



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

FIRST SECTION

CASE OF DE CICCIO v. ITALY

(Application no. 28841/03)

JUDGMENT

STRASBOURG

26 March 2020

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

In the case of De Cicco v. Italy,

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

Tim Eicke, *President*,

Jovan Ilievski,

Raffaele Sabato, *judges*,

and Renata Degener, *Deputy Section Registrar*,

Having regard to:

the application 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 Vincenzo De Cicco (“the applicant”), on 9 February 2000;

the decision to give notice of the application to the Italian Government (“the Government”);

the parties’ observations;

Having deliberated in private on 3 March 2020,

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

INTRODUCTION

The case concerns the establishment of an easement on the applicant’s land and the length of the related domestic proceedings. The applicant relied on Article 1 of Protocol No. 1 to the Convention and Article 6 § 1 of the Convention.

THE FACTS

1. The applicant was born in 1940 and lives in Benevento. The applicant was represented by Mr S. Ferrara, a lawyer practising in Benevento.

2. The Italian Government (“the Government”) were represented by their former Agent, Ms E. Spatafora, and their former co-Agent, Ms P. Accardo.

3. The applicant was the owner of a plot of land in Benevento. The land in issue was recorded in the land register as Folio no. 14, Parcels nos. 1055 and 1153.

4. On 17 April 1990 the President of the Campania Regional Council approved a plan to construct power lines on the applicant’s land.

5. On 28 May 1991 the Mayor of Benevento issued an order authorising the public electricity company, ENEL, to occupy the applicant’s land for a period of five years in order to begin the construction of the power lines.

6. On 8 July 1991, ENEL took physical possession of the land and began the construction work.

I. PROCEEDINGS BEFORE THE BENEVENTO DISTRICT COURT

7. On 3 October 1994 the applicant brought an action for damages against ENEL before the Benevento District Court. He alleged that the occupation of the land had been unlawful as the Mayor's order of 28 May 1991 had not specified the beginning and end dates of the five-year occupation period. Moreover, he argued that the construction work had been completed without a formal order establishing an easement having been issued. He thus sought restitution of the land and the dismantling of the power lines or, alternatively, compensation for the easement established on his property and a further sum for the loss of enjoyment of the land.

8. On an unspecified date the court ordered an expert valuation of the land. In a report submitted on 7 July 1998 the expert found that the deadline for the lawful occupation of the land had expired on 7 July 1996. He further noted that the order issued by the Mayor of Benevento did not indicate the start and end date of the construction work and of any expropriation proceedings. The expert then proceeded to calculate the compensation due to the applicant for the easement permitting electric lines (*servitù di elettrodotto*) which would be attached to his property, which in his opinion amounted to 8,115,000 Italian lire (ITL). The expert further determined that the loss in value of the remainder of the applicant's property after the imposition of an easement would amount to ITL 14 million.

9. In a judgment of 14 December 2006, filed with the registry on 19 December 2006, the Benevento District Court held that the occupation of the applicant's land with a view to erecting the power lines had not been carried out in accordance with the law. That said, in the court's view ordering the removal of the power lines would have been "seriously damaging to the country's economic system", and therefore was not an option it could have envisaged. The court established an easement over electric lines on the applicant's land and held that the applicant was entitled to compensation as calculated by the expert, adjusted for inflation and to be increased by the amount of statutory interest due.

10. The applicant did not lodge an appeal against the judgment of the Benevento District Court.

II. "PINTO" PROCEEDINGS

11. On 15 April 2002 the applicant lodged an application with the Rome Court of Appeal under Law no. 89 of 24 March 2001, known as the "Pinto" Act, complaining of the excessive length of the above-described proceedings. The applicant requested that the court rule that there had been a breach of Article 6 § 1 of the Convention and order the Italian Government to pay compensation for the non-pecuniary damage sustained, which he assessed as being 6,972 EUR.

12. In a decision of 10 April 2003, filed with the registry on 8 May 2003, the Court of Appeal found that the reasonable-time requirement had not been complied with. It awarded the applicant EUR 900 in compensation for non-pecuniary damage and EUR 650 for costs and expenses.

13. The decision of the Court of Appeal was served on the administration on 19 June 2003 and became final on 3 October 2003.

RELEVANT LEGAL FRAMEWORK

14. The domestic law and practice concerning Law no. 89 of 24 March 2001, known as “the Pinto Act”, are set out in the *Cocchiarella v. Italy* judgment ([GC], no. 64886/01, §§ 23-31, ECHR 2006-V).

THE LAW

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

15. The applicant complained that he had been deprived of his land in a manner that had not been in accordance with the law, thus entailing a breach of Article 1 of Protocol No. 1, which reads 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.”

16. The Government contested those arguments.

Admissibility

1. The parties’ submissions

17. The Government argued, first of all, that the case did not concern a deprivation of property but, rather, the establishment of a public easement over the applicant’s land. This had constituted, in their view, a different kind of interference with the right to property than the one complained of by the applicant. The Government further noted that the Benevento District Court had yet to issue a decision at the time the observations were being drafted. However, they felt confident that the applicant would receive adequate compensation for the interference with his property rights.

18. The applicant contested the Government’s arguments. He stressed that he had been unlawfully deprived of his property. In particular, he

contended that his property had been *de facto* transferred to the local authority through constructive expropriation (*accessione invertita*), which had been declared incompatible with Article 1 of Protocol No. 1 by the Court in the *Carbonara and Ventura v. Italy* (no. 24638/94, ECHR 2000-VI), and *Belvedere Alberghiera S.r.l. v. Italy* (no. 31524/96, ECHR 2000-VI) judgments. He further complained that he had yet to receive any compensation for the unlawful taking of his property and that any compensation he would receive would not be, in any event, equal to the property's market value.

2. The Court's assessment

19. The Court notes at the outset that the domestic proceedings were pending when the Government were notified of the case on 1 June 2006, when the Government submitted their first observations on 3 October 2006 and when the applicant submitted his observations in reply on 7 December 2006. The Court notes, however, that the proceedings came to a conclusion on 14 December 2006 with the Benevento District Court's judgment. In the latter judgment, the court established an easement permitting electric lines on the applicant's land and held that the applicant was entitled to compensation in connection with that easement in addition to compensation for the loss in value of the remainder of his property (see paragraph 9 above). The Court can therefore find no evidence that ownership of the applicant's property was actually transferred from the applicant to the local authority via the application of the constructive expropriation principle.

20. In light of the outcome of the proceedings before the Benevento District Court, the Court takes the view that the applicant cannot claim to be a victim of the breach of the Convention complained of, in so far as he complained about the unlawful deprivation of his property.

21. It follows that the applicant's complaint under Article 1 of Protocol No. 1 is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

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

22. The applicant submitted that the proceedings he had instituted seeking compensation for the interference with his property rights had failed to comply with the "reasonable time" requirement set forth in Article 6 § 1 of the Convention, and that the amount awarded by the Court of Appeal had been insufficient to redress the violation. The relevant part of that Article reads as follows:

"1. In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

23. The Government contested that argument.

A. Admissibility

1. Objection on grounds of loss of “victim status”

24. The Government submitted that the applicant was no longer a “victim” of a violation of Article 6 § 1 because he had obtained from the Court of Appeal a finding of a violation and an amount which should be regarded as adequate.

25. The applicant considered that he was still a “victim” of the violation complained of in that the amount that had been awarded by the Court of Appeal had been insufficient.

26. In accordance with its well-established case-law, the Court is required to verify that there has been an acknowledgment, at least in substance, by the authorities of a violation of a right protected by the Convention and whether the redress can be considered as appropriate and sufficient (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 84, ECHR 2006-V).

27. The first condition, which is the finding of a violation by the national authorities, is not in issue since the Rome Court of Appeal expressly acknowledged that a violation had occurred.

28. With regard to the second condition, the Court has indicated a number of characteristics that a domestic remedy must have in order to afford appropriate and sufficient redress (see *Cocchiarella v. Italy* [GC], cited above, §§ 86-107). In particular, in assessing the amount of compensation awarded by the court of appeal, the Court considers, on the basis of the material in its possession, what it would have awarded in the same position for the period taken into account by the domestic court.

29. In the present case the Court considers that the redress was insufficient (see *Delle Cave and Corrado v. Italy*, no. 14626/03, § 26-31, 5 June 2007, and *Cocchiarella v. Italy* [GC], cited above, §§ 69-98).

30. In the light of the foregoing, the applicant can still claim to be a “victim” within the meaning of Article 34 and the Government’s preliminary objection regarding her lack of victim status must therefore be rejected.

2. Objection on grounds of “non-exhaustion”

31. The Government raised a further objection on grounds of non-exhaustion of domestic remedies since the applicant had not lodged an appeal with the Court of Cassation against the decision of the Rome Court of Appeal.

32. The Court reiterates its previous finding that it was reasonable to assume that after 26 July 2004 the public could no longer have been unaware of the Court of Cassation’s overturning of precedent, and that it

was from that date on that applicants were required to avail themselves of that remedy for the purposes of Article 35 § 1 of the Convention (see *Di Sante v. Italy* (dec.), no. 56079/00, 24 June 2004).

33. As the decision of the Rome Court of Appeal became final on 3 October 2003, the Court considers that the applicant is exempt from the obligation to lodge an appeal with the Court of Cassation. Accordingly, the objection must be dismissed.

3. Conclusion

34. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

35. The Court notes that in the instant case the domestic proceedings were lodged on 3 October 1994 and that by the date the Rome Court of Appeal issued its decision on 10 April 2003 they had lasted about eight years and six months for one level of jurisdiction.

36. The Court has previously examined cases raising issues similar to those in the present case and found a violation of Article 6 § 1 in that the length of the proceedings complained of did not satisfy the “reasonable-time” requirement (see, for example, *Cocchiarella v. Italy*, cited above). The Court has examined the present case and finds that the Government have failed to advance any facts or arguments which would lead to any different conclusion in this instance.

37. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

38. The applicant further contended that the remedy introduced by the “Pinto” Act could not be regarded as an effective remedy on account of the sum obtained as compensation at the domestic level. He relied on Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

39. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an

“arguable complaint” under the Convention and to grant appropriate relief in meritorious cases (see *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII; *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 186-88, ECHR 2006-V; and *Sürmeli v. Germany* [GC], no. 75529/01, § 98, ECHR 2006-VII). However, the Court emphasises that the effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Sürmeli v. Germany*, cited above, § 98).

40. The Court further refers to its settled case-law to the effect that the inadequacy of compensation awarded under “Pinto” proceedings is not sufficient grounds to call into question the overall effectiveness of this remedy (see *Gagliano Giorgi v. Italy*, no. 23563/07, § 79, ECHR 2012 (extracts), and *Delle Cave and Corrado v. Italy*, cited above, §§ 43-46).

41. In the present case the Rome Court of Appeal had jurisdiction to entertain the applicant’s complaint and duly examined it. In the Court’s view, the mere fact that the amount awarded as compensation was insufficient does not in itself call into question the effectiveness of the “Pinto” remedy (see, *mutatis mutandis*, *Zarb v. Malta*, no. 16631/04, § 51, 4 July 2006).

42. It follows that this complaint must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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. Non-pecuniary damage

44. The applicant did not claim a specific sum insofar as Article 6 § 1 is concerned but, rather, requested that the Court award non-pecuniary damage for the suffering, anguish and uncertainty suffered as a consequence of the impugned events.

45. The Government argued that the applicant had already obtained compensation at the national level for the non-pecuniary damage suffered as a consequence of the length of the domestic proceedings, and for this reason additional compensation by the Court would not be warranted.

46. Having regard to the characteristics of the domestic remedy chosen by Italy and the fact that, notwithstanding this national remedy, the Court has found a violation, it considers, ruling on an equitable basis, that the applicant should be awarded EUR 3,420.

B. Costs and expenses

47. With regard to the costs incurred in the proceedings before the Court, the applicant submitted a bill of costs and expenses and sought the reimbursement of EUR 53,585.53.

48. The Government left the matter to the Court's discretion while stressing that the amount claimed in respect of the proceedings before the Court was excessive.

49. 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).

50. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 1,000 for the proceedings before the Court.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 6 § 1 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months the following amounts:
 - (i) EUR 3,420 (three thousand four hundred and twenty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 26 March 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Deputy Registrar

Tim Eicke
President