



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

FIRST SECTION

CASE OF VOGLINO v. ITALY

(Application no. 48730/99)

JUDGMENT

STRASBOURG

22 May 2003

FINAL

22/08/2003

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 Voglino 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,

Mr E. LEVITS,

Mr A. KOVLER,

Mr V. ZAGREBELSKY, *judges*,

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

Having deliberated in private on 29 April 2003,

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

PROCEDURE

1. The case originated in an application (no. 48730/99) 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, Mrs Cinzia Voglino (“the applicant”), on 16 March 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 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 14 March 2002 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant lives in Grottaferrata (Rome).

8. She is the owner of a flat in Rome, which she had let to B.F.R.

9. In a writ served on the tenant on 4 February 1991, the applicant informed the tenant of her intention to terminate the lease on expiry of the term on 31 December 1991 and summoned her to appear before the Rome Magistrate.

10. By a decision of 29 May 1991, which was made enforceable on the same day, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 July 1992.

11. On 7 October 1992, 20 September 1995 and 10 February 2000, the applicant served notice on the tenant requiring her to vacate the premises.

12. On 7 December 1992, she served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 15 December 1992.

13. Between 15 December 1992 and 25 February 1993, the bailiff made three attempts to recover possession. Each attempt proved unsuccessful, as the applicant was not entitled to police assistance in enforcing the order for possession.

14. On 13 October 1995, she served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 31 October 1995.

Between 31 October 1995 and 6 November 1996, the bailiff made six attempts to recover possession. Each attempt proved unsuccessful, as the applicant was not entitled to police assistance in enforcing the order for possession.

15. On 28 February 2000, she served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 24 March 2000.

16. Between 24 March 2000 and 13 July 2000, the bailiff made four attempts to recover possession. Each attempt proved unsuccessful, as, the applicant was not entitled to police assistance in enforcing the order for possession.

17. On 24 July 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 seven years and seven 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. Non-pecuniary damage

25. The applicant claimed EUR 12,911.42 for the non-pecuniary damage.

26. The Government submitted that the applicant had failed to adduce evidence of non-pecuniary damage sustained.

27. The Court considers that the applicant must have sustained some non-pecuniary damage. Therefore, the Court decides, on an equitable basis, to award EUR 3,000 under this head.

B. Costs and expenses

28. The applicant sought reimbursement for her costs and expenses before the Court, which she put at 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, for example, *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 2,000 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) 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 22 May 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President