



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

FOURTH SECTION

CASE OF RUSSO v. ITALY

(Application no. 14231/05)

JUDGMENT

STRASBOURG

5 May 2015

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

In the case of Russo 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. 14231/05) 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 an Italian national, Mr Sebastiano Russo (“the applicant”), on 19 March 2005.

2. 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 12 May 2006 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1943 and lives in Rome.

5. The applicant was the owner of a plot of land in Randazzo (Catania). The land in issue was recorded in the land register as Folio no. 57, Parcels no. 24, 28, 31, 32, 35 and 360.

6. By an order issued on 5 August 1981, the regional administrative authorities approved a land development plan for the construction of a road on the applicant’s land.

7. On 24 February 1984 the Mayor of Randazzo issued a decree authorising the Randazzo Municipality to take possession, through an expedited procedure and on the basis of a public-interest declaration, of a portion of the applicant’s land in order to begin the construction of the road.

8. On 2 April 1984 the authorities took physical possession of the land.

9. By a writ served on 26 July 1991, the applicant brought an action for damages against the Randazzo Municipality before the Catania 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 during the period of lawful occupation.

10. On an unspecified date the court ordered an expert valuation of the land. In his report the expert concluded that the occupied land covered a surface area of 2,235 square metres and confirmed that it could be classified as agricultural land. He further concluded that the market value of the land on the date the occupation became unlawful, which was identified as having occurred on 2 April 1990, amounted to 9,000,000 Italian Lire (ITL).

11. By a judgment delivered on 26 May 1999 and filed with the court registry on 8 June 1999, the Catania District Court declared that the possession of the land, which had been initially authorised, had become unlawful as of 2 April 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 applicant had been deprived of his 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.

12. The court drew on the expert valuation to conclude that the land could be classified as agricultural land and that its market value on the date the occupation had become unlawful in 1990 corresponded to ITL 9,000,000 (approximately EUR 4,600), to be adjusted for inflation, plus statutory interest. The court further awarded the applicant ITL 2,339,600 (approximately EUR 1,200) as compensation for the damage occasioned by the unavailability of the land during the period from the beginning of the lawful occupation (24 February 1984) until the date of loss of ownership (13 July 1990), as well as ITL 5,150,000 (approximately EUR 2,700) as compensation for the decrease in the value of the adjoining land.

13. On 17 July 2000 the Municipality appealed against the judgment before the Catania Court of Appeal, primarily contesting the assessment of the property's market value by the court-appointed expert and arguing that the District Court's awards for damages ought to be reduced.

14. The applicant lodged a cross-appeal whereby he also challenged the court-appointed expert's findings with regard to the calculation of the land's market value and criticised the expert's assessment methods which led, in his view, to an under-evaluation of the land.

15. By a judgment delivered on 30 July 2002 and filed with the court registry on 25 June 2003, the Court of Appeal reduced the amount to be awarded as compensation concerning the adjoining land that had not been subject to occupation but that had nonetheless been damaged to 4,950,000 ITL (approximately EUR 2,500). The court upheld the remainder of the Catania District Court's judgment. It considered that the first instance court had awarded a sum equal to the property's full market value. In the court's view, the latter sum had been correctly determined by the court-appointed expert, who had taken into account the land's actual characteristics and reached his conclusions by means of a standard methodology.

16. The judgment became final in September 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 the 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 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. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

21. 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.”

22. The applicant further contended that he had not received an amount corresponding to the real market value of the land due to an under-evaluation by the court-appointed expert.

23. The Government contested the applicant’s arguments.

A. Admissibility

24. The Government contended that the applicant was no longer a victim of the alleged violation as he had obtained, at the national level, an amount corresponding to the full market value of the expropriated land.

25. The applicant, for his part, considered that he was still a “victim” of the violation in that the amount that had been awarded to him by at the national level did not reflect the real market value of the land.

26. The Court reiterates that, according to its established case-law, the word “victim” in the context of Article 34 denotes the person directly affected by the act or omission in issue, the existence of a violation of the Convention being conceivable even in the absence of prejudice; prejudice is relevant only in the context of Article 41. Consequently, a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his 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 *Guerrera and Fusco v. Italy*, no. 40601/98, § 53, 3 April 2003, and *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III).

27. With regard to the redress afforded at the national level, the Court observes that the domestic courts awarded a sum corresponding to the full market value of the expropriated land, readjusted for inflation and increased by the amount of interest due. It emerges from the decision of the Catania Court of Appeal that the market value of the land had been correctly determined by the court-appointed expert, who had taken into account the land’s actual characteristics and reached his conclusions by means of a standard methodology. The Court finds no reason to hold otherwise.

28. As to the first condition, which is the finding of a violation by the national authorities, the Court notes at the outset that the domestic proceedings in question came to an end well before the Constitutional Court delivered its judgment declaring that Article 5 *bis* of Legislative Decree

no. 333 of 11 July 1992 was unconstitutional in that it contravened Article 1 of Protocol No. 1. Therefore, in the present case it can be concluded that the national authorities have not acknowledged, either expressly or in substance, the breach of the Convention (see *Giannitto v. Italy* [Committee], no. 1780/04, §§ 30-31, 28 January 2014, and, by contrast, *Armando Iannelli v. Italy*, no. 24818/03, 12 February 2013).

29. In the present case, therefore, the Court concludes that the applicant has not lost his status as a “victim” for the purposes of Article 34 of the Convention.

30. The Government’s objection must therefore be rejected.

31. The Court notes that the 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 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.

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. The Government further pointed out that the applicant had obtained, at the national level, an amount corresponding to the full market value of the expropriated land.

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 court held that the applicant had been deprived of his land from 2 April 1990 (see paragraph 10 above). The transfer of property to the authorities therefore occurred upon completion of the public works. 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 applicant did not become certain that he had been deprived of his land until September 2004 at the latest, when the judgment of the Catania 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 applicant’s right to the peaceful enjoyment of his possessions.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed EUR 200,000 in respect of pecuniary damage.

41. The Government contended that the applicant had obtained an amount corresponding to the full market value of the expropriated land in conformity with the criteria established by the Court.

42. 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).

43. 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.

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

45. The Court notes that, at the national level, the applicant received a sum corresponding to the full market value of the expropriated land, readjusted for inflation and increased by the amount of interest due, calculated from the date the applicant lost his right of ownership (see paragraph 10 above). Accordingly, the Court makes no award in this regard (see *Giannitto v. Italy*, cited above, § 45, and *Rubortone and Caruso v. Italy* [Committee], no. 24892/03, § 61, 5 February 2013).

B. Non-pecuniary damage

46. The applicant claimed EUR 250,000 in respect of non-pecuniary damage.

47. The Government contested that amount.

48. The Court considers that the feelings of powerlessness and frustration arising from the violation of the applicant's rights under Article 1 of Protocol No. 1 caused them a certain degree of non-pecuniary damage that should be compensated in an appropriate manner.

49. Having regard to the foregoing and ruling on an equitable basis, the Court decides to award EUR 8,500 to the applicant under this head.

C. Costs and expenses

50. With regard to the costs incurred in the proceedings before the Catania Court of Appeal, the applicant submitted a bill of costs and expenses and sought the reimbursement of EUR 3,181.38. With regard to the costs incurred in the proceedings before the Court, the applicant submitted a bill of costs and expenses and sought the reimbursement of EUR 14,688.

51. The Government contested the amounts.

52. 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).

53. The Court does not dispute the submission that the applicant incurred certain expenses in order to obtain redress before it and before the Catania Court of Appeal, but considers that the sum requested is excessive.

54. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award a total sum of 7,000 with respect to costs and expenses.

D. Default interest

55. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts:
 - (i) EUR 8,500 (eight thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable to the applicant, 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