



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

FIRST SECTION

CASE OF SERNI v. ITALY

(Application no. 47703/99)

JUDGMENT

STRASBOURG

9 October 2003

FINAL

09/01/2004

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 Serni v. Italy,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr E. LEVITS,

Mr V. ZAGREBELSKY,

Mrs E. STEINER, *judges*,

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

Having deliberated in private on 18 September 2003,

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

PROCEDURE

1. The case originated in an application (no. 47703/99) 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 Fiorenzo Serni (“the applicant”), on 20 November 1998.

2. The Italian Government (“the Government”) were represented by their Agent Mr U. Leanza and by their co-Agent Mr V. Esposito.

3. On 31 January 2002 the Court declared the application admissible.

4. The applicant died on 12 September 2002. On 7 May 2003, the applicant's heirs, namely Mrs Karen Elisa Reinhold Jeppson and Mrs Ingrid Laila Reinhold Serni expressed the wish to continue the proceedings before the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1937.

6. He was the owner of a flat in Livorno, which he had let to M.S.

7. In a registered letter of 4 March 1983, the applicant informed the tenant that he intended to terminate the lease on expiry of the term on 31 December 1983 and asked him to vacate the premises by that date.

8. On 9 October 1984, he served a notice to quit on the tenant, but he refused to leave.

9. In a writ served on the tenant on 7 January 1986, the applicant reiterated his intention to terminate the lease and summoned the tenant to appear before the Livorno Magistrate.

10. By a decision of 20 January 1986, which was made enforceable on 21 January 1986, the Livorno Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 20 December 1986.

11. On 2 April 1987 the applicant served notice on the tenant requiring him to vacate the premises.

12. On 21 April 1987 he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 24 May 1987.

13. Between 24 May 1987 and 27 November 1987 the bailiff made eighteen 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 15 December 1987, the applicant recovered possession of the flat.

II. RELEVANT DOMESTIC LAW

15. Since 1947 the public authorities in Italy have frequently intervened in residential tenancy legislation with the aim of controlling rents. This has been achieved by rent freezes (occasionally relaxed when the Government decreed statutory increases), by the statutory extension of all current leases and by the postponement, suspension or staggering of the enforcement of orders for possession. The relevant domestic law concerning the extension of tenancies, the suspension of enforcement and the staggering of evictions is described in the Court's judgment in the case of *Immobiliare Saffi v. Italy* [GC], no. 22774/93, §§ 18-35, ECHR 1999-V.

A. The system of control of the rents

16. As regards the control of the rents, the evolution of the Italian legislation may be summarised as follows.

17. The first relevant measure was the Law no. 392 of 27 July 1978 which provided machinery for “fair rents” (the so-called *equo canone*) on the basis of a number of criteria such as the surface of the flat and its costs of realisation.

18. The second step of the Italian authorities dated August 1992. It was taken in the view of progressive liberalisation of the market of tenancies. Accordingly, a legislation relaxing on rent levels restrictions (the so-called *patti in deroga*) entered into force. Owners and tenants were in principle

given the opportunity to derogate from the rent imposed by law and to agree on a different price.

19. Lastly, Law no. 431 of 9 December 1998 reformed the tenancies and liberalised the rents.

B. Obligations of the tenant in the case of late restitution

20. The tenant is under a general obligation to refund the owner any damages caused in the case of late restitution of the flat. In this regard, Article 1591 of the Italian Civil Code provides:

“The tenant who fails to vacate the immovable property is under an obligation to pay the owner the agreed amount until the date when he leaves, together with other remaining damages”.

21. However, Law no. 61 of 1989 set out, *inter alia*, a limit to the compensation claimable by the owner entitling him to a sum equal to the rent paid by the tenant at the time of the expiration of the lease, proportionally increased according to the cost of living (Article 24 of Law n. 392 of 27 July 1978) plus 20%, along the period of inability to dispose of the possession of the flat.

22. In the judgment no. 482 of 2000, the Constitutional Court was called upon to decide whether such a limitation complied with the Constitution. The Constitutional Court held that it was compatible with the Constitution with regard to periods of time during which the suspension of the evictions was determined by law. The Constitutional Court explained that the introduction of that limitation was intended to settle the tenancies of the time of the emergency legislation, when the housing shortage made the suspension of the enforcement necessary. While evictions were suspended *ex lege*, the law predetermined the *quantum* of the reimbursement chargeable to the tenant, both measures being temporary and exceptional. Besides, the interests of the owner were counterbalanced by the exemption for him from the burden to prove the damages.

23. The Constitutional Court declared the limitation to the compensation claimable by the owner unconstitutional with regard to cases where the impossibility for the owner to repossess the flat depended on the conduct of the tenant and was not due to a legislative intervention. Accordingly, it opened the way to owners for the institution of civil proceedings in order to obtain full reparation of the damages caused by the tenant.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 AND OF ARTICLE 6 § 1 OF THE CONVENTION

24. The applicant complained of his prolonged inability to recover possession of his flat, owing to the lack of police assistance. He alleged a violation of his right of property, as guaranteed by 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.”

25. 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...”

26. The Court has previously examined a number of 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).

27. 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 instance. It notes that the applicant had to wait approximately eleven years and six months after the first attempt of the bailiff before being able to repossess the 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

28. 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

29. The applicant sought, firstly, reparation for the pecuniary damage he had sustained, which he calculated as follows: 30,000,000 Italian lire (ITL) [15,493.71 euros (EUR)] for the depreciation of the value of the flat as a consequence of the conduct of the tenant; at least ITL 5,000,000 [EUR 2,582.28], for the loss of rent; ITL 7,605,100 [EUR 3,927.71], for the cost of the works of construction of a new roof. The applicant also submitted that he tried several times to sell the flat but he was not able to do that because the flat was not vacant.

30. The Government contested those claims.

31. As regards the claim concerning the depreciation of the flat, the Court recalls that the applicant and his heirs are entitled to recover the costs directly from the tenant. Consequently, the claim is dismissed.

32. As regards the loss of rent, the Court considers that the applicant has failed to submit itemised particulars of his claim, together with the relevant supporting documents or vouchers, as required under Rule 60 of the Rules of Court. Consequently, the Court decides to make no award under this head.

33. As regards the costs of the new roof, if this construction was made necessary as a consequence of the conduct of the tenant, the Court recalls that the applicant and his heirs are entitled to recover the costs directly from the tenant. If, on the contrary, the construction was not due to the tenant's conduct, the Court observes that the costs – as joint-owned part - would have been sustained by the owner in any case. Consequently, the claim is dismissed.

34. As regards the claim concerning the impossibility to sell the flat, as there is no evidence that the applicant had attempted, but had not been able, to sell the flat, the claim is dismissed.

B. Non-pecuniary damage

35. The applicant claimed reimbursement for the non-pecuniary damage due to loss of health. The applicant left the matter to the Court's discretion.

36. The Government contested the claim.

37. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards EUR 3,000 (EUR 1,500 for each heirs) under this head.

D. Default interest

38. 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 each of the heirs of the applicant, Mrs Karen Elisa Reinhold Jeppson and Mrs Ingrid Laila Reinhold Serni, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amount:
 - (i) EUR 1,500 (one thousand five hundred euros) for non-pecuniary damage;
 - (ii) any tax that may be chargeable on the above amount;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 9 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President