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

FIRST SECTION

DECISION

Application no. 21400/17
Mauro CAMERINI and Maura CAMERINI
against San Marino

The European Court of Human Rights (First Section), sitting on 17 October 2017 as a Committee composed of:
Ksenija Turković, *President,*
Kristina Pardalos,
Tim Eicke, *judges,*
and Renata Degener, *Deputy Section Registrar,*
Having regard to the above application lodged on 11 March 2017,
Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Mauro Camerini and Ms Maura Camerini, siblings, are Italian nationals, who were born in 1956 and 1955 and live in Fano and Santa Cruz de Tenerife respectively. Their application was lodged on 11 March 2017. They were represented before the Court by Mr N. Canestrini, a lawyer practising in Rovereto.

A. The circumstances of the case

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

3. On an unspecified date, in Italy, the first applicant negotiated a plea bargain for the offences of official misconduct, embezzlement, fraud to the detriment of the State (Italy) and the issuance of invoices for fictitious operations.

4. On 21 December 2012 the Pesaro investigating judge (*Giudice per le Indagini Preliminari* – "the GIP") confirmed the plea bargain, sentenced the applicant to two years' imprisonment and a fine of 1,000 euros (EUR) and ordered a confiscation (by equivalent means) of EUR 85,000, representing the proceeds of the crimes.

5. On an unspecified date criminal proceedings were instituted in San Marino against the applicants for ongoing money laundering. According to the prosecution, from 16 January 2008 to 18 August 2014 the first applicant had carried out a complex series of bank operations in San Marino, with the support of the second applicant (the first applicant's sister) who had opened a bank account in her own name and had given him a mandate, in order to hide the criminal origin of the money. The first applicant had, *inter alia*, deposited substantial sums of money in multiple bank accounts which he held in his own name or in the name of his parents and his sister. He transferred the money from one account to another and withdrew conspicuous sums in cash.

6. By a decision of 18 August 2014 all the relevant bank accounts which were traced back to the applicants (containing EUR 1,797,816.22) were frozen.

7. During an oral hearing at the trial, the applicants, assisted by their chosen counsels, claimed that the money had had a legitimate origin since they had inherited it from their father. According to the applicants their family was particularly wealthy. Their grandfather had been the owner of multiple successful construction companies. The family had owned various real estates which over the years had produced considerable profits and which had subsequently been sold. Moreover, the applicant's father had inherited from his own father some precious paintings which he had sold in exchange for substantial sums of money. In any case they claimed that the burden of proof in order to demonstrate the criminal origin of the money was on the prosecution. They argued that the alleged predicate offences, i.e., the offences perpetrated in Italy, had concerned only a small part of the assets seized, as they amounted to EUR 85,000. Moreover, the first applicant had been the alleged perpetrator of the predicate offences so he could not be found guilty of the laundering of those same assets since "self-laundering" did not constitute an offence in San Marino before 13 August 2013.

8. By a judgment of 23 June 2015 the first-instance judge (*Commissario della Legge Decidente*) found the applicants guilty of money laundering. He sentenced the first applicant to four years and six months' imprisonment, to one year and four months' prohibition from holding public office and exercising political rights, and to a fine of EUR 2,000. The second applicant was sentenced to four years' imprisonment, one year's prohibition from holding public office and exercising political rights and to a fine of EUR 500. The judge confiscated EUR 1,797,816.22, which had been frozen

and having found that the laundering had covered a greater sum than that frozen, ordered, solely in respect of the first applicant, a further confiscation by equivalent means of EUR 112,500.

9. The judge specified that the first applicant had been found guilty only in respect of the bank operations carried out after 13 August 2013, namely a bank transfer that he had made on 13 June 2014 and the actions of concealment that he had carried out until the date of the seizure, i.e., 18 August 2014. As to the second applicant, the judge stated that she had not carried out any actions of substitution or transferring of the money. However, she had consciously aided and abetted in the consummation of the laundering by keeping part of the money in her bank account up to the date of the seizure.

10. According to the judge, only a part of the assets had had its origin in the offences of which the applicant had been found guilty in Italy. However, considering the first applicant's income and the specific features of the predicate offences, it was highly presumable that he had also committed other criminal acts and that all the assets seized had had a criminal origin. Moreover, the explanation that the applicants had attempted to give in order to rebut such presumption was not credible and had not been proven.

11. Both the applicants appealed relying on the grounds already advanced in their defence before the first-instance court.

12. By a judgment filed in the relevant registry on 22 September 2016 the Judge of Criminal Appeals (*Giudice d'Appello Penale*) upheld the first-instance judgment.

B. Relevant domestic law

13. Articles 50 and 199 *bis* of the Criminal Code read, in so far as relevant, as follows:

Article 50

"Whosoever, through one or more acts or omissions, commits multiple violations of the same criminal provision, connected by the same criminal plan, shall be punished by the penalty provided for the most serious violation, increased as appropriate, taking into account the number and the entity of the offences, but not exceeding the maximum of the sentencing bracket (*grado*). However, if the most serious violation is already punishable by the maximum penalty, then the maximum penalty by which it can be increased is that of the maximum of the next sentencing bracket."

Article 199 *bis*

"(1) A person is guilty of money laundering, where, except in cases of aiding and abetting, he conceals, substitutes, transfers or co-operates with others to so do, money which he knows was obtained as a result of crimes not resulting from negligence or contraventions (*misfatto*), and with the aim of hiding its origins.

(2) Or whosoever uses, or cooperates or intervenes with the intention of using, in the area of economic or financial activities, money which he knows was obtained as a result of crimes not resulting from negligence or contraventions (*misfatto*).

..."

14. Following amendments introduced by Law No. 100 of 29 July 2013 the clause "except in cases of aiding and abetting" was repealed.

COMPLAINTS

15. The first and second applicant complained under Article 6 § 2 of the Convention about a violation of the presumption of innocence owing to a reversed burden of proof concerning the criminal origin of the assets.

16. The first applicant also complained under Article 7 § 1 of the Convention that the domestic courts had found him guilty of an offence which was not provided by law.

THE LAW

A. Article 6 § 2 of the Convention

17. The applicants complained under Article 6 § 2 of the Convention, about a violation of the presumption of innocence, owing to a reversed burden of proof concerning the criminal origin of the assets.

18. In the applicants' view, the plea bargain that the first applicant had negotiated in Italy could not be considered to be a finding of guilt for the alleged predicate offences of the laundering. In any case, the proceeds of the offences that the first applicant had allegedly committed in Italy had been identified by the Italian courts as being EUR 85,000, while the San Marino courts had considered that all the money deposited in the applicants' bank account had had a criminal origin. In the applicants' view, the domestic courts had not collected evidence as to the criminal origin of all the assets and had reversed the burden of proof placed on them, thus violating the presumption of innocence.

19. The relevant provision reads as follows:

"2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

20. The Court reiterates that viewed as a procedural guarantee in the context of a criminal trial itself, the presumption of innocence imposes requirements in respect of, *inter alia*, the burden of proof and legal

presumptions of fact and law (see *Allen v. the United Kingdom* [GC], no. 25424/09, § 93, ECHR 2013). The right to the presumption of innocence is not absolute, since presumptions of fact or law operate in every criminal-law system. While the Convention does not regard such presumptions with indifference, they are not prohibited in principle, as long as States remain within reasonable limits, taking into account the importance of what is at stake and maintaining the rights of the defence (see *Salabiaku v. France*, 7 October 1988, Series A no. 141-A, § 28, and *Grayson and Barnham v. the United Kingdom*, nos. 19955/05 and 15085/06, § 40, 23 September 2008). Furthermore, it is not for the Court to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. The Court's task is to ascertain whether the proceedings in their entirety, including the way in which evidence was taken, were fair (see *Grayson and Barnham*, cited above, § 42).

21. The Court observes that in the present case the assessment of evidence was carried out by a court in a judicial procedure including a public hearing and the opportunity for the applicant to adduce documentary and oral evidence (see *Phillips v. the United Kingdom*, no. 41087/98, § 43, ECHR 2001-VII; *Grayson and Barnham*, cited above § 45; and *Sofia v. San Marino* (dec.), no. 38977/15, § 59, 2 May 2017). The applicants were represented by counsel of their choice. The burden was on the prosecution to establish that the applicants had held the assets in question during the relevant period and had carried out the laundering operations, a burden which was discharged.

22. Further, the Court observes that the applicants were provided with the possibility at both first and second instance to exculpate themselves and to submit evidence to prove the lawful origin of the money (see, *mutatis mutandis, Grayson and Barnham*, cited above, § 46). In this respect, the Court notes that the applicants attempted this avenue, but the domestic courts found that they had not successfully rebutted the presumption (see paragraph 10 above) (see, *mutatis mutandis*, *Sofia*, cited above, § 60).

23. It follows that the complaint must be rejected as being manifestly ill-founded pursuant to Article 35 § 3 of the Convention.

B. Article 7 § 1 of the Convention

24. The first applicant complained under Article 7 § 1 of the Convention that the domestic courts had found him guilty of an offence which was not provided by law. According to the domestic provision in force before an amendment of 13 August 2013, a person could not be found guilty of money laundering if he had also committed the offence which had given

origin to the laundered assets ("self-laundering"). Article 7 § 1 of the Convention 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."

25. The Court reiterates that Article 7 of the Convention is not confined to prohibiting the retrospective application of the criminal law to an accused's disadvantage. It also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*). While it prohibits in particular extending the scope of existing offences to acts which previously were not criminal offences, it also lays down the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy (see, among other examples, *Del Río Prada v. Spain* [GC], no. 42750/09, § 77, ECHR 2013). The Court must therefore verify that at the time when an accused person performed the act which led to his being prosecuted and convicted there was in force a legal provision which made that act punishable, and that the punishment imposed did not exceed the limits fixed by that provision (ibid. § 80).

26. Turning to the instant case the Court notes that the law on money laundering applicable prior to the amendments of 29 July 2013 (see paragraph 13 above) contained a clause providing that persons who had committed the predicate offence which had given origin to the assets were not punishable for the laundering of those same assets. However, on 13 August 2013 an amendment had entered into force which had expunged the above-mentioned clause, thus "self-laundering" was no longer excluded from the offence of money laundering (see paragraph 14 above). While it is true that the charges against the first applicant also contained acts committed prior to that date, the domestic courts explicitly confined the finding of guilt (with respect to the first applicant) only to the acts committed after the entry into force of the amendment at issue (see paragraph 9 above). Thus at the time when the applicant performed the acts which led to his being "prosecuted and convicted" there was in force a legal provision which made that act punishable. It cannot therefore be said that he was found guilty of an offence on account of an act which did not constitute a criminal offence at the time it was committed.

27. It follows that the complaint must be rejected as being manifestly ill-founded pursuant to Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 16 November 2017.

Renata Degener
Deputy Registrar

Ksenija Turković
President