



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

FIRST SECTION

**CASE OF DE GENNARO v. ITALY**

*(Application no. 59634/00)*

JUDGMENT

STRASBOURG

31 July 2003

**FINAL**

***31/10/2003***

*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 de Gennaro 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,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr V. ZAGREBELSKY,

Mrs E. STEINER, *judges*,

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

Having deliberated in private on 8 July 2003,

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

**PROCEDURE**

1. The case originated in an application (no. 59634/00) 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 an Italian national, Mrs Daniela De Gennaro (“the applicant”), on 21 July 2000.

2. The applicant was represented by Mrs T. Cardarelli, 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 7 March 2002 the Court declared the application admissible.

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1946 and lives in Rome.

5. She is the owner of a flat in Rome, which she had let to M.T.O.T.

6. In a writ served on the tenant on 28 January 1991, the applicant informed her that she intended to terminate the lease on expiry of the term on 31 December 1991 and summoned her to appear before the Rome Magistrate.

7. By a decision of 21 May 1991, which was made enforceable on the same day, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1992.

8. On 1 February 1993, the applicant served notice on the tenant requiring her to vacate the premises.

9. On 17 March 1993, she served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 7 April 1993.

10. Between 7 April 1993 and 17 December 1999, the bailiff made thirty-one attempts to recover possession. Each attempt proved unsuccessful as the applicant was not entitled to police assistance in enforcing the order for possession.

11. On 25 January 2000, the applicant recovered possession of the flat.

## II. RELEVANT DOMESTIC LAW

12. 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

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

14. 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.

15. 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.

16. 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

17. 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”.

18. 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.

19. 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.

20. 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

21. The applicant complained of her prolonged inability to recover possession of her flat, owing to the lack of police assistance. She alleged a violation of her 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.”

22. 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...”

23. 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).

24. 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 applicant had to wait approximately six years and ten 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

25. 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

26. The applicant sought reparation for the pecuniary damage she had sustained, which she put either at 379,311,240 Italian lire (ITL) [195,897.91 euros (EUR)], the sum being the loss of rent for the period from 1993 to 2000, or at ITL 360,000,000 [EUR 185,924.48], the sum being the loss of profit due to the impossibility to sell the flat. As regards the loss of rent, the applicant proposed the difference between the market value rent and the rent imposed by law. For the purpose of assessing the market value rent, the applicant submitted the official price list of the Chamber of Commerce of Rome for the years from 1993 to 2000. Lastly, the applicant

stressed that the flat concerned is located in the city centre and it is composed of nine rooms plus kitchen, bathroom, a cellar and two entrances.

27. The Government contested those claims.

28. The Court considers that the applicant must be awarded compensation for the pecuniary damage resulting from the loss of rent for the period of time related to the violations found. Having regard to the means of calculation proposed by the applicant and in the light of the evidence before it and the period concerned, it decides to award her EUR 85,700 under this head.

29. As regards the claim concerning the loss of profit due to the impossibility to sell the flat, the Court considers that the applicant failed to submit any evidence that she had attempted, but had not been able, to sell the flat. Consequently, the claim is dismissed.

### **B. Non-pecuniary damage**

30. The applicant claimed ITL 30,000,000 [EUR 15.493,71] for the non-pecuniary damage.

31. The Government contested the claim.

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

### **C. Costs and expenses**

33. The applicant claimed the following amounts:

- ITL 5,672,000 [EUR 2,929.34] for the costs of the enforcement proceedings;
- ITL 502,500 [EUR 259.52] for the costs of medical assistance during the attempts of the bailiff;
- EUR 5,000 for the costs and expenses before the Court.

34. 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.

35. On the basis of the information in its possession and the Court's case-law, the Court considers it reasonable to award the applicant the sum of EUR 1,800 for the costs of the enforcement proceedings and EUR 2,000 for the costs and expenses incurred before the Court. As regards the costs for medical assistance, the Court considers that the amount claimed by the applicant must be reimbursed in full.

The Court awards a total sum of EUR 4,059.52 for costs and expenses.

#### **D. Default interest**

36. 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) EUR 85,700 (eighty-five thousand seven hundred euros) for pecuniary damage;
    - (ii) EUR 3,000 (three thousand euros) for non-pecuniary damage;
    - (iii) EUR 4,059.52 (four thousand fifty-nine euros and fifty-two cents)
    - (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN  
Deputy Registrar

Christos ROZAKIS  
President