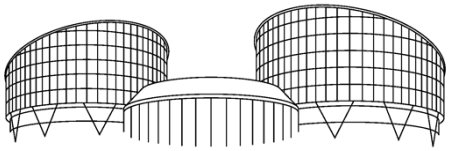

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF G.I.E.M. S.R.L. AND OTHERS v. ITALY

(Applications nos. 1828/06, 34163/07 and 19029/11)

JUDGMENT
(Just satisfaction)

Art 41 • Just satisfaction • Calculation of awards for pecuniary damage caused by automatic and complete confiscation of unlawfully developed land, regardless of any criminal liability, in violation of Art 1 P1 • Elements used to establish extent of pecuniary damage • Nature of violations differing significantly from *Sud Fondi S.r.l. and Others v. Italy* • Compensation for inability to use land since returned to applicants • No compensation due for deterioration of buildings erected in breach of administrative permits • No compensation for loss of value of property with no causal link to confiscation measure • Awards for non-pecuniary damage

STRASBOURG

12 July 2023

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

Table of contents

In the case of G.I.E.M. S.r.l. and Others v. Italy,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Síofra O'Leary,
Georges Ravarani,
Marko Bošnjak,
Gabriele Kucsko-Stadlmayer,
Faris Vehabović,
Egidijus Kūris,
Branko Lubarda,
Yonko Grozev,
Georgios A. Serghides,
Jolien Schukking,
Lado Chanturia,
María Elósegui,
Ivana Jelić,
Raffaele Sabato,
Lorraine Schembri Orland,
Anja Seibert-Fohr,
Diana Sârcu*, judges*,

and Johan Callewaert, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 8 June 2022 and 21 June 2023,

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

PROCEDURE

1. The case originated in three applications (nos. 1828/06, 34163/07 and 19029/11) 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 four Italian companies and one Italian national, G.I.E.M. S.r.l., Hotel Promotion Bureau S.r.l. (company in administration), R.I.T.A. Sarda S.r.l. (company in administration), Falgest S.r.l. and Mr Filippo Gironda ("the applicants"), on 21 December 2005, 2 August 2007 and 23 December 2011 respectively.

2. The applicants were represented as follows: G.I.E.M. S.r.l. by Mr G. Mariani and Mr F. Rotunno, lawyers practising in Bari; Hotel Promotion Bureau S.r.l. (under administration) and R.I.T.A. Sarda S.r.l. (under administration) by Mr G. Lavitola, lawyer practising in Rome and Mr V. Manes, lawyer practising in Bologna; Falgest S.r.l. and Mr Filippo Gironda by Mr A. G. Lana and Mr A. Saccucci, lawyers practising in Rome.

3. The Italian Government ("the Government") were represented by their former Agent, Ms E. Spatafora, and former co-Agent, Ms P. Accardo, and also by their Agent, Mr L. D'Ascia, *Avvocato dello Stato*.

4. In its judgment on the merits of the present case (*G.I.E.M. S.r.l. and Others v. Italy* [GC], nos. 1828/06 and 2 others, 28 June 2018) the Grand Chamber found in particular as follows: a violation of Article 1 of Protocol No. 1 to the Convention in respect of each of the applicants; in respect of Mr Gironda, no violation of Article 7 of the Convention and a violation of Article 6 § 2 of the Convention; and lastly, in respect of the applicant companies, a violation of Article 7.

5. As to Article 1 of Protocol No. 1, the Grand Chamber found that the automatic application under Italian law of confiscation measures in cases of unlawful site development – save in respect of *bona fide* third parties – had been disproportionate. Such automatic application did not allow the courts to ascertain which instruments were most appropriate in the specific circumstances of the case or, more generally, to weigh up the legitimate aim pursued against the rights of those affected by such confiscation measures.

6. As to the violation of Article 7, the Court established that, in view of the discrete nature of the legal personality of the applicant companies in relation to that of their directors and shareholders, the principle of legality entailed that persons (the applicant companies) could not be punished for committing acts which engaged the criminal liability of others (their legal representatives). Consequently, having regard to that principle, a confiscation measure which was applied, as in the present case, to individuals or legal entities which were not parties to the proceedings, was incompatible with Article 7 of the Convention (ibid., § 274). The Grand Chamber further found that there had been no violation of Article 7 of the Convention in respect of Mr Gironda (ibid., §§ 261-262).

7. As to the violation of Article 6 § 2 of the Convention, the Court found that the fact that Mr Gironda had in substance been declared guilty by the Court of Cassation, notwithstanding the fact that the prosecution of the offence in question had become statute-barred, in itself breached the right to be presumed innocent (ibid., §§ 317-18), regardless of the question of respect for defence rights.

8. The Grand Chamber further found that it did not need to consider whether there had been a violation of Article 6 § 1 of the Convention in respect of the company G.I.E.M. S.r.l. or a violation of Article 13 in respect of the companies G.I.E.M. S.r.l. and Falgest S.r.l.

9. Under Article 41 of the Convention, the applicants sought just satisfaction in respect of the pecuniary and non-pecuniary damage that they claimed to have sustained as a result of the violations found in the present case, together with the reimbursement of the costs and expenses incurred before the Court.

10. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicants to submit, within twelve months, their written observations

on that issue and, in particular, to notify the Court of any agreement they might reach (ibid., § 166 and point 4 of the operative provisions).

11. Having failed to reach an agreement, the applicants submitted their observations in September 2018 and April 2019, then in May and July 2019, and the Government submitted theirs on 15 April 2019.

12. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24 of the Rules of Court. At the end of their respective terms of office, Robert Spano and Jon Fridrik Kjølbro were replaced in the Grand Chamber composition by Lorraine Schembri-Orland and Ivana Jelić, substitute judges, in accordance with Rule 24 § 3 of the Rules of Court. At the same time Síofra O'Leary took over the presidency of the Grand Chamber in the present case from Jon Fridrik Kjølbro (Rule 9 § 2).

DEVELOPMENTS SINCE THE JUDGMENT ON THE MERITS

13. The Court notes that the property in question has been returned, on different dates, to all the applicants.

14. As regards the company G.I.E.M. S.r.l., the Court would note that it had already recovered its property on 2 December 2013 (see *G.I.E.M. S.r.l. and Others*, cited above, § 42).

15. The land confiscated from the companies Hotel Promotion Bureau S.r.l. and R.I.T.A. Sarda S.r.l. was returned to them on 29 April 2019. According to the Land Use Certificate issued on 7 August 2018 by the municipality of Golf Aranci, the land cannot be built upon.

16. As to the property confiscated from the company Falgest S.r.l. and Mr Gironda, the Court notes that after being seized on 21 July 2000 and returned on 23 May 2009, it was confiscated following the judgment of the Court of Cassation on 22 April 2010, deposited in that court's registry on 27 September 2010. The custody (*custodia*) and administration of the property were entrusted to a third party.

17. According to information provided by the parties, on 25 November 2019 the District Court of Reggio Calabria determined, in line with a request from the Prime Minister's office, that those two applicants were entitled to have the confiscation revoked and their land returned. However, taking the view that the revocation had to be regarded as temporary because the most appropriate measure for the purpose of executing the Grand Chamber judgment was to reopen the criminal proceedings, the court sent the file to the public prosecutor's office for that purpose. In December 2019 the public prosecutor's office asked the Court of Appeal to reopen the criminal proceedings against Mr Gironda and a director of the company Falgest S.r.l., under Article 630 of the Code of Criminal Procedure as amended by Constitutional Court judgment no. 113 of 2011 (in its judgment that court had acknowledged the right to "*revisione europea*", namely the right for persons

who have obtained a finding of a violation by the European Court of Human Rights to request the reopening of criminal proceedings). In that case the domestic authorities requested the reopening of the criminal proceedings in order to secure a fresh application of the confiscation measure. In a decision of 23 March 2021 the Court of Appeal declared the request inadmissible.

THE LAW

18. 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."

I. PRELIMINARY QUESTION

19. On 9 December 2019 the Government informed the Court that, on 12 January 2016, Hotel Promotion Bureau S.r.l. had been struck off the register of companies. They explained that this information had been "provided to the Court for the purposes of any assessment".

20. Having been declared insolvent on 29 April 1998 and under administration from 31 October 2002, Hotel Promotion Bureau S.r.l. still existed on the date when the application was lodged, on 2 August 2007, but has ceased to exist since 12 January 2016.

21. One of the lawyers acting for the applicant company, Mr Lavitola, asked the Court to continue its examination of the application on the ground that domestic law provided for discontinuance of proceedings only where an individual had been declared dead or where a legal entity had been wound up by its legal representative, which according to him had not been the case here.

22. The Court reiterates that, according to its settled case-law, in cases which primarily involve pecuniary, and, for this reason, transferable claims, the existence of other persons to whom that claim is transferred is an important criterion, but cannot be the only one. Human rights cases before the Court generally also have a moral dimension, which it must take into account when considering whether to continue with the examination of an application after the applicant has died or, in the case of a legal entity, has ceased to exist. That will be the case in particular where the questions raised go beyond the person and interests of the applicant (see *Capital Bank AD v. Bulgaria*, no. 49429/99, § 78, ECHR 2005 XII (extracts); *Uniya OOO and Belcourt Trading Company v. Russia*, no. 4437/03 and 13290/03, 19 June 2014; *Aviakompaniya A.T.I., ZAT v. Ukraine*, no. 1006/07, 5 October 2017; *Euromak Metal Doo v. the former Yugoslav Republic of Macedonia*, no. 68039/14, 14 June 2018; and *Timakov and OOO ID Rubezh v. Russia*, nos. 46232/10 and 74770/10, 8 September 2020).

23. The Court notes that, in most of the cases where an applicant company has disappeared, it has decided not to strike out the application (see *Capital Bank AD*, cited above, and *Schweizerische Radio-und Fernsehgesellschaft and publisuisse SA v. Switzerland*, no. 41723/14, § 43, 22 December 2020; contrast *RF SPOL. S R.O. v. Slovakia* (dec.), no. 9926/03, 20 October 2010) in particular where an individual or legal entity which is the successor to the company in question has expressed a wish to maintain the application (see *Aviakompaniya A.T.I., ZAT*, § 22; *Euromak Metal Doo*, § 33; and *Timakov and OOO ID Rubezh*, § 17, all cited above).

24. The Court observes that the applicant company's lawyer has not supplied details of any other persons (individuals or legal entities) to whom the claims in question could have been transferred. While the "history" of the company attached to that lawyer's observations mentioned the name of its sole shareholder, it has not provided the Court with adequate and useful information as to the situation or existence of that shareholder or as to its right to be considered the successor to the company under Italian law. Nor has that shareholder given authority to counsel to continue the proceedings before the Court. The Court concludes that the individual or legal entity who or which has purportedly succeeded the applicant company Hotel Promotion Bureau S.r.l. has not informed it of its wish to maintain the application, the request made by the legal representative Mr Lavitola not being conclusive.

25. As to whether there are special circumstances regarding respect for human rights as defined in the Convention and the Protocols thereto which would require the examination of the case to be continued (Article 37 § 1 *in fine* of the Convention), the Court notes that in the present case it is called upon only to settle the question of just satisfaction. It will examine the same question and any other related questions of principle in connection with the claims made by the company R.I.T.A. Sarda S.r.l. Accordingly, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols that would require it to continue the examination of that part of the application.

26. In conclusion, application no. 34163/07 should be struck out of the Court's list in so far as it concerns the applicant company Hotel Promotion Bureau S.r.l.

II. PECUNIARY DAMAGE

A. The applicants' claims and the Government's observations

27. By way of preliminary comment, the Court would note that the applicants have formulated their claims for compensation in respect of pecuniary damage in a global manner, without distinguishing between the Convention provisions to which they should be attached.

1. The applicants

(a) G.I.E.M. S.r.l.

28. In its observations the applicant company sought full compensation for the damage that it claimed to have sustained. On the basis of an expert's assessment by the firm Real Estate Advisory Group (REAG) and then updated by the firm Tammaccaro and partners, it claimed the following amounts:

– principally, 54,100,000 euros (EUR) for loss of income;

– in the alternative,

(i) EUR 13,180,000 (plus revaluation from 2009) for the loss of value of the land owing to the change of registered land-use and the impossibility of building thereon, namely EUR 13,200,000 (value at the time of confiscation) less EUR 20,000 (value of the land in 2014) after its return;

(ii) EUR 8,760,338.38 for the inability to use the land from the time of its confiscation until its return in December 2013.

(b) Falgest S.r.l. and Mr Gironda

29. In their observations the applicants jointly requested the following amounts, on the basis of an expert's assessment by the firm Lionte:

– principally,

(i) EUR 12,920,355.83, amount equivalent to the market value of the confiscated property (failing return of property);

(ii) EUR 12,502,155 for loss of income;

(iii) EUR 900,000 for loss of custom;

(iv) EUR 624,178.06 amount equivalent to the cost of taking out a loan to finance the property transaction;

– in the alternative,

(i) the return of the land and the removal of any constraints as to the possibility of building thereon;

(ii) EUR 7,360,896.71 for the investments necessary to refurbish property that had been left abandoned by the authorities;

(iii) EUR 12,502,155 for loss of income;

(iv) EUR 900,000 for loss of custom;

(v) EUR 624,178.06 amount equivalent to the cost of taking out a loan in order to finance the entire property transaction;

– in the further alternative,

(i) the return of the land and the removal of any constraints as to the possibility of building thereon;

(ii) EUR 7,360,896.71 for the cost of restoring the buildings;

(iii) EUR 4,739,929.90 for the inability to use the land;

(iv) EUR 624,178.06 amount equivalent to the cost of taking out a loan to finance the entire property transaction.

30. The applicants also stated that, according to the 2016 "Covenant for the Development of the city of Reggio Calabria", the costs for restoring the property had been estimated at EUR 2,900,000.

(c) R.I.T.A. Sarda S.r.l.

31. The applicant company requested, on the basis of an expert's assessment by the firm Masini:

– EUR 2,548,424.72 for loss of income;

– EUR 3,568,742 (failing return of the property) corresponding to the market value of the land without the possibility of building thereon;

– EUR 1,612,694.08 (failing return of the property) corresponding to the market value of the buildings;

– EUR 3,462,648.04 for inability to use the property.

2. The Government

32. The Government submitted observations on 15 April 2019 and have not made any comments in response to those of the applicants.

33. The Government did not dispute the principle of "total elimination of the consequences of the impugned measure" or the approach adopted in *Sud Fondi S.r.l. and Others v. Italy* (just satisfaction, no. 75909/01, 10 May 2012), whereby the applicants should be awarded compensation for the inability to use the land since the time of the confiscation, corresponding to the statutory interest for the entire period calculated on the value of the property.

34. With regard to G.I.E.M. S.r.l., the Government pointed out that the Court of Cassation, ruling on the criminal liability of the directors of various companies, including Sud Fondi S.r.l., had held that the site development plans and building permits issued were unlawful and, consequently, had established that the development plan in question had been adopted by Bari municipal authority in breach of regional and national laws. Therefore, relying on an assessment by the Tax Administration (*Agenzia delle entrate*), the Government argued that the value of the land in 2001 had been EUR 55,800 and the compensation for the inability to use it amounted to EUR 18,150, and that if the Court were to recognise that the land could be built upon then EUR 314,000 should be awarded.

35. As regards R.I.T.A. Sarda S.r.l., the Government submitted an expert's assessment which took account only of compensation for inability to use the land, because it was occupied, and adopted as the basis of calculation the value of the properties without any possibility of building thereon. Compensation for that damage would amount, in their opinion, to EUR 1,636.

36. Lastly, as to Falgest S.r.l. and Mr Gironda, the Government submitted two expert's assessments which took account only of compensation for inability to use the land, because it was occupied: the first assessment adopted

as the basis of calculation the value of the properties without any possibility of building thereon, while the second estimated the value of the land with the possibility of building thereon but not including the value of existing buildings or the period between seizure and confiscation. The resulting amounts would be EUR 5,089.38 and EUR 28,306.14 respectively.

B. The Court's assessment

1. Approach followed by the Court

37. The Court reiterates its case-law to the effect that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, § 79, ECHR 2014, and *Molla Sali v. Greece* (just satisfaction) [GC], no. 20452/14, § 32, 18 June 2020). The Contracting States that are parties to a case are in principle free to choose the means whereby they comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1 of the Convention). If the nature of the breach allows of *restitutio in integrum*, it is for the respondent State to effect it, the Court having neither the power nor the practical possibility of doing so itself. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I; *Guiso-Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, § 90, 22 December 2009; and *Nagmetov v. Russia* [GC], no. 35589/08, §§ 65-66, 30 March 2017).

38. Once a violation of a Convention provision has been found, the Court must ascertain if a direct causal link may be established between that violation and the damage alleged by the applicant (see *Olewnik-Cieplińska and Olewnik v. Poland*, no. 20147/15, § 150, 5 September 2019; *Kurić and Others*, cited above, § 81; and *Molla Sali*, cited above, § 32).

39. Proof of pecuniary damage, the amount claimed in respect thereof and the causal link between the damage and the violations found, must in principle be adduced by the applicant (see *Thaleia Karydi Axte v. Greece* (just satisfaction), no. 44769/07, § 18, 10 February 2011; *Dumitru v. Romania* (just satisfaction), no. 4710/04, § 11, 3 June 2014; and *Zhidov and Others v. Russia* (just satisfaction), nos. 54490/10 and 3 others, § 19, 17 March 2020).

40. In cases of alleged pecuniary damage resulting, as in the present case, from the confiscation of real property in violation of Article 1 of Protocol

No. 1 to the Convention, the relevant factors to be taken into account in order to establish the extent of the damage include in particular the value of the land and/or constructions prior to their confiscation, whether or not the land could be built upon at that time, the designated use of the land in question under the relevant legislation and land-use plans, the duration of the inability to use the land and the loss of value caused by the confiscation while, if appropriate, deducting the cost of the demolition of any illegal buildings.

41. In order to assess the duration of the inability to use the land in question, the Court will take as the starting point the confiscation of that land and not any prior seizure that have may have been implemented in respect thereof. This is so because in the judgment on the merits only the actual confiscations gave rise to the violations found.

42. In applying Article 41 the Court enjoys a certain discretion regarding the valuation of damage requiring compensation, as attested by the adjective "just" and the phrase "if necessary" (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV). As the case-law shows, such considerations arise in particular when the Court does not find it possible or suitable to calculate the exact value of the damage for which compensation is due.

43. In the present case the Court found, in its judgment on the merits, a violation of Article 6 § 2 in respect of Mr Gironda, of Article 7 in respect of the applicant companies, and of Article 1 of Protocol No. 1 in respect of all the applicants. However, it does not need to rule on the question whether a violation of Article 6 § 2 of the Convention may give rise to damage requiring compensation, as in any event there is no causal link between Mr Gironda's claims of pecuniary damage and the violation of his right to the presumption of innocence. As to the violations of Article 7, even supposing that they could give rise to compensation for pecuniary damage, such compensation could not increase the amount to be awarded in respect of the established violations of Article 1 of Protocol No. 1. The Court may thus focus on the latter.

44. Lastly, the Court notes certain similarities between the present case and that of *Sud Fondi S.r.l. and Others v. Italy* ((merits), no. 75909/01, 20 January 2009), which both concern confiscations of real property entailing violations of Article 7 of the Convention and Article 1 of Protocol No. 1. That being said, the Court would also observe that the nature of the violations in the respective cases is significantly different: while in the *Sud Fondi S.r.l. and Others* judgment (ibid.) the violations were found on account of a lack of legal basis of the confiscations in question, thus rendering them arbitrary, in the present case the violations are mainly procedural, arising solely from the fact that the applicant companies were not parties to the relevant proceedings. Accordingly, the present case should be distinguished from that of *Sud Fondi S.r.l. and Others* in a number of respects.

45. The breach of Article 1 of Protocol No. 1 – as found in the present case in the judgment on the merits – has undeniably caused the applicants to

sustain pecuniary damage. In the light of their respective observations and the evidence adduced therein, the Court will assess the existence and quantum of each head of damage relied upon by the applicants, applying the methodology set out in paragraphs 37-42 above.

2. Heads of pecuniary damage requiring compensation

46. In view of the fact that the land and buildings in question have already been returned to the applicants, the Court will take into consideration the claims for compensation solely in respect of:

(a) the inability to use the land;

(b) the deterioration of any buildings;

(c) the loss of value of the property prior to restitution.

(a) Compensation for inability to use land since its confiscation

47. The Court would point out that in the case of *Sud Fondi S.r.l. and Others* ((just satisfaction), cited above, § 57) it established that the compensation due for the inability to use the land was based on the likely value of the land at the beginning of the situation complained of and that the damage resulting from that inability could be compensated for by the payment of a sum corresponding to the statutory interest accruing throughout this period, applied to the value of the land thus determined.

48. As to the starting point of the period in question, the Court would refer to paragraph 41 above, where it found it appropriate in the present case to calculate the damage from the time of the confiscation of the property.

49. It is therefore necessary to examine, on a case-by-case basis, whether or not the land in question could be built upon, a status which has a significant impact on the value of land. The Court will now examine that question below.

(i) G.I.E.M. S.r.l.

50. The applicant company requested the Court to find that the land could be built upon, on the following grounds in particular: (a) this status was shown by the planning certificates at the time of confiscation; (b) the judgment of the Criminal Division of the Court of Cassation did not have *erga omnes* effect and in any event, as the Court had pointed out in its judgment on the merits (cited above, § 127), did not entail the annulment of administrative acts; and (c) in the *Sud Fondi S.r.l. and Others* judgment (ibid.), the expert's assessment submitted by the Government had not called into question the possibility of building on the land at the time of confiscation.

The Government disputed this argument. In order to determine an award corresponding to the statutory interest accruing on the value of the property throughout the period in question, they argued that no possibility of building on the land should be taken into account because the relevant legislation prohibited any construction thereon. This had been confirmed by the Court

of Cassation which, adjudicating upon the criminal liability of the directors of various companies, including Sud Fondi S.r.l., had found the site development plans and building permits to be unlawful.

51. In the Court's view, the applicant company has failed to counter this argument of the Government. In the light of the judgment of the Court of Cassation – in a case concerning other parties but relating to the same land – in which the site development plans and building permits were found to be unlawful, the Court is of the view that the possibility of building on the land in question has not been proven.

52. Accordingly, following the approach described in paragraphs 37-45 above, the Court awards the applicant company, on the basis of its inability to use the property, compensation amounting to EUR 35,000.

(ii) Falgest S.r.l. and Mr Gironda

53. The Court notes that the applicants and the Government have accepted the principle whereby the damage resulting from the inability to use land may be compensated for by the payment of an amount corresponding to the statutory interest accruing throughout that period applied to the value of the land.

54. As regards the calculation of the value of the property in question, the Government considered it to be non-building land and did not take into account the value of the buildings thereon, since they regarded them as having been erected unlawfully. The applicants contested this argument.

55. In the Court's view it is appropriate to take account of the applicants' inability to use their land in the period between its confiscation and its restitution.

56. As to whether or not the land could be built upon, the Court notes that, unlike the cases concerning the companies G.I.E.M. S.r.l. and R.I.T.A. Sarda S.r.l., building was permitted on the land in question to a very limited extent on the basis of the regulatory provisions in force at the time of the construction. The Court of Cassation held that the building work carried out did not comply with those provisions and that the ensuing site development was unlawful (see *G.I.E.M. S.r.l. and Others*, cited above, § 86). Consequently, the applicants have not shown that they would have been able to sell their land in spite of the erection thereon of constructions whose nature did not correspond to that specified on the relevant building permits. This fact should be taken into account in an assessment of any damage.

57. Accordingly, in the light of those considerations, and applying the approach described above (see paragraphs 37-45 above), the Court awards the company Falgest S.r.l. and Mr Gironda, jointly, for their inability to use their property, compensation amounting to EUR 700,000.

(iii) R.I.T.A. Sarda S.r.l.

58. The Court notes that the applicant company in particular requested compensation for the loss caused by its inability to use the non-building land and the buildings. The Government only took account of the compensation claim in respect of the inability to use the land because it was occupied and adopted as the basis of its calculation the value of the land without any possibility of building thereon.

59. The Court would emphasise that the domestic courts established that the applicant company's land did not permit building on account of the constraints imposed by the Regional Law on Landscape Protection and the Environment (ibid., § 72), and that the company itself, in its observations on just satisfaction, calculated the market value of the land on the premise that it could not be built upon. Lastly, the Court observes that the buildings were erected on the basis of the permits granted by the municipal and regional authorities, which, as found by the criminal courts, had acted in breach of the statutory prohibitions (ibid., §§ 72 and 73).

60. In the light of the foregoing and adopting the approach set out above in paragraphs 37-45, the Court awards the applicant company EUR 35,000 in respect of its inability to use the property.

(b) Compensation for deterioration of buildings (Falgest S.r.l. and Mr Gironda)

61. The applicant company Falgest S.r.l. and Mr Gironda sought compensation for the damage to the buildings left abandoned by the authorities from the time of their seizure until their restitution.

62. The Court notes that the applicants erected the buildings in question in breach of the administrative authorisations. Consequently, it takes the view that no compensation is due under this head.

(c) Compensation for the loss of value of the property stemming from the change in the land-use plan prior to restitution and from the criminal courts' decisions finding the administrative acts unlawful (G.I.E.M. S.r.l.)

63. The applicant company sought, in addition to compensation for the inability to use its property, an award of compensation for loss of value on account of the fact that it was no longer designated as permitting building. The Government disputed that argument, contending that it had been non-building land *ab initio*.

64. The Court would point out that in its judgment on the merits it found that the automatic application of confiscation in cases of unlawful site development was ill-suited to the principles deriving from the Court's case-law on Article 1 of Protocol No. 1. However, the change in designated land use and the loss of status as building land were not raised in the context of the judgment on the merits. Therefore these are matters which bear no relation to the violations found. Had the applicants wished to complain of such

violations and seek compensation in this regard they should have referred them to the Court separately. In the absence of any causal link with the confiscation measure, the loss of value of the land resulting from the change in its designated use and the loss of its status as building land cannot be taken into account in the calculation of the compensation due (see, *mutatis mutandis*, *Sud Fondi S.r.l. and Others* (just satisfaction), cited above, § 30).

65. The same is true for the loss of value of the property caused by the criminal courts' decisions finding the administrative acts unlawful. In any event, the claim of the applicant company is at odds with its assertion that the Court of Cassation's judgment had no impact on the question whether the land could be built upon. In this connection, the Court notes that, according to the information available to it, proceedings are still pending in the domestic courts (see the judgment on the merits, *G.I.E.M. S.r.l. and Others*, cited above, § 43; also §§ 173 and 176 thereof).

III. NON-PECUNIARY DAMAGE

66. With the exception of the company R.I.T.A. Sarda S.r.l., the applicants further sought compensation for non-pecuniary damage. They claimed the following sums: the company G.I.E.M. S.r.l., 5% of the pecuniary damage; the company Falgest S.r.l. and Mr Gironda, EUR 150,000 each.

67. The Government did not specifically oppose these claims.

68. The Court reiterates that it cannot exclude the possibility that compensation may be awarded for non-pecuniary damage alleged by a legal entity. Whether an award should be made will depend on the circumstances of each case (see *Comingersoll*, cited above, §§ 32-35). In the present case, the situation at issue must have caused, in respect of the two applicant companies, their directors and shareholders, considerable inconvenience, if only in the conduct of the company's everyday affairs, which would justify making an award under this head.

69. The Court awards to the companies G.I.E.M. S.r.l. and Falgest S.r.l. and to Mr Gironda the sum of EUR 10,000 each.

IV. COSTS AND EXPENSES

70. The applicants claimed the following sums, respectively: (a) G.I.E.M. S.r.l., EUR 116,364 for the costs and expenses incurred in the proceedings before the domestic courts and EUR 209,200 for those before the Court; (b) Falgest S.r.l. and Mr Gironda, EUR 5,000 for the costs and expenses incurred in the proceedings before the domestic courts and EUR 360,501.44 for those before the Court, plus EUR 34,160 for the expert's assessment before the Chamber and EUR 1,500,000, or a lesser sum depending on the compensation awarded by the Court, for the cost of a fresh expert's

assessment before the Grand Chamber; (c) R.I.T.A. Sarda S.r.l., EUR 30,117.57 for the proceedings before the Chamber.

71. The Government made no specific remarks on these claims.

72. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, and taking account of the documents in its possession and its case-law, the Court finds it reasonable, ruling on an equitable basis, to make the following awards in respect of all costs and expenses: EUR 70,000 to the company G.I.E.M. S.r.l., EUR 70,000 to the company Falgest S.r.l. and to Mr Gironda jointly, and EUR 30,000 to the company R.I.T.A. Sarda S.r.l.

V. DEFAULT INTEREST

73. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that application no. 34163/07 must be struck out in so far as it concerns the company Hotel Promotion Bureau S.r.l.;

2. *Holds*
   (a) that the respondent State is to pay the applicants, within three months, the following amounts:
      (i) G.I.E.M. S.r.l.: EUR 35,000 (thirty-five thousand euros) in respect of pecuniary damage, EUR 10,000 (ten thousand euros) for non-pecuniary damage, plus any tax that may be chargeable on these amounts, and EUR 70,000 (seventy thousand euros) for costs and expenses plus any tax that may be chargeable to the applicant company on this amount;
      (ii) R.I.T.A. Sarda S.r.l.: EUR 35,000 (thirty-five thousand euros) in respect of pecuniary damage, plus any tax that may be chargeable on this amount, and EUR 30,000 (thirty thousand euros) for costs and expenses, plus any tax that may be chargeable to the applicant company on this amount;
      (iii) Falgest S.r.l. and Mr Gironda: EUR 700,000 (seven hundred thousand euros) jointly in respect of pecuniary damage, and EUR 10,000 (ten thousand euros) each for non-pecuniary damage, plus any tax that may be chargeable on these amounts, and EUR 70,000 (seventy thousand euros) jointly for costs and

expenses, plus any tax that may be chargeable to the applicants on this amount;

(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;

3. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English and in French, and notified in writing on 12 July 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Johan Callewaert	Siofra O'Leary
Deputy to the Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge R. Sabato is annexed to this judgment.

S.O.L.
J.C.

CONCURRING OPINION OF JUDGE SABATO

1. I found convincing and concurred with the findings in the present just satisfaction judgment that:

– there was no need to rule on the question whether a violation of Article 6 § 2 of the Convention may give rise to damage requiring compensation, as in any event there was no causal link between Mr Gironda's claims of pecuniary damage and the violation of his right to the presumption of innocence (see paragraph 43 of the present judgment);

– as to the violations of Article 7, even supposing that they could give rise to compensation for pecuniary damage, such compensation could not increase the amount to be awarded in respect of the established violations of Article 1 of Protocol No. 1 (ibid.); and

– as to the latter violations, that their nature was significantly different from that of the violations found in *Sud Fondi S.r.l. and Others v. Italy* (the principal and just satisfaction judgments having been cited above in the present judgment), such that "the present case should be distinguished from that of *Sud Fondi* ... in a number of respects": so for example, "while in the *Sud Fondi S.r.l. and Others* judgment ... the violations were found on account of a lack of legal basis of the confiscations in question, thus rendering them arbitrary, in the present case the violations are mainly procedural, arising solely from the fact that the applicant companies were not parties to the relevant proceedings" (see paragraph 44 of the present judgment).

2. I must, however, note that the ground for distinction identified in the procedural nature of the violations in the present case pertains essentially to the breaches found in the principal judgment (see *G.I.E.M. S.r.l. and Others v. Italy* [GC], nos. 1828/06 and 2 others, 28 June 2018, hereinafter the "principal judgment") in relation to Article 7 (i.e. those violations for which well-founded doubts existed as to the possibility of their causing pecuniary damage in the given context, and which at any rate the Grand Chamber held "could not increase the amount to be awarded in respect of the established violations of Article 1 of Protocol No. 1" – see paragraph 43 of the present judgment).

3. More appropriately, under Article 1 of Protocol No. 1, in my humble view, the central distinguishing element was that, while in *Sud Fondi* confiscation of the properties had not been based on a law of sufficient quality and was therefore arbitrary, in the present case the confiscation was disproportionate, as the automatic application of confiscation in cases of unlawful site development, as provided for – save in respect of *bona fide* third parties – by Italian legislation did not allow the courts to ascertain which instruments were the most appropriate in relation to the specific circumstances of the case or, more generally, to weigh up the legitimate aim

against the rights of those affected by the sanction (see paragraph 5 of the present judgment).

4. Nevertheless, in the principal judgment the fact that the applicant companies were not parties to the impugned proceedings, and therefore did not have the benefit of any relevant procedural safeguards, was also mentioned as part of the non-proportionality assessment (see principal judgment, §§ 303-04).

5. Turning now to the concrete determination of the just satisfaction to be awarded, I wish to clarify that I also found convincing and concurred in the findings that:

– the only head of pecuniary damage having a causal link with the violations was the inability to use the land, while no link existed concerning the deterioration and/or loss of value of the property prior to restitution (see paragraphs 47, 62 and 64-65 of the present judgment);

– in order to compensate for the inability to use the land, the criterion adopted must in principle – as found in the Court's previous practice – be that the calculation is solely based on the statutory interest applied to the "market value" of the land (see paragraph 47 of the present judgment) at the time of the confiscations (see paragraphs 41 and 48), in the period from confiscation until restitution of the property; and

– the "market value" of the land had to be determined based on: whether or not the land could be built upon at the time of the confiscation in relation to the designated use of the land in question under the relevant legislation and land-use plans, as ascertained also by way of reference to domestic judicial assessments; the duration of the inability to use the land; and the loss of value caused by the confiscation while, if appropriate, deducting the cost of the demolition of any illegal buildings, a cost whose calculation – I note – is essential in environmental protection and which might in some cases even result in negative values (see paragraph 40 of the present judgment).

6. That having been said, I feel that the specific features of the case, as compared to those of *Sud Fondi S.r.l. and Others*, might have warranted the inclusion of two additional criteria for an assessment of the market value of the land in the present context. The first criterion, in my modest view, should have been the loss of value that the land would have undergone if the authorities – instead of ordering the automatic, and therefore disproportionate, total confiscation – had adopted a more adapted, limited and proportionate measure, appropriate to the concrete situation, for example, confiscation of only part of the land on which buildings were erected; or if an attachment order had been made in respect of the land by way of guarantee to ensure payment of a fine imposed at the same time, etc. Indeed, a judgment of the Court finding a breach of the Convention imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation

existing before the breach (see paragraph 37 of the present judgment), but not to create a better position than that which existed beforehand.

7. The same goes for the restitution of the property, which has been returned to all the applicants in its entirety (see paragraph 13 of the present judgment): this too is an improvement on the situation existing before the breach, whilst a proportionate measure could have been adopted such as to deprive the applicants of only part of the land's value. Therefore, I would suggest that a second criterion be added: the value of the loss that has thereby been avoided should have been calculated in favour of the respondent State.

8. The lack of consideration of the above criteria made me hesitate to accept the award of the sums as stated in paragraphs 52, 57, and 60 of the present judgment. Indeed, the finding that the automatic application of the confiscation was disproportionate meant that the Court could have accepted that a lesser interference would have been in compliance with Article 1 of Protocol No. 1. Thus, given that the measure was not "*illicite en soi*" (an issue left open in the principal judgment), but solely disproportionate (see the principal judgment, cited above, §§ 303-04), and therefore a less serious violation, this finding should have opened the door to the approach used in cases where the finding of a violation is not based on the unlawfulness of the measure. This was the case, for example, in *Terazzi S.r.l. v. Italy* ((just satisfaction), no. 27265/95, § 34, 26 October 2004), where the Court held (emphasis added): "*Quant à l'indemnisation à fixer en l'espèce, celle-ci n'aura pas, contrairement à celle octroyée dans les affaires concernant des dépossessions illicites en soi, à refléter l'idée d'un effacement total des conséquences de l'ingérence litigieuse ...*"[1].

9. But a more important issue has prompted me to express my views separately in this opinion. I note that in the principal judgment the Grand Chamber, when dealing with the objections alleging an abuse of the right of application and non-exhaustion of domestic remedies (see the principal judgment, cited above, §§ 173-74), considered that the proceedings brought by G.I.E.M. S.r.l. before the domestic courts and those before this Court pursued different objectives and purposes.

10. It is, however, undeniable that G.I.E.M. S.r.l. claimed the same heads of damage before both judicial authorities (see the principal judgment, § 43, and, for a list of the heads of damage sought before the Court, paragraph 28 of the present judgment). The Grand Chamber could therefore have chosen not to rule on the pecuniary damage claim, G.I.E.M. S.r.l. having opted to come to the Court before those domestic proceedings came to an end (see, for similar considerations, albeit in a different context, *Canè and Others v. Malta* (dec.), no. 24788/17, § 75, 13 April 2021).

[1] "As to the compensation to be awarded in the present case, it will not, unlike awards in cases of *per se* illegal dispossessions, have to reflect the idea of total elimination of the consequences of the interference at issue ..."

11. This has not been the case and the issue is cursorily mentioned in paragraph 65 of the present judgment. It is therefore a fact that, in the present judgment, the Court has ruled on (by awarding or rejecting) all items of pecuniary (and also non-pecuniary) damage consequent to the facts and omissions complained of in the principal judgment, regardless of the findings made (for the purpose of admissibility) in paragraphs 173-74 and 176 of the principal judgment.

12. In this situation, it is necessary to refer to the Court's case-law, which resolves the problems linked to the risk that, once the Court has awarded amounts for damage, or has rejected claims, the applicant could be compensated twice, or could be compensated in spite of a rejection by the Court. The applicable principle is that the national authorities must inevitably take note of awards (or rejections) by the Court (both awards and rejections being final and complete determinations of an applicant's complaints) in respect of an applicant's domestic claims (see, *mutatis mutandis, Serghides v. Cyprus* (just satisfaction), no. 44730/98, § 29, 10 June 2003; *Serrilli v. Italy* (just satisfaction), no. 77822/01, § 17, 17 July 2008; and *Silva Barreira Júnior v. Portugal*, nos. 38317/06 and 38319/06, § 40, 11 January 2011). This is particularly important in the situation of G.I.E.M. S.r.l., since the observations and expert reports mentioned in paragraph 28 of the present judgment appear to cover every possible item of harm.

Appendix

List of applications:

No.	Application no.	Lodged on	Applicant Place of residence or registered office
1.	1828/06	21/12/2005	**G.I.E.M. S.R.L.** Bari
2.	34163/07	02/08/2007	**HOTEL PROMOTION BUREAU S.R.L.** Rome **R.I.T.A. SARDA S.R.L.** Rome
3.	19029/11	23/03/2011	**FALGEST S.R.L.** Pellaro **Filippo GIRONDA** Pellaro