CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 34539/02
by Nicholas Richard DEBONO
against Malta

The European Court of Human Rights (Fourth Section), sitting on 3 May 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 6 September 2002,

Having regard to the partial decision of 10 June 2004,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Nicholas Richard Debono, is a Maltese national who was born in 1934 and lives in Marsascala. He was represented before the Court by Mr T. Abela, a lawyer practising in Malta. The respondent Government were represented by their Agent, Mr S. Camilleri, Attorney General.

The facts of the case, as submitted by the parties, may be summarised as follows.

1. The first-instance proceedings instituted by the applicant

On 13 June 1996 the applicant instituted proceedings against the Water Services Corporation, against the Director of the Drainage Department in the Ministry of the Environment and against the Minister of the Environment. He complained about the infiltration of foul liquid in several of his properties, allegedly due to the seepage of drainage from the Government drainage system, and asked for compensation.

Thirty-three hearings took place before the Civil Court. A number of witnesses were examined and an expert report was prepared. Thirteen hearings were adjourned by reason of the defendants' absence.

In a judgment of 5 July 2000, the Civil Court found in favour of the applicant. It held that the Minister of the Environment was not liable and declared that the two other defendants were responsible for the damage suffered by the applicant. It therefore awarded him 5,649.92 liri (Lm – approximately 13,611 euros) for damages and a sum for reimbursement of all the legal costs of the case.

2. The proceedings before the Court of Appeal

On 25 July 2000 the Water Services Corporation and the Director of the Drainage Department appealed against the judgment of 5 July 2000.

On 31 July 2002 the applicant requested that his case be dealt with and decided within a short time.

By a decree of 28 August 2002 the Court of Appeal ordered that the case be fixed for hearing according to law.

On 15 October 2002, the hearing was fixed at 10 December 2002. An application for postponement presented by the Director of the Drainage Department on the ground of the absence of his lawyer was rejected.

On 10 December 2002 the parties presented their pleadings and the case was left for judgment to be delivered on 25 April 2003.

In a judgment of 8 May 2003, the Court of Appeal confirmed the first-instance decision. Observing that the first court had correctly concluded that the applicant had summoned the Minister of the

Environment without good reason, the Court of Appeal decided that the legal expenses incurred by the Minister should be borne by the applicant.

3. The Constitutional proceedings

(a) The constitutional complaint before the Civil Court (First Hall)

In the meanwhile, on 1 October 2002, the applicant had filed a constitutional complaint before the Civil Court (First Hall). He alleged that as the appeal against the judgment of 5 July 2000 had not been decided, his right to a hearing with a reasonable time, guaranteed by Article 6 § 1 of the Convention and by Article 39(1) of the Constitution of Malta, had been violated.

By a judgment of 29 April 2003, the Civil Court upheld the applicant's claim and awarded him a compensation of 500 Lm (approximately 1,204 euros).

The Civil Court noted that the delay in fixing the hearing before the Court of Appeal was due to the workload of the domestic courts. Now, the State had the duty of organising its judicial system in such a way that the courts could comply with the requirements established in Article 6 of the Convention.

Moreover, according to Article 152(1) of Chapter 12 of the Laws of Malta, as in force at the relevant time, the Registrar had the duty to list an appeal for hearing not later than six months after the filing of the appeal. However, in the applicant's case the date of the hearing had been fixed for 10 December 2002, and this had happened only after the applicant had filed two submissions in which he complained about the undue delay. As a principal rule of procedure had been breached, and no fault could be imputed to the applicant, the Civil Court found a violation of the "reasonable time" requirement.

In reaching this conclusion and in determining the amount to be granted as just satisfaction, the Civil Court took into account only the period after July 2000, as in his constitutional complaint the applicant had not referred to the duration of the first-instance proceedings.

(b) The appeal before the Constitutional Court

The Principal Registrar of the Courts of Justice, the Minister of Justice and the Local Government appealed against the judgment of 29 April 2003. They alleged that the failure to observe Article 152(1) of Chapter 12 of the Laws of Malta could not be considered tantamount to a violation of the "reasonable time" requirement and that the fixing of cases for particular dates did not depend on the Registrar. The defendants also complained about the amount of compensation they had been ordered to pay.

In a judgment of 30 June 2003, the Constitutional Court upheld the appeal and annulled the impugned decision in so far as it had accepted the applicant's claims.

The Constitutional Court noted that the lack of observance of the six months period mentioned in the said Article 152(1) could not amount to a violation of Article 6 of the Convention. In fact, according to the Strasbourg case-law, a failure to comply with the time-limits set out in the domestic law did not in itself infringe the "reasonable time" requirement.

The Constitutional Court further observed that the applicant was complaining about the delay between the date on which the appeal was filed (25 July 2000) and the date of the first hearing before the competent court (10 December 2002). An overall period of less than two years and five months was at stake. Taking into account the number of duties that the Court of Appeal had to accomplish, such delay could not be considered excessive. It was true that the State was obliged to organise its judicial system in a way that all the guarantees afforded by Article 6 of the Convention were respected; however, regard must be had to all the circumstances of the case, and to the remedial actions undertaken by the authorities in order to cope with a temporary backlog of business affecting the domestic courts.

In the Constitutional Court's view, the applicant's case was not an easy one. It took more than four years to decide at first instance. The applicant was not complaining about this first delay, which was in any case justified by the number of witnesses heard, by the volume of documents and notes submitted to the judge and by the factual and technical difficulties encountered by the expert. Moreover, there did not exist any special reason to treat the appeal with urgency and it was necessary to consider that in 2002 the Court of Appeal had faced abnormal problems, as its President had changed twice within a few months. Notwithstanding this, when the applicant requested that his case be decided within a short time, the Court of Appeal fixed the hearing at 10 December 2002 and rejected a request for postponement presented by the Director of the Drainage Department.

THE LAW

1. The applicant's first complaint relates to the length of the proceedings before the Court of Appeal. He invoked Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by an independent and impartial tribunal ..."

According to the applicant, the length of the proceedings was in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. He observed that the Government had failed to explain the reasons of the delay in fixing the date of the hearing and to indicate the persons responsible for this. They moreover had not clarified why Article 152(1) of Chapter 12 of the Laws of Malta was deleted and why the case-file had been misplaced.

The Government rejected the allegation. They observed that the applicant's complaint focused on the delay in fixing a date for the hearing before the Court of Appeal. Therefore, the period to be taken into consideration should end on 15 October 2002, when a date for the hearing was actually fixed. In any case, even if the final point of the said period were the delivery of the Court of Appeal's judgment (8 May 2003), the overall duration of the proceedings (two years, nine months and thirteen days) could not be considered excessive in the light of the Court's case-law. In this respect, they recalled that no violation of the "reasonable time" principle was found in the case of G. v. Italy (see judgment of 27 February 1992, Series A no. 228-F), where there was a period of inactivity of two years at the appeal level.

They noted that according to Article 152(1) of Chapter 12 of the Laws of Malta, as in force at the relevant time, the Court of Appeal was obliged to set a date for the hearing within six months from the date on which the appeal was filed. However, according to the Court's case-law (see *G. v. Italy*, judgment quoted above, and *Wiesinger v. Austria*, judgment of 30 October 1990, Series A no. 213), it could not be held that non-compliance with this rule would, in itself, infringe Article 6 § 1 of the Convention.

The Government considered that the applicant's case was rather complex from the legal and technical points of view. In particular, a number of questions arose as to the liability of the defendants and as to the amount of the damages. The applicant also requested that the remedial works be carried out during the judicial proceedings under the supervision of the court appointed expert. Moreover, the said expert had encountered difficulties in determining the origin of the foul water seeping into the applicant's property. The case-file thus amounted to 622 pages.

They acknowledged that the parties had not used any delaying tactics. The Court of Appeal had in any case rejected a request for adjournment based on the unavailability of the lawyers of one of the appellants.

They further pointed out that at the relevant time exceptional circumstances had interfered with the functioning of the Court of Appeal. In particular, the latter had gone through two changes of President in a short time, with the consequence that a number of cases ready for decision had to be granted a fresh hearing. Furthermore, the applicant, who was aware of this situation and did not request that his case be treated as urgent, had

failed to complain about the delay in fixing the hearing before 31 July 2002, which was two years after the date on which the appeal was filed. By that time, the problem of seepage of foul water had been eliminated and the applicant knew that, in case of success in the appeal, he would receive default interest at a rate of eight percent per annum. They argued that the applicant had acquiesced in the period of inactivity prior to 31 July 2002 with a view to increasing the amount finally obtained by way of damages and interest.

The Court notes that the proceedings began on 25 July 2000, the date of the filing of the defendants' appeal, and ended on 8 May 2003, when the Court of Appeal's final judgment was delivered. They therefore lasted two years, nine months and thirteen days for one instance.

The Court considers, in the light of the criteria established in its case-law on the question of "reasonable time" (the complexity of the case, the applicant's conduct as well as that of the competent authorities and what was at stake in the proceedings), and having regard to all the information in its possession, that an examination of the merits of this complaint is required.

2. In his observations in reply, dated 30 October 2004, the applicant complained for the first time about the unfairness of the proceedings before the Constitutional Court.

The Court first observes that it does not appear that the applicant raised this complaint before the competent national jurisdictions. However, it is not necessary to ascertain whether the domestic remedies have been exhausted, as, even if they were, this complaint would in any case be inadmissible, for the following reasons.

The Court recalls that according to Article 35 § 1 of the Convention, it can only deal with the matter if the relevant complaint is raised within a period of six months from the date on which the final decision was taken. In the present case, the final decision is the Constitutional Court's judgment of 30 June 2003. The complaint relating to the unfairness of these proceedings, not mentioned in the original application to the Court, was raised more than six months later, on 30 October 2004.

It follows that this complaint is introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint relating to the excessive length of the proceedings instituted on 25 July 2000 before the Court of Appeal;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President