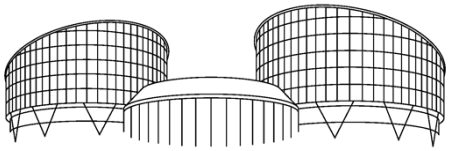

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GIUFFRÈ AND OTHERS v. ITALY

(Application no. 50827/11)

JUDGMENT

STRASBOURG

5 September 2024

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

In the case of Giuffrè 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 application (no. 50827/11) 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 August 2011 by seven Italian nationals, whose relevant details are listed in the appended table ("the applicants") and who were represented by Ms L. Tassone, a lawyer practising in Strasbourg;

the decision to give notice of the complaints raised under Article 13 of the Convention and Article 1 of Protocol No. 1 to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 2 July 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicants' complaint that Ms C.C. was deprived of her land through the application of an indirect form of expropriation (*occupazione usurpativa*).

2. The applicants are the heirs of Ms C.C., who was the owner of a plot of land located in the Messina municipality and recorded in the land register as folio no. 157, parcels nos. 390, 391, 392, 393, 394, 395, 399, 400, 1022, 1066, 1067.

3. In January 1990, the Consortium for the area of industrial development of Messina (*Consorzio area di sviluppo industriale di Messina*; "the ASI Consortium") approved a project for the urbanisation of an area including the land of Ms. C.C. and entrusted the construction works to a group of private entities, led by company B.V. On 30 November 1990, the Messina municipality authorised the immediate occupation of Ms. C.C.'s land and on 22 January 1991 company B.V. took physical possession of it.

4. The construction works began in June 1991 and ended in July 1995.

5. On 25 February 1995, at the request of Ms C.C., the Sicily Regional Administrative Court annulled the decree of 30 November 1990.

I. THE FIRST SET OF DOMESTIC PROCEEDINGS

6. In May 1995, Ms. C.C. brought an action for damages before the Messina District Court against the municipality, the ASI Consortium and company B.V., arguing that the occupation of the land had been unlawful and seeking compensation. The District Court ordered an independent expert valuation of the land.

7. The expert stated that the land had been irreversibly altered already in June 1991. He considered the land as fully constructible and determined its value at 4,900,000,000 Italian lira (ITL) (2,530,639 euros (EUR)). He also valued the previously existing constructions at ITL 369,400,000 (EUR 190,779).

8. By judgment of 4 November 1998, the Messina District Court stated that the expropriation had been unlawful as it had been carried out in the absence of a valid public interest declaration, and ordered the municipality, the ASI Consortium and company B.V. to pay damages jointly.

The District Court noted that, pursuant to the general land-use plan in force before the occupation, the land was only constructible up to one third of its surface, a circumstances which had to be taken into consideration for its valuation. Relying on the value of similar neighbouring land, the District Court therefore reduced the market value of the land and awarded damages amounting to ITL 3,621,175,000 (EUR 1,870,180.81), plus inflation adjustment and statutory interest.

9. On 17 January 2000, the Messina Court of Appeal confirmed the first instance judgment.

10. On 11 July 2000 Ms C.C. died and her heirs joined the proceedings.

11. In the context of enforcement proceedings, on 21 February 2001 the municipality paid EUR 2,912,962.37 to the applicants.

12. By a judgment of 23 May 2001, the Court of Cassation quashed the appeal judgment on two grounds. Firstly, it considered that it had exceeded the scope of the application, as Ms C.C. had only complained of constructive expropriation (*occupazione acquisitiva*) and not of the absence of a public interest declaration, which gave rise to a different form of indirect expropriation (*occupazione usurpativa*). Secondly, the appeal judgment had not correctly determined the public entities that were liable to pay damages.

13. Based on the first of these considerations, on 2 July 2004 the Palermo Court of Appeal rejected the applicants' request for damages. Both the applicants and the municipality appealed, and the latter requested restitution of the amounts already paid.

14. On 4 November 2011, the Court of Cassation dismissed the applicants' appeal. Nevertheless, it quashed the appellate judgment insofar as it had not addressed the municipality's request for restitution and remitted the case to the Court of Appeal.

15. On 10 January 2018, the Palermo Court of Appeal ordered the applicants to return to the municipality the amount received and, in 2021, the municipality initiated enforcement proceedings which, according to the latest available information, are ongoing.

II. THE SECOND SET OF DOMESTIC PROCEEDINGS

16. On 30 December 2002, the applicants initiated new proceedings before the Messina Court of Appeal, complaining of the indirect expropriation (*occupazione usurpativa*) of their land and asking for damages.

17. By judgment of 20 December 2006 the Messina District Court found that the expropriation procedure had been unlawful *ab initio* due to the absence of a public interest declaration and that, by seeking compensation of damages, the applicants had waived their right to the restitution of the land.

The District Court considered only company B.V. responsible and, relying on the court valuation made in the context of the first set of proceedings, awarded damages amounting to EUR 1,870,180.81, plus inflation adjustment and interest (see paragraph 8 above).

18. The applicants appealed, arguing that the municipality and the ASI Consortium had to be held jointly responsible with company B.V. On 2 May 2014, the Messina Court of Appeal partially upheld the complaint and declared the ASI Consortium jointly responsible with company B.V.

19. On 5 June 2018, the Court of Cassation quashed the judgment in that respect and remitted the case to the Court of Appeal.

20. On 20 December 2022, the Court of Appeal held that only company B.V. was responsible. The applicants appealed to the Court of Cassation where the proceedings are still ongoing.

III. COMPLAINTS

21. The applicants complained that Ms. C.C. had been unlawfully deprived of her land without adequate compensation, in breach of Article 1 of Protocol No. 1 to the Convention, and without any effective remedy, contrary to Article 13 of the Convention. After the communication, the applicants raised a new complaint under Article 6 § 1 of the Convention regarding the length of the domestic proceedings.

THE COURT'S ASSESSMENT

I. PRELIMINARY ISSUE

22. The Court firstly takes note of the information regarding the death of Guido Giuffrè, Maria Rosa Giuffrè and Maria Novella Giuffrè, and the wish of their heirs (listed in the appended table) to continue the proceedings in the

initial applicant's stead, as well as of the absence of an objection to that wish on the Government's part. Therefore, the Court considers that the heirs indicated in the appended table have standing to continue the proceedings in the late applicants' stead. However, for practical reasons, reference will still be made to the initial applicants throughout the ensuing text.

23. The Court further takes note of the information regarding the death of Maria Teresa Giuffrè (born in 1931) on 1 December 2022. By letter of 12 March 2024, the applicants' representative informed the Court that, as of that date, no heir had come forward. Accordingly, the Court considers that it is no longer justified to continue the examination of the application with respect to Maria Teresa Giuffrè (born in 1931) in accordance with Article 37 § 1 (c) of the Convention.

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

A. Admissibility

24. The Government objected to the admissibility of the complaint on grounds of non-exhaustion, arguing that domestic proceedings were still ongoing.

25. The applicants argued that the ongoing proceedings could not be considered effective, as they had already lasted over 20 years.

26. The Court considers that the question is closely linked to the substance of the applicants' complaint. It therefore joins the objection to the merits.

27. The Court notes that this 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 therefore be declared admissible.

B. Merits

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

29. The applicants argued that Ms C.C. was subject to an unlawful expropriation already with the imposition, in 1978, of building restraints on her land and subsequently with the deprivation of land by means of indirect expropriation. The Government pointed out that, contrary to the constructive expropriation cases addressed by the Court, in the instant case the applicants could have asked for the restitution of the land.

30. The Court considers, first of all, that the applicants have provided no evidence that any interference had taken place in 1978. It will therefore limit its examination to the subsequent expropriation procedure initiated in 1990.

31. In that respect, the Court notes that the applicants were deprived of their property by means of indirect 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 requirement of lawfulness, leading to findings of a violation of Article 1 of Protocol No. 1 (see, among many other authorities, *Belvedere Alberghiera S.r.l. v. Italy*, no. 31524/96, §§ 59-62, ECHR 2000-VI; *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).

32. The Court is not convinced by the Government's argument that the present case differs from the previous ones.

33. First, the Court notes that the domestic courts found the expropriation to have been unlawful *ab initio* (see paragraph 17 above). It follows that the situation at issue has allowed the administration to take advantage of an unlawful procedure, appropriating the land in breach of the rules governing expropriation in good and due form. The Court has already found that, in similar circumstances, the deprivation of property had been unlawful (see *Belvedere Alberghiera S.r.l.,* cited above).

34. Moreover, the Court notes that, while the Messina District Court recognised the unlawfulness of the expropriation and awarded damages, more than 30 years later the applicants have not yet obtained a final determination of the liable public entity (see paragraph 8 above). Furthermore, the applicant argued – and the Government did not contest – that no sum has been paid to them in the context of the second set of proceedings, as the judgment of the Messina District Court of 20 December 2006 has not yet been enforced. In the meantime, the applicants have been ordered to return the amounts provisionally received by the municipality and the domestic authorities are actively pursuing the enforcement of such order (see paragraph 15 above). In these circumstances, it cannot be concluded that the applicants have lost their victim status for the purposes of this complaint, nor that they have obtained adequate redress for the deprivation of their land.

35. Therefore, the Court rejects the Government's preliminary objection and finds that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

36. The applicants also complained under Article 13 of the Convention of the absence of an effective remedy for the violation of Article 1 of Protocol No. 1. Additionally, with the observations filed on 21 April 2020, the applicants raised a new complaint under Article 6 § 1 of the Convention regarding the excessive length of the domestic proceedings. 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 these complaints (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

37. The applicants claimed 21,991,290.81 euros (EUR) in respect of pecuniary damage, plus inflation adjustment and statutory interest. They further claimed EUR 487,200 in respect of non-pecuniary damage and EUR 353,925 in respect of costs and expenses incurred before the domestic courts and before the Court.

38. The Government contested the claims as excessive.

39. 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 31 to 35 above). The relevant criteria for the calculation of pecuniary damage in indirect expropriation cases have been set forth in *Guiso-Gallisay* (cited above, §§ 105-06). 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.

40. In the present case, the domestic courts disagreed with the expert valuation and determined the market value of the land at the lower amount of EUR 1,870,180.81. The Court considers that they provided reasoning on why they chose to do so (contrast *Kutlu and Others v. Turkey*, no. 51861/11, §§ 72-74, 13 December 2016), relying on the specific characteristics of the land (see paragraphs 8 and 17 above). Furthermore, the applicants have not contested that determination at the domestic level. The Court therefore considers that the amount awarded by the Messina District Court on 20 December 2006 (see paragraph 17 above) constitutes appropriate redress.

41. Nevertheless the applicants argued, and the Government did not contest, that that award has not been enforced pending determination of the liable entity.

42. The Court is mindful of the fact that, while the judgment of the Messina District Court has become final in respect of the amount of damages (see paragraph 17 above), proceedings are still ongoing at the domestic level exclusively for the purpose of determining the liable entity. Nevertheless, having regard to its finding of a violation above, the Court considers that, regardless of the outcome of those proceedings, the respondent State has an outstanding obligation to pay compensation for the deprivation of the applicants' land.

43. Therefore, the Court considers that the above finding of a violation entails an obligation for the State to ensure that the applicants obtain, in a final manner, the amount established by the judgment of the Messina District Court of 20 December 2006 (see paragraph 17 above).

The Court points out that the present judgment does not prevent the Government from obtaining the restitution of any amounts that may already

have been paid to the applicants in excess of the damages awarded by the Messina District Court, or to pursue the set-off of claims between the applicants and the various domestic entities involved.

44. As to the amounts claimed in respect of the loss of opportunities between 1978 and 1991, in light of its findings above (see paragraph 30) the Court does not award any sum.

45. Furthermore, the Court awards, jointly to all applicants, EUR 5,000 for non-pecuniary damage and EUR 10,000 covering costs under all heads, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that the heirs indicated in the appended table have standing to pursue the proceedings in the stead of the deceased applicants;

2. *Decides* to strike the application out of its list of cases in so far as it concerns Maria Teresa Giuffrè (born in 1931);

3. *Joins* to the merits the Government's preliminary objection concerning non-exhaustion of domestic remedies and *dismisses* it;

4. *Declares* the complaint raised under Article 1 of Protocol No. 1 admissible in respect of the remaining applicants;

5. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

6. *Holds* that there is no need to examine the admissibility and merits of the complaints under Articles 6 and 13 of the Convention;

7. *Holds* that the respondent State shall ensure, by appropriate means, within three months, that the applicants obtain, in a final manner, the amount established by the judgment of the Messina District Court of 20 December 2006;

8. *Holds*
   (a) that the respondent State is to pay the applicants jointly, within three months, the following amounts:
      (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 10,000 (ten 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;

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

Done in English, and notified in writing on 5 September 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
1.	Maria Teresa GIUFFRÈ	1969
2.	Maria Teresa GIUFFRÈ Deceased on 1 December 2022	1931
3.	Guido GIUFFRÈ Deceased on 14 April 2021 Heir: Agata TABACHIN	1934 2008
4.	Maria Rosa GIUFFRÈ Deceased on 23 June 2023 Heirs: Giovanni GIACOBBE Daniela GIACOBBE Cecilia GIACOBBE Emanuela GIACOBBE	1937 1933 1962 1963 1965
5.	Margherita GIUFFRÈ	1971
6.	Paola GIUFFRÈ	1970
7.	Maria Novella GIUFFRÈ Deceased on 13 May 2023 Heirs: Pietro CERESIA Maria Teresa GIUFFRÈ Paola GIUFFRÈ Margherita GIUFFRÈ	1980 1967 1969 1970 1971