FIRST SECTION

DECISION

Application no. 41089/15  
Fausto SCHERMI and Elwin Anthony VAN DIJK  
against Italy

The European Court of Human Rights (First Section), sitting on 8 November 2022 as a Committee composed of:

Alena Poláčková*, President*,  
 Gilberto Felici,  
 Raffaele Sabato*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to the above application lodged on 10 August 2015,

Having regard to the declaration submitted by the respondent Government on 21 September 2020 requesting the Court to strike the application out of the list of cases and the applicants’ reply to that declaration,

Having deliberated, decides as follows:

1. FACTS AND PROCEDURE

1.  The applicants, Mr F. Schermi and Mr E. A. van Dijk, are Italian and Dutch nationals, who were born in 1956 and 1960 respectively and live in Fano. They were represented before the Court by Mr P. Masi, a lawyer practising in Pisa.

2.  The Italian Government (“the Government”) were represented by their Agent, Mr L. D’Ascia, State Attorney.

3.  The applicants complained about the refusal to register their marriage contracted abroad and, more generally, about the impossibility of obtaining legal recognition of their relationship, in so far as the Italian legal framework did not allow for marriage between persons of the same sex nor did it provide for any other type of union which could give them legal recognition. They relied on Articles 8, 12, and 14 of the Convention.

4.  On 3 November 2019 the application was communicated to the Government.

5.  By Law no. 76 of 20 May 2016, hereinafter “Law no. 76/2016”, entitled “Regulation of civil unions between people of the same sex and the rules relating to cohabitation”, the Italian legislator provided for civil unions in Italy. The latter legislation came into force on 5 June 2016.

6.  On 28 November 2016 the applicants’ marriage, which had been contracted in the Netherlands on 16 August 2008, was registered by the Fano Municipality as a civil union.

1. THE LAW

7.  After the failure of attempts to reach a friendly settlement, by a letter of 21 September 2020 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application.

8.  By a letter of 21 October 2020, the applicants indicated that they were not satisfied with the terms of the unilateral declaration. They complained of a violation of their rights under Articles 8 and 12 of the Convention on account of the fact that, following the entry into force of Law no. 76/2016, their marriage contracted abroad was registered in Italy as a civil union rather than as a marriage, thus depriving them of all the legal effects attaching to marriage under Italian law. They also argued that the Italian legal framework on the recognition of same-sex marriages contracted abroad produced discriminatory effects.

9.  By a letter of 27 July 2021 the Government submitted a new unilateral declaration, replacing the one submitted previously, and increased the sums offered to the applicants. They acknowledged that the domestic authorities had violated the applicants’ rights under the Articles complained of and, in particular, under Article 8 of the Convention. They offered to pay the applicants 5,000 euros (EUR) each and invited the Court to strike the application out of the list of cases in accordance with Article 37 § 1 (c) of the Convention. The amounts would be payable within three months from the date of notification of the Court’s decision. In the event of failure to pay these amounts within the above-mentioned three-month period, the Government undertook to pay simple interest on them, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment of the award would constitute the final resolution of the case.

10.  By a letter of 8 September 2021 the applicants replied that they were not satisfied with the terms of the second unilateral declaration and referred to the arguments put forward in their letter of 21 October 2020.

11.  The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

“for any other reason established by the Court, it is no longer justified to continue the examination of the applications”.

12.  It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicants wish the examination of the case to be continued.

13.  To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75‑77, ECHR 2003-VI; see also *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

14.  The Court has established in a number of cases, including those brought against Italy, its practice concerning complaints similar to the ones submitted by the applicants in their application lodged on 10 August 2015 (see, for example, *Orlandi and Others v. Italy*, nos. 26431/12 and 3 others, 14 December 2017).

15.  The Court notes that, following the enactment of Law no. 76/2016 (see paragraph 5 above), which entered into force after the introduction of the applicants’ application before the Court, the applicants obtained the registration of their marriage contracted abroad as a civil union in Italy (see paragraph 6 above). It further notes that the arguments relied on by the applicants as grounds for inviting the Court to reject the Government’s unilateral declaration relate to the new legal framework and exceed the scope of the initial complaints as submitted before the Court and communicated to the respondent Government. Accordingly, in the Court’s view, they cannot form the basis for its rejection of the Government’s unilateral declaration.

16.  The Court considers, having regard to the nature of the admissions contained in the Government’s declaration, which cover the applicants’ complaints as submitted in their application, as well as the amount of compensation proposed, which is consistent with the amounts awarded in similar cases, that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

17.  Moreover, in light of the above considerations, and given the clear case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

18.  Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

*Takes note* of the terms of the respondent Government’s declaration and of the modalities for ensuring compliance with the undertakings referred to therein;

*Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 1 December 2022.

Liv Tigerstedt Alena Poláčková  
 Deputy Registrar President