FIRST SECTION

DECISION

Application no. 19548/06
Emma Antonietta CORLETO
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. 19548/06) 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 26 April 2006 by an Italian national, Ms Emma Antonietta Corleto, who was born in 1916 and lived in Castellammare di Stabia (“the applicant”), who was represented by Mr A. Saggiomo and Mr E. Tagle, lawyers practising in Naples;

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

the parties’ observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

.  The case concerns the applicant’s complaint that she was deprived of her land through the application by the domestic courts of the constructive‑expropriation rule (*accessione invertita* or *occupazione appropriativa*).

.  The applicant was the owner of a plot of land located in the municipality of Marsiconuovo and recorded in the land register as folio no. 39, parcel no 460. The land was used for the cultivation of olive and other trees.

.  According to the 1974 land-use plan (*piano di fabbricazione*), the land was designated as non-constructible public or private green area. With an amendment adopted on 16 April 1984, the land was designated partially for parking and green area and partially for the construction of a road.

.  On 3 November 1984, the municipality approved a project for the creation of a public green area. On 25 March 1985, it authorised the immediate occupation of the applicant’s land, with a view to its subsequent expropriation, and on 2 May 1985 it took physical possession of it. On 28 June 1985, the municipality approved a project for the construction of a road, which was to take place on the same land. By the time of the expiry of the authorisation on 2 May 1994, a part of the applicant’s land measuring 1,176 square metres had been irreversibly altered by the construction works even though the authorities had not issued a formal expropriation order.

.  In 1989, the applicant received 8,628,640 Italian lire (ITL), corresponding to 4,456 euros (EUR), as provisional indemnity.

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

.  By a judgment of 12 November 2002, the Potenza District Court upheld the applicant’s complaints and found that the occupation of the land, which had been initially authorised, had subsequently become unlawful, but that the land had been irreversibly altered following completion of the public works. As a consequence, pursuant to the constructive-expropriation rule, ownership of the land had been transferred to the municipality.

.  The Potenza District Court further accepted that the applicant was entitled to damages for the loss of her property, as well as to compensation for the period of lawful occupation, and ordered an independent expert valuation of the land. The expert stated that, due to its location and characteristics, the land had a *de facto* building potential and determined its value, as at May 1990, in ITL 106,900,752 (EUR 55,210).

.  The Potenza District Court, departing from the expert’s valuation, estimated the land’s market value as non-constructible in the amount of ITL 82,231,800 (EUR 42,469). Nevertheless, pursuant to the criteria set forth by section 5 *bis* of Law 359/1992, it awarded the applicant a lower amount. Both the applicant and the municipality appealed.

.  The Potenza Court of Appeal ordered a new expert valuation. The expert considered that the land, which was legally non-constructible, had to be valued as agricultural and determined both the average agricultural value (*valore agricolo medio*), in the amount of ITL 1,130 per square metre, and the market value based on the land’s specific characteristics and on the value of similar land, amounting to ITL 10,000 per square metre.

.  By judgment of 25 October 2011, the Potenza Court of Appeal stated that compensation must be based on the average agricultural value and, since the applicant had already received a higher amount as provisional compensation, dismissed her claims in their entirety.

.  By judgment of 5 September 2013, the Court of Cassation quashed the decision and remitted the case to the Potenza Court of Appeal in order to determine whether the land was part of a larger homogeneous constructible zone (*zona omogenea edificabile*), in which case it had to be valued as constructible.

.  The Potenza Court of Appeal appointed a third expert, who reached different conclusions regarding two parts of the applicant’s land.

As to the 847 square metres used for the public green area, he noted that – pursuant to the 1984 amendment – they had been designated for parking and green area, but were part of a larger homogeneous constructible zone. As indicated by the Court of Cassation, he therefore determined the land’s value as constructible, in the amount of ITL 103,350 per square metre.

As to the remaining 329 square metres, the expert noted that in 1984 they had been designated for the construction of a road. Nevertheless, he considered that such restraint was clearly expropriation-aimed (*vincolo espropriativo*) and thus had to be disregarded. He therefore determined the land’s value in light of the prior 1974 designation as non-constructible and – recalling the previous expertise (see paragraph 10 above) – he valued it at  ITL 10,000 per square metre.

.  By judgment of 26 July 2017, the Potenza Court of Appeal criticised the expert’s report for relying on a provisional version of the land-use plan adopted in 1984. It held that, according to the final plan, no part of the land fell within the homogeneous constructible zone. Therefore, based on its legal designation, the entirety of the land had to be valued as non-constructible.

Relying on the market value of agricultural land as indicated by the expert, the Court of Appeal determined the land’s value as at 2 May 1994 in ITL 10,000 per square metre, for an overall amount of ITL 11, 760,000 (EUR 6,073.53). Having deducted the amount already paid to the applicant as provisional compensation, it awarded EUR 1,617.21, plus inflation adjustment and statutory interest.

The Court of Appeal further awarded the amount of EUR 3,761.43 as compensation for the period of lawful occupation, plus statutory interest.

.  The applicant complained that she had been unlawfully deprived of her land contrary to Article 1 of Protocol No. 1 to the Convention. She argued that the deprivation of property, in the absence of a formal expropriation order, was unlawful, and that she could not obtain adequate redress for the dispossession of her land.

She also complained, under Article 6 § 1 of the Convention, of the retrospective application of section 5 *bis* of Legislative Decree no. 333 of 1992, as amended by Law no. 662 of 1996.

1. THE COURT’S ASSESSMENT
	* 1. Preliminary issue

.  The Court takes note of the information regarding the death of the applicant and the wish of her heirs, Leonardo Rosco, Mauro Rosco and Alfonso Violante, to continue the proceedings in her stead, as well as of the absence of any objection to that wish on the Government’s part. Therefore, taking into account that they are the next of kin of the deceased applicant and have a legitimate interest in continuing the proceedings, the Court considers that Leonardo Rosco, Mauro Rosco and Alfonso Violante have standing to continue the proceedings.

However, for practical reasons, reference will still be made to the “applicant” throughout the ensuing text.

* + 1. Alleged violation of Article 1 of Protocol No. 1 and Article 6 of the Convention

.  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.

18.  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).

19.  The Court notes that the applicant was deprived of her 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).

20.  The Court further observes that the national courts 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 (see paragraphs 7 and 14 above). The Court is satisfied that this amounts to an acknowledgement by the domestic courts of the infringement complained of.

21.  Following that determination, the Potenza Court of Appeal awarded compensation for the expropriation of the land, as well as compensation for the period of lawful occupation (see paragraph 14 above).

22.  The applicant argued that the sum awarded by the national courts did not constitute an appropriate and sufficient redress, as a consequence of the application of the method of calculation set forth in section 5 *bis* of Legislative Decree no. 333 of 1992. Nevertheless, the Court notes that the Potenza Court of Appeal did not apply that method, but awarded damages corresponding to the market value of the land, based on an expert valuation and in light of its non-constructible character.

.  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. Furthermore, the Court has already found that, in the absence of any concrete expectation of development prior to the expropriation, it is not appropriate to rely solely on the applicant’s view that the land had potential for development (see *Maria Azzopardi v. Malta*, no. 22008/20, §§ 62-63, 9 June 2022).

.  In the present case, before the expropriation proceedings began, the land was designated as non-constructible and was used for agriculture (see paragraphs 2 and 3 above) and the applicant does not argue that she had any legitimate expectation that the land would have become constructible. Furthermore, the Court relied on the valuation of the court-appointed expert, which took into account the land’s specific characteristics and the value of similar land (see paragraphs 10 and 13 above).

.  In these circumstances, the Court accepts that the Potenza Court of Appeal awarded a sum reflecting the property’s market value.

.  In a case similar to the one under scrutiny, the Court found that an award comparable to the one issued by the Potenza 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).

.  In the light of the foregoing considerations, the Court is satisfied that the applicant can no longer be considered a victim of the violation complained of.

.  The applicant also complained, under Article 6 § 1 of the Convention, of the retrospective application of section 5 *bis* of Legislative Decree no. 333 of 1992, as amended by Law no. 662 of 1996. However, as stated above (see paragraph 22), the Potenza Court of Appeal did not apply the contested legislation. Therefore, also in this respect, the applicant cannot be considered a victim of the violation complained of.

.  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