



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

FIRST SECTION

CASE OF MATTEO v. ITALIE

(Application no. 24888/03)

JUDGMENT

STRASBOURG

26 March 2020

This judgment is final but it may be subject to editorial revision.

In the case of Matteo v. Italie,

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

Tim Eicke, *President*,

Jovan Ilievski,

Raffaele Sabato, *judges*,

and Renata Degener, *Deputy Section Registrar*,

Having regard to:

the application 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”) by an Italian national, Mrs Maria Cristina Matteo (“the applicant”), on 3 February 2000;

the decision to give notice of the application to the Italian Government (“the Government”);

the parties’ observations;

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

Having deliberated in private on 3 March 2020,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

The case concerns the expropriation of the applicant’s land and the length of the related domestic proceedings.

THE FACTS

1. The applicant was born in 1936 and lives in Castelpagano. The applicant was represented by Mr L. Crisci, a lawyer practising in Benevento.

2. The Italian Government (“the Government”) were represented by their former Agent, Ms E. Spatafora, and their former co-Agent, Ms P. Accardo.

3. The applicant was the owner of a plot of land in Castelpagano. The land in issue was recorded in the land register as Folio no. 30, Parcel no. 365.

4. On 6 September 1989 the Alto Tammaro Mountain Municipalities Authority (*comunità montana Alto Tammaro* – hereinafter “the Mountain Authority”) approved a plan to construct a road on the applicant’s land.

5. On 23 October 1989, the company T., which had been awarded the construction project by the Mountain Authority, took physical possession of 708 square metres of the applicant’s land, having been given authorisation to do so by the applicant’s husband.

6. On 10 May 1990 the Castelpagano Municipality issued an order formally authorising the Mountain Authority to occupy the applicant's land in order to begin the construction of the road.

7. On 14 February 1992, the Mountain Authority paid the applicant an advance on the compensation payable for the expropriation in the amount of 1,260,000 Italian lire (ITL).

8. On 27 June 1995 the Castelpagano Municipality issued an expropriation order in respect of the portion of the land that had been materially occupied (see paragraph 5 above).

I. PROCEEDINGS LODGED IN CONNECTION WITH THE EXPROPRIATION

9. On 14 September 1992 the applicant brought an action for damages against the Mountain Authority before the Benevento District Court. She argued that the occupation of her land had not been in accordance with the law on account of the fact that it had begun before the order formally authorising it had been issued (see paragraphs 5 and 6 above). She sought an award of damages to compensate her for the loss of ownership of her property, which she contended had been *de facto* transferred to the local authority. She further requested a sum for the loss in value to the remainder her land as well as for the destruction of the crops that had been growing on it.

10. In a judgment of 22 December 2004, filed with the registry on 10 February 2005, the Benevento District Court found that the compulsory-purchase order had not been issued in a timely manner. It found that the order ought to have been issued within a five-year period starting from the beginning of the occupation of the applicant's land, which the court identified as coinciding with the date the authorities took physical possession of the land on 23 October 1989 (see paragraph 5 above). Accordingly, pursuant to the constructive-expropriation principle (*occupazione appropriativa*), the applicants were no longer the owners of the land, which had become the property of the Mountain Authority. The court further accepted that the applicant was entitled to damages for the loss of her property but dismissed her other claims on account of a failure by the applicant to provide adequate supporting evidence.

11. On 25 April 2005, the Mountain Authority appealed against the first-instance judgment to the Naples Court of Appeal.

12. By a judgment of 28 March 2008, filed with the registry on 28 May 2008, the Naples Court of Appeal overturned the Benevento District Court's judgment and held that the expropriation of the applicant's land had been carried out in accordance with the law. The Court of Appeal found that the District Court had erred in considering that the formal expropriation order had been issued in an untimely fashion, a determination which had led the

latter court conclude that the transfer of the property had occurred by means of the application of the constructive-expropriation principle. At the outset, the court made a finding to the effect that the applicant had failed to provide evidence that the duration of the period of lawful occupation in the case at hand had been set for a time-frame inferior to the five-year period prescribed by the relevant legislation in force at the time. The appellate court went on to note that, as it considered the occupation to have commenced on the date the authorities first took physical possession of the land in on 22 October 1989 (see paragraph 5 above) – which was the date referred to by the first-instance court (see paragraph 10 above) – the period of lawful occupation of the land should have expired on 23 October 1994. However, the court pointed out that, on the basis of the legislation applicable at the time, five-year lawful occupation periods were to be considered automatically extended for a further period of two years. It followed that the deadline for the issuing of an expropriation order had been extended until 23 October 1996. Accordingly, the court concluded that the expropriation order had been issued in a timely fashion, that is to say within the period of lawful occupation.

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

II. “PINTO” PROCEEDINGS

14. On 17 April 2002 the applicant lodged an application with the Rome Court of Appeal under Law no. 89 of 24 March 2001, known as the “Pinto” Act, complaining of the excessive length of the above-described proceedings. The applicant asked the court to rule that there had been a breach of Article 6 § 1 of the Convention and to order the Italian Government to pay compensation for the non-pecuniary damage sustained, which he assessed as being 18,550 EUR.

15. In a decision of 17 March 2003, filed with the registry on 17 April 2003, the Court of Appeal found that the reasonable time for proceedings had been exceeded. It awarded the applicant EUR 1,400 in compensation for non-pecuniary damage and EUR 500 for costs and expenses incurred in connection with the domestic proceedings and EUR 700 for costs and expenses incurred in connection with the proceedings before the European Court of Human Rights.

16. The decision of the Rome Court of Appeal was served on the local authorities on 26 May 2003 and became final 26 July 2003.

RELEVANT LEGAL FRAMEWORK

17. The domestic law and practice concerning constructive expropriation are to be found in *Guiso-Gallisay v. Italy* ((just satisfaction) [GC], no. 58858/00, §§ 18-48, 22 December 2009).

18. The domestic law and practice concerning Law no. 89 of 24 March 2001, known as the “Pinto Act”, are set out in the *Cocchiarella v. Italy* judgment ([GC], no. 64886/01, §§ 23-31, ECHR 2006-V).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

19. The applicant complained that she had been unlawfully deprived of her land on account of the application, by the domestic courts, of the constructive-expropriation principle (*occupazione acquisitiva*, *occupazione appropriativa* or *accessione invertita*). She submitted that this had breached her rights under Article 1 of Protocol No. 1 to the Convention, which provides:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

20. The Government contested that argument.

Admissibility

1. The parties’ submissions

(a) The Government

21. The Government argued that the complaint was premature as the case was still being examined by the domestic courts. They noted that an appeal had been lodged against the judgment of the Benevento District Court and the proceedings were ongoing and that the appellate court had been called upon to review the question of whether or not the expropriation had been carried out in accordance with the law, a determination upon which a finding of a violation by the Court depends. Should the Court of Appeal decide that the expropriation had been lawful, there would be no grounds on which to find a violation of the Convention.

22. In the event that the Court decided to examine the case before the conclusion of the domestic proceedings, the Government argued that the expropriation had been lawful under domestic law and carried out in conformity with the Convention, as the expropriation order, according to the

local authority, had been issued in a timely manner. They thus invited the Court to declare the complaint inadmissible as manifestly ill-founded.

If, on the contrary, the Court were to find that the expropriation had not been carried out in accordance with the law, they acknowledged the Court's well-established case-law concerning the application of the constructive-expropriation principle, referred to their observations lodged in connection with numerous cases on this subject matter, and left the matter to the Court's discretion.

(b) The applicant

23. The applicant reiterated that the first-instance court had confirmed that ownership of her property had been transferred to the local authority via the application of the constructive-expropriation principle. She submitted that the local authority had been able to profit, in this manner, from its own unlawful conduct. In this regard, she made lengthy observations to the effect that the constructive-expropriation principle was incompatible with the principle of lawfulness and counter to Article 1 of Protocol No. 1. She highlighted that, despite the unlawfulness of the property deprivation, she had not been able to obtain the return of her land but only an award of damages. This too, in her view, had constituted a breach of Article 1 of Protocol No. 1.

2. The Court's assessment

24. The Court takes note of the Government's objection to the effect that the complaint was premature. However, in light of its conclusions in paragraph 25 below, the Court considers that it is not necessary to address that objection.

25. The Court reiterates at the outset that the applicant's complaint hinged on the contention that she had been unlawfully deprived of her land on account of the application of the constructive-expropriation principle to her case. In support of her arguments, the applicant relied on the judgment of the Benevento District Court, which had made a finding to this effect (see paragraph 10 above). However, the Court notes that the Benevento District Court judgment had been appealed against the Naples Court of Appeal and proceedings were pending before the latter court on 23 May 2006 when the respondent Government were notified of the case, when the Government submitted their first and second sets of observations on 21 September 2006 and 3 May 2007 respectively, and when the applicant submitted her observations on 19 March 2007. The Court notes that the proceedings came to a conclusion on 28 May 2008, with the judgment of the Naples Court of Appeal. In that judgment, the court overturned the first-instance judgment and found that the transfer of ownership at issue had not occurred by means of constructive expropriation and had been, on the contrary, carried out in

accordance with the law (see paragraph 12 above). The Court further points out that, as the applicant did not lodge an appeal with the Court of Cassation, the Court of Appeal judgment was the final determination on the issue of whether or not the deprivation of the applicant's property had been lawful. Bearing in mind that it is primarily for the domestic courts to interpret the relevant domestic law, and that the decision of the Court of Appeal, based on the full knowledge of the relevant facts, does not appear arbitrary or manifestly unreasonable, the Court sees no reason to call its findings into question.

26. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

27. The applicant submitted that the proceedings she had instituted seeking compensation for the interference with her property rights had failed to comply with the "reasonable time" requirement set forth in Article 6 § 1 of the Convention, and that the amount awarded by the Court of Appeal had been insufficient to redress the violation. The relevant part of that Article reads as follows:

"1. In the determination of his civil rights and obligations "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

28. The Government contested that argument.

A. Admissibility

29. The Government submitted that the applicant was no longer a "victim" of a violation of Article 6 § 1 because she had obtained from the Court of Appeal a finding of a violation and an amount which should be regarded as adequate.

30. The applicant considered that she was still a "victim" of the violation complained of in that the amount that had been awarded by the Rome Court of Appeal had been insufficient.

31. In accordance with its well-established case-law, the Court is required to verify that there has been an acknowledgment, at least in substance, by the authorities of a violation of a right protected by the Convention and whether the redress can be considered as appropriate and sufficient (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 84, ECHR 2006-V).

32. The first condition, which is the finding of a violation by the national authorities, is not in issue since the Rome Court of Appeal expressly acknowledged that a violation had occurred.

33. With regard to the second condition, the Court has indicated a number of characteristics that a domestic remedy must have in order to afford appropriate and sufficient redress (see *Cocchiarella v. Italy* [GC], cited above, §§ 86-107). In particular, in assessing the amount of compensation awarded by the court of appeal, the Court considers, on the basis of the material in its possession, what it would have awarded in the same position for the period taken into account by the domestic court.

34. In the present case, in accordance with the criteria established in its case-law, the Court considers that the redress was insufficient (see *Delle Cave and Corrado v. Italy*, no. 14626/03, § 26-31, 5 June 2007, and *Cocchiarella v. Italy* [GC], cited above, §§ 69-98).

35. In the light of the foregoing, the applicant can still claim to be a “victim” within the meaning of Article 34 and the Government’s preliminary objection regarding her lack of victim status must therefore be rejected.

36. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

37. The Court notes that in the instant case the domestic proceedings were lodged on 12 September 1992 and, on the date the Rome Court of Appeal issued its decision on 17 March 2003, had lasted about nine years and six months for one level of jurisdiction.

38. The Court has previously examined cases raising issues similar to those in the present case and found a violation of Article 6 § 1 in that the length of the proceedings complained of did not satisfy the “reasonable-time” requirement (see, for example, *Cocchiarella v. Italy*, cited above). The Court has examined the present case and finds that the Government have failed to advance any facts or arguments which would lead to any different conclusion in this instance.

39. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Non –pecuniary damage

41. The applicant claimed 50,000 euros (EUR) in respect of the non-pecuniary damage suffered as a consequence of the length of the domestic proceedings.

42. The Government argued that the applicant had already obtained compensation at the national level for non-pecuniary damage, and for this reason additional compensation by the Court would not be warranted.

43. Having regard to the characteristics of the domestic remedy chosen by Italy and the fact that, notwithstanding this national remedy, the Court has found a violation, it considers, ruling on an equitable basis, that the applicant should be awarded EUR 3,640.

B. Costs and expenses

44. With regard to the costs incurred in the proceedings before the Court, the applicant submitted a bill of costs and expenses but left the sum to be awarded to the Court's discretion.

45. The Government invited the Court not to make an award in connection with costs and expenses.

46. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and were reasonable as to quantum (see *Can and Others v. Turkey*, no. 29189/02, § 22, 24 January 2008).

47. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award, also bearing in mind the sum already awarded by the domestic courts (see paragraph 15 above), EUR 300 for the proceedings before the Court in connection with the length of proceedings complaint.

C. Default interest

48. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 6 § 1 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*

- (a) that the respondent State is to pay the applicant, within three months, the following amounts:
 - (i) EUR 3,640 (three thousand six hundred and forty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 300 (three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 26 March 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Deputy Registrar

Tim Eicke
President