FIRST SECTION

DECISION

Application no. 7494/12
LAWYERS’ ASSOCIATION
FOR THE PROTECTION OF HUMAN RIGHTS
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. 7494/12) against Italy lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 30 January 2012 by the Lawyers’ association for the protection of human rights (*Unione Forense per la Tutela dei Diritti Umani*) (“the applicant”) who was represented by Mr A.G. Lana and Mr A. Saccucci, lawyers practising in Rome;

the decision to give notice of the complaints concerning Article 6 § 1 and Articles 8 and 14 of the Convention to the Italian Government (“the Government”), represented by their Agent, Mr L. D’Ascia, and to declare inadmissible the remainder of the application;

the parties’ observations.

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1.  The case relates to the domestic courts’ alleged failure to make any reference to the applicant’s request to refer a question for a preliminary ruling by the Court of Justice of the European Union (“the CJEU”). It further concerns the domestic authorities’ rejection of the applicants’ request to prevent and punish collective discriminatory actions allegedly in breach of Articles 8 and 14 of the Convention.

2.  The applicant is a non-governmental organisation acting for the protection of human rights. On 5 April 2007 it lodged an application with the District Court of Rome under Article 44 of the legislative decree no. 286/98 against the editor of a local newspaper alleging a violation of the principle of non-discrimination with reference to the publication of several rental advertisements, based on criteria such as “no foreigners”, “no coloured”, “Italians only”.

3.  Following the rejection of its request, the applicant filed an opposition before the District Court of Rome (*reclamo*) and requested, *inter alia*, that a question be referred to the CJEU for a preliminary ruling as to whether the first instance decision was compatible with the European Directive 2000/43/CE (implementing the principle of equal treatment between persons irrespective of racial or ethnic origin) and Article 21 of the Charter of Fundamental Rights of the European Union (non-discrimination principle).

4.  By a decision of 9 August 2011, the District Court of Rome dismissed the opposition. No reference to the applicant’s request to refer a question to the CJEU for a preliminary ruling was contained therein.

5.  On 9 February 2012, the applicant lodged an appeal on points of law. On 20 May 2015, the Supreme Court declared the appeal inadmissible on the ground that the decision of the District Court of 9 August 2011 was a provisional measure, and not a final decision against which an appeal before the Supreme Court could be legitimately lodged. The Supreme Court also specified that Article 44 of the legislative decree no. 286/98 set up provisional proceedings which by their nature anticipated a procedure on the merits (*giudizio di merito*).

6.  The applicant complained under Article 6 § 1 of the Convention that the District Court of Rome had failed to make any reference to its request to refer a question to the CJEU for a preliminary ruling.

7.  It also complained that the rejection by the domestic authorities of its opposition requesting to prevent and punish collective discriminatory actions based on ethnic origin or nationality constituted a breach of Article 8 of the Convention, read in conjunction with Article 14 of the Convention.

1. THE COURT’S ASSESSMENT

8.  The Government asserted that civil actions pursuant to Article 44 of the legislative decree no. 286/98 institute provisional proceedings which anticipate a procedure on the merits. Besides, the Government noted that the application before the Court was introduced while the appeal before the Supreme Court was pending. The application should be thus rejected for non-exhaustion of domestic remedies.

9.  Relying on the case *Udorovic v. Italy* (no. 38532/02, § 38, 18 May 2010), the applicant submitted that Article 6 § 1 is applicable to preliminary proceedings as the one in the instant case. The applicant also argued that there was no obligation to institute a procedure on the merits in this case, due to the ineffectiveness of this remedy for the purpose of urgently putting an end to the indirect collective discrimination.

10.  The Court agrees with the Government’s position that the applicant should have pursued a procedure on the merits, following the rejection of its opposition within provisional proceedings. The provisional nature of the District Court’s decisions also stems clearly from the Supreme Court’s judgment in the present case (see paragraph 5 above) and is confirmed by its plenary composition’s decisions nos. 3670/11 of 11 January 2011 and 7186/11 of 18 January 2011.

11.  In these circumstances, the Court considers that there is no need to examine the Government’s other objections since the application must be rejected for non-exhaustion of domestic remedies, under Article 35 §§ 1 and 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