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

FIRST SECTION

DECISION

Application no. 40761/19
Joseph BARTOLO
against Malta

The European Court of Human Rights (First Section), sitting on 7 September 2021 as a Chamber composed of:

Ksenija Turković, *President,*
Krzysztof Wojtyczek,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato,
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to the above application lodged on 22 July 2019,

Having regard to the decision to give notice to the Maltese Government ("the Government") of the complaint under Article 7 of the Convention (in relation to Regulations 4 and 11 of Subsidiary Legislation 437.101) and to declare the remainder of the application inadmissible,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Joseph Bartolo, is a Maltese national, who was born in 1950 and lives in Marsa. He was represented before the Court by Dr J. Brincat and Dr T. A. Abela, lawyers practising in Marsa, Malta.

2. The Government were represented by their Agents, Dr C. Soler, State Advocate, and Dr J. Vella, Advocate at the Office of the State Advocate.

THE CIRCUMSTANCES OF THE CASE

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

A. Criminal proceedings

4. On 6 November 2014 the Court of Magistrates as a court of criminal judicature, and on appeal on 18 February 2016 the Criminal Court of Appeal, confirmed the applicant's guilt for, *inter alia*, failing to identify and register animals and declare their movements (Section 35 (1) (c) (iii) of The Veterinary Services Act, Chapter 437 of the Laws of Malta); failing to electronically identify dogs (Regulations 4 and 11 (1) of Subsidiary Legislation 437.101); and causing unnecessary pain, suffering or distress to animals and failing to take care of their health and welfare (Section 8 (2) and (3) of the Animal Welfare Act, Chapter 439 of the Laws of Malta) (in relation to his horses), together with being a recidivist. He was fined 7,000 euro (EUR) *in toto*.

5. During the criminal proceedings the applicant raised, *inter alia*, the issues: a) that the failure to fulfil the obligations under Section 35 (1) of the Veterinary Services Act did not constitute an offence in the absence of further regulations which had to be made by the Minister (as provided in Section 35 (2) of the Act); b) a similar argument was raised in connection with Section 8 of the Animal Welfare Act together with the claim that some of his animals were healthy, which meant that he had fulfilled his obligation under the law; c) that Section 7 of the Veterinary Services Act which gave the Minister the power to provide rules establishing systems for the identification and registration of animals did not give the Minister the authority to create offences and punishments.

6. Both courts dismissed his complaints. In particular, in relation to his third argument, the Court of Magistrates noted that the Veterinary Services Act under which the Regulations (4 and 11) were made, provided that the Minister had the power to make regulations, and therefore those regulations were made according to Section 7 of the principal Act. The Court of Appeal, refrained from deciding on the validity of the Regulations, considering itself not to be the competent court for such matter, its role being simply to apply the laws in place.

B. Constitutional redress proceedings

7. In 2016 the applicant instituted constitutional redress proceedings raising the same above-mentioned complaints.

8. By a judgment of 25 April 2018 the Civil Court (First Hall) in its constitutional competence rejected the applicant's complaints. In relation to

the complaint concerning Section 7 of the of the Veterinary Services Act (the basis for the enactment of the Regulations, *via* Subsidiary Legislation 437.101), it noted that it was logical that the reasonable and correct interpretation of that provision was that when the legislator accorded the Minister the power to make regulations, it was according to him a wide power to make regulations about every aspect related to the system of identification and registration of animals, and not only part thereof. It was for that reason that the wording of Section 7 of the Veterinary Services Act, was wide and generic to incorporate all necessary regulation in this regard, including therefore offences and penalties for those who did not observe the prescribed rules, as in fact happened. Therefore, there was nothing reprehensible in the power as exercised by the Minister concerned.

9. On appeal by the applicant, on 31 January 2019 the Constitutional Court rejected his claims confirming the previous judgments.

10. As to Section 7 of the Veterinary Services Act the Constitutional Court considered that the wording of Section 7 was wide and generic enough to encompass the power of the Minister to make any necessary regulations, including penalties for the non-observance of such regulations. It considered that it would be illogical if the Minister could provide for the obligations but not for the consequences arising from the breach of those regulations. Further, once the power to make penalties was not explicitly excluded and once the provision - worded in a wide sense - gave such power, it would not be licit to diminish the power given to the Minister by the law.

RELEVANT DOMESTIC LAW

11. Section 7 of the Veterinary Services Act, reads as follows:

> "(1) The Minister may prescribe rules establishing systems for the identification and registration of animals."

12. By means of Legal Notice 199 of 2011 Subsidiary Legislation 437.101 came into force. The first paragraph of the Legal Notice reads as follows:

> "In exercise of the powers conferred by Section 7 and 57 (1) of the Veterinary Services Act, the Minister for Resources and Rural Affairs, on the advice of the Council for Animal Welfare, had made the following regulations."

13. Regulation 4 regarding electronic identification and Regulation 11 regarding offences and penalties, of Subsidiary Legislation 437.101, read as follows:

> "4. Any person in possession of a dog in terms of these regulations has to electronically identify the dog by the 30th April, 2012."
>
> (...)

"11. (1) Any person in possession of a dog who fails to electronically identify such a dog with the Department in terms of these regulations, or any person or entity submitting incorrect, incomplete or false information in the registration form, shall be liable to a fine (*multa*) of three hundred euro (€300).

(2) In the event that an electronically identified dog fails to provide a reading *intrascapulae* of the said microchip, the owner or any person in possession of the dog is liable to a fine (*multa*) of five hundred euro (€500), unless it is proved by the owner or person in possession of the dog, that the microchip is still located within some other part of the dog.

(3) Any veterinarians authorised to carry out microchipping of dogs under regulation 5(5) shall be liable to a fine (*multa*) of five hundred euro (€500) if it is proved that the veterinarian has intentionally provided incorrect data regarding the registration of the dogs."

14. Article 11 of the Criminal Code reads as follows:

"(1) Where it is not otherwise specifically provided, the maximum of a fine (*multa*) is one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) and the minimum is twenty-three euro and twenty-nine cents (23.29).

(2) Where the maximum of a fine (*multa*) prescribed in this Code or in any other law is less than twenty-three euro and twenty-nine cents (23.29), the maximum shall be twenty-three euro and twenty-nine cents (23.29) and the minimum shall be eleven euro and sixty-five cents (11.65).

(3) In default of payment of a fine (*multa*) within the period prescribed in article 14, such fine (*multa*) shall be converted into imprisonment at the rate of one day for every thirty-five euro (35) or part thereof:

Provided that in no case (save as provided in article 17(g) and in article 29(1)) shall imprisonment in substitution of a fine (*multa*) exceed six months if the fine is not higher than seven thousand euro (7,000), one year if the fine is not higher than thirty thousand euro (30,000), eighteen months if the fine is not higher than eighty thousand euro (80,000) and two years if it is higher than eighty thousand euro (80,000)."

COMPLAINT

15. The applicant complained under Article 7 of the Convention that he had been found guilty of an offence which had had no legitimate legal basis under domestic law.

THE LAW

16. The applicant complained that he had been found guilty under Regulations 4 and 11 (1) of Subsidiary Legislation 437.101 which had had no legitimate legal basis under domestic law - as the Minister had had no power to enact such legislation - contrary to that provided in Article 7 of the Convention, which reads as follows:

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international

law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

17. As of the entry into force of Protocol No. 15 to the Convention, on 1 August 2021[1], Article 35 § 3 (b) of the Convention, reads as follows:

"The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits."

I. THE PARTIES' SUBMISSIONS CONCERNING A SIGNIFICANT DISADVANTAGE

18. The Government submitted that the applicant had not suffered a significant disadvantage, and that all relevant criteria had been satisfied in the present case.

19. Indeed, the minimum level of severity threshold had not been reached, as the maximum penalty the applicant could be fined for the offence at issue (failing to electronically identify dogs (Regulations 4 and 11 (1) of Subsidiary Legislation 437.101)) was EUR 300 which could not be considered significant and nothing suggested that it had had an impact on the applicant's life. That fine could not be converted to a prison term of six-months, contrary to the applicant's allegation which clearly referred to his total fine of EUR 7,000 (in relation to all the offences with which he had been found guilty).

20. As to the offence at issue, while it did amount to a criminal conviction, at the same time the applicant had been found guilty of more serious offences, thus the minor offence complained of was of little consequence and had had absolutely no impact on his life. In the Government's view the nature of the applicant's claims was not serious enough to require an examination thereof. Moreover, they had already been examined by the domestic courts.

21. The applicant considered that he had suffered a significant disadvantage especially given his age. He submitted that according to the Criminal Code (see paragraph 14 above) failing to pay the fine would result in a conversion to six months' imprisonment.

[1] See Article 8 § 4 of Protocol No. 15 and paragraph 24 of the Explanatory Report to Protocol No. 15.

II. THE COURT'S ASSESSMENT

22. Inspired by the general principle *de minimis non curat praetor*, the criterion of no significant disadvantage hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case. The severity of a violation should be assessed taking account of both the applicant's subjective perceptions and what is objectively at stake in a particular case (see *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010). Thus, the absence of any such disadvantage can be based on criteria such as the financial impact of the matter in dispute or the importance of the case for the applicant (see *Adrian Mihai Ionescu v. Romania* (dec.) no. 36659/04, § 34, 1 June 2010; *Rinck v. France* (dec.), no. 18774/09, 19 October 2010; and *Kiousi v. Greece* (dec.), no. 52036/09, 20 September 2011). Moreover, a violation of the Convention may concern important questions of principle and thus cause a significant disadvantage without affecting pecuniary interests (see *Korolev* (dec.), cited above, and *Borg and Vella v. Malta* (dec.), no. 14501/12, 3 February 2015). However, even should the Court find that the applicant has suffered no significant disadvantage, it may not declare an application inadmissible if respect for human rights, as defined in the Convention and the Protocols thereto, requires an examination on the merits, or (prior to the entry into force of Protocol No. 15) if the matter has not been "duly considered" by a domestic tribunal (see *Juhas Đurić v. Serbia*, no. 48155/06, § 55, 7 June 2011). Following the entry into force of Protocol No. 15, on 1 August 2021 (see paragraph 17 above), the latter criterion is no longer required, and the Court may declare an application inadmissible on the ground of non-significant disadvantage, even if it has not been duly considered by a domestic tribunal.

23. Turning to the circumstances of the present case, the Court observes that it is not in dispute that the offence of failing to electronically identify dogs, with which the applicant was charged and of which he was found guilty, was classified as a criminal offence in domestic law and therefore that Article 7 is applicable (see *Žaja v. Croatia*, no. 37462/09, § 86, 4 October 2016). Indeed the maximum penalty consisted of a fine (*multa*) of EUR 300, which could have been converted into a prison term of less than nine days (see paragraph 14 above) had it remained unpaid.

24. The Court observes that as far as insignificant financial impact was concerned, the Court has thus far found a lack of "significant disadvantage" in many cases, under various provisions, where the amount in question was equal or inferior to roughly EUR 500 (see for example, see *Adrian Mihai Ionescu*; *Korolev*; *Rinck*; and *Kiousi*, all cited above, as well as, *inter alia*, *Burov v. Moldova* (dec.,), no. 38875/03, 14 June 2011; *Fernandez v. France*

(dec.), no. 65421/10, 17 January 2012; *Bazelyuk v. Ukraine* (dec.), no. 489275/05, 27 March 2012; and *Gururyan v. Armenia* (dec.), no. 11456/05, 24 January 2012). In the present case it is unclear how much of the global EUR 7,000 fine (in relation to all the offences of which the applicant was convicted), was attributed to the offence at issue, but it is certain that it could not be more than EUR 300 and thus falls squarely within this category.

25. As to the applicant's personal circumstances, he has not claimed that the financial loss incurred as a result of the fine in relation to this offence was excessive given his means (see, *a contrario*, *Pantalon v. Croatia,* no. 2953/14, § 35-36; 19 November 2020). Nor has he claimed that the conviction for such an offence had an impact on his job or on his source of income (see, *a contrario*, *Antia and Khupenia v. Georgia,* no. 7523/10, § 31, 18 June 2020, and *Rola v. Slovenia,* nos. 12096/14 and 39335/16, § 43, 4 June 2019). The only argument raised by the applicant was his age, but the mere fact that he was around sixty-five years of age at the time when he was handed down the fine cannot, without any further explanation, suffice to determine that he suffered a significant disadvantage.

26. The Court further notes that the applicant has not claimed that the situation concerned an important question of principle for him (see, *a contrario*, *Giuran v. Romania*, no. 24360/04, § 17-25, ECHR 2011 (extracts) where the proceedings complained of concerned the applicant's right to respect for his possessions and for his home; or *Diacenco v. Romania,* no. 124/04, § 46, 7 February 2012 concerning the applicant's presumption of innocence). Nor does it appear that the issue of whether he had been fined unlawfully (in this case without a valid legal basis), was in itself a question of principle given his professional activities, if any (see, *a contrario*, *Konstantin Stefanov v. Bulgaria*, no. 35399/05, § 46, 27 October 2015).

27. Further, it is true that the guarantee enshrined in Article 7, which is an essential element of the rule of law, occupies a prominent place in the Convention system of protection, as is underlined by the fact that no derogation from it is permissible under Article 15 in time of war or other public emergency (see *Del Río Prada v. Spain* [GC], no. 42750/09, § 77, ECHR 2013, and *Vasiliauskas v. Lithuania* [GC], no. 35343/05, § 153, ECHR 2015), and that in the present case the impugned Regulations are still in place (see, *a contrario, Boelens and Others vs. Belgium* (dec.), nos. 20007/00 and 2 others, 11 September 2012). However, the Court observes that in rejecting objections of non-significant disadvantage in Article 7 cases, it has done so on the basis of the disadvantage caused to the applicants, and it was never called to do so on the basis of the importance of this provision for the respect of human rights (see the case-law cited at paragraph 25 above).

28. Bearing in mind the above, and the subject matter of the offence, namely the electronic identification of dogs, as well as the minor financial impact of the a fine at issue, and the fact that the applicant has not claimed to have suffered any period of detention in consequence (compare and contrast the Court's approach to this objection in the context of Article 5, in for example, *Zelčs v. Latvia*, no. 65367/16, § 44, 20 February 2020, and *Čamans and Timofejeva v. Latvia*, no. 42906/12, §§ 80-81, 28 April 2016) the Court is of the view that in the specific circumstances of the present case the complaint does not concern an important question of principle, which might justify examining it any further, nor does respect for human rights require such an examination.

29. The conditions of this inadmissibility criterion having therefore been satisfied, the Court finds that this complaint must be declared inadmissible under Article 35 §§ 3 (b) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 October 2021.

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Liv Tigerstedt
Deputy Registrar

Ksenija Turković
President