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

FIRST SECTION

DECISION

Application no. 8796/03
Domenico LOMBARDI
against Italy

The European Court of Human Rights (First Section), sitting on 28 June 2022 as a Committee composed of:

Péter Paczolay, *President,*
Raffaele Sabato,
Davor Derenčinović, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 8796/03) against Italy lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 15 November 1999 by an Italian national, Mr Domenico Lombardi, who was born in 1922 and lived in San Martino Valle Caudina ("the applicant"). He was represented by Mr G. Romano, a lawyer practising in Rome;

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, Ms P. Accardo;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the establishment of an easement on the applicant's land.

2. The applicant was the owner of a plot of land in San Martino Valle Caudina.

3. By an order of 11 May 1987, the president of the Campania Regional Council authorised company G.O.I., to occupy a portion of the applicant's land for a period of five years in order to develop the public water supply network.

4. On 5 June 1987, the company took physical possession of the land and began the construction work.

5. On 11 May 1994, the applicant brought an action for damages before the Regional Public Water Court against, amongst others, company G.O.I. and the Campania Regional administration. He alleged that, following the completion of the building work, he had been *de facto* deprived of the part of the land that had been occupied by the authorities. He thus sought compensation for the dispossession of his property as well as compensation for the period the land had been occupied (*indennità di occupazione*).

6. By a judgment of 17 November 1997, the Regional Public Water Court found that the occupation of the applicant's land had been lawful. Accordingly, it held that the applicant was not entitled to compensation in this respect. However, the court found that the applicant was entitled to compensation for the period the land had been occupied by the authorities.

7. The applicant appealed against the latter judgment before the Higher Public Water Court.

8. By a partial decision issued on 15 November 1999, the Higher Public Water Court upheld the first-instance judgment insofar as it concerned the alleged unlawful deprivation of the applicant's property. It found that the public works at issue were part of a large-scale project aimed at the development of the public water supply network, and that the project had not been completed at the date of the decision. Given that the occupation of the applicant's land within the context of the latter project had been authorised until 30 April 2000, the court found that his request for compensation for a dispossession of his property was premature. The court further ordered an expert valuation for the purposes of calculating the amount of compensation due to the applicant for the period the land had been occupied by the authorities.

9. On 27 March 2002 the Higher Public Water Court upheld the part of the applicant's appeal concerning the amount of compensation due to him for the period of occupation of the land and awarded him a sum reflecting the amount calculated by the court-appointed expert's report.

10. The applicant did not appeal against the Higher Public Water Court's decision.

11. On 22 June 2012 the San Martino Valle Caudina municipality issued an order under Article 42 *bis* of Presidential Decree no. 327 of 8 June 2001 establishing an aqueduct easement incidental to the passage of a pipeline on the applicant's land. In the order, it was specified that the plots of land had been cleared and returned to the applicant. Compensation for the establishment of the easement was calculated as amounting to 3,789.83 euros (EUR).

12. On 25 July 2013 the compensation for the easement was paid to the applicant's heirs.

13. The applicant complained that he had been deprived of his land in a manner that had not been in accordance with the law, thus entailing a breach of Article 1 of Protocol No. 1. In particular, the applicant complained that his property had been *de facto* transferred to the local authority by means of "constructive expropriation" (*accessione invertita*).

14. He further complained, under Article 6 § 1, that he had not had access to a court to obtain compensation for the dispossession of his land.

THE COURT'S ASSESSMENT

15. The Court notes from the outset that the applicant died on 17 August 2012 and that his sons, Mr Antonio Lombardi and Mr Giovanni Lombardi, expressed the wish to continue the proceedings before the Court in his stead. The Government did not object and the Court sees no reason to hold otherwise. For convenience, it will continue to refer to Mr Domenico Lombardi as "the applicant" in the present decision.

16. In their observations submitted on 7 June 2005, the Government argued that the applicant had failed to exhaust domestic remedies.

17. In his observations in reply, submitted on 11 July 2005, the applicant contested the Government's objection concerning failure to exhaust domestic remedies and reiterated that his property had been *de facto* transferred to the local authority through constructive expropriation (*accessione invertita*).

18. By a letter of 1 October 2014, the Government argued that, in light of the developments which had occurred following the communication of the case, and namely the issuing by the municipality of the order of 22 June 2012 (see paragraph 11 above), the applicant could not be considered a victim of the violation complained of. In this connection, they contended that the case did not concern a deprivation of the applicant's property, which had been returned to him following its occupation but, rather, the establishment of a public easement over his land. They noted, in addition, that the applicant had received compensation for the easement and provided evidence that such compensation had been paid to him.

19. The applicant did not make specific submissions in reply insofar as the Government's victim status objection is concerned and did not contest the Government's statements that the land had been *de facto* returned to him and that an easement had been established on it.

20. The Court considers at the outset that it is not necessary to examine the Government's objection regarding non-exhaustion of domestic remedies as the application is in any event inadmissible for the following reasons.

21. The Court notes that by the order of 22 June 2012 the municipality established an aqueduct easement on the applicant's land (see paragraph 11 above) and that the applicant received compensation in connection with that easement (see paragraph 12 above). The Court can find no evidence that ownership of the applicant's land was actually transferred from the applicant

to the municipality via the application of the constructive expropriation principle.

22. Accordingly, the Court takes the view that the applicant cannot claim to be a victim of the breach of the Convention complained of, in so far as he complained about a deprivation of his property.

23. It follows that the applicant's complaint under Article 1 of Protocol No. 1 is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

24. The applicant also raised a complaint under Article 6 § 1 of the Convention (see paragraph 14 above). The Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, this complaint either does not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or does not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

25. It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares that Mr Antonio Lombardi and Mr Giovanni Lombardi have standing to pursue the application in the late applicant's stead;

Declares the application inadmissible.

Done in English and notified in writing on 25 August 2022.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President