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

SECOND SECTION

DECISION

Application no. 33257/20
Brian PSAILA
against Malta

The European Court of Human Rights (Second Section), sitting on 11 July 2023 as a Committee composed of:

Egidijus Kūris*, President*,
Pauliine Koskelo,
Frédéric Krenc*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 33257/20) 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 31 July 2020 by a Maltese national, Mr Brian Psaila, who was born in 1968 and lives in Naxxar ("the applicant") and who was represented by Dr M. Camilleri and Dr E. 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 Agents, Dr C. Soler, State Advocate, and 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 the application of Act XXIII of 1979 that amended Article 12 of Chapter 158 of the Laws of Malta (the Ordinance), which in the present case imposed a unilateral lease on the applicant's property in B'Kara, as of 1990, at a low amount of rent. It appears that the tenant paid annually.

2. Before the entry into force of the 2018 amendments to the law, the applicant instituted constitutional redress proceedings complaining that the application of Act XXIII of 1979, in particular Article 12 of the Ordinance, breached his property rights. He requested relevant remedies including the eviction of the tenant.

3. According to the court-appointed expert, having considered its development potential, in 1990 the annual rental value of the applicant's property amounted to EUR 675, in 1995 to EUR 900, in 2000 to EUR 1,125, in 2005 to EUR 1,650, in 2010 to EUR 2,800, in 2012 to EUR 3,325 and in 2015 to EUR 4,800. However, for the period from 1990 to 2018 the applicant had received EUR 15,500 while according to the court-appointed expert the rent due would have been EUR 51,700. According to the State's architect, in 2018 the annual rental value was EUR 3,140.

4. By a judgment of 29 November 2018, the Civil Court (First Hall) in its constitutional competence found a violation of Article 1 of Protocol No. 1 to the Convention. Rejecting the applicant's request to evict the tenant, it however declared that the tenant may no longer rely on the impugned law to maintain title to the property. It awarded the applicant EUR 35,000 in pecuniary damage (i.e., the difference between the rent perceived and the market value) and EUR 3,000 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.

5. On appeal by the defendants, on 27 March 2020, the Constitutional Court confirmed the merits but reduced the compensation to EUR 20,000 in pecuniary damage and EUR 3,000 in non-pecuniary damage, plus 8 % interest from the date of the first-instance judgment and specified that the declaration referred solely to Article 12 of the Ordinance and not to its newly introduced Article 12B whose interpretation was yet to develop. It considered that while the legitimate aim diminished over the years, it was still relevant and thus compensation need not reflect the actual market value. Moreover, it had not been shown that the applicant would have found a tenant willing to pay the market rent and all relevant repairs and maintenance costs. It ordered that a quarter of the expenses of the State's appeal be paid by the applicant.

6. The courts considered that the 2018 amendments fell outside of the scope of these proceedings.

7. In the meantime, in 2018 the applicant instituted proceedings before the Rent Regulation Board (RRB) under the new Article 12B of the Ordinance (introduced by the 2018 amendments to the law). During these proceedings, on an unspecified date, the tenant was given alternative accommodation by the Housing Authority. In consequence on 28 February 2023 the applicant withdrew the case.

8. In his application, the applicant complained under Article 1 of Protocol No. 1 to the Convention alone and in conjunction with Article 13 of the

Convention that he was still a victim of the violation of Article 1 of Protocol No. 1 upheld by the domestic courts.

THE COURT'S ASSESSMENT

9. The applicant complained under Article 1 of Protocol No. 1 alone and in conjunction with Article 13 that he remained a victim of the violation of Article 1 of Protocol No. 1 upheld 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 tenant.

10. 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).

11. In the present case the courts of constitutional competence found a violation of the applicant's property rights and thus expressly acknowledged the violation. The Constitutional Court, giving reasons for reducing the compensation granted at first instance, awarded EUR 20,000 in pecuniary damage and EUR 3,000 in 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 compensation granted 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 applicant (compare *Bartolo Parnis and Others v. Malta* (dec.), nos. 49378/18 and 3 others, § 48, 24 March 2020, and *Testa and Others v. Malta* (dec.), no. 58910/19, § 39, 7 September 2021) for the violation until 2018, the Constitutional Court having considered that the 2018 amendments, and therefore the subsequent period, fell outside of the scope of the case.

12. In consequence, the Constitutional Court had not ordered the eviction of the tenant or alternatively put in place a higher future rent (see *Cauchi*, cited above, § 30) in order to bring the violation to an end.

13. However, the Court notes that even before the judgments of the courts of constitutional jurisdiction, the applicant had already instituted proceedings before the RRB in line with the 2018 amendments. In 2023 he withdrew those proceedings following the relocation of the tenant to alternative accommodation. No further details were provided in this connection or in relation to any arrangements reached or compensation paid in the meantime. In these circumstances, the Court considers that the property having been vacated, the violation no longer persists (see, *mutatis mutandis*, *Portanier v. Malta*, no. 55747/16, § 54, 27 August 2019).

14. It follows that the Government's objection must be upheld as the applicant has lost his victim status for the purposes of this complaint under Article 1 of Protocol No. 1, 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.

15. 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).

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 14 September 2023.

Dorothee von Arnim Deputy Registrar	Egidijus Kūris President