QORTI CIVILI PRIM`AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON

Illum il-Hamis 28 ta` Gunju 2018

Kawza Nru. 1
Rikors Nru. 55/17JZM

Josephine Micallef

kontra

Avukat Generali
Mary Gatt (KI 0811247M)

Il-Qorti :

I. Preliminari

Rat ir-rikors prezentat fl-10 ta` Lulju 2017 li jaqra hekk :–

1. Premess illi r-rikorrenti tippossjedi b`titolu ta` cens annwu u perpetwu l-fond numru 16, li jgib l-isem ta` `Pamaga` precedentement maghruf bhala `Josephine` fi Triq il-Mosta n-Naxxar ;

2. U Billi permezz ta` kuntratt pubbliku fl-atti tan-Nutar Dottor Joseph Spiteri datat l-1 ta` Settembru 1973, missier ir-rikorrenti cioe Tommaso Micallef kkonceda b`titolu ta` sub-enfitewsi temporanja ghal sbatax-il sena l-fond de quo lill-intimata li dak iz-zmien kienet xebba u lil zewgha Paul Gatt [kopja tal-kuntratt qed tigi hawn annessa u mmarkata bhala ***Dokument JM1****] versu s-subcens annwu u temporanju ta` hamsa u disghin lira (Lm95) pagabbli kull sitt xhur bil-quddiem ;*

3. U Billi din il-koncessjoni sub-enfitewtika skadiet fl-1990 izda a tenur ta` l-Artikolu 12(2) tal-Kap.158 it-titolu tal-intimat gie konvertit ghal dak ta` kera ;

4. U Billi l-ahjar kera li giet accettata, f`Marzu 2013 kienet fl-ammont ta` €332 ghal sitt xhur kera ;

5. U Billi l-kera fuq premessa hija stabbilita mil-ligi u ma ghand hemm l-ebda ness mal-prezz li l-fond igib fis-suq ;

6. U Billi l-Att Numru X tal-2009 li kellu l-ghan biex itaffi d-diskriminazzjoni u l-ingustizzji li l-ligi specjali tal-kera kienet holqot kontra s-sidien tal-propjeta`, bl-ebda mod ma tghin lir-rikorrenti peress li ma taffetwax il-kera tal-fond hlief li kienet li hi gia baxxa hija awmentata kull tlett snin a bazi tal-gholi tal-hajja ;

7. U Billi bl-istat tal-ligi, kif inhi fil-present, ir-rikorrenti m`ghandha l-ebda speranza reali li qatt jiksbu pussess effettiv jew redditu reali mill-imsemmi fond tul hajjitha ;

8. U Billi l-privazzjoni tal-propjeta` hi ekwivalenti ghall-lezjoni tad-dritt tal-propjeta kif protetta mill-Kostituzzjoni ta` Malta u mill-Konvenzjoni Ewropea ;

9. U Billi ghalhekk qed jinkisru fil-konfront tar-rikorrenti d-drittijiet fondamentali taghha kif protetti mill-artikolu 37 tal-Kostituzzjoni ta` Malta, l-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea ;

Ghaldaqstant in vista tas-suespost ir-rikorrenti titlob bir-rispett lil din l-Onorabbli Qorti, sabiex prevja kwalsiasi dikjarazzjoni xierqa u opportuna, joghgobha :

1. Tiddikjara li qeghdin jigu vjolati d-drittijiet fundamentali tar-rikorrenti kif sancit mill-artikolu 37 tal-Kostituzzjoni ta` Malta u l-Ewwel Artikolu tal-Ewwel Protokol tal-Konvenzjoni Ewropea, (L-Ewwel Skeda tal-Kap 319).

2. Taghti lir-rikorrenti dawk ir-rimedji li jidhrilha xierqa u opprtuni, inkluzi l-pussess lura tal-fond numru 16, li jgib l-isem ta` "Pamaga" precedentement maghruf bhala "Josephine" fi Triq il-Mosta n-Naxxar u kumpens xieraq ghall-okkupazzjoni tal-istess fond bi vjolazzjoni tad-drittijiet taghhom

Bl-ispejjez kontra l-intimati li min issa huma ingunti in subizzjoni

Rat ir-risposta li pprezenta l-Avukat Generali fit-<u>28 ta` Lulju 2017</u> li taqra hekk :-

1. Illi l-lanjanza tar-rikorrenti hija fis-sens illi bit-thaddim tad-dispozizzjonijiet tal-artikolu 12(2) tal-Kap. 158 tal-Ligijiet ta` Malta fil-konfront taghha qed jigu miksura l-artikolu 37 tal-Kostituzzjoni ta` Malta kif ukoll l-ewwel artikolu tal-ewwel protokoll tal-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem u dan billi hija qed tigi mcahhda mit-tgawdija tal-proprjeta` li tinsab fi Triq il-Mosta n-Naxxar, minghajr ma qed tinghata kumpens adegwat ;

2. Illi in linea preliminari ir-rikorrenti trid iggib prova tat-titolu taghha fuq il-proprjeta` in kwistjoni. F`dan ir-rigward jinghad ukoll illi r-rikorrenti ma tistax tilmenta dwar perjodi qabel ma hi kellha titolu fuq il-proprjeta` in kwistjoni ;

3. Subordinament u minghajr pregudizzju ghas-suespost fil-mertu l-esponent jopponi l-allegazzjonijiet u l-pretensjonijiet kollha tar-rikorrenti bhala infondati fil-fatt u fid-dritt u dan ghas-segwenti ragunijiet li qeghdin jigu avvanzati minghajr pregudizzju ghal xulxin ;

4. Illi l-esponenti jecepixxu l-improponibilita` tal-artikolu 37 tal-Kostituzzjoni u dan peress illi dan l-artikolu japplika biss f`kaz ta` tehid forzuz tal-proprjeta`. Illi sabiex wiehed ikun jista` jitkellem fuq tehid forzuz jew obbligatorju, persuna trid tigi zvestita minn kull dritt li ghandha fuq dik il-proprjeta`. Pero` certament li fil-kaz odjern tali zvestiment ma jsirx u dan peress illi bit-thaddim tal-artikolu 12A tal-Kap. 158 tal-Ligijiet ta` Malta, ir-

rikorrenti ma tilfux ghal kollox id-drittijiet kollha fuq il-gid in kwistjoni. Il-mizura msemmija fil-ligi li qed jattakkaw ir-rikorrenti, ghalkemm tinkwadra ruhha taht kontroll ta` uzu, madakollu din certament ma twassalx ghal deprivazzjoni totali tal-proprjeta`. Isegwi ghalhekk li l-ilment tar-rikorrenti ma jinkwadrax fil-parametri tal-artikolu 37 tal-Kostituzzjoni u konsegwentement ghandu jigi michud ;

5. Illi safejn l-ilment tar-rikorrenti huwa msejjes fuq l-ewwel artikolu tal-ewwel protokoll tal-Konvenzjoni Ewropea, l-esponenti jirrelevaw li skont il-proviso ta` dan l-istess artikolu, l-Istat ghandu kull jedd li jghaddi dawk il-ligijiet li jidhirlu xierqa biex jikkontrolla l-uzu tal-proprjeta` skont l-interess generali. Illi hija gurisprudenza kostanti tal-Qorti ta` Strassburgu li l-Istat igawdi minn diskrezzjoni wiesgha sabiex jidentifika x`inhu mehtieg fl-interess generali u sabiex jistabilixxi liema huma dawk il-mizuri mehtiega ghall-harsien tal-interess generali ;

6. Illi tali diskrezzjoni tal-legislatur ma` ghandiex titbiddel sakemm din ma tkunx manifestament minghajr bazi ragjonevoli. Kif spjegat fis-suespost l-esponent jishaq li fil-kaz odjern hemm bazi ragjonevoli li tiggustifika l-promulgazzjoni tal-legislazzjoni li tinsab taht skrutinju fil-kawza odjerna ;

7. Illi dejjem minghajr pregudizzju ghas-suespost, ma hemm ebda ksur tal-artikolu 37 tal-Kostituzzjoni u tal-Ewwel Protokol tal-Konvenzjoni Ewropea u dan peress illi dak li gara fil-kaz odjern huwa li l-Istat tramite l-artikolu 12 irregolarizza sitwazzjoni ta` natura socjali fl-ambitu tal-gid komuni b`dana pero` li baqghu impregudikati d-drittijiet tas-sidien qua proprjetarji tal-fond in kwistjoni ;

8. Illi fir-rapport tal-Kummissjoni fil-kaz ***Connie Zammit et vs Malta*** *(applikazzjoni numru 16756/9) tat-12 ta` Jannar 1991 gie osservat illi "the Court has found no violation of the Convention in cases where the State has adopted measures in the field of housing regulations where a more far reaching interference with property rights was involved. Thus in* ***James and others*** *(Eur. Court. H.R., James and Others judgment of 21 February 1986, Series A no. 98) the leaseholders were accorded a statutory right to acquire the property from the owners, while in* ***Mellacher and others*** *Eur. Court. H.R., Mellacher and Others judgment of 19 December 1989, Series A no. 169) the legislation constituted an inducement to the leaseholder not to comply with the terms of a previously validly contracted tenacy agreement" ;*

Fil-fehma tal-esponent mizuri socjali implimentati sabiex jipprovdu akkomodazzjoni lill-persuni fil-bzonn certament jaqghu fil-kappa tal-interess generali. Illi l-artikolu 12 tal-Kap. 158 tal-Ligijiet ta` Malta huwa mahsub biex jipprotegi persuni milli jigu mkeccija mid-dar ta` abitazzjoni taghhom f`gheluq it-terminu koncess lilhom fil-kuntratt tal-enfitewsi jew sub-enfitewzi. Isegwi li dan l-artikolu ma jistax jigi klassifikat bhala wiehed mhux legittimu jew mhux fl-interess generali ;

9. Illi stabbilit li l-artikolu 12 tal-Kap. 158 tal-Ligijiet ta` Malta ghandu ghanijiet legittimi u huwa fl-interess generali bil-konsegwenza li ma hemm xejn hazin taht il-Konvenzjoni Ewropea, li l-ligi nostrana tiddisponi li fl-gheluq tal-enfitewzi jew sub-enfitewzi l-okkupant li jkun qed juza` l-fond bhala r-residenza tieghu ghandu jithalla fid-dar taht titolu ta` kera. Ifisser b`hekk li safejn ir-rikorrenti qeghdin jitolbu dikjarazzjoni gudizzjarja li l-ligi tikser il-Konvenzjoni Ewropea u li l-kirja favur Mary Gatt ghandha tigi mwaqqfa, tali talbiet mhumiex misthoqqa ;

10. Illi inoltre dwar l-ilment tal-allegata sproporzjon fil-kera, jigi rilevat li bis-sahha tal-Att X tal-2009 kif emendat bl-Att V tal-2010, senjatament l-artikolu 38(4)(A), il-valur tal-kera beda joghla kull tlett snin skont l-artikolu 1531C tal-Kodici Civili (Kap 16 tal-Ligijiet ta` Malta) . Fil-kaz tar-rikorrenti, l-ammont tal-kera li hi qeghdha tippercepixxi mhijiex kera daqstant sproporzjonata tenut ukoll kont tal-fatt li f`cirkostanzi bhal dawn, fejn jezisti interess generali legittimu, ma jistax isir paragun mal-valur tal-proprjeta` fis-suq hieles kif pretiz mir-rikorrenti ;

11. Illi l-Qorti Ewrope stess fil-gurisprudenza taghha fosthom fil-kaz ta` ***Amato Gauci v Malta*** *(App Nru 47045/06 Deciz 15/09/2009) rrikonoxxiet li "State control over levels of rent falls into a sphere subject to a wide margin of appreciation by the State <u>and its application may often cause significant reductions in the amount of rent chargeable</u>"* (Enfasi tal-esponent)

12. Illi ghalhekk anke jekk fil-kaz odjern jirrizulta li l-kera dovuta lir-rikorrent hija inferjuri ghall-valur lokatizju fis-suq, dan it-tnaqqis huwa kontro-bilancjat bil-margini wiesgha tal-Istat li jillegisla fil-kuntest ta` mizuri socjali ;

13. Illi fl-umli fehma tal-esponent fil-kaz odjern din l-Onorabbli Qorti m`ghandhiex tevalwa din il-ligi fil-kuntest principalment ta` spekulazzjoni tal-proprjeta` imma ghandha tiskrutinja u tapplika l-ligi fil-qafas aktar wiesgha u cioe` mill-aspett ta` proporzjonalita` fid-dawl tar-realta` ekonomika u socjali tal-pajjiz in generali ;

14. Illi jsegwi ghalhekk li meta wiehed jizen dan fl-assjem kollu, il-konkluzjoni hija li anke dina l-parti tal-ilment tar-rikorrenti dwar in-nuqqas ta` propozjonalita` ma huwiex gustifikat ghaliex ma hemm ebda ksur tal-ewwel artikolu tal-ewwel protokoll tal-Konvenzjoni Ewropea u kwindi kull talba ghall-kumpens prospettata mir-rikorrenti mhijiex misthoqqa ;

15. Illi minkejja li f`kazijiet ohra kontra l-Istat Malti fejn saret lanjanza ta` ksur tad-dispozizzjonijiet tal-ewwel artikolu tal-ewwel protokoll tal-Konvenzjoni Ewropea bbazata fut it-thaddim tal-artikolu 12 tal-Kap 158 tal-Ligijiet ta` Malta, il-Qorti Ewropea kienet waslet ghall-konkluzjoni li kien hemm sproporzjonalita` u tqassim mhux xieraq tal-pizijiet u l-beneficcji, jigi rilevat li tali gurisprudenza hija limitata ghall-fattispecie u ghac-cirkostanzi partikolari ta` dawk il-kazijiet. Huwa rilevanti pero` lil-istess Qorti Ewropea rrikonoxxiet principju importanti: "The Court considers that the legislation at issue in the present case pursued a legitimate social policy aim, namelt the social protection of tenants" ***(Amato Gauci V Malta*** *, paragrafu 55) ;*

16. Illi dejjem minghajr pregudizzju ghas-suespost, dato ma non concesso li din l-Onorabbli Qorti jidhrilha li kien hemm xi ksur tad-drittijiet fundamentali tar-rikorrenti, fatt li qed jigi kontestat, l-esponent jirrileva li fic-cirkostanzi tal-kaz, dikjarazzjoni ta` ksur hija sufficjenti u ma hemmx lok ghar-rimedji ohra mitluba mir-rikorrenti ;

17. Salv eccezzjonijiet ulterjuri.

Ghaldaqstant fid-dawl tas-suespost jirrizulta li ma hemm ebda lezzjoni tad-drittijiet fundamentali tar-rikorrenti u din l-Onorabbli Qorti ghandha tichad il-pretensjonijiet u t-talbiet kollha bhala infondati fil-fatt u fid-dritt u dan bl-ispejjez kontra l-istess rikorrenti.

Rat in-nota li pprezentat ir-rikorrenti fit-30 ta` Novembru 2017 li permezz taghha kienet ceduta l-kawza limitatament fil-konfront tal-intimata Mary Gatt billi fil-mori tal-kawza din irritornat ic-cwievet tal-fond *de quo* lir-rikorrenti.

Semghet ix-xiehda u rat il-provi l-ohra li tressqu fil-kors tal-kawza.

Rat illi l-kawza thalliet ghas-sentenza ghal-lum bil-fakolta` li l-partijiet jipprezentaw noti ta` osservazzjonijiet.

Rat in-noti ta` osservazzjonijiet tar-rikorrenti u tal-Avukat Generali.

Rat l-atti l-ohra tal-kawza.

II. <u>Provi</u>

<u>Rev Dun Joseph Galea</u> xehed illi huwa kien ilu jaf lir-rikorrenti ghal dawn l-ahhar 35 sena. Hija xebba ; u la taf taqra u lanqas tikteb. Sar jafha minn ghaqda religjuza. Sar prokuratur taghha ricentement.

Kompla jixhed illi r-rikorrenti kienet wirtet il-post in kwistjoni. Missierha kien bennej u kien ghamel id-dar *furnished* izda ma kinux damu joqghodu hemm.

Qal li l-post kien inghata b` cens ghal 17-il sena fl-1 ta` Settembru 1973 u allura kellu jaghlaq fl-ahhar ta` Awissu 1990.

Kompla jghid illi missier ir-rikorrenti miet fl-1977. Meta saret il-qasma fl-1983, ic-cens kien ghadu ghaddej.

Qal illi meta ghalaq ic-cens, huwa kien ta parir lir-rikorrenti sabiex tmur tkellem avukat. Fil-fatt kellmet lill-Av. Borg li qalilha illi minhabba l-ligi li kienet vigenti dak iz-zmien, ic-cens kien gie konvertit ghal kera izda l-ammont li kellu jithallas bhala kera sar id-doppju ta` dak li kien jithallas qabel bhala cens. Ic-cens originali kien ta` Lm 95 kull sena pagabbli kull sitt xhur bil-quddiem. Meta saret il-konverzjoni ghal kera, bdiet tithallas is-somma ta` Lm 190 fis-sena pagabbli kull sitt xhur bil-quddiem.

Stqarr illi wara 15-il sena, il-kera kellha tigi aggustata skont l-gholi tal-hajja izda huwa ghamel zmien imsiefer u ma gietx aggustata tajjeb. Imbaghad avvicina lill-avukat li kiteb lill-inkwilina sabiex thallas id-differenza. L-inkwilina accettata biss li thallas id-differenza ta` l-ahhar hames snin biss.

Ikkonferma li llum il-post inghata lura lir-rikorrenti.

Qal illi l-post kien *furnished* izda gie ritornat lura mkisser u minghajr xejn go fih.

Spjega li r-rikorrenti kienet ilha mis-snin disghin trid lura l-post izda ma setghetx minhabba l-ligi vigenti.

Sahaq li r-rikorrenti tghix go faqar kbir. Fil-fatt huwa stess jipprovdi ghall-ghejxien taghha. Ghandha biss pensjoni ta` EUR 220 kull erba` gimghat u llum tinsab go dar ta` l-anzjani.

Sostna li l-Gvern kien jehodilha anke zewg terzi mill-kera li suppost kienet tircievi.

Stqarr illi r-rikorrenti ghandha dar ohra fejn kienet toqghod qabel.

Fil-**<u>kontroezami,</u>** huwa kkonferma li r-rikorrenti ghandha dar f`isimha li kienet akkwistat hi stess bl-ghajnuna ta` missierha. Illum ir-rikorrenti ghandha zewg idjar taghha li huma vojta. Id-dar tar-rikorrenti li kienet tghix fiha tinsab fuq garaxx li mhuwiex proprjeta` taghha. Il-hsieb tar-rikorrenti huwa li d-dar li kienet tghix fiha l-intimata Gatt terga` tinkera biex b` hekk ikollha ftit flus ohra biex tghix.

Qal illi r-rikorrenti ghamlet zmien tahdem bhala purtinara mal-Gvern. Qal li ma jafx jekk l-inkwilina qattx talbet lir-rikorrenti biex taghmel xi xoghol ta` manutenzjoni fid-dar mikrija. Il-kera dejjem thallset b`mod regolari.

<u>Perit Abigail Scicluna Lewis</u> xehdet illi hija kienet inkarikata mir-rikorrenti sabiex taghti stima tal-valur lokatizju tal-fond 16, Pamaga, Mosta Road, Naxxar ghas-snin ta` bejn l-2007 u l-2017.

Iddeskriviet il-post bhala *maisonette* sitwata fi triq kwieta, qrib il-bzonnijiet normali. Fiha kcina, kamra ta` l-ikel, salott, *toilet,* tlitt ikmamar tas-sodda, kamra tal-banju u *washroom*. Id-dar ghandha bzonn ta` *refurbishment* u manutenzjoni ghax ma gietx mizmuma tajjeb matul dawn l-ahhar snin.

Tghid illi l-valur lokatizju huwa ta` EUR 250 fix-xahar ghas-snin 2007 u 2008 ; EUR 300 fix-xahar ghas-snin 2009 sa 2012 ; EUR 600 fix-xahar ghall-2013 ; EUR 500 fix-xahar ghall-2014 ; EUR 550 fix-xahar ghall-2015 ; EUR 600 fix-xahar ghall-2016 ; u EUR 650 fix-xahar ghall-2017.

Perit Paul Buhagiar xehed illi, fuq inkariku tal-Avukat Generali, ghamel spezzjoni tal-fond 16, Pamaga, Triq il-Mosta, Naxxar, fit-12 ta` Jannar 2018, fejn ha l-qisien u ghamel rendikont tal-kundizzjoni attwali tas-sit.

Spjega li l-fond qieghed fuq zewg livelli bl-arja tal-bejt tieghu. Il-livell terran huwa mal-livell tat-triq bl-akkomodazzjoni principali tinsab fil-livell tal-ewwel sular. Il-post qieghed fi triq relattivament kwieta izda centrali hafna, tefgha ta` gebla `l boghod mit-triq principali li tghaqqad in-Naxxar mal-Mosta. Il-post huwa milhuq tajjeb minn servizzi essenzjali bhal hwienet mehtiega ghal bzonnijiet ta` kuljum.

Ipprezenta *site plans* bi skali differenti fosthom *orthophoto plan.* Dawn id-dokumenti kienu estratti mill-*geo portal* tal-Awtorita` tal-Ippjanar u jirreferu ghal ritratti ricenti li ttiehdu fl-2016.

Spjega li l-post inbena fl-1973 u gie battal fl-2017. Qal li l-valutazzjoni li ssegwi hija bazata fuq is-sena 2017, is-sena meta s-sid hadet lura l-pussess tal-post minghand ic-censwalist originali li kien ha l-post b`cens fl-1973 ghal zmien 17-il sena. Il-post inzamm b`kera minn dak li kien ic-censwalist ghal 27 sena ohra wara li ghalaq ic-cens fl-1990.

Stqarr illi fil-livell terran il-fond ghandu ntrata kbira b`tarag ghala ngliza u b`kamra ohra utilitarja li tiehu d-dawl u l-arja minn go bitha ta` terzi. Din il-kamra tista` tintuza bhala kamra tas-sodda u ghalhekk il-post jista` jitqies bhala wiehed ta` tlett kmamar tas-sodda. Fl-ewwel sular hemm kamra kbira fuq il-faccata li kienet tintuza bhala kamra tas-sodda principali u kuritur li jaghti ghall-kmamar l-ohra flimkien mal-bitha nterna u t-terazzin fuq wara. Il-kmamar l-ohra jikkonsistu f` salott li jaghti ghal fuq il-bitha nterna, kamra tas-sodda ohra b` tieqa zghira fil-gholi, kamra tal-banju u kamra tal-ikel u kcina flimkien. Il-bejt titla` ghalih minn tarag mikxuf fil-bitha nterna. Spjega li fuq il-bejt hemm wkoll kamra tal-hasil.

Xehed illi l-post huwa mizmum tajjeb u m`ghandux difett strutturali evidenti. Il-madum tal-art huwa fil-maggoranza tieghu tal-muzajk u s-soqfa huma tal-konkos li ghalkemm ghaddew minn fuqhom ghexieren ta` snin

ghadhom f` kundizzjoni tajba. L-aperturi huma tal-*aluminium* jew tal-injam tal-ahmar mizbugha.

Spjega li l-inkwilin jidher li ghamel diversi benefikati fil-post bhal kamra tal-banju li hija wahda relattivament ricenti.

L-arja msaqqfa totali fuq it-tlett livelli mehuda fl-assjem tlahhaq ghal madwar 158.68 metri kwadri. It-terazzin ta` wara, il-bitha interna u l-bejgh huma madwar 141.43 metru kwadru iehor. L-arja tal-btiehi u l-bejt normalment tittiehed bhala 20% tal-arja msaqqfa ghall-finijiet ta` stima tal-valur tal-proprjeta`. Ghalhekk, l-arja msaqqfa ekwivalenti tista` tittiehed bhala ta` daqs ta` 186.97 metru kwadru.

Kompla jixhed illi minn studju estensiv li ghamel fl-2015 dwar il-valur ta` appartamenti mibnija qabel l-1979, il-valur tal-arja msaqqfa ghal kull metru kwadru ekwivalenti fin-Naxxar jista` jittiehed li jammonta ghal madwar EUR 800. Dan il-valur, li huwa wiehed ghal stat u kundizzjoni ta` sit accettabbli u interament abitabbli, jirrelata ghal madwar sentejn ilu, u ghandu jizdied b` madwar 30% aktar biex jaghmel tajjeb ghall-fatt li l-post mhux appartament izda ghandu jittiehed bhala dar, u ghandu jizdied ukoll bi 15% ohra biex jirrifletti ghaz-zieda fil-valur tal-propjeta` tul sentejn. Ghalhekk il-valur kurrenti kull metru kwadru tal-arja ekwivalenti hija EUR 1,196. Ghalhekk il-valur prezenti tal-post, fi stat liberu u frank, huwa ta` EUR 223,500 meta jitqarreb ghall-eqreb EUR 500. Il-kera f` kazi simili, fejn l-ghamara kienet fil-maggoranza tal-inkwilin normalment tittiehed ghal mhux izjed minn 2.75% tal-valur tal-post, u ghalhekk tammonta ghal EUR 6,146.25 fis-sena jew EUR 512.19 fix-xahar.

Mary Gatt xehed illi qabel telqet mill-post in kwistjoni f`Mejju 2017, kienet ilha tokkupah ghal madwar 44 sena.

Stqarret li hija ghamlet hafna xogholijiet fil-post. Qabilha fil-post kien joqghod in-nannu tar-ragel ta` ohtha ; wara li hareg hu, hadet il-fond hi. Ghall-ewwel 17-il sena, kienet thallas cens ta` Lm 100 fis-sena ; imbaghad bdiet thallas id-doppju f`kera.

Ikkonfermat li kienet irciviet ittra legali minghand Dun Joseph Galea sabiex thallsu zieda tal-kera skont l-gholi tal-hajja ghas-snin precedenti ukoll.

Spjegat li r-rikorrenti kienet dejjem taccetta l-hlas izda meta dahal fix-xena r-Rev. Galea, ic-cekkijiet bdew jintbaghtu lura. Kien ghalhekk li bdiet tiddepozita l-kera fir-Registru tal-Qorti.

Qalet li tat lura c-cavetta tal-post ghaliex intalbet thallas kera ta` EUR 500 fix-xahar.

Fissret illi fil-post hija ghamlet l-bibien tal-injam kollha u l-gallarija. Dan ix-xoghol ma sarx meta kien ghadu ghaddej ic-cens izda wara.

Kompliet tfisser illi kienu bdew jidhru x-xbieki fis-soqfa tal-kamra tas-sodda u fis-salott. U ghamlet tiswija. Kienet ser taghmel l-isqfa tal-kuritur izda mbaghad iddecidiet li ma taghmel xejn u telqet mill-post.

Spjegat li fis-snin tac-cens, ghamlet il-madum ta` isfel, dawl u ilma mghoddi minn gol-hajt, twieqi u bibien tal-aluminium u l-louvers, kamra tal-banju, il-madum tal-kcina wara, membrane, tqaxxir tal-antiporta, gallarija tal-aluminium u manutenzjoni tas-soqfa. Anke l-bieb ta` barra ghamlitu gdid.

Qalet illi fid-dar kollox kien isir fl-ewwel sular. Hemm l-aktar li sar rinnovar. Is-sid qatt ma ghamlet xejn fil-post.

Kompliet tixhed illi dak kienu l-uniku post li kellha. Illum qeghda tabita ma` binha go post li xtara hu. Hija kienet tahdem bhala skrivana t-Tarzna.  Ghamlet zmien fl-Armata u anke segretarja ta` Professur tal-Malti. Fl-1977 il-paga taghha kienet ta` madwar Lm 62 fix-xahar.  Kellha tibqa` tahdem ghax ir-ragel taghha kien jaqla` inqas minnha. Waqfet tahdem meta kellha t-tifel.

Sostniet li hija nkarigat perit li ghamel stima tal-ispejjez li ghamlet fil-post. Ikkalkola li nefqet mat-EUR 18,000. It-tqaxxir tal-opramorta fuq il-bejt u tikhil taghha sewa EUR 1,300.

Fil-**kontroezami**, xehdet illi tat lura c-cwievet f`Novembru 2017. Halliet il-post hekk kif kienet sabitu. Kulma hadet maghha kienet l-ghamara. Sostniet li huma rega` wahhlu bozoz u sink li qalghu. Is-sink li kien hemm kien bil-*cabinet* u ghalhekk, minkejja li l-*cabinet* kien *fixed,* dan inqala` u minfloku wahlet *sink* biss.

Ipprezentat sett ritratti tal-post kif kien u kif inghata lura lis-sid.

Sostniet li hija bidlet il-madum ta` isfel ghax kien kollu mhaffer. Qabel marret tghix hemm, kien hemm joqghod is-sid u bintu r-rikorrenti. Cahdet li hadet il-post bhala *furnished*. Kulma kien hemm kien bank imkisser fil-kcina, li kienu jaghmlu purtieri mieghu sabiex jippruvaw jahbu l-affarijiet. Imbaghad wara 25 sena, it-tifel taghha tahom kcina gdida.

III. <u>Fatti</u>

Ir-rikorrenti hija l-utilista perpetwa tal-fond 16, Pamaga gia` Josephine, Triq il-Mosta, Naxxar.

B`kuntratt tal-1 ta` Settembru 1973 fl-atti tan-Nutar Dottor Joseph Spiteri, missier ir-rikorrenti, cioe` Tommaso Micallef, ikkonceda l-fond de quo b` titolu ta` sub-enfitewsi temporanja ghal 17-il sena lil Mary u Paul konjugi Gatt versu l-hlas ta` subcens annwu u temporanju ta` Lm 95 pagabbli kull sitt xhur bil-quddiem.

Skont il-koncessjoni originali, is-subenfitewsi temporanja skadiet fl-1990, izda a tenur ta` l-Art 12(2) tal-Kap 158 tal-Ligijiet ta` Malta, it-titolu ta` konjugi Gatt kien konvertit ghal kera.

Id-disposizzjoni llum taqra hekk :-

> *(2) Meta dar ta` abitazzjoni tkun inghatat b`enfitewsi temporanja -*
>
> *(a) ghal perijodu ta` mhux izjed minn tletin sena, jekk il-kuntratt ikun sar qabel il-21 ta` Gunju, 1979, jew*
>
> *(b) ghal kull perijodu iehor, jekk il-kuntratt ikun sar wara l-imsemija data,*
>
> *u fit-tmiem xi enfitewsi bhal dik l-enfitewta jkun cittadin ta` Malta u jkun jokkupa d-dar bhala residenza ordinarja tieghu l-enfitewta jkollu jedd li jibqa` jokkupa id-dar b`kera minghand il-padrun dirett -*

(i) b`kera li jkun daqs ic-cens li kien jithallas minnufih qabel ma tkun ghalqet l-enfitewsi, mizjud, fil-bidu tal-kirja tad-dar bis-sahha ta` dan l-artikolu, u wara t-tmiem ta` kull hmistax-il sena wara sakemm tibqa` l-kirja favur l-istess kerrej, b`daqstant mic-cens li kien jithallas minnufih qabel dak il-bidu jew il-bidu ta` kull perijodu sussegwenti ta` hmistax-il sena, li jkun ammont li ma jkunx izjed minn dak ic-cens, li jirrapprezenta bi proporzjon ghal dak ic-cens iz-zieda fl-inflazzjoni minn meta c-cens li ghandu jizdied ikun gie stabbilit l-ahhar ; u

(ia) suggett ghall-kondizzjonijiet stabbiliti fis-subartikolu 5(3)(b); u

(ii) taht dawk il-kondizzjonijiet l-ohra li jistghu jigu miftehma bejniethom jew, jekk ma jkunx hemm ftehim, skont kif il-Bord jidhirlu xieraq.

Sal-prezentata tar-rikors promotur, Mary Gatt kkienet ghadha tokkupa l-fond, izda fil-mori tal-kawza, ir-rikorrenti hadet lura c-cwievet tal-fond in kwistjoni minghand Mary Gatt. Ghalhekk il-kawza kienet ceduta limitatament fil-konfront taghha u l-kawza kompliet kontra l-intimat Avukat Generali.

IV. <u>L-eccezzjoni preliminari numerata tnejn (2) tal-intimat Avukat Generali</u>

L-Avukat Generali jinsisti fuq il-prova mir-rikorrenti tat-titolu taghha ghall-fond in kwistjoni.

Ighid ukoll li r-rikorrenti ma tistax tilmenta dwar iz-zmien ta` qabel kisbet it-titolu fuq il-proprjeta` in kwistjoni.

Il-Qorti tqis li l-kawza tal-lum mhijiex l-*actio reivindicatoria.*

Fis-sentenza li tat fis-7 ta` Frar 2017 fil-kawza **<u>Robert Galea vs Avukat Generali et</u>** (Rik Kost 50/2015 JRM) din il-Qorti diversament presjeduta qalet hekk :-

*"Illi biex wiehed ikun f`qaghda li juri li garrab ksur tal-jedd fundamentali tieghu taht l-artikolu 37 tal-Kostituzzjoni m`ghandux ghalfejn jipprova titolu assolut u lanqas wiehed originali bhallikieku l-azzjoni dwar ksur ta` jedd fundamentali kienet wahda ta` rivendika (Kost. 27.3.2015 fil-kawza fl-ismijiet **<u>Ian Peter Ellis et vs Avukat Generali et</u>**). Huwa bizzejjed, ghall-finijiet ta` dak l-artikolu, li wiehed juri li ghandu jedd fil-haga li tkun li bih jista` jieqaf ghall-pretensjonijiet ta` haddiehor.*

Imbaghad, ghall-finijiet tal-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni, huwa bizzejjed li l-persuna turi li kellha l-pussess tal-haga li tkun."

Dan premess, il-Qorti tghid illi kien muri mir-rikorrenti illi ghandha titolu tajjeb ghall-fond de quo. Jirrizulta li r-rikorrenti saret is-sid tal-fond de quo bis-sahha ta` att ta` divizjoni tat-30 ta` April 1983 (fol 72 sa 87).

L-inkwilina Mary Gatt ukoll ikkonfermat li r-rikorrenti kienet is-sid ta` l-post. Fil-fatt kienet thallasha l-ewwel ic-cens imbaghad il-kera skont il-ligi.

Il-provi tar-rikorrenti dwar it-titolu ma kienux kontestati mill-intimat Avukat Generali.

Il-Qorti tasal ghall-fehma li r-rikorrenti ghandha titolu tajjeb ghall-post li jintitolaha tippretendi li tgawdi l-jeddijiet taghha fuqu u li allura titlob il-harsien ta` dawk il-jeddijiet fil-kaz li tkun ipprivata minnhom.

Ghalhekk l-eccezzjoni preliminari numerata 2 qeghda tkun <u>michuda</u>.

V. <u>L-istatus ta` *vittma* tar-rikorrenti</u>

Fin-nota ta` sottomissjonijiet tieghu, l-Avukat Generali jirrimarka li r-rikorrenti qatt ma xehdet fil-kawza.

Jirrimarka wkoll illi l-unika xiehda li gabet ir-rikorrenti tas-sitwazzjoni taghha kienet dik tar-Rev. Fr. Joseph Galea.

Skont l-Avukat Generali, Fr Galea ma fissirx x`tip ta` prokura nghata mir-rikorrenti.

Inghad illi r-rikorrenti ma hadet ebda sehem sehem attiv fil-kawza.

Lanqas talbet milli tkun ezentata milli tattendi ghall-udjenzi.

Skont l-Avukat Generali, ir-rikorrenti m`ghandhiex interess fil-kawza bil-konsegwenza li ma ppruvatx li hija *vittma* ta` ksur ta` jeddijiet fondamentali.

Il-Qorti tirrileva illi fil-kors ta` dan il-procediment ir-rikorrenti kienet rapprezentata mill-avukat taghha, li ffirma wkoll in-nota tal-osservazzjonijiet taghha.

Anke jekk hija ma tatx ix-xiehda taghha, ma jfissirx li m`ghandhiex l-interess rikjest mil-ligi sabiex tippromwovi l-azzjoni.

Li xehed Fr Galea ghandu rilevanza ghax apparti li dan spjega ghaliex ma kenitx prezenti r-rikorrenti ghall-udjenzi (u ma kienx kontradett) jikkonferma l-istatus taghha ta` vittma.

VI. <u>L-eccezzjoni numerata erbgha (4) tal-intimat Avukat Generali</u>

L-Avukat Generali jeccepixxi l-improponibilita` tal-Art 37 tal-Kostituzzjoni bhala bazi ghall-ilment tar-rikorrenti stante li d-disposizzjoni tghodd biss fil-kaz ta` tehid forzuz tal-proprjeta`.

Intqal li sabiex tkun tista` tressaq ilment dwar tehid forzuz jew obbligatorju, persuna trid tigi zvestita minn kull dritt li ghandha fuq dik il-proprjeta`.

Ghar-rigward tal-kaz odjern, l-Avukat Generali jikkontendi li ma kienx hemm privazzjoni ghaliex bl-applikazzjoni tal-Art 12(2) tal-Kap 158 ir-rikorrenti ma tilfitx ghal kollox id-drittijiet kollha fuq il-fond in kwistjoni.

Ghall-kaz tal-lum il-parti rilevanti tal-<u>Art 37</u> hija <u>s-subartikolu (1)</u> li jghid :-

> *Ebda proprjetà ta` kull xorta li tkun ma ghandu jittiehed pussess taghha b`mod obbligatorju, u ebda nteress fi jew dritt fuq proprjetà ta` kull xorta li tkun ma ghandu jigi miksub b`mod obbligatorju, hlief meta hemm disposizzjoni ta` ligi applikabbli ghal dak it-tehid ta` pussess jew akkwist –*
>
> *(a) ghall-hlas ta` kumpens xieraq ;*
>
> *(b) li tizgura lil kull persuna li tippretendi dak il-kumpens dritt ta` access lil Qorti jew tribunal indipendenti u imparzjali mwaqqaf b`ligi sabiex jigi deciz l-interess taghha fi jew dritt fuq il-proprjetà u l-ammont ta` kull kumpens li ghalih tista` tkun intitolata, u sabiex tikseb hlas ta` dak il-kumpens ; u*
>
> *(c) li tizgura lil kull parti fi proceduri f`dik il-Qorti jew tribunal dwar pretensjoni bhal dik dritt ta` appell mid-decizjoni taghha lill-Qorti tal-Appell f`Malta :*
>
> *Izda f`kazijiet specjali l-Parlament jista`, jekk hekk jidhirlu xieraq li jaghmel fl-interess nazzjonali, b`ligi jistabbilixxi l-kriterji li ghandhom jitharsu, maghduda l-fatturi u c-cirkostanzi l-ohra li ghandhom jitqiesu, biex jigi stabbilit il-kumpens li ghandu jithallas dwar proprjetà li jittiehed pussess taghha jew li tigi akkwistata b`mod obbligatorju; u f`kull kaz bhal dak il-kumpens ghandu jigi iffissat u ghandu jithallas skont hekk.*

Fis-sentenza li tat il-Qorti Kostituzzjonali fil-25 ta` Frar 2011 fil-kawza **<u>Lay Lay Co Ltd vs L-Awtorita ta` Malta Dwar l-Ambjent u l-Ippjanar et</u>** inghad illi l-Art 37 tal-Kostituzzjoni japplika biss meta jkun hemm tehid forzjuz ta` proprjeta, mhux meta l-ilment ikun jirrigwarda l-kontroll jew limitazzjoni ta` l-uzu ta` proprjeta.

Fis-sentenza ta` din il-Qorti diversament presjeduta tat-3 ta` Ottubru 2008 fil-kawza : **<u>Josephine Bugeja vs Avukat Generali et </u>** (Rik Kost 1/2002 TM) : kien diga` affermat dan il-principju.

Inghad hekk :-

> *"Dan qed jinghad peress li biex japplika l-principju ta` tehid forzuz wiehed irid jara jekk ittehditx proprjeta` b`mod li ssid originali jigi zvestit minn kull dritt li ghandu fuq il-proprjeta`. F`dan il-kaz, il-fond kien u ghadu proprjeta` tar-rikorrenti, li tista` taljena jew tittrasferixxi l-fond lill-terzi, ghalkemm il-valur tal-fond certament qieghed affettwat mic-cirkostanzi msemmija .... Fil-fatt, kif qalet l-Onorabbli Qorti Kostituzzjonali fil-kawza "**<u>Galea et vs Briffa et</u>**", deciza fit-30 ta` Novembru, 2001, li kienet titratta mid-dritt ta` enfitewta, li kien igawdi minn koncessjoni ta` anqas minn tletin sena, li fit-tmien l-enfitewsi jikkonverti t-titolu tieghu f`wiehed ta` kera, bl-okkupazzjoni tkun protetta bil-ligi, biex ikun hemm ksur tal-Kostituzzjoni, jrid ikun hemm tehid tal-proprjeta`, u mhux biss regolamenti li jikkontrollaw l-uzu tal-istess proprjeta`.*
>
> *Dik l-Onorabbli Qorti ghamlet is-segwenti osservazzjonijiet fil-kuntest tat-tgawdija ta` fond.*
>
> *"Jibqa` pero` l-problema jekk din il-limitazzjoni statutorja fir-rigward tat-tgawdija tal-proprjeta` setghetx tigi ekwiparata mat-tehid ta` pussess taghha b`mod obbligatarju ghaliex hi din l-ahhar figura guridika illi tattira l-protezzjoni minn privazzjoni ta` proprjeta` bla kumpens ai termini tal-artikolu 37 tal-Kostituzzjoni ... Il-Kostituzzjoni titkellem minn tehid ta` pussess forzat b`mod obbligatorju. Dicitura li, wehidha, minghajr riferenza ghad-dritt ta` tgawdija pacifika fih innifsu donnu timplika li biex tigi estiza l-protezzjoni tal-Kostituzzjoni jehtieg li jkun hemm privazzjoni ta` proprjeta` u li din tkun effett dirett ta` xi att tal-Istat u mhux bizzejjed li jkun hemm privazzjoni tad-dritt tat-tgawdija pacifika bhala rifless ta` tali att ...*

Il-Kostituzzjoni ta` Malta ghandha approcc divers ghad-dritt tal-proprjeta`. Fl-artikolu 32 hi telenka fost id-drittijiet u l-libertajiet fondamentali tal-individwu "it-tgawdija ta` proprjeta`". Dan id-dritt fondamentali li l-individwi kollha b`mod indiskriminat ghandhom igawdu l-protezzjoni tal-Kostituzzjoni, pero`, hu soggett "ghar-rispett tad-drittijiet u l-libertajiet tal-ohrajn u tal-interess pubbliku". Dan l-artikolu hu pero` wiehed dikjaratorju u jidher li t-twettieq tieghu fir-rigward tad-dritt ta` proprjeta` hu limitat ghall-applikazzjoni tal-artikolu 37 fuq citat li l-vjolazzjoni tieghu taghti lok ghar-rimedju kostituzzjonali. Jidher ghalhekk li kontrarjament ghad-dikjarazzjoni tal-principju, fl-ewwel sentenza tal-ewwel artikolu tal-Ewwel Protokol Tal-Konvenzjoni Ewropeja, (Every natural or legal person is entitled to the peaceful enjoyment of his possessions), l-artikolu 32 li jiddikjara d-dritt ghall-proprjeta` b`mod generali ma hux "ut sic" enforzabbli f`xi Qorti. Infatti s-subinciz 1 tal-artikolu 46 jipprovdi illi jaghti biss lok gharrikors quddiem il-Qorti Kostituzzjonali u jista` biss jintalab rimedju ghalihom il-kazijiet ta` vjolazzjonijiet taht l-artikoli 33 sa 45.

Dan ifisser illi biex ir-rikorrenti jkollhom success fis-sottomissjonijiet taghhom fir-rigward tal-artikolu 37 tal-Kostituzzjoni, huma jridu sodisfacentement jippruvaw illi l-fatti kif provati … jinkwadraw ruhhom fl-estremi tas-subinciz 1 tal-artikolu 37 ….".

Jista` allura b`logika jigi arguwit illi l-artikolu 37 jitkellem car u tond fuq cahda tal-proprjeta` jew id-dritt fuqha minghajr kumpens xieraq. Ifisser dan li ghandek vjolazzjoni jekk ghandek privazzjoni totali tal-proprjeta jew xi jedd fuqha minghajr l-ebda kumpens jew ahjar minghajr kumpens li ma jkunx xieraq. Din il-konkluzjoni hi wkoll suffragata mill-kumplament tal-artikolu 37 li proprju jipprovdi li dan il-kumpens kellu jigi stabbilit mil-ligi u li l-kwantifikazzjoni tieghu kellha tkun soggetta ghall-iskrutinju ta` Qorti b`kompetenza li tinvesti tali mertu biex tassigura l-gustizzja tal-kumpens. Hi allura l-fehma ta` din il-Qorti illi fil-kaz taht ezami ma jokkorrux l-estremi tal-ewwel paragrafu tal-

artikolu 37 in kwantu kif fuq elaborat hawn non si tratta ta` tehid ta` proprjeta` jew ta` jedd fuqha taht xi forma jew ohra izda ta` limitazzjoni tal-uzu tal-istess proprjeta`".

Il-pronunzjament tal-Qorti dwar l-Art 37 tal-Kostituzzjoni kien ikkonfermat b`sentenza tal-Qorti Kostituzzjonali tas-7 ta` Dicembru 2009.

Fil-kawza : **<u>Angela sive Gina Balzan v. L-Onorevoli Prim Ministru et</u>** (Rik Kost 15/2008) : li kienet deciza mill-Qorti Kostituzzjonali fis-7 ta` Dicembru 2012 : kienet trattata l-kwistjoni dwar jekk kienx hemm ksur ta` l-Art 37 tal-Kostituzzjoni billi fl-gheluq ta` l-enfitewsi temporanja, l-okkupanti nghataw titolu ta` lokazzjoni.

Inghad hekk :-

"Il-Qorti tibda biex tghid illi taqbel mal-konvenuti illi dan ma huwiex kaz ta` tehid ta` proprjeta izda ta` kontroll ta` uzu ta` proprjeta. L-attrici baqghet sid tal-proprjeta u ghad ghandha l-jeddijiet in re ta` sid u ghalhekk ma jistax jinghad li ttehditilha l-proprjeta.

Madankollu, ghalkemm baqghet sid u, ukoll quddiem il-konvenuti Bajada bhala kerrejja, ghandha l-jeddijiet ta` sid il-kera, l-uzu li tista` taghmel mill-proprjeta huwa kontrollat ghax hija marbuta li taghraf il-jedddijiet tal-kerrejja meta, li kieku ma kienx hemm il-ligi attakkata, kienet tista` tiehu l-fond lura battal u tikrih lil min trid hi b`kemm jaghti s-suq.

Il-Qorti Kostituzzjonali, f`sentenza li kienet tat fis-7 ta` Dicembru 2009 in ***<u>re Josephine Bugeja et versus Avukat Generali</u>****, kienet qalet illi ma hemmx tehid ta` proprjeta meta cens temporanju jigi konvertit f`wiehed perpetwu, ghalkemm f`dak il-kaz is-sid ikun ittehidlu jedd in re fuq il-proprjeta, viz. l-utli dominju li kien jikkonsolida ruhhu f`idejh mad-dirett dominju li ma kinitx ghal-ligi specjali. Multo magis dan ighodd ghall-kaz tal-lum fejn il ius in re kollu baqa` f`idejn l-attrici.*

Ghalhekk tghodd b`aktar sahha ghall-kaz tallum l-osservazzjoni tal-Qorti Kostituzzjonali f`dik is-sentenza illi "kaz ta` kontroll ta` uzu ta` proprjeta, bhalma huwa l-kaz in ezami, ma jaqax entro l-parametri u konsegwentement il-protezzjoni tal-artikolu 37 tal-Kostituzzjoni, izda se mai jista` jaqa` entro l-parametri u taht il-protezzjoni tal-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni Ewropeja."

Fis-sentenza ta` din il-Qorti diversament presjeduta tal-25 ta` Frar 2016 fil-kawza : **Rose Borg vs Avukat Generali et** : (Rik Kost 25/2013 LSO) : inghad hekk :-

*"Illi huwa assodat li l-portata ta` l-Artikolu 37 tal-Kostituzzjoni hija aktar ristretta mill-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni. Filwaqt li dan ta` l-ahhar jipprotegi t-tgawdija pacifika tal-"possedimenti" ("possessions" fit-test Ingliz, "biens" fit-test Franciz) ta` dak li jkun, l-istess ma jistax jinghad ghall-Artikolu 37(1) tal-Kostituzzjoni li jitkellem dwar it-tehid b`mod obbligatorju tal-pussess ta` proprjeta` ta` kull xorta li tkun jew il-ksib b`mod obbligatorju ta` interess fi jew dritt fuq proprjeta` (dejjem ta` kull xorta li tkun).(Ara ad ez. **Amato Gauci vs Avukat Generali**, deciza mill-Qorti Kostituzzjonali fis-26 ta` Mejju 2006; **Galea et vs Briffa**, deciza mill-Qorti Kostituzzjonali fit-30 ta` Novembru 2001; **Lay Lay Co Ltd vs L-Awtorita ta` Malta dwar l-Ambjent et.** deciza mill-Qorti Kostituzzjonali fil-25 ta` Frar 2011; **Bugeja et vs Avukat Generali** deciza mill-Qorti Kostituzzjonali fis-7 ta` Dicembru 2009; **Josephine Bugeja v Avukat Generali** (QK - 7 ta` Dicembru 2006); **Gina Balzan vs l-Onorevoli Prim Ministru et** deciza mill-Prim Awla tal-Qorti Civili (Gurisdizzjoni Kostituzzjonali) fil-11 ta` Ottubru 2011).*

Il-Qorti hawnhekk taqbel ma` dak sollevat mill-Intimati billi r-rikorrenti ghadha s-sid tal-proprjeta` in mertu, u d-dispozizzjonijiet rilevanti tal-Kap 158 jikkostitwixxu kontroll ta` uzu ta` proprjeta`.

Ghaldaqstant l-artikolu 37 tal-Kostituzzjoni mhuwiex applikabbli ghall-kaz odjern."

Fis-sentenza li nghatat fil-31 ta` Ottubru 2014 fil-kawza : **Mary Anne Busuttil vs Tabib John Cassar et** : (Rik Kost 33/2007), il-Qorti Kostituzzjonali spjegat hekk :-

> *"L-art. 37 tal-Kostituzzjoni ihares mhux biss kontra t-tehid tal-proprjeta shiha minghajr kumpens xieraq, b`mod li tinholoq sitwazzjoni fejn "is-sid originali gie zvestit u mnezza` minn kull dritt li ghandu fuq dik il-proprjeta", izda jrid ukoll illi "ebda interess fi jew dritt fuq proprjeta ta` kull xorta li tkun" ma jittiehed minghajr kumpens xieraq.*
>
> *21. Fil-kaz tallum, fi tmiem l-enfitewsi originali – dik ghal hamsin sena – id-direttarji, li ma kienx ghall-art. 12(4) tal-Kap. 158, kienu jiehdu lura l-proprjeta shiha. Issa, bis-sahha ta` dik id-disposizzjoni tal-ligi, sejjer jittehdilhom ghal dejjem l-utli dominju, li mhux biss huwa dritt fuq proprjeta – ius in re – izda wkoll dritt sostanzjali, perpetwu u wiesa` b`mod li d-dritt residwali tas-sid, meta mqabbel mal-utli dominju, huwa minimu.*
>
> *22. Aktar milli konverzjoni ta` enfitewsi temporanja f`wahda perpetwa hemm il-holqien ta` enfitewsi gdida, din id-darba ghal dejjem, u bis-sahha ta` hekk li s-sid jittehidlu ghal dejjem l-utli dominju. Difficli tifhem kif tista` qatt tghid li dan ma huwiex tehid ta` dritt fuq proprjeta.*
>
> *23. Ghaldaqstant huwa skorrett ir-ragunament tal-ewwel Qorti illi "l-jeddijiet tad-direttarju ma jinbidlux bis-sahha tal-bidla wahedha minn enfitewsi temporanju ghal enfitewsi li ma jaghlaqx" u illi "ma jintlaqtux il-jeddijiet tad-direttarji taht l-artikolu 37 tal-Kostituzzjoni li jitkellem dwar tehid ta` proprjeta".*

Fl-istess sens kienet is-sentenza tal-24 ta` April 2015 fil-kawza fl-ismijiet **Michael Angelo Briffa et v. Nadia Merten** (Rik Nru 3316/2009) moghtija mill-Qorti ta` l-Appell Superjuri.

Fis-sentenza ta` din il-Qorti diversament presjeduta tas-7 ta` Frar 2017 fil-kawza : **Robert Galea vs Avukat Generali et** : op. cit. : inghad hekk :-

"Illi safejn l-azzjoni tar-rikorrent tinbena fuq l-artikolu 37 tal-Kostituzzjoni, huwa xieraq li f`dan il-qafas il-Qorti tistharreg element importanti li jirrigwarda sewwasew il-jedd imhares taht l-artikolu 37 tal-Kostituzzjoni, b`mod partikolari ghaliex il-mira tal-ilment tal-istess rikorrent hija ligi li saret wara li kien ta b`enfitewsi l-post tieghu lill-intimati Ganado. L-imsemmi Att XXIII tal-1979 kien wiehed mahsub li jdahhal fis-sehh emendi f`ligi ewlenija – sewwasew fl-Ordinanza XIX A tal-1959 li Tnehhi l-Kontroll tad-Djar– li kienet ilha fis-sehh sa mill-10 ta` April, 1959;

Illi dan kollu qieghed jinghad ghaliex l-artikolu 47(9) tal-Kostituzzjoni jipprovdi li "Ebda haga fl-artikolu 37 ta` din il-Kostituzzjoni ma ghandha tolqot il-hdim ta` xi ligi fis-sehh minnufih qabel it-3 ta` Marzu 1962 jew xi ligi maghmula fi jew wara dik id-data li temenda jew tissostitwixxi xi ligi fis-sehh minnufih qabel dik id-data (jew xi ligi li minn zmien ghal zmien tkun emendata jew sostitwita bil-mod deskritt f`dan is-subartikolu) u li ma – (a) izzidx max-xorta ta` proprjeta` li jista` jittiehed pussess taghha jew id-drittijiet fuq u interess fi proprjeta` li jistghu jigu miksuba; (b) izzidx mal-finijiet li ghalihom jew cirkostanzi li fihom dik il-proprjeta` jista` jittiehed il-pussess taghha jew tigi miksuba; (c) taghmilx il-kondizzjonijiet li jirregolaw id-dritt ghal kumpens jew l-ammont tieghu anqas favorevoli lil xi persuna li jkollha jew li tkun interessata fil-proprjeta`; jew (d) tipprivax xi persuna minn xi dritt bhal dak li huwa msemmi fil-paragrafi (b) jew (c) ta` l-artikolu 37(1) ta` din il-Kostituzzjoni";

Illi dan ifisser li ladarba l-Kapitolu 158 tal-Ligijiet ta` Malta kien ligi fis-sehh f`Malta qabel it-3 ta` Marzu, 1962, xejn li jkun sar taht dik il-ligi (ukoll bis-sahha ta` xi emenda li tkun dahlet fis-sehh wara dakinhar) ma jitqies li jkun sar bi ksur tal-artikolu 37, sakemm ma ssehhx xi wahda mill-erba` cirkostanzi mahsuba fl-istess artikolu 47(9) kif fuq inghad;

Illi l-Qorti hija tal-fehma li d-dispozizzjonijiet tal-artikolu 12 tal-Ordinanza (dawk li minhabba fihom ir-rikorrent jghid li garrab jew qieghed igarrab il-

ksur tal-jedd fondamentali taghhom) kif mibdula bl-Att XXIII tal-1979 jolqtu kemm it-tieni u kemm it-tielet mill-erba` cirkostanzi msemmija u dan ghaliex huma jzidu mal-finijiet jew cirkostanzi li fihom il-proprjeta` li tkun (il-fond tal-abitazzjoni) jista` jittiehed il-pussess taghha jew tigi miksuba u wkoll ghaliex il-kondizzjonijiet li jirregolaw id-dritt ghall-hlas ta` kumpens jew l-ammont ta` dak il-kumpens sar anqas favorevoli ghall-persuna li ghandha dik il-proprjeta` jew ghandha interess fiha;

Illi minhabba f`hekk, din il-Qorti ssib illi ghandha tistharreg jekk kemm-il darba t-thaddim tal-imsemmija dispozizzjonijiet tal-artikolu 12 kif issa emendat iwassalx ghal ksur tal-jeddijiet tar-rikorrenti kif mahsub fl-artikolu 37 tal-Kostituzzjoni;

Illi l-kwestjoni bejn il-partijiet fil-qofol taghha ghandha titqies fil-qafas ta` kuntratt ta` enfitewsi.

Huwa kuntratt li beda bi ftehim bilaterali li jidher li lpartijiet dahlu ghalih minn rajhom u bla ma kienu mgeghlin. Dak li wassal ghall-qaghda li, kuntrattwalment, ir-rikorrent u l-intimati Ganado jinsabu fih illum gara wara l-bidu tal-imsemmi kuntratt bis-sahha tal-intervent legislattiv. Imma dan ma jxejjinx il-fatt li l-bidu tar-rabta legali bejn l-intimati Ganado u r-rikorrent bhala s-sid tal-appartament kien wiehed konsenswali;

Illi l-Qorti tqis li, bil-ligi kif inhi, ir-rikorrent qajla jista` jiehu lura l-post tieghu, minkejja t-titjib li sar fil-ligi tal-kera matul l-ahhar snin (Ara Q.E.D.B. 15.9.2009 fil-kawza fl-ismijiet* ***<u>Amato Gauci vs Malta</u>*** *(Applik. Nru. 47045/06) § 61) u li l-bidliet migjuba bl-Att XXIII tal-1979 gabu maghhom indhil li halaq relazzjoni mgieghla ta` sid-kerrej ("a forced landlordtenant relationship") u li minhabba f`hekk zied "id-drittijiet fuq u interess fi proprjeta` li jistghu jigu miksuba" bi hsara ghal sid il-gid hekk milqut (Kost. 22.2.2013 fil-kawza fl-ismijiet ***<u>Albert Cassar et vs Il-Prim Ministru et</u>****). Il-Qorti jidhrilha li biex wiehed jara sewwa x`inhi l-qaghda legali li thares ir-rabta prezenti ta` bejn il-partijiet fuq il-post, wiehed irid iqis id-dispozizzjonijiet*

kollha relattivi tal-ligi u mhux biss dawk tal-artikolu 12 tal-Kap 158;

Illi jidher li ghall-finijiet tal-artikolu 37 tal-Kostituzzjoni, element siewi u ewlieni li jrid jirrizulta biex wiehed isib ksur tal-jedd imhares tahtu hu dak li t-tehid tal-pussess tal-haga jkun sar b`mod obbligatorju, jigifieri kontra r-rieda ta` sid il-haga. Din il-Qorti hija tal-fehma li, skond l-ahhar tifsir li nghata mill-Qrati taghna dwar il-parametri li fihom jista` jirrizulta ksur tal-artikolu 37 tal-Kostituzzjoni, ma huwiex aktar il-kaz li wiehed iqisu biss mil-lenti dejqa tat-tehid ghal kollox tal-gid li jkun: huwa bizzejjed biex jirrizulta ksur tal-imsemmi artikolu fejn jirrizulta li jkun hemm "limitazzjoni tant sostanzjali li fil-prattika tirrendihom kompletament privi mid-dritt ta` tgawdija tal-istess proprjeta`" (Kost. 24.6.2016 fil-kawza fl-ismijiet ***Ian Peter Ellis et vs Avukat Generali et****);*

Illi f`cirkostanzi bhal fil-kaz li l-Qorti ghandha quddiemha llum, jista` jinghad li l-kirja li nhalqet bil-ligi dwar il-post tar-rikorrent kienet tabilhaqq ghamla ta` tehid ta` pussess obbligatorju kif mahsub fl-imsemmi artikolu tal-Kostituzzjoni. Id-dispozizzjonijiet tal-ligi li dwarhom ir-rikorrent jilmenta jammontaw ghal forma ta` kontroll fuq il-mod jista` jinqeda bi hwejgu u wkoll b`liema kundizzjonijiet titmexxa l-kirja u ghalhekk bla dubju ghal forma ta` kontroll fuq l-uzu min-naha tieghu ta` dik l-istess proprjeta`. Minbarra dan, mhuwiex eskluz li xi dispozizzjonijiet tal-Kap 158 jistghu fis-sewwa jwasslu ghal cirkostanzi li jnisslu ksur tal-artikolu 37 tal-Kostituzzjoni;

Illi, madankollu, il-Qorti ma jidhrilhiex li mehuda c- cirkostanzi tal-kaz, jirrizulta li r-rikorrent garrab ksur tal-jedd tieghu taht l-artikolu 37 tal-Kostituzzjoni. Flewwel lok, it-tigdid li sar wara li ghalaq iz-zmien originali miftiehem ta` enfitewsi kien tigdid taht titolu ta` kirja. Dan jixhed li r-rikorrent baqa` sid il-post, minkejja li ma baqax jista` jinqeda minnu kif irid. Fit-tieni lok, bil-bidliet li ddahhlu fil-ligi fl-2009 u fl-2010 li jolqtu l-kera ta` postijiet urbani li fihom wiehed jghix, ma jistax jinghad li s-sid ta` post bhal dak ma nghatawlux

rimedji kemm biex jerga` jiehu lura l-post fil-kazijiet xierqa u kif ukoll li jistenna li jircievi kera mizjud kull tant zmien sakemm il-kirja tkun ghadha fis-sehh. Fit-tielet lok, intwera li (minkejja li kien marbut li tabilfors irid jaghraf lill-intimati mizzewgin Ganado bhala l-inkwilini tal-post tieghu) r-rikorrent sehhlu juri inizzjattivi kuntrattwali biex mill-qaghda li kien jinsab fiha, jinnegozja kundizzjonijiet tal-kirja li setghu kienu ahjar minn dawk preskritti fl-artikolu 12 tal-Kapitolu 158 infushom. Fir-raba` lok, li fil-kaz tal-intimati Ganado, dawn ma ghandhom lil hadd minn qrabathom jghix maghhom, uliedhom huma stabiliti band`ohra u ghandhom id-dar taghhom, u l-istess intimati huma persuni li llum ghandhom certa eta` matura;

Illi, ghalhekk, safejn l-ewwel zewg talbiet tar-rikorrent jinbnew fuq allegat ksur tal-artikolu 37 tal-Kostituzzjoni, il-Qorti ma ssibx li huma misthoqqa u la fil-fatt u lanqas fid-dritt."

(ara wkoll : 2 ta` Mejju 2017 : PA/Kost : **Catherine Cauchi et vs Avukat Generali et** ; u **Vincent Zerafa et vs Emmanuel Cilia et kif ukoll : Anthony Aquilina vs Avukat Generali** : 9 ta` Ottubru 2017 : Rik Kost Nru 28/2016 MC)

Fis-sentenza li tat il-Qorti Kostituzzjonali fit-2 ta` Marzu 2018 fil-kawza fl-ismijiet **Thomas Cauchi et vs Avukat Generali et** (Rik. Kost. Nru. 91/2013 AF) intqal :

Ighid hazin ukoll l-Avukat Generali meta jghid illi biex kaz jintlaqat bl-art. 37 tal-Kostituzzjoni "persuna trid tigi mnezza` minn kull dritt li ghandha fuq dik il-proprjetà". Jidher car mill-kliem stess tal-art. 37 – "ebda interess fi jew dritt fuq proprjetà ta` kull xorta li tkun ma ghandu jigi miksub b`mod obbligatorju" – illi t-tehid ta` xi interess li jkun fil-proprjetà, u mhux biss it-tehid tal-proprjetà shiha, jintlaqat bl-art. 37. (Ara e.g. ***John Bugeja v. Rev. Alfred Calleja noe et****, Kost. 11 ta` Novembru 2011). Meta l-"kontroll ta` uzu ta` proprjetà" jolqot, bhal fil-kaz tallum, interess– li mhux bilfors ikun in re – fil-proprjetà dak il-kontroll ta` uzu jista` wkoll, jekk ma jkunx*

> *b`kumpens xieraq, ghal skop xieraq, u proporzjonat ghal dak l-iskop, ikun bi ksur tal-art. 37 tal-Kostituzzjoni. Dritt ta` kiri ta` immobbli huwa interess fil-proprjetà, u ghalhekk ma hemmx dubju li jintlaqat bl-art. 37.*
>
> *15. Il-kwistjoni f`din il-kawza hija jekk il-kumpens li jircievu l-atturi, fil-forma ta` kera daqs kemm kien ic-cens mizjud bi proporzjon maz-zjieda fl-inflazzjoni, u li jizdied kull hmistax-il sena, jew, illum, kull tliet snin wara l-emendi maghmula fil-Kodici Civili bl-Att X tal-2009, huwiex kumpens xieraq u proporzjonat ghac-cahda tat-tgawdija ta` hwejjig-hom.*

Il-Qorti tqis li l-kirja li nholqot *ope legis* tammonta ghal ghamla ta` tehid ta` pussess obbligatorju hekk kif kontemplat fl-Art 37 tal-Kostitutzzjoni.

Din il-Qorti tikkondividi dik il-gurisprudenza li ma teskludix illi xi dispozizzjonijiet tal-Kap 158 jistghu fis-sewwa jwasslu ghal cirkostanzi li jgibu ksur tal-Art 37 tal-Kostituzzjoni.

Dan premess, il-Qorti ma ssibx li kien hemm **fil-kaz tal-lum** tehid forzjuz tal-proprjeta tar-rikorrenti.

Fil-fatt ir-rikorrenti hadet lura l-fond u jinsab fil-pussess taghha,

Il-kaz tal-lum jittratta kwistjoni ta` kontroll u limitu ta` tgawdija u uzu ta` proprjeta.

Meta tqis **il-fatti u cirkostanzi ta` dan il-kaz**, il-Qorti ma ssibx li kien hemm ksur tal-Art 37 tal-Kostituzzjoni, peress illi kuntrarjament ghal uhud mid-decizjonijiet fuq citati, il-kaz tal-lum ma kienx jittrata sitwazzjoni fejn enfitewsi temporanja kienet konvertita ghal enfitewsi perpetwa. Il-kaz tal-lum kien bdil fit-titolu minn wiehed ta` enfitwesi temporanja ghal wahda ta` lokazzjoni fejn ir-rikorrenti baqghet is-sid ghalkemm ma setghetx tinqeda bil-post kif riedet.

Il-Qorti qieset ukoll li bl-emendi fil-ligi ghal dak li ghandu x` jaqsam ma` l-kera ta` postijiet residenzjali, ir-rikorrenti qua sid tal-post inghatat rimedji biex tiehu lura l-post f` kazijiet partikolari u anke inghatat zieda fil-kera.

Tishaq li r-rikorrenti hadet il-post lura, anke jekk fil-mori tal-kawza.

Dwar li ma kienx hemm vjolazzjoni tal-Art 37 tal-Kostituzzjoni, il-Qorti taghmel riferenza ghas-16 –il sentenza li tat hija stess kif presjeduta fit-28 ta` Settembru 2017 bl-occhio `Josephine Azzopardi pro et noe vs L-Onorevoli Prim Ministru et`, li ghalkemm kienu appellati u decizi mill-Qorti Kostituzzjonali fil-25 ta` April 2018, ma sar l-ebda appell mid-decizjoni taghha illi ma kienx hemm vjolazzjoni tal-Art 37 tal-Kostituzzjoni, bl-applikazzjoni tad-disposizzjonijiet tal-ligi in kwistjoni.

Ghalhekk qeghda tilqa` l-eccezzjoni numerata 4 tal-Avukat Generali.

VI. L-eccezzjonijiet numerati minn hamsa (5) sa hmistax (15) tal-intimat Avukat Generali

Dawn il-hdax l-eccezzjonijiet se jigu trattati flimkien ghaliex huma relatati. Ghandhom bhala *common denominator* id-difiza tal-Avukat Generali kontra l-applikazzjoni l-Art 1 Prot 1 tal-Konvenzjoni ghall-ilment tar-rikorrenti.

L-Art 1 Prot 1 tal-Konvenzjoni jipprovdi illi :-

> *"Kull persuna naturali jew persuna morali ghandha d-dritt ghat-tgawdija pacifika tal-possedimenti taghha.*
>
> *Hadd ma ghandu jigi pprivat mill-possedimenti tieghu hlief fl-interess pubbliku u bla hsara tal-kundizzjonijiet provduti bil-ligi u bil-principji generali tal-ligi internazzjonali.*
>
> *Izda d-disposizzjonijiet ta` qabel ma ghandhom b`ebda mod inaqqsu d-dritt ta` Stat li jwettaq dawk*

il-ligijiet li jidhrulu xierqa biex jikkontrolla l-uzu tal-proprjeta skond l-interess generali jew biex jizgura l-hlas ta` taxxi jew kontribuzzjonijiet ohra jew pieni.”.

Bl-Art 12(2) tal-Kap 158 hemm certament kontroll ta` uzu.

Dan jinghad fl-isfond ta` dak li kien deciz mill-ECHR fil-15 ta` Settembru 2009 fil-kaz ta` **Amato Gauci vs Malta** li kien jittratta proprju l-Art 12(2) tal-Kap 158.

Huwa pacifiku li l-Istat ghandu margni ta` apprezzament wesghin meta jigi biex jintroduci legislazzjoni sabiex itaffi problemi ta` akkomodazzjoni.

A. Gurisprudenza tal-ECHR

Fil-kaz ta` **Spadea and Scalabino vs Italy** deciz fit-28 ta` Settembru 1995 l-ECHR osservat :-

> *“The second paragraph reserves to States the right to enact such laws as they deem necessary to control the use of property in accordance with the general interest.*
>
> …
>
> *Such laws are especially common in the field of housing, which in our modern societies, is a central concern of social and economic policies.*
>
> …
>
> *In order to implement such policies, the legislature must have a wide margin of appreciation.*
>
> …
>
> *The Court will respect the legislature`s judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation.*

> …
>
> *an interference must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights.*
>
> …
>
> *There must be a reasonable relationship of proportionality between the means employed and the aim pursued."*

Madanakollu, l-interess tal-privat ghandu wkoll jigi salvagwardjat ghaliex ghalkemm kien rikonoxxjut illi l-Istat ghandu dritt jikkontrolla l-uzu tal-proprjetà, ghandu jkun sodisfatt ir-rekwizit tal-proporzjonalità.

Infatti l-ECHR fil-kaz ta` **Amato Gauci vs Malta** (op. cit.) qalet :-

> *"56. Any interference with property must also satisfy the requirement of proportionality. As the Court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see* ***Sporrong and Lönnroth*** *cited above, §§ 69-74, and* ***Brumărescu v. Romania*** *[GC], no. 28342/95, § 78, ECHR 1999-VII).*
>
> *57. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article the Court must therefore ascertain whether by reason of the State`s interference the person concerned had to bear a disproportionate and excessive burden (see* ***James and Others****, cited above, § 50;* ***Mellacher and Others****, cited above, § 48, and* ***Spadea and Scalabrino v. Italy****, judgment of 28 September 1995, § 33, Series A no. 315-B).*

58. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. In cases concerning the operation of wide-ranging housing legislation, that assessment may involve not only the conditions of the rent received by individual landlords and the extent of the State`s interference with freedom of contract and contractual relations in the lease market, but also the existence of procedural and other safeguards ensuring that the operation of the system and its impact on a landlord`s property rights are neither arbitrary nor unforeseeable. Uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State`s conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, and in an appropriate and consistent manner (see ***Immobiliare Saffi v. Italy****, [GC], no. 22774/93, § 54, ECHR 1999-V; and Broniowski, cited above, § 151).*

59. Moreover, in situations where the operation of the rent-control legislation involves wide-reaching consequences for numerous individuals and has economic and social consequences for the country as a whole, the authorities must have considerable discretion not only in choosing the form and deciding on the extent of control over the use of property but also in deciding on the appropriate timing for the enforcement of the relevant laws. Nevertheless, that discretion, however considerable, is not unlimited and its exercise cannot entail consequences at variance with the Convention standards (see, mutatis mutandis, ***Hutten-Czapska****, cited above, § 223)."*

…

"In the present case, having regard to the low rental value which could be fixed by the Rent Regulation Board, the applicant`s state of uncertainty as to

*whether he would ever recover his property, which has already been subject to this regime for nine years, the lack of procedural safeguards in the application of the law and the rise in the standard of living in Malta over the past decades, the Court finds that a disproportionate and excessive burden was imposed on the applicant. The latter was requested to bear most of the social and financial costs of supplying housing accommodation to Mr and Mrs P. (see, mutatis mutandis, **Hutten-Czapska**, cited above, § 225). It follows that the Maltese State failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant`s right of property.".*

L-ECHR ikkonkludiet li kien hemm ksur tal-Art 1 Prot 1 tal-Konvenzjoni.

Relevanti wkoll huwa dak li qalet l-ECHR fis-sentenza tat-22 ta` Novembru 2011 fil-kaz ta` **Saliba et vs Malta** :-

*" ... the rise in the standard of living in Malta over these decades and the diminished need to secure social housing compared to the post-war era........it is clear that what might have been justified years ago, will not necessarily be justified today (see **Amato Gauci**, cited above, 60)."*

Fil-kaz ta` **Zammit & Attard Cassar vs Malta** li kien deciz fit-30 ta` Lulju 2015, l-ECHR irriaffermat il-principji li kienu enunzjati fis-sentenzi taghha ta` qabel dwar il-kontroll ta` kiri ta` djar billi rriteniet :

*"57. In each case involving an alleged violation of Article 1 of Protocol No. 1, the Court must ascertain whether by reason of the State`s interference, the person concerned had to bear a disproportionate and excessive burden (see 9 App.No.1046/12) - EctHR 25 ta` Frar 2016. **James and Others**, cited above, § 50, and **Amato Gauci**, cited above, § 57).*

58. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue,

bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. That assessment may involve not only the conditions of the rent received by individual landlords and the extent of the State`s interference with freedom of contract and contractual relations in the lease market, but also the existence of procedural and other safeguards ensuring that the operation of the system and its impact on a landlord`s property rights are neither arbitrary nor unforeseeable.

*Uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State`s conduct (see **<u>Immobiliare Saffi v. Italy</u>**, [GC], no. 22774/93, § 54, ECHR 1999-V, and Broniowski, cited above, § 151)."*

Ta` rilevanza huwa l-pronunzjament tal-ECHR fil-kaz **<u>Cassar vs Malta</u>** tat-30 ta` Jannar 2018 (App. Nru. 50570/13) fejn inghad :-

*43. The Court reiterates that in order for an interference to be compatible with Article 1 of Protocol No. 1 it must be lawful, be in the general interest and be proportionate, that is to say it must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights (see, among many other authorities, **<u>Beyeler v. Italy</u>** [GC], no. 33202/96, § 107, ECHR 2000-I, and **<u>J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom</u>** [GC], no. 44302/02, § 75, ECHR 2007-III). The Court will examine these requirements in turn.*

(a) Whether there was an interference

44. In connection with the development of property, the Court has previously found that having been aware of the fact that their property had been encumbered with restrictions when they had bought it (for example, its designation in a local development plan), the applicants could not hold

that circumstance against the authorities (see ***Lacz v. Poland****, (dec.) no. 22665/02, 23 June, 2009; and the case-law cited therein), specially when a complaint has not been made that they had a legitimate reason to believe that the restrictions encumbering their property would be removed after they bought the property. However, the Court has not excluded that there might be particular cases where an applicant who bought a property in full knowledge that it was encumbered with restrictions may subsequently complain of an interference with his or her property rights, for example, where the said restrictions are alleged to be unlawful (ibid.).*

45. More specifically in the context of restrictions on lease agreements (in particular the prohibition on bringing a tenant`s lease to an end), the Court has found that there was an interference as a result of the domestic courts` refusals of the applicants` demands, despite the applicants` knowledge of the applicable restrictions when they had entered into the lease agreement, a matter which however carried decisive weight in the assessment of the proportionality of the measure (see ***Almeida Ferreira and Melo Ferreira v. Portugal****, no. 41696/07, §§ 27 and 34, 21 December 2010).*

46. Subsequently, in ***R & L, s.r.o. and Others*** *(cited above) the Court specifically examined whether Article 1 of Protocol No. 1 protected applicants who had purchased property in the knowledge that rent restrictions imposed on the property might contravene the Convention. In that case, when the applicants had acquired their respective properties their rents had been set in accordance with the rent regulations applicable at the time and the applicants could not have increased the rents above the threshold set by the State. Nor were they free to terminate the rent agreements and conclude new ones with different – higher – levels of rent. The Court did not find it decisive that one of the applicants had purchased the property before the domestic courts had taken issue with the legislation in place which had given a legitimate expectation that the status of such properties would be addressed by the national legislator in due course. The Court held that it could*

not be said that the applicants as landlords had implicitly waived their right to set the level of rents, as, for the Court, waiving a right necessarily presupposed that it would have been possible to exercise it. There was no waiver of a right in a situation where the person concerned had never had the option of exercising that right and thus could not waive it. It followed that the rent-control regulations had constituted an interference with the landlords` right to use their property (ibid., § 106).

*47. In the more recent **Zammit and Attard Cassar** (cited above, § 50) case, in a situation where the applicants` predecessor in title had knowingly entered into a rent agreement in 1971 with relevant restrictions (specifically the inability to increase rent or to terminate the lease), the Court held that, at the time, the applicants` predecessor in title could not reasonably have had a clear idea of the extent of inflation in property prices in the decades to follow. Moreover, the Court observed that when the applicants had inherited the property in question they had been unable to do anything more than attempt to use the available remedies, which had been to no avail in their circumstances. The decisions of the domestic courts regarding their request had thus constituted interference in their respect. Furthermore, as in **R & L, s.r.o. and Others**, in **Zammit and Attard Cassar** (both cited above) the applicants, who had inherited a property that had already been subject to a lease, had not had the possibility to set the rent themselves (or to freely terminate the agreement). It followed that they could not be said to have waived any rights in that respect. Accordingly, the Court found that the rent-control regulations and their application in that case had constituted an interference with the applicants` right (as landlords) to use their property (**Zammit and Attard Cassar**, cited above, § 51).*

*48. Turning to the present case, the Court also notes that the applicants had bought their property before the European Court of Human Rights took issue with the Maltese legislation applicable in cases such as **Amato Gauci** (cited above). That judgment was eventually followed in most cases in*

*domestic case-law. However, again the Court finds this not to be decisive given the passage of time between the purchase of the property and now. In this connection the Court reiterates that what might be justified at a specific time might not be justified decades later (see **__Amato Gauci__**, cited above, § 60). In the present case, while it is true that the applicants knowingly entered into the rent agreement in 1988 with the relevant restrictions (specifically the inability to increase the rent or to terminate the lease), the Court considers that the applicants could not reasonably have foreseen the extent of inflation in property prices in the decades that followed (see **__Zammit and Attard Cassar__**, cited above, § 50). Once the discrepancy in the rent applied and that on the market became evident, they were unable to do anything more than attempt to use the available remedies, which they did in 2010, but which were to no avail in their circumstances. The decisions of the domestic courts regarding their application thus constituted interference in their respect. Furthermore, the applicants, who bought a property that was already subject to a restricted lease, did not have the possibility to set the rent themselves or to freely terminate the agreement. Clearly, they could not be said to have waived any rights in that connection (see **__Zammit and Attard Cassar__**, cited above, § 50).*

*49. Accordingly, the Court finds that the rent-control regulations and their application in the present case constituted an interference with the applicants` right (as landlords) to use their property (see **__Zammit and Attard Cassar__**, cited above, § 51). Nevertheless, in circumstances such as those of the present case a number of considerations need to be made in connection with the proportionality of the interference.*

*50. The Court has previously held that rent-control schemes and restrictions on an applicant`s right to terminate a tenant`s lease constitute control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1. It follows that the case should be examined under the second paragraph of Article 1 of Protocol No. 1 (see **__Hutten-Czapska v. Poland__** [GC], no. 35014/97,*

§§ 160-61, ECHR 2006-VIII; ***Bittó and Others v. Slovakia****, no. 30255/09, § 101, 28 January 2014; and* ***R & L, s.r.o. and Others****, cited above, § 108).*

(b) Whether the Maltese authorities observed the principle of lawfulness and pursued a "legitimate aim in the general interest"

51. The Court refers to its general principles on the matter as set out in Amato Gauci (cited above, § 53-54).

52. That the interference was lawful has not been disputed by the parties. The Court finds that the restriction arising from the 1979 amendments was imposed by Act XXIII of 1979 and was therefore "lawful" within the meaning of Article 1 of Protocol No. 1.

53. In the present case the Court can accept that the applicable legislation in the present case pursued a legitimate social-policy aim, specifically the social protection of tenants (see ***Amato Gauci****, cited above, § 55, and Anthony Aquilina, cited above, § 57). It is, however, also true that the relevance of that general interest may have decreased over time, particularly after 2008 (see Anthony Aquilina, cited above, § 57), even more so given that following that date, the only person benefiting from the impugned measures was P.G., whose financial situation as shown before the domestic courts and which is not being contested before this Court, leaves little doubt as to P.G`s necessity for such a property, and at a regulated rent. This Court will therefore revert to this matter in its assessment as to the proportionality of the impugned measure.*

(c) Whether the Maltese authorities struck a fair balance

54. The Court refers to its general principles on the matter as set out in Amato Gauci (cited above, § 56-59).

55. The Court will consider the impact that the application of the 1979 Act had on the applicants`

property. It notes that the applicants could not exercise their right of use in terms of physical possession as the house was occupied by tenants and they could not terminate the lease. Thus, while the applicants remained the owners of the property they were subjected to a forced landlord-tenant relationship for an indefinite period of time.

*56. Despite any reference to unidentified procedural safeguards by the Government (see paragraph 41 above) the Court has on various occasions found that applicants in such a situation did not have an effective remedy enabling them to evict the tenants either on the basis of their own needs or those of their relatives, or on the basis that the tenants were not deserving of such protection (see **Amato Gauci**, cited above, § 60, and **Anthony Aquilina**, cited above, § 66). Indeed, when their need arose (some years after they had purchased it) and later despite the little need of it by the tenant – who was not in any particular need of housing (at least after 2008) – the applicants were unable to recover the property. Consequently, the application of the law itself lacked adequate procedural safeguards aimed at achieving a balance between the interests of the tenants and those of the owners (see **Anthony Aquilina**, cited above, § 66, and mutatis mutandis, **Zammit and Attard Cassar**, cited above, § 61). The Court further considers that the possibility of the tenant leaving the premises voluntarily was remote, especially since the tenancy could be inherited – as in fact happened in the present case. It is clear that these circumstances inevitably left the applicants in uncertainty as to whether they would ever be able to recover their property.*

57. As to the rent payable, the Court is ready to accept that EUR 466 annually was a more or less reasonable amount of rent in 1988 - particularly given that it was an amount of rent which the applicants were aware of and in spite of which they decided to purchase the property with the relevant restrictions. Furthermore, it was an amount of rent which the applicants expected to receive for a number of years, at least until the demise of J.G. and his wife. Moreover, the Court accepts that at the

*relevant time the measure pursued a legitimate social-policy aim (see paragraph 53 above) which may call for payments of rent at less than the full market value (see **Amato Gauci**, § 77).*

*58. The same cannot be said after the passage of decades, during which the rent had remained the same (as stated by the parties and the domestic courts, the rent is still EUR 466 annually). The Court has previously held that there had been a rise in the standard of living in Malta over the past decades (see **Amato Gauci**, cited above, § 63, and **Anthony Aquilina**, cited above, § 65). Thus, the needs and the general interest which may have existed in 1979 must have decreased over the three decades that ensued (see **Anthony Aquilina**, cited above, § 65). It is noted that as stated by the Government in paragraph 40 above, the minimum wage in 2015 was EUR 720.46 per month, while in 1974 (the date when Malta adopted a national minimum wage) it amounted to the equivalent of less than EUR 100 per month (see **Amato Gauci**, cited above, § 60).*

*59. The Court need not identify the exact year at which the rent payable was no longer reasonable. It observes that cases against Malta concerning the same subject matter, that is to say renewal of leases by operation of law - whose rent had been set on an open market – (see **Amato Gauci, Anthony Aquilina, and Zammit and Attard Cassar**, all cited above), which have invariably lead to findings of a violation of Article 1 of Protocol No. 1, concerned periods after the year 2000. Furthermore, the Government of the respondent State have often argued that Malta suffered a boom in property prices in 2003 (see, for example, **Apap Bologna v. Malta**, no. 46931/12, § 97, 30 August 2016). Lastly, although not determinative, it was only in 2008 that the applicants refused to accept the rent, once P.G. had inherited the property. In the light of the above it suffices for the Court to consider that a rent based on the value of the property as it stood in 1962 with the relevant adjustment which amounted to EUR 466 annually in 1988 and thereafter – was certainly not reasonable for the years following 2000.*

60. In particular, even if one had to concede that the valuations submitted by the applicants are on the high side, the Court notes that the first-instance domestic court, in 2011, accepted EUR 3,000 per month (that is to say EUR 36,000 per year) as the rental market value of the property (see paragraph 18 above). Thus, the amount of rent received by the applicants, around EUR 39 a month, that is to say EUR 466 per year, for a fourteen-room house in Sliema, a highly sought-after location, is indeed "derisory" as was also found by the first-instance domestic court (see paragraph 18 above). Indeed, that amount of rent contrasts sharply with the market value of the premises in recent years, as accepted by the domestic court or as submitted by the applicant, as it amounted to a little more than 1% of the market value. The Court considers that State control over levels of rent falls into a sphere subject to a wide margin of appreciation by the State and its application may often cause significant reductions in the amount of rent chargeable. Nevertheless, this may not lead to results which are manifestly unreasonable (see ***Amato Gauci****, cited above, § 62).*

61. In the present case, having regard to the low rental payments to which the applicants have been entitled in recent years, the applicants` state of uncertainty as to whether they would ever recover their property, which has already been subject to this regime for nearly three decades, the rise in the standard of living in Malta over the past decades, and the lack of procedural safeguards in the application of the law, which is particularly conspicuous in the present case given the situation of the current tenant as well as the size of the property and the needs of the applicants, the Court finds that a disproportionate and excessive burden was imposed on the applicants. It follows that the Maltese State failed to strike the requisite fair balance between the general interests of the community and the protection of the applicants` right of property.

62. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention. »

B. **<u>Gurisprudenza ta` l-Qrati Maltin</u>**

Il-Qorti sejra tghaddi ghal analizi ta` whud mis-sentenzi tal-Qrati taghna dwar il-punt in kwistjoni.

1. **<u>Dr. Cedric Mifsud et vs l-Avukat Generali et</u>**
(Rik Nru 33/2010 AE)

Fl-ewwel istanza, il-kawza kienet deciza fit-18 ta` Settembru 2012. Mill-Qorti Kostituzzjonali kienet deciza fil-25 ta` Ottubru 2013.

a) **<u>L-ewwel istanza</u>**

L-Ewwel Qorti sabet illi l-Art 12(2) tal-Kap 158 kien imur kontra l-Art 1 Prot 1 tal-Konvenzjoni.

Kien osservat illi l-Art 12(2) kien baqa` l-istess kif kien meta kien introdott fl-1979.

Kien altru milli evidenti li l-piz finanzjarju kien ghadu mixhut fuq is-sidien privati.

Ghalhekk kien dikjarat illi l-Art 12(2) huwa bla effett fir-rigward tal-proprjeta` mertu tal-kawza, u kien dikjarat li l-inkwilini ma setghux jinvokaw id-disposizzjoni sabiex jibqghu jabitaw fil-fond.

L-Avukat Generali kien ordnat ihallas lir-rikorrenti s-somma ta` €30,000.

Il-Qorti qalet hekk :

> *Sitwazzjoni bhal dik tal-kaz odjern diga` giet trattata mill-Qorti Ewropeja fil-kaz **<u>Amato Gauci vs Malta</u>** (App.Numru 47045/06) deciz fil-15 ta` Settembru 2009, fejn bazikament il-Qorti qalet:-*

i. Restrizzjoni ghas-sid li jittermina kirja tissarraf f`kontroll tal-uzu tal-proprjeta. Ghalhekk il-kaz ghandu jigi ezaminat taht it-tieni paragrafu tal-Artikolu 1.

ii. L-Att XXIII tal-1979 kien legali in kwantu lghan tieghu kien "a legitimate social policy". Il-Qorti osservat:

"Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in 6 f`dan il-kaz the `general` or `public` interest. The notion of `public` or `general` interest is necessarily extensive. In particular, spheres such a housing of the population, which modern societies consider a prime social neeed and which plays a central role in the welfare and economic policies of Contracting states, may often call for some form of regulation by the State.".

iii. Irid jigi sodisfatt l-element ta` proporzjonalita; "As the Court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see ***Sporrong and Lönnroth*** *cited above, §§ 69-74, and* ***Brumărescu v. Romania*** *[GC], no. 28342/95, § 78,ECHR 1999-VII)." (Ara wkoll* ***C.M. v Franza*** *deciza fis-26 ta` Gunju 2011).*

iv. Il-kera li r-rikorrent kien qieghed jircievi kull sena, mija u ghoxrin lira Maltija (Lm120), gie ddikjarat li hu baxx.

L-istess inghad fir-rigward tal-massimu li seta` jircievi skond il-ligi (Lm420). Kera li tikkontrasta sew ma` dik li tithallas fis-suq hieles. Ghalkemm il-Qorti rrikonoxxiet li l-Gvern kien igawdi minn margni ta` apprezzament wiesgha fir-rigward ta` kontroll ta` kera, "Nevertheless, this may not lead to

results which are manifestly unreasonable, such as amounts of rent allowing only a minimum profit.”. Fil-kaz taghna b`applikazzjoni tal-Artikolu 12(1) is-sid kien ikollu jedd ghall- kera ta` Lm99 minn meta ghalaq ic-cens fl-1991, u 15 il-sena wara kien ikollu jedd ghal Lm1488 …

v. Meqjus il-kera baxxa, l-incertezza jekk is-sid qattx kien ser jirkupra l-proprjeta tieghu, il-possibilta` remota li l-inkwilina jitlaq mill-fond minn jeddu specjalment mehud in konsiderazzjoni li l-kirja setghtet tintiret, nuqqas ta` salvagwardji procedurali fl-applikazzjoni tal-ligi, u z-zieda tal-istandard of living f`Malta matul is-snin, il-Qorti kkonkludiet li piz zejjed gie mqieghed fuq is-sid; “It follows that the Maltese State failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant`s right of property.”. Il-Qorti osservat li c-cirkostanzi fuq imsemmija “...inevitably left the applicant in uncertainty as to whether he would ever be able to recover his property.”. Ghalhekk ikkonkludiet li hemm ksur tal-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni.

vi. Il-Qorti tat kumpens lir-rikorrent wara li osservat li hu “ … entitled to compensation in respect of the loss of control, use, and enjoyment of his property from 2000 to date. In assessing the pecuniary damage sustained by the applicant, the Court, has, as far as appropriate, considered the estimates provided and had regard to the information available to it on rental values on the Maltese property market during the relevant period. It has further considered the legitimate purpose of the restriction imposed, reiterating that legitimate objectives in the “public interest”, such as those pursued in measures of economic reform or measures deisgned to achieve greater social justice, may call for less reimbursement of the full market value.”.

vii. Il-Qorti osservat ukoll li wara l-emendi ntrodotti fl- 1995, l-effetti ta` din il-ligi thassru ghall-kuntratti li saru wara l-1995; “….. a decision which fell within the State`s margin of appreciation, can be deemed reasonably and objectively justified

to protect owners from restrictions impinging on their rights."

L-emendi li saru fl-1995 wasslu biex ma tinghatax iktar protezzjoni ghal min jaghmel kuntratt ta` enfitewsi fl-1 ta` Gunju 1995 u wara. B`dan il-provvediment, u ohrajn li lliberalizzaw is-suq tal-kirjiet f`Malta, jidher li l-Gvern ta` Malta kien qieghed jirrikonoxxi li l-qaghda socjali tal-pajjiz ma kinetx titlob li tinghata iktar protezzjoni. Madankollu ma saret l-ebda revizjoni ta` dawk li bhal rikorrenti sabu ruhhom imcahhdin mill-proprjeta taghhom bi dritt li jircievu kumpens mizeru. Japplika wkoll f`dan il-kaz il-konkluzjoni li ghamlet il-Qorti Ewropea fil-kaz **<u>Lindheim and Others v Norway</u>** deciz fit-12 ta` Gunju 2012 :-

"Whilst in reaching the above conclusion the Court has focused on the particular circumstances of the applicants` individual complaints, it adds by way of a general observation that the problem underlying the violation of Article 1 of Protocol No. 1 concerns the legislation itself and that its findings extend beyond the sole interests of the applicants in the instant case. This is a case where the Court considers that the respondent State should take appropriate legislative and/or other general measures to secure in its domestic legal order a mechanism which will ensure a fair balance between the interests of lessors on the one hand, and the general interests of the community on the other hand, in accordance with the principles of protection of property rights under the Convention.".

Ovvjament m`huwiex id-dmir tal-Qorti biex tghid kif ghandu jsehh bilanc bejn l-interessi tal-privat u l-interessi l-ohra.

Il-Qorti Ewropea diga` kellha l-opportunita li tezamina l-Artikolu 12(2) tal-Kap. 158 fil-kaz ta` Amato Gauci u tesprimi l-fehma taghha. Ghalkemm strettament il-gurisprudenza ta` dik il-Qorti ma torbotx lill-qrati lokali, il-Gvern ma ressaq l-ebda raguni valida ghalfejn din il-Qorti m`ghandix issegwi l-insenjament car li johrog minn dik is-sentenza.

Wara li l-Qorti qieset l-istima tal-valur lokatizju paragunat mal-hlas li r-rikorrenti huma intitolati li jircievu skond il-ligi, ic-cirkostanzi l-ohra li semmiet il-Qorti Ewropeja fil-kaz ta` Amato Gauci, u wkoll il-fatt li s-sid ghandu dritt ghall-awment fil-kera kull 15-il sena, zmien li din il-Qorti tqies li ma jirriflettix ir-realta` ekonomika taz-zmenijiet tal-lum, il-konkluzjoni hi li hemm ksur tal-Artikolu 1 tal-Ewwel Protokoll. Il-mizuri li setghu kienu mehtiega matul is-seklu dsatax ma jfissirx li baqghu bzonnjuzi ghaz-zmenijiet tal-lum.

…

Gialadarba l-Artikolu 12(2) tal-Kap. 158 jipprovdi:-

i. Ghall-hlas ta` kera baxxa hafna li ma tirriflettix il-valur tal-proprjeta fuq is-suq. Jekk wiehed kellu joqghod fuq l-istima tal-perit Abela u l-iktar kera li r-rikorrenti huma llum intitolati ghaliha (€465.87 is-sena), ifisser dhul ta` 0.13% tal-valur tal-proprjeta`. Dan il-provvediment ma jissalvagwardjax l-interessi tas-sid, inkluz dak li jaghmlu l-qliegh mill-proprjeta taghhom.

ii. Ghall-awment ta` kera kull hmistax-il sena biss.

iii. Ghal mod kif jigi kkalkolat awment fil-kera, cioe` bazat biss fuq l-indici ta` inflazzjoni u ma jistax jaqbez id-doppju tal-kera li kien jithallas, minghajr ma wiehed jikkunsidra l-valur tal-proprjeta bhala fattur rilevanti.

iv. Ghal fatt li jekk il-partijiet ma jaqblux dwar il-kondizzjonijiet tal-kirja, eskluz dawk li huma regolati mil-ligi, allura l-uniku rimedju li ghandu s-sid hu li jirreferi l-kaz quddiem il-Bord Li Jirregola l-Kera.

v. Ghal stat ta` incertezza ghar-rigward ta` meta s-sid ser ikollu dritt jiehu lura l-pussess ta` hwejgu. Ghaddew diga` iktar minn ghoxrin (20) sena minn meta skadiet l-enfitewsi. Incertezza li tezisti minkejja li t-tifsira ta` inkwilina giet ristretta wara l-emendi li saru bl-Att X tal-2009.

vi. Ghal nuqqas ta` garanziji procedurali sabiex is-sid ikun jista` jiehu lura l-pussess ta` hwejgu f`kazijiet fejn ikollu bzonn il-proprjeta per ezempju ghall-uzu personali tieghu jew ta` membri tal-familja, jew fejn ic-censwalist ma jimmeritax li jinghata protezzjoni;

Il-Qorti ser tiddikjara li dan il-provvediment imur kontra d-dritt fundamentali tar-rikorrenti kif protett fl-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni Ewropea. Dan hu provvediment li ghadu kif kien meta gie ntrodott fl-1979, u hu altru milli evidenti li l-piz finanzjarju ghadu sal-lum mixhut kollu fuq dawk is-sidien privati li huma milquta minn dan il-provvediment."

c) <u>It-tieni istanza</u>

Fid-decizjoni taghha, il-Qorti Kostituzzjonali kkonfermat is-sentenza tal-Ewwel Qorti fil-mertu izda naqqset il-kumpens ghall-vjolazzjoni ghal €15,000.

2. <u>Angela sive` Gina Balzan vs L-Onorevoli Prim Ministru et Qorti Kostituzzjonali – 7 ta` Dicembru 2012</u>

Fid-decizjoni taghha, il-Qorti Kostituzzjonali qalet hekk :-

"Ezaminata din il-kwistjoni, din il-Qorti rat li l-posizzjoni li din il-Qorti u l-Qorti Ewropeja tad-Drittijiet Fundamentali tal-Bniedem hadu fil-kuntest tal-emendi fil-ligi tal-kera li dahlu fis-sehh fl-1979, ma kienx li tiddikjara l-emendi antikostituzzjonali, peress li hu fis-setgha tal-Gvern li jikkontrolla l-uzu ta` proprjeta` fl-interess generali, u allura li tipprovdi, per ezempju, ghall-konverzjoni ta` titolu ta` emfitewsi temporanju fuq fond okkupat bhala residenza ghal titolu ta` emfitewsi perpetwa jew titolu ta` kera, jaqa` f`din is-setgha tal-Gvern biex jassigura postijiet bizzejjed ghall-abitazzjoni tan-nies; il-legislazzjoni ut sic ma tistax, allura, titqies li tivvjola d-drittijiet fundamentali ta` sidien dawk il-fondi.

L-Istat ghandu f`kazijiet bhal dawn margini wiesgha ta` diskrezzjoni billi hu ghandu taghrif dirett tas-socjeta` u l-bzonnijiet taghha, u ghalhekk bhala principju hu f`posizzjoni ahjar biex jiddetermina x`inhu fl-interess pubbliku u x`mezzi jadopera biex jassigura li kulhadd ikollu ghejxien u akkomodazzjoni xierqa. Fis-sentenza ***<u>Ghigo v. Malta</u>****, deciza mill-Qorti Ewropeja tad-Drittijiet Fundamentali tal-Bniedem fis-26 ta` Settembru, 2006, ikkonfermat l-iskop socjali f`legislazzjonijiet li jolqtu materja ta` housing. Hi qalet hekk:*

"In the present case, the Court can accept the Government`s argument that the requisition and the rent control were aimed at ensuring the just distribution and use of housing resources in a country where land available for construction could not meet the demand. These measures, implemented with a view to securing the social protection of tenants were also aimed at preventing homelessness, as well as at protecting the dignity of poorly-off tenants."

Il-Gvern irid jara, pero`, li din il-legislazzjoni fl-interess generali tac-cittadin ma tohloqx piz zejjed fuq sid partikolari ghax dan, bhala s-sid tal-proprjeta`, ghandu dritt ghall-kumpens gust ghall-uzu socjali li l-Gvern irid jaghmel mill-proprjeta` tieghu. Hu obbligu tal-Gvern li johloq bilanc gust bejn l-interess tac-cittadin li jkollu fejn jghammar, u l-interess tas-sid li jiehu gwadan gust mill-proprjeta` tieghu. Jekk il-Gvern sejjer hu jimponi residenza go fond, irid johloq mekkanizmu biex jara` li l-interess tas-sid ma jkunx ippregjudikat.

Dan hu s-sens tad-decizjoni fil-kaz ***<u>Amato Gauci v. Malta</u>****, deciza mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fil-15 ta` Settembru, 2009, meta osservat li fejn l-istat johloq sistema ta` "forced landlord – tenant relationship for an indefinate time", irid jigi assigurat li lis-sid jinghata kumpens li mhux "manifestly unreasonable", kumpens li mhux necessarjament ikun daqs dak li joffri s-suq, imma lanqas ma ghandu jwassal li jaghti lis-sid "only a minimal profit".*

F`dan il-kaz, il-mekkanizmu li holoq il-Gvern iwassal ghall-kumpens li hu ferm `il boghod mill-kumpens li tkun intitolata ghalih ir-rikorrenti kieku thalliet tpoggi l-appartament taghha ghall- kera fis-suq. Kwindi, il-mekkanizmu li holoq il-Gvern, f`dan il-kaz, falla u ma tax rizultat li jirrispekja d-dritt ta` proprjeta` tar-rikorrenti.

Hekk kif il-Gvern ghandu dritt jespropria art fl-interess pubbliku, basta joffri kumpens gust ghal dak it-tehid, hekk ukoll jekk, fl-interess nazzjonali, ihoss li jrid jintervjeni fl-uzu li jsir minn proprjeta` ta` terzi, irid jara li c-cittadin privat ma jigix ippregjudikat, u li jinghata kumpens xieraq ghall-uzu impost. L-aspett socjali ta` ligi trid tigi evalwata mill-Gvern, u sta ghall-Gvern jara li ligi, applikabbli ergo omnes, twassal ghal-konsegwenzi mixtieqa, pero`, fejn se jigu aggevolati klassi ta` persuni f`sitwazzjoni partikolari, il-Gvern irid jara Ii ma tbatix klassi ohra ta` cittadin, u hawn il-htiega ta` bilanc gust.

Jinkombi fuq il-Gvern li johloq mekkanizmu li f`kull kaz iwassal ghal bilanc gust, u ghall-fini ta` dan il-kaz, din il-Qorti tara li l-Gvern ma provdix ghas-sitwazzjoni fejn il-kumpens ikun baxx wisq, u lanqas ghas-sitwazzjoni fejn l-okkupant, li jrid jipprevalixxi ruhu mil-ligi, ikun hu sid ta` proprjeta` ohra. F`dan il-kaz, it-thaddim tal-mekkanizmu ta` vantagg lill-konjugi Bajada u dan bid-dritt (i) li jibqghu fl-appartament b`mod indefinit; (ii) li jhallsu kera ta` kwazi €500 fis-sena, meta l-valur lokatizzju tal-fond gie stmat mill-perit inkarigat mill-attrici li hu €7,000 fis-sena; u (iii) meta ghandhom proprjeta` ohra zgur fi Triq Ellul Mercer, Sliema (Mezzanin numru 24 u fond numru 17) u fi Triq Villambrosa, Hamrun (terran) maghruf bl-isem "Dar il-Ferh"). Fil-mekkanizmu li holoq il-Gvern ma hemm ebda "safeguard" kontra dawn l-ingustizzji, u jhalli lil sid il-fond ibati l-konsegwenzi ta` dawn ir-rizultanzi.

Dan mhux gust, u jwassal lir-rikorrenti ssofri lezjoni fid-dritt taghha ta` proprjeta` kif protett fl-ewwel artikolu tal-ewwel Protokoll tal-Konvenzjoni Ewropeja."

3. **<u>AIC Joseph Barbara et vs L-Onor Prim Ministru et</u>**
(Rik Nru 65/2007) – Qorti Kostituzzjonali - 31 ta` Jannar 2014

Kien deciz hekk :-

"Meta l-Qorti tqis :-

"i. Li r-rikorrenti gew imgieghla jidhlu f`relazzjoni kuntrattwali ta` lokazzjoni ghal zmien indefenit, minkejja li l-koncessjoni subenfitewtika kienet diga` skadiet meta giet promulgata u dahal fis-sehh l-Artikolu 12A tal-Kap. 158. Il-ligi stess tipprovdi li l-kirja tiggedded kull 15 il-sena u s-sid ma jistax jirrifjuta li jgedded il-kirja. Inoltre s-sid ikun jista` jiehu l-fond bil-permess tal-Bord Li Jirregola l-Kera f`kazijiet limitati, cioe`` morozita fil-hlas tal-kera, jekk l-inkwilin ikun naqas milli josserva l-kondizzjonijiet tal-kirja, jew ghamel hafna hsara fid-dar, jew uza l-fond milli bhala r-residenza ordinarja tieghu.

"ii. L-ghoti ta` titolu ta` lokazzjoni lil min ma kellux dritt jkompli jokkupa fond;

"iii. Li r-rikorrenti m`ghandhomx il-mezz biex jikkontestaw jekk is-sitwazzjoni ta` Grima timmeritax li jinghata protezzjoni. Hu minnu li l-Istat ghandu d-dmir li jipprovdi ghal min hu dghajjef. Madankollu l-ligi ma taghmel l-ebda distinzjoni bejn min verament ghandu bzonn li jinghata l-protezzjoni tal-istat u min m`ghandux bzonn. Hekk per ezempju ma tatix il-possibilta ghal indagni biex jigi stabbilit jekk l-okkupant ghandux akkomodazzjoni alternattiva jew x`inhi l-kundizzjoni finanzjarja tieghu.

"iv. Bhala nuqqas iehor li l-ligi ma tikkunsidrax il-qaghda finanzjarja ta` min jinsab fil-posizzjoni tar-rikorrenti u jrid jiehu lura hwejgu.

"v. Ir-rata baxxa ta` kera li r-rikorrenti ghandhom dritt ghaliha b`applikazzjoni tal-Artikolu 12A tal-Kap.158, meta paragunata mal-kera fis-suq hieles. Id-divergenza hi sinifikanti. Il-qaghda ekonomika tal-pajjiz illum m`hijiex dik li kienet fl-1979, meta gew introdotti l-emendi fil-Kap.

158 li kienu jinkludi l-ghoti ta` dritt ta` kirja wara t-terminazzjoni ta` koncesssjoni enftitewtika temporanja;

"vi. Li l-kera tizdied biss kull hmistax-il sena. Fil-fehma tal-Qorti din m`hijiex realistika meta tqies l-gholi tal-hajja. Is-sid ghandu jdejh marbutin fir-rigward ta` b`kemm ghandha tizdied il-kera, in kwantu li hi l-ligi li tiddetta kif ghandha tigi awmentata l-kera;

"vii. In-nuqqas ta` certezza dwar meta r-rikorrenti ikunu jistghu jirkupraw il-fond;

"viii. Skond il-perit tekniku l-valur tal-fond hu ta` €150,000. Il-Qorti m`ghandhiex dubju li l-valur tal-fond b`inkwilin ighix fih, hu ferm inqas milli kieku l-fond hu bil-pussess vakanti;

ix … Dak li kien bzonnjuz iktar minn tletin sena ilu ma jfissirx li baqa` gustifikat illum il-gurnata;

"tikkonkludi biss li t-tezi tar-rikorrenti ghandha mis-sewwa u li l-piz li s-sid qieghed jintalab li jgorr hu eccessiv. L-argument li din il-ligi saret sabiex tirrimedja ghal anamolija li kien hemm fl-Att XXIII tal-1979 wara l-interpretazzjoni li nghatat mill-Qorti tal-Appell fil-kaz Turner vs Cassar, ma jregix.

…

"In vista ta` dak li nghad hawn fuq m`hemmx htiega li l-Qorti tikkunsidra l-provvedimenti l-ohra tal-ligi li nvokaw ir-rikorrenti in sostenn tat-tezi taghhom li l-Artikolu 12A tal-Kap. 158 iwassal ghal ksur tad-drittijiet fundamentali tar-rikorrenti kif imharsa fl-Artikolu 6 u 14 tal-Konvenzjoni, u l-Artikoli 38, 39 u 45 tal-Kostituzzjoni.

"Min-naha l-ohra l-Qorti hi tal-fehma li ma ghandux ikun li tghaddi ligi simili u l-Istat ma jhallasx kumpens lir- rikorrenti, li sabu ruhhom f`sitwazzjoni fejn persuna li jidher li ma kellux titolu biex jokkupa l-proprjeta taghhom inghata titolu b`mod retroattiv.

B`rizultat ta` din il-ligi r-rikorrenti kienu kostretti li fl-ahhar tal-2007 jaghmlu din ilkawza biex jimpunjaw l-Artikolu 12A introdott bl-Att XVIII tal-2007. Ghalhekk ser tordna li l-Istat ihallas lir-rikorrenti s-somma ta` hmistax-il elf ewro (€15,000) wara li kkunsidrat dak li rrelataw il-perit tekniku Valerio Schembri u l-perit tal-Gvern b`riferenza ghall-valur lokatizju, u meta dahlet fis-sehh il-ligi."

Kompliet tghid :-

16. Sitwazzjonijiet bhal dik tal-lum fejn si tratta minn ilmenti ta` vjolazzjoni ta` natura kontinwa tad-drittijiet ta` proprjeta` bhala rizultat tat-twettieq ta` ligijiet li jimponu arrangamenti lokatizji fuq is-sidien u li jipprovdu ghal ammont ta` kera allegatament inadegwat, gew ritenuti li jammontaw ghal mezz ta` kontroll mill-iStat fuq l-uzu tal-proprjeta` u, inkwantu tali, jaqghu sabiex jigu kkunsidrati taht it-tieni paragrafu tal-Artikolu 1 tal-Ewwel Protokoll.

Interferenza bhal din trid tkun kompatibbli mal-principji ta` (i) legalita` (lawfulness), (ii) ghan legittimu fl-interess generali, u (iii) bilanc gust (ECHR ***Bitto and others v. Slovakia****, 28/1/2014 #95).*

17. Oqsma bhalma hu dak tad-djar jistghu ta` spiss jirrikjedu xi forma ta` regolamentazzjoni mill-iStat. Decizjonijiet dwar jekk, u f`dak il-kaz meta, tkun tista` tithalla topera ghal kollox taht it-tmexxija tal-forzi tas-suq liberu jew jekk ghandhiex tkun soggetta ghal kontroll mill-iStat, kif ukoll l-ghazla tal-mizuri mehtiega sabiex jassiguraw il-bzonnijiet tal-komunita` u z-zmien propizju ghat-twettiq taghhom, necessarjament jinvolvu kunsiderazzjonijiet ta` kwistjonijiet socjali, ekonomici u politici kumplessi. Hu ghalhekk rikonoxxut li l-margini ta` apprezzament da parti tal-iStat f`dan il-qasam ghandu jkun wiehed wiesgha u li ghalhekk il-gudizzju tal-legislatur dwar x`inhu fl-interess pubbliku jew generali ghandha tigi rispettata sakemm dak il-gudizzju ma jkunx wiehed manifestament bla bazi.

18. B`danakollu, jrid jinzamm proporzjon ragjonevoli bejn il-mezzi uzati u l-ghan persegwit bil-mezzi uzati mill-iStat sabiex jikkontrolla l-uzu tal-proprjeta` tal-individwu. Din il-htiega ta` proporzjon issib l-espressjoni taghha fin-nozzjoni ta` "bilanc xieraq" li ghandu jinzamm bejn l-esigenzi tal-interess generali tal-komunita` u l-htigijiet tal-harsien tad-drittijiet fundamentali tal-individwu. F`dan il-kuntest il-Qorti jehtigilha taghmel ezami komprensiv tal-interessi varji u taccerta ruhha jekk b`rizultat tal-indhil mill-iStat il-persuna li tkun kellhiex tissaporti piz eccessiv u sproporzjonat.

…

Il-Qorti tirrileva li l-kuntratt ta` subenfitewsi sar fl-14 ta` Gunju 1957 ghall-perjodu pjuttost twil ta` 45 sena.

Dakinhar l-awtur tar-rikorrenti certament ma setax janticipa kif l-inflazzjoni kienet ser tnaqqar konsiderevolment il-valur tal-ammont ta` subcens pattwit fil-kors tad-dekorriment taz-zmien mentri seta` jaspira ghall-eventwalita` li l-fond jirritorna ghandu fi tmiem iz-zmien tas-subcens meta jkun jista` liberament jinnegozja d-dhul mill-istess fond fid-dawl tar-realtajiet ekonomici renjanti dak iz-zmien. Il-mizura legislattiva inkwistjoni pprivat lir-rikorrenti minn din il-possibilita`, u l-kriterju tal-gholi tal-hajja, tenut kont tal-livell baxx tal-valur tas-subcens inizjali, irrizulta insufficjenti fil-fehma tal-ewwel Qorti sabiex jinzamm il-bilanc mehtieg billi jigi assigurat lir-rikorrenti rikavat ragjonevoli komparat ma` dak li setghu jircievu li kieku ma kienx hemm l-intervent tal-iStat u dan anki meta jittiehed qies tal-fatt li l-mizura legislattiva in kwistjoni ttiehdet ghal skopijiet ta` interess generali socjali.

…

Huwa minnu li fejn si tratta ta` uzu ta` proprjeta` fl-interess generali fil-kuntest ta` social housing il-valur li jista` jkollu jithallas jista` jimporta riduzzjoni konsiderevoli fl-ammont tal-kera pagabbli izda wiesgha kemm hu wiesgha l-margini ta` diskrezzjoni li ghandu l-iStat f`dan il-qasam din

id-diskrezzjoni ma hix bla limitu u l-ezercizzju taghha ma jistax igib konsegwenzi li jikkozzaw malesigenzi minimi tal-Konvenzjoni (ECHR ***Broniowski v. Poland****, 22/6/2004 #182;* ***Hutten-Czapska v. Poland,*** *op.cit. #223;* ***Ghigo v. Malta,*** *op. cit. #68;* ***Edwards v. Malta****, op cit. #77).*

Barra minn hekk, fl-apprezzament li jrid isir dwar jekk il-mizuri li jittiehdu mill-iStat humiex konformi mal-Artikolu 1 tal-Ewwel Protokoll jista` jittiehed qies mhux biss tat-termini relevanti tal-kumpens pagabbli izda wkoll tal-estenzjoni tal-interferenza mill-Istat fil-liberta` tal-persuna li jidhol f`kuntratti u fir-relazzjonijiet kontrattwali fis-suq tal-kiri izda wkoll tal-ezistenza ta` salvagwardi procedurali li jassiguraw li t-thaddim tas-sistema u l-impatt taghha fuq id-drittijiet ta` proprjeta` tas-sid la jkunu arbitrarji u anqas imprevedibbli (ECHR Immobiliare ***Saffi v. Italy****, 28/7/1999 #54;* ***Ghigo v. Malta****, op.cit. #62). Ghalhekk jista` jittiehed qies tal-interessi vari involuti, inkluz dak tas-sid li jippretendi li jaghmel profitt mill-proprjeta` tieghu (****Hutten-Czapska v. Poland****, op. cit. #239;* ***Ghigo v. Malta****, op. cit. #66), tal-imgieba tal-partijiet, inkluzi l-mezzi uzati mill-Istat u t-twettiq taghhom. Fatturi ohra relevanti huma l-incertezza legislattiva, amministrattiva jew rizultanti mill-prattici addotatti mill-awtoritajiet.*

*Inoltre, jispetta lill-awtoritajiet pubblici li fi kwistjonijiet fejn hemm l-interess generali jagixxu fi zmien utli u b`mod adegwat u konsistenti (****Broniowski v. Poland****, op. cit. #151). Dan hu li ghamlet sewwa sew l-ewwel Qorti fl-ezercizzju evalwattiv taghha li fil-kors tieghu elenkat dettaljatament il-varji cirkostanzi relevanti tan-natura fuq imsemmija.*

25. Ghalhekk, l-ezercizzju li ghamlet l-ewwel Qorti fil-kors tal-apprezzament li ghamlet tal-interessi u tac-cirkostanzi kollha tal-kaz kien wiehed sew u fondat tajjeb u din il-Qorti ma ssibx ragunijiet sufficjenti sabiex tiddisturba l-konkluzjoni li waslet ghaliha l-ewwel Qorti bhala rizultat tal-analizi dettaljat u approfondit li ghamlet dik il-Qorti."

Fid-decizjoni taghha, il-Qorti Kostituzzjonali rrilevat illi l-Art 12A kien jilledi d-dritt fundamentali ghat-tgawdija tal-appartament in kwistjoni dan kien igib mieghu il-konsegwenza illi l-Art 12A fir-relazzjonijiet ta` bejn il-partijiet ghall-kawza kien bla effett (ara Q. Kost. : **<u>H. Vassallo & Sons Ltd. v. Avukat Generali et.</u>** tat-8 ta` Ottubru 2012) u ma setax jigi nvokat bejn il-partijiet ghar-rigward tal-fond li kien mertu tal-kwistjoni.

Id-decizjoni fl-ewwel istanza kienet ikkonfermata. Ghalkemm kien hemm tentattiv ta` ritrattazzjoni, il-procedura ta` ritrattazzjoni kienet dikjarat irrita u nulla b`sentenza tat-13 ta` Jannar 2015.

4. <u>Maria Ludgarda Borg et vs Rosario Mifsud et</u>
(Rik Nru 72/14 AE)

Fl-ewwel istanza l-kawza kienet deciza fit-30 ta` Ottubru 2015. Id-decizjoni tal-Qorti Kostituzzjonali nghatat fid-29 ta` April 2016.

a) <u>L-Ewwel Qorti</u>

Kien deciz fl-ewwel istanza li minkejja l-emendi bl-Att X tal-2010 fejn il-kera (bhal dik mertu tal-kawza) saret rivedibbli kull tliet snin u mhux iktar kull hmistax-il sena, xorta wahda ma kien hemmx bilanc xieraq bejn l-interess generali u dak privat tas-sid.

Inghad :

> *"Hu evidenti li f`dan il-kaz il-ligi qeghda tippermetti lir-rikorrenti li tircievi biss a minimal profit (ara sentenza tal-Qorti Ewropea fil-kaz **<u>Amato Gauci v. Malta</u>** 47045/2006 tal-15 ta` Dicembru 2009). Dan m`huwiex bizzejjed biex ikun hemm bilanc xieraq. ….`Il fatt li l-kera hi rivedibbli kull tliet snin m`hijiex mizura li tat lok biex jinholoq il-bilanc xieraq li ssemma hawn fuq. Dan iktar u iktar meta hu fatt maghruf li hu s-suq li jirregola l-kera u mhux l-indici ta` inflazzjoni li hemm fl-Iskeda tal-Kap. 158. Ligi li ghal finijiet ta` kera ma taghti l-ebda konsiderazzjoni per ezempju ghal-lokalita fejn jinsab il-fond, id-daqs tal-fond u l-kundizzjoni tieghu.*

Apparti l-kera hemm fatturi ohra li juru li ma nzammx il-bilanc xieraq. Hekk per ezempju sid il-kera jista` jirrifjuta li jgedded il-kera biss fil-kazijiet limitati kontemplati fl-Artikolu 5(3) tal-Kap. 158. Tezisti wkoll incertezza meta sid il-kera ser ikun jista` jiehu l-fond taht il-kontroll tieghu. Il-probabilta` hi li fl-istat attwali tal-affarijiet hu remot hafna li l-konjugi Mifsud jitilqu minn jeddhom mid-dar oggett ta` dawn il-proceduri.

F`dan ir-rigward hemm stat ta` incertezza totali gialadarba l-ligi ma tiffissax terminu massimu li fih il-proprjeta ghandha tibqa` titgawda b`kirja. Sallum diga` ghaddew sbatax-il sena minn meta tterminat il-koncessjoni enfitewtika, u r-rikorrenti m`ghandha l-ebda hjiel meta ser tiehu lura hwejjigha. Inoltre d-definizzjoni ta` kerrej tinkludi wkoll ulied u hut il-kerrej mhux mizzewwgin li jkunu jghixu mieghu fiz-zmien tal-mewt tieghu (ara Artikolu 2). Fil-kaz in ezami l-konjugi Mifsud ghandhom tifla li tghix maghhom. Claudia Mifsud xehedet li ricentement xtrat appartament gewwa s-Swatar bhala investiment (102).

B`daqshekk ma jfissirx li fil-kaz in ezami m`hemmx il-possibilta li tibqa` tghix maghhom u tgawdi mill-protezzjoni li toffri l-ligi. Mela l-ligi ma toffrix biss protezzjoni lill-inkwilin izda wkoll lil terzi. ….

Hekk ukoll fis-sentenza ***__Albert Cassar et vs Onor`Prim`Ministru et__****, il-Qorti Kostituzzjonali qalet:*

"[36] Din il-Qorti tosserva li l-Att XXIII tas-sena 1979 li jipprovdi ghall-konverzjoni tac-cens temporanju ghal wiehed ta` lokazzjoni jikkostitwixxi ndhil fid-dritt konvenzjonali tar-rikorrenti ghat-tgawdija tal-proprjeta` taghhom, stante li permezz tieghu nholqot "forced landlord-tenant relationship" ghal zmien indefenit, b`mod li r-rikorrenti qeghdin isofru deprivazzjoni tal-proprjeta` taghhom, stante li ma jistghux juzawha biex jabitaw fiha, kif ukoll qed isofru telf finanzjarju sostanzjali bil-kera baxx fissat mil-ligi".

…

Hu fatt li mill-provi rrizulta li l-mezzi finanzjarji tal-intimati jiddependu mill-pensjoni li jircievi l-intimat Rosario Mifsud. Ma rrizultax li ghandhom xi ntrojtu iehor. Li tnejn min-nies ighixu bil-pensjoni tar-ragel li jircievi minghand il-Gvern ma tippermettix hajja ta` lussu…. M`hemmx dubju li l-Gvern ghandu dmir li jipprovdi ghal nies fil-bzonn, izda zgur mhux billi jitfa` l-piz kollu fuq sid il-kera. Ir-realta` tal-lum m`hijiex dik li kienet tezisti fl-1979 meta dahal fis-sehh l-Att XXIII li kien l-Att li holoq a forced landlord-tenant relationship. Dan apparti li l-Gvern lanqas ma pprezenta statistika bhala prova li fic-cirkostanzi tal-lum ghad hemm il-htiega tal-mizura li ttiehdet bl-introduzzjoni tal-Att XXIII tal-1979.

…

Waqt is-smiegh tal-kawza ssemma wkoll li :-

i. sid il-kera ghandha iktar gid li wirtet minghand il-genituri. B`daqshekk ma jbiddel xejn minn dak li diga` ntqal.

ii. l-intimati Mifsud ghamlu miljoramenti fil-fond … Pero` hi l-ligi stess li tipprovdi li meta jiskadi t-terminu tal-koncessjoni, il-padrun dirett jiehu lura l-fond bil-miljoramenti (Artikolu 1521 tal-Kodici Civili).

15. Gialadarba l-ilment tar-rikorrenti hu gustifikat taht l-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni, m`hemmx il-htiega li l-Qorti titratta l-ilment taghhom fir-rigward tal-Artikolu 37 tal-Kostituzzjoni."

c) <u>Il-Qorti Kostituzzjonali</u>

Fis-sentenza taghha, il-Qorti Kostituzzjonali qalet :-

25. L-ewwel Qorti sabet lezjoni tad-drittijiet tal-intimati taht l-Artikolu 1 tal-Ewwel Protokoll tal-Kap.319…Kemm l-Avukat Generali, kif ukoll l-intimati konjugi Mifsud jissottomettu illi tenut kont tal-interess generali legittimu wara l-mizura

legislattiva in dizamina, il-Qorti ma ghandhiex issib sproporzjon tali li jimmerita sejbien ta` lezjoni tal-artikolu protokolari.

…

*28. Fir-rigward hija opportuna l-osservazzjoni maghmula minn din il-Qorti fis-sentenza taghha tad- 29ta` Novembru 2013 fl-ismijiet **Christopher Hall v. Awtorita` tad-Djar et** li :*

" … hu l-principju abbraccjat minn din il-Qorti u mill-Qorti Ewropeja li, anke jekk il-mizura li jkun ha l-Istat tkun legittima u tkun fl-interess pubbliku, xorta wahda tista` twassal ghal-lezjoni konvenzjonali jekk ma jinzammx bilanc gust bejn l-interessi tas-socjeta` generali u l-protezzjoni tad-dritt fundamentali sancit fl-Artikolu 1 tal-Ewwel Protokol tal-Konvenzjoni, b`mod li l-mizura, allura legittima, tkun titfa` fuq l-individwu `a disproportionate and e cessive burden`."

Jigi osservat li, ghad li l-istat ghandu margini wiesgha ta` diskrezzjoni f`materja ta` akkomodazzjoni socjali huwa ghandu l-obbligu li jassigura wkoll li bejn il-mezzi adoperati u l-iskop li jrid jilhaq, ikun hemm bilanc gust bejn il-piz li qed ibati s-sid ta` proprjeta` fit-tgawdija pacifika tad-dritt fundamentali tieghu minhabba kirja protetta, u l-interessi tas-socjeta` in generali. L-istat ghandu ghalhekk l-obbligu illi jassigura li ebda parti ma tkun assoggettata ghal piz sproporzjonat u eccessiv.

…

32. L-ewwel Qorti sabet li f`dan il-kaz, ghal numru ta` ragunijiet, ma nholoqx bilanc gust bejn l-interess tal-komunita` u l-interessi privati tar-rikorrenti bhala sidien… Din il-Qorti tikkondividi dawn il-konsiderazzjonijiet maghmula mill-ewwel Qorti li wassluha sabiex f`dan il-kaz issib ksur tal-artikolu konvenzjonali fuq citat rizultat ta` fatturi li holqu zbilanc bejn l-ghan tal-mizura u l-piz sproporzjonat u eccessiv li qed isofru r-rikorrenti.

…

34. Tosserva wkoll li huwiex minnu illi l-Qorti ma qiesitx il-fatt illi uzu ta` proprjeta` fl-interess generali fil-kuntest ta` akkomodazzjoni socjali jista` jimporta riduzzjoni konsiderevoli fl-ammont tal-kera pagabbli.

Hija ikkonsidrat l-ammont tal-kera fil-kuntest ta` bilanc xieraq, u waslet ghall-konkluzjoni li l-hlas ta` 18% tal-kera li jimmerita` l-fond in kwistjoni fis-suq hieles, ma huwiex bizzejjed biex jintlahaq dan il-bilanc.

Dan id-distakk fil-valur lokatizju johloq sproporzjon u jitfa` piz eccessiv u sproporzjonat fuq ir-rikorrenti bi pregudizzju ghad-dritt fundamentali taghhom sancit bl-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni."

5. <u>Robert Galea vs Avukat Generali et</u>
<u>(Rik Nru 50/15 JRM)</u>

Fis-sentenza ta` din il-Qorti diversament presjeduta tas-7 ta` Frar 2017 (<u>mhux appellata</u>) inghad hekk :-

"Illi f`dak li jirrigwarda l-ksur allegat taht l-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni l-kwestjoni tiehu xejra ohra. Ghalhekk il-Qorti sejra tghaddi biex tistharreg il-kwestjoni mqajma mir-rikorrent taht din id-dispozizzjoni ;

Illi fit-tifsira u l-applikazzjoni li nghatat mill-Qrati dwar l-imsemmija dispozizzjoni bhala parti mil-ligi taghna, inghad li din testendi biex thares it-tgawdija hielsa mill-persuna dwar hwejjigha (il-possedimenti taghha) u mhux biss il-harsien mit-tehid ta` pussess kif mahsub fl-artikolu 37 tal-Kostituzzjoni.

Huwa minhabba f`hekk li l-applikabilita` tal-artikolu taht il-Konvenzjoni jidher li hija usa` minn dak taht il-Kostituzzjoni;

*Illi bhalma bosta drabi nghad, l-Artikolu 1 tal-Ewwel Protokoll fih tliet regoli. L-ewwel regola tistabilixxi d-dritt li kull persuna (kemm fizika u kif ukoll morali) tgawdi hwejjigha bil-kwiet. It-tieni regola trid li biex persuna ma tithalliex tgawdi hwejjigha bil-kwiet irid ikun hemm interess pubbliku u bla hsara ta` kundizzjonijiet mahsuba fil-ligi u l-principji generali ta` dritt internazzjonali. It-tielet regola trid li l-ewwel zewg regoli ma jnaqqsux il-jedd tal-Istat li jwettaq ligijiet li jkunu xierqa biex (a) jikkontrolla l-uzu tal-gid skond l-interess generali, jew (b) biex jizgura l-hlas ta` taxxi, kontribuzzjonijiet jew pwieni. B`mod partikolari, fil-harsien tal-jedd imsemmi f`dak l-artikolu irid jintwera li jkun inzamm u thares bilanc xieraq bejn l-interessi tal-komunita` u dawk tal-individwu li gidu jkun intlaqat mill-eghmil tal-Istat. Dwar it-tifsir xieraq ta` dan l-artikolu, il-Qrati taghna diga` (Ara, per ezempju, Kost. 28.12.2001 fil-kawza fl-ismijiet **<u>Pawlu Cachia vs Avukat Generali et</u>** (Kollez. Vol: LXXXV.i.615) taw il-fehmiet meqjusa taghhom u hargu b`sensiela ta` principji li fuqhom ghandhom jintiznu l-jeddijiet tal-individwu fuq naha u dawk tal-Istat fuq in-naha l-ohra;*

*Illi, fuq kollox, l-imsemmija tliet regoli tal-artikolu 1 huma msenslin wahda mal-ohra u ghandhom jinftehmu b`qari ma` xulxin (Q.E.D.B. 23.9.1982 fil-kawza fl-ismijiet **<u>Sporrong & Lonnroth vs Svezja</u>** (Applik. Nru. 7151/75) , § 61). Ghalhekk, filwaqt li l-ligijiet li jaghtu s-setgha lill-Istat li jiehu gid f`idejh ghal ghanijiet pubblici huma meqjusa bhala mehtiega f`socjeta` demokratika, dawn ma jaghtux jedd assolut jew insindakabbli lill-Istat, ghaliex tali jedd ghandu jitqies bhala eccezzjoni jew limitazzjoni ghall-jedd tal-individwu li jgawdi hwejgu u gidu bil-kwiet, u ghalhekk l-Istat irid juri kif imiss li l-jedd tieghu wettqu bil-qies u fil-parametri permessi mil-ligi. Dan ukoll jghodd fejn l-Istat ma jihux gid f`idejh imma, bhal fil-kaz li l-Qorti ghandha llum quddiemha, jghaddi ligijiet mahsuba biex jirregolaw l-uzu u t-tgawdija ta` gid bhal dak;*

Illi ma hemm l-ebda dubju li t-tifsira moghtija lill-kelma "possedimenti" fl-imsemmi artikolu tal-

Konvenzjoni hija wahda wiesgha u zgur tmur lil hinn mit-tifsira ta` semplici proprjeta`. Kemm hu hekk "the word `possessions` ... indicates that a wide range of proprietal interests were intended to be protected. It embraces immoveable and moveable property and corporeal and incorporeal interests, such as shares and patents. Contractual rights, including leases, and judgment debts are possessions. The essential characteristic is the acquired economic value of the individual interest" (Harris, O`Boyle & Warbrick);

Illi ta` min jghid li l-imsemmi artikolu jirreferi ghall-interess pubbliku jew generali, u mhux ghas-skop pubbliku, u huwa dan il-kriterju tal-interess li huwa l-qofol li jholl u jorbot jekk ghemil jiksirx dak l-artikolu konvenzjonali. Il-kejl biex jitqies jekk tali interess pubbliku jew generali jinstabx huwa dak li jqis jekk f`ghemil partikolari johrogx il-"fair balance ... between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights. The search for this balance is inherent in the whole of the Convention and is also reflected in the structure of Article 1";

Illi huwa stabilit li biex indhil fit-tgawdija tal-gid ta` persuna jkun gustifikat fl-interess generali, irid jintwera li hemm utilita` konkreta ghal dak l-indhil, u mhux semplici ipotesi ta` bzonn jew aspirazzjoni.

*Minbarra dan, l-interess generali jew pubbliku ghandu jibqa` jsehh ghaz-zmien kollu tal-indhil fit-tgawdija tal-gid tal-persuna (Kost. 10.10.2003 fil-kawza fl-ismijiet **<u>Francis Bezzina Wettinger et vs Kummissarju tal-Artijiet</u>**).*

Illi huwa mghallem li, ghall-finijiet ta` l-artikolu 1, "there will be deprivation of property only where all the legal rights of the owner are extinguished by operation of law or by the exercise of a legal power to the same effect. ... In the absence of a formal extinction of the owner`s right, the Court has been very cautious about accepting that a de facto deprivation of property qualifies as a `deprivation` for the purposes of Article 1/2. De facto takings are

generally understood to occur when the authorities interfere substantially with the enjoyment of possessions without formally divesting the owner of his title."

*Ghalhekk, b`tehid ta` gid minghand is-sid ghall-finijiet ta` dan l-artikolu, jidher li wiehed ifisser il-kaz fejn il-jeddijiet proprjetarji jingiebu fix-xejn (Ara, per ezempju, Kost. 1.2.2008 fil-kawza fl-ismijiet **Vincent Curmi noe et vs L-Onor. Prim Ministru et**);*

*Illi minbarra dan, kif inghad aktar qabel, huwa accettat li s-setgha tal-Istat li jindahal biex b`ligi jikkontrolla l-uzu tal-gid taht l-artikolu 1 tal-Ewwel Protokoll hija setgha wiesgha u diskrezzjonali. Dejjem tibqa` l-htiega li jintwera (mill-istess Stat) l-interess generali u l-bilanc xieraq bejn l-interessi tal-individwu u dak tal-komunita` (Kost. 8.1.2007 fil-kawza flismijiet **Gera de` Petri Testaferrata Bonici Ghaxaq vs L-Avukat Generali et**);*

Illi, min-naha l-ohra, ghal dak li jirrigwarda l-indhil fl-uzu tal-gid min-naha tal-Istat, jidher li dan l-indhil jista` jiehu s-sura ta` kull ghamla ta` kontroll (bla ma jcahhad lis-sid mit-titolu), sakemm dan isir billi jithares il-bilanc bejn il-htiega ta` interess pubbliku jew generali u l-jeddijiet tas-sid fuq dak il-gid;

*Illi filwaqt li huwa d-dmir tal-Istat li juri li t-tehid jew l-indhil sehh tassew fl-interess pubbliku jew generali (Kost. 24.5.2004 fil-kawza fl-ismijiet **Raymond Vella et vs Il-Kummissarju tal-Artijiet**), hemm qbil li, fejn jidhol dak li jitqies bhala "interess pubbliku", l-Istat igawdi firxa wiesgha ta` diskrezzjoni (Q.E.D.B. 23.11.2000 fil-kawza fl-ismijiet **The former King of Greece et vs Grecja** (Applik. Nru. 25701/94) § 87).*

*Madankollu, il-mod kif titwettaq dik id-diskrezzjoni jrid jghaddi mill-gharbiel tal-bilanc mistenni bejn l-interessi tas-socjeta` u dawk tal-individwu mgarrab bit-twettiq taghha, u dan kemm jekk l-eghmil ikun ta` tehid ta` proprjeta` u kif ukoll jekk ikun "semplicement" dwar indhil fl-uzu taghha (K. Reid **A Practitioner`s Guide to the European***

Convention on Human Rights *(3rd. Edit, 2007) pag. 501);*

Illi huwa accettat ukoll li s-setgha moghtija lill-Istat li jikkontrolla l-uzu tal-gid ukoll ghal ghanijiet socjali jew fl-interess pubbliku trid titwettaq b`mod proporzjonali mal-interessi tas-sid privat fit-tgawdija ta` hwejgu. Din il-proporzjonalita` tinkiseb fis-sura ta` hlas ta` kumpens xieraq u ghalhekk jekk il-kumpens mahsub mil-ligi ma jkunx xieraq, jonqos l-element tal-proporzjonalita`.

Jekk jonqos dan l-element, ikun hemm ksur tal-jedd fundamentali ghat-tgawdija pacifika tal-gid kif imhares bl-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni;

Illi huwa stabilit li, fejn jidhol l-aspett talproporzjonalita` taht il-Konvenzjoni "inherent in the whole of the Convention is a search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights". This balancing approach known under the term of principle of proportionality has acquired the status of general principle in the Convention system." (Van Dijk, van Hoof, van Rijn, Zwaak ***Theory and Practice of the European Convention on Human Rights*** *(4th Edit, 2006), § 17.4.2, f`pagg. 882 – 3) Dan l-element tal-proporzjonalita` kien kunsidrat b`reqqa mill-oghla Qorti f`Malta f`ghadd ta` kazijiet u l-Qorti tqis li ghandha taccenna ghalihom bla ma tidhol f`dettal ta` tismija mill-gdid (Ara Kost. 27.4.2012 fil-kawza fl-ismijiet* ***Michael Xerri et vs Avukat Michelle Tabone noe et*** *, fost bosta ohrajn);*

Illi ma hemmx dubju li, fil-kaz li l-Qorti ghandha quddiemha, l-indhil li minnu jilminta r-rikorrent sehh bis-sahha ta` ligi (l-Att XXIII tal-1979). B`dik il-ligi, fir-rigward ta` postijiet li qabel kienu dekontrollati, fi tmiem ta` enfitewsi li taghlaq ta` post bhal dak, is-sid (i) ma setax aktar jippretendi li l-utilista johrog mill-post, imma l-ligi kienet tat lil dak l-utilista l-jedd li jibqa` joqghod fih bhala kerrej. Illi (ii) l-kirja kienet imgedda ghal zminijiet

ta` hmistax-il (15) sena kull wahda, bil-hlas tal-kera regolat. Illi (iii) s-sid ma setax aktar jirrifjuta li jgedded il-kirja hlief fic-cirkostanzi imsemmija fl-istess dispozizzjonijiet, u (iv) ma setax jimponi kundizzjonijiet ohrajn hlief dawk ukoll stabiliti espressament.

Ghar-rigward tat-tehid lura tal-post minghand il-kerrej, is-sid irid juri lill-Bord li Jirregola l-Kera li l-kerrej ikun kiser il-kundizzjonijiet tal-kirja dwar hlas f`waqtu tal-kera, iz-zamma f`kundizzjoni tajba tal-post mikri u l-harsien tal-kundizzjonijiet miftehma, fosthom li ma jkunx inqeda mill-post b`uzu iehor minn dak miftiehem li l-post kien inkera ghalih. Dwar il-kundizzjonijiet li s-sid jista` jimponi, il-kera ma baqax minghajr kontroll u seta` jizdied biss kull hmistax-il sena skond l-indici tal-inflazzjoni u ma jaqbizx id-doppju tal-ammont tal-perjodu ta` qabel. Ghal dak li jirrigwarda t-tiswijiet u z-zamma f`kundizzjoni tajba tal-post, sid il-kera ma setax jehles mir-rabta li jidhol ghall-ispejjez mehtiega jekk mhux qabel iressaq quddiem l-imsemmi Bord li Jirregola l-Kera certifikat minn perit arkitett u accettat mill-kerrej, li juri li l-post kien fi stat tajjeb ta` tiswija62. Qabel ma dahlu dawn id-dispozizzjonijiet, sid ta` post dekontrollat ma kienx marbut b`dawn il-kundizzjonijiet f`kaz li jikri l-post;

Illi fil-kaz tal-kirja li nhalqet favur l-intimati Ganado, dawn gew igawdu mill-bidliet li ddahhlu fil-ligi bl-Att XXIII tal-1979 kemm ghaliex il-post kien koncess lilhom b`enfitewsi temporanju bhala d-dar fejn joqoghdu u jghixu regolarment u kif ukoll ghaliex huma kienu cittadini Maltin. Tajjeb jerga` jinghad li meta l-intimati Ganado kisbu l-koncessjoni enfitewtika tal-post minghand ir-rikorrent, huma kienu ghamlu dan bil-weghda li johorgu mill-post malli jaghlaq iz-zmien miftiehem u sakemm ikunu ghadhom ma xtrawx post taghhom fejn kien fi hsiebhom imorru joqoghdu;

Illi l-Qorti hija tal-fehma wkoll li wiehed ma jistax jittraskura aspett ewlieni li johrog min-natura tal-kuntratt tal-enfitewsi. Jidher li dan l-aspett mhux kulhadd jaghraf is-siwi tieghu u jaghti `l wiehed x`jifhem li sahansitra quddiem il-Qorti ta`

Strasbourg dan il-kuncett tal-kuntratt mhuwiex apprezzat kemm jisthoqqlu. Il-Qorti qieghda tirreferi ghall-fatt li l-kuntratt ta` enfitewsi jista` jixxiebah ma` bejgh, fejn l-utilista jinghata jeddijiet wesghin fuq il-gid moghti lilu b`enfitewsi u fejn id-direttarju jxidd (ghat-tul tal-koncessjoni) kwazi l-kontroll kollu fuq il-haga li jkun ta` b`enfitewsi, hlief ghall-gharfien tad-dirett dominju tieghu bil-hlas tal-"canone". Dan ifisser li l-"canone" jew cens li kien ikun impost f`koncessjoni enfitewtika ma kienx tabilfors jitkejjel mas-siwi intrinsiku jew skond is-suq tal-gid li jkun qieghed jinghata b`enfitewsi, izda kien ikun hlas nominali bhala turija biss tal-ezistenza tal-jeddijiet tal-padrun dirett. Fil-bicca l-kbira tal-kazijiet, din kienet tkun ghazla konxja u hielsa tal-koncedent direttarju;

Illi meta, ghalhekk, l-artikolu 12 tal-Kapitolu 158 rabat il-kejl tal-hlas tal-kera l-gdida ex lege ma` kemm kien l-ammont tal-"canone" li jithallas matul il-koncessjoni enfitewtika, kienet qieghda tinhalaq sitwazzjoni li tabilfors iddarras lill-padrun dirett fl-gheluq tal-imsemmija koncessjoni. Kemm hu hekk, it-taqbil li llum isir dwar il-valur lokatizju ta` fond li seta` kien inghata b`enfitewsi li taghlaq, iwassal ghar-rizultati kontrastanti mal-kejl tal-kera dovuta marbuta mal-ammont ta` "canone" li kien iffissat liberament bejn il-kontraenti, kif jidher li kien il-kaz fil-koncessjoni enfitewtika originali bejn ir-rikorrent u l-intimat Ganado. Dan il-fattur issa jidher li huwa wkoll rizultat li johrog f`bosta kazijiet fejn wiehed jigi biex iqis l-aspett tal-proporzjonalita` tal-mizura fil-konfront tat-tgawdija tal-jedd tas-sid fuq hwejgu;

Illi minhabba f`hekk, jibqa` fatt mhux kontestat li t-tigrib li jsib ma` wiccu l-padrun dirett meta taghlaq koncessjoni (sub-)enfitewtika mhuwiex daqstant minhabba r-riperkussjonijiet tal-ghazla tieghu li jimponi "canone" mhux kalibrat mal-valur fis-suq tal-immobbli,daqskemm minhabba l-fatt li, fl-gheluq tal-imsemmija koncessjoni, sejra tinhalaq kirja mkejla fuq u b`rabta` mal-imsemmi "canone" u liema kirja zzomm milli l-immobbli bil-benefikati mtellghin fuqu jerga` lura ghand sidu. Kif sewwa inghad f`dan ir-rigward "il-fatt illi l-ligi taghti lis-sid il-jedd biss illi l-kera jzomm il-valur monetarju

tieghu bla konsiderazzjoni ghall-fatt illi s-sid gie mcahhad mill-possibilita` li jiehu l-fond lura jew li jikrih b`kundizzjonijiet aktar vantagguzi, u l-fatt ukoll illi l-ligi ma tahseb ghal ebda mekkanizmu biex tkun valutata tassew il-htiega socjali tal-kerrej ghal kirja protetta, u ma tahsibx ghall-possibilita` li dik il-htiega tigi mqabbla mal-htiega, li tista` tkun xejn anaqas socjali, tas-sid, jaghmlu l-ligi nieqsa minn dawk l-elementi li joholqu bilanc u proporzjon bejn il-htiega genwina ghall-akkomodazzjoni socjali u li ccahhad lis-sid mit-tgawdija ta` hwejgu" (Kost 30.9.2016 fil-kawza fl-ismijiet ***Maria Stella Azzopardi Vella et vs Avukat Generali et*** *§20);*

Illi fis-sottomissjonijiet tieghu, ir-rikorrent jghid li bil-bidliet li saru fil-ligi matul iz-zmien li kienet ghadha miexja l-koncessjoni enfitewtika originali, huwa garrab hsara kemm f`dak li jirrigwarda l-ammont ta` dhul li seta` jippretendi bi dritt minghand l-utilista u kif ukoll bil-fatt li lanqas seta` aktar jiehu l-post lura f`idejh mal-gheluq tal-istess koncessjoni, minkejja li jghid li wliedu kellhom bzonnu biex jghixu fih huma.

Ghalhekk, jghid li huwa qieghed illum bla htija tieghu jgorr il-piz ta` rabta legali li ma kienet bl-ebda mod mahsuba meta dahal fis-sehh l-Att XXIII tal-1979.

Ikompli jargumenta li l-fatt li hu accetta ghal numru ta` snin il-kera minghand l-intimati Ganado wkoll wara li kien ghalaq iz-zmien konvenzjonali ma jnaqqas xejn mill-fatt li jezisti zbilanc bejn l-interessi tieghu dak milhuq mill-interess pubbliku. Jishaq li l-kera li jdahhal illum minghand l-intimati Ganado – elfejn disa` mija u hdax-il euro u tlieta u ghoxrin centezmi (€ 2911.23) kull sena – jgibu mqar sbatax fil-mija (17%) tal-valur lokatizju xieraq li l-post kien stmat mill-perit tekniku mqabbad mill-Qorti li jista` jgib f`kera fiz-zmien li nfethet din il-kawza. Jghid ukoll li tassew ghandu bzonn il-post kemm ghalih u ghal martu u bil-ligi kif inhi ma jistghux johduh f`idejhom, filwaqt li wliedhom kellhom ifittxu post ghalihom biex jikruh bi hlas ta` kera gholi. Huwa jishaq li fid-dawl tal-ksur tal-jedd li huwa qieghed igarrab, ir-rimedju

xieraq ghandu jkun il-hlas ta` kumpens ghat-telf ta` kera minn dak inhar li l-koncessjoni enfitewtika ntemmet u nhalqet il-kirja sallum, imqabbla ma kemm kien inkera l-post li kieku kien hieles biex jinkera fuq is-suq; u kif ukoll li l-post jintraddlu lura battal mill-kerrej, ghaliex anqas minn hekk, il-hsara li qieghed igarrab tibqa` ma tissewwiex;

Illi, min-naha taghhom l-intimati Ganado jishqu hafna fuq il-fatt li r-rabta kuntrattwali li nhalqet bil-ftehim tal-2009 ma tistax tissarraf fi ksur tal-jeddijiet tar-rikorrent. Huma jghidu li nqdew b`jedd li taghtihom il-ligi u ma jistghux iwiegbu ghall-ilment ta` ksur ta` jedd fundamentali li ma halquhx huma.

Itennu li lanqas ma tista` tintlaqa` t-talba tar-rikorrent biex din il-Qorti tordnalhom johorgu mill-post u li lanqas ma huwa xieraq li huma jkunu kundannati jhallsuh kumpens, imma jekk tassew hemm ksur taljeddijiet tar-rikorrenti, hu l-Istat li ghandu jhallas kumpens bhal dak;

Illi l-intimat Avukat Generali jargumenta li l-Konvenzjoni taghti lill-Istat setgha wiesgha biex jindahal fil-jedd ta` tgawdija tal-possedimenti tal-privat ghal interess pubbliku. Izid jghid li r-rikorrent minn rajh biddel il-binarji ta` din il-kawza hekk kif qataghha li jidhol f`kuntratt ta` kirja gdid mal-intimati Ganado li ma baqghetx aktar marbuta mad-dispozizzjonijiet tal-Kapitolu 158 tal-Ligijiet ta` Malta.

Izid jghid li wkoll kieku l-Qorti kellha ssib li d-dispozizzjonijiet tal-artikolu 12 tal-Kapitolu 158 kienu jiksru l-jedd fundamentali tar-rikorrent, b`daqshekk ma jgibx ukoll il-hall tal-ftehim ta` kirja li sar fl-2009 bejnu u l-intimati Ganado u li fadallu sa Novembru tal-2023 biex jaghlaq u b`harsien tar-regola li l-kuntratti jorbtu lil min jidhol fihom – pacta sunt servanda – u jridu jitwettqu b`bona fidi. L-intimat jghid li ma hemm l-ebda dubju li meta ghaddiet il-ligi fl-1979, l-Istat kien qieghed jaghmel dan b`ghan legittimu fejn l-indhil kien jinvolvi t-thaddim ta` politika socjali u ekonomika f`qafas ta` interess pubbliku u ta` gustizzja socjali. Jghid li dik il-ligi kienet taqa` fil-

parametri tat-tieni paragrafu tal-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni u zzomm bilanc gust bejn l-ghan socjali mahsub wara dik il-ligi u r-rispett u l-harsien tal-jeddijiet fundamentali tas-sidien dwar it-tgawdija ta` hwejjighom. L-ghan socjali wara l-bidliet fil-ligi bl-Att XXIII tal-1979 – dak li fl-interess pubbliku ikun assigurat li jkun hemm provvista ta` djar fejn wiehed jghix ghal min ikun nieqes minn tali akkomodazzjoni minhabba ragunijiet finanzjarji u socjali – kien maghruf ukoll mill-Qorti ta` Strasbourg f`bosta sentenzi li tressqu quddiemha minn applikanti minn Malta. Itemm jghid li llum il-gurnata l-ligi regghet inbidlet u saret izjed favorevoli ghas-sidien u jolqtu lir-rikorrenti wkoll;

Illi din il-Qorti tqis li, fic-cirkostanzi tal-kaz, ma jistax jinghad li r-rikorrent gie "privat" jew imcahhad minn hwejgu ghall-finijiet tat-tifsira moghtija fl-ewwel paragrafu tal-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni.

Madankollu, ma hemm l-ebda dubju li, bis-sahha tal-Att XXIII tal-1979, sehh indhil sostanzjali fit-tgawdija ta` hwejgu b`mod li l-ilment tieghu jaqa` biex jitqies taht it-tieni paragrafu tal-istess artikolu. Kif inghad qabel, filwaqt li dak l-indhil huwa legali (ghaliex huwa sewwasew l-effett ta` ligi mghoddija mill-Parlament), u filwaqt li ma hemm l-ebda dubju li l-ghan li ghalih kienet ghaddiet il-ligi kien dak li jipprovdi akkomodazzjoni mharsa lil ghadd ta` persuni, wiehed irid jara jekk dak l-indhil kienx wiehed meqjus jew proporzjonali jew jekk, minhabba fih, is-sid tal-gid (f`dan il-kaz partikolari r-rikorrent) intalabx jerfa` piz zejjed u sproporzjonat fit-tgawdija tal-jedd tieghu meta mqabbel mal-ghanijiet li ghalihom dik il-ligi ddahhlet fis-sehh;

Illi l-Qorti jidhrilha li jixraq tqis li, qabel ma ddahhlu fis-sehh id-dispozizzjonijiet tal-artikolu 12 tal-Kap 158, fil-ligi kien diga` ilu s-snin li ddahhlu dispozizzjonijiet li jharsu lill-kerrejja ta` postijiet urbani. Kemm hu hekk, id-dispozizzjonijiet tal-Kap 158 kienu jirrapprezentaw eccezzjoni ghal dawk id-dispozizzjonijiet u l-kelma "dekontrollat" kienet tirreferi sewwasew ghat-tnehhija ta` certi fondi

"godda" mill-morsa tad-dispozizzjonijiet tal-ligijiet il-qodma, jekk ikunu mharsa certi kundizzjonijiet hemm preskritti.

Dan ifisser li l-Kap 158, sal-1979, kien eccezzjoni ghar-regola ta` x`jigri minn post urban moghti b`koncessjoni enfitewtika meta tintemm il-koncessjoni miftehma.

Mela, meta ddahhlu fis-sehh id-dispozizzjonijiet tal-ligi bl-Att XXIII tal-1979, il-legislatur kien qieghed jerga` johloq eccezzjoni fl-eccezzjoni u jikkontrolla x`setghat kien ikollu s-sid ta` post iddekontrollat fl-eghluq ta` koncessjoni enfitewtika u x`jeddijiet kien ikollu l-okkupant tal-istess post fi tmiem koncessjoni bhal dik;

Illi l-Qorti thoss li din il-precizazzjoni hija mehtiega fil-kaz li ghandha quddiemha llum – b`mod partikolari f`dak li jirrigwarda l-kriterju tal-proporzjonalita` – ghaliex biha johrog car li d-dispozizzjonijiet tal-Att XXIII tal-1979 kienu ndhil legislattiv meta fl-ordinament guridiku Malti kienu jezistu diga` ligijiet ohrajn li jipprovdu ghall-harsien tal-akkomodazzjoni socjali kemm f`dak li jirrigwarda s-setghat tal-Istat li jiehu b`rekwizizzjoni gid immobbli privat biex jaghtih b`kiri lil min kien jehtiegu, u kif ukoll f`dak li jirrigwarda l-kiri ta` postijiet qodma f`dak li jirrigwarda r-relazzjonijiet u d-drittijiet privati bejn sidien u kerrejja;

Illi, minbarra dan, il-bidliet li ddahhlu fil-ligi bl-Att XXIII tal-1979 inghatalhom effett retrospettiv, jigifieri saru jghoddu wkoll ghal koncessjonijiet enfitewtici ta` postijiet dekontrollati moghtija qabel ma gie fis-sehh l-imsemmi Att. Dan ifisser li, fi tmiem koncessjoni bhal dik, tnisslu effetti u konsegwenzi legali li l-partijiet kontraenti ma kellhomx f`mohhhom meta ntrabtu bil-ftehim tal-istess koncessjoni enfitewtika ta` post bhal dak. Dawn l-effetti u konsegwenzi ghabbew aktar lis-sidien u iffavorew lill-utilisti li mbaghad, b`daqqa ta` pinna, saru kerrejja. Dawn l-effetti u konsegwenzi ma baqghux jghoddu fil-kaz fejn kirjiet ta` postijiet dekontrollati saru fl-1 ta` Gunju, 1995 jew wara dakinhar. Minhabba f`hekk, il-kirja mertu

tal-kaz tal-lum ma setghetx tiehu beneficcju minn din il-liberalizzazzjoni;

*Illi b`zieda ma` dan kollu, kien biss wara bosta snin minn mindu r-rikorrent sab ruhu milqut minn dawn il-bidliet legislattivi li minnhom tant jilminta li fetah din il-kawza fl-2015. Dan ma jfissirx li b`daqshekk tilef l-istatus tieghu ta` "vittma" tal-ligi li minnha jilminta, izda din ic-cirkostanza taf thalli tabilfors impatt fuq il-kwalita` tal-ilment imressaq (Kost. 25.10.2013 fil-kawza fl-ismijiet **<u>Dr Cedric Mifsud et vs L-Avukat Generali et</u>**) u wkoll fuq ir-rimedju moghti (Kost. 3.3.2011 fil-kawza fl-ismijiet **<u>Dr David Tonna et vs Kummissarju tal-Artijiet et</u>**).*

*Ghalkemm f`dan ir-rigward irid jinghad ukoll li l-fatt li l-ligi ma timponix fuq sid zmien sa meta jmissu jiftah proceduri dwar ilment ta` ksur ta` jedd fundamentali tqies mill-Qorti fi Strasbourg bhala "questionable" li l-Qorti domestika tiehu qies tad-dewmien fit-tnedija tal-proceduri bhala wiehed mill-kriterji li fuqu jitkejjel il-kumpens (Ara Q.E.D.B. 30.8.2016 fil-kawza fl-ismijiet **<u>Montanaro Gauci et vs Malta</u>** (Applik. Nru. 31454/12) §45);*

Illi meta l-Qorti tigi biex tqis jekk l-indhil li r-rikorrent garrab huwiex wiehed li joqghod ghall-htigijiet tal-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni, trid taghmel "an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are `practical and effective`. It must look behind appearances and investigate the realities of the situation complained of.

In cases concerning the operation of wide-ranging housing legislation, that assessment may involve not only the conditions of the rent received by individual landlords and the extent of the State`s interference with freedom of contract and contractual relations in the lease market, but also the existence of procedural and other safeguards ensuring that the operation of the system and its impact on a landlord`s property rights are neither arbitrary nor unforeseeable" (Q.E.D.B. 11.12.2014

fil-kawza fl-ismijiet ***Anthony Aquilina vs Malta*** *(Applik. Nru. 3851/12) §60);*

Illi meta wiehed iqis il-fatturi u c-cirkostanzi kollha marbuta mal-kaz, wiehed isib li l-piz finanzjarju ghadu mitfugh kollu fuq ir-rikorrent sallum. Dan johrog l-izjed meta wiehed iqis il-valur li l-post kien meqjus li jista` jinkera kemm fiz-zmien meta ghalqet il-koncessjoni enfitewtika u kif ukoll kemm kien jinkera llum li kieku ma kinetx fis-sehh il-ligi kif inhi b`effett tal-Att XXIII tal-1979. Il-perit tekniku sab li fis-sena meta ghalqet il-koncessjoni enfitewtika maghmula lill-intimati Ganado (jigifieri f`Dicembru tal-1993) il-valur li bih il-post kien jista` jinkera kien ta` erbat elef disa` mija u sitta u hamsin euro (€ 4,956) fis-sena filwaqt li llum l-istess appartament kien jista` jinkera ghal sbatax-il elf u seba` mitt (€17,700) fis-sena. Meta l-koncessjoni enfitewtika ntemmet u nhalqet il-kirja ope legis (fl-1993) l-oghla kera li seta` jintalab minghand l-intimati Ganado kien ta` elfejn u tnejn u ghoxrin euro (€2,022) fis-sena, filwaqt li ghat-tieni tigdida tal-kirja ghal hmistax-il (15) sena sat-30 ta` Novembru, 2023, il-kera li l-intimati Ganado huma tenuti jhallsu hu ta` elfejn disa` mija u hdax-il euro u tnejn u ghoxrin centezmi (€ 2,911.22) fis-sena;

Illi dan ifisser li filwaqt li meta nhalqet il-kirja l-kera li seta` jintalab minghand l-intimati Ganado kien jitla` ghal madwar wiehed u erbghin fil-mija (41%) tal-valur lokatizju xieraq tal-post, issa l-kera dovut bilkemm ilahhaq is-sbatax fil-mija (17%) tal-valur lokatizju xieraq tal-istess post illum. Jigifieri aktar ma qieghed jghaddi z-zmien jirrizulta li aktar qieghed jikber id-distakk bejn dak li jithallas b`kera u dak li jixraq jithallas. Meta wiehed iqabbel il-kera dovuta mal-kera li l-post jista` jinkera bih li kieku ma kienx maqbud taht l-effetti tal-Att XXIII, wiehed isib li hemm disproporzjon qawwi bejn qaghda u ohra u li dan id-disproporzjon qieghed igarrbu r-rikorrent wahdu, minkejja l-ghanijiet legittimi u socjali li l-ligi qieghda tilhaq fir-rigward tal-intimati Ganado;

Illi ghalhekk, il-Qorti tasal ghall-fehma li fil-qaghda li jinsab fiha r-rikorrent illum u ladarba l-bidliet li regghu saru fil-ligi baqghu ma

*indirizzawx ghal kollox qaghda bhal dik li jinsab fiha r-rikorrent, u kif ukoll fid-dawl tat-tifsira li nghataw id-dispozizzjonijiet rilevanti tal-Kap 158 kif mibdula bl-Att XXIII tal-1979, kemm mill-qrati ta` kompetenza kostituzzjonali Maltin (Kost. 29.4.2016 fil-kawza fl-ismijiet **Maria Ludgarda Borg et vs Rosario Mifsud et**) u kemm tal-Qorti ta` Strasbourg (Q.E.D.B. 15.9.2009 fil-kawza fl-ismijiet **Amato Gauci vs Malta** (Applik. Nru. 47045/06) §§51 –2; u Q.E.D.B. 11.12.2014 fil-kawza fl-ismijiet **Anthony Aquilina vs Malta** (Applik. Nru. 3851/12) §66 – 7 fost ohrajn), jirrizulta li r-rikorrent garrab u qieghed igarrab ksur tal-jedd tieghu ghat-tgawdija pacifika ta` hwejgu kif imhares bl-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni u dan minhabba li d-dispozizzjonijiet tal-artikolu 12(2) u (3) imsemmi Kap 158 iqieghed fuqu piz sproporzjonat meta mqabbel mal-ghan li ghalih iddahhlu fis-sehh l-istess dispozizzjonijiet;*

Illi, madankollu, safejn l-ewwel talba tar-rikorrent, kif imfassla, torbot il-ksur imgarrab minnu mal-fatt li d-dispozizzjonijiet tal-artikolu 12 tal-Kap 158 "jirrenduha impossibbli lir-rikorrenti li jirriprendi lpussess tal-proprjeta` tieghu" din il-Qorti diga` qalet aktar qabel li dan ma jidhirx li huwa l-kaz. Huwa tabilhaqq izjed iebes u difficli li r-rikorrent isehhlu jnehhi lill-intimati Ganado mill-post – l-aktar minhabba l-ftehim tal-kirja li ghadu ghaddej – izda l-ligi ma taghlaqx il-bieb lilu biex jinghata dak ir-rimedju u l-procedura u l-access ghal tribunal indipendenti u imparzjali biex jilhaq dak il-ghan huwa disponibbli lilu bhalma huwa disponibbli ghal kull sid iehor ta` post mikri bhala residenza protetta jew `kontrollata`. Dan il-punt jinghad b`aktar qawwa fid-dawl tal-effetti li din il-Qorti tqis li jinhalaq bis-sejbien tal-ksur tal-artikolu 1 tal-Ewwel Protokoll meta meqjus l-artikolu 12 tal-Ordinanza. Ghalhekk, il-Qorti ma ssibx li tassew jezisti ksur tal-jedd fundamentali tarrikorrent taht l-ewwel talba tieghu ghar-raguni li huwa jaghti f`dik it-talba;

Illi b`daqshekk ma jfissirx li l-Qorti ma tistax issib ksur tal-jedd taht it-tieni talba tar-rikorrenti. Ghalkemm fid-dehra taghha din it-tieni talba tista` tkun konsegwenzjali ghall-ewwel talba, huwa car

ghal din il-Qorti li r-rikorrenti tassew qieghed igarrab ksur tal-jedd tieghu kif imhares bl-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni ghar-ragunijiet imsemmijin aktar `il fuq u li ma hemmx ghalfejn jergghu jissemmew. B`mod partikolari, ma jistax jinghad li, minn dak li hareg mill-fatti u mill-konsiderazzjonijiet li saru aktar qabel, it-tieni talba ma tistax triegi fuq is-sahha taghha, safejn imsejsa fuq ksur tal-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni. Dan qieghed jinghad ghaliex din il-Qorti waslet ghall-fehma li r-rikorrenti qieghed igarrab ksur tal-jedd tieghu taht l-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni minhabba li l-piz li l-ligi qieghda ggeghelu jgorru huwa wiehed sproporzjonat meta mqabbel mal-ghan li ghalih l-indhil kien mahsub li jirregola favur l-intimati.

Ghalhekk, it-tieni talba hija tajba u sejra tintlaqa` u dan safejn titlob is-sejbien ta` ksur ta` jedd fundamentali taht il-Konvenzjoni."

(ara wkoll : **<u>Catherine Cauchi et vs Avukat Generali et</u> : Rik. Nru. 92/13 AF : QK : 26 ta` Jannar 2018 ; <u>Rose Borg vs Avukat Generali et</u> : Rik. Nru. 25/13 LSO : QK : 11 ta` Lulju 2016 ; <u>Josephine Azzopardi et vs L-Onor Prim Ministru et</u> : QK : Rik. Nru. 72/15 JPG : 25 ta` April 2018 ; <u>Josephine Azzopardi pro et noe et vs L-Onor Prim Ministru et</u> : QK : Rik. Nru. 80/14 MCH : 25 ta` April 2018 ; <u>Josephine Azzopardi pro et noe et vs L-Onor Prim Ministru et</u> : QK : Rik. Nru. 88/14 MCH : 25 ta` April 2018 ; <u>Josephine Azzopardi pro et noe et vs L-Onor Prim Ministru et</u> : QK : Rik. Nru. 96/14 MCH : 25 ta` April 2018 ; <u>Sergio Falzon et vs Alfred Farrugia et : PA/K : Rik. Nru. 8/2016 LSO : 30 ta` Jannar 2018 : appellata ;</u> <u>Josephine Azzopardi pro et noe vs Onor Prim Ministru et</u> : QK : 75/2014 JZM : 25 ta` April 2018 ; <u>Josephine Azzopardi pro et noe vs Onor Prim Ministru et</u> : QK : Rik. Nru. 77/2014 JZM : 25 ta` April 2018 ; <u>Josephine Azzopardi pro et noe vs Onor Prim Ministru et</u> : QK : Rik. Nru. 79/2014 JZM : 25 ta` April 2018 ; <u>Josephine Azzopardi pro et noe vs Onor Prim Ministru et</u> : QK : Rik. Nru 81/2014 JZM : 25 ta` April 2018 ; <u>Josephine Azzopardi pro et noe vs Onor Prim Ministru et</u> : QK : Rik. Nru 82/2014 JZM : 25 ta` April 2018 ; <u>Josephine Azzopardi pro et noe vs Onor Prim Ministru et</u> : QK : Rik. Nru 85/2014 JZM : 25 ta` April 2018 <u>Josephine Azzopardi pro et noe vs Onor Prim Ministru et</u> : QK : Rik. Nru 87/2014 JZM : 25 ta` April 2018 ; <u>Josephine Azzopardi pro et noe vs Onor Prim Ministru et</u> : QK : Rik. Nru 89/2014 JZM : 25 ta` April 2018 ; <u>Josephine Azzopardi pro et noe vs Onor Prim Ministru et</u> : QK :**

Rik. Nru 90/2014 JZM : 25 ta` April 2018 ; <u>Josephine Azzopardi pro et noe vs Onor Prim Ministru et</u> : QK : Rik. Nru 91/2014 JZM : 25 ta` April 2018 ; <u>Josephine Azzopardi pro et noe vs Onor Prim Ministru et</u> QK : Rik. Nru 93/2014 JZM : 25 ta` April 2018 ; <u>Josephine Azzopardi pro et noe vs Onor Prim Ministru et</u> : QK : Rik. Nru 94/2014 JZM : 25 ta` April 2018 ; <u>Josephine Azzopardi pro et noe vs Onor Prim Ministru et</u> : QK : Rik. Nru 95/2014 JZM : 25 ta` April 2018 ; <u>Josephine Azzopardi pro et noe vs Onor Prim Ministru et</u> : QK : Rik. Nru 97/2014 JZM : 25 ta` April 2018 ; <u>Josephine Azzopardi pro et noe vs Onor Prim Ministru et</u> : QK : Rik. Nru 98/2014 JZM : 25 ta` April 2018 ; <u>Josephine Azzopardi pro et noe vs Onor Prim Ministru et</u> : QK Rik. Nru 5/2015 JZM : 25 ta` April 2018 ; <u>Angela *sive* Gina Balzan vs L-Onorevoli Prim Ministru et</u> : PA/K : 15 ta` Dicembru 2017 : appellata ; Maria Pia *sive*` Marian Galea vs Avukat Generali et : Rik. Nru. 2/2017 SM : 7 ta` Novembru 2017 : appellata ; u <u>Josephine Azzopardi pro et noe vs Onor Prim Ministru et</u> : QK : Rik. Nru 6/2015 JZM : 9 ta` Marzu 2018 : appellata)

C. <u>Risultanzi</u>

Minkejja li l-koncessjoni subenfitewtika favur Mary Gatt skadiet fl-1990, bis-sahha ta` l-Art 12(2) tal-Kap 158, ir-rikorrenti kienet kostretta *ope legis* illi tidhol ghal lokazzjoni ghal zmien indefinit, bi quantum ta` kera kontrollat mil-ligi stess fuq firxa twila ta` snin, bil-maqlub li kien sar meta fil-bidu tac-cens temporanju l-kontraenti kienu kkontrattaw il-pattijiet u l-kondizzjonijiet inkluz il-quantum tac-canone.

Mid-deposizzjonijiet tal-periti *ex parte* tar-rikorrenti u tal-Avukat Generali, huwa evidenti li r-rata ta` kera li r-rikorrenti setghet tippercepixxi b`effett tal-Art 12(2) meta mqabbla mal-kera fis-suq hieles hija baxxa u sproporzjonata.

B`zieda ma` dan, jirrizulta li l-qaghda ekonomika tal-pajjiz illum hija bil-wisq ahjar minn dik li kienet fl-1979, meta kienu saru l-emendi ghall-Kap 158.

Ghalkemm bl-aggornament l-aktar ricenti tal-legislazzjoni l-kera tizdied kull tlett snin (mhux kull 15-il sena kif kienet bl-emendi tal-1979), l-ammont tal-kera xorta wahda ma jirriflettix ir-realta` ekonomika u socjali tal-pajjiz, apparti l-fatt illi s-sid ghandu jdejh marbuta dwar b`kemm ghandha tizdied il-kera, in kwantu li hi l-ligi li tistabilixxi kif u kemm

ghandha tkun awmentata l-kera. Mentri fis-suq liberu, il-kera tigi determinata skont kontrattazzjoni bejn il-partijiet.

Fid-decizjoni taghha tal-11 ta` Dicembru 2014 fil-kaz ta` **Anthony Aquilina vs Malta** l-ECHR kienet irrimarkat illi : "*the 2009 and 2010 amendments (only) slightly improved a landlord`s position*".

Fis-sentenza tas-27 ta` Marzu 2015 fil-kawza "**Ian Peter Ellis et vs Avukat Generali et**, il-Qorti Kostituzzjonali stabbiliet illi :-

"Lanqas l-emendi ghall-Kodici Civili li sehhew bl-Att tas-sena 2009 ma jistghu jitqiesu bhala li jaghtu rimedju effettiv ghall-lanjanzi tar-rikorrenti, kemm ghax tezisti diskrepanza enormi bejn l-awment fil-kera kontemplat fl-artikolu 1531C u l-valur lokatizju tal-fond fis-suq hieles, kif ukoll ghax id-disposizzjonijiet tal-artikolu 1531F, fic-cirkostanzi tal-kaz, jaghmlu remota l-possibilita` li dawn jipprendu l-pussess tal-fond taghhom."

Hija l-fehma konsiderata tal-Qorti illi fil-kaz tal-lum b`effett tal-Art 12(2) tal-Kap 158 il-piz li r-rikorrenti matul is-snin kellha ggorr sakemm hadet lura l-pussess tal-fond fil-mori ta` din il-kawza kien bil-wisq sproporzjonat u eccessiv, bil-konsegwenza li ghal bosta snin kellha taccetta *ope legis* inkwilinat minghajr ma tircievi kumpens xieraq u adegwat.

Ghalhekk sejra taghmel taghha l-insenjamenti gurisprudenzjali li ghalihom irreferiet aktar kmieni u tadottahom ghall-kaz tal-lum.

Ghalhekk, filwaqt li qeghda tichad l-eccezzjonijiet numerati minn hamsa (5) sa hmistax (15) tal-intimat Avukat Generali, qeghda tilqa` l-ewwel (1) talba tar-rikorrenti limitatament billi tiddikjara illi bl-applikazzjoni tal-Art 12(2) tal-Kap 158 fir-rigward tal-fond de quo propjeta` taghha hija garrbet ksur tal-jeddijiet fondamentali taghha hekk kif imharsa bl-Art 1 Prot 1 tal-Konvenzjoni.

VII. L-eccezzjoni numerata sittax (16) tal-intimat Avukat Generali u t-tieni (2) talba tar-rikorrenti

L-Avukat Generali qed jeccepixxi illi jekk din il-Qorti jkun jidhrilha li kien hemm ksur ta` drittijiet fundamentali tar-rikorrenti, allura dikjarazzjoni ta` ksur tkun bizzejjed minghajr il-bzonn li r-rikorrenti tinghata r-rimedji li qeghda titlob.

Diga` kien rilevat illi fil-mori tal-kawza, ir-rikorrenti hadet lura l-pussess tal-fond, u allura mhuwiex aktar il-kaz illi tqis it-talba li ghamlet ir-rikorrenti ghall-izgumbrament ta` Mary Gatt mill-fond de quo bhala rimedju ghall-ksur tal-jedd fondamentali taghha hekk kif imhares bl-Art 1 Prot 1 tal-Konvenzjoni.

Fl-istess waqt il-Qorti tirrespingi bhala nfondata l-eccezzjoni tal-intimat Avukat Generali li dikjarazzjoni ta` vjolazzjoni tal-jedd tkun bizzejjed ghar-rikorrenti, meta tqis il-piz sproporzjonat u eccessiv li kien ippruvat illi garrbet matul is-snin effett tal-applikazzjoni tal-Art 12(2) tal-Kap 158 fil-konfront taghha.

VIII. Il-kumpens bhala r-rimedju ndikat ghar-rikorrenti

Il-Qorti hija tal-fehma li r-rikorrenti ghandha tithallas kumpens ghall-vjolazzjoni subita.

Il-kumpens li jista` jinghata fi procediment ta` natura kostituzzjonali mhuwiex ekwivalenti ghal danni civili li jigu likwidati mill-qrati ordinarji (ara : QK : **Philip Grech pro et noe vs Direttur tal-Akkomodazzjoni Socjali et** deciza fis-17 ta` Dicembru 2010 ; **Victor Gatt et vs Avukat Generali et** deciza fil-5 ta` Lulju 2011 ; u **Ian Peter Ellis et vs Avukat Generali et** deciza fl-24 ta` Gunju 2016).

Fid-decizjoni ta` **Maria Stella sive Estelle Azzopardi et vs Avukat Generali et** deciza fit-30 ta` Settembru 2016, il-Qorti Kostituzzjonali kompliet tippreciza illi r-*"rimedju li taghti din il-Qorti huwa kumpens ghall-ksur tad-dritt fondamentali u mhux danni civili ghal opportunita` mitlufa."*

Dan premess, huma diversi l-konsiderazzjonijiet li l-Qorti ghandha taghmel sabiex tistabilixxi l-*quantum* tal-kumpens.

Decizjoni li kkunsidrat fid-dettall din il-kwistjoni hija s-sentenza li tat il-Qorti Kostituzzjonali fil-kawza **Raymond Cassar Torregiani et vs Avukat Generali et** deciza fid-29 ta` April 2016.

Il-Qorti qalet hekk :-

"Dwar il-quantum tal-kumpens dovut issir referenza ghas-sentenza ta` din il-Qorti* ***Igino Trapani Galea Feriol pro et noe et V Kummissarju tal-Artijiet et*** *deciza fil-31 ta` Ottubru 2014, fejn f` materja ta` komputazzjoni ta` kumpens ghal lezjoni ta` dritt fondamentali sancit fl-artikolu konvenzjonali fuq citat gie osservat:

"Rigward il-quantum tal-kumpens stabbilit mill-ewwel Qorti, din il-Qorti tosserva fl-ewwel lok li kull kaz ghandu jigi trattat u deciz fuq il-fattispecie tieghu. Barra minn hekk, jekk il-Qorti Ewropeja hasset li f` certi kazijiet kellha taghti kumpens f` ammont inferjuri ghal dak li nghata lir-rikorrenti mill-ewwel Qorti, ma jfissirx li allura l-Qrati Maltin tilfu l-awtonomija taghhom b` mod li bilfors kumpens li jinghata ikun f` ammont vicin dak li taghti l-Qorti Ewropeja. Fil-kaz odjern l-ewwel Qorti hadet in konsiderazzjoni l-fatturi kollha li jimmilitaw kemm favur kif ukoll kontra r-rikorrenti u deherilha li l-kumpens xieraq li ghandha taghti f` dan il-kaz ikun fl-ammont ta` hamsa u ghoxrin elf Euro (EUR 25,000). Hija kkonsidrat id-dewmien da parti tar-rikorrenti li jiehdu l-proceduri opportuni, il-valur tal-immobbli, iz-zmien tant twil li r-rikorrenti ilhom privati mill-godiment tal-proprjeta` taghhom minghand ma nghata ebda kumpens, l-istat tal-fond u l-ezistenza tal-fattur tal-interess pubbliku. Ma` dawn ghandu jigi senjalat il-fatt li qabel l-ispossessament tal-proprjeta` taghhom ir-rikorrenti kellhom permess mill-Bord kompetenti sabiex jizviluppaw il-fond."

Issa ghalkemm, huwa minnu illi l-valur tal-kumpens akkordat mill-Qorti wara sejba ta` lezjoni tad-drittijiet fondamentali ma jekwiparax necessarjament ma` likwidazzjoni ta` danni civili attwali sofferti, ma jfissirx li d-danni materjali ghandhom jigu injorati ghall-finijiet tal-ezercizzju odjern. Il-Qorti trid tqis il-fatturi kollha rilevanti ghall-kaz odjern sabiex tasal ghad-determinazzjoni tal-quantum. Dawn huma (1) it-tul ta` zmien li ilha ssehh il-vjolazzjoni konsidrat ukoll fid-dawl tat-tul taz-zmien li r-rikorrenti damu sabiex resqu l-proceduri odjerni biex jirrivendikaw id-drittijiet kostituzzjonali taghhom ; (2) il-grad ta` sproporzjoni relatat mal-introjtu li qed jigi percepit

ma` dak li jista` jigi percepit fis-suq hieles, konsidrat ukoll l-ghan socjali tal-mizura; (3) id-danni materjali sofferti mir-rikorrenti konsidrat ukoll l-ispejjez sostanzjali li ghamlu l-intimati Tabone ssabiex jirrendu l-fond abitabbli u (4) l-ordni li ser taghti din il-Qorti dwar l-ezenzjoni f` da nil-kaz mill-effetti legali tal-Artikolu 5 tal-Kap 158."

Meta jinghata kumpens fi procediment ta` din ix-xorta, ghandu jinghata konsiderazzjoni l-ghan li jkun immotiva l-mizura u cioe` l-interess pubbliku. Ghalhekk il-kumpens likwidat ghandu jkun anqas minn kumpens li jista` jinkiseb fis-suq hieles (ara : QK : **Carmen Cassar vs Direttur ghall-Akkomodazzjoni Socjali et** : 12 ta` Lulju 2011).

Bid-decizjoni tas-7 ta` Dicembru 2012 fil-kawza : **Angela sive Gina Balzan v. L-Onorevoli Prim Ministru** : op. cit. : ir-rikorrenti inghatat kumpens ta` €60,000 bhala *just satisfaction.*

Fis-sentenza tal-25 ta` Ottubru 2013 fil-kawza : **Dr. Cedric Mifsud et vs l-Avukat Generali et** : op. cit. : il-Qorti Kostituzzjonali, wara li qieset il-fatturi kollha u l-istima tal-perit tekniku, kif ukoll illi l-funzjoni taghha ma hijiex li tillikwida danni civili izda danni ghall-ksur ta` jeddijiet fondamentali, ghamlet likwidazzjoni ta` kumpens ghall-ksur tal-jedd fondamentali fis-somma ta` €15,000.

Issir ukoll referenza ghas-sentenza tal-Qorti Kostituzzjonali tal-31 ta` Jannar 2014 fil-kawza : **Concetta sive Connie Cini vs Eleonora Galea et** op. cit. : fejn inghad :-

"25. F`materja ta` kumpens il-gurisprudenza patria kif ukoll dik tal-Qorti Ewropeja identifikat is-segwenti principji :

"The Court would reiterate that compensation terms under the relevant legislation may be material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate balance on applicants. The taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference."

[ECHR 31443/96 para.176 Bronoiswki v. Poland, decided 22 June 2004].

26. Fil-kawza Louis Apap Bologna v. Calcidon Ciantar et deciza 24 Frar 2012, din il-Qorti osservat hekk:

"F`kazijiet bhal dawn il-kumpens xieraq ghandu jiehu in konsiderazzjoni l-ghan legittimu li mmotiva l-mizura tarrekwizizzjoni u li l-kumpens jista` jkun anqas mill-kumpens shih li altrimenti jkun dovut skond il-kriterji tas-suq. Il-Qorti Ewropea fil-kazijiet ta` Edwards v Malta u Ghigo v Malta 17 Lulju 2008] ddecidiet li :

"Para.76. As the Court has already stated on may occasions, in spheres such as housing of the population, States necessarily enjoy a wide margin of appreciation not only in regard to the existence of the problem of general concern warranting measures for control of individual property, but also to the choice of the measures and their implementation. The State control over levels of rent is one such measure and its application may often cause significant reductions in the amount of rent chargeable (....Mellacher and Others v Austria para.45]."

27. Inoltre, "In the absence of a formal expropriation that is to say a transfer of ownership, the Court considers that it must look behind the appearances to investigate the realities of the situation complained of!.. Since the Convention is intended to guarantee rights that are practical and effective it has to be ascertained whether that situation amounted to a de facto expropriation [Sporrong & Lonnroth v. Sweden 18/12/1994; ara ukoll kawza Perit Duminku Mintoff, supra]".

28. Fil-kaz in dizamina, l-ewwel Qorti waslet ghall-konkluzjoni li l-kumpens dovut ex lege lill-intimati bis-sahha tal-artikolu precitat huwa wiehed irizorju meta komparat mal-valur tal-fond fis-suq. L-Avukat Generali jhossu aggravat bil-fatt li fid-determinazzjoni tal-fattur tal-proporzjonalita` tal-mizura relattivament ghall-kumpens dovut, l-ewwel Qorti ma kellhiex timxi fuq l-istima tal-valur

tal-fond fl-ammont ta` mija, hamsa u tletin elf Euro (€135,000) moghti ex parte mill-Perit inkarigat mill-intimati, izda se mai kellha timxi fuq l-istima ta` disghin elf Euro (€90,000) tal-Perit inkarigat mir-rikorrenti, stante li l- Konvenzjoni "ma tikkoncedi ebda dritt li xi hadd jircievi profitt, aktar u aktar fil-kuntest ta` proprjeta` li qed isservi ghall-finijiet ta` social housing."

29. Fir-rigward din il-Qorti tosserva li dan l-ilment tal- Avukat Generali huwa fondat. Inkwantu huwa konformi mal-principju, illum assodat kemm fil-gurisprudenza patrija kif ukoll f`dik tal-Qorti Ewropeja, li f`kaz ta` legislazzjoni li ghandha ghan socjali l-kumpens offrut jista` ma jkunx jekwivali ghall-valur tal-fond fis-suq.

30. Kif osservat il-Qorti Ewropeja fil-kaz Amato Gauci v. Malta, [Appl.47045/06, deciz 15 Dicembru 2009] :

"... [the Court] reiterating that legitimate objectives in the `public interest`, such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less that reimbursement of the full market value [see James and Others, cited above, para.54 and Jahn and Others v Germany [GC] nos.46720/99, 72203/01 and 72552/01, para.94..]

31. Illi jirrizulta pacifiku li fiz-zmien meta nghatat il-koncessjoni sub-enfitewtika, fil-11 ta` Jannar 1960 ic-cens annwu kien gie stabbilit fl-ammont ta` £35, illum wiehed u tmenin Euro, tlieta u hamsin centezmi (€81.53), li bl-applikazzjoni tal-Artikolu 12 jizdied ghal erba; mija, disgha u tmenin Euro u tmintax-il centezmi (€489.18)3. Inoltre, l-utilista, allura perpetwa tista` tifdi c-cens versu l-prezz ta` disat elef u tmien mitt Euro (€9,800) li minnu ghandu jitnaqqas il-capital gains tax ta` 12%.

32. Din il-Qorti tikkondividi l-hsieb tal-ewwel Qorti li l-ammont ta` cens dovut ex lege lill-intimati huwa baxx sal-punt li ma jistax jinghad li ghat-tfixkil sostanzjali fit-tgawdija tal-proprjeta` taghhom huma nghataw kumpens adegwat, kemm ghax fiz-zminijiet tal-lum il-quantum tac-cens

annwu dovut ex lege jitqies bhala wiehed baxx meta jigi relatat mal-valur tal-fond, kif ukoll tenut kont tal-konsiderazzjoni li lir-rikorrenti, okkupanti tal-fond b`titolu ta` uzufrutt biss, qed tinghatalha dritt gdid li tibqa` tokkupa l-fond b`titolu ta` enfitewsi perpetwa, bil-possibilita` tarripreza tal-pussess fiziku tal-fond da parti tas-sidien tkun wahda remota hafna. Huwa principalment dan il-fattur li, fil-fehema ta` din il-Qorti, jitfa` `a disproportionate and excessive burden` fuq is-siden.

33. Kif gja` osservat minn din il-Qorti fil-kawza Josephine Bugeja v. Avukat Generali, deciza 7 Dicembru 2009, ghad-determinazzjoni tal-fattur tal-proporzjonalita` ghandu jittiehed kont tal-effetti legali u prattici li l-applikazzjoni tal-artikolu ser iggib mieghu. Dan l-ezami ghandu jsir mhux in vacuo, izda skont il-fattispecje tal-kaz. "Huwa l-ezercizju ta` dak id-dritt fil-prattika u b`mod konkret, u mhux l-ezistenza tieghu fl-astratt, li jista` bhal fil-kaz in ezami, talvolta jammonta ghal-lezjoni ta` dritt fundamentali" [para.45]. Jigi ribadit li l-Qorti ghandha thares lejn l-effett prattiku tas-sitwazzjoni, peress li, kif sostnut mill-Qorti Ewropeja, il-konvenzjoni tiggarantixxi drittijiet li huma "practical and effective" biex jigi stabbilit jekk is-sitwazzjoni fil-fatt tammontax ghal esproprijazzjoni de facto."

Fis-sentenza ta` din il-Qorti diversament presjeduta tas-7 ta` Frar 2017 fil-kawza : **<u>Robert Galea vs Avukat Generali et</u>** : op. cit. : inghad hekk :-

"Illi ghal dak li jirrigwarda t-talba tal-kumpens il-Qorti tqis li din it-talba hija l-effett naturali tas-sejbien tal-ksur tal-jedd invokat. Huwa mizmum li, ladarba Qorti ssib li r-rikorrent garrab ksur tal-jedd tieghu kif imhares bl-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni, ma huwiex bizzejjed li tieqaf b`semplici dikjarazzjoni bhal dik. Ghalkemm ir-rimedju xieraq mhuwiex lanqas u tabilfors il-kundanna ta` hlas ta` kumpens bhallikieku l-haga li dwarha sehh il-ksur kienet inbieghet, xi ghamla ta` kumpens huwa misthoqq u doveruz. Hawn ukoll, il-Qorti qieghda zzomm quddiem ghajnejha li

l-ksur imgarrab mir-rikorrent jikkonsisti f`indhil dwar u mhux f`tehid tal-gid tieghu;

Illi b`zieda ma` dan, ir-rikorrent jitlob ukoll il-hlas tad-danni "ai termini tal-artikolu 41 tal-Konvenzjoni Ewropeja";

Illi l-Qorti tibda biex tghid li l-kumpens misthoqq lill-persuna wara li jkun instab li din garrbet ksur ta` xi jedd fundamentali taghha ma huwiex l-istess bhal-likwidazzjoni u hlas ta` danni mgarrba. Minbarra dan, ir-rikorrent ma jistax jistrieh fuq l-ghoti ta` kumpens taht l-artikolu minnu msemmi tal-Konvenzjoni. Fl-ewwel lok, il-Konvenzjoni taghmel mil-ligijiet ta` Malta safejn id-dispozizzjonijiet taghha kienu inkorporati fil-Kapitolu 319 tal-Ligijiet ta` Malta. L-imsemmi artikolu ma kienx hekk inkorporat. Fit-tieni lok, huwa maqbul li d-dispozizzjonijiet ta` dak l-artikolu jghoddu ghall-Qorti ta` Strasbourg u mhux ghall-qrati domestici tal-Pajjizi Membri tal-Kunsill tal-Ewropa (Ara Kost. 30.9.2016 fil-kawza fl-ismijiet Maria Stella Azzopardi Vella et vs Avukat Generali et);

Illi b`daqshekk ma jfissirx li t-talbiet tar-rikorrent dwar l-ghoti ta` rimedju mhumiex sejrin jintlaqghu. Jekk ma jistghux jintlaqghu talbiet ghal-likwidazzjoni ta` kumpens u danni bis-sahha tal-imsemmi artikolu 41 tal-Konvenzjoni, jista` u sejjer jinghata rimedju taht il-kriterji tal-ghoti ta` rimedju bhal dan minn din il-Qorti fis-setghat u kompetenza attwali taghha (Kost. 17.12.2010 fil-kawza fl-ismijiet Philip Grech pro et noe vs Direttur tal-Akkomodazzjoni Socjali et). Ghalhekk, il-Qorti tasal ghall-fehma li t-tieni rimedju mitlub mir-rikorrenti fit-tielet, ir-raba` u l-hames talbiet tieghu ma jisthoqqlux jintlaqa`, imma sejjer jinghata kumpens taht it-tieni talba tieghu;

Illi huwa llum stabilit li r-rimedju li tista` taghti din il-Qorti huwa kumpens ghall-ksur tad-dritt fundamentali u mhux danni civili ghal opportunita` mitlufa (Kost. 22.2.2013 fil-kawza fl-ismijiet Albert Cassar et vs Onor. Prim Ministru et). Biex tasal ghal dan, il-Qorti jehtigilha tqis ghadd ta` fatturi, fosthom it-telf effettiv li jkun garrab is-sid, l-ghan

socjali mahsub mil-ligi, il-grad ta` sproporzjon fit-tqabbil bejn id-dhul attwali li qieghed jircievi r-rikorrent mad-dhul li jista` jinkiseb fis-suq hieles, id-danni materjali li l-parti rikorrenti tista` tipprova li garrbet u wkoll l-effetti tal-ordni li l-Qorti tista` taghti dwar jekk l-okkupant jistax jibqa` jistrieh aktar fuq it-thaddim tal-ligi attakkata. Minn kif wiehed jista` jara, dawn il-kriterji huma firxa shiha li trid titqies f`kull kaz ghalih u jiddependu hafna mic-cirkostanzi partikolari ta` kull kaz;

Illi dwar il-kumpens dovut lir-rikorrent, madankollu, tqum konsiderazzjoni ohra. Ghalkemm ir-rikorrent harrek ukoll lill-intimati Ganado, izda dan ma jfissirx li huma l-istess intimati Ganado li jridu jhallsu lir-rikorrent il-kumpens li sejjer jinghata jew li jaghmlu tajjeb ghal ghazla li kienet taghtihom il-ligi. Kumpens bhal dak ghandu jbatih biss l-Istat minhabba li l-ksur li qed igarrab ir-rikorrent huwa l-effett dirett tal-ligi li ddahhlet bl-Att XXIII tal-1979. L-intimati Ganado nqdew b`ligi li tathom jeddijiet godda li ma kellhomx fiz-zmien meta nghatat il-koncessjoni enfitewtika, izda ma ghamlu xejn biex jiksbu dan il-jedd b`mod illegali. Fid-dawl tal-massima qui suo jure utitur neminem laedere videtur, l-Qorti ma tistax issib li l-intimati Ganado jridu jaghmlu tajjeb huma wkoll ghall-hlas tal-kumpens lir-rikorrent minhabba s-sejbien ta` ksur tal-jedd fundamentali tieghu. Din il-fehma tinbena wkoll fuq il-fatt li l-ilment tar-rikorrent jirrigwarda ligi li jaghmilha l-Istat u mhux ic-cittadin li, min-naha tieghu, ghandu jedd jinqeda biha fil-parametri taghha u safejn din ma titqiesx li qieghda tikser il-jedd fundamentali tas-sid;

Illi kif inhu mizmum u mghallem "fil-kaz ta` ligi leziva tad-drittijiet konvenzjonali jew kostituzzjonali, huwa l-Istat u mhux ic-cittadin li ghandu jirrispondi. Ghax huwa principalment l-obbligu tal-Istat, u mhux tal-inkwilin, li jassigura li d-drittijiet fundamentali tas-sid ma jinkisrux" (Kost. 24.2.2012 fil-kawza fl-ismijiet Louis Apap Bologna vs Kalcidon Ciantar et; u Kost. 6.2.2015 fil-kawza fl-ismijiet Sean Bradshaw et vs L-Avukat Generali et);

Illi meta wiehed iqis ic-cirkostanzi kollha li johorgu mill-provi mressqa u jhaddem dwarhom ir-regoli li dawn il-qrati minn zmien ghal zmien inqdew bihom f`kazijiet li jixxiebhu (Kost. 29.4.2016 fil-kawza fl-ismijiet Raymond Cassar Torregiani et vs Avukat Generali et), il-Qorti ssib li jkun xieraq li jithallas kumpens lir-rikorrent fis-somma ta` sebat elf euro (€ 7,000). Din is-somma qieghda tqis ukoll iz-zmien li r-rikorrent ha biex ressaq l-ilment tieghu quddiem il-Qorti (Ara Kost 25.5.2012 fil-kawza fl-ismijiet Josephine Mary Vella vs Direttur tal-Akkomodazzjoni Socjali et)."

Fis-sentenza ta` din il-Qorti diversament ippreseduta fl-ismijiet **Sergio Falzon et vs Alfred Farrugia et** : op. cit. : deciza fit-30 ta` Jannar 2018 : li kienet appellata : inghad hekk :-

Illi fil-kaz odjern il-Qorti taqbel li dikjarazzjoni ta` ksur mhijiex sodisfacenti in vista tal-fatt li skont ir-rapport peritali, l-esponenti ghamlu telf pekunjarju konsiderevoli u ser ikomplu jaghmlu telf bl-applikazzjoni tal-ligi sakemm il-fond jintradd lura. Ghaldaqstant taqbel mar-rikorrenti li dikjarazzjoni ta` ksur mhijiex idonea sabiex terga` issir reintegrazzjoni tal-proporzjonalita` u tpoggi lir-rikorrenti fl-istatus quo ante ;

…

Ghal dak li jirrigwarda kumpens bhala rimedju ghad-danni non-pekunjarji ghas-sejbien ta` lezjoni tad-dritt fundamentali tar-rikorrenti kawza tal-applikazzjoni f`dan il-kaz tal-Artikolu 12(2) tal-Kap. 158, ir-rikorrenti ghandhom jedd ghalih meta tqis li ilhom mis-sena 1985 (izjed minn tletin sena) ma jiehdu kumpens gust ghall-fond taghom, u dan minkejja l-liberalizzazzjoni tas-suq fis-sena 1995 u li l-iskop legittimu sfuma mat-trapass taz-zmien. Tali jedd ghandu jigi kkalkulat mid-data tat-terminazzjoni tal-koncessjoni subenfitewtika, cioe`, mis-sena 1985.

Skont il-prospett tal-perit Tekniku il-rendita` mill-valur lokatizju fuq is-suq kellu jammonta ghal €93,217 ghas-snin 1985 sa 2016. Il-kera attwalment imhallsa kienet tammonta ghall-€16,765.50

*(Tabella 4.0) (17%) Madanakollu hu assodat li r-rimedju kostituzzjonali ma jfissirx necessarjament ir-rimbors tal-valur shih fuq is-suq lis-sid. (Ara ad ez. ECtHR Kaz **<u>Ghigo vs. Malta</u>** 17 ta` Lulju 2008, #18; Kaz **<u>Edwards vs. Malta</u>**, 17 ta` Lulju 2008; #21; u l-QK fil-kaz **<u>Borg vs Mifsud</u>** sucitata) Specjalment meta bhal fil-kaz odjern, il-proprjeta` ma ittiehditx mill-Istat imma ghandha eventwalment tigi liberata favur is-sid minhabba r-rimedju li ser taghti din il-Qorti apparti l-kumpens.*

*Il-Qorti Kostituzzjonali f`**<u>Borg vs Mifsud</u>** citat supra, wara li qieset li:*

"l-ghan principali tal-proceduri odjerni u ta` dak mitlub mir-rikorrenti, li huwa dak li jigi determinat jekk ir-rikorrenti sofrewx lezjoni tad-dritt fundamentali taghhom, u fil-kaz affermattiv, "… tiffissa kumpens xieraq ghal tali vjolazzjoni stante li r-rikorrenti baqghu dawn is-snin kollha [mill-1 ta` Dicembru 1998 sallum] minghajr il-pussess u t-tgawdija tal-proprjeta` taghhom" u taghti dawk ir-rimedji li l-Qorti jidhrilha xierqa inkluz li jiehdu lura l-pussess tal-fond proprjeta` taghhom…".

Ikkonsidrat li

"Din id-diskrepanza ta` 18% bejn il-kera fis-suq hieles u l-kera attwalment percepita mir-rikorrenti, timmilita favur ir-rikorrenti fil-komputazzjoni tal-kumpens ghax hija fattur relevanti hafna fil-komputazzjoni tal-estent tal-vjolazzjoni."

Izda dik il-Qorti kkonsidrat ukoll il-fattur li r-rikorrenti damu milli jipprevalu ruhhom mir-rimedju kostituzzjonali kif ukoll kkonsidrat ir-rimedju li kien ser jinghata b`dak il-gudizzju, li permezz tieghu l-intimati ma jistghux ikomplu aktar jistriehu fuq l-Att XXIII.1997 biex jibqghu jokkupaw il-fond de quo. Din il-Qorti ma taqbilx li ghandu jkun hemm tnaqqis dwar id-dewmien. (Dwar id-dewmien vide contra s-sentenza tal-Qorti Ewropea fil-kaz fl-ismijiet "Apap Bologna vs Malta" deciza r fit-30 ta` Novembru 2016 fejn irrimarkat:-

"46. The Court also takes issue with the fact that in line with domestic case-law, such compensation

awards are reduced on the grounds that the applicants have instituted constitutional redress proceedings several years after they started suffering the violation complained of. In this connection, the Court notes, first and foremost, that domestic law does not impose a time-limit for the institution of constitutional redress proceedings. The legislator leaves the choice of timing to the applicant. Moreover, in circumstances such as those of the present case, the violation complained of is a continuing one. The Court thus finds that such reasoning is questionable in the light of the circumstances of the case and the domestic legal framework, which appears to give great latitude to individuals seeking redress for human rights violations.")

Ghaldaqstant wara li qieset bir-reqqa l-provi u s-sottomissjonijiet kollha, din il-Qorti qed tillikwida l-kumpens fl-ammont ta` hmistax-il elf ewro (€15,000) tenut kont il-valur tal-proprjeta` bhala liberu u vakanti (€145,000) u li l-izbilanc bejn il-kera imhallsa u l-valur lokatizju qed ikompli jizdied kull ma jghaddi z-zmien anke bl-applikazzjoni tal-emendi tal-2010. Dan il-kumpens ghandu jithallas mill-Intimat Avukat Generali flimkien mal-imghaxijiet bir-rata ta` hamsa fil-mija (5%) sad data tal-pagament effettiv."

Fis-sentenza li tat fit-2 ta` Marzu 2018 fil-kawza fil-kawza fl-ismijiet **<u>Thomas Cauchi et vs Avukat Generali et</u>** (op. cit.) il-Qorti Kostituzzjonali qalet hekk :-

"Nghaddu ghalhekk ghal-likwidazzjoni tal-kumpens ghall-ksur tad-dritt tal-atturi ghat-tgawdija ta` hwejjighom. Fost il-fatturi relevanti ghal-likwidazzjoni hemm dawn :

- *id-diskrepanza bejn il-kera li l-atturi kellhom jedd ghalih taht il-Kap. 158 u l-kera li l-fond seta` gab fuq is-suq hieles;*

- *iz-zmien minn meta beda jinhass dan in-nuqqas ta` pro-porzjonalità;*

* il-fatt li l-valuri moghtija mill-perit huma biss indikazzjoni tat-telf ekonomiku li setghu garrbu l-atturi u mhux prova ta` telf reali;*

* il-fatt li, meqjus l-interess pubbliku u l-ghan socjali tal-ligi attakkata, il-kumpens misthoqq lis-sidien mhux bilfors ikun daqs il-kumpens shih li seta` kien dovut kieku wiehed kellu jistrieh fuq l-indikaturi tas-suq hieles;*

* l-incertezza tal-atturi dwar meta jistghu, jew jekk jistghux qatt matul hajjithom, jiehdu hwejjighom lura, fin-nuqqas ta` mekkanizmu biex is-sidien jiehdu hwejjighom lura jew biex isir tqabbil bejn il-htigijiet tas-sidien u l-htigijiet tal-kerrejja, izda wkoll ir-rimedji li jistghu jaghtu lill-atturi s-setgha li jiehdu lura l-fond bis-sahha tad-dikjarazzjoni li l-konvenuta ma tistax tistrieh fuq il-ligi attakkata biex fuqha ssejjes titolu biex tibqa` zzomm il-fond;*

* il-quantum ta` kumpens moghti mill-qrati f`kawzi ohra fejn ic-cirkostanzi kienu bejn wiehed u iehor jixxiebhu;*

* il-fatt li ghandu jinghata kumpens kemm morali u kemm materjali ghall-ksur tad-dritt fondamentali.*

20. Meqjusin dawn il-fatturi, din il-qorti hija tal-fehma illi kumpens ta` ghaxart elef euro (€10,000) jkun wiehed xieraq fic-cirkostanzi. Dan il-kumpens jinghata mhux taht l-art. 41 tal-Konvenzjoni, kif talbu l-atturi, ghax, kif sewwa osserva l-Avukat Generali, dak l-artikolu ma huwiex parti mil-ligi domestika; il-kumpens jinghata taht is-setgha ta` din il-qorti li taghhti rimedju ghall-ksur ta` drittijiet fondamentali. Dan il-kumpens jithallas mill-Avukat Generali, mhux mill-konvenuta Borg, billi din kull ma ghamlet kien li nqdiet b`jedd li kienet taghtiha l-ligi."

Fid-decizjoni **Cassar vs Malta** tat-30 ta` Jannar 2018 (App. 50570/13) l-ECHR qalet hekk dwar kif kellu jkun applikat l-Art 41 tal-Konvenzjoni ghal dak il-kaz :-

A. Damage

84. The applicants claimed 1,260,996 euros (EUR) in respect of pecuniary damage. That sum reflected (i) the rent due to them from 1998 to 2015 amounting to EUR 730,330 calculated on the basis of the valuation of an estate agent at EUR 3,500 per month, (EUR 42,000 annually) in 2015, projected backwards to the year 1998 based on two indices for property prices published by the Central Bank of Malta – by means of example, such projections show the rents for the respective years as follows: EUR 6,857 annually in 1988, EUR 18,476 in 1998 and EUR 41,649 in 2008; (ii) EUR 502,006 in simple interest at 8% (capped so as not to exceed the rent of a particular year); and (iii) EUR 28,660 (supported by an architect`s report) in repairs needed to the property since the tenant had failed to take adequate care of the property. In this connection the applicants noted that as things stand, they will remain suffering the effects of the violation even after the Court judgment, for an unspecified amount of years to come. In this light they also considered that their claim of EUR 54,000 in respect of non-pecuniary damage already suffered, representing EUR 2,000 annually since 1988, should be upheld in full.

85. The Government submitted that if a violation were to be found a declaration to that effect would suffice. In any event, they considered that the valuations were exorbitant, speculative and not based on an architect`s report. They noted that the property had been purchased in 1988 at EUR 25,600 it had therefore hardly been imaginable that it could now have a rental value of EUR 42,000 annually. Indeed if it had to be divided over the years, their claim in rent amounted to around EUR 27,000 annually which would surely not reflect the rental value in the eighties and nineties. They further considered that since the applicants had accepted rent until 2008, their claim should only refer to the subsequent years. Moreover, the tenant had deposited rent for the period between 2009-15 amounting to EUR 2,796 which had to be deducted from the award of compensation. As to interest the Government noted that under domestic law, interest

was due only on amount liquidated, which was not the case here. Moreover a rate of 8% was far beyond any commercial rate of interest currently available in the banking sector in respect of deposits. As to the structural works the Government considered this clam unproven and hypothetical. Lastly, the Government considered that an award under this head should not exceed EUR 10,000, which would be EUR 2,123.66 annually over six years, and an award for pecuniary damage should not exceed EUR 4,000.

86. The Court notes that the applicants are entitled to compensation in respect of the loss of control, use, and enjoyment of their property from around 2000 to date. The Court notes on the one hand that the rent suggested by the Government is not based on any valuation or other criteria, and appears to be a simple division of an aleatory sum they proposed. On the other hand, while the applicant`s valuation is based on an estate agent, and was not accompanied by an architect`s report, the domestic court found that EUR 3,000 as opposed to the EUR 3,500 alleged by the applicants appeared reasonable. However, the Court also notes that the comparators used by the estate agent refer to renovated buildings with high quality finishing and furnishing. While no information has been submitted as to the quality of the interior of the applicants` property the Court observes that the applicants claim that their property needs repairs as it has not been well taken care of (see paragraph 84 above). Thus, the latter cannot be considered to be in the same condition and at the same rental value as the former. Therefore, the Court considers that the valuation submitted by the applicants is on the high side, but may nonetheless provide a relevant indication and workable basis.

87. In assessing the pecuniary damage sustained by the applicants, the Court has, as far as appropriate, considered the estimates provided and had regard to the information available to it on rental values on the Maltese property market during the relevant period. It further notes that from 2008 onwards, the Court found the legitimacy of the aim pursued highly questionable (see paragraph 53

above) and thus does not justify a reduction compared with the free market rental value (compare, ***Zammit and Attard Cassar****, § 75; and* ***Amato Gauci****, § 77, both cited above). It further takes note of the sums already received by the applicants and those, following 2008, which were deposited in court and therefore remain retrievable, which are being deducted from the award.*

88. In the present case the Court must, however, also take note of the fact that the applicants bought the property when it was already subject to such restrictions, and therefore it considers that the purchase price at the time reflected such restrictions. While the applicants consider that the Government`s claim to that effect was unsubstantiated (see paragraphs 37 and 38 above), the Court notes that according to the evaluations submitted by the applicants, the property in 1988, date when they purchased it, had a rental market value of EUR 6,857 annually. The Court observes that such a sum in rent would not be appropriate for a property purchased in the same year at EUR 25,600, if that were its real sale value. In consequence it must be accepted that the limitations on the property affected the purchase price.

89. The Court reiterates that an award in respect of pecuniary damage under Article 41 of the Convention is intended to put the applicant, as far as possible, in the position he or she would have enjoyed had the breach not occurred (see, mutatis mutandis, ***Kingsley v. the United Kingdom*** *[GC], no. 35605/97, § 40, ECHR 2002-IV). It therefore considers that interest should be added to the award in order to compensate for the loss of value of the award over time (see* ***Runkee and White v. the United Kingdom****, nos. 42949/98 and 53134/99, § 52, 10 May 2007). As such, the interest rate should reflect national economic conditions such as levels of inflation and rates of interest (see, for example,* ***Akkuş v. Turkey,*** *9 July 1997, Reports of Judgments and Decisions 1997-IV, § 35;* ***Romanchenko v. Ukraine****, no. 5596/03, 22 November 2005, § 30, unpublished; and* ***Prodan v. Moldova****, no. 49806/99, § 73, ECHR 2004-III (extracts)). It notes that the applicants claimed the*

> *statutory rate of eight per cent, and the Government`s objection in that respect. The Court considers that a rate of five per cent interest is more realistic (see **Amato Gauci**, cited above, § 78, and **Ghigo v. Malta** (just satisfaction), no. 31122/05, § 20, 17 July 2008) thus a one-off payment at 5% interest should be added (see **Anthony Aquilina**, cited above, § 72, in fine).*
>
> *90. Lastly, it is not for the Court to award the claim concerning renovation work which was not entered into by this Court.*
>
> *91. The Court, thus, awards the applicants the sum of EUR 170,000 jointly.*
>
> *92. The Court further considers that the applicants must have sustained feelings of anxiety and stress, having regard to the nature of the breach. It therefore awards EUR 3,000 jointly in respect of non-pecuniary damage.*

Fl-isfond ta` din il-gurisprudenza, il-Qorti ssib illi fil-kaz tal-lum, ghalkemm id-diskrepanza bejn il-kera attwalment percepita u l-valur lokatizju li l-fond igib fis-suq hieles hija fattur determinanti ghall-vjolazzjoni tal-principju tal-proporzjonalita`, fl-istess waqt tajjeb jinghad illi fil-komputazzjoni tal-kumpens hemm fatturi ohra li wkoll ghandhom rilevanza, u li flimkien ghandhom iwasslu ghall-ghoti ta` kumpens gust ghal-lezjoni subita.

Dawn il-fatturi huma :-

a) L-ghan socjali tal-mizura legislattiva promulgata ;

b) L-isproporzjon rifless fid-differenza bejn il-kera percepita mir-rikorrenti u dik li setghet tippercepixxi fis-suq hieles li kieku ma kenitx imposta l-lokazzjoni ;

c) Il-fatt li r-rikorrenti hadet il-fond lura, ghalkemm fil-mori tal-kawza ;

d) Iz-zmien li r-rikorrenti damet iggarrab minn stat ta` sproporzjonalita` ;

e) Iz-zmien li ghadda bejn meta ghalaq ic-cens fl-1990 sakemm ipprezentat il-kawza tal-lum fl-2017.

Il-Qorti taghmel ukoll dawn l-osservazzjonijiet.

Tifhem li l-inizjattiva legislattiva li saret kienet intiza ghal ghan socjali.

Tifhem ukoll illi l-awtur tar-rikorrenti fil-mument tal-koncessjoni tas-subenfitewsi ma kienx u ma setax kien jaf bil-mizura li kienet ser tigi promulgata.

Ghar-rigward tal-konteggi, tirrileva li skont il-Perit Paul Buhagiar (perit *ex parte* tal-Avukat Generali), il-valur prezenti ta` l-fond fi stat liberu u frank huwa ta` EUR 223,500 filwaqt li l-valur lokatizju ta` l-fond huwa bbazat fuq rata ta` ritorn ta` 2.75% bil-konsegwenza li l-valur lokatizju huwa ta` EUR 6,146.25 fis-sena jew EUR 512.19 fix-xahar.

Skont il-perit *ex parte* tar-rikorrent, il-valur lokatizju ta` din il-proprjeta` kien ivarja bejn EUR 250 fix-xahar fl-2007 u EUR 650 fix-xahar fl-2017.

Huwa evidenti li, thares mnejn thares, kien hemm divarju oggettiv bejn ir-ritorn li kien qed ihalli l-fond meta mqabbel mal-valur lokatizju tieghu fis-suq. Infatti jekk, fl-aghar ipotezi ghar-rikorrenti, jigu adottati l-konteggi tal-Perit Buhagiar, ir-rendita` mill-kera fis-suq tkun bil-ferm aktar mill-kera li effettivament kienet qed tithallas lir-rikorrenti, liema kera ma baqghetx tigi accettata fl-ahhar snin immedjatment precedenti l-ftuh tal-kawza odjerna.

Minkejja d-diskrepanza fil-konteggi, huwa assodat li r-rimedju li jinghata fi procedimenti ta` din ix-xorta ma jfissirx necessarjament li s-sid jinghata rimbors ta` dak li jrendi s-suq hieles.

Ma jiswiex ghall-fini ta` kalkolu ta` kumpens il-fatt illi Mary Gatt ghamlet miljoramenti fil-fond in kwistjoni. Jekk il-miljoramenti saru qabel ghalaq is-subcens temporanju, dawk kellhom imorru lura ghand ir-rikorrenti b`effett tal-Art 1521 tal-Kap 16. Jekk saru wara li ghalaq is-subcens, ghamlet hekk bir-riskju li ma tiehu xejn lura mill-ispiza li ghamlet.

Propju ghaliex kull kaz ghandu l-isfond u l-fattispeci partikolari tieghu, huwa evidenti li ma hemmx uniformita` fil-quantum tal-kumpens li jigi likwidat mill-qrati taghna.

Il-Qorti sejra tirreferi ghad-decizjoni li tat il-Qorti Kostituzzjonali fil-kawza fl-ismijiet "Josephine Azzopardi pro et noe vs L-Onorevoli Prim Ministru et" (Rik. Nru. 87/14 JZM) fil-25 ta` April 2018 li kellha fattispeci fuq linja simili ghal dawk tal-lum. Din id-decizjoni kienet fost is-16–il decizjoni li kienu decizi fl-istess data u li ghalihom irreferiet aktar kmieni.

Id-differenza principali hija d-data tal-gheluq tac-cens temporanju ghaliex fil-kaz tal-lum ic-cens ghalaq fl-1990 mentri fil-kawzi ta` Josephine Azzopardi ic-cens temporanju ghalaq fl-2002.

Dwar il-kriterji li ghandhom jigu segwiti biex jigi stabbilit il-kumpens, il-Qorti Kostituzzjonali qalet hekk fis-sentenza appena citata :-

32. Din il-qorti hija tal-fehma illi, fost il-fatturi relevanti ghallikwidazzjoni ta` kumpens xieraq, ghandhom jitqiesu dawn li gejjin : (i) il-fatt li kienet l-attrici flimkien ma` hutha li ippermettiet lill-konvenuti Albert Dimech u Simon John Lovett li jkomplu jzommu l-fond sal-2007 meta, bejn l-2002 u l-2007, setghu fittxew l-izgumbrament taghhom; (ii) iz-zmien ta` hdax-il sena – bejn l-2007 u llum – li l-attrici damet imcahhda mit-tgawdija tal-fond taghha minghajr kumpens xieraq; (iii) il-valur tas-suq tal-fond u l-valur lokatizju tieghu, ghalkemm dan ma jfissirx necessarjament li l-attrici kienet sejra ssib tikrih daqshekk u bl-istess kondizzjonijiet dwar responsabbilità ghal tiswijiet bhal fil-kaz ta` kiri kontrollat; (iv) l-ghan legittimu u socjali tal-ligi impunjata; (v) il-fatt li l-kumpens li jinghata ghall-ksur tad-drittijiet fondamentali ma huwiex l-istess bhad-danni civili izda minkejja dan ghandu jkun kumpens shih li, kemm jista` jkun, iqieghed lill-attur fil-pozizzjoni li kien ikun fiha li kieku dak il-ksur ma sehhx; (vi) l-incertezza li ghaddiet minnha l-attrici dwar jekk qattx setghet tiehu hwejjigha lura, u meta; Rik. Kost. 87/14 27 (viii) l-ispejjez gudizzjarji li l-attrici kellha taghmel biex tiehu dan irrimedju;

33. Wara li qieset dan kollu l-qorti hija tal-fehma li l-kumpens ta` hamest elef euro (€5,000) likwidat mill-ewwel Qorti bhala danni morali huwa wiehed xieraq u bizzejjed. Ma` dan izda ghandhom jizdiedu hmistax-il elf euro (€15,000) bhala kumpens ghad-danni pekunjarji, b`kollox ghalhekk ghoxrin elf euro (€20,000).

Tajjeb jinghad illi fis-16-il sentenza kien likwidat l-istess quantum ta` danni pekunjarju u danni morali.

Dan premess, il-Qorti jidhrilha li m`ghandhiex twarrab il-pronunzjamenti tal-ECHR.

Il-Qorti tqis illi fil-kaz ta` **<u>Cassar vs Malta</u>** li kien deciz fit-30 ta` Jannar 2018 l-ECHR ordnat lill-Gvern Malti sabiex ihallas lir-rikorrenti kumpens pekunjarju ta` €170,000 u kumpens mhux pekunjarju ta` €3,000.

Il-Qorti ghandha tirrileva illi fil-kaz ta` **<u>Cassar vs Malta</u>**, ic-cirkostanzi kienu differenti fis-sens illi hemm ir-rikorrenti li dak iz-zmien kienu jghixu fir-Renju Unit, kienu akkwistaw id-dar in kwistjoni bi prezz baxx stante li kienu konsapevoli li l-post ma kienx battal ghax kien soggett ghal kirja li ghaliha kienu japplikaw id-disposizzjonijiet ta` l-Att XXII tal-1979. Kienu jafu wkoll illi l-post kien okkupat minn familja li kellha tlett itfal u li wahda minn dawn it-tfal ma kinitx mizzewga. Inoltre meta r-rikorrenti gew lura Malta kienu kostretti joqghodu Ghawdex fi proprjeta` ohra taghhom peress li ma setghux jabitaw fil-post ta` Malta, billi l-okkupanti omm u missier kienu anzjani kienu u kienu ghadhom jghixu hemm bil-kera. Din is-sitwazzjoni gabet inkonvenjent peress li r-rikorrent kellu jaqsam ghax-xoghol ghal Malta kuljum kif ukoll peress li l-proprjeta` ta` Ghawdex kienet izghar. Imbaghad wara l-mewt taz-zewg anzjani, binthom li kienet tghix fir-Renju Unit go` dar proprjeta` taghha ppretendiet li tkun rikonoxxuta bhala inkwilina peress li fiz-zmien tal-mewt tal-genituri taghha, hija kienet qed tghix maghhom.

Ghalhekk ic-cirkostanzi ta` **<u>Cassar vs Malta</u>** kienu ghal kollox partikolari.

Dan premess ukoll, il-Qorti tghid illi fil-kaz tal-lum irrizulta, li hlief ghall-ahhar zminijiet, ir-rikorrenti accettat il-kera li kienet thallas Mary Gatt wara li bl-iskadenza tas-subcens, it-titolu dar ghal kera. Irrizulta li r-rikorrenti kellha dar ohra fejn kienet tabita. Illum il-gurnata tghix go dar ta` l-anzjani. Mix-xiehda (mhux kontradetta) ta` Mary Gatt jirrizulta li meta kienet tmur thallas il-kera lir-rikorrenti din kienet dejjem tilqaghha bi hgarha u tfahharha. Kif ukoll qatt ma talbitha lura l-post. Il-Qorti rat u semghet lil Mary Gatt tixhed u taghti affidament lill-istqarrija taghha.

Il-Qorti hadet kont ta` kollox, inkluz l-assjem ta` fatti u cirkostanzi tal-kaz li diga` ghamlet ampja riferenza ghalihom, id-dikjarazzjoni taghha li kien hemm vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni, il-komportament u l-ghazliet tar-rikorrenti, u l-pronunzjamenti tal-qrati.

Tqis illi likwidazzjoni ta` kumpens ghal danni pekunjarji u danni morali fl-ammont ta` EUR 20,000 favur ir-rikorrenti ikun gust u sufficjenti in linea mas-sittax (16) –il sentenza ta` Josephine Azzopardi pro et noe (op. cit.), anke jekk fil-kaz tal-lum ic-cens temporanju ghalaq fl-1990 mhux fl-2002 kif kien fil-kazi ta` Josephine Azzopardi pro et noe. Il-likwidazzjoni li qeghda taghmel tibqa` dik gusta tenut kont tal-assjem tal-fatti u cirkostanzi tal-kaz tal-lum.

Dan il-kumpens ghandu jithallas mill-intimat Avukat Generali.

IX. Spejjez

Dwar il-kap tal-ispejjez, il-Qorti Kostituzzjonali fil-kawza fl-ismijiet "**Josephine Azzopardi pro et noe vs L-Onorevoli Prim Ministru et**" (Rik. Nru. 87/14 JZM) (op. cit.) bhal fil-kaz tal-15 –il decizjoni l-ohra li nghataw fl-istess jum qalet hekk :-

35. Nghaddu issa ghall-ahhar aggravju tal-Avukat Generali, li jolqot l-ispejjez tal-kawza. Jilmenta li ma kellux jigi kkundannat biex ihallas l-ispejjez kollha tal-kawza quddiem l-ewwel Qorti, ga ladarba giet milqugha l-eccezzjoni preliminari tieghu, kif ukoll dawk l-eccezzjonijiet fil-mertu li jittrattaw, inter alia, in-nuqqas ta` applikazzjoni u ta` ksur tal-Artikoli 37, 39 u 45 tal-Kostituzzjoni, kif ukoll l-Artikoli 6 u 14 tal-Konvenzjoni. Izid jghid li l-ewwel talba tar-rikorrenti giet akkolta biss in parti in kwantu msejsa limitatament fuq l-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni.

36. Dan huwa minnu. L-attrici ghamlet talbiet li gew michuda u huwa xieraq li l-ispejjez relativi thallashom hi. Rik. Kost. 87/14 28 37.

Decide

Ghar-ragunijiet kollha premessi, il-Qorti qeghda taqta` u tiddeciedi din il-kawza billi :-

Tastjeni milli tiehu konjizzjoni ulterjuri tat-talbiet tar-rikorrenti kif dedotti kontra l-intimata Mary Gatt, stante illi fil-mori tal-kawza, l-atti kienu ceduti mir-rikorrenti limitatament fil-konfront tal-istess intimata, wara li r-rikorrenti hadet lura minghandha c-cwievet tal-fond de quo u l-pussess battal tal-istess.

Tilqa` l-eccezzjoni numerata erbgha (4) tal-intimat Avukat Generali.

Tichad il-bqija tal-eccezzjonijiet tal-intimat Avukat Generali.

Tilqa` limitatament l-ewwel (1) talba tar-rikorrenti billi tiddikjara illi hija garrbet vjolazzjoni tad-dritt taghha ghall-propjeta` kif imhares bl-Ewwel (1) Artikolu tal-Ewwel (1) Protokoll tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fundamentali.

Tichad il-bqija tal-ewwel (1) talba.

Riferibbilment ghat-tieni talba, tillikwida favur ir-rikorrenti s-somma ta` ghoxrin elef Ewro (EUR 20,000) bhala danni kemm pekunjarji u kif ukoll morali bhala konsegwenza tal-vjolazzjoni li garrbet tad-dritt taghha ghall-propjeta` kif imhares bl-Ewwel (1) Artikolu tal-Ewwel (1) Protokoll tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fundamentali. Tordna lill-intimat Avukat Generali sabiex ihallas lir-rikorrenti s-somma hekk likwidata.

Tordna li l-ispejjez kollha ta` din il-kawza ghandhom jithallsu in kwantu ghal nofs mir-rikorrenti u in kwantu ghal nofs mill-intimat Avukat Generali.

Tordna lir-Registratur tal-Qorti sabiex kif appena din is-sentenza tghaddi in gudikat jibghat kopja taghha lill-Ispeaker tal-Kamra tad-Deputati kif irid l-Artikolu 242 tal-Kapitolu 12 tal-Ligijiet ta` Malta.

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur