



**QORTI CIVILI PRIM'AWLA  
(GURISDIZZJONI KOSTITUZZJONALI)**

**ONOR. IMHALLEF  
JOSEPH ZAMMIT MCKEON**

**Illum il-Gimgha 10 ta` Gunju 2016**

**Rikors Nru. 54/2016/1 JZM**

**John Bonnett (ID 254258M) u Carmelo  
Bonnett (ID 164757M)**

***kontra***

**L-Awtorita` ghall-Ambjent u Rizorsi ; u  
L-Awtorita` tal-Ippjanar ; u  
L-Avukat Generali**

**Il-Qorti :**

Rat ir-rikors li pprezentaw John Bonnett u Carmelo Bonnett fid-9 ta` Gunju 2016 fejn - filwaqt illi ghamlu riferenza ghat-talbiet li ressqu fir-rikors kostituzzjonali li pprezentaw fit-3 ta` Gunju 2016 kontra l-istess intimati li jgib in-nru 54/2016 JZM – talbu lill-Qorti sabiex *tordna li temporanjament u b`mod biss interim, sakemm tinqata` l-kawza odjerna* (u cioe` dik bin-nru 54/2016 JZM) *fil-finalita` taghha, tordna s-sospensjoni tal-azzjoni diretta fil-konfront taghhom.*

Rat id-digriet li tat il-bierah stess fejn ordnat in-notifika tar-rikors lill-intimati, tathom sal-11.30 a.m. tal-lum biex iwiegbu bil-miktub, u appuntat ir-rikors ghas-smigh ghall-lum fis-1.00 p.m.

Rat ir-risposti li pprezentaw l-intimati fit-terminu lilhom prefiss.

Semghet is-sottomissjonijiet li ressu d-difensuri tal-partijiet.

Rat l-atti li kienu prezentati fil-kors tal-udjenza tal-lum.

Rat id-digriet li tat illum stess fejn halliet ir-rikors ghal provvediment *in camera*.

Dan huwa l-provvediment.

#### **Ikkunsidrat :**

**Illi fil-kors tat-trattazzjoni tar-rikors, ir-rikorrenti rriafermaw dak illi kienu diga` firsru fir-rikors kostituzzjonali bin-nru 54/2016 JZM u cioe` illi *sejrin jitilfu telf kemm materjali u finanzjarju fammonti ngenti u in effetti l-istess possedimenti tagghom sejrin isiru propjeta` tal-awtoritajiet intimati sabiex din tkun tista` tbiegh l-istess bi profit ghalha.***

**Illi ghal dan ifisser li l-iskop tar-rikors li dwaru qiegbed jinghata l-provvediment tal-lum huwa fis-sostanza finanzjarju u pekunjarju. U propju kien ghalhekk li saru z-zewg talbiet fir-rikors kostituzzjonali kif jirrizultaw dedotti.**

Illi l-Qorti tirreferi ghall-“**Factsheet - Interim measures**” tal-ECHR ghal Jannar 2013 fejn wara li ssir riferenza ghar-Rule 39 tar-Rules of Court tal-ECHR tghid illi :

*Interim measures are urgent measures which, according to the Court's well-established practice, apply only where there is an imminent risk of irreparable harm. Such measures are decided in connection with proceedings before the Court without prejudging any subsequent decisions on the admissibility or merits of the case in question. In the majority of cases, the applicant requests the suspension of an expulsion or an extradition. The Court grants such requests for an interim measure only on an exceptional basis, when the applicant would otherwise face a real risk of serious and irreversible harm ...*

*In practice, interim measures are applied only in a limited number of areas and most concern expulsion and extradition. They usually consist in a suspension of the applicant's expulsion or extradition for as long as the application is being examined. The most typical cases are those where, if the expulsion or extradition takes place, the applicants would fear for their lives (thus engaging Article 2 of the Convention) or would face ill-treatment prohibited by Article 3 (prohibition of torture or inhuman or degrading treatment). More exceptionally, such measures may be indicated in response to certain requests concerning the right to a fair hearing (Article 6 § 1) and the right to respect for private and family life (Article 8).*

***In the Court's case-law as it currently stands, Rule 39 is not applied in the following cases : to prevent the imminent demolition of property, imminent insolvency, the enforcement of an obligation to do military service, to obtain the release of an applicant who is in prison pending the Court's decision as to the fairness of the proceedings, to ensure the holding of a referendum, or to prevent the dissolution of a political party.***

Illi fil-pag 20 et seq tal-ktieb "A Practitioner's Guide to the European Convention on Human Rights" (4<sup>th</sup> Edition – Sweet & Maxwell) Karen Reid tghid illi :-

***As a general practice, measures (riferibbilment ghal interim relief) are applied only where there is an apparent real and imminent risk of irreparable harm to life and limb ... While the procedure has been invoked in respect of other types of cases e.g. adoption of children, which may be arguably be of an irreparable nature, r.39 (riferribbilment ghar-Rule 39 tar-Rules of Court tal-ECHR) has not been applied save in a few exceptional cases. Matters of detention or interference with property, for example, are not regarded as necessitating interim measures.***

Illi huwa manifest illi l-kaz tal-lum ma jinkwadrix fis-sitwazzjonijiet fejn kien applikat r-Rule 39 tar-Rules of Court tal-ECHR u li jista` jigi applikat *mutatis mutandis* ghall-kaz tal-lum.

Illi mhijiex sejra tidhol fid-dettalji tal-argumenti li tressqu fil-kors tat-trattazzjoni tar-rikors tal-lum. Konsiderazzjoni ta` din ix-xorta certament issir wara li l-Qorti tkun semgħet il-provi kollha fil-kawza bin-nru 54/2016 JZM.

Illi fil-pag 113 et seq tal-ktieb “**Theory and Practice of the European Convention on Human Rights**” (Raba` Edizzjoni – 2006 - Intersentia) l-awturi van Dijk, van Hoof, van Rijn u Zwaak, ighidu –

*... it is only in cases of extreme urgency that interim measures are indicated : the facts must prima facie point to a violation of the Convention, **and** the omission to take the proposed measures must result or threaten to result in irreparable injury to certain vital interests of the parties or the progress of the examination.* (enfasi u sottolinear tal-qorti)

Illi l-Qorti mhijiex sejra tidhol fil-mertu u wisq anqas sejra tesprimi ruhha dwar ir-rikors bin-nru 54/2016 JZM anke ghaliex sal-lum ghadha mhijiex edotta bit-twegibiet li sejr in iressqu l-intimati u lanqas ghadha semgħet provi.

Illi l-Qorti tirrimarka biss - għall-grazzja tal-argument – illi *jekk* fil-kawza fil-mertu ssib favur ir-rikorrenti għar-rigward tal-ewwel talba, mhux bilfors trid tagħti r-rimedju li r-rikorrenti qegħdin jitolbu bit-tieni talba.

Illi kollox ma` kollox tkompli tissahhah il-fehma tal-Qorti illi mhijiex indikata l-*interim measure* li qegħdin jitolbu r-rikorrenti fir-rikors tal-lum, ghaliex bil-fatt illi ma tagħtix *interim measure*, kif rikjest mir-rikorrenti, din il-Qorti ma tarax illi *prima facie* se jkun hemm jew illi jista` jkun hemm hsara jew pregudizzju **rreparabbli** għall-istanza tar-rikorrenti.

**Għar-ragunijiet kollha premessi, il-Qorti qegħda tichad it-talba tar-rikorrenti kif dedotta fir-rikors tagħhom tad-9 ta` Gunju 2016. L-**

**ispejjez ta` dan il-provvediment jibqghu rizervati ghall-gudizzju finali fil-kawza fl-ismijiet “John Bonnett et vs L-Awtorita` ghall-Ambjent u Rizorsi et” (Rik. Nru. 54/2016 JZM).**

**Onor. Joseph Zammit McKeon  
Imhallef**

**Amanda Cassar  
Deputat Registratur**