



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

SECOND SECTION

CASE OF ELIA S.r.l. v. ITALY

(Application no. 37710/97)

JUDGMENT

STRASBOURG

2 August 2001

FINAL

02/11/2001

In the case of Elia S.r.l. v. Italy,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mr B. CONFORTI,

Mr G. BONELLO,

Mrs V. STRÁŽNICKÁ,

Mr P. LORENZEN,

Mr M. FISCHBACH,

Mrs M. TSATSA-NIKOLOVSKA, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 10 July 2001,

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

PROCEDURE

1. The case originated in an application (no. 37710/97) against the Italian Republic lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a private limited company, Elia S.r.l. (“the applicant company”), on 6 August 1997.

2. Before the Court the applicant company was represented by Mr I. Fiorillo, a lawyer practising in Rome. The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, and by their co-Agent, Mr V. Esposito.

3. The applicant company alleged a violation of Article 1 of Protocol No. 1 on account of the imposition of a prohibition on building on its land.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 14 December 2000 the chamber declared the application admissible [*Note by the Registry*. The Court’s decision is obtainable from the Registry].

7. The applicant company and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. Since 1967 the applicant company has owned approximately 65,000 square metres of land in the municipality of Pomezia, entered in the Land Register as folio 11, parcel 66. In 1963 the Pomezia District Council had given its approval for a building project to be carried out on the land.

A. The initial prohibition imposed by the administrative authorities

9. On 29 December 1967 the Pomezia District Council resolved to adopt a general development plan (*piano regolatore generale* – “GDP”).

10. On 20 November 1974 the Lazio Regional Council approved the GDP for Pomezia, which set aside the applicant company’s land for the creation of a public park (*parco pubblico*) and, consequently, imposed an absolute prohibition on building on the land with a view to its expropriation.

11. Pursuant to section 2 of Law no. 1187/1968, the prohibition on building imposed by the GDP lapsed in 1979, no detailed development plan having been adopted in the intervening five years.

B. Building restrictions deriving from the application of section 4 of Law no. 10/1977

12. Despite the fact that the prohibition on building had lapsed, the applicant company’s land did not revert to its original use.

13. Pending a decision by the Pomezia District Council on its future use, the land was subject to the regulations in section 4 of Law no. 10/1977, a provision which the courts had held to apply in situations of that kind (see paragraphs 38-40 below), and, from 1990, to the regulations in Law no. 86 of the Lazio Region.

14. The applicant company’s land was consequently affected by the building restrictions deriving from the application of these laws.

15. On 12 March 1987 the applicant company asked the Pomezia District Council to determine the use to which the land was to be put. No action was taken on this request.

16. In view of the District Council’s failure to reply, which amounted to a refusal, the applicant company appealed to the Regional Administrative Court (“the RAC”). It argued, firstly, that the District Council was under an obligation to determine the intended use of the land and that its inaction was unlawful. It also sought to have the land designated as building land by the authorities.

17. In a decision of 16 October 1989 the Lazio RAC allowed the applicant company's appeal in so far as it acknowledged that the Pomezia District Council's inaction was unlawful.

18. The court held that the prohibition on building imposed in 1974 had ceased to be effective after five years, pursuant to Law no. 1187/1968, because the Pomezia District Council had not adopted a detailed development plan. Since then, the applicant company's land had been subject to the regulations in Law no. 10/1977. The court considered, however, that the building restrictions deriving from the application of that Law could not take the place of an actual decision by the administrative authorities as to the intended use of the land; the authorities were consequently under an obligation to revise the land-use plan (*ricostituzione della disciplina urbanistica*), and their inaction was unlawful. However, the District Council remained entirely at liberty to determine the use to which the land in issue should be put; the RAC was not empowered to direct that the land should be given a particular designation.

19. In conclusion, the RAC ordered the administrative authorities to give a fresh decision as to the intended use of the applicant company's land.

20. The Pomezia District Council appealed against that decision.

21. In a decision of 28 February 1992 the *Consiglio di Stato* dismissed the Pomezia District Council's appeal and upheld the impugned decision.

22. On 10 September 1992, in view of the failure of the Pomezia District Council to comply with the *Consiglio di Stato*'s judgment, the applicant company requested the District Council to adopt a decision on the land. It also proposed a solution whereby if the District Council designated 15,000 square metres as building land, the applicant company would assign the rest of the land to the municipality free of charge. No action was taken on this proposal.

C. The second prohibition imposed by the administrative authorities

23. In a decision of 25 October 1995 the Pomezia District Council resolved to adopt a detailed development plan and again imposed an absolute prohibition on building on the applicant company's land with a view to its expropriation. The District Council set the land aside for public use.

24. The applicant company appealed against that decision to the regional committee for supervision of measures taken by municipal authorities (CORECO), seeking to have the District Council's decision overturned. It argued that the indications given as to the intended use of the land were too vague and that the conditions for renewing the prohibition on building, such as that of public interest, were not satisfied. The outcome of the appeal is not known.

25. It appears from the expert opinion produced by the applicant company that the detailed development plan imposing a prohibition on building on the land was adopted on 22 March 1999.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. General principles concerning town planning

26. Article 42 §§ 2 and 3 of the Italian Constitution provides: “Private ownership shall be guaranteed and recognised by the law, which shall determine the manner by which it may be acquired and enjoyed, and its limits, in order to safeguard its social function and to make it accessible to all. Private property may be expropriated in cases provided for by law, and subject to payment of compensation, on grounds of public interest.”

The Town Planning Act (Law no. 1150/1942, as amended) lays down rules governing town planning and confers on municipal authorities the power to adopt development plans, which must cover the entire territory of the municipality.

27. The GDP is valid indefinitely. The procedure for adopting a GDP begins with a resolution (*delibera di adozione*) by the municipal council, followed by a period during which all decisions on applications for planning permission that might conflict with the implementation of the GDP are deferred (Law no. 1902/1952, as amended). Approval of the GDP is the responsibility of the regional authorities (Article 1 of Presidential Decree no. 8/1972 and Articles 79 and 80 of Presidential Decree no. 616/1977), having previously been given by decree of the Italian President. Once the GDP has been approved, it is published in the Official Gazette (*Gazzetta Ufficiale*) and deposited at the town hall.

28. Where a GDP contains precise details of land use, it may be implemented without further formalities; frequently, however, an additional measure is required. The measure may be initiated by the public authorities, as in the case of a detailed development plan (*piano particolareggiato*), which, by contrast, is valid for a specified period only. Following the adoption of the detailed plan (which is equivalent to a declaration that land is required for public purposes), the authorities have a strict time-limit (not exceeding ten years, as provided in section 16 of the Town Planning Act) for carrying out any expropriations and, in any event, implementing the plan, failing which it ceases to be effective. Where the GDP requires a detailed development plan for its implementation, it is for the district council to adopt one. However, no strict time-limits are prescribed for the adoption of a detailed plan.

B. Imposition and duration of a prohibition on building: principles established by the Constitutional Court

29. Restrictions on the right to dispose of property, such as a prohibition on building, are imposed when a development plan is adopted. A prohibition on building may be imposed with a view to expropriation (*vincolo preordinato all'esproprio*) where the land in question has been set aside for public use or for the construction of buildings or public amenities (section 7(3) and (4) of the Town Planning Act).

30. The Town Planning Act, as originally worded, provided that restrictions imposed by a general development plan on the property rights of private persons, such as prohibitions on building, were valid for the same length of time as the general development plan, that is to say indefinitely; at the same time, no compensation was payable to the owners (section 40).

31. The Constitutional Court was asked to determine whether a prohibition which severely restricted the right of property – such as an expropriation order (*vincolo espropriativo*) or a prohibition on building (*vincolo di inedificabilità*) – and could be extended indefinitely without any form of compensation was compatible with the right of property.

32. In judgments delivered between 1966 and 1968 (see, in particular, judgment no. 6/1966 and judgment no. 55 of 29 May 1968) the Constitutional Court reached a negative conclusion and declared the Town Planning Act unconstitutional inasmuch as it provided for the indefinite extension of severe restrictions on the right of property, such as a prohibition on building or a prohibition with a view to expropriation, without any compensation being payable.

33. The Constitutional Court pointed out that restrictions could be imposed by law on the property rights of private persons, provided that they did not render those rights devoid of any substance. Furthermore, the right to build was to be seen as an inherent aspect of the right of property and could be restricted only on specific and tangible public-interest grounds. In the event of expropriation or of restrictions of indefinite duration affecting the very substance of the right of property (such as a prohibition on building), the owner was entitled to compensation. However, no compensation was payable where a prohibition on building was imposed for a limited period only.

34. In the light of those judgments, in which the Constitutional Court laid down the principles applicable where severe restrictions were imposed on the right of property, the legislature had two alternatives: to opt for prohibitions of limited duration without compensation, or to opt for prohibitions of indefinite duration with immediate payment of compensation.

35. The Italian parliament responded to the judgments by choosing the former option and enacting, on 19 November 1968, Law no. 1187/1968

amending the Town Planning Act. By section 2(1) of the Law, when adopting a general development plan, local authorities may impose prohibitions with a view to expropriation and general prohibitions on building in respect of land owned by private persons. However, such restrictions cease to be effective after five years if the land has not been expropriated or if no measures have been taken to implement the general development plan, such as the adoption of a detailed development plan.

36. Section 2(2) of Law no. 1187/1968 also provided for a five-year extension, by force of law, of the deadlines laid down in development plans approved before the Law's entry into force. Laws nos. 756/1973 and 696/1975 and Legislative Decree no. 781 of 26 November 1976 extended those deadlines until the entry into force of Law no. 10/1977 (provisions governing the right to build).

37. In judgment no. 92/1982 the Constitutional Court clarified the scope of Law no. 10/1977, stating that, even after the Law's entry into force, the right to build remained an inherent aspect of the right of property. As regards prohibitions on building, the court held that they were still subject to the provisions of Law no. 1187/1968; that is to say, their validity could not extend beyond five years if no detailed development plan was adopted.

C. Situation after the expiry of a prohibition on building

38. According to legal precedent, where a prohibition on building lapses pursuant to section 2(1) of Law no. 1187/1968 at the end of the five-year period, the land concerned does not automatically revert to the use for which it was originally intended and is not automatically assigned the use for which the adjacent land is intended. In order to determine the intended use of the land, a positive measure such as a detailed development plan is required on the part of the administrative authorities.

Pending such a measure, the land in question is regarded, according to legal precedent, as being subject to the regulations in section 4 of Law no. 10/1977, which apply to land in municipalities that have not adopted general development plans (see the case-law of the *Consiglio di Stato*, in particular judgments nos. 7/1984 and 10/1984 of the full court).

By section 4 of Law no. 10/1977, planning permission may be granted when certain conditions are satisfied, and only if the land is situated away from a built-up area and the volume of the projected building is very small. If the land is situated within a built-up area, no new building work is allowed.

39. The Lazio Region incorporated the case-law referred to above into Law no. 86 of 24 November 1990, which provides explicitly for an absolute prohibition on building where the intended use of land situated within a built-up area has not been determined.

D. Inaction on the part of the authorities

40. When a prohibition on building lapses, it is for the municipal council to determine promptly the use of the land concerned; however, no time-limits are laid down.

41. Inaction on the part of the authorities may form a basis for a complaint to the administrative courts (see the judgment of the *Consiglio di Stato*, Section IV, 20 May 1996, no. 664). The administrative courts may order the municipal authorities to determine the use to which the land is to be put, although the courts are not empowered to take such a decision in place of the relevant authorities. In judgment no. 67/1990, which concerned an expropriation case in which the authorities were accused of inaction, the Constitutional Court held that the remedy by which inaction on the part of the authorities could be challenged in the administrative court was inoperative and thus of limited effectiveness (*defatigante e non conclusivo con conseguente scarsa efficacia*).

42. The Constitutional Court has been called upon to determine whether subjecting land to the regulations in section 4 of Law no. 10/1977 is compatible with the Constitution, seeing that those regulations give rise to an indefinite prohibition on building – on account of the authorities' failure to determine the future use of the land (for example, by adopting a development plan) – and make no provision for compensation. In judgment no. 185/1993 the Constitutional Court declared the question inadmissible, holding that the legislature alone was responsible for taking swift and appropriate action to remedy the situation.

E. Extension of a prohibition on building (by the administrative authorities)

43. In judgment no. 575/1989 the Constitutional Court held that, when the five-year period laid down in section 2 of Law no. 1187/1968 expired and a new development plan was necessary, the local authorities were entitled to extend a prohibition on building on public-interest grounds. This judgment therefore acknowledged the right of the administrative authorities to renew a prohibition that had lapsed.

44. However, their power to extend such a prohibition cannot give rise to an indefinite prohibition on building without any form of compensation. Where the prohibition renders the right of property devoid of any substance on account of the considerable uncertainty created by its indefinite extension or its renewal, the owner should be awarded compensation (see also judgments nos. 186/1993 and 344/1995 of the Constitutional Court, and judgment no. 159/1994 of the *Consiglio di Stato* (Section IV)).

F. Absence of compensation

45. The Court of Cassation has held that where restrictions are imposed on the right of property with a view to expropriation, even in the absence of any compensation, the owner of the land has only a legitimate interest (*interesse legittimo*) – that is to say, an individual position indirectly protected as far as is consistent with the public interest – and not a full and absolute right (*diritto soggettivo*) to compensation (see the following judgments of the Court of Cassation, sitting as a full court: no. 11308 of 28 October 1995; no. 11257 of 15 October 1992; and no. 3987 of 10 June 1983).

46. Consequently, where the municipal authorities have decided to impose a prohibition on building, the owner of the land in question may apply to the administrative courts for a ruling as to whether the authorities, in exercising their discretionary power, have complied with the statutory regulations and have not overstepped the margin of appreciation they enjoy in assessing the balance between public and private interests. However, even if the administrative courts overturn a prohibition on building, no compensation is payable where the prohibition was imposed for a specified period, particularly if it is subject to the five-year time-limit laid down in section 2 of Law no. 1187/1968.

47. In judgment no. 179 of 12-20 May 1999 the Constitutional Court, reiterating the principles established in its case-law (see the judgments cited above in paragraph 32, and also nos. 82/1982, 575/1989 and 344/1995), declared unconstitutional the lack of statutory provision for compensation in cases where an authority for expropriation or a prohibition on building had been renewed by the administrative authorities with the result that the right of property was severely affected. Restrictions on the right of property were problematic where a prohibition had been renewed or extended indefinitely or had been renewed several times for a specified period.

Leaving intact the right of the authorities to renew prohibitions on building, the Constitutional Court held that there was a need for legislation providing for a form of compensation and specifying the criteria and arrangements for its award.

It did not rule out the possibility that a court dealing with an application for compensation before such legislation had been enacted might derive criteria for awarding compensation, where appropriate, from the existing legal system.

The Constitutional Court also pointed out that the requirement to pay compensation applied only to the time after the initial five years of the prohibition (the exemption period).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

48. The applicant company argued that the restrictions imposed on its land over a lengthy period of time without any compensation had infringed its right to the peaceful enjoyment of its possessions, as guaranteed by Article 1 of Protocol No. 1, which provides:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Whether there was interference with the applicant company’s right of property

49. The Court notes that it was common ground that there had been interference with the applicant company’s right to the peaceful enjoyment of its possessions.

50. It remains to be determined whether the interference breached Article 1 of Protocol No. 1.

B. Whether the interference with the applicant company’s right of property was justified

1. The applicable rule

51. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules: “the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest... The three rules are not, however, ‘distinct’ in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in

the light of the general principle enunciated in the first rule” (see, among other authorities, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37, which reproduces in part the Court’s analysis in *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 24, § 61; see also *The Holy Monasteries v. Greece*, judgment of 9 December 1994, Series A no. 301-A, p. 31, § 56, and *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II).

52. The applicant company submitted that its land had been the subject of a *de facto* expropriation as a result of the combined effects of the prohibitions on building with a view to expropriation, which had made the land worthless and impossible to dispose of.

53. The Government argued that the situation complained of amounted to a control of the use of property.

54. The Court notes that prohibitions on building were imposed in respect of the applicant company’s land with a view to its expropriation. Those measures did not entail a formal deprivation of possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1, since the applicant company’s right of property remained intact from a legal standpoint.

55. In the absence of a transfer of property, the Court must look behind the appearances and investigate the realities of the situation complained of. In that connection, it has to be ascertained whether that situation amounted to a *de facto* expropriation, as was argued by the applicant company (see, *mutatis mutandis*, *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, p. 14, § 25).

56. The Court notes that all the effects complained of by the applicant company stemmed from its reduced ability to dispose of the property in issue. They resulted from restrictions on the right of property and from the consequences of those restrictions on the value of the land. However, although the right in question lost some of its substance, it did not disappear. The effects of the measures involved are not such that they can be regarded as a deprivation of possessions. The Court observes in this connection that the applicant company was not denied access to its land and did not lose control of it and that, although it became more difficult to sell the land, that possibility in principle subsisted (see *Loizidou v. Turkey* (merits), judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2237, § 63, and *Sporrong and Lönnroth*, cited above, pp. 24-25, § 63). That being so, the Court considers that there was no *de facto* expropriation and that the second sentence of the first paragraph is therefore not applicable in the instant case.

57. The Court further considers that the measures complained of did not amount to a control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1. Although the prohibitions on

building controlled the use of land (see *Sporrong and Lönnroth*, cited above, p. 25, § 64), the fact remains that those measures were at the same time taken with a view to expropriating the land in issue (see paragraph 29 above).

The Court therefore considers that the situation complained of by the applicant company falls to be dealt with under the first sentence of Article 1 of Protocol No. 1 (see the following judgments: *Sporrong and Lönnroth*, cited above, p. 25, § 65; *Erkner and Hofauer v. Austria*, 23 April 1987, Series A no. 117, pp. 65-66, § 74; and *Poiss v. Austria*, 23 April 1987, Series A no. 117, p. 108, § 64).

2. Compliance with the rule laid down in the first sentence of the first paragraph

58. For the purposes of the first sentence of the first paragraph, the Court must determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Sporrong and Lönnroth*, cited above, p. 26, § 69, and *Phocas v. France*, judgment of 23 April 1996, Reports 1996-II, p. 542, § 53).

(a) The applicant company's submissions

59. The applicant company submitted that the situation complained of did not comply with Article 1 of Protocol No. 1.

60. It observed that the interference with its right to the peaceful enjoyment of its possessions had lasted more than thirty-three years, seeing that, before the adoption of the general development plan in 1974 and the imposition of the initial prohibition, its land had been subject to preventive measures since the District Council had passed its resolution in 1967.

61. The applicant company argued that there had been a long period of inaction on the part of the administrative authorities; it referred to the delays in determining the intended use of the land after the first prohibition had lapsed, and to the fact that the authorities had never actually expropriated the land. In that connection, it observed that from November 1979, after the expiry of the prohibition on building imposed by the general development plan, the land had been subject to the regulations in Law no. 10/1977, which amounted to a further prohibition on building applicable until the adoption of the detailed development plan. It added that the Constitutional Court had held that system to be unlawful in its 1999 judgment.

62. The applicant company observed that, as a result of the combined effects of the prohibitions on building on its land with a view to expropriation, its right of property had been "suspended" throughout that period in that the land had become impossible to use and worthless.

63. It disputed the Government's argument that it could have used the land for agricultural purposes, pointing out that the land was situated in the

very centre of Pomezia. Furthermore, the fact that, before the general development plan had been adopted, the Pomezia District Council had been in favour of a construction project served as confirmation that the land was not suitable for agricultural use.

64. The applicant company submitted that the land could not have been leased either, as no activity would have been permitted on it.

65. As regards the possibility of selling the land, the applicant company maintained that the situation complained of had eliminated any real prospect of finding a buyer.

66. It disputed the Government's argument that a potential buyer would, in the event of the land's subsequently being expropriated, receive an amount almost equivalent to the market value in compensation. In that connection, the applicant company referred to Law no. 359/1992, which laid down the criteria for assessing compensation in the event of expropriation, and contended that the compensation payable would be equivalent to 30% of the market value of the land. Consequently, the argument that the land could be sold was untenable.

67. In addition, if the land was not expropriated and the administrative measure imposing the prohibition on building ceased to be effective, the potential buyer would have to wait until the administrative authorities gave a fresh decision as to the use of the land. However, the only means available to the applicant company for challenging the authorities' inaction was an appeal to the administrative court, a remedy that was of limited effectiveness, as the Constitutional Court had held in judgment no. 67/1990 and as had been demonstrated by the applicant company's own appeal to the administrative courts. That lent further weight to the conclusion that the land was unsaleable.

68. Having regard to the serious nature of the interference with its right of property, the applicant company observed that the lack of compensation was incompatible with Article 1 of Protocol No. 1. Relying on the Court's case-law (*Sporrong and Lönnroth*, *Erkner and Hofauer* and *Poiss*, judgments cited above), it noted that the requisite fair balance had been held to have been upset in the cases cited, in which the interference had lasted for a shorter time than in the instant case.

69. The applicant company submitted that the principles established by the Constitutional Court in such matters had not been taken into account in the case-law of the *Consiglio di Stato* and the Court of Cassation and that, consequently, land could still be subject to a prohibition on building for an indefinite period without any possibility of compensation.

70. In conclusion, the applicant company asked the Court to find that there had been a violation of Article 1 of Protocol No. 1.

(b) The Government's submissions

71. The Government maintained that the situation complained of could not be regarded as a deprivation of possessions. The applicant company's complaint concerned the prohibition on building on its land, a measure that did not mean that the land was impossible to use. They maintained that agricultural use would have been possible.

72. The Government argued that the applicant company had always had the option of selling its land, regardless of the fact that it might be expropriated. In the event of its expropriation, the administrative authorities would have paid an amount almost equivalent to the market value of the land in compensation.

Furthermore, if the land was not expropriated, the prohibition on building would cease to be effective on the expiry of the period prescribed by law, and the authorities would determine the use to which the land was to be put.

73. Having regard to those considerations, the Government maintained that in the instant case the requisite balance had not been upset, because the prohibition on building came within the State's margin of appreciation, which was particularly wide in such matters. They relied on the Court's judgments in the cases of *Mellacher and Others v. Austria*, judgment of 19 December 1989, Series A no. 169; *Fredin v. Sweden (no. 1)*, judgment of 18 February 1991, Series A no. 192; *Allan Jacobsson v. Sweden (no. 1)*, judgment of 25 October 1989, Series A no. 163; and *Pine Valley Developments Ltd and Others v. Ireland*, judgment of 29 November 1991, Series A no. 222.

74. The Government lastly pointed out that the right of property as enshrined in the Italian Constitution had a social purpose.

75. In conclusion, the Government argued that the situation complained of by the applicant company was compatible with Article 1 of Protocol No. 1, and asked the Court to find that there had been no violation of that provision.

(c) The Court's assessment

76. The Court notes that the general development plan imposed a prohibition on building on the applicant company's land with a view to its expropriation. After the prohibition had lapsed, it was maintained by the application of the regulations in Law no. 10/1977; subsequently, a further prohibition on building with a view to expropriation was imposed by the detailed development plan. Consequently, the interference in issue has lasted more than twenty-six years with effect from the date the GDP was approved by the Regional Council (see paragraph 10 above), and more than thirty-three years with effect from the District Council's resolution on the adoption of the plan (see paragraph 9 above).

77. The Court finds it natural that, in an area as complex and difficult as that of spatial development, the Contracting States should enjoy a wide

margin of appreciation in order to implement their town-planning policy (see *Sporrong and Lönnroth*, cited above, p. 26, § 69). It regards it as established that the interference satisfied the requirements of the general interest. Nevertheless, it cannot fail to exercise its power of review.

78. The Court must determine whether the requisite balance was maintained in a manner consonant with the applicant company's right to the peaceful enjoyment of its possessions, within the meaning of the first sentence of Article 1 of Protocol No. 1.

79. The Court considers that throughout the period concerned, the applicant company was in a state of total uncertainty as to the future of its property: initially, seeing that the general development plan imposed a prohibition on building on the land with a view to its expropriation, the land could have been expropriated subject to the adoption of a detailed development plan, but no such plan was adopted (see paragraph 11 above); after 1979 the land could at any time have been subjected to a further prohibition with a view to expropriation, and such a measure was taken sixteen years later, in October 1995, when the District Council adopted a resolution that became final in 1999 (see paragraphs 12, 13, and 23-25 above); as things stand, the land may be expropriated at any moment.

80. The Court notes that the applicant company's requests to the District Council and its appeals to the administrative courts did not remove the uncertainty that persisted between 1979 and 1995 (see paragraphs 15-22 above).

81. The Court further considers that the existence of prohibitions on building throughout the period concerned impeded the applicant company's full enjoyment of its right of property and aggravated the adverse effects on its situation by, among other things, considerably diminishing its prospects of selling the land.

82. Lastly, it observes that domestic legislation does not provide for any possibility of compensation.

83. The circumstances of the case, in particular the uncertainty and the lack of any effective domestic remedy capable of rectifying the situation, coupled with the interference with the applicant company's full enjoyment of its right of property and the absence of any compensation, lead the Court to conclude that the applicant company has had to bear an individual and excessive burden which has upset the fair balance that should be struck between the requirements of the general interest and the protection of the right to the peaceful enjoyment of possessions (see the following judgments: *Sporrong and Lönnroth*, cited above, p. 28, §§ 73-74; *Erkner and Hofauer*, cited above, pp. 66-67, §§ 78-79; *Poiss*, cited above, p. 109, §§ 68-69; and *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 54, ECHR 2000-I).

84. In conclusion, there has been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

86. The applicant company sought 5,389,410,000 Italian lire (ITL) in respect of pecuniary damage – an amount corresponding to the value of the land in 1979, when the initial prohibition on building had lapsed – plus index-linking and interest. It based its claim on an expert valuation carried out in November 1977 on adjacent plots of land on which there were buildings of a volume not exceeding three cubic metres per square metre. The applicant company stated that the value of the land had been assessed in December 2000 at ITL 550,000 per square metre.

87. The applicant company sought ITL 5,000,000,000 in respect of non-pecuniary damage. It pointed out that, as it was a family-run company (mother, father and children), it was fully entitled to compensation for the uncertainty and anxiety caused by the fluctuating situation of the land. The land accounted for the greater part of the family’s resources. Furthermore, the health of two members of the company had been affected.

88. The applicant company sought reimbursement of the various costs incurred at national level, amounting to ITL 200,000,000, but admitted that it did not possess all the relevant supporting documents. As regards the proceedings in the RAC and the *Consiglio di Stato* (see paragraphs 16-21 above), the applicant company produced two bills, to the value of ITL 7,500,000 and ITL 2,150,000; it also produced a third bill to the value of ITL 5,000,000 in respect of the subsequent assistance provided by the lawyer who had acted on its behalf in those proceedings. The overall amount claimed by the applicant company by way of reimbursement of the three bills was ITL 14,650,000 plus value-added tax (VAT) and a contribution to the lawyers’ insurance fund (CPA).

89. As regards the proceedings in Strasbourg, the applicant company produced a bill drawn up on the basis of the applicable national rates and sought reimbursement of ITL 238,000,000 plus VAT and CPA.

90. The Government submitted that the applicant company was not entitled to an award for pecuniary damage in that it had claimed a sum for a plot of building land yet had referred to adjacent land which was not subject to the prohibition on building. They considered that submitting such a claim in respect of pecuniary damage was tantamount to denying the right of the administrative authorities to control the use of land and to asserting that the right to build rested solely with landowners.

91. As regards non-pecuniary damage, the Government argued that no award should be made to the applicant company under that head as it was a company. In any event, they contended that the sum claimed was excessive.

92. Lastly, the Government considered that the costs set out by the applicant company should not be reimbursed.

93. The Court considers that the question of the application of Article 41 is not ready for decision. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicant company (Rule 75 §§ 1 and 4 of the Rules of Court).

FOR THESE REASONS, THE COURT

1. *Holds* by six votes to one that there has been a violation of Article 1 of Protocol No. 1;
2. *Holds* by six votes to one that the question of the application of Article 41 is not ready for decision; accordingly,
 - (a) *reserves* the said question in whole;
 - (b) *invites* the Government and the applicant company to submit, within the forthcoming three months, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
 - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in French, and notified in writing on 2 August 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Conforti is annexed to this judgment.

C.L.R.
E.F.

DISSENTING OPINION OF JUDGE CONFORTI

(Translation)

In my opinion, there has been no violation of Article 1 of Protocol No. 1 in the present case.

The main issue raised was the prohibition on building to which the applicant company's land was subject for twenty-six years, either as a result of the conduct of the Pomezia District Council or – and above all – because of legislation enacted at national level (Law no. 10/1977) and by the Lazio region (Law no. 86/1990) (see paragraphs 13 and 38-40 of the judgment).

The majority of the Court held that, because the applicant company was in a state of total uncertainty as to the future of its property on account of the prohibition on building with a view to expropriation and the failure to adopt any detailed development plans, the fair balance between the requirements of the general interest and the applicant company's right to the peaceful enjoyment of its possessions had been upset.

I do not agree.

It is common knowledge in Italy that the prohibition on building provided for in the 1977 Law was a reaction to the conduct of private persons – real estate companies and individuals – who had reduced the bulk of the land in Italy (in other words, what had been referred to as the most beautiful garden in Europe!) to a mass of cement. It is also common knowledge in Italy that the possibility of expropriating all the land affected by the prohibition on building was purely hypothetical and not real, and that, consequently, the prohibition was not imposed “with a view to expropriation” but, quite simply, with a view to prohibiting building.

In my humble opinion, the Court should have taken that into account in weighing up the interests at stake, so as to avoid the risk of deciding the case in the abstract or, with all due respect, in a vacuum. It should have considered whether a measure prohibiting building on land which, in most cases, was used as farmland or as private gardens, and was therefore to continue being used as such, was not justified on public-interest grounds. That, in my view, was the right solution to adopt.