QORTI KOSTITUZZJONALI

IMHALLFIN

S.T.O. PRIM IMHALLEF JOSEPH AZZOPARDI
ONOR. IMHALLEF NOEL CUSCHIERI
ONOR. IMHALLEF ANTHONY ELLUL

Seduta ta' nhar il-Ġimgħa 14 ta' Diċembru 2018

Numru 1

Rikors numru 321/17

Carmel sive Charles sive Charlie Saliba

v.

L-Avukat Ġenerali in rappreżentanza tal-Istat ta' Malta
u b'digriet tat-8 ta' Jannar 2018 ġew kjamati fil-kawża
Dr Joseph Zammit Tabona u l-eredi ta' May Zammit Tabona

Il-Qorti:

1. Rat ir-rikors ta' Carmel sive Charles sive Charlie Saliba tat-18 ta' Lulju 2017 li bih u għar-raġunijiet hemm imfissra, talab li din il-Qorti: (i) tordna l-eżegwibbilità f'Malta tad-deċiżjoni datata 29 ta' Novembru 2016 tal-Qorti Ewropea tad-Drittijiet tal-Bniedem fl-ismijiet ***Carmel Saliba v. Malta*** (applikazzjoni numru 24221/13); u (ii) tagħti kull ordni jew direttiva

neċessarja għall-eżegwibilità tas-sentenza tal-Qorti Ewropea tad-29 ta' Novembru 2016 fuq premessa. Talab ukoll l-ispejjeż.

2. Rat ir-risposta tal-Avukat Ġenerali tal-21 ta' Lulju 2017 li permezz taggħa, filwaqt li rrefera għall-artikolu 6 tal-Att dwar il-Konvenzjoni Ewropea (Kap. 319 tal-Liġijiet ta' Malta) wieġeb illi huwa diġa ħallas fl-intier tiegħu l-kumpens monetarju likwidat mill-Qorti Ewropea fil-parti dispożittiva tad-deċiżjoni surriferita. Dwar il-paragrafu 85 tad-deċiżjoni surriferita, wieġeb li in prinċipju m' għandu l-ebda oġġezzjoni għat-talba tar-rikorrent stante li għandu kull interess li d-deċiżjonijit tal-Qorti Ewropea jiġu eżegwiti, iżda huwa mportanti ukoll li ma jiġux preġudikati terzi persuni li ma kienux parti fil-proċeduri quddiem il-Qorti Ewropea in linea ma dak deċiż minn din il-Qorti fl-atti tar-rikors tal-Każin tal-Banda San Leonardo fit-18 ta' Marzu 2005;

3. Rat id-diġriet tagħha tal-11 t' Awissu 2017, li bih qegħdet ir-rikors għas-smigħ tal-25 ta' Settembru 2017;

4. Rat li fl-udjenza tat-8 ta' Jannar 2018, abbażi tar-raġunijiet sollevati mill-Avukat Ġenerali, ordnat il-kjamat in kawża Dr Joseph Żammit Tabona u l-eredi ta' May Żammit Tabona li ġew akkordati ġimgħa żmien min-notifika biex jagħmlu l-osservazzjonijiet tagħhom dwar it-talba tar-rikorrent fir-rikors in diżamina;

5. Rat it-tweġiba mressqa mill-kjamati in kawża Dr Joseph Żammit Tabona u l-eredi ta' May Żammit Tabona tat-23 ta' Frar 2018, li bija eċċepew li dawn il-proċeduri huma nfondati u talbiet tar-rikorrent għandhom jiġu miċħuda għas-segwenti raġunijeit: (i) id-deċiżjoni tal-Qorti Ewropea ma għandha ebda effett ta' portata proċedurali fuq il-proċess ġudizzjarju domestiku; (ii) id-deċiżjonijiet tal-Qrati domestiċi ottenuti mill-esponenti huma *res judicata* u li l-Qorti Ewropea m'hijiex Qorti tal-Appell mid-deċiżjonijiet tal-Qrati domestiċi ta' Malta; (iii) id-deċiżjoniji tal-Qorti Ewropea bl-ebda mod ma attakkat l-eżekuzzjoni tas-sentenza datata 6 ta' Ottubru 2009 fl-ismijiet ***Dr Joseph Żammit Tabona et v Charles sive Charlie Saliba*** (rikors 1196/2000); (iv) is-sentenza tal-Qorti Ewropea hi fil-konfront tal-Gvern Malti u mhux fil-konfront tal-kjamati in kawża; (v) l-eżegwibilità f' Malta tad-deċiżjoni datata 29 ta' Novembru 2016 tal-Qorti Ewropea tad-Drittijiet tal-Bniedem fl-ismijiet ***Carmel Saliba v Malta*** (applikazzjoni numru 24221/13) diġa seħħet stante l-akwijxxenza tal-istess rikorrent Saliba meta dan tħallas u aċċetta l-ammont dovut skond l-istess deċiżjoni fl-intier tiegħu;

6. Semgħet lid-difensuri tal-partijiet jitrattaw ir-rikors in eżami u rat li l-kawża baqgħet differita għas-sentenza;

7. Rat l-atti.

Ikkonsidrat

8. Ir-rikorrent talab lil din il-qorti sabiex tirrendi eżegwibbli f'Malta s-sentenza tad-29 ta' Novembru 2016 tal-Qorti Ewropea tad-Drittijiet tal-Bniedem fl-ismijiet ***Carmel Saliba v. Malta*** (applikazzjoni numru 24221/13), fejn il-qorti qalet:

> "***'85. The Court reiterates that the most appropriate form of redress for a violation of Article 6 § 1 would be to ensure that the applicant, as far as possible, is put in the position in which he would have been had this provision not been disregarded (see Teteriny v. Russia, no. 11931/03, § 56, 30 June 2005; Jeličić v. Bosnia and Herzegovina, no. 41183/02, § 53, ECHR 2006-XII; and Mehmet and Suna Yiğit v. Turkey, no. 52658/99, § 47, 17 July 2007). The Court finds that this principle applies in the present case as well. Consequently, it considers that the most appropriate form of redress would be the reopening of the proceedings, to be held in accordance with the requirements of Article 6 § 1 of the Convention, should the applicant so request (see, mutatis mutandis, Salduz v. Turkey [GC], no. 36391/02, § 72, ECHR 2008 in a criminal context, and San Leonard Band Club v. Malta, no. 77562/01, § 70, ECHR 2004-IX concerning the independence and impartiality of a civil tribunal).'"***[1]

9. Jikkontendi li hekk biss jista' verament isir ġustizzja miegħu.

10. Fil qosor, il-fatti li taw lok għad-deċiżjoni surriferita tal-Qorti ta' Strasbourg kienu s-segwenti:

10.1. Fit-12 ta' Mejju 1995 kien hemm serqa fid-dar tal-avukat Dr. Joseph Zammit Tabona u martu May Zammit Tabona. Apparti li nsterqu

[1] Enfażi tal-Qorti.

diversi oġġetti Zammit Tabona sofrew ġrieħi għaliex kienu fid-dar waqt is-serqa. Matul l-investigazzjoni tal-Pulizija Zammit Tabona semmew lil Charles sive Charlie Saliba u lil ħuħ, mingħajr ma qalu li kienu identifikaw l-ebda wieħed minnhom bħala l-ħallelin, bħala nies li potenzjalment kellhom aċċess għal darhom u kienu familjari mal-itess, peress li kienu għamlulhom xogħol ta' dawl u *plumbing*. Fl-1996 Zammit Tabona ma ħallsux lill-aħwa Saliba ta' xi xogħol li kienu għamlulhom bil-konsegwenza li fl-1997 dawn tal-aħħar bdew proċeduri ġudizzjarji kontrihom, u eventwalment irtirati wara li tħallas il-bilanċ dovut.

10.2. Ħames snin wara s-serqa, fit-12 ta' Ġunju, 2000 il-konjuġi Zammit Tabone ppreżentaw kawża fil-Prim' Awla tal-Qorti Ċivili (Citaż. Numru 1196/2000) fejn allegaw li l-konvenut Charles sive Charlie Saliba kien il-promotur u organizzatur u ha sehem attiv fis-serqa li saret f'darhom ġewwa 68 Main Street, San Ġiljan fil-lejl tat-12 ta' Mejju, 1995 u konsegwentement talbu li Charles sive Charlie Saliba jkun dikjarat responsabbli għad-danni li sofrew u kundannat iħallas dak l-ammont li jiġi likwidat mill-Qorti.

10.3. F'dik il-kawża ir-rikorrent eċċepixxa li ma kienx minnu li ippartecipa b'xi mod fis-serqa tat-12 ta' Mejju 1995 u li l-pretensjoni tal-

atturi Zammit Tabona hija kompletament bla bażi u ntiża sabiex tikkawżalu danni.

10.4. **B' sentenza preliminari mogħtija fl-10 ta' Ottubru, 2006 il-Prim Awla tal-Qorti Ċivili ddikjarat li l-konvenut Saliba kien ha sehem fis-serqa mid-dar ta' l-atturi Żammit Tabona fit-12 ta' Mejju 1995 u wara li rat l-Artikolu 1049 tal-Kodiċi Ċivili qalet li l-konvenut għandu jagħmel tajjeb għad-danni kollha li ġarrbu l-atturi**. Ordnat ukoll li jitkompla s-smiegħ tal-każ sabiex jiġu likwidati d-danni.

10.5. **B'sentenza tal-4 ta' Marzu, 2008 l-istess Qorti illikwidat id-danni li ġarrbu l-atturi fis-somma ta' mija u tletin elf, erba' mija u wieħed u erbgħin Ewro u tnejn u erbgħin ċenteżmu (€130,441.42) ekwivalenti għal Lm55,998.50 – u kkundannat lill-konvenut iħallas lill-atturi id-danni hekk likwidati flimkien ma' l-imgħax u l-ispejjez mitluba fiċ-ċitazzjoni**.

10.6. B'rikors preżentat fis-17 ta' Marzu, 2008 Charles sive Charlie Saliba appella kemm mis-sentenza parzjali u mis-sentenza finali msemmija kif ukoll minn digriet tal-4 ta' Marzu 2008 li bih ġiet miċħuda t-talba għall-isfilz tal-affidavit ta' Zammit Tabona.

10.7. **B'sentenza tas-6 ta' Ottubru 2009, il-Qorti tal-Appell ċaħdet l-appell ta' Charles sive Charlie Saliba filwaqt li ikkonfermat fit-totalità tagħhom s-sentenzi appellati kif ukoll id-digriet appellat, bl-ispejjeż kontrih**.

10.8. Fit-18 ta' Diċembru 2009, ir-rikorrent ippreżenta kawża kostituzzjonali (numru 71/2009) fl-ismijiet ***Carmelo sive Charles Saliba vs L-Avukat Generali in rappreżentanza tal-Gvern ta' Malta, Dottor Joseph Zammit Tabona, Raffaella Zammit Tabona u Andrea Zammit Tabona***, permezz ta' liema talab lill-qorti sabiex:

> *"(1) tiddikjara li l-aġir fuq imsemmi partikolarment imma mhux esklussivament fin-nuqqas tal-Onorabbli Prim' Awla tal-Qorti Ċivili fis-sentenzi tagħha tal-10 ta' Ottubru 2006 u tal-4 ta' Marzu 2008 u dik tal-Onorabbli Qorti tal-Appell fis-sentenza tagħha tas-6 ta' Ottubru 2009 kif ukoll id-digrieti kollha li ngħataw fil-kawża ġja' msemmija in segwitu għas-sentenza tal-10 ta' Ottubru 2006 fl-ismijiet "**Dr Joseph Żammit Tabona et vs Carmelo sive Charles Saliba**", Ċitazzjoni Numru 1196/2000 billi*
>
> "*(a) ma applikawx il-grad rigoruż tal-prova aċċettat mill-ġurisprudenza ingliża u abbraċċat mill-istess Onorabbli Qorti tal-Appell, kif ukoll*
>
> "*(b) ma applikawx il-prinċipju ġenerali tad-dritt li min jallega jrid jipprova u mhux bl-invers, u kif ukoll*
>
> "*(c) biċ-ċaħda għall-produzzjoni tax-xhud May Żammit Tabona quddiem l-Onorabbli Prim'Awla tal-Qorti Ċivili kif ukoll*
>
> "*(d) bin-nuqqas ta' provvediment mill-Onorabbli Qorti tal-Appell dwar it-talba għall-produzzjoni ta' Francis Saliba jikkostitwixxu vjolazzjoni tad-dritt tar-rikorrent għal smiegħ xieraq fi żmien raġonevoli u dan kif protett mill-Artikolu 39(1)(2) u (5) tal-Kostituzzjoni ta' Malta u mill-Artikolu 6(1) u (2) tal-Konvenzjoni Ewropea tad-Drittijiet inkorporata fil-Liġijiet ta' Malta permezz tal-Kap.319 tal-Liġijiet ta' Malta.*
>
> "*(2) tagħti dawk ir-rimedji xierqa u opportuni sabiex jiġu indirizzati tali vjolazzjonijiet fosthom:-*

"*(a) jiġu dikjarati vvizjati s-sentenzi mogħtija mill-Onorabbli Prim' Awla tal-Qorti Ċivili fl-10 ta' Ottubru 2006 u tal-4 ta' Marzu 2008 kif ukoll id-digrieti kollha li ngħataw fil-kawża ġja' msemmija in segwitu għas-sentenza tal-10 ta' Ottubru 2006 fl-ismijiet "**Dr Joseph Żammit Tabona et vs Carmelo sive Charles Saliba**" u dik tal-Onorabbli Qorti tal-Appell tas-6 ta' Ottubru 2009 fl-istess ismijiet: "**Dr Joseph Żammit Tabona et vs Carmelo sive Charles Saliba"** (Ċitazzjoni numru 1196/2000) kif ukoll it-taxxa tal-ispejjez u drittijiet tal-imsemmija kawża u kull att ġudizzjarju ieħor sussegwenti u relatat u għalhekk tħassar u tannulla l-istess sentenzi, digrieti u atti ġudizzjarji;*

"*(b) li r-rikorrenti qiegħed fil-qagħda li kien qabel ma ngħataw is-sentenzi tal-10 ta' Ottubru 2006 u tal-4 ta' Marzu 2008 kif ukoll id-digrieti kollha li ngħataw fil-kawża ġja' msemmija in segwitu għas-sentenza tal-10 ta' Ottubru 2006 mill-Onorabbli Prim' Awla tal-Qorti Ċivili u dik tal-Onorabbli Qorti tal-Appell fis-sentenza tagħha tas-6 ta' Ottubru 2009 fl-ismijiet "**Dr Joseph Żammit Tabona et vs Carmelo sive Charles Saliba**" (Ċitazzjoni Numru 1196/2000);*

"*(c) tordna li l-kawża (Ċitazzjoni Numru 1196/2000) fl-ismijiet "**Dr Joseph Żammit Tabona et vs Carmelo sive Charles Saliba**" tiġi mismugħa mill-Onorabbli Prim' Awla tal-Qorti Ċivili u deċiża fuq il-grad ta' probabilita' b'mod rigoruz kif fuq imsemmi u abbraċċat fil-ġurisprudenza Ingliża u mill-Onorabbli Qorti tal-Appell Maltija fis-sentenza ġja' msemmija kif ukoll fuq il-prinċipju li min jallega jrid jipprova l-fatti allegati skont il-liġi kif trid il-Kostituzzjoni ta' Malta u l-Konvenzjoni Ewropea tad-Drittijiet, u*

"*(d) tillikwida d-danni li ġew sofferti mir-rikorrent u tordna lill-intimati jħallsu lir-rikorrenti l-istess danni hekk likwidati."*

10.9. Permezz ta' sentenza mogħtija fis-7 ta' Ottubru 2011, il-Prim' Awla tal-Qorti Ċivili laqgħet l-eċċezzjonijiet fil-meritu tal-intimati u konsegwentement ċaħdet it-talbiet kollha tar-rikorrent bl-ispejjez kollha kontra tiegħu.

10.10. Carmelo sive Charles Saliba ippreżenta appell fil-Qorti Kostituzzjonali. L-appell kien miċħud b'sentenza tal-15 ta' Settembru

2012 li kkonfermat s-sentenza appellata tas-7 ta' Ottubru 2011. Zammit Tabona kienu parti fil-kawża kostituzzjonali.

10.11. Fil-5 t'April 2013, ir-rikorrent beda proċeduri il-Qorti Ewropea tad-Drittijiet tal-Bniedem fi Strasbourg. Sostanzjalment, l-ilment tiegħu kien li ġie mċaħħad mid-dritt għal smiegħ xieraq bi ksur tal-Arikolu 6 § 1, b' mod partikolari, allega li l-Qrati domestiċi kienu naqsu jikkunsidraw kif xieraq il-validità, l-kredibilità u r-rilevanza tal-provi miġjuba quddiemhom.

11. B'sentenza mogħtija **fid-29 ta' Novembru 2016**, ***Case of Saliba v. Malta*** applikazzjoni numru 24221/13, li saret finali fl-24 ta' April 2017, il-Qorti Ewropea tad-Drittijiet tal-Bniedem sabet li fil-proċeduri ċivili surriferiti kontra r-rikorrent, ġie vjolat l-Artikolu 6§1 tal-Konvenzjoni. Il-konsiderazzjonijiet tal-Qorti Ewropea kienu s-segwenti:

> "*'69. Turning to the circumstances of the present case, the Court notes with perplexity the first-instance court's conclusions based on Mr Z.'s inconsistent testimony (see paragraph 16 above concerning the domestic court's description of such testimony) where it seems not to have taken account of all the other witness statements which raised doubts as to the veracity of his attestations (see paragraph 15 above). That judgment highlighted the various inconsistencies of Mr Z.'s testimony and noted the repetitive, far-fetched and banal arguments raised by Mr. Z which, in the same first-instance court's view, weakened his version (see paragraph 16 above). Nevertheless, the first-instance court's judgment makes absolutely no reference whatsoever to any other witness testimony heard during the proceedings, despite the fact that some of that evidence contradicted the statements of Mr Z. (see paragraph 15 above). The first-instance judgment, inter alia, makes no mention of the applicant's statements to the effect that he was not involved and that Mr Z. was only acting in*

retaliation. Nor does the judgment refer to the evidence of the applicant's wife and siblings which in many ways contradicted that of Mr Z. Neither did the first-instance judgment make any reference to any one of the other witnesses who had submitted an affidavit or testified at the bar and/or in cross-examination. Indeed that judgment relied solely on Mr Z.'s testimony, which the court chose to believe, irrespective of any other evidence brought before it.

"*70. Drawing inspiration from its approach to criminal-law matters (see paragraph 67 above), the Court considers that even had the first-instance court considered that other evidence to be incoherent, unreliable or immaterial, a comment or explanation to that effect would have been warranted. The Court reiterates that, in a criminal context, "inconsistencies between a witness's own statements given at various times, as well as serious inconsistencies between different types of evidence ..., give rise to a serious ground for challenging the credibility of the witness and the probative value of his or her testimony; as such, this type of challenge constitutes an objection capable of influencing the assessment of the factual circumstances of the case based on that evidence and, ultimately, the outcome of the trial" (see Huseyn and Others v. Azerbaijan, nos. 35485/05, 45553/05, 35680/05 and 36085/05, § 206, 26 July 2011).*

"*71. While it is true that the current proceedings were civil in nature, it cannot be ignored that the case in question concerned the responsibility for damage resulting from participation in a robbery. Thus the assessment of evidence is somewhat similar despite a different burden of proof being applicable. Indeed it is striking that the first-instance court while highlighting the inconsistencies of Mr Z.'s testimony, gave no reasons as to why it considered that Mr Z.'s statements remained credible and reliable. Nor did it justify those inconsistencies in any way (unlike the Court of Appeal). Such consideration was all the more necessary given that the applicant had originally not been able to identify the assailant back in 1995. The Court notes that the applicant's name and that of his brother had been mentioned in the investigation only with regard to persons who had had access to the house and could have been familiar with it, but no identification of the brothers or the applicant as robbers had been made at the time. Given the delay in identification, which occurred only, suddenly, five years after the robbery and the fact that the identification was the main evidence on which the first-instance court relied, this evidence required a thorough examination. Nevertheless, the first-instance court in its judgment made no consideration and gave no explanations in respect of the sudden change of heart of Mr Z. which occurred in 2000 only after the applicant had lodged civil proceedings against him, despite the applicant's highlighting of the matter repeatedly.*

"*72. Furthermore, while the domestic court accepted the identification of the applicant, on the basis that identification could be based on*

mannerisms, movements and his silhouette, it did not give any consideration to the fact that the evidence produced indicated that Mr Z. was not even able to distinguish between the applicant and his brother – or at least no mention of such was made in the judgment. It is indeed disconcerting to imagine that the only objective evidence before the domestic court, namely that the applicant had had access to the victims' house (together with other people, including his brother), fulfilled the required balance of probabilities.

"*73. A proper examination of the submissions, arguments and evidence adduced by the parties and adequately stating the reasons on which decisions are based are relevant aspects under the civil limb of Article 6 § 1 (see the case law references at paragraph 64 above). The Court considers that this applies equally, if not more, when imputing civil responsibility for damage arising out of criminal acts due to the harsh consequences which may ensue from such findings. The Court notes that, in certain circumstances, such proceedings may also attract some of the guarantees applicable in criminal cases such as, for example, those of Article 6 § 2 (see, for example, Vella v. Malta, no. 69122/10, § 47, 11 February 2014) and that the requirements of a fair hearing are the most strict in the sphere of criminal law (see Jussila v. Finland [GC], no. 73053/01, § 43, ECHR 2006-XIV). The Court has previously held that, notwithstanding the consideration that a certain gravity attaches to criminal proceedings, which are concerned with the allocation of criminal responsibility and the imposition of a punitive and deterrent sanction, it is self-evident that there are criminal cases which do not carry any significant degree of stigma (ibid.). In the same vein the Court considers that, while civil in nature, cases such as the one in the present case can also carry such stigma. Thus, while all civil cases deserve the protection of Article 6 § 1, there is no doubt that in this type of case it is imperative that the domestic decisions are based on a thorough assessment of the evidence presented and that they contain adequate reasons (see general principles at paragraph 64-66 above). The present case leaves much to be desired in that connection.*

"*74. The Court also notes that the Court of Appeal chose not to interfere with the lower court's assessment of evidence, relying entirely on the opinion of the first-instance court. While, it did give some explanation of its own motion as to the inconsistencies in Mr Z.'s statements, no justification was put forward in relation to the testimonies of other individuals who put in doubt Z.'s credibility and his ability to recognise the applicant.*

"*75. In its examination of such cases, it is the Court's role to determine that the proceedings as a whole were fair as required by Article 6 § 1. Apart from the above considerations the Court considers it relevant to make the following further considerations in connection with the applicant's specific complaints (see paragraphs 53-54 above). It reiterates that in its assessment of compliance of the*

procedure in question with the principle of equality of arms, which is a feature of the wider concept of a fair trial, significant importance is attached to appearances and to the increased sensitivity of the public to the fair administration of justice (see Borgers v. Belgium, 30 October 1991, Series A no. 214-B, § 24, and Perić, cited above, §§ 24-25).

"*76. The applicant complained about his inability to cross-examine one of the witnesses, namely Ms Z. The Court notes that although the applicant failed to raise the matter before the Court of Appeal, the courts at two levels of constitutional jurisdiction assessed the matter on the merits. The Court notes that the civil court at first-instance gave no specific reasons in reply to the applicant's request to expunge Ms Z.'s statement from the record and therefore its decision to accept the testimony despite the applicant not having the opportunity to cross-examine the witness. The courts at two levels of constitutional jurisdiction assumed these reasons, concluding that the judge had acted within his discretion and that no prejudice had been caused to the applicant. The Court considers that even though Ms Z. did not identify the applicant in her testimony, she had been the only other witness present on the day of the robbery. Since her testimony was accepted, the applicant had a real interest in cross-examining her or of having her statement removed from evidence.*

"*77. Similarly, the Court observes that the Court of Appeal left unanswered the applicant's request to produce a witness (his brother) during the appeal proceedings and never gave a decision on the matter. While the Government argued, in line with the Constitutional Court's finding (see paragraph 33 above), that the applicant had failed to make such an application in the proper way, the Court of Appeal made no finding to that effect, and did not state that the applicant had failed adequately to bring to their attention his intention to call his brother as a witness (compare, mutatis mutandis, Tamminen, cited above, § 39). It has not been disputed that the appeal application contained such a request including an explanation as to the relevance of the witness (ibid.). Furthermore, while the Government highlighted the exceptional nature of hearing evidence from a witness in appeal proceedings, the Court's attention has not been brought to any specific procedural impediment which prevented the court from taking cognisance of such a request, and the Court notes that Article 208 of the Code of Organisation and Civil Procedure (see paragraph 42 above) only refers to witnesses which had not previously testified (and thus did not apply in the present case since F. had already testified during the first-instance proceedings). Moreover, the intention of the applicant was not to hear the evidence but to juxtapose the witnesses so that the appeal court could see them, allowing it to examine, in its role of appeal court, whether there were compelling reasons which would have made it appropriate to alter the first-instance decision. Nevertheless, no attention was given to this matter by the Court of Appeal.*

"*78. Lastly, in relation to the "late" claim for damages, the Court is ready to accept that it was duly submitted as requested by the first-instance court, and that the applicant had the possibility to make submissions and challenge its content, as well as to ask to have the court hear evidence from the jeweller. The Court cannot speculate as to what would have been the domestic court's decision had the applicant taken the latter action. Moreover, it has not been argued that the acceptance of such types of claims confirmed on oath by the victim, as being the best possible evidence, was not the regular practice in the Maltese legal system.*

"*79. The Court considers that the various failures mentioned above, might not individually suffice to find that the applicant had an unfair trial. Nevertheless, the Court cannot ignore the various shortcomings in the proceedings in the present case, particularly the failure to give reasons in respect of the conflicting evidence (see paragraphs 69-74 above) and in respect of the applicant's requests which were shot down with little or no motivation whatsoever (see paragraphs 76 and 77 above).*

"*80. The foregoing considerations are sufficient to enable the Court to conclude that there had been a violation of Article 6 § 1 of the Convention.*"

12. Il-Qorti Ewropea irreferiet għall-Artikolu 41 tal-Konvenzjoni dwar *just satisfaction* lill-persuna leża u kompliet kif ġej:

"*'81. Article 41 of the Convention provides:*

> *""If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.""*

"***A. Damage***

"*82. The applicant claimed 130,441.42 euros (EUR) which he was ordered to pay by the civil courts in damage together with interest of 8% on that sum, as well as EUR 11,800 representing the difference between his pension and the minimum wage for the years during which he had not been working owing to his being found unfit for work as a result of the stress caused by this incident, in respect of pecuniary damage, and EUR 60,000 in non-pecuniary damage for the stress caused by the courts' findings despite his innocence and the ongoing pressure to sell his house at auction to be able to pay the civil damages awarded to Mr Z.*

"*83. The Government considered the amount claimed exorbitant. Moreover, it had not been shown that this amount had already been paid as, while the victims were attempting to have the judgment enforced, it appeared that up to the date of the observations execution had been stalled. Thus, interest was surely not due on the unpaid amount. As to the remaining pecuniary damage, the Government submitted that no proof had been submitted showing that the applicant had been found to be unfit for work due to the domestic proceedings. As to the non-pecuniary damage the Government considered that in the event of a violation, EUR 5,000 would be sufficient.*

"*84. The Court cannot speculate about the outcome of the proceedings had they been in conformity with Article 6 and therefore, an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of the guarantees of that Article (see Perić, cited above, § 33, and Dulaurans, cited above, § 43). The Court, accepting that the lack of such guarantees has caused him non-pecuniary damage which cannot be made good by the mere finding of a violation, awards the applicant EUR 10,000 in that respect, it however rejects the claim for pecuniary damage.*

"***85. The Court reiterates that the most appropriate form of redress for a violation of Article 6 § 1 would be to ensure that the applicant, as far as possible, is put in the position in which he would have been had this provision not been disregarded (see Teteriny v. Russia, no. 11931/03, § 56, 30 June 2005; Jeličić v. Bosnia and Herzegovina, no. 41183/02, § 53, ECHR 2006-XII; and Mehmet and Suna Yiğit v. Turkey, no. 52658/99, § 47, 17 July 2007). The Court finds that this principle applies in the present case as well. Consequently, it considers that the most appropriate form of redress would be the reopening of the proceedings, to be held in accordance with the requirements of Article 6 § 1 of the Convention, should the applicant so request (see, mutatis mutandis, Salduz v. Turkey [GC], no. 36391/02, § 72, ECHR 2008 in a criminal context, and San Leonard Band Club v. Malta, no. 77562/01, § 70, ECHR 2004-IX concerning the independence and impartiality of a civil tribunal).***[2]

"***B. Costs and expenses***

"*86. The applicant also claimed the following in costs and expenses: EUR 21,752.53 incurred in the civil proceedings; EUR 8,728.05 incurred in constitutional redress proceedings; and EUR 3,121 for the costs and expenses incurred before the Court.*

[2] Enfażi tal-Qorti.

"*87. The Government submitted that in relation to the costs of civil proceeding the applicant had been ordered to pay the victim EUR 8,836 and in any event no proof had been given to substantiate such a payment, or the payment of Government costs relating to the constitutional proceedings. As to the proceedings before this Court, the Government submitted that the sum of EUR 2,000 would be adequate.*

"*88. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court cannot speculate on the outcome of the proceedings and as to whether or not, had he been successful, the applicant would have been dispensed from payment of costs and to what extent. In any event in the case that any eventual request for reopening of proceedings be upheld and the applicant eventually successful, it has not been submitted that the costs of the civil proceedings which the court found to be in violation of Article 6 § 1 would not be recoverable. Further, it is noted that expenses incurred in constitutional redress proceedings, if still unpaid, remain due to the Government. Regard being had to the documents in its possession and the above criteria, it considers it reasonable to award the sum of EUR 11,000 covering costs under all heads.*

"***C. Default interest***

"*89. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.*

"*FOR THESE REASONS, THE COURT, UNANIMOUSLY,*

"*1. Declares the application admissible;*

"*2. Holds that there has been a violation of Article 6 § 1 of the Convention;*

"*3. Holds*

"*(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:*

"*(i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;*

"*(ii) EUR 11,000 (eleven thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;*

> "*(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;*
>
> "*4. Dismisses the remainder of the applicant's claim for just satisfaction.'"*

13. Ir-rikorrent qiegħed jitlob żewġ affarijiet, ossija, (i) li din il-Qorti tordna l-eżegwibilità f'Malta tad-deċiżjoni tal-Qorti tad-Drittijiet tal-Bniedem appena ċitata, u (ii) tagħti kull ordni jew direttiva neċessarja għall-esegwibilità tal-imsemmija sentenza tal-Qorti Ewropea tad-29 ta' Novembru 2016.

14. L-artikolu 6 tal-Att dwar il-Konvenzjoni Ewropea (Kap. 319) jipprovdi kif ġej:

> "*'(1) Kull deċiżjoni tal-Qorti Ewropea tad-Drittijiet tal-Bniedem li għaliha tkun tapplika dikjarazzjoni magħmula mill-Gvern ta' Malta skont l-Artikolu 46 tal-Konvenzjoni,* ***tista' tiġi esegwita mill-Qorti Kostituzzjonali f'Malta, bl-istess mod bħal deċiżjonijiet mogħtija minn dik il-qorti u jiġu esegwiti minnha****, b'rikors li jsir fil-Qorti Kostituzzjonali u notifikat lill-Avukat Ġenerali, li jkun fih talba li tiġi ordnata l-esegwibbiltà ta' dik id-deċiżjoni.*
>
> "*(2) Qabel ma l-Qorti Kostituzzjonali tiddeċiedi talba bħal dik, hija għandha teżamina jekk id-deċiżjoni tal-Qorti Ewropea tad-Drittijiet tal-Bniedem li jkun qed jintalab li tiġi esegwita, hijiex waħda li għaliha tkun tapplika dikjarazzjoni bħal dik imsemmija fis-subartikolu (1).*
>
> "*(3) Il-Qorti Kostituzzjonali għandha tordna l-esekuzzjoni ta' deċiżjoni kif imsemmi f'dan l-artikolu jekk issib li din id-deċiżjoni tkun waħda li għaliha tkun tapplika dikjarazzjoni msemmija fis-subartikolu (2)'"*

15. Dwar id-dikjarazzjoni li għaliha jirreferi dan l-artikolu, fid-deċiżjoni mogħtija minn din il-Qorti diversament presjeduta fit-18 ta' Marzu 2005 ***Wara r-rikors tal-Każin tal-Banda ta' San Leonardo ta' Hal Kirkop ippreżentat fil-15 ta' Novembru, 2004***, ingħad:

> "*'Ghalkemm l-ahhar dikjarazzjoni maghmula minn Malta skond dak li allura kien l-Artikolu 46 tal-Konvenzjoni u li saret fl-ewwel ta' April 1997 kienet ghal hames snin biss, b'mod, ghalhekk, li apparentement din id-dikjarazzjoni skadiet fl-1 ta' April 2002, il-verita` hi li llum dak li kien l-Artkolu 46 tal-Konvenzjoni m'ghadux jezisti. Infatti, bl-emendi introdotti fil-Konvenzjoni bil-Protokoll numru 11 – Protokoll li gie ffirmat minn Malta fil-11 ta' Mejju 1994 u ratifikat minna fil-11 ta' Mejju 1995, u li gie fis-sehh fil-konfront ta' Malta fl-1 ta' Novembru 1998 – l-Artikolu 46, li kien jirrikjedi dikjarazzjoni da parti ta' Stat fir-rigward tal-gurisdizzjoni tal-Qorti "in all matters concerning the interpretaton and application of the present Convention", gie effettivament sostitwit bl-Artikolu 32 b'mod li l-partijiet firmatarji tal-Konvenzjoni gew li awtomatikament accettaw il-gurisdizzjoni tal-Qorti ta' Strasbourg fir-rigward ta' linterpretazzjoni u l-applikazzjoni tal-Konvenzjoni u l-Prokolli annessi maghha fil-kaz sia ta' "inter-State cases", kif ukoll ta' "individual applications" u "advisory opinions".* ***Fi kliem iehor, dak li qabel kien jirrikjedi dikjarazzjoni da parti ta' Stat taht l-Artikolu 46, illum japplika ghal dak l-iStat minghajr il-htiega ta' dikjarazzjoni simili.*** *L-intenzjoni tal-legislatur kienet, evidentement, li d-decizjonijiet tal-Qorti ta' Strasbourg ikunu jistghu jigu b'xi mod esegwiti f'Malta,*[3] *u l-fatt li l-legislatur Malti donnu injora l-izviluppi ricenti fl-imsemmija Konvenzjoni u ma emendax l-Artikolu 6 tal-Kap. 319 ma jwassalx lil din il-Qorti li tifhem li l-legislatur qed jghid li ma jridx aktar l-ezegwibbiltà f'Malta tad-decizjonijiet tal-Qorti Ewropea tad-Drittijiet tal-Bniedem meta l-istat intimat ikun l-iStat Malti ...'*"

16. It test oriġinali tal-Artikolu 46 tal-Konvenzjoni tal-1950 kien is-segwenti:

> *(1)* "*'Any of the High Contracting Parties may at any time declare that it recognises as compulsory ipso facto and without special*

[3] Ara, a propositu, l-artikolu tal-Prim Imhallef Emeritus il-Professur J. J. Cremona "The European Convention on Human Rights as part of Maltese Law" fil-ktieb ta' l-istess insinji awtur ***Selected Papers 1946-1989*** PEG (Malta) 1990, pp. 228 sa 236. F'dina l-kitba, l-artikoli imsemmija tal-Konvenzjoni huma, naturalment, dawk kif kienu qabel ma dahal fis-sehh il-Protokoll numru 11.

agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention.

(2) "The declaration referred to above may be made unconditionally or on condition of reciprosity on the part of several or certain other High Contracting Parties or for a specified period.

(3) "These declarations shall be deposited with the Secretary-General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties.'"

17. Permezz tal-Protokoll Numru 11,[4] li ġie fis-seħħ fl-1 ta' Novembru 1998 u li għalih tagħmel referenza d-deċiżjoni surriferita tal-***Każin tal-Banda ta' San Leonardo ta' Hal Kirkop***, l-Istati Membri tal-Kunsill tal-Ewropa ftehmu, *inter alia*, li t-test eżistenti tat-Taqsima II sa IV tal-Konvenzjoni (Artikoli 19 sa 56) kellu jiġi sostitwit kif maqbul bejniethom. Ta' rilevanza huma l-Artikolu 32 u 46 li kellhom jiġu sostitwiti bis-segwenti:

"***'Article 32 – Jurisdiction of the Court***

"*1 The jurisdiction of the Court shall extend* ***to all matters***[5] *concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34 and 47.*

"*2 In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.'*

"***'Article 46 – Binding force and execution of judgments***

"*1 The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.*

"*2 The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.'"*

[4] https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/155
[5] Enfażi tal-Qorti.

18. Filwaqt li l-Artikolu 46 appena ċitat għaqqad kelma b'kelma dak li kienu jipprovdu l-Artikoli 53 u 54 tal-Konvenzjoni tal-1950, l-Artikolu 32 dwar il-ġurisdizzjoni tal-Qorti ssostitwixxa l-ex Artikolu 46.

19. Sussegwentement, permezz tal-Protokoll Numru 14, li daħal fis-seħħ fl-1 ta' Ġunju tal-2010, l-Istati Membri tal-Kunsill tal-Ewropa ftehmu, *inter alia*, li:

> "*'Article 32 of the Convention shall be amended as follows:*
>
> "*At the end of paragraph 1, a comma and the number 46 shall be inserted after the number 34.*
>
> "*...*
>
> *"Article 46 of the Convention shall be amended to read as follows:*
>
> *"**Article 46 – Binding force and execution of judgments***
>
> *1* "*The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.*
>
> *2* "*The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.*
>
> *3* "*If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.*
>
> *4* "*If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.*
>
> *5* "*If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer*

> *the case to the Committee of Ministers, which shall close its examination of the case"*."

20. Ir-rikorrent ippreżenta l-każ quddiem il-Qorti ta' Strasbourg fl-2013 liema każ ġie deċiż fl-2016 u sar finali fl-2017. Japplika għalhekk it-test tal-Konvenzjoni kif emendat bil-Protokoll 11 u 14 'l fuq riprodott. **Iżda minkejja tali emendi u dak li ngħad fid-deċiżjoni surriferita tal-Każin tal-Banda ta' San Leonardo, l-artikolu 6 tal-Kap 319 tal-Liġijiet ta' Malta baqa' ma ġiex emendat**. Madanakollu, din il-Qorti tibqa' tal-fehma li l-fatt li l-leġislatur ma rrattifikax ir-riferenza għad-'*dikjarazzjoni magħmula mill-Gvern ta' Malta skond l-Artikolu 46 tal-Konvenzjoni'* ma jfissirx li l-leġislatur ma jridx aktar l-eżegwibbiltà f'Malta tad-deċiżjonijiet tal-Qorti Ewropea tad-Drittijiet tal-Bniedem meta l-istat intimat ikun l-Istat Malti. Tqis għalhekk li l-każ in eżami jaqa' fil-parametri tal-artikolu 6 tal-Kap. 319 tal-Liġijiet ta' Malta.

21. Il-kjamati in kawża taw diversi raġunijiet għalfejn, fil-fehma tagħhom, it-talba tar-rikorrent m'għandhiex tintlaqa'. L-ewwel argument tagħhom hu li ma kinux parti fil-proċeduri li saru fil-Qorti ta' Strasbourg. Dik id-deċiżjoni kienet unikament kontra l-Istat Malti u d-drittijiet u r-rimedji hemm mogħtija lir-rikorrent huma ta' natura ta' dritt pubbliku. Jikkontendu għalhekk li l-eżekuzzjoni ta' tali deċiżjoni m'għandiex tippreġudikhom. Jgħidu inoltré li l-osservazzjoni mogħtija mill-Qorti ta' Strasbourg fil-paragrafu 85 tad-deċiżjoni ma tiffurmax parti mill-

operative part tal-istess deċiżjoni u l-unika parti tas-sentenza li din il-Qorti hija obbligata teżegwixxi hija dik il-parti fejn ir-rikorrent ingħata *just satisfaction*. Jisħqu ukoll li l-proċeduri bin-numru 1196/2000 fl-ismijiet ***Joseph Żammit Tabona et vs Charles sive Charlie Saliba*** huma llum il-ġurnata *res judicata* u għalhekk l-istatus legali tagħhom bħala kredituri tar-rikorrent huwa rriversibbli ladarba l-artikolu 811 tal-Kodiċi tal-Organizzazzjoni u Proċedura Ċivili, li jirregola esklussivament meta proċeduri jistgħu jinstemgħu mill-ġdid, ma japplikax. Jikkontendu inoltré li jekk din il-Qorti tilqa' t-talba tar-rikorrent tkun qed tmur kontra dak deċiż minnha fit-18 ta' Marzu 2005 fil-proċeduri ***Wara r-rikors tal-Każin tal-Banda ta' San Leonardo ta' Ħal-Kirkop ippreżentat fil-15 ta' Novembru, 2014***, (Appell Ċivili numru 281/2004/1), fejn ippronunċjat li hija ma għandha tagħmel xejn li jmur kontra l-ordinament ġuridiku Malti. Dan in vista tal-fatt li l-artikolu 237 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili (Kap. 12 tal-Liġijiet ta' Malta) jipprovdi li '*sentenza ma tista' tkun qatt ta' ħsara għal min, la huwa nnifsu u lanqas bil-mezz tal-awturi jew ta' rappreżentant leġittimu tiegħu, ma jkunx parti fil-kawża maqtugħa b' dik is-sentenza'*. Jisħqu ukoll li r-rikorrent stess jgħid li l-paragrafu 85 tad-deċiżjoni kien biss kumment, liema kumment ma jorbotx il-Qrati Maltin hekk kif deċiż fil-kawża fl-ismijiet ***Vincent Cilia v. L-Onorevoli Prim Ministru et*** u li kwalsiasi ordni jew direttiva oltré l-*just satisfaction* imur kontra l-prinċipji ta' *judicial autonomy* u *legal certainty* u

jwassal għall-ksur tad-drittijiet fundamentali tal-kjamati in kawża protetti taħt l-artikolu 6 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem;

22. Il-Qorti se titratta l-ewwel it-teżi li dak li ngħad mill-Qorti Ewropea fil-paragrafu 85 tad-deċiżjoni tad-29 ta' Novembru 2016 huwa biss '*osservazzjoni'* u '*kumment'* li ma jorbotx il-Qrati lokali kif deċiż fil-kawża fl-ismijiet ***Vincent Cilia v. L-Onorevoli Prim Ministru et***.

23. Fl-ewwel lok jiġi ppuntwalizzat li fil-każ ta' ***Vincent Cilia v. L-Onorevoli Prim Ministru et*** din il-Qorti kienet qed titkellem fuq l-applikazzjoni tal-ġurisprudenza tal-Qorti Ewropea b'mod ġenerali. Dik il-kawża ma kellha x'taqsam xejn mat-tip ta' proċedura li tapplika għall-każ in eżami. Fil-każ tal-lum, kif diġa' osservat fid-deċiżjoni ***Wara r-rikors tal-Każin tal-Banda ta' San Leonardo ta' Ħal-Kirkop ippreżentat fil-15 ta' Novembru, 2014,*** il-kwistjoni ma hix ta' *"interpretazzjoni u applikazzjoni"* ta' xi wieħed mill-artikoli sostantivi tal-Konvenzjoni, iżda ta' l-eżegwibbilta`f'Malta ta' deċiżjoni speċifika favur ir-rikorrent ta' organu ġudizzjarju "barrani".

24. Fir-rigward tal-paragrafu 85 tad-deċiżjoni tal-Qorti Ewropea oġġett tar-rikors, din il-Qorti tqis li l-parti inizjali tas-sezzjoni II tad-deċiżjoni tal-Qorti Ewropea, ossija l-paragrafi 81 sa 89 inklussivi, mhumiex sempliċi '*kummenti'* kif allegat iżda jikkostitwixxu l-kunsiderazzjonijiet tal-Qorti

Ewropea dwar ir-rimedju li għandu jingħata lil Saliba għall-ksur ravviżat fil-parti operattiva tas-sentenza. Fil-fehma tal-Qorti Ewropea, '*the most appropriate form of redress for a violation of Article 6 § 1 would be to ensure that the applicant, as far as possible, is put in the position in which he would have been had this provision not been disregarded'* u li '*consequently, it considers taht the most appropriate form of redress would be the reopening of the proceedings, to be held in accordnace with the requirements of Article 6 § 1 of the Convention,* ***should the applicant so request'***.[6]

25. Fis-sentenza **Scozzari & Giunta v Italy** tat-13 ta' Lulju, 2000 l-istess qorti qalet:

> "*'[a] judgment in which the Court finds a breach imposes on the respondent State a legal obligation to pay those concerned the sums awarded by way of just satisfaction,* ***but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects****'.*"

26. Dak li jrid issa jiġi determinat huwa jekk din il-parti tad-deċżijoni tal-Qorti Ewropea hijiex awtomatikament eżegwibbli jew jekk il-kliem **'*should the applicant so request'*** jalludux għal xi proċeduri oħra fis-sistema nazzjonali li huma distinti minn talba għall-eżekuzzjoni tad-deċiżjoni tal-Qorti ta' Strasbourg nnifisha.

[6] Enfażi tal-Qorti.

27. Fil-pubblikazzjoni tal-Kunsill tal-Ewropea dwar l-eżekuzzjoni tad-deċiżjonijiet tal-Qorti Ewropea tad-Drittijiet tal-Bniedem[7] jingħad:

> "*'The obligation to execute judgments arises out of the responsibility assumed by a state which has failed to fulfil its primary obligation under Article 1 of the Convention to secure to everyone within its jurisdiction the rights defined in the Convention. This is in keeping with the scheme of international responsibility. Thus assumption of responsibility entails three obligations: the obligation to put an end to the violation, the obligation to make reparation (to eliminate the past consequences of the act contravening international law) and, finally, the obligation to avoid similar violations (the obligation not to repeat the violation)*
>
> "*...*
>
> ***The obligations arising out of the Court's judgments thus fall into three broad categories: just satisfaction, <u>individual measures</u> and general measures.'***[8]"

28. Fl-istess pubblikazzjoni jingħad li filwaqt li, '*The obligation to pay just satisfaction raises few difficulties: it is an obligation that can be clearly and immediately fulfilled',* it-twettiq tal-obligazzjonijiet l-oħra m'humiex daqstant sempliċi. Dan għaliex, il-ftuħ mill-ġdid ta' proċeduri ġudizzjarji domestiċi, bħala miżura ndividwali, jaffetwa l-prinċipju ta' *res judicata* fuq livell nazzjonali:

> "*'this measure is not a panacea and the scope for reopening such cases is strictly defined,* ***since this could seriously prejudice the rights of third parties, particularly in civil law. In such cases, compensation for loss of opportunity would be more appropriate than reopening a case, which may endanger the legal certainty of individual situations*** *...*
>
> "*If the Court has found a violation of the procedural safeguards for an individual, if such infringements have affected the choice of sentence*

[7] *'The execution of judgments of the European Court of Human Rights'* (Tieni Edizzjoni) https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-19(2008).pdf.
[8] Enfażi tal-Qorti.

at domestic level and if the victim is continuing to serve the sentence, particularly in criminal cases, reopening the proceedings will make it possible to determine, with safeguards for the right of the due process, whether the individual is guilty or innocent and to determine the penalty that should have been initially decided upon had there been no violation of the Convention. Indeed, in such circumstances, it is not acceptable merely to pay just satisfaction to an applicant who is still in prison or to release the individuals concerned without a fresh trial ...

"*... pursuant to the Recommendation of the Committee of Ministers of 19 January 2000,* ***two cumulative conditions must be satisfied before such a measure can be deemed necessary: first, the violation – a substantive violation or a violation of procedural safeguards – must be "of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of" and, second, the individual must continue "to suffer very serious negative consequences because of the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified except by re-examination or reopening"****.'"* [9]

29. L-imsemmija ***Recommendation No. R (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights***[10] tipprovdi testwalment kif ġej:

"*'Noting that under Article 46 of the Convention on Human Rights and Fundamental Freedoms ("the Convention") the Contracting Parties have accepted the obligation to abide by the final judgment of the European Court of Human Rights ("the Court") in any case to which they are parties and that* ***the Committee of Ministers shall supervise its execution****;*

"*Bearing in mind that in certain circumstances the above-mentioned obligation may entail the adoption of measures, other than just satisfaction awarded by the Court in accordance with Article 41 of the Convention and/or general measures,* ***which ensure that the injured party is put, as far as possible, in the same situation as he or she***

[9] Enfażi tal-Qorti.

[10] Adopted by the Committee of Ministers on 19 January 2000 at the 694th meeting of the Ministers' Deputies.

enjoyed prior to the violation of the Convention (restitutio in integrum)*;*

"*Noting that it is for the competent authorities of the respondent State to decide what measures are most appropriate to achieve restitutio in integrum, taking into account the means available under the national legal system;*

"*Bearing in mind, however, that the practice of the Committee of Ministers in supervising the execution of the Court's judgments shows that in exceptional circumstances the re-examination of a case or a reopening of proceedings has proved the most efficient, if not the only, means of achieving restitutio in integrum;*

"*I. Invites, in the light of these considerations the Contracting Parties are invited to ensure that there exist at national level adequate possibilities to achieve, as far as possible, restitutio in integrum;*

"*II. Encourages the Contracting Parties, in particular, to examine their national legal systems with a view to ensuring that there exist adequate possibilities of re-examination of the case, including reopening of proceedings, in instances where the Court has found a violation of the Convention, especially where:*

"*(i) the injured party continues to suffer very serious negative consequences because of the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified except by re-examination or reopening, and*

"*(ii) the judgment of the Court leads to the conclusion that*

"(a) the impugned domestic decision is on the merits contrary to the Convention, or

"*(b) the violation found is based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of.'"*

30. Skont informazzjoni ppubblikata mill-Kumitat tal-Ministri tal-Kunsill tal-Ewropa, li huwa inkarigat jissorvelja l-eżekużżjoni deċiżjonijiet mogħtija mill-Qorti Ewropea, jirriżulta li fis-16 t'Ottubru 2018 *the state of execution of judgment* ***Carmel Saliba v. Malta*** (*Application No*. 24221/13) huwa s-segwenti:

"*'The Maltese authorities will, by the end of December 2018, forward an updated action plan setting out any further steps taken to fully respond to the European Court's judgment and the estimated time table for the next steps.'*[11]"

31. Fl-assjem ta' dan kollu, din il-Qorti tasal għall-konklużjoni illi l-kunsiderazzjoni magħmula mill-Qorti Ewropea fil-paragrafu 85 tad-deċiżjoni fl-ismijiet ***Carmel Saliba v. Malta*** (applikazzjoni numru 24221/13) kien intiż għall-finijiet ta' '*individual measure'* liema miżura trid tiġi sodisfatta ndipendentement mill-ħlas tal-*just satsifacton.* Fi kliem ieħor, il-fatt li l-Istat Malti ħallas dak dovut bħala *just satisfaction* ma jeżonerahx mill-obbligazzjoni li jeżegwixxi *individual measures* fejn dawn ikunu meħtieġa sabiex jagħmlu tajjeb għall-vjolazzjoni tal-Konvenzjoni ravviżata fid-deċiżjoni tal-Qorti Ewropea. M'huwiex il-każ għalhekk li, '*l-eżegwibilità f'Malta tad-deċiżjoni datata 29 ta' Novembru 2016 tal-Qorti Ewropea tad-Drittijiet tal-Bniedem fl-ismijiet Carmel Saliba v Malta (applikazzjoni numru 24221/13) diġa' seħħet stante l-akwixxenza tal-istess rikorrent Saliba meta dan tħallas u aċċetta l-ammont dovut skond l-istess deċiżjoni fl-intier tiegħu',* kif allegat mill-kjamati in kawża.

[11] https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016808e64a8.

32. L-Avukat Generali stess fit-tweġiba qal li fir-rigward ta' paragrafu 85 tas-sentenza tal-Qorti Ewropea, bħala prinċipju ma joġġezzjonax għal dak li talab ir-rikorrent u dan peress li l-Avukat Generali għandu nteress li sentenzi tal-Qorti Ewropea jiġu eżegwiti. Min-naħa l-oħra qal ukoll li terzi li ma kinux parti għal dawk il-proċeduri m'għandhomx jiġu preġudikati.

33. Ir-rikorrent għandu kull dritt li jitlob, permezz tal-proċeduri odjerni, li jiġu eżegwiti dawk l-*individual measures* meqjusa l-aktar xierqa skont id-deċiżjoni tal-Qorti Ewropea sabiex ir-rikorrent f'dawk il-proċeduri jingħata rimedju effettiv għall-ksur. **Madanakollu, ir-*restitutio in integrum* jista' jingħata biss entró l-mezzi disponibbli taħt is-sistema legali nazzjonali.**

34. Ma jirriżultax li l-Istat Malti mexa mar-rakkomandazzjoni tal-Kumitat tal-Ministri li għadha kif saret riferenza għaliha u sal-lum għadna f'sitwazzjoni fejn fl-ordinament ġuridiku Malti ma jeżistix mekkaniżmu speċifiku fil-liġi tagħna li jipprovdi għar-*restitutio in integrum* f'ċirkostanzi simili għal dak tal-każ in eżami.

35. F' dan il-kuntest din il-Qorti terġa tirreferi għas-sentenza ta' din il-Qorti diversament presjeduta fit-18 ta' Marzu, 2005, ***Wara r-rikors tal-***

Każin tal-Banda ta' San Leonardo ta' Ħal-Kirkop ippreżentat fil-15 ta' Novembru, 2014, fejn ġie osservat:

"*'3. L-Artkolu 6 tal-Kap. 319 jipprovdi li decizjoni bhal dik moghtija mill-Qorti Ewropea tad-Drittijiet tal-Bniedem fil-konfront tal-Kazin "…tista' tigi esegwita mill-Qorti Kostituzzjonali f'Malta, bl-istess mod bhal decizjonijiet moghtija minn dik il-Qorti u [li] jigu esegwiti minnha…" – fit-test Ingliz "…may be enforced by the Constitutional Court in Malta, in the same manner as judgments delivered by that court and enforceable by it…". Fil-fehma kunsidrata ta' din il-Qorti, il-lokuzzjoni adoparata mill-legislatur, u b'mod partikolari l-uzu tal-kelma "tista'" (u mhux "ghandha"), tfisser li din il-Qorti, filwaqt li ghandha tassigura li, sa fejn hu possibbli, ir-rikorrent ikollu rimedju effettiv skond id-decizjoni tal-Qorti ta' Strasbourg,* ***mill-banda l-ohra ma ghandu jsir xejn li b'xi mod, direttament jew indirettament, imur kontra l-ordinament guridiku Malti****.*[12] *Din il-Qorti, bhala l-oghla Qorti tal-organu Gudizzjarju ta' l-iStat Malti – iz-zewg organi l-ohra huma l-organu Ezekuttiv u l-organu Legislattiv – ma tistax tinjora, fl-interpretazzjoni taghha ta' l-imsemmi Artikolu 6, l-obbligazzjonijiet assunti mill-iStat Malti taht il-Konvenzjoni. F'dan il-kuntest huwa sinjifikanti il-bran segwenti mid-decizjoni tal-Qorti Ewropea tad-Drittijiet tal-Bniedem (decizjoni tal-"Grand Chamber") fil-kaz* ***Scozzari and Giunta v. Italy*** *(13 ta' Lulju 2000):*

> *""The Court points out that by Article 46 of the Convention the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers.* ***It follows, inter alia, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to the supervision of the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects…Furthermore, subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment."*** *(sottolinear ta' din il-Qorti, jigifieri tal-Qorti Kostituzzjonali)."*

"*4. Mill-banda l-ohra, kif diga nghad, din il-Qorti ma tista', u ma ghandha, taghmel xejn li, direttament jew indirettament, imur kontra l-ordinament guridiku Malti. Ma tistax, per ezempju, din il-Qorti taghti esekuzzjoni ghal decizjoni tal-Qorti ta' Strasbourg b'mod li tmur kontra xi disposizzjoni tal-Kostituzzjoni – ligi superjuri ghall-Kap. 319 – jew*

[12] Enfażi tal-Qorti.

b'mod li tmur kontra l-ordni pubbliku, jew b'mod li tkun qed tuzurpa l-funzjoni ta' organu iehor ta' l-iStat. ***Tista' koncepibbilment tinholoq sitwazzjoni wkoll*** *(li hemm accenn ghaliha b'mod vag fir-risposta ta' l-ahwa Vella)* ***fejn l-esekuzzjoni f'Malta ta' decizjoni tal-Qorti Europea tad-Drittijiet tal-Bniedem tista' tippregudika terzi li ma kienux parti f'dawk il-proceduri quddiem il-Qorti ta' Strasbourg, b'mod ghalhekk li dik l-esekuzzjoni tkun fiha nnifisha "unfair" ghal dawk it-terzi.***[13] *Fil-kaz de quo din il-problema tat-terzi hi effettivament sorvolata ... Ghalhekk kull kaz, bil-fattispeci partikolari tieghu, irid jigi ezaminat skond dak li tkun iddecidiet il-Qorti ta' Strasbourg u fid-dawl tal-konsiderazzjonijiet hawn aktar 'l fuq maghmula u, forsi, konsiderazzjonijiet ohra li din il-Qorti ma thossx li ghandha tidhol fihom ghall-finijiet limitati tal-kaz de quo. Din il-Qorti tista' ma tkunx taqbel mal-mod kif il-Qorti Ewropea tad-Drittijiet tal-Bniedem tkun waslet ghall-konkluzzjoni taghha ... izda jekk dik id-decizjoni tkun tista' tigi esegwita b'mod li ma jmurx kontra l-ordinament guridiku Malti, din il-Qorti, b'applikazzjoni tal-Artikolu 6 tal-Kap. 319, ghandha ssib il-mezz kif taghti rimedju effettiv lill-applikant li jkun inghata ragun minn dik il-Qorti.'"*

36. F'dan il-kuntest ukoll hi rilevanti s-sentenza tal-Qorti ta' Strasbourg fil-kaz **Bochan v Ukraine** tal-5 ta' Frar, 2015, fejn intqal:

"'... it is for the Contracting States to decide how best to implement the Court's judgments without unduly upsetting the principles of res judicata or lega certainty in civil litigation, in particular where such litigation concerns third parties with their own legitimate interests to be protected. Furthermore, even where a Contracting State provides for the possibility of requesting a reopening of terminated judicial proceedings on the basis of a judgment of the Court, it is for the domestic authorities to provide for a procedure to deal with such requests and to set out criteria for determining whether the requested reopening is called for in a particular case. There is no uniform approach among the Contracting States as to the possibility of seeking reopening of terminated civil proceedings following a finding of a violation by this Court or as to the modalities of implementation of existing reopening mechanisms'."

37. Huwa minnu:

[13] Enfażi tal-Qorti.

37.1. li l-kjamati in kawża ma kinux parti fil-proċeduri li r-rikorrent intavola kontra l-iStat Malti fil-Qorti ta' Strasbourg u s-sentenza hi biss fil-konfront ta' Malta;

37.2. Ma jirriżultax li Zammit Tabona għamlu xi tentattiv sabiex jipprovaw jintervjenu fil-proċeduri ta' Strasbourg, għalkemm kienu jafu bihom. Madankollu ħadd mill-partijiet f'dawk il-proċeduri ma jirriżulta li għamel xi talba sabiex dik il-qorti tistieden lil Zammit Tabona biex jagħtu l-kummenti tagħhom;

37.3. li s-sentenzi fl-ismijiet ***Joseph Zammit Tabona et vs Charles sive Charlie Saliba*** li ġew dikjarati leżivi mill-Qorti ta' Strasbourg tad-drittijiet tar-rikorrent *a tenur* tal-Artikolu 6§1 tal-Konvenzjoni huma *res judicata*;

37.4. li l-artikolu 811 tal-Kodiċi tal-Organizzazzjoni u Proċedura Ċivili, li jirregola esklussivament meta proċeduri jistgħu jinstemgħu mill-ġdid, mhux applikabbli; u

37.5. li l-artikolu 237 tal-Kodiċi tal-Organizzazzjoni u Proċedura Ċivili jipprovdi li, '*Is-sentenza ma tista' tkun* ***<u>qatt ta' ħsara</u>*** *għal min, la huwa nnifsu u lanqas bil-mezz tal-awturi jew ta' rappreżentant leġittimu tiegħu, ma jkunx parti fil-kawża maqtugħa b'dik is-sentenza*'. Skont l-artikolu 6

tal-Kap. 319 is-sentenza tal-Qorti ta' Strasbourg għandha tiġi eżegwita mill-Qorti Kostituzzjonali daqslieku kienet sentenza tagħha, u ma ngħatat l-ebda raġuni li tikkonvinċi lil din il-qorti li dik id-disposizzjoni ma tapplikax għall-każ in eżami.

38. Minkejja dan, kif osservat minn din il-Qorti fil-każ ta' fid-deċiżjoni tagħha ***Wara r-rikors tal-Każin tal-Banda ta' San Leonardo ta' Ħal-Kirkop ippreżentat fil-15 ta' Novembru, 2014,*** ir-*restitutio in integrum* hu rimedju li din il-Qorti hi perfettament intitolata li tagħti kieku kienet hi li waslet għall-istess deċiżjoni li waslet għaliha il-Qorti ta' Strasbourg.[14] Każ riċenti fejn ġiet varjata *res judicata* tal-Qorti tal-Maġistrati (Malta) bħala Qorti ta' Ġudikatura Kriminali minħabba leżjoni ta' drittijiet fundamentali, kien fil-kawża kostituzzjonali ***Anthony P. Farrugia v. L-Onorevoli Prim Ministru et***, deċiża minn din il-Qorti fit-8 ta' Mejju 2017. Pero' f'dak il-każ ma kienx hemm il-problema li terza persuna ma kinitx parti għall-kawża kostituzzjonali.

39. Magħmula dawn il-konsiderazzjonijiet m'huwiex possibbli, taħt l-ordinament ġuridiku Malti, li jkun hemm *re-opening* tal-kawża **Joseph Zammit Tabona et vs Charles sive Charlie Saliba** (1996/2000). L-uniku rimedju li jibqa' hu li l-istat Malti iħallas id-dejn li Saliba għandu fil-

[14] A tenur tal-Artikolu 4(2) tal-Kap. 319 il-Prim'Awla tal-Qorti Ċivili għandu jkollha ġurisdizzjoni oriġinali li tisma' u tiddeċiedi kull talba magħmula minn xi persuna skont is-subartikolu (1), **u tista' tagħmel dawk l-ordnijiet, toħroġ dawk l-atti u tagħti dawk id-direttivi li tqis xierqa sabiex twettaq, jew tiżgura t-twettiq tad-Drittijiet tal-Bniedem u LibertajietFundamentali li għat-tgawdija tagħhom tkun intitolata dik il-persuna.**

konfront tal-imsejħin fil-kawża, ċjoe' s-somma ta' €130,441.42, l-imgħax skont il-liġi kif ordnat mill-Prim'Awla u spejjeż ġudizzjarji ta' Zammit Tabona f'dik il-kawża (1196/2000) inkluż dawk tal-atti eżekuttivi li setgħu nħarġu wara li s-sentenza finali saret *res judicata*. B'dan il-mod biss tista' tiġi eżegwita fis-sħiħ dak li ddeċidiet il-Qorti Ewropea fis-sentenza fuq imsemmija, ġialadarba l-artikolu 237 tal-Kap. 12 jagħmilha ċara li sentenza m'għandha qatt tkun ta' ħsara għal dik il-persuna li ma tkunx parti fil-kawża u fil-liġi Maltija għad ma teżistix disposizzjoni li wara sentenza tal-Qorti Ewropea ta' Strasbourg jista' jkollok ftuħ mill-ġdid tal-kawża. Hu veru li m'huwiex magħruf x'kien ikun l-eżitu tal-kawża 1996/2000 li kieku sar *re-opening* tal-kawza kif issuġġeriet il-Qorti Ewropea. Madankollu għar-ragunijiet li ngħataw hawn fuq hu impossibbli li jsir dak l-eżerċizzju u għalhekk irid jingħata rimedju differenti li kemm jista' jkun ikun qrib għall-prinċipju ta' *restitutio in integrum*.

Għal dawn il-motivi tilqa' t-talbiet tar-rikorrent kif magħmula bir-rikors preżentat fit-18 ta' Lulju, 2017 fis-sens li tordna li l-eżekuzzjoni tas-sentenza Carmel Saliba vs Malta (applikazzjoni numru 24221/2013) tad-29 ta' Novembru, 2016 għandha ssir billi tordna lill-Istat Malti jħallas id-dejn li r-rikorrent għandu fil-konfront tal-imsejħin fil-kawża kif spjegat f'paragrafu 38 ta' din is-sentenza.

Spejjeż huma kollha a karigu tal-intimat Avukat Ġenerali.

Joseph Azzopardi Prim Imhallef	Noel Cuschieri Imhallef	Anthony Ellul Imhallef

Deputat Registratur
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