



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

THIRD SECTION

CASE OF STORNELLI AND SACCHI v. ITALY

(Application no. 68706/01)

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 Stornelli and Sacchi 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. 68706/01) 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 four Italian nationals, Mrs Maddalena Stornelli, Mrs Cecilia Sacchi, Mr Leonardo Sacchi and Mrs Francesca Sacchi (“the applicants”), are four Italian nationals, on 14 July 2000.

2. The applicants were represented before the Court by Mrs R. Capitani, a lawyer practising in Florence. The respondent 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 18 March 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 applicants were respectively born in 1932, 1963, 1941 and 1940 and live in Florence.

6. M.S. was the owner of a flat in Florence, which he had let to E.D.L. and after her death to her daughter S.L.D.B.

7. In a writ served on the tenant on 19 October 1989, M.S. informed the tenant that he intended to terminate the lease on expiry of the term on 31 December 1991 and asked her to vacate the premises by that date. He summoned the tenant to appear before the Florence Magistrate.

8. By a decision of 9 November 1989, which was made enforceable on 21 November 1989, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1992.

9. On 12 June 1993, M.S. died, his wife and children – the actual applicants – inherited the flat and became party to the proceedings as heirs.

10. On 14 December 1993, the applicants served notice on the tenant requiring her to vacate the premises.

11. On 18 January 1994, they informed the tenant that the order for possession would be enforced by a bailiff on 8 March 1994.

12. Between 8 March 1994 and 3 December 1998, the bailiff made nine attempts to recover possession. Each attempt proved unsuccessful, as the applicants were not entitled to police assistance in enforcing the order for possession.

13. On 27 July 1999, pursuant to section 6 of Law no. 431/98, the tenant asked for a suspension of the eviction proceedings.

14. The eviction proceedings were suspended until 26 January 2001.

15. On 8 March 2001, the applicants served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 14 May 2001.

16. On that date, the bailiff made one attempt and discovered that the tenant had left the premises on 10 May 2001.

17. Consequently, the applicants recovered possession of the flat.

II. RELEVANT DOMESTIC LAW

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. THE GOVERNMENT'S PRELIMINARY OBJECTION

19. In their observations on the merits, the Government argue that domestic remedies had not been exhausted on the grounds that the applicants had failed to seek reimbursement of damages before the national courts under Article 1591 of the Civil Code.

20. As far as the Government's arguments have to be considered as a preliminary objection, the Court observes that it was not raised, as it could have been, at the time of the admissibility. Therefore, the Court considers that the Government is estopped from raising objections to the admissibility at this stage of the procedure.

21. This objection should accordingly be dismissed (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 44, ECHR 1999-II).

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

22. The applicants complained of their prolonged inability to recover possession of their flat, 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.”

23. 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...”

24. 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 v. Italy* [GC], no. 22774/93, §§ 46-75, ECHR 1999-V; *Lunari v. Italy*, no. 21463/93, §§ 34-46, 11 January 2001; *Palumbo v. Italy*, no. 15919/89, §§ 33-48, 30 November 2000).

25. 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 approximately seven years and two 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.

III. 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 applicants claimed 87,283.93 euros (EUR) for the pecuniary damage they had sustained. They submitted this amount as a result of the difference between the rent imposed by law and the free market rent for the period from October 1989 to May 2001. For the purpose of assessing the free market rent, the applicants submitted an expert opinion.

28. The Government contested the claim. They maintained that the applicants failed to seek reparation for the damages she suffered before the national courts under Article 1591 of the Civil Code. Yet, the Government consider that the applicants failed to adduce any reason that they were unable to make use of such a remedy. Accordingly, their claims must be rejected.

29. The Court observes that the Government have not put forward any argument regarding the possibility that appears to have been developed in the case-law of the Court of Cassation of suing the State for damages following an unjustified lack of police assistance (see *Mascolo* cited above § 34-44).

30. The Court notes that the applicants can bring an action in the civil courts under Article 1591 of the Civil Code claiming compensation from their former tenant for the loss incurred as a result of the property being returned late.

31. 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 applicants' 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.

32. 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.

B. Non-pecuniary damage

33. The applicants claimed EUR 4,190.90 for the non-pecuniary damage.

34. The Government considered the sum fair.

35. The Court considers that the applicants must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards each of them EUR 1,025 under this head.

C. Costs and expenses

36. The applicants also claimed reimbursement for legal costs and expenses as follows:

- 7,318.92 for costs and expenses of the enforcement proceedings;
- 4,933.18 for costs and expenses before the Court.

37. The Government contested the claims.

38. 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 sum of EUR 2,000 for the costs and expenses incurred in the domestic proceedings and EUR 2,000 for the proceedings before the Court.

39. The Court awards a total sum of EUR 4,000 (EUR 1,000 for each applicant) for legal costs and expenses.

D. Default interest

40. 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. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay each of the applicants, 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 1,025 (one thousand twenty five euros) for non-pecuniary damage;
 - (ii) EUR 1,000 (one 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;

5. *Dismisses* the remainder of the applicants' 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