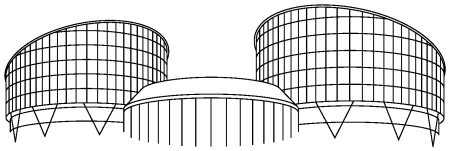

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ROSSI AND VARIALE v. ITALY

(Application no. 2911/05)

JUDGMENT

STRASBOURG

3 June 2014

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

In the case of Rossi and Variale 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 13 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 2911/05) 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 five Italian nationals, Mr Fulvio Rossi, Mrs Alessandra Rossi, Mrs Amalia Rossi, Mrs Maria Luisa Rossi and Mrs Bruna Variale ("the applicants"), on 18 January 2005.

2. The applicants were represented by Mr A. Saccucci, a lawyer practising in Rome. The Italian Government ("the Government") were represented by their Agent, Ms E. Spatafora, their former co-Agent, Mr N. Lettieri, and their co-Agent, Ms P. Accardo.

3. On 30 June 2006 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1948, 1939, 1946, 1973 and 1941 respectively. The first applicant, Mr Fulvio Rossi, lives in Turin, while the other applicants live in Naples.

5. The applicants inherited a plot of land in Crispano. The land in issue – of a surface area of 8,950 square metres – was recorded in the land register as Folio no. 2, Parcel no. 44.

6. On 9 February 1982 the Mayor of Crispano issued a decree authorising the Municipality to take possession, through an expedited procedure and on the basis of a public-interest declaration, of 416 square metres of the applicants' land in order to begin the construction of a road.

7. On 23 March 1982 the authorities took physical possession of the land.

8. By a writ served on 30 May 1990, the applicants brought an action for damages against the Crispano Municipality in the Naples District Court. They 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 and a further sum in damages for the loss of enjoyment of the land, both during the periods of lawful and unlawful occupation. Lastly, the applicants claimed compensation for the demolition of buildings and the destruction of crops present on the land.

9. On an unspecified date the court ordered an expert valuation of the land. In a report submitted on 5 November 1996 the expert concluded that the market value of the land on the date of its irreversible alteration, which he identified as having occurred in 1987, corresponded to 73,682 Italian lire (ITL) per square metre (38.054 euros (EUR)).

10. By a judgment delivered on 31 May 2000 and filed with the court registry on 12 January 2001, the Naples District Court declared that the possession of the land, which had been initially authorised, had become unlawful as of 23 March 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 applicants were entitled to compensation in consideration for the loss of ownership caused by the unlawful occupation.

11. The court considered that the land could be classified as building land and that its market value on the date the occupation had become unlawful (23 March 1990) corresponded to ITL 275,000 per square metre (EUR 142.026).

12. The court held that the applicants were 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 61,339,393 (equivalent to EUR 31,679.53), to be adjusted for inflation, plus statutory interest.

13. The court further awarded the applicants ITL 22,305,234 (EUR 11,519.692) as compensation for the damage occasioned by the unavailability of the land during the period from the beginning of the lawful occupation (23 March 1982) until the date of loss of ownership (23 March 1990), as well as 45,400,000 (EUR 23,447.143) as compensation for the demolition of buildings and the destruction of crops present on the land.

14. On 31 May 2001 the Municipality appealed against the order before the Naples Court of Appeal.

15. By a judgment of 27 May 2003 the Court of Appeal held that the applicants were entitled to compensation in the sum of EUR 48,899.90 to be adjusted for inflation, plus statutory interest for the loss of ownership caused by the unlawful occupation. The court further awarded EUR 7,090.90 as compensation for the period of lawful occupation from 23 March 1982 to 23 March 1990.

16. The judgment became final on 31 October 2004.

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 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 Article 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 provided that international obligations must be complied with. Since that judgment, the provision in question can no longer be applied in the context of pending national proceedings.

20. The domestic legislation was amended in several respects 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 two letters dated 4 November 2013 and 19 February 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.

22. In respect of pecuniary damage, non-pecuniary damage, and costs and expenses, the Government proposed to award the applicants EUR 89 251,02.

23. By a letter dated 10 December 2013 the applicants objected to the Government's proposal.

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 *Przemyk 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 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.

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 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."

30. The Government contested the applicants' argument.

A. Admissibility

31. 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

32. 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.

33. 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.

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

35. 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; and *Velocci v. Italy*, no. 1717/03, 18 March 2008) for a summary of the relevant principles and an overview of its case-law on the subject.

36. In the instant case the Court notes that, in accordance with the constructive expropriation rule, the national courts held that the applicants had been deprived of their land from 23 March 1990 (see paragraph 10 above). The Court considers that that situation could not be regarded as "foreseeable" as it was only in the final decision 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 31 October 2004 at the latest, when the judgment of the Naples Court of Appeal became final.

37. 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 applicants' right to the peaceful enjoyment of their possessions.

38. 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

39. The applicants alleged that the enactment and application to their case of Article 5 *bis* of Legislative Decree no. 333 of 1992, as amended by Law no. 662 of 1996, amounted to an 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

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

B. Merits

41. 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 31-37 above).

42. 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, and *Macrì and Others v. Italy*, no. 14130/02, §§ 46-50, 12 July 2011).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

43. The applicants further complained, under Article 13, that they did not have an effective remedy by which to challenge the compatibility of the constructive-expropriation rule with Article 1 of Protocol No. 1.

44. Lastly, the applicants submitted that the retrospective application of Article 5 *bis* of Legislative Decree no. 333 of 1992, as amended by Law no. 662 of 1996, had given rise to an unjustified difference in treatment contrary to Article 14 of the Convention, read together with Article 1 of Protocol No. 1, between those citizens affected by the provisions in question and those who had obtained a final judgment before the enactment and entry into force of the legislation and had, consequently, received compensation in full for the deprivation of their land.

A. Admissibility

45. The Court notes that these complaints are closely linked to the one lodged under Article 1 of Protocol No. 1 and must therefore likewise be declared admissible.

B. Merits

46. Having regard to the conclusion drawn in respect of the complaint under Article 1 of Protocol No. 1, as well as the changes in domestic legislation introduced following the Constitutional Court's judgments nos. 348 and 349 of 22 October 2007 (see paragraphs 18-20 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13 and Article 14 taken in conjunction with Article 1 of Protocol No. 1.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. With regard to pecuniary damage, the applicants claimed the payment of a sum equivalent to the difference between the market value of the property and the amount obtained at the national level, readjusted for inflation and increased by the amount of interest due, as well as

compensation for the period of lawful occupation of their land. In July 2013, the total sum claimed amounted to EUR 183,537,29.

49. The Government contested the amount.

50. 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).

51. The Court further observes that, in the *Guiso-Gallisay v. Italy* judgment (just satisfaction) ([GC], no. 58858/00, 22 December 2009), 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.

52. 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.

53. In the present case reference can be made to the domestic courts' judgments, according to which the applicants lost their right of ownership of the land on 23 March 1990 (see paragraphs 10 and 15 above) and the market value of the land at that date corresponded to ITL 275,000 per square metre (EUR 142.026).

54. Having regard to the foregoing factors, and ruling on an equitable basis, the Court considers it reasonable to award the applicants EUR 130,000 plus any tax that may be chargeable on that amount, to be divided among the applicants in accordance with their respective shares in the property as provided by domestic law.

55. The loss of opportunities sustained by the applicants following the expropriation remains to be assessed (see *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 (1 January 1981) until the date of loss of ownership (12 September 1986). Ruling on an

equitable basis, the Court awards the applicants jointly EUR 7,000 for loss of opportunities.

B. Non-pecuniary damage

56. The applicants claimed EUR 50,000 (EUR 10,000 for each applicant) in respect of non-pecuniary damage.

57. The Government did not submit any observations on this issue.

58. 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 them considerable non-pecuniary damage that should be compensated in an appropriate manner.

59. 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

60. Submitting documentary evidence in support of their claim, the applicants claimed EUR 53,248.41 for the costs and expenses incurred before the domestic courts and EUR 3,412.88 for those incurred before the present Court.

61. The Government contested that amount.

62. 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 (see *Can and Others v. Turkey*, no. 29189/02, § 22, 24 January 2008).

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

64. 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 costs and expenses incurred in the proceedings before the domestic courts and in Strasbourg.

D. Default interest

65. 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 complaints under Articles 6 § 1, 13, and 14 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicants jointly, within three months, the following amounts:
      (i) EUR 137,000 (one hundred and thirty-seven thousand euros), to be divided among the applicants in accordance with their respective shares in the property as provided by domestic law, plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 15,000 (fifteen 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 3 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos	András Sajó
Deputy Registrar	President