FIRST SECTION

DECISION

Application no. 10212/05
Michela GUISO GALLISAI against Italy
and 2 other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 23 November 2021 as a Committee composed of:

 Péter Paczolay, *President,* Alena Poláčková, Raffaele Sabato *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appended table,

Having regard to the Court’s decisions of 16 March 2006 and 6 April 2006 respectively to communicate the complaints under Article 1 of Protocol No. 1 and Article 6 § 1 in applications nos. 10212/05 and 11071/05 and to declare the remainder of those applications inadmissible,

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‑Agents, Ms P. Accardo and Mr F. Crisafulli.

* + 1. The circumstances of the case

3.  The facts of the case, as submitted by the parties, may be summarised as follows.

4.  The applicants were the joint owners of a plot of land in Nuoro.

5.  By an order issued on 17 July 1980, the President of the Sardinia Regional Council approved a project to build a road through the applicants’ land. By the same order, using an expedited procedure and on the basis of a public interest declaration, the Nuoro Municipality was authorised to take possession of 8,621 sq. m of the applicants’ plot of land, with a view to subsequently expropriating it.

6.  By a claim filed on 23 January 1987 the applicants brought an action for damages against the Nuoro Municipality. 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.

7.  On unspecified dates the Nuoro District Court ordered two expert valuations of the land. In the two reports, submitted on 19 March 1992 and 15 September 1998, the expert indicated that the market value of the land, on the date when the occupation of the land had become unlawful (22 September 1986), had corresponded to 775,890,000 Italian lire (ITL) (approximately 400,700 euros (EUR)). The expert further indicated that compensation for the period of lawful occupation in respect of the land (*indennità di occupazione*) amounted in total to ITL 232,767,000 (approximately EUR 120,200).

8.  By a judgment of 29 September 2004 the Nuoro District Court found that, pursuant to the rule on indirect or “constructive” expropriation (*occupazione acquisitiva*), the applicants were no longer the owners of the land, which had become the property of the Nuoro Municipality following completion of the building work on 22 September 1986. The court found that, as the transfer of property had been unlawful, the applicants were entitled to an award of damages. 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 each applicant EUR 17,748 as compensation for the loss of their property and EUR 9,686 as compensation for the period of lawful occupation. 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 loss of their property.

9.  On an unspecified date, the Nuoro Municipality appealed to the Cagliari Court of Appeal, Sassari Subdistrict Section (*sezione distaccata di Sassari*) against the district court’s judgment. The applicants lodged a cross-appeal requesting, *inter alia*, an award of compensation equal to the property’s market value.

10.  On 4 July 2011, the Court of Appeal ordered an expert valuation of the land.

11.  In the report submitted on 6 March 2013, the expert indicated that the market value of the land, on the date when the occupation of the land had become unlawful (22 September 1986), had corresponded to EUR 47.62 per sq. m., in total EUR 398,999.04.

12.  By a judgment delivered on 5 August 2014, and filed with the court registry on 28 August 2014, the Cagliari Court of Appeal found that the occupation of the applicants’ land by the administration, which had been initially authorised, had subsequently become unlawful, as it had continued beyond the authorised period without an expropriation order being issued. 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. The court assessed the expert valuation and concluded that the calculation method used by the expert, namely the estimation method (*metodo estimativo*), did not accurately reflect the commercial value of the property. Instead, the court considered that the method to be preferred was the comparative method of property valuation (*metodo comparativo*). It recalled that the comparative method, an approach which uses the value of comparable assets sold at the relevant time, allowed for a “more precise and less arbitrary” means to determine the value of the property. Having established the methodology to be employed, the court proceeded to calculate the value of the property by examining deeds of sale of property comparable to the one under scrutiny during the relevant time period. On this basis, it considered that the market value of the property had corresponded to EUR 31,35 per sq. m. and awarded a total sum of EUR 181,422.45, 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 loss of property (22 September 1986).

13.  The applicants did not challenge the calculation method used by the Cagliari Court of Appeal before the Court of Cassation.

14.  On 29 September 2015 (application no. 11071/05), 7 October 2015 (application no. 10511/05), and 16 October 2015 (application no. 10212/05), the Nuoro Municipality paid the applicants the amounts due to them under the judgment of the Cagliari Court of Appeal.

15.  Tax at a rate of 20% was deducted at source from these sums.

* + 1. Relevant domestic law and practice

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

1. COMPLAINTS

17.  All 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. Under the same provision, they also complained about the taxation imposed in accordance with Law no. 413 of 1991.

18.  The applicants in application nos. 10212/05 and 11071/05 further complained about the application of Law no. 662 of 1996 to their case and the impact it had on the calculation of the compensation due to them. They relied on Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention.

19.  The applicants in application no. 10511/05 argued that the application of Law no. 662 of 1996 had produced discriminatory effects, in breach of Article 14 of the Convention. Relying on Article 18, they also complained that their Convention rights had been restricted for purposes other than those prescribed in the Convention.

1. THE LAW
	* 1. Joinder of the applications

20.  Having regard to the similar subject matter of the applications and the fact that they concern the same set of domestic proceedings, the Court finds it appropriate to examine them jointly in a single decision.

* + 1. Complaint under Article 1 of Protocol No. 1 to the Convention

21.  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.”

* + - 1. The parties’ submissions
				1. The applicants

22.  The applicants contended 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. They highlighted the fact that constructive expropriation had been found to be incompatible with the Convention on many occasions by the Court.

23.  They further argued that, even though the domestic courts had acknowledged the unlawful nature of the expropriation and awarded compensation, adjusting the amount for inflation, 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. In their view, the application of the fiscal measure meant that they had ultimately received a sum amounting to only 80% of the property’s market value. The fiscal imposition therefore reflected a legislative expedient to reduce the costs of acquiring land for public purposes by 20%, though formally disguised as a tax. 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. In the light of these developments, which had occurred subsequent to notification of the case, the applicants contended that they were still to be considered victims of the violation complained of.

24.  The applicants in application nos. 10212/05 and 11071/05 argued, in addition, that the adequacy of the compensation had been affected by the failure by the domestic courts to award a sum reflecting “loss of opportunities”, as required by the Court in *Guiso-Gallisay v. Italy* ((just satisfaction) [GC], no. 58858/00, 22 December 2009, § 107). They further challenged the calculation method employed by the Sassari Court of Appeal to obtain the sum awarded as compensation for the loss of property, pointing out that the sum was inferior to the one calculated by the court-appointed expert.

* + - * 1. The Government

25.  The Government disagreed with the applicants’ argument that they retained their victim status and highlighted that the Cagliari Court of Appealhad 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 had been entitled to compensation reflecting the criteria established by the Court in *Guiso-Gallisay v. Italy* (just satisfaction) [GC].

* + - 1. The Court’s assessment

26.  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, as a more recent authority, *Messana v. Italy*, no. 26128/04, §§ 38-43, 9 February 2017). Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion in the present case.

27.  That said, the Court notes that the Cagliari 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 in the Court’s case-law (see paragraph 12 above). The Court is satisfied that that amounts to an acknowledgement by the domestic courts of the infringement complained of.

28.  Following that determination, the Court of Appeal awarded a total sum of EUR 181,422.45 to compensate the applicants for the loss of their property, to be increased by an amount reflecting an adjustment for inflation as well as statutory interest from the date that they were deprived of their property (see paragraph 12 above).

29.  Nevertheless, the applicants in applications nos. 11071/05 and 10212/05 complained about the calculation of the property’s value carried out by the Court of Appeal, which led to a reduction with respect to the amount calculated by the court-appointed expert. The Court first of all notes that the applicants opted not to lodge an appeal before the Court of Cassation on the point, thus depriving the domestic courts of the possibility of addressing the issue. That said, even assuming that the applicants exhausted the domestic remedies available to them, the Court considers that the Court of Appeal did not simply reduce the compensation without offering an explanation but, rather, provided reasoning, which does not appear to be manifestly arbitrary, on why it chose not to rely on the expert’s valuation (see, in contrast, and *mutatis mutandis*, *Kutlu v. Turkey*, no. 65914/01, §§ 72-74, 4 July 2006). In these circumstances, and having regard to the margin of appreciation afforded to national authorities in such matters, the Court accepts that the Cagliari Court of Appeal awarded a sum reflecting the property’s market value.

30.  Turning to the adequacy of the compensation in terms of the Court’s case-law, the Court points out that, in a similar case to the one under scrutiny, it found that an analogous award to the one issued by the Cagliari Court of Appeal had constituted appropriate and sufficient redress for the breach of Article 1 of Protocol No. 1 suffered by the applicant, who – like the present applicants – 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). The Court sees no reason to depart from the approach it adopted in that case.

31.  The Court also notes that the Cagliari Court of Appeal recognised the further sum of EUR 111,495.58 as compensation for the unavailability of the land during the period of lawful occupation (*indennità di occupazione*), and that the applicants were entitled to a portion of this amount corresponding to their respective shares in the property (see paragraph 12 above). The Court finds that the latter compensation exceeded what the Court would have awarded in respect of “loss of opportunities” according to the criteria established by the Court in *Guiso-Gallisay* (just satisfaction) [GC] (cited above, § 107).

32.  While the foregoing considerations would lead the Court to consider that all of the applicants no longer ought to be considered victims of the violation complained of, it notes all applicants’ further argument to the effect that the redress afforded to them was made insufficient on account of the tax levied on the amounts received.

33.  The Court has already found that the most appropriate approach to examine an analogous complaint, concerning the same tax measure as the one in the present case, 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).

34.  Bearing in mind the relevant case-law on the matter and the conclusions drawn by the Court in similar cases (see *Guiso and Consiglio*, cited above, §§ 41-49; *Colazzo v. Italy* (dec.) [Committee], no. 36944/06, §§ 30-34, 14 May 2019; *Guiso-Gallisai v. Italy* (dec.) [Committee], no. 95/06, §§ 35-39, 16 June 2020; and, *mutatis mutandis*, *Cacciato v. Italy* (dec.), no. 60633/16, §§ 22-29, 16 January 2018), and further taking into account the wide margin of appreciation which 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.

35.  Accordingly, this complaint is manifestly ill‑founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

* + 1. Remaining Complaints

36.  Insofar as the applicants in application nos. 11071/05 and 10212/05 complained about the application of Law no. 662 of 1996 and the impact on compensation, the Court notes that the impugned legislation was ultimately not applied in the applicants’ case (see paragraph 12 above).

37.  The Court has examined the other complaints submitted by the applicant in application no. 10511/05 (see paragraph 20 above). Having regard to all the material in its possession and in so far as these complaints fall within the Court’s competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

38.  It follows that these complaints are 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,

*Decides* to join the applications;

*Declares* the applications inadmissible.

Done in English and notified in writing on 16 December 2021.

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 Liv Tigerstedt Péter Paczolay
 Deputy Registrar President

APPENDIX

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| No. | Application no. | Case name | Lodged on | ApplicantDate of BirthPlace of ResidenceNationality | Represented by |
| 1.   | 10212/05 | Guiso Gallisai v. Italy | 17/03/2005 | **Michela GUISO GALLISAI**23/11/1949RomeItalian | Massimo TIRONE |
| 2.   | 10511/05 | Guiso-Gallisai v. Italy | 14/03/2005 | **Stefano GUISO-GALLISAI**15/07/1959MilanItalian**Gianfrancesco GUISO-GALLISAI**08/07/1948RomeItalian**Antonia GUISO-GALLISAI**25/11/1952RomeItalian | Stefano GUISO-GALLISAI |
| 3.   | 11071/05 | Guiso and Others v. Italy | 10/03/2005 | **Paolo GUISO**22/03/1962NuoroItalian**Vincenza CONSIGLIO**28/08/1929died on 2 February 2008**Alessandro GUISO**01/01/1960NuoroItalian | Paolo GUISO |