FIRST SECTION

DECISION

Application no. 36944/06
Nicola COLAZZO and Others
against Italy

The European Court of Human Rights (First Section), sitting on 14 May 2019 as a Committee composed of:

 Aleš Pejchal, *President,* Tim Eicke, Gilberto Felici, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having regard to the above application lodged on 31 August 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1.  The applicants, Mr Nicola Colazzo (“the first applicant”), Mr Giovanni Colazzo (“the second applicant”) and Mr Tiziano Colazzo (“the third applicant”), are three Italian nationals who were born in 1928, 1931 and 1961 respectively. The first applicant died on 11 April 2007. The second and third applicants are his heirs, and expressed their wish to pursue the proceedings before the Court. The first applicant’s other heirs, Mrs Giuseppa Colella, Mr Salvatore Colazzo, Mr William Colazzo, Mr Massimo Colazzo, and Mrs Donata Colazzo, also indicated their intention to continue the proceedings. The applicants were represented before the Court by Mr L. Carvelli, a lawyer practising in Rome.

2.  The Italian Government (“the Government”) were represented by their former Agent, Mrs E. Spatafora, and their former Co-Agent, Mrs P. Accardo.

3.  On 30 July 2007 notice of the application was given to the Government.

A.  The circumstances of the case

4.  The first applicant was a joint owner of a plot of land in Castrignano dei Greci. The land in issue – having a surface area of 3,547 sq. m – was recorded in the land register as folio 5, parcels 16 and 17. The second applicant was the owner of a plot of land in the same municipality with an area of 21,543 sq. m, recorded in the land register as folio 5, parcels 144, 142 and 136. The third applicant inherited a plot of land, also in that municipality, with an area of 12,654 sq. m. That plot was recorded in the land register as folio no. 5, parcel no. 145.

5.  By an order of 1 February 1980 the Castrignano dei Greci City Council approved a project for leisure structures to be built on the land belonging to the first and second applicants and to the third applicant’s predecessor.

6.  By an order issued on 5 March 1987 the Castrignano dei Greci Municipality was authorised to take possession, through an expedited procedure and on the basis of a public-interest declaration, of two parcels of the land, measuring 13,281 sq. m and 12,248 sq. m. The authority was given a maximum period of five years, with a view to the subsequent expropriation of the land.

7.  On 6 October 1987 the Castrignano dei Greci City Council took physical possession of the land and started the building work.

8.  By a claim filed on 28 September 1990 the first applicant and the other joint owners of the land – including the third applicant’s predecessor brought an action for damages against the Castrignano dei Greci Municipality in the Lecce District Court. They alleged that the occupation of the land was unlawful in that the period of lawful occupation had expired and that the building work had been completed without there having been a formal expropriation of the land with payment of compensation. They claimed a sum corresponding to the market value of the land.

9.  On 13 April 1991 the second applicant joined the proceedings.

10.  On an unspecified date the court ordered an expert valuation of the land. In a report submitted on 4 February 1993 the expert indicated that the market value of the land, on the date when it had first been occupied by the municipality in 1987, had corresponded to 12,000 Italian lire (ITL) per square metre (approximately 6.20 euros (EUR)).

11.  On 16 May 1994 a second expert report was submitted. The expert concluded that the market value of the land in 1989 had corresponded to ITL 5,000 per square metre (approximately EUR 2.58).

12.  On 10 November 1995 the third applicant’s predecessor died and on 1 December 1995 the third applicant joined the proceedings as his heir.

13.  In a third report, submitted on 29 August 2000, another expert assessed the market value of the land in 1988 at ITL 12,000 (approximately EUR 6.00) per square metre.

14.  A fourth report was submitted on 22 October 2002, in which an expert concluded that there had been an irreversible transformation of the occupied land on 28 September 1988, a date which coincided with the conclusion of the construction work. That expert found that the total market value of the land on that date had amounted to ITL 2,250 (approximately EUR 1.16) per square metre.

15.  By a judgment of 31 May 2004 the Lecce District Court found that, pursuant to the rule on indirect or “constructive” expropriation (*occupazione appropriativa*), the applicants were no longer the owners of the land, which had become the property of the Castrignano dei Greci Municipality following completion of the building work on 28 September 1988. The court found that, as the transfer of property had been unlawful, the applicants were entitled to an award of damages. Having examined the different expert valuations, the court concluded that the market value of the land in 1988 had been equal to ITL 5,000 per square metre (see paragraph 11 above). However, the court did not award compensation reflecting the market value, but instead proceeded to make an award based on the criteria contained in Article 5 *bis* of Legislative Decree no. 333 of 11 July 1992, as amended by Law no. 662 of 1996. It ordered the municipality to pay the first applicant EUR 9,280.70, the second applicant EUR 59,181.75 and the third applicant EUR 10,835. The court further stated that the applicants were entitled to a sum reflecting an adjustment for inflation, as well as statutory interest running from the date of the irreversible transformation of the land (28 September 1988). Separate sums in compensation for the destruction of crops and buildings were also awarded to the first and second applicants.

16.  On 2 May 2005, the Castrignano dei Greci Municipality appealed to the Lecce Court of Appeal against the district court’s judgment.

17.  As payment of the sums awarded by the Lecce District Court was not forthcoming, on 13 April 2005 the applicants applied for a third‑party debt order (*pignoramento presso terzi*) against a bank. On 23 September 2005 a representative of the bank declared that there was a lack of funds available to be seized.

18.  By a judgment delivered on 24 January 2013, and filed with the court registry on 12 March 2013, the Lecce Court of Appeal confirmed that the applicants had been deprived of their property unlawfully. It further drew on the Constitutional Court’s judgment no. 349 of 24 October 2007, whereby Article 5 *bis* of Legislative Decree no. 333 of 11 July 1992, as amended by Law no. 662 of 1996, had been declared unconstitutional, and held that the applicants were entitled to compensation corresponding to the full market value of the property, minus what had already been paid to them under the judgment of the Lecce District Court. The court awarded a total sum of EUR 59,458.63, to be divided among the applicants in accordance with their respective shares in the property. The court further stated that the applicants were entitled to a sum reflecting an adjustment for inflation, as well as statutory interest running from the date of the irreversible transformation of the land (28 September 1988).

19.  On 26 November 2009 the Castrignano dei Greci Municipality appealed to the Court of Cassation against the Court of Appeal’s judgment.

20.  On 5 May 2015 the Court of Cassation dismissed the municipality’s appeal.

21.  On an unspecified date in 2011 the municipality paid the applicants a portion of the amounts due as compensation for the deprivation of their property. On an unspecified date in 2013 the municipality paid the applicants the remaining amounts due to them. Tax, at a rate of 20%, was deducted at source from these sums, in accordance with Law no. 413 of 1991.

B.  Relevant domestic law and practice

22.  The relevant domestic law and practice applicable in this case was recently summarised in *Guiso and Consiglio v. Italy* (dec.), no. 50821/06, §§ 25-31, 16 January 2018.

COMPLAINTS

23.   The applicants alleged that they had been unlawfully deprived of their land and that the situation had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

24.  In particular, the applicants submitted that they had been dispossessed of their property pursuant to the constructive‑expropriation rule, whereby public authorities could acquire land by taking advantage of their own unlawful conduct.

THE LAW

A.  The parties’ submissions

25.  By a letter of 15 October 2008 the Government informed the Court that the Lecce Court of Appeal had delivered a judgment in which it had acknowledged that the applicants had been unlawfully deprived of their property and, drawing on the Constitutional Court’s judgment no. 349 of 24 October 2007, had held that the applicants were entitled to compensation corresponding to the full market value of the property, and that that sum had to be adjusted for inflation and interest added (see paragraph 18 above). In the light of these developments, which had occurred subsequent to communication of the case, the Government contended that the applicants were no longer victims within the meaning of Article 34 of the Convention.

26.  The applicants advanced the argument that even though the domestic courts had acknowledged the unlawful nature of the expropriation and awarded compensation equal to the property’s market value, adjusting the amount for inflation and adding statutory interest – they had not received redress that could be considered “appropriate and sufficient” owing to the taxation imposed in accordance with Law no. 413 of 1991. Moreover, in the applicants’ view, the adequacy of the compensation was further reduced by the fact that no award had been made in respect of non‑pecuniary damage they had suffered as a consequence of being unlawfully deprived of their property.

B.  The Court’s assessment

27.  The Court notes at the outset 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; *Guiso‑Gallisay v. Italy*, no. 58858/00, §§ 93-97, 8 December 2005; *De Caterina and Others v. Italy*, no. 65278/01, §§ 30-34, 28 June 2011; and, more recently, *Messana v. Italy*, no. 26128/04, §§ 38-43, 9 February 2017). There is no evidence in the case file that could lead the Court to reach a different conclusion in the present case.

28.  That said, the Court further notes that the Lecce Court of Appeal acknowledged that the deprivation of property had been unlawful and, by drawing on the Constitutional Court’s judgment no. 349 of 24 October 2007, held that the applicants were entitled to redress in conformity with the criteria established by the Court’s case-law (see paragraph 18 above). The Court is satisfied that this amounts, in substance, to an acknowledgment by the domestic courts of the infringement complained of (for a similar finding see *Guiso and Consiglio v. Italy* (dec.), no. 50821/06, § 39, 16 January 2018). Following that determination, the court awarded an amount equal to the market value of the land at the time the applicants were deprived of their property, increased by an amount reflecting an adjustment for inflation, as well as statutory interest (see paragraph 18 above). In a similar case, the Court found that an analogous award constituted appropriate and sufficient redress for the breach of Article 1 of Protocol No. 1 suffered by the applicant, notwithstanding the fact that the domestic court had not made an award reflecting non-pecuniary damage, and it 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). The Court sees no reason to depart from the approach it adopted in that case.

29.  Nevertheless, the applicants argued that the redress afforded domestically was insufficient on account of the tax levied on the amounts received, which was imposed on the applicants in accordance with Law no. 413 of 1991.

30.  The Court has already found that the most appropriate approach to examine an analogous complaint concerning the impugned tax measure would be from the standpoint of a control of the use of property “to secure the payment of taxes” (see *Guiso and Consiglio*, cited above, § 41). According to the Court’s well-established case-law (see, among many other authorities, *Gasus Dosier und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, § 62, Series A no. 306‑B,and *N.K.M. v. Hungary*, no. 66529/11, § 42, 14 May 2013), an interference, including one resulting from a measure to secure the payment of taxes, must strike a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights, and applicants must not bear an individual and excessive burden. The Court has also consistently held that a Contracting State, not least when framing and implementing policies in the area of taxation, enjoys a wide margin of appreciation, and that it will respect the legislature’s assessment in such matters unless it is devoid of reasonable foundation (see *Guiso and Consiglio*, cited above, § 43, with further references).

31.  In a case similar to the one under scrutiny, the Court considered that it was well within the area of discretionary judgment for the Italian legislature to develop substantive tax rules providing for taxation of capital gains arising from dispossession of property and that the legislation providing for this could not be considered to be arbitrary as such (ibid., § 44). In the same case the Court considered that the respondent State should be afforded a particularly wide margin of appreciation, since choices as to the type and amount of tax to be levied and related questions as to what could be classified as taxable income, as well as the concrete means of enforcement of a tax, fell within those issues that the domestic legislature was certainly better placed than the Court to assess and determine (ibid.). The Court sees no reason to depart from those findings in the circumstances of the present case.

32.  It remains to be ascertained whether the impugned fiscal measure could be viewed as having imposed an unreasonable or disproportionate burden on the applicants. The Court has already had the opportunity to consider that the tax rate applied in accordance with Law no. 413 of 1991, which amounts to 20% of the total compensation awarded, cannot be considered prohibitive, from a quantitative standpoint (ibid., § 46). Moreover, it cannot be said that the deduction of such an amount had the effect of nullifying or essentially frustrating the award of compensation made by the domestic courts, to the extent of causing the tax burden to acquire a “confiscatory” nature. The Court is, in other words, satisfied that the fiscal measures applied in the present case did not go as far as to impair the very substance of the applicants’ property rights.

33.  The Court also notes that there is no evidence in the case file – and in any event it has not been argued by the applicants – that the levying of such a sum fundamentally undermined their financial situation. This is one of the factors to which the Court has given weight when gauging whether a fair balance has been struck in a given case (see *N.K.M. v. Hungary*, cited above, § 42, and the further references cited therein).

34.  Lastly, the Court finds it relevant to point out that under the legislation under scrutiny, the applicants could have opted for taxation under the ordinary income-tax regime if they so wished, as taxpayers can choose between accepting the 20% deduction applied to the sum obtained and ordinary taxation, which determines the amount due in tax by taking into account any capital gains in combination with other components of their income (see *Guiso and Consiglio*, cited above, § 31).

35.  In view of the foregoing, and taking into account the wide margin of appreciation which the States have in taxation matters, the Court considers that the tax levied on the compensation awarded to the applicants did not upset the balance which must be struck between the protection of the applicants’ rights and the public interest in securing the payment of taxes.

36.  Accordingly, this complaint 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 6 June 2019.

 Renata Degener Aleš Pejchal
 Deputy Registrar President