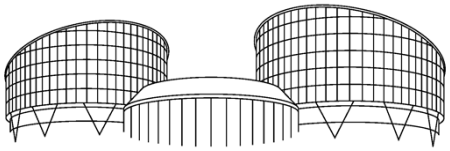

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF STUDIO MEDICO-ODONTOIATRICO DR. CRUSI S.R.L.
v. ITALY

(Application no. 56161/19)

JUDGMENT

STRASBOURG

14 November 2024

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

In the case of Studio Medico-Odontoiatrico Dr. Crusi S.r.l. v. Italy,

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

Lətif Hüseynov*, President*,
Raffaele Sabato,
Alain Chablais*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 56161/19) 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 15 October 2019 by an Italian company, Studio Medico-Odontoiatrico Dr. Crusi S.r.l. ("the applicant company"), represented by Mr F. Cantobelli, a lawyer practising in Lecce;

the decision to give notice of the application to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia;

the Government's observations;

the decision to reject the Government's objection to the examination of the application by a Committee;

Having deliberated in private on 17 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the decision of the domestic courts to reject the applicant company's claim for compensation for the damage suffered as a result of the unlawful administrative decision.

2. The applicant company runs a dental practice.

3. On 12 November 2007 the applicant company obtained an accreditation from the National Health Service allowing it to enter into contracts for the provision of medical services with the local health authorities.

4. On 20 September 2011 the health authorities of the Apulia Region issued executive decision (*determinazione dirigenziale*) no. 227, an administrative decision revoking the applicant company's accreditation with the National Health Service.

5. On 28 November 2013 the *Consiglio di Stato* held that executive decision no. 227 had been unlawful (judgment no. 5690/2013). The applicant company subsequently brought proceedings in the domestic courts, seeking compensation for the revocation of the accreditation.

6. On 17 October 2018 the *Consiglio di Stato* rejected the applicant company's claim for compensation (judgment no. 5952/2018), finding that the administrative authority which had taken the unlawful decision had not been at fault, as it had committed an "excusable error" (*errore scusabile*) because of the lack of clarity of the applicable law.

7. Relying on Article 1 of Protocol No. 1 to the Convention, the applicant company complained that its claim for compensation had been rejected by the domestic courts.

THE COURT'S ASSESSMENT

8. The applicant company complained that the decision of the domestic courts to reject its claim for compensation for the damage suffered as a result of the unlawful administrative decision had amounted to a disproportionate interference with its "possessions".

9. The Court 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.

10. The general principles for the determination of whether, in the absence of redress, an unlawful interference imposes an excessive individual burden have been summarised in *Immobiliare Saffi v. Italy* ([GC], no. 22774/93, §§ 57-59, ECHR 1999-V), *Iatridis v. Greece* ([GC], no. 31107/96, § 58, ECHR 1999-II), *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, § 180, ECHR 2006-V) and *Gashi v. Croatia* (no. 32457/05, §§ 40-41, 13 December 2007).

11. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful.

12. The Court observes that, in the instant case, it is undisputed that the administrative decision was unlawful under domestic law, as established by the domestic courts (see paragraph 5 above).

13. The Court has previously established that the excusable nature of an error made by the domestic authorities does not justify an interference with property rights, and it is not for applicants to bear the consequences of any such errors (see, *mutatis mutandis*, *Gashi*, cited above, § 40). Furthermore, in the event that the error is the consequence of a lack of clarity of the applicable law, the Court emphasises that the requirement of lawfulness means that rules of domestic law must be sufficiently accessible, precise and foreseeable (see *Carbonara and Ventura v. Italy*, no. 24638/94, § 64, ECHR 2000-VI).

14. The Government argued that the withdrawal of the applicant company's accreditation with the National Health Service had been aimed at ensuring the high-quality standards of healthcare services and had therefore pursued the public interest. Furthermore, they stressed that the setting aside of the unlawful administrative decision amounted to sufficient redress for the applicant company.

15. The applicant company did not submit observations in reply to the Government's observations on the admissibility and merits within the time-limit.

16. The Court reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of his or her status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Scordino*, cited above, § 180).

17. The Court observes that, although the unlawful decision was set aside, the applicant company was not awarded compensation for any damage sustained while the decision was in force, solely because of the excusable nature of the error committed by the administrative authority (see paragraph 6 above). Against this background, in the Court's view, setting aside the unlawful decision did not afford the applicant company sufficient redress.

18. Having regard to the above considerations, the Court finds that the interference in question was manifestly in breach of domestic law and, accordingly, incompatible with the right of the applicant company to the peaceful enjoyment of its possessions. This conclusion makes it unnecessary to ascertain whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

19. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. The applicant company did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award it any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 14 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Lətif Hüseynov
Deputy Registrar	President