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

FIRST SECTION

DECISION

Application no. 31308/19
Francesco MANZO
against Italy

The European Court of Human Rights (First Section), sitting on 19 December 2024 as a Committee composed of:

Frédéric Krenc*, President*,
Raffaele Sabato,
Alain Chablais*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 31308/19) 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 7 June 2019 by an Italian national, Mr Francesco Manzo ("the applicant"), who was born in 1944, lives in Padua and was represented by Mr F. Bonon, a lawyer practising in Padua;

the decision to give notice of the application to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia;

the parties' observations;

the comments submitted by the association *Unione delle Camere Penali Italiane*, which was granted leave to intervene by the President of the Section;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the preventive confiscation of the applicant's assets, ordered by the domestic courts pursuant to Article 24 of Legislative Decree no. 159 of 6 September 2011 (*Codice delle leggi antimafia e delle misure di prevenzione,* "Code of Anti-Mafia Laws and Preventive Measures", hereinafter: "Decree no. 159/2011"), since the applicant was found to be an individual who posed a danger to society, and the confiscated assets were considered to be the proceeds of unlawful activities.

2. By a decree of 5 July 2016, the Padua District Court declared that the applicant was a socially dangerous individual within the meaning of Article 1 § 1 (a) of Decree no. 159/2011 (*pericolosità generica* or "ordinary dangerousness"), notably for being an individual who, on the basis of factual evidence, could be regarded as an "habitual offender". On this basis, the court ordered the confiscation of several assets owned by the applicant.

3. By a decree of 3 April 2017, the Venice Court of Appeal dismissed the applicant's appeal and confirmed the measure.

4. The measure became final on the basis of the Court of Cassation's judgment no. 57125 of 18 December 2018, which dismissed the applicant's appeal on points of law.

5. On 28 March 2019 the applicant lodged with the Trento Court of Appeal a request for revocation of the measure pursuant to Article 28 of Decree no. 159/2011. He argued in particular that in judgment no. 24 of 27 February 2019 the Constitutional Court had found that the legal basis of the contested measure – notably, Article 1 § 1 (a) of Decree no. 159/2011 – was not sufficiently clear and foreseeable and, accordingly, was incompatible with the Constitution. The Constitutional Court relied in particular on the Court's judgment issued in the case of *De Tommaso v. Italy* ([GC], no. 43395/09, 23 February 2017). Accordingly, since the legal basis for the contested measure had been declared unconstitutional, the measure had to be revoked.

6. On 11 June 2019, following the institution of the present proceedings before the Court, the Trento Court of Appeal fully upheld the applicant's request, thereby ordering the revocation of the contested measure and the restitution of the confiscated assets to the applicant. It observed in particular that the declaration of unconstitutionality entailed the need to eliminate from the domestic legal order all the legal effects which were grounded on the cited provision.

7. The applicant complained under Article 1 of Protocol No. 1 to the Convention of the alleged lack of clarity and foreseeability of the legal basis with regard to the individuals to whom confiscation of assets as a preventive measure was applicable.

THE COURT'S ASSESSMENT

8. The Court notes that the present application was lodged on 7 June 2019. However, a few days later, on 11 June 2019, the applicant obtained a favourable decision from the competent domestic court, which ordered the revocation of the contested measure and the restitution of the confiscated assets to him. The applicant informed the Court of such development only on 4 June 2024, following the communication of the case to the respondent Government and, in particular, in his observations in reply to the Government's observations on the admissibility and merits of the case

and including his claims for just satisfaction under Article 41 of the Convention.

9. In this connection, the Court stresses that, under Rule 47 § 7 of the Rules of Court, "[a]pplicants shall keep the Court informed [...] of all circumstances relevant to the application". It notes that the applicant waited five years to inform it of important developments in the domestic proceedings, which could be considered as an abuse of the right of application (see, among many others, *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, and *Zličić v. Serbia*, nos. 73313/17 and 20143/19, § 55, 26 January 2021).

10. In any event, while the Court notes that the Government have not raised an objection concerning the loss of victim status by the applicant, it being a matter which falls within its jurisdiction, the Court is not prevented from examining it on its own motion (see, for example, *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, § 88, 17 January 2023).

11. In this connection, the Court reiterates that it falls first to the national authorities to redress any violation of the Convention and that in assessing whether an applicant can claim to be a genuine victim of an alleged violation, account should be taken not only of the formal position at the time when the application was lodged with the Court but also of all the circumstances of the case in question, including any developments prior to the date of the examination of the case by the Court (see *Rooman v. Belgium* [GC], no. 18052/11, § 128, 31 January 2019). A decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention. Only where both these conditions have been satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of the application (ibid., § 129).

12. Therefore, the loss of victim status depends, among other things, on the nature of the right allegedly infringed, the reasons given for the decision, and the persistence of the adverse consequences for the applicant after that decision (see *Shishanov v. the Republic of Moldova*, no. 11353/06, § 106, 15 September 2015).

13. As regards the first condition, the Court notes that the Trento Court of Appeal fully upheld the applicant's complaint that the contested measure was unlawful for being grounded on a provision which had been declared unconstitutional as it lacked in clarity and foreseeability (see paragraphs 8-9 above). The Court therefore finds that, by referring to the reasoning of the Constitutional Court's judgment of 27 February 2019, the domestic court expressly acknowledged the violation which was alleged by the applicant in the present case.

14. As regards the second condition, the Court notes that the domestic court ordered the restitution of the confiscated assets to the applicant.

15. In this connection, the Court reiterates that the redress afforded must be appropriate and sufficient (see *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010).

16. In the present case, the applicant has not argued that the redress offered by the domestic court, in the form of the restitution of the confiscated assets, was not appropriate and sufficient, and has not argued that, notwithstanding such decision, there were adverse consequences for him that persisted. He confined himself to informing the Court of the revocation of the contested measure, without alleging that he had suffered any further damage.

17. Taking into account the express acknowledgement of the violation and the redress offered by the domestic court, seen in the light of the applicant's claims, the Court considers that the application is incompatible *ratione personae* with the provisions of the Convention due to the loss of victim status by the applicant.

18. It must therefore be rejected as inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 23 January 2025.

Liv Tigerstedt Deputy Registrar	Frédéric Krenc President