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

FIRST SECTION

DECISION

Application no. 56311/19
Joseph DARMANIN
against Malta

The European Court of Human Rights (First Section), sitting on 19 October 2021 as a Committee composed of:
Krzysztof Wojtyczek, *President,*
Erik Wennerström,
Ioannis Ktistakis, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*
Having regard to the above application lodged on 21 October 2019,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Joseph Darmanin, is a Maltese national, who was born in 1934 and lives in San Pawl Il-Baħar. He was represented before the Court by Dr M. Camilleri, a lawyer practising in Valletta.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

1. Background

3. Act XIII of 1979 amended Article 12 of Chapter 158 of the Laws of Malta, the Housing (Decontrol) Ordinance (hereinafter "the Ordinance"), and imposed a unilateral lease on the applicant's property in Guardamangia, as of 1980, at a low amount of rent. In 1994 the applicant's ancestor had attempted to evict the tenants *via* court proceedings to no avail.

2. Constitutional redress proceedings

4. In 2017 the applicant instituted constitutional redress proceeding complaining of a violation of his property rights.

5. According to the court-appointed expert, in 1980 the annual market rental value amounted to 508 euros (EUR), in 1985 to EUR 656, in 1990 to EUR 904, in 1995 to EUR 1,244, in 2000 to EUR 1,712, in 2005 to EUR 2,357, in 2010 to EUR 3,244, in 2015 to EUR 4,466 and in 2017 to EUR 5,075. However, the rent being received was approximately EUR 186 in 1980, EUR 373 as of 1995, EUR 745 as of 2010, EUR 795 as of 2013 and EUR 811 as of 2016. Thus, for the period 1980 to 2017 the applicant had received EUR 13,817 while according to the expert the rent due would have been of EUR 47,593. According to the State's architect, the market rental value in 2017 was EUR 3,300.

6. By a judgment of 30 October 2018 the Civil Court (First Hall) in its constitutional competence found a violation of Article 1 of Protocol No. 1 to the Convention, it rejected the applicant's request to evict the tenant, holding, however, that the tenant may no longer rely on the impugned law to maintain title to the property. It awarded the applicant EUR 33,776 in pecuniary damage (i.e. the difference between the rent perceived and the market value) and EUR 5,000 in non-pecuniary damage, plus 8 % interest on the date of payment. It considered that nowadays there was no longer a legitimate aim justifying a reduction in the compensation payable.

7. On appeal by the State, on 31 May 2019 the Constitutional Court confirmed the merits but reduced the compensation to EUR 15,000 *in toto*, having considered that while the legitimate aim diminished over the years it remained relevant and thus compensation need not reflect the actual market value. It ordered that a quarter of the expenses of the appeal be paid by the applicant.

8. The courts considered that the 2018 amendments fell outside the scope of these proceedings, despite the State's reliance on the new Article 12B of the Ordinance in their submissions.

3. Subsequent events

9. By a letter of 8 May 2020, the applicant informed the Court that the tenant had vacated the property, without stating when.

B. Relevant domestic law

10. The relevant domestic law is set out in *Amato Gauci v. Malta* (no. 47045/06, § 19-22, 15 September 2009), *Apap Bologna v. Malta* (no. 46931/12, § 25, 30 August 2016), and *Cauchi v. Malta* (no. 14013/19, § 22, 25 March 2021).

COMPLAINTS

11. The applicant complained under Article 1 of Protocol No. 1 to the Convention alone and in conjunction with Article 13 that he remained a victim of the violation upheld by the domestic court, given the low amount of compensation awarded and the failure to evict the tenant.

12. He also complained of a violation of Article 13 in conjunction with Article 6 due to the multiple actions required to regain possession of the property.

13. Relying on Article 1 of Protocol No. 1 to the Convention alone and in conjunction with Article 13 and Article 6, the applicant further complained that the new Article 12B introduced *via* the 2018 amendments, was also in breach of his property rights and not an effective remedy. He noted that its introduction interfered with his legitimate expectation to evict the tenant, and to access to court.

THE LAW

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

14. The applicant complained under Article 1 of Protocol No. 1 to the Convention alone and in conjunction with Article 13 that he remained a victim of the violation upheld by the domestic court, given the low amount of compensation awarded and the failure to evict the tenant.

15. The Court reiterates that the adoption of a measure favourable to the applicant by the domestic authorities will deprive the applicant of victim status only if the violation is acknowledged expressly, or at least in substance, and is subsequently redressed (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178 et seq. and § 193, ECHR 2006-V, and *Brumărescu v. Romania* [GC], no. 28342/95, § 50, ECHR 1999-VII). Whether the redress given is effective will depend, among other things, on the nature of the right alleged to have been breached, the reasons given for the decision and the persistence of the unfavourable consequences for the person concerned after that decision (see *Oliari and Others v. Italy*, nos. 18766/11 and 36030/11, § 78, 21 July 2015). The redress afforded must be appropriate and sufficient. Whether an individual has victim status may also depend on the amount of compensation awarded by the domestic courts and the effectiveness (including the promptness) of the remedy affording the award (see *Paplauskienė v. Lithuania*, no. 31102/06, § 51, 14 October 2014).

16. In the present case the first criterion has been met as the domestic courts found a violation of the applicant's property rights.

17. As to the second criterion, bearing in mind the Court's practice in awarding compensation in similar cases, the Court considers that an adequate amount of compensation was awarded covering both pecuniary and non-pecuniary damage (compare *Bartolo Parnis and Others v. Malta* (dec.), nos. 49378/18 and 3 others, § 48, 24 March 2020) for the violation until 2017, date of the first-instance judgment, despite an order to pay a small part of costs at the appeal stage (see, *a contrario*, *Zammit and Vassallo v. Malta*, no. 43675/16, § 42, 28 May 2019, and *Portanier v. Malta*, no. 55747/16, § 24, 27 August 2019). The Court considers that, applying the Court's standards as set out, for example, in *Cauchi* (cited above, §§ 102-107) the award made could have covered the period at least until 2019 when the applicant lodged his application with the Court. The applicant has not informed the Court at which date, certainly prior to 8 May 2020 (see paragraph 9 above), he regained possession of the property. In these circumstances the Court considers that the amount of compensation awarded was sufficient to cover the period during which he suffered the violation.

18. The Court further notes that the domestic 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). However, the domestic court made an order to the effect that the tenants could no longer rely on the relevant law provisions to maintain title to the property. The Court has previously expressed its doubts about that approach (*Portanier*, cited above, §§ 49-51, prior to the introduction of the 2018 amendments, and *Cauchi*, cited above, § 31, in respect of the period after the 2018 amendments). However, in the present case, the tenant has vacated the property which has been returned to the applicant in less than a year from the Constitutional Court's judgment and thus the violation no longer persists (see *Portanier*, cited above, § 54).

19. It follows that the applicant has lost his victim status for the purposes of this complaint, which is therefore incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4 of the Convention.

20. Bearing in mind the considerations made above, the complaint under Article 13 taken in conjunction with Article 1 of Protocol No. 1 is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention (compare *Bartolo Parnis and Others*, cited above, § 54).

B. Other complaints

21. The applicant also complained of a violation of Article 13 in conjunction with Article 6 due to the multiple actions required to regain possession of the property.

22. The Court notes firstly that the role of Article 6 § 1 in relation to Article 13 is that of a *lex specialis*, the requirements of Article 13 being subsumed by the more stringent requirements of Article 6 § 1 (see, for example, *Curmi v. Malta*, no. 2243/10, § 58, 22 November 2011, and *Cane` and Others v. Malta* (dec.,) no. 24788/17, 13 April 2021). As to Article 6 the applicant's complaint appears to be misconceived. Indeed, the Convention case-law precisely states that, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI, and *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 131, ECHR 2014). In consequence this cannot of itself raise an issue under Article 6. Moreover, the applicant has not claimed, and even less shown, that he has had to endure successive proceedings, nor indicated any remedies he pursued in that regard. In these circumstances the Court considers that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

23. Relying on Article 1 of Protocol No. 1 to the Convention alone and in conjunction with Article 13 and Article 6, the applicant also complained that the new Article 12B introduced *via* the 2018 amendments, was in breach of his property rights and not an effective remedy. He noted that its introduction interfered with his legitimate expectation to evict the tenant and to access to court.

24. The Court notes that the implications of Article 12B for the purposes of Article 1 of Protocol No. 1 have not been examined by the constitutional jurisdictions as the applicant did not raise the matter – at this stage nothing indicates that the they would not have been an effective remedy in that regard (see, *mutatis mutandis*, *Cauchi*, cited above, §§ 96-97). It follows that the complaint is inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

25. In relation to the applicant's complaints under Articles 6 and 13 of the Convention, as specified in paragraph 23 above, even assuming they are distinct from the ones dealt with above, the applicant has not been affected by Article 12B and he has regained possession of his property shortly after the Constitutional Court's judgment. Thus, even assuming these complaints are not inadmissible for any other reason, the applicant cannot claim to be a victim of these alleged violations since he cannot be regarded as being directly affected by the impugned measure (see, for general principles, *Burden v. the United Kingdom* [GC], no. 13378/05, § 33, ECHR 2008, and, *mutatis mutandis, Psaila v. Malta*, no. 14019/19, [Committee] (dec.), § 20, 14 September 2021). The remainder of the complaints are therefore incompatible *ratione personae* with the provisions of the Convention within

the meaning of Article 35 § 3 (a) and 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 18 November 2021.

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Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President