



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

FIRST SECTION

**CASE OF G.G. v. ITALY**

*(Application no. 43580/98)*

JUDGMENT

STRASBOURG

3 April 2003

**FINAL**

*09/07/2003*

*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 G.G. 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 L. FERRARI BRAVO, *ad hoc judge*,

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

Having deliberated in private on 13 March 2003,

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

**PROCEDURE**

1. The case originated in an application (no. 43580/98) 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 an Italian national, Mr G.G. (“the applicant”), on 14 September 1998. The President of the Chamber acceded to the applicant's request not to disclose his name (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr C. Defilippi, a lawyer practising in Parma. The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, and by their successive co-agents, respectively Mr V. Esposito and Mr F. Crisafulli.

3. The applicant complained under Article 1 of Protocol No. 1 that he had been unable to recover possession of his flat within a reasonable time. Invoking Article 6 § 1 of the Convention, he 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 L. Ferrari Bravo as *ad hoc* judge to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 2).

6. On 4 October 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 applicant was born in 1940 and lives in La Spezia. He is the owner of an apartment in La Spezia, which he had let to B.L.

9. In a registered letter of 21 February 1992, the applicant informed the tenant that he intended to terminate the lease on expiry of the term on 31 August 1992 and asked him to vacate the premises by that date.

10. On 31 August 1992, he served a notice to quit on the tenant, but he refused to leave.

11. In a writ served on the tenant on 22 February 1993, the applicant informed the tenant of his intention to terminate the lease and summoned him to appear before the La Spezia Magistrate.

12. By a decision of 4 March 1993, which was made enforceable on the same day, the La Spezia Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1993.

13. On 14 January 1994, the applicant served notice on the tenant requiring him to vacate the premises.

14. On 16 February 1994, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 8 March 1994.

15. On 30 May 1994, the applicant made a statutory declaration that he urgently required the premises as accommodation for his mother.

16. Between 8 March 1994 and 14 May 1998, the bailiff made three attempts to recover possession.

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

18. On 27 September 1996, the applicant asked the La Spezia Magistrate for police assistance in enforcing the order for possession. The La Spezia Magistrate rejected the request.

19. On 13 February 1998 and on 4 May 1998, the applicant served two notices to quit on the tenant, informing him that the order for possession would be enforced with the assistance of the police.

20. On 14 May 1998, the applicant recovered possession of the apartment.

## II. RELEVANT DOMESTIC LAW

21. 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

22. The applicant complained that he had been unable to recover possession of his flat within a reasonable time owing to the lack of police assistance. 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.”

23. 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...”

24. 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).

25. 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 applicant has been waiting for approximately four years and two months after the first attempt of the bailiff before he could repossess the flat.

26. Consequently, there has been a violation of Article 1 of Protocol No. 1 and of Article 6 § 1 of the Convention in the present case.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant sought reparation for the pecuniary damage he had sustained, which he put at 11,730,000 Italian Lire (ITL) [6,058.004 euros (EUR)], for the loss of rent for the period from 31 August 1992, date of the end of the contract, to 14 May 1998, date on which the flat was vacated, and ITL 22,992,000 [11,874.38 EUR] for the alleged impossibility of selling the flat in 1992.

29. The Government stressed that the applicant had failed to adduce evidence of the pecuniary damage sustained as a result of the alleged violation.

30. The Court considers that the applicant 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 applicant, the Court, in the light of the evidence before it and the period concerned, decides to award on an equitable basis EUR 1,200 for pecuniary damage, which also includes the impossibility of selling the flat.

### B. Non-pecuniary damage

31. The applicant sought reparation for the non-pecuniary sustained, which he put at ITL 60,000,000 [30,987.41 EUR].

32. The Government stressed that the applicant had failed to adduce evidence of non-pecuniary damage sustained as a result of the alleged violation.

33. The Court considers that the applicant must have sustained some non-pecuniary damage, which the mere finding of a violation cannot adequately compensate. The Court decides to award on an equitable basis EUR 5,000 under this head.

### C. Costs and expenses

34. The applicant sought reimbursement for his costs and expenses before the Court, which he put at ITL 25,684,109 [13,264.74 EUR].

35. 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 applicant and are reasonable as to quantum (*Bottazzi v. Italy*, no. 34884/97, Reports of Judgments and Decisions 1999-V, § 30). 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 applicant that amount.

### D. Default interest

36. 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 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) 1,200 EUR (one thousand two hundred euros) for pecuniary damage;
    - (ii) 5,000 EUR five thousand euros) for non-pecuniary damage;
    - (iii) 2,000 EUR (two 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN  
Deputy Registrar

Christos ROZAKIS  
President