



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

FIRST SECTION

**CASE OF FUSCO v. ITALY**

*(Application no. 42609/98)*

JUDGMENT  
(Friendly Settlement)

STRASBOURG

7 May 2002

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



**In the case of Fusco 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 L. FERRARI BRAVO,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mr E. LEVITS,

Mr A. KOVLER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 18 April 2002,

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

**PROCEDURE**

1. The case originated in an application (no. 42609/98) 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 an Italian national, Mr Fabrizio Fusco (“the applicant”), on 9 June 1998.

2. The applicant was represented by Mr G. Maccauro, a lawyer practising in Centurano (Caserta). 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. The case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention. On 4 October 2001, having obtained the parties’ observations, the Court declared the application admissible.

5. 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.

6. On 14 March 2002 and on 19 March 2002 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

## THE FACTS

7. The applicant is the owner of an apartment in Caivano (Naples), which he had let to A.I.

8. In a registered letter of 11 March 1987, the applicant informed the tenant that he intended to terminate the lease on expiry of the term on 31 December 1987 and asked her to vacate the premises by that date.

9. In a writ served on the tenant on 16 January 1988, the applicant reiterated his intention to terminate the lease and summoned the tenant to appear before the Afragola (Naples) Magistrate.

10. By a decision of 22 March 1989, which was made enforceable on 5 April 1990, the Afragola Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 5 July 1990.

11. On 15 March 1990, the applicant served notice on the tenant requiring her to vacate the premises.

12. On 27 April 1993 she served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 18 May 1993.

13. On 15 July 1993, the applicant made a statutory declaration that he urgently required the premises as accommodation for himself.

14. Between 15 May 1993 and 1 December 1998, the bailiff made twelve attempts to recover possession.

15. Each attempt proved unsuccessful, as the applicant was never granted the assistance of the police in enforcing the order for possession.

16. On 7 April 2001, the applicant recovered possession of the apartment.

## THE LAW

17. On 19 March 2002 the Court received the following declaration from the Government:

“I declare that the Government of Italy offer to pay 6,197.48 Euros (six thousand one hundred and ninety seven euros and forty-eight cents) (12,000,000 Italian Lira) to Mr Fabrizio Fusco with a view to securing a friendly settlement of the application registered under no. 42609/98. 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 referral of the case to the Grand Chamber under Article 43 § 1 of the Convention.”

18. On 14 March 2002 the Court received the following declaration signed by the applicant:

“I note that the Government of Italy are prepared to pay a sum totalling 6,197.48 Euros (six thousand one hundred and ninety seven Euros and forty-eight cents) (12,000,000 Italian Lira) covering both pecuniary and non-pecuniary damage and costs to Mr Fabrizio Fusco with a view to securing a friendly settlement of application no. 42609/98 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 referral 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 7 May 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH  
Registrar

Christos ROZAKIS  
President