QORTI CIVILI PRIM' AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF MARK CHETCUTI LL.D.

Illum it-Tlieta, 10 ta' April 2018

Numru 1

Rikors Nru. 53/2017

Anna Camilleri, Pierre Camilleri, Ivan Camilleri, Allan Camilleri

vs

Tabib Principali tal-Gvern;
Avukat Generali

Il-Qorti,

Rat ir-rikors tar-rikorrenti tal-5 ta' Lulju 2017 li jghid hekk:

1. Illi r-rikorrenti huma l-armla u l-ulied ta' Antonio Camilleri li miet fit-25 ta' Gunju, 2011 (Vide Certifikat tal-mewt tal-imsemmi Antonio Camilleri - Dok. 1 u certifikat tat-twelid tar-rikorrenti Pierre, Ivan u Allan) ahwa Camilelri Dok. 2 u 3 u 4). Vide ukoll dokumenti u ricerki testamentarji (Dok.5,6,7);

2. Illi l-imsemmi Antonio Camilleri miet kagun ta' kancer ikkagunat esklussivament mill-esposizzjoni ghall-asbestos, maghruf bhala Malignant Mesothelioma (vide kawza tal-mewt fic-certifikat tal-mewt Dok. 1);

3. Illi l-imsemmi Antonio Camilleri kien jahdem mal-Malta Drydocks u dan kien l-uniku impjieg tieghu (vide 'employment history' tal-ETC anness u mmarkat Dok. 4);

4. Illi matul il-perijodu li l-imsemmi Antonio Camilleri dam hekk impjegat, l-asbestos kien 'staple material' fit-Tarzna u kien jintuza f'ammonti kopjuzi u minghajr l-ebda kontroll effettiv;

5. Illi ilu ghal ghexieren shah ta' snin maghruf li l-esposizzjoni ghall-asbestos hi ta' dannu 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 jipprovdu lil Antonio Camilleri bi protezzjoni fattwali, legali u informattiva biex jilqghu ghall-hsara ikkagunata mill-asbestos, u infatti Antonio Camilleri miet minhabba tali esposizzjoni;

7. Illi kien biss wara li r-rikorrenti u l-mejjet misserhom bdew jisimghu bil-mard u mwiet ikkagunati mill-asbestos ta' whud mill-kollegi ta' missierhom, li saru konxji tal-effetti nocivi tal-esposizzjoni ghall-asbestos u tali gharfien kien gradwali u maghruf minghajr l-intervent tal-entitajiet governattiva li kellhom l-obbligu jissupplixxu tali informazzjoni;

8. 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 hafna f'hajjithom u li kienu fil-kura palljattiva ta' missierhom minhabba marda ngustament u ntortament kontratta minnu;

9. Illi ir-rikorrenti 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 minn meta giet ratifikata minghajr riserva f'Jannar 1965 kif ukoll ai termini tal-Kap. 319 tal-Ligijiet ta' Malta.

10. Illi t-talbiet tar-rikorrenti f'dawn il-proceduri huma limitati ghad-danni morali.

Ghaldaqstant ghall-fatti u ghar-raguni fuq premessi, u ghal dawk kollha li jistghu jirrizultaw matul il-procedura odjerna, ir-rikorrent jitlob lil din l-Onorabbli Qorti tiddikjara li 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;

3. Id-dritt ghar-rispett tal-hajja privata fit-termini tal-paragrafu precedenti pero f'dak li ghandu x''jaqsam 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:

1. Illi ghal dak li ghandu x'jaqsam mal-mertu tal-ilmenti tar-rikorrenti, qabel xejn ir-rikorrenti jehtigilhom juru li l-mejjet Antonio Camilleri kien tassew espost ghall-asbestos u kif ukoll li l-kancer malinju li nstab fuqu kien konsegwenza u kawza unika tal-fatt li l-imsemmi Antonio Camilleri kien espost ghall-asbestos. F'dan il-kuntest ma jirrizultax mid-dokumenti li gew esibiti mar-rikors li l-kancer zviluppa minhabba li l-mejjet kellu kuntatt mal-asbestos;

2. Tabilhaqq mhux daqstant differenti minn kawzi civili ordinarji, ghalkemm hawn qeghdin fil-kamp kostituzzjonali, ir-rikorrenti xorta jridu jippruvaw in-ness tal-kawzalita u ma jistghux jistriehu fuq semplici suspetti, ipotezijiet u kongetturi, kif hekk qed jidher li qed jaghmlu r-rikorrenti fir-rikors kostituzzjonali taghhom;

3. Illi safejn l-ilment tar-rikorrenti jinsab imsejjes fuq l-allegazzjoni ta' ksur tad-dritt ghall-hajja, kif imhares bl-artikolu 33 tal-Kostituzzjoni u l-artikolu 2 tal-Konvenzjoni Ewropea, dan huwa assolutament bla bazi kemm bhala fatt u bhala dritt, peress li hadd mill-intimati intenzjonalment ma qieghed hajjet ir-rikorrenti fil-perikolu jew b'xi mezz cahhadhom mill-jedd ghall-hajja taghhom;
Fis-sewwa hadd mill-intimati ma kellu s-animus necandi li jnehhi hajjet ir-rikorrenti jew l-animus nocendi li jikkaguna xi hsara ghal sahhet ir-rikorrenti;

4. Illi dwar l-ilment tar-rikorrenti, marbut mal-jedd tal-privatezza kif protett taht l-artikolu 8 tal-Konvenzjoni Ewropea, l-esponent josserva li r-rikorrenti ma elaboraw xejn dwar din ix-xilja. Tassew imkien fir-rikors kostituzzjonali ma gie spjegat b'liema mod l-intimati indahlulhom fi hwejjighorn jew fil-hajja privata taghhom jew tal-familja taghhom. Ghalhekk inkwantu dan l-ilment ma giex sufficjentement imfisser, dan ghandu jigi mwarrab ukoll;

5. Madankollu biex l-argument ikun shih, l-esponenti assolutament jichdu bhala fatt li huma ndahlu jew hadu xi mizuri biex jikkompromettu jew ifixklu l-hajja privata jew tal-familja tar-rikorrenti;

6. Illi dejjem minghajr hsara ghal dak li nghad aktar kmieni, b'mod generali jinghad li l-Gvern Malti ha dawk il-mizuri mehtiega, inkluz bdil fil-ligi, biex jindirizza l-problema tal-asbestos karcinogenu fit-tarzna. Tassew malli l-Gvern sar jaf bil-perikolu ta' dan il-materjal, huwa ha certu passi rimedjali biex jigi evitat il-periklu. Infatti l-amministrazzjoni tat-Tarzna provdiet maskri u taghmir protettiv lill-haddiema u gie zgurat li jkun hemm ventilazzjoni adwegata ghaddejja;

7. Mhux fi zmien daqshekk imbieghed l-asbestos kien meqjus bhala wiehed mill-aqwa materji prima biex isolvu problemi ta' insulazzjoni. Hekk kif il-Gvern Malti sar jaf bir-riskju ta' dan il-materjal, inbeda process biex jitnehha dan il-materjal u sahanistra ghadda ligijiet biex iwaqqaf l-importazzjoni tieghu. Naturalment pero dan il-process kellu jiehu z-zmien tieghu ghaliex l-asbestos ma setax jisparixxi f'daqqa wahda;

8. Jigi b'hekk li l-Gvern Malti ma jistax jitqies responsabbli li ma pprojbixxiex l-uzu tal-asbestos jew li naqas milli jxerred taghrif dwar il-perikli sanitarji marbuta mal-esposizzjoni tal-asbestos malli sar jaf b'mod konklussiv bl-effetti negattivi tieghu fuq sahhet il-bniedem;

Ghaldaqstant fid-dawl tas-suespost ma hemm l-ebda lezjoni tad-drittijiet fundamentali tar-rikorrenti u din l-Onorabbli Qorti ghandha tichad l-allegazzjonijiet u t-talbiet kollha bhala infondati fil-fatt u fid-dritt.

Salv eccezzjonijiet ulterjuri

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' Antonio Camilleri li miet fil-25 ta' Gunju 2011 ta' 73 sena qed jallegaw li fiz-zmien twil li dam impjegat mal-Malta Drydocks mill-1959 sal-1993 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 Antonio Camilleri miet minhabba myocardial infraction, atrial fibrillation u mesothelioma.

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. 59 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 (fol. 62 tal-process) 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 Gertrude Scerri, rapprezentata f'Mater Dei li esebiet il-file mediku ta' Antonio Camilleri li minnu jirrizulta illi f'Marzu 2010 kienu jidhru l-komplikazzjonijiet medici li waslu ghal mewt ta' Antonio Camilleri ghalkemm beda jhossu ma jiflax fl-ahhar tal-2009.

Joseph Saliba, policy manager ta' Malta Shipyards fil-Ministeru tal-Infrastruttura f'xiehda wkoll riprodotta minn kawza ohra simili (fol. 35 u 52 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 (fol. 53 et seq. tal-process) 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.

Alan Camilleri bin il-mejjet xehed li missieru miet ta' 73 sena kawza ta' kancer kawzat mill-asbestos. Kien ilu jahdem it-tarzna mindu dahal meta kien ghadu tifel sa ma spicca bil-pensjoni fl-1993. Kellu diversi karigi fit-tarzna fosthom fitter. Kien attiv hafna fid-dar, jghum u jsiefer u jghin fil-knisja. Kien ta' appogg kbir ghal martu li kienet tbati bid-depression. Marad serjament bjen l-ahhar tal-2009 meta beda jkollu nuqqas ta' nifs kbir u ghejja. Ma kellux kondizzjonijiet ohra ta' sahha hlief cholesterol kontrollat. Dahal l-isptar u inghata kors kimoterapija li effettwatu hazin. Tilef l-aptit u l-piz u l-morfina li kien jiehu ghall ugigh kien irenduh konfuz. L-ahhar xhur ta' hajtu kellu qtugh kbir ta' nifs u kellu maskra tal-ossignu u lanqas kien johrog mid-dar. Hu u hutu 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 Antonio Camilleri 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 Antonio Camilleri 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. Antonio Camilleri 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-2010 kif jidher mill-istess notamenti u miet sena u tlett xhur wara. Ghalkemm hu minnu illi l-marda tfaccat b'mod accertat klinikament snin wara li Antonio Camilleri 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' Antonio Camilleri 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 Antonio Camilleri 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).
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> 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' Antonio Camilleri, 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' Antonio Camilleri kienet 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 Antonio Camilleri 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 Antonio Camilleri 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 zmien 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 Antonio Camilleri irtira u meta jidher pruvat li l-marda qerrieda qabdet mieghu cioe l-ahhar sena u tlett xhur 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 miet ta' 73 sena cioe tmintax-il sena 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' €9,000.

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' €9,000 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