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

FOURTH SECTION

**CASE OF EDWARDS v. MALTA**

*(Application no. 17647/04)*

JUDGMENT
(Just Satisfaction)

STRASBOURG

17 July 2008

**FINAL**

*06/04/2009*

*This judgment may be subject to editorial revision.*

**In the case of Edwards 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. 17647/04) 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 Mr Joseph John Edwards, who has dual nationality, British and Maltese, on 4 May 2004.

2. In a judgment delivered on 24 October 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 more than thirty 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 (*Edwards v. Malta*, no. 17647/04, § 78, 24 October 2006).

3. Under Article 41 of the Convention the applicant, without indicating a precise amount, claimed just satisfaction covering the difference between the rent paid to him and the rent he could have obtained on the market, plus compensation for the damage he had suffered.

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., § 84, and point 3 of the operative provisions).

5. The applicant and the Government each filed observations, respectively on 12 July 2007 and 23 July 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 submitted that as a logical consequence of the Court's principal judgment, the Government should have released the property; however, this had not been done. 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 asked the Court to give the Government directions that could ensure effective redress for the violation found and that would bring to an end the circumstances creating it. Consequently, the applicant sought compensation both for losses suffered and for any losses that continued to be suffered until the requisition order was withdrawn. He reiterated, however, that redress would only be effective on the date of the release of the property.

9. The applicant claimed monetary compensation representing the rental value as from 1976, the year in which his property was again requisitioned, to the date of the principal judgment amounting to (26,800 Maltese Liras (MTL) – approximately 62,433 euros (EUR)). For the period from 1976 to 1996 he claimed the sum of MTL 4,800 (approximately EUR 11,184) based on an average of MTL 240 (approximately EUR 559) per year and for the period of 1996 to 2006 he claimed the sum of MTL 22,000 (approximately EUR 51,268) based on an average of MTL 2,000 (approximately

EUR 4,662) per year. According to the architect's valuation submitted by the applicant, the present rental value of the premises is MTL 2,400 (approximately EUR 5,594) per year. This valuation does not take into account the value of the field which is separate and distinct and it is also in this light that the applicant has claimed these amounts. An alternative method to work out these claims would be to start off with the current value and work backwards on the basis of inflation figures which would once more result in a total figure of MTL 26,800 (approximately EUR 62,433) for loss of rents, again not taking into account the value of the field. To this should be added the loss suffered due to inflation on the rental values not paid to the applicant, according to the rates of inflation published by the National Statistics Office ("NSO") and interest of 8% (the legal interest rate) for each of the yearly rents due which were never paid, excluding the amount of MTL 868 (approximately EUR 2,023) already paid to the applicant.

10. The applicant further claimed compensation from the date of the judgment to the date when the property is returned to him with vacant possession. Since it is 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 2006, 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 applicant further submitted that the amount of compensation suggested by the Government would only amount to a twelfth of the property's value and consequently would neither redress the violation suffered nor prevent a further one being perpetrated.

12. The applicant also claimed further expenses he had incurred in relation to this property, namely MTL 689 (approximately EUR 1,606) for the cost of repairs to the premises.

13. The Government submitted that they were not in a position to revoke the requisition order and to evict the tenant from whom the applicant had accepted rent directly for numerous years. The breach found could, however, be remedied through additional compensation.

14. The premises in question were requisitioned in 1941 when the rent applicable according to law (The Rent Restriction (Dwelling Houses) Ordinance) was MTL 28 (approximately EUR 65) per year. The Government submitted that the effect of such rent control, which had given rise to the violation found in the principal judgment, would be remedied if the rent of the premises was increased periodically according to the index of inflation on the basis of criteria applicable to premises which were "decontrolled" in the terms used in Maltese legislation. The Convention came into force in respect of Malta on 23 January 1967 and therefore the

Government proposed that the applicant be compensated as follows: the rent of 1967 updated in accordance with the increase in the index of inflation between 1946 (the year when the index of inflation started to be kept in Malta) and 1967 was 75.6 points which would translate into an increase of MTL 49.18 (approximately EUR 115). In accordance with the law introduced in 1979, the rent of decontrolled premises would have been renewable every fifteen years, provided that such an increase in rent could not exceed 100% every fifteen years. Therefore, the next revision, which would have been in 1982, would have increased the rent to MTL 98.36, and that would have been the rent payable between 1982 and 1997. The next revision of rent would be in respect of the period starting in 1997 and the rent would be increased to MTL 196.72 (approximately EUR 459), therefore the amount payable between 1967 and 2007 would have been MTL 4,180.30 (approximately EUR 9,747). Considering that the amount received by the applicant for the premises between 1967 and 2007 amounted to MTL 1,088 (approximately EUR 2,537) the remaining balance to be paid would be MTL 3,092.30 (approximately EUR 7,210). The Government were moreover willing to pay the applicant the said rent (MTL 196.72) to be increased every fifteen years in accordance with the index of inflation but subject to a capping of 100% increase every fifteen years, the next revision being due to take place in 2012.

15. The Government further submitted that the applicant's claims were speculative and that the rental values between 1976 and 2006 had not been substantiated. Moreover, such valuations did not take account of the fact that the property was subject to legitimate restrictions on the use property in the public interest and that the premises were occupied by a tenant who could not be lawfully evicted by the applicant or his successors. Determination of just satisfaction could not ignore the economic and social reality of Malta, where the weekly minimum wage amounted to EUR 140.

16. Rejecting the applicant's assertions, the Government presented a deed of sale from which it appeared that in 2000 the applicant had purchased five adjacent properties including the one at issue for the price of MTL 30,100 (approximately EUR 70,000); thus if it was assumed that the properties were of equal value it was evident that the value of the property was not that claimed.

17. In respect of the claims for the costs of repairs, the Government submitted that these had not previously been raised. Moreover, in a previous letter to the Registry the applicant had explicitly stated that he was not claiming that the property was damaged.

*2. The Court's assessment*

18. 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 more then thirty years, which created a

landlord-tenant relationship granting only a small amount of rent and a minimal profit, causing the applicant to bear a disproportionate and excessive burden (*Edwards v. Malta*, cited above, § 78).

19. 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 1976 to 2008.

20. The Court observes that there is a considerable difference between the applicant's claims and the amount offered by the Government. It 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.

21. 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 over the past years. 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).

22. The Court, making its assessment on an equitable basis and deducting the amount of rent already paid to the applicant over the years, awards the applicant the sum of EUR 31,000.

23. 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; *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.

24. Hence, the Court awards the applicant EUR 1,550 under this head.

25. In respect of the applicant's claim for maintenance costs, the Court considers that there is no causal link between the pecuniary damage alleged by the applicant and the violation found in the present case. It therefore makes no award under this head.

26. 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.

27. Indeed the Court reiterates, as it did in the principal judgment, that it is not empowered under the Convention to direct the Maltese State to annul or revoke the requisition order (*Edwards v. Malta*, cited above, § 83). Therefore, the release of the property clearly cannot be an automatic consequence of the principal judgment as alleged by the applicant.

28. However, 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).

29. 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; thus, the Court dismisses the applicant's claim for future loses, 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 28 above).

30. 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)).

31. 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*).

32. 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 30), the Court considers that general measures at national level are undoubtedly called for in the execution of the present judgment.

33. 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-...).

34. 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 the 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

35. In view of the distress and anxiety caused to the applicant, who is of an advanced age, he claimed the amount of MTL 20,000 (approximately EUR 46,634) by way of non-pecuniary damage.

36. The Government submitted that the applicant had not suffered any non-pecuniary damage but was willing to pay him MTL 1,000 (approximately EUR 2,331) under this head.

37. 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. Costs and expenses

38. The applicant claimed MTL 298 (approximately EUR 695) as the cost of the architect's valuation as per attached bill, MTL 6,300 (approximately EUR 14,690) as the cost of the applicant's travel from the United Kingdom to Malta to pursue and follow up proceedings connected to his lawsuit and a total of MTL 2,941 (approximately EUR 6,857) for legal costs and expenses incurred before the domestic courts and this Court, of which MTL 1,007 (approximately EUR 2,346) for court expenses and fees and MTL 1,150 (approximately EUR 2,680) as per attached non itemised bill for the costs and fees of his legal representative.

39. The Government submitted that these claims had not previously been raised.

40. The Court notes that these claims were submitted after the delivery of the principal judgment, which considered the issue of costs and expenses but made no award as the applicant had failed to submit a claim under this head. There is therefore no call for the Court to reconsider that award (see *Van Mechelen and Others v. the Netherlands* (Article 50), judgment of

30 October 1997, *Reports of Judgments and Decisions* 1997-VII, p. 2431, § 12).

41. However, the Court accepts that the applicant must have incurred some costs and expenses in the current proceedings for obtaining just satisfaction under Article 41 of the Convention. According to the Court's established case-law, an award can be made in respect of costs and expenses incurred by the applicant only in so far as they have been actually and necessarily incurred and are reasonable as to quantum (see *Belziuk v. Poland*, judgment of 25 March 1998, *Reports* 1998-II, p. 573, § 49). The Court notes that the only expenses relating to the current proceedings under Article 41 are the architect's valuation and the legal representative's fees. Neither of the bills presented was itemised, so that, in respect of the legal representative's fees, the Court cannot assess precisely the cost and expenses actually incurred. In these circumstances, the Court considers it reasonable to award the sum of EUR 1,200.

**Default interest**

42. 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 32,550 (thirty-two thousand five hundred and fifty 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;

(iii) EUR 1,200 (one thousand two hundred euros) plus any tax that may be chargeable to the applicant**,** in respect of costs and expenses;

(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.

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|---|---|
| Lawrence Early<br>Registrar | Nicolas Bratza<br>President |