CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF SCIACCA v. ITALY

(Application no. 50774/99)

JUDGMENT

STRASBOURG

11 January 2005

In the case of Sciacca v. Italy,

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

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr K. TRAJA,
Mr V. ZAGREBELSKY,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO,
Mrs L. MIJOVIĆ, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 7 December 2004,

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

PROCEDURE

1. The case originated in an application (no. 50774/99) 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, Mrs Carmela Sciacca ("the applicant"), on 1 June 1999.

2. The applicant was represented by Mr E.P. Reale, a lawyer practising in Syracuse. The Italian Government ("the Government") were represented by their Agent, Mr I.M. Braguglia, and their co-Agent, Mr F. Crisafulli.

3. The applicant alleged, in particular, that the publication of her photograph had infringed Article 8 of the Convention.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 4 September 2003, the Chamber declared the application partly admissible.

On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly-composed Fourth Section. Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1949 and lives in Syracuse.

7. She was a teacher at a private school in Lentini (Syracuse). The school was owned by a limited liability company, G., of which the applicant and three other teachers were members and Mr G. the manager.

8. In July 1998 Mrs C. lodged a criminal complaint with the Revenue Police (*Guardia di Finanza*) about irregularities in the management of the school's affairs. She stated that she was a *de facto* member of G.

9. The Syracuse public prosecutor's office opened an investigation in respect of the members and manager. On 20 July 1998 the Revenue Police searched the company's head office and the members' homes. At that time the applicant received official notification that she was under investigation.

On an unspecified date the public prosecutor's office ordered the applicant to be questioned and informed her that she and the other persons charged were suspected of committing extortion, fraud and forgery. On 12 August 1998 the Revenue Police questioned the applicant.

10. On 17 November 1998 the public prosecutor's office asked the investigating judge to issue an arrest warrant against the applicant and certain other persons on charges of criminal association, tax evasion and forgery of official documents.

On 28 November 1998 the investigating judge ordered Mrs Sciacca and the other persons charged to be placed under house arrest.

11. On 4 December 1998 the applicant was served with the judge's decision. Like anyone placed under house arrest, she avoided being remanded in custody. However, the Revenue Police compiled a file on her; photographs and fingerprints were included in it. On the same day the deputy public prosecutor responsible for the investigation and officers from the Revenue Police gave a press conference.

12. Two newspapers published articles about the investigation.

13. The first daily, *Giornale di Sicilia*, published two articles, on 5 and 6 December 1998. In the first one it referred to “alleged formal and substantive illegalities in the management of a private school”. After stating that the applicant and three others, who had been placed under house arrest, had been charged with very serious offences (criminal association, extortion, forgery, fraud and tax evasion), the newspaper indicated that other persons charged “were allegedly also” victims of acts of extortion committed by the four people who had been arrested. After outlining the measures taken by the investigators, the newspaper stated that the four people who had been placed under house arrest “were allegedly” the *de facto* managers of the school. The newspaper went on to explain what the

extortion had consisted of. It added that “unofficial accounts had been found at the home of the four people concerned” and that “the investigators had found that the pupils enrolled” in two classes “were in fact the husbands and cousins of the women who had been arrested”. The only passage reporting the investigators' statements concerned someone other than the applicant.

14. The other article – published on the following day together with a photograph of the four arrested women – was similar in content to the first one.

15. On 5 December 1998 the second daily, *La Sicilia*, published on the front page a photograph (identity format) of the four people who had been placed under house arrest and stated that they “had set up a bogus school”. The contents of the article were comparable to those of the articles published in the first daily.

16. The applicant's photograph, together with that of the three other women who had been arrested, was published four times on 5 and 6 December 1998. Each time it was an identity photograph that had been taken by the Revenue Police when the file was compiled, at the time of the applicant's arrest, and released by them to the press.

17. On 12 December 1998 the applicant challenged the order placing her under house arrest in the *tribunale della libertà* (a court with jurisdiction to examine preventive measures) of Catania.

On 28 December 1998 the court ordered the applicant to be released on the ground that it was no longer necessary for the purposes of the investigation to keep her under house arrest.

18. On 1 March 1999 the public prosecutor's office requested the applicant to be committed for trial. The case was listed for hearing before the investigating judge on 26 May 1999. However, the applicant waived her right to that phase and asked to be tried by the court in accordance with a shortened form of procedure.

The case was therefore set down for hearing before the Syracuse Court on 6 June 2000.

19. On 8 March 2002 the case ended with the special procedure for imposition of the penalty agreed between the applicant and the prosecution (Article 444 of the Code of Criminal Procedure – “the CCP” (*applicazione della pena su richiesta delle parti*)), namely, one year and ten months' imprisonment and a fine of 300 euros.

II. RELEVANT DOMESTIC LAW

20. The parties did not provide the Court with any indication as to possible legislation governing the photographing of persons charged or arrested and placed under house arrest without being imprisoned and the release of such photographs to the press.

Presidential Decree no. 431 of 29 April 1976 sets forth the implementing regulations in respect of Law no. 354 of 26 July 1975 on the administration of prisons.

With regard to persons charged who have been arrested and imprisoned, paragraphs 1 and 2 of Regulation 26 of the implementing regulations provide as follows:

> "A personal file shall be compiled on anyone detained or confined as soon as he or she is imprisoned. The file shall follow the person concerned whenever he or she is transferred and shall be stored in the archives of the prison that releases him or her. The ministry shall be informed that the file is being stored.
>
> The references of this personal file shall include civil-status particulars, fingerprints, photographs and any other item necessary for the exact identification of the person."

It is clear from paragraph 5 of that regulation that the compilation of a personal file also concerns persons placed in pre-trial detention.

21. Law no. 121 of 1 April 1981 concerns the new rules relating to public safety. The relevant provisions of this Law read as follows:

Section 6 – Coordination and direction of the police forces

> "With a view to implementing the guidelines issued by the Minister of the Interior on exercising the functions of coordination and unitary direction in respect of order and public safety, the Department of Public Safety shall carry out the following tasks:
>
> (a) classification, analysis and assessment of information and data that have to be provided by the police forces as well for the prevention of disorder and the protection of public safety and for the prevention and punishment of crime, and distribution to the operational services of the above-mentioned police forces;
>
> ... "

Section 7 – Nature and quantity of the data and information collected

> "The information and data referred to in section 6, paragraph (a), must relate to information taken either from documents which are stored in one way or another by public authorities or departments or from judgments or decisions by a judicial authority or from documents relating to the criminal investigation and available in accordance with Article 165 *ter* of the Code of Criminal Procedure or from police inquiries.
>
> In all cases it is forbidden to gather information and data on a citizen solely on the ground of his or her race, religion, political opinions or adherence to the principles of a trade union, cooperative, charitable or cultural movement or on account of any lawful activity carried on by him or her as a member of an organisation lawfully engaged in one of the above-mentioned spheres.
>
> ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

22. The applicant complained that the release of her photograph at the press conference organised by the public prosecutor's office and the Revenue Police had infringed her right to respect for her private life. She relied on Article 8 of the Convention, which is worded as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

23. The applicant's original complaint also concerned the divulgation of information about her during the press conference (part of the complaint which the Court declared inadmissible on 4 September 2003 – paragraph 5 above). The Government had submitted observations without making a distinction between the information divulged and the release of the photograph. Those observations may be summarised as follows, even if they do not specifically concern the release of the photograph.

The Government observed that the applicant's right to respect for her private life was limited by the public's right to be informed and by the aim of preventing further criminal offences. They pointed out that Article 10 of the Convention guaranteed the freedom of opinion and of the press. The only limit on those freedoms was where the accused underwent "trial by newspaper" (see The Sunday Times *v. the United Kingdom (no. 1)*, judgment of 26 April 1979, Series A no. 30, pp. 38-39, § 63). As regards the second aspect, the Government submitted that in the present case account had to be taken of the nature of the offences of which the applicant had been accused – and subsequently convicted – offences which related, *inter alia*, to the management of a school, and harmed the interests of the community. Accordingly, the facts which had given rise to the prosecution – and did not strictly concern the applicant's private life – were matters that the community had an interest in knowing.

In conclusion, in the Government's submission there had not been a violation of the provision in question.

24. The applicant contested the Government's submission. She argued that the interference had been neither in accordance with the law nor necessary for one of the aims referred to in paragraph 2 of Article 8. Indeed, as the public had been unaware of the offence they had not had any interest

in learning of it or knowing how the investigation was progressing. In any event, handing the press her photograph, which had been taken from her file, had not in any way been justified in her view. The claim that there had been no formal finding of guilt by a judicial authority had been contradicted by the contents of the articles written after the press conference.

25. With regard to the elements disclosed at the press conference, the applicant denied that the public had an interest in learning of them, and asserted that they were private. Despite the serious nature of the offences, the information relating to the criminal proceedings – and above all the photograph taken by the investigators at the time of the arrest – should have remained secret. The applicant pointed out to the Court that the Government had not given any explanation regarding the release of the photograph to the press**.**

26. The Court notes that the Government have not denied that the published photograph had been taken when the file was compiled, at the time of the applicant's arrest, and handed to the press by the Revenue Police.

27. The Court has already examined the question of the publication of photographs of public figures (see *Von Hannover v. Germany*, no. 59320/00, § 50, ECHR 2004-VI) or politicians (see *Schüssel v. Austria* (dec.), no. 42409/98, 21 February 2002). After concluding that the publication of photographs fell within the scope of private life, it examined the question of the respondent State's compliance with the positive obligations incumbent on it when the publication was not the result of action or co-operation on the part of State bodies.

28. The present case differs from previous ones in that the applicant was not someone who featured in a public context (public figure or politician) but the subject of criminal proceedings. Furthermore, the published photograph, which had been taken for the purposes of an official file, had been given to the press by the Revenue Police (see paragraphs 16 and 26 above).

That being so, in accordance with its case-law the Court must determine whether the respondent State complied with its obligation not to interfere with the applicant's right to respect for her private life. It must verify whether there has been an interference with that right in the present case and, if so, whether that interference satisfied the conditions laid down in the second paragraph of Article 8: was it “in accordance with the law”, did it pursue one or more legitimate aims under paragraph 2 of that Article and was it “necessary in a democratic society” to achieve them?

29. Regarding whether there has been an interference, the Court reiterates that the concept of private life includes elements relating to a person's right to their image and that the publication of a photograph falls within the scope of private life (see *Von Hannover*, cited above, §§ 50-53). It has also given guidelines regarding the scope of private life and found that there is “a zone of interaction of a person with others, even in a public

context, which may fall within the scope of 'private life' ” (ibid.). In the instant case the applicant's status as an “ordinary person” enlarges the zone of interaction which may fall within the scope of private life, and the fact that the applicant was the subject of criminal proceedings cannot curtail the scope of such protection.

Accordingly, the Court concludes that there has been interference.

30. As regards compliance with the condition that the interference must be “in accordance with the law”, the Court notes that the applicant argued that this condition had not been complied with and that her submission was not disputed by the Government.

According to the information available to it, the Court considers that the subject matter was not governed by a “law” that satisfied the criteria laid down by the Court's case-law, but rather by practice. The Court also notes that the exception to the secrecy rule regarding measures taken during preliminary investigations, provided for in Article 329 § 2 of the CCP, concerns only cases where an investigative document is published for the purposes of continuing the investigation. That was not the case here, however.

The Court therefore concludes that the interference has not been shown to have been in accordance with the law.

That finding is sufficient for the Court to conclude that there has been a breach of Article 8. Accordingly, it is not necessary to determine whether the interference in question pursued a “legitimate aim” or was “necessary in a democratic society” to achieve that aim (see *M. v. the Netherlands*, no. 39339/97, § 46, 8 April 2003).

31. In conclusion, there has been a violation of Article 8 of the Convention.

II. 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.”

A. Damage

33. The applicant claimed 25,000 euros (EUR) for pecuniary damage. She supported her claim by arguing that the publication of her photograph had prevented her from finding work and that the compensation should offset that loss of opportunity. She also claimed EUR 15,000 for non-

pecuniary damage.

34. The Government did not comment.

35. The Court notes that the applicant has neither proved the existence of any pecuniary damage nor, *a fortiori*, any causal connection with the alleged violation. Accordingly, this claim must be rejected.

In respect of non-pecuniary damage, the Court considers that, in the circumstances of the present case, the finding of a violation constitutes in itself sufficient just satisfaction.

B. Costs and expenses

36. The applicant claimed EUR 14,932.80 for costs and expenses. That amount included value-added tax and the contribution to the lawyers' insurance fund.

37. The Government did not comment.

38. The Court reiterates that costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and are also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see *Van de Hurk v. the Netherlands*, judgment of 19 April 1994, Series A no. 288, p. 21, § 66).

The Court notes that the violation found concerns only one complaint among others that have been declared inadmissible.

39. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. In the instant case, having regard to the information before it and to the above-mentioned criteria, the Court considers the amount of EUR 3,500 to be reasonable for the proceedings before the Court and awards it to the applicant.

C. Default interest

40. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 of the Convention;

2. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in French, and notified in writing on 11 January 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President