***TESTO INTEGRALE***

THIRD SECTION

# CASE OF CIUCCI v. ITALY

*(Application no. 68345/01)*

JUDGMENT

STRASBOURG

1 June 2006

*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 Ciucci v. Italy,**

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

Mr B.M. ZUPANČIČ, *President*,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE, *judges*

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 11 May 2006,

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

# PROCEDURE

1. The case originated in an application (no. 68345/01) 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 Fabio Ciucci ("the applicant"), on 10 April 2001.

2. The applicant was represented before the Court by Mr A. Carlesi, a lawyer practising in Livorno. 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. On 18 March 2004 the Court (First Section) declared the application admissible.

4. 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.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966 and lives in Livorno.

6. He is the owner of a flat in Livorno, which he had let to I.M.

7. In a registered letter of 20 February 1990, the applicant informed the tenant that he intended to terminate the lease on expiry of the term on 1 September 1990 and asked him to vacate the premises by that date.

8. In a writ served on the tenant on 22 September 1990, the applicant reiterated his intention to terminate the lease and summoned the tenant to appear before the Livorno Magistrate.

9. By a decision of 8 October 1990, which was made enforceable on 11 October 1990, the Livorno Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 March 1992.

10. On 9 April 1992, the applicant served notice on the tenant requiring him to vacate the premises.

11. On 28 April 1992, the applicant made a statutory declaration that he urgently required the premises as accommodation for himself.

12. On 30 May 1992, he informed the tenant that the order for possession would be enforced by a bailiff on 23 June 1992.

13. Between 23 June 1992 and 29 November 2001, the bailiff made nineteen attempts to recover possession. Each attempt proved unsuccessful, as the applicant was never granted the assistance of the police in enforcing the order for possession.

14. In the meanwhile, pursuant to Article 6 of Law No. 431 of 1998, on 15 July 1999, the tenant asked the Livorno Magistrate to postpone the enforcement proceedings. On 7 April 2000, the Livorno Magistrate set a fresh date for 24 November 2000.

15. On 9 July 2001, the tenant asked the Livorno Magistrate to postpone the enforcement proceedings.

16. On 20 July 2001, the Livorno Magistrate decided to provisionally suspend the enforcement and adjourned the hearing until 5 October 2001.

17. On 5 October 2001, the hearing was reported to 19 October 2001.

18. On 26 October 2001, the Livorno Magistrate ordered that the premises be vacated as soon as possible.

19. On 6 December 2001, the applicant recovered possession of the flat.

## II. RELEVANT DOMESTIC LAW

20. The relevant domestic law and practice is described in the Court's judgments in the cases of *Mascolo v. Italy*, (no. 68792/01, §§ 14-44, 16.12.2004) and *Lo Tufo v. Italy,* (no. 64663/01, §§ 16-48, 21.04.2005).

# THE LAW

## I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

### A. Non-exhaustion of the Pinto remedy

21. In their observations on the merits, the Government reiterated their objection on grounds of non-exhaustion of domestic remedies. They contested the conclusion of the Court in the *Mascolo* decision (*Mascolo v. Italy* (dec), no. 68792/01, 16 October 2003), which was also applied in the present case, and maintained that the Court of Cassation's judgment of 18 June 2002 proved that a remedy under the Pinto Act was also available in respect of eviction proceedings. The success of other applicants who had used that remedy showed that it was an effective one. In support of their submission, they relied on the above-mentioned judgment of 18 June 2002.

22. The Court notes that it has already dismissed the Government's objection concerning the existence of a domestic remedy in its admissibility decision of 18 March 2004.

It also points out that in the *Mascolo* case the Court noted that even for the Government the fact that the Pinto remedy was available for eviction proceedings didn't seem to be so obvious, as they had only raised that issue after the judgment of 18 June 2002. Moreover, as in the *Mascolo* case, in the present case the time-limit for introducing such a remedy expired on 18 April 2002.

23. Therefore, the Court confirms that in those circumstances the applicants were exempted from the obligation to exhaust remedies.

24. The Court considers that the Government based their objection on arguments that were not such as to call into question its decision on admissibility. Accordingly, the objection must be dismissed.

### B. Non-exhaustion of the remedy under Article 1591 of the Civil Code

25. In their observations on the merits, the Government argue that domestic remedies had not been exhausted on the grounds that the applicants had failed to seek compensation for damage before the national courts under Article 1591 of the Civil Code.

26. In so far as the Government's arguments have to be regarded as a preliminary objection, the Court notes that the objection was not raised, as it could have been, before the admissibility decision. That being the case, the Government are stopped from raising it.

27. This objection should accordingly be dismissed (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 44, ECHR 1999-II).

## II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 AND OF ARTICLE 6 § 1 OF THE CONVENTION

28. The applicant complained of his prolonged inability to recover possession of his flat, owing to the lack of police assistance. He alleged a violation of his right of property, as guaranteed by Article 1 of Protocol No. 1 to the Convention, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

29. The applicant also alleged a breach of Article 6 § 1 of the Convention, the relevant part of which provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

30. The Court has previously examined a number of cases raising issues similar to those in the present case and found a violation of Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention (see *Immobiliare Saffi*, cited above, §§ 46-75; *Lunari v. Italy*, no. 21463/93, §§ 34-46, 11 January 2001; *Palumbo v. Italy*, no. 15919/89, §§ 33-48, 30 November 2000).

31. The Court has examined the present case and finds that there are no facts or arguments from the Government which would lead to any different conclusion in this instance. It notes that the applicant had to wait approximately nine years and five months after the first attempt of the bailiff before being able to repossess the flat.

Consequently, there has been a violation of Article 1 of Protocol No. 1 and of Article 6 § 1 of the Convention in the present case.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

33. After the decision on admissibility the applicant's counsel did not submit any claim for just satisfaction within the time allowed, although in the letter sent to him on 25 March 2004 his attention had been drawn to Rule 60 of the Rules of Court, which provides that any claim for just

satisfaction under Article 41 of the Convention must be set out in the written observations on the merits. Accordingly, since the Court received no reply within the time prescribed in the letter accompanying the decision on admissibility, it considers that there is no reason to award any sum under Article 41 of the Convention (see *Capeau v. Belgium*, no. 42914/98, 13 January 2005, § 32).

## FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 1 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Vincent BERGER<br>Registrar | Boštjan M. ZUPANČIČ<br>President |