

EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

CASE OF SORRENTINO PROTA v. ITALY

(Application no. 40465/98)

JUDGMENT

STRASBOURG

29 January 2004

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sorrentino Prota v. Italy,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. Rozakis, President,

Mr P. Lorenzen,

Mr G. Bonello,

Mr A. Kovler,

Mr V. Zagrebelsky,

Mrs E. Steiner,

Mr K. Hajiyev, judges,

and Mr S. Nielsen, Deputy Section Registrar,

Having deliberated in private on 8 January 2004,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 40465/98) against the Italian Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian national, Mrs Anna Maria Sorrentino Prota ("the applicant") on 20 August

1997.

2. The applicant is represented by Mr F. Manzo, a lawyer practising in Torre Annunziata (Naples). The Italian Government ("the Government") were represented by their successive Agents, respectively Mr U. Leanza and Mr I.M. Braguglia and by their successive co-Agents, respectively Mr V. Esposito and Mr F. Crisafulli.

3. On 11 October 2001 the Court declared the application partly inadmissible.

4. On 18 April 2002 the Court declared the remainder admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and lives in Positano.

6. She is the owner of five flats in Castellammare di Stabia (Naples), that she had let to different tenants.

1. The proceedings against I.A.

7. In a registered letter of 24 May 1991, the applicant informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1991 and asked him to vacate the premises by that date.

8. In a writ served on the tenant on 14 May 1992, the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Naples Magistrate.

9. By a decision of 20 May 1992, which was made enforceable on 27 May 1992, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 20 May 1993.

10. On 11 September 1995, the applicant served notice on the tenant requiring him to vacate the premises.

11. On 23 October 1995, she informed the tenant that the order for possession would be enforced by a bailiff on 4 November 1995.

12. Between 4 November 1995 and 3 December 1998, the bailiff made seven attempts to recover possession. Each attempt proved unsuccessful, as the applicant was not entitled to police assistance in enforcing the order for possession.

13. On an unspecified date in 1999, the applicant recovered possession of the flat.

2. The proceedings against V.C.

14. In a registered letter of 24 June 1991, the applicant informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1991 and asked him to vacate the premises by that date.

15. In a writ served on the tenant on 17 April 1992, the applicant reiterated her intention to terminate the lease and summoned the tenant to

appear before the Naples Magistrate.

16. By a decision of 22 June 1992, which was made enforceable on 17 July 1992, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 22 June 1993.

17. On 11 September 1995, the applicant served notice on the tenant requiring him to vacate the premises.

18. On 23 October 1995, she informed the tenant that the order for possession would be enforced by a bailiff on 4 November 1995.

19. Between 4 November 1995 and 28 October 1997, the bailiff made five attempts to recover possession. Each attempt proved unsuccessful, as the applicant the applicant was not entitled to police assistance in enforcing the order for possession.

20. Following the entry into force of Law 431/98, the enforcement of the evictions proceedings was suspended until 31 January 2000.

21. In March 2000, the tenant entered into a new lease.

3. The proceedings against S.E.

22. In a writ served on the tenant on 11 May 1992, the applicant informed the tenant of her intention to terminate the lease on expiry of the term on 8 December 1992 and summoned him to appear before the Naples Magistrate.

23. By a decision of 20 May 1992, which was made enforceable on 25 September 1992, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 20 May 1993.

24. On 11 September 1995, the applicant served notice on the tenant requiring him to vacate the premises.

25. On 23 October 1995, she informed the tenant that the order for possession would be enforced by a bailiff on 4 November 1995.

26. Between 4 November 1995 and 25 November 1999, the bailiff made twelve attempts to recover possession. Each attempt proved unsuccessful as the applicant was not entitled to police assistance in enforcing the order for possession.

27. On 24 March 2000, the applicant recovered possession of the flat.

4. The proceedings against I.R.

28. In a registered letter of 24 May 1991, the applicant informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1991 and asked him to vacate the premises by that date.

29. In a writ served on the tenant on 7 May 1992, the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Naples Magistrate.

30. By a decision of 20 May 1992, which was made enforceable on 27 May 1992, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 20 May 1993.

31. On 1 October 1992, I.R. died, F.E. succeeded in the lease.

32. On 23 October 1995, the applicant served notice on the tenant requiring him to vacate the premises.

33. On 10 October 1995, she informed the tenant that the order for possession would be enforced by a bailiff on 2 December 1995.

34. Between 2 December 1995 and 27 October 1997, the bailiff made five attempts to recover possession. Each attempt proved unsuccessful, as the applicant was not entitled to police assistance in enforcing the order for possession.

35. Following the entry into force of Law 431/98, the enforcement of the evictions proceedings was suspended until 31 January 2000.

36. On 24 March 2000, the applicant recovered possession of the flat.

5. The proceedings against F.D., A.M. and G.R.

37. In a registered letter of 24 May 1991, the applicant informed the tenants that she intended to terminate the lease on expiry of the term on 8 February 1992 and asked them to vacate the premises by that date.

38. In a writ served on the tenants on 8 May 1992, the applicant reiterated her intention to terminate the lease and summoned the tenants to appear before the Naples Magistrate.

39. By a decision of 20 May 1992, which was made enforceable on 27 May 1992, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 20 March 1993.

On 23 October 1995, the applicant served notice on the tenants requiring them to vacate the premises.

40. On 10 November 1995, she informed the tenants that the order for possession would be enforced by a bailiff on 2 December 1995.

41. Between 2 December 1995 and 28 October 1997, the bailiff made five attempts to recover possession. Each attempt proved unsuccessful as, the applicant was not entitled to police assistance in enforcing the order for possession. Following the entry into force of Law 431/98, the enforcement of the evictions proceedings was suspended until 31 January 2000.

42. On 17 March 2000, the applicant recovered possession of the flat.

II. RELEVANT DOMESTIC LAW

43. Since 1947 the public authorities in Italy have frequently intervened in residential tenancy legislation with the aim of controlling rents. This has been achieved by rent freezes (occasionally relaxed when the Government decreed statutory increases), by the statutory extension of all current leases and by the postponement, suspension or staggering of the enforcement of orders for possession. The relevant domestic law concerning the extension of tenancies, the suspension of enforcement and the staggering of evictions is described in the Court's judgment in the

case of Immobiliare Saffi v. Italy [GC], no. 22774/93, §§ 18-35, ECHR 1999-V. Lastly, for some cases, a suspension of the enforcement of the orders for possession until 30 June 2004 was introduced by Legislative Decree no. 147 of 24 June 2003, which became Law no. 200 of 1 August 2003.

A. The system of control of the rents

44. As regards the control of the rents, the evolution of the Italian legislation may be summarised as follows.

45. The first relevant measure was the Law no. 392 of 27 July 1978 which provided machinery for "fair rents" (the so-called equo canone) on the basis of a number of criteria such as the surface of the flat and its costs of realisation.

46. The second step of the Italian authorities dated August 1992. It was taken in the view of progressive liberalisation of the market of tenancies. Accordingly, a legislation relaxing on rent levels restrictions (the so-called patti in deroga) entered into force. Owners and tenants were in principle given the opportunity to derogate from the rent imposed by law and to agree on a different price.

47. Lastly, Law no. 431 of 9 December 1998 reformed the tenancies and liberalised the rents.

B. Obligations of the tenant in the case of late restitution

48. The tenant is under a general obligation to refund the owner any damages caused in the case of late restitution of the flat. In this regard, Article 1591 of the Italian Civil Code provides:

"The tenant who fails to vacate the immovable property is under an obligation to pay the owner the agreed amount until the date when he leaves, together with other remaining damages".

49. However, Law no. 61 of 1989 set out, inter alia, a limit to the compensation claimable by the owner entitling him to a sum equal to the rent paid by the tenant at the time of the expiration of the lease, proportionally increased according to the cost of living (Article 24 of Law n. 392 of 27 July 1978) plus 20%, along the period of inability to dispose of the possession of the flat.

50. In the judgment no. 482 of 2000, the Constitutional Court was called upon to decide whether such a limitation complied with the Constitution. The Constitutional Court held that it was compatible with the Constitution with regard to periods of time during which the suspension of the evictions was determined by law. The Constitutional Court explained that the introduction of that limitation was intended to settle the tenancies of the time of the emergency legislation, when the housing shortage made the suspension of the enforcement necessary. While evictions were suspended ex lege, the law predetermined the quantum of the reimbursement chargeable to the tenant, both measures being temporary and exceptional. Besides, the interests of the owner were counterbalanced by the exemption for him from the burden to prove the damages.

51. The Constitutional Court declared the limitation to the compensation claimable by the owner unconstitutional with regard to cases

where the impossibility for the owner to repossess the flat depended on the conduct of the tenant and was not due to a legislative intervention. Accordingly, it opened the way to owners for the institution of civil proceedings in order to obtain full reparation of the damages caused by the tenant.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 AND OF ARTICLE 6 § 1 OF THE CONVENTION

52. The applicant complained of her prolonged inability to recover possession of her flats, owing to the lack of police assistance. She alleged a violation of her right of property, as guaranteed by Article 1 of Protocol No. 1 to the Convention, which provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

53. The applicant also alleged a breach of Article 6 § 1 of the Convention, the relevant part of which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. The proceedings against I.A.

1. Article 1 of Protocol No. 1

54. The Government maintain that the measures in question amount to a control of the use of property which pursues the legitimate aim of avoiding the social tensions and troubles to public order that would occur if a considerable number of orders for possession were to be enforced simultaneously. In their opinion, the interference with the applicant's property rights was not disproportionate; therefore, there is no violation of Article 1 of Protocol No. 1 to the Convention.

55. The Court considers that the interference complained of amounted to control of the use of property within the meaning of the second paragraph of Article 1, and pursued a legitimate aim in the general interest, as required by that provision (see Immobiliare Saffi, cited above, §§ 46 and 48).

56. The Court recalls that an interference "must strike a "fair balance" between the demands of the general interest and the requirements

of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, and therefore also in its second paragraph. There must be a reasonable relationship of proportionality between the means employed and the aim pursued. In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question. In spheres such as housing, which plays a central role in the welfare and economic policies of modern societies, the Court will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation" (see Immobiliare Saffi, cited above § 49).

57. The Court considers that, in principle, the Italian system of staggering of the enforcement of court orders is not in itself open to criticism, having regard in particular to the margin of appreciation permitted under the second paragraph of Article 1. However, such a system carries with it the risk of imposing on landlords an excessive burden in terms of their ability to dispose of their property and must accordingly provide certain procedural safeguards so as to ensure that the operation of the system and its impact on a landlord's property rights are neither arbitrary nor unforeseeable (see, *mutatis mutandis*, Immobiliare Saffi, cited above, § 54).

58. The Court must thus ascertain whether, in the instant cases, a balance was maintained between the relevant interests (see *Scollo v. Italy* judgment of 28 September 1995, Series A no 315-C, § 37).

59. The Court takes note that although requested several times, the applicant was not able to submit the exact date when she recovered possession of the flat. The restriction on the applicant's use of her flat, therefore, could have lasted for a period of time between three years and two months and four years and one month, after the first attempt of the bailiff.

60. In these circumstances, the Court finds that it did not impose on her an individual and excessive burden, contrary to the requirements of the second paragraph of Article 1 of Protocol No. 1 (see, *Istituto Nazionale Case v. Italy* (dec.), nos. 41932/98, 41934/98, 41937/98, 41938/98, 42730/98 and 42733/98, 05.09.02).

61. Accordingly, there has been no violation of Article 1 of Protocol No. 1 to the Convention.

2. Article 6 § 1 of the Convention

62. The Government submit that the delay in granting police assistance is justified on grounds of the order of priorities established according to public-safety requirements. The length of the proceedings at issue was not unreasonably long, therefore there is no violation of Article 1 of Protocol No. 1 to the Convention.

63. The Court considers that this complaint should be examined in connection with the more general right to a court (see Immobiliare Saffi, cited above, § 61).

64. The right to a court as guaranteed by Article 6 also protects the implementation of final, binding judicial decisions, which, in States that

accept the rule of law, cannot remain inoperative to the detriment of one party (see, *mutatis mutandis*, *Hornsby v. Greece* judgment of 19 March 1997, Reports of Judgments and Decisions 1997-II, p. 510, § 40).

65. Accordingly, the execution of a judicial decision cannot be unduly delayed. However, a stay of execution of a judicial decision for such a period as is strictly necessary to enable a satisfactory solution to be found to public-order problems may be justified in exceptional circumstances (see *Immobiliare Saffi*, cited above, § 69).

66. As far as this proceedings is concerned, the Court notes that after the applicant had to wait between three years and two months and four years and one month, after the first attempt of the bailiff, before being able to repossess the flat.

67. Having in mind the public order problems which Italy admittedly has had to face in the field of housing, the Court considers that this delay was not so long as to deprive the order for possession of all useful effect or of undermining its substance (see, *a contrario*, *Immobiliare Saffi*, cited above, § 73; see also, *mutatis mutandis*, *Caselli v. Italy* (dec.), no. 36679/97, 20.01.2000).

68. Further, the Court considers, bearing in mind the practical difficulties raised by the enforcement of a very large number of evictions, that the length of the proceedings at issue was not unreasonably long (see, *a contrario*, *Scollo v. Italy*, cited above, § 44 in fine).

69. Accordingly, there has been no violation of Article 6 § 1 of the Convention neither.

B. The others proceedings

70. As far as the other proceedings are concerned, the Court recalls that it has previously examined a number of cases raising similar issues and found a violation of Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention (see *Immobiliare Saffi*, cited above, §§ 46-75; *Lunari v. Italy*, no. 21463/93, 11 January 2001, §§ 34-46; *Palumbo v. Italy*, no. 15919/89, 30 November 2000, §§ 33-48).

71. The Court finds that there are no facts or arguments from the Government which would lead to any different conclusion in this instance. It notes, in fact, that the applicant had to wait respectively four years and four months, four years and five months, four years and four months and four years and three months after the first attempts of the bailiff before being able to repossess the flats concerned.

72. Consequently, there has been a violation of Article 1 of Protocol No. 1 and of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

74. The applicant sought, firstly, reparation for the pecuniary damage she had sustained, which she calculated as follows:

- ITL 600,000,000 [EUR 309,874.14], for the closing of her pharmaceutical company. The applicant explained that in order to face the competition of foreign companies, she had to restructure her company. Therefore, she would have needed solid investments that would have been represented by the sale of the flats. However, since the flats were not vacant, if she would have sold them, she could have not obtained a sufficient amount. She was, therefore, in the impossibility to restructure her company and obliged to close it;

- 264,000,000 Italian lire (ITL) [136,344.62 euros (EUR)], for the loss of rent for a period of time from November 1995 to June 1999. The applicant submitted this amount as the result of the difference between the market value rent and the rent imposed by law for a period of time of forty-four months. For the purpose of assessing the market value rent, the applicant submitted five new rent contracts. One of them concerns the second flat of the present application, the others concern similar flats.

75. The Government contested those claims.

76. As regards the first claim, as far as the applicant complains of the impossibility to sell the flats due to the fact that they were not vacant, the Court observes that there is no evidence that the applicant had attempted, but had not been able, to sell them. Accordingly, it rejects the claim.

As far as the applicant complains of the impossibility to find any other source in order to finance her works, the Court finds no causal link between the violations it has found and the alleged pecuniary damage. Therefore it rejects the claim.

77. As regards the first claim, the Court considers that the applicant must be awarded compensation for the pecuniary damage resulting from the loss of rent for the period of time related to the violations found. Having regard to the means of calculation proposed by the applicant and in the light of the evidence before it and the period concerned, it decides to award her, on an equitable basis, the sum of EUR 6,000 under this head.

B. Non-pecuniary damage

78. The applicant claimed ITL 300,000,000 [EUR 154,937.07] for the non-pecuniary damage resulting from the closure of her company and ITL 100,000,000 [EUR 51,645.69] for the mortification she suffered.

79. The Government contested those claims.

80. The Court considers that the applicant must have sustained some non-

pecuniary damage. Ruling on an equitable basis, it awards her EUR 3,000 under this head.

C. Costs and expenses

81. The applicant claimed reimbursement of her legal costs and expenses as follows:

- ITL 25,853,600 [EUR 13,352.27] for the costs of the enforcement proceedings;

- ITL 10,000,000 [EUR 5,164.57] for the costs and expenses incurred before the Court.

82. As regards the costs of the enforcement proceedings, the Government contested the claim. As regards the costs and expenses before the Court, the Government did not make any submissions.

83. On the basis of the information in its possession and the Court's case-law, the Court considers it reasonable to award the applicant the sum of EUR 5,800 for the costs and expenses incurred in the domestic proceedings and EUR 2,000 for the proceedings before the Court.

84. The Court awards a total sum of EUR 7,800 for legal costs and expenses.

D. Default interest

85. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been no violation of Article 1 of Protocol No. 1 to the Convention with respect to the proceedings against I. A.;

Holds that there has been no violation of Article 6 § 1 of the Convention with respect to the proceedings against I. A.;

Holds that there has been a violation of Article 1 of Protocol No. 1 to the Convention with respect to the other proceedings;

Holds that there has been a violation of Article 6 § 1 of the Convention with respect to the other proceedings;

5. Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:

- (i) EUR 6,000 (six thousand euros) for pecuniary damage;
- (ii) EUR 3,000 (three thousand euros) for non-pecuniary damage;
- (iii) EUR 7,800 (seven thousand eight hundred euros) for legal costs and expenses;

any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. Dismisses the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 January 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Christos Rozakis

Deputy Registrar President