

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

SECOND SECTION

CASE OF BUGEJA v. MALTA

(Application no. 51379/20)

JUDGMENT

STRASBOURG

9 July 2024

This judgment is final but it may be subject to editorial revision.



In the case of Bugeja v. Malta,

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

Pauliine Koskelo*, President*,
Lorraine Schembri Orland,
Frédéric Krenc*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 51379/20) 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") on 19 November 2020 by a Maltese national, Ms Carmelina Bugeja, born in 1937 and living in Birżebbuġa ("the applicant"), who was represented by Dr K. Micallef, a lawyer practising in Naxxar;

the decision to give notice of the complaints concerning Article 1 of Protocol No. 1 to the Convention alone and in conjunction with Article 13 of the Convention to the Maltese Government ("the Government"), represented by their Agents, Dr C. Soler, State Advocate, and Dr J. Vella, Advocate at the Office of the State Advocate, and to declare inadmissible the remainder of the application;

the Government's observations;

Having deliberated in private on 18 June 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns an imposed lease as a result of the application of Chapter 69 of the Laws of Malta whereby the applicant was receiving 200 euros (EUR) per annum (based on the 1914 market value) in rent for her property in Luqa. The lease may be renewed indefinitely and inherited. The rent payable became EUR 209 as of 2009.

2. On 6 June 2019 the applicant instituted constitutional redress proceedings complaining, *inter alia*, of a breach of her property rights. According to the court-appointed expert the annual rental value in 1987 was EUR 1,259, and that in 2019 was EUR 7,800. According to the applicant, the income potential over at least thirty years was approximately EUR 96,506.

3. By a judgment of 9 October 2020, the Civil Court (First Hall) in its constitutional competence found a violation of Article 1 of Protocol No. 1 to the Convention and, relying on the court-appointed expert report, which it adopted, it awarded the applicant EUR 30,000 in compensation, bearing in mind, *inter alia*, the time it took the applicant to institute these proceedings. It refused to evict the tenant but declared that the tenant may no longer rely on the impugned law to maintain title to the property. It held that 1/5 of the

costs of the proceedings were to be paid by the applicant given the rejected claims. None of the parties appealed.

4. The applicant complained under Article 1 of Protocol No. 1 to the Convention alone and in conjunction with Article 13 of the Convention that she remained a victim of the upheld violation due to the low amount of compensation awarded and the failure to evict the tenant.

THE COURT'S ASSESSMENT

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

5. The applicant complained that she remained a victim of the violation of Article 1 of Protocol No. 1 to the Convention upheld by the domestic court.

6. The Court refers to its general principles concerning victim status and its established case-law in cases similar to the present one (see, among many other authorities, *Apap Bologna v. Malta*, no. 46931/12, §§ 41, 43, 48 and 82, 30 August 2016). Bearing in mind that the property had a rental value of, for example, EUR 7,800 in 2019, the Court considers that the compensation awarded for a violation persisting over decades was not adequate. This consideration suffices to find that the redress provided by the domestic court did not offer sufficient relief to the applicant, who thus retains victim status for the purposes of this complaint (see, *mutatis mutandis*, *Portanier v. Malta*, no. 55747/16, §§ 24-25, 27 August 2019). The Government's objection to this effect is therefore dismissed.

7. The Court also dismisses the Government's objection of non-exhaustion of domestic remedies (in so far as the applicant had not appealed to the Constitutional Court). The Court has already held that the change in the Constitutional Court's practice, which lead to it being considered an effective remedy in 2021, must have become public knowledge only on 30 July 2021 (see *Rizzo and Others v. Malta*, no. 36318/21, § 59, 16 January 2024). Given the relevant timeline in the present case, the applicant could not have been expected to lodge an appeal to the Constitutional Court prior to that date, that is, in October 2020 when the time-limit to appeal the first-instance judgment in her respect expired.

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

9. As to the merits, the Court refers to its general principles as set out, for example, in *Amato Gauci v. Malta* (no. 47045/06, §§ 52-59, 15 September 2009).

10. Having regard to the findings of the domestic court relating to Article 1 of Protocol No. 1 to the Convention, 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 applicant was made to bear a disproportionate burden. Moreover, as the Court has already found in the context of the objection on victim status (see paragraph 6 above), the redress provided by the domestic court did not offer sufficient relief to the applicant.

11. The foregoing considerations are sufficient for the Court to find that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. OTHER COMPLAINTS

12. The applicant also complained under Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1 to the Convention. Having regard to the facts of the case, and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

13. The applicant did not submit a claim for just satisfaction when invited to do so. In the absence of any exceptional circumstances (see *Nagmetov v. Russia* [GC], no. 35589/08, §§ 77-82, 30 March 2017) the Court makes no award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 1 of Protocol No. 1 to the Convention admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the remaining complaint.

Done in English, and notified in writing on 9 July 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Pauliine Koskelo President