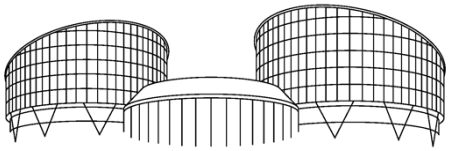

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SCARDACCIONE v. ITALY

(Application no. 9968/14)

JUDGMENT

STRASBOURG

7 November 2024

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

In the case of Scardaccione v. Italy,

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

Péter Paczolay*, President*,
Erik Wennerström,
Raffaele Sabato*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 9968/14) 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") on 24 January 2014 by an Italian national, Ms Maria Grazia Scardaccione ("the applicant"), who was born in 1963, lives in Ercolano and was represented by Ms A. Mascia, a lawyer practising in Verona;

the decision to give notice of the application to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia;

the parties' observations.

Having deliberated in private on 10 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns statutory suspension of eviction proceedings.

2. On 16 July 2004 the applicant, her brother and her sister-in-law became co-owners of an apartment in Naples. The applicant applied for one-off tax benefits for the purchase of a principal residence (*acquisto "prima casa"*).

3. In June 2004, before finalising the purchase, the applicant began negotiations with the previous tenant, M.P., who still occupied the apartment. She offered him 10,000 euros (EUR) to vacate it before 20 August 2005, which he appears to have declined.

4. By a writ of summons served on 13 October 2005, the applicant and her co-owners summoned M.P. to appear before the Naples District Court.

5. On 16 February 2009 the Naples District Court ruled that the premises had to be vacated by 30 August 2009.

6. On 29 July 2009 the co-owners served a notice on the tenant indicating that he would be evicted on 27 October 2009. A bailiff made three unsuccessful attempts to enforce the eviction on 27 October 2009, 27 January 2011 and 31 March 2011.

7. In between the eviction attempts and, following the third attempt, the enforcement of the eviction was stayed, on each occasion for a period of a few months upon M.P.'s request and pursuant to a series of statutory provisions (introduced as part of instruments commonly known as *decreti "mille proroghe"* – Decree-Laws containing several unrelated measures).

8. On 25 July 2011 the District Court dismissed a request by the applicant for the enforcement proceedings to continue, stating, *inter alia*, that she had

not provided sufficient evidence that M.P., the tenant, had another apartment at his disposal.

9. A new request to continue proceedings was allowed on 2 September 2014 since the tenant had not provided the District Court with a declaration of his income for the year 2013 and had not met the income requirements for the suspension in 2012.

10. In November 2014, following a voluntary payment of EUR 4,000 by the applicant, M.P. vacated the premises.

11. Meanwhile, having been unable to establish her residence in the apartment within the eighteen-month period prescribed by law, the tax benefits that the applicant had requested were revoked and a penalty of EUR 17,648.97 was applied.

12. She lodged a tax appeal, alleging that she had been unable to establish residence in her apartment owing to *force majeure*, namely M.P.'s unlawful occupation. The tax courts dismissed her claim, stating that she had been aware at the time of the purchase that the former tenant was occupying the apartment. On 24 July 2013 the Court of Cassation ultimately rejected her claim.

13. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of her prolonged inability to recover possession of her apartment. She further complained under Article 1 of Protocol No. 1 of the disproportionate character of the loss of tax benefits for the purchase of a principal residence.

RELEVANT LEGAL FRAMEWORK

14. The relevant domestic law and practice is set out in the Court's judgments *Immobiliare Saffi v. Italy* ([GC], no. 22774/93, §§ 18-35, ECHR 1999-V) and *Mascolo v. Italy* (no. 68792/01, §§ 14-44, 16 December 2004) and in its decisions *Provvedi v. Italy* ((dec.), no. 66644/01, 2 December 2004) and *Coggiola and Alba v. Italy* ((dec.), no. 28513/02, 24 February 2005).

15. Law no. 9 of 8 February 2007 suspended the enforcement of eviction orders for eight months in respect of tenants who declared that (i) their gross annual income was less than EUR 27,000; (ii) their household included dependent children, a person over sixty-five years of age, or a person with a terminal illness or a disability; and (iii) they did not have another housing solution in the same region.

16. The suspension was extended by subsequent decrees (*decreti "mille proroghe"*). The last Decree-Law, no. 150/2013, converted into Law no. 15/2014, extended the suspension until 30 June 2014.

17. With regard to the relevant case-law concerning the length of eviction proceedings under Law no. 89 of 24 March 2001 (the "Pinto Act"), in its judgments no. 2250 of 2 February 2007 and no. 16445 of 13 July 2010 the Court of Cassation ruled that no compensation for pecuniary damage

resulting from the temporary unavailability of a property in the event of a statutory suspension of eviction could be awarded.

18. As regards tax benefits for the purchase of a principal residence, in accordance with Presidential Decree no. 131/1986 (Consolidated Act on Registration Tax), these benefits apply provided that the property concerned is located in the municipality where the purchasers have established their residence within eighteen months following the purchase date.

THE COURT'S ASSESSMENT

I. ADMISSIBILITY

19. The Government objected to the admissibility of the complaints on the grounds of non-exhaustion of domestic remedies, noting that the applicant could have lodged either compensation claims against the tenant under Article 1591 of the Civil Code, or an application under the "Pinto Act" on the basis of the excessive length of the eviction proceedings.

20. As for the claim under Article 1591 of the Civil Code, in *Coggiola and Alba* (cited above) the Court found no indication that that remedy was effective in respect of the grievances in issue. The Government did not provide any argument to the contrary and there is no reason to depart from the Court's case-law in this respect. The Government's objection must therefore be dismissed.

21. As for the "Pinto" remedy, in a number of previous cases the Court has held that it could be considered effective with regard to complaints under Article 1 of Protocol No. 1 linked to the excessive length of eviction proceedings (see *Mascolo v. Italy* (dec.), no. 68792/01, 16 October 2003; *Provvedi*, cited above; and *Coggiola and Alba*, cited above), and has called on domestic courts to pay particular attention to "Pinto" claims in order to ensure that they examined all the issues involved (see *Provvedi*, cited above). The Government did not provide any examples showing that the approach indicated by the Court had been adopted at the domestic level. On the contrary, the Court notes that the Court of Cassation (see paragraph 17 above) took the view that damage sustained in this context derived in part from the tenant's breach of the obligation to return the property, which could give rise to a claim under Article 1591 of the Civil Code, and in part from the negative repercussions resulting from the enactment of the legislative measures suspending evictions, rather than being directly related to the length of proceedings.

22. In any event, at the time the application was lodged, following the 2012 reform of the Pinto Act, it was impossible to bring "Pinto" claims while the main proceedings were ongoing (see *Verrascina and Others v. Italy*, nos. 15566/13 and 5 others, §§ 6-8 and 30, 28 April 2022).

23. The Court therefore finds that the "Pinto" claim could not be considered an effective remedy before the purposes of the exhaustion requirement in the case at hand.

24. The Court further notes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

II. MERITS

A. Alleged violation of Article 1 of Protocol No. 1 to the Convention and Article 6 § 1 of the Convention regarding the eviction proceedings

25. The applicant's prolonged inability to recover possession of her apartment, owing to the statutory suspension of evictions, lasted for almost five years. Even though specific requirements had been put in place for the selection of potential beneficiaries (see paragraph 15 above), the procedural safeguards proved to be ineffective in this specific case. Indeed, a different burden of proof applied: while tenants had only to submit a declaration stating that they met the legal requirements to be granted the suspension, owners were obliged to prove either that those requirements were not met, or that they themselves met the same requirements, or that they were in a position of "supervening need" (*necessità sopraggiunta*). This mechanism therefore transferred the aim of a social measure (protecting those in low-income categories from being evicted without safeguards) onto the shoulders of private owners. In the present case, the evidence submitted by the applicant was considered insufficient to prove that the tenant had another apartment at his disposal. Only at a later stage, when the tenant submitted the relevant income declaration, the District Court found that the tenant had benefited from the suspension even though he did not meet the income requirements.

26. Similar circumstances gave rise to a violation of Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention in *Immobiliare Saffi* (cited above, §§ 46-75), *Mascolo* (cited above, §§ 47-51) and *Lo Tufo v. Italy* (no. 64663/01, §§ 51-55, ECHR 2005-III). Having examined all the material submitted to it and the Government's submissions, the Court has not found any fact or argument capable of persuading it to reach a different conclusion in the present case.

27. There has accordingly been a violation of Article 1 of Protocol No. 1 and of Article 6 § 1 of the Convention.

B. Alleged violation of Article 1 of Protocol No. 1 to the Convention regarding the loss of tax benefits

28. The Court notes that the loss of tax benefits and the penalty imposed on the applicant amounted to an interference with her possessions. No issue arises as to the lawfulness or the legitimate aim of those measures (see paragraph 18 above). As for proportionality, the Court observes that, although the applicant was aware that the apartment was occupied by the

previous tenant, she was equally aware of public authorities' obligation to protect private owners from unlawful occupation. The Court notes that the applicant has shown a high degree of diligence, starting negotiations with the tenant before the purchase and offering him a sum of money to vacate the premises before the statutory time-limit for establishing her residence had expired. Those efforts being unsuccessful, she brought eviction proceedings, which lasted more than three years before she obtained an order for the tenant to vacate the premises. That order could not be enforced for almost five years owing to the legislative suspension of eviction proceedings, during which the applicant had no effective remedy to accelerate the proceedings or otherwise recover her possessions. The proceedings lasted eight years in total without being able to restore the applicant's proprietary rights. To take possession of her apartment, she had to pay the tenant EUR 4,000 on her own initiative.

29. In conclusion, the Court observes that the applicant not only suffered from the loss of tax benefits, which *per se* could have been considered proportionate, but also received a penalty for having been unable to establish her residence in the apartment within the time-limit prescribed by law, and, given the public authorities' prolonged inaction, chose to pay a not insignificant sum to the tenant to convince him to leave her apartment. These circumstances, taken as whole, placed a disproportionate burden on the applicant.

30. Accordingly, the Court finds that there has been a violation of Article 1 of Protocol No. 1.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. In respect of pecuniary damage, the applicant claimed a total amount of EUR 21,648.97 (comprising the sums of EUR 17,648.97 corresponding to the penalty and EUR 4,000 paid to the tenant to vacate the apartment). In respect of non-pecuniary damage, she claimed EUR 20,000. The applicant also claimed EUR 9,000 in respect of costs and expenses incurred before the Court.

32. The Government contested the claim as excessive.

33. The Court considers it reasonable to award the applicant the amount of EUR 21,648.97 in respect of pecuniary damage, corresponding to the penalty paid by the applicant as a consequence of the loss of tax benefits plus the amount paid to the tenant to vacate the apartment.

34. Moreover, ruling on an equitable basis, the Court awards EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

35. Lastly, the Court considers it reasonable to award the sum of EUR 2,000 for the costs and expenses incurred before the Court.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Dismisses* the Government's preliminary objections;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention and Article 6 § 1 of the Convention as regards the eviction proceedings;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention as regards the loss of tax benefits;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts
      (i) EUR 21,648.97 (twenty-one thousand six hundred and forty-eight euros and ninety-seven cents), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President