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

FIRST SECTION

DECISION

Application no. 35780/18
Cesare LONGO
against Italy

The European Court of Human Rights (First Section), sitting on 27 August 2024 as a Chamber composed of:

Ivana Jelić*, President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Péter Paczolay,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato*, judges*,

and Ilse Freiwirth, *Section Registrar,*

Having regard to the above application lodged on 18 July 2018,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Cesare Longo, is an Italian national who was born in 1946 and lives in Balestrate, Palermo. He was represented before the Court by Ms S. Spallitta, a lawyer practising in Palermo.

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

A. The applicant's conviction for the offence of unauthorised construction and the building amnesty granted by the municipality

3. In March 1995 officers of the Partinico municipal police (*polizia municipale*) carried out an inspection of a plot of land owned by the applicant and found that a 200-square-metre warehouse had been built on it.

4. The officers subsequently established that it had been built without a building permit.

5. On 30 March 1995 the applicant filed a request for a building amnesty (*condono edilizio*) under section 39 of Law no. 724 of 23 December 1994 (see paragraph 33 below), declaring, among other things, that the unauthorised construction had been completed after 15 March 1985, namely between November and December 1993. He submitted the relevant documents and paid an amnesty fee (*oblazione*) as required by the relevant legislation (see paragraphs 30 et seq. below).

6. On 3 October 1997 the Palermo magistrate (*pretore*), Partinico subdistrict section (*sezione distaccata*), found the applicant guilty, *inter alia*, of the offence of unauthorised construction under section 20(b) of Law no. 47 of 28 February 1985 (see paragraph 21 below). The magistrate found that he had built the warehouse without a building permit and that, contrary to what he had declared for the purpose of obtaining a building amnesty, the construction had actually been completed after 1993. For that reason, he could not benefit from an amnesty since, under the relevant legislation (see paragraph 33 below), such a measure could be granted only if the unauthorised construction had been completed prior to 31 December 1993 (see paragraph 31 below).

7. The magistrate sentenced the applicant to an overall suspended sentence of two months' detention (*arresto*) and a fine (*ammenda*) of 8,000,000 Italian lire ((ITL) approximately 4,130 euros (EUR)). In addition, the magistrate ordered the demolition of the unauthorised construction pursuant to section 7(9) of Law no. 47 of 1985 (see paragraph 23 below).

8. On 19 October 1998 the Partinico municipality granted the building amnesty requested by the applicant. On an unspecified date the construction was entered in the land register.

9. The applicant appealed against his conviction by the Palermo magistrate, seeking the extinguishment of the offence of unauthorised construction on the grounds that a building amnesty had been granted (see paragraphs 29-33 below).

10. On 8 March 1999 the Palermo Court of Appeal reduced the amount of the fine but upheld the applicant's conviction and the demolition order. The court considered the amnesty granted by the municipality to be "immaterial", since the relevant conditions required by law had not been met (see paragraph 33 below). Consequently, the warehouse could not be regularised. The court also held that, in the event of a conviction for the offence of unauthorised construction under section 20(b) of Law no. 47 of 1985, the judge was required to order demolition of the construction pursuant to section 7(9) of that Law.

11. On 30 January 2001, at the applicant's request, the Partinico municipality issued a certificate of fitness for use (*certificato di agibilità*, see paragraph 34 below) in respect of the warehouse. The applicant used the warehouse in connection with agricultural activities.

12. On an unspecified date, the applicant's conviction became final.

B. Enforcement of the demolition order and review proceedings (*incidente di esecuzione*)

13. On 25 November 2015 the deputy public prosecutor (*sostituto Procuratore generale*) at the Palermo Court of Appeal served the applicant with a notice to comply with the demolition order (*ingiunzione a demolire*) issued by the Palermo Court of Appeal on 8 March 1999. In particular, he was ordered to demolish the unauthorised warehouse within ninety days. The public prosecutor also warned him that if he did not comply voluntarily, the authorities would enforce the order at his expense.

14. On 24 February 2016 officers of the municipal police carried out a further inspection of the applicant's land and noted that the construction had not been demolished.

15. On 22 June 2016 the applicant lodged a request with the Palermo Court of Appeal for a review of the enforcement order. Relying on a decision by the Asti District Court on 3 November 2014 affirming the "criminal" nature of demolition orders (see paragraph 53 below), he asked the court to suspend the enforcement of the demolition order. He submitted that more than ten years had elapsed since his conviction and that the demolition order, which could be considered a penalty, was therefore time-barred under Article 173 of the Criminal Code (see paragraph 38 below). Stressing that the demolition order was being enforced sixteen years after it had been issued and that the municipality had in the meantime granted a building amnesty, the applicant argued that there was no longer a public interest in the demolition and that the municipality's actions had been inconsistent with the decision (in particular the issuance of a certificate of fitness for use, see paragraph 11 above).

16. On 30 August 2016 the Palermo Court of Appeal, acting as an enforcement court, dismissed the applicant's request. The court firstly reiterated that the building amnesty could not have been granted in the absence of the conditions required by law. Secondly, referring to a judgment by the Court of Cassation (no. 49331 of 2015, see paragraphs 44 et seq. below), it held that the demolition order, rather than being a penalty, was a restorative measure aimed at bringing the site or construction back to its former condition. As such, it fell outside the scope of Article 7 of the Convention and, consequently, the limitation period under Article 173 of the Criminal Code. Lastly, the Court of Appeal observed that the certificate of fitness for use, in view of its different function (see paragraph 34 below), was immaterial with respect to building or town planning regulations.

17. The applicant appealed on points of law before the Court of Cassation, reiterating his arguments and adding that the Court of Appeal had failed to consider that the long period of time that had elapsed since his conviction, together with the conduct of the municipality, had given rise to a legitimate

expectation as to the lawfulness of the warehouse that had to be weighed against the absence of a current public interest in its demolition.

18. By order no. 2781 of 20 January 2017, filed with the registry on 23 January 2018, the Court of Cassation held that the applicant's appeal was inadmissible. It upheld the lower court's reasoning and stated that the ruling that the construction was unauthorised had become final, despite the amnesty granted by the municipality.

19. At the time the application was lodged with the Court, the warehouse had not yet been demolished. The applicant appears to have continued to use it in connection with agricultural activities. To date, he has not informed the Court of any changes in the situation.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Relevant legal framework

1. Preliminary considerations

20. At the material time, the relevant Italian legislative framework consisted mainly of the provisions of Law no. 47 of 28 February 1985 (*Norme in materia di controllo dell'attività urbanistico-edilizia, sanzioni, recupero e sanatoria delle opere edilizie*). Presidential Decree no. 380 of 6 June 2001 (*Testo unico delle disposizioni legislative e regolamentari in materia edilizia* – "the Consolidated Law on Construction") codified the existing provisions in the field of town planning and building regulations, including most of the provisions of Law no. 47 of 1985 (see *G.I.E.M. S.r.l. and Others v. Italy* (merits) [GC], nos. 1828/06 and 2 others, § 105, 28 June 2018). For the most part, the relevant provisions of Law no. 47 of 1985 have been incorporated in the Consolidated Law on Construction without amendment; where amendments have been made, they are indicated in the footnotes to the relevant Articles.

2. Law no. 47 of 28 February 1985 and the Consolidated Law on Construction (Presidential Decree no. 380 of 6 June 2001)

21. Section 4 of Law no. 47 of 1985, in the relevant parts incorporated with a minor amendment into Article 27 of the Consolidated Law on Construction[1], designated the mayor as the authority in charge of supervising town planning and building activities in the municipal territory to ensure their compliance with the law and regulations, the provisions of town planning instruments and the construction methods set out in building permits.

[1] The only amendment introduced by the Consolidated Law on Construction is that the authority in charge of supervising town planning and building regulations is no longer the mayor, but the manager or head of the competent municipal office.

22. The relevant parts of section 7 of Law no. 47 of 1985, incorporated without amendment into Article 31 of the Consolidated Law on Construction[2], provided as follows:

> "1. Building work carried out in contravention of a building permit is that which involves the construction of a building which is totally different in terms of typological, planovolumetric or use characteristics from that covered by the permit itself, or the execution of building volumes that exceed the limits indicated in the project and that constitute a building or part of [a building] separately identifiable and usable.
>
> 2. The mayor, after ascertaining the execution of building work without a building permit, in contravention of permission or significantly different (*variazioni essenziali*) from that covered by the permit ... shall order demolition.
>
> 3. If the person responsible for the unauthorised construction does not demolish or restore the site within ninety days of the demolition order, the construction and the area on which it stands (*area di sedime*) ... shall be acquired without compensation (*acquisiti di diritto*) by the municipality ...
>
> 4. Failure to comply with the demolition order within the time-limit laid down in the previous paragraph shall constitute grounds for taking possession [of the property] and its registration (*trascrizione*) in the land register, which shall be carried out free of charge.
>
> 5. The mayor shall order demolition of the incorporated building work at the expense of the person responsible, unless a municipal council resolution declares the existence of an overriding public interest and provided that the work does not conflict with significant town planning or environmental interests.
>
> ...
>
> 8. If [the mayor] fails to act ... the head of the regional authority (*Giunta regionale*) ... shall adopt the measures required, simultaneously notifying the competent judicial authority for the purposes of prosecution.
>
> ..."

23. The relevant part of section 7(9) of Law no. 47 of 1985, which was incorporated without amendment into Article 31 § 9 of the Consolidated Law on Construction, provided as follows:

> "In the event of a conviction for the offence referred to in ... section 20 of this Law in respect of the unauthorised work referred to in this section, the judge shall order demolition of the work if it has not yet been carried out otherwise."

24. Section 17 of Law no. 47 of 1985, incorporated without amendment into Article 46 of the Consolidated Law on Construction, in the relevant parts provided that sale and purchase contracts concerning buildings or parts of buildings erected after 17 March 1985 were null and void if they do not mention details of the relevant building permit or amnesty.

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[2] Article 31 of the Consolidated Law on Construction was later amended by Decree-Law no. 133 of 12 September 2014 (converted into Law no. 164 of 11 November 2014 and entered into force on 13 September 2014), which introduced paragraphs 4 *bis*, 4 *ter* and 4 *quater*, providing that in the event of non-compliance with the demolition order a fine is also imposed.

25. Section 20(b) of Law no. 47 of 1985, which was incorporated without amendment into Article 44(b) of the Consolidated Law on Construction, provided for the punishment of those who executed building work without or in contravention of a building permit with up to two months' detention (*arresto*) and a fine ranging from ITL 10,000,000 (EUR 5,164) to ITL 100,000,000 (EUR 51,645).

3. Regularisation of unauthorised building work

26. Under domestic law, unauthorised building work may be regularised by the granting of retrospective permission (*permesso/concessione in sanatoria*) or a building amnesty (*condono edilizio*).

27. The granting of retrospective permission is governed by Article 36 of the Consolidated Law on Construction, which incorporates, with amendments[3], section 13 of Law no. 47 of 1985, applicable at the material time.

28. Retrospective permission is granted to remedy "formal" violations, that is to say building work which, although undertaken without or in contravention of a building permit, complies with the building regulations in force at the time of construction and at the time of submission of the regularisation application (*doppia conformità*).

29. Under section 22(1) of Law no. 47 of 1985, incorporated with amendments into Article 45 of the Consolidated Law on Construction, the prosecution of building offences was suspended until regularisation procedures had been completed. Under section 22(3) of Law no. 47 of 1985, the granting of retrospective permission extinguished the minor offences (*contravvenzioni*) provided for by the applicable planning regulations.

30. Building amnesties (*condoni*) are measures of exceptional nature which are introduced by specific national laws. Unlike retrospective permission, the granting of amnesty is not conditional upon the building work being in conformity with the relevant regulations and may therefore be granted to regularise "substantial" violations, provided that the conditions set out in the relevant amnesty law are met and an amnesty fee (*oblazione*) is paid. Furthermore, building amnesties are temporary measures in that they only apply to building work completed prior to a certain date.

31. The first building amnesty was introduced by section 31 of Law no. 47 of 1985, which provided that owners of building work erected without or in contravention of a building permit could apply for amnesty provided, among other things, the work had been completed prior to a certain date (1 October 1983).

[3] Under Article 36 of the Consolidated Law on Construction, retrospective permission can be issued if the unauthorised building work is consistent not only with building regulations, but also with town planning regulations.

32. Section 38(2) of Law no. 47 of 1985 provided that the offence of unauthorised construction punishable under section 20 of the Law and any other related offence was extinguished (see paragraph 21 above) on condition that the request for amnesty under section 31 of the Law was submitted within the mandatory time-limit and the relevant fee was paid.

33. The second building amnesty[4] was introduced by section 39 of Law no. 724 of 23 December 1994, which established the conditions under which unauthorised constructions completed prior to 31 December 1993 could benefit from an amnesty. If these conditions were met, the provisions of sections 31 et seq. of Law no. 47 of 1985 could be applied, and the amnesty would have the same effects (including the extinguishment of building offences).

*4. Certificate of fitness for use (*certificato di agibilità*)*

34. Under section 220 of Royal Decree no. 1265 of 27 July 1934[5] and Article 107 of Legislative Decree no. 267 of 18 August 2000 (Consolidated Law on Local Authorities), the governors of a municipality may issue certificates of fitness for use in respect of non-residential buildings, provided that the relevant building safety conditions are met.

5. Review of an enforcement order

35. Article 665 of the Code of Criminal Procedure contains provisions concerning the functions of the enforcement court (*giudice dell'esecuzione*).

36. Under Article 666 § 1 of the Code of Criminal Procedure, which governs the relevant proceedings (*incidente di esecuzione*), the enforcement court acts at the request of the public prosecutor, the person concerned or his or her representative.

37. The validity or enforceability of a conviction may be contested by means of an objection to enforcement under Article 670 § 1 of the Code of Criminal Procedure ("Issues concerning the enforcement measure" – *Questioni sul titolo esecutivo*). If the objection is accepted, the enforcement court will suspend the enforcement of a judgment and order the subsequent necessary measures.

6. Other relevant domestic provisions

38. The relevant parts of Article 173 of the Criminal Code ("Extinguishment of the penalties of detention and fine by reason of the

[4] The third building amnesty was introduced by section 35 of Decree-Law no. 269 of 30 September 2003, converted with amendments into Law no. 326 of 24 November 2003.

[5] Repealed by Article 136 of the Consolidated Law on Construction with effect from 30 June 2003. The statutory regulation of the certificate of fitness for use (concerning residential and non-residential buildings) is now entirely provided for by Article 24 of the Consolidated Law on Construction (*Agibilità*).

passage of time" – *Estinzione delle pene dell'arresto e dell'ammenda per decorso del tempo)* read as follows:

> "1. The penalties of detention (*arresto*) and fine (*ammenda*) shall be extinguished after a period of five years.
>
> 2. If a fine is imposed in conjunction with detention, for the extinguishment of both penalties only the expiry of the term fixed for detention will be taken into account.
>
> 3. The starting point shall be determined under [Article 172 § 3]."

39. Under Article 172 § 3 of the Criminal Code, the time-limit starts to run from the date on which the conviction became final or from the date on which the convicted person evaded the penalty after its enforcement.

B. Relevant domestic practice

1. Constitutional Court case-law

40. In order no. 33 of 18 January 1990, the Constitutional Court ruled on the constitutionality of section 7(9) of Law no. 47 of 1985 in so far as it required a demolition order to be issued within criminal proceedings when the demolition order had not yet been carried out by order of the municipality (see paragraph 23 above). Although the court considered the question to be manifestly ill-founded, it held that a demolition order was an administrative measure issued by the judge in place of the local administration when the latter had failed to carry it out.

41. By order no. 56 of 9 March 1998, the Constitutional Court reiterated that a demolition order issued by a criminal court with a conviction for the offence of unauthorised construction had a "supplementary role" in ensuring the effectiveness of administrative sanctions not yet enforced by the administrative authorities, and that it was an administrative sanction rather than an ancillary penalty or atypical criminal sanction according to the settled case-law of the criminal divisions of the Court of Cassation. In this connection, the Constitutional Court further considered that a demolition order had to be lifted if it appeared to be inconsistent with a different decision adopted by the administration; for this purpose, it could be re-examined at the enforcement stage (see paragraph 48 below).

2. Court of Cassation case-law

(a) Case-law of the criminal divisions of the Court of Cassation

42. The plenary Court of Cassation, in judgment no. 15 of 24 July 1996, held that a demolition order issued by the judge pursuant to section 7(9) of Law no. 47 of 1985 (see paragraph 23 above) had a restorative purpose directly linked to the need to eradicate the consequences of the offence of unauthorised construction. It then specified that the demolition order, although an administrative measure, was also part of the sentence. Therefore,

when it was part of a criminal sentence, enforcement was entrusted to the public prosecutor, who could submit a request to the enforcement court.

43. In this connection, the Court of Cassation (including in judgments no. 8409 of 28 February 2007; no. 37836 of 28 July 2017; and no. 38104 of 10 October 2022) held that a demolition order could only be imposed by the judge in the event of a conviction (*condanna*), whereas it could not be issued if the proceedings were discontinued because the offence had become time-barred. In any event, the municipal administration remained free to adopt the appropriate measures as part of its task to ensure compliance of construction work with building regulations (under sections 4 and 7 of Law no. 47 of 1985, incorporated into Articles 27 and 31 of the Consolidated Law on Construction, see paragraphs 21 and 22 above).

44. By judgment no. 49332 of 15 December 2015, known as the *Delorier* judgment, the Court of Cassation quashed the Asti District Court's decision of 3 November 2014 (see paragraphs 15 above and 53 below) in which that court had found that demolition orders constituted a criminal penalty within the meaning of Article 6 § 1 and Article 7 of the Convention and, as such, fell within the scope of Article 173 of the Criminal Code, which provided that penalties classified as criminal in domestic law become time-barred (see paragraph 38 above).

45. The Court of Cassation examined in detail the statutory provisions governing demolition orders, also in the light of the Court's relevant case-law (namely *Engel and Others v. the Netherlands*, 8 June 1976, Series A no. 22, and *Öztürk v. Germany*, 21 February 1984, Series A no. 73). It observed that demolition was a mandatory response to the most serious violations of building regulations; once it had been ascertained that an unauthorised construction had been erected, demolition was to be enforced in respect of any subject connected with the construction (*in rem*), irrespective of the personal liability of its owner and of the institution of criminal proceedings against him; consequently, it could also be carried out against legal entities and successors in title of the person responsible for the construction. Furthermore, a demolition order was identical in nature, regardless of the authority issuing it, the municipality or the judge following a conviction; both could issue such orders independently, since coordination was ensured at the enforcement stage (see paragraphs 22-23 above).

46. On these grounds, the Court of Cassation concluded that demolition orders were a measure *in rem* of a restorative nature (*una misura di natura reale e di carattere ripristinatorio*) aimed at restoring a site to its original condition; they did not therefore amount to a penalty and were not subject to a limitation period.

47. In judgment no. 41475 of 4 October 2016 the Court of Cassation reiterated its findings on the characterisation of demolition orders as a restorative measure, emphasising that the relevant legislation (namely section 7(9) of Law no. 47 of 1985, incorporated into Article 31 § 9 of the

Consolidated Law on Construction, see paragraph 23 above) required the judge to issue a demolition order if it had not already been enforced otherwise, that is to say by the municipality. In the Court of Cassation's view, this confirmed the identity of such orders, which retained their restorative nature even when they were ordered following a conviction for the offence of unauthorised construction (see paragraph 21 above).

48. The Court of Cassation has consistently observed that, while the judge is entitled to ascertain independently the constitutive elements of the offence of unauthorised construction (which may involve an assessment of the lawfulness of the building permit, retrospective permission or amnesty granted by the administration), demolition cannot be ordered or maintained when it is incompatible with the measures adopted by the administration. In this case, even after a conviction has become final, the order can be revoked by means of a request for a review of the enforcement order (see, *inter alia*, the Court of Cassation's judgments no. 47402 of 18 November 2014; no. 42699 of 7 July 2015; and no. 55028 of 10 December 2018, see paragraph 36 above). In addition, the enforcement of a demolition order can be stayed, under certain conditions, if a request for retrospective permission or amnesty has been submitted to the administration after conviction (see, among other authorities, the Court of Cassation's judgments no. 16686 of 20 April 2009 and no. 35201 of 22 August 2016). Therefore, the coordination between criminal jurisdiction and the administrative authorities is always ensured at the enforcement stage, and the enforcement court is called upon to assess the compatibility of the demolition order with the decisions of the administration, in order to establish whether and by what means the order can be enforced (see, *inter alia*, the Court of Cassation's judgment no. 702 of 14 February 2000).

49. Furthermore, the Court of Cassation has consistently held that the demolition order provided for in section 7(9) of Law no. 47 of 1985 (see paragraph 23 above), being a restorative measure *in rem* identical in object and in nature to a demolition order issued by an administrative authority, survives the extinguishment of the offence (for reasons other than the granting of retrospective permission or amnesty, see paragraphs 29 and 32 above) of unauthorised construction, as well as the death of the convicted person, for it relates exclusively to the existence of an unauthorised construction and is directed against the property and not against the person (*in rem*) (see, *inter alia*, the Court of Cassation's judgments no. 2674 of 18 September 2000; no. 7228 of 25 February 2011; no. 18533 of 11 May 2011; and no. 41475 of 4 October 2016).

50. In other words, according to the Court of Cassation, the demolition order, whether issued by courts of criminal jurisdiction or by the administrative authorities, serves the purpose of removing abusive and illegal buildings (that is, buildings erected without permit or relying on a permit that the same courts of criminal jurisdiction, in their independent assessment,

deem to be invalid; see paragraph 48 above) which is autonomous from the punishment of the author of the offence, as it satisfies the public interest in the orderly use of land (see Court of Cassation's judgment no. 51044 of 3 October 2019).

51. Following the above-mentioned *Delorier* judgment, the Court of Cassation's case-law has been consistent and is now settled in rejecting the application of the statute of limitations for penalties to the demolition order, given its restorative nature (see, *inter alia*, the Court of Cassation's judgments no. 9949 of 20 January 2016; no. 35052 of 10 March 2016; no. 51044 of 9 November 2018; no. 11916 of 21 November 2018; no. 3979 of 28 January 2019; and no. 21198 of 18 May 2023).

(b) Case-law of the civil divisions of the Court of Cassation

52. By judgment no. 8230 of 22 March 2019, the Plenary Court of Cassation took a stand on the issue – debated at length in domestic case-law – of the validity of sale and purchase contracts relating to unauthorised constructions. The court ruled that, under the relevant domestic legislation (see paragraph 24 above), such validity is not conditional on the construction being in compliance with a building permit, but only on the explicit mention of the building permit or amnesty in the notarial deed transferring the title *inter vivos*. According to the Court of Cassation, this requirement is only one of the means chosen by the legislature to counteract the proliferation of unauthorised constructions, given that the public interest in the orderly and safe use of land in compliance with building regulations is satisfied by the other measures provided within the administrative and criminal framework and, in the most serious cases, by the restorative measure of demolition.

3. Other relevant domestic practice

53. By a decision of 3 November 2014, the Asti District Court, acting as an enforcement court, granted an objection against the enforcement of a demolition order issued following a conviction for the offence of unauthorised construction. The court confirmed that demolition orders, despite their characterisation in domestic law as a restorative measure on the basis of the criteria set out in *Engel and Others* (cited above), constituted a penalty within the meaning of the Convention because of their repressive purpose, severity and connection with a criminal offence. As such, in the court's view, demolition orders fell within the scope of the legislation on the extinguishment of penalties, including Article 173 of the Criminal Code on the statute of limitations (see paragraph 38 above).

54. That decision was later quashed by the Court of Cassation (judgment no. 49332 of 15 December 2015, known as the *Delorier* judgment, see paragraphs 44 et seq. above).

COMPLAINTS

55. Relying on Article 7 of the Convention, the applicant alleged a violation of the principle of legality since the order to demolish his warehouse, which in his view amounted to a penalty, could not be enforced after the expiry of the relevant limitation period.

56. Under Article 6 § 1 of the Convention, he complained about the domestic court's characterisation of the demolition order as a restorative measure instead of a penalty.

57. Lastly, under Article 1 of Protocol No. 1 to the Convention, he argued that enforcement of the demolition order would constitute a disproportionate interference with his property rights.

THE LAW

A. Alleged violation of Article 7 of the Convention

58. The applicant alleged that, in the light of the criteria set out in the Court's case-law, the domestic courts should have concluded that the demolition order provided for in section 7(9) of Law no. 47 of 1985 (see paragraph 23 above) amounted to a penalty. In his view, their failure to do so had resulted in a breach of the principle of legality – as it prevented the application of Article 173 of the Criminal Code concerning the extinguishment of penalties by reason of the passage of time (see paragraph 38 above) – and of the principle of proportionality of penalties. He relied on 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."

59. The applicant emphasised that the demolition order in question was issued following a conviction for the criminal offence of unauthorised construction, that it could not be maintained if such an offence was declared statute-barred (see paragraph 43 above) and, as regards its severity, that it entailed a radical deprivation of property. He relied, in particular, on the Court's findings in *Hamer v. Belgium*, no. 21861/03, § 60, ECHR 2007-V (extracts).

60. The Court reiterates that the concept of "punishment" or "penalty" as set out in Article 7 § 1 of the Convention has an autonomous scope. To render the protection offered by this provision effective, the Court must remain free to go behind appearances and assess for itself whether a particular measure amounts in substance to a "penalty" within the meaning of this provision (see *Welch v. the United Kingdom*, 9 February 1995, § 27, Series A no. 307-A; *Del Río Prada v. Spain* [GC], no. 42750/09, § 81, ECHR 2013; and *G.I.E.M.*

S.r.l. and Others v. Italy (merits) [GC], nos. 1828/06 and 2 others, § 210, 28 June 2018). The wording of the second sentence of Article 7 § 1 indicates that the starting-point in any assessment of the existence of a penalty is whether the measure in question is imposed following conviction for a "criminal offence". Other factors that may be taken into account as relevant in this connection are the nature and purpose of the measure in question; its characterisation under national law; the procedures involved in the making and implementation of the measure; and its severity (see *Welch*, § 28; *Del Río Prada*, § 82; and *G.I.E.M. S.r.l. and Others* (merits), § 211, all cited above). The severity of the measure is not in itself decisive, however, since many non-penal measures of a preventive nature may have a substantial impact on the person concerned (see *Del Río Prada*, cited above, § 82, and the references therein, and *Rola v. Slovenia,* nos. 12096/14 and 39335/16, § 66, 4 June 2019).

61. The Court observes that it has generally considered that the existence of a conviction for a criminal offence was but one of the criteria to be taken into consideration (see *Saliba v. Malta* (dec.), no. 4251/02, 23 November 2004, and *Berland v. France*, no. 42875/10, § 42, 3 September 2015), and that it could not be deemed decisive for establishing the nature of the measure (see *Valico S.r.l. v. Italy* (dec.), no. 70074/01, ECHR 2006-III, and *Balsamo v. San Marino*, nos. 20319/17 and 21414/17, § 60, 8 October 2019). The Court has seldom considered this factor as decisive in declaring Article 7 inapplicable (see *Yildirim v. Italy* (dec.), no. 38602/02, ECHR 2003-IV, and *Bowler International Unit v. France*, no. 1946/06, § 67, 23 July 2009).

62. Turning to the present case, the Court notes at the outset that the applicant was ordered to demolish his warehouse pursuant to section 7(9) of Law no. 47 of 1985 (incorporated into Article 31 § 9 of the Consolidated Law on Construction), which entitles the criminal judge to issue such an order in the event of a conviction (*condanna*) for the offence of unauthorised construction (see paragraph 23 above). Given that demolition cannot be ordered when the offence has become time-barred, since it requires a "conviction" (see paragraph 43 above), the Court considers that there is, in fact, a link between the measure in question and the commission of a criminal offence (see, in the context of Article 6 § 1 of the Convention, *Hamer*, cited above, § 54; see also, *mutatis mutandis*, *Ulemek v. Serbia* (dec.), no. 41680/13, § 48, 2 February 2021). At the same time, the Court notes that, according to the relevant domestic case-law (see paragraph 43 above), as part of the overall domestic system's response to building violations (see paragraph 41 above), the demolition order issued with a conviction is identical in object and in nature to the demolition order issued by the administrative authority, which is entitled to order demolition of unauthorised constructions, irrespective of whether criminal proceedings have been instituted or concluded (see paragraphs 22 and 43 above).

63. Since the imposition of the contested measure following conviction for a criminal offence is not in itself decisive for establishing the nature of the measure (see *G.I.E.M. S.r.l. and Others* (merits), § 215, and *Balsamo*, § 60, both cited above), the Court will examine the other relevant criteria (see paragraph 61 above).

64. As regards the characterisation of demolition orders under national law, the Court acknowledges that, unlike in the *Hamer* case (cited above) relied on by the applicant, the classification of such orders as a restorative measure is unanimous among the domestic courts, which have reached that conclusion in the light of the criteria developed in the Court's case-law (see paragraphs 46-50 above and contrast paragraph 53 above; compare and contrast *Hamer*, § 57, and *G.I.E.M. S.r.l. and Others* (merits), §§ 121 and 223, both cited above).

65. As to the nature and purpose of demolition orders, the Court finds that the measure is clearly aimed at restoring a site to its original condition by bringing construction work into compliance with building regulations, regardless of whether a penalty be also imposed in respect of those charged with the offence of unauthorised construction. In this connection, it firstly attaches importance to the fact that demolition, being a measure *in rem*, is ordered even if the building does not belong to the perpetrator of the offence (for instance to legal entities, successors in title or third parties, see paragraph 45 above). Secondly, it notes that, according to domestic practice, a demolition order is maintained in the event of the death of the perpetrator or of the extinguishment of the offence after conviction, for reasons other than the granting of retrospective permission or amnesty (see paragraph 49 above). It is the Court's view that such circumstances are symptomatic of the restorative nature of demolition orders, which appear to be designed to remove unauthorised constructions independently of the punishment of the perpetrator of the offence, in order to ensure respect of the public interest in the orderly use of land violated by abusive or illegal buildings by way of restoring the land to its original condition (see *Saliba*, and, *mutatis mutandis*, *Ulemek*, § 53, both cited above; compare *The J. Paul Getty Trust and Others v. Italy*, no. 35271/19, § 314, 2 May 2024; compare and contrast *Valico S.r.l.*, and *G.I.E.M. S.r.l. and Others* (merits), § 224, both cited above).

66. As regards the procedures for adopting and enforcing demolition orders, the Court has already noted that the demolition order complained of was issued by the courts of criminal jurisdiction. However, it has repeatedly stated that this cannot in itself be decisive, for it is a common feature of several national legal systems for criminal courts to take decisions of a non-punitive nature, such as, for example, civil reparation measures for the victim of the criminal act (see *Balsamo*, cited above, § 63). In this connection, the Court notes once again the fact that the administration is entitled to issue a demolition order of identical content, irrespective of whether criminal proceedings have been instituted or concluded (see paragraphs 22 and 43

above), so that the criminal judge will order demolition as long as it has not already been enforced by the administration (see the Constitutional Court's order no. 33 of 18 January 1990, paragraph 40 above; see also paragraph 45 above).

The Court further observes that, while the criminal courts and the municipality are *in abstracto* entitled to act independently of each other, the granting of amnesty or retrospective permission by the administrative authority is taken into consideration by the criminal courts, acting as enforcement courts, which may in that case, provided that such measures have been lawfully adopted, lift the demolition order or stay its enforcement after the conviction has become final (see paragraph 48 above).

67. Lastly, as to the severity of demolition orders, the Court reiterates that this factor is not in itself decisive, since many non-penal measures may have a substantial impact on the person concerned (see *Welch*, § 32; *Del Río Prada*, § 82; and *Balsamo*, § 64, all cited above). The Court finds that, although a demolition order is a measure that may have an impact for the person concerned (depending on the features and nature of the unauthorised construction), its severity is not such as to suggest that it should be characterised as a penalty. The object of such an order is, in fact, limited to work (or part thereof) which has been erected without or in contravention of a building permit (see, *mutatis mutandis*, *Ulemek*, § 56; compare and contrast *G.I.E.M. S.r.l. and Others* (merits), § 227, both cited above) and, as a measure aimed at ensuring compliance with building regulations so as to re-establish the rule of law and allow the orderly and safe use of land (interests to which the Court has repeatedly attached significant importance; compare, *inter alia*, *Saliba v. Malta*, no. 4251/02, § 44, 8 November 2005, and *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, § 51, 21 April 2016), the Court considers that the removal of illegal and abusive buildings represents a necessary and appropriate response (see, *mutatis mutandis*, *Balsamo*, cited above, § 64).

68. In the light of the foregoing, having noted and weighed each of the characteristics of the contested measure, the Court finds that they are symptomatic of its predominantly restorative nature; in this regard, the present case differs from *Hamer* (cited above, §§ 54-60). The Court therefore concludes that the demolition order in question did not constitute a "penalty" within the meaning of Article 7 of the Convention (see, *mutatis mutandis*, *Saliba* (dec.), cited above; compare and contrast *Hamer*, cited above, § 60). That provision is accordingly not applicable in the present case.

69. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

B. Alleged violation of Article 6 § 1 of the Convention

70. The applicant complained that, in view of the Court's case-law setting out the criteria for assessing the existence of a criminal charge (in particular, *Engel and Others*, cited above), the domestic court's characterisation of the demolition order in his case as a restorative measure had resulted in a violation of Article 6 § 1 of the Convention. The relevant part of that provision reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

71. It should be observed at the outset that the applicant contested the domestic court's interpretation of the demolition order as a restorative measure as such, arguing that it was inconsistent with the Court's case-law.

72. In this connection, the Court, referring to its findings above under Article 7 of the Convention (see paragraph 68 above), reiterates that it is not its task to deal with alleged errors of law or fact committed by the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, among many other authorities, *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 83, 11 July 2017).

73. The Court therefore finds that, even assuming that Article 6 is applicable to the proceedings under its civil head, the applicant failed to allege any deprivation of the guarantees of a fair trial enshrined in Article 6 as a result of the interpretation employed by the domestic court.

74. It follows that the complaint under Article 6 § 1 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 § 4.

C. Alleged violation of Article 1 of Protocol No. 1 to the Convention

75. The applicant complained that the demolition of the warehouse would constitute a disproportionate interference with his property rights under Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

76. He argued that the national courts had failed to consider that the order to demolish his warehouse was being enforced years after the conviction on which it had been based, and that the municipality had granted him amnesty (see paragraph 8 above) and a certificate of fitness for use (see paragraph 11 above). These factors, in his view, had given rise to a legitimate expectation

which should have been weighed against any competing public interest in carrying out the demolition.

77. The Court notes that the warehouse erected by the applicant was declared an unauthorised construction by the domestic courts (see paragraph 10 above). The Court acknowledges it has been debated at domestic level whether unauthorised buildings could be the subject of property rights and could therefore be validly transferred and purchased (see paragraph 52 above).

78. In the present case, however, the Court considers that it is not necessary to specifically address the issue whether the applicant's warehouse could be regarded as a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention (see, among other authorities, *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I; *Öneryıldız v. Turkey* [GC], no. 48939/99, § 124, ECHR 2004-XII; and *Hamer*, cited above, § 75), given that, even assuming that this were the case, this complaint is in any event inadmissible for the following reasons.

79. The Court firstly notes that at the time the present application was lodged the applicant's warehouse had not yet been demolished and that, to date, the Court has been not informed otherwise (see paragraph 19 above). The planned demolition, which is meant to ensure compliance with building regulations, amounts to a control of the use of property (see *Ivanova and Cherkezov*, cited above, § 69). It therefore falls to be examined under the second paragraph of Article 1 of Protocol No. 1 to the Convention (see *Saliba*, cited above, § 35; *Zhidov and Others v. Russia*, nos. 54490/10 and 3 others, § 96, 16 October 2018; compare *Depalle v. France* [GC], no. 34044/02, § 79, ECHR 2010, and *Hamer*, cited above, § 77).

80. The Court observes that the demolition order complained of was issued pursuant to section 7(9) of Law no. 47 of 1985 (see paragraph 23 above) and that, accordingly, the public prosecutor acted with a view to its enforcement, which was not subject to a limitation period (see paragraphs 13 and 46 above). The interference was therefore in accordance with the law.

81. The Court reiterates that the purpose of a demolition order is to restore the site to its original condition, thereby ensuring the orderly and safe use of land in compliance with building regulations (see paragraph 65 above). It therefore has no doubt as to the legitimacy of the aim pursued by the contested measure, which is clearly "in accordance with the general interest" (see *Saliba*, § 44, and *Ivanova and Cherkezov*, § 71, both cited above).

82. As to whether the aim sought can be considered proportionate to the interference caused by the planned forcible demolition of the warehouse (see, among many other authorities, *Depalle*, § 83, and *Beyeler*, § 114, both cited above), the Court reiterates that in the field of building and town planning regulations, the State enjoys a wide margin of appreciation, in particular in choosing the means of enforcement and in ascertaining whether the consequences of enforcement would be justified (see *Saliba*, § 45; *Hamer*,

§ 78; and *Ivanova and Cherkezov*, § 73; all cited above). It further reiterates that Article 1 of Protocol No. 1 does not in such cases presuppose the availability of a procedure requiring an individualised assessment of the necessity of each measure of implementation of the relevant planning rules. It is not contrary to the latter for the legislature to lay down broad and general categories rather than provide for a scheme whereby the proportionality of a measure of implementation is to be examined in each individual case (see *Ivanova and Cherkezov*, cited above, § 74).

83. The Court firstly observes that the applicant has not disputed that the construction of the warehouse, which he had knowingly built without a building permit, was unauthorised.

84. In this regard, the Court notes that soon after the inspection of the applicant's land which led the municipal police to discover the warehouse, criminal proceedings were instituted against him for the offence of unauthorised construction (see paragraphs 3 and 6 above; contrast *Hamer*, cited above, § 83). It further notes that the courts of criminal jurisdiction considered his arguments regarding the fact that the municipality had granted him amnesty; nevertheless, they ordered that the warehouse be demolished after finding that he could not benefit from one (see paragraph 6 above). As to the issuance of a certificate of fitness for use, which relates to the separate issue of building safety (see paragraph 34 above), the domestic courts considered such a certificate immaterial in respect of building regulations (see paragraph 16 above).

The Court thus finds that, following his conviction, the applicant could not reasonably rely on the legality of the warehouse (see, *mutatis mutandis*, *Depalle*, § 86; *Hamer*, § 85; and *Zhidov and Others*, § 106, all cited above).

85. In fact, despite the demolition order, the applicant himself did not take any action to comply with it, but instead continued to benefit for many years from a construction that should have been demolished (see *Vagnola s.p.a. & Madat S.r.l. v. Italy* (dec.), no. 7653/04, 12 January 2010).

86. Against this background, the Court thus finds that the authorities' initiative to enforce the demolition order at issue was necessary to restore the situation to that which it would have been had the requirements of the law not been disregarded. In this manner, the authorities guarantee the effectiveness of building regulations and deter other potential offenders (see *Saliba*, cited above, § 46, and *Tiryakioglu v. Turkey* (dec.), no. 24404/02, 13 May 2008).

87. In the Court's view, the fact that a certain period of time elapsed before the enforcement of the demolition order by the public prosecutor cannot lead to a different conclusion. In fact, under domestic law, demolition orders are not subject to a limitation period (see paragraph 46 above) and there is nothing in the authorities' conduct following the conviction to suggest that the demolition order issued by the judge lost its validity and that the applicant's warehouse would not be demolished (compare *Hamer*, cited above, § 85).

88. In such circumstances, the Court concludes that the applicant would not bear an excessive burden as a result of the enforcement of the order to demolish his warehouse (see *Tiryakioglu*, cited above, and *Galena Vraniskoska v. "The former Yugoslav Republic of Macedonia*" (dec.), no. 30844/06, 12 April 2011).

89. It follows that this complaint is manifestly ill-founded and must be dismissed pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 12 September 2024.

Ilse Freiwirth Registrar	Ivana Jelić President