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

FIRST SECTION

DECISION

Application no. 76717/12
HABITAT SPA
against Italy

The European Court of Human Rights (First Section), sitting on 7 May 2025 as a Committee composed of:

Erik Wennerström*, President*,
Raffaele Sabato,
Artūrs Kučs*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 76717/12) 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 22 November 2012 by the company Habitat Spa ("the applicant company") that was represented by Mr F. Gullotta, a lawyer practising in Rome;

the decision to give notice of the complaint concerning Article 1 of Protocol No. 1 to the Convention, concerning the compensation for the expropriation of its land, to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the expropriation of the applicant company's land and the subsequent award of compensation for a portion of that land according to Section 8 (3) of the Bolzano Provincial Law No. 10 of 15 April 1991 (hereinafter "Bolzano Provincial Law no. 10/1991").

2. The applicant company was the owner of a plot of land of 4,374 square metres in Bolzano. According to the 1962-64 general land-use plan (*piano*

regolatore generale) the land was designated as a "public green area", a classification confirmed in the subsequent urban planning instruments.

3. On an unspecified date, the applicant company built a production facility on the land without the required authorisations. The buildings covered an area of 2,556 square metres (approximately 60% of the plot of land), while the remaining 1,818 square metres were paved lots (*piazzali*). In 1986, the applicant company filed a request for a building amnesty (*condono edilizio*).

4. On 8 January 1999, the President of the Province of Bolzano issued an order offering payment of 4,360,000,000 Italian lire (ITL) (approximately 2,251,752 euros (EUR)) as compensation for the expropriation of the applicant company's plot of land in view of the construction of a public walkway. The expropriation order was issued on 25 March 1999.

5. On 18 February 1999, the applicant company instituted proceedings before the Trento Court of Appeal claiming that the compensation offered for the expropriation was insufficient and seeking the award of additional compensation covering the buildings (see paragraph 3 above) and the costs of transferring some equipment.

6. On 2 November 1999, the local authorities granted the building amnesty.

7. The expert appointed by the Trento Court of Appeal considered that the applicant's land had a *de facto* building potential in the light of its use and of the residential nature of the surrounding area and, on this basis, determined the market value to ITL 1,800,000 (approximately EUR 930) per square metre.

8. By decision of 16 October 2001, the Trento Court of Appeal found that the value of the land could not be equated to that of residential areas given its urban designation, which had not been impacted by the *ex post facto* regularisation of the buildings (see paragraph 6 above). Rather, the value ought to have reflected that of areas characterised by building potential, specifically for productive settlements. Thus, the court reduced the market value of the land to ITL 500,000 per square metre, for a total amount of ITL 2,187,000,000 (approximately EUR 1,129,491) as expropriation compensation. An additional amount was awarded for the existing buildings and for the costs of transfer of the equipment.

9. On 25 July 2006, the Court of Cassation set aside the lower court judgment with respect to the 1,818 square metres of the land not covered by the facilities. It held that in the light of the urban planning designation of the plot of land as a "public green area" before the beginning of the expropriation, that portion of the land could not be considered as having a building potential. Therefore, the expropriation compensation had to be calculated on the basis of its urban planning designation at the time of the expropriation pursuant to Section 8 (3) of the Bolzano Provincial Law no. 10/1991 (see paragraph 15 below). Consequently, the court remitted the case to the Court of Appeal for a new calculation of the compensation for that portion of the land.

10. In the proceedings before the Court of Appeal, the court-appointed expert, in application of the above-mentioned provision and relying on what it considered to be valuable characteristics of the plot of land at issue (notably, location, nature of the soil and good cultivation quality), deemed it appropriate to apply the highest value within the limits set by the applicable legislation (see paragraph 15 below).

11. The Court of Appeal, relying on the expert valuation, calculated the expropriation compensation for the 1,818 square metres of land in the amount of EUR 30,051.54, to be increased by statutory interests.

12. The applicant company appealed against the judgment before the Court of Cassation. It challenged, *inter alia*, the constitutionality of Section 8 (3) of the Bolzano Provincial Law no. 10/1991 to the extent that it referred to predetermined agricultural values, which in the applicant company's view were abstract criteria with no relation to the actual market value of the land.

13. By decision of 24 May 2012, the Court of Cassation dismissed the appeal stating that the provision allowed for concrete elements to be taken into account in the determination of the land's value. It found that, in any event, the applicant company had failed to argue and provide evidence capable of demonstrating that the value determined in that way did not bear a reasonable relationship to the market value of the land.

14. The applicant company complained, under Article 1 of Protocol No. 1 to the Convention, of a disproportionate interference with its property rights on account of the amount of compensation received for the 1,818 square meters of land not covered by the facilities, which in its view did not reflect the market value of the land.

RELEVANT LEGAL FRAMEWORK

15. Section 8 (3) of the Bolzano Provincial Law no. 10/1991 provided that in the case of expropriation of land with no building potential the expropriation compensation shall consist of the "fair price" to be attributed to the area as agricultural land, according to the type of cultivation in place at the time of the expropriation. The "fair price" should be determined within the minimum and maximum agricultural values per type of cultivation with respect to each agricultural area of the Bolzano province, as identified annually by the Provincial Estimating Commission.

16. In judgment no. 90 of 2016, the Italian Constitutional Court declared the question of constitutionality of the above-mentioned provision unfounded. The Constitutional Court held that the provision did not provide for an automatic and abstract criterion with no connection with the actual characteristics of the land and its market value. Rather, it required reference to a range of agricultural values, revised annually, among which identifying the most appropriate value in the light of the specific characteristics of the

land subjected to the expropriation. As a consequence, the provision was to be interpreted as requiring the authorities to consider the market value of the land when calculating expropriation compensation. In addition, the Constitutional Court clarified that the adequacy of the maximum and minimum values determined by the commission could be challenged before courts that could, if deemed necessary, depart from such values in the determination of the expropriation compensation.

THE COURT'S ASSESSMENT

17. The Court notes at the outset that it does not have to rule on the Government's preliminary objection concerning non-exhaustion of domestic remedies, since the application is inadmissible in any event on the following grounds.

18. The Government submitted that the domestic courts had relied on the actual market value of the land, with regard being had to its real characteristics. The applicant company maintained its complaints.

19. The Court refers to its judgment in the case of *Preite v. Italy* (no. 28976/05, §§ 18-29 and 42-53, 17 November 2015) for a summary of the general principles applicable in the present case.

20. It notes that the applicant company did not contest that the deprivation of its possessions was in accordance with the law and that it pursued a legitimate aim in the public interest. It remains to be determined whether the interference with its property rights was proportionate.

21. The Court reiterates that it is not its task to resolve disputes over the legal classification of the land or the calculation of its value, unless it is shown that the expropriation compensation bears no reasonable relationship with the market value of the land (see *Preite*, cited above, § 50).

22. In this respect, the Court notes that the value of the land was determined on the basis of its categorisation at the time of the loss of the ownership, notably as a "public green area" (see paragraph 9 above), which is a line of reasoning consistent with the case-law of the Court (see *Maria Azzopardi v. Malta*, no. 22008/20, §§ 62-63, 9 June 2022). Pursuant to Section 8 (3) of the Bolzano Provincial Law no. 10/1991, this categorisation entailed the award of compensation calculated on the basis of the agricultural value of the land identified within a range of values established annually for the relevant area (see paragraph 10 above).

23. In *Preite* (cited above, § 51), the Court found that the use of abstract criteria to calculate compensation may lead to awards bearing no reasonable relationship with the market value of the land. However, it notes at the outset that the provisions at issue in the present case are not the same ones as those assessed by the Court in that judgment. It also emerges that, as underlined by the Government, the valuation of the land as non-constructible was based on the assessment of its characteristics in order to identify the most appropriate

value for it, within the limits set by the applicable provisions (see paragraph 10 above). Therefore, the Court cannot conclude that the value was based exclusively on abstract criteria and were thus completely standardised (compare and contrast *Preite*, cited above, § 51).

24. In any event, the Court observes that the applicant company argued throughout the domestic proceedings and before it that the compensation ought to have been determined on the basis of the constructible character of the land, as determined by the first court-appointed expert (see paragraph 7 above). However, no relevant information or document concerning the value of the land assuming its non-constructible nature have been submitted. In this connection, the Court notes the Court of Cassation's finding to the effect that, also in the context of the domestic proceedings, the applicant company had failed to provide evidence capable of demonstrating that the value determined by the authorities, which allowed for concrete elements to be taken into account, did not bear a reasonable relationship to the market value of the land (see paragraph 13 above). The Court further observes that the land, which was classified at the time of the expropriation as non-constructible, was attributed the highest agricultural value for such a designation. As a consequence, the Court is not in a position to conclude that the compensation, in the specific circumstances of the case, was not reasonably related to the market value of the property.

25. Accordingly, the Court considers that the applicant has failed to persuade it that the expropriation compensation was inadequate (contrast *Platakou v. Greece*, no. 38460/97, §§ 56-57, ECHR 2001-I).

26. In view of the foregoing considerations, the application is 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,

Declares the application inadmissible.

Done in English and notified in writing on 30 May 2025.

Liv Tigerstedt Deputy Registrar	Erik Wennerström President