



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

FIRST SECTION

**CASES OF GIANTURCO v. ITALY**

*(Application no. 40672/98  
Application no. 40680/98  
Application no. 40681/98  
Application no. 40884/98)*

JUDGMENT  
(Friendly settlement)

STRASBOURG

22 January 2004

*This judgment is final but it may be subject to editorial revision.*

**In the case of Gianturco v. Italy,**

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mr G. BONELLO,

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 December 2003,

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

**PROCEDURE**

1. The case originated in four applications (no. 40672/98; no. 40680/98; no. 40681/98; no. 40884/98) 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 two Italian nationals, Mr Francesco Gianturco and Mr Giuseppe Gianturco (“the applicants”), respectively on 6, 11, 18 and 23 March 1998.

2. The applicants are represented by Mr E. Baldi, a lawyer practising in Naples. 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 applicants complained under Article 1 of Protocol No. 1 that they had been unable to recover possession of their flats within a reasonable time. Invoking Article 6 § 1 of the Convention, they further complained about the length of the eviction proceedings.

4. On 5 September 2002, after obtaining the parties' observations, the Court declared the applications admissible.

5. Mr Francesco Gianturco died on 7 May 2003. On 18 June 2003, the applicant's heirs, namely Mrs Manuela Zurini and Mr Erkan Gianturco expressed the wish to continue the proceedings before the Court.

6. On 8 September 2003 and on 28 October 2003 the Government and the applicants respectively submitted formal declarations accepting a friendly settlement of the cases.

## THE FACTS

7. The first applicant was born in 1927 and lived in Naples. The second applicant was born in 1928 and lives in Naples.

8. They were the owners of four flats in Arzano (Naples), which they had let respectively to L.U., L.C., C.S., G.R. and G.F.

### *1) Application no. 40672/98*

9. In a writ served on the tenant on 24 November 1986, the applicants informed the tenant of their intention to terminate the lease on expiry of the term on 31 December 1987 and summoned him to appear before the Casoria (Naples) Magistrate.

10. By a decision of 20 February 1987, which was made enforceable on the same day, the Casoria Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1989.

11. On 28 January 1994, the applicants served notice on the tenant requiring him to vacate the premises.

On 23 April 1994, they informed the tenant that the order for possession would be enforced by a bailiff on 28 April 1994.

12. Between 28 April 1994 and 8 March 1999, the bailiff made twelve attempts to recover possession. Each attempt proved unsuccessful, as the applicants were not entitled to police assistance in enforcing the order for possession.

13. On 3 June 2001, the tenant spontaneously left the premises and the applicants recovered possession of their flat.

### *2) Application no. 40680/98*

14. In a writ served on the tenant on 24 November 1986, the applicants informed the tenant of their intention to terminate the lease on expiry of the term on 31 December 1987 and summoned him to appear before the Casoria (Naples) Magistrate.

15. By a decision of 13 February 1987, which was made enforceable on the same day, the Casoria Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1989.

16. On 28 January 1994, the applicants served notice on the tenant requiring him to vacate the premises.

17. On 23 April 1994, they informed the tenant that the order for possession would be enforced by a bailiff on 28 April 1994.

18. Between 28 April 1994 and 8 March 1999, the bailiff made thirteen attempts to recover possession. Each attempt proved unsuccessful, as the applicants were not entitled to police assistance in enforcing the order for possession.

19. On 4 September 1999, the tenant entered into a new lease.

3) *Application no. 40681/98*

20. In a writ served on the tenant on 24 November 1986, the applicants informed the tenant of their intention to terminate the lease on expiry of the term on 31 December 1987 and summoned him to appear before the Casoria (Naples) Magistrate.

21. By a decision of 13 February 1987, which was made enforceable on the same day, the Casoria Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1989.

22. On 28 January 1994, the applicants served notice on the tenant requiring him to vacate the premises.

23. On 23 April 1994, they informed the tenant that the order for possession would be enforced by a bailiff on 28 April 1994.

24. Between 28 April 1994 and 8 March 1999, the bailiff made thirteen attempts to recover possession. Each attempt proved unsuccessful, as the applicants were not entitled to police assistance in enforcing the order for possession.

25. On an unspecified date of May 2000, the applicants recovered possession of the flat.

4) *Application no. 40884/98*

26. In a writ served on the tenant on 24 November 1986, the applicants informed the tenant of their intention to terminate the lease on expiry of the term on 31 December 1987 and summoned her to appear before the Casoria (Naples) Magistrate.

27. By a decision of 6 February 1987, which was made enforceable on the same day, the Casoria Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1988.

28. On 31 January 1994, the applicants served notice on the tenant requiring her to vacate the premises.

29. On 23 April 1994, they informed the tenant that the order for possession would be enforced by a bailiff on 28 April 1994.

30. Between 28 April 1994 and 8 March 1999, the bailiff made thirteen attempts to recover possession. Each attempt proved unsuccessful, as the applicants were not entitled to police assistance in enforcing the order for possession.

31. On an unspecified date of February 2001, the applicants recovered possession of the flat.

## THE LAW

32. On 8 September 2003, the Court received the following declaration from the Government:

“I declare that the Government of Italy offer to pay for each application cited above the sum of 4,085 euros (four thousand eighty-five euros) with a view to securing a friendly settlement.

Mr Giuseppe Gianturco will receive the sum of 8,170 euros (eight thousand one hundred and seventy euros) – i.e. 2,042.50 euros (two thousand forty-two euros and fifty cents) for each application.

Mrs Manuela Zurini and Mr Erkan Gianturco, who are Mr Francesco Gianturco's heirs, will each receive the sum of 4,085 euros (four thousand and eighty-five euros) – i.e. 1,021.25 euros (one thousand twenty-one euros and twenty-five cents) for each application.

These sums shall cover any pecuniary and non-pecuniary damage as well as costs, and shall be payable within three months starting from the notification of the judgment delivered by the Court pursuant to Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the cases.

This declaration does not entail any acknowledgement by the Government of a violation of the European Convention on Human Rights in the present cases.

The Government further undertake not to request the referral of the cases to the Grand Chamber under Article 43 § 1 of the Convention.”

33. On 28 October 2003, the Court received the following declaration signed by Mr Giuseppe Gianturco, Mrs Emanuela Zurini and Mr Erkan Gianturco :

“We note that the Government of Italy are prepared to pay for each application cited above the sum of 4,085 euros (four thousand eighty-five euros) with a view to securing a friendly settlement.

Mr Giuseppe Gianturco will receive the sum of 8,170 euros (eight thousand one hundred and seventy euros) – i.e. 2,042.50 euros (two thousand forty-two euros and fifty cents) for each application.

Mrs Manuela Zurini and Mr Erkan Gianturco, who are Mr Francesco Gianturco's heirs, will each receive the sum of 4,085 euros (four thousand and eighty-five euros) – i.e. 1,021.25 euros (one thousand twenty-one euros and fifty-five cents).

These sums will cover both pecuniary and non-pecuniary damage and costs.

We accept the proposal and waive any further claims in respect of Italy relating to the facts of the applications. We declare that the cases are definitely settled.

This declaration is made in the context of a friendly settlement which the Government and applicants have reached.

We further undertake not to request the referral of the cases to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment.”

34. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). In this connection the Court considers that it has already specified the nature and extent of the obligations which arise for the respondent Government in cases concerning eviction of tenants (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V), and the question of the performance of those obligations is currently pending before the Committee of Ministers. Therefore, a continuation of the examination of the present applications is not required. In these circumstances the Court accepts that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

35. Accordingly, the cases should be struck out of the list.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the cases out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the cases before the Grand Chamber.

Done in English, and notified in writing on 22 January 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN  
Deputy Registrar

Christos ROZAKIS  
President