

FOURTH SECTION

CASE OF FLERI SOLER AND CAMILLERI v. MALTA

(Application no. 35349/05)

JUDGMENT
(Just satisfaction)

STRASBOURG

17 July 2008

FINAL

17/10/2008

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 Fleri Soler and Camilleri v. Malta,

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

Nicolas Bratza, *President*

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä, *judges,*

and Lawrence Early, *Section Registrar,*

Having deliberated in private on 26 June 2008,

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

PROCEDURE

1. The case originated in an application (no. **35349/05**) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Maltese nationals, Mrs Anna Fleri Soler and Mr Herbert Camilleri (“the applicants”), on 10 September 2005.

2. In a judgment delivered on 26 September 2006 (“the principal judgment”), the Court held that there had been a violation of Article 1 of Protocol No. 1 as regards a requisition order which had been imposed on the applicants for almost sixty-five years and which created a landlord-tenant relationship under which they received only a small amount of rent and a minimal profit, so that they had to bear a disproportionate and excessive burden (see *Fleri Soler and Camilleri v. Malta*, no. **35349/05**, § 78, ECHR 2006-).

3. Under Article 41 of the Convention the applicant claimed just satisfaction of MTL 36,378 (approximately EUR 87,307).

4. Since the question of the application of Article 41 of the Convention was not ready for decision as regards pecuniary damage, the Court reserved it and invited the Government and the applicant to submit, within six months from the date on which the judgment became final, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 84, and point 3 of the operative provisions).

5. The applicant and the Government each filed observations on 8 June 2007 and 26 June 2007 respectively.

THE LAW

6. 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. Pecuniary damage

1. *The parties’ submissions*

7. The applicants submitted that they should recover the rent in respect of the premises from 1995 onwards based on an annual rental value.

8. After the delivery of the principal judgment the applicants requested an architect's valuation, which they submitted to the Court. According to this valuation, dated 30 October 2006 and carried out in accordance with the measurement rules and the definition of market value set out in the 'Chamber of Architects Valuation Standards 2004', the annual rental value of the premises at issue, with vacant possession but continuing its existing use, is in the region of 20,800 Maltese liras (MTL – approximately 48,294 euros (EUR)). Once vacant possession of the premises was returned to the applicants, the property was sold at a price of EUR 1,770,323.78, as evidenced by the deed of transfer. The applicants, having taken into consideration inflation and the annual rent that was paid by the Government during this period, submitted that the round figure of MTL 20,000 (approximately EUR 46,645) per annum between 1995 and 2007 (totalling MTL 240,000 - approximately EUR 559,743), would be equitable.

9. The Government submitted a proposal which in their view provided a fair and just basis of the computation for compensation, due account being taken of the relevant social and economic aspects of the matter at issue.

10. The Government submitted that the market value in Malta could not form the basis of the computation for compensation. Social and economic factors related to the social function of the property necessarily had to be taken into account. Moreover, property markets were also influenced by factors such as the sale of property to foreigners and the phenomenon of purchase of property purely for investment or speculation purposes, which did not attach importance to the social functions of the property.

11. The Government proposed reconsideration of the rent according to the index of inflation ("I.I") over the years and a subsequent increase every fifteen years in accordance with the I.I., without applying any cap to the increase in rent, such as that applicable to dwelling houses, in view of the fact that the premises were used as Government offices and not for the purposes of social housing.

12. The index of inflation started to be calculated in Malta in 1946. The Convention came into force in respect of Malta on 23 January 1967. The rent payable for the premises at the time amounted according to law (the Housing Act and the Reletting of Urban Property Ordinance) to MTL 89 (approximately EUR 207). The rate of inflation between 1946 and 1967 (during which period the I.I rose by 75.65 points) would translate into an increase in rent amounting to MTL 156.33 (approximately EUR 364) annually. A revision of that rent according to the I.I in 1982, fifteen years later (during which period the I.I rose by 232.51 points) would increase the rent to MTL 519.81 (approximately EUR 1,212). The increase to cover the subsequent fifteen years 1982-1997 (during which period the I.I rose by 136.12 points) would increase the rent to MTL 1,227.38 (approximately, EUR 2,860). The increase for the next fifteen years would be available only in 2012.

13. The amount of rent already paid by the Government to the applicants between 1967 and 1987 (MTL 89 per year) and between 1988 and 2007 (MTL 340.53 per year) should be deducted from the above sum.

14. Thus, according to the Government the balance to be paid to the applicant was MTL 13,825.30 (approximately EUR 32,204).

2. *The Court's assessment*

15. The Court recalls that in its principal judgment it held that there had been a violation of Article 1 of Protocol No. 1 with regard to the requisition order imposed on the applicants for almost sixty-five years, which created a landlord-tenant relationship under which they received only a small amount of rent and a minimal profit, so that they had to bear a disproportionate and excessive burden (see *Fleri Soler and Camilleri v. Malta*, cited above, § 78).

16. The applicants did not seek compensation for the period between 1967 (date when the

Convention came into force in respect of Malta) and 1994. Hence, the Court will proceed to determine solely the compensation to which the applicants are entitled in respect of the loss of control, use and enjoyment of the property which they suffered from 1995 to 2007, when the Government released the property at issue.

17. The Court observes that there is a considerable discrepancy between the applicants' claims and the amount offered by the Government. According to the Court's own calculation based on the Government's reasoning, the balance, and therefore, the sum offered by the Government for pecuniary damage is incorrect. The Court is of the view that the applicants' submissions can be reasonably considered to reflect an acceptable valuation of the rental value on the market over the years. The Government's proposal, on the other hand, reflects a purely token sum which does not seem to take account of the factual reality, namely the size of the building and its prime location.

18. The Court is of the view that the applicants should be awarded just satisfaction based on a reasonable amount of rent which would have provided them with more than a minimal profit (see paragraph 15 above). In assessing the pecuniary damage sustained by the applicants, the Court, as far as appropriate, considered the estimates provided and had regard to the information available to it on rental values on the Maltese property market over the years. It further considered the legitimate purpose of the restriction suffered, namely the allocation of the applicants' property to Government departments which performed duties in the interests of the community as a whole. Nonetheless, it kept in mind that the property was not used for securing the social welfare of tenants or preventing homelessness.

19. The Court, making its assessment on an equitable basis, awards the applicants the sum of EUR 279,525.

B. Non-pecuniary damage

20. In their claims for just satisfaction made before the adoption of the principal judgment, the applicants alleged that they had suffered great hardship. They requested the Court to fix the amount of compensation for non-pecuniary damage on an equitable basis. They made no further requests in their complementary observations after the principal judgment.

21. The Government considered that the applicants had not sustained non-pecuniary damage. However, as a goodwill gesture they were willing to pay the applicant MTL 3,500 (approximately 8,150 EUR), which would cover the sum paid by the applicants in ground rent from 1941 to 2007.

22. The Court considers that the events in question entailed serious interference with the applicants' right to the peaceful enjoyment of their possessions, in respect of which the sum offered by the Government represents fair compensation for the non-pecuniary damage sustained. It therefore awards EUR 8,150 in respect of non-pecuniary damage.

C. Default interest

23. 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. 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 the following amounts:

- (i) EUR 279,525 (two hundred and seventy-nine thousand five hundred and twenty-five euros) in respect of pecuniary damage;
- (ii) EUR 8,150 (eight thousand one hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Nicolas Bratza
Registrar President

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