



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

FIRST SECTION

CASE OF DONATI v. ITALY

(Application no. 37760/02)

JUDGMENT

STRASBOURG

15 February 2024

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

In the case of Donati 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. 37760/02) 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 11 October 2002 by three Italian nationals (see the appended table) (“the applicants”) who were represented by Mr N. Paoletti, Ms A. Mari and M. B.G. Carbone, lawyers practising in Rome;

the decision to give notice of the application to the Italian Government (“the Government”), represented by their Agent, Mr L. D’Ascia, and former co-Agents, Ms P. Accardo and Mr F. Crisafulli;

the parties’ observations;

Having deliberated in private on 23 January 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the deprivation of the applicants’ land through several expropriation proceedings and, ultimately, pursuant to Article 42 *bis* of Presidential Decree no. 327 of 8 June 2001 (“the Consolidated Law on Expropriation”).

2. The applicants are the heirs of A.D., who was the owner of a plot of land in Rome, recorded in the land register as folio no. 841, parcel no. 81.

I. OCCUPATION OF THE LAND AND INITIAL EXPROPRIATION PROCEEDINGS

3. On 26 February 1980, the Rome municipality approved a project for the construction of a road. On 12 October 1982 it authorised the immediate occupation of part of A.D.’s land and on 7 January 1983 it took physical possession of it. The construction works were completed on 16 May 1983.

4. A.D. initiated proceedings before the Rome District Court, arguing that the occupation of the land had been unlawful and seeking compensation. He also initiated proceedings before the Latium Regional Administrative Court (*Tribunale Amministrativo Regionale*, “TAR”), arguing that the municipality’s orders of 1980 and 1982 had been unlawful.

5. On 10 July 1990 the municipality adopted a formal expropriation order, determining compensation at 146,700,000 Italian lire (ITL) (corresponding

to 75,764 euros (EUR)). A.D. initiated a third set of proceedings before the Rome Court of Appeal, arguing that the compensation was inadequate.

6. By judgment of 1 March 1993, the Rome District Court rejected A.D.'s first request, considering that the occupation of his land had been lawful. The applicant did not lodge an appeal and the judgment became final.

7. On 27 July 1996, A.D. died and the applicants continued the proceedings in his stead.

8. In the context of the proceedings concerning the amount of the expropriation compensation, by judgment of 15 April 2002, the Rome Court of Appeal awarded compensation based on the criteria contained in section 5 *bis* of Law no. 359 of 8 August 1992, in the amount of ITL 788,512,500 (EUR 407,232.72). The applicants appealed against that judgment.

9. Between 2003 and 2004 the municipality enforced the Court of Appeal's judgment.

10. By judgment of 10 May 2004, the TAR annulled the municipality's orders of 1980 and 1982. The municipality did not lodge an appeal and the judgment became final.

11. By decision of 21 February 2006 the Court of Cassation took note of the annulment of the orders and, as a consequence, of the invalidity of the expropriation order. It therefore held that the applicants' request for expropriation compensation had become inadmissible and annulled the 2002 Court of Appeal judgment.

12. The applicants initiated new proceedings before the TAR, seeking the restitution of the land and damages for its occupation. On 5 March 2014, the TAR recognised that the occupation of the land had been unlawful and ordered the Rome municipality to return it and pay damages for its occupation; it noted, however, that the municipality had the opportunity to issue an acquisition order pursuant to Article 42 *bis* of the Consolidated Law on Expropriation.

13. That judgment was, for the relevant part, confirmed by the Council of State on 29 February 2016.

II. ACQUISITION OF THE LAND PURSUANT TO ARTICLE 42 *BIS* AND SUBSEQUENT PROCEEDINGS

14. On 21 January 2016 the municipality issued an order under Article 42 *bis* of the Consolidated Law on Expropriation ("Article 42 *bis* order"), acquiring part of the applicants' land upon payment of compensation, which was set at EUR 742,485.87.

15. On 11 August 2016 the municipality annulled that order.

16. The applicants initiated proceedings before the Council of State for the enforcement of its judgment of 29 February 2016. On 13 May 2019 the

Council of State ordered the administration to comply with its previous judgment.

17. On 9 October 2019 the municipality issued a new Article 42 *bis* order, acquiring part of the applicants' land upon payment of compensation amounting to EUR 73,223.56.

18. Given that the municipality had already paid a higher sum (see paragraph 9 above), on 14 October 2020 it issued an injunction requesting the applicants to return the amount received in excess.

19. The applicants initiated four sets of proceedings: (i) before the Rome Court of Appeal, arguing that the expropriation compensation determined by the Article 42 *bis* order was inadequate; (ii) before the Council of State, arguing that the administration had failed to comply with its 2016 judgment; (iii) before the TAR, seeking the annulment of the Article 42 *bis* order; and (iv) before the Rome District Court, opposing the payment injunction issued by the municipality.

20. By judgment of 18 January 2022 the Rome Court of Appeal, relying on a new expert valuation of the land's market value, found that the amounts awarded by the Article 42 *bis* order had been insufficient and granted EUR 3,649,749.28 as compensation for the loss of property, EUR 6,706,414.31 as compensation for the occupation of the land and EUR 364,974.93 as compensation for non-pecuniary damage. It therefore awarded the overall amount of EUR 10,721,138.52, plus inflation adjustment and statutory interest. The Court of Appeal also clarified that the amounts already paid to the applicants in the past had to be deducted from that amount.

21. The municipality appealed on points of law but, due to its subsequent inactivity, on 2 May 2022 the Court of Cassation declared the proceedings extinguished.

22. As regards the other sets of proceedings initiated by the applicants (see paragraph 19 above), on 29 May 2020 the Council of State rejected the complaint concerning non-enforcement of its prior judgment. According to the most recent information provided to the Court by the parties, the two remaining sets of proceedings are still ongoing.

23. The applicants further initiated proceedings for the enforcement of the judgment of the Rome Court of Appeal of 18 January 2022. On 23 October 2023 the TAR noted that part of the damages fell among the liabilities of the municipality's ordinary administration and set a deadline for their payment. As to the remaining part, amounting to EUR 7,021,994.66, the TAR noted that it fell within the scope of Article 78 of Law Decree No. 112/2008, which established an extraordinary administration of the Rome municipality with a separate financial management, including all credits and liabilities predating 28 April 2008.

24. According to the most recent information provided by the parties, neither of these amounts have yet been paid to the applicants, who have received only the amount awarded as costs and expenses.

III. COMPLAINTS

25. The applicants complained, under Article 1 of Protocol No. 1 to the Convention, that they had been unlawfully deprived of their land and that they had not received adequate compensation.

26. They further complained, under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 that the adoption of Law no. 359/1992 had amounted to a legislative interference with pending proceedings and, under Article 6 § 1 of the Convention, of the lack of reasoning of the Court of Appeal's judgment of 15 April 2002.

RELEVANT LEGAL FRAMEWORK

27. The relevant domestic law and practice concerning the acquisition of property under Article 42 *bis* of the Consolidated Law on Expropriation can be found in *Sorasio and Others v. Italy* (nos. 56888/16 and 3 others, 14 November 2023).

THE COURT'S ASSESSMENT

I. SCOPE OF THE CASE

28. The Court notes that, by correspondence dated 23 October 2023, the applicants complained, under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, of the impossibility to bring enforcement proceedings against Rome municipality in respect of the amounts falling within the extraordinary administration established by Law Decree No. 112/2008. In the Court's view, these complaints are not an elaboration of the applicants' previous complaints, communicated to the Government on 12 November 2004 but entirely new ones. It therefore considers that it is not appropriate to take these matters up in the context of the present case (see *Kaganovskyy v. Ukraine*, no. 2809/18, § 74, 15 September 2022; *N. v. Romania*, no. 59152/08, § 110, 28 November 2017; and *Gallucci v. Italy*, no. 10756/02, §§ 55-57, 12 June 2007).

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 CONCERNING EXPROPRIATION

A. Admissibility

29. The Government objected to the admissibility of the complaint on several grounds.

30. Firstly, they argued that it had been submitted out of time, as it should have been brought to the Court within six months from the adoption of

section 5 *bis* of Law 359/1992 or from the Constitutional Court's judgments of 1993 confirming the validity of that provision (see, for the relevant domestic law in this respect, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 56-60, ECHR 2006-V).

31. The Court considers that, although the applicants initially argued that the compensation had been inadequate also due to the application of section 5 *bis* of Law 359/1992, that provision was ultimately not applied (see paragraphs 8 and 11 above). As regards the applicants' overall complaint that they were deprived of their land unlawfully and in the absence of adequate compensation, the Court considers that the domestic proceedings continued even after the lodging of the application and the judgment in respect of expropriation compensation became final only on 2 May 2022 (see paragraph 21 above). It therefore rejects the Government's objection.

32. Secondly, the Government argued that the applicants had not exhausted domestic remedies since, on the one hand, proceedings were still ongoing and, on the other hand, the multiplication of proceedings based on contradictory allegations had prevented the domestic courts from correctly addressing their case.

33. The Court reiterates that an application cannot be declared inadmissible on the ground of non-exhaustion if the last stage of the domestic remedies is reached before the Court determines the issue of admissibility (see *Molla Sali v. Greece* [GC], no. 20452/14, § 90, 19 December 2018). In the present case, most of the proceedings initiated by the applicants have now come to an end.

34. As to the proceedings that are still ongoing, they concerned the validity of the Article 42 *bis* order and the opposition to the payment injunction issued by the municipality (see paragraphs 19 and 22 above). The Court reiterates that, if more than one potentially effective remedy is available, the applicant is only required to have used one of them (see *Valverde Digon v. Spain*, no. 22386/19, § 39, 26 January 2023, and *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, § 49, 1 June 2023, with further references). In the present case, the applicants have already pursued several remedies and obtained favourable decisions in respect of the entirety of the complaint currently pending before the Court, both in respect of the unlawfulness of the expropriation procedure (see paragraphs 12-13 above) and in respect of the amount of compensation (see paragraph 20 above). The Court therefore considers that they were not required to wait for the conclusion of the remaining proceedings before addressing the Court.

35. Finally, insofar as the Government argued that the multiplication of proceedings prevented domestic courts from correctly addressing the applicants' case, the Court notes that the domestic courts issued decisions in the applicants' favour (see paragraphs 12-13 and 20 above).

36. In light of the above, the Court rejects the Government's objection concerning non-exhaustion.

37. Finally, the Government argued that the decisions rendered in the applicants' favour have deprived them of their victim status. They point out, in this respect, that the process for the payment of the compensation awarded by the Rome Court of Appeal is ongoing.

38. The applicants did not contest that the amount awarded by the Rome Court of Appeal constituted adequate compensation, but argued that they retained their victim status as those amounts have not yet been paid.

39. The Court observes that the question concerning the applicants' victim status is closely linked to the merits of the complaint. It therefore joins the question to the merits.

40. 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

41. The Court notes that in the present case the domestic authorities took possession of land belonging to the applicants and carried out construction works on it (see paragraph 3 above) in the context of an expropriation procedure whose lawfulness was set aside by the domestic courts (see paragraphs 10-12 above). The Court considers that, although the transfer of ownership did not occur until the issuing of the Article 42 *bis* order (see paragraph 17 above), the applicants can be considered to have been *de facto* deprived of their property even before the formal act of transferring ownership was completed (see *Sorasio*, cited above, § 36).

42. Additionally, the Court notes that the applicants have not received full payment of compensation.

43. In fact, by its judgment of 18 January 2022, the Rome Court of Appeal awarded an amount which was based on the land's market value and, based on the criteria provided by Article 42 *bis* of the Consolidated Law on Expropriation, provided compensation for both pecuniary and non-pecuniary damage (see paragraph 20 above). The Court has already found that a similar award could be considered as adequate (see *Sorasio*, cited above, §§ 45-53). Furthermore, the applicants did not contest that amount. The Court is therefore prepared to accept that the sum awarded by the domestic courts was appropriate and sufficient.

44. Nevertheless the applicants argued, and the Government did not contest, that the amount awarded to the applicants has not been paid. Additionally, the Government did not provide a clear indication of when the full amount will be paid (see paragraph 23 above).

45. It follows that, after 40 years from the occupation of the land, the applicants have not yet received the full payment of compensation (contrast *Sorasio*, cited above, § 52).

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

III. REMAINING COMPLAINTS

47. As regards the applicants' remaining complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see paragraph 26 above), the Court observes that the Court of Appeal's judgment of 15 April 2002 was annulled by the Court of Cassation (see paragraph 11 above) and thus Law no. 359/1992 was finally not applied to the applicants' case.

48. It follows that the applicants cannot claim to be victims of the alleged violations and that this part of the application must be rejected as incompatible *ratione personae* pursuant to Article 35 §§ 3 and 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. The applicants claimed 19,064,834 euros (EUR) in respect of pecuniary damage and EUR 120,000 in respect of non-pecuniary damage. They further claimed EUR 47,115.38 in respect of costs and expenses incurred before the domestic courts and EUR 140,761 for those incurred before the Court.

50. The Government contested the claim as excessive.

51. The Court has found that the amount awarded by the Rome Court of Appeal on 18 January 2022 constitutes appropriate redress (see paragraph 43 above).

52. The Court is mindful of the fact that, while that judgment has become final, proceedings are still ongoing at the domestic level on the validity of the Article 42 *bis* order. Nevertheless, having regard to its finding of a violation above, the Court considers that regardless of the outcome of those proceedings the State has an outstanding obligation to pay compensation for the deprivation of the applicants' land.

53. Therefore, the Court considers that its finding of a violation of Article 1 of Protocol No. 1 entails an obligation for the State to pay compensation in the amount and under the terms established by the judgment of the Rome Court of Appeal of 18 January 2022, including the deduction of the amounts already paid to the applicants (see paragraph 20 above).

54. Furthermore, having regard to the documents in its possession and to the costs and expenses awarded at the domestic level, the Court considers it reasonable to award, jointly to all applicants, EUR 7,000 covering costs under all heads, plus any tax that may be chargeable to them.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's preliminary objection concerning the applicants' victim status in relation to their complaint under Article 1 of Protocol No. 1 about the deprivation of their land and *dismisses* it;
2. *Declares* the complaint under Article 1 of Protocol No. 1 concerning the deprivation of the applicants' land admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that the respondent State shall ensure, by appropriate means, within three months, the payment of compensation in the amount and under the terms established by the judgment of the Rome Court of Appeal of 18 January 2022;
5. *Holds*
 - (a) that the respondent State is to pay jointly to the applicants, within three months, EUR 7,000 (seven 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 15 February 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Péter Paczolay
President

APPENDIX

List of applicants:

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Enrico DONATI	1941	Italian	Rome
2.	Maurizio DONATI	1945	Italian	Rome
3.	Angelo DONATI	1948	Italian	Rome