FOURTH SECTION

CASE OF GHIGO v. MALTA

*(Application no. **31122/05**)*

JUDGMENT

STRASBOURG

26 September 2006

FINAL

26/12/2006

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

In the case of Ghigo v. Malta,
The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:
Sir Nicolas Bratza, *President*,
Mr J. Casadevall,
Mr G. Bonello,
Mr M. Pellonpää,
Mr S. Pavlovschi,
Mr L. Garlicki,
Mr J. Šikuta, *judges*,
and Mr T.L. 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. **31122/05**) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Maltese national, Mr Attilio Ghigo, on 23 August 2005.
2. The applicant was represented by Mr I. Refalo and Ms T. Comodini Cachia, two lawyers practising in Valetta (Malta). The Maltese Government ("the Government") were represented by their Agent, Mr S. Camilleri, Attorney General.
3. On 21 October 2005 the President of the Chamber to which the case has been allocated decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.
THE FACTS
I. THE CIRCUMSTANCES OF THE CASE
4. The applicant was born in 1928 and lives in Tarxien (Malta).
A. The background of the case
5. Before 1973 the applicant bought a house in Malta, which he had planned to use as a home for himself and his family. In order to purchase this building, he had incurred debts. Subsequently, in 1973 he acquired by donation full ownership of another house, in Paola. The applicant alleged that he then changed his plans and wanted to sell the former house in order to pay off his debts and to move into the house in Paola with his family.
6. On 31 March 1984 the house in Paola was seized by the Government under a requisition order issued by the Director of Social Housing under the Housing Act (Chapter 125 of the Laws of Malta).
7. On 23 August 1984 the applicant was informed that possession of the house in Paola had been given to a certain Mr G.
8. In September 1984 the applicant introduced a judicial protest against the relevant government department. He alleged that the issuing of the requisition order and the allocation of his property to a third party was causing him hardship. In a judicial letter of 8 November 1984, the Director of Social Housing asked the applicant, in his capacity as owner of the house in Paola, to recognise Mr. G. as the tenant of the premises (section 8 of the Housing Act).
9. According to the Housing Act, the applicant was entitled to receive a requisition rent for the use of his property. However the applicant alleged that no rent had ever been fixed or offered to him and since the date of the requisition he had received no compensation.
B. The proceedings before the Civil Court
10. The applicant subsequently introduced a claim before the Civil Court (First Hall). He alleged that the requisition order and the allocation of his property to a third party was in violation of Article 1 of Protocol No.1, as incorporated into Maltese law by Act XIV of 1987 (European Convention Act). The applicant has not produced the documents pertaining to these proceedings and has not informed the Court about their outcome.
11. On 12 October 1990, while the first proceedings were still pending, the applicant introduced a second claim before the Civil Court (First Hall), alleging a breach of his right to the enjoyment of his property. He requested the Civil Court to issue the orders and directions needed to redress the violation of his fundamental rights, including, if necessary, a declaration that the relevant sections of the Housing Act had been abrogated by the European Convention Act.
12. In a judgment of 30 October 1995, the Civil Court declared the applicant's claim incompatible *ratione temporis* with the provisions of the European Convention Act, as the facts complained of had occurred before its entry into force on 30 April 1987. The requisition had been effected in accordance with the law which was in force at the time, and no violation of the applicant's fundamental rights could be established.
C. The proceedings before the Constitutional Court
13. The applicant appealed to the Constitutional Court.
14. In a judgment of 28 February 2005, the Constitutional Court rejected the applicant's claim.

15. It considered that the situation complained of was a continuing one and the applicant was accordingly affected by it after 30 April 1987. Therefore, the facts of the case fell within the competence of the domestic courts.
16. As to the merits of the applicant's claim, the Constitutional Court noted that the only evidence produced by the applicant was a report of his architect, which stated that the rental value of the house was 120 Maltese Liras (MLT) (approximately 288 euros (EUR)) per year at the time of the requisition, and MLT 250 (approximately EUR 600) per year at the date of the report (28 October 1993). However, when the defendant declared that the rental value as fixed by the Land Valuation Officer was MLT 23 (approximately EUR 55) per year, the applicant did not produce any new evidence in rebuttal. According to the Constitutional Court, this constituted a manifest fault on the applicant's part. Furthermore, he never initiated proceedings before the Rent Regulation Board for the determination of a fair rent for his house.
17. The Constitutional Court also noted that in the implementation of policies of a socio-economic nature the margin of appreciation of the State was very wide. It quoted the case of *Connie Zammit v. Malta* (no. 16756/90, Commission's report of 12 January 1991) and an excerpt from van Dijk's and van Hoof's book "*Theory and Practice of the European Convention*" concerning the interpretation of the notion of "general interest". In the light of the above, the Constitutional Court held that the applicant had proved neither the hardship he alleged nor a violation of Article 1 of Protocol No.1.
II. RELEVANT DOMESTIC LAW
A. The definition of requisition
18. According to section 2 of the Housing Act requisition means:
"to take possession of a building or require the building to be placed at the disposal of the requisitioning authority."
B. The grounds for issuing requisition orders
19. Until 1989 the Housing Secretary could issue a requisition order if he was satisfied that such a step was necessary in the public interest for providing living accommodation to certain persons or for ensuring a fair distribution of living accommodation. As in force at the time of the requisition of the applicant's house, section 3(1) of the Housing Act read as follows:
"The Secretary, if it appears to him to be necessary or expedient to do so in the public interest or for providing living accommodation to persons or for ensuring a fair distribution of living accommodation, may requisition any building, and may give such directions as appear to him to be necessary or expedient in order that the requisition may be put into effect or complied with."
20. After 1989 the authority to issue requisition orders was given to the Director of Social Housing.
C. The recognition of the third person in occupation and compensation for the taking of possession
21. A requisition order imposes on the owner of the requisitioned premises a landlord-tenant relationship. According to section 8(1) of the Housing Act, the Director of Social Housing may require the owner to recognise the person accommodated in his property as his tenant or sub-tenant.
22. The owner of the premises may seek authorisation for non-compliance with this request in accordance with section 8(2) and (3) of the Housing Act, which, in so far as relevant, provides:
"(2) Within thirty days of service on him of a judicial letter under the last preceding sub-section, the requisitionee, by application to the First Hall of the Civil Court in contestation of the Director, may pray for an authorisation of non-compliance with that request ...
(3) The court shall not grant the authorisation of non-compliance mentioned in the last preceding sub-section unless the applicant shows to the satisfaction of the court that serious hardship would be caused to him by complying with that request:
Provided that the assertion that the requisitionee wishes to take possession of the building for his own use or for the use of any member of his family shall not be considered of itself as a hardship for the purposes of this sub-article."
23. According to the Housing Act, the owner of the premises has a right to compensation, which is calculated and payable pursuant to the criteria established in section 11, which, in so far as relevant, reads as follows:
"(1) Subject as hereinafter provided, the compensation payable in respect of the requisition of a building shall be the aggregate of the following sums, that is to say-
(*a*) a sum equal to the rent which might reasonably be expected to be payable by a tenant in occupation of the building during the period for which possession of the building is retained by virtue of the provisions of this Act, under a letting granted immediately before the beginning of that period:
Provided that where the building is used by the Director or by a person accommodated therein after its requisition as a dwelling house within the meaning of the Rent Restriction (Dwelling Houses) Ordinance, the rent shall not exceed the fair rent as defined in article 2 of the aforesaid Ordinance;
(*b*) a sum equal to the cost of making good any damage to the building which may have occurred during the period in which possession thereof under requisition was retained (except in so far as the damage has been made good during that period by the occupant of the requisitioned premises or by a person acting on behalf of the

Director), no account being taken of damage which, under the provisions of this Act, is the responsibility of the requisitionee;
(*c*) a sum equal to the amount of expenses reasonably incurred, otherwise than on behalf of the Director, for the purpose of compliance with any directions given by or on behalf of the Director in connection with the taking of possession of the building ..."
24. 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
25. The applicant complained that due to a requisition order he had lost control of his property for a long period of time and had been obliged to bear the obligations of a landlord *vis-à-vis* a third person, without obtaining any compensation. He invoked Article 1 of Protocol No. 1 which reads as follows:
"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."
26. The Government contested that argument.
A. Admissibility
1. The Government's objection of non-exhaustion of domestic remedies
27. The Government objected that the applicant had not exhausted the domestic remedies available to him. In the first place, he had failed to produce any proof of the facts he was alleging. He had not proved his intention to reside in his house and the expert reports had not taken into consideration the domestic laws controlling rents. Furthermore, the applicant omitted to file an action for judicial review of the requisition order. Finally, he never claimed compensation before the domestic courts.
28. The applicant submitted that all the relevant facts had been proved before the domestic courts and in the domestic proceedings the Government had never raised an objection on this point and had never pleaded that ordinary remedies were available to an applicant in his situation. All the relevant facts had been established on the basis of the official documents produced by the Government, by the applicant's judicial protest and by the report of the court-appointed architect. It was true that the applicant had not produced evidence of the hardship caused to him by the requisition order. However, to require proof of such would be inconsistent with the European Court's case-law.
29. In the applicant's opinion, an application for judicial review would not have provided any redress for the violation of his rights. In compliance with all the relevant domestic rules, the applicant had complained to the

constitutional jurisdictions, which would have dismissed the case had they found that he had other ordinary remedies at his disposal.
30. The Court reiterates that according to Article 35 § 1 of the Convention, it may only deal with an issue after all domestic remedies have been exhausted. The purpose of this rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). Article 35 § 1 is based on the assumption, reflected in Article 13 (with which it has a close affinity), that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (*Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).
31. Thus the complaint submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits. Nevertheless, the obligation to exhaust domestic remedies only requires that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances (*Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004). The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (*Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).
32. The Court would emphasise that the application of the rule of exhaustion must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that Article 35 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that this rule is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (*Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1211, § 69, and *Sammut and Visa Investments v. Malta* (dec.), no. 27023/03, 28 June 2005).
33. In the present case, the applicant instituted constitutional proceedings before the Civil Court alleging a breach of his right to the enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1. He furthermore appealed to the Constitutional Court against the Civil Court's judgment rejecting his claim. The Court considers that in raising his complaint before the domestic constitutional jurisdictions, the applicant has made normal use of the remedies which were accessible to him and which related, in substance, to the facts complained of at the European level (see, *mutatis mutandis*, *Zarb Adami v. Malta* (dec.), no. 17209/02, 24 May 2005 and *Sammut and Visa Investments*, cited above). On that account, the applicants having sought redress for their complaint before the highest judicial authority could not be expected to take separate judicial review proceedings to contest the requisition order, even supposing that such a remedy was still available to them.
34. It follows that the application cannot be rejected for non-exhaustion of domestic remedies and that the Government's objection should be dismissed.
2. Other grounds for declaring the application inadmissible
35. 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
36. The Government considered that the applicant had not been deprived of his possessions; nor had there been a *de facto* expropriation. The requisition order and the rent-control measure were matters of housing and social policy, which constituted a control of use of property in the general interest aimed at ensuring a just distribution and use of housing resources as well as a better use and preservation of old houses in a densely populated and small country where land available for construction was severely limited in relation to demand.
37. As the requisition order could have been withdrawn by the Department of Social Accommodation on the basis of its assessment of prevailing circumstances, the applicant did not necessarily lose all possibilities of selling the premises. The Government further noted that from 1995 the power to requisition premises had ceased. However, the requisitions already in place had to be maintained in the general interest in order to provide accommodation to current occupiers.
38. The Government pointed out that prior to the requisition order the applicant had not resided in the premises. They had been rented out to a third party who did not live in them. The applicant had not produced any proof that he had been in the process of evicting his former tenant. Therefore, it could not be said that he suffered a violation of his right of property by virtue of the substitution of one tenant who did not live in the premises by another occupier who lived in them. Furthermore, the veracity of the applicant's claim that he had wanted to move into his house was open to doubt since, even though he had had full possession of it during the ten years preceding its requisition, he had not shown any such intention.

39. The Government emphasised that "decontrolled" dwelling houses were not subject to requisition. In 1959 owners had been given the right to "decontrol" their property which was either occupied by them, or not ready for habitation, or was in the process of structural alterations for conversion into larger dwelling houses. In 1984 when the requisition in question occurred, requisition of dwelling houses could only be effected in respect of dwellings which were not inhabited or occupied by their owners in 1959.
40. According to the Government, the interference complained of did not impose an excessive individual burden on the applicant. Requisition was a legal means to force the owners of old empty buildings, who would not have been subjected to particular financial hardship if they had rented out their properties, to rent them out.
41. The Government noted that the applicant, who complained that a landlord-tenant relationship had been imposed on him, had never recognised his tenant. However, he had not alleged that he had been forced to carry out or to pay for any maintenance and repairs, and the present good state of the house was most probably attributable to the care of the current occupier. Furthermore, there was no difference between the legal obligations which the applicant had towards his former tenant and those which he had *vis-à-vis* the Director of Social Housing and which he might have towards the current occupier, if recognised by him. The tenancy conditions were those applicable under the rent laws. Similarly, the amount of rent payable was the same as would have been allowable had the old building been rented out voluntarily by the owner before 1995.
42. The Government acknowledged that controlled rents did not reflect the market value of the affected properties. However, these low rents were based on legitimate policy grounds, such as prevention of homelessness and protection of the dignity of individuals who would not have been able to afford reasonably priced accommodation. Moreover, the applicant had not proved that the compensation granted to him was disproportionately low; nor had he ever claimed the rent owing to him. He had also failed to request the Rent Regulation Board to fix a fair rent for the premises at an amount higher than that established by the Land Valuation Officer.
43. The Government submitted that the applicant enjoyed adequate procedural safeguards to ensure that the operation of the system and its impact on his property rights were neither arbitrary nor unforeseeable. It was true that, in order to avoid evasive actions which would have made the Housing Act ineffective, owners were not given notice of requisitions. However, requisition orders were subject to judicial review like all ordinary administrative actions. Indeed, the applicant had his claims heard before the Maltese courts in 1990, notwithstanding that the requisition order had been issued in 1984. Referring to domestic case-law on the matter, the Government finally noted that there were cases where requisitions had been annulled as it was found that they had not been issued in the public interest.
(b) The applicant
44. The applicant submitted that the requisition order had been issued arbitrarily and without prior notice. He had not been able to do anything to influence this decision, which immediately dispossessed him of his property and imposed on him a landlord-tenant relationship. The applicant considered that he was confronted with a *fait accompli* and that he did not have at his disposal adequate procedural safeguards ensuring that the operation of the system was neither arbitrary nor unforeseeable. Even the process of selection of the tenant had been arbitrary.
45. The fact that as from 1995 the law no longer allowed requisition orders did not minimise the severity of the interference complained of. The applicant's property was still under requisition and there was no indication that this situation would change.
46. In the applicant's opinion, the requisition of his house was not proportionate to the aims sought to be achieved. He underlined that he had lost possession of the house shortly after he had inherited it and while he was preparing to move into it with his family. No compensation had ever been paid to him, thus causing him financial hardship. Furthermore, even if the rent had been paid to him, it would have amounted to the rental value which applied ninety-two years ago.
47. The applicant also noted that the current tenant had always been in full employment and that the Government had not shown that the latter was so poor that he would be made homeless if he had to leave the property. Even if nothing in the present case justified the fixing of the rent at a level lower than the market rent, the applicant was entitled to compensation of MTL 23 (approximately EUR 55) per year, which only represented 1.9% of the market rent which could have been obtained in 2005. The applicant alleged that he had no means to seek a change in the rent, which was established by law.
2. The Court's assessment
(a) Applicable rules in Article 1 of Protocol No. 1
48. As the Court has stated on a number of occasions, Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, *inter alia*, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected.

The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among other authorities, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37, *Beyeler v. Italy* [GC], no. 33202/96, § 98, ECHR 2000-I, and *Saliba v. Malta*, no. 4251/02, § 31, 8 November 2005).

49. The Court observes that in the present case, by requisitioning and assigning his property to others, the applicant has been prevented from exercising his right of use of the property as the house has been occupied by tenants. Also, his right to receive a market rent and to terminate leases has been substantially affected. However, the applicant has never lost his right to sell his property, nor have the authorities applied any measures resulting in the transfer of his ownership of the property.

50. In the Court's view, the measures taken by the authorities were aimed at subjecting the applicant's house to a continuing tenancy and not at taking it from him permanently. Therefore, the interference complained of cannot be considered a formal or even *de facto* expropriation, but constituted a means of State control of the use of property. It follows that the case should be examined under the second paragraph of Article 1 of Protocol No. 1 (see *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 160-161, 19 June 2006).

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

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

52. In the present case, it is not disputed by the parties that the requisition of the applicant's house had been carried out in accordance with the provisions of the Housing Act. The latter defines the notion of "requisition" (see paragraph 18 above) and indicates the grounds for issuing requisition orders (paragraph 19 above). Furthermore, the legal and financial consequences of the requisition, notably the imposition of a landlord-tenant relationship and the criteria for calculating the compensation due to the owner of the premises, are stated in the Housing Act (see paragraphs 21-24 above). There is nothing to show that these provisions are unclear and/or not foreseeable.

53. 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" had been 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"

54. 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).

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

56. The notion of "public" or "general" interest is necessarily extensive. In particular, spheres such as housing of the population, which modern societies consider a prime social need and which plays a central role in the welfare and economic policies of Contracting States, may often call for some form of regulation by the State. In that sphere decisions as to whether, and if so when, it may fully be left to the play of free market forces or whether it should be subject to State control, as well as the choice of measures for securing the housing needs of the community and of the timing for their implementation, necessarily involve consideration of complex social, economic and political issues (*Hutten-Czapska*, cited above, §§ 165-166).

57. 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).

58. In the present case, the Court can accept the Government's argument that the requisition and the rent control were aimed at ensuring the just distribution and use of housing resources in a country where land available for construction could not meet the demand. These measures, implemented with a view to securing the social protection of tenants (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, § 178), were also aimed at preventing homelessness, as well as at protecting the dignity of poorly-off tenants (see paragraphs 36 and 42 above).

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

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

60. Not only must an interference with the right of property pursue, on the facts as well as in principle, a "legitimate aim" in the "general interest", but there must also be a reasonable relation of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including measures designed to control the use of the individual's property. That requirement is expressed by the notion of a "fair balance" that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Saliba,* cited above*,* § 37).

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

62. 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).

63. In the present case, the applicant's house was seized without prior notice by the Government through a requisition order on 31 March 1984 (see paragraph 6 above). Approximately five months later, on 23 August 1984, the applicant was informed that his house had been allocated to a certain Mr G. (see paragraph 7 above).

64. The Court notes that a requisition order imposes on the owner of the premises concerned a landlord-tenant relationship (see paragraph 21 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). In particular, the owner may seek authorisation for non-compliance with the Director of Social Housing's request to recognise the tenant only if he is able to show "to the satisfaction of the court that serious hardship would be caused to him by complying with that request". The wish to take possession of the building for the owner's use or for the use of any member of his family cannot amount, in itself, to hardship (see section 8(2) and (3) of the Housing Act – paragraph 22 above). Therefore, it was not open to the applicant to obtain restitution of his property solely on the basis that he needed to move into the house in Paola with his family (see paragraph 5 above).

65. The Court further observes that the applicant claimed that he never received any compensation for the loss of the control over his property (paragraphs 9 and 46 above). In any event, the rental value established by the Land Valuation Officer was MTL 23 (approximately EUR 55) per year (see paragraph 16 above). The Government themselves acknowledged that controlled rents did not reflect the market value of the properties affected (see paragraph 42 above).

66. Even assuming that the applicant was not made to cover the costs of extraordinary maintenance and repairs of the building as required by law, the Court cannot but note that the sum at issue – amounting to less than EUR 5 per month – is extremely low and could hardly be seen as fair compensation for the use of a house. 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), have been met by restricting the owner to a return of less that EUR 5 per month from his property. It is true that the Government reproached the applicant for his failure to institute proceedings before the Rent Regulation Board to fix a fair rent for the premises (see paragraph 42 above). However, it has not been shown by any concrete examples from domestic law and practice that this remedy would have been an effective one. Moreover, it is to be recalled that when the applicant had produced a report from his architect stating that the yearly rental value of the house was MTL 120 (approximately EUR 288) in 1984 and MTL 250 (approximately EUR 600) in 1993, the Constitutional Court concluded that he had failed to produce evidence in rebuttal of the defendant's statement that the rent due was MTL 23 per year (see paragraph 16 above).

67. As the Court has already stated on many occasions, in spheres such as housing of the population, States necessarily enjoy a wide margin of appreciation not only in regard to the existence of the problem of general

concern warranting measures for control of individual property but also to the choice of the measures and their implementation. The State control over levels of rent is one such measure and its application may often cause significant reductions in the amount of rent chargeable (see, in particular, *Mellacher and Others*, cited above, § 45).

68. Moreover, in situations where the operation of the 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).

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

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. The applicant primarily requested that the requisition order be revoked.

73. He also claimed pecuniary damage, amounting to MTL 10,998 (approximately EUR 26,395), a sum representing the losses in rent he had suffered from 1984 to 2005. To this amount should be added the following sums: MTL 1,972.72 (approximately EUR 4,734) for losses suffered due to inflation; interest at a rate of 8 per cent for lack of yearly payments; MTL 1,200 (approximately EUR 2,880) – increased by the cost of living index – for each year after the introduction of the application in Strasbourg; MTL 1,200 (approximately EUR 2,880) – increased by the cost-of-living index plus a further increase of 5 per cent every three years – for each year that passed before the property was re-assigned to him.

74. The applicant further claimed MTL 5,000 (approximately EUR 12,000) in respect of non-pecuniary damage.

75. The Government submitted that the sums claimed were excessive and did not take into consideration the fact that the legislature had a right to control the amount of rents in the general interest. Moreover, even if the premises had never been requisitioned, the applicant would have received a rent established by the Rent Regulation Board, which would have been equal to the rent paid in 1984 by any other tenant. In the Government's view, no interest was due to the applicant since he had failed to claim interest by judicial letter, as required by domestic law.

76. As regards non-pecuniary damage, the Government considered that the applicant's claim should be rejected. They observed that the applicant had not proved any of his assertions and did not enjoy vacant possession of the premises at the time of the requisition.

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

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

B. Costs and expenses

79. The applicant claimed MTL 828.81 (approximately EUR 1,989), as per a taxed bill, for the costs and expenses incurred before the domestic courts and MTL 874.85 (approximately EUR 2,099) for those incurred before this Court.

80. The Government submitted that the costs of the domestic proceedings should not be borne by the State since the applicant had failed to produce any evidence substantiating his claims before the Maltese courts. The costs and expenses sought in the Convention proceedings were excessive.

81. 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 his application in Strasbourg, the applicant presented a constitutional claim alleging a violation of his right of property before the Civil Court. He also appealed against the latter's decision to the Constitutional Court. The Court therefore accepts that the applicant had incurred some expenses in order to put right the breach of his fundamental rights (see, *mutatis mutandis*, *Sannino*, cited above, § 75, 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 applicant (EUR 4,088) covering costs under all heads, plus any tax that may be chargeable on this amount.

C. Default interest

82. 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 applicant for any pecuniary or non-pecuniary damage resulting from the violation found in the present case is concerned, the question of the application of Article 41 is not ready for decision and accordingly,

(a) *reserves* the said question as a whole;

(b) *invites* the Government and the applicant to submit, within six months from the date on which this judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

(c) *reserves* the further procedure and *delegates* to the President of the Section the power to fix the same if need be;

4. *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, EUR 4,088 (four thousand and eighty-eight 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.

T.L. Early Nicolas Bratza
Registrar President

GHIGO v. MALTA JUDGMENT