



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

SECOND SECTION

CASE OF G.L. v. ITALY

(Application no. 22671/93)

JUDGMENT

STRASBOURG

3 August 2000

FINAL

03/11/2000

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of G.L. v. Italy,

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

Mr C.L. ROZAKIS, *President*,

Mr A.B. BAKA,

Mr L. FERRARI BRAVO,

Mr G. BONELLO,

Mr P. LORENZEN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr E. LEVITS, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 11 July 2000,

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

PROCEDURE

1. The case originated in an application (no. 22671/93) against Italy lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Mr G.L. (“the applicant”), on 3 May 1993.

2. The Italian Government (“the Government”) were represented by their Agent, Mr Umberto Leanza, and by their Co-Agent, Mr Vitaliano Esposito.

3. The applicant alleged that the prolonged impossibility to recover possession of his flat, owing to the implementation of emergency legislative provisions on residential property leases, infringed his right under Article 1 of Protocol No. 1. Invoking Article 6 § 1 of the Convention, he further complained about the duration of the eviction proceedings.

4. The application was declared admissible by the Commission on 17 January 1997 and transmitted to the Court on 1 November 1999 in accordance with Article 5 § 3, second sentence, of Protocol No. 11 to the Convention, the Commission not having completed its examination of the case by that date.

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was the owner of an apartment in Milan, which he had let at a low rent pursuant to a 1969 law on rent control (*equo canone*). His tenant owns a shop and is shopkeeper together with his family.

7. On 18 November 1985, the applicant served a notice to quit on the tenant upon expiry of the lease on 28 December 1988, but the tenant refused to vacate the premises.

8. In a writ served on the tenant on 22 January 1988, the applicant reiterated the notice to quit and summoned the tenant to appear before the Milan magistrate. By a decision of 1 February 1988, which was made enforceable on 22 February 1988, the Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 1 September 1989.

9. On 25 August 1989, the applicant served notice on the tenant requiring him to vacate the premises. On 6 November 1989, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 13 November 1989.

10. On 13 November 1989, the bailiff adjourned the eviction to 19 January 1990, pursuant to the instructions given by the Milan Prefect on 8 May 1989. Further attempts to evict the tenant on 20 February, 7 April and 15 November 1990, were unsuccessful.

11. On 15 September 1992, the applicant served on the tenant a second order to vacate the apartment. On 28 October 1992, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 20 November 1992. The attempts made by the bailiff on 20 November 1992 and 25 February 1993 were unsuccessful as, under the statutory provisions providing for the staggering of evictions, the applicant was not entitled to police assistance in enforcing the order for possession.

12. On 20 September 1993, the applicant made a statutory declaration that he urgently required the premises as accommodation for his son.

13. Between 14 October 1993 and 28 November 1996, the bailiff made 14 attempts to recover possession, on 14 October 1993, 18 January 1994, 12 April 1994, 28 June 1994, 18 October 1994, 31 January 1995, 13 April 1995, 18 July 1995, 26 September 1995, 19 December 1995, 14 March 1996, 28 May 1996, 26 September 1996 and 28 November 1996.

14. Each attempt proved unsuccessful, as the applicant was never granted the assistance of the police in enforcing the order for possession.

15. On 16 February 1997, the tenant spontaneously vacated the premises.

II. RELEVANT DOMESTIC LAW

16. The relevant domestic law is described in the judgment *Immobiliare Saffi v. Italy* [GC], no. 22774/93, 28.7.99, §§ 18-35, ECHR 1999-V, to be published.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

17. The applicant complained about his prolonged impossibility of recovering possession of his apartment, owing to the implementation of emergency legislative provisions on residential property leases. He alleged a violation of 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.”

A. The applicable rule

18. Relying on its previous case-law, the Court considers that the interference with the applicant’s property rights amounted to control of the use of property and falls to be examined under the second paragraph of Article 1 (see the *Immobiliare Saffi* judgment cited above, § 46).

B. Compliance with the conditions in the second paragraph

1. Aim of the interference

19. The Court has previously expressed the view that the impugned legislation had a legitimate aim in the general interest, as required by the second paragraph of Article 1 (see the *Immobiliare Saffi* judgment cited above, § 48).

2. Proportionality of the interference

20. The Court reiterates that an interference under the second paragraph of Article 1 of Protocol No. 1, must strike a “fair balance” between the demands of the general interest and the requirements of the protection of the individual's fundamental rights. There must be a reasonable relationship of proportionality between the means employed and the aim pursued. In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question. In spheres such as housing, which plays a central role in the welfare and economic policies of modern societies, the Court will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (see the *Immobiliare Saffi* judgment, cited above, § 49 and the *Chassagnou and Others v. France* judgment, no. 25088/94, § 75, ECHR-III).

21. The applicant contended that the interference at issue was disproportionate in view of its length and of the financial burden resulting from the impossibility of raising the rent. He further argued that the public authorities never took into consideration the economic conditions of tenants, often better than those of landlords.

22. The Court considers that, in principle, the Italian system of staggering of the enforcement of court orders is not in itself open to criticism, having regard in particular to the margin of appreciation permitted under the second paragraph of Article 1. However, such a system carries with it the risk of imposing on landlords an excessive burden in terms of their ability to dispose of their property and must accordingly provide certain procedural safeguards so as to ensure that the operation of the system and its impact on a landlord's property rights are neither arbitrary nor unforeseeable (see, *mutatis mutandis*, the *Immobiliare Saffi* judgment cited above, § 54).

23. The Court must thus ascertain whether, in the instant case, the applicant was afforded sufficient guarantees as to be safeguarded against uncertainty and arbitrariness.

24. The Court observes that the applicant obtained an order for possession on 1 February 1988, which was enforceable as of 22 February 1988 (see paragraph 8 above). Between 13 November 1989 and 25 February 1993, the bailiff's attempts to recover possession proved unsuccessful, on account initially of the legislation that suspended enforcement of non-urgent possession orders and successively of the legislation providing for the staggering of the evictions (see paragraphs 10-11 above). Thereafter, on 20 September 1993, the applicant made a statutory declaration that he urgently required the premises as accommodation for his son (see paragraph 12 above *in fine*). Despite being entitled to priority in the grant of

police assistance, he could only recover possession of his apartment three years and five months later and only because the tenant spontaneously vacated it on 16 February 1997.

25. For approximately six years and three months, the applicant was left in a state of uncertainty as to when he would be able to repossess his apartment. Until 20 September 1993, he could not apply to either the judge dealing with the enforcement proceedings or the administrative court, which would not have been able to set aside the prefect's decision to give priority to any pending urgent cases, as that decision was an entirely legitimate one (see the *Immobiliare Saffi* judgment cited above, § 56). After making the statutory declaration which gave him priority, although the statutory conditions for enforcement of eviction were satisfied (see *Scollo* judgment v. Italy, 28 September 1994, Series A 315-C, § 39) he had no prospect of accelerating the grant of police assistance, which depended almost entirely on the availability of policemen. Further, the applicant had no prospects of obtaining compensation through the Italian courts for his protracted wait.

26. In the light of the foregoing, the Court considers that, in the particular circumstances of this case, an excessive burden was imposed on the applicant and accordingly the balance that must be struck between the protection of the right of property and the requirements of the general interest was upset to the applicant's detriment.

Consequently, there has been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

27. 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..."

28. The Court observes that the applicant had originally relied on Article 6 in connection with his complaint regarding the length of the proceedings for possession. The Court nonetheless considers that the instant case must firstly be examined in connection with the more general right to a court.

A. Whether Article 6 is applicable

29. The Government maintained that the arrangements for staggering police assistance were not part of the judicial process for enforcement of orders for possession, since police intervention was an administrative issue, entirely separate from and independent of the judicial process. The Government stressed in that connection that it was not in their capacity as

officers of the court that prefects were empowered to stagger evictions, but as part of their duties as an administrative authority responsible for maintaining public order. Owing to its special purpose, police assistance could not be regarded merely as a method of enforcing judgments, and one that was available automatically: rather, its function was to protect the overriding general interest. That administrative phase could under no circumstances be said to come within the scope of Article 6.

30. The Court recalls that it has already held that Article 6 of the Convention is applicable to the tenants eviction proceedings (see the *Immobiliare Saffi* judgment cited above, §§ 62-63). As the Government have not submitted any new argument in support of their objections, the Court sees no reason to depart from its previous finding. This exception should therefore be rejected.

B. Compliance with Article 6

31. The applicant complained that he had to wait nine years to recover possession of his apartment after the issue of the Magistrate's order. Furthermore, he argued that despite the fact that he had made a statutory declaration that he urgently required the premises as accommodation for his son, he had to wait approximately three years and five months from the declaration before repossessing his apartment.

32. The Court notes that a landlord cannot seek to enforce an order for possession against a tenant until the date which the magistrate, having regard to the special needs of both the landlord and the tenant and the reasons for the eviction, sets in the order. The maximum period for a stay of execution is statutorily fixed at six, or in exceptional cases twelve, months, after which the landlord must be allowed to enforce the order. The Milan Magistrate had ruled that the applicant would be entitled to enforce its order as from 1 September 1989.

33. The Court reiterates that the right to a court as guaranteed by Article 6 also protects the implementation of final, binding judicial decisions, which, in States that accept the rule of law, cannot remain inoperative to the detriment of one party (see, *mutatis mutandis*, the *Hornsby v. Greece* judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40). Accordingly, the execution of a judicial decision cannot be unduly delayed.

34. The Government contended on that point that although prefects, as officers of the court, were required to provide assistance for the execution of enforceable court decisions, they were also empowered, in their capacity as the administrative authority responsible for maintaining public order, to turn down requests for police assistance if its provision threatened to cause a serious disturbance of public order. The fact that they had such a power did not entail a denial of the right to a court as guaranteed by Article 6 § 1 of the

Convention, as the prefects were required to comply with the general criteria and their decisions were subject to judicial review.

35. The Court accepts that a stay of execution of a judicial decision for such period as is strictly necessary to enable a satisfactory solution to be found to public-order problems may be justified in exceptional circumstances.

36. The present case does not, however, concern, as the Government seem to suggest, an isolated refusal by the prefect to provide police assistance, owing to the risk of a serious disturbance of public order.

37. In the instant case, enforcement of the order was stayed after January 1990 as a result of the intervention of the legislature, which reopened the magistrate's decision regarding the date by which the tenant was required to vacate the premises. For a period of more than three years from 1 January 1990 until 20 September 1993, when the applicant made a statutory declaration that he needed the premises for his son, enforcement of the order for possession in his favour was postponed on a number of occasions (see paragraphs 10-11 above). The legislature, presuming that the risk that had been noted in 1984 of serious breaches of public order remained – as a large number of evictions had to be enforced at the same time – conferred a power, and possibly a duty, on prefects, as the authority responsible for maintaining public order, to intervene systematically in the enforcement of orders for possession, while at the same time defining the scope of that power.

38. Even after making the statutory declaration, the applicant was not granted the assistance of the police. Indeed, the tenant was never actually evicted as the applicant recovered his apartment only after the tenant had spontaneously vacated it.

39. The Court notes, firstly, that the postponement of the date by which the premises had to be vacated rendered nugatory the Milan Magistrate's decision on that point in his order of 1 February 1988. It should be noted in this connection that the decision on whether police assistance should be provided is made on the basis of the same factors – the situation of the landlord and tenant, and the grounds for eviction – as those the magistrate takes into consideration under section 56 of Law no. 392/78.

40. In addition, the Court observes that the assessment whether it was appropriate subsequently to stay enforcement of the order for possession and therefore de facto to extend the lease, was not subject to any effective review by the courts, since the scope of judicial review of the prefect's decision was limited to verifying whether he had complied with the criteria governing the order of priority.

41. In conclusion, while it may be accepted that Contracting States may, in exceptional circumstances and, as in this instance, by availing themselves of their margin of appreciation to control the use of property, intervene in proceedings for the enforcement of a judicial decision, the consequence of

such intervention should not be that execution is prevented, invalidated or unduly delayed or, still less, that the substance of the decision is undermined.

In the present case, as the Court explained in paragraphs 24-25 above in connection with the complaint under Article 1 of Protocol No. 1, the impugned legislation rendered nugatory the Milan Magistrate's ruling in his order of 1 February 1988. Further, from the moment the prefect became the authority responsible for determining when the order for possession would be enforced, and in the light of the fact that there could be no effective judicial review of his decisions, the applicant was deprived of his right under Article 6 § 1 of the Convention to have the dispute (*contestation*) with the tenant decided by a court. That situation is incompatible with the principle of the rule of law.

Consequently, there has been a violation of Article 6 § 1 of the Convention.

42. As to the complaint concerning the length of the proceedings, the Court considers that it must be regarded as having been absorbed by the preceding complaint.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant sought reparation for the pecuniary damage he had sustained amounting to 47,600,000 Italian lire (ITL), which resulted from the loss of rent during the period between 8 August 1992 (date of enter into force of a legislation liberalising the determination of the amount of the rent) and 16 February 1997.

45. The Government conceded that the applicant should be awarded the damage which he incurred for loss of rent amounting to 47,000,000 ITL.

46. As regards pecuniary damage, the Court considers that the applicant must be awarded compensation for the pecuniary damage resulting from the loss of rent (see the *Immobiliare Saffi* judgment, cited above, § 79). Therefore the Court decides, in the light of the Government's concession, to grant the requested amount of 47,600,000 ITL.

B. Non pecuniary damage

47. The applicant claimed 150,000,000 ITL for the non pecuniary damage.

48. The Government submitted that a finding of a violation would in itself constitute sufficient just satisfaction.

49. The Court, having regard to its case-law (see, for example, *A.O. v. Italy*, no. 22534/93, 30.05.2000, § 33), decides to award 20,000,000 ITL under this head.

C. Legal costs

50. The applicant sought reimbursement of legal costs, which he put at 1,135,670 ITL.

51. The Court decides to award the amount claimed in full (see the *Scollo v. Italy* judgment of 28 September 1995, Series A no. 315-C, p. 56, § 50 and the *Immobiliare Saffi* judgment, cited above, § 79).

D. Default interest

52. According to the information available to the Court, the statutory rate of interest applicable in Italy at the date of adoption of the present judgment is 2,5% per annum.

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) 47,600,000 (forty seven million six hundred thousand) ITL for pecuniary damage;
 - (ii) 20,000,000 (twenty million) ITL for non pecuniary damage;
 - (iii) 1,135,670 (one million one hundred thirty five thousand six hundred seventy) ITL for legal costs.

(b) that simple interest at an annual rate of 2.5% shall be payable from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English and notified in writing on 3 August 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President