



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

FOURTH SECTION

CASE OF SCORDINO v. ITALY (no. 3)

(Application no. 43662/98)

JUDGMENT
(Just Satisfaction)

STRASBOURG

6 March 2007

FINAL

09/07/2007

This judgment shall become final in the circumstances set out in Article 44 (2) of the Convention. It may be subject to editorial revision.

In the case of Scordino v. Italy (no. 3),

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL

Mr G. BONELLO,

Mr K. TRAJA,

Mr L. GARLICKI,

Mrs L. MIJOVIĆ, *judges*,

Mrs M. DEL TUFO, *ad hoc judge*,

and of Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 13 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 43662/98) against the Italian Republic lodged with the Court under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Italian nationals, Giovanni, Elena, Maria and Giuliana Scordino (“the applicants”), on 12 August 1998.

2. By a judgment of 17 May 2005 (“the principal judgment”), the Court ruled that the interference with the applicants' right to peaceful enjoyment of their possessions was incompatible with the principle of lawfulness and that accordingly, there had been a violation of Article 1 of Protocol No. 1 (see *Scordino v. Italy (no. 3)*, no. 43662/98, § 101, and point 1 of the operative provisions, 17 May 2005).

3. Relying on Article 41 of the Convention, the applicants claimed by way of pecuniary damage a sum corresponding to the value of the land in issue less the compensation received at national level, plus the value of the buildings erected on their land. They also requested compensation for non-pecuniary damage. Lastly, they requested reimbursement of the costs incurred before the national courts and the costs of the proceedings in Strasbourg.

4. As the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicants to submit, within three months of the judgment becoming final, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.* § 108, and point 2 of the operative provisions).

5. The principal judgment became final on 12 October 2005, following rejection by the panel of five judges of the Grand Chamber of the

respondent Government's application for referral. The three-month time-limit passed without any such agreement having been reached.

6. On 12 June 2006 the President of the Chamber to which the subsequent proceedings had been assigned (point 2 c) of the operative provisions of the principal judgment) decided to ask each party to appoint an expert to assess the pecuniary damage and to submit an expert report by 30 September 2006.

7. Only the applicants submitted an expert report within the time-limit set. That report was transmitted to the Government.

8. On 8 November 2006 the Government filed a memorial. The applicants responded to that memorial on 9 January 2007.

THE LAW

I. APPLICATION OF ARTICLE 46 OF THE CONVENTION

9. Article 46 of the Convention provides:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

10. The Court refers to its conclusion in its principal judgment (§§ 92-94 and §§ 98-102 of the principal judgment):

“The Court further notes that the constructive expropriation mechanism generally enables the administration to circumvent the established rules governing expropriation, with the risk, for the parties concerned, of an unforeseeable or arbitrary result, regardless of whether the situation is unlawful from the outset or subsequently becomes unlawful.

In this connection, the Court notes that constructive expropriation enables the administration to occupy land and to alter it irreversibly, so that is deemed to be public property, without any parallel formal decision declaring the transfer of ownership being adopted. Where there is no decision formalising the expropriation and made at the latest when the owner has lost all use of the property, the factor which will make it possible to transfer the occupied property to public ownership and to attain legal security is the finding by the court of unlawfulness, amounting to a declaration of transfer of ownership. It is a matter for the party concerned – who formally continues to be the owner – to ask the competent court for a decision, finding, as the case may be, unlawfulness accompanied by the construction of works in the public interest, which conditions are required for the party concerned to be retrospectively declared dispossessed of his property.

Having regard to these factors, the Court considers that the constructive expropriation mechanism is not capable of ensuring a sufficient degree of legal security.

...

In the instant case, the Court notes that in applying the principle of constructive expropriation, the Italian courts considered the applicants to have been dispossessed of their property as of 13 January 1982, the conditions of the unlawfulness of the occupation and the public interest in the building erected having been satisfied. In the absence of a formal expropriation order, the Court considers that this situation cannot be considered to be 'foreseeable' since it is only by means of the final decision – the judgment of the Court of Cassation – that the principle of constructive expropriation can be deemed to have been actually applied and the land deemed to have been acquired as public property. Consequently, the applicants did not have “legal security” as regards the dispossession of their land until 23 August 2002, the date on which the judgment of the Court of Cassation was lodged with the registry.

The Court further notes that the situation in issue has allowed the administration to take advantage of that occupation of the land without title from the outset, having been deemed arbitrary by the administrative court (see paragraph 14 above). In other words, the administration was able to appropriate the land in breach of the rules governing expropriation in good and due form and, *inter alia*, without compensation being paid to the parties concerned.

As regards compensation, the Court notes that retrospective application of the Finance Act (Law No. 662/1996) to the present case had the effect of depriving the applicants of full reparation for the damage sustained.

In the light of these considerations, the Court is of the opinion that the interference complained of is incompatible with the principle of lawfulness and has therefore violated the applicants' right to peaceful enjoyment of their possessions.

Accordingly, there has been a violation of Article 1 of Protocol No. 1.”

11. The violation of the applicants' right guaranteed under Article 1 of Protocol No. 1 originates in a widespread problem arising out of the unlawful conduct of the authorities, endorsed by the courts and tribunals in terms of constructive expropriation, and which permits those same authorities to appropriate the property in question. The breach of the principle of lawfulness and of the right to peaceful enjoyment of possessions has not been caused by an isolated incident; neither is it attributable to the particular turn taken by events in the case of the parties concerned. It arises from application of the principle of constructive expropriation, a principle established by judicial precedent and subsequently codified, to a specific category of citizen, namely, the owners of land occupied unlawfully from the outset or from a given point in time (see §§ 30-60 of the principal judgment).

In the Court's view, the facts of the case disclose the existence, within the Italian legal order, of a shortcoming as a consequence of which an entire

category of individuals have been or are still being arbitrarily deprived of their right to the peaceful enjoyment of their possessions. It also finds that the legal loopholes detected in the applicants' particular case may subsequently give rise to numerous well-founded applications.

12. Before examining the claims for just satisfaction submitted by the applicants under Article 41 of the Convention, and having regard to the circumstances of the case and the evolution of its caseload, the Court will examine what consequences may be drawn from Article 46 of the Convention for the respondent State. It reiterates that, under Article 46, the High Contracting Parties undertake to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers. One of the effects of this is that where the Court finds a violation, the respondent State has a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress as far as possible the effects. The respondent State remains free, subject to monitoring by the Committee of Ministers, to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII and *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V).

13. Furthermore, under the Convention, particularly Article 1, in ratifying the Convention the Contracting States undertake to ensure that their domestic law is compatible with the Convention (see *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I).

14. The violation that the Court has found in the present case arises from a situation affecting a large number of people, namely, the category of individuals whose land has been occupied unlawfully, and who could lose their property as a result of a court decision endorsing the unlawful conduct of the authorities in terms of constructive expropriation. There are already dozens of similar applications before the Court. On 30 May 2000, the Court gave its first ruling on constructive expropriation (see *Carbonara and Ventura v. Italy*, no. 24638/94, ECHR 2000-VI and *Belvedere Alberghiera S.r.l. v. Italy*, no. 31524/96, ECHR 2000-VI). In 2003 it set out the criteria applicable to just satisfaction in cases of constructive expropriation (see *Carbonara and Ventura v. Italy* (just satisfaction), no. 24638/94, 11 December 2003 and *Belvedere Alberghiera S.r.l. v. Italy* (just satisfaction), no. 31524/96, 30 October 2003). Since then, the Court has delivered many judgments finding a violation of Article 1 of Protocol No. 1 as a result of dispossession of property by way of constructive expropriation. That is not only an aggravating factor as regards the State's

responsibility under the Convention for a past or present situation, but is also a threat for the future effectiveness of the system put in place by the Convention.

15. In theory it is not for the Court to determine what may be the appropriate measures of redress for a respondent State to take in accordance with its obligations under Article 46 of the Convention. However, having regard to the systemic situation which it has identified, the Court would observe that general measures at national level are undoubtedly called for in the execution of the present judgment, measures which must take into consideration the large number of people affected. Furthermore, the measures taken must be such as to remedy the systemic defect underlying the Court's finding of a violation, so that the system established by the Convention is not compromised by a large number of applications arising out of the same cause. Such measures must therefore include a mechanism for providing injured persons with compensation for the violation of the Convention established in the present judgment concerning the applicants. In that connection, the Court's concern is to facilitate the rapid and effective suppression of a malfunction found in the national system of human rights protection. Once such a deficiency has been identified, the national authorities have the task, subject to supervision by the Committee of Ministers, of taking - retrospectively if necessary - (see the judgments in the cases of *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V, *Di Mauro v. Italy* [GC], no. 34256/96, § 23, ECHR 1999-V, and the Interim Resolution of the Committee of Ministers ResDH(2000)135 of 25 October 2000 (Excessive length of judicial proceedings in Italy: general measures); see also *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX, and *Giacometti and Others v. Italy* (dec.), no. 34939/97, ECHR 2001-XII), the necessary measures of redress in accordance with the principle of subsidiarity under the Convention, so that the Court does not have to reiterate its finding of a violation in a long series of comparable cases.

16. In order to assist the respondent State in complying with its obligations under Article 46, the Court has attempted to indicate the type of measures the Italian State could take in order to put an end to the systemic situation found in the present case.

It considers that the respondent State should, above all, take measures to prevent any unlawful occupation of land, whether this be unlawful occupation from the outset or occupation that has initially been authorised and which has subsequently become unlawful. This might be achieved by authorising the occupation of such properties only where it was established that the expropriation project and decisions had been adopted in accordance with the rules laid down by law and that the necessary budgetary funds had been earmarked to ensure that the persons concerned received prompt and adequate compensation (for the principles applicable as regards compensation in the case of expropriation in good and due form, see

Scordino v. Italy (no. 1) [GC], no. 36813/97, §§ 93-98, ECHR 2006-). Furthermore, the respondent State should discourage practices which are incompatible with the rules of expropriation in good and due form, by adopting dissuasive provisions and by holding liable those responsible for such practices.

In all cases where land has already been occupied unlawfully and has been altered in the absence of a declaration of expropriation, the Court considers that the respondent State should remove the legal obstacles which systematically and in principle prevent restitution of the land. Where restitution is not possible for plausible concrete reasons, the respondent State should effect payment of a sum corresponding to the value of the restitution. Furthermore, the State should take adequate budgetary measures to award, if necessary, damages for any loss incurred and which are not covered by the restitution or the payment in lieu (see paragraphs 25-39 below).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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

1. Applicants' submissions

18. The applicants asked the Court to award them just satisfaction in accordance with the case-law concerning constructive expropriation (*Carbonara and Ventura v. Italy* (just satisfaction), no. 24638/94, 11 December 2003 and *Belvedere Alberghiera S.r.l. v. Italy* (just satisfaction), no. 31524/96, 30 October 2003). They claimed that only restitution of the land could place them in a situation equivalent to their original situation. In the absence of restitution, the applicants requested full compensation, less any amount that they had received at national level, and claimed an amount covering the current value of the land plus the appreciation brought about by the existence of the buildings, and loss of enjoyment.

19. In support of their claims, the applicants produced an expert report, prepared by three experts. The estimate relates to land measuring 3,694 square metres, situated a few kilometres from the town centre of Reggio de Calabria, in an area earmarked for and undergoing urban development.

The report notes that in 1980, the year in which the land was occupied, the land occupancy volume (*indice di fabbricabilità*) rose from 1.75 cubic metres per square metre to 3.15 cubic metres per square metre. Two buildings comprising thirty housing units and garages were built, with a volume of 13,338 cubic metres.

The experts determined the current value of the land to be 1,329,840 euros (EUR) (EUR 360 per square metre), based on today's property market.

They then considered the appreciation brought about by the existence of the buildings used for residential purposes. This appreciation, less the value of the land, amounted to EUR 2,476,067.

Furthermore, the experts indicated that the cost of constructing the buildings in 2006, less 17% for wear and tear of the buildings, less the value of the land, also totalled EUR 2,476,067.

The experts then assessed the damage for loss of enjoyment due to it not having been possible to use the land and the buildings for more than twenty-four years. This damage amounted in total to EUR 4,179,653.50.

20. To summarise the experts' conclusions:

Value of the land in 2006:	EUR 1,329,840
Appreciation brought about by the existence of the buildings = cost of construction in 2006, less wear and tear:	EUR 2,476,067
Inability to enjoy the land and buildings:	EUR 4,179,653,50

2. The Government's submissions

21. The Government failed to produce a second expert opinion. They made no comments on the legitimacy and accuracy of the calculations presented in the applicants' expert report.

22. In their memorial, the Government contested the Court's case-law concerning just satisfaction for arbitrary dispossession of property, on which case-law the applicants based their claims.

The Government considered that the *Papamichalopoulos* judgment constituted an erroneous precedent, both legally and financially: they claimed that there was confusion between the value of the buildings, the cost of construction and the appreciation brought about by the existence of the buildings. Moreover, the Government contended that obliging a State to return land – including the buildings that had been erected on that land – amounted to enrichment for the party concerned, who would thus obtain the State's investment free of charge.

The Government then criticised the judgment in the case of *Carbonara and Ventura*, in so far as the applicant was awarded an amount corresponding to the cost of building the school built by the authorities.

Lastly, they observed that in the *Belvedere Alberghiera* case, where the land had been used for the construction of a road, the Court had not awarded an amount corresponding to the cost of construction of the road but an amount for loss of value of the building due to the construction of the road.

23. In conclusion, the Government found this case-law to be inconsistent and asked that the Court abandon it.

24. The Government asked the Court to adopt new criteria and thus award the interested parties just satisfaction limited to the market value of the land at the time of its alteration, increased by the rate of inflation over the period concerned plus interest. In support of their argument, the Government asserted that a decision by which the national courts found that the authorities had acted unlawfully had the effect of legalising the situation since it took the place of the missing expropriation order. Consequently, the interested parties could not seek compensation, since this was reserved for cases of arbitrary expropriation.

3. The Court's decision

25. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State an 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).

26. The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the breach allows of *restitutio in integrum*, it is for the respondent State to effect it, the Court having neither the power nor the practical possibility of doing so itself. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2000-I).

27. In its principal judgment, the Court held that the interference in issue did not satisfy the condition of lawfulness (§§ 98-102 of the principal judgment). The act of the Italian Government which the Court held to be in breach of the Convention was not in the instant case an expropriation which would have been legitimate but for the failure to pay adequate compensation; on the contrary, it was a taking by the State of the applicants' land, for which the latter have been unable to obtain redress (§§ 99-100 of the principal judgment).

In this regard, the Court has established that the national courts noted the unlawful situation and that, by virtue of that finding, they declared that the applicants had been dispossessed of their possessions in favour of the occupant (§ 98 of the principal judgment). Furthermore, the Court considered that despite the compensation paid to the applicants, “full reparation of the loss incurred” had not been made (§ 100 of the principal judgment).

28. It is apparent from the foregoing that the Court acknowledged the applicants' status as “victims” in order to then find a breach of Article 1 of Protocol No. 1 (see *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 32, §§ 69 et seq.; *Amuur v. France*, 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X). Furthermore, the applicants continue to be “victims” as their situation has remained unchanged since the principal judgment was delivered.

29. The Court reaffirms that, in its view, the decision by which a national court takes note of an illegal occupation of land and declares constructive expropriation thereof does not have the effect of regularising the situation complained of. It merely ratifies an unlawful situation (see, among numerous judgments, *Serrao v. Italy*, no. 67198/01, § 81, 13 October 2005), a situation which cannot be redressed where reparation is not made in accordance with the criteria which apply to cases of unlawful deprivation of possessions.

30. Accordingly, the Court rejects the Government's argument and reasserts that it is not possible to equate lawful expropriation, which would be in breach of Article 1 of Protocol No. 1 by reason of the inadequacy of the compensation, with a case such as the instant case, where the violation of the applicants' right to enjoyment of their possessions arises from on violation of the principle of lawfulness (see *Former King of Greece and Others v. Greece* (just satisfaction) [GC], no. 25701/94, § 75, ECHR 2002).

It follows that reparation in cases of constructive expropriation will not be similar to the compensation awarded for cases in which the finding of a violation of Article 1 of Protocol No. 1 for deprivation of possessions is based on the fact that the “fair balance” was not struck given the level of compensation well below the market value of the land and given the lack of “public interest” grounds making it possible to pay expropriation compensation lower than the value of the property (see *Scordino v. Italy* (no. 1) [GC], no. 36813/97, § 257, ECHR 2006-).

31. The compensation to be set in the instant case must reflect the idea of total elimination of the consequences of the impugned interference. In fact, in the present case, it is the intrinsic unlawfulness of the taking of the land that was at the origin of the violation found under Article 1 of Protocol No. 1. The unlawfulness of such a dispossession inevitably affects the

criteria to be used for determining the reparation owed by the respondent State since the pecuniary consequences of a lawful taking cannot be assimilated to those of an unlawful dispossession (see *Former King of Greece and Others*, cited above, § 75 and *Scordino v. Italy* [GC], cited above, § 250).

32. The Court points out that its position as regards just satisfaction in cases of arbitrary dispossession of possessions was based on the principles laid down by the Permanent Court of International Justice (see *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A no. 330-B, § 36), which in its judgment of 13 September 1928 in the case concerning the factory at Chorzów, held:

“... reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it – such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.” (Collection of Judgments, Series A no. 17, p. 47)

33. The Court adopted a very similar position in *Papamichalopoulos v. Greece* (see *Papamichalopoulos and Others v. Greece* (Article 50), cited above, §§ 36 and 39). It found a violation in that case on account of a *de facto* unlawful expropriation (occupation of land by the Greek navy since 1967) which had lasted more than twenty-five years on the date of the principal judgment delivered on 24 June 1993. The Court accordingly ordered the Greek State to pay the applicants, for damage and loss of enjoyment since the authorities had taken possession of the land, a sum equivalent to the current value of the land increased by the appreciation brought about by the existence of certain buildings that had been built since occupation.

34. The Court followed that approach in two Italian cases concerning expropriations that did not comply with the principle of lawfulness. In the first of those cases, *Belvedere Alberghiera S.r.l. v. Italy* (just satisfaction), no. 31524/96, §§ 34-36, 30 October 2003), it held:

“As it is the inherent unlawfulness of the expropriation which was at the origin of the breach found, the compensation must necessarily reflect the full value of the property.

With regard to pecuniary damage, the Court therefore holds that the compensation to be awarded to the applicant is not limited to the value of the property when it was occupied. For that reason, it requested the expert to estimate also the current value of the land in issue and the other heads of damage.

The Court decides that the State shall pay the applicant the current value of the land. To that amount shall be added a sum for loss of enjoyment of the land since the authorities took possession of it in 1987 and for the depreciation of the property.

Furthermore, in the absence of comments from the Government on the expert report, an amount shall be awarded for loss of income from the hotel activity.”

35. In the second of those cases, (see *Carbonara and Ventura v. Italy* (just satisfaction), no. 24638/94, §§ 40-41, 11 December 2003), the Court declared:

“With regard to pecuniary damage, the Court therefore holds that the compensation to be awarded to the applicants is not limited to the value of their property when it was occupied. For that reason, it requested the expert to estimate also the current value of the land in issue. That value does not depend on hypothetical conditions, which would be the case if it was now in the same condition as in 1970. It is clear from the expert report that, since then, the land and its immediate surroundings – whose situation gave them potential in terms of urban development – have increased in value as a result of the construction of buildings, including a school.

The Court decides that the State should pay the applicants, for damage and loss of enjoyment since the authorities took possession of the land in 1970, the current value of the land plus the appreciation gained by the existence of the building.

As to the determination of the amount of that compensation, the Court adopts the findings in the expert report for the exact assessment of the damage sustained. That sum amounts to EUR 1,385,394.60.”

36. An analysis of the three above-mentioned cases, which all concern cases of inherently unlawful dispossession, shows that, in order to fully compensate the loss incurred, the Court has awarded amounts taking account of the current value of land in the light of today's property market. It has also sought to compensate loss not covered by payment of that amount, by taking account of the potential of the land in question, calculated, if applicable, on the basis of the construction costs of buildings put up by the expropriating authority.

37. Taking account of the foregoing considerations, the Court believes that in the present case, the nature of the violation found in the principal judgment enables it to adopt the principle of *restitutio in integrum*. Consequently, the Court considers that the return of the land in issue ... would put the applicants as far as possible in a situation equivalent to the one in which they would have been if there had not been a breach of Article 1 of Protocol No. 1; the award of the existing buildings would then fully compensate them for the consequences of the alleged loss of enjoyment (see *Papamichalopoulos and Others v. Greece* (Article 50), cited above, § 36 and §38).

38. If such restitution is not made, the Court considers that the compensation to be awarded to the applicants is not limited to the value of their property on the date of occupation. It decides that the State should pay to the parties concerned a sum corresponding to the current value of the land (EUR 1,329,840), from which must be deducted the compensation obtained by the applicants at national level (namely, ITL 264,284,339 in 1982, see paragraph 25 of the principal judgment) and updated (that is, approximately

EUR 436,000). To this amount will be added an amount for appreciation brought about by the presence of buildings – which in the present case has been estimated at the same level as the construction costs – and which is also capable of compensating the applicants for any other loss they have incurred.

39. As to determination of the amount of this compensation, in the absence of an expert report submitted by the Government and in the absence of any comments on the amounts claimed, the Court relies on the applicants' expert report. Ruling on an equitable basis, the Court awards the applicants EUR 3,300,000.

B. Non-pecuniary damage

40. The applicants each claimed EUR 25,000.

41. The Government found these sums to be excessive and left the matter to the discretion of the Court.

42. The Court considers that the violation of the Convention has clearly caused the applicants non-pecuniary damage arising out of a feeling of powerlessness and frustration in the face of the unlawful taking of their property. Ruling on an equitable basis, it awards each of the applicants EUR 10,000 under this head, or EUR 40,000 in total.

C. Costs and expenses

43. The applicants requested EUR 26,983.76 for reimbursement of the costs incurred before the national courts. They also sought reimbursement of the costs incurred before the Court totalling EUR 51,891.44, including EUR 46,000 for fees, value added tax (VAT) and social security contributions. The applicants did not seek reimbursement of the expert's fees.

44. The Government observed that the amounts claimed were excessive and left the matter to the discretion of the Court.

45. The Court reiterates that costs and expenses will not be awarded under Article 41 unless they have actually been incurred, were necessarily incurred and were also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction), cited above, § 54). Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see *Van de Hurk v. Netherlands*, judgment of 19 April 1994, Series A no. 288, § 66).

46. The Court does not doubt that the costs claimed were necessarily and actually incurred. It considers that the applicants' case before the national courts was intended essentially to redress the violations of the Convention alleged before the Court. The Court deems however the total amount of fees claimed in this respect to be too high. It therefore considers that only partial reimbursement need be made.

Having regard to the circumstances of the case, and ruling on an equitable basis as required under Article 41 of the Convention, the Court deems it reasonable to award the sum of EUR 30,000 plus VAT and social security contributions in respect of all costs incurred before the domestic courts and in Strasbourg.

D. Default interest

47. The Court considers it appropriate that the default interest 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. *Holds*

a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts:

- i. EUR 3,300,000 (three million three hundred thousand euros) for pecuniary damage;
- ii. EUR 40,000 (forty thousand euros) for non-pecuniary damage;
- iii. EUR 30,000 (thirty thousand euros) for costs and expenses;
- iv. any tax that may be chargeable on those amounts;

b) that from 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;

2. *Dismisses* the remainder of the claim for just satisfaction.

Done in French and notified in writing on 6 March 2007 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court

T.L. EARLY
Registrar

Nicolas BRATZA
President