QORTI CIVILI PRIM' AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF MARK CHETCUTI LL.D.

Illum l-Erbgha, 28 ta' Frar 2018

Numru 1

Rikors Nru. 22/2017

Emanuela Caruana armla minn Emanuel; u
Joseph Caruana, Maria Assunta sive Marcelle Agius,
Maria Dolores Sheridan, Savior Peter Caruana ulied il-mejjet
Emanuel Caruana u l-imsemmija Emanuela Caruana

vs

Tabib Principali tal-Gvern (Sahha Pubblika);
Avukat Generali

Il-Qorti,

Rat ir-rikors tar-rikorrenti tas-6 ta' April 2017 li jghid hekk:

1. Illi r-rikorrenti huma mard l-ulied u l-eredi tal-mejjet Emanuele Caruana li miet fil-5 ta' Settembru, 2005 ta' 71 sena (vide certifikati tat-twelid - Dok. 1-4, certifikat tal-mewt tal-imsemmi Emanuele Caruana- Dok. 5, causa mortis Dok. 6);

2. Illi l-imsemmi Emanuel Caruana miet kagun ta' kancer ikkagunat esklussivament mill-esposizzjoni ghall-asbestos, maghruf bhala Malignant Mesothelioma (vide kawza tal-mewt fic-certifikat tal-mewt Dok. 5);

3. Illi Emanuel Caruana kien jahdem mal-Malta Drydocks u dan hajtu kollha sakemm irtira fis-sena 1995, u qatt ma kellu impieg iehor (vide certifikat tal-Impieg tal-ETC anness u mmarkat Dok.7);

4. Illi matul il-perjodu kollu li Emanuel Caruana kien irnpjegat it-tarzna, l-asbestos kien 'staple material' fl-imsemmija korporazzjoni u kien jintuza f'ammonti kopjuzi minghajr l-ebda kontroll effettiv;

5. Illi ilu ghexieren shah ta' snin maghruf li l-esposizzjoni ghall-asbestos tikkaguna dannu serju ghal sahhet il-bniedem, twassal ghal mard serju u tista' wkoll tikkaguna l-mewt;

6. Illi minkejja tali gharfien, l-awtoritajiet tas-sahha, naqsu milli jinfurmaw dwar tali perikolu u naqsu li jipprovdu lil Emanuel Caruana bi protezzjoni legali u fattwali adegwata biex jilqghu ghall-hsara kkagunata mill-asbestos, u infatti miet minhabba tali esposizzjoni;

7. Illi l-esposizzjoni ghall-asbestos u l-effetti tieghu affettwat b'mod negattiv il-kwalita tal-hajja tar-rikorrenti li gew imcahhda prematurament minn presenza sinjifikanti f'hajjithom u li kienu jassistu fil-kura palljattiva ta' missierhom minhabba marda ngustament u ntortament kontratta minnu (vide Affidavit Joseph Caruana anness u mmarkat Dok. 8);

8. Illi ghalhekk jissodisfaw il-kriterji biex ikollhom locus standi bhala vittmi, u dan ai termini tal-artikolu 34 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem applikabbli f'Malta tramite I-Kap. 319 tal-Ligijiet ta' Malta;

Ghaldaqstant ghall-fatti u ghar-raguni fuq premessi, u ghal dawk kollha Ii jistghu jirrizultaw matul il-procedura odjerna, ir-rikorrent jitlob lil din l-Onorabbli Qorti tiddikjara Ii fil-konfront individwali tar-rikorrenti gie vjolat:-

1) Id-dritt ghall-protezzjoni tal-hajja, u li l-hajja tal-individwu ma titqieghedx f'periklu bla bzonn, ai termini tal-artikolu 33 tal-Kostituzzjoni ta' Malta, u tal-artikolu 2 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem, applikabbli ukoll lokalment via l-Kap. 319 fuq gia riferit;

2) Id-dritt ghar-rispett tal-hajja privata u tal-familja tal-individwu ai termini tal-artikolu 8 tal-istess Konvenzjoni Ewropea, applikabbli wkoll lokalment via l-Kap. 319 fuq gia riferit u applikabbli ukoll skond il-Kostituzzjoni;

3) Id-dritt ghar-rispett tal-hajja privata fit-termini tal-paragrafu precedenti pero f'dak: li ghandu xjaqsam mad-dritt ghall-informazzjoni dwar perikli marbutin mal-asbestos;

4) Tikkwantifika kumpens xieraq bhala rimedju ghal ksur tad-drittijiet fuq indikati jew liema minnhom fil-konfront tar-rikorrenti individwalment;

5) Tillikwida dan l-ammont ta' kumpens;

6) Tordna li l-ammont hekk likwidat bhala rimedju pekunjarju jithallas lir-rikorrenti individwalment.

Rat ir-risposta tal-intimati li tghid hekk:

Illi I-esponent jirrespingu I-allegazzjonijiet u I-pretensjonijiet tar-rikorrenti stante li huma infondati, u dan ghas-segwenti ragunijiet:

Illi fl-ewwel lok, ir-rikorrenti ghandhom igibu prova li Emmanuele Caruana kien fil-fatt espost ghal asbestos waqt li kien jahdem mal-Malta Drydocks u li l-marda tal-Mesothelioma kontratta minnu kienet il-konsegwenza u l-kawza unika tal-fatt li hu kien hekk espost;

Illi fit-tieni lok jinghad li hadd mill-intimati odjerni ma qieghed il-hajja tar-rikorrenti fil-periklu jew b'xi mod cahhadhom mid-dritt ghal hajjithom;

Illi ghalhekk mhemm l-ebda ksur tal-artikolu 33 tal-Kostituzzjoni ta' Malta u tal-artikolu 2 tal-Konvenzjoni Ewropea de quo;

Illi fit-tielet lok, il-fatt li Emmanuele Caruana miet kawza tal-Mesothelioma ma jitqiesx li jikkostitwixxi xi interferenza mill-intimati fil-hajja privata jew familjari tar-rikorrenti, liema hajja tista' tibqa' tigi ezercitata f'kull hin;

Illi la l-artikolu 8 u lanqas ebda artikolu iehor fil-Konvenzjoni Ewropea u fil-Kostituzzjoni ta' Malta ma jistabilixxi xi dritt fundamentali ta 'informazzjoni dwar perikli assocjati mal-asbestos jew ma' kwalunkwe materjal iehor kif qed jippretendu r-rikorrenti;

Illi ghalhekk mhemm l-ebda ksur tal-artikolu 8 tal-Konvenzjoni in dizamina;

Illi minghajr hsara ghal dak suespost, jigi wkoll rilevat li hekk kif il-Gvern Malti sar jaf bir-riskju ta' dan il-materjal, huwa ha dawk il-passi u l-mizuri mehtiega biex jindirizza l-problema tal-asbestos karcinogenu fit-tarzna. Dan billi biddel u ghadda ligijiet biex iwaqqaf l-importazzjoni ta' dan il-materjal filwaqt li l-amministrazzjoni tat-Tarzna provdiet maskri u taghmir protettiv lill-haddiema u gie zgurat li jkun hemm ventilazzjoni adegwata ghaddejja;

Salv eccezzjonijiet ohra jekk ikun il-kaz.

Ghaldaqstant, l-esponent ghar-ragunijet fuq esposti jitolbu bir-rispett li din l-Onorabbli Qorti joghgoha tiddikjara li mhemm ebda ksur tad-drittijiet fundamentali tar-rikorrenti u tichad l-allegazzjonijiet u t-talbiet kollha tar-rikorrenti.

Bl-ispejjez.

Rat l-atti u n-noti ta' sottomissjonijiet;

Rat li l-kawza thalliet ghas-sentenza.

Ikkunsidrat

Ir-rikorenti bhala mart u ulied eredi ta' Emanuel Caruana li miet fil-5 ta' Settembru 2005 ta' 71 sena qed jallegaw li fiz-zmien twil li dam impjegat mal-Malta Drydocks

mill-1959 sal-1982 kien espost ghal ammonti kopjuzi ta’ asbestos li esponewh ghal marda qerrieda li waslitu sal-mewt tieghu. Skond ir-rapport mediku u c-certifikat tal-mewt Emanuel Caruana miet minhabba cardio respiratoratory insufficiency, mesothelioma u status post bowel resection for mechanical trans peritoneal metastases.

Fatti

Skond ix-xiehda tal-Professur Joseph Cacciatolo, kap tad-dipartment tal-medicina fl-Universita riprodotta minn kawza ohra fuq fatti simili ghal din (fol. 34 tal-process) u jghid li hemm ness ta’ kawzalita diretta bejn l-espozizzjoni ghall-asbestos ma’ peritoneal mesothelcima , li hu kancer tal-pulmun, pero tista’ teffettwa r-riti tal-imsaren, madwar il-qalb u t-testikoli. Dan in-ness ta’ kawzalita bejn l-espozizzjoni ghall-asbestos mal-kancer ilu ppruvat xjentifikament mill-1960 mill-British Medical Journal li hu wiehed miz-zewg gurnali principali medici li jinqraw mit-tobba.

Giet ukoll riprodotta x-xiehda ta’ Ray Busuttil, supretendent tas-sahha pubblika wkoll mehuda minn kawza ohra fuq fatti simili li qal li informazzjoni dwar l-asbestos u s-sahha pubblika bejn l-1956 u s-sena 2010 ma kien hemm xejn fuq livell nazzjonali u ma kienx hemm direzzjoni dwar l-uzu tal-asbestos in generali.

Xehdet Doris Vella Cassia, customer care officers f’Mater Dei li esebiet il-file mediku ta’ Emanuel Caruana li minnu jirrizulta illi fl-2004 kienu jidhru l-komplikazzjonijiet medici li waslu ghal mewt ta’ Emanuel Caruana. Jidher li Emanuel Caruana kellu kancer fil-pulmun (malignant mesothelioma).

Joseph Saliba, policy manager ta’ Malta Shipyards fil-Ministeru tal-Infrastruttura f’xiehda wkoll riprodotta minn kawza ohra simili (fol. 37 tal-process) qal li l-ahhar kariga li kellu kien ta’ health and safety manager mal-Malta Shipyard li qabel kienet Malta Drydocks. Kien ilu jokkupa l-kariga mill-1993. Xoghlu kien li jiehu hsieb is-sahha u sigurta tal-haddiema. L-asbestos jintuza f’diversi affarijiet bhal insulation, boards u wiring. Fl-investigazzjonijiet li kienu ghamlu fit-Tarzna sabu tlett tipi ta’ asbestos, l-aktar hu dak l-inqas nociv pero sabu ftit li hu l-aktar forma ta’ asbestos

nociva. F'Malta saru konxji dwar il-periklu tal-asbestos fin-nofs tad-disghinijiet, u bil-mod bdew jittestjaw ghal u jigbru l-asbestos minn fejn sabuh fid-Drydocks ghal habta tal-ahhar tad-disghinijiet. L-asbestos tnehha kollu mid-Drydocks u gie esportat b'mod legali ghad-distruzzjoni tieghu. Bhala prekawzjoni wkoll bdew igibu nies apposta biex jittestjaw vapuri li jidhlu t-tarzna ghal xoghol fuqhom sabiex jivverifikaw kellhomx asbestos. It-tarzna hadet ukoll il-prekawzjoni li tiehu l-haddiema ghal check ups l-isptar fejn qabel il-haddiema kienu jinghataw dangerous employment allowance li nqatghet. Zied li meta kien gie mpjegat mat-tarzna, hu fis-sittinijiet, l-asbestos kien jintuza bhala sheeting kontra s-shana. Ghalkemm l-asbestos hu assocjat mat-tarzna ghax jidhlu hafna vapuri, pero jinsab ukoll f'gaskits tal-karozzi, corrugated sheeting u tankijiet tal-ilma fuq il-bejt.

Dr George Peplow kwalifikat fil-kimika analitika li x-xiehda tieghu giet ukoll riprodotta minn kawza ohra qal li l-asbestos hu perikoluz pero f'certi cirkostanzi jista' jkun aktar perikoluz jekk tnehhih minhabba l-fibri li jarmi fl-arja. Hu ghamel diversi konsulenzi fosthom l-isptar St. Luke's. Qal li kien hemm awareness fuq il-periklu assocjat mal-asbestos mill-ahhar tas-sittinijiet pero bhala ligijiet anki internazzjonali dawk waslu aktar tard, anki barra minn Malta. Fil-bidu tas-sebghinijiet il-prekawzjonijiet li kienu jittiehdu f'Malta kien li jekk tuza l-asbestos tahsel idejk u li toqghod attent ma jigix fuq hwejgek, pero ma kienx hemm sens tal-estent u kejl tar-riskju involut. Dan beda jsir b'mod aktar xjentifiku fid-disghinijiet. L-aktar li jintuza l-asbestos hu fuq il-vapuri bhal insulaturi ghal hot water pipes, partitions bejn bibien bhala fire retardant, pero jintuza wkoll f'affarijiet ohra bhala corrugated sheeting. L-ewwel ligi f'Malta saret fl-2003 biex tipprotegi l-haddiema, ghalkemm fit-tmenijijiet ma setghax jigi importat aktar f'Malta. Ix-xhud spjega li l-fatt li hemm asbestos f'sit, dan mhux necessarjament perikoluz jekk fl-arja ma hemmx livell gholi ta' fibri tal-asbestos. Jekk pero l-asbestos jigi iddisturbat il-livelli fl-arja ser joghlew.

Xehed Shawn Meli rapprezentant tad-Dipartment tas-Sigurta Socjali, xehed li Emanuel Caruana beda jiehu l-pensjoni f'Lulju 1995 u baqa' jehodha sakemm miet f'Settembru 2005. Ma setghax jikkonferma jekk din il-pensjoni kinitx tinkludi xi beneficju ghal mard billi l-pensjoni li tinghata hi l-oghla wahda li tista' tiehu ank jekk tkun illegibbli ghal xi beneficju tal-mard.

Xehed ukoll Jesmond Marshall rappresentatnt tal-General Workers Union li spjega li f'taqsima partikolari tal-Union kienu jersqu membri affetti mill-marda kawzata bl-asbestos l-aktar dawk konnessi ma' xoghlijiet li jkunu saru fuq vapuri Amerikani u jittiehdu proceduri gewwa l-Amerika fejn hemm trust fund li minnha jinghata kumpens lil persuni li jkunu gew milquta mill-marda kawzata mill-espozizzjoni ghal asbestos fuq bastimenti Amerikani. Fis-seduta tat-9 ta' Jannar 2018 gie esebit mill-atturi rendikont ta' kumpens li nghata mill-fond appositu Amerikan lil Emanuel Caruana f'isem l-eredita ta' Emanuel Caruana fis-somma ta' USD43,829.48.

Mart u wlied Emanuel Caruana xehdu li Emanuel Caruana miet ta' 71 sena kawza ta' kancer kawzat mill-asbestos. Kien ilu jahdem it-tarzna mindu dahal meta kien ghadu tifel sa ma spicca bil-pensjoni fl-1995. Kellu diversi karigi fit-tarzna fosthom lagger u driver. Kien imidd idejh ghal kollox anki fid-dar. Marad serjament bjen l-ahhar tal-2004 meta beda jkollu nuqqas ta' nifs kbir u ghejja. Ma kellux kondizzjonijiet ohra ta' sahha hlief darba meta kellu slip disc. Dahal l-isptar u inghata kors kimoterapija u interventi ohra minhabba ilma fil-pulmun. Martu u wliedu baqghu jduru bih sal-ahhar.

Mertu

Il-mertu tal-azzjoni hu wiehed semplici. Ir-rikorrenti qed jallegaw li l-marda ta' missierhom cioe kancer fil-pulmun kien ir-rizultat dirett tal-fatt li hu kien espost ghal diversi snin qabel mewtu ghal kontaminazzjoni minn asbestos fil-post tax-xoghol minghajr ma ttiehdu prekawzjonijiet mill-awtoritajiet tas-sahha biex jipprevjenu tali mard.

Irrizulta mill-provi illi Emanuel Caruana dam ghexirien ta' snin jahdem id-Drydocks, entita pubblika tal-Gvern, fejn kien hemm materjal tal-asbestos prezenti u li sa mis-sittinijiet kien hemm informazzjoni medika dwar il-periklu assocjat mal-asbestos u ghal persuni li jigu esposti ghalih. Saret ukoll il-prova illi l-awtoritajiet tas-sahha bdew jiehdu mizuri preventivi fid-disghinijiet, cioe wara li Emanuel Caruana kien irtira mix-xoghol.

Gie stabbilit mix-xiehda tal-Professur Cacciatolo, kap tad-dipartiment tal-medicina fl-universita li hemm ness dirett bejn il-marda tal-kancer senjatament pleural mesothelioma u l-espozizzjoni tal-bniedem ghall-asbestos. Emanuel Caruana miet kawza ta' din il-marda kif juri c-certifikat tal-mewt u l-inkartament tal-isptar esebit. Hu beda juru sintomi avvanzati ta' din il-marda fl-ahhar tal-2004 kif jidher mill-istess notamenti u miet disa' xhur wara. Ghalkemm hu minnu illi l-marda tfaccat b'mod accertat klinikament snin wara li Emanuel Caruana spicca mill-impjieg pero n-ness dirett tal-marda max-xoghol tieghu fid-Drydocks ma giex meghlub bi prova kuntrarja mill-intimati, nonostante it-trapass taz-zmien. In oltre jigi rilevat li x-xoghol ta' Emanuel Caruana kien esklussivament fit-tarzna u ma ngiebet ebda prova li seta' kkontratta l-marda banda ohra jew minn sors iehor jew li kellu xi mard antecedent li seta' ikkawza jew ikkontribwixxa ghal marda li waslitu sal-mewt.

Ir-rikorrenti jilmentaw illi minhabba l-marda li biha miet Emanuel Caruana kien hemm vjolazzjoni tal-art. 33 tal-Kostituzzjoni u tal-art. 2 u l-art. 8 tal-Konvenzjoni:

> 33. (1) Hadd ma jista' jigi pprivat mill-hajja tieghu intenzjonalment hlief fl-esekuzzjoni tas-sentenza ta' qorti dwar reat kriminali skont il-ligi ta' Malta li tieghu jkun gie misjub hati.
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> 2. (1) Id-dritt ghall-hajja ta' kulhadd ghandu jigi protett b'ligi. Hadd ma ghandu jigi ipprivat mill-hajja tieghu intenzjonalment hlief fl-esekuzzjoni tas-sentenza tal-qorti wara li jigi misjub hati ta' delitt li dwaru tkun provduta mil-ligi din il-piena
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> 8. (1) Kulhadd ghandu d-dritt ghar-rispett tal-hajja privata tieghu u tal-familja tieghu ...

Il-Qorti tirreferi ghas-sentenza tal-Prim Awla Sede Kostituzzjonali fl-ismijiet **Mary Grace Farrugia et vs Tabib Principal ital-Gvern (Sahha Pubblika) et** deciza fil-31 ta' Jannar 2017 fejn irreferiet ghal kaz tal-ECHR **Brincat vs Malta** f'aktar dettall. Il-Qorti tqis illi ezami tas-sentenza tal-kaz Brincat hargu s-segwenti principji:

> 79. The Court reiterates that Article 2 does not solely concern deaths resulting from the use of unjustified force by agents of the State but also, in the first sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction (see, for example, L.C.B. v. the United Kingdom, 9 June 1998, § 36, Reports 1998-III, and Paul and Audrey Edwards, cited above, § 54).
>
> 80. This obligation is construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake, and a fortiori

in the case of industrial activities which by their very nature are dangerous, such as the operation of waste-collection sites (see Öneryıldız v. Turkey [GC], no. 48939/99, §71, ECHR 2004-XII) or nuclear testing (see L.C.B. cited above, § 36) or cases concerning toxic emissions from a fertiliser factory (see Guerra and Others v. Italy, 19 February 1998, §§ 60 and 62, Reports 1998-I, although in this case the Court found that it was not necessary to examine the issue under Article 2, it having been examined under Article 8).

81. The Court considers that the same obligations may apply in cases, such as the present one, dealing with exposure to asbestos at a workplace which was run by a public corporation owned and controlled by the Government.

106. Thus, as to whether the Maltese Government knew or ought to have known in the early seventies, the Court must rely on other factors, most evident amongst them being objective scientific research, particularly in the light of the domestic context. The Court takes account of the list, submitted by the applicants, which contains references to hundreds of articles or other publications concerning the subject at issue published from 1930 onwards - many of them taken from reputable British medical journals. The Court observes that medical studies at the then Royal University of Malta were modelled on, and followed closely upon, the corresponding United Kingdom system, with many graduates in medicine continuing their studies in England and Scotland. Particularly in view of this situation, even accepting the Government's argument - that is, that information was at the time not as readily available as it is today - it is inconceivable that there was no access to any such sources of information, at least, if by no one else, by the highest medical authorities in the country, notably the Chief Government Medical Officer and Superintendent of Public Health (as provided for in the, now repealed, Department of Health (Constitution) Ordinance, Chapter 94 of the Laws of Malta, see paragraph 42 above). In fact, according to Maltese law it was precisely the duty of the Superintendent of Public Health to remain abreast of such developments and advise the Government accordingly. The Court, further, observes that it has not been submitted that there had been any specific impediment to access the necessary information. Furthermore, the Government failed to rebut the applicants' assertion with any signed statement by a medical expert or authority, who could have attested that the medical professionals in the country were, in or around the 1970s, unaware of these worrying medically related findings at the time.
Moreover, the Pellicano judgment by the Commercial Court (see paragraph 35 above) is in itself an implicit acknowledgement by a domestic court that in the years preceding Mr Pellicano's death in 1979 the authorities knew or ought to have known of the dangers of working with asbestos and that they had failed to provide adequate health and safety measures in that respect.
Against this background, the Court concludes that for the purposes of the present case, it suffices to consider that the Maltese Government knew or ought to have known of the dangers arising from exposure to asbestos at least as from the early 1970s.

107. As to the fulfillment of the ensuing obligations, as stated above, the respondent Government claimed that as soon as they had become aware of the dangers associated with asbestos, laws were enacted to protect employees from these dangers and this as early as 1987 by means of the Work Place (Health, Safety and Welfare) Regulations. It follows that, by Government's admission, up until 1987 no positive action was taken in the nearly two decades (four years in the case of Mr. Attard who left the MDC in 1974) during which the applicants had been exposed to asbestos.

111. Consequently, from the information provided, it is apparent that from the mid-1980s to the early 2000s, when the applicants (except for Mr Attard) left the MDC, the legislation was deficient in so far as it neither adequately regulated the operation of the asbestos-related activities nor provided any practical measures to ensure the effective protection of the employees whose lives might have been endangered by the inherent risk of exposure to asbestos.

Tajjeb jinghad illi d-decizjoni ta` Brincat (op. cit.) kienet tittratta kwistjoni identika ghal din tal-lum fejn l-ECHR ikkonkludiet li kien ippruvat ness ta` kawzalita` sufficjenti in kwantu malignant mesothalioma hija maghrufa bhala kancer rari assocjat ma` esposizzjoni ghal asbestos. Inghad hekk :-

83. The medical certification indicated that Mr Attard's death was likely to be a result of asbestos exposure; malignant mesothelioma is known to be a rare cancer associated with asbestos exposure. The Court observes that it has not been contested or denied that Mr Attard worked at Malta Drydocks for more than a decade (1959-1974), during which time he was repeatedly exposed to asbestos. Neither has it been shown that Mr Attard could have been contaminated elsewhere or that he was affected by other factors that could have led to the disease. In these circumstances, and given that Mr Attard has died as a result of his cancer, the Court considers that Article 2 is applicable to the complaint brought by the applicants in application no. 62338/11 relating to the death of the said Mr Attard.

Fil-kaz ta` Brincat (op. cit.) inghad ukoll:-

85. However, in the context of dangerous activities, the scope of the positive obligations under Article 2 of the Convention largely overlaps with that of those under Article 8 (see Öneryıldız, cited above, §§ 90 and 160). The latter provision has allowed complaints of this nature to be examined where the circumstances were not such as to engage Article 2, but clearly affected a person's family and private life under Article 8 (see López Ostra v. Spain, 9 December 1994, Series A no. 303-C and Guerra and Others, cited above).

Il-konkluzjoni kienet illi fil-kaz tal-haddiema li mietu bil-mesothelioma l-ilment taghhom kellu jigi trattat fil-kuntest ta` vjolazzjoni tal-Art 2 mentri fil-kaz tal-haddiema illi mardu bil-mesiothelioma l-ilment kellu jigi trattat biss fl-ambitu tal-Art 8.

Din il-Qorti tikkondividi l-linja traccjata mill-ECHR u sejra tqis il-mewt ta` Emanuel Caruana, ghar-ragunijiet fuq esposti, bhala vjolazzjoni tal-art. 2 mhux tal-art. 8.

In kwantu ghall-artikolu 33 tal-Kostituzzjoni fil-kawza **James Agius vs Avukat Generali et**, deciza mill-Qorti Kostituzzjonali fl-14 ta' Dicembru 2015, intqal hekk:

> L-artikolu 33 tal-Kostituzzjoni "Ir-rikorrenti qed tallega ksur ta' dan l-artikolu flimkien malartikolu 2 tal-Konvenzjoni. Il-kliem tal-artikolu 33 mhuwiex ezattament l-istess bhat-test tal-artikolu 2. L-artikolu 2 jibda bis-sentenza "Everyone's right to life shall be protected by law". Dan il-principju assolut mhuwiex rispekkjat fl-artikolu 33 li jinkorpora biss it-tieni frazi tal-artikolu 2. Wiehed jista' jirraguna li din il-frazi thalliet barra appozitament u ghalhekk l-artikolu 33 jitkellem biss dwar indhil dirett mill-Istat.
> Izda dan l-artikolu ghandu jinghata l-istess applikazzjoni bhall-artikolu 2 tal-Konvenzjoni ghal diversi ragunijiet. L-ewwel nett hu pacifiku li rresponsabbilita guridika temani mhux biss fuq att pozittiv u dirett, imma anke minn att ta' omissjoni fejn persuna tonqos milli taghmel dak li hu mistenni ragonevolment minnha. Att ta' omissjoni jista' jkun leziv daqs att ta' kommissjoni. "Inoltre, l-obbligazzjoni sancita bl-artikolu 33 hija wahda essenzjalment tal-protezzjoni tal-hajja minn azzjonijiet illegali u arbitrarji tal-Istat. Dan jirrikjedi li l-Istat ghandu jkun marbut mhux biss milli jindahal fit-tgawdija ta' tali dritt imma anke li jiehu mizuri pozittivi biex jassigura t-tharis tad-dritt; altrimenti dan l-artikolu ikun wiehed dghajjef u ineffettiv.

A bazi ta' dawn l-osservazzjonijiet il-Qorti issib li mill-provi prodotti l-mewt ta' Emanuel Caruana kienet ta' rizultat ta' ommissjoni serja da parti tal-istat li mhux biss ma aggornax ruhu bil-legislazzjoni mill-gharfien tal-perikli tal-asbestos u l-uzu tieghu izda naqas ukoll li jaghmel rakkomandazzjonijiet pubblici dwar mizuri ta' prevenzjoni u eliminazzjoni tal-uzu f'waqtha ta' din is-sustanza nociva ghas-sahha tal-bniedem. Dan wassal biex Emanuel Caruana ghamel snin twal espost ghal dan il-materjal bla ebda hjiel tal-periklu li kien qed jigi espost inkonxjament ghalih, periklu li mill-ahhar tas-sittinijiet kien gia evidenti u rikonoxxut medicament. Il-Qorti ghalhekk taqbel ma' dak li ntqal mill-ECHR fi Brincat vs Malta u dak kunsidrat mill-Qorti Maltija kif fuq riportat u ribadut mill-istess Qorti diversament preseduta fil-kawza **George Spiteri et vs Policy Manager tal-Malta Shipyards et**, deciza fit-23 ta' Novembru 2016.

Kumpens

Stabbilit illi Emanuel Caruana miet probabilment kawza tal-kancer assocjat mal-espozizzjoni tieghu ghall-asbestos fi zmien li kien jahdem mat-tarzna, l-eredi tieghu cioe wliedu kif ukoll martu li kienu vicin tieghu fil-mumenti l-aktar difficli ta' hajtu cioe

l-ahhar qabel ma miet batew is-sofferenza ta' mart u wlied li jaraw lil missierhom ibati fl-ahhar ta' hajtu minn marda li originat mill-materal uzat fil-post tax-xoghol tieghu. Il-Qorti tqis li dan mhux kaz fejn id-dikjarazzjoni ta' lezjoni hi rimedju sufficjenti. Il-Qorti tqis illi f'dan il-kaz ghandhom jinghataw danni non pekunjarji ghas-sofferenza lil eredi. Il-Qorti taghmel referenza ghaz-zewg sentenzi Maltin gia msemmija aktar il-fuq cioe dak ta' Spiteri u Farrugia u l-kumpens hemm likwidat. Il-Qorti tqis li f'dan il-kaz hemm differenza sostanzjali mill-kawzi l-ohra cioe t-trapass ta' zmien bejn meta Emanuel Caruana irtira u meta jidher pruvat li l-marda qerrieda qabdet mieghu cioe l-ahhar sena u nofs ta' hajtu. Fil-kawzi l-ohra l-eta tal-persuni milquta kienu fis-sittinijiet u ghalhekk ta' eta pjuttost zghira u f'perjodu fejn il-kapacita lavorattiva u l-kontribuzzjoni familjari attiva kienet ghadha qawwija. Jigi rilevat ukoll illi Emanuel Caruana miet ta' 71 sena cioe ghaxar snin wara li irtira u ta' eta li qabzet is-70 sena. Dawn il-fatturi jwasslu lil Qorti tikkonkludi illi l-kumpens non pekunjarju ghas-sofferenza subita bil-vjolazzjoni tad-dritt msemmi ghandu jkun ta' €12,000.

Il-Qorti ma tqis li l-kumpens moghti mill-Amerika ghandu jinfluixxi lil Qorti fl-ghoti tal-kumpens fuq imsemmi peress li l-kumpens Amerikan kien relatat ma danni ex delicto subiti direttament min Emanuel Caruana kawza ta' materjal nociv li gie f'kuntattt mieghu mentri l-kawza prezenti hi wahda ta' lezjoni ta' dritt fundamentali kontra l-istat Malti da parti tal-eredi ta' Emanuel Caruana.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' t-talbiet tar-rikorrenti u issib li kien hemm lezjoni tal-artikolu 2 tal-Konvenzjoni Ewropea u l-artikolu 33 tal-Kostituzzjoni, u tillikwida favur ir-rikorrenti kumpens ta' €12,000 li ghandu jinqasam ugwalment bejn ir-rikorrenti li ghandu jithallas in solidum bejn l-intimati. L-ispejjez ibatuhom l-intimati in solidum bejniethom.

Onor. Mark Chetcuti LL.D.
Imhallef

Anne Xuereb
Deputat Registratur