**[2017 Gib LR 172]**

## MONTEGRIFFO and LUGARO (as trustees for the estate of FRANCIS) v. ATTORNEY-GENERAL (SERUYA intervening)

SUPREME COURT (Ramagge Prescott, J.): July 28th, 2017

*Landlord and Tenant—rent—rent control—no breach of landlord's right to enjoyment of property under Constitution, s.1 by reduction in rental income caused by Housing (Amendment) Act 2013 (i.e. fixed statutory rents for properties built between 1945–1959 if tenancies pre-date June 1st, 2008)—Act of general application for public benefit and valid revision of Gibraltar rent control legislation*

The claimants sought a declaration that the Housing (Amendment) Act 2013 violated their rights to the enjoyment of property, as protected by s.1(a) of the Constitution.

The claimants were the trustees of an estate which included a property built in the early 1950s consisting of 41 residential tenancies and 5 business tenancies. Prior to the Housing (Amendment) Act 2013, which amended the Housing Act 2007, rents in the building had been determined by the Rent Assessor. The 2013 Act amended the Housing Act 2007 and provided for fixed statutory rents for properties that had been built between 1945 and 1959, and which were rented out under tenancies entered into before June 1st, 2008. The 2013 Act substantially reduced the rent the claimants could charge for residential tenancies in the property from Rent Assessor rents to lower fixed statutory rents. This had resulted in an alleged reduction of rental income of more than 50% and was said to have prevented the claimants from properly maintaining the building.

The claimants brought proceedings seeking a declaration that the 2013 Act violated their right to the enjoyment of property as protected by s.1(a) of the Gibraltar Constitution Order 2006. They submitted *inter alia* that (a) as far as the 2013 Act downgraded rents payable from Assessor rents to fixed rents it was unconstitutional and such tenancies should be determined as they had been before the Act, *i.e.* in accordance with the Rent Assessor provisions of the Landlord and Tenant Act 1983; (b) there was no justification for the violation of the enjoyment of their property; alternatively, the justification relied on did not accord with the principle of proportionality; (c) it was for the Attorney-General to prove that the Act was constitutional; (d) it was not said that rent control schemes were unconstitutional in general, but that the 2013 Act did not form part of the broader framework of rent control and was in fact a standalone measure or so disconsonant with the legislative history of rent control as to make it

irreconcilable within that framework; and (e) the Court of Appeal decision in *Rent Tribunal* v. *Aidasani* (2001–02 Gib LR 21) was distinguishable.

Section 1 of the Constitution provided for the right of individuals to the enjoyment of property. Any infringement of the right could be justified on the ground of public interest.

The Attorney-General submitted *inter alia* that (a) the claimants had the burden of proving that the 2013 Act was unconstitutional; (b) the 2013 Act was an amending Act and part of the rent control scheme; (c) the case of *Rent Tribunal* v. *Aidasani* therefore applied and the court was bound by the decision of the Court of Appeal in that case that the rent control legislation was enacted for public benefit and any deprivation thereby caused to landlords would not give rise to a right to compensation; and (d) although the 2013 Act possibly contravened landlords' right of enjoyment of property, it was nevertheless justified.

**Held,** dismissing the claim:

(1) The burden lay on the claimants to prove their assertion that the 2013 Act was unconstitutional. The court would start from the premise that the Act was presumed to be constitutional (paras. 27–28).

(2) The 2013 Act was not a standalone Act, as was evident from its description and title. It amended the Housing Act 2007. Nor was it so disconsonant with the legislative history of rent control as to make it irreconcilable within the framework of that prior legislation. The effect of the 2013 Act was clear: all buildings erected before 1959 were either fixed rent, if tenancies had been created pre-2008, or rent-assessed, if tenancies had been created post-2008. The purpose of the 2013 Act was to provide a single rent control system, albeit with two elements in relation to the dates of creation of tenancies. The concept of fixed rent was not a new introduction in 2013. The amendments introduced by the 2013 Act might have had the effect of seemingly favouring a small portion of tenants by moving them from assessed rents to fixed rents, and conversely disadvantaging a portion of private landlords by reducing the rent recoverable by them, but the legislature was perfectly entitled to consolidate and simplify the rent control legislation. The 2013 Act had a legitimate purpose and was part of a broad scheme of rent control and management. Although the claimants objected to the 2013 Act, they did not claim that rent control was itself unconstitutional (para. 31; paras. 39–41; para. 49).

(3) The claimants had failed to establish that the 2013 Act offended the Constitution. It was an Act of general application and for the public benefit. It was a valid revision of rent control legislation which had been developing for years. Rent control schemes involved consideration of issues of social policy of great difficulty and the court must approach its task with caution. The present case fell within the ambit of the Court of Appeal decision in *Rent Tribunal* v. *Aidasani*, in which it was held that a rent control provision which deprived a landlord of some of the rent

previously paid by tenants did not offend s.1 of the Constitution. The court was bound by *Aidasani* and the claim therefore failed (paras. 53–61).

(4) If the court were wrong and the claim was not caught by *Rent Tribunal* v. *Aidasani*, the court considered the claimants' constitutional argument in light of the jurisprudence of the European Court of Human Rights. The Attorney-General claimed that even if the measure introduced by the 2013 Act possibly contravened landlords' right of enjoyment of property, it was nevertheless justified. A justification defence would succeed if (i) the measure's objective was sufficiently important to justify the limitation of the fundamental right; (ii) it was rationally connected to the objective; (iii) a less intrusive measure could not have been used; and (iv) a fair balance had been struck between the rights of the individual and the interests of the community (this test was known as the proportionality test). The first point was met. It was not in dispute that domestic and European case law had established that rent control was a legitimate objective of legislators, even if it had some impact on the limitation of rights. The second point was also met as a natural extension of the first. The objective of the Act was rent control and the level of rent must be rationally connected to the objective. In relation to the third point, it would be rare if, with the benefit of hindsight, less intrusive measures could not be identified in all but a minority of cases. Each measure must be analysed in the contextual background against which it was created. The 2013 Act was based on a reasonable foundation and the legislature's adoption of it was not open to substitution by the court of an alternative, less intrusive measure. The third part of the test was met. In relation to the fourth part, the exercise of balancing the rights of the individual against the rights of the community or the general interest must, in the first instance, be for the legislature to strike. Domestic governments have a wide margin of appreciation when legislating on domestic issues and policies such as rent control. The 2013 Act formed part of a comprehensive scheme of rent control the aim of which was to remove unnecessary distinctions in the scheme and provide for a single method for the calculation of rent. The creation of a uniform method of calculation could quite properly be in the general interest. The justification for the connection between the measure and the landlords was legitimate. The 2013 Act was in keeping with protected housing policy and did not derogate rights already granted to tenants. Although it disadvantaged some landlords, rent control measures often did. The measure was not so unreasonable and unfounded as to justify an intervention by the court. It might be that subjecting a landlord to receipt of fixed rent when he had previously received assessed rent caused him some disadvantage, but that did not itself make the measure unconstitutional. The 2013 Act had a legitimate purpose, was of general application for public benefit and was part of a rent control scheme. The claim would be dismissed (paras. 62–81).

**Cases cited:**

(1) *Arorangi Timberland Ltd.* v. *Minister of the Cook Islands National Superannuation Fund*, [2016] UKPC 32; [2017] 1 W.L.R. 99, followed.

(2) *Atanasiu* v. *Romania*, [2010] ECHR 1502, considered.

(3) *Bäck* v. *Finland*, [2004] ECHR 360; (2005), 40 E.H.R.R. 48; [2005] BPIR 1, considered.

(4) *Bank Mellat* v. *H.M. Treasury (No. 2)*, [2013] UKSC 38; [2014] A.C. 700; [2013] 4 All E.R. 533; [2013] Lloyd's Rep. F.C. 557, applied.

(5) *Cassell & Co. Ltd.* v. *Broome*, [1972] A.C. 1027; [1972] 2 W.L.R. 645; [1972] 1 All E.R. 801, considered.

(6) *Francis (Trustees)* v. *Balban*, 2007–09 Gib LR 229, considered.

(7) *Grape Bay Ltd.* v. *Att.-Gen. (Bermuda)*, [2001] 1 W.L.R. 574; [2000] 1 L.R.C. 167; (1999), 57 W.I.R. 62, referred to.

(8) *James* v. *United Kingdom* (1986), 8 E.H.R.R. 123; [1986] ECHR 8793/79; 75 ILR 396; [1986] R.V.R. 139, considered.

(9) *Mellacher* v. *Austria*, [1989] ECHR 25; (1990), 12 E.H.R.R. 391, followed.

(10) *Morgan* v. *Att. Gen. (Trinidad & Tobago)*, [1988] 1 W.L.R. 297; [1988] L.R.C. (Const.) 468, considered.

(11) *Penn Central Transp. Co.* v. *New York City* (1978), 438 U.S. 104; 57 L.Ed.2d. 631, referred to.

(12) *R. (Daly)* v. *Home Secy.*, [2001] UKHL 26; [2001] 2 A.C. 532; [2001] 2 W.L.R. 1622; [2001] 3 All E.R. 433; [2001] H.R.L.R. 49; [2001] UKHRR 887; [2001] Prison L.R. 322, considered.

(13) *Rent Tribunal* v. *Aidasani*, 2001–02 Gib LR 21, applied.

(14) *Rookes* v. *Barnard*, [1964] A.C. 1129; [1964] 2 W.L.R. 269; [1964] 1 All E.R. 367; [1964] 1 Lloyd's Rep. 28, referred to.

**Legislation construed:**

Gibraltar Constitution Order 2006, Annex 1, s.1: The relevant terms of this section are set out at para. 21.

s.16: "(1) If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1), and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the foregoing provisions of this Chapter to the protection of which the person concerned is entitled."

Housing Act 2007, s.40: The relevant terms of this section are set out at para. 15.

s.41: The relevant terms of this section are set out at para. 13.

Housing (Amendment) Act 2013, s.1: The relevant terms of this section are set out at para. 30.
s.2: The relevant terms of this section are set out at para. 30.

Landlord and Tenant Act 1983, s.10: The relevant terms of this section are set out at para. 17.
s.11: The relevant terms of this section are set out at para. 17.
s.11A: The relevant terms of this section are set out at para. 17.

*J. Restano*, *Q.C.*, *R. Pennington-Benton* and *M. Levy* for the claimants;
*J. Neish*, *Q.C.* and *L.A. Saez* for the defendant.

1 **RAMAGGE PRESCOTT, J.:** The original claimant in this matter was the late Mr. Solomon Levy, as trustee for the estate of Lewis Francis ("the estate"). After his demise on December 22nd, 2016, an application was made in March 2017 for his replacement and, by order of this court the claimants were appointed to replace Mr. Levy. The estate includes the Matilde Francis Building ("the building"), built in the early 1950s, which consists of 41 residential tenancies and 5 business tenancies.

2 By order dated February 23rd, 2016, Mr. Abraham Seruya was granted permission to participate in the proceedings as intervenor. The intervention was to be limited to the filing of written submissions. These were filed together with enclosures on June 24th, 2016. A further set of submissions was handed up to me after the claimants and defendants had concluded their final submissions. For the avoidance of doubt, I have read the intervenor's submissions and so far as they are relevant to the matters raised in this case I take account of them.

**Summary of the claim**

3 The claimants bring proceedings under Part 8 of the CPR. The relief sought is a declaration that the Housing (Amendment) Act 2013 ("the 2013 Act") violates the right of the claimants to the enjoyment of their property as protected by s.1(a) of the Gibraltar Constitution Order 2006. In the course of this hearing the claimants have emphasized that the purpose of their claim is not to seek to decontrol the building altogether. They do not say that rent control offends the Constitution but, rather, that insofar as the 2013 Act downgrades rents payable from assessor rents to fixed rents, it is unconstitutional, and such tenancies should fall to be determined as they were prior to the commencement of the 2013 Act, that is, in accordance with the Rent Assessor provisions of the Landlord and Tenant Act 1983.

4 Prior to the 2013 Act, rents in the building were determined by the Rent Assessor by reference to the size of the property, at below market rents. The effect of the 2013 Act was to reduce the statutory rent recoverable by those landlords whose property was built between

1945–1959, and which was rented out under tenancies entered into before June 1st, 2008. The building is one such property and, therefore, post the 2013 Act, the amount of rents which the claimants could charge dropped from Rent Assessor rents to fixed statutory rents.

5 The claimants submit that this constitutes a breach of s.1(a) of the Constitution in so far as it is a violation of the enjoyment of property and that there is no justification for this violation. Alternatively, they submit that the justification relied on does not accord with the principle of proportionality.

**The legislation and its background**

6 An understanding of the legislative history is necessary because it helps place the current legislation into its proper context. Both counsel have provided me with a chronological table of the legislative history, for which I am grateful. In setting out the relevant legislative chronology, I quote liberally from both sets of tables.

7 The origins of statutory rent control originate in the Rent Restriction Ordinance 1938. By that Ordinance, rents of dwellinghouses remained frozen at the level they had been in January 1936, however that cap did not extend to dwellinghouses built after January 1st, 1936.

8 The Landlord and Tenant (Miscellaneous Provisions) Ordinance 1959 ("the 1959 Ordinance") repealed the Rent Restriction Ordinance 1938 and, in respect of dwellinghouses erected before May 1st, 1940, set fixed rents which were higher than previous fixed rents and referable to the floor surface area of the dwelling. The 1959 Ordinance, however, did not apply to dwellinghouses erected after May 1st, 1940, so that there was no rent control on dwellings built after May 1st, 1940.

9 Section 83 of the Landlord and Tenant Act 1983 ("1983 Act") repealed the 1959 Ordinance and extended rent control to dwellings erected before January 1st, 1945. By s.10, rents payable for dwellinghouses built before 1945 were subject to Part III of the 1983 Act, in particular s.11 and Schedule 1; this provided that rents in respect of tenancies of dwellinghouses erected on or before January 1st, 1945 would be between £40–£60 per 100 sq. ft. p.a. This was higher than it had been under the 1959 Ordinance but lower than average rent on the open market. The 1983 Act provided no mechanism for the increase of rents over time. The position as from 1983, therefore, was that tenancies of dwellinghouses built before 1945 were subjected to the same fixed rent scheme. The building was erected in 1950, so the legislation thus far had no bearing upon it.

10 Then came the Landlord and Tenant (Amendment) Act 1991 ("the 1991 Amending Act"); this preserved the position in respect of dwellinghouses built on or before January 1st, 1945. These dwellinghouses

remained subject to fixed rents, and were subject to s.11 and Schedule 1 of the 1983 Act, which fixed rents at between £40–£60 per 100 sq. ft. p.a., exclusive of rates. In respect of dwellinghouses built after January 1st, 1945, it introduced a rolling system of rent control upon the dwelling becoming 45 years old. The 1991 Amending Act therefore introduced a separate scheme of statutory rents for dwellings which were built after 1945 and which became 45 years old with the passage of time. Upon dwellings coming within the ambit of the 45-year rule, tenants became entitled, upon application, to have their rent assessed in accordance with s.11A of the 1983 Act and the Statutory Rent (Forty-Five Year Rule) Regulations 1992 ("the 1992 Regulations"). By those Regulations the Rent Assessor was bound to take account of a number of factors, amongst them the size and state of repair of the property as well as rents the Assessor had approved in respect of other dwellings. This method of rent assessment produced a higher rental than that produced by the fixed rent formula applicable to pre-1945 dwellings. In a witness statement dated August 29th, 2014, Mr. Kevin Warwick, Senior Departmental Counsel (Ag.) gives an explanation for the 45-year rule which seems to me to be inherently logical. He says at para. 2(iii):

> "The underlying consideration behind this extension to the scope of rent control was that by the time a building reached the age of 45 years the landlord would have had more than sufficient time to recoup and obtain a return on his investment and it would be appropriate at that stage to add such dwellings to the pool of dwellings available for rental on a rent controlled basis. In the context of the statutory regime which prevailed at the time and the rolling nature of extension of rent control, it was considered appropriate at the time to have a dual system for determining statutory rents one for pre-January 1st, 1945 dwellings and the other for post-1945 dwellings."

Of note is that the 1991 Amending Act did not subject any dwelling to a fixed rent which was not already subject to one, but it did provide for the possibility, in due course of time, of uncontrolled rents becoming subject to control by way of assessed rents.

11 At this point, it is worth interjecting that, in 2001, a landlord named Mr. Aidasani brought a challenge before the courts to the 1983 Act as it applied to tenancies of pre-January 1st, 1945 dwellinghouses. He complained that it had become impossible for a landlord of a pre-1945 dwelling to cover his costs, let alone return a profit. The Court of Appeal ruled that the landlord's right to enjoyment of property had not been infringed. I will return to *Rent Tribunal* v. *Aidasani* (13) anon.

12 The Landlord and Tenant (Amendment) Act 2004 ("the 2004 Act") brought an end to the rolling nature of the 45-year rule but maintained the

rent control for dwellings built prior to March 1st, 1959 (45 years before 2004). Tenancies of dwellinghouses built after 1959 were unregulated. The 2004 Act did not repeal s.11A of the 1983 Act, nor the 1992 Regulations.

13 Next came the Housing Act 2007 ("the 2007 Act"). Section 1 provided that it was to come into operation on such day appointed by Government, by notice in the Gazette, and that different days might be appointed for different provisions and purposes. It came into operation on June 1st, 2008, save that ss. 40 and 113(3) would not come into operation as regards dwellinghouses erected after January 1st, 1945 and before March 1st, 1959. Section 41(1) provides:

> "Except where otherwise provided in this Act, the statutory rent of any dwelling to which this Part applies shall be the rent appropriate to that dwelling as assessed by the Rent Assessor in accordance with the criteria set out in Part 1 of Schedule 4 and such further criteria as may be prescribed."

Section 41(7) provides:

> "Subject to subsections (10) and (11) and Schedule 6, the statutory rent of any dwelling to which this Part applies and in respect of which a tenancy was in existence immediately before the commencement of this Act shall be the rent appropriate to that dwelling as calculated in accordance with Part II of Schedule 4."

14 Put simply, the 2007 Act maintained the dual system of assessing statutory rent but it drew a distinction for the purposes of computing statutory rent between tenancies created before the commencement of the 2007 Act, *i.e.* June 1st, 2008, and those created after that date:

(a) Tenancies created prior to June 1st, 2008 of dwellinghouses built on or before January 1st, 1945 remained on fixed rents, determined by Schedule 4, Part II. The fixed rents were increased to a maximum of £120, £90 and £80 per 100 sq. ft. p.a.; this translated into an increase of double the previous maximum. In addition, there was provision for the fixed rents to increase in accordance with the retail price index. Tenancies created prior to June 2008 would be allowed two transmissions to a son or daughter of the tenant, who had lived with the tenant for not less than 12 months immediately before the tenant's death or had departed from the dwelling for a prescribed reason or, where there were no sons or daughters, a member of the tenant's family who had so lived with the tenant and was financially dependent on him. The first transmission of the tenancy would be at fixed rent, and the second at the Rent Assessor rent.

(b) All new tenancies created post-June 1st, 2008 of dwellinghouses built on or before January 1st, 1945 moved from fixed rents to new higher

Rent Assessor rents. These tenancies would be allowed one transmission at Rent Assessor rent.

(c) Tenancies of dwellinghouses built after 1959 remained unaffected (no rent control).

15 Section 40 of the 2007 Act provided that the only dwellings subject to rent control were those built before January 1st, 1945, save that the rights exercised and thus created by tenants before January 1st, 2007, in respect of dwellings built on or before 1959, would have their rights preserved. The rents of buildings built between January 1st, 1945 and March 1st, 1959 would cease to be controlled, save to the extent provided by s.40(1)(a) of the 2007 Act, which provides:

> "(1) Subject to the provisions of this Act, this Part shall apply to dwellings but only to the following extent, namely—
>
> (a) it shall apply to every dwelling that has been erected on or before 1st January 1945, provided that the rights exercised and thus accrued by a tenant before 1st January 2007 under the former Act in respect of a dwelling that has been erected on or before 1st March 1959 shall not be prejudiced and shall persist as if it were a tenancy to which this Part applied."

16 However, ss. 40 and 113(3) were not brought into force. The Legal Notice of March 13th, 2008 provided:

> "In exercise of the powers conferred upon it by section 1 of the Housing Act 2007, the Government has appointed the 1st June 2008 as the day the Act comes into operation, except that sections 40 and 113(3) shall not be commenced for the following purposes, namely dwelling houses erected after the 1st day of January 1945 and before the 1st day of March 1959, for which purposes the provisions of section 10 and 11A of the former Act shall continue to apply."

Therefore, ss. 10–11 of the 1983 Act, which governed dwellinghouses built between 1945 and 1959, remained in force.

17 Section 10(1) of the 1983 Act provided:

> "Subject to the provisions of this Act, this Part shall apply to dwellinghouses but only to the following extent, namely:
>
> (a) it shall apply to every dwellinghouse that has been erected on or before the first day of March 1959 . . ."

Section 11(1) of the 1983 Act provided:

> "Except where otherwise provided in this Act, the statutory rent of any dwellinghouse to which this Part applies shall be the rent

appropriate to that dwellinghouse as calculated in accordance with Schedule 1."

Read together these sections determined that statutory rent of all controlled dwellings should be calculated according to the provisions of Schedule 1. But s.11A of the 1983 Act, which remained in force, created some ambiguity as to whether the rents should be subject to s.11 or to s.11A.

Section 11A provided:

"Where a dwellinghouse not being one to which this Part applies, becomes by virtue of the operation of section 10(1)(a) a dwellinghouse to which this Part applies—

(a) the tenant may make application to the Rent Assessor to determine the statutory rent in respect of that dwellinghouse . . ."

18 This led to the case of *Francis (Trustees)* v. *Balban* (6). The appellants (in this case, the claimants) successfully appealed against a decision of the Rent Tribunal that the rent of the building should be determined by it, the Rent Tribunal. The Supreme Court held that tenancies of dwellinghouses built between 1945 and 1959 would be subject to Rent Assessor rents under s.11A of the 1983 Act, and not fixed rents under s.11. The court, as set out in the headnote to the report in *The Gibraltar Law Reports*, held that (2007–09 Gib LR at 230):

"(1) The rent should have been determined under s.11A of the Landlord and Tenant Act as the property had been built in the early 1950s and s.11A remained in force for this purpose. The respondent should therefore have applied to the Rent Assessor rather than to the Tribunal for approval of the rent. The former system of rent calculation had not been wholly repealed by the 2004 amendment—pre-1945 dwellinghouses were still governed by s.11 and Schedule 1 of the Act . . .

(2) There was a clear intention to preserve the rights granted to tenants under the former system whilst having a cut-off date to which the system should apply but using 1959 as the new benchmark date as added to s.10 in the 2004 amendment. Statutes should be interpreted cautiously, according to the specific wording of provisions and in keeping with the intentions of the legislature. Consequently, Parliament's intention should not be inferred as intending to change the law dramatically. Where the legal meaning of a statutory provision was in doubt, it should be presumed that the intention was to depart as little as possible from the current state of the law . . ."

19 Section 49(1) of the 2007 Act provided for the decontrol of dwellings and s.50 prohibited assignments or subletting after June 1st, 2008.

20 Finally the Housing (Amendment) Act 2013 ("the 2013 Act") repealed ss. 10 and 11A of the 1983 Act, and brought ss. 40(1) and 113(3) of the 2007 Act into operation as regards tenancies of dwellings erected between January 1st, 1945 and March 1st, 1959. The effect of the 2013 Act on tenancies depends upon whether they have been entered into before or after June 1st, 2008.

(a) As regards tenancies of 1945–1959 dwellings commenced after June 1st, 2008, the rent was to be assessed by the Rent Assessor pursuant to Schedule 4, Part I of the 2007 Act, they had previously been assessed by the Rent Assessor under Part III of the 1983 Act and the 1992 Regulations. Essentially, they remained Rent Assessor rents but on a different, although broadly similar, system.

(b) As regards tenancies of 1945–1959 dwellings commenced prior to June 1st, 2008 and still subsisting on August 8th, 2013 (when the 2013 Amendment Act came into operation), the rent moved from Rent Assessor rents under Part II of the 1983 Act and the 1992 Regulations, to fixed rent under Part II to Schedule 4 of the 2007 Act. It was not in dispute that this had the effect of reducing rents from Rent Assessor rents to fixed rents.

**The Constitution**

21 Section 1 of the Constitution provides:

> "It is hereby recognised and declared that in Gibraltar there have existed and shall continue to exist without discrimination by reason of any ground referred to in section 14(3), but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms, namely—
>
> (a) the right of the individual to life, liberty, security of the person, the enjoyment of property and the protection of the law . . ."

These rights are then qualified essentially by the rights and freedoms of others and by the public interest:

> "[A]nd the provisions of this Chapter shall have effect for the purpose of affording protection to the said rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest."

22 It was not in dispute that the rights contained in s.1 are enforceable rights, nor was it in dispute that rent control may amount to a deprivation of property under s.1 of the Constitution (*Rent Tribunal* v. *Aidasani* (13) (2001–02 Gib LR 21, at paras. 65–72 and para. 84, respectively)).

23 Section 16 allows for redress by the Supreme Court in respect of any rights which may have been contravened and gives the Supreme Court jurisdiction to hear and determine any such applications.

24 Section 18 makes it incumbent upon a court which is determining a question which has arisen in connection with a right enshrined in s.1 to take into account any judgment, decision, declaration or advisory opinion of the European Court of Human Rights.

25 Any infringement of the right to the enjoyment of property may be defendable and justified on the grounds of public interest.

**The claim**

26 For the claimants it was submitted that the 2013 Act unjustifiably violates their constitutional right to the enjoyment of their property because the effect of the 2013 Act was to reduce substantially rents received by the claimants for a large proportion of flats within the building.

27 The claimants submit that the burden of proving that the 2013 Act is unconstitutional lies on the defendant; however, I am with the defendant that the burden lies on the party asserting unconstitutionality, such was the opinion of the Privy Council in *Arorangi Timberland Ltd.* v. *Minister of the Cook Islands National Superannuation Fund* (1) ([2017] 1 W.L.R. 99, at para. 31):

> "The Board would accept that, save perhaps in extreme circumstances, a statute should be presumed to be constitutional until it is shown to be otherwise, that (in so far as it is helpful to speak of a burden in such circumstances) the burden is on the party alleging that a statute is unconstitutional, and that any court should be circumspect before deciding that a statute is unconstitutional."

28 I therefore begin from the premise that the 2013 Act is presumed to be constitutional and, applying the required degree of circumspection, I propose first to determine the nature of the 2013 Act, and thereafter to consider the implications of the constitutional argument and of ECHR jurisprudence.

29 The claimants do not advance the general submission that rent control schemes are in themselves unconstitutional but, rather, the measure introduced by the 2013 Act is unconstitutional because it is not a coherent feature of the general rent control scheme but instead is a

complete deviation from that scheme. For the claimants it was submitted that the 2013 Act does not form part of the broader framework of rent control and is in fact a standalone measure. For the defendant it was said that, given that the 2013 Act is an amending Act, it cannot be a standalone Act and, in any event, it is part of a rent control scheme and that therefore *Aidasani* (13) applies and this court is bound by that decision.

30 The 2013 Act is described in statute as "AN ACT to amend the Housing Act 2007 and for related matters." It is helpful to set out the entirety of the Act:

"**Title and commencement.**

1.(1) This Act may be cited as the Housing (Amendment) Act 2013 and comes into operation on the date of publication in the Gazette.

(2) Sections 40 and 113(3) of the Housing Act 2007 shall, for the purposes of dwelling houses erected after the 1st day of January 1945 and on or before the 1st day of March 1959 come into operation on the commencement of this Act.

(3) Sections 10 and 11A of the Landlord and Tenant Act shall, for the purposes of dwelling houses erected after the 1st day of January 1945 and on or before the 1st day of March 1959, cease to apply on the commencement of this Act.

**Amendment of the Housing Act 2007.**

2.(1) The Housing Act 2007 is amended in accordance with this section.

(2) For paragraph (a) of section 40(1) substitute—

'(a) it shall apply to every dwelling that has been erected on or before the 1st March 1959; and'.

(3) For section 40(8) substitute–

'(8) This Part shall not apply to any dwelling house that has been erected after the 1st March 1959, or to any tenancy to which the former Act did not apply.'"

31 It is evident from its description and title that this is not a standalone Act. Unless read within the context of the 2007 Act, it has no meaning and no effect. It does what it says on the tin: amend the 2007 Act. Its only *raison d'être* is to modify its mother Act. If the 2007 Act is removed from the equation, the 2013 Act is redundant. The claimants have conceded that the 2013 Act cannot realistically survive as a standalone enactment but they submit that it is so disconsonant with the legislative history of rent control as to make it irreconcilable within the framework of that prior legislation.

32 Both sides have referred at some length to excerpts from Hansard. I do not propose to rehearse that at length, save for those parts which are of particular relevance. The 2013 Act was promoted in Parliament by the Chief Minister (given that the Minister for Housing was a tenant of the building and had been the claimant in *Francis (Trustees)* v. *Balban* (6)). The Chief Minister explained to Parliament the background behind the Bill (Hansard, July 25th, 2013):

> "In 2004, section 10(1)(a) of the Landlord and Tenant Act was amended to bring an end to the rolling 45-year rule. It fixed the application of part III to dwelling houses erected on or before 1st March 1959. However, Mr Speaker, section 11A of the regulations should have been repealed concurrently with the amendment of section 10(1)(a) and the cessation of the rolling 45-year rule, since both became superfluous from that date.
>
> For some reason, Mr Speaker, section 11A and the regulations were not repealed. Consequently, there remained in existence two methods of calculating rents: the pre-1945 dwellings method and the dwellings built between 1945 and 1st March 1959 method.
>
> . . .
>
> By virtue of Legal Notice 2008, No. 12, Mr Speaker, sections 40 and 113(3) of the Housing Act were not to commence for dwelling houses erected after 1st January 1945 but before 1st March 1959, for which purposes the provisions of sections 10 and 11A of the Landlord and Tenant Act were to continue to apply."

33 For the claimants it was said that the suggestion that s.11A and the Regulations "should have been repealed" goes beyond legislative purpose and moves into supposed government policy. I fail to see the distinction as material—if government policy is soundly formulated, it will result in legislative purpose which in turn will lead to the presentation in Parliament of legislation for debate, enactment or rejection.

34 The Chief Minister, as can be seen from Hansard, stated that "for some reason" the provisions were not repealed back in 2004. For the claimants it was submitted that in the *Balban* (6) case the Supreme Court made it clear that the failure to repeal the Regulations and s.11A was not accidental. The defendant submitted that what the court said was that it was apparent (2007–09 GLR 229, at para. 18)—

> "that the intention of the legislature was to revert to the principle of a cut-off date whilst preserving rights which had accrued to tenants. In contrast, there is nothing to suggest that the failure to repeal s.11A and the Regulations made thereunder was accidental."

There was indeed some speculation as to why s.11A had been retained and ultimately the court made no conclusive finding on the point, other than to say that there was nothing to suggest failure to repeal had been accidental. The Chief Justice (Dudley, Ag. C.J.) went on to say (*ibid.*, paras. 18–19):

> "18 . . . [I]n my view, the fact that s.11A and the Regulations remain are a clear marker to the effect that, as regards dwelling-houses erected between 1945 and 1959, the intention was for the rent in respect of these to continue to be governed by the Regulations . . .
>
> 19 . . . and that the alternate system of rent control was not repealed."

The meaning is clear: given that s.11A and the Regulations had not been repealed, the intention must have been for them to remain and this in turn retained the dual system of rent control. The Chief Justice highlighted the importance of interpreting statutes cautiously and in keeping with the intentions of the legislature. At para. 17, he referred to an extract from Hansard of March 24th, 2004, on the Bill for the Landlord and Tenant (Amendment) Act 2004, where the promoter of the Bill, the Hon. J.J. Netto, said:

> "The Government consider it appropriate to return to the pre-1991 principle of a fixed cut-off date . . . However in reverting to the old system the Government have wished to avoid dispossessing tenants of rights which the existing law has already bestowed on them."

35 It is apparent that rent control schemes are in a constant state of ebb and flux, provisions are enacted, and systems set in place. Some years later those systems are changed either by repealing sections, introducing new amendments or bringing into force provisions which have been dormant. It is evident from the speech by the Hon. J.J. Netto that the Government in 2004 decided to return to the pre-1991 principle of a cut-off date. However, the thread running through the Government's intention, certainly from 2004, appears to have been not to dispossess a tenant of rights already bestowed upon them. The 2013 Act does not contradict that intention; it enhanced a right but it did not derogate a right already enjoyed.

36 The Chief Minister, when promoting the 2013 Act, could have given the reason why the provisions were not repealed. He did not, and I guard against the danger of reading either purpose or accident into the promoter's words. For some reason which was not spelt out, the provisions were not repealed, but clearly the view of the promoter was that they should have been. I remind myself that the reason I am looking at the statement of the promoter of the Bill is not to resolve ambiguities in the legislation by reference to legislative purpose—in my view, the legislation is unambiguous—but to place the legislation into its statutory context and

identify any public policy considerations which might provide potential signposts in relation to the legitimate aim of this Act.

37 The purpose of the 2013 Act was stated by its promoter as (Gibraltar Hansard, July 25th, 2013):

> "The purpose of the amendments contained in this Bill is to do away with this distinction [as between pre-January 1st, 1945 dwellings and March 1st, 1959 dwellings], so as to place all buildings erected before 1st March 1959 in the same regime with regard to the calculation of rents."

When considering this statement of purpose, I remind myself that after the 2004 Act, although the rolling nature of the 45-year rule was abolished, there remained a distinction for the calculation of rent in respect of the date upon which buildings were erected. Buildings erected prior to January 1st, 1945 were on fixed rents, and buildings erected between 1945–1959 were rent-assessed. The 2007 Act maintained the concept of fixed rents, but introduced a relevant period for the creation of tenancies in respect of the calculation of rent, pre- and post-2008. So the position became that in respect of buildings built before January 1st, 1945 there were two relevant periods. All tenancies created pre-June 1st, 2008 were on fixed rents (but new higher and index-linked fixed rents), and all tenancies created post-June 1st, 2008 were on Rent Assessor rents. In addition, there was a further distinction drawn in respect of buildings erected between 1945–1959: those tenancies were subject to Rent Assessor rents. Essentially, the 2013 Act maintained the concept of fixed rents. It preserved the position with regard to the pre- and post-2008 cut-off point for tenancies. There were still to be fixed rents for pre-2008 tenancies and Rent Assessor rents for post-2008 tenancies, but it did away with the sub-group of 1945–1959 buildings which were on assessed rents. The effect of the amendment was therefore clear: all buildings erected before 1959 were either fixed rent, if tenancies had been created pre-2008, or rent-assessed, if tenancies had been created post-2008. I read little relevance into the choice of June 1st, 2008 as the cut-off date. It was obviously chosen because parts of the 2007 Act came into force on that date and although the claimants submit that June 1st, 2008 as the crucial date makes no sense now, as regards 1945–1959 dwellings, as it is neither unreasonable nor odd that the date once identified should have been preserved. The effect of the 2013 Act and, in my view, its intent, was that all buildings erected before March 1st, 1959 should be subject to rent control, as in fact they had been since the 1991 Amending Act, and importantly, that they should all fall into the same single regime that, as the promoter says, they should have been, following the 2004 Act.

38 At para. 11 of his witness statement, dated August 29th, 2014, Kevin Warwick states that—

> "it is material and noteworthy that the Bill was passed unanimously by all the MPs who voted without a single dissenting vote . . . This indicates that the party in opposition which had been the party in government when the 2004 amendment was made agreed with the amending bill and the reasons why it had been proposed."

With respect, I am not persuaded that a unanimous vote is any more impressive than a majority vote. The claimants criticize that there was no debate at all, and that there is no suggestion in Hansard that there was any consideration given to the effect that the passing of the 2013 Act would have on landlords such as this one. Similarly, I am not persuaded that absence of a debate reflects either a lack of consideration or a lack of understanding of the issue being promoted; quite the contrary. It is, in my view, more likely to be indicative that the members of Parliament were clear on the issues and in agreement with them, and that, therefore, no debate was necessary. As Mr. Warwick points out, the party in opposition in 2007 had been the party in Government in 2004 which moved the amendment then; the inference is therefore that both sides were familiar with rent control legislation.

39 At para. 2(v) of his witness statement, Mr. Warwick states:

> "The Housing Act 2007 ('HA') . . . was a complete review of previous legislation governing residential properties. The HA maintained rent control in respect of residential properties built prior to the 1st March 1959 but maintained the dual system of assessing the statutory rent. Some of the provisions of the HA which I would identify as material in the context of this claim are that fixed rents were increased to a maximum of £120 per annum per 100 square feet *i.e.* double the previous maximum; provision was made for the statutory rent to be increased by the percentage by which the retail price index had increased during the preceding 12 months or by such greater percentage as the Minister may prescribe; and the statutory right of transmission of tenancies although maintained at two, provided that the first transmission would be subject to the Fixed Rent formula and the second one to the Rent Assessor rent."

At para. 12(i), Mr. Warwick continues:

> "Mr. Levy has put evidence before the court of the apparent financial standing of tenants. However tenants' financial means has never been a criterion for rent control in Gibraltar. The purpose of rent control is to provide a pool of housing available for rental at controlled rents which parliament considers appropriate. In determining whether dwellings should be rent controlled the date of their construction has always been the key factor in Gibraltar. Since 1991 successive Legislatures have upheld in one way or another the 1959 date for triggering rent control."

I accept that financial standing of tenants is not a premise for rent control schemes in Gibraltar; it can therefore have no impact upon the aim of the 2013 Act. In addition, the fact that some provisions may cause advantages to some landlords (and indeed tenants) and disadvantages to others is, to my mind, an intrinsic part of rent control. I reject the claimant's submission that through Mr. Warwick's statement, the defendant is saying that because the 2007 Act improved the return for landlords of pre-1945 dwellinghouses, it was justifiable to violate the rights of another class of landlords, those of post-1945 dwellings. Rather, it seems to me that the point is that the 2013 Act is justifiable because its purpose was to provide a single rent control system, albeit with the two elements in relation to the dates of creation of tenancies.

40 It is apparent to me from consideration of the 2013 Act against the background of the 2004 and 2007 Acts that the intention of the legislature was to have one date (in relation to the erection of buildings) which is determinative of the buildings' qualification for rent control, and thereafter two periods (tenancies pre- or post-2008) which are determinative of the type of rent (fixed or assessed) which would be payable. The concept of fixed rent, which the claimants complain of as unfair, was not a new introduction in 2013, but rather the groups of people caught by the new adjustment of relevant periods in 2013 changed. The amendments introduced in 2013 may have had the effect of seemingly favouring a small portion of tenants by moving them from assessed rents to fixed rents, and conversely disadvantaging a particular class of private landlords by reducing the rent recoverable by them, but it seems to me that, notwithstanding, Parliament was perfectly entitled to consolidate and simplify the legislation. I recognize that the specific complaint of the claimants is not so much the existence of the fixed rent category (although if they were to succeed that would be abolished) but the fact that they were in receipt of assessed rents and have suddenly and, they say, unreasonably been demoted into a bracket which attracts a lower income.

41 In fact, the 2013 Act was not the first time in the legislative history of rental control schemes that tenants have been transferred from a bracket where they paid higher rent to a bracket where they paid lower rent. By virtue of the 45-year rule in the 1991 Amending Act, when the property in question became 45 years old, tenants were able to move from paying higher rents (uncontrolled) to much lower rents (assessed). The obvious conclusion is that this benefitted tenants by transferring them from a higher paying bracket to a lower paying bracket, and that necessarily disadvantaged landlords. However, it also benefitted landlords, because for the first 45 years, the rent was uncontrolled. In a similar way, although the 2013 Act clearly benefits a class of tenants, it also benefits landlords who are able to continue to charge Rent Assessor rents for post-2008 tenancies in respect of pre-1945 dwellings. The reality is that it is hard to

envisage a rental control scheme which will not give rise to some complaint from either landlord or tenant.

42 Further, the claimants advance a submission based on the economic impact of the measure. In support of their application, the claimants rely, *inter alia*, on the witness statement of the late Solomon Levy, who at the time was the sole trustee of the estate. Lewis Francis died in 1981 and by his will appointed the late Mr. Levy, Sir Alfred Vasquez, Lewis F. Francis and Eulogio Barabich as executors of his estate. After the death of the other trustees, Mr. Levy remained as sole trustee, although it is fair to say that, since his appointment in 1985, he had always dealt with the day-to-day running of the estate. Mr. Levy sadly passed away shortly before this action came for hearing and was replaced as trustee by Mr. Montegriffo and Ms. Lugaro, the current claimants.

43 At para. 25 of his witness statement, Mr. Levy stated that "the building is the most drastically affected one in Gibraltar by the 2013 Act as it consists of 41 residential tenancies (as well as 5 business tenancies)." However, he did not reveal the statistics upon which that statement was based. The claimants have not produced evidence of how many other buildings in Gibraltar are caught by the 2013 Act, or of the number of flats caught by the Act in each of the affected buildings. I must assume, therefore, that Mr. Levy was speaking from his own personal knowledge or belief. The defendants have produced a list of properties affected by the 2013 Act. In her statement of December 16th, 2016, Ms. Saez, a solicitor assisting counsel for the defendant, states that the list has been verified by Land Property Services as land agents for the defendants. Evident from the list is that there are 195 properties built before March 1st, 1959 and therefore caught by the 2013 Act. Of that list, 7 properties have been decontrolled, 2 have decontrol pending and 8 are subject to statutory rent—

> "either by virtue of an old statutory rent under section 15 of the former Act becoming the statutory rent pursuant to section 41(10) of the Housing Act 2007 or as a result of an assessment of rent by LPS pursuant to section 41(1) of the Act 2007."

The list does not show the number of properties that are rented out.

44 For the claimants it was said that the impact of the 2013 Act is that they are currently recovering less than 50% of what was previously recoverable, a drop from £19,000 per month to £8,700 per month, which translates into an annual loss of income of £124,000. In addition and as a result, the value of the building has been reduced by approximately £2m. Although the 2013 Act potentially affected 29 tenancies in the building, the shift from rent-assessed rents to fixed rents was not to be automatic, and it was incumbent on tenants to apply for reduction of rent. 23 tenants out of the 29 applied to the Housing Tribunal and, on August 1st, 2014,

those 23 had their rents reduced. Rents for those 23 tenants dropped from £500 per month to between £100–£150 per month. I assume that the remaining 18 tenancies remained on rent-assessed rents of £500 per month. By my calculation, and on the figures provided by Mr. Levy, this means that from the 23 fixed rent tenancies there is an annual income of £30,269.28, and from the remaining 18 tenancies there is an annual income of £108,000 (assuming they are on £500 per month). In addition, the building comprises five commercial units which are held on full repairing and insuring tenancies; the gross annual rental income of these commercial premises amounts to £143,300 (£11,941.66 per month). The commercial units are unaffected by the 2013 Act. This translates into a total annual income for the building of £281,569.28.

45 A valuation report conducted by BFA Valuers and Chartered Surveyors in May 2014 indicates that a figure in the region of £50,000 had been spent on repairs "in the course of the last year," but the valuers had been provided with no information on the extent of the works. In his second witness statement of February 12th, 2016, Mr. Levy estimated the annual amounts spent on repairs/maintenance of the building as follows:

| | |
|---|---|
| 2010 | £64,299.22 |
| 2011 | £44,907.66 |
| 2012 | £60,582.25 |
| 2013 | £73,592.14 |
| 2014 | £35,584.19 |
| 2015 | £35,214.29 |

Taking the highest of those repair costs and rounding it to £73,600, that would leave the landlord with a disposable annual income of *circa* £208,000. I do not say that this figure is either high or low, reasonable or unreasonable, but upon these figures there would appear to be some room for funding additional repairs if necessary. Put another way, the rental income is not lower than outgoings. Of course, I do accept that these figures may be subject to a further negative impact by reason of any one-off large expenses, such as painting the building which has been estimated at *circa* £250,000 by the claimants, and at a maximum of £204,915 by Home Emergency Repair Services, a company instructed by the Matilde Francis Tenants Association (which I presume is an association formed to represent the tenants of the building).

46 At para. 33 of his first witness statement, Mr. Levy said:

> "The fact that the Tenants had traditionally never paid high rents meant that as in most cases of old buildings in Gibraltar, not much investment was made into the maintenance of the building. Only essential works were undertaken for safety purposes."

Implicit in this comment is that the claimants believe that historically little was spent on the maintenance of the building because the rents being collected were too low to merit a greater investment. This sits a little uncomfortably with the further submission that it has been the drop to fixed rents brought about by the 2013 Act which has made maintenance and repair difficult.

47 Mr. Levy recognized (at para. 32) that "in less than 15 years the building has gone from being completely uncontrolled and with unprotected tenants to being controlled by Rent Assessor Rents and finally last year to Fixed Rents." And he went on to say: "Once it was clear to me that rents needed to be raised I realised that the higher rents would enable me to plan a series of maintenance works to improve the building." The implication is that but for the drop in rents post-2013, the claimants would have been in a position to afford repairs. From the material before me, it appears that even before the drop in rents in 2013, very little was invested into the building by way of maintenance and repair. The witness statement dated June 24th, 2016 of the intervenor, in particular paras. 3.9–3.15, suggests that in the entirety of the 63 years of the building's life, the building has been poorly maintained.

48 The claimants have been in the position of landlords since 1985; between that time and 2014 (when 23 of the rents were reduced), some 29 years, there is no evidence before me of anything other than minimal maintenance having been effected on the building. In the circumstances, I am unable to accept that failure to maintain is directly correlated to the reduction of rents brought about by the 2013 Act.

49 For the reasons given, I find that the 2013 Act had a legitimate purpose and is part of a broad scheme of rent control and management. Although the claimants object to the measure itself, they are not saying that rent control is unconstitutional, and they are not asking for the 29 tenancies to be decontrolled. It seems to me there is some merit in the defendant's submission that the claimants seem to be arguing about quantum. They are asking that the statutory fixed rent be increased to statutory assessed rent. In the event it seems to me that this case falls squarely within the ambit of the *Aidasani* (13) case.

***Rent Tribunal v. Aidasani***

50 For the sake of context it is useful if I set out the headnote to the report in *The Gibraltar Law Reports* (2001–02 Gib LR at 21–23):

> "The respondent landlord appealed to the Supreme Court against a decision of the Rent Tribunal fixing the rent of his tenant's flat.
>
> A tenant of the respondent applied to the Rent Tribunal to determine the statutory rent of his flat. The tribunal fixed the

statutory rent at a figure less than one-third of the contractual rent. The respondent appealed to the Supreme Court on the basis that the rent control provisions of the Ordinance, and in particular ss. 11 and 30 and Schedule 1, contravened ss. 1 and 6 of the Constitution and thus had no legal validity.

The Supreme Court (Schofield, C.J.) concluded that these provisions did not contravene s.6 of the Constitution but were contrary to s.1 and set aside the Rent Tribunal's decision.

The Attorney-General on behalf of the Rent Tribunal appealed and applied for a stay of the Supreme Court's decision, pending the decision of the appeal. No stay was granted of its decision that the provisions were contrary to s.1 but a stay was granted of the order setting aside the decision of the Rent Tribunal. The proceedings are reported at 2001–02 Gib LR 6.

On the substantive appeal, the appellant submitted that (a) it was necessary to maintain statutory rent control as the housing shortage in Gibraltar still presented a serious problem and rent control gave assistance to residents on lower incomes; (b) s.1 of the Constitution, which was a general provision for the protection of human rights, itself gave no rights which could be directly enforced by an individual; (c) alternatively, s.1 had to be read subject to s.6, which protected individuals against the compulsory acquisition of their property, but provided an exception in the case of property acquired as an incident of a lease or tenancy; (d) the Landlord and Tenant Ordinance 1983 was a general regulatory provision enacted in the public interest and it had not lost these characteristics by the passage of time; and (e) the competing public interest considerations in this case were properly a matter for the legislature and not for the courts.

The respondent (who was supported by a newly-founded landlords' association) submitted in reply that (a) the present low level of statutory rents, found in Schedule 1, made it impossible for landlords to maintain their properties, let alone achieve a reasonable profit (Schedule 1 provided that the statutory rent for self-contained residential accommodation with a bathroom should be £60 p.a. per 100 sq. ft. exclusive of rates; this has not been amended since the Ordinance was enacted and the Schedule contained no mechanism for any periodical review of rent); (b) as a result of the low level of statutory rents, landlords were in effect being deprived of their property without compensation contrary to ss. 1 and 6 of the Constitution, which could not be justified as being in the public interest; and (c) the 1983 Ordinance could not be regarded as a regulatory enactment and, even if it had been a regulatory enactment when enacted, by the passage of time it had become confiscatory.

**Held,** allowing the appeal:

(1) Schedule 1 to the 1983 Ordinance did not offend s.1 of the Constitution. Accordingly, the Chief Justice had erred in concluding that the passage of time had rendered the 1983 Ordinance unconstitutional . . .

(2) Section 1 was not merely declaratory but created rights enforceable by individuals, including the right not to be deprived of property without compensation. The effect of the application of Schedule 1 deprived the respondent of the sum representing the difference between the contractual rent and the statutory rent fixed by the Rent Tribunal pursuant to Schedule 1. The right to rent came within the definition of property, as it was a profit arising out of or incidental to property. In principle, however, since the legislation was general and enacted for the public benefit, any deprivation caused would not give rise to a right to compensation. The position had not changed with the passage of time since 1983. Whilst the Ordinance did not contain any provision for the periodic review of statutory rents, or any formula whereby adjustments could be made, the absence of such provisions did not invalidate Schedule 1 or render it unconstitutional. Section 1, additionally, did not have to be read in the light of the limitations contained in s.6. Although s.6 and the other provisions of the Constitution had to be construed in the light of s.1, s.1 did not have to be read subject to the provisions of ss. 2 to 14 . . .

(3) The Chief Justice was correct in holding that s.6, which restricted the compulsory taking possession of or acquisition of any interest or right over property, did not apply to the case. Its application required the transfer under compulsory powers to an acquiring authority and whilst the effect of the rent control provisions was to deprive landlords of their property by restricting their contractual right to rent, that property was not transferred to an acquiring authority . . .

(4) The court was ill-equipped to undertake a full enquiry, which would be required in order to provide a just solution and recommended that the effect of Schedule 1 should be reconsidered as an urgent matter by the Government. Currently, the low level of rents permitted was unfair to the landlords and there was evidence that residential re-development was being inhibited and that the condition of some private housing stock was deteriorating. The appeal would be allowed . . ."

51 For the claimants, it was said that *Aidasani* is distinguishable for three reasons. The first is that the facts upon which *Aidasani* is based are materially different. The claimants say at para. 85 of their skeleton:

"Aidasani concerned a challenge which was based on the argument that with the passage of time, rents under the Landlord and Tenant Act 1983 for pre 1945 dwelling houses had become so unrealistic so as to violate the landlords' right to enjoyment of property. In that case the property was built before 1945 and did not benefit from the more generous Rent Assessor rents and it is for that reason that it concerns a materially different set of circumstances."

52 For the claimants, it was said that the 1983 Act did no more than continue the system of fixed rents and could therefore be seen to be legislation of a general regulatory character controlling the use of property, whereas the 2013 Act strips landlords of the benefit of assessed rents by reducing such rents to fixed rents, and therefore provides no benefit to the housing situation in Gibraltar. To my mind, attempts at distinguishing the facts upon this basis are forced and not material. Needless to say, every Parliamentary Act relating to housing legislation will have different provisions with different consequences attaching; the issue is not to split straws upon the specifics of the legislative provisions, but to consider the nature and characteristics of the legislation. The characteristics of the 1983 Act and the 2013 Act are similar, in that both concern the relationship between landlord and tenant, and both restrict the amount of rent that a landlord can demand. I accept, of course, that the 1983 Act did not reduce rents from assessed to fixed, but the concept is similar in that the consequence of the measure, *i.e.* hardship to landlords, is comparable. In *Aidasani* (13) it was argued that by passage of time the 1983 Act had changed in nature, in that over the course of time it had resulted in causing landlords undue hardship. The claimants in the present case submit that the nature of the 2013 Act discriminates against landlords by causing them undue hardship. Rejecting the submission that the 1983 Act had become unconstitutional by passage of time, Neill, P. stated (2001–02 Gib LR 21, at para. 111):

"The hardship to the landlords may have increased to a significant degree and the number of those needing protection may have fallen, but we cannot say that the nature of the legislation has lost its characteristic of being legislation of general application passed for the public interest."

53 Neill, P. said (*ibid.*, at paras. 107–109):

"In our judgment, this Ordinance, as its title suggests, is intended to regulate the relationship between landlords and tenants and is a classic example of a piece of legislation of general application . . . We are therefore entirely satisfied that the 1983 Ordinance when first enacted came within the *Grape Bay* principle. It was of general application and was clearly for the public benefit . . . It is of course true that the 1983 Ordinance did not contain any provision for the

> periodic review of statutory rents or any formula whereby adjustments to meet inflation or increases in the cost of living could be made. But we find it impossible to say that the absence of such provisions invalidated Schedule 1 or rendered it unconstitutional."

The Court of Appeal ruled that the 1983 Act was of general application and for the public benefit; by a process of logical extension, the 1991 Amending Act, the 2004 Act, and the 2007 Act must also be part of the same framework of legislation designed to regulate the relationship between landlord and tenant. The characteristics intrinsic in those Acts extend to the 2013 Act and I am of the view that the 2013 Act is an integral part of the rent control legislation and I am in no doubt that the 2013 Act is an Act of general application for the public benefit.

54 In *Aidasani* (13), the landlord argued that the level of rent was so low that it made it impossible for him to maintain the property. Whilst Neill, P. noted that in *Penn Central Transp. Co.* v. *New York City* (11), the Supreme Court emphasized that its decision was made on the basis that the premises as a whole remained "economically viable," he went on to say (2001–02 Gib LR 21, at para. 103):

> "It is first necessary to consider the nature of the legislation. Does it satisfy the two relevant tests (a) of being of general application and (b) of having been enacted for the public benefit? It is then necessary to consider the facts and the effect of the legislation on the property concerned. If the legislation passes the two tests and the legislation does not effect any transfer of property from the owner, it seems to us that the principle applies and that no compensation is payable even though the effect on the value of the property remaining in the hands of the owner is reduced to vanishing point."

And (*ibid*., at para. 105):

> "General legislation may 'deprive' an owner of property of some of the profit that he could otherwise obtain from it, and to that extent he is deprived of the sum representing that loss of profit, but, provided the legislation is for the public benefit, the *Grape Bay* principle applies and the owner is not entitled to compensation."

55 At para. 119, the court noted that they were "far from clear as to the precise extent of the hardship in Mr. Aidasani's case . . ." I share a similar uncertainty with regard to any hardship alleged to be occasioned to the claimants in this case. I am not certain if the claimants' argument extends quite as far as saying that the rent is so low that they cannot maintain the property at all, I think not, but even if it does, the figures I discussed earlier would not support that contention. In any event, as the court observed in *Aidasani* (13) (*ibid.*, at para. 117):

> "The imposition of any system of rent control involves the consideration of issues of social policy of great difficulty, and as Lord Bingham pointed out in *Ex p. Spath Holme Ltd.* . . . ([2001] 1 All E.R. at 215), in the context of the Rent Acts (Maximum Fair Rent) Ordinance 1999 in the United Kingdom, 'it was for ministers to judge where the balance between the competing interests of landlords and tenants should be struck.'"

Of course, as the court pointed out, the courts will in certain circumstances have a role in intervening, but "the court must approach its task with great caution" (*ibid.*, at para. 118).

56 The principle in this case is similar to that in *Aidasani*: whether a provision which discriminates against a group of people by depriving them of their right to receive a reasonable rental income from their properties offends the Constitution. Both Mr. Aidasani and the present claimants complained that the rent they received by virtue of an enactment governing rent control was too low and unrealistic and (to a greater or lesser extent) prevented them from properly maintaining their buildings. Both complained their rights under the Constitution were contravened. This case, like *Aidasani*, impacts directly upon a specific class of people defined by the applicable provisions. More importantly, the principles applied in *Aidasani* to the resolution of the issue are, to my mind, directly relevant and applicable in this case.

57 The claimants draw attention to the case of *Morgan* v. *Att. Gen.* (*Trinidad & Tobago*) (10), cited at para. 71 of *Aidasani*, for the proposition that the 2013 Act is closer to the legislation under scrutiny in *Morgan*. I am not persuaded by that argument, but even if there is merit in it, the Privy Council ruled in *Morgan* that even though the landlord's right to enjoy his property had been infringed by depriving him of a higher rent otherwise obtainable, that infringement was justifiable.

58 I am of the view that the claimants have failed to establish that the 2013 Act itself offends the Constitution. In the context of the 2007 Act, I am of the view that the 2013 Act constituted a valid revision of rent control legislation which had been developing for years—in fact, the building had been subject to rent control for 25 years.

59 The second and third reasons relied upon by the claimants to distinguish *Aidasani* (13) are that it was wrongly decided and is no longer good law. In summary, the claimants submit that the Court of Appeal misunderstood and misapplied *Grape Bay Ltd.* v. *Att.-Gen. (Bermuda)* (7). Let me say that, at para. 100, the Court of Appeal stated that they had considered "the scope of the *Grape Bay* principle with great care" and at para. 108 they stated that they were "entirely satisfied" that the 1983 Act came within the *Grape Bay* principle. That said, it seems to me that the claimants are asking me to review the decision of the Court of Appeal and

overrule them. Unsurprisingly perhaps, not only do I feel ill-qualified to do this but, more importantly, I am of the view that I have no power to do this and therefore should not embark upon the exercise.

60 In *Cassell & Co. Ltd.* v. *Broome* (5), the Court of Appeal dismissed an appeal before it, and expressed the view that *Rookes* v. *Barnard* (14) had been wrongly decided by the House of Lords, and was not, therefore, binding upon them. Delivering the judgment of the Lords, Lord Hailsham said ([1972] A.C. at 1054):

> "The fact is, and I hope it will never be necessary to say so again, that, in the hierarchical system of courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers. Where decisions manifestly conflict, the decision in *Young* v. *Bristol Aeroplane Co. Ltd*. [1944] K.B. 718 offers guidance to each tier in matters affecting its own decisions. It does not entitle it to question considered decisions in the upper tiers with the same freedom. Even this House, since it has taken freedom to review its own decisions, will do so cautiously."

61 In the circumstances, although the claimants have elaborated a detailed exposition of why *Aidasani* (13) was wrongly decided and is no longer good law, there is no purpose in my exploring that submission. Unless and until the Privy Council reverses the Court of Appeal in *Aidasani*, this court continues to be bound by it.

**European Court of Human Rights**

62 I am of the firm view that for the reasons given this case falls squarely within the ambit of *Aidasani* and, on that basis, the claim necessarily fails. If, however, I am wrong and this case is not caught by *Aidasani*, then I now turn to consider the constitutional argument in light of the jurisprudence of the European Court of Human Rights. Essentially, what the defendant says at this point is that the measure introduced by the 2013 Act, whilst possibly contravening the landlord's right of enjoyment to property, is nevertheless justified.

63 It is not in dispute that, according to human rights jurisprudence, the relevant test to be applied for a justification defence to succeed is that set out by Lord Sumption in *Bank Mellat* v. *H.M. Treasury (No. 2)* (4). It is helpful to set that out ([2014] A.C. 700, at para. 20):

> ". . . [T]he question depends on an exacting analysis of the factual case advanced in defence of the measure, in order to determine (i) whether its objective is sufficiently important to justify the limitation of a fundamental right; (ii) whether it is rationally connected to the objective; (iii) whether a less intrusive measure could have been

> used; and (iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community. These four requirements are logically separate, but in practice they inevitably overlap because the same facts are likely to be relevant to more than one of them."

This test has collectively become known as the proportionality test.

64 Given that I have discussed the matter at some length and found that the 2013 Act had a legitimate purpose, the first point of Lord Sumption's test is, in my view, met. For the avoidance of doubt, it is not in dispute that domestic and European case law has established that rent control is a legitimate objective of legislators, even if it has some impact upon the limitation of rights. The important requirement is that the measure taken should be in the general interest and proportionate. Given that I have found that the legitimate purpose of the 2013 Act was rent control, I am of the view that the second point of Lord Sumption's test is met as a natural extension to the first. If the objective of the measure is rent control, the level of rent (regardless of whether it is low or high) must, as a matter of logic, be rationally connected to the objective.

65 I now turn to the third and fourth points of the test. In relation to the third limb, it would, in my view, be rare if, with the benefit of hindsight, less intrusive measures could not be identified in all but a minority of cases. That said, each measure must be analysed within the contextual background against which it was created, as Lord Steyn said in *R. (Daly)* v. *Home Secy.* (12) ([2001] 2 A.C. 532, at para. 28):

> "And Laws LJ rightly emphasised in *Mahmood*, at p 847, para 18, 'that the intensity of review in a public law case will depend on the subject matter in hand'. That is so even in cases involving Convention rights. In law context is everything."

Turning his mind to the third point, in what was to become known as Lord Sumption's test, Lord Reed in *Bank Mellat* (4) said ([2014] A.C. 700, at para. 75):

> "In relation to the third of these criteria, Dickson CJ made clear in *R v Edwards Books and Art Ltd* [1986] 2 SCR 713, 781–782 that the limitation of the protected right must be one that 'it was reasonable for the legislature to impose', and that the courts were 'not called on to substitute judicial opinions for legislative ones as to the place at which to draw a precise line'. This approach is unavoidable, if there is to be any real prospect of a limitation on rights being justified: as Blackmun J once observed, a judge would be unimaginative indeed if he could not come up with something a little less drastic or a little less restrictive in almost any situation, and thereby enable himself to

> vote to strike legislation down (*Illinois State Board of Elections v Socialist Workers Party* (1979) 440 US 173, 188–189); especially, one might add, if he is unaware of the relevant practicalities and indifferent to considerations of cost. To allow the legislature a margin of appreciation is also essential if a federal system such as that of Canada, or a devolved system such as that of the United Kingdom, is to work, since a strict application of a 'least restrictive means' test would allow only one legislative response to an objective that involved limiting a protected right."

It may be that if I were Parliament I might have settled upon a different way of achieving the purpose at hand, but the substitution of one opinion (a judicial one) for another (a legislative one) can in my view only be justified if the legislature's action is manifestly without reason. Underpinning any consideration in this regard must be the recognition that, all things being equal, the legislature is better placed to make these type of policy decisions. In *Atanasiu* v. *Romania* (2) it was held ([2010] ECHR 1502, at para. 166) that "the Court has declared that it will respect the Legislature's judgment as to what is 'in the public interest' unless that judgment is manifestly without reasonable foundation."

66 In *Bank Mellat* (4), Lord Neuberger of Abbotsbury, PSC said ([2014] A.C. 700, at paras. 164–165):

> "164 Judges have no more important function than that of protecting individuals and organisations from abuse or misuse by the executive of its considerable and extensive powers—even, as is almost always the case, when such abuse or misuse does not involve bad faith. The substantial adverse financial consequences for Bank Mellat of the giving of the Direction in this case provide a good example of the importance of this function. On the other hand, the judiciary's power to review decisions of the executive must be exercised bearing in mind that responsibility for the decision lies with the executive, not the judiciary, and judges do not have the relevant expertise or experience of those responsible for the decision. In the present case, the importance and relevance of expertise and experience in international relations, national security and financial Regulation, is self-evident.
>
> 165 Accordingly, while the court has to apply well-established legal principles when deciding whether the Direction can be substantively justified, I agree with Lord Sumption JSC when he says in para 21 that the Treasury must be allowed 'a large margin of judgment', or, as Lord Reed JSC puts it in para 94, 'a wide margin of appreciation', when taking steps to prevent proliferation internationally, through the means of giving a direction under Schedule 7 to the Counter-Terrorism Act 2008 . . ."

67 The measure under discussion (the 2013 Act), in my view, was based on a reasonable foundation, and therefore the legislature's adoption of it is not open to substitution by this court of an alternative, albeit less intrusive, measure. I am of the view that part (iii) of Lord Sumption's test is met.

68 Turning to the fourth limb, the exercise of balancing the rights of the individual against the rights of the community or the general interest must, in the first instance, be for the legislature to strike. In *James* v. *United Kingdom* (8), the court held (8 E.H.R.R. 123, at para. 46) that—

> "because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is 'in the public interest'. Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment both of the existence of a problem of public concern warranting measures of deprivation of property and of the remedial action to be taken. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation.
>
> Furthermore, the notion of 'public interest' is necessarily extensive. In particular, as the Commission noted, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues on which opinions within a democratic society may reasonably differ widely. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is 'in the public interest' unless that judgment be manifestly without reasonable foundation. In other words, although the Court cannot substitute its own assessment for that of the national authorities, it is bound to review the contested measures under Article 1 of Protocol No. 1 and, in so doing, to make an inquiry into the facts with reference to which the national authorities acted."

It is agreed by both parties that domestic governments have a wide margin of appreciation when legislating on domestic issues and policies such as the control of rent; that is constantly reiterated in European jurisprudence.

69 In *Mellacher* v. *Austria* (9), the applicants complained of an infringement of their property rights under art. 1 (P1–1) of the Convention for the Protection of Human Rights and Fundamental Freedoms. The complaint was in relation to an excessive reduction in rents allowed to their tenants pursuant to domestic legislation. Article 1 (P1–1) provided for peaceful enjoyment of property and, *inter alia*, recognized that contracting states (12 E.H.R.R. 391, at para. 42) "are entitled, amongst other things, to

control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose . . ."

The applicants submitted that the domestic legislation (*ibid.*, at para. 43)—

> "had had the result of turning them into mere administrators of their property, receiving remuneration controlled by the public authorities. They claimed that the effect of the reductions was such that they could be regarded as equivalent to a deprivation of possessions. They maintained that the depreciation of their possessions, following the introduction of the system of fixing rents per square metre, amounted to a *de facto* expropriation. They also alleged that they had been deprived of a contractual right to receive payment of the agreed rent."

The court found (*ibid.*, at paras. 44–45) that—

> "the measures taken did not amount either to a formal or to a *de facto* expropriation . . . The contested measures which, admittedly, deprived them of part of their income from the property amounted in the circumstances merely to a control of the use of property . . .
>
> Such laws are especially called for and usual in the field of housing, which in our modern societies is a central concern of social and economic policies. In order to implement such policies, the legislature must have a wide margin of appreciation both with regard to the existence of a problem of public concern warranting measures of control and as to the choice of the detailed rules for the implementation of such measures."

70 The court in *Mellacher* (9), whilst specifically acknowledging that the landlords were being deprived of their income by the measure, justified such deprivation for the purposes of rent control by the state. The balance struck in that case is comparable to the present case and the justification for the deprivation of landlords' rights equally applicable. Counsel for the claimants distinguish that case on the basis that the domestic legislation pursued the legitimate aim of, *inter alia*, improving the condition of rental property, a philanthropic factor absent in the present case. Whilst it is true that the ambit of the 2013 Act does not extend to the improvement of the condition of property, in my view its aim is no less legitimate. The 2013 Act, like the domestic legislation in *Mellacher*, forms part of a comprehensive scheme of rent control, the aim of which, in this case, was to remove unnecessary distinctions in the scheme and provide for a single method for the calculation of rent. I do not think that aim is any less legitimate than a plethora of others, and it seems to me that the creation of a uniform method of calculation can quite properly be in the general interest.

71 The creation and management of rent control schemes often have social policy at their core. The claimants submit that social concerns, the need for protected housing, and the protection of vulnerable tenants from the economic effects of rental increases are no longer relevant in the current social climate; that may or may not be so, but there is no material before me which enables me to evaluate that contention, as against the adopted measure. As the Court of Appeal recognized in *Aidasani* (13) (2001–02 Gib LR 21, at para. 118):

> "[Even where] the parties may be able to adduce carefully prepared and cogent evidence . . . it may be difficult in the context of court proceedings to collect all relevant material, and that, in any event, the evaluation of that evidence may involve questions of policy with which a court is ill-equipped to deal."

Even where there is "carefully prepared and cogent evidence," evaluation of government policy as a response to social housing issues would be difficult but, in the absence of any such evidence, the exercise cannot be undertaken.

72 In *Bank Mellat* (4), the Treasury, pursuant to its powers under the Counter Terrorism Act 2008, made an order which contained a direction prohibiting any person in the United Kingdom from engaging in any transaction with Bank Mellat, a major Iranian commercial bank, on the grounds that the Treasury believed that the development of nuclear weapons in Iran posed a significant risk to the national interest in the United Kingdom. The House of Lords found by a majority (Lord Hope of Craighead, DPSC, Lord Neuberger of Abbotsbury, PSC, Lord Dyson, M.R. and Lord Reed, JSC, dissenting) (as stated in the headnote to the report in *The Law Reports* ([2014] A.C. at 700)) in part that—

> "although the Order had a rational connection with the objective of frustrating as far as possible the Iranian weapons programme, the distinction between the claimant and other Iranian banks in circumstances found by the judge to relate to the general risks of international banking, not to specific problems identified in respect of the claimant itself, was irrational and disproportionate . . ."

For the claimants, it was submitted that a comparison can be drawn between the direction in *Bank Mellat*, which singled out one bank, and the 2013 Act here, which singles out a small group of landlords in respect of which the disadvantage applies.

73 In *James* v. *United Kingdom* (8), the court held (8 E.H.R.R. 123, at para. 45) that—

> "a taking of property effected in pursuance of legitimate social, economic or other policies may be 'in the public interest', even if the

community at large has no direct use or enjoyment of the property taken."

74 Similarly in *Bäck* v. *Finland* (3), the court said (40 E.H.R.R. 48, at para. 60):

"The Court agrees with the applicant that a transfer of property affected for no reason other than to confer a private benefit on a private party cannot be 'in the public interest'. Nonetheless, it is settled case law that the compulsory transfer of property from one individual to another may, depending upon the circumstances, constitute a legitimate means for promoting the public interest. Thus, a transfer of property effected in pursuance of legitimate social, economic or other policies may be 'in the public interest', even if the community at large has no direct use or enjoyment of the property transferred. The debt adjustment legislation clearly serves legitimate social and economic policies and is not therefore *ipso facto* an infringement of Art. 1 of Protocol No.1."

75 To my mind, the issue is not that the measure disadvantages an individual or a small group over others, but rather the justification of the connection between the measure and the particular person, class of persons, entity or group of entities to which it relates. In the present case, the justification for the connection between the measure and the landlords was legitimate. Cut-off points were set which categorized rents payable by reference to dates of creation of tenancies and age of buildings; similar exercises had been conducted on various occasions in previous years, for example, by virtue of the provisions of the 1991 Amending Act. The measure was in keeping with protected housing policy; it did not derogate rights already granted to tenants; it is true it disadvantaged some landlords but rent control measures often do; and, on one view, that is a necessary consequence of rent control.

76 Ultimately, much turns on the interpretation by the court of the context against which the particular measure was introduced. The fact that in *Bank Mellat* (4) Lord Neuberger reached a different conclusion from Lord Sumption on the reasonableness of the measure illustrates just how difficult the assessment of such a measure is. Lord Neuberger said ([2014] A.C. 700, at paras. 168–169):

"168 The explanation for the fact that Lord Sumption and Lord Reed JJSC have reached opposing conclusions on Bank Mellat's substantive challenge to the Direction largely lies in the difference between their respective analyses of the facts. Essentially, Lord Sumption JSC concludes that the Treasury's decision to make the Direction was legally flawed for two main reasons, which he summarises in para 22 . . .

169 I have concluded that, while those two points each have some force in a qualified form, neither of them amounts to a sufficiently justified criticism of the Direction to justify quashing the Order."

77 Each case must be decided on its own particular facts, and the importance of placing those particular facts into their historical and social context cannot be underestimated. The important consideration must be whether the measure is so unreasonable and unfounded as to justify an intervention by the court. In this case, in my view, it is not.

78 Placed in context, the 2013 Act did not arbitrarily introduce a new concept of fixed rents by way of a random act; the principal Act (the 2007 Act), which the 2013 Act amends, already had the concept of fixed rents for pre-2008 tenancies in buildings built on or before 1945. All that the 2013 Act did in respect of fixed rents was to change the qualifying period when buildings were erected from before 1945 to between 1945–1959. As a result, there was a change in the particular group of people who qualified for the new categories, *i.e.* some landlords who had been receiving assessed rents moved into fixed rents and some tenants who had been paying assessed rents were now caught by the more favourable fixed rents. This was not an unexplained or unforeseeable introduction of a measure which aimlessly targeted a specific group, or which had no sense or purpose. This was the development of a rental management scheme which had begun years before; it simply corrected the failure to repeal s.11A, and placed all buildings erected before March 1st, 1959 in the same regime with regard to the calculation of rent. It is difficult to see how this step could be described as manifestly without reasonable foundation.

79 It may indeed be that subjecting a landlord to receipt of fixed rent when he was previously in receipt of assessed rent causes him some disadvantage, but that does not of itself make that measure unconstitutional. I find the 2013 Act to have a legitimate purpose, to be of general application for public benefit, and to be part of a rent control scheme.

80 It is not disputed that restriction of rent may in certain circumstances impact upon a landlord's ability to maintain a building. Successive governments as far back as 1938 who were mulling over the issue of rent control must have been, and become, increasingly aware that rent control would likely have some effect on the level of upkeep of old buildings in Gibraltar. Notwithstanding, the policy of rent control by Parliament has continued to date. Certainly it seems to me that in 2007 the intention of Parliament was to preserve the concept of fixed rents, notwithstanding any possible negative impact that might have on relevant buildings, and that intention has been confirmed in 2013. If Parliament were to find that the fixed rent regime does not allow landlords generally to meet their obligations in terms of maintenance and repair, and as a result some of Gibraltar's historic buildings risk becoming derelict, then it may be that

they might wish to consider revising the level of statutory fixed rents but, of course, that must be a matter for the legislature. Similarly, if by operation of law, tenants are paying rents which by any means of computation are low, it may be that they are moved by a concern for the preservation of the building in which they live to make a voluntary contribution into a repair fund by way of a maintenance charge but, of course, that must be a matter for them.

81 For the reasons given, the claim fails.

*Order accordingly.*