FIRST SECTION

DECISION

Application no. 22433/06
Stefano GUISO GALLISAI and Others
against Italy

The European Court of Human Rights (First Section), sitting on 4 July 2023 as a Committee composed of:

 Péter Paczolay*, President*,
 Gilberto Felici,
 Raffaele Sabato*, judges*,
and Liv Tigerstedt, *Deputy* *Section Registrar,*

Having regard to:

the application (no. 22433/06) 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”) on 31 May 2006 by the three Italian nationals listed in the appended table (“the applicants”) who were represented by Mr S. Guiso Gallisai, a lawyer practising in Milan;

the decision to give notice of the application to the Italian Government (“the Government”), represented by their former co-Agent, Mr Crisafulli;

the parties’ observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1.  The case concerns the applicants’ complaint that they were deprived of their land through the application by the domestic courts of the constructive-expropriation rule (*accessione invertita* or *occupazione acquisitiva*).

2.  The applicants were co-owners – with a share of 29/360 each – of a plot of land located in the municipality of Nuoro and recorded in the land register as folio no. 43, parcel no. 11.

3.  According to the 1974 general land-use plan (*piano regolatore generale*), the applicants’ land was designated as a public green area (*verde pubblico*). On 26 June 1977, the municipality amended the plan to authorise the construction of a church.

4.  By an order of 29 December 1978, subsequently re-issued on 31 March 1980, the public administration approved a project for the construction of a church. On 15 May 1980, the Nuoro Municipality was authorised to occupy the applicant’s land with a view to its subsequent expropriation and, on 26 June 1980, it took physical possession of a part of the land measuring 15,130 square metres. By 1989 at the latest, the land had been irreversibly altered by the construction works but the administration had not issued a formal expropriation order.

5.  The applicants brought an action for damages before the Nuoro District Court, arguing that the occupation of the land had been unlawful and seeking compensation.

6.  By a judgment of 19 April 1994, the Nuoro District Court found that the occupation of the applicants’ land had been unlawful, but that the land had been irreversibly altered following the completion of the public works in May 1989. As a consequence, pursuant to the constructive-expropriation rule, the applicants were no longer the owners of the land.

7.  The District Court further accepted that the applicants were entitled to damages for the loss of their property and ordered an independent expert valuation of the land. Based on that valuation, which considered the land as constructible, the Nuoro District Court awarded the applicants, jointly with the other co-owners, 1,051,064,000 Italian lire (ITL), corresponding to 542,829 euros (EUR), as expropriation compensation. It further awarded ITL 472,979,000 (EUR 244,273) as compensation for the unavailability of the land during the period of lawful occupation.

8.  The Nuoro municipality lodged an appeal against this judgment, contesting the valuation of the land.

9.  The Sassari Court of Appeal ordered a new expert valuation in order to take into account the legal designation of the land. The expert proposed two alternative valuations: one based on the designation for the construction of a church and amounting to ITL 412,000,000 (EUR 212,780); the second assuming the absence of any building restraint and amounting to ITL 1,231,000,000 (EUR 635,758).

10.  By a judgment of 12 October 2007, the Sassari Court of Appeal reiterated that the applicants were entitled to damages but, as to their amount, it did not rely on the expertise. The Court of Appeal considered that, since 1974, the land had been designated as public green area and such designation, which was unrelated to the subsequent expropriation, entailed a building restraint (*vincolo conformativo*). Moreover, the subsequent designation for the construction of a church entailed a restraint that was expropriation-aimed (*vincolo espropriativo*). As a consequence, the Court of Appeal based its valuation on the land’s designation as of 1974, disregarding the subsequent expropriation-aimed restraint.

.  Therefore, the Court of Appeal considered the land as non-constructible and, in the absence of any evidence on the value of similar land, determined its value on an equitable basis at ITL 5,000 (EUR 2.58) per square metre. It therefore awarded the applicants, jointly with other co-owners, EUR 39,069.96 as expropriation compensation and EUR 13,208.86 as compensation for the unavailability of the land during the period of lawful occupation, plus inflation adjustment and statutory interest.

12.  This award was subsequently confirmed by the Court of Cassation on 30 April 2014.

13.  The applicants complained that they had been unlawfully deprived of their land on account of the application by the domestic courts of the constructive-expropriation rule and in the absence of sufficient compensation, in breach of their rights under Article 1 of Protocol No. 1 to the Convention.

14.  They also complained, under Articles 6 and 14 of the Convention, of the retrospective application of section 5 *bis* of Legislative Decree no. 333 of 11 July 1992, as amended by Law no. 662 of 1996.

1. THE COURT’S ASSESSMENT

15.  The relevant domestic law and practice concerning constructive expropriation is to be found in *Guiso-Gallisay v. Italy* ((just satisfaction) [GC], no. 58858/00, §§ 18-48, 22 December 2009).

16.  The Government objected to the admissibility of the application on the ground of non-exhaustion of domestic remedies as well as on the ground that the applicants were no longer victims of the violation complained of since they had obtained reparation at the national level.

17.  The Court finds that it does not have to decide on the Government’s objection concerning non-exhaustion of domestic remedies, since the application is inadmissible in any event on the following grounds.

.  The Court notes 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, and, as a more recent authority, *Messana v. Italy*, no. 26128/04, §§ 38-43, 9 February 2017).

19.  The Court further observes that the national courts acknowledged that the deprivation of property had been unlawful and held that the applicants were entitled to compensation.

20.  Following that determination, the Sassari Court of Appeal awarded compensation for the expropriation of the land, as well as compensation for the period of lawful occupation (see paragraph 11 above).

21.  The applicants argued that the sum awarded by the national courts did not constitute a sufficient redress, as compensation should have been based on the land’s constructible character in light of its designation and use for the construction of a church.

.  The relevant criteria for the calculation of pecuniary damage in constructive expropriation cases have been set forth in *Guiso-Gallisay* (cited above, §§ 105-06). In that case, the Court relied on the market value of the property at the time of the expropriation as stated in the court-ordered expert reports drawn up during the domestic proceedings.

23.  In the present case, the Sassari Court of Appeal did not rely on the court-ordered expert report in order to assess the market value, providing specific reasoning why it chose not to do so (see, in contrast, *Kutlu and Others v. Turkey*, no. 51861/11, §§ 72-74, 13 December 2016). Indeed, the Sassari Court of Appeal disagreed with the expert’s premise that the land had to be valuated as constructible.

24.  In this respect, the Court recalls that compensation must be calculated based on the property’s value on the date on which ownership thereof was lost, which is intrinsically linked to the designation of the land at that time, and not on the basis of its later designation, attributed to it by State action. Indeed, awarding compensation depending on the nature of the project undertaken by the authorities, something which is not necessarily related to the land’s potential, could lead to disparities in treatment of persons (see *Maria Azzopardi v. Malta*, no. 22008/20, §§ 62-63, 9 June 2022, and *Guiso-Gallisay*,cited above, § 103).

25.  In the present case, before the expropriation procedure was initiated, the land was designated as a public green area, which entailed a building restraint (*vincolo conformativo*). As to the subsequent designation for the construction of a church, it was considered by the Sassari Court of Appeal as an expropriation-aimed restraint (*vincolo espropriativo*) and thus disregarded for the purposes of the valuation of the land (see paragraph 10 above).

26.  The Court considers that it is not its task to determine the qualification of the building restraints under national law (see *Campanile and Others v. Italy* (dec.), no. 32635/05, § 29, 15 January 2013). Furthermore, the Court notes that the designation for the construction of a church, though adopted before the beginning of the expropriation procedure, had a clear link with the project subsequently undertaken by the authorities. Therefore, disregarding such designation and valuating the land as non-constructible was in compliance with the principles set forth above (see paragraph 24).

27.  Finally, the Court is not convinced by the applicants’ further arguments in support of a valuation of the land as constructible. As to the ownership of the church by a religious entity, such matter relates to the subsequent use of the land which, as stated above, may not affect the land’s valuation. As to the alleged recognition, by the public administration, of the constructible character of the land for taxation purposes, according to the available documents, the public administration merely stated that the land fell within a larger constructible area, while always maintaining that the specific plot of land was non-constructible.

28.  In light of these considerations, the Court accepts that the Court of Appeal’s decision to disregard the expert report and valuate the land as non‑constructible was not without a reasonable foundation.

29.  The Court further notes that the Sassari Court of Appeal determined the value of the land on an equitable basis, due to the fact that it did not dispose of any evidence on the value of similar land (see paragraph 11 above).

30.  The Court recognises that, in principle, the valuation of the land should take into account its specific characteristics (see, *mutatis mutandis*, *Preite v. Italy*, no. 28976/05, §§ 50-51, 17 November 2015). However, in the present case, the applicants merely stated that their compensation ought to be determined on the basis of the constructible character of the land, as established by the court-appointed expert. They have not submitted any relevant information or document concerning the value of the land, assuming its non-constructible character. As a consequence, the Court does not have any basis on which to conclude that the compensation determined by the Court of Appeal was inadequate. Therefore, the Court considers that the applicants have failed to discharge their burden of showing that the expropriation compensation did not bear a reasonable relationship to the value of the property (see, *a contrario*, *Platakou v. Greece*, no. 38460/97, §§ 56-57, ECHR 2001-I).

31.  In a case similar to the one under scrutiny, the Court found that an award comparable to the one issued by the Sassari Court of Appeal had constituted appropriate and sufficient redress for the breach of Article 1 of Protocol No. 1 suffered by the applicant, who 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).

32.  In the light of the foregoing considerations, the Court is satisfied that the applicants can no longer be considered victims of the violation complained of.

33.  The applicants also complained, under Article 6 of the Convention, of the application of the method of calculation of damages set forth in section 5 *bis* of Legislative Decree no. 333 of 1992. The Court notes that, as recognised also by the applicants, the Sassari Court of Appeal did not apply that method (see paragraph 10 above). Therefore, the applicants cannot be considered victims of the violation complained of under this provision.

34.  It follows that the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be declared inadmissible in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 7 September 2023.

 Liv Tigerstedt Péter Paczolay
 Deputy Registrar President

Appendix

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| No. | Applicant’s Name | Year of birth | Place of residence |
| 1. | Stefano GUISO GALLISAI | 1959 | Milan |
| 2. | Antonia GUISO GALLISAI | 1952 | Rome |
| 3. | Gianfrancesco GUISO GALLISAI | 1948 | Rome |