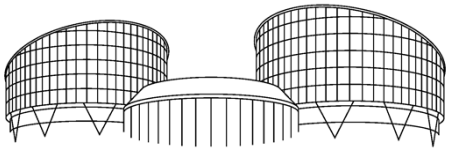

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ANTHONY AQUILINA v. MALTA

(Application no. 3851/12)

JUDGMENT

STRASBOURG

11 December 2014

FINAL

20/04/2015

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

In the case of Anthony Aquilina v. Malta,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ganna Yudkivska,
Vincent A. De Gaetano,
André Potocki,
Helena Jäderblom, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 18 November 2014,

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

PROCEDURE

1. The case originated in an application (no. 3851/12) 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, Mr Anthony Aquilina ("the applicant"), on 20 December 2011.

2. The applicant was represented by Dr Joseph Ellis, a lawyer practising in Valletta. The Maltese Government ("the Government") were represented by their Agent, Dr Peter Grech, Attorney General.

3. The applicant alleged that his property rights were being infringed as a result of legislative amendments in 1979 which imposed on him a continued lease relationship for an indeterminate time without providing him with a fair and adequate rent. He relied on Article 1 of Protocol No. 1 to the Convention.

4. On 21 February 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1948, and at the time of lodging the application lived in Milton, Ontario, Canada.

A. Background to the case

6. Malta has gone through various legislative regimes in order to regulate its housing situation. The first regime came about in 1931 and protected tenants from the termination of their leases. This was followed by the 1944 Rent Restriction (Dwelling Houses) Ordinance which, apart from regulating termination of the lease of dwelling houses, also controlled rents and the initial conditions of contracts. The Housing Act was then enacted in 1949, with the aim of providing a solution to homelessness caused by the Second World War. In 1959 the Housing (Decontrol) Ordinance, Chapter 158 of the Laws of Malta (hereinafter "the HD Ordinance") was enacted, which provided incentives to encourage landlords to rent their property, and created a special class of dwelling houses free from rent control.

7. The applicant owns a property in Gozo (a maisonette measuring 105 square metres) which he inherited from his parents, his mother having passed away in 1984.

8. On 12 January 1960 the property was registered as a "decontrolled dwelling house" in accordance with Article 3 of the HD Ordinance. At the time, Article 5 (1) of the HD Ordinance provided that the provisions of the "Rent Ordinances" (the Reletting of Urban Property (Regulation) Ordinance, Chapter 69 of the Laws of Malta and the Rent Restriction (Dwelling Houses) Ordinance, Chapter 116 of the Laws of Malta) were not applicable to dwelling houses decontrolled in accordance with Article 3 of the HD Ordinance.

9. In 1970 the applicant's mother leased the premises to couple C., who are Maltese citizens (born in 1943 and 1950 respectively), for a rent of 35 Maltese Liri (MTL) (approximately 81.50 euros (EUR)) every six months, which was later decreased to the equivalent of EUR 75.70 every six months. At the time, the law permitted her to increase the rent, to refuse to renew the lease or to change its terms on renewal.

10. In 1979 the Maltese parliament enacted an amendment to the HD Ordinance, which provided that the rent restrictions set out in the Rent Ordinances would apply where tenants were Maltese citizens and occupied houses as ordinary residences. It further provided that landlords could not refuse to renew leases, raise their rent, or impose new conditions on renewal, except as provided for by law (see "Relevant domestic law" below). The applicant submitted that the contractual freedom of parties was greatly restricted as a result of the new provisions, in that his family could not charge a fair rent or recover possession of their property, despite the fact that his tenants owned substantial immovable property.

11. By a decision of the Rent Regulation Board (RRB) of 7 July 1998, the rent was further reduced to EUR 65.22 per year. The applicant did not appeal.

12. In 1995 new laws were enacted in respect of new leases which could again be free from rent control. They did not apply to the applicant's case.

13. In 2009 and 2010 new concepts and provisions were introduced, aimed at gradually eliminating the restrictive regimes applicable to leases entered into before 1995.

14. Thus, while a rent of EUR 65.22 per year had been paid to the applicant since September 1998, a rent of EUR 185 had been paid from September 2010 onwards in view of the above-mentioned amendments. However, the applicant refused to accept any rent as from 2007 and it was duly deposited in court by the tenants by means of a schedule of deposit.

15. According to a court-appointed architect's evaluation made in the context of constitutional proceedings instituted in 2005 (see paragraph 17 below), the property at that time had a rental value of EUR 2,912 per year. According to an architect's report commissioned by the Government, the rental market value in 2013 was EUR 2,900 per year, and the sale value EUR 58,000.

16. To date, couple C still reside in the applicant's property. It does not at present appear that they have any children formally residing with them.

B. The proceedings brought by the applicant

1. First set of constitutional redress proceedings (no. 49/05)

17. In 2005 the applicant instituted constitutional redress proceedings complaining, *inter alia*, that the 1979 amendments (in particular Article 5 (2) and (3) of the HD Ordinance, which prohibited landlords from refusing to renew existing leases or from raising their rent) had breached his property rights under Article 1 of Protocol No. 1 to the Convention.

18. On 4 June 2008 the Civil Court (First Hall) in its constitutional jurisdiction rejected his complaint. Basing its judgment on domestic case-law relating to the same subject matter, it considered that he remained the owner of the property at issue, which was being used as a dwelling house, that he could still evict the tenants if they failed to fulfil their obligations under the lease, and that although the amount of rent was low, the law provided for an increase in rent every fifteen years, amounting to double the actual rent. The interference with his rights was therefore proportionate given the needs of society. Moreover, his mother had not been forced to lease out the property.

19. The applicant appealed on 25 June 2008.

20. On 3 November 2008 the Constitutional Court dismissed his appeal as being lodged out of time, the statutory time-limit having expired on 16 June 2008.

21. On 29 April 2009 he lodged an application with the Court, relying on Article 1 of Protocol No. 1 to the Convention.

22. By a decision of 10 November 2009 the Court, sitting as a Committee of three judges, declared the applicant's application inadmissible. It found that he had lodged his appeal with the Constitutional Court out of time. The domestic remedies had therefore not been exhausted as required by Article 35 § 1 of the Convention.

2. Second set of constitutional redress proceedings

23. In 2010 the applicant instituted constitutional redress proceedings complaining that the 1979 amendments, which prohibited landlords from refusing to renew existing leases or from raising their rent when the tenant was a Maltese citizen, had breached his property rights under Article 1 of Protocol No. 1 to the Convention. He submitted that the amendments introduced in 2009 had not improved his situation, even assuming they (in particular Article 1531C of the Civil Code) applied to the case in question, a matter which was unclear in the domestic context. With a new rent of EUR 185 per year (see Relevant domestic law below), he remained a victim of the alleged violation, not least because he was also prevented from refusing to renew the lease. He cited the then recent case of *Amato Gauci v. Malta* (no. 47045/06, 15 September 2009), in which the Court had found a violation in analogous circumstances.

24. By a decree of 30 April 2010 the Civil Court (First Hall) in its constitutional jurisdiction ruled that the defendant in the case should be the Attorney General of Malta, not the State of Malta as purported by the applicant.

25. On 15 October 2011 the Civil Court (First Hall) in its constitutional jurisdiction, upholding the objection raised by the third party who joined in the suit (*kjamat fil-kawża*), rejected the applicant's complaint on the basis that the matter had already become *res judicata* by virtue of the decision of 4 June 2008 (see paragraph 18 above). It noted that such a conclusion required three elements, namely the same parties (*eaedem personae*), the same object (*eadem res*) and the same cause of action (*eadem causa petendi*). Moreover, where the arguments raised were different, it had to be seen whether they could have been raised at the time of the principal judgment. In the present case, it considered that there had been no doubt that the requirement of *eaedem personae* had been met, despite the fact that the applicant had attempted to bring the present proceedings against the State and that the other proceedings had been against the Attorney General, as it was clear that the defendant in both cases was the Maltese Government. The element of *eadem res* had also been satisfied in so far as the present case concerned the same lease of the same property, with the same tenants and the same circumstances that had led the applicant to institute proceedings the first time round. Similarly, the element of *eadem causa petendi* had also been satisfied, since the applicant's applications to the court were to a great extent the same, if not identical, despite the fact that he

had made further arguments and submitted that his situation had remained unchanged notwithstanding the 2009 amendments to the Civil Code. The court considered that the changes to the application had not changed the nature of the action, namely a claim that the restrictions on the rent imposed by the law had been disproportionate. This matter had already been dealt with by the court in the first set of proceedings (no. 49/05), where it had decided that a fair balance had been struck by the authorities; it was not therefore open to the applicant to relitigate the matter. The court further held that even though the applicant had argued that despite the 2009 amendments (if they applied at all) he had remained a victim of the alleged violation, there was already a judgment in his respect stating that the law in so far as it applied to his case had not breached his rights, and the more recent amendments had not worsened his situation. Thus, the Civil Court (First Hall) held that there could not have been a breach of his rights even under the new law. Lastly, it concluded that any new arguments put forward by him should have been incorporated into the first set of proceedings. As to the Court's recent case-law, it considered that the judgment cited did not entitle the applicant to ask for a fresh examination of his case.

26. By a judgment of 24 June 2011 the Constitutional Court upheld the first-instance judgment, considering the appeal to be frivolous and vexatious.

II. RELEVANT DOMESTIC LAW

27. The Housing Decontrol Ordinance, Chapter 158 of the Laws of Malta, as amended in 1979 by means of Act XXIII of 1979 and again in 2004, in so far as relevant, reads as follows:

Article 5

"(1) Subject to the following provisions of this article and of article 6, the provisions of the Rent Ordinances shall not apply to any decontrolled dwelling-house from the day on which the house is registered in accordance with the provisions of article 3.

(2) Where on the expiration of the lease of a decontrolled dwelling-house (whether such period be conventional, legal, customary or otherwise) the tenant is a citizen of Malta and occupies the house as his ordinary residence, the provisions of sub-article (3) shall have effect and the provisions of the Reletting of Urban Property (Regulation) Ordinance shall also apply but only in so far as they are not inconsistent with the said provisions of this article.

(3) The provisions referred to in sub-article (2) are:

(a) It shall not be lawful for the lessor of the dwelling house to refuse to renew the lease except in any of the circumstances set out in paragraph (b), nor shall it be lawful for him to raise the rent, or to impose new conditions for the renewal of the lease, except as provided in paragraphs (c) and (d).

(b) The lessor may only refuse to renew the lease, and may only resume possession of the house, at the termination of the lease, if he shows to the satisfaction of the

Board, on an application to resume possession, that in the course of the lease, the tenant has failed to pay the rent due by him in respect of two or more terms within fifteen days from the day on which the lessor called upon him for payment, or has caused considerable damage to the house, or otherwise failed to comply with the conditions of the lease or his obligations thereunder, or has used the premises for a purpose other than mainly as his ordinary residence.

(c) The rent payable under the same lease after the date of the first renewal of the lease made by virtue of this sub-article may be increased by the lessor, upon such renewal and after the lapse of every fifteenth year thereafter during the continuance of the lease in favour of the same tenant, by so much of the rent payable immediately before such renewal or before the commencement of each subsequent fifteen year period, being an amount not exceeding the said rent, as represents in proportion to such rent the increase in inflation since the year the rent to be increased was last established.

(d) Where, on or before the date of any renewal of the lease of the dwelling-house, the lessor files in the Registry of the Board, a certificate, signed by a qualified architect and civil engineer and which is either accepted as correct by the tenant or has been so declared by the Board on an application by the lessor requesting such a declaration, showing that the house is in good state of maintenance and repair, all repairs and all maintenance of the dwelling-house shall thereafter, and throughout the continuance of the lease in favour of the same tenant, be at the charge of the tenant."

28. The 2009 amendments include the introduction of various articles of the Civil Code, Chapter 16 of the Laws of Malta, which in so far as relevant, and as amended again in 2010, read as follows:

Article 1531C

"(1) The rent of a residence which has been in force before the 1st June 1995 shall be subject to the law as in force prior to the 1st June 1995 so however that unless otherwise agreed upon in writing after the 1st January 2010, the rate of the rent as from the first payment of rent due after the 1st January 2010, shall, when this was less than one hundred and eighty-five euro (€185) per year, increase to such amount:

Provided that where the rate of the lease was more than one hundred eighty-five euro (€185) per year, this shall remain at such higher rate as established.

(2) In any case the rate of the rent as stated in sub-article (1) shall increase every three years by a proportion equal to the increase in the index of inflation according to article 13 of the Housing (Decontrol) Ordinance; the first increase shall be made on the date of the first payment of rent due after the 1st January 2013:

Provided that where the lease on the 1st January 2010 will be more than one hundred eighty-five euro (€185) per year, and by a contract in writing prior to 1st June 1995 the parties would have agreed upon a method of increase in rent, after 1st January 2010 the increases in rent shall continue to be regulated in terms of that agreement until such agreement remains in force."

Article 1531E

"The external ordinary maintenance of a tenement leased prior to 1st January 2010, save unless otherwise agreed upon in writing between the parties, shall be at the expense of the tenant and not of the lessor."

Article 1531F

"In the event of a lease of a house used as an ordinary residence made prior to 1st June 1995 that person who will be occupying the tenement under a valid title of lease on the 1st June 2008 as well as his or her spouse if living together and if they are not legally separated shall be deemed to be the tenant; when the tenant dies the lease shall be terminated:

Provided further that a person continues the lease after the death of the tenant under the same conditions of the tenant if on the 1st June 2008 -

(i) such person is the natural or legal child of the tenant and has lived with the said tenant for four years out of the last five years; and after 1st June 2008 continues to live with the tenant until his death:

Provided that, if more than one child has lived with the tenant for four years out of the last five years before the 1st June 2008 and they continued to live with the tenant until his death, all such children will continue the lease *in solidum*; this lease shall not extend to the wife, husband or offspring of the child, or

(ii) such person is the brother or sister of the tenant, who on the death of the tenant is forty-five years of age or more, or brother or sister of her husband or his wife who is forty-five years of age or more, and who has lived with the tenant for four years out of the last five years before 1st June 2008 and who after that date continued living with the tenant until his death:

Provided that, if there are more than one brother or sister who are over forty-five years of age and who have been living with the tenant for four years out of the last five years before the 1st June 2008 and have continued living with him until his death, all such brothers or sisters shall continue the lease *in solidum*; this lease shall not extend to the wife, husband or children of the said brother or sister, or

(iii) such person is the natural or legal child of the tenant, who is younger than five years of age and after 1st June 2008 has continued to live with the tenant until his death, or

(iv) such person is the natural or legal ascendant of the tenant, who is forty-five years of age, and who has lived with the tenant for a period of four years out of the last five years before the 1st June 2008 and has continued living with the tenant until his death; this lease shall not extend to the wife, husband or children of the ascendant:

Provided that if on the death of the tenant, there are several children, siblings, or ascendants who all satisfy the criteria of paragraphs (i), (ii), (iii) or (iv), all those persons shall have the right to continue the tenancy together *in solidum*:

Provided further that a person shall not be deemed not to have lived with the tenant for the sole reason that she has been temporarily absent from the residence of the tenant due to work, study or medical care:

Without prejudice to the provisions of this article, a person shall not be entitled to continue the lease following the death of the tenant, unless such person satisfies the means test criteria which the Minister responsible for accomodation may introduce from time to time."

Article 1540

"(1) The lessor is bound to deliver the thing in a good state of repair in every respect.

(2) During the continuance of the lease, the lessor is bound to make all repairs which may become necessary, excluding, in the case of buildings, the repairs mentioned in article 1556, if he has not expressly bound himself to this effect.

(3) For the purposes of this Title with regard to an urban, residential and commercial tenement, "structural repairs" shall be deemed to be those relating to the structure of the building itself, including the ceilings.

(4) When the lessor in the case of a residence leased prior to the 1st June, 1995 carries out structural repairs which have become necessary not due to his own fault, then the rent shall be increased by six per cent of the costs incurred:

Provided that where the structural repairs have not become necessary due to a fault of the lessee, then the said lessee has the right to terminate the lease even though the period of the lease has not yet lapsed:

Provided that in the cases where the lessor is willing to carry out these repairs, the lessee may choose to carry out such repairs at his expense, and in such an event the rent shall remain unchanged; however the lessee shall in such case have no right for any full or partial compensation for such structural repairs at the termination of the lease."

Article 1555

"If the lessee uses the thing leased for any purpose other than that agreed upon by the parties, or as presumed in the previous article, or in a manner which may prejudice the lessor, the lessor may, according to circumstances, demand the dissolution of the contract."

Article 1555A

"(1) In the case of a residential tenement, failure to use the tenement for a period exceeding twelve months shall be deemed to be bad use of the thing leased in terms of article 1555."

Article 1556

"The lessee of an urban tenement is responsible for all repairs other than structural repairs."

Article 1570

"A contract of letting and hiring may also be dissolved, even in the absence of a resolutive condition, where either of the parties fails to perform his obligation; and in any such case the party aggrieved by the non-performance may elect either to compel the other party to perform the obligation if this is possible, or to demand the dissolution of the contract together with damages for non-performance:

Provided that in the case of urban, residential and commercial tenements where the lessee fails to pay punctually the rent due, the contract may be terminated only after that the lessor would have called upon the lessee by means of a judicial letter, and the lessee notwithstanding such notification, fails to pay the said rent within fifteen days from notification."

29. Article 39 (1) and (4) of Act X of 2009 provided as follows:

"(1) Leases which were in force before the 1st of June 1995 and which are still in force on the 1st January 2010, shall continue to be regulated by the laws which were in

force before the 1st of June 1995, other than the provisions of Title IX Part II of Book Second of the Civil Code, Of Contracts of Letting and Hiring, as amended by this Act and subject to any regulations made in virtue of the amendments introduced by this Act."

"(4) The provisions of Title IX of Part II of Book Second of the Civil Code, Of Contracts of Letting and Hiring, shall also apply to the letting of urban tenements where terminated contracts of emphyteusis or sub-emphyteusis have been or are about to be converted into leases by virtue of the law:

Provided that in the case of leases made by virtue of the Housing (Decontrol) Ordinance, the provisions of the said Ordinance defining the person to be considered as the lessee and the provisions providing for the transfer of the lease after the demise of the lessee shall continue to apply notwithstanding the aforesaid provisions of the Civil Code."

THE LAW

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

30. The applicant complained that his property rights had been breached in so far as the law denied him a realistic possibility of resuming possession of his property, given that this was only possible in exceptional circumstances. Moreover, he was unable to charge a fair rent as it could only be doubled every fifteen years, a restriction which did not take into account the condition of the property market. He contended that the applicable restrictions were not in the public interest, and that he had had to shoulder a disproportionate and excessive burden contrary to that provided in Article 1 of Protocol No.1, which reads as follows:

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

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

31. The Government contested the claim.

A. Admissibility

1. The Government's objection that the application was substantially the same

(a) The parties' submissions

32. The Government noted that the application was the same as that rejected by the Court in 2009 for non-exhaustion of domestic remedies. They submitted that the applicant had reinstituted constitutional proceedings only to cure his earlier failings, a matter also highlighted by the constitutional jurisdictions, and that the bringing of a second application before the Court was therefore uncalled for. They further noted that they were not required to raise the plea of *res judicata* at the domestic level. Being a principle of public order and legal certainty, it could also be raised by the domestic court *ex officio*.

33. The applicant submitted that in his first application, the Court had not examined the case on the merits. Moreover, in his second application before the Maltese courts, the Government had not raised the plea of *res judicata*; it had only been the third parties who had done so, despite them not having been a party to the initial proceedings. In that respect, the Constitutional Court's findings had, in his view, been incongruous.

(b) The Court's assessment

34. According to Article 35 § 2 (b), an application is to be declared inadmissible if it "is substantially the same as a matter that has already been examined by the Court ... and contains no relevant new information". The Court must therefore ascertain whether the two applications brought before it by the applicant relate essentially to the same person, the same facts and the same complaints (see, *mutatis mutandis*, *Pauger v. Austria*, no. 24872/94, Commission decision of 9 January 1995, Decisions and Reports 80-A, p. 170, and *Folgerø and Others v. Norway* (dec.), no. 15472/02, 14 February 2006).

35. The Court considers that in so far as the facts of the case refer to the period antecedent to the Constitutional Court judgment of 3 November 2008, the application relates essentially to the same person, the same facts and the same complaints, and is therefore inadmissible pursuant to Article 35 § 2 of the Convention.

36. The same cannot be said, however, about the application in so far as it concerns the period subsequent to that judgment. The Court notes that the applicant has complained about rent restrictions which have affected his rights as landlord over his property, circumstances which therefore constitute a continuing interference for the purposes of Article 1 of Protocol No. 1 (see *Amato Gauci v. Malta*, no. 47045/06, § 51, 15 September 2009). In consequence, in circumstances such as those of the

present case which must be seen in the light of changing circumstances as well as relevant new elements – including but not limited to, further legislative intervention - he is entitled to institute fresh proceedings where his claims would be determined in the light of the current situation.

37. It follows that the Government's objection is dismissed in so far as the complaint concerns the period after 3 November 2008.

2. Conclusion

38. The Court notes that the complaint concerning the period after 3 November 2008 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

39. The Court further finds that the remainder of the application is inadmissible pursuant to Article 35 § 2 (b) of the Convention.

B. Merits

1. The parties' submissions

(a) The applicant

40. The applicant submitted that after 1959, premises such as those at issue were not restricted and parties enjoyed contractual freedom. However, following the 1979 amendments to the law this was no longer the case and restrictions became applicable to properties rented out to tenants who were citizens of Malta and occupied houses as ordinary residences. The restrictions were no longer applicable to new leases contracted after 1995. The applicant thus had been and remained subject to these restrictions over his property, which, he opined, had not been improved by the 2009 amendments and which, in his view, did not necessarily apply in his case given that their application was dependent on the interpretation given to Article 39 (4) of Act X of 2009 (see paragraph 29 above), and the non-application of the principle of *lex specialis derogat lex generali*.

41. He noted that this interference had been suffered by his mother before him, and the fact that he had inherited the property in 1984 under those conditions did not mean that he was not suffering such an interference with his property rights. Moreover, when his mother had leased the property it had been in an open market, and she could not have envisaged that previously abolished restrictions (in 1959) would resurface twenty years later and be imposed on her.

42. The applicant highlighted that the enjoyment of his possessions had been severely restricted. Firstly, he could not resume possession of his property (except in extreme circumstances which were difficult to attain). Secondly, he could not charge a fair rent, as the law only provided for it to

be doubled every fifteen years, which did not reflect increases in the property market (which, as an example, had increased by more than 40% over the seven-year period between 2004 and 2011).

43. The applicant submitted that such restrictions had not been in the public interest, given the huge amount of vacant property on the Maltese islands (27.6% of total dwellings), particularly on the island of Gozo, where the property at issue was located and where "homelessness does not feature as a notable problem" (substantiated by the relevant census statistics and other documentation submitted to the Court dated 2005 and 2006 respectively). Indeed, the Government had not submitted any evidence of an emergency situation existing in 1979 when the laws had been amended in the tenants' favour (following twenty years of a free market). Nor had these laws done any good, given that people had started to mistrust the Government, who could tip the balance to one end or another at their convenience. In fact, people had stopped investing in residential property, opting to invest in holiday accommodation which was not subject to restrictions. Thus, instead of achieving the Government's alleged aim of decent residential accommodation, the measure had been counterproductive. The Government had not even substantiated that there were tenants in need of protection nowadays. In fact, if this were so, it would be in stark contrast to the liberalisation of leases undertaken after 1995. Thus, the Government had failed to prove that the existence of such restrictions to date pursued any existing and current public interest. In reality, as in the present case, the restrictions had solely aimed to enrich tenants and impoverish landlords. The applicant noted that in the present case, the tenant and his sister had received by donation a plot of land measuring 2,185 square metres, which had been subsequently parcelled out into nine building plots and sold to third parties. Despite such land availability or the relevant income, couple C remained housed by the applicant at an extremely low rent. To add insult to injury, the tenants were ready to move out had they been paid a financial incentive (key money) of EUR 232,494.

44. The applicant reiterated that in his view, it was not without doubt that the 2009 amendments were applicable to him, and in particular the new definition of tenant was surely not applicable, as clearly could be seen from Article 39 (4) of Act X of 2009 (see paragraph 29 above). Thus, the amendments had only marginally ameliorated his position, in that the minimum rent had been adjusted to EUR 185 per year and was revisable every three years. Any other provisions were either inapplicable or had already been provided for by the 1979 law. Admitting that he had erred in his claims during the proceedings before the RRB in 1998, he considered that under domestic law an appeal could only be lodged in respect of applications for the repossession of premises or on a point of law; however, neither of these categories applied to his case. He further noted that, had the proper regime been applied, the rent should have been adjusted to EUR 246

in 1994 and EUR 363 in 2009, and in that case the amendments of 2009 would not even have applied to him. In addition, he submitted that the Government's calculations as to the increases available to him were incorrect. In reality, it had only been in 2013 that such an increase had been due and this would have amounted to EUR 194.63 per year in his current position, while under the HD Ordinance it would have amounted to EUR 381.83. Thus, even assuming the Government's rental estimate for that year amounting to EUR 2,900 (see paragraph 15 above) to be correct (although the applicant considered it improbable), the said rents would still have amounted to 6.7 % and 13.17 % of the current market value respectively. This went to show how meagre the improvements had been, and the fact that an increase according to inflation did not reflect price increases in immovable property, which according to the Immovable Price Index Notice (Subsidiary legislation 246.08) had been 42.92% for the period between 2004 and 2012.

45. It followed that the extremely subsidised housing at his expense, where there had been no social or economic need, nor any subsidisation by the State or any opportunity to evict his tenants, had made him bear an individual and excessive burden.

(b) The Government

46. The Government submitted that there had not been an interference with the applicant's property rights in so far as the HD Ordinance (as amended in 1979) only limited the already existent protection of tenants to Maltese citizens occupying premises as ordinary residences. Moreover, he had inherited the premises in 1984, thus at the time he had become its owner, the property had already been subject to that law. It followed that the property had not lost any worth since he had inherited it. The Government were of the opinion that no right existed to maintain in force an existing regime, that is to say that a certain regime would never be regulated in future. Furthermore, the 1959 law had been an emergency ordinance with the aim of ameliorating specific situations.

47. Without prejudice to the above, the Government submitted that the control of the use of such property was and remained in the general interest, namely the protection of tenants by providing decent and adequate accommodation and the avoidance of homelessness, which was still relevant today given the number of families lacking financial resources. They noted that various people were still dependent on leases, irrespective of the amount of vacant property. According to information submitted by them, the number of applications for social housing in 1988 was 4,982 and in 1989 was 1,622; it continued to decrease, reaching a low in 2001 with 249 applications, increasing gradually until 2012 when there were 932 applications, which by 2013 were down again to 756 (in 2008 it was 693). Indeed, the 1979 amendments had come about as a legislative reaction to

protect tenants, following the years of unrestricted leases, and whose leases and emphyteutic grants of dwelling houses covered by prevailing laws were at the time coming to an end. Had it not been for such restrictions, the number of persons in need of social housing aid would have been greater.

48. The Government further submitted that by means of amendments in 2009 and 2010, which applied to the applicant's premises, the Government aimed to gradually eliminate protected tenancies. Those amendments had helped to mitigate interference with owners' rights. They had introduced an increase in the amount of rent by introducing a minimum rent of EUR 185 per year. The rent could be increased every three years in accordance with inflation. While owners retained their rights to dispose of the property, tenants had limited rights and were obliged to take good care of the property as well as incur all expenses related to ordinary repairs and maintenance. In the event that owners were to make extraordinary repairs to the property, the law allowed for a further increase in the annual rent by 6% of the value of the repairs. Furthermore, tenants could only use a property for its intended purpose and any other use, or non-use, for twelve months, would entitle owners to ask for the dissolution of the contract. Lastly, the revision of the definition of tenant had been more favourable to land owners (see Relevant domestic law above). The law had thus struck a balance between the rights of tenants and those of owners, who under these circumstances could make some profit.

49. The Government considered that it was not right to compare the rent received by the applicant to market values. Proportionality had to be assessed in the light of the economic and social reality of Malta. They noted that in 1997 the minimum weekly wage in Malta had been EUR 106, increasing up to EUR 162 in 2013 (in 2008 it had been EUR 146). In any event, they pointed out that the Convention did not give a right to receive profits, and the discrepancy between market values and that rent had to fall within the margin of appreciation of the State to legislate and put in place social measures. Furthermore, they noted that the low rent received since 1998 was not a result of the 1979 laws, but of a wrong decision by the RRB which had not been appealed against. They considered that the applicant should have appealed had he considered that the decision was not based on a correct application and interpretation of law. They further noted that despite that decision, since 2010, according to the amended legal regime, the applicant had been entitled to a rent of EUR 185 per year, which in 2012 could have been increased to EUR 246 per year. These amounts had been based on the original rental values the applicant's mother had agreed to.

50. The Government noted that the applicant had not proved that couple C had had alternative accommodation; while it was true that Mr C had entered into some contracts of sale, he had been a co-owner of the property sold and therefore it could not be assumed that he made sufficient earnings to enable the couple to acquire a dwelling of their own. Moreover, couple C

were now of an advanced age and no relatives lived with them, thus it was possible that the applicant would regain possession in the future.

51. In view of the above, and the fact that rent had been originally established by the applicant's mother in an open market, the Government considered that the applicant had not suffered an individual burden, nor had there been any arbitrary or unforeseen impact on his property rights.

2. The Court's assessment

(a) Whether there was interference

52. As the Court has stated on a number of occasions, Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, inter alia, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among other authorities, *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98; *Beyeler v. Italy* [GC], no. 33202/96, § 98, ECHR 2000-I; and *Saliba v. Malta*, no. 4251/02, § 31, 8 November 2005).

53. The Government contested the assertion that there had been an interference with the applicant's property rights within the meaning of Article 1 of Protocol No. 1 to the Convention, on the basis that the law at issue had already been in force when the applicant had inherited the property. The Court notes that the application of legislation affecting landlords' rights over many years constitutes a continued interference for the purposes of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Hutten-Czapska* [GC], no. 35014/97, § 210, ECHR 2006-). Thus, in circumstances such as those of the present case, both the applicant's mother and subsequently the applicant suffered interference with their property rights (see, *mutatis mutandis*, *Amato Gauci*, cited above, § 51). For the purposes of this case, however, the complaint is confined to the application of the 1979 amendments to the applicant's rights over his property, from 3 November 2008 onwards.

54. The Court has previously held that rent control-schemes and restrictions of an applicant's right to terminate a tenant's lease constitute control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1. It follows that the case should be examined

under the second paragraph of Article 1 of Protocol No. 1 (see, *inter alia*, *Bittó and Others v. Slovakia*, no. 30255/09, § 101, 28 January 2014 and *Amato Gauci*, cited above, § 52).

(b) Whether the Maltese authorities observed the principle of lawfulness and pursued a "legitimate aim in the general interest"

55. The first requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions be lawful. In particular, its second paragraph, while recognising that States have the right to control the use of property, subjects their right to the condition that it be exercised by enforcing "laws". Moreover, the principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see, *mutatis mutandis*, *Broniowski v. Poland* [GC], no. 31443/96, § 147, ECHR 2004-V, and *Saliba*, cited above, § 37).

56. Furthermore, a measure aimed at controlling the use of property can only be justified if it is shown, *inter alia*, to be "in accordance with the general interest". Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the "general" or "public" interest. The notion of "public" or "general" interest is necessarily extensive. In particular, spheres such as housing of the population, which modern societies consider a prime social need and which plays a central role in the welfare and economic policies of Contracting States, may often call for some form of regulation by the State. In that sphere, decisions as to whether, and if so when, it may fully be left to the play of free market forces or whether it should be subject to State control, as well as the choice of measures for securing the housing needs of the community and of the timing for their implementation, necessarily involve consideration of complex social, economic and political issues. Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has on many occasions declared that it will respect the legislature's judgment as to what is in the "public" or "general" interest unless that judgment is manifestly without reasonable foundation (see *Hutten-Czapska*, cited above, §§ 165-166).

57. That the interference was lawful has not been disputed by the parties. The Court finds that the restriction arising from the 1979 amendments was imposed by Act XXIII of 1979 and was therefore "lawful" within the meaning of Article 1 of Protocol No. 1. It further considers that the legislation at issue in the present case pursued a legitimate social policy aim, namely the social protection of tenants (see *Velosa Barreto*, § 35; *Hutten-Czapska*, § 178; and *Amato Gauci*, § 55, all cited above). It is, however, also true that the relevance of that general interest may have

decreased over time, particularly after 2008, the years at issue in the present case. This matter will therefore be reverted to in the Court's assessment as to the proportionality of the impugned measure.

(c) Whether the Maltese authorities struck a fair balance

58. Any interference with property must also satisfy the requirement of proportionality. As the Court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69-74 Series A no. 52, and *Brumărescu v. Romania* [GC], no. 28342/95, § 78, ECHR 1999-VII).

59. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article, the Court must therefore ascertain whether by reason of the State's interference the person concerned had to bear a disproportionate and excessive burden (see *James and Others v. the United Kingdom*, 21 February 1986, § 50, Series A no. 98; *Mellacher and Others v. Austria*, 19 December 1989, § 48, Series A no. 169; and *Spadea and Scalabrino v. Italy*, 28 September 1995, § 33, Series A no. 315-B).

60. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. In cases concerning the operation of wide-ranging housing legislation, that assessment may involve not only the conditions of the rent received by individual landlords and the extent of the State's interference with freedom of contract and contractual relations in the lease market, but also the existence of procedural and other safeguards ensuring that the operation of the system and its impact on a landlord's property rights are neither arbitrary nor unforeseeable. Uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, and in an appropriate and consistent manner (see *Immobiliare Saffi v. Italy*, [GC], no. 22774/93, § 54, ECHR 1999-V, *Bittó and Others*, cited above, § 98, and *Broniowski*, cited above, § 151).

61. Moreover, in situations where the operation of the rent-control legislation involves wide-reaching consequences for numerous individuals and has economic and social consequences for the country as a whole, the

authorities must have considerable discretion not only in choosing the form and deciding on the extent of control over the use of property, but also in deciding on the appropriate timing for the enforcement of the relevant laws. Nevertheless, that discretion, however considerable, is not unlimited and its exercise cannot entail consequences at variance with the Convention standards (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, § 223, and *Amato Gauci*, cited above, § 59).

62. The Court notes the impact the application of the 1979 amendments had on the applicant's property. In particular, although the property was originally decontrolled and not subject to rent or other contractual restrictions, the applicant subsequently could not exercise his right of use in terms of physical possession, as the house was occupied by tenants who were Maltese citizens and he could not terminate the lease (see, *mutatis mutandis, Statileo v. Croatia*, no. 12027/10, § 126, 10 July 2014). Thus, while he remained the owner of the property, he was subjected to a forced landlord-tenant relationship for what appears to be an indefinite period of time. He could only bring the lease to an end if his tenants failed to pay the rent or caused considerable damage to the house, or if they otherwise failed to comply with the conditions of the lease or their obligations thereunder, or if they used the premises for a purpose other than mainly as their ordinary residence. The Court further considers that the possibility of the tenants leaving the premises voluntarily was remote, especially since the tenancy could be inherited (despite the disputed application of the definition of tenant, which was varied only slightly by the 2010 amendments). The Government's contention that transfer of the tenancy by inheritance was improbable given that couple C were of an advanced age and currently living alone was not substantiated and remains to be considered as pure speculation. It follows that these circumstances inevitably left the applicant in a state of uncertainty as to whether he would ever be able to recover his property.

63. Moreover, the applicant could not increase the rent more than as provided for by the recent amendments. The Court points out that in the application of the 1979 and subsequent amendments to his case, he was in an even worse position as regards the amount of rent payable because of an error in the RRB proceedings, which he admitted (see paragraph 44 above). In fact it is not disputed that the RRB had based its decision on a regime which was not applicable to the property at issue, thus providing a lower rent, and that the applicant had not appealed. In this connection, the Court does not find it necessary to determine whether an appeal before the RRB would have been possible in the instant case, as in any event it has not been contested that, even if the proper law was applied, the RRB could not have awarded more than what was established by law which, according to the applicant, was not a fair amount of rent. It follows, however, that this further pejoration in the rent payable is attributable to him, and the

assessment of the proportionality of the measure will thus take into account what he would have received in rent under the applicable regime complained of, as also amended in 2009 and 2010, and not what he actually received. Further, the Court notes that it is not up to it to interpret domestic law, and for the purposes of the present case it can in any event consider that the 2009 and 2010 amendments – slightly improving a landlord's position – applied to the applicant's case. The parties are also in disagreement as to the maximum amount of rent applicable; however, it suffices for the Court to note that in 2013 such rent would not in any event have exceeded EUR 382 annually (see paragraph 44 above), which is less than 1/7th of the rental market value as established by the Government for that year (EUR 2,900). The Court considers that State control over levels of rent falls into a sphere subject to a wide margin of appreciation by the State, and its application may often cause significant reductions in the amount of rent chargeable (see, in particular, *Mellacher and Others*, cited above, § 45). Nevertheless, this may not lead to results which are manifestly unreasonable, such as amounts of rent allowing only a minimal profit (see *Amato Gauci*, cited above § 62).

64. These restrictions must be seen in the light of the demands of the general interest of the community. The Court notes that as stated by the Government, the 1979 amendments to the HD Ordinance were aimed to protect tenants in need, whose protection was diminishing with the fading out of previous favorable regimes. Thus, in its balancing exercise the Court will have to determine whether such a degree of tenant protection to the detriment of owners is still justified thirty years after those amendments, that is to say, from 2008 onwards.

65. Firstly, the Court notes that the documentation provided by the applicant confirms that there is and has been in the last decade a substantial amount of vacant property in the country. Secondly, as admitted by the Government, steps were being taken to phase out controlled leases and that new leases were no longer controlled after 1995. Despite this open regime being in force for nearly two decades, it seems from the statistics submitted by the Government that from 2008 onwards less than 2% of the population were requesting aid for social housing. Regrettably, the Government have not submitted information as to how many tenants still benefit today from protected rents and whether these protected rents are justified in respect of each tenant (see *Bittó and Others,* cited above, §§ 109-110). In addition, as had been established in other cases (see *Amato Gauci*, cited above), there has been a rise in the standard of living in Malta over the past decades. It follows from the above that the needs and the general interest which may have existed in 1979 must have decreased over the three decades that ensued. Indeed, as submitted by the Government, the minimum wage in 2008 was EUR 146 a week or EUR 7,592 per year, and in 2013 it was EUR 162 a week or EUR 8,424 per year. The Court further observes that the

national minimum pension according to the Social Security Act is, according to circumstances, four fifths (if the husband was maintaining his wife) or two thirds of the relevant minimum wage. It follows that, for example, for the year 2013, even assuming couple C were dependent solely on one individual's minimum wage (EUR 8,424 per year), what they should have paid in annual rent for lodging purposes according to the 1979 amendments (which the Court noted in paragraph 63 above could not in any case be more than EUR 382 per year) amounted to less than 5% of their annual income (what they were actually paying amounted to less than 2.2%). Had they been dependent only on one national minimum pension it would have amounted to less than 6% of their annual income.

66. The Court further notes that it has not been disputed that the RRB was not an effective remedy enabling the applicant to evict the tenants (contrast *Velosa Barreto*, cited above), either on the basis of his own need or that of his relatives or on the basis that the couple were not deserving of such protection, as they owned alternative accommodation or could have afforded it (see *Amato Gauci*, cited above, § 71). Consequently, the application of the law itself lacked adequate procedural safeguards aimed at achieving a balance between the interests of the tenants and those of the owners (see also *Statileo,* cited above, § 128).

67. In the present case, despite the considerable discretion of the State in choosing the form and deciding on the extent of control over the use of property in such cases, the Court finds that, having regard to the low rental value which could have been received by the applicant, his state of uncertainty as to whether he would ever recover his property, the lack of procedural safeguards in the application of the law and the rise in the standard of living in Malta over the past decades, a disproportionate and excessive burden was imposed on the applicant who was requested to bear most of the social and financial costs of supplying housing accommodation to couple C (see *Amato Gauci*, cited above, § 63). It follows that the Maltese State failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant's right of property.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicant claimed pecuniary damage amounting to EUR 2,900 yearly from 2008 to the end of the current state of affairs, from which must be deducted the sums deposited by the tenants with the domestic courts. He further claimed EUR 1,500 yearly for the period 1987 to 2008. He further claimed EUR 35,000 in non-pecuniary damage, given that he has been unable to regain possession of his property since 1979.

71. The Government submitted that a finding of a violation sufficed as just satisfaction. In any event, an award calculated on the basis of an open market value was not justified. As to non-pecuniary damage, they considered that an amount of EUR 5,000 would suffice.

72. The Court notes that the applicant is entitled to compensation in respect of the loss of control, use, and enjoyment of his property from December 2008 to date. In assessing the pecuniary damage sustained by him, 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. It has further considered the legitimate purpose of the restriction imposed, reiterating that legitimate objectives in the "public interest", such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (see *James and Others*, cited above, § 54, and *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 94, ECHR 2005-VI). However, the situation in the present case might be said to involve a degree of public interest which is less marked than in previous similar Maltese rent-law cases and which does not justify such a substantial reduction compared with the free market rental value (see *Amato Gauci*, cited above, § 77). It further considers that a one-off payment of 5% interest should be added to the above amount (see *Ghigo v. Malta* (just satisfaction), no. 31122/05, § 20, 17 July 2008). The Court, also bearing in mind that it was because of the applicant's own fault that he was receiving an even lower rent, considers it reasonable to award EUR 11,550, from which must be deducted the sums already deposited in court by couple C in rent since 2008, which can still be retrieved by the applicant.

73. Under Article 41 of the Convention, the purpose of awarding sums by way of just satisfaction is to provide reparation solely for damage suffered by those concerned to the extent that such events constitute a consequence of the violation that cannot otherwise be remedied (*ibid.,* § 249). It is therefore not for the Court to quantify the amount of rent due in

the future. Consequently, it dismisses the applicant's claim for future losses, without prejudice to any future claims he may have.

74. The Court further considers that the applicant must have suffered non-pecuniary damage which the finding of a violation in this judgment does not suffice to remedy. Deciding in equity, it therefore awards him EUR 2,500 in respect of non-pecuniary damage.

B. Costs and expenses

75. The applicant also claimed EUR 9,629.22 as per submitted bills of costs for proceedings before the domestic courts (of which only EUR 5,217 concerned the second set of constitutional court proceedings) and EUR 5,900 for proceedings before the Court.

76. The Government did not contest the amounts stipulated in the bill of costs concerning the domestic proceedings, but submitted that no receipts had been provided showing that those costs had been paid. As to the costs before the Court, they considered that the sum of EUR 1,500 was sufficient.

77. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that expenses related to the first set of constitutional proceedings fall outside the scope of this case and thus no award may be made for that purpose. As to the expenses relating to the second set of proceedings, while they have not yet been paid, the Court observes that they nonetheless remain due. As to expenses in connection with the proceedings before it, the Court notes the absence of a breakdown of costs, or any details as to the number of hours worked and the rate charged per hour. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 7,500 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 1 of Protocol No. 1 to the Convention in so far as it relates to the period after 3 November 2008 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*

(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 11,550 (eleven thousand five hundred and fifty euros) from which must be deducted the sums already deposited in court by couple C in rent since 2008, in respect of pecuniary damage;

(ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 7,500 (seven thousand five hundred 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;

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

Done in English, and notified in writing on 11 December 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President