



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

FIRST SECTION

CASE OF MALTESE AND OTHERS v. ITALY

(Applications nos. 31143/20 and 4 others – see appended list)

JUDGMENT

STRASBOURG

14 November 2024

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

In the case of Maltese and Others v. Italy,

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

Lətif Hüseyinov, *President*,

Raffaele Sabato,

Alain Chablais, *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 applicants listed in the appended table (“the applicants”), on the various dates indicated therein;

the decision to give notice of the complaints concerning Article 1 of Protocol No. 1 to the Convention and Article 13 of the Convention to the Italian Government (“the Government”) represented by their Agent, Mr L. D’Ascia;

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 17 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the decision of the domestic courts to reject the applicants’ claim for compensation for the losses suffered as a result of unlawful administrative decisions.

2. Following their participation in a recruitment procedure, the applicants were found eligible to be recruited by the Ministry of Defence, thus acquiring a “right to be hired”.

3. On 1 April 1994 the Ministry of Defence issued notice no. 20486 introducing a “hiring freeze” (*blocco delle assunzioni*), which had the effect of rejecting the applicants’ requests to be recruited.

4. The applicants appealed to the Lazio Regional Administrative Court, which held that the application of notice no. 20486 in respect of the applicants had been unlawful (see the judgments referred to in the appended table).

5. On various subsequent dates the applicants were recruited by the Ministry of Defence and, following the Regional Administrative Court’s judgments, they brought proceedings in the domestic courts, seeking compensation for the delay in their recruitment.

6. In those proceedings the *Consiglio di Stato* rejected the applicants' claims for compensation (see the appended table), finding that the administrative authority which had taken the unlawful decision had not been at fault, as it had committed an "excusable error" (*errore scusabile*) because of the lack of clarity of the applicable law.

7. Relying on Article 1 of Protocol No. 1 to the Convention and Article 13 of the Convention, the applicants complained that their claims for compensation had been rejected by the domestic courts and that the compensatory remedy was not "effective".

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

8. 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

9. The applicants complained that the decisions of the domestic courts to reject their claims for compensation for the losses suffered as a result of the unlawful administrative decision had amounted to a disproportionate interference with their "possessions".

10. 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.

11. The general principles for the determination of whether, in the absence of redress, an unlawful interference imposes an excessive individual burden have been summarised in *Immobiliare Saffi v. Italy* ([GC], no. 22774/93, §§ 57-59, ECHR 1999-V), *Iatridis v. Greece* ([GC], no. 31107/96, § 58, ECHR 1999-II), *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, § 180, ECHR 2006-V) and *Gashi v. Croatia* (no. 32457/05, §§ 40-41, 13 December 2007).

12. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful.

13. The Court observes that, in the instant case, it is undisputed that the administrative decision was unlawful under domestic law, as established by the domestic courts (see paragraph 4 above).

14. The Court has previously established that the excusable nature of an error made by domestic authorities does not justify an interference with property rights and it is not for the applicants to bear the consequences of any such errors (see, *mutatis mutandis*, *Gashi*, cited above, § 40). Furthermore, in the event that an error is the consequence of a lack of clarity of the applicable law, the Court emphasises that the requirement of lawfulness means that rules of domestic law must be sufficiently accessible, precise and foreseeable (see *Carbonara and Ventura v. Italy*, no. 24638/94, § 64, ECHR 2000-VI).

15. The Government argued that the hiring freeze had been aimed at controlling public expenditure and had therefore pursued the public interest. Furthermore, they stressed that the setting aside of the unlawful administrative decision amounted to sufficient redress for the applicants.

16. The Court reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of his or her status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Scordino*, cited above, § 180).

17. The Court observes that, although the unlawful decision was set aside and the applicants were subsequently recruited by the Ministry of Defence, they were not awarded compensation for the damage sustained as a result of the delay in their recruitment, solely on the ground of the excusable nature of the error committed by the administrative authority (see paragraph 6 above). Against this background, in the Court’s view, setting aside the unlawful decision did not afford the applicants sufficient redress.

18. Having regard to the above considerations, the Court finds that the interference in question is manifestly in breach of domestic law and, accordingly, incompatible with the applicants’ right to the peaceful enjoyment of their possessions. This conclusion makes it unnecessary to ascertain whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights.

19. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

20. In addition, the applicants complained under Article 13 of the Convention that, in view of the fact that the domestic courts had rejected their claims for compensation on the grounds that the administrative authority’s error was considered “excusable”, they did not have an effective domestic remedy at their disposal in respect of their complaint under Article 1 of Protocol No. 1.

21. The Court considers that in the light of its finding of a violation of Article 1 of Protocol No. 1 to the Convention (see paragraph 19 above), in

the circumstances of the present case it is not necessary to examine the applicants' complaint under Article 13 of the Convention separately (*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

22. In respect of pecuniary damage, the applicants claimed an amount corresponding to at least half of the salary that they would have been entitled to had they been recruited without undue delay. They claimed 50,000 euros (EUR) each in respect of non-pecuniary damage and the reimbursement of costs and expenses incurred in the proceedings in the domestic courts.

23. The Government argued that the applicants had failed to provide evidence of damage sustained.

24. The Court reiterates that a judgment in which it finds a breach imposes a legal obligation on the respondent State 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). Moreover, only damage sustained as a result of Convention violations found by the Court may give rise to the award of just satisfaction (see, among other authorities, *Éditions Plon v. France*, no. 58148/00, § 61, ECHR 2004-IV).

25. In the instant case, the Court has found that there has been a violation of Article 1 of Protocol No. 1 to the Convention, as the unlawful decision taken by the Ministry of Defence delayed the recruitment of the applicants (see paragraph 5 above). Regard being had to the documents in its possession, the Court considers it reasonable to award the sums indicated in the appended table.

26. With regard to costs and expenses in the domestic proceedings, the Court finds it reasonable to award the applicants EUR 5,000 jointly and dismisses the remainder of the claims.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaint concerning Article 1 of Protocol No. 1 to the Convention admissible;
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 admissibility and merits of the complaint under Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months:
 - (i) the amounts indicated in the appended table in respect of pecuniary and non-pecuniary damage, plus any tax that may be chargeable;
 - (ii) EUR 5,000 (five thousand euros) to the applicants jointly, plus any tax that may be chargeable to them, 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Lətif Hüseynov
President

MALTESE v. ITALY JUDGMENT

APPENDIX

List of cases:

No.	Application no. Case name Date of introduction	Applicant's name Year of birth Place of residence Nationality	Representative's name Location	Judicial decision declaring the Ministry of Defence's notice no. 20486 of 01/04/1994 unlawful	Judicial proceedings for compensation - final judgment	Amount awarded by the Court in respect of pecuniary and non-pecuniary damage (in euros) ¹
1.	31143/20 Maltese v. Italy 17/07/2020	Valentina MALTESE 1970 Rome Italian	Maria Rosaria DAMIZIA Rome	Judgment of the Lazio Regional Administrative Court, R.G. 11949/1994, 25/02/2002	Judgment of the <i>Consiglio di Stato</i> , R.G. 9838/2014, 18/10/2019	24,250
2.	31255/20 Corsi v. Italy 17/07/2020	Vittorio CORSI 1964 Rome Italian	Maria Rosaria DAMIZIA Rome	Judgment of the Lazio Regional Administrative Court, R.G. 10280/1995, 04/03/2002	Judgment of the <i>Consiglio di Stato</i> , R.G. 9087/2014, 18/10/2019	18,000
3.	31721/20 Maltese v. Italy 17/07/2020	Loredana MALTESE 1952 Rome Italian	Maria Rosaria DAMIZIA Rome	Judgment of the Lazio Regional Administrative Court, R.G. 10564/1994, 25/02/2002	Judgment of the <i>Consiglio di Stato</i> , R.G. 9857/2014, 18/10/2019	24,250
4.	32656/20 Maesano v. Italy 17/07/2020	Cecilia MAESANO 1949 Rome Italian	Maria Rosaria DAMIZIA Rome	Judgment of the Lazio Regional Administrative Court, R.G. 11945/1994, 29/01/2003	Judgment of the <i>Consiglio di Stato</i> , R.G. 9837/2014, 18/10/2019	29,500
5.	50986/20 Gugliotta v. Italy 05/11/2020	Stefania GUGLIOTTA 1970 Rome Italian	Maria Rosaria DAMIZIA Rome	Judgment of the Lazio Regional Administrative Court, R.G. 11945/1994, 29/01/2003	Judgment of the <i>Consiglio di Stato</i> , R.G. 9836/2014, 05/05/2020	32,000

¹ Plus any tax that may be chargeable.