

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

FIRST SECTION

CASE OF CRESTACCI v. ITALY

(Application no. 37894/04)

JUDGMENT

STRASBOURG

6 April 2023

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



In the case of Crestacci v. Italy,

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

Péter Paczolay*, President*,
Alena Poláčková,
Raffaele Sabato*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 37894/04) 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 28 September 2004 by an Italian national, Mr Luigi Crestacci, born in 1935 and living in Livorno ("the applicant") who was represented by Mr R. Righi, a lawyer practising in Florence;

the decision to give notice of the application to the Italian Government ("the Government"), represented by their former co-Agent, Mr N. Lettieri;

the parties' observations;

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

Having deliberated in private on 6 April 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the expropriation of the applicant's land and the subsequent award of compensation based on the average agricultural value of the land.

2. The applicant was the owner of a plot of land of 32,000 square meters located in the municipality of Collesalvetti and recorded in the land register as folio no. 27, parcels nos. 1135 and 1136. According to the 1976 general land-use plan (*piano regolatore generale*), the land was designated for agricultural use; subsequently, at an unspecified date, the designation of the land was altered to public green area (*verde pubblico*).

3. On 14 November 1989, the municipality approved a project for the creation of a parc with public facilities (*verde pubblico attrezzato*). On 29 November 1989, it authorised the urgent occupation of the applicant's land and subsequently offered payment of compensation in the amount of 31,200,000 Italian lire (ITL), which the applicant refused. On 11 August 1993, the municipality issued the expropriation order.

4. The applicant instituted judicial proceedings claiming that the compensation offered by the municipality was insufficient and arguing that it should be based on the *de facto* building potential of the land (*vocazione edificatoria*).

5. The expert appointed by the Florence Court of Appeal considered that the applicant's land had a *de facto* building potential in light of the use and characteristics of the surrounding area and, on this basis, determined its market value to ITL 2,036,000,000.

6. By a decision dated 26 July 2000, the Florence Court of Appeal stated that the determination of the market value of the land should be based on the legal and factual characteristics of the land, in light of its designation before the expropriation. The Court of Appeal therefore considered that, according to the general land-use plan in force before the beginning of the expropriation procedure, the land was designated as a public green area and thus subject to a building restraint (*vincolo conformativo*).

7. On this ground the Court of Appeal determined, pursuant to section 5 *bis* of Law no. 359/1992, that the criteria for agricultural land were applicable and thus expropriation compensation should be based on the average agricultural value (*valore agricolo medio*). As a consequence, the compensation of ITL 31,200,000 (approximately EUR 16,100) was confirmed.

8. The applicant appealed to the Court of Cassation which, on 1 April 2004, dismissed the appeal.

9. The applicant complained to the Court, under Article 1 of Protocol No. 1 to the Convention, of the disproportionate interference with his property rights on account of the amount of compensation received, which was allegedly inadequate.

THE COURT'S ASSESSMENT

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

11. The Court refers to its judgment in the case of *Preite v. Italy* (no. 28976/05, §§ 18-29 and 42-53, 17 November 2015) for a summary of the relevant domestic law and practice as well as the relevant general principles applicable in the present case.

12. The Court notes that the applicant has been deprived of his property in accordance with national law and that the expropriation pursued a legitimate aim in the public interest. However, the application concerns a distinct expropriation, which was neither carried out as part of a process of economic, social or political reform nor linked to any other specific circumstances. Accordingly, the Court does not discern any legitimate aim "in the public interest" capable of justifying the payment of compensation less than the market value.

13. In the present case, the expropriation compensation awarded to the applicant was calculated on the basis of the criteria laid down in section 5 *bis* of Law no. 359/1992 for non-constructible land, and thus according to the average agricultural value of the land (see paragraph 7 above).

14. The applicant complained that the compensation was calculated without taking into account the real characteristics of the land.

15. The Court reiterates that it is not its task to resolve disputes over the legal classification of the land or the estimation of its value, unless it is shown that the expropriation indemnity bears no reasonable relationship with the market value of the land (see *Preite*, cited above, § 50).

16. In this respect, the Court is prepared to accept that the estimation of the market value takes into account the legal designation of the land before the expropriation. In fact, it 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, and not on the basis of its later designation. 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).

17. In the present case, before the expropriation proceedings begun, the land was designated initially as agricultural and then as a public green area (see paragraph 2 above). The latter designation was qualified as a building restraint (*vincolo conformativo*) rather than an expropriation-aimed restraint (*vincolo espropriativo*; in this regard, see *Campanile and Others v. Italy* (dec.), no. 32635/05, § 29, 15 January 2013). Additionally, the applicant had no concrete legitimate expectation that, in the absence of the expropriation proceedings, the land would have become constructible. Thus, in the Court's view, the estimation of the land as non-constructible was not without a reasonable foundation.

18. Nevertheless, the Court notes that, in the present case, the national authorities did not carry out an estimation of the market value of the land, taking into account the specific characteristics of the property, but awarded compensation based on the average agricultural value (see paragraph 7 above).

19. In this respect, the applicant argued that the market value of the land, even assuming it was non-constructible, was significantly higher than the average agricultural value and, according to an *ex parte* expert valuation, amounted to EUR 446,218.76. As to the Government, they recognised that, in principle, compensation should not have been based on the average agricultural value, but argued that in the present case the actual market value of the land was not significantly higher. To this end, they relied on a report issued by the Livorno tax authority which stated that the land in question was marshland and required technical processes for it to be reclaimed and made

usable and determined the compensation due to the applicant in the amount of ITL 32,000,000 (approximately EUR 16,500).

20. The Court is not convinced by the Government's argument. It notes that the estimation carried out by the Livorno tax authority applied the average agricultural value on the basis of the law in force at the relevant time. While it did consider that the land in question was marshland and uncultivated, it only did so in order to refer to the average value of the prevailing crops in the area rather than the crops that were actually farmed. Therefore, the tax authority did not conduct any assessment of the land's actual market value.

21. The Court has already found that an award of compensation based on the average agricultural value bears no reasonable relationship with the market value of the land, as it does not take into account its real characteristics (*Preite*, cited above, § 51). In the light of the above considerations, the Court sees no reason to depart from its previous case-law.

22. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. The applicant claimed 1,401,044.27 euros (EUR), plus statutory interest from August 2003, in respect of pecuniary damage. He further claimed about EUR 10,000 in respect of costs and expenses incurred before the domestic courts and the Court.

24. The Government contested the claims as excessive.

25. The Court has found a violation of Article 1 of Protocol No. 1 on account of the inadequate compensation for the expropriation of the applicant's land, in light of an estimation based on the average agricultural value instead of the actual market value of the land.

26. The relevant criteria for the calculation of pecuniary damage in such cases have been set forth in *Scordino (no. 1)* ([GC], no. 36813/97, § 258, ECHR 2006-V) and *Preite* (cited above, §§ 68-72). In particular, the Court relied on the market value of the property at the time of the expropriation as stated in the court-appointed expert's reports drawn up during domestic proceedings.

27. However, in the present case the expert's valuation is based on the land's potential for development. In light of its conclusions set out above (see paragraphs 16 and 17), the Court does not consider it appropriate to rely on that report.

28. The Court takes into account the calculation provided by the applicant and the Government's objections and, deducting the amount awarded at the domestic level, finds it appropriate to rule on an equitable basis and to award EUR 150,000 as pecuniary damage.

29. With regard to costs and expenses for the proceedings before the Court, the applicant has not substantiated his claim with any relevant supporting documents. The Court therefore rejects the claim on that account. However, it awards EUR 5,000 for costs and expenses in the domestic proceedings, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 150,000 (one hundred fifty thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 5,000 (five thousand 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President