



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

FOURTH SECTION

CASE OF BEZZINA WETTINGER AND OTHERS v. MALTA

(Application no. 15091/06)

JUDGMENT

STRASBOURG

8 April 2008

FINAL

08/07/2008

This judgment may be subject to editorial revision.

In the case of Bezzina Wettinger and Others v. Malta,

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

Nicolas Bratza, *President*,

Giovanni Bonello,

Stanislav Pavlovski,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 18 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 15091/06) against Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr Francis Bezzina Wettinger, Mr Emanuel Zammit, Mr Nicholas Parnis England, Mr Stephen Parnis England, Mr Robin Parnis England, Mrs Joanna Parnis England and W.J. Parnis England Limited (“the applicants”) on 19 April 2006.

2. The applicants were represented by Dr T. Comodini Cachia, a lawyer practicing in Valetta (Malta). The Maltese Government (“the Government”) were represented by their Agent, Mr S. Camilleri, Attorney General.

3. The applicants alleged a violation of Article 6 § 1, among other things, on account of the excessive length of the proceedings and of Article 1 of Protocol No. 1 to the Convention, among other things, on account of the compensation due.

4. On 12 July 2006 the President of the Fourth Section of the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first six applicants were born in 1926, 1936, 1969, 1963, 1972 and 1965 respectively and live in Malta. The second applicant introduced his application in his capacity as sole heir of the late Carmelo Zammit, while the third, fourth, fifth and sixth applicants are acting before the Court in their capacity as heirs of the late John Parnis England. The seventh applicant, W.J. Parnis England Limited, is a company registered in Valletta, Malta.

A. The background of the case

6. On 3 August 1960 the applicants and/or their ancestors acquired the right of perpetual emphyteusis (a contract granting use of a “tenement”, that is, a house, apartment or other building, for a stated yearly rent or ground rent to be paid in money or in kind) over a piece of land, located within the limits of two Maltese cities, Birkirkara and Msida. This land, known as “Tal-Hriereb”, measured approximately 23,606 square metres (sq.m).

7. Under the contract of emphyteusis, the applicants and/or their predecessors undertook to pay the annual ground rent and to spend 7,500 British pounds (GBP, approximately 11,137 euros (EUR)) on improvements to the land. They were given the right to redeem the direct *dominium* (the right of the *dominus* on the tenement let out on emphyteusis) at the capitalisation rate of five per cent, which amounted to 8,669.80 Maltese liras (MLT - approximately EUR 20,807).

8. On 1 August 1961 the Governor of Malta declared that part of the land in question, measuring approximately 7,531 sq.m, was required for a public purpose. The acquisition of the land was to be made by outright purchase. The applicants and/or their predecessors held under title of emphyteusis most of the land affected by the expropriation (approximately 7,066 sq.m). The amount of ground rent payable on the area of land expropriated amounted to MTL 260.12 (approximately EUR 624) per year. In accordance with domestic law they lost possession of the said land fourteen days from the date of publication of the notice of the intention to expropriate the property.

9. In a Notice to Treat of 16 May 1964 and 20 May 1964 respectively the Commissioner of Lands offered the applicants in their capacity as emphyteutae, jointly with the persons having the direct *dominium* (hereinafter, the “*dominus*”), GBP 631 (approximately EUR 1,515) for the land expropriated. The *dominus* and the applicants refused this offer.

10. On 1 June 1964 they jointly lodged replies to the Notice to Treat rejecting the amount offered and claiming that the compensation should be calculated on the basis of an annual ground rent of twelve shillings and six pence (approximately EUR 0.92) per 4,3911 sq.m (one square cane) less three shillings and four pence (approximately EUR 0.24) per 4.3911 sq.m which was the original ground rent to which it had been subjected. They also claimed that the *directum dominium* alone was worth approximately GBP 8,738 (approximately EUR 12,974).

11. On 6 November 1964 the case was brought before the Land Arbitration Board (hereafter the “LAB”) to establish the amount of the compensation due.

12. The first sitting was held on 9 December 1964. Within the following year seven adjournments took place for various reasons, *inter alia*: to allow a lawyer to be instructed; the illness of the applicants’ lawyer (on 24 February 1965, adjourned to 31 March 1965); the ordering of an on-site inspection; giving the parties time to submit replies; the LAB taking time to consider the oral submissions made; and because the merits of the case were related to another pending case. An on-site inspection was also held.

13. On 15 December 1965 the case was adjourned *sine die* to await the outcome of case X, pending before the Civil Court. The proceedings could have been resumed on request by any of the parties. According to the Government, the decision to adjourn was given with the agreement of all the parties. The applicants contest this. Judgment in case X was delivered by the Civil Court on 21 October 1967 and reversed on appeal on 28 October 1968. This decision was upheld on 10 February 1971 by the Judicial Committee of the Privy Council.

14. Three and a half years later, on 30 September 1974, one of the applicants asked for the proceedings to be resumed. On 7 October 1974 the case was adjourned to 18 November 1974. The case was then adjourned five times (18 November, 9 December and 20 December 1974, 13 January and 24 February 1975), on three occasions because the parties had not been notified and twice by order of the LAB.

15. According to the applicants and/or the documents of the proceedings, no reason was given for three of the adjournments (7 October and 9 December 1974 and 24 February 1975). According to the Government, the six adjournments were made for the purposes of notifying all the applicants that the case had been resumed.

16. After notification of all the parties, the LAB started dealing with the merits on 3 March 1975, on which date the case was again adjourned in order to fix a date for an on-site inspection because of the withdrawal of one of the architects.

17. On 7 April 1975 a date was set for the on-site inspection and the case was adjourned. On 25 April 1975 the on-site inspection was held. No representatives of the applicants were present.

18. On 12 May 1975 the case was adjourned for no apparent reason to 26 May 1975, on which date a request was made to apportion the compensation and the case was adjourned again to 23 June 1975 as the applicants' representative was not present. On 23 June 1975 the case was adjourned again as one of the applicants had not been notified. On 6 October 1975 the case remained adjourned.

19. On 17 November 1975 the last applicant to be notified confirmed notification and did not object to the on-site inspection, which had already taken place. The case was then adjourned another three times for no apparent reason. On 26 January 1976 the LAB put questions to the parties and heard their replies and declared that all the land of the emphyteutae had been expropriated. It adjourned the case to 1 March 1976, on which date the case was adjourned again as the architects required more time to estimate the apportionment of the emphyteusis. The case was then adjourned another eight times: three times for judgment; once because the architects required still more time; three times by order of the LAB; and once due to other commitments of one of the members of the LAB.

20. By a decision of 3 February 1978, the LAB established that the compensation due amounted to MLT 1,161 (approximately EUR 2,786) and fixed 15 February 1978 as the date for the publication of the deed of transfer. It further assigned a notary to publish the deed and an advocate to appear on behalf of any absent party. The LAB did not indicate how this amount was to be shared among the interested parties.

21. On 5 December 1978 the State made a request for the correction of a mistake in the LAB's decision. On an unspecified date the Commissioner of Lands asked the LAB to establish how the compensation was to be divided between the *dominus* and the emphyteutae. A similar request was made by the interested parties.

22. On 29 December 1978, after having seen the application for rectification and replies thereto, the LAB scheduled a hearing for 2 March 1979. The case was then adjourned seventeen times, once for lack of notifications, once on the request of the applicants, three times because of the unavailability of the LAB members or other problems of the LAB and the rest for unknown reasons. The applicants' representatives did not appear at, at least, seven hearings between 7 May 1979 and 12 January 1981.

23. On 21 January 1981, Mr Carmelo Zammit died. It cannot be established whether the second applicant replaced his late father in these proceedings as the relevant documentation could not be found in the domestic court's archives.

24. On 22 September 1981 the LAB gave its decision. It acknowledged that the decision of 3 February 1978 had been based on a wrong

measurement of the expropriated land and ordered the correction of this mistake. However, the amount of compensation remained unchanged. The LAB rejected the Commissioner of Land's request to indicate the respective shares of the *dominus* and the emphyteutae, reserving the right of the parties to have this matter determined by the ordinary courts.

25. The *dominus* and the emphyteutae disagreed on the amount of compensation due to each. Consequently, their rights were not transferred to the Government. The emphyteutae were still bound under the contract of emphyteusis to pay the *dominus* the ground rent, amounting to MLT 260.12 (approximately EUR 595) per year.

B. The proceedings before the Civil Court

26. On 31 October 1994, the applicants and/or their predecessors instituted proceedings before the Civil Court (First Hall) in its constitutional jurisdiction. They claimed that the requisition of the "Tal-Hriereb" land, coupled with the lack of payment of compensation, amounted to a violation of Article 1 of Protocol No. 1. Moreover, they argued that, contrary to Article 6 § 1 of the Convention, their case had not been heard by the LAB "within a reasonable time".

27. By a judgment of 5 October 1998, the Civil Court rejected these claims.

28. It observed that even though part of the "Tal-Hriereb" land had been declared to have been required for a public purpose in 1961, the expropriation had not yet been executed since the deed of transfer had not been published and payment of the compensation had not been made.

29. In the Civil Court's view, the law aimed at establishing a fair compensation for the taking of the property, which should reflect the market value of the expropriated land. This sum was due to all interested parties. Under the Convention, it was irrelevant whether one or more parties were entitled to the sum in issue and whether the right originated from the same title or not. In any case, the calculation of compensation had to be based on objective criteria. It then fell to the various interested parties to establish how the compensation should be divided. In the present case, the applicants and/or their predecessors had not made use of the ordinary remedy provided by the law in order to fix the apportionment of the compensation. The fact that the division had not been made was therefore imputable to them.

30. The Civil Court further noted that during the constitutional proceedings the Commissioner of Lands had refunded the applicants the amount of ground rent that had been paid by them.

31. As far as the "reasonable time" requirement was concerned, the Civil Court observed that, even though no compensation had been paid for almost forty years after the taking of the land, the LAB's decision had been delivered in 1981. Thus, the applicants' omission to avail themselves of the

ordinary remedy provided by law in order to obtain the division of the sum due for compensation had caused a delay of almost twenty years, which could not be imputed to the authorities.

C. The proceedings before the Constitutional Court

32. On an unspecified date the applicants appealed both claims to the Constitutional Court.

33. They observed, in particular, that the Civil Court had failed to take into consideration the fact that the refunding of the ground rent by the Commissioner of Lands produced a sum which was much higher than the compensation awarded by the LAB. They also reiterated their argument that the compensation in issue had not been apportioned among the interested parties.

34. On 13 June 2004 Mr John Parnis England died, and the proceedings, were continued in his own name as no application to replace him was lodged by his heirs.

35. By a judgment of 24 October 2005, the Constitutional Court rejected the applicants' appeal and confirmed the Civil Court's decision under both heads.

36. In particular, it recalled that the Commissioner of Lands was obliged to pay the real and actual market value of the land, and not a sum calculated on the basis of non-objective criteria. The fact that the ground rent on the land was high did not necessarily mean that the compensation awarded by the LAB was not just.

37. It was true that the law did not prohibit the apportionment of the compensation; however, this did not mean that there was an obligation to effect such an apportionment in each case where there was more than one interested party. An omission to do so was therefore not in violation of the Civil Code or of any other law. In any case, it was open to the applicants to request the Civil Court to divide the compensation. The fact that this division had not taken place was therefore imputable to the applicants, who had failed to institute the proceedings provided by the law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The emphyteusis

38. The Civil Code (hereinafter, the "CC") defines emphyteusis as:

"...a contract whereby one of the contracting parties grants to the other, in perpetuity or for a time, a tenement for a stated yearly rent or ground rent which the latter binds himself to pay to the former, either in money or in kind, as an acknowledgment of the tenure."

39. The agreed yearly ground rent remains unaltered. According to section 1500 of the CC:

“(1) The ground rent during the continuance of the emphyteutical grant is unalterable.

(2) The emphyteuta cannot claim any reduction of the ground rent by reason of any change of circumstances.

(3) Nor can he claim any remission or abatement of the ground rent for one or more years if as a result of a fortuitous event, whether ordinary or extraordinary, foreseen or unforeseen, the whole or part of the produce is lost.”

40. The rights of the emphyteuta are regulated by sections 1504 and 1508 of the CC. These provisions read as follows:

Section 1504

“(1) The emphyteuta may alter the surface of the tenement, provided he does not thereby cause any deterioration thereof.

(2) He is entitled to any profit which the tenement may yield and has the right to recover the tenement from any holder, even if such holder is the *dominus*.

(3) He is also entitled to the treasure trove found in the tenement, saving such portion thereof as according to law is due to the person who has found it.”

Section 1508

“(1) The emphyteuta may, without giving notice to the *dominus* or requiring his consent, dispose of the emphyteutical tenement and of the improvements, either by an act *inter vivos* or by any testamentary disposition.

(2) Any alienation, however, made otherwise than by a public deed, is null.”

41. By an Act XXX of 1981, all emphyetutae were given the right to redeem the ground rent owed by them to the *dominus*. The relevant provisions of this Act read as follows:

“(1) Where a grant in emphyteusis is made in perpetuity, the emphyteuta, even though the ground rent may be revised at stated intervals of time, shall have the option to redeem the ground-rent as provided in the following sub-articles of this article, unless the contract itself, being a contract entered into before the 15th August, 1981, provides for a different manner in which the redemption may be effected.

(2) Such redemption of ground-rent shall be made by the payment of a sum equivalent to the amount of the ground-rent capitalised at the rate of five per cent.”

B. The determination of the compensation due for the taking of land

42. Prior to the amendments introduced in 2002, section 12 (1) of the Land Acquisition (Public Purposes) Ordinance (Chapter 88 of the Laws of Malta) provided that:

“...the competent authority shall give to the owner a notice ... by means of a judicial act, stating the amount of compensation, as shown in a valuation to be attached to the notice to treat.”

43. According to section 2 of the same Ordinance, the word owner included the “...lessee or other person having an interest in the land”.

44. An agreement on the compensation could be reached at any time. Sections 13(1) and 22 of the Ordinance in issue provided that:

Section 13(1)

“The amount of compensation to be paid for any land required by a competent authority may be determined at any time by agreement between the competent authority and the owner (...).”

Section 22

“If the owner shall by a judicial act decline to accept the offer made by the competent authority, the matter shall be brought before the Board by an application to be made by the competent authority, and the Board shall give all necessary orders or directions in accordance with the provisions of this Ordinance.”

45. The Board mentioned in section 22 was the LAB. According to section 25(e), it was competent to:

“... assess the amount of compensation payable under any of the provisions of this Ordinance and for that purpose to declare whether any area is a building site or agricultural or waste land.”

46. For the purposes of compensation, section 27(1) (b) provided that:

“the value of the land shall,... be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise.”

THE LAW

47. The applicants complained that the proceedings in relation to the compensation for the taking of the land on which they or their predecessors had a right of emphyteusis had been neither conclusive nor determined within a reasonable time. They further complained of a violation of their rights as emphyteutae over the expropriated land as the amount of compensation awarded was not fair and adequate and, moreover, had not

been paid. They relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which 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 1 of Protocol No. 1

“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.”

48. The Government contested these arguments.

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

A. Admissibility

1. The Government's objection ratione temporis.

49. The Government submitted that Malta became an independent State on 21 September 1964; it ratified the Convention on 23 January 1967 and recognised the right of individual petition on 30 April 1987. Consequently, alleged breaches which occurred before 21 September 1964 could not be imputed to the State; alleged breaches which occurred between 21 September 1964 and 23 January 1967 fell outside the Court's jurisdiction; and alleged breaches which occurred between 23 January 1967 and 30 April 1987 could in the absence of a domestic remedy only have been made within six months of 1 April 1987. In the present case the final decision in respect of the complaint under Article 6 § 1 was the LAB's decision of 3 February 1978 or alternatively that of 22 September 1981, and therefore before the right of individual petition existed in Malta. Thus, the complaint was inadmissible because the facts about which the applicants complained occurred between 1 August 1961 and 22 September 1981 and therefore fell outside the Court's jurisdiction *ratione temporis*.

50. The applicants submitted that prior to introducing proceedings before this Court they had to exhaust all ordinary domestic remedies. Furthermore, the Government's plea *ratione temporis* had already been

dismissed by the Civil Court, which rejected the case on the merits and the Government had not appealed against the dismissal of their plea. Only the applicants had appealed against the said judgment and this had also been noted by the Constitutional Court which again rejected the claims on the merits after it had confirmed the applicability of the Convention.

51. The Court reiterates that in the case of *X v. France* (no. 9587/81, Commission decision of 13 December 1982, Decisions and Reports (DR) 29, p. 238), it was held that in the absence of any stipulation to the contrary in the declaration made by a State in accordance with former Article 25 of the Convention, the Commission was competent to examine facts which had occurred between the date of ratification and the date on which the State's declaration under former Article 25 became effective.

52. Under Article 6, in order to decide whether the Court has jurisdiction *ratione temporis*, it is necessary to establish whether, on the date when the Convention entered into force in respect of a Contracting State, the proceedings concerning an applicant were still pending before the domestic courts (see, *mutatis mutandis*, *Dubinskaya v. Russia*, no. 4856/03, § 29, 13 July 2006). Moreover, the Court reiterates that its jurisdiction *ratione temporis* covers only the period after the ratification of the Convention or its Protocols by the respondent State. From the ratification date onwards, all of the State's alleged acts and omissions must conform to the Convention or its Protocols and subsequent facts fall within the Court's jurisdiction even where they are merely extensions of an already existing situation (see, for example, *Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, p. 16, § 40, and see *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 43, ECHR 2000-I).

53. The Court notes that the proceedings before the LAB were instituted in 1964 and they were terminated in 1978 or as argued by the applicants, in 1981. The applicants and/or their predecessors, in order to exhaust domestic remedies, subsequently instituted constitutional proceedings which ended in 2005.

54. Having regard to the case-law mentioned in paragraph 51 above, the Court observes that in the absence of an express limitation, the Maltese declaration of 30 April 1987 is retrospective and the Court is therefore competent to examine facts which occurred between 1967 and 1987 (see *Demicoli v. Malta*, no. 13057/87, Commission decision of 15 March 1989, Decisions and Reports (DR) 60, p. 243, and *Grech v. Malta*, no. 24492/94, Commission decision of 28 July 1995). Since the proceedings before the LAB started in 1964 and were terminated in 1978 or alternatively 1981 (in the applicants' view) the Court is competent *ratione temporis* to examine the applicants' complaints about the length of the proceedings only in so far as they relate to events which took place from 23 January 1967 onwards

(see, *mutatis mutandis*, *Jedamski v. Poland* (dec.), no. 29691/96, 29 June 2000).

55. It follows from the above that the complaint cannot be rejected as being incompatible *ratione temporis* and the Government's objection should be dismissed.

2. The Government's objection of non-exhaustion of domestic remedies

56. The Government submitted that the proceedings before the LAB ended in 1981 whereas the applicants only lodged their complaint with the constitutional courts many years later, in 1994. Furthermore, in the proceedings before the constitutional jurisdictions the applicants had not claimed a breach of Article 6 § 1 with reference to the actual length of proceedings. Their complaint related to the fact that the law had not been amended to provide for the division of the compensation, thus resulting in an inconclusive outcome to the proceedings before the LAB.

57. The applicants submitted that they had repeatedly argued before the domestic tribunals that all the various elements which had contributed to the unreasonable delay in the payment of fair and adequate compensation had interfered with their rights as protected by Article 6. This was also confirmed by the judgments delivered by the domestic courts.

58. The Court reiterates that according to Article 35 § 1 of the Convention, it may only deal with an issue after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, for example, *Hentrich v. France*, judgment of 22 September 1994, Series A no. 296-A, p. 18, § 33, and *Remli v. France*, judgment of 23 April 1996, *Reports of Judgments and Decisions* 1996-II, p. 571, § 33). Thus the complaint submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004).

59. The Court considers, as confirmed by the Government in their observations, that according to domestic law there were no time-limits on the bringing of an action under the European Convention Act. Thus, the applicants' delay in instituting proceedings which were allowed by domestic law cannot prejudice their situation as regards the admissibility of the complaint.

60. The Court observes that the applicants instituted constitutional proceedings before the Civil Court (First Hall) alleging a breach of their right to a fair trial within a reasonable time. They further appealed to the Constitutional Court against the Civil Court's judgment rejecting their claim. It notes that both domestic court judgments clearly make mention of the reasonable time requirement invoked by the applicants. This was so

notwithstanding that the applicants' pleas were mostly based on the fact that they did not consider the LAB's decision conclusive and that the constitutional jurisdictions seemed to have addressed only that aspect and not to have taken into consideration the twenty years it took the authorities to come to such a decision. However, had they opted to do so, the constitutional jurisdictions could have found a violation of Article 6 of the Convention in respect of the length of the proceedings and thereby provided, if need be, adequate redress. The Court therefore considers that, in relying on the reasonable time requirement under Article 6 before the constitutional jurisdictions, which did not reject the applicants' claim on procedural grounds but examined to some degree the substance of the claim, the applicants made normal use of the remedies which were accessible to them and which related, in substance, to the facts complained of at the European level (see, *mutatis mutandis*, *Zarb Adami v. Malta* (dec.), no. 17209/02, 24 May 2005).

61. It follows that the complaint cannot be rejected for non-exhaustion of domestic remedies and that the Government's objection must be dismissed.

3. Victim status in relation to the length of proceedings before the LAB

62. While no issue arises in respect of the first applicant and the applicant company, the Court must address the question of the second, third, fourth, fifth and sixth applicants' right to pursue this complaint as heirs of two of the "direct victims".

63. The existence of a victim of a violation, that is to say, an individual who is personally affected by an alleged violation of a Convention right, is indispensable for putting the protection mechanism of the Convention into motion, although this criterion is not to be applied in a rigid, mechanical and inflexible way throughout the proceedings (see *Karner v. Austria*, 40016/98, § 25, ECHR 2003-IX).

64. The Court recalls that in various cases where an applicant died in the course of the proceedings before this Court, it has taken into account the statements of the applicant's heirs or close family members who expressed the wish to pursue the proceedings before the Court (see in this respect *Karner*, cited above, and *Dalban v. Romania* [GC], no. 28114/95, § 39, ECHR 1999-VI).

65. The Court notes, however, that the present case must be distinguished from those cases which were introduced before this Court by the applicants themselves and only continued by their relatives after their subsequent death. Moreover, the Court recalls that where the proposed application primarily concerns a complaint under Article 6 of the Convention, the Court interprets the concept of victim autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act (see *Sanles Sanles v. Spain*, (dec.), no. 48335/99).

66. In the present case, the Court notes, on the one hand, that the second applicant instituted constitutional proceedings before the Civil Court in order to redress the alleged violation and the latter court did not reject the application. Nor was there any opposition to his appealing to the Constitutional Court – the last remedy required to be exhausted before the complaint could be introduced under the Convention. Moreover, the second applicant as heir of the deceased “direct victim” had a legitimate expectation to receive the amount of compensation due within a reasonable time. Consequently, in view of the fact that the length of the proceedings had a direct effect on the second applicant’s patrimonial rights, it can be said that he had a sufficient personal interest in the outcome of the proceedings and therefore can be considered a victim of the alleged violation (see, *mutatis mutandis*, *Ressegatti v. Switzerland*, no. 17671/02, § 25, 13 July 2006, and *Georgiades v. Cyprus* (dec.), no. 62233/00, 24 September 2002).

67. Moreover, the Court reiterates that its case-law on the intervention of third parties in civil proceedings makes the following distinction: where the applicant has intervened in domestic proceedings only on his or her own behalf the period to be taken into consideration begins to run from that date, whereas if the applicant has declared his or her intention to continue the proceedings as heir, as in the present case, he or she can complain of the entire length of the proceedings (see, *M.Ö. v. Turkey*, no. 26136/95, § 25, 19 May 2005 and *Cocchiarella v. Italy* [GC], no. 64886/01, § 113, ECHR 2006-).

68. The Court, on the other hand, notes that the third, fourth, fifth and sixth applicants had not participated in the proceedings before the LAB, of which they are complaining; nor had they intervened in the proceedings before the constitutional courts. Thus, the Court considers that these applicants, though heirs of a direct victim, have never been affected by the length of the proceedings and therefore cannot be considered victims of the alleged violation (see *Georgia Makri and others v. Greece*, (dec.), no. 5977/03, 24 March 2005 and *Salvatore v. Italy*, no. 37827/97, § 11, 9 January 2001).

69. Consequently this part of the third, fourth, fifth and sixth applicants’ complaint is incompatible *ratione personae* within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4.

4. Conclusion

70. In conclusion, the Court finds that the complaint of the first and second applicants and the applicant company 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.

B. Merits

1. The parties' submissions

71. The applicants complained that the land in question had been expropriated on 1 August 1961 and that the final decision granting compensation had been delivered only twenty years later, on 22 September 1981. Moreover, this final decision had not identified the amount due to the different interested parties, thus leaving them in a situation of uncertainty.

72. They submitted that under domestic law the rights of the *dominus* and those of the emphyteutae were distinct and separate rights over the same property. The applicants had a real interest in respect of the expropriated land in that as emphyteutae, they had obtained all active rights over the property, in their case also in perpetuity. On the other hand, the *dominus* retained only a right of recognition, namely that of receiving the yearly ground rent. While the Civil Code provided for the valuation of the right of the *dominus* (see paragraph 41 above) this was not so for the emphyteutae.

73. The applicants submitted that the competence of the LAB was restricted to issues mentioned in section 25 of the Land Acquisition (Public Purposes) Ordinance (see paragraph 45 above) and therefore disputes relating to the rights held over the expropriated property between individual parties and those relating to the nature or extent of the rights and obligations of any person who claimed an interest in the property fell outside its competence. Consequently, the only issue that could be discussed before the LAB was the amount of compensation.

74. In this connection, the applicants submitted that the proceedings were simple in nature and were not concerned with any substantial issue.

75. Moreover, the said Ordinance placed the responsibility for advancing the proceedings exclusively on the Commissioner of Lands. Consequently, the applicants could not take any action to expedite the proceedings. According to them, taking action under ordinary law to determine the shares of the interested parties would have amounted to an acceptance of the amount of compensation awarded, thereby prejudicing their right to seek compensation.

76. Finally, the applicants submitted that the period of twenty years taken up by these proceedings had been unjustifiable and unreasonable in view of the period of inactivity totalling twelve years and ten months.

77. The Government first pointed out that the LAB's decision of 1981 only corrected an error in the measurement of the land and therefore the judgment of 3 February 1978 constituted the LAB's final decision.

78. The Government submitted that the applicants had waited nine years before one of them had asked for the case to be resumed; the applicants' lawyers had often asked for adjournments; the applicants and their lawyers had often failed to attend sittings and on-site inspections; and the applicants had not made themselves available to receive service of the notice of the reinstatement of the case. Moreover, even though a specific date for the conclusion of the deed of transfer had been fixed in the LAB's decision of 1978, the applicants had never shown any interest in concluding that deed. Consequently, it was the applicants' behaviour which had obstructed and lengthened the proceedings.

2. The Court's assessment

(a) The failure to reach a conclusive determination

79. In so far as the applicants' complaint referred to the fact that the proceedings failed to reach a conclusive determination, the Court reiterates that it is in the first place for the national authorities, and notably the courts, to interpret domestic law and that the Court will not substitute its own interpretation for theirs in the absence of arbitrariness (see *Tejedor García v. Spain*, judgment of 16 December 1997, *Reports* 1997-VIII, p. 2796, § 31). The domestic courts observed that even though no compensation had been paid to the applicants it had been their choice not to avail themselves of the ordinary remedy provided by law in order to obtain the division of the sum due for compensation.

80. The Court refers to the applicants' submissions in paragraph 73 above. It considers that since the applicants were aware that disputes between individual parties relating to the rights held over the expropriated property and those relating to the nature or extent of the rights and obligations of any persons who claimed an interest in the property fell outside the LAB's competence, they could not have expected the LAB to decide on such matters. The Court further considers that although a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to enforcement proceedings in order to have it executed (see *Cocchiarella v. Italy* [GC], cited above § 89; *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004), in the present case the action necessary was one in ordinary law to determine the shares of the interested parties, and not one demanding the execution of a judgment. Moreover, the action required to be taken by them would not have

prejudiced their claims regarding adequate and fair compensation in a further constitutional application.

81. It follows that the domestic courts' reasoning that it was up to the applicants to seek the division at issue was not arbitrary. The Court, therefore, finds that if the proceedings were inconclusive this was only as a result of the applicants' inaction and negligent omission.

82. It follows that this part of the complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and therefore must be rejected in accordance with Article 35 § 4.

(b) The length of the proceedings

83. The Court will next consider the applicants' complaint relating to the length of the proceedings, a matter which appears to have been overlooked by the domestic courts even though the applicants had raised the substance of the complaint (see paragraph 60 above).

84. The Court considers that, notwithstanding that it only served to correct an error in the measurement of the land, the judgment of 22 September 1981 should be considered as the final judgment in the applicants' case, it being noted that it had been the Government which had requested such a correction, which had caused a further delay.

85. The Court, therefore, notes that the proceedings began on 6 November 1964 and ended on 22 September 1981.

86. However, the Court can only take into consideration the period which has elapsed since the Convention entered into force in respect of Malta (see paragraph 54 above), although it will have regard to the stage reached in the proceedings by that date (see, for example, *Humen v. Poland* [GC], no. 26614/95, §§ 58-59, 15 October 1999). Thus, the proceedings at issue lasted fourteen years and eight months for one level of jurisdiction.

87. 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).

88. The Court observes that the applicants' case was not particularly complex and that the competence of the LAB was restricted to determining the amount of compensation for a piece of land which had been taken from the applicants.

89. It further observes that case X, which led to the adjournment of the applicants' case, became final on 10 February 1971 (see paragraph 13 above). Even if the parties disagreed about whether the adjournment had been consensual or not, the Court considers that there was nothing to prevent the applicants from requesting the reinstatement of the case at any

time. Moreover, after case X had become final, the applicants waited three and a half years before making a request for their case to be resumed.

90. From September 1974 to March 1975 the case was adjourned six times for reasons not imputable to the applicants (see paragraphs 14-15 above). From March 1975 to February 1978, during the merits stage, the case was adjourned nineteen times for notifications, requests made by architects, unavailability of LAB members or for unknown reasons. It appears that only one adjournment was imputable to the applicants as a result of their representatives' absence. Consequent to the Government's request for a correction in 1978, the case was again adjourned seventeen times, four of which were due to lack of notifications and the unavailability of the LAB members and eight of which were due to the applicants' fault, either by reason of their requests or the absence of their representatives; the other adjournments were ordered for unknown reasons.

91. The Court considers that the time taken for the case to be resumed after it had been adjourned was mainly due to the applicants' fault. It also takes into account that some of the delays pending the adoption of the second and final judgment were in fact due to the applicants.

92. However, bearing in mind that the Government, the only party having the authority and duty to institute these proceedings, waited three years before doing so and having regard also to the various reasons for the numerous adjournments, *inter alia*, the absence of notifications, which cannot be imputed to the applicants (see *Străin and Others v. Romania*, no. 57001/00, § 68, ECHR 2005-...), in general terms, the Court considers that the applicants cannot be criticised for lack of diligence in the period before the institution of the proceedings and from the reinstatement of the case to the adoption of the first judgment. It considers that the authorities failed to act with all due diligence in the conduct of the applicants' case throughout the various stages of the proceedings.

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

94. There has accordingly been a violation of Article 6 § 1.

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

A. The Government's objection *ratione temporis*.

95. The Government submitted that this complaint did not fall within the Court's jurisdiction *ratione temporis*. They made reference to their

submissions in paragraph 49 above and argued that the final decision in respect of the complaint under Article 1 of Protocol No. 1 was that of 22 September 1981.

96. The Government submitted that the applicants could not complain of a continuing violation. According to the Court's case-law, a deprivation of possessions materialises once an irreversible dispossession of property has taken place, irrespective of whether there has been a deed of transfer or not (see *Abdilla v. Malta* (dec.), no. 38244/03, 3 November 2005). The fact that domestic courts might choose to consider this differently did not mean that the Court could not find that the case was outside its jurisdiction *ratione temporis*. They noted in this connection that according to domestic law there were no time-limits for filing an action under the European Convention Act. In the present case, this had allowed the applicants to commence proceedings thirty years after they had been deprived of their possessions. Moreover, the fact that the applicants had not yet received their compensation was due to their own fault and therefore they could not consider themselves to be victims of a continuing violation.

97. The applicants made reference to their submissions in paragraphs 50-51 above. They further submitted that the violations of Article 1 of Protocol No. 1 were of a continuing nature since they arose not only out of the notice of expropriation itself but also from the fact that, to date, they had not received adequate compensation. They referred to *Vajagic v. Croatia* (no. 30431/03, 20 July 2006) and *Kirilova and Others v. Bulgaria* (no. 42908/98, 9 June 2005). They further referred to the case of *Dubinskaya v. Russia* (no. 4856/03, 13 May 2006).

98. The Court makes reference to paragraphs 52 and 54 above. It further notes that the applicants' complaints under Article 1 of Protocol No. concern, first, the failure of the authorities to determine the appropriate amount of compensation due to them as *emphyteutae*, a claim which had been vested in them ever since the actual expropriation measure took place. Secondly, they complain generally about the amount of compensation determined. Therefore, in so far as the applicants' complaint is directed against the acts and omissions of the State in relation to the implementation of an entitlement to a compensatory measure vested in them under Maltese law - an entitlement which continued to exist after 23 January 1967 and still exists today - the Court has temporal jurisdiction to entertain the complaint (see, *mutatis mutandis*, *Broniowski v. Poland* (dec.) [GC], no. 31443/96, §§ 75-76, ECHR 2002-X). The same applies to the assessment of the amount of final compensation (see *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, cited above, § 43), the determination of which was made by the LAB's decision of 3 February 1978 or alternatively that of 22 September 1981.

99. It follows from the above that the complaint cannot be rejected as being incompatible *ratione temporis* and that the Government's objection must therefore be dismissed.

B. The Government's objection of non-exhaustion of domestic remedies

100. The Government objected that the applicants had not exhausted domestic remedies in so far as their claims regarded the alleged inadequacy of the amount of compensation. This factor had not been raised before the domestic courts although they had argued a violation of Article 1 of Protocol No. 1 to the Convention.

101. The applicants recalled the Court's developed principles on non-exhaustion of domestic remedies. They submitted that in essence the domestic courts had been given the opportunity to assess their claim under Article 1 of Protocol No. 1 to the Convention and to offer them redress. Thus, they had exhausted remedies for both their complaints under this head. During the domestic constitutional proceedings they had alleged an infringement of their right to enjoyment of possessions and their arguments had focused on the amount of compensation determined by the LAB. They distinguished their case from that of *Azinas v Cyprus* ([GC], no. 56679/00, ECHR 2004-III), where the applicant had not relied on Article 1 of Protocol No. 1 to the Convention. They further emphasised that exhaustion was not dependent on whether the domestic courts had understood the arguments submitted to them. Moreover, the applicants had not instituted civil proceedings to obtain the apportionment of the compensation because the civil courts in ordinary jurisdiction were not in a position to alter the amount of compensation determined by the LAB, and any division would have left them with an illusory amount of compensation. Thus, the applicants had had no further effective remedies available.

102. The Court reiterates that, under Article 35 § 1 of the Convention, it may only deal with a matter after all domestic remedies have been exhausted. Article 35 § 1 requires that the complaints intended to be made subsequently before the Court should have been made, at least in substance, to the appropriate domestic body (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, pp. 2275-76, §§ 51-52).

103. The Court observes that under this head the applicants complained about two different matters: first, an interference with their rights as emphyteutae over the expropriated land, as the amount of compensation awarded was not fair and adequate; and second that the compensation had not been paid to them.

104. The Court notes that the main thrust of the applicants' action before the Maltese courts concerned their inability to receive what was due to them and not the quantum of compensation. The Court has examined both the

application and the appeal application made to the domestic courts, from which it transpired that although they sought a remedy in relation to compensation in general, they did not address the inadequacy of the compensation granted to them. Moreover, on analysing the Constitutional Court's judgment, the Court notes that in the oral pleadings the applicants' representative expressly stated on two occasions that he was not entering into the question of the quantum of compensation. Consequently, the Constitutional Court did not rule on the matter since the appellants were not complaining that the sum determined by the LAB was not a fair and adequate amount of compensation.

105. It follows that this part of the complaint must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

C. The remainder of the complaint

106. The Government reiterated, as confirmed by the constitutional jurisdictions, that the applicants were not prevented from having the matter of apportionment determined before the ordinary courts and from concluding the deed of transfer of the land. Moreover, they could have further argued that the Government should bear the costs of the proceedings.

107. According to the Government, the obligation to pay compensation did not entail an obligation to engage in numerous complicated procedures in order to have the compensation apportioned among the various persons having an interest in the land, something which would delay and obstruct the expropriation process. Apportionment should be carried out by the parties themselves, if necessary by having recourse to the domestic courts. The fact that the said Ordinance did not provide for apportionment did not violate the principle of proportionality, because there was no need for the public authority to interfere in relations between private individuals. Furthermore, this would have placed a burden on the expropriation process to the detriment of any private benefits which might result therefrom.

108. The applicants submitted that the obligation to pay compensation required not only that such compensation be fair and adequate but also that it be identifiable. The State through its actions had created a situation of uncertainty as to the amount of compensation due and had therefore failed to fulfil its obligation and had prolonged the loss suffered by the victims. The only amount identifiable at law was that owed to the *dominus*, and the global amount of compensation awarded did not even cover that.

109. The applicants further submitted that they could not have resorted to civil proceedings for the apportionment of that amount since further judicial proceedings at their own cost would have increased their financial burden. Moreover, such proceedings would have been ineffective since the amount due according to civil law was more than the compensation

awarded. Furthermore, such an action would have implied acceptance of the amount granted by the LAB as full compensation.

110. The Court recalls that an interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 26, § 69). Compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on applicants. In this connection, the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference, and a total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances (see *The Holy Monasteries v. Greece*, judgment of 9 December 1994, Series A no. 301-A, p. 35, § 71).

111. The Court notes that in theory the applicants were granted compensation for the expropriation of their property. However, in practice they did not receive this compensation because they failed to institute the relevant proceedings for the division of the compensation.

112. The Court has already established that it was up to the applicants to take the necessary steps to divide up the compensation granted (see paragraphs 81-82 above). It further recalls that unlike in *Tuleshov and Others v. Russia* (no. 32718/02, § 45, 24 May 2007), where it was not clear what steps the applicant was expected to take to receive the award from the insolvent debtors, in the present case it was clear that it was open to the applicants to request the Civil Court to divide the compensation awarded.

113. The Court therefore cannot find that the Government's responsibility is engaged in so far as it was for the applicants to take the necessary steps to divide up the sum granted.

114. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

115. 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. Pecuniary damage

116. The applicants claimed that since the expropriation had not yet been finalised, they should receive the payment due on finalisation together with compensation for the delay in payment, and not simply an amount reflecting monetary values of forty years ago. They claimed:

(i) The value of the land expropriated as valued by the architect’s report in the sum of MTL 3,780,000 (approximately EUR 8,807,460);

(ii) Interest on the amount liquidated;

(iii) Interest on the amount of MTL 7,074 (approximately EUR 16,477) paid by the applicants to the *dominus* as ground rent during the expropriation proceedings, which had only been refunded at a later date.

117. The Government confirmed that the applicants would receive interest on the original amount due and that they had also paid back the ground rent the applicants had been obliged to pay to the *dominus*. Moreover, the amounts claimed by the applicants were fictitious as the land at issue was part of the University and could have no other commercial value since it could not be put to any other use.

118. The Court has found no violation of Article 1 of Protocol No.1. It therefore rejects this claim.

B. Non-pecuniary damage

119. The applicants alleged that they had been caused serious emotional and psychological distress in view of the financial problems resulting from the situation complained of. They claimed MTL 15,000 (approximately EUR 35,000).

120. The Government submitted that the applicants had not proved their distress.

121. The Court considers that the applicants must have suffered some non-pecuniary damage for the violation of Article 6 of the Convention due to the length of the proceedings. However, it also notes that the applicants’ conduct contributed to a delay of at least four years. Thus, ruling on an equitable basis, the first and second applicants and the applicant company should each be awarded EUR 6,000 (see, *Mohai v. Hungary*, no. 30089/03, § 22, 11 April 2006) plus any tax that may be chargeable on that amount.

C. Costs and expenses

122. The applicants claimed a total of MTL 11,333.28 (approximately EUR 26,400) for legal costs and expenses incurred, namely MTL 566.61 representing their costs and expenses before the domestic courts as proved by an attached taxed bill; MTL 1,558.37 which they were bound to pay to the *dominus*; MTL 49.65 for the copying of plans as evidenced by receipts; MTL 6,690.60 representing the cost of the architects' report as shown by an attached invoice; MTL 1,298 for professional fees in relation to their constitutional proceedings as shown by an attached invoice; MTL 1,170.05 for costs and expenses incurred before the Court (including MTL 87.5 for translation costs). They did not quantify any amount for professional or registry fees incurred in the proceedings before the LAB as they could not provide copies of invoices or other documents. Lastly, they requested that the Government's costs and expenses which they were ordered to pay but which the Government had not yet sought, be declared irrecoverable.

123. The Government submitted that the relevant domestic judgments had correctly ordered the applicants to pay costs and that the architects' report and expenses in relation to the copying of plans had been unnecessarily incurred. Moreover, they submitted that the taxed judicial costs had already covered professional expenses and that no separate bills could therefore be claimed. Lastly, they submitted that the fees claimed for the proceedings before this Court were excessive and that the sum of MTL 300 should suffice to cover legal fees except for translations.

124. The Court recalls at the outset that it has no jurisdiction under the Convention to make orders annulling or revoking domestic decisions (see *mutatis mutandis*, *Credit and Industrial Bank v. the Czech Republic*, no. 29010/95, § 87, ECHR 2003-XI (extracts)). Consequently, the Court is not in a position to declare irrecoverable any costs due to the Government.

125. According to its settled case-law, the Court will award costs and expenses in so far as these relate to the violation found and to the extent to which they have been actually and necessarily incurred and are reasonable as to quantum (see, among other authorities, *Schouten and Meldrum v. the Netherlands*, judgment of 9 December 1994, Series A no. 304, pp. 28-29, § 78 and *Runkee and White v. the United Kingdom*, no. 42949/98, § 57, 25 July 2007). In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the part of the claim for costs and expenses in relation to maps and reports related to their complaint under Article 1 of Protocol No.1 and part of the costs and expenses of the domestic proceedings in relation to that complaint and considers it reasonable to award the sum of EUR 1,200 for part of the costs and expenses in the domestic proceedings and the proceedings before the Court, in so far as they related to the violation found.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint of the first and second applicants and the applicant company concerning the length of proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the first and second applicants and the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) each in respect of non-pecuniary damage and EUR 1,200 (one thousand two hundred euros) jointly for costs and expenses, plus any tax that may be chargeable;
 - (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 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President