



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

SECOND SECTION

CASE OF RIZZO AND OTHERS v. MALTA

(Application no. 36318/21)

JUDGMENT

Art 13 (+ Art 1 P1) • Effective remedy • Appeal to Constitutional Court as of 2021 an accessible remedy, capable of providing redress and offering reasonable prospect of success in relation to claims under the old rent laws • Consistent application by Constitutional Court of specific guidelines for award of adequate compensation indicated in *Cauchi v. Malta* • Amendments to relevant domestic law subsequent to *Cauchi* • New potentially effective procedure capable of evicting tenants or putting in place a higher future rent Art 1 P1 • Peaceful enjoyment of possessions • Disproportionate burden on applicants due to inadequate rent imposed by law • Insufficient domestic redress at first instance • Art 35 § 1 • Exhaustion of domestic remedies • Given present case timeline, applicants not expected to lodge a Constitutional Court appeal prior to expiry of appeal time-limit as remedy ineffective at the time due to judicial practice

Prepared by the Registry. Does not bind the Court.

STRASBOURG

16 January 2024

FINAL

16/04/2024

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

In the case of Rizzo and Others v. Malta,

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

Arnfinn Bårdsen, *President*,

Egidijus Kūris,

Pauliine Koskelo,

Saadet Yüksel,

Lorraine Schembri Orland,

Frédéric Krenç,

Diana Sârcu, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 36318/21) 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 three Maltese nationals, relevant details listed in the appended table, (“the applicants”), on 15 July 2021;

the decision to give notice to the Maltese Government (“the Government”) of the complaints concerning Article 1 of Protocol No. 1 to the Convention alone and in conjunction with Article 13 of the Convention and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 5 December 2023,

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

INTRODUCTION

1. The case concerns the effectiveness of an appeal to the Constitutional Court for the purposes of Article 13 following developments in domestic case-law in the ambit of judgments relating to old rent laws raising issues under Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicants were initially represented by Dr K. Micallef and later by Dr C. Ellul, lawyers practising in Valletta.

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

4. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE CASE

5. The applicants hold the perpetual *utile dominium* of a property, No. 17, Triq Gort, Paceville, St. Julian's, which they received by deed *causa mortis*, following the death of their aunt on 26 February 1994.

6. On 19 January 1972 the applicants' predecessor in title rented, under title of temporary sub-emphyteusis, the property to a third party for twenty-one years.

7. On 18 January 1993, on the expiry of the temporary sub-emphyteusis, the tenant, a Maltese citizen and using the property as his ordinary residence, 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 annual rent according to law of approximately 303 euros (EUR) per year. In line with the law, in 2008 the annual rent was increased to approximately EUR 454; in 2013, to approximately EUR 502; and in 2016, to approximately EUR 519.

II. CONSTITUTIONAL REDRESS PROCEEDINGS

8. In April 2019, the applicants instituted constitutional redress proceedings before the First Hall, Civil Court (in its constitutional competence) (hereinafter 'FHCC') claiming that the provisions of the Ordinance as amended by Act XXIII of 1979 which granted the tenant the right to retain possession of the premises under a lease, imposed on them, as owners, as of January 1993, a unilateral lease relationship for an indeterminate time without reflecting a fair and adequate rent, in breach of, *inter alia*, Article 1 of Protocol No. 1 to the Convention. Limiting their claims to 31 December 2018, they requested the court to award compensation for the damage suffered, but they did not demand the eviction of the tenant.

9. According to the court-appointed expert, bearing in mind the development potential of the premises (namely, a further three floors and a penthouse, with two apartments on each level), its sale value in 2019 would be of EUR 850,000, while its actual value as it stood (excluding development potential) was EUR 320,000. Thus, the annual market rental value in 1993 was EUR 1,980 annually, in 1998 EUR 3,120, in 2003 EUR 4,080, in 2008 EUR 6,360, in 2013 EUR 6,240 and that in 2018 EUR 10,560.

10. By a judgment of 25 January 2021, the FHCC found a violation of the applicants' property rights, them having suffered a disproportionate burden as a result of the laws in place and awarded them EUR 30,000 in pecuniary and non-pecuniary damage, for the violation suffered until 10 April 2018 (as requested by the applicants (*sic.*)), date when the new Article 12B of the Ordinance provided a further remedy. The applicants were not made to bear any of the costs related to the proceedings, despite the fact that not all of their demands were acceded to by the court. None of the parties appealed.

III. PARALLEL PROCEEDINGS

11. Act XXVII of 2018 was published on 10 July 2018 and came into force on 1 August 2018. This Act amended the Ordinance and introduced Article 12B thereof (see Relevant Domestic Law below).

12. In April 2019, the applicants instituted ordinary proceedings before the Rent Regulation Board (hereinafter ‘RRB’) demanding the RRB (1) to recognise the occupants as the tenants of the property; (2) to order the tenants to undergo the means test according to law; (3) to declare that the rent should be increased to an amount not exceeding 2% of the open market value of the property on 1 January 2019 or to order the eviction of the tenant within five years if the tenant does not satisfy the means test criteria.

13. By a judgment of 2 December 2020, the RRB, having found that the tenants satisfied the means test, increased the annual rent payable to EUR 5,000 for the first two years and to EUR 7,500 for the subsequent four years. The tenants appealed and the applicants filed a cross-appeal. By judgment of 17 December 2021 the decision of the RRB was confirmed by the Court of Appeal.

RELEVANT LEGAL FRAMEWORK

14. The relevant domestic law in connection with the rent laws at issue in the present case is set out in *Amato Gauci v. Malta* (no. 47045/06, §§ 19-22, 15 September 2009) and *Cauchi v. Malta* (no. 14013/19, § 22, 25 March 2021).

15. The relevant domestic law in connection with constitutional redress proceedings is set out in *Apap Bologna v. Malta* (no. 46931/12, §§ 28-29, 30 August 2016).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

16. The applicants complained that they did not have an effective remedy in respect of their property rights as provided in Article 13 of the Convention, read in conjunction with Article 1 of Protocol No.1 to the Convention, the former of which reads as follows:

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

A. Admissibility

17. The Court notes that the applicants' have an arguable claim for the purposes of Article 1 of Protocol No. 1 to the Convention as evidenced by copious case-law to that effect (see, *inter alia*, *Amato Gauci v. Malta*, no. 47045/06, §§ 19-22, 15 September 2009, and *Cauchi v. Malta*, no. 14013/19, § 22, 25 March 2021), as well as the domestic findings in their case at first instance (see paragraph 10 above) and the Court's considerations in that respect (see paragraph 65 below). It follows that Article 13 is applicable.

18. 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*

(a) *The applicants*

19. The applicants submitted that at the time that an appeal had to be filed in their case, following the judgment at first instance in January 2021, recourse to the Constitutional Court did not constitute an effective or practical remedy. Although early signs of a change in trend started appearing in late 2020, this did not automatically mean that the concerns related to the ineffectiveness of the Constitutional Court, as confirmed by years of jurisprudence of the Court to this effect, were no longer justified. They considered that, while in more recent judgments delivered by the Constitutional Court in 2021-2022, the latter appeared to have started reversing the trend of rejecting appeals or at worse decreasing the compensation claimed, this was not the existing situation at the time their petition was made. The applicants noted that by the State Advocate's own admission, in 2020, bar two judgments, all were decided in late 2020 (October and November 2020) and therefore by no means could it be alluded that such development had changed the situation to the extent that what otherwise (and for well over a decade) had been deemed to be an ineffective remedy, suddenly became an effective one. In the applicants' view a decade long reputation could not be eradicated by a few sporadic judgments delivered some months before the applicants had to decide on which recourse they would seek.

20. Moreover, while the six cases dated 2020, relied on by the Government (see paragraph 24 below), indicated that the Constitutional Court had increased the compensation awarded by the first-instance court, in the applicants' view, five of those awards had nevertheless not reflected adequate compensation, in line with the Court's guiding principles established in *Cauchi* (cited above). The same held in respect of another case (namely,

Catherine Tabone pro et noe v. L-Avukat Generali et, Rik. 27/18, 27 March 2020), which the Government mistakenly considered had reduced compensation. In support of this, the applicants' submitted their own calculations, based on the latter guidelines, in respect of those cases. They noted that the guiding principles only started to be followed at the domestic level after the Court's judgment in *Cauchi* in March 2021, but those judgments were after January 2021 (date relevant to the applicants) and thus could not be of any relevance to the present case.

21. Furthermore, apart from the issue of compensation, the applicants further referred to the Constitutional Court's continued insistence not to apply an *erga omnes* effect to a declaration that the rent laws are unconstitutional, as well as its continued insistence not to order eviction even though the declaration of unconstitutionality would so merit.

(b) The Government

22. The Government submitted that constitutional redress proceedings, namely an application before the CCFH as first-instance constitutional jurisdiction and, in particular, an appeal before the Constitutional Court amounted to an effective remedy for the purposes of the applicants' complaint under Article 1 of Protocol No. 1 to the Convention. They noted that, in law, the powers of the courts enjoying constitutional jurisdiction in the domestic legal system were wide and capable of offering any redress which the plaintiff may be entitled to.

23. In the present case, the applicants had demanded compensation for the violation that subsisted until 2018, and explicitly stated that they were not after the eviction of the tenants. As a result, the CCFH awarded EUR 30,000 which the Government considered adequate compensation. Nevertheless, had they been unhappy with that award, they could have appealed to the Constitutional Court which could have increased that compensation had it been merited. In particular, the Government relied on the Constitutional Court's case-law in 2020 and 2021, which dispelled previous conclusions in that respect.

24. The Government submitted that between 1 January 2020 and 31 December 2020, the Constitutional Court decided eight appeals by plaintiffs demanding higher compensation in rent law cases and in six¹ of them the Constitutional Court had upheld the appeal and increased the compensation. In one other case² it had confirmed the compensation, and in

¹ *Victoria Amato Gauci et v. L-Avukat Generali et*, Rik. 85/2013, 28 February 2020; *Mario Cachia et v. Supermarkets Limited et*, Rik. 82/2015, 20 July 2020; *Angela sive Gina Balzan v. L-Onorevoli Prim Ministru et*, Rik. 16/2015/1, 8 October 2020; *Michael Farrugia et v. L-Avukat Generali et*, Rik. 79/2016, 6 October 2020; *Giovanna Bartoli et v. Carmelo Calleja et*, Rik. 46/2018/1, 6 October 2020; *Henry Deguara Caruana Gatto et v. L-Avukat tal-Istat*, Rik. 36/18, 23 November 2020.

² *Josephine Azzopardi et v. Ono. Prim Ministru et*, Rik. 92/2014/1, 20 July 2020.

the other³ it had reduced compensation upholding the State's appeal (*sic.*). The Constitutional Court also chastised the representative of Government for appealing when the compensation awarded by the FHCC had evidently been in line with jurisprudence. It also, at times, had found that the appeal was frivolous and vexatious and ordered the State to pay double court costs⁴. According to the Government, in the same time span there had been eleven other rent cases decided by the Constitutional Court on appeal by the Government. However, those eleven cases were irrelevant as no appeal had been filed by the plaintiffs and therefore the Constitutional Court could not have increased the compensation. Nevertheless, for completeness' sake, of those cases, the Constitutional Court had upheld the State appeal in three cases⁵, thus reducing the compensation which had been awarded to the applicants at first instance and rejected the State's appeal in the remaining eight cases⁶.

25. According to the Government, given that the applicants' case was decided at first instance on 25 January 2021, their appeal would have been decided sometime after and therefore the outcome of the cases in 2021 was also relevant. Limited to the Ordinance at issue in the present case, they referred to three judgments⁷ whereby the Constitutional Court increased compensation upon an appeal (or cross-appeal) by the plaintiffs. In one case⁸, where only the State had appealed, the Constitutional Court rejected the appeal and confirmed the compensation awarded at first instance. In four other cases⁹ (three of which concerning only an appeal by the State) it reduced it, having considered that the amount awarded at first instance had been even

³ *Catherine Tabone pro et noe v. L-Avukat Generali et*, Rik. 27/18, 27 March 2020.

⁴ *Barbara Cassar et v. Avukat Generali et*, Rik. 209/19, 23 November 2020.

⁵ *Perit Ian Cutajar et v. Avukat Generali et*, Rik. 14/18, 6 October 2020;

Brian Psaila v. L-Avukat Generali et, Rik. 12/2018, 27 March 2020;

Joseph Grima et v. L-Avukat Generali et, Rik. 22/19, 27 March 2020.

⁶ *J&C Properties Limited v. L-Avukat Generali et*, Rik. 132/2018/1, 6 October 2020;

Patricia Curmi et v. Miriam Pace et, Rik. 68/19, 6 October 2020;

Mary Gauci v. John Azzopardi et, Rik. 54/18, 6 October 2020;

Joseph Camilleri v. Avukat Generali et, Rik. 77/15, 8 October 2020;

Anthony Debono et v. L-Avukat Generali et, Rik. 89/2018/1, 8 October 2020;

Lilian Martinelli et v. Avukat Generali et, Rik. 75/2019, 23 November 2020;

Josephine Mary sive Joyce Grech et v. L-Avukat Generali et, Rik. 95/2016, 23 November 2020;

Barbara Cassar et v. Avukat Generali et, Rik. 209/19, 23 November 2020.

⁷ *Anthony Casaero pro et noe v. L-Avukat Generali et*, Rik. 84/2018/1, 26 May 2021 ;

Doreen Grima et v. Avukat Generali et, Rik. 220/19/1, 26 May 2021;

Joseph u Johanna konjugi Tabone et v. L-Avukat Generali et, Rik. 202/19/1, 30 June 2021;

⁸ *Jason Attard et v. L-Avukat Generali et*, Rik. 65/2018/1, 30 June 2021;

⁹ *Martha Grixti et v. Avukat Generali et*, Rik. 124/2018/1, 30 June 2021;

Maria Dolores sive Doris armla minn Carmel Attard pro et noe v. L-Avukat Generali, Rik. 7/18/1, 30 June 2021;

Joseph Zammit v. Albert Edward Galea et, Rik. 187/2019/1, 30 June 2021;

Gaetano Attard v. Avukat Generali et, Rik. 4/2019/1, 27 October 2021;

higher than that which would have been awarded according to the guidance of the ECtHR in *Cauchi* (cited above), therefore applying the latter in setting the compensation. The Government further relied on *Cuschieri and Others v. Malta* ([Committee] dec., no. 36806/21, §§ 4 and 8, 20 September 2022), whereby the Court had held that the Constitutional Court's award increasing compensation, had been adequate.

26. In relation to the applicants' submissions concerning the adequacy of compensation in the cases delivered in 2020 (see paragraph 20 above), the Government noted that the applicants' calculations had been based on the court-appointed expert reports without any consideration in that regard. However, the valuations provided by the expert reports had to be analysed and assessed, and not merely applied blindly by the national courts as though they constituted incontrovertible evidence of the rent which the owners would have received over the years. Undoubtedly, expert reports are a strong and vital piece of evidence in such proceedings, but they must be scrutinised like all other pieces of evidence. Moreover, according to the guidelines established in *Cauchi* (cited above, §§ 103-04), deductions had to be made of 'around 30% on the grounds of that legitimate aim' [referring to the social protection of tenants] and 'at least 20%' on the basis that had the property not been subject to the impugned regime it would not necessarily have been rented out throughout the entire period. Thus, the calculations could not be based on a strict deduction of 50 % on the values established by the experts. Moreover, in at least one of those six cases, the property had been one of a very high standing, and thus according to the Court's case-law (see *Galea v. Malta*, no. 28712/19, 7 October 2021) the probability of it having been rented out all throughout was less than in the usual cases dealing with standard residential property, thus the percentage reduction could be increased.

27. As concerns preventing the continuation of the violation, the Government noted that, at the time when the applicants instituted constitutional redress proceedings, the new Article 12B of the Ordinance had already come into force. In fact, the applicants had specifically limited the effects of their case to the date of the introduction of Article 12B in 2018, reserving any future constitutional redress proceedings they could institute to challenge the new remedy. Therefore, the applicants had recognised, at least implicitly, that the new law provided an ordinary remedy that allowed them to either increase the rent being paid or to acquire the eviction of the tenant if the latter did not deserve the protection of the law. In fact, they instituted such ordinary proceedings and as a result acquired a significantly higher future rent (see paragraph 13 above).

2. *The Court's assessment*

(a) General principles

28. Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 148, ECHR 2014; *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 240, 13 February 2020; and *Mugemangango v. Belgium* [GC], no. 310/15, § 130, 10 July 2020).

29. The scope of the obligation under Article 13 varies depending on the nature of the applicant’s complaint. However, the remedy required by Article 13 must be “effective” in practice as well as in law (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII, and *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 268, 15 December 2016). The “effectiveness” of a “remedy” within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the “authority” referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Kudła*, § 157, and *Khlaifia and Others*, § 268, both cited above).

30. 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 (see *Kudła*, cited above, §§ 157-58). In certain cases, a violation cannot be made good through the mere payment of compensation (see, for example, *Apap Bologna v. Malta*, no. 46931/12, § 77, 30 August 2016). In the context of Article 13, the Court’s role is to determine whether, in the light of the parties’ submissions, the proposed remedies constituted effective remedies which were available to the applicant in theory as well as in practice, that is to say, that they were accessible, capable of providing redress and offered reasonable prospects of success (*ibid.*, § 32, and *McFarlane v. Ireland* [GC], no. 31333/06, § 114, 10 September 2010).

(b) Application of the general principles to the present case

31. The Court observes that it has repeatedly found, in the context of Maltese cases before it, that constitutional redress proceedings which are an effective remedy in theory are not so in practice in cases concerning rent laws

presenting similar problems to the one at issue in the present case. 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. Due to the deficiencies in the redress given by the Constitutional Court the same conclusions, resulting in a violation of Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1 to the Convention, have continued to be reiterated in similar cases concerning several rent laws, in the absence of anything being brought to the Court's attention which could alter those conclusions (see, for example, *Marshall and Others v. Malta*, no. 79177/16, §§ 76-79, 11 February 2020, in connection with rent laws under Chapter 69 of the Laws of Malta, *Cauchi*, cited above, § 77, and *Galea*, cited above, § 63, in connection with the rent laws under the Ordinance at issue in the present case).

32. The Court has held that the reasons behind those violations are twofold. As explained in *Cauchi*, cited above, § 53:

“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 v. Malta*, no. 55747/16, §§ 47-48, 27 August 2019). 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).”

33. In particular in *Cauchi* (cited above, § 77) the Court held that an appeal to the Constitutional Court could not be considered an effective remedy at the material time relevant to that case, namely the end of 2018. It acknowledged, however, that the situation might be different in 2021, at the time of the delivery of the *Cauchi* judgment, if the state of domestic practice had evolved accordingly – a matter which was to remain under the Court's supervision (ibid.). The situation pertaining in 2018 persisted in 2019 (see, for example, *Pace v. Malta* [Committee] no. 53545/19, 29 September 2022, *Attard and Others v. Malta*, [Committee], no. 18593/20, 29 September 2022, and *Grima and Others v. Malta* [Committee], no. 18052/20, § 8, 7 March 2023).

34. It is now for the Court to determine whether in the light of the evolution of the domestic case-law in 2020 and thereafter, an appeal to the Constitutional Court could be considered as an effective remedy satisfying the requirements of Article 13, at the time relevant to the present case, without prejudice to the question of exhaustion of domestic remedies concerning the

complaint under Article 1 of Protocol No.1 to the Convention, examined below.

35. The Court notes that the domestic cases relied on by the Government, in relation to 2020, show that the Constitutional Court increased compensation in seven¹⁰ of the eight appeals where this was requested. Thus, the Court considers that the case-law relied on by the Government offers a good indication that in 2020 the Constitutional Court abandoned its precedent practice of systemically diminishing compensation awarded at first instance and, as argued by the Government, has started to examine these rent cases on their own merits, paying attention to the facts of each case. The cases related to the year 2021 continued to confirm that trend¹¹. While it is true that in mid-2021 the Constitutional Court diminished compensation in four judgments (see paragraph 25 above), it did so by applying the Court's guidelines established in *Cauchi* (cited above), summarised in the Government's submissions at paragraph 26 above. The situation is therefore not comparable to the persistent unreasonable reductions it used to undertake in previous years, which led to multiple violation judgments before this Court. The Court, thus, considers that it can no longer be said that an appeal to the Constitutional Court is not an effective remedy on the basis of that practice, which has been abandoned.

36. While admitting that the Constitutional Court had started to increase compensation in 2020, the applicants' argued, however, that the awards it made in those cases did not constitute adequate compensation in line with the Court's case-law, and thus could still not be considered an effective remedy.

37. As to whether adequate financial redress was actually provided by the Constitutional Court in 2020, the Court observes that the compensation terms applied by the Constitutional Court in 2020 were nonetheless not consistently satisfactory. For example, on the same day, 27 March 2020, it upheld the plaintiff's appeal and increased compensation in one judgment, awarding adequate compensation (see *Tabone v. Malta*, [Committee] (dec.), no. 23107/20, §§10-13, 28 March 2023), while upholding the State's appeal and therefore reducing compensation in two other judgments¹², one of which resulting in an inadequate amount of compensation (see *Grima v. Malta*,

¹⁰ *Victoria Amato Gauci et v. L-Avukat Generali et*, Rik. 85/2013, 28 February 2020; *Catherine Tabone pro et noe v. L-Avukat Generali et*, Rik. 27/18, 27 March 2020; *Mario Cachia et v. Supermarkets Limited et*, Rik. 82/2015, 20 July 2020; *Angela sive Gina Balzan v. L-Onorevoli Prim Ministru et*, Rik. 16/2015/1, 8 October 2020; *Michael Farrugia et v. L-Avukat Generali et*, Rik. 79/2016, 6 October 2020; *Giovanna Bartoli et v. Carmelo Calleja et*, Rik. 46/2018/1, 6 October 2020; *Henry Deguara Caruana Gatto et v. L-Avukat tal-Istat*, Rik. 36/18, 23 November 2020.

¹¹ *Anthony Casaero pro et noe v. L-Avukat Generali et*, Rik. 84/2018/1, 26 May 2021; *Doreen Grima et v. Avukat Generali et*, Rik. 220/19/1, 26 May 2021; *Joseph u Johanna konjugi Tabone et v. L-Avukat Generali et*, Rik. 202/19/1, 30 June 2021.

¹² *Joseph Grima et v. L-Avukat Generali et*, Rik. 22/19, 27 March 2020, *Brian Psaila v. L-Avukat Generali et*, Rik. 12/2018, 27 March 2020.

[Committee], no. 38660/20, §§ 6 and 9, 22 September 2022) while the other amounting to an adequate amount of compensation (see *Psaila v. Malta* [Committee], (dec.), no. 33257/20, § 11, 11 July 2023). The next case where compensation was increased by the Constitutional Court is dated 20 July 2020¹³, but again the compensation terms in that case were not adequate (see *Cachia and Others v. Malta*, [Committee], no. 6335/21, § 9, 24 October 2023). The three cases decided in October 2020, where compensation was increased, have not reached the Court, but in the last case decided by the Constitutional Court in (November) 2020¹⁴, the latter awarded an adequate amount of compensation (see *Deguara Caruana Gatto and Gera v. Malta*, (dec.), no. 20064/21, § 35, 23 May 2023).

38. In these circumstances, the Court considers that while the Constitutional Court judgments of 2020 announced a shift in practice towards awarding adequate compensation, given the lack of uniformity in the judgments throughout the year, it could not be said that there was a clear and unequivocal practice to the effect that the Constitutional Court was effectively awarding adequate compensation, and therefore that it was by 2020, at least on that basis, an already effective remedy (see, *mutatis mutandis*, *Kirinčić and Others v. Croatia*, no. 31386/17, § 114, 30 July 2020, see also *Savickas v. Lithuania* (dec.), no. 66365/09, 12845/10 and 28367/11, § 77, 15 October 2013).

39. As to the domestic cases relied on by the Government for the year 2021, the Court observes that, unlike for the antecedent period – for reasons unknown to the Court – they were limited only to cases concerning the Ordinance at issue in the present case, and only for the second period of the year, namely May 2021 and thereafter. However, the Government also made reference to *Cuschieri and Others* (cited above) where the Court had found that sufficient compensation had been awarded by the Constitutional Court in a judgment dated 27 January 2021, whereby it had increased the award made by the first-instance court of EUR 20,000 to EUR 45,000. Indeed, the Court considers the last-mentioned domestic judgment of the Constitutional Court as particularly relevant it being the first pronouncement in that sense for the year 2021. Moreover, albeit not relied on by the Government despite dealing with the same issues under the same Ordinance, cases brought before the Court show that on the same day (27 January 2021), the Constitutional Court deciding cases where an appeal had solely been lodged by the State, rejected the appeal regarding compensation, considering it to be frivolous and vexatious (see, for example, *Vassallo and Vincenti v. Malta*, [Committee], no. 38111/21, § 4, 24 October 2023).

40. Furthermore, the domestic cases submitted by the Government indicate that, after the delivery in March 2021 of the Court's judgment in

¹³ *Mario Cachia et v. Supermarkets Limited et*, Rik. 82/2015, 20 July 2020.

¹⁴ *Henry Deguara Caruana Gatto et v. L-Avukat tal-Istat*, Rik. 36/18, 23 November 2020.

Cauchi, indicating specific guidelines (summarised in the Government's submissions at paragraph 26 above) of what would constitute adequate compensation for violations of Article 1 of Protocol No. 1 such as those at issue in the present case, the Constitutional Court consistently applied those guidelines in its judgments. The applicants were also of that view (see paragraph 20 above). From the parties' submissions, there is therefore nothing suggesting that in 2021 the Constitutional Court was not awarding appropriate compensation, and therefore this is also no longer a reason to consider that it was not an effective remedy.

41. In so far as the applicants complained that the findings of the Constitutional Court (as to the unconstitutionality of the law and its Convention incompatibility) were not applicable *erga omnes*, the Court observes that – as questionable as that may be in legal terms and judicial efficiency – this has no effect on whether by means of its judgment the Constitutional Court could provide the applicants' with adequate redress for any violation that had already occurred, nor in respect of preventing the continuation of the violation, which could, for example, be resolved by awarding a higher future rent, or by means of legislative intervention bringing the legislation in line with Article 1 of Protocol No. 1. In connection with the latter, the Court notes that in 2018 certain amendments affected the Ordinance, albeit limitedly (see, for some detail, *Cauchi*, cited above, § 22) and the Ordinance was again amended in 2021 (see, for some detail, *Deguara Caruana Gatto and Gera*, cited above, § 38). While the Court has to date not determined whether such legislative changes satisfy the requirements of Article 1 of Protocol No.1, it is not called on to do so in the present case.

42. Lastly, as to the Constitutional Court's unwillingness to evict the tenants – although not particularly elaborated on by the parties in their submissions – the Court notes the following. For example, in *Marshall and Others* (cited above, § 75), a situation concerning commercial property under Chapter 69 of the Laws of Malta, where the lease would have anyways expired in 2028, the Court had found that the only remedy capable of giving adequate and speedy redress to the applicants in that situation was for the Constitutional Court to order eviction. In its judgment in the case of *Portanier v. Malta* (no. 55747/16, § 50, 27 August 2019) in relation to an imposed lease under the Ordinance at issue in the present case, but prior to the 2018 amendments, the Court aired its concerns about the applicants having to undertake a further set of proceedings seeking eviction. Despite those findings, from the multiple rent cases lodged against Malta before it, the Court observes that the Constitutional Court remains adamant in not ordering the eviction of the tenants, particularly concerning cases under the Ordinance at issue in the present case, and this is even more so after the entry into force of the 2018 amendments (see, for example, *Cauchi*, cited above, § 30, and *Cuschieri and Others*, cited above, § 9).

43. Nevertheless, the Court reiterates that, in the event that a higher future rent is put in place, 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 (see *Portanier*, cited above, § 48). Indeed, the domestic case-law shows that the Constitutional Court has considered that the procedures before the RRB under Article 12B introduced by the 2018 amendments were an ordinary remedy to be pursued, which would have allowed both the eviction of the tenant or a higher future rent (see, for example, *Deguara Caruana Gatto and Gera*, cited above, §§ 15 and 37, and *Anastasi and Others* [Committee] dec., no. 49102/19 and 2 others, §§ 3-5, 29 September 2022).

44. The Court observes that in *Cauchi* (§§ 82-85), on the basis of a limited number of considerations and the material it had before it on that date (early 2021), and without prejudice to any future findings, the Court had found that Article 12B, introduced in 2018, was not designed to deal effectively and meaningfully with the issue of the disproportionate interference arising from the applicable rent laws, which had already been recognised by the domestic courts, and – as the situation stood on that date – it could not be considered an effective remedy following the finding of a violation of Article 1 of Protocol No. 1 by the constitutional jurisdictions.

45. Since then, as evidenced by a number of applications before the Court, various cases have been decided by the RRB which could give a better picture of the situation. Moreover, the law was amended again in May 2021 with a view to tackle some of the Court's concerns raised in *Cauchi* (see, for some detail, *Deguara Caruana Gatto and Gera*, cited above, § 38). Thus, and until the Court is called on to examine that procedure – once it has been undertaken by an applicant and relevant remedies pursued in that respect – it suffices for the Court to hold, for the time being, that a new potentially effective procedure capable of evicting the tenant or putting in place a higher future rent was open to the applicants following a finding by the Constitutional Court (*ibid.*). Moreover, it is not irrelevant that in the present case the applicants had limited their claims before the constitutional jurisdictions to 2018, and it was therefore that period which the Constitutional Court would have been bound to examine (*ibid.*).

46. It follows from all the above that, in 2021, the applicants had an available remedy in theory as well as in practice, which was accessible, capable of providing redress and offered reasonable prospects of success for their complaint under Article 1 of Protocol No.1. There has therefore been no violation of Article 13 in conjunction with that provision in the applicants' case.

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

47. The applicants complained that they were still victims of the violation of Article 1 of Protocol No. 1, found by the domestic court, given the low amount of compensation awarded by the first-instance court. The provision reads as follows:

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

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

A. Admissibility

1. *Victim status*

48. The Government submitted that the applicants had lost their victim status as the domestic court had found a violation and awarded adequate redress.

49. The applicants considered that they remained victims of the violation of Article 1 of Protocol No. 1, found by the domestic court, given the low amount of compensation awarded.

50. The Court reiterates that the adoption of a measure favourable to the applicant by the domestic authorities will deprive the applicant of victim status only if the violation is acknowledged expressly, or at least in substance, and is subsequently redressed (see *Brumărescu v. Romania* [GC], no. 28342/95, § 50, ECHR 1999-VII; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178 et seq., and § 193, ECHR 2006-V; and *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 259, ECHR 2012 (extracts)). Whether the redress given is effective will depend, among other things, on the nature of the right alleged to have been breached, the reasons given for the decision and the persistence of the unfavourable consequences for the person concerned after that decision. The redress afforded must be appropriate and sufficient. Whether an individual has victim status may also depend on the amount of compensation awarded by the domestic courts and the effectiveness (including the promptness) of the remedy affording the award (see *Apap Bologna*, cited above, § 41, and the case-law cited therein). Appropriate redress in Article 1 of Protocol No. 1 cases requires an award in respect of both pecuniary damage as well as non-pecuniary damage, which would generally be required when an individual was deprived of, or suffered an interference with, his or her possessions contrary to the Convention (ibid., § 43, and *Deguara Caruana Gatto and Gera*, cited above, § 25).

51. The Court observes that the first criterion, namely the acknowledgment of a violation, has been met, as the CCFH found a violation of Article 1 of Protocol No. 1 to the Convention (see paragraph 10 above).

52. As to the compensation awarded, the Court observes that the court-appointed expert valued the property in its actual state as having a rental value of EUR 10,560 annually in 2018 (i.e. on the basis of a 3.3 % yield on the actual value of the property in 2018 excluding its development potential). There is therefore nothing objectionable in that evaluation. In that light, the Court considers that even though the market value is not applicable as rent valuations may be decreased due to the legitimate aim at issue and further considerations apply (see *Cauchi*, cited above, §§ 102-04, and the case-law cited therein, and more recently *Deguarra Caruana Gatto and Gera*, cited above, § 32), bearing in mind that the property had a rental value of for example, EUR 6,360 in 2008, EUR 6,240 in 2013 and EUR 10,560 in 2018, a global award of EUR 30,000 covering pecuniary and non-pecuniary damage is insufficient for a violation persisting for twenty-five years.

53. That is enough to find that the redress provided by the domestic court in the present case did not offer sufficient relief to the applicants, who thus retain victim status for the purposes of this complaint (see, *mutatis mutandis*, *Portanier*, § 24, and *Cauchi*, § 29, both cited above).

54. The Government's objection is therefore dismissed.

2. Exhaustion

55. The Government submitted that the applicants had failed to exhaust domestic remedies as they had not filed an appeal to the Constitutional Court. Relying on their submissions under Article 13 they considered that an appeal to the Constitutional Court could not be considered "obviously futile" thus the applicants had been bound to attempt it.

56. The applicants, who had made their choice not to appeal based on the track record of the Constitutional Court at the time, considered that they should not be made to suffer for having taken a decision to seek recourse to this Court at a time when this Court was the most reasonable and practical hope for them to achieve an effective remedy for their human rights violation.

57. The Court reiterates that under Article 35 § 1 it may only deal with a matter after all domestic remedies have been exhausted. Applicants must have provided the domestic courts with the opportunity, in principle intended to be afforded to Contracting States, of preventing or putting right the violations alleged against them. That 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 in the domestic system in respect of the alleged breach (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 69, 25 March 2014). The only remedies which Article 35 § 1 requires to be exhausted are those that relate to the breach alleged and are available and sufficient. The existence of

such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness: it falls to the respondent State to establish that these conditions are satisfied (see, among many other authorities, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII, and *McFarlane*, cited above, § 107).

58. The development and availability of a remedy said to exist, including its scope and application, must be clearly set out and confirmed or complemented by practice or case law (see, *mutatis mutandis*, *McFarlane*, cited above, § 120, and the case-law cited therein). The Court has further held that in cases where the remedy in question was the result of interpretation by the courts, it normally takes six months for such a development of the case-law to acquire a sufficient degree of legal certainty before the public may be considered to be effectively aware of the domestic decision which had established the remedy and the persons concerned be enabled and obliged to use it (see, for example, *Kirinčić and Others*, cited above § 115 ; *Savickas*, cited above, § 86; and *Provide S.r.l. v. Italy*, no. 62155/00, § 18, 5 July 2007). The Court considers that the same principle applies when a remedy was available in theory, but was rendered ineffective due to judicial practice, which was then overturned making the remedy effective again in practice, as happened in the present case.

59. In this connection the Court notes that the first decisions in 2021 confirming the shift in the Constitutional Court's practice, which continued to be applied throughout that year, were adopted on 27 January 2021 (see paragraph 39 above). Maltese law does not require official publication of judgments which are however rendered public, generally, a few days after they are delivered, *via* a public website. The Court therefore deems it reasonable to consider that the change in the Constitutional Court's practice, which lead to it being considered an effective remedy in 2021 (see paragraph 46 above), must have become public knowledge, six months' later, that is on 30 July 2021.

60. Given the relevant timeline in the circumstances of the present case the applicants could not have been expected to lodge an appeal to the Constitutional Court, prior to that date, that is, in February 2021 when their time-limit to appeal expired. The Government's objection is therefore dismissed.

3. Conclusion

61. 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

62. The applicants submitted they had suffered a violation in line with well-established case law of the Court.

63. The Government referred to the findings of the domestic court but considered that the applicants had been adequately compensated.

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

65. Having regard to the findings of the domestic court relating to Article 1 of Protocol No. 1 (see paragraph 10 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 court, the applicants were made to bear a disproportionate burden. Moreover, as the Court has already found in the context of the applicants' victim status (see paragraph 53 above), the redress provided by the domestic court did not offer sufficient relief to the applicants.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicants claimed 28,749 euros (EUR) in respect of pecuniary damage (i.e. rental losses from 1993 to 2018 amounting to EUR 119,460 on the basis of the court-appointed architect's report, to which they had applied their own calculations based on *Cauchi*, cited above), and an unquantified amount in non-pecuniary damage.

69. The Government submitted that the applicants' claims were excessive, firstly they had been incorrect about the total amount of rent due on the basis of the court-appointed architect's report which should have amounted to EUR 115,060 until July 2018 (relevant amendments having been introduced in 2018) and secondly the deductions indicated in *Cauchi*, cited above, had also been misapplied. According to the Government a correct application of those principles would leave an outstanding balance of EUR 18,000. The applicants not having quantified a sum of non-pecuniary damage the Government considered that they should get none.

70. The Court has made all the considerations applicable in this type of cases, as set out in *Cauchi* (cited above, §§ 102-07). Noting in particular that the award of the domestic court remains payable if not yet paid, the Court

awards the applicants, jointly, EUR 23,000 in pecuniary damage and rejects their claim for non-pecuniary damage which can be considered covered by the domestic award.

B. Costs and expenses

71. The applicants also claimed EUR 3,412 in costs related to the proceedings before the Court, as per bills presented.

72. The Government considered that the sum claimed in costs for the proceedings before this Court was excessive.

73. According to the Court's case-law (see *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023), 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, and particularly the fact that the parties had been made aware that this was a potentially leading case (as opposed to the standard well established case-law cases concerning this subject matter), the Court considers it reasonable to award the sum of EUR 3,000 for the proceedings before the Court.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, jointly, 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 23,000 (twenty-three thousand euros), in respect of pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros), 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 January 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President

APPENDIX

List of applicants:

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Vincent John RIZZO	1950	Maltese	Sliema Malta
2.	Philip RIZZO	1951	Maltese	Trecastagni Italy
3.	Anne FARRUGIA	1954	Maltese	Sliema Malta