



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

FIRST SECTION

CASE OF APRILE v. ITALY

(Application no. 11557/09)

JUDGMENT

STRASBOURG

9 March 2023

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

In the case of Aprile v. Italy,

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

Péter Paczolay, *President*,

Gilberto Felici,

Raffaele Sabato, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 11557/09) 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 21 February 2009 by an Italian national, Ms Brizia Maria Aprile (“the applicant”), who was born in 1925 and lives in Rome, and who was represented by Mr R. Marzo, 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 14 February 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant’s complaint that she was deprived of land through the application of an indirect form of expropriation (“*occupazione usurpativa*”) by the domestic courts.

2. The applicant was the owner of a plot of land located in the Melendugno municipality, which was recorded in the land register as folio no. 24, parcel no. 45.

3. Without issuing any public-interest declaration or any formal expropriation order, the municipality occupied the land in 1973 to use it as a public square.

4. On 19 November 1980, the applicant brought an action in the Lecce District Court arguing that the occupation of the land had been unlawful and seeking its restitution as well as damages.

5. By a judgment of 22 July 1992, the Lecce District Court upheld the applicant’s complaints and found that the occupation of her land had been unlawful, but that the land had been irreversibly altered as a result of the public works which had been carried out on it since 1973. As a consequence, pursuant to the indirect-expropriation rule, the applicant was no longer the owner of the land. The Lecce District Court further ruled that the applicant was entitled to damages in respect of the loss of her property.

6. The municipality appealed against that judgment. The applicant lodged a counter-appeal, asking the Lecce Court of Appeal to declare that, as a consequence of the irreversible alteration of the land, it had been acquired by the municipality, and to confirm the award of damages in that connection.

7. By a judgment of 14 February 2002, the Lecce Court of Appeal found that the applicant's complaints were subject to a five-year limitation period which had started to run from the date of the irreversible alteration of the land. As a result, the complaints were time-barred and she was not entitled to compensation.

8. The applicant appealed to the Court of Cassation, contesting the application of the limitation period and arguing that the indirect expropriation was contrary to Article 1 of Protocol No. 1 to the Convention.

9. On 11 September 2008 the Court of Cassation upheld the appeal judgment.

10. The applicant complained that she had been unlawfully deprived of her land without compensation, in breach of her rights under Article 1 of Protocol No. 1 to the Convention.

THE COURT'S ASSESSMENT

I. THE GOVERNMENT'S REQUEST TO STRIKE THE APPLICATION OUT OF THE LIST OF CASES

11. The Government submitted a unilateral declaration which did not offer a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*). The Court rejects the Government's request to strike the application out and will accordingly pursue its examination of the case (see *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §75, ECHR 2003 VI).

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

12. The relevant domestic law and practice concerning indirect expropriation is to be found in *Guiso-Gallisay v. Italy* ((just satisfaction) [GC], no. 58858/00, §§ 18-48, 22 December 2009).

A. Admissibility

13. The Government objected to the admissibility of the application on grounds of non-exhaustion of domestic remedies, arguing that the applicant had not challenged, in the course of appeal and cassation proceedings, the first-instance court's rejection of her request for the restitution of the land.

14. The Court notes that the applicant complained of the unlawful expropriation of the land and sought compensation, before both the Court of Appeal and the Court of Cassation (see paragraphs 6 and 8 above). That complaint reflected the alleged breach that has been raised before the Court (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 117, 20 March 2018) and, as a consequence, the Government's preliminary objection must be dismissed.

15. As the 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 be declared admissible.

B. Merits

16. The Court notes that the applicant was deprived of her property by means of indirect expropriation, an interference with the right to the peaceful enjoyment of possessions which the Court has previously considered, in a large number of cases, to be incompatible with the principle of lawfulness, leading to findings of a violation of Article 1 of Protocol No. 1 (see, among many other authorities, *Carbonara and Ventura v. Italy*, no. 24638/94, §§ 63-73, ECHR 2000-VI, and *Messana v. Italy*, no. 26128/04, §§ 38-43, 9 February 2017).

17. In the present case, having examined all the material submitted to it and the Government's submissions, the Court has not found any fact or argument capable of persuading it to reach a different conclusion.

18. Furthermore, the Court notes that the domestic courts applied a five-year limitation period which started to run from the date of the irreversible alteration of the land (see paragraph 7 above). As a result, the applicant was denied the possibility that had, in principle, been available to her of obtaining damages (see *Carbonara and Ventura*, cited above, §§ 69 and 71).

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 did not submit any claims for just satisfaction, despite being invited to do so. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Rejects* the Government's request to strike the application out of its list of cases;
2. *Declares* the application admissible;

3. *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 9 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Péter Paczolay
President