FIRST SECTION

DECISION

Application no. 11340/07
AVMA S.R.L.
against Italy

The European Court of Human Rights (First Section), sitting on 8 November 2022 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. 11340/07) 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”) on 28 February 2007 by an Italian company, Avma S.R.L., located in Benevento (“the applicant company”) who was represented by Mr S. Ferrara, a lawyer practising in Benevento;

the decision to give notice of the application to the Italian Government (“the Government”), represented by represented by their former Agent, Ms E. Spatafora, and their former co‑Agent, Ms P. Accardo;

the parties’ observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1.  The case concerns the deprivation of the applicant company’s land through the application of an indirect form of expropriation (“*occupazione usurpativa*”).

2.  The applicant company was the owner of a plot of land in Benevento adjacent to an area on which the Municipality had decided to build a road.

3.  In order to carry out the construction work, a private company delegated by the Municipality occupied a part of the applicant company’s land.

4.  On 27 January 1993 the applicant company brought an action for damages against the Benevento Municipality before the Benevento District Court. It argued that the occupation of its land had been unlawful since it had not been formally authorised. It sought the restitution of the land or, in the alternative, an award of damages to compensate it for the loss of ownership of its property, should it be deemed to have been *de facto* transferred to the Municipality in application of the constructive-expropriation principle.

5.  In a judgment of 27 November 2006, the Benevento District Court found that the construction of the road had involved a wider portion than the one considered in the original project. It further concluded that 4,809 square metres of the applicant’s land had been occupied without a valid expropriation order. Pursuant to a form of constructive expropriation (*occupazione usurpativa*), the applicant company was no longer considered to be the owner of the land, which had become the property of the Municipality. The domestic court further accepted that the applicant company was entitled to damages for the loss of its property. It did not award compensation reflecting the market value, but instead made an award based on the criteria contained in Article 5 *bis* of Legislative Decree no. 333 of 11 July 1992, as amended by Law no. 662 of 1996. The Municipality was ordered to pay 108,141.47, euros (EUR) for the loss of property, as well as costs and expenses.

6.  Upon appeal by the applicant complaint, by a judgment delivered on 10 October 2013, and filed with the local court Registry on 19 December 2013, the Naples Court of Appeal found, on the basis of an independent expert valuation, that only 1,828 square meters of the applicant’s land had been occupied by the Municipality. It further drew on the Constitutional Court’s judgment no. 349 of 24 October 2007, whereby Article 5 *bis* of Legislative Decree no. 333 of 11 July 1992, as amended by Law no. 662 of 1996, had been declared unconstitutional, and held that the applicant company, which had been unlawfully deprived of its property, was entitled to compensation corresponding to the full market value of the land. On this basis, the applicant company was entitled to an award of EUR 109,158 for the dispossession of its property, to be adjusted for inflation from the date of the loss of property. The Court of Appeal considered that the inflation rate calculated by the Italian Institute of Statistics (ISTAT), in the relevant period, also covered statutory interest. Therefore, it did not recognise an additional amount on that account, in order to avoid duplication of compensation. Since the Municipality had already paid EUR 114,372.39 in execution of the first-instance decision, the Court of Appeal concluded that the applicant company had received a sum exceeding its award and ordered that the balance be refunded.

7.  Claiming that it still had a credit against the Municipality amounting to EUR 3,412.86, the applicant requested the revocation of the judgment pursuant to Article 395 no. 4 of the Code of Civil Procedure.

8.  By a judgment delivered on 15 May 2016, the Court of Appeal rejected the application, holding that applicant company should have raised the matter on appeal before the Court of Cassation.

9.  The applicant did not pursue the case before the Court of Cassation and the Court of Appeal’s judgment of 10 October 2013 became final.

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

1. THE COURT’S ASSESSMENT

11.  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).

12.  The Court notes that the applicants were deprived of their 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).

13.  That said, the Naples Court of Appeal acknowledged that the transfer of property to the authorities had not occurred by lawful means and, by drawing on the Constitutional Court’s judgment no. 349 of 24 October 2007, held that the applicant company was entitled to compensation corresponding to the full market value of the property (see paragraph 6 above). The Court is satisfied that that amounts to an acknowledgement by the domestic courts of the infringement complained of.

14.  Following that determination, the Naples Court of Appeal compensated the applicant company for the loss of its property with a sum reflecting the property’s market value, to be increased by an amount reflecting inflation adjustment calculated at a rate that also covered statutory interest (see paragraph 6 above).

15.  Turning to the adequacy of such compensation in terms of the Court’s case-law, the Court firstly notes, as pointed out by the Government, that the applicants did not appeal against the second-instance judgment in accordance with the forms prescribed by national law, thus depriving the domestic courts of the possibility of addressing the issue of the allegedly remaining credit of EUR 3,412.86. It further the considers that the Court of Appeal did not fail to award a sum reflecting statutory interest without offering an explanation but, rather, provided reasoning, which does not appear to be manifestly arbitrary, on why it considered statutory interest to be covered by the sum reflecting inflation adjustment.

16.  The Court further notes that, in a case concerning comparable facts to the one under scrutiny, it found that an award similar, in substance, 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 – like the applicant company – 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). Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion in the present case.

17.  It follows that this complaint 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 1 December 2022.

 Liv Tigerstedt Péter Paczolay
 Deputy Registrar President