



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

FOURTH SECTION

**CASE OF CENTRAL MEDITERRANEAN DEVELOPMENT
CORPORATION LIMITED v. MALTA**

(Application no. 35829/03)

JUDGMENT

STRASBOURG

24 October 2006

FINAL

24/01/2007

*This judgment will become final in the circumstances set out in Article 44
§ 2 of the Convention. It may be subject to editorial revision.*

In the case of Central Mediterranean Development Corporation Limited v. Malta,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 3 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 35829/03) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Maltese company, Central Mediterranean Development Corporation Limited (“the applicant”), on 31 October 2003.

2. The applicant company was represented by Mrs A. Mifsud-Bonnici, a lawyer practising in Valletta, Malta. The Maltese Government (“the Government”) were represented by their Agent, Mr S. Camilleri, Attorney General.

3. On 25 April 2005 the President of the Fourth Section decided to communicate the application. Applying Article 29 § 3 of the Convention, he decided that the Court should rule on the admissibility and merits of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant, Central Mediterranean Development Corporation Limited, is a Maltese company registered in Valletta.

A. The civil proceedings

5. On 7 December 1990 the applicant company sued a certain Mrs S. before the Civil Court (First Hall). It claimed that a contract concluded with the defendant should be rescinded and requested to reacquire possession of a plot of land. Its claim was based on the fact that, disregarding the obligations arising from the said contract, Mrs S. had not built a house or a villa on the plot in issue and had failed to pay the agreed annual rent of 44 Maltese liras (MTL – approximately 105 euros (EUR)).

6. Mrs S. filed submissions in reply to the applicant's claim on 18 December 1990 and on 8 January 1991. The case was set down for hearing on 21 February 1991, on which date a number of preliminary pleas were raised. These were determined on 15 March 1991. Subsequently, the parties submitted their pleadings and the case was reserved for judgment until 8 November 1991. The parties were authorised to submit observations but failed to do so. The case was adjourned first until 17 January 1992, then until 26 March 1992. The decision was adjourned twelve times.

7. In a judgment of 5 October 1993 the Civil Court upheld the applicant's claim.

8. On 29 October 1993 Mrs. S. appealed against that judgment. The applicant filed submissions in reply on 25 November 1993. On 17 October 1996 the parties presented their oral pleadings and the case was reserved for judgment until 16 January 1997. However, the decision was adjourned on twenty-eight occasions.

9. In a judgment of 9 October 2001 the Court of Appeal dismissed the appeal and upheld the first-instance judgment.

B. The applicant company's constitutional application

10. Considering that its case had not been decided "within a reasonable time", on 13 August 2002 the applicant, invoking Article 39(2) of the Constitution of Malta and Article 6 § 1 of the Convention, lodged an application with the Civil Court (First Hall) in its constitutional jurisdiction.

11. In a judgment of 14 November 2002 the Civil Court dismissed the applicant's application. It observed that it did not appear that there had been excessive delays in deciding the case at first instance. The preliminary pleas had been decided on 21 February 1991 and the judgment on the merits had been delivered only one and a half years after the date on which the case was ready for decision. Moreover, the Civil Court had waited four months for the parties to submit their observations. It was true that the proceedings before the Court of Appeal had lasted a longer time. The fixing of the date of the first sitting had taken three years and a decision on the merits of the case had not been given until five years later. However, the reasonableness of this delay had to be examined in the context of the national judicial

system, in which, unlike in other countries, the right of appeal was automatic. Every litigant who felt aggrieved by a decision given at first instance could lodge an appeal without having to apply for leave to do so. This obliged the Court of Appeal to examine a large number of cases in detail, bearing in mind that its decision would be the final one, and would therefore not be subject to review by any superior authority. The expenses for bringing an appeal were also relatively low, which constituted another factor encouraging citizens to bring their cases before the Court of Appeal. In the Civil Court's view, the obligation of the State to organise its judicial system with a view to complying with the "reasonable-time" principle was to be balanced against the other privileges that the Maltese system provided to its citizens.

12. It was true that a period of five years for deciding the applicant company's case was "a bit long" *vis-à-vis* its complexity and the workload of the Court of Appeal, and that three years should have been in principle sufficient. However, the Civil Court considered that this delay had not reached the extent of seriously prejudicing the rights of the parties, and was therefore not excessive.

13. As to the claim for damages, the Civil Court observed that the applicant company was seeking compensation for sixteen years of unpaid rent (which amounted to MTL 864). However, the failure to pay the rent was not due to the delay in determining the case and the applicant company could have asked, and could still ask, for the rent arrears from Mrs S. Moreover, it was likely that the market value of the land had increased during the judicial proceedings. The applicant company alleged that if it had regained possession of its land in 1996 or 1997, it could have sold it for MTL 35,000. It had accordingly requested the reimbursement of the interest on this sum as compensation for pecuniary damage. The Civil Court could not accept this argument, as the applicant company was still in possession of its land and was trying to sell it for about MTL 60,000. In the Civil Court's view, the loss of interest had been compensated by the increase in the value of the land.

14. The Civil Court concluded that even if a violation of the "reasonable-time" principle had been found, no compensation could have been awarded to the applicant company.

15. The applicant company appealed to the Constitutional Court.

16. In a judgment of 8 May 2003 the Constitutional Court reversed the decision of the Civil Court and declared that there had been a violation of Article 6 § 1 of the Convention. It also decided that the costs of the case should be borne by the Attorney General, who should moreover pay the applicant company MTL 100 (approximately EUR 240) for non-pecuniary damage.

17. The Constitutional Court observed that the Civil Court had rightly pointed out that the delay in delivering the judgment on appeal had been

unreasonable. However, it could not be said that this delay had not infringed Article 6 § 1 of the Convention. Before the Court of Appeal, the parties had presented their oral pleadings on 14 November 1996, but no decision on the merits had been given until 9 October 2001, almost five years later. The case had been adjourned several times and it did not appear that there had been any special reasons for this. Moreover, the case was not particularly complex and the parties had not obstructed its course. Therefore, an overall period of inactivity of five years could not be accepted.

18. The Constitutional Court considered that the applicant company had not suffered any pecuniary damage. It upheld the reasoning of the Civil Court on this point. However, it concluded that prejudice of a non-pecuniary nature could be suffered even by a private company, and awarded MTL 100 under this head.

THE LAW

19. The applicant company alleged that the violation of the “reasonable-time” principle found in its case had not been effectively redressed. It invoked Article 13 of the Convention, read in conjunction with Article 6 § 1. In so far as relevant, these provisions read as follows:

Article 6 § 1

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

Article 13

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

20. The Government contested that argument.

21. The Court is of the opinion that the applicant company’s complaint also relates in substance to the excessive length of the civil proceedings. It therefore considers it necessary to examine whether there has been a violation of Article 6 of the Convention taken alone and read in conjunction with Article 13.

I. ADMISSIBILITY OF THE APPLICATION

A. The Government's objection concerning the lack of "victim status"

22. The Government argued that the applicant company could not claim to be the "victim", within the meaning of Article 34 of the Convention, of the facts complained of. They observed that the Constitutional Court had indeed acknowledged a violation of the "reasonable-time" principle and awarded the applicant company MTL 100 for non-pecuniary damage, thus providing adequate redress for the breach of the Convention.

23. The applicant company submitted that according to the Court's case-law, the term "victim" denoted the person directly affected by the act or omission in issue. It asserted that it had undeniably suffered a violation of Article 6 of the Convention.

24. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see, for example, *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 32, §§ 69 et seq.; *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X).

25. The issue as to whether a person may still claim to be the victim of an alleged violation of the Convention essentially entails on the part of the Court an *ex post facto* examination of his or her situation. As it has already held in other length-of-proceedings cases, the question whether he or she has received reparation for the damage caused – comparable to just satisfaction as provided for under Article 41 of the Convention – is an important issue. Regarding violations of the reasonable-time requirement, one of the characteristics of sufficient redress which may remove a litigant's victim status relates to the amount awarded as a result of using the domestic remedy. The Court has already had occasion to indicate that an applicant's victim status may depend on the level of compensation awarded at domestic level on the basis of the facts about which he or she complains before the Court (*Scordino v. Italy* (no. 1), no. 36813/97, §§ 181 and 202, 29 March 2006).

26. In the case of *Scordino v. Italy* (no. 1) the Grand Chamber held that when, in order to prevent or to put right violations of the "reasonable time" principle, Contracting States chose to introduce remedies of a compensatory nature, it might be easier for the domestic courts to refer to the amounts awarded at domestic level for other types of damage – personal injury,

damage relating to a relative's death or damage in defamation cases for example – and rely on their innermost conviction, even if that resulted in awards of amounts that were lower than those fixed by the Court in similar cases. However, the Court should verify whether the way in which the domestic law is interpreted and applied has produced consequences that are consistent with the principles of the Convention, as interpreted in the light of the Court's case-law. It reiterates that, especially for States that have effectively incorporated the Convention into their legal systems, a clear error in assessment on the part of the domestic courts may also arise as a result of a misapplication or misinterpretation of the Court's case-law (see *Scordino*, cited above, §§ 182-192).

27. In the present case, it is not disputed that the Constitutional Court found a violation of Article 6 § 1 of the Convention by reason of the excessive length of the civil proceedings complained of. There has therefore been an acknowledgment, at the domestic level, of the violation of the applicant company's rights. It remains to be ascertained whether the redress granted can be considered appropriate and sufficient.

28. According to the Court's case-law, there is a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage. It is acceptable, however, that, in some cases, the length of proceedings may result in only minimal non-pecuniary damage or no non-pecuniary damage at all. The domestic courts will then have to justify their decision by giving sufficient reasons. Moreover, when no remedy designed to expedite the proceedings is provided for by the domestic legal system, which affords only the possibility of obtaining financial compensation, the threshold in respect of which the amount will still allow a litigant to claim to be a "victim" will be higher (see *Scordino*, cited above, §§ 204-206).

29. In the instant case, the Constitutional Court awarded the applicant company MTL 100 (approximately EUR 240) for an overall length of more than ten years and ten months for two levels of jurisdiction. It stressed, in particular, that a substantial period of inactivity of almost five years had occurred during the proceedings before the Court of Appeal. Thus, the Constitutional Court applied a rate of less than EUR 24 per annum. The Court observes that this amount is approximately 4.8% of what it generally awards in similar Italian cases (see *X200 S.R.L. v. Italy*, no. 45060/98, § 15, 17 October 2000) and 7% of what it awarded in a recent similar Maltese judgment (see *Debono v. Malta*, no. 34539/02, § 49, 7 February 2006). That factor in itself leads to a result that is manifestly unreasonable, having regard to the Court's case-law. It will revert to this matter in the context of Article 41 (see paragraphs 59-61 below).

30. In conclusion, the Court considers that the redress afforded to the applicant company was insufficient. As the second condition – that of appropriateness and sufficiency – has not been fulfilled, the Court considers

that the applicant company can still claim to be the “victim” of a breach of the “reasonable-time” requirement in the instant case.

31. Accordingly, the Government’s objection concerning the applicant company’s lack of “victim status” should be dismissed.

B. The Government’s objection of failure to exhaust domestic remedies

32. The Government submitted that the applicant company, which had alleged a violation of Article 6 § 1 before the domestic courts, had never raised an issue under Article 13 in conjunction with Article 6 § 1 in the context of its constitutional application. In the Government’s view, that meant that it had not exhausted all available domestic remedies.

33. The applicant company alleged that all domestic remedies had been exhausted. It observed that both before the Civil Court and the Constitutional Court it had sought a declaration that the reasonable-time requirement had been infringed, together with an adequate award of compensation.

34. For reasons which appear below the Court does not consider it necessary to examine whether the applicant has exhausted all available domestic remedies as regards its complaint under Article 13 of the Convention and consequently leaves this matter open (see *Zarb v. Malta*, no. 16631/04, § 45, 4 July 2006).

C. Other grounds for declaring the application inadmissible

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

36. The applicant company observed that its case, mainly based on undisputed facts, had been a simple one and that there had been no special reasons for the lengthy duration of its examination.

37. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

38. In the present case, the period to be taken into consideration began on 7 December 1990, when the applicant company sued Mrs S. before the

Civil Court and ended on 9 October 2001, the date of the Court of Appeal's judgment. The proceedings at issue thus lasted ten years, ten months and two days for two levels of jurisdiction.

39. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

40. The Court observes that the applicant company's case was not particularly complex, and that the proceedings were adjourned twelve times at first instance and twenty-eight times at the appeal stage (see paragraphs 6 and 8 above). Moreover, as rightly pointed out by the Constitutional Court (see paragraph 17 above), the Court of Appeal gave its final judgment almost five years after the date on which the parties had presented their final pleadings. No convincing explanation for these delays has been given by the respondent Government.

41. The Court observes that in the present case the Constitutional Court found that a reasonable time had been exceeded. However, the fact that the constitutional proceedings, examined as a whole, did not cause the applicant company to lose its "victim" status constitutes an aggravating circumstance regarding a breach of Article 6 § 1 for exceeding the reasonable time (see, *mutatis mutandis*, *Scordino*, cited above, § 225, and *Zarb*, cited above, § 38). The Court will therefore revert to this issue under Article 41.

42. Having examined all the material submitted to it, and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable-time" requirement.

43. There has accordingly been a breach of Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION, READ IN CONJUNCTION WITH ARTICLE 6 § 1

44. The applicant company observed that the Constitutional Court had acknowledged in substance that there had been a violation of Article 6 by reason of the excessive length of the civil proceedings. However, the Constitutional Court had made an award of compensation which was ridiculous and much lower than those which had been granted in similar cases by the domestic courts (MTL 500 for proceedings which had lasted eleven years in the case of *Attard ne.et. v. Il-Prim Imhallef*, judgment of the Civil Court (First Hall) of 29 October 1992, and MTL 700 in respect of a period of thirteen years in the case of *Manduca v. Prim Ministru*, judgment of the Constitutional Court of 23 January 1995).

45. The applicant alleged that the failure by Mrs S. to comply with the obligations arising from the contract (notably, building a house or a villa and paying the annual rent) had adversely affected the market value of its land. These factors had been aggravated by the time taken by the domestic

courts to order the restitution of the land. In spite of the above-mentioned circumstances, the Constitutional Court had not awarded any compensation for pecuniary damage, thus failing to take into account what was at stake for the applicant company and providing a remedy which was completely inadequate. Moreover, the Constitutional Court had refused to acknowledge that there had been a violation of Article 39 § 2 of the Constitution of Malta.

46. The Government disputed the applicant's arguments.

47. The Court reiterates that Article 13 of the Convention guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

48. The Court has frequently held that the remedy required by Article 13 must be "effective" in practice as well as in law (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII). The term "effective" is also considered to mean that the remedy must be adequate and accessible (see *Paulino Tomás v. Portugal* (dec.), no. 58698/00, ECHR 2003-XIII). Remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are "effective" within the meaning of Article 13 of the Convention if they prevent the alleged violation or its continuation, or provide adequate redress for any violation that has already occurred (see *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII; *Scordino*, cited above, §§ 186-188; and *Sürmeli v. Germany* [GC], no. 75529/01, § 99, 8 June 2006). Lastly, the Court reiterates that the effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Sürmeli*, cited above, § 98) and that the mere fact that an applicant's claim fails is not in itself sufficient to render the remedy ineffective (see *Amann v. Switzerland* [GC], no. 27798/95, §§ 88-89, ECHR 2002-II).

49. The Court must determine whether the means available to the applicant company in Maltese law for raising a complaint about the length of the proceedings in its case could be considered "effective".

50. The Court notes that Maltese law in principle provided a remedy which enabled the applicant company to raise with the national courts its complaint about the length of the proceedings in its case. The applicant company indeed instituted constitutional proceedings before the Civil Court (First Hall) in its constitutional jurisdiction and, on appeal, before the Constitutional Court. Its complaint under Article 13 mainly related to the amount of the compensation awarded by the Constitutional Court, a question which the Court has addressed in its examination of the Government's objection of lack of victim status (see paragraphs 24-31 above).

51. The Court observes that there existed no limit on the amount of compensation which could be granted to an applicant in such proceedings.

The amount awarded to the applicant was based solely on the exercise by the domestic court judges' of their discretion as to what might constitute appropriate pecuniary redress in the circumstances of the applicant's own case. The mere fact that the amount of compensation given was low does not render the remedy in itself ineffective. Furthermore, no other evidence has been provided showing that the remedy at issue could be considered ineffective. In the light of the foregoing, the Court considers that the above mentioned situation cannot be regarded as a breach of the applicant's right to an effective remedy (see *Zarb*, cited above, § 51).

52. Accordingly, in the present case there has been no violation of Article 13 of the Convention, read in conjunction with Article 6 § 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant company submitted that it had suffered pecuniary damage equal to the unpaid rent and penalties it was owed by Mrs S., amounting to a total sum of MTL 1,858 (approximately EUR 4,459). Moreover, Mrs S.'s failure to build on the company's plot of land had decreased its market value.

55. The applicant company also claimed that it had suffered damage of a non-pecuniary nature. It left the amount to be determined by the Court.

56. The Government argued that the applicant company's claim in respect of pecuniary damage should be dismissed, as there was no causal link between the excessive duration of the proceedings and the alleged damage. The applicant company could have taken other forms of action, such as having a judicial letter served on Mrs S. or bringing an ordinary civil suit. Furthermore, the applicant had failed to request the domestic court to order Mrs S. to pay the relevant penalties. The Government also considered that the fact that the applicant company's plot of land had remained undeveloped for thirty-two years was not attributable to the authorities but to Mrs S. The plot would have remained undeveloped even if the proceedings had been concluded within a reasonable time.

57. As to non-pecuniary damage, the Government submitted that the Constitutional Court had awarded the applicant MTL 100 under this head, a

sum which should be considered adequate in the circumstances of the present case.

58. The Court considers that there is no causal link between the pecuniary damage alleged by the applicant and the violation found in the present case. It therefore makes no award under this head.

59. The Court considers, on the contrary, that the applicant company suffered non-pecuniary damage. However, it should be kept in mind that at domestic level it had already obtained MTL 100 under this head. In the case of *Scordino* (cited above, §§ 268-269) the Grand Chamber stressed that the amount to be awarded for non-pecuniary damage under Article 41 may be less than that indicated in its case-law where the applicant has already obtained a finding of a violation at domestic level and compensation by using a domestic remedy. However, where an applicant can still claim to be a “victim” after using that domestic remedy he or she must be awarded the difference between the amount obtained from the national courts and an amount that would not have been regarded as manifestly unreasonable compared with the amount awarded by the Court if it had been awarded at the domestic level (see also *Zarb*, cited above, § 59).

60. Having regard to the circumstances of the present case (see paragraph 41 above), the Court considers that, in the absence of domestic remedies, it would have awarded the sum of EUR 7,500. It notes that the applicant company was awarded EUR 240 by the Constitutional Court, which is approximately 3.2% of what the Court would have awarded. In the Court’s view, this factor in itself leads to a result which is manifestly unreasonable, having regard to the criteria established in its case-law.

61. Having regard to the characteristics of the domestic remedy chosen by Malta and the fact that, notwithstanding that remedy, the Court has found a violation, it considers, ruling on an equitable basis, that the applicant company should be awarded EUR 3,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

62. The applicant company sought the reimbursement of the costs incurred before the domestic courts, namely MTL 364.16 (approximately EUR 874) for the proceedings before the Civil Court and the Court of Appeal and MTL 444.16 (approximately EUR 1,027) for the constitutional proceedings. It also sought MTL 528.50 (approximately EUR 1,268) for the costs incurred before the Court.

63. The Government submitted that there was no causal link between the violation found and the costs incurred before the Civil Court and the Court of Appeal. They observed that at the outset of those proceedings Mrs S. had been ordered to pay the applicant company’s legal costs and that the latter’s failure to recover them was unconnected to the length of the proceedings.

As to the expenses incurred in the constitutional proceedings, the Constitutional Court had ordered the Government to pay them and all the applicant company had had to do was submit the relevant bills.

64. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession, the Court finds that there is no causal link between the expenses incurred before the Civil Court and the Court of Appeal and the violation found in the present case. Regarding the costs of the constitutional proceedings, as the Government rightly pointed out, the Constitutional Court held that they should be borne by the Attorney General (see paragraph 16 above). At the same time, the Court considers that the amount claimed for the fees and costs incurred before it is reasonable. It therefore awards the applicant company EUR 1,268 under this head, plus any tax that may be chargeable on that amount.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been no violation of Article 13 of the Convention, read in conjunction with Article 6 § 1;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Maltese liras at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,268 (one thousand two hundred and sixty-eight euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;

- (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Bonello is annexed to this judgment.

N.B.
T.L.E.

CONCURRING OPINION OF JUDGE BONELLO

1. I voted to award the applicant only EUR 3,000 in respect of non-pecuniary damage, solely in deference to the criteria recently established by the Grand Chamber of the Court in the cases of *Scordino* and *Cocchiarella v. Italy* (29 March 2006) in which deliberations I did not participate and with whose conclusions I respectfully disagree.

2. According to its long-established criteria, the Court would have awarded the applicant company EUR 7,500 had its case been decided in Strasbourg. Instead of applying the Strasbourg scale of compensation, the domestic courts fobbed the applicant Company off with EUR 240 – which represents a beggarly 3.2% of what the Strasbourg court would have awarded (see § 60).

3. For having complied with the Convention's requirement of exhausting domestic remedies before applying to the Strasbourg Court, the applicant now finds himself penalized by getting only about 45% of what would have been due to him according to the Court's practice. The argument (used in *Scordino* and *Cocchiarella*) that the sum obtainable in Strasbourg should anyway be curtailed because the applicant enjoyed the convenience of a domestic remedy, in the present case falls flat on its face. The so-called domestic 'remedy' worked out at only 3.2% of what he was entitled to, and the so-called 'convenience' consisted in having to undergo the burden of *three* sets of court proceedings instead of one.