FIRST SECTION

DECISION

Application no. 40242/12
Salvatore DI GREGORIO
against Italy

The European Court of Human Rights (First Section), sitting on 22 February 2022 as a Committee composed of:

 Péter Paczolay, *President,* Raffaele Sabato, Davor Derenčinović, *judges,*
and Liv Tigerstedt, *Deputy* *Section Registrar,*

Having regard to:

the application (no. 40242/12) against Italy lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 11 June 2012 by an Italian national, Mr Salvatore Di Gregorio, who was born in 1943 and lives in Catania (“the applicant”), represented by Mr A. Cariola, a lawyer practising in Catania;

Having deliberated, decides as follows:

SUBJECT-MATTER OF THE CASE

1.  The case concerns the impartiality of the Court of Audit when deciding on the financial liability of the applicant, a public servant, upon a claim filed by the public prosecutor. In this connection the applicant complained that the internal organisation of the Court of Audit did not sufficiently separate the functions of judges from those of the members of the public prosecutor’s office.

2.  The applicant, at the relevant time head of the financial services of the Municipality of Catania, was summoned to appear before the Court of Audit (jurisdictional section for the Sicily Region) with a view to ascertaining his financial liability jointly with other employees for the damages caused to the municipal treasury.

3.  At the end of the proceedings he was deemed responsible for having overestimated the revenues of the Municipality for the financial years 2003 and 2004, which had resulted in the Municipality being forced to increase its access to bank credit and pay additional interests on loans for several millions of euros.

4.  Following a second set of proceedings, the Court of Audit held that the applicant had failed to promptly renew the previously existing contract between the Municipality and the bank providing it with treasury services. As result, the bank had imposed higher fees for the above mentioned loans.

5.  In both sets of proceedings, the Court of Audit ordered the applicant to repay a percentage of the pecuniary damages suffered by the Municipality, in total approximately 350,000 euros (EUR).

6.  Relying on Article 6 § 1 of the Convention, the applicant complained about the lack of impartiality of the judges of the Court of Audit, claiming that the members of the public prosecutor’s office and the judges are part of the same organisational structure and may easily be appointed to serve in one role or the other. He further raised other complaints under Article 6 § 1 as well as under Article 1 of Protocol No.1 and Article 4 of Protocol No. 7 relating to the domestic proceedings.

1. THE COURT’S ASSESSMENT

7.  According to the relevant principles set out in *Paunović v. Serbia* (no. 54574/07, § 41, 3 December 2019) and *Piersack v. Belgium* (1 October 1982, § 30 (b), Series A no. 53), the mere fact that a judge was once a member of the public prosecutor’s office is not a reason for fearing that he or she lacks impartiality. Nor is this the case when a judge, who was once an officer of the public prosecutor’s office, adjudicates a case which was initially examined by that office, when the judge in question had never personally dealt with that case.

8.  In the instant case the applicant complained that judges and members of the public prosecutor’s office are recruited by means of the same competitive procedure; that they belong to the same administrative structure; and that they have the possibility to be appointed throughout their careers to serve in one role or the other.

9.  The Court observes that the applicant did not claim that any of the judges who heard his case had previously exercised, in relation to the same case, the function of member of the public prosecutor’s office. In fact, he limited his submission to a generic allegation of partiality of the Court of Audit based on a formalistic conception of separation between the career of judge and that of public prosecutor. Bearing in mind the relevant case-law mentioned above, the Court does not observe in the present case any issue concerning the internal structural impartiality of the Court of Audit (compare and contrast *Procola v. Luxembourg*, 28 September 1995, § 45, Series A no. 326, and *Kleyn and Others v. the Netherlands* [GC],nos. 39343/98 and 3 others, §§ 193-96, ECHR 2003‑VI, in which judicial functions and the structural function of advising the government were combined within the *Conseil d’Etat* and where the structure of the body in question was such that its members could successively exercise both functions). Therefore, the Court considers that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

10.  The applicant also raised other complaints under Article 6 § 1 as well as under Article 1 of Protocol No. 1 and Article 4 of Protocol No. 7 relating to the domestic proceedings.

11.  The Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

12.  It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 17 March 2022.

 Liv Tigerstedt Péter Paczolay
 Deputy Registrar President