FIRST SECTION

DECISION

Application no. 3405/05
Gennaro DEL BALZO DI PRESENZANO and Others
against Italy

The European Court of Human Rights (First Section), sitting on 29 November 2022 as a Committee composed of:

 Péter Paczolay*, President*,
 Gilberto Felici,
 Raffaele Sabato*, judges*,
and Liv Tigerstedt, *Deputy* *Section Registrar,*

Having regard to:

the application (no. 3405/05) 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 20 January 2005 by the applicants listed in the appended table (“the applicants”) who were represented by Mr N. Paoletti and Mrs A. Mari, lawyers practising in Rome;

the decision to give notice of the application to the Italian Government (“the Government”), represented by their former Agent, Ms E. Spatafora, and their former co-Agents, Mr N. Lettieri and Mrs P. Accardo;

the parties’ observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1.  The case concerns the deprivation of the applicants’ land pursuant to the rule on indirect or “constructive” expropriation.

2.  The applicants are the heirs of M.P., who was the owner of a plot of land in Battipaglia.

3.  In 1982 the Battipaglia municipality ordered the urgent occupation of M.P.’s land, with a view to subsequently expropriating it, in order to build a social housing complex. Shortly thereafter, the local housing authority began the construction work.

4.  In 1989 M.P. brought an action for damages against the municipality and the local housing authority before the Salerno District Court. She alleged that the period of lawful occupation had expired and that the construction of the public works had been completed without there having been a formal expropriation of the land. She sought a declaration to the effect that the occupation of her land had ceased to be lawful and that it had been irreversibly altered by the public works, and claimed, *inter alia*, a sum reflecting the land’s market value as compensation for the loss of her property, to be adjusted for inflation and increased by statutory interest.

5.  M.P. died in 2001 and the applicants joined the domestic proceedings in her stead.

6.  By a judgment of 19 January 2004 the Salerno District found that, pursuant to the constructive-ex­propriation principle, the applicants were no longer the owners of the land, which had become the property of the municipality. The court did not make an award based on the market value of the expropriated land, but proceeded to calculate the compensation due to the applicants by relying 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.

7.  The applicants appealed against the first‑instance judgment before the Salerno Court of Appeal.

8.  By a judgment of 2 February 2009 the Salerno Court of Appeal confirmed the dispossession of the applicants’ land my means of constructive-expropriation. As regards compensation, it drew on the Italian 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 land. On this basis, the court awarded a sum equal to the difference between the property’s market value and the sum that had been awarded by the first-instance court. This amounted to a total of 261,899 euros (EUR), to be adjusted for inflation, and increased by statutory interest running from the date of the loss of property, which the court identified as having occurred on the date the occupation of the property had ceased to be lawful.

9.  The applicants appealed against that judgment to the Court of Cassation. They argued that the dispossession of their property had been carried out contrary to Article 1 of Protocol No. 1 to the Convention on account of the application of the constructive-expropriation rule. As regards compensation, they contended that they were entitled, in addition to the market value of the land, to a sum reflecting the increase in value of the property attributable to the public buildings erected on it.

10.  By a judgment of 11 September 2015 the Court of Cassation dismissed the applicants’ appeal. It first cited the principles established in judgment no. 735/2015 delivered on 19 January 2015 by the Court of Cassation sitting as a full court, which eradicated the constructive-expropriation doctrine from the Italian legal system on account of its stark contrast with Article 1 Protocol No. 1 to the Convention. In particular, the court highlighted that domestic law must be interpreted in line with the Convention, and in particular the principle whereby expropriations must always be carried out in good and due form. In this connection, the court considered it would be fruitless to declare the unlawful nature of constructive-expropriation, as requested by the applicants, given that the doctrine could no longer be applied. Relying on its previous case-law, it further considered that a deprivation of property by means of constructive-expropriation constituted a permanent unlawful act which could cease, amongst other things, with the restitution of the land, an agreement between the parties on the transfer of the land, or a waiver of ownership rights implicit in a request for damages equivalent to the loss suffered (*danno per equivalente*). The court found such a waiver to have occurred in the present case, as the proceedings lodged by the applicants had been aimed at obtaining damages.

11.  As regards compensation, the court reiterated that, following the unconstitutionality of Article 5 *bis* of Legislative Decree no. 333 of 11 July 1992, awards had to be based on the full market value of the land. It further cited the *Guiso-Gallisay* judgment (*Guiso-Gallisay v. Italy*, (just satisfaction) [GC], no. 58858/00, 22 December 2009) in which the Court had held that, in assessing pecuniary damage, no further regard ought to be had to the construction costs of the buildings erected by the State on the land, thus dismissing the applicants’ argument to that effect.

12.  On an unspecified date the applicants were paid the amounts awarded to them under the judgment of the Salerno Court of Appeal. Tax at a rate of 20% was deducted at source from these sums in accordance with Law no. 413 of 1991.

13.  Relying on Article 1 of Protocol No. 1 to the Convention, the applicants contended that they had been unlawfully deprived of their land by means of indirect or “constructive” expropriation.

14.  They further complained that the enactment and application to their case of section 5 *bis*of Law no. 359/1992 amounted to interference by the legislature in breach of their right to a fair hearing as guaranteed by Article 6 § 1 of the Convention.

15.  The applicants also complained, under Article 13, of the absence of effective domestic remedies for the protection of their rights.

1. THE COURT’S ASSESSMENT
	* 1. The complaint under Article 1 of Protocol No. 1 to the Convention

16.  The relevant domestic law and practice concerning constructive expropriation is to be found in *Guiso-Gallisay* (cited above, §§ 18-48).

17.  Turning to the facts of the present case, the Court notes that the Salerno District Court found that the applicants lost ownership of their property by means of indirect or “constructive” expropriation (see paragraph 6 above), 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 *Messana v. Italy*, no. 26128/04, §§ 38-43, 9 February 2017).

18.  That said, the Court notes that the domestic proceedings were pending before the Salerno Court of Appeal when the respondent Government were notified of the case in 2006. The latter court issued a judgment in 2009 whereby it granted the applicants’ appeal as regards the amount of compensation and awarded them a sum reflecting the property’s market value, to be adjusted for inflation and increased by statutory interest (see paragraph 8 above). The judgment of the Court of Appeal was upheld by the Court of Cassation in 2015 (see paragraph 10 above).  In light of these developments, the Court finds it appropriate to examine whether the applicants can still be considered victims of the alleged violation of the Convention. In this connection, the Court has already held that it is not prevented from examining of its own motion an applicant’s victim status, since it concerns a matter which goes to the Court’s jurisdiction (see *Buzadji v. the Republic of Moldova*[GC], no. 23755/07, § 70, 5 July 2016, and *Orlandi and Others v. Italy*, nos. 26431/12 and 3 others, § 117, 14 December 2017).

19.  The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example,*Dalban v. Romania*[GC], no. 28114/95, § 44, ECHR 1999-VI).

20.  As regards the first condition, the Court notes that the Court of Cassation highlighted the need to interpret domestic law in line with the Convention, and that expropriation of land must always occur in good and due form (see paragraph 10 above). In underlining that the constructive-expropriation doctrine had been eradicated from the domestic legal landscape, it further relied on judgment no. 735/2015 of 19 January 2015, in which the Court of Cassation, sitting as a full court, had found such a doctrine to be contrary to Article 1 of Protocol No. 1 to the Convention (see paragraph 10 above). It also reiterated that, when damages are sought, compensation must reflect the property’s market value. The Court is satisfied that the foregoing findings by the Court of Cassation may be viewed as an acknowledgement of the infringement complained of.

21.  As regards the amount of compensation awarded to the applicants, the Court notes that they obtained a sum equal to the land’s market value on the date of the dispossession, to be increased by an amount reflecting an adjustment for inflation as well as statutory interest, applied to the capital progressively adjusted, from the date that they were deprived of their property. The Court has already found such compensation appropriate and sufficient in a case similar to the one under scrutiny and concluded that the applicant in that case 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). 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. In particular, in the Court’s view, the fact that tax at a rate of 20% was applied to the sums awarded to the applicants is not sufficient to call into question the adequacy of the compensation (see *Guiso and Consiglio v. Italy* (dec.), no. 50821/06, §§ 38-52, 16 January 2018).

22.  It follows that the complaint lodged by the applicants under Article 1 of Protocol No. 1 is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

* + 1. Other complaints

23.  As to the other complaints raised by the applicants under Articles 6 and 13 of the Convention (see paragraphs 14 and 15 above), the Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention and must therefore be declared inadmissible in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 12 January 2023.

 Liv Tigerstedt Péter Paczolay
 Deputy Registrar President

APPENDIX

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| No. | Applicant’s Name | Year of birth | Nationality | Place of residence |
| 1. | Gennaro DEL BALZO DI PRESENZANO | 1932 | Italian | Naples |
| 2. | Ferdinando DEL BALZO DI PRESENZANO | 1934 | Italian | Rome |
| 3. | Gioacchino DEL BALZO DI PRESENZANO | 1945 | Italian | Rome |
| 4. | Luigi PIRONTI DI CAMPAGNA | 1956 | Italian | Rome |
| 5. | Riccardo PIRONTI DI CAMPAGNA | 1959 | Italian | Milan |