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

Press Release
issued by the Registrar of the Court

ECHR 090 (2026)
09.04.2026

Restrictions on poplar harvesting in a nature reserve in Italy struck a fair balance between environmental protection and property rights

In its decision in the case of Vendrame and Others v. Italy (application no. 47565/22) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The application concerned the imposition of land-use restrictions on private plots of land belonging to two of the applicants due to the incorporation of the land into a newly instituted nature reserve. The land was being used by the other applicant, an agricultural company, for poplar harvesting. In October 2011, a request by the company for authorisation from the municipality of Codroipo to replant a poplar grove on the land was refused for incompatibility with the land-use restrictions.

The applicants lodged proceedings challenging the incorporation of the land in the nature reserve, arguing, amongst other things, that that they had not been provided with compensation for such restrictions. The domestic courts dismissed their action, noting that the restrictions did not give rise to a right to compensation, as they had not been imposed with a view to expropriating the land. However, other allowances were available instead.

Paying particular regard to the State's leeway in the context of environmental protection policies, the Court considered that a fair balance had been struck between the general interest and the applicants' right to decide how to use their land. It rejected the complaint under Article 1 of Protocol No. 1 to the Convention as manifestly ill-founded.

Principal facts

The applicants are two Italian nationals F. and P. Vendrame, born in 1961 and 1967 respectively, and an Italian company, Società Agricola F.lli Vendrame e C. s.s., registered in 2005 and based in Passariano di Codroipo. F. and P. Vendrame are the company's managing partners. They are the owners of plots of land in Codroipo, where natural springs (*risorgive*) existed and on which the applicant company carried out forestry activities, namely poplar harvesting. The land had been used for that purpose since 1994. Each planting and replanting of poplar groves required prior authorisation from the local authorities, so that the compatibility of that with urban-planning regulations could be assessed.

In June 2007, the region, following a request from the local municipality, established a protected natural area (*biotopo*), in Codroipo in order to protect the natural and semi-natural habitats and plant species there, in accordance with the European network of nature protection areas established under the EU Habitats Directive. The "Risorgive di Codroipo" protected area was established by decree which lay down certain rules and limitations on activities that could be carried out there.

In November 2011 a request by the applicant company for authorisation from the municipality to replant a poplar grove was refused, since the new classification of the land had been incorporated into the general municipal land-use plan (*piano regolatore generale*) in February 2011, and the replanting of poplar groves on the site had been forbidden.

The applicants argued that they had only learned of the existence of the protected natural area and the resulting restrictions on their property through that rejection notice. Challenging the measures before the Friuli-Venezia Giulia Regional Administrative Court, they complained, amongst other things, about the lack of monetary payments for the restrictions, which, in their view, amounted to a form of expropriation. That claim was dismissed in June 2014 as the restrictions fell within the regulatory power of the public authorities and did not require the payment of compensation since

they were limitations on the ways in which the property could be used, but did not entail the definitive deprivation/expropriation of the property.

The applicants appealed to the *Consiglio di Stato*, which dismissed the appeal, finding it both inadmissible and unfounded. First, the ground of appeal that there had been a violation of international law was a complaint that had not been raised before the lower courts. Secondly, the appeal was in any event unfounded, in particular as regards the matter of compensation, as the restrictions had not deprived them of their property rights to such an extent as to have been substantially expropriatory in nature. Moreover, the case-law of the European Court of Human Rights allowed national authorities leeway in assessing the general interest in environmental matters, and the clear distinction between expropriatory and regulatory constraints represented a long-standing line of case-law of the national administrative courts.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 29 September 2022.

Relying on Article 1 of Protocol No. 1 to the Convention (protection of property), the applicants complained about the restrictions limiting the use of their land and the lack of adequate compensation for those restrictions.

The decision was given by a Chamber of seven judges, composed as follows:

Ivana **Jelić** (Montenegro), *President*,
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),
Frédéric **Krenc** (Belgium),
Davor **Derenčinović** (Croatia),
Artūrs **Kučs** (Latvia),
Anna **Adamska-Gallant** (Poland),

and also Ilse **Freiwirth**, *Section Registrar.*

Decision of the Court

The Court recognised that the restrictions had interfered with the owners' peaceful enjoyment of their possessions as, although the owners had not been deprived of their property, they had been limited in how they could use it. Nevertheless, the interference had its basis in law, and was aimed at protecting the environment, an aim that was in the general interest. As regards the company, the Court left open the question of whether there had been an interference with its rights under Article 1 of Protocol No. 1.

The Court observed that the applicants had used the land for commercial poplar harvesting for two decades before the restrictions linked to the creation of the protected area had been imposed. Throughout that period the applicants had had to apply for a permit from the local authorities each time they had wished to plant or cut down poplar groves on their land, so that the compatibility of those activities with the regulations in force at the time could be assessed. Therefore, the applicants were aware, or ought to have been aware, that the conditions for the use of the land were reviewable and modifiable.

Moreover, as to their allegation that they had only learned about the creation of the protected area and the restrictions on types of land use when they had applied for authorisation to replant poplar groves, the Court reiterated that, as they had been harvesting poplar on the land for commercial purposes for many years, they should have kept abreast of any inherent risks. The decree establishing the protected area had been published in the Official Bulletin of the Region on 20 June 2007 and had

thus been made public. From that moment on, they ought to have been aware that restrictions on the use of their land were possible.

In any event, the Court noted that the applicants had had the possibility of requesting a judicial review of the measures establishing the protected natural area and that they had also been eligible for payments in respect of the use of the land.

The Court reiterated that environmental protection policies that are in the public's general interest allow the State wider leeway than when exclusively civil rights are at stake. In implementing such policies, the State might, in particular, have to intervene in the sphere of public property and in the control over the use of property. The Court's case-law regarding property-use measures had consistently stated that the lack of compensation was a factor to be taken into consideration in determining whether a fair balance had been achieved, but was not of itself sufficient to constitute a violation of Article 1 of Protocol No. 1.

At any rate, the Court noted that the applicants had had access to some allowances for more than ten years after the creation of the protected area. Although these sums had been limited and had been paid for other purposes, they had nonetheless offset, at least initially, the consequences of the restrictions on the use of the land. It was also noted that the applicants had never challenged at national level the adequacy of those payments or the relevant regulatory measures. Rather, they had complained that they had not been compensated for what they saw as amounting to expropriation of their land. In that connection, the Court reiterated that the case did not concern deprivation of property, but rather the control of the use of property in which the lack of compensation was only one factor and not necessarily a decisive one.

Paying particular regard to the State's leeway in the context of environmental protection policies, the Court considered that a fair balance had been struck between the general interest and the applicants' right to decide how to use their land.

The decision is available only in English.

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