



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

FIRST SECTION

CASE OF D.L. v. ITALY

(Application no. 34669/97)

JUDGMENT
(Striking out)

STRASBOURG

6 November 2003

FINAL

06/02/2004

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 D.L. v. Italy,

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

Mr P. LORENZEN, *President*,

Mr G. BONELLO,

Mr E. LEVITS,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

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

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

Having deliberated in private on 16 October 2003,

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

PROCEDURE

1. The case originated in an application (no. 34669/97) 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 D.L. (“the applicant”), on 13 November 1996.

2. The applicant was represented by Mrs A. M. Foti, a lawyer practising in Milan. The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza and by their co-Agent, Mr V. Esposito.

3. 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).

4. Mr V. Zagrebelsky, the judge elected in respect of Italy, withdrew from sitting in the case (Rule 28). The Government appointed Mrs M. del Tufo as *ad hoc* judge to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 2).

5. On 4 October 2001 the Court declared the application admissible.

6. On 15 November 2002, the Court was informed of Mrs D.L.’s death and then of Mrs A.M. Foti’s wish to have the proceedings continued and to take part therein as the actual owner of the flat.

7. On 13 February 2003, the Court was informed by Mrs A.M. Foti of the fact that Mrs D.L. died on 7 November 1999.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1920 and lived in Florence.

9. Until 1992, she was the owner of a flat in Florence, which she had let to A.P.

10. After that date, by contract, she kept a life and controlling interest (*usufrutto*) in the flat, i.e. the right to use it and derive any benefits therefrom. Her representative, Mrs A.M. Foti, had the title (*nuda proprietà*) over that flat.

11. In a writ served on the tenant on 23 November 1982, the applicant communicated her intention to terminate the lease and summoned the tenant to appear before the Florence Magistrate.

12. By a decision of 3 October 1983, which was made enforceable on 16 December 1983, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises must be vacated by 31 December 1984. At the tenant's request the Magistrate postponed the deadline for vacation to an unspecified date.

13. On 30 September 1987, the applicant served notice on the tenant requiring him to vacate the premises.

14. On 2 November 1987, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 9 December 1987.

15. Between 9 December 1987 and 16 September 1998, the bailiff made twenty-four 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 12 July 1999, the tenant requested the Florence District Court to set a fresh date for the enforcement of the order for possession pursuant to Section 6 of Law No. 431/98. The Court set the date for 26 January 2001.

17. On 7 November 1999, the applicant died and Mrs A.M. Foti acquired full interest in the flat as she was the owner with all the rights over the flat. Subsequently, she also became a part of the eviction proceedings.

18. According to the last information provided by Mrs A. M. Foti in her fax of 15 November 2002, the Florence District Court has now set the new date for 15 January 2004 for the enforcement of the order for possession with the assistance of the police.

19. As of today, Mrs A.M. Foti has not yet recovered possession of the flat.

THE LAW

20. The Court must first address the issue of Mrs A.M. Foti's entitlement to pursue the application originally introduced by the applicant who died in November 1999.

21. Mrs A.M. Foti declared in November 2002 that she wishes to pursue the application of Mrs D.L. before the Court. She invokes the fact that, after the death of Mrs D.L., she acquired interest in the flat and sought the enforcement of the eviction order.

22. The Court observes that, while Mrs A.M. Foti had a mere title over the flat in question, it was the applicant, Mrs D.L., who had a life and controlling interest in it, i.e. the right to use it and to derive any benefits therefrom. It was the applicant, in her capacity, who issued the proceedings against the tenant. Mrs A.M. Foti acquired full interest in the flat on 7 November 1999 (when the applicant died) and became a party to the eviction proceedings only after this date.

23. The Court recalls that in various cases where an applicant died in the course of the proceedings it has taken into account the statements of the applicant's heirs or of close members of his or her family who expressed the wish to pursue the proceedings before the Court (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII).

24. In the present case so far, no heirs have expressed any wish to continue the proceedings before the Court.

25. However, Mrs A.M. Foti, who wishes to pursue the application, is neither one of the applicant's heirs nor one of the applicant's next of kin and neither had she the right to exercise that title before Mrs D.L.'s death. Yet, nothing in the file suggests that Mrs D.L.'s wish was to designate Mrs A.M. Foti as the successor of the proceedings before the Court.

26. In these circumstances, the Court considers that Mrs A.M. Foti lacks *locus standi* in respect of the present application.

27. However, nothing prevents her from filing another application before the Court after having exhausted the available domestic remedies as required under Article 35 § 1 of the Convention.

28. In these circumstances, the Court concludes that it is no longer justified to continue the examination of the application within the meaning of Article 37 § 1 (c) of the Convention. Furthermore, the Court finds no reasons of a general character, as defined in Article 37 § 1 *in fine*, which would require the examination of the application by virtue of that Article.

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

FOR THESE REASONS, THE COURT

1. *Holds*, by six votes to one, that Mrs A.M. Foti has no standing to continue the present proceedings;
2. *Decides* by six votes to one to strike the case out of the list.

Done in English, and notified in writing on 6 November 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Peer LORENZEN
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, a separate opinion of Mrs M. del Tufo is annexed to this judgment.

P.L.
S.N.

SEPARATE OPINION OF JUDGE DEL TUFO

Through this separate opinion, I would just express some perplexity about the decision of striking the case of D.L. v. Italy out of the list. I think that the position of Mrs Foti would have deserved closer examination.

Since 1992 Mrs Foti had by contract the title over a flat (*nuda proprietà*), in which D.L. kept a life and controlling interest (*usufrutto*).

In 1982 D.L. began trying to vacate her flat before the Magistrate. Mrs Foti was her representative. After the death of Mrs D.L. in 1999, Mrs Foti, who since 1992 had already an interest in the flat, became owner with all the rights and continued in Italy the proceeding for the vacation of the flat.

On 13 November 1996 Mrs D.L., represented by Mrs Foti, introduced an application in Strasbourg and on 4 October 2001 the Court declared the application admissible. The Court was informed on 15 November 2002 of Mrs D.L.'s death and of Mrs Foti's wish to have the proceedings continued and to take part therein as actual owner of the flat.

With the present decision the Court strikes out the case because Mrs Foti lacks *locus standi* in respect of this application. According to the Court, Mrs Foti acquired full interest in the flat after the death of Mrs D.L. (1999) and became a party of the eviction proceedings only after this date. She is neither one of applicant's heirs nor one of the applicant's next of kin. Furthermore D.L. expressed no wish to designate Mrs Foti as successor of the proceedings before the Court.

In conclusion, Mrs Foti, after having exhausted the available domestic remedies, could only file another application before the Court.

The time to have her rights effectively protected will be in any case very long.

I wonder if, under the point of view of the procedure, the case could not be seen from an other perspective.

The object of the national proceedings was the recovery of a flat. On this flat Mrs Foti also had right of property, even though it was a "compressed" one. It is true that she became sole owner only after the death of Mrs D.L., but what is discussed here is only whether Mrs Foti could keep Mrs D.L. position in the proceedings before the Court as from its introduction in 1996. Certainly, there is no doubt that since 1999 she has an autonomous *locus standi*, but, in my opinion, she could take advantage also of the previous period (1996-1999) as successor in the specific right of Mrs D.L. Her actual position in the proceedings is directly grafted on the previous position of Mrs D.L.: the effective protection from a violation of a right concerning the same flat is demanded.

The fact that Mrs Foti is neither one of applicant's heirs nor one of the applicant's next of kin is not relevant, because the only person concerned by the continuation of the proceedings is the owner, who defends the same right that Mrs D. L. had defended by introducing the application before the Court.

The fact that Mrs D.L. expressed no wish to designate Mrs Foti as successor of the proceedings before the Court has no relevance here.

What is important is to assure that the right of ownership receives a concrete and effective protection and in this case since 1982 it has been impossible to recover possession of the flat.