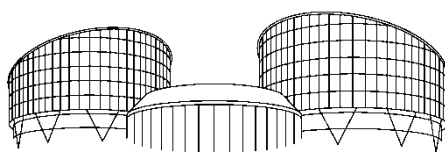


La Corte EDU sull'equo indennizzo per espropriazione
(CEDU, sez. I, sent. 2 febbraio 2023, ric. nn. 46306/06 and 24940/07)

La decisione resa dalla Corte EDU ha per oggetto l'esproprio di alcuni terreni di proprietà dei ricorrenti e la conseguente concessione di un indennizzo sulla base di criteri stabiliti dalla vigente disciplina nazionale. Gli stessi ricorrenti avevano ritenuto insufficiente ed inadeguata l'indennità liquidata, lamentando la violazione dell'art. 1 del Protocollo n. 1 della Convenzione.

La Corte di Strasburgo ha ritenuto che gli espropri non fossero stati eseguiti nell'ambito di un processo di riforma economica, sociale o politica né che fossero legati ad altre circostanze specifiche. La stessa non ha neppure ravvisato, a motivo dell'espropriazione, alcun reale obiettivo di pubblico interesse tale da giustificare il pagamento di un indennizzo inferiore al valore di mercato. D'altronde, in casi analoghi, la quantificazione del risarcimento previsto dalla legge nazionale è stato ritenuto inadeguato, e sproporzionata è apparsa l'indennità calcolata per il periodo durante il quale il terreno era stato occupato prima dell'emissione del provvedimento di espropriazione. In ragione di ciò, la Corte ha ribadito che il compenso per il periodo di legittima occupazione debba essere calcolato sulla base del valore di mercato del terreno e, per conseguenza, ha condannato lo Stato convenuto a risarcire a titolo di danno patrimoniale e morale, entro tre mesi, i ricorrenti per violazione dell'art. 1 del protocollo n. 1 della Convenzione.



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

FIRST SECTION

CASE OF XXX v. ITALY

(Applications nos. 46306/06 and 24940/07)

JUDGMENT

STRASBOURG

2 February 2023

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

In the case of XXX v. Italy,

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

Péter Paczolay, *President*,
Alena Poláčková,
Raffaele Sabato, *judges*,
and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 46306/06 and 24940/07) 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”) by the applicants listed in the appended table (“the applicants”), on the dates and with the representatives indicated therein;

the decision to give notice of the applications to the Italian Government (“the Government”) represented by their Agent, Mr L. D’Ascia, and Co-Agent, Ms P. Accardo;

the parties’ observations;

the decision to reject the Government’s objection to the examination of application no. 46306/06 by a Committee;

Having deliberated in private on 10 January 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 subsequent award of compensation based on the criteria established by section 5 *bis* of Law no. 359 of 8 August 1992 (“Law 359/1992”).
2. The applicants were the owners of plots of land located, respectively, in XXX and in XXX (see the appended table). The national authorities adopted development plans which included portions of the applicants’ land and authorised the urgent occupation thereof. Subsequently, they issued expropriation orders and offered payment of compensation, which the applicants refused.
3. The applicants instituted judicial proceedings claiming that the compensation offered by national authorities was insufficient.
4. In each case, the national courts appointed experts to carry out an estimation of the value of the land and awarded compensation for the expropriation and compensation for the period during which the land had been occupied before the expropriation order (*indennità di occupazione*) had been issued. The calculation of those amounts was based on the criteria contained in section 5 *bis* of Law 359/1992, which had entered into force on 14 August 1992.
5. Further details of the factual information on each application, as well as the compensation awarded, can be found in the appended table.
6. The applicants complained to the Court, under Article 1 of Protocol No. 1 to the Convention, of a disproportionate interference with their property rights on account of the allegedly inadequate amounts of compensation they had received. In particular, in application no. 46306/06 the applicant (“the first applicant”) complained solely of inadequate expropriation compensation, whereas in application no. 24940/07 the applicant (“the second applicant”) also complained of insufficient compensation for the period of lawful occupation on account of the fact that it had been calculated pursuant to section 5 *bis* of Law 359/1992.

7. Additionally, the first applicant complained, under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, of the restrictions imposed on her land since 1969 as a consequence of the prohibition on building on the land, of the repeated refusals and delays in the payment of compensation coupled with incorrect behaviour by national authorities in the course of friendly settlement negotiations at the national level, of legislative interference with pending proceedings, and of the lack of an effective remedy by which to complain of the alleged breach of her property rights.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

8. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. PRELIMINARY ISSUE

9. The Court firstly takes note of the information regarding the death of the first applicant and the wish of her heirs to continue the proceedings in her 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 Ms XXX, namely, Ms XXX, XXX and Ms XXX, have standing to continue the proceedings.

10. However, reference will still be made to the "first applicant" throughout the ensuing text.

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

11. The relevant domestic law and practice have been summarised in *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, §§ 47-61, ECHR 2006-V).

12. With regard to application no. 46306/06, the Government submitted that the applicant was no longer a victim of the violation complained of as she had obtained adequate compensation for the property of which she had been deprived. The Court considers that the question concerning the applicant's victim status is closely linked to that of the proportionality of the interference in question. It therefore joins the question to the merits of the complaint.

13. As the applicants' 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.

14. The Court refers to its judgment in the case of *Scordino (no. 1)* (cited above, §§ 93-98) for a summary of the relevant principles applicable in the present case.

15. The Court notes that the applicants have been deprived of their properties in accordance with national law and that the expropriation pursued a legitimate aim in the public interest. Furthermore, the applications concern distinct expropriations, which were 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 objective "in the public interest" capable of justifying the payment of compensation less than the market value.

16. 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 and, as a consequence, they received amounts far lower than the market value of the properties.

17. The Court has already found, in similar cases, that the level of compensation under section 5 bis of Law 359/1992 was inadequate and that applicants in those cases had to bear a disproportionate and excessive burden (see *Scordino (no. 1)*, cited above, §§ 99-104). Having examined all the material submitted to it and the parties' observations (see appended table), the Court has not found any fact or argument capable of persuading it to reach a different conclusion in the present case.

18. Furthermore, with regard to application no. 24940/07, the Court notes that the national courts awarded the applicant compensation for the period during which the land had been occupied before the expropriation order was issued, which was equal to statutory interest applied to the amount awarded as expropriation compensation. As a consequence, this amount was also significantly lower than what would have been obtained had it been calculated on the basis of the land's market value.

19. In this connection, the Court takes note of the Government's argument to the effect that the market value is an inappropriate starting point for the determination of the compensation to be awarded for the period of lawful occupation. Nevertheless, the Court has already 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). The Court sees no reason to depart from its previous case-law.

20. Accordingly, the Court rejects the Government's preliminary objection raised in application no. 46306/06 and, ruling on the merits of both applications, finds that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

IV. OTHER COMPLAINTS

21. As to the other complaints raised in application no. 46306/06 under Article 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention (see paragraph 7 above), 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 complaints (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

22. The applicants claimed the amounts indicated in the appended table in respect of pecuniary and non-pecuniary damage and in respect of costs and expenses.

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

24. The Court has found a violation of Article 1 of Protocol No. 1 on account of inadequate compensation for the expropriation of the applicants' land (see paragraphs 16 and 17 above). The relevant criteria for the calculation of pecuniary damage in such cases have been set forth in *Scordino (no. 1)* (cited above, § 258). 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 domestic proceedings.

25. With regard to application no. 46306/06, two different independent expert reports are available. The applicant relied before the Court on the expert report drawn up in the course of the

appeal proceedings and the Government did not object to that; therefore that is the report on which the Court will base its assessment.

26. As to application no. 24940/07, the Court has also found a violation of Article 1 of Protocol No. 1 on account of inadequate compensation for the period of lawful occupation (see paragraphs 18 and 19 above). The relevant criteria for the determination of pecuniary damage have been set forth in *Luigi Serino (no. 3)* (cited above, § 47).

27. Having regard to the applicants' claims, and taking into account the principle *non ultra petita*, the Court awards the sums indicated in the appended table and dismisses the remainder of the claims.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* that Ms. XXX, Ms. XXX and Ms. XXX have standing to continue the present proceedings in the first applicant's stead;
3. *Decides* to join to the merits the Government's objection concerning the first applicant's victim status and *rejects* it;
4. *Declares* the complaint under Article 1 of Protocol No. 1 to the Convention admissible;
5. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
6. *Holds* that there is no need to examine the admissibility and merits of the remaining complaints;
7. *Holds*
 - (a) that the respondent State is to pay the applicants the amounts indicated in the appended table, within three months, in respect of pecuniary and non-pecuniary damage and 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;
8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

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

Liv Tigerstedt Deputy Registrar
Péter Paczolay President

