CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF GHIDOTTI v. ITALY

(Application no. 28272/95)

JUDGMENT

STRASBOURG

21 February 2002

FINAL

21/05/2002

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 Ghidotti v. Italy,

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

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mr A. KOVLER, *judges*,
Mr G. RAIMONDI, ad hoc *judge*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 31 January 2002,

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

PROCEDURE

1. The case originated in an application (no. 28272/95) 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, Mrs Lidia Ghidotti ("the applicant"), on 1 June 1995.

2. The Italian Government ("the Government") were represented by their Agent, Mr U. Leanza, and by their Co-Agent, Mr V. Esposito.

3. The applicant complained under Article 1 of Protocol No. 1 about her prolonged inability to recover possession of her flat through lack of police assistance.

4. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998 and in accordance with the provisions of Article 5 § 2 thereof, the application was transferred to the Court.

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.

6. On 30 May 2000, the Court declared the application admissible.

7. Mr. V. Zagrebelsky, the judge elected in respect of Italy, withdrew from sitting in the case (Rule 28). The Government appointed Mr. G. Raimondi as *ad hoc* judge to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 2).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant is the owner of an apartment in Milan, which she had let to C.F.

9. In a registered letter of 13 June 1989, the applicant informed the tenant that she intended to terminate the lease expiring on 31 December 1989 and asked her to vacate the premises by that date.

10. In a writ served on the tenant on 23 November 1989, the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

11. By a decision of 28 November 1989, which was made enforceable on 1 December 1989, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1990.

12. On 18 February 1991, the applicant served notice on the tenant requiring her to vacate the premises.

13. On 19 March 1991, she served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 12 April 1991.

14. On 2 May 1991, the applicant made a statutory declaration that she urgently required the premises as accommodation for herself.

15. Between 12 April 1991 and 27 April 1995 the bailiff made twenty attempts to recover possession.

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

17. On 17 January 1996 the applicant was granted police assistance in evicting her tenant; on that day, however, the latter claimed to be ill and no officially appointed doctor was available to check her allegations. The bailiff arranged to make his next visit to the premises on 6 February 1996. However, on that occasion the applicant was not granted police assistance and the tenant refused to vacate the premises, as she was about to have a council flat allocated to her. On 23 April 1996, the tenant produced a document from the council stating that she would have the flat from 30 April 1996.

18. On 17 May 1996, the tenant vacated the premises.

II. RELEVANT DOMESTIC LAW

19. 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. THE GOVERNMENT'S PRELIMINARY OBJECTION

20. The Government maintained that the applicant had not exhausted domestic remedies, in that she had failed to issue proceedings in the administrative courts challenging the refusal of police assistance.

21. The Court considers that the Government is estopped from raising objection to the admissibility at this stage of the procedure. This objection should therefore be dismissed.

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

22. The applicant complained about her prolonged impossibility of recovering possession of her apartment through lack of police assistance. She 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

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

B. Compliance with the conditions in the second paragraph

1. Aim of the interference

24. 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 v. Italy* judgment cited above, § 48).

2. Proportionality of the interference

25. 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 v. Italy* judgment, cited above, § 49 and the *Chassagnou and Others v. France* judgment, no. 25088/94, § 75, ECHR-III).

26. 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. That was particularly true in her case, given the fact that she had made a statutory declaration that she urgently required the premises as accommodation for herself.

27. The Government pointed out that the interference with the applicant's right to the peaceful enjoyment of her property was proportionate to the legitimate aim pursued. They concluded that, taking into consideration the interests of both the landlord and the tenant, the burden imposed on the applicant had not been excessive.

28. 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 v. Italy* judgment cited above, § 54).

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

30. The Court observes that the applicant obtained an order for possession on 28 November 1989, which was enforceable as of 1 December 1989. On account partly of the legislation providing for the staggering of the evictions and partly of the lack of police assistance, the applicant only

recovered possession of her flat on 17 May 1996, although on 2 May 1991 she had declared that she urgently needed the apartment. Only on one occasion, on 17 January 1996, had the applicant been granted police assistance in evicting her tenant but to no avail, given that the tenant had claimed to be ill and no officially appointed doctor was available to check her allegations.

31. For approximately five years and one month, the applicant was left in a state of uncertainty as to when she would be able to repossess her apartment. The competent authorities do not seem to have taken any action in response to the declaration of necessity made by the applicant on 2 May 1991. Until 2 May 1991, the applicant 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 v. Italy* judgment cited above, § 56). After making the statutory declaration which gave her priority, although the statutory conditions for enforcement of eviction were satisfied (see the Scollo judgment v. Italy, 28 September 1994, Series A 315-C, § 39) she had no prospect of accelerating the grant of police assistance, which depended almost entirely on the availability of policemen. Furthermore, the Court notes that just before the eviction the authorities managed to allocate to the tenant a subsidised apartment: the Court has not been provided with any information as to why this could not be done earlier, nor as to whether the authorities made any efforts at all to allocate to her such an apartment prior to that date.

32. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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. Damage

34. The applicant sought reparation for the damages she had sustained amounting to 40,000,000 Italian lire.

35. As regards pecuniary damage, the Government considered the amount unjustified. As regards non-pecuniary damage, the Government submitted that a finding of a violation would in itself constitute sufficient just satisfaction or that the amount should only be symbolic.

36. The Court considers that the applicant has undoubtedly suffered from the violation found above (see §§ 29-30). Making its assessment on an equitable basis, the Court awards the applicant 10,000 euros.

B. Default interest

37. 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 3% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government preliminary objection;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

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, EUR 10,000 (ten thousand euros) for damage;
   (b) that simple interest at an annual rate of 3% 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 21 February 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH Registrar	Christos ROZAKIS President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following concurring opinion of Mr Raimondi is annexed to this judgment.

C.L.
E.F.

CONCURRING OPINION OF JUDGE RAIMONDI

I voted in favour of paragraph 3 of the operative part of the judgment because I found it appropriate to allow Mrs Ghidotti, as a consequence of the violation of Article 1 of Protocol No. 1 held by the Court, the sum of EUR 10,000.

Nevertheless, my preference would have been to specify that this sum is allowed as a satisfaction for non-pecuniary damage.

This sum, in fact, corresponds to the amount which is normally awarded in similar cases in the practice of the Court for non-pecuniary damages.

The Court decided not to mention the nature of the damages because the applicant's letter of 1 August 2000 was in a way ambiguous, stating on the one hand that she could not prove her claim of a lump sum of ITL 40,000,000 and on the other hand that it was not a moral claim.

Eventually the Court decided to give Mrs Ghidotti the sum to which she was entitled on the basis of the Court's practice on non-pecuniary damage in a case of violation of Article 1 of Protocol No. 1 (expulsion of tenants) without calling it so.

In my view the applicant wrote that the claim was not a moral claim only to respond to the Government's observations on just satisfaction, asking for a symbolic moral award, but in the letter of 1 August 2000 her intention to ask for moral damage was perfectly clear. In fact, she speaks about "danno personale psicofisico e morale" (personal, psychological, physical and moral damage).

There was no reason therefore, in my view, to avoid calling the damage awarded non-pecuniary damage. This, in my view, would have made the judgment clearer and more transparent.