



MALTA

**QORTI CIVILI
PRIM'AWLA**

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Illum l-20 ta' Novembru, 2018.

**Prim'Awla tal-Qorti Civili
(Sede Kostituzzjonali)
Rikors Numru 17/2016**

**Redent Pintley (I.D: 269364 M) u
martu Rosaria Pintley (I.D: 157463 M)**

vs.

**Dr. Josianne Cutajar bhala Kap Ezekuttiv
u in rapprezentanza ta' Saint Vincent de
Paul Residence**

Il-Qorti,

- 1.0. Rat ir-rikors promotur datat id-9 ta' Frar, 2016, li permezz tieghu r-rikorrenti sintetikament esponew is-segwent, (ara foll 1):

- 1.1. Illi r-rikorrenti Redent Pintley hu *nursing aide* fir-residenza tal-anzjani fuq indikata;
- 1.2. Illi l-istess rikorrenti jagħmel ukoll is-sahra fl-isptar *Mater Dei*;
- 1.3. Illi fil-15 t'Ottubru, 2015, gie rappurtat li pazjent indikat fl-istess rikors promotur, (ara foll 1), ilmenta li waqt li r-rikorrenti fuq riferit kien qieghed jagħmel is-sahra fl-imsemmi sptar kien waddab flixxun tal-plastik – senjatament flixxun li fih tingabar l-urina – lill-istess pazjent;
- 1.4. Illi allegatament l-imsemmi incident kien sehh f' *Room 2, Bed 8* tal-*MW8*;
- 1.5. Illi konsegwentement l-imsemmi rikorrenti gie mitlub jirrilaxxa stqarrija fuq l-istess incident lill-Assistent Direttur tan-*Nursing* fl-istess sptar;
- 1.6. Illi l-imsemmija stqarrija inghatat kif mitlub fl-20 t'Ottubru, 2015, u fiha l-istess rikorrenti:
 - 1.6.1. Spjega c-cirkostanzi tal-fatti;
 - 1.6.2. Spjega kif l-allegat incident qatt ma sehh;
 - 1.6.3. Indika lis-6 pazjenti tal-istess sala fejn allegatament sehh l-incident bhala xhieda;
 - 1.6.4. Irrelata li l-pazjent ikkoncernat ma kienx mentalment f'siktu tant li kien għamel l-urina fil-*mug* li kienet gabitlu l-*care-worker*;
- 1.7. Illi rizultat tal-istess ir-rikorrenti in kwistjoni inzamm milli jahdem is-sahra fl-imsemmi sptar sakemm jintemmu l-investigazzjonijiet li kienu gew stabbiliti;
- 1.8. Illi permezz t'ittra datata l-5 ta' Novembru, 2015, l-intimata *nomine* informat lill-imsemmi rikorrenti li:
 - 1.8.1. Kien qed jigi akkuzat li sawwat pazjent; u

- 1.8.2. Kien ghalhekk qed jigi sommarjament sospiz sakemm tkun approvata s-sospensjoni temporanja;
- 1.9. Illi s-suespost sehh proprju meta r-rikorrenti Rosaria Pintley, mart Redent, bdiet it-trattament bir-raggi ghall-marda li kellha, (ara foll 1);
- 1.10. Illi l-ahbar tas-sospensjoni u tal-akkuza ikkawzatihom hsara psikologika kbira u durevoli;
- 1.11. Illi r-reputazzjoni tal-imsemmi rikorrenti sofriet hsara konsiderevoli u irreparabbli;
- 1.12. Illi l-istess rikorrenti irrikorra ghand il-Kummissjoni dwar is-Servizz Pubbliku, (minn issa 'l quddiem il-Kummissjoni), biex jiprotegi d-drittijiet tieghu *stante* li s-sospensjoni *de quo* kienet intempestiva billi l-Bord investigattiv kien ghadu m'ikkonkludix l-investigazzjoni tieghu;
- 1.13. Illi eventwalment irrizulta li ma kien sehh l-ebda incident kif allegat;
- 1.14. Illi ghalhekk il-Kummissjoni *de quo* giet infurmata li ma kienux ser jittiehdu proceduri kontra r-rikorrenti in dizamina;
- 1.15. Illi konsegwentement l-istess Kummissjoni idderigiet lill-intimata *nomine* biex:
- 1.15.1. Tirrevoka is-sospensjoni sommarja inflitta fuq l-imsemmi rikorrenti;
- 1.15.2. Tirrifondi n-nofs is-salarju mizmum lill-istess rikorrenti, tul il-perjodu li fih ir-rikorrenti in dizamina dam sospiz;
- 1.16. Illi l-mizuri in kwistjoni mehuda mill-intimat *nomine* saru:
- 1.16.1. Minghajr ma dahlet fil-mertu tal-kaz; u
- 1.16.2. Minghajr ma stenniet l-ezitu tal-investigazzjoni;

- 1.17. Illi ghalhekk l-istess mizuri mehuda mill-intimata *nomine* ittiehdu b'abbuz tal-procedura dixxiplinari moghti lilha skont il-ligi;
- 1.18. Illi r-rikorrenti ghalhekk ghaddew minn ansjeta` u tbatija psikologika kbira;
- 1.19. Illi minkejja li ircevwew ir-rifuzjoni ta' nofs is-salarju li kien inzamm mill-intimat, xorta wahda sofrew danni materjali u danni morali;
- 1.20. Illi ghalhekk sofrew:
 - 1.20.1. Lezjoni tad-dritt ghal smigh xieraq, (artiklu 6 tal-Konvenzjoni Ewropeja tad-Drittijiet Fundamentali tal-Bniedem, (minn issa 'l quddiem il-Konvenzjoni));
 - 1.20.2. Lezjoni tad-dritt ghall-harsien minn trattament inuman u degradanti, (artiklu 3 tal-Konvenzjoni);
 - 1.20.3. Lezjoni tad-dritt ghat-tgawdija tal-possedimenti, (artiklu 1 tal-Ewwel Protokoll tal-Konvenzjoni);
 - 1.20.4. Lezjoni tad-dritt ghall-hajja privata u ghall-hajja tal-familja, (artiklu 8 tal-Konvenzjoni);
- 1.21. Illi r-rikorrenti la ghandhom mezzi finanzjarji u lanqas snin zejda biex l-ewwel jintavolaw proceduri civili ghad-danni u wara jstitwixxu kawza kostituzzjonali ghad-danni mhux pekunjarji;
- 1.22. Illi ghalhekk ghazlu li jintavolaw procedura wahda;
- 1.23. Illi minhabba mankanzi serji f'dan ir-rigward fil-ligi ta' Malta l-parti ikkoncernata tista' tigi kostretta li tkun involuta f'diversi proceduri, liema proceduri jkunu inkompatibbli mal-koncett ta' determinazzjoni tad-drittijiet u obbligi civili fi zmien ragonevoli;

- 1.24. Illi ghalhekk ir-rikorrenti aderew din il-qorti biex din tassigura t-twettieq tad-drittijiet fundamentali taghhom u konsegwentement:
 - 1.24.1. Tiddikjara li r-rikorrenti sofrew lezjoni tas-segwenti drittijiet kif sanciti mill-Konvenzjoni;
 - 1.24.1.i. Ghal smigh xieraq;
 - 1.24.1.ii. Ghall-harsien minn trattament inuman u degradanti;
 - 1.24.1.iii. Ghat-tgawdija tal-possedimenti;
 - 1.24.1.iv. Ghall-hajja privata u tal-familja;
 - 1.24.2. Tordna lill-intimata *nomine* thallas kumpens xieraq li jinkludi d-danni materjali, danni non-pekunjarji jew morali;
 - 1.24.3. Bl-ispejjez kontra l-intimata *nomine*;
2. Rat id-digriet taghha datat id-9 ta' Frar, 2016, li permezz tieghu, appuntat l-istess procedura ghas-smigh ghall-udjenza hemm indikata, (ara foll 4);
- 3.0. Rat ir-risposta tal-intimata *nomine* datata s-16 ta' Frar, 2016, li permezz tieghu sintetikament irrispondiet bil-mod segwenti ghat-talbiet rikorrenti, (ara foll 10);
 - 3.1. Illi l-ilment rigwardanti s-sospensjoni sommarja gie superat *stante* li fir-rigward, ir-rikorrenti kisbu ezitu favorevoli mill-Kummissjoni, u dan, kemm:
 - 3.1.1. Fir-rigward tat-tnehhija tas-sospensjoni mix-xoghol, u
 - 3.1.2. Fir-rigward tar-radd tas-salarju;
 - 3.2. Illi s-sospensjoni sommarja in dizamina ma kienitx abbużiva, izda kienet gustifikata, ittiehdet fl-interess pubbliku, u ghalhekk, legittima;

- 3.3. Illi l-istess decizjoni rigwardanti s-sospensjoni *de quo* ittiehdet skont Regolamenti tal-Procedura ta' Dixxiplina tal-Kummissjoni;
- 3.4. Illi l-amministrazzjoni tar-Residenza in dizamina, bhala l-principal tar-rikorrenti ikkoncernat, kellha l-obbligu li tissospendi lill-istess sakemm jigi investigat l-ilment in kwistjoni li kien wiehed serju b'implikazzjonijiet ta' natura kriminali;
- 3.5. Illi wara li ntemmet l-investigazzjoni fejn irrizulta li r-rikorrenti *de quo* gie ezonorat, allura kienet l-istess amministrazzjoni li talbet lill-Kummissjoni biex tirrevoka s-sospensjoni sommarja;
- 3.6. Illi l-intimata *nomine* kienet qed taqdi d-dmirijiet taghha fl-aqwa interess tal-pubbliku;
- 3.7. Illi ghalhekk ir-rikorrenti ghandhom ifittxu lil min ikkaguna l-inkwiet li setghu ghaddew minnu u mhux lill-intimata *nomine*;
- 3.8. Illi mhux minnu dak allegat mir-rikorrenti li kellhom jintavolaw proprju din il-procedura biex jiksbu danni materjali flimkien ma danni morali;
- 3.9. Illi r-rikorrenti ma setghux jinvokaw l-artiklu 6 tal-Konvenzjoni *stante* li dan japplika biss f'kazijiet quddiem qorti jew tribunal – u l-intimata *nomine* m'hi l-ebda wahda minnhom;
- 3.10. Illi fi kwalunkwe kaz ir-rikorrenti ma jghidux b'liema mod soffrew ksur ta' smigh xieraq;
- 3.11. Illi bil-maqlub, ir-rikorrenti kellhom access shih ghall-awtorita` kostituzzjonali biex jindirizzaw il-lanjanzi taghhom;
- 3.12. Illi fir-rigward tal-artiklu 3 tal-Konvenzjoni jirrizulta li r-rikorrenti ma gew assoggettati ghal ebda piena jew trattament inuman jew degradanti;

- 3.13. Illi sospensjoni temporanja mix-xoghol bl-ebda mod ma tikkwalifika ghal piena jew trattament inuman u/jew degradanti;
- 3.14. Illi tali mizuri huma effettivament komuni hafna f'socjeta` civili u demokratika;
- 3.15. Illi fil-fatt tali mizura hi kontemplata fir-regolamenti ta' dixxiplina u tittiehed b'mod prekawzjonali sakemm tigi terminata l-investigazzjoni;
- 3.16. Illi ghalkemm investigazzjoni ta' natura dixxiplinari tista' tohloq ansjeta` dan ma jistax jigi ekwiparat ma trattament inuman u degradanti;
- 3.17. Illi *di piu`*, hu l-obbligu tal-awtoritajiet kompetenti li jinvestigaw l-allegazzjonijiet indirizzati fil-konfront tal-imsemmi rikorrenti;
- 3.18. Illi s-suspensjoni in dizamina damet biss sakemm giet konkluza l-investigazzjoni in kwistjoni u konsegwentement l-allegazzjonijiet tar-rikorrenti ghandhom karattru ingurju u libelluz;
- 3.19. Illi mhux sew li r-rikorrenti jirrikorru ghal tattici illegittimi billi jinvolvu kwistjonijiet ta' natura personali li huma ghal kollox irrilevanti ghall-vertenza in dizamina;
- 3.20. Illi l-bazi tal-Ewwel Artiklu tal-Ewwel Protokoll tal-Konvenzjoni li fuqha jistrieu r-rikorrenti hi ghal kollox irrilevanti *stante* li hadd ma ha xi gid tar-rikorrenti jew fixkilhom fit-tgawdija ta' gidhom;
- 3.21. Illi in effetti il-porzjon tas-salarju mizimum mir-rikorrenti intradd lura;
- 3.22. Illi fir-rigward tal-artiklu 8 tal-Konvenzjoni jinghad li s-suspensjoni temporanja tal-imsemmi rikorrenti kienet relatata max-xoghol tieghu u mhux mal-mod kif ir-rikorrenti jghixu l-hajja ordinarja tagghom;
- 3.23. Illi f'dan ir-rigward hadd ma ndahal fil-hin liberu u privat tar-rikorrenti;

3.24. Illi fi kwalunkwe kaz is-sospensjoni temporanja in kwistjoni ittiehdet fl-interess pubbliku u bhala mizura kawtelatorja sakemm tintemm l-investigazzjoni;

3.25. Illi la r-rikorrenti ma sofrew l-ebda lezjoni konvenzjonali allura l-ebda talba ghall-kumpens ma tista' tigi akkolta;

3.26. Illi ghalhekk:

3.26.1. It-talbiet tar-rikorrenti ghandhom jigu respinti;

3.26.2. Bl-ispejjez kontra r-rikorrenti;

4. Rat id-digriet taghha datat l-24 ta' Jannar, 2018, li permezz tieghu, wara talba appozita` tal-abbli rapprezentanti legali tal-partijiet, awtorizzat lill-istess biex jittrattaw il-kaz bil-modalita` u fit-termini hemm indikati, (ara foll 101);

5. Rat in-nota t'osservazzjonijiet tar-rikorrenti datata s-26 ta' Marzu, 2018, (ara foll 104), flimkien man-nota ta' sottomissjonijiet tal-intimata *nomine* datata l-21 ta' Mejju, 2018, (ara foll 122);

6. Semghat ix-xhieda prodotta;

7. Ezaminat id-dokumenti esebiti flimkien mad-dikjarazzjonijiet guramentati prodotti;

8. Rat il-verbal datat is-26 ta' Gunju, 2018, li permezz tieghu l-abbli rapprezentanti legali tal-partijiet iddikjaraw li kienu qed jistrieħu fuq in-noti ta' sottomissjonijiet minnhom ipprezentati, (ara foll 143);

Ikkunsidrat:

9.0. Illi l-fatti li taw lok ghall-procedura odjerna jistghu jigu sintetikament elenkati bil-mod segwenti:

9.1. Illi r-rikorrenti hu *nursing aide* regolament impjegat fir-residenza San Vincens de Paule, u jaghmel ukoll sahra l-isptar, (ara foll 1);

- 9.2. Illi fil-15 t'Ottubru, 2015, kien intavolat ilment minn pazjent fl-isptar kontra r-rikorrenti Redent Pintley fejn dan allega li l-imsemmi rikorrenti waddablu flixxkun tal-plastik ossija flixxkun li fih tingabar l-urina, (ara foll 1 u 56);
- 9.3. Illi r-rikorrenti involut fl-istess incident kien gie mitlub jirrilaxxa stqarrija fir-rigward, (ara foll 46 u 59), liema stqarrija hi datata l-20 t'Ottubru, 2015;
- 9.4. Illi rizultat tal-istess ilment fuq riferit giet inizjata investigazzjoni u tul l-istess ir-rikorrenti fuq imsemmi kien gie sospiz, (ara foll 48), b'effett mill-5 ta' Novembru, 2015, (ara foll 87), u dan, skont ir-regolament 12 (3) tar-regolamenti kkoncernati, (ara foll 91);
- 9.5. Illi l-intimata *nomine* infurmat lill-istess rikorrenti bis-sospensjoni temporanja u bl-investigazzjoni relattiva permezz t'ittra datata l-5 ta' Novembru, 2015, (ara foll 54);
- 9.6. Illi fl-istess data indikata fil-paragrafu precedenti l-intimata *nomine* kitbet lill-Kummissjoni li kienet qed tirrakkomanda s-sospensjoni temporanja tal-imsemmi rikorrenti, (ara foll 55);
- 9.7. Illi permezz t'ittra datata s-6 ta' Novembru, 2015, ir-rikorrenti *de quo* informa lill-Kummissjoni li l-mizuri inizjati fil-konfront tieghu kienu intempestivi *stante* li l-Bord t'investigazzjoni stabbilit biex jexamina l-ilment in kwistjoni kien ghadu m'itterminax l-indagini tieghu, (ara foll 44);
- 9.8. Illi effettivament il-Kummissjoni ddecidiet li ma tiehu l-ebda proceduri dixxiplinari kontra r-rikorrenti involut;
- 9.9. Illi ghalhekk permezz t'*e-mail* datata t-3 ta' Dicembru, 2015, l-istess Kummissjoni tat-struzzjonijiet biex:
 - 9.9.1. Tigi revokata s-sospensjoni sommarja mehuda fil-konfront tal-istess rikorrenti; u

- 9.9.2. Jigi rifuz nofs is-salarju precedent mizmum lir-rikorreni *de quo* rizultat tal-incident in dizamina, (ara foll 45 u 85);
- 9.10. Illi l-imsemmi rikorreni dam ghalhekk sospiz mit-3 ta' Novembru, 2015, (ara foll 47), sas-6 ta' Dicembru, 2015, (ara foll 103);
- 9.11. Illi r-rikorreni *de quo* kien rifuz il-parti tas-salarju precedentement mizmum in kosegwenza tal-investigazzjoni *de quo*, (ara foll 82);

Ikkunsidrat:

10. Illi essenzjalment ir-rikorreni jsostnu li rizultat tas-suespost sofrew lezjoni tad-drittijiet fundamentali taghhom kif elenkati aktar qabel, (ara paragrafu numru wiehed punt ghoxrin, (1.20.) u paragrafu numru wiehed punt erbgħa u ghoxrin, (1.24.) aktar qabel;
11. Illi ghalhekk qeghdin ukoll jitolbu li jingħataw kumpens xieraq kif dedott *ai termini* tal-paragrafu numru wiehed punt erbgħa u ghoxrin punt tnejn, (1.24.2.) aktar qabel;

Ikkunsidrat:

12. Illi ghalhekk il-vertenza odjerna tiddependi mill-analizi tal-procedura adoperata mill-intimata *nomine* wara li din kienet infurmata bl-ilment introdott fil-konfront tar-rikorreni in kwistjoni;
13. Illi in effetti l-procedura adoperata fir-rigward tirrizulta naxxenti mir-regolament 12 (3) tar-Regolamenti tal-1999 tal-Proceduri ta' Dixxiplina tal-Kummissjoni dwar is-Servizz Pubbliku, (ara fol 90 u 91), li tirrizulta li kienet ikkomunikata lir-rikorreni *de quo* permezz t'ittra datata l-5 ta' Novembru, 2015, (ara fol 54);
14. Illi in effetti l-imsemmi regolament 12 (3) riferit fil-paragrafu precedenti jistipula is-segwenti:

“Il-Kap tad-Dipartiment jista' jissospendi lill-ufficjal mill-ezercizzju tas-setghat u tal-funzjonijiet tal-kariga

tieghu sakemm tinghata d-decizjoni tal-Prim Ministru fuq ir-rakkomandazzjoni tal-Kummissjoni”;

Ikkunsidrat:

15.0. Illi fir-rigward tal-allegata lezjoni tal-**artiklu 6 tal-Konvenzjoni** jinghad sintetikament is-segwenti:

15.1. Illi dan l-artiklu partikolari jipprotegi u jassigura d-dritt ghal procediment gust;

15.2. Illi ghal kull *buon fini* jibda biex jigi sottolineat li r-rikorrenti in kwistjoni inghata l-opportunita` biex jipprezenta l-versjoni tieghu ta' kif sehew il-fatti in dizamina u fil-fatt ipprezenta din il-versjoni fl-20 t'Ottubru, 2015, (ara foll 46);

15.3. Illi pero` jigi wkoll osservat li l-intimata *nomine* hi biss il-Kap Ezekuttiv tar-Residenza San Vincenz, (ara foll 47), u bl-ebda mod ma tikkwalifika bhala “tribunal indipendenti u imparzjali”, “qorti”, jew “awtorita` gudikanti”, fit-termini tal-Kostituzzjoni jew tal-Konvenzjoni, b' xi funzjoni li taghti xi decizjoni dwar “drittijiet” jew “obbligi civili” kif determinat fl-artiklu 6 in dizamina;

15.4. Illi limitatament ghall-fattispeci tal-procedura odjerna effettivament l-artiklu 6 tal-Konvenzjoni jistabbilixxi s-segwenti:

“Fid-determinazzjoni tad-drittijiet civili u tal-obbligi tieghu kulhadd hu intitolat ghal smigh imparzjali u pubbliku fi zmien ragonevoli minn tribunal indipendenti u imparzjali mwaqqaf b'ligi. Is-sentenza ghandha tinghata pubblikament izda l-istampa u l-pubbliku jistghu jigu eskluzi mill-proceduri kollha jew minn parti minnhom fl-interess tal-morali, tal-ordni pubbliku jew tas-sigurta` nazzjonali f'socjeta` demokratika, meta l-interessi tal-minuri jew il-protezzjoni tal-hajja privata tal-partijiet hekk tehtieg, jew safejn ikun rigorozament mehtieg fil-fehma tal-qorti

f'cirkostanzi specjali meta l-pubblicita` tista' tippregudika l-interessi tal-gustizzja;

- 15.5. Illi fir-rigward tad-definizzjoni tal-kelma “tribunal” hemm inserita fis-sentenza taghha fl-ismijiet **Stojakovic vs. Austria Applikazzjoni Numru 30003/02** datata d-9 ta' **Novembru, 2006**, il-Qorti ta' **Strasburgu** affermat is-segwenti:

*“According to the Court’s case-law a “tribunal” is characterised in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rule of law and after proceeding conducted in prescribed manner. It must also satisfy a series of further requirements – independence - in particular of the executive; impartiality, duration of its members’ terms of office; guarantees afforded by its procedure – several of which appear in the text of Article 6 § 1 itself (see **Baischer v. Austria, no. 32381/96, § 23, 20 December 2001** with a reference to **Belilos v. Switzerland, judgement of 29 April 1988, Series A no. 132, p. 29, § 64**)”;*

- 15.6. Illi gialadarba l-intimata *nomine*, kemm personalment, kif ukoll fil-kapacita` amministrattiva naxxenti mill-kariga li hi tokkupa fi hdan l-amministrazzjoni pubblika, ma tikkwalifikax bhala “tribunal” jew “awtorita` gudizzjarja” ghall-finijiet u effetti tal-artiklu 6 tal-Konvenzjoni jew l-artiklu 39 tal-Kostituzzjoni, l-azzjoni hawn tentata mir-rikorrenti fil-konfront tal-istess intimata *nomine* ma treggix *stante* li din ma taqdi l-ebda funzjoni gudizzjarja;
- 15.7. Illi in vista tal-premess l-artiklu 6 tal-Konvenzjoni rikjamat mir-rikorrenti biex jistrieħu fuqu ghall-lanjanza minnhom postulata ma japplikax;
- 15.8. Illi ghalhekk ma tirrizulta l-ebda lezjoni tad-drittijiet fundamentali tar-rikorrenti ibbazati fuq l-imsemmi

artiklu, u konsegwentement din it-talba tar-rikorrenti ghandha tigi respinta;

Ikkunsidrat:

16.0. Illi fir-rigward tal-allegata lezjoni tal-**artiklu 3 tal-Konvenzjoni** jinghad sintetikament is-segwenti:

16.1. Illi l-artiklu *de quo* essenzjalment jipprojbixxi t-tortura u t-trattament inuman u jistipula s-segwenti:

“Hadd ma ghandu jkun assoggettat ghal tortura jew ghal trattament jew piena inumana jew degradanti”;

16.2. Illi fil-ktieb, “***The International Law of Human Rights***”, **Edizzjoni tal-1983, Paul Sieghart** jigbed l-attenzjoni tal-qarrej ghas-sentenza hemm citata fl-ismijiet ***Denmark et al vs. Greece***, u jghid:

“*EUCM, (European Commission of Human Rights), stated that the notion of inhuman treatment covers at least such treatment as deliberately causes severe suffering, mental or physical;*”

16.3. Illi fis-sentenza taghha fl-ismijiet **Paul Hili et vs. L-Avukat Generali et**, datata t-13 ta' Frar, 2014, il-**Prim'Awla tal-Qorti Civili**, filwaqt li rriferiet ghal **Facett** hemm citat, irriproduciet minnu s-segwenti:

“*Inhuman treatment would then be the deliberate infliction of physical or mental pain or suffering against the will of the victim and, when forming part of criminal punishment, out of proportion to the offence;*”

16.4. Illi fis-sentenza taghha fl-ismijiet **Lawrence Gatt vs. l-Onorevoli Prim Ministru et**, datata t-12 ta' Frar, 2008, il-**Qorti Kostituzzjonali** irrimarkat is-segwenti:

“Barra minn dan, din il-qorti tara li, f’kull kaz, ma jezistux l-estremi tad-dritt invokat mir-rikorrent. Definizzjoni tat-terminologija uzata fl-artiklu 3 tal-Konvenzjoni ... kienet inghatat mill-Kummissjoni Ewropea fl-hekk imsejha **Greek Case**. Fir-rapport taghhom ippubblikat fil-5 ta’ Novembru, 1969, jinghad a *propozitu*:

“The notion of inhuman covers at least such treatment as deliberately causes severe suffering, mental or physical, which, in the particular situation, is unjustifiable. The word “torture” is often used to describe inhuman treatment, which has a purpose, such as the obtaining of information or confession, or the infliction of punishment, and is generally an aggravated form of inhuman treatment. Treatment or punishment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his will or conscience”;

- 16.5. Illi fir-rigward ta’ trattament degradanti generalment, dan jitqies li jirreferi ghal dak it-trattament li jgieghel lil dak li jkun ikisser ir-resistenza kemm fizika kif ukoll morali tal-vittma jew li jgieghel lill-vittma li tagixxi kontra l-volonta` taghha;
- 16.6. Illi fis-sentenza fl-ismijiet **Peers vs. Greece**, **Applikazzjoni Numru 28524/95**, datata z-19 t’April, 2001, (paragrafi 67 u 68), il-Qorti ta’ Strasburgu irriteriet f’dan ir-rigward is-segwenti:

“The Court recalls that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of

*health of the victim (see, among other authorities, **Ireland v. the United Kingdom, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).***

*“Furthermore, in considering whether a treatment is “degrading” within the meaning of article 3, the court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with article 3 (see **Raninen v. Finland, judgment of 16 December 1997, Reports of Judgments and Decisions, 1997 – VIII, pp. 2821-22, § 55)**”.*

- 16.7. Illi fil-paragrafu 74 tal-istess sentenza citata fil-paragrafu precedenti il-qorti in dizamina hemm insemija tkompli bil-mod segwenti:

*“In the light of the foregoing, the court considers that in the present case there is no evidence that there was a positive intention of humiliating or debasing the applicant. However, the court notes that, although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of violation of article 3 (see **V. v. the United Kingdom (GC), no. 24888/94, § 71, ECHR 1999-IX)**”;*

- 16.8. Illi fis-sentenza fl-ismijiet **Case of Yankov vs. Bulgaria**, datata l-11 ta' Marzu, 2004, l-istess Qorti ta' Strasburgu sosstniet is-segwenti fil-paragrafi 105 sa 107 tal-istess:

“In considering whether treatment is “degrading” within the meaning of article 3, the court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a

*manner incompatible with article 3. Even the absence of such a purpose cannot conclusively rule out a finding of a violation of article 3 (see, for example, **Peers v. Greece, no. 28524/95, § 74, ECHR 2001-III; and Kalashnikov v. Russia, no. 47095/99, § 101, ECHR 2002-VI**).*

*“Ill-treatment must attain a minimum level of severity if it is to fall within the scope of article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, **Ireland v. the United Kingdom, judgment of 18 January 1978, Series A no. 25, p. 65, § 162**)”.*

*“The court has consistently stressed that the suffering and humiliation involved must go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. The State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (**Kudla v. Poland (GC), no. 30210/96, §§ 93-94, ECHR 2000-XI**)”;*

- 16.9. Illi taht dan il-kap partikolari jigi sottolineat li r-rikorrenti in kwistjoni kien gie sospiz sakemm tigi konkluza l-investigazzjoni li kien doveruz li tigi istitwita wara allegazznijiet serji li kienu gew sollevati fil-konfront tieghu, (ara paragrafu numru disgha punt tnejn, (9.2.), aktar qabel);

- 16.10. Illi din l-azzjoni kif hekk mehuda mill-intimata *nomine* hi ibbazata fuq l-artiklu 12 (3) tar-Regolamenti Dixxiplinari appoziti, (ara foll 90 u 91 u l-paragrafu numru tlettax, (13.), aktar qabel);
- 16.11. Illi konsegwenza tal-istess ghandu jkun pacifiku li azzjoni ibbazata fuq regolamenti stabbiliti skont il-ligi ma tammontax ghal trattament inuman u degradanti kif mifhum u stabbilit fil-Konvenzjoni;
- 16.12. Illi ghalhekk ma tirrizulta l-ebda lezjoni tad-drittijiet fundamentali tar-rikorrenti ibbazata fuq l-imsemmi artiklu, u konsegwentement, anke din it-talba tar-rikorrenti ghandha tigi respinta;

Ikkunsidrat:

17.0. Illi rigward tal-allegata lezjoni tal-**Ewwel Artiklu tal-Ewwel Protokoll tal-Konvenzjoni** jinghad sintetikament is-segwenti:

17.1. Illi essenzjalment dan l-artiklu jipprotegi il-proprjeta` u jistabbilixxi s-segwenti:

“Kull persuna naturali jew persuna morali ghandha dritt ghat-tgawdija pacifika tal-possedimenti taghha. Hadd ma ghandu jigi pprivat mill-possedimenti tieghu hlief fl-interess pubbliku u bla hsara ghal 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 ta' proprjeta` skont l-interess generali jew biex jizgura l-hlas ta' taxxi jew kontribuzzjonijiet ohra jew pieni;

17.2. Illi ghalhekk dan l-artiklu konvenzjonali partikolari jipprotegi d-dritt tac-cittadin ghat-tgawdija pacifika tal-possedimenti tieghu;

- 17.3. Illi ghandu wkoll jirrizulta pacifiku anke *ictu oculi* mill-istess artiklu fuq riprodott, li dan id-dritt mhux wiehed assolut *stante* li jirrizulta li tali dritt hu dejjem suggett ghall-limiti dettati minn socjeta` demokratika li thaddan is-sovranita` tad-dritt billi l-Istat jista' jagixxi fir-rigward fl-interess pubbliku minghajr ma jikser kundizzjonijiet stabbiliti bil-ligi, u skont il-principji generali tal-ligi internazzjonali;
- 17.4. Illi l-istess jinghad fid-dawl tal-**artiklu 37 tal-Kostituzzjoni** fejn hemmhekk hu wkoll salvagwardat id-dritt:
- 17.4.1. Ghal kumpens xieraq;
- 17.4.2. Access ghall-qradi jew tribunal indipendenti u imparzjali;
- 17.5. Illi ghandu jkun pacifiku li s-salarju ta' individwu jaqa' fil-parametri tad-definizzjoni ta' "propjeta`" *stante* li dan jiffirma parti mill-patrimonju ta' min jippercepjeh;
- 17.6. Illi pero` ghandu wkoll ikun pacifiku li r-ritenzjoni ta' nofs is-salarju tar-rikorrenti in kwistjoni pendenti l-investigazzjoni tal-ilment li kien inoltrat fil-konfront tieghu kienet mizura legittima u proporzjonali;
- 17.7. Illi ghalhekk ma tirrizulta l-ebda lezjoni tad-drittijiet fundamentali tar-rikorrenti ibbazata fuq l-imsemmi artiklu hawn in dizamina, u konsegwentement, anke din it-talba tar-rikorrenti ghandha tigi respinta;

Ikkunsidrat:

- 18.0. Illi rigward l-allegata **lezjoni** sofferta mir-rikorrenti **fir-reputazzjoni** tieghu, jinghad sintetikament is-segwent:
- 18.1. Illi effettivament dan il-kwezit jezorbita l-valur ekonomiku jew kummercjali indirizzat mir-rikorrenti;
- 18.2. Illi ghalhekk din it-talba tmur lil hemm mill-applikazzjoni tal-Ewwel Artiklu tal-1 Protokoll hawn in dizamina;

- 18.3. Illi fis-sentenza taghha fl-ismijiet **Joseph Bellizzi et vs. Awtorita` Marittima ta' Malta et**, datata is-27 ta' Frar, 2009, il-Qorti Kostituzzjonali irriteriet f'dan ir-rigward is-segwenti:

“Dwar l-allegazzjoni tar-rikorrent li hu jgawdi minn “possediment” li jehtieglu protezzjoni, din il-qorti tirrileva li ghalkemm l-Artikolu 1 ta' l-Ewwel Protokoll tal-Konvenzjoni ... ma jipprovdiniex b'definizzjoni ta' f'hiex jikkonsisti l-kuncett ta' beni jew possedimenti, gie stabbilit, diversi drabi, li dan il-kuncett ghandu jigi interpretat b'mod wiesgha. Infatti, f'**Mellacher v. Austria, 19 ta' Dicembru, 1989** dan il-kuncett gie interpretat li ma jinkludix biss art, imma anke interessi ohra li ghandhom valur ekonomiku. Isegwi illi kull interess li ma jimmanifestax din il-karatteristika ta' valur ekonomiku, dan jezorbita awtomatikament mill-iskop jew l-applikabbilita` ta' dan l-artiklu”;

- 18.4. Illi ghalhekk anke f'dan ir-rigward ma tirrizulta l-ebda lezjoni tad-drittijiet fundamentali tar-rikorrenti ibbazata fuq dan l-Ewwel Artiklu tal-Ewwel Protokoll tal-Konvenzjoni, u ghalhekk, anke din it-talba tar-rikorrenti ghandha tigi respinta;

Ikkunsidrat:

- 19.0. Illi rigward l-allegata lezjoni tal-**artiklu 8 tal-Konvenzjoni** jinghad sintetikament is-segwenti:

- 19.1. Illi dan l-artiklu essenzjalment jirrigwarda d-dritt ghar-rispett tal-hajja privata u tal-familja, u jistabbilixxi s-segwenti:

“Kulhadd ghandu d-dritt ghar-rispett tal-hajja privata tieghu u tal-familja tieghu, ta' daru u tal-korrispondenza tieghu;

“Ma ghandux ikun hemm indhil minn awtorita` pubblika dwar l-ezercizzju ta’ dan id-dritt hlief 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, ghall-protezzjoni tas-sahha jew tal-morali, jew ghall-protezzjoni tad-drittijiet u l-libertajiet ta’ haddiehor”;

- 19.2. Illi jigi immedjatament sottolineat fir-rigward ta’ dan l-artiklu konvenzjonali partikolari li n-nozjoni ta’ rispettt fuq inkluza mhix wahda sintassikament u legalment cara u univoka;
- 19.3. Illi f’dan ir-rigward issir referenza ghas-sentenza fl-ismijiet **B. vs. France (57/1990/248/319)**, datata l-**24 ta’ Jannar, 1992**, fejn il-**Qorti ta’ Strasburgu** irriteniet is-segwent:

“The Court notes first of all that the notion of “respect” enshrined in Article 8 (art. 8) is not clear-cut. Fair balance ... has to be struck between the general interest and the interests of the individual”;

- 19.4. Illi ssir referenza wkoll ghas-sentenza tal-**Prim’Awla tal-Qorti Civili** fl-ismijiet **MarieTherese Cuschieri vs. L-Avukat Generali**, datata t-**28 ta’ Marzu, 2017**, li f’dan ir-rigward irriteniet is-segwent:

“Illi tajjeb li jinghad li “hajja privata” fl-artikolu 8 tal-Konvenzjoni ghandha tifsira wiesgha li tghodd fiha l-aspetti tal-hajja fizika u socjali tal-persuna;

“Thus from the beginning the Court eschewed a narrow approach which would limit private life to notions of privacy and protection from publicity, in favour of a broader approach which emphasised the ability to live one’s life without arbitrary disruption of interference”;

“Kuncett essenzjali hu dak ta’ *personal autonomy* li inghata tifsira fil-kaz **Christine Goodwin v UK**:

“*Under Article 8 of the Convention in particular, where the notion of personal autonomy is an important principle underlying the interpretation of its guarantees, protection is given to the personal sphere of each individual, including the right to establish details of their identity as individual human beings (see, inter alia, Pretty v. the United Kingdom, no. 2346/02, judgment of 29 April 2002, § 62, and Mikulić v. Croatia, no. 53176/99, judgment of 7 February 2002, § 53, both to be published in ECHR 2002-...);*”

“Madankollu, l-fatt wahdu li jezisti tali ndhil mhux raguni ta’ ksur tal-jedd imhares fl-artikolu 8, ghaliex it-tieni paragrafu ta’ dak l-artikolu nnifsu jaghmel eccezzjonijiet dwar meta tali ndhil ma jitqiesx bi ksur tal-jedd ghall-hajja privata jew tal-familja ta’ dak li jkun. Minbarra dan, hu stabilit ukoll li l-artikolu 8 jitfa’ fuq l-Istat id-dmir ta’ azzjoni pozittiva li jara li biex tabilhaqq ikun hemm harsien tal-jedd mahsub fl-artikolu 8 b’mezzi effettivi biex dan il-harsien jigi attwat;”

“Illi biex indhil bhal dak ikun “*skont il-ligi*”, jehtieg mhux biss li jsir taht is-sahha ta’ xi ligi li tkun fis-sehh, imma wkoll li t-twertiq ta’ kull ghemil ma jkunx jiddependi minn diskrezzjoni bla razan jew uzata b’mod li hadd ma jista’ jobsru, (*unforeseeable*);

“Illi, biex mizura ta’ ndhil tkun titqies bhala wahda “*mehtiega f’socjeta` demokratika*”, jrid jintwera li kienet wahda mnissla minn

htiega urgenti sociali li tkun proporzjonali mal-ghan mixtieq u prevedibbli fit-thaddim taghha biex taghti c-“*certezza*” *tad-dritt*”. F’dan il-waqt ta’ min isemmi li l-artikolu 8 tal-Konvenzjoni jtkellem dwar ir-“*rispett*” li l-Istat ghandu juri ghall-jeddijiet imsemmija f’dak l-artikolu. Dan hu imfisser bhala obligazzjoni passiva fuq l-Istat biex ma jindahalx bla bzonni jew b’mod eccessiv f’dawk il-jeddijiet, bil-konsegwenza li mhux kull indhil hu proji bit sakemm ikun joqghod mal-ghanijiet mahsuba fl-artikolu 8(2) tal-Konvenzjoni u jkun idhil maghmul b’mod proporzjonat ma’ dawk l-ghanijiet. Kif inghad “*In determining whether the interference was “necessary in a democratic society”, the Court refers to the principles established in its case-law. It has to consider whether, in the light of the case as a whole, the reasons adduced to justify that interference were relevant and sufficient for the purposes of paragraph 2 of Article 8 (see, inter alia, T.P. and K.M. v. the United Kingdom (GC), no. 28945/95, § 70, ECHR 2001-V, and Sommerfeld v. Germany (GC), no. 31871/96, § 62, ECHR 2003-VIII).*”

“Illi hu stabilit li fejn jidhol l-aspett tal-proporzjonalita` 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”.

- 19.5. Illi fid-dawl tal-insenjament surreferit ghandu jirrizulta pacifiku li jekk is-sospensjoni tar-rikorrenti mill-impjeg tieghu u s-sospensjoni ta' nofs is-salarju tieghu tal-investigazzjoni li kienet saret obligatorja ghall-intimata *nomine* wara l-ilment inoltrat kif fuq elenkat jistghu jitqiesu bhala indhil jew ingerenza fil-hajja privata tar-rikorrenti u tal-familja taghhom, tali ingerenza tirrizulta li kienet gustifikabbli u saret skont il-ligi;
- 19.6. Illi ghalhekk hawn ukoll ma tirrizulta l-ebda lezjoni tad-drittijiet fundamentali tar-rikorrenti ibbazata fuq l-imsemmi artiklu hawn ukoll in dizamina, u konsegwentement, anke din it-talba tar-rikorrenti ghandha tigi respinta;

Ikkunsidrat:

- 20.0. Illi in vista tal-premess din il-qorti hi sodisfatta li r-rikorrenti ma ipprovawx il-lanjanzi taghhom ghas-sodisfazzjoni ta' din il-qorti, u konsegwentement:

DECIDE:

- 20.1. Tirrespingi t-talbiet kollha tar-rikorrenti;
- 20.2. Takkolji r-risposti kollha tal-intimata *nomine*;
- 20.3. Bl-ispejjez kontra r-rikorrenti Redent u martu Rosaria Pintley.

Onor. Imhalledf Silvio Meli

DECIZJONI FINALI