

**CIVIL COURT  
FIRST HALL  
(CONSTITUTIONAL JURISDICTION)**

**THE HON. JUDGE  
JACQUELINE PADOVANI GRIMA LL.D. LL.M.  
(IMLI)**

**Court hearing of Friday 16<sup>th</sup> March 2018**

**Application No.: 24/2017 JPG**

**Case No: 4**

**Colin John Morland (ID 41927A)**

**Vs**

**The Advocate General**

**The Court,**

Having seen the application by Colin John Morland (ID 41927A) dated 11<sup>th</sup> April 2017, vide fol 1 et seqq (Vide fol 18 et seqq), which submits;

- 1. That on the 23<sup>rd</sup> April 1995 he married Mary Ann Morland with whom he has two children.*

2. *That on the 4<sup>th</sup> February 2002 his wife filed a legal separation lawsuit in the Civil Court First Hall in the names 'Mary Anne Morland proprio et nomine vs Colin John Morland' Application number 130/2002.*
3. *That on the 25<sup>th</sup> April 2014 during the course of these proceedings the Court in First Instance divorced the parties and the lawsuit continued on the aspects relating to the community of acquests, maintenance and care and custody of the minors.*
4. *That these same proceedings were decided in First Instance on the 21<sup>st</sup> November 2014.*
5. *That both parties appealed from different parts of the judgement, which appeal and incidental appeal were decided by the Court of Appeal on the 15<sup>th</sup> December 2015.*
6. *That as held in case **Joseph Gatt et vs Avukat Ġenerali** decided by the Constitutional Court on the 28<sup>th</sup> February 2014:*

*“It is now well established, both in local jurisprudence as well as that of the European Court that, in order to determine if the length of time taken for proceedings was reasonable or not for the purposes of the Constitution and the Convention one must examine all the particular circumstances of the case and in particular the complexity of the case to be decided, how the applicant conducted himself in the proceedings complained of, how the Court proceeded in the course of these proceedings and what the applicant stood to lose as a consequence of the proceedings, besides obviously, the effective time it took to have a final decision in the case (Vide Frydlender v. France GC no. 30979/96, § 43, ECHR 2000-VII)”.*

7. *That apart from this, in the case **Azzopardi vs Malta** (28177/12) of the 6<sup>th</sup> November 2014 decided by the European Court of Human Rights it was held:*

*“..... the judicial authorities remain ultimately responsible for the conduct of proceedings before them and ought to weigh up the advantages of continued adjournments against the requirement of promptness (see, mutatis mutandis, Gera de Petri Testaferrata Bonici Ghaxaq, cited above, § 43)”.*

8. *It is the duty of the State to organise its legal system in such a way that the Courts are put in a position where they can guarantee everyone’s right to have a final decision within a reasonable time (see for example **Scordino v. Italy (no. 1)**, para. 183). ‘The fact that the Courts have an excessive workload does not exonerate the State from responsibility (vide **Vocaturo v. Italy**, para 17 and **Cappello v. Italy**, para 17).*
9. *That in the course of these proceedings the applicant’s fundamental rights were infringed, both in respect of his property (rights) and also because as a result of the delay he did not have a fair hearing within a reasonable time and as a result of such infringements, he suffered moral and pecuniary damages and this in breach of Article 6 (1) of the Convention and Article 39 (2) of the Constitution and Article 1 Protocol 1 of the Convention as will be amply proven during the course of this lawsuit.*
10. *That apart from this, the applicant has a right to an effective remedy (Art 13 of the Convention) linked with the right of private life (Art 8) which rights were infringed as a result of the uncertainty pending the final outcome of the said proceedings.*
11. *Consequently the applicant respectfully requests that this Honorable Court:*
  - i. *Declares that in the aforementioned lawsuit (Rik 130/2002) his fundamental rights to have a fair hearing within a reasonable time were infringed and because of this, apart from such rights being infringed, so also were his other*

*rights as enshrined under Article 6 (1) of the Convention. Article 39 (2) of the Constitution and Article 1 Protocol 1 of the European Convention of Human Rights;*

- ii. Declares that his rights as enshrined in Articles 8 and 13 of the Convention were infringed.*
- iii. Provides an appropriate and effective remedy to redress such infringement/infringements and orders the defendant to compensate the plaintiff for damages, both pecuniary as well as non pecuniary in order to make good for such infringements.*

*With cots against the defendant who is hereby being demanded for reference to the oath.*

Having seen that the original application documents, the order and notice of hearing have been duly notified in accordance with law.

Having seen the reply of the Attorney General dated 28<sup>th</sup> April 2017, a fol 7 et seqq (a fol 13 et seqq), which states:

- 1. That as regards to the complaint based on **article 6 of the European Convention and article 39(2) of the Constitution** it should be stated from the outset that despite that the civil lawsuit overall took thirteen years to be concluded by the Civil Court (Family Section) and the Court of Appeal this does not entail an automatic unjustified delay or a delay attributable to the State. Indeed it is established and constant jurisprudence that the unreasonableness of time should not be determined in abstract or by the number of years a lawsuit kept ongoing, but should be considered in the light of the particular case at stake;*

2. *That it is likewise accepted that there is no time limit which a Court is obliged to observe in the course of the proceedings pending before it because otherwise the interests of justice would be prejudiced due to inadvisable and excess haste;*
3. *That without prejudice to the above in order for this Honorable Court to consider in a serious way applicant's demand under **article 6 of the European Convention** and **article 39(2) of the Constitution** it should be proved that the lawsuit was not only pending for a long time but also that the delay was capricious and intended only to put him at a disadvantage in his enjoyment of his rights according to law. Truly in the present case, the delay was not a capricious one nor unreasonable but was due owing to the nature and complexity of the procedures involved. Suffice it to state that during the civil proceedings various experts were appointed and a good number of applications were filed pendente lite;*
4. *That in any case from the acts of the civil proceedings it does not result that the courts were in some way to blame for the delay. On the contrary the acts of the proceedings indicate that the delay was more likely to stem from applicant's own behavior: (i) who took a long time to conclude his evidence notwithstanding that the other party had concluded her evidence from the 20<sup>th</sup> November 2003; (ii) who failed to attend for a number of sittings before the Court and the before the experts, (iii) who burdened the process by a number of applications; and (iv) who did not submit his note of submissions within the given timeframe so much that he had to request the court to extend his time;*
5. *That on the other hand when the Civil Court (Family Section) was placed in the situation to pass on judgment it delivered the judgment in a short time which did not exceed six months. Even the Court of Appeal did not take a long time to end the appeal process as it concluded the case within a year;*
6. *That indeed in the circumstances of this case applicant is slightly unjust when he criticizes the court with the delay because instead of closing his evidence or*

*refusing to give him more time to finish his submissions before handing down the judgment, the Court chose to be patient with him and grant him further opportunity to defend his case. Therefore applicant is not correct to pretend compensation from the State for the reason that the Civil Court (Family Section) was permissive towards him at evidence and submissions stage. It follows that this first complaint cannot be deemed as justified and hence should be dismissed;*

7. *That insofar as the complaint stands on the **first article of the first protocol of the European Convention**, respondent notes that applicant does not mention which was that possession he was allegedly denied of by the State. Given the lack of indication of the possession this complaint cannot be acceded to;*
8. *That apart from this, the State at no stage of the proceedings took any property from applicant or obstructed him from enjoying his belongings. Even if there were pending separation procedures initiated by applicant's wife this does not mean that the State took control over applicant's belongings. Therefore even this complaint should be discarded;*
9. *That regarding the complaint related to **article 8 of the European Convention** which speaks about the right to respect for his private life, respondent feels that this remained unexplained by applicant in his constitutional application. Therefore even this complaint should be dismissed;*
10. *That notwithstanding this, respondent claims that the State under no circumstances did intervene in applicant's private life. The dispute that developed between applicant and his wife in the separation proceedings and which later on where converted into divorce proceedings cannot be deemed as part of private life because as it was stated by the Constitutional Court in the judgment **Edmond Espedito Mugliett et vs. The Minister of Justice et** decided on the 5<sup>th</sup> of March 2012, "given that the controversy between them developed in a judicial action this necessarily required the intervention by the court to resolve the matter in terms of*

*law and as such it fell outside the private sphere of the individual parties involved and turned into a matter of public nature”;*

11. *That always without prejudice to all that has been said earlier, finally applicant is also not correct when he argues that he had no effective remedy under domestic law in violation of **article 13 of the European Convention** to safeguard his rights. **Article 13 of the European Convention** does not require a particular procedure how a remedy should be given. What is important is that he is given an effective remedy before a national authority. This means that the constitutional remedy itself may also be deemed an effective remedy within the ambit of **article 13 of the European Convention**;*
12. *That **article 13 of the European Convention** does not require that the remedy be within the framework of ordinary procedures as applicant seems to pretend. On the contrary what is important is that there should be a remedy before a national authority, irrespective of whether it is given by way of an ordinary civil lawsuit or by way of constitutional/conventional lawsuit. As for example, the European Court on Human Rights dismissed a complaint on **article 13** in the judgment **Nazzareno Zarb vs. Malta** decided on the 4<sup>th</sup> of July 2006, to commensurate for the lack of remedy under ordinary law in the case of unjustified delay in the proceedings, there was the remedy under **Chapter 319 of the Laws of Malta** before the courts conferred with constitutional powers;*
13. *That indeed with the filing of these constitutional proceedings the applicant himself is recognizing that the Maltese system provides for a domestic remedy which is effective. If it had not been the case applicant would not have wasted time and money to open these proceedings;*
14. *That therefore insofar as applicant is complaining about a breach of **article 13 of the European Convention**, this is manifestly unfounded if not also frivolous due to the fact that these same proceedings and this Honorable Court as a national*

*authority are empowered to grant an effective remedy to the applicant, provided he manages to show that he indeed was prejudiced in his fundamental rights as protected under the **European Convention**;*

*Therefore for the above stated reasons the requests made by Colin John Morland should be dismissed with costs against him.*

Having heard the witnesses on oath;

Having seen all the documents exhibited and all the acts of the proceedings;

Having seen the notes of submissions filed by the parties;

**Deliberates:**

**Colin Morland** testified<sup>1</sup> that he has suffered damages because of the undue length of the separation proceedings, including the appeal, which lasted for fourteen years for no good reason. He explained that in his view the proceedings should have only taken three years to conclude, and had that been the case, he would have stopped paying maintenance to his wife in 2004, which is why he is claiming the cited amount in damages. He stated that the judgement of the Court of first instance reduced the maintenance payable to his wife to €200, which he had to keep paying until the appeal was decided, that is, until 2016. He testified further that he is claiming interest paid due to a garnishee order which was issued in November 2014. He stated that he made the payment which was due to his wife as half her community of acquests in two parts, with the first installment being paid in December 2014, and the second one December 2015. He went on to explain that the appellate judgement did not determine any payment dates, not even when an application for further clarification was made in this regard, which further complicated matters for the parties. He stated that the payment due could not be made immediately, as was expected by his wife, because some accounts required a ninety day notice before they

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<sup>1</sup> Fol 18E *et seqq*, including documents filed, Fol 30 *et seqq*, including documents filed and Fol 552 *et seqq*.



could be closed, and that further more, the amount of €23,000 had to be released by his wife since it was held in joint accounts, but during negotiations, his wife issued a garnishee order which allowed an interest payment of €4,000 calculated from the date of the first instance judgement. He explained that he was also making a claim for the amount of money that he disbursed as payments to a life insurance policy made on behalf of his wife, as well as court and legal fees. Regarding the auditor's appointment during the separation proceedings, he testified that in his opinion this appointment was wholly unnecessary since it ended up as only serving to confirm the veracity of the accounts produced by him in court. He complained that he was not allowed to produce an updated financial account due to being 'out of time', when it took the Court five years to reach its decision after the audit. He claimed also that it should not have taken the Court long to determine the cause of the breakdown of the marriage, since this was an issue of irreversible incompatibility. He confirmed that the invoice filed at Fol 550 had been paid in full by him.

**Audrey Ghigo,**<sup>2</sup> representing HSBC Bank Malta plc, produced a copy of the bank statements of the account held in the applicant's name for the period between the 8<sup>th</sup> of May 2001 and the 25<sup>th</sup> of January 2016, which also show all transactions made by means of Standing Orders, which were always honoured.

**Deliberates:**

Regarding the right to a fair trial within a reasonable time

In the present case, the applicant is claiming that he has suffered a violation of his right to a fair trial within a reasonable time, due to the excessive length of the separation proceedings. He contends that these proceedings should have lasted three years, as the dispute was not a complex or novel one. Instead, these proceedings lasted thirteen years due to his wife's behaviour and the conduct of the competent authorities. Respondant submits however that the separation proceedings were not unduly long, as the length

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<sup>2</sup> Fol 119B *et seqq.*

reflected the complexity of case, and therefore cannot be blamed on the conduct of the competent authorities.

The Court recognises that according to the jurisprudence of both the Maltese courts, as well as that of the European Court of Human Rights, in order to assess whether the case under examination was excessively lengthy and thus in breach of the right to a fair trial, the Court must have regard not merely to the duration of the case alone, but must rather examine four factors, that is:

- (1) The complexity of the case;
- (2) The conduct of the applicant;
- (3) The conduct of the competent authorities;
- (4) What is at stake for the applicant.

This has been held to be due to the fact that the time factor must not be examined in the abstract, but it must rather be examined in the light of **the particular circumstances of the case** before the Court.<sup>3</sup> **Furthermore, no single criterion is conclusive on its own, as the Court must instead assess the cumulative effect of the four.**<sup>4</sup>

The Court further notes that regarding the reasonable of the length of the proceedings, Maltese Courts have opined that the term ‘reasonable’ connotes a strong discretionary element, leaving it up to the Court to determine whether, considering the particular facts of the case under examination, the length of time it took for the case to be decided is such that it exceeds what is, or should normally be, acceptable in a democratic society. This therefore means that every case must be examined in light of its own special set of circumstances.<sup>5</sup>

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<sup>3</sup> **Anthony Camilleri et vs L-Avukat Generali et**, Constitutional Court decided 28<sup>th</sup> September 2012.

<sup>4</sup> See e.g. **Zakkarija Calleja vs L-Avukat Generali**, Constitutional Court decided 15<sup>th</sup> December 2015; **Sydney Ellul Sullivan vs Il-Kummissarju tal-Pulizija et**, Constitutional Court, decided 28<sup>th</sup> January 2013; **Frydlander v. France**, ECHR 30979/96 decided 27<sup>th</sup> June 2000; **Comingersoll S.A. v. Portugal**, ECHR 35382/97 decided 6<sup>th</sup> April 2000.

<sup>5</sup> **Emanuela Brincat vs L-Avukat Generali**, Constitutional Court decided 21<sup>st</sup> February 1996, cited with approval even in the context of civil proceedings in **Zakkarija Calleja vs L-Avukat Generali**, Constitutional Court 15<sup>th</sup> December 2015.

It is the State's duty to ensure that the judicial processes can run its course without undue delay. The Constitutional Court has previously observed that the Maltese courts are burdened with a heavy case load which often serves as an obstacle to the speedy determination of cases. This Courts agrees with the opinion expressed many times by this Court as otherwise composed and the Constitutional Court that there exists an inherent deficiency in the justice system because the public authorities are failing their duty ensure that there are enough resources for the court to be able to perform its duties satisfactorily.<sup>6</sup> In this regard, the Court makes reference to the teachings of the ECHR that:

*“...it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee to everyone the right to a final decision within a reasonable time in the determination of his civil rights and obligations.”<sup>7</sup>*

Regarding the fourth criterion, the Court notes that Respondent agrees that the nature of proceedings in question were such that they required the courts to handle the case with special diligence, and therefore in view of the parties' agreement on this matter, the Court considers that it need not examined this criterion.

Regarding the issue of complexity, the court notes that whereas the applicant claims that the reasons for the breakdown of the marriage were simple in nature, that is, the irremediable incompatibility between the spouses, in actual fact, both spouses attributed the fault of the breakdown of the marriage to alleged mistreatment. Furthermore the applicant even made an allegation that his wife was guilty of threats, excesses and mental cruelty against their minor children. This contention by the applicant is also contradicted by the fact that during the separation proceedings, he filed an affidavit which included numerous pages of journal entries of the daily trials and tribulations of the contentents'

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<sup>6</sup> See e.g. **Joseph Gatt et vs L-Avukat Generali**, Constitutional Court decided 28<sup>th</sup> February 2014.

<sup>7</sup> **Frydlender v. France**, ECHR 30979/96 decided 27<sup>th</sup> June 2000.

marriage, including instances when his wife failed to prepare a salad for his lunch. Indeed the applicant filed even more journal entries further along the case, documenting every minor detail of what was happening with the children and their mother's alleged faults in their regard during the course of proceedings including some instances when the applicant found glitter in his daughter's hair.

The Court furthermore notes that the community of acquests was comprised of a substantial amount of assets, notwithstanding the fact that the matrimonial home was the paraphernal property of the husband, as evidenced by the fact that the wife's share of the community totalled over €100,000. This was compounded by the fact that the wife made allegations that the applicant was making untoward withdrawals from accounts belonging to the community, which necessitated an investigation by the Court. While the applicant lambasts the Court for appointing an auditor for this reasons, this Court reminds the applicant that both parties to the case have a right to a fair trial which the Court must guarantee. **This includes ensuring** that it hears and duly examines any reasonable claims made by either of them. The fact that the auditor came to the conclusion that there was no wrongdoing on the part of the applicant, does not automatically mean that the Court was wrong in appointing the auditor to investigate the claims made by the applicant's wife.

The Court notes that the case file is composed of over 2000 pages of evidence, which includes lengthy testimony by the parties on the reasons for the breakdown of the marriage which they kept insisting on attributing solely to the other party. In this respect the Court notes that it is the duty of the parties' lawyers to ensure that affidavits filed in court are restricted to facts which are relevant and material to the case, as opposed to filing whatever their client wish to share with the court, which, as can be seen from the applicant's journal entries filed in the separation proceedings, led to lengthy affidavits full of minor details which have no bearing on the case, but which the court would have had to examine. The Court notes also that three experts, namely a legal referee, an accountant and a social worker had to be appointed to aid the Court in reaching its decisions. Particularly with regards to the appointment of the social worker, and the issues which were brought up before the Court in relation to the parties' son, the Court

notes that while the applicant tries to downplay these issues and attribute their examination to his wife's hysteria, it transpires from the records of the case that the parties' son was indeed a cause for concern, since he was performing very poorly at school, and had regressed to infantile behaviours such as bedwetting and thumb sucking. He was later on certified as having learning difficulties which were the result of problems with visual-motor integration, coordination skills, attention control and communication skills, as well as suffering from Aspergers.

Regarding however the fact that there was a counter-claim, that the proceedings were converted into divorce proceedings and that the Court was asked to award a number of decrees, which according to the Respondent is further proof of the complexity of the case, the Court notes that while it is true that there was a counter-claim, the facts of the counter-claim and the legal points under examination were essentially the same as those in the original suit, and that furthermore, the conversion of the proceedings into divorce proceedings could not have had the effect of adding any element of complexity to the case. With regards to the applications *pendente lite* filed by the parties, the Court agrees with the applicant that these could not have resulted in adding to the complexity of the case, since they were decided by the Court in parallel to the gathering of evidence which was being done first by a Judicial Assistant, and then by a Legal Referee. However both would have contributed considerably to the length of the procedures.

Therefore, the Court holds that whilst the separation case was not extraordinarily complex, certainly not enough to explain, on its own, the thirteen years that it took for the case to be finally decided, it was certainly neither straightforward nor simple - as the applicant is now trying to make it seem.

Regarding the second and third criteria, the records of the separation/divorce proceedings, attached to this case by virtue of the decree dated the 8 May 2017, shows:

- On the 17<sup>th</sup> August 2001, applicant's wife applied before the Second Hall of the Civil Court, to be authorized to proceed with a personal separation lawsuit against her husband, Colin John Morland (fol. 6);
- The Second Hall of the Civil Court acceded to this request by virtue of a decree dated 31<sup>st</sup> January 2002 (fol. 7);
- Applicant's wife instituted the personal separation proceedings against Colin John Morland on the 4<sup>th</sup> of January 2002 (fol. 1);
- By virtue of a decree issued by the Second Hall of the Civil Court, Colin John Morland was ordered to pay monthly alimonies *pendente lite* to his wife and children amounting to Lm 150 and Lm 210 respectively;
- The case was appointed for first hearing on the 21<sup>st</sup> of May 2002, wherein the Court ordered that the writ of summons be translated and served upon Colin John Morland in the English language (fol 15);
- Colin John Morland filed his statement of defence on the 25<sup>th</sup> of June 2002 together with a counter-claim (fol. 20-24);
- Applicant's wife replied to the counter-claim on the 1<sup>st</sup> of July 2002 (fol. 27-28). On this same date, applicant's wife exhibited her own affidavit (fol. 29-64);
- On the 4<sup>th</sup> of July 2002 Colin John Morland filed a request to extend his visitation rights (fol. 140). The said application was appointed by the Court for hearing on the 25<sup>th</sup> July 2002 for which Colin John Morland failed to attend. The application was eventually decided by the Court on the 1<sup>st</sup> August 2002;
- Colin John Morland presented his affidavit on the 22<sup>nd</sup> August 2002 (fol. 146);
- Until the end of year 2002, applicant's wife produced three affidavits of Emanuel Formosa (fol. 149-161), Phyllis Formosa (fol. 162-164) and Saviour Formosa (fol, 165-167), together with a medical certificate issued by Dr. S. Attard Montalto (fol. 168-169). On the 2<sup>nd</sup> December 2002, applicant's wife also produced Rita Agius to give evidence *viva voce* (fol. 168-169);

- Three further witnesses (Catherine Fenech, Norbert Bartolo and Colin John Morland himself) gave testimony on the 21<sup>st</sup> March 2003 upon the request of applicant's wife (fol. 206-225);
- Also on the 21<sup>st</sup> of March 2003, an application was filed by applicant's wife for the increase of the maintenance obligation to cover rent fees because Colin John Morland was living in the matrimonial home whilst his wife and children had to rent another premises (fol. 190-191). The Court acceded to this request on the 1<sup>st</sup> July 2003 and increased the maintenance obligation by Lm90 per month (fol. 200). Applicants's monthly salary was Lm1500;
- Between April and July 2002, Colin John Morland and his wife tried to settle their issues in an amicable manner and therefore sittings were being cancelled (fol. 348). No compromise however was reached;
- Colin John Morland continued to give testimony on the request of applicant's wife on the 14<sup>th</sup> July 2003 and 3<sup>rd</sup> September 2003 (fol. 350 *et seq*);
- Applicant's wife declared the conclusion of her evidence on the 20<sup>th</sup> November 2003 (fol. 376). From then onwards case was adjourned for the production of Colin John Morland's evidence;
- Colin John Morland conducted the counter-examination on his wife on the 5<sup>th</sup> February 2004 (fol. 389-434), on the 18<sup>th</sup> February 2004 (fol. 435-451), on the 26<sup>th</sup> February 2004 and on the 6<sup>th</sup> April 2004 (fol. 456-467):
- Between April and June 2004, Colin John Morland produced as witnesses Lina Thake (fol. 473-501), Marlene Tua (fol. 502 and 514) and Lina Thake again (fol. 516-520);
- By the end of 2004, a further affidavit was exhibited by plaintiff (fol. 523-551); Emanuel Formosa (fol. 567-587 and 654-673) and Saviour Formosa (fol. 590-653) testified again upon Colin John Morland's request;
- On the 10<sup>th</sup> November 2004, Mary Ann Morland requested evidence from a representative of the Malta Stock Exchange to correct his previous testimony. Colin John Morland filed a no objection on the 29<sup>th</sup> November

- 2004 and the Court acceded to such request on the 1<sup>st</sup> December 2004 (fol. 673A *et seq.*);
- Meanwhile Mary Ann Morland filed another application on the 23<sup>rd</sup> November 2004 to present an additional affidavit (fol. 677). Although Colin John Morland was notified with this application, he never filed a reply. Court allowed the presentation of the affidavit subject to Colin John Morland's right to effect counter-examination (fol. 717);
  - The cross-examination of Colin John Morland was carried out on the 17<sup>th</sup> May 2005 (fol. 791);
  - Further applications had to be decided by the Court regarding the school of the children (fol. 719) and the travelling abroad of the children (fol. 815);
  - A legal expert was appointed on the 29<sup>th</sup> November 2005 (fol. 815);
  - Mary Ann Morland testified on the 2<sup>nd</sup> March 2006 (fol. 1317) and the 24<sup>th</sup> May 2006 (fol. 1337);
  - An application, dated 30<sup>th</sup> March 2006, was filed this time by Mary Ann Morland because Colin John Morland was not behaving properly in front of the children (fol. 818);
  - Another application was filed on the 25<sup>th</sup> April 2006, again by Mary Ann Morland, to allow her to take decisions concerning their child's health (fol. 1007). Colin John Morland objected to this application (fol. 1020). The Court, however, after hearing the witness of Dr. Simon Attard Montalto, was convinced to accede to Mary Ann Morland's demand (fol. 1036);
  - As a result a social worker was appointed on the 28<sup>th</sup> April 2006 (fol. 826). The social worker's report was presented in August 2006;
  - Another application was filed by Colin John Morland on the 4<sup>th</sup> June 2006 so that the Court appoints a family mediator;
  - Colin John Morland summoned a number of bank representatives to tender evidence on the 16<sup>th</sup> June 2006 (fol. 827). Josette Agius, Jeanette Lepre,



- Joe Borg Cardona and Catherine Fenech all testified on this date (fol. 1338 et seq.);
- During the sitting of the 18<sup>th</sup> September 2006 the parties requested an adjournment to explore the possibility of reaching a compromise (fol. 1340);
  - On the 28<sup>th</sup> February 2007, upon the request of Mary Ann Morland, the Court ordered Colin John Morland to produce within three weeks, bank and financial statements regarding funds from Bradford and Bingley (fol. 835). These statements were exhibited on the 15<sup>th</sup> March 2007 (fol. 837);
  - On the 21<sup>st</sup> June 2007 Mary Ann Morland filed an application regarding the visitation rights of the children (fol. 1026). The application was decreed by the Court on the 3<sup>rd</sup> July 2007 (fol. 1030);
  - Following this decree, Colin John Morland, on the 29<sup>th</sup> October 2007, filed an application to change his visitation hours (fol. 1037). However this request was dismissed by the Court (fol. 1045);
  - Mary Ann Morland gave evidence again on the 20<sup>th</sup> November 2007 (fol. 1342);
  - The Court ordered for the closure of evidence on the 14<sup>th</sup> November 2007 (fol. 1047);
  - Colin John Morland and his wife filed a joint application on the 3<sup>rd</sup> December 2007 to revoke the nomination of the social worker. The application was accepted on the 5<sup>th</sup> December 2007 (fol. 1050);
  - The sitting of the 7<sup>th</sup> February 2008 was cancelled on behalf of Colin John Morland's legal counsel (fol. 1052);
  - Dr. Aldo Vella testified on the 17<sup>th</sup> April 2008 (fol. 1344) whilst Colin John Morland testified on the 22<sup>nd</sup> May 2008 (fol. 1346). On this last date Colin John Morland presented an additional affidavit;
  - Mary Ann Morland and Colin John Morland testified again on the 3<sup>rd</sup> August 2008 (fol. 1346) and 29<sup>th</sup> September 2008 (fol. 1348);

- During November 2008 parties agreed that the Court should nominate a technical referee with accounting expertise (fol. 1351). Consequently the Court nominated Accountant Mr. Lawrence Camilleri (fol. 1067);
- Jonathan Phyll, Jeanette Lepre and Joe Borg Cardona gave evidence on the 24<sup>th</sup> November 2011 (fol. 1354) whilst Audrey Ghigo testified on the 19<sup>th</sup> of January 2009 (fol. 1356);
- On the 17<sup>th</sup> February 2009, parties declared that they had no further evidence to produce (fol. 1357);
- Mary Ann Morland filed an application on the 21<sup>st</sup> July 2009 to increase maintenance fee (fol. 1073). Colin John Morland objected to this increment on the 12<sup>th</sup> August 2009 (fol. 1109) but the Court on the 7<sup>th</sup> September 2009 acceded to this request and increased maintenance by €75 (fol. 1111);
- Colin John Morland filed an application on the 23<sup>rd</sup> September 2009 to reduce the maintenance (fol. 1114) but the Court dismissed this application on the 25<sup>th</sup> September 2009 because the Court felt that nothing had changed from its previous decree of the 7<sup>th</sup> September 2009 (fol. 1122);
- During the sitting of the 9<sup>th</sup> December 2009, the parties presented various documents for the attention of the technical referee (fol. 1358);
- The technical referee presented his report on the 29<sup>th</sup> January 2010 (fol. 1127). On the 28<sup>th</sup> April 2010, the parties presented a list of questions to the technical referee (fol. 1153). Following these questions the Court on the 16<sup>th</sup> June 2010 ordered the technical referee to present an additional report (fol. 1158). This additional report was filed on the 18<sup>th</sup> October 2010 (fol. 1159);
- On the 8<sup>th</sup> November 2010, legal counsel to Colin John Morland requested the Court to adjourn cases after the 11<sup>th</sup> December 2010 (fol. 1170);
- Technical referee Lawrence Camilleri testified on 3<sup>rd</sup> February 2011 (fol. 1176);

- Colin John Morland presented an additional affidavit on the 9<sup>th</sup> March 2011 (fol. 1184);
- On the 26<sup>th</sup> May 2011, the Court authorized the parties to present their written submissions before the legal referee (fol. 1206). Mary Ann Morland submitted her written submissions (fol. 1208) but Colin John Morland did not. On the 2<sup>nd</sup> November 2011, the Court allowed Colin John Morland to file his written submissions by the end of December 2011 (fol. 1238). Colin John Morland once again failed to submit his written submissions and therefore the Court on the 15<sup>th</sup> February 2012 ordered the legal referee to proceed with her report in the absence of such submissions (fol. 1243);
- On the 18<sup>th</sup> January 2013, Colin John Morland requested the Court to allow him to present additional documents (fol. 1381). This request was accepted and Colin John Morland presented such documents (fol. 1383);
- Another application dated 22<sup>nd</sup> February 2013 was filed by Colin John Morland to stop his son, Liam, from being examined by a psychiatrist or psychologist (fol. 1773). Mary Ann Morland objected to this request (fol. 1782). The Court on the 14<sup>th</sup> March 2013 decreed against this application (fol. 1807);
- Legal Referee presented her report on the 14<sup>th</sup> March 2013 (fol. 1811);
- On the 5<sup>th</sup> April 2013, Colin John Morland presented another application to present additional documents following to the legal referee's report (fol. 1828). This request was dismissed on the 13<sup>th</sup> May 2013 by the Court as the Court reasoned that Colin John Morland had ample time to present his evidence (fol. 1834);
- A note requesting the appointment of additional referees was filed by Colin John Morland on the 24<sup>th</sup> May 2013 (fol. 1835);
- Mary Ann Morland filed a list of questions on the 31<sup>st</sup> May 2013 to be answered by the legal referee (fol. 1836) whereas Colin John Morland presented his own list of questions on the 14<sup>th</sup> June 2013 (fol. 1840). On the 28<sup>th</sup> June 2013, the Court authorized the legal referee to reply to these

- questions in writing (fol. 1845). The replies by the legal referee were inserted in the acts on the 27<sup>th</sup> November 2013 (fol. 1849). Colin John Morland, on the 29<sup>th</sup> November 2013, requested the Court to allow him to make further questions (fol. 1859) and the legal referee replied to these additional questions on the 9<sup>th</sup> December 2013 (fol. 1961);
- Mary Ann Morland filed her final written submissions on the 29<sup>th</sup> January 2014 (fol. 1861). On the other hand, Colin John Morland on the 31<sup>st</sup> January 2014, was granted two months time to present his final written submissions (fol. 1874). Colin John Morland did not manage to conclude his written submissions in time, so on the 14<sup>th</sup> March 2014 he requested for an extension. The Court accepted his request and gave him until the 15<sup>th</sup> April 2014 to file his submissions (fol. 1877). These submissions were eventually filed by Colin John Morland on the 22<sup>nd</sup> April 2014 (fol. 1878);
  - On the 23<sup>rd</sup> May 2014, Colin John Morland once more requested the Court to allow him to produce further documents. This request was accepted and following that the parties made their final oral submissions. Case was put off for judgment for the 24<sup>th</sup> October 2014 (fol. 1971);
  - The Civil Court (Family Section) did do not deliver judgment on the 24<sup>th</sup> October 2014 (fol. 1977) but handed down the judgment, nearly one month later, on the 21<sup>st</sup> November 2014 (fol. 1978);
  - Colin John Morland lodged a principal appeal from this judgment whilst his wife lodged a cross-appeal;
  - The appeal was appointed for hearing on the 6<sup>th</sup> October 2015;
  - Parties presented their oral submissions on the 10<sup>th</sup> November 2015 and judgment by the Court of Appeal was delivered on the 15<sup>th</sup> December 2015;
  - Colin John Morland filed an application before the Court of Appeal on the 10<sup>th</sup> May 2016 asking for clarifications about the judgment;
  - The application was dismissed by the Court of Appeal on the 31<sup>st</sup> May 2016 because it had nothing to add to its final judgment;

- On the 9<sup>th</sup> of June 2016, Mary Ann Morland filed a judicial letter against Colin John Morland to settle the balance of €57,377.50 which were still due by Colin John Morland following the judgment delivered on the 15<sup>th</sup> December 2015;
- In August 2016, Mary Ann Morland obtained a garnishee order against Colin John Morland for the amount of €57,377.50 as principal debt and for the amount of €4,212.92 as legal interests;
- The garnishee order was withdrawn on the 19<sup>th</sup> September 2016 in view of payment effected by Colin John Morland;<sup>8</sup>

The applicant argues that the Court allowed his wife to raise unnecessary and unwarranted issues and that she created a multitude of problems regarding the cross-examination of her witnesses, such that, the proceedings continued for a further eleven years. He held that the Court was to assess whether experts were needed and to monitor their efficiency, which it could not do properly because sittings before the Court were sporadic. **He argues further that he only asked for an adjournment once and that he only failed to appear for hearings where his presence was not needed** and that in fact the only sitting which records an absence of both himself and his legal counsel **was that of the 6<sup>th</sup> of April 2005**. Respondent on the other hand argues that the delay occurred mainly due the applicant's behaviour, giving a number of examples of behaviour by the applicant which according to the Respondent caused unnecessary delay in the proceedings. Respondent argues that on the other hand the Court always decided the various *pendente lite* applications expeditiously and imposed time limits, could not close evidence because sittings were not being wasted, delivered judgement within six months, and the appeal stage was very expeditious, arguing that the applicant cannot expect compensation because the Court was patient with him.

The Constitutional Court has already noted also that the appointment of legal referees generally means that in practice sittings are held periodically, during which only one or

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<sup>8</sup> Vide note of Attorney General's submissions at page 556 to 561.

two witnesses testify.<sup>9</sup> This was in fact what happened in this case. In six years and 2 months, a total of thirty-eight sittings were held for the production of evidence by the parties, that is, a total of six sittings a year, or a sitting every two months on average. During these sittings only one or maybe two witnesses would manage to testify, while the cross-examination of the contendents and their main witnesses spanned a number of sittings. The Court furthermore notes that there were a number of length gaps between sittings, and this not including in the most part the summer recess, namely:

- 4 months between 21/03/2003 and 14/07/2003 (although this was because the parties were trying to reach an amicable compromise);
- 3 months between 03/09/2009 and 09/12/2003;
- 3 months between 06/12/2004 and 18/03/2005;
- 12 months and a week between 17/05/2005 and 24/05/2006;
- 8 ½ months between 06/03/2007 and 20/11/2007;
- 3 ½ months between 20/11/2007 and 11/03/2008

Therefore, during the evidence gathering stage of the proceedings, there was an aggregate period of apparent inactivity of two and a half years (excluding the four months in 2003 when the parties were trying to reach an amicable compromise) which can certainly not be attributed to the applicant. The Court however notes that the inactivity is only an apparent one because evidence was still being heard and gathered by the Judicial Assistant and Legal Referee and other professionals appointed by the Court during the above mentioned period.

The Court notes in this respect however, that although the applicant tries to blame his wife for stalling the cross-examination of her witnesses, from the minutes of the sittings, it transpires that in actual fact there was only one sitting meant for the cross-examination of one of her witnesses during which nothing happened because there was a misunderstanding regarding the notification of the said witnesses. The Court notes that while the applicant claims that he and his legal counsel only failed to attend **once** in

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<sup>9</sup> **Iris Cassar et vs L-Avukat Generali**, Constitutional Court decided 27<sup>th</sup> March 2015.

Court, **from the minutes of the sittings held before the Judicial Assistant and the Legal Referee it transpires that the applicant wasted seven sittings, either because he or his lawyer did not appear, or because his lawyer appeared too late for the sitting to be held.** The Court notes also that the applicant cannot complain that the sittings held before the Court were too sporadic to enable the Court to exercise control of the gathering of evidence before the Judicial Assistance and the Legal Referee, and at the same argue that when he did not appear before the Court, this was only because his presence was not needed. Apart from all this, the Court noted that from the minutes of the case, it is clear that the applicant and his legal counsel failed to appear for far more than one sitting before the Court. It was the applicant's duty to ensure that he or his legal counsel appeared in Court to keep the Court informed about the state of evidence gathering and about any complaints he may have had about his wife's behaviour during these sittings. Also noted in this respect, that independently of this, the Court itself has a duty to ensure the proper supervision of the evidence gathering stage, **which the Court was clearly doing as evidenced by the notes which the Judicial Assistant periodically submitted to the attention of the Judge regarding the sittings being held.**

Furthermore, with reference to the applicant's complaint regarding the appointment of the accountant, which according to the applicant should not have been done by the Court as this was simply a stalling technique employed by his wife, the Court notes that it transpires that **the applicant himself had submitted that he had no objection to the appointment of an accountant and that this was in the interest of both parties,**<sup>10</sup> and therefore he cannot now complain that this appointment was unnecessary and served to continue to unduly prolong the proceedings. The Court notes furthermore that the applicant repeatedly failed to submit his written submissions before the Legal Referee, to the extent that the Court had to eventually authorise the Legal Referee to draw up her report even in the absence of the applicant's written submission. In this regard, the applicant showed an absolute lack of interest in the case, failing to submit his written submissions before the Legal Referee, **even though he had well over a year to do this.**

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<sup>10</sup> Fol 1065 of the separation proceedings.

In light of all of the above, the Court therefore considers that the period of thirteen years for the conclusion of the separation proceedings in question was unnecessarily lengthy, and further concludes that **the parties share the blame for the undue length of the proceedings for the reasons outlined above.**

With regards to the issue of compensation, the Court notes that the Constitutional Court has previously held that for violations of the right to a fair trial within a reasonable time the Court does not award pecuniary damages allegedly suffered, but only moral damages to make good for the violation suffered.<sup>11</sup>

The European Court of Human Rights has given specific indications regarding the equitable liquidation of damages suffered due to undue delay in judicial proceedings. It has been held in fact that a sum of between **€1,000 and €1,500 for every year that the proceedings were still pending**, to be calculated from the day when the proceedings were filed until they were resolved by means of a final judgement as the basic figure for the relative calculation.<sup>12</sup>

This basic figure is then reduced according to the number of Courts who heard the case, the applicant's conduct – in particular the number of months or years of delay that the applicant is responsible for – and also the standard of living of the country concerned.

Accordingly, the basic figure which the applicant is entitled to as compensation for the violation suffered by him is in the amount of €13,000. This amount however has to be reduced to reflect the fact that **the case was tried by two courts, and the applicant is equally to blame** for the length of the proceedings and **the standard of living of the country.**

In light of the above, the Court therefore concludes that the compensation due to the applicant is in the amount of €2,500.

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<sup>11</sup> **Said vs L-Avukat Generali**, Constitutional Court decided 11<sup>th</sup> November 2011.

<sup>12</sup> **Pizzatti v. Italy**, ECHR 62361/00 decided 10<sup>th</sup> November 2004.



**Deliberates:**

Regarding the right to peaceful possession of one's possessions

Applicant bases his complaint under this heading on two arguments: firstly, that had the case taken the three years he contends it should have taken instead of the thirteen years it actually took, he would have paid €81,095.17 less in maintenance to his wife, and secondly that the prolonged separation procedure brought about a state of forced co-ownership which was not proportional to the aim sought.

Regarding the first basis for this complaint, the Court first of all notes that with regards to the decrees which increased the maintenance that had originally been set by the Family Court, it is not completely clear whether these increases were meant to be increases to the maintenance payable for the children, or the maintenance payable as spousal support to the applicant's wife. The first request for an increase in maintenance was made by the applicant's wife in order to cover the additional expenses to rent accommodation for herself and the party's two children, after a psychologist advised her that it was better for the children, in particular her son, to live in their house, as opposed to continuing living with her mother, as this offered a more stable environment for the children. The Court recognises that according to the law, **maintenance due for the support of one's children is meant to cover food, clothing and accommodation**. With regards to the second request, the applicant's wife requested that both her maintenance as well as that due of behalf of the children be increased due to the increased cost of living. In partially acceding to the request, the Family Court did not state clearly in its decree how much of that increase related to the wife's maintenance and how much of it related to the children's maintenance. The Court therefore considers that the applicant's calculations were made on the wrong criteria.

The Court further notes the decision to stop the applicant's wife maintenance after two years would have elapsed from the judgement was largely based on the fact that by then

their children were 18 and 17 and were therefore independent. The Court also notes that from the acts of the separation case, it results that their son needed extra care and attention, to the extent that while the case was still pending, it transpired that the child suffered from certain conditions, including Aspergers, and that his mother had to help him considerably with his school work at home, take him to weekly sessions at the Speech-Language Clinic in Zebbug and was further more directed by the professional overseeing the care of the child to carry out activities with him at home. From the acts of the proceedings of the separation case, it results that the applicant's wife carried out these duties diligently, to the extent that their son managed to obtain a few O'levels and his school leaving certificate, which considering the expert reports that this Court has examined about their son, is certainly a testament to his wife's dedication to their son's well-being and development. Considering that their son needed such special attention, it takes no stretch of the imagination to understand that it would have been rather difficult for the applicant's wife to work and maintain herself, without her husband's help, independently of the length of the separation proceedings. This Court is furthermore cognizant of the fact that while the applicant and his wife were still bringing up their children, there existed in Malta, no free child care facilities that could take care of the children after school until their mother returned home from work, and during the school holidays. It was therefore difficult, if not impossible, for a woman to work and take care of young children, especially one with special needs, without her husband's support. Therefore, had the applicant's wife been obliged to seek employment because of lack of spousal support when the children were still too young to be left to fend for themselves, applicant would still have had to help cover the costs of the child-care required. The applicant therefore would have had to pay far more than he did in spousal support to his wife, especially during the 3 monthly summer holidays during which, the children would have needed full-time care. In view of this, the Court disagrees with the applicant that had the case been concluded earlier, he would have had to pay less in maintenance, and therefore considers that this argument is unfounded.

Regarding the second basis of applicant's argument, the Court considers that it may only enter findings of a violation on the basis of concrete situations, rather than hypothetical

arguments. In fact, in **Rossi and Others v. Italy**, which was decided on the 16<sup>th</sup> of December 2008, the ECHR declared that the applications under examination were inadmissible, after considering that Article 34 of the Convention:

*“exige qu’un individu requérant se prétende effectivement lésé par la violation qu’il allègue. Il n’institue pas au profit des particuliers une sorte d’actio popularis pour l’interprétation de la Convention...”*

On the same vein, the ECHR stated in **Fairfield and Others v. the United Kingdom**, decided on the 8<sup>th</sup> of March 2005 that :

*“Article 34 requires that an individual applicant should claim to have been actually affected by the violation he alleges (see Ireland v. the United Kingdom, judgment of 18 January 1978, Series A no. 25, pp. 90-91, §§ 239-40, and Klass and Others v. Germany, judgment of 6 September 1978, Series A no. 28, pp. 17-18, § 33); it does not institute for individuals a kind of actio popularis for the interpretation of the Convention or permit individuals to complain against a law simply because they feel that it contravenes the Convention (see Norris v. Ireland, judgment of 26 October 1988, Series A no. 142, pp. 15-16, § 31, and Sanles Sanles v. Spain (dec.), no. [48335/99](#), ECHR 2000-XI). The same applies to events or decisions which are alleged to infringe the Convention.”*

An exception to this requirement is however made if in the case under examination, the applicant proves that he was required to modify his conduct, as can be seen by the judgements of the ECHR handed down in the cases of **Tanase v. Moldova** decided on the 27<sup>th</sup> of April 2010, **Sejdic and Finci v. Bosnia and Herzegovina** decided on the 22 of December 2009 and **Michaud v. France** decided on the 6<sup>th</sup> of December 2012.

In this particular case, the Court notes that applicant produced before this Court no evidence that he was impeded from acquiring anything due to continuing effects of the community of acquests or that he had to modify his behaviour because of it. The Court infact notes in this regard that the applicant never attempted to file any application before the court seized with the separation case to ask for the court's permission to make any unilateral aquisitions, in light of the length of the proceedings.

The Court also notes that as from 2011, it had become possible for the applicant to file an application to move the court to order the cessation of the community of acquests while the separation was ongoing by virtue of Article 55 of the Civil Code, which was introduced into the law by means of Act XIV of 2011. In the Court's opinion, the fact that the applicant failed to make such a request to the Family Court, which would have meant that the state of 'forced co-ownership' he is impugning would have come to an end about four years prior to the actual dissolution of the marriage, proves that applicant's argument is merely hypothetical. Had applicant truly been impeded for acquiring anything, or modify his behaviour, due to the continued existence of the community of acquests, he would have certainly filed such a request before the Family Court.

Applicant's complaint under this heading is therefore being dismissed.

**Deliberates:**

Regarding the right to an effective remedy

Under this heading, the applicant complains that the separation/divorce proceedings were not an effective remedy for the applicant's situation because it took thirteen years for them to be concluded. The Attorney General rebuts this complaint by arguing that the applicant did in fact have an effective remedy for the human rights violations complained by him before the courts of constitutional jurisdiction, as has been confirmed by the European Court of Human Rights.

The Court observes that in his argument, the applicant conflates his rights in relation to ordinary proceedings, with this rights in relation to proceedings specifically meant to provide an effect remedy for human rights violations. Article 13 envisages precisely the latter, and therefore the length of the separation or divorce proceedings is immaterial for a complaint made under Article 13, since the effective remedy contemplated in that Article is one meant to redress a human rights violation. Therefore, the issue should rather be whether the applicant had at his disposal an effective remedy to redress the excessively lengthy separation/divorce proceedings. In this regard, the Court makes reference to the judgement of the ECHR in the case **Maria Theresa Deguara Caruana Gatto and others v. Malta** decided on the 9<sup>th</sup> of July 2013 which confirmed that there is nothing to show that constitutional redress proceedings are not effective for the purposes of Article 13 with regards to complaints regarding the length of proceedings, having found that:

*“[i]n so far as the complaint refers to the lack of an effective remedy in relation to their length-of-proceedings complaint, again the Court observes that a remedy was provided under Maltese law, either in the context of ordinary proceedings, by means of a referral to the constitutional jurisdictions by the court hearing the merits of the case, or alternatively through the separate institution of constitutional redress proceedings.”*

No evidence has been produced and no arguments have been made by the applicant that could persuade this Court to depart from these reasoning. These proceedings have taken under a year and this Court is empowered by the Constitution to grant the applicant whichever remedy it deems necessary to adequately redress the violation suffered by him. This complaint is therefore manifestly unfounded and is consequently being rejected.

**For these reasons, the Court accepts the Attorney General’s pleas in respect of applicant’s complaints under Article 1 of Protocol 1 and Article 8 and 13 of the European Convention on Human Rights and rejects the Attorney General’s pleas**

**relating to applicant's complaint relating to Article 6 of the European Convention on Human Rights and consequently:**

- 1. Accedes in part to the first request of the Applicant, and declares that Applicant suffered a violation of his right to a fair trial within a reasonable time in the case Mary Anne Morland pro et noe vs Colin John Morland (130/2002);**
- 2. Denies the second request of the Applicant;**
- 3. Accedes to the second request and orders the Attorney General to pay the Applicant by way of compensation the sum of two thousand and five hundred euro (€2,500) by way of compensation for the violation of the right to a fair trial within a reasonable time, with interest accruing from the date of this judgement until payment in full is made.**

**One third of the costs of these proceedings are to be borne by the applicant, while the remaining two thirds are the borne by the respondent.**

**Read.**

**Judge Jacqueline Padovani Grima LL.D. LL.M. (IMLI)**

**Lorraine Dalli  
Deputy Registrar**