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

FIRST SECTION

DECISION

Application no. 39118/20
Giovanni Maria SCORDINO and Others
against Italy

The European Court of Human Rights (First Section), sitting on 20 June 2023 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. 39118/20) 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 26 August 2020 by the applicants listed in the appended table ("the applicants") who were represented by Mr N. Paoletti and Ms G. Ruggiero, lawyers practising in Rome and Reggio Calabria;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns an expropriation order accompanied by a prohibition on building.

2. The applicants own plots of land in the municipality of Reggio Calabria, covering a total area of 95,299 sq. m. On 25 March 1970 the Reggio di Calabria District Council adopted a general development plan, which came into force in 1985. It set aside the land in question for public use, consequently prohibiting building on the site with a view to its expropriation. In accordance with the applicable legislation, and given that the municipality did not issue any expropriation order, the order establishing restrictions with a view to expropriation (*vincolo preordinato all'esproprio*) expired five years after the entry into force of the development plan. However, the applicable legislation also provided that, despite the expiry of the order establishing

restrictions, the municipality had to take a decision on the new designated use of the land in question, pending which the land was not unencumbered and was placed under the "white zone" regime (*zone bianche*) with accompanying prohibitions on building.

3. In 2009 the applicants served notice on the authorities to determine the intended use of the land and then lodged a complaint with the Regional Administrative Court ("the TAR").

4. By judgment of 6 May 2011, the TAR ordered that the municipality take a decision on the new use to be assigned to the land.

5. In 2011 the applicants decided to lodge a new complaint with the TAR requesting that a special commissioner (*commissario "ad acta*") be appointed to reach a decision in place of the municipality.

6. In 2013 the special commissioner appointed by the TAR decided to earmark the land for a different use, which allowed limited construction work. In 2016, following a request by the applicants made in 2012 and reiterated in 2014, a permit was issued authorising the installation of photovoltaic greenhouses.

7. Moreover, in 2011, before lodging the second complaint with the TAR (see paragraph 4 above), by a further application to the TAR, the applicants claimed that they had sustained damage ensuing from the unlawful behaviour of the authorities, in particular the impossibility to obtain financial incentives for photovoltaic greenhouses because of the delay in obtaining the relevant permit, and requested that they be awarded compensation. The applicants made extensive reference to the Court's case-law finding violations of Article 1 of Protocol No. 1 in cases concerning the unlawful extension of building restrictions. By a judgment of 22 April 2015, the TAR rejected the request.

8. The applicants appealed against that decision, and, by a judgment of 27 March 2020, the *Consiglio di Stato* upheld, in general terms, the regional court's findings. The *Consiglio di Stato* considered that the Italian system had recognised, based on several legal developments also reflected in the Code of Administrative Procedure ("CAP"), the possibility of awarding full damages in the event of a wrongful delay by municipalities in earmarking land under the "white zone" regime (*zone bianche*), by resorting to accelerated proceeding. However, damages could not be recognised automatically since, according to the general rule of the Civil Code, the courts had to satisfy themselves that the owners had actually been deprived of opportunities to use the land because of the municipality's delay in acting. In this context, the *Consiglio di Stato* considered that the applicants had not requested any action by the authorities until 2009, thus the period preceding this request could not constitute a wrongful delay. As regards the subsequent period, the applicants had benefitted from effective judicial protection which had led to the appointment of a special commissioner who, within a reasonable time, had requalified the designation of the land in accordance with the applicant's expectations. Moreover, the applicants' request for the authorisation to install

photovoltaic greenhouses had not been made within the applicable time-limits. As a result, they had had no right to the incentives, the loss of which they were complaining about. Consequently, the request for damages was refused *in concreto.*

9. Relying on Article 1 of Protocol No. 1 to the Convention, the applicants complained of the duration of the prohibition on building on their land, as from the date of the order establishing restrictions with a view to expropriation. They emphasised the delay on the part of the authorities in designating the land for a new use once the initial deadline had expired as well as their delay in complying with the final judgments of the national courts. They also complained of the lack of a remedy in the domestic system by which to obtain full redress for the ensuing damage.

THE COURT'S ASSESSMENT

10. According to the general principles established by the Court's case-law, under Article 1 of Protocol No. 1 the mere fact that a person owns a piece of land does not, *per se*, confer a right on the owner to build on that land. It is indeed permissible under this provision for the authorities to impose and maintain various building restrictions. The Court has previously examined a number of cases concerning restrictions imposed on landowners in the context of spatial planning, sometimes lasting for many years, and considered that the situation complained of by the applicants fell within the control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (see *Scagliarini and Others v. Italy* (dec.), no. 56449/07, § 14, 3 March 2015).

11. The Court also declared inadmissible some applications concerning an absolute prohibition on building, accompanied by an inability to claim compensation, where the owners had neither manifested an intention to build nor shown that the prohibition had obliged them to alter the use to which the property was put (ibid.); or where the designated use had not been changed but the applicant had waited for a long time before applying for a building permit (see *Galtieri v. Italy* (dec.), no. 72864/01, 24 January 2006).

12. The Court notes that the relevant domestic legislation and practice has been set out in *Scordino v. Italy (no. 2)* (no. 36815/97, §§ 25-45, 15 July 2004), and more recently in *Odescalchi and Lante della Rovere v. Italy* (no. 38754/07, § 22-32, 7 July 2015). The Court considered in those cases that although there had been no formal transfer of property, the measures imposed had ultimately been aimed at the expropriation of the land and the applicants had remained in total uncertainty as to the fate of their property for very long periods. That inaction could not be effectively challenged before the courts nor was any general compensatory remedy available because, at the time, redress was only available for the period following the renewal of the relevant restrictions (see *Scordino (no. 2)*,

§§ 90 - 91 and 93-98, and *Odescalchi and Lante della Rovere,* §§ 54-56 and 59 - 63, both cited above).

13. In the present case, by contrast, the Court observes – as the *Consiglio di Stato* also noted in its judgment – that the applicants had not asked for any authorisation in good time to obtain the incentives they sought or shown any interest in challenging the limitation on building. It was only in 2009 that they turned to the TAR to obtain an order for the authorities to act, after the failure of the administration to determine the intended use of the land. Therefore, while it is true that a long period had passed since the entry into force of the development plan, once the applicants decided to challenge the situation in court a remedy was actually available, following the changes in the domestic legislation and case-law.

14. The Court notes that the applicants were able – unlike the applicants in *Scordino (no.2)* and *Odescalchi and Lante della Rovere* (both cited above) – to petition both for compensation in respect of damage for the entire period in which the unlawfully extended restrictions had applied and for the appointment of a special commissioner tasked with removing those restrictions.

15. Accordingly, the Court considers that – in the absence of the special circumstances relevant in *Scordino (no. 2)* and *Odescalchi* (both cited above) – the situation complained of by the applicants falls within its well - established general approach (e.g. *Scagliarini,* cited above, § 14) and thus entails a regulation of the use of property, within the meaning of the second paragraph of Article 1 of Protocol No. 1.

16. As to the lawfulness of the interference arising from the building restrictions, the Court notes that the designation of the applicants' land for public use (before the unlawful renewal of the restrictions) and for private facilities accessible to the public (after the new designation by the special commissioner) had had a legal basis in the town planning instruments, whose purpose was to respond to the needs of the local communities and the general interest. As to the period during which the designation had been unlawful, the situation had been remedied by the domestic courts, which had in principle been prepared to award damages.

17. The Court notes that there has been a restriction of some form on the land in question since 1985. However, it is not apparent from the file that during the period prior to the adoption of the 1985 development plan the applicants had expressed an intention to build on the land or initiated administrative procedures aimed at obtaining a building permit. In addition, the applicants have not shown that there was a change in the use of the land resulting from the designation of the property for public use (see *Scagliarini*, § 1, and *Galtieri,* both cited above).

18. Concerning the refusal of compensation, including in relation to the period in which the building restrictions had been unlawfully extended, the Court reiterates that the availability *in abstracto* of compensation in this

regard was clearly stated by the domestic courts. The fact that *in concreto,* owing to the failure on the part of the applicants to provide evidence as to damage, the courts were unable to award damages in the specific case does not mean that an avenue to obtain equitable redress was not available.

19. The Court further reiterates that the classification of the land in question as an area intended for public use did not confer on the applicants a right to compensation. It considers, however, that when a measure to control the use of property is in issue, the absence of compensation is only one of the factors to be taken into account in establishing whether a fair balance has been struck and cannot, in itself, constitute a violation of Article 1 of Protocol No. 1 (see *Galtieri*, cited above). In the absence of a manifestly arbitrary or unreasonable choice concerning the lack of compensation, given the prior use and the limited size of the plot of land, the Court cannot substitute its own assessment for that of the national authorities as to the most appropriate means of achieving, at the domestic level, the results sought by their policy.

20. The Court thus concludes that the impugned interference did not upset the fair balance which must prevail, as regards control of the use of property, between the public and private interests at stake.

21. It follows from the foregoing that the application is inadmissible and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 July 2023.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President

Appendix

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Giovanni Maria SCORDINO	1959	Italian	Reggio Calabria
2.	Elena SCORDINO	1949	Italian	Reggio Calabria
3.	Giuliana SCORDINO	1953	Italian	Reggio Calabria
4.	Maria SCORDINO	1951	Italian	Reggio Calabria