CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF GENI SRL v. ITALY

(Application no. 32662/96)

JUDGMENT

STRASBOURG

19 December 2002

FINAL

19/03/2003

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 Geni Srl 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 G. BONELLO,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA, *judges*,
Mr G. RAIMONDI, ad hoc *judge*,

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

Having deliberated in private on 5 December 2002,

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

PROCEDURE

1. The case originated in an application (no. 32662/96) 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 Geni Srl ("the applicant"), an Italian company, on 26 July 1996.

2. The applicant was represented by Mrs C. M. Cialdini, a lawyer practising in Rome. The Italian Government ("the Government") were represented by their Agent, Mr U. Leanza, and by their co-Agent, Mr V. Esposito.

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

6. On 22 March 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 is the owner of an apartment in Rome, which it had let to L.L.D.L.

9. In a registered letter of 20 November 1984, the applicant informed the tenant that it intended to terminate the lease on expiry of the term on 31 December 1986 and asked her to vacate the premises by that date.

10. On 5 June 1986, it served a notice to quit on the tenant, but she refused to leave.

11. In a writ served on the tenant on 12 June 1986, the applicant reiterated its intention to terminate the lease and summoned the tenant to appear before the Rome Magistrate.

12. By a decision of 30 June 1986, which was made enforceable on 20 November 1986, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1987.

13. On 17 March 1990, the applicant served notice on the tenant requiring her to vacate the premises.

14. On 9 June 1990 it served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 15 June 1990.

15. Between 15 June 1990 and 25 September 1996 the bailiff made thirty-two attempts to recover possession. Each attempt proved unsuccessful, as, under the statutory provisions providing for the staggering of evictions, the applicant was not entitled to police assistance in enforcing the order for possession.

16. On 6 May 1997, the applicant sold the apartment.

II. RELEVANT DOMESTIC LAW

17. 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

18. The applicant complained that it had been unable to recover possession of its flat within a reasonable time owing to the lack of police assistance. It 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."

19. 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..."

20. 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).

21. 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 had had to wait for approximately six years and eleven months from the first attempt of the bailiff and then it sold the flat.

22. 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

23. 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

24. The applicant sought reparation for the pecuniary damage it had sustained, which it put at 385,000,000 Italian lire (ITL) [198,835.91 euros (EUR)], the sum of ITL 150,000,000 [EUR 77,468.53] being the compensation for the unavailability of the flat, the sum of ITL 165,000,000 [EUR 85,215. 39] being the price of the sale of the flat reduced by 30%, the sum of ITL 50,000,000 [EUR 25,822.84] being the loss of rent for the period from 31 December 1986 (the term of expiration of the lease) to 6 May 1997 (the date of the sale), the sum of ITL 20,000,000 [EUR 10,329.14], being the legal costs and expenses incurred in the domestic proceedings and before the Court.

25. The Government stressed that the applicant had failed to adduce evidence of any pecuniary damage sustained.

As regards the costs incurred in the domestic proceedings, the Government argued that the costs of the proceedings on the merits were not related to the alleged violations and that the costs incurred during the enforcement stage were due only for the period that was regarded as being a disproportionate interference with the applicant's right of property.

26. 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 grant EUR 7,000 under this head.

As regards the costs of the enforcement proceedings, the Court considers that they must be reimbursed in part (see the *Scollo v. Italy* judgment of 28 September 1995, Series A no. 315-C, p. 56, § 50). It considers, however, that only the costs relating to the delay in the eviction must be reimbursed and, accordingly, decides to award the applicant the sum of EUR 2,000.

B. Non-pecuniary damage

27. The applicant claimed ITL 50,000,000 for the non-pecuniary damage.

28. The Government submitted that no compensation under this head is possible, the applicant being a company and not a private individual.

29. The Court recalls that it has stated in its Comingersoll judgment that it cannot exclude the possibility that a commercial company may be awarded compensation for non-pecuniary damage (*Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV, § 35). Whether an award should be made will depend on the circumstances of each case. In the circumstances of the present case, however, the Court finds that it has not been established that the applicant company has suffered any non-pecuniary damage as a result of the duration of the eviction procedure. It therefore dismisses this claim.

C. Legal costs

30. The applicant has also asked for compensation for legal costs in the proceedings before the Court (see § 24 above).

31. 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 (see, for example, *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V). 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

32. 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) 9,000 EUR (nine thousand euros) for pecuniary damage;
      (ii) 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 19 December 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President