



## Application inadmissible concerning proceedings for recovery of property occupied under open-ended rent-free loan

In its decision in the case of [Barras v. France](#) (application no. 12686/10) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the applicant's inability to recover property belonging to him which has been occupied under an open-ended rent-free loan for over 50 years.

The Court found that Mr Barras had not been prevented, by the application of the "concentration of legal grounds" principle, from benefiting from a departure from precedent of the Court of Cassation on 3 February 2004, granting the lender a right to terminate an open-ended rent-free loan at any time. Mr Barras' claim had not been based on this right recently granted to lenders but on a lack of maintenance that he attributed to the occupiers, a ground already raised in previous proceedings which had been found inadmissible.

### Principal facts

The applicant, Jean-Louis Barras, is a French national who was born in 1949 and lives in Beuvron en Auge (France).

Mr Barras' grandmother owned a house of which Mr and Mrs V. were the salaried caretakers. In 1960 she terminated their employment but authorised them to live in the farm house free of charge for the rest of their lives. After the death of his mother, who had inherited the property, Mr Barras and his father became, respectively, title owner and life tenant of the house. Wishing to use the house for his own son, Mr Barras, acting with his father, decided to terminate the rent free arrangement allowing Mr and Mrs V. to live there. As they refused to quit, Mr Barras and his father brought proceedings against them. The Lisieux *tribunal de grande instance* (TGI) upheld their claim. On an appeal by Mr and Mrs V., the Caen Court of Appeal quashed that judgment on 3 September 2002 on the grounds that the occupiers had a more pressing need of the premises. In addition, the court did not find it established that a lack of maintenance could be attributed to the occupiers.

Taking the view that this judgment was in line with the principles of the Court of Cassation's case-law, Mr Barras and his father decided not to appeal on points of law.

Departing from its previous case-law, the Court of Cassation held, in a judgment of 3 February 2004 concerning another case, that an open-ended rent-free loan for the use of property could be terminated at any time.

On 28 January 2005 Mr Barras and his father once again brought proceedings against Mr and Mrs V. before the Lisieux TGI, seeking the termination of the rent-free loan on the grounds of a lack of maintenance by the occupiers and their eviction. On 23 March 2006 the court dismissed their claims, finding that Mr and Mrs V. had not failed in their duty to maintain the property. On 30 October 2007 the Caen Court of Appeal found, firstly, that in its judgment of 3 September 2002 it had dismissed the claims brought by Mr Barras and his father seeking the eviction of Mr and Mrs V., and, secondly, that even though an expert's report had revealed a lack of maintenance attributable to the occupiers, that situation pre-dated the judgment of 3 September 2002, such that the report in question could not be relied upon in any subsequent claim to justify termination.

Mr Barras appealed on points of law. On 24 September 2009 the Court of Cassation dismissed the appeal, finding that the claimant had been obliged to submit, in the proceedings concerning the first claim, all the arguments that he wished to use as a basis for the claim.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 22 February 2010.

Relying on Article 6 § 1 (right to a fair hearing and right of access to a court), the applicant complained that in his case the domestic court had applied the principle, stemming from a departure from precedent by the Court of Cassation on 7 July 2006, that, in order to submit a claim that was not barred for having the same cause of action as a previous one, a party could not rely on a legal basis that it could have raised in the proceedings concerning the initial claim but had not.

Relying on Article 1 of Protocol No. 1 (protection of property) the applicant complained that, despite the Court of Cassation's departure from case-law in its judgment of 3 February 2004, he remained unable to terminate the open-ended rent-free agreement for the use of his property granted over 50 years ago and could not therefore recover possession of it.

The decision was given by a Chamber of seven, composed as follows:

Mark Villiger (Liechtenstein), *President*,  
 Angelika Nußberger (Germany),  
 Boštjan M. Zupančič (Slovenia),  
 Ganna Yudkivska (Ukraine),  
 Vincent A. de Gaetano (Malta),  
 André Potocki (France),  
 Helena Jäderblom (Sweden), *Judges*,

and also Claudia Westerdiek, *Section Registrar*.

## Decision of the Court

### Article 6 § 1

The Court found that, under Article 1351 of the Civil Code, the authority (*res judicata*) of a previous judgment would prevail in respect of a fresh claim only where the latter had the same cause of action and where the parties and subject-matter were also the same.

The case-law prior to 7 July 2006 had inferred from this that the *res judicata* principle did not preclude a fresh claim on a different legal basis. The Court of Cassation's judgment of 7 July 2006 had then laid down the "concentration of legal grounds" principle. According to that principle, the claimant was required to submit, in the proceedings initiated by his initial claim, all the grounds on which he wished to rely. He was not therefore entitled, in a second claim, to rely on any ground that he could have raised in the context of his initial claim but had not done so.

Such a condition was admittedly impossible to satisfy where the legal basis of the second claim lay in a departure from precedent that was subsequent to the first claim.

However, Mr Barras had not been prevented – as he had argued – from benefiting from a departure from precedent of the Court of Cassation on 3 February 2004 (granting the lender a right to terminate an open-ended rent-free loan at any time), by the application of the "concentration of legal grounds" principle. For Mr Barras' second claim had not been based on this right recently granted to lenders but on a lack of maintenance that he attributed to the occupiers, a ground already raised unsuccessfully in the previous proceedings.

This part of the application was thus manifestly ill-founded and had to be dismissed.

#### Article 1 of Protocol No. 1

The Court noted that Mr Barras had brought a second claim before the Lisieux TGI on 28 January 2005 seeking the termination of an open-ended rent-free loan on the grounds that the occupiers had failed to maintain the property. He had not sought the application of the new case-law introduced by the Court of Cassation on 3 February 2004, authorising the termination of such loans at any time. He could not therefore claim to have been deprived of his right under Article 1 of Protocol No. 1 on account of a refusal to grant him the benefit of new case-law when he had not sought its application.

This part of the application was thus manifestly ill-founded and had to be dismissed.

*The decision is available only in French.*

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