FOURTH SECTION

CASE OF EDWARDS v. MALTA

*(Application no. **17647/04**)*

JUDGMENT

STRASBOURG

24 October 2006

FINAL

24/01/2007

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 Edwards v. Malta,

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

Sir Nicolas BRATZA, *President,*
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr J. ŠIKUTA, *judges,*
and Mr T.L. EARLY, *Section Registrar,*

Having deliberated in private on 3 October 2006,

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. The applicant was represented by Mr I. Refalo and Ms T. Comodini Cachia, lawyers practising in Valetta (Malta). The Maltese Government ("the Government") were represented by their Agent, Mr S. Camilleri, Attorney General.

3. On 21 October 2005 the President of the Chamber to which the case has been allocated decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1919 and lives in London.

A. The background of the case

5. The applicant claimed to be the owner of four tenements in Malta. Before the Court he produced a statement made on 19 July 2006 by a notary public, which reads as follows:

> "I the undersigned Dr. Paul Pullicino, Notary Public, do hereby certify that in virtue of a secret will made on the 4th day of October, 1966, by Charles Edwards, and published by me on the 9th November, 1996, Major Joseph John Edwards [the applicant] was nominated and appointed by his father, the late Mr Charles Edwards as his sole universal heir and Testamentary Executor of his estate to whom he bequeathed 21/25ths undivided parts of tenements situated at numbers 96 to 100 Tonna Street, Sliema, - of which

2/25ths had been inherited by his wife from her late brother Sir Augustus Bartolo and the further 16/25ths purchased by him from her brother's family in the mid 1950's – all of which were owned in common with the remaining 4/25ths undivided and equal parts owned by four further members of the Bartolo family residing somewhere in South America, the administration of which had been passed on to him by their eldest brother Captain Albert Borg Falzon who had been their family administrator until he emigrated from Malta on the 4th June, 1956."

6. In March 1941 the four tenements were requisitioned for the purpose of providing housing for homeless people. The requisition order was served on the applicant's ancestor, Mr Charles Edwards. Further correspondence about the premises was addressed to Mr Charles Edwards, as trustee of the estate of the late Sir Augustus Bartolo.

7. On 2 June 1949 a judicial letter was sent to Mr Charles Edwards "as owner" of the premises, demanding recognition of the tenants. He replied that he was only the trustee of the estate and could not therefore recognise the tenants. This position was confirmed in a court application of 14 July 1949.

8. The top floor of one of the tenements was allocated to Mr P. and his family, while family S. had been allotted the ground floor. The requisition of this tenement, composed of two floors, was contested on the ground that the ground floor provided the only access to a field, which belonged to the same owner and which had not been requisitioned. After these tenants had been recognised, on 16 December 1949 the premises were derequisitioned.

9. The premises were again requisitioned on 18 July 1957 from Mr Charles Edwards. They were derequisitioned on 5 March 1963.

10. On 10 September 1975 a fresh requisition order concerning the same tenement was issued to Mr. Charles Edwards. The authorities instructed that family P. be allotted both floors. The housekeeper, who was in correspondence about the matter with the applicant (Mr Joseph John Edwards), handed over all the keys of the tenement.

11. On 14 November 1975 the applicant wrote to the Housing Department asking for reconsideration of the order of 10 September 1975. He reiterated the argument concerning access to the field. The Department acknowledged receipt of this letter but did not reply to it. On an unspecified date in 1976, an amended requisition order, including the field adjacent to the applicant's tenement, was issued.

12. The applicant alleged that he had sought the assistance of the Minister of Housing and of the Attorney General in order to restore the situation and that on further meetings with the authorities he had been made to believe that the situation would be remedied. However, this had not been the case and he did not obtain any satisfaction.

B. The proceedings before the Civil Court

13. On 28 March 1996 the applicant instituted proceedings before the Civil Court (First Hall) against the Director of Social Accommodation. He alleged that the requisition order of 10 September 1975 had been issued as a result of an abuse of power and was therefore null and void. He also claimed an infringement of his right to the enjoyment of his property as guaranteed by Article 1 of Protocol No. 1

by reason that the requisition order had not been made in accordance with the public interest and that he had not received adequate and appropriate compensation.

14. In a judgment of 3 October 2003, the Civil Court dismissed the applicant's claim. It declared that the tenement should be considered '*quid unum*' and therefore as a single entity, including the field. It also found that the applicant's submission that the requisition order had been made in excess of power was unsubstantiated.

15. The Civil Court held that the existence of a public interest should be assessed in the light of the particular features of each individual case. In the applicant's case, the requisition was aimed at ensuring a fair distribution of homes. The benefit enjoyed by the son of Mr P. and his family, who were still using the tenement as a place of habitation, was far superior to that of the applicant. In fact, the latter made sporadic use of the garden or field, which, according to certain witnesses, was used as a rubbish dump.

16. The Civil Court furthermore observed that the applicant had brought his complaints twenty years after the issuing of the requisition order and that during this period he had apparently accepted the rent that he was being paid. This rent had been established by the Land Valuation Officer and had the applicant wanted to review the amount of the rent he could have applied to the Rent Regulation Board.

17. The Civil Court found that it had no jurisdiction to deal with the alleged violation of Article 1 of Protocol No. 1 since the requisition order had been issued in 1975. According to Article 4 of Chapter 319 of the Laws of Malta, the Convention could not be applied retroactively and thus only breaches which occurred after 30 April 1987 fell within the jurisdiction of the domestic courts.

C. The proceedings before the Constitutional Court

18. The applicant appealed to the Constitutional Court.

19. He observed that had the tenement been a single entity, this should have been the case from the original requisition order made in 1941. However, the field only became accessory to the tenement according to the 1975 requisition order. The applicant moreover claimed that the tenant was making use of the land to further his gardening hobby, which could not be considered an essential part of his accommodation needs. The applicant recalled that he had been deprived of his property for almost thirty years and complained about the amount of rent (28 Maltese Liras (MTL) per year – approximately 67 euros (EUR)), which he considered to be ridiculous in comparison with the market value of the property.

20. In a judgment of 25 February 2005, the Constitutional Court rejected the applicant's appeal.

21. It held that the applicant's tenement should be considered one whole property, especially since the only access to the field was through the ground floor. Furthermore, the applicant had never made any serious attempt to question this and had kept unreservedly receiving the rent due. In any case, if he had not been satisfied with the amount of the rent, the applicant should have applied to the Rent Regulation Board, thus using the ordinary remedy available in such circumstances.

22. The Constitutional Court found that the applicant's claim regarding a violation of his right to the enjoyment of property was inadmissible *ratione*

temporis as the requisition order had been issued and executed before 1987. However, since the complaint concerning the absence of adequate compensation referred to a continuing situation, the Constitutional Court went on to consider its merits.

23. It recalled that the applicant had always accepted rent from the tenants, which meant that there was a regular lease between the two. The Constitutional Court held that the Government enjoyed a wide margin of appreciation in assessing what was in the public interest and which measures were proportionate to the aims sought to be achieved. It quoted van Dijk's and van Hoof's book *Theory and Practice of the European Convention* stating that social and economic policy in the field of housing constituted an aim in the general interest.

24. Finally, the requisition and the amount of rent were in accordance with the Strasbourg case-law. The Constitutional Court referred, on these points, to the cases of *Pine Valley Developments and Others v. Ireland* (judgment of 29 November 1991, Series A no. 222), *Sporrong and Lönnroth v. Sweden*(judgment of 23 September 1982, Series A no. 52), *The Holy Monasteries v. Greece* (judgment of 9 December 1994, Series A no. 301-A) and *James and Others v. United Kingdom* (judgment of 21 February 1986, Series A no. 98).

II. RELEVANT DOMESTIC LAW

A. The definition of requisition

25. According to section 2 of the Housing Act requisition means:

> " to take possession of a building or require the building to be placed at the disposal of the requisitioning authority."

B. The grounds for issuing requisition orders

26. Until 1989 the Housing Secretary could issue a requisition order if he was satisfied that such a step was necessary in the public interest for providing living accommodation to certain persons or for ensuring a fair distribution of living accommodation. As in force at the time of the requisition of the applicant's tenement, section 3(1) of the Housing Act read as follows:

> "The Secretary, if it appears to him to be necessary or expedient to do so in the public interest or for providing living accommodation to persons or for ensuring a fair distribution of living accommodation, may requisition any building, and may give such directions as appears to him to be necessary or expedient in order that the requisition may be put into effect or complied with."

27. After 1989 the authority to issue requisition orders was given to the Director of Social Housing.

C. The recognition of the third person in occupation and compensation for the taking of possession

28. A requisition order imposes on the owner of the requisitioned premises a landlord-tenant relationship. According to section 8(1) of the Housing Act, the Director of Social Housing may require the owner to recognise the person accommodated in his property as his tenant or sub-tenant.

29. The owner of the premises may seek authorisation for non-compliance with this request in accordance with section 8(2) and (3) of the Housing Act, which, in so far as relevant, provides:

> "(2) Within thirty days of service on him of a judicial letter under the last preceding sub-section, the requisitionee, by application to the First Hall of the Civil Court in contestation of the Director, may pray for an authorisation of non-compliance with that request ...
>
> (3) The court shall not grant the authorisation of non-compliance mentioned in the last preceding sub-section unless the applicant shows to the satisfaction of the court that serious hardship would be caused to him by complying with that request:
>
> Provided that the assertion that the requisitionee wishes to take possession of the building for his own use or for the use of any member of his family shall not be considered of itself as a hardship for the purposes of this sub-article."

30. According to the Housing Act, the owner of the premises has a right to compensation, which is calculated and payable pursuant to the criteria established in section 11, which, in so far as relevant, reads as follows:

> "(1) Subject as hereinafter provided, the compensation payable in respect of the requisition of a building shall be the aggregate of the following sums, that is to say-
>
> (*a*) a sum equal to the rent which might reasonably be expected to be payable by a tenant in occupation of the building during the period for which possession of the building is retained by virtue of the provisions of this Act, under a letting granted immediately before the beginning of that period:
>
> Provided that where the building is used by the Director or by a person accommodated therein after its requisition as a dwelling house within the meaning of the Rent Restriction (Dwelling Houses) Ordinance, the rent shall not exceed the fair rent as defined in article 2 of the aforesaid Ordinance;
>
> (*b*) a sum equal to the cost of making good any damage to the building which may have occurred during the period in which possession thereof under requisition was retained (except in so far as the damage has been made good during that period by the occupant of the requisitioned premises or by a person acting on behalf of the Director), no account being taken of damage which, under the provisions of this Act, is the responsibility of the requisitionee;
>
> (*c*) a sum equal to the amount of expenses reasonably incurred, otherwise than on behalf of the Director, for the purpose of compliance with any directions given by or on behalf of the Director in connection with the taking of possession of the building ."

31. According to Article 2 of the Rent Restriction (Dwelling Houses) Ordinance, "fair rent" means:

> "i) in respect of an old house, the rent which might reasonably be expected in respect of an old house, regard being had to the average rents prevalent on the 31st March, 1939, as shown on the registers of the Land Valuation Office in respect of comparable dwelling houses in the same or in comparable localities:
>
> Provided that where, after the 31st March, 1939, structural alterations or additions in a house, whether old or new, have been carried out which, in the opinion of the Board, have enhanced the rental value of the house and in respect of which or, as the case may be, of a part of which, no compensation has been paid or is payable under the provisions of the War Damage Ordinance 1943, and no amount has been paid or is payable by way of a grant by the Government of Malta, the rent shall be increased by an amount which, in the opinion of the Board, corresponds to the enhancement of the rental value and which shall in no case exceed a return of three and one quarter *per centum* a year on the capital outlay on the alterations or additions (excluding any interest on loans or in respect of idle capital) or, as the case may be, on the part thereof in respect of which compensation has not been paid and is not payable under the provisions of the War Damage Ordinance 1943, and no amount has been paid or is payable by way of grant by the Government of Malta, in every case as proven by the landlord to the satisfaction of the Board or, in default, as assessed by the Board; and
>
> ii) in respect of a new house, a sum equivalent to a return of three *per centum* a year on the freehold value of the site and of three and one quarter *per centum* on the capital outlay on construction (excluding any sum which has been paid or is payable by way of a grant by the Government of Malta and any interest on loans

or in respect of idle capital) as proven by the landlord to the satisfaction of the Board or, in default, as assessed by the Board:

Provided that where a payment under the War Damage Ordinance 1943, is made by or is due from the war damage account in respect of a former building out of which or on the site of which a new house is erected in whole or in part, for the purpose of computing the fair rent of that new house the return on that part of the capital outlay thus contributed by or due from the war damage account shall in no case exceed one year's fair rent of the former building as on 31st March,1939, or three and one quarter *per centum* for one year on that part of the capital outlay, whichever is the less;

iii) in respect of a scheme house, an annual sum to be determined by agreement ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

32. The applicant complained about the requisition of his tenement and of the adjacent field. He invoked Article 1 of Protocol No.1, which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

33. The Government contested that argument.

A. Admissibility

1. The Government's objection of non-exhaustion of domestic remedies

34. The Government observed that the applicant had not instituted proceedings to challenge the 1975 requisition order in respect of the ground floor, in whole or in part. He had also recognised Mr P.'s tenancy since he had received rent from him for over 20 years. Therefore, the applicant's constitutional claim, introduced in 1996, contradicted what was a settled state of affairs. In the Government's opinion the applicant's contradictory positions and his failure to pursue his claim in a timely manner was tantamount to non-exhaustion of domestic remedies.

35. The applicant did not comment on the matter.

36. The Court reiterates that according to Article 35 § 1 of the Convention, it may only deal with an issue after all domestic remedies have been exhausted. The purpose of this rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). Article 35 § 1 is based on the assumption, reflected in Article 13 (with which it has a close affinity), that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (*Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

37. Thus the complaint submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal

requirements of domestic law and within the prescribed time-limits. Nevertheless, the obligation to exhaust domestic remedies only requires that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances (*Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004). The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (*Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

38. The Court would emphasise that the application of the rule of exhaustion must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that Article 35 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that this rule is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (*Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1211, § 69, and *Sammut and Visa Investments v. Malta* (dec.), no. 27023/03, 28 June 2005).

39. In the present case, the applicant instituted constitutional proceedings before the Civil Court (First Hall) alleging a breach of his right to the enjoyment of his property as guaranteed by Article 1 of Protocol No1. He furthermore appealed to the Constitutional Court against the Civil Court's judgment rejecting his claim. The Court considers that in raising this plea before the domestic constitutional jurisdictions, which did not reject the applicant's claim on procedural grounds but examined the substance of the claim, the applicant has made normal use of the remedies which were accessible to him and which related, in substance, to the facts complained of at the European level (see, *mutatis mutandis*, *Zarb Adami v. Malta* (dec.), no. 17209/02, 24 May 2005 and *Sammut and Visa Investments*, cited above).

40. It follows that the application cannot be rejected for non-exhaustion of domestic remedies and that the Government's objection should be dismissed.

2. Other grounds for declaring this complaint inadmissible

41. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

A. Merits

1. The parties' submissions

(a) The Government

42. The Government first submitted that it was crucial to determine whether the applicant was the owner of the premises in question. The applicant had become involved with the premises in 1975, all previous dealings having been conducted by

Mr Charles Edwards. The latter always insisted he was not the owner but only a trustee of the property on behalf of an inheritance. At that time, the institution of a trust was alien to Maltese law and persons administering an inheritance were either procurators of the heirs, testamentary executors or court-appointed administrators. None of these positions was transmissible by inheritance. Even assuming that the applicant's statement that in 1975 he was an owner and administrator were correct, this would not be tantamount to establishing a legal title to the property. Such a title would be a contract of acquisition or a proof of acquisition by succession. However, no such proof had been adduced by the applicant.

43. Assuming that the applicant had an ownership title, the Government submitted that he had not been deprived of his possessions; nor had there been a *de facto* expropriation. The tenement in question always remained the property of its owners and there were no restrictions on their ability to transfer ownership. The applicant had been receiving the rent for several years, thus implicitly recognising the tenant and irreversibly establishing a landlord-tenant relationship. The requisition order and the rent control measure were matters of housing and social policy, which constituted a control of use of property in the general interest aimed at ensuring a just distribution and use of housing resources as well as a better use and preservation of old houses in a densely populated and small country where land available for construction was severely limited in relation to demand.

44. The applicant never claimed that the owners had at any time required the property for their own habitation or made any use of it. Furthermore, it had not been proven that the tenants had no need of the premises and were thus no longer entitled to them. The allocation of the whole house to Mr P. was aimed at putting an end to a situation, common in time of war, of having two families living in the same, albeit divided, house. Moreover, the issue relating to the field had been examined in detail before the domestic courts.

45. The Government emphasised that “decontrolled” dwelling houses were not subject to requisition. In 1959 owners had been given the right to “decontrol” their property which was either occupied by them, or not ready for habitation, or was in the process of structural alterations for conversion into larger dwelling houses. In 1975 when the requisition in question occurred, requisition of dwelling houses could only be effected in respect of dwellings which were not inhabited or occupied by their owners in 1959.

46. According to the Government, the interference complained of did not impose an excessive individual burden on the applicant. Requisitioning was a legal means to force the owners of old empty buildings, who would not have been subjected to particular financial hardship if they had rented out their properties, to rent them out. Tenancy conditions were those applicable under the rent laws. Similarly, the amount of rent payable was the same as would have been allowable had the old building been rented out voluntarily by the owner before 1995.

47. The Government acknowledged that the level of controlled rents did not reflect the market value of the affected properties. However, these low rents were based on legitimate policy grounds, such as prevention of homelessness and protection of the dignity of individuals who would not have been able to afford

reasonably priced accommodation. The Government concluded that the measure complained of was not inappropriate or disproportionate to the aims pursued and that the State did not exceed its margin of appreciation.

48. The Government submitted that the applicant enjoyed adequate procedural safeguards to ensure that the operation of the system and its impact on his property rights were neither arbitrary nor unforeseeable. Requisition orders were subject to judicial review like all ordinary administrative actions. Indeed, the applicant had his claims heard before the Maltese courts in 1996, notwithstanding that the requisition order had been issued back in 1975. Referring to domestic case-law on the matter, the Government noted that there were cases where requisitions had been annulled as it was found that they had not been issued in the public interest. Lastly, the Government observed that the fact that the applicant lived abroad did not prevent him from instituting proceedings in Malta, as it was open to him to appoint a person to pursue them.

(b) The applicant

49. The applicant maintained that in 1975 he was a joint owner and administrator of the tenement in question, which he had just inherited. He alleged that this information was recorded both in the relevant government department and in the domestic courts.

50. The applicant claimed that the requisition of his tenement and of the adjacent field had not been carried out in the public interest and had deprived him of the right to develop and sell his property. The original tenant had died and his descendants had continued to use the premises, even though they were not entitled to be given further accommodation. They had been tenants for thirty-five years and at no time had they made any sworn legal declaration that they were in need of public housing. Had the Housing Secretary complied with the law and investigated the owner's financial circumstances, he would have realised that he had no legal right to requisition the premises. Moreover, no rent had been paid in respect of the field since 1975, and the total amount of rent received by the applicant (MTL 28 – approximately EUR 67) was manifestly disproportionate to the market value of his property. This rent had been accepted only because the letter requesting that it be reconsidered had been of no avail. Moreover the applicant was waiting to challenge the illegality of the requisition of the field which had been carried out without the required warnings, owners' replies and consultation.

51. The applicant stated that although he did not need the property for personal habitation, he could have made other use of it. He also insisted that the field should have been considered a separate piece of non-requisitionable land and not as *quid unum* with the tenement. This had been proved by the findings of the court-appointed architect, which had been ignored by the domestic court.

2. The Court's assessment

(a) Applicability of Article 1 of Protocol No. 1

52. The Court will first ascertain whether the applicant had a "possession" within the meaning of Article 1 of Protocol No. 1. It reiterates that the concept of "possessions" has an autonomous meaning which is certainly not limited to ownership of physical goods: certain other rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision (see *Iatridis v. Greece*, no. 31107/96, § 54, ECHR 1999-II, *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, judgment of 23 February 1995, Series A no. 306-B, p. 46, § 53).

53. According to the Government, the applicant could not claim to be the owner of the tenement and adjacent field in question, as his ancestor, Mr Charles Edwards, had clearly stated that he was only a trustee of the property on behalf of an inheritance. Moreover, no proof of ownership had been produced before the Court (see paragraph 42 above). The applicant challenged these arguments (see paragraph 49 above).

54. The Court observes that the applicant invoked a violation of his right of property before the domestic constitutional jurisdictions and that the latter did not see any obstacle to the applicability of Article 1 of Protocol No. 1 in his case. Nor was the applicant's ownership title contested by the defendants at the national level. On the contrary, the requisition order of 10 September 1975 was served on the applicant (see paragraph 10 above). Moreover, as the Government themselves pointed out (see paragraph 43 above), since 1975 the applicant has been receiving rents for the use of the tenement, and it has not been shown to the Court that he did so only as a trustee or administrator or that he had to transfer the revenue received either in whole or in part to third parties.

55. In the Court's view, these circumstances indicate that the applicant had been acting as the owner of the premises without disturbance for more than thirty years. Moreover, the applicant has produced a statement by a notary public, indicating that, in his capacity as sole universal heir of the late Mr Charles Edwards, he inherited 21/25ths undivided parts of tenements situated in Sliema, Malta (see paragraph 5 above). This is sufficient to conclude that the applicant had a "possession" within the meaning of Article 1 of Protocol No. 1.

56. This provision is therefore applicable in the present case.

(b) Applicable rules in Article 1 of Protocol No. 1

57. As the Court has stated on a number of occasions, Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, inter alia, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see,

among other authorities, James and Others v. the United Kingdom, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37, Beyeler v. Italy [GC], no. 33202/96, § 98, ECHR 2000-I, and Saliba v. Malta, no. 4251/02, § 31, 8 November 2005).

58. The Court observes that in the present case, by requisitioning and assigning the use of his property to others, the applicant has been prevented from enjoying his property. His right to receive a market rent and to terminate leases has been substantially affected. At the same time, the applicant never lost his right to sell his property, nor have the authorities applied any measures resulting in the transfer of his ownership title.

59. In the Court's view, the measures taken by the authorities were aimed at subjecting the applicant's tenement and field to a continuing tenancy and not at taking it away from him permanently. Therefore, the interference complained of cannot be considered a formal or even *de facto* expropriation, but constituted a means of State control of the use of property. It follows that the case should be examined under the second paragraph of Article 1 of Protocol No. 1 (see *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 160-161, ECHR 2006-).

(c) Whether the Maltese authorities respected the principle of lawfulness

60. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. In particular, the second paragraph of Article 1, while recognising that States have the right to control the use of property, subjects their right to the condition that it be exercised by enforcing "laws". Moreover, the principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see, *mutatis mutandis*, *Broniowski v. Poland* [GC], no. 31443/96, § 147, ECHR 2004-V, and *Saliba*, cited above, § 37).

61. In the present case, it is not disputed by the parties that the requisition of the applicant's tenement had been carried out in accordance with the provisions of the Housing Act. The latter defines the notion of "requisition" (see paragraph 25 above) and indicates the grounds for issuing requisition orders (paragraph 26 above). Furthermore, the legal and financial consequences of the requisition, notably the imposition of a landlord-tenant relationship and the criteria for calculating the compensation due to the owner of the premises, are set out in the Housing Act (see paragraphs 28-31 above). There is nothing to show that these provisions are unclear and/or unforeseeable.

62. The measure complained of was, therefore, "lawful" within the meaning of Article 1 of Protocol No. 1. It remains to be ascertained whether it pursued a legitimate aim in the general interest and whether a "fair balance" was struck between the means employed and the aim sought to be realised.

(d) Whether the Maltese authorities pursued a "legitimate aim in the general interest"

63. Any interference with the enjoyment of a right or freedom recognised by the Convention must pursue a legitimate aim. The principle of a "fair balance" inherent

in Article 1 of Protocol No. 1 itself presupposes the existence of a general interest of the community.

64. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the "general" or "public" interest. Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures to be applied in the sphere of the exercise of the right of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a margin of appreciation.

65. The notion of "public" or "general" interest is necessarily extensive. In particular, spheres such as housing of the population, which modern societies consider a prime social need and which plays a central role in the welfare and economic policies of Contracting States, may often call for some form of regulation by the State. In that sphere decisions as to whether, and if so when, it may fully be left to the play of free market forces or whether it should be subject to State control, as well as the choice of measures for securing the housing needs of the community and of the timing for their implementation, necessarily involve consideration of complex social, economic and political issues (*Hutten-Czapska*, cited above, §§ 165-166, and *Ghigo v. Malta*, no. 31122/05, § 56, 26 September 2006).

66. Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has on many occasions declared that it will respect the legislature's judgment as to what is in the "public" or "general" interest unless that judgment is manifestly without reasonable foundation (see *Immobiliare Saffi v. Italy*, [GC], no. 22774/93, § 49, ECHR 1999-V, *mutatis mutandis*, *Broniowski*, cited above, § 149, and *Fleri Soler and Camilleri v.Malta*, no. 35349/05, § 65, 26 September 2006).

67. In the present case, the Court can accept the Government's argument that the requisition and the rent control were aimed at ensuring the just distribution and use of housing resources in a country where land available for construction could not meet the demand. These measures, implemented with a view to securing the social protection of tenants (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, § 178, and *Ghigo*, cited above, § 58), were also aimed at preventing homelessness, as well as at protecting the dignity of poorly off tenants (see paragraphs 43 and 47 above).

68. The Court accepts that the impugned legislation had a legitimate aim in the general interest, as required by the second paragraph of Article 1.

(e) Whether the Maltese authorities struck a fair balance between the general interest of the community and the applicant's right to the peaceful enjoyment of his possessions

69. Not only must an interference with the right of property pursue, on the facts as well as in principle, a "legitimate aim" in the "general interest", but there must also be a reasonable relation of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including measures designed to control the use of the individual's property. That requirement is expressed by the notion of a "fair balance" that must be struck between the

demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Saliba,* cited above, § 37, and *Ghigo*, cited above, § 60).

70. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article the Court must therefore ascertain whether by reason of the State's interference the person concerned had to bear a disproportionate and excessive burden (see *James and Others*, cited above, p. 27, § 50; *Mellacher and Others v. Austria*, judgment of 19 December 1989, Series A no. 169, p. 34, § 48; *Spadea and Scalabrino v. Italy*, judgment of 28 September 1995, Series A no. 315-B, p. 26, § 33).

71. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. In cases concerning the operation of wide-ranging housing legislation, that assessment may involve not only the conditions for reducing the rent received by individual landlords and the extent of the State's interference with freedom of contract and contractual relations in the lease market but also the existence of procedural safeguards ensuring that the operation of the system and its impact on a landlord's property rights are neither arbitrary nor unforeseeable. Uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (see *Immobiliare Saffi*, cited above, § 54; *Broniowski*, cited above, § 151; *Fleri Soler and Camilleri,* cited above, § 70).

72. In the present case, the applicant's tenement was seized by the Government by means of a requisition order on 10 September 1975, and family P. was allotted both floors (see paragraph 10 above). Subsequently, in 1976 the field adjacent to the applicant's tenement was also requisitioned (see paragraph 11 above).

73. The Court notes that a requisition order imposes on the owner of the premises concerned a landlord-tenant relationship (see paragraph 28 above). While this can be seen as creating a quasi-lease agreement between a landlord and a tenant, landlords have little or no influence on the choice of the tenant or the essential elements of such an agreement (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, § 196; *Ghigo*, cited above, § 64; *Fleri Soler and Camilleri*, cited above, § 72). In particular, the owner may seek authorisation for non-compliance with the Director of Social Housing's request to recognise the tenant only if he is able to show "to the satisfaction of the court that serious hardship would be caused to him by complying with that request". The wish to take possession of the building for the owner's use or for the use of any member of his family cannot amount, in itself, to hardship (see section 8(2) and (3) of the Housing Act – paragraph 29 above). Therefore, it was not open to the applicant to obtain restitution of his property solely on the basis of his wish to "make other use" of it (see paragraph 51 above).

74. The Court further observes that the applicant claimed that no rent had ever been paid to him in respect of the field. The compensation for the loss of the control over his tenement was MLT 28 (approximately EUR 67) per year. The Government themselves acknowledged that the controlled rents did not reflect the market value of the property (see paragraph 47 above).

75. Even assuming that the applicant was not made to cover the costs of extraordinary maintenance and repairs of the building, as required by law, the Court cannot but note that the sum at issue – amounting to less than EUR 6 per month – is extremely low and could hardly be seen as a fair compensation for the use of a tenement and an adjacent field. The Court is not convinced that the interests of the landlords, "including their entitlement to derive profits from their property" (see *Hutten-Czapska*, cited above, § 239; *Ghigo*, cited above, § 66; *Fleri Soler and Camilleri*, cited above, § 74), have been met by restricting the owners to such extremely low returns. It is true that the Constitutional Court reproached the applicant for his failure to institute proceedings before the Rent Regulation Board to fix a fair rent for the premises (see paragraph 21 above). However, it has not been shown by any concrete examples from domestic law and practice that this remedy would have been an effective one.

76. As the Court has already stated on many occasions, in spheres such as housing of the population, States necessarily enjoy a wide margin of appreciation not only in regard to the existence of the problem of general concern warranting measures for control of individual property but also to the choice of the measures and their implementation. The State control over levels of rent is one such measure and its application may often cause significant reductions in the amount of rent chargeable (see, in particular, *Mellacher and Others*, cited above, § 45).

77. Moreover in situations where the operation of rent-control legislation involves wide-reaching consequences for numerous individuals and has economic and social consequences for the country as a whole, the authorities must have considerable discretion not only in choosing the form and deciding on the extent of control over the use of property but also in deciding on the appropriate timing for the enforcement of the relevant laws. Nevertheless, that discretion, however considerable, is not unlimited and its exercise cannot entail consequences at variance with the Convention standards (see, *mutatis mutandis*,*Hutten-Czapska*, cited above, § 223; *Ghigo*, cited above, § 68; *Fleri Soler and Camilleri*, cited above, § 76).

78. In the present case, having regard to the extremely low amount of rent, to the fact that the applicant's premises have been requisitioned for more than thirty years, as well as to the above-mentioned restrictions of a landlord's rights, the Court finds that a disproportionate and excessive burden has been imposed on the applicant. The latter had been requested to bear most of the social and financial costs of supplying housing accommodation to family P. (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, § 225, and *Ghigo*, cited above, § 69). It follows that the Maltese State has failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant's right of property.

79. There has accordingly been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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."

A. Damage

81. The applicant requested the Court to order the withdrawal of the requisition of the ground floor of his tenement and the release of the top floor. Without indicating a precise amount, he also sought a sum 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.

82. The Government noted that the issue of compensation was not aired before the Maltese courts and that the applicant failed to invoke the ordinary civil laws on damages. Furthermore, it would not be appropriate for the Court to grant the remedies sought by the applicant. The Government recalled that the latter had been receiving rent for the premises in question and that after 1975 this rent was increased in order to take account of the parts of the property made available to the tenants.

83. The Court first recalls that it is not empowered under the Convention to direct the Maltese State to annul or revoke the requisition order (see, *mutatis mutandis*, *Sannino v. Italy*, no. 30961/03, § 65, 27 April 2006, *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports* 1997-I, p. 284, § 88, *Albert and Le Compte v. Belgium* (former Article 50), judgment of 24 October 1983, Series A no. 68, pp. 6-7, § 9).

84. Having examined the circumstances of the case, the Court considers that the question of compensation for pecuniary damage and/or non-pecuniary damage is not ready for decision. That question must accordingly be reserved and the subsequent procedure fixed, having due regard to any agreement which might be reached between the respondent Government and the applicant (Rule 75 § 1 of the Rules of Court; see *Hutten-Czapska*, cited above, § 247).

B. Costs and expenses

85. Although invited to do so, the applicant did not submit a claim with regard to the costs and expenses he had incurred.

86. Accordingly, the Court makes no award in this respect (see *Craxi v. Italy (No.2)*, no. 253374/94, §§ 91-92, 17 July 2003, and *Ipsilanti v. Greece*, no. 56599/00, § 39, 6 March 2003)

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

3. *Holds* that, as far as the financial award to the applicant for any pecuniary or non-pecuniary damage resulting from the violation found in the present case is concerned, the question of the application of Article 41 is not ready for decision and accordingly,
   (a) *reserves* the said question as a whole;
   (b) *invites* the Government and the applicant to submit, within six months from the date on which this judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
   (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 24 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY Nicolas BRATZA
Section Registrar President

EDWARDS v. MALTA JUDGMENT