



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

THIRD SECTION

CASE OF CAPELLINI v. ITALY

(Application no. 64009/00)

JUDGMENT
(Friendly settlement)

STRASBOURG

16 December 2004

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

In the case of Capellini v. Italy,

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

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr V. ZAGREBELSKY,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 25 November 2004,

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

PROCEDURE

1. The case originated in an application (no. 64009/00) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Mrs Daniela Capellini (“the applicant”), on 29 November 2000.

2. The applicant was represented before the Court by Mr M.A. de Stasio, a lawyer practising in Milan. The respondent 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 she had been unable to recover possession of her flat within a reasonable time. Invoking Article 6 § 1 of the Convention, she further complained about the length of the eviction proceedings.

4. On 11 March 2004, after obtaining the parties’ observations, the Court (First Section) declared the application admissible.

5. On 28 October 2004 and on 29 October 2004, the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

7. The applicant was born in 1956 and lives in Milan.

8. A.C., the applicant's father, was the owner of a flat in Milan, which he had let to V.S.

9. In a registered letter of 9 November 1990, the applicant's father informed the tenant that he intended to terminate the lease on expiry of the term on 31 December 1991 and asked him to vacate the premises by that date.

10. The tenant told the applicant's father that he would not leave the premises.

11. In a writ served on the tenant on 22 January 1991, the applicant's father reiterated his intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

12. By a decision of 21 March 1991, which was made enforceable on 26 March 1991, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1992.

13. On 11 January 1993, the applicant's father served notice on the tenant requiring him to vacate the premises.

14. On 25 February 1993, he informed the tenant that the order for possession would be enforced by a bailiff on 19 March 1993.

15. Between 19 March 1993 and 18 April 2000, the bailiff made nineteen attempts to recover possession. Each attempt proved unsuccessful, as the applicant's father and then the applicant were not entitled to police assistance in enforcing the order for possession.

16. In the meanwhile, on 24 August 1993, the applicant's father died and the applicant inherited the flat.

17. On 14 February 2000, she became party to the proceedings.

18. On 15 June 2000, the applicant recovered possession of the flat.

19. Pursuant to the Pinto Law, on 3 April 2002 the applicant applied to the Brescia Court of Appeal. By decision of 12 June 2002, the Court of Appeal rejected the applicant's claim. As far as the conduct of the relevant authorities were concerned, the Court of Appeal underlined that the behaviour of the Prefect was in conformity with the criteria fixed by the national law and that after the Law no. 431/98 the expulsion was suspended by other laws. So the delays derived from *factum principis* and were therefore irrelevant for the purpose of the Pinto Law.

20. The applicant did not appeal to the Court of Cassation.

THE LAW

21. On 29 October 2004, the Court received the following declaration from the Government:

“I declare that the Government of Italy offer to pay 5,717.70 euros (five thousand seven hundred seventeen euros and seventy cents) to Mrs Daniela Capellini with a view to securing a friendly settlement of the application registered under no. 64009/00. 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. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay, until settlement, simple interest on the amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

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.”

22. On 28 October 2004, the Court received the following declaration signed by the applicant:

“I note that the Government of Italy are prepared to pay a sum totalling 5,717.70 euros (five thousand seven hundred seventeen euros and seventy cents) covering both pecuniary and non-pecuniary damage and costs to Mrs Daniela Capellini with a view to securing a friendly settlement of the application no. 64009/00 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 applicant has 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.”

23. The Court takes note of the agreement 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 application is not required. In these circumstances the Court accepts 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).

24. 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 16 December 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President