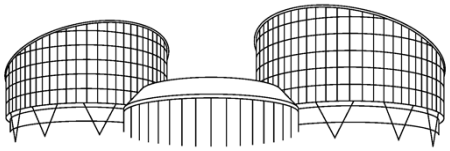

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF LA SPADA v. ITALY

(Application no. 2731/14)

JUDGMENT

STRASBOURG

26 October 2023

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

In the case of La Spada 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. 2731/14) 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 16 December 2013 by an Italian national, Mr Attilio La Spada, born in 1948 and living in Milazzo ("the applicant") who was represented by Mr G. Romano and Mr E. Lizza, lawyers practising in Rome;

the decision to give notice of the application to the Italian Government ("the Government"), represented by their former co-Agent, Mrs P. Accardo;

the parties' observations;

Having deliberated in private on 3 October 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the deprivation of the applicant's land through the application by the domestic courts of the constructive-expropriation rule (*accessione invertita* or *occupazione acquisitiva*), as well as the non-enforcement of the domestic courts' decisions rendered in this respect.

2. The applicant was the owner of a plot of land in the municipality of Milazzo, recorded in the land register as folio no. 12, parcels nos. 39, 47, 408 and 410. The land was designated for agricultural use by the 1989 general land-use plan (*piano regolatore generale*) and was used for farming.

3. On 8 June 1988, the municipality approved a project for the construction of a road. On 30 January 1990, the municipality authorised the immediate occupation of a part of the applicant's land with a view to its subsequent expropriation and, on 6 April 1990, the company entrusted with the construction works took physical possession of it. By the time the public interest declaration had expired, on 8 June 1993, a part of the occupied land had been irreversibly altered by the construction works. In respect of that land, a formal expropriation order was issued on 30 December 1996. As to the remaining land, it was returned to the applicant on 23 September 1993.

4. The applicant brought an action for damages before the Barcellona Pozzo di Gotto District Court, arguing that the occupation of the land had been unlawful and seeking compensation.

5. The District Court ordered an independent expert valuation of the land. The expert provided several alternative calculations of its market value: the first, amounting to 33,850 Italian lire (ITL) per square metre, took into

account an exclusively agricultural use of the land and was based on the price of similar neighbouring land; the other valuations, which were considerably higher, were based on the land's *de facto* building potential or other alternative uses.

6. By judgment of 15 April 2003, the District Court held that the expropriation had been lawful and rejected the applicant's request. The applicant appealed against this judgment.

7. By judgment of 6 March 2006, the Messina Court of Appeal quashed the previous decision and found that part of the applicant's land had been irreversibly altered following the completion of the public works. As a consequence, pursuant to the constructive-expropriation rule, the applicant had lost the ownership of the land by 8 June 1993. Furthermore, the Court of Appeal accepted that the applicant was entitled to damages for the loss of his property.

8. As to the quantification of damages, the Court of Appeal maintained that the land was designated and used for agriculture and the applicant had not provided any evidence of other potential uses. Hence, the Court of Appeal relied on the amount indicated by the expert appointed at first instance in respect of agricultural land and awarded damages for the expropriation in the amount of ITL 102,228,469, corresponding to 52,796.69 euros (EUR), plus inflation adjustment and statutory interest.

9. As to the compensation for the unavailability of the land, the Court of Appeal did not base its calculation on the market value of the land as estimated above, but on the average agricultural value (*valore agricolo medio*). As a consequence, it awarded EUR 6,010.12, plus statutory interest.

10. Finally, the Court of Appeal awarded EUR 17,562.90 for the further damage caused to the remaining part of the land and EUR 11,020 for costs and expenses.

11. The municipality appealed to the Court of Cassation, contesting both the finding that the expropriation had been unlawful and the amount of compensation awarded. The appeal was dismissed on 8 August 2013.

12. On 8 November 2016, the municipality of Milazzo was declared insolvent. As a consequence, according to the most recent information submitted to the Court, the applicant has received only the amount of EUR 24,375.71, corresponding to the provisional expropriation compensation paid in 2003, whereas the Court of Appeal's judgment has not been enforced for the remaining part.

13. The applicant complained that he had been unlawfully deprived of his land on account of the application by the domestic courts of the constructive-expropriation rule and that he had not received adequate compensation, in breach of his rights under Article 1 of Protocol No. 1 to the Convention. He further complained, under Article 1 of Protocol No. 1 and Article 6 of the Convention, of the non-enforcement of the decision of the Messina Court of Appeal of 6 March 2006 and of the impossibility to bring enforcement proceedings against the municipality of Milazzo.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 REGARDING THE EXPROPRIATION

A. Admissibility

14. The Government objected to the admissibility of this complaint on two grounds.

15. First of all, they argued that the applicant did not exhaust domestic remedies, as he did not appeal against the decision of the Messina Court of Appeal before the Court of Cassation.

16. The Court has previously rejected similar submissions in the context of constructive expropriation cases (see *Ucci v. Italy*, no. 213/04, §§ 83-86, 22 June 2006) and, in the present case, there is no reason to hold otherwise.

17. The Government further contended that the applicant had obtained sufficient redress at the national level and had therefore lost his victim status.

18. The applicant argued that he was still a victim of a breach of his property rights as he had not obtained sufficient redress. He claimed, in particular, that the Court of Appeal relied on the average agricultural value rather than on the market value of the land as indicated by the court-appointed expert.

19. The relevant criteria for the determination of pecuniary damage in constructive-expropriation cases have been set forth in *Guiso-Gallisay v. Italy* ((just satisfaction) [GC], no. 58858/00, §§ 105-07, 22 December 2009). In particular, the Court held that the applicants were entitled to pecuniary damage both in respect of the loss of property and in respect of the loss of opportunities occasioned by the unavailability of the land during the period of lawful occupation.

20. In the present case, as regards the loss of property, the Court notes that the compensation awarded by the Messina Court of Appeal was based on one of the alternative values proposed by the expert, which corresponded to an exclusively agricultural use of the land (see paragraph 8 above). Firstly, the Court considers that the choice to rely on the value corresponding to agricultural land was not unreasonable. In fact, the applicant's land was designated and used for agriculture (see paragraph 2 above) and the applicant does not argue that it had any alternative use. Secondly, the Court notes that the expert's valuation was not based on the average agricultural value of the land, but rather on a comparison with the market value of neighbouring land with similar characteristics (see paragraph 5 above). Therefore, the Court accepts that the sum awarded by the Messina Court of Appeal in respect of the loss of property reflected the market value of the land (see, *a contrario*, *Preite v. Italy*, no. 28976/05, § 51, 17 November 2015).

21. Nevertheless, the domestic court relied on the average agricultural value for the determination of damages in respect of the unavailability of the land during the period of lawful occupation (see paragraph 9 above).

22. In this respect, the Court has already found that the compensation for the unavailability of the land should, in principle, be based on its market value (see, *mutatis mutandis*, *Luigi Serino v. Italy (no. 3)*, no. 21978/02, § 39, 12 October 2010). Additionally, the Court has also found that an award of compensation based on the average agricultural value bears no reasonable relationship with the market value of the land, as it does not take into account its real characteristics (*Preite*, cited above, § 51).

23. In these circumstances, the Court considers that the applicant has not received appropriate and sufficient redress for the violation complained of.

24. Accordingly, the Court rejects the Government's preliminary objections and, 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 declares it admissible.

B. Merits

25. The Court notes that the applicant was deprived of his 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).

26. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 AND ARTICLE 6 OF THE CONVENTION REGARDING THE NON-ENFORCEMENT OF DOMESTIC DECISIONS

28. The Government objects to the admissibility of the complaint on grounds of non-exhaustion, noting that the applicant could have initiated proceedings for the enforcement of the decision of the Messina Court of Appeal at least until 2013, when the first declaration of insolvency of the municipality of Milazzo was issued.

29. In this respect, the Court recalls that a person who has obtained an enforcement title against the State cannot be required to resort to enforcement proceedings in order to have it executed (see, for example, *Ventorino v. Italy*,

no. 357/07, § 28, 17 May 2011, and *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). Therefore, the Court rejects the Government's objection.

30. 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.

31. As to the merits of the complaint, the Court notes that, according to the decision of the Messina Court of Appeal, the applicant was entitled to receive specific amounts in respect of damages and costs and expenses and that, according to the most recent information submitted to the Court, the municipality of Milazzo did not repay its debt.

32. In the leading cases of *De Luca v. Italy* (no. 43870/04, §§ 50-56, 24 September 2013), *Pennino v. Italy* (no. 43892/04, §§ 54-60, 24 September 2013) and *Ventorino* (cited above, §§ 24-31) the Court already found a violation of Article 1 of Protocol No. 1 and Article 6 in respect of issues similar to those in the present case.

33. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion.

34. Therefore, the Court finds that there has been a violation of Article 1 of Protocol No. 1 and Article 6 of the Convention.

III. OTHER COMPLAINT

35. The applicant also complained under Article 6 of the Convention of the impossibility to bring enforcement proceedings against the municipality of Milazzo. 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 admissibility and merits of 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

36. The applicant claimed 579,116.72 euros (EUR) in respect of pecuniary damage, EUR 50,000 in respect of non-pecuniary damage and EUR 26,137 in respect of costs and expenses incurred before the Court.

37. The Government contests the claims as excessive.

38. The Court has found a violation of Article 1 of Protocol No. 1 on account of a breach of the principle of lawfulness (see paragraph 26 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).

39. In light of its considerations above (see paragraph 20), the Court does not award any amount in respect of pecuniary damages deriving from the loss

of property. However, it awards pecuniary damage for the loss of opportunities deriving from the unavailability of the land from the beginning of the lawful occupation until either its expropriation or its restitution (see paragraph 3 above). In this respect, ruling on an equitable basis, it awards EUR 11,900, plus any tax that may be chargeable.

40. Furthermore, the Court has found a violation of Article 1 of Protocol No. 1 and Article 6 of the Convention on account of the non-enforcement of the decision of the Messina Court of Appeal. In this respect, the Court reiterates that a judgment in which it finds a breach of the Convention imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI). The Court therefore notes that the respondent State has an outstanding obligation to enforce the decision of the Messina Court of Appeal.

41. Finally, the Court awards EUR 12,500 for non-pecuniary damage and EUR 6,000 for costs and expenses, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints raised under Article 1 of Protocol No. 1 and under Article 6 of the Convention concerning the expropriation and the non-enforcement of the domestic decision admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the expropriation;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 and Article 6 of the Convention in respect of the non-enforcement of the domestic decision;

4. *Holds* that there is no need to examine the admissibility and merits of the remaining complaint;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 11,900 (eleven thousand nine hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicant, 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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President