



**MALTA**

**QORTI CIVILI  
PRIM'AWLA**

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**Illum il-15 t'Ottubru, 2018.**

**Rikors Numru 34/2017  
(Sede Kostituzzjonali)**

- 1. Josephine Mallia  
(K.I. 828850 M);**
- 2. Jeanette Cardona nee`  
Mallia (K.I. 217776 M);**
- 3. Paul Mallia  
(K.I. 363979 M)**

**vs.**

- 1. Tabib Principali Tal-Gvern;**
- 2. Avukat Generali**

Il-Qorti,

- 1.0. Rat ir-rikors promotur datat it-18 ta' Mejju, 2017, li permezz tieghu r-rikorrenti sintetikament esponew is-segwenti, (ara foll 1):
  - 1.1. Illi r-rikorrenti Josephine Mallia hi l-armla ta' Joseph Mallia li miet fit-3 ta' Settembru, 2012, (ara foll 4), waqt li r-rikorrenti l-ohra huma ulied l-imsemmi Joseph, (ara foll 5 u 6 u foll 7 sa 14);
  - 1.2. Illi l-imsemmi Joseph Mallia miet b'kancer ikkagunat esklussivament mill-esposizzjoni ghall-asbestos – *Malignant Mesothelioma*, (ara foll 4);
  - 1.3. Illi l-imsemmi Joseph Mallia kien “*fitter*” mal-“*Malta Drydocks*”, liema impjeg kien l-uniku wiehed tieghu, (ara foll 15);
  - 1.4. Illi matul il-perjodu tal-impjeg tieghu fuq indikat l-*asbestos* kien *staple material* u kien jintuza f'ammonti kopjuzi u minghajr kontroll;
  - 1.5. Illi ilu maghruf ghal dawn l-ahhar ghaxieren ta' snin li l-esposizzjoni ghall-*asbestos* kien dannuz ghal sahhiet il-bniedem, u li dan iwassal ghal mard serju li jista' wkoll jakkaguna l-mewt;
  - 1.6. Illi minkejja dan, l-awtoritajiet tas-sahha naqqsu li jipprovdu lil Joseph Mallia bi protezzjoni fattwali, legali u informattiva biex jilqghu ghall-hsara kkagunata mill-*asbestos*;
  - 1.7. Illi in fatti, l-imsemmi Joseph Mallia miet minhabba tali esposizzjoni;
  - 1.8. Illi kien biss wara li r-rikorrenti u l-mejjet missierhom bdew jisimghu bil-konsegwenzi serji ikkagunati mill-*asbestos* fuq uhud mill-kollegi ta' missierhom li saru konxji tal-effetti tal-esposizzjoni ghall-istess, u tali gharfien kien gradwali u maghruf minghajr l-intervent tal-

entitajiet governattivi li kienu obbligati jissupplixxu tali informazzjoni;

- 1.9. Illi l-effetti ta' tali esposizzjoni affettwat hazin il-kwalita` tal-hajja tar-rikorrenti billi gew imcahnda permanentement minn presenza sinifikanti hafna f'hajjithom u li missierhom marad ingustament u intortament;
- 1.10. Illi jissodisfaw il-kriterji rikjesti biex ikollhom *locus standi* kwantu vittmi *ai termini* tal-artiklu 34 tal-Konvenzjoni Ewropea fuq id-Drittijiet tal-Bniedem, (minn issa 'l quddiem, il-Konvenzjoni), applikabbli f'Malta, (minn issa 'l quddiem Kap 319);
- 1.11. Illi ghaldaqstant aderew din il-qorti biex l-intimati jkollhom l-opportunita` jghidu ghaliex din il-qorti m'ghandiex:
  - 1.11.1. Tiddikjara li gie vjolat id-dritt tar-rikorrenti ghall-protezzjoni tal-hajja u li l-hajja ma titqieghedx f'periklu bla bzonn, *ai termini* tal-artiklu 33 tal-Kostituzzjoni ta' Malta, (minn issa 'l quddiem il-Kostituzzjoni), u tal-artiklu 2 tal-Konvenzjoni kif applikabbli lokalment *tramite* l-Kap 319;
  - 1.11.2. Tiddikjara li gie vjolat id-dritt tar-rikorrenti ghar-rispett tal-hajja privata u tal-familja *ai termini* tal-artiklu 8 tal-istess Konvenzjoni kif applikabili lokalment *tramite* l-Kap 319;
  - 1.11.3. Tiddikjara li gie vjolat id-dritt tar-rikorrenti ghar-rispett tal-hajja privata *ai termini* tal-paragrafu precedenti ghal dak li ghandu x'jaqsam mad-dritt ghall-informazzjoni dwar il-perikli marbutin mal-*asbestos*;
  - 1.11.4. Tikkwantifika kumpens xieraq bhala rimedju ghall-ksur tad-drittijiet fuq indikati jew liema minnhom, fil-konfront tar-rikorrenti individwalment;
  - 1.11.5. Tillikwida l-imsemmi kumpens;

1.11.6. Tikkundanna lill-intimati jhallsu lir-rikorrenti l-ammont hekk likwidat;

2. Rat id-digriet datat iz-19 ta' Mejju, 2017, li permezz tieghu appuntat l-istess rikors promotur ghas-smigh ghall-udjenza hemm indikata, (ara foll 16);
- 3.0. Rat ir-risposta datata d-29 ta' Mejju, 2017, li permezz taghha l-intimati sintetikament irrispondew bil-mod segwenti, (ara foll 21):
  - 3.1. Illi jinhtieg li jintwera li Joseph Mallia miet ghaliex kien espost ghall-asbestos u li l-kancer fuqu rivelat kien konsegwenza tal-istess u kawza unika tad-decess;
  - 3.2. Illi r-rikorrenti jridu jippruvaw in-ness tal-kawzalita` u ma jistghux jistrieħu fuq suspetti, ipotenzijiet u kongetturi kif qed jaghmlu;
  - 3.3. Illi safejn l-ilment tar-rikorrenti hu msejjes fuq l-allegazzjoni ta' ksur tad-dritt ghall-hajja, dan hu assolutament bla bazi peress li l-intimati m'ipperikolawx il-hajja tar-rikorrenti, u ma kellhomx l-*animus necandi* li jnehhu hajjet ir-rikorrenti, jew l-*animus nocendi* li jikkagunawlhom xi hsara;
  - 3.4. Illi fir-rigward tal-artiklu 8 tal-Konvenzjoni r-rikorrenti ma elaboraw xejn u ghalhekk ghandu jigi respint;
  - 3.5. Illi jirrespingu l-allegazzjoni li ndahlu jew hadu xi mizuri biex jikkompromettu l-hajja privata jew fil-familja tar-rikorrenti;
  - 3.6. Illi b'mod generali l-Gvern Malti dejjem ha l-mizuri mehtiega – inkluz il-bdil fil-ligi – biex jindirizza l-problema tal-asbestos fit-tarzna u malli sar jaf b'dan il-periklu ha passi rimedjali u t-tarzna bdiet tippovdi maskri u taghmir protettiv, u zgurat li jkun hemm ventilazzjoni adegwata;
  - 3.7. Illi l-asbestos kien meqjus bhala wiehed mill-aqwa materjali biex isolvi l-problemi ta' insulazzjoni;

- 3.8. Illi kif il-Gvern Malti sar jaf bir-riskji konnessi ma dan il-materjal inbeda process ta' smantellament tal-istess u gew introdotti ligijiet biex titwaqqaf l-importazzjoni tieghu;
- 3.9. Illi ovvjament dan kollu ha z-zmien tieghu;
- 3.10. Illi ghalhekk il-Gvern Malti ma jistax jitqies responsabbli li m'ipprojbix l-uzu tal-asbestos jew li naqas milli jxerred taghrif dwar il-perikli sanitarji marbuta mal-esposizzjoni tieghu malli sar jaf b'mod konklussiv bl-effetti negattivi *de quo*;
- 3.11. Illi in vista tal-premess allura, m'hemm l-ebda lezjoni tad-drittijiet fundamentali tar-rikorrenti;
- 3.12. Illi ghalhekk, din il-qorti ghandha tirrespingi l-allegazzjonijiet u t-talbiet kollha tar-rikorrenti;
4. Rat id-digriet taghha datat il-21 ta' Gunju, 2017, li permezz tieghu, wara talba appozita tal-abbli rapprezentanti legali tal-partijiet fir-rigward, awtorizzat lill-istess biex jipprezentaw fl-atti ta' din il-procedura xhieda pprezentata f'kawzi ohra li jittrattaw mertu identiku ghall-kaz odjern, (ara foll 26);
5. Rat id-digriet taghha datat is-16 ta' Jannar, 2018, li permezz tieghu, wara talba appozita tal-abbli rapprezentanti legali tal-partijiet, awtorizzat lill-istess biex jittrattaw il-procedura odjerna bil-modalita` u fit-termini hemm indikati, (ara foll 389);
6. Semghet ix-xhieda prodotta;
7. Ezaminat id-dokumenti kopjuzi pprezentati *in atti*;
8. Semghet it-trattazzjoni orali finali tal-abbli rapprezentanti legali tal-partijiet;

Ikkunsidrat:

- 9.0. Illi l-fatti li taw lok ghall-procedura in dizamina jistghu jigu sintetikament esposti bil-mod segwenti:

- 9.1. Illi Joseph Mallia, rispettivamente ir-ragel ir-rikorrenti Josephine, u missier ir-rikorrenti uliedu Jeanette u Paul, miet fit-3 ta' Settembru, 2012, (ara foll 4 sa 14);
- 9.2. Illi l-istess Joseph Mallia kien impjegat ghal zmien twil bhala *fitter* mal-*Malta Drydocks*, u dan mit-28 ta' Novembru, 1960 sal-10 ta' Mejju, 2002, (ara foll 15);
- 9.3. Illi tul dan l-impjieg tieghu l-istess Joseph Mallia kien espost ghall-ammonti kopjuzi ta' *asbestos*;
- 9.4. Illi din l-esposizzjoni esponietu ghall-marda qerrieda li eventwalment wasslitu sal-mewt;
- 9.5. Illi dan jirrizulta mic-certifikat tal-mewt involut fejn gie rilevat li l-kawza tal-mewt kienet "*right pleural mesothelioma*", (ara foll 4);
- 9.6. Illi r-rikorrenti jsostnu li l-esposizzjoni ghall-*asbestos* matul l-impjieg ta' Joseph Mallia it-Tarzna ivvjolat id-drittijiet fundamentali taghhom kif sanciti fl-artiklu 33 tal-Kostituzzjoni u l-artikli 2 u 8 tal-Konvenzjoni;
- 9.7. Illi konsegwentement, qed jitolbu kumpens ghall-istess;
- 9.8. Illi *di piu`*, jirrizulta li fin-nota ta' sottomissjonijiet taghhom ir-rikorrenti jinvokaw ukoll l-artikli 6, 13 u 14 tal-Konvenzjoni *nonostante* li ma tresqet l-ebda talba minnhom lill-qorti biex tawtorizzhom iressqu talbiet ulterjuri;
- 9.9. Illi jirrizulta li r-rikorrenti gia` inghataw kumpens ghall-mewt ta' Joseph Mallia mill-Amerika, (ara foll 391 u foll 392 sa 394);

#### Ikkunsidrat:

10. Illi qabel xejn issir referenza ghar-rikjam li r-rikorrenti ghamlu fin-nota ta' sottomissjonijiet taghhom ghall-artikli 6, 13 u 14 tal-Konvenzjoni;

11. Illi kif già` ritenut ir-rikorrenti ma kellhomx id-debita awtorizzazzjoni li jipprezentaw talbiet ulterjuri, (ara paragrafu numru disgha punt tmienja, (9.8.) aktar qabel);
12. Illi ghalhekk, *stante* li l-intimati ma kienux f'posizzjoni li jiddefendu ruhhom fir-rigward, hi kostretta tinjora l-istess *stante* li dawn l-artikli ma gewx legittimament sollevati, u konsegwentement, tastjeni milli tiehu konjizzjoni ulterjuri tal-istess;

Ikkunsidrat:

13. Illi l-intimati jsostnu li la r-rikorrenti già` inghataw kumpens ghal lanjanza taghhom hawn in dizamina minn pajjiz iehor, allura "... dikjarazzjoni ta' lezzjoni hi sufficjenti", (ara foll 410);
14. Illi f'dan ir-rigward issir referenza ghas-sentenza tal-**Prim'Awla tal-Qorti Civili**, (ikkonfermata mill-**Qorti tal-Appell fit-3 ta' Dicembru, 2010**), fl-ismijiet **Carmen Fenech et vs. Ic-Chairman tal-Malta Drydocks nomine et**, datata l-**10 t'Ottubru, 2008**, irriteniet is-segwent:

"Din il-qorti mhix tant interessata fuq x'irceview jew ma rceviewx l-atturi minghand it-terzi sidien jew operatori ta' bastimenti li fuqhom hadem id-*decujus*. Dak li jghodd hu li l-konvenut *nomine* kien il-persuna obligata ghar-rizarciment tad-danni li tnisslet mid-decess tal-kongunt taghhom. Kull dhul iehor ta' kumpens minn sorsi ohra ghandu ghal finijiet tar-rapport bejn id-defunt u t-Tarzna jitqies *res inter alios acta*";

Ikkunsidrat:

- 15.0. Illi essenzjalment ir-rikorrenti jallegaw li l-marda inkurabbli sofferta minn Joseph Mallia li wasslitu ghall-mewt kienet rizultat dirett tal-fatt li hu kien espost ghall-kontaminazzjoni mill-*asbestos* fuq il-post tax-xoghol tieghu, u dan:
  - 15.1. Ghal snin twal – mill-1960 sal-2002, (ara foll 15);

15.2. Minghajr ma ttiehdu prekawzjonijiet mill-awtoritajiet tas-sahha, (ara foll 358, 359 u 371 sa 378);

Ikkunsidrat:

16. Illi jirrizulta pacifiku li Joseph Mallia dam ghal aktar minn erbghin (40) sena jahdem bhala *fitter* it-Tarzna – li tul dal-perjodu kollu kienet entita` governattiva;
17. Illi jirrizulta li fit-Tarzna kien jintuza l-*asbestos*;
18. Illi sa mis-snin sittin (60) kien hemm informazzjoni medika rigwardanti l-perikolozita` ta' dan il-materjal ghall-persuni li jigu esposti ghalih, (ara foll 356);
19. Illi jirrizulta li l-awtoritajiet tas-sahha lokali bdew jiehdum mizuri preventivi fir-rigward fid-disghinijiet (90), ftit qabel mal-imsemmi Joseph Mallia irtira mix-xoghol, (ara foll 365 u 374);
20. Illi skont il-Kap tad-Dipartiment tal-Medicina fl-Universita` u "*consultant respiratory physician*" fid-Dipartiment tas-Sahha, il-kawza diretta tal-marda li kkagunat il-mewt ta' Joseph Mallia bil-"*pleural mesothelioma*" kien il-fatt li l-istess Mallia kien espost ghall-*asbestos*, (ara foll 355 u foll 4);
21. Illi jirrizulta assodat li l-imsemmi Joseph Mallia kien jahdem biss fit-Tarzna;
22. Illi ma ngabet l-ebda prova li l-istess Mallia seta' kkontratta l-marda *de quo* minn xi sors iehor;
23. Illi ghalhekk din il-qorti hi sodisfatta li tenut kont tas-suespost, jezisti ness dirett bejn il-marda riskontrata fl-imsemmi Mallia u x-xoghol tar-rikorrenti fit-Tarzna;

Ikkunsidrat:

- 24.0. Illi fir-rigward tal-lanjanzi naxxenti mill-artikli 2 u 8 tal-Konvenzjoni, jinghad sintetikament is-segweni:



24.1. Illi l-artiklu 2 in dizamina jirrigwarda d-dritt għall-hajja u jistipula s-segwenti:

“1. Id-dritt għall-hajja ta’ kulhadd għandu jigi protett b’ligi. Hadd ma għandu jigi pprivat mill-hajja tiegħu intenzjonalment hliet fl-esekuzzjoni tas-sentenza ta’ qorti wara li jigi misjub hati ta’ delitt li dwaru tkun provduta mill-ligi din il-piena;

“2. Il-privazzjoni tal-hajja ma għandhiex titqies bħala magħmula bi ksur ta’ dan l-Artikolu meta tirrizulta mill-uzu ta’ forza li ma tkunx aktar minn dak li jkun assolutament mehtieg:

“a. fid-difiza ta’ xi persuna minn vjolenza illegali;

“b. sabiex jigi effettwat arrest skont il-ligi jew tigi evitata l-harba ta’ xi persuna detenuta skont il-ligi;

“c. f’azzjoni mehuda skont il-ligi sabiex tigi meghluba rewwixta jew insurrezzjoni”;

24.2. Illi l-artiklu 8 in dizamina jirrigwarda d-dritt għar-rispett tal-hajja privata u tal-familja u jistipula s-segwenti:

“1. Kulhadd għandu d-dritt għar-rispett tal-hajja privata tiegħu u tal-familja tiegħu, ta’ daru u tal-korrispondenza tiegħu.

“2. Ma għandux ikun hemm indhil minn awtorita` pubblika dwar l-ezercizzju ta’ dan id-dritt hliet dak li jkun skont il-ligi u li jkun mehtieg f’socjeta` demokratika fl-interessi tas-sigurta` nazzjonali, sigurta` pubblika jew il-gid ekonomiku tal-pajjiz, biex jigi evitat id-dizordni jew l-eghmil ta’ delitti, għall-protezzjoni tas-sahha jew tal-morali, jew għall-protezzjoni tad-drittijiet u l-libertajiet ta’ haddiehor;”

Ikkunsidrat:

25. Illi ssir referenza ghas-sentenza tal-Qorti Ewropea tad-Drittijiet tal-Bniedem, (minn issa 'l quddiem Qorti ta' Strasburgu), fl-ismijiet **Brincat u Ohrajn vs. Malta**, datat l-24 ta' Lulju, 2014, li tghid:

*“79. The Court reiterates that Article 2 does not solely concern deaths resulting from the use of the unjustified force by agents of the State but also, in the first sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction (see, for example, **L.C.B. v. the United Kingdom, 9 June 1998, § 36, Reports 1998-III and Paul and Audrey Edwards, cited above, § 54**);*

*“80. This obligation is construed as applying in the context of any activity, whether public or not, in which the right of life may be at stake, and a fortiori in the case of industrial activities which by their very nature are dangerous, such as the operation of waste-collection sites (see **Öneryildiz v. Turkey [GC], no 48939/99, § 71, ECHR 2004-XII**) or nuclear testing (see *L.C.B. cited above, § 36*) or cases concerning toxic emissions from a fertiliser factory (see **Guerra and Others v. Italy, 19 February, 1998, §§ 60 and 62, Reports 1998-I**, although in this case the Court found that it was not necessary to examine the issue under Article 2, it having been examined under Article 8);*

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

*“106. Thus, as to whether the Maltese Government knew or ought to have known in the early seventies, the Court must rely on other factors, most evident amongst them being objective scientific research, particularly in the light of the domestic context. The Court takes account of the list, submitted by the applicants, which contains*

*references to hundreds of articles or other publications concerning the subject at issue published from 1930 onwards – many of them taken from reputable British medical journals. The Court observes that medical studies at the then Royal University of Malta were modelled on, and followed closely upon, the corresponding United Kingdom system, with many graduates in medicine continuing their studies in England and Scotland. Particularly in view of this situation, even accepting the Government’s argument – that is, that information was at the time not as readily available as it is today – it is inconceivable that there was no access to any such sources of information, at least, if by no one else, by the highest medical authorities in the country, notably the Chief Government Medical Officer and Superintendent of Public Health (as provided for in the, now repealed, Department of Health (Constitution) Ordinance, Chapter 94 of the Laws of Malta, see paragraph 42 above). In fact, according to Maltese law it was precisely the duty of the Superintendent of Public Health to remain abreast of such developments and advise the Government accordingly. The Court, further, observes that it has not been submitted that there had been any specific impediment to access the necessary information. Furthermore, the Government failed to rebut the applicants’ assertion with any signed statement by a medical expert or authority, who could have attested that the medical professionals in the country were, in or around the 1970s, unaware of these worrying medically related findings at the time;*

*“Moreover, the Pellicano judgment by the Commercial Court (see paragraph 35 above) is in itself an implicit acknowledgement by a domestic court that in the years preceding Mr Pellicano’s death in 1979 the authorities knew or ought to have known of the dangers of working with asbestos and that they had failed to provide adequate health and safety measures in that respect”;*

*“Against this background, the Court includes that for the purposes of the present case, it suffices to consider that the Maltese Government knew or ought to have known of*

*the dangers arising from exposure to asbestos at least as from the early 1970s”;*

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

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

26. Illi jigi sottolineat li d-decizjoni ta’ Brincat indikata fil-paragrafu precedenti kienet tirrigwarda kwistjoni identika ghall-kawza odjerna fejn il-Qorti ta’ Strasburgu ikkonkludiet li kien gie ippruvat in-ness dirett ta’ kawzalita` bejn l-insorgiment tal-*malignant mesothelioma* u l-esposizzjoni ghall-asbestos;

27. Illi l-istess sentenza tal-**Qorti ta’ Strasburgu** irriteniet is-segwenti:

*“83. The medical certification indicated that Mr Attard’s death was likely to be a result of asbestos exposure; malignant mesothelioma is known to be a rare cancer associated with asbestos exposure. The Court observes that it has not been contested or denied that Mr Attard worked at Malta Drydocks for more than a decade (1959 – 1974), during which time he was repeatedly exposed to asbestos. Neither has it been shown that Mr Attard could have been contaminated elsewhere or that he was*

*affected by other factors that could have led to the disease. In these circumstances, and given that Mr Attard has died as a result of his cancer, the Court considers that Article 2 is applicable to the complaint brought by the applicants in application no. 62338/11 relating to the death of the said Mr Attard ...”;*

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

Ikkunsidrat:

28. Illi l-konkluzjoni li wasslet ghalha l-qorti insinji riferita fil-paragrafu precedenti kienet li fil-kaz tal-haddiema li **mietu** bil-*mesothelioma* l-ilment taghhom kellu jigi trattat fil-kuntest ta’ vjolazzjoni tal-artiklu 2 tal-Konvenzjoni, mentri fil-kaz tal-haddiema li mardu bil-*mesothelioma* l-ilment kellu jigi trattat biss taht l-ambitu tal-artiklu 8 tal-istess Konvenzjoni;
29. Illi in vista tal-insenjament fuq deklinat din il-qort tikkondividi l-linja delineata mill-Qorti ta’ Strasburgu u konsegwentement ser tqis il-mewt ta’ Joseph Mallia bhala vjolazzjoni tal-artiklu 2 tal-Konvenzjoni u mhux bhala vjolazzjoni tal-artiklu 8 tal-istess;

Ikkunsidrat:

- 30.0. Illi fir-rigward tal-artiklu 33 tal-Kostituzzjoni sollevat mir-rikorrenti tissottolinea s-segwent:
- 30.1. Illi dan l-artiklu jirrigwarda d-dritt ghall-protezzjoni tad-dritt tal-hajja;
- 30.2. Illi dan l-artiklu hawn in dizamina jistipula s-segwent:

“1. Hadd ma jista’ jigi pprivat mill-hajja tieghu intenzjonalment hliet fl-esekuzzjoni tas-sentenza ta’ qorti dwar reat kriminali skont il-ligi ta’ Malta li tieghu jkun gie misjub hati.

“2. Minghajr hsara ghal xi responsabbilita` ghal ksur ta’ xi ligi ohra dwar l-uzu ta’ forza f’dawk il-kazijiet li huma hawnhekk izjed ‘l quddiem imsemmija, persuna ma ghandhiex titqies li tkun giet ipprivata mill-hajja taghha bi ksur ta’ dan il-artikolu jekk tmut b’rizzultat tal-uzu ta’ forza daqs kemm tkun ragonevolment gustifikabbli fic-cirkostanzi tal-kaz -

“a. fid-difiza ta’ xi persuna minn vjolenza jew fid-difiza ta’ proprjeta`;

“b. sabiex jigi effettwat arrest skont il-ligi jew tigi evitata l-harba ta’ persuna detenuta skont il-ligi;

“c. sabiex tigi meghluba rewwista, insurrezzjoni jew ammutinament; jew

“d. sabiex jigi evitat l-eghmil minn dik il-persuna ta’ reat kriminali;

jew jekk tmut minhabba att legittimu ta’ gwerra;

31. Illi f’dan ir-rigward issir referenza ghas-sentenza tal-**Qorti Kostituzzjonali** fl-ismijiet **Jane Agius vs. L-Avukat Generali et**, datata l-**14 ta’ Dicembru, 2015**, fejn gie ritenut is-segwenti:

“Ir-rikorrenti qed tallega ksur ta’ dan l-artikolu flimkien mal-artikolu 2 tal-Konvenzjoni. Il-kliem tal-artikolu 33 mhux ezattament l-istess bhat-test tal-artikolu 2. L-artikolu 2 jibda bis-sentenza “*Everyone’s right to life shall be protected by law*”. Dan il-principju assolut mhux rispekkjat fl-artikolu 33 li jinkorpora biss it-tieni frazi tal-artikolu 2. Wiehed jista’ jirraguna li din il-frazi thalliet barra appozitament u ghalhekk l-artikolu 33 jitkellem biss dwar indhil dirett mill-Istat;

“Izda dan l-artikolu ghandu jinghata l-istess applikazzjoni bhall-artikolu 2 tal-Konvenzjoni ghal diversi ragunijiet. L-ewwelnett hu pacifiku li r-responsabbilita` guridika temani mhux biss fuq att pozittiv u dirett, imma anke minn att ta' omissjoni fejn persuna tonqos milli taghmel dak li hu mistenni ragonevolment minnha. Att ta' omissjoni jista' jkun leziv daqs att ta' kommissjoni;

“*Inoltre*, l-obbligazzjoni sancita bl-artikolu 33 hi wahda essenzjalment tal-protezzjoni tal-hajja minn azzjonijiet illegali u arbitrarji tal-Istat. Dan jirrikjedi li l-Istat ghandu jkun marbut mhux biss milli jindahal fit-tgawdija ta' tali dritt imma anke li jiehu mizuri pozittivi biex jassigura t-tharis tad-dritt; altrimenti dan l-artikolu ikun wiehed dgħajjed u ineffettiv”;

Ikkunsidrat:

32. Illi minn ezami tal-fatti kif rizultati *in atti* jirrizulta assodat li Joseph Mallia ghamel snin twal impjegat bhala *fitter* it-Tarzna u ghalhekk, kostantement espost għall-asbestos, u dan, minghajr ma kien jaf bil-periklu kbir li kien suggett għalih *nonostante* li l-awtoritajiet medici lokali kienu konxji ta' dan il-periklu sa mill-ahhar tas-snin sittin (60);
33. Illi konsegwenza tal-fatt li dawn l-awtoritajiet kienu jafu b'dan il-periklu u mill-fatt li jirrizulta li bdew jirreagixxu għall-istess biss mis-snin disghin, (90), allura din il-qorti hi sodisfatta li f'dan ir-rigward tirrizulta vjolazzjoni tal-artiklu 33 tal-Kostituzzjoni;

Ikkunsidrat:

- 34.0. Illi minn analisi tal-fatti fuq delineati jirrizulta li l-mewt ta' Joseph Mallia kienet ikkawzata minhabba l-ommissjoni daparti tal-iStat li:
  - 34.1. M'aggornax ruhhu tempestivament bil-legislazzjoni li kien hemm bzonn li tigi adottata għall-gharfien xjentifiku tal-perikli konnessi mal-asbestos, u l-uzu tieghu; u

- 34.2. M'ghamilx rakkomandazzjonijiet pubblici dwar mizuri ta' prevenzjoni u eliminazzjoni tal-uzu f'waqtu ta' din is-sustanza nociva ghas-sahha tal-bniedem;
35. Illi ssir referenza ghas-sentenza tal-**Prim'Awla tal-Qorti Civili** fl-ismijiet **George Spiteri et vs. Policy Manager tal-Malta Shipyards** fi hdan il-**Ministeru ghall-Infrastruttura, Trasport u Kommunikazzjoni et**, datata t-**23 ta' Novembru, 2016**, li f'dan ir-rigward irriteniet is-segwenti:

“14. Bhala fatt ghalhekk hu car, u ghal dan il-Gvern ma ghandu ebda skuza, illi fil-perjodu li r-rikorrent George Spiteri kien jahdem it-Tarzna, l-gharfien ghall-Awtoritajiet Maltin dwar il-perikli ghas-sahha assocjati mal-*asbestos* kien jezisti u l-informazzjoni dwar in-ness bejn it-tip ta' kancer li qabad lir-rikorrent u l-espozizzjoni ghall-*asbestos* kienet disponibbli ghalihom ...”

“Il-qorti tqis li f'dan il-kuntest mhux bizzejjed li jigi evalwat meta l-Gvern sar jaf bil-perikli assocjati mal-*asbestos* izda meta seta' jsir jaf b'dan. A skans ta' ripetizzjoni jinghad li gie muri b'mod mhux kontradett f'din il-kawza li prova xjentifika li tassocja l-espozizzjoni ghall-*asbestos* mal-kancer tmur lura ghas-sena 1938, u cioe' ghoxrin sena qabel ma' George Spiteri dahal jahdem it-Tarzna. Imbaghad, circa sentejn wara li Spiteri dahal it-Tarzna, cioe` fl-1960, it-tobba Maltin, u allura anke l-Gvern *tramite* l-awtoritajiet tas-sahha, kellhom a dispozizzjoni taghhom, *tramite* bulettini medici Inglizi, l-konferma tan-ness bejn l-*asbestos* u *pleural mesothelioma*.

Ikkunsidrat:

36. Illi stabbilit li Joseph Mallia miet minhabba *pleural mesothelioma* rizultat tal-esposizzjoni tieghu ghall-*asbestos* li kien jigi uzat fuq il-post tax-xoghol tieghu u dan, in vjolazzjoni tal-artiklu 33 tal-Kostituzzjoni u tal-artiklu 2 tal-Konvenzjoni, hu issa doveruz li l-qorti tghaddi ghall-likwidazzjoni tad-danni non pekunjarji u mhux li tieqaf superficialment fuq mera dikjarazzjoni ta' lezjoni bhala ekwivalenti ghal rimedju sufficjenti kif l-intimati qed jistiednu lill-qorti li taghmel;



37. Illi fic-cirkostanzi kif fuq delineati, inkluz il-fatt li r-rikorrenti gew ukoll risarciti minn kumpanija estera kif fuq sintetikament gia` indikat, *stante* li kif gia` intqal li din il-qorti mhix interessata jekk ir-rikorrenti rceviewx, jew le, xi kumpens fir-rigward mill-istess, (ara paragrafu numru erbatax, (14.), aktar qabel), tillikwida s-somma ta' hamsa u ghoxrin elf euro, (€25,000.00), bhala danni sofferti mir-rikorrenti bhala rizultat tal-mewt ta' Joseph Mallia minhabba l-esposizzjoni li hu kellu ghall-asbestos fix-xoghol tieghu kif fuq deskritt;

Ikkunsidrat:

- 38.0. Illi ghalhekk, fid-dawl tas-suespost, u bil-limiti fuq indikat, tiddikjara li hi sodisfatta li r-rikorrenti ipprovaw il-kaz taghhom skont il-ligi, u konsegwentement:

**DECIDE:**

- 38.1. Tirrespingi t-tieni (2) talba tar-rikorrenti;
- 38.2. Takkolji t-talbiet rimanenti l-ohra kollha tar-rikorrenti;
- 38.3. Takkolji r-raba' (4) u l-hames (5) eccezzjoni tal-intimati;
- 38.4. Tirrespingi l-eccezzjonijiet l-ohra rimanenti tal-istess intimati;
- 38.5. Tillikwida d-danni sofferti mir-rikorrenti fl-ammont fuq indikat ta' €25,000.00;
- 38.6. Tikkundanna lill-intimati biex *in solidum* bejniethom ihallsu lir-rikorrenti l-ammont hekk likwidat;
- 38.7. Bl-ispejjez ta' din il-procedura kontra l-intimati.

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Onor. Imhalledf Silvio Meli

**DECIZJONI FINALI**