



## Violation of the right to respect for the property of owners of land unlawfully occupied by the government outside of the standard expropriation procedure

In today's **Chamber judgment**<sup>1</sup> in the case of [Messana v. Italy](#) (application no. 26128/04) 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 the deprivation of the property of landowners via indirect expropriation following the occupation of the land by the municipal authorities, with a view to building low-rent housing (HLM).

The Court dismissed the Government's unilateral declaration offering a sum of 236,777 euros (EUR) in order to strike out the application from its list of cases (Article 37 of the Convention) in view of the inadequacy of the proposed sum under the Court's case-law on indirect expropriations<sup>2</sup>.

The Court found in particular that the applicants had been deprived of their right to their property within the meaning of Article 1 of Protocol No. 1 to the Convention owing to the unlawful occupation of the land and then its acquisition by the government by way of indirect expropriation, in breach of the rules governing expropriation in the prescribed form.

The Court also found that the impugned interference was incompatible with the legality principle and therefore infringed the applicants' right to respect for their property.

### Principal facts

The applicants, Calogero Messana, Rosa Messana and Giuseppa Messana, are Italian nationals who were born in 1946, 1944 and 1948 respectively and live in Caltanissetta (Italy).

A municipal decree was issued concerning a plot of building land belonging to the applicants, authorising its emergency occupation for a five-year period with a view to the construction of low-rent housing (HLM). The land was occupied on 16 July 1980.

On 11 January 1991 the applicants lodged an action for damages, submitting that the building works had irreversibly transformed their land, without any expropriation decree or compensation of any kind. They claimed compensation for the market value of the property and for the period of occupation. During the proceedings an expert assessment determined that the plot of land had become irreversibly transformed by 28 February 1982 at the latest, that is to say the date of cessation of the legitimate occupation period pinpointed by the expert.

On 23 January 1997 the Agrigento Court found that the building of the HLM had indeed transferred the ownership of the land to the authorities. However, the court also noted that the applicants' action was statute-barred, since the five-year limitation period had started on 18 June 1985. The

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](http://www.coe.int/t/dghl/monitoring/execution).

applicants appealed against that decision. A further expert assessment was ordered, establishing that the legitimate occupation had ended on 18 June 1986, following a twelve-month extension.

On 11 October 2002 the Palermo Court of Appeal granted the applicants' action on the grounds that they had been deprived of their land on 18 June 1986 and that their action was therefore not statute-barred. The municipal council was therefore ordered, pursuant to Act No. 662 of 1996, to pay them a sum of 92,316.67 euros (EUR) for the loss of ownership of the land, and EUR 25,177.27 in compensation for the temporary occupation. That judgment became final on 12 January 2004.

## Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 to the Convention (protection of property), the applicants complained that they had been deprived of their land by dint of indirect expropriation. Relying on Article 6 § 1 (right to a fair trial), they complained about the unfairness of the proceedings and submitted that their compensation had not been based on the market value of their land. The applicants also relied on Article 17 (prohibition of abuse of rights).

The application was lodged with the European Court of Human Rights on 8 July 2004.

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

Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"), *President*,  
Ledi **Bianku** (Albania),  
Guido **Raimondi** (Italy),  
Kristina **Pardalos** (San Marino),  
Aleš **Pejchal** (the Czech Republic),  
Armen **Harutyunyan** (Armenia),  
Pauliine **Koskelo** (Finland),

and also Renata **Degener**, *Deputy Section Registrar*.

## Decision of the Court

### Article 37 (striking out)

The Government submitted a unilateral declaration offering a lump sum of 236,777 euros (EUR) in order to strike the application out of the list of cases.

The Court deemed this amount insufficient in the light of the sums which it had awarded in similar cases relating to indirect expropriation<sup>2</sup>, and considered that the unilateral declaration does not provide a sufficient basis for a finding that respect for the human rights secured under the Convention did not require the continued examination of the application. It therefore rejected the Government's request to strike out the case.

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

The Court noted that in the instant case there had been a deprivation of property within the meaning of Article 1 of Protocol No. 1 to the Convention, and that in applying the principle of indirect expropriation the domestic courts had held that the applicants had been deprived of their property as of the date of cessation of the period of legitimate occupation. However, in the absence of a formal expropriation decision, the Court considered that that situation could not be deemed "foreseeable", because it was only on the basis of a final judicial decision that the principle of

<sup>2</sup> See *Guiso-Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, 22 December 2009; *Rivera and di Bonaventura v. Italy*, no. 63869/00, 14 June 2011; *De Caterina and Others v. Italy*, no. 65278/01, 28 June 2011; and *Macrì and Others v. Italy*, no. 14130/02, 12 July 2011.

indirect expropriation could be considered actually to have been applied and the acquisition of the land by the public authorities to have been confirmed. Consequently, the applicants only had legal certainty as regards the deprivation of the land on 12 January 2004 at the very earliest, on which date the decision of Palermo Court of Appeal became final. The Court also found that the situation in question had enabled the government to take advantage of an unlawful land occupation to appropriate the plot of land in breach of the rules on proper expropriation. Consequently, the impugned interference was incompatible with the legality principle, thus infringing the applicants' right to respect for their property. **There had therefore been a violation of Article 1 of Protocol No. 1.**

### Other articles

The Court considered it unnecessary to examine separately the complaint under Article 6 § 1 (right to a fair trial), and declared the complaint under Article 17 (prohibition of abuse of rights) manifestly ill-founded, noting that it had not been substantiated.

### Article 41 (just satisfaction)

The Court held that Italy was to pay the applicants jointly 326,300 euros (EUR) in respect of pecuniary damage, EUR 5,000 in respect of non-pecuniary damage and EUR 5,000 in respect of costs and expenses.

*The judgment is available only in French.*

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [@ECHRpress](http://www.echr.coe.int/RSS/en).

### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel.: +33 3 90 21 42 08

Inci Ertekin (tel: + 33 3 90 21 55 30)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

George Stafford (tel: + 33 3 90 21 41 71)

**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.