



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

THIRD SECTION

CASE OF MARSHALL AND OTHERS v. MALTA

(Application no. 79177/16)

JUDGMENT

Art 1 P1 • Control of the use of property • Capping of rent levels on commercial properties • Disproportionate individual burden
Art 13 (+ Art 1 P1) • Effective remedy • Constitutional redress proceedings ineffective in present case • Failure to order eviction of tenants or award higher future rents • Insufficient domestic compensation
Art 6 § 1 (civil) • Excessive length of proceedings
Art 13 (+ Art 6 § 1) • Effective remedy • Systemic flaws rendering constitutional redress proceedings ineffective in respect of length-of-proceedings complaints • Lack of speediness • Regular practice of unreasonably low compensation awards

STRASBOURG

11 February 2020

FINAL

11/06/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Marshall and Others v. Malta,

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

Paul Lemmens, *President*,

Georgios A. Serghides,

Alena Poláčeková,

María Elósegui,

Gilberto Felici,

Erik Wennerström,

Lorraine Schembri Orland, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 21 January 2020,

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

PROCEDURE

1. The case originated in an application (no. 79177/16) 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 Ms Mary Marshall a Maltese national, Ms Marie Christiane Ramsay Pergola, a British national and the estate of the late Marquis John Scicluna (represented by its administrator Marcus John Scicluna Marshall as duly authorised by the Civil Court (First Hall) (Voluntary Jurisdiction) on 5 May 2016) (“the applicants”), lodged on 16 December 2016.

2. The applicants were represented by Dr I. Refalo, Dr M. Refalo and Dr S. Grech, lawyers practising in Valletta. The Maltese Government (“the Government”) were represented by their Agent, Dr P. Grech, Attorney General.

3. The applicants complained, in particular, that the Constitutional Court judgment in their favour failed to give them appropriate redress for the violations suffered, they therefore remained victims of a violation of Article 6 and Article 1 of Protocol No. 1 to the Convention.

4. On 6 September 2018 notice of the complaints concerning Article 1 of Protocol No. 1 to the Convention and Article 6 § 1 (length of proceedings), as well as Article 13 in connection with both just-mentioned articles was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. The British Government did not make use of their right to intervene in the proceedings (Article 36 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. Details of the applicants are set out in the Annex.

A. Background to the case

7. The applicants are owners of commercial properties nos. 1 to 5 in St George's Square, Valletta and nos. 132 to 135 Strait Street, Valletta (hereinafter jointly referred to as "the property").

8. On 30 July 1958 the applicants' ancestor (the late Marquis John Scicluna) leased the premises no. 1 to 5 in St George's Square, Valletta, to Scicluna's Bank for ten years starting on 1 January 1959 for the annual rent of 800 pounds sterling (GBP).

9. In March 1968, the premises no. 132 to 135 Strait Street, Valletta, adjacent to the other premises, were incorporated into the lease contract for use by Scicluna's Bank. Thereinafter the lease was renewed every year.

10. On an unspecified date, Scicluna's Bank was merged with the National Bank of Malta Ltd, and the contract of lease was renewed. The conditions imposed in the lease contracts of 1958 and 1968 *et sequi* stipulated that the property would be used as the seat of Scicluna's Bank and that it could not be sublet or used for other purposes.

11. By means of Act XLV of 1973 as amended by Act IX of 1974 the Bank of Valletta (hereinafter "the Bank") was established and the lease of the property was transferred in the name of the Bank by operation of law. The Bank was wholly owned by the Government.

12. The applicants objected to the transfer, considering it a breach of contract. Following numerous requests for the return of the property and futile attempts to agree over a new lease contract with appropriate conditions, in 1989 the applicants instituted ordinary proceedings (no. 926/1989) before the civil courts, in their ordinary jurisdiction, to regain possession of the property. In the applicants' view, since it was a business lease and therefore a going concern which could be terminated at any time, the special rent laws under Chapter 69 of the Laws of Malta did not apply to it.

13. Twenty-one years later, the case was determined by a final judgment of the Court of Appeal of 25 June 2010, whereby the court found that the lease in favour of the Bank was protected under Chapter 69 of the Laws of Malta (until 2028) and therefore that the ordinary courts were not the competent forum to address the applicants' complaints.

14. Over time the Government reduced its stake in the Bank by selling shares to private third parties.

B. Constitutional redress proceedings

15. On 11 November 2010 the applicants instituted constitutional redress proceedings relying on, *inter alia*, Article 1 of Protocol No. 1 to the Convention and Article 6 § 1 of the Convention (fair trial within a reasonable time).

16. By a judgment of 9 February 2016 the Civil Court (First Hall) in its constitutional competence upheld the applicants' claims in part. It found a violation of Article 1 of Protocol No. 1 to the Convention and a breach of the reasonable time requirement under Article 6 of the Convention in relation to proceedings no. 926/1989, and awarded the applicants 1,000,000 euros (EUR) in compensation. Costs were to be paid by the defendants.

17. In so far as relevant, the court rejected i) the defendant's plea that the applicants had not presented proof of their title to the property ii) the defendant's objection *ratione temporis* and iii) the defendant's objection of non-exhaustion of ordinary remedies. The court noted that previous judicial action had recognised the applicants' interest; that the situation complained of was a continuous one; and that the applicants had no ordinary remedies available to them given that the Rent Regulation Board (RRB) was not an effective remedy.

18. On the merits, the court found that the applicants had been deprived of their possessions, but the legislative intervention had been lawful (the lease at issue was valid at law and the Bank remained protected) and pursued the public interest in view of the economic climate at the time. Nevertheless, in the absence of adequate compensation there had been a breach of the applicants' property rights. The court noted that, according to the court-appointed expert, the estimated rental value of the property in 2014 was EUR 159,350 [annually]. The rent received by the applicants was thus derisory and as a result they were suffering an excessive burden.

19. The court found a violation of the reasonable time requirement under Article 6 § 1 of the Convention in the light of the twenty-one year duration of the civil proceedings instituted by the applicants.

20. The Government and the applicants appealed.

21. By a judgment of 24 June 2016, the Constitutional Court upheld only in a limited part both appeals and confirmed the first-instance judgment, with a varied reasoning in part, but reduced the compensation to EUR 25,000.

22. In particular, the Constitutional Court confirmed the first-instance court's rejection of the claim of non-exhaustion of ordinary remedies, noting that it had not been clear whether the competent forum to determine the matter was the civil courts or the RRB. The applicants pursued the remedy before the civil courts and it took the latter twenty-one years to come to the conclusion that they were not the competent forum. The

first-instance court had thus been correct in looking into the merits of the case.

23. As to the merits, the Constitutional Court confirmed that the measure was disproportionate given the striking difference between the rent the applicants received, EUR 4,277.80 annually, and its rental value on the market, EUR 159,350 annually. The amendments as a result of Act X of 2009 [which amended the Civil Code and was aimed at ameliorating the position of land owners who were subject to controlled rents] were of little comfort given that the applicants had been suffering a breach for a long time and would continue to do so for another twelve years given that Article 1531I of the Civil Code resulting from the 2009 amendments - which provided for a possibility of owners regaining their property - could only come to play after twenty years from 2008. Furthermore, the fact that the applicants had not lodged proceedings before the RRB could not play in their disfavour given that the RRB was bound by law and therefore it could not award an amount of rent which would have fulfilled the proportionality requirement.

24. As to the violation of Article 6, the Constitutional Court noted, in brief, that the case had started in 1989 and the submission of evidence came to an end in 1994. It then took four years for the applicants to file their submissions. At that stage the court accepted the applicants' request to nominate a court-appointed expert, but it then took six years, until 2006, for a court-appointed expert to submit a technical report, which was confirmed on oath in January 2007, and a first-instance judgment was delivered on 28 March 2008. During that time, in 2003 the court had asked the parties for submissions and the applicants had presented their submissions only a year later in 2004. The proceedings before the appeal court had not been excessively long, while it was true that the appeal was lodged on 16 April 2008 and was appointed for hearing on 12 April 2010, the final judgment had been issued just two months later. It was thus clear that most of the delay was due to the applicants, namely, four years for their submissions, and then six years for the additional technical experts' report - although the latter's delay was justified given that two of the experts had to be replaced. However, given that the case was of average complexity the State could not be exonerated from its responsibility of an overall twenty-one-year delay. Nevertheless, given the responsibility of the applicants for part of the delay, in the Constitutional Court's view a finding of a violation was sufficient just satisfaction in the present case.

25. As to redress, the Constitutional Court considered that it was not the adequate forum to decide on the eviction of a tenant, which was the competence of the ordinary courts or the RRB. However, given that the application of Chapter 69 of the Laws of Malta, in combination with Act XLV of 1973 as amended by Act IX of 1974 had breached the applicants' human rights, the Constitutional Court ordered that such laws

could no longer be relied on as a basis for the occupation of the premises in the present case. As to compensation, having considered that the applicants had waited twenty-three years to lodge constitutional redress proceedings and the disproportion of the rent received by the applicants in the light of the market value, as well as the order invalidating the effects of the impugned laws between the parties at issue, the Constitutional Court awarded EUR 25,000. Costs were to be paid in the ratio of 3/5 by the applicants (amounting to EUR 4,620.43) and 2/5 by the Government.

II. RELEVANT DOMESTIC LAW

26. The relevant provision of the Reletting of Urban Property (Regulation) Ordinance, Chapter 69 of the Laws of Malta, enacted in June 1931 and subsequently amended, and those of the Civil Code, Chapter 16 of the Laws of Malta, as amended in 2009, are set out in *Zammit and Attard Cassar v. Malta* (no. 1046/12, §§ 26-27, 30 July 2015).

27. Act XLV of 1973 and Act IX of 1974 vested the administration and full control of The National Bank of Malta and Tagliaferro Bank in the Council of Administration, which in turn passed the assets of The National Bank of Malta to the Bank of Valletta.

THE LAW

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

28. The applicants complained that the Constitutional Court judgment in their favour failed to give them appropriate redress for the violation suffered, they therefore remained victims of a violation of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

29. The Government contested that argument.

A. Admissibility

1. *The Government's objection of lack of victim status*

30. The Government submitted that the applicants had lost their victim status following the Constitutional Court's finding which acknowledged the violation and awarded EUR 25,000 in compensation. Moreover, the Constitutional Court had also made an order to the effect that the bank could no longer rely on the relevant law to retain title to the property, thus in theory it had evicted the Bank.

31. Relying on the Court's case-law the applicants maintained that they remained victims of the violation upheld by the Constitutional Court. They noted that the rental value of the property according to the court-appointed expert was EUR 159,300 annually, thus the domestic court's award of EUR 25,000 had only covered two months' of rent, not forty years. Moreover, the applicants were made to pay part costs on appeal. The final award was also in stark contrast with the EUR 1,000,000 awarded by the first-instance court. Further, the applicants considered that the declaration facilitating eviction did not make up for the losses incurred since 1974.

32. The Court refers to its general principles about the matter as set out in *Apap Bologna v. Malta* (no. 46931/12, §§ 41 and 43, 30 August 2016).

33. In the present case the Court notes that there has been an acknowledgment of the violation by the domestic courts. As to whether appropriate and sufficient redress was granted, the Court considers that even assuming that the market value is not applicable and the rent valuations may be decreased due to the legitimate aim at issue, an award of EUR 25,000 – from which part costs amounting to EUR 4,620.43 had to be paid – for a property whose rental value on the market was EUR 159,350 annually (at least in 2014) as accepted by the Constitutional Court (see paragraph 23 above) cannot be considered sufficient for a violation which persisted for decades during which the applicants were being paid a disproportionate amount of rent.

34. That finding alone suffices to find that the redress provided by the Constitutional Court did not offer sufficient relief to the applicants, who thus retain victim status for the purposes of this complaint.

35. The Government's objection is therefore dismissed.

2. *Conclusion*

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

B. Merits

37. The applicants submitted that there had been a violation of Article 1 of Protocol No. 1 as upheld by the domestic courts.

38. The Government submitted that the applicants had not suffered any interference since they had voluntarily entered in to the contract and in any event a fair balance had been struck by the authorities.

39. Having regard to the findings of the domestic courts relating to Article 1 of Protocol No. 1 (see paragraph 23 above), 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. In addition, the Court observes that while the overall measure may be in the general interest, the fact that there also exists an underlying private interest of a commercial nature cannot be disregarded (see, *mutatis mutandis*, *Zammit and Attard Cassar v. Malta*, no. 1046/12, § 63, 30 July 2015, and *Bradshaw and Others v. Malta*, no. 37121/15, § 64, 23 October 2018).

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

41. The applicants complained of a violation of the reasonable time requirement under Article 6 § 1 of the Convention which read as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Scope of the complaint

42. The Court notes that in their application the applicants did not explicitly complain about the duration of the constitutional redress proceedings under Article 6 § 1 of the Convention. In consequence, despite any reference to this matter in their observations, the Court considers that the scope of the present complaint, as communicated to the respondent Government, solely refers to the duration of the civil proceedings no. 926/1989, which lasted twenty-one years over two jurisdictions.

B. Admissibility

1. *The Government's objection of lack of victim status*

43. The Government submitted that the applicants had lost their victim status following the Constitutional Court's finding which acknowledged the violation and awarded compensation.

44. The applicants submitted that they were still victims as no compensation had been awarded to them in respect of this violation.

45. The Court refers to its general principles about the matter in relation to complaints of length of proceedings as set out in *Central Mediterranean Development Corporation Limited v. Malta* (no. 35829/03, §§ 24-26 and 28, 24 October 2006).

46. The Court notes that no compensation whatsoever has been awarded to the applicants for the acknowledged breach of Article 6 § 1 concerning proceedings which lasted more than twenty years over two jurisdictions, as the Constitutional Court considered that a finding of a violation amounted to sufficient compensation, given that most of the delay was due to the applicants (see paragraph 24). The Court observes that what the Constitutional Court considered as “most of the delay” amounted on its own account to about ten years (four for submissions and six years for the court-appointed expert reports) out of twenty-one, and the Constitutional Court considered that the six years’ delay awaiting the experts who had to be replaced following their promotion was also partly justified. In this connection, the Court would reiterate that experts work in the context of judicial proceedings under the supervision of a judge, who remains responsible for the preparation and speedy conduct of proceedings (see, for instance, *Proszak v. Poland*, 16 December 1997, § 44, *Reports of Judgments and Decisions* 1997–VIII, and *Łukjaniuk v. Poland*, no. 15072/02, § 28, 7 November 2006). It follows that the applicants’ conduct cannot be said to have contributed to “most of the delay”. Moreover, the Constitutional Court explicitly remarked that, given that the case was of average complexity the State could not be exonerated from its responsibility of an overall twenty-one year delay.

47. It has not been shown in the present case that the applicants were largely responsible for the delay of the proceedings, nor that only a small part of the extraordinarily lengthy proceedings was attributable to the State (see, *a contrario*, *Piper v. the United Kingdom*, no. 44547/10, §§ 73-74, 21 April 2015, and *McNamara v. the United Kingdom*, Committee judgment no. 22510/13, §§ 67-68, 12 January 2017). In that light, the Court cannot consider that the Constitutional Court gave sufficient reasons for denying the applicants any compensation whatsoever.

48. It follows that the applicants retain victim status for the purposes of this complaint and the Government’s objection is therefore dismissed.

2. Conclusion

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

C. Merits

50. The applicants complained that their case had lasted unreasonably long. They considered that irrespective of any delaying factors it was not justifiable to take twenty years to decide a case, and that the responsibility lay with the courts.

51. The Government submitted that while the case had not been complex, the applicants' behaviour had contributed to the delay. It followed that there had been no violation of Article 6.

52. Having regard to the findings of the domestic courts relating to the length of proceedings (see paragraph 24 above), and the Court's considerations set out above (see paragraphs 46-47) 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 reasonable time requirement has been breached.

53. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

54. The applicants further complained that the Constitutional Court judgment in their favour failed to give them appropriate redress for the violations suffered. Thus, in their view, given the domestic case-law, constitutional redress proceedings could not be considered as an effective remedy. 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

55. The Government submitted that the applicants could have instituted a fresh set of constitutional redress proceedings to complain under Article 13 about the Constitutional Court judgment.

56. The applicants submitted that such an action would not have been appropriate and that the ordinary action at such stage was to bring the complaint before the Court.

57. The Government's objection to this effect has been repeatedly rejected by this Court (see, amongst multiple authorities, *Apap Bologna*, cited above, § 63 and more recently *Grech and Others v. Malta*, no. 69287/14, § 50, 15 January 2019). The Court sees no reason to reach a different conclusion in the present case.

58. The Government's objection is therefore dismissed.

59. Further, the Court notes that it has already found a violation of Article 6 and Article 1 of Protocol No. 1 to the Convention, it follows that the applicants' claims are arguable for the purposes of Article 13.

60. The Court considers that the complaints under Article 13 in conjunction with both provisions are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

61. The applicants submitted that, in connection with the violation of Article 1 of Protocol No. 1, as per its usual practice, the Constitutional Court, had i) failed to evict the tenants, ii) awarded a meagre amount of compensation ii) imposed costs of the proceedings on the successful applicants. In connection with Article 6 it had failed to award any compensation whatsoever.

62. In connection with the remedy in relation to Article 1 of Protocol No. 1, while it was true that the courts of constitutional jurisdiction had "unlimited powers", in this case those courts had failed to use their wide-ranging powers to rectify the breach. Indeed, domestic case-law showed that the Constitutional Court systematically reduced compensation awards made by the first-instance constitutional jurisdiction without giving any weighty reasons, and sometimes also without any adequate reasoning. Moreover, generally the Constitutional Court also ordered applicants who had been successful in their claims to pay part of the costs of the proceedings. They made reference to a number of domestic cases (see the list set out in *Grech and Others*, cited above, § 53).

63. As to eviction orders the applicants noted that the Constitutional Court had persistently struck down first-instance decisions by the constitutional jurisdictions which had ordered such evictions, as shown by the list submitted by the Government (see paragraph 67 below). It was only in some of those cases that the Constitutional Court ordered, instead, that the tenants could no longer rely on the relevant law to maintain title to the property. The applicants considered that the latter order was not tantamount to an eviction order. It was true that, like in the present case, once the Constitutional Court had ordered that the tenants could no longer rely on the relevant provisions of law to retain title to the property, an owner is sometimes successful in evicting the tenant. However, in the applicants' view, such a process was burdensome and entailed another set of proceedings.

64. In connection with the remedy in relation to Article 6, the applicants relied on the list submitted by the Government which showed an inconsistency in the amounts awarded when compared to the relevant delay. They also noted that the Constitutional Court often considered a breach of Article 6 incidental to the main breach and compensation for the latter was absorbed by the main breach - they relied on *Vica Limited vs the Commissioner of Land*, Constitutional Court judgment of 3 February 2012. In other cases the Constitutional Court simply opted to find that a finding of a violation is sufficient just satisfaction, without providing any monetary compensation - they relied on *Pawlu Cachia vs the Attorney General*, Constitutional Court judgment of 28 December 2001.

(b) The Government

65. The Government submitted that constitutional proceedings were capable of providing adequate redress for the violation found by the domestic courts. In fact and in practice, the courts of constitutional jurisdiction could award any type of redress, ranging from an award of compensation, which was the usual type of redress granted in cases of a violation of Article 1 of Protocol No. 1 (they relied, for example, on *AIC Joseph Barbara vs the Prime Minister*, Constitutional Court judgment of 31 January 2014, and *Angela sive Gina Balzan vs the Prime Minister*, Constitutional Court judgment of 7 December 2012), to various other types of orders. The Government submitted, as examples from actual judgments, the reintegration of an employee into the public service, as well as an order made to the courts of criminal jurisdiction to discard a statement made by the accused when it had been taken by the police without legal assistance. They reiterated that there were no limits to the powers of the courts of constitutional jurisdiction to grant redress for Convention violations.

66. In reply to the Court's specific request in relation to Article 1 of Protocol No. 1 to submit relevant examples, the Government submitted the following cases where the domestic courts of constitutional jurisdiction upheld the violation of the claimants' property rights (in circumstances similar to the present case), awarded compensation and ordered that the tenants could no longer rely on the protection afforded by Chapter 158 of the Laws of Malta to retain title to the property, and thus facilitated eviction:

- *Maria Pia sive Marian vs the Attorney General*, Constitutional Court judgment of 31 January 2014,
- *Vincent Curmi vs the Attorney General*, Constitutional Court judgment of 24 June 2016,
- *Rose Borg vs the Attorney General*, Constitutional Court judgment of 11 July 2016,
- *Maria Stella sive Estelle Azzopardi Vella et vs the Attorney General*, Constitutional Court judgment of 30 September 2016.

67. A further four examples of the like dated 2018 were also included:

- *Thomas Cauchi et vs the Attorney General*, Constitutional Court judgment of 2 March 2018,
- *Evelyn Montebello et vs the Attorney General*, Constitutional Court judgment of 13 July 2018,
- *John Mattei et vs the Housing Authority* Constitutional Court judgment of 5 October 2018,
- *Maria Pia sive Marian Galea vs the Attorney General*, Constitutional Court judgment of 14 December 2018.

In the last-mentioned three cases the Constitutional Court revoked the eviction order which had been ordered by the first-instance court. In the other case the claimants had not been successful at first-instance.

68. The Government also submitted four examples dated 2016 where no eviction was ordered by the courts:

- *Carmelo Grech vs the Housing Authority*, Constitutional Court judgment of 10 February 2016;
- *Maria Ludgarda sive Mary Borg et vs Rosario Mifsud et, Raymond* Constitutional Court judgment of 29 April 2016;
- *Cassar Torreggiani et vs the Attorney General*, Constitutional Court judgment of 29 April 2016;
- *Ian Peter Ellis et vs the Attorney General*, Constitutional Court judgment of 24 June 2016.

69. In reply to the Court's specific question in relation to Article 6, the Government relied on the Court's findings in *Central Mediterranean Development Corporation Limited* (cited above). They also submitted a list of examples showing the compensation awarded by the Constitutional Court when upholding violations of the reasonable time requirement, the most recent of which are listed hereunder:

- *John A. Said Pro et Noe vs the Attorney General*, Constitutional Court judgment of 11 December 2011 – EUR 1,000 for 12 years [one instance];
- *Joseph Camilleri vs the Attorney General*, Constitutional Court judgment of 28 September 2012 – EUR 7,000 plus interest to date of payment, for 15 years [two instances];
- *Joseph Lebrun vs the Attorney General*, Constitutional Court judgment of 26 May 2014 – EUR 6,000 for 6 years plus EUR 10 per day until the bill of indictment is issued;
- *Omar Asman Omar vs the Attorney General*, Constitutional Court judgment of 6 February 2015 – EUR 4,000 and EUR 2,000 respectively to the victims for 5 years 8 months [one instance];
- *Raymond Bonnici vs the Attorney General*, Constitutional Court judgment of 2 March 2015 – EUR 700 for 23 years [one instance];
- *Daniel Alexander Holmes vs the Attorney General*, Constitutional Court judgment of 16 March 2015 – no compensation for 7 years [two instances];
- *Iris Cassar vs the Attorney General*, Constitutional Court judgment of 27 March 2015 – EUR 8,000 for 20 years [two instances];

- *Samuel Onyeabor vs the Attorney General*, Constitutional Court judgment of 14 December 2015 – EUR 5,000 for 7 years [one instance];
- *Zakkarija Calleja vs the Attorney General*, Constitutional Court judgment of 15 December 2015 – EUR 2,000 for 43 years [one instance];
- *Anton Camilleri vs the Attorney General*, Constitutional Court judgment of 1 February 2016 – EUR 3,000 for 6 years [one instance];
- *Joseph Camilleri vs the Attorney General*, Constitutional Court judgment of 27 May 2016 – EUR 4,000 for 11 years [one instance];
- *Joseph Gauci vs the Attorney General*, Constitutional Court judgment of 24 June 2016 – EUR 5,000 for 16 years [two instances];
- *Malcolm Said vs the Attorney General*, Constitutional Court judgment of 24 June 2016 – EUR 800 for five years [one instance];
- *Filippa Seguna vs the Attorney General*, Constitutional Court judgment of 30 September 2016 – EUR 3,000 for 23 years [one instance];
- *Mario Schembri vs the Attorney General*, Constitutional Court judgment of 24 November 2017 – EUR 3,000 for 7 years [one instance];
- *Gordi Felice vs the Attorney General*, Constitutional Court judgment of 27 November 2017 – EUR 6,000 for 13 years [two instances];
- *Emmanuel Borg vs the Attorney General*, Constitutional Court judgment of 13 July 2018 – EUR 3,000 for 33 years [two instances];
- *Roberta Grech vs the Attorney General*, Constitutional Court judgment of 5 October 2018 – EUR 8,000 for 8 years [one instance];
- *Liliana Farrugia vs the Attorney General*, Constitutional Court judgment of 5 October 2018 – EUR 8,000 for 20 years [two instances].

2. The Court's assessment

(a) Article 13 in conjunction with Article 1 of Protocol No. 1

70. The Court reiterates its general principles under Article 13 as set out in *Apap Bologna* (cited above, §§ 76-79). In particular it reiterates that, for the purposes of Article 13, it is for the Court to determine whether the means available to an applicant for raising a complaint are “effective” in the sense either of preventing the alleged violation or its continuation or of providing adequate redress for any violation that had already occurred. In certain cases a violation cannot be made good through the mere payment of compensation and the inability to render a binding decision granting redress may also raise issues (*ibid.*, § 77).

(i) “Preventing the alleged violation or its continuation”

71. The Court notes that as in *Apap Bologna*, cited above, and *Portanier v. Malta* (no. 55747/16, 27 August 2019), in the present case the constitutional jurisdictions and in particular the Constitutional Court did not order the eviction of the tenant. There is no doubt that, in law, the courts of constitutional jurisdiction could annul an order and evict a tenant (as

sometimes ordered by the first-instance constitutional jurisdiction, see paragraph 67 *in fine* above), which measure would have prevented the continuation of the violation. However, it is clear, from the case-law relied on by the Government, that in situations such as those of the present case, namely where as a result of a protected rent regime (such as that arising from Chapter 69 of the Laws of Malta at issue in the present case) the owners have suffered an excessive burden leading to a violation, the courts of constitutional jurisdiction, and in particular the Constitutional Court on appeal, do not take such action. More particularly, the Constitutional Court revokes such an action when it was ordered by the first-instance court. Indeed, the Government have not provided one example of a final finding ordering eviction, despite having been requested to do so, and despite the fact that numerous violations of the kind have been found at the domestic level. In similar circumstances, in *Apap Bologna* (concerning violations arising from requisition orders) the Court found that, despite having the power to do so, in practice, the Constitutional Court had repeatedly failed to take the required action which would bring the violation to an end (*ibid.*, § 86).

72. In *Apap Bologna*, § 88, the Court, noting that it was not for it to interpret domestic law, also expressed regret at the interpretation given by the constitutional jurisdictions as to their impossibility of awarding a higher future rent. According to the Court, such an order would constitute a measure *vis-à-vis* an individual applicant, which would provide for an end to the violation without affecting the tenant. The same was reiterated in the more recent *Portanier* judgment, § 48, which noted that this course of action has not been popular with the constitutional jurisdictions, and where the Court reiterated 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 repair the existing disproportionality and thus bring the violation to an end. The Court notes that, in the present case, despite the less weighty legitimate aim, an adequate future rent in the light of that aim, could nonetheless bring the violation to an end. Moreover, the future rent would have had to be established only until 2028 date when the lease will no longer be protected under Chapter 69 of the Laws of Malta. Nevertheless, the Constitutional Court did not take that approach.

73. The Court notes that in the present case, while none of the above actions were taken, the Constitutional Court took an alternative action. It ordered that the tenants could no longer rely on the relevant law provisions to retain title to the property. From the domestic case-law brought to the

Court's attention by the Government, that same action appears to have become customary, at least since 2016. In *Portanier* the Court maintained that it still had doubts as to this approach, and reiterated its reservations about the fact that the Constitutional Court, whose role is to bring a violation to an end and to redress the upheld violation, abdicates the responsibility assigned to it by the Constitution of Malta and refers applicants to yet another remedy despite it having the power and authority to grant such redress (§ 51). In that case, while having set out a number of considerations, in view of the parties' limited submissions and the fact that the applicant had been successful in evicting the tenants, the Court refrained from adjudicating on the effectiveness of that approach in general (§§ 52-54). Similar considerations apply in the present case in relation to the parties' limited submissions, and for, *inter alia*, those same reasons the Court will refrain from adjudicating on the matter in general. The Court will however adjudicate on the effectiveness of such a measure in the present case.

74. Firstly, the Court notes that it has not been informed that eviction proceedings were undertaken and if so that they have been concluded. Nor has the Court been informed that the tenants have voluntarily vacated the property since they now (as a result of the Constitutional Court judgment) no longer have title to it (in the absence of the relevant protection of law). It follows that the inaction of both parties has led to the status quo remaining that which existed on the date of the Constitutional Court judgment, more than three years ago. In this connection the Court makes reference to its case-law to the effect that it is inappropriate to require an individual who has obtained judgment against the State at the end of legal proceedings to then bring enforcement proceedings to obtain satisfaction (*Musci v. Italy* [GC], no. 64699/01, § 90 ECHR 2006-V (extracts)). That reasoning appears to be relevant to the situation in the present case, and echoes the concerns expressed by the Court in *Portanier* concerning a further set of eviction proceedings.

75. However, leaving that matter open, the Court notes that, unlike the situation in other similar cases against Malta where the interferences had been justified by the legitimate aim of providing social housing, in the present case the interference applied in favour of a commercial entity, namely a bank. Moreover, as the law stood at the time of the Constitutional Court proceedings, the bank would in any event lose the protection of the law and therefore would have to vacate the property when the lease comes to an end in 2028. It follows that, in the circumstances of the present case, there seems to be no particular justification for delaying redress and continuing to perpetrate the violation established. Thus, in the absence of an award covering future rent until 2028, the Court considers that 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 paragraph 71 above).

76. 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 thus the remedy at issue did not prevent its continuation.

(ii) “Providing adequate redress for any violation that had already occurred”

77. The Court notes that it has repeatedly found that the sums awarded in compensation by the Constitutional Court do not constitute adequate redress. It also makes reference to its considerations in paragraphs 33 and 34 above where the Court found that the financial redress offered was also not adequate in the present case.

78. The Court reiterates that, just like an award for pecuniary damage under Article 41 of the Convention, an award for pecuniary damage made by a domestic court must be intended to put the applicant, as far as possible, in the position he would have enjoyed had the breach not occurred. It transpires from the information and cases brought before the Court that this is often not the case. Such pecuniary awards are also often not accompanied by an adequate award of non-pecuniary damage and/or an order for the payment of the relevant costs (*ibid.* § 90 and *Grech and Others*, cited above, § 62). No domestic case-law dispelling such conclusions has been brought to the Court’s attention in the present case.

(iii) Conclusion

79. In the light of the above considerations, the Court concludes 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.

80. No other remedies have been referred to by the Government.

81. 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.

(b) Article 13 in conjunction with Article 6 § 1 (length of proceedings)

82. As regards length-of-proceedings cases, the Court reiterates that a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 183, ECHR 2006-V). However, States can also choose to introduce only a compensatory remedy, without that

remedy being regarded as ineffective. The Court has set key criteria for verification of the effectiveness of a compensatory remedy in respect of the excessive length of judicial proceedings. These criteria are as follows:

- an action for compensation must be heard within a reasonable time;
- the compensation must be paid promptly and generally no later than six months from the date on which the decision awarding compensation becomes enforceable;
- the procedural rules governing an action for compensation must conform to the principle of fairness guaranteed by Article 6 of the Convention;
- the rules regarding legal costs must not place an excessive burden on litigants where their action is justified;
- the level of compensation must not be unreasonable in comparison with the awards made by the Court in similar cases (see *Valada Matos das Neves v. Portugal*, no. 73798/13, § 73, 29 October 2015, and *Brudan v. Romania*, no. 75717/14, § 69, 10 April 2018).

83. On this last criterion, the Court indicated that, with regard to pecuniary damage, the domestic courts are clearly in a better position to determine the existence and quantum. The situation is, however, different with regard to non-pecuniary damage. There is a strong, although rebuttable, presumption in favour of non-pecuniary damage being occasioned by the excessive length of proceedings. However, there may also be situations where no such damage, or only minimal damage, has been ascertained – for instance where an applicant’s conduct has entirely or partly caused the procrastination or where the delay has been caused by circumstances independent of the authorities (see *Rutkowski and Others v. Poland*, nos. 72287/10 and 2 others, § 182, 7 July 2015, and the case-law cited therein).

84. In the present case the Court will evaluate the effectiveness of the remedy, namely constitutional redress proceedings, in the light of the criteria mentioned above (§ 82).

85. The Court notes that the parties have not argued, and therefore, for the purposes of the present case, the Court has no reason to doubt that constitutional redress proceedings are, in principle, governed by the procedural fairness guarantees provided by Article 6, and that the compensation awards made are, generally, paid promptly.

86. Neither have the parties accentuated or defended at length the issue of the costs of the proceedings. Nevertheless, the Court cannot ignore that it has repeatedly found (in the context of cases relating to Article 1 of Protocol No. 1) that compensation awards are reduced or even absorbed by an order for the payment of costs (see, as recent examples, *Zammit and Vassallo v. Malta*, no. 43675/16, § 42, 28 May 2019, and *Portanier*, cited above, § 55). The same occurred in the present case, where in proceedings where the applicants’ claims under Article 1 of Protocol No. 1 and Article 6 in connection with the length of proceedings were upheld, the Constitutional

Court nevertheless ordered the applicants to pay 3/5 of the costs of the proceedings (see paragraph 25 above). Thus, while it has not been argued that such costs impede access to such a remedy, they, at the very least, often have an impact on the compensation awarded.

87. The Court observes that there existed no limit on the amount of compensation which could be granted to an applicant in such proceedings. The redress to be awarded is based solely on the exercise by the domestic court judges' of their discretion as to what might constitute appropriate pecuniary redress in the circumstances of the particular case. The mere fact that an amount of compensation awarded is low, or that no amount is awarded at all, does not render the remedy in itself ineffective, although it does have an impact on the Court's assessment of the applicant's victim status concerning the length of proceedings complaint (see, *mutatis mutandis*, *Zarb v. Malta*, no. 16631/04, § 51, 4 July 2006, and *Śliwiński v. Poland*, no. 40063/06, § 36, 5 January 2010 respectively). In the present case the Constitutional Court denied the applicants any compensation whatsoever without giving sufficient reasons (see paragraph 47-48 above). Moreover, the two cases relied on by the applicants and one of the cases put forward by the Government, as well as the applicants' own case, suggest that the Maltese Constitutional Court far too often fails to award any compensation at all for such breaches. Even when they do make an award, the cases brought forward by the Government indicate that the Constitutional Court generally awards sums which do not constitute adequate redress (compare, *Apap Bologna*, cited above, § 89, in relation to pecuniary awards in property cases). Indeed, the Court observes that in around two thirds of the cases relied on by the Government the Constitutional Court made awards which were significantly lower (between 20 and 40 % of the amount), or even manifestly unreasonably lower (as low as 2 and 5 % of the amount) than what the Court would have awarded in those circumstances. Thus, the material brought forward by the parties appears to be sufficient evidence to show that the remedy at issue does not fulfil this criterion due to a regular practice of significantly or unreasonably low compensation awards in such cases, or even no compensation at all, as happened in the present case.

88. Further, the Court recalls that a remedy which could last for several years through two jurisdictions would not be reconcilable with the requirement that the remedy for delay (even before a constitutional court) be sufficiently swift (see *McFarlane v. Ireland* [GC], no. 31333/06, § 123, 10 September 2010, and the case-law cited therein). In particular, the Court has held that to conform with the reasonable time principle, a remedy for length of proceedings should not in principle and in the absence of exceptional circumstances, last more than two and half years over two jurisdictions, including the execution phase (see *Gagliano Giorgi v. Italy*, no. 23563/07, § 73, ECHR 2012). The Court notes that the parties have not

elaborated on this matter. However, the fact that the constitutional redress proceedings in the present case lasted nearly six years over two jurisdictions raises doubts about the speediness of the remedial action itself.

89. The Court concludes that, in the light of the above considerations and bearing in mind the systemic flaws identified above, the Government have not demonstrated that constitutional redress proceedings, which are an effective remedy in theory, constituted effective remedies in practice, for length of proceedings complaints at the relevant time, as demonstrated by the circumstances of the present case.

90. Accordingly, the Court finds that there has been a violation of Article 13, in conjunction with Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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

1. *The parties' submissions*

92. The applicants claimed 14,291,500 euros (EUR) in respect of pecuniary damage and EUR 598,000 in non-pecuniary damage. The pecuniary damage represented the loss of rent calculated by the court-appointed expert as being EUR 159,350 annually multiplied by 45 years, from which had to be deducted the EUR 25,000 awarded by the domestic court, resulting in EUR 7,145,750 and the same sum in interest according to law. The non-pecuniary claim was calculated on the basis of EUR 10,000 per year for the violation of Article 1 of Protocol No. 1, and EUR 3,000 per year for the twenty year delay in the proceedings plus the six year delay before the constitutional redress proceedings, as well as EUR 35,000 each for the two violations of Article 13. The legal representatives indicated their firm's bank account to receive payment of all the sums awarded by the Court.

93. The Government submitted that the applicants' claims were grossly exaggerated. They noted that according to the evaluation of their own *ex parte* architect the market rental price of the property in 2014 was EUR 93,500 annually. Moreover, at least until the year 2000, the rent received was commensurate to the market prices, thus sums in respect of those years were not due. They also noted that judicial interest was only payable from the date of judgment according to Maltese legislation. They also considered that the applicants had already obtained EUR 25,000 in

non-pecuniary damage from the domestic court. In their view the award for pecuniary damage should not exceed EUR 75,000 jointly and that in non-pecuniary damage should not exceed EUR 2,000.

2. *The Court's assessment*

94. The Court must proceed to determine the compensation the applicants are entitled to in respect of the loss of control, use and enjoyment of the property which they have suffered. However, the Court notes that the only valuation submitted by the court-appointed architect referred to 2014. The rental value of the premises was clearly not the same in the preceding decades. In consequence the Court is unable to identify in which year the disproportionality arose. For the same reasons the Court considers that it has no objective basis on which to determine the pecuniary damage for the years preceding 2014.

95. Thus, in assessing the pecuniary damage sustained by the applicants, the Court has, 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 during the relevant period. It has also considered the legitimate purpose of the restriction suffered, bearing in mind that legitimate objectives in the “public interest”, such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (see, *inter alia*, *Ghigo v. Malta* (just satisfaction), no. 31122/05, § 18 and 20, 17 July 2008). In the present case however, the Court keeps in mind that the property was not used for securing the social welfare of tenants or preventing homelessness (compare, *Fleri Soler and Camilleri v. Malta* (just satisfaction), no. 35349/05, § 18, 17 July 2008). Thus, the situation in the present case might be said to involve a degree of public interest which is significantly less marked than in other cases and which does not justify such a substantial reduction compared with the free market rental value (see, *Zammit and Attard*, cited above, § 75).

96. Furthermore, the sums already received by the applicants for the relevant period must be deducted.

97. The Court reiterates that an award for pecuniary damage under Article 41 of the Convention is intended to put the applicant, as far as possible, in the position he would have enjoyed had the breach not occurred. It therefore considers that interest should be added to the above award in order to compensate for loss of value of the award over time. As such, the interest rate should reflect national economic conditions, such as levels of inflation and rates of interest. The Court thus considers that a one-off payment of 5% interest should be added to the above amount.

98. The Court thus awards the applicants, jointly, EUR 500,000. As requested, the amount awarded is to be paid directly into the bank account designated by the applicants' representatives.

99. Bearing in mind the Constitutional Court's award of EUR 25,000, which remains payable to the applicants, the Court need not award a further sum in non-pecuniary damage, it therefore rejects such claim.

B. Costs and expenses

100. The applicants also claimed a total of EUR 26,041.62 in costs and expenses, including EUR 4,620.43 (as per taxed bill of costs) and EUR 19,817.20 (other legal costs incurred) in connection with the constitutional redress proceedings and EUR 6,224.42 for those incurred before the Court. The legal representatives indicated their firm's bank account to receive payment of all the sums awarded by the Court.

101. The Government accepted the claim of EUR 4,620.43 (as per taxed bill of costs) but contested the remaining claims for expenses incurred domestically and considered that costs before this Court should not amount to more than EUR 2,000.

102. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 16,000, jointly, covering costs under all heads. As requested, the amount awarded is to be paid directly into the bank account designated by the applicants' representatives (see, for example, *Denisov v. Ukraine* [GC], no. 76639/11, § 148, 25 September 2018 and the Practice Directions to the Rules of Court concerning just satisfaction claims, under the heading payment information).

C. Default interest

103. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1;

5. *Holds* that that there has been a violation of Article 13 in conjunction with Article 6 § 1 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicants, into the bank account designated by the applicants' representatives, 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 500,000 (five hundred thousand euros), jointly, in respect of pecuniary damage;
 - (ii) EUR 16,000 (sixteen thousand euros), jointly, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 11 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Paul Lemmens
President

ANNEX

No.	Applicant's Name	Birth date	Nationality	Place of residence
1	Mary MARSHALL	30/07/1924	Maltese	Naxxar
2	ESTATE OF THE LATE MARQUIS JOHN SCICLUNA	14/02/1970 (registration)		Valletta
3	Marie Christiane RAMSAY PERGOLA	26/03/1948	British	Naxxar