

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

SECOND SECTION

CASE OF BUTTIGIEG v. MALTA

(Application no. 7615/21)

JUDGMENT

STRASBOURG

25 June 2024

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



In the case of Buttigieg 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. 7615/21) 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") on 28 January 2021 by a Maltese national, Mr Francis Buttigieg, born in 1971 and living in Għajnsielem ("the applicant"), who was represented by Dr N. DeBono, a lawyer practising in Valletta;

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 parties' observations;

Having deliberated in private on 4 June 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns an imposed (residential) lease as a result of the application of Chapter 69 of the Laws of Malta whereby the applicable rent in 1966 (date of the original contract) was 93 euros (EUR) annually for the applicant's property in Għajnsielem, Gozo. The property was acquired by the applicant by title of legacy on the death of his grandparents on 19 November 2012. The rent payable became EUR 227 as of 2009 which was to be increased every three years according to the index of inflation.

2. In 2019 the applicant instituted constitutional redress proceedings complaining*, inter alia*, of a breach of his property rights as a result of the application of the relevant provisions of Chapter 69 and the ensuing amendments in 2009 and 2010. He asked the court for compensation and an order to evict the tenant. According to the court-appointed expert the annual rental value in 1987 was EUR 675, that in 1993 EUR 825, that in 1999 EUR 1,200, that in 2005 EUR 1,728, that in 2011 EUR 3,640 and that in 2019 was EUR 5,280 (the property had a sale value of EUR 220,000 in 2019). On that basis, according to the applicant, the rental income lost since 1987 was approximately EUR 56,000.

3. By a judgment of 29 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 awarded the applicant EUR 10,000 in compensation. In particular, the court considered that property rights were personal rights, thus, the applicant could only complain in relation the period from the moment he had been affected, namely 2012, when he had become the owner of the property. This was even more so since the applicant was not the universal heir of his predecessor in title but only a legatee. It refused to evict the tenant considering that it was not the competent court to do so. No costs were to be paid by the applicant. 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 he remained a victim of the violation upheld by the domestic court 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 he 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). The Court observes that the domestic court has acknowledged the violation and awarded EUR 10,000 in total compensation, having considered that the applicant was only entitled to compensation from the date when he had inherited the property by title of legacy. The Court observes that the domestic case-law of the Constitutional Court is consistent on the matter, namely that, unlike an heir (who steps into the shoes of the deceased, inheriting all rights and obligations of that person), a legatee can only complain as from the moment that he became the owner of the property, on the death of the predecessor in title. The Court finds no reason to deem otherwise in this matter pertaining to the sphere of domestic law. It is therefore for that period that the Court will assess whether the applicant had been adequately redressed.

7. The Court observes that according to the court-appointed expert's report (see the Court's considerations in that regard at paragraph 17 below), the property had a rental value of, for example, EUR 5,280 in 2019. Thus, the Court considers that the compensation awarded for the violation persisting as of November 2012 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.

8. 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 November 2020 when the time-limit to appeal the first-instance judgment in his respect expired.

9. 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.

10. 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).

11. 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 7 above), the redress provided by the domestic court did not offer sufficient relief to the applicant.

12. 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

13. 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

14. The applicant claimed 20,346 euros (EUR) as pecuniary damage for rental losses from 1987 up to 2019 based on the court-appointed expert's valuation and in accordance with his calculations which he considered were

based on the principles set out in *Cauchi v. Malta* (no. 14013/19, 25 March 2021). He also claimed non-pecuniary damage and costs and expenses in relation to the proceedings before this Court without specifying any amounts.

15. The Government referred to the relevant considerations set out in *Cauchi* (cited above), noting however that the latter judgment had provided guidelines to be applied to each case according to its circumstances and was not a one size fits all calculation. In their view, in the present case, since the applicant had acquired the property by inheritance, free of charge, this ought to have an impact on the pecuniary damage award. Furthermore, expert reports were not to be followed blindly. In the instant case, the court-appointed expert's report had not provided a realistic assessment of the price at which the property could be rented out in its current state, which by the architect's own admission was not in a good state and required urgent works. The rental valuation was therefore not realistic without extensive works being carried out.

16. The Court observes that the applicant is due compensation for the losses he incurred from the date when he inherited the property by title of legacy and not before, it thus rejects the claim in respect of the antecedent period.

17. As to the subsequent period, the Court observes that while expert reports should certainly not be followed blindly, in the present case nothing in the court-appointed expert's report indicates that the valuation did not reflect the state of the property, with all its deficiencies. Indeed, the report does not indicate that it had been based on the assumption that the property was in a good habitable state, nor does it consider the property's potential, or make other irrelevant considerations (see, *a contrario*, *Spiteri Maempel and Others v. Malta* (dec.) [Committee], no. 26917/21, §§ 4 and 10, 6 September 2022). Indeed, the report refers to the value of the property as it stood on the date of the architect's visit ("*ħejjiet il-valutazzjoni tal-fond fil preżent*"). While it is true that in explaining the method of 'comparison calculation' the report referred to 'an appreciation of potential, if any,' it thereafter evaluated the property on the sole basis of its location and actual size. In that light, and in the absence of any other report submitted by the Government to substantiate their claim, the Court accepts the report as a basis for the calculation of compensation.

18. 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 Civil Court (First Hall) in its constitutional competence remains payable if not yet paid, the Court awards the applicant EUR 2,500 in pecuniary damage and EUR 2,000, plus any tax that may be chargeable, in non-pecuniary damage.

19. The Court rejects the unquantified and unsubstantiated claim for costs incurred before this Court.

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;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 2,500 (two thousand five hundred euros) in respect of pecuniary damage;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 25 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Pauliine Koskelo President