



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

FIRST SECTION

CASE OF FABI v. ITALY

(Application no. 48145/99)

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 Fabi 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,

Mr V. ZAGREBELSKY,

Mrs E. STEINER, *judges*,

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. 48145/99) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Mr Giuseppe Fabi (“the applicant”), on 20 April 1999.

2. The applicant was represented by Mr A. Barbàra, 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 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 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.

5. 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.

6. On 27 June 2002 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant lives in Rome.

8. The applicant is the owner of a flat in Rome, which he had let to A.M.S.

9. In a registered letter of 10 April 1987, the applicant informed the tenant that he intended to terminate the lease on expiry of the term on 31 December 1987 and asked her to vacate the premises by that date.

10. In a writ served on the tenant on 14 October 1987, the applicant reiterated his intention to terminate the lease and summoned the tenant to appear before the Rome Magistrate.

11. By a decision of 1 February 1988, which was made enforceable on 22 April 1988, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 1 February 1989.

12. On 24 May 1989, the applicant served notice on the tenant requiring her to vacate the premises.

13. On 18 July 1989 he served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 25 July 1989.

14. Between 25 July 1989 and 10 December 1998 the bailiff made fourteen attempts to recover possession. Each attempt proved unsuccessful, as, under the statutory provisions providing for the suspension or staggering of evictions, the applicant was not entitled to police assistance in enforcing the order for possession.

15. Pursuant to Article 6 of Law no. 431/98, the eviction proceedings were suspended until 30 November 2000.

16. On 11 October 2000, the applicant served a second notice on the tenant requiring her to vacate the premises.

17. On 3 November 2000, he served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 28 November 2000.

18. On February 2001, the applicant recovered possession of the flat.

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 issues similar to those 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 relied on by 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 eleven years and seven months before repossessioning his 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

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. Non-pecuniary damage

25. The applicant claimed ITL 25,000,000 for non-pecuniary damage (EUR 12,911.42).

26. The Government submitted that a finding of a violation would in itself constitute sufficient just satisfaction. They further submitted that in any event the amount claimed was excessive. The Government stressed that the applicant had failed to adduce evidence of any non-pecuniary damage sustained as a result of the alleged violation.

27. The Court considers that the applicant must have sustained some non-pecuniary damage, which the mere finding of a violation cannot adequately compensate. Therefore, it decides, on an equitable basis, to award EUR 3,000 under this head.

B. Costs and expenses

28. The applicant sought reimbursement of his legal costs and expenses for the proceedings before the Court, which he put at ITL 8,422,650 (EUR 4,349.94).

29. 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 *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V). In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court considers that EUR 1,000 is a reasonable sum and awards the applicant that amount.

C. Default interest

30. 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) 1,000 EUR (one 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 17 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President