



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

SECOND SECTION

CASE OF TENTORI MONTALTO v. ITALY

(Application no. 32648/96)

JUDGMENT
(Friendly Settlement)

STRASBOURG

4 October 2001

In the case of Tentori Montalto v. Italy,

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

Mr C.L. ROZAKIS, *President*,

Mr A.B. BAKA,

Mr G. BONELLO,

Mrs M. TSATSA-NIKOLOVSKA,

Mr E. LEVITS,

Mr A. KOVLER, *judges*,

Mr G. RAIMONDI, *ad hoc judge*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 20 September 2001,

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

PROCEDURE

1. The case originated in an application (no. 32648/96) 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 an Italian national, Mr Tullio Tentori Montalto (“the applicant”), on 5 April 1996.

2. The applicant was represented before the Court by Mr P. Tentori Montalto, 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 about his prolonged inability - through lack of police assistance - to recover possession of his apartment and about the duration of the eviction proceedings.

4. On 22 March 2001, after obtaining the parties’ observations, the Court declared the application admissible.

5. On 11 July 2001 and on 27 July 2001, the Agent of the Government and the applicant respectively submitted formal declarations proposing a friendly settlement of the case.

THE FACTS

6. Mr A.K. was the owner of an apartment in Rome, which he had let to S.C.

7. In a writ served on the tenant on 24 December 1986, he informed the tenant that he intended to terminate the lease on expiry of the term on 30 June 1987 and asked him to vacate the premises by that date.

8. On 23 May 1988, the applicant acquired the use (*usufrutto*) of the apartment.

9. In a writ served on the tenant on 21 June 1988, the applicant communicated his intention to terminate the lease and summoned the tenant to appear before the Rome Magistrate.

10. By a decision of 5 December 1988, which was made enforceable on the same day, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises must be vacated by 5 December 1989.

11. On 31 January 1990, the applicant served notice on the tenant requiring him to vacate the premises.

12. On 7 March 1990, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 18 April 1990.

13. Between 18 April 1990 and 1 February 1994, the bailiff made eighteen attempts to recover possession.

14. On 12 February 1994, the applicant made a statutory declaration that he urgently required the premises as accommodation for his son.

15. Between 30 June 1994 and 7 March 1997, the bailiff made twelve attempts to recover possession. Each attempt proved unsuccessful, as the applicant was never granted the assistance of the police in enforcing the order for possession.

16. On 9 May 1997, the applicant recovered possession of his apartment.

THE LAW

17. On 12 July 2001 the Court received the following declaration from the Government:

“I declare that the Government of Italy offer to pay 90,000,000 ITL to Mr Tullio Tentori Montalto with a view to securing a friendly settlement of the application registered under no. 32648/96. This sum shall cover any pecuniary and non-pecuniary damage as well as costs, and it will 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 case.

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

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

18. On 6 August 2001 the Court received from the applicant’s representative the following declaration signed by the applicant:

“I note that the Government of Italy are prepared to pay a sum totalling 90,000,000 ITL covering both pecuniary and non-pecuniary damage and costs to Mr Tullio Tentori Montalto with a view to securing a friendly settlement of application no. 32648/96 pending before the Court.

I accept the proposal and waive any further claims in respect of Italy relating to the facts of this application. I declare that the case is definitely settled.

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

I further undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court’s judgment.”

19. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied 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).

20. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

Done in English, and notified in writing on 4 October 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President