



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

FOURTH SECTION

CASE OF MANGO v. ITALY

(Application no. 38591/06)

JUDGMENT

STRASBOURG

5 May 2015

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

In the case of Mango v. Italy,

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

Ledi Bianku, *President*,

Paul Mahoney,

Krzysztof Wojtyczek, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 14 April 2015,

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

PROCEDURE

1. The case originated in an application (no. 38591/06) 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 an Italian national, Mr Giovanni Mango (“the applicant”), on 22 September 2006.

2. The applicant was represented by Mr G. Romano and Mr. C. Mango, lawyers practising in Benevento. 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 17 September 2007 the application was communicated to the Government.

4. On 7 March 2013 Giovanni Mango died. His son, Francesco Mango and his daughter, Vincenzina Mango, expressed their wish to pursue the application. For ease of reference, the present judgment will continue to refer to Mr Mango as “the applicant”.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1929 and lived in Moiano.

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

7. The applicant was the owner of a plot of land in Moiano. The land in issue was recorded on the land register as folio no. 11, parcels no. 392 and 396.

8. On 18 June 1987, a decree authorising the Moiano Municipality to take possession of a portion of the applicants’ land was issued for a period

of three years, through an expedited procedure and on the basis of a public-interest declaration, in order to begin the construction of a road.

9. On 14 July 1987 the authorities took physical possession of the land.

10. By a writ served on 1 October 1990, the applicant brought an action for damages against the Moiano Municipality before the Benevento District Court. He 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. He claimed a sum corresponding to the market value of the land and a further sum in damages for the loss of enjoyment of the land during the period of lawful occupation.

11. On an unspecified date the court ordered an expert valuation of the land. In a report submitted in September 1992, the expert concluded that the occupied land covered a surface area of 109 square metres. The expert further concluded that the market value of the land on the date the land had been irreversibly transformed, which he identified as having occurred in May 1998, corresponded to 50,000 Italian lire (ITL) (EUR 25.80) per square metre.

12. By a judgment delivered on 9 March 2005 and filed with the court registry on 18 March 2005, the Benevento District Court declared that the possession of the land, which had been initially authorised, had become unlawful as of 14 July 1990. It found that the land had been irreversibly transformed by the public works. As a result, in accordance with the constructive-expropriation rule (*occupazione acquisitiva* or *accessione invertita*), the applicants had been deprived of their property, by virtue of its irreversible alteration, on the date on which the possession had ceased to be lawful. In the light of those considerations, the court concluded that the applicant was entitled to compensation in consideration for the loss of ownership caused by the unlawful occupation.

13. The court drew on the expert valuation and considered that the market value of the land, which in 1998 corresponded to ITL 50,000 (EUR 25.82) per square metre, corresponded to ITL 57,000 (EUR 29.43) per square metre on the date the occupation had become unlawful in 1990.

14. The court held that the applicant was entitled to compensation, calculated in accordance with Law no. 662 of 1996, which had entered into force in the meantime, in the sum of ITL 2,997,500 (equivalent to EUR 1,548.08), to be adjusted for inflation, plus statutory interest.

15. The court further awarded the applicant ITL 408,750 (equivalent to EUR 211.10) as compensation for the damage occasioned by the unavailability of the land during the period from the beginning of the lawful occupation (June 1987) until the date of loss of ownership (July 1990), as well as ITL 5,000,000 (EUR 2,582.28) for the damage caused by the building works and ITL 3,000,000 (EUR 1,549.37) as compensation for the decrease in the value of the adjoining land.

16. The judgment became final in May 2006.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. 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).

18. 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.

19. 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.

20. 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

21. By a letter dated 4 November 2014 the Government submitted a unilateral declaration with a view to resolving the issues raised by the present application and requested the Court to strike it out of its list of cases.

22. The Government informed the Court that they were ready to accept that there had been a violation of Article 1 of Protocol No. 1. In respect of pecuniary damage, non-pecuniary damage, and costs and expenses, the Government proposed to award the applicant EUR 3,485.

23. The applicant did not take a position on the unilateral declaration.

24. 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).

25. 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 *Przemysław v. Poland*, no. 22426/11, § 39, 17 September 2013).

26. 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).

27. Therefore, the Court considers that, in the particular circumstances of the applicant's 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.

28. 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

29. The applicant complained that he had been deprived of his 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."

30. The Government contested the applicant's argument.

A. Admissibility

31. In its observations of 11 December 2007 the Government submitted that the applicant had failed to exhaust domestic remedies in that he had not lodged an appeal against the judgment of the Benevento District Court.

32. The applicant challenged the Government's objection.

33. The Court reiterates that it has already rejected similar submissions in previous cases (see *Colacrai v. Italy (no. 1)*, no. 63296/00, 13 October 2005; *Colacrai v. Italy (no. 2)*, no. 63868/00, 15 July 2005; *Colazzo v. Italy*, no. 63633/00, 13 October 2005; *Pia Gloria Serrilli and Others v. Italy*, nos. 77823/01, 77827/01 and 77829/01, 17 November 2005; *Serrilli v. Italy*, no. 77822/01, 6 December 2005; *Giacobbe and Others v. Italy*, no. 16041/02, 15 December 2005; *Sciarrotta and Others v. Italy*, no. 14793/02, 12 January 2006; *Izzo v. Italy*, no. 20935/03, 2 March 2006; and *Gianni and 8 Others v. Italy*, no. 35941/03, 30 March 2006). The Court finds no reason to depart from its previous conclusions and considers that the objection must be dismissed.

34. 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

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

36. 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.

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

38. 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.

39. In the instant case, the Court notes that, pursuant to the constructive-expropriation rule, the Benevento District Court held that the applicants had been deprived of their land on 14 July 1990. 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 May 2006, when the judgment of the Benevento District Court became final.

40. 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 (see also paragraph 22 above).

41. 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

42. The applicant alleged that the enactment and application to his case of Law no. 662 of 1996 amounted to interference by the legislature in breach of his 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

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

B. Merits

44. The Court has found that the interference with the applicant’s property rights was not compatible with the principle of lawfulness and that it therefore infringed the applicant’s right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 (see paragraphs 37-41 above).

45. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. With regard to pecuniary damage, the applicant claimed an amount corresponding to the market value of the land, readjusted for inflation and increased by the amount of interest due, as well as compensation for the damage caused to buildings and the destruction of crops present on the land. The applicant further sought compensation for the period of lawful occupation. In March 2008, the sum claimed amounted to EUR 84,380, readjusted for inflation and increased by the amount of interest due.

48. The Government contested that amount.

49. 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).

50. 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 applicant’s 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.

51. The Court held that the reparation of the pecuniary damage must be equal to the full market value of the property on the date 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.

52. In the present case, reference can be made to the Benevento District Court’s judgment, according to which the applicant lost his right of

ownership of the land on 14 July 1990. On the basis of the court-ordered expert report drawn up during the domestic proceedings before the Benevento District Court, the market value of the land during that period corresponds to ITL 6,213,000 (EUR 3,209).

53. In light of the difference between the market value of the land when the applicants lost ownership and the amount obtained at the domestic level, increased by a sum reflecting inflation adjustment and interest, and ruling on an equitable basis, the Court considers it reasonable to award the applicant EUR 8,800 plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

54. The applicant did not submit any claim for just satisfaction in respect of non-pecuniary damage. Accordingly, the Court considers that it is unnecessary to make an award under this head.

C. Costs and expenses

55. The applicant submitted a bill of costs and expenses and sought the reimbursement of EUR 15,110.77 for the costs and expenses incurred before the present Court.

56. The Government contested the amount.

57. 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).

58. 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.

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

D. Default interest

60. 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 application 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 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 8,800 (eight thousand eight hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) 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 5 May 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Ledi Bianku
President