



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

FIRST SECTION

CASE OF SCURCI CHIMENTI v. ITALY

(Application no. 33227/96)

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 Scurci Chimenti 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. BOTOCHAROVA, *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. 33227/96) 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 an Italian national, Mrs Rita Maria Scurci Chimenti (“the applicant”), on 3 May 1996.

2. 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 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).

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 was born in 1943 and lives in Leghorn.

9. The applicant is the owner of an apartment in Leghorn, which she had let to G.T. and G.P.

10. In a registered letter of 18 November 1987, the applicant informed the tenants that she intended to terminate the lease on expiry of the term on 31 October 1989 and asked them to vacate the premises by that date.

11. In a writ served on the tenants on 5 December 1987, the applicant reiterated her intention to terminate the lease and summoned the tenants to appear before the Leghorn Magistrate.

12. By a decision of 14 December 1987, which was made enforceable on 15 December 1987, the Leghorn Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 October 1989.

13. On 11 May 1990, the applicant served notice on the tenants requiring them to vacate the premises.

14. On 31 May 1990, the applicant made a statutory declaration that she urgently required the premises as accommodation for herself.

15. On 15 June 1990, she served notice on the tenants informing them that the order for possession would be enforced by a bailiff on 10 July 1990.

16. Between 10 July 1990 and 5 April 1996, the bailiff made thirteen attempts to recover possession.

17. Each attempt proved unsuccessful, as the applicant was never granted the assistance of the police in enforcing the order for possession.

18. On 9 July 1999, the tenants asked the Leghorn District Court to postpone the execution of the order for possession, pursuant to Article 6 of Law no. 431 of 9 December 1998.

19. On 11 August 1999, the applicant served a second notice on the tenants informing them that the order for possession would be enforced by a bailiff on 28 September 1999.

20. On 10 November 1999, pursuant to Article 6 of Law no. 431 of 9 December 1998, the Leghorn District Court postponed the execution of the order for possession until 14 April 2000.

21. On 25 May 2000 and on 15 July 2000, the bailiff made two attempts, which proved unsuccessful, as the applicant was not granted the assistance of the police in enforcing the order for possession.

22. In the meanwhile, on 2 July 2000, the applicant made a statutory declaration that she urgently needed the apartment for herself.

23. On 19 October 2000, the applicant recovered possession of the apartment.

II. RELEVANT DOMESTIC LAW

24. 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

25. 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.”

26. 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...”

27. 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).

28. 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 ten years and three months after the first attempt of the bailiff before repossessing the flat.

29. 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

30. 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

31. The applicant sought reparation for the pecuniary damage she had sustained, which she put at 10,480,000 Italian lire (ITL), [5,412.47 euros (EUR)] being the loss of rent for the period from 31 October 1989 to 19 October 2000 (the date the applicant recovered possession of her flat), and ITL 2,213,552 [EUR 1,143.20] for the costs of executing the possession order.

32. 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.

33. 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, 3,600 euros (EUR) 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, and in the light of the evidence before it and the period concerned, and ruling on an equitable basis, the Court awards her 1,140 euros (EUR) under this head.

The Court awards a total sum of EUR 4,740 for pecuniary damage.

B. Non-pecuniary damage

34. The applicant 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 non-pecuniary damage sustained as a result of the alleged violation.

36. 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 10,000 under this head.

C. Default interest

37. 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) 4,740 EUR (four thousand seven hundred forty euros) for pecuniary damage;
 - (ii) 10,000 EUR (ten 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