



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

FIRST SECTION

CASE OF FOLLIERO v. ITALY

(Application no. 33376/96)

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 Folliero 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. 33376/96) 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 Mr Renato Folliero (“the applicant”), an Italian national, on 22 July 1996.

2. The applicant was represented by Mr G. Romano, a lawyer practising in Benevento. 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 he had been unable to recover possession of his flat within a reasonable time. Invoking Article 6 § 1 of the Convention, he 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 March 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 1927 and lives in Naples.

9. He is the owner of a flat in Naples, which he had let to R.T.

10. In a writ served on the tenant on 15 July 1988, the applicant communicated his intention to terminate the lease and summoned the tenant to appear before the Naples Magistrate.

11. By a provisional decision of 20 January 1989, the Naples Magistrate upheld the validity of the notice to quit, ordered that the premises be vacated by 20 January 1990 and declined jurisdiction on account of the value of the case.

12. On 22 February 1989, the applicant resumed the proceedings before the Naples District Court. By a judgment of 14 April 1994, the court declared that the lease was terminated as of 31 December 1987 and confirmed the date of vacation indicated by the Magistrate. The judgment was made enforceable on 2 September 1994.

13. On 1 April 1995, the applicant served notice on the tenant requiring him to vacate the premises.

14. On 21 April 1995, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 30 May 1995.

15. Between 30 May 1995 and 21 September 1999, the bailiff made twelve attempts to recover possession. Each attempt proved unsuccessful, as, under the statutory provisions providing for staggering of evictions, the applicant was not entitled to police assistance in enforcing the order for possession.

16. On an unspecified date in 2000, the applicant recovered possession of his flat.

II. RELEVANT DOMESTIC LAW

17. 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

18. The applicant complained that he had been unable to recover possession of his flat within a reasonable time owing to the lack of police assistance. He 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.”

19. 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...”

20. 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).

21. 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 more than four years and seven months after the first attempt of the bailiff before repossessing the flat.

22. 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

23. 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

24. The applicant sought reparation for the pecuniary damage he had sustained, which he put at 30,000,000 Italian lire (ITL) [15,493.71 euros (EUR)], the sum of ITL 27,000,000 [EUR 13,944.34] being the loss of rent for the period from 2 September 1994 (the date when the judgment of the Naples District Court became enforceable) to 2000 (when the applicant repossessed his flat), the sum of ITL 2,868,128 [EUR 1,481.26] plus more than ITL 600,000 [EUR 309.87] for the costs and expenses of the domestic proceedings and the costs for executing the possession order.

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

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.

26. The Court considers that the applicant must be awarded compensation for the pecuniary damage (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 1,500 under this head.

B. Non-pecuniary damage

27. The applicant claimed ITL 120,000,000 [EUR 61,974.83] for the non-pecuniary damage.

28. The Government stressed that the applicant had failed to adduce evidence of non-pecuniary damage sustained and that the amount claimed was excessive.

29. 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.

C. Costs and expenses

30. The applicant sought reimbursement for his costs and expenses before the Commission, which he put at ITL 21,774,960 [EUR 11,245.83].

31. 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 2,000 is a reasonable sum and awards the applicant that amount.

D. Default interest

32. 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) 1,500 EUR (one thousand five hundred euros) for pecuniary damage;
 - (ii) 3,000 EUR (three thousand euros) for non-pecuniary damage;
 - (iii) 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