



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

FOURTH SECTION

CASE OF DADOUCH v. MALTA

(Application no. 38816/07)

JUDGMENT

STRASBOURG

20 July 2010

FINAL

20/10/2010

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

In the case of Dadouch v. Malta,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 29 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 38816/07) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Maltese national, Mr Mazen Dadouch (“the applicant”), on 2 September 2007.

2. The applicant was represented by Dr J. Brincat, a lawyer practising in Malta. The Maltese Government (“the Government”) were represented by their Agent, Dr S. Camilleri, Attorney General.

3. The applicant alleged that the refusal to register his marriage based on a request for a letter of nationality was in violation of Article 8 of the Convention alone and in conjunction with Article 14.

4. On 25 May 2009 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant is a Maltese national who was born in Damascus, Syria, in 1967, and lives in Sliema, Malta.

A. Background of the case

6. In 1993 the applicant acquired Maltese citizenship by registration in consequence of his marriage to a Maltese national. Subsequently, on 22 March 2002 the marriage was annulled by court order as it had been found to be a marriage of convenience. However, the applicant retained Maltese nationality according to the law in force at the time.

7. On 30 July 2003 the applicant married a Russian national in Moscow.

8. In the days following 30 June 2004 the applicant applied to the Public Registry Office to have his marriage registered in Malta.

9. On several occasions, notwithstanding the presentation of his Maltese identity card and a Maltese passport, the Public Registry required “as a matter of policy” that the applicant submit a letter from the Department of Citizenship declaring that he was a citizen of Malta.

10. According to the Government the authorities also noted that the requisite translation of the Russian marriage certificate presented by the applicant had not been apostilled by the Ministry of Foreign Affairs of Moscow.

11. Despite his contention that the request for a letter from the Department of Citizenship did not have a legal basis in domestic law, the applicant requested the Department to issue the letter. The Head of Department refused to issue such a letter, allegedly replying that he was not bound to issue it then, if at all.

12. Following the applicant's request, by a decision of the Court of Revision of Notarial Acts dated 31 May 2005, the Director of the Public Registry was directed to register the marriage, upon the applicant submitting his original act of marriage in Russian together with an English translation authenticated by his lawyer.

13. The applicant's request remained unsatisfied notwithstanding this decision.

14. On 5 April 2006 the decision of 31 May 2005 was revoked by the Court of Appeal. The latter, while expressing doubts as to whether the applicant could apply to the Court of Revision of Notarial Acts, held that a Maltese passport was not conclusive evidence of citizenship. Furthermore, the Director was vested with discretion to demand documents which he considered reasonable to prove the authenticity of what was submitted to him. The court therefore agreed that the Russian certificate of marriage produced by the applicant was not sufficiently authenticated evidence satisfying the Director of the Public Registry, having regard to Article 244 (1) of the Civil Code (see relevant domestic law, below).

B. The proceedings before the Civil Court

15. On 20 June 2005 the applicant instituted proceedings before the Civil Court (First Hall) in its constitutional jurisdiction. He complained that the refusal to register his marriage was in violation of his Article 8 rights alone and in conjunction with Article 14.

16. It appeared from the evidence given by an official employed at the Marriage Registry that there were two reasons for the refusal to register the marriage. Firstly, the documents presented by the applicant had not been authenticated by the Ministry of Foreign Affairs of Moscow, which is the competent authority to attach apostilles to such public documents, and, secondly, that every person who applied for registration was asked to produce a letter of citizenship.

17. According to the evidence of the relevant Minister, the request for such a certificate did not result from a law or legal notice but from an internal regulation. While in the course of the present proceedings a circular, applicable to all Government departments, was issued stating that Maltese passports could be accepted as proof of citizenship, the Minister stated that a letter of citizenship was the best evidence to prove citizenship at any precise moment.

18. On 2 May 2006, during these proceedings, the Head of the Nationality Department also confirmed that the applicant was a Maltese citizen.

19. On 13 June 2006 the applicant withdrew his complaint in relation to Article 14 taken in conjunction with Article 8.

20. On 10 October 2006, the court rejected the application, with legal costs to be paid by the applicant. It held that Article 8 had not been breached, since the Director of the Public Registry had not categorically refused to register the marriage, but had merely requested appropriate documentation. Moreover, Article 8 did not extend to a general obligation on the part of a Contracting State to respect the choice by married couples of the country of their matrimonial residence and to accept the non-national spouse for settlement in that country.

C. Proceedings before the Constitutional Court

21. On 11 October 2006, the applicant appealed to the Constitutional Court.

22. On 6 November 2006 the court invited the Director of the Public Registry to indicate the law on which the Registry based its insistence on the “letter of nationality”. The Director stated that it was a matter of policy. The case was then adjourned to 13 November 2006 for the Head of the Nationality department to testify.

23. Meanwhile, on 9 November 2006, the applicant was called upon by the Registry to register the marriage. He was asked to submit the original or an authenticated copy of his marriage certificate. No further documents were requested.

24. On 13 November 2006 the marriage was registered on the basis of the documents originally submitted by the applicant.

25. On the same day, before the Constitutional Court, the appeal was maintained as the Director of the Public Registry did not accept that the first judgment should be revoked and the costs refunded to the applicant.

26. On 9 March 2007, the Constitutional Court found that there had not been a violation of Article 8 of the Convention. It held that the request for a “letter of citizenship” was in accordance with law, namely Article 244(1) of the Civil Code according to which the Director of the Public Registry had to be satisfied that at least one of the parties to the marriage was a Maltese citizen. Although an identity card and a passport were *prima facie* evidence of nationality they were not conclusive, especially when citizenship had been obtained through registration (as in the case of the applicant) or naturalisation, both being subject to revocation according to section 14 of the Maltese Citizenship Act (see relevant domestic law). The Minister's deposition in respect of the recently issued circular was irrelevant, since responsibility for ascertaining the compliance with the requirements of Article 244(1) was for the Director of the Public Registry. Thus, the requirement of a letter of nationality was in accordance with the law, pursued a legitimate aim and was proportionate. However, the Constitutional Court noted that from the witness testimony at the hearing of 2 May 2006, it was clear that the applicant was a Maltese citizen; however, interdepartmental lethargy had meant that the Director of the Public Registry only called upon the applicant to register the marriage on 9 November 2006. Thus, the Court revoked the first-instance judgment in part by ordering the costs to be shared between the parties. It further noted that the applicant had withdrawn his Article 14 complaint and consequently no appeal lay against it.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Of marriage and registration

27. Regarding marriages in foreign countries, Article 244 of the Maltese Civil Code, Chapter 16 of the Laws of Malta, in so far as relevant, reads as follows:

- (1) Any act of birth, marriage or death of a citizen of Malta drawn up or registered in a foreign country by a competent authority in that country, ... may, at the request of any person interested and upon the Director of the Public Registry being satisfied of

the authenticity of such act, be registered in these Islands in the same manner as if it were an act drawn up by any of the persons mentioned in this Title.

(2) The person making the request shall, for the purposes of registration, deliver to the Director the act in respect of which such request is made.

28. In this respect, Article 242 of the Civil Code reads as follows:

(1) The Director shall not accept any act which is not written in clear and legible characters, or which contains abbreviations, or which may appear to him to be otherwise defective or irregular.

(2) In any such case, the act shall be presented by the Director to one of the Visitors of notarial acts, who, after hearing, if necessary, the person by whom the act has been made, shall determine the manner in which, according to law, the act is to be drawn up.

(3) The Director may not refuse to accept any act which is countersigned by one of the said Visitors.

29. In respect of registration and the validity of marriages, sections 12 and 18 of the Marriage Act, Chapter 255 of the Laws of Malta, provide as follows:

Section 12

(1) Registration is not essential to the validity of marriage.

(2) Registration shall not operate to validate a marriage which, independently of such registration, is null.

(3) A marriage shall not have effect for any purpose of law unless and until the appropriate act of marriage is completed and delivered for registration in accordance with the provisions of articles 293 and 294 of the Civil Code.

Section 18

A marriage, whether celebrated in Malta or abroad, shall be valid for all purposes of law in Malta if -

(a) as regards the formalities thereof, the formalities required for its validity by the law of the country where the marriage is celebrated are observed; and

(b) as regards the capacity of the parties, each of the persons to be married is, by the law of the country of his or her respective domicile, capable of contracting marriage.

30. Article 627 of the Code of Organisation and Civil Procedure ("COCP") provides a list of documents requiring no proof of authenticity other than that which they bear on the face of them. Sub-article (f) refers to the certificates issued from the Public Registry Office.

31. According to a notice published on the Government website by the Department for Citizenship and Expatriate affairs, dated February 2007, regarding registration of foreign certificates concerning citizens of Malta at

the Public Registry, the documents required for registration of a marriage abroad by a citizen of Malta are as follows: 1) marriage certificate, 2) birth certificate 3) father's birth certificate 4) parents' marriage certificate 5) Maltese passport.

32. According to section 14 of the Maltese Citizenship Act, Chapter 188 of the Laws of Malta, as in force since 1975, the Minister may by order deprive of his Maltese citizenship any citizen of Malta who is such by registration or naturalisation if he is satisfied that the registration or certificate of naturalisation was obtained by means of fraud, false representation or the concealment of any material fact or on any other of an exhaustive list of grounds.

B. The Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (5 October 1961)

33. According to The Hague Convention, apostilles may only be issued by a Competent Authority designated by the State on whose territory the public document has been executed. Its Article 6 lists the competent authorities, which in so far as relevant in respect of Russia, reads as follows:

The Ministry of Justice of the Russian Federation;

The General Prosecutor's Office of the Russian Federation;

The Ministry of the Interior of the Russian Federation;

The Register Offices of the executive bodies in subjects of the Russian Federation;

The Federal Archives Agency and the authorised bodies for archives of the executive power in subjects of the Russian Federation;

The Federal Supervision Service for Education and Science;

The Ministry of Defence of the Russian Federation on official archive documents on military service (employment) in the Armed Forces of the Russian Federation, the Armed Forces of the USSR and the Joint Armed Forces of the Commonwealth of Independent States (CIS), issued in the Russian Federation.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

34. The applicant complained that the refusal to register his marriage based on a request for a letter of nationality was an interference which was

not in accordance with the law and not necessary in a democratic society and therefore in breach of Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

35. The Government contested that argument.

A. Admissibility

36. 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

37. The applicant complained that the refusal to register his marriage based on a request for a letter of nationality was an interference which was not in accordance with the law and not necessary in a democratic society for the protection of one of the aims set forth in paragraph two of Article 8. The registration of the marriage, although not obligatory or necessary for its validity, was a legal right, indispensable for the purposes of establishing a family in Malta. It constituted *erga omnes* proof that the State recognised that the husband and wife were lawfully married. The applicant submitted that whenever a Government department required proof of marriage, a copy of the original act of marriage would not suffice, unless the marriage had been registered by the Public Registry. According to Maltese law (Article 627 (f) of the COCP), certification following registration of a marriage required no further proof and could not be contested. Registration was necessary for the purposes of the Immigration Act, allowing his wife to be an exempt person as opposed to a prohibited immigrant, and dispensing with the need for a visa, a matter which to date had been concessionary. Registration would also have allowed her to work (without requiring a permit) and to have the status of a lawfully wedded wife. Furthermore, it was necessary for the purposes of the Social Security Act, the Income Tax Act, and to obtain free medical aid for his wife, all of which required

official proof of marriage. Moreover, only a recognised spouse was able to apply for citizenship once the relevant criteria had been fulfilled.

38. He submitted that the only legal requirement arising out of Article 244 (1) was that the documents presented were authentic and they were, so the Director had no real discretion in the matter. No proceedings had ever been issued against the applicant for revocation of citizenship and therefore no doubts about the validity of his passport should have arisen. In practice, not all citizens needed to produce a letter of citizenship in order to register their marriage. In fact, in accordance with the Marriage Act, Catholic marriages were registered by the parish priest and not by the parties.

39. As to the authenticity of the documents submitted, the applicant submitted that the competent authority to apostille documents in Malta was the Ministry of Foreign Affairs. Russia had seven listed competent authorities, one of which had apostilled the relevant documents as evidenced by the documents submitted to the Court. Thus, this criterion had been satisfied immediately. Moreover, the procedure followed by the authorities to verify these documents was not in accordance with the Hague Convention 1961 regarding apostilles.

40. Moreover, the registration had eventually been effected on the basis of the same documents submitted initially and the Constitutional Court itself admitted that interdepartmental lethargy had caused this situation.

41. The applicant submitted that there had been no legitimate aim justifying this denial. There had never been any doubt about any persisting previous marriage or any other crime, the only issue being proof of the applicant's nationality.

42. The Government submitted that the fact that a marriage did not qualify for registration according to the Civil Code did not necessarily mean that it would not be recognised as a valid marriage since section 18 of the Marriage Act would then be applicable (see relevant domestic law). The Government alleged that registration had no effects for the purposes of law. Allowing registration of marriages contracted outside Malta only served practical purposes, in that the relevant departments would not require further proof when presented with certificates authenticated by the Public Registry. They added that the Government did not contest the marital status of persons marrying abroad and that registration of the marriage was not a requirement for the application of the relevant provisions of the Immigration Act, Social Security Act or Tax Act.

43. Moreover, the Government submitted that there had not been any interference with the applicant's private and family life. Although there was no right to establish a family in any particular jurisdiction, the applicant was allowed to continue to reside in Malta and to cohabit with his spouse. The fact that the Maltese authorities insisted that the conditions laid down by domestic law for the registration of a marriage celebrated by a Maltese

citizen abroad had been satisfied could not amount to an interference. Indeed, once the authorities had acquired proof of citizenship through the deposition of one of the witnesses from the Citizenship Department and had verified the authenticity of the marriage certificate with the Maltese Embassy in Russia the applicant's marriage was then duly registered.

44. Without prejudice to the above, the Government submitted that any interference would have been in accordance with the law, namely Article 244 (1) of the Civil Code which required the Director of the Public Registry to be satisfied with the authenticity of the marriage act produced. As to the citizenship prerequisite, this was not at the discretion of the Director. Proof of citizenship was necessary. Thus, the Director required a declaration from the Department of Citizenship that at the relevant time the applicant was a citizen of Malta. The Government further questioned the existence of the notice (see relevant law part). They submitted in this connection that even if such notice existed, it would not have had the force of law.

45. According to the Government, the alleged interference had a legitimate aim, namely the prevention of disorder and crime and the protection of the rights and freedoms of others. Article 244 of the Civil Code was intended to preserve order in matrimonial unions, to safeguard others who have entered into the marriage bond, to prevent bigamy in a society founded on monogamous marriage and to provide certainty in respect of the personal status of the citizens concerned.

46. The Maltese authorities exercised their discretion reasonably, carefully and in good faith, and on relevant and sufficient grounds. Bearing in mind the margin of appreciation of the State, the alleged interference was necessary in a democratic society. Verification of the relevant conditions required caution and therefore some time for its completion. Its prolongation and the consequential unnecessary delay were caused by the applicant who had instituted proceedings.

2. The Court's assessment

a) Whether there has been interference

47. The Court recalls that the concept of “private life” is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can therefore embrace multiple aspects of the person's physical and social identity. Elements such as, for example, gender identification, name and sexual orientation and sexual life fall within the personal sphere protected by Article 8. Beyond a person's name, his or her private and family life may include other means of personal identification and of linking to a family. An individual's ethnic identity must be regarded as another such element. Article 8 protects in addition a right to personal development, and the right to establish and develop relationships

with other human beings and the outside world (see, *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 66, 4 December 2008, and the case-law cited therein). The Court further recalls that it has previously considered that an individual's inability to seek recognition in law of a *de facto* separation from a spouse concerned private and family life (see *Airey v. Ireland*, 9 October 1979, §§ 32-33, Series A no. 32) and that decisions to nullify an applicant's marriage had implications for her legal status and in general for her private life (see *Benes v. Austria*, (dec.), no. 18643/91, 6 January 1992).

48. The Court finds no reason why a State's acknowledgment of the real marital status of a person, be it, *inter alia*, married, single, divorced, widow or widower, should not form part of his or her personal and social identity, and indeed psychological integrity protected by Article 8. It therefore considers that registration of a marriage, being a recognition of an individual's legal civil status, which undoubtedly concerns both private and family life, comes within the scope of Article 8 § 1.

49. It is true that where immigration is concerned, Article 8 cannot be considered to impose on a State a general obligation to respect the choice by married couples of the country of their matrimonial residence and to authorise family reunion in its territory (see *Gül v. Switzerland*, judgment of 19 February 1996, *Reports of Judgments and Decisions* 1996-I, § 38 and *Pejcinowski v. Austria* (dec.) no. 33500/96, 23 March 1999). However, the Court notes that refusal to register a marriage may have consequences which go beyond immigration and may affect the private or family life of both nationals and foreigners.

50. The Court notes that the parties disagree as to the effects of marriage registration. While Maltese law (section 12 of the Marriage Act) is clear that the absence of registration does not give rise to any legal effects (see, conversely, *Benes v. Austria*, (dec.), cited above), the Court cannot ignore the practical repercussions such an act may have on everyday life. As acknowledged by the Government, the relevant departments would not require further proof of marriage when a document from the Public Registry was presented to them. In consequence, lack of such documentation would make the processing of certain requests, such as applications for social or tax benefits, lengthier and more complex, if at all possible. The same would hold true for verifications required in the private domain, such as the employment sector. The refusal to register the applicant's marriage would clearly have had an impact on his private life. It follows that the lack of registration or a substantial delay in such registration, such as a delay amounting to over twenty-eight months as in the present case, constitutes interference within the meaning of Article 8 of the Convention.

51. Such interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of Article 8 as being “in accordance with the law”, as pursuing one or more of the legitimate aims

listed therein, and as being “necessary in a democratic society” in order to achieve the aim or aims concerned (see *Maslov v. Austria* [GC], no. 1638/03, § 65, 23 June 2008).

b) whether the interference was in accordance with the law

52. The Court reiterates that it is well established in the case-law that the term “in accordance with the law” implies - and this follows from the object and purpose of Article 8 - that there must be a measure of legal protection in domestic law against arbitrary interference by public authorities with the rights safeguarded by Article 8 § 1 (see *Copland v. the United Kingdom*, no. 62617/00, § 45, ECHR 2007-IV). The expression also refers to the quality of the law in question, requiring that it be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Onur v. the United Kingdom*, no. 27319/07, § 48, 17 February 2009).

53. The Court notes that the domestic courts held that the refusal was in accordance with Article 224 of the Civil Code. In the present case, the Court has considerable doubt whether the law, in particular, in so far as it concerned proof of citizenship, satisfied the quality requirements of precision and foreseeability. However, the Court does not find it necessary finally to decide this question since, even assuming that the interference was in accordance with the law within the meaning of Article 8 of the Convention, it still has to be determined whether the refusal was “necessary in a democratic society” in order to achieve a legitimate aim. It will revert to that matter.

c) whether there was a legitimate aim

54. While it is difficult to perceive how the refusal to register the applicant's marriage could prevent bigamy or ensure certainty in respect of personal status as submitted by the Government (see paragraph 45 above), the Court is prepared to accept that national regulation of the registration of marriage may serve the legitimate aim of the prevention of disorder and the protection of the rights of others, as contended by the Government.

d) whether the measure was necessary in a democratic society

55. The Court reiterates that it is primarily for the national legislation to lay down rules regarding the validity of marriages and to draw the legal consequences (see, *mutatis mutandis*, *Benes v Austria* (dec.), cited above). The same is true of procedures relating to the registration of such marriages.

56. The Court notes that apart from the issue as to whether the documents submitted by the applicant fulfilled formal requirements, the Government have not given any reason justifying the need in a democratic

society for refusing registration of the applicant's marriage for over two years.

57. In the present case, even assuming the marriage act itself required further verification, the Court considers that the need to study the Hague Convention to verify whether the marriage certificate had been apostilled or, alternatively, to carry out further checks with the relevant embassy, as was eventually done by the Government, could have been conducted in a more timely manner.

58. Similarly, as regards the certification of the applicant's citizenship, the Court is of the view that since the applicant was in possession of a valid Maltese passport, a presumption of his Maltese nationality arose. It considers that in circumstances where a person's nationality is certified by means of his or her passport, the onus of proving that the information contained in their passport is not conclusive of nationality shifts to the authorities. Thus, if the authorities believed that the applicant might have renounced his Maltese citizenship, it was for them to verify the matter with the relevant department and within an appropriate time-frame, rather than to require the holder of a valid Maltese passport to prove that he still retained Maltese nationality. However, even assuming that it was acceptable to request corroboration of such evidence in the case of citizenship obtained through registration (as in the case of the applicant) or naturalisation, which are subject to revocation (see paragraph 26 above), the Court does not accept that such corroboration necessitated such a considerable delay. It notes that the delay persisted during the domestic proceedings and verification was eventually satisfied through the witness testimony of a person working in the relevant Government department. The Court further observes that the applicant had attempted to obtain a letter of citizenship, notwithstanding the precarious legal basis for such requirement, but the authorities refused to issue such a letter.

59. Thus, the Court rejects the Government's argument that the delay was due to the applicant's decision to institute proceedings. Indeed, the Constitutional Court itself admitted that the delay at issue was a result of interdepartmental lethargy (see paragraph 26 above); the Government also conceded that the procedure had been unnecessarily prolonged (see paragraph 46 above).

60. In consequence, in the circumstances of the instant case, the Court finds that the denial of the registration of the applicant's marriage for a period of over two years was a disproportionate interference with his Article 8 rights.

61. Therefore, the Court finds that there has been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

62. The applicant complained that the treatment he endured and the reasoning of the Constitutional Court were discriminatory in that this requirement only applied to citizenship acquired through naturalisation or registration and not to citizenship by birth. He relied on Article 14 in conjunction with Article 8 of the Convention. Article 14 reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

63. In so far as the complaint is directed at the applicant's treatment by government departments, the Court notes that the applicant withdrew his complaint before the constitutional jurisdictions (see paragraph 19 above).

64. 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.

65. In so far as the complaint is directed at the reasoning of the Constitutional Court that citizenship obtained through registration or naturalisation was different to citizenship by birth, the Court considers that even assuming that this complaint can be detached from the previous one, it is not necessary to consider whether the applicant was required to exhaust domestic remedies in this respect, since the complaint is in any case inadmissible for the following reasons.

66. The Court notes that the Constitutional Court only referred to the position at law, namely section 14 of the Maltese Citizenship Act, which provides that any citizen of Malta who is so by registration or naturalisation can be deprived of such citizenship in particular circumstances (see paragraph 32 above). The substance of this provision is not contested by the applicant in these proceedings; nor is the applicant arguing that he has been treated differently to others who have brought similar proceedings before the Constitutional Court. The Court considers that the mere fact that the domestic court had made such a statement does not in any way amount to discriminatory treatment which may raise an issue under Article 14.

67. It follows that this part of the complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

69. The applicant claimed 23,996.23 euros (EUR) in respect of pecuniary damage. This included EUR 18,470 for loss of his wife's earnings for the family, EUR 256.23 covering eleven visas and EUR 5,000 covering the consequent travels to exit and enter Malta.

70. The applicant further claimed EUR 15,000 for non-pecuniary damage as a result of the anguish he and his wife had suffered and the fact that they had to delay having children because of their precarious situation.

71. The Government submitted that the applicant's wife was not a party to the proceedings and that in any case there was no proof that she had any employment opportunities during the relevant period. Similarly, the visa and travelling expenses, which had no link of cause and effect with any violation found, only related to her and not the applicant. Moreover, the Government submitted that the applicant's wife's visits to Russia were not a result of any expulsions by the authorities.

72. As to non-pecuniary damage, the Government submitted that there was no unwillingness on the part of the Maltese authorities to grant extensions for her stay in Malta when applied for. This claim should therefore be rejected.

73. Even assuming that there was a causal link between the violation found and the pecuniary damage alleged and that the claim for loss of earnings is not hypothetical, the Court notes that the applicant has failed to substantiate his claims by providing any evidence of the said losses except in the case of the visa expenses. The Court, however, notes that only six of the visas submitted by the applicant refer to the relevant period and that according to the payment receipts submitted these have been paid by his wife who was not a party to either these proceedings or the domestic ones. The Court therefore rejects these claims. On the other hand, bearing in mind the length of the delay in registering the said marriage which is the basis of the violation found, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

74. The applicant also claimed a total of EUR 5,290.12, covering the costs and expenses incurred before the domestic courts as per taxed bills of costs, namely EUR 310 for the proceedings before the Visitor of Notarial Acts and EUR 1,480.12 for the constitutional redress proceedings, and those incurred before the Court amounting to EUR 3,500.

75. The Government submitted that these proceedings could have been avoided had the applicant produced the required letter of citizenship. In any event, the amount claimed was excessive and the sum of EUR 1,000 would sufficiently cover these proceedings.

76. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the above criteria and the information in its possession, notably the fact that the applicant did not submit any evidence substantiating the claims and the absence of details as to the number of hours worked and the rate charged per hour, the Court is not convinced that all the costs incurred in the proceedings before it were reasonable as to quantum. Moreover, since the Court has only found a violation of Article 8 and has rejected the complaint under Article 14, the Court considers it reasonable to award the sum of EUR 3,000 covering costs under all heads.

C. Default interest

77. 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 under Article 8 concerning the failure to register the applicant's marriage admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros),

plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 3,000 (three thousand euros) plus any tax that may be chargeable, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President