



H/Exec(2015)15 – 20 May 2015

Ghigo group¹ against Malta (and three similar cases)²

Cases concerning violations of the applicants' right to respect to the peaceful enjoyment of their property on account of the operation of various parts of legislation regarding controlled rents in Malta

Summary of the measures taken and outstanding issues

Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights.

EXECUTIVE SUMMARY

The Committee of Ministers has been following the execution of these judgments since 2006, 2009 and 2012 respectively. On 10 June 2014, the Maltese authorities submitted two action reports in respect of the *Ghigo* group and *Saliba and Others*, as well as an action plan in *Amato Gauci*.³ This document summarises the status of execution of both the individual and general measures, analyses the action plans and reports submitted and identifies a number of outstanding questions.

On 13 May 2015, fruitful discussions were held in Malta between the Department for the Execution of Judgments and the Maltese authorities, addressing the issues raised in this document. The Maltese authorities are expected to present updated action plans and/or reports in due course reflecting the positive information submitted orally by the authorities during those discussions.

The opinions expressed in this document are binding on neither the Committee of Ministers, nor the European Court.

¹ *Ghigo v. Malta*, No.31122/05, judgment final on 26/12/2006, *Fleri Soler and Camilleri v. Malta*, No.35349/05, judgment final on 26/12/2006; *Edwards v. Malta*, No. 17647/04, judgment final on 24/01/2007.

² *Amato Gauci v. Malta*, No.47045/06, judgment final on 15/12/2009, *Saliba and Others v. Malta*, No.20287/10, judgment final on 22/02/12 and *Anthony Aquilina v. Malta*, No.3851/12, judgment final on 20/04/2015.

³ Action report on *Ghigo* group DH-DD(2014)788; Action plan on *Amato Gauci* DH-DD(2014)789; and Action report on *Saliba and Others* DH-DD(2014)783.

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I. INTRODUCTION

1. The Committee of Ministers is currently supervising a number of cases concerning violations of Article 1 Protocol 1 of the Convention, arising from the state's infringement of the applicants' right to property. Following extensive damage to buildings and infrastructure on the islands of Malta and Gozo during the Second World War, the Maltese authorities were faced with a severe housing shortage. They thus engaged in an intensive restructure and construction exercise, taking possession of properties and rebuilding residences to provide social accommodation.⁴ Various pieces of legislation were introduced or amended⁵ to govern the requisition and acquisition of properties in such circumstances. Where property was requisitioned by the state, tenants were moved into the properties and then paid rent at a level fixed under the legislation.

2. Further, legislation imposing unilateral leases was introduced in the 1970s⁶ with the aim of the social protection of sitting tenants, as the authorities were faced with the possibility of large scale evictions of those tenants whose leases, granted in the 1950s and 1960s were due to expire.⁷

3. The applicants' properties were thus requisitioned or otherwise subject to control by the authorities primarily either for social housing or for reasons of housing policy and the applicants were forced into landlord/tenant relationships over which they had little control. Moreover, at the time the European Court gave its judgments, the applicants' were receiving rent based on the rental values at the time of the requisitions in the 1940s and 1950s (or in the cases in the *Amato Gauci* group, the ground rent set in the 1970s), which were disproportionately low by today's standards. The relevant legislation remains in place, having been only partially reformed in 1995 and 2010.

4. Referring to Article 46 of the Convention in *Ghigo and others*, the European Court noted that as a result of shortcomings in the Maltese legal system, particularly Maltese housing legislation, an entire category of individuals have been and are still being deprived of their right to the peaceful enjoyment of property.⁸ The European Court therefore considered that general measures at national level were called for⁹ and stated that the Maltese authorities must above all, through appropriate legal and/or other measures, secure in its domestic legal order a mechanism maintaining a fair balance between the interests of landlords, including their entitlement to derive profit from their property, and the general interest of the community – including the availability of sufficient accommodation for the less well-off – in accordance with the principles of the protection of property rights under the Convention.¹⁰

5. It should be noted that the Committee of Ministers is also supervising a number of other judgments against Malta¹¹ concerning violations of Article 1 Protocol 1, which do not concern the creation of imposed landlord/tenant relationships but rather outright expropriation of the property by the authorities (for more information on the status of execution in these cases, see www.coe.int/t/dghl/monitoring/execution/Default_en.asp).

⁴ *Saliba and Others*, §10.

⁵ Including the Housing Act examined by the European Court in the *Ghigo* group and Land Acquisition (Public Purposes) Ordinance examined by the European Court in *Saliba and Others*.

⁶ Act XXIII of 1979 amending the Housing (Decontrol) Ordinance examined in the *Amato Gauci* group.

⁷ *Amato Gauci*, §60.

⁸ *Ghigo*, Article 41 judgment, §25; *Edwards*, Article 41 judgment, §30.

⁹ *Ghigo*, Article 41 judgment, §27; *Edwards*, Article 41 judgment, §32.

¹⁰ *Ghigo*, Article 41 judgment, §28; *Edwards*, Article 41 judgment, §33.

¹¹ See Appendix for full list of all cases.

II. ASSESSMENT OF THE STATUS OF EXECUTION

A. Case description – Shortcomings identified by the European Court

6. The groups of cases included in this document address three different situations arising from separate pieces of legislation regarding controlled rents in Malta (violations of Article 1 of Protocol No. 1).

1) ***Ghigo group – requisitions under the Maltese Housing Act leading to imposed landlord-tenant relationships***

7. In the *Ghigo* group of cases, the European Court found that a disproportionate and excessive burden had been imposed on the applicants, further to the requisition of their properties under the Maltese Housing Act¹² between 1941 and 1984 and the imposition of landlord-tenant relationships, because of, *inter alia*, the extremely low rental value; the length of time that the properties had been requisitioned (between 22 and 65 years); and the number of restrictions on the landlords' rights¹³.

2) ***Amato Gauci group – forced indefinite extension of private leases under the Housing (Decontrol) Ordinance***

8. In the *Amato Gauci* group, the European Court found that a disproportionate and excessive burden had been imposed on the applicants, further to the operation of the Housing (Decontrol) Ordinance¹⁴ (as amended by Act XXIII of 1979) which from 1979 and 2000 respectively subjected them to continuing landlord-tenant relationships without their consent.¹⁵ In coming to that conclusion, the European Court criticised, *inter alia*, the low rental value; the rise in standard of living in Malta over past decades which implied less justification for such protected rents;¹⁶ the state of uncertainty as to whether the applicants would ever recover their properties and the lack of adequate procedural safeguards aimed at achieving a balance between the interests of the tenants and those of the owners.¹⁷

3) ***Saliba and Others – “Possession and Use” of the property by the state resulting in an imposed tenancy, and finally de facto expropriation***

9. In the case of *Saliba and Others*, the European Court found that a disproportionate and excessive burden had been imposed on the applicants, further to the state taking “possession and use” of the property in 1951 and its *de facto* expropriation in 1993 under the Land Acquisition (Public Purposes) Ordinance¹⁸ and given, *inter alia*, the applicants' state of uncertainty over six decades as to whether or not they would ever recover their property and the meagre amount of acquisition/recognition rent paid to them.¹⁹ The European Court noted in that regard that the domestic law did not provide for any increase in rent according to the cost of living and other factors but had to be tied to the rental values at the time of the taking of the property (in this case in 1951). It considered that this system could only lead to unreasonable results.²⁰

¹² Chapter 125 of the Laws of Malta.

¹³ Including for example, their lack of influence on the choice of tenant and their inability to obtain restitution of the property solely on the basis that they needed to move into the property themselves (*Ghigo*, §64).

¹⁴ Chapter 158 of the Laws of Malta.

¹⁵ At the end of either temporary emphyteusis contracts (as in *Amato Gauci*) or leases where the tenants were Maltese citizens and occupied houses as ordinary residences (as in *Anthony Aquilina*).

¹⁶ *Anthony Aquilina*, §65.

¹⁷ *Amato Gauci*, §63 and *Anthony Aquilina*, §67.

¹⁸ Chapter 88 of the Laws of Malta.

¹⁹ *Saliba and Others*, §67.

²⁰ *Saliba and Others*, §65.

B. Individual Measures

1) *Just satisfaction*

10. The awards of just satisfaction for both pecuniary and non-pecuniary damage have been paid. In some cases, no further individual measures appear to be necessary because the applicants are no longer subject to the measures which placed a disproportionate and excessive burden upon them.²¹

2) *Other measures*

11. The properties belonging to the applicants *Ghigo* and *Edwards* are still subject to the impugned requisition orders. In this respect, it should be noted that the European Court considered it was not empowered under the Convention to direct the Maltese authorities to annul or revoke the requisition orders.²² It further concluded that it was not for it to quantify the amount of rent due in the future and consequently dismissed the applicants' claim for future losses subject to action being taken by the Government to put an end to the violation found by putting in place a mechanism which would allow a fair amount of rent to be paid in future years (see under general measures below).²³

12. The applicants in the two cases in the *Amato Gauci* group also remain subject to the imposed landlord-tenant relationships at issue before the Court. The European Court concluded that it was not for it to quantify the amount of rent due in the future and consequently dismissed the applicants' claim for future losses without prejudice to any future claims that they may have.²⁴

Assessment

The outstanding individual measures in the cases of *Ghigo*, *Edwards* and the *Amato Gauci* group are linked to the general measures. In the case of *Ghigo* and *Edwards*, that is the establishment of a mechanism which would establish a fair balance between the interests of landlords and their tenants (including a fair amount of rent). In the case of the *Amato Gauci* group, that is the introduction of adequate procedural safeguards aimed at achieving a balance between the interests of the tenants and those of the owners, including the possibility to evict the tenants or obtain an adequate amount of rent (see general measures below).

C. General Measures

1) *Ghigo* group

13. In their action report in the *Ghigo* group, the Maltese authorities explain that the Housing Act has been amended²⁵ to prohibit the requisitioning of any further property. In addition, they indicate, without giving any further details, that following the adoption of Act III of 1995, a number of practical measures were taken which have drastically reduced the number of properties subject to requisition orders from 54,000 in 1964 to 1,286 in 2008.

²¹ In *Fleri Soler and Camilleri*, the requisitioned property was returned to the applicants in 2007, see Article 41 judgment, §16. In *Saliba and Others*, the Maltese authorities have since purchased the impugned property outright from the applicant, see Article 41 judgment, §15.

²² *Ghigo*, principal judgment, §77; *Edwards*, principal judgment, §83.

²³ *Ghigo*, Article 41 judgment, §24; *Edwards*, Article 41 judgment, §29.

²⁴ *Amato Gauci*, §80; *Anthony Aquilina*, §73.

²⁵ For the avoidance of any doubt, the authorities do not indicate in the action report when this amendment took place.

14. Furthermore, since the *Ghigo* judgment, the Maltese authorities have introduced a general reform to rental laws by means of Act X of 2009, which came into force on 1 January 2010. These laws have:

- established a statutory minimum rent, revisable every three years according to the cost of living index;
- allowed owners to raise annual rent by six per cent of any costs incurred to effect repairs to the properties; and
- introduced a number of restrictions on the inheritance of tenancies, including co-habitation requirements, the introduction of a means test and the possibility of the revision of the amount of rent payable.

15. In their action report, the Maltese authorities also state, without providing further details, that they have taken various measures to facilitate the reversion of leased premises to their owners.

16. The action report does not contain any information about whether or not individuals whose properties were subject to requisition and the imposition of landlord-tenant relationships in the past have access to an effective domestic remedy, including compensation, for their complaints under Article 1 of Protocol 1.

17. In January 2015, the European Court communicated a number of similar cases to the Maltese Government.²⁶

Assessment

Elimination of property requisition

It is positive both that the requisition of any future properties is no longer permitted under domestic law and that, as a result of measures taken by the Maltese authorities since 1995, the number of requisitioned properties has reduced significantly in the last twenty years. This implies that no new landlord-tenant relationships can be imposed in similar circumstances to those at issue in the *Ghigo* group of cases and that the number of people in situations similar to the applicants, subjected to a disproportionate and excessive burden due to the requisition of their properties, has significantly reduced.

Ensuring appropriate rent for existing tenancies

The general reform to rental laws by means of Act X of 2009 also appears to be positive in that it introduces a statutory minimum rent and, given the apparent restrictions on the inheritance of tenancies together with the requirement of a means test, it may have the capacity to eventually phase out these types of imposed landlord-tenant relationships.

However, in separate information submitted in 2010²⁷, the authorities stated that the above rent reforms were not applicable to the situation of the applicants because they did not cover premises requisitioned or otherwise controlled in the public interest. Indeed, section 39(8) of Act X of 2009 states that the Act does not apply to the impugned Housing Act (unless the Minister responsible for accommodation provides otherwise in Regulations). Thus the authorities should clarify whether the Act applies in respect of requisitioned properties and, if so, from what date.

Furthermore, in order to enable a comprehensive assessment of these general reforms and whether or not they now provide a mechanism maintaining a fair balance between the interests of landlords and the general interest of the community, further information and clarification is required:

- does the legislation set out the modern criteria for terms such as “tenant in need”, “fair rent” and “decent profit” as suggested by the European Court under Article 46 of the Convention?²⁸
- what is the statutory minimum rent now laid down in law and how did the Maltese authorities decide upon that figure? On which basis can this be considered to be “fair rent”?

²⁶ *Vella v. Malta*, no.73182/12; *Montanaro Gauci and Others*, no.31454/12; and *Apap Bologna*, no.46931/12.

²⁷ By letter to the Department of Execution of Judgments dated 06/07/2010.

²⁸ *Ghigo*, Article 41 judgment, §29; and *Edwards*, Article 41 judgment, §34.

In addition, in order to enable an assessment of whether or not the amendments to the law on the inheritance of tenancies by Act X of 2009 mean that owners may in certain circumstances be able to retake possession of their properties upon the death of the tenant, it would be helpful if the authorities could provide further details:

- what are the details of the means test to be satisfied for the inheritance of a tenancy and has this means test already been introduced?²⁹
- what possibilities exist for the revision of the rent in the event of the inheritance of the tenancy?

Effective remedies

The authorities should provide more detail regarding the measures referred to in the *Ghigo* action report which would facilitate the reversion of leased premises to their owners:

- Is there a mechanism in place to which owners are entitled to apply to seek the return of their leased properties?
- If so, how does it function and what legislation governs its operation?
- If not, what means of redress and remedies are available to these owners?

Finally, the authorities should clarify the implications of the European Court's findings in the recent *Anthony Aquilina* judgment (see below) on the above measures taken in the *Ghigo* group through the general reform to rental laws by means of Act X of 2009.

2) *Amato Gauci*

18. In the *Amato Gauci* action plan, the Maltese authorities explain that they intend to extend the above general reform of rental laws to the unilateral leases at issue created under the legislation impugned in the *Amato Gauci* case³⁰. The Maltese authorities consider that such amendments will address the European Court's findings and indicate that the amendments were to be drafted by the end of 2014.

19. The Maltese authorities also explain that domestic courts make reference to the European Court's judgment but do not explain what the implications of these domestic judgments may be.³¹ In their action plan, the Maltese authorities also state that they have taken various measures to facilitate the reversion of leased premises to their owners without providing further details.

Assessment

Elimination of forced landlord-tenant relationships

From the outset, it should be noted that 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 1995.³² Thus, new forced landlord-tenant relationships can no longer be imposed in circumstances such as those in the *Amato Gauci* group.

Ensuring appropriate rent for existing tenancies

As regards the authorities' proposal to extend the general rent reforms to these cases, it should be noted that in the recent judgment of *Anthony Aquilina*, the European Court, despite certain doubts about the same, was prepared to accept that those reforms were already applicable to the applicant's

²⁹ Section 1531F of Act X of 2009 provides that "a person shall not be entitled to continue the lease following the death of the tenant, unless such person satisfies the means test criteria which the Minister responsible for accommodation may introduce from time to time".

³⁰ The Housing (Decontrol) Ordinance as amended by Act XXIII of 1979.

³¹ The authorities refer to a number of Constitutional Court's judgments including *Carmen Zammit et vs Commissioner of Lands et* (application number 20/2010, decided on 26/04/2013), *Albert Cassar et vs Prime Minister et* (application number 14/2010, decided on 22/2013) and *Dr Cedric Mifsud et vs Attorney General et* (application number 33/2010, decided on 25/10/2013).

³² According to the amended section 16(3) of the Housing (Decontrol) Ordinance, see *Amato Gauci*, §25 and *Anthony Aquilina*, §12.

case. The European Court nevertheless considered that even with these reforms, a disproportionate and excessive burden was imposed on the applicant given, *inter alia*, that the tenancy could still be inherited; that the applicant could not increase the rent more than as provided for by the recent amendments; the rise in standard of living in Malta over past decades which implied less justification for such protected rents; and the absence of adequate procedural safeguards aimed at achieving a balance between the interests of the tenants and those of the owners.

Thus it is clear that the extension of the general reform of rental laws to unilateral leases imposed by the amended Housing (Decontrol Ordinance), would not be sufficient to alleviate the disproportionate and excessive burden on the applicants and others in their situation. Indeed, the European Court has noted that the situation in these cases “might be said to involve a degree of public interest which is less marked than in previous similar Maltese rent-law cases and which does not justify such a substantial reduction [in rent/profit] compared with the free market rental value.”³³

Effective remedies

In this respect it is important to recall that, in the *Amato Gauci* group, the European Court criticised the lack of remedy which would have enabled the applicants to evict the tenants or obtain an adequate amount of rent.³⁴ Further information is therefore required as to what procedural safeguards are envisaged to provide those property owners in a similar situation to the applicant with an effective remedy enabling them to challenge both the amount of rent fixed and/or the actual tenancies imposed, either on the basis of their own need (or that of their relatives), or on the basis that the tenants were not deserving of such protection because they owned alternative accommodation.³⁵ This is particularly important in light of the European Court’s recent comments in the *Anthony Aquilina* judgment that the degree of tenant protection to the detriment of owners in these cases may no longer be justified.³⁶

Last, information is necessary on whether individuals in a similar position to the applicants have access to an effective remedy enabling them to claim compensation for their complaints under Article 1 Protocol 1.

3) *Saliba and Others*

20. The *Saliba and Others* action report does not contain any information about the general measures taken or envisaged to respond to the European Court’s finding of a violation of Article 1 of Protocol 1.

Assessment

It is important that the Maltese authorities provide information on the measures taken to respond to the European Court’s findings regarding Article 1 of Protocol 1. In particular, it would be useful if the authorities could provide responses to the questions set out below.

It is noted that the Court’s judgment makes reference to a Government Declaration in 1988 that they would no longer be resorting to such takings and that they were converting such takings into takings by “absolute purchase”.³⁷ In light of the same, the Maltese authorities should confirm that there are no longer any properties in Malta still subject to acquisition for “possession and use” and “public tenure” under section 5 of the Land Acquisition (Public Purposes) Ordinance.

If properties are still being held for “possession and use” and “public tenure”, the authorities should confirm what measures have been taken to respond to the European Court’s criticisms in *Saliba and Others* that the law did not provide for any increase in acquisition/recognition rent according to the

³³ *Amato Gauci*, §77; *Anthony Aquilina*, §72.

³⁴ *Amato Gauci*, §61.

³⁵ *Amato Gauci*, §61.

³⁶ Given, *inter alia*, the rise in standard of living in Malta over the last decades, the very small proportion of their annual income that protected tenants must pay in rent, together with the substantial amount of vacant property in Malta, see *Anthony Aquilina*, §65.

³⁷ *Saliba and Others*, §14.

cost of living and other factors but had to be tied to rental values at the time of the President's Declaration (in this case in 1951)?³⁸

Last, information is necessary on whether individuals in a similar position to the applicants have access to effective remedies enabling them to obtain reasonable rent; and to claim compensation for their complaints under Article 1 Protocol 1.

III. CONCLUSIONS

21. Positive steps have been taken to address the scale of the problem, which has been significantly reduced in recent years. It is also welcome that the authorities have initiated legislative reforms in this domain. However, for the reasons set out above, there is a lack of clarity on the content and the scope of the application of those reforms and how they will benefit property owners, such as the applicants in these cases, whose properties continue to be the subject of imposed tenancies. Most importantly, further information is required on effective domestic remedies and the procedural safeguards in place for these property owners in particular as repetitive cases are pending before the European Court.

22. Furthermore, information must be provided on the measures taken in response to the *Saliba and Others* judgment in order to advance the status of execution in this case.

³⁸ *Saliba and Others*, §§64-65.

IV. Appendix of all pending judgments against Malta relating to Article 1 of Protocol 1

Table 1 - Judgments against Malta referred to in detail in this document

Application no.	Date of final judgment	English case title - precedent cases in bold	Issue / Precedent case
31122/05	26/12/2006	Ghigo	Requisitions under the Maltese Housing Act leading to imposed landlord-tenant relationships
35349/05	26/12/2006	Fleri Soler and Camilleri	Ghigo
17647/04	24/01/2007	Edwards	Ghigo
47045/06	15/12/2009	Amato Gauci	Forced indefinite extension of emphyteusis contracts or leases under the Housing (Decontrol) Ordinance
3851/12	20/04/2015	Anthony Aquilina	Amato Gauci
20227/10	22/02/2012	Saliba and Others	"Possession and use" of the property by the state resulting in an imposed tenancy

Table 2 - Other judgments against Malta concerning violations of Article 1 Protocol 1, which were not examined in this document

Application no.	Date of final judgment	English case title - precedent cases in bold	Issue / Precedent case
42583/06	10/02/2010	Schembri and Others	Different violations relating to inadequate compensation for expropriation of properties
57862/09	11/01/2012	Vassallo	Schembri
2243/10	22/02/2012	Curmi	Schembri
2226/10	22/02/2012	Frendo Randon and Others	Schembri
14796/11	09/10/2013	Deguara Caruana Gatto and Others	Schembri
26771/07	05/07/2011	Gera De Petri Testaferrata Bonici Ghaxaq	Delays in Land Arbitration Board proceedings and compensation proceedings
28177/12	06/02/2015	Azzopardi	Gera de Petri Testaferrata Bonici Ghaxaq