

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

FIRST SECTION

# CASE OF BARONE v. ITALY

*(Application no. 23668/05)*

JUDGMENT

STRASBOURG

1 June 2023

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



**In the case of Barone 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. 23668/05) 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 17 June 2005 by an Italian national, Mr Francesco Barone, born in 1922, who lived in Palermo ("the applicant") and was represented by Mr F. Di Salvo, a lawyer practising in Florence;

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

the parties' observations;

Having deliberated in private on 9 May 2023,

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

## SUBJECT MATTER OF THE CASE

1. The case concerns the indirect expropriation (*occupazione acquisitiva*) of a plot of land of approximately 2,300 square meters in Palermo, owned in equal shares by the applicant and his uncle.

2. In 1988, the land was urgently occupied by the Region of Sicily in order to build a church. The church was built, however, no expropriation order was issued by 22 March 1993, that is, within five years following the beginning of the occupation.

3. The applicant, also acting on behalf of his uncle, brought an action for damages against the Region before the Palermo District Court, seeking compensation for the *de facto* dispossession of his property.

4. The Palermo District court awarded the claimants 234,493.63 euros (EUR), plus inflation adjustment and statutory interest from 22 March 1993, as damages for the loss of property. The court calculated damages on the basis of the market value of the land, as estimated by a court-appointed expert, and then reduced the amount according to Article 5 *bis* of Decree-Law No. 333 of 11 July 1992. The court's judgment was issued on 4 November 2003 and was not appealed against. Thus, it became final on 20 December 2004.

5. After the decision became final, it was revealed that the applicant's uncle was already deceased when the proceedings were initiated. Hence, during the enforcement proceedings, the decision was declared null and void as to the part concerning the applicant's uncle.

6. The applicant lodged an application under Law no. 89 of 24 March 2001 (the "Pinto" Act), complaining of the excessive length of the above-described proceedings and was awarded EUR 6,750 as compensation for non-pecuniary damage by the domestic courts.

7. The applicant complained, under Article 1 of Protocol No. 1 to the Convention, about the unlawful deprivation of his property coupled with an award of compensation allegedly not reasonably related to the market value of the land.

8. The applicant also complained under Article 6 § 1 of the Convention with regard to the excessive length of the domestic proceedings and the alleged inadequacy of the compensation awarded to him.

# THE COURT'S ASSESSMENT

## I. PRELIMINARY ISSUE

9. The Court takes note of the information regarding the death of the applicant on 11 November 2014 and of the wish of his heirs, Mr Ignazio Barone, Mr Giovanni Barone, Mr Mario Barone, Ms Rosalia Barone and Ms Rita Barone, to continue the proceedings in his stead, as well as of the absence of any objection to that wish on the Government's part.

10. Therefore, the Court considers that the specified heirs (see details in the appended table) have standing to continue the proceedings on behalf of the deceased applicant.

11. However, for practical reasons, reference will still be made to the initial applicant throughout the ensuing text.

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

12. The Court notes at the outset that, as regards the Government's argument that the applicant did not exhaust domestic remedies, it has already rejected similar objections in previous cases concerning indirect expropriations (see *Colacrai v. Italy (no. 2)*, no. 63868/00, 15 July 2005; *Colazzo v. Italy*, no. 63633/00, 13 October 2005; and *Izzo v. Italy*, no. 20935/03, 2 March 2006). The Court finds no reason in the present application which would require it to depart from its previous conclusion.

13. As regards the Government's argument that the application was lodged out of time because the six-month time-limit should start from the date of the first instance decision was issued rather than from when it became final, the Court has already examined and rejected a similar objection in *Spampinato v. Italy* (no. 69872/01, § 25, 5 October 2006), the circumstances of which are similar to the present case. The Court finds no reason which would require it to reach a different conclusion now.

14. The Court notes that this complaint 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.

15. 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.

16. The Court observes 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 violations 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 *Messana v. Italy*, no. 26128/04, §§ 38-43, 9 February 2017).

17. Having examined all the material submitted to it and the parties' observations, the Court has not found any fact or argument capable of persuading it to reach a different conclusion in the present case.

18. Furthermore, the Court notes that the damages awarded to the applicant did not reflect the market value of the land (see paragraph 4 above).

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

### III. REMAINING COMPLAINTS

20. The applicant also complained under Article 6 of the Convention about the length of the domestic proceedings (see paragraph 8 above). The Court notes that the sum awarded to the applicant as non-pecuniary damage for the length of the proceedings is above the amount which would have been awarded by the Court. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. The applicant claimed EUR 6,336,995.52 in respect of pecuniary and non-pecuniary damage and EUR 221,520.36 in respect of costs and expenses incurred before the domestic courts and the Court.

22. The Government contended that such requests were excessive.

23. As regards pecuniary damage, the Court reiterates that the relevant calculation criteria with respect to unlawful expropriations were laid down in *Guiso-Gallisay* (cited above, § 105). On the facts of the present case, the Court considers it appropriate to use, as a starting point, the market value of the property as identified in the court-appointed expert report drawn up during the proceedings before the Palermo District Court, which corresponds

to 830,900,000 Italian Lire (ITL), so that the difference between that amount and the damages awarded in domestic proceedings (ITL 457,915,518) is ITL 372,984,482. Considering that the applicant was the owner of half of the expropriated land, the starting point for the calculations is ITL 186,492,241 (corresponding to EUR 96,315). That amount must be increased by a sum reflecting inflation adjustment and simple statutory interest applied to the capital progressively adjusted from the date of loss of ownership (22 March 1993). Having regard to the foregoing elements, and ruling on an equitable basis, the Court considers it reasonable to award the applicant EUR 220,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

24. The Court further awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

25. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 5,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* that Mr Ignazio Barone, Mr Giovanni Barone, Mr Mario Barone, Ms Rosalia Barone and Ms Rita Barone have standing to continue the present proceedings in the stead of the late applicant;

2. *Declares* the complaint concerning Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;

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 heirs jointly, within three months, the following amounts:
      (i) EUR 220,000 (two hundred and twenty 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 5,000 (five thousand euros), plus any tax that may be chargeable to the heirs, 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 1 June 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Liv Tigerstedt<br>Deputy Registrar | Péter Paczolay<br>President |

# APPENDIX

| Applicant's Name | Year of birth | Nationality | Place of residence |
|---|---|---|---|
| Francesco BARONE | 1922<br>Deceased in 2014 | Italian | Palermo |
| **Heirs**: | | | |
| Ignazio BARONE | 1957 | Italian | Palermo |
| Giovanni BARONE | 1959 | Italian | Palermo |
| Mario BARONE | 1963 | Italian | Palermo |
| Rosalia BARONE | 1975 | Italian | Palermo |
| Rita BARONE | 1978 | Italian | Palermo |