FIRST SECTION

DECISION

Application no. 30747/07  
Mariano FAGONE and Teresa SCURSUNI CANTARELLA  
against Italy

The European Court of Human Rights (First Section), sitting on 4 July 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. 30747/07) 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 9 July 2007 by two Italian nationals, Mr Mariano Fagone and Ms Teresa Scursuni Cantarella, who were born in 1939 and 1940 respectively and live in Militello Val di Catania (“the applicants”), and who were represented by Mr S. Formaggio and A. Anfuso Alberghina, lawyers practising in Caltagirone;

the decision to give notice of the complaints raised under Article 1 of Protocol No. 1 to the Convention to the Italian Government (“the Government”), represented by their Agent, Mr L. D’Ascia, and to declare inadmissible the remainder of the application;

the parties’ observations;

the decision to reject the Government’s objection to the examination of the application by a Committee;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1.  The case concerns the applicants’ complaint that they were deprived of their land through the application of the constructive-expropriation rule (“*accessione invertita*” or “*occupazione acquisitiva*”) by the domestic courts.

.  On 20 October 1967, a project for the construction of an aqueduct in the municipality of Militello in Val di Catania was approved. Its execution was subsequently authorised on 5 January 1968.

.  The project entailed the occupation of a plot of land, recorded at folio no. 29, parcels nos. 120 and 155, which at the time was owned by G.S., A.T., G.B and R.S. (“the initial owners”).

.  On 23 January 1971, the municipality and the initial owners reached an agreement for the voluntary transfer of the land. The agreement authorised the municipality to occupy the land and provided that the transfer of property would occur at the moment of its physical occupation. The same agreement also provided that, in the event that the initial owners were to transfer the property of the land, they were obliged to transfer the rights and obligations set forth in the agreement. The parties also agreed on the compensation, amounting to 1,707,000 Italian lire (ITL), which was paid to the initial owners on 10 July 1973.

.  Meanwhile, on 13 July 1971, the municipality decided to request an authorisation for the urgent occupation of several plots of land, including the one belonging to the initial owners. On 18 December 1971, the prefect of Catania ordered the execution of the expropriation plan.

.   Neither a formal authorisation to occupy the land, nor a formal expropriation order, was ever adopted and the voluntary transfer of ownership was not recorded in the land register.

.  On 30 October 1979, the applicants purchased the plot of land from the initial owners.

.  On 13 September 1983, the applicants obtained a building permit for the construction of a warehouse on the land. On 5 November 1983, they obtained an authorisation to build from the local civil engineering office. According to their statements, only when carrying out the construction work, they discovered that part of the land had been occupied by the municipality. It emerges from the domestic decisions that a well, a fence and two buildings had been erected by the municipality on adjoining land and partially on the land purchased by the applicants.

.  In 1984, the applicants brought an action against the municipality, arguing that the occupation of the land was unlawful and seeking either its restitution, following the removal of the public works or, in the alternative, compensation. With its statement of defence, the municipality filed complaints against the initial owners, who therefore joined the proceedings. The applicants thus extended their request for damages also to the initial owners.

.  On 6 November 2002, the Caltagirone District Court found that the applicants could not have been aware of an expropriation having taken place when they purchased the land, as no formal expropriation order had been issued with respect to the land. As a consequence, it held that the applicants were entitled to compensation 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. Both the municipality and the applicants filed an appeal.

11.  By a judgment of 13 April 2006, the Catania Court of Appeal quashed the first instance judgment. It considered that the occupation of the land had initially been lawful but, as a formal expropriation order had not been issued, it had subsequently become unlawful. It found that the public works had been completed, and the property had been transferred to the municipality, at the latest in 1973. The court concluded that, as the applicants’ complaints were subject to a five-year limitation period which started to run from the date of completion of the public works, their complaints were time-barred. Concerning the complaint brought by the applicants against the initial owners, the Court of Appeal noted that such complaint had not been included in the applicants’ final submissions before the District Court and, as such, had to be considered as waived.

.  The judgment was served to the applicants on 21 November 2006 and became final on 20 January 2007.

.  The applicants complained that they had been unlawfully deprived of their land on account of the application, by the domestic courts, of the constructive-expropriation rule. In particular, they complained that the unlawful character of the expropriation proceedings, combined with the application of Article 5 *bis* of Legislative Decree no. 333 of 11 July 1992 for the determination of damages and with the application of the limitation period, resulted in a breach of Article 1 of Protocol No. 1 to the Convention.

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

.  The Court takes note of the information regarding the death of the applicant Mariano Fagone and the wish of his heirs to continue the proceedings in his stead, as well as of the absence of an objection on the Government’s part. Therefore, the Court considers that Salvatore Fagone, Giovanni Fagone, Sebastiano Fagone and Maurizio Fagone have standing to continue the proceedings on behalf of the deceased.

.  However, for practical reasons, Mr Mariano Fagone will continue to be called “the applicant” in this judgment.

* + 1. Scope of the case

.  The Court notes that, with the additional observations filed on 23 April 2019, the applicants complained, under Article 1 of Protocol No. 1 to the Convention, of the municipality’s failure to record the prior transfer of the land in the land register and of the fact that the same municipality subsequently granted them a building permit.

.  The Court finds that these complaints are not an elaboration of the applicants’ original complaint to the Court, concerning the unlawful deprivation of land on account of the application of the constructive‑expropriation rule (see paragraph 13 above), but completely new complaints. Accordingly, they have been lodged outside the six-month time‑limit (see *Grosam v. the Czech Republic* [GC], no. 19750/13, §§ 91, 95‑96 and 98, 23 June 2022).

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

.  The Government objected to the admissibility of the application on grounds of lack of victim status. They pointed out that the applicants complained of an unlawful deprivation of what they referred to as their land, whereas the land had already been transferred from the initial owners to the municipality when the applicants purchased it. As a consequence, in their view, the applicants never acquired the plot of land at issue. Furthermore, the Government argued that the applicants should have directed their complaints against the initial owners, who were obliged – according to the 1971 agreement – to inform them of the agreement they had entered into with the municipality (see paragraph 4 above).

.  The applicants did not make any submissions concerning their ownership of the land in reply to the Government’s objection. Rather, they insisted on the unlawful nature of the expropriation, pointing out that the agreement between the initial owners and the municipality was invalid and that no expropriation decree had ever been adopted.

.  According to the Court’s established case-law, the word “victim”, as used in Article 34 of the Convention, denotes the person directly affected by the act or omission in issue (see, among other authorities, *Brumărescu v. Romania* [GC], no. 28342/95, § 50, ECHR 1999-VII, and *J.M. v. the United Kingdom*, no. 37060/06, § 27, 28 September 2010).

.  The Court further recalls that an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his “possessions” within the meaning of this provision. Consequently, a person who complains of a violation of his or her right under Article 1 of Protocol No. 1 must first show to be the owner of said right (see *Arsimikov and Arsemikov v. Russia*, no. 41890/12, § 46, 9 June 2020; *Novikov v. Russia*, no. 35989/02, § 33, 18 June 2009; and *Stephens v. Cyprus, Turkey and the United Nations* (dec.), no. 45267/06, 11 December 2008).

.  In the present case, the Court recalls that the applicants’ complaint relates to an allegedly unlawful deprivation of property (see paragraph 13 above). The Court must therefore address the Government’s submissions regarding ownership of that land and determine whether the applicants have demonstrated that they were its owners.

23.  The agreement of 23 January 1971 provided that the property of the land was transferred to the municipality from the moment of the occupation (see paragraph 4 above). Based on the documents in the Court’s possession, the agreement has never been invalidated by domestic courts and has been executed. Furthermore, the national authorities’ deliberations, the occupation of the land and the execution of the public works all took place before the applicants’ purchase. Although the municipality had raised these arguments before the Court of Appeal, the latter did not explicitly address the issue of whether the applicants had ever acquired the property of the land. The Court considers that these circumstances are such as to cast doubts about whether the applicants ever acquired ownership of the land.

.  Additionally, the Court notes that in their observations the applicants only contested the validity of the 1971 agreement (see paragraph 19 above), a matter which is for the national courts to assess. They did not, however, provide any argument in response to the Government’s allegation that they had never acquired the ownership of the contested land.

.  In light of these considerations, the Court considers that the applicants have not shown that they were the owners of the property at the time of its expropriation. Taking into account that the applicants’ complaints concern exclusively the alleged deprivation of their land, the Court is not persuaded, on the basis of the material available to it, that the applicants can claim to be victims of the violation complained of (see, *mutatis mutandis*, *Falcon Privat Bank A.G. v. Italy* (dec.), no. 48931/09, § 69, 23 June 2015, and *Stephens,* cited above).

.  The application is therefore incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 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 7 September 2023.

Liv Tigerstedt Péter Paczolay  
 Deputy Registrar President