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

FIRST SECTION

DECISION

Application no. 52611/19
Michael PÜSCHEL
against Italy

The European Court of Human Rights (First Section), sitting on 3 October 2024 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 26 September 2019,

Having regard to the declaration submitted by the respondent Government on 29 February 2024 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, Mr Michael Püschel, is an Austrian national, who was born in 1964 and lives in Innsbruck. He was represented before the Court by Mr P. Platter, a lawyer practising in Bolzano.

2. The Italian Government ("the Government") were represented by their Agent, Mr L. D'Ascia.

3. The applicant complained under Article 6 § 1 of the Convention about the excessive formalism of the decision of the Court of Cassation to declare his appeal on points of law inadmissible.

4. The application had been communicated to the Government.

THE LAW

5. After the failure of attempts to reach a friendly settlement, by a letter of 29 February 2024 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 further requested the Court to strike out the application in accordance with Article 37 of the Convention.

6. The Government acknowledged that the contested decision of the Court of Cassation amounted to excessive formalism. They offered to pay the applicant 6,000 euros (EUR) for non-pecuniary damage and EUR 1,000 for costs and expenses before the Court, plus any taxes which may be chargeable to the applicant. They further undertook not to request the payment of EUR 5,200 for costs sustained by the respondent public authority (Ministry of Public Education) and of the amount for additional expenses of proceedings (*ulteriore importo a titolo di contributo unificato*) pursuant to Article 13, paragraph 1-*quater* of Decree no. 115/2002, imposed on the applicant by the order of the Court of Cassation no. 8449/2019. Should the applicant already have paid these amounts, the Government undertook to reimburse them, plus any tax that may be chargeable to the applicant. In view of the above, they invited the Court to strike the application out of the list of cases in accordance with Article 37 § 1 (c) of the Convention. The amounts would be payable within three months from the date of notification of the Court's decision. In the event of failure to pay these amounts within the above-mentioned three-month period, the Government undertook to pay simple interest on them, 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. By a letter of 29 March 2024, the applicant informed the Court that he was not satisfied with the terms of the unilateral declaration. He submitted that a strike-out decision would prevent him from seeking the reopening of the domestic proceedings, under Article 391-*quater* of the Code of Civil Procedure, introduced by Legislative Decree no. 149 of 10 October 2022, as that would only be possible on the basis of a finding of a violation by the Court. He also claimed that the sums offered by the Government did not in themselves constitute an adequate redress for the violation complained of.

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 further reiterates that in a number of cases in which the possibility to request reopening of domestic proceedings would have constituted an appropriate form of redress, it has refused to accept unilateral declarations if the right to apply for reopening of domestic proceedings following the Court's decision to strike out a case on that basis was not guaranteed to an applicant in domestic law, as it would be for an applicant in respect of whom the Court delivered a judgment (see *Šarić and Others v. Croatia*, nos. 38767/07 and 22 others, §§ 26-29, 18 October 2011, and *Aviakompaniya A.T.I., ZAT v. Ukraine*, no. 1006/07, §§ 33-34, 5 October 2017, with further references).

12. The Court has established clear and extensive case-law concerning complaints relating to the right of access to a Court (see, for example, *Zubac v. Croatia* [GC], no. 40160/12, 5 April 2018; *Succi and Others v. Italy*, nos. 55064/11 and 2 others, 28 October 2021; and *Patricolo and Others v. Italy*, nos. 37943/17 and 2 others, 23 May 2024).

13. The Court notes the admissions contained in the Government's declarations as well as the amounts of compensation proposed – which are consistent with the amounts awarded in similar cases (see *Patricolo and Others*, cited above, § 112).

14. As regards the applicant's objection concerning the impossibility to seek the reopening of the proceedings under Article 391-*quater* of the Code of Civile Procedure, the Court observes that, under that provision, a finding of a violation by the Court may warrant examination of an application for review (*revocazione*) only provided that the violation adversely affected a "right to a personal status" (*diritto di stato della persona*). However, the applicant has not even alleged that his case, which concerns a request for compensation for damages caused by an accident, complies with this condition and would thus be eligible for review under Italian law of civil procedure. In the absence of further details, the Court has no reason to consider that the compensation offered by the Government constitutes inadequate or otherwise unreasonable redress for the violation of his Convention rights (see *Ryabkin and Volokitin v. Russia* (dec.), nos. 52166/08 and 8526/09, §§ 49-50, 28 June 2016; compare and contrast with *Igranov and Others v. Russia*, nos. 42399/13 and 8 others, §§ 24 and 26, 20 March 2018).

15. In light of the above considerations, 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*).

16. 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).

17. 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 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 24 October 2024.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President