



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

FIRST SECTION

CASE OF GHELARDINI AND BRUNORI v. ITALY

(Application no. 53233/99)

JUDGMENT

STRASBOURG

9 October 2003

FINAL

09/01/2004

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 Ghelardini and Brunori v. Italy,

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr E. LEVITS,

Mr V. ZAGREBELSKY,

Mrs E. STEINER, *judges*,

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

Having deliberated in private on 18 September 2003,

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

PROCEDURE

1. The case originated in an application (no. 53233/99) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Italian nationals, Mr Mario Ghelardini and Mrs Bruna Brunori (“the applicants”), on 29 October 1999.

2. The applicants were represented by Mr F. Bordone, a lawyer practising in La Spezia. 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. On 7 March 2002 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were both born in 1936 and live in La Spezia.

5. They are the owners of a flat in Florence, which they had let to G. and M. D.

6. In a registered letter of 3 April 1987, the applicants informed the tenants that they intended to terminate the lease on expiry of the term on 31 December 1987 and asked them to vacate the premises by that date.

7. In a writ served on the tenants on 25 June 1987, the applicants reiterated their intention to terminate the lease and summoned the tenants to appear before the Florence Magistrate.

8. By a decision of 19 October 1987, which was made enforceable on 2 November 1987, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1988.

9. On 5 April 1989, the applicants made a statutory declaration that they urgently required the premises as accommodation for their son.

10. On 29 June 1989, the applicants served notice on the tenants requiring them to vacate the premises.

11. On 21 July 1989, they served notice on the tenants informing them that the order for possession would be enforced by a bailiff on 11 September 1989.

12. Between 11 September 1989 and 14 December 1998, the bailiff made twenty 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.

13. On 17 June 1999, the applicants recovered possession of the flat.

II. RELEVANT DOMESTIC LAW

14. Since 1947 the public authorities in Italy have frequently intervened in residential tenancy legislation with the aim of controlling rents. This has been achieved by rent freezes (occasionally relaxed when the Government decreed statutory increases), by the statutory extension of all current leases and by the postponement, suspension or staggering of the enforcement of orders for possession. The relevant domestic law concerning the extension of tenancies, the suspension of enforcement and the staggering of evictions is described in the Court's judgment in the case of *Immobiliare Saffi v. Italy* [GC], no. 22774/93, §§ 18-35, ECHR 1999-V.

A. The system of control of the rents

15. As regards the control of the rents, the evolution of the Italian legislation may be summarised as follows.

16. The first relevant measure was the Law no. 392 of 27 July 1978 which provided machinery for “fair rents” (the so-called *equo canone*) on the basis of a number of criteria such as the surface of the flat and its costs of realisation.

17. The second step of the Italian authorities dated August 1992. It was taken in the view of progressive liberalisation of the market of tenancies. Accordingly, a legislation relaxing on rent levels restrictions (the so-called *patti in deroga*) entered into force. Owners and tenants were in principle given the opportunity to derogate from the rent imposed by law and to agree on a different price.

18. Lastly, Law no. 431 of 9 December 1998 reformed the tenancies and liberalised the rents.

B. Obligations of the tenant in the case of late restitution

19. The tenant is under a general obligation to refund the owner any damages caused in the case of late restitution of the flat. In this regard, Article 1591 of the Italian Civil Code provides:

“The tenant who fails to vacate the immovable property is under an obligation to pay the owner the agreed amount until the date when he leaves, together with other remaining damages”.

20. However, Law no. 61 of 1989 set out, *inter alia*, a limit to the compensation claimable by the owner entitling him to a sum equal to the rent paid by the tenant at the time of the expiration of the lease, proportionally increased according to the cost of living (Article 24 of Law n. 392 of 27 July 1978) plus 20%, along the period of inability to dispose of the possession of the flat.

21. In the judgment no. 482 of 2000, the Constitutional Court was called upon to decide whether such a limitation complied with the Constitution. The Constitutional Court held that it was compatible with the Constitution with regard to periods of time during which the suspension of the evictions was determined by law. The Constitutional Court explained that the introduction of that limitation was intended to settle the tenancies of the time of the emergency legislation, when the housing shortage made the suspension of the enforcement necessary. While evictions were suspended *ex lege*, the law predetermined the *quantum* of the reimbursement chargeable to the tenant, both measures being temporary and exceptional. Besides, the interests of the owner were counterbalanced by the exemption for him from the burden to prove the damages.

22. The Constitutional Court declared the limitation to the compensation claimable by the owner unconstitutional with regard to cases where the impossibility for the owner to repossess the flat depended on the conduct of the tenant and was not due to a legislative intervention. Accordingly, it opened the way to owners for the institution of civil proceedings in order to obtain full reparation of the damages caused by the tenant.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 AND OF ARTICLE 6 § 1 OF THE CONVENTION

23. The applicants complained of their prolonged inability to recover possession of their flat, owing to the lack of police assistance. They alleged a violation of their right of property, as guaranteed by 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.”

24. 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...”

25. The Court has previously examined a number of cases raising issues similar to those 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, §§ 46-75; *Lunari v. Italy*, no. 21463/93, 11 January 2001, §§ 34-46; *Palumbo v. Italy*, no. 15919/89, 30 November 2000, §§ 33-48).

26. 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 instance. It notes that the applicants had to wait approximately nine years and nine months after the first attempt of the bailiff before being able to repossess the flat.

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 applicants claimed 40,340,000 Italian lire (ITL) [20,833.88 euros (EUR)] for the pecuniary damage. They submitted this amount as the difference between ITL 46,500,000 [EUR 24,015.25], the rent paid for another flat in Florence for their son from March 1997 to June 1999 (thirty-one months), and ITL 6,160,000 [EUR 3,181.37], the rent received from the tenant for the same period of time.

29. The Government contested the claim.

30. The Court notes that the applicants submitted the contract of the flat rented for the son and considers that they must be awarded compensation for the pecuniary damage. Having regard to the means of calculation proposed by the applicants and in the light of the evidence before it and the period concerned, it decides to award the amount claimed in full, i.e. EUR 10,416.94 for each applicant.

B. Non-pecuniary damage

31. The applicants claimed reimbursement of the non-pecuniary damage. They left the matter to be assessed by the Court in an equitable manner.

32. The Government contested the claim.

33. The Court considers that the applicants must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards each applicant EUR 9,000 under this head.

C. Costs and expenses

34. The applicants also claimed reimbursement of their legal costs and expenses as follows:

- ITL 2,983.836 [EUR 1,541.06] for the costs of the enforcement proceedings;

- EUR 3,752.71 for the costs and expenses incurred before the Court.

35. As regards the costs of the enforcement proceedings, the Government contested the claim. As regards the costs and expenses before the Court, the Government did not make any submissions.

36. As regards the costs of the enforcement proceedings, on the basis of the information in its possession and the Court's case-law, the Court decides to award the applicants the amount claimed in full.

As regards the costs and expenses incurred before it, the Court considers it reasonable to award EUR 2,000 under this head.

37. The Court awards a total sum of EUR 3,541.06 (EUR 1,770.53 for each applicant) for legal costs and expenses.

D. Default interest

38. 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) EUR 10,416.94 (ten thousand four hundred sixteen euros and ninety-four cents) for pecuniary damage;
 - (ii) EUR 9,000 (nine thousand euros) for non-pecuniary damage;
 - (iii) EUR 1,770.53 (one thousand seven hundred seventy euros and fifty-three cents) for legal costs and expenses;
 - (iv) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount[s] 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 9 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President