FOURTH SECTION

CASE OF GERA DE PETRI TESTAFERRATA BONICI GHAXAQ v. MALTA

*(Application no. **26771/07**)*

JUDGMENT
(*merits*)

STRASBOURG

5 April 2011

FINAL

05/07/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gera de Petri Testaferrata Bonici Ghaxaq v. Malta,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva, *judges,*
Joseph Zammit Mckeon, ad hoc *judge,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 15 March 2011,

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

PROCEDURE

1. The case originated in an application (no. **26771/07**) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Maltese national, Ms Agnes Gera de Petri Testaferrata Bonici Ghaxaq ("the applicant"), on 28 June 2007.

2. The applicant was represented by Dr Ian Refalo, a lawyer practising in Valletta. The Maltese Government ("the Government") were represented by their Agent, Dr Silvio Camilleri, Attorney General.

3. The applicant alleged that the length of her proceedings had been excessive, and that she had suffered a breach of her property rights as a consequence of the first taking of her property and the lack of an effective remedy in this respect.

4. On 3 November 2009 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of proceedings and the lack of an effective remedy in respect of the first taking of the applicant's property, to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. Mr V. De Gaetano, the judge elected in respect of Malta, was unable to sit in the case (Rule 28 of the Rules of Court). The President of the Chamber accordingly appointed Mr Joseph Zammit McKeon to sit as an *ad hoc* judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1949 and lives in Balzan, Malta.

A. Background of the case

7. The applicant is the owner of a property, known as Palazzo Bonici, in Valetta. She partly owns some of the ground floor shops, and entirely owns the house, from the rest of the ground floor and the basement to the top floors.

8. The property had been damaged during the Second World War and the applicant's ancestors, from whom she inherited the property, had on 11 January 1945 applied to the War Damage Commission to obtain the necessary funding to have the property restored. At the time, the building consisted of a large eighteenth century town house including a few rooms on the ground floor which were rented out as shops. Between 1945 and 1950 the War Damage Commission had paid out a sum corresponding to EUR 1,307, for the premises excluding the shops in respect of which no amount had been paid as a consequence of undefined claims. According to the applicant the sums awarded covered expenses for required temporary works to secure the premises, as had originally been claimed, and not the entire works to repair the whole of the property. While the Government contended that, despite the payments, the building was left in a state of neglect, the domestic courts acknowledged that the applicant had attempted to reconstruct the damaged area (page 21 of the Constitutional Court judgment of 8 January 2007)

9. In 1958 the then Colonial Government issued an order taking control of the property under title of possession and use, that is, a forced temporary taking of property subject to the payment of annual compensation, known as a "recognition rent", to the owners.

10. Despite this order, the applicant's ancestors refused to hand over the keys of the building. Thus, the property was left unused until 1972 when the building was forced open by the Government, by which time it had deteriorated considerably.

11. In 1972 the Government commenced works to repair the property with a view to using it as a cafeteria and offices in conjunction with the Manoel Theatre situated nearby. The Government evicted the tenants of the shops on the ground floor which had been leased on the basis of controlled rents, and a hall in the upper floors was converted into a performance hall for small audiences. Subsequently a theatre restaurant was housed in the basement of the building and another floor was added to house the foundation for Maltese patrimony "*Fondazzjoni Patrimonju Malti*", a Government foundation promoting national heritage, which also serves as a commercial company dealing in publications.

12. On 5 August 1976 the Government issued a "notice to treat" by which the owner was informed that the compensation offered by way of recognition rent amounted to 210 Maltese Liras (MTL – approximately 490 euros (EUR)). The amount was based on the 1914 rental value (according to rent laws relating to renting of residences – not commercial premises – in force at the time) increased by 40 % to allow for inflation. By a judicial letter of 1976 the applicant's ancestors rejected the offer and in the same year the Commissioner of Lands instituted compensation proceedings before the Land Arbitration Board ("LAB"). These proceedings were suspended *sine die* on 10 October 1996 (see Annex A for a detailed chronological list of hearings in the proceedings). Pending these

proceedings, the applicant inherited the property of which she gained possession by public deed on 26 March 1990. The applicant submitted that even if these proceedings had been concluded, the LAB would have been unable to establish a fair rent reflecting market values, since it was bound by law to assess rent on the basis of 1914 rental values.

13. After repairing the property the Government allocated it and entrusted its management to the Manoel Theatre Management Committee ("MTMC"), the organ of the Ministry of Culture and Education which administers the Manoel Theatre. It rented the property to a number of commercial entities, including offices, cafeterias, reception halls, a restaurant and a publishing house. According to the Government, the economic income received by the MTMC per year amounted to approximately EUR 13,000 and the Government had spent EUR 735,115 restoring the building and meeting its maintenance costs.

B. Proceedings before the Civil Court in its constitutional jurisdiction

14. In 1996 the applicant instituted constitutional redress proceedings in which she brought complaints under Articles 6 and 14 of the Convention and Article 1 of Protocol No.1 to the Convention. She complained that the property, estimated at the time to be worth MTL 880,000 (approximately EUR 2,050,000), was not used for a public purpose, that she had not been offered fair compensation, that the proceedings pending before the LAB were taking an unreasonably long time to be decided and that she had been discriminated against *vis-à-vis* other property owners who, unlike her, had their properties expropriated by outright purchase and not subject to the less favourable forced rents. She requested the court to grant adequate redress and to award damages.

15. On 18 January 1999 the Civil Court (First Hall) found for the applicant. It declared the taking null and void, as the property was not being used for a public purpose, and therefore contrary to the Convention. It further found a violation of the applicant's right to a fair hearing within a reasonable time. It considered that the period to be taken into account started running on 25 February 1958, the date when the applicant's right to compensation arose, and had not yet ended forty years later. It noted that it had taken the Government eighteen years to issue a "notice to treat" without which compensation proceedings could not be initiated. This, together with the lack of initiative of the Commissioner of Lands to pursue those proceedings, was enough to allow it to conclude that the applicant had suffered a serious prejudice, incompatible with Article 6 of the Convention, over the forty years during which she had been left without compensation. It declared that it was not necessary to examine the Article 14 complaint. The issue of payment of damages in respect of the violation of Article 6 (which depended on the value of the property) was reserved.

C. Proceedings before the Constitutional Court

16. The Government appealed against the above-mentioned judgment.

17. The applicant submitted that during the proceedings, lasting eight years, the judges were replaced several times and there had been numerous adjournments (see Annex B for a detailed chronological list of hearings in the proceedings).

18. On 8 January 2007 the Constitutional Court upheld the first-instance judgment in part. It held that there had been a violation of Article 1 of Protocol No.1 to the Convention, in that a proper balance had not been preserved between the private interest and the public need. While it was true that the commercial purposes of the taking appeared to have superseded the original purpose, it was in the light of the compensation offered to the applicant (EUR 490 yearly rent for a property valued at approximately EUR 1,863,500) and the fact that she had been deprived of her property for nearly fifty years, that she had been made to bear a disproportionate burden. The fact that the property had been refurbished by the State had little bearing on this conclusion, although it could be relevant in determining the compensation terms. It declared the Governor's declaration of 1958 null and void and ordered the Government to release the property. The Constitutional Court, however, found that there had not been a violation of Article 6 in respect of the length of the proceedings. It was true that the proceedings had been lengthy, the "notice to treat" having been issued only eighteen years after the taking of the property and the proceedings before the LAB having not yet been concluded. However, the court noted that the time to be considered started running after the Convention took effect in respect of Malta, namely on 30 April 1987 (when Malta introduced the right of individual petition) and the applicant had failed to submit evidence of what had caused the delay after 1987. As to the Article 14 complaint, the court held that it had been misconceived, since the first-instance court had not examined it. As to the adequacy of compensation, it confirmed that the release of the property was an adequate remedy for the violation of Article 1 of Protocol No.1 to the Convention, and the reservation of the issue of compensation by the first court was related to the Article 6 complaint, which had not been upheld on appeal. However, it reserved any rights the applicant might wish to assert in respect of compensation for the "possession and use" of the premises during the relevant period.

D. The circumstances after the Constitutional Court judgment

19. On an unspecified date following this judgment, the applicant obtained an eviction order against the Government. However, prior to its enforcement, on 22 January 2007, the Government issued a fresh order, this time under title of public tenure in accordance with the Land Acquisition (Public Purposes) Ordinance ("the Ordinance"). Included in the taking were a number of shops and offices adjacent to Palazzo Bonici, of which the applicant owned an undivided share together with third parties. The Government offered an annual recognition rent of MTL 21,000 (approximately EUR 49,000), basing it on section 22 (11) (c) of the Ordinance (see "Relevant Domestic Law" below), without indicating what portion of this amount was due for the applicant's house, of which she was the sole owner.

According to an architect's valuation, the present day rental value of Palazzo Bonici, excluding the other adjacent property, amounts to MTL 110,000 (approximately EUR 256,000) per year. The market value in the case of sale is estimated to be MTL 2,200,000 (approximately EUR 5,125,000); the Government, however, estimate it to be only MTL 1,500,000 (approximately EUR 3,494,000).

E. Ordinary Proceedings

20. On an unspecified date, the applicant lodged ordinary proceedings (327/07 - ATB 10), complaining that the new taking of the property under public tenure had been unlawful, as it was not permissible under the Land Acquisition Ordinance to take property by means of public tenure if it was not already being used by the Government.

21. At the request of the Government the eviction order was suspended pending the outcome of those proceedings.

22. On the date of introduction of this application the proceedings were still pending. The Civil Court, in its ordinary jurisdiction, gave judgment in the case on 11 November 2008. The latter held that the taking of the property by public tenure had been *ultra vires* and was therefore null and void. An appeal was lodged on 19 November 2008 and the case is still pending.

F. The second constitutional proceedings

23. On an unspecified date the applicant lodged further constitutional redress proceedings (23/07 - ATB 10 A), claiming that the taking of the property under public tenure breached Articles 6 and 14 of the Convention and Article 1 of Protocol No.1 to the Convention.

24. She claimed that the taking had not been in the public interest as the property was mainly being used for commercial purposes in relation to the Theatre, even though the Government had at their disposal other properties in the vicinity which could have served the same purpose. She also claimed that the inadequate compensation offered by the Government was arbitrary and not in accordance with the law. Compensation for the taking of a property under public tenure had to be calculated on the basis of section 27 (13) of the Ordinance and not section 22 (11) (c), which applied where property taken under “public tenure” was converted by absolute purchase (see the Relevant Domestic Law below). Although it could be supposed that the Government's offer amounted to more than what was applicable by law, it did not reflect the real current market value, since the calculations had been based on rental values applicable in 1939. Even assuming that the offer comprised compensation for Palazzo Bonici alone and not the adjacent properties, it still represented a fifth of its real value on the market; therefore, it did not constitute adequate compensation and the applicant was being made to bear an excessive burden. She further claimed that the decision to take her property under public tenure had been arbitrary and discriminatory. At the time only four other properties had been taken under this title, as opposed to outright purchase. All the

properties had already been in the possession of the Government under a different title and were all related to slum clearance and housing projects, unlike the applicant's. Finally, she complained that the taking was in breach of Article 6, in that she was not given a fair hearing within a reasonable time, as she had no real and effective possibility of having the value of her property determined by a court. Notwithstanding the Constitutional Court judgment in her favour, in these circumstances the applicant remained without an effective remedy.

25. These proceedings are still pending.

G. The compensation proceedings

1. Compensation for damage arising from the violation of Article 1 of Protocol No. 1

26. On 15 January 2007 the applicant requested the Civil Court (First Hall) to determine the claim (537/1996) for the compensation due for the violation of Article 1 of Protocol No. 1 in accordance with Article 235 of the Code of Organisation and Civil Procedure ("COCP"). On 29 November 2007 the Civil Court (First Hall) rejected the applicant's claim. It held that the Civil Court had only reserved the matter of compensation in relation to Article 6, of which no violation had been found by the Constitutional Court, which had also found that declaring the taking null and void was a sufficient remedy for the violation of Article 1 of Protocol No. 1. Thus, the Constitutional Court's judgment of 8 January 2007 had been final, the applicant's claims having been decided in their entirety, except for the reservation in respect of payment due for the possession and use of the land for the relevant period, which was subject to ordinary civil remedies. In consequence Article 235 of the COCP did not apply to the present case.

27. That finding was confirmed on appeal by a judgment of the Constitutional Court of 29 February 2008.

2. Compensation for damage arising from the possession and use of the premises

28. On 6 December 2007 the applicant instituted proceedings against the Commissioner of Lands (1281/07) for damage arising from the loss of possession and use of the premises in the light of the Constitutional Court's judgment of 8 January 2007 finding a violation of Article 1 of Protocol No. 1 to the Convention. On 10 June 2010, the court having established that such a decision had not been taken by any other court and that the domestic courts had particularly stated that such a measure had to be sought before the ordinary domestic civil courts, took cognisance of the case and ordered the submission of the relevant evidence.

29. The proceedings are still pending.

II. RELEVANT DOMESTIC LAW

30. Section 22 (11) of the Land Acquisition (Public Purposes) Ordinance, Chapter 88 of the Laws of Malta, reads as follows:

"The compensation due for the acquisition by absolute purchase of any land, and the sum to be deposited in accordance with this article shall be:

...

(c) in the case of conversion from public tenure into absolute purchase a sum arrived at by the capitalisation at the rate of one point four *per centum* of the annual recognition rent due under the provisions of this Ordinance."

Section 27 of the Ordinance relates to the assessment of compensation by the Land Arbitration Board. Subsection 13, reads as follows:

"The compensation in respect of the acquisition of any land held by way of public tenure shall be equal to the acquisition rent assessable in respect thereof in accordance with the provisions contained in subarticles (2) to (12), inclusive, of this article, increased (*a*) by forty *per centum* (40%) in the case of an old urban tenement and (*b*) by twenty*per centum* (20%) in the case of agricultural land."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

31. The applicant complained that the proceedings relating to the first taking of her property had not been decided within a reasonable time as required by Article 6 § 1 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

32. The Government contested that argument.

A. Admissibility

33. The Court notes that this complaint 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' observations

34. The applicant submitted that the proceedings she had been required to undertake had not been decided within a reasonable time. The property was taken in 1958 and the Government only initiated compensation proceedings eighteen years later, in 1976. Pending the outcome of those proceedings, which she did not consider effective, as they could never have resulted in an adequate award of compensation, the applicant instituted constitutional redress proceedings in 1996, which were concluded in 1999 at first instance and in 2007 on an appeal filed by the Government. Subsequently, the taking having been found to be null and void, proceedings before the LAB became in her view superfluous and were abandoned. Thus, after fifty years, during which Malta was under the protection of the Convention (prior to Malta's ratification, the United Kingdom had extended the

protection of the Convention also to Maltese territory), the applicant had still not been awarded compensation for the taking.

35. The applicant submitted that she could not be penalised for having requested a suspension pending the outcome of other cases, relevant to her own, which had eventually been decided in favour of the claimants. Indeed, she had no control over the unreasonable delay of other courts in hearing parallel cases. This only went to prove that the length of proceedings was an endemic problem. Similarly, it had been appropriate to re-suspend proceedings before the LAB pending the outcome of the constitutional redress proceedings, since the LAB could establish compensation due only for lawful takings, a matter which was being contested before the constitutional jurisdictions. Moreover, she had had a right to bring constitutional proceedings and submit all the relevant evidence supporting her case at that stage, especially since it related to the intensification of the commercial use of the premises, a matter crucial to her submissions. It was the fact that it had taken the court two years to disallow the request that had contributed to the delay and not the actual request. Lastly, after fifty years the applicant still remained without compensation and was still instituting proceedings to obtain it.

36. The Government submitted that the delay had to be calculated only post 1987, when the right of individual petition entered into force in Malta. They further submitted that the applicant and/or her ancestors had requested adjournments or not attended hearings seven times during the proceedings before the LAB. Moreover, the applicant gained possession of the property at issue on 26 March 1990 following her ancestor's death in 1988, and it had taken her eight years to file the necessary documents to enable her to continue in her deceased ancestor's stead, namely, until 9 May 1996. Subsequently, on 10 October 1996 she requested the case to be adjourned *sine die* pending the outcome of her constitutional case and another, in the Government's view, unrelated case. The latter case was still pending to date and consequently the Government could not request the resumption of the case that, according to them, was still pending before the LAB; the former proceedings, namely, her constitutional claims, which had been instituted on 14 March 1996, were decided at first instance on 18 January 1999 and at second instance on 8 January 2007. This delay on appeal had been due to the applicant's request that fresh evidence be produced (see Annex B). As to any other proceedings, the Government submitted that the applicant should not have persisted in pursuing compensation as the Constitutional Court had held that it had not been due. Lastly, the Government concluded that, overall, the length of the proceedings had been due to the applicant and/or her ancestors' behaviour.

2. The Court's assessment

37. The Court notes that the taking of the property took place in 1958. The Government did not institute the relevant compensation proceedings before the LAB for eighteen years. They eventually began in 1976 and were suspended *sine die* on 10 October 1996 according to the applicant, and remain pending to date according to the Government. Meanwhile, constitutional redress proceedings

started in 1996 and were concluded in 1999 at first instance and on 8 January 2007 on appeal.

38. The Court observes that in the absence of an express limitation, the Maltese declaration of 30 April 1987 is retrospective and the Court is therefore competent to examine facts which occurred between 1967 the date of ratification and 1987 the date on which the State's declaration under former Article 25 became effective (see *Bezzina Wettinger and Others v. Malta*, no. 15091/06, § 54, 8 April 2008). As to the antecedent period, even though the Convention was applicable to Maltese territory, this had its basis in the United Kingdom's Convention obligations. The present complaint is directed against the Maltese Government. Thus, the Court can only take into consideration the period which has elapsed since the Convention entered into force in respect of Malta (1967), although it will have regard to the stage reached in the proceedings by that date (see, for example, *Humen v. Poland* [GC], no. 26614/95, §§ 58-59, 15 October 1999). Moreover, since the applicant has continued the proceedings as heir, she can complain of the entire length of the proceedings (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 113, ECHR 2006-; and *Bezzina Wettinger*, cited above, § 67).

39. In the present case, the proceedings at issue, once undertaken, lasted more than thirty years at three levels of jurisdiction.

40. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

41. The Court observes that the applicant's case was not particularly complex; before the LAB it was restricted to determining the amount of compensation for the property which had been taken from the applicant, and before the constitutional jurisdictions the applicant was complaining about the proportionality of the measure and the unreasonable delay before the LAB. The Court further finds that the issue at stake in the proceedings could, in principle, be regarded as of importance to the applicant.

42. The Government argued that the delay in the proceedings was attributable to the applicant's and/or her ancestors' absences and requests for adjournments, particularly, the requests to adjourn the proceedings pending the outcome of other cases which the Government deemed irrelevant.

43. The Court does not find it necessary to determine whether any other proceedings may have been of relevance or not to the decision to be taken by the LAB, as the fact that the LAB granted the adjournments for this purpose presupposes that the LAB found them to be relevant. However, the latter decision did not release the domestic authorities from their obligation to examine the case within a reasonable time. The LAB remained responsible for the conduct of the proceedings before it and ought therefore to have weighed the advantages of the continued adjournments pending the outcome of other cases against the requirement of promptness (see, *mutatis mutandis*, *Šilih v. Slovenia* [GC], no.

71463/01, § 205, 9 April 2009 and *Konig v. Germany*, Commission decision, 28 June 1978, § 104). Moreover, the Court notes that, apart from the adjournments pending the outcome of other cases, the LAB adjourned the case repeatedly, and on at least sixteen occasions the case was adjourned either because members of the LAB were unable or failed to attend, or because the Board was not appointed, or because no chambers were available. Meanwhile the applicant's legal counsel failed to appear three times and requested four adjournments (see Annex A).

44. As to the actual constitutional redress proceedings, the Court notes that they lasted nearly three years at first instance and eight years on appeal. As to the appeal, even assuming that some of the delay was attributable to the applicant, it took the Constitutional Court four years to hear the evidence, then one and a half years to deliver a decree rejecting the applicant's request to submit fresh evidence, and subsequently another one and a half years to deliver judgment (See Annex B). No explanation has been given in relation to these periods of delay.

45. In the light of the above, the Court considers that in the instant case the overall length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

46. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

47. The applicant complained of a violation of her property rights. She relied on Article 1 of Protocol No. 1 to the Convention, 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."

A. Admissibility

1. The Government's objection based on lack of victim status

48. The Government submitted that the Constitutional Court's judgment finding a breach of Article 1 of Protocol No.1 for the lack of proportionality of the impugned measure deprived the applicant of victim status. Indeed, the fact that the Constitutional Court held that the Government's declaration was null and void constituted substantial compensation because the Government were thereby constrained to acquire the premises afresh at a cost of approximately EUR 49,000 per year. Moreover, the Constitutional Court reserved the applicant's right to claim compensation for the occupation of the premises and in fact the applicant instituted proceedings in this connection which are still pending, together with those before the LAB, which are intended to fix the rent for the said occupation.

49. The applicant submitted that she was still a victim of a violation of Article 1 of Protocol No.1 as the Constitutional Court had not granted her compensation for either non-pecuniary or pecuniary damage. The fact that she was still pursuing proceedings in this connection did not alter her victim status, as it was unreasonable to expect persons still to seek compensation after pursuing all the relevant proceedings over numerous years. Indeed the Constitutional Court could not have known that the Government would resort to taking the land again. Thus, any future payments, which, to date, had not been paid, and which according to the applicant did not amount to adequate rent, could not be considered as the compensation intended by the Constitutional Court. The applicant further submitted that it was paradoxical that in the proceedings before the domestic courts during which she was seeking compensation the Government were arguing that the Constitutional Court had ruled out the possibility of compensation and that before this Court they were arguing exactly the opposite. Moreover, the fact that the Government regained possession by means of another title rendered the Constitutional Court judgment totally unenforceable.

50. The Court reiterates that an applicant is deprived of his or her status as a victim if the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate and sufficient redress for, a breach of the Convention (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-193, ECHR 2006-...).

51. As regards the first condition, namely, the acknowledgement of a violation of the Convention, the Court considers that the Constitutional Court's finding amounted to a clear acknowledgment that there had been a breach of Article 1 of Protocol No.1 to the Convention.

52. With regard to the second condition, namely, appropriate and sufficient redress, the Court must ascertain whether the measures taken by the authorities, in the particular circumstances of the instant case, afforded the applicant appropriate redress in such a way as to deprive her of her victim status. The Court notes that the Constitutional Court ordered the release of the property but awarded no compensation for the violation found. However, it reserved the applicant's right to claim the rent due for the relevant period from the ordinary domestic courts.

53. The Court, therefore, observes that after thirty years of proceedings the Constitutional Court, having established that the amount offered by the State had not been proportionate to the impugned measure, failed to determine the amount of rent due. In fact, four years later, these proceedings are still pending (at least before the ordinary jurisdictions if not before the LAB) and the rent payable to the applicant has not yet been established (see paragraphs 28 and 29 above). Moreover, the Constitutional Court failed to grant any compensation for non-pecuniary damage which would generally be required when an individual was deprived of, or suffered an interference with, his or her possessions, contrary to the Convention. Indeed, in the present case the violation persisted for forty years after the Convention came into force in respect of Malta. Thus, the Court considers that, quite apart from the issue of the subsequent taking, in the circumstances of the

present case, the order for the release of the property coupled with the applicant's reserved right to bring further proceedings for compensation, half a century after the taking, did not offer sufficient relief to the applicant, who continues to suffer the consequences of the breach of her rights (see, *mutatis mutandis*, *Dolneanu v. Moldova*, no. 17211/03, § 44, 13 November 2007).

54. In consequence, the Government's objection is dismissed.

2. Other points on admissibility

55. The Court notes that the complaint 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

56. The applicant submitted that, as established by the domestic courts, there had been a violation of Article 1 of Protocol No. 1 to the Convention because she had been made to bear a disproportionate burden having regard to the amount of compensation payable, even though this had not been finally determined by the LAB.

57. In their fresh observations on the merits of the complaint, the Government conceded that there had been a violation of Article 1 of Protocol No. 1 to the Convention as held by the Constitutional Court.

58. The Court reiterates that any interference with property must, in addition to being lawful, also satisfy the requirement of proportionality. As the Court has repeatedly stated, a fair balance 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, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69-74, Series A no. 52 and *Brumărescu v. Romania* [GC], no. 28342/95, § 78, ECHR 1999-VII).

59. Having regard to the finding of the Constitutional Court relating to Article 1 of Protocol No.1 (see paragraph 18 above), the Court considers that it is not necessary to re-examine in detail the merits of the complaint. It follows that, as established by the domestic courts, in the light of the compensation offered to the applicant and the fact that she was deprived of her property for nearly fifty years, she was made to bear a disproportionate burden.

60. There has accordingly been a breach of Article 1 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

61. The applicant also complains that she did not have an effective remedy in respect of the violation of her property rights. She invokes Article 13 of the Convention, which provides as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

62. The Government contested that argument.

A. Admissibility

63. The Court notes that this complaint 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

64. The applicant submitted that the remedy provided by the constitutional proceedings would only have been effective when coupled with a reservation of her right to seek damages if the property had been effectively returned to her and not taken afresh under a new title.

65. The Government submitted that the constitutional redress proceedings were an effective remedy. The annulment of the expropriation was the most radical remedy possible, and opened the way for the applicant to acquire a high compensatory rent for the retention of the property by the Government. Moreover, the Constitutional Court judgment reserved the applicant's right to institute ordinary proceedings to obtain the relevant compensation for the period for which the property had been taken under title of possession and use.

66. The Court reiterates that the remedy required by Article 13 must be "effective" in practice as well as in law (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII). The term "effective" is also considered to mean that the remedy must be adequate and accessible (see*Paulino Tomás v. Portugal* (dec.), no. 58698/00, ECHR 2003-XIII). However, the Court recalls that the effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Sürmeli v. Germany* [GC], no. 75529/01, § 98, ECHR 2006-VII) and the mere fact that an applicant's claim fails is not in itself sufficient to render the remedy ineffective (*Amann v. Switzerland*, [GC], no. 27798/95, §§ 88-89, ECHR 2002-II).

67. Firstly, the Court notes that in its partial decision of 3 November 2009 it considered that the applicant's complaint that the taking of the property for the second time suspended the enforcement of the judgment of 8 January 2007 was indissociably linked to the applicant's claims then and currently pending before the domestic courts and therefore rejected the complaint for non-exhaustion of domestic remedies. In consequence, the fact that the property was taken afresh by the Government cannot have any bearing on the examination under Article 13 of the effectiveness of the constitutional redress proceedings in the present case. Although the applicant's submissions under Article 13 mainly related to this aspect, namely, the non-enforcement of the judgment, the complaint had originally been based on the lack of compensation awarded by the Constitutional Court.

68. The Court notes that a remedy was in principle provided under Maltese law, which enabled the applicant to raise with the national courts her complaint of the violation of her Convention right to peaceful enjoyment of possessions. She pursued constitutional proceedings before the Civil Court (First Hall) in its constitutional jurisdiction and, on appeal, before the Constitutional Court.

69. The Court observes that the Constitutional Court could have made an award of non-pecuniary damage and there was no limit on the amount of compensation which could be granted to an applicant for such a violation. The fact that no such award was made resulted from the exercise by the domestic court judges of their discretion as to what constituted appropriate redress in the circumstances of the applicant's case. Thus, the mere fact that they did not award compensation for non-pecuniary damage, deeming that the release of the property was in itself sufficient, did not render the remedy in itself ineffective. Furthermore, no other evidence has been provided to show that the remedy at issue could be considered ineffective.

70. In the light of the foregoing, the Court finds that it has not been shown that the constitutional remedy was ineffective.

71. Accordingly, there has been no violation of Article 13 of the Convention in the present case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed EUR 926,812.10 and EUR 5,620,797.13, respectively, in respect of pecuniary damage for (i) loss of rent from the date of the Constitutional Court judgment onwards as a consequence of the failure to enforce the judgment; and (ii) loss of rent for the period during which the owners were deprived of the possession of their property, which currently consisted of four floors and a basement, together amounting to approximately 1,800 square metres. From 1958 to 2006 the rent was calculated on the basis of the rental value in an open market together with 8 % interest. She submitted that in the event that the Court considered the latter claim to be premature in view of the fact that proceedings were still pending three years after the constitutional court judgment, she should be permitted to reserve the right to make the claim at a later stage. She further reserved her right to claim compensation for the value of the property which had never been returned to her, a matter which was still before the domestic courts. Lastly, she claimed EUR 100,000 for non-pecuniary damage in respect of the violations of Articles 6 and 13 and Article 1 of Protocol No.1.

74. The Government submitted that the applicant's claim for the value of the property on grounds of non-enforcement and for loss of rent from the date of the

Constitutional Court judgment onwards was subject to pending domestic proceedings and for this reason the complaints in this connection had been declared inadmissible by the Court in its decision of 3 November 2009. As to her claim regarding rent for the period during which the owners were deprived of the possession of their property, the matter was also still pending before the domestic court and therefore the claim was premature. No other compensation for non-pecuniary damage was due, particularly because any delay in assessing compensation was attributable to the applicant.

75. The Court reiterates that it rejected the applicant's complaint of non-enforcement of the judgment of 8 January 2007 for non-exhaustion of domestic remedies in its decision of 3 November 2009. In consequence the claim in respect of pecuniary damage arising from loss of rent from the date of the Constitutional Court judgment onwards and that for compensation for the value of the property which was never returned to her cannot be entertained.

76. As to the amount of rent for the period during which the owners were deprived of the possession and use of their property, a matter which had been reserved by the Constitutional Court and which is currently pending before the domestic courts, the Court considers that, having examined the circumstances of the case, the question of compensation for pecuniary damage in this respect 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).

77. The Court awards the applicant EUR 25,000 in respect of non-pecuniary damage.

B. Costs and expenses

78. The applicant also claimed EUR 3,169.61, attaching a bill of costs, for the costs and expenses incurred before the domestic courts and EUR 6,224.23 for those incurred before the Court.

79. The Government submitted that according to the domestic courts' judgments at various levels of jurisdiction most of the costs were to be borne by the Government; the relevant costs to be paid by the applicant amounted to EUR 1,454.19 only. As to the costs incurred before this Court, the Government argued that they were excessive and should not exceed EUR 3,000.

80. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case the Court did not find a violation of Article 13, but found, however, a violation of Article 6 and Article 1 of Protocol No. 1 to the Convention, the latter having already been established by the domestic courts. The Court, moreover, accepts the Government's argument in relation to the costs in the domestic proceedings. Thus, regard being had to the documents in its possession

and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 to cover the costs under all heads.

C. Default interest

81. 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 remainder of the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 1 of Protocol No.1 to the Convention;

4. *Holds* that there has been no violation of Article 13 of the Convention;

5. *Holds* that, as far as the financial award to the applicant for 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 in part, namely in so far as it relates to the amount of rent for the period during which the owners were deprived of the possession and use of their property, that is until 2007;
   (b) *invites* the Government and the applicant to submit, within three 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 Section the power to fix the same if need be;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,
      i) EUR 25,000 (twenty–five thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage;
      ii) EUR 5,000 (five-thousand euros) in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 5 April 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Nicolas Bratza
Registrar President

ANNEX A

The proceedings before the LAB - Application number 28/76
Commissioner of Lands vs Alfio Testaferrata Bonici Ghaxaq

09.04.1976	Application filed by CoL in the Registry
14.05.1976	Reply filed by the respondent in the Registry
17.05.1976	First Hearing: legal counsel for respondent requested an adjournment awaiting judgment in the case 'Carmela Mercieca vs Commissioner of Lands' pending in front of the Court of Appeal. Adjourned.
11.10.1976	Board ordered adjournment.
08.11.1976	Board ordered adjournment.
10.01.1977	Board ordered adjournment.
15.04.1977	Case in the names 'Mercieca vs Commissioner of Lands' still pending. Adjourned.
03.06.1977	Board ordered adjournment.
20.06.1977	Board ordered adjournment
02.12.1977	Case in the names 'Mercieca vs Commissioner of Lands' still pending. Adjourned.
07.04.1978	Board ordered adjournment.
30.06.1978	Board ordered adjournment.
01.12.1978	Board ordered adjournment.
05.02.1979	Board not appointed. Adjourned.
05.03.1979	Board ordered adjournment.
12.03.1979	Case in the names 'Mercieca vs Commissioner of Lands' still pending. Adjourned.
28.05.1979	Case in the names 'Mercieca vs Commissioner of Lands' still pending. Adjourned.
08.10.1979	Case in the names 'Mercieca vs Commissioner of Lands' still pending. Adjourned.
10.12.1979	Case in the names 'Mercieca vs Commissioner of Lands' still pending. Adjourned.
14.04.1980	Case in the names 'Mercieca vs Commissioner of Lands' still pending. Adjourned.
06.10.1980	Case in the names 'Mercieca vs Commissioner of Lands' still pending. Adjourned.
01.12.1979	Board ordered adjournment.
02.03.1981	Awaiting judgment in the names 'Commissioner of Lands vs Attard'. Adjourned.
13.07.1981	Board ordered adjournment.

11.01.1982	Board ordered adjournment.
16.04.1982	Board ordered adjournment.
04.06.1982	Case adjourned.
04.10.1982	Member of the Board unable to attend. Adjourned.
07.01.1983	Note filed by Dr Goffredo Randon renouncing to defence of Respondent. Awaiting judgment in the names 'Mercieca vs Commissioner of Lands'. Respondent to inform the Board about the legal counsel. Adjourned.
25.02.1983	Chairman of the Board unable to attend. Adjourned.
27.05.1983	Awaiting judgment in the names 'Mercieca vs Commissioner of Lands'. Adjourned.
04.11.1983	Board ordered adjournment.
23.03.1984	Board ordered adjournment.
22.06.1984	Board ordered adjournment.
26.10.1984	Board ordered adjournment.
25.01.1985	Board ordered adjournment.
26.04.1985	Board ordered adjournment.
11.10.1985	Board ordered adjournment.
10.01.1986	Chairman sitting in other Court. Adjourned.
06.06.1986	No chambers available. Adjourned.
10.10.1986	Member of the Board unable to attend sitting. Adjourned.
19.01.1987	Member of the Board did not attend sitting. Adjourned.
06.05.1987	Board ordered adjournment.
08.10.1987	Member of the Board did not attend sitting. Adjourned.
11.02.1988	Member of the Board did not attend sitting. Adjourned.
23.06.1988	Case adjourned for evidence to be produced by respondent. Adjourned.
10.11.1988	Legal counsel to respondent did not attend. Adjourned to the '*legittimazzjoni ta' l-atti'* following death of respondent. Adjourned.
16.03.1989	Board ordered adjournment.
30.03.1989	Board ordered adjournment.
20.04.1989	Member of the Board did not attend sitting. Adjourned.
08.05.1989	Awaiting judgment in the case 'Mercieca vs Commissioner of Lands'. Adjourned.
02.10.1989	Board ordered adjournment.

09.10.1989 Parties did not attend sitting. Adjourned

27.11.1989 Respondent requested an adjournment. Adjourned.

19.02.1990 Respondent did not attend sitting. Adjourned.

07.05.1990 Board not appointed. Adjourned.

09.07.1990 Board not appointed. Adjourned.

12.11.1990 Chairman of Board sitting in another Court. Adjourned.

04.03.1991 Legal Counsel for respondent informed board that constitutional proceedings were going to be instituted. Case adjourned.

06.05.1991 Chairman of Board sitting in another court. Adjourned.

24.06.1991 Chairman of Board sitting in another court. Adjourned.

25.11.1991 Member of the Board did not attend sitting. Adjourned.

17.02.1992 Legal Counsel for respondent requested an adjournment for finalization of '*legittimazzjoni ta' l-atti'*. Adjourned.

18.05.1992 Respondent requested Board adjournment and that submissions in cases 26/76 and 27/76 apply to this case.

12.10.1992 Board ordered adjournment.

07.12.1992 Applicant requested that cases continue to be heard. Respondent requested an adjournment. Adjourned.

08.02.1993 Board not appointed. Adjourned.

12.04.1993 Case adjourned.

26.04.1993 Chairman unable to attend sitting. Adjourned.

28.06.1993 Board ordered adjournment.

02.07.1993 Board ordered adjournment

05.07.1993 Respondent requested an adjournment. Adjourned.

06.12.1993 Legal Counsel for respondent informed board that there is possibility of settlement out of court. Adjourned for possible settlement out of court. Adjourned.

22.02.1994 Adjourned for possible settlement out of court.

08.04.1994 Adjourned for possible settlement out of court.

10.06.1994 Adjourned for '*legittimazzjoni ta' l-atti'*

13.10.1994 Adjourned.

09.02.1995 Adjourned for 'legittimazzjoni ta' l-atti'

06.04.1995 Adjourned for 'legittimazzjoni ta' l-atti'.

13.06.1995 Adjourned for 'legittimazzjoni ta' l-atti'.

09.10.1995 Adjourned for 'legittimazzjoni ta' l-atti'.

05.02.1996 Adjourned.

11.04.1996 Adjourned for 'legittimazzjoni ta' l-atti'.

09.05.1996 Adjourned for the parties to indicate evidence.

27.06.1996 Adjourned for remaining evidence of the parties.

10.10.1996 Case adjourned sine die awaiting judgments in the constitutional applications in the names 'Jensen et vs Commissioner of Land' (application number 543/96 and 'Agnese Gera de Petri Testaferrata Bonici Ghaxaq vs AG et' (application number 537/96)

ANNEX B

Constitutional Redress proceedings
***Agnes Gera de Petri Testaferrata Bonici Ghaxaq vs AG et* – 537/96**

25.03.1996 First Hearing - Adjourned for evidence.

24.04.1996 Board informed that Manoel Theatre Committee filed an application for joinder in the suit, adjourned.

03.06.1996 Court ordered Manoel Theatre Committee to bring evidence relative to distinct judicial personality and evidence of leases with third parties, adjourned.

26.06.1996 Adjourned to for cross examination of witnesses tendering their evidence at this sitting

09.06.1996 Legal Council to the parties could not attend sitting, adjourned.

06.11.1996 Witnesses tendered evidence, adjourned

11.12.1996 Case adjourned for evidence

12.02.1997 Case adjourned for oral submissions

05.03.1997 Case adjourned for oral submissions

24.03.1997 Oral submissions, adjourned for decree

02.07.1997 Court needs more time to decree, adjourned

04.07.1997 Decree by the Court, adjourned for continuation

03.11.1997 Evidence tendered, adjourned for applicant's evidence

10.12.1997 Evidence tendered, adjourned for applicant's evidence

16.02.1998 Evidence tendered, adjourned for applicant to conclude

11.03.1998 Evidence tendered for respondent's evidence

27.03.1998 Respondent authorised to produce evidence by affidavit, adjourned for cross examination and respondent's evidence

29.05.1998 Respondent authorised to file affidavits till 24 June 1998, adjourned for cross examinations and oral submissions

26.06.1998 Case adjourned for judgment, written submissions to be filed by applicant till 14 August 1998 and by respondent till the 30 September 1998

18.01.1999 First Hall delivered its judgment

25.01.1999 Appeal filed

01.02.1999 Case appointed in front of Constitutional Court

03.11.1999 Written submissions filed by Prof Refalo, adjourned

26.01.2000 Court ordered adjournment

05.04.2000 Oral submissions, adjourned for continuation

19.06.2000 Prof Refalo requested an adjournment, adjourned.

09.10.2000 Court ordered adjournment

11.12.2000 Note filed by respondent, adjourned for final oral submissions

31.01.2001 Court ordered adjournment

04.04.2001 Adjourned for applicants to examine reply of respondent and for continuation

18.06.2001 Prof Refalo requested an adjournment, adjourned for continuation

29.10.2001 Court ordered adjournment

18.02.2002 Court ordered adjournment

15.04.2002 Court ordered adjournment

12.06.2002 Prof Refalo requested that fresh evidence be produced, Court requested Prof Refalo to make this request by means of an application, adjourned for final oral submissions

11.11.2002 Prof Refalo informed Court that his client's application was served on the Government days prior to the sitting and that the period fixed for reply was still running, adjourned.

19.02.2003 Adjourned for oral submissions

07.04.2003 Oral submissions on request to produce fresh evidence, adjourned for decree

03.10.2003 Court ordered adjournment

10.10.2003 Court needs more time for decree, adjourned

16.12.2003 Court needs more time for decree, adjourned

27.02.2004 Court needs more time for decree, adjourned

30.06.2004 Court needs more time for decree

29.10.2004 Court needs more time for decree

16.12.2004 Court needs more time for decree

28.01.2005 Court needs more time for decree

25.02.2005 Decree read in open court, adjourned for oral submissions

18.04.2005 Oral submissions, adjourned for further oral submissions

13.06.2005 Further oral submissions, adjourned for judgment

04.11.2005 Court needs more time for judgment, adjourned

12.12.2005 Court needs more time for judgment, adjourned
30.03.2006 Court needs more time for judgment, adjourned

26.05.2006 Court needs more time for judgment, adjourned

07.07.2006 Court needs more time for judgment, adjourned

13.10.2006 Court needs more time for judgment, adjourned

20.11.2006 Court needs more time for judgment, adjourned

27.11.2006 Court needs more time for judgment, adjourned

08.01.2007 Constitutional Court delivered judgment.

GERA DE PETRI TESTAFERRATA BONICI GHAXAQ v. MALTA JUDGMENT (MERITS)