



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

SECOND SECTION

Application no. 19440/10
Maria Carmela MANISCALCO
against Italy
lodged on 30 March 2010

STATEMENT OF FACTS

The applicant, Mrs Maria Carmela Maniscalco, is an Italian national, who was born in 1952 and lives in Reggio Emilia.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant worked in a subsidiary company of UNICREDIT Bank, until the date she resigned pending disciplinary proceedings following claims made by the bank in respect of misappropriation of funds by the applicant. The bank also instituted proceedings against the applicant and requested conservatory measures.

On 9 October 2009, the Bologna Labour Court (*Il Giudice del Lavoro*), having seen the documents submitted by the bank, considered that there existed both the requirements of a “presumption of sufficient legal basis” (*fumus boni iuris*) and that of “danger in delay” (*periculum in mora*): the applicant having resigned from work, she could easily dispose of or hide her possessions. It therefore ordered the seizure of the applicant’s assets up to a value of EUR 5 million (amounting to the damage claimed by the bank). The court fixed a date to hear the parties (following notification which occurred on 15 October 2009).

On 23 October 2009 the applicant challenged this decision. However, the order was confirmed on 9 December 2009. The court considered in detail the results obtaining from the investigation to that date, namely that most suspicious dealings (transfer of funds) had been signed by the applicant. Nevertheless, the court noted that the applicant had not transferred any funds to herself, but to other third parties, particularly Mr S. It considered that the bank’s contention that such funds had been transferred on the applicant’s own initiative was ill-founded. Nevertheless, it was clear that the applicant had misappropriated funds contrary to internal bank rules, abusing her power as director of the bank branch. It followed that there was a real risk that the bank would lose such money, and therefore the requisite of *fumus boni iuris* persisted together with that of *periculum in mora*. The order was therefore confirmed.

The court also considered that it could not accept the applicant's request to hear Mr S. (whose relation with the applicant was also of relevance, but that was not a matter to be assessed at that stage). It considered that although Mr S. was the beneficiary of the misappropriated funds he had an interest to be a party to the proceedings, but he had not been cited to intervene by any of the parties. Under Italian law a person who has an interest to be a party to the proceedings cannot be heard as a witness.

The applicant appealed (to the *Sezione per le controversie del Lavoro*), which after having heard the parties at a hearing on 10 February 2010 dismissed the applicant's appeal by a decision filed in the relevant registry on 24 February 2010. The court noted that the applicant had failed to disprove the findings referring to her involvement. Neither did the court accept her contention that only 20 % of her TFR (*spettanza di fine rapporto*), a lump sum awarded in compensation at the end of an employment relationship, could be seized. It rejected the argument in accordance with constant jurisprudence (*inter alia*, Cass. S.L. n.6214/2004), noting that the one case cited by the applicant (Cass. S.L. n.10629/2006) was a one-off.

The seizure of what appear to be all her assets remained in place.

On 29 July 2010 the Brescia Tribunal unblocked 80 % of her pension fund (*fondo pensione*). This decision was notified on 3 September 2010 and on 8 September 2010 the applicant requested the liquidation of the relevant amount. Such funds were only released six months later, namely on 8 March 2011, and in the meantime the court in the main proceedings had requested the parties to go through mediation with the aim of reaching a settlement. The latter not having been successful proceedings were continued and the rest of the seizure remained in force. In June 2013 the main proceedings were still pending at first instance before the Bologna Tribunal.

B. Relevant domestic law

Article 545 of the Italian Civil Code, regarding assets which cannot be seized, in so far as relevant, reads as follows:

“Sums such as salaries, allowances or benefits, including termination of employment sums, owed by private individuals to their employees, may be seized to the extent allowed by a tribunal or judge. Only one fifth of such sums may be seized for the purposes of taxes owed to the state, province or commune, and in the same measure for any other credit.

Seizure in respect of more than one of the abovementioned purposes jointly cannot exceed half the mentioned sums.

Without prejudice to any other limitation expressly provided for in specialized legal provisions.”

Article 1246 of the Civil Code provides for exceptions to what assets can be set-off, and includes “credits which cannot be seized”.

COMPLAINTS

The applicant complains about the extent of the seizure of her assets which did not allow her to live in dignity. She further complains that the proceedings ordering such confiscation were not adversarial.

QUESTIONS TO THE PARTIES

1. Did the extent of the seizure of the applicant's assets over the relevant duration constitute an interference with the applicant's rights under Article 8 § 1 of the Convention which was in accordance with the law and necessary in terms of Article 8 § 2?
2. Did the extent of the seizure of the applicant's assets over the relevant duration constitute an interference with the applicant's peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1? If so, was it in accordance with the law? Did it impose an excessive individual burden on the applicant?
3. Was Article 6 § 1 of the Convention applicable to the interim proceedings in the present case (see *Micallef v. Malta* [GC], no. 17056/06, § ECHR 2009)?
4. If so, did the applicant have a fair hearing in accordance with Article 6 § 1 of the Convention? In particular, was the principle of equality of arms and the right to an adversarial hearing respected?