CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 39767/98
by Eleonora and Vittoria CARRIERO
against Italy

The European Court of Human Rights (First Section), sitting on 10 April 2003 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr G. BONELLO,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr V. ZAGREBELSKY,
Mrs E. STEINER, *judges*,
and Mr S.NIELSEN, *Deputy Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 30 October 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants Eleonora Carriero and Vittoria Carriero are Italian nationals, born in 1932 and in 1940 respectively and living in Merine (Lecce). They are represented before the Court by Mr Marzo, a lawyer practising in Lecce. The respondent Government were represented by Mr F.Crisafulli, co-agent.

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

The applicants own two plots of land in the municipality of Sannicola, recorded on the cadastral register as folio no. 1, parcel no. 62 and no. 56. The former plot has been classified under the Town Planning Act of 20 March 1974 as a protected landscape ("*vincolo paesistico monumentale*") and consequently cannot be used for building. The second plot however has been classified as land that can be used for building tourist residences ("*turistico residenziale*").

On 11 December 1978, the applicants submitted a plan for the division of the plots ("*piano di lottizzazione*") to the Sannicola City Council.

The City Council did not reply.

On 26 April 1979 the applicants sent the City Council a warning letter ("*diffida*") by which they asked for a reply.

On 13 June 1979 the applicants applied to the Puglia Regional Administrative Court ("*T.A.R.*"), maintaining that the City Council had the duty to reply to their request of 11 December 1978.

By judgment of 15 April 1985, the Puglia Regional Administrative Court ordered the Sannicola City Council to reply to the applicants' request.

In the meantime, the Puglia Regional Council had adopted Law No. 56 of 31 May 1980 which regulated the use of lands.

On 3 August 1985 the Sannicola City Council rejected the applicants' plan for the division of the plots on the ground that it was not consistent with the town-planning legislation and, in particular, with the Town Planning Order of 1974 and with Law No. 56 of 31 May 1980.

The applicants did not appeal.

On 25 November 1985 the applicants applied to the Lecce District Court for compensation for damages as a result of the inertia by the Sannicola City Council in replying to their request. In particular, they alleged that if the City Council had replied before the entry into force of Law No. 56 of 31 May 1980, their request would have been granted. Furthermore, they requested the court to state that the plan they had submitted to the City Council was consistent with planning legislation in force at that time.

By judgment of 4 July 1991, the Lecce District Court declared the applicants' claim inadmissible. The court first observed that only the regional administrative courts were competent to state whether a plan concerning the division of land was consistent with the planning legislation; furthermore, it refused compensation stating that the applicants had not the right but a simple expectation to have their plan approved.

On 4 may 1995, the applicants appealed against the judgment to the Lecce Court of Appeal.

By a judgment of 26 January 1995, the Lecce Court Appeal rejected the appeal and upheld the impugned judgment.

The applicants appealed on points of law.

By judgment of 30 January 1997, filed with the registry on 2 June 1997, the Court of Cassation rejected the appeal.

COMPLAINTS

1. The applicants complain under Article 1 of Protocol No.1 about the decision of 3 August 1985 by which the Sannicola City Council refused their plan for the division of land. They allege that the refusal was due both to the inertia by the City Council in replying to their request of 11 December 1978 and to the fact that the City Council did not adopt the town-planning legislation provided by Law No. 56 of 31 May 1980.

2. They further complain under Article 6 of the Convention about the unfairness and the partial nature of the civil proceedings, insofar the domestic courts refused compensation for damages allegedly suffered as a result of the inertia by the City Council.

3. Invoking Article 14 of the Convention, the applicants claim that the enjoyment of the rights and freedoms set forth in the Convention was not secured.

THE LAW

1. Invoking Article 1 of Protocol No. 1 to the Convention the applicants complain that the refusal to accept their plan for the division of their land constituted a violation of their property rights.

Article 1 of Protocol No. 1 to the Convention, provides as follows:

> "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."

The Government first observe that the applicants have not exhausted domestic remedies, insofar they did not appeal against the refusal of 3 August 1985, which, furthermore, must be considered the final decision within the meaning of Article 35 § 1 of the Convention.

In fact, in the administrative proceedings the applicants only claimed a right to receive a reply by the local authorities and in the civil proceedings they applied for compensation for the delay. Thus, the Government maintain that the case must be declared inadmissible since it has been lodged out of time and, in any case, since the applicants did not exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention.

On the merits, the Government point out that the applicants' request of 11 December 1978 was rejected since it was not consistent with the town-planning legislation in force at that time. Furthermore, the Government contend that the inertia by the local authorities and the entry into force of the above law did not prevent the applicants from having their plan examined by the local authorities. In this respect, the Government recall that Contracting States enjoy a wide margin of appreciation in order to implement their town-planning policy.

The applicants contest the Government's submissions.

They allege that the Sannicola City Council did not adopt the town-planning legislation provided by Law No. 56 of 31 May 1980. For this reason, they were prevented from building on their plots of land.

The applicants submit that, if the Sannicola City Council had replied to their request within a reasonable time, they could have modified their plan before the entry into force of the above law and, then, able to build.

The Court must first examine whether the applicants have exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention.

In this respect, the Court notes that the decision of 3 August 1985, by which the Sannicola City Council refused the applicants' plan for the division of the plots, was not challenged by them before the competent administrative tribunals.

It follows that the applicants have not exhausted domestic remedies and that this part of the application must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. The applicants complain under Article 6 of the Convention about the unfairness of the civil proceedings, insofar domestic jurisdictions refused compensation for the damages allegedly suffered as a result of the inertia by the Sannicola City Council.

Article 6 of the Convention, insofar it is relevant, provides as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

The Court recalls that, according to Article 19 of the Convention, the duty of the Court is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (García Ruiz v. Spain [GC], nº 30544/96, § 28, ECHR 1999-I).

The Court considers that the reasons on which the national courts based their decisions in question does not disclose any appearance of arbitrariness and that nothing in the file suggests that the domestic proceedings were unfair and, thus, contrary to the requirements of Article 6 of the Convention.

The mere fact that the applicants are not satisfied with the decisions by the national courts does not make the proceedings unfair.

It follows that these complaints must be rejected as being manifestly ill founded within the meaning of Articles 35 §§ 3 and 4 of the Convention.

3. Invoking Article 14 of the Convention, the applicants claim that the enjoyment of the rights and freedoms set forth in the Convention was not secured.

Article 14 of the Convention provides as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Court recalls that Article 14 does not have an independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols.

However, the application of Article 14 does not presuppose a breach of one or more of such provisions and to this extent it is autonomous. For Article 14 to become applicable it suffices that the facts of a case fall within the ambit of another substantive provision of the Convention or its Protocols (see the Inze v. Austria judgment of 28 October 1987, Series A no. 126, p. 17, § 36).

Insofar Article 14 of the Convention relates to the complaint under Article 1 of Protocol No. 1 the Court notes that the latter has been rejected for non-exhaustion of domestic remedies. It follows that this complaint must be also rejected for the same reasons, pursuant to Article 35 §§ 1 and 3 of the Convention.

Insofar Article 14 of the Convention relates to the complaint under Article 6 of the Convention, the Court considers that the facts complained of by the applicants fall within the ambit of this provision, even if the respective complaint has been declared manifestly ill-founded.

For the purposes of Article 14 a difference of treatment is discriminatory if it "has no objective and reasonable justification", that is if it does not pursue a «legitimate aim» or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised". Moreover the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (Karlheinz Schmidt v. Germany judgment of 18 July 1994, Series A no. 291-B, p. 32, § 24).

The Court considers that nothing in the file shows that the above requirements were not satisfied in the instant case. It follows that this complaint is manifestly ill founded and must be rejected under Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President