FIRST SECTION

DECISION

Application no. 24745/03
Giuliano GHETTI and Others
against Italy

The European Court of Human Rights (First Section), sitting on 3 March 2020 as a Committee composed of:

 Aleš Pejchal, *President,* Tim Eicke, Raffaele Sabato, *judges,*and Renata Degener, *Deputy Section Registrar,*

Having regard to the above application lodged on 1 August 2003,

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

Having deliberated, decides as follows:

1. THE FACTS

1.  A list of the applicants is set out in the appendix.

2.  The Italian Government (“the Government”) were represented by their former Agent, Ms E. Spatafora, and their former co‑Agent, Ms P. Accardo.

The circumstances of the case

3.  The applicants were the owners of a plot of land in Forlì. The land in issue covered an area of 3,435 square metres.

4.  In an order of 11 November 1972 the President of the Emilia-Romagna Regional Council approved a land-use plan providing for the construction of a social-housing complex (*piano per l’edilizia economica e popolare or“P.E.E.P”*). According to the land-use plan, the applicants’ land was earmarked for the construction of a school, a public park and a parking lot.

5.  On 1 December 1975, Forlì Municipality (“the Municipality”) offered the applicants a total sum of 2,167,485 Italian lire (ITL) as compensation for the forthcoming expropriation. The applicants stated that they did not accept the Municipality’s offer.

6.  On 7 April 1977 the President of the Forlì Province issued an expropriation order in respect of the applicants’ land. In the order it was declared that the construction work provided for by the land-use plan was “in the public interest”.

7.  On 11 July 1985 the Municipality approved an amendment to the land-use plan which entailed the elimination of the school from the plan and changed the designated use of the applicants’ land to the creation of a shopping centre.

8.  On 7 July 1989 the Municipality entrusted a private company, CTG, with the construction and subsequent management of the shopping centre.

9.  On 6 April 1990 the applicants brought proceedings against Forlì Municipality and CTG before the Forlì District Court. They argued that the Municipality had failed to carry out the public construction work that had been envisaged at the time of the expropriation and that the local authority had entrusted the project to a private party for the latter’s financial gain. The applicants thus requested that the land be returned to them or, in the alternative, that they be awarded damages.

10.  In a judgment of 17 October 1996 the Forlì District Court ruled against the applicants. The court found that the approval of the land-use plan and its subsequent amendments, whose lawfulness *per se* had not been challenged by the applicants before the administrative courts, could be considered as being encompassed by the public-interest declaration underlying the expropriation. The court went on to consider that the original land-use plan had been revised so as to reflect demographic changes, which had made educational structures no longer necessary in the area. The court further found that the expropriation could be considered as carried out in accordance with the law on account of the fact that a lawful expropriation order had been formally issued. The court concluded that there were no grounds on which the restitution of the applicants’ land or damages could be ordered.

11.  On 17 January 1997, the applicants appealed against the Forlì District Court’s judgment to the Bologna Court of Appeal.

12.  On 20 October 1999, the Bologna Court of Appeal delivered its judgment. The court first noted that, according to the documentation in its possession, the sector (*comparto*) in which the applicants’ land had been inserted provided for, in addition to schools, a number of multifunctional buildings, including a recreational centre and a commercial area. Thus, the presence of a shopping centre had been contemplated as part of the overarching plan (*assetto complessivo*) for the entire piece of land that had been subject to expropriation. The court then went on to note that the proposal for the amendment of the land-use plan, which had been approved in June 1998, had been based on a technical report by Forlì Municipality, which had provided evidence of demographic changes in the area, and which had found that the area that had been originally earmarked for the shopping centre was too small and badly connected to the transport network. The court furthermore considered that the expropriation of the applicants’ land had been carried out within the context of complex urban planning efforts, which were adapted according to evolving needs. On the basis of the foregoing considerations, the court found that no grounds for the return of the applicants’ land existed and dismissed the applicants’ appeal.

13.  On 18 February 2000, the applicants lodged an appeal with the Court of Cassation.

14.  In a judgment of 3 April 2003, the Court of Cassation dismissed the applicants’ appeal. The court reiterated that the grounds for returning expropriated land to its previous owners existed only when, amongst other things, public construction work had been completed and the land had been left unused, or when the originally envisaged public construction plan had been replaced by a completely different plan to the point of frustrating the original urban planning framework. The court found that the Court of Appeal had correctly determined that such conditions had not been met in the present case. The court considered at the outset that a shopping centre may be viewed as being in the public interest. On the facts of the present case, the construction of such a shopping centre could not, in the court’s view, be considered as a radically different kind of public amenity that originally envisaged, firstly of all because it was consistent with the general plan for the sector of which the applicants’ land had been part, which provided for commercial space, and secondly because it was also consistent with the overarching urban planning framework, which had been amended in order to reflect the evolving needs of the community. In reaching its decision, the court referred to the general context of social and economic planning (*pianificazione economico popolare*), in which the meeting of collective needs linked to the social-housing programme were important considerations when assessing whether or not a land-use plan had been complied with.

1. COMPLAINT

15.  The applicants complained that the expropriation of their land had not been carried out in accordance with the law and that there had been no public interest underlying the taking of their property.

1. THE LAW

16.  The applicants complained that the deprivation of their property had not been in accordance with the law and did not pursue a legitimate aim in the “public interest” on account of the fact that the public construction work for which the land had been expropriated had not been completed and had, instead, the construction of a shopping centre had been planned. They submitted that this had breached their rights under Article 1 of Protocol No. 1 to the Convention, which provides:

“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.”

* + 1. The parties’ submissions
			1. The Government

17.  The Government argued that the applicants could have lodged a complaint with the administrative courts, challenging the validity of the public-interest declaration underlying the expropriation. They concluded that the applicants had failed to exhaust the domestic remedies available under domestic law. They further contended that the application before the Court had been lodged out of time on account of the fact that more than six months had elapsed from the issuing of the expropriation order.

18.  In any event, the Government submitted that the application should be declared inadmissible.

19.  The Government stated that the expropriation of the applicants’ land had been carried out in accordance with the law and had been based on a public interest declaration issued in good and due form.

20.  The Government submitted that the construction of the shopping centre in the case at hand had pursued public-interest objectives. They underlined, first of all, that one ought not to lose sight of the overarching development context in which the centre had been planned, as also highlighted by the domestic courts. In such a context, the creation of a shopping centre can clearly be considered as functional to “public construction work” as, in this case, the shopping facility catered to the social housing complex which was built in the neighbourhood.

21.  The Government further reiterated that the Court has afforded a wide margin of appreciation to States when it comes to determining what may be considered in the “public interest”.

22.  In closing, the Government contested the applicants’ contention to the effect that damages ought to have been awarded to them. In this connection, they once again emphasised that the expropriation had been carried out in accordance with the law and, consequently, no damages were owed to the applicants.

* + - 1. The applicants

23.   The applicants contested the Government’s preliminary objection regarding the failure to exhaust domestic remedies.

24.  As to the merits, the applicants’ central argument was that the expropriation had not pursued a genuine and compelling public interest. They further complained of the impossibility to have the land returned to them or to have damages awarded.

25.  The applicants stressed that the public construction work which had been originally envisaged on their land had never been realised and the change in the land-use plan had entailed a radical shift from an intended use of a public nature to a merely private one.

26.  In the applicants’ view, this had been inconsistent with the land-use plan which had only provided for construction work “in the public interest”. The applicants further contended that a shopping facility could under no circumstances be viewed as “public”. The assignment of building rights and the concession to operate the centre in favour of CTG had conferred, from the applicants’ perspective, an unfair advantage on a purely private company operating under a private-law regime.

27.  The applicants also challenged the validity of the public-interest declaration underlying the expropriation in terms of its alleged incompatibility with domestic law and contested the domestic courts’ decisions in this regard. They also called into question the domestic courts’ interpretation of the domestic law concerning the return of property in the event that the public construction work envisaged at the time of an expropriation was not carried out, arguing that the courts had erred in fact and law. The applicants further contended that the domestic courts had displayed a bias in favour of CTG during the course of the proceedings.

28.  The applicants further argued that the way their property had been taken had entailed a parallel with different forms of constructive expropriation (*occupazione appropriativa* or *occupazione usurpativa*) as it concerned, in their view, an expropriation that had not been carried out in accordance with the law. For this reason, they contended that they had had the right to obtain an award of damages from the domestic courts. Relying on the judgments *Carbonara and Ventura v. Italy* (no. 24638/94, ECHR 2000‑VI), and *Belvedere Alberghiera S.r.l. v. Italy* (no. 31524/96, ECHR 2000‑VI), they further emphasised that the Court had found the application of the constructive-expropriation principle to be incompatible with Article 1 of Protocol No.1 to the Convention.

* + 1. The Court’s assessment
			1. The Government’s preliminary objections

29.  The Court takes note of the Government’s objections to the effect that the applicants had failed to exhaust the domestic remedies available to them and had not complied with the six-month time-limit. However, the Court considers that it is not necessary to address such objections as it finds that the application is in any event inadmissible for the reasons set out below.

* + - 1. Alleged violation of Article 1 of Protocol No.1 to the Convention

30.  The Court refers to its established case-law on the structure of Article 1 of Protocol No. 1 and the three rules contained therein (see, amongst many other authorities, *Sporrong and Lönnroth v. Sweden* (23 September 1982, § 61, Series A no. 52). It further refers to the general principles concerning the justification for interferences with property rights as restated in *Beyeler v. Italy* ([GC] no. 33202/96, §§ 108-14, ECHR 2000‑I).

31.  The Court notes at the outset that it has not been contested that there has been a deprivation of property within the meaning of the first paragraph of Article 1 of Protocol No. 1. What is at issue in the present case is the lawfulness and the legitimacy of the aim pursued by the impugned expropriation.

32. As to the first limb of the applicants’ challenge, and namely the lawfulness aspect, the Court notes that a formal expropriation order was issued in respect of the applicants’ land (see paragraph 6 above). Based on the material submitted by the parties, the Court finds no reason to question that the expropriation procedure under scrutiny was not complied with. Indeed, there is no evidence that the domestic authorities bypassed the rules governing expropriation in the present case, nor is there any evidence that applicants were deprived of their land by means of the application of the constructive-expropriation principle in its different guises (contrast, amongst many other authorities, *Carbonara and Ventura*, and *Belvedere Alberghiera*; and, as a more recent authority, *Messana v. Italy*, no. 26128/04, 9 February 2017), although the applicants attempt to draw a parallel between the facts of the case and “indirect” forms of expropriation. In the absence of any such evidence, the Court remains unpersuaded by the applicants’ arguments to the effect that the expropriation was not carried out in compliance with conditions provided for by law. To the extent that the applicants appear to be arguing that the alleged lack of a genuine and compelling public interest underlying the expropriation deprived it of a legal basis, the Court considers that it ought to be dealt with in its assessment of the public-interest requirement.

33.  In view of the above, the Court is prepared to accept that the taking of the applicants’ property was lawful and will turn to examining whether or not the expropriation may be regarded as having been carried out “in the public interest”.

34.  In this connection, the Court reiterates that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is “in the public interest”. Furthermore, the notion of “public interest” is necessarily extensive (see *James and Others v. the United Kingdom*, 21 February 1986, Series A no. 98). Here, as in other fields to which the safeguards of the Convention extend, the national authorities enjoy a certain margin of appreciation. The Court finds it natural that, in an area as complex and difficult as that of urban planning, the Contracting States should enjoy a wide margin of appreciation in order to implement their policies in that regard (see and *Elia S.r.l. v. Italy*, no. 37710/97, § 77, ECHR 2001‑IX 77, and, *mutatis mutandis*, *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 69, Series A no. 52).

35.  The Court further reiterates that while a deprivation of property effected for no reason other than to confer a private benefit on a private party cannot be “in the public interest”, the compulsory transfer of property from one individual to another may, depending on the circumstances, constitute a legitimate means of promoting the public interest (see *James and Others v. the United Kingdom*, 21 February 1986, § 40, Series A no. 98). Moreover, the taking of property effected in pursuance of legitimate social, economic or other policies may be in “in the public interest”, even if the community at large has no direct use or enjoyment of the property taken (ibid., § 45).

36.  Turning to the present case, the Court accepts that the original intention behind the expropriation of the land, namely the construction of a school, was in the public interest. This is not contested by the applicants. However, for the reasons set out below, the Court is not persuaded by the applicants’ contention that on account of the change in use following the amendment to the land-use plan, no such public interest persisted.

37.  Firstly, the Court finds it relevant to review the circumstances which led to the change in the land-use plan. In this regard, as also highlighted by the domestic courts, the Court points out that the change was not carried out in a vacuum but, rather, was introduced in response to evolving demands as identified by the Municipality (see paragraphs 10, 12, and 14 above). In particular, the Municipality, which benefited from a direct knowledge of the affected community and its needs, made a determination to the effect that educational structures were no longer necessary in the area due to demographic changes (ibid.). It further is clear that a shopping area – whose presence had been envisaged from the outset – had initially been allocated to a plot of land which was too small and not well-connected to transport (ibid.). The Court sees no reason to call into question the assessment made by the domestic authorities as to the appropriateness of shifting the location of the shopping centre to the plot owned by the applicants.

38.  Moreover, the Court cannot share the applicants’ view that a retail market cannot be considered as having a public dimension *tout court*. On the contrary, the Court has no difficulty in accepting that the establishment of a – albeit privately run – shopping centre may, in certain circumstances, serve a “public” function. The Court notes that in the present case, as highlighted by the domestic courts, the presence of a shopping centre had been contemplated as part of a wider urban-planning scheme, which included a social-housing development and different complementary services in connection with the housing project. Against this backdrop, the Court is prepared to accept that in the present case the establishment of a shopping centre, as an amenity catering to the inhabitants of the social‑housing complex which was to be built in the neighbourhood may be viewed as a legitimate means of promoting the public interest.

39.  In the light of the foregoing considerations, and regard being had to the wide margin of appreciation enjoyed by States in the area, the Court considers that the expropriation of the applicants’ property may be regarded as having been carried out “in the public interest”.

40.  Accordingly, the complaint must be rejected as being manifestly ill‑founded pursuant to Article 35 §§ 3 and 4 of the Convention.

41.  The Court notes that, in their reply to the Government’s observations on the admissibility and merits of the case, the applicants stated, for the first time, that they had been offered expropriation compensation by the local authority on 1 December 1975 and that they had not been satisfied with the amount offered.

42.  In the Court’s view, such a complaint raised by the applicants is not an elucidation of their original complaint – as articulated in the application form and communicated to the Government – which hinged exclusively on the unlawfulness and alleged lack of public interest in the expropriation. In this connection, even assuming that the complaint was lodged in a timely manner, the Court notes that the applicants did not institute proceedings before the domestic courts in connection with the compensation that had been offered to them in 1975, thus providing the national authorities with the opportunity to redress the alleged breach caused by the purported insufficiency of the amount offered. The Court further notes, in this regard, that the domestic proceedings lodged by the applicants in connection with the present case (see paragraphs 10, 12, and 14 above) concerned, like their original complaint, solely the allegedly unlawful nature of the expropriation and the lack of public interest, with restitution of the land or, in the alternative, an award of damages to make good the breaches suffered in this connection. In the circumstances, therefore, the Court considers that the applicants have failed to raise the complaint concerning the expropriation compensation received in 1975 before the domestic courts.

43.  Accordingly, this complaint must be declared inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 26 March 2020.

 Renata Degener Aleš Pejchal
 Deputy Registrar President

Appendix

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| No. | Applicant’s Name | Birth year | Nationality | Place of residence |
| 1 | Giuliano GHETTI | 1944 | Italian | Forlì |
| 2 | Amelia GHETTI | 1941 | Italian | Forlì |
| 3 | Franca RIVA MARTELLI | 1945 | Italian | San Casciano Val di Pesa |