FIRST SECTION

DECISION

Application no. 75587/17
Alfredo ROBLEDO
against Italy

The European Court of Human Rights (First Section), sitting on 16 May 2023 as a Committee composed of:

 Péter Paczolay*, President*,
 Gilberto Felici,
 Raffaele Sabato*, judges*,
and Attila Teplán, *Acting* *Deputy* *Section Registrar*,

Having regard to:

the application (no. 75587/17) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 16 October 2017 by an Italian national, Mr Alfredo Robledo (“the applicant”), who was born in 1950, lives in Milan and was represented by Mr F. Cerqua, a lawyer practising in Milan;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1.  The case concerns the alleged lack of impartiality on the part of the disciplinary section of the National Council of the Judiciary (*sezione disciplinare del* *Consiglio Superiore della Magistratura* – “the disciplinary section” or “the CSM”), which ruled on disciplinary charges brought against the applicant, a public prosecutor.

2.  On 19 January 2015 the Chief Public Prosecutor of the Court of Cassation levelled disciplinary charges in respect of the applicant and requested the adoption of precautionary measures.

3.  On 5 February 2015 the disciplinary section upheld the request for precautionary measures and ordered the applicant’s temporary transfer to a different court, where he would exercise other duties.

4.  On 21 September 2015 the applicant was heard by the CSM in relation to the contested facts; he submitted his written observations.

5.  On 8 April 2016 the applicant lodged a request for the withdrawal (*istanza di ricusazione*) of all members of the disciplinary section, arguing that, as they had ruled on the request for precautionary measures, their impartiality had been compromised.

6.  On 19 April 2016 the disciplinary section, in a different composition, dismissed the applicant’s request. It observed that, pursuant to the relevant rules, the provisions of the Code of Criminal Procedure had to be applied by the CSM only if they were compatible with the characteristics of the disciplinary proceedings. Since disciplinary proceedings are not – unlike criminal proceedings – split into a pre-trial and a trial phase, the provisions concerning withdrawal during the trial phase of judges who adopted pre-trial decisions are inapplicable.

7.  The disciplinary section, in the same composition which adopted the interim order, held hearings on 21 April and on 2, 30 and 31 May 2016, during which it heard the testimony of a witness and the parties’ arguments.

8.  On 31 May 2016 the CSM found the applicant liable for two disciplinary offences and acquitted him of two other charges. By way of sanction, it directed that six months of service should be discounted and ordered the applicant’s permanent transfer to another court.

9.  On 20 December 2016 the applicant lodged an appeal with the Joint Chambers of the Court of Cassation (*Sezioni Unite*) against the decision, complaining, *inter alia*, of lack of impartiality on the part of the CSM.

10.  In a judgment of 11 April 2017, the Court of Cassation dismissed the applicant’s appeal. It observed that his doubts as to the CSM’s impartiality were incompatible in structural terms with the disciplinary proceedings at issue, in which the jurisdiction to adopt precautionary measures and that of ruling on the merits was vested in the same body and exercised at the same “stage” of the proceedings.

11.  The applicant complains under Article 6 § 1 of the Convention of the perceived lack of impartiality on the part of the CSM.

1. THE COURT’S ASSESSMENT

12.  The domestic provisions concerning the composition of the disciplinary section of the CSM and requests for withdrawal of its members were summarised in *Di* *Giovanni* *v.* *Italy* (no. 51160/06, §§ 19-29, 9 July 2013). Disciplinary proceedings before the CSM are currently regulated by Legislative Decree no. 109 of 23 February 2006 (“Decree no. 109/2006”).

13.  The Court notes from the outset that, whatever the procedural rules applicable domestically, the disciplinary proceedings at issue entail the applicability of the civil, and not the criminal, head of Article 6 of the Convention (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, §§ 121 and 128, 6 November 2018, and *Lorenzetti v. Italy* (dec.), no. 24876/07, § 39, 7 July 2015).

14.  It further notes that the applicant did not contest the subjective impartiality of the CSM members. The Court finds no reasons to hold otherwise, as nothing in the present case pointed to any prejudice or bias on their part.

15.  According to the applicant, the fear of a lack of impartiality is based on the fact that the CSM had carried out a preliminary assessment of the case, in order to rule on the request for precautionary measures, and subsequently decided on the merits. He further contested the language used in the reasoning of the interim order. The latter provided, for example, that on the basis of the available evidence there were “no doubts”, that it was “indisputable” that the facts as described had taken place, and that the applicant’s acts appeared to be “seriously inappropriate”. In the applicant’s view, such language reflected the CSM members’ firm conviction that he had committed the disciplinary offences at issue.

16.  The Court notes that the interim order contained an account of the facts and made a preliminary legal assessment of the applicant’s acts; and it appreciates that its language may have given rise to certain misgivings on the part of the applicant as to the impartiality of the CSM.

17.  However, that language *per se* would not be sufficient to indicate a violation of Article 6 § 1, as the standpoint of the person concerned is important but not decisive. What is decisive is whether the applicant’s fears can be held to be objectively justified in the circumstances of the case (see *Micallef v. Malta* [GC], no. 17056/06, § 96, ECHR 2009).

18.  The Court must therefore assess this situation under the objective impartiality test (see *Kamenos v. Cyprus*, no. 147/07, § 100, 31 October 2017). It observes that the requirements of a fair hearing do not automatically prevent the same judge from successively performing different duties within the framework of the same case. The assessment of whether the participation of the same judge at different stages of a civil case complies with the requirement of impartiality is to be made on a case-by-case basis, regard being had to the circumstances of the individual case and, importantly, to the characteristics of the relevant rules of civil procedure (see *Pasquini v. San Marino*, no. 50956/16, §§ 147-148, 2 May 2019, and *Marina* *v.* *Romania*, no. 50469/14, § 38, 26 May 2020). The fact that the judge has detailed knowledge of the case file does not entail any prejudice on his part that would prevent his being regarded as impartial when the decision on the merits is taken. Nor does a preliminary analysis of the available information mean that the final analysis has been prejudged (see *Morel v. France*, no. 34130/96, § 45, ECHR 2000‑VI). In similar cases, it is necessary to consider whether the link between substantive issues determined at various stages of the proceedings is so close as to cast doubt on the impartiality of the judge (see *Warsicka v. Poland*, no. 2065/03, § 40, 24 July 2012).

19.  More specifically, the Court has held that a preliminary finding based on the available information, without the benefit of the applicant’s defence, cannot by itself be regarded as prejudging the final conclusion to be drawn after the applicant’s arguments have been presented at an oral hearing. What is important is for the final decision to be taken on the basis of all the available elements, including the evidence produced and the arguments made at the hearing (see *Xhoxhaj v. Albania*, no. 15227/19, § 307, 9 February 2021, and the cases cited therein).

20.  Therefore, the Court will first assess the characteristics of the relevant procedural rules and then examine how they were applied in the applicant’s case.

21.  In that connection, the Court notes that, pursuant to the applicable domestic procedural rules, the interim order and the decision on the merits are not adopted at different “stages” of the proceedings. This situation has been emphasised in the applicant’s case (see paragraphs 6 and 10 above), on the basis of well-established domestic case-law according to which no doubts as to impartiality arise when the applicable provisions confer on the same judge the jurisdiction to adopt, within the same stage of the proceedings, preliminary and final decisions (see, *inter alia*, Court of Cassation, judgments no. 18374 of 19 August 2009, no. 20159 of 24 September 2010 and no. 25136 of 16 November 2014; and see, in respect of different types of proceedings, Constitutional Court orders no. 90 of 11 February 2004 and no. 123 of 20 April 2004, and judgment no. 460 of 23 December 2005).

22.  The Court further observes that, under Article 13 § 2 of Decree no. 109/2006, precautionary measures are ordered when (i) there are weighty reasons for believing that disciplinary offences (*gravi elementi di fondatezza dell’azione disciplinare*) were committed, (ii) the disciplinary offences allegedly committed are of a certain gravity, and (iii) the need to take such measures has become urgent. In adopting interim orders, the CSM is called on to summarily assess the available evidence in order to determine whether there are “serious”, even if “*prima facie*”, grounds for considering that an individual has committed disciplinary offences.

23.  By contrast, pursuant to Article 19 § 1 of Decree no. 109/2006, the disciplinary section rules on the merits after the relevant evidence has been adduced and after having heard the parties’ arguments. Therefore, when giving judgment at the conclusion of proceedings, the CSM assesses whether the evidence that has been adduced and debated in adversarial proceedings suffices for the individual to be held liable on a disciplinary basis.

24.  The Court finds that those two assessments cannot be treated as being the same (see, *mutatis mutandis*, *Hauschildt v. Denmark*, 24 May 1989, § 50, Series A no. 154, and *Dragojević* *v.* *Croatia*, no. 68955/11, § 118, 15 January 2015).

25.  Moreover, the Court notes that the interim order was adopted less than a month after the disciplinary charges had been brought, before the adversarial phase and on the basis of the evidence available at that time. In its interim order, the CSM observed that “in the specific case it [was] considered, although on the basis of the *prima facie* assessment typical of this phase, that the applicant [had] breached his professional duties”. Therefore, although in theory the language used in the reasoning may seem to suggest the existence of a prejudgment on the merits (see paragraphs 15-16 above), the Court considers that, placed in its actual context of a “*prima facie* assessment”, such language is not sufficient to conclude that the applicant’s fears were objectively justified.

26.  The Court also considers that, after the adoption of the interim order, the CSM heard the applicant’s testimony, and the latter submitted his written observations (see paragraph 4 above). The CSM then held hearings, in the context of which it heard the testimony of a witness and the parties’ arguments (see paragraph 7 above).

27.  The Court observes that the applicant also complained of the fact that the CSM had relied on the findings of the interim order when deciding on the merits. However, it cannot agree with this argument. In the final decision, although it reiterated the findings of the interim order in respect of the legal classification of the charges, the CSM made a fresh assessment of the facts, taking into account the new evidence and the parties’ arguments. This is also demonstrated by the fact that the final decision acquitted the applicant of two of the disciplinary charges that in the interim order had been considered *prima facie* well founded (see paragraph 8 above).

28.  Furthermore, even assuming that the final decision did not specify all the relevant facts and points of law but merely reiterated the findings of the previous order, the Court observes that the incorporation of reasons by reference is widely used in judicial practice (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999‑I). When judicial bodies endorse (or refuse) previous decisions, they may limit themselves to indicating that they agree with (or object to) the reasons indicated in the precedent. Mere reference to reasons is admissible, provided that it discloses – as in the present case – that any new evidence and the arguments of the parties have been taken into account.

29.  Accordingly, the Court finds that the final decision was adopted on the basis of the assessment of the evidence adduced and discussed during the adversarial phase and the arguments made at the hearings, in accordance with the Court’s case-law (see *Xhoxhaj*, § 307, and *Morel*, § 45, both cited above).

30.  Lastly, the applicant complained that the Vice-President of the CSM had not participated in the deliberations. The Court observes that, pursuant to section 6 of Law no. 195 of 24 March 1958, if the Vice-President of the CSM cannot participate, he or she is replaced by law by the CSM member elected by Parliament, and that this procedure was complied with in the present case.

31.  The Court is therefore satisfied that, in the light of the applicable procedural rules and the circumstances of the case, the applicant’s doubts as to the CSM’s impartiality were not objectively justified.

32.  Accordingly, the Court concludes that there is no appearance of a violation of the applicant’s rights under Article 6 § 1 of the Convention. The application is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 8 June 2023.

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 Attila Teplán Péter Paczolay
 Acting Deputy Registrar President