



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

FIRST SECTION

CASE OF UTZERI v. ITALY

(Application no. 10393/22)

JUDGMENT

STRASBOURG

11 January 2024

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

In the case of Utzeri v. Italy,

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

Péter Paczolay, *President*,

Gilberto Felici,

Raffaele Sabato, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 10393/22) 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 9 February 2022 by an Italian national, Ms Ileana Utzeri (“the applicant”), who was born in 1980, lives in Aprilia and was represented by Mr D. Romito, a lawyer practising in Bari;

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

the Government’s observations;

Having deliberated in private on 5 December 2023,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the non-enforcement of a decision awarding compensation for the excessive length of judicial proceedings under Law no. 89 of 24 March 2001, known as the “Pinto Act” (“Pinto” decision) issued by the Perugia Court of Appeal on 8 May 2017 (R.G. no. 518/2012).

2. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention of the non-enforcement of the above domestic decision in her favour.

RELEVANT LEGAL FRAMEWORK

3. The domestic law concerning the Pinto Act is set out in the *Cocchiarella v. Italy* judgment ([GC], no. 64886/01, §§ 23-31, ECHR 2006-V). The Pinto Act was subsequently amended in 2012 (Law-Decree no. 83 of 2012, converted into Law no. 134 of 7 August 2012) and in 2015 (section 1, paragraph 777, of Law no. 208 of 28 December 2015).

4. The relevant provisions of the Pinto Act, following the above amendments, are as follows:

Section 5 *sexies* (terms of payment)

“1. In order to receive the payment of the sums awarded pursuant to the present Act, the creditor shall issue a declaration [...] to the debtor authority, certifying that no sums have been paid in execution of the relevant domestic decision, indicating whether

enforcement proceedings have been instituted for the judgment debt, the sum that the authorities are still required to pay and the preferred method of payment pursuant to paragraph 9 of the present section. The creditor shall also submit the necessary documents required under the decrees indicated in paragraph 3.

...

3. A model declaration pursuant to paragraph 1 and the documents to be submitted to the debtor authority shall be determined by decrees of the Ministry of Economy and Finance, to be issued before 30 October 2016. The authorities shall publish the forms and documents referred to in the latter sentence on their institutional websites. ...

4. In the event of an absent, incomplete or irregular submission of the declaration or documentation referred to in the preceding paragraphs, the payment order may not be issued.

5. The authority shall make the payment within six months from the date on which the obligations provided for in the preceding paragraphs are fully discharged. The time-limit referred to in the preceding sentence shall not begin to run in the event of absent, incomplete or irregular submission of the declaration or documentation referred to in the preceding paragraphs.

...

9. The payment of the sums owed under the present Act is made crediting the sums to the creditors' current or payment accounts. Payments in cash and through bills of exchange are only possible for sums not exceeding 1,000 euros."

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 1

5. The Government contended that the applicant had failed to submit a declaration containing the necessary information for the authorities to proceed to the payment of the judgment debt, as well as supporting documents. They contended that such documents must be submitted in order to issue the payment of sums awarded by "Pinto" decisions, as required under Article 5 *sexies* of the Pinto Act (see paragraph 4 above).

6. The Court reiterates that the execution of a judgment given by any court must be regarded as an integral part of a "hearing" for the purposes of Article 6. It also refers to its case-law concerning the non-enforcement or delayed enforcement of final domestic judgments (see *Hornsby v. Greece*, no. 18357/91, § 40, *Reports of Judgments and Decisions* 1997-II).

7. The Court further notes that the decision in the present application ordered specific action to be taken. The Court therefore considers that the decision in question constitutes "possessions" within the meaning of Article 1 of Protocol No. 1.

8. The Court reiterates that a successful litigant may be required to undertake certain procedural steps in order to recover the judgment debt, be it during a voluntary execution of a judgment by the State or during its

enforcement by compulsory means (see *Shvedov v. Russia*, no. 69306/01, §§ 29-37, 20 October 2005). Accordingly, it is not unreasonable that the authorities request the applicant to produce additional documents, such as bank details, to allow or speed up the execution of a judgment (see, *mutatis mutandis*, *Kosmidis and Kosmidou v. Greece*, no. 32141/04, § 24, 8 November 2007; *Burdov v. Russia (no. 2)*, no. 33509/04, § 69, ECHR 2009; and *Arbačiauskienė v. Lithuania*, no. 2971/08, § 86, 1 March 2016). The creditor's uncooperative behaviour may be an obstacle to timely enforcement of a judgment, thus alleviating the authorities' responsibility for delays (see *Belayev v. Russia (dec.)*, no. 36020/02, 22 March 2011). In fact, while the primary responsibility for enforcement of a judgment against the State lies with the authorities, they cannot comply with their obligations without the applicants' minimal cooperation to that effect (see *Gadzhikhanov and Saukov v. Russia*, nos. 10511/08 and 5866/09, § 29, 31 January 2012, and *Kuzhelev and Others v. Russia*, nos. 64098/09 and 6 others, § 106, 15 October 2019).

9. The Court notes that the requirement for the creditor to submit the declaration indicating the relevant domestic decision, the sum that the authorities are still required to pay and the preferred method of payment as well as bank details is set out in Article 5 *sexies* of the Pinto Act (see paragraph 4 above). The Court takes note of the Government's statement that this option is meant to facilitate and accelerate the payment of judicial awards by the State.

10. The Court agrees with the Government that the obligation to send the declaration and supporting documents under Article 5 *sexies* of the Pinto Act constitutes a reasonable procedural step which is required of the creditor in order to obtain sums awarded by "Pinto" decisions. The failure of the creditor to comply with this obligation constitutes an obstacle to enforcement of the decision in his favour, for which the authorities cannot be held responsible (see *Gadzhikhanov and Saukov*, cited above, § 29).

11. However, in the present case, the Court notes that the applicant submitted evidence to the Court showing that she had filed the relevant declaration under Article 5 *sexies* of the Pinto Act. The Court therefore finds that the applicant complied with the requirement of cooperation and cannot therefore be blamed for the lack of execution of the "Pinto" decision.

12. Still, the Court will take into consideration the date of the applicant's submission of the declaration as the starting date of the non-enforcement period, that is 26 March 2018.

13. In the leading cases of *Gaglione and Others v. Italy* (nos. 45867/07 and others, 21 December 2010) and *Gagliano Giorgi v. Italy*, (no. 23563/07, 6 March 2012), the Court already found a violation in respect of the non-enforcement or delayed enforcement of "Pinto" decisions.

14. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard

to its case-law on the subject, the Court considers that in the instant case the authorities did not deploy all necessary efforts to enforce fully and in due time the decision in the applicant's favour, which remains unenforced.

15. These complaints are therefore admissible and disclose a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. 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.”

17. Regard being had to the documents in its possession and to its case law (see, in particular, *Gaglione and Others* and *Gagliano Giorgi*, both cited above), the Court considers it reasonable to award 200 euros (EUR) in respect of non-pecuniary damage and EUR 30 covering costs and expenses for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

18. The Court further notes that the respondent State has an outstanding obligation to enforce the decision which remains enforceable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that the respondent State shall ensure, by appropriate means, within three months, the enforcement of the pending domestic decision;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts:
 - (i) EUR 200 (two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 30 (thirty 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

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rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 11 January 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Péter Paczolay
President