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

FIRST SECTION

DECISION

Application no. 26454/19
Ernesto RIMOLDI and Gianluigi RIMOLDI
against Italy

The European Court of Human Rights (First Section), sitting on 3 April 2025 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. 26454/19) 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 8 May 2019 by two Italian nationals, Mr Ernesto Rimoldi ("the first applicant") and Mr Gianluigi Rimoldi ("the second applicant"), who were born in 1961 and 1956 respectively, live in Olgiate Olona and Busto Arsizio and were represented by Ms A. Mascia, a lawyer practising in Verona;

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 the remainder of the application inadmissible;

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*.

2. At the relevant time, the applicants were administrators and shareholders of Dante Rimoldi & co. a car dealership (hereinafter "the applicants' company"), which, according to the available documents, was a

general partnership (*società in nome collettivo*) incorporated into a limited liability company (*società a responsabilità limitata*) on 1 December 2006.

3. On 26 March 2007 the Revenue Police (*Guardia di Finanza*) conducted a tax audit on the applicants' company and on 4 September 2007 delivered its report (*processo verbale di constatazione*), accusing the company of several tax violations allegedly committed between 2004 and 2007.

A. Criminal proceedings

4. Following the investigation by the Revenue Police, the applicants, their company and several other individuals were accused of conspiracy to commit various offences in relation to value-added tax (VAT) during the fiscal years 2004 to 2007. They were accused of having participated in VAT carousel fraud, in particular by creating shell companies and using false documents, which enabled them to acquire goods — in this case, motor vehicles — without paying VAT. The scheme allowed those involved to procure products at costs below the market price, which they could then sell to customers, thereby distorting the market.

5. In particular, they were charged with fraudulent submission of false declarations in lieu of affidavits (*dichiarazioni sostitutive dell'atto di notorietà*) to the Vehicle Licensing Authority (*Motorizzazione Civile*); unlawfully profiting from deception by using shell companies to import motor vehicles within the European Union (EU), thus misleading the Vehicle Licensing Authority and the Tax Administration (*Agenzia delle Entrate*); and issuing invoices for non-existent transactions. They were charged under Article 640 of the Criminal Code; sections 47 and 76 of Presidential Decree no. 445 of 28 December 2000 in connection with Article 483 of the Criminal Code; and Articles 2 and 8 of Legislative Decree no. 74 of 10 March 2000. All the offences were allegedly committed between 2004 and 2007.

6. On 27 February 2013 the Busto Arsizio District Court acquitted the applicants and their company on the grounds that they had not committed the offences with which they had been charged (judgment no. 377/12). The judgment was not appealed against and became final.

B. Tax proceedings

7. In the light of the tax audit report by the Revenue Police, the Tax Administration issued five tax assessment notices (*avviso di accertamento*) against the applicants' company. Each of them concerned tax violations allegedly committed between 2004 and 2007 (no. R2V02BB00055/2008 in respect of the year 2004; no. R2V02BB00044/2008 in respect of the year 2005; no. T9302TA00556/2010 in respect of the year 2006; and nos. T93C0TC01011/2012 and T9303TC02055/2012 in respect of the year 2007).

8. In particular, the applicants' company was found to have participated in VAT carousel fraud, committing several bookkeeping offences and supplying false information to the tax authorities under Article 1 § 2, Article 5 § 4, Article 8 § 1 and Article 9 §§ 1 and 3 of Legislative Decree no. 471 of 18 December 1997 and Article 32 § 2 of Legislative Decree no. 446 of 15 December 1997. For all those offences, additional taxes and tax surcharges were imposed on the company.

9. The Tax Administration also issued tax assessment notices nos. R2V01BB00063/2008 and T93010H01323/2010 against the first applicant, and tax assessment notices nos. R2V01BB00061/2008 and T93010H01322/2010 against the second applicant, imposing on them additional taxes and tax surcharges. They were found, under Article 1 § 2 of Legislative Decree no. 471 of 18 December 1997, to have submitted false statements concerning taxable income in their tax returns for the years 2005 and 2006, as they had allegedly concealed part of the corporate income derived from VAT carousel fraud and the bookkeeping offences referred to in tax assessment notices nos. R2V02BB00044/2008 and T9302TA00556/2010 issued against the applicants' company (see paragraph 7 above).

1. First set of proceedings

10. On 13 February 2009 the Provincial Tax Commission of Varese partially granted the appeal against tax assessment notices nos. R2V02BB00055/2008, R2V02BB00044/2008, R2V01BB00063/2008 and R2V01BB00061/2008 (judgment no. 31/12/09).

11. On 28 April 2011 the Regional Tax Commission of Milan upheld judgment no. 31/12/09 (judgment no. 34/8/11).

12. On 7 December 2018 the Court of Cassation granted the appeal lodged by the Tax Administration and referred the case back to the Regional Tax Commission of Milan (order no. 31726/18).

13. The applicants did not provide information on the continuation of the proceedings before the Regional Tax Commission of Milan but, according to the available documents, it appears that the applicants and their company paid the sums they had been ordered to pay by the relevant tax assessment notices.

2. Second set of proceedings

14. On 7 December 2012 the Provincial Tax Commission of Varese granted the appeal lodged against tax assessment notices nos. T9302TA00556/2010, T93010H01323/2010 and T93010H01322/2010 (judgment no. 104/06/11).

15. On 16 April 2013 the Regional Tax Commission of Milan struck part of the case out of its list and granted the appeal lodged by the Tax

Administration against judgment no. 104/06/11 in respect of the remaining part of the case (judgment no. 55/28/13).

16. On 9 November 2018 the Court of Cassation upheld judgment no. 55/28/13 (judgment no. 28705/18).

3. Third set of proceedings

17. Similarly, on 18 November 2013 the Provincial Tax Commission of Varese granted the appeal lodged against tax assessment notices nos. T9303TC02055/2012 and T93C0TC01011/2012 (judgment no. 105/12/13).

18. On 30 March 2015 the Regional Tax Commission of Milan partially granted the appeal lodged by the Tax Administration (judgment no. 1285/15).

19. On 9 November 2018 the Court of Cassation upheld judgment no. 1285/15 (judgment no. 28706/18).

C. Complaint

20. The applicants alleged that there had been a violation of the principle of *ne bis in idem* under Article 4 of Protocol No. 7 to the Convention with regard to the above-mentioned separate sets of criminal and tax proceedings.

THE COURT'S ASSESSMENT

21. The parties disagreed as to whether the criminal and the tax proceedings had had the same subject matter or not, as the Government argued that, in contrast to the criminal proceedings, the tax proceedings had not required an assessment of the applicants' intention to participate in fraudulent activities.

22. The Court notes that in the criminal proceedings the applicants were charged with participation in VAT carousel fraud as they were the administrators of the company. The company itself was charged as an autonomous legal entity (see paragraphs 4-6 above).

23. As regards the tax proceedings, the Court preliminarily observes that while tax assessment notices nos. R2V01BB00063/2008, R2V01BB00061/2008, T93010H01323/2010 and T93010H01322/2010 were issued against the applicants, tax assessment notices nos. R2V02BB00055/2008, R2V02BB00044/2008, T9302TA00556/2010, T93C0TC01011/2012 and T9303TC02055/2012 were issued only against their company (see paragraphs 7-8 above). The Court will therefore assess them separately.

A. Tax assessment notices nos. R2V02BB00055/2008, R2V02BB00044/2008, T9302TA00556/2010, T93C0TC01011/2012 and T9303TC02055/2012

24. The Government did not raise an objection concerning the applicants' victim status in respect of tax assessment notices nos. R2V02BB00055/2008, R2V02BB00044/2008, T9302TA00556/2010, T93C0TC01011/2012 and T9303TC02055/2012. However, the issue of whether an applicant can claim to be a victim of the violation complained of is a matter which goes to the Court's jurisdiction and which the Court must thus examine of its own motion (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 70, ECHR 2016 (extracts), and *A and B v. Croatia*, no. 7144/15, § 88, 20 June 2019).

25. The Court reiterates that the term "victim" used in Article 34 of the Convention denotes the person directly affected by the act or omission which is in issue (see, among other authorities, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 92, ECHR 2012).

26. Having regard to its case-law (see *Albert and Others v. Hungary* [GC], no. 5294/14, §§ 119-69, 7 July 2020), the Court considers that it must itself examine whether the applicants, as shareholders of a company, can claim to be victims of the alleged violation of Article 4 of Protocol No. 7 to the Convention.

27. The Court observes that the applicants' company was a general partnership until November 2006, but that it was incorporated into a limited liability company in December of the same year, thus before the tax audit took place and the report was issued (see paragraph 3 above) and before the separate sets of criminal and tax proceedings were initiated.

28. The Court notes that, according to the domestic law, a limited liability company is an autonomous legal entity, as testified by the fact that, in all sets of proceedings, it was represented by a legal representative. Furthermore, the applicants did not provide any element to conclude that they had participated in the tax proceedings in respect of the tax assessment notices issued against their company or that they had borne liability in respect of the tax surcharges issued against it.

29. In respect of tax assessment notices nos. R2V02BB00055/2008, R2V02BB00044/2008, T9302TA00556/2010, T93C0TC01011/2012 and T9303TC02055/2012 the applicants were therefore not subject to tax proceedings and they cannot be regarded as having standing in the proceedings before the Court regarding the complaint raised under Article 4 of Protocol No. 7 to the Convention (compare *Falgest S.r.l. and Others v. Italy* (dec.), no. 19029/11, § 28, 30 April 2013).

30. It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention.

B. Tax assessment notices nos. R2V01BB00063/2008, R2V01BB00061/2008, T93010H01323/2010 and T93010H01322/2010

31. The Court will continue to examine whether there was a duplication of proceedings as regards the tax proceedings arising only from tax assessment notices nos. R2V01BB00063/2008, R2V01BB00061/2008, T93010H01323/2010 and T93010H01322/2010 issued against the applicants.

32. As to the facts referred to in those tax assessment notices, the Court emphasises that they did not concern the alleged fraud or the other bookkeeping activities which could have possibly overlapped with the subject matter of the criminal proceedings, as the applicants were instead accused of having provided false information in their own individual tax returns (see paragraph 9 above).

33. The Court has already found that possible tax offences committed within the context of the administration of a company, including making a tax declaration for it, differ from making a tax declaration in personal taxation, as these declarations are made using different forms, they may have been made at different times and, in the case of the company, may also have involved other persons (compare *Pirttimäki v. Finland*, no. 35232/11, § 51, 20 May 2014).

34. The Court therefore considers that the parts of the first and second sets of tax proceedings concerning tax assessment notices nos. R2V01BB00063/2008, R2V01BB00061/2008, T93010H01323/2010 and T93010H01322/2010 did not arise from identical facts or facts which were substantially the same as those falling within the scope of the criminal proceedings. It follows that this part of the complaint must be declared manifestly ill-founded and must be rejected 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 9 May 2025.

Liv Tigerstedt Deputy Registrar	Erik Wennerström President