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Communication from Malta concerning the groups of cases of APAP BOLOGNA v. Malta (Application No. 46931/12), GHIGO v. Malta (Application No. 31122/05) and AMATO GAUCI v. Malta (Application No. 47045/06)

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Réunion : 1514e réunion (décembre 2024) (DH)

Référence du point : Bilan d'action (08/10/2024)

Communication de Malte concernant les groupes d'affaires APAP BOLOGNA c. Malte (requête n° 46931/12), GHIGO c. Malte (requête n° 31122/05) et AMATO GAUCI c. Malte (requête n° 47045/06) et ***(anglais uniquement)***

ACTION REPORT

APAP BOLOGNA/GHIGO GROUPS
AMATO GAUCI GROUP

(full list of cases provided in annex)

In order to supplement and consolidate the information transmitted to the Committee of Ministers in the previous Action Reports of 29 September 2023, the Government of Malta submits the following:

A. DESCRIPTION OF THE CASES

1. The cases in the *Apap Bologna/Ghigo* groups concern a violation of the applicants' right to the peaceful enjoyment of their possessions on account, primarily, of the requisitioning of their properties and land by virtue of the Housing Act, Chapter 125 of the Laws of Malta,[1] which imposed a landlord-tenant relationship upon them. Some of the cases in this group concern a forced landlord-tenant relationship as a result of the operation of the Reletting of Urban Property (Regulation) Ordinance, Chapter 69 of the Laws of Malta in relation to residential properties.

2. 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 legislative amendments adopted since the ***Ghigo v. Malta*** judgment. It followed that the national authorities had failed to strike the requisite fair balance between the general interests of the community and the protection of the applicants' right of property.

3. The Court referred 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.

4. The cases in the *Amato Gauci* group concern a finding of a disproportionate and excessive burden imposed on the applicants, primarily as a result of the operation of the Housing (Decontrol) Ordinance (as amended by Act XXIII of 1979) which subjected their properties to indefinite landlord-tenant relationships without their consent.

5. In coming to that conclusion, the European Court noted, *inter alia*, the low rental value of the properties (which starkly contrasted with the market value); the rise in the 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).

6. 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

[1]. Chapter 125, enacted in 1949, gave the Government the right to take possession of vacant dwellings to make provision for securing living accommodation to the homeless, to ensure a fair distribution of living accommodation and to generally address shortage of housing in the wake of the wholesale destruction of housing during the Second World War in Malta. To put matters into perspective, the Government of Malta in 1949 faced the prospect of housing a population of around 311,000, which had risen significantly from 270,000 in 1940, whilst simultaneously making use of the limited funds apportioned to the islands by the colonial British Government in repairing the 10,761 buildings either destroyed or extensively damaged during the war (other estimates speak of a tally as high as 30,000 buildings).

standing 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 to the Convention were breached, in violation of Article 14.

7. In various judgements within these groups, the Court also found a violation of Article 13 read in conjunction with Article 1 of Protocol No. 1. Acknowledging that constitutional redress proceedings are an effective remedy in theory, the Court found that 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.

B. INDIVIDUAL MEASURES

Just Satisfaction

8. The just satisfaction awarded by the European Court in respect of pecuniary damages, non-pecuniary damages, as well as costs and expenses, has been paid in respect of all cases.

Other Individual Measures

Derequisitions:

9. In the cases of ***Ghigo*** and ***Apap Bologna***, by judgments of 31 January 2019 and 12 July 2019, the Constitutional Court annulled the requisition order and declared that the occupants could no longer rely on the impugned law to maintain title to the property. The applicants in ***Apap Bologna*** have since regained possession of their property. In the case of ***Mattei and Others***, the requisition order was declared null and void by the domestic courts. It appears that the tenants have not vacated the property of their own accord. As a result, the applicants have instituted eviction proceedings against the tenants, which proceedings are *sub judice*.

Rent increases:

10. By a final judgment of 18 January 2021, the Rent Regulation Board (hereinafter, the RRB) increased the rent payable to ***Buttigieg and Others*** from EUR 574.09 to EUR 4,950/year for the first two years, to EUR 5,775 for the third and fourth years, and to EUR 6,600 for the fifth and sixth years. By a judgement of 28 October 2019, the RRB increased the rent payable to ***Aquilina*** from just over EUR 1,000 to EUR 5,500/year for the first two years and EUR 6,600/year for the subsequent four years. On appeal, the Court of Appeal fixed the annual rent at the sum of EUR 5,000/year per annum after taking into consideration all the circumstances of the case. By a final judgement of 12 March 2021, the RRB increased the rent payable to ***Cauchi*** from EUR 200 to EUR 3,600/year. By a final judgement of 13 July 2020, the RRB increased the rent payable to ***Pace*** from EUR 969 to EUR 4,187.50/year for the first two years and EUR 5,025 for the subsequent four years. By final judgement of the Court of Appeal of 16 March 2022, the rent payable to ***Grima and Others*** was increased retroactively to: EUR 2,875 for 2018-2019; EUR 3,450 for 2020-2021; and EUR 4,025 for 2022-2023. By final judgement of 8 October 2021, the RRB increased the rent payable to ***Vassallo*** to EUR 2,550 for three years and EUR 3,400 for the subsequent three years.

11. ***Zammit, Cachia and Others*** and ***Galea and Borg***: It follows from the Court's judgments that since 2019 a new agreement was reached with the tenant on the payable rent (Zammit); a new lease agreement was reached between the parties for the period of 2020 onwards (Cachia and Others), and on an unspecified date in 2020 the Galea and Borg applicants entered into a new lease agreement with the tenants, which was no longer regulated by the impugned law.

Vacations of properties:

12. In the cases of ***Hyzler and Others*** and ***Amato Gauci***, the RRB ordered the tenants to vacate the properties in question (by judgments of 22 May 2023 and 31 January 2022).

13. ***Micallef and Others*** and ***Martinelli and Others***: It follows from the Court's judgments that by judgments of the RRB the tenants were ordered to vacate the properties in question, and the applicants regained possession.

C. GENERAL MEASURES

Article 1 of Protocol No. 1

14. At the outset it ought to be noted that, according to the most recent data collected by the Housing Authority in March 2024, there is currently **a total of 135 requisition orders in force**. Out of these, a vast majority relate to property whose owners are unknown and have never contacted the Authority or filed a court case for constitutional compensation or for an increase of compensation. In fact, out of the 135 R.O.'s still in force only 17 property owners have filed a constitutional court case. Furthermore although, as noted below, Cap 125 entitles any person who has a right over a property which is subject to a requisition order to institute proceedings before the Rent Regulation Board seeking an increase in rent of up to two percent (2%) of the value of the property, to date only 3 cases have been lodged for such an increase.

Most of these R.O.'s are still in force because the tenant is still in need. In 2007/2008 an exercise was conducted on all requisitioned properties, and in instances where there was a tenant-owner relationship (i.e. rent was paid directly to the owner) a derequisition order was issued since the tenants were protected by rent laws. In cases where the landlord did not recognize the tenants and they paid rent either to the H.A. or at the Law Courts, a means test was carried out and where tenants were found to possess more than €10,000, the requisition order was also removed.

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

Elimination of property requisition

15. 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.

16. 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.

17. 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 of protection, 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 adopted a policy of monitoring, every five years, the situation with regard to the tenants' means and whether the requisition order remains justified.

18. As a result of the above measures, the number of requisitioned properties has decreased from 54,000 in the 1960's to 135 properties that are still subject to a requisition order in 2024.

19. In this connection, it is important to reiterate that the owners of many of these properties are not known. In fact, since 2016, the Housing Authority has received only a handful of requests from owners requesting the derequisitioning of their property. When contact is made with the Housing Authority, the Authority enters into negotiation with the owner of the property and duly considers issuing a derequisition order without the need for court proceedings, provided that adequate protection for tenants in need is maintained. Moreover, since 2021, the Housing Authority has also been offering a new specialised subsidy for controlled households which experience a rent increase as a result of any proceedings initiated by the landlord (this would cover the entire difference between the previously controlled rent and the new revised rent; in case of tenants who would still be in employment it would cover the difference between 25% of their gross income and the new revised rent). The Housing Authority is currently assisting 1,076 tenant households which have experienced a rental increase. In its 2022 report, it revealed that in 2022 it was spending up to €1 753 176 on these tenant subsidies. In 2023 a total of €4,862,128 was paid in subsidies, adding up to a total sum of €6,664,444 paid in subsidies since 2021. At present there are 1,488 households that benefit from such subsidies. In addition, the H.A. also has in place a scheme for the Subsidy of Adaptation Works related to dangerous structures in Private Dwellings Held on Lease or Emphyteusis prior to 1st June 1995. The aim of this scheme is to provide subsidies to assist owners or tenants/emphyteuta in carrying out works related to dangerous structures and to render the residential premises leased prior 1st June 1995 habitable and of an acceptable standard.

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

20. The Controlled Residential Leases Reform Act of 2021 (hereinafter, the Act of 2021), which entered into force on 1 June 2021, amended Article 11 of the Housing Act (Chapter 125), introducing a new subarticle 5, which reads as follows: '*The compensation that shall be payable in respect of the requisition of a building used for a residential purpose shall, upon the demand by the person holding a title over the building, be reviewed to an amount not exceeding two percent (2%) per annum of the free and open market value of the dwelling-house on 1 January of the year in which the application is filed.*'

21. Therefore, by means of Article 11(5), any person who has a right over a property which is subject to a requisition order and being used for residential purposes may institute proceedings before the Rent Regulation Board seeking an increase in rent of up to two percent (2%) of the value of the property. The 2% threshold corresponds to broadly half the rental yield of 4% to 5% observed in the private rental market. This is also consistent with the ECtHR judgment in ***Cauchi vs Malta***, which provided guidelines for the compensation of controlled rents. In this judgment, the ECtHR recommended that from the estimate of the rental income of property at market prices, one deducts 30% due to public interest of the policy and a further 20% due to uncertainty.

Elimination of forced landlord-tenant relationships

22. 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.

Measures to ensure appropriate rent for existing, on-going tenancies under the Housing (Decontrol Ordinance) and Reletting of Urban Property (Regulation) Ordinance

23. The Controlled Residential Leases Reform Act also made important changes to the previous legislation concerning these regimes:
- The lessor shall have the right to file an application before the RRB requesting that the rent be reviewed to an amount not exceeding two percent (2%) per annum of the free and open market value of the dwelling-house on the 1st January of the year in which the application is filed and to establish new conditions regarding the lease;
- Upon such application, the RRB shall conduct a means test of the tenant, based on the Continuation of Tenancies (Means Testing Criteria) Regulations. The means test shall be based on the income of the tenant between the 1 January and the 31 December of the year preceding the year in which the proceedings are commenced and the capital of the tenant on the 31 December of the said year. Nevertheless, when the lessor has the suspicion that the tenant may have transferred his property, both movable or immovable, with the intention of hiding these assets, he shall have the right to request that the means test on the capital assets shall go back to the 1 January 2021. When it is established that the tenant has disposed of these assets for malicious purposes, the RRB shall nonetheless take them into consideration in its means test;
- Where the tenant does not meet the income and capital criteria of the means test, the Board shall give judgement allowing the tenant a period of two (2) years to vacate the dwelling-house. The compensation for occupation of the dwelling-house payable to the lessor during the said period shall be determined by the RRB in its discretion;
- Where, on the other hand, the tenant meets the income and capital criteria of the means test, the Board shall increase the rent to up to 2% as explained above. The stated rent shall be applicable for a period of six (6) years, which rent will then increase according to regulations published by the Minister responsible for housing. This increase shall be without prejudice to the lessor's right to request the RRB to revise the rent upwards once again, or for the parties to agree otherwise;
- The RRB may increase the rent payable *pendente lite*, in order to give the lessor immediate, interim relief;
- If at any time, following the judgement of the RRB, it appears to the lessor that the economic circumstances of the tenant have changed, he may file a new application before the RRB requesting that a new means test of the tenant be conducted. If the tenant does not satisfy the criteria of the means test, then the RRB shall allow the tenant two (2) years to vacate the premises, and the rent payable during those 2 years will be established at its discretion.

24. As regards the two-year grace period for vacating the premises where the tenant satisfies the means test, the rent applicable shall be established by the RRB in its discretion. This means that the RRB is empowered to impose full market value rent for that period. The two-year period was considered appropriate to give the tenant, who had previously lived in the property in question under legitimate circumstances, sufficient time to find suitable, alternative accommodation.

25. The RRB is empowered to allow the lessor to resume possession of the dwelling-house on satisfaction of two conditions: the first is that the lessor requires the dwelling-house for his own residence or for that of any of his ascendants or descendants; and secondly, that the tenant has alternative accommodation under title of ownership, which is reasonably suitable to the means of the tenant and his family as regards size and state of repair and proximity to his place of work (if he is employed). The RRB shall also consider properties of the tenant which are in the possession of third parties, but which may be recovered by the tenant within a short time, and properties granted to third parties under any title for the malicious purpose of evading the effects of this Article. This Article shall not apply where the tenant is sixty-five (65) years old.

26. Moreover, the amendments have led to further restrictions to the definition of a 'tenant'. According to the new definition of 'tenant', only the following persons may continue to occupy a property: the person recognised as a tenant before the coming into force of Act XXIV of 2021; the widow or widower of a tenant or the siblings of the tenant, provided that such person cannot be considered a tenant if he or she did not live with the tenant for four (4) out of the last five (5) years prior to the 1st June 2008 and did not continue living with the tenant until his death. In effect, these amendments mean that the persons who were recognised as tenants by law on the date of the coming

into force of the Act of 2021 will be the last recognised tenants, since their children will no longer inherit the lease as occurred previously. **This effectively acts as a natural cut-off date for the current regmie, which will dissolve upon the demise of the current generation of tenants**.

27. The 2% ceiling established by this law is considered fair and equitable in view of the public interest scope of the legislation in question and takes into account the prevailing jurisprudence of both the domestic courts and the European Court. It is important to stress that the vast majority of requisitioned properties were in a dismal state when allocated to tenants. The case law shows that many of the tenants had to effect significant structural works at their own expenses to make the property habitable in exchange for being granted the right to live there. This is not to mention that, throughout the years of occupation, the tenant would have been required to maintain the property in a good state of repair. When establishing the value of the property on the open market, for the purpose of determining the rent due under Article 11(5), no account is taken of the improvements made by the tenant to that property. Therefore, even if 2% of the open market value of the property may be below market rate in some cases, such rate is nonetheless justified because the value of the property is established without reference to the improvements made by the tenant throughout the years and considering that the law in question is intended to safeguard the public interest.

28. As stated above, in the ***Cassar*** judgement, the Court found a violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1 because the previous legislation failed to treat the applicants' property, which was large and of a high value, differently. This failure has been adequately remedied, given that the increase in rent is calculated vis-à-vis the actual freehold market value of the property rather than being '*based on a random choice of a numerical figure*.'

<u>Amendment to the Continuation of Tenancies (Means Testing Criteria) Regulations</u>
29. The Act of 2021 also amended the Continuation of Tenancies (Means Testing Criteria) Regulations. Where the tenant satisfies the income threshold and capital criteria of the means test, he is deemed by the RRB to be a tenant deserving of protection and will thus be allowed to continue residing in the property at a higher annual rent. Where, on the other hand, the tenant does not satisfy such criteria, he will be deemed to have sufficient income and capital assets to find alternative accommodation.

30. In preparation of the amendments leading to the Act of 2021, the national authorities engaged in a thorough assessment of the means testing criteria which were in force prior to the amendments. Following an examination of such factors as, *inter alia*, national wages, property prices and market rental values, and in order to ensure that only those tenants who are truly deserving of protection may continue to occupy properties under a protected rent, it was suggested that the means test brackets be increased from three (3) to six (6) and that the income threshold and capital criteria be modified. These recommendations were taken up wholesale by the legislator and the Regulations were amended accordingly by means of the same Act of 2021.

<u>Effect of the Controlled Residential Leases Reform Act</u>
31. The remedy provided by Act of 2021 is being used frequently by owners/lessors to seek either the eviction of the tenant or an increase in the rent. The ever-increasing jurisprudence of the RRB, in respect of cases stemming from both the Housing (Decontrol) Ordinance (namely, Article 12B) and those stemming from the Reletting of Urban Property (Regulation) Ordinance (namely, Article 4A which is identical to 12B), shows that the RRB is giving lessors an effective remedy.

32. According to the information at the disposal of the national authorities at this time, the RRB has registered more than two thousand (2,000) cases wherein landlords have demanded the application of Article 12B or the application of Article 4A since their introduction in 2018 and 2021 respectively. Between 11 January 2022 and 27 July 2022, the RRB delivered around two hundred and eighty (280) judgements, whereby it applied the most recent amendments mentioned above. In more than two hundred and ten (210) of those judgements, the RRB decided that the rent payable should increase to the maximum two percent (2%) of the open market value of the property

from the date of the judgement. This amounts, therefore, to more than seventy-five percent (75%) of the cases decided by the RRB up until July 2022.

33. According to the same information, in more than two hundred and sixty (260) of those 280 judgements delivered, the RRB decided that the rent payable should increase to at least one point five percent (1.5%) of the open market value of the property from the date of the judgement. In most of those cases, the actual percentage applied was one point seven percent (1.7%) or higher. This amounts, therefore, to more than ninety-five percent (95%) of the cases decided by the RRB until July 2022.

34. In 2023, the RRB delivered a total of four hundred and twenty-five judgements (425), out of which the RRB decided that the rent applicable would not be 2% in only 40 cases. In other words, in only 9.4% of judgements, the RRB decided that the rent payable would be less than the 2% open market value of the property. This means that in 99.906% of cases, the RRB decided that the rent payable by the tenant should be 2% of the open market value of the property. During the period between 1 September 2023 and 19 June 2024, the RRB decided a total of 622 cases, out of which it did not apply the full 2% increase in only 29 cases (i.e. 4.6% of judgments). Nonetheless, in these 29 cases, the minimum percentage increase in rent granted was of at least 1.5%.

35. It is therefore quite evident that, in the very large majority of cases before it, the RRB is applying the maximum rent permissible at law, or an amount which is very close to the maximum permissible at law.

36. An independent study made with the support of the Council of Europe, using public data as well as data collected during a visit of the Department for the Execution of Judgments to Valletta in March 2024 revealed that "*The average estimate value of the controlled properties was that of €247,095. The average percentage of the freehold value of the property determined by the RRB was that of 1.95% while the average revised rent (i.e. following the proceedings) was set at €4,685 annually. More importantly, when compared to the estimated market prices of similar properties rented on the free market, the average rate of controlled rents in comparison to the market rental value is approximately 63%. The conclusion of this assessment corresponds to other data available on the Maltese rental market since the 2% comes close to invariably reach at least half of the market rental value since Malta's residential rental capitalisation rate hovers around 4.25%."*

37. It is also important to emphasise here that the Court itself found that a revised rent starting at 1.75% and rising to 2% of the market value, was acceptable.[2]

38. In a number of cases, the RRB has also ordered the eviction of the tenants.[3] The jurisprudence shows that the national courts generally order the tenant, who does not satisfy the means testing criteria, to vacate the property within no less than 2 years. Therefore, to date, the national courts have applied the 2 years as a fixed period. In this connection, the national authorities note that, the fact that the jurisprudence in this respect is so limited goes to show that the absolute majority of

[2]. See *Testa and Others v. Malta*, inadmissibility decision of 7 September 2021.

[3]. See *Maria Concetta mart John James Liddell pro et noe v. Maria Dolores Cassar et (Rik. 92/2020, decided 21 July 2021)*: The tenant was seventy-five years (75) old and was found to have significant assets, thus, not to satisfy the means test criteria and was ordered to vacate from the property within a period of two (2) years. Throughout the two-year period, the tenant was ordered to pay the sum of EUR 4,600 in rent, which amounts to 2% of the open market value of the property; no appeal; *Hadrian Cassar Torreggiani v. Maria Dolores sive Doris Grasso et (Rik. 33/2020 NC, decided 31 January 2022)*: The tenant was seventy-five (75) years old and was declared not to satisfy the means test criteria, so ordered to vacate the property within a period of two (2) years and, throughout that time, to pay the sum of EUR 6,200 in rent per year, which represents 2% of the open market value of the property in question; no appeal; *Henry Caruana Gatto v. Georgina Grima (Rik. 113/2020, decided 29 July 2021)*: the RRB found that the tenant, although a pensioner, had very significant assets, including various properties, so he did not satisfy the means test criteria. The RRB ordered the tenant to vacate the property within a period of two (2) years. Taking into consideration the potential of the property, which was worth EUR 2,100,000 according to the RRB's technical experts, it ordered the tenant to pay the sum of EUR 2,000 per month for the first three months and the sum of EUR 4,375 per month for the remaining twenty-one months. The latter rental value amounts to 2.5% of the value of the property on the open market. The judgement was appealed to the Court of Appeal by the tenant, rejected by judgement of 20 April 2022.

the existing tenants are, indeed, found to be needy tenants who continue to require the protection of the law in question.

39. In other instances, the RRB has ordered the eviction of the tenant from the property in light of an agreement reached between the owner and the tenant.[4]

40. It is important to keep in mind that the amendments explained above do not affect the landlord's pre-existing rights where the tenant has caused considerable damage to the property. According to Article 5(3)(b), which has been in force for many years, where the tenant has caused considerable damage to the property, the lessor may apply to the RRB to demand the dissolution of the lease. This right of action would also be without prejudice to the lessor's right to file proceedings under general civil law to demand the payment of damages caused by the tenant.

Article 13 of the Convention

41. 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 of a property subject to a requisition order may at any time contact the Housing Authority in writing contesting either the requisition order or the level of rent;

(ii) The Housing Authority will then 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 Article 11(5) of the Housing Act. The owner may also institute constitutional redress proceedings ;(v) As a matter of practice, in cases where the owner has instituted constitutional redress proceedings, following domestic judgements 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.

42. Alternatively, such individual may institute constitutional redress proceedings. The recent jurisprudence of the courts of a constitutional jurisdiction shows increasing alignment with the judgements of the European Court when it comes to the remedy accorded in such cases. Having said that, it is important to appreciate that the case law before the national constitutional courts concerning properties that are still subject to a requisition order are quite rare. It appears that from 1 January 2021 to date, there have only been six (6) judgements of this kind before the domestic constitutional courts, which judgements are explained below. It cannot be excluded that there are other ongoing cases. However, this further proves the point made above that, in many cases, the owners of the properties still subject to a requisition order are not known. They have neither

[4]. See, for instance, *John Baptist Agius et v. Joseph Zammit* (Rik. 101/2019 JD, decided 14 February 2022) and *Silvia Zammit et v. Spiridione Triganza et* (Rik. 763/2021 NB, decided 13 May 2022.

approached the Housing Authority requesting a derequisition, nor have they instituted proceedings before the national courts for the same purpose.[5]

43. Since the coming into force of the amendments of 2021, the national courts' approach to derequisition has been case dependent.[6] In such cases, owners would receive compensation for the

[5]. In the case of *Martino de Porres sive Martin Leone Ganado et v. Direttur tas-Sigurta' Socjali et* (Rik. 64/2016 RGM), the Housing Authority was ordered to issue a derequisition order and compensation awarded amounted to €165,000 in pecuniary and non-pecuniary damages; no appeal. In the case *Rosette Fenech et v. Awtorità tad-Djar et* (Rik. 81/16 JRM), the court annulled the requisition order and ordered the payment of EUR 75,000 in compensation; no appeal.

[6]. Reference can be made to *Georgina Grima et v. Awtorità tad-Djar et* (Rik. 216/19/1 TA, decided 1 December 2021). The plaintiffs' property had been subject to a requisition order since 1988. The first-instance court found that the plaintiffs had suffered a violation of Article 1 of Protocol no. 1. It, therefore, held that the tenant could no longer rely on the requisition order to continue occupying the property, and ordered the payment of EUR 30,000 in compensation. Upon appeal, the Constitutional Court reversed the order of the first-instance court that the tenant could no longer occupy the property on the basis of the requisition order in question. At paragraph 22 of its judgement, the Constitutional Court held that such declaration would invalidate the 2021 amendments, which allow the owners of the property to institute proceedings before the RRB seeking an increase in rent to up to two percent (2%) of the open market value of the property in question. In another judgement of the Constitutional Court of 31 August 2021, in the names *Mary Azzopardi pro et noe v. Awtorità tad-Djar et* (Rik. 207/19/1 TA), the first-instance court found no violation of the Convention. The Constitutional Court reversed that decision, finding a violation of Article 1 of Protocol no. 1 up until the coming into effect of Act of 2021, and, referring to the criteria set out in ***Cauchi v. Malta***, ordered the payment of EUR 24,000 in pecuniary damages and EUR 8,000 in non-pecuniary damages. In *Gemma Brownrigg et v. L-Awtorità tal-Djar et* (Rik. 241/2019 MCH), the court found a violation of Article 1 of Protocol no. 1 and ordered the payment of compensation amounting to EUR 568,507 by way of pecuniary damages. Considering that, during the proceedings themselves, the tenant vacated from the property in question, the court ordered the annulment of the requisition order. This case has been appealed, and judgment will be delivered on 21 October 2024. In *Christianne Ramsay Pergola et v. L-Awtorità tal-Djar et* (Rik. 11/2020 GM), court found a violation of Article 1 of Protocol no. 1 up until the coming into force of Act of 2021. Considering that the plaintiff was due compensation only from 2016 until 1 June 2021 and referring to ***Cauchi v. Malta***, the court ordered the payment of EUR 9,000 in pecuniary damages and the annulment of the requisition order once the tenancy in favour of the existing tenant (defendant in the proceedings) comes to an end. This case has been appealed and judgment will be delivered on 2 December 2024.
Nutar Dottor Rosella Sciberras et v Avukat tal-Istat et (72/2023 LM) was decided by the Court of First Instance on the 3rd July 2024. The Court ruled that the requisition order along with articles 3, 4, 6 and 9 of Chapter 69 and Chapter 125 of the Laws of Malta breached Article 1 of Protocol 1 of the Convention. The Court, utilising the principles set out in ***Cauchi v Malta***, awarded EUR 52,757.07 for pecuniary damages and EUR 6000 for pecuniary damages.
Alexander Xuereb et v Avukat tal-Istat et (154/2020MH) was decided by the Court of First Instance on the 31st January 2024. The plaintiff acquired the property subject to a requisition order in 1992. The Court awarded pecuniary damages in the amount of EUR 70,229.22 and non-pecuniary damages in the amount of EUR10,000. The court arrived at this sum after taking into consideration ***Ghigo v Malta***, ***Cauchi v Malta***, ***Montanaro v Malta*** and ***Fleri Soler v Malta***. Despite the fact that a request for eviction was made by the plaintiffs, the Court deemed that there is an ordinary remedy which the plaintiffs should have used relating to this request.
Antonio Zammit et v Avukat tal-Istat et (144/2021/1 GM) was decided by the Constitutional Court on the 9th October 2023. The Court declared that the requisition order breached the plaintiffs rights under Article 1 of Protocol 1 and awarded pecuniary damages in the amount of EUR 38,942.17 and EUR 5000 for non-pecuniary damages. The amount was calculated based on the principles set out in ***Cauchi v Malta***. The Constitutional Court overturned the decision of the First Instance Court in regard of the fact that the First Court had only found a breach between 1989 and 2007, and the Constitutional Court was satisfied that the breach persisted until 2018.
Michael Angelo Briffa et v Avukat tal-Istat et (748/2021 JVC) was decided by the First Instance Court on the 30th January 2024. The property was requisitioned and then subjected to a lease in terms of Chapter 69 of the Laws of Malta. The Court found that Chapter 69 and Chapter 125 breach Article 1 of Protocol 1 of the European Convention and awarded pecuniary damages of EUR 49,826.82 and this after taking into consideration the principles set out in ***Cauchi v Malta***. The Court also awarded the amount of EUR 5000 for non-pecuniary damages. Although a request was made for the termination of the lease by the plaintiffs, the Court deemed that the plaintiffs had not used the ordinary remedies available to them, and hence abstained.
Marcus Scicluna Marshall v Avukat tal-Istat (166/2023) was decided by the First Instance Court on the 26th September 2024. The property was requisitioned in 1975 and was subsequently de-requisitioned in 2008. The lessee was given possession of the property from 1975 until 2019. The Court found that Chapter 125 and Chapter 69 breached Article 1 of Protocol 1 of the European Convention. The Court made reference to ***Amato Gauci v Malta*** to determine the lawfulness of the interference of the state in relation to Article 1 of Protocol 1. Reference was also made to ***Bradshaw and Others v Malta*** regarding the legitimacy of the interference. More specifically in relation to requisition orders and lease, the Court quoted ***Fleri Soler and Camilleri v Malta*** and ***Cassar v Malta***. Based on the principles set out in ***Cauchi v Malta***, the Court awarded the amount of EUR 91,000 for pecuniary damages, and the amount of EUR 5500 for non-pecuniary damages.
John sive Juanito Pullicino v Awtorita' tad-Djar et (25/2019 MH) was decided by the Court of First Instance on the 10th June 2024. The property had been requisitioned in the 70s and de-requisitioned in the year 2000. Since the property had subsequently been given on emphyteusis after 2000 and the plaintiff was not contesting this title, the Court limited its scope to the period of requisition and the applicability of the European Convention, i.e. 1987 until 2000. The Court found that Chapter 125 of the Laws of Malta breached Article 1 of Protocol 1 of the European Convention. Reference was made to ***Fleri Soler v Malta,***

violation of rights sustained up to the date of the coming into force of the 2021 amendments, while also having the possibility of instituting proceedings before the Rent Regulation Board to seek an increase in the rent payable in the future.

44. Government considers that all national courts of a constitutional competence have heeded the Court's rulings concerning compensation. The prevailing jurisprudence of the national courts, both

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Ghigo v Malta as well as ***Montanaro Gauci and others v Malta*** in the Court's consideration of the breach of the Article 1 of Protocol 1. The Court calculated the pecuniary damages in terms of the principles set out in *Cauchi v Malta* and awarded EUR 30,000, for non-pecuniary damages the Court awarded EUR 5000.

Roger De Gaetano et v l-Avukat tal-Istat (113/20/1 TA) was decided by the Constitutional Court on the 3rd June 2024. The Court of First Instance had found that Chapter 69 and Act X of 2009 breached Article 1 of Protocol 1 of the European convention, and had awarded compensation in the amount of EUR 33,000. The plaintiffs appealed. The Constitutional Court made reference to ***Cauchi v Malta***, ***Attard and Others v Malta***, ***Pace v Malta*** and ***Grima v Malta*** and increased the pecuniary damage award to EUER 59,498 and the non-pecuniary damage to the amount of EUR 6000.

Zerafa Holdings Limited et v Avukat tal-Istat et (323/2021/1 AF) was decided by the Constitutional Court on the 13th May 2024. The Court of First Instance had found that Chapter 69 breached Article 1 of Protocol 1 of the European Convention, and awarded EUR 10,000 for pecuniary damages and EUR 5000 for non-pecuniary damages. The plaintiffs appealed this decision purely on the basis that the calculation of the compensation was not in line with the principles set out. The Constitutional Court made reference to ***Cauchi v Malta*** and various other local judgements and maintained that the pecuniary damages for the breach of Article 1 of Protocol 1 of the Convention from 1987 – 2021 should be that of EUR 111,519.45, whilst the non-pecuniary damages of EUR 5000 remained unchanged.

Patricia Curmi et v Avukat tal-Istat et (288/21/1 TA) was decided by the Constitutional Court on the 6th May 2024. The Court of First Instance held that Chapter 69 of the Laws of Malta as well as Act X of 2009 breached Article 1 of Protocol 1 of the European Convention and awarded pecuniary damages in the amount of EUR 30,000; no non-pecuniary damages were awarded. The plaintiffs appealed this decision on the ground that the pecuniary damages should have been awarded from 1987 until the date of introduction of Act XXIV of 2021, and that such damages should be calculated according to the principles set out in ***Cauchi v Malta***. The Constitutional Court was satisfied that the damages were to be calculated from 1987 until 2021, and utilised the principles set out in ***Cauchi v Malta*** to carry out such calculation. The pecuniary damages awarded by the Constitutional Court amounted to EUR 36,856.04 and the non-pecuniary damages to EUR 5000.

Juan Miguel sive Miguel Xuereb et v L-Avukat tal-Istat et (273/20/1 TA) was decided by the Constitutional Court on the 9th October 2023. The Court of First Instance held that the applicable law was not Chapter 69 of the Laws of Malta but rather Chapter 158 of the Laws of Malta and hence did not accede to the request of the plaintiffs and did not award any damages. The plaintiffs appealed this decision. The Constitutional Court made reference to ***Bradshaw and Others v Malta*** as well as ***Amato Gauci v Malta*** and was satisfied that the applicable law was in fact Chapter 69 of the Laws of Malta, and not Chapter 158 as the First Court had decided. In view of this the Constitutional Court utilised the principles set out in ***Cauchi v Malta*** and awarded pecuniary damages in the amount of EUR 41,722.33. The plaintiffs had also made a request for the eviction of the tenants, however the Court held that by way of Act XXIV of 2021, the owner has an ordinary remedy before the Rent Regulation Board to address this issue.

John Agius v Avukat tal-Istat et (603/2021 GM) was decided by the First Instance Court on the 26th September 2023. The plaintiffs requested a declaration that due to the application of Chapter 69 of the Laws of Malta, their rights under Article 1 of Protocol 1 had been breached from 1992 until 2021, and for the relevant compensation to be awarded. The Court found that there was in fact a breach of Article 1 of Protocol 1 and, applying the principles of ***Cauchi v Malta***, awarded pecuniary damages in the amount of EUR 38,000 and EUR 500 for non-pecuniary damages.

Martin Frederick Attard v Avukat tal-Istat et (124/2022 AD) was decided by the Court of First Instance on the 26th September 2023. The plaintiffs requested the Court to declare that the application of Chapter 69 in their regard was in breach of Article 1 of Protocol 1 of the European Convention on Human Rights. The Court made reference to ***Bradshaw and Others v Malta***, ***Amato Gauci v Malta*** and ***Cassar v Malta***. The Court was in agreement that Chapter 69 as well as Act X of 2009 breached the plaintiff's right under Article 1 of Protocol 1 of the Convention, however it did not consider that Act XXIV of 2021 breached this right. Hence the Court liquidated damages from 1987 until 2021, which, after applying the ***Cauchi v Malta*** principles, amounted to EUR 19,928.42 for pecuniary damages and EUR 3000 for non-pecuniary damages.

Luciano sive Lucio Demicoli et v Avukat tal-Istat et (395/2022 GM) was decided by the Court of First Instance on the 26th September 2023. The plaintiffs requested a declaration that the application of Chapter 69 and Act X of 2009 in their regard breached their right under Article 1 of Protocol 1 of the European Convention, as well as compensation. The Court was satisfied that that this breach had occurred, and decided that the damages should be awarded for the years 1987 until 2021 (when the amendments by way of Act XXIV of 2021 came into force). After utilising the principles set out in *Cauchi v Malta*, the Court awarded pecuniary damages in the amount of EUR 70,000 and non-pecuniary damages in the amount of EUR 500.

Modesta Farrugia et v Avukat tal-Istat et (243/2022 LM) was decided by the Court of First Instance on the 15th September 2023. The plaintiffs requested a declaration that the application of Chapter 69 of the Laws of Malta in their regard breached their right under Article 1 of Protocol 1 of the European Convention, as well as the liquidation of damages. In the Court's considerations, reference was made to ***Cassar v Malta*** and ***Ghigo v Malta*** and it awarded EUR 19,303 for pecuniary damages and EUR 6000 for non-pecuniary damages. Although the plaintiffs had requested the Court to also declare that the tenant could no longer make use of Chapter 69 to continue residing within the property, the Court held that by way of Act XXIV of 2021, the owner was given other remedies to address this issue.

at first and at second instance, shows a strong reliance on the judgement of ***Cauchi v. Malta*** in order to determine what amount of compensation ought to be paid to the owners of the property. In the case *Rizzo v. Malta,*[7] the European Court ruled that the applicants in such cases as the one at issue here now have "*an available remedy in theory as well as in practice, capable of providing redress and offering reasonable prospects of success*".

45. As regards the judgements of the Constitutional Court, it is important to remember that the Constitutional Court is a court of second instance, that is an appellate court. Therefore, it is bound to decide only on the appeals brought before it and cannot increase compensation unless the plaintiff demands it by way of a principal appeal or a cross-appeal.

46. For instance, between 1 January 2020 and 31 December 2020, the Constitutional Court decided nineteen (19) cases which concerned an appeal in old rent laws cases on the compensation awarded by the first-instance court. However, out of those 19 cases, there were only eight (8) cases in which it was the plaintiff who appealed to the Constitutional Court demanding higher compensation. In six (6) out of those 8 cases, the Constitutional Court increased the compensation awarded, while in one (1) the compensation remained the same and in one (1) the compensation was decreased.

47. Where such appeals are instituted, the national authorities have noted an increasing reliance by the Constitutional Court to award compensation by reference to the criteria set out in ***Cauchi v. Malta***. Of course, each case is assessed by the Constitutional Court in an individual manner. However, where the first instance court does not award compensation which reflects the European Court's pronouncement in ***Cauchi v. Malta***, the Constitutional Court tends to increase or decrease the compensation awarded accordingly.[8]

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7. Application No. 36318/21, judgment of 16 January 2024, final on 16/04/2024.

8. *Anthony Casaero pro et noe v. L-Avukat Generali et* (Rik. 84/2018/1 FDP), decided 26 May 2021: The plaintiffs were awarded EUR 40,000 in respect of pecuniary and non-pecuniary damages by the first-instance court. The Constitutional Court increased the compensation to EUR 70,000, representing pecuniary damages of EUR 65,000 and non-pecuniary damages of EUR 5,000; *Doreen Grima et v. Avukat Generali et* (Rik. 220/19/1 JZM), decided 26 May 2021: The plaintiffs were awarded EUR 30,000 in pecuniary and non-pecuniary damages by the first-instance court. The Constitutional Court increased the compensation to EUR 45,224, representing EUR 40,224 in pecuniary damages and EUR 5,000 in non-pecuniary damages; *Joseph u Johanna konjugi Tabone et v. L-Avukat Generali et* (Rik. 202/19/1 JZM) decided 30 June 2021: The first instance court awarded EUR 32,286 in pecuniary damages. Upon a cross-appeal by the plaintiffs, the Constitutional Court increased the pecuniary damages to EUR 40,000; *Jason Attard et v. L-Avukat Generali et* (Rik. 65/2018/1 RGM), decided 30 June 2021: The first instance court awarded the plaintiffs the sum of EUR 50,000 in pecuniary damages and EUR 13,500 in non-pecuniary damages. Upon appeal by the defendant, the Constitutional Court confirmed the award of compensation; *Martha Grixti et v. Avukat Generali et* (Rik. 124/2018/1 FDP), decided 30 June 2021: The first instance court awarded the plaintiffs the sum of EUR 60,000 in pecuniary and non-pecuniary damages. Upon appeal by the defendant, the Constitutional Court calculated the difference between the market rent and the rent received by the owners throughout the years as EUR 54,238.45. Following on ***Cauchi v. Malta***, it deducted from the latter sum 30% in respect of the public interest and 20% due to the uncertainty of renting out the property throughout the years, and thus reduced the compensation awarded to EUR 30,000 in respect of pecuniary damages and EUR 5,000 in respect of non-pecuniary damages; *Maria Dolores sive Doris armla minn Carmel Attard pro et noe v. L-Avukat Generali* (Rik. 7/18/1 FDP), decided 30 June 2021: The first instance court awarded the plaintiffs the sum of EUR 125,100 in pecuniary damages. Upon appeal by the defendant, the Constitutional Court found that, throughout the relevant period, the plaintiffs could have earned around EUR 220,000 in rent throughout the years had it been rented on the open market. When applying the reductions of 30% and 20% indicated by ***Cauchi v. Malta***, as well as deducting the rent received throughout the years, the Constitutional Court noted that the sum of EUR 102,926 in pecuniary damages would be a more appropriate sum; *Joseph Zammit v. Albert Edward Galea et* (Rik. 187/2019/1 MH), decided 30 June 2021: The first instance court awarded the plaintiffs the sum of EUR 45,000 in pecuniary and non-pecuniary damages. Upon appeal by the defendant, the Constitutional Court found that throughout the period in question, the plaintiffs could have received EUR 54,560 in rent on the open market, according to the conclusions of the court-appointed expert. Deducting from the said sum 30% and 20% according to ***Cauchi v. Malta***, as well as the rent received by the plaintiffs throughout the years, the Constitutional Court reduced the compensation to EUR 30,000 in total; *Gaetano Attard v. Avukat Generali et* (Rik. 4/2019/1 RGM), decided 27 October 2021: The first instance court awarded the plaintiffs the sum of EUR 30,000 in pecuniary damages and EUR 6,000 in non-pecuniary damages. The defendant appealed the sum of compensation awarded. As regards the pecuniary damages awarded by the first instance court, the Constitutional Court noted that, throughout the relevant period, the plaintiffs could have received the sum of EUR 43,783 in rent on the open market. Deducting 30% and 20% accordingly, as well as the rent received throughout the years, the Constitutional Court found that the sum of EUR 22,500 in pecuniary damages would be

48. The caselaw shows that, even where the Constitutional Court has reduced the compensation ordered by the first-instance court, it has done so because it was evident that such compensation was too high considering the prevailing jurisprudence of the European Court. It is the national authorities' humble view that the ever-increasing list of judgments provides clear evidence that the Constitutional Court is adhering to the jurisprudence of the European Court and can no longer be said to be an ineffective remedy in such cases.

49. In this connection, it should be noted that in recent domestic cases concerning the same law, the Constitutional Court has sometimes chastised the representative of Government for appealing judgements of the first instance courts on grounds of compensation, when the compensation awarded by the first instance court was reasonable and in line with current jurisprudence. In such

more appropriate; *Nutar Dottor Pierre Cassar v. Avukat tal-Istat* (Rik. 202/20/1 RGM), decided 4 May 2022: The first instance court awarded the sum of EUR 8,910 in pecuniary damages and EUR 1,000 in non-pecuniary damages. Noting that throughout the relevant period, the plaintiff could have received EUR 49,792 in rent, the Constitutional Court increased the sum of pecuniary damage to EUR 25,662, while confirming the sum of non-pecuniary damages; *Maria Concetta Mangion et v. Avukat Generali et* (Rik. 149/19/1 TA), decided 22 June 2022: court awarded EUR 20,000 in pecuniary and non-pecuniary damages. The Constitutional Court increased the compensation awarded to EUR 26,370 in respect of pecuniary damages and awarded EUR 4,000 in respect of non-pecuniary damages, after referring to the European Court's judgement in ***Cauchi v. Malta***; *Agnes Pace et v. Avukat tal-Istat et* (Rik. 247/21/1 LM), decided 29 March 2023: The first instance court awarded the sum of EUR 25,500 in pecuniary damages and non-pecuniary damages. The Constitutional Court found that, throughout the relevant period, the applicants could have received the sum of EUR 41,600 in rent. Therefore, applying the principles set out in ***Cauchi v. Malta***, the Constitutional Court reduced the sum of compensation awarded EUR 22,000, inclusive of the non-pecuniary damages; *Anthony Haber et v Avukat tal-Istat* (621/22 TA), decided at first instance on the 27th June 2024, wherein the Court awarded pecuniary damages in the amount of EUR 45,000 after taking into consideration the principles established in ***Cauchi v Malta***, and a further EUR 3000 for non-pecuniary damages; *Maggur Raymond Millet et v Avukat tal-Istat et* (197/21/1 AF), decided on the 13th May 2024 by the Constitutional Court. The Court of First Instance had originally awarded pecuniary damages in the amount of EUR 30,000 and EUR 5000 for non-pecuniary damages. The Constitutional Court overturned this decision, and after applying the principles set out in ***Cauchi v Malta*** it increased the pecuniary damages to EUR 43,200. The non-pecuniary damages remained unchanged at EUR 5000; *Joseph Galea v l-Avukat tal-Istat* (23/22 TA), decided on the 14th March 2024 by the Court of First Instance, where after the Court made reference to ***Cauchi v Malta,*** it awarded the amount of EUR 35,000 for pecuniary damages and EUR 5000 for non-pecuniary damages; *Josephine sive Jessie Gatt et v Avukat tal-Istat et* (133/2023 AJD), decided on the 12th April 2024 at First Instance, where after making reference to ***Cauchi v Malta***, the Court awarded the amount of EUR41,276.71 for pecuniary damages and EUR 8500 for non-pecuniary damages; *Felicity Wismayer et v L-Avukat tal-Istat* (134/20/1 ISB)*,* decided by the Constitutional Court on the 9th October 2023. The Court of First Instance had originally awarded pecuniary damages in the amount of EUR 5772.48 and non-pecuniary damages in the amount of EUR 2500. However, the Constitutional Court overturned this decision and increased the pecuniary damages to the amount of EUR 36,019.20, after taking into consideration the principles set out in ***Cauchi v Malta***. The non-pecuniary damages awarded remained unchanged; *Norman Cini et v l-Avukat tal-Istat* (610/2021 MH), decided at First Instance on the 24th January 2024 where Court awarded pecuniary damages in the amount of EUR 16,178.65 and non-pecuniary damages in the amount of EUR 5000. The calculation of the pecuniary damages was based on the principles set out in ***Cauchi v Malta***; *Rita Vassallo et v Avukat tal-Istat* (233/22 TA) decided on the 28th September 2023: The Court of First Instance awarded EUR 45,000 for pecuniary damages after applying the principles set out in ***Cauchi v Malta,*** and awarded a further EUR 5000 for non-pecuniary damages; *Albert Calleja noe v Avukat tal-Istat et* (366/2021 ISB) decided on the 11th October 2023: The Court of First Instance awarded EUR 92,363 in pecuniary damages by applying the principles set out in ***Cauchi v Malta***, and awarded a further EUR 5000 for non-pecuniary damages; *Adrian Galea v Avukat tal-Istat et* (176/2022 TA), decided on the 28th September 2023: The Court of First Instance awarded EUR 25,000 for pecuniary damages after applying the principles set out in ***Cauchi v Malta***, and also taking into consideration the fact that for a period of time, the plaintiff chose not to increase the lease. The Court also awarded EUR 5000 for non-pecuniary damages; *Francis sive Frank Said v Avukat tal-Istat et* (577/2022 AD), decided on the 26th September 2023: The Court of First instance awarded EUR 36,588.44 in pecuniary damages. The Court arrived at this sum after applying the principles set out in ***Cauchi v Malta***. The Court ordered the payment of EUR 5500 for non-pecuniary damages for the state of uncertainty that the plaintiffs were in, but considering the fact that for a period of time the plaintiff was not the only owner of the property in question; *Paul Borg v Avukat tal-Istat et* (Rik. 350/2022 AD), decided 26th September 2023: The first instance court awarded the sum of EUR 26,187, for pecuniary damages after taking into consideration the principles set out in ***Cauchi v. Malta***. The Court then fixed the amount of EUR 5000 for non-pecuniary damages due to the state of uncertainty the plaintiffs were put in.

cases, the Constitutional Court has, at times, even penalized the representative of Government by imposing on him the obligation to pay double court expenses to the plaintiff (landlord).[9]

Publication and dissemination

50. The judgements were disseminated internally within the Government Departments, including the Housing Authority, the Ministry responsible for social accommodation, as well as members of the judiciary. Furthermore, the judgements of the European Court often receive media coverage.[10] They also feature in a book.[11]

D. GOVERNMENT'S CONCLUSIONS

51. The Maltese authorities will continue to keep the Committee of Ministers informed of the progress in the adoption of the individual and general measures, with a view to the full execution of these judgments.

[9]. E.g. *Barbara Cassar et v. Avukat Generali et* (Rik. 209/19 GM) decided by the Constitutional Court on 23/11/2020.
[10]. See for example https://timesofmalta.com/articles/view/european-court-human-rights-rules-malta-old-rent-laws.1056946
[11]. '*Malta at the European Court of Human Rights 1987 – 2012*', Sammut, Cuignet & Borg, 2012.

Annex – List of pending cases

1. **Apap Bologna v. Malta** (No. 46931/12, judgment of 30/08/2016, final on 30/11/2016)
2. Montanaro Gauci and Others v. Malta (No. 31454/12, judgment (merits) of 30/08/2016, final on 30/11/2016; judgment (just satisfaction) of 10/10/2017, final on 05/03/2018)
3. Vella v. Malta (No. 73182/12, final judgment of 27/02/2018)
4. Marshall and Others v. Malta (No. 79177/16, final judgment of 11/06/2020)
5. Mattei and Others v. Malta (No. 14615/19, final judgment of 17/06/2021)
6. Ghigo v. Malta (No. 31122/05, judgment of 26/09/2006, final on 26/12/2006)
7. Edwards v. Malta (No. 17647/04, judgment (merits) of 24/10/2006, final on 24/01/2007; judgment (just satisfaction) of 17/07/2009, final on 06/04/2009)
8. Bugeja v. Malta (No. 51379/20, final judgment of 09/07/2024)
9. Buttigieg v. Malta (No. 7615/21, final judgment of 25/06/2024)

1. **Amato Gauci v. Malta** (No. 47045/06, judgment of 15/09/2009, final on 15/12/2009)
2. Anthony Aquilina v. Malta (No. 3851/12, judgment of 11/12/2004, final on 20/04/2015)
3. Cassar v. Malta (No. 50570/13, judgment of 30/01/2018, final on 30/04/2018)
4. Buttigieg and Others v. Malta (No. 22456/15, final judgment 11/12/2018)
5. Bradshaw and Others v. Malta (No. 37121/15, judgment of 23/10/2018, final on 23/01/2019)
6. Zammit and Vassallo v. Malta (No. 43675/16, judgment of 28/05/2019, final on 28/08/2019)
7. Aquilina v. Malta (No. 40246/18, final judgement of 09/06/2020)
8. Ellis and Scilio v. Malta (No. 48382/17, final judgement of 21/01/2021)
9. Cauchi v. Malta (No. 14013/19, judgement of 25/03/2021, final on 25/06/2021)
10. Baldacchino and Falzon v. Malta (No. 30806/19, final judgment of 14/10/2021)
11. Chemimart Limited v. Malta (No. 29567/19, final judgment of 21/10/2021)
12. Hyzler and Others v. Malta (No. 45720/19, final judgment of 09/12/2021)
13. Attard and Others v. Malta (No. 19853/20, final judgment of 22/09/2022)
14. Anastasi and Others v. Malta (No. 49102/19 and two others, final judgment of 29/09/2022)
15. Pace v. Malta (No. 53545/19, final judgement of 29/09/2022)
16. Grima and Others v. Malta (No. 18052/20, final judgment of 07/03/2023)
17. Vassallo v. Malta (No. 52795/20, final judgement of 12/09/2023)
18. Zammit and Busuttil v. Malta (No. 55102/20, final judgment of 12/09/2023)
19. Rizzo and Others v. Malta (No. 36318/21, judgment of 16/01/2024, final on 16/04/2024)
20. Abela v. Malta (No. 825/21, final judgment of 14/11/2023)
21. Vassalo and Vincenti v. Malta (No. 38111/21, final judgment of 24/10/2023)
22. Grima and Others v. Malta (No. 18057/20, final judgment of 14/11/2023)