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

FIRST SECTION

DECISION

Application no. 29241/22
Jean-Pierre MEERSSERMAN
against Italy

The European Court of Human Rights (First Section), sitting on 12 December 2024 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. 29241/22) 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 29 May 2022 by an Italian national, Mr Jean-Pierre Meersserman ("the applicant"), who was born in 1947, lives in Como, and was represented by Ms P. Regina, a lawyer practising in Milan;

the decision to give notice of the complaint concerning Article 4 of Protocol No. 7 to 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 present application concerns the alleged violation of the principle of *ne bis in idem*.

A. The criminal proceedings

2. On 1 October 2014 the applicant was charged with failure to submit income tax-returns in respect of tax years 2005-2009 with a view to evading

taxes under Article 5 of Legislative Decree no. 74 of 10 March 2000 (Legislative Decree no. 74/2000).

3. On 9 October 2015 the Como District Court discontinued the proceedings in respect of tax years 2005 and 2006 on account of statutory limitation and convicted the applicant in respect of tax years 2007-2009 to one year of imprisonment (judgment no. 1310/2015).

4. On 9 November 2016 the Milano Court of Appeal discontinued the proceedings in respect of tax year 2007 on account of statutory limitation and, accordingly, reduced the sentence to ten months of imprisonment (judgment no. 532/2016).

5. On 28 July 2017 the Court of Cassation rejected the applicant's appeal against judgment no. 532/2016.

B. The tax proceedings

6. In parallel with the criminal proceedings, the Tax Administration (*Agenzia delle Entrate*) issued the applicant with tax assessment notices nos. T9K010800679/2011, T9K010701100/2012, T9K010701105/2012, T9K010701107/2012 and T9K010701111/2012 which gave rise to two separate sets of proceedings.

1. The first set of tax proceedings

7. According to tax assessment notice no. T9K010800679/2011 of 20 April 2011 the applicant was found liable under Article 1(1) of Legislative Decree no. 471 of 18 December 1997 (Legislative Decree no. 471/1997) for failure to submit the income tax return and, consequently, for failure to pay taxes on his company's income (IRES) and on physical persons (IRPEF) in respect of tax year 2005. Subsequently, he was ordered to pay the unpaid taxes as well as 207,596.40 euros (EUR) in tax surcharges.

8. On 4 July 2012 the Provincial Tax Commission of Como granted the applicant's appeal against the tax assessment notice and nullified it (judgment no. 29/05/12).

9. On 31 July 2014 the Regional Tax Commission of Milan reversed judgment no. 29/05/12 and upheld the assessment of the tax assessment notice and the obligation to the pay the unpaid taxes and the imposition of the tax surcharges (judgment no. 4184/14).

10. Judgment no. 4184/14 was upheld by the Court of Cassation on 29 November 2021 (order no. 37149/21).

2. The second set of tax proceedings

11. Similarly, according to tax assessment notices nos. T9K010701100/2012, T9K010701105/2012, T9K010701107/2012 and T9K010701111/2012 of 26 June 2012, the applicant was charged under

Article 1(1) of Legislative Decree no. 471/1997 with failure to submit the income tax return and pay IRPEF in respect of tax years 2006-2009. Each notice ordered the payment of the unpaid taxes. While tax assessment notices nos. T9K010701100/2012 and T9K010701105/2012, concerning tax years 2006 and 2007 respectively, included tax surcharges (EUR 201,112.80 and EUR 58,488 respectively), tax assessment notices nos. T9K010701107/2012 and T9K010701111/2012, relating to tax years 2008 and 2009, did not.

12. The applicant appealed against all four tax assessment notices separately and, according to the available information, after having joined the proceedings, on 29 May 2013 the Provincial Tax Commission of Como rejected the appeals (judgment no. 81/01/13).

13. Judgment no. 81/01/13 was upheld on 17 June 2014 by the Regional Tax Commission of Milan and on 7 December 2021 by the Court of Cassation (order no. 38759/21).

C. Complaint

14. The applicant alleged a violation of the principle of *ne bis in idem* as provided in Article 4 of Protocol No. 7 to the Convention with regard to the sets of proceedings detailed above.

THE COURT'S ASSESSMENT

15. The parties disagreed as to the "criminal" nature of the tax proceedings for the purposes of Article 4 of Protocol No. 7 to the Convention.

16. The Government also argued that the applicant had failed to exhaust domestic remedies as he had failed to lodge a complaint before the domestic courts in the tax proceedings. The applicant did not reply to the Government's objection.

17. The Court observes that on 28 July 2017 the applicant was convicted in the criminal proceedings to ten months of imprisonment with a final decision in respect of the failure to submit the income tax return in tax years 2008 and 2009 (see paragraph 5 above).

18. However, in respect of the conduct allegedly held by the applicant in tax years 2005, 2006 and 2007, the domestic courts discontinued the proceedings on account of statutory limitation (see paragraphs 3 and 4 above).

19. In order to determine whether a particular decision constitutes an "acquittal" or a "conviction", the Court has considered the actual content of the decision at issue and assessed its effects on the applicant's situation. Referring to the text of Article 4 of Protocol No. 7, it considers that the deliberate choice of the words "acquitted or convicted" implies that the accused's "criminal" responsibility has been established following an assessment of the circumstances of the case, in other words that there has been a determination as to the merits of the case. In order for such an

assessment to take place, it is vital that the authority giving the decision is vested by domestic law with decision-making power enabling it to examine the merits of a case. The authority must then study or evaluate the evidence in the case file and assess the applicant's involvement in one or all of the events prompting the intervention of the investigative bodies, for the purposes of determining whether "criminal" responsibility has been established (see *Mihalache v. Romania* [GC], no. 54012/10, § 97, 8 July 2019).

20. In the instant case, the Court observes that the decision adopted in the criminal proceedings in respect of tax years 2005, 2006 and 2007 did not amount to a conviction nor an acquittal for the purposes of Article 4 of Protocol No. 7 to the Convention as the impugned ruling was not based on any investigation into the charges brought against the applicant, nor was it based on any findings of fact relevant for determining the applicant's guilt or innocence. The decision terminating the criminal proceedings did not take cognisance of the facts, circumstances or evidence relating to the alleged acts, evaluate them or rule to convict or acquit him. It did not amount to an assessment of whether the applicant bore responsibility for the impugned offence. The appeal court simply held that the statutory limitation period had expired and thus closed the case for purely procedural reasons (compare *Smoković v. Croatia*, no. 57849/12, §§ 43-44, 12 November 2019).

21. The Court further notes that, according to domestic law (see, *a contrario*, Article 654 of the Code of Criminal Procedure and Article 21-*bis* of Legislative Decree no. 74/2000), the applicant had no reason to believe that the expiry of the statutory limitation period in respect of those offences would in any manner affect the tax proceedings. Thus, although the ruling in the criminal proceedings was final, it did not preclude the continuation of the parallel tax proceedings in respect of the same conduct.

22. It follows that Article 4 of Protocol No. 7 to the Convention is not applicable to the sets of proceedings concerning the applicant's alleged conduct in tax years 2005, 2006 and 2007 and that this part of the complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

23. The Court will continue the examination of the applicability of Article 4 of Protocol No. 7 exclusively in respect of the applicant's failure to submit the income tax return in tax years 2008 and 2009. In this regard, it must therefore determine whether the tax proceedings could be qualified as "criminal" under the Convention.

24. On the basis of the "Engel criteria" (see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22) the Court has already found that tax proceedings were "criminal" in nature, not only for the purpose of Article 6 of the Convention (see, among many authorities, *Bendenoun v. France*, no. 12547/86, § 47, 24 February 1994) but also for the purpose of Article 4 of Protocol No. 7 to the Convention (see *A and B v. Norway* [GC],

nos. 24130/11 and 29758/11, §§ 107, 136 and 138, 15 November 2016, and *Jóhannesson and Others v. Iceland*, no. 22007/11, § 43, 18 May 2017), but only where tax surcharges were imposed.

25. In the instant case, the Court notes that tax assessment notices nos. T9K010701107/2012 and T9K010701111/2012, concerning the failure to submit the income tax return and pay IRPEF in respect of tax years 2008 and 2009, did not include tax surcharges (see paragraph 11 above), but only aimed at collecting the unpaid taxes due.

26. Therefore, the Court finds that, insofar as the applicant's conduct in tax years 2008 and 2009 was concerned, the tax proceedings could not be qualified as "criminal" for the purposes of the Convention. It follows that Article 4 of Protocol No. 7 to the Convention is not applicable and that also this part of the complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

27. In light of the foregoing the Court does not find it necessary to examine the Government's objection as to non-exhaustion of domestic remedies and declares the application inadmissible.

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	Erik Wennerström President