



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

FIRST SECTION

CASE OF CAPURSO v. ITALY

(Application no. 45006/98)

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 Capurso 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 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. 45006/98) 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, Mr Francesco Saverio Capurso (“the applicant”), on 14 July 1998.

2. 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 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 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 Milan.

9. In a letter of 28 June 1982, the former owner of the flat informed R.S. (the tenant) that he intended to terminate the lease on expiry of the term on 31 December 1983 and asked him to vacate the premises by that date.

10. In a writ served on the tenant on 16 April 1984, the owner reiterated his intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

11. By a decision of 20 November 1984, which was made enforceable on the same date, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 10 September 1985.

12. The tenant asked the Milan Magistrate to postpone the enforcement proceedings. The Milan Magistrate set a fresh date for the end of August 1986.

13. On 29 January 1985, the applicant became the owner of the flat and pursued the enforcement proceedings.

14. On 4 July 1986, the applicant served notice on the tenant requiring him to vacate the premises.

15. On 19 August 1986, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 24 September 1986.

16. Between 24 September 1986 and 22 October 1987, 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.

17. On 24 March 1987, the applicant made a statutory declaration that he urgently required the premises as accommodation for himself.

18. The tenant asked the Milan Magistrate to set again a fresh date for the enforcement for 28 July 1988.

19. On 14 December 1988 and on 14 April 1989, the applicant served two notices on the tenant requiring him to vacate the premises.

20. On 4 May 1989, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 26 May 1989.

21. Between 26 May 1989 and 13 January 2000, the bailiff made forty-four attempts to recover possession.

22. On 13 January 2000, the applicant recovered possession of the flat.

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 he had been unable to recover possession of her 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.”

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 thirteen years and three months from 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 he had sustained, which he put at 68,492,746 [35,373.5 euros (EUR)], the sum of ITL 64,211,000 [EUR 33,162.21] being the difference between the rent he had to pay for other flats and the rent paid by the tenant of his flat from the period from June 1987 to January 2000, the sum of ITL 4,281,746 [EUR 2,211.34] being the costs of the enforcement proceedings

31. The Government submitted that the amount claimed was excessive and challenged the criteria that had been used from the applicant.

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.

32. The Court considers that the applicant must be awarded compensation for the pecuniary damage. 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 him, on an equitable basis, EUR 27,000 under this head.

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). It considers the means of calculation proposed by the applicant to be a reasonable starting point. However, in the light of the evidence before it and the period concerned, and ruling on an equitable basis, it awards him EUR 1,000.

B. Non-pecuniary damage

33. The applicant claimed ITL 50,000,000 [EUR 25,822.84] 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 10,000 under this head.

C. Costs and expenses

36. The applicant sought reimbursement of his legal costs, which he put at ITL 6,340,000 [EUR 3,274.34] for his costs and expenses before the Court. In any event, the applicant left the matter to be assessed by the Court in an equitable manner.

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. In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court considers that EUR 500 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) 28,000 EUR (twenty-eight thousand euros) for pecuniary damage;

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

(iii) 500 EUR (five hundred 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