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

FIRST SECTION

CASE OF M.C. v. ITALY

(Application no. 32391/96)

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 M.C. 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 G. BONELLO,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA, *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. 32391/96) 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 Mrs M.C. ("the applicant"), an Italian national, on 24 May 1996.

2. The applicant was represented by Mrs L. Frasca', a lawyer practising in Florence. 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 transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second 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).

6. On 17 May 2001 the Court declared the application admissible.

7. 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

8. The applicant was born in 1913 and lives in Florence. She is the owner of three apartments in Florence, which she had let to P.U., C.G. and G.G.

1) The proceedings against P.U.

9. In a writ served on the tenant on 20 March 1990, the applicant informed the tenant of her intention to terminate the lease and summoned her to appear before the Florence Magistrate.

10. By a decision of 11 April 1990, which was made enforceable on 29 May 1990, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises must be vacated by 31 December 1992.

11. On 3 December 1992, the applicant served notice on the tenant requiring her to vacate the premises.

12. On 12 January 1993, she served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 19 February 1993.

13. Between 19 February 1993 and 23 February 1996, 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.

14. On an unspecified date in 1996, the applicant sold the apartment.

2) The proceedings against C.G.

15. In a writ served on the tenant on 17 February 1990, the applicant informed the tenant of her intention to terminate the lease and summoned her to appear before the Florence Magistrate.

16. By a decision of 7 March 1990, which was made enforceable on 23 March 1990, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises must be vacated by 31 October 1991.

17. On 12 October 1991, the applicant served notice on the tenant requiring her to vacate the premises.

18. On 21 November 1991, she served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 15 January 1992.

19. Between 15 January 1992 and 28 May 1996, 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.

20. On an unspecified date in 1996, the applicant sold the apartment.

3) The proceedings against G.G.

21. In a writ served on the tenant on 17 February 1990, the applicant informed the tenant of her intention to terminate the lease and summoned her to appear before the Florence Magistrate.

22. By a decision of 8 March 1990, which was made enforceable on 27 April 1990, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises must be vacated by 31 January 1993.

23. On 3 December 1992, the applicant served notice on the tenant requiring him to vacate the premises.

24. On 12 January 1993, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 19 February 1993.

25. Between 19 February 1993 and 16 January 1996, the bailiff made four attempts to recover possession. Each attempt proved unsuccessful, as the applicant was not entitled to police assistance in enforcing the order for possession.

26. On an unspecified date in 1996, the applicant sold the apartment.

II. RELEVANT DOMESTIC LAW

27. 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 AND OF ARTICLE 6 § 1 OF THE CONVENTION

28. The applicant complained that she has been unable to recover possession of her flats 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."

29. 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..."

30. 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).

31. 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 the applicant had to wait for more than three years in the first proceedings, more than four years and four months in the second one and two years and at least eleven months in the third one from the first attempts of the bailiff before she sold her flats.

32. Consequently, there has been a violation of Article 1 of Protocol No. 1 and of Article 6 § 1 of the Convention in the second proceedings, but not in the first and third sets of proceedings.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant sought reparation for the pecuniary damage she had sustained including the costs of executing the possession order. She left the matter to be assessed by the Court in an equitable manner.

35. The Government stressed that the applicant had failed to adduce evidence of any pecuniary damage sustained.

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 applicant had failed to adduce the necessary evidence.

36. The Court considers that the applicant has failed to adduce evidence of any pecuniary damage sustained and rejects the claim under this head.

B. Non-pecuniary damage

37. The applicant left the matter to be assessed by the Court in an equitable manner.

38. The Court considers that the applicant must have sustained some non-pecuniary damage. Therefore, the Court decides, on an equitable basis, to award EUR 3,000 under this head.

C. Costs and expenses

39. The applicant sought reimbursement of her costs and expenses before the Court.

40. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum (see, for example, *Bottazzi v. Italy* [GC], no. 34884/97, ECHR 1999-V, § 30). In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court considers that EUR 1,500 is a reasonable sum and awards the applicant that amount.

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 to the Convention as regards the second proceedings;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the second proceedings;

3. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention as regards the first and third sets of proceedings;

4. *Holds* that there has been no violation of Article 6 § 1 of the Convention as regards the first and third sets of 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) 3,000 EUR (three thousand euros) for non-pecuniary damage;

(iii) 1,500 EUR (one thousand five hundred euros) for legal costs and expenses;

(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 19 December 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN	Christos ROZAKIS
Deputy Registrar	President