FOURTH SECTION

CASE OF GHIGO v. MALTA

(Application no. 31122/05)

JUDGMENT

(Just Satisfaction)

STRASBOURG

17 July 2008

FINAL

17/10/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ghigo 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,
Ján Šikuta,
Päivi Hirvelä, *judges*,
and Lawrence Early, *Section Registrar*,
Having deliberated in private on 24 June 2008,
Delivers the following judgment, which was adopted on that date:
PROCEDURE
1. The case originated in an application (no. **31122/05**) 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 Attilio Ghigo, on 23 August 2005.
2. In a judgment delivered on 26 September 2006 ("the principal judgment"), the Court held that there had been a violation of Article 1 of Protocol No. 1 as regards a requisition order which had been imposed on the applicant for almost twenty-two years and which had created a landlord-tenant relationship under which he received only a small amount of rent and a minimal profit, so that he had to bear a disproportionate and excessive burden (see *Ghigo v. Malta*, no. **31122/05**, § 69, 26 September 2006).
3. Under Article 41 of the Convention the applicant claimed just satisfaction amounting to (10,998 Maltese Liras (MTL) – approximately 26,395 euros (EUR)) a sum representing the losses in rent he had suffered from 1984 to 2005 and the following sums: MTL 1,972.72 (approximately EUR 4,734) for losses suffered due to inflation; interest at a rate of 8 per cent for lack of yearly payments; MTL 1,200 (approximately EUR 2,880) – increased by the cost of living index – for each year after the introduction of the application in Strasbourg; MTL 1,200 (approximately EUR 2,880) – increased by the cost-of-living index plus a further increase of 5 per cent every three years – for each year that passed before the property was re-assigned to him.
4. Since the question of the application of Article 41 of the Convention was not ready for decision as regards pecuniary and non pecuniary damage, the Court reserved it and invited the Government and the applicant to submit, within six months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (ibid., § 78, and point 3 of the operative provisions).
5. The applicant and the Government each filed observations respectively on 25 June, with a further amendment on 27 June 2007, and on 26 June 2007.
THE LAW
I. ARTICLE 41 AND ARTICLE 46 OF THE CONVENTION
6. 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."
7. Article 46 of the Convention provides:
"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."
A. Damage
1. The parties' submissions
8. The applicant said he recognised the limits of the Convention with regard to compensation and noted that the Government had not sought to redress the violation found in the Court's principal judgment. He was weary of a situation in which he was given compensation for the past but not for the future, so that the situation remained unchanged and might continue indefinitely. He therefore sought compensation both for losses suffered and for any losses that continued to be suffered until the requisition order was withdrawn.
9. The applicant claimed monetary compensation from 1984 to the date of the principal judgment namely (i) the rental value for the period between March 1984 and 2007 which amounted to MTL 13,758 (approximately EUR 32,045). That sum was based on valuations by two different architects concerning different years of assessment, namely, MTL 120 (approximately EUR 280) in 1984, MTL 250 (approximately EUR 583) in 1993, MTL 1,200 (approximately EUR 2,797) in 2005 and MTL 1,380 (approximately EUR 3,215) in 2007; (ii) the loss suffered due to inflation on the rental values not paid to him - according to the rates of inflation published by the National

Statistics Office ("NSO") the loss would amount to MTL 1,972.72 (approximately EUR 4,594) ; (iii) interest of 8% (the legal interest rate) for each of the yearly rents due which were never paid.

10. The applicant further claimed compensation from the date of the judgment to the date when the property would be returned to him with vacant possession. Since it was impossible to calculate the future loss according to any fixed data, the applicant submitted that this must certainly reflect at least the rental value for the year 2005, increased by the yearly rate indicated in the cost of living index as published by the NSO. In view of the increase in market value the applicant claimed a further increase of this amount by 5% every three years to make up for the increase of the property's rental value.

11. The Government submitted that the compensation should take due account of the social and economic aspects of housing in Malta and of the effects which measures adopted as conditions for the settlement of claims by owners of requisitioned premises might have on the living conditions of tenants and on the budget of the State. Moreover, as confirmed by this Court, the property had been requisitioned in the public interest and therefore the Government submitted the following proposal which took into account the relevant social and economic aspects of housing in Malta.

12. The applicant's premises were requisitioned in 1984 and in accordance with the law (The Rent Restriction (Dwelling Houses) Ordinance), were subject to rent control which fixed the rent at a rate of MTL 23 (approximately EUR 54) per year. The Government pointed out that, at the time, the premises could not be legally rented out at the rate of MTL 120 as proposed by the applicant, since they were not "decontrolled" premises and indeed the applicant had not proved that any similar premises in the same location were in fact rented at a similar price at that time. However, as a sign of good will the Government accepted the applicant's estimate of MTL 120 (approximately EUR 280) per year in 1984, as being a correct rent market value. The Government therefore offered to use such a basis in their calculation and to apply the laws applicable to "decontrolled" properties in order to afford redress to the applicant.

13. It followed that, had the premises been rented out for a year as "decontrolled" premises, in accordance with the law (The Housing Decontrol Ordinance Article 5 (3) (c)), the rent of the premises would have been renewable upon the expiration of the first year and every fifteen years thereafter taking into consideration the index of inflation. Between 1984 and 1985 there was no increase in the index of inflation but in fact a decrease of 1.01 points. Thus, the rent in 1985 would also be MTL 120 (approximately EUR 280). The next revision would have been due in 2000 and by then the increase in the index of inflation was of 163.83 points translating into an increase in rent of MTL 321.40 (approximately EUR 749) per year. However, according to the Housing Decontrol Ordinance, such an increase in rent could not exceed 100% every fifteen years and consequently in 2000 the rent payable would have been MTL 240 (approximately EUR 559). Thus, the Government submitted that the sum of MTL 3,600 (approximately EUR 8,386) would suffice to compensate the applicant for the rent due from March 1984 to March 2007.

14. The Government also submitted that it would be prepared to pay future rent at the rate of MTL 240 (approximately EUR 559) per year subject to an increase every fifteen years according to the index of inflation and subject to a maximum increase of 100% every fifteen years. Lastly, the Government submitted that the market value in Malta could not form the basis of the computation for compensation. Social and economic factors related to the social function of property necessarily had to be taken into account. Moreover, property markets were also influenced by factors such as the sale of property to foreigners and the phenomenon of the purchase of property purely for investment or speculation purposes.

2. The Court's assessment

15. The Court recalls that in its principal judgment it held that there had been a violation of Article 1 of Protocol No. 1 as regards a requisition order imposed on the applicant, for almost twenty-two years, which had created a landlord-tenant relationship under which he received only a small amount of rent and a minimal profit, so that he had to bear a disproportionate and excessive burden (see *Ghigo v. Malta*, no. **31122/05**, § 69, 26 September 2006).

16. The Court will proceed to determine the compensation the applicant is entitled to in respect of the loss of control, use, and enjoyment of the property which he has already suffered from 1984 to 2008.

17. The Court observes that there is a considerable difference between the applicant's claims and the amount offered by the Government. It further notes that the Government's calculation is based on the law in force at the time for "decontrolled premises". The Court in principle is not bound to follow domestic calculations; moreover, in the present case the Government's calculations are merely speculative and based on another legal regime which was not pertinent to the applicant's premises. Furthermore, it recalls that in its principal judgment the Court solely considered whether the requisition order imposed on the applicant creating a landlord-tenant relationship with fixed minimal rents infringed the applicant's rights under Article 1 of Protocol No. 1. It did not enter into an analysis of whether the rent control laws in force in respect of landlord-tenant relationships entered into voluntarily, and therefore applicable to non-requisitioned property owners, whether the property was "decontrolled" or otherwise, were compatible with the Convention. The Court is of the view that the applicant's

submissions can be reasonably considered to reflect an acceptable valuation of the rental value on the market over the years.

18. In assessing the pecuniary damage sustained by the applicant, the Court has, as far as appropriate, considered the estimates provided and had regard to the information available to it on rental values on the Maltese property market during the relevant period. It further considered the legitimate purpose of the restriction suffered, recalling that legitimate objectives in the "public interest", such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value and that a total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances (see *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, p. 36, § 54; and *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 94, ECHR 2005-VI).

19. The Court, making its assessment on an equitable basis, awards the applicant the sum of EUR 26,400.

20. The Court reiterates that an award for pecuniary damage under Article 41 of the Convention is intended to put the applicant, as far as possible, in the position he would have enjoyed had the breach not occurred (see, *mutatis mutandis*, *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 40, ECHR 2002-IV). It therefore considers that interest should be added to the above award in order to compensate for loss of value of the award over time (see *Runkee and White v. the United Kingdom*, nos. 42949/98 and 53134/99, § 52, 10 May 2007). As such, the interest rate should reflect national economic conditions, such as levels of inflation and rates of interest (see, for example, *Akkuş v. Turkey*, judgment of 9 July 1997, *Reports of Judgments and Decisions* 1997-IV, § 35; *Romanchenko v. Ukraine*, no. 5596/03, 22 November 2005, § 30, unpublished; and *Prodan v. Moldova*, no. 49806/99, § 73, ECHR 2004-III (extracts)). It notes that the applicant claimed the statutory rate of 8 per cent, and that the Government did not make any submission in this respect. However, it considers that the rate of 5 per cent interest is more realistic. Accordingly, it considers that 5 per cent interest should be added to the above amount.

21. Hence, the Court awards the applicant EUR 1,320 under this head.

22. The Court notes that the Government have not released the property and that the applicant's calculation for future rent has not been met by the Government under the proposed conditions.

23. The Court points out that by Article 46 of the Convention the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. Furthermore, subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see, *mutatis mutandis*, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 248, ECHR 2000-VIII).

24. Accordingly, under Article 41 of the Convention the purpose of awarding sums by way of just satisfaction is to provide reparation solely for damage suffered by those concerned to the extent that such events constitute a consequence of the violation that cannot otherwise be remedied (*idem* § 249). It is therefore not for the Court to quantify the amount of rent due in the future. Consequently, the Court dismisses the applicant's claim for future losses, subject to action being taken by the Government to put an end to the violation found by putting in place a mechanism which would allow for a fair amount of rent to be paid in future years (see paragraph 23 above).

25. Referring to Article 46 of the Convention, the Court observes that its conclusion in the principal judgment is a result of shortcomings in the Maltese legal system, particularly, Maltese housing legislation, as a consequence of which, an entire category of individuals have been and are still being deprived of their right to the peaceful enjoyment of property. In the Court's view, the unfair balance detected in the applicant's particular case may subsequently give rise to other numerous well-founded applications which are a threat for the future effectiveness of the system put in place by the Convention (see *Driza v. Albania*, no. 33771/02, § 122, ECHR 2007-... (extracts)).

26. Under Article 46 of the Convention, once a deficiency in the legal system has been identified by the Court, the national authorities have the task, subject to supervision by the Committee of Ministers, of taking within a determined period of time – retrospectively if needs be – (see, among other authorities, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 233, ECHR 2006 and *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V; and *Di Mauro v. Italy* [GC], no. 34256/96, § 23, ECHR 1999-V) the necessary measures of redress in accordance with the principle of subsidiarity under the Convention, so that the Court does not have to reiterate its finding of a violation in a long series of comparable cases (see *Driza*, cited above, § 123 *in fine*).

27. In principle it is not for the Court to determine what may be the appropriate measures of redress for a respondent State to perform in accordance with its obligations under Article 46 of the Convention. However, the

Court's concern is to facilitate the rapid and effective suppression of a defective national legislation hindering human-rights protection. In that connection and having regard to the systemic situation which it has identified above (see paragraph 25), the Court considers that general measures at national level are undoubtedly called for in the execution of the present judgment.

28. As regards the general measures to be applied by the Maltese State in order to put an end to the systemic violation of the right of property identified in the present case, and having regard to its social and economic dimension, including the State's duties in relation to the social rights of other persons, the Court considers that the respondent State must above all, through appropriate legal and/or other measures, secure in its domestic legal order a mechanism maintaining a fair balance between the interests of landlords, including their entitlement to derive profit from their property, and the general interest of the community – including the availability of sufficient accommodation for the less well-off – in accordance with the principles of the protection of property rights under the Convention (see *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 239, ECHR 2006-...).

29. It is not for the Court to specify what would be the most appropriate way of setting up such remedial procedures or how landlords' interest in deriving profit should be balanced against the other interests at stake. The Court would, however, observe that the many options open to the State include measures setting out the features of a mechanism balancing the rights of landlords and tenants and criteria for what might be considered nowadays a "tenant in need" (which, as stated by the Government in their observations regarding the principal judgment, refers to "individuals who would not have been able to afford reasonably priced accommodation"), "fair rent" and "decent profit".

B. Non-pecuniary damage

30. The taking of the property which was to be established as a residence for the applicant and his family had placed the applicant in various financial difficulties, including the need to take out a loan to acquire his current residence. Moreover, the applicant's children could not benefit from their father's property and were obliged to acquire other property. Consequently, the applicant claimed MTL 5,000 (approximately EUR 11,648) in non-pecuniary damage for the distress caused.

31. The Government submitted that the applicant did not suffer any non pecuniary damage. Nevertheless, they were willing to pay the applicant MTL 1,400 (approximately EUR 3,261) as a gesture of good will.

32. The Court considers that the applicant must have sustained feelings of frustration and stress having regard to the nature of the breach. It therefore awards EUR 6,000 in respect of non-pecuniary damage.

C. Default interest

33. 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. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 27,720 (twenty-seven thousand seven hundred and twenty euros) in respect of pecuniary damage;

(ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(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;

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

Done in English, and notified in writing on 17 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Nicolas Bratza

Registrar President

GHIGO v. MALTA (JUST SATISFACTION) JUDGMENT