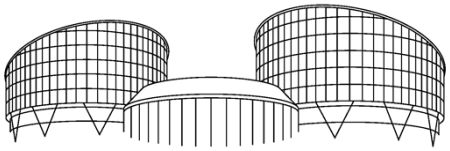

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SICOP S.R.L. v. ITALY

(Application no. 7523/23)

JUDGMENT

STRASBOURG

14 November 2024

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Sicop S.r.l. 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. 7523/23) 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 3 February 2023 by an Italian company, Sicop S.r.l. ("the applicant company"), represented by Mr G. Di Pardo, a lawyer practising in Campobasso;

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, 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 is an energy company.

3. On 7 July 2015 it obtained authorisation to build a wind farm.

4. On 9 July 2015 the applicant company began construction work on the wind farm. The work was suspended the following day by a work suspension order issued by the Ministry of Culture.

5. On 23 July 2015 the Molise Regional Administrative Court issued an order on interim measures, temporarily authorising the applicant company to carry out the preliminary work for the construction of the wind farm. It further held that the applicant company was required to take out an insurance policy.

6. On 6 August 2015 the Prime Minister's Office clarified the scope of the authorisation given to the applicant company.

7. On 22 September 2015 the Ministry of Culture issued a second order to suspend construction.

8. On 24 September 2015 the Molise Regional Administrative Court delivered its second decision on interim measures, authorising the applicant company to finish the construction of the wind farm.

9. On 5 October 2015 the Ministry of Culture issued a third work suspension order because the applicant company had failed to take out an insurance policy as instructed by the administrative court on 23 July (see paragraph 5 above). The applicant company took out the required insurance policy on 12 October 2015.

10. On 29 October 2015 the applicant company completed construction and the wind farm began operating immediately.

11. On 6 April 2016 the Molise Regional Administrative Court found that the work suspension orders issued by the Ministry of Culture on 10 July, 22 September and 5 October 2015 had been unlawful (judgment no. 189/2016). The orders were lifted, the judgment was not appealed against and it became final. The applicant company subsequently brought civil proceedings to obtain redress for the losses incurred as a consequence of the Ministry of Culture's unlawful orders.

12. On 25 October 2022 the *Consiglio di Stato* rejected the applicant company's claim for compensation (judgment no. 9064/2022). As to the first work suspension order, it found that the Ministry of Culture had not been at fault prior to the clarification issued by the Prime Minister's Office on 6 August 2015. Instead, the Ministry had made an "excusable error" (*errore scusabile*) on account of the lack of clarity of the scope of the authorisation (see paragraph 6 above). Furthermore, the court held that the applicant company had in any event obtained permission from the Regional Administrative Court on 23 July 2015 to carry out the preliminary works for the construction of the wind farm (see paragraph 5 above). As to the second and third work suspension orders, the *Consiglio di Stato* concluded that there was no causal link between the unlawful suspensions and the losses alleged by the applicant company, as the second order had been lifted after only two days (see paragraphs 7-8 above) and the third one had been issued as a result of the applicant company's uncooperative behaviour in failing to correctly comply with the order of the Regional Administrative Court (see paragraph 9 above).

13. Relying on Article 1 of Protocol No. 1 to the Convention and Article 13 of the Convention, the applicant company complained that its claim for compensation had been rejected by the domestic courts and that the compensatory remedy was not "effective".

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

14. The applicant company complained that the decision of the domestic courts to reject its claim for compensation for the losses suffered as a result

of unlawful administrative decisions had amounted to a disproportionate interference with its "possessions".

15. 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.

16. 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).

17. 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.

18. The Court observes that, in the instant case, it is undisputed that the work suspension orders issued by the Ministry of Culture were unlawful, as established by the domestic courts (see paragraph 11 above).

19. 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 the applicants to bear the consequences of any such errors (see, *mutatis mutandis*, *Gashi*, cited above, § 40).

20. The Government argued that the work suspension orders issued by the Ministry of Culture had been aimed at protecting the natural landscape and that the short duration of the suspensions had not affected the interests of the applicant company. In any event, it stressed that lifting the unlawful orders amounted to sufficient redress.

21. 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).

22. The Court notes that, although the work suspension orders were declared unlawful and lifted (see paragraph 11 above), the applicant company was not awarded compensation for any damage sustained. Whereas the claim for compensation was rejected in respect of the second and the third orders because there was no causal link between the unlawful suspensions deriving from those orders and the damage alleged, in respect of the first order the company was not awarded compensation only because of the excusable nature of the error made by the administrative authority (see paragraph 12 above). Against this background, in the Court's view, lifting the unlawful first order did not afford the applicant company sufficient redress.

23. That finding is sufficient for the Court to find that the applicant company suffered an interference which was manifestly in breach of domestic

law and, accordingly, incompatible with the right 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.

24. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the first work suspension order.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

25. In addition, the applicant company complained under Article 13 of the Convention that, in view of the fact that the domestic courts had denied it compensation on the grounds that the administrative authority's error was considered "excusable", it did not have an effective domestic remedy at its disposal in respect of its complaint under Article 1 of Protocol No. 1.

26. The Court considers that, in the light of its finding of a violation of Article 1 of Protocol No. 1 to the Convention in the circumstances of the present case (see paragraph 24 above), it is not necessary to examine the applicant company's complaint under Article 13 of the Convention separately (see *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

27. The applicant company claimed 971,574.75 euros (EUR) in respect of pecuniary and non-pecuniary damage and EUR 40,045.55 in respect of costs and expenses incurred before the Court.

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

29. The Court observes that the construction of the wind farm began on 9 July 2015 and was completed on 29 October 2015 (see paragraphs 4 and 10 above) and that, despite the unlawful work suspension orders, the domestic authorities granted the applicant company's requests for interim measures in a timely manner (see paragraphs 5 and 8 above). In the absence of any evidence substantiating any losses suffered by the applicant company, the Court does not discern any causal link between the violation found and the pecuniary damage alleged and rejects this claim. However, it awards the applicant company EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

30. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 2,000 for costs and expenses for the proceedings before the Court, plus any tax that may be chargeable to the applicant company.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 1 of Protocol No. 1 to the Convention admissible;

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

3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant company, within three months, the following amounts:
      (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two 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;

5. *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	Lətif Hüseynov
Deputy Registrar	President