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

FIRST SECTION

DECISION

Application no. 14019/19
David PSAILA
against Malta

The European Court of Human Rights (First Section), sitting on 14 September 2021 as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Erik Wennerström,
Lorraine Schembri Orland, *judges,*

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to the above application lodged on 11 March 2019,

Having regard to the decision to give notice to the Maltese Government ("the Government") of the complaint under Article 6 § 1 of the Convention and to declare the remainder of the application inadmissible;

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr David Psaila, is a Maltese national, who was born in 1961 and lives in Attard. He was represented before the Court by Dr M. Camilleri and Dr E. Debono, lawyers practising in Valletta.

2. The Government were represented by their Agents, Dr C. Soler, State Advocate, and Dr J. Vella, Advocate at the Office of the State Advocate.

I. THE CIRCUMSTANCES OF THE CASE

A. Background

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant owns a property, Flat no. 4, Plymouth Flats, Testaferrata Street, Msida, which he acquired (not by inheritance) from his father and uncle (G. and C.) in 1992.

5. On 1 November 1971 G. and C. rented (under title of temporary emphyteusis) the property to a third party, for seventeen years, at 65 Maltese liras (MTL) (approximately 151 euros (EUR)) per year, to take effect as of 1 January 1972. The third party rented the property under title of sub-emphyteusis to another third party who did the same, and the latter did the same. The sub-empyhteutae on the date of the termination of the emphyteusis, i.e. 31 December 1989, was a certain B. Indeed, a few months earlier, by virtue of a contract signed on 2 February 1989 G. and C. granted the property under title of temporary emphyteusis to B., for twenty-one years, at a rent of MTL 130.

6. On the termination of the emphyteusis on 1 February 2010 A. (the son of B.) relied on Act XXIII of 1979 amending Chapter 158 of the Laws of Malta, the Housing (Decontrol) Ordinance, (hereinafter "the Ordinance") to retain the property under title of lease, at a rent of EUR 510.69 per year.

7. By virtue of Act X of 2009 the rent payable according to law was slightly increased. However, A. had not paid rent since 2010, nevertheless, the applicant did not take up eviction proceedings against him.

B. Constitutional redress proceedings

8. On 21 November 2017 the applicant instituted constitutional redress proceedings claiming that the provisions of the Ordinance as amended by Act XXIII of 1979 - which granted tenants the right to retain possession of the premises under a lease - imposed on him as owner a unilateral lease relationship for an indeterminate time without reflecting a fair and adequate rent, in breach of, *inter alia*, Article 1 of Protocol No. 1 to the Convention.

9. By a judgment of 27 September 2018 the Civil Court (First Hall) in its constitutional competence found a violation of the applicant's property rights, awarded EUR 15,000 in compensation and ordered that the tenant could no longer rely on the impugned law to maintain title to the property.

C. Other information

10. When lodging the application, the applicant had argued that despite the order of the first-instance court to the effect that the tenant could no longer rely on the relevant law, he had been unable to institute eviction proceedings due to the introduction of Act XXVII of 2018 which provided that despite a judgment in 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.

11. Following the introduction of the application before the Court, the applicant instituted proceedings before the Rent Regulation Board ("RRB") requesting the eviction of the tenant, on the basis of the judgment of 27 September 2018 by which the tenant no longer had title to the property. The tenant did not reply to the case, nor did he appear before the RRB.

12. By a letter of 30 March 2020, following the communication of the complaint to the Respondent Government, the applicant informed the Court that he had obtained the eviction of the tenant by a decision of 24 July 2019 and that the property had reverted back into his possession.

II. RELEVANT DOMESTIC LAW

13. The relevant domestic law is set out in *Amato Gauci v. Malta* (no. 47045/06, § 19-22, 15 September 2009) and *Cauchi v. Malta* (no. 14013/19, § 22, 25 March 2021). Further, Article 5 (3) (b) of the Ordinance reads as follows:

> "The lessor may only refuse to renew the lease, and may only resume possession of the house, at the termination of the lease, if he shows to the satisfaction of the Board, on an application to resume possession, that in the course of the lease, the tenant has failed to pay the rent due by him in respect of two or more terms within fifteen days from the day on which the lessor called upon him for payment, or has caused considerable damage to the house, or otherwise failed to comply with the conditions of the lease or his obligations thereunder, or has used the premises for a purpose other than mainly as his ordinary residence."

COMPLAINT

14. The applicant complained under Article 6 § 1 of the Convention that the introduction of Act XXVII of 2018 impeded the execution of the judgment in his favour.

THE LAW

15. The applicant complained that the introduction of Act XXVII of 2018, which had impeded the execution of the judgment in his favour, had resulted in a breach of Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. The parties' submissions

16. The Government submitted that the applicant had failed to bring a new set of constitutional redress proceedings in relation to this complaint. Thus, the Maltese constitutional jurisdictions had not had the opportunity to

assess whether Article 12B of the Ordinance complied with the Convention, thereby denying the Court the benefit of the views of the domestic courts. In any event they considered that the applicant had no victim status as he had managed to obtain the eviction of the tenant. Without prejudice to the above, they also considered that the applicant had not suffered a significant disadvantage since the applicant could have sought to evict the tenant under the ordinary law at any time since 1999 given that the latter had failed to pay the rent due as increased by law (see paragraph 13 above). Such a course of action would have obviated any need to institute constitutional redress proceedings.

17. The applicant considered that in such a situation he should not be required to restart constitutional redress proceedings to seek to put an end to the breach of his rights under Article 1 of Protocol No. 1 which had persisted over so many years. Furthermore, he noted that Act XXVII of 2018 introducing Article 12B of the Ordinance had entered into force in April 2018, that is, while his constitutional redress proceedings had been underway. At the time, he had had a legitimate expectation, based on case-law, that following the judgment in his favour he would be able to start proceedings to evict the tenants. However, Article 12B (11) of the Ordinance had put a stop to that expectation – which, however, in the present case only materialised because the tenant had not objected to the proceedings. Lastly, he was of the view that he had not lost his victim status, because the violation of Article 6 had neither been acknowledged nor redressed. In reply to the Government's last argument, he however, admitted that he had chosen to institute constitutional proceedings, as opposed to ordinary proceedings, because he deemed that the former had more prospects of success.

B. The Courts' assessment

18. The Court has developed two lines of case-law regarding the victim status of an applicant under Article 34 of the Convention. The first line concerns the nature and extent of the conditions for claiming to be a victim of a violation of the Convention when lodging an application with the Court, namely whether a person can be regarded as being directly affected by the impugned measure (see, among other authorities, *Burden v. the United Kingdom* [GC], no. 13378/05, § 33, ECHR 2008). The second line of cases relates to the question of whether, where an alleged violation has already taken place, subsequent events can give rise to a loss of victim status. The Court would emphasise that the two lines of case-law are independent of each other. Having and losing victim status are two different situations, although they are both based on the notion of "victim" (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 66, 2 November 2010).

19. The Court further reiterates that States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and that those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see, among many authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV). The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances (ibid. § 66).

20. The Court notes firstly that, the complaint in the present case concerns the alleged violation of Article 6 § 1 (access to court) in so far as the applicant claimed that Article 12B of the Ordinance impeded the execution of the judgment in his favour. However, as admitted by the applicant – albeit belatedly – he has evicted the tenant and the newly enacted Article 12B of the Ordinance has not, in the specific circumstances of the present case, impeded the execution of the judgment in his favour. He has therefore no victim status in respect of an alleged violation of Article 6 § 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.

21. However, the Court also finds it opportune to point out that in *Cauchi v. Malta* (no. 14013/19, § 96, 25 March 2021), concerning the same complaint under Article 6 § 1, the Court considered that there was no suggestion that the constitutional jurisdictions would not be an effective remedy for the purposes of this type of complaint, and the Court found that there were no special circumstances absolving the applicant in that case from the requirement to exhaust domestic remedies in this regard. In the present case, nothing has been brought to the Court's attention capable of altering that finding.

22. Thus, even assuming the complaint was not inadmissible for any other reason, it would be inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 October 2021.

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Liv Tigerstedt
Deputy Registrar

Krzysztof Wojtyczek
President