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

FIRST SECTION

DECISION

This version was rectified on 16 April 2024
under Rule 81 of the Rules of Court.

Application no. 14805/13
Giancarlo MOGGIAN BARBAN
against Italy

The European Court of Human Rights (First Section), sitting on 23 January 2024 as a Committee composed of:

Péter Paczolay*, President*,
Gilberto Felici,
Raffaele Sabato*, judges*,

and Attila Teplán, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 14805/13) 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 9 February 2013 by an Italian national, Mr Giancarlo Moggian Barban ("the applicant"), born in 1934, who lived in Mirano ("the applicant") and was represented by Ms N. Paoletti, Ms R. Rampazzo and Mr A. Di Lorenzo, lawyers practising in Rome;

the decision to give notice of the complaint concerning Article 1 of Protocol No. 1 to the Convention 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's land and the subsequent award of compensation based on the average agricultural value of the land. It raises issues under Article 1 of Protocol No. 1 to the Convention.

2. The applicant was the owner of a plot of land in Mirano.

3. In November 1979 the municipality approved a project for the construction of a car park on the applicant's land, declaring the works to be of public interest and urgent.

4. On 16 September 1981, the applicant concluded an agreement (*cessione volontaria*) for the transfer of the land to the municipality, thus finalising the expropriation procedure.

5. Pursuant to temporary legislation (Law no. 385/1980, which referred to the compensation criteria laid down in Law no. 865/1971), the applicant received an advance on the amount of expropriation compensation calculated on the basis of the average agricultural value criterion (*valore agricolo medio*, "VAM"), with an increase of 50% given that the applicant had agreed to a voluntary transfer of the land. This compensation amounted to 12,138,795 Italian lire (ITL) (approximately 6,269 euros (EUR)). In the agreement, it was stipulated that the sum would be adjusted in the light of the final compensation, to be calculated in accordance with a future law establishing new criteria.

6. By judgment no. 223 of 1983, the Constitutional Court declared Law no. 385/1980 unconstitutional.

7. In 1991 the applicant lodged proceedings with a view to requesting payment of the adjustment to the sum already obtained. He sought a sum based on the market value of the land, which in his view ought to have been considered as constructible.

8. While the proceedings were ongoing, Art. 5 *bis* of Law no. 359/1992 entered into force.

9. In 2002, the Venice District Court dismissed the applicant's claim. It stated that, given the wording of paragraph 3 of Art. 5 *bis* of Law no. 359/1992 and the established case-law on the point, the constructible nature of the land should be based on its legal characterisation, in the light of its designation in the relevant urban-planning instrument before the expropriation. Therefore, departing from the court-appointed expert report which considered that the land had a *de facto* building potential, the District Court noted that the land was not classified as building land by the general land-use plan at the relevant time and that the expropriation compensation had correctly been determined in accordance with the criteria laid down in Law no. 865/1971. Therefore, no additional compensation was due.

10. In the appeal proceedings, the court-appointed expert once again valued the expropriation compensation considering the *de facto* building potential of the land. However, the Venice Court of Appeal upheld the findings of the District Court, further clarifying that the land at the relevant time was designated as service area for a school district, a classification which according to the relevant national provisions excluded the possibility of building activity on private initiative.

11. The Court of Cassation upheld the Court of Appeal's findings.

12. The applicant complained, under Article 1 of Protocol No. 1 to the Convention, of a disproportionate interference with his property rights on account of the amount of compensation received.

THE COURT'S ASSESSMENT

A. Preliminary issue

13. The Court takes note of the information regarding the death of the applicant Giancarlo Moggian Barban and of the wish of his heirs, as specified in the appended table, to continue the proceedings in his stead, as well as of the absence of any objection on the Government's part. Therefore, the Court considers that the heirs have standing to continue the proceedings on behalf of the deceased. However, for practical reasons, reference will still be made to the initial applicant throughout the ensuing text.

B. Alleged violation of Article 1 of Protocol No. 1

14. The applicant complained of the inadequacy of the expropriation compensation received at the time of the voluntary agreement, as it was based on the average agricultural value. He maintained that he was entitled to receive an adjustment to the sum already obtained so as to reflect the market value of the land, which in his view ought to have been considered as constructible. The Government contested those arguments, as in their view the applicant had obtained a sum reflecting the market value of the property.

15. 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 relevant domestic law and practice as well as the general principles applicable in the present case.

16. The Court notes that the land at issue was transferred to the public administration not as a result of an expropriation order but on the basis of a voluntary agreement (see paragraph 4 above). The Court has already examined a similar circumstance in the case of *Mason and Others v. Italy* (no. 43663/98, § 55, 17 May 2005) and reached the conclusion that such a deprivation of property fell within the scope of the second sentence of Article 1 of Protocol No. 1. The Court finds no reason to reach a different conclusion in the present case.

17. The Court further notes that the applicant has not contested that the deprivation of his 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 his property rights was proportionate.

18. The Court reiterates that it is not its task to resolve disputes over the legal classification of the land or the estimation 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).

19. In this respect, it does not appear unreasonable to the Court that the market value was calculated by taking into account the legal designation of the land before the dispossession. In fact, it reiterates that compensation must be calculated based on the property's value on the date on which ownership thereof was lost, which is intrinsically linked to the designation of the land at that time, and not on the basis of its later designation. Furthermore, the Court has already found that, in the absence of any concrete expectation of development prior to the expropriation, it is not appropriate to rely solely on the applicant's view that the land had potential for development (see *Maria Azzopardi v. Malta*, no. 22008/20, §§ 62-63, 9 June 2022).

20. In the present case, before the expropriation proceedings began, the land had been designated as service area for a school district (see paragraph 10 above). By decisions which do not appear arbitrary, the domestic courts considered that the latter designation excluded the possibility of building activity on private initiative according to the relevant domestic provisions (see paragraphs 9-11 above). Furthermore, the applicant did not argue that he had undertaken any steps to obtain an authorisation to build on the land. Thus, in the Court's view, the qualification of the land as non-constructible was not without a reasonable foundation.

21. The Court further notes that the expropriation compensation received by the applicant by virtue of the voluntary agreement was calculated by using as a starting point the average agricultural value criterion (VAM), with an increase of 50% (see paragraph 5 above).

22. The Court recognises that, in principle, the valuation of the land should take into account its specific characteristics (see *Preite*, cited above, §§ 50-51). However, in the present case, the applicant stated that the compensation ought to be determined on the basis of the constructible character of the land, as established by the court-appointed expert. No relevant information or document concerning the value of the land assuming its non-constructible nature have been submitted. As a consequence, the Court does not have any basis on which to conclude that the compensation, to the extent that it was determined by increasing the average agricultural value of the land by 50%, was inadequate. Therefore, the Court considers that the applicant has failed to discharge his burden of showing that the expropriation compensation did not bear a reasonable relationship to the value of the property (contrast *Platakou v. Greece*, no. 38460/97, §§ 56-57, ECHR 2001-I).

23. In view of the foregoing considerations, this complaint 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 15 February 2024.

Attila Teplán Acting Deputy Registrar	Péter Paczolay President

APPENDIX[1]

Applicant's Name	Year of birth	Place of residence
Giancarlo MOGGIAN BARBAN	1934 Deceased in 2020	Mirano
Heirs: Valli PESCE	1940	Mirano
Cristina MOGGIAN BARBAN	1964	Padova
Sabina MOGGIAN BARBAN	1969	Milano
Vittoria GULLI	1994	Padova

[1] Rectified on 16 April 2024: the Appendix containing the list of heirs has been added.