CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF GAMBERINI MONGENET v. ITALY

(Application no. 59635/00)

JUDGMENT

STRASBOURG

6 November 2003

FINAL

06/02/2004

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 Gamberini Mongenet v. Italy,

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

Mr P. Lorenzen, *President*,
Mr G. Bonello,
Mr E. Levits,
Mr A. Kovler,
Mr V. Zagrebelsky,
Mrs E. Steiner,
Mr K. Hajiyev, *judges*,

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

Having deliberated in private on 16 October 2003,

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

PROCEDURE

1. The case originated in an application (no. 59635/00) 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 three Italian nationals, Mr Roberto Gamberini Mongenet, Mr Rolando Gamberini Mongenet and Mr Rodolfo Maria Gamberini Mongenet ("the applicants"), on 24 July 2000.

2. The applicants, three brothers, were represented by the third applicant, a lawyer practising in Rome. 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 30 May 2002 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were respectively born in 1938, 1943 and 1948 and live in Rome.

5. The applicants' father was the owner of a flat in Rome, which he had let to C.C.

6. In a writ served on the tenant on 24 January 1984, the applicants' father informed the tenant that he intended to terminate the lease on expiry of the term and summoned him to appear before the Rome Magistrate.

7. By a decision of 17 April 1984, which was made enforceable on 2 May 1984, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 16 April 1985.

8. On 10 March 1985, the applicants' father served notice on the tenant requiring him to vacate the premises.

9. On 3 April 1987, the applicants' father served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 12 May 1987.

10. On 14 February 1992, the applicants' father died and they inherited the flat. Subsequently they became parties to the eviction proceedings.

11. Between 12 May 1987 and 15 February 2000, the bailiff made fifty-seven attempts to recover possession. Each attempt proved unsuccessful, as neither the applicants' father nor themselves were entitled to police assistance in enforcing the order for possession.

12. On an unspecified date in February 2000, reaching an agreement with the tenant, the applicants recovered possession of the flat.

II. RELEVANT DOMESTIC LAW

13. 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. Lastly, a suspension of the enforcement of the orders for possession until 30 June 2004 was introduced by Legislative Decree no. 147 of 24 June 2003, which became Law no. 200 of 1 August 2003.

A. The system of control of the rents

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

15. 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.

16. 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.

17. 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

18. 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."

19. 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 no. 392 of 27 July 1978) plus 20%, along the period of inability to dispose of the possession of the flat.

20. 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.

21. 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

22. 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.”

23. 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...”

24. 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, §§ 34-46, 11 January 2001; *Palumbo v. Italy*, no. 15919/89, §§ 33-48, 30 November 2000).

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 instance. It notes that the applicants had to wait approximately twelve 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

26. 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

27. The applicants sought, firstly, reparation for the pecuniary damage they had sustained. They proposed two means of calculations:

- either the difference between what the applicants could have obtained in government bonds if they could have sold the flat and the rent paid by the tenant which consisted in the sum of 97,440,000 Italian lire (ITL) [50,323.56 euros (EUR)];
- or the difference between the market value rent – as estimated by an expert for the year 1992 – and the rent imposed by law for a period of time of ninety-six months which consisted in the sum of ITL 102,240,000 [EUR 52,802.55].

28. The Government contested the claim.

29. Having regards to the first means of calculation proposed by the applicants, the Court finds no causal link between the violations it has found and the alleged pecuniary damage. Therefore the Court rejects it.

Having regards to the second means of calculation proposed by the applicants, the Court considers that the they must be awarded compensation for the pecuniary damage resulting from the loss of rent for the period of time related to the violation found.

In the light of the evidence before it and the period concerned, it decides to award them EUR 49,500, i.e. EUR 16,500 for each applicant, under this head.

B. Non-pecuniary damage

30. The applicants claimed EUR 10,000 each for the non-pecuniary damage.

31. The Government contested the claim.

32. The Court considers that the applicants must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards each of them EUR 3,000 under this head.

C. Costs and expenses

33. The applicants also claimed reimbursement of their legal costs and expenses as follows:
- EUR 1,714.12 for the costs of the enforcement proceedings;
- EUR 5,000 for the costs and expenses before the Court.

34. The Government contested the claims.

35. On the basis of the information in its possession and the Court's case-law, the Court considers it reasonable to award the applicants the sum of EUR 700 for the costs and expenses incurred in the domestic proceedings and EUR 500 for the proceedings before the Court.

36. The Court awards a total sum of EUR 1,200 (EUR 400 for each applicant) under this head.

D. Default interest

37. 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 16,500 (sixteen thousand five hundred euros) for pecuniary damage;
      (ii) EUR 3,000 (three thousand euros) for non-pecuniary damage;
      (iii) EUR 400 (four hundred euros) 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 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 6 November 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN	Peer LORENZEN
Deputy Registrar	President