



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 6656/15
SOL.IN.MUS. S.R.L. against Italy
and 7 other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 13 February 2024 as a Committee composed of:

Péter Paczolay, *President*,

Gilberto Felici,

Raffaele Sabato, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the applications 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”) by the companies listed in the appended table (“the applicant companies”), on the various dates indicated therein;

the decision to give notice of the applications to the Italian Government (“the Government”) represented by their Agent, Mr L. D’Ascia;

the parties’ observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present applications concern changes introduced by two ministerial decrees to an incentive regime for photovoltaic energy producers. The applicant companies are all owners of photovoltaic installations.

A. Legislative Decree no. 387 of 29 December 2003 and Ministerial Decree of 6 August 2010 (the “third Energy Tariff”)

2. Legislative Decree no. 387 of 29 December 2003, transposing into national law Directive 2001/77/EC of the European Parliament and of the

Council of 27 September 2001, included measures encouraging the uptake of photovoltaic installations but left the definition of the criteria for incentivising the production of electricity to ministerial decrees, known as “Energy Tariffs” (*Conti Energia*).

3. The Ministerial Decree of 6 August 2010 (the third Energy Tariff) was enacted to regulate the incentive scheme for photovoltaic installations that entered into service between 1 January 2011 and 31 December 2013. It aimed to increase photovoltaic energy production to approximately 8,000 megawatts (MW) by 2020 and it provided that feed-in tariffs should be calculated based on the size of each photovoltaic installation and on the date of its entry into service. Once calculated, the feed-in tariff was to be awarded by an agreement between the energy producer and Gestore dei Servizi Energetici S.p.A. (hereinafter “GSE”), a company owned by the Ministry of Economics and Finance that was given responsibility for the payment of feed-in tariffs. The rapid achievement of the total amount of incentives that the third Energy Tariff was able to allocate led to early termination of the Tariff.

B. Legislative Decree no. 28 of 3 March 2011 and Ministerial Decree of 5 May 2011 (the “fourth Energy Tariff”)

4. On 29 March 2011 Legislative Decree no. 28 of 3 March 2011, transposing Directive 2009/28/CE of the European Parliament and of the Council of 23 April 2009, entered into force. Among other things, it aimed to progressively review incentive mechanisms for producers of renewable energy with a view to safeguarding investments and ensuring their flexibility in the light of market development and technological progress. It limited the applicability of the third Energy Tariff to installations that had entered into service by 31 May 2011 and provided that the conditions to implement the incentive mechanisms should be established by further ministerial decrees (Article 7).

5. The Ministerial Decree of 5 May 2011 enforced Legislative Decree no. 28 of 3 March 2011 and established a new incentive regime, which was meant to be applied to photovoltaic installations entering into service between 1 June 2011 and 31 December 2016. It aimed to increase photovoltaic energy production to approximately 23,000 MW, which would correspond to incentives of an estimated cost of between 6 and 7 billion euros per year. When the total cost of incentives reached 6 billion the incentive measures would have to be reviewed by ministerial decree.

6. The fourth Energy Tariff was to run over two periods: a “transitional period” (between 1 June 2011 and 31 December 2012) and an “operative period” (2013-2016).

7. With regard to the transitional period, the Tariff determined the maximum total amount of incentives that could be awarded in each six-month period to photovoltaic installations and the amount of solar energy that should be produced over the same period (Article 4 § 2). In order to be admitted to the incentive scheme, photovoltaic installations which entered into service after 31 August 2011 had to be registered in an electronic database organised by GSE, which in turn had to draft a ranking of the registered installations. The feed-in tariffs would then be awarded on the basis of the ranking until the limit for each six-month period was reached, at which point no further feed-in tariffs would be awarded until the next six-month period (Article 6).

8. The amounts of energy to be produced and the maximum total amounts of incentives that could be awarded to photovoltaic installations in each six-month period were also established in respect of the operative period of the fourth Energy Tariff (Article 4 § 4). There would be no ranking during the operative period. All eligible photovoltaic installations could be admitted to the incentive scheme, but if the maximum total amount of incentives established for a given six-month period was exceeded that meant that feed-in tariffs would be reduced in the subsequent six-month periods (Article 2 § 2 and Article 4 § 3).

C. The applicant companies' application for incentives and the sets of domestic proceedings brought by them

9. The second, seventh and eighth applicant companies invested in the construction of photovoltaic installations while the third Energy Tariff was in force. However, by the time they could file their requests to receive feed-in tariffs, the fourth Energy Tariff had replaced the third one. On various dates they brought proceedings in the domestic courts arguing that they were entitled to the incentives established in the third Energy Tariff. The second applicant company further complained that the domestic law was incompatible with European Union law ("EU law"). The domestic courts dismissed the companies' claims (see the appended table for details).

10. The first, third, fourth, fifth and sixth applicant companies invested in the construction of photovoltaic installations that entered into service between March and June 2012 – at which point the fourth Energy Tariff had already come into force. Those applicant companies, as well as the seventh and the eighth applicant companies, applied for incentives under the system set out for the transitional period of the fourth Energy Tariff. However, they were placed too far down the ranking to receive the incentives.

11. On 20 January 2012, GSE issued a press release announcing that, in the light of the number of requests filed for incentives to be awarded to photovoltaic installations during the first six months of 2012, the electronic register for the second six months of the same year would not be opened.

12. On 12 July 2012 the Electricity and Gas Authority informed the public that the overall cost of incentives to be awarded by the fourth Energy Tariff had reached the amount of 6 billion euros and ordered that, as established by Article 2 § 3 of the fourth Energy Tariff, the incentive regime be amended in accordance with the Ministerial Decree of 5 July 2012 – known as “the fifth Energy Tariff” – which entered into force on 27 July 2012.

13. On various dates all of the applicant companies (except for the second applicant company) brought various sets of proceedings in the domestic courts arguing that, considering the launch dates of their installations as well as the relevant provisions of the fourth Energy Tariff, they were entitled to the feed-in tariff established therein from 1 January 2013 at the latest (namely, its operative period). The domestic courts rejected the applicant companies’ claims.

14. On 11 July 2019, the Court of Justice of the European Union (“CJEU”) decided on a referral for a preliminary ruling in another case which also concerned photovoltaic energy companies’ access to the incentives provided for in the fourth Energy Tariff (see *Agrenergy Srl and Fusignano Due Srl v. Ministero dello Sviluppo Economico*, C-180/18, C-286/18 and C-287/18, ECLI:EU:C:2019:605). The CJEU found in that case that Article 3(3)(a) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources, read in the light of the principles of legal certainty and the protection of legitimate expectations, must be interpreted as not precluding national legislation by which a Member State might provide for the reduction, or even the removal, of incentives for energy produced by solar photovoltaic installations.

D. Complaints

15. The applicant companies complained under Article 1 of Protocol No. 1 to the Convention that they had engaged in the construction of the photovoltaic installations and entered into financial commitments in the expectation that they would receive the incentives set out in the third or fourth Energy Tariffs (see the appended table).

16. They also complained under Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 that they had been discriminated against compared to companies which had benefitted from the incentives.

17. The second applicant company also complained under Article 13 of the Convention that it did not have at its disposal any domestic remedy for its Convention complaints. It also alleged a violation of Article 6 § 1 of the Convention owing to the domestic courts’ refusal to refer the issue to the CJEU for a preliminary ruling.

THE COURT'S ASSESSMENT

A. Joinder of the applications

18. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

B. The complaint under Article 1 of Protocol No. 1 to the Convention

19. The Government objected that the applicant companies were not entitled to any "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention as they did not have any legitimate expectation that they would be awarded the feed-in tariff established by the third or the fourth Energy Tariff. The applicant companies disagreed.

20. The principles concerning the circumstances in which a "legitimate expectation" of obtaining an asset may enjoy the protection of Article 1 of Protocol No. 1 have been summarised in *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 49-50, ECHR 2004-IX, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, §§ 172-73, ECHR 2012, and *Bélané Nagy v. Hungary* [GC], no. 53080/13, § 75, 13 December 2016 with further references.

21. In respect of the second, seventh and eighth applications, the Court notes that the third Energy Tariff was intended to apply to photovoltaic installations entering into service between 1 January 2011 and 3 December 2013. Nevertheless, its applicability was expressly limited by the objective of increasing solar energy production to approximatively 8,000 MW by 2020 (see paragraph 3 above). Further, the relevant photovoltaic installations did not enter into service before the entry into force of the fourth Energy Tariff (1 June 2011, following the early termination of the third Energy tariff, see paragraph 3 above).

22. Similarly, in respect of all the applications (with the exception of the second applicant company), while it is true that the fourth Energy Tariff was intended to be applicable to photovoltaic installations entering into service between 1 June 2011 and 31 December 2016, the total value of the incentives available was expressly capped at 6 to 7 billion euros. Furthermore, the fourth Energy Tariff also established that the incentive regime be reviewed as soon as the costs reached the amount of 6 billion euros (see paragraph 5 above).

23. None of the applicant companies indicated in the previous paragraph could directly benefit from the incentives of the fourth Energy Tariff as their installations entered into service after 31 August 2011 (see paragraph 7 above). Their attempts to receive feed-in tariffs by registering their installations on the GSE electronic database were also unsuccessful as they were ranked too far down the list to qualify (see paragraph 10 above), and the mechanism set forth for the operative period of the fourth Energy Tariff was

not applied owing to the entry into force of the fifth Energy Tariff (see paragraphs 11 and 12 above). Therefore, they were not eligible to receive feed-in tariffs either under the transitional or under the operative period of the fourth Energy Tariff.

24. In light of the foregoing and considering that the reduction of incentives was found to be consistent with EU law by the CJEU (see paragraph 14 above), the Court is of the view that none of the applicant companies could reasonably have expected that they would be guaranteed incentives under a specific Energy Tariff either under domestic or under EU law.

25. Therefore, since for the recognition of a “possession” consisting in a “legitimate expectation” the applicant must have an assertable right which may not fall short of a sufficiently established, substantive proprietary interest under the national law (*Bélané Nagy*, cited above, § 79), none of the applicant companies was entitled to a claim in respect of which they could argue that they had a “legitimate expectation” of obtaining effective enjoyment of a property right. The complaint is therefore incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a).

C. Complaints under Articles 13 and 14 of the Convention

26. Having regard to the finding that Article 1 of Protocol No. 1 to the Convention is inapplicable, Articles 13 and 14 of the Convention also do not apply in the present case as the applicant companies did not have an “arguable” complaint under any Article of the Convention or of its Protocols (see *Maurice v. France* [GC], no. 11810/03, § 106, ECHR 2005-IX, in respect of Article 13, and see *a contrario*, among many other authorities, *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 384, ECHR 2012 (extracts), in respect of Article 14). The complaints are therefore incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention.

D. Complaint under Article 6 § 1 of the Convention

27. Concerning the complaint raised under Article 6 § 1 of the Convention, the Court notes that the second applicant company did not specifically request the domestic courts to seek a preliminary ruling from the CJEU but confined itself to broadly challenging the consistency of domestic provisions with the EU law (see paragraph 9 above). In any event, the domestic courts gave adequate reasoning in their decisions in that regard (see *Somorjai v. Hungary*, no. 60934/13, § 39, 28 August 2018). Accordingly, the complaint is manifestly ill-founded and must be rejected under Article 35 §§ 3 of the Convention.

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For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 7 March 2024.

Liv Tigerstedt
Deputy Registrar

Péter Paczolay
President

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APPENDIX

List of applications:

No.	Application no. Case name Date lodged	Applicant company Registration date Location	Representative's name Location	Installations' entry into service	Domestic proceedings concerning applicability of the third Energy Tariff	Domestic proceedings concerning applicability of the fourth Energy Tariffs
1.	6656/15 Sol.In.Mus. S.r.l. v. Italy 07/01/2015	SOL.IN.MUS. S.R.L. 2010 Mussumeli	Andrea SACCUCCI Rome	23/03/2012	-	Lazio Regional Administrative Court Judgment no. 9732/2013 14/11/2013 <i>Consiglio di Stato</i> Judgment no. 1602/2014 18/07/2014
2.	9381/15 Energetica S.r.l. in liquidazione v. Italy 07/02/2015	ENERGETICA S.R.L. IN LIQUIDAZIONE 2008 Rome	Anton Giulio LANA Rome	The photovoltaic installations never entered into service	Lazio Regional Administrative Court Judgment no. 3274/13 02/04/2013 <i>Consiglio di Stato</i> Judgment no. 4233/14 08/08/2014	-
3.	38199/15 Solvestia 1 S.r.l. v. Italy 28/07/2015	SOLVESTIA 1 S.R.L. 2010 Lentini	Germana CASSAR Milan	30/03/2012	-	Lazio Regional Administrative Court Judgments nos. 9743/2013 and 9730/2013 14/11/2013 and no. 10251/2013

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No.	Application no. Case name Date lodged	Applicant company Registration date Location	Representative's name Location	Installatio ns' entry into service	Domestic proceedings concerning applicability of the third Energy Tariff	Domestic proceedings concerning applicability of the fourth Energy Tariffs
4.	38290/15 Società Agricola Dalla Valentina S.s. v. Italy 28/07/2015	SOCIETÀ AGRICOLA DALLA VALENTINA S.S. 2011 Roverè Veronese	Germana CASSAR Milan	30/06/2012	-	29/11/2013 <i>Consiglio di Stato</i> Judgments nos. 424/2015, 422/2015 and 421/2015 29/01/2015 Lazio Regional Administrative Court Judgment no. 9753/2013 14/11/2013 <i>Consiglio di Stato</i> Judgment no. 427/2015 29/01/2015
5.	38481/15 Sinergie Sardegna S.as. Di Green Utility Italia S.r.l. & C. v. Italy 29/07/2015	SINERGIE SARDEGNA SAS DI GREEN UTILITY ITALIA S.R.L. & C 2011 Merano	Germana CASSAR Milan	28/06/2012	-	Lazio Regional Administrative Court Judgment no. 9745/2013 14/11/2013 <i>Consiglio di Stato</i> Judgment no. 428/2015 29/01/2015
6.	38553/15 Solared S.r.l. v. Italy 29/07/2015	SOLAREDD S.R.L. 2010 Merano	Germana CASSAR Milan	18/05/2012	-	Lazio Regional Administrative Court Judgment no. 9746/2013 14/11/2013 <i>Consiglio di Stato</i>

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No.	Application no. Case name Date lodged	Applicant company Registration date Location	Representative's name Location	Installatio ns' entry into service	Domestic proceedings concerning applicability of the third Energy Tariff	Domestic proceedings concerning applicability of the fourth Energy Tariffs
7.	44150/15 Cge Palea Arsa S.r.l. v. Italy 02/09/2015	CGE PALEA ARSA S.R.L. 2009 Rovereto	Germana CASSAR Milan	28/03/2012	Lazio Regional Administrative Court Judgment no. 1578/2013 13/02/2013 <i>Consiglio di Stato</i> Judgment no. 1043/2015 03/03/2015	Lazio Regional Administrative Court Judgment no. 9733/2013 14/11/2013 <i>Consiglio di Stato</i> Judgment no. 1043/2015 03/03/2015
8.	50654/15 Asi Troia Fv 1 S.r.l. v. Italy 07/10/2015	ASI TROIA FV 1 S.R.L. 2009 Rome	Germana CASSAR Milan	The photovoltaic installations never entered into service	Lazio Regional Administrative Court Judgment no. 3144/2013 26/03/2013 <i>Consiglio di Stato</i> Judgment no. 1777/2015 08/04/2015	Lazio Regional Administrative Court Judgment no. 1562/2013 13/02/13 <i>Consiglio di Stato</i> Judgment no. 1777/2015 08/04/2015