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

COURT (SECOND SECTION)

CASE OF ARCURI & THREE OTHERS v. ITALY

(Application no. 52024/99)

DECISION

STRASBOURG

5 July 2001

[TRANSLATION]

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THE FACTS

The applicants, Rocco Arcuri, Anna Maria Mussurici, Mirko Arcuri and Greta Guarino, are Italian nationals, who were born in 1933, 1951, 1974 and 1970 respectively. They live in Turin. The third applicant is the son of the first two applicants, who are a married couple. The fourth applicant is the daughter of the second applicant. The applicants were represented before the Court by Mr Barone, a lawyer practising in Milan.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

As the first applicant was suspected of being a member of a criminal organisation involved in drug trafficking, the Turin public prosecutor's office instituted proceedings against him on 23 October 1995 for the application of preventive measures available under Act no. 1423 of 27 December 1956 and Act no. 575 of 31 May 1965, as amended by Act no. 646 of 13 September 1982. The public prosecutor's office also requested the seizure of a number of assets belonging to the first applicant and/or the other applicants.

In an order of 31 October 1995 the President of the division of the Turin District Court specialised in preventive measures ordered the seizure of the assets in question, which included eight vehicles, several plots of land and flats, two private company shares and numerous documents. He noted that the inspections carried out by the national anti-mafia brigade (DIA) showed a discrepancy between the first applicant's financial means and his legal business activities and declared income.

During the proceedings before the special division the first two applicants and numerous witnesses were questioned. Accountants' and financial experts' reports were drawn up and transcripts of certain tapped telephone conversations were filed with the court registry. The court also ordered the production of certain documents relating to other judicial proceedings brought against the first applicant and/or other persons suspected of belonging to mafia-type organisations. All the applicants, represented by a lawyer of their choice, participated in the proceedings for the application of preventive measures.

In an order of 13 June 1997 that was deposited with the registry on 24 July 1997 the division of the Turin Court specialised in preventive measures decided to place the first applicant under police supervision, combined with an order for compulsory residence in the district of Turin for four years. The special division also ordered confiscation, pursuant to section 2(3), third paragraph, of Act no. 575 of 1965, of the applicants' previously seized assets.

The judges of the special division pointed out first of all that between 1959 and 1980 the first applicant had been convicted on a number of occasions of fraud, incitement to prostitution, assault, duress, false imprisonment, gross indecency in a public place, uttering worthless cheques, illegal possession of firearms, fraudulent bankruptcy and criminal association. It also emerged from a number of documents found at the first applicant's house that he was in close contact with persons involved in organised crime. Furthermore, proceedings for usury and mafia-type criminal association were pending against the first applicant. Admittedly, in the criminal proceedings for criminal association the applicant's pre-trial detention had been revoked; however, that fact did not prevent the judges from considering it "reasonably probable" that he was involved in a criminal association, that he lent money at excessive interest rates and that he had made death threats in the event of non-payment. Continued detention of an accused was justified where there was a "very high probability" that they were guilty, whereas the application of preventive measures could be based on a lesser degree of probability.

With regard to the Arcuri family's financial situation, the special division of the court observed that it was difficult to reconstruct the history of the various economic activities carried out by the first applicant because he had not kept official accounts of all his operations. In any event, it was clear from the evidence produced that at least part of the first applicant's considerable fortune had been unlawfully acquired, since it was the proceeds from his offences of fraudulent bankruptcy, uttering worthless cheques, illegal trading in diamonds, and usury. Moreover, the applicants had not supplied proof that the seized assets had been lawfully acquired. Admittedly, part of the assets officially belonged to the second, third and fourth applicants; however, the special division found that the Acuri family's entire fortune had been created by the first applicant, who, being the subject of numerous judicial proceedings, had subsequently considered it preferable to transfer certain assets to the couple's two children for no consideration and to make his wife a partner in his business activities.

The applicants appealed against the order of 13 June 1997.

In an order of 2 February 1998 the Turin Court of Appeal upheld the district court's decision. It observed, *inter alia*, that the special division of the court had found that the first applicant was a danger to society on the basis of statements made in other judicial proceedings by certain *pentiti* of the Mafia, which had been corroborated by substantial evidence and showed that the first applicant had moved in criminal circles at least until the beginning of the 1990s. The transcription of the tapped telephone conversations showed, furthermore, that the first applicant had severely threatened his debtors. With regard to his submission that his financial means could be explained exclusively by his legal activities as a businessman, the Court of Appeal held that the Acuri family's fortune had been amassed from the proceeds of criminal activities. Furthermore, the lack of accurate documentation made it impossible to assess the real profits which the first applicant had made from certain business transactions. There was also evidence showing that the Acuri family's legal activities had been started up, developed and maintained with the proceeds of criminal offences committed by the first applicant.

The Court of Appeal observed lastly that, according to case-law of the Court of Cassation, assets which were the subject of a preventive measure concerning property should not formally belong to the person deemed to be a danger to society, since the latter could simply use them *de facto* as if he were the owner. In the instant case the first applicant had not maintained that the transfer of certain assets to the third and fourth applicants had made it impossible for him to use them as he wished. With regard to the second applicant, even if it was true that she had been involved in a number of business activities, the first applicant had nonetheless maintained a primordial role in the management and organisation of those activities.

The applicants lodged an appeal on points of law. In a judgment of 3 July 1998 that was deposited with the registry on 12 September 1998 the Court of Cassation dismissed the applicants' appeal, holding that the Turin Court of Appeal had given logical and proper reasons for all the points in dispute between the parties.

B. Relevant domestic law

In accordance with section 2(3) of Act no. 575 of 31 May 1965, during the proceedings for the application of preventive measures against a person suspected of belonging to a mafia-type organisation, "the District Court may issue a reasoned decision, even of its own motion, ordering the seizure of property at the direct or indirect disposal of the person against whom the proceedings have been instituted, when there is sufficient circumstantial evidence, such as a considerable discrepancy between his lifestyle and his apparent or declared income, to show that the property concerned forms the proceeds from unlawful activities or their reinvestment. Together with the implementation of the preventive measure the District Court shall order the confiscation of any of the goods seized in respect of which it has not been shown that they were lawfully acquired. ... The District Court shall revoke the seizure order when the application for preventive measures is dismissed or when it has been shown that the property in question was lawfully acquired."

COMPLAINTS

1. The applicants submitted that the preventive confiscation measure infringed their right to peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1.

2. Relying on Article 6 §§ 1 and 3 of the Convention, the applicants complained of the unfairness of the proceedings for the application of preventive measures.

THE LAW

1. The applicants submitted that the preventive confiscation measure infringed their right to peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1. That Article provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Court notes that the confiscation at issue undoubtedly constituted interference with the applicants' right to peaceful enjoyment of their possessions (see M. v. Italy, application no. 12386/86, Commission decision of 15 April 1991, Decisions and Reports (DR) 70, p. 59, at p. 99).

The Court goes on to note that the confiscation affected assets which had been deemed by the courts to have been unlawfully acquired and was intended to prevent the first applicant, who, according to the Italian courts, could directly or indirectly dispose of the assets, from using them to make a profit for himself or for the criminal organisation to which he is suspected of belonging, to the detriment of the community.

Accordingly, even though the measure in question led to a deprivation of property, this amounted to control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1, which gives the State the right to adopt "such laws as it deems necessary to control the use of property in accordance with the general interest" (see the Agosi v. the United Kingdom judgment of 24 October 1986, Series A no. 108, p. 17, § 51 et seq., and the Handyside v. the United Kingdom judgment of 7 December 1976, Series A no. 24, pp. 29 and 30, §§ 62-63).

With regard to compliance with the conditions of that paragraph, the Court notes at the outset that confiscation of the applicants' assets was ordered pursuant to section 2(3) of the 1965 Act. It was therefore an interference prescribed by law.

The Court notes next that the confiscation complained of sought to prevent the unlawful use, in a way dangerous to society, of possessions whose lawful origin has not been established. It therefore considers that the aim of the resulting interference serves the general interest (see the Raimondo v. Italy judgment of 22 February 1994, Series A no. 281-A, p. 17, § 30, and the Commission decision in the M. v. Italy case cited above, p. 59, at p. 100). It remains to be determined, nevertheless, whether this interference was proportionate to the legitimate aim pursued.

In this connection the Court points out that the impugned measure forms part of a crime-prevention policy; it considers that in implementing such a policy the

legislature must have a wide margin of appreciation both with regard to the existence of a problem affecting the public interest which requires measures of control and the appropriate way to apply such measures.

The Court further observes that in Italy the problem of organised crime has reached a very disturbing level.

The enormous profits made by these organisations from their unlawful activities give them a level of power which places in jeopardy the rule of law within the State. The means adopted to combat this economic power, particularly the confiscation measure complained of, may appear essential for the successful prosecution of the battle against the organisations in question (see the Raimondo judgment cited above, p. 17, § 30, and the Commission decision in the M. v. Italy case cited above, p. 101).

The Court cannot therefore underestimate the specific circumstances which prompted the action taken by the Italian legislature. However, it has a duty to satisfy itself that the rights guaranteed by the Convention are respected in every case.

The Court notes that in this case section 2 (3) of the 1965 Act establishes, where there is "sufficient circumstantial evidence", a presumption that the property of a person suspected of belonging to a criminal organisation represents the proceeds from unlawful activities or has been acquired with those proceeds.

Every legal system recognises presumptions of fact or of law. The Convention obviously does not prohibit such presumptions in principle. However, the applicants' right to peaceful enjoyment of their possessions implies the existence of an effective judicial guarantee. Consequently, the Court must consider whether, having regard to the severity of the applicable measure, the proceedings in the Italian courts afforded the applicants a reasonable opportunity of putting their case to the responsible authorities (see, mutatis mutandis, the Agosi judgment cited above, p. 18, § 55).

In this connection the Court notes that the proceedings for the application of preventive measures were conducted in the presence of both parties in three successive courts – the District Court, the Court of Appeal and the Court of Cassation. In particular, the applicants, instructing the lawyer of their choice, were able to raise the objections and adduce the evidence which they considered necessary to protect their interests, which shows that the rights of the defence were respected.

In addition, the Court observes that the Italian courts were debarred from basing their decisions on mere suspicions. They had to establish and assess objectively the facts submitted by the parties and there is nothing in the file which suggests that they assessed the evidence put before them arbitrarily.

On the contrary, the Italian courts based their decision on the evidence adduced against the first applicant, which showed that he was in regular contact with members of criminal organisations and that there was a considerable discrepancy between his financial resources and his income. The domestic courts also carefully analysed the financial situation of the other applicants and the nature of their relationship with the first applicant and concluded that all the confiscated

assets could only have been purchased by virtue of the reinvestment of Mr Rocco Acuri's unlawful profits and were de facto managed by him, with the official attribution of legal title to the last three applicants being merely a legal dodge designed to circumvent the application of the law to the assets in question (see, mutatis mutandis, Autorino v. Italy, application no. 39704/98, Commission decision of 21 May 1998, unreported).

Furthermore, the preventive purpose of confiscation justified its immediate application notwithstanding any appeal (see the Raimondo judgment cited above, p. 17, § 30).

That being the case, having regard to the margin of appreciation enjoyed by States when they "control the use of property in accordance with the general interest", particularly in the context of a crime policy designed to combat major crime, the Court concludes that the interference with the applicant's right to peaceful enjoyment of his possessions was not disproportionate to the legitimate aim pursued (see the Raimondo judgment cited above, p. 17, § 30, and the Commission decision in the M. v. Italy case cited above, p. 102).

It follows that this complaint must be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicants complained of the unfairness of the proceedings for application of preventive measures. They relied on Article 6 §§ 1 and 3 of the Convention, the relevant parts of which provide:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
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> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

The Court must first determine whether the provision relied on is applicable in the present case.

The Court reiterates that, according to the case-law of the Convention institutions, the preventive measures prescribed by the Italian Acts of 1956, 1965 and 1982, which do not involve a finding of guilt, but are designed to prevent the commission of offences, are not comparable to a criminal "sanction" (see the Raimondo judgment cited above, p. 20, § 43; the Ciulla v. Italy judgment of 22 February 1989, Series A no. 148, p. 17, § 39; the Guzzardi v. Italy judgment of 6 November 1980, Series A no. 39, p. 37, § 100; and the Commission decision in the M. v. Italy case cited above, p. 59, at pp. 94-98).

Accordingly, the proceedings under those provisions did not involve "the determination ... of a criminal charge" (see the Raimondo judgment cited above, p. 20, § 43, and the Guzzardi judgment cited above, p. 40, § 108). The third paragraph of Article 6, which concerns the rights of persons charged with a criminal offence, does not therefore apply to the instant case.

It remains to be established whether the proceedings brought against the applicants concerned "civil rights and obligations" within the meaning of the first paragraph of Article 6.

The Court observes in this connection that Article 6 applies to any action whose subject matter is "pecuniary" in nature and which is founded on an alleged infringement of rights that were likewise of a pecuniary nature (see the Raimondo judgment cited above, p. 20, § 43, and the Editions Périscope v. France judgment of 26 March 1992, Series A no. 234-B, p. 66, § 40).

That being the case here, Article 6 § 1, under its civil head, is applicable to the proceedings in question.

The applicants alleged that the domestic courts' decisions were based on a distortion of the facts and on errors of law, that they were prevented from proving that their property had been lawfully acquired and that, in any event, the authorities reversed the burden of proof by presuming that the property in question had been unlawfully acquired. That presumption had, they alleged, been based on mere suspicions and not on evidence adduced during the proceedings.

The Court reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation and assess the facts (see, among many other authorities, the Brualla Gómez de la Torre v. Spain judgment of 19 December 1997, Reports of Judgments and Decisions 1997-VIII, p. 2955, § 31, and the Edificaciones March Gallego S.A. v. Spain judgment of 19 February 1998, Reports 1998-I, p. 290, § 33). It is not the Court's task to substitute its own assessment of the facts for that of the domestic courts or to give a ruling as to whether certain elements were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see, among other authorities, the Doorson v. the Netherlands judgment of 26 March 1996, Reports 1996-II, p. 470, § 67, and the Van Mechelen and Others v. the Netherlands judgment of 23 April 1997, Reports 1997-III, p. 711, § 50).

As the Court has noted above, under Article 1 of Protocol No. 1, the proceedings for the application of preventive measures were conducted in the presence of both parties and with respect for the rights of the defence before three successive courts. Those courts could not base their conclusions on mere suspicions and gave full reasons on all the points at issue, which meant that any risk of arbitrariness was avoided.

It follows that this complaint must be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Declares the application inadmissible.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President