



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

THIRD SECTION

CASE OF GRECH AND OTHERS v. MALTA

(Application no. 69287/14)

JUDGMENT

STRASBOURG

15 January 2019

FINAL

15/04/2019

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

In the case of Grech and Others v. Malta,

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

Branko Lubarda, *President*,

Vincent A. De Gaetano,

Helen Keller,

Pere Pastor Vilanova,

Alena Poláčková,

Georgios A. Serghides,

Jolien Schukking, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 11 December 2018,

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

PROCEDURE

1. The case originated in an application (no. 69287/14) 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 four Maltese nationals, Ms Mary Grech, Mr Christopher Mintoff, Ms Stephanie Mintoff and Ms Lilian Wismayer (“the applicants”), on 23 October 2014.

2. The applicants were represented by Dr I. Refalo and Dr S. Grech lawyers practising in Valletta. The Maltese Government (“the Government”) were represented by their Agent, Dr P. Grech, Attorney General.

3. On 23 March 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. Details concerning the applicants can be found in the appendix.

A. Background to the case

5. The applicants are part-owners of the property named “Assunta” in Nazzarenu Street, Paola, Malta, which is a twentieth century corner town house with three floors and a total area of approximately 135 square metres.

The first applicant owns one seventh undivided share thereof. The second and third applicants each own one of twenty-eight undivided shares thereof and the fourth applicant owns one of twenty-one undivided shares thereof.

6. The applicants' ancestor, L.M., as owner of the property, had granted it on temporary emphyteusis to J.S. on 31 March 1962 for a period of seventeen years at a yearly ground rent of 45 Maltese liras (MTL), approximately 105 euro (EUR). In 1971 a certain C.C. had obtained the *sub-utile dominium* (by way of sub-emphyteusis) of the property from J.S.

7. In March 1979 when the temporary emphyteusis came to an end C.C. continued to live in the property as a result of Chapter 158 of the Laws of Malta which provided for the conversion of temporary emphyteusis contracts into lease contracts. The rent under the new lease regime was MTL 86.54, approximately EUR 200 annually.

8. On 9 April 1986 the property was requisitioned by the State and C.C. was given other accommodation. He handed in the keys to the Housing Department on 29 September 1986.

9. On 30 October 1986 the Housing Department allocated the property to D.L. for residential use, at the annual rent of MTL 86. To the applicants' knowledge, at the time when the property was allocated to D.L., there was no pressing social need for such an allocation. D.L. and her husband (thereinafter "the occupants") had come to Malta from the United Kingdom three months before, and had been living in a house in Senglea. The husband had a job and the house they were previously residing in was not in danger of being requisitioned, nor had it been granted to them on account of old age. The Government noted that the applicants had not submitted any proof in this respect. The applicants also noted that the Government, in whose possession all the relevant documentation was, had failed to submit any evidence concerning D.L.'s need for the premises in question. Nevertheless, from the order itself it transpired that this was a normal case, and not one founded on homelessness, old age, or a risk of danger.

10. The owners refused the rent and did not recognise the occupants as tenants.

11. The occupants thus started paying rent directly to the Housing Department.

12. Eventually the owners became aware that the occupants were also occupying a portion of an adjacent property (a room previously used as an office), also owned by the applicants in the above-mentioned shares, and which was not covered by the requisition order.

13. The owners informed the authorities of this but no action was taken.

14. On an unspecified date, following the death of D.L. (in whose name the requisition order had been issued) the owners asked for the property to be returned to them. They offered the occupants a smaller property in the vicinity as part of a settlement proposal. The deal did not go through.

15. In 2001 D.L.'s husband also died and on 30 January 2002 their son L.L. requested to be recognised as tenant of the requisitioned premises. On 16 September 2003 the authorities recognised L.L. as tenant despite the owners' objections of 27 March 2002.

16. Rent continued to be paid on the terms mentioned above.

17. The owners complained to the ombudsman who, on 29 October 2003, considered that the authorities had not given sufficient attention to the owners' complaints.

18. On an unspecified date, L.L. applied for a grant to make alterations to the premises, including to the commercial room the occupants had been occupying without legal title.

19. When the owners became aware that this application had been lodged, they filed, on 21 February 2007, an objection to the proposed development.

20. The relevant permit to make structural alterations was issued by the Malta Environment and Planning Authority (MEPA) on 16 April 2007. In the applicants' view these structural changes affected the character of the property as well as its value.

B. Constitutional Redress Proceedings

21. On 28 May 2007 the owners (including the applicants or their predecessors in title) instituted constitutional redress proceedings. They complained of a breach of Article 1 of Protocol No. 1 to the Convention, and requested that the requisition order be annulled, that the property be returned to them and that compensation be awarded for any damage suffered as a result of the occupation of the premises and the breach of their right to property.

22. Pending proceedings, on 11 February 2010, the property was derequisitioned; however the Government admitted that although the property had been abandoned by the occupants the Government had not recovered the keys. On 8 April 2010 the Government offered the owners EUR 4,507.30 as rent for the occupation of the premises from 9 April 1986 until 11 February 2010. The owners refused the offer which they considered was too low compared to the rental value of the property and the long number of years during which it had been occupied by third parties.

23. On 28 April 2011 the Civil Court (First Hall) in its constitutional competence found in favour of the owners. It found a violation of Article 1 of Protocol No. 1 and, being unable to annul the requisition order - it having come to an end pending the proceedings - it ordered the defendants to return the property, free and unencumbered, to the owners. It also awarded EUR 7,535 in compensation, with costs against the Government.

24. The court considered that while the requisition order had been lawful and pursued a legitimate aim, it had failed to strike a fair balance for the

purposes of the invoked provision. The owners had received a low amount of rent for twenty-four years which had remained unvaried. In establishing compensation, the court had regard to the rental value submitted by the owners' expert [in a report of 2007] of MTL 250 (approximately EUR 582) a month, in other words MTL 3,000 (approximately EUR 6,988) yearly, which however included a room which was not subject to the requisition order and thus its rental value had to be deducted. This estimate was however not binding on the court. It noted that had the property not been requisitioned, according to Chapter 158 of the laws of Malta, rent would have increased every fifteen years according to the index of inflation (but never amounting to double the original rent). Thus, the owners would have been due a yearly rent of MTL 86.45 (from 9 April 1986) until 31 March 1994, of MTL 141.09 (approximately EUR 329) until March 2009, and thereafter a rent of MTL 207.39 (approximately EUR 483) until date of judgment, amounting to a rounded up sum of EUR 7,535.

25. The Government appealed in so far as they had been forced to return the premises (over which they no longer had control) and the owners cross-appealed in connection with the award of compensation. The latter noted that although L.L. had vacated the premises and offered to return the keys, the Government had failed to recover the keys.

26. By a judgment of 28 April 2014 the Constitutional Court considered that the first-instance court could not have ordered the return of the property which had already been de-requisitioned. As to the compensation it found that the amount awarded by the first-instance court had been low. Indeed the award of EUR 7,535 reflected the sums that the owners would have been entitled to as rent for the premises according to the provisions of Chapter 158 of the Laws of Malta, and thus it was not an award in compensation for the violation of their property rights, nor did it reflect an award for the occupation of the premises at undervalued rents. Bearing in mind the social aim pursued by the measure and the fact that the rent paid had been in accordance with the law, as well as the fact that the measure persisted for twenty-four years during which the owners received a low rent compared to its market value, it awarded non-pecuniary damage of EUR 5,000 to be added to the pecuniary damage already awarded. Thus, in total it awarded compensation of EUR 12,535 covering both pecuniary and non-pecuniary damage, without prejudice to any claims the owners may have for material damage caused to the property, and it ordered that the costs of the proceedings at both instances be split equally between the contending parties.

27. Pending these proceedings, on 21 October 2013, L.M., predecessor of the second and third applicant, died.

C. Subsequent events

28. Eventually, in or around August 2014, the keys were also returned to the owners, and the property was returned to them in a poor state. The applicants claimed that the property was not habitable and the works started by L.L. were never completed. They considered that the Government's lack of regard towards the situation had contributed to the degeneration of the property and that a considerable expense would have to be incurred and relevant permits obtained to reinstate the building for habitation.

29. According to an architect's valuation dated 19 August 2014, the property was abandoned halfway through a refurbishment project, leaving it in an uninhabitable and unfinished state, with visible damage, most pertinently as a result of severe water penetration. According to the same report the sale market value of the property with vacant possession, as it stood, was EUR 145,000 and the market value upon completion of works would be EUR 175,000. The estimated rental value of the property (in an unspecified state) in 2014 was EUR 665 a month (EUR 7,980 a year). On the basis of a process of interpolation, rental values for previous years were calculated to be as follows:

Year	Monthly rent (in EUR)	Annual rent (in EUR)
1971	9.32	111.84
1979	16.70	200.40
1987	86.80	1,041.60
1995	184.80	2,217.60
2003	325.60	3,907.20
2011	615	7,380

II. RELEVANT DOMESTIC LAW

30. The relevant domestic law and practice can be found in *Edwards v. Malta* (no. 17647/04, §§ 25-31, 24 October 2006) and *Amato Gauci v. Malta* (no. 47045/06, §§ 19-25, 15 September 2009).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

31. The applicants complained under Article 1 of Protocol No. 1 to the Convention that they could not make use of their property for a number of years, for which they received no adequate compensation. They argued that

the finding of the domestic courts did not suffice to remove their victim status as they remained inadequately compensated; moreover, since the keys of the property had not been returned to them in 2010 at the time of the derequisition, they continued to remain victims for a subsequent period for which they had not been compensated. Finally they maintained that the compensation awarded had been based on rental values established in a law which were also not Convention compatible. Article 1 of Protocol No. 1 to the Convention, 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.”

32. The Government contested that argument.

A. Preliminary objection

33. In the last round of observations the Government noted that the domestic proceedings concerned the entire property while the applicants claimed to own 11/42 undivided share of the property. Given that the applicants had not produced evidence to substantiate their exact share, their claim was contested by the Government.

34. The Court notes that the Government’s argument is not that the applicants do not have a possession, but rather the exact extent of that possession. Given the documents provided by the applicants concerning the attestation of the heirs of the original holders – which has not been contested by the Government – the Court finds no valid reason to doubt the amount of shares owned by the applicants as submitted by them. The Government’s contention is therefore dismissed.

B. Admissibility

1. Victim status

(a) The parties’ submissions

35. The Government submitted that the applicants had lost their victim status given that the Constitutional Court had found a violation of Article 1 of Protocol No. 1 and awarded compensation of EUR 12,535 covering both pecuniary and non-pecuniary damage. In the Government’s view the order for costs to be divided equally between all the parties was the result of the

fact that part of the Government's appeal had been upheld, together with that filed by the applicants.

36. The applicants submitted that given that the annual rental value of the property, in 2014, was EUR 7,980, an award of compensation amounting to EUR 12,535 for a violation persisting twenty-four years was not adequate. This was even more so given that costs had to be deducted. They noted that the increase of compensation awarded by the Constitutional Court (a non-pecuniary award of EUR 5,000) had been in practice negated by the order to pay costs (the owners' share amounting to EUR 2,265 exclusive of VAT) despite the owners having been successful at both first and second instance. They further noted that in determining pecuniary damage the domestic courts had used as a yardstick the regime that the applicants, or their ancestors, had subjected the property to prior to the requisition order, in other words a rent which was relevant only until 1979, with no regard to fluctuation in the property values for subsequent years. Indeed the applicable law on which the Constitutional Court had based its calculation provided for a value of rent which was only 1/35 of the market value of the property.

(b) The Court's assessment

37. The Court refers to its general principles about the matter as set out in *Apap Bologna v. Malta* (no. 46931/12, §§ 41, and 43-44, 30 August 2016).

38. In the present case the Court notes that there has been an acknowledgment of a violation by the domestic court. As to whether appropriate and sufficient redress was granted, the Court considers that even though the market value is not applicable and the rent valuations may be decreased due to the legitimate aim at issue, an award of EUR 12,535 - from which around EUR 3,000 must be deducted, being the sum the owners had to pay in costs (as evidenced by relevant documents), leaving an award of less than EUR 10,000 - can hardly be considered sufficient for a violation which persisted for more than twenty years during which the applicants were being paid a meagre amount of rent. Even assuming the applicants' expert's estimations are on the high side, the Government failed to provide any other valuation which could have been submitted in rebuttal. Moreover, the Court notes that the pecuniary damage awarded in the present case (EUR 7,535) was calculated on the basis of a legal regime which the Court has found not to be compatible with the Convention in circumstances similar to those of the present case (see, for example, *Amato Gauci v. Malta*, no. 47045/06, § 62, 15 September 2009).

39. It follows that the redress provided by the Constitutional Court did not offer sufficient relief to the applicants, who thus retain victim status for the purposes of this complaint.

40. The Government's objection is therefore dismissed.

2. Conclusion

41. 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.

C. Merits

42. The applicants submitted that there had been a violation of Article 1 of Protocol No. 1 as upheld by the domestic courts.

43. They further considered that there had been no particular social need for the requisition order in favour of D.L. Moreover, once the property had been derequisitioned the applicants had to wait another four years to regain possession of the property, as the Government had failed to obtain back the keys. Nor had the Government carried out a condition report, given that the property was returned to the applicants in a very poor state.

44. The Government submitted that although the applicants had suffered a violation of their property rights resulting from the fact that the rent did not increase over the years during which the property had been subject to a requisition order, the applicants could no longer complain once they had been compensated by the domestic court. They considered that that compensation was sufficient: while the applicants' architect had estimated the rental value in 2007 as being EUR 6,990 annually, according to the Government a more realistic rental market value for the property was EUR 1,500 annually. The Government further noted that the requisition had been issued in the general interest namely social housing, and that the applicant's appeal, which had only concerned the amount of compensation, had not referred to this matter.

45. Having regard to the findings of the domestic courts relating to Article 1 of Protocol No. 1 (see paragraphs 24, and 25-27 above), namely that there had been a violation which persisted for twenty-four years during which the owners received a low rent compared to its market value, the Court considers that it is not necessary to re-examine in detail the merits of the complaint. It finds that, as established by the domestic courts, the applicants were made to bear a disproportionate burden.

46. There has accordingly been a violation of 1 of Protocol No. 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

47. The applicants also invoke Article 13 in conjunction with Article 1 of Protocol No. 1 in connection with the lack of effectiveness of the

constitutional redress proceedings, in particular in so far as the award in pecuniary damage for the rent due had been too low. The provision reads as follows:

“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.”

A. Admissibility

48. The Government submitted that the applicants could have instituted a fresh set of constitutional redress proceedings to complain under Article 13 about the Constitutional Court judgment.

49. The applicants submitted that such an action would not have been appropriate and that the ordinary action at such stage was to bring the complaint before the Court.

50. The Court notes that the applicants have suffered a violation of their rights for over twenty years. They have already been through one set of constitutional redress proceedings, as a result of which the Court has found that they remained victims of the violation recognised by the domestic courts (see paragraph 40 above). As the Court has repeatedly found in such cases, given the nature of the complaint and the specific situation of the Constitutional Court in the domestic legal order, the Court finds that the institution of fresh constitutional redress proceedings was not a remedy which was required to be exhausted in the specific circumstances of this case (see, for example, *Apap Bologna*, cited above, § 63). The Government’s objection is therefore dismissed.

51. The Court notes that this 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.

B. Merits

1. The parties’ submissions

(a) The applicants

52. The applicants submitted that an ordinary civil remedy had no prospects of success, since the requisition orders were lawful and the authorities had wide discretion in requisitioning property.

53. According to the applicants, while it was true that the courts of constitutional jurisdiction had “unlimited powers”, in their case those courts had failed to use their wide-ranging powers to rectify the breach. Indeed, case-law showed that the Constitutional Court systematically reduced compensation awards made by the first-instance constitutional jurisdiction

without giving any weighty reasons, and sometimes also without any adequate reasoning. Moreover, generally the Constitutional Court also ordered applicants who had been successful in their claims to pay part of the costs of the proceedings. They relied on:

Margaret Galea vs L-Awtorità tal-Ippjanar et decided by the Constitutional Court on 12 February 2016 where the Constitutional Court acknowledged that the court-appointed architects had estimated the loss of rent as a result of the violation of the claimants' rights under Article 1 of Protocol No. 1 to the Convention as amounting to EUR 55,251 but nevertheless proceeded to award only EUR 3,500 by way of compensation;

Louis Apap Bologna vs Calcidon Ciantar et decided by the Constitutional Court on 24 February 2012 where the Constitutional Court reduced the compensation liquidated by the lower court from EUR 21,000 to EUR 16,000 and ordered that all the costs at appeal stage be borne by the claimant whose rights under Article 1 of Protocol No. 1 had been violated;

Ian Peter Ellis et vs Avukat Generali et decided by the Constitutional Court on 24 June 2016 where the Constitutional Court reviewed the compensation awarded by the lower court by reducing it to half the original amount, bringing it down from EUR 20,000 to EUR 10,000, and it awarded one half of the costs of the main appeal against the claimants and one quarter of the cross-appeal against the claimants;

Victor Portanier et vs Avukat Generali et decided by the Constitutional Court on 29 April 2016 where the Constitutional Court awarded only EUR 2,500 by way of compensation for the violation of Article 1 of Protocol No. 1 and saddled the complainant with 1/6 of the costs incurred at both first and second instance;

Vincent Curmi noe vs Avukat Generali et decided by the Constitutional Court on 24 June 2016 where the Constitutional Court reduced the compensation which had been awarded by the first court for the violation of the claimants' rights under Article 1 of Protocol No. 1, from EUR 1,000,000 to EUR 25,000. In addition it ordered that the claimants whose rights had been breached pay 3/5 of the costs of the appeal proceedings.

Josephine Mary Vella vs Direttur tal-Akkomodazzjoni Socjati et decided by the Constitutional Court on 25 May 2012 where the Constitutional Court confirmed the finding of a violation of Article 1 of Protocol No. 1 and confirmed the award of EUR 60,000 made by the lower court but revoked the eviction order made by the first court and saddled the claimant with a considerable portion of the costs of the appeal proceedings.

54. The applicants noted that Government relied on the latter case in support of the argument that the domestic courts do not always award compensation which is at the low end of the monetary scale. The applicants considered, however, that that case was not an example of a particularly generous award, considering the size of the building in question (which is the seat of a band club), its prominent location and architectural prestige, as

well as the long number of years during which the complainants in that case had been deprived of the control of use of their property. Considering that the first court had made the award in conjunction with an order to evict the tenant, the fact that the Constitutional Court revoked the eviction order but did not increase the compensation due – thus implying that the violation would continue to be perpetrated in the future – meant that the award made in that case was not beyond criticism to the extent that it was [at the date of observations] pending before this Court.

55. Most importantly, the Court had already recognised the ineffectiveness of constitutional redress proceedings in the judgment of *Apap Bologna* (cited above).

(b) The Government

56. The Government made reference to an ordinary civil action by which the requisition could be declared null and void, and damages for loss of use of the property could be awarded. Furthermore, the applicants could also have sought authorisation for non-compliance with the Director of Social Housing's request to recognise the tenant if they were able to show that serious hardship would be caused to them by complying with that request (Article 8 of the Housing Act). However, the applicants had not instituted such proceedings, opting instead to seek constitutional redress.

57. The Government submitted that constitutional proceedings were capable of providing adequate redress for the violation found by the domestic courts. In fact and in practice, the courts of constitutional jurisdiction could award any type of redress, ranging from an award of compensation, which was the usual type of redress granted in cases of a violation of Article 1 of Protocol No. 1 (they relied, for example, on *AIC Joseph Barbara vs the Prime Minister*, Constitutional Court judgment of 31 January 2014, and *Angela sive Gina Balzan vs the Prime Minister*, Constitutional Court judgment of 7 December 2012), to various other types of orders. The Government submitted, as examples from actual judgments, the reintegration of an employee into the public service, as well as an order made to the courts of criminal jurisdiction to discard a statement made by the accused when it had been taken by the police without legal assistance. They reiterated that there were no limits to the powers of the courts of constitutional jurisdiction to grant redress for Convention violations. In cases of complaints under Article 1 of Protocol No. 1, the domestic courts could annul a requisition order or evict a tenant if they considered that it would be the appropriate redress.

58. In reply to the Court's specific question to submit relevant examples, the Government submitted the cases of *Josephine Mary Vella vs Director for Social Accommodation*, Constitutional Court judgment of 25 May 2012 and *Angela sive Gina Balzan vs the Prime Minister* (cited above) where the

Constitutional Court awarded EUR 60,000. In the Government's view it sufficed if a remedy had the potential of redressing a complaint.

59. The Government further submitted that the present case was proof that the Constitutional Court did not systematically reduce compensation. Moreover, in the present case there had been no other action to be taken given that the property had already been de-requisitioned pending proceedings.

2. The Court's assessment

60. The Court reiterates its general principles under Article 13 as set out in *Apap Bologna* (cited above, §§ 76-79). In particular it reiterates that, for the purposes of Article 13, it is for the Court to determine whether the means available to an applicant for raising a complaint are "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred. In certain cases a violation cannot be made good through the mere payment of compensation and the inability to render a binding decision granting redress may also raise issues (*ibid.*, § 77).

61. The Court notes that unlike in *Apap Bologna*, cited above, in the present case the constitutional jurisdictions and in particular the Constitutional Court did not need to take any action "preventing the alleged violation or its continuation" because the violation had come to an end pending those proceedings. However, even where it was required, the Court has already established that the Constitutional Court has repeatedly failed to take the required action which would bring the violation to an end (*ibid.*, § 86).

62. As to the requirement of providing adequate redress for any violation that had already occurred, the Court has repeatedly found that the sums awarded in compensation by the Constitutional Court do not constitute adequate redress. The Court reiterates that, just like an award for pecuniary damage under Article 41 of the Convention, an award for pecuniary damage made by a domestic court must put the applicant, as far as possible, in the position he would have enjoyed had the breach not occurred. It transpires from the information and cases brought before the Court that this is often not the case. Such pecuniary awards are also often not accompanied by an adequate award of non-pecuniary damage and/or an order for the payment of the relevant costs (*ibid.*, §§ 89-90). In respect of the present case, the Court makes reference to its considerations in paragraph 38 above. Indeed, in the present case, the applicants - or their ancestors with other part-owners - had been awarded low pecuniary damages, and their award of non-pecuniary damage was substantially diminished by an order to pay part costs, despite them being successful at first and second instance, rendering such compensation inadequate overall.

63. In the light of the above considerations, and in view of the domestic judgments brought to its attention on the subject matter also in the present case, the Court concludes that, although constitutional redress proceedings are an effective remedy in theory, they are not so in practice, in cases such as the present one. In consequence, they cannot be considered an effective remedy for the purposes of Article 13 in conjunction with Article 1 of Protocol No. 1 concerning arguable complaints in respect of requisition orders which, though lawful and pursuing legitimate objectives, impose an excessive individual burden on applicants.

64. As to the other remedies referred to by the Government the Court has already held that they did not constitute effective remedies available to the applicants in theory and in practice at the relevant time (*ibid.*, § 92-93). Nothing has been brought to the Court's attention to alter that conclusion.

65. Accordingly, the Court finds that there has been a violation of Article 13, in conjunction with Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicants claimed loss of fair rent from 1979 (date of the requisition order) to 2014 (date when the keys were returned to them). For this purpose they submitted a valuation, dated 2014, which takes into account the rental value of the property over a span of years. According to this valuation, the annual rental value of the property on the market was 200.40 euros (EUR) in 1979, EUR 1,041.60 in 1987, EUR 2,217.60 in 1995, EUR 3,907.20 in 2003, EUR 7,380 in 2011, and EUR 7,980 in 2014. The applicants have therefore calculated the loss of rent as follows:

Loss of rent 1979 to 1986, 8 years at EUR 200.40: EUR 1,603.20

Loss of rent 1987 to 1994, 8 years at EUR 1,041.60: EUR 8,332.80

Loss of rent 1995 to 2002, 8 years at EUR 2,217.60: EUR 17,740.80

Loss of rent 2003 to 2010, 8 years at EUR 3,907.20: EUR 31,257.60

Loss of rent 2011 to 2014, 4 years at EUR 7,380: EUR 29,520.00

Thus, the total loss of rent from 1979 to 2014 amounted to EUR 88,454.40. Deducting the sum awarded by the Constitutional Court, the remaining pecuniary loss in respect of the entire property amounted to EUR 75,919.40.

68. The applicants together own an undivided share of 11/42 in the property, therefore the total share of the pecuniary loss claimed by the applicants is 11/42 of the above mentioned-sum, amounting to EUR 19,883.65 to be split between them according to their ownership rights and without prejudice to the share of the sum awarded by the Constitutional Court which the applicants have already received. In addition the applicants submit that they ought also to receive interest on the rent which they were entitled to over the years which should be calculated at the rate of 8% according to law.

69. The applicants further claimed EUR 25,000 for costs to reinstate the property without prejudice to any further right of compensation which the applicants might have.

70. The applicants further claimed EUR 15,000, EUR 5,000, EUR 3,750, and EUR 3,750 respectively, in non-pecuniary damage.

71. The Government submitted that the period to be taken into consideration was that during which the requisition order was in place, i.e. 1986-2010. They further noted that the applicants' architect's valuation was based on a number of assumptions such as the fact that the property was freehold, and included a room that was not covered by the requisition order. Moreover, the valuation was made relative to commercial use not residential purposes. Furthermore, the boom in the property market had only occurred in 2003. According to the Government a more realistic rental market value for the property in 2007 was EUR 1,500 annually. Given the rent already paid and the award made by the Constitutional Court, and in the light of the share of the applicants being 11/42, the Government considered that pecuniary damage should not exceed EUR 3,000 jointly. They also considered that no interest was due.

72. The Government submitted that they had not been responsible for the damage to the property and thus any claim in that respect had to be made against the persons who allegedly caused the damage.

73. Lastly, the Government considered that an award in respect of non-pecuniary damage should not be more than EUR 2,000 jointly.

74. The Court must proceed to determine the compensation the applicants are entitled to in respect of the loss of control, use and enjoyment of the property which they have suffered for the period during which the requisition was in force, which is from 1986 to 2010. Nevertheless given that the keys of the property were not returned to the owners until 2014, the Court will determine the compensation due until that date.

75. The Court observes that the applicants' claims are based on a valuation prepared by their own architect, and that the Government have failed to rebut such valuation by any technical means. However, the Court notes that the valuation, made in 2014, considers the property as freehold - assuming that the perpetual emphyteusis on it had been redeemed - it also considers the potential development into a home office and its potential use.

That valuation further considers that the property was on the date of the visit in 2014 unfinished and uninhabitable, and its then sale market value - in that state - was estimated to be EUR 145,000, while that once works would be completed was estimated to be EUR 175,000.

76. The Court notes that the rental value was estimated in 2014 at EUR 665 a month. Given that the property was then uninhabitable it is presumed that this rental value was prepared on the basis that works had been completed. The different rents applicable for the previous years were calculated by a process of interpolation on the basis of that rental estimate. The Court also notes that the 2007 report, submitted by the applicants, also considers the property to be freehold and refers to the best price one could obtain on an open market. That report also considers the possibility of converting the property into an office, and of ameliorations being carried out as by a permit issued in 2007. Thus, in the Court's view those estimates, while useful, cannot be taken to reflect the real rental value during the relevant period, for the residential purposes it was used for.

77. Thus, in assessing the pecuniary damage sustained by the applicants, the Court has, as far as appropriate, considered the estimates provided and had regard to the information available to it on rental values on the Maltese property market during the relevant period. It has also considered the legitimate purpose of the restriction suffered, bearing in mind that 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 *James and Others v. the United Kingdom*, 21 February 1986, Series A no. 98, § 54; *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 94, ECHR 2005-VI; and *Ghigo v. Malta* (just satisfaction), no. 31122/05, § 18, 17 July 2008). Furthermore, the sums already received by the owners for the relevant period must be deducted.

78. The Court reiterates that an award for pecuniary damage under Article 41 of the Convention is intended to put the applicant, as far as possible, in the position he would have enjoyed had the breach not occurred. It therefore considers that interest should be added to the above award in order to compensate for loss of value of the award over time. As such, the interest rate should reflect national economic conditions, such as levels of inflation and rates of interest (*ibid.*, § 20).

79. Bearing in mind the applicants' share of the property, the Court awards the applicants EUR 8,000 jointly, to be split according to their shares.

80. The Court does not discern any causal link between the violations found and the pecuniary damage alleged in connection with the costs to reinstate the property, which may be recovered domestically from the relevant party; it therefore rejects this claim. On the other hand, it awards the applicants EUR 2,400 jointly, in respect of non-pecuniary damage.

B. Costs and expenses

81. The applicants claimed EUR 1,296.79, jointly, for the costs and expenses incurred before the domestic courts, which included, in relation to their share, EUR 959 of court costs according to a taxed bill of costs, as well as EUR 208.21 in extra judicial costs and EUR 129.58 in architect fees. They further claimed EUR 2,283.66, jointly, for those costs and expenses incurred before the Court.

82. They also claimed EUR 1,744.02 in unpaid water and electricity bills which were pending on the property when this was returned to them.

83. The Government did not contest the claim arising out of the taxed bill of costs, but contested that arising out of non-judicial costs. They also considered that an award for costs and expenses before this Court should not exceed EUR 1,500 which would include the costs for architect fees. The Government also considered that the claim for water and electricity had to be made against the tenant not the Government.

84. The Court does not discern any causal link between the violation found and the costs claimed in relation to outstanding bills, which may be recovered domestically from the relevant party. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 3,000, jointly, covering costs under all heads.

C. Default interest

85. The Court considers it appropriate that the default interest rate 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 application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there has been a violation of Article 13 in conjunction with Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months the following amounts:

- (i) EUR 8,000 (eight thousand euros), jointly, in respect of pecuniary damage;
- (ii) EUR 2,400 (two thousand four hundred euros), jointly, plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (iii) EUR 3,000 (three thousand euros), jointly, plus any tax that may be chargeable to the applicants, 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 15 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Branko Lubarda
President

APPENDIX

N°.	Firstname LASTNAME	Birth date	Birth year	Nationality	Place of residence
1.	Mary GRECH	30/12/1932	1932	Maltese	Birkirkara
2.	Christopher MINTOFF	17/09/1986	1986	Maltese	Tarxien
3.	Stephanie MINTOFF	16/10/1990	1990	Maltese	Tarxien
4.	Lilian WISMAYER	03/10/1954	1954	Maltese	Kappara