EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 38580/06
Stefano GUISO GALLISAI and Others
against Italy

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 application (no. 38580/06) against Italy lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 19 September 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, their former co-Agent, Ms P. Accardo, their Agent, Mr L. D'Ascia, and Mr E. Manzo, State Attorney;

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 were the joint owners of a plot of land in Nuoro.

3. In 1980 the Sardinia Regional Council approved a project to build a road through the applicants' land. In this connection, the Nuoro Municipality was authorised to take possession of a portion of the above-

mentioned plot of land belonging to the applicants, with a view to subsequently expropriating it.

4. In 1987 the applicants brought an action for damages against the Nuoro Municipality before the Nuoro District Court. 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.

5. In 2006 the 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 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.

6. By a judgment of 12 February 2015, the Cagliari Court of Appeal, Sassari Subdistrict Section, 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 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.

7. The Municipality paid the applicants the amounts due 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.

8. The applicants complained that they had been unlawfully deprived of their land and that the situation had infringed their rights under 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.

THE COURT'S ASSESSMENT

9. 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). 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.

10. 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 redress in conformity with the criteria established in the Court's case-law. The Court is satisfied that that amounts to an acknowledgement by the domestic courts of the infringement complained of.

11. 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.

12. While the foregoing considerations would lead the Court to consider that the applicants no longer ought to be considered victims of the violation complained of, it notes the 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.

13. 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 v. Italy* (dec.), no. 50821/06, § 41, 16 January 2018).

14. 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.

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

16. As to the other complaints raised by the applicants under Articles 14 and 18 of the Convention (see paragraph 8 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.

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 16 December 2021.

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Liv Tigerstedt
Deputy Registrar

Péter Paczolay
President

APPENDIX

List of applicants:

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