FOURTH SECTION

CASE OF SALIBA AND OTHERS v. MALTA

(Application no. 20287/10)

JUDGMENT
(*Merits*)

STRASBOURG

22 November 2011

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 Saliba and Others v. Malta,

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

Nicolas Bratza, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić, *judges,*
David Scicluna, ad hoc *judge,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 3 November 2011,

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

PROCEDURE

1. The case originated in an application (no. **20287/10**) 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 18 Maltese nationals, Dr Philip Saliba, Sr Maria Saliba, Ms Josanne Galea, Ms Doreen Vella, Mr Mario Sammut, Ms Janine Vella, Ms Mary Anna "Miriam" Saliba, Ms Carmela Saliba, Ms Jane Chadwich, Ms Mariella Holmes, Ms Cynthia Drury, Ms Magdalene Manley, Ms Isabella Grainger, Mr Pio Saliba, Mr Philip Saliba, Mr Joseph Saliba, Ms Veronica Mifsud, and Ms Bernardette Dimech ("the applicants"), on 5 April 2010.

2. The applicants were represented by Dr Ian Refalo and Dr Sarah Grima, lawyers practising in Valletta. The Maltese Government ("the Government") were represented by their Agent, Dr Peter Grech, Attorney General.

3. The applicants alleged that the two successive takings of their property had amounted to a disproportionate interference with their rights as protected by Article 1 of Protocol No. 1 to the Convention and that the Constitutional Court proceedings had taken an unreasonably long time to be decided, contrary to Article 6 § 1.

4. On 17 December 2010 the President of the Fourth Section decided to give notice of the application to the Government. It was 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 David Scicluna to sit as an *ad hoc* judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1922, 1920, 1962, 1958, 1955, 1953, 1935, 1933, 1958, 1959, 1968, 1964, 1961, 1962, 1966, 1957, 1962 and 1959 respectively. The ninth, tenth, twelfth and thirteenth applicants live in the United Kingdom, the eleventh applicant lives in the United States and all the other applicants live in Malta.

A. Background of the case

7. The applicants or their ancestors (hereinafter "the applicants") were owners of half an undivided share of several properties in Senglea, namely, five apartments on the ground floor and an adjacent entrance giving access to another twenty apartments above. At the time when the property was acquired, for the price of 345 pounds sterling (approximately 400 euros ("EUR")), it was leased and occupied by various third parties.

8. This property was damaged during the Second World War and war-damage compensation was due to the owners under the War Damage Ordinance.

9. By a declaration of 27 February 1951 the Government took possession of this property under title of "possession and use" in accordance with the Land Acquisition (Public Purposes) Ordinance (see relevant domestic law). Under this title the owners were paid a yearly acquisition rent of 88 Maltese liras ("MTL") − approximately EUR 205 for the entire property. This rent was calculated on the rental value declared by the owners to the Land Valuation Office.

10. Subsequently, without requesting prior consent from the owners and without having the plans of the property as it stood, the Government demolished the property and built a new set of apartments on wholly different plans, using part of the property to widen a road. The Government noted that permission for demolition was not necessary since they had legal possession of the property. At the time since the city of Senglea had been totally bombarded and consisted of a pile of rubble, the Government were engaged in an intensive restructuring and construction exercise, taking possession of properties and rebuilding the area with residences for social accommodation. In doing this the applicants alleged that the Government had also appropriated to themselves the war-damage compensation due to them. The Government considered this allegation to be unsubstantiated.

11. On 24 September 1991 the owners wrote to the Commissioner of Lands ("COL") requesting compensation for their property. They suggested the sum of MTL 105,000 – approximately EUR 244,584. Receipt of their request was acknowledged but the claim remained unanswered.

12. By a declaration of 22 June 1993 the Government acquired the said property under the title of "public tenure" according to the Land Acquisition (Public Purposes) Ordinance (see relevant domestic law). Under this title the owners continued to be paid EUR 205 per year for the entire property.

13. In the meantime, this property was allocated as housing to third parties and included a shop.

14. The applicants pointed out that in 1988 the Government had declared that it would no longer be resorting to takings under titles of "possession and use" or "public tenure". During political debate, the Deputy Prime Minister had in fact

referred to such takings as a nefarious method of acquisition. Indeed, in the past twenty years the Government had converted takings under title of "possession and use" or "public tenure" to takings under "outright purchase". The latter provided for a more favourable form of compensation, namely the market value of the property at the time of taking. The applicants submitted a number of examples reflecting this allegation (for example, Legal Notice nos. 271 and 272 of 2010 converting previous takings to outright purchases, and declaration no. 578 of 31 August 1990 substituting a declaration of taking under possession and use of a few months earlier with an outright purchase, following complaints by the owners. In the latter case the property had also been demolished and rebuilt and was being used for social housing).

15. The applicants also submitted an expert report valuing the entire property in Senglea at EUR 950,000. Thus, their share as owners of half an undivided share was worth EUR 475,000.

2. Proceedings before the Civil Court in its constitutional jurisdiction

16. On 13 March 1998 the applicants brought constitutional redress proceedings. Invoking Article 1 of Protocol No. 1 to the Convention and Article 14 they requested that the court find a violation of their rights as a consequence of the actions taken by the COL and to grant adequate compensation. Given the way the application was presented the Government did not plead non-exhaustion in respect of the failure of the applicants to institute proceedings before the LAB.

17. The case was set down for hearing on 25 March 1998. On 25 September 1998 the court-appointed architect was requested to conduct an on-site inspection to determine whether the property built by the Government was indeed built on the applicants' property and what use was being made of the ground floor. The report was submitted on 5 January 1999; however, the court-appointed expert failed to draw up an estimate of the value of the property in issue and the applicants' request for additional terms of reference to be given to the expert was rejected on 16 December 1999 on the basis that the value of the property was irrelevant to the merits of the claim. Subsequently, on 7 September 2001 the case was adjourned pending negotiations regarding the possibility of reaching an amicable solution to the case. This having failed, the proceedings continued on 20 February 2002 at the applicants' request. On 14 November 2002 the applicants requested the court to make written submissions. On 1 March 2005 the applicants requested that the case be suspended pending the determination of another constitutional case that could have affected the merits of their case. The hearing of submissions recommenced on 22 May 2007. The Government filed their written submissions on 12 September 2007 and the case was scheduled for judgment on 9 October 2007.

18. By a judgment of 16 October 2008 the Civil Court (First Hall), acting in its constitutional jurisdiction, rejected their claims. It held that, since the applicants were still owners of the said property, the taking under both titles could not be considered a deprivation of property but a control of the use of such property. This control had been necessary in view of the fact that the property had been ruined in

the war and that there had been a need to provide social housing in the post-war years. For the same reasons, even assuming that the taking under title of public tenure had been a deprivation of possessions, it would have been in the public interest. In respect of the fair balance required, the court observed that, when the State was pursuing economic reform or social justice, less reimbursement was due than the full market value. While it was true that the recognition rent payable to the applicants was not high and there were no prospects for it to be increased in future years, it was comparable to the rents applicable under the controlled rents regime in force in respect of other old properties. Moreover, in the present case the owners had not been required to incur expenses for the building of the new apartments or for their maintenance and when the property had been originally purchased by the owners' ancestors it was already rented to third parties to which such regulated rents applied. In consequence, it could not be said that the applicants had borne an excessive burden. The court found that their related complaint under the same provision in respect of the unauthorised demolition could not be examined *ratione temporis*.

19. Lastly, as to the complaint regarding the difference in treatment as a result of the taking under title of public tenure as opposed to an outright purchase, the court held that the choice was specifically available to the Government. However, according to the policy in force, takings under titles of possession and use were converted to outright purchases in cases where the properties were used for commercial purposes. Other properties, where the Government wished to keep control of the expropriated property, were taken under title of public tenure. While this choice allowed for a large margin of appreciation, the applicants had not proved that other people in an analogous position had been treated more favourably and it did not appear that the policy had been applied arbitrarily or in a discriminatory fashion in the applicants' case.

3. Constitutional Court proceedings

20. On appeal, by a judgment of 6 October 2009 the Constitutional Court upheld the first-instance judgment.

21. Primarily, it noted that the applicants had been acquiescent for a period of forty years before they ever solicited any action from the authorities or the relevant courts. On the merits, it confirmed that the interference did not amount to a deprivation since quite apart from retaining the title of ownership, the applicants had continued to receive rent in respect of the said property and to have standing to institute proceedings in respect of complaints relating to the property. Thus, not all the legal rights of the owners had been extinguished.

22. It further noted that the legality of the interference and the public interest involved were not disputed. Indeed, the law (section 12(3) of the Land Acquisition (Public Purposes) Ordinance, prior to its amendment) allowed the State to carry out works on property taken under possession and use, without any specific limitation. Moreover, the property which had been demolished and rebuilt had been taken in a damaged state, and any complaints about the entitlement to war-damage

compensation remained unsubstantiated and were irrelevant to the main complaint in issue.

23. The decision as to under which title the property could be taken fell within the margin of appreciation of the State. As to the fair balance and the relevant amount of compensation, while it was true that a rent of EUR 205 was by today's standards low for the property in issue, the value of the property had to reflect the values applicable in 1951 and not 2009. It noted that the applicants had not even contested the amount of rent due before the Land Arbitration Board ("LAB") and that their acquiescence had led to a situation where even if they had wanted to do so, they could not prove the boundaries of the property. However, it was also true that the authorities had failed in their duty to draft a report as to the state and the boundaries of the property before they demolished it and created new plans for it. Thus, at this stage it was impossible to determine the actual boundaries of the property and in this state of uncertainty it was not surprising that the applicants had not taken up the procedure before the LAB. In any event, the court was of the view that the complaint was manifestly ill-founded.

24. As to the complaint under Article 14, it noted the witness testimony from the Department of Lands to the effect that takings under absolute purchase had occurred, although they generally related to commercial properties; that there had been cases were the Government had acted differently and acquired property by outright purchase following a taking by title of possession and use; that there was no hard policy regulating what type of taking was required in each case; and that to the witness's knowledge there had been no political or other specific reasons motivating such an action. The court concluded that the fact that it had been established that other property had been taken by absolute purchase was not enough to prove discriminatory treatment and therefore there could not be a violation of the said provision.

25. The Constitutional Court further criticised the delay of ten and a half years which the first-instance court had taken to decide on the case even though a good part of the delay had been attributable to the applicants who, *inter alia*, had taken four and a half years to make submissions.

4. Developments after the Constitutional Court proceedings

26. Following the introduction of the application with the Court (April 2010), on 3 June 2010 the Government issued a declaration that the property was being taken under title of absolute purchase. The property was valued in terms of section 22 of the Ordinance and the compensation offered was that of EUR 168,417.43.

II. RELEVANT DOMESTIC LAW

A. Land Acquisition (Public Purposes) Ordinance

27. Section 5 of the Land Acquisition (Public Purposes) Ordinance ("the Ordinance"), Chapter 88 of the Laws of Malta provides for three methods of acquisition by the Government of private property. It reads as follows:

"The competent authority may acquire any land required for any public purpose, either -

(*a*) by the absolute purchase thereof; or

(*b*) for the possession and use thereof for a stated time, or during such time as the exigencies of the public purpose shall require; or

(*c*) on public tenure:

Provided that after a competent authority has acquired any land for possession and use or on public tenure the conversion into public tenure or into absolute ownership of the terms upon which such land is held shall always be deemed to be an acquisition of land required for a public purpose and to be in the public interest:

Provided also that, subject to the provisions of articles 14, 15 and 16, a competent authority may acquire land partly by one and partly by another or others of the methods in paragraphs (*a*), (*b*) and (*c*):

Provided further that where the land is to be acquired on behalf and for the use of a third party for a purpose connected with or ancillary to the public interest or utility, the acquisition shall, in every case, be by the absolute purchase of the land."

28. Section 13 regarding compensation reads, in so far as relevant, as follows:

" (1) The amount of compensation to be paid for any land required by a competent authority may be determined at any time by agreement between the competent authority and the owner, saving the provisions contained in subarticle (2).

(2) The compensation shall in the case of acquisition of land for temporary possession and use be an acquisition rent and in the case of acquisition of land on public tenure be a recognition rent determined in either case in accordance with the relevant provisions contained in article 27."

29. The Ordinance provides that compensation in respect of absolute purchase is calculated in accordance with the applicable "fair rent", as agreed by the parties following the Government's offer or as established by the LAB. In respect of public tenure, section 27(13) of the Ordinance provides as follows:

"The compensation in respect of the acquisition of any land on 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.

30. In so far as relevant, section 19(1) and (5) reads as follows:

(1) When land has been acquired by a competent authority for use and possession during such time as the exigencies of the public purpose shall require, the owner may, after the lapse of ten years from the date when possession was taken by the competent authority, apply to the Board for an order that the land be purchased or acquired on public tenure or vacated within a period of one year from the date of the order, and the land shall either be vacated or acquired on public tenure or purchased upon compensation to be determined in accordance with the provisions of this Ordinance or of any Ordinance amending or substituted for this Ordinance.

(5) Public tenure shall of its nature endure in perpetuity, without prejudice to any consolidation by mutual consent or otherwise according to law of that tenure with the residual ownership of the land; and the recognition rent payable in respect thereof shall in every case be unalterable, without prejudice to the effects of any consolidation, total or partial. The residual ownership of land held on public tenure with the inherent right to receive recognition rent, shall, for all purposes of law, be deemed to be an immovable right by reason of the object to which it refers and shall be transferable according to law at the option of the owner, from time to time, of that right.

31. Thus, while a taking under title of "possession and use" is intended for a determinate period of time, a taking under title of "public tenure" is for an indeterminate period of time, possibly forever, and the relevant recognition rent is to remain unaltered for its duration.

THE LAW

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

32. The applicants complained that both takings of their property had amounted to a disproportionate interference with their property rights, particularly in the light of the insignificant amount of compensation paid, the meagre public interest involved and the fact that they had lost the compensation due for war damage. They 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."

33. The Government contested that argument.

A. Admissibility

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

34. The Government contended that the applicants had not instituted proceedings before the Land Arbitration Board to contest the amount of rent they were receiving. It followed that they had not exhausted domestic remedies.

35. The applicants submitted that there was no use in bringing proceedings before the LAB, since the latter was bound by the law in calculating compensation, and the law provided for ridiculously low amounts. Moreover, they had instituted constitutional redress proceedings which had not resulted in the rejection of their complaint on the ground of non-exhaustion of ordinary remedies. Indeed, even the constitutional jurisdictions had acknowledged that since no plans existed as to what constituted the applicants' property, such proceedings would have been complicated.

36. The Court reiterates that according to Article 35 § 1 of the Convention, it may only deal with an issue after all domestic remedies have been exhausted. The purpose of this rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). Article 35 § 1 is based on the assumption, reflected in Article 13 (with which it has a close affinity), that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI). Thus the complaint submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits. Nevertheless, the obligation to exhaust domestic remedies only requires that an applicant make

normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004). The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

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

38. In the present case the applicants instituted constitutional proceedings before the Civil Court alleging a breach of their right to the peaceful enjoyment of their possessions. They further appealed to the Constitutional Court against the Civil Court's judgment rejecting their claim. As the applicants had complained of a breach of Article 1 of Protocol No. 1 in its entirety, the domestic courts examined whether all the requirements of this provision had been complied with, notably the existence of a "fair balance" and of a reasonable relationship of proportionality between the means employed, the aim sought to be achieved and the respect of the individual's fundamental rights. Indeed, while noting that proceedings before the LAB had not been instituted the courts did not reject the claim for non-exhaustion of ordinary remedies. Having acknowledged that the rent received by the applicants was very low, they nevertheless concluded that the complaint was ill-founded.

39. The Court considers that, in raising this plea before the domestic constitutional jurisdictions, which did not reject the claim on procedural grounds but examined the substance of it, the applicants made normal use of the remedies which were accessible to them and which related, in substance, to the facts complained of at the European level (see, *mutatis mutandis*, *Fleri Soler and Camilleri v. Malta*, no. 35349/05, §§ 39-40, ECHR 2006-X; and *Amato Gauci v. Malta*, no. 47045/06, § 35, 15 September 2009).

40. It follows that the Government's objection should be dismissed.

2. Other grounds for declaring the complaint inadmissible

41. The Court reiterates that its jurisdiction *ratione temporis* covers only the period after the ratification of the Convention or its Protocols by the respondent State. From the ratification date onwards, all of the State's alleged acts and omissions must conform to the Convention or its Protocols and subsequent facts fall within the Court's jurisdiction even where they are merely extensions of an

already existing situation (see, for example, *Yağcı and Sargın v. Turkey*, 8 June 1995, § 40, Series A no. 319-A, and *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 43, ECHR 2000-I). The Court reiterates that the application of legislation affecting owners' rights over many years constitutes a continuing interference for the purposes of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 210, ECHR 2006-...).

42. The Court notes that the issue raised by the present complaint is the successive takings under different regimes and the amount of rent received by the applicants throughout the relevant periods. It further notes that it has not been contested that such measures constituted an interference with the applicants' right of property. It follows that the Court is competent *ratione temporis* to deal with the complaint particularly in so far as it relates to the period following 23 January 1967, when the Convention and Protocol No. 1 entered into force in respect of Malta.

43. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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 applicant

44. The applicants submitted that the interference constituted a deprivation of possessions as the applicants had been deprived of control over the property. The demolition and rebuilding of the property had not been subject to their approval, and the new construction had been based on totally new plans. Moreover, the property had been held under possession and use for forty-two years, notwithstanding that the law provided that taking under this title was to be temporary. Furthermore, the Government had appropriated the war-damage compensation, which was due to the applicants following payments they had made which rendered them eligible for it.

45. In any event, the applicants contended that the compensation received by them was unreasonable and disproportionate. The acquisition rent was linked to the property's rental value prior to the Second World War, it was fixed in time and did not allow for increases reflecting the cost of living and fluctuations in the market, and could therefore not reflect the real value of the property. When this was transformed into recognition rent, it was subject to an increase of 40%; however, the sum still remained very low as this was again dependent on the initial acquisition rent. Again, this sum was fixed in time notwithstanding that under public tenure the property was taken permanently. Thus, as time went by, the rent they received was significantly more inconsequential compared with prices on the open market, the rent being established decades before and not having any prospect of a future increase. These amounts were to be considered a pittance, particularly

against the fact that the Government were receiving rent from the current tenants, and that part of the property was being used as a commercial business. The applicants further considered that in their claim for compensation they were at a disadvantage since no plans existed to show what their property used to consist of.

46. Lastly, they noted that the fact that the Government had, in 2010, chosen to acquire the property under title of absolute purchase could not suffice to correct the situation which they had endured over numerous years. In particular, they noted that the compensation being offered was once again inappropriate.

(b) The Government

47. The Government submitted that the taking under title of possession and use and/or public tenure constituted a control of the use of the property since the applicants had not been divested of their ownership rights.

48. This taking had been carried out in the public interest. The building had been demolished and rebuilt for the purposes of creating social housing, to provide accommodation for those persons who had been left without as a consequence of the war. Even assuming that a shop had also been built on their property, a matter which the applicants could not prove since they could not submit plans of the delimitations of their property, the shop served the interest of the surrounding community. They claimed that this public interest subsisted to date. They further noted that the applicants had not really contested the aim of the taking before the domestic courts.

49. The Government submitted that the interference had not imposed an excessive individual burden on the applicants. Indeed the applicants had not instituted proceedings before the LAB to obtain an order that the land be acquired by the Government by title of absolute purchase or public domain, or requesting that the premises be vacated; nor did they contest the amount of rent payable. Thus, any burden suffered had been due to their inertia. Once the property had been taken over under title of public tenure, the rent they received had risen by 40%. Moreover, this calculation had been based on the rental values declared by the applicants, and this was the same rent that would have applied had the property been leased to private tenants. The Government noted that, in the present case, the applicants had no obligation to maintain or repair the premises. Moreover, the premises had been rebuilt entirely at the Government's expense. It followed that unlike in the case of *Hutten-Czapska* (cited above), the applicants did not risk making a loss on the rent of the property.

50. The Government further considered that since the State had incurred the expenses of rebuilding the property, the owners could not recover compensation for works which they had never undertaken. Indeed, according to the law (the then Article 11 (2) of the Ordinance), the Government could carry out any such work on the land which any person having an unrestricted interest in the land would be entitled to do by virtue of that interest. The Government submitted that prior approval by the owners was therefore not called for.

2. The Court's assessment

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

51. 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*, 21 February 1986, § 37, Series A no. 98; *Beyeler v. Italy [GC]*, no. 33202/96, § 98, ECHR 2000-I; and *Saliba v. Malta*, no. 4251/02, § 31, 8 November 2005).

52. The Court notes that from 1951 to 1993 the property, which was demolished as early as the 1950s, was taken under title of "possession and use". Under this title, the taking was meant to be temporary. However, the applicants failed to request the termination of the measure or its conversion to an outright purchase, as provided for by law. Thus, the measure under this title persisted for forty years during which time the applicants never lost their right to sell the property and the ownership title was never transferred to third parties; in fact they continued to receive rent from the Government in its respect. Although in the present circumstances the sale was improbable, both because little interest lay in the purchase of property which cannot be used, and because of the fact that the boundaries were not clearly established, the Court cannot accept that the measure complained of amounted to a *de facto* expropriation. However, the applicants' right of property was severely restricted: they could not exercise the right of use in terms of physical possession as the building was occupied by third parties. Thus, this constituted a means of State control of the use of property, which should be examined under the second paragraph of Article 1 of Protocol No. 1.

53. As to the second period, namely after 1993, during which the property was taken under title of public tenure, the restrictions remained the same as above. However, the Court observes that public tenure implies that the property is taken permanently. Consequently, the applicants were not simply restricted in or temporarily deprived of their use and enjoyment of the property (see, conversely, *Erkner and Hofauer v. Austria*, 23 April 1987, § 74, Series A no. 117, and *Sporrong and Lönnroth v. Sweden*, 23 September 1982, Series A no. 52). The Court reiterates that in the absence of a formal expropriation, that is to say a transfer of ownership, the Court must look behind the appearances and investigate the realities of the situation complained of (*ibid*). In the Court's view, the measures taken by the authorities were aimed at subjecting the applicants' property to a continued tenancy in favour of third parties, with a view to eventually taking it from them permanently, as was confirmed by the recent offer (2010) to take the

property by means of outright purchase. Therefore, the Court considers that it is possible that the interference over the second period went beyond State control of the use of property, verging on what could be equated to a *de facto* expropriation.

54. Nevertheless, the Court notes that the applicable principles are similar, namely that, in addition to being lawful, a deprivation of possessions or an interference such as the control of use of property must also satisfy the requirement of proportionality.

55. 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*, cited above, §§ 69-74, and *Brumărescu v. Romania* [GC], no. 28342/95, § 78, ECHR 1999-VII).

56. The Court notes that in *Gera de Petri Testaferrata Bonici Ghaxaq v. Malta* (no. 26771/07, 5 April 2011) which dealt with the same system, the Court, adopting the Constitutional Court's approach, also concentrated its assesment on the proportionality of the measure.

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

57. In the present case, it has not been disputed by the parties that the measures were carried out in accordance with the provisions of the Ordinance. The measures complained of, namely the successive takings, were, therefore, "lawful" within the meaning of Article 1 of Protocol No. 1.

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

58. 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 v. Poland* [GC], no. 31443/96, § 148, ECHR 2004-V).

59. 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.

60. 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 (see *Hutten-Czapska*, cited above, §§ 165-66).

61. 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).

62. In the present case, the Court can accept the Government's argument that the measures were aimed at creating social housing, to provide accommodation for those persons who had been left without, as a consequence of the war. Thus, the measures 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 applicants' right to the peaceful enjoyment of possessions

63. In the present case, the Court firstly notes that while the public interest requirement has been met, it is clear that what might have been justified years ago, will not necessarily be justified today (see *Amato Gauci*, cited above, § 60). Thus, in its balancing exercise the Court will have to determine whether such a measure, to the detriment of owners, is still justified and proportionate sixty years after the war.

64. The Court notes that the applicants' property was taken under title of possession and use in 1951 and subsequently under title of public tenure in 1993. It follows that for more than six decades the applicants have not been able to make any use of their property. Throughout the sixty years the owners (the applicants own half an undivided share) have received a rent of not more than EUR 205 per year for a property which consisted, *inter alia*, of twenty-five apartments. The Court notes a discrepancy in the facts as presented by the parties: while both parties agree that the law provided for a 40% increase for recognition rent *vis-á-vis* what had been the acquisition rent, the applicants stated that the owners had received EUR 205 per year in rent throughout the whole period, without alleging that after 1993 the increase had not been applied to them. It follows that the rent paid from 1951-1993 was presumably even less than EUR 205 per year. However, the Court will make its assessment on the premise that the owners always received EUR 205 in rent, as confirmed by the applicants.

65. Thus, the Court observes that the owners effectively received the strikingly low sum of EUR 0.68 per month for each of the twenty-five apartments. Indeed, the constitutional jurisdictions themselves asserted that the rent "was by today's standards low for the property in issue". The Court notes that the law did not provide for any increase according to the cost of living and other factors but, as confirmed by the Constitutional Court, it had to be tied to the rental values of 1951. This factor has to be seen against the background of the State's economic situation today which surely cannot be compared to that of a post-war nation. In this light,

the Court cannot but find that this system could lead to unreasonable results. In the present case, the fact that the property was rebuilt by the Government is not sufficient to establish that the original property was worthless. Indeed, when it was originally taken, the applicants, who had previously paid contributions towards this fund, were due war-damage compensation which, at the time, would have enabled or at least helped in the reconstruction of the damaged premises, had it remained in their possession. The Court considers that the amount of rent received by the owners is manifestly disproportionate to the market value of the building (as submitted by the applicants in their just satisfaction claims). The fact that, as argued by the Government, the rent received was in line with the rent laws applicable on the island, does not favour the Government's case. Indeed, the Court has on various occasions held that various legislation regarding controlled rents in Malta was in breach of Article 1 of Protocol No. 1 (see *Ghigo v. Malta*, no. 31122/05, §§ 69-70, 26 September 2006; *Edwards v. Malta*, no. 17647/04, §§ 78-79, 24 October 2006; *Fleri Soler and Camilleri v. Malta*, no. 35349/05, §§ 79-80, ECHR 2006-X; and *Amato Gauci*, cited above, § 62).

66. Even though, as argued by the Government, in the present case the applicants were not made to cover the costs of extraordinary maintenance or repairs to the building, the Court cannot but note that the sum at issue – amounting to less than EUR 18 per month for the entire property – is extremely low and can hardly be seen as fair compensation for the use of such property. The Court is not convinced that the interests of the owners, "including their entitlement to derive profits from their property" (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, § 239), have been met.

67. In the present case, having regard to the applicants' state of uncertainty as to whether they would ever recover their property, which has been subject to successive regimes (possession and use and subsequently public tenure) for sixty years, the meagre amount of acquisition/recognition rent received by the applicants throughout this period, but particularly over the most recent decades, the rise in the standard of living in Malta over these decades and the diminished need to secure social housing compared to the post-war era, the Court finds that a disproportionate and excessive burden was imposed on the applicants. The latter were required to bear most of the social and financial costs of supplying housing accommodation to third parties (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, § 225, and *Amato Gauci*, cited above, § 63; see also *Gera de Petri Testaferrata Bonici Ghaxaq*, cited above, § 59). 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 applicants' right of property.

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

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

69. The applicants further complained of the fact that the Constitutional Court proceedings took an unreasonably long time to be decided. They relied on Article 6 of the Convention, which, in so far as relevant, 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 ..."

70. The Government contested that argument.

A. Admissibility

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

71. The Government contended that the complaint made under Article 6 that the constitutional jurisdictions had taken an unreasonably long time to decide the case had never been brought before the domestic courts as the applicants had failed to institute a new set of constitutional proceedings in this respect. Arguing that such a remedy would be effective, the Government made reference to domestic case-law, namely *Lawrence Cuschieri v. the Honourable Prime Minister* (6 April 1995), *Perit Joseph Mallia v. the Honourable Prime Minister* (15 March 1996), and *The Honourable Judge Dr Anton Depasquale v. the Attorney General* (19 September 2001), where the constitutional jurisdictions had taken cognisance of complaints against the Constitutional Court in relation to the fairness of proceedings under Article 6 of the Convention. In the first of these cases, the Constitutional Court held that it could not*a priori* exclude review of questionable behaviour or actions of the constitutional jurisdictions. In the *Perit Joseph Mallia* case, both the first-instance court exercising its constitutional jurisdiction and the Constitutional Court on appeal had upheld the applicant's claims and had found a violation of Article 6.

72. The applicants submitted that instituting a new set of constitutional redress proceedings with the risk of them taking once again an unduly long time, together with the extra expenses involved, would have been a further prejudice on top of the violations they had suffered at the hands of the State.

73. As mentioned above in paragraph 36, in accordance with Article 35 § 1 of the Convention, the Court 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],* cited above, § 74). 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 (see *Zarb Adami v. Malta* (dec.), no. 17209/02, 24 May 2005). However, the rule of exhaustion of domestic remedies requires an applicant to have normal recourse to remedies within the national legal system which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. There is no obligation to have recourse to remedies which are inadequate or ineffective (see *Micallef v. Malta [GC],* no. 17056/06, § 55, ECHR 2009-...). The speed of the procedure of the remedial action may also be relevant to whether it is practically

effective for the purposes of Article 35 § 1 (see, mutatis mutandis, *McFarlane v. Ireland [GC]*, no. 31333/06, § 123, ECHR 2010-...).

74. The Court observes that in *Ferré Gisbert v. Spain* (no. 39590/05, § 39, 13 October 2009), it held that the sole remedy available against a Constitutional Court judgment is an individual petition before the Court under Article 34 of the Convention. In this case the Spanish legal system did not allow, either in practice or in law, the institution of a new set of constitutional proceedings against the proceedings and a final judgment of the Constitutional Court. Such a limitation is common amongst member States adopting constitutional court remedies for alleged human rights breaches (for example, Cyprus, Czech Republic, Germany and Poland). However, in the Maltese legal system the applicants could have − both in law and in practice − lodged a fresh set of constitutional proceedings complaining of the first set of constitutional proceedings. As established by the Government, such cases would not *a priori* be declared inadmissible.

75. In such a circumstance the Court is called on to examine whether the constitutional remedy against a Constitutional Court judgment could be considered accessible and effective, in the present case.

76. The Court considers that, as evidenced by a plurality of cases brought before the Maltese Constitutional Court, there is no reason to doubt that Constitutional Court proceedings are accessible and that they are a remedy capable of providing redress for human rights violations by means of binding judgments.

77. However, what is of concern to the Court is the length of another set of constitutional proceedings at a stage where an applicant's initial complaint would have been conclusively decided possibly after several years of litigation before various levels of the domestic courts, including the constitutional jurisdictions. The Court notes that lodging a constitutional application involves a referral to the First Hall of the Civil Court and the possibility of an appeal to the Constitutional Court. The Court has already held that this is a cumbersome procedure, especially since practice shows that appeals to the Constitutional Court are lodged as a matter of course (see *Sabeur Ben Ali v. Malta*, no. 35892/97, § 40, 29 June 2000 and *Kadem v. Malta*, no. 55263/00, § 53, 9 January 2003, where the Court held that the relevant proceedings are invariably longer than what would qualify as "speedy" for Article 5 § 4 purposes). The length of these proceedings is furthermore aggravated by the fact that they may be adjourned *sine die* pending any proceedings concerning the substantive complaints before this Court. In consequence, the Court considers that, even though the domestic legal system allows for such a new complaint to be lodged, the length of the proceedings detracts from their effectiveness (see *McFarlane v. Ireland* [GC], cited above, § 123). It notes that in the present case the applicants had been involved in proceedings which lasted for eleven years before the constitutional jurisdictions.

78. It follows that, even though in the Maltese legal system domestic law provides for a remedy against a final judgment of the Constitutional Court, in view of the specific situation of the Constitutional Court in the domestic legal order (see *Ferré Gisbert*, cited above, § 39) the Court considers that in circumstances such as those of the present case it is not a remedy which is required to be exhausted.

79. The Government's objection that domestic remedies have not been exhausted is therefore rejected.

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

B. Merits

81. The applicants submitted that the Government were to blame for a number of adjournments, and a number of adjournments had been made by the court for no apparent reason. They noted that the Constitutional Court itself had reprimanded the Civil Court (First Hall) for the length of the first-instance proceedings, noting that under no circumstances should a case before the Constitutional Court take so long to be decided.

82. The Government submitted that the applicants' behaviour had contributed to the delay before the constitutional jurisdictions, and not that of the Government or the courts. Indeed the applicants had requested various adjournments, they had not always appeared before the court and it had taken the applicants four years to file submissions. Moreover, it had been the applicants who had requested that the proceedings be stayed pending the outcome of another case, which according to the Government was irrelevant to the facts of the case. It followed that there had not been a violation of the reasonable time principle.

83. 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 *Bezzina Wettinger and Others v. Malta*, no. 15091/06, § 87, 8 April 2008).

84. The Court observes that, as stated by the Constitutional Court, the applicants' case, which dealt with their property rights and can therefore be regarded as of importance to the applicants, was not particularly complex.

85. The Court notes that the proceedings started on 13 March 1998, the first-instance judgment was delivered on 16 October 2008 and the proceedings were concluded on appeal on 6 October 2009. The constitutional proceedings thus lasted eleven years and seven months at two levels of jurisdiction. It is, however, clear that the crux of the delay was the period of ten and a half years before the first-instance court.

86. The Court notes (see appendix) that there were at least forty adjournments at first instance, of which fifteen were requested by the applicants or due to their absence, particularly over a period of two years when they requested extensions in order to file their submissions. However, it took the court five adjournments in order to deliver judgment, some adjournments were not explained and six adjournments were given over a span of more than a year and a half, pending the outcome of another case. In reply to the Government's argument as to whether any other case may have been pertinent or not to the applicants' case, the Court considers that once the court granted the adjournments for this purpose, it is presupposed that it found them to be relevant. Moreover, in this respect the Court

notes that the courts remain responsible for the conduct of the proceedings before them 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*, *Gera de Petri Testaferrata Bonici Ghaxaq*, cited above, § 43).

87. Having examined all the material submitted to it, and having regard to its case-law on the subject, the Court considers that although a certain delay was indeed attributable to the applicants, bearing in mind the domestic courts' responsibility in the conduct of proceedings, the overall length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

88. There has accordingly been a violation of Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

89. The applicants complained that the taking under title of "public tenure" as opposed to "outright purchase", as was customary, amounted to discrimination contrary to Article 14, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

90. The applicants submitted that their property had not been taken under title of outright purchase as should have been done years back, in line with the practice which applied to similar situations. Even if this had been due to an overburdened system or administrative lethargy (as transpired during domestic proceedings), they considered that the wait had constituted discriminatory treatment.

91. The Government submitted that during the domestic proceedings the applicants had not proved that there had been any analogous property taken over by outright purchase. Moreover, they had not specified on which ground they had allegedly been discriminated. In any case, given the circumstances of the case and the need to provide social housing in a post war era any difference in treatment would have been objectively justified.

92. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

93. Having regard to the finding relating to Article 1 of Protocol No. 1. (see paragraph 67 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 14 (see, for example, *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 103, ECHR 2000-XII; and *Draon v. France* [GC], no. 1513/03, § 91, 6 October 2005).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. 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

95. The applicants claimed EUR 712,500 in respect of pecuniary damage: EUR 475,000 for their half of the value of the property (estimated at EUR 950,000 according to an architect's report) and EUR 237,500 in rent over the years calculated at 50% of their share of the value of the property. They further claimed EUR 100,000 in non-pecuniary damage.

96. The Government submitted that the applicants were not due a lump sum amounting to the value of the property, such a lump sum, would be due only now that a taking under outright purchase was in progress. As to the rent, the Government noted that the buildings existing today were built and were being maintained by the Government. Moreover, they were totally different from the buildings which existed before the war. Thus, the applicants' claims were unfounded. Indeed according to an application by one of the co-owners who is not an applicant in the present proceedings, it transpired that the value of a half undivided share in 1983 was EUR 1,300. Thus, according to the Government the increase of value given to the premises by the applicants' architect was baffling. Moreover, the Government considered that the premises had had no commercial potential and that the owners would in any event have been bound by controlled rent laws. They, therefore, considered that no pecuniary damage was due.

97. As to non-pecuniary damage the Government also considered that none was due, and that in any event any award by the Court should not exceed EUR 5,000 to be shared among all eighteen applicants.

98. The Court notes that it has found a violation of Article 1 of Protocol No. 1 in so far as the applicants have not been receiving an adequate amount of rent in respect of their property which was taken by the Government under various titles. The Court therefore rejects the applicants' claim for a lump sum representing the value of the property. The Court should, however, proceed to determine the compensation to which the applicants are entitled in respect of the loss of the enjoyment of their property which they have suffered since 1967, when the Convention and the relevant protocol entered into force in respect of Malta, to the date of the Court's judgment in this respect, since the Court has not been informed that this regime has come to an end following the Government's intention to take over the property by outright purchase. Such compensation should consist in a sum representing an adequate amount of rent which the applicants should have received over the years. The Court is of the view that the applicants' submissions in respect of the rent are entirely speculative and do not give any details as to actual and realistic rental values. Therefore, they cannot reasonably be considered to reflect an acceptable valuation of the rental value on the market over the years. However, the Government have not submitted any proper estimates or concrete calculations as to rental values over the years.

99. Bearing in mind the above, the Court considers that the question of compensation for pecuniary damage in so far as it relates to the adequate amount of rent is not ready for decision. That question must accordingly be reserved and the subsequent procedure fixed, having due regard to any agreement which might be reached between the respondent State and the applicants (Rule 75 § 1 of the Rules of Court).

100. Bearing in mind the violations found in the present case the Court awards the applicants, EUR 3,000 each in respect of non-pecuniary damage.

B. Costs and expenses

101. The applicants also claimed EUR 2,785.82 as set out in the taxed bill of costs plus interest at 8 % and EUR 615 in legal fees (appeal application) for the costs and expenses incurred before the domestic courts and EUR 2,102.68 for those incurred before the Court.

102. The Government submitted that the amount claimed for proceedings before this Court was excessive, and considered that EUR 1,500 would suffice. As to the amount of costs and expenses incurred before the domestic courts, the Government noted that no evidence had been submitted proving that the costs due to the Government had been paid. Moreover, no interest was due on judicial costs, particularly those that had not yet been paid. They further noted that the legal fees for the appeal application constituted double billing as they had already been included in the taxed bill of costs.

103. 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. The Court firstly notes that even assuming the Government's expenses have not yet been paid, these expenses remain due. It however upholds the Government's argument in respect of the fees incurred in connection with the appeal application. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,800 covering costs under all heads.

C. Default interest

104. The Court considers it appropriate that the default interest rate 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 to the Convention;

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

4. *Holds* that there is no need to examine the complaint under Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1;

5. *Holds* that, as far as the financial award to the applicants for pecuniary damage resulting from the violations 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 payable for the relevant period;

(b) *invites* the Government and the applicants 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 applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 3,000 (three thousand euros), each, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 4,800 (four thousand eight hundred euros), jointly, plus any tax that may be chargeable to the applicants, 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 amount 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Nicolas Bratza Deputy Registrar President

APPENDIX

Dr Philip Saliba pro et noe v. Commissioner of Land et – Constitutional Application no. 640/1998 – Civil Court (First Hall)

Date of Adjournment	**Purpose**
25.03.1998	First hearing. The defendants asked the court for more time to consider the legal and factual situation as raised in the applicant's application. The case was adjourned to 30 April 1998.
30.04.1998	The parties requested that the case be adjourned. The case was adjourned to 24 July 1998.
24.07.1998	The court adjourned the case to 16 September 1998.
16.09.1998	The court noted that there was no possibility of amicable settlement in the case. The case was adjourned to 25 September 1998 for the applicants to produce their evidence. Architect Albert Fenech was nominated by the court to assist it.
25.09.1998	Oral testimony was given by Dr Philip Saliba and Mr Joseph Sciriha. The court appointed Architect Fenech to carry out an on-site inspection of the property. The court adjourned the case to 9 November 1998.
09.11.1998	The court-appointed architect informed the court that he had encountered some problems. The case was adjourned to 8 January 1999 for filing of the architect's report.
08.01.1999	The architect confirmed his report on oath. The case was adjourned to 18 March 1999 for examination of the report.
18.03.1999	The parties' legal advisers did not attend the hearing. The case was adjourned to 9 April 1999.
09.04.1999	The applicants' legal adviser asked the court to extend the nomination of the architect in order to establish the value of the property. The case was adjourned to 26 April 1999.
26.04.1999	The case was adjourned to 27 April 1999.
27.04.1999	The applicants did not file the request mentioned in the court record of 9 April 1999. The court observed that the applicants applied on 26 April 1999 for leave to file the request as an appendix to the application. The court acceded to the applicants' request. The court adjourned the case to 25 June 1999.
17.06.1999	The applicants and their legal adviser did not attend the sitting. The case was adjourned to 8 October 1999.
08.10.1999	The case was adjourned to 16 November 1999.
16.11.1999	The case was adjourned to 3 December 1999 for the court to give a Decree following the request made by the applicants for a valuation of the property.
03.12.1999	The court gave its Decree. The applicants' legal adviser did not attend the hearing. The case was adjourned to 21 January 2000.
21.01.2000	The applicants' legal adviser informed the court that he intended to produce *viva voce* witnesses. The case was adjourned to 5 May 2000 for all evidence of the parties.
05.05.2000	Mr Joseph Sciriha gave evidence. The applicants' legal adviser requested a long adjournment. The case was adjourned to 17 November 2000 for oral submissions.
17.11.2000	The applicants' legal adviser requested an adjournment. The case was adjourned to 19 January 2001.
19.01.2001	The parties and their legal advisers did not attend the sitting. The case was adjourned to 20 March 2001.
20.03.2001	The case was adjourned to 28 May 2001.
28.05.2001	The applicants' legal adviser requested a long adjournment. The case was adjourned to 7 September 2001 for oral submissions.
07.09.2001	The parties requested a long adjournment. The court adjourned the case *sine die*.
20.02.2002	Application filed by the applicants requesting the court to resume the case.
25.02.2002	Court issued a Decree whereby the case was reappointed for 22 April 2002.

22.04.2002	The applicants' legal adviser informed the court that one of the applicants had died *pendente lite*. The case was adjourned to 30 September 2002.
30.09.2002	The case was adjourned to 22 November 2002.
14.11.2002	The court was informed that the Legal adviser for the applicants was unable to attend the sitting and that he requested the Court to be allowed to make oral submissions. The case was adjourned for oral submissions to 14 January 2003.
14.01.2003	The case was adjourned to 15 April 2003.
15.04.2003	The applicants' legal adviser asked the court for permission to file written submissions. The court gave the applicants until 31 July 2003 to file their written submissions and the defendants were given until 30 September 2003 to file their reply. The case was adjourned to 14 October 2003 for final submissions.
14.10.2003	The applicants' legal adviser requested an extension of the deadline for filing written submissions. The case was adjourned to 13 January 2004.
13.01.2004	The applicants' legal adviser again requested an extension of the deadline for filing written submissions. The case was adjourned to the 17th February 2004.
17.02.2004	The applicants' legal adviser once again requested an extension of the deadline for filing written submissions. The case was adjourned to 17 March 2004.
17.03.2004	The applicants and their legal adviser did not attend the sitting. The case was adjourned to 8 June 2004.
08.06.2004	The applicants' legal adviser requested an extension of the deadline for filing written submissions. The case was adjourned to 27 October 2004.
27.10.2004	The applicants' legal adviser again requested an extension of the deadline for filing written submissions. The case was adjourned to 1 March 2005.
01.03.2005	The applicants' legal adviser requested that the proceedings be stayed until the outcome of the case of *Gera de Petri v. AG et* (application number 537/96) pending before the Constitutional Court. The case was adjourned to 26 May 2005.
26.05.2005	The parties and their legal advisers did not attend the hearing. The court noted that the constitutional application no. 537/96 was still pending and adjourned the case to 1 November 2005.
01.11.2005	The parties and their legal advisers did not attend the hearing. The court noted that the constitutional application no. 537/96 was still pending and adjourned the case to 17 January 2006.
17.01.2006	The parties and their legal advisers did not attend the hearing. The court noted that the constitutional application no. 537/96 was still pending and adjourned the case to 6 April 2006.
06.04.2006	The parties and their legal advisers did not attend the hearing. The court noted that the constitutional application no. 537/96 was still pending and adjourned the case to 28 June 2006.
28.06.2006	The parties and their legal advisers did not attend the hearing. The court noted that the constitutional application no. 537/96 was still pending and adjourned the case to 2 November 2006.
02.11.2006	The parties and their legal advisers did not attend the hearing. The court noted that the constitutional application no. 537/96 was still pending and adjourned the case to 18 January 2007.
18.01.2007	The applicants and their legal adviser did not attend the hearing. The court gave the applicants until 20 March 2007 to file their written submissions and the defendants until 26 April 2007 to file their reply. The case was adjourned to 2 May 2007.
02.05.2007	The applicants requested an extension of the deadline for filing their written submissions. The case was adjourned to 12 July 2007.
22.05.2007	The applicants filed their written submissions.

12.07.2007	The Court gave the defendants until 12 September 2007 to file their replies to the submissions filed by the applicants. The case was adjourned to 9 October 2007.
09.10.2007	Oral submissions were heard. The case was adjourned to 10 January 2008 for judgment.
10.01.2008	Case adjourned to 12 February 2008 for judgment.
12.02.2008	Case adjourned to 26 February 2008 for judgment.
26.02.2008	Case adjourned to 9 October 2008 for judgment.
09.10.2008	Case adjourned to 16 October 2008 for judgment.
16.10.2008	Judgement was delivered.