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

FIRST SECTION

DECISION

Applications nos. 37464/21 and 43204/21
Joseph ZAMMIT and Anna BUSUTTIL
against Malta

The European Court of Human Rights (First Section), sitting on 19 October 2021 as a Committee composed of:

Erik Wennerström, *President,*
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to the above applications lodged on 21 July 2021 and 18 August 2021 respectively,

Having deliberated, decides as follows:

THE FACTS

1. The two applicants in both applications, Mr Joseph Zammit and Ms Anna Busuttil, are Maltese nationals, who were born in 1944 and 1956 respectively and live in Paola. They were represented before the Court by Dr N. Debono, a lawyer practising in Valletta.

A. The circumstances of the case

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

1. Application no. 37464/21

3. The application concerns a unilaterally imposed lease under Act XXIII of 1979 amending Chapter 158 of the Laws of Malta, the Housing (Decontrol) Ordinance (hereinafter "the Ordinance"), affecting the applicants' property in Paola as of 26 November 2003. At that time the annual rent payable was 350 euros (EUR), and in 2013 it increased to

EUR 443, which would increase every three years thereafter. Its annual market rental value in 2003, according to the court-appointed expert, was EUR 2,473 and EUR 5,600 in 2018. According to the applicants the total market rental value from January 2003 to December 2018 amounted to EUR 64,906.

4. On 27 September 2019 the applicants lodged constitutional redress proceedings complaining that the application of Article 12 of the Ordinance, in particular Article 12 (2) breached their property rights. They specified that their claims referred to the period until 31 December 2018, without prejudice to any further action they might undertake to challenge the 2018 amendments introducing the new Article 12B of the Ordinance.

5. By a judgment of 28 January 2021, the Civil Court (First Hall) in its constitutional competence found a violation of Article 1 of Protocol No. 1 to the Convention. Bearing in mind the guidelines of the European Court of Human Rights in awarding just satisfaction as well as other factors, it awarded EUR 24,825 in pecuniary damage and EUR 5,000 in non-pecuniary damage. No costs were to be paid by the applicants.

6. None of the parties appealed.

7. In the meantime, on 29 July 2019 an agreement was reached by the parties whereby the tenants are paying EUR 2,400 annually.

2. Application no. 43204/21

8. The application also concerns a unilaterally imposed lease under Act XXIII of 1979 amending the Ordinance and affecting another property of the applicants in Paola as of 22 June 2011. At that time the annual rent payable was EUR 545, and in 2013 it increased to EUR 566, which would increase every three years thereafter. Its annual market rental value in 2011, according to the court-appointed expert, was EUR 5,600 and EUR 9,600 in 2018, totalling EUR 57,362 over the relevant period.

9. On 27 September 2019 the applicants lodged constitutional redress proceedings complaining that the application of Article 12 of the Ordinance, in particular Article 12 (2) breached their property rights. They specified that their claims referred to the period until 31 December 2018, without prejudice to any further action they might undertake to challenge the 2018 amendments introducing the new Article 12B of the Ordinance.

10. By a judgment of 24 February 2021, the Civil Court (First Hall) in its constitutional competence found a violation of Article 1 of Protocol No. 1 and awarded EUR 25,000 in pecuniary damage and EUR 3,000 in non-pecuniary damage. No costs were to be paid by the applicants.

11. None of the parties appealed.

12. In the meantime, on 27 June 2019 an agreement was reached by the parties whereby the tenants are paying EUR 3,600 annually.

B. Relevant Domestic Law

13. The relevant domestic law is set out in *Amato Gauci v. Malta* (no. 47045/06, § 19-22, 15 September 2009).

COMPLAINTS

14. 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 remained victims of the violation upheld by the domestic court since they considered the award of compensation to be too low. They further complained under Article 13 in conjunction with Article 6.

THE LAW

A. Joinder of the applications

15. Having regard to the similar factual and legal background of the applications, the Court finds it appropriate to examine them jointly in a single decision.

B. Article 1 of Protocol No. 1 to the Convention

16. The Court finds it opportune to note that it has previously held that an appeal to the Constitutional Court could not be considered an effective remedy - in various cases concerning *inter alia*, complaints under Article 1 of Protocol No. 1 in relation to the application of Act XXIII of 1979 amending the Ordinance - in particular until the end of 2018 (see, for example, *Cauchi v. Malta*, no. 14013/19, §§ 76-77, 25 March 2021). In that case it considered that the situation might be different in 2021 had the state of domestic practice evolved accordingly and noted that the matter will remain under the Court's supervision (ibid.). The Court does not consider it necessary to decide, in the present case, whether in 2021 the Constitutional Court can be considered as an effective remedy which the applicants had to exhaust. This is so given that, even assuming that this complaint is not inadmissible for non-exhaustion of domestic remedies – the applicants having failed to appeal – it is in any event inadmissible for the following reasons.

17. 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).

18. The Court notes that at the domestic level the applicants' complaint, lodged in 2019, was limited to the effects of Act XXIII of 1979 amending the Ordinance until 2018 and it explicitly excluded the application of the new Article 12B introduced *via* the 2018 amendments.

19. In the present applications the Court notes that the first criterion, namely the acknowledgment of the violation which had occurred until 2018, 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 an adequate amount of compensation was awarded in respect of both pecuniary and non-pecuniary damage in relation to both properties (compare *Bartolo Parnis and Others v. Malta* (dec.), nos. 49378/18 and 3 others, § 48, 24 March 2020). Moreover, those sums were not reduced by any order to pay costs (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).

20. It follows that the redress provided by the domestic court offered sufficient relief to the applicants, and in the circumstances of these applications, where the applicants do not complain that they continue to suffer the consequences of that breach, the Court considers that they have lost their victim status in respect of their complaint under Article 1 of Protocol No. 1 (compare *Bartolo Parnis and Others,* cited above, § 50 and *Testa and Others v. Malta*, (dec.,) no. 58910/19, § 43, 7 October 2021).

21. This complaint 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.

C. Other complaints

22. 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).

23. In so far as the applicants complained under Article 13 taken in conjunction with Article 6, 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). Secondly, the Court notes that the applicants have not explained in what way they consider that their rights under Article 6 have been breached, nor indicated any remedies they pursued in that regard. In these circumstances the Court considers that this complaint is also manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 18 November 2021.

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Liv Tigerstedt
Deputy Registrar

Erik Wennerström
President