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

FIRST SECTION

DECISION

Application no. 36806/21
Paul CUSCHIERI and Others
against Malta

The European Court of Human Rights (First Section), sitting on 20 September 2022 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. 36806/21) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 16 July 2021 by the applicants listed in the appended table ("the applicants") who were represented by Dr K. Micallef, a lawyer practising in Valletta;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns an extended lease under Act XXIII of 1979 amending Chapter 158 of the Laws of Malta (the Housing Decontrol Ordinance – hereinafter 'the Ordinance') affecting the applicants' property at Melita Junction, Sliema, as of 1983. In that light a new lease agreement was signed and it was agreed that the annual rent payable would be approximately 167 euros (EUR) until December 1985, despite the law allowing for a rent of EUR 466. In May 1998 the rent was increased to EUR 466 and in May 2013 to EUR 650. Thereafter it was subject to inflation increases every three years, allowed by law, thus, in 2016 the rent stood at EUR 663.

2. In 2018 the applicants lodged constitutional redress proceeding complaining that the application of Article 12 of the Ordinance was in breach of their property rights. According to the court-appointed expert, the sale value of the property in 2018 was EUR 350,000 and the annual market rental

value of the furnished property in 1983 was EUR 833, in 1988 EUR 1,963, in 1993 EUR 2,505, in 1998 EUR 3,196, in 2003 EUR 4,080, in 2008 EUR 5,715, in 2013 EUR 9,205 and that in 2018 EUR 11,118.

3. By a judgment of 8 June 2020 the Civil Court (First Hall) in its constitutional competence found a violation of Article 1 of Protocol No. 1 to the Convention and awarded EUR 20,000 in compensation. In awarding compensation, it took account, *inter alia*, of the fact the applicants had waited thirty-five years before instituting proceedings. The defendants appealed and the applicants cross-appealed demanding an increase in the compensation awarded.

4. By a judgment of 27 January 2021 the Constitutional Court confirmed the first-instance judgment on the merits and increased the compensation to EUR 45,000 (together with 5 % interest from the date of each judgment on the liquidated amount and remaining capital respectively). It bore in mind that, according to the expert report and relevant testimony, the rental value of the property for the relevant period 1983 to 2018 amounted to EUR 151,425, which could be decreased by 30 % if the property were to be rented unfurnished, i.e. EUR 105,998, thus the award by the first court had been too low. No costs were to be paid by the applicants. On the merits the Constitutional Court also clarified that the first-instance judgment referred to the period until 10 April 2018 that is the period prior to the introduction of the 2018 amendments, particularly Article 12 B of the Ordinance.

5. In the meantime, it appears from the documents lodged with the application, that the applicants instituted proceedings before the Rent Regulation Board (RRB) pursuant to the 2018 amendments requesting an increase in rent and by a judgment of 13 February 2020 the latter fixed the rent at EUR 7,000 annually.

THE COURT'S ASSESSMENT

A. Article 1 of Protocol No. 1 to the Convention alone and in conjunction with Article 13 of the Convention

6. The applicants complained under Article 1 of Protocol No. 1 to the Convention alone and in conjunction with Article 13 that they remained victims of the violation upheld by the courts of constitutional competence, given the low amount of compensation awarded and the failure to evict the tenants.

7. 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. In the present case the courts of constitutional competence found a violation of the applicants' property rights and thus expressly acknowledged

the violation. The Constitutional Court, increasing the compensation granted at first instance, awarded EUR 45,000 in compensation covering pecuniary and non-pecuniary damage (plus further interest). Bearing in mind the Court's practice in awarding compensation (see *Cauchi v. Malta*, no. 14013/19, §§ 102-07, 25 March 2021) the Court considers that the award made by the Constitutional Court is sufficiently similar to what the Court would have awarded in pecuniary and non-pecuniary damage and thus that an adequate amount of compensation was awarded to the applicants (compare *Bartolo Parnis and Others v. Malta* (dec.), nos. 49378/18 and 3 others, § 48, 24 March 2020) for the violation until 2018.

9. The Court, however, notes that the Constitutional Court had not ordered the eviction of the tenants or alternatively put in place a higher future rent (see *Cauchi*, cited above, § 30, and *Marshall and Others v. Malta*, no. 79177/16, §§ 71-72, 11 February 2020) having considered that the violation solely concerned the period prior to the 2018 amendments. In this connection the Court reiterates that in the event that a higher future rent is put in place eviction would not always be necessary. Indeed, when the measure did pursue a legitimate aim (such as the social protection of needy tenants), the adaptation of the future rent to present circumstances might be sufficient to repair the existing disproportionality and thus bring the violation to an end (see *Portanier v. Malta*, no. 55747/16, § 48, 27 August 2019). The Court notes that in their application lodged with the Court in 2021, while complaining about the 2018 amendments generally, the applicants omitted to make any reference to the proceedings they undertook before the RRB and the judgment of 13 February 2020 increasing the rent due or claiming that they were dissatisfied with the amount of rent put in place in their case. Furthermore, they have not informed the Court, at any later date, about these proceedings or about whether an appeal was lodged against such a decision or even that they have undertaken constitutional redress proceedings complaining about the outcome of the ordinary proceedings – an avenue they would have had to undertake had they been dissatisfied with the amount of rent put in place in respect of their property. Accordingly, the Court will not make any general considerations on the rent put in place, as for the purposes of the present case and given its specific circumstances, it suffices to note that it appears that the applicants have managed to obtain satisfaction by the higher rent put in place. Therefore, *a priori*, it must be considered that the violation complained of does not persist (compare *Testa and Others v. Malta* (dec.), no. 58910/19, § 42, 7 September 2021).

10. It follows that in the circumstances of the present case the applicants have lost their victim status for the purposes of Article 1 of Protocol No. 1. The complaint is therefore incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be declared inadmissible in accordance with Article 35 § 4 of the Convention.

11. The Court reiterates that Article 13 does not apply in the absence of an arguable claim (see *Maurice v. France* [GC], no. 11810/03, § 106, ECHR 2005-IX). Bearing in mind the considerations made above in relation to the applicants' victim status, it considers that in the specific circumstances of this case, the complaint under Article 13 is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Other Complaints

12. The applicants also raised other complaints under various Convention provisions.

13. The Court 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.

14. It follows that these complaints must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 October 2022.

Liv Tigerstedt Deputy Registrar	Erik Wennerström President

APPENDIX

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Paul CUSCHIERI	1948	Maltese	Gżira
2.	Ailwin CUSCHIERI	1951	Maltese	Swieqi
3.	Marie Josette SCALPELLO	1955	Maltese	Sliema