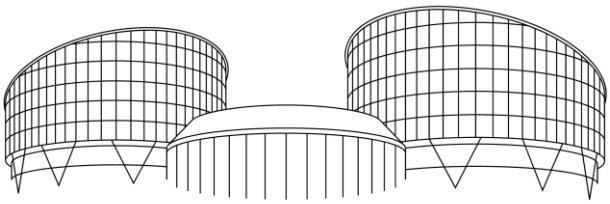

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FOURTH SECTION

CASE OF AMATO GAUCI v. MALTA

(Application no. 47045/06)

JUDGMENT

STRASBOURG

15 September 2009

FINAL

15/12/2009

This judgment may be subject to editorial revision.

In the case of Amato Gauci v. Malta,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Giovanni Bonello,
Ljiljana Mijović,
Päivi Hirvelä,
Ledi Bianku,
Nebojša Vučinić, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 25 August 2009,

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

PROCEDURE

1. The case originated in an application (no. 47045/06) against Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Maltese national, Mr Philip Amato Gauci ("the applicant"), on 24 November 2006

2. The applicant was represented by Dr I. Refalo and Dr T. Comodini Cachia, lawyers practising in Valletta. The Maltese Government ("the Government") were represented by their Agent, Dr S. Camilleri, Attorney General.

3. The applicant alleged that his property rights under Article 1 of Protocol No. 1 to the Convention were infringed as a result of a new law which imposed on him a unilateral lease relationship for an indeterminate time without providing him with a fair and adequate rent.

4. On 27 September 2007 the President of the Fourth Section decided to communicate to the Government the complaint concerning Article 1 of Protocol No. 1 to the Convention. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1939 and lives in Msida, Malta.

A. Background of the case

6. The applicant is the owner of a maisonette in Sliema, Malta. He inherited one undivided half-share of the premises from his father, who died in 1995 and the other undivided half-share from his mother, who died in 1997.

7. On 21 November 1975 the applicant's father had entered into a temporary emphyteusis contract (a contract granting a tenement [house, flat or other type of real property] for a stated yearly rent or ground rent to be paid in money or in kind) with Mr P. The parties had agreed that Mr P. was to pay a yearly amount of 90 Maltese liras (MTL – approximately 210 euros (EUR)) and was to return the premises with vacant possession to the owner after twenty-five years. They further agreed that in respect of maintenance, the grantor was responsible only for "extraordinary expenses in connection with the roofs and ceiling ... unless caused by the negligence of the acquirer".

8. In accordance with the Civil Code, the premises reverted *ipso iure* to the applicant on 20 November 2000.

9. In 1979 under Act XXIII (see paragraph 24 below) amending Chapter 158 of the Laws of Malta, Mr and Mrs P., as holders of the *utile dominium* at the time and as Maltese citizens occupying the premises as their ordinary residence, were granted the right to retain possession of the premises under a lease, without the consent of the owner. The law did not apply to temporary emphyteusis contracts entered into after 1 June 1995.

10. By a letter of 6 April 2000, the year in which the temporary emphyteusis contract lapsed, the applicant informed Mr and Mrs P. that he would not renew the contract of emphyteusis and that they should vacate the premises.

11. By a letter dated 13 April 2000, Mr and Mrs P. informed the applicant that they were not seeking renewal of the contract but that they were availing themselves of the right granted to them under Act XXIII of 1979 whereby they could retain the property under a lease.

12. After 20 November 2000, Mr and Mrs P. remained in possession of the premises under a lease, bringing about a completely new legal relationship between them and the applicant. As a result the applicant claimed that he had been unilaterally deprived of his property without being able to have recourse to a court for a determination as to whether it was necessary for Mr and Mrs P. to retain the property or to establish just and fair lease conditions. The applicant also submitted that Mr and Mrs P. also owned other property, whilst he could not make use of his property for the benefit of his daughter, who was getting married.

13. On 26 September 2000 the applicant instituted proceedings before the Rent Regulation Board (the "RRB") in order to have a fair amount of rent fixed. On 17 January 2002 these proceedings were adjourned *sine die* in

view of the constitutional proceedings instituted by the applicant, and they have not been resumed since. According to the applicant the proceedings were awaiting the outcome of the constitutional proceedings and would be resumed according to law, as stated in the minutes of the last hearing before the Board. According to the Government, the applicant abandoned these proceedings, which were then declared to have been vacated on 28 July 2004. The maximum compensation the applicant could be offered by the RRB in accordance with the law (see paragraph 21 below) was MTL 180 (approximately EUR 420) per year.

14. According to an architect's report dated March 2002, the market value of the vacant premises amounted to MTL 39,000 (approximately EUR 90,700), while the rental value was MTL 120 (approximately EUR 280) per month.

1. Proceedings before the Civil Court

15. On an unspecified date the applicant instituted constitutional redress proceedings before the Civil Court (First Hall). He complained that the lease imposed on him, as owner of the premises, which had been granted in emphyteusis at the time of the introduction of the new law, subject to inadequate compensation, infringed his rights under Article 1 of Protocol No. 1 to the Convention and was discriminatory and contrary to Article 14 of the Convention, since other premises, particularly those rented after 1995, were not subject to the same conditions.

16. By a judgment of 16 November 2004 the Civil Court rejected the applicant's claims. It held that the case was not one of deprivation of property but rather of control of use. Although it had been claimed that the rent received by the applicant was minimal, the legislator had put in place provisions to deal with this; in particular, the rent could be adjusted every fifteen years in line with the inflation index, subject to capping at double the original amount. Consequently, there had been no breach of the applicant's property rights. In respect of Article 14, it noted that the applicant had not invoked any basis for the discrimination and that the applicant and persons who rented out premises after 1995 were not persons in a similar situation and that consequently, no discrimination could have arisen.

2. Proceedings before the Constitutional Court

17. On 26 November 2004 the applicant appealed.

18. By a judgment of 26 May 2006 the Constitutional Court rejected the applicant's claims. It held that the law at issue restricted the use of property; thus, the interference suffered by the applicant constituted control of the use of property, which had been legitimate and in the general interest, falling within the State's wide margin of appreciation. In view of the housing situation in Malta, the new law was meant to protect persons occupying

premises as their ordinary residence for a certain period of time from being evicted. The law also allowed for the rent to be reviewed as mentioned by the first-instance court. The Constitutional Court found that the sum of MTL 180 (approximately EUR 420) per year was certainly low and that it would be preferable for the executive to revise the laws determining such compensation, a task which fell outside the competence of the courts. However, the sum was higher than that payable under other rent laws in force in the country. Hence, having considered all the circumstances, it held that, although the amount of rent was close to the demarcation line below which it would qualify as unjust compensation, it did not result in a violation of the applicant's property rights. In respect of Article 14, the Constitutional Court upheld the first-instance judgment, ruling that no comparison could be made in the absence of an analogous situation.

II. RELEVANT DOMESTIC LAW

A. Emphyteusis contracts

19. According to Article 1494 (1) of the Civil Code, Chapter 16 of the Laws of Malta, emphyteusis is defined as:

> "a contract whereby one of the contracting parties grants to the other, in perpetuity or for a time, a tenement for a stated yearly rent or ground-rent which the latter binds himself to pay to the former, either in money or in kind, as an acknowledgement of the tenure."

20. Other articles of the Civil Code related to this form of contract, in so far as relevant, read as follows:

Article 1521 (1)

> "A temporary emphyteusis ceases on the expiration of the time expressly agreed upon, and the reversion, in favour of the *dominus*, of the tenement together with the improvements takes place, *ipso jure*."

Article 1505

> The emphyteuta shall keep, and in due time restore the tenement in a good state.

Article 1507

> The emphyteuta is bound to carry out any obligation imposed by law on the owners of buildings or lands:
>
> Provided that if for the carrying out of any such obligation a considerable expense is required, and the emphyteusis is for a time, the court may, upon the demand of the emphyteuta, compel the *dominus* to contribute a portion of such expense, regard being

had to the covenants of the emphyteusis, to the remaining period of the grant, to the sum of the ground-rent and to other circumstances of the case."

B. The 1979 Act

21. Section 12 of Act XXIII of 1979 amending Chapter 158 of the Laws of Malta (the Housing (Decontrol) Ordinance), in so far as relevant, reads as follows:

"(1) Notwithstanding anything contained in the Civil Code or in any other enactment the following provisions of this section, and of section 12A shall have effect with respect to all contracts of temporary emphyteusis made at any time.

(2) Where a dwelling-house has been granted on temporary emphyteusis –

(*a*) for a period not exceeding thirty years, if the contract was made before 2l June 1979, or

(*b*) for any period, if the contract is made on or after the date aforesaid, and on the expiration of any such emphyteusis the emphyteuta is a citizen of Malta and occupies the house as his ordinary residence, the emphyteuta shall be entitled to continue in occupation of the house under a lease from the *directus dominus* -

(i) at a rent equal to the ground-rent payable immediately before the expiration of the emphyteusis increased, at the beginning of the lease of the house by virtue of this article, 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 ground-rent payable immediately before such commencement or the commencement of each subsequent fifteen year period, being an amount not exceeding such ground-rent, as represents in proportion to such ground-rent the increase in inflation since the time the ground-rent to be increased was last established; and

(ii) under such other conditions as may be agreed between them, or failing agreement, as the Board may deem appropriate.

22. Section 2 of the Act defines the notion of "tenant" as follows:

(*a*) the widow or widower of a tenant provided husband and wife were not, at the time of the death of the tenant, either legally or *de facto* separated;

(*b*) where the tenant leaves no widow or widower such members of the tenant's family as were residing with him or her at the time of his or her death; and

(*c*) any sub-tenant in relation to the tenant:

Provided that for the purposes of sections 5 and 12, "tenant" shall not include any of the persons included under paragraph (*b*) or (*c*) of this definition but shall include, instead, the children, and any brother or sister, of the tenant who are not married and who reside with the tenant at the time of his or her death and any ascendant of the tenant who so resides with the tenant.

C. The remedy under the Reletting of Urban Property Ordinance

23. According to section 8 of the Reletting of Urban Property Ordinance, Chapter 69 of the Laws of Malta, where the lessor desires to resume possession of the premises on termination of the lease he shall apply to the [Rent Regulation] Board for permission to do so. According to section 9 of the Ordinance, this permission is granted, *inter alia*:

> "... if the lessor requires the premises (other than a shop) for his own occupation or for that of any of his ascendants or descendants, whether by consanguinity or affinity, or of a brother or sister, and (except as otherwise provided in this paragraph of this section) the Board is satisfied that alternative accommodation is available which is reasonably suitable to the means of the tenant and his family as regards extent, character, and proximity to place of work (if any):
>
> Provided that the existence of alternative accommodation shall not be a condition for the grant by the Board of permission to recover possession of premises under this paragraph of this article where the Board is satisfied, having regard to all the circumstances of the case including any alternative accommodation available for the landlord or for the tenant, that greater hardship would be caused by refusing permission for the recovery of possession than by granting it."

D. The 1995 amendments

24. According to section 12(3) of the Housing (Decontrol) Ordinance:

> "Where on the expiration of an emphyteusis ... the dwelling-house is subject to a lease, the provisions of the Reletting of Urban Property (Regulation) Ordinance, shall not apply in respect of such lease:
>
> Provided that where the tenant under the said lease is a citizen of Malta and occupies the house as his ordinary residence he shall, on the termination of the lease, be entitled to continue in occupation of the house under a new lease from the *directus dominus* at the same rent and under the same conditions...."

25. According to section 16(3) of the Housing (Decontrol) Ordinance as amended in 1995:

> "The provisions of section 12 shall not apply to any contract of temporary emphyteusis entered into on or after the 1st June, 1995."

THE LAW

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

26. The applicant complained that his property rights were being infringed as a result of the new law which imposed on him a unilateral lease relationship for an indeterminate time without reflecting a fair and adequate rent in violation of Article 1 of Protocol No. 1 to the Convention, which 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."

27. The Government contested that argument.

A. Admissibility

1. The Government's objection of non-exhaustion of domestic remedies

(a) The parties' submissions

28. The Government first pointed out that the applicant himself, in his observations, had stated that his complaint was "directed against the deprivation itself irrespective at this stage of the complaint of the amount of compensation".

29. The Government added that, in any event, the applicant had failed to exhaust ordinary remedies in a number of ways. Firstly, he had failed to seek a decision from the RRB to evict the tenants on the ground that he himself needed the property and that the tenants had alternative accommodation available to them, in accordance with section 9 of the Reletting of Urban Property Ordinance (see "Relevant domestic law" paragraph 23 above). Secondly, the applicant had failed to bring to a conclusion the proceedings instituted before the RRB regarding the determination of the conditions under which the premises were to be granted under lease to the tenant. This not having been determined, it was impossible to establish whether the applicant had been made to suffer an excessive burden.

30. The applicant submitted that his complaint was directed at the application of the law itself, viewed in the light of reasonableness and proportionality, and that the amount of rent was thus of secondary importance. According to the applicant, for the RRB to have jurisdiction and competence, the owner must have accepted as a precondition that the act depriving him of his possessions respected his fundamental rights. This was not so in the present case. A decision by the RRB regarding the rent would be futile if the act of deprivation was found to be null and void. Moreover, it was established by law that the amount of rent the RRB could grant could not exceed MTL 180 (approximately EUR 420). The applicant further submitted that the second remedy proposed by the Government, was not applicable to the present proceedings, according to section 12(3) of the Housing Decontrol Ordinance (see paragraph 24 above). However, even if it were, it appeared from domestic case-law that such proceedings did not generally have prospects of success. The applicant argued that it was for the Government, who were better placed to acquire the relevant information, to prove that any other property owned by a tenant was fit for use as accommodation. The burden of proof should not be on the owner, who generally did not have the relevant knowledge to make such allegations.

31. The RRB was competent solely to establish whatever conditions it might deem appropriate, which would then regulate the imposed lease, but it could not review or consider whether the giving of the property to a third person under lease violated Article 1 of Protocol No. 1 to the Convention. Indeed, on 11 July 2001, the RRB had adjourned the proceedings to allow the applicant to institute the relevant constitutional proceedings. The RRB's minutes of the hearing held on 17 January 2002 stated that the proceedings were being adjourned pending the examination of the constitutional claim. Consequently, the only effective remedy available to the applicant was an application to the courts of constitutional jurisdiction, which he had pursued.

(b) The Court's assessment

32. The Court reiterates that according to Article 35 § 1 of the Convention, it may only deal with an issue after all domestic remedies have been exhausted. The purpose of this rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). Thus the complaint submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits. Nevertheless, the obligation to exhaust domestic remedies only requires that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances (see

Balogh v. Hungary, no. 47940/99, § 30, 20 July 2004). The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII). Moreover, according to established case-law, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see, *inter alia*, *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 40, 19 February 2009).

33. The Court, in reply to the Government's preliminary submission, notes that the applicant's statement continues to read "the issue related to the establishment of an amount of rent is herein of a secondary nature". Consequently, the applicant was merely submitting that the proper order of priority was first to establish that there had been interference with his property and once that had been determined, to establish the proper compensation due.

34. As to the remedies relied on by the Government, the Court notes that on the one hand the amount of compensation to be awarded by the RRB could not exceed EUR 420, a sum which the applicant considered inadequate and contested before this Court. On the other hand, in view of section 12(3) of the Housing Decontrol Ordinance (see paragraph 24 above) the Court is not convinced that the remedy suggested by the Government under the Reletting of Urban Property Ordinance applied to the applicant's circumstances. The Government have not submitted a consistent pattern of case-law substantiating their allegation in this respect. Even if this were so, the Court does not see how applicants could be expected to be aware of tenants' financial situation and alternative accommodation. Consequently, in the circumstances of the present case and in view of the applicant's specific complaint, recourse to the RRB cannot be regarded as an effective remedy requiring exhaustion.

35. Most importantly, the Court notes that in the present case the applicant instituted constitutional proceedings before the Civil Court (First Hall) alleging a breach of his right to the enjoyment of his property as guaranteed by Article 1 of Protocol No. 1. He further appealed to the Constitutional Court against the Civil Court's judgment rejecting his claim. In both proceedings the applicant complained, *inter alia*, about the effects of the law at issue and the inadequate amount of compensation. The Court therefore considers that in raising these pleas before the domestic constitutional jurisdictions, which did not reject the applicant's claim on procedural grounds but examined the substance of the claim, the applicant has made normal use of the remedies which were accessible to him and which related, in substance, to the facts complained of at the European level (see, *mutatis mutandis*, *Zarb Adami v. Malta* (dec.), no. 17209/02, 24 May 2005 and *Edwards v. Malta*, no. 17647/04, § 39, 24 October 2006).

36. It follows that the complaint cannot be rejected for non-exhaustion of domestic remedies and that the Government's objection should be dismissed.

2. Conclusion

37. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicant's submissions

38. The applicant submitted that he had suffered interference with his property rights as he had been deprived of his possessions unilaterally on 20 November 2000. Although the original grant in temporary emphyteusis had expired, contrary to his expectation that the property would revert to him vacant on termination of the contract, the 1979 Act gave the tenants the right to retain possession of the property under a new lease. Thus, the fact that he retained ownership in circumstances in which he was unable to foresee when, if ever, the property would revert to him, could not exclude a deprivation of property in the Convention sense. Indeed the concept of tenant was a wide one (see "Relevant domestic law" paragraph 22 above) and the applicant had legitimate fears that the property would not revert to him in the foreseeable future. Moreover, the sums paid in succession tax related to a time when the property was still under the original emphyteusis and could not justify the subsequent interference.

39. The applicant further claimed that the deprivation of his property had been disproportionate. Firstly, the law did not distinguish between tenants who owned other property and those who did not – in the present case the tenants owned other property which they occasionally rented out to third parties. Neither did it distinguish between those who did not have the means to find a residence on the free market and those who did. Secondly, the law failed to restrict the application of such measures to a reasonable time that would enable the owner to foresee the length of time for which he or she would be unable to exercise rights over the property. Thirdly, it failed to give the owner fair and adequate compensation.

40. In the present case, the applicant presented a valuation carried out by a professional architect and based on the current situation and objective indicators. Indeed, the Government's argument that liberalisation of the rent laws would decrease a property's market value was counter-productive. Had that been the case, it would have been a more proportionate measure to

ensure availability of property at cheaper prices, without introducing arbitrary control. Furthermore, since the Government referred to the national minimum wage, it was useful to note that according to the National Statistics Office the current gross salaries in various industries amounted to approximately EUR 240 per week and therefore were more than the amount of the minimum wage. Thus, official statistics showed that the minimum salary was not the salary being generally earned. Similarly, the Government's contention that market prices were inflated as a result of foreigners purchasing property did not tally with the results provided by the Government department responsible for issuing permits to such foreigners for purchasing residential premises.

41. According to the architect's valuation dated 2002, the lease value of the premises was MTL 120 (approximately EUR 280) per month. Thus, even the maximum amount of rent allowed by law, namely MTL 180 (approximately EUR 420) per year, amounted to only 12.5% of its real value. This illusory compensation would be of more concern with the passage of time, since the lease was of indefinite duration. It followed that notwithstanding the State's margin of appreciation, the applicant had been made to bear an excessive burden which was disproportionate to the general interest pursued.

42. Moreover, there were no safeguards ensuring that the operation of the 1979 Act would be neither arbitrary nor unforeseeable. The applicant could not contest the application of the system to his property or seek a review as to whether in his circumstances the application of the law was justified, except before the constitutional courts. Furthermore, the RRB could not establish fair and adequate compensation, which was determined by the law itself, and was not subject to judicial review.

2. The Government's submissions

43. The Government contested the assertion that there had been interference with the applicant's property rights. They submitted that the applicant's father should have known that at the time of the emphyteusis the Civil Code and the applicable case-law had already determined that owners had to respect lease contracts entered into even beyond the period of temporary emphyteusis. In fact, Act XXIII only limited the already existent protection of tenants to Maltese citizens occupying the premises as their ordinary residence. Moreover, the applicant had inherited an undivided half-share of the premises from his late father in December 1995 and the rest in 1997. Thus, at the time the applicant had acquired possession, the property was already governed by the new law. What he had inherited was the "*subdirectum dominium*" of the premises, which granted him the right to receive the ground rent previously established. This had also affected the duty on succession, since at the time when he had acquired full ownership on the basis of these conditions the premises as a whole were valued at

MTL 13,000. Moreover, he retained ownership of the property, albeit subject to a tenancy in favour of Mr and Mrs P., with limited possibilities of inheritance. Given the above and the fact that the applicant's possession was not worth less than when he had inherited it and what he had paid succession duty on, it could not be said that he had suffered interference with his rights.

44. Even assuming that there had been interference with the applicant's property rights, it had consisted of control of the use of property in the general interest, namely that of protecting the interests of tenants, as also established by the Commission in *Zammit and Others v. Malta*, (no. 16756/90, Commission report of 12 January 1991, *Decisions and Reports* 68, pg 312) which dealt with a similar complaint. Indeed, the 1979 Act was aimed at preventing large scale evictions in the 1950s and 1960s of persons who had acquired houses in emphyteusis for periods in excess of sixteen years.

45. The Government submitted that the interference had been proportionate, relying on the Commission's decision in *Zammit and Others*. In the latter, in respect of similar facts, the Commission had noted that the applicants remained owners of their property interest, which they were free to dispose of, and that they continued to receive rent from the occupiers. Thus, bearing in mind the wide margin of appreciation afforded to States in regulating housing problems, the control of use was justified within the meaning of the second paragraph of Article 1 of Protocol No. 1 to the Convention.

46. The Government further submitted that the proportionality of compensation in the context of social measures such as those in the field of housing could not be calculated on the basis of the full value on the open market, but was a matter which fell within the margin of appreciation of the State. Moreover, Article 1 of Protocol No. 1 did not confer a right to receive a profit. The rent payable to the applicant was reasonable in view of the value of the property at the time when he inherited it. Furthermore, it was not clear on what basis the applicant's valuations, which contrasted with those relied on for succession purposes, had been carried out. They were speculative and appeared to be based on the assumption that similar properties would fetch the same price on the open market. The valuation did not take into account the change in market conditions which would be brought about if all the rent laws affecting general social conditions were to be abolished.

47. Reiterating the reasoning of the Constitutional Court, the Government further submitted that the issue of proportionality had to be examined in the light of the necessity of such social measures and the average monthly income of the population (the minimum wage in 2007 had been approximately EUR 140 per week). Therefore, one had to consider the economic and social reality in the country as a whole and not just property

speculation. Indeed, if market rents, which were also inflated beyond local market conditions because of foreigners' interest in purchasing such properties at higher prices, were to be applied to all premises this would result in severe hardship for many.

48. Furthermore, at the time when the ground rent had been agreed by the applicant's father it had not been subject to price controls. Section 12(2)(b)(i) of the Housing (Decontrol) Ordinance (see "Relevant domestic law" above) provided for the rent payable to be a reflection of the original ground rent and was therefore a fair and proportionate rent in the circumstances. Therefore, the applicant had not suffered a disproportionate burden.

49. Finally the Government submitted that the law was not arbitrary and that it provided for procedural safeguards in the form of recourse to an impartial tribunal established by law, namely the RRB for the establishment of rent conditions, with an appeal on points of law to the Court of Appeal. Moreover, the operation of the whole system, although not based on means testing of tenants, did not allow for any reductions in rent and applied only to tenants who used the property as their ordinary residence and did not have suitable alternative accommodation. This provided sufficient safeguards against arbitrariness. Referring to *Mellacher and Others v. Austria* (19 December 1989, Series A no. 169), they recalled that legislation instituting a system of rent control and aiming, *inter alia*, at establishing a standard of rents for equivalent flats at an appropriate level must, perforce, be general in nature. It would hardly be consistent with these aims nor would it be practicable to make the reductions of rent dependent on the specific situation of each tenant.

3. The Court's assessment

(a) Whether there was interference

50. As the Court has stated on a number of occasions, Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, *inter alia*, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among other authorities, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, § 37; *Beyeler v.*

Italy [GC], no. 33202/96, § 98, ECHR 2000-I; and *Saliba v. Malta*, no. 4251/02, § 31, 8 November 2005).

51. The Government contested the assertion that there had been an interference with the applicant's property rights within the meaning of Article 1 of Protocol No. 1 to the Convention on the basis that the law at issue was already in force when the applicant inherited the property. The Court notes that the application of legislation affecting landlords' rights over many years constitutes a continued interference for the purposes of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 210, ECHR 2006-...). Thus, even considering that the interference in question, as in *Hutten-Czapska*, was the result of subsequent regulatory regimes limiting owners' rights, this does not mean that there was no interference. On the contrary, this means that both the applicant's parents and subsequently the applicant suffered interference with their property rights. For the purposes of this case, however, the complaint is confined to the application of Act XXIII of 1979 to the applicant's rights over his property.

52. The Court has previously held that a restriction on an applicant's right to terminate a tenant's lease constitutes control of the use of property within the meaning of the second paragraph of Article 1. It follows that the case should be examined under the second paragraph of Article 1 of Protocol No. 1 (see *Velosa Barreto v. Portugal*, 21 November 1995, § 35, Series A no. 334).

(b) Whether the Maltese authorities observed the principle of lawfulness and pursued a "legitimate aim in the general interest"

53. The first requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions be lawful. In particular, the second paragraph of Article 1, while recognising that States have the right to control the use of property, subjects their right to the condition that it be exercised by enforcing "laws". Moreover, the principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see, *mutatis mutandis*, *Broniowski v. Poland* [GC], no. 31443/96, § 147, ECHR 2004-V, and *Saliba*, cited above, § 37).

54. Furthermore, a measure aiming at controlling the use of property can only be justified if it is shown, *inter alia*, to be "in accordance with the general interest". Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the "general" or "public" interest. The notion of "public" or "general" interest is necessarily extensive. In particular, spheres such as housing of the population, which modern societies consider a prime social need and which plays a central role

in the welfare and economic policies of Contracting States, may often call for some form of regulation by the State. In that sphere decisions as to whether, and if so when, it may fully be left to the play of free market forces or whether it should be subject to State control, as well as the choice of measures for securing the housing needs of the community and of the timing for their implementation, necessarily involve consideration of complex social, economic and political issues. Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has on many occasions declared that it will respect the legislature's judgment as to what is in the "public" or "general" interest unless that judgment is manifestly without reasonable foundation (see *Hutten-Czapska*, cited above, §§ 165-166).

55. That the interference was lawful is a matter not disputed by the parties. The Court finds that the restriction was imposed by Act XXIII of 1979 and was therefore "lawful" within the meaning of Article 1 of Protocol No. 1. The Court further considers that the legislation at issue in the present case pursued a legitimate social policy aim, namely the social protection of tenants (see *Velosa Barreto*, cited above, § 35 and *Hutten-Czapska*, cited above, § 178).

(c) Whether the Maltese authorities struck a fair balance

56. Any interference with property must also satisfy the requirement of proportionality. As the Court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth* cited above, §§ 69-74, and *Brumărescu v. Romania* [GC], no. 28342/95, § 78, ECHR 1999-VII).

57. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article the Court must therefore ascertain whether by reason of the State's interference the person concerned had to bear a disproportionate and excessive burden (see *James and Others*, cited above, § 50; *Mellacher and Others*, cited above, § 48, and *Spadea and Scalabrino v. Italy*, judgment of 28 September 1995, § 33, Series A no. 315-B).

58. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. In cases concerning the operation of wide-ranging housing legislation, that assessment may involve

not only the conditions of the rent received by individual landlords and the extent of the State's interference with freedom of contract and contractual relations in the lease market, but also the existence of procedural and other safeguards ensuring that the operation of the system and its impact on a landlord's property rights are neither arbitrary nor unforeseeable. Uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, and in an appropriate and consistent manner (see *Immobiliare Saffi v. Italy*, [GC], no. 22774/93, § 54, ECHR 1999-V; and *Broniowski*, cited above, § 151).

59. Moreover, in situations where the operation of the rent-control legislation involves wide-reaching consequences for numerous individuals and has economic and social consequences for the country as a whole, the authorities must have considerable discretion not only in choosing the form and deciding on the extent of control over the use of property but also in deciding on the appropriate timing for the enforcement of the relevant laws. Nevertheless, that discretion, however considerable, is not unlimited and its exercise cannot entail consequences at variance with the Convention standards (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, § 223).

60. The Court notes that the Government made reference to the Commission's decision in *Zammit and Others v. Malta*. Indeed, in analogous circumstances the Commission found that the said interference had been justified in view of the wide margin of appreciation of States in this sphere. However, the Court recalls that this margin is still subject to European supervision and what might have been justified eighteen years ago, the Commission decision having been delivered in 1991, will not necessarily be justified today. As stated by the Government, Act XXIII of 1979 had as its aim to prevent large-scale evictions in the 1950s and 1960s. Thus, in its balancing exercise the Court will have to determine whether such a degree of tenant protection, to the detriment of owners, is still justified fifty years later. It notes that, as stated by the Government, the minimum wage in 2007 was approximately EUR 600 per month, while back in 1974 (the date when Malta adopted a national minimum wage), it amounted to less than EUR 100 per month.

61. The Court will consider the impact that the application of the 1979 Act had on the applicant's property. It notes that the applicant could not exercise his right of use in terms of physical possession as the house was occupied by the tenants and he could not terminate the lease. Thus, while the applicant remained the owner of the property he was subjected to a forced landlord-tenant relationship for an indefinite period of time. It has already been established that the applicant did not have an effective remedy enabling him to evict the tenants (see, *a contrario*, *Velosa Barreto*, cited above), either on the basis of his own need or that of his relatives or on the

basis that Mr and Mrs P. were not deserving of such protection, as they owned alternative accommodation. Consequently, the application of the law itself lacked adequate procedural safeguards aimed at achieving a balance between the interests of the tenants and those of the owners. The Court further considers that the possibility of the tenant leaving the premises voluntarily was remote, especially since the tenancy could be inherited. The Government's contention that transfer of the tenancy by inheritance was improbable was not substantiated and remains to be considered as pure speculation. It follows that these circumstances inevitably left the applicant in uncertainty as to whether he would ever be able to recover his property.

62. Moreover, both the amount of rent received by the applicant, namely EUR 210 per year and the maximum amount of rent the applicant could obtain, namely EUR 420, were, as confirmed by the Constitutional Court, "certainly low". Indeed, the amount of rent contrasts starkly with the market value of the premises as submitted by the applicant. The Court considers that, State control over levels of rent falls into a sphere subject to a wide margin of appreciation by the State and its application may often cause significant reductions in the amount of rent chargeable (see, in particular, *Mellacher and Others*, cited above, § 45). Nevertheless, this may not lead to results which are manifestly unreasonable, such as amounts of rent allowing only a minimal profit.

63. In the present case, having regard to the low rental value which could be fixed by the Rent Regulation Board, the applicant's state of uncertainty as to whether he would ever recover his property, which has already been subject to this regime for nine years, the lack of procedural safeguards in the application of the law and the rise in the standard of living in Malta over the past decades, the Court finds that a disproportionate and excessive burden was imposed on the applicant. The latter was requested to bear most of the social and financial costs of supplying housing accommodation to Mr and Mrs P. (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, § 225). It follows that the Maltese State failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant's right of property.

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

II. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

65. The applicant complained that Act XXIII of 1979 discriminated against him *vis-a-vis* owners of premises granted in temporary emphyteusis after 1995, which were not subject to the same law. Its effects on persons who had given their property in emphyteusis before 1979 were therefore contrary to Article 14 of the Convention, which provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

66. The Court reiterates that Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see, among many other authorities, *Petrovic v. Austria*, 27 March 1998, § 22, *Reports* 1998-II).

67. The Court reiterates that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV). However, not every difference in treatment will amount to a violation of Article 14. It must be established that other persons in an analogous or relevantly similar situation enjoy preferential treatment and that this distinction is discriminatory (see *Unal Tekeli v. Turkey*, no. 29865/96, § 49, 16 November 2004).

68. The Court also points out that the grounds on which those differences of treatment are based are relevant in the context of Article 14. However, the list of prohibited grounds of discrimination as set out in Article 14 is not exhaustive (see *Rasmussen v Denmark*, 28 November 1984, § 34 *in fine*, Series A no. 87)

69. The Court considers that the facts at issue fall within the ambit of Article 1 of Protocol No. 1 and that Article 14 is therefore applicable in the instant case.

70. The Court notes that even assuming that all property owners could be considered to be in an analogous situation, the legal restrictions and impositions complained of applied to every owner whose property had been granted under a contract of emphyteusis on the date of the introduction of Act XXIII (21 June 1979). Moreover, the applicant would not have been subjected to such restrictions and impositions in respect of any such contracts entered into after 1 June 1995, the date on which the law was amended. Thus, there appears to be no distinguishing criterion based on the personal status of the houseowner or on any other ground which the applicant failed to mention (see, *mutatis mutandis*, *G. v. Austria* (dec.), no. 12484/86, 7 June 1990).

71. In any case, the Court reiterates that no discrimination is disclosed by a particular date being chosen for the commencement of a new legislative regime (see, *mutatis mutandis*, *Massey v. the United Kingdom*, (dec.) no. 14399/02, 8 April 2003), and that differential treatment arising out of a legislative change is not discriminatory where it has a reasonable and objective justification in the interests of the good administration of justice (see, *mutatis mutandis*, *Stacey v. the United Kingdom* (dec.), no. 16576/90, 3 December 1990). The use of a cut-off date creating a difference in treatment is an inevitable consequence of introducing new systems which replace previous and outdated schemes. Moreover, the choice of such a cut-off date when introducing new regimes falls within the wide margin of appreciation afforded to a State when reforming its policies (see, *mutatis mutandis*, *Twizell v. the United Kingdom*, no. 25379/02, § 24, 20 May 2008).

72. The Court observes that the 1995 amendments sought to abolish a law which, in fact, was challenged by the applicant and in respect of which the Court has found a violation of the applicant's property rights. The introduction of the amendment does not appear arbitrary or unreasonable in any way. On the contrary, in the instant case, the fact that the effects of the impugned law were abolished in respect of contracts concluded after 1995, a decision which fell with the State's margin of appreciation, can be deemed reasonably and objectively justified to protect owners from restrictions impinging on their rights.

73. The Court therefore finds that there is no appearance of discrimination contrary to Article 14 and that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. According to the architect's valuation report dated 2002 the property was valued at approximately EUR 91,000 for outright sale and its rental value was EUR 279.52 per month. The compensation thus claimed was as follows:

(a) A sum of EUR 24,318, plus interest covering the period from 21 November 2000 to 20 February 2007;

(b) A sum of EUR 279.52 per month, to be increased every two years according to the published official increase in the cost of living until effective return of the property with vacant possession to the applicant.

In addition, the applicant claimed EUR 11,646 in respect of non-pecuniary damage, all the above amounts to be paid with interest of 8% (the maximum interest rate in Malta) from the date of the judgment until the date of effective payment.

76. The Government submitted that tenant protection and rent control were permitted under the Convention and that therefore there was no cause and effect relationship between the effects of the 1979 Act and the pecuniary damage claimed. Moreover, the applicant's valuations were based on economic assumptions of market conditions and the values submitted reflected short term leases of furnished premises and not long-term ones for unfurnished premises. Lastly, the Government submitted that no non-pecuniary damage had been suffered by the applicant.

77. The Court notes that the applicant is entitled to compensation in respect of the loss of control, use, and enjoyment of his property from 2000 to date. In assessing the pecuniary damage sustained by the applicant, the Court has, as far as appropriate, considered the estimates provided and had regard to the information available to it on rental values on the Maltese property market during the relevant period. It has further considered the legitimate purpose of the restriction imposed, reiterating that legitimate objectives in the "public interest", such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (see *James and Others*, cited above, § 54, and *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 94, ECHR 2005-VI). However, the situation in the present case might be said to involve a degree of social interest which is less marked than in previous similar Maltese rent-law cases and which does not justify such a substantial reduction compared with the free market rental value. The Court, making its assessment on an equitable basis and after having deducted the sum already received in rent over the stated period, awards the applicant the sum of EUR 14,310.

78. The Court reiterates that an award for pecuniary damage under Article 41 of the Convention is intended to put the applicant, as far as possible, in the position he would have enjoyed had the breach not occurred (see, *mutatis mutandis*, *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 40, ECHR 2002-IV). It therefore considers that interest should be added to the above award in order to compensate for loss of value of the award over time (see *Runkee and White v. the United Kingdom*, nos. 42949/98 and 53134/99, § 52, 10 May 2007). As such, the interest rate should reflect national economic conditions such as levels of inflation and rates of interest

(see, for example, *Akkuş v. Turkey*, 9 July 1997, *Reports* 1997-IV, § 35; *Romanchenko v. Ukraine*, no. 5596/03, 22 November 2005, § 30, unpublished; and *Prodan v. Moldova*, no. 49806/99, § 73, ECHR 2004-III (extracts)). It notes that the applicant claimed the statutory rate of eight per cent, and that the Government did not make any submission in this respect. However, it considers that a rate of five per cent interest is more realistic. Accordingly, it considers that five per cent interest should be added to the above amount (see *Ghigo v. Malta* (just satisfaction), no. 31122/05, § 20, 17 July 2008).

79. Hence, the Court awards the applicant EUR 715 under this head.

80. Under Article 41 of the Convention the purpose of awarding sums by way of just satisfaction is to provide reparation solely for damage suffered by those concerned to the extent that such events constitute a consequence of the violation that cannot otherwise be remedied (*ibid.*, § 249). It is therefore not for the Court to quantify the amount of rent due in the future. Consequently, the Court dismisses the applicant's claim for future losses, without prejudice to any future claims he may have.

81. The Court further considers that the applicant must have sustained feelings of anxiety and stress, having regard to the nature of the breach. It therefore awards EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

82. The applicant also claimed a total of EUR 4,693 in costs and expenses. This included EUR 2,819, as per taxed bill, for the costs and expenses incurred before the domestic courts and EUR 1,874 for those incurred before the Court, including EUR 261 for translations and EUR 75 for the architect's professional fees.

83. The Government did not contest the claims for costs incurred during the domestic proceedings; however, they claimed that the costs incurred for the proceedings before the Court were excessive and that the architect's fees had been unnecessarily incurred.

84. 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 have been actually and necessarily incurred and were reasonable as to quantum. In the present case the Court notes that it has found a violation only in respect of Article 1 of Protocol No. 1 on its own. Regard being had to the information in its possession and the above criteria, and also noting that the Court made no request for translations, the Court considers it reasonable to award the sum of EUR 3,500 covering costs under all heads.

C. Default interest

85. The Court considers it appropriate that the default interest 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 complaint concerning Article 1 of Protocol No. 1 to the Convention 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*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,
   (i) EUR 15,025 (fifteen thousand and twenty-five euros), in respect of pecuniary damage,
   (ii) EUR 1,500 (one thousand five hundred euros) plus any tax that may be chargeable, in respect of non-pecuniary damage,
   (iii) EUR 3,500 (three thousand five hundred euros) plus any tax that may be chargeable to the applicant, 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Deputy Registrar	Nicolas Bratza President