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Meeting: 1236 meeting (22-24 September 2015) (DH)

Item reference: Action report (27/07/2015)

Communication from Malta concerning the case of Brincat and Others against Malta (Application No. 60908/11)

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Réunion : 1236 réunion (22-24 septembre 2015) (DH)

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Communication de Malte concernant l'affaire Brincat et autres contre Malte (Requête n° 60908/11)  
(*anglais uniquement*)

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DGI

27 JUL. 2015

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

## **Execution of Judgments of the European Court of Human Rights**

### **Brincat and Others v. Malta**

**Application numbers 62110/11; 62129/11; 62312/11; and 62338/11**

**Judgment delivered on the 24th July 2014; final 24<sup>th</sup> October 2014**

### **Action Report submitted by Malta**

#### **1. Case Description**

The case concerned the exposure of ship-yard repair workers to asbestos for a number of years from the 1950s to the early 2000s which led to them suffering from asbestos related conditions.

The European Court found that the Maltese authorities had failed to satisfy their positive obligations to legislate or take other practical measures to ensure that the applicants were adequately protected and informed of the risk to their health and lives. At least from the early 1970s, the Maltese authorities had been aware or should have been aware of the risk, yet they had taken no positive steps to counter that risk until 2003.

In its judgment, the European Court found a violation of Article 2 in respect of the applicants whose relative had died and Article 8 in respect of the remainder of the applicants.

#### **2. Individual Measures:**

##### **Just satisfaction:**

By virtue of the judgment of the 24<sup>th</sup> July 2014, the Court ordered that within three months from the date on which the judgment became final, the Government should pay the following amounts:

- EUR 30,000 jointly to the applicants in application no. 62338/11 in respect of non-pecuniary damage;
- EUR 12, 00 to Mr John Mary Abela in respect of non pecuniary damage;
- EUR 1, 000 to Mr Dyer in respect of non pecuniary damage;
- EUR 9, 000 to each of the remaining applicants in respect of non pecuniary damage; and
- EUR 6, 000 jointly to the group of applicants in each one of the applications in respect of costs and expenses.

The payment of the amounts established by the Court was effected by means of Payment Vouchers, copies have already been transmitted.

No further individual measures seem to be necessary.

### **3. General Measures:**

As to the positive obligations of the State to take reasonable and appropriate measures to secure the applicant's rights under Articles 2 and 8 of the Convention, the Maltese authorities make reference to paragraphs 33 and 34 of the judgment where the Court makes reference to the legislation enacted in order to prevent and reduce environmental pollution caused by asbestos and to protect workers from the risks related to exposure to carcinogens or mutagens at work and protection from exposure to asbestos at work.

In paragraph 112 of the judgment the Court observed that in the absence of a legislative and administrative framework, positive obligations may be fulfilled in practice and concluded that the disposable masks distributed were of an inadequate quality. The Maltese authorities point out that the company which used to employ the applicants is in liquidation and no longer functional. Given the legal regime that is currently in force in Malta companies in the shipping industry are precluded from exposing their employees to asbestos.

In paragraphs 113, 114 and 115 of the judgment the Court observed the Maltese authorities failed to provide access to essential information enabling individuals to assess risks to their health and lives. The Maltese authorities submit that with the establishment of the Occupational Health and Safety Authority (OHSA) the Government is fulfilling its positive duty. OHSA provides preventive information and guidelines concerning the management and use of asbestos.

### **4. Publication and dissemination:**

- The judgment was disseminated internally within the Government Departments and to OHSA.
- The judgment received ample media coverage.

### **5. Conclusion**

Malta considers that with the legislative developments that took place over the last fifteen years, with the setting up of OHSA and with the payment of the amounts awarded by the Court, the issue of the proper execution of the judgement will have been properly addressed.