



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

FIRST SECTION

CASE OF FIORANI v. ITALY

(Application no. 33909/96)

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 Fiorani 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. 33909/96) 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 Riccardo Fiorani (“the applicant”), an Italian national, on 29 November 1995.

2. The applicant was represented by Mr E. Caroli, a lawyer practising in Rome. 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 6 § 1 of the Convention 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 was born in 1946 and lives in Rocca Priora (Rome).

9. He is the owner of an apartment in Rome, which he had let to C.C.

10. In a registered letter of 17 April 1984, the applicant informed the tenant that he intended to terminate the lease on expiry of the term on 31 May 1986 and asked her to vacate the premises by that date.

11. In a writ served on the tenant on 18 January 1985, the applicant reiterated his intention to terminate the lease and summoned the tenant to appear before the Rome Magistrate.

12. By a decision of 11 March 1985, which was made enforceable on 2 April 1985, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 28 February 1987.

13. On 3 April 1987, the applicant served notice on the tenant requiring her to vacate the premises.

14. On 27 April 1987 he served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 5 June 1987.

15. Between 5 June 1987 and 31 January 1989, the bailiff made eight attempts to recover possession.

16. On 11 May 1989, the applicant had made a statutory declaration that he urgently required the premises as accommodation for himself. On 20 October 1993, he reiterated the declaration.

17. Between 6 September 1989 and 22 February 1996, the bailiff made forty two attempts to recover possession. Each attempt proved unsuccessful, as the applicant was never granted the assistance of the police in enforcing the order for possession.

18. On 24 March 1996, the tenant vacated the premises.

II. RELEVANT DOMESTIC LAW

19. 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

20. The applicant 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 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 eight years and nine months after the first attempt of the bailiff before repossessing the flat.

23. 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

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 he had sustained, which he put at 82,015,340 Italian lire (ITL) [42,357.39 euros (EUR)], the sum of ITL 70,000,000 [EUR 36,151.98] being the loss of rent for the period from 2 April 1985 (the date when the Rome Magistrate upheld the validity of the notice and ordered that the premises be vacated) to 24 March 1996 (when the applicant recovered

possession of his flat), the sum of ITL 12,015,340 [EUR 6,205.41] for the costs of the enforcement proceedings.

26. The Government challenged the criteria that had been used for calculating the loss of profits.

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 violation 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.

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 18,500 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 him EUR 2,500 under this head.

B. Non-pecuniary damage

28. The applicant claimed ITL 300,000,000 [EUR 154,937.07] for the non-pecuniary damage.

29. The Government submitted that a finding of a violation would in itself constitute sufficient just satisfaction and stressed that in any event the amount claimed was excessive.

30. The Court considers that the applicant must have sustained some non-pecuniary damage. Therefore, the Court decides, on an equitable basis, to award EUR 8,000 under this head.

C. Costs and expenses

31. The applicant sought reimbursement for his costs and expenses before the Court, which he put at ITL 11,610,000 [EUR 5,996.06].

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 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) 21,000 (twenty one thousand euros) for pecuniary damage;
 - (ii) 8,000 EUR (eight 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;
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