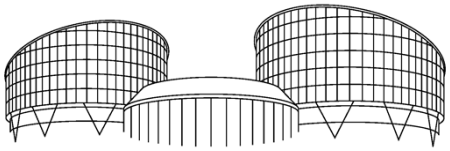

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MEREGHETTI v. ITALY

(Application no. 37185/18)

JUDGMENT

STRASBOURG

11 September 2025

This judgment is final but it may be subject to editorial revision.

In the case of Mereghetti v. Italy,

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

Frédéric Krenc*, President*,
Raffaele Sabato,
Alain Chablais*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 37185/18) 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 2 August 2018 by an Italian national, Mr Cornelio Marco Mereghetti ("the applicant"), who was born in 1968, lives in Milano and was represented by Mr A. Vinci, a lawyer practising in Milan;

the decision to give notice of the complaint concerning Article 6 § 1 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 in private on 10 July 2025,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The application concerns the fairness of the sanctioning proceedings before the Bank of Italy and the absence of a public hearing in the proceedings for judicial review.

2. The applicant was member of the board of directors and managing director of an investment company (*societa' di gestione del risparmio*).

3. Between September and October 2013, the department on banking and financial supervision (*Dipartimento vigilanza bancaria e finanziaria*, hereafter "the Department") of the Bank of Italy, in charge of sanctioning the failure to comply with rules designed to ensure the sound and prudent management of banking and financial activities, the fairness and transparency of conduct, and the prevention of the use of the financial system for money laundering of proceeds from criminal activities, accused the directors of the investment company of several administrative offences. It invited them to submit their response, and they were also given the opportunity to be heard by the Department. The applicant did not request to be heard.

4. The Department then transmitted the file to the Directorate of the Bank of Italy, accompanied by a report setting out the evidence against the directors and their arguments in reply. According to that report, the arguments submitted by the directors were not such as to alter the Department's conclusions. As concerns the applicant, the Department proposed that he be

found liable, as member of the company's board of directors, for the failure to adopt several organisational measures and an adequate overview mechanism capable of ensuring the correct management of the company, and for having acted beyond his powers in respect of specific financial activities. This had affected the interests of the investors and the correct functioning of the market. Accordingly, it proposed to impose on him a fine of 41,000 euros (EUR) in accordance with Article 190 of Legislative Decree no. 58 of 24 February 1998. On 22 July 2014, by decision no. 740800/2014, the Directorate of the Bank of Italy fined the applicant according to the department's proposal.

5. On 18 February 2015 the Brescia Court of Appeal rejected the applicant's appeal against decision no. 740800/2014. The proceedings were held in the presence of the parties in private (*in camera di consiglio*) in accordance with Article 195 § 7 of Legislative Decree no. 58 of 24 February 1998 as in force at that time.

6. The judgment of the Brescia Court of Appeal was upheld by the Court of Cassation on 12 March 2018.

7. Invoking Article 6 § 1 of the Convention, the applicant complained of the fairness of the sanctioning proceedings before the Bank of Italy and of the fact that the Brescia Court of Appeal did not remedy those defects on appeal as it failed to hold a public hearing.

THE COURT'S ASSESSMENT

I. ADMISSIBILITY

8. The Court observes that the parties disagreed on whether the proceedings before the Bank of Italy could be qualified as "criminal" for the purposes of the Convention, and thus whether Article 6 was applicable to case at hand.

9. In this regards the Court reiterates its established case-law that, in determining the existence of a "criminal charge", it is necessary to have regard to the *Engel* criteria (*Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22).

10. As to the legal classification, the applicant's conduct was punished by a penalty which was classified as "administrative" by domestic law. However, this element alone is not decisive (see *Öztürk v. Germany*, 21 February 1984, § 52, Series A no. 73).

11. As to the nature of the offence, it appears that the provisions which the applicant were accused of breaching were intended to guarantee the protection of savings and ensure the sound and prudent management of banking and financial activities (see paragraph 3 above). These are general interests of society, usually protected by criminal law (compare, *mutatis mutandis*, *Grande Stevens and Others v. Italy,* nos. 18640/10 and

4 others, § 96, 4 March 2014). In addition, the fine imposed had both a deterrent purpose, namely to dissuade the applicant from resuming the activity in question, and a punitive one, since it punished unlawful conduct. In this respect, it should be noted that the penalty was determined on the basis of the gravity of the impugned conduct.

12. The Court has already found that the deterrent and punitive function of a penalty is sufficient to establish its criminal nature, irrespective of its gravity (see *Pantalon v. Croatia*, no. 2953/14, § 31, 19 November 2020; *Jussila v. Finland* [GC], no. 73053/01, § 38, ECHR 2006-XIV; and *Vasile Sorin Marin v. Romania*, no. 17412/16, § 44, 3 October 2023).

13. At any rate, the criminal nature of the civil proceedings concerning the administrative fine in question is further confirmed by the fact that the maximum penalty the applicant risked incurring under Article 190 of Legislative Decree no. 58 of 24 February 1998 was EUR 5 million. Taking into account that the criminal connotation of the proceedings depends on the penalty which is "likely to be imposed" on the applicant (*Engel and Others*, cited above, § 82), that the penalty in question may affect the reputation for the representatives of the companies involved, and that the fine imposed was not negligible for the applicant (see paragraph 3 above), the Court considers that the penalty in question was criminal in nature. Accordingly, Article 6 § 1 is applicable in this case under its criminal head.

14. Therefore, the Court rejects the Government's preliminary objection and notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

II. MERITS

15. The general principles concerning the fairness of the proceedings before administrative authorities and the judicial control over their sanctioning decisions have been summarised in *Grande Stevens and Others* (cited above, §§ 94, 116-23, 132, 138-39 and 148-55).

16. The Court notes that the Department's accusation was communicated to the applicant, who was invited to reply and was given a reasonable delay to file observations and to submit evidence in his defence. Extensions were granted to the co-accused who requested it and, despite the essentially written nature of the proceedings in question, the applicant declined the opportunity to be heard in person by the Department.

17. However, the Court observes that, although on the basis of different arguments, both parties acknowledged that the Bank of Italy does not meet all the requirements to be considered an "independent and impartial tribunal" under Article 6 of the Convention. In particular, as admitted by the Government, both the investigative and decision-making stages of the sanctioning procedure were conducted within the same authority. Therefore,

taking into account the conclusions reached in respect of similar administrative bodies (compare *Grande Stevens and Others*, cited above, §§ 132-37), the Court agrees with the parties that the Bank of Italy cannot be considered an "independent and impartial tribunal" under Article 6 of the Convention.

18. In view of this finding, the Court reiterates that the obligation to comply with Article 6 of the Convention does not preclude a "penalty" being imposed by administrative authorities which do not themselves satisfy the requirements of Article 6 § 1 of the Convention if their decisions are subject to subsequent control by a judicial body that has full jurisdiction (*Grande Stevens and Others*, cited above, § 139).

19. In the present case, the applicant had the possibility, which he used, of challenging the penalty imposed by the Bank of Italy before the Brescia Court of Appeal and then, to appeal on points of law against the judgment delivered by the latter court to the Court of Cassation.

20. It is clear that the Court of Appeal, which had jurisdiction to rule, in respect of both law and fact, on whether the offences of which the applicant was accused had been committed and was authorised to set aside the decision taken by the Bank of Italy, was independent and impartial. Contrary to the applicant's arguments, the Court of Appeal did not refuse to exercise its jurisdiction over the alleged failure of the Bank of Italy to comply with the deadlines foreseen in the sanctioning proceedings, but extensively ruled on this issue, providing its own interpretation of the relevant provisions. Furthermore, it was called upon to assess the proportionality of the imposed penalty to the seriousness of the alleged conduct. Thus, its jurisdiction was not merely confined to reviewing lawfulness, but it had full jurisdiction within the meaning of the Court's case-law (compare *Grande Stevens and Others*, cited above, §§ 148-51).

21. However, the applicant's main complaint is that no public hearing was held before the Court of Appeal to remedy the lack of fairness before the Bank of Italy. In this respect, the Court recalls that an oral and public hearing constitutes a fundamental principle enshrined in Article 6 § 1. While the requirements of a fair hearing are the strictest in the sphere of criminal law, the Court would not exclude that in the criminal sphere the nature of the issues to be dealt with before the tribunal or court may not require an oral hearing (*Grande Stevens and Others*, cited above, §§ 118-20).

22. As to the necessity of holding a public hearing in the present case, the Court observes that, at the time of the facts, Article 195 § 7 of Legislative Decree no. 58 of 1998 established that the hearing in the proceedings for judicial review of decisions adopted by the Bank of Italy and other administrative bodies were to be held in private. On 27 June 2015, few months after the Brescia Court of Appeal rejected the applicant's appeal, Article 195 of Legislative Decree no. 58 of 1998 was amended and the duty to hold a public hearing was introduced.

23. Noting that the proceedings before the Bank of Italy, including the subsequent appeal proceedings, may lead to the imposition of severe administrative penalties which can be qualified as criminal for the purposes of the Convention (see paragraphs 9-13 above), it cannot be claimed that public scrutiny is not a necessary condition for ensuring that the rights of the person concerned are respected (compare, *mutatis mutandis*, *Bongiorno and Others v. Italy*, no. 4514/07, §§ 28-31, 5 January 2010). This conclusion is reinforced by the fact that, in the instant case, the facts were contested, especially with regard to the applicant's conduct and liability, and that he risked incurring a substantial financial penalty with further consequences on his professional honour and reputation (see paragraph 13 above) (compare *Grande Stevens and Others*, cited above, § 122).

24. In respect of the lack of a public hearing before the Court of Appeal, the Government argued that the applicant failed to file a request to the court, implicitly waiving his right, and failed to explain why the lack of public hearing affected the fairness of the proceedings.

25. In light of the express legislative reference to the private nature of the hearing to be held before the Court of Appeal (see paragraph 22 above), the Government failed to adequately support their statement (compare *Bongiorno and Others*, cited above, §§ 21-22). The alleged wide margin of discretion of the Court of Appeal in this kind of proceedings appears generic and unsubstantiated. On the contrary, the amendment of Article 195 § 7 and the inclusion of the right to a public hearing in appeal proceedings against administrative decisions testifies to the importance attached to the public scrutiny by the respondent State.

26. Although a public hearing was held before the Court of Cassation, the latter did not have jurisdiction to examine the merits of the case, establish the facts and assess the evidence. It could not therefore be considered as a court with full jurisdiction within the meaning of the Court's case-law (compare *Grande Stevens and Others*, cited above, § 155).

27. In the light of the above considerations, the Court considers that, although the proceedings before the Bank of Italy did not meet the requirements of fairness and objective impartiality set out in Article 6 of the Convention, the applicant's case was subsequently reviewed by an independent and impartial body with full powers, specifically the Brescia Court of Appeal. However, the latter did not hold a public hearing, which, in the present case, amounted to a violation of Article 6 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. The applicant claimed 100,399.72 euros (EUR) in respect of pecuniary damage, including the penalty imposed by the Bank of Italy, other administrative penalties issued in separate administrative proceedings and the legal costs incurred at the domestic level in those proceedings. He deferred to

the Court the determination of the non-pecuniary damage on an equitable basis. He further claimed EUR 15,000 in respect of costs and expenses incurred before the Court.

29. The Government argued that the applicants had included in the request for material damage sums unrelated to the object of the complaint and that, in any event, he had failed to provide evidence of the damage sustained.

30. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim. As to the non-pecuniary damage, in light of its case-law (*Martinie v. France* [GC], no. 58675/00, § 59, ECHR 2006-VI; *Bocellari and Rizza v. Italy*, no. 399/02, § 46, 13 November 2007; and *Lorenzetti v. Italy*, no. 32075/09, § 55, 10 April 2012), the Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage caused to the applicant.

31. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,000 for costs and expenses incurred before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 September 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Frédéric Krenc President