



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

FIRST SECTION

CASE OF IMMOBILIARE SOLE SRL v. ITALY

(Application no. 32766/96)

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 Immobiliare Sole Srl 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. 32766/96) 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 Immobiliare Sole Srl (“the applicant”), an Italian company, on 7 January 1996.

2. The applicant was represented by Mr G. Tomasoni, a lawyer practising in Milan. 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 it had been unable to recover possession of its flat within a reasonable time. Invoking Article 6 § 1 of the Convention, it 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 22 June 2000 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 is an Italian company having its registered seat in Milan.

9. Mrs C. was the owner of an apartment in Milan, which she had let to D.S.

10. In a registered letter of 20 January 1987, she informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1987 and asked him to vacate the premises by that date.

11. In a writ served on the heirs of the tenant, who had died in the meantime, on 25 February 1988, Mrs C. reiterated her intention to terminate the lease and summoned them to appear before the Milan Magistrate.

12. By a decision of 24 March 1988, which was made enforceable on 29 March 1988, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 24 March 1989.

13. On 25 July 1989, the applicant became the owner of the apartment.

14. On 17 July 1990, the applicant served notice on the heirs, now tenants, requiring them to vacate the premises.

15. On 5 October 1990, it served notice on the tenants informing them that the order for possession would be enforced by a bailiff on 15 October 1990.

16. Between 15 October 1990 and 15 October 1996, the bailiff made twenty-one attempts to recover possession. Each attempt proved unsuccessful, as, under the statutory provisions on the staggering of evictions, the applicant was not entitled to police assistance in enforcing the order for possession.

17. At the beginning of January 1997, the applicant repossessed the apartment as the tenants had spontaneously vacated the premises.

II. RELEVANT DOMESTIC LAW

18. 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

19. The applicant complained that it had been unable to recover possession of its flat within a reasonable time owing to the lack of police assistance. It 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.”

20. 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...”

21. 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).

22. 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 has had to wait for approximately six years and two months from the first attempt of the bailiff before repossessing the flat.

23. 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

24. 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

25. The applicant sought reparation for the pecuniary damage it had sustained, which it put at 69,765,123 Italian lire (ITL) [36,030.68 euros (EUR)], the sum of ITL 54,708,000 being the loss of rent for the period from 24 March 1989 (the date on which the Milan Magistrate ordered that the premises be vacated) to January 1997 (when the applicant recovered possession of the flat), the sum of ITL 15,057,123 [EUR 7,776.36] for the costs of executing the possession order.

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

27. The Court considers that the applicant must be awarded compensation for the pecuniary damage resulting from the loss of rent (see *Immobiliare Saffi*, cited above, § 79). Having regard to the means of calculation proposed by the applicant, the Court, in the light of the evidence before it and the period concerned, decides to award on an equitable basis EUR 7,900 under this head.

As regards the costs of the enforcement proceedings, the Court considers that they must be reimbursed in part (see the *Scollo v. Italy* judgment of 28 September 1995, Series A no. 315-C, p. 56, § 50). Having regard to the means of calculation proposed by the applicant, the evidence before it and the period concerned, and ruling on an equitable basis, the Court awards EUR 3,500 under this head.

B. Non-pecuniary damage

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

29. The Government stressed that the applicant had failed to adduce evidence of non-pecuniary damage sustained.

30. The Court recalls that it has stated in its *Comingersoll* judgment that it cannot exclude the possibility that a commercial company may be awarded compensation for non-pecuniary damage (*Comingersoll S.A. v. Portugal* [GC], n° 35382/97, ECHR 2000-IV, § 35). Whether an award

should be made will depend on the circumstances of each case. In the circumstances of the present case, however, the Court finds that it has not been established that the applicant company has suffered any non-pecuniary damage as a result of the duration of the eviction procedure. It therefore dismisses this claim.

C. Costs and expenses

31. The applicant sought reimbursement of its costs and expenses before the Commission, which it put at ITL 5,600,000 [EUR 2,892.16].

32. 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. In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court considers that EUR 2,000 is a reasonable sum and awards the applicant that amount.

D. Default interest

33. 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) 11,400 EUR (eleven thousand four hundred euros) for pecuniary damage;
 - (ii) 2,000 EUR (two thousand 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;

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