FIRST SECTION

DECISION

Application no. 11946/06
MASTROMONACO
against Italy

The European Court of Human Rights (First Section), sitting on 30 May 2023 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. 11946/06) 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 21 March 2006 by two Italian nationals, Mr Giuseppe Mastromonaco and Mrs Patrizia Mastromonaco, who were born in 1959 and 1956 respectively and live in Rome (“the applicants”), who were represented by Mrs A. Quattrini and Mr F. Buonanno, lawyers practising in Rome;

the decision to give notice of the application to the Italian Government (“the Government”), represented by their former Agent, Mrs E. Spatafora, and their former co-Agent, Mr N. Lettieri;

the parties’ observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1.  The present case concerns the alleged unlawfulness of the expropriation of the applicants’ land and the failure by the domestic courts to grant them adequate compensation.

2.  The applicants’ mother was the owner of five plots of land in San Giacomo degli Schiavoni, which the local plan, approved by the Municipal Council, assigned to the construction of a social-housing complex.

3.  With reference to three out of the five plots, the applicants’ mother was offered by the Municipal Council compensation amounting to 20,000 Italian lire (ITL) per square metre.

4.  The applicant’s mother accepted the offer but the Municipal Council paid only part of the amount due.

5.  On 7 July 1998, following the death of their mother, the applicants brought an action against the Municipality of San Giacomo degli Schiavoni before the Larino District Court, seeking the enforcement of the agreement and compensation for the remaining two plots of land.

6.  With a further pleading submitted on 19 February 1999, the applicants amended their claims. They contended that, since the agreement for the transfer of the land to the Municipality had never been formalised, the other three plots of land had been unlawfully transferred to the municipality by virtue of the constructive expropriation rule (*accessione invertita*). Therefore, they claimed to be entitled to damages.

7.  By decision of 23 March 2010, the District Court declared the applicants’ claims based on the constructive expropriation rule inadmissible since they had been raised in breach of the procedural rules on the time-limits to be complied with in lodging an appeal. Furthermore, since the applicants had not reiterated their claims in the final hearing before the first-instance judge, they were to be considered as waived. However, with reference to the complaint concerning the agreement with the Municipality, the court found that the amount due to the applicants’ mother had been only partially paid and awarded the applicants the sum of 22,233.99 euros (EUR), increased by statutory interest.

8.  The applicants appealed against the decision.

9.  On 30 October 2014, the Campobasso Court of Appeal upheld the first - instance decision in relation to the applicants’ claim for damages, reiterating the inadmissibility of the claims based on the constructive expropriation rule. However, it granted them a sum to compensate them for the period of lawful occupation of the land.

10.  The applicants did not lodge an appeal before the Court of Cassation and the Court of Appeal’s judgment became final.

11.  Relying on Article 1 of Protocol No. 1 to the Convention, the applicants contended that the deprivation of their property, in the absence of a formal expropriation order, was unlawful. They further claimed that they could not obtain adequate redress for the dispossession of their land.

12.  The applicants also complained, under Article 6 of the Convention, of the absence of effective domestic remedies for the protection of their rights, since more than twenty years after the dispossession of their land, they were unable to obtain adequate redress.

1. THE COURT’S ASSESSMENT
	* 1. Alleged violation of Article 1 of Protocol No. 1 to the Convention

13.  In their first set of observations, the Government argued that the applicants’ complaint was inadmissible, in view of the fact that domestic proceedings were still pending before the courts. They underlined that, in the light of the subsidiarity principle, the supervisory jurisdiction of the Court could not be engaged before domestic remedies had been exhausted. This objection was reiterated in further observations, where the Government underlined that, after the intervention of the Constitutional Court with judgment nos. 248 and 249 of 2007 (see *Messana v. Italy*, no. 26128/04, § 18, 9 February 2017), domestic remedies could not be considered ineffective and, therefore, the applicants could not be exempted from exhausting them.

14.  The applicants, on their part, contended that the Court of Appeal’s decision settled the merits of the case in a final manner and could no longer be challenged without, however, expanding on this statement. They nonetheless underlined that the decision was erroneous because, in their view, it did not comply with the applicable substantive and procedural law.

15.  The Court notes that domestic courts, while granting the applicants the sums agreed between their mother and the Municipality, as requested in the original writ of summons before the District Court, considered the further claim for compensation either inadmissible or waived (see paragraph 7 above).

16.  The Court reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (*Anđelković v. Serbia*, no. 1401/08, § 24, 9 April 2013). According to the interpretation given by the civil courts, the applicants had failed to comply with the applicable national procedural rules, which is one of the conditions that should normally be fulfilled in order to meet the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention.

17.  Furthermore, even assuming that domestic decisions were erroneous, as contended by the applicant, Article 35 § 1 requires that any procedural means that might prevent a breach of the Convention should be used. Where an applicant has failed to comply with this requirement, his or her application should be declared inadmissible for failure to exhaust domestic remedies, unless domestic remedies were for some reason inadequate and ineffective in the particular circumstances of the case or there existed special circumstances absolving the applicant from this requirement (*Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 72 and 77, 25 March 2014).

18.  In the present case, the Court notes that the applicants did not offer any argument or evidence to the effect that the domestic decisions could not be challenged before the Court of Cassation pursuant to Article 360 of the Code of Civil Procedure, which, notably, allows appeals against second instance decisions on point of law.

19.  In view of the above and having regard to the circumstances of the case as a whole, the Court does not find that there were any special reasons to consider the appeal on point of law before the Court of Cassation ineffective and, thus, for dispensing the applicants from the requirement to exhaust domestic remedies.

20.  Accordingly, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

* + 1. Alleged violation of Article 6 of the Convention

21.  Relying on Article 6 of the Convention, the applicants also complained of the absence of effective remedies for the protection of their rights due to the unreasonable delay of domestic proceedings. In this connection, they questioned the effectiveness of the “Pinto” remedy which they had decided not to use.

22.  The Court has already held that the remedy introduced by the “Pinto Act” is accessible and that there is no reason to question its effectiveness (see *Pacifico and Others v. Italy*, nos. 34389/02 and 3 others, § 67, 15 November 2012, and *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX).

23.  It follows that this complaint must be rejected on the ground that domestic remedies have not been exhausted in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 22 June 2023.

 Liv Tigerstedt Péter Paczolay
 Deputy Registrar President