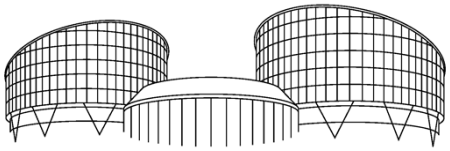

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF LERRO AND OTHERS v. ITALY

(Applications nos. 469/08 and 16108/11)

JUDGMENT

STRASBOURG

6 April 2023

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

In the case of Lerro and Others 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 two applications (nos. 469/08 and 16108/11) 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") by the applicants listed in the appended table ("the applicants"), on the various dates and with the various representatives indicated therein;

the decision to give notice of the complaints raised under Article 6 § 1 of the Convention, concerning the retrospective application of Law no. 662/1996, and under Article 1 of Protocol No. 1 to the Convention, to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia, and to declare inadmissible the remainder of the applications;

the parties' observations;

the decision to reject the Government's objection to the examination of the applications by a Committee;

Having deliberated in private on 14 March 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicants' complaints that they were deprived of their land through the application by the domestic courts of the constructive-expropriation rule (*accessione invertita* or *occupazione acquisitiva*).

2. The applicants were the owners of plots of land in different municipalities (see the appended table for details).

3. The national authorities issued orders authorising the urgent occupation of the applicants' various plots of land with a view to their subsequent expropriation. Shortly thereafter, they took physical possession of the land. By the time the authorisations expired, the land had been irreversibly altered by construction works, but the authorities had not issued formal expropriation orders.

4. The applicants brought actions for damages in the national courts, arguing that the occupation of the land had been unlawful and seeking compensation. With regard to application no. 16108/11, the applicant also argued that, in the course of previous negotiations, the municipality had made a binding offer of compensation.

5. The domestic courts found that the occupation of the applicants' land, which had initially been legally authorised, had subsequently become unlawful, but that the land had been irreversibly altered following the completion of the public works. As a consequence, pursuant to the constructive-expropriation rule, the applicants were no longer the owners of the land.

6. With regard to application no. 469/08, the domestic courts initially awarded a sum as compensation for the unavailability of the land during the period of lawful occupation (*indennità di occupazione*). In a subsequent set of proceedings, the domestic courts further accepted that the applicants were entitled to damages for the loss of their property, and ordered an independent expert valuation of the land. They did not award compensation reflecting the market value of the expropriated land, but instead proceeded to make an award based on the criteria contained in section 5 *bis* of Legislative Decree no. 333 of 11 July 1992, as amended by Law no. 662 of 1996.

7. With regard to application no. 16108/11, the domestic courts found that the applicant's complaints were subject to a five-year limitation period which had started to run from the date of the irreversible alteration of the land. As a result, the complaints were time-barred and the applicant was not entitled to any compensation. Furthermore, the domestic courts found that the municipality had not made any binding offer of compensation to the applicant.

8. Further information on each application can be found in the appended table.

9. All the applicants complained that they had been unlawfully deprived of their land on account of the application by the domestic courts of the constructive-expropriation rule, in breach of their rights under Article 1 of Protocol No. 1 to the Convention.

10. Additionally, the applicants made distinct complaints under Article 6 § 1: the applicants in application no. 469/08 complained of the retrospective application of section 5 *bis* of Legislative Decree no. 333 of 11 July 1992, as amended by Law no. 662 of 1996; the applicant in application no. 16108/11 complained of conflicting case-law concerning the limitation period.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

11. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. PRELIMINARY ISSUE

12. The Court takes note of the information regarding the death of the applicant Anna Maria Siddi (application no. 16108/11) and the wish of her heirs, Ornella, Fabrizio, Roberto and Pietro Pontis, to continue the proceedings in her stead.

13. The Government objected that the individuals in question lacked standing, claiming that their status as heirs with regard to the disputed rights was insufficiently demonstrated.

14. The Court notes that Ornella, Fabrizio, Roberto and Pietro Pontis have submitted official documents attesting to their status as universal heirs of Anna Maria Siddi. As a consequence, the Court dismisses the Government's objection and considers that they have standing to continue the proceedings on behalf of the deceased.

15. However, for practical reasons, Anna Maria Siddi will continue to be referred to as "the applicant" in this judgment.

III. THE GOVERNMENT'S REQUESTS TO STRIKE OUT THE APPLICATIONS UNDER ARTICLE 37 § 1 OF THE CONVENTION

16. The Government submitted unilateral declarations which do not offer a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*). The Court rejects the Government's request to strike out the applications and will accordingly pursue its examination of the merits of the case (see *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, § 75, ECHR 2003-VI).

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

17. 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).

A. Admissibility

18. The Government objected to the admissibility of application no. 469/08 on the grounds of non-exhaustion of domestic remedies and loss of victim status.

19. As to the first ground, the Government argued that the applicants had failed to lodge an appeal against the first-instance judgment and had not contested the determination of damages made by the court-appointed expert. In this connection the Court notes that it has previously rejected similar

submissions (see *Ucci v. Italy*, no. 213/04, §§ 83-86, 22 June 2006) and there is no reason to do otherwise in the present case.

20. As to the alleged loss of victim status, the Government contended that the applicants had obtained reparation at the national level. In this regard the Court observes that the domestic courts did not award a sum corresponding to the full market value of the expropriated land (see paragraph 6 above). It follows that the applicants have not lost their victim status (see, conversely, *Armando Iannelli v. Italy*, no. 24818/03, §§ 35-37, 12 February 2013).

21. The Government also objected to the admissibility of application no. 16108/11. They maintained that the applicant had failed to challenge the first-instance judgment on the point concerning the municipality's compensation offer and the application of the limitation period. As a consequence, the applicant had not exhausted domestic remedies and lacked victim status as she had, by her own behaviour, contributed to the alleged violation.

22. The Court notes that the applicant lodged an appeal against the first-instance judgment complaining of the failure to award compensation for the unlawful occupation of the land. That complaint reflected the alleged breach that has been raised before the Court (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 117, 20 March 2018).

23. As to the failure to challenge the application of the limitation period, the Court notes that at the time the appeal was lodged in 2007, the established domestic case-law provided that the limitation period was five years and began to run from the date on which the land was irreversibly altered (see *Guiso-Gallisay*, cited above, §§ 24-25). In this respect, therefore, national remedies were ineffective and the Government's objections must be dismissed.

24. As the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds, the Court declares it admissible.

B. Merits

25. The Court notes that the applicants were deprived of their 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 a violation 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, as a more recent authority, *Messana v. Italy*, no. 26128/04, §§ 38-43, 9 February 2017).

26. In the present case, having examined all the material submitted to it and the Government's submissions, the Court has not found any fact or argument capable of persuading it to reach a different conclusion.

27. Furthermore, with regard to application no. 16108/11, the Court notes that the domestic courts applied a five-year limitation period which started to run from the date of completion of the public works (see paragraph 7 above). As a result, the applicants were denied the possibility that had, in principle, been available to them of obtaining damages (see *Carbonara and Ventura*, cited above, § 71).

28. It follows that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

V. OTHER COMPLAINTS

29. As to the remaining complaints raised under Article 6 § 1 of the Convention (see paragraph 10 above), having regard to the facts of the case, the submissions of the parties and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. The applicants claimed the amounts indicated in the appended table in respect of pecuniary and non-pecuniary damage and in respect of costs and expenses.

31. With regard to application no. 469/08, the Government argued that the applicants had already obtained sufficient reparation at the national level, whereas with regard to application no. 16108/11 they did not submit any observations on the applicant's just satisfaction claims.

32. The Court has found a violation of Article 1 of Protocol No. 1 on account of a breach of the principle of lawfulness (see paragraphs 25 and 26 above). The relevant criteria for the calculation of pecuniary damage in constructive expropriation cases have been set forth in *Guiso-Gallisay* (cited above, §§ 105-06). In particular, the Court relied on the market value of the property at the time of the expropriation as stated in the court-ordered expert reports drawn up during the domestic proceedings.

33. With regard to application no. 469/08, the Court notes that two different expert reports were ordered during the domestic proceedings. The applicants relied before the Court on the expert report drawn up in the course of the second set of proceedings and the Government did not object to that; therefore the Court will base its assessment on that report.

34. As to the amount already awarded by the domestic courts, the Government argued that the sum the applicants had obtained as occupation compensation (see paragraph 6 above) ought to be viewed as part of the compensation for loss of property. The Court considers that the sum in

question was aimed at affording reparation for the damage occasioned to the applicants by the unavailability of the land before the loss of ownership and, as a consequence, it cannot be taken into account as part of the compensation for the dispossession of the applicants' property.

35. As to application no. 16108/11, the Court notes that the domestic courts did not appoint an expert for the valuation of the land. Nevertheless, the applicant submitted an expert report which includes a determination of the market value of the land in 1983. The Court notes in this regard that the expert estimated the value of the land on the basis of a comparison with neighbouring lands with similar characteristics, a method which is consistent with the line of reasoning of the Court (see, *mutatis mutandis*, *Preite v. Italy*, no. 28976/05, § 70, 17 November 2015). Additionally, the Government have neither provided an alternative basis for the calculation of the land's value nor submitted any observations in respect of the applicant's just satisfaction claim. The Court therefore considers it appropriate to rely on the expert report submitted by the applicant.

36. Having regard to the applicants' claims, and taking into account the principle *non ultra petita*, the Court awards the sums indicated in the appended table and dismisses the remainder of the claims.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* that Ornella Pontis, Fabrizio Pontis, Roberto Pontis and Pietro Pontis have standing to continue the present proceedings in Anna Maria Siddi's stead;

3. *Rejects* the Government's request to strike the applications out of its list of cases;

4. *Declares* the complaint under Article 1 of Protocol No. 1 to the Convention admissible;

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

6. *Holds* that there is no need to examine the admissibility and merits of the remaining complaints;

7. *Holds*
   (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table in respect of pecuniary and non-pecuniary damage and 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;

8. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 6 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President

APPENDIX

No.	Application no. Case name Lodged on	Applicant's name Year of birth Place of residence Nationality	Representative's name Location	Factual information	Amounts awarded by national courts in Italian lira (ITL)	Market value of the land in Italian lira (ITL)	Observations of the parties	Award under Article 41 of the Convention per application
1.	469/08 Lerro v. Italy 27/12/2007	**Umberto LERRO** 1948 Naples Italian **Raffaello LERRO** 1950 Naples Italian **Giovanna LERRO** 1954 Villa Chiara Italian	Maurizio DE STEFANO Rome	Land: Avellino municipality, recorded in the land register as folio no. 12, parcels nos. 96 and 202 Urgent occupation orders: 28/02/1976 (and subsequent extensions of 21/03/1980 and 01/12/1980) and 12/09/1987 Expropriation order: 02/12/1994 Physical occupation: 12/12/1987 National decisions: Avellino District Court, 28/06/1989, declaring the occupation unlawful since	ITL 1,082,315,850, plus inflation adjustment and statutory interest from 01/05/1989, as damages ITL 594,493,090 plus statutory interest, as occupation compensation	ITL 979,169,000 (in 1989, according to expert valuation in first set of proceedings) ITL 1,513,865,000 (as on 01/05/1989, according to expert valuation in second set of proceedings)	Government: (1) non-exhaustion (see § 19 of the judgment); (2) loss of victim status (see § 20 of the judgment); (3) merits: interference sufficiently foreseeable on the basis of national law and proportionate to the public interest pursued; (4) just satisfaction: applicants received a sufficient amount, taking into account also the payment of occupation compensation. Applicant: (1) national remedies were ineffective; (2) compensation did not reflect the property's market value, and the sum	Pecuniary damage: **EUR 901,400**, plus any tax that may be chargeable Non-pecuniary damage: **EUR 5,000**, plus any tax that may be chargeable Costs and expenses: **EUR 5,000**, plus any tax that may be chargeable to the applicants

No.	Application no. Case name Lodged on	Applicant's name Year of birth Place of residence Nationality	Representative's name Location	Factual information	Amounts awarded by national courts in Italian lira (ITL)	Market value of the land in Italian lira (ITL)	Observations of the parties	Award under Article 41 of the Convention per application
				01/03/1979, ordering the restitution of the land and awarding occupation compensation; Naples Court of Appeal, 18/02/1991, ascertaining the irreversible transformation as of 01/05/1989 and the impossibility of returning the land, and awarding occupation compensation; Campania Regional Administrative Court, 22/06/1998, declaring the expropriation order invalid; Avellino District Court, 29/11/2004, awarding damages based on Law no. 662/1996; Naples Court of Appeal, 19/05/2006, upholding the first-instance judgment.			paid as occupation compensation cannot be taken into account; (3) just satisfaction claims: (a) loss of property: 1,706,580.23 euros (EUR) (b) non-pecuniary damage: EUR 45,000 (c) costs and expenses: EUR 31,204.10 plus taxes	

No.	Application no. Case name Lodged on	Applicant's name Year of birth Place of residence Nationality	Representative's name Location	Factual information	Amounts awarded by national courts in Italian lira (ITL)	Market value of the land in Italian lira (ITL)	Observations of the parties	Award under Article 41 of the Convention per application
2.	16108/11 Siddi v. Italy 09/03/2011	**Anna Maria SIDDI** 1931 Deceased 2012 Quartu Sant'Elena Italian Heirs Ornella PONTIS 1954 Fabrizio PONTIS 1955 Roberto PONTIS 1960 Pietro PONTIS 1966	Maurizio DE STEFANO Rome	Land: 1/3 of land located in the Selargius municipality, recorded in the land register as folio no. 42, parcels nos. 378, 380 and 381 (overall 3,270 square metres) Urgent occupation order: 18/07/1977 National decisions: Cagliari District Court, 22/11/2006, declaring the occupation unlawful since 30/04/1982 and the applicant's complaints statute-barred; Cagliari Court of Appeal, 15/09/2010, upholding previous judgment; Court of Cassation, 22/03/2012, upholding previous judgment.	None	ITL 120,000 per square metre in 1983 (ITL 130,800,000 for the applicant's share), according to *ex parte* expert valuation	Government: (1) lack of standing of applicant's heirs; (2) non-exhaustion (see § 21 of the judgment); (3) lack of victim status (see § 21 of the judgment) (4) merits: both the expropriation and the application of the statute of limitation were sufficiently foreseeable and proportionate to the public interest pursued. Applicant: (1) heirs have standing; (2) the appeal concerned the request for damages, and was ineffective due to the statute of limitation; (3) just satisfaction claims: (a) loss of property: EUR 371,237.65 (b) non-pecuniary damage: EUR 40,000	Pecuniary damage: **EUR 371,237.65**, plus any tax that may be chargeable Non-pecuniary damage: **EUR 5,000**, plus any tax that may be chargeable Costs and expenses: **EUR 5,000**, plus any tax that may be chargeable to the applicant

No.	Application no. Case name Lodged on	Applicant's name Year of birth Place of residence Nationality	Representative's name Location	Factual information	Amounts awarded by national courts in Italian lira (ITL)	Market value of the land in Italian lira (ITL)	Observations of the parties	Award under Article 41 of the Convention per application
							(c) costs and expenses: EUR 29,335.61	