

## SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



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**DH-DD(2013)871**

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1179 meeting (24-26 September 2013) (DH)

Item reference: Updated action plan (23/07/2013)

Communication from Italy concerning the case of Buffalo SRL en liquidation against Italy (Application No. 38746/97).

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Réunion : 1179 réunion (24-26 septembre 2013) (DH)

Référence du point : Plan d'action mis à jour

Communication de l'Italie relative à l'affaire Buffalo SRL en liquidation contre Italie (requête n° 38746/97)  
**(anglais uniquement)**

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Rappresentanza permanente d'Italia presso il Consiglio d'Europa  
Ufficio dell'Agente del Governo davanti alla Corte europea dei Diritti dell'Uomo

#### *Action Plan*

### **Case of BUFFALO SRL EN LIQUIDATION V. ITALY**

**Application n°38746/97**

*Final on 3 March 2003(merits)*

*Final on 15 December 2004(just satisfaction)*

#### **Case Summary**

The case concerns a violation of the right of the applicant company (in liquidation since 1994) to the peaceful enjoyment of its possessions on account of the authorities' delay in paying back tax rebates (violation of Article 1 of Protocol no. 1).

In particular, tax rebates from 1985 to 1991 were paid back 5-10 years late, while a tax rebate for 1992 was still pending when the European Court rendered judgment on the merits in 2003.

The Court found that the financial impact of the delays in paying back tax rebates, coupled with the lack of any effective remedy to expedite reimbursement together with the uncertainty as to when the rebates would be paid, had upset the fair balance that had to be maintained between the general interest of the community and the applicant's right to the peaceful enjoyment of possessions (§ 39 of the judgment).

#### **Individual Measures**

The European Court, considering all the elements of the case (§ 29 of the judgment), awarded to the applicant just satisfaction in respect of pecuniary and non-pecuniary damage (a global sum of 75.000,00 euros), together with 1.000,00 euros for legal expenses.

In light of the above, the Committee decided that – besides payment of just satisfaction - no further individual measure is necessary.

Payment of just satisfaction: The award was paid on 10 March 2005 and evidence supplied.

#### **General Measures**

i) The European Court noted that the law applicable to tax rebates (Article 13 of Legislative Decree No. 241 of 9/07/1997, which modified Article 36bis of Decree No. 602/1973 of the President of the Republic), provided no strict time-limit for reimbursements (§28).

After the judgment of the Court, many measures have been taken, in order to facilitate and speed up tax rebates paying back.

Article 38 of joint provisions on tax collection (*Testo unico sulla riscossione delle imposte sul reddito*), as amended in 2005

[http://www.esptorisponde.ilsole24ore.com/Documenti/ProblemaDellaSettimana/2011/092011/20110919/LEGGE/DPR\\_602\\_1973.pdf](http://www.esptorisponde.ilsole24ore.com/Documenti/ProblemaDellaSettimana/2011/092011/20110919/LEGGE/DPR_602_1973.pdf)

, allows a time limit of 1 year, starting from the date of the application, to pay the reimbursements and establishes that default interest apply automatically in case of delay in payment. In 2006, it was also introduced the possibility of deducting tax credits from tax debits.

Furthermore, the tax payer can ask for direct payment in his or her bank or postal account.

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Citizens and interested persons can find all information at the following website of the Italian tax authorities: <http://www.agenziaentrate.gov.it/wps/portal/entrate/home>  
This information shows that the delays have been shortened and further improvements are expected.

ii) Furthermore, as regards the domestic remedy to apply for reimbursement (and in case of inaction to sue the relevant authorities before the fiscal jurisdictions, *commissioni tributarie* - Articles 37 and 38 of the Presidential Decree), the European Court noted that “the government provided no precedent case and failed to demonstrate that the applicant company had at its disposal an accessible and effective remedy against the lengthy wait for reimbursement, insofar as favourable decisions by fiscal commissions may only be executed once they become final, i.e. after three levels of jurisdiction” (§3 of the admissibility decision; see also §39 of the judgment).  
Information on this point will be provided as soon as possible.

iii) The judgment has been published on the Internet site of the Court of Cassation, in the database on the case-law of the European Court of Human Rights, and on the government's website. These websites are widely used by all those who practice law in Italy: civil servants, lawyers, prosecutors and judges alike. It has also been disseminated to all relevant authorities.