

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

FIRST SECTION

CASE OF RADMILLI v. MALTA

(Application no. 28711/19)

JUDGMENT

STRASBOURG

13 January 2022

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



In the case of Radmilli v. Malta,

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

Krzysztof Wojtyczek, *President,*
Erik Wennerström,
Ioannis Ktistakis, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 28711/19) 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 17 May 2019 by a Maltese national, Ms Alessandra Radmilli, born in 1948 and living in Sliema ("the applicant") who was represented by Dr M. Camilleri and Dr E. Debono, lawyers practising in Valletta;

the decision to give notice of the application 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;

the parties' observations;

Having deliberated in private on 30 November 2021,

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

SUBJECT-MATTER OF THE CASE

1. The applicant's property had been rented out to a third party (under title of temporary emphyteusis) by her ancestors. The contract expired in 1980, however, as a result of Act XXIII of 1979 amending Chapter 158 of the Laws of Malta the tenant retained the property under title of lease, at a rent of approximately 420 euros (EUR) per year with slight increases over the years.

2. On 15 February 2018 the Civil Court (First Hall) in its constitutional competence found a violation of the applicant's property rights, noting in particular a decreasing legitimate aim since 1995 when the large majority of the property market had been liberalised. Bearing in mind the discrepancy in the rent received and the market value, particularly as of 2008, it awarded EUR 30,000 in pecuniary damage and EUR 1,000 in non-pecuniary damage and declared that the tenant could no longer rely on the impugned law to maintain title to the property. No costs were to be paid by the applicant. On appeal by the State and the tenant, on 14 December 2018 the Constitutional Court confirmed the first-instance judgment but reduced the pecuniary award to EUR 25,000, having considered that it should not depart from the limits of compensation usually awarded in similar cases. The applicant was ordered to pay ¼ of the costs of the appeal proceedings.

3. Act No. XXVII of 2018 entered into force on 1 August 2018 and its Article 12B provided, *inter alia*, that despite a judgment in the owner's favour, it shall not be lawful for the owner to proceed to request the eviction

of the occupier without first availing himself of the new procedure provided by that law. On an unspecified date before 8 May 2020 the applicant regained possession of the vacant property.

THE COURT'S ASSESSMENT

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

4. The applicant complained that she is still a victim of the violation of Article 1 of Protocol No. 1, despite the findings by the domestic courts, given the low amount of compensation awarded as well as the fact that there had been no order to evict the tenants.

5. The Court observes that the domestic courts have acknowledged the violation and awarded EUR 26,000 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). Bearing in mind that the property had a rental value of, for example, EUR 12,775 in 2017, the Court considers that the compensation awarded for a violation persisting over decades was not adequate and that the redress provided by the domestic courts 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.

6. The Court also dismisses the Government's objection of non-exhaustion of domestic remedies (in so far as the applicant had not appealed against the first-instance judgment of 15 February 2018 to the Constitutional Court) on the basis of its considerations in *Cauchi v. Malta* (no. 14013/19, §§ 55 and 77, 25 March 2021, relating to domestic proceedings in 2018). The additional domestic cases relied on by the Government in the present case are all dated 2020. Thus, they do not dispel the Court's earlier conclusions that the Constitutional Court could not be considered an effective remedy at the relevant time (2018).

7. 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 considers that bearing in mind its findings at paragraph 12 below, it is not necessary to deal with this objection.

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

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

10. Having regard to the findings of the domestic courts 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 courts, 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 4 above), the redress provided by the domestic courts did not offer sufficient relief to the applicant.

11. The Court observes that, as noted by the Government, it is unclear whether during a certain time after 1980, the rent being received by the applicant was one agreed by both parties, before it was later increased according to law. However, in the absence of any considerations in this respect at the domestic level, the Court will not speculate as to the factual circumstances.

12. Furthermore, the Court considers that – without having to address the effectiveness or otherwise of the procedure introduced by Act XXVII of 2018 for the purposes of this complaint – even assuming that the new Article 12B of the Ordinance provided for any relevant and effective safeguards, these had no bearing on the situation suffered by the applicant until the introduction of these amendments in 2018. It is also unclear whether they had any bearing thereafter given that the tenant vacated the premises on an unspecified date prior to 8 May 2020 (compare, *Cauchi*, cited above, § 63).

13. 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 VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

14. The applicant also raised a complaint under Article 13 in conjunction with Article 1 of Protocol No. 1 which is covered by 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 inadmissible on any other ground. Accordingly, it must be declared admissible. Having examined all the material before it, and noting that the Government's submissions have been rejected by this Court in previous analogous cases, the Court concludes that they disclose a violation of Article 13 of the Convention in the light of its findings in, for example, *Apap Bologna* (cited above, §§ 89-91) and *Portanier* (cited above, §§ 55-56).

III. REMAINING COMPLAINTS

15. The applicant also raised other complaints under various Convention provisions. The Court has examined that part of the application and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

16. It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. The applicant claimed 170,000 euros (EUR) in respect of pecuniary damage and EUR 15,000 in non-pecuniary damage in the light of all the complaints raised as well as EUR 401 in respect of costs and expenses incurred before the domestic courts and EUR 3,000 for those incurred before the Court.

18. The Government submitted that there had been no explanation as to the applicant's calculation in respect of the pecuniary damage, which did not appear to tally with the court-appointed expert's valuation. Moreover, amongst its various observations, they noted that the applicant only acquired the entirety of the property in 1997 by a contract of division and donation, her having acquired the other half jointly with her brothers on her father's demise in 1989. The Government also considered that the claim for non-pecuniary damage was excessive. The Government did not dispute the domestic courts costs but submitted that no proof of payment had been put forward in relation to costs before this Court.

19. The Court notes that both before the domestic courts as well as before this Court the applicant premised her application with the fact that she became the full owner in 1997. However, in her domestic application reference is made to the fact that her ancestor also suffered the breach and that she was due compensation also for that period. The latter request was reiterated by the Civil Court (First Hall) in its constitutional competence and acknowledged by the Government who raised a plea of prescription and of inadmissibility *ratione temporis* – both of which were rejected. Further the Civil Court (First Hall) in its constitutional competence examined the rent at issue for the period following 1980 noting that it was low compared to the market value with the discrepancy increasing over time, resulting, together with other factors, in a violation of Article 1 of Protocol No. 1. The Constitutional Court did not alter those conclusions. There is therefore no reason to exclude the years during which the applicant only part-owned the property, or those where it was held

by the applicant's ascendant – bearing in mind, however, that the disproportionality must not have arisen immediately.

20. The Court further notes that, apart from relying generally on the experts' valuations, the applicant has not explained her calculation. In any event 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 Constitutional Court remains payable if not yet paid, the Court awards the applicant EUR 37,000 in pecuniary damage and EUR 7,000, plus any tax that may be chargeable on that amount, in respect of non-pecuniary damage.

21. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 401, plus any tax that may be chargeable to the applicant, for costs and expenses before the domestic courts. It rejects the unsubstantiated claims for costs and expenses before this Court.

22. The Court further 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 complaints concerning Article 1 of Protocol No. 1 to the Convention alone and in conjunction with Article 13 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 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 37,000 (thirty-seven thousand euros), in respect of pecuniary damage;
      (ii) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 401 (four hundred and one 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 13 January 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President