



The transfer to State ownership, without compensation, of a fishing valley in the Venice lagoon used by a company was in breach of the Convention

In today's Chamber judgment¹ in the case of [Valle Pierimpiè Società Agricola S.p.a v. Italy](#) (application no. 46154/11) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights.

The case concerned a declaration to the effect that a part of the Venice lagoon known as Valle Pierimpiè, which the applicant company had purchased and had been using for fish farming, belonged to the public maritime domain.

The Court held that the transfer of the valley to State ownership constituted manifestly disproportionate interference with the applicant company's right to the peaceful enjoyment of its possessions. It further held that the State had not struck a fair balance between the public and private interests at stake and that an excessive and impracticable burden had therefore been imposed on the applicant company.

Principal facts

The applicant, Valle Pierimpiè Società Agricola S.p.a., is a public limited company incorporated under Italian law.

The applicant had previously acquired a production facility known as Valle Pierimpiè, situated in a lagoon in the province of Venice. The facility formed part of what are known locally as the "fishing valleys", comprising areas of land with bodies of water surrounded by barriers. Since acquiring the property the applicant company has been carrying out fish farming there.

In 1989, 1991 and 1994 the Padua financial authorities ordered the company to vacate the fishing valley it occupied, on the ground that it was State property. The applicant company brought proceedings in the Venice District Court against the Ministries of Finance, Transport, Navigation and Public Works seeking a declaration recognising its ownership of Valle Pierimpiè. The application was rejected by the District Court, which ruled that the valley in question was State property and that the applicant company was therefore liable to pay the administrative authorities compensation for unlawful occupation of public property, in an amount to be determined in separate civil proceedings. That decision was upheld following an appeal and an appeal on points of law.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property), the applicant complained of being deprived without compensation of the fishing valley it had been using, and of being held liable to

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

pay a potentially very large sum to the State in compensation for unlawful occupancy of the property.

The application was lodged with the European Court of Human Rights on 26 July 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Işıl **Karakaş** (Turkey), *President*,
 Guido **Raimondi** (Italy),
 András **Sajó** (Hungary),
 Nebojša **Vučinić** (Montenegro),
 Helen **Keller** (Switzerland),
 Egidijus **Kūris** (Lithuania),
 Robert **Spano** (Iceland),

and also Abel **Campos**, *Deputy Section Registrar*.

Decision of the Court

Article 1 of Protocol No. 1 (protection of property)

The Government objected that Valle Pierimpiè had been incorporated in the Venice lagoon in 1783, thereby becoming State property, which could not be disposed of. The Italian courts had considered the fishing valley in question to be an “open valley” where fishing could be carried on in the same way as in open waters. The Government explained that the applicant company could not have had any ownership rights, since properties belonging to the public maritime domain were not available for purchase.

The Court pointed out that a “possession” within the meaning of Article 1 of Protocol No. 1 to the Convention could be said to exist in so far as the factual and legal situation existing prior to the withdrawal of the applicant’s title to the property conferred upon the applicant a legitimate expectation, based on property rights, that was sufficient to constitute a substantive interest protected by the Convention.

In the present case, Valle Pierimpiè Società Agricola S.p.a. had possessed formal title to the property, as recorded by a notary and entered in the property registers. The applicant company could found its legitimate expectation on the practice, dating back to the 15th century, of granting individuals title to the fishing valleys and tolerating their continued occupation and use of them. The applicant had been paying property tax on Valle Pierimpiè and had been occupying the site and acting as the owner without the authorities ever having taken action. The site was the base for the company’s activity, the profit the company derived from it was its main source of income and, until the property had been incorporated in the public maritime domain, the company had had a legitimate expectation of being able to continue carrying out that activity. The Court considered that these circumstances conferred on the applicant company title to a substantive interest protected by Article 1 of Protocol No. 1.

Accordingly, the Court held that the incorporation of Valle Pierimpiè into the public maritime domain constituted interference with the applicant’s right to the peaceful enjoyment of its possessions amounting to a “deprivation” of property for the purposes of the Convention.

The Court considered that the interference in question had had a sufficient legal basis in Italian law and had pursued the legitimate aim in the general interest of preserving the environment and the lagoon ecosystem and ensuring that the latter was actually designated for public use.

As to whether the interference had been proportionate to the aim pursued, the Court examined whether a fair balance had been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

In that connection it noted that in the present case the applicant had not been offered any compensation for the deprivation of its possession and, on the contrary, had been ordered to pay compensation for unlawful occupation of Valle Perimpiè. Although the amount of the compensation was to be determined in separate civil proceedings, there was every indication that it would be very significant.

Furthermore, there was nothing in the file to show that the authorities had taken account of the fact that the transfer of the valley to the public maritime domain had caused the applicant to lose the "tools of its trade" since the valley was the base for its business activity, which it had exercised in a lawful manner.

Lastly, whilst it might have been possible for the applicant to relocate its activities, this would probably have been difficult and would have entailed significant costs for the applicant. The authorities had taken no steps to reduce the financial impact of the interference at issue.

Accordingly, the Court considered that the interference with the applicant's right to the peaceful enjoyment of its possessions had been manifestly disproportionate to the legitimate aim pursued. The State had not struck a fair balance between the public and private interests at stake and an excessive and impracticable burden had been imposed on the applicant; there had therefore been a violation of Article 1 of Protocol No. 1.

Article 41 (just satisfaction)

The Court held that Italy was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 25,000 in respect of costs and expenses. It reserved the question of the application of Article 41 with regard to pecuniary damage.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.