



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

THIRD SECTION

CASE OF FRATESCHI v. ITALY

(Application no. 68008/01)

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 Frateschi v. Italy,

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

Mr B.M. ZUPANČIČ, *President*,
Mr L. CAFLISCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr V. ZAGREBELSKY,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Ms I. ZIEMELE, *judges*,

and Mr M. VILLIGER, *Deputy Section Registrar*,

Having deliberated in private on 17 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 68008/01) 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 Ms Stefania Frateschi, an Italian national (“the applicant”), on 28 February 2001.

2. The applicant was represented before the Court by Mr G. Fanfani, 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 declared the application admissible.

4. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1960 and lives in Florence.

6. A.C., C.G. and G.G. were the owners of a flat in Florence, which they had let to R.F.

7. In a registered letter of 29 June 1987, the owners 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.

8. In a writ served on the tenant on 9 September 1988, the owners reiterated their intention to terminate the lease and summoned the tenant to appear before the Florence Magistrate.

9. By a decision of 18 October 1988, which was made enforceable on 23 November 1988, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 13 October 1989.

10. In the meanwhile, on 4 April 1989, the applicant became the owner of the flat and pursued the enforcement proceedings.

11. On 14 November 1989, the applicant served notice on the tenant requiring him to vacate the premises.

12. On 5 December 1989, she informed the tenant that the order for possession would be enforced by a bailiff on 26 January 1990.

13. Between 26 January 1990 and 22 January 1999, the bailiff made twenty attempts to recover possession. Each attempt proved unsuccessful, as the applicant was never granted the assistance of the police in enforcing the order for possession.

14. On 17 May 1990, the applicant made a statutory declaration that she urgently required the premises as accommodation for herself.

15. On 11 October 2000, the applicant recovered possession of the flat.

II. RELEVANT DOMESTIC LAW

16. The relevant domestic law and practice is described in the Court's judgments in the cases 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

17 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.

18. 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.

19. 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

20. 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.”

21. 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...”

22. 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).

23. 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 ten years and eight 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

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. Pecuniary damage

25. The applicant claimed 81 000 euros (EUR) for the pecuniary damage she had sustained. From 1990 to 1993, the applicant allegedly lost EUR 12,224 as a result of the difference between the rent she had to pay for another accommodation and the rent received from her tenant. From 1993 to 2000, she allegedly lost EUR 69,000 as a result of the difference between the free market rent and the rent paid by the tenant.

26. The Government contested the claim. 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.

27. 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).

28. As regards the damage claimed for the period of time from 1993 to 2000, the Court recalls that in May 1990, the applicant made a statutory declarations that she urgently required the flat as accommodation for herself. In such circumstances, she cannot claim any entitlement to reimbursement of loss of rent but can only claim the reimbursement of such costs and expenses incurred to rent another flat which go beyond the rent received from the tenant. Therefore, the Court rejects this part of the claim.

29. As regards the damage claimed for the period of time from 1990 to 1993, the Court notes that the applicant 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.

30. 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 her 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.

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

B. Non-pecuniary damage

32. The applicant claimed EUR 30,000 for the non-pecuniary damage. She also left the matter to be assessed by the Court in an equitable manner.

33. The Government contested the claim.

34. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 10,000 under this head.

C. Costs and expenses

35. The applicant claimed EUR 17,514 for the costs and expenses incurred before the Court.

36. The Government contested the claim.

37. 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 2,000 for the costs and expenses incurred before it.

D. Default interest

38. 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 10,000 (ten thousand euros) for non-pecuniary damage;
 - (ii) EUR 2,000 (two 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 8 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mark VILLIGER
Deputy Registrar

Boštjan M. ZUPANČIČ
President