



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

FIRST SECTION

**CASE OF ISTITUTO DIOCESANO PER IL SOSTENTAMENTO
DEL CLERO DI CAPUA AND OTHERS v. ITALY**

(Applications nos. 41591/07 and 2 others – see appended list)

JUDGMENT

STRASBOURG

13 July 2023

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

In the case of Istituto diocesano per il Sostentamento del Clero di Capua 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 institutes listed in the appended table (“the applicant institutes”), on the dates and with the representatives indicated therein;

the decision to give notice of the complaints concerning the interference with the applicant institutes’ property rights to the Italian Government (“the Government”), represented by their Agent, Mr L. D’Ascia, and to declare the remainder of the applications nos. 21970/09 and 74234/11 inadmissible;

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 20 June 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the expropriation of the applicant institutes’ land and the subsequent award of compensation based on the criteria established by section 5 *bis* of Law no. 359 of 8 August 1992 (“Law no. 359/1992”).

2. The applicant institutes were the owners of plots of land located in San Prisco and Marcianise (see the appended table for details). The national authorities adopted development plans, which included portions of the applicant institutes’ land, and authorised the immediate occupation of the land in question. Subsequently, they issued expropriation orders and offered to pay compensation, which the applicant institutes refused.

3. The applicant institutes brought judicial proceedings, arguing that the compensation offered by the national authorities was insufficient.

4. In each case, the national courts appointed experts to carry out a valuation of the land and awarded compensation for the expropriation and also for the period during which the land had been occupied before the expropriation order had been issued (*indennità di occupazione*). The calculation of those amounts was based on the criteria set out in section 5 *bis* of Law no. 359/1992, which had entered into force on 14 August 1992.

5. Further details of each application and the compensation awarded can be found in the appended table.

6. The applicant institutes complained under Article 1 of Protocol No. 1 to the Convention of a disproportionate interference with their property rights on account of the allegedly inadequate amounts of compensation they had received for the expropriation of their land. They further complained that the compensation awarded to them had effectively been reduced by 20% on account of the amount they had had to pay in tax.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

8. The relevant domestic law and practice have been summarised in *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, §§ 47-61, ECHR 2006-V).

9. The Government submitted that the applicant institutes were no longer victims of the violations complained of as a consequence of settlement agreements that had been concluded with the respective municipalities on 13 April 2012 (applications nos. 41591/07 and 74234/11) and on 16 November 2010 (application no. 21970/09). The Court notes that those agreements concerned the manner of enforcing the domestic decisions, namely by means of payment by instalments or a final payment of the amounts due, and the only waivers contained therein concerned the costs incurred for the enforcement proceedings. It follows that the agreements cannot be interpreted as a waiver to pursue the complaints invoked in the present proceedings. Therefore, the Court dismisses the Government's objection.

10. As the applicant institutes' 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.

11. The Court refers to its judgment in *Scordino* (cited above, §§ 93-98) for a summary of the relevant principles applicable in the present case.

12. The Court notes that the applicant institutes have been deprived of their land in accordance with national law and that the expropriation pursued a legitimate aim in the public interest. Furthermore, the applications concern distinct expropriations, which were neither carried out as part of a process of economic, social or political reform nor linked to any other specific circumstances. Accordingly, the Court does not discern any legitimate

objective “in the public interest” capable of justifying the payment of compensation below the market value.

13. In the present case the compensation awarded to the applicant institutes for the expropriation was calculated on the basis of the criteria laid down in section 5 *bis* of Law no. 359/1992 and, as a consequence, they received amounts far lower than the market value of the properties. Additionally, the compensation they received was, in effect, reduced by 20% on account of tax.

14. The Court has already found that the levying of taxes on the compensation for expropriation does not amount to a disproportionate interference under Article 1 of Protocol No. 1 (see *Cacciato v. Italy* (dec.), no. 60633/16, § 32, 16 January 2018).

15. Nevertheless, it has also found, in similar cases, that the level of compensation under section 5 *bis* of Law no. 359/1992 was inadequate and that applicants in those cases had to bear a disproportionate and excessive burden (see *Scordino*, cited above, §§ 99-104). Having examined all the material submitted to it and the parties’ observations (see the appended table), the Court has not found any fact or argument capable of persuading it to reach a different conclusion in the present case.

16. Accordingly, the Court finds that there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of the inadequate compensation.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. The applicant institutes claimed the amounts indicated in the appended table in respect of pecuniary and non-pecuniary damage and in respect of costs and expenses.

18. The Government did not submit any observations regarding the applicant institutes’ just satisfaction claims.

19. The Court has found a violation of Article 1 of Protocol No. 1 on account of the inadequate compensation awarded for the expropriation of the applicant institutes’ land (see paragraph 15 above). The relevant criteria for the calculation of pecuniary damage in such cases have been set forth in *Scordino* (cited above, § 258). 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.

20. Having regard to the applicant institutes’ claims, and taking into account the principle *non ultra petita*, the Court awards the sums indicated in the appended table for pecuniary and non-pecuniary damage and dismisses the remainder of the claims.

21. With regard to costs and expenses, the Court observes that the applicant institutes have not substantiated their claims with any relevant supporting documents establishing that they were under an obligation to pay

legal fees or that they have actually paid them and, as a consequence, no sum will be awarded on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant institutes the amounts indicated in the appended table, within three months, in respect of pecuniary and non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the amounts indicated in the appended table at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant institutes' claim for just satisfaction.

Done in English, and notified in writing on 13 July 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Péter Paczolay
President

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APPENDIX

No.	Application no. Case name Date of introduction	Applicant institute's name	Representative's name Location	Factual information	Amounts awarded by national courts in euros (EUR)	Market value of the land in EUR	The parties' observations	Award under Article 41 of the Convention per application
1.	41591/07 Istituto diocesano per il Sostentamento del Clero di Capua v. Italy 07/09/2007	ISTITUTO DIOCESANO PER IL SOSTENTAMENTO DEL CLERO DI CAPUA	Alfredo IMPARATO San Prisco	<p><u>Land:</u> Municipality of San Prisco, recorded in the land register as folio no. 5, parcels nos. 5463, 5464, 5465, 5466 and 5467</p> <p><u>Public interest pursued:</u> social housing</p> <p><u>Urgent occupation order:</u> 22/07/1999</p> <p><u>Physical occupation:</u> 07/09/1999</p> <p><u>Expropriation order:</u> 03/12/2001</p> <p><u>National decisions:</u> Naples Court of Appeal, 12/04/2005, awarding compensation for expropriation and occupation based on section 5 <i>bis</i> of Law no. 359/1992; Court of Cassation, 07/07/2011, confirming first-instance judgment</p>	EUR 605,336.69 in expropriation compensation, plus statutory interest; occupation compensation based on interest on expropriation compensation	EUR 1,777,500 (in December 2001, according to independent expert valuation)	<p><u>Government:</u> (1) admissibility: loss of victim status following settlement agreement of 13/04/2012; (2) merits: interference proportionate to the public interest pursued</p> <p><u>Applicant institute:</u> (1) admissibility: the agreement did not contain any waiver in respect of the claims lodged with the Court; (2) compensation did not reflect market value and was also subject to 20% tax; (3) just satisfaction claims: (a) loss of property: EUR 1,132,235.51 (b) non-pecuniary damage: EUR 150,000 (c) costs and expenses before the Court: EUR 39,075.85</p>	<p>Pecuniary damage (loss of property): EUR 1,132,235.51</p> <p>Non-pecuniary damage: EUR 5,000, plus any tax that may be chargeable</p>

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2.	21970/09 Istituto diocesano per il Sostentamento del Clero di Caserta v. Italy 25/03/2009	ISTITUTO DIOCESANO PER IL SOSTENTA- MENTO DEL CLERO DI CASERTA	Carmela DE FRANCISCIS Caserta	<p><u>Land</u>: Municipality of Marcianise (see below for records in land register)</p> <p><u>Public interest pursued</u>: construction of industrial complex</p> <p><u>National decisions</u>: Naples Court of Appeal awarding compensation for expropriation and occupation based on section 5 <i>bis</i> of Law no. 359/1992; Court of Cassation, confirming first- instance judgment (see below for relevant dates)</p> <p>1st expropriation <u>Land</u>: folio no. 16, parcel no. 691 <u>Urgent occupation order</u>: 15/11/1999 <u>Physical occupation</u>: 09/02/2000 <u>Expropriation order</u>: 24/05/2001 <u>National decisions</u>: Naples Court of Appeal, 23/02/2004; Court of Cassation, no. 26112 of 30/10/2008</p> <p>2nd expropriation <u>Land</u>: folio no. 16, parcel</p>	<p>1st expropriation EUR 32,817.10 in expropriation compensation and EUR 580.86 in occupation compensation, plus statutory interest</p> <p>2nd expropriation EUR 163,428.88 in expropriation compensation and EUR 2,892.69 in compensation for occupation, plus statutory interest</p> <p>3rd expropriation EUR 80,667.10 in expropriation compensation and EUR 12,174.27 in occupation compensation, plus statutory interest</p> <p>4th expropriation EUR 734,771.25 in expropriation</p>	<p>1st expropriation EUR 65,403 (in May 2001, according to independent expert valuation)</p> <p>2nd expropriation EUR 325,354.77 (in May 2001, according to independent expert valuation)</p> <p>3rd expropriation EUR 161,248.68 (in May 2001, according to independent expert valuation)</p> <p>4th expropriation EUR 1,462,964.49 (in June 2001,</p>	<p><u>Government</u>: (1) admissibility: loss of victim status following settlement agreement of 16/11/2010; (2) merits: interference proportionate to the public interest pursued</p> <p><u>Applicant institute</u>: (1) admissibility: the agreement did not contain any waiver in respect of the claims lodged with the Court; (2) compensation did not reflect market value and was also subject to 20% tax; (3) just satisfaction claims: (a) loss of property: EUR 727,007.60 plus revaluation and statutory interest (b) non-pecuniary damage on an equitable basis (c) costs and expenses before the Court: EUR 58,763.50</p>	<p>Pecuniary damage (loss of property): EUR 1,386,750</p> <p>Non-pecuniary damage: EUR 5,000, plus any tax that may be chargeable</p>
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			<p>no. 92 <u>Urgent occupation order:</u> 19/11/1999 <u>Physical occupation:</u> 10/01/2000 <u>Expropriation order:</u> 24/05/2001 <u>National decisions:</u> Naples Court of Appeal, 23/02/2004; Court of Cassation, no. 26113 of 30/10/2008</p> <p>3rd expropriation <u>Land:</u> folio no. 16, parcel no. 713 <u>Urgent occupation order:</u> 19/11/1999 <u>Physical occupation:</u> 10/01/2000 <u>Expropriation order:</u> 24/05/2001 <u>National decisions:</u> Naples Court of Appeal, 20/04/2004; Court of Cassation, no. 26619 of 06/11/2008</p> <p>4th expropriation <u>Land:</u> folio no. 20, parcel no. 5012 <u>Urgent occupation order:</u> 15/09/2000 <u>Physical occupation:</u> 30/10/2000 <u>Expropriation order:</u> 29/06/2001</p>	<p>compensation and EUR 15,871.06 in occupation compensation, plus statutory interest</p> <p>5th expropriation EUR 78,827.83 in expropriation compensation and EUR 11,896.68 in occupation compensation, plus statutory interest</p>	<p>according to independent expert valuation)</p> <p>5th expropriation EUR 157,572 (in May 2001, according to independent expert valuation)</p>		
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				<p><u>National decisions:</u> Naples Court of Appeal, 20/02/2004; Court of Cassation no. 26114 of 30/10/2008</p> <p>5th expropriation <u>Land:</u> folio no. 16, parcel no. 715 <u>Urgent occupation order:</u> 19/11/1999 <u>Physical occupation:</u> 10/01/2000 <u>Expropriation order:</u> 24/05/2001 <u>National decisions:</u> Naples Court of Appeal, 20/04/2004; Court of Cassation no. 25714 of 24/10/2008</p>				
3.	74234/11 Istituto diocesano per il Sostentamento del Clero di Capua v. Italy 21/11/2011	ISTITUTO DIOCESANO PER IL SOSTENTA- MENTO DEL CLERO DI CAPUA	Alfredo IMPARATO San Prisco	<p><u>Land:</u> Municipality of San Prisco, recorded in the land register as folio no. 6, parcels nos. 5392, 5393 and 5394</p> <p><u>Public interest pursued:</u> social housing</p> <p><u>Urgent occupation order:</u> 22/07/1999</p> <p><u>Physical occupation:</u> 10/09/1999</p> <p><u>Expropriation order:</u> 03/12/2001</p>	EUR 1,228,632.64 in expropriation compensation, plus statutory interest; occupation compensation based on interest on expropriation compensation	EUR 2,386,250 (in December 2001, according to independent expert valuation)	<p><u>Government:</u> (1) admissibility: loss of victim status following settlement agreement of 13/04/2012; (2) merits: interference proportionate to the public interest pursued</p> <p><u>Applicant institute:</u> (1) admissibility: the agreement did not contain any waiver in respect of the claims lodged with the Court; (2) compensation did not</p>	<p>Pecuniary damage (loss of property): EUR 2,174,700</p> <p>Non-pecuniary damage: EUR 5,000, plus any tax that may be chargeable</p>

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				<p><u>National decisions:</u> Naples Court of Appeal, 12/04/2005, awarding compensation for expropriation and occupation based on section 5 <i>bis</i> of Law no. 359/1992; Court of Cassation, 27/06/2011, confirming first-instance judgment</p>			<p>reflect market value and was also subject to 20% tax; (3) just satisfaction claims: (a) loss of property: EUR 2,270,837.75 (b) non-pecuniary damage: EUR 150,000 (c) costs and expenses before the Court: EUR 50,800.10</p>	
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