FIRST SECTION

DECISION

Application no. 58572/13
POLTI SUD S.R.L.
against Italy

The European Court of Human Rights (First Section), sitting on 4 May 2023 as a Committee composed of:

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

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 5 September 2013,

Having regard to the declaration submitted by the respondent Government requesting the Court to strike the application out of the list of cases,

Having deliberated, decides as follows:

1. FACTS AND PROCEDURE

The applicant company’s details are set out in the appended table.

The applicant company was represented by Ms A. Mari, a lawyer practising in Rome. Its complaints under Article 6 § 1 of the Convention concerning excessive formalism in two decisions of the Court of Cassation declaring its appeals inadmissible for failure to comply with the requirements set forth in Article 366-bis of the Code of Civil Procedure were communicated to the Italian Government (“the Government”).

1. THE LAW

The Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by these complaints. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The Government acknowledged the violation of Article 6 § 1 of the Convention. They offered to pay the applicant company the amount detailed in the appended table 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 amount would be payable within three months from the date of notification of the Court’s decision. In the event of failure to pay this amount within the above-mentioned three-month period, the Government undertook to pay simple interest on it, 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 will constitute the final resolution of the case.

The applicant company was sent the terms of the Government’s unilateral declaration several weeks before the date of this decision. It was not satisfied with the terms of the unilateral declaration.

The Court observes that Article 37 § 1 (c) enables it 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 application”.

Thus, it may strike out applications under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued (see, in particular, the *Tahsin Acar v. Turkey* judgment (preliminary objections) [GC], no. 26307/95, §§ 75‑77, ECHR 2003-VI).

The Court has established clear and extensive case-law concerning complaints relating to excessive formalism in the decisions of the domestic courts (see, for example, *Suc**ci and Others v. Italy*, nos. 55064/11 and 2 others, 28 October 2021; and *Tre**visanato v. Italy*, no. 32610/07, 15 September 2016).

Noting the admissions contained in the Government’s declaration as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

In the light of the above considerations, 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*).

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application may be restored to the list in accordance with Article 37 § 2 of the Convention (see *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 arrangements 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 25 May 2023.

 Viktoriya Maradudina Alena Poláčková
 Acting Deputy Registrar President

APPENDIX

Application raising complaints under Article 6 § 1 of the Convention

(excessive formalism)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Application no.Date of introduction | Applicant’s name | Representative’s name and location | Date of receipt of Government’s declaration | Date of receipt of applicant’s comments | Amount awarded for pecuniary and non-pecuniary damage and costs and expenses(in euros)[[1]](#endnote-1)  |
| 58572/1305/09/2013 | **POLTI SUD S.R.L.**  | Mari AlessandraRome | 12/09/2022 | 14/10/2022 | 9,600 |

1. Plus any tax that may be chargeable to the applicant [↑](#endnote-ref-1)