



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

THIRD SECTION

CASE OF GAUCI AND OTHERS v. MALTA

(Application no. 57752/16)

JUDGMENT

STRASBOURG

8 October 2019

FINAL

08/01/2020

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

In the case of Gauci and Others v. Malta,

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

Georgios A. Serghides, *President*,

Vincent A. De Gaetano,

Paulo Pinto de Albuquerque,

Helen Keller,

Branko Lubarda,

María Elósegui,

Erik Wennerström, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 10 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 57752/16) 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 twenty-six Maltese nationals (one of whom had dual Maltese and American nationality) and two British nationals, whose details are set out in the appendix (“the applicants”), on 29 September 2016.

2. The applicants were represented by Dr J. Gatt and Dr. A Librieri, lawyers practising in Valletta, Malta. The Maltese Government (“the Government”) were represented by their Agent, Dr P. Grech, Attorney General.

3. The applicants complained that there had been no public interest behind the taking of their land, and that the measure had failed to respect the proportionality principle as they had received no compensation for the taking.

4. On 28 September 2018 the Government were given notice of the application.

5. The United Kingdom Government did not make use of their right to intervene in the proceedings (Article 36 § 1 of the Convention).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE****A. Background to the case**

6. The applicants are all part-owners (in different shares) of a plot of land situated in Ghadira Bay, limits of Mellieħa measuring 3,930 square metres.

7. In 1954 part of the applicants' property was being rented out as a caravan site.

8. By means of a Governor's declaration of 18 February 1957 it was declared that the property was required for a public purpose and thus was to be expropriated (acquired by title of absolute purchase).

9. At the time, other pieces of land (belonging to other persons) had also been taken under various titles, as part of the "Għadira Scheme" a project aimed at extending the sandy beach to allow for more access to the sea for swimming purposes.

10. As a result of the declaration, the above-mentioned rental arrangement came to an end.

11. Over the years, until 1973, the applicants repeatedly made attempts, to no avail, to recover their property, explaining that they were willing to put in place a beach concession.

12. In 1992 a part of the applicants' land was given to CS, a private company, under a beach concession allowing for encroachment under specific conditions at the price of 200 Maltese liras (MTL) annually, until 2006. A similar arrangement appears to have existed as from 1974 under a title of emphyteusis.

13. Some of the applicants instituted proceedings requesting an injunction to stop the transfer to third parties, which was refused by a judgment of 24 June 1993.

14. Apart from that, the applicants continued their attempts to recover their property including by means of judicial protests dated 10 April 1989 and 18 April 2008. The latter protest included a list of the owners of the land as well as a request to the authorities to pay compensation for the taking, plus interest due.

15. Following amendments to Chapter 88 of the Laws of Malta, on 13 July 2006 a fresh declaration by the President of Malta (under Chapter 88) was issued and published in the Government Gazette confirming the previous declaration. The price for the taking was established at MTL 7,000 (approximately 16,310 euros (EUR)) but no offer was formally notified to the applicants.

16. The same CS continued to use the property after 2006, under a different arrangement with the authorities. The arrangement consisted of an annual encroachment fee of EUR 2.33 and a management contribution of EUR 4.66 per square metre payable to the authorities.

17. The land is currently being used, in part, by private establishments and for its larger part is used for commercial activities connected to the enjoyment of the sea, such as the rental of deckchairs and umbrellas and related accessories.

B. Constitutional redress proceedings

18. On 12 January 2009 the applicants instituted constitutional redress proceedings complaining that the taking and the use of the land (without there having been an official transfer of ownership of the property and payment of compensation) had breached their property rights. They requested that the land be returned to them and that compensation be paid for the years during which they had been denied the use of their property. They pointed out that while they had been deprived of their property it had been awarded to third parties to make commercial profits at their expense, and that there had thus been no public interest in the taking.

19. By a judgment of 14 May 2015 the Civil Court (First Hall) in its constitutional competence, in so far as relevant, found a breach of the applicants' property rights under the Convention and awarded them EUR 20,000 in non-pecuniary damage. Costs and expenses were to be paid by the defendants.

20. The court found, on the one hand, that the applicants had sufficiently proven their title of ownership of the land. On the other hand, it had not been proven that, as claimed by the applicants, the land had originally been taken to build a road, which plan never came to be. It rather appeared that the plan was to improve bathing facilities in the context of the "Għadira scheme" also for the purpose of attracting tourism which favoured economic development in Malta. The court considered that the fact that the land had then been given for use to a third party did not detract from the public interest of the measure. Similarly, the fact that land had not been built upon did not mean that no use had been made of it, as the concept of public interest included the aim of maintaining the original habitat or keeping a location pristine.

21. As to proportionality, the court noted that compensation terms were relevant. However, the applicants had waited until 2009 to undertake proper judicial proceedings on the matter - a fact which weakened their case. Nevertheless, the fact that fifty-eight years after the applicants' land had been taken a deed of transfer had not yet been signed, nor compensation paid, resulted in a breach of the applicants' rights.

22. Bearing in mind that the applicants had not attempted to oblige the Commissioner of Land (CoL) to initiate compensation proceedings, the court awarded EUR 20,000 in non-pecuniary damage, considering that it was not the right forum to determine the pecuniary compensation due for the transfer of the land. It further considered that it should not order the return of the land to the applicants. However, it was for the CoL not to stall any further the process of paying compensation for the taking to allow the expropriation to come to an end, even more so since in the present proceedings sufficient proof of ownership had been put forward. It thus

ordered the CoL to take the relevant steps within four months from the date when the judgment became final.

23. On 1 June 2015 both parties appealed.

24. By a judgment of 19 April 2016 the Constitutional Court rejected the appeals and confirmed the first-instance judgment. At appeal stage, costs and expenses incurred by the applicants (EUR 5,716) as well as those incurred by one of the defendants (who had not been the legitimate defendant) were to be paid by the applicants.

25. By 5 September 2018, the CoL had not yet initiated any compensation proceedings.

C. Subsequent events

26. In their observations, the parties did not dispute the facts as set out above.

27. In their last round of observations, the Government brought to the Court's attention an email exchange of June 2016, according to which, following a telephone conversation, a Government employee contacted one of the applicants' legal representatives requesting information with a view to proceeding with the expropriation. The representative replied that he was aware that the time-limit for the authorities was 19 August [2016], and stated that the applicants were considering instituting proceedings before the European Court of Human Rights.

28. It appears that, at the date of observations, in 2019, no expropriation contract had been signed.

II. RELEVANT DOMESTIC LAW

29. The relevant domestic law concerning the case is set out in *Frendo Randon and Others v. Malta* (no. 2226/10, §§ 26-27, 22 November 2011) and *Galea and Others v. Malta* (no. 68980/13, § 24, 13 February 2018).

30. Article 2 of the Land Acquisition (Public Purposes) Ordinance, in so far as relevant reads as follows:

“ ‘agricultural or rural land’ does not include the domestic garden of a house or building or any other land within the precincts of a house or building nor a building site nor waste land but includes farmhouses, buildings intended mainly for the keeping of store cattle or other domestic animals, and other structures of a kindred nature;”

31. The Government Lands Act, Chapter 573 of the Laws of Malta, entered into force on 25 April 2017. Its Article 64 reads as follows:

“(1) When land is subject to a Declaration which has been issued before the entry into force of this Act and such land is in possession of Government without having issued any notice to treat or without having indicated the compensation offered for its

acquisition, anyone who proves to the satisfaction of the Arbitration Board that he is the owner of the land by valid title may demand that the competent authority acquires the land by absolute purchase.

(2) This action shall be done by means of an application filed before the Registry of the Arbitration Board that shall be addressed against the authority who shall have a right of reply within twenty days from when it has been served with the application.

(3) The compensation that shall be paid for the acquisition of the land shall be the value that the land has within the period of publication of the Declaration as updated during the years in accordance to the index of inflation published in the schedule of the Housing (Decontrol) Ordinance.

(4) Apart from the compensation for the acquisition of the land as established in this article, the owner can also make a request to the Arbitration Board to liquidate and order the authority to pay him for material damages and moral damages due to the excessive delay for such acquisition.

(5) The peremptory period referred to in article 63(6) for filing such action shall apply *mutatis mutandis* to the action under this article.”

32. Article 63 (6) of the Government Lands Act reads as follows:

“Everyone shall forfeit his right of action in accordance with this article if he fails to proceed within thirty years from when the declaration has been issued, provided that if upon the entry into force of this Act, a period of twenty five years already had elapsed from the date of issue of the Declaration, the action shall be filed by not later than five years from the entry into force of this Act. Such periods are peremptory and cannot be renewed.”

THE LAW

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

33. The applicants complained that there was no public interest behind the taking of their land, which they claimed had not been used, but had been given to a third party, who made substantial profits therefrom. They also considered that the measure had failed to respect the proportionality principle as, to date, they have received no compensation for the taking. They relied on 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.”

34. The Government contested that argument.

A. Admissibility

1. *The Government's objection ratione materiae*

35. In their last round of observations the Government submitted that the applicants had not proved their title to the property when asked to do so following the Constitutional Court judgment. They relied on an email exchange of June 2016 (see paragraph 27 above). According to the Government, this raised an issue as to whether the applicants had title over the property and therefore a possession in terms of Article 1 of Protocol No. 1.

36. The Court reiterates that, according to Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application.

37. The Court notes that the Government first raised this matter in their observations of 30 May 2019 when they had been invited to comment on the claims for just satisfaction and make any further observations - on that same occasion their attention had been drawn to the fact that the Court may consider them estopped from raising new admissibility pleas at that stage.

38. The Court notes that the Government's objections have been raised at a stage where an applicant has in principle no further opportunity to reply. A further round of observations to allow the applicant a right of reply would lengthen the procedure to the applicant's detriment as a result of the Government's untimely actions (see *Ramadan v. Malta*, no. 76136/12, § 60, 21 June 2016).

39. However, the Court observes that what is at stake in the present case is the applicability of the invoked provision, and, therefore, a matter that goes to the Court's jurisdiction *ratione materiae* and which it is not prevented from examining of its own motion, even in the absence of an objection by the Government (see *Pasquini v. San Marino*, no. 50956/16, § 86, 2 May 2019 and, *a contrario*, *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 51-54, 15 December 2016 in the context of a late non-exhaustion objection).

40. The Court notes that the applicants instituted proceedings before the constitutional jurisdictions at first and second instance. Those courts did not see any obstacle to the applicants bringing their claims, which were moreover allowed. In particular the first-instance constitutional jurisdiction found that the applicants had sufficiently proved their title to the property (see paragraph 20 and 22 above), and allowed their claims awarding the applicants (as persons having title to the land) compensation for non-pecuniary damage resulting from the violations they had suffered. That judgment was confirmed by the Constitutional Court (see paragraph 24 above). In that light there is no reason to doubt that the applicants had title

to the land in question and thus had a possession for the purposes of the relevant provision.

2. *The Government's objection ratione temporis*

41. The Government considered that in relation to the declaration issued in 1957, the complaint was inadmissible as the Convention only became applicable to Malta in 1967.

42. The applicants submitted that their situation had been a continuous one. In particular, they had not yet received compensation for the taking of the property to date, 2019, and because the lack of public interest existed on the issuance of the declaration both in 1957 and again in 2006.

43. The Court notes that the deprivation in the present case occurred in 1957; however, although a deprivation of an individual's home or property is in principle an instantaneous act and does not produce a continuing situation of "deprivation" in respect of the rights concerned (see, *inter alia*, *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96 ECHR 2000-XII, and *Blečić v. Croatia* [GC], no. 59532/00, § 86, ECHR 2006-III), in the present case the applicants' complaint extends to the failure to pay them final compensation. Thus, the Court is empowered to examine the matter (see *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 43, ECHR 2000-I, *Vajagić v. Croatia*, no. 30431/03, § 23, 20 July 2006, and more recently *Galea and Others v. Malta*, no. 68980/13, § 30, 13 February 2018). Moreover, in 2006 a fresh declaration was issued, which shows that the deprivation of property in 1957 was not completed. The Court further notes that as Malta ratified the Convention on 23 January 1967 (including Protocol No. 1), the Court is competent *ratione temporis* to examine complaints in so far as they relate to events which took place from 23 January 1967 onwards (*ibid*; see also *Bezzina Wettinger and Others v. Malta*, no. 15091/06, § 54, 8 April 2008, and *Azzopardi v. Malta*, no. 28177/12, § 32, 6 November 2014).

44. The Court therefore upholds the Government's objection in respect of the period until 23 January 1967, and dismisses it for the period after that date.

3. *The Government's objection ratione personae*

45. The Government submitted that the applicants had lost their victim status following the Constitutional Court's finding which acknowledged the violation and awarded EUR 20,000 in non-pecuniary compensation. They noted that the only part of the costs of the proceedings were to be paid by the applicants. Moreover, the Constitutional Court had ordered the CoL to conclude the expropriation within four months, and in absence of such action the applicants could complain before the domestic courts to have the judgment executed.

46. Relying on the Court's case-law the applicants maintained that they remained victims of the violation upheld by the Constitutional Court. They noted that the sum of EUR 20,000, in non-pecuniary damage, did not redress the upheld violation which they continued to suffer.

47. The Court reiterates that an applicant is deprived of his or her status as a victim if the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate and sufficient redress for a breach of the Convention (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-193, ECHR 2006-V; *Gera de Petri Testaferrata Bonici Ghaxaq v. Malta*, no. 26771/07, § 50, 5 April 2011; and *B. Tagliaferro & Sons Limited and Coleiro Brothers Limited v. Malta*, nos. 75225/13 and 77311/13, § 55, 11 September 2018).

48. As regards the first condition, namely the acknowledgment of a violation of the Convention, the Court considers that the Constitutional Court's findings amounted to an acknowledgment that there had been a breach of Article 1 of Protocol No. 1.

49. With regard to the second condition, namely appropriate and sufficient redress, the Court must ascertain whether the measures taken by the authorities in the particular circumstances of the instant case afforded the applicants appropriate redress in such a way as to deprive them of victim status (*ibid.* § 57).

50. The Court notes that the Constitutional Court awarded the applicants EUR 20,000 in respect of non-pecuniary damage and that they had to pay part judicial costs amounting to approximately EUR 5,000. The Court considers that the remaining amount was a reasonable amount of non-pecuniary damage for the violation suffered. However, after fifty years the Constitutional Court – having established that there had been a violation of the applicants' rights – did not determine the amount of pecuniary compensation due, opting instead to order the authorities to finalise the expropriation within four months from the date of its judgment. The Court also notes that that judgment has not been executed by the authorities.

51. No explanation has been given as to why the expropriation was not finalised. It is true that, at the end of the exchange of pleadings before the Court, the Government stated that the applicants had failed to prove ownership. However, the Court notes that the email of June 2016 (see paragraph 27 above), relied on by the Government, does not refer to proof of ownership, nor does it indicate, or even less prove, the reason why the expropriation contract was not finalised by 19 August 2016, as ordered by the Constitutional Court. Moreover, ownership had already been proved before the courts of constitutional competence. It follows that the authorities failed to fulfil the order of the Constitutional Court, and in such context the applicants could not have been expected to undertake new proceedings to enforce that final decision.

52. Given that in the present case the violation under Article 1 of Protocol No. 1, upheld by the Constitutional Court, persisted for more than fifty years after the entry into force of the Convention and the relevant Protocol in respect of Malta, and that during that time the applicants received no compensation for the taking of their property, the Court considers that the Constitutional Court's judgment, which was not enforced by the authorities, did not offer sufficient relief to the applicants.

53. Consequently, the Government's objection in this respect is dismissed.

4. Conclusion

54. The Court notes that the application in so far as it refers to the period after 23 January 1967 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

55. The applicants complained that there had been no public interest for the taking of their land, which, moreover, remained unused for several years, and in respect of which they received no compensation.

56. The applicants submitted that while the Government alleged that the property had been taken for the purpose of the "Għadira Scheme", this purpose had not been mentioned in either of the declarations. They considered that during the domestic proceedings the implementation of the scheme had not been proved as documentation related to it could not be traced. In reality the use made of it was a concession granted by the State to a third party for private commercial purposes. Indeed such third party had generated considerable profits of which the applicants had been deprived.

57. Moreover, the applicants had not been awarded compensation for the taking, despite a delay of more than fifty years, which compensation should have moreover taken account of the fact that the property was allocated to a third party for private commercial interests. They relied on *Arsovski v. the former Yugoslav Republic of Macedonia* (no. 30206/06, §§ 60-61, 15 January 2013) and *Almeida Garrett, Mascarenhas Falcão and Others*, (cited above, § 52-55).

58. Lastly, in reply to the Government's submissions, the applicants noted that Chapter 573 of the Laws of Malta promulgated in 2017 was not applicable to their case. They also considered that the applicability of Chapter 88 of the Laws of Malta to their case was also doubtful. In this respect, they noted that their property had been considered agricultural land

in terms of Chapter 88, however, in view of its definition of agricultural land (see paragraph 30 above), the applicants considered that it could not include a sandy beach area by the shoreline.

(b) The Government

59. The Government submitted that the declaration of 6 February 1957 was issued under Article 3 of the then Chapter 136 of the Laws of Malta while that of 2006 was issued under Article 3 of Chapter 88 of the Laws of Malta and thus the deprivation of possessions was lawful. It also pursued a legitimate aim in so far as the property was taken for the purpose of the “Għadira Scheme”, which was aimed at extending the sandy beach to guarantee better accessibility and facilities to the beach for the general public, as part of the Government’s initiative to embellish Malta and attract more tourism. In the Government’s view the fact that on a parcel of the land encroachment (a concession given by the CoL on a tolerance basis, that is not considered to be a proper title at law) was allowed by third parties in order to erect umbrellas and place deckchairs did not detract from that public interest, as such facilities benefitted the public and concessions were precisely a tool for beach management.

60. As to proportionality, the Government submitted that the Constitutional Court had already held that the applicants had suffered a violation from 1967 to 2006 due to the delay in the payment of compensation. After 2006 the applicants were offered EUR 16,310 for what was considered as agricultural land – an amount the applicants could have withdrawn or contested before the Land Arbitration Board, and thus the Government were not responsible for any delay after that date. Moreover, the Government noted that as of 2017 the applicants have had a new remedy to pursue under Article 64 of the Government Lands Act (see paragraph 31 above), which also established that the value of the property was to be that of the land on the date of the publication of the declaration, updated over the years according to the index of inflation. The provision also allowed the applicants to request material and moral damage due to the excessive delay in concluding the acquisition.

2. The Court’s assessment

61. The Court refers to its general principles as set out in *Tagliaferro & Sons Limited and Coleiro Brothers Limited* (cited above, § 67-69).

62. The Court considers that given the findings of the domestic courts as to a violation of the invoked provision it does not need to examine the questions whether there was a deprivation of property and whether it was in accordance with the law.

63. However, the Court finds it pertinent to express itself in particular on the public interest requirement contested by the applicants, especially given

that the finding concerning the public interest has an impact on the compensation due (*ibid.* § 74).

64. The Court reiterates that, while deprivation of property effected for no reason other than to confer a private benefit on a private party cannot be “in the public interest”, the compulsory transfer of property from one individual to another may, depending on the circumstances, constitute a legitimate means of promoting the public interest (see *James and Others v. the United Kingdom*, 21 February 1986, § 40, Series A no. 98). Moreover, the taking of property effected in pursuance of legitimate social, economic or other policies may be in “in the public interest”, even if the community at large has no direct use or enjoyment of the property taken (*ibid.*, § 45).

65. The Court considers that, as accepted by the domestic courts at two instances, the taking of the property for the purposes of the “Għadira Scheme” in order to embellish the area and ensure relevant facilities to enhance tourism, was a measure in the public interest. In the Court’s view such a measure, in the context of economic reform, cannot be considered unreasonable, particularly given the wide margin of appreciation when implementing economic policies. The fact that a part of that land (around one tenth according to the architect’s report submitted by the applicants) was given on concession to a third party, does not detract from that interest. That public interest persisted from 1967 (date of ratification) to date.

66. As to proportionality, the Court notes that, in the present case, the applicants have never received any compensation for the taking of the property in 1957, despite an alleged offer in 2006, and an order by the Constitutional Court in 2016. In this connection it is noted that the Government did not contest the facts as set out above, which stated that the applicants had not been formally notified of such an offer (see paragraphs 15 and 26 above). It is thus unclear in what way the applicants could have withdrawn or contested such sums, after 2006, even more so given that the Government was to date contesting their title to the property. It is also undisputed that no payment was ever made after the order of the Constitutional Court. Thus, the Court considers that the Government have not provided any justification for the failure of the authorities to pay such compensation to the applicants over time.

67. The Court is of the opinion that (quite apart from the adequacy of the compensation) the above delay in the payment of compensation as a result of which the applicants are still without any compensation more than five decades after the Convention and the relevant Protocol came into force in respect of Malta, fails to meet the requirements of Article 1 of Protocol No. 1.

68. There has accordingly been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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*

70. The applicants submitted that since no actual use was made of the property, the State should be made to return such property according to the principle of *restitutio in integrum*.

71. In the absence of that, they claimed a value commensurate to the commercial legitimate expectations in relation to the land. Thus, they considered it legitimate for the Court to award the value of the land plus loss of opportunities. In that light they claimed 1,391,551 euros (EUR) in respect of pecuniary damage, according to an expert report which covered their loss of income over sixty-two years as well as the non-payment of the pecuniary compensation for the taking. According to the valuation, the area could take up 270 beach beds a day, at a daily income of EUR 2,700, for 168 days a year (summer period) at 80% occupancy, meaning it had an annual potential income of EUR 362,880, from which had to be deducted the beach concession (EUR 18,313.80) and labour costs (EUR 30,000), resulting in a net rental income of EUR 314,567 annually. On that basis (capitalizing the net rental income by 7.5%) the value of the land was estimated at EUR 4,194,226, which when backdated gave a value of EUR 35,512 in 1957.

72. They further claimed non-pecuniary damage.

73. The Government submitted that the expropriation had been lawful and so there was no reason to return the property. As to the loss of income alleged by the applicants, they considered that the property could not be considered as a going concern as at the time of the taking, in 1957, the land had been agricultural in nature and the applicants had not proved otherwise. No expected income could thus be calculated for the state of the land before development took place. The Government submitted a valuation which showed that the value of the land in 2019 was either EUR 139,000 or EUR 185,000 depending on which rate of interest was applied, while the value in 2006 excluding interest amounted to EUR 61,740. Bearing in mind the public interest of the measure the Government considered that an award in pecuniary damage should not exceed EUR 70,000 jointly (over and above the damage awarded by the Constitutional Court). They also considered that, given the Constitutional Court's award, no further non-pecuniary

damage should be awarded and that in any event a further award should not exceed EUR 2,000 jointly.

2. *The Court's assessment*

74. As the Court has held on a number of occasions, a judgment in which the Court finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96 § 32, ECHR 2000-XI, and *Guiso-Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, § 90, 22 December 2009). The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attached to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the violation allows of *restitutio in integrum* it is the duty of the State held liable to effect it, the Court having neither the power nor the practical possibility of doing so itself. If, however, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (*ibid.*). The Court notes that while restitution of the property does not appear impossible given that no use has been made of it, the Government have not offered to return it, nor indicated that they were interested in doing so, maintaining solely that such action was not called for (see paragraph 73 above).

75. In the absence of such action, it is thus for the Court to award compensation noting that there is no risk that the applicants will receive pecuniary compensation twice, as the national authorities will inevitably take note of this Court's award when finalising the contract of expropriation (see, *mutatis mutandis*, *Frendo Randon and Others*, cited above, §77).

76. As the Court has already noted the taking in the applicant's case did not lack public interest. In this connection 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 warrant reimbursement of less than the full market value (see *Urbárska Obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, § 115, ECHR 2007-XIII).

77. The source of the violation was the delay in instituting the relevant proceedings and the fact that to date – more than sixty years after the taking of the land (and more than fifty from when the relevant provision became applicable to Malta) – the applicants have still not been awarded any compensation for their property.

78. The Court notes that in similar cases (see, for example, *Frendo Randon and Others v. Malta*, (just satisfaction), no. 2226/10, § 20, 9 July 2013 and *Azzopardi v. Malta*, no. 28177/12, § 66, 6 November 2014) the sum to be awarded to the applicants was calculated on the basis of the value of the land at the time of the taking, converted to the current value to offset the effects of inflation, plus simple statutory interest applied to the capital progressively adjusted. However, in the present case the Court does not lose sight of the fact that in 2006 a fresh declaration had been issued, in the absence of any conclusion to the declaration issued in 1957. The Court will also take account, to the extent necessary, of the location of the property and the possibilities it could have had over the years because of such location, bearing in mind however that when it was taken it was solely used as a caravan site.

79. Having regard to the above the Court considers it reasonable to award the applicants EUR 150,000, jointly, plus any tax that may be chargeable on that amount, in compensation for the expropriation.

80. Bearing in mind the award of EUR 20,000 granted by the domestic courts, which remains payable, the Court does not find it necessary to make an award in respect of non-pecuniary damage.

B. Costs and expenses

81. The applicants also claimed the costs and expenses incurred before the constitutional jurisdictions as per taxed bill of costs (which showed EUR 5,716 incurred by the actor and EUR 4,147 incurred by the defendant), and EUR 99.26 for the courier expenses related to the proceedings before this Court.

82. The Government submitted that the applicants did not quantify their claim but simply relied on a taxed bill of costs. Moreover they noted that the applicants did not procure evidence of those costs having been paid. In the Government's view the costs of the entirety of proceedings should in any event not exceed EUR 1,500.

83. 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 5,815 covering costs under all heads.

C. Default interest

84. 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 in so far as it refers to the period after 23 January 1967 and the remainder inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, jointly, within three months the following amounts:
 - (i) EUR 150,000 (one hundred and fifty thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 5,815 (five thousand eight hundred and fifteen euros), 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;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Georgios A. Serghides
President

APPENDIX

1. Bernard GAUCI is a Maltese and American national who was born in 1950, and lives in San Ġiljan, Malta
2. Emanuela BONNICI is a Maltese national who was born in 1948, and lives in Kent, England
3. Norah CORCORAN is a Maltese national who was born in 1930, and lives in Somerset, England
4. Sharon Marie CUTAJAR is a Maltese national who was born in 1970, and lives in Mellieħa, Malta
5. Susan ELLUL SULLIVAN is a Maltese national who was born in 1957, and lives in Swieqi, Malta
6. Mary Rose FARRUGIA is a Maltese national who was born in 1966, and lives in Mellieħa, Malta
7. Doris FENECH is a Maltese national who was born in 1952, and lives in Mellieħa, Malta
8. Gothard GAUCI is a Maltese national who was born in 1962, and lives in Plymouth, England
9. Maria Sylvia GAUCI is a Maltese national who was born in 1954, and lives in Mellieħa, Malta
10. Anthony GRIMA is a Maltese national who was born in 1964, and lives in Mellieħa, Malta
11. John GRIMA is a Maltese national who was born in 1955, and lives in Mellieħa, Malta
12. Joseph GRIMA is a Maltese national who was born in 1944, and lives in Mellieħa, Malta
13. Joseph GRIMA is a Maltese national who was born in 1970, and lives in Cork, England
14. Marianne GRIMA is a Maltese national who was born in 1976, and lives in Mellieħa, Malta
15. Sarah GRIMA is a Maltese national who was born in 1979, and lives in Mellieħa, Malta
16. Therese GRIMA is a Maltese national who was born in 1943, and lives in Mellieħa, Malta
17. Elizabeth MORRIS is a British national who was born in 1944, and lives in Baħar iċ-Ċagħaq, Malta
18. Mary MUSCAT is a Maltese national who was born in 1941, and lives in Paola, Malta
19. Mary PARKER is a Maltese national who was born in 1929, and lives in Sliema, Malta
20. Sonia STEWART is a Maltese national who was born in 1972, and lives in Mellieħa, Malta

21. Victoria Stella STURCKE is a Maltese national who was born in 1944, and lives in Middlesex, England
22. Anne TABONE is a British national who was born in 1932, and lives in Sliema, Malta
23. Edmond TABONE is a Maltese national who was born in 1975, and lives in Baħar iċ-Ċagħaq, Malta
24. Jane TABONE is a Maltese national who was born in 1966, and lives in Swieqi, Malta
25. John TABONE is a Maltese national who was born in 1935, and lives in Sliema, Malta
26. Joseph TABONE is a Maltese national who was born in 1936, and lives in Sliema, Malta
27. Rebecca TABONE is a Maltese national who was born in 1974, and lives in San Ġiljan, Malta
28. Josephine XUEREB is a Maltese national who was born in 1947, and lives in Sliema, Malta