



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

CASE OF GUILLEMIN v. FRANCE

(Article 50)

(Application no. 19632/92)

JUDGMENT

STRASBOURG

2 September 1998

In the case of Guillemin v. France¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr F. MATSCHER, *President*,
Mr L.-E. PETTITI,
Mr J. DE MEYER,
Mr R. PEKKANEN,
Mr A.N. LOIZOU,
Mr M.A. LOPES ROCHA,
Mr B. REPIK,
Mr P. KÜRIS,
Mr E. LEVITS,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 27 June and 24 August 1998,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) on 8 December 1995, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 19632/92) against the French Republic lodged with the Commission under Article 25 by a French national, Mrs Adrienne Guillemin (née Mouchez), on 28 November 1991.

2. In its judgment of 21 February 1997 (“the principal judgment”) the Court held that the length of proceedings brought by the applicant to challenge an expropriation and to secure compensation for it, together with the expropriating town council’s failure to carry out judicial decisions setting aside the expropriation measures, had infringed Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (*Reports of Judgments and*

Notes by the Registrar

1. The case is numbered 105/1995/611/699. The first number is the case’s position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case’s position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

Decisions 1997-I, pp. 162 and 164, §§ 45 and 57, and points 1 and 3 of the operative provisions). It also awarded the applicant a specified sum for non-pecuniary damage and for costs and expenses (*ibid.*, p. 165, §§ 63 and 67, and point 4 of the operative provisions).

As the question of the application of Article 50 of the Convention was not ready for decision as regards pecuniary damage, the Court reserved it and invited the Government and the applicant to notify it, within three months, of any agreement they might reach (*ibid.*, p. 165, § 62, and point 5 of the operative provisions).

3. In a letter of 4 June 1997, received at the registry on 6 June, counsel for the applicant informed the Court that although he had sent a letter to the Government on 1 April 1997, they had not to date taken any action on the Court's judgment, in particular as regards attempting to reach a friendly settlement.

4. On 4 June 1997 the Court had received from the Government a copy of the judgment of the Evry *tribunal de grande instance* of 26 May 1997, in which it ruled on the amount of compensation for the applicant's pecuniary and non-pecuniary damage (see paragraph 14 below) and a copy of a letter of 30 May 1997 from the Agent of the Government to the applicant's lawyer, which read as follows:

“... ”

As on 26 May last the Evry *tribunal de grande instance* was due to deliver its judgment on the amount of compensation for the pecuniary and non-pecuniary damage sustained by your client, Mrs Guillemin, the French Government considered that it was appropriate to wait until that court had ruled.

In the operative provisions of that judgment the court assesses the compensation due to Mrs Guillemin and Mrs Grandjean at FRF 1,038,043 for the property; FRF 415,883 for the loss of enjoyment; and FRF 150,000 for non-pecuniary damage.

The decision was expressed to be immediately enforceable, so that your client will be able to secure payment of those sums as soon as she has served the judgment on the town council, notwithstanding any appeal. For this reason the French Government consider that the question of your client's pecuniary damage has now been settled by this judgment.

In order that I may inform the Court as soon as possible of any developments in this case, I should be grateful if you would kindly let me know your client's position on this matter.”

On 16 June 1997, in view of that judgment, the President of the Chamber, Mr R. Ryssdal, gave the Government, the applicant and the Delegate of the Commission until 7 July 1997 to submit observations. On 11 July he agreed to an extension of time until 15 September 1997, as an appeal might be brought against the judgment of the *tribunal de grande instance*.

5. In a letter of 1 September 1997 counsel for the applicant informed the Court that Saint-Michel-sur-Orge Town Council and Evry New Town Development Corporation had indeed appealed against the judgment to the Paris Court of Appeal; although the judgment was immediately enforceable, Mrs Guillemin had not received anything to date. He asked the Court to give judgment so that “the assessment of damage and payment of compensation following the unlawful dispossession of which [the applicant] was the victim in 1982 should [not] again be left to the sole discretion of the French national courts”. Lastly, he submitted his client’s claim in respect of pecuniary damage, updated since the one he had submitted to the Court in his pleading of 3 June 1996.

6. On 11 September 1997 the Agent of the Government wrote to the Court as follows:

“I have the honour to inform you that as Mrs Guillemin has reported to the Court that she has still not secured payment of the compensation awarded to her, in particular under the head of pecuniary damage, by the Evry *tribunal de grande instance* in its judgment of 26 May 1997, I have requested the department of the Government Law Officer at the Ministry of the Economy, Finance and Industry to look into possible ways of overcoming the particular difficulty presented by this case, in order to ensure that the applicant is actually compensated.

The main difficulty raised by this compensation lies in the fact that the debtor required by the Court’s judgment to compensate for the pecuniary damage sustained by Mrs Guillemin (the French State) is not the same as the one ordered by the Evry *tribunal de grande instance* to pay this same compensation (Saint-Michel-sur-Orge Town Council).

As I told you in my letter of 30 May 1997, the judgment of 26 May 1997 was immediately enforceable notwithstanding any appeal. Mrs Guillemin may consequently demand payment of the sums awarded her despite the appeal lodged by Saint-Michel-sur-Orge Town Council. It does not appear from the information available to the French Government that the applicant has actually sought payment of those sums from the town council. At all events, I shall not fail to inform you of the Government Law Officer’s reply, which should reach me by 25 September.”

In a letter of 1 October 1997 he added:

“...

I have the honour to inform you that in the light of the information forwarded by [the department of the Government Law Officer at the Ministry of the Economy, Finance and Industry], the Ministry of Foreign Affairs has approached the Ministry of the Interior with a view to seeking, together with the Prefect of Essonne and the mayor of Saint-Michel-sur-Orge, a rapid solution to the problem of Mrs Guillemin’s compensation. I shall let you know as soon as possible the outcome of this step.

I would add that Mr Meyer, Mrs Guillemin's counsel in the proceedings before the Strasbourg institutions, has not been able to tell me whether his client has tried to execute the judgment of the Evry *tribunal de grande instance*, which is immediately enforceable. Not being in charge of the case, Mr Meyer does not have the file of the proceedings in the domestic courts and he will seek information on the subject from his colleague."

7. On 17 October 1997 the applicant's lawyer lodged with the Court a copy of a summons to attend an urgent judicial hearing that had been served on Mrs Guillemin by Saint-Michel-sur-Orge Town Council and the Evry New Town Development Corporation and which requested her to appear before the President of the Paris Court of Appeal. The town council argued that since public funds were at stake, it would be extremely dangerous if they could not be recovered in the likely event of the judgment of 26 May 1997 being set aside; it sought leave to deposit all the sums awarded in that judgment in the hands of the Chairman of the Paris Bar and, in the alternative, an order that execution of the judgment should be conditional on Mrs Guillemin's providing sufficient personal security or security in the form of real or movable property to satisfy any claim for restitution or compensation. At the hearing on 4 November 1997 (see paragraph 15 below) the town council sought to have the immediate enforceability of the judgment suspended, arguing that judgments could never be enforced against public-law bodies.

The lawyer pointed out that this summons confirmed the town council's intention to do everything to resist payment of the sums due and to delay still further the conclusion of the dispute in the national courts.

8. In a letter of 27 October 1997 the Registrar of the Court wrote to the Agent of the Government as follows:

"...

I would also inform you that the relevant Chamber met during the October session and reviewed the state of the proceedings. It instructed me to inform you of its wish to see the case disposed of in the next few months, and by May next year at the latest. To that end, I venture to suggest the following course of action: ask the Minister of Justice to request Principal State Counsel at the Paris Court of Appeal to seek from the President of that court an expedited hearing of the appeal against the judgment of the Evry *tribunal de grande instance*."

9. On 28 November 1997 Mrs Guillemin's lawyer informed the Court that the President of the Paris Court of Appeal had dismissed the town council's and the development corporation's applications for a stay of execution of the judgment of 26 May 1997 (see paragraph 15 below).

10. On 15 April 1998 the Government sent the Court a copy of the Paris Court of Appeal's judgment of 13 March 1998, in which that court reduced the compensation awarded to the applicant by the Evry *tribunal de grande instance* (see paragraph 16 below).

11. In reply to a letter of 28 April 1998 from the Registrar, the Government informed the Court on 12 May 1998 of the following development:

“... I am sending you a document from Mr Horta, Mrs Guillemin’s counsel in the proceedings before the domestic courts, in which he confirms that Saint-Michel-sur-Orge Town Council has transferred the sum of 1,615,926 francs to the lawyer’s account at the Bank for Lawyers’ Financial Settlements (“CARPA”). That sum corresponds to the amount of damages awarded to Mrs Guillemin by the Evry *tribunal de grande instance* on 26 May 1997.

In a judgment of 13 March 1998 the Paris Court of Appeal varied that judgment and ordered Saint-Michel-sur-Orge Town Council to pay Mrs Guillemin and her sister Mrs Grandjean the following sums: 660,518 francs in respect of the loss of value of the property, including the repurchase allowance, 300,000 francs in respect of loss of enjoyment and 50,000 francs in respect of non-pecuniary damage.

In a judgment of 21 February 1997 the European Court of Human Rights reserved the question of compensating Mrs Guillemin for the pecuniary damage sustained on account of the expropriation proceedings in issue. Now that the sums awarded to Mrs Guillemin by the Court of Appeal, which cover that head of damage among others, have been transferred to the applicant’s lawyer’s CARPA account, the French Government consider that the applicant may be regarded as having been actually compensated.”

In a letter of 27 May 1998 he added:

“... I am writing to inform you that the French Government consider that the payment by Saint-Michel-sur-Orge Town Council of the sums awarded to Mrs Guillemin as compensation for her pecuniary damage makes it possible to envisage closing the case which is still before the European Court of Human Rights.”

12. On 29 May 1998 the registry received the applicant’s submissions on the application of Article 50 of the Convention.

13. In February 1998 Mr R. Bernhardt, the Vice-President of the Court, had replaced Mr Ryssdal, who had died on 18 February 1998 (Rule 21 § 6, second sub-paragraph, of Rules of Court A). Subsequently Mr F. Matscher replaced Mr Bernhardt as President of the Chamber and Mr R. Pekkanen, substitute judge, became a full member of it (Rules 21 § 6, second sub-paragraph, 22 § 1 and 24 § 1).

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

14. In a judgment of 26 May 1997 the Evry *tribunal de grande instance* ruled as follows:

“ ...

The application against Saint-Michel-sur-Orge Town Council

The town council was certainly the instigator of the expropriation – subsequently declared unlawful – that gave rise to the damage sustained by the plaintiffs, and it has already been held to be liable in the judgment of 23 October 1995.

The amount of this damage must therefore now be assessed and the town council ordered to pay the resulting sums.

As regards the value of the building and the damage resulting from loss of enjoyment, it should be remembered that as all damage is to be assessed as at the date on which the assessment is made, the value of the building must be assessed as at the date of this judgment.

But the interference with enjoyment must be assessed in relation to the income that the property would have brought in from the date of dispossession to the present day, and that presupposes that the land in question should also be valued at the date of dispossession, that is to say in July 1983.

...

The total value of the property, including the repurchase allowance, is therefore FRF 1,038,043; this figure was arrived at by the expert in September 1996 but, in the absence of any significant [change] since then, it will be adopted as being still valid at the date of this judgment.

The plaintiffs should therefore be awarded the sum of FRF 1,038,043 in respect of the value of the property of which they have been dispossessed.

The damage resulting from the loss of this property will be assessed on the basis of 6.5% – the average rate of return – of the value of the property in 1983, with annual indexation, as the expert recommended, that method of calculation and rate corresponding to the reality of the situation as it has developed since 1983.

...

And the damage resulting from interference with enjoyment will thus be assessed at FRF 415,883 in all.

Apart from the foregoing damage, the plaintiffs have indisputably sustained damage distinct from the pecuniary or material damage through being deprived of a property that they were entitled to wish to keep and on account of the endless difficulties they encountered [over] many years in seeking compensation whose principle could not be in doubt.

This non-pecuniary damage will be compensated by the award of a sum of FRF 150,000, an assessment which cannot be in any way affected by the judgment of the European Court of Human Rights.

Interest shall be payable on the totality of the foregoing sums from the date of this judgment, having regard to their compensatory nature.

Furthermore, regard being had to the length of time the case has lasted and the plaintiffs' indisputable right to be compensated, this judgment shall be immediately enforceable notwithstanding any appeal, as is moreover appropriate to the nature of the case.

..."

In so deciding, the court adopted the assessment made in the court-appointed expert's report that was filed on 29 July 1996.

15. On 4 November 1997 the President of the Paris Court of Appeal, ruling on the application for an interim order by Saint-Michel-sur-Orge Town Council and the Evry New Town Development Corporation, refused the council's and corporation's requests for a stay of execution of the judgment of the Evry *tribunal de grande instance*.

His order read as follows:

"...

The general principle of law that property belonging to public bodies is exempt from execution, thus making it impossible to have recourse to the execution procedures of private law, has no bearing on the present case, as the execution of judgments by public bodies is governed by the special rules laid down in Law no. 80-539 of 16 July 1980.

Nor is the considerable sum of damages awarded a sufficient ground in itself for staying immediate execution, and in any event the defendants did not claim that immediate payment of the sums in question would have manifestly unconscionable consequences for them within the meaning of Article 524 of the New Code of Civil Procedure.

Furthermore, they did not in any way establish that Mrs Guillemin and Mrs Grandjean had not provided sufficient security to satisfy any order for restitution in the event of the decision's being set aside by the Court of Appeal.

It follows that the applications by St-Michel-sur-Orge Town Council and *EPEVRY* must be dismissed in their entirety.

..."

16. On 13 March 1998 the Paris Court of Appeal delivered its judgment on the appeal by Saint-Michel-sur-Orge Town Council against the judgment of the Evry *tribunal de grande instance*. It reduced the amounts awarded by that court on the following grounds:

“ ...

The value of the real property

...

The land cannot be valued on the day of compensation by indexing the price per sq. m in 1982 in line with the building cost index, which is inappropriate in the instant case. In order to arrive at the present-day value of the property, regard will be had to the fluctuations in property prices in the sector concerned for comparable properties, which gives a round figure of 500,000 francs, whence a repurchase allowance of ... 105,000 francs and a total sum of 500,000 francs + 105,000 francs = 605,000 francs.

The expert has made an expert assessment of the value of the improvements (buildings, gardens and swing), valuing them at 38,200 francs (1983 value). The present-day value may be assessed, as it was by the court below, at 55,518 francs.

In consequence, Mrs Guillemin and Mrs Grandjean will receive in respect of the loss of the value of the property total compensation of 660,518 francs.

Loss of enjoyment

The damage resulting from the loss of this property since 1 July 1983 will be assessed at 300,000 francs, regard being had to the average return to be expected from such a property.

Non-pecuniary damage

The sum of 50,000 francs will be awarded to Mrs Guillemin and Mrs Grandjean in respect of the non-pecuniary damage resulting from the unjustified dispossession of their property and the trouble caused by the reluctance of Saint-Michel-sur-Orge Town Council to compensate them for the damage arising from their unlawful eviction from their property in 1983.

...”

17. On 2 April 1998 Saint-Michel-sur-Orge Town Council transferred to the *CARPA* account of Mr Horta, Mrs Guillemin’s counsel in the proceedings before the national courts, the sum awarded her by the Evry *tribunal de grande instance*.

According to the applicant, the town council was going to seek restitution of the difference between the sum it had paid and the one awarded by the Paris Court of Appeal.

18. On 5 June 1998 Mrs Guillemin appealed on points of law against the Court of Appeal’s judgment.

FINAL SUBMISSIONS TO THE COURT

19. In her submissions on the application of Article 50 the applicant requested the Court:

“To order France to pay the applicant, pursuant to Article 50 of the Convention, the sum of FRF 3,735,000 in respect of the violation of Article 1 of Protocol No. 1, together with statutory interest from the date of the judgment.

In the alternative:

To reserve the question of the application of Article 50 pending the judgment of the Court of Cassation.

In any event:

To order France to pay Mrs Guillemin the sum of FRF 30,000 in respect of costs of representation, together with statutory interest from the date of the judgment.”

20. The Government considered that the “payment by [the] town council of the sums awarded to Mrs Guillemin as compensation for her pecuniary damage [made] it possible to envisage closing the case...”

AS TO THE LAW

A. Pecuniary damage

21. The Court notes that on 26 May 1997 the Evry *tribunal de grande instance* ordered Saint-Michel-sur-Orge Town Council to pay Mrs Guillemin the sum of 1,603,926 French francs (FRF) for pecuniary and non-pecuniary damage; having regard to the “length of time the case ha[d] lasted”, the court ordered that the judgment should be immediately enforceable, as was, in the court’s words, “appropriate to the nature of the case” (see paragraph 14 above). The town council did not comply, however. It appealed against the judgment and summoned the applicant to attend an urgent judicial hearing with a view to obtaining either security to satisfy any claim for restitution, in the event of the judgment’s being set aside by the Paris Court of Appeal, or suspension of the judgment’s immediate enforceability (see paragraph 7 above). On 13 March 1998 the Court of Appeal reduced the sum awarded by the *tribunal de grande instance* by about one-third, thereby prompting the applicant to appeal on points of law (see paragraphs 16 and 18 above). On 2 April 1998 the town council – all of whose applications in the urgent proceedings had been dismissed on

4 November 1997 (see paragraph 15 above) – deposited the full sum awarded by the *tribunal de grande instance* in the *CARPA* account of the lawyer who had represented Mrs Guillemin in the national proceedings (see paragraph 17 above).

That sum, however, is not payable to the applicant until she has repaid to the town council part of the funds deposited in the account in execution either of the Court of Appeal’s judgment or of the one which will have to be delivered by the court to which the Court of Cassation will remit the case if it allows Mrs Guillemin’s appeal on points of law. Nor do deposits in such accounts yield any interest.

22. The applicant considered the compensation awarded by the Evry *tribunal de grande instance* to be insufficient and *a fortiori* that awarded by the Paris Court of Appeal, whose judgment she criticised for its “poor reasoning”, and she requested the Court to rule on the damage she had sustained.

It is not for the Court to make such an assessment, however, which is a matter for the national courts. As the Court has reiterated several times, it is not its function to give judgment on alleged errors of domestic law or to substitute its own assessment of the facts for that of the national courts.

23. In the instant case, as it stands at present, the Court can only note the excessive and continuing duration of the proceedings Mrs Guillemin brought to secure compensation for an expropriation which the Court of Cassation had held to be unlawful (see paragraph 12 of the principal judgment).

24. The Court observes that since the principal judgment was given, the proceedings in the national courts, which are still pending, have deprived the applicant of the compensation to which she was entitled and will doubtless continue to deprive her of it, at least until the Court of Cassation gives judgment.

The Court points out that in the principal judgment it based the finding of a violation of Article 1 of Protocol No. 1 on the following considerations:

“Compensation for the loss sustained by the applicant can only constitute adequate reparation where it also takes into account the damage arising from the length of the deprivation. It must moreover be paid within a reasonable time.

...

The Court considers that the potentially large sum that may be awarded at the end of the pending proceedings does not offset the previously noted failure to pay compensation and cannot be decisive in view of the length of all the proceedings already instituted by the applicant (see, *mutatis mutandis*, the Zubani v. Italy judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1078, § 49).” (*Reports* 1997-I, p. 164, §§ 54 and 56)

Furthermore, the Court has held in an earlier case that the adequacy of compensation may be diminished if it is paid without reference to various circumstances likely to reduce its value, such as the lapse of a considerable period of time (see the *Stran Greek Refineries and Stratis Andreadis v. Greece* judgment of 9 December 1994, Series A no. 301-B, p. 90, § 82).

25. That being so, the Court considers it appropriate, without prejudice to the amount that will finally be paid to Mrs Guillemin at the end of the proceedings in the Court of Cassation, to award her compensation now for the loss of availability of the sum already awarded in the judgment of the *Evry tribunal de grande instance* on 26 May 1997 that has been caused by the town council's refusal to comply with that judgment. Taking into consideration, in particular, the period that has elapsed between 26 May 1997 and the date of adoption of the present judgment, the Court rules on an equitable basis that the respondent State is to pay Mrs Guillemin FRF 60,000 under this head.

B. Lawyer's fees

26. The applicant sought FRF 30,000 for the costs incurred in instructing a lawyer to defend her interests.

Seeing that the domestic proceedings are continuing, the Court considers the claim to be justified and decides to allow it in full.

C. Default interest

27. According to the information available to the Court, the statutory rate of interest in France at the date of adoption of the present judgment is 3.36% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that the respondent State is to pay the applicant, within three months, 60,000 (sixty thousand) French francs for pecuniary damage and 30,000 (thirty thousand) French francs for lawyer's fees;

2. *Holds* that simple interest at an annual rate of 3.36% shall be payable on those sums from the expiry of the above-mentioned three months until settlement.

Done in English and in French, and notified in writing on 2 September 1998 pursuant to Rule 55 § 2, second sub-paragraph, of Rules of Court A.

Signed: Franz MATSCHER
President

Signed: Herbert PETZOLD
Registrar