



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

FIRST SECTION

CASE OF FERRARA AND OTHERS v. ITALY

*(Applications nos. 54592/07 and 3 others
see appendix)*

JUDGMENT

STRASBOURG

6 April 2023

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

In the case of Ferrara and Others 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 applications 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 the applicants listed in the appended table (“the applicants”), on the various dates and with the various representatives indicated therein;

the decision to give notice of the applications to the Italian Government (“the Government”), represented by their Agent, Mr L. D’Ascia;

the parties’ observations;

the decision to reject the Government’s objection to the examination of the applications by a Committee.

Having deliberated in private on 14 March 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicants’ complaints that they were deprived of their land through the application by the domestic courts of the constructive-expropriation rule (*accessione invertita* or *occupazione acquisitiva*).

2. The applicants were the owners of plots of land in different municipalities (see the appended table for details).

3. The national authorities issued orders authorising the urgent occupation of the applicants’ various plots of land with a view to their subsequent expropriation. Shortly thereafter, they took physical possession of the land. By the time the authorisations expired the land had been irreversibly altered by construction works, but the authorities had not issued formal expropriation orders.

4. The applicants brought actions for damages in the national courts, arguing that the occupation of the land had been unlawful and seeking compensation.

5. The domestic courts upheld the applicants’ complaints and found that the occupation of the applicants’ land, which had initially been legally authorised, had subsequently become unlawful, but that the land had been irreversibly altered following the completion of the public works. As a consequence, pursuant to the constructive-expropriation rule, the applicants were no longer the owners of the land.

6. The domestic courts further accepted that the applicants were entitled to damages for the loss of their property, and ordered independent expert valuations of the land. They did not award compensation reflecting the market value of the expropriated land, but instead proceeded to make awards based on the criteria contained in section 5 *bis* of Legislative Decree no. 333 of 11 July 1992, as amended by Law no. 662 of 1996.

7. Additionally, in applications nos. 22915/09, 43955/09 and 43275/12, the national courts awarded a sum as compensation for the unavailability of the land during the period of lawful occupation (*indennità di occupazione*).

8. Further information on each application can be found in the appended table.

9. The applicants complained that they had been unlawfully deprived of their land on account of the application by the domestic courts of the constructive-expropriation rule, in breach of their rights under Article 1 of Protocol No. 1 to the Convention.

10. They also complained, under Article 6 § 1 of the Convention, of the retrospective application of section 5 *bis* of Legislative Decree no. 333 of 11 July 1992, as amended by Law no. 662 of 1996. In their submission, this amounted to legislative interference with pending proceedings.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

11. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. PRELIMINARY ISSUE

12. The Court takes note of the information regarding the death of the applicant Nicolò Bresciano (application no. 22915/09) and the wish of his heir, Giovanna Bresciano, to continue the proceedings in his stead, as well as of the absence of any objection to that wish on the Government's part. Therefore, the Court considers that Giovanna Bresciano, who was already a party to the present proceedings before the Court, has standing to continue the proceedings also on behalf of the deceased.

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

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

A. Admissibility

14. The Government objected to the admissibility of the applications on the grounds of non-exhaustion of domestic remedies, either because the applicants had not made use of available avenues for obtaining redress or because national proceedings were still pending.

15. In particular, with regard to application no. 54592/07, the Government claimed that the applicant had failed to lodge an appeal against the first-instance judgment and had not contested the determination of damages made by the court-appointed expert. In this connection the Court notes that it has previously rejected similar submissions (see *Ucci v. Italy*, no. 213/04, §§ 83- 86, 22 June 2006) and there is no reason to do otherwise in the present case.

16. With regard to application no. 22915/09, the Government argued that the applicants should have requested the restitution of the land at the national level. The Court considers that, as stated by the applicants, at the time national proceedings were instituted in 1988 there was no possibility of requesting the restitution of the land (see *Guiso-Gallisay*, cited above, §§ 23-34).

17. Finally, with regard to applications nos. 22915/09, 43955/09 and 43275/12, the Government claimed that national proceedings were still pending at the time the applications were lodged. As to application no. 43955/09, the Government have not submitted any evidence of pending proceedings. As to applications nos. 22915/09 and 43275/12, the proceedings that were still ongoing concerned the enforcement of domestic decisions and were thus unrelated to the violations complained of in the present applications.

18. It follows that none of the remedies indicated by the Government can be considered effective for the purposes of the Convention.

19. The Government further contended that the applicants were no longer victims of the alleged violation as they had obtained reparation at the national level. In this connection the Court observes that the domestic courts did not award sums corresponding to the full market value of the expropriated plots of land (see paragraph 6 above). It follows that the applicants have not lost their victim status (see, conversely, *Armando Iannelli v. Italy*, no. 24818/03, §§ 35-37, 12 February 2013).

20. Additionally, with regard to application no. 43275/12, the Government contended that the applicant had declared that he had received all payments due and had waived any further claims. The Court notes, as pointed out by the applicant, that the waiver referred to by the Government was made in the context of two sets of proceedings, one relating to the enforcement of a judgment issued by the Catania Court of Appeal on 26 November 2009 and the other concerning a separate expropriation order. As also noted by the applicant, those proceedings, as well as the waiver, exclusively concerned compensation for the expropriation of plots of land

that are different from the one in question in the present proceedings. As a consequence, the Court does not see how such a declaration could be interpreted as a waiver of rights relating to the case at hand. The Court therefore dismisses the Government's objections in this connection also.

21. As the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds, they must be declared admissible.

B. Merits

22. The Court notes that the applicants were deprived of their property by means of indirect or "constructive" 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, as a more recent authority, *Messana v. Italy*, no. 26128/04, §§ 38-43, 9 February 2017).

23. 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.

24. It follows that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

IV. OTHER COMPLAINTS

25. As to the complaint raised under Article 6 § 1 of the Convention (see paragraph 10 above), having regard to the facts of the case, the submissions of the parties and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. The applicants claimed the amounts indicated in the appended table in respect of pecuniary and non-pecuniary damage and in respect of costs and expenses.

27. The Government did not submit any observations regarding the applicants' just satisfaction claims.

28. The Court has found a violation of Article 1 of Protocol No. 1 on account of a breach of the principle of lawfulness (see paragraphs 22 and 23 above). The relevant criteria for the calculation of pecuniary damage in constructive expropriation cases have been set forth in *Guiso-Gallisay* (cited

above, §§ 105-07). In particular, the Court relied on the market value of the property at the time of the expropriation as stated in the court-ordered expert reports drawn up during the domestic proceedings.

29. With regard to applications nos. 22915/09 and 43955/09, the Court notes that two different expert reports were ordered during the course of the domestic proceedings. Nevertheless, as the applicants relied on the expert report drawn up in the course of the appeal proceedings and the Government did not object, the Court will base its assessment on the latter.

30. Additionally, with regard to application no. 22915/09, the Court notes that the applicants had obtained payment of the full market value of the land on the basis of the first-instance judgment, which was subsequently quashed by the Court of Appeal. As a consequence, by a judgment of 23 June 2014, the Savona District Court ordered the applicants to return the sum received in excess (see the appended table). No information about the enforcement of that judgment has been provided by the parties. As the Court will base its pecuniary damage calculation on the amounts awarded to the applicants by the Court of Appeal, it points out that the present judgment does not affect the possibility for the Government to obtain the enforcement of the judgment of the Savona District Court of 23 June 2014.

31. Having regard to the applicants' claims, and taking into account the principle *non ultra petita*, the Court awards the sums indicated in the appended table and dismisses the remainder of the claims.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* that Giovanna Bresciano has standing to continue the present proceedings also in Nicolò Bresciano's stead;
3. *Declares* the complaint under Article 1 of Protocol No. 1 to the Convention admissible;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
5. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 6 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table in respect of pecuniary and non-pecuniary damage and 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;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Péter Paczolay
President

FERRARA AND OTHERS v. ITALY JUDGMENT

APPENDIX

No.	Application no. Case name Lodged on	Applicant's name Year of birth Place of residence Nationality	Representative's name Location	Factual information	Amounts awarded by national courts in Italian lira (ITL)	Market value of the land in Italian lira (ITL)	Observations of the parties	Award under Article 41 of the Convention per application
1.	54592/07 Ferrara v. Italy 01/12/2007	Luciano FERRARA 1922 Lusciano Italian	Silvano TOZZI Naples	<u>Land</u> : Trentola Ducenta municipality, recorded in the land register as folio no. 5, parcel no. 91 <u>Urgent occupation order</u> : 21/11/1987 <u>Physical occupation</u> : 27/06/1988 <u>National decisions</u> : Santa Maria Capua Vetere District Court, 02/04/2006, declaring the occupation unlawful <i>ab initio</i> and awarding damages based on Law no. 662/1996	ITL 106,943,980 plus inflation adjustment and statutory interest from 21/11/1987	ITL 194,320,000 (in 1988, according to expert valuation)	<u>Government</u> : (1) non-exhaustion: the applicant did not contest the determination of damages in the first-instance proceedings or lodge an appeal against the first-instance judgment; (2) loss of victim status: the applicant received a fair amount; (3) merits: interference proportionate to the public interest pursued <u>Applicant</u> : (1) national remedies were ineffective; (2) compensation did not reflect the property's market value; (3) just satisfaction claims: (a) loss of property: EUR 158,212.54 (b) non-pecuniary damage: EUR 15,800 (c) costs and expenses: EUR 17,100 plus taxes	Pecuniary damage (loss of property): EUR 158,212.54 , plus any tax that may be chargeable Non-pecuniary damage: EUR 5,000 , plus any tax that may be chargeable Costs and expenses: EUR 5,000 , plus any tax that may be chargeable to the applicant
2.	22915/09 Bresciano and Others	Nicolò BRESCIANO 1938	Maurizio DE STEFANO Rome	<u>Land</u> : 50% ownership of land located in the Albenga municipality, recorded in the land	50% of ITL 533,396,050 as damages relating	50% of ITL 675,000,000 (in 1984, according	<u>Government</u> : (1) non-exhaustion: the applicants did not request the restitution of the land	Pecuniary damage: - loss of property: EUR 109,373 plus

FERRARA AND OTHERS v. ITALY JUDGMENT

	v. Italy 28/04/2009	Deceased in 2010 Imperia Italian <u>Heir:</u> Giovanna BRESCIANO 1943 Giovanna BRESCIANO 1943 Genova Italian Anna Maria DE LUCIA 1936 Alassio Italian		register as no. 7441, folio no. 13, parcels nos. 316, 320 and 764 <u>Urgent occupation order:</u> 10/02/1979 <u>Physical occupation:</u> 12/03/1979 <u>National decisions:</u> Savona District Court, 27/02/1997, declaring the occupation unlawful since 12/03/1984 and awarding damages and occupation compensation based on the market value of the assets; Genoa Court of Appeal, 01/10/2003, awarding damages based on Law no. 662/1996; Court of Cassation, 20/02/2009, rejecting all appeals; Savona District Court, 23/06/2014, ordering the applicants to return the amounts in excess of damages based on Law no. 662/1996 that they had received on the basis of the first- instance judgment.	to land and ITL 67,500,000 as occupation compensation, plus inflation adjustment and statutory interest from 12/03/1984 (Court of Appeal judgment of 01/10/2003, see previous column)	to first-instance expert valuation) 50% of ITL 966,150,000 (in 1984, according to appeal expert valuation, excluding value of the buildings)	and proceedings for the enforcement of the appeal judgment were still pending; (2) loss of victim status: the applicants received a fair amount; (3) merits: interference proportionate to the public interest pursued <u>Applicants:</u> (1) national remedies were ineffective; (2) compensation did not reflect the market value; (3) just satisfaction claims: (a) loss of property: EUR 109,373 (b) loss of opportunity: EUR 295,080.33 (c) non-pecuniary damage: EUR 40,000 (d) costs and expenses before national courts: EUR 75,807.87 (e) costs and expenses before the Court: EUR 38,137.02	any tax that may be chargeable - loss of opportunity: EUR 14,700 , plus any tax that may be chargeable Non-pecuniary damage: EUR 5,000 , plus any tax that may be chargeable Costs and expenses: EUR 7,000 , plus any tax that may be chargeable to the applicants
3.	43955/09 Grana v. Italy 31/07/2009	Maria Rosa GRANA 1933 Albenga Italian	Maria Margherita VIALE Nice	<u>Land:</u> 50% ownership of land located in the Albenga municipality, recorded in the land	50% of ITL 533,396,050 as damages relating to land and ITL 67,500,000 as	50% of ITL 675,000,000 (in 1984, according	<u>Government:</u> (1) non-exhaustion: proceedings for the enforcement of the appeal judgment were still pending;	Pecuniary damage: -loss of property: EUR 609,904.61 , plus

FERRARA AND OTHERS v. ITALY JUDGMENT

		<p>Maria Giovanna GRANA 1941 Albenga Italian</p>		<p>register as no. 7441, folio no. 13, parcels nos. 316, 320 and 764</p> <p><u>Urgent occupation order:</u> 10/02/1979</p> <p><u>Physical occupation:</u> 12/03/1979</p> <p><u>National decisions:</u> Savona District Court, 27/02/1997, declaring the occupation unlawful since 12/03/1984 and awarding damages and occupation compensation based on the market value of the assets; Genoa Court of Appeal, 01/10/2003, awarding damages based on Law no. 662/1996; Court of Cassation, 20/02/2009, rejecting all appeals.</p>	<p>occupation compensation, plus inflation and statutory interest from 12/03/1984</p>	<p>to first-instance expert valuation)</p> <p>50% of ITL 966,150,000 (in 1984, according to appeal expert valuation, excluding value of the buildings)</p>	<p>(2) loss of victim status: the applicants received a fair amount; (3) merits: interference proportionate to the public interest pursued</p> <p><u>Applicants:</u> (1) no proceedings pending at the time the application was lodged; (2) compensation did not reflect the market value; (3) just satisfaction claims: (a) loss of property: EUR 609,904.61 (b) non-pecuniary damage: EUR 60,000 (c) costs and expenses before the Court: EUR 32,500</p>	<p>any tax that may be chargeable</p> <p>Non-pecuniary damage: EUR 5,000, plus any tax that may be chargeable</p> <p>Costs and expenses: EUR 5,000, plus any tax that may be chargeable to the applicants</p>
4.	43275/12 Contarino v. Italy 04/07/2012	<p>Corsaro Francesco CONTARINO 1925 Acireale Italian</p>	<p>Santi PAPPALARDO Catania</p>	<p><u>Land:</u> municipality of Acireale, recorded in land register as folio no. 49, parcel no. 408</p> <p><u>Urgent occupation order:</u> 20/05/1985</p> <p><u>Physical occupation:</u> 01/08/1985</p> <p><u>National decisions:</u> Catania District Court, 12/01/2000, declaring the occupation unlawful since 20/05/1994 and</p>	<p>ITL 1,282,255,000 plus inflation adjustment and statutory interest since 20/05/1994 as damages and ITL 657,466,800 as occupation compensation</p>	<p>ITL 2,330,880,000 (in May 1994, according to expert valuation)</p>	<p><u>Government:</u> (1) non-exhaustion: proceedings for the enforcement of the appeal judgment were still pending; (2) loss of victim status: the applicant waived his right to further claims; (3) merits: interference proportionate to the public interest pursued</p> <p><u>Applicant:</u> (1) pending proceedings did not concern the alleged violation; (2) the waiver concerned different expropriation proceedings;</p>	<p>Pecuniary damage: - loss of property: EUR 1,472,900, plus any tax that may be chargeable - loss of opportunity: EUR 292,400, plus any tax that may be chargeable</p> <p>Costs and expenses: EUR 5,000, plus any tax that may be</p>

FERRARA AND OTHERS v. ITALY JUDGMENT

				<p>awarding damages based on Law no. 662/1996; Catania Court of Appeal, 26/11/2009, upholding previous decision; Court of Cassation, 15/02/2012, upholding previous decision</p>			<p>(3) the compensation for loss of property was insufficient; (4) just satisfaction claims: (a) loss of property and loss of opportunity: EUR 2,056,895 (b) costs and expenses before the Court: EUR 30,000</p>	<p>chargeable to the applicant</p>
--	--	--	--	--	--	--	---	------------------------------------