



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

FIRST SECTION

DECISION

Application no. 60633/16
Concetta CACCIATO and Michele CACCIATO
against Italy

The European Court of Human Rights (First Section), sitting on 16 January 2018 as a Chamber composed of:

Linos-Alexandre Sicilianos, *President*,

Kristina Pardalos,

Guido Raimondi,

Krzysztof Wojtyczek,

Armen Harutyunyan,

Pauliine Koskelo,

Jovan Ilievski, *judges*,

and Abel Campos, *Section Registrar*,

Having regard to the above application lodged on 12 October 2016,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mrs Concetta Cacciato (“the first applicant”) and Mr Michele Cacciato (“the second applicant”), are Italian nationals, who were born in 1945 and 1950 respectively and live in Canicattì. They were represented before the Court by Mrs G. Paoletti and Mr N. Paoletti, lawyers practising in Rome.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

3. On 30 November 1999 the Canicattì City Council issued a decree authorising the Canicattì Municipality to take possession of a plot of land

measuring 1,983 square metres for the purposes of building a social housing complex. The land was recorded in the land register as Folio no. 66, parcels nos. 759, 574, 402, 613, 799, 800, 607, 795, 612, 602, and 790. The first applicant was the owner of 398 square metres of the land corresponding to parcels nos. 402, 613, 799, and 800. The second applicant was the owner of the land corresponding to parcels nos. 607, 795, and 612. Both applicants also owned four sixteenths of the land corresponding to parcels nos. 602 and 790.

4. On 28 January 2000 the authorities took physical possession of the land.

5. On 13 January 2005 the Canicattì City Council issued an expropriation order in respect of the land.

6. As the determination of the amount of expropriation compensation due to them was not forthcoming, on 23 April 2008 the applicants brought an action before the Palermo Court of Appeal. In addition to compensation for expropriation, they also claimed compensation for the period the land had been lawfully occupied, namely from the date of its initial occupation by the authorities in 2000 to the date on which the expropriation order was issued in 2005.

7. By a judgment delivered on 25 June 2014 and filed with the court registry on 12 November 2014, the Palermo Court of Appeal held that the applicants were entitled to expropriation compensation corresponding to the land's market value, as determined by a court-appointed expert, plus statutory interest from the date of the expropriation to the present date. The court also held that the applicants were entitled to compensation for the period in which the land had been lawfully occupied. The first applicant was awarded a global sum of 111,464.25 euros (EUR) and the second applicant was awarded a global sum of EUR 89,526.25.

8. As neither party lodged an appeal on points of law, the judgment of the Palermo Court of Appeal became final.

9. The applicants received the payment, by the Canicattì Municipality, of a first portion of the sums due to them by way of three instalments: on 15 April, 26 April and 1 July 2016. Tax had been deducted at source at a rate of 20%.

B. Relevant domestic law and practice

10. Law no. 413 of 30 December 1991 (hereinafter "Law no. 413/1991") was created, *inter alia*, to broaden the tax base and streamline, facilitate and strengthen tax administration.

11. The relevant parts of section 11(5) provide that capital gains (*plusvalenza*) on expropriation compensation paid to individuals not operating a business are taxable under the Consolidated Income Tax Act (*Testo Unico delle Imposte sui Redditi*).

12. As to the practical means of enforcement of the tax, section 11(7) provides that when paying the compensation mentioned in section 11(5), the authorities entrusted with making the payment (*enti eroganti*) must deduct tax at source at a rate of 20% from the entire sum. It is open to the taxpayer to opt for ordinary taxation in his or her annual tax return, in which case the sum deducted at source will be considered as an advance on the final tax payment due.

COMPLAINTS

13. The applicants complained that they had not received adequate compensation for the expropriation of their land, as the Palermo Court of Appeal had awarded them a sum corresponding to the market value of the land at the time of the expropriation, but had failed to award a sum reflecting an adjustment for inflation, and had awarded a sum covering statutory interest without, however, calculating such interest on the basis of the progressively adjusted capital. This, in their view, ran contrary to the Court's case-law and, in particular, to the judgment *Preite v. Italy* (no. 28976/05, 17 November 2015).

14. The applicants further complained that the expropriation compensation awarded to them had been reduced by 20% on account of the amount they had had to pay in taxation. This meant that they had ultimately received an amount considerably inferior to the land's market value, which, in turn, amounted to a disproportionate interference with their property rights.

15. With respect to the taxation provisions in question, the applicants argued that they reflected a legislative expedient to reduce the costs of acquiring land for public purposes by 20%. Relying on *Scordino v. Italy* (no. 1) [GC] (no. 36813/97, ECHR 2006-V) and *Gigli Costruzioni S.r.l. v. Italy* (no. 10557/03, 1 April 2008), they contended that the Court had already found that the levying of the tax amounted to a violation of Article 1 of Protocol No. 1 when examining the issue jointly with other reductions applied to the property's market value.

16. In support of their claims, the applicants further pointed out, without citing specific cases, that the Court had always included the phrase "plus any tax that may be chargeable" in its just satisfaction awards in cases involving both lawful and unlawful expropriations.

THE LAW

17. In respect of the above complaints, the applicants relied on Article 1 of Protocol No. 1, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. As regards the alleged inadequacy of compensation

18. One part of the applicants’ complaint concerns the alleged inadequacy of the sum determined by the Palermo Court of Appeal as expropriation compensation on account of that court’s failure to include an adjustment for inflation in its award and the way in which it had determined the interest due. The Court notes that the applicants have not lodged an appeal with the Court of Cassation against the judgment of the Court of Appeal. Accordingly, the Court considers that this part of the complaint must be rejected pursuant to Article 35 § 1 of the Convention for failure to exhaust domestic remedies.

B. As regards the imposition of tax on compensation

19. The Court will now turn to the part of the complaint hinging on the tax levied on the expropriation compensation. In this respect, the Court notes that there is no evidence in the case file that the applicants raised their grievance before the domestic courts. However, the Court considers that it is not necessary to rule on this issue conclusively because this part of the complaint is in any event inadmissible for the reasons set out below.

20. The Court considers at the outset that the award by the domestic court reflecting expropriation compensation amounted to a “possession” attracting the guarantees of Article 1 of Protocol No. 1.

21. The Court reiterates that, according to its well-established case-law, Article 1 of Protocol No. 1 comprises three distinct rules: the first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance

with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle laid down in the first rule (see, among many other authorities, *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 61, Series A no. 52; *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98; and *Beyeler v. Italy* [GC], no. 33202/96, § 98, ECHR 2000-I).

22. The Court notes at the outset that the impugned tax measure was imposed on the applicants by the Canicattì Municipality under Law no. 413/1991, which regulates, *inter alia*, the collection of taxation on expropriation compensation. It would therefore appear to the Court to be the most natural approach to examine the applicants' complaint from the standpoint of control of the use of property "to secure the payment of taxes", which falls within the rule in the second paragraph of Article 1 of Protocol No. 1 (see *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 79, *Reports of Judgments and Decisions* 1997-VII).

23. According to the Court's well-established case-law (see, among many other authorities, *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, § 62, Series A no. 306-B, and *N.K.M. v. Hungary*, no. 66529/11, § 42, 14 May 2013), an interference, including one resulting from a measure to secure the payment of taxes, must strike a "fair balance" between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, including the second paragraph: there must therefore be a reasonable relationship of proportionality between the means employed and the aims pursued. Lastly, the applicant must not bear an individual and excessive burden (see *Sporrong and Lönnroth*, cited above, § 73).

24. Furthermore, in determining whether this requirement has been met, it is recognised that a Contracting State, not least when framing and implementing policies in the area of taxation, enjoys a wide margin of appreciation and the Court has consistently held that it will respect the legislature's assessment in such matters unless it is devoid of reasonable foundation (see *Gasus Dosier- und Fördertechnik GmbH*, cited above, § 60; *Imbert de Trémiolles v. France* (dec.), nos. 25834/05 and 27815/05 (joined), 4 January 2008; and *Arnaud and Others v. France*, nos. 36918/11 and 5 others, § 25, 15 January 2015). It is, indeed, primarily for national authorities to decide the type of tax or contributions they wish to levy, since decisions in this area will commonly involve the appreciation of political, economic and social questions which the Convention leaves within the competence of the States parties, the domestic authorities being better

placed than the Court in this connection (see *N.K.M. v. Hungary*, cited above, § 57).

25. Turning to whether a fair balance has been struck in the case at hand, the Court considers at the outset that it was well within the area of discretionary judgment for the Italian legislature to develop substantive tax rules providing for taxation of expropriation compensation. Consequently, the legislation cannot be considered to be arbitrary as such (see *Di Belmonte v. Italy*, no. 72638/01, § 42, 16 March 2010, and, *mutatis mutandis*, *Arnaud and Others*, cited above, § 27). Moreover, choices as to the type and amount of taxation to be levied, but also the related question as to what may be classified as taxable income, fall within those issues that the domestic legislature is certainly better placed than the Court to assess and determine (see, *mutatis mutandis*, *Gáll v. Hungary*, no. 49570/11, § 56, 25 June 2013; *Baláž v. Slovakia* (dec.), no. 60243/00, 16 September 2003; and *Spampinato v. Italy* (dec.), no. 69872/01, 29 March 2007). The same can be said as regards the choice as to the concrete means of enforcement, namely deduction at source, with the option left to the taxpayer to choose the regular taxation route (see paragraph 12 above). In view of the foregoing, the Court considers that the respondent State should be afforded a particularly wide margin of appreciation in the present case.

26. It remains to be ascertained whether the impugned fiscal measure could be viewed as having imposed an unreasonable or disproportionate burden on the applicants.

27. The Court considers at the outset that the tax rate applied in the present case, which amounted to 20% of the total expropriation compensation awarded, cannot be considered, from a quantitative standpoint, as prohibitive. Moreover, it cannot be said that the deduction of such an amount had the effect of nullifying or essentially frustrating the award of expropriation compensation made by the Court of Appeal, to the extent of causing the tax burden to acquire a “confiscatory” nature. Nor did it lead to a paradoxical situation whereby the State took away with one hand – in this case in taxation – more than it awarded with the other, in the form of expropriation compensation (see, *mutatis mutandis*, in the context of the application of court fees, *Perdigão v. Portugal* [GC], no. 24768/06, § 72, 16 November 2010). The Court is, in other words, satisfied that the fiscal measures applied in the present case did not go as far as to impair the very substance of the applicants’ property rights.

28. The Court also notes that there is no evidence in the case file – and in any event it is not argued by the applicants – that the levying of such a sum fundamentally undermined the applicants’ financial situation. This is one of the factors which the Court has given weight to when gauging whether a fair balance has been struck in a given case (see *N.K.M. v. Hungary*, cited above, § 42 and the further references cited therein).

29. In addition, the Court finds it relevant to point out that the applicants had the choice under the legislation under scrutiny to opt for taxation under the ordinary income tax regime if they so wished, as taxpayers can choose between accepting the 20% deduction applied to the sum obtained, or opt for ordinary taxation, which determines the amount due as tax taking into account the capital gains in combination with other components of their income (see paragraph 12 above).

30. As to the applicants' reliance on the *Scordino (No. 1)* and *Gigli Costruzioni* judgments to support their arguments, the Court observes at the outset that those cases concerned awards of expropriation compensation which had been drastically reduced, with the result that they were much lower than the property's market value, owing to the retrospective application of legislative provisions providing for such reductions (see *Scordino (No. 1)*, cited above, §§ 47-61 for a summary of the relevant provisions). It was against that specific factual backdrop that the Court concluded that Article 1 of Protocol No. 1 had been breached (see *Scordino (No. 1)*, cited above, §§ 99-104, and *Gigli Costruzioni*, cited above, §§ 38-50). The provisions applied in *Scordino (No. 1)* and *Gigli Costruzioni* were declared unconstitutional in 2007 and were, consequently, no longer applied in proceedings for the determination of expropriation compensation, which had to correspond to the expropriated property's full market value (see *Messana v. Italy*, no. 26128/04, § 18, 9 February 2017). In the present case the amount of compensation was determined well after the Constitutional Court judgments and was therefore not subjected to any reduction with respect to the market value.

31. In any event, the Grand Chamber made the following determination in *Scordino (No. 1)* (cited above, § 258): "[w]ith regard, lastly, to the 20% tax deducted from the expropriation compensation awarded at domestic level, the Grand Chamber, like the Chamber, has not found the application of that tax to be unlawful as such but has taken account of that factor in assessing the facts". Thus, in the Court's view, the case-law cited by the applicants cannot be understood as implying that the application of the tax, *per se*, ran contrary to Article 1 of Protocol No. 1.

32. In view of the foregoing, and taking into account the wide margin of appreciation which the States have in taxation matters, the Court considers that the levying of the tax on the expropriation 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. Accordingly, this part of the complaint is manifestly ill - founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 8 February 2018.

Abel Campos
Registrar

Linos-Alexandre Sicilianos
President