FIRST SECTION

DECISION

Application no. 29867/06
Paolo GUISO and Others
against Italy

The European Court of Human Rights (First Section), sitting on 26 April 2022 as a Committee composed of:

 Péter Paczolay, *President,* Raffaele Sabato, Davor Derenčinović, *judges,*
and Liv Tigerstedt, *Deputy* *Section Registrar,*

Having regard to:

the application (no. 29867/06) against Italy lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 20 July 2006 by the applicants listed in the appended table (“the applicants”) who were represented by Mr N. Paoletti and Mr P. Guiso, lawyers practising in Rome and Nuoro;

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 F. Crisafulli and Ms 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 and the taxation imposed on the compensation awarded by the domestic courts.

2.  The applicants inherited a plot of land in Nuoro from a relative, P.G.

3.  On different dates in 1976 and 1977 the Sardinia Regional Council approved a project to build a social-housing complex on the above-mentioned plot of land. In this connection, the Nuoro Municipality was authorised to take possession of a portion of the land, with a view to subsequently expropriating it.

4.  In 1983 P.G. brought an action for damages against the Nuoro Municipality before the Nuoro District Court. He alleged that the occupation of the land was unlawful in that the period of lawful occupation had expired and that the construction of the building had been completed without there having been a formal expropriation of the land with payment of compensation.

5.  In 1987 P.G. died and his heirs, the applicants in the present case, continued the proceedings in his stead.

6.  On 12 March 1997 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 Municipality following completion of the building work. As to damages, the court acknowledged the entry into force of Law no. 662 of 1996. It proceeded to make an award amounting to 55% of the property’s market value as an advance on the sum to be calculated in accordance with the new criteria laid down in that law.

7.  In March 1998 the Municipality paid the applicants the amounts awarded to them under the judgment of the Nuoro District Court. Tax at a rate of 20% was deducted at source from these sums in accordance with Law no. 413 of 1991.

8.  On 17 July 2003 the Nuoro District Court found that the compensation due to the applicants under Law no. 662 of 1996 corresponded to the sum awarded in its judgment of 12 March 1997.

9.  In 2004 the applicants appealed before the Cagliari Court of Appeal, Sassari Subdistrict Section (*sezione distaccata di Sassari*) against the district court’s judgment.

10.  By a judgment of 17 October 2008, the Cagliari Court of Appeal found that the applicants had been unlawfully dispossessed of their property. 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 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.

11.  In March 2010 the Municipality paid the applicants the amounts awarded to them under the judgment of the Cagliari Court of Appeal. Tax at a rate of 20% was deducted at source from these sums in accordance with Law no. 413 of 1991.

12.  On an unspecified date the Municipality appealed against the judgment of the Court of Appeal before the Court of Cassation.

13.  On 5 June 2015 the Court of Cassation dismissed the Municipality’s appeal.

14.  The applicants complained that they had been unlawfully deprived of their land contrary to 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. The applicants further argued that the application of Article 5 *bis* of Legislative Decree no. 333 of 11 July 1992, as amended by Law no. 662 of 1996, had produced discriminatory effects, in breach of Article 14 of the Convention. Lastly, relying on Article 18, the applicants complained that their Convention rights had been restricted for purposes other than those prescribed in the Convention.

1. THE COURT’S ASSESSMENT

15.  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.

16.  The Court notes 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; and, as a more recent authority, *Messana v. Italy*, no. 26128/04, §§ 38-43, 9 February 2017).

17.  That said, 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 compensation corresponding to the full market value of the property, adjusted for inflation and increased by statutory interest running from the date of the loss of property. The Court is satisfied that that amounts to an acknowledgement by the domestic courts of the infringement complained of.

18.  Turning to the adequacy of the compensation in terms of the Court’s case-law, in a similar case to the one under scrutiny, the Court 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.

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

20.  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).

21.  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 *Guiso Gallisai v. Italy* (dec.) [Committee], nos. 10212/05 and 2 others, §§ 33-35, 23 November 2021), 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.

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

23.  As to the other complaints raised by the applicants under Articles 14 and 18 of the Convention (see paragraph 14 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 either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

24.  It follows that this part of the application must be rejected 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 19 May 2022.

 Liv Tigerstedt Péter Paczolay
 Deputy Registrar President

Appendix

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| No. | Applicant’s Name | Year of birth | Nationality | Place of residence |
| 1. | Paolo GUISO | 1962 | Italian | Nuoro |
| 2. | Vincenza CONSIGLIO | 1929 | Italian | Nuoro |
| 3. | Alessandro GUISO | 1960 | Italian | Nuoro |