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

SECOND SECTION

DECISION

Application no. 22976/21
Raymond MILLER and Others
against Malta

The European Court of Human Rights (Second Section), sitting on 9 July 2024 as a Committee composed of:

Frédéric Krenc*, President*,
Lorraine Schembri Orland,
Davor Derenčinović*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 22976/21) 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 30 April 2021 by ten Maltese nationals, relevant details are listed in the appended table ("the applicants"), who were represented originally by Dr K. Micallef and Dr E. Debono, and later by Dr N. Debono, 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 Co-Agent, 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, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns an imposed lease on the applicants' property (consisting of two warehouses and an office, all in shell form) in the industrial zone of Marsa, as a result of the application of Chapter 69 of the Laws of Malta whereby the tenants were paying annually approximately 360 euros (EUR) until 2010 when the rent became around EUR 841 and was to increase every year by 5 %. The original lease had been put in place in the 1930s.

2. The applicants own the property together with the late Ms Helen Demajo Albanese who was never an applicant in the present case. The applicants David and Paul Demajo Albanese only have the bare ownership of part of this property, whose usufruct is in favour of their mother who is also not a party to the proceedings before the Court. The remaining applicants have full ownership, in different shares, of the remaining part of the property.

3. The owners including the applicants lodged constitutional redress proceedings complaining, *inter alia*, of a breach of Article 1 of Protocol No. 1 to the Convention in their respect. They asked the court to award compensation for the damage they had suffered and to evict the tenants.

4. According to the court-appointed expert the property was in need of upgrading and refurbishment for it to conform to applicable standards and for it to be put in a state allowing for it to be rented out, such as the repair of the roofs, installation of services and finishing requiring a substantial investment. Nevertheless, using an average between two different methodologies (one based on its sale value according to indices provided by a private company of architects, which were reduced in view of the state of the property, and the other based on rental estimates of industrial property provided by the same company) the expert estimated the rental value in 1987 as being EUR 14,817, in 1992 EUR 16,508, in 1997 EUR 18,395, in 2002 EUR 19,629, in 2007 EUR 21,875, in 2012 EUR 24,380 and in 2017 EUR 27,175, totalling a potential rental income for the years 1987-2019 of EUR 660,651. Those figures did not take into account the property's development potential, namely the possibility to build three more floors and a mezzanine (*sular irtirat*) which could be used as offices (*uficini*).

5. By a judgment of 3 December 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 161,000 in pecuniary damage and EUR 3,000 in non-pecuniary damage, plus eight per cent interest from the date of the judgment. It ordered that the tenant may no longer rely on the impugned law to maintain title to the property. It rejected the claims under Articles 6 and 14 of the Convention. None of the parties appealed.

6. Following a negotiation with the tenants the applicants regained possession of their property on 3 June 2021.

7. The applicants complained under Article 1 of Protocol No. 1 to the Convention alone and in conjunction with Article 13 of the Convention that they were still victims of the upheld violation, the constitutional jurisdictions having failed to award appropriate redress (and no redress for the period 1967-1986) and evict the tenants.

THE COURT'S ASSESSMENT

I. PRELIMINARY ISSUES

8. Following the introduction of the application, the applicants Ms Theresa Albanese, Ms Christine Cassola and Mr David Demajo Albanese died on 21 July 2021, 12 September 2021 and 31 December 2022, respectively. The Court was informed that the applicant Mr Anthony Albanese and Ms Denise Days in respect of Ms Theresa Albanese, Mr John Cassola in respect of the Ms Christine Cassola, and Ms Carol Demajo Albanese in respect of Mr David Demajo Albanese, all respective universal heirs of the deceased applicants, wished to pursue the application.

9. In its case-law, the Court has differentiated between applications where the direct victim has died after the application was lodged with the Court and those applications where he or she had already died before the lodging of the application. Where the applicant has died after the application was lodged, the Court has accepted that the next of kin or heir may in principle pursue the application, provided that he or she has sufficient interest in the case (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 97, ECHR 2014).

10. Having regard to the circumstances of the present case, the Court accepts that the heirs of the direct victims (who had lodged the application before their death), have a legitimate interest in pursuing the application.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

11. The applicants complained that they were still victims of the violation of Article 1 of Protocol No. 1 to the Convention upheld by the domestic court.

12. 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). In the present case, the Court notes that there has been an acknowledgment of the violation by the domestic court, albeit it was likely not to have covered the period prior to 1987 given the relevant domestic law and practice (see, for example, *Edwards v. Malta*, no. 17647/04, § 22, 24 October 2006). However, the Court will refer to that period separately (see paragraph 18 below).

13. The domestic court further awarded EUR 161,000 in pecuniary damage and EUR 3,000 in non-pecuniary damage. The Court notes that in awarding compensation the domestic courts did not distinguish between the status of the applicants, namely whether they had full ownership or bare ownership, despite the latter suffering no actual losses, such losses being suffered solely by the usufructuary (see *Tabone v. Malta* (dec.) [Committee],

no. 23107/20, § 12, 28 March 2023). In these circumstances the Court will also not make such a distinction, thus assessing the compensation in relation to the property globally.

14. As to whether appropriate and sufficient redress was granted for the period following 1987, the Court observes that, although prepared by a court-appointed expert and unrebutted by the State Attorney during the domestic proceedings, the Government challenged the expert's valuation before this Court. They did so in so far as the expert report had held that the property could not be rented out in its state, without significant investment, yet it then contradicted itself by stating that the property could be rented out at more than EUR 28,000 annually in 2019. Moreover, in the absence of relevant references to substantiate the values in the earlier years such as 1987, which was estimated at the unrealistic figure of EUR 14,817, the valuations provided were vague indications of the rental value of the property, not a true reflection of what a willing tenant would have paid at the time. The Court further observes that, despite a question on the matter, the applicants made no specific comment on these issues.

15. While noting that the report correctly excluded the property's development potential (see *Rizzo and Others v. Malta*, no. 36318/21, § 52, 16 January 2024) the Court finds convincing the Government's argument that a property which by the experts' own words could not be rented out in its current state, cannot possibly have a rental value of EUR 28,381 in 2019, nor of EUR 27,175 two years earlier etc., even though as a matter of fact it was leased out, the original lease having been put in place seventy years earlier. In consequence that report cannot reasonably be considered to reflect an acceptable valuation of the rental value on the market of the property at issue over the relevant period during which it was rented (compare, *Grech and Others v. Malta*, no. 69287/14, § 76, 15 January 2019, and contrast, *Fleri Soler and Camilleri v. Malta* (just satisfaction), no. 35349/05, § 17, 17 July 2008). In such circumstances the Court has no reason to consider that the award made by the domestic court did not constitute adequate compensation for the violation suffered (see, *mutatis mutandis*, *Spiteri Maempel v. Malta* (dec.) [Committee], no. 26917/21 § 11, 6 September 2022).

16. 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 v. Malta*, no. 14013/19, § 30, 25 March 2021, and *Marshall and Others v. Malta*, no. 79177/16, §§ 71-72, 11 February 2020). It, however, made a declaration to the effect that the tenants may no longer rely on the impugned law to maintain title to the property. The Court had previously aired its reservations about this approach (see *Cauchi*, cited above, § 31; see also, *inter alia*, *Portanier v. Malta*, no. 55747/16, §§ 49-54, 27 August 2019, and *Marshall and Others*, cited above, § 73). In *Cauchi* (cited above, § 31) in the context of imposed leases under Chapter 158, the Court clearly stated that such a declaration had not had any effect in bringing the violation to an end.

However, unlike in *Cauchi*, cited above, and *Galea v. Malta* (no. 28712/19, § 27, 7 October 2021) where an action for eviction based on such a declaration was impeded by Article 12B (11) of Chapter 158 introduced *via* the 2018 amendments to the law, the lease in the present case was governed by Chapter 69 of the Laws of Malta. Thus, at the time, an eviction based on such a declaration was not impeded by any provision of law and could lead to favourable results whether by means of eviction or an amicable agreement (see *Pace and Others v. Malta* (dec.) [Committee], no. 38114/21, § 12, 12 December 2023). Indeed, as argued by the Government, in the present case such a procedure had not even been necessary, the tenants having accepted to leave the premises of their own motion. It follows that the violation no longer persists (see *Portanier*, cited above, § 54, and *Darmanin v. Malta* (dec.) [Committee], no. 56311/19, § 18, 19 October 2021) and the applicants have lost their victim status in respect of this complaint.

17. 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.

18. In so far as the applicants also complain under Article 1 of Protocol No. 1 to the Convention about the period prior to 1987, the Court notes that no estimates were provided for that period, it is therefore not possible to determine whether any disproportionality for the purposes of Article 1 of Protocol No. 1 to the Convention arose prior to 1987 capable of raising an issue under Article 1 of Protocol No. 1. It follows that, even assuming the complaint is not inadmissible for any other reason, this part of the complaint is unsubstantiated and therefore manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. REMAINING COMPLAINT

19. The applicants also relied on Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1 to the Convention.

20. 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' complaint under Article 1 of Protocol No. 1, 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.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 5 September 2024.

Dorothee von Arnim Deputy Registrar	Frédéric Krenc President

Appendix

List of applicants:

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No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Raymond MILLER	1945	Maltese	Sliema
2.	Anthony ALBANESE	1941	Maltese	St Julians
3.	Theresa ALBANESE	1945	Maltese	St Julians
4.	Christine CASSOLA	1948	Maltese	Sliema
5.	David DEMAJO ALBANESE	1954	Maltese	Sliema
6.	Paul DEMAJO ALBANESE	1958	Maltese	Attard
7.	Antoinette MICALLEF	1934	Maltese	St Julians
8.	Gerald MILLER	1947	Maltese	St Julians
9.	Mary Antoinette PORTELLI	1931	Maltese	Burlington
10.	Dolores RIPARD	1932	Maltese	St Julians