QORTI CIVILI PRIM`AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON

Illum it-Tnejn 14 ta` Jannar 2019

Kawza Nru. 3
Rik. Nru. 93/2018/1 JZM

Emanuel Delia
K.I. Nru 0560176M

kontra

L-Onorevoli Ministru tal-Gustizzja, Kultura u Gvern Lokali Owen Bonnici (I.D. 273280M)

u

d-Direttur Generali tad-Divizjoni tat-Tindif u l-Manutenzjoni Ramon Deguara (I.D. 83474M)

Dan huwa digriet finali fil-miftuh dwar rikors li pprezenta Av. Dr Joseph Brincat fis-26 ta` Settembru 2018 fejn talab

sabiex ikun awtorizzat jintervjeni *in statu et terminis* fil-kawza fl-ismijiet premessi.

Il-Qorti :

I. <u>Preliminari</u>

Rat ir-rikors.

Rat id-dokument li kien prezentat mar-rikors.

Rat id-digriet taghha tas-27 ta` Settembru 2018.

Rat ir-risposta li pprezentaw l-intimati fit-2 ta` Novembru 2018.

Rat ir-risposta li pprezenta Emanuel Delia fit-12 ta` Novembru 2018.

Rat id-digriet l-iehor taghha tal-14 ta` Novembru 2018.

Semghet is-sottomissjonijiet li saru fil-kors ta` udjenza li saret fit-30 ta` Novembru 2018 fis-1.30 p.m.

Rat id-digriet li tat fl-istess udjenza fejn halliet ir-rikors ghal provvediment ghal-lum.

Rat l-atti tal-kawza fl-ismijiet premessi sal-lum.

II. <u>It-talba tal-Av. Dr. Joseph Brincat</u>

Ghar-ragunijiet li kienu ndikati fil-premessi tar-rikors, Av. Brincat talab lill-Qorti sabiex :

tawtorizzah li jintervjeni in statu et terminis halli :

Jasserixxi d-dritt tieghu tal-liberta` tal-espressjoni protett mill-Artikolu 10 tal-Konvenzjoni Ewopea dwar id-Drittijiet tal-Bniedem, u dan dwar il-Monument tal-Assedju l-Kbir jibqa` bla mittiefes ;

Jasserxxi d-dritt tieghu li ma jigix vjolat l-Artiklu 1 tal-Ewwel Protekoll tal-Konvenzjoni Ewopeja dwar id-Drittijiet tal-Bniedem

u dan taht dawk il-provvedimenti li joghgobha taghti din l-Onorabbli Qorti u minghajr ebda talba ghal kumpens.

III. Il-posizzjoni tal-partijiet

L-intimati rrimettew ghad-decizjoni tal-Qorti.

Min-naha tieghu, ir-rikorrent Emanuel Delia oppona t-talba tal-Av. Dr. Brincat fuq il-premessa li dan m`ghandux l-interess rikjest mil-ligi sabiex jitlob l-intervent fil-kawza *in statu et terminis* ghar-raguni **in sostanza** li jekk fi procediment ta` din ix-xorta, kwalunkwe persuna kellha tithalla tintervjeni fuq l-inqas pretest jintilef kull kontroll fi procedimenti kostituzzjonali, ghaliex jithallew jidhlu fil-kawza persuni ghal kull raguni li jikkontemplaw li jgibu `l quddiem, meta dawn ikunu sprovvisti mill-interess rikjest mil-ligi sabiex issir talba ghal intervent fil-kors ta`kawza li tkun ghaddejja bejn terzi. In sostenn ta` din il-posizzjoni, Emanuel Delia ghamel referenza ghas-sentenza li tat il-Qorti Kostituzzjonali fl-10 ta` Jannar 2005 fil-kawza **"Mario Galea Testaferrata et vs Il-Prim`Ministru et".**

IV. L-istitut tal-intervent f`kawza *in statu et terminis*

1. Art 960 tal-Kap 12

Fil-Kap 12 tal-Ligijiet ta` Malta, l-istitut ta' l-intervent f'kawza *in statu et terminis* huwa regolat bl-**Art 960** li jiddisponi hekk :-

"***Kull min juri b'sodisfazzjoni tal-Qorti, li huwa ghandu interess*** *f'kawza li tkun miexja bejn partijiet ohra, jista' fuq rikors, jigi mdahhal in statu et terminis, bhala parti fil-kawza, f'kull waqt taghha, sew fil-Qorti ta' l-ewwel grad kemm fil-Qorti fi grad ta' Appell ; izda dan l-intervent fil-kawza ma jwaqqafx il-proceduri taghha".* (enfasi u sottolinear ta` din il-Qorti)

i) Dottrina

Dwar l-intervent fil-kawza, il-**Mortara** jghid hekk fil-"*Commentario del Codice e delle Leggi di Procedura Civile*" – 1923 – Vol III – pag 256) :–

" *… puo' trovarsi ad avere interesse nella lite sotto varii aspetti e perfino a poterne temere un gravame di fatto e indiretto, qualora il risultato finale di essa, pur non alternando la di lui situazione giuridica, minacciasse di rendere difficile il godimento delle utilita` che vi sono inerenti, od anche diminuirlo effettivamente, sovente la legge inesorabile del fatto compiuto e' piu` forte delle teorie astratte le quali proclamano la innocuita` della cosa giudicata inter alios"*

Dwar l-istess istitut tad-dritt, **Enrico Tullio Liebman** fil-pag 151 tal-"*Manuale di Dir. Proc. Civile*" – 1957 ighid hekk :-

"La ragione pratica dell' istituto e' data dalla interdipendenza delle posizioni giuridiche e dei rapporti giuridici, sebbene i terzi non possono essere pregiudicati dalla sentenza pronunciata tra altri (res inter alios acta tertio neque nocent neque prodest) la loro posizione giuridica, o i rapporti giuridici di cui sono titolari, possono in vario modo subire delle conseguenze indirette dalla sentenza altrui, cio` che determina di un processo in cui non sono parti, o all'esito del medesimo".

ii) Gurisprudenza

Il-Qorti sejra tirreferi ghal dawk id-decizjonijiet, minn ghexieren ta` ohrajn li nghataw mal-medda tas-snin, li fil-fehma taghha, jaghtu direzzjoni ghall-mertu tar-rikors odjern.

Fis-sentenza moghtija minn din il-Qorti (*per* Onor Imhallef Luigi Ganado) fit-23 ta`Novembru 1898 fil-kawza "**Stepton vs Spiteri**" nghad hekk –

"E` stato ritenuto che, nel linguaggio della Procedura, e' terzo una persona materialmente estranea al giudizio fra altri pendente, e se viene chiaramente dimostrato che questo terzo ha un interesse qualunque, purche` sostanziale, sia personale, che reale, e non derivativo nell'esito del giudizio che si agita fra altri, egli ha il diritto di intervenirvi, e puo` essere chiamato a prenderne parte …

"L`istituto dell'intervento in causa, sia volontario, sia coattivo, e` basato sulla speditezza e semplicita` dei giudizi, essendo giustamente ritenuto molto utile il decidere la questione in presenza di quelli che vi hanno interesse, sviluppandosi meglio, in tal modo, le rispettive ragioni dei contendenti, ed evitando cosi` molteplicita` di giudizi inutili e spese considerevoli ai medesimi".

Fis-sentenza li tat il-Qorti tal-Appell (Inferjuri) fit-28 ta` Frar 2004 fil-kawza "**Fogg Insurance Agency Limited et v. Simon Tabone**" kien trattat appell minn terz. Inghad hekk :-

"Din il-kelma "interess" giet interpretata mill-Qorti tal-Kummerc fit-8 ta' April 1899 in re Brockdorff –vs- Pace Balzan (Kollez Vol XVII pIII p15) fis-sens illi "appena e` necessario di aggiungere che l'interesse, ossia il motivo della domanda giudiziale deve essere concreto, e sussistere di fronte a colui contro il quale la domanda viene proposta". (Kollez. Vol XXXIII pI p 662)… … "Tajjeb li nigi notat f'dan il-kuntest illi l-interess merament ipotetiku ma huwiex accettabbli in kwantu ma humiex ammissibbli rikonjizzjoni ta' drittijiet jew kundanni preventivi 'ad futurum'."

(ara wkoll : PA – **Zammit pro et noe vs Kirkby Williams** – 7 ta` Ottubru 1948 ; Appell Superjuri Civili – **Cefai vs Cutajar et** – 14 ta` April 1947 ; Appell Superjuri Civili – **Zammit vs Formosa** – 11 ta` Gunju 1948 ; PA – **Said et vs Vassallo** – 11 ta` Marzu 1950 ; PA – **Prato vs Cassar Galea et noe** – 30 ta` Marzu 1951 ; PA – **Delia vs**

Schembri – 4 ta` Frar 1958 ; Appell Superjuri Civili – **Ganado vs Borg Olivier** – 3 ta` Novembru 1958 ; PA – **Borg vs Muscat** – 28 ta` Ottubru 1960 ; PA – **Micallef pro et noe vs Younes et noe** – 18 ta` Novembru 1984 ; Appell Kummercjali – **Debattista et vs Calleja noe** – 28 ta` Frar 1986 ; Appell Kummercjali – **Galea vs Cardona** – 28 ta` Lulju 1987 ; Appell Kummercjali – **Azzopardi vs Grixti** – 9 ta` Marzu 1988 ; Appell Superjuri Civili – **Psaila vs Biggerstaff** – 7 ta` Novembru 1988 ; PA – **Camilleri vs Borg** – 8 ta` Mejju 1990 ; Appell Kummercjali – **Chatlani vs Grixti** – 2 ta` Dicembru 1991 ; Appell Superjuri Civili – **Buhagiar pro et noe vs Psaila** – 31 ta` Jannar 1996 ; Appell Superjuri Civili – **Grech et vs Sceberras Trigona et** – 20 ta` Frar 1996 ; Appell Superjuri Civili – **Abela vs Zahra** – 29 ta` Ottubru 2002)

Fis-sentenza li tat il-Qorti Kostituzzjonali fl-10 ta` Jannar 2005 fil-kawza **"Mario Galea Testaferrata v. Prim Ministru"** (citata minn Emanuel Delia fil-kors tat-trattazzjoni li saret fl-udjenza tat-30 ta` Novembru 2018) inghad hekk :-

"*L-interess mehtieg sabiex wiehed jintervjeni … huwa interess sostanzjali u dirett fil-kawza u mhux semplicement interess fl-ezitu ta' dik il-kawza bil-hsieb li dak l-ezitu jista' talvolta jkollu implikazzjonijiet, pozittivi jew negattivi, f'kawza jew kawzi ohra futuri … Fi kliem iehor, l-intervenut fil-kawza jitlob li jintervjeni, u ghandu jigi ammess li hekk jintervjeni, biex jipprotegi l-interessi tieghu f'dik il-kawza partikolari u mhux f'kawza jew kawzi ohra li talvolta jistghu jigu intavolati."*

2. Il-Konvenzjoni

Waqt it-trattazzjoni tar-rikors, saret referenza ghal dak li tipprovdi l-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali ("**Il-Konvenjoni**"). Fil-kors tar-ricerka taghha dwar dak li nghad, il-Qorti ltaqghet ma` bran li huwa riportat fuq :

> *agent.echr.am/en/functions/representation/thirdparty intervention.html.*

Jinghad hekk :-

A third party intervention is the term given to the process by which any person other than the applicant, or another State Party to the European Convention on Human Rights other than that against which the application has been lodged, to intervene in the proceedings. The person or State in question is entitled to file pleadings and take part in public hearings.

The objective of a third party intervention before the European Court of Human Rights is to provide the court with information to assist it in reaching its decision; as such it is also known as amicus curiae, or "friend of the court". A third party intervention should endeavour to objectively present law and practices relevant to the case. Third party interventions are usually made concerning cases which carry the potential of having a broad impact beyond the direct parties involved in an effort to ensure the development of good precedents and jurisprudence. Most often third party interventions before the European Court of Human Rights are brought by NGOs or academic centers to bring to light the latest standards of international human rights law and comparative jurisprudence and practices.

*Under changes introduced through Protocol No. 14 to the Convention, the Council of Europe Commissioner for Human Rights may submit written comments to the Court and take part in hearings in any case before the Chamber of Grand Chamber (**Article 36(3)**; **Rule 44(2)**).*

*The European Court operates a well-established and important system for intervention in cases by third parties. The Court may permit Convention states to intervene under **Article 36 of the Convention and Rule 44**.*

*Thus, under **Article 36 (1)** of the Convention, a State is entitled to intervene to submit written comments and/or take part in hearings where the applicant is one of its national. Furthermore, Article 36 also permits 'any person concerned' (which might include a state, or an individual, or an organization) to intervene if it is considered to be 'in the interest of proper administration of justice'. Any time after the Court has given the respondent state notice of the application, a third party may be given permission by the Court to submit written comments or, in*

*exceptional cases, to take part in hearings (**Article 36(2)**; **Rule 44(3)**)[2].*

Any third party seeking to intervene should write to the President of the Chamber for permission to do so within 12 week.]The request for leave must be 'duly reasoned'. If the request is granted, the Court will almost invariably set out certain conditions for intervening. These conditions are likely to include a maximum length for the written submissions (commonly 10 to 15 pages), a specified time limit for lodging the submissions and, importantly, conditions as to the matters which can be covered by the intervention. It is usual for the Court to indicate that the intervention should not comment on the particular facts or merits of the case (as those are matters for the parties).

*Requests for permission to lodge third party interventions will usually be made in relation to the merits stage of the proceedings. It is also possible to be granted permission to lodge a third party intervention for the purposes of deciding admissibility (see, e.g. **TI v. UK**, application no. 43844/98, decision 7 March 2000).*

Fl-24 ta` Frar 2015, **Paul Harvey**, ufficjal tar-Registru tal-Qorti ta` Strasbourg, ippubblika kitba bl-isem **"Third Party Interventions before the ECtHR : A Rough Guide"** fejn ghamel dawn l-osservazzjonijiet :-

What constitutes an effective third party intervention before the European Court of Human Rights? Before answering that, it is necessary to make three preliminary points on what distinguishes the practice of the Strasbourg Court on third party interventions from other courts.

First, the Court has always had a comparatively liberal policy as regards granting leave to third party interveners. Second, since the third party interventions of Amnesty International and the German Government in Soering v. the United Kingdom *in 1989, there have been well over a hundred significant interventions in Court's cases. The Court has generally been well served by these interventions,*

though for reasons I shall come to, in some cases it has been less well served in recent years. Third, a survey of those interventions shows a striking range in both the types of interveners and the types of cases in which they have intervened. There have been broadly six types.

1. States exercising the right in Article 36(1) of the Convention to intervene in cases brought by one of their nationals against another Contracting State

This is something of an archaism, based on the traditional right of diplomatic protection. Perhaps for this reason States rarely avail themselves of the right: there have been less than a dozen such interventions in the Court's history. Even more rarely has this type of intervention had any significant impact on the proceedings, though one notable exception is Germany's intervention in Soering *above.*

2. Interventions by States when they have sought leave (rather than exercised the right) to do so

This commonly occurs when States consider their legal systems will be affected by the outcome of a case. These have included high profile interventions such as the interventions of the UK Government in Saadi v Italy *(expulsion in terrorism cases) and ten governments in* Lautsi and others v. Italy *(crucifixes in Italian classrooms). Other than in high profile cases, these cases tend to involve issues of criminal procedure (for instance, the interventions of the UK, Irish and French Governments in* Taxquet v. Belgium *(the giving of reasons by juries) and the interventions of the UK, Irish and Maltese Governments in* Kyprianou v. Cyprus *(contempt of court).*

A more recent trend is the practice of certain Governments to intervene when issues of public international law are at stake, where the Government quite properly intervenes to ensure that – as far as possible – the Convention is interpreted in accordance with international law (see, for instance, the UK Government's intervention in Association SOS Attentats and de Boery v. France *(immunity of*

foreign heads of state in criminal proceedings) and the French and Slovakian Government's interventions in *Stoll v. Switzerland* (confidentiality of diplomatic communications).

3. Interventions by other international institutions

This is a growing feature of the Court's case-law. Prominent and undoubtedly useful examples include: the European Commission's intervention in Bosphorus v. Ireland*(implementation of EU law); the OSCE's intervention in* Blecic v. Croatia *(post-conflict termination of specially protected tenancies); the United Nations High Commissioner for Human Rights' intervention in* El-Masri v. "the former Yugoslav Republic of Macedonia" *(extraordinary rendition); the Office of the United Nations High Commissioner for Refugees' interventions in* M.S.S. v. Belgium and Greece *(on the Dublin II Regulation; its first before an international tribunal) and* Hirsi Jamaa and others v. Italy *("push-back" of irregular migrants in the Mediterranean). Another recent addition is the right, provided in Article 36(3) of the Convention, for the Council of Europe Commissioner for Human Rights to intervene in any proceedings before a Chamber or Grand Chamber. Thus far, the successive Commissioners have been rather sparing in the exercise of this right (see* MSS *above and* Centre for Legal Resources on behalf of Valentin Campeanu v. Romania*) and it is not yet possible to discern what criteria the Commissioners have applied in deciding when to intervene.*

4. Interventions by national human rights institutions

This is a growing and also entirely positive development. Interventions so far include those by the Equality and Human Rights Commission for England and Wales in Al-Saadoon and Mufdhi v. the United Kingdom *(transfer of detainees to Iraqi custody) and* Eweida and others v. the United Kingdom *(manifestation of religion in employment), the then Irish Human Rights Commission in* O'Keeffe v. Ireland *(protection against sexual abuse by a teacher) and the European Group of Human Rights Institutions in* Gauer and others v. France *(sterilisation without consent);* D.D. v. Lithuania *(involuntary*

admission to a psychiatric institution and unfairness of guardianship proceedings).

5. Interventions by NGOs

NGOs with a broader interest in the protection of human rights have always intervened in proceedings before the Court. Frequent, prominent and much valued interveners include, but are certainly not limited to, the AIRE Centre, Amnesty, FIDE, JUSTICE, Interights, the International Commission of Jurists. They have recently been joined by organisations who, while not being human rights organisations in the ordinary sense of the term, have nonetheless an interest in intervening in certain types of case (cases involving religious rights, freedom of expression, or sexual equality being prominent examples). Other common interveners include the various European bar associations, who commonly and quite properly intervene in cases affecting the lawyer-client relationship (see for example the intervention of various national and European bar associations in Michaud v. France *(money laundering reporting requirements) and* Staroszczyk v. Poland *(ineffective assistance by a legal aid lawyer).*

6. Interventions by litigation projects at leading universities

This, too, is a new and much welcomed addition to the range of third party interveners such that it should now be considered a category quite separate from that of traditional NGO interventions. Recent examples include the interventions of the Human Rights Centre of Ghent University in S.A.S. v. France *(the French ban on the full-face veil); the Human Rights Centre and the Transitional Justice Network at the University of Essex University in, respectively,* Hassan v. the United Kingdom*(detention in Iraq) and* Janowiec and others v. Russia *(the Katyn massacre); and the National Litigation Project at Yale Law School in* Babar Ahmad and others v. the United Kingdom *(extradition to the United States of America).*

Ineffective interventions

It should be self-evident from this survey that the Court has generally been well served by third party interventions. I do, though, use the word 'generally' advisedly. It has been an unfortunate consequence of the increase in third party interventions in recent years that not all such interventions have been as useful or as mindful of the purpose of third party interventions as the examples set out above. The well-established rule is that a third party intervener should not comment on the facts or merits of the case. Yet too often that rule is either expressly or implicitly flouted. Too often third party interventions have passed from being welcome and valued amicus curiae *to being* animus curiae*. However sincere and well intentioned such interventions are, they often leave the impression that the intervention has been made, not out of a desire to assist the Court, but so that the intervener can be seen to have intervened.*

A similar shortcoming concerns interventions in cases which concern sensitive ethical issues under either Article 8 or Article 9 of the Convention. There can be high numbers of interveners in such cases. Some provide relevant comparative or international law and are of considerable assistance. Too many others rely almost exclusively on philosophical or religious arguments. Without in any way criticising the sincerity of the beliefs or philosophies upon which these submissions are based, the reality is that they provide little assistance.

Effective interventions

It must be said that the majority of third party interventions are not like this, because the majority of cases before the Court are not like this. Indeed, it would seem that the key to any effective third party intervention is an appreciation of what courts do most of the time and how they go about it.

The Strasbourg Court, like most legal institutions, spends most of its time doing work only lawyers could love. The Strasbourg Court does not decide cases based on the policy preferences of individual judges, but on a prudent consideration of the legal materials before them. These are, for the most part, the Court's own precedents, the

general principles contained in those precedents, the views of the domestic courts and the international and comparative materials which are relevant to the case at hand. Almost 90% of the Court's cases are decided on the first two (precedent and general principles); virtually all of its cases are decided on the basis of a combination of all four. The best third party interventions assist the Court in that task.

It is not a polite fiction to say that the Strasbourg Court, like most courts, values that assistance. Even an expert tribunal like the Strasbourg Court cannot know all of the law or other materials that may have a bearing on the outcome of a case. The best third party interventions supply those materials. These can include scientific information (for instance, the reports on the utility of DNA databases supplied in S. and Marper v. the United Kingdom *or so called "Brandeis briefs" setting out statistics and other studies which show a particular policy or practice amounts to indirect discrimination (see, for instance,* D.H. and others v. the Czech Republic, *on placing Roma in special schools)).*

More frequently, though no less usefully, effective interventions focus on international and comparative law. The Court will often look to the work of others international bodies in interpreting and applying the rights set out in the Convention. Comparative studies, as long as they are fully and impartially done, can provide great assistance in determining whether a Contracting State enjoys a broad or narrow margin of appreciation in a particular policy area.

Of just as great assistance, but not done nearly often enough, is providing relevant precedents from other courts around the world. Courts, one would like to think, are the same everywhere; nothing could be of greater assistance to a supranational court than being provided with those precedents. Perhaps because of their long traditions in protecting human rights and, more prosaically, because they are given in English, the precedents of common law courts have dominated the Court's reliance on comparative law. But other courts now deserve to come to the fore. Third party interveners are well placed to supply the Court with such materials.

<u>The impact of third party interventions</u>

It is an inevitable feature of appellate litigation that the parties cannot always know how effective their advocacy has been: what appeals to one judge may not appeal to another and, in appellate litigation before large panels of judges, the views of lower courts or the views of other judges hearing the case may carry just as much weight, if not more weight, as the submissions of the parties. This is as true for third parties as it is for the parties themselves.

However, this is not to say that third party interventions carry no weight with the Strasbourg Court: if this were the case, the Court would not be as liberal as it is in giving leave to third parties to intervene. It does, however, serve to underline that, once leave to intervene is given, the most effective third party interventions are those which respect the Court's request not to comment on the merits of a case, those which do not seek to advance their own interests and, above all, those which, in good faith, seek to provide real assistance to the Court in its adjudicative task.

V. <u>Konsiderazzjonijiet ta` din il-Qorti</u>

Kemm mir-rikors, kif ukoll mit-trattazzjoni li saret fl-udjenza tat-30 ta` Novembru 2018, jirrizulta li Av. Brincat talab li jkun ammess sabiex jintervjeni fil-kawza *in statu et terminis* **<u>in sostanza</u>** sabiex igib `il quddiem il-pretensjoni tieghu illi huwa ghandu l-jedd jishaq li l-Monument tal-Assedju l-Kbir li jinsab il-Belt Valletta m`ghandux jittiefes. Isostni l-pretensjoni tieghu billi jghid li d-dritt ghal-liberta` tal-espressjoni nvokat minn Emanuel Delia u allegatament ivvjolat bit-thejjija tal-oggetti li tqeghdu quddiem l-istess Monument mhuwiex assolut. Isostni wkoll li jekk il-Monument jittiefes bil-mod u manjiera pretiza minn Emanuel Delia jkun hemm vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni u kwindi ghandu jedd isemma` lehnu sabiex ma jkunx hemm allegata vjolazzjoni ta` din ix-xorta.

Accertat li anke l-Konvenzjoni tippermetti l-intervent, il-Qorti sejra tikkoncentra l-konsiderazzjonijiet taghha fl-ambitu ta` dak li jipprovdi l-Kap 12.

Minn analizi tal-Art 960 tal-Kap 12, jirrizulta evidenti li l-ligi riedet taghti lil persuna l-possibilita` li jekk turi, ghas-sodisfazzjon tal-qorti, li ghandha interess li tidhol f`kawza li tkun ghaddejja bejn terzi allura tithalla tintervjeni fil-kawza.

Jekk il-persuna tkun ammessa li tintervjeni fil-kawza, hija ma ssirx parti.

Intervenut ghandu posizzjoni guridika diversa minn dik ta` kjamat fil-kawza ghaliex filwaqt li l-intervenut jitqies bhala osservatur fil-kawza, il-kjamat fil-kawza jsir parti u jilbes il-vesti ta` konvenut jew intimat.

Anke ghal dawk li huma spejjez, il-posizzjoni tal-intervenut hija distinta ghaliex filwaqt li l-partijiet (inkluz kjamat fil-kawza) huma soggetti ghall-kundanna mill-qorti tal-hlas ta` spejjez, l-intervenut ghax huwa osservatur, ibati l-ispejjez tieghu.

Hekk stabbiliet id-dottrina.

Kif ukoll il-gurisprudenza (*supra*).

Sabiex tkun hemm ammessa tintervjeni *in statu et terminis,* il-persuna trid **tissodisfa lill-qorti** li ghandha **interess.**

Riferibbilment ghal dak li ssottometta Emanuel Delia fil-kors tat-trattazzjoni tar-rikors, din il-Qorti tghid illi dment li procediment ikun *kawza*, il-ligi ma taghmilx distinzjoni bejn tipi ta` kawzi sabiex issir talba ghal intervent *in statu et terminis.*

Huwa evidenti mid-dicitura tad-disposizzjoni li l-*interess* li jrid ikollha persuna sabiex titlob li tintervjeni f`kawza bejn terzi jghodd ghal kull xorta ta` kawza, kemm jekk tkun ordinarja, kemm jekk tkun ta` xejra kostituzzjonali, u kif ukoll jekk tkun fondata fuq disposizzjonijiet tal-Konvenzjoni.

Tghid dan ghaliex l-Art 960 tal-Kap 12 ghandu applikazzjoni wiesgha u testendi ghal <u>kull</u> kawza.

Li kieku l-legislatur ried li tip ta`kawza partikolari tkun eskluza minn dak li ried li jkun applikabbli in linea generali, din il-Qorti tinsab konvinta illi kien jahseb ghal dan diversament.

Il-kompitu ta`l-Qorti huwa li tapplika l-ligi kif inhi - xejn aktar.

Nigu issa ghall-kwistjoni tal-lum.

In sostenn tal-opposizzjoni tieghu **<u>ghall-assjem</u>** tat-talba tal-Av. Brincat, Emanuel Delia nvoka favur tieghu l-insenjament li hareg mill-provvediment li tat il-Qorti Kostituzzjonali fl-10 ta` Jannar 2005 fil-kawza **<u>"Mario Galea Testaferrata et vs Il-Prim`Ministru et"</u>** (Nru. 348/1991/2).

Din il-Qorti rat il-provvediment.

Qieset b`reqqa l-kontenut, fil-kuntest tal-fatti u cirkostanzi ta` dak il-kaz.

Din il-Qorti tghid illi l-fehma espressa mill-Qorti Kostituzzjonali f`dik il-kawza ma tistax tinhareg mill-kuntest taghha u tigi trasposta sabiex tigi applikata ghal kull kawza ohra, inkluza din tal-lum.

Fil-provvediment citat, il-Qorti Kostituzzjonali ghamlet sewwa li ma akkordatx l-intervent fil-kawza *in statu et terminis* ta` Philip Grima, Brian Bajada, Perit Joseph Barbara u ohrajn, kif ukoll ta` Angela Balzan, ghaliex dawn il-persuni li talbu li jintervjenu ma kellhomx interess **sostanzjali u dirett** fil-kawza.

Kellhom biss interess **fl-ezitu taghha**, jew ghaliex dak l-ezitu seta` jkollu effett fuq kawzi li diga` kienu pendenti, liema kawzi ma kienux jirrigwardaw il-mertu ta` **dik** il-kawza, jew ghaliex seta` jkollu effett fuq kawzi futuri li kellhom fi hsiebhom li jistitwixxu.

Il-posizzjoni ta` Av. Brincat hija ghal kollox diversa minn dik tal-persuni li talbu li jintervjenu fil-kawza **"Mario Galea Testaferrata v. Prim Ministru"**.

Din il-Qorti tghid illi l-interess ta` Av. Brincat mhuwiex intiz sabiex din il-kawza jkollha effett jew sabiex tolqot kawzi futuri izda huwa mirat lejn **din** il-kawza partikolari.

Tghid dan b`riserva tenut kont tat-talba tieghu kif dedotta.

Sabiex jitlob li jintervjeni fil-kawza *in statu et terminis* Av. Brincat huwa obbligat jinkwadra t-talba tieghu fil-parametri tal-azzjoni ta` Emanuel Delia kif dedotta.

Issa Emanuel Delia qieghed jitlob dikjarazzjoni ta` vjolazzjoni abbazi tal-Art 10 tal-Konvenzjoni, tal-Art 41 tal-Kostituzzjoni, u tal-Art 6 tal-Konvenzjoni. Qed jitlob ukoll rimedji.

It-talba ta` Av. Brincat ma tistax tiddipartixxi mill-parametri tal-azzjoni kif stabbilita minn Emanuel Delia.

Jekk Av. Brincat qieghed jitlob li jintervjeni, it-talba tieghu trid titqies fil-kuntest ta` l-azzjoni promossa minn Emanuel Delia.

Ma jistax f`talba ghal intervent f`kawza, Av. Brincat igib `il quddiem kwistjonijiet li mhumiex mertu tal-kwistjoni ta` bejn il-partijiet.

Jekk Av. Brincat ghandu ilment x`igib `il quddiem li jmur oltre l-parametri tal-azzjoni tar-rikorrent u tad-difiza tal-intimati ghal dik l-azzjoni, allura huwa liberu li jippromwovi azzjoni *ad hoc.*

Li kieku kellu jkun xort`ohra allura tassew il-procedura tinqaleb ta` taht fuq.

Dan il-Qorti ma tistax tippermetti li dan isir.

Dan premess, jissussisti <u>l-interess</u> ta` Av. Brincat li jitlob li jintervjeni fil-kawza <u>limitatament</u> fir-rigward ta` l-ewwel (1) talba sabiex bhala cittadin juri li d-dritt ghal-liberta` tal-espressjoni vantat minn Emanuel Delia mhuwiex assolut, u li l-mod kif dak id-dritt qieghed jigi espress minn Emanuel Delia bil-mod u manjiera li tirrizulta mill-atti, ma jimmeritax it-tutela pretiza. Ghal din il-Qorti <u>l-interess</u> ta` Av. Brincat huwa dirett u sostanzjali.

Ghandux ragun fil-mertu Av. Brincat huwa bil-wisq prematur li jinghad fl-istadju attwali tal-kawza meta tqis illi Emanuel Delia ghadu ma ghalaqx l-istadju tal-provi tieghu.

Din il-Qorti tinsab certa li prova ta` l-fatti u cirkostanzi li jsostnu r-ragunijiet ta` naha u ta` ohra sejrin isiru fil-kors ta` dan il-procediment. Abbazi tal-provi li jingiebu, il-Qorti tiddeciedi fil-waqt opportun skont il-ligi.

<u>Provvediment</u>

Ghar-ragunijiet kollha premessi, il-Qorti qeghda tipprovdi dwar ir-rikors tal-Av. Dr. Joseph Brincat tas-26 ta` Settembru 2018, billi qeghda tilqa` t-talba tieghu <u>limitatament</u> fis-sens illi qeghda tppermettilu illi jintervjeni fil-kawza *de qua in statu et terminis* unikament bil-ghan sabiex jasserixxi d-dritt tieghu tal-liberta`espressjoni hekk kif protett mill-Artikolu 10 tal-Konvenzjoni Ewopeja dwar id-Drittijiet tal-Bniedem halli l-Monument tal-Assedju l-Kbir sitwat il-Belt Valletta jibqa` bla mittiefes.

L-ispejjez ta` dan il-provvediment jibqghu riservati ghall-gudizzju finali fil-kawza dwar il-mertu bejn il-partijiet.

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur