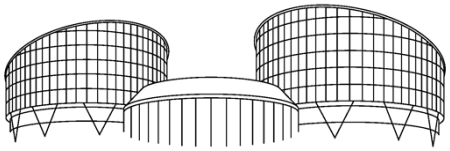

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF CENTRO DI FISIOTERAPIA DI CECILIA SURACE E. C. S.A.S. v. ITALY

(Application no. 15277/20)

JUDGMENT

STRASBOURG

14 November 2024

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

In the case of Centro di Fisioterapia Di Cecilia Surace E. C. S.A.S. 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. 15277/20) 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 10 March 2020 by an Italian company, Centro di Fisioterapia Di Cecilia Surace E. C. S.A.S. ("the applicant company"), represented by Mr A. Saccucci, a lawyer practising in Rome;

the decision to give notice of the complaint concerning Article 1 of Protocol No. 1 to the Convention to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia, and to declare the remainder of the application inadmissible;

the parties' 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 sustained as a result of the unlawful administrative decision.

2. The applicant company runs a medical centre.

3. On 21 March 1985 the applicant company's legal representative entered into a public healthcare service agreement with the local health authority, allowing him to provide medical services.

4. Following the incorporation of the company, the legal representative requested that the public healthcare service agreement be transferred from his name into the name of the applicant company. His request was rejected, despite the fact that the local authority had taken note of the medical centre's incorporation.

5. On 29 September 1994 the local health authority issued a resolution terminating the contractual relationship with the applicant company's legal representative, and consequently with the company itself. In addition, it revoked both the order in which it had recognised the medical centre's incorporation, and also the associated administrative decisions.

6. On 28 June 2013 the Apulia Regional Administrative Court (Lecce) found that the resolution of 29 September 1994 had been unlawful (judgment no. 1542/2013). The judgment was not appealed against and became final. The applicant company subsequently brought proceedings in the domestic courts, seeking compensation for the termination of the contractual relationship.

7. On 11 September 2019 the *Consiglio di Stato* rejected the applicant company's claim for compensation (judgment no. 6138/2019), finding that the administrative authority which had taken the unlawful decision had not been at fault, because it had committed an "excusable error" (*errore scusabile*).

8. 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

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

10. 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.

11. 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).

12. 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.

13. 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 6 above).

14. 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).

15. The Government argued that the resolution terminating the contractual relationship with the applicant company and the other related decisions 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.

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 resolution was set aside, the applicant company was not awarded compensation, solely because of the excusable nature of the error committed by the administrative authority (see paragraph 7 above). Against this background, in the Court's view, setting aside the unlawful resolution 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 claimed between 3,115,824 and 7,249,276 euros (EUR) in respect of pecuniary damage, EUR 100,000 in respect of non-pecuniary damage and EUR 20,299.12 in respect of costs and expenses incurred before the domestic courts and EUR 105,982.12 for those incurred before the Court.

21. The Government did not submit observations on the request for just satisfaction.

22. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI). Moreover, only damage sustained as a result of Convention violations found by the Court may give rise to the award of just satisfaction (see, among other authorities, *Éditions Plon v. France*, no. 58148/00, § 61, ECHR 2004-IV).

23. In the instant case, the Court has found that there has been a violation of Article 1 of Protocol No. 1 to the Convention, as the unlawful decision taken by the administrative authorities had prevented the applicant company

from running its business between 1994 and 2016. Nevertheless, the Court observes that the applicant company has failed to provide sufficient evidence of damage sustained other than in respect of loss of earnings.

24. In this connection, the Court reiterates that where a loss of earnings (*lucrum cessans*) is alleged, it must be conclusively established and must not be based on mere conjecture or probability (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 219, ECHR 2012).

25. The Court finds that the applicant company did indeed suffer a loss of earnings as a result of the termination of the public healthcare service agreement. It considers, however, that the evidence before it cannot lead to a precise assessment of pecuniary damage, since this type of damage involves many uncertain factors, making it impossible to calculate the exact amount capable of affording fair compensation. In those circumstances, without speculating on the profit which the applicant company would have made if the violation of the Convention had not occurred, the Court considers it appropriate to award a lump sum in compensation for the loss of earnings resulting from the unlawful conduct of the local health authority.

26. In view of the foregoing, and making its assessment on an equitable basis, the Court considers it reasonable to award the applicant company an aggregate sum of EUR 544,000, covering all heads of damage, plus any tax that may be chargeable on that amount.

27. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 10,000 for costs and expenses incurred in the domestic proceedings and before the Court, plus any tax that may be chargeable to the applicant company, and dismisses the remainder of the claim.

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;

3. *Holds*
   (a) that the respondent State is to pay the applicant company, within three months, the following amounts:
      (i) EUR 544,000 (five hundred and forty-four thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant company, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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