



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

FIRST SECTION

CASE OF APONTE v. ITALY

(Application no. 38011/97)

JUDGMENT

STRASBOURG

17 April 2003

FINAL

17/07/2003

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 Aponte 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 27 March 2003,

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

PROCEDURE

1. The case originated in an application (no. 38011/97) 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 an Italian national, Mr Aniello Aponte (“the applicant”), on 11 July 1997.

2. The applicant was represented by Mr T. Anastasio, a lawyer practising in Meta (Naples). 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. 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 1939 and lives in Sorrento.

9. He is the owner of a flat in Sorrento, which he had let to A.E. and F.C.

10. In a writ served on the tenants on 5 November 1983, the applicant communicated his intention to terminate the lease and summoned them to appear before the Naples Magistrate.

11. By a provisional decision of 23 November 1983, the Naples Magistrate upheld the validity of the notice to quit, ordered that the premises be vacated by 1 January 1986 and declined jurisdiction on account of the value of the case, indicating that the Naples District Court had jurisdiction to hear it.

12. On 16 January 1984, the applicant resumed the proceedings before the Naples District Court. In a judgment of 10 January 1986, the Court declared that the lease was terminated as of 31 December 1985 and ordered that the premises must be vacated by 30 September 1986. The judgment was made enforceable on 18 January 1990.

13. On 23 January 1990, the applicant served notice on the tenants requiring them to vacate the premises. On 9 February 1990, he served notice on the tenants informing them that the order for possession would be enforced by a bailiff on 8 May 1990.

14. On 8 May 1990, the bailiff made an attempt to recover possession, which proved unsuccessful as, under the statutory provisions providing for the staggering of evictions, the applicant was not entitled to police assistance in enforcing the order for possession.

15. Thereafter, the applicant decided to suspend the eviction attempts, in order to avoid useless costs, given the lack of prospects of obtaining the assistance of the police.

16. On 30 November 1995, the applicant served again notice on the tenants requiring them to vacate the premises. On 18 December 1995, he served notice on the tenants informing them that the order for possession would be enforced by a bailiff on 6 February 1996.

17. The bailiff made three further attempts to recover possession in enforcing the order for possession, which attempts proved unsuccessful as,

under the statutory provisions providing for the staggering of evictions, the applicant was not entitled to police assistance in enforcing the order for possession.

18. On 10 April 1997, the tenants vacated the premises.

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 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.”

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 applicant has been waiting for approximately six years and eleven months after the first attempt of the bailiff before he could repossess the flat.

24. 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

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 reparation for the pecuniary damage he had sustained for the loss of rent for the period from 31 December 1983, date of deadline of the contract, to 10 April 1997, date on which the flat was vacated. He left the matter to be assessed by the Court in an equitable manner because he is not able to quantify the loss of rent.

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

28. The Court reminds that under article 60 of the Rules the applicant must quantify his claims and provide relevant supporting documents “failing which the Chamber may reject the claim in whole or in part”. Since the applicant has not provided any evidence regarding the pecuniary damage, the Court cannot award any reparation under this head.

B. Non-pecuniary damage

29. The applicant sought reparation for non-pecuniary damage. He left the matter to be assessed by the Court in an equitable manner.

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. The Court decides to award on an equitable basis EUR 3,000 under this head.

C. Costs and expenses

32. The applicant sought reimbursement for his costs and expenses before the Court, which he put at ITL 16,184,340 [EUR 8,358.51].

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 (*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 1,500 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) 3,000 EUR (three thousand euros) for non-pecuniary damage;
 - (ii) 1,500 EUR (one thousand 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 17 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President