



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

THIRD SECTION

CASE OF GIOVANNA SCIORTINO v. ITALY

(Application no. 69834/01)

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 Giovanna Sciortino 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. 69834/01) 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 an Italian national, Mrs Giovanna Sciortino (“the applicant”), on 22 March 2001.

2. The applicant was represented before the Court by Mrs M.G. Atzeni, a lawyer practising in Cagliari. 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 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 applicant was born in 1936 and lives in San Giovanni Lupatoto (Verona).

6. G.S., the applicant's father, was the owner of a flat in Cagliari which he had let to G.A.S.

7. In a registered letter of 3 June 1991, the applicant's father informed the tenant that he intended to terminate the lease on expiry of the term on 31 December 1991 and asked him to vacate the premises by that date.

8. In a writ served on the tenant on 24 February 1992, the applicant's father reiterated his intention to terminate the lease and summoned the tenant to appear before the Cagliari Magistrate.

9. By a decision of 23 March 1992, which was made enforceable on the same day, the Cagliari Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 28 June 1992.

10. On 20 July 1992, the applicant's father served notice on the tenant requiring him to vacate the premises.

11. On an unspecified date, the applicant's father made a statutory declaration that he urgently required the premises as accommodation for himself.

12. Subsequently, he informed the tenant that the order for possession would be enforced by a bailiff on 13 October 1992.

13. Between 13 October 1992 and 23 June 1995, the bailiff made five attempts to recover possession. Each attempt proved unsuccessful, as the applicant's father was never granted the assistance of the police in enforcing the order for possession.

14. On 25 May 1995, the applicant's father made a request for police assistance.

15. On 27 July 1995, the Cagliari Prefect informed him that the police assistance would be granted after 30 September 1996.

16. On 22 September 1997, the applicant's father died and his daughter, the actual applicant, inherited the flat and took part in the proceedings as an heir.

17. On 13 July 1998, the Prefect informed the bailiff that the police assistance would be granted only after 31 December 1998, as there was no urgent necessity, the applicant's father having died.

18. On 19 April 1999, the applicant served on the tenant the order to vacate the premises.

19. On 3 May 1999, she informed the tenant that the order for possession would be enforced by a bailiff on 25 May 1999.

20. On an unspecified day of May 2001, the tenant spontaneously vacated the premises and the applicant recovered possession of the flat.

II. RELEVANT DOMESTIC LAW

21. 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

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

23. 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 stopped from raising objections to the admissibility at this stage of the procedure.

24. 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

25. The applicant complained of her prolonged inability to recover possession of her flat, owing to the lack of police assistance. She alleged a violation of her 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.”

26. 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...”

27. 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).

28. 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 eight 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant sought, firstly, reparation for the pecuniary damage she had sustained, which she calculated as follows:

- 99,263.39 euros (EUR) the sum being the loss of rent, plus interests, for the period from March 1992 to June 2001. In this respect, the applicant submitted that the rent imposed by law amounted to approximately EUR 36.15 while the free market rent amounted to approximately EUR 568.10. For the purpose of assessing the free market rent, the applicant submitted a real estate agency evaluation for the years from 1993 to 2001;

- EUR 58,819.66 for renovation works, plus interests, in the flat after possession was recovered;

- EUR 191.83 for the registration of the rent contract;

The applicant also left the matter to be assessed by the Court in an equitable manner.

31. The Government contested those claims. They maintained that the applicant 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 applicant failed to adduce any reason that she was unable to make use of such a remedy. Accordingly, her claim must be rejected.

32. 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).

33. As regards the loss of rent, the Court notes that the applicant can bring an action in the civil courts under Article 1591 of the Civil Code claiming compensation from her former tenant for the loss incurred as a result of the property being returned late.

34. 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.

35. The Court accordingly notes that Italian domestic law allows reparation to be made for the material consequences of the breach and considers that this claim should be dismissed.

36. As regards the costs incurred by the applicant for renovation work, the Court considers that they are not related to the violations found. Furthermore, it considers that the applicant would have been entitled to recover them from the tenant. Therefore, the Court rejects this claim.

37. As regards the costs incurred by the applicant in order to register the rent contract, the Court considers that they are not related to the violations found. Accordingly, the Court rejects this claim.

38. The Court decides to make no award for pecuniary damage.

B. Non-pecuniary damage

39. The applicant claimed EUR 50,000 for the non-pecuniary damage. She also left the matter to be assessed by the Court in an equitable manner.

40. The Government contested the claim.

41. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 8,000 under this head.

C. Costs and expenses

42. The applicant also claimed reimbursement for legal costs and expenses as follows:

- EUR 3,044.81 for the costs of the enforcement proceedings;
- EUR 14,393.73 for her costs and expenses before the Court.

43. The Government contested the claims.

44. On the basis of the information in its possession and the Court's case-law, the Court considers it reasonable to award the applicant the sum of EUR 1,500 for the costs and expenses incurred in the domestic proceedings and EUR 2,000 for the costs and expenses incurred before the Court.

45. The Court awards a total sum of EUR 3,500 for legal costs and expenses.

D. Default interest

46. 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 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 8,000 (eight thousand euros) for non-pecuniary damage;
 - (ii) EUR 3,500 (three thousand five hundred 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 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