

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

FIRST SECTION

CASE OF GALLO v. ITALY

(Application no. 11061/05)

JUDGMENT

STRASBOURG

9 February 2023

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



In the case of Gallo v. Italy,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Péter Paczolay*, President*,
Gilberto Felici,
Raffaele Sabato*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 11061/05) 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 21 March 2005 by an Italian national, Mr Michele Gallo ("the applicant"), who was born in 1939 and lives in Fasano, and was represented before the Court by Mr L. Paccione, a lawyer practising in Bari;

the decision to give notice of the application to the Italian Government ("the Government"), represented by their former Agent, Ms E. Spatafora, and their former co-Agent, Mr F. Crisafulli;

the parties' observations;

Having deliberated in private on 17 January 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the deprivation of the applicant's land pursuant to the rule on indirect or "constructive" expropriation.

2. The applicant was the co-owner of a plot of land located in Mottola with another individual, F.L.

3. On 25 July 1974 F.L. brought an action for damages in the Taranto District Court against the Mottola municipality. He argued that the municipality had occupied part of his land without permission and had built a road on it. He sought compensation for the dispossession of the relevant land as well as compensation for the depreciation in the value of the remainder.

4. On 5 March 1980 the District Court struck the case out of its list in accordance with Article 309 of the Code of Civil Procedure, as both parties had been absent from two consecutive hearings.

5. On 6 April 1984 F.L. brought the same action for damages in the Taranto District Court against the Mottola municipality.

6. On an unspecified date the District Court ordered an independent expert valuation of the land.

7. On 3 April 1986 the applicant joined the proceedings before the Taranto District Court. He submitted that he was the co-owner of part of the occupied land and was seeking compensation for the dispossession of that land.

8. By a judgment of 29 March 1989 the District Court declared that the occupation of the land had been unlawful and that ownership of the land had been transferred to the municipality pursuant to the constructive-expropriation rule. It referred to the finding of the independent expert to the effect that the market value of the property, in so far as the applicant's share in the land was concerned, had amounted to 10,946,450 Italian liras (ITL) in 1974. The court ordered the Mottola municipality to pay F.L. and the applicant the sums of ITL 143,139,473 and ITL 58,891,901 (30,415 euros (EUR)) respectively, corresponding to the property's market value in 1974 as adjusted for inflation.

9. On 15 June 1989 the Mottola municipality appealed to the Lecce Court of Appeal against that judgment.

10. By a judgment of 14 March 1994 the Court of Appeal dismissed the municipality's appeal.

11. On 19 July 1994 the Mottola municipality appealed to the Court of Cassation against the Court of Appeal's judgment, arguing, *inter alia*, that that court had failed to take into consideration its argument to the effect that the applicant's right to compensation had become time-barred.

12. By a judgment delivered on 3 March 1997 the Court of Cassation partly upheld the municipality's appeal and remitted the case to the Bari Court of Appeal.

13. By a judgment of 12 July 2000 the Bari Court of Appeal declared the applicant's right to compensation time-barred, given that he had lodged his application more than five years after the date on which the construction of the road had been completed (20 November 1974). Referring to the Court of Cassation's case-law on constructive expropriation, it found that the transfer of ownership to the administration had occurred upon the completion of the public works.

14. On 5 September 2001 the applicant appealed to the Court of Cassation against that judgment.

15. On 23 September 2004 the Court of Cassation dismissed the applicant's appeal.

16. In judgment no. 735/2015 of 19 January 2015 the constructive-expropriation rule was found to be incompatible with Article 1 of Protocol No. 1 to the Convention by the Court of Cassation sitting as a full court. The court held that individuals were entitled to request the restitution of their property unless they decided to claim damages. Moreover, it held that the five-year limitation period for claiming damages in respect of the dispossession of property should start to run from the date on which the claim was lodged with the court.

17. Relying on Article 1 of Protocol No. 1 to the Convention, the applicant complained to the Court that he had been unlawfully deprived of his land by means of indirect or "constructive" expropriation and that he had not obtained any compensation for the dispossession of his property.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

18. The Court notes at the outset that, as regards the Government's argument that the application was lodged out of time, it has already examined and rejected a similar objection by the Government in *Donati v. Italy* ((dec.), no. 63242/00, 13 May 2004), the circumstances of which are similar to the present case. The Court finds no reason which would require it to reach a different conclusion now.

19. 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.

20. The relevant domestic law and practice concerning constructive expropriation is to be found in *Guiso-Gallisay v. Italy* ((just satisfaction) [GC], no. 58858/00, §§ 18-48, 22 December 2009).

21. The Court observes that the applicant was deprived of his property by means of indirect or " constructive" expropriation – an interference with the right to the peaceful enjoyment of possessions which the Court has previously considered, in a large number of cases, to be incompatible with the principle of lawfulness, leading to findings of violations of Article 1 of Protocol No. 1 (see, among many other authorities, *Carbonara and Ventura v. Italy*, no. 24638/94, §§ 63-73, ECHR 2000-VI, and, more recently, *Messana v. Italy*, no. 26128/04, §§ 38-43, 9 February 2017).

22. Having examined all the material submitted to it and the parties' observations, the Court has not found any fact or argument capable of persuading it to reach a different conclusion in the present case.

23. Furthermore, the Court notes that the domestic courts applied a five-year limitation period which had started to run from the date of the completion of the public works (see paragraph 13 above). As a result, the applicant was denied the possibility that had, in principle, been available to him of obtaining damages (see *Carbonara and Ventura*, cited above, § 71).

24. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. The applicant claimed 30,415.13 euros (EUR) in respect of pecuniary damage, corresponding to the amount of compensation awarded by the Taranto District Court, to be adjusted for inflation and increased by statutory interest calculated from 1974. The applicant also claimed EUR 500,000 in respect of non-pecuniary damage. He further sought reimbursement of

EUR 25,610.91 for legal costs and EUR 1,974.92 for expenses incurred before the national courts.

26. The Government made no observation with respect to the market value of the property, arguing instead that the failure to pay compensation had been on account of a delay on the applicant's part in requesting it. Should the Court decide to award the applicant compensation in respect of pecuniary damage, they invited the Court to take the applicant's conduct into consideration when calculating interest and inflation. The Government also contended that the sum claimed by the applicant in respect of non-pecuniary damage was excessive.

27. As regards pecuniary damage, the Court reiterates that the relevant calculation criteria with respect to unlawful expropriations were laid down in *Guiso-Gallisay* (cited above, § 105). On the facts of the present case, the Court considers it appropriate to use, as a starting point, the market value of the property as identified in the court-ordered expert report drawn up during the proceedings before the Taranto District Court, which corresponds to EUR 5,653 (see paragraph 8 above). In so far as the calculation of the sum reflecting inflation adjustment and statutory interest is concerned, the Court notes, as also pointed out by the Government, that the applicant did not join the proceedings for damages until 3 April 1986. Having regard to the foregoing factors and ruling on an equitable basis, the Court considers it reasonable to award the applicant EUR 100,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

28. As regards non-pecuniary damage, the Court awards the applicant EUR 5,000, plus any tax that may be chargeable on that amount.

29. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 7,000 covering costs and expenses under all heads, plus any tax that may be chargeable to the applicant on that amount.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 100,000 (one hundred thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable to the applicant, 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President