



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

FIRST SECTION

CASE OF E.P. v. ITALY

(Application no. 34658/97)

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 E.P. 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. 34658/97) 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 Mr E.P. (“the applicant”), an Italian national, on 28 June 1996.

2. The applicant was represented by Mr S. Perozziello. The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, and by their co-Agent, Mr F. Crisafulli.

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 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 1912 and lives in Mercato Sanseverino.

9. He is the owner of an apartment in Mercato Sanseverino, which he had let to M.S. in 1974. The lease was due to expire on 31 December 1983, but was extended until 31 December 1987 pursuant to Law No. 392/78.

10. In a writ served on the tenant on 4 September 1986, the applicant communicated his intention to terminate the lease and summoned the tenant to appear before the Mercato Sanseverino Magistrate.

11. By a decision of 30 September 1986, which was made enforceable on the same day, the Mercato Sanseverino Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 June 1989.

12. On 1 August 1991, the applicant served notice on the tenant requiring him to vacate the premises.

13. On 15 October 1991, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 28 October 1991.

14. On 28 October 1991, the bailiff made an attempt to recover possession, which proved unsuccessful, as the applicant was not granted the assistance of the police in enforcing the order for possession.

15. On 18 November 1991, the applicant made a statutory declaration that he urgently required the premises as accommodation for his daughter.

16. On 18 February 1992, the bailiff asked the local police to provide their assistance in enforcing the order for possession and at the same time suspended the enforcement proceedings until the assistance would be granted.

17. At the beginning of 1998, the tenant spontaneously 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 1 OF PROTOCOL NO. 1 AND OF ARTICLE 6 § 1 OF THE CONVENTION

19. 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.”

20. 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...”

21. 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).

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 six years and two months after the first attempt of the bailiff before he recovered possession of the flat.

23. 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

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 and for the costs of the enforcement proceedings. He 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 any pecuniary damage sustained.

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.

27. The Court notes that Rule 60 of the Rules of Court requires applicants to submit itemised particulars of their claims, together with the relevant supporting documents or vouchers “failing which the Chamber may reject the claim in whole or in part”. Since the applicant has failed to comply with that rule, the Court decides to make no award under this head.

B. Non-pecuniary damage

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

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

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 6,000 under this head.

C. Default interest

31. 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, 6,000 EUR (six thousand euros) for non-pecuniary damage;
 - (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