



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

FIRST SECTION

CASE OF PULCINI v. ITALY

(Application no. 59539/00)

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 Pulcini 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. 59539/00) 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, Mrs Anna Maria Pulcini (“the applicant”) on 20 July 2000.

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 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 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 7 March 2002 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1933 and lives in Monte Porzio Catone (Rome).

8. She is the owner of a flat in Monte Porzio Catone, which she had let to R.L.

9. In a registered letter of 7 July 1986, the applicant informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1987 and asked him to vacate the premises by that date.

10. The tenant told the applicant that he would not leave the premises.

11. In a writ served on the tenant on 9 December 1986, the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Frascati Magistrate (Rome).

12. By a decision of 31 March 1987, which was made enforceable on 14 April 1987, the Frascati Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1988.

13. On 10 January 1989, the applicant served notice on the tenant requiring him to vacate the premises.

14. On 4 July 1989, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 27 July 1989.

15. Between 27 July 1989 and 26 May 2000 the bailiff made thirty-five 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.

16. In the meanwhile, on 12 July 1993, the applicant made a statutory declaration that she urgently required the premises as accommodation for her daughter.

17. On 8 June 2000, the applicant recovered possession of the flat.

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 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.”

20. 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...”

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 applicant has had to wait for approximately ten years and ten months after the first attempt of the bailiff before repossessing the flat.

23. 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. Pecuniary damage

25. The applicant sought reparation for the pecuniary damage she had sustained, which she put at 29,602.79 euros (EUR), the sum of EUR 23,562.79 being the loss of rent for the period from January 1989 to June 2000, the sum of EUR 6,040 being the costs of the enforcement proceedings.

26. The Government maintained that the amount claimed was excessive.

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.

27. The Court considers that the applicant must be awarded compensation for the pecuniary damage resulting from the loss of rent (see *Immobiliare Saffi*, cited above, § 79). 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 her, on an equitable basis, EUR 16,000 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). In the light of the evidence before it and the period concerned, and ruling on an equitable basis, it awards her EUR 2,000 under this head.

B. Non-pecuniary damage

28. The applicant claimed EUR 20,000 for the non-pecuniary damage.

29. The Government submitted that in any event the amount claimed was excessive and stressed that the applicant had failed to adduce evidence of non-pecuniary damage sustained.

30. 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. Default interest

31. 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) 18,000 EUR (eighteen thousand euros) for pecuniary damage;
 - (ii) 10,000 EUR (ten 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 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