FIRST SECTION

DECISION

Application no. 26841/06
Filomena DE MATTEIS and Others
against Italy

The European Court of Human Rights (First Section), sitting on 4 October 2022 as a Committee composed of:

 Péter Paczolay*, President*,
 Raffaele Sabato,
 Davor Derenčinović*, judges*,
and Liv Tigerstedt, *Deputy* *Section Registrar,*

Having regard to:

the application (no. 26841/06) 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 30 June 2006 by the applicants listed in the appended table (“the applicants”) who were represented by Mr G. Romano, a lawyer practising in Rome;

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

the parties’ observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1.  The case concerns the deprivation of the applicants’ land pursuant to the rule on indirect or “constructive” expropriation.

2.  The applicants were the joint owners of a plot of land in Castelpagano.

3.  On an unspecified date the Campania Regional Council authorised the Alto Tammaro Mountain Municipalities Authority (*comunità montana Alto Tammaro* – hereinafter “the Mountain Authority”) to launch a public tender for the construction of a road.

4.  By two orders issued in May 1990 and August 1991, the Castelpagano municipality authorised the occupation of 3254 square metres of the applicants’ land for the construction of the road, with a view to subsequently expropriating the plot of land. On 16 September 1991 the authorities took physical possession of the land and began the construction work, which was completed on 15 December 1991.

5.  On 29 June 1992, the applicants brought an action for damages against the Mountain Authority and the Castelpagano municipality before the Benevento District Court. They argued that the occupation of their land had not been in accordance with the law and that a formal expropriation order had not been issued. They sought an award of damages to compensate them for the loss of ownership of their property, which they contended had been *de facto* transferred to the local authority, and compensation for the period their land had been occupied. They further requested a sum reflecting the loss in value to the remainder of their land.

6.  On an unspecified date the District Court ordered an independent expert valuation of the land. In his report, the expert found that the occupation of the applicants’ land had ceased to be lawful on 16 September 1993. According to the expert, the market value of the land on that date was equal to 26,032,000 Italian lire (ITL), that is ITL 8,000 per square metre.

7.  On an unspecified date the District Court ordered a second expert valuation with a view to calculating the compensation due to the applicants according to the criteria introduced by Law no. 662 of 1996. The compensation due to the applicants under that law was reduced to ITL 19,549,683.

8.  In a judgment of 22 January 2002, the District Court found that the occupation of the applicants’ land by the local authorities, which had been initially authorised, had subsequently become unlawful as of 1993, and that the land had been irreversibly altered by the public works. Accordingly, pursuant to the constructive-ex­propriation principle, the applicants were no longer the owners of the land, which had become the property of the Castelpagano municipality. It then proceeded to make an award based on the second expert evaluation (see paragraph 7 above).

9.  The applicants, the Castelpagano municipality and the Mountain Authority appealed against the first‑instance judgment to the Naples Court of Appeal.

10.  By a judgment of 26 November 2004, the Naples Court of Appeal confirmed the expert’s finding to the effect that the occupation of the applicants’ land had ceased to be lawful on 16 September 1993, and that the latter date had been correctly taken into account by the expert appointed during the course of the proceedings before the Benevento District Court for the purposes of calculating the compensation for the loss of the applicants’ property. It further considered that the market value of the property on that date, as established in the first expert valuation (see paragraph 6 above) was equal to ITL 26,032,000 (13,444 euros (EUR)). This amount reflected the compensation due to the applicants for the dispossession of their property. The court further recognised a sum for the depreciation of the remainder of their land and awarded compensation for the period the land had been lawfully occupied (*indennità di occupazione*). In addition, it awarded EUR 2,582 to compensate the applicants for the loss of plants and EUR 4,131.66 to cover the loss of a garage and a chicken coop that had been present on the land. The entire amount, including all heads of damage, was adjusted for inflation, thus leading to a global award of EUR 34,394.

11.  The applicants did not lodge an appeal with the Court of Cassation against the judgment of the Naples Court of Appeal.

12.  The applicants contended that they had been unlawfully deprived of their land by means of indirect or “constructive” expropriation and that the situation had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention.

1. THE COURT’S ASSESSMENT

13.  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).

14.  That said, the domestic courts found that the occupation of the applicants’ property and the completion of public works on it had not been carried out through lawful means and held that the applicants were entitled to an award of damages. The Court is satisfied that that amounts to an acknowledgement by the domestic courts of the infringement complained of.

15.  The Court also notes that the Naples Court of Appeal awarded a sum reflecting the market value of the property at the time the dispossession took place, as well as a sum to compensate the applicants for the depreciation of the adjoining land, compensation for the period the land had been lawfully occupied, in addition to other sums (see paragraph 10 above). To the extent that applicants are not satisfied with the calculation of the property’s market value, the Court notes, first of all, that the applicants opted not to lodge an appeal before the Court of Cassation on the point, thus depriving the domestic courts of the possibility of addressing the issue. In any event, the Court notes that the Court of Appeal relied on an independent valuation carried out by a court-appointed expert during the domestic proceedings and that the sum calculated by the expert as the property’s market value was based on an assessment of the land and its characteristics.

16.  As to the second argument on the alleged insufficiency of the compensation put forward by the applicants, and namely that the domestic courts had failed to award a sum reflecting the appreciation of the land brought about by the presence of the buildings erected by the State, the Court reiterates that, in *Guiso-Gallisay v. Italy* ((just satisfaction) [GC], no. 58858/00, § 105, 22 December 2009), it decided that, in assessing pecuniary damage in cases analogous to the one under scrutiny, no further regard had to be had to the construction costs of the buildings erected by the State on the land. In the light of the foregoing considerations, the Court is not persuaded by the applicants’ arguments to the effect that they ought to still be considered victims of the violation complained of on such grounds. The Court further considers that the Court of Appeal awarded a sum which largely reflects, in substance, the amount the Court would have awarded in a similar case by following the principles established in its case-law (see *Guiso-Gallisay*, cited above,§§ 105 and 107).

17.  The foregoing considerations are sufficient for the Court to conclude that, in the specific circumstances of the present case, the domestic courts afforded appropriate and sufficient redress for the breach of the Convention sustained. The Court is therefore satisfied that the applicants can no longer be considered victims of such a breach.

18.  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 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 10 November 2022.

 Liv Tigerstedt Péter Paczolay
 Deputy Registrar President

Appendix

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| No. | Applicant’s Name | Year of birth | Nationality | Place of residence |
| 1. | Filomena DE MATTEIS | 1949 | Italian | Benevento |
| 2. | Maria Libera DE MATTEIS | 1947 | Italian | Benevento |
| 3. | Cristina PAGNANO | 1914 | Italian | Benevento |