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

SECOND SECTION

DECISION

Application no. 37474/21
Myriam CHEMEL and Victoria TABONE
against Malta

The European Court of Human Rights (Second Section), sitting on 13 February 2024 as a Committee composed of:

Egidijus Kūris*, President*,
Pauliine Koskelo,
Frédéric Krenc*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 37474/21) 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") on 21 July 2021 by two Maltese nationals, Ms Myriam Chemel and Ms Victoria Tabone ("the applicants"), who were born in 1943 and 1949 respectively, live in Sliema and Rabat, and were represented before the Court by Dr S. Grech and Dr I. Refalo, lawyers practising in Valletta;

the decision to give notice of the application to the Maltese Government ("the Government"), represented by their Agents, Dr C. Soler, State Advocate, Dr J. Vella and Dr A. Falzon, Advocates at the Office of the State Advocate;

the parties' observations;

Considering that Ms Lorraine Schembri Orland, judge elected in respect of Malta, withdrew from sitting in the case (Rule 28 § 3 of the Rules of Court);

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the expropriation of the applicants' land of around 12,302 s.q.m., in 1978. At the time no compensation was offered.

2. The State obtained ownership of the land in 2007 following a new Presidential declaration whereby the State offered 145,026 euros ('EUR') in

compensation. That sum was not accepted by the applicants and was put in an interest-bearing account.

3. The applicants challenged that offer and compensation was determined by the Land Arbitration Board ('LAB') on 6 July 2016 at EUR 2,579,000, representing the value of the land on 1 January 2005 (date established by law) based on the nature of the land in 1978. The LAB also considered that "interest was due as from 19 September 1978". The applicants did not appeal, and the State's appeal was rejected as being lodged out of time.

4. Due to a disagreement on the amount of interest payable the deed of transfer was not concluded.

5. In consequence, in 2018, the applicants instituted constitutional redress proceedings complaining under Article 6 of the Convention (length of proceedings) and Article 1 of Protocol No. 1 to the Convention that they had still not been compensated for the taking of their property in 1978. They raised various arguments in relation to the interest due to them, in particular in relation to i) the amendments introduced in 2006 (Act I of 2006) affecting the amount of interest payable for the period 1978-2016, in respect of which they claimed to have had a legitimate expectation of interest of a certain amount; ii) the fact that they were only obtaining interest at bank rates on the sum of EUR 145,026, while they considered 5 % on the value established by the LAB more appropriate; iii) the fact that they should receive 8 % interest on the full sum of EUR 2,579,000, as of the date of the LAB decision in 2016.

6. By a judgment of 1 July 2020 the Civil Court (First Hall), in its constitutional competence, held that the interest offered until 2007 had been in line with the law (Article 12 (3) of the Second Schedule to Chapter 88 of the Laws of Malta), which did not create any disproportionality since any legislative changes (in 2006) decreasing the payable interest had to be seen against the background that the same legislative changes augmented the capital paid for the land. The latter was no longer being based on its value in 1978. Bearing in mind that property had increased in value, the applicants had thus benefitted from that rise in value for the purposes of the capital payable in compensation.

As to the interest due following the LAB decision, the court found that this was merely a civil issue.

However, given the trespass of time and the Government's failure to proceed with the deed and pay compensation, without prejudice to the applicants' rights to challenge the interest, the court found a violation of Article 1 of Protocol No. 1 to the Convention and Article 6 of the Convention because, until that date, the applicants had not yet been compensated for the taking of their land. It awarded EUR 20,000 in non-pecuniary damage for the violations suffered and ordered that the deed of transfer be signed by the end of the month. Part of the costs were to be paid by the applicants in view of their rejected claims.

7. The applicants appealed.

8. Pending the appeal proceedings, in 2020, the deed of transfer was signed, and the applicants received i) EUR 2,579,000 in compensation for the value of the property (the capital); ii) EUR 1,839,033 in interest from 1978-2007 (i.e. 5 % on the mean value between the value of the land in 1978, which the authorities estimated as being EUR 5,000, and that established by the LAB in 2016 i.e. EUR 2,579,000, running as of 1978); iii) EUR 807,157 in interest from the date of the LAB judgment (2016) until the deed in 2020 (amounting to 8 % on the difference between the sum awarded by the LAB and the sum offered in 2007). This without prejudice to their right to seek further interest, and to their ongoing constitutional proceedings. While in their application to the Court the applicants had stated that for the period 2007-2016 they had received no interest at all, in their observations they admitted to having been paid no interest "except for the sum of EUR 18,702", namely the interest accrued (from 2007 until 2020) on the bank account where the Government had deposited EUR 145,026.

9. On 27 January 2021 the Constitutional Court rejected the applicants' appeal. It considered that the applicants' complaint had to be seen globally, namely whether they had been properly compensated for the expropriation suffered given the entirety of the compensation paid and was of the view that the latter had been adequate. The applicants' argumentation in relation to the interest until 2007 was manifestly baseless as by means of the 2006 amendments they had benefitted of a more favourable legal regime in the light of the capital value of the property, which was estimated on the value in 2005. The mere fact that other persons, in different situations, could have benefited from a more favourable calculation of interest was irrelevant. As for the period following 2007, the applicants should raise their claims before the courts of civil jurisdiction, as per domestic case-law and practice. There was therefore no reason to award further interest.

10. In their application before the Court the applicants complained that they remained victims of the violations upheld by the domestic courts. They considered that they should not be required to undertake further proceedings to receive the full compensation they were due, more than forty-two years after the taking.

THE COURT'S ASSESSMENT

11. The applicants considered that they continued to be victims of a violation of Article 1 of Protocol No. 1 to the Convention and Article 6 of the Convention since they had not yet been fully compensated. They considered that the interest paid to them had not been adequate because for the period 2007-2020, they should have obtained interest at 8 % on the entire sum determined by the LAB; for the period prior to 2007 the change in law had provided them with a lower sum of interest, even more so compared to other persons in different situations. In addition, they complained that the award

for non-pecuniary damage was too low, and that they had been made to bear costs.

12. The Court considers that bearing in mind the way in which the application was lodged, and domestic remedies undertaken or not (despite the constitutional jurisdictions' directions), the complaint can only be seen globally for the purposes of Article 1 of Protocol No. 1 to the Convention, the applicants having opted not to undertake ordinary remedies which could examine any specific vested interest, separately, in line with domestic law.

13. The Court reiterates that an applicant is deprived of his or her status as a victim if the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate and sufficient redress for a breach of the Convention (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-193, ECHR 2006-V; *Gera de Petri Testaferrata Bonici Ghaxaq v. Malta*, no. 26771/07, § 50, 5 April 2011; and *Frendo Randon and Others v. Malta*, no. 2226/10, § 34, 22 November 2011).

14. As regards the first condition, the Court considers that the Constitutional Court's findings, confirming those at first instance, amounted to an acknowledgment that there had been a breach of Article 1 of Protocol No. 1 to the Convention and Article 6 of the Convention.

15. With regard to the second condition, namely appropriate and sufficient redress, the Court must ascertain whether the measures taken by the authorities afforded the applicants appropriate redress in such a way as to deprive them of victim status (see *B. Tagliaferro & Sons Limited and Coleiro Brothers Limited v. Malta*, nos. 75225/13 and 77311/13, § 57, 11 September 2018). In the context of expropriations in Malta the Court refers to its recapitulation of the relevant case-law concerning compensation as set out in *Pisani v. Malta* ((dec.) [Committee], no. 48719/20, §§ 41-45, 6 July 2021).

16. The Court considers that an award of EUR 20,000 in non-pecuniary damage was adequate in the circumstances of the case (compare, *Curmi v. Malta* (just satisfaction), no. 2243/10, § 20, 9 July 2013, and *Scerri v. Malta*, no. 36318/18, § 89, 7 July 2020).

17. As to compensation for pecuniary damage, the Constitutional Court did not award any as it considered that the supervening compensation paid by the Government in 2020, pending the constitutional proceedings, had been adequate, thus no further pecuniary amount was due.

18. The Court observes that for the expropriation of their land in 1978, the applicants were paid a total of EUR 5,243,929 in 2020. This included a capital of EUR 2,579,000, based on 2005 values, which has not been challenged by the applicants, and the remaining sum represented relevant interest according to different calculations covering different periods (namely EUR 1,839,033 for the period 1978-2007, EUR 18,702 for the period 2007-2020, and EUR 807,157 for the period 2016-2020).

The Court has sympathy with the applicants' argument that for the period 2016-2020, they should have received 8 % on the entire sum established by

the LAB, in other words, without the deduction of the sum of EUR 145,026 which had been deposited in the bank and which only accumulated interest at a lower (unspecified) rate. Indeed, deducting such sum from the award made by the LAB would have been reasonable only if the interest in the interest-bearing account was equally of 8 %. This does not appear to have been the case, although none of the parties were explicit as to the interest rate applied on that account.

Conversely, the Court considers that the applicants have not substantiated that they were also due interest at 8 % on the entirety of that sum established by the LAB as early as 2007. It is true that the interest obtained by the applicants over that period only related to a sum (EUR 145,026) the relevance of which had been disproved in the LAB proceedings and thus should, in principle, be of no real pertinence for the calculation of interest. However, no legal provision in support of the applicants' argumentation has been brought to the Court's attention. While the applicants relied on one domestic judgment awarding that type of interest, a one-off judgment – in a situation which, as highlighted by the Government, was not identical to the present case – cannot suffice to ascertain such an interest rate. In addition, the Court cannot but note that their claim at the domestic level in relation to the period until 2016 was for 5 %, not 8 % (see paragraph 5 above).

Lastly, as to the period 1978-2007, the Court shares the reasoning of the Constitutional Court, and refers to relevant considerations it has made in similar circumstances (see *Azzopardi and Others v. Malta* (dec.), nos. 16467/17 and 24115/17, § 51, 12 March 2019).

19. Bearing in mind all the above, the Court considers that, globally, an adequate amount of compensation has been paid, which was reasonably related to the value of the property of which the applicants had been deprived in 1978, this is even more so bearing in mind that the capital amount was dependent on the 2005 valuation of the land and that significant interest was paid on top of that. It follows that it had been unnecessary for the Constitutional Court to increase the pecuniary compensation paid.

20. The Court further notes that it is true that the Court has sometimes found that the sums awarded in compensation did not constitute adequate redress because applicants were burdened with an order for the payment of the relevant costs (see, for example, *Edward and Cynthia Zammit Maempel v. Malta*, no. 3356/15, § 72, 15 January 2019, and *Zammit and Vassallo v. Malta*, no. 43675/16, § 42, 28 May 2019). However, the order to pay part of the costs at first instance and all the appeal costs on appeal was reasonably justified in the present case (compare *Mifsud and Others v. Malta*, no. 38770/17, § 51, 13 October 2020). It is noted that the applicant's complaints had been rejected in part in line with the Court's findings above, and in part for failure to undertake ordinary remedies, which in the present case did not seem unreasonable.

21. It follows that the second criterion has also been met and the applicants have lost their victim status in respect of the violation of Article 1 of Protocol No. 1 to the Convention and Article 6 of the Convention. The Government's objection to this effect is therefore upheld.

22. The application is therefore incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be declared inadmissible in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 21 March 2024.

Dorothee von Arnim Deputy Registrar	Egidijus Kūris President