



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

CASE OF PAOLA ESPOSITO v. ITALY

(Application no. 30883/96)

JUDGMENT

STRASBOURG

19 December 2002

FINAL

19/03/2003

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 Paola Esposito v. Italy,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER, *judges*,

Mr G. RAIMONDI, *ad hoc judge*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 5 December 2002,

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

PROCEDURE

1. The case originated in an application (no. 30883/96) 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, Mrs Paola Esposito (“the applicant”), on 22 November 1995.

2. The applicant was represented by Mr M. Cenerini, a lawyer practising in Leghorn. The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, and by their co-Agent, Mr V. Esposito.

3. The applicant complained under Article 1 of Protocol No. 1 that she had been unable to recover possession of her flat within a reasonable time. Invoking Article 6 § 1 of the Convention, she further complained about the length of the eviction proceedings.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr V. Zagrebelsky, the judge elected in respect of Italy, withdrew from sitting in the case (Rule 28). The Government appointed Mr G. Raimondi as *ad hoc* judge to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 2).

5. On 30 May 2000 the Court declared the application admissible.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1968 and lives in Leghorn.

8. The applicant is the owner of an apartment in Leghorn, which she had let to O.C.L.

9. On an unidentified date, the applicant informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1991 and asked her to vacate the premises by that date.

10. In a writ served on the tenant on 16 July 1991 the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Leghorn Magistrate.

11. By a decision of 29 July 1991, which was made enforceable on 17 September 1991, the Leghorn Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1992.

12. On 29 March 1993, the applicant served notice on the tenant requiring her to vacate the premises.

13. On 15 May 1993, the applicant made a statutory declaration that she urgently required the premises as accommodation for herself.

14. On 20 May 1993, she served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 17 June 1993.

15. Between 17 June 1993 and 4 June 1998, the bailiff made eight attempts to recover possession. Each attempt proved unsuccessful, as the applicant was never granted the assistance of the police in enforcing the order for possession.

16. Following the entry into force of Law No. 431 of 1998, on 27 July 1999, the tenant asked the Leghorn District Court to set a fresh date for the enforcement of the order for possession.

17. The applicant asked the court to reject the tenant's request.

18. On 23 September 1999, the Leghorn Magistrate decided to postpone the enforcement proceedings until 10 February 2001. In the meantime, pursuant to Law No. 388/00 all evictions of tenants were suspended until 30 June 2001.

19. On 2 July 2001, the applicant served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 20 July 2001.

20. On 3 August 2001, the Leghorn Magistrate decided to postpone the enforcement proceedings first until 23 April 2002 and then until 16 May 2002.

21. On 23 May 2002, the applicant was granted police assistance to evict the tenant only once, but to no avail, as the tenant claimed he was ill and an officially assigned doctor was available to check his allegations.

22. On 24 May 2002 the applicant had not recovered possession of her flat.

II. RELEVANT DOMESTIC LAW

23. The relevant domestic law is described in the Court's judgment in the case of *Immobiliare Saffi v. Italy* [GC], no. 22774/93, §§ 18-35, ECHR 1999-V.

THE LAW

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

24. The applicant complained that she had been unable to recover possession of her flat within a reasonable time owing to the lack of police assistance. She alleged a violation of 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.”

25. 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...”

The Court has on several previous occasions decided cases raising similar issues as in the present case and found a violation of Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention (see *Immobiliare Saffi*,

cited above, §§ 46-66; *Lunari v. Italy*, no. 21463/93, 11 January 2001, §§ 34-46; *Palumbo v. Italy*, no. 15919/89, 30 November 2000, §§ 33-47).

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 case. The Court refers to its detailed reasons in the judgments cited above and notes that in this case, since June 1993, i.e. more than eight years and eleven months, the applicant is still left in a state of uncertainty as to when she would be able to repossess her flat.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant sought reparation for the pecuniary damage she had sustained, which she put at ITL 2,000,466 [EUR 1,033.15] for the ICI (“*Imposta Comunale sugli Immobili*”) –real estate municipal tax and ITL 8,436,250 [EUR 4,356.96] for the costs of executing the possession order.

28. The Government stressed that the applicant had failed to adduce evidence of any pecuniary damage sustained as a result of the alleged violation. As regards the costs incurred in the domestic proceedings, the Government argued that the costs of the proceedings on the merits were not related to the alleged violations and that the costs incurred during the enforcement stage were due only for the period that was regarded as being a disproportionate interference with the applicant's right of property.

29. As regards the costs of the enforcement proceedings, the Court decides to grant the requested amount of EUR 4,356.96.

30. The Government argued that the costs incurred by the applicant for the real estate municipal tax were not related to the alleged violations.

31. The Court considers that there is no causal link between the violations found and the alleged pecuniary damage for real estate municipal tax and dismisses that claim.

The Court awards on an equitable basis a total sum of EUR 4,356.96 for pecuniary damage.

B. Non-pecuniary damage

32. The applicant claimed ITL 50,000,000 [EUR 25,822.84] for the non-pecuniary damage.

33. The Government submitted that a finding of a violation would in itself constitute sufficient just satisfaction. It submitted that in any event the amount claimed was excessive. The Government stressed that the applicant had failed to adduce evidence of non-pecuniary damage sustained as a result of the alleged violation.

34. The Court considers that the applicant must have sustained some non-pecuniary damage, which the mere finding of a violation cannot adequately compensate. Therefore, the Court decides, on an equitable basis, to award EUR 8,000 under this head.

C. Default interest

35. 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 to the Convention;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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) 4,356.96 EUR (four thousand three hundred fifty-six euros ninety-six cents) for pecuniary damage;
 - (ii) 8,000 EUR (eight thousand euros) for non-pecuniary damage;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 December 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President