



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

FOURTH SECTION

CASE OF CHINNICI v. ITALY (No. 2)

(Application no. 22432/03)

JUDGMENT

STRASBOURG

14 April 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Chinnici v. Italy (no. 2),

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Päivi Hirvelä, *President*,

Guido Raimondi,

George Nicolaou,

Ledi Bianku,

Nona Tsotsoria,

Krzysztof Wojtyczek,

Faris Vehabović, *judges*,

and Françoise Elens-Passos, *Section Registrar*,

Having deliberated in private on 24 March 2015,

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

PROCEDURE

1. The case originated in an application (no. 22432/03) 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 an Italian national, Mr Giuseppe Chinnici (“the applicant”), on 4 July 2003.

2. The applicant was represented by Mr A. Marchetti, a lawyer practising in Rome. The Italian Government (“the Government”) were represented by their Agent, Ms E. Spatafora, their former co-Agent, Mr N. Lettieri, and their co-Agent, Ms P. Accardo.

3. On 3 January 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1945 and lives in L’Aquila.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. The applicant was the owner of a plot of land designated as industrial land in L’Aquila. The land in issue – of a surface area of 10,059 square metres – was recorded in the land register as Folio no. 4, Parcel no. 222.

7. In 1989, the regional administrative authorities granted the Consortium for the industrial development of L’Aquila (“*Consorzio per il*

nucleo di sviluppo industriale di L'Aquila", hereinafter "the Consortium") permission to occupy a portion of the applicant's land in order to begin the construction of an industrial compound.

8. On an unspecified date, the applicant brought an action for damages in the L'Aquila District Court against the regional administrative authorities seeking compensation for the remaining portion of land which had become unusable following the occupation.

9. On 9 April 1991 the regional administrative authorities issued an expropriation order in respect of the land.

10. Pursuant to the order, the consortium offered the applicant a global sum of 106.400.000 Italian lire (ITL) (equivalent to EUR 55,000) as compensation for the expropriation and compensation for the period during which the land had been occupied before the expropriation order had been issued.

11. The offer was refused by the applicant on the ground that he considered it inadequate.

12. On 9 May 1991, contesting the amount that he had been awarded, the applicant brought proceedings against the Consortium in the L'Aquila Court of Appeal. He argued that the amount determined by the regional authorities was extremely low in relation to the market value of the land.

13. On 14 August 1992 Law no. 359 of 8 August 1992 came into force ("Urgent measures aimed at stabilising public finances"). Article 5 *bis* of the Law laid down new criteria for calculating compensation for the expropriation of building land. The Law was expressly applicable to pending proceedings.

14. On 3 November 1993, the applicant accepted the consortium's offer and requested the termination of the proceedings ("*cessazione della materia del contendere*").

15. By a provisional judgment delivered on 22 November 1994, the Court of Appeal acknowledged the entry into force of Law no. 359 of 8 August 1992 and held that the amount of the compensation for the expropriation had to be in accordance with the new criteria laid down in the legislation's Article 5*bis*. The court therefore rejected the applicant's request to terminate the proceedings, appointed an expert and instructed him to assess the compensation for the expropriation according to the new criteria.

16. On an unspecified date, the expert submitted his report.

17. By a judgment delivered on 23 July 2002 and filed with the court registry on 1 August 2002, the Court of Appeal held that the applicant was entitled to compensation in the sum of EUR 77,556.40, as calculated according to the criteria laid down in Law no. 359 of 1992. Moreover, the Court of Appeal held that the applicant was entitled to compensation for the period during which the land had been occupied before the expropriation

order had been issued, in the sum of EUR 12 778,37. The amounts were subject to tax, deducted at the source at a rate of 20%.

18. On an unspecified date the consortium appealed on points of law.

19. By a judgment delivered on 21 November 2006 and filed with the court registry on 8 January 2007, the Court of Cassation remitted the case to the L'Aquila Court of Appeal.

20. By a judgment delivered on 24 January 2013, filed with the court registry on 12 March 2013, the L'Aquila Court of Appeal acknowledged the Constitutional Court's judgment no. 348 of 24 October 2007, whereby Article 5 *bis* of Law no. 359 of 8 August 1992 had been declared unconstitutional, and held that the applicant was entitled to compensation corresponding to the full market value of the property.

21. Therefore, drawing on the court-ordered expert report submitted during the first set of proceedings, the Court of Appeal concluded that the applicant was entitled to compensation in the sum of EUR 108,578.96 (equivalent to ITL 210,236,000), which reflected the market value of the land at the time of the expropriation (1991), plus statutory interest. It did not, however, adjust the amount for inflation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. The relevant domestic law and practice concerning formal expropriations are to be found in the *Scordino v. Italy (no. 1)* judgment ([GC], no. 36813/97, §§ 47-61, ECHR 2006-V).

23. In judgment no. 348 of 24 October 2007, the Italian Constitutional Court held that national legislation must be compatible with the Convention as interpreted by the Court's case-law and, in consequence, declared unconstitutional section 5 *bis* of Law no. 359 of 8 August 1992.

24. In the judgment, the Constitutional Court noted that the insufficient level of compensation provided for by the 1992 Law was contrary to Article 1 of Protocol No. 1 and also to Article 117 of the Italian Constitution, which provides for compliance with international obligations. Since that judgment, the provision in question may no longer be applied in the context of pending national proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

25. The applicant alleged that he had borne a disproportionate burden on account of the inadequate amount of the expropriation compensation he

received at the domestic level, thus entailing a violation of Article 1 of Protocol No. 1, which provides as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. The parties’ submissions

26. The Government submitted that the applicant was no longer a “victim” within the meaning of Article 34 of the Convention as he had obtained from the L’Aquila Court of Appeal a finding of a violation Article 1 of Protocol No. 1 and an amount corresponding to the full market value of the expropriated land.

27. The applicant, for his part, considered that he was still a “victim” of the violation in that the amount that had been awarded to him did not correspond to the market value of the land at the time of the expropriation in 1991, and the sum had not been converted to its current value to offset the effects of inflation.

B. The Court’s assessment

1. Admissibility

28. Having regard to the parties’ arguments, the Court considers that the question concerning the applicant’s victim status is closely linked to the merits of the complaint. It therefore joins the question to the merits of the applicant’s complaint under Article 1 of Protocol No. 1.

2. Merits

29. As the Court has reiterated on a number of occasions, Article 1 of Protocol No. 1 contains three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest. These rules are not, however, unconnected: the second and third rules are concerned with particular instances of interference with the right to the

peaceful enjoyment of possessions and are therefore to be construed in the light of the principle laid down in the first rule (see, among other authorities, *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98, which partly reiterates the terms of the Court's reasoning in *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 61, Series A no. 52; see also *The Holy Monasteries v. Greece*, 9 December 1994, § 56, Series A no. 301-A; *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II; and *Beyeler v. Italy* [GC], no. 33202/96, § 106, ECHR 2000-I).

30. It is not in dispute between the parties that in the instant case the situation complained of falls within the scope of Article 1 of Protocol No. 1.

31. It emerges from the decisions of the national courts that the expropriation was considered to be in accordance with the law and that the expropriation pursued a legitimate aim in the public interest. The Court finds no reason to hold otherwise.

32. The Court reiterates that any interference with property must, in addition to being lawful and having a legitimate aim, also satisfy the requirement of proportionality. A fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, cited above, and *The Holy Monasteries v. Greece*, cited above).

33. In this connection, the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be justified under Article 1 of Protocol No. 1 (see, among other authorities, *Papachelas v. Greece* [GC], no. 31423/96, § 48, ECHR 1999-II).

34. Article 1 of Protocol No. 1 does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of "public interest" may call for less than reimbursement of the full market value (see *Papachelas v. Greece* [GC], cited above, § 48; *The Holy Monasteries v. Greece*, cited above, § 71; *Lithgow and Others v. the United Kingdom*, 8 July 1986, §§ 50-51, Series A no. 102).

35. In the instant case the amount of expropriation compensation offered to the applicant pursuant the expropriation order of 9 April 1991 was fixed at ITL 106,400,000, or approximately EUR 55,000 (see paragraph 10 above), which constitutes a sum far lower than the market value of the property in question (see paragraph 21 above).

36. The present case concerns a distinct expropriation, and one which was neither carried out as part of a process of economic, social or political reform nor linked to any other specific circumstances. Accordingly, in this

case, the Court does not discern any legitimate objective “in the public interest” capable of justifying less than reimbursement of the market value.

37. Having regard to all the foregoing considerations, the Court considers that the compensation awarded to the applicant was inadequate, given the low amount awarded and the lack of public-interest grounds capable of justifying less than compensation at the market value of the property. Accordingly, the applicant has had to bear a disproportionate and excessive burden which cannot be justified by a legitimate aim in the public interest pursued by the authorities.

38. It remains to be determined whether the national courts before which the applicant’s claims were brought, have afforded redress for the breach of the Convention.

39. The Court reiterates that it falls first to the national authorities to redress any violation of the Convention. In this regard, the question whether an applicant can claim to be a victim of the violation is relevant at all stages of the proceedings under the Convention (see *Scordino v. Italy (no. 1)* [GC], cited above, § 179 and *Burdov v. Russia*, no. 59498/00, § 30, ECHR 2002-III).

40. The Court further recalls that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate and sufficient redress for, the breach of the Convention. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Eckle v. Germany*, 15 July 1982, §§ 69 et seq., Series A no. 51; *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III).

41. As to the first condition, which is the finding of a violation by the national authorities, in its judgment of 24 January 2013 the L’Aquila Court of Appeal acknowledged the Constitutional Court’s judgment no. 348 of 24 October 2007, whereby Article 5 *bis* of Law no. 359 of 8 August 1992 had been declared unconstitutional, and held that the applicant was entitled to compensation corresponding to the full market value of the property. This may be viewed as a recognition of the principle that the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be justified under Article 1 of Protocol No. 1. The Court therefore considers that the domestic courts acknowledged, at least in substance, the infringement complained of.

42. With regard to the second condition, the Court must ascertain whether the measures taken by the authorities, in the particular circumstances of the instant case, afforded the applicant appropriate redress in such a way as to deprive him of his victim status.

43. According to the Court’s case-law (*Scordino v. Italy (no. 1)* [GC], cited above, and, among others, *Aldo Leoni v. Italy*, no. 67780/01,

26 January 2010; *Perinati v. Italy*, no. 8073/05, 6 October 2009; *Mandola v. Italy*, no. 38596/02, 30 June 2009; *Zuccalà v. Italy*, no. 72746/01, 19 January 2010), adequate expropriation compensation in cases similar to the one under scrutiny should first of all correspond to the full market value of the land at the time of the loss of the property, reduced by any sums awarded at domestic level. Moreover, as the adequacy of the compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as the lapse of a considerable period of time (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 82, Series A no. 301-B, and, *mutatis mutandis*, *Motais de Narbonne v. France* (just satisfaction), no. 48161/99, §§ 20-21, 27 May 2003), the Court has held that the initial amount must be updated to offset the effects of inflation, and increased by the amount of statutory interest due (*Scordino v. Italy (no. 1)* [GC], cited above, § 258. See also, *mutatis mutandis*, *Akkuş v. Turkey*, 9 July 1997, § 29, *Reports* 1997-IV and *Aka v. Turkey*, 23 September 1998, § 48, *Reports* 1998-VI).

44. In the instant case the Court of Appeal awarded the applicant compensation in the sum of EUR 108,578.96 (equivalent to ITL 210,236,000), reflecting the market value of the property at the time of the expropriation, plus interest, but failed to award a sum reflecting inflation adjustment.

45. The Court further points out that, in the twenty-two years that elapsed between the date of the expropriation in 1991 and the L'Aquila Court of Appeal's judgment in 2013, a considerable change occurred in the monetary depreciation in the country. When converted to its current value in order to offset the effects of inflation, the capital so adjusted amounts to nearly twice the original amount.

46. In the light of the foregoing, the Court considers that the redress was only partial and the compensation obtained at domestic level was, therefore, not capable of making good the loss sustained.

47. As the second condition – appropriate and sufficient redress – has not been fulfilled, the Court considers that the applicant can in the instant case still claim to be a “victim” in respect of his complaint under Article 1 of Protocol No. 1.

48. Accordingly, the Court rejects the Government's objection and, ruling on the merits, finds that there has been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

49. The applicant alleged that the enactment and application to his case of Article 5 *bis* of Law no. 359/1992 amounted to interference by the legislature in breach of his right to a fair hearing as guaranteed by Article 6 § 1 of the Convention, the relevant parts of which provide:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ...”

50. The Government contested that argument.

51. The Court points out that, by a judgment of 24 January 2013, filed with the court registry on 12 March 2013, the L'Aquila Court of Appeal acknowledged the Constitutional Court's judgment no. 348 of 24 October 2007, whereby Article 5 *bis* of Law no. 359 of 8 August 1992 had been declared unconstitutional, and held that the applicant was entitled to compensation corresponding to the market value of the property (see paragraph 20 above).

52. In the Court's view, therefore, the impugned legislation was not applied in the applicant's case.

53. In the light of the above, it cannot be said that the applicant has victim status in respect of this complaint, which is therefore incompatible *ratione personae* with the provisions of the Convention and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage

55. The applicant claimed 161,370.59 euros (EUR) in respect of pecuniary damage, to be adjusted for inflation and increased by the amount of interest due.

56. The Government contended that the applicant had obtained an amount corresponding to the market value of the expropriated land.

57. 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], cited above, § 32).

58. The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attached to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the breach

allows of *restitutio in integrum*, it is for the respondent State to effect it, the Court having neither the power nor the practical possibility to do so itself. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I).

59. The Court has held that the interference in question satisfied the condition of lawfulness and was not arbitrary (see paragraphs 30-31 above). The act of the Italian government which the Court held to be contrary to the Convention was an expropriation that would have been legitimate but for the failure to pay fair compensation (see paragraphs 32-37 above).

60. In the present case the Court considers that the nature of the violation found does not allow it to assume that *restitutio in integrum* can be made (contrast *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, Series A no. 330-B). An award of equivalent compensation must therefore be made.

61. In the instant case the Court has found that a “fair balance” was not struck, given the level of compensation awarded could not be said to correspond to a sum reasonably related to the property’s value.

62. As the applicant received from the Court of Appeal an award of EUR 108,578.96, a sum reflecting the market value of the land at the time of the expropriation in 1991, increased by the amount of statutory interest due, but failed to adjust the amount for inflation, the Court will award compensation corresponding to inflation adjustment.

63. Having regard to the foregoing, the Court considers it reasonable to award the applicant EUR 85,000, plus any tax that may be chargeable on that amount. The amount was obtained by adjusting the sum of EUR 108,578.96 for inflation according to the consumer price index calculated by the Italian National Institute of Statistics (ISTAT).

B. Non-pecuniary damage

64. The applicant claimed EUR 100,000 in respect of non-pecuniary damage.

65. The Government contested that amount.

66. The Court considers that on account of the violation found the applicant must have sustained a certain degree of non-pecuniary damage, which it assesses, on an equitable basis, at EUR 5,000.

C. Costs and expenses

67. The applicant submitted a bill of costs and expenses and sought the reimbursement of EUR 40,000 for the costs and expenses incurred in the domestic proceedings.

68. The Government contested that amount.

69. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and were reasonable as to quantum (see *Can and Others v. Turkey*, no. 29189/02, § 22, 24 January 2008).

70. As the applicant's case before the domestic courts was essentially aimed at remedying the violations of the Convention alleged before the Court, these domestic legal costs may be taken into account in assessing the claim for costs.

71. While it is not disputed that the applicant incurred certain expenses in order to obtain redress before the domestic courts, it considers that the sum requested is excessive.

72. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of 5,000 for the proceedings before the domestic courts.

D. Default interest

73. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's objection regarding the applicant's victim status in respect of Article 1 of Protocol No. 1;
2. *Declares* the complaint concerning Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 of the Convention and rejects the Government's objection;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

- (i) EUR 85,000 (eighty-five thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
- (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (iii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicants, 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;

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

Done in English, and notified in writing on 14 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Registrar

Päivi Hirvelä
President