



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

THIRD SECTION

CASE OF CIMA v. ITALY

(Application no. 55161/00)

JUDGMENT

STRASBOURG

28 July 2005

FINAL

28/10/2005

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 Cima v. Italy,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr L. CAFLISCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 5 July 2005,

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

PROCEDURE

1. The case originated in an application (no. 55161/00) 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 Maurizio Cima (“the applicant”), on 6 July 1999.

2. The applicant was represented before the Court by Mrs M.G. Morandi Pelosi and Mr A. Morandi, lawyers practising in Rome. The Italian Government (“the Government”) were represented by their successive Agents, respectively Mr U. Leanza and Mr I.M. Braguglia, and by their successive co-Agents, respectively Mr V. Esposito and Mr F. Crisafulli.

3. On 8 January 2004, the Court (First Section) declared the application admissible.

4. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1945 and lives in Rome.

6. A.C., the applicant's aunt, was the owner of a flat in Rome, which she had let to C.R.

7. In a registered letter of 10 May 1985, A.C. informed the tenant that she intended to terminate the lease on expiry of the term on 30 April 1986 and asked her to vacate the premises by that date.

8. In a writ served on the tenant on 10 July 1985, A.C. reiterated her intention to terminate the lease and summoned the tenant to appear before the Rome Magistrate.

9. By a decision of 14 November 1985, 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 May 1986.

10. On 29 May 1986, A.C. served notice on the tenant requiring her to vacate the premises.

11. On 24 July 1986, she informed the tenant that the order for possession would be enforced by a bailiff on 5 August 1986.

12. Between 5 August 1986 and 20 November 1998, the bailiff made thirty-six attempts to recover possession. Each attempt proved unsuccessful, as A.C. was not entitled to police assistance in enforcing the order for possession.

13. In the meanwhile, on 9 November 1998, A.C. died and her nephew, the applicant, inherited the apartment.

14. On 22 July 1999, pursuant to Law no. 431/98, the tenant asked for a suspension of the enforcement proceedings.

15. After that, on an unspecified day of 1999, the applicant became party to the national proceedings.

16. The enforcement proceedings were suspended first until 30 May 2000 and then until 16 November 2000.

17. On 30 January 2001, the tenant spontaneously left the premises and the applicant recovered possession of the flat.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The relevant domestic law and practice is described in the Court's judgment in the case of *Mascolo v. Italy* (no. 68792/01, §§ 14-44).

THE LAW

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

19. 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, 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 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, §§ 46-75; *Lunari v. Italy*, no. 21463/93, §§ 34-46, 11 January 2001; *Palumbo v. Italy*, no. 15919/89, §§ 33-48, 30 November 2000).

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

25. The applicant claimed 14,460.80 euros (EUR) as a just satisfaction for the interference in his rights.

26. The Government contested the claim.

27. As far as the applicant claims reimbursement for pecuniary damages, the Court notes that he can bring an action in the civil courts under Article 1591 of the Civil Code claiming compensation from his former tenant for the loss incurred as a result of the property being returned late.

28. The issue in the present case is the damage arising from the unlawful conduct of the tenant, who, irrespective of the State's cooperation in enforcing the court-ordered eviction, had a duty to return the flat to its owner. The breach of the applicant's right to peaceful enjoyment of his possessions is above all the consequence of the tenant's unlawful conduct. The breach of Article 6 § 1 of the Convention committed by the State and found by the Court is a procedural one that occurred after such conduct on the part of the tenant.

29. The Court accordingly notes that Italian domestic law allows reparation to be made for the material consequences of the breach and considers that the claim for just satisfaction for pecuniary damage should be dismissed (see *Mascolo* cited above).

30. As far as the applicant claims reparation of non-pecuniary damage, the Court, ruling on an equitable basis, it awards him EUR 3,000.

B. Costs and expenses

31. The applicant also claimed reimbursement of his legal costs and expenses. He left the matter to be assessed by the Court in an equitable manner.

32. The Government contested the claim.

33. As far as the applicant claims reimbursement of costs and expenses incurred in the domestic proceedings, the Court, in the light of the evidence before it and the period concerned, decides to award him on an equitable basis EUR 1,000 under this head.

As far as the applicant claims reimbursement of costs and expenses incurred before the Court, the Court considers it reasonable to award the sum of EUR 2,000.

34. The Court awards a total sum of EUR 3,000 for legal costs and expenses.

C. 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;
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) EUR 3,000 (three thousand euros) for non-pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros) for legal costs and expenses;
 - (iii) 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President