



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

FIRST SECTION

CASE OF GNECCHI AND BARIGAZZI v. ITALY

(Application no. 32006/96)

JUDGMENT

STRASBOURG

15 November 2002

FINAL

15/02/2003

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 Gnecchi and Barigazzi 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 24 October 2002,

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

PROCEDURE

1. The case originated in an application (no. 32006/96) against the Italian Republic 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 Mrs Giovanna Gnecchi and Mr Mario Barigazzi (“the applicants”), Italian nationals, on 1 April 1996.

2. The applicants were represented by Mrs M. Gnecchi Boscarolli, a lawyer practising in Bolzano. The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, and by their co-Agent, Mr V. Esposito.

3. The applicants complained under Article 1 of Protocol No. 1 that they had been unable to recover possession of their flat within a reasonable time owing to a lack of police assistance. Invoking Article 6 § 1 of the Convention, they further complained about the length of the eviction proceedings.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

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. 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).

6. On 22 June 2000 the Court declared the application admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants are the owners of a flat in Milan, which they had let to G.M. and R.C.

9. In a registered letter of 23 January 1982, the applicants informed the tenants that they intended to terminate the lease and asked them to vacate the premises by 27 July 1982.

10. In a writ served on the tenants on an unspecified date, the applicants reiterated their intention to terminate the lease and summoned the tenants to appear before the Milan Magistrate.

11. By a decision of 4 November 1982, which was made enforceable on 15 December 1982, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1983.

12. By a decision of 28 June 1985, the Milan Magistrate postponed the said deadline to 18 December 1985.

13. On 13 December 1985, the applicants served notice on the tenants requiring them to vacate the premises.

14. On 11 February 1986, they served notice on the tenants informing them that the order for possession would be enforced by a bailiff on 25 February 1986.

15. Between 25 February 1986 and 24 November 1986, the bailiff made six attempts to recover possession.

16. On 14 April 1987, the applicants made a statutory declaration that they urgently required the premises as accommodation for their daughter.

17. Between 28 April 1987 and 12 January 1999, the bailiff made fifty-one attempts to recover possession. Each attempt proved unsuccessful, as the applicants were never granted the assistance of the police in enforcing the order for possession.

18. At the end of January 1999, the tenants vacated the premises.

II. RELEVANT DOMESTIC LAW

19. The relevant domestic law is described in the Court's judgment in the case of *Immobiliare Saffi v. Italy* [GC], no. 22774/93, §§ 18-35, ECHR 1999-V.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

20. The applicants complained that they had been unable to recover possession of their flat within a reasonable time owing to the lack of police assistance. They 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

21. In accordance with its case-law, the Court considers that the interference with the applicants’ right to peaceful enjoyment of their possessions amounted to control of the use of property and falls to be examined under the second paragraph of Article 1 (see *Immobiliare Saffi*, cited above, § 46).

B. Compliance with the conditions in the second paragraph

1. *Aim of the interference*

22. 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 *Immobiliare Saffi*, cited above, § 48).

2. *Proportionality of the interference*

23. The Court reiterates that for the purposes of the second paragraph of Article 1 of Protocol No. 1 an interference 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 judgement as to what is in the general interest unless that judgement is manifestly without reasonable foundation (see *Immobiliare Saffi*, cited above, § 49).

24. The applicants contended that the interference was disproportionate in view of its length and of the financial burden that resulted from not being able to increase the rent. The interference had caused particular hardship in their case, as they had made a statutory declaration that they urgently required the premises as accommodation for their daughter. Finally, they had only recovered possession because of a voluntary surrender by the tenant, not because they had police assistance.

25. The Government pointed out that the interference with the applicants' right to the peaceful enjoyment of their 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 applicants had not been excessive.

26. The Court observes that the applicants obtained an order for possession, which became enforceable on 15 December 1982, indicating that the tenants should quit the flat on 31 December 1983. The first attempt by a bailiff to enforce the order for possession took place on 25 February 1986. On account partly of the legislation suspending the enforcement of orders for possession, partly of the legislation providing for the staggering of evictions and partly of the lack of police assistance, the applicants only recovered possession of their flat at the end of January 1999, even though they had made a statutory declaration on 14 April 1987 confirming that they urgently needed the flat for their daughter. Indeed, the applicants were only able to regain possession because of a voluntary surrender by the tenants at the end of January 1999.

27. For approximately twelve years and eleven months starting from the first attempt of the bailiff to enforce the order for possession, the applicants were left in a state of uncertainty as to when they would be able to repossess their flat. The relevant authorities do not seem to have taken any action whatsoever in response to the statutory declaration by the applicants on 14 April 1987 that they needed the premises for their own use.

28. In the light of the foregoing, the Court considers that, in the particular circumstances of this case, an excessive burden was imposed on the applicants; 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 applicants' detriment.

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

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

29. 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...”

30. The applicants complained that they had to wait approximately sixteen years to recover possession of their flat after the magistrate's order was issued. Furthermore, they argued that despite the fact that they had made a statutory declaration that they urgently required the premises as accommodation for their daughter, they had had to wait approximately eleven years and nine months from the date the declaration was made before recovering possession.

31. The Government contested this point. As to the length of the enforcement proceedings, the Government maintained that the delay in providing the assistance of the police was justified by the protection of the public interest.

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

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 *Immobiliare Saffi*, cited above, § 66). Accordingly, the execution of a judicial decision cannot be unduly delayed.

34. In the instant case, the applicants obtained an order for possession on 4 November 1982, which became enforceable on 15 December 1982. Even after they had made the statutory declaration, the applicants were not granted the police assistance. Indeed, the applicants recovered their flat approximately twelve years and eleven months after the first attempt of the bailiff, when the tenants voluntarily surrendered possession.

35. The Court considers that a delay of that length in the execution of a final court decision deprives Article 6 § 1 of the Convention of any practical effect.

36. In these circumstances, the Court holds that there has been a violation of the right to a court, as guaranteed by Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicants sought reparation for the pecuniary damage they had sustained, which they put at 193,442,118 Italian lire (ITL) [99,904.52 euros (EUR)], the sum of ITL 65,495,532 [EUR 33,825.62] being the loss of rent for the period from 1993 to 1999 (the period of the entry into force of the relevant legislation on rent control), the sum of ITL 19,200,000 [EUR 9,915.97] being the rent the applicants had to pay for a different flat for their daughter from 25 May 1985 to 28 May 1989, the sums of ITL 75,000,000 plus ITL 4,078,000 [EUR 38,734.27; EUR 2,106.11] being the price the applicants had to pay to purchase a new flat for their daughter, the latter the amount the applicants had to pay to validate the purchase contract of the new flat, the sum of ITL 21,340,040 [EUR 11,021.21] being the expenses the applicants had incurred for renovation works in the flat after possession was recovered, and the sum of ITL 8,328,546 [EUR 4,301.34] for the costs of executing the possession order.

39. As regards the loss of profits, the Government contested the period calculated by the applicants. As regards the costs incurred by the applicants for the new flat for their daughter, they argued that the costs were not related to the alleged violations and that the applicants should have sought reparation directly from the tenant. As regards the costs incurred in the domestic proceedings, the Government argued that the costs of the proceedings on the merits were not related to the alleged violations and that the costs incurred during the enforcement stage were due only for the period that was regarded as being a disproportionate interference with the applicants' right of property.

40. The Court considers that the applicants must be awarded compensation for the pecuniary damage resulting from the loss of rent (see *Immobiliare Saffi*, cited above, § 79) on the basis of the reimbursement of the difference between the global amount of the rent they could have endorsed and the rents they effectively collected. Having regard to the means of calculation proposed by the applicants, the Court, in the light of

the evidence before it and the period concerned, decides to award them EUR 33,825.62 (EUR 16,912.81 each) under this head.

41. As regards the costs for renovation works in the flat after possession was recovered, as well as the costs for a new flat for their daughter, the Court considers that they are not related to the alleged violations. Furthermore, it considers that the applicants would have been entitled to recover the costs of the renovation works from the tenant. Therefore, the Court rejects these claims.

42. As regards the costs of the enforcement proceedings, the Court decides to grant the requested amount of EUR 4,301.34 (EUR 2,150.67 each).

B. Non-pecuniary damage

43. The applicants claimed ITL 40,000,000 [EUR 20,658.28] for non-pecuniary damage. However, they left the matter to be assessed by the Court in an equitable manner.

44. The Government stressed that the applicants had failed to adduce evidence of non-pecuniary damage sustained.

45. The Court considers that the applicants must have sustained some non-pecuniary damage. Therefore, the Court decides, on an equitable basis, to award EUR 10,000 under this head (EUR 5,000 each).

C. Costs and expenses

46. The applicants sought reimbursement of their legal costs, which they put at ITL 25,820,582 [EUR 13,335.22] for their costs and expenses before the Court.

47. The Government left the matter to the discretion of the Court.

48. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicants and are reasonable as to quantum (see the case *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V). In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court considers that EUR 2,000 is a reasonable sum and awards the applicants that amount (EUR 1,000 each).

D. Default interest

49. 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 to the Convention;
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 of the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) 19,063.48 EUR (nineteen thousand sixty-three euros forty-eight cents) for pecuniary damage;
 - (ii) 5,000 EUR (five thousand euros) for non-pecuniary damage;
 - (iii) 1,000 EUR (one thousand euros) for legal costs and expenses;
 - (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 15 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President