CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF FEDERICI v. ITALY (NO. 2)

(Applications nos. 66327/01 and 66556/01)

JUDGMENT

STRASBOURG

8 December 2005

FINAL

08/03/2006

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 Federici v. Italy (no. 2),

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

Mr B.M. ZUPANČIČ, *President*,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN,
Mr DAVID THÓR BJÖRGVINSSON, *judges*,
and Mr M. VILLIGER, *Deputy Section Registrar*,

Having deliberated in private on 20 January and 17 November 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in two applications (nos. 66327/01 and 66556/01) 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 two Italian nationals, Mrs Clara and Licia Federici (“the applicants”) on 21 November 2000.

2. The applicants are represented before the Court by MM. M. and C. Segnalini, two lawyers practising in Rome.

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 20 January 2005, the Court decided to join the applications and declared them admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were respectively born in 1927 and 1929 and live in Rome.

1. Application no. 66327/01

5. In a registered letter of 26 February 1990, the applicants informed the tenant that they intended to terminate the lease on expiry of the term on 5 October 1992 and asked him to vacate the premises by that date.

6. In a writ served on the tenant on 28 December 1990, the applicants reiterated their intention to terminate the lease and summoned the tenant to appear before the Rome Magistrate.

7. By a decision of 17 May 1991, which was made enforceable on the same day, the Rome Magistrate upheld the validity of the notice to quit on 5 October 1992 and ordered that the premises be vacated by 5 October 1993.

8. Pursuant to Law no. 359/92, the expiry of the term was extended until 5 October 1994.

9. This decision invalidated the previous writ. As a result, the applicants had to restart the eviction proceedings.

10. On 5 April 1996, they served on the tenant a second notice to quit and summoned him to appear before the Rome Magistrate.

11. By a decision of 20 November 1996, the Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 20 May 1997.

12. On 18 December 1998, the applicants served on the tenant the order to vacate the premises.

13. On 17 February 1999, they informed the tenant that the order for possession would be enforced by a bailiff on 22 July 1999.

14. On 25 October 1999, the applicants served on the tenant a second order to vacate the premises.

15. On 4 November 1999, they informed the tenant that the order for possession would be enforced by a bailiff on 30 November 1999.

16. Between 30 November 1999 and 14 April 2000, the bailiff made four attempts to recover possession. Each attempt proved unsuccessful.

17. On 30 June 2000, the applicants recovered possession of the flat.

2. Application no. 66556/01

18. In a registered letter of 19 February 1990, the applicants informed the tenant that they intended to terminate the lease on expiry of the term on 30 June 1991 and asked him to vacate the premises by that date.

19. In a writ served on the tenant on 13 June 1990, the applicants reiterated their intention to terminate the lease and summoned the tenant to appear before the Rome Magistrate.

20. By a decision of 22 June 1992, which was made enforceable on the same day, the Rome Magistrate upheld the validity of the notice to quit on 31 December 1993 and ordered that the premises be vacated by 30 September 1994.

21. Pursuant to Law no. 359/92, the expiry of the term was extended until 31 December 1995.

22. This decision invalidated the previous writ. As a result, the applicants had to restart the eviction proceedings.

23. On 5 April 1995, the applicants served a second writ on the tenant with a view to terminating the lease.

24. The tenant was then summoned to appear before the Rome Magistrate who, by a decision of 20 November 1996, upheld the validity of the notice to quit and ordered the premises be vacated by 20 November 1997.

25. On 18 December 1998, a notice was served on the tenant requiring him to vacate the premises.

26. On 17 February 1999, the applicants informed the tenant that the order for possession would be enforced by a bailiff on 22 July 1999.

27. Between 30 November 1999 and 14 April 2000, the bailiff made 4 attempts to recover possession. Each attempt proved unsuccessful.

28. On 29 September 2000, the applicants recovered possession of the flat.

II. RELEVANT DOMESTIC LAW

29. 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, 16.12.2004) and *Lo Tufo v. Italy,* (no. 64663/01, §§ 16-48, 21.04.2005).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

30. 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.

31. 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, before the admissibility decision. Therefore, the Court considers that the Government is estopped from raising objections to the admissibility at this stage of the procedure.

32. 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

33. 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."

34. 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..."

35. 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).

36. 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 having obtained an order for possession (respectively on 5 Octobre 1993 and on 30 September 1994), approximately six years and nine months before being able to repossess the first flat and six years before being able to repossess the second flat.

37. 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

38. 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

39. The applicants claimed reimbursement of the pecuniary damage as follows:

- 65,578 euros (EUR), the sum being the loss of rent they had sustained with regard to the first flat. They submitted this sum as a result of the difference between the free market rent and the rent imposed by law. For the purpose of assessing the free market rent, the applicants sent the evaluation of an engineer;
- EUR 73,980, the sum being the loss of rent they had sustained with regard to the second flat. They submitted this sum as a result of the difference between the free market rent and the rent imposed by law. For the purpose of assessing the free market rent, the applicants sent the evaluation of an engineer.

40. The Government contested those claims. 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.

41. 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, and *Lo Tufo* cited above, §§ 37-48).

42. 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.

43. 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.

44. 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

45. The applicants left the assessment of non-pecuniary damage to the Court's discretion.

46. The Government contested the claim.

47. 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 for each flat.

48. The Court awards a total sum of EUR 12,000 (EUR 6,000 to each applicant) under this head.

C. Costs and expenses

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

- EUR 3,000 for the costs and expenses incurred in the enforcement proceedings of the first flat;
- EUR 4,000 for the costs and expenses incurred in the enforcement proceedings of the second flat;
- a sum assessed by the Court in an equitable manner for the costs and expenses incurred before it.

50. The Government contested the claims.

51. On the basis of the information in its possession and the Court's case-law, the Court considers it reasonable to award the applicants a total sum of EUR 3,000 (EUR 1,500 for each proceedings) for the costs and expenses incurred in the two domestic proceedings and EUR 2,000 for the proceedings before the Court.

52. The Court awards a total sum of EUR 5,000 (EUR 2,500 to each applicant) for legal costs and expenses.

D. Default interest

53. 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 each 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 6,000 (six thousand euros) for non-pecuniary damage;
      (ii) EUR 2,500 (two 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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mark VILLIGER	Boštjan M. ZUPANČIČ
Deputy Registrar	President