



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

FIRST SECTION

CASE OF BONACCHI AND OTHERS v. ITALY

(Applications nos. 34363/07 and 54669/08)

JUDGMENT

STRASBOURG

6 April 2023

This judgment is final but it may be subject to editorial revision.

In the case of Bonacchi and Others v. Italy,

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

Péter Paczolay, *President*,

Gilberto Felici,

Raffaele Sabato, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the two applications 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”) by the applicants listed in the appended table (“the applicants”), on the various dates and with the various representatives indicated therein;

the decision to give notice of the applications to the Italian Government (“the Government”), represented by their Agent, M. L. D’Ascia;

the parties’ observations;

the decision to reject the Government’s objection to the examination of the applications by a Committee.

Having deliberated in private on 14 March 2023,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The case concerns the expropriation of the applicants’ land and the subsequent award of compensation based on the criteria established by section 5 *bis* of Law no. 359 of 8 August 1992 (“Law 359/1992”).

2. The applicants were the owners of plots of land located, respectively, in Agliana and Padua (see the appended table). The national authorities adopted development plans which included portions of the applicants’ land and authorised the urgent occupation thereof. Subsequently, they issued expropriation orders and offered payment of compensation, which the applicants refused.

3. The applicants instituted judicial proceedings, claiming that the compensation offered by the national authorities was insufficient.

4. In each case, the national courts appointed experts to carry out an estimation of the value of the land and awarded compensation for the expropriation and compensation for the period during which the land had been occupied before the expropriation order (*indennità di occupazione*) was issued. The calculation of those amounts was based on the criteria contained in section 5 *bis* of Law 359/1992, which had entered into force on 14 August 1992.

5. Further information on each application can be found in the appended table.

6. 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 allegedly inadequate amounts of compensation they had received. They complained both of inadequate expropriation compensation and of insufficient compensation for the period of lawful occupation.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

7. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. PRELIMINARY ISSUE

8. With regard to application no. 54669/08, the Court takes note of the information regarding the death of the applicants Paolo Mason, Giorgio Mason, Tarcisio Mason and Lidia Ferraresso and of the wish of their heirs, as specified in the appended table, to continue the proceedings in their stead, as well as of the absence of any objection to that wish on the Government's part.

9. Therefore, the Court considers that the specified heirs have standing to continue the proceedings on behalf of the deceased.

10. However, for practical reasons, reference will still be made to the initial applicants throughout the ensuing text.

III. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATIONS UNDER ARTICLE 37 § 1 OF THE CONVENTION

11. The Government submitted unilateral declarations which do not offer a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*). The Court rejects the Government's request to strike out the applications and will accordingly pursue its examination of the merits of the case (see *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, § 75, ECHR 2003-VI).

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

12. The relevant domestic law and practice have been summarised in *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, §§ 47-61, ECHR 2006-V).

13. The Government submitted that the applicants were no longer victims of the violation complained of as they had obtained adequate compensation for the properties of which they had been deprived. The Court considers that

the matter of the applicants' victim status is closely linked to that of the proportionality of the interference in question. It therefore joins that matter to the merits of the complaint.

14. As the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds, it must be declared admissible.

15. The Court refers to its judgment in the case of *Scordino* (cited above, §§ 93-98) for a summary of the relevant principles applicable in the present case.

16. The Court notes that the applicants were deprived of their properties in accordance with national law and that the expropriations pursued a legitimate aim in the public interest. Furthermore, the applications concern distinct expropriations which were neither carried out as part of a process of economic, social or political reform nor linked to any other specific circumstances. Accordingly, the Court does not discern any legitimate objective "in the public interest" capable of justifying the payment of compensation less than the market value.

17. In the present case, the expropriation compensation awarded to the applicants was calculated on the basis of the criteria laid down in section 5 *bis* of Law 359/1992 and, as a consequence, they received amounts far lower than the market value of the properties.

18. Additionally, in application no. 54669/08 the applicants argued that the compensation they received was effectively reduced by 20% on account of taxation. The Court has already found that the levying of taxes on expropriation compensation does not amount to a disproportionate interference under Article 1 of Protocol No. 1 (see *Cacciato v. Italy* (dec.), no. 60633/16, § 32, 16 January 2018).

19. Nevertheless, it has also found, in similar cases, that the level of compensation under section 5 *bis* of Law 359/1992 was inadequate and that the applicants in those cases had to bear a disproportionate and excessive burden (see *Scordino*, cited above, §§ 99-104). Having examined all the material submitted to it and the parties' observations, the Court has not found any fact or argument capable of persuading it to reach a different conclusion in the present case.

20. Furthermore, the Court notes that the national courts awarded the applicants compensation for the period during which the land had been occupied before the expropriation orders were issued, which was equal to statutory interest applied to the amount awarded as expropriation compensation. As a consequence, this amount was also significantly lower than the amount that would have been obtained had it been calculated on the basis of the properties' market value.

21. In this connection, the Court has already found that the compensation for the period of lawful occupation should be calculated on the basis of the market value of the land (see *Luigi Serino v. Italy* (no. 3), no. 21978/02,

§§ 37-39, 12 October 2010). The Court sees no reason to depart from its previous case-law.

22. Accordingly, the Court rejects the Government's preliminary objection and, ruling on the merits of both applications, finds that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. The applicants claimed the amounts indicated in the appended table in respect of pecuniary and non-pecuniary damage and in respect of costs and expenses.

24. The Government did not submit any observations regarding the applicants' just satisfaction claims.

25. The Court has found a violation of Article 1 of Protocol No. 1 on account of inadequate compensation for the expropriation of the applicants' land (see paragraphs 17 and 19 above). The relevant criteria for the calculation of pecuniary damage in such cases have been set forth in *Scordino* (cited above, § 258). In particular, 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.

26. With regard to application no. 54669/08, the expert report established the market value of the land and subsequently applied a reduction based on the assumption that the municipality had not acquired full ownership of the land but merely surface owner's rights. The Court of Appeal found that assumption to be incorrect and redetermined the market value of the land without said reduction. Given that the applicant relied before the Court on the market value as determined by the Court of Appeal and that the Government did not object, the Court will base its assessment on that value.

27. Furthermore, the Court has also found a violation of Article 1 of Protocol No. 1 on account of inadequate compensation for the period of lawful occupation (see paragraphs 20 and 21 above). The relevant criteria for the determination of pecuniary damage in this regard have been set forth in *Luigi Serino* (cited above, § 47).

28. Finally, the Court reiterates that an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 370-72, 28 November 2017). With regard to application no. 34363/07, the Court observes that the applicant has not substantiated his claim with any relevant supporting documents establishing that he was under an obligation to pay legal fees or that he has actually paid them. Consequently, no sum is to be awarded on that account.

29. Having regard to the applicants' claims, and taking into account the principle *non ultra petita*, the Court awards the sums indicated in the appended table and dismisses the remainder of the claims.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* that Mauro Mason, Paola Mason, Carla Mason, Anna Mason, Renato Suin, Elisabetta Suin, Micaela Mason, Elisabetta Mason and Marta Mason have standing to continue the present proceedings in the stead of Paolo Mason, Giorgio Mason, Tarcisio Mason and Lidia Ferraresso, as specified in the appended table;
3. *Rejects* the Government's request to strike the applications out of its list of cases;
4. *Joins* to the merits the Government's preliminary objection concerning victim status and *dismisses* it;
5. *Declares* the applications admissible;
6. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
7. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table in respect of pecuniary and non-pecuniary damage and in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
8. *Dismisses* the remainder of the applicants' claims for just satisfaction.

BONACCHI AND OTHERS v. ITALY JUDGMENT

Done in English, and notified in writing on 6 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Péter Paczolay
President

BONACCHI AND OTHERS v. ITALY JUDGMENT

APPENDIX

No.	Application no. Case name Lodged on	Applicant's name Year of birth Place of residence Nationality	Representative's name Location	Factual information	Amounts awarded by national courts in Italian lira (ITL) and euros (EUR)	Market value of the land in Italian lira (ITL) and euros (EUR)	Observations of the parties	Award under Article 41 of the Convention per application
1.	34363/07 Bonacchi v. Italy 03/08/2007	Giovanni BONACCHI 1939 Prato Italian	Vittorio BOLOGNI Prato	<p><u>Land:</u> Agliana municipality, recorded in the land register as folio no. 1, parcels nos. 1220 and 1221</p> <p><u>Public interest pursued:</u> construction of productive buildings</p> <p><u>Urgent occupation order:</u> 06/08/1990</p> <p><u>Physical occupation:</u> 12/09/1990</p> <p><u>Expropriation order:</u> 02/11/1993</p> <p><u>National decisions:</u> Florence Court of Appeal, 14/10/2002, awarding expropriation and occupation compensation based on section 5 <i>bis</i> of Law no. 359/1992; Court of Cassation, 01/03/2007, upholding the lower court's judgment</p>	ITL 302,493,260 (EUR 156,224.73) as expropriation compensation and ITL 91,162,352 (EUR 47,081.43) as occupation compensation, plus statutory interest	ITL 604,000,000 or EUR 311,939.97 (in 1993, according to independent expert valuation)	<p><u>Government:</u> (1) lack of victim status: the applicant received adequate compensation; (2) merits: interference proportionate to the public interest pursued</p> <p><u>Applicant:</u> (1) admissibility and merits: the sums awarded as compensation for expropriation and occupation were not based on the market value of the land; (2) just satisfaction claims: (a) loss of property: EUR 412,759.07 (b) occupation compensation: EUR 124,393.10 (c) non-pecuniary damage: EUR 26,000 (d) costs and expenses on an equitable basis</p>	<p>Pecuniary damage: - loss of property: EUR 412,759.07, plus any tax that may be chargeable - occupation compensation: EUR 44,900, plus any tax that may be chargeable</p> <p>Non-pecuniary damage: EUR 5,000, plus any tax that may be chargeable</p>

BONACCHI AND OTHERS v. ITALY JUDGMENT

No.	Application no. Case name Lodged on	Applicant's name Year of birth Place of residence Nationality	Representative's name Location	Factual information	Amounts awarded by national courts in Italian lira (ITL) and euros (EUR)	Market value of the land in Italian lira (ITL) and euros (EUR)	Observations of the parties	Award under Article 41 of the Convention per application
2.	54669/08 Scattolin and Others v. Italy 11/11/2008	Tommaso SCATTOLIN 1959 Noventa Padovana Italian Chiara SCATTOLIN 1961 Padua Italian Giacomo SCATTOLIN 1962 Padua Italian Giorgio MASON 1931 Deceased in 2011 Padua Italian <u>Heirs:</u> Mauro MASON 1955 Paola MASON 1956	Nicolò PAOLETTI Rome	First expropriation proceedings <u>Land:</u> Padua municipality, recorded in the land register as folio no. 32, parcels nos. 167, 801, 802, 803 and 747 <u>Public interest pursued:</u> construction of social housing <u>Urgent occupation order:</u> 14/03/1987 <u>Physical occupation:</u> 14/04/1987 <u>Expropriation order:</u> 15/12/1989 <u>National decisions:</u> Venice Court of Appeal, 07/02/2002, awarding expropriation and occupation compensation based on section 5 <i>bis</i> of Law no. 359/1992; Court of Cassation, 16/05/2008, upholding the lower court's judgment Second expropriation	First expropriation proceedings ITL 1,203,946,049 (EUR 621,786.24) as expropriation compensation, plus inflation adjustment and statutory interest; statutory interest on ITL 1,203,946,018 from 14/03/1987 to 15/12/1989 as occupation compensation (amounting to EUR 85,772.43), plus statutory interest Second expropriation proceedings	First expropriation proceedings ITL 1,882,188,000 or EUR 972,068.98 (in 1989, according to independent expert valuation) ITL 2,395,512,000 or EUR 1,237,178.70 (in 1989, according to Court of Appeal valuation) Second expropriation proceedings ITL 1,390,175,000 or EUR 717,965.47	<u>Government:</u> (1) lack of victim status: the applicant received adequate compensation; (2) merits: interference proportionate to the public interest pursued <u>Applicant:</u> (1) admissibility and merits: the sums awarded as compensation for expropriation and occupation were not based on the market value of the land and were subject to an additional 20% tax deduction; (2) just satisfaction claims: (a) loss of property and occupation compensation: EUR 5,879,583.55, plus inflation adjustment from 31/01/2020 to the date of actual payment (b) non-pecuniary damage: EUR 20,000 for each applicant	Pecuniary damage: - loss of property: EUR 3,991,700 , plus any tax that may be chargeable - occupation compensation: EUR 92,126.60 , plus any tax that may be chargeable Non-pecuniary damage: EUR 5,000 , plus any tax that may be chargeable Costs and expenses: EUR 7,000 , plus any tax that may be chargeable to the applicants

BONACCHI AND OTHERS v. ITALY JUDGMENT

No.	Application no. Case name Lodged on	Applicant's name Year of birth Place of residence Nationality	Representative's name Location	Factual information	Amounts awarded by national courts in Italian lira (ITL) and euros (EUR)	Market value of the land in Italian lira (ITL) and euros (EUR)	Observations of the parties	Award under Article 41 of the Convention per application
		<p>Carla MASON 1961 Anna MASON 1965 Renato SUIN 1955 Elisabetta SUIN 1993</p> <p>Tarcisio MASON 1934 Deceased in 2021 Vigonovo Italian <u>Heirs:</u> Micaela MASON 1964 Elisabetta MASON 1967</p> <p>Marta MASON 1958 Rovagnate Italian</p> <p>Lidia FERRARESSO 1928</p>		<p>proceedings</p> <p><u>Land:</u> Padua municipality, recorded in the land register as folio no. 32, parcels nos. 798, 799 and 800</p> <p><u>Public interest pursued:</u> construction of social housing</p> <p><u>Urgent occupation order:</u> 11/12/1989</p> <p><u>Physical occupation:</u> 08/01/1990</p> <p><u>Expropriation order:</u> 18/03/1991</p> <p><u>National decisions:</u> Venice Court of Appeal, 31/01/2002, awarding expropriation and occupation compensation based on section 5 <i>bis</i> of Law no. 359/1992; Court of Cassation, 16/05/2008, upholding the lower court's judgment</p>	<p>ITL 888,154,155 (EUR 458,693.34) as expropriation compensation, plus inflation adjustment and statutory interest; statutory interest on said sum from 08/01/1990 to 18/03/1991 as occupation compensation (amounting to EUR 33,113.88), plus statutory interest</p>	<p>(in 1991, according to independent expert valuation)</p> <p>ITL 1,769,292,000 or EUR 913,763.06 (in 1991, according to Court of Appeal valuation)</p>	<p>(c) costs and expenses before national courts: EUR 69,994.98 (d) costs and expenses before the Court: EUR 13,369.92</p>	

BONACCHI AND OTHERS v. ITALY JUDGMENT

No.	Application no. Case name Lodged on	Applicant's name Year of birth Place of residence Nationality	Representative's name Location	Factual information	Amounts awarded by national courts in Italian lira (ITL) and euros (EUR)	Market value of the land in Italian lira (ITL) and euros (EUR)	Observations of the parties	Award under Article 41 of the Convention per application
		<p>Deceased in 2019 Padua Italian <u>Heir:</u> Marta MASON 1958</p> <p>Paolo MASON 1925 Deceased in 2015 Padua Italian <u>Heirs:</u> Mauro MASON 1955 Paola MASON 1956 Carla MASON 1961 Anna MASON 1965 Renato SUIN 1955 Elisabetta SUIN 1993</p>						