



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

FIRST SECTION

CASE OF FRANCESCHETTI v. ITALY

(Application no. 35001/97)

JUDGMENT
(Friendly settlement)

STRASBOURG

7 November 2002

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

In the case of Franceschetti v. Italy,

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

Mr C.L. ROZAKIS, *President*,

Mr G. BONELLO,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mrs E. STEINER, *judges*,

Mrs M. DEL TUFO, *ah hoc judge*,

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

Having deliberated in private on 17 October 2002,

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

PROCEDURE

1. The case originated in an application (no. 35001/97) 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, Mrs Ilaria Franceschetti (“the applicant”), on 22 November 1995.

2. The applicant was represented by Mrs S. Gatta, a lawyer practising in Florence. 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 her prolonged inability – through lack of police assistance – to recover possession of her 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.

5. On 4 October 2001, having obtained the parties’ observations, the Court declared the application admissible

6. On 2 August 2002 and on 18 September 2002 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

7. In 1964 the applicant inherited from her father the title over an apartment in Florence; her mother L. inherited a life and controlling interest in that apartment, i.e. the right to use it and derive any benefits therefrom. L. let the apartment to D.D.C. The lease was due to expire on 31 December 1987. In a writ served on the tenant on 9 January 1986, L. communicated her intention to terminate the lease and summoned the tenant to appear before the Florence Magistrate.

8. On 12 February 1986, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1988. That decision was made enforceable on 21 March 1988.

9. On 5 October 1990, L. served notice on the tenant requiring him to vacate the premises. On 14 November 1990, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 21 November 1990.

10. Between 21 November 1990 and 19 November 1996, the bailiff made eleven attempts to recover possession. Each attempt proved unsuccessful, as L. was never granted the assistance of the police in enforcing the order for possession.

11. In the meantime, on 28 February 1991, the applicant in her capacity as the owner of the apartment, made a statutory declaration that she urgently required the premises as accommodation for her son.

12. On 28 November 1996 L. died and the applicant acquired the interest in the apartment. She pursued the proceedings in her own name.

13. Between 17 March 1997 and 22 January 1999, the bailiff made five further attempts to recover possession, which attempts were unsuccessful due to the lack of police assistance.

14. Under the newly enacted Law 431/1998, the tenant proposed to the applicant that they enter into a new lease. On 1 July 1999, the applicant informed the tenant that she intended to repossess the apartment.

15. On 27 July 1999, the tenant requested the Florence District Court, under Section 6 of Law 431/98, to set a new date for the eviction.

16. On 27 December 1999, reaching a friendly agreement with the tenant, the applicant recovered possession of her apartment.

THE LAW

17. On 18 September 2002 the Court received the following declaration from the Government:

“I declare that the Government of Italy offer to pay 9,000 (nine thousand) Euros to Mrs Ilaria Franceschetti with a view to securing a friendly settlement of the application registered under no. 35001/97. 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 2 August 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 9,000 (nine thousand) Euros covering both pecuniary and non-pecuniary damage and costs to Mrs Ilaria Franceschetti with a view to securing a friendly settlement of application no. 35001/97 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 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President