FOURTH SECTION

CASE OF FLERI SOLER AND CAMILLERI v. MALTA

(Application no. 35349/05)

JUDGMENT

STRASBOURG

26 September 2006

FINAL

26/12/2006

In the case of Fleri Soler and Camilleri v. Malta,

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

Nicolas Bratza, *President*,
Josep Casadevall,
Giovanni Bonello,
Matti Pellonpää,
Stanislav Pavlovschi,
Ljiljana Mijović,
Ján Šikuta, *judges*,
and Lawrence Early, *Section Registrar*,

Having deliberated in private on 5 September 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 35349/05) 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 two Maltese nationals, Mrs Anna Fleri Soler and Mr Herbert Camilleri ("the applicants"), on 10 September 2005.

2. The applicants were represented before the Court by Mr J. Brincat, a lawyer practising in Marsa (Malta). The Maltese Government ("the Government") were represented by their Agent, Mr S. Camilleri, Attorney General.

3. On 28 November 2005 the President of the Chamber to which the case had 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 applicants were born in 1932 and 1934 respectively and live in Malta.

A. The background to the case

5. The applicants claimed to be the owners of a building in Valletta, Malta. The Government contested this claim, stating that it appeared from the relevant records and from a letter written by the applicants themselves on 29 July 2005 that the premises had simply been acquired by the applicants' late father, Mr Joseph Camilleri, under a public deed of 19 March 1943. The property had been transferred in perpetual emphyteusis (a contract granting a tenement for a stated yearly rent or ground rent to be paid in money or in kind) with effect from 1 March 1941. The deed in question included a clause stating as follows:

"As the said house has been requisitioned by the government it is hereby agreed that the period of five (5) years

mentioned in this condition (an obligation to carry out improvements) will run from the date on which the keys of the said house shall have been given back by the government to the said Joseph Camilleri."

6. Having taken note of the disagreement between the parties on this point, the Court will nevertheless refer in the present judgment to the building in issue as "the applicants' building" or "the applicants' property".

7. On 4 September 1941 the authorities requisitioned the applicants' building. They allocated the property first to the Department of Education and then to the Ministry of Industry and Agriculture. The building was used as public offices.

8. According to the Emergency Compensation Board, the yearly rent due at the time of the requisitioning was 89 Maltese liras (MTL – approximately 213 euros (EUR)). In 1989 the Rent Regulation Board decided that it should be increased to MTL 340.53 (approximately EUR 817) per year. The applicants received this rent regularly and it was still being paid to them at the time the application was lodged (10 September 2005).

B. The proceedings before the Civil Court

9. On 13 March 1997 the applicants brought constitutional proceedings before the First Hall of the Civil Court. They argued that the requisitioning and continued occupation of their building amounted to a *de facto* expropriation. Furthermore, they observed that, even assuming that the measure complained of could be considered to be aimed at controlling the use of property, the authorities should nevertheless have been subject to the ordinary laws governing landlords and tenants. However, when a forced tenancy was established with the authorities, the usual remedies available to ordinary landlords against tenants were excluded, and the landlord-tenant relationship could not be terminated under the usual conditions. Hence, for example, whereas a lease in favour of an individual or a family might terminate in the absence of descendants or relatives entitled to succeed, a government, while its composition might change, remained a government and hence a lessee in perpetuity. In view of the above, the applicants alleged a breach of Article 1 of Protocol No. 1 taken alone or in conjunction with Article 14 of the Convention.

10. In a judgment of 26 November 2003, the Civil Court rejected the applicants' claim. It observed that, according to the case-law of the European Court of Human Rights, a deprivation of property could be said to have occurred only where all the legal rights of the owner had been extinguished. In the present case, the applicants were still receiving the rent due and had not been deprived of their right of ownership. Therefore, the requisition of their building could not be considered an expropriation.

11. In the Civil Court's view, the measure complained of was aimed at controlling the use of property. The authorities had the power to interfere with the right of property in accordance with the general interest provided that their actions satisfied a "fair balance" test.

12. According to the findings of the European Commission of Human Rights in *Zammit v. Malta* (no. 16756/90, Commission decision of 12 January 1991, Decisions and Reports (DR) 68), in the implementation of policies of a socio-economic nature, the margin of appreciation of the State was very wide. The Civil Court found that in the present case the occupation of the property by the authorities could properly be said to be in the public interest.

13. With regard to the claim of discrimination, the Civil Court acknowledged that the applicants were burdened with a perpetual tenant and that the authorities could no longer issue requisition orders after 1995. However, referring to the *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* (9 February 1967, Series A no. 5), the Civil Court held that these facts did not amount to a violation of Article 14 of the Convention, since the difference in treatment was proportionate and based on reasonable and objective grounds. In addition, it noted that the fact that no further requisitions could be carried out did not mean that those in force should not be maintained, especially since the public interest justifying them had not ceased to exist.

C. The proceedings before the Constitutional Court

14. The applicants appealed to the Constitutional Court. They claimed that the requisition constituted a *de facto* expropriation rather than a measure to control the use of property. Moreover, it had not been carried out in the general interest, since the applicants' building was being used by the government as offices and had not been allocated to private individuals needing subsidised housing. The measure complained of was therefore disproportionate and the authorities had abused their powers for their own benefit.

15. The applicants further observed that they were being discriminated against, since the authorities were abusing their power and frustrating the applicants' right to seek a remedy. They relied on Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

16. In a judgment of 18 March 2005, the Constitutional Court dismissed the applicants' appeal and upheld the Civil Court's judgment.

17. The Constitutional Court reiterated that, since the applicants had retained their right of ownership and were still receiving rent, the measure complained of could not be considered a *de facto* expropriation, but was aimed at controlling the use of property.

18. The Constitutional Court noted that the Housing Act, as in force at the time of the issuing of the requisition order, authorised requisitions either in the general interest or to meet the need for affordable housing. In the present case, the use of the building as a government department was clearly in accordance with the public interest.

19. The Constitutional Court further pointed out that in *Mellacher and Others v. Austria* (19 December 1989, Series A no. 169), the European Court of Human Rights had held that any interference with the right of property must strike a fair balance and be proportionate to the aims pursued. The regular payment of rent to the applicants mitigated the effects of the requisition and sufficed to achieve this balance. Moreover, during the constitutional proceedings the applicants had never complained that the amount of rent was unfair or unjust compared to the value of the requisitioned property. It was true that the authorities would probably continue using the building for an indefinite period of time; however, this was lawful as long as the building was being used in the general interest.

20. Lastly, the Constitutional Court observed that the applicants had never claimed that they needed their property urgently for themselves or for their families. Hence, no "individual and excessive burden" had been imposed on them within the meaning of the Strasbourg case-law.

21. As to the applicants' complaint under Article 14 of the Convention, the Constitutional Court noted that it was unclear what form of discrimination the applicants were claiming to have suffered. They had not clarified, either, what kind of remedies they had been unable to use. In any case, the authorities and the applicants were not "persons in relevantly similar situations". The Constitutional Court referred on this point to the case in *Spadea and Scalabrino v. Italy* (28 September 1995, Series A no. 315-B).

II. RELEVANT DOMESTIC LAW

A. The definition of requisition

22. 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. Grounds for issuing requisition orders

23. Until 1989 the Housing Secretary could issue a requisition order if he was satisfied that such a step was necessary in the public interest or in order to provide living accommodation to certain persons or ensure a fair distribution of living accommodation. Section 3(1) of the Housing Act, as in

force at the time of the requisitioning of the applicants' building, 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 appear to him to be necessary or expedient in order that the requisition may be put into effect or complied with."

24. After 1989 authority to issue requisition orders was transferred to the Director of Social Housing. In section 3(1) of the Housing Act, after the words "public interest", the conjunction "or" was deleted and replaced by the words "but only".

C. Compensation for taking possession

25. A requisition order imposes a landlord-tenant relationship on the owner of the requisitioned premises. 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. This provision, 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 possession of the building ..."

26. 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

27. The applicants complained that the requisition of their building had breached 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."

28. The Government contested that argument.

A. Admissibility

1. The Government's objection that the application was out of time

29. The Government submitted that the application was out of time. They observed that the final domestic decision was the Constitutional Court's judgment given on 18 March 2005, that is to say, more than six months before the date on which the applicants' first letter had been received by the Registry (19 September 2005).

30. The applicants submitted that they had sent the application form by courier service on 10 September 2005.

31. The Court reiterates at the outset that the first day of a time-limit is considered to start on the day following the final decision, whereas "months" are calculated as calendar months regardless of their actual duration (see *K.C.M. v. the Netherlands*, no. 21034/92, Commission decision of 9 January 1995, DR 80-A, p. 87). In the present case the final domestic decision was given on 18 March 2005. It follows that the six-month period provided for in Article 35 § 1 of the Convention started to run on the following day, namely 19 March 2005. Therefore, even if it had been lodged on 19 September 2005, the present application would have been submitted on the last day of the said period.

32. In any event, the Court also points out that the requirements of the six-month rule are complied with if the first communication is made within the time allowed, even though it may arrive several days after its expiry (see *Anguelova v. Bulgaria* (dec.), no. 38361/97, 6 June 2000, and *Erdoğdu and İnce v. Turkey* [GC], nos. 25067/94 and 25068/94, § 30, ECHR 1999-IV). The applicants' first communication, enclosing the completed application form, was dated 10 September 2005. The postmark on the envelope containing it shows that the application form was indeed posted on the same day and hence before the expiry of the six-month period provided for by Article 35 § 1 of the Convention.

33. It follows that the application cannot be rejected as being out of time and the Government's objection should therefore be dismissed.

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

34. The Government submitted that the applicants had failed to exhaust domestic remedies in relation to their claim concerning the lack of proportionality between the rent received by them and the market value of the building. As rightly observed by the Constitutional Court, the applicants had never made this claim in the constitutional proceedings.

35. The applicants alleged that all available domestic remedies had been exhausted. They had developed the substance of their arguments concerning the lack of proportionality during their oral pleadings before the Civil Court and the Constitutional Court.

36. The Court reiterates that according to Article 35 § 1 of the Convention it may deal with an issue only 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 (see *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 (see *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 (see *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 (see *Akdivar and Others v. Turkey*, 16 September 1996, § 69, *Reports of Judgments and Decisions* 1996-IV, and *Sammut and Visa Investments Ltd v. Malta* (dec.), no. 27023/03, 28 June 2005).

39. In the present case the applicants instituted constitutional proceedings before the Civil Court alleging a breach of their right to the peaceful enjoyment of their possessions. They further appealed to the Constitutional Court against the Civil Court's judgment rejecting their claim. As the applicants had complained of a breach of Article 1 of Protocol No. 1 in its entirety, the domestic courts with constitutional jurisdiction examined whether all the requirements of this provision had been complied with, notably the existence of a "fair balance" and of a reasonable relationship of proportionality between the means employed, the aim sought to be achieved and the respect of the individual's fundamental rights.

40. The Court considers that in raising this plea before the domestic courts with constitutional jurisdiction, the applicants made normal use of the remedies which were accessible to them 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 Ltd*, cited above).

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

3. Other grounds for declaring the application inadmissible

42. 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.

B. Merits

1. The parties' submissions

(a) The Government

43. The Government first submitted that the building in question had already been requisitioned and was therefore government property when it had been transferred to the applicants' predecessor. The deed of transfer of the right of perpetual emphyteusis had made specific reference to the requisition and had also exempted the acquirer from the obligation to make improvements for as long as the premises remained subject to the requisition order. The applicants' father, Mr Joseph Camilleri, had been aware of this in agreeing to the contract, and also of the fact that there was no time-limit on the requisition order. The restrictions on the rights of the emphyteuta (the holder of the title of emphyteusis) would also certainly have been taken into consideration in determining the price of the building.

44. The Government emphasised that the applicants had made a profit from the building because the rent paid to them had always exceeded the amount which they had to pay in yearly ground rent. The latter was MTL 53 (approximately EUR 132), while the rent paid by the government had been MTL 89 in the years 1941-88 and MTL 340.53 from 1989 onwards. Moreover, while the ground rent was fixed on a perpetual basis and unalterable, the rent paid by the government could be reviewed under the Reletting of Urban Property (Regulation) Ordinance, and had in fact been increased in 1988, with the possibility of further increases. Under these circumstances, and having regard to the fact that no premium had been paid to the authorities for the granting of the property in emphyteusis, it could not be said that any additional burden had been imposed on the applicants.

45. In the Government's view, the above considerations showed that there had been no interference with the applicants' right to the peaceful enjoyment of their possessions.

46. Without prejudice to the last statement, the Government maintained that the use of the premises as offices of a government department was for the benefit of the community, and therefore in the general interest.

47. The fact that the premises had already been requisitioned when they were taken over by the applicants' father meant that the effects of the requisition had been foreseeable and that he or his descendants could not challenge this on grounds of arbitrariness. Given the use to which it was being put, it had also been foreseeable that the building would not be released in the near future.

48. The Government observed that the requisition order had been issued by the Housing Secretary and had been served on the owners in accordance with the law. Moreover, requisitions were subject to judicial review like any ordinary administrative act. Hence, the applicants had had at their disposal adequate remedies and procedural safeguards ensuring that the operation of the system and its impact on their property rights as landlords were neither arbitrary nor unforeseeable.

(b) The applicants

49. The applicants argued that the measure complained of amounted to a *de facto* expropriation since there was no remedy whereby the property could revert to its owners and the landlord-tenant relationship with the government could in effect be perpetual. As a consequence, the applicants had never had the opportunity to sell their property on the open market. This situation of perpetuity and its effects had also been confirmed in the Constitutional Court's judgment.

50. Moreover, even assuming that the requisition was a measure aimed at controlling the use of property, the applicants alleged that it had not been adopted in the public interest as it had not been

designed to provide persons with living accommodation or to ensure a fair distribution of living accommodation. In the applicants' view, the Housing Act was not a law of general application and the way in which the requisitioning had been carried out had been selective and discriminatory.

51. The applicants alleged that it appeared from the contract signed by their father that the requisition, made in time of war, had been intended as a temporary measure and that the authorities would at some future stage hand back the keys. However, this had not happened. Moreover, the contract in issue had taken effect on 1 March 1941, when no requisition had yet existed. Interferences of short duration during war time would have been in the public interest; in the present case, however, there had been continued interference which was prolonged even after the legislation on requisitions had been repealed. Furthermore, in 1979 the government had acquired properties belonging to the Church and to the British military while it was stationed in Malta. After this date, the use of the applicants' property could not be considered legitimate and necessary.

52. The applicants also considered that an excessive individual burden had been imposed on them. They referred on this point to the considerable length of time for which the property had been occupied and to the amount of rent which had been paid to them. In 1990 the Rent Regulation Board had established the fair rent applicable in 1939. They considered that the latter was far below the market value of their building, which, according to their calculations, was approximately EUR 2,000,000.

53. Referring to *Broniowski v. Poland* ([GC], no. 31443/96, ECHR 2004-V), the applicants submitted that they found themselves in a situation of uncertainty owing to repeated delays and obstructions for which the State was responsible. This made their situation incompatible with the obligations undertaken by the State under the Convention.

54. Finally, the applicants pointed out that requisitions issued under emergency powers had not been notified to the landlords in question and remained in force. Thus, the only remedy at their disposal had been a constitutional claim, which had only become available in 1987 when the Convention was incorporated into domestic law.

2. The Court's assessment

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

55. 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 the 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*, 21 February 1986, § 37, Series A no. 98; *Beyeler v. Italy* [GC], no. 33202/96, § 98, ECHR 2000-I; and *Saliba v. Malta*, no. 4251/02, § 31, 8 November 2005).

56. The Court observes in the first place that the parties disagree as to the nature of the applicants' right to the building in issue. The applicants claimed to be its owners, while the Government alleged that they had only a right of perpetual emphyteusis (see paragraphs 5 and 6 above).

57. The Court does not consider it necessary to examine in detail the views of the parties on this point. It reiterates that the concept of "possessions" in Article 1 of Protocol No. 1 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 *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, § 53, Series A no. 306-B, and *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999-II). The right of perpetual emphyteusis, which entails the obligation to pay the annual ground rent and the right to use the property or, in the case of a lease, to receive a rent, constitutes such a "possession". The Court also underlines that the domestic courts with constitutional jurisdiction saw no obstacle to the applicability of Article 1 of Protocol No. 1 to the kind of right asserted by the applicants. Therefore, even assuming that the applicants were emphyteutae, rather than owners, of the building in question, this provision would in any event be applicable.

58. In the present case, the applicants were prevented from exercising their right of use in terms of physical possession as the building had been allocated to government departments. Also, their right to receive rent and to terminate the lease was substantially affected. However, the applicants never lost their right to sell their property or their right of emphyteusis, nor did the authorities apply any measures resulting in the transfer of ownership.

59. In the Court's view, the measures taken by the authorities were aimed at subjecting the applicants' property to a continued tenancy rather than at taking it away from them permanently. Therefore, the interference complained of cannot be considered as a formal or even *de facto* expropriation, but constitutes 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, §§ 160-61, ECHR 2006-VIII).

(b) Whether the Maltese authorities complied with 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*, cited above, § 147, and *Saliba*, cited above, § 37).

61. In the present case, it is not disputed by the parties that the requisitioning of the applicants' building was effected in accordance with the provisions of the Housing Act. The latter defines the notion of "requisition" (see paragraph 22 above) and indicates the grounds for issuing requisition orders (paragraph 23 above). Also, 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 property, are set out in the Housing Act (see paragraphs 25-26 above). There is nothing to show that these provisions are unclear or not foreseeable.

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.

(c) 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 (see *Broniowski*, cited above, § 148).

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 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. 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, and, *mutatis mutandis*, *Broniowski*, cited above, § 149).

66. In the present case, the applicants' property was allocated first to the Department of Education, then to the Ministry of Industry and Agriculture (see paragraph 7 above). As these bodies were performing their duties in the interests of the community as a whole, the Court can accept the Government's argument that the requisition and the rent control were measures taken in the general interest (see paragraph 46 above).

67. The Court therefore accepts that the impugned measures had a legitimate aim in the general interest, as required by the second paragraph of Article 1 of Protocol No. 1.

(d) Whether the Maltese authorities struck a fair balance between the general interest of the community and the applicants' right to the peaceful enjoyment of their possessions

68. Not only must 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 relationship 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).

69. 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, § 50; *Mellacher and Others*, cited above, § 48; and *Spadea and Scalabrino*, 28 September 1995, § 33, Series A no. 315-B).

70. 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, and *Broniowski*, cited above, § 151).

71. In the present case the applicants' property was requisitioned in 1941 and subsequently used as public offices (see paragraph 7 above).

72. The Court notes that a requisition order imposes a landlord-tenant relationship on the owner of the property (see paragraph 25 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). This is especially so in the present case, where the building was occupied by the authorities and the

applicants had little or no possibility of obtaining restitution of the property.

73. The Court further observes that the applicants received compensation for the loss of control of their property, amounting to MTL 89 (approximately EUR 213) for the years 1941-88 and MTL 340.53 (approximately EUR 817) from 1989 onwards. At the same time, the applicants had to pay a yearly ground rent of MTL 53 (approximately EUR 132 – see paragraphs 8 and 44 above). This means that the net income they could obtain from their building was approximately EUR 81 per year until 1988 and approximately EUR 685 per year after that date.

74. Even assuming that the applicants were not made to cover the costs of extraordinary maintenance and repair of the building, as required by law, the Court cannot but note that the sums in issue – amounting to less than EUR 7 per month until 1988 and to less than EUR 58 per month from 1989 onwards – are extremely low and could hardly be seen as fair compensation for the use of a building which was big enough to house public offices and an entire government department. 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), were met by restricting the owners to such extremely low returns. It has not been shown by the Government to the Court's satisfaction that in the particular circumstances of their case the applicants had at their disposal effective remedies capable of redressing the above-mentioned situation.

75. The Court has stated on many occasions that in spheres such as housing of the population, States necessarily enjoy a wide margin of appreciation not only in regard to the existence of a problem of public concern warranting measures for control of individual property but also to the choice of the measures and their implementation. 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).

76. Also, 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).

77. However, these principles do not necessarily apply in the same manner where, as in the present case, the requisition of property belonging to private individuals is aimed at accommodating public offices rather than at securing the social welfare of tenants or preventing homelessness. In the Court's view, in cases such as the present one the effects of the rent-control measures are subject to closer scrutiny at the European level.

78. Having regard to the small amount of rent paid to the applicants, the minimal profit that the latter could obtain from their building, the fact that the applicants' property has been occupied for almost sixty-five years and the above-mentioned restrictions on the landlords' rights, the Court holds that a disproportionate and excessive burden has been imposed on the applicants. The latter have been required to bear most of the financial costs of providing a working environment for government departments and public offices performing their duties for the benefit of the community as a whole (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, § 225). It follows that the Maltese State failed to strike the requisite fair balance between the general interests of the community and the protection of the applicants' fundamental rights.

79. This conclusion is not altered by the fact, referred to by the Government (see paragraphs 43 and 47 above), that the existence of the requisition was known by the applicants' father at the time of the signature of the public deed of 19 March 1943. Indeed, the applicants and their father could have expected that the requisition, done in time of war, would have been lifted at the end of the emergency period. The prolongation of the requisition order over a period of decades coupled with the low level of rent and the absence of sufficient procedural safeguards has, over time, upset the reasonable

relationship of proportionality which should exist between the means employed and the aim sought to be achieved.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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

82. The applicants claimed 36,378 Maltese liras (MTL) (approximately 87,307 euros (EUR)) in respect of pecuniary damage for the occupation of their property since 1997, the year in which they started constitutional proceedings. They also alleged that they had suffered great hardship. They requested the Court to fix the amount of compensation for non-pecuniary damage on an equitable basis.

83. The Government submitted that the occupation in issue was not unlawful and that the applicants had received the rent provided for by the law and had obtained a profit from their property. Furthermore, the value of the building claimed by the applicants was merely speculative.

84. Having examined the circumstances of the case, the Court considers that the question of compensation for pecuniary and 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 State and the applicants (Rule 75 § 1 of the Rules of Court).

B. Costs and expenses

85. The applicants also claimed MTL 669.16 (approximately EUR 1,605) for costs and expenses incurred before the domestic courts and MTL 1,675 (approximately EUR 4,020) for those incurred before this Court.

86. The Government submitted that the costs as adjudicated by the Constitutional Court had been perfectly fair to the applicants, whereas the fees claimed for the Convention proceedings were excessive in view, among other things, of the extremely high figure quoted by the applicants for translations, postage and secretarial services.

87. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, before introducing their application in Strasbourg, the applicants lodged a constitutional claim with the Civil Court alleging a violation of their right of property. They also appealed against the latter's decision to the Constitutional Court. The Court therefore accepts that the applicants incurred some expenses in order to put right the breach of their fundamental rights (see, *mutatis mutandis*, *Sannino v. Italy*, no. 30961/03, § 75, ECHR 2006-VI, and *Rojas Morales v. Italy*, no. 39676/98, § 42, 16 November 2000). Regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum sought by the applicants (EUR 5,625) covering costs under all heads, plus any tax that may be chargeable on this amount.

C. Default interest

88. 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. *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 applicants 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;
   accordingly,
   (a) *reserves* the said question in whole;
   (b) *invites* the Government and the applicants 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;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,625 (five thousand six hundred and twenty-five euros), to be converted into Maltese liras at the rate applicable at the date of settlement, in respect of costs and expenses, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 26 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Nicolas Bratza
Registrar President

FLERI SOLER AND CAMILLERI v. MALTA JUDGMENT