

Interim Resolution CM/ResDH(2007)3
Systemic violations of the right to the peaceful enjoyment of possessions
through “indirect expropriation” by Italy

*(adopted by the Committee of Ministers on 14 February 2007
at the 987th meeting of the Ministers’ Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2 of the Convention for the protection of Human Rights and Fundamental Freedoms (“the Convention”),

Considering the judgments of the European Court of Human Rights (“the Court”) finding violations of Article 1 of Protocol No. 1 to the Convention by Italy on account of the resort to what is known as “indirect expropriation”, a practice characterised by:

- emergency occupation of land by local administrative authorities pursuant to Law No. 85 of 1971, without any formal expropriation procedure, the occupation subsequently becoming irrevocable on account of the transformation of the property by the realisation of public works;
- the lack of clear and predictable rules covering the transfer of property and compensation;
- the absence of adequate mechanisms to afford redress, including the inadequacy of compensation awarded;

Recalling that the Committee of Ministers has been examining the problems at the origin of these violations and the means of solving them since 2000 in the framework of the execution of two judgments against Italy, namely the cases of Belvedere Alberghiera and Carbonara and Ventura, as well as many similar subsequent judgments (see appendix II);

Recalling the declarations by the Committee of Ministers as well as the Warsaw Summit underlining the importance of executing the Court’s judgments promptly, which is particularly necessary in cases like these which reveal structural problems and thus give rise to an influx of new applications before the Court;

Stressing states’ obligation under Article 46, paragraph 1, of the Convention to comply with the Court’s judgments by adopting individual measures to erase as far as possible the consequences of violations for the applicants (*restitution in integrum*) as well general measures to put an end to any ongoing situation and avoid new, similar violations;

Having noted with interest that following the initial judgments related to this problem Italy adopted, through Presidential Decree No. 327 of 8 June 2001, a general “Consolidated Text” on expropriation, Article 43 of which authorised public authorities to issue formal deeds of expropriation which are valid for the future but also acknowledge the unlawfulness of such acquisitions in the past;

Noting in this respect that in the government’s view (see Appendix I) the new procedure will constitute a break with the practice of indirect expropriation and will rule out any undue interference by the administration with property rights as recognised by the Convention, provided it is correctly and consistently implemented.

Underlining that the Court noted contradictory applications found in past case-law as well as contradictions between case-law and statute law, including the Consolidated Text (see judgment in the case of Prenna and Others of 9 February 2006, paragraphs 40-43, 65);

Supporting the government's firm intention to do everything in its power to bring procedures in this area into complete conformity with the obligations flowing from the Convention and the Court's judgments (see appendix I);

Welcoming the recent case-law of the Italian Council of State (Decision No. 2 of 2005) which contains some provisions needed to sanction unlawful action by administrative authorities and secure the return of property to its owner irrespective of any transformation carried out;

Being of the opinion that this case-law must be followed by the Italian judiciary and further developed in order to overcome the remaining points of uncertainty inherent in Article 43 of the "Consolidated Text";

Welcoming generally the increasing efforts made by the senior Italian Courts to give direct effect to the Court's judgments and the government's will to have this direct effect consolidated and strengthened at every level of the Italian judicial and administrative systems;

Convinced that the measures taken or to be taken in national law must result in adequate and effective redress which complies with the requirements of the Convention as embodied in the Court's case-law;

Considering that redress mechanisms must also, to the fullest possible extent, allow victims of violations already found by the European Court to be fully compensated, given that the Court has systematically reserved the question of just satisfaction, leaving it initially to the Italian authorities to provide such reparation;

Noting with satisfaction the new law which aims to discourage resort to indirect appropriation by providing a right to oblige responsible administrations to cover the cost of reparation due following the finding of a violation by the European Court (Article 1, paragraph 1217, of Law No. 296 of 2006);

Being of the view that this law will further contribute to preventing public authorities from benefiting from their own unlawful acts,

ENCOURAGES the Italian authorities to continue their efforts and rapidly take all further measures needed to bring an end definitively to the practice of "indirect expropriation" and to ensure that any occupation of land by the public authority complies with the requirement of legality as required by the Convention;

INVITES the authorities to ensure that redress mechanisms are rapid, efficient and able to the fullest possible extent of discharging the Court of its function under Article 41 of the Convention;

DECIDES to continue supervision of the measures required by the Court's judgments and to resume consideration of the cases at issue in the light of the progress achieved, at the latest at their second human rights meeting in 2008.

Appendix I

Information provided by the Italian government to the Committee of Ministers in the context of the supervision of judgements of the Court concerning indirect expropriation in Italy

Through Presidential Decree No. 327 of 8 June 2001 (modified in 2002 and in force since 30 June 2003), introducing a general Consolidated Text on expropriation, Italy has improved the procedures for expropriation in the public interest.

Article 2 of this Consolidated Text provides that each expropriation must be carried out according to law; Articles 20 *et seq* require that expropriation proceedings are based on respect for the rules in force.

Thus, in general and besides exceptional, urgent public works, authorities may no longer occupy property unless or until they own it.

Article 43 authorises the public authority to issue “deeds of expropriation”, valid *ex nunc*. Such deeds do not regularise past illegalities, but rather define the situation with reference to the future, guaranteeing a just balance between the public interest (which must be particularly important and is subject to the strict supervision of a magistrate) and that of the individual, who is entitled to receive, within a reasonable time and in addition to reimbursement of the market value of the property, overall damages in respect of the prejudice sustained up until the date of issue of the deed.

The *travaux préparatoires* of the Consolidated Text explicitly show that the aim of this article is to rule out indirect expropriation so as to give full effect to the relevant judgments rendered by the European Court of Human Rights since 2000.

The recent provisions and decisions have not yet been examined in depth by the European Court which has so far gone no further than declaring that indirect expropriation should not be regarded as a valid alternative to a proper expropriation procedure, referring in doing so to the parallel declaration by the Council of State contained in the decision mentioned above (see the Prenna judgment, §§43-66).

The prime competence for ensuring respect of Article 43 lies with the magistrates of administrative tribunals, one of whose institutional roles is to protect the interests of individuals against illicit acts by public authorities (see decision No. 191 of 2006 of the Constitutional Court).

The higher administrative courts in Italy, which are competent for disputes concerning the application of Article 43, have already interpreted the article in the light of the requirements of the Convention as they flow from the European Court’s judgments (Council of State, Plenary Assembly, decision No. 2 of 2005; Sicilian Regional Council of Administrative Justice, decisions Nos. 934 of 2005 and 440 and 442 of 2006).

In the government’s view, the procedure provided by Article 43 might fulfil the requirements of the Convention provided that it is interpreted along the following lines:

1. The application and interpretation of Article 43 must be clear, consistent and predictable so as to embody the relevant discretionary powers of the state and thus satisfy the Convention’s requirement relating to the *quality* of the law;

2. The procedure provided by Article 43 is not an alternative to the ordinary procedure provided for expropriation and thus is not generally applicable: on the contrary it is an exceptional measure to be used only in case of demonstrably urgent public interest;
3. Formal acquisition must be established promptly and only by the relevant public administrative authority;
4. If no acquisition is thus established, under Article 43, the property must be promptly restored;
5. Under no circumstance may acquisition of property be considered automatic on the grounds that public works or other transformations have been carried out;
6. The procedure must, as far as possible, be applied to all cases of illicit occupation even if this came about before the entry into force of the Consolidated Text.

The government is encouraging all national authorities to apply the Consolidated Text in this way so as to comply with its obligations under the Convention and the Court's judgments, i.e., to redress the violations committed and to prevent further similar violations. The government considers that the direct effect recently given to the Court's judgments by the higher Italian courts in various fields of jurisdiction establishes the conditions needed in order to satisfy the Convention's requirements through application of the Consolidated Text. The government encourages and supports the broadest possible extension of the direct effect of the Court's judgments in Italian law.

Beyond the Consolidated Text, another significant measure has been taken to discourage public authorities from having recourse to indirect expropriation: Law No. 296 of 2006 (Article 1, paragraph 1217) provides that damages awarded to individuals in respect of illegal occupation of land are covered by the budget of the public authority responsible. The law also provides the possibility for the public authority concerned to sue the individual official at the origin of the illegal act. The government takes the view that this measure will not fail to contribute to preventing violations similar to those found in the cases at issue.

Appendix II – List of cases

31524/96	Belvedere Alberghiera S.R.L., judgment of 30/05/00, final on 30/08/00 and of 30/10/03 final on 30/01/04
41040/98	Acciardi and Campagna, judgment of 19/05/2005, final on 12/10/2005
71603/01	Binotti, judgment of 13/10/2005, final on 13/01/2006
63632/00	Binotti, judgment of 17/11/2005, final on 17/02/2006
20236/02	Capone, judgment of 06/12/2005, final on 06/03/2006
62592/00	Capone, judgment of 15/07/2005, final on 30/11/2005
24638/94	Carbonara and Ventura, judgment of 30/05/00 and judgment of 11/12/03
63861/00	Carletta, judgment of 15/07/2005, final on 30/11/2005
63620/00	Chiro' and 3 others No. 1, judgment of 11/10/2005, final on 11/01/2006
65137/01	Chiro' and 3 others No. 2, judgment of 11/10/2005, final on 11/01/2006
67196/01	Chiro' and 3 others No. 4, judgment of 11/10/2005, final on 11/01/2006
67197/01	Chiro' and 3 others No. 5, judgment of 11/10/2005, final on 11/01/2006
65272/01	Chiro' Dora No. 3, judgment of 11/10/2005, final on 11/01/2006
63296/00	Colacrai No. 1, judgment of 13/10/2005, final on 13/01/2006
63868/00	Colacrai No. 2, judgment of 15/07/2005, final on 30/11/2005
63633/00	Colazzo, judgment of 13/10/2005, final on 13/01/2006
71175/01	De Pasquale, judgment of 13/10/2005, final on 13/01/2006
176/04	De Sciscio, judgment of 20/04/2006, final on 20/07/2006
44897/98	Di Cola, judgment of 15/12/2005, final on 15/03/2006
64111/00	Dominici, judgment of 15/11/2005, final on 15/02/2006
63242/00	Donati, judgment of 15/07/2005, final on 30/11/2005
19734/92	F.S. No. 1, Interim Resolution DH(98)209 of 10/07/98
63864/00	Fiore, judgment of 13/10/2005, final on 13/01/2006
9119/03	Genovese, judgment of 02/02/2006, final on 03/07/2006
16041/02	Giacobbe and others, judgment of 15/12/2005, final on 15/03/2006
35941/03	Gianni and others, judgment of 30/03/2006, final on 30/06/2006
60124/00	Gravina, judgment of 15/11/2005, final on 15/02/2006
18791/03	Grossi and others, judgment of 06/07/2006, final on 06/10/2006
58858/00	Guiso-Gallisay, judgment of 08/12/2005, final on 08/03/2006
35638/03	Immobiliare Cerro S.a.s., judgment of 23/02/2006, final on 23/05/2006
62876/00	Istituto Diocesano Per Il Sostentamento Del Clero, judgment of 17/11/2005, final on 17/02/2006
20935/03	Izzo, judgment of 02/03/2006, final on 02/06/2006
63240/00	La Rosa and 3 others No. 6, judgment of 15/07/2005, final on 30/11/2005
58119/00	La Rosa and Alba No. 1, judgment of 11/10/2005, final on 11/01/2006
58386/00	La Rosa and Alba No. 3, judgment of 15/11/2005, final on 15/02/2006
63238/00	La Rosa and Alba No. 4, judgment of 13/10/2005, final on 13/01/2006
63239/00	La Rosa and Alba No. 5, judgment of 11/07/2006, final on 11/10/2006
63241/00	La Rosa and Alba No. 7, judgment of 17/11/2005, final on 17/02/2006
63285/00	La Rosa and Alba No. 8, judgment of 15/07/2005, final on 15/10/2005
56578/00	Lanteri, judgment of 15/11/2005, final on 15/02/2006
12912/04	Lo Bue and others, judgment of 13/07/2006, final on 13/10/2006
61211/00	Maselli No. 2, judgment of 11/07/2006, final on 11/10/2006
63866/00	Maselli, judgment of 13/10/2005, final on 13/01/2006
43663/98	Mason and others, judgment of 17/05/2005, final on 12/10/2005
36818/97	Pasculli, judgment of 17/05/2005, final on 12/10/2005
69907/01	Prenna and others, judgment of 09/02/2006, final on 09/05/2006
14793/02	Sciarotta and others, judgment of 12/01/2006, final on 12/04/2006

43662/98	Scordino No. 3, judgment of 17/05/2005, final on 12/10/2005
67790/01	Scozzari and others, judgment of 15/12/2005, final on 15/03/2006
67198/01	Serrao, judgment of 13/10/2005, final on 13/01/2006
77822/01	Serrilli, judgment of 06/12/2005, final on 06/03/2006
77823/01	Serrilli Pia Gloria and others, judgment of 17/11/2005, final on 17/02/2006
213/04	Ucci, judgment of 22/06/2006, final on 22/09/2006
12894/04	Zaffuto and others, judgment of 13/07/2006, final on 13/10/2006