



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

SECOND SECTION

CASE OF MAIORANO AND SERAFINI v. ITALY

(Application no. 997/05)

JUDGMENT

STRASBOURG

25 November 2014

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

In the case of Maiorano and Serafini v. Italy,

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

András Sajó, *President*,

Helen Keller,

Robert Spano, *judges*,

and Abel Campos, *Deputy Section Registrar*,

Having deliberated in private on 4 November 2014,

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

PROCEDURE

1. The case originated in an application (no. 997/05) 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 four Italian nationals, Mr Giovanni Maiorano, Mrs Carmela Maiorano, Mrs Manuela Maiorano and Mrs Maria Rosaria Serafini (“the applicants”), on 4 January 2005.

2. The applicants were represented by Mr C. Ventura, a lawyer practising in Bari. The Italian Government (“the Government”) were represented by their Agent, Mrs M.E. Spatafora, her former co-Agents, Mr N. Lettieri and Mr F. Crisafulli, and her co-Agent Mrs Paola Accardo.

3. On 29 August 2006 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1947, 1952, 1965, and 1921 respectively and live in Perugia, Fano, and (the third and fourth applicant) in Lecce, respectively.

5. The facts of the case may be summarised as follows.

6. The applicants are the owners of a plot of land in Galatina. The land in issue, an area of 6,241 square metres, was recorded on the land register as folio no. 76, parcel no. 29.

7. On 10 July and 9 August 1985 respectively, the Mayor of Galatina issued two decrees authorising the Municipality to take possession, under an expedited procedure and on the basis of a public-interest declaration, of 560

and 894 square metres of land in order to begin the construction of low-rent housing.

8. By two writs served, respectively, on 17 September and 8 October 1990, the applicants brought actions in damages against the Galatina Municipality before the Lecce District Court. The applicants alleged that the occupation of the land was illegal and that the construction work had been completed without there having been a formal expropriation of the land and payment of compensation. They claimed a sum corresponding to the market value of the land as well as compensation for the area of land that had become unusable as a result of the building work. They further claimed a sum in damages for the loss of enjoyment of the land during the period of lawful occupation.

9. On 13 November 1991 and 15 January 1992, the court ordered two expert assessments of the land in connection with the two sets of proceedings.

10. On 22 November 1996 the applicants submitted a motion pursuant to Article 186 *quater* of the Italian Code of Civil Procedure requesting that the court issue an order for the immediate payment of the requested compensation by the Municipality.

11. On 13 December 1996 the court concluded that sufficient evidence existed for it to proceed with the order. The court granted the motion and merged the two sets of proceedings. By means of an order delivered on the same day, the Lecce District Court drew on the expert reports to conclude that the market value of the land on the date of its irreversible alteration (31 December 1985) corresponded to ITL 355 000 000 (EUR 342,199). On this basis, the court ordered that the applicant was entitled to compensation equivalent to the latter sum, adjusted for inflation, plus statutory interest, for a total amount of ITL 600 000 000 (EUR 309 874,139). The claim concerning the loss of enjoyment of the land during the period of lawful occupation was dismissed.

12. The order was served on the Galatina Municipality on 24 March 1997 and thereupon became immediately enforceable.

13. In April 1997 the Municipality submitted a motion, pursuant to Article 186 *quater* of the Italian Code of Civil Procedure, expressing their intention to waive the delivery of the final judgment (“*rinuncia alla pronuncia della sentenza definitiva*”). The motion was served on the applicants on 4 April 1997 and filed with the registry on 31 May 1997. By virtue of the foregoing provision, once the motion is served and filed with the registry, the order becomes final and can, therefore, be subject to appeal.

14. On 2 June 1997 the Municipality appealed against the order before the Lecce Court of Appeal, their main contention being that the portion of land subject to expropriation was actually less than the size identified in the Lecce District Court’s order. The Municipality, therefore, requested that a new expert valuation be submitted and that the Court of Appeal recalculate

the final sum to be awarded to the applicants under Law no. 662 of 1996, which had entered into force in the meantime. The Municipality further requested a stay of execution of the Lecce District Court's order.

15. On 4 June 1997 the applicants lodged a cross-appeal arguing that the appeal proceedings should be declared null and void on the ground, *inter alia*, that the application of Article 186 *quater* of the Italian Code of Civil Procedure entailed a violation of their defense rights. The applicants also sought the dismissal of the Municipality's appeal on the ground that it was manifestly ill-founded. No claim concerning the loss of enjoyment of the land during the period of lawful occupation was raised.

16. On 30 July 1997 the Lecce Court of Appeal ordered a stay of execution of the Lecce District Court's order.

17. On 27 August 1997 the applicants filed a motion seeking the enforcement of the order.

18. On 30 July 1997 the Lecce Court of Appeal confirmed the stay of execution of the Lecce District Court's order.

19. On 13 July 1999 the Court of Appeal ordered an expert assessment in order to verify the size of the land in question and calculate the amount of compensation under Law no. 662 of 1996. The report was filed with the court's registry on 2 February 2000.

20. According to the expert, the land that had been actually occupied, coupled with the portion that had become unusable due to the building works, was less extensive than the size established in the Lecce District Court's judgment and amounted to 2,132 square metres. He further concluded that the lawful occupation had ended, for a first portion of the land, on 2 August 1994, and, for a second portion, on 6 September 1994. The expert concluded that the market value of the land in 1994 corresponded to ITL 67,000 per square metre and assessed the compensation due to the applicants under Law no. 662 of 1996 at ITL 83 308 412 (EUR 43,025).

21. By a judgment of 4 April 2001, filed with the court registry on 4 June 2001, the Court of Appeal held that the applicant was entitled to compensation in the sum of ITL 83 308 412 (equivalent to EUR 43,025) to be adjusted for inflation, plus statutory interest. The court dismissed the remaining claims.

22. On an unspecified date in 2001 the applicants received the payment of EUR 56 130,81.

23. On 12 November 2001 the applicants appealed on points of law.

24. By a judgment of 13 February 2004, filed with the court registry on 15 July 2004, the Court of Cassation dismissed the appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

25. The relevant domestic law and practice concerning constructive expropriation are to be found in the *Guiso-Gallisay v. Italy* judgment (just satisfaction) [GC], no. 58858/00, 22 December 2009).

26. In judgments nos. 348 and 349 of 22 October 2007, the Italian Constitutional Court held that national legislation must be compatible with the Convention as interpreted by the Court's case-law and, in consequence, declared unconstitutional section 5 *bis* of Legislative Decree no. 333 of 11 July 1992 as amended by Law no. 662 of 1996.

27. In judgment no. 349, the Constitutional Court noted that the insufficient level of compensation provided for by the 1996 Law was contrary to Article 1 of Protocol No. 1 and also to Article 117 of the Italian Constitution, which provides for compliance with international obligations. Since that judgment, the provision in question may no longer be applied in the context of pending national proceedings.

28. A number of changes occurred in domestic legislation following the Constitutional Court's judgments. Section 2/89 (e) of the Finance Act (Law no. 244) of 24 December 2007 established that in cases of constructive expropriation the compensation payable must correspond to the market value of the property, with no possibility of a reduction.

THE LAW

I. THE GOVERNMENT'S REQUEST FOR THE APPLICATION TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION

29. By a letter dated 12 June 2014 the Government submitted a unilateral declaration with a view to resolving the issue raised by the present application and requested the Court to strike it out of its list of cases.

30. In respect of pecuniary damage, non-pecuniary damage, and costs and expenses, the Government proposed to award the applicants EUR 50,000.

31. By a letter dated 26 June 2014 the applicants objected to the Government's proposal.

32. The Court reiterates that in certain circumstances it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued. Whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case will depend on the particular circumstances of the

case (see, among many other authorities, *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, § 75, ECHR 2003-VI, and *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

33. The Court has held that the amount proposed in a unilateral declaration may be considered a sufficient basis for striking out an application in full or in part. The Court will have regard in this connection to whether the amount is commensurate with its own awards in similar cases (see *Przemyk v. Poland*, no. 22426/11, § 39, 17 September 2013).

34. Having studied the terms of the Government's unilateral declaration, the Court is of the view that, in the instant case, the sum proposed in the declaration in respect of the pecuniary and non-pecuniary damage suffered by the applicants as a result of the constructive expropriation of their land does not bear a reasonable relation to the amounts awarded by the Court in similar cases against Italy (see, amongst others, *Guiso-Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, 22 December 2009, and *Macrì and Others v. Italy*, no. 14130/02, 12 July 2011).

35. Therefore, the Court considers that, in the particular circumstances of the applicants' case, the proposed declaration does not provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the case.

36. This being so, the Court rejects the Government's request to strike the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

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

37. The applicants complained that they had been deprived of their land in circumstances that were incompatible with the requirements of Article 1 of Protocol No. 1, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

38. The Government contested the applicants' argument.

A. Admissibility

39. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

40. The applicants submitted that they had been dispossessed of their property pursuant to the constructive-expropriation rule, whereby public authorities acquire land by taking advantage of their own unlawful conduct. The applicants maintained that the application of the constructive-expropriation rule to their case did not comply with the principle of the rule of law.

41. According to the Government, despite the absence of a formal expropriation order and although the irreversible alteration of the land following the construction of “public” works prevented its restitution, the occupation in issue had been carried out within the framework of an administrative procedure grounded on a declaration of public interest.

42. The Court observes that the parties agree that a “deprivation of property” has occurred for the purposes of Article 1 of Protocol No. 1.

43. With regard to constructive expropriation, the Court refers to its established case-law (see, amongst others, *Belvedere Alberghiera S.r.l. v. Italy*, no. 31524/96, ECHR 2000-VI; *Scordino v. Italy (no. 3)*, no. 43662/98, 17 May 2005; *Velocci v. Italy*, no. 1717/03, 18 March 2008) for a summary of relevant principles and an overview of its case-law on the subject.

44. In the instant case, the Court notes that, pursuant to the constructive-expropriation rule, the Lecce Court of Appeal held that the applicants had been deprived of their land between 2 August and 6 September 1994. The Court considers that that situation could not be regarded as “foreseeable” as it was only in the final decision in the proceedings under scrutiny that the constructive-expropriation rule could be regarded as being effectively applied. The Court consequently finds that the applicants did not become certain that they had been deprived of their land until 15 July 2004, when the judgment of the Court of Cassation was filed with the court registry.

45. In the light of the foregoing observations, the Court considers that the interference complained of was not compatible with the principle of lawfulness and that it therefore infringed the applicant’s right to the peaceful enjoyment of her possessions.

46. It follows that there has been a violation of Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

47. The applicants alleged that the enactment and application to their case of Law no. 662 of 1996 amounted to interference by the legislature in breach of their right to a fair hearing as guaranteed by Article 6 § 1 of the Convention, the relevant parts of which provide:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

48. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

B. Merits

49. The Court has found that the interference with the applicants' property rights was not compatible with the principle of lawfulness and that it therefore infringed the applicants' right to the peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 (see paragraphs 40-46 above).

50. Having regard to the foregoing conclusion, the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 6 § 1 (see, among other authorities, *Rivera and di Bonaventura v. Italy*, no. 63869/00, §§ 27-30, 14 June 2011; *Macrì and Others v. Italy*, no. 14130/02, §§ 46-50, 12 July 2011).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. Lastly, the applicant complained under Article 6 § 1 about the unfairness of the proceedings before the Lecce District Court concerning the stay of execution of the order and the application of Article 186-*quater* of the Italian Code of Civil Procedure. They further complained about the unfairness of the proceedings before the Court of Cassation.

52. The Court has examined the remainder of the applicants' complaints as submitted by them. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

53. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage

55. With regard to pecuniary damage, the applicants claimed an amount corresponding to the difference between the compensation that they sought to obtain before the Lecce District Court and the amount that was awarded by the Court of Appeal, readjusted for inflation and increased by the amount of interest due. The applicants further sought compensation for the period of lawful occupation. In January 2007, the sum claimed amounted to EUR 286,806 approximately, readjusted for inflation and increased by the amount of interest due.

56. The Government contested that amount.

57. The Court reiterates that a judgment in which it finds a breach 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 (*Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI).

58. The Court further observes that, in the *Guiso-Gallisay v. Italy* judgment (just satisfaction) [GC], cited above, the Grand Chamber considered it appropriate to adopt a new approach with regard to the criteria to be used in assessing damages in constructive expropriation cases. In particular, the Court decided to reject applicants' claims in so far as they were based on the value of the land on the date of the Court's judgment and, in assessing the pecuniary damage, to have no further regard to the construction costs of the buildings erected by the State on the land.

59. The Court held that the reparation of the pecuniary damage must be equal to the full market value of the property on the date of the domestic judgment declaring that the applicants had lost ownership of their property, that value being calculated on the basis of the court-ordered expert reports drawn up during the domestic proceedings. Once the amount obtained at the domestic level is deducted, and the difference with the market value of the land when the applicants lost ownership is obtained, that amount will have to be converted into the current value to offset the effects of inflation. Moreover, simple statutory interest (applied to the capital progressively adjusted) will have to be paid on this amount so as to offset, at least in part, the long period for which the applicants have been deprived of the land.

60. In the present case, reference can be made to the Lecce Court of Appeal's judgment, according to which the applicants lost their right of ownership of the land between 2 August and 6 September 1994. On the basis of the court-ordered expert reports drawn up during the domestic proceedings before the Court of Appeal, the market value of the land during that period corresponds to ITL 142,844,000 (EUR 73,772).

61. Having regard to the foregoing factors, and ruling on an equitable basis, the Court considers it reasonable to award the applicants EUR 88,000 plus any tax that may be chargeable on that amount.

62. The loss of opportunities sustained by the applicants following the expropriation remains to be assessed (*Guiso-Gallisay v. Italy* (just satisfaction) [GC], cited above, § 107). The Court considers that it must have regard to the damage occasioned by the unavailability of the land during the period from the beginning of the lawful occupation (between 10 July and 9 August 1985) until the date of loss of ownership (between 2 August and 6 September 1994). Ruling on an equitable basis, the Court awards the applicant EUR 39,000 for loss of opportunities.

B. Non-pecuniary damage

63. The applicants claimed EUR 200,000 in respect of non-pecuniary damage.

64. The Government left the matter to the Court's discretion, while emphasising that the amount claimed by the applicants was excessive.

65. The Court considers that the feelings of powerlessness and frustration arising from the violation of the applicants' rights under Article 1 of Protocol No. 1 of the Convention caused the applicants considerable non-pecuniary damage that should be compensated in an appropriate manner.

66. Having regard to the foregoing and ruling on an equitable basis, the Court decides to award EUR 15,000 jointly to the applicants under this head.

C. Costs and expenses

67. The applicant submitted a bill of costs and expenses and sought the reimbursement of EUR 91,664 for the costs and expenses incurred before the domestic courts and EUR 35,950 for those incurred before the Court.

68. The Government contested the amounts.

69. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and were reasonable as to quantum (*Can and Others v. Turkey*, no. 29189/02, § 22, 24 January 2008).

70. While it is not disputed that the applicant incurred certain expenses in order to obtain redress before the Court, it considers that the sum requested is excessive.

71. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of 5,000 for the proceedings before the Court.

D. Default interest

72. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Rejects* the Government's request to strike the application out of the list;
2. *Declares* the complaints concerning Articles 1 of Protocol No. 1 and 6 § 1 on account of the application of Law 662 of 1996 admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that there is no need to examine the complaint under Article 6 § 1 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the following amounts:
 - (i) EUR 127,000 (one hundred and twenty seven euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 15,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 5,000 (five 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.

Done in English, and notified in writing on 25 November 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Deputy Registrar

András Sajó
President