



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

FIRST SECTION

CASE OF FLERES v. ITALY

(Application no. 34454/97)

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 Fleres 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

12. The case originated in an application (no. 34454/97) against Italy 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 Fabrizia Fleres (“the applicant”), on 5 October 1996.

3. The applicant was represented by Mr M. Albanesi Ginammi, 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.

4. 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.

5. 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).

6. 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).

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 (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1959 and lives in Rome.

9. The applicant is the owner of an apartment in Rome, which she had let to G.S.

10. In a registered letter of 2 November 1983, the applicant informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1983 and asked him to vacate the premises by that date.

11. In a writ served on the tenant on 11 December 1984, the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Rome Magistrate.

12. By a decision of 6 February 1985, which was made enforceable on the same day, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises must be vacated by 10 January 1986.

13. On 19 December 1986, the applicant served notice on the tenant requiring him to vacate the premises.

14. On 27 January 1987, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 13 March 1987.

15. Between 13 March 1987 and 27 January 1989, the bailiff made twelve attempts to recover possession.

16. On 12 May 1989, the applicant made a statutory declaration that she urgently required the premises as accommodation for her family.

17. Between 19 May 1989 and 14 July 1999, the bailiff made sixty-three 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 25 February 2000, 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 1 OF PROTOCOL NO. 1 AND OF ARTICLE 6 § 1 OF THE CONVENTION

20. 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.”

21. 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...”

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).

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 had to wait for thirteen years before recuperating the flat.

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

22. 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

23. The applicant sought reparation for the pecuniary damage she had sustained, which she put at 168,000,000 Italian lire (ITL) [86,764.76 euros (EUR)], being the loss of rent for the period from 10 January 1986 (the date when the premises had to be vacated, as established by the decision of the Rome Magistrate of 6 February 1985) to 25 February 2000, ITL 60,000,000 [EUR 30,987.41] for renovation works in the flat after possession was recovered and ITL 3,334,100 [EUR 1,721.92] for the costs of executing the possession order.

24. The Government stressed that the amount claimed by the applicant was excessive. As regards the costs incurred for the domestic proceedings, the Government argued that the costs of the proceedings on the merits and the ones for renovation works in the flat after possession, were not related to the alleged violations.

25. 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), on the basis of the reimbursement of the difference between the global amount of the rents she could have endorsed and the rents she effectively collected. 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 her on an equitable basis EUR 60,000.

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 Court decides to grant the amount of EUR 1,600.

As regards the costs for the renovation works in the flat after possession was recovered, the Court considers that they are not related to the alleged violations. Therefore the Court rejects the applicant's claim.

The Court awards a total sum of EUR 61,600 for pecuniary damage.

B. Non-pecuniary damage

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

27. The Government submitted that a finding of a violation would in itself constitute sufficient just satisfaction.

28. 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. Legal costs

29. The applicant sought reimbursement of her legal costs, which she put at a sum superior to ITL 12,240,000 [EUR 6,321.43] globally for her costs and expenses before the national courts and for her costs and expenses before the Commission and the Court.

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

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 the case *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V). In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court considers that EUR 2,500 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) 61,600 EUR (sixty-one thousand six hundred euros) for pecuniary damage;

(ii) 10,000 EUR (ten thousand euros) for non-pecuniary damage;

(iii) 2,000 EUR (two thousand euros) for legal costs;

(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 claims 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