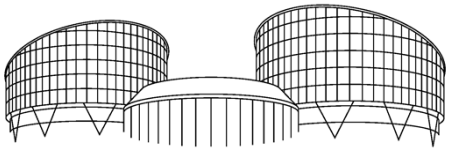

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BRADSHAW AND OTHERS v. MALTA

(Application no. 37121/15)

JUDGMENT

STRASBOURG

23 October 2018

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

In the case of Bradshaw and Others v. Malta,

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

Branko Lubarda, *President,*
Vincent A. De Gaetano,
Helen Keller,
Dmitry Dedov,
Georgios A. Serghides,
Jolien Schukking,
María Elósegui, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 2 October 2018,

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

PROCEDURE

1. The case originated in an application (no. 37121/15) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by twenty-four Maltese nationals and a company registered in Malta (see appendix for details), ("the applicants"), on 20 July 2015.

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

3. The applicants alleged that they had been suffering an ongoing interference with their property rights in breach of Article 1 of Protocol No. 1 to the Convention. They also considered that they were being discriminated against with regard to the enjoyment of their property, since as the law stood, they were obliged to renew their rent agreement on a yearly basis, while people having commercial rents had been freed from such obligation through amendments introduced to the Civil Code in 2009.

4. On 4 January 2017 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

5. The applicants are joint owners of the property at number 274, Republic Street, Valletta. The property, known as the "King's Own Band Club" (hereinafter referred to as "the KOBC"), is a four-storey building of 864 square metres, and is located in a prime site in Malta's capital city.

6. Initially, the property belonged to the applicants' ascendants. In 1946, the applicants' ascendants entered into a rent agreement with the KOBC, whereby they willingly rented the said property for 500 pounds sterling (GBP) annually (around 1,164.69 euros (EUR)). In 1955 legislation specifically regulating the lease of property to band clubs (Act V of 1955, hereinafter "the 1955 amendments") was introduced.

7. By law (The Civil Code read in conjunction with the Re-letting of Urban Property (Regulation) Ordinance – see relevant domestic law below), the applicants are obliged to renew, on an annual basis, the lease entered into by their ascendants, and may not demand an increase in rent. According to the applicants', the property's market rental value (in 2014) was EUR 269,100 annually.

8. Part of the property is utilised as a band club, and part of the property is operated as a restaurant and bar. The applicants claim that the operation of the restaurant and bar is a profitable economic activity that generates an income to the caterer of around EUR 150,000 or more annually.

9. In 2009, amendments were introduced to allow for increases in certain rents and to establish a cut-off date for existing protected leases relating to commercial properties, which are thus to come to an end in 2028. These amendments did not affect the applicants' property which is rented out as a band club. The amendments however also gave the relevant Minister the power to regulate conditions relating to clubs, thus allowing for the possibility of future amendments (see paragraph 19 below).

1. Constitutional redress proceedings

10. In 2011, the applicants filed proceedings before the Civil Court (First Hall) in its constitutional jurisdiction. The proceedings were brought against the Attorney General (hereinafter referred to as "the AG"), the Prime Minister (hereinafter referred to as "the PM") and the King's Own Band Club (the lessee). The applicants claimed that their right to peaceful enjoyment of the property as protected under Article 1 of Protocol No. 1 to the Convention was being breached. They claimed that they were being

denied the use of their property without being provided with adequate compensation. The applicants further submitted that, in 2009, the law had been amended, allowing for an increase in rent and the establishment of a cut-off date for existing "protected rents", but the amendments in the law did not cover properties rented out as clubs. Therefore, in contrast with other commercial rents, the annual rent for the club could not be raised, and the rent contract could not be terminated. The applicants claimed that the law was discriminatory and was therefore in violation of Article 14 of the Convention.

11. On 8 October 2013, the Civil Court (First Hall) in its constitutional jurisdiction found that the applicants had suffered a violation of Article 1 of Protocol No. 1 to the Convention in so far as the interference with the applicants' property rights had not been proportionate. The applicants had submitted that the property had a rental value of EUR 269,100 a year, while the AG and the PM had submitted that the property had a rental value of EUR 93,000 a year. Irrespective of which value one was to consider, the court concluded that the rent being received by the applicants was disproportionate. Keeping in mind the estimated rental values presented before the court, and the income that the KOBC was generating from its bar, the court awarded EUR 300,000 in damages to the applicants (to be paid half by the AG and the PM jointly, and half by the KOBC). The costs of the proceedings were to be paid, half by the AG and PM, and the other half by the KOBC.

12. The court further concluded that the applicants had not suffered any discrimination as no satisfactory proof had been presented showing that they were discriminated against when compared to other owners leasing their property as a club.

13. The AG, PM and KOBC filed an appeal before the Constitutional Court.

14. On 6 February 2015 the Constitutional Court overturned in part the judgment of the first-instance court, and concluded that there had been no violation of the applicants' rights. The Constitutional Court ordered that the costs of proceedings at both instances be paid by the applicants.

15. The Constitutional Court found that contrary to that pleaded by the Government, the applicants did have title of ownership over the property at issue. However, in line with domestic case-law the Constitutional Court concluded that, because the agreement had been entered into voluntarily with full knowledge of the consequences it would lead to (that is, that the rent due could not be raised and the rent agreement could not be terminated), then the applicants could not allege a violation of their rights. This was so, even if due to the rate of inflation throughout the years, the rent due was now to be considered low. The Constitutional Court further held that the amendments to the law of 2009, mentioned by the applicants, did not affect their position which remained the same as that when the rent

agreement had been entered into [in 1946], and therefore there was no reason for the principle of *pacta sunt servanda* ("agreements must be complied with") not to be given full effect.

2. Retrial proceedings

16. On 6 May 2015, the applicants filed an application for retrial. They claimed that the Constitutional Court had committed an error of fact and applied a wrong interpretation of the law. They noted that the protection given in law to clubs was introduced in 1955 while their predecessors in title had entered into a lease agreement in 1946.

17. Nevertheless, the applicants also instituted proceedings before this Court on 20 July 2015.

18. On 3 February 2016 the Constitutional Court rejected the applicants' request for a re-trial. The Constitutional Court held that, as the law stood, retrial could not be applied in regard to a case of a constitutional nature. The costs of the proceedings were to be paid by the applicants.

3. Relevant amendments

19. Pending the constitutional redress proceedings (on appeal), on 1 January 2014, the Conditions Regulating the Leases of Clubs Regulations (hereinafter 'the Regulations'), Subsidiary Legislation Chapter 16.13 of the Laws of Malta came into force (see relevant domestic law).

20. The Regulations provided that the rent payable to the owners by the band clubs holding the property under title of lease was to be increased by 10% (from the previous year) every year until 2016 and as from 1 January 2016 the rent was to be increased by 5% (from the previous year) every year until 2023, following which it would increase every year according to the index of inflation. As from 2015 the tenant also had to pay an additional rent calculated at the rate of 5% on the annual income derived by the club. As a result in 2015 the total annual rent paid to the applicants by the KOBC was EUR 2,876. 26 and in 2016 EUR 3,017.20,

II. RELEVANT DOMESTIC LAW

21. Act I of 1925 introduced restrictions whereby controlled rents were applied to urban property. Article 2 of Act I of 1925 defined the term premises as "any urban immovable property". The owner was only able to gain back the possession of the property by requesting authorisation from the Rent Regulation Board on condition that the owner was able to prove that the lessee was not paying the rent or that the property was needed for the accommodation for the owner himself or his ascendants and descendents. Act I of 1925 was intended to provide such protection until 1929. By means of Act XXIII of 1929 the obligation of renewal of leases

was extended until 1933. In the meantime, in 1931, Ordinance XXI had been promulgated (originally Chapter 109 of the Laws of Malta, today Chapter 69 of the Laws of Malta), which provided that the obligation to renew a lease was an indefinite obligation. In 1955 legislation specifically regulating the lease of property to band clubs (the 1955 amendments) was introduced.

22. Article 2, of the Reletting of Urban Property (Regulation) Ordinance, Chapter 69 of the Laws of Malta (as applicable to date), in so far as relevant, reads as follows:

> "In this Ordinance, unless the context otherwise requires -
>
> the expression 'club' means any club registered as such at the Office of the Commissioner of Police under the appropriate provisions of law"

1. The 2009 amendments

23. Article 1531I and Article 1531J of the Civil Code, Chapter 16 of the Laws of Malta, read as follows:

Article 1531I

> "In the case of commercial premises leased prior to 1st June, 1995, the tenant shall be considered to be the person who occupies the tenement under a valid title of lease on the 1st June, 2008, as well as the husband or wife of such tenant, provided they are living together and are not legally separated, and also in the event of the death of the tenant, his heirs who are related by consanguinity or by affinity up to the grade of cousins inclusively:
>
> Provided that a lease of commercial premises made before the 1st June, 1995 shall in any case terminate within twenty years which start running from the 1st June, 2008 unless a contract of lease has been made stipulating a specific period. When a contract of lease made prior to the 1st June, 1995 for a specific period and which on the 1st January, 2010 the original period *di fermo* or *di rispetto* is still running and such period of lease has not yet been automatically extended by law, then in that case the period or periods stipulated in the contract shall apply. A contract made prior to the 1st June, 1995 and which is to be renewed automatically or at the sole discretion of the tenant, shall be deemed as if it is not a contract made for a specific period and shall as such terminate within twenty years which start running from the 1st June, 2008."

Article 1531J

> "In the case of a tenement leased to an entity and used as a club before the 1st June, 1995 including but not limited to a musical, philanthropic, social, sport or political entity, when its lease is for a specific period and on the 1st January, 2010 the original period *di fermo* or *di rispetto* is still running and the lease has not yet been automatically extended by law, then in that case the period of lease established in the contract shall apply. In all other instances where the contract of lease was made prior to the 1st June, 1995 the law and all definitions as in force on the 1st June, 1995 shall continue to apply:
>
> Provided that notwithstanding the provisions of the law as in force before the 1st June, 1995, the Minister responsible for accommodation may from time to time

make regulations to regulate the conditions of lease of clubs so that a fair balance may be reached between the rights of the lessor, of the tenant and the public interest".

2. The 2014 amendments

24. In 2014, the Conditions Regulating the Leases of Clubs Regulations, Subsidiary Legislation Chapter 16.13 of the Laws of Malta were introduced through Legal Notice 195 of 2014. In so far as relevant, these Regulations provide that:

"2. (1) The rent of a club as referred to in Article 1531J of the Civil Code which is paid on the basis of a lease entered into before the 1st June 1995 shall, unless otherwise agreed upon in writing after the 1st January 2014, or agreed upon in writing prior to the 1st June 1995 with regard to a lease which was still in its original period *di fermo* or *di rispetto* on the 1st January 2014, as from the date of the first payment of rent due after the 1st January 2014, be increased by a fixed rate of ten per cent over the rent payable in respect of the previous year and shall continue to be increased as from the date of the first payment of rent due after the 1st January of each year until and including the year 2016 by ten per cent over the previous rent.

(2) The rent as from the first payment of rent due after the 1st January 2017 shall be increased by a fixed rate of five per cent over the rent payable in 2016. Such rent shall continue to be increased by five per cent *per annum* until the 31 December 2023 and the rent shall thereafter increase every year according to the index of inflation for the previous year.

3. (1) Where club premises or part thereof to which these regulations apply are used for the generation of income through an economic activity carried out in the said premises, then as from the 1st January 2015 the tenant of the said premises shall also pay the person entitled to receive the rent a sum equivalent to five per cent of the annual income derived by the club from the said economic activity, other than income derived from fundraising or philanthropic activities organized and managed by the club itself:

Provided that for the purposes of this regulation, income generated from economic activity means any income which is directly or indirectly derived from the bar and, or restaurant and from any lease, sub-lease, lease of a going-concern or a management agreement of the said premises that is leased out as a club or part thereof.

(2) The amount referred to in sub-regulation (1) shall be calculated on an annual basis and shall be payable by the 30th September of the following year with the first payment being due in respect of the year 2015 by the 30th September 2016.

(3) The annual income referred to in sub-regulation (1) shall be calculated on the basis of financial statements signed by a certified public accountant in the case of clubs having an income of less than €200,000 *per annum* and by audited financial statements in the case of clubs having an income of €200,000 or more *per annum*".

THE LAW

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

25. The applicants complained that they had been suffering an ongoing interference with their property rights in breach of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

26. The Government contested that argument.

A. Admissibility

1. Scope of the complaint/ compatibility ratione temporis

27. The Court reiterates that its jurisdiction *ratione temporis* covers only the period after the ratification of the Convention or its Protocols by the respondent State. From that date onwards, all of the State's alleged acts and omissions must conform to the Convention or its Protocols and subsequent facts fall within the Court's jurisdiction even where they are merely extensions of an already existing situation (see, for example, *Bezzina Wettinger and Others v. Malta*, no. 15091/06, § 52, 8 April 2008).

28. The Court notes that in their application the applicants did not specify a date as to when they started suffering from the continuing violation, and that their just satisfaction claims concern the period starting from 1967 (date of Malta's ratification) onwards. Indeed the Government raised no objection in this respect.

29. In that light the Court considers that the complaint does not concern the period before 1967 which would be incompatible *ratione temporis* with the provisions of the Convention.

30. The Court finds that the complaint in the present case which refers to the subsequent period is compatible *ratione temporis* with the provisions of the Convention.

2. The Government's objection of lack of victim status

31. The Government submitted that protection of urban property, which in their view comprised band clubs, under controlled rents with an

obligation to renew the lease had been in force since 1925. They argued that the 1955 amendments had been effected to distinguish band clubs from other urban property as these clubs had evolved over the years, and by 1947 there were sixty band clubs, with one or more for every parish. Nevertheless, the applicants' ancestors had freely entered into the lease agreement with KOBC on 1 May 1946, knowing what the consequences would be. Thus, in the Government's view, the applicants had not been subjected to an interference and could not claim to be victims of the alleged violation.

32. The applicants submitted that their ascendants had entered into the lease agreement in 1946 and they could not foresee, at that time, that nine years later the Government was going to protect club leases indefinitely. They highlighted that it was only in May 1955 that the rent laws were amended to specifically include band clubs. Indeed had the Government's contention (that band clubs fell under the definition of urban property) been true, there would hardly have been any need to introduce the 1995 law specifically extending the effects of rent laws to band clubs.

33. The Court need not determine whether under domestic law band clubs were already subject to such restrictions in 1946, as even in the event that they were the Court has already examined similar scenarios.

34. The Court has previously held that in a situation where the applicants' predecessor in title had, decades before, knowingly entered into a rent agreement with relevant restrictions (specifically the inability to increase rent or to terminate the lease), the applicants' predecessor in title could not, at the time, reasonably have had a clear idea of the extent of inflation in property prices in the decades to follow. Moreover, the Court observed that when such applicants had inherited the property in question they had been unable to do anything more than attempt to use the available remedies, which had been to no avail in their circumstances. The decisions of the domestic courts regarding their request had thus constituted interference in their respect. Furthermore, those applicants, who had inherited a property that had already been subject to a lease, had not had the possibility to set the rent themselves (or to freely terminate the agreement). It followed that they could not be said to have waived any rights in that respect. Accordingly, the Court found that the rent-control regulations and their application in those cases had constituted an interference with the applicants' right (as landlords) to use their property (see, for example, *Zammit and Attard Cassar v. Malta*, no. 1046/12, §§ 50-51, 30 July 2015).

35. There is no reason to hold otherwise in the present case. It follows that there has been an interference with the applicants' right (as landlords) to use their property, and thus they are victims of the violation complained of. The Government's objection is therefore dismissed.

3. Conclusion

36. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

37. The applicants submitted that the conditions of the lease agreements with clubs were "protected" by the Re-letting of Urban Property (Regulation) Ordinance by virtue of the amendment by Act V of 1955, which meant that not only were the owners bound (as they still are) to renew the lease automatically on a yearly basis and thus could not terminate the lease, they were also prohibited from imposing any increase in rent. They considered that the Regulations introduced in 2014 which finally provided for the possibility of an increase (within strict, controlled parameters) nevertheless did not suffice to alter the disproportionality of the measure.

38. The applicants noted that according to law the lease will never terminate and will subsist indefinitely meaning that the applicants will never enjoy their property as its owners, and that, in that light, any eventual sale transaction will suffer from a price reduction. Thus, the legislative measures introduced also failed to meet the "foreseeability" requirement since the law did not provide a termination date for the lease in question.

39. In the applicants' view the measure did not pursue any public interest since a significant area within the ground floor of the property was being used for a clearly commercial purpose, namely as a bar and restaurant open to the public which generated thousands of euros per year. This economic activity was disguised under the name of a 'band club' which was not used solely for the benefit of its members. The applicants submitted that the purpose of protecting band clubs should not be abused and extended to a situation where a band club is used to generate income and profits for the benefit of the lessee. In the present case, the use as a restaurant was not an ancillary activity for the benefit and exclusive enjoyment of its members but a free-standing income-generating activity. Indeed the management agreement entered into with the restaurant showed that the latter was paying the band club EUR 17,000 annually for the use of part of the ground floor. Furthermore, the applicants considered that while accepting that a band club had its cultural and social role, there was no reason why such a club needed to operate in a multi-storey building in a prime site in Malta's capital city.

The same cultural aim could have been achieved from a more modest property.

40. Moreover, no fair balance had been struck between the applicants' fundamental right to enjoy their property and the community at large. First of all, the rent they received of EUR 1,164.69 annually (in 2014) compared to the market rental value that same year, of EUR 269,100 annually, was disproportionate. The applicants submitted that EUR 1,164.69 annually was also disproportionate prior to 2014, given that, for example, calculations based on the property price index showed that in 2004 rent would have worked out to two thirds of that rent [i.e. around EUR 179,400]. The Regulations introduced in 2014 merely gave a 10% increase on the rent for the years 2014 to 2016 and a negligible 5% increase for the years 2016 till 2023. The rent from 2023 onwards will be regulated by the index of inflation, which was generally substantially low - for instance, the rate of inflation for the year 2014 was 0.31% and the rate for 2013 was 1.38%. The Regulations also provided a premium of 5% per annum on the profits of the lessee. However, theses profits were not foreseeable since the profits may vary from year to year. The fact remained that (in 2017) the applicants were receiving a rent of around EUR 3,000 while the rental market value was one hundred times as much (EUR 350,000 annually according to an expert report submitted to the Court).

41. Moreover, as a result of a law promulgated decades before, the applicants were barred from requesting a fairer rent. Nor had they had any other remedies, save for the constitutional proceedings which rejected their claim on appeal.

42. In reply to the Government's contention that the applicants' valuation was too high, the applicants submitted to the Court a Government scheme showing that the Government was leasing its own properties at substantial rates which were only slightly lower than market rates. Indeed in that scheme the Government's property intended for commercial use, situated in the same area as that of the applicants, was scheduled at a rental rate of EUR 500 per square metre (at ground floor level and the higher floors at 25% and 20% respectively of the ground floor rate) and was to be rented out for a determinate term. This was in stark contrast with the rent received by the applicants of EUR 1,164.69 for 865 square metres.

43. The applicants considered that as private individuals they should not be burdened with 'financing' or 'sponsoring' the social and cultural interests of the community. Indeed as things stood such burden was borne only by the landlords of leased clubs. Indeed the applicants considered that the Government's conclusion - that an annual rent of EUR 2,000 - 3,000 was proportionate - when the market value was closer to an annual rent of EUR 350,000, bordered on the cynical.

(b) The Government

44. Without prejudice to the above submissions as to the absence of an interference, the Government submitted that any interference would have been lawful, in accordance with Chapter 69 of the Laws of Malta (Chapter 109 at the time when the lease was entered into).

45. Any interference had also pursued a legitimate aim, namely the protection of the cultural identity of Maltese citizens. In the Government's view, band clubs played a very important role in Maltese culture in order to increase and stimulate the local musical talents and thus a public interest persisted even though such a cultural service was given by a private entity as in the present case. The Government explained that band clubs were prominent institutions and social centres in all towns and villages and the two Valetta band clubs practically enjoyed a national status in the Maltese cultural landscape. They noted that such clubs could not function in small secluded premises as they were at the heart of the village/town feast and that on the days before the feast and during the feast people would come together at the club to socialise whilst band marches were played in the centre of the village or town. Moreover, given that clubs were usually dependent on donations, the fact that they generated some income from a commercial activity did not eliminate the public interest element, given their primary function.

46. The Government submitted that in 1946 and subsequent years (it was envisaged that the lease would remain in force for a maximum of sixteen years and thus would expire in 1962) approximately EUR 1,645 as rent as established by contract was a substantial rent. Subsequently, until 2004, it could still not be said to be a low rent unless it was compared to rents charged to commercial entities or to Maltese persons who struggled to pay high rents. The Government emphasised that the rental valuation presented by the applicants (EUR 269,100 annually in 2014) was excessive and the applicants had not shown that there had been anyone willing to pay that amount. Indeed the Government had, during domestic proceedings, submitted a rental valuation of EUR 93,000 annually (in 2014). The Government submitted that in cases where there was a public interest for the measure owners were not due market values. Thus, in the light of the above, the Government considered that it was evident that the applicants had not suffered a disproportionate burden relative to the amount of rent payable until 2014.

47. Following the Regulations introduced in 2014, the rent payable increased by 10% (from the one applicable the year before) every year until 2016 (i.e. according to law, in 2015 the rent payable to the applicants was EUR 1,281.20 annually and in 2016 EUR 1,409.27 annually). As from 1 January 2016 the rent increased by 5% and will continue to do so until 2023, following which it will increase every year according to the index of inflation. As from 2015 the tenant also had to pay an additional rent

calculated at the rate of 5% on the annual income derived by the club. Indeed in 2015 the total annual rent paid to the applicants by the KOBC was EUR 2,876. 26 and in 2016 EUR 3,017.20, which in the Government's view was a considerable increase to the rent paid prior to the 2014 amendments. Thus, the Government submitted that a fair balance had been reached.

48. The Government also submitted that the comparison to the Government scheme mentioned by the applicants was not tenable as that scheme provided for acquiring shops on a temporary emphyteusis for forty-five years. The Government submitted that an empyhteutae is granted a real right on the property entitling him to exercise all the rights of ownership during the relevant period and thus his or her status was more similar to that of a landlord than a lessee. Moreover, an empyhteutae had an obligation to affect all necessary maintenance unlike the lessee.

49. The Government insisted that there was no arbitrary or unforeseeable impact on the applicants given that their ancestor had known the applicable conditions and limitations when he signed the contract in 1964. In any event the Government considered that there existed procedural safeguards, but that the Court should not look into the matter given that the ancestors were aware of the applicable regime in 1964.

2. The Court's assessment

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

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

(a) Whether the Maltese authorities observed the principle of lawfulness

52. The first requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions be lawful. In particular, the second paragraph of Article 1, while recognising that States have the right to control the use of property, subjects

their right to the condition that it be exercised by enforcing "laws". Moreover, the principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see, *mutatis mutandis*, *Broniowski v. Poland* [GC], no. 31443/96, § 147, ECHR 2004-V, and *Amato Gauci v. Malta*, no. 47045/06, § 53, 15 September 2009).

53. In the present case the measure affecting the applicants from 1967 onwards was in accordance with Chapter 69 of the Laws of Malta, and its subsidiary legislation. The mere fact that the law provided for an indefinite renewal of the lease, an element which plays a part in the assessment of the proportionality of the interference, does not suffice to make the law in itself unforeseeable. The interference was therefore "lawful" within the meaning of Article 1 of Protocol No. 1.

(b) Whether the measure pursued a "legitimate aim in the general interest"

54. A measure aimed at controlling the use of property can only be justified if it is shown, *inter alia*, to be "in accordance with the general interest". Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the "general" or "public" interest (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, §§ 165). In situations where the operation of rent-control legislation involves wide-reaching consequences for numerous individuals and has economic and social consequences for the country as a whole, the authorities must have considerable discretion not only in choosing the form and deciding on the extent of control over the use of property but also in deciding on the appropriate timing for the enforcement of the relevant laws. Nevertheless, that discretion, however considerable, is not unlimited and its exercise cannot entail consequences at variance with the Convention standards (see *Fleri Soler and Camilleri v. Malta*, no. 35349/05, § 76, ECHR 2006-X). However, these principles do not necessarily apply in the same manner where an interference effecting property belonging to private individuals is not aimed at securing the social welfare of tenants or preventing homelessness (ibid. § 77). In such cases the effects of the rent-control measures are subject to closer scrutiny at the European level (ibid., in connection with property requisitioned for use as government offices).

55. As submitted by the Government and also accepted by the applicants (see paragraph 39 above), a band club has a cultural and social role in Maltese society. In consequence the Court can accept that the measure pursued a legitimate aim in the public interest. Nevertheless, other considerations in this connection may be relevant to the proportionality of the measure. In particular, the Court reiterates that the use of property for reasons other than to secure the social welfare of tenants and prevent homelessness is a relevant factor in assessing the compensation due to the

owner (see *Fleri Soler and Camilleri v. Malta* (just satisfaction), no. 35349/05, § 18, 17 July 2008).

(c) Whether the Maltese authorities struck a fair balance

56. In each case involving an alleged violation of Article 1 of Protocol No. 1, the Court must ascertain whether by reason of the State's interference, the person concerned had to bear a disproportionate and excessive burden (see *Amato Gauci*, cited above, § 57). In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. That assessment may involve not only the conditions of the rent received by individual landlords and the extent of the State's interference with freedom of contract and contractual relations in the lease market, but also the existence of procedural and other safeguards ensuring that the operation of the system and its impact on a landlord's property rights are neither arbitrary nor unforeseeable. Uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct (see *Immobiliare Saffi v. Italy*, [GC], no. 22774/93, § 54, ECHR 1999-V, and *Broniowski*, cited above, § 151).

57. The Court observes that in the present case the lease was subject to renewal by operation of law and the applicants had no possibility to evict the tenant. Furthermore, the applicants were unable to fix the rent – or rather to increase the rent established by their predecessor more than seventy years ago. It was only in 2014 that the Regulations increasing the rent to be paid came into force, and those regulations nevertheless did not allow the applicants to set the rent themselves.

58. In relation to the rent which the applicants received the Court recalls that the use being made of the premises was as a band club as opposed to, for example, social housing, and thus that the situation in the present case might be said to involve a degree of public interest which is significantly less marked than in other cases and which does not justify such a substantial reduction compared with the free market rental value (see, *mutatis mutandis*, *Zammit and Attard Cassar*, cited above, § 75).

59. As to the rent payable from 1967 to 2013 (prior to the 2014 Regulations) the Court notes that the applicants were being paid EUR 1,164.69 annually, that is a rent of approximately EUR 97 per month for a multi-storey property of 864 square metres in a prime location in the capital city. The Court considers that while this might have been an appropriate rent in the 1960s (the original lease at that price was intended to expire in 1962), and possibly in the 1970s, it could not be said to be so decades later, for the following reasons.

60. Taking 2004 - a year relied on by the parties - the Court observes that the applicants claimed that a market rent for that year would be in the vicinity of EUR 179,000 annually while they were receiving EUR 1,164.69 annually. The Government did not submit any figures in relation to that period (despite admitting that there was a boom in the property market, see paragraph 89 below). The Court observes that the Government implicitly accepted that the applicable rent was a low rent (see paragraph 46 above). Indeed, contrary to the Government's assertion, the Court sees no reason why the applicable rent should not be compared to "rents charged to commercial entities or to Maltese persons" which are the relevant comparators and therefore the rent applicable to them is precisely what constitutes a current market value. Thus, even accepting that the applicants' valuation is on the high side, the Court considers that, as found by the first-instance constitutional jurisdiction which examined the proportionality of the measure, the rent received by the applicants could not be considered in any way proportionate.

61. Taking 2014 – a year also relied on by the parties – the Court observes that according to the applicants' expert's report the annual rental value of the property for 2014 was EUR 269,100 annually, while according to the Government's report, for that same year, it was EUR 93,000 annually. Thus, even on the basis of the Government's lower valuation, the applicants were receiving 1.25% of the market rental value. Moreover, at that same time, while the applicants were receiving solely EUR 1,164.69 annually for rent in respect of the entire building, the KOBC was receiving in rent EUR 17,000 annually from sub-letting only part of the ground floor. Contrary to the Government's allegation, the Court considers that the disproportionality in the present case is clear and manifest.

62. As for the period following 2014, and the introduction of the Regulations, the Court notes that in practical terms the ameliorated formula translated into the following rents for the applicants: EUR 2,876. 26 in 2015 and EUR 3,017.20 in 2016. The Court notes that, while the Regulations allowed for more or less double the rent previously received by the applicants, it still amounted to around 3% of the rental value estimated by the Government for the year 2014 (and around 1% of that estimated by the applicants). It was also around EUR 14,000 less than the rent the KOBC was obtaining for the use of part of the first floor by the catering facility. The Court thus considers that the situation following the 2014 remains disproportionate, and without any action by the legislature, it is likely to remain so indefinitely.

63. The Court reiterates that State control over levels of rent falls into a sphere that is subject to a wide margin of appreciation by the State, and its application may often cause significant reductions in the amount of rent chargeable. Nevertheless, this may not lead to results which are manifestly unreasonable (see, *mutatis mutandis*, *Amato Gauci*, cited above, § 62).

While the applicants do not have an absolute right to obtain rent at market value, the Court observes that, despite the recent amendments, the amount of rent is very much lower than the market value of the premises. Furthermore, the restriction on the applicants' rights has been in place for fifty years since the Convention came into effect in respect of Malta, and will remain so perpetually in the absence of any action by the legislature to establish the required balance. These elements must be weighed against the interests at play in the present case, which are not those of avoiding homelessness but of enhancing social and cultural activities, comprising those of a commercial nature.

64. While the Court has accepted above that the overall measure was, in principle, in the general interest, the fact that there also exists an underlying private interest of a commercial nature cannot be disregarded. In such circumstances, both States and the Court in its supervisory role must be vigilant to ensure that measures, such as the one at issue, do not give rise to an imbalance that imposes an excessive burden on landlords while allowing tenants to make inflated profits. It is also in such contexts that effective procedural safeguards become indispensable (see, *mutatis mutandis*, *Zammit and Attard Cassar*, cited above, § 63). The Government argued that there existed procedural safeguards, without mentioning what these were, preferring to rely on the fact that the applicants had no right to complain given their ancestors' knowledge of the applicable laws seventy years ago. The Court notes that the latter argument has repeatedly been rejected by the Court, as was done in paragraph 35 of the present case. From the information available to the Court, there were no avenues - other than constitutional redress proceedings - which the applicants could pursue to ameliorate their situation (if circumstances so required). Consequently, the application of the law itself lacked adequate procedural safeguards aimed at achieving a balance between the interests of the tenants and those of the owners (see, *mutatis mutandis*, *Amato Gauci*, cited above, § 62, *Anthony Aquilina v. Malta*, no. 3851/12, § 66, 11 December 2014 and *Statileo v. Croatia*, no. 12027/10, § 128, 10 July 2014).

65. Having assessed all the elements above, and notwithstanding the margin of appreciation allowed to a State in choosing the form and deciding on the extent of control over the use of property in such cases, the Court finds that, having regard to the use made of the property, the extremely low rent of the premises and the lack of procedural safeguards in the application of the law, a disproportionate and excessive burden was imposed on the applicants, who have had to bear and continue to bear a significant part of the social and financial costs of supporting a local custom by supplying the band club with premises for its activities, including commercial activities. It follows that the Maltese State failed to strike the requisite fair balance between the general interests of the community and the protection of the applicants' right to the enjoyment of their property.

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

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

67. The applicants complained of a violation of Article 14 in conjunction with Article 1 of Protocol No. 1 as they were being discriminated against with regard to the enjoyment of their property, since as the law stood, they were obliged to renew their rent agreement on a yearly basis, while people having commercial rents had been freed from such obligation through amendments introduced to the Civil Code in 2009. Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

68. According to the established case-law of the Court, Article 14 of the Convention complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts in issue fall within the ambit of one or more of the latter (see, among many other authorities, *Van Raalte v. the Netherlands*, 21 February 1997, § 33, *Reports of Judgments and Decisions* 1997-I; *Petrovic v. Austria*, 27 March 1998, § 22, *Reports* 1998-II; *Zarb Adami v. Malta*, no. 17209/02, § 42, ECHR 2006-VIII; and *Konstantin Markin v. Russia* [GC], no. 30078/06, § 124, ECHR 2012 (extracts)).

69. The Court considers that the facts at issue fall within the ambit of Article 1 of Protocol No. 1 and that Article 14 is therefore applicable in the instant case.

70. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

71. The applicants considered that, contrary to that held by the domestic court, the comparators in the present case were not other landlords of a club, but landlords of other commercial leases as per Article 1531I of the Civil Code. Rent legislation in Malta broadly distinguished between residential and commercial premises. However, it was amply clear that premises used as a 'band club' were not residential in nature, particularly, if a significant part of the premises were operated commercially. Thus, landlords of commercial leases and landlords of a band club were in a 'relatively similar situation' and, the right of enjoyment of property should thus apply to both indiscriminately. They recalled that the Convention prohibited discrimination on the bases of status, and that status included the status of the applicants as the landlords. They relied on *Berger Krall and Others v. Slovenia* (no. 14717/04, 12 June 2014).

72. The applicants submitted that according to Article 1531I of the Civil Code, commercial leases which were protected by law (before the amendments introduced by Act X of 2009) were liberalised in the sense that a termination date was established (not later than 2028). This gave the opportunity to the landlords of a commercial lease to enjoy their property once the lease agreement terminates (in 2028). Moreover, it made it feasible for a long-term investor to buy commercial premises, notwithstanding a running lease, in view of the knowledge that possession of the property would be returned within a foreseeable future. However, the applicants were being discriminated against since, as the law stood, they were obliged to renew their lease agreement on a yearly basis.

73. The applicants submitted that the Government's argument that the rent issues were being dealt with in a piecemeal fashion were not tenable since nearly a decade had passed since the 2009 amendments and there were no indications of any measure to be taken in respect of people in the applicants' situation. The applicants also considered that the Government were attempting to deceive the Court in so far as it was not correct to claim that the 2009 amendments in relation to commercial premises were linked to the amount of rent a property was generating. Indeed they were not, nor were they linked to the status of the company, its income or the type of business activity carried out. All commercial premises had been included irrespective of the value of the rent. Similarly, all band clubs had been excluded irrespective of the value of the rent, or any other consideration. Thus, it was not true that the commercial premises deserved greater attention because their rent was not high enough for landlords. Similarly, the fact that the property at issue was leased as a band club did not mean

that that private individuals could be deprived of the use of their property indefinitely, at a rent of 1% its market value, thus leaving land owners like the applicants to be the only ones carrying the relevant burden.

(b) The Government

74. The Government acknowledged that the applicants had been treated differently from owners of commercial premises. However, they opined that the distinction had an objective and reasonable justification. The Government submitted that commercial leases had been freed from the obligation of renewal as from 2028 as part of a rent law reform aimed to tackle old leases created prior to 1995. The rents applicable to those leases were tied to values of the early 1900s which created a disproportionate burden on owners. The Government also noted that the position of owners of premises leased as band clubs had also been improved through the reform by means of the 2014 amendments, which increased their rent - a measure which was not applied to owners of commercial premises.

75. The Government submitted that in an area as complicated as rent control, which developed over a period of eighty years, the fact that the authorities tackled the problem piecemeal to provide for those cases which raised the most concern could not constitute discrimination. Indeed the applicants who were receiving EUR 1,164.69 annually were better off than landlords who were receiving much less for commercial premises. The Government submitted that the State had objective and justifiable reasons based on economic assessments when it introduced such reforms. Moreover, they considered that band clubs as social institutions contributing to the identity of the country were more deserving of protection than commercial premises whose controlled leases where being phased out.

2. The Court's assessment

(a) General principles

76. The Court reiterates that in the enjoyment of the rights and freedoms guaranteed by the Convention, Article 14 affords protection against different treatment, without an objective and reasonable justification, of persons in similar situations. For the purposes of Article 14, a difference of treatment is discriminatory if it "has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised". Moreover, the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of the margin of appreciation will vary according to the circumstances, the subject matter and the background, but the Court must determine in the last resort whether the Convention requirements have

been complied with. Since the Convention is first and foremost a system for the protection of human rights, the Court must however have regard to the changing conditions in Contracting States and respond, for example, to any emerging consensus as to the standards to be achieved (see *Fabris v. France* [GC], no. 16574/08, § 56, ECHR 2013 (extracts)).

(b) Application to the present case

77. The Court considers that the applicants, as landlords of controlled property leased out as band clubs, are in a comparable situation to landlords of controlled property leased out for commercial use, as they are both persons subject to controlled properties which are not used for the social welfare of tenants or to prevent homelessness.

78. As admitted by the Government (see paragraph 74 above) the applicants were, however, treated differently in so far as - unlike landlords whose controlled property was leased out for commercial use - the applicants did not benefit from the change of law allowing their property to be free (from the imposed conditions) as of 2028 as provided by the 2009 amendments.

79. While the Court can accept that following repeated findings of violations in respect of the controlled-rent laws in Malta, the Government felt obliged to attempt to ameliorate the situation of owners whose property was subject to such rent laws or other rent-laws which could have raised the same problems, the Court must ascertain whether an objective and reasonable justification has been supplied by the Government as to why property owners, like the applicants, who were housing band clubs, were treated differently from their counterparts (compare *Cassar v. Malta*, no. 50570/13, § 80, 30 January 2018).

80. The applicants considered that there had been no objective justification behind such a legislative choice. The Government considered that the objective justification for the exclusion of the applicants from the relevant amendments was the fact that it was more important to protect band clubs than property used for commercial use, and that in any event the applicants had had other benefits, which had not been applied to owners of property leased for commercial purposes. The Government were also of the view that the owners of property leased for commercial purposes were suffering more than the applicants as a result of the applicable rent laws prior to the reform and that it was for that reason that the reform firstly tackled the latter group and then the group of persons in the applicants' position.

81. The Court is ready to accept that the State had to start from somewhere to improve the situation of owners suffering from the effects of controlled rents (see *Cassar*, cited above, § 81); indeed the Government submitted that ameliorating the situation of landlords of commercial purposes was a priority, both because such owners were suffering more and

because commercial premises deserved lesser protection, thus amendments in that respect had been a first step. The Court reiterates that no discrimination is disclosed as a result of a particular date being chosen for the commencement of a new legislative regime and differential treatment arising out of a legislative change is not discriminatory where it has a reasonable and objective justification in the interests of the good administration of justice (see *Amato Gauci*, cited above, § 71). While the Government failed to substantiate their claim that persons leasing out property for commercial purposes were suffering more than people in the applicants' position, the fact that commercial premises deserved lesser protection is for the purpose of this part of the assessment an acceptable argument. The Court is thus ready to accept that the Government's choice at the time of enacting the 2009 amendments fell within their margin of appreciation and was reasonably justified. The question remains, whether the situation persisting after that date was also reasonable and justified.

82. While the Government refrained from stating that situations such as those of the applicants would have been dealt with in a similar manner in the near future, they, however, argued that different measures had been taken in respect of the applicants. They referred to the 2014 amendments. The Court notes that it has already found above (see paragraphs 62 and 66 above) that the 2014 amendments were of little comfort to the applicants, who continued to suffer a breach of their property rights. Indeed more than eight years have passed since the 2009 amendments and the situation of persons in the applicants' position remains the same. According to the Government this different level of improvement was justified because band clubs were more deserving of protection. Accordingly, the Court accepts that the reason behind the applicants' continued exclusion from the amendment complained of was precisely the Government's will to continue to preserve local customs and in particular the functioning of band clubs, which in itself is not unreasonable.

83. The Court considers that if the global measures taken by the Government in respect of persons in the applicants' position reach the requisite balance between the interests at play, it would be possible to find that the difference in treatment pursued a legitimate aim and that there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised. In the present case the measure complained of by the applicants is that, according to the law at present, their property will not be "released" in 2028, while that of their comparators will. Thus, such an action will come to be in respect of their comparator only in ten years' time. From the parties' submissions the Court cannot conclude that further amelioration to the applicants' situation will not ensue until such date, even more so in the light of the violation upheld by the Court in the present case in relation to Article 1 of Protocol No. 1 to the Convention (see paragraph 66 above). Bearing in mind the foregoing considerations, the

Court finds that the current existing difference in treatment, in law, complained of by the applicants, may at this stage be considered reasonably justified.

84. It follows that there has not been a violation of Article 14 of the Convention, in conjunction with Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

1. The parties' submissions

86. In the absence of a possibility of the property being returned to them, the applicants claimed pecuniary damage amounting to EUR 10,400,694 plus 8% interest (domestic rate), in order to compensate for the loss of rental value they suffered from 1967 to 2017.

87. They noted that, on the one hand, based on the applicants' valuation of 2014, from 1955 till 2014 the rent that should have been received would have amounted to approximately EUR 15 million. On the other hand by taking into account the valuation of the defendants the rent that should have been received would have been around EUR 5 million, which was still a considerable sum. Thus, the compensation of EUR 300,000 awarded to the applicants by the first-instance constitutional jurisdiction was a very conservative one, albeit one which, in the circumstances, the applicants had been willing to accept. However, the applicants noted that they were still suffering from the violation which would persist *ad infinitum*. They therefore submitted a fresh updated architect report dated 2017 which estimated a fair rental value for that year as being EUR 352,550 annually (comprising EUR 111,750 for the ground floor as commercial premises, EUR 58,800 for the mezzanine, and EUR 91,000 each for the second and third floor rented out as offices). The report took into account the properties found in the same street as the applicants' property and the particular features and characteristics of the property at issue. On the basis of that report and relevant calculations back dating the rent for each of the relevant years (for example, the rent in 1967 is estimated as being approximately EUR 74,352, that in 1980 as being approximately EUR 153,958 and that

in 2000 as EUR 255,316), the total rent due was EUR 10,488,115.82 from which had to be deducted the rents actually received i.e. EUR 87,421.76.

88. The applicants also claimed EUR 300,000 in non-pecuniary damage.

89. The Government submitted that there was a boom in property prices only in around 2004 and that in any event the expert valuations submitted by the applicants were exorbitant. In their view, their own valuation was more reliable and showed an annual rental value in 2014 as being EUR 93,000 per year. Thus, in their view an award of EUR 20,000 sufficed to cover the years from 2004 to 2014 (date of the amendments) and that no interest was due on that amount as Convention proceedings should not be a kin to domestic claims for damage. They also considered that an award of EUR 5,000, jointly, sufficed as non-pecuniary damage.

2. The Court's assessment

90. The Court must proceed to determine the compensation the applicants are entitled to in respect of the loss of control, use and enjoyment of the property which they have suffered. The Court has already found that while the rent paid to the applicants might have been an appropriate rent in the 1960s – 70s it was not so decades later (see paragraph 59 above), it also found a violation for both the period before and after 2014, consequently the applicants are due compensation until the date of this judgment.

91. The Court notes the significant difference between the Government's only valuation (of 2014) and the valuations submitted by the applicants. While it is true that the property is a four-storey building, the Court observes that the principal part of its ground floor which is being used as a restaurant, and which the applicants' architect estimated in 2017 at EUR 111,750 was being rented out in 2014 at EUR 17,000. Moreover, the rent established willingly by the applicants' ancestors until 1962, which the Court found to be appropriate for 1960s – 70s, was EUR 1,164.69 annually, however, the backdated calculation submitted by the applicants estimates the market rent for that year as being EUR 74,352. The Court therefore considers that such an estimate has no reasonable foundation in the reality of the time. With that in mind, and noting that the upper floors are lower in price (as also shown by the applicants' valuation) it would appear that the Government's valuation is closer to the actual reality. Thus, in assessing the pecuniary damage sustained by the applicants, the Court has considered the estimates provided in as far as appropriate and has had regard to the information available to it on rental values on the Maltese property market during the relevant period. It also takes into account that the applicants were satisfied with the award of EUR 300,000 granted by the first-instance domestic court. To that amount must be added a sum in respect of the annual rent lost for the period 2013 to date.

92. The Court reiterates that legitimate objectives in the "public interest", such as those pursued in measures of economic reform or

measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (see *Ghigo v. Malta* (just satisfaction), no. 31122/05, § 18, 17 July 2008). In the present case however, the Court keeps in mind that the property was not used for securing the social welfare of tenants or preventing homelessness (compare *Fleri Soler and Camilleri*, (just satisfaction), cited above, § 18).

93. Furthermore, the sums already received by the owners for the relevant period must be deducted.

94. The Court reiterates that an award for pecuniary damage under Article 41 of the Convention is intended to put the applicant, as far as possible, in the position he would have enjoyed had the breach not occurred. It therefore considers that interest should be added to the above award in order to compensate for loss of value of the award over time. As such, the interest rate should reflect national economic conditions, such as levels of inflation and rates of interest (ibid., § 20). The Court thus considers that a one-off payment of 5% interest should be added to the above amount (see *Ghigo* (just satisfaction), cited above, § 20).

95. Hence, the Court awards the applicants, jointly, EUR 592,000 under this head.

96. The Court considers that the applicants must have sustained feelings of frustration and stress, having regard to the nature of the breaches. It thus awards the applicants, jointly, EUR 8,000 under this head.

B. Costs and expenses

97. The applicants also claimed EUR 17,013.87 (as per relevant receipts) for the costs and expenses incurred before the domestic courts (including for retrial proceedings) and the Court.

98. The Government did not contest the EUR 4,204.28 representing the applicants' costs of domestic proceedings but argued that the applicants had not shown that the remaining EUR 6,077.53 in defendants' costs they had been ordered to pay had actually been paid. They also submitted that costs for proceedings before this Court should not exceed EUR 2,000.

99. The Court considers, on the one hand, that the costs of retrial proceedings are not due, it being an extraordinary remedy which needed not be pursued for the purposes of the proceedings before this Court. On the other hand, as continuously reiterated by this Court, any sums in judicial costs ordered by the domestic courts (for the purposes of exhausting regular domestic proceedings) remain payable by the applicants, and thus must be awarded. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its

possession and the above criteria, the Court considers it reasonable to award the sum of EUR 10,700, jointly, covering costs under all heads.

C. Default interest

100. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares,* unanimously, the application admissible;

2. *Holds*, unanimously, that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*, by four votes to three, that there has been no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1 to the Convention;

4. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 592,000 (five hundred and ninety-two thousand euros), in respect of pecuniary damage;
      (ii) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 10,700 (ten thousand seven hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Branko Lubarda
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Judge Dedov;

(b) joint partly dissenting opinion of Judges Keller, Serghides and Schukking.

B.L.
J.S.P.

CONCURRING OPINION OF JUDGE DEDOV

It is always difficult for the Court to assess a case under Article 14 of the Convention. There is no consistency or clarity in its methodology. In the case of *Slivenko v. Latvia* ([GC], no. 48321/99, 9 October 2003), the Court found a violation of Article 8 because there were no formal obstacles to prevent the applicants from becoming permanent residents of Latvia; the applicants could not be regarded as endangering the national security of Latvia by reason of belonging to the family of a former Soviet military officer (see § 127 of the *Slivenko* judgment). The applicants in that case also relied on Article 14, complaining that they had been removed from Latvia as members both of the Russian-speaking ethnic minority and of the family of a former Russian military officer. Those arguments, based on different treatment of an ethnic minority, were much stronger, and the Court considered that it was not necessary to rule on the applicants' complaints under Article 14 of the Convention taken in conjunction with Article 8, in view of its finding of a violation of Article 8 of the Convention.

At the same time, in the case of *A.H. and Others v. Russia* (no. 6033/13, 17 January 2017), the Court examined the complaint (concerning different treatment of US adoptive parents and those from other countries) under Article 14 of the Convention taken in conjunction with Article 8, ignoring the absolute margin of appreciation in the sphere of international adoption. The Court, without providing any explanation, preferred to examine the complaint under Article 14, which is not autonomous, chose to exploit a stronger line of argument – including discrimination on the ground of nationality – and then held that it was not necessary to examine the core complaint under Article 8. In this area the Court must be careful to avoid double standards.

It is well established that Article 14 complements the other substantive provisions of the Convention and the Protocols thereto. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. The judges should take this principle into account and establish where is the core complaint - under the substantive provision or under Article 14. In the case of *Biao v. Denmark* ([GC], no. 38590/10, 24 May 2016), the core complaint concerned the Danish authorities' refusal to grant the applicant and his wife family reunion in Denmark on the basis of the attachment requirement under national law. The attachment requirement was thus the principal issue of the case. The applicant insisted that the authorities had taken their decision as a result of an unjustified difference in treatment between Danish nationals of Danish ethnic origin and Danish nationals of other ethnic origin. In the *Biao* case, it could be accepted that the discrimination issue under Article 14 was more important and it was reasonable not to examine the case solely under Article 8. The dissenting judges took different

positions as to whether it was necessary to examine Article 8 if there would be no violation of Article 14 in conjunction with Article 8. Judge Jäderblom preferred not to examine the application separately under Article 8, whereas judges Villiger, Mahoney and Kjølbro considered it necessary to examine the application under Article 8 taken alone. However, in their view, it was clear that there had been no violation of Article 8 of the Convention, since the female applicant had no ties with Denmark and their family life in Denmark was not feasible.

Equally, the Court may not examine the complaint if it is premature, for example, if the domestic authorities have not issued the final decision. In the present case, we have both criteria in place, which enabled the Court to examine the complaint under Article 14 on the merits: the complaint was based on the provisions of national law establishing different treatment for commercial landlords and band clubs; although the relevant provisions will become effective as from 2028, they were enacted in 2008, and thus the national authorities have already expressed their views on the issue. Since the rent legislation in Malta broadly distinguished between residential and commercial premises, the difference in treatment could therefore be justified due to the wide margin of appreciation and the principle of subsidiarity. It is not for the international judge, but for the national authorities, to solve social problems, including those arising from the automatic renewal of lease agreements.

Earlier in the judgment, the Court found a violation of Article 1 of Protocol No. 1 because of a disproportionate interference with the property rights of owners renting premises to band clubs (see the conclusions in paragraphs 65 and 66 of the judgment). The Court has found that a disproportionate and excessive burden was imposed on the applicants, arising mainly from the extremely low rent of these premises. Since Article 1 of Protocol No. 1 and Article 14 refer to different problems (economic and social) and to different issues (low rent and obligatory renewal of the lease), an examination by the Court of their merits is justified in the present case.

JOINT PARTLY DISSENTING OPINION OF JUDGES KELLER, SERGHIDES AND SCHUKKING

1. We voted against point 3 of the operative part because, in particular, we cannot follow the reasoning in paragraph 83 of the judgment; we would have preferred a more cautious approach on the Court's part concerning the issue whether the Maltese law in question was discriminatory.

2. Where the same set of facts or circumstances gives rise to claims under both Article 14 and Article 1 of Protocol No. 1, the Court has repeatedly found it "unnecessary to examine" the former claim (see, for example, *Cyprus v. Turkey* [GC], no. 25781/94, 10 May 2001; *Herrmann v. Germany* [GC], no. 9300/07, 26 June 2012; *Willis v. United Kingdom*, no. 36042/97, 11 June 2002; *Schneider v. Luxembourg*, no. 2113/04, 10 July 2007; *Alexandrou v. Turkey*, no. 16162/90, 20 January 2009; *Andreou Papi v. Turkey*, no. 16094/90, 22 September 2009; *Strati v. Turkey*, no. 16082/90, 22 September 2009; *Vrahimi v. Turkey*, no. 16078/90, 22 September 2009; and *Olymbiou v. Turkey*, no. 16091/90, 27 October 2009).

3. Thus, this Court has held that "having regard to its findings under Article 1 of Protocol No. 1, ... there is no need to give a separate ruling on the applicant's complaint under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1" (see *Herrmann v. Germany*, § 105). In our view, the issue in this case with regard to Article 14 is analogous, and must follow this line of cases.

4. While Article 14 has no independent existence apart from the other provisions of the Convention, it plays an "important autonomous role by complementing the other normative provisions of the Convention and the Protocols: Article 14 ... safeguards individuals ... from any discrimination in the enjoyment of the rights and freedoms set forth in those other provisions" (see *Marckx v. Belgium,* no. 6833/74, § 32, 13 June 1979).

5. Finding that a violation of Article 14 has not occurred is a conclusion that is entirely distinct from holding that it is unnecessary to examine the issue.