



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

FIRST SECTION

CASES OF ISTITUTO NAZIONALE CASE SRL v. ITALY (no. 2)

(Applications nos. 41932/98, 41935/98 and 42732/98)

JUDGMENT
(Friendly settlement)

STRASBOURG

27 November 2003

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

In the cases of Istituto Nazionale Case Srl v. Italy (no. 2),

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,

Mr A. KOVLER,

Mr V. ZAGREBELSKY,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

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

Having deliberated in private on 6 November 2003,

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

PROCEDURE

1. The cases originated in three applications (nos. 41932/98; 41935/98 and 42732/98) 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 company, Istituto Nazionale Case Srl (“the applicant”), on 18 May 1998 and 26 May 1998.

2. The applicant was represented by Mr E. Baldi, a lawyer practising in Naples. The Italian Government (“the Government”) were represented by their successive Agents, respectively Mr U. Leanza and Mr I.M. Braguglia, and by their successive co-Agents, respectively Mr V. Esposito and Mr F. Crisafulli.

3. The applicant complained under Article 1 of Protocol No. 1 that it had been unable to recover possession of its flats within a reasonable time. Invoking Article 6 § 1 of the Convention, it further complained about the length of the eviction proceedings.

4. Following communication of the applications to the Government by the Commission, 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 5 September 2002, having obtained the parties' observations, the Court declared the applications admissible.

5. On 26 June 2003 and on 1 July 2003 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the cases.

THE FACTS

1) Application no. 41932/98

6. In a writ served on the tenant on 23 January 1987, the applicant informed him of its intention to terminate the lease on expiry of the term on 3 December 1988 and summoned him to appear before the Torre Annunziata Magistrate.

7. By a decision of 25 February 1987, which was made enforceable on the same day, the Torre Annunziata Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 March 1990.

8. On 21 April 1995, the applicant served notice on the tenant requiring him to vacate the premises. It also informed him that the order for possession would be enforced by a bailiff on 2 May 1995.

9. Between 2 May 1995 and 5 November 1997, the bailiff made six attempts to recover possession. Each attempt proved unsuccessful, as the applicant was not entitled to police assistance in enforcing the order for possession.

10. On 1 September 2000, the tenant spontaneously left the premises and the applicant recovered possession of the flat.

2) Application no. 41935/98

11. In a writ served on the tenant on 23 June 1983, the applicant informed him of its intention to terminate the lease on expiry of the term on 31 December 1983 and summoned him to appear before the Torre Annunziata Magistrate.

12. By a decision of 8 October 1983, which was made enforceable on the same day, the Torre Annunziata Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 1 January 1986.

13. On 2 February 1995, the applicant served notice on the tenant requiring them to vacate the premises.

14. On 21 April 1995, it informed him that the order for possession would be enforced by a bailiff on 2 May 1995.

15. Between 2 May 1995 and 5 November 1997, the bailiff made six attempts to recover possession. Each attempt proved unsuccessful, as the applicant was not entitled to police assistance in enforcing the order for possession.

16. On 3 June 2001, the tenant spontaneously left the premises and the applicant recovered possession of the flat.

3) Application no. 42732/98

17. In a writ served on M.A. (the tenant) on 23 January 1987, the applicant informed her of its intention to terminate the lease on expiry of the term on 31 December 1988 and summoned her to appear before the Torre Annunziata Magistrate.

18. By a decision of 25 February 1987, which was made enforceable on the same day, the Torre Annunziata Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 May 1991.

19. On 2 February 1995, the applicant served notice on the tenant requiring her to vacate the premises.

20. On 21 April 1995, it informed her that the order for possession would be enforced by a bailiff on 2 May 1995.

21. Between 2 May 1995 and 27 November 1998, the bailiff made eight attempts to recover possession. Each attempt proved unsuccessful, as the applicant was not entitled to police assistance in enforcing the order for possession.

22. On 3 August 2002, the applicant recovered possession of the flat.

THE LAW

23. On 1 July 2003 the Court received the following declarations from the Government:

1) Application no. 41932/98

“I declare that the Government of Italy offer to pay 3,085 (three thousand eighty-five) Euros to Istituto Nazionale Case S.r.l. with a view to securing a friendly settlement of the application registered under no. 41932/98. 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.”

2) Application no. 41935/98

“I declare that the Government of Italy offer to pay 3,585 (three thousand five hundred eighty-five) Euros to Istituto Nazionale Case S.r.l. with a view to securing a friendly settlement of the application registered under no. 41935/98. 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.”

3) Application no. 42732/98

“I declare that the Government of Italy offer to pay 4,085 (four thousand eighty-five) Euros to Istituto Nazionale Case S.r.l. with a view to securing a friendly settlement of the application registered under no. 42732/98. 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.”

24. On 26 June 2003 the Court received the following declarations signed by the director of the applicant's company, Mr Giuseppe Gianturco:

1) Application no. 41932/98

“I note that the Government of Italy are prepared to pay a sum totalling 3,085 (three thousand eighty-five) Euros covering both pecuniary and non-pecuniary damage and costs to Istituto Nazionale Case S.r.l. with a view to securing a friendly settlement of application no. 41932/98 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.”

2) Application no. 41935/98

“I note that the Government of Italy are prepared to pay a sum totalling 3,585 (three thousand five hundred eighty-five) Euros covering both pecuniary and non-pecuniary damage and costs to Istituto Nazionale Case S.r.l. with a view to securing a friendly settlement of application no. 41935/98 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."

3) Application no. 42732/98

I note that the Government of Italy are prepared to pay a sum totalling 4,085 (four thousand eighty-five) Euros covering both pecuniary and non-pecuniary damage and costs to Istituto Nazionale Case S.r.l. with a view to securing a friendly settlement of application no. 42732/98 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."

25. The Court takes note of the agreements reached between the parties (Article 39 of the Convention). In this connection the Court considers that it has already specified the nature and extent of the obligations which arise for the respondent Government in cases concerning eviction of tenants (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V), and the question of the performance of those obligations is currently pending before the Committee of Ministers. Therefore, a continuation of the examination of the present applications is not required. In these circumstances the Court accepts that the settlements are 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).

26. Accordingly, the cases should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the cases out of the list;
2. *Takes note* of the parties' undertakings not to request a rehearing of the cases before the Grand Chamber.

Done in English, and notified in writing on 27 November 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President