

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

FIRST SECTION

CASE OF PACE v. MALTA

(Application no. 53545/19)

JUDGMENT

STRASBOURG

29 September 2022

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



In the case of Pace v. Malta,

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

Erik Wennerström*, President,*
Lorraine Schembri Orland*,*
Ioannis Ktistakis*, Judges,*
and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 53545/19) 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 10 October 2019 by a Maltese national, Mr Mark Pace, born in 1950 and living in San Ġiljan ("the applicant") who was represented by Dr M. Camilleri and Dr K. Micallef, lawyers 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 Agent, 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 6 September 2022,

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

SUBJECT MATTER OF THE CASE

1. The application concerns a unilaterally imposed lease under Act XXIII of 1979 amending Chapter 158 of the Laws of Malta, the Housing Decontrol Ordinance (hereinafter 'the Ordinance') affecting the applicant's property at No. 49, 'Ruhl', Wilga Street, Paceville, St. Julian's.

2. In 1980, at the expiration of the original lease, the rent according to law was approximately 391 euro (EUR) annually. In line with the law, in 1995 the annual rent was increased to approximately EUR 574; in 2000 to EUR 823, in 2013 to EUR 878 and in 2016 to EUR 969. According to a court-appointed expert the annual rental value of the property in 1980 was EUR 1,350 and in 2018 it was EUR 28,025.

3. By a judgment of 29 May 2019, the Civil Court (First Hall) in its constitutional competence found a violation of Article 1 of Protocol No. 1 to the Convention in relation to the applicant's property which had been affected by those laws since 1980. It awarded EUR 20,000 in compensation and declared that the tenant may no longer rely on the impugned law to maintain title to the property. In awarding compensation, it noted, *inter alia*, that the applicant had waited thirty-eight years to initiate proceedings. The court

refused to order the eviction of the tenants and ordered the applicant to pay 1/5 of the costs of the proceedings. The parties did not appeal.

4. In the meantime, the applicant lodged proceedings before the Rent Regulation Board ('RRB'), under the new Article 12B of the Ordinance. By a judgment of 13 July 2020, the RRB, having found that the tenant satisfied the means test, increased the annual rent payable to EUR 4,187.50 for the first two years, and to EUR 5,025 for the subsequent four years.

5. The applicant complained under Article 1 of Protocol No. 1 alone and in conjunction with Article 13 that he is still a victim of the violation upheld by the domestic court.

THE COURT'S ASSESSMENT

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

6. The applicant complained under Article 1 of Protocol No. 1 that he is still a victim of the violation of Article 1 of Protocol No. 1 upheld by the domestic court given the low amount of compensation awarded as well as the fact that there had been no order to evict the tenants.

7. The Court observes that the domestic courts have acknowledged the violation and awarded EUR 20,000 in compensation for both pecuniary and non-pecuniary damage. 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).

8. The Court takes note of the discrepancy between the valuation of the court-appointed architect finding that the property had a sale value of EUR 590,000 in 2018, and, as noted by the Government, that of the technical experts of the RRB who valued the same property at EUR 335,000 in 2020. However, even assuming that in recent years the property had an annual rental value of around EUR 5,000 based on the latter sale value (see paragraph 4 above) the Court considers that the compensation awarded for a violation persisting over decades would still not be adequate. That is sufficient 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, 27 August 2019). The Government's objection to this effect is therefore dismissed.

9. 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 made relevant considerations related to the Constitutional Court's effectiveness for the period until 2018 in *Cauchi v. Malta* (no. 14013/19, §§ 55 and 77, 25 March

2021). The additional domestic cases relied on by the Government in the present case, related to 2019, show that the Constitutional Court increased compensation in only six of sixteen appeals where this was requested. By way of example, in two of the ten cases where the appeal was rejected, it reduced compensation, and consequently in both cases this Court found relevant violations (see *Apap Bologna v. Malta*, [Committee], no. 47505/19, § 33, 9 December 2021, and *Hyzler and Others v. Malta*, [Committee], no. 45720/19, § 31, 9 December 2021). Similarly, amongst the eight cases where the Constitutional Court did not alter the compensation on appeal, the Court also found the relevant violation in the only case it has decided (see *Gera De Petri Testaferrata v. Malta*, [Committee], no. 19465/20, § 8, 28 April 2022). It follows that the cases relied on by the Government do not dispel the Court's earlier conclusions and finds that the Constitutional Court could not be considered an effective remedy which the applicants were required to undertake in 2019. As previously stated, the situation might be different in 2021 (see *Cauchi*, cited above, § 77).

10. In so far as the Government raised an objection in relation to the applicant's arguments concerning Article 12B, which had never been brought before the domestic courts, the Court observes that the latter have already been declared inadmissible by the President of the Section acting in a Single Judge formation at the stage of communication.

11. 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.

12. 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).

13. Having regard to the findings of the domestic court relating to Article 1 of Protocol No. 1, 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 8 above), the redress provided by the domestic court did not offer sufficient relief to the applicant.

14. 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 ALLEGED VIOLATION UNDER WELL-ESTABLISHED CASE-LAW

15. The applicant also raised another complaint which is covered by the well-established case-law of the Court. The complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. Accordingly, it must be declared

admissible. Having examined all the material before it and noting that in the circumstances of the present case the applicant remained a victim of the violation complained of (see paragraph 8 above) and that the Government's submissions in relation to the effectiveness of the Constitutional Court have been rejected (see paragraph 9 above), the Court concludes that it discloses a violation of Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1 in the light of its findings in, for example, *Apap Bologna* (cited above, §§ 89-91) and *Portanier* (cited above, §§ 55-56).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. The applicant claimed 110,704 euros (EUR) in respect of pecuniary damage (i.e. rental losses from 1980 to 2020 amounting to EUR 258,000 on the basis of the court-appointed architect's report, to which were applied the relevant deductions based on *Cauchi*, cited above), EUR 15,000 in non-pecuniary damage and EUR 1,100.72 in respect of costs and expenses incurred before the domestic courts, as per the taxed bill of costs.

17. The Government submitted that there had been no explanation as to the applicant's calculation in respect of the pecuniary damage, in any event they considered that the court-appointed expert's valuation was subjective. They referred instead to the evaluation made by the two architects of the RRB which they submitted to the Court and considered that the relevant deductions were to be applied thereon. The Government also considered that the claim for non-pecuniary damage was excessive and that no proof had been put forward in relation to the payment of the domestic court costs.

18. The Court has taken note of the two expert reports submitted and 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 Constitutional Court remains payable if not yet paid, the Court awards the applicant EUR 70,000 in pecuniary damage and EUR 5,000, plus any tax that may be chargeable on that amount, in respect of non-pecuniary damage.

19. Having regard to the documents in its possession, and noting that domestic court costs, according to the taxed bill of costs, remain payable if not yet paid, the Court considers it reasonable to award EUR 1,100, plus any tax that may be chargeable to the applicant, for costs and expenses before the domestic courts.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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 13 of the Convention taken in conjunction with Article 1 of Protocol No. 1 to the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 70,000 (seventy thousand euros) in respect of pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 1,100 (one thousand and one hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 29 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Erik Wennerström President