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

Item reference: Action plan (17/04/2018)

Communication from Malta concerning the case of APAP BOLOGNA v. Malta (Application No. 46931/12)

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

Référence du point : Plan d'action

Communication de Malte concernant l'affaire APAP BOLOGNA c. Malte (Requête n° 46931/12)
(anglais uniquement)

DGI

17 AVR. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Execution of Judgments of the European Court of Human Rights

Action Plan

Apap Bologna Group

Ghigo v. Malta (application no. 31122/05; judgment of 26/09/2006, final 26/12/2006; Art 41 judgment of the 17/07/2008); Fleri Soler and Camilleri v. Malta (application no. 35349/05; judgment of 26/09/2006, final 26/12/2006; Art 41 judgment of the 17/07/2008); Edwards v. Malta (application no. 17647/04; judgment of 24/10/2006, final 24/01/2007; Art 41 judgment of the 17/07/2008); Apap Bologna v. Malta (application no. 46931/12; judgment of 30/08/2016, final on 30/11/2016)
(and clone – Montanaro Gauci v. Malta (31454/12), judgment of 30/08/2016, final on 30/11/2016; Art 41 judgment not delivered)

Case Summary

1. Case description

- The cases concern a violation of the applicants' right to respect to the peaceful enjoyment of their possessions on account of the requisition of their properties and land, between 1987 and 1988, under the Maltese Housing Act, which imposed a landlord-tenant relationship upon them (violations of Article 1 of Protocol 1).
- The European Court found that a disproportionate and excessive burden had been imposed on the applicants because they had been forced to bear most of the social and financial costs of supplying housing accommodation to third parties and their families. The Court noted, in particular, the low amount of rent payable, despite certain relevant legislative amendments adopted since the *Ghigo v. Malta* judgment. It followed that the Maltese state had failed to strike the requisite fair balance between the general interests of the community and the protection of the applicants' right of property.
- In the Apap Bologna case, the Court also found that there was a lack of an effective remedy concerning arguable complaints in respect of requisition orders (violation of Article 13 in conjunction with Article 1 of Protocol 1 of the Convention). Acknowledging that constitutional redress proceedings are an effective remedy in theory, the Court found that, in similar cases relating to complaints against requisition orders, they are not effective in practice. The Court noted that despite having the powers to do so, the Constitutional Court has repeatedly failed to take the required action which would bring the violation to an end and has failed to award adequate redress. The Court also found the other remedies proposed by the authorities, including a request to the Director of Social Housing, to be ineffective.
- The European Court made reference to its call for general measures, under Article 46 of the Convention, to be applied by the Maltese authorities in order to put an end to the systematic violation of the right of property identified in such cases and encouraged the Maltese authorities to pursue such measures speedily and with due diligence.

Individual Measures

2. Just satisfaction

The just satisfaction awarded for pecuniary and non-pecuniary damage, as well as costs and expenses, has been paid. The just satisfaction in the case of the Montanaro Gauci case has not yet been established by the Court.

3. Other individual measures:

The applicants are still subject to the requisition measure at issue. The individual measures in these cases therefore appear to be linked to the general measures (see below).

General Measures

A number of measures, legal and otherwise, have been taken to address and reduce the problems identified by the European Court.

4. Elimination of property requisition

The Housing Act was amended in order to prohibit the requisition of any further property in the future. Therefore, no additional properties will be subject to requisition orders and no additional individuals will be forced to bear a disproportionate and excessive burden by the restrictions on the use of their properties.

In addition, in 1995, by means of Act III of 1995, the Government also took a number of practical measures which drastically reduced the number of properties subject to a requisition order.

More recently, the authorities have taken steps to assess every property under a requisition order to ensure that the requisition remains justified, that the tenant remains a tenant in need and that the rent payable to the property owner is fair. In 2011, a Memorandum with Guidelines was published for the Housing Authority to follow when examining requisition orders. This has led to a large number of notices being issued to tenants requesting their departure from the properties and to the release of properties to their owners. It has also led to agreement being reached between landlords and tenants on private tenancy agreements so that the property will no longer need to remain under requisition. Where the tenants are assessed as still being in need, the Housing Authority has introduced a system of negotiation with landlords to ensure that a fair rent is paid and, where necessary, considers the necessity of the payment of top-up rents (see below). The Housing Authority adopts a policy of periodical monitoring every five years of the situation with regard to the tenants' means and whether the requisition order remains justified.

As a result of the above measures, the number of requisitioned properties (and therefore of individual owners subject to a disproportionate and excessive burden) has decreased from 54,000 in the 1960's, to 1286 in 2008, to 157 in 2015. As of June 2016, there were 155 properties subject to a requisition order.

5. Ensuring "fair rent" to the owners of properties that remain under requisition orders

At the beginning of 2010, a general reform to rent laws came into effect by way of Act X of 2009 which amended the provisions regarding leases in the Civil Code and derogated from the provisions of old rent laws (mainly enacted in the 1920's, 30's and 40's) which provided for a very high degree of tenant protection and low rents.

In particular, the amended legislation established:

- (i) A statutory minimum rent of EUR 185 revisable every three years according to the cost of living index. In 2013 there was the first increase according to the cost of living index and another increase took place in 2016;

- (ii) The possibility for owners to raise the annual rent by 6% of the amount of expenses made in order to effect repairs to rented houses;
- (iii) Limitations on the inheritance of tenancies by way of both residence requirements (in order to inherit a tenancy, the individual must have lived with the tenant for four of the last five years; be residing with the tenant on 1 June 2008 and after the 1 June 2008 continued to live with the tenant until his death) and a means test. The means test is aimed at accessing whether the future tenant is considered to be a tenant in need;
- (iv) The possibility of the revision and increase of the rent in the event of the inheritance of a tenancy;
- (v) The reversion of properties to the owners in certain circumstances where the above conditions are not met.

In paragraph 55 of the *Apap Bologna* judgment, the Court made reference to the above amendments and observed that “the rents provided for by the amended law remain in stark contrast to the values of such property”.

In the circumstances, the Government is considering broader reforms including improved criteria defining what constitutes ‘fair rent’ thus revising the statutory minimum rent and to ensure an effective domestic remedy capable of providing redress for owners of property subject to tenancies. However, Government is concerned about a sudden change to the legislative regime and about sudden increases in rents. The Government needs to examine the situation closer in order to draft the necessary legislative amendments seeking a balance between the needs of vulnerable tenants and the interests of the owners.

In paragraph 29 of the *Ghigo* judgment of the 17th July 2008, the Court made reference to improved criteria for the terms ‘tenant in need’, ‘fair rent’ and ‘decent profit’. By virtue of Legal Notice 463 of 2011, the Continuation of Tenancies (Means Testing Criteria) Regulations (S.L. 16.11) were introduced in order to clarify what is meant by a tenant in need. If a tenant does not pass the means test established in the regulations, then that particular tenant cannot be considered to be a tenant in need of protection. The means test covers the inheritance of tenancies.

The domestic constitutional courts have also, on the basis of judgments of the Court, found a violation of the owner’s rights as a result of the low rents.

In the coming days, Government will be launching a White Paper relative to the reform of short term leases which will provide for an expedited redress mechanism and a revision of the rents payable. This White Paper will serve as a basis for the general reform of the rental laws.

6. Effective remedies and procedural safeguards

If an individual’s property is subject to a requisition order, he/she may take the steps below to seek either the release of the property or an increase in the rent. The Maltese authorities consider that cumulatively this provides a mechanism to maintain a fair balance between the interests of landlords and tenants.

- (i) The owner contacts the Housing Authority in writing contesting either the requisition order or the level of rent;
- (ii) The Housing Authority will examine the owner’s request in accordance with the 2011 Guidelines issued to the Housing Authority in this area. The Housing Authority then obtains up to date

- information on the landlord and tenant and assesses the situation of both against the requirement of keeping the requisition order in place;
- (iii) The Housing Authority will then either issue a de-requisition order relative to the property and release the property to the owner or enter into negotiations with the owner on the level of rent payable for the future to ensure that it amounts to a fair rent. The Housing Authority tries to seek agreement between the landlord and the tenant to ensure that a “fair rent” is paid to the landlord. In those cases where the tenant does not have sufficient financial means to pay a ‘fair rent’ the Housing Authority tops up the rent that the tenant pays or in certain circumstances provides alternative accommodation to the tenant.
 - (iv) If the owner and the Housing Authority are unable to reach agreement it is open to the landlord to seek redress before the domestic courts in accordance with the jurisprudence of the European Court of Human Rights. An interesting development in case law at domestic level was that whereby an increase in the rent was established by the domestic courts which also ordered the apportionment of compensation between the tenant and Government in order to increase proportionality and balance between competing rights.
 - (v) As a matter of practice, following domestic judgments and in order to avoid future complaints, the Housing Authority tops up rents of those tenants whose rent was declared to be in violation of the landlord’s right to a ‘fair rent’ as assessed by the domestic courts.

In view of the finding of the Court that the remedies at domestic level are not adequate, Government is currently examining options that can be adopted as possible remedies in order to properly execute this part of the judgments.

7. Publication and Dissemination:

The judgments were disseminated to the competent authorities including the Housing Authority and the Ministry for responsible for social housing.

They were also made publicly available via the website of the Ministry of Justice, Culture and Local Government which provides a direct link to the Court’s website and received a great deal of media coverage.

Status of execution of judgment

- The Maltese authorities will, by July 2018, forward an updated action plan setting out the manner in which the authorities will be fully respond to the European Court’s judgments and the estimated time table for the next steps.