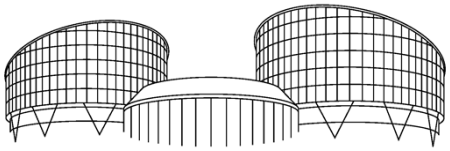

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF QUAGLIA AND OTHERS v. ITALY

(Application no. 14696/10)

JUDGMENT

STRASBOURG

29 June 2023

This judgment is final but it may be subject to editorial revision.

In the case of Quaglia and Others v. Italy,

The European Court of Human Rights (First Section), sitting 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. 14696/10) 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 2 March 2010 by five Italian nationals, whose relevant details are listed in the appended table ("the applicants"), who were represented by Mr B. Forte, a lawyer practising in Sora;

the decision to give notice of the application to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia;

the parties' observations;

the decision to reject the Government's objection to examination of the application by a Committee;

Having deliberated in private on 6 June 2023,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicants' complaint that they were deprived of their land through the application by the domestic courts of the constructive-expropriation rule (*accessione invertita* or *occupazione acquisitiva*).

2. The applicants were the joint owners of a plot of land located in the municipality of Fabriano and recorded in the land register as folio no. 97, parcels nos. 61, 176 and 54. According to the general land-use plan (*piano regolatore generale*) adopted on 7 April 1975 and approved by the Marche Region on 20 July 1981, most of the land was designated for agricultural use and the remaining part as public green area and road.

3. On 18 December 1981, the municipality approved a project for the construction of a sports facility. On 22 May 1982, the municipality authorised the immediate occupation of the applicant's land with a view to its subsequent expropriation and, on 15 June 1982, it took physical possession of 15,270 square metres of land. The public works were concluded in March 1983 and by the time the authorisation expired (on 15 June 1985) the applicants' land had been irreversibly altered by construction works, but the authorities had not issued a formal expropriation order.

4. Meanwhile, on 24 February 1984 the municipality adopted a new general land-use plan, which was finally approved by the Marche Region on

5 July 1990 and which altered the land's designation allowing the construction of sports facilities.

5. In 1987, the applicants brought an action for damages before the Ancona District Court, arguing that the occupation of the land had been unlawful and seeking compensation.

6. By a judgment of 5 April 1996, the Ancona District Court upheld the applicants' complaints and found that the occupation of their land had been unlawful, but that the land had been irreversibly altered following the completion of the public works. As a consequence, pursuant to the constructive-expropriation rule, the applicants were no longer the owners of that land.

7. The Ancona District Court further accepted that the applicants were entitled to damages for the loss of their property, and ordered an independent expert valuation of the land. The expert stated that, at the time of the valuation, the land was designated as partially constructible (for sports facilities only) and was in any case *de facto* constructible due to its characteristics and location. He therefore established its market value taking into account a combination of factors, including the costs of construction and the market value of both constructible and non-constructible land in the area. In this occasion, the expert noted among other factors that the market value of non-constructible land in the area amounted, as at June 1985, to 10,000 Italian lire (ITL), corresponding to 5.16 euros (EUR), per square metre.

8. On the basis of the expert's considerations, the Ancona District Court awarded the applicants ITL 554,561,250 (EUR 286,407), as expropriation compensation and ITL 119,490,204 (EUR 61,712) as compensation for the for the unavailability of the land during the period of lawful occupation (*indennità di occupazione*), plus inflation adjustment and statutory interest.

9. The municipality appealed against this decision and the Ancona Court of Appeal ordered a new expert valuation of the land. The expert noted that, both at the time of the occupation and at the time of completion of the public works, the land was designated as agricultural and, as a consequence, he relied on the average agricultural value (*valore agricolo medio*), pursuant to section 5 *bis* of Law no. 359/1992.

10. Therefore, by a judgment of 27 December 2003, the Ancona Court of Appeal awarded compensation for the expropriation based on the average agricultural value of the land, amounting to ITL 11,202,072 (EUR 5,785), plus inflation adjustment and statutory interest. It further awarded ITL 2,799,398 (EUR 1,446) as compensation for the unavailability of the land during the period of lawful occupation.

11. The applicants' appeal to the Court of Cassation was dismissed on 4 September 2009.

12. 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 rule, in breach of their rights under Article 1 of Protocol No. 1 to the Convention.

13. They also complained, under Article 6 § 1 of the Convention, of the retrospective application of section 5 *bis* of Legislative Decree no. 333 of 1992, as amended by Law no. 662 of 1996.

THE COURT'S ASSESSMENT

14. 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).

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

15. The Government argued that the applicants were no longer victims of the alleged violation as they had obtained reparation at the national level. The Court observes that the question concerning the applicants' victim status is closely linked to the merits of the complaints. It therefore joins the question to the merits.

16. As the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds, it must be declared admissible.

17. 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).

18. The Court observes that the national courts acknowledged that the expropriation had been unlawful and held that the applicants were entitled to compensation (see paragraph 6 above).

19. Following that determination, the national courts awarded a sum based on the average agricultural value of the land (see paragraph 10 above). As to the adequacy of such compensation, the applicants argued that the amount received had been insufficient as it had not duly taken into account the real characteristics of the land and, in particular, its *de facto* building potential.

20. In this respect, the Court accepts that the estimation of the market value takes into account the legal designation of the land before the expropriation. In fact, it recalls that compensation must be calculated based on the property's value on the date on which its ownership 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).

21. In the present case, before the expropriation procedure was initiated, the land was designated mostly as agricultural and, for the remaining part, as public green area and road (see paragraph 2 above) and the applicant had no legitimate expectation that, in the absence of the expropriation proceedings, the land would have become constructible. Thus, in the Court's view, the estimation of the land as non-constructible was not without a reasonable foundation.

22. Nevertheless, the Court notes that, in the present case, the Ancona Court of Appeal did not carry out an estimation of the market value of the land taking into account its specific characteristics, but awarded compensation based on the average agricultural value (see paragraph 10 above). The Court has already found that an award of compensation on this basis bears no reasonable relationship with the market value of the land, as it does not take into account its real characteristics (*Preite*, cited above, § 51).

23. The Government further contended that the applicants were no longer victims of the alleged violation as in 2016 they had obtained an additional amount, which they had accepted. In this respect, the Court notes that – as the Government themselves have recognised – that payment was made in respect of different expropriation proceedings and, as a consequence, it cannot be taken into consideration as compensation for the violation complained of in the present proceedings.

24. The Court therefore observes that the domestic courts did not award the applicants a sum corresponding to the full market value of the expropriated land. It follows that the applicants have not lost their victim status (see, conversely, *Armando Iannelli v. Italy*, no. 24818/03, §§ 35-37, 12 February 2013).

25. Accordingly, the Court rejects the Government's preliminary objection and, ruling on the merits, finds that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. OTHER COMPLAINT

26. The applicants also complained, under Article 6 § 1 of the Convention, of the retrospective application of section 5 *bis* of Legislative Decree no. 333 of 1992, as amended by Law no. 662 of 1996. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaint (see *Centre for*

Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. The applicants claimed, in respect of pecuniary damage, EUR 1,402,511.56 for the loss of property and EUR 302,196.37 for the loss of opportunity. They did not claim any sum in respect of non-pecuniary damage or costs and expenses.

28. The Government contested the claims as excessive.

29. The Court has found a violation of Article 1 of Protocol No. 1 on account of a breach of the principle of lawfulness (see paragraph 17 above). The relevant criteria for the calculation of pecuniary damage in constructive expropriation cases have been set forth in *Guiso-Gallisay* (cited above, §§ 105-06). In particular, the Court relied on the market value of the property at the time of the expropriation as stated in the court-ordered expert reports drawn up during the domestic proceedings.

30. In the present case, two expert valuations of the land are available to the Court. The first, carried out in the course of first-instance proceedings, determined the value of the land based on its *de facto* potential for development. However, the report also noted that the market value of urban non-constructible land in the area amounted to about ITL 10,000 (EUR 5.16) per square metres (see paragraph 7 above). As to the second expertise, carried out in the course of appeal proceedings, it did not contain an assessment of the land's market value based on its real characteristics but applied the average agricultural value (see paragraph 9 above).

31. In light of the considerations above (see paragraphs 21 and 22), the Court considers it appropriate to rely on the value indicated by the first expertise for urban non-constructible land. Therefore, ruling on an equitable basis, it awards pecuniary damages amounting to EUR 392,000 for the loss of property and EUR 7,000 for the loss of opportunity.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's objection concerning the applicants' victim status and *rejects* it;

2. *Declares* the complaint raised under Article 1 of Protocol No. 1 to the Convention admissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds* that there is no need to examine the admissibility and merits of the remaining complaint;

5. *Holds*
   (a) that the respondent State is to pay the applicants jointly, within three months, EUR 399,000 (three hundred ninety-nine thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 29 June 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Attila Teplan Acting Deputy Registrar	Péter Paczolay President

APPENDIX

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Pierina QUAGLIA	1928	Italian	Fabriano
2.	Ersilio POSSANZA	1963	Italian	Fabriano
3.	Franco POSSANZA	1956	Italian	Fabriano
4.	Abdenago QUAGLIA	1950	Italian	Fabriano
5.	Alessandro RIPANTI	1958	Italian	Fabriano