

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

FOURTH SECTION

CASE OF CASSAR v. MALTA

(Application no. 50570/13)

JUDGMENT

STRASBOURG

30 January 2018

FINAL

30/04/2018

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Cassar v. Malta,

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

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Egidijus Kūris,
Carlo Ranzoni,
Georges Ravarani,
Marko Bošnjak,
Péter Paczolay, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 9 January 2018,

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

PROCEDURE

1. The case originated in an application (no. 50570/13) 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 two Maltese nationals, Mr Albert Cassar and Ms Mariella Cassar ("the applicants"), on 23 July 2013.

2. The applicants were represented by Dr I. Refalo and Dr S. Grech, lawyers practising in Valletta. The Maltese Government ("the Government") were represented by their Agent, Dr P. Grech, Attorney General.

3. The applicants alleged that they had suffered a violation of Article 1 of Protocol No. 1 as a result of the forced landlord-tenant relationship coupled with the low amount of rent received by them. They also alleged a violation of Article 14 in conjunction with the above in so far as relevant amendments excluded them from an increase of the rent.

4. On 1 June 2015 the complaints concerning Article 1 of Protocol No. 1 alone and in conjunction with Article 14 were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1945 and 1951 respectively and live in Sliema.

A. Background to the case

6. Pursuant to the terms of a contract of 11 April 1962 a house (of fourteen rooms, including four double bedrooms) in Sliema (hereinafter "the property") owned by a third party was rented out under a contract of temporary sub-emphyteusis to J.G. for twenty-five years as from 15 June 1962 at 100 Maltese liras (MTL – approximately 233 euros (EUR)) per year. According to the contract the tenant was responsible for all maintenance work, both ordinary and extraordinary, internally and externally.

7. On 15 June 1987, by operation of law (Act XXII of 1979), that contract was converted into one of lease, and the owner continued to receive rent.

8. On 11 January 1988 the applicants acquired the property from the above mentioned third party at the price of MTL 11,000 (approximately EUR 25,600) in the full knowledge that the property was occupied under title of lease and that J.G. had three children, one of whom was unmarried. However since all the descendants had settled lives of their own, the applicants expected that the property would be returned to them after the tenant's and his wife's death. At the time the applicants lived in the United Kingdom. Initially they asked J.G. whether he was willing to vacate the property, but he did not consent to do so. Eventually the applicants agreed that J.G. and his wife, at the time 76 and 77 years old respectively, would continue to reside in the property against the rent as adjusted by law. They thus recognised them as tenants and regularly received the rent in question ((EUR 466 per year) which had been adjusted once and could not be readjusted further since it had reached the maximum amount allowed by law, namely double the original rent).

9. In 1993 the applicants returned to Malta. In out-of-court discussions they asked J.G. and his wife to vacate the premises. Eventually, given their advanced age (80 and 81 respectively) and the fact that their children owned properties of their own – thus making it unlikely that they would return to live in the premises – the applicants decided not to take formal steps to have them evicted.

10. However, the applicants were unable to find an apartment to rent in Malta given that, at the time, owners were reluctant to lease property to Maltese residents because of the rent laws in force. In consequence the

applicants had to reside in their smaller apartment on the island of Gozo and the first applicant was obliged to commute by boat on a daily basis to get to work.

11. In 1995 the Maltese rent laws were amended and a free and open market was re-established for new leases. Subsequent to the change, the applicants found an apartment in Malta which they rented at EUR 2,795 annually. Allegedly the applicants spent EUR 12,000 in maintenance and furnishings.

12. In 2003, P.G., the daughter of J.G. and his wife, who had been living in the United Kingdom for thirty years in a house she owned, returned to live with her parents in the property in Malta. In 2004 and 2008 respectively her parents passed away.

13. On 6 June 2008 the applicants asked P.G. to vacate the property. She refused and requested that she be recognised as a tenant in accordance with Article 2 of Chapter 158 of the Laws of Malta, as she had been residing in the property at the date of her father's death.

14. The applicants refused to recognise P.G. as a tenant and refused to accept rent from her. They also insisted she had to undertake repair work in the property pursuant to the original contract.

15. P.G., a seventy-year old pensioner, had a constant and considerable income (a monthly pension of 900 pounds sterling (GBP), and during her stay in Malta she was letting her property in the UK at GBP 1,000 a month); she eventually sold her property in the UK for GBP 305,000. She went on to inherit various assets and sold them for a considerable sum. In the constitutional redress proceedings (mentioned below), she declared that she needed the property which was spacious in order to store her parent's furniture.

16. In 2009, the enactment of Act X of 2009 was meant to ameliorate the position of land owners whose properties were subject to controlled rents. The amendments operated to bring rates of rent up to EUR 185 per year where these were below that figure; however this increase did not apply to the applicants' property, the rent of which was already more than EUR 185. Pursuant to the current law the rent applicable in the applicants' case is increased every three years in accordance with the increase in the inflation index (capped at a 100%).

B. Constitutional redress proceedings

17. On 17 February 2010 the applicants instituted constitutional redress proceedings. They claimed that they were suffering a violation of Article 1 of Protocol No. 1 to the Convention as a result of the laws in force which allowed the tenant to enjoy a title of lease over their property and made it impossible for them to regain possession of it despite their own need for housing. They noted that they were renting a property at EUR 2,795 per

year, while they were only earning around EUR 39 per month (EUR 466 per year) from their own house, which had a lease market value of EUR 3,500 per month. The applicants further relied on Article 14 of the Convention. The applicants asked the court to order the eviction of the tenant and the latter to pay for ordinary and extraordinary repairs, and to award damages for the loss sustained as a result of the low amount of rent received, and in connection with the disbursements they had to make for their own housing.

18. By a judgment of 31 October 2011 the Civil Court (First Hall) in its constitutional jurisdiction found a violation of Article 1 of Protocol No. 1 to the Convention as a result of the application of Articles 2 and 12 of Chapter 158 of the Laws of Malta and ordered that the tenant be evicted within four months of the date of judgment. It considered that the rent payable, namely EUR 466 per year in accordance with the law was derisory, bearing in mind that such property had a rental market value of EUR 3,000 per month – the court noted that while an architect's valuation would have been preferable the latter sum appeared to be an appropriate rent. Furthermore, the burden on the applicants was greater as this arrangement had gone on beyond the death of the original lessor, and was now benefitting his daughter.

19. The court rejected the remainder of the claims.

20. The Government and the tenant appealed and the applicants cross-appealed.

21. By a judgment of 22 February 2013 the Constitutional Court reversed the first-instance judgment and found no violation of the said provision, and rejected the remainder of the applicants' appeal. It considered that Act XXII of 1979, which provided for the conversion of a temporary emphyteusis into a lease, had constituted interference with the applicants' right of property as it had created a forced landlord-tenant relationship for an indeterminate time, during which they had not been able to use their own property and during which they had suffered financial losses as a result of the low amount of rent received, which had been established by law. The interference pursued a legitimate social-policy aim, specifically the social protection of tenants. However, the applicants, fully aware of the factual and legal situation, opted of their own free will to purchase the property and to enter into the existing agreement with J.G., whose emphyteusis had just been converted into a lease on 15 June 1987, and from whom they continued to receive rent. The court concluded that the applicants had not suffered any imposition in so far as they had willingly entered into that contract at a point where the law had been crystal clear as to the consequences which would ensue.

C. Subsequent events

22. The applicants are now of pensionable age. In or around 2013 the applicants were given notice to vacate the property which they had been leasing as their ordinary residence since 1996 (see paragraph 11 above), as there were plans to demolish the property in 2014. At the time when they were renting this property, the second applicant's mother had been one of five co-owners of the dwelling, and it appears that the second applicant has since become a co-owner. The Government submitted that the applicants had failed to prove that they had been paying rent and, if so, what rent they had been paying for these premises. According to the applicants, they have since moved to a different property.

II. RELEVANT DOMESTIC LAW

A. Emphyteusis contracts

23. Article 1494 (1) of the Civil Code, Chapter 16 of the Laws of Malta, defines emphyteusis as:

> "... a contract whereby one of the contracting parties grants to the other, in perpetuity or for a time, a tenement for a stated yearly rent or ground-rent which the latter binds himself to pay to the former, either in money or in kind, as an acknowledgement of the tenure."

24. Other articles of the Civil Code related to this form of contract, in so far as relevant, read as follows:

Article 1521 (1)

> "A temporary emphyteusis ceases on the expiration of the time expressly agreed upon, and the reversion, in favour of the *dominus*, of the tenement together with the improvements takes place, *ipso jure*."

Article 1505

> The emphyteuta shall keep, and in due time restore the tenement in a good state.

Article 1507

> The emphyteuta is bound to carry out any obligation imposed by law on the owners of buildings or lands:
>
> Provided that if for the carrying out of any such obligation a considerable expense is required, and the emphyteusis is for a time, the court may, upon the demand of the emphyteuta, compel the *dominus* to contribute a portion of such expense, regard being had to the covenants of the emphyteusis, to the remaining period of the grant, to the sum of the ground-rent and to other circumstances of the case."

B. The 1979 Act

25. Section 12 of Act XXIII of 1979 amending Chapter 158 of the Laws of Malta (the Housing (Decontrol) Ordinance) (hereinafter "the 1979 Act"), in so far as relevant, reads as follows:

> "(1) Notwithstanding anything contained in the Civil Code or in any other enactment the following provisions of this section, and of section 12A shall have effect with respect to all contracts of temporary emphyteusis made at any time.
>
> (2) Where a dwelling-house has been granted on temporary emphyteusis –
>
> (*a*) for a period not exceeding thirty years, if the contract was made before 2l June 1979, or
>
> (*b*) for any period, if the contract is made on or after the date aforesaid, and on the expiration of any such emphyteusis the emphyteuta is a citizen of Malta and occupies the house as his ordinary residence, the emphyteuta shall be entitled to continue in occupation of the house under a lease from the *directus dominus* -
>
> (i) at a rent equal to the ground-rent payable immediately before the expiration of the emphyteusis increased, at the beginning of the lease of the house by virtue of this article, 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 ground-rent payable immediately before such commencement or the commencement of each subsequent fifteen year period, being an amount not exceeding such ground-rent, as represents in proportion to such ground-rent the increase in inflation since the time the ground-rent to be increased was last established; and
>
> (ii) under such other conditions as may be agreed between them, or failing agreement, as the Board may deem appropriate.
>
> (3) Where on the expiration of an emphyteusis as is mentioned in sub-article (2)(*a*) or (*b*) the dwelling-house is subject to a lease, the provisions of the Reletting of Urban Property (Regulation) Ordinance, shall not apply in respect of such lease:
>
> Provided that where the tenant under the said lease is a citizen of Malta and occupies the house as his ordinary residence he shall, on the termination of the lease, be entitled to continue in occupation of the house under a new lease from the *directus dominus* at the same rent and under the same conditions as are mentioned in sub-article (2)(i) and (ii) in respect of the emphyteuta.
>
> (4) On the expiration of a temporary emphyteusis of a dwelling house occupied by a citizen of Malta as his ordinary residence at the time of such expiration, not being an emphyteusis mentioned in sub-article (2)(*a*) or (*b*), the emphyteuta shall be entitled to convert the emphyteusis into a perpetual one under the same conditions of the temporary emphyteusis with the exception of those relating to the duration and the ground-rent. The ground-rent payable with effect from the conversion of the emphyteusis into a perpetual one and until fifteen years from that date shall be equal to six times the ground-rent payable immediately before such conversion, and shall thereafter be increased every fifteen years by so much of the then current ground-rent, being an amount not exceeding such rent, as represents in proportion thereto the increase in inflation since the time the said ground-rent was last established.
>
> (5) If the emphyteuta does not exercise the right granted to him by sub-article (4) within six months from the date such right is exercisable, such right shall, with the necessary modifications, pass to the occupier of the house who shall be entitled to

demand, to the exclusion of the emphyteuta, that the dwelling-house be granted to him by the owner in perpetual emphyteusis under the same conditions as could have applied if the emphyteuta had converted the emphyteusis into a perpetual one."

26. Section 2 of the 1979 Act defines the notion of "tenant" as follows:

(*a*) the widow or widower of a tenant provided husband and wife were not, at the time of the death of the tenant, either legally or *de facto* separated;

(*b*) where the tenant leaves no widow or widower such members of the tenant's family as were residing with him or her at the time of his or her death; and

(*c*) any sub-tenant in relation to the tenant:

Provided that for the purposes of sections 5 and 12, "tenant" shall not include any of the persons included under paragraph (*b*) or (*c*) of this definition but shall include, instead, the children, and any brother or sister, of the tenant who are not married and who reside with the tenant at the time of his or her death and any ascendant of the tenant who so resides with the tenant.

C. The 1995 amendments

27. Section 12(3) of the Housing (Decontrol) Ordinance provides:

"Where on the expiration of an emphyteusis ... the dwelling-house is subject to a lease, the provisions of the Reletting of Urban Property (Regulation) Ordinance, shall not apply in respect of such lease:

Provided that where the tenant under the said lease is a citizen of Malta and occupies the house as his ordinary residence he shall, on the termination of the lease, be entitled to continue in occupation of the house under a new lease from the *directus dominus* at the same rent and under the same conditions...."

28. Section 16(3) of the Housing (Decontrol) Ordinance as amended in 1995 provides:

"The provisions of section 12 shall not apply to any contract of temporary emphyteusis entered into on or after the 1st June, 1995."

D. The 2009 amendments

29. The 2009 amendments (by means of Act X of 2009) include the introduction of various articles in 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 accommodation 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."

30. Article 39 (1) and (4) of Act X of 2009 provides 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

31. The applicants complained that the forced landlord-tenant relationship coupled with the low amount of rent received by them had made them suffer an excessive individual burden. The breach had been even more blatant given that the advantages provided by law had been in favour of a third party who had not been in need of social housing, and thus the interference had not pursued any legitimate aim as provided in Article 1 of Protocol No. 1 to the Convention, 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."

A. Admissibility

32. The Court notes that this complaint 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.

B. Merits

1. The parties' submissions

(a) The applicants

33. To establish the interference, the applicants relied on *R & L, s.r.o. and Others v. the Czech Republic* (nos. 37926/05 and 4 others, 3 July 2014) and noted that in 2013 the domestic courts had acknowledged that the Law in question had been in breach of the applicants' property rights. The applicants further relied on the Court's case-law (*Anthony Aquilina v. Malta*, no. 3851/12, 11 December 2014; *Zammit and Attard Cassar v. Malta*, no. 1046/12, 30 July 2015; and *Amato Gauci v. Malta*, no. 47045/06, 15 September 2009) concerning the lack of proportionality at issue.

34. The applicants submitted that the circumstances in which they had acquired the property were immaterial. They had bought the property so that they would have had a house to live in when they would have returned to Malta but they had not been able to do so. Moreover, when they had purchased the property they had known that J.G. and his wife had been of advanced age and that none of their children, who had already been well settled in life, had been living with them. Thus, there had been no real prospect of any of those children claiming rights over the property. The applicants specified that they themselves, like the current tenant, were advanced in age. In particular the first applicant was seventy years old, a pensioner, and he had never been able to use his property despite being the owner.

35. The applicants submitted that the property had not been assigned to J.G. because he had required social accommodation but only because of an

automatic conversion of an emphyteusis into a controlled and protected lease by operation of law. In the opinion of the applicants, the fact that the law had not provided a mechanism for distinguishing between those in social need and others, had been one of the reasons why the law had failed to address the proportionality issue. As a result, J.G. and later his daughter P.G. had benefited and were still benefiting from a controlled-rent regime irrespective of their means.

36. In this connection the applicants submitted that P.G. had been sufficiently stable financially to afford renting at market values without requiring any form of social assistance. In particular, evidence showed that, apart from her income, P.G. had owned an apartment in London which she had sold for EUR 433,100; she had inherited property in Malta (to the value of tens of thousands of euros – as shown by documents submitted to the Court) and she had sold some of that property for profit. Moreover, P.G. was receiving a pension of EUR 1,200 per month, a sum way above the minimum wage in Malta. Thus, assuming that that money (earned from the transfers) had been invested at a rate of 4%, in addition to her declared annual income of EUR 14,400 (from the pension), P.G. was in receipt of an annual income of around EUR 31,000. Indeed, even her monthly pension of EUR 1,200 was much higher than the minimum wage (EUR 720.46 per month) and it was incomprehensible that a single woman of pensionable age would need a fourteen-room house. The applicants further noted that it had transpired in the course of the domestic proceedings that P.G. had been unwilling to vacate the applicants' property because she had not had a place to house all her furniture, and this fact further showed that her accommodation therein had lacked any social purpose.

37. They noted that the Government's claim that the applicants had acquired the property at below market value had not been substantiated. In any case, nearly thirty years after the acquisition of the property, they were still suffering the consequences of the rent regime and they were still not able to receive adequate rent for their property. They submitted that the rent to which they were legally entitled was clearly disproportionate compared to the value of the property. According to an estate agent's valuation the property would fetch a rental income of EUR 3,500 per month on the open market, while the applicants were receiving EUR 39 monthly. In reply to the Government, as regards the increase in rent every fifteen years, the applicants specified that there had only been one increase in rent so far but that increase had not been adequate. A rent of EUR 466 per annum was low for any house located anywhere in Malta and specifically their property, which had an annual rental market value of EUR 42,000. According to the applicants the rent established in 1987 had been too low even then, let alone thirty years later.

(b) The Government

38. The Government noted that the rent paid by J.G. – EUR 233 (MTL 100) per annum – in 1962 had been considered to be a substantial sum of money. They submitted that, following the conversion of the sub-emphyteusis into a lease by operation of law in 1988 the applicants had bought the property at a considerably reduced value (in the light of the fact that the property had been occupied). Thus, the applicants were aware, prior to the purchase of the property – for the modest sum of EUR 25,600 (reflecting its limitations) – that it had been leased to J.G. and in fact they had accepted rental payments from J.G. until his death on 7 May 2008. The rent had also been raised (every fifteen years) in accordance with the rate of inflation as established in the law. Therefore, the Government considered that the applicants, who had made a business decision assuming the risks associated with it, had been well aware of the consequences of the legal regime applicable to their property and they could not argue that they had been subject to a forced lease or that the interference had been arbitrary or unforeseeable.

39. In any event the Government submitted that the restriction had had its legal basis in Chapter 158 of the Laws of Malta and had thus been lawful and that the interference had pursued a legitimate aim, specifically the social protection of tenants and the prevention of homelessness.

40. As to the proportionality of the measure, the Government considered that the amount of rent paid by the tenant (EUR 466 per annum) was not an extraordinarily low rent. In 1987 when the sub-emphyteusis had been converted to a lease such an amount had been a considerable rent, based on the increase of the inflation (capped at 100%) and it reflected the rental market value of the property at such time. In the opinion of the Government, the amount claimed as rental market value by the applicants (circa EUR 3,500 per month) was exorbitant in particular if it was interpreted against the background of the national minimum wage in 2015 (EUR 720.46 per month) in the light of the fact that the rent-control regulation system is aimed at protecting individuals within the lower income strata. Moreover, the applicants had not shown that there had been any tenant willing to pay the excessive amount that they had claimed.

41. The Government submitted that the income of the tenant (a seventy-year-old unmarried pensioner) was GBP 900 per month (circa EUR 1,200). Therefore, subtracting the rent (around EUR 39 per month) from the pensionable income, the amount left was EUR 1,160, a sum from which all expenses including medical expenses associated with old age and maintenance costs of the property, had to be paid. Thus, in the opinion of the Government the authorities had struck a fair balance between the various rights and interests involved in the case at hand. Furthermore, the applicants had had procedural safeguards at their disposal to protect their interests.

42. The Government argued that the present case was considerably different from the case *Amato Gauci* (cited above) since in that case the owner of the property had been forced into a unilateral lease, while in the present case the applicants had acquired a property which had already been subject to an existing lease of which they had had full knowledge. Thus, unlike in the present case, in that case it had been unforeseeable that an emphyteutical concession would have been converted into a lease. As to the case of *Zammit and Attard Cassar* (cited above) the Government pointed out that that case had referred to property which had involved a private interest of a commercial nature, while in this case the property concerned was purely intended for residential purposes.

2. The Court's assessment

43. The Court reiterates that in order for an interference to be compatible with Article 1 of Protocol No. 1 it must be lawful, be in the general interest and be proportionate, that is to say it must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among many other authorities, *Beyeler v. Italy* [GC], no. 33202/96, § 107, ECHR 2000-I, and *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 75, ECHR 2007-III). The Court will examine these requirements in turn.

(a) Whether there was an interference

44. In connection with the development of property, the Court has previously found that having been aware of the fact that their property had been encumbered with restrictions when they had bought it (for example, its designation in a local development plan), the applicants could not hold that circumstance against the authorities (see *Lacz v. Poland*, (dec.) no. 22665/02, 23 June, 2009; and the case-law cited therein), specially when a complaint has not been made that they had a legitimate reason to believe that the restrictions encumbering their property would be removed after they bought the property. However, the Court has not excluded that there might be particular cases where an applicant who bought a property in full knowledge that it was encumbered with restrictions may subsequently complain of an interference with his or her property rights, for example, where the said restrictions are alleged to be unlawful (ibid.).

45. More specifically in the context of restrictions on lease agreements (in particular the prohibition on bringing a tenant's lease to an end), the Court has found that there was an interference as a result of the domestic courts' refusals of the applicants' demands, despite the applicants' knowledge of the applicable restrictions when they had entered into the lease agreement, a matter which however carried decisive weight in the assessment of the proportionality of the measure (see *Almeida Ferreira and*

Melo Ferreira v. Portugal, no. 41696/07, §§ 27 and 34, 21 December 2010).

46. Subsequently, in *R & L, s.r.o. and Others* (cited above) the Court specifically examined whether Article 1 of Protocol No. 1 protected applicants who had purchased property in the knowledge that rent restrictions imposed on the property might contravene the Convention. In that case, when the applicants had acquired their respective properties their rents had been set in accordance with the rent regulations applicable at the time and the applicants could not have increased the rents above the threshold set by the State. Nor were they free to terminate the rent agreements and conclude new ones with different – higher – levels of rent. The Court did not find it decisive that one of the applicants had purchased the property before the domestic courts had taken issue with the legislation in place which had given a legitimate expectation that the status of such properties would be addressed by the national legislator in due course. The Court held that it could not be said that the applicants as landlords had implicitly waived their right to set the level of rents, as, for the Court, waiving a right necessarily presupposed that it would have been possible to exercise it. There was no waiver of a right in a situation where the person concerned had never had the option of exercising that right and thus could not waive it. It followed that the rent-control regulations had constituted an interference with the landlords' right to use their property (ibid., § 106).

47. In the more recent *Zammit and Attard Cassar* (cited above, § 50) case, in a situation where the applicants' predecessor in title had knowingly entered into a rent agreement in 1971 with relevant restrictions (specifically the inability to increase rent or to terminate the lease), the Court held that, at the time, the applicants' predecessor in title could not reasonably have had a clear idea of the extent of inflation in property prices in the decades to follow. Moreover, the Court observed that when the applicants had inherited the property in question they had been unable to do anything more than attempt to use the available remedies, which had been to no avail in their circumstances. The decisions of the domestic courts regarding their request had thus constituted interference in their respect. Furthermore, as in *R & L, s.r.o. and Others*, in *Zammit and Attard Cassar* (both cited above) the applicants, who had inherited a property that had already been subject to a lease, had not had the possibility to set the rent themselves (or to freely terminate the agreement). It followed that they could not be said to have waived any rights in that respect. Accordingly, the Court found that the rent-control regulations and their application in that case had constituted an interference with the applicants' right (as landlords) to use their property (*Zammit and Attard Cassar*, cited above, § 51).

48. Turning to the present case, the Court also notes that the applicants had bought their property before the European Court of Human Rights took issue with the Maltese legislation applicable in cases such as *Amato Gauci*

(cited above). That judgment was eventually followed in most cases in domestic case-law. However, again the Court finds this not to be decisive given the passage of time between the purchase of the property and now. In this connection the Court reiterates that what might be justified at a specific time might not be justified decades later (see *Amato Gauci*, cited above, § 60). In the present case, while it is true that the applicants knowingly entered into the rent agreement in 1988 with the relevant restrictions (specifically the inability to increase the rent or to terminate the lease), the Court considers that the applicants could not reasonably have foreseen the extent of inflation in property prices in the decades that followed (see *Zammit and Attard Cassar*, cited above, § 50). Once the discrepancy in the rent applied and that on the market became evident, they were unable to do anything more than attempt to use the available remedies, which they did in 2010, but which were to no avail in their circumstances. The decisions of the domestic courts regarding their application thus constituted interference in their respect. Furthermore, the applicants, who bought a property that was already subject to a restricted lease, did not have the possibility to set the rent themselves or to freely terminate the agreement. Clearly, they could not be said to have waived any rights in that connection (see *Zammit and Attard Cassar*, cited above, § 50).

49. Accordingly, the Court finds that the rent-control regulations and their application in the present case constituted an interference with the applicants' right (as landlords) to use their property (see *Zammit and Attard Cassar*, cited above, § 51). Nevertheless, in circumstances such as those of the present case a number of considerations need to be made in connection with the proportionality of the interference.

50. The Court has previously held that rent-control schemes and restrictions on 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 *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 160-61, ECHR 2006-VIII; *Bittó and Others v. Slovakia*, no. 30255/09, § 101, 28 January 2014; and *R & L, s.r.o. and Others*, cited above, § 108).

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

51. The Court refers to its general principles on the matter as set out in *Amato Gauci* (cited above, § 53-54).

52. 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.

53. In the present case the Court can accept that the applicable legislation in the present case pursued a legitimate social-policy aim, specifically the social protection of tenants (see *Amato Gauci*, cited above, § 55, and *Anthony Aquilina*, cited above, § 57). It is, however, also true that the relevance of that general interest may have decreased over time, particularly after 2008 (see *Anthony Aquilina*, cited above, § 57), even more so given that following that date, the only person benefiting from the impugned measures was P.G., whose financial situation as shown before the domestic courts and which is not being contested before this Court, leaves little doubt as to P.G's necessity for such a property, and at a regulated rent. This Court will therefore revert to this matter in its assessment as to the proportionality of the impugned measure.

(c) Whether the Maltese authorities struck a fair balance

54. The Court refers to its general principles on the matter as set out in *Amato Gauci* (cited above, § 56-59).

55. The Court will consider the impact that the application of the 1979 Act had on the applicants' property. It notes that the applicants could not exercise their right of use in terms of physical possession as the house was occupied by tenants and they could not terminate the lease. Thus, while the applicants remained the owners of the property they were subjected to a forced landlord-tenant relationship for an indefinite period of time.

56. Despite any reference to unidentified procedural safeguards by the Government (see paragraph 41 above) the Court has on various occasions found that applicants in such a situation did not have an effective remedy enabling them to evict the tenants either on the basis of their own needs or those of their relatives, or on the basis that the tenants were not deserving of such protection (see *Amato Gauci*, cited above, § 60, and *Anthony Aquilina*, cited above, § 66). Indeed, when their need arose (some years after they had purchased it) and later despite the little need of it by the tenant – who was not in any particular need of housing (at least after 2008) – the applicants were unable to recover the property. 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 *Anthony Aquilina*, cited above, § 66, and *mutatis mutandis*, *Zammit and Attard Cassar*, cited above, § 61). The Court further considers that the possibility of the tenant leaving the premises voluntarily was remote, especially since the tenancy could be inherited – as in fact happened in the present case. It is clear that these circumstances inevitably left the applicants in uncertainty as to whether they would ever be able to recover their property.

57. As to the rent payable, the Court is ready to accept that EUR 466 annually was a more or less reasonable amount of rent in 1988 - particularly given that it was an amount of rent which the applicants were aware of and

in spite of which they decided to purchase the property with the relevant restrictions. Furthermore, it was an amount of rent which the applicants expected to receive for a number of years, at least until the demise of J.G. and his wife. Moreover, the Court accepts that at the relevant time the measure pursued a legitimate social-policy aim (see paragraph 53 above) which may call for payments of rent at less than the full market value (see *Amato Gauci,* § 77).

58. The same cannot be said after the passage of decades, during which the rent had remained the same (as stated by the parties and the domestic courts, the rent is still EUR 466 annually). The Court has previously held that there had been a rise in the standard of living in Malta over the past decades (see *Amato Gauci*, cited above, § 63, and *Anthony Aquilina*, cited above, § 65). Thus, the needs and the general interest which may have existed in 1979 must have decreased over the three decades that ensued (see *Anthony Aquilina*, cited above, § 65). It is noted that as stated by the Government in paragraph 40 above, the minimum wage in 2015 was EUR 720.46 per month, while in 1974 (the date when Malta adopted a national minimum wage) it amounted to the equivalent of less than EUR 100 per month (see *Amato Gauci*, cited above, § 60).

59. The Court need not identify the exact year at which the rent payable was no longer reasonable. It observes that cases against Malta concerning the same subject matter, that is to say renewal of leases by operation of law - whose rent had been set on an open market – (see *Amato Gauci*, *Anthony Aquilina*, and *Zammit and Attard Cassar*, all cited above), which have invariably lead to findings of a violation of Article 1 of Protocol No. 1, concerned periods after the year 2000. Furthermore, the Government of the respondent State have often argued that Malta suffered a boom in property prices in 2003 (see, for example, *Apap Bologna v. Malta*, no. 46931/12, § 97, 30 August 2016). Lastly, although not determinative, it was only in 2008 that the applicants refused to accept the rent, once P.G. had inherited the property. In the light of the above it suffices for the Court to consider that a rent based on the value of the property as it stood in 1962 with the relevant adjustment which amounted to EUR 466 annually in 1988 and thereafter – was certainly not reasonable for the years following 2000.

60. In particular, even if one had to concede that the valuations submitted by the applicants are on the high side, the Court notes that the first-instance domestic court, in 2011, accepted EUR 3,000 per month (that is to say EUR 36,000 per year) as the rental market value of the property (see paragraph 18 above). Thus, the amount of rent received by the applicants, around EUR 39 a month, that is to say EUR 466 per year, for a fourteen-room house in Sliema, a highly sought-after location, is indeed "derisory" as was also found by the first-instance domestic court (see paragraph 18 above). Indeed, that amount of rent contrasts sharply with the market value of the premises in recent years, as accepted by the domestic

court or as submitted by the applicant, as it amounted to a little more than 1% of the market value. 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. Nevertheless, this may not lead to results which are manifestly unreasonable (see *Amato Gauci,* cited above, § 62).

61. In the present case, having regard to the low rental payments to which the applicants have been entitled in recent years, the applicants' state of uncertainty as to whether they would ever recover their property, which has already been subject to this regime for nearly three decades, the rise in the standard of living in Malta over the past decades, and the lack of procedural safeguards in the application of the law, which is particularly conspicuous in the present case given the situation of the current tenant as well as the size of the property and the needs of the applicants, the Court finds that a disproportionate and excessive burden was imposed on the applicants. 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 applicants' right of property.

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

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

63. The applicants further relied on Article 14 in conjunction with Article 1 of Protocol No. 1, firstly, in so far as their lease had been subject to different and less favourable laws than leases entered into after 1995. Secondly, on the basis that Act X of 2009 had treated the applicants differently in so far as they had not been able to benefit from an increase in rent, unlike owners of other properties which had been rented at a sum lower than EUR 185. Furthermore the sum of EUR 185 had also been discriminatory as it had made no distinction according to the size, value or condition of the property. The relevant Article reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

64. The Court considers that the facts at issue fall within the ambit of Article 1 of Protocol No. 1 and that Article 14 is therefore applicable in the instant case.

(a) Discrimination *vis-à-vis* leases entered into after 1995

65. The Government submitted that the reform of the rent laws had been principally aimed at tackling the old leases, namely the controlled leases that had been created prior to 1995. According to the Government the reasons for such different treatment (between the old and the new leases) was that the rents applicable to the old leases had been tied to the rental values applicable at the beginning of the 1900s, which had amounted to a disproportionate burden on the owners of property. The Government noted that the sub-emphyteusis relative to the property in this case had been converted to a lease in 1987 and such a lease had been a controlled lease which had been based on free market lease values of the 1960s. Therefore in the Government's view it was not correct on the part of the applicants to argue that they had suffered a violation by the introduction of the new leases that had not been subject to rent control (that is to say leases post 1995).

66. The Court notes that as concerns the difference of treatment *vis-à-vis* leases entered into after 1995, the Court has already rejected this complaint as being manifestly ill-founded on the basis that the use of a cut-off date creating a difference in treatment is an inevitable consequence of introducing new systems which replace previous and outdated schemes, and that the choice of such a cut-off date when introducing new regimes falls within the wide margin of appreciation afforded to a State when reforming its policies. The fact that the effects of the impugned law were abolished in respect of contracts concluded after 1995, a decision which fell within the State's margin of appreciation, could be deemed reasonably and objectively justified to protect owners from restrictions impinging on their rights (see *Amato Gauci*, cited above, §§ 69-73). There are no reasons to hold otherwise in the present case.

67. It follows that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(b) Discrimination *vis-à-vis* other premises with lower rents

68. The Court notes that this complaint 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.

B. Merits

1. The parties' submissions

(a) The applicants

69. The applicants referred to *Thlimmenos v. Greece* ([GC], no. 34369/97, ECHR 2000-IV) in relation to the failure to distinguish between cases which call for different treatments.

70. The applicants emphasised that the amendment introduced by Act X of 2009 had simply introduced a new flat rate for rents arising out of the pre-1995 regime, set at EUR 185 per annum. According to the applicants this regime had failed to apply any sort of criteria in matching the rent with the size or value of the property. As such it had failed to treat the applicants differently from other property owners whose rented premises had not been of the same size and in the same location as theirs.

71. The applicants pointed out that the 2009 amendments had applied to all pre-1995 leases and as such should also have applied in their case. However, the very fact that they had not obtained anything out of the new law (since the rental value of their property at EUR 466 per year at the termination of the emphyteusis had already been higher than EUR 185) showed that that law, which was meant to address the imbalance in controlled leases, had failed to differentiate sufficiently between properties and had not ensured that all the owners could benefit from some increase in rent in order to lessen the gap between the established rent and the prevailing fair market rent.

72. According to the applicants it was debatable that the definition of tenant which applied to leases arising out of the Housing (Decontrol) Ordinance was more favourable than the one introduced by means of Act X of 2009. While Act X of 2009 required successors to have lived with the original tenant since 1 June 2008, Article 2 of the Housing (Decontrol) Ordinance allowed successors to the lease such as children and siblings to continue the lease if they were living with the tenant at the time of the tenant's death (therefore even if they started living there after 1 June 2008).

73. The applicants observed that the Government had failed to explain how the threshold of EUR 185 had been established. In this connection the explanation that the Government had attempted to give had been contradictory since the Government had first stated that the amount of EUR 185 had been fixed with reference to a date (that is to say the rental values applicable in 1914) and had then explained that such an amount was not based on a date but rather on the amount of the rent due. Furthermore, considering the justification given by the Government (that the amendments of 2009 had been deemed necessary in order to increase those rents that were very low) the Government ought to have recognised that there were cases where the limit of EUR 185 continued to be unjustifiable. In the

applicants' view the distinction made by the Government between persons renting properties at amounts less than EUR 185 and persons renting properties at EUR 185 or higher was not objective since it failed to consider that the amount of the rent depended on the location and size of the property. Moreover, comparing the threshold of EUR 185 per annum with the minimum wage applicable in Malta, it was evident that even persons on the minimum wage would be able to rent property for an amount higher than EUR 185 per annum.

(b) The Government

74. The Government argued that in an area so complicated as rent control over a period of around eighty years in different social contexts, the fact that the Government had decided to tackle the problem piecemeal and to deal with the more serious cases did not in itself constitute discrimination. In this connection, an obvious objective difference had existed between the situation of the applicants, who had been receiving a rent of EUR 466 a year, and the situation of other landlords who had been receiving less than EUR 185 a year.

75. The Government considered that it was not correct to say that the situation of the applicants had not benefited from the reform. According to the Government, the provisions of the reform had been applicable to leases which had arisen by operation of law upon the termination of contracts of emphyteusis or sub-emphyteusis by means of sub-article 4 of Article 38 (*sic*.) [39] of Act X of 2009 (see paragraph 30 above). Therefore, in the opinion of the Government the amendments introduced by Act X of 2009 had increased low rents to EUR 185 (with further increases every three years), while those rents which already exceeded EUR 185 had been excluded from the revision. The amendment had been deemed necessary in order to increase those rents that were very low even when compared to low incomes; thus the distinction between property rented for an amount lower than EUR 185 and property rented for an amount higher than EUR 185 had objective and justifiable reasons based on economic assessments.

76. In the Government's view such a distinction had simply applied the principle established in *Thlimmenos* (cited above). In this connection the Government specified that the rents created by operation of law after the termination of contracts of emphyteusis or sub-emphyteusis which were below the amount of EUR 185 a year also still benefited from the increase. Thus, the reform was not based on the origin of the pre-1995 rents but on the amount of rent due.

2. The Court's assessment

77. The Court refers to its general principles on the matter as set out in *Amato Gauci*, cited above, 66-68). Furthermore, the Court reiterates that the right not to be discriminated against in the enjoyment of the rights

guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different (see *Thlimmenos,* cited above, § 44). The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law. That margin is wider when it comes to the adoption by the State of general fiscal, economic or social measures, which are closely linked to the State's financial resources. However, it is ultimately for the Court to decide, in the light of the circumstances of the case in question, whether such measures are compatible with the State's obligations under the Convention and its Protocols (see *Şerife Yiğit v. Turkey* [GC], no. 3976/05, § 70, 2 November 2010 and the case-law cited therein).

78. According to its case-law, the Court will have to examine whether the failure to treat the applicants differently from other property owners (who received less than EUR 185) pursued a legitimate aim. If it did the Court will have to examine whether there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised. A violation will ensue if there is no reasonable and objective justification for not treating the applicants differently to other property owners (who received less than EUR 185) (see, *mutatis mutandis*, *Thlimmenos,* cited above, §§ 46-47).

79. The Court accepts that the aim of the 2009 amendments – which established that all pre-1995 rents which amounted to less than EUR 185 annually would be increased to EUR 185, with further increases every three years – was to increase those rents that were "very low". Nevertheless, it cannot but note that the concept "very low" is not a numerical consideration, but needs to be assessed relatively to, *inter alia*, the size, state or location of the property at issue (hereinafter referred to as its "worth"). Indeed the fact that an owner received less than EUR 185 for a property of a certain worth, does not mean that he or she suffered less of an excessive burden than others who received EUR 185 or more, for a property of more worth. Similarly, it cannot be said that those receiving less than EUR 185 were less prosperous, since an owner may have had various properties affected by the rent laws in place in Malta which benefited from this reform, as well as other movable or immovable property or capital. It is evident that a person owning various properties of less worth may be just as wealthy as a person owning only one property of more worth – it follows that neither can it be said that the 2009 amendments aimed at helping the neediest of protection. Furthermore, as noted by the Government (see paragraph 76 above), the 2009 amendments applied both to property owners who had originally rented out their property on an open market and had later had a restricted regime by operation of law imposed (as in the present case), as well as others whose properties had always been subject to controlled

rents. It is clear therefore that the amendments were not aimed at property owners who had been affected prior to the 1979 laws, and who were arguably in a worse position given that in some cases such rents were tied to 1914 values. Thus, as admitted by the Government the sole aim of the law was to increase rents which were lower than EUR 185. This decision appears to have been solely based on a random choice of a numerical figure, with no real legitimate aim save that of creating an artificial distinction.

80. While the Court can accept that following repeated findings of violations in respect of the controlled-rent laws in Malta, the Government felt obliged to attempt to ameliorate the situation of owners whose property was subject to such rent laws, no objective and reasonable justification has been supplied by the Government as to why property owners, like the applicants, who were receiving EUR 185 or more (for property which was worth more), and whose suffering in connection with such laws was the same or similar, were excluded from such efforts.

81. The Court might have been ready to accept that the State had to start from somewhere to improve the dismal situation of owners suffering from the effects of controlled rents; nevertheless it has not been submitted that this had been a first step and that situations such as those of the applicants would have been dealt with in the near future. Indeed, more than eight years have passed since these amendments and the situation of persons in the applicants' position remains the same.

82. In conclusion, by applying an across-the-board legislative measure which failed to treat the applicants (whose property was large, of a high standard and in a sought after area) differently, the State violated the applicants' right not to be discriminated against in the enjoyment of their rights under Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicants claimed 1,260,996 euros (EUR) in respect of pecuniary damage. That sum reflected (i) the rent due to them from 1998 to 2015 amounting to EUR 730,330 calculated on the basis of the valuation of an estate agent at EUR 3,500 per month, (EUR 42,000 annually) in 2015, projected backwards to the year 1998 based on two indices for property prices published by the Central Bank of Malta – by means of example, such

projections show the rents for the respective years as follows: EUR 6,857 annually in 1988, EUR 18,476 in 1998 and EUR 41,649 in 2008; (ii) EUR 502,006 in simple interest at 8% (capped so as not to exceed the rent of a particular year); and (iii) EUR 28,660 (supported by an architect's report) in repairs needed to the property since the tenant had failed to take adequate care of the property. In this connection the applicants noted that as things stand, they will remain suffering the effects of the violation even after the Court judgment, for an unspecified amount of years to come. In this light they also considered that their claim of EUR 54,000 in respect of non-pecuniary damage already suffered, representing EUR 2,000 annually since 1988, should be upheld in full.

85. The Government submitted that if a violation were to be found a declaration to that effect would suffice. In any event, they considered that the valuations were exorbitant, speculative and not based on an architect's report. They noted that the property had been purchased in 1988 at EUR 25,600 it had therefore hardly been imaginable that it could now have a rental value of EUR 42,000 annually. Indeed if it had to be divided over the years, their claim in rent amounted to around EUR 27,000 annually which would surely not reflect the rental value in the eighties and nineties. They further considered that since the applicants had accepted rent until 2008, their claim should only refer to the subsequent years. Moreover, the tenant had deposited rent for the period between 2009-15 amounting to EUR 2,796 which had to be deducted from the award of compensation. As to interest the Government noted that under domestic law, interest was due only on amount liquidated, which was not the case here. Moreover a rate of 8% was far beyond any commercial rate of interest currently available in the banking sector in respect of deposits. As to the structural works the Government considered this clam unproven and hypothetical. Lastly, the Government considered that an award under this head should not exceed EUR 10,000, which would be EUR 2,123.66 annually over six years, and an award for pecuniary damage should not exceed EUR 4,000.

86. The Court notes that the applicants are entitled to compensation in respect of the loss of control, use, and enjoyment of their property from around 2000 to date. The Court notes on the one hand that the rent suggested by the Government is not based on any valuation or other criteria, and appears to be a simple division of an aleatory sum they proposed. On the other hand, while the applicant's valuation is based on an estate agent, and was not accompanied by an architect's report, the domestic court found that EUR 3,000 as opposed to the EUR 3,500 alleged by the applicants appeared reasonable. However, the Court also notes that the comparators used by the estate agent refer to renovated buildings with high quality finishing and furnishing. While no information has been submitted as to the quality of the interior of the applicants' property the Court observes that the applicants claim that their property needs repairs as it has not been well

taken care of (see paragraph 84 above). Thus, the latter cannot be considered to be in the same condition and at the same rental value as the former. Therefore, the Court considers that the valuation submitted by the applicants is on the high side, but may nonetheless provide a relevant indication and workable basis.

87. In assessing the pecuniary damage sustained by the applicants, the Court has, as far as appropriate, considered the estimates provided and had regard to the information available to it on rental values on the Maltese property market during the relevant period. It further notes that from 2008 onwards, the Court found the legitimacy of the aim pursued highly questionable (see paragraph 53 above) and thus does not justify a reduction compared with the free market rental value (compare, *Zammit and Attard Cassar*, § 75; and *Amato Gauci*, § 77, both cited above). It further takes note of the sums already received by the applicants and those, following 2008, which were deposited in court and therefore remain retrievable, which are being deducted from the award.

88. In the present case the Court must, however, also take note of the fact that the applicants bought the property when it was already subject to such restrictions, and therefore it considers that the purchase price at the time reflected such restrictions. While the applicants consider that the Government's claim to that effect was unsubstantiated (see paragraphs 37 and 38 above), the Court notes that according to the evaluations submitted by the applicants, the property in 1988, date when they purchased it, had a rental market value of EUR 6,857 annually. The Court observes that such a sum in rent would not be appropriate for a property purchased in the same year at EUR 25,600, if that were its real sale value. In consequence it must be accepted that the limitations on the property affected the purchase price.

89. The Court reiterates that an award in respect of pecuniary damage under Article 41 of the Convention is intended to put the applicant, as far as possible, in the position he or she would have enjoyed had the breach not occurred (see, *mutatis mutandis*, *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 40, ECHR 2002-IV). It therefore considers that interest should be added to the award in order to compensate for the loss of value of the award over time (see *Runkee and White v. the United Kingdom*, nos. 42949/98 and 53134/99, § 52, 10 May 2007). As such, the interest rate should reflect national economic conditions such as levels of inflation and rates of interest (see, for example, *Akkuş v. Turkey*, 9 July 1997, *Reports of Judgments and Decisions* 1997-IV, § 35; *Romanchenko v. Ukraine*, no. 5596/03, 22 November 2005, § 30, unpublished; and *Prodan v. Moldova*, no. 49806/99, § 73, ECHR 2004-III (extracts)). It notes that the applicants claimed the statutory rate of eight per cent, and the Government's objection in that respect. The Court considers that a rate of five per cent interest is more realistic (see *Amato Gauci,* cited above, § 78, and *Ghigo v. Malta* (just satisfaction), no. 31122/05, § 20, 17 July 2008) thus a one-off

payment at 5% interest should be added (see *Anthony Aquilina*, cited above, § 72, *in fine*).

90. Lastly, it is not for the Court to award the claim concerning renovation work which was not entered into by this Court.

91. The Court, thus, awards the applicants the sum of EUR 170,000 jointly.

92. The Court further considers that the applicants must have sustained feelings of anxiety and stress, having regard to the nature of the breach. It therefore awards EUR 3,000 jointly in respect of non-pecuniary damage.

B. Costs and expenses

93. The applicants also claimed a total of EUR 13,447.60 in costs and expenses. These included EUR 5,921.47 (as shown by copies of two cheques) for the costs and expenses in relation to the defendants expenses and EUR 4,654.86 (EUR 369 + EUR 590 + EUR 1,062 + EUR 2,013.86 + EUR 620, as shown by relevant bills or judicial bill of costs) for costs of the applicants' legal representation, both incurred before the domestic courts, and EUR 2,871.27 (EUR 1,884.73 + EUR 986.54 as per attached bills) for those incurred before the Court.

94. The Government submitted that the applicants should not be paid expenses as they had not submitted proof that they made these payments. They further considered that costs for the proceedings before the Court should not exceed EUR 1,500.

95. 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, regard being had to the documents in its possession (see paragraph 93 above) and the above criteria, the Court considers it reasonable to award the sum of EUR 10,000, jointly, covering costs under all heads.

C. Default interest

96. 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 and that concerning Article 14 in conjunction with Article 1 of Protocol No. 1, in

connection with the difference of treatment compared to other premises with lower rents, admissible, and the remainder of the application inadmissible;

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

3. *Holds* that there has been a violation of Article 14 in conjunction with Article 1 of Protocol No. 1 to the Convention, in connection with the difference of treatment compared to other premises with lower rents;

4. *Holds*
(a) that the respondent State is to pay the applicants, 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 170,000 (one hundred and seventy thousand euros), jointly, in respect of pecuniary damage;
(ii) EUR 3,000 (three thousand euros), jointly, plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 10,000 (ten thousand euros), jointly, plus any tax that may be chargeable to the applicants, 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 30 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Ganna Yudkivska
President