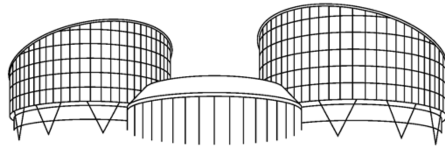

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

# DECISION

Application no. 6107/06
Sabatina SINISI and Others
against Italy

The European Court of Human Rights (First Section), sitting on 4 April 2023 as a Committee composed of:
Péter Paczolay, *President*,
Alena Poláčková,
Raffaele Sabato, *judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*
Having regard to:
the application (no. 6107/06) 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 4 February 2006 by the applicants listed in the appended table (“the applicants”) who were represented by Mr S. Basso, a lawyer practising in Bari;
the decision to give notice of the application to the Italian Government (“the Government”), represented by their former co-Agent, Mr N. Lettieri;
the parties’ observations;
Having deliberated, decides as follows:

## SUBJECT MATTER OF THE CASE

1. The case concerns the deprivation of the applicants’ land through the application by the domestic courts of the constructive-expropriation rule (*accessione invertita* or *occupazione acquisitiva*).

2. The applicants were the owners of a plot of land in the municipality of Minervino Murge, recorded in the land register as folio no. 116, parcels nos. 239, 410 and 413. According to the 1972 land-use plan (*programma di fabbricazione*), the land was designated for agricultural use.

3. On 12 June 1989, the municipality approved a project for the construction of a jail. On 2 October 1990, it adopted an amendment to the land-use plan in order to allow building on the land. On 2 September 1993,

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the immediate occupation of the applicant's land was authorised and on 6 October 1993 the municipality took physical possession thereof. By the time the authorisation expired, part of the applicants' land had been irreversibly altered by construction works, but the authorities had not issued a formal expropriation order.

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

5. By judgment of 6 February 2003, the Trani District Court upheld the applicants' complaints and found that the occupation of their land had been unlawful, but that part of the land (corresponding to parcels 239 and 410) had been irreversibly altered following the completion of the public works. As a consequence, pursuant to the constructive-expropriation rule, the applicants were no longer the owners of that land.

6. The Trani 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. The appointed expert conducted two alternative valuations of the land.

7. First, it considered its agricultural designation and, after having assessed that the land's specific characteristics rendered it difficult to farm, determined the full market value of the expropriated land (parcels nos. 239 and 410) at 3,650,874 Italian lire (ITL), corresponding to 1,886 euros (EUR). Nevertheless, it considered that only for parcel no. 239, the occupation of which had been unlawful *ab initio*, compensation had to reflect that market value. As regards parcel no. 410, the criteria provided for agricultural land by section 5 *bis* of Law no. 359/1992 were applicable and thus the expropriation compensation had to be based on the average agricultural value (*valore agricolo medio*).

8. As an alternative, the court-appointed expert considered that the applicant's land had a *de facto* building potential in light of the use and characteristics of the surrounding area and, on this basis, determined its market value at ITL 174,409,995 (EUR 90,075).

9. The Trani District Court held that the determination of the market value of the land should be based on its legal and factual characteristics in light of its designation before the expropriation which, according to the 1972 land-use plan, was agricultural. It further considered that the subsequent the land-use plan had been amended with a view to expropriation (*vincolo espropriativo*). For these reasons, in the court's view the new designation could not be taken into account for the determination of the land's value. On this basis, it awarded compensation based on the average agricultural value in respect of parcel no. 410 and on the full market value in respect of parcel no. 239, for an overall amount of EUR 1,755.06, plus an adjustment for inflation and statutory interest. The court further awarded EUR 438.76 as compensation for the unavailability of the land during the period of lawful occupation

(*indennità di occupazione*) and EUR 90.60 as compensation for the depreciation of the surrounding land.

10. The applicants' appeal to the Bari Court of Appeal was dismissed on 9 August 2005 and the applicants did not lodge an appeal with the Court of Cassation.

11. 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, in breach of their rights under Article 1 of Protocol No. 1 to the Convention.

## THE COURT'S ASSESSMENT

12. The Court notes at the outset that it does not have to decide on the Government's preliminary objection concerning non-exhaustion of domestic remedies, since the application is inadmissible in any event on the following grounds.

13. 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).

14. 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).

15. The Court further observes that the Trani District Court acknowledged that the deprivation of property had been unlawful and held that the applicants were entitled to compensation (see paragraphs 5 and 6 above). The Court is satisfied that this amounts to an acknowledgement by the domestic courts of the infringement complained of.

16. Following that determination, the Trani District Court awarded compensation based on the average agricultural value in respect of parcel no. 410 and on the full market value in respect of parcel no. 239 (see paragraph 9 above).

17. As to the adequacy of such compensation, the applicants argued that the determination of the market value carried out by the Trani District Court was incorrect, as it did not take into account either the land's *de facto* potential for development or the subsequent use made of it by the municipality.

18. In this respect, it does not appear unreasonable to the Court that the market value was calculated by taking into account the legal designation of the land before the expropriation. Indeed, it 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. 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, §§ 62-63, 9 June 2022).

19. In the present case, before the expropriation procedure was initiated, the land was designated as agricultural (see paragraph 2 above). The amendment to the land-use plan took place when the expropriation proceedings were already ongoing and was carried out exclusively in connection with the expropriation (see paragraphs 3 and 9 above). Therefore, the applicant had no concrete legitimate expectation that, in the absence of the expropriation proceedings, the land would have become constructible.

20. As regards the part of the award based on the average agricultural value (see paragraph 9 above), the Court has already found that the use of such a criterion to calculate compensation leads to awards that bear no reasonable relationship with the market value of the land (see *Preite v. Italy*, no. 28976/05, § 51, 17 November 2015). Nevertheless, in the present case, the Court notes that the difference between the sum awarded by the national courts and the market value as determined by the court-appointed expert was minimal. In these circumstances, the Court is prepared to accept that the Trani District Court awarded a sum which largely reflected, in substance, the amount the Court would have awarded in a similar case by following the principles established in its case-law (see *Guiso-Gallisay,* cited above, §§ 105 and 107).

21. The Court points out that, in a similar case to the one under scrutiny, it found that a similar award to the one issued by the Trani District Court 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).

22. In the light of the foregoing considerations, the Court is prepared to accept that, in the specific circumstances of the present case, the domestic courts afforded appropriate and sufficient redress for the breach of the Convention complained of. The Court is therefore satisfied that the applicants can no longer be considered victims of such a breach.

23. 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 rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 27 April 2023.

| Liv Tigerstedt<br>Deputy Registrar | Péter Paczolay<br>President |
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# Appendix

| No. | Applicant's Name | Year of birth | Nationality | Place of residence |
|---|---|---|---|---|
| 1. | Sabatina SINISI | 1922 | Italian | Turin |
| 2. | Maria TIANI | 1951 | Italian | Turin |
| 3. | Rosanna TIANI | 1953 | Italian | Turin |
| 4. | Sabina TIANI | 1956 | Italian | Turin |
| 5. | Vincenza TIANI | 1959 | Italian | Turin |
| 6. | Vincenzo TIANI | 1962 | Italian | Grugliasco |