

***TESTO INTEGRALE***

THIRD SECTION

**CASE OF MOSCONI v. ITALY**

*(Application no. 68011/01)*

JUDGMENT

STRASBOURG

1 June 2006

*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 Mosconi v. Italy,**

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

Mr B.M. ZUPANČIČ, *President*,

Mr L. CAFLISCH,

Mr C. BÎRSAN,

Mr V. ZAGREBELSKY,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 11 May 2006,

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

## PROCEDURE

1. The case originated in an application (no. 68011/01) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Mr Giuseppe Mosconi (“the applicant”), on 21 January 2001.

2. 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 13 May 2004, the Court (First Section) declared the application partly admissible.

4. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1931 and lives in Rome.

6. The applicant is the owner of two flats in Rome, which he had respectively let to C.C. and G.C.

7. In a registered letter of 14 June 1991, the applicant informed the tenants that he intended to terminate the lease on expiry of the term on 31 December 1991 and asked them to vacate the premises by that date.

8. In a writ served on the tenants on 16 January 1992, the applicant reiterated his intention to terminate the lease and summoned the tenants to appear before the Rome Magistrate.

9. By a decision of 16 April 1992, which was made enforceable on the same day, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 March 1993.

10. On 11 March 1995, the applicant served notice on the tenants requiring them to vacate the premises.

11. On 25 March 1995, he informed the tenants that the order for possession would be enforced by a bailiff on 5 May 1995.

12. On 5 May 1995, the bailiff made one attempt to recover possession of the flats which proved unsuccessful, as the applicant was not entitled to police assistance in enforcing the order for possession.

13. Pursuant to Law no. 241/90, on 2 November 1995, the applicant addressed himself to the Prefectoral Committee in order to be granted the assistance of the police in enforcing the order for possession.

14. The Prefectoral Committee informed the applicant that priority was given to landlords urgently requiring premises as accommodation for themselves, their spouses, children or ascendants and for seeking priority treatment he should have made a statutory declaration.

15. On 11 September 1999, the Rome Magistrate set the date of the eviction proceedings for 10 January 2000.

16. Then, pursuant to Law no. 388 of 23 December 2000, the enforcement proceedings were suspended until 29 June 2001; Law-Decree no. 247/01 suspended them until 31 December 2001 and Law-Decree no. 450/01 suspended them until 30 June 2002.

17. On 25 November 2002, the applicant recovered possession of the flat which he had let to C.C.

18. Pursuant to Law no. 200 of 24 August 2003, Law-Decree no. 147/03 suspended the enforcement proceedings until 30 June 2004.

19. On an unspecified date in 2003, it appears that the applicant has recovered possession of the flat.

## II. RELEVANT DOMESTIC LAW

20. The relevant domestic law and practice is described in the Court's judgment in the case of *Mascolo v. Italy* (no. 68792/01, §§ 14-44) and *Lo Tufo v. Italy* (no. 64663/01, §§16-48, ECHR 2005-...).

## THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTION

21. In their observations on the merits, the Government argue that domestic remedies had not been exhausted on the grounds that the applicant had failed to seek reimbursement of damages before the national courts under Article 1591 of the Civil Code.

22. As far as the Government's arguments have to be considered as a preliminary objection, the Court observes that it was not raised, as it could have been, at the time of the admissibility. Therefore, the Court considers that the Government is estopped from raising objections to the admissibility at this stage of the procedure.

23. This objection should accordingly be dismissed (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 44, ECHR 1999-II).

### II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

24. The applicant complained of his prolonged inability to recover possession of his flat, owing to the lack of police assistance. He alleged a violation of his right of property, as guaranteed by Article 1 of Protocol No. 1, 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.”

25. The Court has previously examined a number of cases raising issues similar to those in the present case and found a violation of Article 1 of Protocol No. 1 (see *Immobiliare Saffi*, cited above, §§ 46-75; *Lunari v. Italy*, no. 21463/93, §§ 34-46, 11 January 2001; *Palumbo v. Italy*, no. 15919/89, §§ 33-48, 30 November 2000).

26. The Court has examined the present case and finds that there are no facts or arguments from the Government which would lead to any different conclusion in this instance. It notes that the applicant had to wait approximately seven years and seven months after the first attempt of the bailiff before being able to repossess the flat which he had let to C.C. and approximately eight years after the first attempt of the bailiff before being able to repossess the flat which he had let to C.G.

Consequently, there has been a violation of Article 1 of Protocol No. 1.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

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

- EUR 76,413 the sum being the loss of rent which he suffered with regards to the flat let to C.C. ;
- EUR 80,840 the sum being the loss of rent which he suffered with regards to the flat let to C.G.

29. The Government contested those claims. They maintained that the applicant failed to seek reparation for the damages he suffered before the national courts under Article 1591 of the Civil Code. Yet, the Government consider that the applicant failed to adduce any reason that he was unable to make use of such a remedy. Accordingly, his claims must be rejected.

30. The Court observes that the Government have not put forward any argument regarding the possibility that appears to have been developed in the case-law of the Court of Cassation of suing the State for damages following an unjustified lack of police assistance (see *Mascolo* cited above § 34-44, and *Lo Tufo* cited above, §§ 37-48).

31. The Court notes that the applicant can bring an action in the civil courts under Article 1591 of the Civil Code claiming compensation from his former tenants for the loss incurred as a result of the property being returned late.

32. The issue in the present case is the damage arising from the unlawful conduct of the tenant, who, irrespective of the State’s cooperation in enforcing the court-ordered eviction, had a duty to return the flat to its owner. The breach of the applicant’s right to peaceful enjoyment of his possessions is above all the consequence of the tenant’s unlawful conduct.

33. The Court accordingly notes that Italian domestic law allows reparation to be made for the material consequences of the breach and considers that the claim for just satisfaction for pecuniary damage should be dismissed.

#### B. Non-pecuniary damage

34. The applicant stressed the paradox and the inconvenience of his inability to have a court decision executed. He left the matter to the Court’s discretion.

35. The Government contested the claim.

36. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 6,000 under this head.

### **C. Costs and expenses**

37. The applicant claimed reimbursement for legal costs and expenses.

38. The Government contested the claim.

39. As far as the applicant seeks reimbursement of costs and expenses incurred in the domestic proceedings, the Court, on the basis of the information in its possession and its case-law, considers it reasonable to award him the sum of EUR 500. As far as the applicant seeks reimbursement of costs and expenses incurred in the proceedings before the Court, the Court considers it reasonable to award him EUR 500.

40. The Court awards a total sum of EUR 1,000 for legal costs and expenses.

### **D. Default interest**

41. 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 a violation of Article 1 of Protocol No. 1;
2. *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 non-pecuniary damage;
    - (ii) EUR 1,000 (one thousand euros) for legal costs and expenses;
    - (iii) 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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER  
Registrar

BOŠTJAN M. ZUPANČIČ  
President