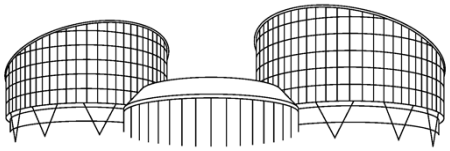

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SOCIETÀ AGRICOLA MOCENIGA PESCA S.S. DI SIVIERO ALESSANDRA & C. v. ITALY

(Application no. 13643/22)

JUDGMENT

STRASBOURG

14 November 2024

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

In the case of Società Agricola Moceniga Pesca S.S. di Siviero Alessandra & C. v. Italy,

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

Lətif Hüseynov*, President*,
Raffaele Sabato,
Alain Chablais*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 13643/22) 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 11 March 2022 by an Italian company, Società Agricola Moceniga Pesca S.S. di Siviero Alessandra & C. ("the applicant company"), represented by Mr G.D. Toffanin, a lawyer practising in Rovigo;

the decision to give notice of the complaint concerning Article 1 of Protocol No. 1 to the Convention to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia, and to declare the remainder of the application inadmissible;

the parties' observations;

the decision to reject the Government's objection to the examination of the application 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 applicant company's claim for compensation for the losses suffered as a result of unlawful administrative decisions.

2. The applicant company runs an aquaculture business.

3. Between 9 July and 6 November 2003, the Province of Rovigo revoked the professional fishing licences of the members of the applicant company, rejected the company's request for the renewal of its shellfish aquaculture concession and refused to provide it with a fishing permit. Those decisions were followed by further administrative decisions to the detriment of the applicant company, which were aimed at preventing it from continuing its professional activities, including the cultivation and farming of shellfish.

4. The applicant company appealed against the above-mentioned administrative decisions. Its appeal was rejected by the Veneto Regional Administrative Court (judgment no. 311/2004).

5. On 4 June 2004 the *Consiglio di Stato* granted a request by the applicant company for interim measures suspending the effect of the administrative decisions under appeal, and on 29 April 2005 it held that the decisions had

been unlawful (judgment no. 2034/2005). The applicant company subsequently brought proceedings in the domestic courts, seeking compensation for the damage suffered.

6. On 7 December 2021 the *Consiglio di Stato* rejected the applicant company's claim for compensation (judgment no. 8165/2021), finding that the administrative authorities which had taken the unlawful decisions had not been at fault, as they 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, the applicant company complained that its claim for compensation had been rejected by the domestic courts.

THE COURT'S ASSESSMENT

8. The applicant company complained that the decision of the domestic courts to reject its claim for compensation for the damage suffered as a result of the unlawful administrative decisions had amounted to a disproportionate interference with its "possessions".

9. 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.

10. 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).

11. 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.

12. The Court observes that, in the instant case, it is undisputed that the administrative decisions were unlawful under domestic law, as established by the domestic courts (see paragraph 5 above).

13. The Court has previously established that the excusable nature of an error made by the domestic authorities does not justify an interference with property rights, and it is not for 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).

14. The Government argued that the domestic authorities' decisions had been aimed at protecting the environment and preventing illegal fishing

activities and stressed that the setting aside of the unlawful administrative decisions amounted to sufficient redress for the applicant company.

15. 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).

16. The Court observes that, although the unlawful decisions were set aside, the applicant company was not awarded compensation for any damage sustained while the decisions werein force, solely because of the excusable nature of the error committed by the administrative authorities (see paragraph 6 above). Against this background, in the Court's view, setting aside the unlawful decisions did not afford the applicant company sufficient redress.

17. Having regard to the above considerations, the Court finds that the interference in question was manifestly in breach of domestic law and, accordingly, incompatible with the right of the applicant company to the peaceful enjoyment of its 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.

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicant company claimed 852,846 euros (EUR) in respect of pecuniary damage, as determined by the expert appointed by the Veneto Regional Administrative Court in the domestic proceedings for compensation, EUR 250,000 in respect of non-pecuniary damage and EUR 142,659.86 in respect of costs and expenses incurred both before the domestic courts and the Court.

20. The Government argued that the applicant company had failed to provide evidence of the damage sustained.

21. 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 (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).

22. 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 decisions

taken by the administrative authorities prevented the applicant company from conducting its business from July 2003 to June 2004 (see paragraphs 3 and 5 above). Nevertheless, the Court observes that the applicant company has not provided evidence of the costs incurred during those months of inactivity. The expert report submitted by the applicant company stated that it could reasonably be concluded that the forced suspension of the applicant company's operations had caused the death of part of its shellfish stock, but subsequently it focused exclusively on the applicant company's alleged loss of earnings.

23. In this connection, the Court reiterates that where a loss of earnings (*lucrum cessans*) is alleged, it must be conclusively established and must not be based on mere conjecture or probability (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 219, ECHR 2012).

24. The Court finds that the applicant company did indeed suffer a loss of earnings as a result of its inability to derive any profit whatsoever from the sale of the dead shellfish. It considers, however, that the evidence before it cannot lead to a precise assessment of pecuniary damage, since this type of damage involves many uncertain factors, making it impossible to calculate the exact amounts capable of affording fair compensation. In particular, the expert report submitted by the applicant company only determined the market value of the dead shellfish and the overall earnings that the company could otherwise have made. Nevertheless, the applicant company has not provided evidence demonstrating the quantity of shellfish that it would have expected to sell, even though the domestic courts had already highlighted the lack of this essential information in the proceedings for compensation.

25. In those circumstances, without speculating on the profit which the applicant company would have made if the violation of the Convention had not occurred, the Court considers it appropriate to award a lump sum in compensation for the loss of earnings resulting from its inability to sell part of the shellfish stock.

26. In view of the foregoing, and making its assessment on an equitable basis, the Court considers it reasonable to award the applicant company an aggregate sum of EUR 110,000, covering all heads of damage, plus any tax that may be chargeable on that amount.

27. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 10,000 for costs and expenses incurred in the domestic proceedings and before the Court, plus any tax that may be chargeable to the applicant company and dismisses the remainder of the claim.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant company, within three months, the following amounts:
      (i) EUR 110,000 (one hundred and ten thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant company, 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;

4. *Dismisses* the remainder of the applicant company's 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