



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

THIRD SECTION

**CASE OF EDWARD ZAMMIT MAEMPEL AND
CYNTHIA ZAMMIT MAEMPEL v. MALTA**

(Application no. 3356/15)

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 Edward Zammit Maempel and Cynthia Zammit Maempel 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. 3356/15) 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 two Maltese nationals, Mr Edward Zammit Maempel and Ms Cynthia Zammit Maempel, (“the applicants”), on 14 January 2015.

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

3. The applicants alleged that they had suffered a breach of Article 1 of Protocol No. 1 to the Convention and Article 13 of the Convention in conjunction with the latter on account of the requisition order imposed on their property in 1992, in respect of which they did not have an effective remedy available in particular given the insufficient redress provided by the Constitutional Court.

4. On 5 December 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were both born in 1968 and live in Marsalforn and Naxxar, respectively.

A. Background to the case

6. The applicants are owners (each own a half undivided share) of the property at number 85, St. Francis Square, Alley No. 3, Qormi, Malta.

7. On 18 November 1986 the applicants granted the property on emphyteusis for twenty-one years to Mr and Ms E. at a rent of approximately 230 euros (EUR).

8. On 31 December 1992, the property was requisitioned by the Director of Social Housing by virtue of requisition order no. RO53704 (hereinafter referred to as “the requisition order”). No reason for the requisition was set out in the order. The property was allocated to Mr and Ms A. At the request of the Housing Authority, on 26 March 1997, the emphyteutical grant in favour of Mr and Ms E. was transferred to Mr and Ms A.

9. The contract of emphyteusis expired in 2007. However, given Article 12A, of the Housing (Decontrol) Ordinance, Chapter 158 of the Laws of Malta (see Relevant domestic law), which provided for the automatic conversion of the emphyteusis into a lease, Mr and Ms A. continued to occupy the property by title of lease.

10. Mr and Ms A. paid the applicants EUR 279.52 annually by way of rent pursuant to the rent control legislation. However, the applicants did not accept this rental amount on the ground that it was insignificant when compared to the rental value which the property would have fetched on the open market. Due to this refusal the rent was to be deposited with the court registry. The rental amount was never revised in the subsequent years, the 2010 amendments (see Relevant domestic law) not being applicable as the rent exceeded the EUR 185 stipulated by law.

B. Constitutional Redress Proceedings

11. On 9 March 2009 the applicants filed proceedings before the Civil Court (First Hall) in its constitutional competence. The applicants claimed that their rights, as protected under Article 1 of Protocol No. 1 to the Convention, were being violated because they had not received adequate compensation for the forced occupation of their property and because the authorities had failed to properly look after the property after taking possession of it.

12. On 26 March 2013 the court decided in favour of the applicants. The court found a violation of the applicants' rights under Article 1 of Protocol No. 1 to the Convention. It confirmed that the applicants were the legitimate owners of the property, it declared the requisition order null and void, and ordered the release of the premises with vacant possession in favour of the applicants, as well as the eviction of Mr and Ms A. from the property within one month. It awarded EUR 50,000 in compensation (*kumpens dovut*) to the applicants to be paid by the Housing Authority. The costs of the proceedings were to be paid by the Housing Authority and Mr and Mrs A.

13. The court held that keeping the requisition order in place was unjustifiable since Mr and Ms A. had left the property in an abandoned state and left it to deteriorate without carrying out any acts of ordinary maintenance. Thus, the very scope of requisitioning a property for the purpose of "supplying housing accommodation" was not met in the present case given that Mr and Ms A. had abandoned the property. Furthermore, a disproportionate and excessive burden was being imposed on the applicants, since they had been required to bear most of the social and financial costs of supplying housing accommodation. A balance had not been struck between the interests of the applicants (as owners of the property) and the interests of the public especially since the property lay abandoned.

14. The court-appointed architect estimated that it would require 25,000 Maltese liri (MTL) (equivalent to EUR 58,234) to make the property habitable again and he estimated the property's sale value on the market (in 2010) to be EUR 139,800 and its rental value (for the same year) to be EUR 4,893 annually. Against that background, the court considered that the discrepancy between that amount and the rental sum offered by Mr and Ms A. rendered the situation devoid of any proportionality as required under the Convention.

15. Mr and Ms A. did not file an appeal but the Attorney General and the Housing Authority both appealed against the decision of the Civil Court (First Hall) in its constitutional competence. The applicants made submissions in reply to the appeal lodged by the defendants, and asked the Constitutional Court to confirm the first-instance judgment.

16. On 18 July 2014 the Constitutional Court upheld the first-instance judgment in part. It confirmed that the requisition order constituted an interference with the applicants' property and amounted to a violation of the applicants' rights under Article 1 of Protocol No. 1. However, the Constitutional Court revoked the first-instance court's order to evict Mr and Ms A. from the premises, and revoked the annulment of the requisition order. Furthermore, the Constitutional Court reduced the compensation due as non-pecuniary damages from EUR 50,000 to EUR 12,000. One-fifth of the costs of the appeal were to be borne by the applicants.

17. The Constitutional Court confirmed that the applicants had proved ownership of the property and noted that as a result of the requisition order the applicants' father lost possession of the property and had no means of regaining possession as long as the requisition order remained in force. It further noted that the court-appointed architect had described the property as having been neglected for a long time and left without ordinary maintenance; it was (at the time of the judgment) uninhabitable. It followed that the first-instance court's conclusion, to the effect that the property was not being lived in, was correct. The deterioration of the property also caused damage to the owners as substantial costs would have to be incurred in order to carry out repairs.

18. In the light of these circumstances, the Constitutional Court considered that the requisition order was putting a disproportionate and excessive burden on the applicants, who, moreover, were precluded from taking judicial action before the ordinary courts against Mr and Ms A., with the aim of protecting their interests. This was even more so given that the Housing Authority did nothing, and did not appear to have the will to do anything, to remedy the damage done to the property. Indeed it appeared that the requisition order was kept in place because the Housing Authority wanted to exclude the possibility of Mr and Ms A. being evicted from the property. Nevertheless the court considered that Mr and Ms A., could still be protected through the lease agreement.

19. As to redress, the Constitutional Court observed that the first-instance court had awarded compensation in the light of the court-appointed architect's valuations of the property and the expenses required to rehabilitate the property. However, it considered that while the applicants deserved compensation for the violation of their rights, namely non-pecuniary damages, the quantum established by the court of first-instance was excessive. In its view, constitutional redress proceedings should not serve as a replacement to ordinary remedies available to the applicants. Once the requisition order was annulled (by means of a judicial review procedure), the applicants had other remedies to deal with both the eviction of Mr and Ms A. and the award of material damages before the ordinary courts. The Constitutional Court also observed that the applicants took a long time before taking action to protect their fundamental rights, namely, in 2009, around seventeen years after the violation of their rights first occurred. Therefore, as a result of this delay the Constitutional Court considered that the amount of EUR 12,000 was just and equitable as compensation for non-pecuniary damage. In relation to practical measures, the Constitutional Court considered that since the applicants still had a remedy under Article 469A, by means of which they could attack the requisition order before the ordinary courts, it was not for it to annul the requisition order.

C. Following the Constitutional Redress Proceedings

20. On 5 August 2014 the Housing Authority derequisitioned the property of the applicants. However, up to the date of the lodging of the application, the property still had not been returned to the applicants. No keys were returned to them and they had no means of taking possession of the property unilaterally.

21. On 31 October 2014, the applicants wrote to the Housing Authority requesting that a declaration be made on whether the premises were vacant and requesting the Housing Authority to prepare a condition report detailing the state of the premises at the end of the requisition period. According to the applicants, the Housing Authority failed to reply.

22. During the observations stage of proceedings before the Court the parties submitted an update of the situation. On 31 August 2015 the Housing Authority wrote to the applicants informing them that they could collect the keys of the property. The applicants refused to withdraw the keys in the absence of the drawing up of a condition report in the presence of the authorities since - as had already transpired in the domestic proceedings - the property had suffered huge damage while subject to the requisition order. The applicants thus wanted a condition report to be drawn up, in the presence of the authority, to enable them to obtain compensation for the damage incurred which was the responsibility of the State in line with Article 5 of the Housing Act (see Relevant domestic law below). The authorities refused to co-operate and informed the applicants that if they wished they could draw up a report at their own expense. In the Government's view if the applicants wished to obtain compensation for damage it was for them to lodge the relevant domestic proceedings. The applicants having failed to withdraw the keys, on 7 September 2016 the Housing Authority deposited the keys in court.

II. RELEVANT DOMESTIC LAW

A. Requisition orders

23. The relevant domestic law and practice concerning requisition orders is to be found in, *inter alia*, *Ghigo v. Malta* (no. 31122/05, 26 September 2006, §§ 18-24).

24. Article 1531C of the Civil Code and the Minimum Compensation for Requisitioned Buildings Regulations (Subsidiary Legislation 16.2) introduced further amendments in 2010, allowing for an increase in the applicable rents. Article 1531C of the Civil Code reads as follows:

Article 1531C

“(1) The rent of a residence which has been in force before the 1st June 1995 shall be subject to the law as in force prior to the 1st June 1995 so however that unless otherwise agreed upon in writing after the 1st January 2010, the rate of the rent as from the first payment of rent due after the 1st January 2010, shall, when this was less than one hundred and eighty-five euro (€185) per year, increase to such amount:

Provided that where the rate of the lease was more than one hundred eighty-five euro (€185) per year, this shall remain at such higher rate as established.

(2) In any case the rate of the rent as stated in sub-article (1) shall increase every three years by a proportion equal to the increase in the index of inflation according to article 13 of the Housing (Decontrol) Ordinance; the first increase shall be made on the date of the first payment of rent due after the 1st January 2013:

Provided that where the lease on the 1st January 2010 will be more than one hundred eighty-five euro (€185) per year, and by a contract in writing prior to 1st June 1995 the parties would have agreed upon a method of increase in rent, after 1st January 2010 the increases in rent shall continue to be regulated in terms of that agreement until such agreement remains in force.”

25. In so far as relevant, the Minimum Compensation for Requisitioned Buildings Regulations read as follows:

“2. (1) The provisions of article 1531C of the Civil Code shall, as from first (1st) payment of rent due after the 30th September 2011, apply to buildings consisting of a residence which are requisitioned in terms of the Housing Act.

(2) For the purposes of these regulations ‘rent’ shall also include compensation payable under the Housing Act for the requisition of a building consisting of a residence and in the case of such compensation being payable, the provisions of article 1531C of the Civil Code shall apply *mutatis mutandis*.”

26. Section 5 and 8 of the Housing Act, Chapter 125 of the Laws of Malta, in so far as relevant, read as follows:

Section 5

“(1) Subject to the provisions of the next following subsection, the Director shall have the same rights and obligations in respect of repairs and maintenance of a requisitioned building as a tenant under the relevant provisions of the Civil Code.

(2) When a building which has been in the possession of the Director under the provisions of this Act is vacated, the Director (unless the requisitionee prefers to retain same paying compensation as laid down in Article 1564 of the Civil Code), may remove all fixtures or other improvements of whatsoever nature made therein during the requisition period, making compensation to the requisitionee for the damage which may have been caused by the placing or by the removal of those fixtures or other improvements.”

Section 8

“(1) Where any persons have been accommodated in a building which is held by virtue of a requisition, the Director may at any time, by means of a judicial letter, require the requisitionee to recognize the persons so accommodated as tenants or as subtenants of the building, as the case may be.

(2) Within thirty days of service on him of a judicial letter under the last preceding subsection, the requisitionee, by application before the First Hall of the Civil Court in contestation of the Director, may pray for an authorization of non-compliance with that request:

Provided that, in the case where the building has been requisitioned from the tenant, the latter, by a judicial letter to be filed within fifteen days from service on him of the judicial letter provided for in the last preceding subsection, may inform the Director that he does not wish to retain the tenancy, and thereupon the Director shall be entitled to take action under the last preceding subsection against the landlord.

(3) The court shall not grant the authorisation of noncompliance mentioned in the last preceding subsection unless the applicant shows to the satisfaction of the court that serious hardship would be caused to him by complying with that request:

Provided that the assertion that the requisitionee wishes to take possession of the building for his own use or for the use of any member of his family shall not be considered of itself as a hardship for the purposes of this subarticle."

27. Article 12A of the Housing (Decontrol) Ordinance, Chapter 158 of the Laws of Malta, in so far as relevant, reads as follows:

"(1) This article shall apply:

(a) on the expiration of a temporary emphyteusis or subemphyteusis (hereinafter in this article referred to as "the most recent emphyteusis or sub-emphyteusis") which is not one the effects of the termination of which are regulated by article 12(2)(a) or (b) or by article 12(4) or 12(5);

(b) of a dwelling house which at the time of the expiration of the most recent emphyteusis or sub-emphyteusis:

(i) is occupied by a citizen of Malta as his ordinary residence; and

(ii) is subject to another emphyteusis or subemphyteusis (hereinafter in this article referred to as "the preceding emphyteusis or subemphyteusis") whether perpetual or temporary.

(2) On the expiration of the most recent emphyteusis or subemphyteusis the emphyteuta or the sub-emphyteuta who satisfies the requirements of subarticle (1)(b)(i) shall be entitled to continue in occupation of the dwelling house under a lease from the person holding the preceding emphyteusis or sub-emphyteusis at the same rent and under the same conditions applicable according to article 12(2)(i), (ia) and (ii) which shall apply *mutatis mutandis*.

(3) On the expiration of the preceding emphyteusis or subemphyteusis the lease mentioned in subarticle (2) shall remain in force for the same rent and under the same conditions as mentioned in subarticle (2) between the tenant and the person who from time to time would, were it not for the tenancy, be entitled to the vacant possession of the house.

(4) The provisions of this article shall also apply in all cases where although the most recent emphyteusis or sub-emphyteusis shall have expired before the 1st July 2007 the person who was the emphyteuta or the sub-emphyteuta in the most recent emphyteusis or sub-emphyteusis still occupies the house as his ordinary residence on the said date".

B. Remedies

28. Article 46 of the Constitution of Malta, in so far as relevant, reads:

“(1) ... any person who alleges that any of the provisions of articles 33 to 45 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, or such other person as the Civil Court, First Hall, in Malta may appoint at the instance of any person who so alleges, may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the Civil Court, First Hall, for redress.

(2) The Civil Court, First Hall, shall have original jurisdiction to hear and determine any application made by any person in pursuance of sub-article (1) of this article, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said articles 33 to 45 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Court may, if it considers it desirable so to do, decline to exercise its powers under this sub-article in any case where it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(4) Any party to proceedings brought in the Civil Court, First Hall, in pursuance of this article shall have a right of appeal to the Constitutional Court.”

29. Similarly, Article 4 of the European Convention Act, Chapter 319 of the Laws of Malta, provides:

“(1) Any person who alleges that any of the Human Rights and Fundamental Freedoms, has been, is being or is likely to be contravened in relation to him, or such other person as the Civil Court, First Hall, in Malta may appoint at the instance of any person who so alleges, may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the Civil Court, First Hall, for redress.

(2) The Civil Court, First Hall, shall have original jurisdiction to hear and determine any application made by any person in pursuance of sub-article (1), and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement, of the Human Rights and Fundamental Freedoms to the enjoyment of which the person concerned is entitled:

Provided that the court may, if it considers it desirable so to do, decline to exercise its powers under this sub-article in any case where it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other ordinary law.

(4) Any party to proceedings brought in the Civil Court, First Hall, in pursuance of this article shall have a right of appeal to the Constitutional Court.”

30. Article 469A of the Code of Organisation and Civil Procedure of the Laws of Malta, in so far as relevant, reads as follows:

“(1) Saving as is otherwise provided by law, the courts of justice of civil jurisdiction may enquire into the validity of any administrative act or declare such act null, invalid or without effect only in the following cases:

(a) where the administrative act is in violation of the Constitution;

(b) when the administrative act is *ultra vires* on any of the following grounds:

(i) when such act emanates from a public authority that is not authorised to perform it; or

(ii) when a public authority has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative act or in its prior deliberations thereon; or

(iii) when the administrative act constitutes an abuse of the public authority's power in that it is done for improper purposes or on the basis of irrelevant considerations; or

(iv) when the administrative act is otherwise contrary to law.

(2) In this article - "administrative act" includes the issuing by a public authority of any order, licence, permit, warrant, decision, or a refusal to any demand of a claimant, but does not include any measure intended for internal organization or administration within the said authority:

Provided that, saving those cases where the law prescribes a period within which a public authority is required to make a decision, the absence of a decision of a public authority following a claimant's written demand served upon it, shall, after two months from such service, constitute a refusal for the purposes of this definition;

(3) An action to impugn an administrative act under sub-article

(1)(b) shall be filed within a period of six months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is the earlier".

THE LAW

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

31. The applicants complained about the ongoing interference with their property in breach of Article 1 of Protocol No. 1 to 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."

32. The Government contested that argument.

A. Admissibility

1. *The parties' submissions*

33. The Government submitted that the applicants had lost their victim status following the Constitutional Court's finding which acknowledged the violation and awarded EUR 12,000 in compensation. In the present case most of the costs had to be paid by the defendant, leaving only 1/5 of costs at appeal stage for the applicants. The Government noted that the Constitutional Court arrived at that quantum having taken into consideration the value of the property and the legitimate aim behind the lawful measure as well as the fact that the applicants instituted proceedings seventeen years after the requisition order had been put in place. The applicants were thus awarded EUR 545.45 annually which had to be added to the EUR 279.52 annually which they received in rent. In consequence they had been paid EUR 824 annually, which in the Government's view was sufficient redress.

34. The applicants submitted that while the Constitutional Court had found a violation given that for twenty-two years the applicants had suffered an interference as a result of which they were entitled to very low compensation, that Court had only awarded EUR 12,000, (less than 1/4 of what the first-instance court had awarded) which would amount to EUR 545.45 annually, while the court-appointed architect had established the rental value in 2010 as being EUR 4,893 annually. While admitting that the value of the property would have been less prior to 2010, its value had increased post 2010. Thus, the difference in rent awarded and that on the market remained too wide to consider such sum to be adequate redress. Moreover, the applicants noted that out of that EUR 12,000 they had to pay EUR 1,230 in costs, which thus diminished their compensation further. Lastly, they noted that that award was not even sufficient to restore the property into a habitable state given that the court-appointed architect had estimated such costs at EUR 58,234.

2. *The Court's assessment*

35. The Court reiterates that the adoption of a measure favourable to the applicant by the domestic authorities will deprive the applicant of victim status only if the violation is acknowledged expressly, or at least in substance, and is subsequently redressed (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178 et seq. and § 193, ECHR 2006-V, and *Brumărescu v. Romania* [GC], no. 28342/95, § 50, ECHR 1999-VII). Whether the redress given is effective will depend, among other things, on the nature of the right alleged to have been breached, the reasons given for the decision and the persistence of the unfavourable consequences for the person concerned after that decision (see *Oliari and Others v. Italy*, nos. 18766/11 and 36030/11, § 78, 21 July 2015). The redress afforded must be

appropriate and sufficient. Whether an individual has victim status may also depend on the amount of compensation awarded by the domestic courts and the effectiveness (including the promptness) of the remedy affording the award (see *Paplauskienė v. Lithuania*, no. 31102/06, § 51, 14 October 2014).

36. In the present case the Court notes that the first criterion, namely acknowledgment of a violation, has been met.

37. As to the second criterion, the Court notes that, as it transpires from its case-law, appropriate redress in Article 1 of Protocol No. 1 cases requires an award in respect of both pecuniary damage (see *Frendo Randon and Others v. Malta*, no. 2226/10, § 37, 22 November 2011 and *Azzopardi v. Malta*, no. 28177/12, § 33, 6 November 2014) as well as non-pecuniary damage, which would generally be required when an individual was deprived of, or suffered an interference with, his or her possessions contrary to the Convention (see *Gera de Petri Testaferrata Bonici Ghaxaq v. Malta*, no. 26771/07, § 53, 5 April 2011).

38. The Court notes that in the present case it is clear from the Constitutional Court's judgment (see paragraph 19 above) that the award made was solely for non-pecuniary damage, as that court considered that other remedies could be pursued for the purposes of obtaining pecuniary damage.

39. The Court reiterates that under the established case-law, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see, *inter alia*, *Kozacioğlu v. Turkey* [GC], no. 2334/03, § 40, 19 February 2009 and *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009). Moreover, in cases under Article 1 of Protocol No. 1, an applicant who has suffered a violation over a long period of time should not be required to pursue a further remedy in order to obtain compensation (see, *mutatis mutandis*, *Gera de Petri Testaferrata Bonici Ghaxaq*, cited above, § 53 and *Apap Bologna v. Malta*, no. 46931/12, § 44, 30 August 2016).

40. In the present case, after finding that the applicants had been suffering a breach of their property rights for more than twenty years, the Constitutional Court, in the ambit of constitutional redress proceedings which are the ultimate domestic remedy which must be pursued for the purposes of the exhaustion requirement under the Convention, sent the applicants to obtain compensation for pecuniary losses elsewhere. The redress that the Constitutional Court offered was therefore solely representing the non-pecuniary damage suffered for the breach of their rights. Moreover, the applicants remained subject to the same requisition order, which even though eventually retracted, remained *de facto* in force for some time.

41. It follows that the redress provided by the Constitutional Court did not offer sufficient relief to the applicants, who continued to suffer the

consequences of the breach of their rights, and thus retain victim status for the purposes of this complaint (see, *mutatis mutandis*, *Apap Bologna*, cited above, § 48).

42. The Government's objection is therefore dismissed.

43. 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

44. The applicants submitted that they had suffered a violation of their property rights as acknowledged by the domestic courts. They pointed to the fact that while a legitimate aim may have existed at the start, none existed twenty years later as shown by the fact that the tenants had abandoned the property. Moreover, the difference between the rent paid to them under the applicable law and that on the market was substantial (the rent payable according to law was one seventeenth of the market value). Thus, the State had failed to strike a fair balance between the demands of the general interest and those of the applicants. Moreover, the state in which the property was returned to them caused them a further burden.

45. The Government submitted that the requisition order was issued under Articles 3 and 7 of the Housing Act (Chapter 125 of the Laws of Malta) and originally pursued a legitimate aim, namely the provision of social accommodation. It had only been at a later stage that the property was abandoned and, thereafter, the requisition order was revoked.

46. As to compensation terms the Government submitted that until 1997 the applicants were earning, in ground rent, approximately EUR 230 annually (as established by their predecessor in title), while upon conversion of the original sub-utile dominium arising from the emphyteusis contract into a lease the rent increased to approximately EUR 280 annually, according to law. The Government submitted that the court appointed architect's valuation was inflated, and that in their opinion a more realistic value for 2010 would be in the region of EUR 2,000. However, according to a calculation based on the court-appointed architect's valuation of 2010, the market rental value of 1992 was EUR 580 annually – the applicants having received, after the Constitutional Court's award, a total of EUR 824 annually for the years until 2003 (when there had been a boom in property prices) the applicants had for at least a decade received rent exceeding the market value. The Government submitted that the applicants had no right to receive rent at market value, thus given that they had been paid pecuniary

and non-pecuniary compensation by the Constitutional Court they had no right to complain.

2. The Court's assessment

47. The Court refers to its general principles as set out in *Ghigo v. Malta* (no. 31122/05, §§ 48, 51, 54-57, and 60-62, 26 September 2006).

48. Having regard to the findings of the Constitutional Court relating to Article 1 of Protocol No.1 (see paragraphs 17 and 18 above), 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, particularly in view of the low amount of rent they were due according to law and to the fact that after a certain date the purpose of supplying housing accommodation no longer persisted.

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

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

50. The applicants complained about the lack of an effective remedy available to them to remedy the violation of their property rights. In particular they complained about the meagre amount of compensation awarded, and the fact that the Constitutional Court had failed to annul the requisition order. They relied on Article 13 in conjunction with Article 1 of Protocol No. 1 to the Convention. Article 13 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

1. The parties' submissions

51. 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.

52. The applicants submitted that such a course of action was not adequate and would surely have been considered as a further appeal and be rejected as being *res judicata*.

2. The Court's assessment

53. The Court notes that it has already established, in the context of Maltese cases before it, that even though Maltese domestic law provides for

a remedy, for the purposes of a complaint under Article 13, in respect of a final judgment of the Constitutional Court, the length of the proceedings detracts from the effectiveness of that remedy and that, in view of the specific situation of the Constitutional Court in the domestic legal order, in certain circumstances it is not a remedy which is required to be exhausted (see, *passim*, *Saliba and Others v. Malta*, no. 20287/10, § 78, 22 November 2011, and *Bellizzi v. Malta*, no. 46575/09, § 44, 21 June 2011).

54. The Court notes that the applicants have suffered a violation of their rights over a period of several 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 41 above). Given the nature of the complaint and the above-mentioned 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, as a recent authority, *Apap Bologna*, cited above, § 63).

55. Accordingly, the Government's objection that domestic remedies have not been exhausted is dismissed.

56. The Court reiterates that Article 13 does not apply in the absence of an arguable claim (see *Maurice v. France* [GC], no. 11810/03, § 106, ECHR 2005-IX).

57. In the present case the Court has found that the applicant's complaint under Article 1 of Protocol No. 1 was not manifestly ill-founded and concluded that there has been a violation of Article 1 of Protocol No. 1. Thus, there is no doubt that the complaint relating to that provision is an arguable one for the purposes of Article 13 of the Convention. It follows that Article 13 in conjunction with Article 1 of Protocol No. 1 is applicable in the present case.

58. 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 applicant

59. The applicants submitted that they had had no effective remedy for their complaint. They noted that in their case apart from the meagre amount of compensation awarded, the Constitutional Court had failed to annul the requisition order, despite the property having been abandoned; it failed to

order the return of the keys and to provide a condition report in relation to the state of the property.

60. They noted that a civil action to annul the requisition order had no prospects of success since the requisition order was in accordance with the law thus there was no ground on which it could be declared null by the ordinary court. Given that the problem arose from the disproportionality of the interference the only adequate avenue was to seek constitutional redress. As to filing a civil action to obtain damages, again, the law itself stipulated the amount of rent applicable, thus no ordinary court could increase that. The only way such damages would be recoverable would have been following a finding of a violation which would mean that after pursuing constitutional redress proceedings an individual would have to institute a further set of proceedings to obtain compensation, delaying justice even further.

61. As to an action to evict the tenants, again, prior to the finding of a violation this had no prospect of success as they were protected by law while the property was under the requisition order. In the present case, once the tenants abandoned the property the requisition order was revoked.

62. The applicants considered that there was a systemic pattern of cases in which the Constitutional Court reviewed the amount of damages awarded by the first-instance court and then diminished them, as was shown by the most recent case-law relied on by the Government, without giving any valid reasons or sometimes without any reasons at all. Similarly, the Constitutional Court regularly ruled that such applicants should be burdened with part of the judicial costs.

(b) The Government

63. The Government submitted that 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 to the Convention, to various other actions. They relied on for example, *AIC Joseph Barbara vs the Prime Minister et*, Constitutional Court judgment of 31 January 2014, and *Angela sive Balzan vs the Prime Minister et*, Constitutional Court judgment of 7 December 2012, and as most recent authorities, *Ian Peter Ellis vs Major Alfred Cassar Reynaud et*, Constitutional Court judgment of 27 January 2017 and *Jesmond Portelli et vs Attorney General*, Constitutional Court judgment of 25 November 2016. They added that 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.

64. The Government also claimed that the applicants could have instituted an ordinary civil action to declare the requisition null and void and to request the award of damages for loss of use of property.

Furthermore, the applicants could also have sought authorisation for non-compliance with the Director of Social Housing's request to recognise the tenant had they been 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. Further, the Government noted that the Constitutional Court itself had held that while constitutional redress proceedings were appropriate to examine and uphold the violation complained of, it was for the ordinary courts to deal with eviction and the quantum of damage. In the Government's view, the combination of the available remedies constituted an effective remedy.

65. In any event the Government submitted that an effective remedy was not tantamount to a successful remedy, it suffices that it had the potential of redressing a complaint. Given that in the present case there was no issue of evicting the tenants, who had already left the property, the case was different to *Apap Bologna*, (cited above).

2. The Court's assessment

(a) General principles

66. The Court has held on many occasions that Article 13 guarantees the availability at national level of a remedy to enforce the substance of the Convention rights in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. Although the scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint, the remedy required by Article 13 must be effective in practice as well as in law. The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective. Furthermore, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Kudla v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI, and *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 131, ECHR 2014).

67. 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 (see *Kudla*, cited above, §§ 157-58). In certain cases a violation cannot be made good through the mere payment of compensation (see, for example, *Petkov and Others v. Bulgaria*, nos. 77568/01, 178/02 and 505/02, § 80, 11 June 2009 in connection with Article 3 of Protocol No. 1) and the inability to render a binding decision granting redress may also raise issues (see *Silver and Others v. the United Kingdom*, 25 March 1983, § 115, Series A no. 61; *Leander v. Sweden*, 26 March 1987, § 82, Series A no. 116; and *Segerstedt-Wiberg and Others v. Sweden*, no. 62332/00, § 118, ECHR 2006-VII). Particular attention should be paid to the speediness of the remedial action itself, it not being excluded that an otherwise adequate remedy could be undermined by its excessive duration (*McFarlane v. Ireland* [GC], no. 31333/06 § 123, ECHR 2010).

68. However, according to the Court's case-law, Article 13 does not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority (see *Maurice*, cited above, § 107).

69. In the context of Article 13, the Court's role is to determine whether, in the light of the parties' submissions, the proposed remedies constituted effective remedies which were available to the applicant in theory as well as in practice, that is to say, that they were accessible, capable of providing redress and offered reasonable prospects of success (see *McFarlane*, cited above, § 114).

(b) Application of the above principles to the present case

i. Constitutional redress proceedings

70. The Court notes that a remedy, in the form of constitutional redress proceedings, was in principle available under Maltese law, which enabled the applicants to raise with the national courts their complaint of a violation of their Convention right to peaceful enjoyment of possessions.

71. The Court has already assessed the effectiveness of such a remedy, in practice, in cases concerning requisition orders. When assessing whether such a remedy was capable of preventing the alleged violation or its continuation, it found that while there was no doubt that in law, the courts of constitutional jurisdiction could annul an order and evict a tenant, it was clear from the case-law brought to the Court's attention that in situations such as those of the present case, namely where a lawful requisition has imposed an excessive burden on an applicant leading to a violation, the courts of constitutional jurisdiction, and in particular the Constitutional Court on appeal, do not take such action (see *Apap Bologna*, cited above, § 85-88). When examining whether such a remedy provided adequate redress for any violation that had already occurred, the Court noted that it had repeatedly found that the sums awarded in compensation by the Constitutional Court did not constitute adequate redress (*ibid.*, §§ 89

and 82). Moreover, awards were also often not accompanied by an adequate award of non-pecuniary damage and/or burdened with an order for the payment of the relevant costs (*ibid.*, § 90). Thus, the Court concluded that although constitutional redress proceedings were an effective remedy in theory, they were not so in practice, in cases such as the present one. In consequence, they could not 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, imposed an excessive individual burden on applicants (*ibid.*, § 91).

72. The submissions made by the Government in this respect do not alter those conclusions, which are reinforced by the circumstances of the present case, where the Constitutional Court, overturning the first-instance decision in this respect, failed to revoke the requisition order despite it finding that the property had been abandoned by the tenants (see paragraph 17 above), it also failed to award any pecuniary damage, and the non-pecuniary damage award was burdened by a payment of costs.

73. In the light of the above considerations 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.

ii. Other remedies

74. The Court considers it opportune to note that in their submissions in the present case, the parties raised arguments which went beyond those made in the case of *Apap Bologna* (cited above). In particular, apart from the ordinary remedies which were available prior to the constitutional redress proceedings, inspired by the unusual finding of the Constitutional Court, the Government also relied on remedies which would be available subsequent to the finding of a violation by that court, which matters deserve assessment.

(a) Prior to constitutional redress proceedings

75. As in *Apap Bologna* (cited above), the Government, relying on the effectiveness of an aggregate of remedies, also referred to ordinary civil proceedings and authorisation for non-compliance with the Director of Social Housing's request to recognise the tenant.

76. The Court notes that the Government have, again, not provided any examples of such proceedings and the relevant decisions. Secondly, the Government have not explained in what way such proceedings could have,

alone or in combination with others, provided adequate redress in the form of awards for both pecuniary and non-pecuniary damage for the violation suffered, before it was upheld. Nor have they explained how such proceedings could have brought to an end the situation complained of. Indeed the Court notes that the constitutional jurisdictions accepted to take cognizance of the case, and considered that there was no issue of a failure to exhaust ordinary remedies.

(β) Post constitutional redress proceedings

77. The Court notes that in the present case the Constitutional Court - the supreme court of the land and the ultimate forum to raise complaints concerning human rights breaches - failed to award the relevant pecuniary damage, in particular that in respect of the incurred losses due to the legal framework in place, as affected the applicants, which was the basis of the violation.

78. While the Court can accept that such a course of action might be accepted in connection with the damage done to the property, which is a matter of pure civil or contractual law where the responsibilities of the relevant parties in the particular circumstances of case must be determined, the same cannot be said as to the pecuniary losses which derived from the way the legal framework in place affected the applicants.

79. It does not appear that the applicants are complaining about the ordinary civil remedies for recovering the damage incurred to the property which had become uninhabitable (see also paragraph 89 below), the Court will thus not pursue the matter.

80. As to the ordinary remedies which the Government considered that the applicants could pursue now that they had a finding of a violation in their favour, the Court notes that these refer to an action before the ordinary courts to deal with eviction and the quantum of damage. No mention was made by the Government of an action of judicial review to annul the requisition after the violation finding, as suggested by the Constitutional Court, thus the Court will not examine that avenue.

81. As to the civil action for eviction and for the determination of the quantum of damage, while these are not new and specifically adopted remedies which according to the Court's case-law may be given time to be tested (see, for example *McFarlane*, cited above § 117 and the case-law therein), and recalling that that the development and availability of a remedy said to exist, including its scope and application, must be clearly set out and confirmed or complemented by practice or case-law (*ibid.*, § 120), in the light of the specific circumstances of the present case and the parties submissions, the Court notes as follows:

82. In connection with eviction proceedings the Government failed to give any examples where such an action was indeed successful following a Constitutional Court's finding of a violation which was not accompanied by

any specific order. Nevertheless, as mentioned previously, the approach taken by the Constitutional Court in the present case was novel. Thus while it surely has no bearing for the purposes of the exhaustion requirement - given that the Constitutional Court is the last step in the process of exhaustion of ordinary remedies in the Maltese context - the Court will refrain from finding that such a remedy had generally no prospects of success. Indeed, in the present case, following the Constitutional Court's finding, no such action was necessary as the tenants had already abandoned the property of their own motion. Thus, the remedy required (in the sixteen months following the Constitutional Court's finding, i.e. before the property was also derequisitioned) would have been one which would have led to the revocation of the requisition order. The Government made no reference to the availability of such a remedy.

83. As to an action before the civil courts for damage resulting from the low rent the applicants received (as upheld by the Constitutional Court), the Court notes that the applicants themselves admitted that such an avenue could have had prospects of success. Nevertheless, the Court cannot but be perplexed at the fact that the Constitutional Court whose role is to bring a violation to an end and to redress the upheld violation, abdicates its responsibility assigned to it by the Constitution of Malta and refers applicants to yet another remedy despite it having the power and authority to grant such redress. However, putting aside any considerations about the compliance of such an approach with a proper administration of justice, the Court will refrain from finding that such a remedy had no prospects of success in the light of the applicants' submissions and the absence of any available case-law on the matter.

84. It follows that from the parties observations it cannot be said that these two courses of action would undoubtedly be ineffective.

iii. Conclusion

85. The Court observes that the aggregate of remedies proposed by the Government in the present case extends further than that proposed at the time of the *Apap Bologna* judgment. Indeed, such considerations seems to be the result of the Constitutional Court's finding in the specific circumstances of the present case, which had also taken account of the structural damages to the property. This situation does not appear to be the norm. However, the Court notes that even assuming each successive remedy could have provided the relevant action attributed to it, the Court observes that it took the constitutional jurisdictions more than five years (over two instances) to decide the applicants' claims, it thus appears reasonable to consider that it could take another five years (at two instances) for the civil courts to determine the applicants' remaining claims. Thus, bearing in mind that the speed of remedial action is also relevant (see paragraph 67 above) as well as its consideration made at paragraph 39 above, the Court cannot

consider that the aggregate of remedies available to the applicants, in the present case, constituted effective remedies available to them in theory and in practice at the relevant time. Moreover, the Court cannot lose sight of the fact that successive procedures would have further burdened the applicants with supplementary legal costs and expenses (see, *mutatis mutandis*, *McFarlane*, cited above § 124).

86. 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

87. 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

1. *The parties' submissions*

88. The applicants claimed 92,387.08 euros (EUR), plus interest at 8%, in loss of fair rent from 1992 to 2017 (date of observations) considering that while the property was derequisitioned in 2014 the violation subsisted as the keys had not yet been returned to them, and once the keys had been offered it was under conditions which were not acceptable to the applicants. The applicants submitted their claim was made on the basis of the valuations of the court-appointed expert for 2010 scaled backwards and forwards according to the property price index published by the Central Bank of Malta, amounting to a total of EUR 104,387.08 from which had to be deducted the amount awarded by the domestic court.

89. Without prejudice to any further right to compensation they may have, the applicants also claimed EUR 80,000 to contribute to the expenses which must be incurred to repair the damage caused to the property during the requisition.

90. The applicants claimed a further EUR 15,000 each in non-pecuniary damage.

91. The Government submitted that compensation was due from 2003-2015 when the keys were made available to the applicants. However, they considered that the court-appointed architect's valuation was exorbitant and not realistic. In their view a pecuniary award should not exceed EUR 10,000. The Government also considered that no non-pecuniary

damage was due given that the Constitutional Court had already awarded EUR 12,000.

2. *The Court's assessment*

92. The Court notes that in so far as the claim for damage concerns the expenses for repair of the property, such damage was not dependant on the legal framework applicable to the applicants which resulted in a breach of their rights under the Convention. Moreover, as admitted by the applicants such claims need yet to be made before the domestic courts in an ordinary civil action (see also paragraph 78 above). Thus, the Court makes no award in that respect.

93. 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. It notes that the violation relates to the conditions imposed and the circumstances relating to the requisition order, which was retracted in August 2014. However, as the keys of the property were not made available to the applicants until August 2015, the Court will determine the compensation due until that date.

94. The Court notes that Government have not rebutted the court-appointed expert's claim with any other expert opinion or report, thus their contestation is solely based on their own unspecialised opinion. The Court therefore finds that there is no reason to doubt the validity of the valuation made by the domestic court-appointed expert, which it will use for the basis of its calculation.

95. The Court reiterates 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 and that a total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances (see, for example, *Ghigo v. Malta* (just satisfaction), no. 31122/05, § 18, 17 July 2008). In the present case however, the Court keeps in mind that after a certain date the property was not used for securing the social welfare of tenants or preventing homelessness and thus thereafter does not justify a reduction compared with the free market rental value (see *Cassar v. Malta*, no. 50570/13, § 87, 30 January 2018).

96. Furthermore, the sums deposited in court which may still be retrieved by the owners for the relevant period must be deducted.

97. 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.*, § 89).

98. Hence, the Court awards the applicants EUR 33,000 jointly under this head.

99. The Court observes that the Constitutional Court has already awarded EUR 12,000 in non-pecuniary damage, which award would cover what this Court would have awarded including the violation of Article 13, thus no award is warranted under that head.

B. Costs and expenses

100. The applicants also claimed EUR 1,230.28 in domestic court costs as per taxed bill of costs submitted to the Court, as well as EUR 660.80 in extra judicial costs incurred in relation to the domestic proceedings. They further claimed EUR 1,688.99 for costs incurred before this Court and other judicial acts following the Constitutional Court judgment.

101. The Government did not contest the claim for EUR 1,230.28 but considered that the remaining costs should not exceed EUR 2,000 altogether.

102. 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, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,230 covering costs under all heads.

C. Default interest

103. 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 of the Convention 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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 33,000 (thirty-three thousand euros), jointly, in respect of pecuniary damage;

(ii) EUR 3,230 (three thousand two hundred and thirty 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