



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

**ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON**

Illum il-Hamis 30 ta` Novembru 2017.

**Kawza Nru. 2
Rikors Nru. 48/2017 JZM**

**Av. Larry Formosa ghan-nom u in
rappresentanza tal-imsiefer Daniel Gill
(Passaport tar-Renju Unit Numru :
801159683)**

kontra

L-Avukat Generali

Il-Qorti :

Rat ir-rikors li pprezenta r-rikorrent noe fis-27 ta` Ottubru 2017 (a fol 57 sa fol 59 tal-process) fejn ghar-ragunijiet indikati fir-rikors talab lil din il-Qorti sabiex *sakemm jigi deciz ir-rikors kostituzzjonali fl-ismijiet premissi l-Onorabbli Qorti tal-Magistrati (Ghawdex) bhala Qorti Istrutturja fil-kawza fl-ismijiet "Il-Pulizija vs Hedley Jacqueline Rio u Daniel Gill"* li tinsab differita ghad-9 ta` Novembru 2017 tissopasjedi.

Rat id-digriet taghha tat-30 ta` Ottubru 2017.

Rat ir-risposta li pprezenta l-Avukat Generali fis-6 ta` Novembru 2017.

Rat id-digriet taghha tal-10 ta` Novembru 2017.

Rat il-verbal tal-udjenza tal-14 ta` Novembru 2017.

Rat l-att li pprezenta l-intimat fl-istess udjenza.

Rat id-digriet li tat fl-istess udjenza fejn halliet ir-rikors ghal provvediment ghal-lum.

Rat l-atti tal-kawza sal-lum.

Ikkunsidrat :

Ir-rikorrent noe qed jitlob lil din il-Qorti sabiex taghti *interim measure*. Effettivament li qed jintalab mir-rikorrent noe huwa illi din il-Qorti taghti ordni lill-Qorti tal-Magistrati (Ghawdex) bhala Qorti Istrutturja sabiex sakemm tkun deciza l-kawza odjerna tissoprasjedi fil-kawza fl-ismijiet *Il-Pulizija vs Hedley Jacqueline Rio u Daniel Gil*.

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***. Eccezzjonalment biss, f` mizura li minnha stess diga` hija eccezzjonali, tigi applikata fil-kaz ta` l-allegati vjolazzjonijiet tal-artikoli tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali citati mir-rikorrent noe bhala bazi tal-istanza tieghu fil-kawza odjerna.

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

Fil-premessi tar-rikors tieghu, ir-rikorrent noe jaccenna ghal *hsara rrimedjabbli*.

Minkejja dak li jinghad mir-rikorrent noe fir-rikors tieghu sabiex jiggustifika t-talba ghall-ghoti ta` *interim measure*, din il-Qorti mhijiex konvinta illi l-prosegwiment tas-smigh tal-kawza citata mir-rikorrent noe (*supra*) iwassal ghal *an imminent risk of irreparable harm* jew addirittura ghal *an apparent real and imminent risk of irreparable harm to life and limb*.

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 l-Qorti mhijiex sejra tidhol fil-mertu tal-kawza li ghandha quddiemha.

Wisq anqas sejra tlissen kelma wahda jew taghmel xi konsiderazzjoni dwar il-provi li ngabru sa issa fil-kawza tal-lum.

Il-Qorti taghmel il-kostatazzjonijiet u l-konsiderazzjonijiet taghha meta tkun fil-qaghda li taghti decizjoni dwar it-talbiet tar-rikorrent noe, u dan wara li tkun qieset l-ecezzjonijiet tal-intimat, wara li tkun semghet il-provi kollha tal-partijiet, u wara li tkun qieset is-sottomissjonijiet taghhom.

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 kollox ma` kollox tkompli tissahhah il-fehma tal-Qorti illi mhijiex indikata l-*interim measure* li qed jitlob ir-rikorrent noe, 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-rikorrent noe kif dedotta fir-rikors tieghu tas-27 ta` Ottubru 2017.

L-ispejjez ta` dan il-provvediment jibqghu rizervati ghall-gudizzju finali dwar il-mertu.

Onor. Joseph Zammit McKeon
Imhalled

Amanda Cassar
Deputat Registratur