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

FIRST SECTION

DECISION

Application no. 62786/13
Fabio BUGO
against Italy

The European Court of Human Rights (First Section), sitting on 7 May 2025 as a Committee composed of:

Erik Wennerström*, President*,
Raffaele Sabato,
Artūrs Kučs*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 62786/13) 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") on 24 September 2013 by an Italian national, Mr Fabio Bugo ("the applicant"), who was born in 1959, lives in Rome and was represented by Mr F. Pisani, a lawyer practising in Rome;

the decision to give notice of the complaint concerning Article 6 § 1 of the Convention to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the use of evidence unlawfully obtained by the police in proceedings before the Court of Auditors.

2. On 29 May 2002, in the context of a search during an anti-drug operation, the police found some drugs and around 170,000 euros (EUR) in the applicant's apartment.

3. On that occasion the applicant, who worked at the State Mint and Polygraph Institute (*Ufficio Poligrafico e Zecca dello Stato*), denied any

involvement in smuggling of drugs and declared that the money came from earnings from the sale of revenue stamps he had stolen from his workplace.

4. Following the abovementioned self-incriminating declarations, the applicant was charged with embezzlement.

5. On 27 November 2006 the applicant was acquitted by the Rome District Court. The court found that the self-incriminating declarations could not be admitted as evidence in trial as the applicant had not been notified of his right to a lawyer and his right to remain silent, although, at that time, he was already suspected of having committed drugs-related offences. The admissible available evidence was insufficient to find the applicant guilty beyond reasonable doubt.

6. On 28 September 2007 the Court of Cassation upheld the acquittal.

7. On 19 January 2011 the Court of Auditors ordered the applicant to pay compensation to the Treasury for the pecuniary damages caused by the theft of the revenue stamps. The evidence grounding the decision included the abovementioned self-incriminating declarations, a reconstruction of the conduct of the applicant and his accomplice and rebuttable presumptions.

8. On 25 March 2013 the judgment was upheld by the appeal section of the Court of Auditors.

9. Accordingly, on 12 July 2013 the Ministry of Economy and Finance requested the applicant to pay about EUR 340,000, including revaluation and interest. According to documents included in the dossier, the request has been partially enforced through a garnishment of about EUR 50,000.

10. The applicant complained under Article 6 § 1 of the Convention that the declarations unlawfully obtained from him under psychological coercion in the criminal investigations were used in the proceedings before the Court of Auditors in breach of the privilege against self-incrimination.

THE COURT'S ASSESSMENT

11. The privilege against self-incrimination does not protect against the making of an incriminating statement per se but against the obtaining of evidence by coercion or oppression (*De Legé v. the Netherlands*, no. 58342/15, § 64, 4 October 2022). Thus, either the person concerned must be facing existing or anticipated criminal proceedings – that is to say, a "criminal charge" within the autonomous meaning of Article 6 § 1 – or incriminating information compulsorily obtained outside the context of criminal proceedings must be used in a subsequent criminal prosecution. These may be considered the two prerequisites for the applicability of the privilege against self-incrimination (ibid., § 74).

12. Where these prerequisites are met, it is necessary to determine whether the use of evidence obtained by means of coercion or compulsion should nevertheless be considered as falling outside the scope of protection of the privilege against self-incrimination (ibid., § 75) and whether the procedure did not extinguish the "very essence" of the privilege, that is to say, to determine the manner in which the overall fairness of the proceedings was

affected. For this purpose, it is necessary to have regard to the nature and degree of compulsion used to obtain the evidence; the existence of any relevant safeguards in the procedure; and the use to which any material so obtained is put (ibid., §§ 76 and 78).

13. The Court also reiterates that it is not its role to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the unlawfulness in question and, where the violation of another Convention right is concerned, the nature of the violation found (see *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, § 150, 17 October 2019).

14. The Court ultimately recalls that the "fair trial" guarantees are not necessarily the same in criminal-law and civil-law proceedings, the States having greater latitude when dealing with civil cases (ibid., § 152).

15. Turning to the present case, the Court notes that, in light of their compensatory purpose, the proceedings before the Court of Auditors concerned the determination of civil rights and obligations. Thus, Article 6 § 1 of the Convention applies to this case under the civil limb (see *Rigolio v. Italy* (dec.), no. 20148/09, § 39, 13 May 2014) and, accordingly, the authorities enjoyed greater latitude.

16. Having clarified the applicable standard in the case at hand, the Court observes that it is undisputed between the parties that the applicant made self-incriminating declarations without having previously been notified of his right to a lawyer and his right to remain silent. It is also undisputed that those declarations were deemed to be unlawfully collected under domestic criminal law and, as such, inadmissible in the criminal trial (see paragraph 5 above). However, their use was allowed in the proceedings before the Court of Auditors.

17. Therefore, the Court is called to examine whether (a) the privilege against self-incrimination applies in the instant case, and (b) the collection of the declarations in question was such as to make the civil proceedings before the Court of Auditors "unfair".

18. The Government argued that the applicant had not been subject to coercion, that the self-incriminating declarations were admissible in the proceedings before the Court of Auditors and that the proceedings as a whole were fair.

19. In respect of the applicability of the principle against self-incrimination, the Court notes that, contrary to the applicant's contentions, there is no evidence that the self-incriminating declarations were obtained through methods of coercion, oppression or compulsion by the authorities in defiance of the applicant's will. In particular, there is no evidence that the applicant was under physical or psychological pressure or any coercion in the form of treatment which breached any provision of the Convention. The Court also observes that the applicant never filed a criminal complaint

against the officers that had made the search and never questioned the lawfulness of the search itself.

20. In the absence of any form of coercion or compulsion on the applicant, the Court finds that the first prerequisite for the applicability of the privilege against self-incrimination is not met.

21. The applicant argued that he made the declarations in question to avoid being accused of a more serious offence such as drug smuggling. Even assuming that this might amount to a form of pressure and that the privilege against self-incrimination is applicable in the instant case, such a degree of compulsion does not appear, in any event, to destroy the very essence of the privilege for the following reasons.

22. First, the applicant was given the opportunity to challenge the authenticity of the declarations in question and oppose their use in the proceedings before the Court of Auditors. Second, the circumstances in which the evidence was obtained do not really cast doubt on its reliability or accuracy (compare *Jalloh v. Germany* [GC], no. 54810/00, § 96, ECHR 2006-IX). Ultimately, despite the undoubtful relevance of the declarations in question in the proceedings before the Court of Auditors, the applicant's liability was supported by a reconstruction of his conduct and the conduct of his accomplice, and by presumptions that he was unable to rebut, for example by demonstrating the lawful origin of the money (see paragraph 7 above).

23. Irrespective of the applicability of the privilege against self-incrimination, the Court also finds that, in light of the conclusions reached above, the way in which the evidence was obtained did not involve any violation of other rights of the Convention and that, despite its unlawful collection under domestic criminal law, the circumstances of the case do not allow the conclusion that the admission of the declarations in question impaired the overall fairness of the proceedings before the Court of Auditors.

24. Against this background, the complaint under Article 6 § 1 of the Convention is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 30 May 2025.

Liv Tigerstedt Deputy Registrar	Erik Wennerström President