



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

FIRST SECTION

CASE OF CICCARIELLO v. ITALY

(Application no. 34412/97)

JUDGMENT

STRASBOURG

9 January 2003

FINAL

09/04/2003

*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 Ciccariello v. Italy,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mr G. BONELLO,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mrs E. STEINER, *judges*,

Mrs M. DEL TUFO, *ad hoc judge*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 12 December 2002,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 34412/97) 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 Mrs Franca Ciccariello (“the applicant”), an Italian national, on 26 December 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 C. Crisafulli.

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 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 Mrs M. Del Tufo as *ad hoc* judge to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 2).

6. On 4 October 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 1946 and lives in Naples.

9. She is the owner of an apartment in Naples, which she had let to L.T.

10. In a writ served on the tenant on 24 October 1986, the applicant communicated her intention to terminate the lease and summoned the tenant to appear before the Naples Magistrate.

11. On 3 November 1986, the Naples Magistrate did not uphold the validity of the notice to quit and declined jurisdiction on account of the value of the case.

12. On 11 November 1986, the applicant resumed the proceedings before the Naples District Court. In a judgment of 10 July 1987, deposited with the registry on 22 July 1987, the court declared that the lease would terminate on 4 November 1987 and ordered that the premises be vacated by 31 December 1988.

13. On 20 February 1992, the applicant served notice on the tenant requiring him to vacate the premises.

14. On 8 April 1992, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 29 April 1992.

15. On 28 April 1992, the applicant made a statutory declaration that she urgently required the premises as accommodation for her daughter.

16. On 29 April 1992 and 12 February 1993, the bailiff made two 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. Thereafter, the applicant decided not to pursue the enforcement proceedings, in order to avoid useless costs, given the lack of prospects of obtaining the assistance of the police.

19. On 27 June 1995, the applicant served again notice on the tenant requiring him to vacate the premises.

20. On 5 July 1995, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 24 July 1995.

21. Between 24 July 1995 and 7 October 1998, the bailiff made twelve 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.

22. On 28 October 1998, the tenant vacated the premises.

II. RELEVANT DOMESTIC LAW

23. 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

24. 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.”

25. 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...”

26. 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).

27. 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 six years and six months after the first attempt of the bailiff before repossessing the flat.

28. 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

29. 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

30. The applicant sought reparation for the pecuniary damage she had sustained, which she put at 79,200,000 Italian lire (ITL) [40,903.39 euros (EUR)], being the prejudice of ITL 600,000 [EUR 309.87] per month for a period of eleven years (from 4 November 1987, when the Naples District Court declared that the lease would terminate, to 28 October 1996, when the applicant recovered possession of her flat).

31. The Government challenged the criteria that had been used by the applicant.

32. 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 13,000 under this head.

B. Non-pecuniary damage

33. The applicant claimed ITL 70,000,000 [EUR 36,151.98] for the non-pecuniary damage.

34. The Government submitted that in any event the amount claimed was excessive.

35. The Court considers that the applicant must have sustained some non-pecuniary damage. Therefore, the Court decides, on an equitable basis, to award EUR 6,000 under this head.

C. Costs and expenses

36. The applicant sought reimbursement of her legal costs, which she put at ITL 21,774,960 [EUR 11,245.83] for her costs and expenses before the Commission and the Court.

37. 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, *Bottazzi v. Italy*, no. 34884/97, Reports of Judgments and Decisions 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

38. 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) 13,000 EUR (thirteen thousand euros) for pecuniary damage;
 - (ii) 6,000 EUR (six 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 9 January 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President