EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BARTOLO PARNIS AND OTHERS v. MALTA

(Applications nos. 49378/18 and 3 others)

JUDGMENT

Art 1 P1 • Art 13 (+ Art 1 P1) • Peaceful enjoyment of possessions • Effective remedy • Disproportionate burden on applicant due to inadequate rent imposed by law • Inadequate domestic redress for continuing violation

STRASBOURG

7 October 2021

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 Bartolo Parnis and Others v. Malta,

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

Ksenija Turković, *President,*
Péter Paczolay,
Alena Poláčková,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato,
Lorraine Schembri Orland, *judges,*
and Liv Tigestedt, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 49378/18, 49380/18, 49496/18 and 49676/18) 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 four Maltese nationals, Ms Greta Bartolo Parnis, Ms Patricia Anastasi, Ms Anna Maria Saddemi and Ms Josephine Azzopardi ("the applicants"), on 17 October 2018;

the Chamber's decision to join the applications, to give notice to the Maltese Government ("the Government") of the complaints concerning Article 1 of Protocol No. 1 and Article 13 in conjunction with Article 1 of Protocol No. 1 (in relation to the period 2007 onwards) concerning the properties which continued to be subject to the 2007 law after the Constitutional Court judgment and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated in private on 7 September 2021,

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

INTRODUCTION

1. The present application concerns a breach of Article 1 of Protocol No. 1 to the Convention in relation to the disproportionate amount of rent received by the applicants, and the effectiveness of the available remedies in this regard.

THE FACTS

2. The applicants were born in 1965, 1963, 1960 and 1958 respectively and live in Pembroke. They were represented by Dr P.M. Magri, a lawyer practising in Valletta.

3. The Government were represented by their Agents, Dr C. Soler, State Advocate, and Dr J. Vella, Advocate at the Office of the State Advocate.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND

5. On the demise of the applicants' ancestors, the apartments at issue in the present applications, along with others, were inherited jointly by the applicants, who are sisters. By a deed of division of property dated 7 October 2015 the applicants divided the properties between them, as explained below.

6. In 1957 the applicants' ancestors had given their property (*utile dominium*, held by title of perpetual emphyteusis) consisting of several apartments (later inherited by the applicants), in St. Julian's Court, Triq is-sur Fons, St. Julians, on lease to third parties for forty-five years.

7. The lease expired in 2002. However, the tenants maintained occupation of the premises despite not having any legal title to them. In 2006 the applicants requested the tenants of the apartment to vacate the premises, but the latter refused to do so. No eviction proceedings were lodged against the tenants.

8. In 2007 the Government introduced Act XVIII of 2007 (hereinafter "the 2007 law") introducing Section 12A into the Housing De-Control Ordinance (Chapter 158 of the Laws of Malta) (hereinafter "the Ordinance") allowing for any such tenants who had not been evicted to remain in occupation of the premises under specific conditions (including a low rent). On the basis of that provision of law the tenants of the apartments at issue in the present case continued to reside there.

II. APPLICATION NO. 49378/18

9. By the deed of division of property dated 7 October 2015 the applicant became the sole and exclusive owner of apartments 12B, 24C, 37D, 44D and 49D.

10. In 2014 the applicant (along with the other heirs who are the applicants in the other applications) introduced constitutional redress proceedings complaining, *inter alia*, that the law enacted in 2007 created a forced lease relationship causing her a disproportionate burden in breach of Article 1 of Protocol No. 1 to the Convention.

11. Pending these proceedings, apartments 12B and 37D were returned to the applicant in 2015 and 2016 respectively.

12. By a series of first-instance judgments of 28 September 2017 the first-instance constitutional jurisdiction found a violation of the claimants' property rights, in relation to apartments 12B, 24C, 37D, 44D and 49D, given that by the enactment of the 2007 law, a forced lease had been imposed on owners, who were receiving a very low rent. It awarded

5,000 euros (EUR) in compensation and held (in connection with apartments 24C, 44D and 49D which were still occupied) that the tenants could no longer rely on Section 12A of the 2007 law to continue to occupy the premises. It rejected the complaints raised under Articles 6 and 14 of the Convention. Costs were to be paid by the defendants.

13. The applicant appealed solely against the redress awarded.

14. By a series of judgments of 24 April 2018, the Constitutional Court confirmed the first-instance judgments and increased the compensation. Bearing in mind that i) had the owners evicted the tenants in 2002 (as they could have done when the latter lost legal title) they would not have suffered the violation; ii) the duration, namely from 2007, until date of judgment (*recte* or release of property – i.e. eleven years in respect of the apartments still occupied, and less for the others); iii) the rental value, as well as the fact that the apartments might not have been rented out throughout the whole period; iv) the public interest involved; v) the fact that compensation had to be complete; vi) the uncertainty suffered by the owners vii) the costs they incurred to undertake judicial proceedings, as well as viii) (in connection with apartments 24C, 44D and 49D) the fact that a further remedy was being given (enabling the applicant to eventually evict the tenants), it awarded EUR 20,000 in compensation for each flat.

15. It however reversed the finding in relation to costs at first instance and considered that the claimants were to pay the entire costs of proceedings in connection with the costs of the defendants who should not have been cited to appear, and half of the remaining costs of the first-instance proceedings since they had not been successful in all the claims. It also ordered the claimants to pay 1/6 of the costs of the appeal proceedings for the same reason.

III. APPLICATION NO. 49380/18

16. By the deed of division of property dated 7 October 2015 the applicant became the sole and exclusive owner of apartments 20B, 33C, 39D and 48D.

17. In 2014 the applicant (along with the others heirs who are the applicants in the other applications) introduced constitutional redress proceedings complaining, *inter alia*, that the law enacted in 2007 created a forced lease relationship causing her a disproportionate burden in breach of Article 1 of Protocol No. 1 to the Convention.

18. Pending these proceedings, apartment 39D was returned to the owners on 21 March 2015 and apartment 48D was returned to the applicant on an unspecified date in 2017.

19. By a series of first-instance judgments of 28 September 2017 the first-instance constitutional jurisdiction found a violation of the claimants' property rights, in relation to apartments 20B, 33C and 48D, given that by

the enactment of the 2007 law, a forced lease had been imposed on owners, who were receiving a very low rent. It awarded EUR 5,000 in compensation and held (in connection with apartments 20B, 33C and 48D which were still occupied at the time) that the tenants could no longer rely on Section 12A of the 2007 law to continue to occupy the premises. It rejected the complaints raised under Articles 6 and 14 of the Convention. Costs were to be paid by the defendants.

20. By a similar first-instance judgment of 13 April 2018, the court also found a violation in respect of apartment 39D (which had by then been returned to the applicant) and awarded EUR 20,000 in compensation. It ordered that one-third of costs of the proceedings be paid by the applicant.

21. The applicant appealed solely against the redress awarded.

22. By a series of judgments of 24 April 2018, the Constitutional Court confirmed the first-instance judgments and increased the compensation in respect of apartments 20B, 33C and 48D. Bearing in mind that i) had the owners evicted the tenants in 2002 (as they could have done when the latter lost legal title), they would not have suffered the violation; ii) the duration, namely from 2007, until date of judgment (or release of property – i.e. eleven years in respect of the apartments still occupied, and less for the others); iii) the rental value, as well as the fact that the apartments might not have been rented out throughout the whole period; iv) the public interest involved; v) the fact that compensation had to be complete; vi) the uncertainty suffered by the owners and the costs they incurred to undertake judicial proceedings, as well as vii) (in connection with apartments 20B and 33C which were still occupied at the time) the fact that a further remedy was being given (enabling the applicant to eventually evict the tenants), it awarded EUR 20,000 in compensation for each flat.

23. In relation to apartments 20B, 33C and 48D, it reversed the finding in relation to costs at first instance and considered that the claimants were to pay the entire costs of proceedings in connection with the costs of the defendants who should not have been cited to appear, and half of the remaining costs of the first-instance proceedings since they had not been successful in all the claims. It also ordered the claimants to pay 1/6 of costs of the appeal proceedings for the same reason.

24. In respect of apartment 39D, (where the first-instance court had already awarded EUR 20,000) it confirmed the first-instance judgment, including the award of compensation. It, however, altered the award of costs at first instance, ordering the claimants to pay only 1/5 of costs, and ordered them to pay all the costs of the appeal.

IV. APPLICATION NO. 49496/18

25. By the deed of division of property dated 7 October 2015 the applicant became the sole and exclusive owner of apartments 11B, 26C, 40D and 41D.

26. In 2014 the applicant (along with the other heirs who are the applicants in the other applications) introduced constitutional redress proceedings complaining, *inter alia*, that the law enacted in 2007 created a forced lease relationship causing her a disproportionate burden in breach of Article 1 of Protocol No. 1 to the Convention.

27. Pending these proceedings, apartments 26C and 40D were returned to the applicant on unspecified dates in 2017 and 2016 respectively.

28. By a series of first-instance judgments of 28 September 2017 the first-instance constitutional jurisdiction found a violation of the claimants' property rights, in relation to apartments 11B, 26C, 40D and 41D, given that by the enactment of the 2007 law, a forced lease had been imposed on owners, who were receiving a very low rent. It awarded EUR 5,000 in compensation and held (in connection with apartments 11B, 26C and 41D which were still occupied) that the tenants could no longer rely on Section 12A of the 2007 law to continue to occupy the premises. It rejected the complaints raised under Articles 6 and 14 of the Convention. Costs were to be paid by the defendants.

29. The applicant appealed solely against the redress awarded.

30. By a series of judgments of 24 April 2018, the Constitutional Court confirmed the first-instance judgments and increased the compensation. Bearing in mind that i) had the owners evicted the tenants in 2002 (as they could have done when the latter lost legal title) they would not have suffered the violation; ii) the duration, namely from 2007, until date of judgment (*recte* or release of property – i.e. eleven years in respect of the apartments still occupied, and less for the others); iii) the rental value, as well as the fact that the apartments might not have been rented out throughout the whole period; iv) the public interest involved; v) the fact that compensation had to be complete; vi) the uncertainty suffered by the owners and the costs they incurred to undertake judicial proceedings, as well as vii) (in connection with apartments 11B, 26C and 41D) the fact that a further remedy was being given (enabling the applicant to eventually evict the tenants), it awarded EUR 20,000 in compensation for each flat.

31. It however reversed the finding in relation to costs at first instance and considered that the claimants were to pay the entire costs of proceedings in connection with the costs of the defendants who should not have been cited to appear, and half of the remaining costs of the first-instance proceedings since they had not been successful in all the claims. It also ordered the claimants to pay 1/6 of costs of the appeal proceedings for the same reason.

V. APPLICATION NO. 49676/18

32. By the deed of division of property dated 7 October 2015 the applicant became the sole and exclusive owner of apartments 30C, 32C and 46D.

33. In 2014 the applicant (along with the other heirs who are the applicants in the other applications) introduced constitutional redress proceedings complaining, *inter alia*, that the law enacted in 2007 created a forced lease relationship causing her a disproportionate burden in breach of Article 1 of Protocol No. 1 to the Convention.

34. Pending these proceedings, apartment 32C was returned to the applicant in 2015.

35. By a series of first-instance judgments of 28 September 2017 the first-instance constitutional jurisdiction found a violation of the claimants' property rights, in relation to apartments 30C, 32C and 46D, given that by the enactment of the 2007 law, a forced lease had been imposed on owners, who were receiving a very low rent. It awarded EUR 5,000 in compensation and held (in connection with apartment 30C and 46D which were still occupied) that the tenants could no longer rely on Section 12A of the 2007 law to continue to occupy the premises. It rejected the complaints raised under Articles 6 and 14 of the Convention. Costs were to be paid by the defendants.

36. The applicant appealed solely against the redress meted out.

37. By a series of judgments of 24 April 2018, the Constitutional Court confirmed the first-instance judgments and increased the compensation. Bearing in mind that i) had the owners evicted the tenants in 2002 (as they could have done when the latter lost legal title) they would not have suffered the violation; ii) the duration, namely from 2007, until date of judgment (*recte* or release of property – i.e. eleven years in respect of the apartments still occupied, and less for the others); iii) the rental value, as well as the fact that the apartments might not have been rented out throughout the whole period; iv) the public interest involved; v) the fact that compensation had to be complete; vi) the uncertainty suffered by the owners and the costs they incurred to undertake judicial proceedings, as well as vii) (in connection with apartments 30C and 46D) the fact that a further remedy was being given (enabling the applicant to eventually evict the tenants), it awarded EUR 20,000 in compensation for each flat.

38. It however reversed the finding in relation to costs at first instance and considered that the claimants were to pay the entire costs of proceedings in connection with the costs of the defendants who should not have been cited to appear, and half of the remaining costs of the first-instance proceedings since they had not been successful in all the claims. It also ordered the claimants to pay 1/6 of costs of the appeal proceedings for the same reason.

VI. OTHER RELEVANT INFORMATION

39. Section 12B of the Ordinance, introduced by Act XXVII of 2018, entered into force on 1 August 2018, stultifying the outcome of the Constitutional Court judgments in respect of the possibility of evicting the tenant. The provision introduces a further procedure to be undertaken even in cases where any emphyteusis, sub-emphyteusis or tenancy in respect of a dwelling house regulated under Sections 5, 12 or 12A of the Ordinance has lapsed due to a court judgment based on the lack of proportionality. The law provides that in such cases it shall not be lawful for the owner to proceed to request the eviction of the occupier without first availing himself of the provisions of the article.

RELEVANT LEGAL FRAMEWORK

40. The relevant domestic law is set out in *Bartolo Parnis and Others v. Malta* ((dec.), nos. 49378/19 and 3 others, § 38, 24 March 2020) and *Cauchi v. Malta* (no. 14013/19, § 22, 25 March 2021).

THE LAW

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

41. The applicants complained that the violation of their property rights, in respect of the apartments that continued to be subject to the 2007 law (apartments 11B, 20B, 24C, 30C, 33C, 41D, 44D, 46D and 49D), was not brought to an end and that they were not adequately compensated for the breach by the Constitutional Court, in view of the value of the properties. Article 1 of Protocol No. 1 to the Convention reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

1. The parties' submissions

42. The Government submitted that the applicants had lost their victim status as the Constitutional Court had expressly acknowledged the violation

and awarded appropriate redress, namely compensation of EUR 20,000 for each apartment, which it had increased from EUR 5,000 awarded by the first-instance court. Moreover, the Constitutional Court had ordered that the tenants could no longer rely on Section 12A of the Ordinance to maintain title to the property.

43. The applicants submitted that they were still victims of the violation upheld by the domestic courts as the compensation awarded covered only a minimal part of the rent losses they suffered over the eleven years (2007-2018 until the new amendments), even according to the valuations of the Government's own expert. They relied on another case lodged by the applicants where the Government had acknowledged the violation and agreed to pay a further EUR 11,500 by way of unilateral declaration, and the application was thus struck out by the Court.

2. The Court's assessment

44. The Court reiterates that the adoption of a measure favourable to the applicant by the domestic authorities will deprive the applicant of victim status only if the violation is acknowledged expressly, or at least in substance, and is subsequently redressed (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178 et seq. and § 193, ECHR 2006-V, and *Brumărescu v. Romania* [GC], no. 28342/95, § 50, ECHR 1999-VII). Whether the redress given is effective will depend, among other things, on the nature of the right alleged to have been breached, the reasons given for the decision and the persistence of the unfavourable consequences for the person concerned after that decision (see *Oliari and Others v. Italy*, nos. 18766/11 and 36030/11, § 78, 21 July 2015). The redress afforded must be appropriate and sufficient. Whether an individual has victim status may also depend on the amount of compensation awarded by the domestic courts and the effectiveness (including the promptness) of the remedy affording the award (see *Paplauskienė v. Lithuania*, no. 31102/06, § 51, 14 October 2014).

45. In the present case the Court notes that the first criterion, namely acknowledgment of a violation, has been met.

46. As to the second criterion, bearing in mind the Court's practice in awarding compensation in similar cases, the Court considers that an adequate amount of compensation was awarded, which in the present case amounted to EUR 20,000 for each apartment covering both pecuniary and non-pecuniary damage (see *Bartolo Parnis and Others*, cited above, § 48). At this juncture the Court notes that, the case relied on by the applicants concerned two apartments in respect of which the domestic court had given no compensation whatsoever and is therefore not comparable. Indeed, in that same application, the remaining complaints in respect of the other apartments had been declared inadmissible by the President acting as Single Judge at communication stage (see *Azzopardi and Others v. Malta*,

no. 49684/18, Committee decision, 12 May 2020, § 4). Turning to the present case it is further noted that a reasonable explanation was given by the domestic courts justifying the costs the applicants were made to pay. Mainly, these were due to failures in the bringing of proceedings before those courts or were related to the applicants' failed claims or appeals, and therefore the order to pay costs in the present applications has no impact on the reasonableness of the awards made. It follows that appropriate financial redress has been awarded (see *Bartolo Parnis and Others,* cited above, § 48).

47. However, the Court notes that the properties have not been returned to the applicants (see, *a contrario*, *Bartolo Parnis and Others,* cited above, § 49), nor has the Constitutional Court ordered the eviction of the tenants or alternatively put in place a higher future rent (see *Cauchi v. Malta*, no. 14013/19, § 30, 25 March 2021 and *Marshall and Others v. Malta*, no. 79177/16, § 71-72, 11 February 2020). While the Constitutional Court made an order to the effect that the tenants could no longer rely on the relevant law provisions to maintain title to the property, the Court has already expressed its doubts about that approach (ibid. §§ 73-74) (prior to the introduction of the 2018 amendments). In the more recent judgment *Cauchi*, cited above, § 31, the Court held that in the light of Section 12B(11) of the Ordinance, introduced as a result of the 2018 amendments, such a declaration cannot be considered to have any effect in bringing the violation to an end where, more than two years after the domestic court's judgment, the applicant continued to suffer the same violation of her property rights.

48. The parties have not informed the Court as to whether they have attempted to initiate eviction proceedings and whether Section 12B(11) of the Ordinance has been applied to their case. Moreover, the parties have not informed the Court that the properties were vacated upon agreement with the tenants or by any other means, or that a higher rent was established amicably or *via* the procedures under the new Section 12B of the Ordinance. Thus, for the purposes of the present case it suffices to note that three years after the Constitutional Court's judgment, the applicants continue to suffer the same violation of their property rights upheld by the same court.

49. In consequence, the applicants still retain victim status for the purposes of this complaint and the Government's objection is dismissed.

50. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

51. The applicants submitted that there had been a violation of their property rights as a result of the enactment of Act XIII of 2007, as had been

recognised by the domestic courts. They further highlighted the lack of a legitimate aim behind the introduction of Act XIII of 2007 - which had only been intended to impede the possible eviction of the tenants which had been residing in various properties without legitimate title as of 2002 (see paragraphs 7-8 above) - and the lack of procedural safeguards in the application of the Act.

52. The Government acknowledged that the domestic courts had found a violation in the present case but considered that it had been redressed.

53. Having regard to the findings of the domestic courts relating to Article 1 of Protocol No. 1, the Court considers that it is not necessary to re-examine in detail the merits of the complaint. It finds that, as established by the domestic courts, the applicants were made to bear a disproportionate burden. Moreover, as the Court has already found in the context of the applicants' victim status the domestic courts did not offer sufficient relief to the applicants who continue to suffer the same violation (see paragraphs 48-49 above) in respect of apartments 11B, 20B, 24C, 30C, 33C, 41D, 44D, 46D and 49D.

54. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

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

55. The applicants complained that the violation of their property rights was not brought to an end and that they were not adequately compensated for the breach by the Constitutional Court. They relied on Article 13 which reads as follows:

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

A. Admissibility

56. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

57. The applicants relied on the Court's consistent case law to the effect that the Constitutional Court is not an effective remedy for this type of complaints under Article 1 of Protocol No. 1 to the Convention. In so far as

the Government relied on the new Section 12B (which was beyond the scope of the applicants' complaints, see *Bartolo Parnis and Others*, cited above, § 40), the applicants submitted that it only showed a continued reluctance by the State to provide an adequate remedy, namely the eviction of the tenants. This was so, not only because Section 12B stultified Constitutional Court judgments which had opened the way to aggrieved owners to evict the tenants, but also because the threshold of the means test applied to evict any tenants *via* this new cumbersome procedure, was so low, that even wealthy individuals would benefit from this protection. Thus, the situation was one where both the Constitutional Court and the legislator *via* its retrospective interventions, acted in tandem to avoid any possibility for aggrieved individuals to have an effective remedy.

58. The Government submitted that the Constitutional Court had awarded adequate compensation, as also confirmed by the Court in its earlier decision in the same cases, in relation to the properties which had been released. They further considered that eviction would not always be necessary, and that it would be draconian to evict a tenant, outside of the context of an Article 6 compliant procedure to that effect. They insisted that eviction should only be ordered by the competent court, because the result of eviction proceedings was not automatic. They considered that an individual may wish to argue that he has another title to the property (as for example a contract between the parties), which did not derive from the impugned law. In this connection the Government relied on the case of *Robert Galea v Major John Ganado* (no. 41/2017, decided by the Rent Regulation Board on 24 September 2018 and by the Court of Appeal on 25 February 2019) where, however, both courts had found that the tenants had no other title to the property (as the contract between the parties had ultimately been based on the impugned law and could not be seen separately).

59. Moreover, the Government argued that even if constitutional remedies were deemed to be insufficient, the aggregate of the remedies available to the applicant satisfied the requirements of Article 13. They referred to the new Section 12B of the Ordinance, which provided the applicants with the possibility of evicting the tenants (if they did not fulfil the means test requirements) and requesting an increase in rent. In any event, with respect to evicting the tenants, the Government considered that the State had a margin of appreciation in determining what remedy should be given to an applicant.

2. The Court's assessment

60. The Court reiterates its general principles as set out in *Apap Bologna v. Malta* (no. 46931/12, §§ 76-79, 30 August 2016).

61. The Court has repeatedly found that constitutional redress proceedings, in particular the Constitutional Court, cannot be considered an

effective remedy for the purposes of Article 13 in conjunction with Article 1 of Protocol No. 1 concerning arguable complaints in respect of the rent laws in place, which, though lawful and pursuing legitimate objectives, impose an excessive individual burden on applicants (ibid § 91; see also, for example, *Portanier v. Malta*, no. 55747/16, § 53, 27 August 2019).

62. While the Court's findings were often largely based on the fact that the sums awarded by the Constitutional Court do not constitute adequate redress, and therefore the applicants were not provided with adequate redress for the violation already suffered (ibid. § 55), this was not so in the present case (see paragraph 46 above). The bone of contention thus remains whether the Constitutional Court prevented the continuation of the violation.

63. The Court has persistently found that although, in law, the courts of constitutional jurisdiction could evict a tenant, in situations such as those of the present case the Constitutional Court does not take such action (ibid., § 47 and the case law cited therein). Similarly, the Constitutional Court does not award a higher future rent which would constitute a measure *vis-à-vis* an individual applicant, which would provide for an end to the violation without affecting the tenant (ibid., § 48). The Court reiterates that in the event that the constitutional jurisdictions award a higher future rent (to be paid by the Government, with the possibility of an arrangement with the tenants who would have for years benefitted from a generous regime), eviction would not always be necessary. Indeed, when the measure did pursue a legitimate aim (such as the social protection of needy tenants), the adaptation of the future rent to present circumstances might be sufficient to bring the violation to an end (ibid.). However, systematically none of these actions are taken.

64. In the present case the Constitutional Court, in judgments which were delivered before the 2018 amendments, ordered that the tenants could no longer rely on the law to maintain title to the property. Already before the 2018 amendments, in similar cases, when the legitimate aim behind the measure was social housing, the Court expressed its doubts about such an approach (ibid. §§ 51-52). In particular the Court considered that the success of the eviction request before the ordinary jurisdictions would be evident (automatic) in the absence of any other legitimate title to the property, which therefore raised questions as to the utility of this further procedure.

65. The Government argued that the outcome of such proceedings would not be automatic, as the tenant may have another title to the property. However, the Government's argument misses the wood for the trees. In the context of these cases, the eviction proceedings are expected to take place after the domestic court has found a violation of an applicant's property rights due to the effects of the impugned law. It is thus already established that it was the impugned law which gave the tenant title to the property and

which interfered with an individual applicant's property rights. Had the tenant had another title to the property, then that should have been a defence in the constitutional proceedings, which if valid would have avoided the violation in the first place. Indeed, the case relied on by the Government (see paragraph 58 above) only affirms the evident outcome of such proceedings (had they not been disturbed by the 2018 amendments), thus the doubts already expressed by the Court continue to be reaffirmed.

66. As to such an approach being used, following the 2018 amendments, the Court has already found that such a declaration cannot be considered to have had any effect in bringing the violation to an end (see *Cauchi*, cited above, § 31).

67. In so far as the Government relied on the new procedure introduced under Section 12B, *via* the 2018 amendments, the Court has also already found that this was not effective in circumstances similar to those of the present case (ibid., § 85). There is no reason to hold otherwise in the instant case.

68. Thus, in the absence of an award covering future rent, the Court considers that despite the legitimate aim at issue being that of social housing, the only remedy capable of giving adequate and speedy redress to the applicants in the situation of the present case was for the Constitutional Court to order eviction – a course of action it failed to undertake, as is its normal practice (see *Marshall and Others*, cited above, § 75, in respect of commercial premises).

69. It follows from the above that, in the present case, because of the deficiency in the redress given by the Constitutional Court the violation still persists, and the remedies relied on by the Government did not prevent its continuation.

70. Accordingly, the Court finds that there has been a violation of Article 13 in conjunction with Article 1 of Protocol No. 1 to the Convention.

III. 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 applicants claimed the loss of rent over eleven years until the date of the Constitutional Court judgment amounting to a total of 424,050 euros (EUR) (for apartments 11B, 20B, 24C, 30C, 33C, 41D, 44D,

46D and 49D combined) in respect of pecuniary damage and EUR 44,000 in non-pecuniary damage.

73. The Government noted that the Constitutional Court had already awarded the applicants EUR 180,000 for those properties. They considered that to award EUR 244,050 over and above that would be excessive, especially since their calculations were made on the higher price ranges. Moreover, from that sum had to be deducted the sums already received in rent over the period, which amounted to more than EUR 62,000. In the Government's view awarding the remaining sum would yield the applicant an unjustified profit for the following reasons: (i) the expert reports were only estimates, and not amounts that the applicants would certainly have obtained; (ii) it could not be assumed that the property would have been rented out for the whole period if the tenants had not been protected by the Ordinance - particularly given the boom in property prices over recent years; (iii) the tenants had had to maintain the property in a good state of repair and (iv) the measure had been in the public interest and thus the market value was not called for. The Government also considered that the claim for non-pecuniary damage was excessive.

74. The Court has already held that the Constitutional Court awarded an adequate amount of compensation covering both pecuniary and non-pecuniary damage in relation to the violation of Article 1 of Protocol No. 1 (see paragraph 46 above) the Court thus rejects the claim for further pecuniary and non-pecuniary damage in this respect. On the other hand, it awards the applicants EUR 4,000, each, plus any tax that may be chargeable, in respect of non-pecuniary damage in relation to the violation under Article 13 in conjunction with Article 1 of Protocol No. 1, plus any tax that may be chargeable.

B. Costs and expenses

75. When invited to submit their claims on just satisfaction the applicants did not quantify a claim for costs and expenses, but submitted a global domestic taxed bill of costs in relation to the constitutional redress proceedings of the fourth applicant and referred to the documents they submitted with the application forms.

76. The Government noted that the applicants had not made a quantified claim for costs and expenses, and in any event, they had only been made to pay 1/6 of the appeal proceedings.

77. The Court notes that the applicants did not submit a quantified claim for costs and expenses when invited to do so. Their prior indications of desirable reparation in the application form cannot replace a properly articulated claim (see *Nagmetov v. Russia* [GC], no. 35589/08, §§ 59 and 75, 30 March 2017). In the absence of any exceptional circumstances (ibid., §§ 77-82), the Court makes no award under this head.

C. Default interest

78. 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 applications 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 13 of the Convention in conjunction with Article 1 of Protocol No. 1 to the Convention;

4. *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:
   EUR 4,000 (four thousand euros), each, 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;

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

Done in English, and notified in writing on 7 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Ksenija Turković
Deputy Registrar	President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality
1.	49378/18	Bartolo Parnis v. Malta	17/10/2018	**Greta BARTOLO PARNIS** 1965 Pembroke Maltese
2.	49380/18	Anastasi v. Malta	17/10/2018	**Patricia ANASTASI** 1963 Swieqi Maltese
3.	49496/18	Saddemi v. Malta	17/10/2018	**Anna Maria SADDEMI** 1960 St Julians Maltese
4.	49676/18	Azzopardi v. Malta	17/10/2018	**Josephine AZZOPARDI** 1958 St. Julians Maltese