



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

**ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON**

Illum it-Tlieta 4 ta` April 2017

**Kawza Nru. 1
Rikors Nru. 17/2017/1 JZM**

- 1. Maria Ewkaristika Farrugia
K.I. 9137(G)**
- 2. Lawrence Pisani
K.I. 27531(G)**

kontra

L-Avukat Generali

Il-Qorti :

Rat ir-rikors prezentat minn Maria Ewkaristika Farrugia u Lawrence Pisani fit-30 ta` Marzu 2017 fejn talbu lill-Qorti sabiex *tordna li sakemm jigi deciz ir-rikors kostituzzjonali fl-ismijiet fuq premissi prezentat kontestwalment ma` dan ir-rikors, l-Onorabbli Qorti tal-Magistrati (Ghawdex – Gurisdizzjoni Superjuri – Sezzjoni Familja) tiddezisti milli tisma` r-rikors fl-ismijiet “Martin Farrugia K.I. 51561(G) vs 1. Paul Farrugia K.I. 10476(G) ; 2. Maria Ewkaristika Farrugia K.I. 9137(G) ; 3. Lawrence Pisani K.I. 27531(G) ; Direttur tar-Registru Pubbliku” (Ref. 17/16 JVC) li tinsab differita*

ghal 5 ta` April 2017 ghas-skop fuq premiss, u jekk hemm bzonn l-allegazzjoni tal-atti ta` l-istess kawza.

Rat illi skont il-premessi tar-rikors, it-talba qed isir ghaliex jekk fil-kors tal-kawza fuq riferita quddiem il-Qorti tal-Magistrati (Ghawdex – Gurisdizzjoni Superjuri – Sezzjoni Familja) jigi ordnat it-tehid ta` kampjuni tal-genetika u jinstemghu x-xiehda tar-rikorrenti se jkun hemm vjolazzjoni tal-jeddijiet fundamentali taghhom kif protetti bl-Art 6 u 8 tal-Konvenzjoni u bl-Art 39 tal-Kostituzzjoni.

Rat id-digriet li tat fit-30 ta` Marzu 2017 fejn ordnat in-notifika tar-rikors lill-intimat, taghtu sa nofsinhar tat-3 ta` April 2017 biex iwiegeb bil-miktub, u appuntat ir-rikors ghas-smigh ghal-lum fid-9.00 a.m.

Rat ir-risposta li pprezenta l-intimat fit-terminu prefiss fejn issottometta illi t-talba kellha tkun michuda.

Semghet is-sottomissjonijiet tad-difensuri waqt l-udjenza tal-lum.

Rat ir-rikors thalla ghal provvediment ghal-lum stess.

Rat l-atti.

Ikkunsidrat :

Fis-sostanza, ir-rikorrenti qeghdin jitolbu lil din il-Qorti sabiex taghti *interim measure*.

Effettivament li qed jintalab mir-rikorrenti huwa illi din il-Qorti taghti ordni lill-Qorti tal-Magistrati (Ghawdex – Gurisdizzjoni Superjuri – Sezzjoni Familja) sabiex tieqaf milli tkompli tittratta l-kawza civili fuq riferita sakemm il-kawza kostituzzjonali tkun deciza.

Il-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).

Skont il-Factsheet, *interim measure* hija procedura minnha nnfisha eccezzjonali. Tinghata biss fil-kazi fejn tirrizulta *an imminent risk of irreparable harm*.

F`mizura li per se hija eccezzjonali, huwa biss eccezzjonalment li *interim measure* tigi applikata fil-kaz ta` allegati vjolazzjonijiet tal-Art 6 u tal-Art 8 tal-Konvenzjoni.

Fil-pag 20 et seq tal-ktieb "**A Practitioner`s Guide to the European Convention on Human Rights**" (4th Edition – Sweet & Maxwell) Karen Reid izzid id-doza tas-sinjifikat reali ta` *an imminent risk of irreparable harm* meta tghid :-

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*** (riferibbilment ghar-Rule 39 tar-Rules of Court tal-ECHR) ***has not been applied save in a few exceptional cases.***

Fil-premessi tar-rikors taghhom, jaccennaw ghal *pregudizzju rrimedjabbli*.

Tajjed jinghad illi talba ghall-ghoti ta' *interim measure* ma tistax tkun ekwiparata bhal donnu tixbah il-hrug ta' mandat ta' inibizzjoni.

Fost is-sottomissjonijiet illi ghamlu d-difensuri tar-rikorrenti, semmew l-ilment illi fl-udjenza ta' ghada tal-kawza quddiem il-Qorti tal-Magistrati (Ghawdex – Gurisdizzjoni Superjuri – Sezzjoni Familja) ghandhom jigu trattati l-eccezzjonijiet preliminari taghhom, u mhux jeskludu li jinstemghu provi ta' xejra personali u private.

Il-Qorti tirrimarka illi jekk quddiem il-Qorti tal-Magistrati (Ghawdex – Gurisdizzjoni Superjuri – Sezzjoni Familja) jigu biex isiru provi li mhux rilevanti ghall-fini tal-eccezzjoni preliminari, dejjem jistghu r-rikorrenti jirregistraw l-opposizzjoni taghhom fuq il-punt tar-rilevanza.

Fil-kaz tal-lum il-Qorti mhijiex sodisfatta illi, minhabba n-natura tal-kawza fil-kuntest tal-ambjent ta' Ghawdex, il-prosegwiment tas-smigh tal-kawza civili fuq riferita mill-Qorti tal-Magistrati (Ghawdex – Gurisdizzjoni Superjuri – Sezzjoni Familja) iwassal ghal *an imminent risk of irreparable harm* jew addirittura ghal *an apparent real and imminent risk of irreparable harm to life and limb*.

Del resto l-procediment l-iehor jibqa' kawza *ordinarja* (mhux kostituzzjonali) ta' natura civili li qed jinstema' Ghawdex minn Qorti Civili – Sezzjoni Familja.

Illi huwa manifest ghal din il-Qorti illi l-kaz tal-lum ma jinkwadrax fis-sitwazzjonijiet fuq citati fejn kien applikat r-Rule 39 tar-Rules of Court tal-ECHR.

Illi mhijiex sejra tidhol fid-dettalji tal-argumenti li gabu l-partijiet. Il-Qorti mhijiex sejra tidhol fil-mertu u wisq anqas sejra tesprimi ruhha dwar il-kawza kostituzzjonali li kienet presentata kontestwalment mar-rikors tal-lum, anke ghaliex sal-lum ghadha mhijiex edotta bit-twegibiet li sejjer iressaq l-intimat ; u wisq anqas ghadha semghet provi. Il-Qorti taghmel il-konsiderazzjonijiet taghha meta tigi biex tiddeciedi t-talbiet u dwar l-eccezzjonijiet fil-procediment kostituzzjonali de quo, wara li tkun semghet il-

provi kollha rilevanti għall-kaz, u wara li tkun qieset is-sottomissjonijiet tal-partijiet.

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 sottolinar tal-qorti)*

Illi kollox ma` kollox, u tenut kont tal-assjem, il-Qorti tibqa` tal-fehma illi mhijiex indikata l-*interim measure* li qeghdin jitolbu r-rikorrenti, ghaliex bil-fatt illi ma taghtix l-*interim measure* rikjest il-Qorti ma tarax illi *prima facie* se jkun hemm jew illi jista` jkun hemm *an imminent risk of irreparable harm* jew addirittura ghal *an apparent real and imminent risk of irreparable harm to life and limb*.

Ghar-ragunijiet kollha premessi, il-Qorti qeghda tichad it-talba tar-rikorrenti kif dedotta fir-rikors taghom tat-30 ta` Marzu 2017.

L-ispejjez ta` dan il-provvediment jibqghu rizervati għall-gudizzju finali fil-kawza kostituzzjonali li hija pendenti quddiem din il-Qorti kif presjeduta u li kienet prezentata kontestwalment mar-rikors tal-lum.

**Onor. Joseph Zammit McKeon
Imhallef**

**Amanda Cassar
Deputat Registratur**