EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 39828/07
Nicola MASELLI
against Italy

The European Court of Human Rights (First Section), sitting on 11 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. 39828/07) 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 31 August 2007 by an Italian national, Mr Nicola Maselli, who was born in 1938 and lives in Victoria ("the applicant") who was represented by Mr L. Crisci and Mr F. Crisci, lawyers practising in Benevento;

the decision to give notice of the application to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia, 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's land through the application by the domestic courts of the constructive-expropriation rule (*accessione invertita* or *occupazione appropriativa*).

2. The applicant and his father were the owners of a plot of land located in the municipality of Castelpagano and recorded in the land register as folio no. 30, parcels nos. 21, 22 and 298.

3. On 6 September 1989, the Alto Tammaro Mountain Municipalities Authority (*comunità montana Alto Tammaro*) approved a project for the

construction of a road and, on 23 October 1989, the company entrusted with the construction works took physical possession of 1,763 square metres of the applicant's land. On 10 May 1990, the Castelpagano municipality issued an order authorising the occupation of the land with a view to its subsequent expropriation.

4. The public works were completed in December 1991 and on 27 June 1995 the municipality issued a formal expropriation order.

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

6. By a judgment of 25 May 2007, the Benevento District Court found that the occupation of the applicant's land had been unlawful *ab initio*, but that the land had been irreversibly altered following the completion of the public works. As a consequence, pursuant to the constructive-expropriation rule, the applicant was no longer the owner of the land.

7. The Benevento District Court further accepted that the applicant was entitled to damages for the loss of his property and ordered an independent expert valuation of the land. The expert stated that the expropriated land was subject to a hydrogeological restraint and thus to an absolute prohibition on building. He further considered that the market value of neighbouring land ranged between 5,405 and 7,657 Italian lire (ITL) per square metre. Taking into account the presence of a small vineyard, the expert valued the land as of October 1989 at ITL 6,756 per square metre.

8. The Benevento District Court considered that, in light of the absolute prohibition on building, the market value had to be determined by using as a starting point the low end of the range indicated by the court-appointed expert, in the amount of ITL 5,850 per square metre, corresponding to 3.02 euros (EUR). On this basis, it awarded compensation amounting to EUR 5,326, in addition to EUR 15,493.71 as compensation for the depreciation of the surrounding land, plus inflation adjustment and statutory interest on those sums.

9. The applicant did not lodge an appeal against this judgment and on 28 April 2008 the Mountain Municipalities Authority paid him the amount of EUR 80,235.16.

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

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 Government objected to the admissibility of the application on the ground that the applicant was no longer a victim of the violation complained of since he had obtained reparation at the national level.

13. The Court notes that the applicant was deprived of his 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. The Court further observes that the Benevento District Court acknowledged that the deprivation of property had been unlawful and held that the applicant was entitled to compensation. The Court is satisfied that this amounts to an acknowledgement by the domestic courts of the infringement complained of.

15. Following that determination, the Benevento District Court awarded a sum that it considered equal to the market value of the property (see paragraph 8 above).

16. As to the adequacy of such compensation, the applicant argued that the determination of the market value carried out by the Benevento District Court was incorrect, as it did not take into account the fact that, according to the urban development plan in force at the time, the land was constructible.

17. The Court notes that the Benevento District Court stated, on the basis of the expertise, that the land was subject to a hydrogeological restraint and thus to an absolute prohibition on building (see paragraph 7 above) and, as pointed out by the Government, the applicant did not appeal against that judgment. Furthermore the Court observes that the Benevento District Court provided specific reasoning, which does not appear to be manifestly arbitrary, on why it chose to determine the expropriation compensation at the low end of the range indicated by the expert (see, in contrast, and *mutatis mutandis*, *Kutlu and Others v. Turkey*, no. 51861/11, §§ 72-74, 13 December 2016). In these circumstances, and having regard to the margin of appreciation afforded to national authorities in such matters, the Court is prepared to accept that the Benevento District Court awarded a sum reflecting the property's market value.

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

19. Nevertheless, in the present case the applicant also argued that he could not obtain the restitution of the land. In this respect, the Court notes that, according to the national courts, the land had been irreversibly altered (see paragraph 6 above) and, as a consequence, no *restitutio in integrum* was possible. In these circumstances, the Court considers that the granting of compensation corresponding to the full value of the land may constitute an adequate form of redress (see *Guiso-Gallisay*, cited above, § 96).

20. In the light of the foregoing considerations, the Court is not persuaded by the applicant's arguments to the effect that the compensation awarded to him did not constitute appropriate and sufficient redress. The Court is therefore satisfied that the applicant can no longer be considered a victim of the violation complained of.

21. 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 7 September 2023.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President