FIRST SECTION

DECISION

Application no. 21461/05  
RIZZELLI and FRASSANITI  
against Italy

The European Court of Human Rights (First Section), sitting on 30 May 2023 as a Committee composed of:

Péter Paczolay*, President*,  
 Gilberto Felici,  
 Raffaele Sabato*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to the above application lodged on 8 June 2005,

Having regard to the declaration submitted by the respondent Government on 13 September 2017 requesting the Court to strike the application out of the list of cases and the applicants’ reply to that declaration,

Having deliberated, decides as follows:

1. FACTS AND PROCEDURE

1.  A list of the applicants is set out in the appendix. They were represented by Mr M. De Stefano, a lawyer practising in Rome.

2.  The Italian Government (“the Government”) were represented by their former Agent, Ms E. Spatafora, and their former co‑Agent, Ms P. Accardo.

3.  On 4 May 2006 the applicants’ complaint under Article 1 of Protocol No. 1 to the Convention about the indirect expropriation of their land was communicated to the Government and the remainder of the application was declared inadmissible.

1. THE LAW

4.  The applicants complained that they had been unlawfully deprived of their land by means of indirect or “constructive” expropriation and that the compensation awarded to them by the domestic courts was inadequate. They relied on Article 1 of Protocol No. 1 to the Convention.

5.  The Court takes note of the information regarding the death of Ms Anna Maria Frassaniti and of the wish of her daughter, Ms Maria Rizzelli, to continue the proceedings in her stead, as well as of the absence of any objection to that wish on the Government’s part. Therefore, the Court considers that Ms M. Rizzelli has standing to continue the proceedings on behalf of the deceased.

6.  After the failure of attempts to reach a friendly settlement, by a letter of 13 September 2017 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. The declaration provided as follows:

“Le Gouvernement italien reconnaît que les requérantes ont subi la violation de l’article 1 du Protocole 1, en raison de l’application à niveau interne du critère de la VAM (valeur agricole moyenne), pour les indemniser l’expropriation indirecte de leur terrain.

Le Gouvernement italien, pour redresser la violation offre, au sens de l’art. 62 A du Règlement de la Cour, le montant global de 32.780,00 € (trente-deux mille sept cent quatre-vingts euros) à répartir entre les requérantes en fonction de leur quote-part respective telle que prévue par le droit interne, couvrant tout préjudice matériel et moral découlant de la violation susmentionnée.

Cette somme sera payée dans les trois mois suivant la date de la notification de la décision de la Cour rendue conformément à l’article 37 § 1 de la Convention européenne des droits de l’homme. À défaut de règlement dans ledit délai, le Gouvernement s’engage à verser, à compter de l’expiration de celui-ci et jusqu’au règlement effectif de la somme en question, un intérêt simple à un taux égal à celui de la facilité de prêt marginal de la Banque centrale européenne, augmenté de trois points de pourcentage.

Ce versement vaudra règlement définitif de l’affaire.

Le Gouvernement italien estime que, au sens de l’article 37 § 1 de la Convention, il ne se justifie plus de poursuivre l’examen de la requête en objet, compte tenu également du fait que les dispositions internes qui avaient causé la violation, ont été éliminées de l’ordre juridique italien par arrêt de la Cour Constitutionnelle n. 181 du 10 juin 2011.

Le Gouvernement italien demande donc à la Cour de disposer la radiation du rôle de la requête susmentionnée, car les conditions prévues par l’art. 62 A du Règlement de la Cour sont remplies.”

7.  By a letter of 24 October 2017, the applicants indicated that they were not satisfied with the terms of the unilateral declaration on account of the insufficiency of the amount proposed.

8.  The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

“for any other reason established by the Court, it is no longer justified to continue the examination of the applications”.

9.  It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicants wish the examination of the case to be continued.

10.  To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75‑77, ECHR 2003-VI; see also *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007, and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

11.  The Court has established in a large number of cases against Italy its practice concerning complaints about the violation of Article 1 of Protocol No. 1 on account deprivations of property by means of indirect or “constructive” expropriation (see, among many other authorities, *Carbonara and Ventura v. Italy*, no. 24638/94, §§ 63-73, ECHR 2000‑VI; *Guiso‑Gallisay v. Italy*, no. 58858/00, §§ 93-97, 8 December 2005; *De Caterina and Others v. Italy*, no. 65278/01, §§ 30-34, 28 June 2011; and *Messana v. Italy*, no. 26128/04, §§ 38-43, 9 February 2017). As regards compensation based on the application of the “average agricultural value” criterion, the Court established its practice in *Preite v. Italy*, no. 28976/05, 17 November 2015.

12.  Having regard to the nature of the admissions contained in the Government’s declaration, as well as the amount of compensation proposed, which appears reasonable having regard to the Court’s case-law (see *Guiso‑Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, § 105, 22 December 2009), the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

13.  Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

14.  Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

15.  In view of the above, it is appropriate to strike the case out of the list.

16.  Rule 43 § 4 of the Rules of Court provides that when an application has been struck out in accordance with Article 37 of the Convention, the Court has the discretion to award costs. The general principles governing reimbursement of costs under Rule 43 § 4 are essentially the same as under Article 41 of the Convention (see, for example, *Union of Jehovah’s Witnesses and Others v. Georgia* (dec.), no. 72874/01, 21 April 2015). Regard being had to the documents in its possession and to its case-law, the Court in the present case considers it reasonable to award the applicants jointly the global sum of 5,000 euros (EUR) in respect of costs and expenses, plus any tax that may be chargeable to them.

For these reasons, the Court, unanimously,

*Decides* that Ms Maria Rizzelli has standing to continue the present proceedings in the stead of Ms Anna Maria Frassaniti;

*Takes note* of the terms of the respondent Government’s declaration under Article 1 of Protocol No. 1 to the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

*Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

*Holds*

* 1. that the respondent State is to pay the applicants jointly, within three months, EUR 5,000 (five thousand euros) plus any tax that may be chargeable to them 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English and notified in writing on 22 June 2023.

Liv Tigerstedt Péter Paczolay  
 Deputy Registrar President

APPENDIX

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| No. | Applicant’s Name | Year of birth | Nationality | Place of residence |
| 1. | Maria RIZZELLI | 1963 | Italian | Lecce |
| 2. | Anna Maria FRASSANITI  deceased on 20/10/2012  Heir:  Maria RIZZELLI | 1932  1963 | Italian  Italian | Lecce |
| 3. | Filomena RIZZELLI | 1931 | Italian | Castro |