



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

FIRST SECTION

CASE OF FORNACI MARZO '88 S.P.A. v. ITALY

(Application no. 55498/07)

JUDGMENT
(Merits)

STRASBOURG

12 February 2026

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

In the case of Fornaci Marzo '88 S.p.A. v. Italy,

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

Frédéric Krenç, *President*,

Raffaele Sabato,

Alain Chablais, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 55498/07) 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 3 December 2007 by Fornaci Marzo '88 S.p.A. (“the applicant company”), registered in Italy, which was represented by Mr S. Tozzi, a lawyer practising in Naples;

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

the parties’ observations;

Having deliberated in private on 22 January 2026,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the occupation of the applicant company’s land by the State authorities (the Presidency of the Council of Ministers) for the construction of a landfill.

2. The land in issue was the site of a large clay quarry, intended by the applicant company for the establishment of a plant for the production of building materials and bricks. In October 1995, during the so-called “waste crisis” in the Campania Region, the land was urgently seized under order no. P15803/DIS, issued by the prefect of Naples acting as Commissioner for the Presidency of the Council of Ministers, to allow the construction of a landfill. The authorities then proceeded to irreversibly transform the land through the construction of the waste landfill and began using it as a landfill.

3. The applicant company appealed against the occupation order before the administrative courts.

4. By a judgment of 16 April 1998 (no. 197/1998) the Council of State annulled the order related to the occupation. Nevertheless, the area was not vacated and continued to be used as a landfill.

5. The applicant company then brought proceedings seeking the restitution of the property or, in the alternative, its acquisition; the applicant company claimed compensation in both scenarios. The Court of Appeal of Salerno stated that it did not have jurisdiction.

6. The proceedings were then resumed before the Administrative Court (*Tribunale Amministrativo Regionale*, “the TAR”) in Salerno. By judgment no. 1947/2008 the Salerno TAR declared that it lacked territorial competence.

7. The proceedings were then resumed before the Lazio TAR, which rejected the request of restitution on account of the irreversible transformation of the land.

8. After an appeal by the applicant company, by a judgment of 26 March 2010 (no. 1762/2010), the Council of State set a time-limit of 90 days for the acquisition of the land pursuant to Article 43 of Presidential Decree no. 327 of 8 June 2001 (“the Consolidated Law on Expropriation”) or for the restitution of the land, also awarding the applicant company compensation to be established by the Presidency of Council of Ministers.

9. By a judgment of 8 October 2010 the Constitutional Court declared Article 43 of the Consolidated Law on Expropriation unconstitutional.

10. By a decree of 1 December 2010 (no. 905/2010), the Presidency of the Council of Ministers formally acquired the property under Article 43 of the Consolidated Law on Expropriation. The order also awarded the applicant company compensation in the amount of 1,045,409.17 euros (EUR).

11. The applicant company received the compensation but brought an action contesting the validity of Article 43 of Decree no. 905/2010.

12. By a judgment of 10 June 2020 (no. 3704/2020) the Council of State set aside Decree no. 905/2010, recognising, among other things, that it had been issued after Article 43 of Presidential Decree no. 327 of 8 June 2001 had been declared unconstitutional. It then reiterated the alternatives of the restitution of the land or its acquisition, also awarding the applicant company compensation to be calculated considering the sums already paid. In the event of acquisition, it ruled that Article 42 *bis* of the Consolidated Law on Expropriation, a supervening provision, was applicable in the case.

13. The applicant company brought a fresh set of proceedings before the administrative courts, requesting that the State authorities take action to address the situation, specifically by returning the land or by formally acquiring it and awarding compensation.

14. By a judgment of 19 January 2023 (no. 658/2023) the Council of State dismissed the applicant company’s appeal and ordered that it return the sums received in compensation.

15. By a judgment of 5 February 2024 (no. 1173/2024) the Council of State set aside the previous ruling (no. 658/2023) and ordered the Presidency of the Council of Ministers to grant, within the subsequent 60 days, the restitution of the land or that an acquisition order, pursuant to Article 42 *bis* of the Consolidated Law on Expropriation, be adopted. It also ordered that the compensation to be awarded should be reduced by the amounts already paid to the party on the basis of Decree no. 905/2010.

16. By a communication of 5 August 2024 the State notified the applicant company that it had initiated the acquisition procedure provided by Article 42 *bis* of the Consolidated Law on Expropriation.

17. By a subsequent communication of 3 December 2024, the State informed the applicant company that it had verified that part of the occupied

areas was not affected by the landfill and that it would proceed to return these parts to the applicant company. The acquisition procedure is still ongoing, considering that to date, no measures have been taken to acquire the land, nor to return the unaffected areas.

18. The applicant company complained, under Article 1 of Protocol No. 1 to the Convention and Article 6 of the Convention, that its land had been occupied and altered by the local authorities without title, which, in its view, amounted to an unlawful, *de facto* dispossession of property. It highlighted that, at the time of lodging the application, despite the favourable judgment of 1998 (see paragraph 4 above), it had not obtained the return of the property or the requested compensation and that there was still uncertainty regarding those issues.

THE COURT'S ASSESSMENT

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

19. The Court notes that the complaint under Article 6 is mentioned in conjunction with Article 1 of Protocol No. 1 without a specific, separate analysis. Therefore, having regard to the particular circumstances of the case and being master of the characterisation to be given in law to the facts of the case, the Court will examine the complaint only under Article 1 of Protocol No. 1 (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 124, 20 March 2018).

A. Admissibility

20. The Government objected that the applicant company had lost victim status and they argued that (i) by the order of 1 December 2010 (Decree no. 905/2010), the Presidency of the Council of Ministers had awarded the applicant company compensation in the amount of EUR 1,045,409.17 (see paragraph 10 above); and (ii) by judgment no. 1173/2024 (see paragraph 15 above), the Council of State had definitively ordered the administration to grant, within the subsequent 60 days, the restitution of the land or to adopt an acquisition order pursuant to Article 42 *bis* of the Consolidated Law on Expropriation.

21. The applicant company contested the Government's objection, submitting that it had not been able to obtain the return of the land, despite bringing relevant actions starting in 1998 to obtain it.

22. The Government then raised another objection, arguing that, at the moment of lodging the application, the applicant company had not exhausted domestic remedies. The objection was based on two elements, namely the applicant company's failure to await the conclusion of the proceedings pending before the Salerno TAR (see paragraph 6 above) and the existence

of other proceedings which had been instituted after the applicant company had lodged the application.

23. The Court finds that the Government's objections are closely linked to the merits of the applicant company's complaint that it has been unable to obtain the measures requested in relation to the alleged violations and therefore considers that they should be joined to the merits of the applicant company's complaint.

24. The Court notes that the application 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.

B. Merits

25. The relevant domestic law and practice can be found in *Guiso-Gallisay v. Italy* ((just satisfaction) [GC], no. 58858/00, §§ 18-44, 22 December 2009) and *Sorasio and Others v. Italy* ((dec.), no. 56888/16, §§ 20-23, 14 November 2023).

26. The relevant general principles can be found in *Vistiņš and Perepjolkins v. Latvia* ([GC], no. 71243/01, § 93, 25 October 2012).

27. In the present case, it is not in dispute that the public authorities took physical possession of the applicant company's land in 1995 and that the land is still under the control of the public administration.

28. The Court notes the applicant company's submissions to the effect, *inter alia*, that its land had been physically occupied and irreversibly altered by the authorities without title, with a landfill being built on it (see paragraph 2 above), and that this amounted to a deprivation of property.

29. The Court also notes that, to date, no order has been issued pursuant to Article 42 *bis* of the Consolidated Law on Expropriation, which provided for the transfer of the property to the local authorities upon payment of compensation (see paragraph 12 above) and that, therefore, there is still no formal order transferring ownership to the public authority.

30. The Court finds that such circumstances, considered as a whole, must be viewed as deprivation of possessions for the purposes of Article 1 of Protocol No. 1. The Court will therefore ascertain whether the impugned deprivation was justified under that provision.

31. In relation to the first requirement of Article 1 of Protocol No.1, the lawfulness of the interference, the Court notes at the outset that the domestic authorities took physical possession of the applicant company's land and built a landfill on it (see paragraph 2 above) in the context of an expropriation procedure whose lawfulness was set aside by the domestic courts (see paragraphs 4, 8, 12 and 15 above). In the present case, despite the annulment of the urgent occupation decree by judgment no. 197/1998 (see paragraph 4 above) and the subsequent annulment of the acquisition order pursuant to Article 43 of the Consolidated Law on Expropriations by judgment

no. 3704/2020 (see paragraph 12 above), and, furthermore, despite order no. 1173/2024 issued by the Council of State (see paragraph 15 above), the physical possession of the land has remained with the State since 1995, with the public works remaining on it.

32. The Court refers to the relevant principles set out in *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, §§ 179-81, ECHR 2006-V) and points out that, despite the cited judgments no. 197/1998, no. 3704/2020 and no. 1173/2024, to date no formal act of transfer of ownership to the State has been adopted by the administration involved and the situation of uncertainty regarding the applicant company's requests continues.

33. The foregoing considerations disclose that the deprivation of the applicant company's property has not been carried out "in good and due form", within the meaning of Article 1 of Protocol No. 1.

34. The Court further notes that the examination of the domestic proceedings discloses an inordinate length of time taken to challenge the measures restricting the applicant company's property rights. It reiterates that such length is effectively capable of seriously undermining their remedial efficacy from the perspective of Article 1 of Protocol No. 1 (see, for instance, *Kirilova and Others v. Bulgaria*, nos. 42908/98 and 3 others, § 117, 9 June 2005).

35. In the present case the protracted length of the proceedings was caused by the State's continued failure to enforce the judgments handed down during the relevant time (see paragraphs 4, 8, 12 and 15 above) by which the domestic courts ordered the return of the applicant company's land or its acquisition in accordance with the various regulatory instruments introduced during that time. The lack of execution of the judgments allowed the proceedings to drag on for more than 27 years (considering that the Council of State's judgment no. 197/1998 was the first decision that could have been enforced – see paragraph 4 above) without a final resolution of the case being reached and generating uncertainty as to the determination of ownership rights with respect to the property.

36. In the Court's view, the domestic authorities did not act with coherence, diligence or appropriate expedition concerning the applicant company's claim, as required under Article 1 of Protocol No. 1.

37. In addition, the Court notes that by a decree of 1 December 2010 (no. 905/2010 – see paragraph 10 above) the land was formally acquired under Article 43 of the Consolidated Law on Expropriation and the applicant company received compensation in the amount of EUR 1,045,409.17. The applicant company then brought an action against the validity of Article 43 of Decree no. 905/2010 (see paragraph 11 above). In 2023, the Council of State ordered the applicant company to return the sum received in compensation (see paragraph 14 above). In 2024 the order to return the sum was annulled but its final amount was to be adjusted in accordance with the Article 42 *bis* acquisition order (see paragraph 15 above). To date, no other

measures regarding compensation have been taken in relation to the ongoing deprivation of the applicant company's property.

38. In view of the circumstances above, the Court finds that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

39. It also follows from the foregoing and, in particular, the findings in paragraphs 31, 35 and 38 above, that the Government's preliminary objections, which have been joined to the merits (see paragraph 23 above), must be rejected.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. The applicant company submitted an expert report to substantiate the damages suffered and claimed an amount ranging approximately from 13,000,000 to 15,000,000 euros (EUR) in respect of pecuniary damage, comprising: (i) the market value of land and the quarry; (ii) the value of the clay; (iii) the value of the warehouses and buildings; (iv) the amount of damage; and (v) interest. It asked the Court to eventually commission an expert report to calculate the amount of compensation. It also claimed compensation in respect of non-pecuniary damage in the amount of EUR 1,504,000 and a further EUR 30,000 for reimbursement of the costs incurred before the Court.

41. The Government submitted that the claim in respect of pecuniary damage was unsubstantiated and asked the Court to reject the claims under this head. They argued that the applicant company had already been compensated for all damage suffered, both pecuniary and moral, through the payment of compensation in 2010 (see paragraphs 10 and 11 above).

42. The Court, noting the continued domestic proceedings and developments subsequent to the payment made in 2010, considers that the question of the application of Article 41 is not ready for decision. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicant company (Rule 75 §§ 1 and 4 of the Rules of Court). Should the parties fail to settle the matter, they are requested to provide a duly substantiated valuation of the applicant company's property – covering both the area affected by the landfill and the area not affected (see paragraph 17 above) – in accordance with the principles set out in *Guiso-Gallisay v. Italy* ((just satisfaction) [GC], no. 58858/00, 22 December 2009).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's preliminary objections and *dismisses* them;
2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that the question of the application of Article 41 of the Convention is not ready for decision; accordingly,
 - (a) reserves the said question in whole;
 - (b) invites the Government and the applicant company to submit, within three months, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
 - (c) reserves the further procedure and delegates to the President of the Committee the power to fix the same if need be.

Done in English, and notified in writing on 12 February 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Frédéric Krenç
President