



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

FIRST SECTION

CASE OF GUIDI AND OTHERS v. ITALY

(Application no. 32374/96)

JUDGMENT

STRASBOURG

19 December 2002

FINAL

19/03/2003

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 Guidi and Others 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,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER, *judges*,

Mr G. RAIMONDI, *ad hoc judge*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 5 December 2002,

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

PROCEDURE

1. The case originated in an application (no. 32374/96) 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 Immacolata Guidi and Mrs Fara Guidi (“the applicants”), Italian nationals, on 5 February 1994.

2. The applicants were represented by Mr N. D'Aniello, a lawyer practising in Naples. 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. 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 15 March 2001 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 S. Agnello, which they had let to A.M.

9. In a writ served on the tenant on 30 January 1984, the applicants communicated their intention to terminate the lease and summoned the tenant to appear before the Sorrento Magistrate.

10. By a decision of 15 March 1984, the Magistrate refused to uphold the validity of the notice to quit, declined jurisdiction on account of the value of the case and indicated that the Naples District Court had jurisdiction to hear it.

11. On 26 March 1984, the applicants resumed the proceedings before the Naples District Court.

12. In a judgment of 22 June 1988, which was filed with the registry on 19 October 1988, the court allowed the applicants' claim and ordered that the premises be vacated by 15 December 1989.

13. On 16 December 1988, the tenant appealed to the Naples Court of appeal.

14. In a judgment of 17 October 1991, which was filed with the registry on 9 November 1991, the court rejected the appeal.

15. On 5 February 1992, the applicants served notice on the tenant requiring him to vacate the premises.

16. On 2 February 1993, they served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 15 March 1993.

17. As from 15 March 1993 until 16 October 1997, the bailiff made several attempts to recover possession. Each attempt proved unsuccessful, as, under the statutory provisions providing for the staggering of evictions, the applicants were not entitled to police assistance in enforcing the order for possession.

18. On 16 October 1997, the tenant 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 AND OF ARTICLE 6 § 1 OF 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.”

21. 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...”

22. The Court has on several previous occasions decided cases raising similar issues as 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, §§ 46-66; *Lunari v. Italy*, no. 21463/93, 11 January 2001, §§ 34-46; *Palumbo v. Italy*, no. 15919/89, 30 November 2000, §§ 33-47).

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 case. The Court refers to its detailed reasons in the judgments cited above and notes that in this case the applicants have had to wait for four years and seven months from the first attempt of the bailiff before recovering the flat.

23. Consequently there has been a violation of Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention.

II. 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 applicants sought reparation for the pecuniary damage they had sustained, which they put at 31,943,000 Italian Lire (ITL) [16,497.18 euros (EUR)], being the loss of rent for the period from 1989 to 1997 (the date the applicants recovered possession of their flat).

26. 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). 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, and ruling on an equitable basis, decides to award EUR 1,000 (EUR 500 each).

B. Non-pecuniary damage

27. The applicants claimed ITL 30,000,000 [EUR 15,493.71] for the non-pecuniary damage.

28. The Court considers that the applicants must have sustained some non-pecuniary damage. Therefore, the Court decides, on an equitable basis, to award each applicant EUR 3,000 under this head.

C. Costs and expenses

29. The applicants sought reimbursement of their legal costs before the Court. They left the matter to be assessed by the Court in an equitable manner.

30. 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. In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court considers that EUR 1,500 is a

reasonable sum and awards the applicants that amount under this head (EUR 750 each).

D. Default interest

31. 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) 500 EUR (five hundred euros) for pecuniary damage;
 - (ii) 3,000 EUR (three thousand euros) for non-pecuniary damage;
 - (iii) 750 EUR (seven hundred fifty 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 19 December 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President