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

FIRST SECTION

DECISION

Application no. 47503/07
Anna Maria CASINI
against Italy

The European Court of Human Rights (First Section), sitting on 8 November 2022 as a Committee composed of:

Péter Paczolay*, President*,
Gilberto Felici,
Raffaele Sabato*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to the above application lodged on 23 October 2007,

Having regard to the declaration submitted by the respondent Government on 29 August 2016 requesting the Court to strike the application out of the list of cases, and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Ms Anna Maria Casini, is an Italian national, who was born in 1929 and lives in Ronciglione. She was represented before the Court by Mr F Lubrano, a lawyer practising in Rome.

2. The Italian Government ("the Government") were represented by their former Agent, Ms E. Spatafora, and their former co-Agent, Ms P. Accardo.

3. Relying on Article 1 of Protocol No. 1 to the Convention, the applicant complained about an infringement of her right to the peaceful enjoyment of her possessions in that the expropriation compensation awarded to her had not been sufficient, having been calculated on the basis of section 5 *bis* of Law no. 359 of 1992. The applicant further complained, under Article 6 § 1 of the Convention, that the enactment of section 5 *bis* of Law no. 359/1992 and its application in her case had amounted to an interference by the legislature in breach of her right to a fair hearing.

4. The application was communicated to the Government.

5. By judgment no. 348 of 24 October 2007, the Italian Constitutional Court declared section 5 *bis* of Law no. 359 of 8 August 1992 unconstitutional. The Constitutional Court found that the insufficient level of compensation provided for by the 1992 Law was contrary to Article 1 of Protocol No. 1 to the Convention and Article 117 of the Italian Constitution, which provides for compliance with international obligations. Since that judgment, the provision in question may no longer be applied in the context of pending national proceedings.

THE LAW

6. After failed attempts to reach a friendly settlement, by a letter of 29 August 2016 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They acknowledged that the domestic authorities had violated the applicant's rights under Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention. They offered to pay the applicants a global sum of 145,482 euros (EUR), and invited the Court to strike the application out of the list of cases in accordance with Article 37 § 1 (c) of the Convention. The amount would be payable within three months from the date of notification of the Court's decision. In the event of failure to pay this amount within the above-mentioned three-month period, the Government undertook to pay simple interest on it, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

The payment will constitute the final resolution of the case.

7. The applicant did not submit comments on the Government's unilateral declaration.

8. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the applications".

9. It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

10. To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; see also *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02,

26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

11. The Court has established in a large number of cases against Italy its practice concerning complaints about the violation of Article 1 of Protocol No. 1 on account of the calculation of expropriation compensation pursuant to section 5 *bis* of Law no. 359 of 8 August 1992 as well as the violation of Article 6 § 1 in connection with the application of the latter legislation in the course of the domestic proceedings (see, amongst others, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, ECHR 2006-V; *Gigli Costruzioni S.r.l. v. Italy*, no. 10557/03, 1 April 2008; *Pisacane and Others v. Italy*, no. 70573/01, 27 May 2008; *Sarnelli v. Italy*, no. 37637/05, 17 July 2008; *Mandola v. Italy*, no. 38596/02, 30 June 2009; *Perinati v. Italy*, no. 8073/05, 6 October 2009; *Vacca v. Italy*, no. 8061/05, 8 December 2009; and *Zuccalà v. Italy*, no. 72746/01, 19 January 2010).

12. The Court further underlines that the domestic provision which was the origin of the acknowledged violations was declared unconstitutional by the Italian Constitutional Court in 2007 (see paragraph 5 above).

13. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed, the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

14. Moreover, in light of the above, and in particular given the clear and extensive case-law on the topic, coupled with the fact that the domestic provision which was the origin of the acknowledged violations was eliminated from the domestic legal system, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

15. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

16. In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 1 December 2022.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President