



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

FIRST SECTION

CASE OF L. AND P. v. ITALY

(Application no. 33696/96)

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 L. and P. 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. 33696/96) 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 N.L. and Mrs M.P. (“the applicants”), Italian nationals, on 29 March 1996.

2. The applicants were represented by Mr N. Sardi, 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. Invoking Article 6 § 1 of the Convention, the applicants 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 30 August 1999 the registry was informed of Mr N.L.'s death and then of Mrs M.P.'s wish to have the proceedings continued and to take part therein also as inheritor. For the sake of convenience, the present judgment will only refer to Mrs M.P. as “the applicant”.

7. On 22 June 2000 the Court declared the application admissible.

8. 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

9. The applicants were the owners of a flat in Milan, which they had let to M.A.

10. In a registered letter of 16 January 1989, the applicants informed the tenant that they intended to terminate the lease on expiry of the term on 30 June 1990 and asked her to vacate the premises by that date.

11. In a writ served on the tenant on 28 February 1990, the applicants reiterated their intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

12. By a decision of 28 March 1990, which was made enforceable on 25 June 1990, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 June 1991.

13. On 5 June and again on 13 September 1991, the applicants served notice on the tenant requiring her to vacate the premises.

14. On 3 July 1991, the applicants made a statutory declaration that they urgently required the premises as accommodation for themselves.

15. On 4 December 1991, they served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 13 December 1991.

16. Between 13 December 1991 and 7 January 1997, the bailiff made twenty-five attempts to recover possession. Each attempt proved unsuccessful, as the applicants were never granted the assistance of the police in enforcing the order for possession.

17. At the end of January 1997, the tenant 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 6 § 1 OF THE CONVENTION

19. The applicant complained that she has been unable to recover possession of her flat within a reasonable time. She alleged a violation 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 6 § 1 of the Convention (see *Immobiliare Saffi*, cited above, §§ 46-66; *Lunari v. Italy*, no. 21463/9, 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 Courts refers to its detailed reasons in the judgments cited above and notes that in this case the applicant has had to wait for five years from the first attempt of the bailiff before recovering the flat.

Consequently, there has been a violation of Article 6 § 1 of the Convention in the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant sought reparation for the pecuniary damage she had sustained, which she put at 34,378,600 Italian lire (ITL) [17,755.07 euros (EUR)], the sum of ITL 33,642,000 [EUR 17,374.64] being the loss of rent for the period from 8 August 1992 (the date the legislation relaxing restrictions on rent levels entered into force) to January 1997 (the date the applicant recovered possession of the flat), the

sum of ITL 736,600 [EUR 380.42] being the amount of the costs of executing the possession order.

23. The Government contested the period calculated by the applicant. 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.

24. 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 8,000 under this head.

As regards the costs of the enforcement proceedings, the Court considers the means of calculation proposed by the applicant to be reasonable. Therefore the Court decides to grant the requested amount of EUR 380.

B. Non-pecuniary damage

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

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

27. The Court considers that the applicant must have sustained some non-pecuniary damage. Therefore, the Court decides, on an equitable basis, to award EUR 5,000 under this head.

C. Costs and expenses

28. The applicant sought reimbursement of her legal costs, which she put at ITL 12,430,000 plus taxes [EUR 6,419.56] for her costs and expenses before the Court.

29. The Government left the matter to the discretion of the Court.

30. 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 1,500 is a reasonable sum and awards the applicant that amount.

D. Default interest

31. The Court considers that the default interest should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *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) 8,380 EUR (eight thousand three hundred eighty euros) for pecuniary damage;
 - (ii) 5,000 EUR (five thousand euros) for non-pecuniary damage;
 - (iii) 1,500 EUR (one thousand five hundred euros) for legal costs and expenses;
 - (b) that simple interest at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;
3. *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