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

FIRST SECTION

DECISION

Application no. 22315/07
Giuseppe ZARRO 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. 22315/07) 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 May 2007 by the applicants listed in the appended table ("the applicants"), who were represented by Mr S. Ferrara and Mr A. Ferrara, lawyers practising in Benevento;

the decision to give notice of the application to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia;

the parties' observations;

the decision to reject the Government's objection to the examination of the application by a Committee;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns compensation awarded to the tenant farmer of a plot of land which was acquired by the national authorities on the basis of the constructive-expropriation rule (*accessione invertita* or *occupazione acquisitiva*).

2. The applicants are the heirs of F.Z., who at the time was a tenant farmer of a plot of land measuring 6,260 square metres, located in the municipality

of Sant'Angelo a Cupolo and recorded in the land register as folio no. 9, parcel no. 116.

3. On 20 June 1978 the municipality approved a project for the construction of sports facilities. On 12 December 1978 it authorised the immediate occupation of the plot of land for a duration of three years, with a view to its subsequent expropriation, and on 17 January 1979 it took physical possession of the land. By the time of the expiry of the authorisation, the land had been irreversibly altered by the construction work even though the authorities had not issued a formal expropriation order.

4. F.Z. brought an action in the national courts, arguing that the occupation of the land had been unlawful and seeking compensation for the loss of income that would have been generated from farming the land. Upon his death, the applicants pursued the domestic proceedings in his stead.

5. By a decision of 6 October 2004, the Benevento District Court upheld the applicants' complaints and found that the occupation of the land, which had been initially authorised, had subsequently become unlawful, but that the land had been irreversibly altered following completion of the public works. As a consequence, pursuant to the constructive-expropriation rule, ownership of the land had been transferred to the municipality.

6. The Benevento District Court further accepted that the applicants, as heirs of the tenant of the land, were entitled to damages for the loss of future income and therefore appointed an expert to determine the compensation due to the tenant. In the light of the expert's findings, it awarded the applicants compensation based on the average agricultural value (*valore agricolo medio*) of the land, amounting to 1,665 euros (EUR), plus an adjustment for inflation.

7. The applicants lodged an appeal against that decision, arguing that the compensation should not have been based on the average agricultural value but rather on the market value of the land.

8. By a decision dated 22 March 2006, the Naples Court of Appeal confirmed the determination of loss based on the average agricultural value and the consequent award of EUR 1,665 in damages, to be increased by a sum reflecting an adjustment for inflation and statutory interest from 17 January 1982.

9. The applicants complained to the Court of the inadequacy of the compensation for loss of income – compensation which had been due owing to an unlawful expropriation procedure – in breach of their rights under Article 1 of Protocol No. 1 to the Convention. They further complained of the absence of an effective domestic remedy under Article 13 of the Convention.

THE COURT'S ASSESSMENT

10. 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.

11. 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).

12. Additionally, section 17 of Law no. 865 of 1971, subsequently transposed into Articles 37 and 47 of Presidential Decree no. 327 of 8 June 2001, establishes that, in the event of formal expropriation, a tenant farmer is entitled to receive compensation amounting to the average agricultural value of the land. Such value is determined on a yearly basis by a local commission and takes into account the value of land in the surrounding area where the same kinds of crops are cultivated. According to domestic case-law, although the provision as such is not directly applicable to constructive-expropriation cases, the same criterion serves as the basis for the calculation of damages owed to tenant farmers in such cases.

13. The Court has already found that future income generated by the use of land on the basis of a lease constitutes a possession within the meaning of Article 1 of Protocol No. 1 (see *Di Marco v. Italy*, no. 32521/05, §§ 52-53, 26 April 2011).

14. The applicants were deprived of such future income by means of indirect or constructive expropriation of the land, this being 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. That said, the Court observes that the national courts acknowledged that the expropriation had been unlawful and held that the applicants were entitled to compensation for their loss of income (see paragraph 5 above). The Court is satisfied that this amounts to an acknowledgment by the domestic courts of the infringement complained of.

16. Following that determination, the national courts awarded a sum on the basis of the average agricultural value of the land (see paragraph 6 above). As to the adequacy of such compensation, the applicants argued that the amount received had been insufficient and had not duly taken into account the market value of the land. The Government maintained, on the contrary, that the compensation awarded to the applicants had been adequate and, as a consequence, they were no longer to be considered victims of the violation complained of. The Court is therefore called upon to determine whether the compensation granted by the national courts constitutes appropriate and sufficient redress for the applicants' loss of future income.

17. The Court notes at the outset that, in the present case, the average agricultural value criterion was not relied on by national courts to determine

the value of the expropriated land for the purposes of awarding compensation to the dispossessed owner (contrast *Preite v. Italy*, no. 28976/05, § 51, 17 November 2015). Rather, it was used to estimate the future income that the tenant farmer would have obtained had he continued to farm the land. The Court recognises that the determination of the lost profits based on the average agricultural value amounts, to a certain extent, to a standardisation rather than an individual assessment of the lost income. Nevertheless, taking into account the way such value is determined (see paragraph 12 above) and, in particular, its relationship with the value of land in the surrounding area where the same kinds of crops are cultivated, the Court cannot conclude that the compensation so determined is *per se* inadequate.

18. The Court further highlights that the applicants merely stated that their compensation ought to have been calculated on the basis of the land's market value as established by the court-appointed expert for the purpose of determining the compensation due to the owners of the land. They have not, however, submitted any relevant information or document concerning the foreseeable income that would have been obtained from the farming of the land. As a consequence, the Court does not have any basis on which to conclude that the compensation determined in accordance with the average agricultural value was inadequate to cover the losses complained of.

19. 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.

20. It follows that the complaint under Article 1 of Protocol No. 1 to the Convention 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 of the Convention.

21. As regards the complaint under Article 13, the Court reiterates that this Article does not apply in the absence of an arguable claim (see *Maurice v. France* [GC], no. 11810/03, § 106, ECHR 2005-IX). Bearing in mind the considerations set out above in relation to the applicants' victim status, the complaint under Article 13 is manifestly ill-founded and must be rejected pursuant to 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 27 April 2023.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President

Appendix

No.	Applicant's name	Year of birth	Nationality	Place of residence
1.	Giuseppe ZARRO	1949	Italian	Benevento
2.	Consiglia ZARRO	1935	Italian	Benevento
3.	Marisa Giuseppina ZARRO	1953	Italian	Benevento
4.	Sergio ZARRO	1951	Italian	Benevento