

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

FOURTH SECTION

CASE OF VASSALLO v. MALTA

(Application no. 57862/09)

JUDGMENT

(*Just satisfaction*)

STRASBOURG

6 November 2012

FINAL

06/02/2013

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

In the case of Vassallo v. Malta,

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

Nicolas Bratza, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić, *judges*
Geoffrey Valenzia, *ad hoc judge,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 16 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 57862/09) 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, Ms Victoria Vassallo ("the applicant"), on 13 October 2009.

2. Mr Vincent De Gaetano, the judge elected in respect of Malta, was unable to sit in the case (Rule 28). Accordingly the President of the Chamber decided to appoint Mr Geoffrey Valenzia to sit as an *ad hoc* judge (Rule 29 § 1(b)).

3. In a judgment delivered on 11 October 2011 ("the principal judgment"), the Court held that there had been a violation of Article 1 of Protocol No. 1 to the Convention as a result of the fact that the expropriated land remained unused for twenty-eight years and that the applicant had not received any compensation for the expropriation of the property to that date, thirty-seven years after the taking (*Vassallo v. Malta*, no. 57862/09, §§ 48-49, 11 October 2011).

4. Under Article 41 of the Convention the applicant sought just satisfaction of between 105,881 and 127,057 euros (EUR), representing her share (one of eleven) of the present value of the land, together with all court costs.

5. Since the question of the application of Article 41 of the Convention was not ready for decision as regards pecuniary damage and costs and expenses, the Court reserved it and invited the Government and the applicant to submit, within three months of the date on which that judgment became final, their written observations on those issues and, in particular, to notify the Court of any agreement they might reach (ibid., §§ 54-55, and

point 3 of the operative provisions). Since the applicant did not claim any compensation for non-pecuniary damage, the Court made no award under that head.

6. The applicant and the Government each filed observations.

THE LAW

7. Article 41 of the Convention provides:

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

A. Damage

1. The parties' submissions

8. The applicant submitted that since there had not been any public purpose behind the expropriation, and given that to date the owners had not yet received compensation, she should be awarded the present-day value of the land. She therefore claimed a sum between EUR 105,881 and EUR 127,057, representing her share (one of eleven) of the present value of the land, which, according to the applicant's architect's valuation, was valued at between EUR 1,281,155 and EUR 1,397,624. She further made reference to the cases of *Kozacıoğlu v. Turkey* ([GC], no. 2334/03, § 85, 19 February 2009); *Iatridis v. Greece* ((just satisfaction) [GC], no. 31107/96, § 35, ECHR 2000-XI); and *Brumărescu v. Romania* ((just satisfaction) [GC], no. 28342/95, ECHR 2001-I).

9. The applicant further claimed a fair amount of non-pecuniary damage besides that awarded by the Constitutional Court.

10. The Government submitted that it was not called upon to pay the full market value, since the expropriation had been effected for a social purpose. They considered that the applicant should be awarded compensation according to the value of the land at the time of the taking, namely in 1974, when it was designated as agricultural land, according to domestic law. They further made reference to *Schembri and Others v. Malta* ((just satisfaction), no. 42583/06, § 55, 28 September 2010). However, since the Notice to Treat was issued in 1999, the offer made to the applicant at that time reflected the value of the land in 1974 as it stood in 1999, the date of the offer. Thus, the eventual award to be made by the Land Arbitration Board will reflect the value in 1999 with interest to the date of payment. That sum will guarantee adequate compensation in so far as the 1999 values

(a time when land prices in Malta were high) were comparable to those today (when land prices have stabilised). According to the architect's valuation submitted by the Government, the value of the land according to domestic law and based on values prevalent in January 2005 was EUR 47,400, and thus the applicant's share amounted to EUR 3,950.

11. The Government further submitted that even assuming that the applicant had to be awarded the current market value of the land, her architect's valuation was exorbitant and did not reflect the realistic value of the property. The valuation had not given consideration to the fact that the land had originally been agricultural land and that today it formed part of a social housing site, which drastically reduced the value of the property. According to an architect's valuation submitted by the Government, the current market value of the property was EUR 79,820, and thus the applicant's share would amount to EUR 6,650.

12. The Government noted that the applicant had already been awarded compensation for non-pecuniary damage by the Constitutional Court.

2. The Court's assessment

13. In view of the fact that the domestic proceedings relating to the payment of compensation have not come to an end nearly forty years after the taking of the property, the Court considers that it would be unreasonable to wait for the outcome of those proceedings (see *Serrilli v. Italy* (just satisfaction), no. 77822/01, § 17, 17 July 2008; *Mason and Others v. Italy* (just satisfaction), no. 43663/98, § 31, 24 July 2007; and *Frendo Randon and Others v. Malta*, no. 2226/10, § 77, 22 November 2011). The Court considers that by awarding amounts for damage at this stage there is no risk that the applicant will be compensated twice, as the national jurisdictions would inevitably take note of this award when deciding the case (see *Serghides and Christoforou v. Cyprus* (just satisfaction), no. 44730/98, § 29, 12 June 2003).

14. The Government insisted that compensation should be in line with that provided in domestic law. However, the Court has previously held that compensation as established by Maltese law, amounting to a sum equal to the price of the land at the time when the declaration had been served, plus interest at 5%, was not sufficient to offset failure to pay compensation decades previously (see *Schembri and Others v. Malta*, no. 42583/06, § 42, 10 November 2009). Moreover, the Government did not quantify the exact amount which they considered to be appropriate compensation for the applicant in the present case to date.

15. The Court also finds it opportune to note that the present case is not comparable to those mentioned by the applicant. Indeed, in *Kozacıoğlu* it was the total failure to take into consideration the disputed property's architectural and historical features and its rarity in calculating the expropriation compensation which gave rise to the violation. In *Iatridis* the

interference had been manifestly in breach of Greek law and thus had not fulfilled the lawfulness requirement under Article 1 of Protocol No. 1, and in *Brumărescu* no justification had been offered for the situation brought about by the judgment of the Supreme Court of Justice depriving the applicant of the rights of ownership of the house which had been vested in him by virtue of the final judgment in his favour, thus amounting to a violation of the applicant's property rights.

16. The Court notes that the taking in the applicant's case was not unlawful (see *Vassallo,* cited above*,* § 40). It was the fact that the expropriated land remained unused for twenty-eight years and that the applicant still had not received any compensation for the expropriation of the property thirty-seven years after the taking, and not the inherent unlawfulness of the taking of the land, that was at the origin of the violation found under Article 1 of Protocol No. 1.

17. In such cases, in determining the amount of adequate compensation, the Court must base itself on the criteria laid down in its judgments regarding Article 1 of Protocol No. 1 and according to which, without payment of an amount reasonably related to its value, a deprivation of property would normally constitute a disproportionate interference which could not be considered justifiable under Article 1 of Protocol No. 1 (see *James and Others v. the United Kingdom,* judgment of 21 February 1986, Series A no. 98, § 54) and a total lack of compensation could be considered justifiable only in exceptional circumstances. The provision does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of "public interest" may call for reimbursement of less than the full market value (see *The Holy Monasteries v. Greece*, 9 December 1994, § 71, Series A no. 301-A, and *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 94, ECHR 2005-VI).

18. The Court considers that compensation in the present case could have been based on the lines of *Schembri* (cited above), only if the breach of the applicant's property rights arose solely as a result of the lapse of time during which she had been denied compensation. The Court, however, notes that in the principal judgment in the instant case, it also held that the lapse of twenty-eight years from the date of the taking of the property without any concrete use having been made of it, in accordance with the requirements of the initial taking, raised an issue under Article 1 of Protocol No. 1, in respect of the public interest requirement (§ 43).

19. Thus, the Court considers that compensation in the present case must be awarded on the lines of that in *Motais de Narbonne v. France* ((just satisfaction), no. 48161/99, § 20, 27 May 2003), and *Keçecioğlu and Others v. Turkey* ((just satisfaction), no. 37546/02, § 19, 20 July 2010), in which the Court had in its principal judgments found a breach of Article 1 of Protocol No. 1 on account of a significant delay between a decision to

expropriate property and the undertaking of a project in the public interest which had denied the applicants the appreciation ("*plus-value"*) of their property (see *Motais de Narbonne v. France*, no. 48161/99, § 19, 2 July 2002 and *Keçecioğlu and Others v. Turkey*, no. 37546/02, §§ 28-29, 8 April 2008). In both these cases, where the violation pertained to a lack of public interest, the Court considered under Article 41 that the applicants were to be paid compensation corresponding to the appreciation they had been denied. It thus awarded pecuniary damage on the basis of the then current market value of that property ("*la valeur vénale actuelle du bâtiment*") and deducted what the applicants had already received in compensation for the expropriation years before.

20. However, on the one hand, the Court notes that, unlike in the above cases, where the planned project was never carried out, in the present case, in 2002, twenty-eight years after the taking, the authorities undertook the originally planned project in the public interest, namely the construction of apartments and maisonettes intended for social housing. The Court considers that this is a matter which has to be given some consideration. On the other hand, in the present case no payment has ever been made to the applicant, another issue which was at the source of the upheld violation, and which is particularly relevant to the calculation in the present case.

21. The Court notes the striking difference between the valuation made by the applicant's and the Government's architects (albeit the Government claimed that this was an independent architect), the applicant's architect's valuation amounting to sixteen times that of the Government's architect (EUR 1,281,155 and EUR 79,820 respectively). Given this discrepancy, little value can be placed on what appear to be subjective valuations unaccompanied by any detailed reports. Thus, in assessing the amount due to the applicant the Court has, as far as appropriate, considered information available to it on land values on the Maltese property market today.

22. Having regard to the above factors, the Court considers it reasonable to award the applicant, as one of eleven owners, EUR 50,000 in pecuniary damage.

23. The Court notes that in its principal judgment it did not award any non-pecuniary damage, as the applicant had not made a claim under that head (§ 53). Thus, no such question had been reserved by the Court and no further decision is required on the matter.

B. Costs and expenses

24. The applicant made no claims in respect of costs and expenses.

25. Noting that no bills had been produced in relation to the domestic proceedings, the Government submitted that any such claim could not be entertained and that an award of fees before this Court should not exceed EUR 1,000.

26. The applicant's representatives did not submit any claim for reimbursement of costs and expenses, although that matter had been reserved. Accordingly, the Court decides not to award any sum in these respects.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *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 50,000 (fifty thousand euros) in respect of pecuniary damage.
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 6 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Nicolas Bratza
Deputy Registrar	President