



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

FIRST SECTION

CASE OF FOSSI AND MIGNOLLI v. ITALY

(Application no. 48171/99)

JUDGMENT

STRASBOURG

4 March 2004

FINAL

04/06/2004

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 Fossi and Mignolli v. Italy,

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

Mr P. LORENZEN, *President*,

Mr G. BONELLO,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr V. ZAGREBELSKY,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 12 February 2004,

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

PROCEDURE

1. The case originated in an application (no. 48171/99) 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 three Italian nationals, Mr Enrico Fossi, Mr Andrea Fossi and Mr Luciano Mignolli (“the applicants”) on 3 March 1999.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born respectively in 1949, 1934, 1953 and live in Altopascio (Lucca), Lastra a Signa and Florence.

5. They are the owners of four flats in Florence.

6. On 10 January 2001, the whole property was transferred to the first applicant, Mr Enrico Fossi.

1) Proceedings against G.I.

7. In a registered letter of 29 April 1987, the applicants informed the tenant that they intended to terminate the lease on expiry of the term on 31 December 1987 and asked her to vacate the premises by that date.

8. In a writ served on the tenant on 11 June 1987, the applicants reiterated their intention to terminate the lease and summoned the tenant to appear before the Florence Magistrate.

9. By a decision of 14 July 1987, which was made enforceable on 4 January 1990, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 November 1990.

10. On 19 October 1993, the applicants served notice on the tenant requiring her to vacate the premises.

11. On 11 November 1993, they informed the tenant that the order for possession would be enforced by a bailiff on 9 December 1993.

12. Between 9 December 1993 and 16 November 1998, the bailiff made twelve attempts to recover possession. Each attempt proved unsuccessful, as the applicants were not entitled to police assistance in enforcing the order for possession.

13. At the end of 1998, the applicants recovered possession of the flat.

2) Proceedings against G.C.

14. In a registered letter of 29 April 1987, the applicants informed the tenant that they intended to terminate the lease on expiry of the term on 31 December 1987 and asked him to vacate the premises by that date.

15. In a writ served on the tenant on 11 June 1987, the applicants reiterated their intention to terminate the lease and summoned the tenant to appear before the Florence Magistrate.

16. By a decision of 14 July 1987, which was made enforceable on 31 July 1991, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 May 1992.

17. On 19 October 1993, the applicants served notice on the tenant requiring him to vacate the premises.

18. On 11 November 1993, they informed the tenant that the order for possession would be enforced by a bailiff on 9 December 1993.

19. Between 9 December 1993 and 17 March 1999, the bailiff made thirteen attempts to recover possession. Each attempt proved unsuccessful, as the applicants were not entitled to police assistance in enforcing the order for possession.

20. On 1 August 2000, the applicants entered into a new lease with the tenant's wife.

21. On an unspecified date at the end of 2001, Mr Enrico Fossi recovered possession of the flat.

3) *Proceedings against T.C.*

22. In a registered letter of 29 April 1987, the applicants informed the tenant that they intended to terminate the lease on expiry of the term on 31 December 1987 and asked her to vacate the premises by that date.

23. In a writ served on the tenant on 11 June 1987, the applicants reiterated their intention to terminate the lease and summoned the tenant to appear before the Florence Magistrate.

24. By a decision of 14 July 1987, which was made enforceable on 31 July 1991, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 May 1992.

25. On 19 October 1993, the applicants served notice on the tenant requiring her to vacate the premises.

26. On 11 November 1993, they informed the tenant that the order for possession would be enforced by a bailiff on 9 December 1993.

27. Between 9 December 1993 and 17 March 1999, the bailiff made thirteen attempts to recover possession. Each attempt proved unsuccessful, as the applicants were not entitled to police assistance in enforcing the order for possession.

28. On 13 July 2003, Mr Enrico Fossi recovered possession of the flat.

4) *Proceedings against G.S.*

29. In a registered letter of 29 April 1987, the applicants informed the tenant that they intended to terminate the lease on expiry of the term on 31 December 1987 and asked him to vacate the premises by that date.

30. In a writ served on the tenant on 11 June 1987, the applicants reiterated their intention to terminate the lease and summoned the tenant to appear before the Florence Magistrate.

31. By a decision of 14 July 1987, which was made enforceable on 31 July 1991, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 May 1992.

32. On 19 October 1993, the applicants served notice on the tenant requiring him to vacate the premises.

33. On 11 November 1993, they informed the tenant that the order for possession would be enforced by a bailiff on 9 December 1993.

34. Between 9 December 1993 and 17 March 1999, the bailiff made thirteen attempts to recover possession. Each attempt proved unsuccessful, as the applicants were not entitled to police assistance in enforcing the order for possession.

35. On an unspecified date of 1999, the applicants recovered possession of the flat.

II. RELEVANT DOMESTIC LAW

36. 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. Lastly, for some cases, a suspension of the enforcement of the orders for possession until 30 June 2004 was introduced by Legislative Decree no. 147 of 24 June 2003, which became Law no. 200 of 1 August 2003.

A. The system of control of the rents

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

38. 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.

39. 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.

40. 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

41. 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.”

42. 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 no. 392 of 27 July 1978) plus 20%, along the period of inability to dispose of the possession of the flat.

43. 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.

44. 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

45. The applicants complained of their prolonged inability to recover possession of their flats, owing to the lack of police assistance. They alleged a violation of their 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.”

46. The applicants 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...”

47. 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).

48. 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 applicants had to wait after the first attempt of the bailiff approximately five years before being able to repossess the first and the fourth flat, six years and eight months before being able to repossess the second flat, nine years and seven months before being able to repossess the third 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

49. 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

50. The applicants sought reparation for the pecuniary damage they had sustained. They left the calculation of the loss of rent to the Court and submitted the following figures:

- first flat: the applicants stressed that the rent paid by G.I. was 126 euros (EUR) per month while the rent paid by the actual tenant is EUR 570 per month;
- second flat: the applicants stressed that the rent paid by G.C. and his wife was EUR 145 while the actual rent could be presumably estimated around EUR 500 per month;
- third flat: the applicants stressed that the rent paid by T.C. is EUR 180 per month while the actual rent could be presumably estimated around EUR 500 per month;
- fourth flat: the applicants stressed that the rent paid by G.S. was EUR 145 per month while the rent paid by the actual tenant is EUR 438,99 per month.

For the purpose of substantiating these figures, the applicants submitted two new rent contracts of two flats similar to those of the present application located in the same building. The contracts are respectively dated 2000 and 2002.

51. The Government contested the claim.

52. The Court considers that the applicants must be awarded compensation for the pecuniary damage resulting from the loss of rent for the period of time related to the violations found.

53. Having regard to the means of calculation proposed by the applicants and in the light of the evidence before it and the period concerned, it decides to award, on an equitable basis, the sum of EUR 15,000 to Mr Enrico Fossi, EUR 5,000 to Mr Andrea Fossi and EUR 5,000 to Mr Luciano Mignolli.

B. Non-pecuniary damage

54. The applicants claimed reimbursement of the non-pecuniary damage. They left the matter to be assessed by the Court in an equitable manner.

55. The Government contested the claim.

56. The Court considers that the applicants must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards each of them EUR 3,000.

C. Costs and expenses

57. The applicants claimed reimbursement of the costs of the enforcement proceedings as follows:

- EUR 2,037.45 for the proceedings no. 1;
- EUR 1,510.55 for the proceedings no. 2;
- EUR 1,486.90 for the proceedings no. 3;
- EUR 2,085.34 for the proceedings no. 4.

58. The Government contested the claim.

59. On the basis of the information in its possession and the Court's case-law, the Court considers it reasonable to award the applicants the following sums:

- EUR 1,500 for the costs and expenses incurred in the domestic proceedings no. 1;
- EUR 1,000 for the costs and expenses incurred in the domestic proceedings no. 2;
- EUR 1,000 for the costs and expenses incurred in the domestic proceedings no. 3;
- EUR 1,600 for the costs and expenses incurred in the domestic proceedings no. 4.

60. The Court awards a total sum of EUR 5,100 (EUR 1,700 for each applicant) for legal costs and expenses.

D. Default interest

61. 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, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 15,000 (fifteen thousand euros) to Mr Enrico Fossi; EUR 5,000 (five thousand euros) to Mr Andrea Fossi; EUR 5,000 (five thousand euros) to Mr Luciano Mignolli for pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros) to each of the applicants for non-pecuniary damage;
 - (iii) EUR 1,700 (one thousand seven hundred euros) to each of the applicants for legal costs and expenses;
 - (iv) any tax that may be chargeable on the above amounts;
 - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 4 March 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Peer LORENZEN
President