



Malta failed to protect ship-yard workers from exposure to asbestos

In today's Chamber judgment in the case of [Brincat and Others v. Malta](#) (applications nos. 60908/11, 62110/11, 62129/11, 62312/11, and 62338/11), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 2 (right to life) of the European Convention on Human Rights, and

a violation of Article 8 (right to respect for private and family life) of the Convention.

The case concerned ship-yard repair workers who were exposed to asbestos for a number of decades beginning in the 1950s to the early 2000s which led to them suffering from asbestos related conditions.

The Court held that, in view of the seriousness of the threat posed by asbestos, and despite the room for manoeuvre ("margin of appreciation") left to States to decide how to manage such risks, the Maltese Government had failed to satisfy their positive obligations under the European Convention, to legislate or take other practical measures to ensure that the applicants were adequately protected and informed of the risk to their health and lives. Indeed, at least from the early 1970s, the Maltese Government had been aware or should have been aware that the ship-yard workers could suffer from consequences resulting from the exposure to asbestos, yet they had taken no positive steps to counter that risk until 2003.

Principal facts

The applicants are 21 Maltese nationals who were (or are the immediate family of) employees of a ship repair yard run by the Government from 1968 to 2003 who had been exposed to asbestos and in certain cases suffered conditions (and in one case passed away of a malignant cancer) linked to exposure to asbestos.

The applicants allege that they (or their relatives) were constantly and intensively exposed to asbestos particles during their employment repairing ship machinery insulated with asbestos. In May 2009 all the applicants brought constitutional redress proceedings alleging that the State had failed to protect them (or their relatives) from unnecessary risks to their health and they sought compensation. Their applications were ultimately dismissed in April 2011 for non-exhaustion of domestic remedies, the Constitutional Court considering that constitutional redress proceedings could only be brought after the applicants had brought civil proceedings for damages arising out of tort or contractual liability.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Complaints, procedure and composition of the Court

Relying on Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life) of the European Convention on Human Rights, the applicants complained about their or their deceased relative's exposure to asbestos and the Government's failure to protect them from its fatal consequences. They alleged, in particular, that despite the fact that the authorities had to have been aware of such risks as early as 1938, when the link between asbestos exposure and respiratory disease had first been documented, the ship yard employees had neither been informed nor protected from the dangers of asbestos in any way. Moreover, they alleged that the Government had failed to properly legislate or take practical measures concerning the removal of asbestos. They further complained under Article 13 (right to an effective remedy) in conjunction with Articles 2, 3 and 8 that, as a result of the Constitutional Court findings, they had been denied an effective remedy.

The application was lodged with the European Court of Human Rights on 23 September 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Mark **Villiger** (Liechtenstein), *President*,
Angelika **Nußberger** (Germany),
Boštjan M. **Zupančič** (Slovenia),
Ann **Power-Forde** (Ireland),
Vincent A. **de Gaetano** (Malta),
André **Potocki** (France),
Helena **Jäderblom** (Sweden),
and also Stephen **Phillips**, *Deputy Section Registrar*.

Decision of the Court

Article 2 and 8

The Court reiterated that a State had a positive obligation to take reasonable and appropriate measures to safeguard an applicant's rights under Article 2 and 8 of the Convention. Such positive obligations include, but are not limited to, adequate legislative and administrative frameworks, practical measures to ensure protection of individuals, and provision of information to individuals to enable them to assess risks to their health and lives. In the context of dangerous activities, the Court placed special emphasis on regulations and measures designed to protect individuals although the choice of means of practical measures was up to a State to decide.

The Court found that the Maltese Government knew or ought to have known of the dangers arising from exposure to asbestos at least as from the early 1970s, given the domestic context as well as scientific and medical opinion accessible to the government at the time. The applicants were left without any adequate safeguards against the dangers of asbestos, either in the form of protection or information about risks, until the early 2000s when they had left employment at the ship repair yard (other than the applicant who had died earlier). Legislation which was passed earlier, in 1987 did not adequately regulate asbestos related activity nor did it provide any practical measures to protect employees whose lives may have been endangered.

The Court concluded that, in view of the seriousness of the threat posed by asbestos, and despite the room for manoeuvre ("margin of appreciation") left to States to decide how to manage such risks, the Maltese Government had failed to satisfy their positive obligations, to legislate or take other practical measures under Articles 2 and 8.

It followed that there had been a violation of Article 2 (right to life) in respect of the applicants whose relative had died (application no. 62338/11). It also followed that there had been a violation

of Article 8 in respect of the remainder of the applicants (application nos. 60908/11, 62110/11, 62129/11 and 62312/11).

Article 3

The Court found that, while the conditions the applicants had had to live with in recent years had undoubtedly caused some – and in one case severe – difficulties and discomfort, they could not be considered to amount to degrading treatment within the meaning of Article 3 and therefore the Maltese Government had no positive obligation under that provision (applications nos. 60908/11, 62110/11, 62129/11 and 62312/11). In respect of the applicants whose relative had died, the Court held that, even considering that his suffering had met the threshold for a violation of Article 3 to be found, the strictly personal nature of that Article meant that the complaint at issue could not be transferrable. Accordingly, they could not be considered to have victim status in respect of this complaint (application no. 62338/11).

Article 13

In relation to the complaint in conjunction with Articles 2 and 8 the Court found that an effective remedy already existed. The fact that the use of that remedy did not lead to a finding in favour of the applicants or remained unused in the particular circumstances did not render it ineffective. In relation to the complaint in conjunction with Article 3 the Court found that Article 13 could not apply as there was no arguable claim under Article 3. In conclusion, the entirety of the complaint under Article 13 was manifestly ill-founded and was rejected.

Just satisfaction (Article 41)

The court held that Malta was to pay, in respect of non-pecuniary damage:

- EUR 30,000, jointly, to the applicants in application no. 62338/11;
- EUR 12,000 to the first applicant in application no. 62312/11 (John Mary Abela);
- EUR 1,000 to the second applicant in application no. 62312/11 (Francis John Dyer);
- EUR 9,000 to each of the remaining applicants;

and, in respect of costs and expenses, EUR 6,000 jointly to the group of applicants in each application.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: [@ECHRpress](http://www.echr.coe.int/RSS/en).

Press contacts

echrpess@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.