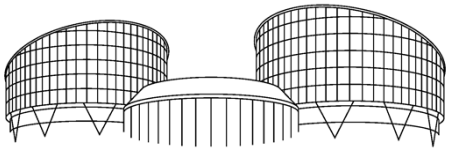

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

# CASE OF AUTRU RYOLO v. ITALY

*(Application no. 9112/10)*

JUDGMENT

STRASBOURG

12 October 2023

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

**In the case of Autru Ryolo 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 Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 9112/10) 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 14 January 2010 by four Italian nationals, whose relevant details are listed in the appended table ("the applicants"), who were represented by Ms M.S. Mori, a lawyer practising in Milan;

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 19 September 2023,

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

## SUBJECT MATTER OF THE CASE

1. The case concerns the expropriation of the applicants' land and the award of compensation based on the "average agricultural value" of the land.

2. The applicants were the owners of a plot of land located in Giardini Naxos and recorded in the land register as folio no. 6, parcels nos. 57/b, 57/a, 58 and 855. The land, which is part of the Naxos archaeological park, was designated for archaeological purposes by the 1985 general land-use plan (*piano regolatore generale*) and was subject to the restrictions on the use of archaeological finds (*vincolo archeologico*) provided by Article 11 of Law no. 1089 of 1 June 1939. At the time, the applicants used some of the land for farming citrus and allowed for the land to be used for archaeological excavations.

3. On 21 October 1993, the administration initiated a procedure for the expropriation of a part of the applicants' land, measuring 8,375 square metres and corresponding to parcels nos. 57/a and 855, for archaeological purposes. On 7 April 1994, the administration authorised the immediate occupation of the land in question and, on 21 December 1996, it issued the expropriation order.

4. The compensation offered to the applicants was based on a valuation conducted by the Messina Expropriation Commission, which considered that the land had building potential and determined its value at 1,507,500,000

Italian lire (ITL), corresponding to 778,559 euros (EUR). Nevertheless, based on the criteria contained in section 5 *bis* of Law 359/1992, the applicants were offered compensation in the lower amount of ITL 454,448,435 (EUR 234,703).

5. The applicants instituted judicial proceedings, arguing that such compensation was insufficient, and the Messina Court of Appeal appointed an expert to carry out a valuation of the land.

6. The expert noted that the restrictions on the use of archaeological finds did not entail an absolute prohibition on building but, rather, allowed for the possibility of other uses, provided that they were compatible with archaeological interests. It further noted that, in 1976, the administration had issued a note according to which building on part of the land was compatible with archaeological interests, whereas the remaining part was not constructible. On this basis, the expert concluded that 1,955 square metres of the land had to be valuated as constructible and determined their market value at ITL 508,300,000 (EUR 262,515).

7. As to the remaining 6,420 square metres, they could be used for purposes other than agriculture, such as a camping area or other tourist facilities. Furthermore, the applicants could have obtained compensation in case of new archaeological finds on their land. Therefore, taking into account the price of similar land, the expert determined the market value of this part of the land at ITL 100,000 per square metres and, overall, at ITL 642,000,000 (EUR 331,565).

8. On 18 February 1999, the Court of Appeal asked the expert to conduct a further valuation, by applying the average agricultural value (*valore agricolo medio*). The expert noted that the land was partially used for the cultivation of citrus and indicated the value of ITL 10,000 per square metre.

9. By a decision of 4 November 2005, the Messina Court of Appeal considered that the entire plot of land was non-constructible and, by applying the average agricultural value, awarded compensation for the expropriation in the amount of ITL 83,750,000 (EUR 43,253). The Court further awarded ITL 18,901,909 (EUR 9,762) in compensation for the occupation of the land (*indennità di occupazione*), using as a starting point the same average agricultural value.

10. The applicants appealed to the Court of Cassation which, by a judgment of 14 July 2009, confirmed the non-constructible nature of the land. In particular, it noted that the land was subject to the restrictions on the use of archaeological finds provided by Article 11 of Law no. 1089 of 1 June 1939, which only permitted construction insofar as it was compatible with archaeological purposes. In the case at hand, the court found that no construction was allowed, as the archaeological interest at issue was not confined to isolated finds but, rather, extended to a large area covered by the ruins of the ancient city of Naxos. As to the note issued in 1975, it was considered irrelevant, as it was merely a preliminary assessment and, in any

event, in the twenty years that followed, further excavations had taken place. On these grounds, the Court of Cassation dismissed the applicants' appeal.

11. The applicants complained under Article 1 of Protocol No. 1 to the Convention of a disproportionate interference with their property rights on account of the allegedly inadequate amount of compensation they had received for the expropriation of their land and for the period of lawful occupation.

# THE COURT'S ASSESSMENT

## I. PRELIMINARY ISSUE

12. The Court firstly takes note of the information regarding the death of the first and second applicants, Mr Luigi Autru Ryolo and Ms Laura Autru Ryolo, and the wish of their heirs, the third and fourth applicants, Mr Carlo Autru Ryolo and Mr Tommaso Autru Ryolo, to continue the proceedings also in their stead, as well as of the absence of an objection to that wish on the Government's part. Therefore, and having regard to the subject matter of the complaints, the Court considers that the heirs of the first two applicants have standing to continue the proceedings in their stead.

## II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

13. The Government argued that the applicants were no longer victims of the violation complained of or, in any event, that the complaint was manifestly ill-founded, as they had received adequate compensation for the expropriation. The Court considers that this issue is closely linked to that of the proportionality of the interference. It therefore joins the issue to the merits of the complaint.

14. As the applicants' complaint is not inadmissible on any other grounds, it must be declared admissible.

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 relevant general principles applicable in the present case.

16. The Court notes that the applicants have been deprived of their property in accordance with national law and that the expropriation pursued a legitimate aim in the public interest. However, the application concerns a distinct expropriation, which was neither carried out as part of a process of economic, social or political reform nor linked to any other specific circumstances. Accordingly, the Court does not discern any legitimate aim "in the public interest" capable of justifying the payment of compensation less than the market value.

17. In the present case, the expropriation compensation awarded to the applicants was calculated on the basis of the criteria laid down in section 5 *bis* of Law no. 359/1992 for non-constructible land, and thus according to the "average agricultural value" of the land (see paragraph 9 above).

18. The applicants complained that the compensation was calculated without taking into account the real characteristics of the land.

19. 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 indemnity bears no reasonable relationship with the market value of the land (see *Preite*, cited above, § 50).

20. In this respect, the Court is prepared to accept that the estimation of the market value takes into account the legal designation of the land before the expropriation. In fact, 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. The applicants' land was designated for archaeological purposes and was subject to the restrictions on the use of archaeological finds. By reasoned decisions, which do not appear to be arbitrary, the domestic courts considered that such restrictions entailed a prohibition on building on the entire plot of land (see paragraphs 9 and 10 above).

22. Furthermore, the applicants themselves had used the land either for farming or granted use of it for archaeological purposes, had not undertaken any steps to obtain an authorisation to build and had no legitimate expectation that such authorisation would be granted. Thus, in the Court's view, the estimation of the land as non-constructible was not without a reasonable foundation.

23. Nevertheless, the Court notes that the national authorities did not carry out an estimation of the market value of the land, taking into account the specific characteristics of the property, but awarded compensation based on the average agricultural value (see paragraph 9 above).

24. In this respect, the applicants argued that the market value of the land was significantly higher, as indicated by the court-appointed expert in his first report. As to the Government, they maintained that in the present case the application of the average agricultural value was based on a concrete assessment of the characteristics of the land, conducted by the court-appointed expert, with particular reference to the farming of citrus.

25. The Court is not convinced by the Government's argument. It notes that the reference to the farming of citrus in the second report drafted by the expert (see paragraph 8 above) was only aimed at selecting the average agricultural value corresponding to the crops farmed on the land. Nevertheless, it did not account for any of the other possible uses of the land indicated by the court-appointed expert in his first report (see paragraph 7 above).

26. The Court has already found that an award of compensation based on the average agricultural value 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). Furthermore, it has found that the compensation for the period of lawful occupation should be calculated on the basis of the market value of the land (see *Luigi Serino v. Italy (no. 3)*, no. 21978/02, §§ 37-39, 12 October 2010). In the light of the above considerations, the Court sees no reason to depart from its previous case-law.

27. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

## APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. The applicants claimed 701,961.17 euros (EUR) jointly, plus inflation adjustment and statutory interest (in total about EUR 1,640,000), in respect of pecuniary damage, EUR 10,000 each in respect of non-pecuniary damage and EUR 11,222.22 in respect of costs and expenses incurred before the domestic courts and the Court.

29. The Government did not submit any observations regarding the applicants' just satisfaction claims.

30. The Court has found a violation of Article 1 of Protocol No. 1 on account of the inadequate compensation awarded both for the expropriation of the applicant's land and for the period of lawful occupation, in light of an estimation based on the average agricultural value instead of the actual market value of the land (see paragraph 26 above).

31. In respect of expropriation compensation, the relevant criteria for the calculation of pecuniary damage have been set forth in *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, § 258, ECHR 2006-V) and *Preite* (cited above, §§ 68-72). In particular, the Court relied on the market value of the property at the time of the expropriation as stated in the court-appointed expert's reports drawn up during domestic proceedings. As to compensation for the period of lawful occupation, the relevant criteria have been set forth in *Luigi Serino (no. 3)* (cited above, § 47).

32. In light of the considerations above (see paragraphs 20-22 above), the Court considers it appropriate to rely on the value indicated by the court-appointed expert for non-constructible land (see paragraph 7 above). Therefore, ruling on an equitable basis, it awards pecuniary damage amounting to EUR 1,002,200 in total for expropriation compensation and compensation for the period of lawful occupation.

33. The Court points out that the present judgment does not affect the possibility for the Government to obtain the restitution of any amounts that may have been paid to the applicants on the basis of the valuation conducted by the Messina Expropriation Commission, insofar as they exceeded the damages awarded by the domestic courts.

34. Furthermore, the Court awards, jointly to the applicants, EUR 5,000 for non-pecuniary damage, plus any tax that may be chargeable, as well as EUR 7,000 covering costs under all heads, plus any tax that may be chargeable to the applicants.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that the third and fourth applicants have standing to continue the proceedings in the first and second applicants' stead;

2. *Declares* the application admissible;

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

4. *Holds*
   (a) that the respondent State is to pay the applicants jointly, within three months, the following amounts:
      (i) EUR 1,002,200 (one million two thousand two hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 12 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Liv Tigerstedt<br>Deputy Registrar | Péter Paczolay<br>President |

# APPENDIX

| No. | Applicant's Name | Year of birth | Place of residence |
|---|---|---|---|
| 1. | Luigi AUTRU RYOLO | 1931<br>Deceased in 2018 | Messina |
| 3. | Laura AUTRU RYOLO | 1962<br>Deceased in 2016 | Messina |
| 2. | Carlo AUTRU RYOLO | 1963 | Messina |
| 4. | Tommaso AUTRU RYOLO | 1965 | Messina |