



**QORTI CIVILI
(SEZZJONI TAL-FAMILJA))**

IMHALLEF

**Onor. Abigail Lofaro LL.D., Dip. Stud. Rel.,
Mag. Jur. (Eur. Law)**

Illum 28 ta' Gunju, 2017

Rikors Guramentat numru : 19/15 AL

A B

vs

C D

**Passaport Uzbek CA1795697 u b'digriet tas-27 ta' Gunju
2016 l-Avukat Dr Josette Sultana u l-PL Gilian Muscat gew
nominati bhala kuraturi deputati sabiex jirrapprezentaw lill-
assenti C D**

Il-Qorti:

**Rat ir-rikors guramentat ippresentat mill-attrici, li *in forza* tieghu,
wara li ppremettiet :**

**1.Illi l-esponenti kellha relazzjoni intimata mal-intimat, liema
relazzjoni giet terminata circa snin ilu, li minnha twieldet l-minuri
E D B;**

2. Illi l-intimat huwa rikonoxxut bhala l-missier, skont ma jidher mic-Certifikat tat-Twelid relattiv tal-minuri E D B li qieghed jigi hawn anness u markat bhala Dok A;

3. Illi minkejja li bint l-intimat E D B hadet kunjomu, huwa ma ghandu l-ebda hsieb u lanqas biss qieghed jipprova jiehu hsieb li jmantri lil bintu, liema fatt jista facilment jigi konfermat bil-gurament mill-esponenti;

4. Illi minhabba n-nuqqas ta' interess da parti tal-intimat lejn bintu u dan sa mit-twelid taghha sal-gurnata tal-lum, l-esponenti tistqarr li zmien ilu, kienet intavolat zewg proceduri ta' medjazzjoni (medjazzjoni numru 1337/11BOB u medjazzjoni numru 799/12BOB) sabiex tipprova tasal ghal xi forma ta' ftehim mal-intimat fejn il-kura u kustodja tal-minuri tkun esklussivament tal-esponenti omm izda sfortunatament qatt ma gie konkluz xejn stante li l-intimat kien inadempjenti ghall-ahhar (kif dina l-Onorabbli Qorti tista ssegwi mir-rapporti tal-medjazzjoni) tant li qatt ma wera interess li jilhaq xi forma ta' kompromess mal-esponenti sabiex jaqdi l-obbligu tieghu ta' missier versu bintu u dan minghajr ebda raguni valida. Lanqas qatt ma tista tghid li l-intimat zamm mal-kelma li kien jaghti lill-istess esponenti fir-rigward ta' binthom u cioe l-manteniment, l-hinijiet u d-dati tal-access tieghu versu l-istess minuri u dan gialadarba l-intimat jippretendi li kollox isir a kumdita tieghu;

5. illi kif l-esponenti indikat hawn fuq, minhabba l-inadempjenza tieghu, l-intimat falla milli jasal ghal xi forma ta' ftehim dwar il-minuri minhabba il-persistenza kontinwa tieghu biex ikollu kontroll assolut fuq bintu minghajr ma jgib ebda rispettt lill-esponenti u jpoggi lilu nnifsu qabel l-ahjar interess ta' bintu minuri;

6. Illi inoltre l-esponenti tistqarr li mill-bidu tal-proceduri de quo sal-lum, minkejja l-isforzi tad-difensuri tal-partijiet (kif ukoll tal-medjatur koncernanti) l-intimat baqa ma wera ebda interess versu l-minuri u dan kemm f'li jivversa manteniment adegwat u kemm li jistabilixxi rutina ta' access. Aghar minn hekk l-esponenti baqghet sal-gurnata tal-lum qatt ma tista tkun taf fejn tikkuntattja lill-istess intimat stante li apparti li ghandu iktar minn

linja tat-telefon wahda, li kemm il-darba uza biex ikellimha, m'ghandu l-ebda residenza fissa stante illi huwa jirrisjedi mal-partner li jkollu tal-mument. Sahansitra ricentement, l-esponenti saret taf minn terzi persuni li fix-xahar ta' Dicembru tas-sena 2014 kienu inhargu kontra l-intimat akkuzi kontrih mill-Ispettur Darren Buhagiar minhabba li kellu fil-pussess tieghu passaport falz u li qieghed iservi sentenza ta' habs gewwa l-facilita korrettiva ta' Kordin ghal perjodu ta' seba xhur (7).

7. Illi l-esponenti tenfasizza li minkejja li l-intimat ried jaghti l-impressjoni li ghandu interess uniku versu bintu, l-intimat QATT ma segwa l-access kif hekk ordnat mid-digriet li inhareg minn dina l-Onorabbli Qorti nhar il-hdax (11) ta' Dicembru 2014 u ma ipprova jzomm ebda kuntatt mal-esponenti biex jinfurmaha xi jkun behsiebu jaghmel. Ghar-rikorrenti ta' kull darba tkun diffiqli ghaliha li tikkomunika mal-intimat peress li QATT ma jkollu residenza fissa u linja telefonika fissa. Din is-sitwazzjoni hija hekk frustranti u inaccettabli ghall-ahhar ghar-rikorrenti li ta' kull darba jkollha l-inkwetudini fuq bintha li ma tafx x'inhum jigri mill-intimat u xi skopijiet ghandu lejn bintu qalb il-hajja turbolenti u perikoluza li jinsab jghaddi minnha. Fin-nuqqas li tigi fdata esklussivament il-kura u kustodja fuqha hija jkollha ta' kull darba tithabat f'kaz li jinqala' il-bzonn ta' firma mill-intimat f'dak li jikkoncerna l-ahjar interess tal-minuri;

8. Illi sfortunatament b'rizultat ta' dan l-agir irresponsabbli ghall-ahhar minn naha tal-intimat, l-esponenti kellha ukoll problema flimkien mal-kap tal-iskola fejn tattendu binthom sabiex l-esponenti tkun accertata illi l-ittri li qed jintbghatu mill-iskola dwar bintha jkunu ukoll indirizzati lill-intimat f'xi residenza li jkun qieghed jghix hu u mhux jircievhom terzi persuni minflok (li mhux fl-interess taghhom li jkunu jafu informazzjoni dwar il-minuri). Dan kollu juru cament is-sens ta' immaturita u irresponsabbilta ta' l-intimat versu binthom li sal-gurnata ta' llum ghadu lanqas indinja jghaddi informazzjoni lill-iskola dwar ir-residenza tieghu attwali, halli jkun infurmat dwar bintu u iktar u iktar konxjament ma jridx jghaddi ebda dettalji lill-istess esponenti dwar fejn qieghed prezenzjalment jirrisjedi u l-linja telefonika tieghu attwali;

9. Illi di piu l-intimat ftit ta' snin ilu kien hareg mil-facilita korrettiva ta' Kordin wara li kellu sentenza meta gie misjub hati ta' serq u talli zamm persuna kontra r-rieda taghha. Minn dak iz-zmien 'l hawn l-esponenti saret anki taf li jgorr fuqu reputazzjoni li jiddejjien man-nies u ma jhallasx lura minkejja li fuq il-pagna tal-facebook tal-istess intimat jidher jew almenu irid jaghti impressjoni li ghaddej hajja komda hafna;

10. illi l-esponenti tistqarr li kemm ilha li twieldet l-minuri, l-kura u kustodja kienet effettivament u de quo minn dejjem mal-esponenti li tista tghid rabbitha dejjem hi taht ir-responsabiilita taghha bl-ghajnuna tal-familja taghha fejn kien ikun hemm il-htiega.

11. illi minkejja illi l-esponenti ppruvat taghti cans lill-intimat sabiex jersaq lejn binthom u jirkupra l-hin li tilef fit-trobbija taghha dan kollu sfaxxa ukoll minhabba l-attitudni dittatorjali tal-intimat li jipretendi li jista jikkontrolla kull moviment tal-istess esponenti sabiex hija tagevolah fl-access u fil-manteniment lejn binthom. Sahansitra ftit tax-xhur ilu l-intimat heddidha minn fuq it-telefon li kien sejjer jigbor lill-binthom mill-iskola hu f'wahda mill-granet tal-iskola taghha. Kif gharrafha b'dan l-esponenti bezat u inkwetat mhux ftit u ghalkemm resqet immedjatament rapport mal-Pulizija, l-istess pulizija ma setghux jintraccaw lill-istess intimat stante li l-esponenti ma ghandha ebda informazzjoni dwar fejn jinsab gewwa Malta (vide Dok B). Aghar minn hekk, xejn ma tista jserrah rasha l-esponenti kontra t-theddid tal-intimat biex johdilha lil bintha kontra r-rieda tal-esponenti jekk mhux bl-awtorizzazzjoni mill-Qorti illi l-kura u kustodja ta' bintha tkun esklussivament fuq isimha;

12. Illi l-inkwetudini li qed tahkem l-esponenti gejjja ukoll mil-fatt li l-intimat ma ghandux l-permessi mehtiega biex jirrisjedi gewwa Malta u fil-fatt minkejja li kien qiegħed izomm fuqu passaport skadut, irnexxielu ta' kemm il-darba johrog minn Malta u jerga jidhol lura u dan minkejja li f'sentenza li nqatghet, kienet imsemmija ukoll ordni ta' deportazzjoni kontra tieghu izda li din qatt ma giet fis-sehh. Illi diga l-intimat kien darba heddida li jiehu t-tifla mieghu lejn r-Russja, dina t-theddida regghet tfaccat ricenti ftit tax-xhur ilu;

13. illi l-esponenti bl-akbar rispettt lejn dina l-Onorabbli Qorti temmen li l-intimat wasal f'punt fejn warrab kull responsabilita u ezempji xierqa li fid-dmir tieghu ta' missier kellu jonora fl-ahjar interess tal-minuri u dan jinghad ghaliex naqas kemm milli jmantni lil bintu u kemm milli jirrispetta u josserva l-ligijiet ta' Malta u jevita milli jidhol f'inkwiet bla bzonni;

14. Illi r-rikorrenti tinsab inkwetata ukoll dwar ir-religjon illi jhaddan l-intimat u cioe peress li proprjament huwa di origini mill-Uzbekistan, ghandha biza li xi darba jasal jahrab bil-minuri lejn art twelidu. Di fatti l-intimat jghid li huwa mir-Russja biex jizvija tali fatt kif ukoll ghar-raguni li jhaddan religjon Islamika, jemmen li tfajliet minn eta zghira ghandhom jigu sfurzati jizzewgu. Illi sfortunatament ir-rikorrenti ghandha ukoll biza li l-intimat bid-djun li qed jkollu jasal biex jisraq lit-tifla biex taghmel tajjeb bi flus ghad-dejn li jkollu. Haga li l-intimat fil-karattru tieghu kemm il-darba uriha li jasal jaghmel kollox ghall-flus u bil-wisq iktar qed juri hafna persistenza biex jara lit-tifla wahdu minghajr l-esponenti. Haga li r-rikorrenti qatt ma accettat u minhabba f'hekk wegghda li jpattijilha billi jaqbad u jmur ghat-tifla minn jheddu gewwa l-iskola u kif tispicca jehodha mieghu. L-esponenti fil-fatt marret tirraporta lill-pulizija;

15. Illi r-rikorrenti qegghda tipprezenta sensila ta' ritratti mehudin mill-facebook tal-intimat biex proprju turu l-istill ta' hajja li qed jghix l-intimat inkluz ritratt li qieghed ipejjep 'joint' kif ukoll ghal hajja komda li jidher li jinsab li jghix fiha a skans tal-ghixien minghajr tbatija ta' bintu; Di fatti ritratt minnhom hemm fih miktub 'I am happy in my life right now' u dan imur lura ghal Jannar tas-sena korrenti 2014 – u cioe fi zmien fejn kien ilu ma jara it-tifla minn Novembru tas-sena 2013 u minkejja, haga tal-misthija, huwa kiteb li jinsab kuntent! Hemm ukoll ritratt ta' fejn jghid li jghix u jahdem u li f'Dicembru ta' 2013 kiteb fuq l-pagna tal-facebook li sahasitra kien qieghed Dubai (!) meta ghal kuntrarju lill-esponenti kien informaha li f'dak iz-zmien kien mar l-Italja u r-Russja sabiex jirranga ghall-passaport tieghu; Ritratt iehor bil-profile tieghu li juri li qieghed jghix Gwardamangia u jinsab f'relazzjoni ikkumplikata (vide Dok C).

16. illi r-rikorrenti tigbed l-attenzjoni ta' din l-Onorabbli Qorti illi mir-ritratti li ghandu minn Novembru 2013 sa Lulju 2014 kien kumbinazzjoni zmien li ma ghadha ebda forma ta' manteniment lill-esponenti u di piu' naqas milli jara lill-bintu! ...zmien illi mir-ritratti annessi jixhdu biss il-verita u cioe li mohhu kien biss fix-xalar sfrenat biex jghix il-'good life';

17. illi kien ghalhekk li l-esponenti kellha tirrikorri ghal din l-Onorabbli Qorti b'dan ir-rikors biex tkun tista tottjeni l-kura u kustodja tal-minorenni. Illi gialadarba isehh dan, ir-rikorrenti ikollha l-interessi tal-minuri ssalvagwardjati inkluz l-pretezzjoni u assistenza minn naha tal-pulizija biex jkunu jistghu jghinuha f'kaz illi l-intimat jasal biex iwettaq it-theddida tieghu li jisraq lit-tifla taghhom u addirittura jisraqha ukoll (!), ikollha hekk sahha bizzejjed biex tramite l-pulizija ta' Malta u tramite l-investigazzjonijiet tramite InterPol, jekk ikun l-kaz, tkun tista tirkupra lura lill-minuri E D B;

18. illi ghalhekk kien mehtieg li jkun intavolat dan ir-rikors.

Talbet in vista tas-suespost u tad-dokumenti annessi li l-konvenut jghid ghaliex din il-Qorti m'ghandhiex :

1. takkordalha b'mod eklussivi l-kura u l-kustodja tal-minuri E D B u dan fuq isem l-esponenti biss;
2. tordna li l-intimat ihallas manteniment fix-xahar li jkun adegwat a favur l-minuri E D B;

u dan dejjem taht dawk il-provvedimenti li din l-Onorabbli Qorti jidhrilha xierqa fl-interess suprem tal-minuri.

Rat il-lista tax-xhieda tal-attrici;

Rat ir-risposta guramentata tal-konvenut, li *in forza* taghha huwa eccepixxa : fol 67

1. illi l-esponenti dejjem kellu interess fit-trobbija ta' bintu u dan nonostante l-fatt li l-attrici dejjem ghamlet li setghet sabiex iccahhad lill-esponent minn bintu u sabiex huwa ma jkollux

kuntatt ma' bintu u b'hekk testromettieh b'mod komplet minn hajjet il-minuri;

2. illi l-esponent vera mess mal-habs izda bhalissa huwa qieghed jaghmel hiltu kollha sabiex izomm hajja ezemplari, ghandu indirizz fiss li qieghed jirrisjedi fih (ghal kuntrarju ta' dak allegat mill-attrici) u qieghed jaghmel hiltu kollha sabiex isib xoghol u jtejjeb hajtu u jirregolarizza l-istat tieghu hawn Malta;

3. Illi l-esponent qatt ma kellu u qatt ma huwa ser ikollu ebda intenzjoni li "jisraq" lil bintu minuri minghand ommha sabiex jehodha barra minn Malta u dawn kollha huma kongetturi bazwija sabiex l-attrici tittenta tpenzi stampa kerha tieghu bil-ghan li ccahdu minn bintu u dan semplicement minhabba d-divergenzi li kienu ghadhom jezistu bejn l-attrici u l-familja taghha fil-konfront tal-esponent;

4. illi l-attrici qed tigdeb kemm tiflah biex tipprova thammeg lill-esponent u dan anki meta taghmel referenza ghar-religjon tal-istess esponent. Apparti l-fatt li kieku stess l-esponent kien ihaddan religjon Musulmana, dan qatt ma kien ta' deterrent milli wiehed irabbi l-uliedu u allahares kien hekk, fi kwalunkwe kaz l-esponenti ma huwiex Musulman izda huwa Kristjan Ortodoss;

5. Illi ghalhekk, minkejja l-allegazzjonijiet fiergha li qed taghmel l-attrici fil-konfront tal-esponenti sabiex tigi permessa li ccahdu minn bintu, l-esponent qieghed jopponi l-ewwel talba tal-attrici in kwantu huwa jrid ikollu sehem attiv fit-tgawdija u t-trobbija tal-istess bintu;

6. illi l-esponent, minn jeddu u minghajr ma kien jezisti ebda kuntratt jew ftehim ufficjali iehor bejnu u bejn l-attrici, kemm-il darba ta flus lill-attrici ghat-trobbija ta' binthom u lill-minuri, qabel ma huwa gie mcahhad minnha kien anke jixtrilha rigali u hwejjeg ohra u dan juri bic-car li huwa qatt ma xtaq jiddekadi mill-obligi tieghu bhala missier kif qed tallega l-attrici.

7. illi ghalhekk ghar-rigward tat-tieni talba l-esponent ma huwiex qieghed joggezzjoni li huwa jhallas l-manteniment, mahdum

skont il-mezzi u c-cirkostanzi personali u partikolari tieghu u skont bzonnijiet il-minuri.

Ghaldaqstant in vista tas-sue-espost l-esponenti:

1. Qieghed jopponi ghall-ewwel talba tal-attrici u jitlob minflok li l-kura u l-kustodja tal-minuri E D B tkun wahda kongunta;
 2. Ma huwiex qieghed jopponi li huwa jhallas manteniment adegwat fix-xahar ghal bintu minuri E D B.
- Salv kull provvediment iehor li din l-Onorabbli Qorti jidrilha xieraq.

Rat il-lista tax-xhieda tal-konvenut;

Rat ir-risposta tal-kuraturi deputati Dr Josette Sultana u il-PL Gilian Muscat, li *in forza* taghha huwa eccepixxa : fol 149a

1. Illi f'dan l-istadju l-esponenti mhux edotti mill-fatt u ghalhekk jirriservaw li jipprezentaw risposta ulterjuri fi stadju iehor tal-proceduri;

Rat il-lista tax-xhieda tal-kuraturi deputati Dr Josette Sultana u il-PL Gilian Muscat;

Rat id-digriet taghha tal-25 ta' Marzu 2015, li permezz tieghu hatret lil Dr Anna Mallia bhala perit legali f'din il-kawza.

Rat ir-rapport tal-perit legali, li qieghed jigi hawn hekk riprodott:

“1.Illi l-esponenti kellha relazzjoni intimat mal-intimat, liema relazzjoni giet terminate circa snin ilu, li minnha twieldet l-minuri E D B;

2.Illi l-intimat huwa rikonoxxut bhala l-missier, skont ma jidher mic-Certifikat tat-Twelid relattiv tal-minuri E D B li qieghed jigi hawn anness u markat bhala Dok A;

3.Illi minkejja li bint l-intimat E D B hadet kunjomu, huwa ma ghandu l-ebda hsieb u lanqas biss qieghed jipprova jiehu hsieb li jmantni lil bintu, liema ftt jista facilment jigi konfrmat bil-gurament mill-esponenti;

4. Illi minhabba n-nuqqas ta' interess da parti tal-intimat lejn bintu u dan sa mit-twelid taghha sal-gurnata tal-lum, l-esponenti tisqarr li zmien kienet intavolat zewg proceduri ta' medjazzjoni (medjazzjoni numru 1337/11BOB u medjazzjoni numru 799/12BOB) sabiex tipprova tasal ghal xi forma ta' ftehim mal-intimat fejn il-kura u kustodja tal-minuri tkun esklussivament tal-esponenti omm izda sfortunatament qatt ma gie konkluz xejn stante li l-intimat kien inadempjenti ghall-ahhar (kif dina l-Onorabbli Qorti tista ssegwi mir-rapporti tal-medjazzjoni) tant li qatt ma wera interess li jilhaq xi forma ta' kompromess mal-esponenti sabiex jaqdi l-obbligu tieghu ta' missier versu bintu u dan minghajr ebda raguni valida. Lanqas qatt ma tista tghid li l-intima zamm mal-kelma li kien jaghti lill-istess esponenti fir-rigward ta' binthom u cioe l-manteniment, l-hinijiet u d-dati tal-access tieghu verus l-istess minuri u dan gialadarba l-intimat jippretendi li kollox isir a kumdita tieghu;

5. illi kif l-esponenti indikat haw fuq, minhabba l-inadempjenza tieghu, l-intimat falla milli jasal ghal xi forma ta' ftehim dwar il-minuri minhabba il-persistenza kontinwa tieghu biex ikollu kontroll assolut fuq bintu minghajr majgib ebda rispettt lill-esponenti u jpoggi lill-nnifsu qabel l-ahjar interess ta' bintu minuri;

6. Illi inoltre l-esponenti tistqarr li mil-bidu tal-proceduri de quo sal-lum, minkejja l-isforzi tad-difensri tal-partijiet (kif ukoll tal-medjatur koncernanti) l-intimat baqa ma wera ebda interess veru l-minuri u dan kemm f'li jivversa manteniment adegwat u kemm li jistabilixxi rutina ta' access. Aghar minn hekk l-esponenti baqghet sal-gurnata tal-lum qatt ma tista tkun taf tikkuntattha lill-istess intimat stante li apparti li ghandu iktar minn linja tat-telefon wahda, li kemm il-darba uza biex ikellimha, m'ghandu l-ebda residenza fissa stante illi huwa jirrisjedi mal-partner li jkollu tal-mument. Sahansitra ricentement, l-esponenti saret taf minn terzi persuni li fix-xahar ta' Dicembru tas-sena 2014 kienu inhargu kontra l-intimat akkuzi kontrieh mill-Ispettur Darren Buhagiar minhabba li kellu fil-pussess tieghu passaport falz u li qieghed iservi sentenza ta'

habs gewwa l-facilita korrettiva ta' Kordin ghal perjodu ta' seba xhur.

7. Illi l-esponenti tenfasizza li minkejja li l-intimat ried jaghti l-impressjoni li ghandu interess uniku versu bintu, l-intimat QATT ma segwa l-access kif hekk ordnat mid-digriet li inhareg minn dina l-Onorabbli Qorti nhar il-hdax (11) ta' Dicembru 2014 u ma prova jzomm ebda kuntatt mal-esponenti biex jinfurmaha xi jkun behsiebu jaghmel. Ghar-rikorrenti ta' kull darba tkun diffici li ghalha li tikkomunika mal-intimat peress li QATT ma jkollu residenza fiss u linja telefonika fissa. Din is-sitwazzjoni hija hekk frustranti u inaccettabli ghall-ahhar ghar-rikorrenti li ta' kull darba jkollha l-inkwetudini fuq bintha li ma tafx x'inhum jigri mill-intimat u xi skopijiet ghandu lejn bintu qalb il-hajja turbolenti u perikoluza li jinsab jghaddi minnha. Fin-nuqqas li tigi fdata esklussivament il-kura u kustodja fuqha hija jkollha ta' kull darba tithabat f'kaz li jinqala' il-bzonn ta' firma mill-intimat f'dak li jikkoncerna l-ahjar interess tal-minuri;

8. Illi sfortunatament b'rizultat ta' dan l-agir irresponsabbli ghall-ahhar minn naha tal-intimat, l-esponenti kellha ukoll problema flimkien mal-kap tal-iskola fejn tattendi binthom sabiex l-esponenti tkun accertata illi l-ittri li qed jintbghatu mill-iskola dwar bintha jkunu ukoll indirizzati lill-intimat f'xi residenza li jkun qiegħed jghix hu u mhux jircievhom terzi persuni minflok (li mhux fl-interess tagħhom li jkunu jafu informazzjoni dwar il-minuri). Dan kollu juru cament is-sens ta' immaturita u irresponsabbilita ta' l-intimat versu binthom li sal-gurnata ta' llum għadu lanqa indenja jghadi informazzjoni lill-iskola dwar ir-residenza tighu attwali, halli jkun infurmat dwar bintu u iktar u iktar konxjament ma jridx jghaddi ebda dettalji lill-istess esponenti dwar fejn qiegħed prezenzjalment jirrisjedi u l-linja telefonika tiegħu attwali;

9. Illi di piu l-intimat ftit ta' snin ilu kien hareg mill-facilita korrettiva ta' Kordin wara li kellu sentenza meta gie misjub hati ta' serq u talli zamm persuna kontra r-rieda tagħha. Minn dak iz-zmien l'hawn l-esponenti saret ankti taf li jgorr fuqu reputazzjoni li jiddejjien man-nies u ma jhallasx lura minkejja li

fuq il-pagna tal-facebook tal-istess intimat jidher jew almenu irid jaghti impressjoni li ghaddej hajja komda hafna;

10. illi l-esponenti tistqarr li kemm ilha li ttwieldet l-minuri, l-kura u kustodja kienettivament u de quo minn dejjem mal-esponenti li tista tghid rabbitha dejjem hi taht ir-responsabiilita taghha bl-ghajnuna tal-familja taghha fejn kien ikun hemm il-htiega.

11. illi minkejja illi l-esponenti ppruvat taghti cans lill-intimat sabeix jersaq lejn binthom u jirkupra l-hin li tilef fit-trobbija taghha dan kollu sfaxxa ukoll minhabba l-attitudni dittatorjali tal-intimat li jippretendi li jista jikkontrolla kull moviment tal-istess esponenti sabiex hija tagevolah fl-access u fil-manteniment lejn binthom. Sahansitra ftit tax-xhur ilu l-intimat heddidha minn fuq it-telefon li kien sejjer jigbor lill-binthom mill-iskola hu f'wahd amill-granet tal-iskola taghha. Kif gharrafha b'dan l-esponenti bezat u inkwetat mhux ftit u ghalkemm resqet immedjatament rapport mal-Pulizija, l-istess pulizija ma setghux jintraccaw lill-istess intimat stante li l-esponenti ma ghandha ebda informazzjoni dwar fejn jinab gewwa Malta (vide Dok B). aghar minn hekk, xejn ma tista jserrah rasha l-esponenti kontra t-theddid tal-intimat biex johdilha lil bintha kontra r-rieda tal-esponenti jekk mhux bl-awtorizzazzjoni mil-Qorti illi l-kura u kustodja ta' bintha tkun esklussivament fuq isimha;

12. Illi l-inkwetudini li qed tahkem l-esponenti gejjja ukoll mil-fatt li l-intimat ma ghandux l-permessi mehtiega biex jirrisjedi gewwa Malta u fil-fatt minkejja li kien qiegħed izomm fuqu passaport skadut, irnexxielu ta' kemm il-darba johrog minn Malta u jerga jidhol lura u dan minkejja li f'sentenza li nqatgħet, kienet imsemmija ukoll ordni ta' deportazzjoni kontra tiegħu izda li din qatt ma giet if-sehh. Illi diga l-intimat kien darba heddida li jiehu t-tifla miegħu lejn r-Russja, dina t-theddida reggħet tfaccat ricenti ftit tax-xhur ilu;

13. illi l-esponenti bl-akbar rispettt lejn dina l-Onorabbli Qorti temmen li l-intimat tasal f'punt fejn warrab kull responsabilita u ezempji xierqa li fid-dmir tiegħu ta' missier kellu jinjora fl-ahjar interess tal-minuri u dan jingħad għaliex naqas kemm millli

jmantni lil bintu u kemm milli jirrispett u josserva l-ligijiet ta' Malta u jevita milli jidhol f'inkwiet bla bzonn;

14. Illi r-rikorrenti tinsab inkwetata ukoll dwar ir-religjon illi jhaddan l-intimat u cioe peress li proprjament huwa di origini mill-Uzbekistan, ghandha biza li xi darba jasal jahrab bil-minuri lejn art twelidu. Di fatti l-intimat jghid li huwa mir-Russja biex jizvija tali fatt kif ukoll ghar-raguni li jhaddan religjon Islamika, jemmen li tfajliet minn eta zghira ghandhom jigu sfurzati jizzewgu. Illi sfortunatament ir-rikorrenti ghandha ukoll biza li l-intimat fid-djun li jkollu. Haga li l-intimat fil-karattru tieghu kemm il-darba uriha li jasal jaghmel kollox ghal flus u bil-wisq aktar qed juri hafna persistenza biex jara lit-tifla wahdu minghajr l-esponenti. Haga li r-rikorrenti qatt ma accettat u minhabba f'hekk weghda li jpattihilha billi jaqbad u jmur ghat-tifla minn jheddu gewwa l-iskola u kif tispicca jehodha mieghu. L-esponenti fil-fatt marret tirraporta lill-pulizija;

15. Illi r-rikorrenti qieghda tipprezenta sensila ta' ritratti mehudin mill-facebook tal-intimat biex proprju turu l-istill ta' hajja li qed jghix l-intimat inkluz ritratt li qieghed ipejjep 'joint' kif ukoll ghal hajja komda li jidher li jinsab li jghix fiha a skans tal-ghixien minghajr tbatija ta' bintu; Di fatti ritratt minnhom hemm fih miktub 'I am happy in my life right now' u dan imur lura ghal Jannar tas-sena korrenti 2014 – u cioe fi zmien fejn kien ilu ma jara tifla minn Novembru tas-sena 2013 u minkejja, haga tal-misthija, huwa kiteb li jinsab kuntent! Hemm ukoll ritratt ta' fejn jghid li jghix u jahdem u li f'Dicembru ta' 2013 kiteb fuq l-pagna tal-facebook li sahansitra kien qieghed Dubai (!) meta ghal kuntrarju lill-esponenti kien informaha li f'dak iz-zmien kien mar l-Italja ur-Russja sabiex jirranga ghall-passaport tieghu; Ritratt iehor bil-profile tieghu li juri li qieghed jghix Gwardamangia u jinsab f'relazzjoni ikkumplikata (vide Dok C).

16. illi r-rikorrenti tigbed l-attenzjoni ta' din l-Onorabbli Qorti illi mir-ritratti li ghandu minn Novembru 2013 sa Lulju 2014 kien kumbinazzjoni zmien li ma ghadda ebda forma ta' manteniment lill-esponenti u di piu' naqas milli jara lill-bintu!...zmien illi mir-ritratti annessi jixhdu biss il-verita u cio e li mohhu kien biss fix-xalar sfrenat biex jghix il-'good life';

17. illi kien ghalhekk li l-esponenti kellha tirrikorri ghal din l-Onorabbli Qorti b'dan ir-rikors biex tkun tista tottjeni l-kura u kustodja tal-minorenni. Illi gialadarba isehh dan, ir-rikorrenti ikollha l-interessi tal-minuri ssalvagwardjati inkluz l-pretezzjoni u assistenza minn naha tal-pulizija biex jkunu jistghu jghinuha f'kaz illi l-intimat jasal biex iwettaq it-theddida tieghu li jisraq lit-tifla taghhom u addirittura jsiraqha ukoll (!), ikollha hekk sahha bizzejjed biex tramite l-pulizija ta' Malta u tramite l-investigazzjonijiet tramite InterPol, jekk ikun l-kaz, tkun tista tirkupra lura lill-minuri E D B;

18. illi ghalhekk kien mehtieg li jkun intavolat dan ir-rikors.

Ghaldaqstant in vista tas-suespost u tad-dokument annessi, l-esponenti titlob umilment li din l-Onorabbli Qorti joghgobha:

1. takkordalha b'mod eklussivi l-kura u l-kustodja tal-minuri E D B u dan fuq isem l-esponenti biss;
2. tordna li l-intimat ihallas manteniment fix-xahar li jkun adegwat a favur l-minuri E D B;

u dan dejjem taht dawk il-provvedimenti li din l-Onorabbli jidhrilha xierqa fl-interess suprem tal-minuri.”

Illi l-konvenut wiegeb hekk :

“1. illi l-esponenti dejjem kellu interess fit-trobbija ta' bintu u dan nonostante l-fatt li l-attrici dejjem ghamlet li setghet sabiex iccahhad lill-esponent minn bintu u sabiex huwa ma jkollux kuntatt ma' bintu u b'hekk testromettieh b'mod komplet minn hajjet il-minuri;

2. illi l-esponent vera mess mal-habs izda bhalissa huwa qieghed jaghmel hiltu kollha sabiex izomm hajja ezemplari, ghandu indirizz fiss li qieghed jirrisjedi fih (ghal kuntrarju ta' dak allegat mill-attrici) u qieghed jaghmel hiltu kollha sabiex isib xoghol u jtejjeb hajtu u jirregolarizza l-istat tieghu hawn Malta;

3. Illi l-esponenti qatt ma kellu u qatt ma huwa ser ikollu ebda intenzjoni li “jisraq” lil bintu minuri minghand ommha sabiex jehodha barra minn Malta u dawn kollha huma kongetturi bazwija sabiex l-attrici tittenta tpengi stampa kerha tieghu bil-ghan li ccahdu minn bintu u dan semplicement minhabba d-divergenzi li kienu ghadhom jezistu bejn l-attrici u l-familja taghha fil-konfront tal-esponenti;

4. illi l-attrici qed tigdeb kemm tiflah biex tipprova thammeg lill-esponent u dan anki meta taghmel referenza ghar-religjon tal-istess esponent. Apparti l-fatt li kieku stess l-esponent kien ihaddan religjon Musulmana, dan qatt ma kien ta’ deterrent milli wiehed irabbi l-uliedu u allahares kien hekk, fi kwalunkwe kaz l-esponenti ma huwiex Musulman izda huwa Kristjan Ortodoss;

5. Illi ghalhekk, minkejja l-allegazzjonijiet fiergha li qed taghmel l-attrici fil-konfront tal-esponenti sabiex tigi permessa li ccahdu minn bintu, l-esponent qieghed jopponi l-ewwel talba tal-attrici in kwantu huwa jrid ikollu sehem attiv fit-tgawdija u t-trobbija tal-istess bintu;

6. illi l-esponent, u min jeddu u minghajr ma kien jezisti ebda kuntratt jew ftehim ufficjali iehor bejnu u bejn l-attrici, kemm-il darba ta flus lill-attrici ghat-trobbija ta’ binthom u lil-minru, qabel ma gie mcahhad minnha kien anke jixtrilha rigali u hwejjeg ohra u dan juri bic-car li huwa qatt ma xtaq jiddekadi mill-obligi tieghu bhala missier kif qed tallega l-attrici.

7. illi ghalhekk ghar-rigward tat-tieni talba l-esponenti ma huweix qieghed joggezzjoni li huwa jhallas l-manteniment, mahdum skont il-mezzi u c-cirkostanzi personali u partikolari tieghu u skont bzonnijiet il-minuri.

Ghaldaqstant in vista tas-sue-espost l-esponenti:

1. Qieghed jopponi ghall-ewwel talba tal-attrici u jitlob minflok li l-kura u l-kustodja tal-minuri E D B ktun wahda kongunta;

2. Ma huwiex qieghed jopponi li huwa jhallas manteniment adgwat fix-xahar ghal bintu minuri E D B.

Salv kull provvediment iehor li din l-Onorabbli Qorti jidrilha xieraq.

Documents filed by the plaintiff

Fol 6 – Dok A – birth certificate of the minor child

Fol 7 et – Dok B - police report

Fol 9 et – Dok C – photos

Fol 57 et – Dok D – authorization by this Court to proceed with this action

Fol 84 the decision by the Court of Criminal Appeal dated 4th February 2005 against the defendant whereby the decision of the first court was confirmed and sent to eight days imprisonment.

Fol 89 et – text messages from previous girlfriends including Jacqueline Gatt who testified in this case

Fol 101 et – medical expenses

Fol 107 et – decision by the Court of Criminal Appeal dated 25 October 2012 whereby the defendant was found guilty of theft , extortion and insults and condemned to thirteen months imprisonment.

Fol 116 et – maintenance paid by defendant.

22.6.2015 sitting – maintenance expenses, business card printed by the father of the plaintiff for the defendant .

3.12.2015 sitting – Dok X a breakdown of maintenance paid by defendant until 18 July 2014 and Dok Y a breakdown of maintenance paid by defendant in 2013.

Other evidence submitted by the plaintiff

The plaintiff a fol 86 et by means of an affidavit testified that she met the plaintiff one month before her nineteenth birthday and they started dating and after three months he asked her to marry him. He told her that was wrongly accused and sent to prison. She told me that marrying so that he can stay in Malta was not a good deal. After one week she found out he lied

because he was accused of holding some one against his will amongst other things.

She was called in by immigration and warned her that it was common for foreigners in Malta to make a Maltese girl pregnant so they could stay in Malta and after a week she found out she was pregnant. They lived together in his flat and when became pregnant she went back home as he used to say that he did not have any money for the rent. He stayed with her at her parents house as he was the father of her unborn child.

During the next two months she borrowed him seven hundred to pay the rent but this money was never used for rent; he also sent three hundred every month which he said was for his father though they were never addressed to her father but to different names. Her father even transferred his car on his name but he never paid the installments and her father ended up in court. He would tell her to commit an abortion as he would not afford the child. This made her depressed and she was admitted to hospital for dehydration. When she was five months pregnant she saw him testing and he received a text message in Russian which she wrote and translated on the computer which said that he would see her soon as he only needed to sort out his papers. That is when she told him to leave.

She would give him booklets about being a new father but he would tell her that he knew everything about being a father and he never read them; even when he once went with her to childbirth classes he refused to do the exercises and even questioned the teacher's knowledge insisting he was a perfect father.

Even during the ten hour labour he told her she was exaggerating the pain and the nurses asked him to leave the room as he was causing her stress and stress on the baby. E was born on 10 November 2010. She let him see her both at her house and at his place. This happened only three times as the baby used to come home with a nappy rash caused by leaving the nappy dirty and not changed and very smelly. He

would say that this happened as he was leaving to bring her back.

Seeing her daughter being neglected she could not take it anymore and for a while he vanished. Only when his court case was approaching would he test her to show the court he had a daughter not to risk deportation. For six to eight months he did not contact her and he never paid for maintenance or even caring if the child was healthy.

In June 2012 she started mediation and he was granted access to E yet at times he would not show without informing her and this resulted in problems at school for her daughter as she got scared that even her mother was going to abandon her. He had many girlfriends all willing to marry him so he would stay in Malta and many would text her to be careful as there were people after him who owe them money. He started paying maintenance in 2013 when E was three years old and he never bothered to pay any arrears of medical or school fees.

During the past three years he was in prison three times last one being caught with a false passport which terrified her as he had a false passport for her daughter already.

E is a happy child, has a stable home and she has a routine, school, piano and ballet. The child is sad when her father does not show up or when he tells her that he is in prison. Plaintiff has nightmares that he is going to take her away from her home.

On cross examination (3.12.2015) the plaintiff confirmed that the defendant paid all the money he owed to her family. After he came out of prison he started working and paid his dues. She believed that he got her pregnant to be able to stay in Malta and re-iterated that he wanted an abortion because he did not have any money. When asked to explain this contradiction she replied that she has no explanation.

She confirmed that until 18 July 2014 he gave her 200 euros for the months of May, June, July and August 2015. She filed Dok X the breakdown of the maintenance he paid her until 18 July

2014; Dok Y a breakdown of the maintenance he paid her in 2013 at 100 euros monthly. She confirmed that there is no court decree and that he increased it to 200 euros monthly voluntarily.

Since August 2015 she did not receive any maintenance and she also stated that she works full time.

By means of a joint affidavit (sitting 22.6.2015), **Annemarie Pace and Nathalie Pace** who stated that they have known the plaintiff and her mother since 2010 when there were directed to HOPE . They certified that they are of high moral background and their integrity is beyond question. They were witness to the harassment they enduring together with E when the defendant on several occasions he followed them to their show which is situated in Msida despite the lawyer's advise to respect the mediation decisions. They heard the defendant verbally stating that no one, no matter what rank could tell him when and where he could see his child and that if he so wishes he could take her there and then. This happened on a number of occasions even in public spaces which was very upsetting for the plaintiff, her daughter and the plaintiff's mother. He is a very volatile person and they hope that the defendant will be thought of his limitations so that the defendant her mother and her daughter will not be afraid to go out.

Victor B (affidavit filed 22/6/15 sitting) testified that he is the father of the plaintiff and that the defendant presented himself as a perfect gentlemen and asked to court his daughter and attended mass with her on Sunday and expressed his dire need for a stable family life as his mother had supposedly died when he was ten years old. He told them he was self employed within the building trade and he even printed for him business card and his wife bought him tools from the UK to help him. Later they got to know about the criminal charges and were told that he applied to marry his daughter who was attending Mcast. He was in fact on bail and facing deportation.

When he transferred his car in the defendant's name he would receive the parking fines and overdue car payments and Raul & Rocco car dealer would call him that he is in default and would start court proceedings. He has to impound his car until his fine and licence and insurance are paid; he took 700 euros from his daughter's student visa and only paid 400 euros and still owes him 300 euros. According to him, the defendant planned the relationship to obtain residents permit and confirms that he would impound his daughter and his wife to abort the baby as he did not want to be held liable if he did not pay maintenance.

During her pregnancy she became very stressed and they sought the help from Hope , an organization that protects mothers and babies in stressful situations and she had to be admitted to hospital. She told him that he would have him arrested if he continued to insist that she aborts.

According to him the defendant has a split personality and has no natural love in him or any regard for the welfare of others. He calculating callous person who would not think twice to use E solely to make courts feel sorry for him not to be deported. The child is not safe with him, he has no moral code, his prison record speaks for itself and his deceitful actions speak volumes. He begs the court to see that this man is a harm to his granddaughter and to his daughter and to grant full custody of E to his daughter.

The plaintiff's mother **Susan Mary B** (22.6.2015 sitting), testified that her daughter has been in a brief but turbulent relations with the defendant from January 2010. He told her he had lived in Malta with his father for over five years and that his father had returned to Russia because of sick health and his father had not been able to return to Malta. He also alleged his mother died of cancer when he was ten years of age. He asked her to get him pills for his father from Mater Dei where she worked but she later realized that the pills were for him.

They were shocked to learn that he had applied to marry her daughter so that he could stay in Malta because he was facing

deportation but he insisted that he was innocent and that he loved their daughter and having a family was all he wanted.

The plaintiff informed them that things were not good between them and that his moods showed a much different person to the one he portrayed in front of people. He was sending money abroad yet borrowing from them and receiving threats from people who owed him money to parking fines every week.

When their daughter was in hospital due to dehydration he did not take her up but returned to her house with a laptop and a new charger and unplugged her freezer to plug it and she had to throw away 600 euros worth of food which he never reimbursed. She heard him engage in a conversation with a Russian woman and when she told her daughter he told her it was his cousin. Then she had the messages translated which were a confirmation to the woman that he would soon have residency because of the baby. When he got to know that having the baby did not guarantee residency he would ask them for money so her daughter would have an abortion. He went to her place of work to constantly demand for this. He stopped when she told him he would have him arrested if he got in touch with her daughter or the baby.

She stated that he then asked her to give him five thousand euros (€5000) so that he could obtain a visa from Italy and he would then guarantee her daughter's safety and he would be gone from their lives. When she objected he told her he could not guarantee the safety of her daughter.

She informed the immigration, the minister of justice and the marriage bureau to let them know what is happening.

Defendant never paid anything for his daughter and when he lives with them he resented people who have families and compared himself to his daughter who was rich because she had them and that they should feel sorry for him and not for E. He constantly verbally assaulted his children. He would tell them that he can take E to Russia but for now he does not

because he wants to be kind. His next girlfriend got him arrested.

She states that the facts are frightening. He drives to Marsa and flashes his lights so the girls come out and disappears for months and then comes back with lost of money. He has countless people chasing him for money and her daughter was warned not the leave the baby with him as people after him are dangerouse. She sufferes do much stress because of the defendant that she was uable to work and and is suffers from chronic eurological problems that have rendered her unable to work.

She implores the court so that the care and custody of E is given to her daughter who works as an LSA in a government school and has completed all her studies. She and E are inseparable and they live with them. E is very outgoing, loved at school and very intelligent and a charming caring girl.

Documents submitted by the Defendant

Dok MD at fol 76 shows payments of €100 monthly, done by the defendant to the plaintiff from 22 January 2014 to 22 December 2014 and from 22 May 2013 to 22 December 2013.

Other evidence submitted by the Defendant

By means of an affidavit at fol 72 et the **defendant** explained how he met the plaintiff. They liked each other and starting dating and she moved in with him. Then she got pregnant and when she phoned him to tell him he promised he would take care of her and of the baby. She was a student at Mcast at that time. Then she would stay at home and he used to go work. Then she decided to go back to her parents' house and insisted he joins her. The house was small and they had no privacy but her parents treated him well and he would leave a good part of their salary with hem. He also formed part of a band and he recorded a single. Her pregnancy was not easy and she was in

hospital very often. Due to the fact that he was spending a lot of time in hospital he ended up losing his job.

When she gave birth to E everything changed. During the same week she told him she did not want to be with him anymore. At first he thought it was because of the stress of giving birth as she had really been depressed during the pregnancy both because she got pregnant and because she had to leave school. He was heartbroken when she told him that she did not want him in her life any more . she told her father that she did not want to be with the defendant and he could see that he despised me and accepted to leave as long as he would get to see his daughter and she agreed. She even told him that she could stay until he found accommodation but her father did not want him in the house and one afternoon after he came back from work he told him to collect his stuff and leave and he practically threw him out of the house.

He was angry at A' family and he still wanted to be a father to E. He went to live with a friend for a week, eventually he found an apartment in Paola, so that he can be close to where E lived. For the first six months he used to take his daughter even for sleepovers even twice a week. He even went to Mothercare and bought anything he thought he would need for his daughter, clothes and accessories for the baby.

Suddenly the plaintiff changed and told him that he could only see his daughter at her place. He did not want to argue and he accepted. The plaintiff would come with her boyfriend and go up to her room and he would play with his daughter. He did not mind that as he had girlfriends too. He always took something with him, sweets or presents for his daughter.

Then she told me to start meeting somewhere outside her home and the reason she gave him was that her boyfriend was jealous and he did not like him in the house. Again he accepted and they would meet either at the swings at Paola behind the church or at Paola square. Things got worse when they started arguing regarding when he could visit E. He started working in a bar and could not keep the arrangement

they had regarding access and when he asked her to change the times and days she refused and told her that he was going to consult a lawyer to have a contract.

Before he met the plaintiff, when he was just twenty years of age, he had an argument with somebody in Paceville and was found guilty of grievous bodily harm and sentenced to eleven months imprisonment and he appealed. When they met he told her about this case which was pending appeal. Then the appeal was confirmed and he was sent to prison. He spent seven months in prison and during that time the plaintiff will not let him speak to his daughter. When he got out of prison he started mediation immediately. They even agreed on a contract but than she refused to sign it.

She told him she was filing a court case at a time when he was having access and paying maintenance. He was then in October arraigned in Court accused of using a false passport and he did it to be able to work in Malta. He was found guilty and sentenced to four months imprisonment. He denies that he ever travelled in Dubai and he stated that on facebook as a joke.

He accuses A of twisting the facts and of painting a picture of him which is to a large extent false. A created problems when she refused to sign the contract. It is a blatant lie that he was not paying maintenance and he was not having access to his daughter. In reality she was making a lot of excuses not to let him see his daughter. He would call her to meet his daughter and she would not answer. Then she would contact him back late at night, when it would be too late to meet E with all kinds of excuses like saying she was asleep and did no hear her mobile phone. The times that she answered the phone she would get some other excuse like saying E was sick or that she had fever when it was not true. Other times he would go to see his daughter and his father will tell him that E is sick and he will not let him see her. He did not file police reports because for a person like him who had troubles with the law, it was not easy to file a report.

The defendant says that it is a blatant lie that he did not pay maintenance and filed Dok DM1 to prove that the payments he made as from 22nd May 2013. Before he also paid maintenance but he did not know he had to ask for a receipt. For the payment from 22 September 2014 to 22 October 2014 he gave her €300 for two months but he forgot to take the paper with him to sign and although she promised she would sign it she never did. On 22nd November he went to give her the maintenance but she refused it. Then in December 2014 he was in prison for making use of a false passport.

He denies that he was living a good life and if he was going to the gym that does not mean that he was living 'a good life'. He admits he made mistakes but he always treated E like the precious she is to him. His mother died when he was thirteen and does not want to see his daughter brought up without both parents. He even had a meeting with the Assistant Commissioner Lawrence Cutajr about his status in Malta having been in Malta for thirteen years with a fixed address, a job and a mobile number. He wants to be present in his daughter's life.

Dok MD at fol 76 shows payments of €100 monthly, done by the defendant to the plaintiff from 22 January 2014 to 22 December 2014 and from 22 May 2013 to 22 December 2013.

A fol 78 **Marthese Mussett** in her affidavit testified that she has known the defendant for a year asince he ahs been in a relationship with her sister Jacqui. He is a kind, polite and friendly person and always tries to help and suppost us and he is considered part of their family. He mentions E all the time and he spends a significant amount of time with her young children, Kieran 10 and Stacey 6 years. She is aware of the problems he had with the police.

A fol 79 **Rashyd Curiel** testified that he had known the defendant for the past three years and they are very good friends and lived together. He is also his training coach at the gym. He is a good person and although he has been in trouble a couple of times in the past he is working on making positive changes his life. He wishes to build a relationship with his

daughter E. Last year he went with him to Paola square and saw him give the plaintiff €500. A week later he called him to go to his room and told him he was going to see his daughter whom he had not seen for three months. He wanted to buy everything for his daughter and he ended up buying her a doll and an animation movie 'Frozen'. He went with him to see his daughter at the Paola swings. He even wanted to take photos of him and with his daughter and the witness took these photos from his mobile. He saw him playing together in the doll-house and E was smiling and enjoying herself all throughout. Later the defendant moved in with Jacqui.

At fol 81 **Jacqueline Gatt** by means of an affidavit testified that she has known the defendant for about twelve years and until last year they were just friend and since last year they starting dating and they are now living together with her four year old son Jacob. He has a good relationship with her family especially her son. He takes him to school and picks him up regularly. He love sports and works out at the gym regularly and is a good influence on her son as he like staying indoors and is not very active. He goes to play basketball with her son and he is part of the family. They have a stable relationship and he has always been hones with her. When he was in prison he used to speak to her son on the phone every day.

He has a real desire to build a loving relationship with his daughter E and he mentions her every day. He has no intention of leaving Malta or to take her out of the country. His real life is in Malta. He would call the mother of E in her presence and she would tell him that she is either sick or out. On her fourth birthday they baked a birthday cake for E and bought her gifts and when to her house in Paola and when he knocked at the door the plaintiff's father opened and told him she was sick and let the cake and presents with him.

Before he went to prison he bought her presents and she met the plaintiff and her mother and gave them to her and a few days after last Christmas when he was in prison she met them next to the Ibragg church to give them the presents for E. She never saw the defendant as a bad influence on her son and she

believes that the defendant is a good caring father to E if given the chance.

Appointment of curators

At fol 135 Agenzija Appogg informed the Court that the defendant informed Appogg that he was going abroad and will not be attending supervised access visit for approximately three to four weeks as from 22nd December 2015. At the request of the plaintiff the court appointed Dr Josette Sultana and PL Gillian Muscat as curators to represent the absent defendant.

At fol 149a the curators pleaded that at this stage that they are not familiar with the facts of the case and they reserve the right to make additional reply.

Considerations

First of all it needs to be pointed out that the requests of the plaintiff in this case are only two, that is, care and custody and maintenance.

In Civil law, with regards to appreciation of evidence our Courts have established the following principles:

Fil-kamp civili, għal dak li hu apprezzament tal-provi, l- kriterju ma huwiex dak jekk il-gudikant assolutament jemminx l-ispjegazzjonijiet forniti lilu, imma jekk dawn l-istess spjegazzjonijiet humiex, fic-cirkostanzi zvarjati tal- hajja, verosimili.

Dan fuq il-bilanc tal-probabilitajiet, sostrat baziku t'azzjoni civili, in kwantu huma dawn, flimkien mal-proponderanza tal-provi, generalment bastanti għall konvinciment. Ghax kif inhu pacifikament akkolt, ic-certezza morali hi ndotta mill-preponderanza tal- probabilitajiet. Dan għad-differenza ta' dak li japplika fil- kamp kriminali, fejn il-htija trid tirrizulta minghajr ma thalli dubju ragjonevoli.”

In oltre, kif gie affermat fis-sentenza fl-ismijiet **Maria Stella B vs Joseph Cassar et** deciza nhar il-hamsa w ghoxrin (25) t'April 2002 mill-Prim' Awla tal-Qorti Civili:-

“Il-gudikant, fil-kamp civili, ghandu jiddeciedi fuq il-provi li jkollu quddiemu, meta dawn jinducu fih dik ic-certezza morali li kull tribunal ghandu jfittex, u mhux fuq semplici possibilitajiet; imma dik ic-certezza morali hija bizzejjed, bhala li hi bazata fuq il-preponderanza tal-probabilitajiet. U dan ghad-differenza ta' dak li japplika fil-kamp kriminali, fejn il-htiega trid tirrizulta minghajr ma thalli ebda dubju ragonevoli.”

Ghal dak li huwa apprezzament tal-provi, il-kriterju determinanti mhuwiex jekk il-gudikant assolutament jemminx dak li jkun gie spjegat lilu, izda jekk dawk l- ispjegazzjonijiet humiex verosmili fic-cirkostanzi svarjati tal-hajja (**B vs Bartolo**– Appell Inferjuri – 25 ta' Gunju 1980).

Il-grad ta' prova rikjest fil-kamp civili huwa dak li bizzejjed li jkun inissel certezza morali f'mohh il- gudikant li tkun indotta minn preponderanza ta' provi meqjusa fuq bilanc ta' probabilitajiet (**Caruana vs Laurenti** – Prim'Awla tal-Qorti Civili – 8 ta' April 1994 ; **B vs Manager ta' l-Intrapriza tal-Halib** – Prim'Awla tal-Qorti Civili – 17 ta' Lulju 1981; **Vassallo vs Pace** - Vol.LXX.II.144 u **Zammit vs Petrococcino** – Appell Kummercjali – 25 ta' Frar 1952).

Kif inghad fis-sentenza moghtija mill-Qorti tal-Appell Sede Inferjuri nhar it-tmienja w ghoxrin (28) t'April 2004 fl- ismijiet **Emanuel Ciantar vs David Curmi noe**:-

“Fil-kamp civili l-piz tal-prova huwa mixhut fuq min jafferma fatt, u mhux fuq min jinnegah. B'danakollu, f'kawza civili, d-dolo jista' jigi stabbilit anke permezz ta'presunzjonijiet w indizji, purke s'intendi jkunu serji, precizi u konkordanti, b'tali mod li ma jhallu l-ebda dubju f'min hu msejjah biex jiggudika. Huwa ben maghruf, f'materja konsimili, li mhux kwalunkwe konflitt, kontradizzjonijiet jew inezattezzi fil- provi, ghandhom ihallu lill-Qorti f'dak l-istat ta' perplessita` li minhabba fihom, ma tkunx tista' tiddeciedi b'kuxjenza kwieta jew jkollha b'konsegwenza taqa' fuq ir-regola ta' in dubio pro reo.

It is therefore in the light of the above considerations that the legal referee needs to consider the claims of the plaintiff.

Care and custody of E

From the facts of the case it results that from a brief relationship between the parties a daughter was born on 10 November 2010. It was a turbulent relationship caused mainly by the volatile character of the defendant who although he states that he wants to be a good father to his daughter from the facts of the case it clearly results that he is a very immature person who does not take responsibility for his actions. The fear he tried to instill in the defendant and her family confirm to the legal referee his high level immaturity which eventually resulted in him leaving the country and nobody knows his whereabouts.

He got the plaintiff pregnant when he was having problems with the police and he was out on bail, he always denies that his court cases are not his fault and he even went to register to get married when he got the defendant pregnant and without telling her. Only when the plaintiff refused that he asked her to have an abortion. Not only was he welcomed in her parent's place but he even dated a Russian girl when he was still living with her parents. He has problems with the police and was sent to prison more than once. He threatened her and her parents that if things are not done his way he would take his daughter away from the country.

The affidavit of his girlfriend portraying him as the ideal father fell apart from the messages she sent to the plaintiff when she threw him out of the house and reported him to the police.

The defendant has his way of loving the daughter and there is no doubt about that but the problem with him is that he does not take no for an answer and he is immature to the extent that if things do not come his way he starts threatening.

The fact that he has left Malta without informing the plaintiff and lying to Appogg by telling them that this is only for three weeks

when in actual fact he never came back continues to re-affirm the legal referee's decision that the care and custody of the minor child E shall be entrusted solely to the mother, the plaintiff.

Maintenance

Preliminary it must be underlined that it is the duty of both parents to contribute towards the maintenance of their children both financially and otherwise. That maintenance is quantified according to the needs of the children and the means of each party who is obliged to pay maintenance. These means include both movable and immovable property.

The obligation of the parents is regulated by **Article 3 of our Civil Code** which states:

Il-partijiet fiz-zwieg ghandhom l-obbligu, kull wahda minnhom skond il-mezzi u l-hila taghhom, li jahdmu kemm fid-dar kif ukoll barra mid-dar kif jinhtiegu l-interessi tal-familja, li jmantnu lil xulxin u jikkontribwixxu għall-htigijiet tal-familja"

In Article 3B of the same Code the following is stipulated:

"Iz-zwieg jimponi fuq il-mizzewgin l-obbligu li jiehdu hsieb, imantnu, jgħallmu u jedukaw lil ulied li jigu miz-zwieg skond il-hila, xehtiet naturali u aspirazzjonijiet ta' l-ulied."

Reference is also being made to Article 7(1) of the Civil Code which states that: :-

"Il-genituri ghandhom l-obbligu li jiehdu hsieb, imantnu, jgħallmu u jedukaw lil uliedhom bil-mod stabbilit fl-artikolu 3 B ta' dan il-Kodici."

In view of the above, it results from the law that the parents have the same obligations towards their children and therefore both of them have to contribute towards their upbringing more so today when both parents are equal and have the same rights and therefore according to article 2 of the Civil Code they carry the same responsibilities during their marriage.

It is an established fact that the obligations derived from marriage suffer in the course of separation between the parties, even in cases pendent lite ; however the obligation of the parents toward their children remains basically the same that is, each parent according to hi or her means calculated according to the dispositions of article 20 of the Civil Code and the needs of the children and in the interest of the children.

Article 7(1) of the Civil Code states: : *“Il-genituri għandhom l-obbligu li jjeñdu f’sieb imantnu, jgħallmu u jeducaw lil uliedhom bil-mod stabbilit fl-artikolu 3b ta’ dan il-Kodici.”*

It is also an established principle that the mother also has to carry the responsibilities of maintenance towards her children. In the decision of the court in the court case **“Marthese Vella pro et noe vs George Vella” decided on 28th February 2003**, this Honourable Court sustained that: :- *“t-tibdil legislattiv filwaqt li rrikonoxxa l-avvanz tal-mara gab miegħu wkoll responsabbilitajiet fuq il-mara miżżewga ferm aktar milli kellha qabel. Dawn ir-responsabbilitajiet huma riflessi wkoll anke fejn jirrigwarda manteniment. Li jfisser li hi wkoll trid terfa’ b’hal żewgħa r-responsabbilita’ għal dak li jirrigwardja l-manteniment tal-familja.”*

In the sitting dated 1st June 2015 before the legal referee the parties agrees that the maintenance for Emilie shall be that of two hundred euros (€200) monthly.

This should therefore stay and maintenance shall be that of two hundred euros (€200) monthly plus half of the educational, health and extra curricular activities.

These are the only two requests of the plaintiff.

Access

Although this was not a specific request by the plaintiff in her sworn application or by the defendant in his reply, during these

proceedings from fol 118 it results by means of decree of 11 December 2014 issued in the acts of mediation 1664/13 RGM defendant was granted access to his daughter E every Tuesday and Thursday from 4.30pm and 5.30pm and alternately on either Saturday or Sunday from 11am to 1pm either in the mother's residence or under the supervision of Agenzija Appogg outside the Agency's premises. It also results that the parties agreed that access shall be held every Tuesday from 5pm to 6.30pm and every Saturday from 11.30am to 1pm inside the Agency's premises.

By means of a decree at fol 133 the Court ordered that access remains supervised but once a month access be held outside Appogg but under supervision.

It is the humble opinion of the legal referee that such arrangement shall be suspended until such time as and when the defendant is back in Malta and is authorized by the Court to resume this access.

Tant l-esponenti ghandha x'tissottometti lil din Onorabbli Qorti."

Rat l-affidavits tal-partijiet u tax-xhieda minnhom prodotti;

Rat id-dokumenti kollha esebiti u l-atti proċesswali kollha, inkluż il-provi kollha miġbura mill-abbli Perit Legali Dr. Anna Mallia;

Rat illi l-konvenut, fil-mori tal-proċeduri telaq minn Malta, possibilment huwa ġie ddeportat mill-pajjiż stante d-diversi akkużi kriminali li kien qiegħed jiffaċċja; Il-Qorti m'hijiex konsapevoli dwar fejn jista' jinsab; Illi għalhekk il-Qorti ħatret kuraturi deputati sabiex jirrappreżentawh fl-atti¹.

Rat illi permezz ta' digriet mogħti nhar il-25 ta' Marzu 2015², il-Qorti kienet laqgħet it-talba tal-konvenut sabiex il-proċeduri jsiru bil-lingwa Ingliża; Illi in vista li l-konvenut m'għadux

¹ Digriet iddatat 27 ta' Ġunju 2016, fol. 142

² Fol. 70

personalment parteċipi fl-atti iżda huwa rrapprezentat mill-Kuraturi, m'hemmx iktar il-ħtieġa li l-proċeduri jinżammu bl-Ingliš, u l-Qorti fil-waqt illi qed tirrevoka d-digriet tagħha ċitat, ser tgħaddi biex tagħti s-sentenza bil-Malti;

Rat illi l-kawża ġiet differita għal-lum sabiex tingħata s-sentenza, b'dana illi l-konvenut ingħata l-fakolta` li jippreżenta in-nota ta' sottomissjonijiet finali tiegħu; liema nota huwa għażel illi ma jipprezentax;

Ikkunsidrat:

KONSIDERAZZJONIJIET

Illi l-Qorti għandha quddiemha azzjoni fejn ir-rikorrenti qiegħda titlob li tiġi fdata esklussivament bil-kura u l-kustodja ta' bint il-partijiet ossia il-minuri E D B, imwiela fl-10 ta' Novembru 2010³ u rikonoxxuta mill-intimat. Hija titlob ukoll li l-intimat iħallasha manteniment għall-minuri.

Rat illi *pendente lite* il-kwistjoni tal-kura u l-kustodja tal-minuri hija rregolata permezz ta' digriet ta' din il-Qorti datat is-7 ta' Frar 2017, illi permezz tiegħu il-kura u l-kustodja tal-minuri ġiet fdata b'mod provviżorju lil A B⁴. L-aċċess huwa ddekretat minn din il-Qorti kif diversament presjeduta permezz ta' digriet innumerat 1664/13RGM illi permezz tiegħu l-aċċess għandu jsir taħt superviżjoni kull nhar ta' Tlieta jew Ħamis u kull nhar ta' Sibt jew Ħadd. Permezz ta' digriet ta' din il-Qorti ddatat id-29 ta' Jannar 2016, il-Qorti kienet ordnat illi darba fix-xahar l-aċċess isir barra l-bini tal-Aġenzija Appoġġ iżda dejjem taħt superviżjoni. Illi dan l-aċċess ġie sospiż mill-Aġenzija Appoġġ wara li l-konvenut infurmahom li kellu jsiefer u dana b'effett minn Frar 2016.

PRINĊIPJI LEGALI

³ Ċertifikat tat-twelid tal-minuri jinsab esebit fol. 6 tal-proċess

⁴ Fol. 184

Illi huwa ritenut fil-ġurisprudenza tagħna li, f'kawżi bħal din, il-Qorti għandha tikkunsidra l-aqwa interess tal-minuri.

Fil-kawża Jennifer Portelli pro.et noe. vs. John Portelli⁵ intqal: *“Jingħad illi l-kura tat-tfal komuni tal-miżżewġin, sew fil-liġi antika u sew fil-liġi viġenti, kif ukoll fil-ġurisprudenza estera u f'dik lokali hija regolata mill-prinċipju tal-aqwa utilita' u l-akbar vantaġġ għall-interess tal-istess tfal li ċ-ċirkustanzi tal-każ u l-koeffiċjenti tal-fatti partikulari tal-mument ikunu jissuġġerixxu. Illi in konsegwenza, ir-regola sovrana fuq enunċjata għandha tipprevali dwar il-kustodja u l-edukazzjoni tat-tfal komuni tal-miżżewġin, sew meta l-konjuġi jisseparaw ruħhom ġudizzjarjament, sew meta jiġu biex jisseparaw konsenswalment;”*

Illi fil-kawża fl-ismijiet Susan Ellen Lawless vs. Il Reverendo George Lawless⁶, il-Qorti kienet qalet illi *“la cura ed educazione dei figli, nel caso che la moglie non continua ad abitare col marito, deve essere commessa ed affidata a colui, fra i coniugi, che si riconoscerà' piu atto ed idoneo a curarli ed educarli, avuto riguardo alla loro eta', ed a tutte le circostanze del caso – sotto quei provvedimenti, che si reputino spediti pel vantaggio di tali figli”*.

Illi ngħad ukoll fil-kawża fl-ismijiet John Cutajar vs. Amelia Cutajar et ⁷ u Maria Dolores sive Doris Scicluna vs. Anthony Scicluna⁸ illi *“apparti l-ħsieb ta' ordni morali u dak ta' ordni legali, li għandhom setgħa fil-materja ta' kura u kustodja tat-tfal in ġenerali, il-prinċipju dominanti 'in subjecta materia', li jiddetermina normalment u ġeneralment il-kwistjonijiet bħal din insorta f'dina l-kawża, huwa dak tal-aktar utilita' u dak tal-aqwa vantaġġ u nteress tal-istess minuri fl-isfond taċ-ċirkostanzi personali u 'de facto' li jkunu jirriżultaw mill-provi tal-każ li jrid jiġi riżolut...”*

⁵ Deċiża mill-Prim'Awla tal-Qorti Ċivili fil-25 ta' Ġunju 2003, Ċitazz Numru: 2668/1996/2RCP

⁶ Deċiża mill-Prim'Awla tal-Qorti Ċivili fil-8 ta' Diċembru 1858;

⁷ Deċiża mill-Prim'Awla tal-Qorti Ċivili fit-28 ta' Jannar 1956;

⁸ Deċiża mill-Prim'Awla tal-Qorti Ċivili fis-27 ta' Novembru, 2003 (Ċitazzjoni Numru. 1715/2001/1RCP)

Il-Qorti għaldaqstant, għandha s-setgħa illi jekk ikun fl-aħjar interess tal-minuri, tafda wieħed biss mill-konjuġi bil-kura u l-kustodja tal-minuri u dana ai termini tal-Artikolu 56 tal-Kodiċi Ċivili⁹. Illi kif kellha l-okkażjoni ttenni din il-Qorti diversi drabi, l-interess tal-minuri huwa iprem mid-drittijiet tal-ġenituri. *“Il-Qorti tirrileva illi filwaqt li dejjem tagħti piż għad-drittijiet tal-ġenituri, l-interess suprem li żżomm quddiemha huwa dejjem dak tal-minuri, kif anke mgħallma mill-ġjurisprudenza kostanti tagħna hawn ‘il fuq iċċitata.”*¹⁰

Il-prinċipju legali tal-manteniment tal-ulied huwa msejjes fuq l-Artikolu 7(1) tal-Kodiċi Ċivili li jstipula: ***“Il-ġenituri għandhom l-obbligu li jieħdu ħsieb, imantnu, jgħallmu u jedukaw lil uliedhom bil-mod stabbilit fl-artikolu 3B ta’ dan il-Kodiċi.”*** L-artikolu 3B tal-istess Kodiċi jstipula illi: ***“Iż-żwieġ jimponi fuq il-miżżewġin l-obbligu li jieħdu ħsieb, imantnu, jgħallmu u jedukaw lil ulied li jiġu miż-żwieġ skond il-ħila, xeħtiet naturali u aspirazzjonijiet ta’ l-ulied.”***

Għalhekk abbażi tal-premess, jirriżulta mid-dispożizzjonijiet tal-liġi, li l-ġenituri għandhom l-istess obbligi verso l-ulied tagħhom, u għalhekk it-tnejn li huma għandhom jikkontribwixxu għat-trobbija ta’ l-istess. L-obbligu taż-żewġ ġenituri lejn l-ulied jibqa’ bażikament l-istess: kull wieħed skond il-mezzi tiegħu, ikkalkulati skond id-dispożizzjonijiet ta’ l-artikolu 20 ta’ l-istess Kodiċi, u l-bżonnijiet ta’ l-istess minuri.

Kif jaf kulħadd, meta l-Qorti tiġi biex tistabbilixxi manteniment, m’hemmx xi formula stabbilita fil-liġi li biha l-Qorti tagħmel il-kalkoli biex imbagħad joħroġ ir-riżultat. Iżda fl-artikolu 20 ta’ l-istess Kapitolu insibu kif jitqies il-manteniment. Dan l-artikolu jaqra hekk:

(1) Il-manteniment għandu jingħata skont il-bżonn ta’ min jitolbu u l-mezzi ta’ min għandu jagħtih.

⁹ Kapitolu 16 tal-Liġijiet ta’ Malta.

¹⁰ Frances Farrugia vs. Duncan Caruana, deċiża fil-31 ta’ Mejju 2017 (Rikors Ġuramentat 268/11AL)

(2) Fl-istharriġa sabiex jinsab jekk min jitlob il-manteniment jistax jaqalghu xort'oħra, għandu jittieħed qies ukoll tal-ħila tiegħu fl-eżerċizzju ta' xi professjoni, arti jew sengħa.

(3) Meta jinqiesu l-mezzi ta' min hu obligat għall-manteniment, għandu jingħadd biss il-qliġh tiegħu mix-xogħol tal-professjoni, arti jew sengħa, is-salarju jew il-pensjoni tiegħu mogħtija mill-Gvern jew minn ħaddieħor, u tal-utili tal-beni, sew mobbli kemm immobbli u kull dħul li jinħoloq taħt trust.

(4) Ma jitqiesx li għandu mezzi biżżejjed biex jagħti l-manteniment min ma jistax jagħtih ħlief billi jilqa' f'daru l-persuna li titlob dak il-manteniment, jekk din il-persuna ma tkunx axxendent jew dixxendent.

(5) Meta jinqiesu l-mezzi ta' min jitlob il-manteniment, għandu jittieħed qies ukoll ta' kemm jiswew il-beni tiegħu mobbli jew immobbli kif ukoll ta' kull interess benefiċjarju taħt trust.

APPLIKAZZJONI TAL-PRINĊIPJI LEGALI GĦALL-KAŻ ODJERN

Il-Qorti kkunsidrat ir-relazzjoni ppreżentata mill-Perit Legali Dr. Anna Mallia u l-argumenti minnha mressqa. Il-Qorti hija tal-fehma, tenut kont tal-provi prodotti u tenut kont ukoll tal-ġurisprudenza ċċitata mill-abbli Perit Legali (li ġja ġiet rapportata f'din is-sentenza), illi l-konklużjonijiet mil'fuq mill-Perit Legali, kemm dawk legali kif ukoll dawk fattwali, huma korretti u għandhom jiġu abraċċjati mill-Qorti. L-imsemmija Perit Legali għamlet apprezzament tajjeb tal-provi mressqa mill-partijiet.

Dwar il-kura u l-kustodja tal-minuri E, il-Perit Legali wara li kkunsidrat il-karattru immatur tal-konvenut, u ssonstanzjat dan bil-provi, waslet għall-konklużjoni illi din aħjar tkun fdata esklussivament f'idejn l-omm. Il-Qorti tikkondividi din l-opinjoni. Il-fedina penali tal-konvenut, id-diversi relazzjonijiet tiegħu ma'

nisa Maltin fejn japprofitta mill-ġenerożita tagħhom u jużahom sabiex ikun jista' jibqa' hawn Malta, in-nuqqas ta' koerenza tiegħu bejn dak illi jwiegħed u dak li effettivament jagħmel, juru n-nuqqas ta' stabbiltà fil-karattru tiegħu. Tenut kont li huwa telaq minn Malta mingħajr ma ħalla xi tip ta' kuntatt mal-attriċi qua omm bintu, mal-Aġenzija Appoġġ jew saħansitra mal-avukat tiegħu, ssostni l-fehma tal-Qorti li l-kura u l-kustodja tal-minuri E m'għandhiex tkun kongunta bejn il-partijiet iżda tiġi kkonfermata bħala unikament u esklussivament fdata f'idejn l-omm, l-attriċi A B.

Il-Qorti tikkunsidra illi l-minuri, mit-twelid, dejjem ġiet ikkurata minn ommha l-attriċi bil-għajnuna tal-ġenituri tagħha. Ir-responsabilità għall-għixien u t-trobbija tal-minuri dejjem waqgħu fuq l-omm, anke tenut kont illi l-konvenut xellef dufrejha mal-liġi diversi drabi u għalhekk skonta diversi pieni ta' priġunerija fil-Faċilità Korrettiva ta' Kordin. Il-konvenut baqa' għaddej bil-ħajja tiegħu wara t-twelid tal-minuri u bid-diversi relazzjonijiet tiegħu, uħud konkorrenti. Fil-waqt illi l-attriċi waqqfet l-istudju tagħha temporanjament sabiex tkun tista' tiegħu ħsieb it-tifla li ma kinitx ippjanata fl-età tenera tagħha. Minkejja li t-tqala ġiet fuqha involontarjament, hija xorta waħda wriet ruħha denja tat-trobbija ta' bintha u fejn ma setgħetx tasal hi, anke materjalment, fittxet l-għajnuna.

Dwar l-aċċess, in vista tal-assenza tal-konvenut minn Malta, il-Qorti qiegħda tissospendi id-digriet tagħha relattivi għall-aċċess tal-konvenut. Jekk u meta, l-konvenut jirritorna fid-domicilju tal-minuri, preżentement hawn Malta, jkun liberu illi jitlob aċċess versu bintu, bil-Qorti f'dak l-istadju tiddeċiedi x'ikun l-aħjar għall-minuri.

Dwar il-manteniment, il-Qorti dejjem irritjeniet li l-obbligu għall-manteniment tal-ulied m'huwiex marbut bl-ebda mod mal-impjieġ jew mal-introjtu tal-ġenituri iżda huwa obbligu assolut. Dana jfisser li kull ġenitur għandu l-obbligu li jmantni lil uliedu anke jekk il-mezzi tiegħu huma baxxi jew jinsab diżokkupat. Fil-fatt, l-attriċi, anke meta kienet mingħajr xogħol rat kif għamlet

biex setgħet tipprovdi l-ħtiġijiet ta' bintha bħalma huma l-ħrieqi, l-ħalib, wipes, ikel tat-trabi¹¹. Il-konvenut għamel perjodu qasir ta' ħmistax-il xahar bejn Ġunju 2013 u Awwissu 2014 fejn ikkontribwixxa mitt Ewro (€100) għal kull xahar¹² bħala manteniment għal bintu. Huwa reġa beda jħallas minn Mejju 2015 u baqa' jħallas s'Awwissu 2015. Volontarjament kien aċċetta li jivversa manteniment ta' mitejn Ewro (€200) fix-xahar¹³.

Jirriżulta wkoll illi fis-seduti peritali l-partijiet kienu vverbalizzaw li kienu laħħqu ftehim bejniethom illi l-manteniment tal-minuri għandu jkun ta' mitejn Ewro fix-xahar¹⁴. Għab-baži ta' dan il-ftehim, il-Perit Legali kkonstatat illi l-manteniment għall-minuri E, dovut mill-konvenut lill-attriċi, għandu jkun ta' mitejn Ewro (€200) fix-xahar, oltre nofs l-ispejjeż tas-saħħa, tal-edukazzjoni u tal-attivitajiet extra-kurrikulari tal-minuri. In vista, li l-konvenut ma jinstabx hawn Malta, u li l-attriċi aktarx ser tkun kostretta li teżegwixxi din is-sentenza barra l-ġurisdizzjoni ta' Malta, jekk kemm-il darba ssir taf fejn qiegħed jirrisjedi l-konvenut, il-Qorti ser tikkwantifika l-ispejjeż tas-saħħa, tal-edukazzjoni u tal-attivitajiet extra-kurrikulari tal-minuri sabiex jiżdiedu mal-manteniment dovut mensilment, illi għalhekk għandu jkun ta' mitejn u ħamsin Ewro (€250) fix-xahar sabiex jinkludi wkoll l-imsemmija spejjeż. Dan il-manteniment jiżdied kull sentejn skond l-indiċi tal-għoli tal-ħajja u jista' jitnaqqas direttament minn kwalsiasi paga, introjtu jew benefiċċju soċjali li jista' jipperċepixxi l-konvenut. Dan il-manteniment jibqa' jitħallas sakemm il-minuri tagħlaq l-eta' ta' tmintax-(18)-il sena jew tibda taħdem fuq baži *full-time*, skont liema eventwalita' tavvera ruħha l-ewwel. F'każ illi bint il-partijiet tibqa' tistudja, fuq baži *full-time*, wara li tilħaq l-eta' maġġorenni, il-manteniment għandu jibqa' jitħallas sakemm it-tifla tagħlaq l-eta' ta' tlieta u għoxrin (23) sena jew sakemm ittemm l-istudji tagħha, skont liema eventwalita' tavvera ruħha l-ewwel. Kwalunkwe

¹¹ Bl-għajnuna tal-għaqda Hope Support, hija akkwistat dawn l-oġġetti bi prezz issussidjat, fol. 230 et seq.

¹² Dokument fol. 246

¹³ Xhieda tal-attriċi fis-seduta tat-3 ta' Diċembru 2015 quddiem il-Perit Legali Dr. Anna Mallia, fol. 244

¹⁴ Seduta tal-1 ta' Ġunju 2015, fol. 212

benefiċċju soċjali in konnessjoni mal-minuri, inkluż *children's allowance* għandu jkun perċepibbli mill-attriċi.

Illi l-attriċi ressqet it-talba tagħha għall-manteniment tal-minuri f'Jannar 2015. Minn dak in-nhar sal-preżenti (total ta' disgħa u għoxrin (29) xahar) il-konvenut ħallas manteniment biss għax-xhur ta' Mejju, Ġunju, Lulju u Awwissu 2015 – total ta' €800 u ma kkontribwixxa xejn għall-ispejjeż tas-saħħa u tal-edukazzjoni tal-minuri. Il-Qorti qiegħda tistabilixxi manteniment pagabbli mill-konvenut lill-attriċi għall-minuri għall-perjodu minn Jannar 2015 sal-preżenti, bir-rata ta' €250 kull xahar, inkluż l-ispejjeż tas-saħħa u tal-edukazzjoni tat-tifla, u cioe s-somma komplessiva ta' sitt'elef, erba' mija u ħamsin Ewro (€6450)¹⁵.

DEĊIDE

Għalhekk, għal dawn il-motivi, il-Qorti qiegħda taqta' u tiddeċiedi din il-kawża billi tilqa' t-talbiet tar-rikorrenti u konsegwentement:

1. tiddikjara li l-kura u l-kustodja tal-minuri E D B qed tiġi fdata unikament u esklussivament f'idejn ommha ir-rikorrenti A B, b'dana illi kwalsiasi deċiżjoni rigwardanti saħħa, edukazzjoni, reliġjon, trobbija, safar tal-minuri, inkluż ħruġ u/jew tiġdid tal-passaport tal-minuri u b'mod ġenerali kull deċiżjoni oħra rigwardanti l-minuri għandha tittieħed mir-rikorrenti weħidha mingħajr il-bżonn tal-awtorizzazzjoni u/jew il-kunsens tal-intimat;
2. tordna lill-intimat iħallas lir-rikorrenti is-somma ta' mitejn u ħamsin Ewro (€250) fix-xahar, rappreżentanti manteniment għall-minuri E li jinkludi l-ispejjeż tas-saħħa, tal-edukazzjoni u tal-attivitajiet extra-kurrikulari tal-minuri. Dan il-manteniment jiżdied kull sentejn skond l-indiċi tal-għoli tal-ħajja u jista' jitnaqqas direttament minn kwalsiasi paga, introjtu jew benefiċċju soċjali li jista' jipperċepixxi l-konvenut. Dan il-manteniment jibqa' jitħallas sakemm il-

¹⁵ €250 x 29 xahar = €7250. Naqqas €800 ġja mħallsa. Jibqa' bilanċ ta' €6450

minuri tagħlaq l-eta` ta' tmintax-(18)-il sena jew tibda taħdem fuq bażi *full-time*, skont liema eventwalita` tavvera ruħha l-ewwel. F'każ illi bint il-partijiet tibqa' tistudja, fuq bażi *full-time*, wara li tilħaq l-eta` maġġorenni, il-manteniment għandu jibqa' jithallas sakemm it-tifla tagħlaq l-eta` ta' tlieta u għoxrin (23) sena jew sakemm ittemm l-istudji tagħha, skont liema eventwalita` tavvera ruħha l-ewwel. Kwalunkwe benefiċċju soċjali in konnessjoni mal-minuri, inkluż *children's allowance* għandu jkun perċepibbli mill-attriċi.

3. Tordna lill-konvenut iħallas lill-attriċi s-somma komplessiva ta' sitt'elef, erba' mija u ħamsin Ewro (€6450), rappreżentanti manteniment għall-minuri għall-perjodu minn Jannar 2015 sal-preżenti, inkluż l-ispejjeż tas-saħħa u tal-edukazzjoni tat-tifla, bl-imġħax legali dekorribbli mill-preżenti sad-data tal-pagament effettiv.

Bl-ispejjeż kontra l-konvenut, b'dana illi l-attriċi għandha provviżorjament tħallas id-drittijiet tal-Kuraturi Deputati.