



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

FIRST SECTION

CASE OF CAUCHI v. MALTA

(Application no. 14013/19)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Disproportionate burden on applicant due to inadequate rent imposed by law • Insufficient domestic redress

Art 13 (+ Art 1 P1) • Effective remedy • Aggregate remedies ineffective in the present case

STRASBOURG

25 March 2021

FINAL

25/06/2021

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

In the case of Cauchi v. Malta,

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

Ksenija Turković, *President*,
Krzysztof Wojtyczek,
Linos-Alexandre Sicilianos,
Alena Poláčeková,
Péter Paczolay,
Raffaele Sabato,
Lorraine Schembri Orland, *judges*,
and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 14013/19) 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 Catherine Cauchi (“the applicant”), on 11 March 2019;

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

the parties’ observations;

Having deliberated in private on 16 February 2021,

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

INTRODUCTION

1. The present application concerns compensation and redress for a breach of Article 1 of Protocol No. 1 to the Convention in relation to the disproportionate amount of rent received by the applicant, and therefore the effectiveness in 2018 of the available remedies in this regard, in particular following amendments to the law by Act No. XXVII of 2018.

THE FACTS

2. The applicant was born in 1941 and lives in Valletta. She was represented by Dr M. Camilleri and Dr E. Debono, lawyers practising in Valletta.

3. The Government were represented by their then Agent, Dr V. Buttigieg and later 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 a property at 19 *Dar il-Bebbux* Street in Hal Ghaxaq.

6. On 24 February 1967 she rented the property (under title of temporary emphyteusis) to a third party for seventeen years, at 25 Maltese liras (MTL – approximately 58 euros (EUR)) per year. The third party rented the property under title of sub-emphyteusis to another third party, who did the same. The sub-empyhteutae on the date of termination of the emphyteusis, 26 February 1984, were a certain couple A., who used it as their sole ordinary residence and for this purpose undertook substantial works to make the place habitable. The latter had been a condition placed on them to obtain the lease in question, to which they had agreed. Further works continued to be undertaken throughout the years by the tenants, with the applicant's permission.

7. On an unspecified date couple A. relied on Act XXIII of 1979 amending Chapter 158 of the Laws of Malta, the Housing (Decontrol) Ordinance, (hereinafter "the Ordinance") to retain the property under title of lease, at the above-mentioned rent increased in line with inflation but not exceeding double the previous rent, until 26 February 1999. As of 27 February 1999, in accordance with the law, the rent was to increase to MTL 100 (approximately EUR 116) per year. However, couple A. continued to pay MTL 50 per year, as the applicant did not seek to increase the rent.

8. With the introduction of Act X of 2009 couple A. started paying EUR 185 per year, as of 1 January 2010. In accordance with the law, on 1 January 2013 they started paying EUR 197.31 per year until 31 December 2016, and as of 1 January 2017 the rent was increased to EUR 200 per year.

9. During the tenancy the couple did not own any other property. Mr A. was on a low wage and was, for some time, unemployed. He is today retired and receives a pension of EUR 515 a month.

II. CONSTITUTIONAL REDRESS PROCEEDINGS

10. 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 indefinite period without enabling her to obtain a fair and adequate rent, in breach of, *inter alia*, Article 1 of Protocol No. 1 to the Convention. She asked the court to award her compensation for the damage suffered since 1984 and order the eviction of the tenants. She argued that prior to 1979 she had had no other option than to rent the property under title of temporary

emphyteusis, in order to avoid it being requisitioned, as had been common at the time.

11. According to the Government's expert, at the time the relevant report was drawn up (2017), the property in its refurbished state (the water, electricity and drainage having been updated by the tenants) was valued at EUR 174,000. Bearing in mind that unfurnished property, which was extensively refurbished by tenants, bore a rental value of no more than 2.75% of its sale value, he estimated its rental value at EUR 398.75 per month (EUR 4,785 per annum).

12. According to the court-appointed expert, who considered the property refurbished, including the additional rooms added by the tenants, the sale value in 2017 was EUR 165,000. Considering a rental value at a rate of 3.5% of its sale value, he estimated the annual rental value as being EUR 701 in 1984, EUR 965 in 1989, EUR 1,328 in 1994, EUR 1,828 in 1999, EUR 2,516 in 2004, EUR 3,463 in 2009, EUR 4,767 in 2014 and EUR 5,775 in 2017.

13. By a judgment of 31 October 2018 the Civil Court (First Hall), in its constitutional competence, found a violation of the applicant's property rights, awarded her EUR 20,000 in compensation and declared that the tenants (or their descendants) could no longer rely on the law in question to retain title to the property.

14. In particular, the court was satisfied that the applicant had proved her title to the property and that Article 12 of the Ordinance applied in her case. It also considered that the fact that she had not raised the rent during a certain period did not prejudice her right to bring her claims before the court.

15. On the merits, the court disagreed with the applicant's argument that it would be impossible to ever recover her property. However, it considered that the tenants had been occupying the property for thirty-four years; that the lease had not been entered into voluntarily, but had been imposed by Article 12 of the Ordinance, and that the difference between the market rental value and the rent received by the applicant, despite the various increases, remained "enormous if not shocking". It was clear that the rent applicable by law was not compatible with the reality of current Maltese society or the applicable rents on the free open market. It followed that the applicant was not receiving fair and adequate compensation in exchange for the burden imposed by law. While the legislator had a right to address social issues and protect a category of citizens such as tenants, it could not disproportionately prejudice another group of citizens (owners). It was thus for the State to assume responsibility for the imbalance created between the two interests at stake. Moreover, the law at issue did not provide any procedural safeguards.

16. The court refused to order the eviction of the tenant, considering that it was not the appropriate court to take such action. In particular, it

considered that, given that the interference had been lawful and that there had been a legitimate aim, to order eviction without taking into consideration other factors would shift the balance in favour of the applicant. It therefore sufficed to order that the tenants be prevented from relying on the relevant law, namely Article 12 (2)(b)(i) of the Ordinance, in any future eviction proceedings.

17. For the purposes of compensation, the court considered the huge discrepancy between the rent received and the market value, despite the fact that market value might not be payable in view of the legitimate aim at issue, namely social housing; the uncertainty as to when the applicant would recover her property; on the one hand, the thirty-four years during which such disproportionality persisted and, on the other hand, the fact that she had only instituted proceedings in 2017; and the inertia of the State in amending its legislation – in an effective manner – in order to avoid such a disproportionate burden on owners. It therefore awarded the applicant EUR 20,000 in respect of pecuniary and non-pecuniary damage. One third of the costs were to be paid by her, given that not all her claims had been upheld.

III. OTHER INFORMATION

18. The applicant did not appeal explaining that – as had been confirmed by the European Court of Human Rights – the appeal procedure before the Constitutional Court was not an effective remedy since that court systematically reduced the awards given by the first-instance courts of constitutional competence.

19. Despite the order of the first-instance court that the tenants could no longer rely on the relevant law, the applicant was unable to institute eviction proceedings due to the enactment of Act No. XXVII of 2018, which provided that even with a judgment in his or her favour, 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 new procedure provided by that law (see paragraph 22 below).

20. In 2019 the applicant filed a case with the Rent Regulation Board (hereinafter “the RRB”) in accordance with Article 12B of the Ordinance (as amended in 2018), requesting that the RRB increase the rent in accordance with that law. The proceedings were still pending in May 2020 and the Court has not been informed that they have been concluded.

RELEVANT LEGAL FRAMEWORK

21. The relevant domestic law is set out in *Amato Gauci v. Malta* (no. 47045/06, § 19-22, 15 September 2009).

22. Article 12B of the Ordinance, which was introduced by Act No. XXVII of 2018 published on 10 July 2018 and entered into force on 1 August 2018, reads as follows:

“(1) Where a person is in occupation of a dwelling house under title of lease created by virtue of a previous title of emphyteusis or sub-emphyteusis which commenced before the 1st June 1995 through the application of article[s] 5, 12, or 12A the following conditions shall, insofar as they are inconsistent with the provisions of the said articles of this Ordinance apply in respect of such lease as from, the 10th April 2018 notwithstanding the provisions of the said articles of the Ordinance or of any other law.

(2) The owner shall be entitled to file an application before the Rent Regulation Board demanding that the rent be revised to an amount not exceeding two percent per annum of the open market freehold value of the dwelling house on the 1st January of the year during which the application is filed and that new conditions be established in respect of the lease.

(3) The procedure applicable to the hearing of applications before the Rent Regulation Board shall apply to the hearing of an application made under sub-article (1):

Provided that:

(i) the Housing Authority shall be notified with the application and shall have a right to fully participate as *amicus curiae* in the proceedings; and

(ii) the tenant and the landlord shall always be entitled to the benefit of legal aid in proceedings filed in terms of this article if they are not in full-time gainful employment; and

(iii) at the initial stage of the proceedings the Board shall conduct a means test of the tenant which shall be based on the means test provided for in the Continuation of Tenancies (Means Testing Criteria) Regulations issued under articles 1531F and 1622A of the Civil Code or any regulations from time to time replacing them.

The means test shall be based on the income of the tenant between the 1st January and the 31st December of the year preceding the year when the proceedings are commenced and the capital of the tenant on the 31st December of the said year.

The means test shall be conducted with particular reference, *inter alia*, to regulations 4 to 8 of the said regulations which shall apply *mutatis mutandis*.

(4) Where the tenant does not meet the income and capital criteria of the means test the Board shall, after hearing any evidence and submissions produced by the parties, give judgement allowing the tenant a period of five years to vacate the premises. The compensation for occupation of the premises payable to the owner during the said period shall amount to double the rent which would have been payable in terms of articles 5, 12 or 12A.

(5) Where the tenant meets the income and capital criteria of the means test the Board shall proceed according to the following sub-articles.

(6) In establishing the amount of rent payable in accordance with sub-article (1) the Board shall give due account to the means and age of the tenant and to any disproportionate burden particular to the landlord and it may determine that any increase in rent shall be gradual. The Board, after briefly hearing the parties and examining any evidence which it considers relevant, may also order that an increased

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amount of rent be paid whilst the hearing of an application filed in terms of sub-article (1) is pending.

(7) Where an amount of rent is established in terms of sub-article (1) that rent shall apply in respect of the lease of the dwelling house, unless the lease is previously terminated, for a period of six years, after which it shall be subject to being revised in accordance with sub-article (1) unless an agreement is reached between the parties.

(8) (a) Upon the happening of a material change in circumstances during the continuance of a lease established in accordance with article 5, 12 or 12A the owner shall be entitled to file an application before the Board demanding that the conditions of the lease be revised on account of their causing a disproportionate burden upon him.

(b) The owner may also demand the dissolution of the lease if he can prove through unequivocal evidence that the tenant is not a person in need of the social protection provided by articles 5, 12 or 12A and by this article:

Provided that:

(i) the provisions of paragraph (a) of this sub-article shall not apply where the hearing of an application under sub-article (1) is pending or has been determined for less than three years;

(ii) the tenant shall always be deemed to be a person not in need of the social protection provided by articles 5, 12, 12A and by this article if the Housing Authority or the landlord offer alternative accommodation suitable to the tenant and guarantees the availability of such accommodation to the tenant for at least ten years for a rent which is not in excess of that which would have been payable by the tenant had the tenant continued the lease under articles 5, 12 or 12A.

(9) (a) Any person who has a right to be recognised as a tenant in terms of the proviso to the definition "tenant" in article 2 shall, unless the said is a person referred to in paragraph (a) of the said definition, only acquire a right to occupy the dwelling house for a period of five years upon the expiration of which he shall vacate the said dwelling house. The compensation for occupation of the dwelling house payable to the owner during the said period shall, unless the occupier meets the income and capital criteria of the means test referred to in paragraph (iii) of sub-article (3), amount to double the rent which would have been payable in terms of articles 5, 12 or 12A.

(b) Any dispute as to whether the occupier meets the criteria of the means test may be referred by either party to the Board by application and the provisions of sub-article (3) shall apply.

(10) The provisions of article 1555A of the Civil Code shall apply in respect of any lease which came into effect by virtue of articles 5, 12, 12A or this article.

(11) The provisions of this article shall also apply in all cases where any emphyteusis, sub-emphyteusis or tenancy in respect of a dwelling house regulated under articles 5, 12, or 12A has lapsed due to a court judgment based on the lack of proportionality between the value of the property and the amount receivable by the landlord and the person who was the emphyteuta or the sub-emphyteuta or the tenant still occupies the house as his ordinary residence on the 10th April 2018. In such cases it shall not be lawful for the owner to proceed to request the eviction of the occupier without first availing himself of the provisions of this article."

THE LAW

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

23. The applicant complained that she was still a victim of the violation of Article 1 of Protocol No. 1 acknowledged by the domestic court, given the low amount of compensation awarded and the fact that there had been no order to evict the tenants. That 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

24. The Government submitted that the applicant had lost her victim status as the domestic court had expressly acknowledged the violation and awarded appropriate redress, namely compensation of EUR 20,000. According to the Government, this sum had been sufficient given that the tenants had added a number of rooms to the property and undertaken structural alterations at their own expense. All this had gone to the applicant’s benefit.

25. The applicant submitted that the remedy given to her had not remedied the breach of her rights, which remained ongoing. In particular, the court had not ordered the eviction of the tenants. Whilst it had declared that they were prevented from relying on the relevant law in any future eviction proceedings to be instituted, that order had been meaningless due to the introduction of Act No. XXVII of 2018. The latter provided that even after obtaining a favourable judgment, it would not be lawful for an owner to proceed to request the eviction of an occupier without first availing him or herself of the new procedure provided by that law. Furthermore, the compensation awarded had been too low in relation to the amount of rental income lost by her. She referred to the estimates of the court-appointed expert (see paragraph 12 above).

(b) The Court's assessment

26. 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).

27. 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 20,000 covering pecuniary and non-pecuniary damage, for a property with a rental value of between EUR 2,000 and 6,000 per year, in the last twenty years, appears *a priori* insufficient for a violation persisting for over thirty years.

28. While it is true that the property was substantially refurbished by the tenants, the Court observes firstly that this was a condition of the lease which they accepted at the time they took over the sublease (see paragraph 6, *in fine*, above). Secondly, the applicant did not ask for the increase in rent allowed by law in 1999 (see paragraph 7 above). Thus, for a decade the tenants paid half the rent due by law. While this “deduction” remained a humble amount, it offset some of the expenses incurred by the tenants. Furthermore, the Court notes that, unlike the estimate of the court-appointed architect, the estimate of the Government’s architect did take account of the fact that the renovation works had been undertaken by the tenants and not the owner. Despite their different considerations, the estimates are not very dissimilar – EUR 5,775 and 4,785 annually in 2017. Thus, even on the basis of the estimates of the Government’s own architect, the sum awarded remains insufficient.

29. 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).

30. However, the Court also notes that the domestic court failed to bring the violation to an end. In particular, it failed to order the eviction of the tenants or alternatively award a higher future rent. While it ordered that the tenant could no longer rely on Article 12 (2)(b)(i) of the Ordinance (see paragraph 16 above), the Court cannot ignore that at the time of judgment, namely October 2018, the amendments to the Ordinance had already been promulgated and entered into force.

31. 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, the applicant is obliged to undertake a new procedure before proceeding to evict the tenant. In this connection, the Court has previously expressed its reservations about the fact that the

constitutional jurisdictions, whose role is to bring a violation to an end and redress the violation found, abdicate the responsibility assigned to them by the Constitution of Malta and refer applicants to yet another remedy despite having the power and authority to grant such redress (*ibid.*, § 50). Moreover, the Court observes that the new Article 12B (4) provides that even where the tenant does not meet the means test he or she would have five years to vacate the premises, during which time the rent would amount to only double the – often miserly – rent which would have been payable under the Ordinance (see paragraph 16 above). Thus, such a procedure allows for the violation of an individual's property rights to continue for another five years despite the absence of any legitimate aim behind the interference, the tenant not having fulfilled the criteria making him or her eligible to benefit from such social housing measures. It follows that the declaration of the domestic court in the present case cannot be considered to have had any effect in bringing the violation to an end, so much so that more than two years after the domestic court's judgment, the applicant continues to suffer the same violation of her property rights.

32. In consequence, the applicant still retains victim status for the purposes of this complaint and the Government's objection is dismissed.

2. *Exhaustion of domestic remedies*

(a) **The parties' submissions**

(i) *The Government*

33. The Government submitted that the applicant had failed to exhaust domestic remedies as she had failed to appeal to the Constitutional Court, which in their view was an effective remedy. In this connection, they considered that when reducing compensation awarded by the first-instance courts, the Constitutional Court did so on the basis of its considerations, and not systematically. They noted that, in the absence of an appeal by the State, the Constitutional Court could not decrease compensation, so in the present case, if the applicant had appealed, it could not have decreased the compensation unless the State had filed a cross-appeal.

34. Moreover, the Government relied on three examples where the Constitutional Court had increased such compensation, namely *Angela sive Gina Balzan vs the Honourable Prime Minister* 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) and *Azzopardi Josephine proprio et nominee vs the Honourable Prime Minister* (6/2015) of 29 November 2019 (from EUR 20,000 to 38,000).

35. 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 al* of 27 January 2017. 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. The Government considered that if the Court rejected their objection, it would be usurping the Constitutional Court's role of protecting human rights, turning itself into a first-instance court.

36. Lastly, the Government questioned whether the applicant had deliberately decided not to appeal, or whether she had failed to appeal in time and was thus attempting a remedy before the Court. Nevertheless, in their submission on the merits of the complaint under Article 13, they considered that she had deliberately not appealed.

(ii) *The applicant*

37. The applicant submitted that she had known that an appeal to the Constitutional Court to increase the compensation would fail and that she had thus resorted to the Court to right a wrong which the Constitutional Court had systematically denied most applicants in the context of a challenge to rent laws such as Article 12 of the Ordinance. 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 al* of 5 July 2011 (25/2008/1); *Franco Buttigieg et al vs the Attorney General* of 6 February 2015 (70/2012 JA)); and *Anthony Aquilina vs the Attorney General et al* of 13 April 2018).

38. 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 André Azzopardi* of 25 October 2013, where the Constitutional Court had reduced the compensation from EUR 30,000 to 15,000 on appeal on the basis that the applicants had taken too long to initiate proceedings; and *Maria Ludgarda Borg et al vs Rosario Mifsud et al* 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.

39. The applicant further relied on the above-mentioned case of *Ian Peter Ellis pro et noe*, where the Constitutional Court had reduced the award to EUR 15,000 from 50,000; *Alessandra Radmilli vs Joseph Ellul et* of 14 December 2018, where it had reduced the compensation from EUR 31,000 to 25,000; and *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.

40. 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, the case of *Maria Pia sive Maria Galea vs the Attorney General et* of 14 December 2018, where the Constitutional Court had confirmed the amount of compensation of EUR 10,000 but overturned the order for the eviction of the tenants.

41. Furthermore, while the Constitutional Court had recently taken the approach of ordering that tenants could no longer rely on Article 12 of the Ordinance 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.

42. Worse still, 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 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.

43. As to the cases relied on by the Government (see paragraph 34 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. As to the two other 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. However, in another of the cases lodged by the same person, namely *Azzopardi Josephine proprio et nomine 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.

44. Lastly, the applicant noted that claimants rarely appealed to the Constitutional Court, and that it was generally the State which appealed. This had brought about a situation in which applicants before the Court were considered to have exhausted domestic remedies if the State had appealed, but other applicants, like the applicant in the present case, risked their application being dismissed if the State had not appealed. The applicant submitted that exhaustion of domestic remedies should not be dependent on the actions of the State.

(b) The Court’s assessment

(i) General principles

45. The Court reiterates that the rule on exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before the Court to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering for their acts before an international body until they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available to deal with the substance of an “arguable complaint” under the Convention and grant appropriate relief (see, for example, *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

46. It should be emphasised that the Court is not a court of first instance; it does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the finding of basic facts or the calculation of monetary compensation - both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, § 69, ECHR 2010).

47. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the

remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV).

48. To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Akdivar and Others*, cited above, § 71; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009; and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 53, 25 March 2014).

49. According to the “generally recognised rules of international law”, there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his or her disposal. The rule is also inapplicable where an administrative practice consisting of a repetition of acts incompatible with the Convention and official tolerance by the State authorities has been shown to exist, and is of such a nature as to make proceedings futile or ineffective (see *Akdivar and Others*, cited above, § 67).

50. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Akdivar and Others*, cited above, § 68; *Demopoulos and Others*, cited above, § 69; and *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010).

(ii) Application of the above principles to the present case

51. The Court observes that the applicant did not come to the Court to ask it to be a first-instance court, and that she lodged her application following a first-instance decision of the Civil Court (First Hall) in its constitutional competence. The latter examined the merits of her complaint and acknowledged a violation of her property rights. Dissatisfied with the redress awarded to her, she considered that an appeal to the Constitutional Court in this regard had no prospects of success.

52. The Court has no reason to doubt that she intentionally did not appeal. It further notes that it has repeatedly found that constitutional redress proceedings, which are an effective remedy in theory, are not so in

practice in cases concerning rent laws presenting similar problems. The first time the Court found a violation of Article 13 in relation to this problem was in *Apap Bologna* (cited above, § 91) in connection with requisition orders. The same findings have continued to be reiterated in similar cases, in the absence of anything being brought to the Court's attention which could alter those conclusions (see, more recently, *Marshall and Others v. Malta*, no. 79177/16, § 79, 11 February 2020, in connection with rent laws under Chapter 69 of the Laws of Malta).

53. The reason behind the violations are twofold. In particular, the Court has taken issue with the approach of the Constitutional Court, which has regularly failed to prevent the continuation of the violation (for example, by evicting tenants or awarding a higher future rent to applicants remaining in the same situation as a result of the laws in place), and secondly, it has repeatedly found that the sums awarded in compensation by the Constitutional Court do not constitute adequate redress. It has specifically found that when eviction has been ordered or a future rent established by the first-instance court, it would be revoked by the Constitutional Court on appeal (see *Portanier*, cited above, §§ 47-48). Similarly, an analysis of the cases brought before the Court has also shown that the Constitutional Court has persistently reduced the compensation awarded by the first-instance courts for no valid reason. This has led to a number of Chamber judgments and a series of repetitive well-established case-law judgments finding a violation of Article 13 and Article 1 of Protocol No. 1 since applicants remained victims of the violation found (see, recently, *Ellis and Scilio v. Malta*, no. 165/17, and *Testaferrata Bonici and Others v. Malta*, no. 41862/18, both Committee judgments of 30 June 2020).

54. The only exception to this long list of cases, and only in part, is a specific group of cases lodged by the same family, where the properties affected by the law in question (in that case Article 12A of the Ordinance) had been vacated by the time of the domestic judgment and the compensation awarded until then was deemed adequate by the Court (see *Bartolo Parnis and Others v. Malta*, (dec.), nos. 49378/18 and 3 others, §§ 50 and 54, 24 March 2020). However, in relation to the properties still occupied and subject to the same law, notice of the complaints was given to the Government (*ibid.*, §§ 52 and 55).

55. The Court considers that this last case, together with the mere three cases cited by the Government (two of which date from 2019) – despite the hundreds of similar cases being decided domestically and the number of violations already found by the Court in this regard – do not suffice to dispel its concerns about the prospects of success of such an appeal at the relevant time. Bearing in mind the above and the Court's case-law on the matter, it considers that 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.

56. It follows that the Government's objection is dismissed.

3. Conclusion

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

B. Merits

58. The applicant submitted that she had suffered a breach of her rights after the termination of the temporary emphyteutic concession because an excessive or disproportionate burden had been put on her due to the *de facto* extension of the tenants' rights at law for an inconsequential rent, with no available procedural safeguards. She considered that, while social reasons had to be taken into account, a fair balance had to be struck between the interests at play. In her case, the court-appointed expert had determined that the rental value of the property in, for example, 2017 was EUR 5,775 per year. However, the applicant had been obliged by law to receive only EUR 200 per year.

59. She considered that the introduction of Act No. XXVII of 2018 was not a suitable procedural safeguard but only another cumbersome legal obstacle. Via this procedure, a tenant who qualified under a means test - whose threshold was very low - would continue to reside in the property at a protected rent raised up to only 2% of the market value of the property. The increase was at the wide discretion of the RRB. If the tenant did not satisfy the means test, he or she would nevertheless be allowed to live in the premises for five years at double the rent currently being paid.

60. The Government insisted that the measure had been in the public interest and thus considered that market values could not be taken as a benchmark to determine its proportionality. Furthermore, after 2018, the applicant had had the right, of which she had availed herself, to apply for an increase in rent in line with Article 12B of the Ordinance. Nevertheless, the Government later submitted that they did not contest the decision of the first-instance constitutional jurisdiction.

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

62. 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 29 above), the redress provided by the domestic court did not offer sufficient relief to the applicant.

63. Furthermore, the Court considers that – without having to address the effectiveness or otherwise of the procedure introduced by Act No. 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, and have had no impact to date.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

65. 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

66. The Government submitted that the applicant had failed to bring a new set of constitutional proceedings in relation to her complaints under Article 13 of the Convention.

67. The applicant relied on the Court's standard case-law on the matter (for example, *B. Tagliaferro & Sons Limited and Coleiro Brothers Limited v. Malta*, nos. 75225/13 and 77311/13, § 79, 11 September 2018).

68. The Court notes that the same objection has been repeatedly rejected by this Court (see, amongst many authorities, *Apap Bologna*, cited above, § 63, and *Grech and Others v. Malta*, no. 69287/14, § 50, 15 January 2019). It sees no reason to reach a different conclusion in the present case.

69. The Government's objection is therefore dismissed.

70. In the present case, the Court has found that the applicant's complaint under Article 1 of Protocol No.1 is not manifestly ill-founded and concluded that there has been a violation of Article 1 of Protocol No. 1. Thus, there is no doubt that the complaint relating to that provision is an arguable one for the purposes of Article 13 of the Convention. It follows that Article 13 in conjunction with Article 1 of Protocol No. 1 is applicable in the present case.

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

B. Merits

1. The parties' submissions'

72. 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. Furthermore, the introduction of Article 12B of the Ordinance in 2018 showed a continued reluctance by the State to provide an adequate remedy.

73. 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 three specific cases where it had increased compensation on appeal (see paragraph 34 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.

74. 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. In any event, with respect to evicting the tenants, the Government considered that the State had a margin of appreciation in determining what remedy should be given to an applicant.

2. The Court's assessment

75. The Court reiterates its general principles under Article 13 as set out in *Apap Bologna* (cited above, §§ 76-79).

76. 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).

77. The Court refers to its findings at paragraph 55 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, namely the end of 2018. The situation might however be different today if the state of domestic practice had evolved accordingly – a matter which will remain under the Court’s supervision.

78. The Court must consider whether the same considerations apply to the Civil Court (First Hall) in its constitutional competence, that is, the remedy pursued by the applicant. The Court notes that the parties’ submissions under Article 13 in this regard are limited and not accompanied by relevant examples. Thus, it will take into account the parties’ submissions under various headings in the present case, as well as the information available from the numerous applications decided by the Court on the subject.

79. The Court observes that, as argued by the applicant herself, it is the Constitutional Court that revokes eviction orders or reduces the amounts awarded by the Civil Court (First Hall) in its constitutional competence (see paragraphs 38-40 above), meaning that the latter does take such action sometimes.

80. The cases adjudicated by the Court show that the Civil Court (First Hall) in its constitutional competence often awards amounts similar if not higher than those made by the Court (see, for example, *Edward and Cynthia Zammit Maempel v. Malta*, no. 3356/15, §§ 12 and 98-99, 15 January 2019, and *Marshall and Others*, cited above, §§ 16 and 98-99, where it awarded nearly double what the Court awarded). It also at times orders eviction or the return of property, or offers alternative remedies (see the judgments of the Civil Court (First Hall) in its constitutional competence in *Evelyn Montebello et vs the Attorney General* of 7 October 2016 and *Maria Pia sive Marian Galea vs the Attorney General* of 7 November 2017, both ordering eviction; and *John Mattei et vs the Housing Authority* of 16 January 2018, referred to in *Portanier*, cited above, § 43). Indeed, the Court has also profusely praised the *John Mattei* judgment for its impeccably comprehensive approach (*ibid.*, § 48).

81. It is true that in the present case, the remedy offered by the first-instance court was not sufficient to deprive the applicant of her victim status, and was thus not effective in practice in the present case. However, it has not been shown that such deficiencies were systemic at the relevant time, that is, in or before 2018.

82. In so far as the Government relied on the new 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 domestic court. The Court is therefore called on to examine its effectiveness as a remedy following the finding of a violation by a domestic court. The Court observes that, as noted

above (see paragraph 31 above), this procedure would allow an unmeritorious tenant, namely one who is not in need of social protection because he or she has not fulfilled the relevant means test, to continue occupying the premises for five years. The Court cannot accept that following a favourable judgment of the constitutional jurisdictions, whether at first-instance or on appeal before the Constitutional Court, an aggrieved applicant must remain the victim of an interference which no longer pursues a legitimate aim for at least five more years. In reality, more than five years, since that period only starts to run after the decision of the RRB, which, moreover, is amenable to appeal.

83. Furthermore, the same provision provides that where a tenant meets the means test and thus deserves such protection, the rent can increase up to a maximum of 2% of its sale value. In establishing the amount of rent, the RRB gives due account to the means and age of the tenant and any disproportionate burden on the landlord, and may determine that any increase in rent will be gradual. In this connection, the Court observes that in the absence of eviction, in order to bring the violation (already acknowledged by the domestic court) to an end, the applicant should be paid an appropriate rent for the period subsequent to the domestic judgment. It is thus incomprehensible how a gradual increase over the years would fulfil such a requirement. Moreover, the Court observes that the establishment of this rent is dependent on the means of the tenant. Thus, a low rent may still be established, leaving the landlord to bear most of the social and financial costs of providing housing to the individual, as opposed to the State. In view of these considerations, the Court cannot accept that Article 12B was designed to deal effectively and meaningfully with the issue of the disproportionate interference arising from the applicable rent laws, which has already been recognised by the domestic courts (contrast, *mutatis mutandis*, *Nagovitsyin and Nalgiyev v. Russia*, (dec.), no. 27451/09 and 60650/09, 23 September 2010). Furthermore, despite the passage of nearly two years since its introduction, no material has been provided to the Court to enable it to dispel the above-mentioned concern, that is, to show that the discretion of the RRB is leading to awards of adequate rent capable of bringing the violation to an end within a reasonable time. In particular, in the applicant's case, it does not appear that a decision has yet been taken (see paragraph 20 above), and nearly two years after the domestic judgment she continues to be a victim of the violation found.

84. Moreover, the Court cannot but note that this novel procedure was introduced with the aim of stultifying court pronouncements, as evidenced by its Article 12B (11) (see *Portanier*, § 49). In consequence, the constitutionality and Convention compatibility of the legal basis of this remedy have yet to be examined.

85. Without prejudice to such future findings, in view of the above-mentioned considerations, as the situation stands today, the Court

cannot confirm the effectiveness of this remedy in circumstances such as those of the present case.

86. 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.

87. There has accordingly been a violation of Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

88. The applicant complained that the introduction of Act No. XXVII of 2018, which had impeded the execution of the judgment in her favour, had resulted in her 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 ...”

A. The parties’ submissions

89. 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.

90. The applicant considered that the same reasoning applied to the objection concerning the complaint under Article 13 should be applied to her complaint of non-enforcement under Article 6. She noted that Act No. 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.

B. The Courts’ assessment

91. The Court reiterates that States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and that those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints

against a State are thus obliged to use first the remedies provided by the national legal system (see, among many authorities, *Akdivar and Others*, cited above, § 65). The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances (ibid. § 66).

92. The Court notes that, while it has considered it 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 (see *Musci v. Italy* [GC], no. 64699/01, § 90, ECHR 2006-V (extracts), and *Beshiri and Others v. Albania*, no. 7352/03, § 54, 22 August 2006 and the case-law cited therein), it has nonetheless generally considered that the constitutional jurisdictions are an appropriate forum to complain about non-enforcement of domestic judgments, before bringing proceedings before the Court (see, for example, by implication, *Mahmutović v. Croatia*, no. 9505/03, § 21, 15 February 2007, and *Ridić and Others v. Serbia*, nos. 53736/08 and 5 others, § 68-73, 1 July 2014).

93. It is true that the Court has previously found, in the context of Maltese cases before it in the context of complaints under Articles 6 or 13, that even though Maltese domestic law provides for a remedy in respect of a final judgment of the Constitutional Court, the length of the proceedings detracts from the effectiveness of that remedy and that, in view of the nature of the complaints and the specific situation of the Constitutional Court in the domestic legal order, in certain circumstances it is not a remedy which is required to be exhausted (see *Saliba and Others v. Malta*, no. 20287/10, § 78, 22 November 2011, concerning a complaint under Article 6 about the length of the applicant's constitutional redress proceedings; *Bellizzi v. Malta*, no. 46575/09, § 44, 21 June 2011, concerning a complaint under Article 6 about the partiality of the Constitutional Court; and, *inter alia*, *Apap Bologna*, cited above, §§ 62-63, concerning a complaint under Article 13 as to the ineffectiveness of the constitutional redress proceedings, as well as the Court's conclusion at paragraph 68 above; see also *Ferré Gisbert v. Spain*, no. 39590/05, § 39, 13 October 2009 for the Spanish context).

94. The Court observes that the complaint under Article 6 (access to court) in the present case concerns the impossibility, or in any event the delay, faced by the applicant in enforcing the judgment in her favour due to the introduction of Act No. XXVII of 2018 (which provided that even with a court judgment, 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 new procedure provided by that law). Thus, the inability of the applicant to bring eviction proceedings (which was, at least on paper, meant to be open to her in the light of the remedy given by the first-instance constitutional jurisdiction) was the result of legislative State action. It follows that the

situation is different from that where the violation complained of resulted from the actions or omissions of the constitutional jurisdictions.

95. Such an interference by the State can and should be challenged before the constitutional jurisdictions (see, for example, *mutatis mutandis*, *Azzopardi and Others v. Malta* (dec.) nos. 16467/17 and 24115/17, 12 March 2019). These latter courts – in finding in favour of the applicant – have the power (i) to declare the law in question null and void, opening the way for enforcement of the judgment in the applicant’s favour, and (ii) to award her financial redress for the breach (see, conversely, *Kozachek v. Ukraine*, no. 29508/04, § 23, 7 December 2006, and *Apostol v. Georgia*, no. 40765/02, § 46, ECHR 2006-XIV). It is true that having to initiate a further set of constitutional proceedings would further delay the enforcement of the applicant’s judgment. However, it would then be for the constitutional jurisdictions to award adequate compensation for this further delay, which may of itself amount to a violation.

96. The Court is mindful that in this situation the applicants have to suffer both the piecemeal approach by the State – that has to date not resolved issues which the Court found to be in breach of the Convention more than a decade ago – and the apparent reluctance of some of the domestic courts to apply the Convention standards and safeguard human rights, particularly in the context of rent laws, permitting such violations to persist for years on end. However, it reiterates that when there is an effective remedy, the Court should not take on the role of Contracting States, whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected on a domestic level (see *Vučković and Others*, cited above, § 69). In the present case, there is no suggestion that the constitutional jurisdictions would not be an effective remedy for the purposes of this complaint, and the Court does not find that there were any special circumstances absolving the applicant from the requirement to exhaust domestic remedies in this regard – an avenue which moreover remains open to her. The Government’s objection is accordingly upheld.

97. 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

98. 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*

99. The applicant claimed EUR 85,000 euros (EUR) in respect of pecuniary damage, namely the loss of an adequate amount of rent from 1984 to date. In this connection, she referred to the estimates of the court-appointed expert (see paragraph 12 above). She further claimed EUR 15,000 in respect of non-pecuniary damage.

100. The Government submitted that on the basis of the court-appointed expert's figures from 1984 onwards, deducting what had been received by the applicant in rent and the sum awarded by the domestic court, the outstanding sum would be EUR 60,000 for pecuniary damage. It was therefore unclear on what basis the applicant was claiming EUR 85,000. In any event, they considered that the sum of EUR 60,000 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 - indeed, in 1967 they had incurred significant expenses to make the place habitable; 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.

2. *The Court's assessment*

101. 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 since 1984 to date, given that the violation remains ongoing.

102. In assessing the pecuniary damage sustained by the applicant, the Court 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).

103. 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 (*ibid.*; see also *Ghigo v. Malta* (just satisfaction), no. 31122/05, § 18 and 20, 17 July 2008). In this connection, the Court notes that, to date, it has accepted that in most cases of this type, the impugned measure pursued a legitimate social policy aim, namely the

social protection of tenants. It has also found, however, that the needs and general interest which may have existed in Malta in 1979 (when the law in question was put in place by Act XXIII) must have decreased over the three decades that followed (see, for example, *Anthony Aquilina v. Malta*, no. 3851/12, § 65, 11 December 2014). With that in mind, the Court considers that for the purposes of awarding compensation, such estimates may be reduced by around 30% on the grounds of that legitimate aim. It notes, however, that other public interest grounds may not justify such a reduction (see, for example, *Marshall and Others*, cited above, § 95, and the case-law cited therein).

104. Furthermore, the Court is ready to accept, particularly in view of the recent boom in property prices, that if the property had not been subject to the impugned regime it would not necessarily have been rented out throughout the entire period. Therefore, it is acceptable to consider that the actual losses were less than those claimed, by at least 20%.

105. Furthermore, the rent already received by the applicant for the relevant period must be deducted from the relevant calculation (see, *inter alia*, *Portanier*, cited above, § 63). In this connection, the Court notes that it is the rent applicable by law which should be deducted in the present case, as the applicant chose of her own volition not to increase the rent for a certain period of time.

106. The global award made by the domestic court, which remains payable if not yet paid to the applicant, must also be deducted.

107. Lastly, 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 she 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 the 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 (*ibid.*, § 64).

108. The Court thus awards the applicant EUR 20,000 in pecuniary damage.

109. 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

110. The applicant also claimed EUR 5,440 for costs and expenses, namely EUR 1,440 (as per the taxed bill of costs) for those incurred before

the domestic courts and EUR 4,000 for legal fees before the Court, corresponding to forty hours of work at EUR 100 per hour.

111. The Government did not contest the claim in relation to the domestic proceedings but noted that no proof of payment had been submitted in relation to the legal costs incurred for the proceedings before the Court.

112. 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 documents in its possession and the above criteria, the Court rejects the claim for costs and expenses for the proceedings before this Court as no proof of payment to that effect has been submitted. It however awards the applicant the sum of EUR 1,440 incurred for costs and expenses in the domestic proceedings, plus any tax that may be chargeable to her.

C. Default interest

113. 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 of the Convention 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;
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 20,000 (twenty 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;

- (iii) EUR 1,440 (one thousand four hundred and forty euros), plus any tax that may be chargeable to the applicant, 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;

5. *Dismisses*, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 March 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Ksenija Turković
President