



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

FOURTH SECTION

CASE OF CURMI v. MALTA

(Application no. 2243/10)

JUDGMENT
(Merits)

STRASBOURG

22 November 2011

FINAL

22/02/2012

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

In the case of Curmi 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*,

David Scicluna, *ad hoc judge*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 3 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 2243/10) 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 Helen Curmi (“the applicant”), on 22 December 2009.

2. The applicant was represented by her son John Curmi, who also brought domestic proceedings on her behalf. The latter is represented by Dr I. Refalo, Dr S. Grima and Dr R. Montebello, lawyers practising in Valletta. The Maltese Government (“the Government”) were represented by their Agent, Dr Peter Grech, Attorney General.

3. The applicant alleged that her property rights under Article 1 of Protocol No.1 to the Convention had been breached as the taking of her land had not been effected in the public interest and twenty-one years after the land was taken she had not received any compensation. In this respect she complained that no mechanism had been provided whereby the applicant could have initiated proceedings for compensation, contrary to Article 6 of the Convention.

4. On 26 August 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).

5. Mr V. De Gaetano, the judge elected in respect of Malta, was unable to sit in the case (Rule 28 of the Rules of Court). The President of the Chamber accordingly appointed Mr David Scicluna to sit as an *ad hoc* judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1922 and lives on the Isle of Man.

A. Background of the case

7. The applicant owned an area of land in Marsaxlokk, Malta, measuring approximately 13,557 sq. m.

8. On 18 March 1988, by means of a President's declaration made by virtue of Article 3 of the Land Acquisition (Public Purposes) Ordinance, it was declared that the land was required for a public purpose and was thereby being expropriated. According to the Government the site was to be protected as a nature reserve.

9. Following the issue of the relevant permit dated 10 August 1998, in 1999 the boundary of the plot was fenced with a chain-link fence, but no other use has ever been made of the property to date. According to an architect's report submitted by the applicant the site had been abandoned and allowed to deteriorate. It was completely neglected and not looked after in any way. In consequence the land had been vandalised and the watercourses on the land contaminated by leakages from a nearby pig farm. According to the applicant the land had become a dumping site. The Government contested the veracity of this allegation.

10. The said fencing incorporated an area of land which was effectively larger than that covered by the declaration. In consequence, in relation to this additional land (hereinafter Land B for ease of reference) measuring 362.5 sq. m the applicant claimed that there had been a *de facto* expropriation which was not in accordance with the law.

11. The entirety of the land was part of the Marsaxlokk Bay Local Plan 1995, which recognised the site as a salt marsh of ecological importance. Nevertheless, the Malta Environment and Planning Authority's policies authorise development in the area subject to specific conditions.

12. The applicant contended that although the site was declared a Special Conservation Zone in 2005, in 1998 when it was taken there existed no public purpose. In the meantime she was prevented from developing the land in accordance with the relevant policies, since any permit requests she made were refused on the basis of the supposed expropriation.

13. To date, the Commissioner of Lands had not issued a "notice to treat" and the applicant had not received any compensation for the taking of her land.

14. The applicant's judicial protest of 11 January 2005 requesting the Government to dispossess itself of certain adjoining lands (including Land

B) which she claimed had been expropriated illegally, and to pay compensation, was unsuccessful.

2. *Constitutional redress proceedings*

15. In 2005 the applicant instituted proceedings before the Civil Court (First Hall) in its constitutional jurisdiction, complaining of a breach of her rights as guaranteed by Article 1 of Protocol No. 1 to the Convention and Article 6. She claimed that no use had been made of the expropriated land, that the taking could not be considered proportionate and that she had not obtained any compensation. Moreover, the delay in initiating compensation proceedings denied her the right of access to court. She further noted that certain adjoining lands were also her property and that notwithstanding her judicial protest of 11 January 2005, which she attached to her application (*Rikors promotorju*), the State had not taken the desired action.

16. On 4 February 2009 the Civil Court rejected the applicant's claims. It held that there was no doubt that the land in question was saline marshland that had great ecological importance in Malta. Therefore, its taking for the preservation of a natural reserve had been legitimate and in the public interest. As to Article 6 it held that the applicant could have instituted ordinary proceedings to oblige the Commissioner of Lands to institute proceedings before the Land Arbitration Board ("LAB") or could have made a request for the relevant Government department to appoint a lawyer to establish the origin of the land. However, she had not taken up any of these procedures.

17. The applicant appealed on the grounds that the public interest upheld by the court was an objective one. However, the Government had failed in the circumstances of the present case to demonstrate how and whether the protection of the said reserve would occur. Moreover, the public interest had to be established at the time of the taking and must persist. However, in the present case the site was declared a Special Conservation Zone only in 2005, seventeen years after the taking and it surely did not persist in view of the state of the land to date. Furthermore, as was clear from the testimony before the first-instance court, the fencing had taken over more land than was covered by the President's declaration. Thus, as had been argued in the applicant's submissions, the court should have ordered its release and upheld a violation in the terms explained in her original application ("*rikors promotur*").

18. On 26 June 2009, the Constitutional Court found that the applicant's property rights had not been violated but that there had been a breach of Article 6 in so far as the failure of the Commissioner of Lands to issue a "notice to treat" amounted to a lack of access to court. It awarded the applicant 2,000 euros (EUR) in respect of non-pecuniary damage.

19. The Constitutional Court reiterated that the public interest should persist from the moment of taking the land to the moment when the

Government obtained ownership of the land on conclusion of the expropriation procedure. It considered the evidence produced, in particular the witness testimony of the Commissioner of Lands, stating that the Environment Protection Department had requested that such land be expropriated; Departmental correspondence related to the use of the land evidencing that because fencing had been built the property should not be released, whereas it would have been otherwise had nothing been done on site; photographs of the state of the land when it was being taken care of by the applicant's ancestors; and the witness testimony of an employee at the MEPA who classified the land as saline marshland (Mediterranean sea meadows) hosting rare and healthy flora and fauna communities. He further stated that the land was in a good state although the man in the street might deem otherwise due to the appearance of salt marshes and that the department had added certain species to the site in order to avoid erosion and had carried out engineering works to improve the state of the pools therein. In this light, and having considered subsequent structural plans and assessments confirming the necessity of protecting the biodiverse site, the court held that the taking of the land had been in the public interest, which persisted, notwithstanding that no construction had taken place. It was in fact the aim of the taking of the land to leave the site in its original state, a state which could not have been guaranteed if it had been left in the hands of private individuals.

20. In respect of Land B of the land, while noting that the Commissioner of Lands did not contest the allegation and was willing to give the relevant portion back to the applicant, the court found that the applicant had not made any request in this respect in her application ("*rikors*") to the court. It noted that the court had to decide on the case as presented in the application which fixed the parameters of a case at issue. Indeed in the present case no request for rectification of the application had been made in order to include this complaint. The court therefore rejected this ground of appeal.

21. Under Article 6 it held that the applicant, who became aware of the expropriation in 1999, had not solicited the action of the authorities. Nevertheless, it was unacceptable that the Commissioner of Lands, who had the duty to take action, had, in twenty years, failed to pay compensation, or at least to make an offer of such. In consequence this amounted to a violation of Article 6 for lack of access to court.

II. RELEVANT DOMESTIC LAW

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

Section 3

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

Section 7

“The competent authority may deal with and dispose of land acquired by it in such manner and subject to such conditions as it considers expedient having regard to the public interest or utility.”

23. Articles 2 and 3 of subsidiary legislation 12.09 regarding court practice and procedure and good order rules, read as follows:

Article 2

“Proceedings before the Civil Court, First Hall, under article 46 (1) of the Constitution of Malta and under article 4 (1) of the European Convention Act and proceedings before the Constitutional Court in cases referred to in article 95 (2) of the Constitution of Malta shall be instituted by application.”

Article 3

“(1) An application before the Civil Court, First Hall, shall state concisely and clearly the facts out of which the complaint arises and shall indicate the provision or provisions of the Constitution of Malta or of the European Convention for the Protection of Human Rights and Fundamental Freedoms alleged to have been, to be or likely to be contravened.

(2) The application shall also specify the redress sought by the applicant:

Provided that it shall be lawful for the court, if the application is allowed, to give any other redress within its jurisdiction which it may consider to be more appropriate.

(3) In cases referred to in article 95 (2) (a) of the Constitution of Malta, the application before the Constitutional Court shall state clearly and concisely the circumstances out of which the question arises, the demand and the provision or provisions of the Constitution or of any other law on which the applicant relies.

(4) In cases referred to in article 95 (2) (c), (d), (e) and (f) of the Constitution of Malta, the application shall state clearly and concisely the circumstances out of which the appeal arises, the reasons of appeal and the prayer for the reversal or a specific variation of the decision appealed from.

(5) Default of compliance in the application with the requirements of sub-rules (1), (2), (3) and (4) shall not render the application null; but the court may, in any such case, order the applicant to file, within such time as the court shall fix, a note containing the particulars required and the costs of such order shall be borne by the applicant.”

24. Article 1078 of the Civil Code (Chapter 16 of the Laws of Malta), in so far as relevant, read 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:

(a) if the subject-matter of the obligation is the payment of a sum of money, such obligation shall be performed within two years, if the sum is due without interest, or, within six years if the sum is due with interest;

(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 circumstances.”

THE LAW

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

25. The applicant complained that her property rights had been breached as the taking of her land had not been effected in the public interest and twenty-one years later she had not received any compensation. In this respect she complained that no mechanism had been provided whereby she could have initiated proceedings for compensation. The applicant further complained that Land B had been expropriated illegally and contrary to the requirements of Article 1 of Protocol No. 1 of the Convention, which reads as follows:

“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.”

26. The Government contested that argument.

A. Admissibility

1. The property which was the subject of the President’s declaration

27. The Court notes that this part of the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It

further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. *Land B*

28. The Government submitted that, as noted by the Constitutional jurisdictions, the issue relating to Land B had not been brought before the domestic courts according to the relevant procedure, as it had only been raised at the appeal stage. This part of the complaint was therefore inadmissible for non-exhaustion of domestic remedies. Moreover, if the fence had indeed been installed irregularly, the applicant could also lodge a claim for eviction or for compensation with the ordinary courts.

29. The applicant submitted that she had filed a judicial protest in respect of Land B, reference to which she had made in the constitutional application. Indeed, she had requested the domestic courts to return all her land to her possession, and to decide that the taking of the land by the Government had violated her rights under the Convention. The issue relating to Land B had also been raised in oral arguments, both before the first-instance court and on appeal.

30. The Court reiterates that the complaints intended to be made subsequently at the international level should have been aired before the appropriate domestic courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among many other authorities, *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III). The Court has previously rejected applications for non-exhaustion of domestic remedies where the applicant, who was represented by a lawyer, failed to lodge his constitutional complaint in accordance with the applicable procedural rules and established practice (*Obluk v. Slovakia*, no. 69484/01, § 62, 20 June 2006) or had not made use of the constitutional remedy in accordance with the formal requirements, as interpreted and applied by the Constitutional Court (see *Lubina v. Slovakia*, no. 77688/01, § 63, 19 September 2006). The Court notes that in the present case the Constitutional Court refused to take cognisance of the applicant's attempted appeal in respect of Land B as the applicant had made no such request in her original application (see paragraph 20 above). Thus, by her own fault, the applicant did not provide the Maltese courts with the opportunity which is in principle intended to be afforded to a Contracting State by Article 35 of the Convention, namely the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged against it (see *Azinas*, cited above, § 41). It follows that the applicant failed to properly exhaust domestic remedies in this respect.

31. Consequently, this part of the complaint must be rejected as inadmissible, in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Merits

1. The parties' submissions

32. The applicant submitted that the taking of the property had not been in the public interest. Indeed the site had only been declared a Special Conservation Zone in 2005, and EU law had not been applicable in Malta before 2004. No measures had been taken in respect of the land except for the building of a fence which had also not been maintained in good condition. The property was now derelict (according to an architect's report) and was not supervised or protected from vandalism. It had moreover been contaminated by nearby pig farms. In the applicant's view, if she had retained possession of the property she would have kept it in order as she had always done, respecting the ecological balance, and could have developed it according to the relevant local plan issued by the Malta Environment and Planning Authority (MEPA). The latter, although it recognised the site as a salt marsh of ecological importance, nevertheless allowed for development of the site if it took into account the potential effects on the site. However, the applicant had always been precluded from such development because of the supposed expropriation of the said land. Indeed, the applicant's family had not only taken care of the property but had prepared projects for its development (an environment-friendly yacht marina), which had then been put aside when they discovered the land had been expropriated in 1999.

33. Moreover, the applicant had to date, twenty-one years after the land was taken, not received any compensation. Nor had the relevant procedures been instituted, as the COL had failed to issue a notice to treat. Indeed, Article 1078 of the Civil Code had not been intended for expropriation purposes and the applicant could not be expected to pursue such an action when, according to the legal procedure relevant to expropriation, it was the COL's duty to institute proceedings. Moreover, local jurisprudence had been unclear as to the effectiveness of such a remedy. Furthermore, the delay could not be blamed on the fact that the owner was unknown or resided abroad, as the law clearly gave the option to institute proceedings by means of a curator, an option the COL had not taken up.

34. Furthermore, the applicant argued that any sum of money awarded as compensation for the taking of the land would only be subject to interest at a rate which would not suffice to redress the delay in the payment of such compensation. It followed that the applicant had been made to suffer an excessive individual burden.

35. The Government submitted that the taking of the land had been in the public interest, namely the land was to be used and conserved as a nature reserve. The area had national and international importance, because of species which grew only in that part of Malta and because of the

marshlands in the area. In 1993 the area was protected under the Environment Protection Act and in 2005 the site was declared a Special Conservation Zone, it being a habitat type listed in the pertinent EU Council Directive (21 May 1992). However, this did not mean that the Government could not protect such areas before the relevant legislation entered into force. While the taking of the land had been carried out to conserve the site in its original state, certain development of an ecological nature had been carried out as mentioned by the domestic courts (see paragraph 19 above). The area was also regularly cleaned up, at least twice a year. However no measures could totally protect it from vandalism, to which any property could be subjected. Moreover, the Government rejected the applicant's argument that she could take better care of the property, particularly in view of the fact that she wanted to develop it, and any such development could not be in line with the preservation of the habitat.

36. The Government submitted that the delay in issuing the relevant notice to treat (containing an offer of compensation, which the applicant could then refuse, in which case it would have been for the COL to institute proceedings before the LAB for the setting of compensation) was due to the fact that the applicant was unknown and resided abroad. The Government submitted that in practice declarations were published in the Government Gazette to allow owners to come forward. It was then for the owners to provide proof of ownership in order for the Government to issue a notice to treat. In respect of the option of the COL to institute proceedings by means of a curator, the Government considered that this was not an appropriate course of action, since it could prevent the owners, once their identity had eventually been established, from contesting the amount of compensation awarded. It further transpired that the applicant only became aware of the expropriation in 1999, and until then had shown absolutely no interest in the property. Thereafter the applicant did not institute ordinary proceedings demanding the performance of an obligation (in this case by the COL) according to Article 1078 of the Civil Code, opting to take constitutional proceedings in 2005. Nor did the applicant cooperate in offering proof of her ownership title, notwithstanding that any related legal costs were paid by the State.

37. The Government submitted that the applicant's aim was to have her land returned. While this was not possible, the Government noted that the applicant would eventually obtain compensation, with interest. The Government noted that no yacht marina projects could ever be allowed, as the applicant had no right to use land such as the seashore, which was clearly in the public domain. Bearing in mind that the land had no commercial value or development potential, the applicant had not suffered an excessive individual burden.

2. *The Court's assessment*

38. 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).

39. 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. The Court 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).

40. 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).

41. 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 reimbursement of less than the full market value (see *Urbárska Obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, § 115, ECHR 2007-... (extracts)).

42. 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 *Akkuş 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*).

43. 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 of this plot of land had been carried out in accordance with procedures provided by law.

44. The Court further accepts the domestic courts’ assessment as to the relevant public interest (see paragraph 19 above). Indeed it considers that conservation does not necessarily entail development of the land, particularly when the aim is to maintain an original habitat. It notes however that in the present case certain measures have been taken by the Government to improve the relevant conditions. Lastly, the Court considers that the State is allowed to take measures in order to ensure ecological conservation, regardless of any international obligations in this respect. It follows that the taking fulfilled the public interest requirement (see, for example, *Fredin v. Sweden (no. 1)*, 18 February 1991, § 48, Series A no. 192; *Matos e Silva, Lda., and Others v. Portugal*, 16 September 1996, § 88, *Reports of Judgments and Decisions* 1996-IV; and *Posti and Rahko v. Finland*, no. 27824/95, § 77, ECHR 2002-VII).

45. As to the proportionality of the measure, the Court considers that, in the light of the circumstances of the case, and particularly the fact that the applicant made no such claims before the domestic court, it is not necessary

to determine, at this stage, whether the amount yet to be offered to the applicant could satisfy the requirements of Article 1 of Protocol No. 1.

46. 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, twenty-three years after the taking of the land, the applicant has been required to bear a disproportionate burden.

47. 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). Whatever the effectiveness of an action under the Civil Code might be, 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 Court notes that notwithstanding the Constitutional Court judgment, to date no proceedings have been instituted by the COL. Lastly, the Court rejects the Government's argument that the applicant was not cooperative in proving ownership title. Indeed the Court considers that, in the context of an expropriation mechanism, it can understandably be the responsibility of the Government to identify the relevant owners. This responsibility also entails the necessary research to identify the owners. Moreover, the Court further notes that the Maltese legal system also provided for the possibility of initiating proceedings by means of a curator. It follows that the delay in paying compensation was totally attributable to the State.

48. The Court therefore concludes that in view of the delay in instituting the relevant proceedings and the fact that to date, twenty-three years after the taking of the land, the applicant has not been awarded, let alone paid, any compensation for it, the applicant has been made to bear an excessive individual burden.

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

II. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

50. The applicant complained that the Constitutional Court which found a violation of Article 6 did not award adequate just satisfaction and did not

redress the violation found, as she still did not have a means to oblige the Government to initiate compensation procedures and remains uncompensated to date. She relied on Articles 6 and 13 of the Convention, which read as follows:

Article 6

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

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

51. The Government submitted that the Constitutional Court had held that the COL’s inaction had constituted a violation of the applicant’s right to access to court and to a trial within a reasonable time, and awarded the applicant EUR 2,000. Thus, they considered that the applicant could no longer be considered a victim of a violation of Article 6 § 1. In any case, as explained in the submissions above, the Government considered that the applicant was also partly to blame for the delay in the proceedings.

52. The applicant submitted that she was still a victim of a violation of Article 6 § 1, as she had suffered non-pecuniary as well as pecuniary damage. She had been entitled to compensation, which the constitutional jurisdictions had not taken account of. Moreover, it had not even ordered the COL to institute the relevant proceedings. It followed that the constitutional remedy was highly ineffective in terms of Article 13. As to the merits, she contended that for the reasons referred to above she could not be blamed for the delay in the proceedings.

53. The Court reiterates that a decision favourable to the applicant is not in principle sufficient to deprive him or her of his or her status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *Central Mediterranean Development Corporation Limited v. Malta*, no. 35829/03, § 24, 24 October 2006).

54. The Court notes that the Constitutional Court’s acknowledgment that the excessive delay on the part of the Commissioner of Lands in instituting proceedings for compensation amounted to a denial of access to court satisfies in substance the first condition. However, as far as the second condition is concerned, even assuming that the award of EUR 2,000 is comparable to Strasbourg awards, the Court notes that the domestic courts, although empowered to do so, failed to order the COL to initiate proceedings as soon as possible. Indeed, to date in 2011 proceedings have

not been instituted. In these circumstances the Court considers that the applicant can still claim to be a victim of a violation of Article 6 § 1.

55. The Government's objection is therefore dismissed.

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

57. Having regard to the finding of the Constitutional Court relating to Article 6 § 1 (see paragraph 19 above), the Court considers that it is not necessary to re-examine in detail the merits of the complaint. Also bearing in mind that the situation persists to date, the Court finds that there has been a violation of Article 6 § 1 of the Convention on account of the fact that the applicant was denied and continues to be denied access to a court for the determination of the compensation due to her.

58. The Court reiterates that the role of Article 6 § 1 in relation to Article 13 is that of a *lex specialis*, the requirements of Article 13 being absorbed by the more stringent requirements of Article 6 § 1 (see, for example, *Société Anonyme Thaleia Karydi Axte v. Greece*, no. 44769/07, § 29, 5 November 2009; *Dauti v. Albania*, no. 19206/05, § 58, 3 February 2009; *Jafarli and Others v. Azerbaijan*, no. 36079/06, § 55, 29 July 2010, and *Urbanek v. Austria*, no. 35123/05, § 70, 9 December 2010).

59. It follows that it is not necessary to examine the complaint under Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed EUR 3,700,930 in respect of pecuniary damage. This included EUR 3,141,881 for loss of annual revenue for the planned project of the yacht marina and restoration works on the land and EUR 559,049 representing the value of the land in 2006, in the event that it was not returned to her. She further claimed EUR 24,000 in compensation for non-pecuniary damage.

62. The Government submitted that the yacht marina could never come into existence and any claims in respect of any revenue it could have obtained were totally imaginary and unfounded. The same held for any

restoration works which had never been carried out and would not be carried out at the applicant's expense, since the land was now in the State's hands. As to the value of the land, the Government submitted that since it had no commercial use but only an ecological one, the land was comparable to waste land and could not be valued at more than EUR 75,000. However, this sum had yet to be determined by the LAB. The Government considered that no compensation for non-pecuniary damage was called for in the circumstances of the present case.

63. The Court considers that the claim for loss of revenue on account of the expansion of a yacht marina does not reflect the realities of the situation and does not take account of the nature of the land and its surroundings or ecological value. In addition, no costs in relation to restoration works have been incurred by the applicant.

64. It therefore rejects these claims.

65. On the other hand, it notes that no compensation has yet been paid to the applicant in respect of the taking of the land. In view of the fact that the domestic proceedings relating to the payment of compensation have not even been instituted more than twenty years after the land was taken, the Court considers that it would be unreasonable to wait for the outcome of those proceedings (see *Serrilli v. Italy* (just satisfaction), no. 77822/01, § 17, 17 July 2008, and *Mason and Others v. Italy* (just satisfaction), no. 43663/98, § 31, 24 July 2007). However, in view of the submissions made by the parties at this stage, the question of pecuniary damage in relation to the compensation for the expropriation of the applicant's land is not ready for decision. Thus, that question, together with the issue of non-pecuniary damage, must accordingly be reserved and a subsequent procedure arranged, 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).

B. Costs and expenses

66. The applicant also claimed EUR 3,271.65 as per taxed bill of costs, and a further sum of approximately EUR 3,000 covering other legal fees, services and *ex parte* architect's fees, for costs and expenses incurred before the domestic courts, and EUR 1,823.68 for those incurred before the Court.

67. The Government submitted that some of the costs incurred in the domestic proceedings were being claimed twice, since they had already been included in the taxed bill of costs. Moreover, bills for *ex parte* experts should not be reimbursed, since it was the applicant's choice not to use court-appointed experts.

68. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as

to quantum. In the present case, the Court notes that the applicant has submitted double billing by claiming the amount stated in the taxed bill of costs and then a number of services separately. Regard being had to the violations found, the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,500 covering costs under all heads.

C. Default interest

69. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 1 of Protocol No. 1 to the Convention in relation to Land B inadmissible and the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the land subject to the President's declaration;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention in conjunction with Article 6 § 1;
5. *Holds* that, as far as the financial award to the applicant for non-pecuniary and pecuniary damage resulting from the violations found in the present case is concerned, the question of the application of Article 41 is not ready for decision and accordingly,
 - (a) *reserves* the said question as a whole in respect of non-pecuniary damage and in part in respect of pecuniary damage, namely in so far as it relates to the award of compensation for the expropriation of the land subject of the President's declaration;
 - (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;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amount:

(i) EUR 4,500 (four thousand five hundred 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 22 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President