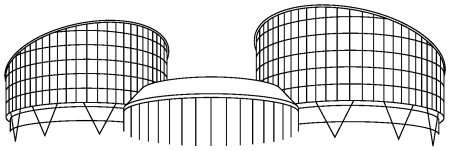

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ZAMMIT AND ATTARD CASSAR v. MALTA

(Application no. 1046/12)

JUDGMENT

STRASBOURG

30 July 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Zammit and Attard Cassar v. Malta,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ganna Yudkivska,
Vincent A. De Gaetano,
André Potocki,
Aleš Pejchal, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 7 July 2015,

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

PROCEDURE

1. The case originated in an application (no. 1046/12) 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 two Maltese nationals, Mr Carmel Zammit and Ms Doris Attard Cassar ("the applicants"), on 28 December 2011.

2. The applicants were represented by Dr P. Borg Costanzi, a lawyer practising in Valletta. The Maltese Government ("the Government") were represented by their Agent, Dr P. Grech, Attorney General.

3. The applicants alleged that they had suffered a breach of Article 1 of Protocol No. 1 to the Convention in so far as the rent law restrictions had imposed an excessive individual burden on them.

4. On 9 January 2013 the complaint under Article 1 of Protocol No. 1 to the Convention was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1943 and 1957 and live in Zabbar and Birkirkara respectively.

A. Background to the case

6. The applicants own, in equal shares, a property built in the 1960s in Zabbar and which is known today as the Cressi-Sub Store. According to the applicants, the property is used as a storage facility for a nearby shop. At first, this was not contested by the Government, but at a later stage in the proceedings, they submitted that the property had been abandoned and was not in use.

7. The applicants inherited the property from their uncle on 7 October 2000. At the time, the property was already leased to E., a company registered in Malta, for 185 Maltese lira (MTL) (equivalent to 431 euros (EUR)) every six months, that is, EUR 862 a year on the basis of a voluntary lease agreement. Although there was no evidence of the parties' ever having signed a lease agreement, it appears that the lease commenced in 1971. Rent is payable every six months in advance, and in accordance with the law the lease is renewed automatically every six months.

8. In such circumstances, the Reletting of Urban Property (Regulation) Ordinance (hereinafter "the Ordinance"), Chapter 69 of the Laws of Malta, (see Relevant domestic law below) provides that the eviction of a tenant or a change in the conditions of a lease requires the authorisation of the Rent Regulation Board ("the RRB").

9. In 2002, the applicants undertook a valuation of the property with a view to making a request for an increase in the rent. The architect who carried out the valuation indicated that the current rental value of the property was EUR 7,000 a year.

10. In accordance with legal requirements (see Relevant domestic law below), on 22 April 2002, the applicants informed E. by means of a judicial letter that they intended to raise the rent to EUR 7,000 a year with effect from 1 July 2002.

11. By means of a judicial letter dated 17 May 2002, E. replied that it did not agree to the request. It failed, however, to apply to the RRB for the rejection of such an increase or for new conditions, as required by law (see Article 14 of the Ordinance).

12. As from the second term of 2002 the applicants stopped accepting rent for fear it would prejudice their claim. In consequence, company E. continued to pay the rent by means of a schedule of deposit filed with the domestic courts.

13. On 27 March 2003 the applicants brought an action before the Civil Court, requesting it to impose on E. an obligatory time-limit within which to make an application to the RRB. They considered that in default of such action by E., the increase in rent requested should be deemed to have been agreed. E. having eventually filed the said application (see below), the applicants' action was dismissed.

B. Proceedings before the RRB and the subsequent appeal

14. On 31 May 2004 E. applied to the RRB, requesting it to dismiss the claim for the increase in rent. The applicants responded, arguing that the rent should reflect market values.

15. In a report dated September 2006 two court-appointed architects concluded that the rent of EUR 862 was already more than 40% over and above the rent level at which the premises were or could have been leased before 4 August 1914 (Article 4 (1) (b) of the Ordinance, see Relevant domestic law below). It followed that in the light of Article 4 (1) (b) of the Ordinance, the increase in rent could not be recommended.

16. By a note filed on 30 November 2006 the applicants submitted that an unfavourable decision would breach their rights under the Convention.

17. On 9 January 2008 the RRB dismissed the applicants' request on the basis of the opinion of the two court-appointed architects. It noted that it had no jurisdiction to determine the human rights issue raised by the applicants, who had not made a request for a constitutional referral.

18. On 25 January 2008 the applicants appealed. They argued that the RRB's decision had breached their rights under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. They requested the court to refer the matter to the constitutional jurisdictions.

19. By decree of 13 May 2008 the Court of Appeal referred the matter to the constitutional jurisdictions. Following the constitutional proceedings (described below) and the applicants' lodging of an application with the Court, on 4 October 2013 the Court of Appeal adjourned the case *sine die*, pending the outcome of the present proceedings.

C. Constitutional redress proceedings

20. By a judgment of 7 July 2010 the Civil Court (First Hall), in its constitutional jurisdiction, upheld the applicants' claim, holding that their rights under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention had been breached. Referring to the Court's case-law, it considered that the applicants had not had an effective remedy, in so far as they had been constrained by the capping of rent levels set out in the law. In relation to their property rights, it upheld the finding of a violation, on the basis of the reasoning in the case of *Amato Gauci v. Malta* (no. 47045/06, § 63, 15 September 2009) – namely the low level of the rent, the applicants' state of uncertainty as to the possibility of recovery of the property, the lack of procedural safeguards, and the rise in the standard of living in Malta over the past decades – coupled with the applicants' argument that the interference had been disproportionate, as it had caused them to bear an excessive burden, given that the property was used for a commercial purpose. Indeed, the lessor could have used other property it had owned, but

had preferred to sell that other property for EUR 350,000 and to continue to rent from the applicants at a low rate.

21. On appeal, by a judgment of 5 July 2011, the Constitutional Court reversed the first-instance judgment. It considered that although when the parties had concluded the contract they had been aware of the law as it stood (and had stood for a number of years), they had nevertheless opted to enter into that contract. Therefore, they and their legal successors could not now complain of a breach of their human rights. Indeed, the original lease agreement had neither stipulated a low level of rent nor envisaged future increases in rent. Given that the original owner had opted to lease the premises, knowing the legal consequences attached, the impact on their property rights had been neither unforeseen nor arbitrary; nor had there been a state of legal uncertainty. Moreover, recent amendments to the law had improved their position from 2010 onwards (Act X of 2009; see Article 1531D of the Civil Code below).

D. Rent

22. As mentioned above (see paragraph 12) as soon as they inherited the property, the applicants refused to accept the rent to avoid prejudicing their legal position. In consequence, it transpires from the documents provided to the Court that from 2002 to 2010 the tenants deposited in court by means of schedules of deposit the sum of EUR 431 every six months (EUR 862 annually). For the subsequent years those deposits amounted to EUR 496 and EUR 570 in 2011, and EUR 656 every six months until 2013.

E. Relevant legislative changes

23. In 1995 Article 46 of the Ordinance was amended to stipulate that the impugned restrictions would not apply to leases entered into after 1 June 1995.

24. While the above-mentioned constitutional proceedings were pending, a new law was enacted, stipulating that with effect from 1 January 2010 the rent applicable to commercial leases was to be increased by 15% per year, and that an increase at that level should also take place for the years 2011, 2012 and 2013 (Section 1531 D of the Civil Code).

25. Thus the amounts of rent payable to the applicants in those years were as follows: in 2010 EUR 990; in 2011 EUR 1,138; in 2012 EUR 1,309; and in 2013 EUR 1,505. For the years 2014 onwards the rent would increase by 5% a year.

II. RELEVANT DOMESTIC LAW

26. The Reletting of Urban Property (Regulation) Ordinance, Chapter 69 of the Laws of Malta, enacted in June 1931 and subsequently amended, in so far as relevant, reads as follows:

Article 3

"It shall not be lawful for the lessor of any premises, at the expiration of the period of tenancy (whether such period be conventional, legal, customary or consequential on the provisions of this Ordinance), to refuse the renewal of the lease or to raise the rent or impose new conditions for the renewal of the lease without the permission of the Board."

Article 4

"(1) The Board shall grant the said permission in the following cases:

(*a*) if the lessor is bound to carry out or has reasonable cause for making any alterations or works other than ordinary repairs;

(*b*) if the proposed rent does not exceed 40% over and above the fair rent (to be, where necessary, fixed by valuation), at which the premises were leased or could have been leased at any time prior to the 4th of August, 1914: the Board may fix such fair rent. ..."

Article 8

"(1) Where the lessor desires to resume possession of the premises at the termination of the lease he shall apply to the Board for permission to do so.

(2) The provisions of this article shall not apply to premises belonging to or administered by the Government."

Article 9

"The Board shall grant the permission referred to in the last preceding article in the following cases:

(*a*) if the tenant has in the course of the previous lease failed to pay punctually the rent due by him, or has caused considerable damage to the premises, or otherwise failed to comply with the conditions of the lease, or has used the premises for any purpose other than that for which the premises were leased, or has sublet the premises or made over the lease without the express consent of the lessor. ...

(*b*) 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 article) 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."

Article 12

"Where the premises consist in a shop, the lessor shall not be entitled to resume possession thereof during the time in which this Ordinance shall be in force, except in the case mentioned in article 9(*a*) or where the premises belong to or are administered by the Government or are otherwise required by the Government for any public purpose."

Article 14

"(1) The lessor of any premises who desires to increase the rent or to vary the conditions of the lease on the renewal thereof, shall apply to the Board at least one calendar month before the expiration of the lease: in default, the lease shall be deemed to be renewed at the same rent and on the former conditions for a period corresponding to a term of rent, that is to say, for one year if the rent is payable yearly, for six months if the rent is payable half yearly, for three months if the rent is payable quarterly, for one month if the rent is payable by the month or at other shorter periods.

(2) Where, however, the rent exceeds ninety-three euro and seventeen cents (93.17) *per annum* the lessor who desires to increase the rent or to impose new conditions, must within the said period of one month give notice to the tenant of his such intention, by means of a judicial letter, and if the tenant wishes to contest such increase or the imposition of such new conditions, he must apply to the Board for the rejection of such increase or new conditions; in default of such application the proposed increase or new conditions shall be deemed to have been accepted by the tenant."

Article 15

"(1) Any clause or condition excluding the tenant from any benefit conferred by this Ordinance whether such clause or condition has been stipulated prior to the commencement of this Ordinance or after such commencement, shall be considered as null and void. ..."

Article 46

"(1) The foregoing provisions of this Ordinance shall not apply to the lease of any premises entered into on or after the 1st June, 1995:

Provided that articles 16 to 45 shall also apply to all leases made after the 1st June, 1995."

27. The relevant articles of the Civil Code, Chapter 16 of the Laws of Malta, as amended in 2009, in so far as relevant, read as follows:

Article 1531 I

"In the case of commercial premises leased prior to 1st June, 1995, the tenant shall be considered to be the person who occupies the tenement under a valid title of lease on the 1st June, 2008, as well as the husband or wife of such tenant, provided they are living together and are not legally separated, and also in the event of the death of the

tenant, his heirs who are related by consanguinity or by affinity up to the grade of cousins inclusively:

Provided that a lease of commercial premises made before the 1st June, 1995 shall in any case terminate within twenty years which start running from the 1st June, 2008 unless a contract of lease has been made stipulating a specific period. When a contract of lease made prior to the 1st June, 1995 for a specific period and which on the 1st January, 2010 the original period "di fermo" or "di rispetto" is still running and such period of lease has not yet been automatically extended by law, then in that case the period or periods stipulated in the contract shall apply. A contract made prior to the 1st June, 1995 and which is to be renewed automatically or at the sole discretion of the tenant, shall be deemed as if it is not a contract made for a specific period and shall as such terminate within twenty years which start running from the 1st June, 2008."

Article 1531 D

"(1) The rent of a commercial tenement, unless otherwise agreed upon after 1st January, 2010 or agreed upon in writing prior to the 1st June, 1995 with regards to a lease which would still be in its original period on the 1st January, 2010, shall as from the date of the first payment of rent due after the 1st January, 2010, be increased by a fixed rate of fifteen per cent over the actual rent and shall continue to increase as from the date of the first payment of rent due after the 1st January of each year by fifteen per cent over the last rent between the 1st January, 2010 and the 31st December, 2013.

(2) The rent as from the first payment of rent due after the 1st January, 2014, is to be established by agreement between the parties. In the event that such agreement is not reached, the Property Market Value Index shall be considered as a guide to the rent as may be established by regulations made by the Minister responsible for accommodation and in the absence of such regulations, the rent shall from the first payment of rent due after the 1st January, 2014, increase by five per cent per year until the coming into force of the said regulations.

(3) In the case of a commercial tenement, if there was an agreement between the parties for periodic rent increases, then such agreement shall continue to apply without the increases contemplated in this article:

Provided that except in such cases where the increase in rent has been effected following an agreement, where the increase as proposed here before for commercial tenements is applied, the tenant may by means of a judicial letter served on the lessor or on one of the lessors, terminate the lease by giving him advance notice of three months and this shall also apply if the lease is for a definite period."

THE LAW

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

28. The applicants complained under Article 1 of Protocol No. 1 to the Convention that the law did not allow them to seek an increase in rent to reflect market values, thus it made them bear an excessive burden which

could not be justified by any legitimate interest. Under Article 6 of the Convention they complained that they did not have an effective remedy which could determine a rent increase, since the law provided for a cap on rent levels which had to be applied by the Rent Regulation Board.

29. The Court reiterates that it is the master of the characterisation to be given in law to the facts of the case (see *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I). In the present case it considers that the applicants' complaint under Article 6 is absorbed by the assessment of procedural guarantees under Article 1 of Protocol No. 1.

30. The Court will therefore only examine the latter provision, which provides 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

31. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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 parties' submissions

(a) The applicants

32. The applicants submitted that the renewal of the lease by operation of the law constituted an interference with the peaceful enjoyment of their possessions and that in the circumstances of the case the RRB had not been of any use, and their decision had in fact constituted interference by the State.

33. The applicants admitted that the rent had been adequate and had reflected market values at the time the initial lease was agreed upon. It was a considerable time after the signing of the original lease (the conventional duration of which was one year) that the rent had become inappropriate. At that stage, however, it had not been possible for the parties to negotiate successive increases in rent (Article 3 of the Ordinance) as future increases

could only be done through the RRB and were subject to capping. Indeed, in their case no increase could be allowed. They contended that in the 1970s when the original lease contract had been entered into, landlords could not have foreseen that markets would change so drastically in the years to come. Nor could they have expected that once such market changes had come about, no provision would have been made for commercial rents to be increased accordingly.

34. The applicants submitted that the law did not allow them to seek an increase in rent to reflect market values, and their rent remained tied to fictitious 1914 values. They considered that that situation had given rise to a disproportionate state of affairs in which the applicants had to bear an excessive burden. This could not be justified by any legitimate interest, given that the premises were leased as a commercial property.

35. The applicants further submitted that the interference had not been proportionate. From 1970 to 2009 there had been no increase in rent at all and in 2010 (following the 2009 amendments) the rent had increased from EUR 861 to EUR 990, in 2011 to EUR 1,138, in 2012 to EUR 1,309 and finally in 2013 to EUR 1,505. In 2013, however, the property's rental value had been estimated at EUR 9,500. The measure had been disproportionate also because company E. had owned other property, which it had chosen to sell (for EUR 350,000), logically opting to continue to use the property leased from the applicants for a paltry amount of rent. The Government had not explained why it was for the applicants to carry that burden in favour of the company.

36. The applicants maintained that the Government were aware that such leases were losing relevance in today's changed circumstances, which is why in 1995 a new regime of liberalisation had been introduced for new leases. However, the Government had not justified why old leases were tied by older regimes, and the improvements provided for by the 2009 amendments had been minimal.

37. The applicants pointed out that they had stopped accepting rent from E. in 2002, as they considered that had they accepted such rent this would have been perceived as acquiescing and would therefore have been detrimental to their case.

38. In conclusion, the applicants argued that they could not have foreseen that a law enacted in the 1930s, when Europe was in turmoil and there was a huge need for social housing, would still be in force to this very day. Nevertheless, it remained in force and the applicants lacked any procedural safeguards to protect their property rights – they could neither increase the rent nor evict the tenant (unless he was in breach).

39. Lastly, in reply to the Government's submission (paragraph 46 below), the applicants noted that the Government were not referring to the correct property and were thus misleading the Court. The property was in fact in use as a store to complement a commercial outlet owned by the

tenants and situated across the street from the store. In consequence, the property was being used for the purpose for which it had been let and the applicants had no ground on which to evict the tenant.

(b) The Government

40. The Government submitted that there had not been an intervention on their part and thus no interference with the applicants' enjoyment of their possession. They pointed out that the case could be distinguished from that of *Amato Gauci v. Malta*, (no. 47045/06, 15 September 2009) and *Lindheim and Others v. Norway*, (nos. 13221/08 and 2139/10, 12 June 2012). In the present case, the property had been leased by the applicants [*recte:* their predecessor in title] on an open market and they had imposed the terms of the agreement. However, they had omitted to make provision for future increases in the rent, even though they could have done so. There had been no limits on the amount of rent to be fixed. The applicants' predecessor in title had known that the lease would be extended by operation of law and that it would be difficult to increase the rent. Thus he had been aware that any increases to provide for that eventuality had to be made during the original lease period.

41. The Government submitted that they were entitled to take that social measure. They contended that the fact that rent restriction provisions for commercial leases had to be made was also in the general interest, as it safeguarded the stability of businesses and the public services such businesses provided. The measure also sought to protect the employment of those persons who depended on the activity of those businesses and safeguarded against property owners taking advantage of the economic activity of a tenant.

42. As to proportionality, the Government reiterated that it was the applicants' predecessor in title who had fixed the amount of rent, which at the time had given a very good return on capital, as shown by the fact that there had been no attempt to increase it. The Government considered that the applicants had been fully aware of the applicable future rent, especially following the reform in 2009. Thus, the applicants had not suffered an excessive and individual burden. The Government also pointed out that the reform in 2009 had provided for an increase in rents as well as other benefits, such as the possibility to terminate leases. It had also introduced changes concerning the disbursement of maintenance costs and strict controls to reduce the instances where a lease could be renewed in favour of a member of the lessee's family after the lessee's death. Of relevance to the present case was also the fact that the amendments established that a lease entered into before 1 June 1995 must terminate within twenty years from 2008. Thus, in the applicants' case their property would be free and unencumbered as of 2028 and until that time the law provided for a rent increase each year (see paragraph 27 above). The Government highlighted

that the reform had sought to achieve a balance between the rights of the lessee and those of the land owner, and at phasing out the old rent-law regime in favour of a market-oriented approach.

43. In any event, as to the law providing for the capping of rents, the Government argued that the applicants had no right to have an unlimited increase in rent or to receive a rent reflecting market values. In their view, this also transpired from the Court's case law (*Mellacher and Others v. Austria*, 19 December 1989, Series A no. 169; *Pincová and Pinc v. the Czech Republic*, no. 36548/97, ECHR 2002-VIII, and *James and Others v. the United Kingdom*, 21 February 1986, Series A no. 98).

44. The Government also noted that the fact that the applicants had not accepted rent since 2002 could not weigh in the balance for the proportionality test. The rent had been deposited in court each year by the lessee by means of schedules of deposit and the money could have been withdrawn by the applicants at any time but they had chosen not to do so.

45. The Government further considered that there had been no arbitrary or unforeseeable impact on the applicants and that they had also had procedural safeguards at their disposal, such as the RRB, which could have acted had the rent originally agreed been too low. In the Government's view, the applicants were trying to circumvent a contractual obligation enshrined in a legal regime which they (through their predecessor) had chosen to enter into with a third party, fully aware of the consequences of that choice. Thus, the Court could not enter into the question as to whether the application of the law itself lacked adequate procedural safeguards, unlike it had done in the case of *Amato Gauci* (cited above).

46. At a later stage in the proceedings, the Government submitted that the property had been abandoned and the tenant had not been carrying out business. The applicants could therefore have requested the domestic courts to evict the tenants on the basis that the property was not being used for its original purpose (Articles 1555 and 1555 A (3) of the Civil Code).

2. The Court's assessment

47. The Court reiterates that in order for an interference to be compatible with Article 1 of Protocol No. 1 it must be lawful, be in the general interest and be proportionate, that is, it must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among many other authorities, *Beyeler v. Italy* [GC], no. 33202/96, § 107, ECHR 2000-I, and *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 75, ECHR 2007-III). The Court will examine these requirements in turn.

(a) Whether there was interference

48. In previous cases concerning restrictions on lease agreements, the Court considered that there had been interference (as a result of the domestic courts' refusals of the applicants' demands) despite the applicants' knowledge of the applicable restrictions at the time when they entered into the lease agreement, a matter which however carried weight in the assessment of the proportionality of the measure (see *Almeida Ferreira and Melo Ferreira v. Portugal*, no. 41696/07, §§ 27 and 34, 21 December 2010).

49. More recently, in *R & L, s.r.o. and Others v. the Czech Republic* (nos. 37926/05, 25784/09, 36002/09, 44410/09 and 65546/09, 3 July 2014) the Court specifically examined whether Article 1 of Protocol No. 1 protected applicants who had purchased property in the knowledge that rent restrictions imposed on the property might contravene the Convention. In that case, when the applicants had acquired their respective houses their rents had been set in accordance with the rent regulations applicable at the time and the applicants could not have increased the rents above the threshold set by the State. Nor were they free to terminate the rent agreements and conclude new ones with different – higher – levels of rent. The Court held that it could not be said that the applicants as landlords had implicitly waived their right to set the level of rents, as, for the Court, waiving a right necessarily presupposed that it would have been possible to exercise it. There was no waiver of a right in a situation where the person concerned had never had the option of exercising that right and thus could not waive it. It followed that the rent-control regulations had constituted an interference with the landlords' right to use their property (ibid. § 106).

50. In the present case the Court observes that the applicants' predecessor in title knowingly entered into the rent agreement in 1971. It is the Court's considered opinion that, at the time, the applicants' predecessor in title could not reasonably have had a clear idea of the extent of inflation in property prices in the decades to come. Moreover, the Court observes that when the applicants inherited the property in question they had been unable to do anything more than attempt to use the available remedies, which were to no avail in their circumstances. The decisions of the domestic courts regarding their request thus constitute interference in their respect. Furthermore, as in *R & L, s.r.o. and Others* (cited above), the applicants in the present case, who inherited a property that was already subject to a lease, did not have the possibility to set the rent themselves (or to freely terminate the agreement). It follows that they could not be said to have waived any right in that respect.

51. Accordingly, the Court considers that the rent-control regulations and their application in the present case constituted an interference with the applicants' right (as landlords) to use their property.

52. The Court has previously held that rent-control schemes and restrictions on an applicant's right to terminate a tenant's lease constitute control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1. It follows that the case should be examined under the second paragraph of Article 1 of Protocol No. 1 (see *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 160-161, ECHR 2006-VIII, *Bittó and Others v. Slovakia*, no.30255/09, § 101, 28 January 2014; and *R & L, s.r.o. and Others*, cited above, § 108).

(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 *Amato Gauci*, cited above, § 53).

54. Furthermore, a measure aimed 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. 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, *mutatis mutandis*, *Hutten-Czapska*, cited above, §§ 165-66, and *Fleri Soler and Camilleri v. Malta*, no. 35349/05, § 65, ECHR 2006-X).

55. The Court finds that the restriction was imposed by the Reletting of Urban Property (Regulation) Ordinance and was "lawful" within the meaning of Article 1 of Protocol No. 1. This was not disputed by the parties.

56. As to the legitimate aim pursued, the Government submitted that the measure, as applied to commercial premises, aimed to protect the stability of businesses and the public services such businesses provided. The measure was also aimed at protecting the employment of those persons who depended on the activity of those businesses and safeguarded against property owners taking advantage of the economic activity of a tenant. The Court observes that the Commission has previously accepted that rent

regulation to preserve the economic viability of commercial enterprises in the interest of both those enterprises and the consumer, was in the general interest (see *G v. Austria* no. 12484/86, Com. Dec., 7 June 1990). Similarly, the Court can accept that, in principle, the overall measure, which also applied to commercial premises, may be considered as being in the general interest.

(c) Whether the Maltese authorities struck a fair balance

57. In each case involving an alleged violation of Article 1 of Protocol No. 1, the Court must 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*, and *Amato Gauci*, cited above, § 57).

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. 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 (see *Immobiliare Saffi v. Italy*, [GC], no. 22774/93, § 54, ECHR 1999-V, and *Broniowski*, cited above, § 151).

59. The Court notes, in the first place, that the Government's final argument (submitted at an advanced stage in the proceedings, see paragraph 46 above) is misconceived in so far as the property they were referring to was not the property at issue in the present case. From the documents and submissions provided to the Court it transpires that the property is in use and thus the applicants were not entitled, on the grounds established by law (Article 12 of Ordinance, paragraph 26 above), to evict the tenant.

60. The Court observes that in the present case the lease was subject to renewal by operation of law and the applicants had no possibility to evict the tenant on the basis of any of the limited grounds provided for by law. Indeed, any such request before the RRB, in the circumstances obtaining in their case, would have been unsuccessful, despite the fact that the tenant was a commercial enterprise that possessed other property (a matter which has not been disputed), as the latter fact was not a relevant consideration for the application of the law. Furthermore, the applicants were unable to fix the rent – or rather to increase the rent previously established by their predecessor in title. The Court notes that, generally, increases in rent could

be done through the RRB. They were, however, subject to capping, in that any increase could not go beyond 40% of the fair rent at which the premises were or could have been leased before August 1914. Indeed, in the applicants' case no increase was possible at all, because the rent originally fixed in 1971 was already beyond the capping threshold.

61. Whereas the RRB could have constituted a relevant procedural safeguard by overseeing the operation of the system, in the present case it was devoid of any useful effect, given the limitations imposed by the law (see, *mutatis mutandis*, see *Amato Gauci*, cited above, § 62 and *Anthony Aquilina v. Malta*, no. 3851/12, § 66, 11 December 2014). 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 (ibid and, *mutatis mutandis*, *Statileo v. Croatia*, no. 12027/10, § 128, 10 July 2014).

62. The Court further notes that for the first decade of the rental contract, during which – according to the applicants – the market value of the property was EUR 7,000, the rent payable to the applicants was EUR 862 a year. Subsequently, for the year 2010 the rent amounted to EUR 990, for 2011 EUR 1,138, for 2012 EUR 1,309 and for 2013 EUR 1,505. For the years 2014 onwards it would increase by 5% a year. The Court reiterates that State control over levels of rent falls into a sphere that is subject to a wide margin of appreciation by the State, and its application may often cause significant reductions in the amount of rent chargeable. Nevertheless, this may not lead to results which are manifestly unreasonable, such as amounts of rent allowing only a minimal profit (see *Amato Gauci*, cited above, § 62). While the applicants do not have an absolute right to obtain rent at market value, the Court observes that, despite the 2009 amendments, the amount of rent is significantly lower than the market value of the premises as submitted by the applicants, which was not effectively contested by the Government. However, the applicants have not argued that they were unable to make any profit. Even so, this element must be balanced against the interests at play in the present case.

63. While the Court has accepted above that the overall measure was, in principle, in the general interest, the fact that there also exists an underlying private interest of a commercial nature cannot be disregarded. The Government have not argued that in the present case the viability of the tenant's commercial enterprise was in any way dependent on the favourable conditions of the lease on the premises used for storage – a matter which was irrelevant in the application of the law to the premises. In such circumstances, both States and the Court in its supervisory role must be vigilant to ensure that measures such as the one at issue, applied automatically, do not give rise to an imbalance that imposes an excessive burden on landlords while allowing tenants of commercial property to make

inflated profits. It is also in such contexts that effective procedural safeguards become indispensable.

64. Lastly, the Court notes that unlike in other rent-control cases where the applicants were in a position of uncertainty as to when and if they would recover their property (see, *inter alia*, *Amato Gauci*, cited above, § 61, and *Saliba and Others v. Malta*, no. 20287/10, § 67, 22 November 2011), in the present case, under the laws currently in force and in the absence of any further legislative interventions, the applicants' property will be free and unencumbered as of 2028. It follows that the effects of such rent regulation are circumscribed in time. However, the Court cannot ignore the fact that by that time, the restriction on the applicants' rights would have been in force for nearly three decades, and to date has been in force for over a decade.

65. Having assessed all the elements above, and notwithstanding the margin of appreciation allowed to a State in choosing the form and deciding on the extent of control over the use of property in such cases, the Court finds that, having regard to the relatively low rental value of the premises and the lack of procedural safeguards in the application of the law, a disproportionate and excessive burden was imposed on the applicants, who have had to bear a significant part of the social and financial costs of supporting a commercial enterprise. 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 applicants' right to the enjoyment of their property.

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

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

67. Lastly, citing Article 14 in conjunction with Article 1 of Protocol No. 1, the applicants complained that they had been treated differently from other property owners who had only begun leasing their property after 1995, and who were therefore not subject to the restrictions arising from the Ordinance.

68. The Court notes that it does not appear that the applicants have exhausted domestic remedies in respect of this complaint, which has not been explicitly brought before the domestic judicial authorities.

69. In any event, the legal restrictions and impositions complained of apply to every owner whose property was rented under a contract of lease prior to 1995 and the applicants (or their predecessor in title, were he still alive) would not have been subjected to such restrictions and impositions in respect of contracts entered into after 1995. Thus, it would appear that there is no distinguishing criterion based on the personal status of the property owner, nor on any other ground which the applicants failed to mention (see *Amato Gauci*, cited above, § 70).

70. Furthermore, no discrimination is disclosed as a result of a particular date being chosen for the commencement of a new legislative regime (see *Amato Gauci*, cited above, § 71, and *mutatis mutandis*, *Massey v. the United Kingdom*, no. 14399/02, 16 November 2004) and 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 *Amato Gauci*, cited above, § 71, and *mutatis mutandis*, *Stacey v. the United Kingdom* (dec.), no. 16576/90, 3 December 1990). The Court notes that the 1995 amendments, which sought in effect to improve the situation of land owners in order to reach a balance between all the competing interests, by abolishing the regime which is in fact being challenged by the applicants before this Court, do not appear arbitrary or unreasonable in any way.

71. In conclusion, the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicants claimed 99,000 euros (EUR) plus interest in respect of pecuniary damage for the period 2002 to 2014 (the date of their claims). Their calculation was based on an average rent of EUR 8,250, to be multiplied by twelve years, bearing in mind that according to expert evaluations, the property had a rental value in 2002 of EUR 7,000 and in 2013 of EUR 9,500. They made no claim for non-pecuniary damage.

74. The Government submitted that the applicants' claims were exorbitant and that the architect's valuations had not given any indication of a comparative analysis. They considered that the value could not be considered on the basis of an average, as worked out by the applicants. Given that the rental value had increased by EUR 2,500 over eleven years, the increase in value was of 3% per year. Moreover, the applicants were still able to withdraw the amounts deposited in court by the tenants and thus those sums (according to the Government amounting to around EUR 10,000), together with interest on them, must be deducted from the claim, as the applicants had freely chosen not to withdraw such sums. In the Government's view, an award for pecuniary damage (sic.) should not exceed EUR 10,000 jointly.

75. The Court notes that the applicants seek compensation in respect of their property from December 2002 to date. The Court is of the view that the applicants should be awarded just satisfaction based on a reasonable amount of rent which would have provided them with more than a minimal profit (see *Fleri Soler and Camilleri v. Malta* (just satisfaction), no. 35349/05, § 18, 17 July 2008). In assessing the pecuniary damage sustained by them, the Court has, as far as appropriate, considered the estimates provided and had regard to the information available to it on rental values in the Maltese property market during the relevant period. The Court notes 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, *inter alia*, *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 94, ECHR 2005-VI, and *Amato Gauci*, cited above, § 77). Nonetheless, the Court bears in mind that the property was not used for securing the social welfare of tenants or preventing homelessness (see *Fleri Soler* (just satisfaction) cited above, § 18). Thus, the situation in the present case might be said to involve a degree of public interest which is significantly less marked than in other cases and which does not justify such a substantial reduction compared with the free market rental value (compare also *Amato Gauci*, cited above, § 77, and *Ghigo v. Malta* (just satisfaction), no. 31122/05, § 20, 17 July 2008).

76. The Court considers that a one-off payment of 5% interest should be added to the above amount (ibid.).

77. It takes note that the sums deposited in court by the tenants over the years remain retrievable by the applicants and are therefore deducted.

78. Bearing those principles in mind, the Court considers it reasonable to award the applicants, jointly, EUR 40,000 in pecuniary damage.

79. The Court notes that the applicants have not claimed any non-pecuniary damage and therefore makes no award under that head.

B. Costs and expenses

80. The applicants also claimed EUR 9,681, as per an official bill submitted to the Court, plus 18% value added tax (VAT) on that amount, for the costs and expenses incurred before the domestic courts (namely proceedings before the RRB and constitutional redress proceedings) and EUR 478 for those incurred before the Court.

81. The Government contested the amount of costs for the proceedings before the RRB and the Court of Appeal, without any explanation. They further noted that the applicants had not submitted receipts of payment in relation to the constitutional proceedings. They further considered that VAT was applicable only to professional services, not to court registry fees.

82. 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 are reasonable as to quantum. In the present case, the Court notes that the official bill for costs submitted by the applicants appears to cover the costs of the entirety of the domestic proceedings. In any event, the applicants claim is solely in respect of the sums contained therein, and no separate claim was made in respect of the constitutional proceedings. Regard being had to the documents in its possession and the above criteria, as well as the fact that part of the application was declared inadmissible, the Court considers it reasonable to award the sum of EUR 10,000 covering costs under all heads, plus any tax that may be chargeable to the applicants.

C. Default interest

83. 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 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 applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 40,000 (forty thousand euros) in respect of pecuniary damage;

(ii) EUR 10,000 (ten thousand 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;

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

Done in English, and notified in writing on 30 July 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Mark Villiger
Deputy Registrar	President