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

FIRST SECTION

DECISION

Application no. 58910/19
Benjamin TESTA and Others
against Malta

The European Court of Human Rights (First Section), sitting on 7 September 2021 as a Chamber composed of:

Ksenija Turković, *President,*
Péter Paczolay,
Alena Poláčková,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato,
Lorraine Schembri Orland, *judges,*

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to the above application lodged on 8 November 2019,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

INTRODUCTION

1. The case concerns rent laws and particularly the applicants' victim status in view of the compensation awarded by the domestic courts and their failure to take action under Article 5 (3) of the Housing (Decontrol) Ordinance.

THE FACTS

2. The applicants were born in 1952, 1970, 1973, 1943, 1973, 1954, 1946 and 1938 respectively and live in Malta (see Appendix). The applicants were represented by Dr M. Camilleri and Dr K. Micallef, lawyers practising in Valletta.

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

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

THE CIRCUMSTANCES OF THE CASE

A. Background

5. The applicants own a property, no. 223, *Madonna ta' Pinu,* F.S. Caruana Street, Birkirkara.

6. On 17 November 1966, the applicants' father rented (under title of temporary emphyteusis) the property to a third party, for seventeen years, at 50 Maltese liras (MTL) (approximately 116 euros (EUR)) per year. Sometime later, the applicants' parents died and the applicants inherited the property.

7. Following the expiry of the concession, in November 1983, the tenants 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. They started paying MTL 100 per year (approximately EUR 233). As of 16 November 1998, according to law the rent was to increase automatically to MTL 135.63 (approximately EUR 316) per year, as of 16 November 2013 to MTL 191.86 (approximately EUR 447) per year and as of March 2016 to EUR 456.13 per year. However, the tenants continued to pay MTL 100 per year without the further increases granted by law. It appears that the applicants had not asked the tenant to pay the rent with the relevant increases. It was only in 2014 that the applicants refused to accept the rent and asked for a higher rent, at which point the tenant started depositing the MTL 100 in court. At this point the applicants did not institute proceedings to evict her for failure to pay the rent according to law.

8. During the tenancy Mr Z. died, it was thus only Ms Z. who lived in the property thereafter. She was in 2018, seventy-two years of age and retired receiving a pension of EUR 600 a month. She owned no other property.

B. Constitutional redress proceedings

9. In 2018 the applicants 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 them as owners 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. They requested the court to award compensation for the damage suffered and to order the eviction of the tenants. The applicants argued that prior to 1979 they had

had no other option than to rent the property under title of temporary emphyteusis, in order to avoid it being requisitioned as was common at the time.

10. The Government objected, *inter alia*, on the basis that the applicants had had an ordinary remedy to evict the tenants, mainly proceedings before the Rent Regulation Board ("RRB"), on the basis that the tenant had not been paying the rent due.

11. Relying on the newly introduced (2018) Article 12B of the Ordinance, the tenant (also party to the proceedings) argued that the newly enacted procedure amounted to an ordinary remedy which had now cured any prior defects in the law in so far as it had achieved a fair balance, and thus no violation persisted.

12. According to the court-appointed expert the sale value in 2017 was EUR 105,000 and the annual rental value was estimated as being in 1983 EUR 494, in 1988 EUR 679, in 1993 EUR 933, in 1998 EUR 1,282, in 2003 EUR 1,761, in 2008 EUR 2,420, in 2013 EUR 3,324 and in 2017 EUR 1,662.18 per six months.

13. By a judgment of 30 May 2019 the Civil Court (First Hall) in its constitutional competence found a violation of the applicants' property rights, awarded EUR 20,000 in compensation and declared that the tenants could no longer rely on the impugned law to maintain title to the property.

14. In particular, the court was satisfied that the applicants had proved their title to the property. It also considered that the fact that the applicants had not taken any other steps did not prejudice their right to bring their claims before the courts of constitutional competence. Reiterating that according to domestic jurisprudence an individual was not obliged to seek ordinary remedies if these could not satisfy his constitutional complaint, the court considered that the applicants had no effective ordinary remedy to complain about the imposed lease and thus it decided to exercise its jurisdiction and hear the case. It also considered that the procedure provided for under the new Article 12B of the Ordinance was outside the parameters of the present case. Moreover, the provision had only been in place since 2018 and could not in any way affect the previous years.

15. On the merits, the court considered that while the law had a legitimate aim when it was introduced in 1979 the situation in Malta was different in 2019, and the law had created a disproportionate burden on owners. In fact, the legislator liberalized the rental market in 1995 with exceptions such as the present one, which was however affected by amendments in 2009 and 2010. The latter amendments allowed for an increase in rent every three years (as opposed to every fifteen years as was the case with the 1979 amendments). However, the quantum of the increase was again limited by the law, thus the disproportionality of the measure persisted, so much so that the legislator felt the need of introducing further changes. In consequence, Act XXVII of 2018 came into force. However,

this could only ameliorate future situations and had no impact on the situation until now. There had therefore been a violation of the applicants' property rights.

16. The court refused to order the eviction of the tenant, considering that it was not the appropriate court to take such action. In particular, the court noted that Act XXVII of 2018 also aimed at regulating evictions, and the new Article 12B (11) of the Ordinance provided that an owner could not ask for the eviction of the tenant before going through the new procedure before the RRB, provided by the same new provision. The court considered that it was not for it to decide on the effectiveness of this new remedy. It, however, ordered that the tenants be prohibited from relying on the relevant law to retain title to the property.

17. For the purposes of compensation, the court considered: the discrepancy in the rent received and the market value; the legitimate aim at issue namely social housing; the location and situation of the property; the fact that additional rooms had been built without a permit; that the tenant took good care of the property; the fact that the applicants continued to accept the rent for thirty-four years, thus, while they had been victims since 1983 they had only brought constitutional redress proceedings in 2018; and the inertia of the State in amending its legislation in order to avoid such a disproportionate burden on owners. It also noted that the improvements made by the tenants had no relevance for the calculation of compensation as this had been their obligation under the law. It therefore awarded EUR 15,000 in pecuniary damage and EUR 5,000 in non-pecuniary damage. A small part of costs in relation to the tenant's upheld pleas was to be paid by the applicants.

18. The applicants did not appeal because, as had been confirmed by the European Court of Human Rights, the Constitutional Court was not an effective remedy since it systematically reduced the awards given by the first-instance courts of constitutional competence. The respondent State did not appeal either.

C. Other information

19. Despite the order of the first-instance court to the effect that the tenant could no longer rely on the relevant law, the applicants claimed that they were unable to institute eviction proceedings due to the introduction of Act XXVII of 2018 which provided (Article 12B (11)) that despite a judgment in their 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.

20. In 2019, in accordance with the new Article 12B of the Ordinance, the applicants instituted proceedings before the RRB, without prejudice to the then pending constitutional redress proceedings which were adjourned

awaiting judgment. They requested that Ms Z. be declared as tenant of the property at issue and that she be subjected to the means test, as per the Ordinance, and that i) if she fulfilled the criteria of the means test that the rent be increased to 2 % of the market sale value of the property, according to law, or ii) if she failed to fulfil such criteria, that according to law she vacate the property within five years during which time the rent payable would be EUR 912.26 in terms of the law.

21. By a judgment of 8 July 2020, the RRB considered that Ms Z. fulfilled the criteria of the means test and showed that she was a person of insufficient means. She could thus benefit of the protection afforded by the law and therefore the RRB did not order her eviction. In consequence, having considered her age, needs and limited means and noting that the applicants had not shown that they would suffer a disproportionate burden (given that they owned other property) (all criteria under Article 12B (6) of the Ordinance) the RRB increased the rent to EUR 1,575 for the first year starting from 20 April 2020 (amounting to 1.75 % of the market value) and to EUR 1,800 for the subsequent five years (amounting to 2 % of the market value, i.e. the maximum allowed by the Ordinance). The RRB noted that the tenant could apply to the Housing Authority for the relevant subsidy. No appeal has been lodged.

RELEVANT LEGAL FRAMEWORK

22. 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, § 38, 25 March 2021).

23. Further, Article 5 (3) (b) and (c) of the the Housing (Decontrol) Ordinance, Chapter 158 of the Laws of Malta, reads as follows:

> "(b) 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.
>
> (c) The rent payable under the same lease after the date of the first renewal of the lease made by virtue of this sub-article may be increased by the lessor, upon such renewal and after the lapse of every fifteenth year thereafter during the continuance of the lease in favour of the same tenant, by so much of the rent payable immediately before such renewal or before the commencement of each subsequent fifteen year period, being an amount not exceeding the said rent, as represents in proportion to such rent the increase in inflation since the year the rent to be increased was last established."

COMPLAINTS

24. The applicants complained under Article 1 of Protocol No. 1 alone and in conjunction with Article 13 of the Convention that they were still victims of the violation of Article 1 of Protocol No. 1 upheld by the domestic court given the low amount of compensation awarded as well as the fact that there had been no order to evict the tenants. They also considered that constitutional redress proceedings were not an effective remedy for the purposes of Article 13. This was even more so given the introduction of Act XXVII of 2018 which impeded the execution of the judgment in their favour, as a result of which they considered that they were suffering a breach of Article 6 § 1 of the Convention.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO.1 TO THE CONVENTION

25. The applicants complained that they were still victims of the violation of Article 1 of Protocol No. 1 upheld by the domestic court given the low amount of compensation awarded as well as the fact that there had been no order to evict the tenants. The provision reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The parties' submissions in relation to the applicants' victim status

1. The Government

26. The Government submitted that the applicants had lost their victim status as the domestic court had expressly acknowledged the violation and awarded appropriate redress, namely compensation of EUR 20,000 (covering EUR 15,000 in pecuniary damage and EUR 5,000 in non-pecuniary damage), for the violation which persisted since 1983. That award was based on the expert valuations of the sale value of the property (between EUR 90,000 and EUR 105,000). Moreover, it had ordered that the tenants could no longer rely on the impugned law to maintain title to the property and subsequently, the RRB had increased the rent to be paid –

since the applicants had not attempted to evict the tenant but rather requested her recognition and an increased rent.

27. Furthermore, the Government submitted that the applicants could not claim to be victims of a violation they themselves were party responsible for. In this connection the Government noted that although the applicable rent increased in 1999 and subsequently in 2013 and every three years the tenant persistently continued to pay MTL 100 and the applicants had failed to demand the difference in rent until a few years before lodging the constitutional redress proceedings (see paragraph 7 above). Nevertheless, the applicants failed to use ordinary remedies to evict the tenants, on the basis that they had not been paying the applicable rent, which showed the lack of interest the applicants had in the property. The Government relied on two domestic judgments showing the effectiveness of the eviction proceedings before the RRB in such circumstances, namely, *David Scerri vs Maureen Scicluna* of 6 October 2014 and *Dolores Rita Caruana v Mark Caruana* of 20 October 2016. In both cases eviction was ordered within thirty days of judgment, following the finding that the tenants had not paid the relevant rent. It followed, in the Government's view, that the applicants could not be considered victims of a violation which was perpetuated due to their inactivity. The Government also noted that despite this ordinary remedy and the possibility of them evicting the tenant at any time since 1999 on this basis, in 2019 the applicants opted to institute proceedings before the RRB requesting it to confirm the tenant and increase the rent.

2. The applicants

28. The applicants considered that they were still victims of the violation upheld by the domestic court, because the latter had not awarded sufficient compensation for the breach and had not brought the violation to an end. They further considered that the RRB decision of 8 July 2020 concerning the future rent had only tried to remedy the future situation but not the past, and in any event, it only added an extra barrier in bringing the violation to an end. They considered that they had been forced to bring proceedings under Article 12B, since the 2018 amendments had made it impossible for them to evict the tenant despite a court judgment in their favour, which found that the tenants could no longer rely on the relevant law. Thus, the latter declaration had in no way enabled the situation to come to an end.

29. In reply to the Government's argument concerning the possible earlier eviction of the tenants as a result of the latter's failure to pay the rent, the applicants explained as follows: According to the Ordinance a landlord may apply to the RRB requesting eviction of the tenant when the latter had in the course of the previous lease failed to pay punctually the rent due by him. A tenant is deemed to have failed to pay punctually the rent due by him if in respect of each of two or more terms he has not paid the rent within fifteen days from the day on which the lessor has called upon him for

payment. Therefore, the applicants had to call upon the tenant for payment following non-payment of two or more terms before they could file an application for eviction. The applicants considered that, had they called upon the tenant to pay, she would have either effected payment, following which the applicants could not file an application for eviction or she would have contested it. The applicants claimed that the former scenario happened regularly. They also claimed that the tenant's refusal to pay the increases coincided with their refusal to accept rent. In their view it was legally unsustainable for owners to request the payment of the full rent to enable them to demand eviction, but at the same time refuse rent to safeguard their interests and in protest of the unfairness of the situation. Moreover, they insisted that even had they instituted ordinary proceedings on this basis, eviction would not have been automatic, as the situation could have been contested before the RRB where the tenant could have defended her position.

B. The Court's assessment

1. General principles

30. 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).

31. In respect of the second line of cases, namely, the loss of victim status, the Court reiterates its general principles as set out in *Apap Bologna v. Malta* (no. 46931/12, §§ 41 and 43, 30 August 2016). In particular, 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).

32. The Court also reiterates that an applicant cannot claim to be a victim in a case where he or she is partly responsible for the alleged violation (see, *mutatis mutandis*, *Paşa and Erkan Erol v. Turkey*, no. 51358/99, §§ 19-22, 12 December 2006 and *Vujica v. Croatia*, no. 56163/12, § 67, 8 October 2015; see also *Occhetto v. Italy* (dec.), no. 14507/07, §§ 40).

2. Application of the general principles to the present case

33. The Court notes that the present case raises two issues in relation to the applicants' victim status. The first is whether the applicants can be considered victims of the impugned measure - namely the effects of the imposed lease as a result of the provisions of the Ordinance - given that they failed to call for payment and request the eviction of the tenant when they had legal grounds to do so, as of 1999. The second is whether the redress awarded by the domestic courts for the violation suffered since the end of 1983 was adequate.

34. As to the first issue, the Court notes that the tenant stopped paying the full applicable rent as of 1999; that the applicants took no steps in this regard until around 2014 when they stopped accepting the rent in protest; and that even then the applicants did not seek to evict the tenant on this ground. The Court notes that these facts are not in dispute despite a misleading statement by the applicants to the effect that the failed payments corresponded to the date when they stopped receiving rent. There is also no dispute about the fact that the law, namely Article 5 (3) of the Ordinance (see paragraph 23 above) provided for the possibility of requesting the eviction of the tenant on the ground of non-payment. However, the applicants argue that this procedure had no guarantee of success.

35. The Court observes that the domestic court in the present case did not enter into the effectiveness of eviction proceedings in the context of non-payment by the tenant, considering in general that ordinary proceedings could not address the applicants' constitutional complaint (see paragraph 14 above). The Court also notes that other cases before it also show that little explanation, if at all, is given as to why such failures on behalf of applicants have no bearing on the substance of their constitutional complaints (see for example, *Cauchi v. Malta*, no. 14013/19, § 14, 25 March 2021).

36. At this juncture the Court finds it opportune to emphasize that there is a difference between effective ordinary remedies which can prevent the occurrence of a violation (as in this case, had the applicants proceeded to

evict the tenant after 1999) and effective ordinary remedies which can only redress an alleged violation which has already occurred and can no longer be prevented (see, for example, *Brincat and Others v. Malta*, nos. 60908/11 and 4 others, §§ 62-69, 24 July 2014). Failure to undertake remedies of the former category (i.e. pre-emptive remedies) may render a Convention complaint premature and have an impact on the applicant's victim's status (see, for example, *Muscat v. Malta* (dec.), no. 69119/10, 6 September 2011; *Dimech v. Malta*, no. 34373/13, § 45-48, 2 April 2015; *Desira and Eltarhuni v. Malta*, (dec.), no. 30623/13, §§ 36-39, 6 December 2016, and *Magri v. Malta*, (dec.), no. 22515/16, §§ 45-49, 2 May 2017).

37. The Court considers that on the basis of the observations of the parties and the examples put forward by the Government, there seems to be no reason to consider that ordinary proceedings before the RRB, under Article 5 (3) of the Ordinance would have had no prospects of success. The Court also notes that had the applicants undertaken such proceedings, a successful outcome would have obviated the continuance of the violation. Thus, in the Court's view while the applicant's inactivity might not have been enough for the courts of constitutional competence to refuse to take cognisance of the case – which globally concerned a longer period starting in 1983 – the Court considers that such a situation could have had an impact on the assessment of their claims concerning 1999 onwards at the constitutional level (see general principles at paragraph 32 above).

38. While the Court is unable to speculate as to the outcome of such eviction proceedings had the applicants' been diligent in the protection of their propriety interests, for the purposes of the present case, it suffices to note that their inactivity potentially contributed to the persistence of the violation upheld by the domestic court. In these circumstances and particularly in view of the domestic findings, for the purposes of the present case, the Court will accept that the applicants were directly affected by the impugned measure throughout the entire period from 1983 and beyond 1999 (compare and contrast *Bartolo Parnis and Others v. Malta* (dec.), nos. 49378/18 and 3 others, §§ 39 and 45, 24 March 2020 albeit in a different context). However, it considers that the relevant compensation due for the violation suffered and upheld by the domestic court may be affected by their inactivity since 1999 (see, for example, although to a limited extent, *Cauchi*, cited above, § 105).

39. As to whether the applicants have lost their victim status following the domestic court's judgment in their favour the Court notes as follows. The first criterion, namely acknowledgment of a violation, has been met. As to the second criterion, bearing in mind the Court's practice in awarding compensation in similar cases, the Court considers that in the specific circumstances of this case an adequate amount of compensation was awarded, which in the present case amounted to EUR 20,000, i.e. EUR 15,000 for pecuniary damage and EUR 5,000 for non-pecuniary

damage. In particular the Court notes the reasoning of the domestic court, in relation to the fact that part of the property had not been covered by a building permit. Moreover, the Court cannot ignore the inactivity of the applicants which contributed to the violation being perpetuated for several more years. Further, the Court considers that a reasonable explanation was given by the domestic courts justifying the costs the applicants were made to pay and therefore the order to pay costs in the present case has no impact on the reasonableness of the awards made (see, for example, *Bartolo Parnis and Others*, cited above, § 48). It follows that appropriate financial redress has been awarded.

40. However, the Court notes that the properties have not been returned to the applicants (see, *a contrario*, *Bartolo Parnis and Others*, cited above, § 49), nor has the domestic court 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). While 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 already expressed its doubts about that approach (ibid. §§ 73-74) (prior to the introduction of the 2018 amendments). In the more recent judgment of *Cauchi* (cited above, § 31) the Court held that in the light of Article 12B(11) of the Ordinance, introduced as a result of the 2018 amendments, such a declaration cannot be considered to have any effect in bringing the violation to an end where, more than two years after the domestic court's judgment, the applicant continued to suffer the same violation of her property rights.

41. Nevertheless, the situation in the present case is different, in so far as shortly after the introduction of the 2018 amendments, while the constitutional redress proceedings were still pending, the applicants had already instituted proceedings before the RRB requesting precisely the recognition of the tenant and that the rent be increased. By means of a judgment of 8 July 2020, around a year after the judgment of the constitutional jurisdiction, the RRB acceded to the applicants request and increased the rent to the maximum allowed by law as of 2021 (see paragraph 21 above). 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).

42. The Court notes that the applicants (who did not appeal – them having obtained the maximum allowed by law as of the second year) have not submitted that they are 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 matter. For the purposes of the present case it suffices to note that applicants have managed to obtain satisfaction, and in the circumstances of the present case the violation does not persist (compare, *mutatis mutandis*, *Portanier*, cited above, § 54).

43. It follows that the applicants have lost their victim status for the purposes of Article 1 of Protocol No. 1.

44. 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.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

45. The applicants complained that the introduction of Act XXVII of 2018 impeded the execution of the judgment in their favour, as a result of which they considered that they were suffering 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

46. 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. They further submitted that the applicants' claim had been incongruent since while arguing that they could not evict the tenant, they had in the meantime requested the RRB to recognise the tenant and increase the rent. Lastly, and without prejudice to the above, they also considered that the applicants had not suffered a significant disadvantage since they could have sought to evict the tenant under the ordinary law at any time given that the latter had failed to pay the rent due. Such a course of action would have obviated any need to institute constitutional redress proceedings.

47. The applicants considered that in such a situation they should not be required to restart constitutional redress proceedings to seek to put an end to the breach of their rights under Article 1 of Protocol No. 1 which had persisted over so many years, as would have been the case for a complaint under Article 13. Furthermore, they noted that Act XXVII of 2018 introducing Article 12B had entered into force in April 2018, that is, while their constitutional redress proceedings had been underway. At the time, they had had a legitimate expectation, based on case-law, that following the

judgment in their favour they would be able to start proceedings to evict the tenants. However, Article 12B (11) had put a stop to that expectation.

B. The Court's assessment

48. The Court need not examine all the admissibility grounds raised by the Government, given that in *Cauchi* (cited above, § 96), concerning the same complaint, the Court has already 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.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

50. Lastly, the applicants complained that constitutional redress proceedings were not an effective remedy for the purposes of Article 13.

51. 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 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, §§ 50 and 54).

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

Ksenija Turković
President

APPENDIX

List of applicants:

Application no. 58910/19

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Benjamin TESTA	1952	Maltese	Birkirkara
2.	Alfred ATTARD	1970	Maltese	Buġibba
3.	Jason ATTARD	1973	Maltese	Birkirkara
4.	Emanuela GHERXI	1943	Maltese	Birkirkara
5.	Marika SANT	1973	Maltese	Birkirkara
6.	Alfred TESTA	1954	Maltese	Buġibba
7.	Charles TESTA	1946	Maltese	Birkirkara
8.	Joyce VELLA JAMES	1938	Maltese	Birkirkara