



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF SCHEMBRI AND OTHERS v. MALTA

(Application no. 42583/06)

JUDGMENT
(merits)

STRASBOURG

10 November 2009

FINAL

10/02/2010

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 Schembri and Others v. Malta,

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

Nicolas Bratza, *President*,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 20 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 42583/06) against Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Ms Rosaria Schembri, Mr Saviour Schembri, Mr Carmel Schembri, Mr Anthony Schembri, Mr Emanuel Schembri, Ms Michelina Farrugia, Ms Catarina Formosa, Ms Mary Fenech, Ms Rosanna Mula, Ms Anna Zammit and Sr Rosangela Schembri (“the applicants”), all Maltese nationals, on 4 October 2006.

2. The applicants were represented by Dr T. Azzopardi, a lawyer practising in Valetta. The Maltese Government (“the Government”) were represented by their Agent, Dr S. Camilleri, Attorney General.

3. The applicants complained under Article 1 of Protocol No.1 to the Convention that the expropriation of their land had not been necessary for a public purpose and that the compensation awarded was not fair and adequate. They further complained under Article 6 of the Convention of a violation of the reasonable time requirement.

4. On 25 February 2008 the President of the Fourth Section decided to communicate the complaint concerning the expropriation of the applicants' land under Article 1 of Protocol No.1 to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. On 14 October 2008 the applicant requested that an oral hearing be held in the case. On 20 October 2009, the Court considered this request. It decided that having regard to the materials before it, an oral hearing was not necessary.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1918, 1944, 1946, 1947, 1939, 1943, 1950, 1949, 1955, 1965 and 1940 respectively. They all live in Ghaxaq except for the last applicant who lives in Mosta.

A. The background of the case

7. The applicants are owners of two plots of land ("A and B") in Ghaxaq, Malta. Plot A measures 71.5 sq.m and plot B measures 1,930.3 sq.m.

8. By a Governor's declaration of 15 February 1974, the Government gave notice of expropriation of both plots of land. It was declared that the land was required for a public purpose and was to be acquired by outright sale. At the relevant time, this declaration did not transfer the ownership of the land to the Government. In particular, it was provided that the Commissioner of Lands should serve a copy of the Presidential Declaration on the owner of the land, together with a "notice to treat" informing him or her about the amount that the Commissioner was willing to pay.

9. By a Notice to Treat of 19 November 1974 the applicants were offered the sum of 81 Maltese liras (MTL – approximately 189 euros (EUR)) for plot A and MTL 2,905 (approximately EUR 6,762) for plot B. Consequently, the procedure to compensate the applicant and to transfer the legal ownership of the land to the legal authority was initiated.

10. The applicants refused the offer and on an unspecified date in 1990 proceedings were instituted before the Land Arbitration Board ("LAB"). On 13 October 1995 the LAB ordered the applicants to transfer the two plots of land to the Government by outright sale and established the amount of compensation to be paid to the applicants in the sum of MTL 277.75 (approximately EUR 647) for Plot A and MTL 7,099.94 (approximately EUR 16,512) for Plot B, in accordance with the appointed architects' evaluations according to domestic law. The applicants submitted that according to their architect's valuation dated January 1993 the land then was worth MTL 105,000 (approximately EUR 243,850).

11. The applicants appealed against this decision to the Court of Appeal, which on 30 May 1997 declared the appeal null and void as no appeal could be entered against the decision of the LAB.

12. In the meantime, building permits had been issued by the administration in respect of all the entire area surrounding the plots of land at issue; however, the administration had not considered that Plots A and B could be used for building purposes. The applicants alleged that from 1974

to 1998 (the year when they instituted constitutional proceedings, see paragraph 13 below), Plots A and B had not been utilised for any public purpose. Plot A had been allocated to a private individual so that he could have a garage and a garden next to his residence and Plot B had remained unused until 1979, when a commemorative plaque was placed in a small area of the land. The remainder had not been utilised by the authorities for twenty-five years.

B. Proceedings before the Civil Court

13. On 18 May 1998 the applicants lodged an application with the Civil Court (First Hall) in its constitutional jurisdiction claiming that there had been a violation of Article 1 of Protocol No.1 to the Convention, in that the property expropriated had not been used for a public purpose and the amount determined by the LAB did not constitute adequate compensation for the taking of the property. They further complained, under Article 6 of the Convention, that the Government, which alone had the possibility of initiating proceedings before the LAB in order to determine the amount of compensation due, had waited sixteen years before instituting these proceedings, in breach of the reasonable time principle.

14. On 29 April 2005 the Civil Court dismissed their complaints under Article 1 of Protocol No.1 to the Convention. It held that, according to the evidence produced, the land at issue was used to form part of a road, more than 90% of it to make a public garden, and the rest for a bus shelter, a commemorative plaque, a niche and four garages. The garages were not situated wholly on the expropriated land and although they were used by private individuals they served the needs of the adjoining housing estate; the fourth garage contained an Enemalta (the only producer and distributor of electricity in Malta) generator. Thus, the expropriated land had been taken for a public purpose. In respect of the adequacy of the compensation the Civil Court held that the LAB had determined the amount awarded according to established objective criteria found in the law, which were not arbitrary or capricious. Where the amounts were fixed by reference to objective standards with the possibility for those deprived of the property to be represented in the procedure, it was not its duty to establish or revise the value so quantified.

15. The Civil Court upheld, however, a violation of the reasonable time principle under Article 6 of the Convention, finding that there had been an excessive delay regarding the commencement of proceedings before the LAB and awarded the applicants jointly MTL 300 (approximately EUR 700).

C. Proceedings before the Constitutional Court

16. On an unspecified date the applicants appealed to the Constitutional Court. They claimed that the expropriation had not been effected in the public interest and that the court had mistaken the land at issue for another plot of land previously expropriated. They presented a number of documents in order to support their argument that a mistake had been made. The site plan exhibited by the applicants indicated the land which had been expropriated earlier (1969) and which had then been used to build a bypass, and the plots of land actually at issue. They further argued that the amount of compensation awarded was far below its market value. The applicants also requested the court to vary the amount of compensation awarded by the Civil Court for the acknowledged Article 6 violation.

17. On 6 April 2006 the Constitutional Court dismissed the applicants' appeal. It upheld the first-instance court's reading of the exhibited cartographic and photographic evidence; it further maintained that even if the land had remained unused for a period of time this was normal in housing estate projects. Even if parts of the land had eventually been allotted to private individuals this did not render the taking of the property devoid of a public interest purpose. In respect of the amount of compensation, the Constitutional Court held that the estimates provided by the applicants were relatively recent and based on the current market value which was not always decisive according to the Strasbourg case-law, whereas the evaluation of the LAB referred to the real value of the land in 1974, the year when the land had been expropriated. Consequently this claim was manifestly ill-founded. As to the last claim, namely compensation for the length of proceedings, the Constitutional Court noted that, although it appeared that a request for a variation of the compensation awarded had been made in the appeal application, this had not been listed as a ground of appeal. Consequently, it could not take cognisance of the matter.

II. RELEVANT DOMESTIC LAW

18. The Land Acquisition (Public Purposes) Ordinance (Chapter 88 of the Laws of Malta) in so far as relevant reads as follows:

Section 3

“The President of Malta may by declaration signed by him declare any land to be required for a public purpose.”

Section 7

“The competent authority may deal with and dispose of land acquired by it in such manner and subject to such conditions as it considers expedient having regard to the public interest or utility.”

Section 17

“Any land which is not a building site shall be valued for the purpose of determining the compensation payable in the case of compulsory acquisition as rural land or as wasteland, as the case may be (...)”

Section 27 (1) (b)

“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. Provided that - (i) the value of the land shall be the value as at the time when the President's Declaration was served (...)”

19. Article 143 of the Code of Organisation and Civil Proceedings (Chapter 12 of the Laws of Malta) in so far as relevant reads as follows:

“(2) The application for the variation of a judgment shall contain a reference to the claim and to the judgment appealed from and shall distinctly state the heads of the judgment complained of together with detailed reasons for which the appeal is entered and, in conclusion, shall state, specifically, the manner in which it is desired that the judgment be varied under each head.”

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No.1 TO THE CONVENTION**

20. The applicants complained that the expropriation of their land had not been necessary for a public purpose and that the compensation awarded was not fair and adequate as provided in Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

21. The Government contested that argument.

A. Admissibility

22. The Court notes that this complaint 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

23. The applicants submitted that there existed no public purpose in the present case. They contested the domestic court's assessment of evidence, submitting that the land, said to be required for a public purpose in 1974, was not used until 1998, apart from the placement of a commemorative plaque in 1979. While most of the land remained a field covered in soil, four units were built and leased to private individuals, a particular area also allowed for the enhancement of a private individual's garden and garage. Moreover, while contesting the necessity of an open space to accompany a housing estate, nothing made the applicants' land, which was detached from the housing estate, the appropriate location for the open space required, especially when it was located just opposite a public garden. Acknowledging that the concept of public interest found its limits in the principle of proportionality, they submitted that a fair balance did not exist since they had been deprived of their property without adequate compensation.

24. In 1995 when the value of the land was assessed, the land had not been deemed to be suitable for building notwithstanding that all the land in the vicinity had in the meantime been granted building permits. Moreover, the value of the land in 1974, when the Notice to treat was issued by the Government, represented only a fraction of the value of the property. According to an architect's evaluation the value of the property in 1995 was MTL 105,000 (approx EUR 244,600) and the current market value was approximately EUR 2,500 per square metre. The value awarded by the LAB, although higher than the initial offer, was much less than the then current market value and a payment of accumulated interest at the time of transfer would not be a substitute for proper compensation *vis-a-vis* the price that the property could fetch on the open market. Indeed, to date, thirty-four years after the expropriation, the applicants had not yet received full and fair compensation. Thus, in the present case the applicants had had to bear a disproportionate burden.

25. The Government submitted that the expropriation had been effected for the purpose of the construction and planning of a Government public garden in connection with a housing estate. Such housing projects had to be

seen as a whole, in that dwellings also required shops and amenities, parking and open spaces. The land in question was used for the public purposes identified by the domestic courts, namely a public garden, the partial provision of a road, a bus stop, and services to the nearby housing estate. It had been used as a public open space fronting the Government housing estate from 1978. Moreover, although the shops built partly on the applicants' land were run by private individuals, the expropriation had not been carried out to confer a benefit upon them but to render a service to the community of the estate and its surroundings. Moreover, in the field of town planning, the authorities enjoyed a wide margin of appreciation as to what fell within the concept of public interest.

26. The Government submitted that the price offered for the land was based on objective criteria in contentious proceedings before the LAB. It was legitimate to take the value at the date when the land was taken over (1974) to determine the compensation payable. At the time, the land at issue was agricultural with little market value. Indeed the applicants did not submit that the price fixed representing the value in 1974 was incorrect. They simply argued that they should be awarded the market value at the time of the proceedings.

27. The Government further submitted that the contract of formal transfer of the land had not yet been concluded because of the judicial proceedings brought by the applicants and culminating in the present application. When the transfer eventually took place, apart from paying the price established by the LAB, the Commissioner of Lands would also make good any damage suffered by the owners due to the lapse of time between the date of the *de facto* taking of the land and that of the contract, in the form of interest at 5 % per annum. The applicants had furthermore been awarded compensation by the Civil Court in respect of the authorities' delay in commencing proceedings before the LAB. Thus, the applicants had not been subject to an excessive individual burden.

2. The Court's assessment

a) Whether there has been interference

28. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules: “the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not, however, “distinct” in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the

right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule” (see, among other authorities, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37; *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II; and *Beyeler v. Italy* [GC], no. 33202/96, § 98, ECHR 2000-I).

29. In order to determine whether there has been a deprivation of possessions within the meaning of the second rule, the Court must not confine itself to examining whether there has been dispossession or formal expropriation, it must look behind the appearances and investigate the realities of the situation complained of. Since the Convention is intended to guarantee rights that are “practical and effective”, it has to be ascertained whether that situation amounted to a *de facto* expropriation (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, pp. 24-25, § 63, and *Vasilescu v. Romania*, judgment of 22 May 1998, *Reports of Judgments and Decisions* 1998-III, p. 1078, § 51). A taking of property within this second rule can be justified only if it is shown, *inter alia*, to be “in the public interest” and “subject to the conditions provided for by law”.

30. The Court notes that, it has not been contested that in the present case there has been a deprivation of possessions within the meaning of the first paragraph of Article 1 of Protocol No. 1. Indeed the Court notes that although the transfer had not yet taken effect and that the applicant was still the owner of the property, the Presidential Declaration of 1974 officially stated that the property taken from the applicant was required for a public purpose. Moreover, some use had been made of the land and it would in practice be impossible for the applicant to enjoy, sell or develop his property. Under these circumstances, the Court finds that there had been a deprivation of possessions within the meaning of the first paragraph of Article 1 of Protocol No. 1 (see *Abdilla v Malta*, (dec.) no. 38244/03).

b) Whether the taking was in accordance with the law

31. The Court reiterates that it has already held that this type of taking in the Maltese system constitutes an interference with property which satisfies the requirement of lawfulness (see *Abdilla*, cited above). A Presidential Declaration and the taking of an applicant's land were based on Chapter 88 of the Laws of Malta, which was accessible and the effects of the Presidential Declaration provided for therein foreseeable (*ibid*).

c) Whether the taking was in the public interest

32. The Court reiterates that because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is “in the public interest”. Furthermore, the notion of “public interest” is necessarily extensive.

In particular, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, ECHR 2005-VI, § 91, *Immobiliare Saffi v. Italy*, [GC], no. 22774/93, § 49, ECHR 1999-V; and, *mutatis mutandis*, *Fleri Soler and Camilleri v. Malta*, no. 35349/05, § 65, 26 September 2006). Moreover, a taking of property effected in pursuance of legitimate social, economic or other policies may be "in the public interest" even if the community at large has no direct use or enjoyment of the property taken (see *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, § 45).

33. The Court notes that the parties before the Court disagreed as to the use made of the expropriated land. Nonetheless, the domestic courts held that some use was made of it in the public interest.

34. The Court accepts that the respondent State, in pursuit of its economic and social policies, was entitled to cater for the needs and interests of the individuals living on a nearby housing estate. Considering the wide margin of appreciation which the Contracting States enjoy in similar matters, the interference with the applicants' rights to peaceful enjoyment of their possessions cannot be said to have been manifestly without reasonable foundation. Therefore the proposed transfer of ownership complained of was "in the public interest" within the meaning of the second sentence of Article 1 of Protocol No. 1. Whether this public-interest aim was of sufficient weight for the Court to be able to find the interference proportionate will be examined hereunder.

d) Whether there was proportionality

35. Any deprivation of property must also satisfy the requirement of proportionality. As the Court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth*, cited above, pp. 26-28, §§ 69-74, and *Brumărescu v. Romania* [GC], no. 28342/95, § 78, ECHR 1999-VII). Thus, in the exercise of its power of review the Court must determine whether the requisite balance was maintained in a manner consonant with the applicants' right of property (see *Abdilla*, cited above).

36. Compensation terms under the relevant legislation are material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants (see *Jahn and Others*, cited above, § 94). 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). However, while it is true that in many cases of lawful expropriation only full compensation can be regarded as reasonably related to the value of the property, Article 1 of Protocol No. 1 does not guarantee a right to full compensation in all circumstances. Legitimate objectives in the “public interest”, such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (see *Urbárska Obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, § 115, ECHR 2007-... (extracts)).

37. It is in the first place for the national authorities, and notably the courts, to interpret domestic law and 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 same applies in respect of calculating values of land and property (see *Panagiotou v. Greece* (dec.), no. 38361/03, 3 November 2005).

38. The Court, however, reiterates that the adequacy of the compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as unreasonable delay. Abnormally lengthy delays in the payment of compensation for expropriation lead to increased financial loss for the person whose land has been expropriated, putting him in a position of uncertainty (see *Akkuş v. Turkey*, 9 July 1997, § 29, *Reports*). The same applies to abnormally lengthy delays in administrative or judicial proceedings in which such compensation is determined, especially when people whose land has been expropriated are obliged to resort to such proceedings in order to obtain the compensation to which they are entitled (see *Aka v. Turkey*, 23 September 1998, § 49, *Reports*).

39. Moreover, bearing in mind the importance of the consequences of the expropriation for the applicants' property rights, the Court considers that a careful examination of all relevant factors by a court dealing with the case was necessary to ensure that the requirements of Article 1 of Protocol No.1 were complied with (see *Bistrović v. Croatia*, no. 25774/05, § 36, 31 May 2007).

40. The Court takes as its starting point that in the present case the taking did not pursue any pressing public interest objective capable of

justifying less than reimbursement of the market value (compare and contrast *Urbárska Obec Trenčianske Biskupice*, cited above, §120) .

41. The Court notes that, neither the transfer of the land, nor, in consequence, the payment of compensation, have yet taken place, thirty-five years after the President's Declaration and the Government's taking possession of the land. It observes that, as pointed out by the Government, upon actual transfer of the property by deed, the applicant will, in accordance with the relevant law, be entitled to receive a sum equal to the price of the land at the time when the said declaration had been served, in the present case on 15 February 1974. The Government added that on the date of transfer the Commissioner of Lands will have to pay interest on the amount so as to offset, at least in part, the long period for which the applicants have been deprived of the land.

42. The Court considers that, in respect of a deed of expropriation which has not yet been concluded thirty-five years after the Government took over the land, to assess the price of the land for the purposes of compensation, yet to be paid, in accordance with values applicable decades before, would not be consonant with the spirit of the Convention. It follows that the value of the land established in accordance with the law cannot by itself be considered adequate, in the applicants' case. The Court notes that to this sum interest of 5% per annum will be added. However, while acknowledging that the setting of an interest rate came within the wide margin of appreciation which the Contracting States enjoy in deciding the terms and conditions on which compensation is to be paid following an expropriation (see *Aka*, cited above, § 47), the Court considers that the sum, including interest, to be awarded on transfer would not offset the failure to pay compensation to date and cannot be decisive in view of the length of all the proceedings already instituted by the applicants (see, *mutatis mutandis*, *Guillemin v. France*, 21 February 1997, § 56, *Reports* 1997-I).

43. Moreover, the Court observes that in determining the amount of compensation, the LAB did not take account of the fact that over twenty years had elapsed and the applicants had not yet received any compensation. Similarly, ten years after the LAB's decision, the Constitutional jurisdictions, while finding a violation of the reasonable time requirement in respect of the expropriation proceedings and awarding some compensation to that effect, failed to alter the amount of compensation for the expropriation or to consider it inadequate on account of the time which had lapsed.

44. The Court lastly notes that the Government have claimed that the payment was not completed due to the applicants' institution of constitutional proceedings. The Court is not convinced that the acceptance of the sum awarded by the LAB in 1995 would not have prejudiced any future claims the applicant may have had in its respect. As to whether such claims would have been reasonable, the Court observes that while the

applicant submitted that the amount awarded by the LAB in 1995 amounted to far less than the land's market value, the Government did not comment on the matter and no information has been provided in relation to this assessment. In consequence, the Court is unable to determine whether the ensuing constitutional proceedings in so far as they related to compensation would have been vexatious or unnecessary.

45. However, in the circumstances of the present case, it is sufficient for the Court to conclude that by awarding compensation reflecting values applicable decades before and deferring the payment of such for at least twenty years until the date of the LAB decision which did not take into account this delay, the national authorities rendered that compensation inadequate and, consequently, upset the balance between the protection of the right to property and the requirements of the general interest.

46. There has accordingly been a violation of Article 1 of Protocol No.1 to the Convention in this respect.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

47. The applicants complained of a violation of the reasonable time requirement under Article 6 of the Convention. They claimed that they could still be considered victims in view of the sum awarded by the domestic courts, which did not constitute adequate compensation for the violation found.

48. The Court reiterates that a decision 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 *Central Mediterranean Development Corporation Limited v. Malta*, no. 35829/03, § 24, 24 October 2006). The Court observes that the Constitutional Court's acknowledgment of the excessive length of the proceedings satisfies in substance the first condition. However, as far as the second condition is concerned, the Court observes that the domestic court awarded EUR 700 for a delay of twenty years. Thus, the amount awarded to the applicants is at least thirty times lower than the amount that could have been given in Strasbourg (see, for example, *Del Bono and Others v. Italy*, no. 52968/99, § 16, 12 February 2002, and *Luciani v. Italy*, no. 52919/99, § 15, 12 February 2002, where the Court awarded EUR 28,000 with respect to civil proceedings which lasted more than nineteen years before one instance). This factor in itself leads to a result that is manifestly unreasonable, having regard to the Court's case-law. The Court therefore considers that the redress afforded to the applicants was insufficient. As the second condition – that of appropriateness and sufficiency – has not been fulfilled, the Court considers that the applicants can still claim to be the “victim” of a breach of the “reasonable time” requirement in the instant case

(see *Central Mediterranean Development Corporation Limited*, cited above, §§ 29-30).

49. However, the Court reiterates that the complaints intended to be made subsequently at the international level should have been aired before the appropriate domestic courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among many other authorities, *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III). The Court has previously rejected applications for non-exhaustion of domestic remedies where the applicant, who was represented by a lawyer, failed to lodge his constitutional complaint in accordance with the applicable procedural rules and established practice (*Obluk v. Slovakia*, no. 69484/01, § 62, 20 June 2006) or had not made use of the constitutional remedy in accordance with the formal requirements, as interpreted and applied by the Constitutional Court (see *Lubina v. Slovakia*, no. 77688/01, § 63, 19 September 2006). The Court notes that in the present case the Constitutional Court refused to take cognisance of the applicants' attempted appeal on their claim under Article 6 in view of the manner in which it was put forward (see paragraph 17, *in fine*, above). Thus, by their own fault, the applicants did not provide the Maltese courts with the opportunity which is in principle intended to be afforded to a Contracting State by Article 35 of the Convention, namely the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged against it (see *Azinas*, cited above, § 41). It follows that the applicants failed to properly exhaust domestic remedies in this respect.

50. Consequently, the complaint must be rejected as inadmissible, in accordance with Article 35 §§ 1 and 4 *in fine* of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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.”

52. The applicants claimed the value of the property in 2008 amounting to EUR 2,200,000, in accordance with an architect's valuation dated 2008 whereby the property was estimated to be worth EUR 1,100 per square metre, in respect of pecuniary damage and EUR 50,000 in respect of non-pecuniary damage. The applicants also claimed EUR 6,090 for costs and expenses incurred before the domestic courts and this Court, covering legal fees of two solicitors.

53. The Government submitted that the applicants had no claim to the hypothetical increase in value of the land following its taking over by the

Government. The value of the land payable to the applicants is the value at the time of the taking over, namely in 1974. Moreover, the sum claimed for non-pecuniary damage was unfounded as the applicants suffered no particular nuisance and the prolongation of the issue was mainly the result of their contestation of the expropriation.

54. The Court first observes that it has found that there has been a violation of the applicants' right to the peaceful enjoyment of their possessions (see paragraph 45 above). It further observes that the damage, in the present case, stems from the failure of the authorities to award adequate compensation also reflecting the delay in payment, with the consequence that the expropriation has not yet been concluded and payment today, in accordance with domestic law, would not represent adequate compensation for the *de facto* taking which took place thirty-five years ago.

55. Indeed, according to the Court's standard practice in respect of just satisfaction, the estimated market value of lawfully expropriated land is that at the date of the expropriation. That amount will have to be converted to current value to offset the effects of inflation. Moreover, interest will have to be paid on this amount so as to offset, at least in part, the long period for which an applicant would have been deprived of the land (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 110, 258, ECHR 2006-...). Only where the expropriation had been unlawful, just satisfaction should be in line with the principle of *restitutio in integrum*, if this is impossible, compensation for the loss of property requires an award of the current value of the land, increased solely by the appreciation brought about by the existence of the buildings (see *Belvedere Alberghiera S.r.l. v. Italy* (just satisfaction), no. 31524/96, §§ 34-36, 30 October 2003, and *Carbonara and Ventura v. Italy* (just satisfaction), no. 24638/94, §§ 36-41, 11 December 2003).

56. In the present case, on the one hand the *de jure* expropriation (the deed of transfer) had not yet taken effect, on the other hand the *de facto* taking took place in 1974 and the Court has already established that it consisted of a lawful deprivation of property (see paragraph 30 above). It follows that the circumstances of the case do not fit squarely within any of the above-mentioned categories. Moreover, the Court has been unable to establish responsibility for the lack of payment after 1995 and the ensuing failure to conclude the transfer.

57. In these circumstances, the Court considers that the question of the application of Article 41 is not ready for decision. That question must accordingly be reserved and the subsequent procedure fixed, having due regard to any agreement which might be reached between the respondent Government and the applicants (Rule 75 § 1 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning Article 1 of Protocol No.1 to the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No.1 to the Convention;
3. *Holds* unanimously that the question of the application of Article 41 of the Convention is not ready for decision;
accordingly,
 - (a) *reserves* the said question in whole;
 - (b) *invites* the Government and the applicants to submit, within the forthcoming three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
 - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 10 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President