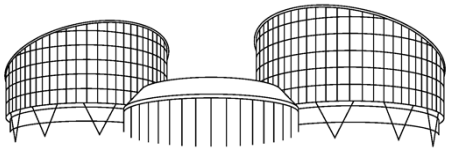

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF HYZLER AND OTHERS v. MALTA

(Application no. 45720/19)

JUDGMENT

STRASBOURG

9 December 2021

This judgment is final but it may be subject to editorial revision.

In the case of Hyzler and Others v. Malta,

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

Krzysztof Wojtyczek, *President,*
Erik Wennerström,
Lorraine Schembri Orland, *judges,*
and Attila Teplán, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 45720/19) 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") by eight Maltese nationals ("the applicants"), on 27 August 2019;

the decision to give notice to the Maltese Government ("the Government") of the complaints under Articles 6, 13 of the Convention and Article 1 of Protocol No. 1 and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 16 November 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present application concerns a breach of Article 1 of Protocol No. 1 to the Convention in relation to the disproportionate amount of rent received by the applicants, and the effectiveness of the available remedies as required by Article 13 in this regard.

THE FACTS

2. A list of the applicants is set out in the Appendix. The applicants were represented by Dr M. Camilleri, a lawyer 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.

I. BACKGROUND TO THE CASE

5. The applicants co-own a property, No. 20 'Lourdes' Depiro Street, Sliema, which they inherited.

6. On 2 December 1971, the applicants' predecessor in title rented (under title of temporary emphyteusis) the property to a third party, for seventeen years.

7. On 3 December 1988, on the expiry of the emphyteusis, the tenant 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 the rent according to law, approximately 233 euros (EUR) per year. In line with the law, in 2003 the rent was increased to approximately EUR 466.

8. According to the Government with the introduction of Act X of 2009, the rent should have increased according to the rate of inflation as of 1 January 2013 and increased again according to the rate of inflation every three years thereafter. However, the applicants had not demanded the increases in the rent due according to law.

II. CONSTITUTIONAL REDRESS PROCEEDINGS

9. In 2015 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 that the tenants no longer be able to rely on the above-mentioned law to retain possession of the property, as well as to order their eviction.

10. According to applicant's expert, the rental value of the property in 1988 was EUR 3,100 annually and its rental value in 2015 EUR 7,800 annually. According to the Government's expert and the expert of the tenants, the rental value in 2015 was EUR 6,820 and EUR 6,000 respectively.

11. By a judgment of 9 May 2018 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 the impugned law null and without effect. No costs were to be paid by the applicants.

12. The parties appealed. The applicants appealed solely in relation to the award of compensation.

13. By a judgment of 29 March 2019, the Constitutional Court confirmed the findings of a violation, but reduced the compensation to EUR 15,000. It further revoked the finding that the law was to be null and without effect but considered that the tenants (only) could no longer rely on the impugned law to maintain title to the property. Costs of the applicants' appeal and 1/4 costs of the State's appeal were to be paid by the applicants.

III. SUBSEQUENT EVENTS

14. Act XXVII of 2018 which entered into force on 1 August 2018 also amended the Ordinance and provided, *inter alia*, 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 its Article 12B.

RELEVANT LEGAL FRAMEWORK

15. 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, § 22, 25 March 2021).

THE LAW

I. THE SCOPE OF THE CASE

16. The Court observes that, in their application, the applicants made a series of repetitive complaints invoking each time Article 1 of Protocol No. 1 to the Convention alone and in conjunction with Article 13 as well as Article 6 in conjunction with Article 13, all together, in relation to the situation arising out of Act XXIII of 1979 and Act XXVII of 2018.

17. In their observations the Government submitted admissibility objections and submissions on the merits in relation to both legislative interventions. Moreover, in their second round of submissions they referred to the Controlled Residential Leases Reform Act, Act XXIV of 2021 which came into force on 1 June 2021, replacing the previous Article 12B introduced by means of Act XXVII of 2018.

18. However, the Court notes that the complaints communicated to the Government were solely the following: (i) under Article 1 of Protocol No. 1 read alone and in conjunction with Article 13 of the Convention, that the applicants were still victims of the violation of Article 1 of Protocol No. 1 upheld by the domestic courts (namely that in relation to Act XXIII of 1979) given the low amount of compensation awarded as well as the fact that there had been no order to evict the tenants; (ii) that the constitutional redress proceedings were thus not an effective remedy for the purposes of Article 13 (in conjunction with the above complaint); and (iii) that the introduction of Act XXVII of 2018 impeded the execution of the judgment in their favour, as a result of which the applicants considered that they were suffering a breach of Article 6 § 1 of the Convention.

19. When the Court gave notice of the above complaints to the Respondent Government, the parties were informed that the remainder of

the application was declared inadmissible by the Vice-President of the Section sitting in a single-judge formation.

20. The Court observes that the issues raised in the various complaints are to an extent overlapping, however, the scope of the case is limited to the complaints communicated to the respondent Government as mentioned above. It follows that any submissions falling out of that context will not be referred to except in so far as they are strictly tied to the communicated complaints.

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

21. The applicants complained that that they were still victims 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 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. Admissibility

22. The Government submitted that the applicants had lost their victim status as the Constitutional Court had acknowledged the violation and awarded EUR 15,000 in compensation.

23. The applicants considered that they had not lost their victim status given the low amount of compensation awarded as well as the fact that there had been no order to evict the tenants. They relied on the Court's findings in *Cauchi v. Malta* (no. 14013/19, § 27-32, 25 March 2021).

24. The Court reiterates its general principles concerning victim status as set out in *Apap Bologna v. Malta* (no. 46931/12, §§ 41 and 43, 30 August 2016).

25. In the present case, the Court notes that there has been an acknowledgment of a violation by the domestic courts. As to whether appropriate and sufficient redress was granted, the Court considers that even though the market value is not applicable and the rent valuations may be decreased due to the legitimate aim at issue, a global award of EUR 15,000 covering pecuniary and non-pecuniary damage for a breach which has persisted since 1988 in relation to a property with a rental value of, for

example, EUR 6,820 in 2015, according to the Government's own expert, is insufficient.

26. That is enough to find that the redress provided by the domestic court in the present case did not offer sufficient relief to the applicants, who thus retain victim status for the purposes of this complaint (see, *mutatis mutandis*, *Portanier v. Malta*, no. 55747/16, § 24, 27 August 2019).

27. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

28. The applicants submitted that on the termination of the concession in 1988 an excessive and disproportionate burden was put on them due to the extension of the tenants' rights at law for an inconsequential rent. Moreover, there had been no procedural safeguards available to them. They relied on the general principles and conclusions established in the Court's case-law concerning such cases.

29. The Government submitted that there had been no violation of Article 1 of Protocol No. 1. This was even more so given that apart from the rent received by the applicants they had also obtained EUR 15,000 from the domestic courts.

30. The Court refers to its general principles as set out, for example, in *Amato Gauci v. Malta* (no. 47045/06, § 52-59, 15 September 2009).

31. Having regard to the findings of the domestic courts relating to Article 1 of Protocol No. 1, the Court considers that it is not necessary to re-examine in detail the merits of the complaint. It finds that, as established by the domestic courts, the applicants were made to bear a disproportionate burden. Moreover, as the Court has already found in the context of the applicants' victim status (see paragraph 26 above), the redress provided by the domestic courts did not offer sufficient relief to the applicants.

32. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

33. The applicants complained that constitutional redress proceedings had not been 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 possibility of evicting the tenants. The provision reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

34. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

35. Relying on the Court's case-law, particularly *Apap Bologna* and *Cauchi* (both cited above), which applied equally to the present case, the applicants submitted that they had not had an effective remedy in relation to the breach of their property rights, as required by Article 13 of the Convention. In particular, the domestic courts had systemically failed to prevent the continuation of the violation and provide adequate redress, as had happened in their case. Furthermore, they considered that the introduction of Article 12B of the Ordinance in 2018 showed a continued reluctance by the State to provide an adequate remedy.

36. The Government submitted that the Constitutional Court had awarded adequate compensation and prevented the continuation of the violation, as it had confirmed the declaration that the tenants could no longer rely on the impugned law. They further considered that eviction would not always be necessary, and that it would be draconian to evict a tenant, outside of the context of an Article 6 compliant procedure to that effect. The Government was of the view that the most reasonable remedy would be monetary compensation which remedies the past violation and prevents any future violation.

37. Moreover, the Government argued that even if constitutional remedies were deemed to be insufficient, the aggregate of the remedies available to the applicants satisfied the requirements of Article 13. They referred to Article 12B of the Ordinance introduced in 2018, which provided the applicants with the possibility of evicting the tenants and requesting an increase in rent. They submitted examples of cases where the RRB increased the rent to 1.2 to 2 % of the market value. Most of these cases had not been appealed signalling the satisfaction of the owners with the findings of the RRB. They further noted that the RRB had the potential of providing immediate relief in so far as Article 12B (6) provided that after briefly hearing the parties and examining any evidence which it considers relevant, the RRB may also order that an increased amount of rent be paid whilst the hearing of an application filed in terms of sub-article (1) is pending. Thus, the parties could lodge a request for immediate relief.

2. The Court's assessment

38 The Court reiterates its general principles as set out in *Apap Bologna* (cited above, §§ 76-79).

39. The Court has repeatedly found that although constitutional redress proceedings are an effective remedy in theory, they are not so in practice in cases such as the present one. In consequence, they cannot be considered an effective remedy for the purposes of Article 13 in conjunction with Article 1 of Protocol No. 1 concerning arguable complaints in respect of the rent laws in place, which, though lawful and pursuing legitimate objectives, impose an excessive individual burden on applicants (see, *inter alia*, *Portanier*, cited above, § 56). No domestic case-law has been brought to the Court's attention to dispel those conclusions, relevant to the material time. Moreover, those conclusions are reinforced by the circumstances of the present case where, *inter alia*, the applicants have been awarded insufficient compensation for the breach suffered over the years (see paragraph 26 above), and thus the violation was not adequately redressed.

40. In so far as the Government relied on the new procedure introduced under Article 12B of the Ordinance, the Court notes that this new procedure introduced in 2018 was only available to the applicants after they had lodged their constitutional application and a few months before it was decided by the Constitutional Court. In examining its effectiveness as a remedy following the finding of a violation by a domestic court – that is, for the purposes of determining whether it could bring the violation to an end – the Court could not accept that Article 12B was designed to deal effectively and meaningfully with the issue of the disproportionate interference arising from the applicable rent laws, which has already been recognised by the domestic courts (see *Cauchi v. Malta*, no. 14013/19, § 85, 25 March 2021).

41. In the present case, the Government have elaborated their arguments in respect of this remedy and given further examples to substantiate its effectiveness. However, the Court notes that it does not need to delve into such an assessment for the purposes of the present case. Indeed - without prejudice to any future findings - even assuming that Article 12B of the Ordinance was capable of bringing the ongoing violation to an end, it has had no bearing on the situation suffered by the applicants until the introduction of these amendments in 2018, in respect of which it could not give redress. Since the applicants did not have a remedy capable of providing adequate redress for the violation that had already occurred prior to 2018 (see also paragraph 39 above) the Court must conclude that the aggregate of the remedies proposed by the Government did not provide the applicants with an effective remedy.

42. There has accordingly been a violation of Article 13 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

43. Lastly, 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 the applicants consider that they suffered a breach of Article 6 § 1 of the Convention.

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

44. The Government submitted that the applicants had not brought a new set of constitutional redress proceedings in relation to this complaint. Thus, the Maltese constitutional jurisdictions had not yet 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.

45. 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 his rights under Article 1 of Protocol No. 1 which had persisted over 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 2018, that is, while the 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.

46. In *Cauchi* (cited above, § 96), 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. It 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.

47. It follows that the complaint is inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

49. The applicants claimed 100,000 euros (EUR) in respect of pecuniary damage for all the violations complained of, which persisted beyond 2018, in view of the rental value of the property as determined by the different experts in the domestic proceedings. They also claimed EUR 15,000 in non-pecuniary damage.

50. The Government submitted that there had been no explanation as to the applicants' calculation in respect of pecuniary damage. Moreover, the applicants had already received around EUR 15,000 in rent from the tenants and EUR 15,000 by the domestic courts. In any event, they considered that simply adding up the alleged loss of rent would yield the applicants an unjustified profit for the following reasons: (i) they were only estimates, and not amounts that the applicants would certainly have obtained; (ii) it could not be assumed that the property would have been rented out for the whole period if the tenants had not been protected by the Ordinance - particularly given the boom in property prices over recent years; (iii) the tenants had had to maintain the property in a good state of repair and in the present case had spent EUR 4,380 in that respect; and (iv) the measure had been in the public interest and thus the market value was not called for. The Government also considered that the claim for non-pecuniary damage was excessive.

51. Having regard to the scope of the case (see paragraphs 18 to 20 above) and in connection with the violations found, the Court must proceed to determine the compensation to which the applicants are entitled for the loss of control, use and enjoyment of the property which they have suffered as of December 1988.

52. The Court notes that, apart from relying generally on the experts' valuations, the applicants have not explained their calculation.

53. In any event, the Court has made all the considerations applicable in this type of case as set out in *Cauchi* (cited above, §§ 102-107).

54. Noting in particular that the award of the domestic court remains payable if not yet paid, the Court awards the applicants jointly EUR 40,000 in pecuniary damage.

55. It also awards the applicants jointly EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

56. The applicants claimed EUR 4,689 in respect of costs and expenses covering EUR 1,689 in domestic court expenses as per submitted taxed bill of costs and EUR 3,000 in legal fees.

57. The Government did not dispute the domestic costs but submitted that no substantiation had been provided by the applicants of their claim for legal fees.

58. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the above criteria, the Court awards the applicants jointly EUR 1,689 in respect of costs and expenses.

C. Default interest

59. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Article 1 of Protocol No. 1 to the Convention alone and in conjunction with Article 13 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No.1 to the Convention;

3. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1;

4. *Holds*
   (a) that the respondent State is to pay the applicants jointly, within three months, the following amounts:
      (i) EUR 40,000 (forty thousand euros) in respect of pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 1,689 (one thousand six hundred and eighty-nine euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Attila Teplán Acting Deputy Registrar	Krzysztof Wojtyczek President

APPENDIX

List of applicants

No.	Applicant's Name	Birth year	Nationality	Place of residence
1	Rebecca HYZLER	1956	Maltese	Swieqi
2	Alan BONAVIA	1956	Maltese	St. Julians
3	Rachel BORG	1959	Maltese	Sliema
4	Pierre Marie CAMILLERI	1964	Maltese	Balzan
5	Rose Marie CAMILLERI	1939	Maltese	Balzan
6	Audrey MICALLEF	1959	Maltese	Sliema
7	Michael MOUSU'	1968	Maltese	Birkirkara
8	Alison RIPARD	1963	Maltese	Balzan