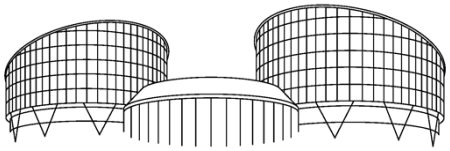

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF PREVIDI v. ITALY

(Application no. 18216/15)

JUDGMENT

STRASBOURG

12 October 2023

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

In the case of Previdi v. Italy,

The European Court of Human Rights (First Section), sitting 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. 18216/15) 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 2 April 2015 by an Italian national, Mr Sergio Previdi, born in 1923 and living in Mantua ("the applicant") who was represented by Ms A. Mascia, a lawyer practising in Verona;

the decision to give notice of the application to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia;

the parties' observations;

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

Having deliberated in private on 19 September 2023,

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

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 acquisitiva*).

2. The applicant was the owner of a plot of land in the municipality of Virgilio, recorded in the land register as folio no. 4, parcels nos. 19, 67, 561 and 562 and located at the intersection of two roads. According to the 1984 general land-use plan (*piano regolatore generale*), parcels nos. 19 and 561 were designated as ancillary residential zone, parcel no. 67 partially as ancillary residential zone and the rest for public facilities and services and parcel no. 562 as road buffer zone.

3. On 6 June 1989, the National Autonomous Road Corporation (*Azienda nazionale autonoma delle strade*; "ANAS") approved a project for the widening of the roads. On 10 December 1990, the Mantua prefect authorised the immediate occupation of the land and on 21 March 1991 the company entrusted with the construction works took physical possession of it. The works were completed on 14 November 1991 and affected 520 square metres of the applicant's land, corresponding to parcels no. 561 and 562. Therefore, by the time the occupation authorisation expired, part of the applicant's land had been irreversibly altered by construction works, but the authorities had not issued a formal expropriation order.

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

5. On 18 February 2000, the District Court ordered an independent expert valuation of the land.

6. The expert noticed that the expropriated land fell within an area that was designated for public facilities and as road buffer zone, and was thus non-constructible. Nevertheless, he considered that the land was ancillary to a neighbouring commercial building and determined its value on the basis of a comparison with other land designated for productive or commercial purposes. He concluded that the value of the expropriated land amounted, as of November 1991, to 130,000 Italian lire ((ITL); 67 euros (EUR)) per square metre.

7. In the course of an oral hearing, the expert clarified that the indicated amount was based on the market value of neighbouring constructible land and that – taking into account the fact that the land was non-constructible but could be used for the benefit of neighbouring constructible land – its value could be equitably determined between ITL 80,000 and 90,000 (between EUR 41 and 46) per square metre.

8. On 9 May 2002 the District Court considered that the first expertise was non-exhaustive and appointed a new expert.

9. The second expert confirmed that the expropriated land was non-constructible. Nevertheless, he estimated the land's value taking into account the fact that it contributed to the building potential of the entire plot. He therefore considered that the land's value, as of the date of the expertise (13 January 2003) amounted to EUR 180 per square metre, for an overall amount of EUR 93,600. The expert further quantified the compensation due for the period of lawful occupation to EUR 10,150.

10. By judgment of 4 May 2004, the District Court upheld the applicant's complaints and found that part of his 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 that land. Furthermore, the District Court accepted that the applicant was entitled to damages for the loss of his property in the amount indicated by the second expertise, and thus awarded EUR 93,600 as expropriation compensation and EUR 10,150 as compensation for the unavailability of the land during the period of lawful occupation, plus inflation adjustment and statutory interest.

11. ANAS appealed against this judgment.

12. By judgment of 20 June 2007, the Brescia Court of Appeal stated that the applicant had lost ownership of the land at the end of the period of lawful occupation, on 14 June 1994, and confirmed that the deprivation of property had been unlawful.

13. As regards compensation, the Court of Appeal considered that the land had to be valued in light of the legal possibility to build on it rather than on a *de facto* building potential. Noting that the expropriated land was subject to prohibitions on building deriving, for parcel no. 562, from its designation as buffer zone and, for parcel no. 561, from the legal restrictions to build within a 10 metres distance from the road, it concluded that it had to be considered non-constructible. Nevertheless, the Court of Appeal recognised that the land could be used for purposes other than agriculture, in light of its proximity to commercial buildings. Therefore, relying on the value of ITL 80,000 per square metre indicated by the first expert (see paragraph 7 above), it awarded the applicant EUR 21,484.60 as expropriation compensation.

14. The Court of Appeal further considered that the deprivation of the property of parcel no. 561 had determined a loss of building potential of the remaining land, and awarded damages in the amount of EUR 4,400.

15. As to compensation for the occupation of the land, the Court of Appeal considered that it fell outside the competence of the District Court and did not award any sum in that respect.

16. Finally, the Court of Appeal established that the damage award should be subject to inflation adjustment and to a 3% interest from June 1994 to the date of the judgment.

17. The applicant's appeal to the Court of Cassation was dismissed on 2 October 2014.

18. 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 and that he had not received adequate compensation, in breach of his rights under Article 1 of Protocol No. 1 to the Convention.

THE COURT'S ASSESSMENT

I. PRELIMINARY ISSUE

19. The Court firstly takes note of the information regarding the death of the applicant and the wish of his heir, Mr Carlo Previdi, to continue the proceedings in his stead, as well as of the absence of an objection to that wish on the Government's part. Therefore, and having regard to the subject matter of the complaints, the Court considers that Mr Carlo Previdi has standing to continue the proceedings in the stead of Mr Sergio Previdi.

20. However, reference will still be made to the "applicant" throughout the ensuing text.

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

21. 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).

A. Admissibility

22. The Government contended that the applicant had obtained sufficient reparation at the national level and had therefore lost his victim status.

23. The Court observes that the Court of Appeal acknowledged that the expropriation had been unlawful and held that the applicant was entitled to compensation (see paragraph 12 above). The Court is satisfied that this amounts to an acknowledgment by the domestic courts of the infringement complained of.

24. Following that determination, the Court of Appeal awarded a sum that it considered equal to the market value of the expropriated land, as well as compensation for the additional damage caused to the neighbouring land (see paragraphs 13 and 14 above).

25. The applicant argued that he did not obtain sufficient redress, for several reasons. He pointed out that the Court of Appeal disregarded the experts' conclusions on the constructible character of the land and, without appointing a new expert, considerably reduced the land's valuation.

26. The Court observes that the Court of Appeal did not simply reduce the market value as estimated by the court-appointed experts without explanation but provided specific reasoning, which does not appear to be manifestly arbitrary, on why it chose not to rely on the experts' valuations (see, in contrast, and *mutatis mutandis*, *Kutlu and Others v. Turkey*, no. 51861/11, §§ 72-74, 13 December 2016). Indeed, the Court of Appeal pointed out that both expert reports valuated the land as constructible despite the fact that it was subject to prohibitions on building (see paragraph 13 above).

27. 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 (see *Maria Azzopardi v. Malta*, no. 22008/20, §§ 62-63, 9 June 2022).

28. Furthermore, the Court notes that the Court of Appeal established the land's market value taking into account both the concrete possibility to use the land to the benefit of neighbouring commercial buildings and the valuation indicated by the first court-appointed expert (see paragraph 13 above). Thus, in the Court's view, the sum awarded by the Court of Appeal bears a reasonable relationship with the real characteristics of the land.

29. Nevertheless, the applicant also complained that he had not been adequately compensated for the damage occasioned by the unavailability of the land during the period of lawful occupation. The Court has previously held that the applicant is entitled to receive compensation for the loss of opportunities sustained in the period from the beginning of the lawful occupation until the date of the loss of ownership (see *Guiso-Gallisay*, cited above, § 107). The Court notes that the national courts have not awarded any sum in this respect. It follows that the applicant has not received appropriate and sufficient redress for the violation complained of.

30. The Court therefore considers that it is unnecessary to examine the applicant's remaining arguments and concludes that he has not lost his victim status.

31. Accordingly, the Court rejects the Government's preliminary objection and, as the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds, it declares it admissible.

B. Merits

32. The Court notes that the applicants were deprived of their 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).

33. In the present case, having examined all the material submitted to it and the Government's submissions, the Court has not found any fact or argument capable of persuading it to reach a different conclusion.

34. It follows that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. In respect of pecuniary damages, the applicant claimed compensation for the loss of property without quantifying the amount. He further claimed EUR 50,000 as compensation for the loss of opportunities.

36. Additionally, the applicant claimed EUR 50,000 in respect of non-pecuniary damage, EUR 13,533.20 in respect of costs and expenses incurred before the domestic courts and 13,200 EUR for those incurred before the Court.

37. The Government did not submit any observations in this respect.

38. The Court has found a violation of Article 1 of Protocol No. 1 on account of a breach of the principle of lawfulness (see paragraph 32 above). The relevant criteria for the calculation of pecuniary damage in constructive expropriation cases have been set forth in *Guiso-Gallisay* (cited above, §§ 105-07).

39. As regards damages deriving from the loss of property, the Court recalls that the applicant should submit relevant documents to prove, as far as possible, not only the existence but also the amount or value of the damage. In light of its considerations above (see paragraph 28) and of the fact that the applicant did not submit any evidence of other pecuniary damages deriving from the loss of property, the Court does not award any amount in this respect. However, ruling on an equitable basis, it awards pecuniary damage for the loss of opportunities amounting to EUR 6,000, plus any tax that may be chargeable.

40. The Court points out that the present judgment does not affect the possibility for the Government to obtain the restitution of the amounts paid to the applicants on the basis of the first instance decision, insofar as they exceeded the damages awarded by the Court of Appeal.

41. Furthermore, the Court awards EUR 5,000 for non-pecuniary damage and EUR 7,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* that Carlo Previdi has standing to continue the present proceedings in Sergio Previdi's stead;

2. *Declares* the application admissible;

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

4. *Holds*
   (a) that the respondent State is to pay the applicant's heir, within three months, the following amounts:
      (i) EUR 6,000 (six 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, in respect of non-pecuniary damage;
      (iii) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable to the applicant's heir, 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;

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

Done in English, and notified in writing on 12 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President