



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

FIRST SECTION

CASE OF G. and M. v. ITALY

(Application no. 31740/96)

JUDGMENT

STRASBOURG

27 February 2003

FINAL

27/05/2003

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 G. and M. 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*,

Mr G. RAIMONDI, *ad hoc judge*,

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

Having deliberated in private on 6 February 2003,

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

PROCEDURE

1. The case originated in an application (no. 31740/96) 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 A.G. and Mrs G.M. (“the applicants”), Italian nationals, on 11 May 1996.

2. The applicants were represented by Mr S. Ceni, a lawyer practising in Florence. The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, and by their co-Agent, Mr F. Crisafulli.

3. The applicants complained under Article 1 of Protocol No. 1 that they had been unable to recover possession of their flat within a reasonable time. Invoking Article 6 § 1 of the Convention, they 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 Mr G. Raimondi as *ad hoc* judge to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 2).

6. On 15 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 applicants were born in 1951 and 1953 respectively and live in Florence.

9. Mrs B.P. was the owner of an apartment in Florence, which she had let to M.D.S.

10. In a writ served on the tenant on 21 November 1985, she informed him of her intention to terminate the lease expiring on 31 May 1986 and summoned him to appear before the Florence Magistrate.

11. By a decision of 9 December 1985, which was made enforceable on 11 October 1988, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1988.

12. On 17 December 1986, the applicants became the owners of the apartment.

13. On 8 November 1989, the applicants served notice on the tenant requiring him to vacate the premises.

14. On 27 December 1989, they served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 23 January 1990.

15. On 2 June 1990, the applicants made a statutory declaration that they urgently required the premises as accommodation for themselves.

16. Between 23 January 1990 and 17 June 1996, the bailiff made fourteen 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. On 4 September 1996, 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 1 OF PROTOCOL NO. 1 AND OF ARTICLE 6 § 1 OF THE CONVENTION

19. The applicants complained that they have been unable to recover possession of their flat within a reasonable time owing to the lack of police assistance. They 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 applicants 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 applicants have had to wait for six years and seven months before repossessing 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

23. 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

24. The applicants sought reparation for the pecuniary damage they had sustained including the costs of executing the possession order. They left the matter to be assessed by the Court in an equitable manner.

25. The Government stressed that the applicants had failed to adduce evidence of any pecuniary damage sustained as a result of the alleged violation.

26. 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 applicants have failed to comply with that rule, the Court decides to make no award under this head.

B. Non-pecuniary damage

27. The applicants left the matter to be assessed by the Court in an equitable manner.

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

C. Costs and expenses

29. The applicants sought reimbursement for their costs and expenses before the Court. They left the matter to the discretion of the Court.

30. 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 applicants have failed to comply with that rule, the Court decides to make no award under this head.

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 each applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amount:
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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 February 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President