



# Requisition Orders and the Constitution: Lessons from the State's Re-Dimensioned Margin of Appreciation

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# **REQUISITION ORDERS AND THE CONSTITUTION: LESSONS FROM THE STATE'S RE-DIMENSIONED MARGIN OF APPRECIATION**

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## Abstract

This paper examines Malta's legal regime governing requisition orders, tracing its origins, legislative evolution, and contemporary relevance within the broader framework of property rights and housing policy. Requisition orders were instruments issued by the State on buildings, generally vacant and in a dilapidated state, to take full possession of such buildings to be allocated, mainly for housing purposes, in exchange of a compensation. Beginning with the historical context in which requisition powers were first introduced, primarily as an emergency mechanism to address acute housing shortages, the paper outlines the legal developments and the current legal position following years of judicial scrutiny and the latest legislative reforms. Particular focus is given to case law that has shaped the modern understanding of requisition orders, especially decisions addressing the right of compensation and the quantum thereof, persons entitled to claim such compensation, and the courts' interpretation of the "public interest" requirement that constitutionally legitimises property interference. The analysis also assesses alternative legal measures adopted by the State aimed at expanding Malta's housing stock while respecting the fundamental right to peacefully enjoy one's possessions. Recent reforms, policy instruments, and regulatory mechanisms are evaluated to highlight the State's ongoing effort to balance social needs with private property rights. Ultimately, the paper provides a comprehensive overview of the requisition framework's legacy and assesses how contemporary housing strategies reflect the shift toward more proportionate and rights sensitive approaches to addressing Malta's accommodation challenges.

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## 1. Introduction

The Maltese State has been among the most frequent violators of the right to the peaceful enjoyment of possessions protected under Article 1 of Protocol No. 1 (P1-1) to the European Convention on Human Rights (ECHR). A significant part of this pattern stems from the unfair allocation of the burden of social accommodation onto private landlords through the use of requisition orders, which in practice constituted compulsory takings of vacant properties by the State for indefinite periods and at rental values markedly below market levels.

This line of jurisprudence has brought into sharp focus the limits of legitimate State intervention in the housing sphere and the extent to which public policy may justifiably encroach upon private property rights. The objective of this article is therefore to propose an answer to this question by examining the requisition order in its historical, socio-political, and jurisprudential contexts, with particular attention to the fair balance test as developed by the European Court of Human Rights and subsequently adopted by the Maltese Constitutional Court, as well as the remedies available to claimants. Ultimately, this should enable the identification of the ‘red lines’ that future public housing measures must respect if they are to withstand Convention and constitutional scrutiny, not least during periods of housing scarcity, when the limits of permissible State intervention are most likely to be tested.

The analysis will also shed light on the legacy of these measures for current policy, particularly the effort to structure forms of cooperation with private suppliers that can deliver social accommodation while rebuilding confidence in public intervention.

## 2. History of Requisition Orders

Requisition orders were first introduced by the *Housing (Requisition) Act* of 1943 and reaffirmed in the *Housing Act*<sup>2</sup> of 1949. These laws empowered the administration to take possession of properties that were reported and subsequently confirmed to be vacant. Properties could be requisitioned, initially, generically, in the public interest, and later, specifically for “providing living accommodation to persons or for ensuring a fair distribution of living accommodation”.<sup>3</sup> Besides the forceful taking of possession, requisitions were also characterised by very low compensation terms. The rent payable to the ‘requisitioner’ was, in fact, equal to the rigid ‘fair rent’ imposed by rent control statutes<sup>4</sup> that froze rents of ‘old’ pre-1939 dwellings at their pre-WWII levels and limited those of

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<sup>2</sup> Housing Act, Chapter 125 of the Laws of Malta.

<sup>3</sup> Housing Act, Chapter 125 of the Laws of Malta, article 3.

<sup>4</sup> Rent Restriction (Dwelling Houses) Ordinance, Chapter 116 of the Laws of Malta, article 2.

'new' post 1939 dwellings to a minor percentage of the value of the land along with the capital outlay.<sup>5</sup> Although a de-requisitioning exercise has been taking place in the past years, the order would only be lifted on the condition that the landlord recognised the sitting tenant's right of lease.<sup>6</sup> Thus the right to remain in occupation of the dwelling continued to be protected by the old rent laws, unless the occupier was found to fail a means test for access to social housing.<sup>7</sup> Until the time that these powers were taken away from the Director of Social Accommodation the powers of requisition had been used 54,197 times:<sup>8</sup> by 1995 there were still as many as 25,217 orders in place<sup>9</sup> although by 2010 the number had been scaled down to a markedly lower 362<sup>10</sup> and until August 2025, the number went down to 120.

Requisition orders were conceived as an emergency response to wartime devastation, which had destroyed approximately 7,000 dwellings and damaged as many as 30,000 others.<sup>11</sup> At the time, the government had not yet commenced the construction of its own housing, and thus relied heavily on requisitions to meet urgent housing needs.<sup>12</sup> By the late 1940s, the authorities announced that most cases of wartime homelessness had been resolved and that requisitions would henceforth be limited to the extreme cases of persons residing in refugee centres or facing eviction.<sup>13</sup>

History, however, proved otherwise. Extension of requisitioning powers was required to rehouse families evicted from areas affected by public slum clearance and reconstruction projects, which requisitions peaking at 3,487 orders in the financial year 1973/74.<sup>14</sup> One of the reasons why requisitions continued to be used beyond the wartime period was the expiry of temporary

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<sup>5</sup> The terms 'old' and 'new' differentiated between buildings that had been built and were ready for use before or after the 31 March 1939. "Fair" rents for "new" houses were set at 3% on the freehold value of the site (formerly 3½%) and 3½% on the capital outlay (formerly 5%), while rents for "old" houses remained pegged to 1939 levels.

<sup>6</sup> Initially, in the late 1980s if the owner convinced the Housing Secretary that the property was required for one's immediate family or that the premises was being sold and there was a promise of sale a derequisition was issued.

<sup>7</sup> Hon. Dolores Cristina (Minister for Family and Social Solidarity) in response to Hon. Stefan Buontempo, Legislature X, 27 October 2006, Sitting no. 444, PQ. no. 21284.

<sup>8</sup> Hon. Lawrence Gonzi (Minister for Social Policy) in response to Hon. Jason Azzopardi, Legislature IX, 21 January 1999, Sitting no. 54, PQ. no. 3764.

<sup>9</sup> Hon. John Dalli (Minister for Social Policy) in response to Hon. Censu Galea, Legislature XI, 10 June 2008, Sitting no. 15, PQ no. 651.

<sup>10</sup> Paper Laid no. 5051 (Minister for Education, Employment and the Family), Legislature XI, 22 June 2006, Sitting no. 242 (PQ no. 18466). The majority of the remaining orders remain in Valletta (18%), Birkirkara (7.7%), Qormi (6%), Gzira (5.5%), Hamrun (5.5%) and Sliema (5%).

<sup>11</sup> Report of a Committee Appointed by the Governor to consider the Question of Housing Accommodation in Malta (1943) as cited in: Cassar, D. (2025). 'The Evolution of Social Housing in Malta: 1943-2024', in *Beyond Walls: From post-war beginnings to modern communities – a social housing story*. Housing Authority.

<sup>12</sup> The requisition orders were necessary since Malta had no funds to embark on a rebuilding programme such as, for instance, the UK [C. Vakili-Zad, *Housing Policy in Malta*, (Marsa: Union Print, 2007)].

<sup>13</sup> Cassar, D. (2025). The Evolution of Social Housing in Malta: 1943-2024, in *Beyond Walls: From post-war beginnings to modern communities – a social housing story*. Housing Authority, p. 11.

<sup>14</sup> Camilleri, p. 35; 136-139.

‘emphyteutical’ grants<sup>15</sup>, as the government would take possession of the property to prevent the tenant’s eviction.

This instrument, conceived in times of acute crisis but maintained over the years, conferred extremely broad discretionary powers, including the forced recognition of the tenant by the ‘requisitionnee’ (the owner of the requisitioned property). Even during the earlier years, it was regarded as “odious and unnecessary” in nature.<sup>16</sup> It was, needless to say, also open to political abuse, particularly given the very limited degree of judicial scrutiny.<sup>17</sup> In later years, however, efforts were made to mitigate antagonism with private owners by requiring special permission prior to the allocation of tenants (as opposed to direct allocation) and by allowing owners to make representations.<sup>18</sup> Despite its unpopularity and government’s declared intention to close down the Housing Department<sup>19</sup>, the powers were not limited until 1989<sup>20</sup> and definitively taken away from government until 1995<sup>21</sup>, although the provisions of the Housing Act continued to apply to premises requisitioned up to that point. Account should also be taken of the historical context, where numerous properties identified for requisition were in disrepair and that, at the relevant time, the rental market was weak.

Examining data found in judgments delivered by the Maltese Courts between 2019 until 2025 shows that the majority of properties which were covered with a requisition order were houses. The period during which a requisition order remained in force varies considerably from a couple of years to over 40 years.

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<sup>15</sup> In Malta, properties were also granted under ‘emphyteusis’, a form of long leasehold typically lasting between 17 and 30 years, which, owing to its real nature, was not affected by the rent control legislation that was simultaneously in force at the time. It is a contract which gives quasi-ownership rights (and obligations) during the period covenanted upon.

<sup>16</sup> Camilleri, p. 36.

<sup>17</sup> Anecdotal evidence also points to politically motivated or vindictive reports by neighbours concerning properties that appeared to be unoccupied (Camilleri, p. 138).

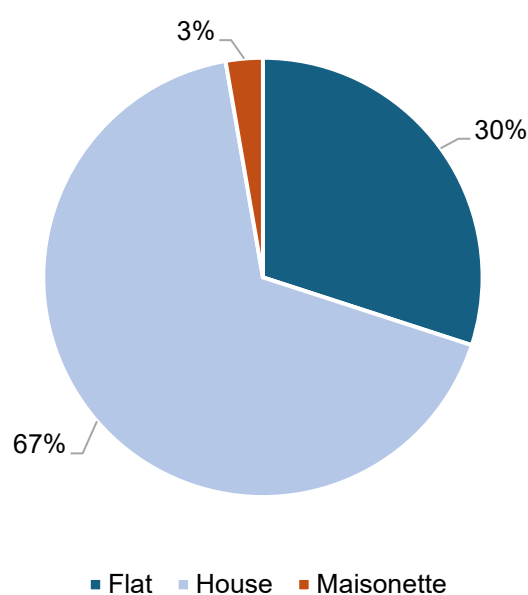
<sup>18</sup> Camilleri, p. 115.

<sup>19</sup> Camilleri, p. 41.

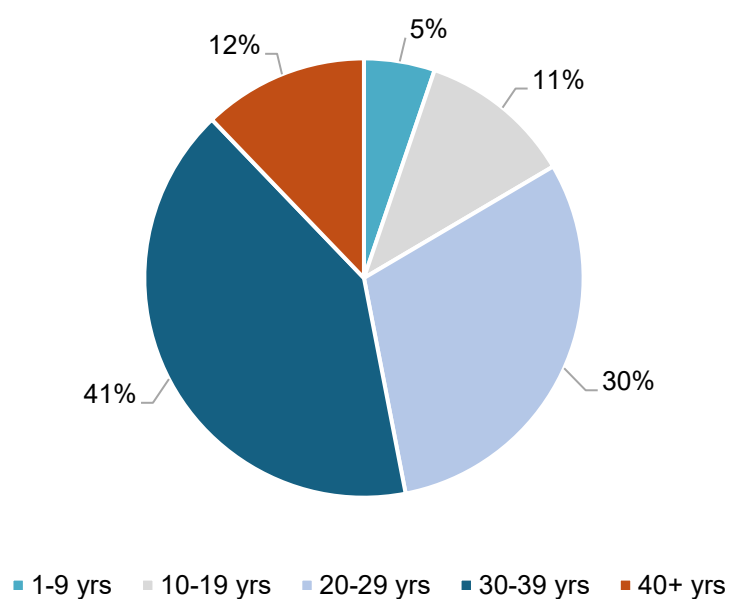
<sup>20</sup> Article 3 was amended in 1989 (Act XXXVII) to read that the Director of Social Accommodation would requisition property in the public interest but only for the purpose of either providing living accommodation to persons or of ensuring a fair distribution of such living accommodation. So that henceforth requisitioning property to serve purposes other than accommodation would be illegal.

<sup>21</sup> Housing Act, Chapter 125 of the Laws of Malta, article 21.

**Chart 1: Type of Requisitioned Properties**



**Chart 2: Duration of Imposition**



### 3. Legal Elements of Requisition Orders

Maltese Courts have determined that the relationship between the requisitioning authority and the beneficiary would be *sui generis* and, therefore, distinct from that of a contract of lease. The result was a tri-partite situation between the Government, the owner and the allocated tenant which excluded the applicability of special legislation on leases at least until the owners recognised the

occupants as tenants, voluntarily or by law. In fact, Article 44(2) of the Reletting of Urban Property (Regulation) Ordinance<sup>22</sup>, stipulates that “accommodation provided by the Government in requisitioned premises” shall not be considered as “letting”. This article was most recently affirmed in *Jason Borg et v. Avukat tal-Istat et*<sup>23</sup>, where it was further stated that that Cap. 125 and Cap. 69 can apply concurrently, as one does not exclude the other. It explained that Article 44 of Cap. 69 governs only the relationship between the Government and the tenant, but does not preclude a separate letting relationship between the property owners and the occupants. Since the owners had been receiving rent directly from the occupants before 1 June 1995, a letting relationship existed, making both statutes applicable. Therefore, Cap. 69 became applicable only once a letting relationship had arisen, irrespective of the status of the requisition<sup>24</sup>, because from that moment the occupant benefited from the protection of the old rent laws.

A requisition order would divest the ‘requisitionee’ of any of his rights in respect to the property until the formal derequisitioning of the property by Government.<sup>25</sup> The effect of the requisition was, therefore, to dispossess the ‘requisitionee’ in a way that until that order was lifted the ‘requisitionee’ could not exercise his ownership rights in respect of the premises. During the time that the requisition order would still be in place, the Maltese courts could not hear any action concerning either the termination of the lease or the eviction of the tenants.<sup>26</sup>

The Government could require the ‘requisitionee’ to recognise the tenant during the course of the requisition.<sup>27</sup> Amongst the most important effects of such recognition was that the beneficiary-turned-lessee would have become liable to conduct repairs in the government’s stead.<sup>28</sup> Although even here the lessee was responsible for ordinary repairs, extraordinary repairs would need to be effected by the landlord, in spite of the low rent that he was receiving. The requisitionee would have only been able to oppose himself to the recognition by applying to the First Hall within thirty days of the service of the judicial letter by the authorities, on the basis of the claim that his compliance would have exposed him to an excessive hardship.<sup>29</sup> This clause was, predictably, interpreted very restrictively

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<sup>22</sup> Reletting of Urban Property (Regulation) Ordinance, Chapter 69 of the Laws of Malta.

<sup>23</sup> Rik 65/2021/1, Constitutional Court, 9 October 2023.

<sup>24</sup> Rik 2/2021/1, *Doreen Grima et v. Natalie Baldacchino et*, Court of Appeal, 13 March 2025.

<sup>25</sup> *Assunta Cassar v. Avv. Dr. Carmelo Zammit*, Court of Appeal, 29 May 1959, Vol. XLII.I.238.

<sup>26</sup> *George Zahra v. Carmelo Chircop*, Court of Appeal, 8 February 1960, Vol. XLIII.I.42.

<sup>27</sup> Housing Act, Chapter 125 of the Laws of Malta, Article 8. See *Nature of the order*.

<sup>28</sup> Government’s liability during the duration of the requisition order is discussed under section *Nature of the order* above.

<sup>29</sup> According to the same article that requisitionee’s claim that he needed the building for his own use or for the use of any member of his family would not be considered of itself as a hardship.

by Court<sup>30</sup>, even when the order extended to a garden that could potentially serve as a building site.<sup>31</sup> Importantly, where the 'requisitionnee' would have successfully challenged the recognition of the tenant, the building would have been deemed to have remained in the possession of the government.<sup>32</sup> Judgments from the late 1980s, the period which coincided with the strengthening of private owners' rights, gave more weight to 'requisitionnee's' arguments to oppose the recognition on the basis of economic hardship suffered by the same 'requisitionnee' as a result of the order<sup>33</sup> as well as where the risk of incurring higher costs of wear and tear and the prospect of incurring significant costs involved in rendering a dwelling suitable for accommodation.<sup>34</sup>

The public authority's rights in respect to the requisitioned premises were quite extensive.<sup>35</sup> Article 4(6) of the Housing Act used to give the authorities the "widest discretion and the most ample power" to make any use of the premises, equivalent to owners. It was very clearly set out that a requisition order, therefore, transferred a form of 'temporary ownership' to the State with the obligation to remove any fixtures as well as to compensate the owner for any consequent damages incurred in their placing or removal, upon the derequisition of the premises.<sup>36</sup>

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<sup>30</sup> Jurisprudence was clear in establishing that this remedy could only be availed of when the hardship would have been a consequence of a recognition of the tenant as such and that it could not serve as a ground to contest the legitimacy of the order, which remained a matter beyond judicial scrutiny. See: *John Zammit v. Onor. Joseph Ellul Mercer noe et*, Civil Court (First Hall), 9 May 1958, Vol. XLII.II.1010; *Perit Gustav Vincenti v. Spiridione Farrugia noe*, Court of Appeal, 26 June 1967, Vol. LI.I.403. The hardship should have therefore been directly deriving from, and attributable to, the occupation of the premises by the accommodated individual (*Rev. Maurice Grech noe v. Spiridione Farrugia noe*, Civil Court (First Hall), 18 November 1964, Vol. XLVIII.II.1273).

<sup>31</sup> *W.R.K Don Emmanuele Farrugia v. Onor. Joseph Ellul Mercer noe*, Court of Appeal, 20 March 1958, Vol. XLII.I.172.

<sup>32</sup> Housing Act, Chapter 125 of the Laws of Malta, Article 7 (added by Act V of 1958). This article was added following the case of *Pasquale Vella v. Onor. Joseph Ellul Mercer noe*, Civil Court (First Hall), 1 February 1958, Vol. XLII.II.892. See also: *Ersilia Said v. Agent Segretarju Tad-Djar*, Civil Court (First Hall), 9 October 1984, Vol. LXVIII.III.9, where it was clarified that the request to oppose recognition did not amount to a request for the withdrawal of the order or lead to the requisitionnee's reintegration in the unconditional ownership of the premises.

<sup>33</sup> *Perit Arkittett Edwin Delia et v. Segretarju tad-Djar*, Court of Appeal, 13 May 1992, Vol. LXXVI.II.263. See also: *Joseph Muliatt v. Segretarju tad-Djar*, Civil Court (First Hall), 9 February 1988, Vol. LXXII.III.667. In this latter case, the owner holding the property under emphyteusis was allowed to oppose the recognition of the tenant, since the fair rent he would have received from the prospective tenant would not even have been sufficient to cover half of the ground rent he himself owed to the direct owner.

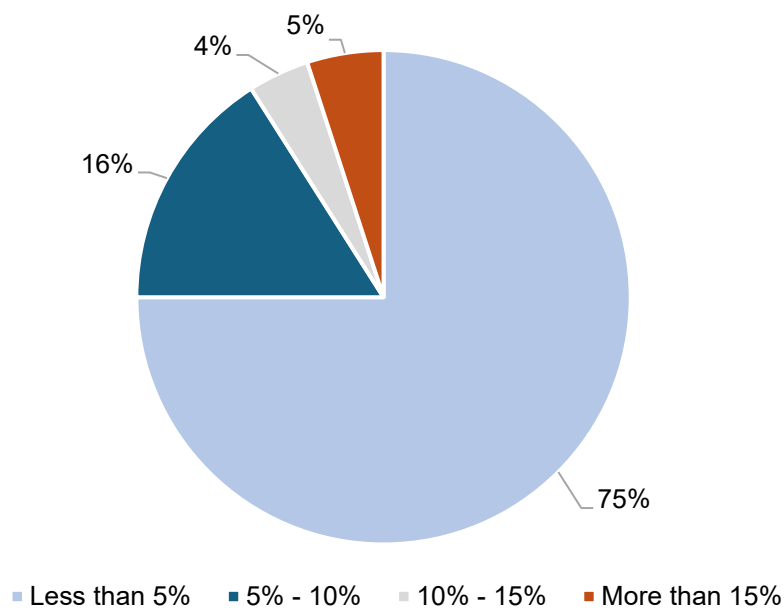
<sup>34</sup> *Avukat Dottor Ettore Lucia v. Segretarju Tad-Djar*, Court of Appeal, 24 June 1985, Vol. LXIX.II.250. In *Dottor Joseph Caruana et v. Segretarju tad-Djar*, Court of Appeal, 27 April 1993, Vol. LXXVII.II.282 the Court asserted that: "stated much more emphatically that it was: *"of the firm opinion that it cannot give its consent to the authority's practice of requisitioning "substandard" premises, which would require various repairs in order to be rendered adequate for accommodation, and simply proceed to allocate the same premises to an individual without first carrying out the necessary works but, instead, expect the owner to do them without even being able to claim a serious hardship."*

<sup>35</sup> *Onorevoli Joseph Ellul Mercer noe v. Dr. Francis Pullicino*, Court of Appeal, 3 October 1958, Vol. XLII.I.406.

<sup>36</sup> This was also in line with the judgment of *Victor Trapani noe v. Oscar Pace Feraud* [Court of Appeal, 6 February 1950, Vol. XXXIV.I.17] that had established that regardless of the purpose for which the premises were used prior to requisition, the "fair rent" had to be calculated on the purpose assigned to it by the Housing Commissioner. See also: *Arthur Vella et v. Kevin Briffa et*, Court of Appeal, 25 May 2001 (App. Vol. 537/93). The Court of Appeal confirmed that the 'requisitionnee' could not exercise a direct action against the beneficiary.

As regards the compensation paid by the authorities to the owner, article 11 of the Housing Act: (a) capped the compensation to 'fair rent' limits if used as a dwelling under the Rent Restriction (Dwelling Houses Ordinance)<sup>37</sup>. The owner is entitled to compensation covering: (b) the cost of repairing any damage to the building that occurred during the period of requisition, except for damage already remedied by the occupant or for which the owner is responsible under the Act; and (c) any reasonable expenses personally incurred to comply with directions issued by or on behalf of the Director<sup>38</sup> when possession of the property was taken. In practice, especially throughout recent years, this meant rents were substantially lower than market rates.

**Chart 3: Rent Received on Requisitioned Properties as a Percent of Rental Market Value**



Therefore, in essence, a requisition gave rise to a *sui generis* relationship between the State, the owner and the occupant which temporarily divested the owner of control and rights over the property until derequisition, while granting the State extensive powers akin to temporary ownership. This mechanism operated to suspend the exercise and enjoyment of ownership rights, reducing the value of the property, in itself constituting a breach of property rights for the duration of the requisition and depriving the owner of any proportionate economic benefit.<sup>39</sup> The following section will now examine

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The illegal occupation of the latter was held not to prejudice the situation of the 'owner-requisitioner' he was, in any case, guaranteed compensation by the State. Upon the derequisitioning of the premises, the owner would regularly be entitled to proceed with an action for eviction along with the right to claim any compensatory damages for the illegal occupation (*Agnese Gera De Petri v. Direttur tal-Akkomodazzjoni Socjali*, Civil Court (First Hall), 27 January 2003, Rik 803/1994/2).

<sup>37</sup> Rent Restriction (Dwelling Houses) Ordinance, Chapter 116 of the Laws of Malta.

<sup>38</sup> These responsibilities have since 2007 been taken over by the Housing Authority. Such functions were transferred in virtue of article 24 of the Housing Authority Act, Chapter 261 of the Laws of Malta.

<sup>39</sup> It is worth noting that in the case of civil damages, the Courts also see the state the property was in when the Requisition Order was issued.

how such orders were legally challenged before the Maltese Constitutional Court and, more decisively, before the European Court of Human Rights (ECtHR).

#### 4. Challenges of Requisition Orders

Justice for landlords was significantly deferred, first by the judiciary's early hesitation to review administrative action, and later by the protracted process through which the Maltese courts came to assimilate the ECtHR case law, particularly concerning the nature and scope of adequate redress.

Justice was further deferred by the persistent unwillingness of successive administrations to address the issue through legislative intervention, thereby ensuring the payment of fair compensation to landlords whose properties were subjected to requisition orders that remained in force for decades. Nonetheless, it must be acknowledged that, without the requisitioning of unused, and more often than not, dilapidated, properties, the country would have faced prolonged difficulty in alleviating the deprivation that followed both the devastation of the war and the subsequent departure of the British forces from Malta.

The first cases regarding the orders of requisition brought before the Courts of Malta reveal that the Courts were still reluctant to evaluate a decision taken at administrative level since they still upheld the doctrine of governmental immunity from the jurisdiction of the ordinary courts.<sup>40</sup> Government acts were held to be superior to the juridical relationships of a private character and in the exercise of its political powers government was both immune from investigation as well as exempt from responsibility.<sup>41</sup> Being held to fall under its political aspect, a declaration by government to be acting in the public interest was regarded as a matter that pertained to its sovereign function.<sup>42</sup>

This interpretation meant that requisition orders were almost unassailable saving for challenges based on formal defects (see the section dealing with unlawfulness of the intervention below). In 1987, however, Malta formally integrated the ECHR into its domestic legal system and property cases were among the first to be scrutinised under this new legal framework. In essence, Article 1

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<sup>40</sup> See *inter alia*: *Salvatore Balluci v. Joseph Vella Gera*, Civil Court (First Hall), 12 March 1946, Vol. XXXII.II.257. Until the 1990s, the Court upheld the theoretical distinction between acts *jure gestionis* and acts *iure imperii* according to which only the former could be scrutinised by the Courts. The State, in fact, was held to enjoy a privilege over certain acts performed in the exercise of its sovereign authority.

<sup>41</sup> *Carmelo Ciantar v. Onor. Avv. Dr. Giuseppe M. Camilleri noe*, Court of Appeal, 23 April 1951, Vol. XXXV.I.83. Acts of revocation of requisition orders were equally immune from judicial scrutiny.

<sup>42</sup> This approach has now given way to the modern human rights concepts that require a more thorough appreciation of governmental acts, particularly if claimed to have been done in the public interest. This matter was recently treated by the First Hall, Civil Court (Constitutional Jurisdiction), in the case of *Rik 44/2010 Buxom Poultry Limited v. Kummissarju tal-Artijiet Et*, 15 December 2010.

of the First Protocol (P1-1) enshrines the right to the peaceful enjoyment of possessions and introduced an additional layer of protection in addition to the right to property as protected under the Constitution of Malta.<sup>43</sup>

The earliest case lodged with the ECtHR in respect of Malta addressed the automatic renewal of sub-emphyteutical rights, however, the complaint was dismissed.<sup>44</sup> It so happened, however, that in 2006 the ECtHR applied a stricter interpretation of the fair balance test, extending it to cases involving control of use and not only to those concerning deprivation of property. In *Hutten-Czapska v. Poland*, the Court established two related principles: first, that landlords are entitled to derive a reasonable profit from their property; and second, that the burden of protecting tenants' social rights should not fall disproportionately on a single social group, namely private landlords.<sup>45</sup> As circumstances would have it, the next three cases to be decided by the ECtHR on the legality of rent controls were Maltese: *Ghigo*<sup>46</sup>, *Camilleri and Fleri Soler*<sup>47</sup> and *Edwards*<sup>48</sup>, three cases stemming from the imposition of requisition orders wherein the ECtHR had among the first opportunities to reassert the incompatibility of the measure with the landlords' fundamental human rights since they had been "requested to bear most of the social and financial costs of supplying housing accommodation to [the tenant] and his family".<sup>49</sup>

The following sub-sections will summarise the salient points arising from the judgments of the ECtHR, beginning with the classification of requisition orders under P1-1, and proceeding to examine the three tests developed by the Court in order to assess compliance with the ECHR standards: lawfulness, public interest, and fair balance.<sup>50</sup> While the first two tests were invariably satisfied, the third was consistently failed. The test of lawfulness was generally satisfied, as requisition orders were issued pursuant to the aforementioned Housing Act while it was accepted that the measure

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<sup>43</sup> Article 37, provides for the protection from deprivation of property without compensation, particularly that "no property of any description shall be compulsorily taken possession of". Article 37 of the Constitution of Malta also allows limitation to the protection from deprivation of property as long as there is payment of "adequate compensation", "access to an independent and impartial court or tribunal established by law" to determine the compensation and one's interest in the property and "a right of appeal".

<sup>44</sup> *Zammit and Others v. Malta*, App. No. 16756/90, (ECtHR, 12 January 1991). This case will be analysed in more detail below, in the section dealing with the automatic conversion of emphyteutical grants into leases.

<sup>45</sup> *Hutten-Czapska v. Poland* [Grand Chamber], 19 June 2006, App. no. 35014/97, paras 225, 239.

<sup>46</sup> *Ghigo v. Malta*, App. no. 31122/05, (ECtHR 26 September 2006).

<sup>47</sup> *Camilleri v. Malta*, App. no. 51760/99 (ECtHR, 16 March 2006).

<sup>48</sup> *Fleri Soler and Camilleri v. Malta*, App. no. 35349/05, (ECtHR, 26 September 2006).

<sup>49</sup> *Ghigo v. Malta*, App. no. 31122/05, (ECtHR 26 September 2006), para 69; *Edwards v Malta*, App no 17647/04 (ECtHR, 24 October 2006) para 78.

78; *Amato Gauci v Malta* App no 47045/06 (ECtHR, 15 September 2009) para 63.; *Montanaro and Others v Malta* App no 31454/12 (ECtHR, 30 August 2016) para 56. This point was also made in *Statileo v Croatia* App no 12027/10 (ECtHR, 10 July 2014) para 143.

<sup>50</sup> T. Allen, *Property and the Human Rights Act 1998*, (Oxford: Hart Publishing, 2005), p. 102. These rules were elaborated in the judgment of *Sporrong and Lönnroth v Sweden* App nos 7151/75 and 7152/75 (ECtHR, 23 September 1982) Series A no 52. In the case of rent controls the rule in dispute is one contained in the second paragraph of P1-1 regulating "control of use" of property.

had an inherent element of public interest since such orders addressed the provision or fair distribution of housing.<sup>51</sup> The third test, which is the test of proportionality between the means employed by the State and the aim pursued in the public interest was the test that the Maltese authorities have frequently failed, leading to findings of violations both by the ECtHR and eventually the Maltese Constitutional Court.<sup>52</sup>

### Nature of the intervention

First of all, it is important to note that the ECtHR has given the term “possessions” in P1-1 an autonomous meaning extending beyond ownership of physical property to include rights and interests with economic value<sup>53</sup>. Accordingly, the right to receive a rent qualifies as possession for the purposes of this provision.<sup>54</sup>

A second issue concerns the rule, among the three contained in P1-1, under which expropriations would fall. Since the claimants had merely been prevented from exercising their right of use, while retaining at all times the right to sell<sup>55</sup> their property, requisition orders were classified as measures of control of use rather than as de facto expropriations.<sup>56</sup> Consequently, such cases are assessed under the rule set out in the second paragraph of P1-1, rather than under the first paragraph, which governs violations of the general principle of peaceful enjoyment of possessions or deprivations of possessions, such as expropriations.

A note in relation to the assessment of requisition orders under Article 37 of the Constitution of Malta is that, initially, the courts interpreted requisition orders as falling outside its scope, on the grounds that such orders did not entail an actual taking of property but merely a regulation of its use.<sup>57</sup> This interpretation, however, has since evolved. Article 37 is now understood to encompass not only the direct taking of possession but also any form of control over property that substantially deprives the owner of the ability to use it as they wish, thus interfering with their “interest” or “right” in their property.<sup>58</sup>

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<sup>51</sup> *Fleri Soler and Camilleri v. Malta*, App. no. 35349/05, (ECtHR, 26 September 2006) para 67.

<sup>52</sup> See e.g., *Cauchi v Malta App no 14013/19 (ECtHR, 25 March 2021)* paras 63–74.

<sup>53</sup> *Gasus Dosier- und Fördertechnik GmbH v Netherlands* App no 15375/89 (ECtHR, 23 February 1995) para 53; *Iatridis v Greece [GC]* App no 31107/96 (ECtHR, 25 March 1999) para 54.

<sup>54</sup> *Fleri Soler and Camilleri v. Malta*, App. no. 35349/05, (ECtHR, 26 September 2006) para 57.

<sup>55</sup> In practice, it is doubtful whether there were buyers willing to buy such properties, even if at a fraction of the actual price, since the tenant would still remain in the property.

<sup>56</sup> *Fleri Soler and Camilleri v. Malta*, App. no. 35349/05, (ECtHR, 26 September 2006) paras 58-59.

<sup>57</sup> Rik 30/2004/1 *Lay Lay Co Ltd vs L-Awtorità ta' Malta dwar l-Ambjent*, Constitutional Court, 25 February 2011; Rik 1/2002/1 *Bugeja et vs Avukat Generali*, 7 December 2009; and Rik 16/2015 *Gina Balzan vs l-Onorevoli Prim Ministru et*, Civil Court, First Hall (Constitutional Jurisdiction), 11 October 2011.

<sup>58</sup> Initially determined in Rik 39/2010/1 *Ian Peter Ellis v. Avukat Generali*, Constitutional Court, 24 June 2016. Previously, in *Carmen Cassar v. Direttur għall-Akkomodazzjoni Socjali*, the Court had found a requisition order to be in breach of the Constitution by treating it indiscriminately to Article 1 of the First Protocol of the Convention.

## A. Lawfulness

No requisition order was ever challenged before the ECtHR on grounds of lack of lawfulness and generally, if the requisition order is issued pursuant to the Housing Act<sup>59</sup>, it is considered as lawful. Yet Maltese courts have occasionally annulled such orders for failing to comply with their formal requirements. In *Victor F. Denaro noe v. Emanuel Tabone noe et*<sup>60</sup> and *Francesco Masini noe v. Wilfred Podestà noe*<sup>61</sup>, the courts held that a requisition order must specify the precise purpose for which the premises are intended and that any departure from that stated purpose renders the order unlawful.

## B. Public Interest

The ECtHR similarly found no ground upon which to disturb the local Court's assessment regarding the property's use in the general interest since the administrative bodies to which the premises were assigned were, in fact, performing duties in the interests of the community.<sup>62</sup> In its jurisprudence, the ECtHR has consistently accepted that requisitioning measures pursued legitimate aims in the public interest, particularly in securing access to affordable housing and ensuring the equitable distribution of limited housing resources. In *Fleri Soler and Camilleri v. Malta*, the Court found that the continued use of requisitioned property by government departments served a valid public purpose and affirmed that States enjoy a wide margin of appreciation in defining public interest, especially in socio-economic matters.<sup>63</sup> Similarly, in *Edwards v. Malta*, the Court upheld the State's justification that requisitioning properties was necessary in a small, densely populated country to regulate housing supply.<sup>64</sup> In *Marshall and Others v. Malta*, it observed that where requisitioned property is not used for pressing social purposes, such as preventing homelessness, the degree of public interest is significantly reduced and may not warrant severe restrictions or below-market compensation.<sup>65</sup> More broadly, the Court has recognised public interest not only in housing policy but also in the protection of commercial premises and even cultural activities, such as the operation of band clubs, provided these serve a wider community function.<sup>66</sup>

The Maltese courts have, however, on certain occasions intervened where the element of public interest was lacking or misapplied, especially for those requisition orders issued before the legislative

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<sup>59</sup> Chapter 125 of the Laws of Malta.

<sup>60</sup> Court of Appeal, 25 January 1957, Vol. XLI.I.34.

<sup>61</sup> Court of Appeal, 21 April 1961, Vol. XLV.I.i.110.

<sup>62</sup> *Fleri Soler and Camilleri v Malta* App no 35349/05 (ECtHR, 26 September 2006) para 66.

<sup>63</sup> *Fleri Soler and Camilleri v Malta* App no 35349/05 (ECtHR, 26 September 2006) paras 64–67.

<sup>64</sup> D. Maxwell, *The Human Right to Property: A Practical Approach to Article 1 of Protocol No. 1 to the ECHR*, Oxford: Hart Publishing, 2022, p. 204.

<sup>65</sup> *Marshall and Others v Malta* App no 79177/16 (ECtHR, 11 February 2020) para 95.

<sup>66</sup> *Bradshaw and Others v Malta* App no 37121/15 (ECtHR, 23 October 2018) para 55;

*Grech and Others v Malta* App no 62978/15 (ECtHR, 4 June 2019) para 38.

amendment defining the public interest in case of Requisition orders. Until 1989, the Housing Secretary was empowered to issue requisition orders when satisfied that such action was necessary in the public interest, for the provision of living accommodation, or to ensure the fair distribution of such accommodation. At the time, Section 3(1) of the Housing Act<sup>67</sup>, provided as follows:

*The Secretary, if it appears to him to be necessary or expedient to do so in the public interest or for providing living accommodation to persons or for ensuring a fair distribution of living accommodation, may requisition any building, and may give such directions as appear to him to be necessary or expedient in order that the requisition may be put into effect or complied with.*

Following amendments introduced in 1989, the power to issue requisition orders was transferred from the Housing Secretary to the Director of Social Housing. The language of Section 3(1) was narrowed, notably through the replacement of the conjunction “or” with the more restrictive phrase “but only.” The revised English version of Article 3(1) reads:

*The Director, if it appears to him to be necessary or expedient to do so in the public interest, but only for the purpose of providing living accommodation to persons or of ensuring a fair distribution of such living accommodation, may requisition any building...*

This legislative change made it clear that, post-1989, requisition orders could be justified on grounds of public interest only when aimed at providing or distributing residential accommodation, particularly pertinent at a time when housing supply was limited. However, those requisition orders issued before such amendment, have often been subject to scrutiny as to whether they were issued for public interest or otherwise.

The scope of public interest came under closer scrutiny in *Dr. Carmelo Vella et v. Is-Segretarju tad-Djar*<sup>68</sup>, a landmark judgment where the Court held that not every socially beneficial activity could qualify as public interest. The Court drew a distinction between genuinely public purposes and those that, while culturally or socially desirable, remained essentially private. It warned against an overextension of the concept to justify State interference with private property, rejecting arguments that requisitioning private buildings for use by private schools or clubs automatically served the public good. This case represented a clear shift toward greater judicial oversight of administrative discretion.

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<sup>67</sup> Chapter 125 of the Laws of Malta.

<sup>68</sup> Constitutional Court, 30 December 1993, Vol. LXXVII.II.390. This case dealt with the adjacent property to the one dealt with in the case of *Vella v. Ellul Mercer* and the beneficiaries of the order was the same band club.

Subsequent jurisprudence reflected a gradual broadening of the notion of public interest, aligning it more closely with European standards. In *Vella Josephine Mary v. Direttur tal-Akkomodazzjoni Soċjali*<sup>69</sup>, the Court upheld the requisition of premises for a band club (ironically involving the daughter of the applicant in the previously cited case and concerning neighbouring premises allocated to the same club), recognising its social and cultural function as a legitimate contribution to community life.

Another illustrative example of the interpretation of public interest in requisition order cases is *Fleri Soler v. Malta*.<sup>70</sup> The applicants' property was requisitioned on 4 September 1941 and initially allocated to the Department of Education, later to the Ministry of Industry and Agriculture, where it was used as government offices. The Civil Court observed that the ongoing existence of requisition orders remained valid insofar as the public interest that originally justified them persisted. The Constitutional Court affirmed that, at the time of the requisition, the Housing Act authorised such measures both in the general interest and for the purpose of securing affordable housing. In this instance, the building's use as a government department was deemed consistent with the public interest.

Public interest has a considerable effect on compensation and remedies. This is delved into more detail in Section 5.

### C. Fair Balance

The proportionality, or *fair balance*, test is of extreme importance since the proportionality test shifted the central focus of the ECtHR's analysis onto the effect of the interference on the individual, particularly from an economic perspective.<sup>71</sup> In a consistent line of judgments, the Court found that, despite being grounded in the public interest, Malta's requisition system imposed a disproportionate and excessive burden on landlords, effectively transferring onto them the financial costs of providing housing that should have been borne by the State.<sup>72</sup>

Referring to *Hutten-Czapska*, the ECtHR found a failure to maintain the requisite fair balance between individual rights and the public interest, given the landlords' entitlement to derive a

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<sup>69</sup> Rik 15/2007/1 *Josephine Mary Vella v. Direttur tal-Akkomodazzjoni Soċjali et*, Constitutional Court, 25 May 2012.

<sup>70</sup> *Fleri Soler and Camilleri v Malta* App no 35349/05 (ECtHR, 26 September 2006).

<sup>71</sup> D. Maxwell, *The Human Right to Property: A Practical Approach to Article 1 of Protocol No. 1 to the ECHR*, Oxford: Hart Publishing, 2022, p. 242.

<sup>72</sup> *Edwards v. Malta*, App no. 17647/04, (ECtHR 24 October 2006) para 60;

*Ghigo v Malta* App no 31122/05 (ECtHR, 26 September 2006) para 60; *Fleri Soler and Camilleri v Malta* App no 35349/05 (ECtHR, 26 September 2006) para 78; *Montanaro Gauci and Others v Malta* App no 31454/12 (ECtHR, 30 August 2016) para 17; *Apap Bologna v Malta*, App no 46931/12 (ECtHR, 30 August 2016) para 76; *Mattei and Others v Malta* App no 32035/12 (ECtHR, 30 August 2018) para 94.

reasonable profit from their property. Specifically, in *Fleri Soler and Camilleri v. Malta* the extremely low rents, amounting to €7 per month for several decades and €58 thereafter, could not constitute fair compensation. While recognising the State's wide margin of appreciation in regulating rent levels, the Court held that this discretion could not justify minimal or symbolic returns that deprived owners of any meaningful benefit. The Court further criticised the indefinite duration and uncertainty of requisition, which left landlords unable to recover possession and effectively transferred to them the financial burden of maintaining premises used by public authorities. Finally, since the requisitioned property was not used to protect vulnerable tenants or prevent homelessness, but rather to house government departments, the measure was subject to heightened scrutiny, as its social justification was comparatively weak.<sup>73</sup>

The ECtHR rejected the Maltese Government's contention that the applicants had failed to demonstrate a personal need for the premises or to prove that the sitting tenants no longer required them.<sup>74</sup> On the other hand, it seemed to give weight to the fact that the continued enforcement of requisition and rent-control measures were no longer justified within Malta's changed socio-economic context, which had long ceased to reflect conditions of post-war housing scarcity. In *Ghigo*, the applicant argued that the tenant's stable employment undermined the Government's justification that the measure was required to prevent homelessness.<sup>75</sup> The applicant in *Edwards* went further, invoking a broader conception of property rights: even if he did not require the dwelling for personal use, he retained the inherent right to dispose of or develop his property, a right rendered meaningless under the indefinite requisition regime.<sup>76</sup> While the Court did not expressly uphold these arguments or engage in a detailed examination of their merits, it was evident that the fair balance test increasingly accorded greater weight to the protection of property rights. Accordingly, although interferences pursuing the public interest continued to be recognised as legitimate, governments were now required to demonstrate particularly compelling justifications for the continued imposition of stringent controls.

The stringency of these controls was most clearly reflected in the controlled rental prices, with the ECtHR affirming that such measures could not result in returns that were "manifestly unreasonable" returns or "minimal profits" for landlords.<sup>77</sup> A conspicuous disparity between controlled and market rents was sufficient to establish disproportionality, without requiring proof that rents fell below

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<sup>73</sup> *Fleri Soler and Camilleri v. Malta* App no. 35349/05, (ECtHR 26 September 2006), paras 74-78.

<sup>74</sup> *Edwards v. Malta*, App no. 17647/04, (ECtHR 24 October 2006) para 44.

<sup>75</sup> *Ghigo v Malta* App no 31122/05 (ECtHR, 26 September 2006) para 47.

<sup>76</sup> *Edwards v. Malta*, App no. 17647/04, (ECtHR 24 October 2006) para 50.

<sup>77</sup> *Amato Gauci v Malta* App no 47045/06 (ECtHR, 15 September 2009) paras 60-62; *Fleri Soler and Camilleri v Malta* App no 35349/05 (ECtHR, 26 September 2006) para 78; *Anthony Aquilina v. Malta*, App No 3851/12, (ECtHR, 20 April 2015), para 63; See also: *Statileo v Croatia* App no 12027/10 (ECtHR, 10 July 2014) para 143.

maintenance costs.<sup>78</sup> The disproportionality was further aggravated by the absence of adequate procedural safeguards to ensure the consistent proportionality of the conditions imposed<sup>79</sup> as well as limit the uncertainty as to when the landlord would be able to take possession of the property in case of own need or the lack of deservingness of the tenant.<sup>80</sup>

This jurisprudence was unreservedly adopted by the Maltese Constitutional Court. In *Igino Trapani Galea Feriol et v. Direttur għall-Akkomodazzjoni Soċjali et*<sup>81</sup>, the Court identified several factors contributing to the failure of the fair balance test, namely: (i) the devaluation of the property, (ii) the imposition of a forced landlord–tenant relationship with the occupants, (iii) the uncertainty surrounding the recovery of possession, and (iv) the derisory level of compensation awarded, particularly in light of the property’s historic value. It is important to note as well, however, that the Constitutional Court had previously also considered challenges to requisition order on the basis of article 38 of the Constitution protecting the privacy of the home. The early case of *Edward Ferro v. Housing Secretary*<sup>82</sup>, focused on procedural and constitutional aspects, with the courts upholding the government’s right of entry into requisitioned premises. However, in *Antonio Pace v. Ministru tad-Djar u Artijiet*<sup>83</sup>, the Constitutional Court acknowledged that, although requisition orders were generally lawful and issued in the public interest, their enforcement must also be “reasonably justifiable in a democratic society.” The Court found a violation where the State had deprived a family

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<sup>78</sup> *Ghigo v Malta* App no 31122/05 (ECtHR, 26 September 2006) para 66; *Fleri Soler and Camilleri v Malta* App no 35349/05 (ECtHR, 26 September 2006) para 74. In *Hutten-Czapska* the ECtHR had laid particular emphasis on the absence of an adjustment to cover maintenance, in fact, it justified its departure from *Mellacher* on the basis that while Austrian legislation made it possible for landlords to keep their property in a proper condition, the Polish scheme did not (§224). The figures were particularly accentuated in cases of *band clubs* (see: *Bradshaw and Others v. Malta*, (Application no. 37121/15) 23 October 2018, §61; *Grech and Others v. Malta*, (Application no. 62978/15) 4 June 2019, 41).

<sup>79</sup> *Edwards v. Malta*, App no. 17647/04, (ECtHR 24 October 2006) para 71; *Ghigo v Malta* App no 31122/05 (ECtHR, 26 September 2006) para 62; *Fleri Soler and Camilleri v Malta App no 35349/05* (ECtHR, 26 September 2006) para 70.

<sup>80</sup> *Edwards v. Malta*, App no. 17647/04, (ECtHR 24 October 2006) 71; *Fleri Soler and Camilleri v Malta App no 35349/05* (ECtHR, 26 September 2006) para 70. In the case of the Maltese band clubs, the ECtHR found that the fact that there were no avenues for the landlords to challenge the fairness of the amount of rent except through the filing of constitutional proceedings was a clear example of how the law lacked adequate procedural safeguards securing the required balance (*Grech and Others v. Malta*, App no. 62978/15, (ECtHR, 4 June 2019) para 41).

<sup>81</sup> Rik 96/13, Constitutional Court, 20 July 2020. The requisition order would be found to be disproportionate even if at the time of its issue it would have been lawful, it is the prolonged deprivation of the enjoyment of the property without a fair consideration that would give rise to the violation (Rik 69/16 *Madeleine Ellul et v. Awtorita’ tad-Djar*, Civil Court, First Hall (Constitutional Jurisdiction), 14 December 2017).

In Rik 14/2009/1 *Edward Zammit Maempel et v. L-Awtorita’ tad-Djar et* (Constitutional Court, 18 July 2014,) the Constitutional Court criticised the State for imposing a superfluous requisition order which was impeding the landowners from proceeding directly against the occupants, who had abandoned the dwelling and left it in a state of disrepair. The tenants would have been protected by the special statutes even without the imposition of the requisition order, however, the latter had divested the owner from the “legal possession” of the dwelling. Whilst a property was under requisition, landowners could never proceed to obtain the eviction of the tenants (the relevant jurisprudence discussed earlier in this chapter (*inter alia Zahra v. Chircop*) has been recent reaffirmed in Rik, 810/1994/1 *Carmen Cilia v. Carmela Grech* (Constitutional Court, 15 January 2007). This fact was found to shift upon the landlord an excessive and disproportionate burden.

<sup>82</sup> Rik 17/73, Constitutional Court, 19 June 1973.

<sup>83</sup> Constitutional Court, 17 October 1988, Vol. LXXII.I.82.

of its only dwelling, used also for its livelihood, thereby exceeding the limits of legitimate public intervention. In *Domenic Mintoff et vs. Direttur tal-Akkomodazzjoni Soċjali et*<sup>84</sup>, the Court held that the disproportionate and excessive burden was a result of the small amount of rent which remained invariable for 24 years until 2010 when a derequisition was issued, besides the requisition order having been issued against the plaintiff's will.

## 5. The Remedies Awarded

The violation, in fact, gave rise to the obligation on the part of the State to put an end to this systemic violation, more specifically by putting in place a mechanism which would allow for a fair amount of rent to be paid in future years.<sup>85</sup> Of course, this new remedy had to take into consideration both the landlords' right to the deprivation of profit as well as the availability of sufficient accommodation for those worse off.<sup>86</sup> The Court, however, seemed to direct the national legislator not only towards the establishment of a "fair rent" and the allowance of a "decent profit" for landlords but also towards redefining what was a "tenant in need".

Malta was thus required to address two key issues: the compensation amounts awarded to victims for past violations and the implementation of a remedy capable of immediately ceasing the violation. Both these points are relevant because they provide further useful insights into the limits which the ECtHR has been setting to Member States.

### i. Compensation for past violations

A matter that lies beyond the scope of this paper is the line of cases, including those concerning requisitions, such as *Apap Bologna*<sup>87</sup>, in which the ECtHR consistently found that the remedies granted by the Maltese Constitutional Court were ineffective both in preventing violations of the right to property and in providing adequate redress for those already sustained. The Constitutional Court's hesitant response to these Strasbourg judgments led the ECtHR itself to develop guidelines for the award of compensation, setting out what it considered to constitute "adequate" redress in the circumstances.

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<sup>84</sup> Rik 32/2007, Civil Court, First Hall (Constitutional Jurisdiction), 28 April 2011.

<sup>85</sup> *Ghigo v Malta* App no 31122/05 (ECtHR, 17 October 2008), para 24. This obligation stems from Article 46 of the Convention that binds the signatory States to abide by any decision of the Court to which they would be parties. It has become an established practice for the Court to indicate general measures in judgments that reveal problems or gaps in legislation, administrative practice and judicial remedies or a lack of other essential safeguards (Harris et al, *Law of the European Convention*, 165). This is owed to the Court's concern regarding an unmanageable number of identical cases that would possibly threaten the future effectiveness of the Convention (*Driza v. Albania*, App. no. 33771/02, 13 November 2007).

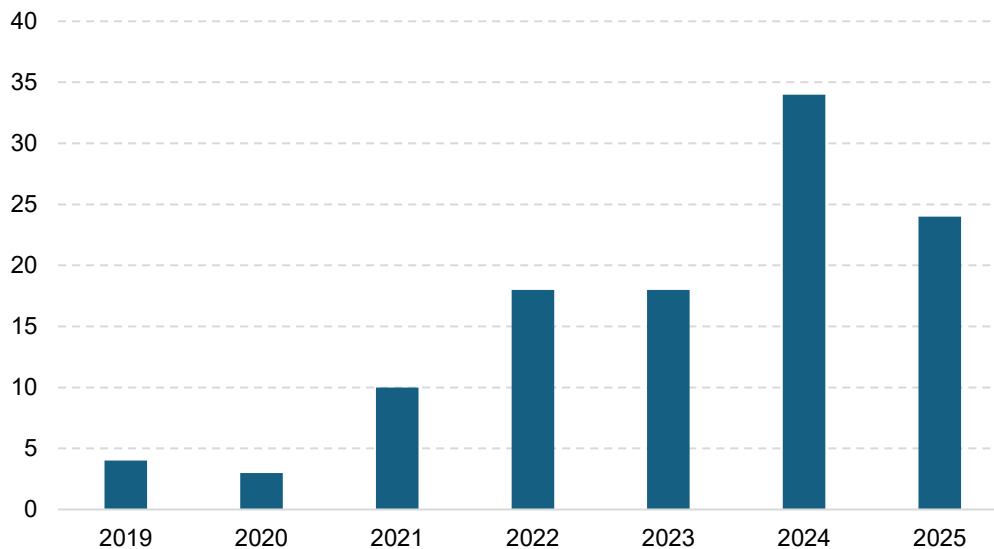
<sup>86</sup> *Ghigo v Malta* App no 31122/05 (ECtHR, 17 October 2008), para 28.

<sup>87</sup> *Apap Bologna v Malta*, App no 46931/12 (ECtHR, 30 August 2016).

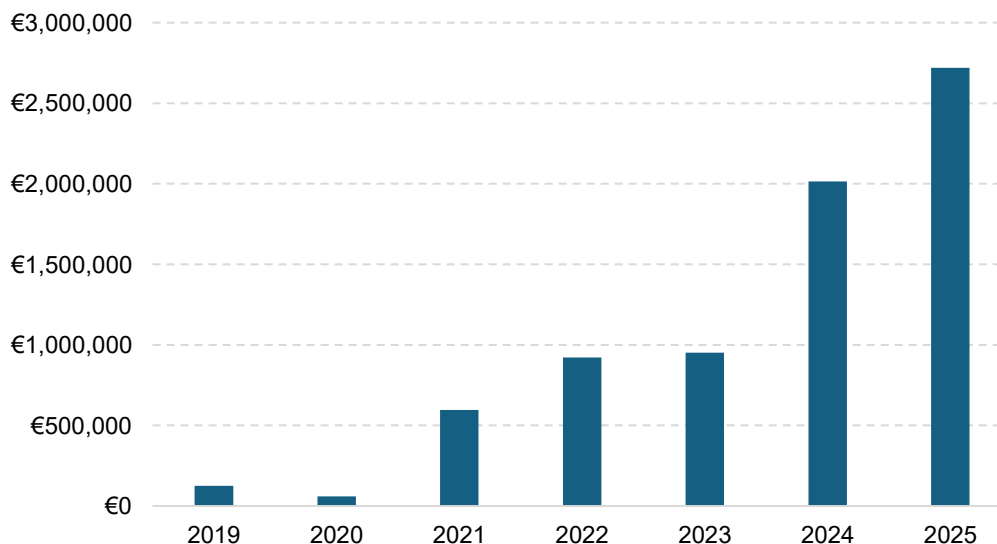
The ECtHR underlined that an award for pecuniary damage made by a domestic Court had to “put the applicant, as far as possible, in the position he would have enjoyed had the breach not occurred”.<sup>88</sup> The compensation standard thus mirrored that for finding a violation, requiring the ECtHR to quantify the “fair rent” and define the lawful threshold between controlled and market rents.

Between 1<sup>st</sup> January 2019 and 31<sup>st</sup> December 2025, the Maltese State was ordered to pay a total of €7,390,007 in compensation for violations of P1-1.

**Chart 4: Number of cases (2019-2025)**



**Chart 5: Total Amounts awarded by Court**



<sup>88</sup> *Portanier v. Malta*, Application no. 55747/16, (ECtHR, 27 August 2019) paras 24, 55; *Grech and Others v. Malta*, Application no. 69287/14, (ECtHR, 15 January 2019) para 63; *Marshall and Others v. Malta*, Application no. 79177/16, (ECtHR, 11 February 2020) para 78.

For several years, when awarding compensation for a violation, there was no hard and fast rule to determine the quantum of damages to be awarded. This matter was solely at the discretion of the Judge presiding over the case.

The key judgment on this point is that of *Cauchi v. Malta*<sup>89</sup> in which the ECtHR, following several key deliberations, conceived a ‘formula’ which assists in the computation of the compensation to be awarded. Subsequently, the Maltese courts also started to refer to this ‘formula’.

In practice, following the appointment of an *ex-parte* court expert, a report is drawn whereby amongst the various findings, the rental income is calculated based on residential rent rates along the years, representing that income which the landlords would have yielded along those same years of the Requisition Order’s imposition had this not been in place. It is important to note that compensation for the violation of P1-1 is only provided from 1987 in cases where requisition order was issued prior to that date.<sup>90</sup> Once this global sum is determined, three deductions are affected based on the three key findings made by the ECtHR in the above-mentioned judgement:

1. The estimated market value rents could be “reduced by around 30%” on the ground of the legitimate social policy aim of protecting tenants.
2. The ECtHR was also willing to accept a further 20% reduction due to the upward fluctuations in the Maltese property market, “if the property had not been subject to the impugned regime it would not have been rented out throughout the entire period.”<sup>91</sup>
3. Additionally, and lastly, a further deduction of the rent already received by the landlords to avoid the State bearing the tenant’s rent obligation.<sup>92</sup>

While the Maltese Courts are free to adopt any method to calculate such compensation, the Maltese courts adhered to this line of reasoning adopted in *Cauchi v Malta* without further controversy.<sup>93</sup>

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<sup>89</sup> Application no. 14013/19 25 March 2021.

<sup>90</sup> The ECHR was incorporated into domestic law on 19<sup>th</sup> August 1987.

<sup>91</sup> *Cauchi v. Malta*, Application no. 14013/19, (ECtHR, 25 March 2021), para 104.

<sup>92</sup> This was also consistent with earlier cases. In *Fleri Soler and Camilleri* (2008) just satisfaction was therefore based on “a reasonable amount of rent which would have provided them with more than a minimal profit” and it followed to award the applicants the sum of €279,525 in pecuniary damages, or 50% of the amount that the applicants had requested by quoting the market value (§18). It is also worth noting that these judgments required Maltese constitutional damages to align with the civil law principle of *restitutio in integrum*, rather than being determined arbitrarily (Rik 54/09/1 *Walter Delia et v. Chairman tal-Awtorità tad-Djar*, Constitutional Court, 18 February 2016; Rik 2/2017/1 *Maria Pia sive Marian Galea v. Avukat Generali et*, Constitutional Court, 14 December 2018). The ECtHR’s influence thus extended well beyond rent law cases in Maltese Constitutional and human rights law.

<sup>93</sup> In practice, Maltese courts sought to balance fairness to landlords in requisition cases by aligning compensation with the higher commercial rental value where applicable (Rik 241/2019/1 *Gemma Brownrigg et vs L-Awtorità tad-Djar et*, Constitutional Court, 21 October 2024.), while excluding speculative profits from potential commercial development (Rik 73/2011/1 *Sean Bradshaw et vs L-Avukat tal-Istat et*, Constitutional

## BOX 1: COMPARISON WITH COMPENSATION AWARDED BY RENT REGULATION BOARD

In the context of controlled rents regulated under Chapter 69 and Chapter 158 of the Laws of Malta, landlords may request an adjustment of the rent payable by tenants of up to 2% of the market value of the leased property. In practice, the Rent Regulation Board has, in the majority of cases, granted the full 2% increase of the market value. This level of adjustment corresponds to roughly half of the rental yield, typically between 4% and 5%, observed within the private rental market. The approach is also consistent with the principles affirmed by the ECtHR in *Cauchi v. Malta*.

An empirical exercise was undertaken using a random sample of 40 cases decided in 2023 and 2024, comparing the compensation awarded by the Rent Regulation Board to the median rent for a two-bedroom apartment registered with the Housing Authority during the second half of 2023. The applicable median market rent for each case was determined on the basis of the property's locality. Overall, the ratio of court-ordered compensation to the corresponding median rent averaged 47%, a result that aligns with prior expectations and reflects the intended proportionality of the statutory mechanism.

This also resonates the Court's decision in *Apap Bologna v State Advocate et* in which the plaintiff requested the Court to declare, amongst others, that the means test adopted in Article 4A of Chapter 69 of the Laws of Malta and Subsidiary legislation 16.11 are invalid and disproportionate as it violates the P1-1 and are discriminatory when compared with means testing adopted by the Housing Authority to allow clients to apply for social housing accommodation.

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Court, 6 February 2015.). Rental valuations also disregarded tenant-made improvements that enhanced the property's value (Rik 36/2018/1 *Henry Deguara Caruana Gatto v. L-Avukat tal-Istat et*, Constitutional Court, 23 November 2020), though some judgments held such improvements irrelevant since tenants could not claim their value (Rik 31/2018/1 *Paul Azzopardi et v. Joseph Elich et*, Constitutional Court, 27 January 2021). A lack of public interest may also serve as a basis for increasing the compensation (Rik 73/2012/1 *Elvia Scerri et v. Awtorita' tad-Djar et*, Constitutional Court, 2 March 2018). Maltese jurisprudence has clarified that only universal heirs may claim damages for violations suffered by their predecessors, as they legally continue the latter's personality (*Marianne Zammit v. Joseph Cutajar*), whereas successors acquiring property through sale or donation are excluded from such claims (Rik 6/2021/1 *D. Peak Limited vs L-Avukat tal-Istat et*, Constitutional Court, 25 January 2023.; Rik 79/2020/1 *Maria Gialanze vs Carmen Mizzi et*, Constitutional Court, 22 June 2022). Likewise, legatees may claim compensation only from the testator's death onwards, unless the property is subject to a usufruct, in which case the usufructuary alone may seek redress (Rik 602/2021 *Micallef Francis sive Frank et vs L-Avukat tal-Istat et*, (First Hall Civil Court, Constitutional. Jurisdiction.), 17 March 2025).). An additional issue addressed in this line of cases concerned whether a derequisition order automatically extinguished all State control over the property. The Constitutional Court answered in the negative where the landlord continued to accept rent directly from the tenant (Rik 116/2019/1 *Erika Gollcher et v. L-Avukat tal-Istat et*, (First Hall Civil Court (Constitutional Jurisdiction) 26 January 2022), thereby departing from an earlier contrary decision (Rik 195/2019 *Dr Umberto Borg Cardona v. L-Avukat tal-Istat et*, (First Hall Civil Court (Constitutional Jurisdiction) 18 November 2020)).

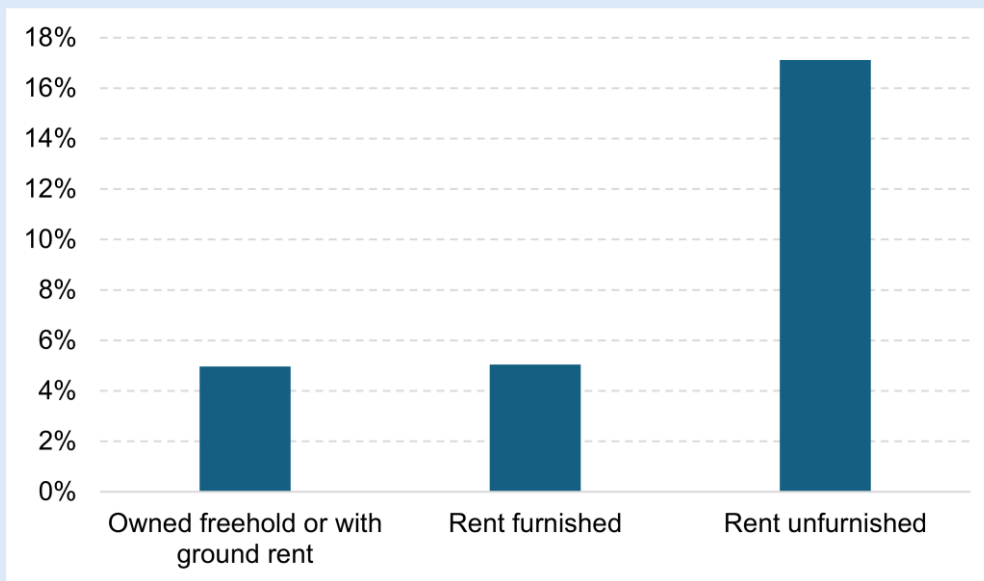
The Court rejected these pleas and did not find a violation of P1-1 or discrimination between the means testing adopted in Chapter 69 and that adopted by the Housing Authority since these have two completely different aims. Moreover, referring to the judgment in *Joseph Mary Duca v Reno Farrugia et* (the Court said that the rent increase mechanism does not violate P1-1, and considered the mechanism proportionate:

*“Tassew għalhekk il-fatt waħdu li l-liġi tagħti biss il-possibbiltà illi l-kera togħla sa mhux aktar minn tnejn fil-mija ta’ kemm jiswa l-post – u ma tagħtix, għalhekk, il-possibbiltà li sid il-kera jirċievi l-valur lokatizju sħiħ tal-fond fis-suq ħieles – ma jfissirx, b’daqshekk, illi m’hemmx il-proporzjon mixtieq mil-legislatur bejn l-interess ġenerali u l-interessi tas-sidien tal-proprjetà, partikolarment fid-dawl tal-fatt illi l-kera tibqa’ kontrollata biss sakemm il-kerrej jibqa’ jeħtieġ protezzjoni soċjali u illi tista’ tintalab reviżjoni tal-kera kull sitt snin”*

Similarly, although this has not been presented before any Court to date, it may be contended that the 2% adjustment mechanism applicable to requisitioned properties under Chapter 125 of the Laws of Malta, likewise constitutes a proportionate means of aligning compensation with contemporary market conditions.

Another interesting point is that unlike today’s private rental market, where units are typically leased fully furnished and maintained to contemporary standards, controlled leases and requisitioned properties were generally leased unfurnished. The restricted rent levels and limited landlord autonomy of these properties resulted in such properties generally exhibiting a significantly higher need for repairs. As a matter of fact, recent census data shows that 17% of the dwellings rented unfurnished (which include requisitioned properties, and those with rent controls under Chapter 69 and Chapter 158) are in need of moderate or serious repairs or are in a dilapidated state. This is significantly more than those owned freehold or rented furnished (see chart A).

**Chart A: Share of dwellings in need of moderate, serious repairs on in a dilapidated state**



This can shed light on two factors: first that the deteriorated condition of many requisitioned or pre-1995 unfurnished units is not merely incidental but reflects the cumulative effect of long-term regulatory constraints which disincentives the owner to invest in maintenance of the property. Secondly, when assessing the proportionality of compensation mechanisms, such as the 2% adjustment envisaged under Chapter 125, it is necessary to situate these mechanisms within the broader reality that the market value of such properties does not necessarily correspond to their actual state of repair. It should be noted that, in the case of pre-1995 leases, the responsibility for carrying out extraordinary repairs rested with the landlord. Until 2010, extraordinary repairs extended beyond structural works or ceiling repairs and covered a broader range of substantial interventions. In practice, however, tenants, conscious of the relatively low rents they were paying, were often reluctant to call upon landlords to undertake such repairs. At the same time, in many instances, the necessary works were not carried out by the tenants themselves. This dynamic has contributed significantly to the deteriorated condition observed in many of these dwellings.

Nevertheless, there have been certain exceptions to this formula as a result of certain particularities of the case before the Court. A case in point is *Simon Mercieca v. Avukat Ġenerali et*<sup>94</sup> wherein the court deducted an additional 50% since the plaintiff had bought the property at a very low price due to it being subject to a protected lease under Chapter 69 of the Laws of Malta following the derequisition of the property and hence has made a considerable profit buying the property at a very low price. Here the Constitutional Court specifically stated that:

*Il-Kostituzzjoni u l-Konvenzjoni huma maḥsuba biex iħarsu drittijiet fundamentali, li interpretati sew ma għandhomx jiġu sfruttati b'mod ċiniku biex min jilmenta mill-ksur jagħmel qligħ aktar milli xieraq.*<sup>95</sup>

## *ii. Cessation of the violation*

Another important discussion relates to the remedy afforded to the landlord. One of the main elements discussed was whether the violation implied the eviction of the tenant, a question which the ECtHR answered in the negative although the ECtHR recognised eviction as the sole remaining remedy where a judgment or subsequent government action failed to provide adequate redress through a rent increase.<sup>96</sup> With respect to requisition cases, the ECtHR criticised the Constitutional Court for issuing contradictory judgments which, while annulling the requisition order for violating human rights<sup>97</sup>, failed to order the eviction of the occupants, thus rendering the decision ineffective in practice.<sup>98</sup>

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<sup>94</sup> Rik 80/2012/1, Constitutional Court, 1 December 2021.

<sup>95</sup> The Constitution and the Convention are intended to safeguard fundamental rights, which, if properly interpreted, should not be allowed to be exploited cynically so as to enable a complainant to obtain more than is properly due" (authors' translation).

<sup>96</sup> *Apap Bologna v Malta*, App no 46931/12 (ECtHR, 30 August 2016) paras 87-88. The Court held that any distress to the tenant was for the Government to address through relocation, noting that constitutional courts must remedy Convention violations regardless of governmental inconvenience, which could be avoided by ensuring reasonable rent through law reform. See also: *Portanier v. Malta*, Application no. 55747/16, (ECtHR, 27 August 2019) paras 48; *Marshall and Others v Malta* App no 79177/16 (ECtHR, 11 February 2020) para 72.

<sup>97</sup> In *Joseph Falzon et v. Avukat Ġenerali* (Rik 10/2011/1, Constitutional Court, 28 April 2017)) the Constitutional Court, invoking Article 46(2) of the Constitution, held that once a requisition order resulted in a human rights violation, it had to be declared ineffective and revoked, stressing that it was the State's duty to ensure proportionality and the Court's role to end the violation. See also: Rik 104/14 *Michael D'Amato pro et noe v. Awotrta' tad-Djar et* (Constitutional Court, 28 April 2017) and Rik 59/2010/1 *Elvia Scerri et v. Awtorita' tad-Djar et* (Constitutional Court, 13 April 2018).

<sup>98</sup> *Mattei and Others v. Malta*, App. no. 14615/19, (ECtHR, 17 June 2021) paras 54-55. See also: *Edward and Cynthia Zammit Maempel v. Malta*, App. no. 3356/15, (ECtHR, 15 January 2019) paras 71-72. The case of *Portanier v. Malta* was interesting in this respect since the ECtHR praised the first-instance court's "impeccably comprehensive" remedy, ordering eviction, interim rent, and alternative housing for the tenant, as a model of adequate redress, though it was later overturned by the Constitutional Court (para 48). The ECtHR has, however, stated that it has no power under the Convention to annul or revoke requisition orders, nor to direct the Maltese State to do so; in awarding just satisfaction, it also cannot award any future losses [*Carmelo Grech and Others v. Malta*, (App. no. 43586/16), (ECtHR, 2 April 2019) (amicable settlement)].

In *Mattei and Others v. Malta*, the Court held that once a requisition order is annulled, the Housing Authority is under an obligation to vacate the property and return the keys to the rightful owner.<sup>99</sup> Nonetheless, this position may be subject to debate. The requisition order itself is the legal instrument that confers upon the Housing Authority a degree of control or administrative authority over the property. It is by virtue of this authority that the Housing Authority may initiate eviction proceedings in accordance with Chapter 573 of the Laws of Malta. Consequently, upon annulment of the requisition order, the Housing Authority arguably loses its legal standing to evict the occupant. As a result, any steps to regain possession of the property would then fall within the powers of the owners themselves.

Therefore, had the Court intended for the Housing Authority to proceed with the eviction of the tenant irrespective of the annulment of the requisition order, it should have explicitly provided for such a directive in its judgment. In the absence of a clear judicial mandate, it is arguable that the Authority is neither empowered nor obliged to take such action post-annulment. In fact, in *Martino de Porres sive Martin Leone Ganado et v. Direttur tas-Sigurtà Socjali et*<sup>100</sup>, the Court specifically ordered that the defendant Director of Social Services and the Superintendent of Public Health shall not enjoy the protection granted from the Requisition order, annulled the requisition order and specifically ordered the Authority to issue a derequisition order and return the vacant possession of the premises within three months.

This issue has been addressed through a dual approach. Firstly, the courts have increasingly adopted the compensation formula established in *Cauchi v. Malta*, aligning domestic awards with standards set by the European Court of Human Rights.

Secondly, the 2021 reform resolved this issue by allowing owners of requisitioned properties to seek rent reviews of 2% of the property's market value.<sup>101</sup> Yet uptake has been minimal, only three cases, since most of the original 54,197<sup>102</sup> requisition orders have been withdrawn or annulled, leaving about 120 in force<sup>103</sup>. This is similar to the procedure adopted in cases where landlords recognise the tenant under Chapter 69<sup>104</sup> or Chapter 158<sup>105</sup> of the Laws of Malta but without carrying out a

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<sup>99</sup> App. No. 14615/19, (ECtHR, 17 June 2021), para 54.

<sup>100</sup> Rik 64/2016, Civil First Hall (Constitutional), 28 January 2021.

<sup>101</sup> Housing Act, Chapter 125 of the Laws of Malta, article 11(5). In *Mary Pulo et v. Awtorita' tad-Djar et* (Rik 152/2021, Civil First Hall (Constitutional Jurisdiction), 27 October 2022) the Court held that: "... bearing in mind that the applicants now have at their disposal an ordinary remedy enabling them to receive rent in a non-negligible amount, with the possibility of recovering the premises if the tenants fail to meet the criteria established by law."

<sup>102</sup> Hon. Lawrence Gonzi (Minister for Social Policy) in response to Hon. Jason Azzopardi, Legislature IX, 21 January 1999, Sitting no. 54, PQ. no. 3764.

<sup>103</sup> As at August 2025.

<sup>104</sup> Chapter 69 of The Laws of Malta, Article 4A.

<sup>105</sup> Chapter 158 of the Laws of Malta, Article 12B.

means testing since the payee is the Housing Authority. Although the 2% rent-increase threshold has not been formally endorsed by the ECtHR and remains subject to further scrutiny under P1-1, in cases where landlords invoked this procedure, such as *Benjamin Testa and Others v. Malta*<sup>106</sup> and *Deguara Caruana Gatto v. Malta*<sup>107</sup>, the Court held that the violation had ceased, recognising the new mechanism as potentially effective in restoring proportionality.

### iii. Who may claim such remedy?

Another recurring issue in these constitutional cases concerns which successors in title are entitled to claim such compensation, and, as a consequence, the period for which compensation may be awarded. Requisition orders were imposed decades ago and as a result it is common for the subjected properties to have been passed onto generations, either through a transfer *causa mortis* or else through a transfer *intervivos*.

In *Marianne Zammit v. Joseph Cutajar*<sup>108</sup>, the Constitutional Court highlighted that, primarily constitutional rights are personal to an individual, and secondly, extra commercium; cannot be traded, negotiated or transferred. Jurisprudence has nevertheless established that successors appointed as universal heirs are deemed to have stepped into the shoes of their predecessors, thereby continuing their legal personality. Therefore, universal heirs can claim to be “victims” not only of the violations suffered directly by themselves whilst in possession of the property, but also for the years which their predecessors suffered the same violations.

Conversely, in *D. Peak Limited (C12224) v. l-Avukat tal-Istat et*<sup>109</sup>, where the property was acquired by the plaintiff company through a deed of sale, the Constitutional Court confirmed that such acquisition did not confer the right to claim compensation which the predecessor could have claimed during his lifetime. The same position was adopted in *Maria Gialanze v. Carmen Mizzi et*<sup>110</sup>, where the transfer occurred by way of a donation *inter vivos*.

Similarly, the Court held that a legatee who was not a universal heir could not be considered to have stepped into the shoes of the deceased. Accordingly, compensation could only be claimed from the date of the testator's death, when ownership passed to the legatee.<sup>111</sup>

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<sup>106</sup> App. no. 58910/19, (ECtHR, 7 September 2021) para 41. See also: *Matthew Said & Iana Said v. Malta*, Application no. 34562/20, (ECtHR, 22 March 2022) para 11.

<sup>107</sup> App. no. 20064/21, (ECtHR, 23 May 2023). The applicant was similarly found to have lost his victim status. See also: *Bartolo Parnis v. Malta* (App No. 24535/20, ECtHR, 3 October 2023). This was all ultimately, reiterated in *Rizzo and Others*, App No. 36318/21, (ECtHR, 16 January 2024).

<sup>108</sup> Rik 33/2019/1 *Zammit Marianne vs Cutajar Joseph et* (Constitutional Court, 1 December 2021).

<sup>109</sup> Rik 6/2021/1 *D. Peak Limited vs Avukat tal-Istat et* (Constitutional Court, 25 January 2023).

<sup>110</sup> Rik 79/2020/1 *Gialanze' Maria vs Mizzi Carmen et* (Constitutional Court, 22 June 2022).

<sup>111</sup> Rik 33/2019/1 *Zammit Marianne vs Cutajar Joseph et* (Constitutional Court, 1 December 2021).

A further dimension to this question is when a property is subject to a usufruct<sup>112</sup>. In *Micallef Francis sive Frank et vs L-Avukat tal-Istat et*<sup>113</sup>, although the property had been left to the son by way of legacy, it was subject to a usufruct in favour of the husband. The Court held that it is the usufructuary, and not the bare owner, who is entitled to complain of a breach of human rights.

#### iv. Non-Pecuniary damages

Compensation awarded also included those of a non-pecuniary nature reflecting the victim's moral suffering, uncertainty, and anxiety as recognised by the Court.<sup>114</sup> The Court enjoys discretion in determining the quantum of moral damages, taking into account all relevant facts of the case and the circumstances surrounding the imposition of the requisition order and the subsequent forced rent, insofar as these affected the landlord.

In cases such as *Gevimida Limited v. Carmen Fenech et*<sup>115</sup>, the Court suggested and even awarded a sum of €500 for each year of the violation. Although this rate has been relied upon by several plaintiffs when instituting their constitutional claims, the Constitutional Court in *Christel Limited v. L-Avukat tal-Istat et*<sup>116</sup> clarified that no fixed rate applies to all cases. Similarly, in *B. Tagliaferro & Sons Limited (C-817) v. L-Avukat tal-Istat et*<sup>117</sup>, it was emphasised that non-pecuniary damages are inherently subjective and must be assessed on a case-by-case basis, whilst reductions may occur for delay<sup>118</sup>, speculative intent<sup>119</sup>, or passivity of the victim.<sup>120</sup>

Interestingly, our Court also had the opportunity to explore the possibility of companies' and legal persons' rights to claim for moral damages.<sup>121</sup> It has been argued that such juridical bodies, such as companies, cannot suffer morally, and thus cannot claim these non-pecuniary damages. However,

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<sup>112</sup> 'Usufruct is the real right to enjoy things of which another has the ownership' as defined by Article 328, Civil Code, Cap.16 of the Laws of Malta.

<sup>113</sup> Rik 602/2021, *Micallef Francis sive Frank et vs L-Avukat tal-Istat et*, First Hall, Civil Court (Constitutional Jurisdiction), 17 March 2025.

<sup>114</sup> Rik 265/2021/1 *Christel Limited v. Avukat tal-Istat*, Constitutional Court, 28 April 2025.

<sup>115</sup> Rik 53/2015 *Gevimida Limited vs Fenech Carmen et*, First Hall Civil Court (Constitutional Jurisdiction), 16 November 2017.

<sup>116</sup> Rik 265/2021/1 *Christel Limited v. Avukat tal-Istat*, Constitutional Court, 28 April 2025.

<sup>117</sup> Rik 23/2020/1 *B. Tagliaferro & Sons Limited (C-817) v. L-Avukat tal-Istat et* (Constitutional Court, 12 July 2023).

<sup>118</sup> Rik 46/2018/1 *Giovanna Bartoli et v. Carmelo Calleja et*, Constitutional Court, 6 October 2020,; Rik 161/2019/1 *Carmel sive Charles Sammut v. Maria Stella Dimech et*, Constitutional Court, 26 May 2021,. In both cases, the Court, however, suggested that this element could still have bearing on the amount of moral damages awarded to the claimant.

<sup>119</sup> Rik 113/2018 *Gerald Camilleri et v. L-Avukat Generali*, Civil First Hall (Constitutional Jurisdiction), 31 October 2019,; Rik. Kost. Nr. 119/2018/1 *Alexander Caruana et v. Doris Zarb*, Constitutional Court, 28 April 2021.

<sup>120</sup> Rik 106/2019/1 *Emanuela Camenzuli pro et noe et v. Avukat Generali*, Constitutional Court, 4 May 2022, Rik 290/2021/1 *Lilian Martinelli et v. Avukat tal-Istat*, Constitutional Court, 22 June 2022.

<sup>121</sup> Rik 265/2021/1 *Christel Limited v. Avukat tal-Istat*, Constitutional Court, 28 April 2025.

with reference to foreign jurisprudence such as *Comingersoll S.A. v. Portugal*<sup>122</sup>, our Court explained that whilst the ECHR is to be widely interpreted to guarantee rights as practical and effective as possible, companies can also suffer from issues of reputation, uncertainties, disruption of management on the one hand and anxiety and inconveniences by its members on the other. Therefore, non-pecuniary damages are likewise to be awarded to and claimed by juridical bodies.

In *Patricia Ellul Sullivan et v. Avukat tal-Istat et*<sup>123</sup>, the tenant was likewise ordered to pay half of the moral damages. This marked an important development, signalling that moral damages may be imposed on private parties rather than being shouldered exclusively by the State. It is worth noting, however, that in this case the tenant was a political party which happened to be in government at the time the requisition order had been issued in its favour (see further Section iv. below).

#### *iv. The impact of public interest on compensation and remedies*

While the use of a building as a government department was deemed in the public interest<sup>124</sup>, the same reasoning was not extended to political clubs, which were deemed incapable of representing the general public interest due to their partisan nature, and whose requisition was found to breach constitutional protections against discrimination and interference with freedom of expression.<sup>125</sup> In other cases, the courts invalidated requisition orders where properties were derelict, uninhabitable, or neglected by the authorities, emphasising that public interest must be both genuine and reasonably exercised.<sup>126</sup>

Interestingly the concept of public interest impacts on the method of calculation adopted for compensation. In *Cauchi v. Malta*, where the Court confirmed that while legitimate social policy aims may warrant a deduction, around 30% as adopted in this judgment, from the full market value, such deductions are not automatic and must reflect the strength and continuing relevance of the public interest.

Domestic case law has followed suit and in *Jason Borg et vs Avukat tal-Istat et*<sup>127</sup>, the Maltese Courts identified multiple factors to be considered in compensation assessments, including the legitimacy of the public interest pursued, the duration of the disproportionate situation, and the conduct of both

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<sup>122</sup> App. No. 35382/97, (ECtHR, 6 April 2000).

<sup>123</sup> Rik 105/2018/1 Constitutional Court, 23 June 2025.

<sup>124</sup> *Fleri Soler and Camilleri v. Malta*, App. no. 35349/05, (ECtHR, 26 September 2006)

<sup>125</sup> Rik 60/2006/1 *Philip Grech et v. Direttur tal-Akkomodazzjoni Socjali*, Constitutional Court, 7 December 2010).

<sup>126</sup> *Joseph F. Portelli noe v. L-Onorevoli Ministru tax-Xoghlijiet u Sport et*, Civil Court (First Hall), 15 March 1993 (Vol. LXXVII.III.70); Rik 96/2013 *Igino Trapani Galea Feriol et v. Direttur għall-Akkomodazzjoni Socjali et*, Constitutional Court, 20 July 2020.

<sup>127</sup> Rik 65/2021, 25 March 2024, Civil First Hall (Constitutional Jurisdiction).

the applicant and the State. The principle was further refined in the above-mentioned *Ellul Sullivan* case, where the Court distinguished between types of social objectives, concluding that the protection of a political party's title did not carry the same weight as residential social housing, and accordingly limited the reduction to 10% rather than the typical 30%. This evolving jurisprudence illustrates a more nuanced and proportionate approach to balancing private property rights with legitimate public interests.

The element of public interest not only affects the quantum of compensation awarded in constitutional redress cases, but also shapes the nature of the remedies granted, particularly in relation to eviction. Historically, the Constitutional Court of Malta has refrained from ordering eviction in cases concerning residential leases, on the basis that constitutional remedies are directed against the State and not private individuals. In *Victor Portanier et v. Avukat Generali et*<sup>128</sup>, the Court recognised that ordering evictions against private tenants, who are not responsible for the legislative breaches, could trigger social consequences beyond the courtroom. The Court stated that it was acting prudently, not shirking its responsibility, in avoiding a wave of evictions from residences that could result in disproportionate hardship.

Nevertheless, in the case of *Ellul Sullivan*, the Court found that these public interest concerns did not carry the same weight. Unlike residential tenants, the occupiers in that case were a political party, and the Court found them to be complicit with the public authority in effecting the breach of the applicants' property rights. The Court observed that "the tenants were as guilty as the State in violating the plaintiffs' rights" and, accordingly, held that it was appropriate for the remedy of eviction to be granted against them as well. It explicitly distinguished this situation from typical residential lease cases, holding that the same arguments that apply to tenants unaware of or uninvolved in the breach could not apply where the tenant had actively contributed to the violation. This case illustrates that eviction may be an appropriate constitutional remedy where the public interest in maintaining the status quo is weak, and where the tenant has a direct role in the rights violation. The Court thus reaffirmed that remedies in constitutional cases must be tailored to the circumstances, with public interest considerations remaining central to their scope and application. This contrasts with the approach taken in *Philip Grech et v. Direttur tal-Akkomodazzjoni Soċjali*<sup>129</sup> and *Vanessa Rapa Grech et v. Avukat tal-Istat et*<sup>130</sup> wherein eviction was only ordered through separate proceedings before the Rent Regulation Board<sup>131</sup>, showing a possible evolution in the perspective towards political parties vis-à-vis the concept of public interest.

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<sup>128</sup> Rik 50/2010/1, Constitutional Court, 29 April 2016.

<sup>129</sup> Rik 60/2006/1, Constitutional Court, 7 December 2010.

<sup>130</sup> Rik 8/2020, Civil First Hall (Constitutional Jurisdiction), 30 November 2022.

<sup>131</sup> Rik 385/2023 *Vanessa Rapa Grech et v Direttur tal-Akkomodazzjoni Soċjali et*, First Hall Civil Court (Constitutional Jurisdiction), 30 November 2022.

Another contrast can be seen with *Josephine Mary Vella v. Direttur tal-Akkomodazzjoni Socjali et*<sup>132</sup> wherein the Court of Appeal revoked the judgment of first instance to evict the band club, probably because of the fact that it considered a band club as satisfying the public interest unlike a political party.

## 6. Lessons drawn from the Maltese experience

The legacy of this experience, judicial as well as political, has significantly shaped Maltese housing policy. Indeed, the succession of ECtHR judgments against Malta coincided with a period of pronounced public resentment towards the notorious consequences of the requisition system. This widespread repugnance towards requisition orders, and towards rent controls more generally, gradually solidified into an almost quasi-legal expectation that the State was, or ought to be, precluded from intervening in property matters altogether. In reality, however, as the analysis demonstrates, the ECtHR's criticism was directed primarily at the severity and obsolescence of the measure, for which no compelling justification remained. The ECtHR's focus was thus on the depletion of the essential attributes of ownership, including the inability to derive a reasonable and proportionate profit, rather than on any principled objection to State intervention in the private housing market.<sup>133</sup>

However, the impact of requisition orders went well beyond public unpopularity and produced concrete distortions within the property market. The system of controls in general, and requisition orders in particular, contributed to the shrinking of the residential rental market, driven by fears that requisitioning laws might one day be reintroduced.<sup>134</sup> The government itself openly recognised that landlords' distrust of past and potential future interventions, especially the prospect of renewed requisition, was stifling the rental sector.<sup>135</sup> Unsurprisingly, the Working Group responsible for drafting the 2008 White Paper on the reform of controlled leases adopted a similar outlook, advocating a wholly non-interventionist approach in order to restore the conditions necessary for a functioning rental market. The final report recommended:

*“... unequivocal bi-partisan agreement that no party in government will resort to interventionist measures to address housing issues is of fundamental importance so that the necessary confidence to rebuild the rental market is attained.”*<sup>136</sup>

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<sup>132</sup> Rik 15/2007/1, Constitutional Court, 25 May 2012.

<sup>133</sup> K. Xerri, *Rent Control, Property and Human Rights Law* (1st edition, Routledge 2026).

<sup>134</sup> C. Vakili-Zad & J. Hoekstra, (2011). High dwelling vacancy rate and high prices of housing in Malta a mediterranean phenomenon, *Journal of Housing and the Built Environment*, Vol. 26, No. 4, 450.

<sup>135</sup> Ministry for Social Policy, *The Need for Reform: Sustainability, Justice and Protection*, 2008, i.

<sup>136</sup> *Ibid.* Ministry for Social Policy, 32.

Nevertheless, in an island that recorded double digit growth rates in its population between 2011 and 2021, mostly driven by migrant workers, and that already has the highest population density in the EU, pressures on the housing system have been mounting. These difficulties are reflected in the continued rise in rents and house prices. At the same time, the 2021 Census reported that one quarter of all dwellings in Malta, 81,613 units, were secondary, seasonally used, or vacant.<sup>137</sup>

In the face of these strains, government has remained committed to its position of avoiding interventionist measures, relying, aside from the construction of additional social housing units, primarily on *Nikru biex Nassistu* (NIK), a scheme that enables landlords to lease their vacant residential properties to the Housing Authority for a 10-year period, during which the Authority subleases them for social housing purposes.<sup>138</sup> Therefore, in practice, this policy framework continues to prioritise the provision of highly favourable incentives to landlords rather than resorting to any coercive measures.

Although the present context is far removed from the mass homelessness of the immediate post-war period, it nonetheless revives long-standing concerns about the efficient utilisation of Malta's housing stock. Against this backdrop, the central question becomes: what legal and policy position does this line of cases now leave us with, and how should contemporary strategies be shaped in light of it?

A first and fundamental observation is that the ECtHR has never rejected State intervention in the private rental market. The rehousing strategy underlying requisition orders, despite amounting in practice to a temporary State taking, was consistently accepted as pursuing a legitimate public-interest aim. The systemic failure lay not in the concept of intervention itself but in its defective execution. The stricter proportionality review applied by the ECtHR, and subsequently by the Maltese Constitutional Court, demonstrates that the constitutional infirmity of the historic regime lay primarily in its derisory compensation levels and its potentially indefinite duration, both of which generated disproportionate burdens. Domestic case law further demonstrates how such a framework was structurally susceptible to political manipulation, especially through the compulsory recognition of tenants selected by government.

What, then, would be the defining conditions of any future intervention capable of withstanding constitutional and Convention scrutiny? At a minimum, the purpose of the measure must be clearly

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<sup>137</sup> National Statistics Office (Malta), *Census of Population and Housing 2021: Final Report – Dwelling Characteristics (Volume 2)* (nso.gov.mt)

<sup>138</sup> Available on: <https://housingauthority.gov.mt/scheme/nikru-biex-nassistu/>. Additionally, landlords receive tax-free rent, paid every six months in advance, and an annual rent increase of 2%. The Housing Authority assumes full responsibility for tenant compliance and maintenance.

articulated, and the scope of properties that may be subjected to intervention must be precisely delineated. The modalities of the taking should be strictly defined in order to prevent arbitrary State action, while preserving the possibility of legal challenge where the asserted public interest is insufficient, particularly in cases where beneficiaries do not use the dwelling as a primary residence or possess suitable alternative accommodation.

Equally crucial are the compensatory terms and the duration of the intervention. Sharp divergences from market rental values must be avoided, although the analysis makes clear that the ECtHR does not confer on property owners any entitlement to full market rent. The remedial principles developed by the ECtHR indicate that compensation should *not* fall below approximately 50 per cent of market rent, reflecting both the legitimate aims of social policy and the inherent uncertainty surrounding continuous full-market rental income. Finally, no intervention can be allowed to persist indefinitely: temporal limits are essential to ensure that measures operate only for as long as the impelling public interest that justifies them continues to exist. Moreover, adequate procedural safeguards would need to be established to ensure that landlords are not burdened with excessive maintenance obligations, nor prevented from recovering the property should it be required for their own primary residential use.

It must nevertheless be recognised that the economic and social conditions which produced the historic requisition regime bear little resemblance to those prevailing today. The acute post-war scarcity of habitable dwellings, which once served to justify extraordinary and far-reaching forms of State intervention, cannot be said to be present in comparable terms. In that sense, the foregoing discussion is necessarily prospective, aimed less at predicting an imminent return to requisition than at distilling the constitutional lessons emerging from the case law of the ECtHR and the domestic Constitutional Court. Those lessons are not merely theoretical. They can already be seen informing contemporary policy design, including mechanisms such as the NIK scheme, which seeks to involve private supply while avoiding indefinite control and improving compensation structures.

## 7. Conclusion

The history of requisition orders represents one of the most momentous episodes in the constitutional and human-rights development of Maltese law. It reveals, in stark terms, how extensive interferences with private property, even when animated by legitimate social objectives, may give rise to long-lasting repercussions such as the burden which the State, partly through the Housing Authority, continues to suffer in the form of reparations for violations established by domestic and ECtHR jurisprudence.

At the same time, the case law makes equally clear that the underlying public interest pursued by such measures was not, in itself, repudiated. Intervention in the housing market falls squarely within the State's margin of appreciation. What proved fatal was the absence of adequate safeguards, particularly in relation to foreseeability, proportionality, duration, and the level of return afforded to owners.

Two broader lessons emerge. First, the legacy of intrusive regimes extends beyond legal liability; it risks instilling a deep mistrust towards public management of private property. Secondly, it underlines the structural importance of sustained supply policies capable of preventing emergencies that might otherwise tempt governments towards exceptional solutions.

Contemporary initiatives suggest an awareness of these lessons. Schemes such as *Nikru Biex Nassistu (NIK)* rely on voluntary participation, provide compensation aligned with market conditions, and are subject to defined temporal limits, thereby marking a clear departure from earlier models of compulsory control. Parallel efforts to expand the stock of social housing (447 units have been built since 2022, including the recovery of more than 430 sets of keys to social housing properties following vacancies, reallocations, and the transition of elderly residents into residential care), together with partnerships with third-sector actors including the Foundation for Affordable Housing, further signal a move towards diversified and more sustainable forms of provision.

The evolution from coercive intervention to structured cooperation illustrates how constitutional adjudication, far from paralysing policy, can instead guide its redesign. The Maltese experience therefore stands not only as a cautionary tale, but also as an example of institutional adaptation under the discipline of fundamental rights.



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