FIRST SECTION

DECISION

Application no. 43823/11
Gianfranco MASCOLI and Laura MASCOLI
against Italy

The European Court of Human Rights (First Section), sitting on 29 August 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. 43823/11) 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”) on 13 July 2011 by Mr Salvatore Nappi, who acted as representative for Mr Gianfranco Mascoli and Ms Laura Mascoli, born in 1946 and 1945, respectively, and living in Naples and Massa Lubrense (“the applicants”), and represented by Mr G. Romano, a lawyer practising in Rome;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1.  The case concerns the expropriation of a plot of the applicants’ land in the framework of reconstruction and development efforts following a major earthquake in 1980.

2.  Law No. 219 of 14 May 1981 launched a large-scale programme for the repair, reconstruction and renovation of buildings, roads and other infrastructure in the areas hit by the earthquake, mainly in the Campania Region.

3.  In order to implement such a plan, a large-scale expropriation programme was also envisaged for the purpose of building new residential areas and infrastructure.

4.  Under Law No. 219 of 14 May 1981, compensation for the expropriation of land concerned by the reconstruction plan had to be equal to approximately half of the market value of the land.

5.  In 1986, the applicants’ land, which was classified as agricultural land according to the general land use plan, was occupied by the public authority, with a view to its expropriation, in order to build a road in the Municipality of Cercola, a town hit by the aforementioned earthquake. The land was formally expropriated in 2002.

6.  Compensation in the amount of approximately 600 million Italian Lira (ITL) (equal to approximately 310,000 Euros (EUR)) was offered to the applicants by the Naples Province, the public authority in charge of the post-earthquake expropriation plan.

7.  The applicants challenged the offer before the domestic courts, claiming higher compensation on the grounds that the land’s alleged building potential had to be taken into account in the calculation of compensation.

8.  After having sought an expert valuation of the land, the Naples District Court decided the compensation for occupation and expropriation in the amount of EUR 1,228,722.06. The expert based his valuation on the land’s agricultural nature and calculated the compensation due to the applicants pursuant to Law No. 219 of 14 May 1981.

9.  The applicants and the Naples Province appealed against that decision to the Naples Court of Appeal. In particular, the applicants complained that the District Court had considered the expropriated land as agricultural land and had accordingly quantified its value without taking into account the land’s building potential.

10.  The Court of Appeal, by a judgment issued on 22 June 2010, rejected the appeals submitted by the parties and upheld the decision of the District Court, reaffirming that the expropriation procedure at issue had been carried out under special legislation (Law No. 219 of 14 May 1981), pursuant to which the compensation for expropriation had to reflect approximately half of the market value of the land.

11.  The Court of Appeal also reiterated that the market value of the land had to be based on the legal classification of the land at the time of the expropriation. It noted that the 1999 general land use plan classified the land as agricultural in the context of a general designation concerning a large territory (*vincolo conformativo*) and thus the market value of the land should reflect the value of agricultural land.

12.  The Court of Appeal’s judgment was not appealed against and became final in 2011.

13.  The applicants complained, under Article 1 of Protocol No. 1 to the Convention, of a disproportionate interference with their property rights on account of the amount of compensation received for the expropriation of their land, which they considered to be inadequate for two reasons.

14.  First, they contested that the building potential of the land had not been duly considered, which would have led to a higher quantification of its value.

15.  Second, they highlighted that, following the decisions issued by the Italian Constitutional Court in 2007 and 2011 (see *Messana v. Italy*, no. 26128/04, §§ 18-20, 9 February 2017, and *Preite v. Italy*, no. 28976/05, § 28, 17 November 2015, for an overview of the decisions), expropriation compensation had to reflect the market value of the land, not only half of it as in their case.

1. THE COURT’S ASSESSMENT

16.  The Court notes, at the outset, that the applicants have not contested that the expropriation of their land was in accordance with the law and that it pursued a legitimate aim in the public interest. The issue before the Court is therefore whether the interference with their property rights was proportionate.

17.  In this regard, the Court notes that the applicants complained, firstly, about the fact that the domestic courts considered the land as agricultural land and did not take into account the building potential of the land for compensation purposes.

18.  In connection with this part of the complaint, the Court reiterates that it is not its task to resolve disputes over the legal classification of the land or the estimation of its value, unless it is shown that the compensation bears no reasonable relationship with the market value of the land (see *Preite*, cited above, § 50). In this respect, the Court considers that the calculation of the market value should take into account the legal designation of the land at the time of expropriation and before any modification of such designation which was directly linked to the expropriation. It further reiterates that compensation must be calculated on the basis of the property’s value on the date on which ownership thereof was lost, which is intrinsically linked to the legal designation of the land at that time. Furthermore, the Court has already found that, in the absence of any concrete expectation of development prior to the expropriation, it is not appropriate to rely solely on the applicant’s view that the land had potential for development (see *Maria Azzopardi v. Malta*, no. [22008/20](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2222008/20%22]}), §§ 62-63, 9 June 2022).

19.  In the present case, before the expropriation proceedings began, the land was designated as agricultural by the general land use plan and, according to the domestic courts, such designation hinged on a general planning decision covering a large territory (see paragraph 11 above). The applicants therefore had no legitimate expectation that, in the absence of the expropriation proceedings, the land would have become constructible. Thus, in the Court’s view, the valuation of the land as non-constructible had a reasonable foundation and was based on the legal classification established by the general land use plan for the whole area.

20.  Secondly, the applicants complained about the fact that, even considering the land as agricultural, the compensation awarded was inadequate, as it corresponded to half of the market value assessed by the court-appointed expert.

21.  As to this limb of the applicants’ complaint, the Court notes that, while it is true that in many cases of lawful expropriation, such as the distinct expropriation of land with a view to building a road or for other purposes “in the public interest”, only full compensation can be regarded as reasonably related to the value of the property, that rule is not without exceptions. Legitimate objectives in the “public interest”, such as those pursued in measures of economic reforms or measures designed to achieve greater social justice, may call for reimbursement below the full market value (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 96-97, ECHR 2006-V, and *Former King of Greece and Others v. Greece* (just satisfaction) [GC], no. 25701/94, § 78, 28 November 2002).

22.  On the facts of the present case, the Court notes that the earthquake, which hit the Campania Region in Southern Italy in 1980, devastated a large, densely populated territory. It caused a large number of deaths and the destruction of several towns and thousands of houses, in addition to causing extensive damage to residential and public buildings, businesses, and infrastructure.

23.  The reconstruction plan, which was financially backed by Law No. 219 of 14 May 1981, envisaged a wide range of measures and programmes aimed at restoring essential services, renovating and rebuilding infrastructure as well as residential and industrial areas in the affected region.

24.  As the earthquake deeply affected the life of a large part of the population of an entire region, with heavy repercussions on the latter’s economy, the reconstruction plan also had a wide-ranging impact on its social and economic development.

25.  In view of the above, the Court is prepared to accept that the large-scale expropriation plan was implemented as a part of the larger reconstruction plan in order to face the pressing need of reconstruction and development of the affected territory and that it may be qualified as a legitimate objective in the “public interest” of an exceptional nature, capable of justifying reimbursement of less than the full market value.

26.  The Court further notes that, in the present case, the compensation awarded to the applicants was not negligible, as it corresponded to half of the market value of the property. In this regard, the Court further considers that, in the light of the social and economic impact of the aforementioned expropriation plan, the choice to award a sum lower than the property’s market value would fall within the broad margin of appreciation accorded to the legislature in matters involving the implementation of social and economic policies (see, among many other authorities, *James and Others v. the United Kingdom*, 21 February 1986, § 46).

27.  In view of the above, the Court is satisfied that, in the exceptional circumstances of the present case, the interference with the applicants’ property may be considered proportionate.

28.  Accordingly, the application is 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 21 September 2023.

 Liv Tigerstedt Péter Paczolay
 Deputy Registrar President