



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

FIRST SECTION

CASE OF MOTTOLA v. ITALY

(Application no. 58191/00)

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 Mottola 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 29 April 2003,

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

PROCEDURE

1. The case originated in an application (no. 58191/00) 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 Mr Antonio Mottola (“the applicant”), on 12 May 2000.

2. The applicant was represented by Mr D. Pizzillo, a lawyer practising in Benevento. 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. Invoking Article 6 § 1 of the Convention, the applicant complained about the length of the eviction proceedings and alleged that the order issued by the Benevento Magistrate resulted in a denial of his right of access to a court. The Court has examined this complaint under Article 1 of Protocol No. 1 of the Convention.

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 28 February 2002 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1932 and lives in Benevento.

8. He is the owner of a flat in Benevento, which he had let to N.C.

9. In a writ served on the tenant on 27 April 1994, the applicant informed the tenant of his intention to terminate the lease and summoned the tenant to appear before the Benevento Magistrate.

10. By a decision of 25 May 1994, which was made enforceable on the same day, the Benevento Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 November 1996.

11. On 30 November 1996, the applicant served notice on the tenant requiring him to vacate the premises.

12. On 10 February 1997, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 25 February 1997.

13. Between 25 February 1997 and 9 November 1998, the bailiff made nine attempts to recover possession. Each attempt proved unsuccessful, as the applicant was not entitled to police assistance in enforcing the order for possession.

14. Pursuant to Section 6 of Law no. 431/98, the tenant asked the Benevento District Court to set a new date for the enforcement of the order for possession. The date was set for 25 April 2000 and then for 30 September 2000.

15. On 12 October 2000, the applicant served notice on the tenant requiring him to vacate the premises.

16. On 4 November 2000, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 27 November 2000.

17. Between 27 November 2000 and 26 April 2001, the bailiff made four attempts to recover possession. Each attempt proved unsuccessful, as the applicant was not entitled to police assistance.

18. A new attempt of the bailiff to enforce the order for possession was set for 21 June 2001.

19. On 8 August 2001, the applicant recovered possession of the flat.

II. RELEVANT DOMESTIC LAW

20. 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

21. 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 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 also examined the case under 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.”

23. 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).

24. 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 four years and five months after the first attempt of the bailiff before repossessing the flat.

25. 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

26. 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

27. The applicant sought reparation for the pecuniary damage he had sustained, which he put at 1,455.88 euros (EUR), the sum of EUR 1,116 being the cost of renovation of the flat once repossessed and the sum of EUR 339,88 being the service charges that the tenant did not pay for the period January – August 2001.

28. The Government stressed that the applicant had failed to adduce evidence of any pecuniary damage sustained.

29. The Court observes that the applicant is entitled to recover the cost he had sustained from the tenant and considers, therefore, that no award should be made under this head.

B. Non-pecuniary damage

30. The applicant claimed EUR 8,000 for the non-pecuniary damage.

31. The Government submitted that in any event the amount claimed was excessive.

32. 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.

C. Costs and expenses

33. The applicant sought reimbursement of his costs and expenses before the Court which he put at EUR 4,570.96.

34. 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.

D. Default interest

35. 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