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Contact: John Darcy
Tel: 03 88 41 31 56

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Meeting: 1318th meeting (June 2018) (DH)

Item reference: Action plan (16/04/2018)

Communication from Malta concerning the case of AMATO GAUCI v. Malta (Application No. 47045/06)

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Réunion : 1318^e réunion (juin 2018) (DH)

Référence du point : Plan d'action

Communication de Malte concernant l'affaire AMATO GAUCI c. Malte (Requête n° 47045/06)
(anglais uniquement)

16 AVR. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Execution of Judgments of the European Court of Human Rights **Action Plan**

Amato Gauci v. Malta (application no. 47045/06; judgment final on 15/12/09); Anthony Aquilina (application no.3851/12, judgment final on 20/04/15); Cassar v. Malta (application no. 50570/13 judgment final 30/04/2018)

Case Summary

1. Case description

- These cases concern a finding of a disproportionate and excessive burden imposed on the applicants, further to the operation of the Housing (Decontrol) Ordinance (as amended by Act XXIII of 1979) which from 1979 and 2000 respectively subjected their properties to indefinite landlord-tenant relationships without their consent.
- In coming to that conclusion, the European Court noted, inter alia, the low rental value (which starkly contrasted with the market value); the rise in standard of living in Malta over past decades which implied less justification for such protected rents; the state of uncertainty as to whether the applicants would ever recover their properties (especially due to the possibility of inheritance of the tenancies) and the lack of adequate procedural safeguards aimed at achieving a balance between the interests of the tenants and those of the owners (violation of Article 1 of Protocol No.1).
- In the Cassar judgment, the European Court also noted that by applying an across the board legislative measure which failed to treat the applicants (whose property was large, of a high standard and in a sought after area) differently, the applicants' rights not to be discriminated against in the enjoyment of their rights under Article 1 of Protocol No. 1 of the Convention were breached.

Individual Measures

2. Just satisfaction:

- The just satisfaction awarded for both pecuniary and non-pecuniary damage has been paid in Amato Gauci and Aquilina judgments and evidence previously supplied. The Cassar judgment has not become final and, therefore, evidence of payment will be submitted once the judgment becomes final

3. Individual measures:

- The applicants' properties in both cases remain subject to the imposed landlord-tenant relationships at issue before the European Court.
- The outstanding individual measures therefore remain linked to the general measures: that is the introduction of adequate procedural safeguards aimed at achieving a balance between the interests of the tenants and those of the owners (see below under general measures).

General Measures

4. Elimination of forced landlord-tenant relationships

- As confirmed by the European Court, legislative amendments enacted in 1995 mean that the impugned legislation (the amended Housing (Decontrol) Ordinance) does not apply to new leases entered into on or after 1 June 1995. Thus, new forced landlord-tenant relationships can no longer

be imposed in circumstances such as those in the Amato Gauci group. There are approximately 1,600 tenancies effected by this regime.

5. Measures to ensure appropriate rent for existing, on-going tenancies

- A number of legislative amendments (which constitute a general reform to the rent laws) were introduced since the European Court's judgment.
- These amendments were introduced in the Civil Code by Articles 1531C to 1531H of Act X 2009, which came into force on 1 January 2010. They provide, *inter alia*, that:
 - A statutory minimum rent of EUR 185, revisable every three years according to the cost of living index has been established (Article 1531C);
 - Owners are now allowed to raise the annual rent by six per cent of the amount of expenses paid to effect repairs to rented houses (Article 1540(4));
 - The inheritance of tenancies has been subjected to a cut-off date and limited to persons residing with the tenant for four years out of the last five years, residing with the tenant on 1/6/08 and after 1/06/08 continued to live with the tenant until his death (Articles 1531F and 1531G);
 - The inheritance of tenancies was also made subject to a means test and to revision of the amount of rent (Article 1531F).

The Maltese authorities intended to extend those general amendments to rental law to the unilateral leases at issue in the present cases. However, in the more recent judgment of *Anthony Aquilina*, the European Court accepted that those reforms were already applicable and nevertheless considered that, even with those reforms, a disproportionate and excessive burden was imposed on the applicant. This was because, *inter alia*, the tenancy could still be inherited; the applicant could not increase the rent sufficiently and there was an absence of adequate procedural safeguards aimed at achieving balance between the interests of tenants and owners.

In the circumstances, the Government is considering broader reforms and a Bill was drafted to this effect. The Bill was given a First Reading in Parliament on the 10th April 2018.

The Bill in its current form aims at increasing rents deriving from a title of emphyteusis to reflect a percentage of the open market value of the property, at limiting the right to inherit tenancies and the period for which a person claiming a right to a tenancy after the tenant's death may retain the tenancy, at introducing means testing for tenants and at making it possible for the owner to challenge the continuation of a tenancy when there has been a material change in the situation of the tenant.

Given the sensitive nature of rent regulation law, the Government and the Opposition will discuss the Bill internally prior to its publication.

6. Procedural safeguards for landlords wishing to challenge the tenancies/the rents

As set out above, the Bill provides procedural safeguards for owners wishing to challenge the tenancies when there has been a material change and in order to request an increase in the rent.

7. Effective remedies for those claiming a violation of Article 1 of Protocol 1

- The domestic courts take the Court's jurisprudence in these judgments into account when examining complaints under Article 1 of Protocol 1 and award compensation accordingly.

- Examples include *Carmen Zammit et vs Commissioner of Lands et (application no 20/2010)* decided by the Constitutional Court on 26 April 13; *Albert Cassar et vs Prime Minister et (application no 14/2010)* decided by the Constitutional Court on 22 February 2013 and *Dr Cedric Mifsud et vs Attorney General et (application no 33/2010)* decided by the Constitutional Court on 25 October 2013. In the latter case the constitutional courts followed verbatim the dicta of the Court in *Amato Gauci* in finding a violation of Article 1 of Protocol No. 1 in finding that Article 12 (2) of the Housing Decontrol Ordinance was inconsistent with the European Convention and unconstitutional.
- Resolving this issue in order to provide legal certainty for landlords and tenants is now a priority for Government.

8. Publication and Dissemination:

- The judgment was disseminated internally within the Government Departments.
- The judgment received ample media coverage.
- The judgment features in the publication in the names '*Malta at the European Court of Human Rights 1987 – 2012*, Sammut, Cuignet & Borg, 2012.

State of execution of judgment

- The Maltese authorities will take all necessary steps to ensure that the Bill becomes law before the Parliamentary Summer recess (July 2018) and by July 2018, will forward an updated action plan setting out the provisions of the Bill as adopted by Parliament in order to fully respond to the European Court's judgments.