FIRST SECTION

DECISION

Application no. 40284/06  
Stefano GUISO GALLISAI 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. 40284/06) against Italy lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 3 October 2006 by the applicants listed in the appended table (“the applicants”) who were represented by Mr S. Guiso-Gallisai, a lawyer practising in Milan;

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‑Agent, 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.

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

3.  On 3 June 1982 the Nuoro Municipality issued an order authorising the occupation of a portion of the applicants’ land in order to begin the construction of a school.

4.  On 5 July 1982 the Municipality took physical possession of the land.

5.  On 15 October 1990 the applicants brought an action for damages against the Nuoro Municipality before the Nuoro District Court. They argued that the occupation of their land had not been in accordance with the law on account of the fact that it had begun before the order formally authorising it had been issued. They sought an award of damages to compensate them for the loss of ownership of their property, which they contended had been *de facto* transferred to the local authority.

6.  In a judgment of 22 September 2003, the Nuoro District Court found that the expropriation order had not been issued in a timely manner. It found that the order ought to have been issued within a five-year period starting from the beginning of the occupation of the applicant’s land, which the court identified as coinciding with the date the authorities took physical possession of the land on 5 July 1982. Accordingly, pursuant to the constructive-expropriation principle (*occupazione appropriativa*), the applicants were no longer the owners of the land, which had become the property of the Nuoro Municipality. The court further accepted that the applicants were entitled to damages for the loss of their property. 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.

7.  The applicants appealed against the first-instance judgment before the Sassari Court of Appeal.

8.  By a judgment delivered on 24 February 2011, and filed with the court registry on 21 March 2011, the Sassari Court of Appeal, found that the occupation of the applicants’ land had ceased to be lawful on 25 May 1986. 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, who had been unlawfully deprived of their property, were entitled to compensation corresponding to the full market value of the property. 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 5,928 euros (EUR), to be adjusted for inflation, and increased by statutory interest running from the date of the loss of property. The Sassari Court of Appeal recognised a further sum of EUR 1,185 to the applicants as compensation for the unavailability of the land during the period of lawful occupation (*indennità di occupazione*).

9.  The applicants complained that they had been unlawfully deprived of their land on account of the application, by the domestic courts, of the constructive-expropriation principle in breach of their rights under Article 1 of Protocol No. 1 to the Convention.

10.  They also complained, under Article 6 § 1 and Article 14 of the Convention, about the retrospective application of Article 5 *bis* of Legislative Decree no. 333 of 11 July 1992, as amended by Law no. 662 of 1996, which in their view had produced discriminatory effects. 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

11.  The relevant domestic law and practice concerning constructive expropriation is to be found in *Guiso-Gallisay v. Italy*((just satisfaction) [GC], no. 58858/00, §§ 18-48, 22 December 2009).

12.  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).

13.  That said, the Sassari Court of Appeal acknowledged that the transfer of property to the authorities had not occurred by lawful means 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 (see paragraph 8 above). The Court is satisfied that that amounts to an acknowledgement by the domestic courts of the infringement complained of.

14.   Following that determination, the Sassari Court of Appeal awarded a total sum of EUR 5,928 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 8 above). The Court of Appeal awarded the applicants a further sum of EUR 1,185 as compensation for the unavailability of the land during the period of lawful occupation (see paragraph 8 above).

15.  Turning to the adequacy of the compensation in terms of the Court’s case-law, in a case similar to the one under scrutiny, the Court found that an award analogous to the one issued by the Sassari 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). 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.

16.  It follows that this complaint 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.

17.  As to the other complaints raised by the applicants under Articles 6, 14 and 18 of the Convention (see paragraph 10 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.

18.  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. | Stefano GUISO GALLISAI | 1959 | Italian | Milan |
| 2. | Antonia GUISO GALLISAI | 1952 | Italian | Rome |
| 3. | Gianfrancesco GUISO GALLISAI | 1948 | Italian | Rome |