



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

FIRST SECTION

CASE OF FEGATELLI v. ITALY

(Application no. 39735/98)

JUDGMENT

STRASBOURG

3 April 2003

FINAL

03/07/2003

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 Fegatelli 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 L. FERRARI BRAVO, *ad hoc judge*,

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

Having deliberated in private on 13 March 2003,

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

PROCEDURE

1. The case originated in an application (no. 39735/98) 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 an Italian national, Mrs Oriana Fegatelli (“the applicant”), on 14 July 1997.

2. The applicant was represented by Mrs G. Mazza Ricci, a lawyer practising in Rome. The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, and by their successive co-Agents, respectively Mr V. Esposito and Mr F. 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 Mr L. Ferrari Bravo 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 1945 and lives in Rome.

9. A.G.D. was the owner of an apartment in Rome, which she had let to V.P.

10. A.G.D. 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. By a decision of 21 October 1986, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 April 1987.

12. On 13 November 1986, the applicant became the owner of the apartment and pursued the enforcement proceedings.

13. On 8 May 1987, she served a notice to quit on the tenant, but he refused to leave.

14. On 20 May 1987 she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 7 July 1987.

15. On 3 April 1989, the applicant made a statutory declaration that she urgently required the premises as accommodation for herself.

16. Between 7 July 1987 and 1 December 1999, the bailiff made forty-nine 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. After reaching an agreement with the tenant, on 18 December 1999 the applicant recovered possession of her apartment.

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...”

22. 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).

23. 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 twelve years and five months from the first attempt of the bailiff before recovering the flat.

24. Consequently there has been a violation of Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant sought reimbursement of the costs of executing the possession order that she had sustained, which she put at ITL 1,422,035 [EUR 734,42].

27. 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.

28. As regards the costs of the enforcement proceedings, the Court considers that they must be reimbursed (see the *Scollo v. Italy* judgment of 28 September 1995, Series A no. 315-C, p. 56, § 50). The Court finds the sum requested reasonable and decides to award EUR 734.42 for pecuniary damage.

B. Non-pecuniary damage

29. The applicant claimed a sum between ITL 15,000,000 [EUR 7,746.85] and ITL 30,000,000 [EUR 15,493.71] for non-pecuniary damage.

30. The Government stressed that the applicant had failed to adduce evidence of non-pecuniary damage sustained as a result of the alleged violation.

31. 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. Costs and expenses

32. The applicant sought reimbursement of legal fees, which she put at ITL 540,000 [EUR 247.90], and a sum between ITL 1,980,000 [EUR 1,022.58] and ITL 22,060,000 [EUR 11,393.04] for barrister's fees before the Court.

33. 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, for example, *Bottazzi v. Italy* [GC], no. 34884/97, ECHR 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

34. 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) 734.42 EUR (seven hundred thirty-four euros forty-two cents) for pecuniary damage;
 - (ii) 10,000 EUR (ten 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 3 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President