



Grand Chamber judgment in *G.I.E.M. S.r.l. and Others v. Italy* on just satisfaction

In today's **Grand Chamber** judgment¹ in the case of [G.I.E.M. S.r.l. and Others v. Italy](#) (applications nos. 1828/06, 34163/07 and 19029/11), concerning the question of just satisfaction (Article 41 of the Convention), the European Court of Human Rights found that application no. 34163/07 had to be struck out of its list in respect of the company Hotel Promotion Bureau S.r.l. and that the respondent State was to pay the following amounts within three months:

- to G.I.E.M. S.r.l., 35,000 euros (EUR) for pecuniary damage, EUR 10,000 for non-pecuniary damage, and EUR 70,000 for costs and expenses;
- to R.I.T.A. Sarda S.r.l., EUR 35,000 for pecuniary damage, and EUR 30,000 for costs and expenses;
- to Falgest S.r.l. and Mr Gironda, EUR 700,000 jointly, for pecuniary damage, EUR 10,000 each for non-pecuniary damage, and EUR 70,000, jointly, for costs and expenses;

The Court rejected the remainder of the claims.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The case originated in three applications (nos. 1828/06, 34163/07 and 19029/11) lodged against Italy. The applicants are four companies and one individual: G.I.E.M. S.r.l., Hotel Promotion Bureau S.r.l. (under administration), R.I.T.A. Sarda S.r.l. (under administration), Falgest S.r.l. and Mr Filippo Gironda.

In its [judgment](#) on the merits delivered on 28 June 2018, the Grand Chamber found: a violation of Article 1 of Protocol No. 1 to the Convention (protection of property) in respect of each of the applicants; no violation of Article 7 of the Convention (no punishment without law) and a violation of Article 6 § 2 (presumption of innocence) in respect of Mr Gironda; and lastly a violation of Article 7 in respect of the applicant companies.

As to Article 1 of Protocol No. 1, the Grand Chamber found that the automatic application of confiscation in the event of unlawful site development was disproportionate. This automaticity did not allow the domestic courts to assess which instruments were best adapted to the specific circumstances of the case or, more generally, to weigh in the balance the legitimate aim pursued against the rights of those affected by the confiscation.

As regards the violation of Article 7, the Court concluded that, in view of the discrete nature of the legal personality of companies in relation to that of their directors and shareholders, the principle of legality meant that the entities concerned (the applicant companies) could not be punished for acts engaging the criminal liability of others (the individuals concerned). Consequently, to apply confiscation to legal entities who were not parties to the proceedings in question was incompatible with Article 7. The Grand Chamber also found that there had been no violation of Article 7 of the Convention in respect of Mr Gironda.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Lastly, there had been a violation of Article 6 § 2 of the Convention, as the fact that Mr Gironda had in substance been found guilty by the Court of Cassation, even though the proceedings had become statute-barred, constituted a breach of his right to be presumed innocent.

Under Article 41 (just satisfaction) of the Convention, the applicants sought an award by way of just satisfaction for the pecuniary and non-pecuniary damage they claimed to have sustained, together with the reimbursement of the costs and expenses they had incurred in the present proceedings. As the question was not ready for decision, the Court deferred it and invited the Government and the applicants to submit observations and in particular to keep it informed of any agreement they might reach.

The Court noted that the property in question had been returned, on various dates, to all the applicants.

Procedure and composition of the Court

The applications were lodged with the European Court of Human Rights, respectively, on 21 December 2005, 2 August 2007 and 23 March 2011. Notice thereof was given to the Government on 30 March 2009, 5 June 2012 and 30 April 2013, respectively.

On 5 June 2012 the Court gave a [partial decision](#) on admissibility in the case of *Hotel Promotion Bureau S.r.l. and Others v. Italy*. On 30 April 2013 the Court gave a [partial decision](#) in the case of *Falgest S.r.l. and Gironda v. Italy*.

On 17 February 2015 the Chamber to which the cases had been allocated relinquished jurisdiction in favour of the Grand Chamber. A [hearing](#) was held on 2 September 2015.

On 28 June 2018, the Grand Chamber delivered its [judgment](#) on the merits.

The present judgment was given by the Grand Chamber of 17 judges, composed as follows:

Síofra O’Leary (Ireland), *President*,
 Georges Ravarani (Luxembourg),
 Marko Bošnjak (Slovenia),
 Gabriele Kucsko-Stadlmayer (Austria),
 Faris Vehabović (Bosnia and Herzegovina),
 Egidijus Kūris (Lithuania),
 Branko Lubarda (Serbia),
 Yonko Grozev (Bulgaria),
 Georgios A. Serghides (Cyprus),
 Jolien Schukking (the Netherlands),
 Lado Chanturia (Georgia),
 María Elósegui (Spain),
 Ivana Jelić (Montenegro),
 Raffaele Sabato (Italy),
 Lorraine Schembri Orland (Malta),
 Anja Seibert-Fohr (Germany),
 Diana Sârcu (the Republic of Moldova),

and also Johan Callewaert, *Deputy Grand Chamber Registrar*.

Decision of the Court

Having been declared insolvent on 29 April 1998 and under administration from 31 October 2002, the company Hotel Promotion Bureau S.r.l. has ceased to exist since 12 January 2016. The individual

or legal entity who or which had purportedly succeeded the applicant company Hotel Promotion Bureau S.r.l. had not informed the Court of a wish to maintain the application, the request made by the legal representative not being conclusive, and therefore application no. 34163/07 had to be struck out of the Court's list in so far as it concerned the applicant company Hotel Promotion Bureau S.r.l.

Pecuniary damage

As the land and buildings had already been returned to the applicants, the Court considered their claims only to the extent that they concerned the inability to use the land, the deterioration of buildings and the loss of value prior to their restitution.

In order to assess the duration of the inability to use the land in question, the Court took as the starting point the confiscation of that land and not any prior seizure that have may have been implemented.

It was therefore necessary to calculate the loss from the time of confiscation and to examine, on a case-by-case basis, whether or not the land in question could be built upon, a status which had a significant impact on the value of land.

The Court awarded the applicant company G.I.E.M. S.r.l., on the basis of its inability to use its property, compensation amounting to EUR 35,000.

It awarded the company Falgest S.r.l. and Mr Gironda, jointly, for their inability to use their property, compensation amounting to EUR 700,000.

The Court awarded the applicant company R.I.T.A. Sarda S.r.l. EUR 35,000 for its inability to use its property.

Falgest S.r.l. and Mr Gironda had sought compensation for the damage to the buildings left abandoned but the Court noted that they had been erected in breach of the administrative authorisations. Consequently, it took the view that no compensation was due under that head.

As to the alleged loss of value of the land on account of the fact that it was no longer designated as permitting building, as a result of the change in the land-use plan before restitution and in view of the criminal court judgments finding administrative decisions unlawful (G.I.E.M.), in its judgment on the merits the Court had 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 had not been raised in the context of the judgment on the merits.

Since there was no causal link with the confiscation, the loss of value of the land resulting from the change in its designated use and the loss of its status as building land could not be taken into account in the calculation of the compensation due. The same was true for the loss of value of the property caused by the criminal courts' decisions finding the relevant administrative acts unlawful.

Non-pecuniary damage

In the present case, the situation at issue must have caused, in respect of the two applicant companies G.I.E.M. S.r.l. and Falgest S.r.l., their directors and shareholders, considerable inconvenience, if only in the conduct of the company's everyday affairs, which justified making an award under this head. The Court awarded 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.

Costs and expenses

Taking account of the documents in its possession and its case-law, the Court found it reasonable 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.

Separate opinion

Judge Sabato expressed a separate opinion, which is annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.