FIRST SECTION

DECISION

Application no. 42868/08
Pietro FIORE
against Italy

The European Court of Human Rights (First Section), sitting on 6 June 2023 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. 42868/08) 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 29 August 2008 by an Italian national, Mr Pietro Fiore, who was born in 1951 and lives in Castelpagano (“the applicant”) who was represented by Mr L. Crisci and Mr F. Crisci, lawyers practising in Benevento;

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, decides as follows:

SUBJECT MATTER OF THE CASE

1.  The case concerns the deprivation of the applicant’s land through the application by the domestic courts of the constructive-expropriation rule (*accessione invertita* or *occupazione acquisitiva*).

2.  The applicant was the owner of a plot of land in the municipality of Castelpagano, recorded in the land register as folio no. 30, parcels nos. 323 and 293 and folio no. 35, parcel no. 191. The land was designated for agricultural use by the 1988 general land-use plan (*piano regolatore generale*) and was actually farmed.

3.  On 6 September 1989, the Alto Tammaro Mountain Municipalities Authority (*comunità montana Alto Tammaro*) approved a project for the construction of a road. On 25 October 1989 the applicant’s father authorised, on behalf of the applicant, the immediate occupation of the land, which took place on the same day. In 1992, the applicant accepted the payment of a provisional expropriation compensation and agreed to enter a voluntary transfer agreement; nevertheless, such agreement was never concluded. On 10 May 1990, the Castelpagano municipality issued an order authorising the occupation of the land with a view to its subsequent expropriation. The public works were completed in December 1991 and on 27 June 1995 the municipality issued a formal expropriation order.

4.  The applicant brought an action for damages before the Benevento District Court, arguing that the occupation of the land had been unlawful and seeking compensation.

5.  The Benevento District Court ordered an independent expert valuation of the land. The expert determined that 6,152 square metres of the applicant’s land had been expropriated and its value as of October 1989 amounted to 4,000 Italian lire (ITL), corresponding to about 2.07 euros (EUR), per square metre.

6.  By a judgment of 10 January 2003, the Benevento District Court considered that in 1992 the applicant had, in substance, agreed to the expropriation and thus rejected his request. The applicant lodged an appeal.

7.  By a judgment of 30 June 2004, the Naples Court of Appeal found that, although the occupation had been authorised, the land had been irreversibly altered following the completion of the public works in December 1991. As a consequence, pursuant to the constructive-expropriation rule, the applicant had lost the ownership of the land at that time, regardless of the subsequent expropriation order.

8.  The Naples Court of Appeal further accepted that the applicant was entitled to damages for the loss of his property and relied on the market value of ITL 4,000 per square metre indicated by the expert appointed at first instance. The Court of Appeal further calculated the compensation due to the applicant for the depreciation of the surrounding land, the inflation adjustment and statutory interest and, having deducted the amount that applicant had received as provisional payment, it awarded EUR 36,092.57.

9.  The applicant’s appeal to the Court of Cassation was dismissed on 7 May 2009.

10.  The applicant complained that he had been unlawfully deprived of his land on account of the application by the domestic courts of the constructive-expropriation rule, in breach of his rights under Article 1 of Protocol No. 1 to the Convention.

1. THE COURT’S ASSESSMENT

11.  The Court notes at the outset that it does not have to decide on the Government’s preliminary objection concerning non-exhaustion of domestic remedies, since the application is inadmissible in any event on the following grounds.

12.  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).

13.  The Court notes that the applicant was deprived of his 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).

14.  The Court further observes that the Naples Court of Appeal found that the occupation of the applicant’s property and the completion of public works on it had not been carried out through lawful means and held that the applicant was entitled to an award of damages. The Court is satisfied that this amounts to an acknowledgement by the domestic courts of the infringement complained of.

15.  Following that determination, the Naples Court of Appeal awarded a sum that it considered equal to the market value of the property, relying on the statements of the court-appointed expert (see paragraph 8 above).

16.  As to the adequacy of such compensation, the applicant argued that the determination of the market value carried out by the Naples Court of Appeal was incorrect, as it did not take into account the fact that the land was subsequently used for the construction of a road.

17.  In this respect, the Court recalls 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, attributed to it by State action. Indeed, awarding compensation depending on the nature of the project undertaken by the authorities, something which is not necessarily related to the land’s potential, could lead to disparities in treatment of persons (see *Maria Azzopardi v. Malta*, no. 22008/20, §§ 62-63, 9 June 2022, and *Guiso-Gallisay*,cited above, § 103).

18.  In the present case, before the expropriation procedure was initiated, the land had been designated and used for agricultural purposes (see paragraph 2 above). Therefore, in the Court’s view, the Naples Court of Appeal awarded a sum reflecting the property’s market value.

19.  In a case similar to the one under scrutiny, the Court found that an award comparable to the one issued by the Naples Court of Appeal had constituted appropriate and sufficient redress for the breach of Article 1 of Protocol No. 1 suffered by the applicant, who had been unlawfully dispossessed of his property, and concluded that the applicant could no longer be considered a victim of the violation complained of (see *Armando Iannelli v. Italy*, no. 24818/03, §§ 35-37, 12 February 2013).

20.  In the light of the foregoing considerations, the Court is not persuaded by the applicant’s arguments to the effect that the compensation awarded to him did not constitute appropriate and sufficient redress. The Court is therefore satisfied that the applicant can no longer be considered a victim of the violation complained of.

21.  It follows that the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 29 June 2023.

 Attila Teplán Péter Paczolay
 Acting Deputy Registrar President