



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

THIRD SECTION

CASE OF DEL DUCE v. ITALY

(Application no. 65674/01)

JUDGMENT
(Friendly settlement)

STRASBOURG

7 April 2005

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

In the case of Del Duce 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 C. BÎRSAN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Ms R. JAEGER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 17 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 65674/01) 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, Mr Giovanni Del Duce (“the applicant”), on 20 June 2000.

2. The applicant was represented before the Court by Mrs T. Fiorini and Mr F. Falco, lawyers practising in Pomezia (Rome). The Italian Government (“the Government”) were represented by their Agents, 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 he had been unable to recover possession of his flat within a reasonable time. Invoking Article 6 § 1 of the Convention, he further complained about the length of the eviction proceedings and his right to access to a court.

4. On 18 March 2004, after obtaining the parties' observations, the Court declared the application admissible.

5. On 2 February 2005 and on 8 February 2005 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicant was born in 1937 and lives in Rome.

7. He is the owner of a flat in Rome, which he had let to R.B.

8. In a registered letter of 31 December 1990, the applicant informed the tenant that he intended to terminate the lease on expiry of the term on 30 November 1991 and asked her to vacate the premises by that date.

9. In a writ served on the tenant on 18 February 1992, the applicant communicated his intention to terminate the lease and summoned the tenant to appear before the Rome Magistrate.

10. By a decision of 8 July 1992, which was made enforceable on the same day, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 May 1994.

11. Pursuant to Law no. 359/92 the expiry of the term was extended for two years from 30 November 1993 to 30 November 1995.

12. Nonetheless, on 4 November 1994, the applicant served notice on the tenant requiring her to vacate the premises.

13. On 30 November 1994, he informed the tenant that the order for possession would be enforced by a bailiff on 15 December 1994.

14. Between 15 December 1994 and 10 October 1995, 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. In the meanwhile, the tenant fell in rent arrears.

15. On 6 April 1995, pursuant to Law no. 61/89, the applicant asked the Rome Magistrate to suspend the extension of the expiry of the term and asked to be granted the assistance of the police in enforcing the order for possession. The Rome Magistrate refused to grant the assistance of the police.

16. Therefore, the applicant decided to restart the eviction proceedings.

17. In a writ served on the tenant on 29 November 1995, the applicant informed her of his intention to terminate the lease and summoned the tenant to appear before the Rome Magistrate.

18. By a decision of 28 March 1996, which was made enforceable on the same day, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 15 January 1997.

19. On 20 February 1997, the applicant served notice on the tenant requiring her to vacate the premises.

20. On 9 May 1997, he informed the tenant that the order for possession would be enforced by a bailiff on 20 May 1997.

21. Between 20 May 1997 and 15 October 1998, the bailiff made seven attempts to recover possession. Each attempt proved unsuccessful, as the applicant was not entitled to police assistance in enforcing the order for possession.

22. The eviction proceedings having been suspended pursuant to Law no. 431/1998, on 8 September 1999 the applicant served a second order to vacate the premises.

23. On 29 September 1999, a second notice was served on the tenant informing her that the order for possession would be enforced by a bailiff on 22 October 1999.

24. After two attempts, on 3 January 2000, the applicant recovered possession of his flat.

THE LAW

25. On 2 February 2005, the Court received the following declaration from the Government:

“I declare that the Government of Italy offer to pay the total sum of 6,085 euros (six thousand eighty five euros (5,000 euros plus 1,085 euros for costs and expenses before the Court)) to Mr Giovanni Del Duce with a view to securing a friendly settlement of the application registered under no. 65674/01. 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.”

26. On 8 February 2005, the Court received the following declaration signed by the applicant:

“I note that the Government of Italy are prepared to pay a sum totalling 6,085 euros (six thousand eighty five euros (5,000 euros plus 1,085 euros for costs and expenses before the Court)) euros covering both pecuniary and non-pecuniary damage and costs to Mr Giovanni Del Duce with a view to securing a friendly settlement of application no. 65674/01 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.”

27. 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).

28. 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 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President