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

FIRST SECTION

DECISION

Application no. 95/06
Stefano GUISO-GALLISAI and Others
against Italy

The European Court of Human Rights (First Section), sitting on 16 June 2020 as a Committee composed of:
Pere Pastor Vilanova, *President,*
Jovan Ilievski,
Raffaele Sabato, *judges,*
and Renata Degener, *Deputy Section Registrar,*
Having regard to the above application lodged on 18 October 2005,
Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,
Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix.

A. The circumstances of the case

2. The applicants were the joint owners of various parts of different plots of land zoned for construction in Nuoro.
3. The plots in question – measuring a total surface area of 13,614 sq. m. – were recorded in the land register as Folio no. 43, parcel nos. 1141, 1147, 1148, 1339, 1136, 1137, 1143, and 1146.
4. By different orders issued between March and October 1991 Nuoro City Council approved a project to build a residential complex on the applicants' land.
5. By four orders issued on 18 October 1991 by the mayor of Nuoro, through an expedited procedure and on the basis of a public interest declaration, the Nuoro municipality was authorised to take possession of the above-mentioned plots of land belonging to the applicants, with a view to

subsequently expropriating them. The deadline for issuing a formal expropriation order was 31 December 1995.

6. In November 1991 the authorities took physical possession of the land and began construction.

7. By an order issued on 12 December 1995 by Nuoro City Council, the deadline for issuing the expropriation order was extended to 31 October 1996.

8. By an order of 21 August 1996 Nuoro City Council further extended the deadline for issuing the expropriation order.

9. On 11 October 1996 an expropriation order was issued in respect of the land.

10. On 24 January 1997 the applicants lodged an application with the Sardinia Regional Administrative Court ("the Regional Administrative Court"), contesting the lawfulness of the mayor's orders of 18 October 1991 and the orders extending the deadline for issuing the expropriation order.

11. By a judgment of 12 May 1999 the court found that the orders extending the deadline for issuing the expropriation order had been unlawful, and that the expropriation order of 11 October 1996 had consequently also been unlawful.

12. On 22 November 2000 the applicants applied to the Regional Administrative Court for compensation for their being unlawfully deprived of their property, relying on the same court's judgment of 12 May 1999. In that connection they sought an amount equal to the property's market value on the date when the land had been irreversibly altered, plus a sum reflecting adjustment for inflation and statutory interest. They further contended that "constructive expropriation", which was the likely designation in their case, had been found by the Court to be incompatible with Article 1 of Protocol No. 1 to the Convention.

13. On an unspecified date the court ordered an expert valuation of the land. A report produced in September 2004 stated that the affected surface area of the applicants' land was equal to 13,614 sq. m, and that the market value of the land in May 1996 had been 122.32 euros (EUR) per sq. m.

14. By a judgment of 24 January 2005 the court found that, as a result of constructive expropriation (*occupazione appropriativa*), the applicants were no longer the owners of the land, which had become the property of the Nuoro municipality following completion of the construction work. It dismissed the applicants' argument to the effect that constructive expropriation was incompatible with Article 1 of Protocol No. 1 to the Convention. However, the court conceded that, as the transfer of property had been unlawful, the applicants were entitled to compensation. In this connection, it referred to the expert report, which had assessed the market value of the land at EUR 122.32 per sq. m. However, the court did not award compensation reflecting the market value, but instead proceeded to make an award based on the criteria contained in Article 5 *bis* of Legislative

Decree no. 333 of 11 July 1992, as amended by Law no. 662 of 1996. All amounts were to be adjusted for inflation and to include statutory interest from the date the occupation of the applicants' land had ceased to be lawful, which the court identified as 1 January 1996.

15. On 24 May 2005 the applicants lodged an application with the *Consiglio di Stato*. They contested the lower courts' legal classification of how they had been deprived of their property and complained that the reduction in their compensation was incompatible with their right to property. They claimed, *inter alia*, that they were entitled to compensation corresponding to the market value of the land, and a sum for loss of enjoyment of the land. They also complained about the fact that the award would be subject to taxation.

16. On 2 October 2009 the *Consiglio di Stato* issued a decision declaring that it did not have jurisdiction to decide the applicants' claim.

17. The applicants lodged an application with the Court of Cassation in order to settle the issue of jurisdiction.

18. On 12 January 2011the Court of Cassation, sitting as a full court (*Sezioni Unite*), ruled that the administrative courts had jurisdiction to decide the applicants' claim for compensation, as the issue at stake concerned the unlawful exercise of public authority.

19. On an unspecified date the applicants resumed their appeal before the *Consiglio di Stato*. They contested the lower courts' legal classification of how they had been deprived of their property and complained that the reduction in their compensation was incompatible with their right to property. They asked the court to award an amount corresponding to the property's market value. They also complained about the fact that the award would be subject to taxation.

20. By a judgment delivered on 12 July 2011, filed with the registry on 2 November 2011, the *Consiglio di Stato* confirmed that the applicants had been deprived of their property unlawfully. It referred on the Constitutional Court's judgment no. 349 of 24 October 2007, whereby Article 5 *bis* of Legislative Decree no. 333 of 11 July 1992, as amended by Law no. 662 of 23 December 1996, had been declared unconstitutional, and held that the applicants were entitled to compensation corresponding to the full market value of the property, minus what had already been paid to them under the judgment of the Regional Administrative Court. The court furthermore stated that the applicants were entitled to a sum reflecting an adjustment for inflation as well as statutory interest from the date that they were deprived of their property. It also awarded a global sum of EUR 50,000 in compensation for non-pecuniary damage. The court stated that it lacked jurisdiction to examine the complaint concerning prospective taxation.

21. Tax at a rate of 20% was deducted at source from the sums disbursed to the applicants under the judgments of the Regional Administrative Court and the *Consiglio di Stato*.

22. On an unspecified date the applicants lodged proceedings before the Sassari Court of Appeal with a view to obtaining compensation for the occupation of their land (*indennità di occupazione*) between 1991 and 1995.

23. On 21 June 2013 the Sassari Court of Appeal found that compensation for the period of lawful occupation in respect of the land amounted in total to EUR 701,183.24. It held that the applicants were entitled to a portion of this amount corresponding to their respective shares in the property.

B. Relevant domestic law and practice

24. The relevant domestic law and practice applicable in this case was recently summarised in *Guiso and Consiglio v. Italy* ((dec.), no. 50821/06, §§ 25-31, 16 January 2018).

COMPLAINTS

25. The applicants alleged that they had been unlawfully deprived of their land and that the situation had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention. They also complained about the entry into force of legislation which had had the effect of depriving them of a substantial part of the compensation to which they were entitled. The applicants further argued that the application of Law no. 662 of 1996 had produced discriminatory effects, in breach of Article 14 of the Convention. Lastly, relying on Article 18, the applicants complained that their Convention rights had been restricted for purposes other than those prescribed in the Convention.

THE LAW

A. Complaint under Article 1 of Protocol No. 1 to the Convention

26. The applicants alleged that they had been unlawfully deprived of their land and that the situation had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "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."

1. The parties' submissions

27. By a letter of 6 August 2013 the Government informed the Court that the *Consiglio di Stato* had delivered a judgment in which it had acknowledged that the applicants had been unlawfully deprived of their property and, drawing on the Constitutional Court's judgment no. 349 of 24 October 2007, had held that the applicants had been entitled to compensation corresponding to the full market value of the property, and that that sum should be adjusted for inflation and interest added (see paragraph 20 above). In the light of these developments, which had occurred subsequent to notification of the case, the Government contended that the applicants were no longer victims of the violation complained of.

28. The applicants alleged that they had been unlawfully deprived of their land and that the situation had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1. They highlighted the fact that constructive expropriation had been found to be incompatible with the Convention on many occasions by the Court.

29. The applicants furthermore advanced the argument that, even though the domestic courts had acknowledged the unlawful nature of the expropriation and awarded compensation equal to the property's market value, adjusting the amount for inflation, adding statutory interest and a sum for non-pecuniary damage, they had not received redress that could be considered "appropriate and sufficient" owing to the taxation imposed in accordance with Law no. 413 of 1991. In their view, the application of the fiscal measure meant that they had ultimately received a sum amounting to only 80% of the property's market value. The fiscal imposition therefore reflected a legislative expedient to reduce the costs of acquiring land for public purposes by 20%, though formally disguised as a tax.

30. Moreover, the adequacy of the compensation had been further reduced by the fact that, in the applicants' view, the domestic courts had not awarded a sum reflecting "loss of opportunities", as required by the Court in *Guiso-Gallisay v. Italy* ((just satisfaction) [GC], no. 58858/00, 22 December 2009, § 107).

2. The Court's assessment

31. The Court notes at the outset that the applicants were deprived of their property by means of indirect or "constructive" expropriation, an interference with the right to the peaceful enjoyment of possessions which the Court has previously considered, in a large number of cases, to be incompatible with the principle of lawfulness, leading to findings of a

violation of Article 1 of Protocol No. 1 (see, among many other authorities, *Carbonara and Ventura v. Italy*, no. 24638/94, §§ 63-73, ECHR 2000-VI; *Guiso-Gallisay v. Italy*, no. 58858/00, §§ 93-97, 8 December 2005; *De Caterina and Others v. Italy*, no. 65278/01, §§ 30-34, 28 June 2011; and, as a more recent authority, *Messana v. Italy*, no. 26128/04, §§ 38-43, 9 February 2017). There is no evidence in the case file that could lead the Court to reach a different conclusion in the present case.

32. That said, the Court nevertheless notes that the *Consiglio di Stato* acknowledged that the deprivation of property had been unlawful and, by drawing on the Constitutional Court's judgment no. 349 of 24 October 2007, held that the applicants were entitled to redress in conformity with the criteria established in the Court's case-law (see paragraph 20 above). The Court is satisfied that that amounts to an acknowledgement by the domestic courts of the infringement complained of. Following that determination, the *Consiglio di Stato* awarded an amount equal to the market value of the land at the time the applicants were deprived of their property, increased by an amount reflecting an adjustment for inflation as well as statutory interest from the date that they were deprived of their property (see paragraph 20 above). In a similar case, the Court found that an analogous award had constituted appropriate and sufficient redress for the breach of Article 1 of Protocol No. 1 suffered by the applicant, who – like the present applicants – had been unlawfully dispossessed of his property, and concluded that the applicant could no longer be considered a victim of the violation complained of (see *Armando Iannelli v. Italy*, no. 24818/03, §§ 35-37, 12 February 2013). The Court sees no reason to depart from the approach it adopted in that case.

33. Moreover, the Court highlights that in the present case the *Consiglio di Stato* also awarded EUR 50,000 in respect of the non-pecuniary damage suffered owing to the unlawful nature of the property deprivation (see paragraph 20 above). The Court also notes that the Sassari Court of Appeal recognised the further sum of EUR 701,183.24 as compensation for the unavailability of the land during the period of lawful occupation (*indennità di occupazione*), and that the applicants were entitled to a portion of this amount corresponding to their respective shares in the property (see paragraph 23 above). The Court finds that the latter compensation exceeded what the Court would have awarded in respect of "loss of opportunities" according to the criteria established by the Court in *Guiso-Gallisay* (just satisfaction) [GC] (cited above, § 107).

34. Nevertheless, the applicants argued that the redress afforded by the domestic courts, and in particular the *Consiglio di Stato*, in connection with the loss of their property, was furthermore made insufficient on account of the tax levied on the amounts received.

35. The Court has already found that the most appropriate approach to examine an analogous complaint concerning the impugned tax measure

would be from the standpoint of a control of the use of property "to secure the payment of taxes" (see *Guiso and Consiglio*, cited above, § 41). According to the Court's well-established case-law (see, among many other authorities, *Gasus Dosier und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, § 62, Series A no. 306-B, and *N.K.M. v. Hungary*, no. 66529/11, § 42, 14 May 2013), an interference, including one resulting from a measure to secure the payment of taxes, must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, and applicants must not bear an individual and excessive burden. The Court has also consistently held that a Contracting State, not least when framing and implementing policies in the area of taxation, enjoys a wide margin of appreciation, and that it will respect the legislature's assessment in such matters unless it is devoid of reasonable foundation (see *Guiso and Consiglio*, cited above, § 43, with further references).

36. In a case analogous to the one under scrutiny, the Court considered that it was well within the area of discretionary judgment for the Italian legislature to develop substantive tax rules providing for taxation of capital gains arising from dispossession of property and that the legislation providing for this could not be considered to be arbitrary as such (ibid., § 44). In the same case, the Court considered that the respondent State should be afforded a particularly wide margin of appreciation, since choices as to the type and amount of tax to be levied and related questions as to what could be classified as taxable income, as well as the concrete means of enforcement of a tax, fell within those issues that the domestic legislature was certainly better placed than the Court to assess and determine (ibid.). The Court sees no reason to depart from those findings in the circumstances of the present case.

37. It remains to be ascertained whether the impugned fiscal measure could be viewed as having imposed an unreasonable or disproportionate burden on the applicants. The Court has already had the opportunity to consider that the tax rate applied in accordance with Law no. 413 of 1991, which amounted to 20% of the total compensation awarded, cannot be considered prohibitive, from a quantitative standpoint (ibid., § 46). Moreover, it cannot be said that the deduction of such an amount had the effect of nullifying or essentially frustrating the award of compensation made by the domestic courts, to the extent of causing the tax burden to acquire a "confiscatory" nature. The Court is, in other words, satisfied that the fiscal measures applied in the present case did not go as far as to impair the very substance of the applicants' property rights.

38. The Court also notes that there is no evidence in the case file – and in any event it has not been argued by the applicants – that the levying of such a sum fundamentally undermined their financial situation. This is one of the factors to which the Court has given weight when gauging whether a

fair balance has been struck in a given case (see *N.K.M. v. Hungary*, cited above, § 42, and the further references cited therein).

39. Lastly, the Court finds it relevant to point out that under the legislation under scrutiny, the applicants could have opted for taxation under the ordinary income-tax regime if they had so wished, as taxpayers can choose between accepting the 20% deduction applied to the sum obtained and ordinary taxation, which determines the amount due in tax by taking into account any capital gains in combination with other components of their income (see *Guiso and Consiglio*, cited above, § 31).

40. In view of the foregoing, and taking into account the wide margin of appreciation which the States have in taxation matters, the Court considers that the tax levied on the compensation awarded to the applicants did not upset the balance which must be struck between the protection of the applicants' rights and the public interest in securing the payment of taxes.

41. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Remaining complaints

42. The Court has examined the other complaints submitted by the applicants. Having regard to all the material in its possession and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

43. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 9 July 2020.

Renata Degener Deputy Registrar	Pere Pastor Vilanova President

APPENDIX

No.	Applicant's Name	Birth date	Nationality	Place of residence
1	Stefano GUISO-GALLISAI	15/07/1959	Italian	Milan
2	Antonia GUISO-GALLISAI	25/11/1952	Italian	Rome
3	Gianfrancesco GUISO-GALLISAI	08/07/1948	Italian	Rome