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

FIRST SECTION

CASE OF GALEA v. MALTA

(Application no. 28712/19)

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 Galea 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 Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 28712/19) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Maltese national, Ms Maria Pia Galea ("the applicant"), on 17 May 2019;

the decision to give notice to the Maltese Government ("the Government") of the application;

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 applicant was born in 1956 and lives in St. Julians. The applicant was represented by Dr M. Camilleri and Dr E. Debono, lawyers 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 TO THE CASE

5. The applicant owns an interlinked property, situated at No. 3 St. Paul's Square, and 8 Triq Rocca, Mdina, Malta whose sole ownership

she acquired, by contract of division in 2016 following the division of the inheritance of her mother.

6. On 1 January 1973, the applicant's ancestors rented the property under title of lease (Article 5 of the Chapter 158 of the Laws of Malta, the Housing (Decontrol) Ordinance (hereinafter "the Ordinance")), to a third party, for twenty-five years, at 25 British pounds (GBP) per month (GBP 300 per year).

7. The contract expired on 31 December 1998. However, the tenant relied on Act XXIII of 1979 amending the Ordinance to continue retaining the property under title of lease, at a rent agreed by the parties of approximately 1,398 euros (EUR) per year (while the rent applicable by law was EUR 300 per year). As of January 2013, the rent was paid in accordance with the increase established by law, namely EUR 1,977 per year and later, as of 2016, EUR 2,005 per year.

II. CONSTITUTIONAL REDRESS PROCEEDINGS

8. In 2017 the applicant instituted constitutional redress proceedings claiming that the provisions of the Ordinance as amended by Act XXIII of 1979 - which granted tenants the right to retain possession of the premises under a lease - imposed on her as owner a unilateral lease relationship for an indeterminate time without reflecting a fair and adequate rent, in breach of, *inter alia*, Article 1 of Protocol No. 1 to the Convention. The applicant argued that she had needed the property for herself and for her family. She asked the court for compensation for the losses incurred (since 1999, when the lease was extended by operation of law) and to order the eviction of the tenants.

9. According to the court-appointed expert the sale value in 2017 was EUR 1,780,000 and the annual rental value was estimated as being in 2017 EUR 40,050, and in 1998 as being EUR 19,224.

10. By a judgment of 7 November 2017 the Civil Court (First Hall) in its constitutional competence found a violation of the applicant's property rights, having considered the huge disproportion in the rents paid compared to the market value (only 5%). It awarded EUR 10,000 in compensation and ordered the eviction of the tenants who could no longer rely on the protection of the impugned law. No costs were to be paid by the applicant.

11. The defendants appealed and in her pleadings in defence the applicant asked the court to reject their appeals. In particular the Government argued that the first-instance court gave no explanation as to how it calculated the compensation, which they deemed excessive.

12. By a judgment of 14 December 2018 the Constitutional Court confirmed the first-instance judgment but revoked the order of eviction of the tenants and ordered that 1/4 costs of the State and 2/3 costs of the tenants on appeal be paid by the applicant.

13. In particular it considered the State's challenge to the amount of compensation awarded by the first-court to be frivolous, since in the light of the huge disproportion in the rent received, had it not been for the order that the tenant could no longer rely on the relevant law to maintain possession of the premises [previously accompanied by an eviction order], such compensation would have been considered very mild ("*tenwu ħafna"*).

III. OTHER INFORMATION

14. Despite the order of the Constitutional Court to the effect that the tenant could no longer rely on the relevant law, the applicant submitted that eviction proceedings were hindered due to the introduction of Act XXVII of 2018 which provided that despite a judgment in favour, it shall not be lawful for the owner to proceed to request the eviction of the occupier without first availing himself of the new procedure provided by that law.

15. In particular, in 2018 the applicant instituted proceedings before the Rent Regulation Board (hereinafter RRB), asking for, in line with the findings of the constitutional jurisdictions in her case, a declaration that the tenants could no longer rely on the law to maintain title to the property and in consequence to order the eviction of the tenants. Subsidiarily, in the event that the RRB did not uphold such request, it asked that the tenants be subject to a means test and, if they qualified for protection under the law, that the rent be increased according to law. Alternatively, that if they did not satisfy the requirements for protection, that eviction be ordered and the rent increased until then, as stipulated by law.

16. By a judgment of 19 February 2020, the RRB considered that it could not uphold the applicant's main request which was based on the Constitutional Court's judgment. Relying on the case of *Robert Galea vs. Major John Ganado*, Court of Appeal judgment of 25 February 2019, it noted that by means of Act XXVII of 2018, which entered into force on 10 July 2018 with retroactive effect as from 10 April 2018, the Ordinance was amended to include a new Article 12B which brought to nothing (*taf iġib fix-xejn*) the judgments of the constitutional jurisdictions. Article 12B provided that where the lease had lapsed due to a court judgment it shall nonetheless not be lawful for the owner to proceed to request the eviction of the occupier without first availing himself of the procedure under the same provision. The RRB considered that the new Article 12B applied in the present case and therefore it could not be said that the lease came to an end by means of the judgment of the Constitutional Court of 14 December 2018.

17. In relation to the means test it noted that the tenants had declared to possess EUR 800 in cash and to have an unquantified part of an inheritance which included a property in Valletta (which was the subject of ongoing proceedings concerning its title). They also declared to live off a pension plus an annual income of EUR 600 and 1/5 of the rent on two properties in

Rabat. The RRB thus considered that they fulfilled the means test requirements to be considered persons of limited means and therefore in need of protection. It noted that the applicant's property had a sale value of EUR 2.2 million and that a rent equivalent to 2 % of the sale value of the property (the maximum allowed by law) would amount to an annual rent of EUR 44,000.

18. Having considered the age and limited means of the tenants and that the applicant had not shown that she would suffer a disproportionate burden (all criteria under Article 12B (6) of the Ordinance) the RRB considered that a gradual increase in rent would be appropriate. It thus increased the rent (as from the date of its judgment) to EUR 16,500 annually for the first two years (amounting to 0.75 % of the market value); to EUR 22,000 for the subsequent two years (amounting to 1 % of the market value) and to EUR 27,500 for the subsequent two years (amounting to 1.25 % of the market value). The RRB noted that the tenants could apply to the Housing Authority for the relevant subsidy.

19. The tenants appealed against the judgment, but later withdrew their appeal and the property was returned vacant to the applicant on an unspecified date.

RELEVANT LEGAL FRAMEWORK

20. The relevant domestic law is set out in *Anthony Aquilina v. Malta* (no. 3851/12, §§ 27-28, 11 December 2014) and *Cauchi v. Malta* (no. 14013/19, § 38, 25 March 2021).

THE LAW

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

21. The applicant complained that she was still a victim of the violation of Article 1 of Protocol No. 1 upheld by the domestic courts given the low amount of compensation awarded, as well as the fact that there had been no order to evict the tenants. The provision 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. Victim status

(a) The parties' submissions

22. The Government submitted that the applicant had lost her victim status as the domestic courts had expressly acknowledged the violation and awarded appropriate redress, namely compensation of EUR 10,000 covering both pecuniary and non-pecuniary damage.

23. The applicant submitted that she was still a victim of the violation upheld by the domestic courts, because the latter had not awarded sufficient compensation for the breach and had not brought the violation to an end. She noted that the rental income in 1998 was calculated at EUR 19,224 per annum and EUR 40,050 in 2017, while she had only been awarded EUR 10,000. The Constitutional Court had moreover revoked the eviction order, leaving her at the mercy of the tenants, given that she could no longer evict them due to the introduction of the new Article 12B of the Ordinance.

(b) The Court's assessment

24. The Court reiterates its general principles concerning victim status as set out in *Apap Bologna v. Malta* (no. 46931/12, §§ 41 and 43, 30 August 2016).

25. In the present case, the Court notes that there has been an acknowledgment of a violation by the domestic courts. As to whether appropriate and sufficient redress was granted, the Court considers that even though the market value is not applicable and the rent valuations may be decreased due to the legitimate aim at issue, a global award of EUR 10,000 covering pecuniary and non-pecuniary damage for a property with a rental value of, for example, EUR 40,050 in 2017, is clearly insufficient for a violation persisting for various years. The Court notes that even the Constitutional Court remarked that the award had been very mild (see paragraph 13 above).

26. That would be enough to find that the redress provided by the domestic court in the present case did not offer sufficient relief to the applicant, who thus retains victim status for the purposes of this complaint (see, *mutatis mutandis*, *Portanier v. Malta*, no. 55747/16, § 24, 27 August 2019).

27. However, the Court also notes that the Constitutional Court failed to bring the violation to an end. In particular, it failed to order the eviction of the tenants (explicitly revoking the eviction order made by the first-instance court) or alternatively to award a higher future rent. While it ordered that the tenant could no longer rely on Article 5 of the Ordinance (at issue in the present case) the Court cannot ignore that at the time of judgment, namely December 2018, the amendments to the Ordinance had already been

promulgated and entered into force (compare *Cauchi v. Malta*, no. 14013/19, § 30, 25 March 2021). The latter, in particular the new Article 12B (11) of the Ordinance, provided that it would not be lawful for the owner to proceed to request the eviction of the occupier without first availing him or herself of the provisions of that Article. As a result, when the applicant attempted to enforce the order of the Constitutional Court before the RRB, the latter held that Article 12B applied in the present case, with the result that the Constitutional Court's declaration no longer had any useful effect (see paragraph 16 above). It follows that the declaration of the Constitutional Court in the present case cannot be considered to have had any effect in bringing the violation to an end, so much so that nearly two years after the Constitutional Court judgment - until the tenants left the property of their own motion on an unspecified date in 2020 - the applicant continued to suffer the same violation of her property rights.

28. It follows that the domestic courts did not offer sufficient relief to the applicant, who thus retains victim status for the purposes of this complaint and the Government's objection is dismissed.

2. Non-exhaustion

(a) The parties' submissions

(i) The Government

29. The Government submitted that the applicant had failed to exhaust domestic remedies as she had failed to appeal to the Constitutional Court, despite the fact that both the Government and the tenants had appealed the first-instance judgment finding in favour of the applicant. In that situation the Constitutional Court - who also commented on the low amount of compensation - bound by the appeals before it and the lack of an appeal by the applicant, could not have increased the compensation, but only confirmed it or lowered it. This was also recently confirmed in the Constitutional Court judgment of 23 November 2020 in the names of *Cassar Barbara vs Attorney General et*.

30. The Government considered that the Constitutional Court was an effective remedy and relied on six examples where the Constitutional Court had increased the compensation awarded by the first-instance court, namely *Angela* sive *Gina Balzan vs the Honourable Prime Minister* (14/2015) of 31 January 2018 (from EUR 15,000 to 20,000), *Azzopardi Josephine* proprio et nominee *vs the Honourable Prime Minister* (93/2014) of 31 January 2019 (from EUR 5,000 to 20,000), *Azzopardi Josephine* proprio et nominee *vs the Honourable Prime Minister* (6/2015) of 29 November 2019 (from EUR 20,000 to 38,000), *Angela* sive *Gina Balzan vs the Honourable Prime Minister* (16/2015/1) of 8 October 2020 (from EUR 15,000 to 70,000), *Michael Farrugia vs the Attorney General et* of 6 October 2020 (no increase in pecuniary damage but EUR 5,000 in

non-pecuniary damage were added), and *Giovanni Bartoli et vs Carmel Calleja* also of 6 October 2020 (from EUR 15,000 to 25,000 in pecuniary damage and EUR 5,000 in non-pecuniary damage were added). They noted that even the applicant admitted (see paragraph 40 below) that sometimes the Constitutional Court increased the compensation precisely due to the value of the property, as for example, in the last-mentioned case.

31. They also submitted that the Constitutional Court had abandoned its practice of reducing compensation on the basis that applicants had delayed initiating proceedings. Indeed, it had started to follow the Court's findings in relation to that issue, as set out in *Montanaro Gauci and Others v. Malta* (no. 31454/12, § 45, 30 August 2016), as it had done, for example, in *Ian Peter Ellis pro et noe vs Major Alfred Cassar Reynaud et* of 27 January 2017.

32. It therefore could not be said with certainty that there had been no prospects of success, and by failing to appeal the applicant had denied the domestic courts the opportunity of developing their case-law.

33. The Government further considered that in so far as her complaint appeared also to include a claim that Article 12B of the Ordinance also infringed her property rights (see paragraph 48 below), such a claim had never been brought before the domestic courts.

(ii) The applicant

34. The applicant submitted that an appeal to the Constitutional Court was not an effective remedy in the context of a challenge to rent laws as in the present case. She submitted that, even after the case of *Amato Gauci v. Malta* (no. 47045/06, 15 September 2009) the Constitutional Court had continued to reject such claims, for one reason or another. She cited, for example, a series of Constitutional Court judgments overturned by the Court (see *Emanuel Said Ltd vs Carmel Zammit and Doris Attard Cassar et* of 5 July 2011 (25/2008/1); *Franco Buttigieg et vs the Attorney General* of 6 February 2015 (70/2012 JA)); and *Anthony Aquilina vs the Attorney General et al* of 13 April 2018).

35. Alternatively, when such claims had been upheld, the compensation awarded by the first-instance constitutional jurisdiction had been systematically reduced by the Constitutional Court. The applicant relied on the case of *Dr Cedric Mifsud and Dr Michael Camilleri (as special mandatories) vs the Attorney General and Andrè Azzopardi* of 25 October 2013, where the Constitutional Court had reduced the compensation from EUR 30,000 to 15,000 on the basis that the applicants had taken too long to initiate proceedings; and *Maria Ludgarda Borg et vs Rosario Mifsud et* of 29 April 2016, with similar circumstances. In this connection, the applicant submitted that before the case of *Amato Gauci* (cited above), the Constitutional Court would not find a breach of human rights in such situations. Therefore, any action in the Maltese courts before 2010 would

have failed. Owners thus could not have been blamed for initiating proceedings at that time.

36. The applicant further relied on the above-mentioned case of *Ian Peter Ellis pro et noe*, where the Constitutional Court had reduced the award from EUR 50,000 to 15,000; *Alessandra Radmilli vs Joseph Ellul et* of 14 December 2018, where it had reduced the compensation from EUR 31,000 to 25,000; *Maria Stella* sive *Estelle and John Azzopardi Vella vs the Attorney General*, decided on 30 September 2016, where it had reduced the compensation from EUR 20,000 to 5,000; and *Rebecca Hyzler vs Attorney General et*, of 29 March 2019, where the Constitutional Court reduced the compensation from EUR 20,000 to 15,000.

37. The applicant also considered that while the Constitutional Court could evict tenants, it had refused to do so, thus failing to rectify the breach. She relied on *Portanier* (cited above) and gave, as an example, her own case.

38. Furthermore, while the Constitutional Court had more recently taken the approach of ordering that tenants could no longer rely on the impugned law to retain title to property (see *Portanier*, cited above, § 49), the applicant noted that that approach had become inconsistent following the amendments to the Ordinance in 2018 (by Act XXVII of 2018), it having been applied to some cases but not to others. In *Chemimart Ltd vs the Attorney General*, also of 14 December 2018, the Constitutional Court had confirmed the amount of compensation of EUR 5,000 and the order that the tenants could not rely on the provisions of the Ordinance to continue to reside in the property, knowing that in the meantime amendments had been introduced giving rise to a contradiction.

39. In the case of *Brian Psaila vs Attorney General et al*, decided by the Constitutional Court on 27 March 2020, the latter had upheld the part of the judgment of the first-instance court stating that the tenants could not rely on – in that case – Article 12 of the Ordinance to continue residing in the property, considering however that they could have title under the new Article 12B of the Ordinance. In the applicant's view, this was contradictory because title under Article 12B was dependent on title acquired under the principal Article 12 of the Ordinance. Be that as it may, the situation as it stood was one where the Constitutional Court would find that the law in question did not apply between the parties, but would not order eviction. It opted instead to open the door for applicants to initiate eviction proceedings – at least on paper – knowing, however, that in practice and in law such an eviction could not be successful because the RRB would reject the claim in line with the newly enacted Article 12B (11) of the Ordinance, which did not allow for such action, as shown by the decision in her own case.

40. As to the cases relied on the by the Government (see paragraph 30 above), the applicant noted that in the *Balzan* case the Constitutional Court had increased the compensation because it had wanted to keep the amount

of compensation awarded in line with other cases. Moreover, the title of lease in that case was under Article 12A of the Ordinance, and the ECHR had already found that during a certain amount of years the applicants could have evicted the tenants. As to the two other *Aquilina* cases – only two of fifteen cases lodged by the same person and concerning the same legal provision – the Constitutional Court had increased the damages in one case because the first-instance court had only awarded compensation in respect of non-pecuniary damage (known in domestic law as moral damage), and in the second case because of the value of the property (as was the case in *Giovanni Bartoli et vs Carmel Calleja*). However, in another of the cases lodged by the same person, namely *Azzopardi Josephine* proprio et nominee *vs the Honourable Prime Minister* (72/2015), the Constitutional Court had decreased the award from EUR 98,000 to 20,000, which had been the standard sum it had been awarding in the cases lodged by Mr. Azzopardi. As to the case of *Michael Farrugia*, the Constitutional Court had not increased the pecuniary damage but solely awarded non-pecuniary damage which had not been awarded by the first-instance court.

(b) The Court's assessment

41. The Court reiterates its general principles as set out in *Cauchi*, cited above, §§ 45-50.

42. In *Cauchi*, §§ 55 and 77, the Court has already found that, bearing in mind the parties submissions which were nearly identical to those in the present case and the Court's case-law on the matter, at the end of 2018, following the first-instance judgment in the applicant's case, an appeal to the Constitutional Court could not be considered an effective remedy, and that it was therefore not unreasonable for her to come directly to the Court (in the absence of an appeal by the defendants).

43. The Court notes that the additional cases relied on by the Government to substantiate their contention that the Constitutional Court is an effective remedy in this type of complaint are all dated 2020. Thus, while there appears to be a good indication that the Constitutional Court's practice is evolving, nothing has been brought to the Court's attention to dispel its earlier conclusions that the Constitutional Court could not be considered an effective remedy at the relevant time, namely 2017-2018.

44. It is true that in the present case, given that the other parties appealed and that the award of the first-instance court had been extremely low, it may have been more appropriate for the applicant to attempt this avenue nonetheless, at least by means of a cross-appeal. Indeed, it can be understood that the applicant, having obtained the eviction of the tenant at first-instance, might have been ready to forego the adequate compensation for the past violation and not risk an appeal instance which would certainly (as in fact happened) revoke the eviction order in case of a cross-appeal by the Government or the tenant. However, the way things turned out, the

Government and the tenant did appeal, thus at that stage the applicant had little to lose (save for costs) by lodging a cross-appeal. Nevertheless, and in the interests of coherence, given the ineffectiveness of an appeal before the Constitutional Court at the time, the applicant cannot be blamed for having, in line with this Court's case-law as it stood at the relevant time, failed to appeal to the Constitutional Court.

45. It follows that the Government's objection that the applicant failed to exhaust domestic remedies by not appealing to the Constitutional Court is dismissed.

46. In so far as the Government raised an objection in relation to the applicant's arguments in relation to Article 12B, which had never been brought before the domestic courts, the Court considers that bearing in mind its findings at paragraph 53 below, it is not necessary to deal with this objection.

3. Conclusion

47. The Court notes that 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

48. The applicant submitted that on the termination of the rent agreement an excessive and disproportionate burden was put on her due to the extension of the tenants' rights at law for an inconsequential rent. Moreover, there had been no procedural safeguards available to her. She relied on the general principles and conclusions established in the Court's case-law concerning such cases. She also considered that the new Article 12B did nothing to ameliorate the situation and only continued to perpetrate the breach of her rights.

49. The Government submitted that there had been no violation of the invoked provision, and in any event the Constitutional Court had awarded the applicant compensation. Subsequent to that judgment the applicant could rely on Article 12B to ameliorate her situation.

2. The Court's assessment

50. The Court refers to its general principles as set out, for example, in *Amato Gauci* (cited above, §§ 52-59).

51. 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 applicant was made to bear a disproportionate

burden. Moreover, as the Court has already found in the context of the applicant's victim status (see paragraph 28 above), the redress provided by the domestic courts did not offer sufficient relief to the applicant.

52. The Court finds it opportune to note, however, that while it would appear that the interference started in 1999 on the end of the rent agreement, for the years 1999-2012 the rent being received by the applicant was one agreed by both parties and which amounted to nearly four times that provided by law. It was later increased according to law. The Court observes that domestic courts were silent on the matter. Admittedly, while the applicant's power to negotiate was not unfettered given the circumstances, the applicant has not submitted that the agreement with the tenants at the time had been hindered by any related considerations. Thus, while it would generally be for the domestic courts to examine such issues, in the absence of any considerations in this respect at the domestic level, the Court will limit itself to take this into account only for the purposes of the compensation it will award under Article 41 of the Convention.

53. Furthermore, the Court considers that – without having to address the effectiveness or otherwise of the procedure introduced by Act XXVII of 2018 for the purposes of this complaint – even assuming that the new Article 12B of the Ordinance provided for any relevant and effective safeguards, these had no bearing on the situation suffered by the applicant until the introduction of these amendments in 2018. It is also unclear whether they had any bearing thereafter given that the judgment of the RRB delivered in 2020 had been appealed by the tenants – appeal which was later withdrawn, the tenants having opted to vacate the property (see paragraph 19 above).

54. The foregoing considerations are sufficient to enable the Court to conclude that there has 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 applicant complained that constitutional redress proceedings were not an effective remedy for the purposes of Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1. Article 13 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 this 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. Relying on the Court's case-law, particularly *Apap Bologna* (cited above), which applied equally to the present case, the applicant submitted that she had not had an effective remedy in relation to the breach of her property rights, as required by Article 13 of the Convention. In particular, the domestic courts had systemically failed to prevent the continuation of the violation and provide adequate redress, as had happened in her case. She emphasized that when eviction was ordered by the first instance-court it would be revoked by the Constitutional Court as happened in her case. Furthermore, she considered that the introduction of Article 12B of the Ordinance in 2018 showed a continued reluctance by the State to provide an adequate remedy.

58. The Government insisted that constitutional redress proceedings, including an appeal to the Constitutional Court, were effective remedies in relation to the applicant's complaint on the basis of submissions similar to those made in previous cases. In relation to the Constitutional Court (relying on specific cases where it had increased compensation on appeal (see paragraph 30 above)), they considered that the applicant had of her own volition chosen not to appeal, despite a possibility of success, and that this should militate against the finding of a violation of Article 13.

59. 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 RRB on 24 September 2018 and by the Court of Appeal on 25 February 2019, where, however, both courts 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). The Government was of the view that the most reasonable remedy would be monetary compensation which remedies the past violation and prevents any future violation.

60. 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 Article 12B of the Ordinance, which provided the applicant with the possibility of evicting the tenants and requesting an increase in rent – the latter the applicant in fact obtained at first instance.

2. The Court's assessment

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

62. The Court has repeatedly found that although constitutional redress proceedings are an effective remedy in theory, they are not so in practice in cases such as the present one. In consequence, they 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 (see *Portanier*, cited above, § 53).

63. The Court refers to its findings at paragraph 43 above and considers that in the present case an appeal to the Constitutional Court could not be considered an effective remedy at the material time. Indeed, quite apart from the issue of compensation, in the present case, as with its constant practice, the Constitutional Court revoked the eviction order made by the first-instance court, leaving the applicant with an order which was of no consequence given the 2018 amendments (see *Cauchi*, cited above, § 31), as a result of which she remained a victim of the violation (see paragraph 28 above).

64. In so far as the Government relied on the new procedure introduced under Article 12B of the Ordinance, the Court notes that this new procedure introduced in 2018 was only available to the applicant after she lodged her constitutional application and a few months before it was decided by the Constitutional Court. Its effectiveness is thus to be examined as a remedy following the finding of a violation by a domestic court. Indeed, the Court has also already found that this was not effective in circumstances similar to those of the present case (ibid., § 85). Moreover, in the present case as it developed (see paragraph 17-19 above), those proceedings do not appear to have had any consequence on the applicant's situation.

65. The foregoing considerations are sufficient to enable the Court to conclude that the aggregate of the remedies proposed by the Government did not provide the applicant with an effective remedy.

66. There has accordingly been a violation of Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

67. The applicant complained that the introduction of Act XXVII of 2018 impeded the execution of the judgment in her favour, as a result of which she considered that she was suffering a breach of Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

68. The Government submitted that the applicant had failed to bring a new set of constitutional redress proceedings in relation to her complaints under Article 6. Thus, the Maltese constitutional jurisdictions had not had the opportunity to assess whether Article 12B of the Ordinance complied with the Convention, thereby denying the Court the benefit of the views of the domestic courts.

69. The applicant considered that just as much as she was not required to institute a new set of constitutional redress proceedings to complain under Article 13 she should not be made to do so for a complaint of non-enforcement under Article 6. All these complaints were connected to her main Article 1 of Protocol No. 1 complaint which had been upheld by the domestic courts. She noted that Act XXVII of 2018 introducing Article 12B had entered into force in April 2018, that is, while her constitutional redress proceedings had been underway. At the time, she had had a legitimate expectation, based on case-law, that following the judgment in her favour she would be able to start proceedings to evict the tenants. However, Article 12B (11) had put a stop to that expectation. She was of the view that in such a situation she should not be required to restart constitutional redress proceedings to seek to put an end to the breach of her rights under Article 1 of Protocol No. 1 which had persisted over so many years.

70. In *Cauchi* (cited above, § 96), concerning the same complaint, the Court has already considered that there was no suggestion that the constitutional jurisdictions would not be an effective remedy for the purposes of this type of complaint, and the Court found that there were no special circumstances absolving the applicant in that case from the requirement to exhaust domestic remedies in this regard. In the present case, nothing has been brought to the Court's attention capable of altering that finding. The Government's objection is accordingly upheld.

71. It follows that the complaint is inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed 600,000 euros (EUR) in respect of pecuniary damage for all the violations complained of, which persisted beyond 2018, in view of the value of the property as determined by the expert in the domestic proceedings. She also claimed EUR 15,000 in non-pecuniary damage.

74. The Government submitted that there had been no explanation as to the applicant's calculation in respect of pecuniary damage. Moreover, the applicant had already received around EUR 30,000 in rent from the tenants and EUR 10,000 by the domestic courts. In any event, they considered that simply adding up the alleged loss of rent would yield the applicant an unjustified profit for the following reasons: (i) they were only estimates, and not amounts that the applicant 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.

75. The Court must proceed to determine the compensation to which the applicant is entitled for the loss of control, use and enjoyment of the property which she has suffered at least until 2019, as it is unclear at what date in 2020 the property was vacated.

76. The Court notes that quite apart from the fact that the experts estimated the annual rental value as being in 2017 EUR 40,050, and in 1998 as being EUR 19,224, the applicant has not explained her calculation. Thus, the Court, in assessing the pecuniary damage sustained by the applicant, has as far as appropriate, considered the estimates provided and had regard to the information available to it on rental values in the Maltese property market during the relevant period (see, *inter alia*, *Portanier*, cited above, § 63).

77. It has also bore in mind, the considerations applicable in this type of case as set out in *Cauchi* (cited above, §§ 103-104). With particular reference to the present case, the Court points out two further considerations. It notes that the property is of a relevantly high standing

(valued at EUR 2.2 million) and therefore the probability of it having been rented out all throughout is less than in the usual cases dealing with standard residential property. Further, as noted in paragraph 52 above, the rent received as from 1999 was one agreed by both parties which amounted to nearly four times that provided by law. Thus, the owners must have been more or less satisfied for at least a number of years thereafter, following which the rent increased according to law.

78. The rent received and the award of the domestic court, which if not yet paid remains payable, have also been deducted, and interest added to the resulting award (see *Cauchi*, cited above §§ 104-106).

79. Bearing in mind all the above, the Court awards the applicant EUR 110,000 in pecuniary damage.

80. Furthermore, the Court considers that the applicant must have experienced feelings of stress and anxiety, having regard to the duration of the breach, heightened by the ineffectiveness of the available remedies. It therefore awards her EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

81. The applicant also claimed EUR 3,000 for the costs and expenses she claims to have incurred in legal fees.

82. The Government submitted that no proof of payment had been put forward.

83. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the above criteria, the Court rejects the claim for costs and expenses as no proof of payment to that effect has been submitted.

C. Default interest

84. 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 complaints concerning Article 1 of Protocol No. 1 to the Convention alone and in conjunction with Article 13 admissible and the remainder of the application inadmissible;

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 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 110,000 (one hundred and ten thousand euros) in respect of pecuniary damage;
      (ii) EUR 10,000 (ten thousand 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;

5. *Dismisses* the remainder of the applicant's 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