



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

FOURTH SECTION

CASE OF VASSALLO v. MALTA

(Application no. 57862/09)

JUDGMENT
(Merits)

STRASBOURG

11 October 2011

FINAL

11/01/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Vassallo v. Malta,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President*,

Päivi Hirvelä,

George Nicolaou,

Ledi Bianku,

Zdravka Kalaydjieva,

Nebojša Vučinić, *judges*,

Geoffrey Valenzia, *ad hoc judge*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 20 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 57862/09) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Maltese national, Ms Victoria Vassallo (“the applicant”), on 13 October 2009.

2. The applicant was represented by Dr J. Herrera, a lawyer practising in Valletta. The Maltese Government (“the Government”) were represented by their Agent, Dr Peter Grech, Attorney General.

3. Mr Vincent De Gaetano, the judge elected in respect of Malta, was unable to sit in the case (Rule 28). Accordingly the President of the Chamber decided to appoint Mr Geoffrey Valenzia to sit as an *ad hoc* judge (Rule 29 § 1(b)).

4. The applicant alleged that the expropriation of the land she co-owned was not in the public interest and that she was made to suffer a disproportionate burden since it had taken the authorities twenty-five years to institute compensation proceedings and to date, thirty-five years after the taking of the land, she remained uncompensated.

5. On 18 October 2010 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant, Victoria Vassallo, is a Maltese national who was born in 1954 and lives in Zebbug, Malta

A. Background of the case

7. The applicant is one of eleven owners of a piece of land in Birkirkara, Malta, having an area of 1,578 square metres (“sq.m.”).

8. The land was the subject of a declaration by the Governor General dated 29 November 1974, stating that it would be expropriated for a public purpose. The public purpose intended was a social housing project.

9. At the time, the initiation of compensation proceedings was an action which could only be undertaken by the authorities and to which no time-limit applied. However, in the 1990s domestic case-law confirmed that the ordinary courts had the competence, upon a request made by persons in the applicant’s position, to set a time-limit for the performance of the obligation by virtue of Article 1078 of the Civil Code, a long-standing provision.

10. Following twenty-five years of silence on the part of the authorities, on 9 February 1999 the Government issued a notice to treat and offered the owners of the land 5,600 Maltese liri (MTL), approximately 13,045 euros (EUR). This reflected the value (on the date of valuation) of the property as agricultural land, including some rural structures according to an independent architect’s evaluation commissioned by the Government on 21 November 1998. The owners refused this offer and proceedings were initiated before the Land Arbitration Board (“LAB”) to assess the amount of compensation due. These proceedings are still pending to date since they have been suspended pending the completion of the ordinary and constitutional proceedings instituted (see below).

11. From 1974 to 2000 the property remained unused. On 1 December 2000, pending the proceedings mentioned below, the authorities ordered the restitution to the owners of part of the land measuring 324 sq.m., which was eventually released in 2002. On 2 April 2002 the applicant and the other owners signed a sworn declaration to the effect that no further claims for compensation or damages would lie in respect of this piece of land.

12. The remaining land (1,254 sq.m.) was kept by the authorities with the aim of building a social housing project. In 2002 the Government started constructing apartments and maisonettes. While the price offered for the remaining land still has to be apportioned by the LAB, the Government estimated that a fair *pro rata* value would amount to MTL 4,450, approximately EUR 10,369.

B. Ordinary civil proceedings

13. On 14 May 1999 the applicant's predecessor instituted ordinary civil proceedings. He contended that the order of expropriation had not been made for a public purpose, since the land had remained unused and the purpose put forward, namely the construction of housing units for third persons, could not be considered to be in the public interest. In consequence, they requested that the expropriation be declared null and void.

14. On 5 March 2004 the Civil Court dismissed the claim, holding that it had not been proved that the expropriation had been in contravention of the law, namely the Land Acquisition (Public Purposes) Ordinance.

15. No appeal was lodged against this judgment.

C. Constitutional redress proceedings

16. On 23 July 2004 the owners of the land (including the applicant) instituted constitutional redress proceedings. They claimed a violation of their rights under Article 1 of Protocol No. 1 to the Convention in that the expropriation had not been carried out for a public purpose, since the land had remained unused for twenty-five years and the purpose put forward, namely the construction of housing units for third persons, could not be considered to be in the public interest. They further argued that the measure had not been proportionate in view of the compensation offered and that they should be compensated according to the market value of the land at that date.

17. On 20 October 2008 the Civil Court (First Hall) in its constitutional jurisdiction found a violation of Article 1 of Protocol No. 1 to the Convention and awarded the owners EUR 50,000 in compensation for non-pecuniary damage. It held that the land had originally been taken in the public interest, namely for the housing project, construction of which, however, had only recently started. However, this public purpose had not been pressing, since the land had remained unused for twenty-five years, during which the authorities had not initiated compensation proceedings. In consequence the owners' property rights had been breached. Lastly, noting that the owners were not calling into question the relevant compensation provisions of the law, but simply arguing what compensation should be payable, it refused to take cognisance of the claim regarding compensation for pecuniary damage, since the amount payable still had to be determined by the LAB. The expenses were to be borne by both parties.

18. By a judgment of 30 April 2009, the Constitutional Court, on appeal, altered the first-instance judgment in part. While considering that a public interest had existed originally, and had persisted since indeed some apartments had eventually been built, it confirmed that there had been a

delay on the part of the authorities in initiating proceedings, which had been to the detriment of the owners, and this constituted a breach of their property rights. However, it noted that although the owners had an available remedy to speed up the process, they had done nothing about it. In consequence, while upholding the finding of a violation, the Constitutional Court reduced the award in respect of non-pecuniary damage to EUR 15,000. It further confirmed that the complaint regarding compensation for pecuniary damage was premature, that issue still having to be determined by the LAB. It ordered the expenses to be borne by both parties.

II. RELEVANT DOMESTIC LAW

A. Expropriation

19. The Land Acquisition (Public Purposes) Ordinance (Chapter 88 of the Laws of Malta), in so far as relevant, reads as follows:

Section 3

“The President of Malta may by declaration signed by him declare any land to be required for a public purpose.”

Prior to the amendments introduced in 2002, the Land Acquisition (Public Purposes) Ordinance provided that:

Section 12(1)

“...the competent authority shall give to the owner a notice ... by means of a judicial act, stating the amount of compensation, as shown in a valuation to be attached to the notice to treat.”

Section 13(1)

“The amount of compensation to be paid for any land required by a competent authority may be determined at any time by agreement between the competent authority and the owner (...).”

Section 22

“If the owner shall by a judicial act decline to accept the offer made by the competent authority, the matter shall be brought before the Board by an application to be made by the competent authority, and the Board shall give all necessary orders or directions in accordance with the provisions of this Ordinance.”

B. Obligations

20. Article 1078 (b) of the Maltese Civil Code, Chapter 16 of the Laws of Malta, in so far as relevant, reads as follows:

“Where the time for the performance of the obligation has been left to the will of the debtor, or where it has been agreed that the debtor shall discharge the obligation when it will be possible for him to do so, or when he will have the means for so doing, the following rules shall be observed:

(b) if the subject-matter of the obligation is other than the payment of a sum of money, the time within which the obligation is to be performed shall be fixed by the court according to the circumstances.”

THE LAW

I. THE SCOPE OF THE CASE

21. The Court notes that it is unclear whether the applicant is complaining about the entirety of the property expropriated in 1974, or solely about the part of the land which has not been returned to the owners.

22. In any case the Court considers that the agreement entered into at national level (on 2 April 2002) has had the practical effect of satisfying to a significant extent the claim, if any, made by the applicant under Article 1 of Protocol No. 1 to the Convention in respect of the piece of land returned. Furthermore, the applicant was not acting under coercion when she waived any possible entitlement to compensation and any future judgment on the merits. As a result, the applicant has settled the case in respect of the part of land which was returned to the owners and can no longer claim to be a victim of the alleged violation (see *Giacometti and Others v. Italy*, (dec.), no. 34939/97, 29 March 2001; *Guerrera and Fusco v. Italy*, no. 40601/98, 3 April 2003; *Folcheri v. Italy*, no. 61839/00, (dec.) 3 June 2004 ; and *Cali and Others v. Italy* (strike-out), no. 52332/99, 19 May 2005).

23. It follows that, in so far as it can be deemed to be raised in the Convention proceedings, the part of the complaint relating to the portion of land which has been returned to the owners is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4 (see *Maio v. Italy*, no. 24886/03, § 20, 18 March 2008, and *Curmi v. Malta*, (dec.), no. 48580/07, 29 June 2010).

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION AND ARTICLE 6 OF THE CONVENTION.

24. The applicant complained that the expropriation of the land was not in the public interest as it had taken the authorities more than twenty-five years to develop the said land. Moreover, she was made to suffer a disproportionate burden since it had taken the authorities twenty-five years to institute compensation proceedings and to date, thirty-five years after the taking of the land, the applicant remained uncompensated. Given these circumstances, she argued that the compensation payable should be in line with present day values. She claimed that the situation created was contrary to that provided in Article 1 of Protocol No. 1 to the Convention and Article 6 § 1 of the Convention, which read as follows:

Article 1 of Protocol No. 1

“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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

Article 6 § 1

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

25. The Government contested that argument.

26. As to the length of the compensation proceedings under Article 6, the Court considers that in the circumstances of the present case, this is an element which falls to be assessed under Article 1 of Protocol No. 1 to the Convention and therefore the complaint is absorbed by the latter provision.

A. Admissibility

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

B. Merits

1. The parties' submissions

28. Referring to the facts of the case, the applicant submitted that the taking of the property had not been in the public interest. Indeed, construction on the site had only started in 2002, twenty-eight years after the taking, and this had clearly been a direct consequence of the legal action taken by the applicant's predecessor in 1999. Construction on the land was completed in 2003, within one year; in consequence the size of the Government's project could not be an excuse for the fact that nothing had been done with the land for decades. The lack of a public purpose was even more evident considering that part of the land was in fact given back, twenty-eight years later. Moreover, she argued that the area referred to by the Government had not been restricted to social housing; indeed, a school, the University of Malta, the only public hospital in the country and various retail outlets had been built on it.

29. As to the delay in receiving compensation, the applicant submitted that the owners could not be blamed for not taking judicial proceedings earlier, since it was for the State to initiate the relevant procedures and pay their dues. Nor could they be at fault for instituting civil proceedings which suspended the compensation proceedings, since the reason the proceedings had been instituted was precisely the Government's inaction for twenty-five years.

30. As to the compensation itself, the applicant submitted that since the expropriation had not been in the public interest and since she had not been compensated for the taking to date, appropriate compensation had to be determined on the basis of the current market value on the date of payment. She further noted that she had refused to take her share of the compensation granted by the domestic court in order not to prejudice her case before the Court. Accepting that in 1974 the land had been rural, the applicant submitted that today it was worth between EUR 1,164,686 and EUR 1,397,624.

31. The Government submitted that, as held by the domestic courts, the land had been expropriated to provide social housing, and therefore the measure had been in the public interest. Thus, the expropriation had had a legitimate aim, notwithstanding that the actual construction of the dwellings had taken a considerable time to be completed. In this respect, they submitted that it had to be taken into consideration that the land expropriated from the applicant was only a small fraction of over 62,000 square metres of land expropriated in 1974. This area was being constructed on a piecemeal basis for social housing purposes and the fact that the Government had later returned parts of the land did not mean that there had not been any concrete plans for its use.

32. As to the delay in receiving compensation, the Government pointed out that the owners had remained inactive for twenty-four years before instituting any action under ordinary civil law or under the Constitution and Convention, notwithstanding the possibility of availing themselves of the remedy provided by Article 1078, which had been available as of the date of the Governor's declaration. When they eventually started ordinary proceedings, the proceedings before the LAB had been suspended, and resumed only following the Constitutional Court judgment in 2009. Thus, in the Government's view, the delay in the proceedings before the LAB had been caused by the owners, who had instituted other proceedings only after the LAB proceedings had been initiated, although nothing had prevented them from doing so before. Moreover, it had taken the owners twelve years to produce their evidence to contest the amount of compensation offered. In this respect the Government noted that the owners would benefit from this delay as they would receive damages for the delay in payment in the form of interest at 5 % per annum from 1974 until the date of payment of compensation.

33. They submitted that the expropriation could not be considered disproportionate since the applicant still had a right to acquire compensation under domestic law. Since the expropriation had been made for the purposes of social housing, the State enjoyed a certain margin of appreciation as to the amount of compensation payable as long as it was reasonably related to the value. The Government submitted that in 1974 when the land was expropriated, the area was still rural in nature and considered as agricultural land of little value. Thus, it could not be said that the applicant suffered a disproportionate burden, particularly in the light of the fact that following the Government's development programme, the part of the applicant's land which was returned to the owners had substantially increased in value.

34. According to domestic law and the Court's case-law this amount had to be calculated according to the market value of the land at the time of the taking, namely when it was agricultural land. However, in the present case although the land had been taken in 1974, since the notice to treat was issued only in 1999, the value offered to the owners had reflected the state of the land in 1974 but with the value as it stood on 19 January 1999. Thus, the sum to be awarded by the LAB would be fixed with reference to the value as on 19 January 1999, with interest calculated from 1974 to the date of payment. Therefore, in the present case the value of the land had not been pegged to the value in 1974 as had been the case in *Schembri and Others v. Malta* (no. 42583/06, 10 November 2009), where the Court found a violation of Article 1 of Protocol No. 1 to the Convention. Given that land prices in Malta in 1999 were not low, the applicant should therefore receive adequate compensation for the interference suffered. They noted that the present case did not concern an expropriation which had been unlawful; therefore, under the Court's case-law it did not merit current market value

compensation. Moreover, the applicant together with the other owners had been awarded EUR 15,000 in respect of non-pecuniary damage by the domestic courts.

2. General principles

35. The Court reiterates that Article 1 of Protocol No. 1 guarantees, in substance, the right to property and comprises three distinct rules (see, for example, *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 61, Series A no. 52). The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. However, the rules are not “distinct” in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property. They must be construed in the light of the general principle laid down in the first rule (see, for example, *Air Canada v. the United Kingdom*, 5 May 1995, §§ 29 and 30, Series A no. 316-A).

36. A taking of property can be justified only if it is shown, *inter alia*, to be “in the public interest” and “subject to the conditions provided for by law”. The Court reiterates that because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is “in the public interest”. Furthermore, the notion of “public interest” is necessarily extensive. In particular, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature’s judgment as to what is “in the public interest” unless that judgment is manifestly without reasonable foundation (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, ECHR 2005-VI, § 91; *Immobiliare Saffi v. Italy*, [GC], no. 22774/93, § 49, ECHR 1999-V; and, *mutatis mutandis*, *Fleri Soler and Camilleri v. Malta*, no. 35349/05, § 65, 26 September 2006). The Court also reiterates that in the area of land development and town planning the Contracting States should enjoy a wide margin of appreciation in order to implement their town and country planning policies. Nevertheless, in the exercise of its power of review the Court must determine whether the requisite balance was maintained in a manner consonant with the individual’s right of property (see *Abdilla v. Malta* (dec.), no 38244/03, 3 November 2005).

37. Thus, any interference with property must also satisfy the requirement of proportionality. As the Court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth*, cited above, pp. 26-28, §§ 69-74; and *Brumărescu v. Romania* [GC], no. 28342/95, § 78, ECHR 1999-VII).

38. Compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the individuals (see *Jahn and Others*, cited above, § 94). In this connection, the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference, and a total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances (see *The Holy Monasteries v. Greece*, 9 December 1994, § 71, Series A no. 301-A). However, while it is true that in many cases of lawful expropriation only full compensation can be regarded as reasonably related to the value of the property, Article 1 of Protocol No. 1 does not guarantee a right to full compensation in all circumstances. Legitimate objectives in the "public interest", such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (see *Urbárska Obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, § 115, ECHR 2007-... (extracts)).

39. The Court, however, reiterates that the adequacy of the compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as unreasonable delay. Abnormally lengthy delays in the payment of compensation for expropriation lead to increased financial loss for the person whose land has been expropriated, putting him in a position of uncertainty (see *Akkus v. Turkey*, 9 July 1997, § 29, *Reports of Judgments and Decisions*). The same applies to abnormally lengthy delays in administrative or judicial proceedings in which such compensation is determined, especially when people whose land has been expropriated are obliged to resort to such proceedings in order to obtain the compensation to which they are entitled (see *Aka v. Turkey*, 23 September 1998, § 49, *Reports*).

3. The Court's assessment

40. The Court notes that it has not been contested that in the present case there has been a deprivation of possessions within the meaning of the first paragraph of Article 1 of Protocol No. 1, and that the taking had been carried out in accordance with procedures provided by law.

41. The Court will therefore analyse the public interest requirement. It reiterates that in the case of *Beneficio Cappella Paolini v. San Marino* (no. 40786/98, § 33, ECHR 2004-VIII), which concerned property that had been lawfully expropriated but not used, the Court found that the partial use of expropriated land raised an issue as to respect for property rights, having regard in particular to the change in use following the approval of a new land-use plan. A similar situation obtained in the cases of *Keçecioğlu and Others v. Turkey* (no. 37546/02, §§ 28-29, 8 April 2008) and *Motais de Narbonne v. France* (no. 48161/99, § 19, 2 July 2002). In the latter case the Court found a breach of Article 1 of Protocol No. 1 on account of a significant delay between a decision to expropriate property and the actual undertaking of a project in the public interest which had formed the basis of the expropriation. While the placing in reserve of expropriated property, even for a long period of time, does not necessarily entail a breach of Article 1 of Protocol No. 1, there is clearly an issue under that provision where such an action is not itself based on public-interest grounds and where, during that period, the property in question generates a significant increase in value of which the former owners are deprived (*ibid*, § 21).

42. The Court accepts that, in the present case, the original intention behind the expropriation of the land, namely that of building a social housing project, was in the public interest. However, the Court notes that no use has been made of the applicant's land for twenty-eight years. The Government submitted that this was due to the size and extent of the project. While acknowledging that a certain delay may occur when undertaking projects of a certain size the Court cannot consider reasonable a delay of nearly three decades in concretising the plans. In the present case, the Government have not advanced any other argument capable of justifying this delay; in consequence, it cannot be said that the delay was itself based on any public-interest concern (see *Motais de Narbonne*, cited above, § 22, *in fine*). The Court considers that it is undisputable that the land has generated an increase in value of which the owners have been deprived (see *Motais de Narbonne*, cited above, § 22). The Government themselves acknowledged that the value of the land at issue had substantially increased over the years that followed the taking of the land, although they claimed that such an increase in value was entirely due to the project which the authorities had undertaken.

43. Thus, the Court considers that the lapse of twenty-eight years from the date of the taking of the property without any concrete use having been made of it, in accordance with the requirements of the initial taking, raises an issue under Article 1 of Protocol No. 1, in respect of the public interest requirement.

44. This having been said, the Court will also look at the proportionality of the measure. While the Court has already held that Maltese law relating to compensation in such cases is in breach of Article 1 of Protocol No. 1 to

the Convention (see *Schembri and Others v. Malta*, no. 42583/06, § 45, 10 November 2009), it observes that in the present case an amount of compensation calculated on a different basis may be awarded to the owners. Thus, the Court considers that, in the light of the circumstances of the case, it is not necessary to determine, at this stage, whether the amount yet to be offered by the LAB would satisfy the proportionality requirement.

45. It suffices to say that, having regard to the fact that the applicant has not received any compensation for the expropriation of the property to date, thirty-seven years after the taking, the applicant has been required to bear a disproportionate burden.

46. In so far as the Government argued that the delay in paying compensation was due to the owners, the Court notes that, according to the Land Acquisition (Public Purposes) Ordinance, it was up to the authorities to initiate the relevant compensation proceedings (see paragraph 19 above) (see also *Bezzina Wettinger and Others v. Malta*, no. 15091/06, § 92, 8 April 2008). Without prejudice to the effectiveness of an action under the Civil Code – an action of a general nature and in respect of which the Government have not produced any evidence in relation to its prospects of success (see, *mutatis mutandis*, *Horvat v. Croatia*, no. 51585/99, § 44, ECHR 2001-VIII, and *Marini v. Albania*, no. 3738/02, § 156, ECHR 2007-XIV (extracts)) - the Court considers that, in such cases, owners could not be expected to incur the expense and burden of instituting proceedings to ensure the authorities' fulfilment of their legal obligation (see, *mutatis mutandis*, *Apostol v. Georgia*, no. 40765/02, §§ 64-65, ECHR 2006-XI, in relation to enforcement proceedings). Moreover, the mere fact that the Government would have been forced by means of a court decision to initiate proceedings, would not guarantee that those proceedings would thereafter be pursued with due diligence. Indeed, the Court has previously found a violation of the reasonable time requirement in relation to LAB proceedings in the Maltese context (see, *Bezzina Wettinger*, cited above, § 93; and *Gera de Petri Testaferrata Bonici Ghaxaq v. Malta*, no. 26771/07, § 43, 5 April 2011). The Court observes, in this context, that the applicant's case is still pending, twelve years after the institution of proceedings before the LAB to determine the relevant compensation. The Government imputed this latter delay to the fact that ordinary and constitutional proceedings were eventually taken up by the owners, and in consequence the proceedings before the LAB were suspended. At the same time the Government also argued that it had taken the owners twelve years to produce the relevant evidence. The Court is unconvinced by this argument, it reiterates that the judicial authorities remain responsible for the conduct of the proceedings before them and ought to weigh the advantages of continued adjournments pending the outcome of other cases against the requirement of promptness (see, *mutatis mutandis*, *Gera de Petri*, cited above, § 43). More importantly, the Court considers that the owners cannot be held to blame (as submitted

by the Government) for having eventually made use of their right to institute proceedings, under civil and constitutional law, to safeguard their property rights in view of the authorities' inaction and/or on the merits of the taking itself. Thus, the Court finds that the Government's argument cannot be accepted.

47. The Court further notes that in the circumstances of the present case the authorities' acknowledgment of a breach of the applicant's property rights as a result of the delay on the part of the authorities in initiating proceedings, and the joint award of EUR 15,000 to the owners, more than thirty years after the taking, did not offer sufficient redress to the applicant, who continues to suffer the consequences of the breach of her rights more than two years after the Constitutional Court judgment in this connection (see, *mutatis mutandis*, *Dolneanu v. Moldova*, no. 17211/03, § 44, 13 November 2007, and *Gera de Petri*, cited above, § 53).

48. In conclusion, having regard to the fact that the land remained unused for twenty-eight years and that the applicant has not received any compensation for the expropriation of the property to date, thirty-seven years after the taking, the Court considers that the requisite balance has not been struck.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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. Damage and costs and expenses

51. Bearing in mind the architect's valuation submitted by the applicant, which estimated the land to be valued at between EUR 1,164,686 and EUR 1,397,624, the applicant claimed her share (one of eleven) of the present value of the land, namely between EUR 105,881 and EUR 127,057, together with all court expenses.

52. The Government contested the architect's evaluation, holding that it was exorbitant and inflated and that land situated exclusively in a residential area would not fetch that amount on the open market. Emphasising that the issue of compensation was premature, it still being pending before the LAB, the Government considered that the value of the property in 1999, and an award of damages at 5% per annum on that established value, as of 1974,

would constitute adequate compensation. As to any costs and expenses claimed, a matter which was unclear in the applicant's observations, the Government submitted that no costs were due for the domestic proceedings, the applicant having failed to produce any bills of costs, and that fees in relation to the Court proceedings should not exceed EUR 1,000.

53. The applicant did not claim any compensation for moral damage. The Court therefore does not make an award under this head.

54. As to the amount of compensation due for the land expropriated, a matter which is currently pending before the domestic courts, the Court considers that, having examined the circumstances of the case, the question of compensation for pecuniary damage is not ready for decision. That question must accordingly be reserved and the subsequent procedure fixed, having due regard to any agreement which might be reached between the respondent Government and the applicant (Rule 75 § 1 of the Rules of Court).

55. The Court further notes that the applicant did not submit a specific claim in respect of costs and expenses. Also bearing in mind that the determination of pecuniary damage has been reserved and therefore the procedure before the Court is not yet closed, the question of costs and expenses must accordingly also be reserved and the subsequent procedure fixed, having due regard to any agreement which might be reached between the respondent Government and the applicant (Rule 75 § 1 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the area of land which has been expropriated and not returned to the applicant (and other co-owners) admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that the question of the application of Article 41 is not ready for decision and accordingly,
 - (a) *reserves* the said question as regards pecuniary damage and costs and expenses;
 - (b) *invites* the Government and the applicant to submit, within three months from the date on which this judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

(c) *reserves* the further procedure and *delegates* to the President of the Section the power to fix the same if need be.

Done in English, and notified in writing on 11 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President