

COMPLETE TRANSLATION OF DOCUMENT CT 16061/2022

CT 16061/2022 (Attorney Valenzano)

Attorney General of the State

Court of Rome – Section III Civil, RGE: 80036/2022, G.E. Dr. LIVERANI, Hearing: May 25, 2022.

Appearance

For the **Presidency of the Council of Ministries**, in the person of the *pro tempore* President of the Council (fiscal code 80188230587), *ope legis* represented and defended by the Attorney General of the State (fiscal code 80224030587), for the reception of documents fax 06/96514000, certified email ags.rm@mailcert.avvocaturastato.it (*sic*) in which offices established legal residence in Via dei Portoghesi n.12, Rome
third called

AGAINST

Miss **LETIZIA ROSSANA**, represented and defended by lawyer Vincenzo Perticarò
executed debtor

AND

CASTEL GIUBILEO REAL ESTATE srl, represented by the legal representant *pro tempore*
proceeding creditor

FACT

Mis LETIZI ROSSANA submitted an opposition to the execution ex art. 615 of the civil procedure code (c.d.c.) to an eviction for arrears requested by the proceeding creditor CASTEL GIUBILEO REAL ESTATE srl, on the basis of a cautelary provision of the High Commissioner for Human Rights, issued in accordance with art.5 of the Optional Protocol to the Covenant on Economic, Social and Cultural Rights signed in the frame of the UN on December 10th 2008 and ratified by Italy with Law 152/2014.

In detail, the UN High Commissioner, while awaiting the decision of the Committee on Economic, Social and Cultural rights on the “communication”/complaint n. 256/2022 for a violation of those right by the Italian state presented by miss LETIZI ROSSANA, and awaiting the observations of the Italian state on the measures taken to guarantee an adequate accommodation for miss Letizi, requested to the Italian state, with a note issued in February 11th, 2022, to suspend the eviction or to guarantee adequate housing to the petitioner.

In light of the decision of the High Commissioner, this Judge of the Execution issued a procedure on February 17th, 2022, to suspend *inaudita altera parte* the executive procedure of eviction, ordering to notify the appeal and the decree of suspension to the Presidency of Council of Ministries to communicate the measures adopted and requested by the UN High Commissioner.

That being stated in fact, the Presidency of the Council of Ministry turns in and observes the following:

Concerning this issue, it is presented here, translated from English, the answer that the Interministerial Commission on Human Rights, based in the Italian Ministry of External Affairs and International Cooperation, submitted to the UN High Commissioner on April 11th, 2022, as a response to the communication presented by miss LETIZIA ROSSANA:

(omissis: translation into Italian of the State party's observations for case 256/2022, submitted to CESCR on April 11th, 2022)

As is evident, Italy's response to the informative request of the UN High Commissioner was produced and stated the inadmissibility of the communication/complaint to the Committee presented by LETIZI for non exhaustion of domestic remedies, as prescribed by art.3 comma 2 lett a) of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; moreover, from the response of the Ministry of Foreign Affairs it appears that miss LETIZI was offered several alternative accommodation but they were all refused.

For these reasons, the executive eviction must be resumed in obedience to the executive order and according to the norms of the civil procedure code, considering the following principles:

1) the resolutions of the High Commissioner and of the Committee on Economic Social and Cultural Rights are not binding for the State party, according to articles 7 and 9 of the Optional Protocol, and do not have the juridical value to the point of influencing internal juridical procedures;

2) the High Commissioner's request to suspend the execution of the eviction was issued to the State-government/State administration, thus, the Judge of the Execution has no jurisdiction, according to art. 37 c.p.c., regarding the request of suspension of the execution, since the authority to suspend the execution of the eviction would at the most belong to the State-government/administration, with a disposition that would have the force of law, and not to the Judge, that, according to art. 101 c.p.c., is only subject to the law, thus is required to enforce the executive order on the basis of the norms of the civil procedure code;

3) the application of miss LETIZI ROSSANA to the Committee appears inadmissible, given that, according to artt. 3 and 10 of the Optional Protocol, a communication is admissible only if all the domestic remedies have been exhausted. In the particular case, all domestic remedies have not been exhausted, as is evident in the appeal for the opposition to the execution ex art.615 c.p.c., in which it is said that the validation of the execution was issued erroneously considering that the person ordered (of eviction) did not appear (to the hearing), while in fact this person had appeared and opposed to the validation (of the eviction); in this situation, miss LETIZI would have had to lodge an appeal according to the law of the Court of Cassation n. 14625/2017, for which *“the order to validate an eviction, if erroneously issued despite the opposition of the person under eviction, assumes a decisory nature and a substantial character of a sentence, thus it is possible to oppose through an appeal; with such an act, the person ordered (of eviction) can request relief from the time limit (or.: rimessione in termini), to pursue the defense denied to him in the first grade, notwithstanding that the judge of the burden shall decide on the merit of the controversy, given that the omission of the change of procedure on the basis of art. 667 c.p.c., does not include any of the*

possibilities strictly contemplated by artt. 343 and 354 c.p.c., to relief the trial to the first judge”; the lack of application of all the domestic remedies that were available, thus, determines the inadmissibility of the submission to the Committee;

4) the guarantee of the right to adequate housing cannot compress to the point of annihilating the right to property, likewise on a Constitutional level, ex art. 42 of the Italian Constitution.

FOR THESE REASONS

The Presidency of the Council of Ministries, *ut supra* represented and defended, so

CONCLUDES

May the honorable judge of the execution in charge reject the opposition ex art. 615 civil procedure code proposed by LETIZIA ROSSANNA as inadmissible for lack of jurisdiction of the Judge in charge, ex art. 37 civil procedure code, founded in an absolute reserve of administrative attribution by the State government/administration on the matter.

Attached:

1) Response of the Interministerial Committee on Human Rights located in the Ministry of External Affairs and International Cooperation, submitted in April 11th, 2022 to the UN Committee on Economic, Social and Cultural Rights following the claim forwarded by LETIZI ROSSANA.

Rome, May 24th, 2022

Emanuele VALENZANO
Attorney of the State

(digital signature)