QORTI CIVILI PRIM`AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON

Illum it-Tnejn 16 ta` Dicembru 2019

Kawza Nru. 1
Rikors Nru. 14/2018/JZM

Perit Ian Cutajar u martu
Victoria Cutajar

kontra

Avukat Generali,

Awtorita` tal-Artijiet

u

Kummissarju tal-Pulizija

Il-Qorti :

I. <u>Preliminari</u>

Rat ir-rikors li kien prezentat fis-<u>16 ta` Frar 2018</u> li jaqra :–

Illi l-esponenti huma proprjetarji tal-fond ufficjalment markat bin-numri 173, 175 u 177, ga bin-numri ufficjali 106, 107 u 108, u qabel bin-numri 50, 51 u 52, fi Triq Santa Katerina (ga maghrufa bl-ismijiet Churchill Square u Strada Maggiore), fiz-Zurrieq, liberu u frank minn cnus u pizijiet, u bid-drittijiet u pertinenzi kollha tieghu, li huma xtraw bis-sahha ta` tliet kuntratti pubblikati rispettivament min-Nutar Dottor Joseph Lia fit-18 ta` Lulju 2011, u min-Nutar Dottor Jean Carl Debono fil-25 ta` Gunju 2016 u fis-6 ta` Awwissu 2016.

Illi dan il-fond ilu zmien twil mikri lill-Gvern ta` Malta. Minn dejjem kien jintuza mill-intimat Kummissarju tal-Pulizija bhala ghassa, u ghal xi zmien parti minnu kienet anke tintuza bhala berga.

Illi din il-kirja kienet originarjamet kostitwita mill-awturi tal-esponenti b`kuntratt tan-Nutar Calcedonio Gatt tal-1 ta` Mejju 1935, u sussegwentement imgedda b`att iehor tan-Nutar Carmelo Farrugia tal-10 ta` Lulju 1946.

Illi kif jirrizulta mit-tieni att imsemmi, wara proceduri quddiem il-Bord li Jirregola l-Kera skont l-Ordinanza li Tirregola t-Tigdid tal-Kiri ta` Bini (Kap. 69), b`sentenza tas-27 ta` Frar 1946, il-kera ta` dan il-fond zdied ghal tletin lira Sterlina (30) fis-sena b`effett mill-1 ta` Jannar 1946, pagabbli kull sitt xhur bil-quddiem.

Illi bl-istess kuntratt, il-kirja kienet imgedda ghal erba` snin difermo b`effett mill-1 ta` Jannar 1946, u erba` snin ohra fid-diskrezzjoni tal-inkwilin.

Illi b`ittra tal-4 ta` Novembru 2016, l-esponenti gharrfu lill-Kummissarju tal-Art, awtur tal-intimata Awtorita` tal-Artijiet, li huma kienu akkwistaw il-proprjeta` shiha ta` dan il-fond, u li jixtiequ jiehdu pussess ta` dan il-fond, jew jikruh ghal zmien definit, bi hlas ta` kumpens xieraq u adegwat bil-valuri kummercjali fis-suq tal-lum, izda ma rcevew ebda risposta minghandu.

Illi l-esponenti rcevew nota biss minghand l-intimat Kummissarju tal-Pulizija, fejn informhom li din l-ittra kienet waslet ghandu, u ma rcevew ebda risposta ohra.

Illi sussegwentement, fuq talba tal-intimati stess, b`ittra tat-2 ta` Awwissu 2017, l-esponenti infurmawhom li l-valur fis-suq tal-lum ta` din il-proprjeta` huwa ta` €700,000, u li l-valur lokatizju taghha huwa ta` €70,000 fis-sena. Bl-istess ittra, l-esponenti regghu fakkru lill-intimati li kienu disposti jidhlu f` arrangament ta` kiri, jew jaghtuhom xort`ohra l-uzu u t-tgawdija ta` dan il-fond, ghal zmien definit, u b`kumpens xieraq u adegwat fis-suq tal-lum.

Illi ghal darb`ohra, l-esponenti rcevew noti minghand iz-zewg intimati li kienet waslet ghandhom din l-ittra taghhom, pero` baqghu ma rcevew ebda risposta.

Illi min-naha taghhom, l-intimati qed jippretendu li jibqghu jikru din il-proprjeta` tal-esponenti, bl-istess kera u kundizzjonijiet.

Illi l-artikolu 3 tal-Ordinanza li Tirregola t-Tigdid tal-Kiri (Kap 69) jzomm lill-esponenti milli jirrifjutaw li jgeddu l-kirja jew li jghollu l-kera jew li jaghmlu kondizzjonijiet godda ghat-tigdid tal-kiri, anke

meta jaghlaq iz-zmien tal-kiri, minghajr il-permess tal-Bord li Jirregola l-Kera.

Illi l-esponenti lanqas ma jistghu jiehdu lura l-pussess tal-proprjeta` taghhom, sakemm iddum fis-sehh din l-Ordinanza, hlief fil-kazijiet imsemmija fl-artikolu 9 ta` l-istess Ordinanza, filwaqt li ebda restrizzjoni simili ma tapplika ghall-fondi tal-Gvern, jew amministrati mill-Gvern, jew li jkunu mehtiega mill-Gvern ghal skop ta` utilità pubblika (artikolu 12 tal-Kap. 69), jew meta l-kiri jkun beda wara l-1 ta` Gunju 1995 (artikolu 46 tal-Kap. 69).

Illi effettivament l-ebda wahda mic-cirkostanzi kontemplati fl-artikolu 9 tal-Kap. 69 ma hi applikabbli f` dan il-kaz; u ghalhekk l-esponenti ma jistghux jirriprendu l-pussess tal-fond proprjeta` taghhom.

Illi fid-dawl tar-rifjut tal-intimati li jaccettaw awment fil-kera, l-esponenti huma mizmuma wkoll milli jinforzaw il-jedd taghhom li jghollu l-kera ghal dik li jistghu jgibu fis-suq hieles tal-lum, minhabba dak provdut fl-art. 4 u 5 tal-istess Ordinanza (Kap. 69).

Illi aghar minn hekk, bl-aktar emendi ricenti fil-ligijiet tal-kiri (Att X tal-2009), l-esponenti gew sahansitra diskriminati minhabba li huma jinsabu kostretti jibqghu jgeddu din il-kirja favur l-intimati, li huma nfushom organi fi hdan il-Gvern ta` Malta, bl-istess kera u kundizzjonijiet ta` aktar minn sebghin sena ilu, u dan ghal dejjem.

Illi dawn ir-restrizzjonijiet fl-Ordinanza u/jew l-operazzjoni taghhom jiksru d-drittijiet fundamentali tal-esponenti ghat-tgawdija pacifika tal-possedimenti taghhom, ghal smigh xieraq, ghal rimedju effettiv u ghall-protezzjoni minn diskriminazzjoni kif protetti bl-artikoli 37, 39 u 45 tal-Kostituzzjoni ta` Malta u bl-artikoli 6, 13 u 14 u bl-artikolu 1 tal-Ewwel Protokol tal-Konvenzjoni Ewropea ghall-

Protezzjoni tad-Drittijiet tal-Bniedem u Libertajiet Fundamentali (Kap. 319 tal-Ligijiet ta` Malta).

Ghaldaqstant l-esponent jitlob bir-rispett li din il-Qorti joghgobha :-

i) Tiddikjara u tiddeciedi li l-Ordinanza li Tirregola t-Tigdid tal-Kiri ta` Bini (Ordinanza XXI tal-1931, illum Kap. 69), u senjatament l-artikoli 3, 4, 5 u 9 tal-istess Ordinanza u/jew l-applikazzjoni taghhom ghall-kirja msemmija tal-fond bin-numri 173, 175 u 177, ga bin-numri ufficjali 106, 107 u 108, u qabel bin-numri 50, 51 u 52, fi Triq Santa Katerina (ga maghrufa bl-ismijiet Churchill Square u Strada Maggiore), fiz-Zurrieq, jilledu d-drittijiet fundamentali tieghu kif fuq inghad u senjatament bl-artikoli 37, 39 u 45 tal-Kostituzzjoni, u bl-artikoli 6, 13 u 14 u bl-artikolu 1 tal-Ewwel Protokol tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u Libertajiet Fundamentali.

ii) Konsegwentement u ghar-ragunijiet premessi, tiddikjara l-imsemmija artikoli 3, 4, 5 u 9 tal-Ordinanza li Tirregola t-Tigdid tal-Kiri ta` Bini (Kap. 69) nulli u minghajr effett legali, u/jew tiddikjara illi l-istess artikoli 3, 4, 5 u 9 tal-Ordinanza li tirregola t-Tigdid tal-Kiri ta` Bini (Kap. 69) mhumiex applikabbli ghal din il-kirja.

iii) Taghmel dawk id-dikjarazzjonijiet, taghti dawk l-ordnijiet, ir-rimedji u l-provvedimenti kollha mehtiega biex tizgura t-twettiq tad-drittijiet fundamentali fuq imsemmija tal-esponenti, inkluz billi (i) tiddikjara li l-esponenti mhumiex obbligati jgeddu l-kirja ta` dan il-fond, fiz-Zurrieq, favur l-intimati ; u (ii) tikkundanna lill-istess intimati jhallsu kumpens xieraq ghall-vjolazzjoni tad-drittijiet imsemmija tal-esponent, u ghall-okkupazzjoni tal-fond imsemmi bi vjolazzjoni tad-drittijiet tal-esponenti.

Bl-ispejjez kontra l-intimati li jibqghu ingunti minn issa ghas-subizzjoni.

Rat ir-risposta li pprezentat l-intimata Awtorita` tal-Artijiet fit-13 ta` Marzu 2018 li taqra hekk :-

1. Preliminarjament, in kwantu r-rikorrenti qeghdin jittentaw jimpunjaw diversi artikoli tal-ligi dwar it-tigdid tal-kera, l-Awtorita` tal-Artijiet m`hijiex legittimu kontradittur biex twiegeb ghal dikjarazzjoni ta` antikostituzzjonalita u ghalhekk ghandha tigi hekk dikjarata u mehlusa mill-osservanza tal-gudizzju.

2. Preliminarjament, in kwantu l-fondi li dwarhom tinsorgi l-kwistjoni huma proprjeta` privata tar-rikorrenti, l-Awtorita` tal-Artijiet m`hijiex legittimu kontradittur biex twiegeb ghal sitwazzjonijiet li huma esklussivament rizultat tal-ligi vigenti, u ghalhekk ukoll l-Awtorita` tal-Artijiet ghandha tigi mehlusa mill-osservanza tal-gudizzju.

3. Illi in linea preliminari wkoll u minghajr pregudizzju ghas-suespost, in-nuqqas ta` applikabilita` tal-Artikolu 37 tal-Kostituzzjoni ta` Malta in kwantu ma hemm l-ebda tehid forzus ta` proprjeta, u r-rikorrenti qeghdin jimpunjaw iddispozizzjonijiet tal-ligi fuq allegata antikostituzzjonalita`.

4. Illi in linea preliminari wkoll u minghajr pregudizzju ghas-suespost, in-nuqqas ta` applikabilita` tal-Artikolu 39 tal-Kostituzzjoni u tal-Artikolu 6 tal-Konvenzjoni Ewropea ghad-Drittijiet tal-Bniedem in kwantu ma kien hemm lebda smigh involut. Ir-rikorrenti ddecidew li jistitwixxu proceduri kostituzzjonali biex jimpunjaw il-ligi u hekk imxew, u allura anki access ghall-qrati ghandhom. Konsegwentement, il-kaz odjern la jinvolvi d-dritt ghal smigh xieraq u lanqas id-dritt ta` access ghall-Qorti.

5. Fil-meritu, ir-rikorrenti jippremettu tliet affarijiet importanti :-

- *li huma kienu u ghadhom il-proprjetarji tal-fond/i indikati li huma sitwati fi Triq Santa Katerina, Santa Venera ;*

- *li r-rikorrenti krew minn rajhom il-fond/i lill-Gvern ta` Malta ;*

- *li dejjem baqa` jsir uzu fl-interess pubbliku, bhala Ghassa tal-Pulizija u, ghal zmien limitat, bhala Berga,*

u dan ma jhalli l-ebda dubju illi l-fond lokat qed jintuza fl-interess pubbliku, stante li kemm Ghassa tal-Pulizija kif ukoll Berga ghandhom uzu pubbliku importantissimu f`socjeta`.

6. Ir-rikorrenti jsemmu li b`ittra tal-4 ta` Novembru 2016 gharrfu lill-Kummissarju tal-Art, awtur tal-Awtorita` tal-Artijiet, li huma kienu akkwistaw il-proprjeta` shiha u li "jixtiequ jiehdu pussess ta` dan il-fond, jew jikruh ghal zmien definit, bi hlas ta` kumpens xieraq u adegwat bil-valuri kummercjali fis-suq tal-lum" izda f`Malta hawn numru kbir ta` sidien li jixtiequ jiehdu pussess tal-proprjeta` taghhom jew jikruha ghal zmien definit u ghalhekk jinsabu fl-istess sitwazzjoni li jirreferu ghaliha r-rikorrenti. B`danakollu, il-ligijiet jaghmilhom il-Parlament u mhux l-Awtorita` tal-Artijiet u, inoltre, hija m`ghandhiex is-soluzzjonijiet ghall-problemi tas-sidien tal-proprjeta` privata li tkun nkriet liberament mill-istess sidien.

7. Illi d-dispozizzjonijiet tal-ligi li dwarhom qeghdin jillamentaw ir-rikorrenti ilhom fis-sehh hafna snin, u dejjem applikaw u gew mwettqa fil-konfront ta` kulhadd bl-istess mod. Ghalhekk, mhux minnu li hemm diskriminazzjoni, Dan japplika wkoll fir-rigward tal-emendi introdotti bl-Att X tal-2009. Dawn ukoll dejjem gew imwettqa fil-konfront ta` kulhadd bl-istess mod. Ghalhekk, il-lanjanza dwar diskriminazzjoni hija fiergha u vessatorja.

8. Fir-rigward tal-artikoli invokati mir-rikorrenti, apparti li l-Artikolu 37 tal-Kostituzzjoni ma japplikax ghall-kaz odjern stante li ma hemm l-ebda tehid forzus, u lanqas l-Artikolu 39 tal-Kostituzzjoni u l-Artikolu 6 tal-Kap 319 ma japplikaw peress li l-kaz odjern ma jinvolvix smigh xieraq jew l-access ghall-qrati.

9. Illi r-rikorrenti ma sofrew l-ebda tehid tad-drittijiet ta` proprjeta` ghaliex kienu l-awturi taghhom li, liberament u volontarjament, krew il-proprjeta` taghhom meta l-ligi kienet diga` tipprovdi kif fil-fatt tipprovdi. L-Artkolu 37 talKostituzzjohi u l-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni (Kap 319) jistghu japplikaw meta jkun qed jigi attakkat l-iskop pubbliku, izda r-rikorrenti ma jistghux jattakkaw l-iskop tal-kirja ghaliex l-awturi taghhom kienu jaqblu mal-kiri ta` dik il-proprjeta` bhala Ghassa tal-Pulizija u anki bhala Berga.

10. Illi l-proviso fl-Artikolu 1 tal-Ewwel Protokoll jipprovdi espressament illi d-dispozizzjonijiet ta` qabel ma ghandhom b`ebda mod inaqqsu d-dritt ta` Stat li jwettaq dawk il-ligijiet li jidhrulu xierqa biex jikkontrolla l-uzu ta` proprjeta` skont l-interess generali jew biex jizgura l-hlas ta` taxxi jew kontribuzzjonijiet ohra jew pieni. Ghalhekk, il-Konvenzjoni Ewropea tippermetti l-uzu ta` proprjeta` skont l-interess generali, iktar u iktar meta l-proprjeta` privata giet mikrija appozitament biex jigi sodisfatt l-interess generali.

11. Illi kwantu ghall-emendi introdotti bl-Att X tal-2009 imsemmija mir-rikorrenti, dawk l-emendi kellhom skop u applikabilita` differenti, u kienu emendi ghall-Kodici Civili. Fuq kollox, dawk l-emendi, dment li jkunu applikabbli ghal xi kaz partikolari, jghoddu ghal kulhadd l-istess. Ma saret l-ebda diskriminazzjoni jew preferenza ma xi persuna jew grupp ta` persuni partikolari bi ksur tal-Artikolu 45 tal-Kostituzzjoni ta` Malta jew ta` l-Artikolu 14 tal-Konvenzjoni Ewropea.

12. *Illi kwantu ghall-allegazzjoni tar-rikorrenti dwar vjolazzjoni ta` l-Artikolu 13 tal-Konvenzjoni Ewropea, ir-rikorrenti ma jindikawx kif il-kirja lill-Gvern tivvjola l-Artikolu 13. L-esponenti tissottometti illi l-Artikolu 13 tal-Konvenzjoni ma jezigix xi procedura partikolari dwar kif ghandu jinghata r-rimedju. L-importanti huwa li jinghata rimedju effettiv quddiem awtorita` nazzjonali. Fil-fehma tal-esponenti, din l-Onorabbli Qorti fil-gurisdizzjoni kostituzzjonali taghha hija awtorita` li tista` taghti rimedju effettiv lir-rikorrent jekk jinstab li sehhew infrazzjonijiet konvenzjonali, li fil-fehma tal-esponenti m`huwiex il-kaz li kien hemm. L-Artikolu 13 ma jitlobx li r-rimedju ghandu jkun fil-qafas tal-procedüri ordinarji. Bil-kontra, l-importanti huwa li jkollok rimedju quddiem awtorita` nazzjonali, u dan irrispettivament jekk bil-mezz ta` talba quddiem il-Qrati ordinarji jew bil-mezz ta` kawza kostituzzjonali / konvenzjonali. Ghalhekk, safejn ir-rikorrenti qeghdin jilmentaw dwar allegat ksur tal-Artikolu 13 tal-Konvenzjoni Ewropea, dan huwa manifestament infondat jekk mhux ukoll fieragh ghaliex dawn il-proceduri u dina l-Onorabbli Qorti bhala awtorita` nazzjonali ghandhom is-setgha li jaghtu rimedju effettiv lir-rikorrenti jekk kemm-il darba jirnexxilhom juru li tassew sehhew infrazzjonijiet tal-jeddijiet fondamentali taghhom kif imharsa taht il-Konvenzjoni Ewropea. Isegwi ghalhekk li din il-lanjanza mhix misthoqqa u ghandha tigi michuda.*

13. *Konsegwentement, din l-Onorabbli Qorti ghandha tichad it-talbiet tar-rikorrenti.*

14. *Bl-ispejjez kontra taghhom.*

15. *Salvi eccezzjonijiet ulterjuri.*

Rat ir-risposta tal-intimati Avukat Generali u l-Kummissarju tal-Pulizija prezentata fl-14 ta` Marzu 2018 li taqra hekk :-

1) Illi in linea preliminari, ir-rikorrenti jridu jgibu prova tat-titolu taghhom fuq il-proprjeta` in kwistjoni.

2) Illi subordinatament u minghajr pregudizzju ghas-suespost, fir-rigward tal-mertu, l-intimati jopponu t-talbiet kif avvanzati fir-Rikors Promotur u jirrilevaw li ma sehh l-ebda ksur tad-drittijiet fundamentali tal-bniedem filkonfront tar-rikorrenti u dan ghas-segwenti motivi li qeghdin jigu avvanzati minghajr pregudizzju ghal xulxin :

(2.1) Illi fl-ewwel lok, it-talbiet tar-rikorrenti kif dedotti fir-Rikors huma infondati fil-fatt u fid-dritt, in kwantu r-rikorrenti akkwistaw il-proprjeta` in kwistjoni fit-18 ta` Lulju, 2011, fil-25 ta` Gunju, 2016 u fis-6 t`Awwissu, 2016 meta kienu ben konxji tal-protezzjoni li jaghtu l-provvedimenti tal-Kap 69 lill-inkwilin u ghalhekk ma kien hemm l-ebda intervent legislattiv li ma kinux edotti minnu;

(2.2) Illi fit-tieni lok, il-proprjeta` hija okkupata mill-Kummissarju intimat fuq bazi legali u ghal ghan legittimu. Fil-fatt, l-skop pubbliku jikkonsisti fil-gestjoni tal-Ghassa tal-Pulizija u ghalhekk jissusisti l-interess pubbliku. Inoltre, il-kera li tithallas hija proporzjonata tenut kont tac-cirkostanzi tal-fond lokat. Ghandu jigi rilevat li l-lstat ghandu s-setgha li jikkontrolla l-uzu tal-proprjeta` fl-interess generali u ghal dan il-ghan, l-lstat ghandu margini wiesgha ta` diskrezzjoni dwar kif iwettaq din il-politika u l-provvedimenti dwar il-kera huma ezercizzju legittimu ta` din id-diskrezzjoni;

Illi ghalhekk anke jekk fil-kaz odjern jista` jkun hemm diskrepanzi fil-kera dovuta lir-rikorrenti meta mqabbla mal-valur lokatizju fis-suq, dan it-tnaqqis huwa kontro-bilancjat bil-margini wiesgha tal-lstat li jillegisla fil-kuntest ta` mizuri kulturali u socjali;

(2.3) Illi fit-tielet lok, ic-cirkostanzi odjerni ma jirrapprezentaw l-ebda ksur tal-Artikoli 37, 39 u 45 tal-Kostituzzjoni u/jew tal-Artikoli

6,13, 14 u tal-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni Ewropea stante li :

a. taht il-ligijiet tal-kera ma jsehhx `tehid forzuz` jew obbligatorju tal-proprjeta` izda biss kontroll tal-uzu taghha fil-parametri tal-Kostituzzjoni u tal-Konvenzjoni;

b. meta l-iskop pubbliku jkun wiehed socjali, il-kumpens xieraq ma jistax jitkejjel ma` kemm tiswa l-proprjeta` fis-suq — il-kera tilhaq bilanc bejn l-interess generali u dak privat;

c. ma kien hemm l-ebda intervent legislattiv meta r-rikorrenti ghazlu volontarjament u liberalment li jakkwistaw il-proprjeta` in kwistjoni fit-18 ta` Lulju, 2011, fil-25 ta` Gunju 2016 u fis-6 t`Awwissu 2016.

d. Inoltre, ma hemmx ksur tal-Artikolu 14 tal-Konvenzjoni peress li persuni f`sitwazzjonijiet simili mhux qeghdin jigu trattati b`mod differenti minghajr gustifikazzjoni ragjonevli u oggettiva u minghajr proporzjonalita` ragjonevli bejn il-mezzi u l-ghan li jrid jintlahaq;

Illi ulterjorment jigi rilevat li fi kwalunkwe kaz, l-Artikolu 1 tal-Ewwel Protokol ma jikkoncedi ebda dritt li xi hadd jircievi profitt. Inoltre, fil-kaz odjern mill-aspett tal-proporzjonalita` l-ligi ghandha tigi applikata f`sens wiesgha u cioe` fid-dawl tar-realta` ekonomika u socjali tal-pajjiz in generali u mhux sempliciment a bazi ta` konsiderazzjonijiet ta` spekulazzjoni tal-proprjeta` in kwistjoni;

(2.4) Illi fir-raba` lok, jekk ir rikorrenti thallsu u accettaw il-kera minghajr rizerva, mhux il-kaz li jitolb xi kumpens, taht liema forma jkun, retroattiv ghaz-zmien meta huma accettaw il-kera minghajr ebda rizerva stante li dan jikser stat ta` fatt u ta` ligi kompjut bejn il-partijiet;

(3) Salv eccezzjonijiet ohra, jekk ikun il-kaz.

Ghaldaqstant, l-esponenti ghar-ragunijiet fuq esposti jitolbu bir-rispett li din l-Onorabbli Qorti joghgobha tichad it-talbiet kollha tar-rikorrenti bhala infondati fil-fatt u fid-dritt, stante li fic-cirkostanzi odjerni ghandu jirrizulta li ma hemm l-ebda ksur tal-Artikoli 37, 39 u 45 tal-Kostituzzjoni u/jew tal-Artikoli 1 tal-Ewwel Protokol u/jew tal-Artikolu 14 tal-Konvenzjoni Ewropea; bl-ispejjez.

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

Rat in-noti ta` osservazzjonijiet li kienu prezentati.

Semghet is-sottomissjonijet tal-ahhar bil-fomm.

Rat illi l-kawza thalliet ghas-sentenza ghal-lum.

Rat l-atti l-ohra tal-kawza.

II. <u>Fatti</u>

Permezz ta` kuntratt tal-1 ta` Mejju 1935 fl-atti tan-Nutar Calcedonio Gatt, Margherita Falzon, ghan-nom ta` huha Ignazio Falzon, ikkoncediet taht titolu ta` kera il-fond bin-numri 173, 175 u 177, ga bin-numri ufficjali 106, 107 u 108, u qabel bin-numri 50, 51 u 52, fi Triq Santa Katerina (ga maghrufa bl-ismijiet Churchill Square u Strada Maggiore), fiz-Zurrieq, favur il-Gvern ta` Malta bl-iskop illi l-fond jintuza bhala Ghassa tal-Pulizija u Berga jew ghal skopijiet ohrajn.

Il-kirja inghatat ghal zmien sena b`effett mill-1 ta` Jannar 1935 bil-fakolta` favur il-Gvern illi jaghzel li jgedded il-kirja ghal sena ohra. Il-kera kellha tkun ta` £22 fis-sena pagabbli kull sitt xhur bil-quddiem. Fi tmiem iz-zmien originali u cioe` fil-31 ta` Dicembru 1936, il-kirja kienet imgedda sal-31 ta` Dicembru 1937 skont kif pattwit. Bejn l-1 ta` Jannar 1938 u l-31 ta` Dicembru 1945 it-tigdid tal-kirja sar b`mod tacitu.

B`sentenza moghtija fis-27 ta` Frar 1946, il-Bord li Jirregola l-Kera awtorizza awment fil-kera ghal £30 fis-sena pagabbli kull sitt xhur bil-quddiem b`effett mill-1 ta` Jannar 1946.

Permezz ta` kuntratt tal-10 ta` Lulju 1946 fl-atti tan-Nutar Carmelo Farrugia, Margherita Falzon, f`isimha propju u ghan-nom u in rapprezentanza ta` huha Ignazio Falzon, accettat li b`effett mill-1 ta` Jannar 1946, taghti kirja gdida lill-Gvern ta` Malta, biz-zmien ikun ghal erba` snin *di fermo* u erba` snin *di rispetto* versu hlas ta` kera ta` £30 fis-sena pagabbli kull sitt xhur bil-quddiem.

Permezz ta` kuntratt tat-18 ta` Lulju 2011 fl-atti tan-Nutar Dottor Joseph Lia, ir-rikorrenti xtraw u akkwistaw *inter alia* minghand Emanuela sive Emma Schembri terz indiviz tal-fondi bin-numri 173, 175 u 177, ga bin-numri ufficjali 106, 107 u 108, fi Triq Santa Katerina fiz-Zurrieq "***liema fond huwa mikri lill-Gvern ta` Malta bhala Ghassa tal-Pulizija***". (enfasi u sottolinear tal-qorti)

Permezz ta` kuntratt tal-25 ta` Gunju 2016 fl-atti tan-Nutar Dottor Jean Carl Debono, ir-rikorrenti xtraw u akkwistaw *inter alia* minghand Anthony Camilleri, Josephine Spicuglia, Reginald Vella, Doris Zerafa, Vincent Vella u Rose Mary Peart, is-sehem ta` terz indiviz tal-fond mertu ta` din il-kawza "***which tenement is presently leased to the Government of Malta as a Police Station at one hundred and sixty six euro (€166) annually***". (enfasi u sottolinear tal-qorti)

Permezz ta` kuntratt tas-6 ta` Awwissu 2016 fl-atti tan-Nutar Dottor Jean Carl Debono, ir-rikorrenti xtraw u akkwistaw *inter alia* minghand Joseph Bezzina is-sehem ta` terz indiviz tal-fond in kwistjoni kif soggett ghal kirja favur "**the *Government of Malta as a Police Station at one hundred and sixty six euro (€166) annually***". (enfasi u sottolinear tal-qorti).

B`ittra legali tal-4 ta` Novembru 2016, ir-rikorrenti gharrfu lill-Kummissarju tal-Artijiet u lill-Kummissarju tal-Pulizija illi kienu akkwistaw il-proprjeta` tal-fond de quo u riedu jiehdu lura l-pussess tal-fond. Ir-rikorrenti wrew li kienu disposti jaslu fi ftehim dwar kirja ghal zmien definit, u bi hlas ta` kumpens xieraq skont il-valur kummercjali tal-fond fis-suq. Fit-8 ta` Novembru 2016 il-Kummissarju tal-Pulizija baghat *acknowledgement* li kien ircieva l-ittra pero` ma wegibx ghall-ittra fil-mertu taghha. Min-naha tal-Kummissarju tal-Artijiet ma kienx hemm twegiba.

B`ittra legali tat-23 ta` Jannar 2016 ir-rikorrenti baghtu lura c-cheques bil-hlas tal-kera u nsistew mal-intimati li ghandhom iressqu l-proposti taghhom ghal ftehim dwar il-kirja. B`ittra legali ohra tat-2 ta` Awissu 2017, ir-rikorrenti, b`risposta ghal talba li saret mill-Kummissarju tal-Artijiet u mill-Kummissarju tal-Pulizija, gharrfuhom illi l-fond kellu valur fis-suq ta` €700,000 u valur lokatizzju fl-ammont ta` €70,000 fis-sena. Ir-rikorrenti rega` stiednu lill-kontroparti ghal ftehim. Fl-4 ta` Awissu 2017 fil-kaz tal-Kummissarju tal-Artijiet, u fil-21 ta` Awissu 2017 fil-kaz tal-Kummissarju tal-Pulizija, intbaghtu lir-rikorrenti zewg *acknowledgements* tal-ahhar ittra li kienu baghtu r-rikorrenti.

III. Provi

Ir-rikorrent xehed li hu u r-rikorrenti martu kienu sabu bosta diffikultajiet meta gew biex jixtru l-fond de quo. Kien ghalhekk li hadu hames snin sabiex xtraw l-intier. Is-sidien ta` qabel kienu jithallsu l-kera mit-Tezor darbtejn fis-sena. Wara li huma akkwistaw l-intier tal-

fond, il-Gvern baghat ihallas il-kera izda huma ma accettawx il-kera. Il-posizzjoni taghhom baqghet sal-ahhar li jaslu fi ftehim mal-Gvern abbazi ta` kirja ghal zmien definit u b`kumpens li jirrifletti l-valur fis-suq. Min-naha tal-Gvern ma kienx hemm reazzjoni hlief hlief *acknowledgment* tal-ittri taghhom.

Xehed illi huwa ghandu prattika privata bhala perit b`numru ta` impjegati. Fil-prezent l-ufficcju tieghu jinsab Birkirkara, pero` mhuwiex propjeta` tieghu. Ighid li jrid jikkonduci l-*private practice* tieghu minn post li huma propjeta` tieghu. Ghalhekk jehtieg il-fond de quo sabiex ikun konvertit f`ufficcju.

Kompla jixhed illi skont rapport ta` perit *ex parte* li nkarika hu, il-fond de quo ghandu valur fis-suq ta` €700,000. Il-valur lokatizju huwa ta` €70,000 fis-sena.

Stqarr illi sabiex akkwista l-fond huwa ghamel investment sostanzjali u ta` piz. Ghalhekk kien qed jippretendi li jithallas kera adegwata mill-Gvern mhux it-€384.42 fis-sena li qeghdin jithallsu fil-prezent. Sostna li l-Gvern mhux biss ghandu l-mezzi mnejn ihallas kera li tirrifletti l-prezz tas-suq, izda ghandu wkoll il-mezzi sabiex jaghmel rilokazzjoni tal-ghassa u jrodd lura l-fond lilhom.

Ghamel referenza ghal kuntratt tal-4 ta` April 2007 li permezz tieghu l-Gvern xtara l-Ghassa tal-Qrendi ghall-prezz ta` Lm86,000 (€200,326).

<u>Fil-kontroezami</u> xehed illi huwa kien qed jimpjega tnax il-persuna. Ghalih il-fond de quo huwa ideali biex jiftah ufficcju li jakkomoda l-bzonnijiet tieghu u ta` min jahdem mieghu.

Xehed illi jirrisjedi l-Qrendi u hemm ghandu wkoll ufficcju fejn iservi darba f`gimgha. Dan l-ufficcju huwa kompost minn kamra wahda minghajr *waiting room*.

Stqarr illi Perit Denis Camilleri hejja r-rapport tieghu fuq inkariku tieghu *ex parte.* Cio` nonostante huwa halla lill-Perit Camilleri fil-liberta` shiha li jasal ghall-konkluzjonijiet tieghu.

Xehed illi sabiex akkwist l-intier tal-fond tal-fond kellu jaghmel tliet kuntratti separati mad-diversi kompropjetarji. Sahaq li kull kuntratt kien indipendenti mill-iehor. Ha riskju li jiftiehem ma` kompropjetarji u ma jasalx ma` ohrajn.

Kompla jixhed illi l-valur tal-proprjeta` kollha ndikata fit-tliet kuntratti kien ta` madwar €200,000. Jirrizulta illi l-valur attribwit ghall-proprjeta` mertu ta` din il-kawza kien ta` €14,500 fuq it-tieni kuntratt, u ta` €14,500 fuq it-tielet kuntratt. Ma jirrizultax valur specifiku ghal din l-istess propjeta` fl-ewwel kuntratt. Sahaq illi huwa ftiehem prez wiehed ghall-propjetajiet kollha.

Ikkonferma li meta akkwista kien jaf li l-fond de quo kien mikri bhala Ghassa tal-Pulizija.

Sahaq illi ma setax jeskludi li ma jiehux lura l-fond de quo ghaliex jifhem l-uzu importanti li ghandu l-fond fil-lokalita`. Jistenna pero` li jkun ikkompensat. Jekk mhux se jkun jista` juza l-fond bhala ufficcju almenu ghandu jkun ikkompensat sabiex ikun jista` jkollu f`idu propjeta` simili ghal uzu ta` ufficcju.

Spjega illi l-prezz komplessiv illi hallas ghall-proprjetajiet kollha jirrifletti l-fatt illi l-proprjeta` kienet qed tinbiegh indiviza. Il-prezz qatt ma kien dettat mill-fatt illi parti mill-proprjeta` kienet qed tintuza bhala Ghassa biss dan l-aspett certament illi kkontibwixxa biex inaqqas

xi ftit il-valur tal-proprjeta`. Madanakollu, il-valur kien jirrifletti sitwazzjoni komplessa bejn id-diversi sidien u r-riskju li hu u martu kienu qeghdin jiehdu meta akkwistaw il-proprjeta` bicca bicca.

Supretendent Anthony Agius xehed illi l-fond in kwistjoni ilu jintuza bhala Ghassa tal-Pulizija mill-1935 meta saret il-kirja. Din l-Ghassa sservi diversi bzonnijiet pubblici kif ukoll tintuza bhala Kwartieri Distrettwali ghal ghasses izghar li hemm fl-inhawi taz-Zurrieq. Din l-Ghassa tassisti lil madwar 22,000 ruh li jirrisedju fiz-Zurrieq u fil-lokalitajiet tal-madwar. Tassisti wkoll lit-turisti li jzuru l-inhawi. B`kollox din l-Ghassa ghandha madwar tletin ufficjal tal-Pulizija.

Kompla jixhed illi fl-ewwel parti tal-Ghassa hemm stazzjonati numru ta` ufficjali li jahdmu fuq bazi ta` roster u jservu lill-pubbliku kull hin ghaliex l-Ghassa tkun miftuha erbgha u ghoxrin siegha kuljum. Il-volum tax-xoghol jizdied sostanzjalment fix-xhur tas-sajf. Mill-istatistika jirrizulta li f`din l-Ghassa jidhlu madwar 2800 rapport fis-sena dwar firxa ta` reati.

Stqarr illi anke bhala ufficcju distrettwali tal-korp, l-Ghassa sservi funzjonijiet ohra fosthom : il-hrug ta` rapporti dwar reati li jkunu rappurtati f`Malta, Ghawdex u Kemmuna ; hlas ta` permessi ghal attivitajiet li jsiru fid-distrett ; hlas ta` licenzji u trasferiment ta` armi ; hlas ta` licenzji tal-kazini fid-distrett ; tinzamm l-istatistika tad-distrett ; l-ipprocessar u rendikont tal-kawzi tad-distrett li jkunu pendenti quddiem il-Qrati, li jinkludi t-tqassim tar-riferti.

Xehed illi sa ftit taz-zmien ilu parti mill-fond kienet tintuza bhala Berga Pubblika. Meta l-Berga marret band`ohra, il-fond kien zviluppat fi spazju akbar u ahjar sabiex il-pubbliku jkun moqdi ahjar. Xoghol ghadu jsir.

Qal illi fl-ewwel sular tal-fond hemm diversi ufficini minn fejn jigu kondotti investigazzjonijiet dwar reati, u jsiru laqghat varji, fosthom mal-kazini tal-baned tad-distrett l-aktar fi zmien l-ghadd ta` festi li jkun hemm celebrati fil-lokalitajiet tal-madwar. L-ufficini jservu wkoll bhala arkivju ghal licenzji li l-Pulizija tohrog jew tkun harget matul iz-zmien b`rabta ma` attivitajiet u negozju fid-distrett.

Fisser li fil-prezent tithallas ghall-post kera ta` €325.78 fis-sena. Fil-prezent il-kera mhijiex qeghda tigi accettata mis-sidien u ghalhekk qed isir depozitu taht l-awtorita` tal-qorti.

Xehed illi matul iz-zmien saru diversi xogholijiet ta` manutensjoni fl-Ghassa. Kien hemm *upgrade* tas-sistema tad-dawl u l-ilma. Kien hemm bdil tal-kmamar tal-banju. Sar xoghol ta` tibjid, tikhil, manutensjoni tas-soqfa, kura tal-faccati, ghamara u aperturi, fost l-ohrajn. Il-manutensjoni kollha saret mis-Sezzjoni tal-Manutensjoni fi hdan il-Korp.

Kompla jixhed illi fl-ahhar snin sar xoghol estensiv sabiex jigi pprezervat il-karattru tal-fond. Fil-fatt il-hitan tqaxxru miz-zebgha u kienu trattati, sar t-toghrik tal-madum, inbidlu apertura, u sar restawr tal-faccata. Inbidlet l-ghamara ta` l-Ghassa sabiex taqdi ahjar il-pubbliku. Kien hemm ukoll tiswija tal-bjut, apparti li saru airconditioners godda.

Zied jghid illi l-manutensjoni tal-fond dejjem saret skont kif pattwit fil-kuntratt ta` kirja originali. Hemm kien miftiehem li kull xoghol, barra jew gewwa, kellu jsir mill-inkwilin.

Stqarr illi s-sit attwali tal-Ghassa jaqdi tajjeb hafna lill-pubbliku ghaliex jinsab fil-qalba taz-Zurrieq.

Sahaq li s-sit attwali huwa vitali ghall-inhawi kollha.

Perit Denis Camilleri kkonferma r-rapport tieghu datat 16 ta` Mejju 2018. Ir-rikorrenti tawh l-inkariku li jhejji r-rapport.

Xehed illi l-fond de quo ghandu faccata ta` circa 10 metri u jinsab fil-pjazza taz-Zurrieq imiss mat-tarag taz-zuntier tal-Knisja. Il-wisgha tal-post jiftah ghal madwar 15.4 metri u huwa fond madwar 22.8 metri. Huwa tat-tip *townhouse* u kien mibni madwar 150 sena ilu. Il-kostruzzjoni tal-fond x`aktarx saret f`fazijiet differenti fuq medda ta` snin. Illum il-post ghandu zewg sulari u ghandu *footprint* totali ta` bini fuq iz-zewg sulari ta` circa 370 metri kwadri. Fuq wara hemm gnien li ghandu kejl ta` circa 71.75 metri kwadri. Fil-livell tal-ewwel sular hemm terazzin tal-kejl ta` circa 85.75 metri kwadri. Il-proprjeta` tinsab fi stat tajjeb ta` manutensjoni. Ghandha dawl u ventilazzjoni tajbin.

Kompla jixhed illi l-fond jinsab f`*Secondary Town Centre.* Skont is-*South Malta Local Plan* ghandu *building height limitation* ta` zewg sulari. Jinsab f`zona kummercjali gewwa *urban conservation area.* Is-sit huwa skedat bhala zona arkeologika sensittiva.

Stqarr illi l-pjan terran huwa accessibbli minn bieb li fuq kull naha tieghu hemm sala. Is-sala fuq in-naha tal-lemin tintuza bhala *help desk*. Is-sala fuq in-naha tax-xellug kienet tintuza bhala berga. Kull wahda minn dawn iz-zewg swali tgawdi minn access indipendenti minn Triq Santa Katerina. Wara l-intrata hemm tarag li jaghti ghal kamra kbira. It-tarag jaghti ghall-kantina u ghal tlett kmamar ohra li jinfdu minn wahda ghal ohra. Il-kamra l-kbira fuq in-naha ta` wara fiha gholi ta` circa 3.7 metri kwadri u taghti ghal logga li taghti ghal bitha kbira. Min-naha tax-xellug tal-loggia hemm passagg ghal zewg kmamar ohra li l-ikbar wahda minnhom tinfed ghall-berga u ohra ghall-bitha. Fil-livell terran hemm zewg kmamar ohra li ghandhom gholi ta` circa 2.76 metri kwadri u li huma accessibbli biss mill-bitha fuq in-naha ta` wara.

Kompla stqarr illi fil-livell tal-ewwel sular hemm kamra li ghandha gholi ta` circa 4.18 metri kwadri u li testendi fuq il-faccata kollha. Hemm ukoll kamra ohra accessibbli minn faccatta tat-tarag li ghandha gholi ta` circa 3.6 metri kwadri. Din il-kamra taghti ghal zewg kmamar ohra accessibbli wahda minn l-ohra. Dawn jinfdu ghat-terrazzin li jhares fuq il-bitha fuq in-naha ta` wara tal-proprjeta`. It-tarag f`dan is-sular jaghti access ghal terazzin iehor li ukoll jaghti ghal fuq il-bitha ta` wara. It-tarag jibqa` tiela sal-livell tal-bejt.

Xehed l-intern tal-pjan terren ghandu kejl ta` circa 232.23 metri kwadri. Il-gnien ghandu kejl ta` circa 71.75 metri kwadri. Fl-ewwel sular, il-proprjeta` interna ghandha kejl ta` 138.25 metri kwadri waqt illi t-terrazini ghandhom kejl ta` circa 85.5 metri kwadri.

Xehed illi l-istima tieghu hija bbazata fuq il-*Valutation Standards* ppubblikati mill-Kamra tal-Periti fl-2012. Il-valur tal-proprjeta` inhadem skont ezami komparattiv dwar il-valur ta` proprjetajiet ohra kummercjali fl-istess zona. Il-proprjeta` in kwistjoni tiswa circa €2,000 kull metru kwadru. Huwa ha in konsiderazzjoni s-sit fejn tinsab il-proprjeta`, il-valur ta` proprjetajiet ohra bhalha, il-fatt illi din il-proprjeta` tista tintuza bhala ufficcju, klinika jew centru estetiku, u l-kondizzjoni taghha. Abbazi ta` dawn il-konsiderazzjonijiet, fl-2018 ikkonkluda li l-valur tal-fond fis-suq kien jammonta ta` €823,625 waqt bil-valur lokatizju jkun ta` €63,787.50 fis-sena. Fil-kaz tal-valur lokatizju, huwa qies is-sit fejn jinsab il-post u l-valur lokatizju ta` proprjetajiet simili. Fisser illi l-ewwel sular tal-fond ghandu valur lokatizju ta` €150 kull metru kwadru, il-livell terran ghandu valur lokatizju ta` €175 kull metru kwadru, u l-ispazji miftuha jghollu l-valur lokatizju b`10% fuq il-valur lokatizju li jgib l-ewwel sular.

Ippreciza li t-tqabbil ghall-fini ta` valutazzjoni sar postijiet kummercjali peress li fiz-zona in kwistjoni hemm attivita` kummercjali apparti l-Ghassa tal-Pulizija. Jekk issir applikazzjoni ghall-hrug ta` permess ta` l-izvilupp, il-fond de quo joffri potenzjal sabiex johrog permess ta` l-zvilupp ghal skop kummercjali.

Kompla jippreciza li l-valutazzjoni giet maqsuma in bazi ghal-livelli differenti u ghat-terazzini, ghaliex fil-livell tal-ewwel sular wiehed jista` jiftah hwienet zghar, mentri it-tieni sular huma aktar addattat ghal ufficini. Spjega illi t-terrazzini ukoll ghandhom l-importanza taghhom partikolarment ghal min ipejjep.

Fil-kontroezami, xehed illi z-zewg proprjetajiet l-ohra li ha in konsiderazzjoni ghall-fini ta` komparazzjoni jinsabu fi pjazza kbira. Skont l-*estate agents*, ghandhom *market value* ta` €3,000 u €2,700 kull metru kwadru rispettivament. Billi l-fond in kwistjoni mhux qieghed direttament fil-pjazza, huwa applika *market value* ta` €2,000 kull metru kwadru. Abbazi ta` dan seta` mbaghad jinhadem il-valur lokatizju, li kien kapitalizzat bir-rata ta` 6.75% li minnha naqqas ir-rata ta` 1% biex tirrifletti l-fatt illi ufficcju gewwa z-Zurrieq biex jinkera ghandu jigi trattat diversament minn ufficcju sitwat fi *prime location*. Sahaq illi l-fond huwa *committed* bhala kummercjali peress illi diga qieghed jintuza bhala ufficini. Kif inhu l-post, u bi ftit alterazzjonijiet, facilment johorgu erba` ufficcji ta` daqs sostanzjali.

Perit Paul Buhagiar xehed illi b`inkariku tal-Avukat Generali, ghamel spezzjoni tal-fond numru 173, 175 u 177 Triq Santa Katerina, Zurrieq, fis-6 ta` April 2018, fejn ha l-qisien u ghamel rendikont tal-kundizzjoni attwali tas-sit.

Xehed illi l-fond jinsab biswit iz-zuntier tal-Knisja Parrokkjali ta` Santa Katerina fiz-Zurrieq u ghalhekk qieghed proprju fic-centru tar-rahal. Il-fond huwa kbir b`faccata imponenti. Fih hemm l-Ghassa tal-Pulizija. Il-post ghandu mal-150 sena u jinsab fi stat tajjeb billi matul is-snin saru diversi xogholijiet ta` manutensjoni u benefikati.

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

Stqarr illi ghall-iskop ta` valutazzjoni, il-valur u l-kera kummercjali ta` ufficcju trid tigi kalkolata b`effett mill-2011 `il quddiem.

Kompla stqarr illi l-post huwa maqsum fuq zewg sulari – pjan terran u l-ewwel sular. Il-livell tal-pjan terran jinsab fil-livell tat-triq u fuq in-naha ta` wara hemm bitha u gnien. Fl-ewwel sular hemm terrazzin kbir. Il-post ghandu arja ta` 300 metri kwadri. L-arja msaqqfa fil-pjan terran ghandha kejl ta` 225 metri kwadru. L-ewwel sular huwa tal-kejl ta` 125 metri kwadri waqt illi t-terrazzin f`dan is-sular ghandu kejl ta` 80 metri kwadru. Il-gnien u l-bitha fil-pjan terran ghandhom kejl ta` 75 metri kwadri.

Qal illi l-valur korrenti kull metru kwadru tal-arja msaqqfa huwa ta` €1800 waqt illi t-terrazzini u l-btiehi jigu valutati madwar 20% tal-valur tal-arja msaqqfa. Ghalhekk il-valur attwali fis-suq tal-post fl-intier tieghu liberu u frank huwa ta` €690,000. Kwantu ghall-valur lokatizju, f`kazi simili fejn l-ghamara tkun tappartjeni lill-inkwilin, u l-istess inkwilin ikun ghamel diversi benefikati fil-post, il-valur lokatizju jkun ta` €39,700 fis-sena jew €3,308.33 fix-xahar.

Kompla jghid illi l-valur lokatizju ta` fond kummercjali jista` wkoll jigi kkalkolat bi tqabbil bejn kera kummercjali ta` ufficcju fiz-Zurrieq daqs 25% ta` dak li wiehed jista` jgib fi *prime location*. Ghalhekk waqt li l-valur tal-ahhar huwa ta` €500 kull metru kwadru, il-valur ta` fond fiz-Zurrieq huwa ta` €125 kull metru kwadru. Dan jirrizulta f`kera annwali fl-ammont ta` €42,200.

Kirja kummercjali kalkolata biz-zewg metodi ta` valutazzjoni taghti valur lokatizzju simili hafna.

<u>Fil-kontroezami</u> xehed illi m`ghamilx *survey* tal-fond. Il-kejl hadu mis-*site plans* u minn qisien li ha huwa stess fuq il-post stess.

Stqarr illi ma tax valur lill-arja tal-bejt ghar-raguni illi dan il-fond jinsab fil-*village core* biswit il-Knisja u l-arja tal-bejt difficli illi tkun tista` tigi zviluppata. Madanakollu tista` tintuza kif inhi bhala bejt.

Qal illi l-valur lokatizju huwa bbazat fuq l-uzu tal-fond bhala Ghassa fejn hemm diversi ufficini u ghalhekk gew applikati rati kummercjali. F`dan il-kaz ir-rata hija dik ta` 6.75% tal-valur lokatizju biss naqqas din ir-rata b`1% biex tirrifletti l-ghamara u l-benefikati li saru mill-inkwilini. Dan it-tnaqqis ghalhekk jirrifletti l-valur lokatizju tal-fond jekk dan jinkera minghajr ghamara. Il-valutazzjoni tieghu ma tqisx il-kantina ghaliex fil-mument meta acceda ghall-fond ma kienx jaf illi hemm kantina. Zied jghid illi dan il-fatt ma kienx ser jaghmel differenza kbira fuq l-istima tal-valur tal-fond.

Xehed illi d-differenza bejn il-kejl li ndika hu u dak indikat mill-Perit Camilleri ghaliex hu hareg il-kejl tieghu in bazi ta` pjanta mkejla. Spjega illi wara li wasal ghall-valur ta` €1,800 kull metru kwadru, ikkonsulta ma` xi *estate agents* fejn kien ikkonferma li r-rata kienet wahda ragonevoli.

IV. L-ewwel (1) eccezzjoni tal-intimati Avukat Generali u Kummissarju tal-Pulizija

Kienet rikjesta l-prova tat-titolu tar-rikorrenti sabiex jippromwovu l-azzjoni.

Ghal din l-eccezzjoni ma sarx accenn fin-nota ta` sottomissjonijiet ta` l-intimati li taw l-eccezzjoni.

Bhala fatt pero` l-eccezzjoni ma kenitx rinunzjata.

Il-gurisprudenza tal-qrati taghna hija fis-sens illi f`kawza ta` ndole kostituzzjonali ta` din ix-xorta mhuwiex indispensabbli illi r-rikorrent jipprova t-titolu tieghu ghall-propjeta` *de qua* ghaliex kawzi bhal din tal-lum mhumiex kawzi ta` rivendika fejn il-prova tat-titolu hija *sine qua non* sabiex tirnexxi l-azzjoni.

Fis-sentenza li tat fis-7 ta` Frar 2017 fil-kawza **Robert Galea vs Avukat Generali et** din il-Qorti diversament presjeduta qalet hekk :-

> *"Illi biex wiehed ikun f`qaghda li juri li garrab ksur tal-jedd fundamentali tieghu taht l-artikolu 37 tal-Kostituzzjoni m`ghandux ghalfejn jipprova titolu assolut u lanqas wiehed originali bhallikieku l-azzjoni dwar ksur ta` jedd fundamentali kienet wahda ta` rivendika (Kost. 27.3.2015 fil-kawza fl-ismijiet **Ian Peter Ellis et vs Avukat Generali et**). Huwa bizzejjed, ghall-finijiet ta` dak l-artikolu, li wiehed juri li ghandu jedd fil-haga li tkun li bih jista` jieqaf ghall-pretensjonijiet ta` haddiehor.*
>
> *Imbaghad, ghall-finijiet tal-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni, huwa bizzejjed li l-persuna turi li kellha l-pussess tal-haga li tkun."*

Dan premess, il-Qorti tosserva illi fil-fatt ir-rikorrenti ghamlu l-prova tat-titolu.

Tant huwa hekk li jirrizulta ppruvat illi :-

Permezz ta` kuntratt tat-18 ta` Lulju 2011 fl-atti tan-Nutar Dottor Joseph Lia, ir-rikorrenti xtraw u akkwistaw mill-poteri ta` Emanuela sive Emma Schembri, terz indiviz tal-fondi bin-numri 173, 175 u 177, ga bin-numri ufficjali 106, 107 u 108, fi Triq Santa Katerina fiz-Zurrieq, liema fond huwa mikri lill-Gvern ta` Malta bhala Ghassa tal-Pulizija (Dok IC2).

Permezz ta` kuntratt tal-25 ta` Gunju 2015 fl-atti tan-Nutar Dottor Jean Carl Debono, ir-rikorrenti xtraw u akkwistaw minghand Anthony Camilleri, Josephine Spicuglia, Reginald Vella, Doris Zerafa, Vincent Vella u Rose Mary Peart, is-sehem ta` terz indiviz tal-fond mertu ta` din il-kawza (Dok IC3).

Permezz ta` kuntratt tas-6 ta` Awwissu 2016 fl-atti tan-Nutar Dottor Jean Carl Debono, ir-rikorrenti xtraw u akkwistaw minghand Joseph Bezzina, is-sehem ta` terz indiviz tal-fond de quo (Dok IC4).

Dawn il-provi ma gewx ikkontestati.

Il-Qorti ssib li r-rikorrenti ghandhom titolu tajjeb ghall-proprjeta`li jaghtihom il-jedd li jippretendu li jgawdu l-jeddijiet taghhom fuq il-proprjeta` li akkwistaw, u allura li jitolbu l-harsien tal-jeddijiet taghhom fil-kaz ta` vjolazzjoni.

Ghalhekk l-ewwel (1) eccezzjoni tal-Avukat Generali u l-Kummissarju tal-Pulizija qeghda tkun <u>michuda</u>.

V. <u>L-ewwel (1) u t-tieni (2) eccezzjonijiet tal-intimata Awtorita` tal-Artijiet</u>

Qed ikun eccepit mill-Awtorita` illi :-

i) mhijiex legittimu kontradittur sabiex taghti xi rimedju kostituzzjonali ; u

ii) peress illi l-fond in kwistjoni huwa propjeta` privata tar-rikorrenti, mhijiex legittimu kontradittur sabiex twiegeb ghal sitwazzjonijiet li jinholqu bl-operat tal-ligi vigenti.

Il-Qorti sejra tittratta dawn iz-zewg eccezzjonijiet flimkien.

Ir-rikorrenti ma ghamlux osservazzjonijiet dwar dawn l-eccezzjonijiet. Lanqas ma sar accenn ghalihom mill-Awtorita` ntimata fin-nota ta` sottomissjonijiet taghha jew fis-sottomissjonijiet tal-ahhar bil-fomm.

Dan premess, huwa accettat fil-gurisprudenza taghna illi f`kawzi ta` indole kostituzzjonali u/jew konvenzjonali huwa l-Istat illi ghandu jwiegeb ghall-vjolazzjoni ta` drittijiet fondamentali billi huwa l-Istat illi ghandu l-obbligu illi jassigura illi l-ligijiet ma joholqux zbilanc ngust bejn id-drittijiet tac-cittadin privat u dawk tal-Istat.

Fis-sentenza li tat fis-7 ta` Dicembru 1990 fil-kawza fl-ismijiet **Joseph Abela v. Onor. Prim` Ministru et**, il-Qorti Kostituzzjonali qalet hekk :-

> *"F`kawzi ta` natura kostituzzjonali bbazati fuq id-drittijiet fundamentali, il-legittimi kontradittur ta` dawk l-azzjonijiet jinqasmu fi tliet kategoriji. L-ewwel kategorija tikkomprendi dak li huwa allegat li huma, direttament jew indirittament, responsabbli ghall-kummissjoni jew omissjoni ta` xi fatt li jikser xi dritt fundamentali protett mil-ligi. Fit-tieni kategorija huma dawk li ghall-omissjonijiet jew kummissjonijiet tal-persuni tal-ewwel kategorija jistghu jkunu responsabbli biex jaghtu jew jiffornixxu r-rimedji li s-sentenza, li takkolji llament tal-ksur ta` dritt fundamentali, tissanzjona. It-tielet kategorija mbaghad hemm dawk il-partijiet kollha li jkunu in kawza meta l-kwistjoni kostituzzjonali tinqala` fuq jew waqt xi procedura gudizzjarja.*
>
> *Dawn it-tliet kategoriji ta` persuni huma kollha legittimi kontradittur fi proceduri ta` natura kostituzzjonali, li f`dan ir-rigward ukoll hija specjali, ghaliex biex zgumbrament ikunu kompiti u effikaci jirrikjedu l-prezenza ta` persuni li normalment fi proceduri ordinarji jithallew barra, ghaliex minghajrhom il-gudizzju xorta wahda huwa integru. F`azzjoni ta` natura kostituzzjonali wkoll, il-gudizzju jkunu*

integru, jekk il-persuni tat-tieni kategorija jithallew barra mill-kawza, ghalkemm jista` jkun li l-azzjoni tirrizulta ineffikaci."

Tajjeb jinghad illi fir-rikors promotur ir-rikorrenti ma jurux kif precizament tinkwadra l-Awtorita` intimata fl-azzjoni. Kemm ighidu fin-nota ta` sottomissjonijiet taghhom illi l-Awtorita` hija awtorita` pubblika bi rwol attribwit lilha mil-ligi.

Proceduri tax-xorta tal-lum jinvolvu tlett aspetti : i) ir-responsabbilita` ghall-vjolazzjoni, ii) l-persuna li trid twiegeb, iii) il-persuna li tigi milquta b`dikjarazzjoni illi disposizzjoni tal-ligi ma tistax tinghata effett ladarba l-applikazzjoni taghha tkun leziva ghad-drittijiet fundamentali ta` l-persuna. Dawn l-aspetti mhux necessarjament illi jkunu konnessi fis-sens illi filwaqt li vjolazzjoni tkun giet imwettqa minn persuna, ir-rimedju jista` jolqot persuna ohra.

Fil-kawza fl-ismijiet **Raymond Cassar Torreggiani et vs AG et**, deciza mill-Qorti Kostituzzjonali fit-22 ta` Frar 2013, il-Qorti ghamlet din l-osservazzjoni :-

*" … **biex gudizzju jkun integru jehtieg li, ghall-ahjar gudizzju tal-Qorti, jippartecipaw fih dawk kollha li huma nteressati fil-kawza**. B`hekk tigi assigurata kemm jista` jkun l-effikacita` tal-gudizzju inkwantu dan jorbot biss lil dawk li jkunu partecipi fih, kif ukoll jigi rispettat il-principju tal-ekonomija tal-gudizzju sabiex ma jkunx hemm bzonn ta` ripetizzjoni ta` proceduri kontra l-persuni kollha interessati fid-diversi kawzi billi dawn ma jkunux hadu parti f`gudizzju wiehed. Il-gudizzju jibqa` integru mill-mument li jiehdu parti fih dawk li jkollhom id-dritt, u dawk li kontra taghhom dak l-istess dritt jikkompeti". (enfasi mizjuda)*

…

Mill-premess ghandu jirrizulta car li l-intimati konjugi Tabone, bhala inkwilini tal-fond de quo, u tenut kont tal-fatt li proprju l-inkwilinat taghhom jifforma l-mertu tal-kawza odjerna, ghandhom interess guridiku u ghalhekk ikunu partecipi fil-kawza li jista` jkollha effetti legali anke fuqhom."

Il-Qorti taghmel referenza wkoll ghal dak illi nghad fis-sentenza li tat il-Qorti Kostituzzjonali fis-6 ta` Frar 2015 fil-kawza fl-ismijiet **Sam Bradshaw et vs l-Avukat Generali et** :-

"20. Din il-Qorti tosserva li, ghalkemm taqbel mat-tezi li, ladarba l-kazin agixxa skont il-ligi, allura m`ghandux legalment jirrispondi ghall-inkostituzzjonalita` tal-ligi applikata minnu jew jehel spejjez tal-kawza, izda mill-banda l-ohra, il-proceduri odjerni necessarjament jaffettwaw lill-kazin stante li dan hu parti fir-rapport guridiku li huwa regolat b`ligi li l-kostituzzjonalita` taghha qed tigi attakkata. Ghaldaqstant il-prezenza tieghu f`dawn il-proceduri hija necessarja ghall-finijiet tal-integreta` tal-gudizzju. Il-kazin bhala inkwilin tal-fond ghandu interess guridiku f`din il-kawza peress li l-meritu jikkoncerna lilu direttament. Ghal din ir-raguni huwa ghandu jkun partecipi fil-gudizzju u ghalhekk huma legittimi kuntraditturi. Ghaldaqstant lewwel Qorti kienet korretta meta laqghet it-talba ghas-sejha fil-kawza tal-kazin intimat."

Ir-rikorrenti qeghdin jitolbu kumpens ghall-vjolazzjoni kif ukoll dikjarazzjoni li l-ligi vigenti ma tibqax tinghata effett. Ghalhekk peress illi l-effett ta` dak li qed jintalab mir-rikorrenti jista` jolqot lill-Awtorita` ntimata direttament, hija ghandha l-interess li trid il-ligi sabiex tibqa` fil-kawza halli thares il-pozizzjoni taghha.

Fil-kaz tal-Awtorita` ntimata, il-lezjoni lamentata mir-rikorrenti mhijiex diretta kontra taghha izda kienet imharrka billi ghandha interess fl-esitu tal-procediment. Fil-fatt l-Awtorita` ntimata hija

responsabbli mill-proprjeta` tal-Gvern jew li tkun hija mikrija lill-Gvern.

L-Art 3 tal-Kap 573 ighid :-

"*B`zieda mal-poteri, obbligi u dmirijiet moghtija lilha bl-Att dwar l-Awtorità tal-Artijiet, l-Awtorità tal-Artijiet hija moghnija bir-responsabbiltà li tamministra l-art kollha li hija proprjetà tal-Gvern u kif ukoll li tamministra kull art ohra li ghalkemm mhux proprjetà tal-Gvern tinsab fil-pussess jew hija mizmuma jew amministrata mill-Gvern*."

L-ewwel (1) u t-tieni (2) eccezzjonijiet tal-intimata Awtorita` tad-Djar qeghdin jigu respinti.

VI. Kien allegat li l-Konvenzjoni ma tghoddx *ratione temporis*

Fin-nota ta` osservazzjonijiet taghhom, l-intimati Avukat Generali u l-Kummissarju tal-Pulizija jaghmlu l-argument illi din il-Qorti hija prekluza milli tqis it-talbiet tar-rikorrenti abbazi tad-disposizzjonijiet tal-Konvenzjoni.

In sostenn tal-argument jaghmlu referenza ghall-**Art 7 tal-Kap 319** li jghid :-

"*Ebda ksur tal-Artikoli 2 sa 18 (inkluzi) tal-Konvenzjoni jew tal-Artikoli 1 sa 3 (inkluzi) tal-Ewwel Protokoll li jsir qabel it-30 ta` April 1987 jew tal-Artikoli 1 sa 4 (inkluzi) tar-Raba` Protokoll, l-Artikoli 1 u 2 tas-Sitt Protokoll jew tal-Artikoli 1 sa 5 (inkluzi) tas-Seba` Protokoll li jsir qabel l-1 ta` April 2002, ma ghandu jaghti lok ghal xi azzjoni taht l-artikolu 4*."

Dan il-punt ma kienx trattat mir-rikorrenti waqt l-ahhar battuti tal-procediment li kienu skambjati meta saru sottomissjonijiet tal-ahhar bil-fomm qabel il-kawza thalliet ghas-sentenza.

Saret referenza ghall-Art 7 tal-Kap 319 ghaliex qed jinghad illi ladarba l-allegata vjolazzjoni avverat ruhha qabel it-30 ta` April 1987, allura din il-Qorti hija prekluza milli tqis jekk kienx hemm ksur tad-disposizzjonijiet tal-Konvenzjoni.

Fil-kaz in dizamina, jidher bic-car illi l-vjolazzjoni lamentata mir-rikorrenti tirrigwarda l-applikazzjoni ta` l-Ordinanza li Tirregola t-Tigdid tal-Kera (Kap 69 tal-Ligijiet ta` Malta) ghall-propjeta` in kwistjoni. Il-ligi in kwistjoni dahlet fis-sehh b`effett mid-19 ta` Gunju 1931.

Ir-rikorrenti jsostnu li jinsabu maqbuda f`sitwazzjoni fejn minhabba l-Art 3 tal-Kap 69 huma kostretti jibqghu f`kirja, minghajr prospett illi l-kera li jircievu tizdied b`mod li tkun tirrifletti l-valur lokatizju tal-fond fis-suq.

Jilmentaw ukoll mill-fatt illi l-emendi ghall-Kap 16 li kienu ntrodotti bl-Att X tal-2009 jiddiskriminaw kontra taghhom ghaliex meta kien liberalizzat is-suq tal-kera, dan kien effettiv ghal kirja li bdew wara l-1 ta` Gunju 1995, izda mhux ukoll ghall-kirjiet illi kienu vigenti qabel.

Fil-kaz tal-lum, irrizulta li l-kirja tal-fond bdiet fl-1935.

In segwitu sar kuntratt fl-1946 fejn il-kirja saret in kwantu ghal erba` snin di fermo u in kwantu ghal erba` snin di rispetto.

Il-kirja ghadha fis-sehh sal-lum *ope legis* bis-sahha tad-disposizzjonijiet tal-Kap 69.

Wara l-kuntratt tal-1946, il-pattijiet u kondizzjonijiet tal-kirja baqghu nvarjati.

Dan kollu jfisser li kien hemm kontinwita` fl-allegata vjolazzjoni.

Fis-sentenza li tat din il-Qorti diversament presjeduta fis-26 ta` Novembru 2009 fil-kawza fl-ismijiet **Philip Grech pro et noe vs Direttur tal-Akkomodazzjoni Socjali et** (kif riformata mill-Qorti Kostituzzjonali fis-7 ta` Dicembru 2010) inghad hekk :-

> *"Illi preliminarjament, l-intimat iwiegeb illi peress illi t-talbiet rikorrenti huma bbazati fuq ksur tal-Konvenzjoni Ewropeja, li saret parti mill-ligi lokali wara biss li sehh il-ksur ilmentat mir-rikorrenti, ir-rikorrenti ma ghandhomx rimedju taht l-Att dwar il-Konvenzjoni Ewropeja. L-artikolu 7 tal-Att Dwar il-Konvenzjoni Ewropeja (Kap. 319 tal-Ligijiet ta` Malta) fil-fatt jiddisponi, inter alia, illi ebda ksur tal-artikolu 1 tal-Ewwel Protokoll li jsir qabel it-30 ta` April 1987 ma ghandu jaghti lok ghal xi azzjoni taht l-istess att.*
>
> *"Illi jrid jinghad pero` illi t-tfixkil fit-tgawdija tal-possediment tar-rikorrenti huwa stat ta` fatt kontinwu u li ghadu jippersisti sal-lum. Ma jistax jinghad illi r-rikorrenti ghandhom it-tgawdija pacifika tal-fond in kwistjoni u dan peress illi r-rikorrenti llum jinsabu fi ftehim ma` terz inkwilin konsegwenza u naxxenti mill-ordni ta` rekwizizzjoni mahruga mill-Gvern u bl-allokazzjoni tal-fond de quo mill-intimat lill-intervenut fil-kawza, u allura ir-relazzjoni li hemm bejn l-intervenut fil-kawza u r-rikorrenti li zviluppat sallum hija effett tal-istess ordni ta` rekwizizzjoni. Dan l-istat ta` fatt baqa` jippersisti sakemm l-ordni tar-rekwizizzjoni tibqa` fis-sehh u hekk ghadha il-posizzjoni sallum u ghalhekk*

*certament l-effett tal-istess ordni hija ta` natura kontinwa ("**Nazzareno Galea et vs Giuseppe Briffa et**" (A.C. – 16 ta` April 2004). Il-kaz kien ikun differenti f`kaz li att amministrattiv kien jittratta esproprjazzjoni li giet iffinalizzata (Ara f`dan is-sens, **"Louis Manduca vs Il-Prim Ministru et"** (Q.K. - 13 ta` Jannar 1999). F`dan is-sens ukoll, irid jinghad illi l-Onorabbli Qorti Kostituzzjonali qieset esproprjazzjoni illi qatt ma giet iffinalizzata fis-sens illi qatt ma sar l-att ta` akkwist bhala ammontanti ghall-ksur kontinwu tal-possediment pacifiku ("**Pawlu Cachia vs Avukat Generali et**" (Q.K. – 28 ta` Dicembru 2001); "**Andrew Briffa vs Kummissarju tal-Art et**" – P.A. (RCP) – 27 ta` Novembru 2008. F`dan is-sens huwa ta` rilevanza, l-kaz ta` "**Loizidou vs. Turkey**" (ECHR - 15318/89 - 18 ta` Dicembru 1996) fejn il-Qorti Ewropeja qalet illi:-*

"The Court has endorsed the notion of a continuing violation of the Convention and its effects as to temporal limitation of the competence of the Convention organs. Accordingly the present case concerns alleged violations of a continuing nature if the applicant, for the purposes of Art. 1 of Protocol No. 1 and Art. 8 of the Convention can still be regarded as the legal owner of the land".

"Illi f`dan s-sens huma is-sentenzi fl-ismijiet "**Agrotexim Hallas vs Greece**" (19 ta` Frar 1992 u 10 ta` Marzu 1994) u "**Papamichaloupoulis et vs Greece**" (24 ta` Gunju 1993).

`Illi mhux hekk biss izda iktar relevanti ghall-kaz in ezami huwa dak li gie ritenut fuq dan il-punt fil-kawza fl-ismijiet **"Domenic Mintoff et vs Direttur tal-Akkomodazzjoni Socjali et"** (P.A. (GV) – 28 ta` Marzu 2008) fejn inghad li fejn allegazzjoni li l-kera wara li tkun saret rekwizizzjoni ma tkunx tirrifletti l-valur fis-suq u b`hekk ir-rikorrenti qed igorr piz sproporzjonat bhala effett ta` tali tehid f`dan il-kaz l-artikolu 7 ma japplikax billi l-effetti tar-rekwizizzjoni jipperduraw oltre d-data li fiha harget ir-rekwizizzjoni. Dan proprju jikkombacja mal-kaz odjern, u dan iktar u iktar meta

f`din il-kawza ma jidher qatt li tali ordni ta` rekwizizzjoni ghall-fond de quo qatt giet irtirata, u jidher li ghalhekk li ghadha sallum vigenti; dan apparti li l-istess rikors odjern jilmenta dwar in-nuqqas ta` kumpens gust li gie moghti lir-rikorrenti u lill avendi causa tieghu konsegwenti ghall-istess ordni ta` rekwizizzjoni. B`hekk din il-Qorti ma tikkondividiex it-tezi tal-intimat li r-rikorrenti m`ghandhomx azzjoni taht Kap. 319 ghal din ir-raguni u ghalhekk tichad din l-ewwel eccezzjoni tal-intimat ibbazata fuq l-eccezzjoni rationae temporis b`dan li din l-eccezzjoni qed tigi michuda.`

Fis-sentenza li tat din il-Qorti diversament presjeduta fil-11 ta` Frar 2015 fl-ismijiet **Raymond Cassar Torreggiani et vs Avukat Generali et** inghad hekk:

"*Illi l-Qorti tirrileva li l-azzjoni tar-rikorrenti hija msejsa kemm fuq id-dispozizzjonijiet tal-Kostituzzjoni u kif ukoll fuq dawk tal-Konvenzjoni. Is-silta li ssemmiet qabel tirreferi biss ghad-dispozizzjonijiet relattivi tal-Konvenzjoni. Izda hawnhekk ukoll, in-natura tal-ksur li dwaru jitqajjem l-ilment tiehu siwi ewlieni biex wiehed iqis jekk huwiex il-kaz jew le li l-ksur ikun sar qabel dawk id-dati msemmija. Dan qieghed jinghad ghaliex huwa accettat li fejn il-ksur jibqa` jsehh jew fejn il-qaghda li ggib maghha l-ksur tal-jedd fundamentali ma tkunx wahda istantaneja (Kost. 10.10.2003 fil-kawza fl-ismijiet **Francis Bezzina Wettinger et vs Kummissarju tal-Artijiet**; u Kost. 28.2.2005 fil-kawza fl-ismijiet **Attilio Ghigo vs Direttur tal-Akkommodazzjoni Socjali et** fost ohrajn), allura minkejja li l-grajja setghet sehhet qabel id-dati msemmija, l-Qorti xorta wahda tista` tqis u tistharreg il-ksur jekk il-qaghda tibqa` ttul wara (ara b`ezempju, Kost. 28.12.2001 fil-kawza fl-ismijiet **Cachia vs Avukat Generali et** (Kollez. Vol. LXXXV.i.615). Ta` min jghid hawnhekk li din il-kwestjoni tqajmet ukoll quddiem il-Qorti ta` Strasbourg f`kazijiet imressqin kontra Malta u dik il-Qorti sabet li, ladarba d-dikjarazzjoni maghmula mill-Gvern Malti f`April tal-1987 kienet b`effett retrospettiv, allura l-istharrig li dik il-*

*Qorti tista` taghmel imur lura ghall-1967, jigifieri meta l-Konvenzjoni kienet ratifikata mill-Parlament Malti (ara b`ezempju Q.E.D.B 5.4.2011 fil-kawza fl-ismijiet **Bezzina Wettinger et vs Malta** (Applik nru. 15091/06) §54 u Rikors Kostituzzjonali Nru: 7/2017/LSO. 59 15 ta` Frar 2018 Q.E.D.B. 5.4.2011 fil-kawa fl-ismijiet **Gera de Petri Testaferrata Bonici Ghaxaq vs Malta** (Applik. Nru. 26771/07) §38.)*

Illi l-Qorti ma ghandha l`ebda dubju li ghalkemm il-kirja mifthema bejn l-intimat John Tabone u Cassar Estates Limited intemmet fl-1983, u bis-sahha tal-bidliet fil-ligi bl-Att XXIII tal-1979 inholqot il-kirja ex lege mal-gheluq ta` dik il-kirja konvenzjonali, l-effetti li minnhom jilmintaw ir-rikorrenti ghandhom jinhassu sallum. Minbarra f`dan, minhabba li l-intimati Tabone ghandhom jibbenefikaw mit-tibdiliet li saru fil-Ligi u baqghu izommu l-appartament, jista` jinghad li jekk hemm qaghda li gabet maghha xi ksur tal-jeddijiet fundamentali tar-rikorrenti din il-qaghda qiegha tittenna kuljum. Minhabba f`hekk, il-Qorti ma tistax ma tqisx l-ilment fid-dawl ta` dan kollu, minkejja li l-bidu tieghu jista` jmur lura qabel id-data msemmija millintimati."

Sar appell.

Il-Qorti Kostituzzjonali, fis-sentenza illi tat fid-29 ta` April 2016, waqt li kkonfermat dak fuq premess, qalet hekk :

"27. A skans ta` ripetizzjoni, din il-Qorti taghmel referenza ghall-konsiderazzjonijiet tal-ewwel Qorti in meritu inkluz ir-referenzi taghha ghall-gurisprudenza patria u dik Ewropea, u tabbraccjahom bhala taghha. Huwa palezi illi l-allegata vjolazzjoni tal-jeddijiet tar-rikorrenti ghadha ghaddejja in kwantu l-effetti kollha emananti mill-kirja ikkreata ex lege bl-Att XXIII tal-1979 ghadhom ezistenti sal-gurnata tal-lum, u

ghalhekk l-aggravju mressaq mill-konjugi Tabone ma ghandu ebda fondament fid-dritt."

Din il-Qorti tikkondividi dawn l-insenjamenti u taghmilhom taghha.

Fil-kaz ta` l-lum l-effetti tal-kirja li tiggedded *ex lege* ghadhom hemm.

Ghalkemm il-kirja bdiet qabel it-30 ta` April 1987, l-allegata vjolazzjoni tal-Konvenzjoni baqghet kostanti sal-lum.

L-ilment tal-intimati Avukat Generali u Kummissarju tal-Pulizija mhux mistoqq.

VII. L-Art 47(9) tal-Kostituzzjoni

Fin-nota ta` sottomissjonijiet taghhom, l-Avukat Generali u l-Kummissarju tal-Pulizija, jissottomettu illi a tenur tal-Art 47(9) tal-Kostituzzjoni, l-Art 37 tal-Kostituzzjoni m`ghandux ikollu effett fuq l-applikazzjoni tal-Kap 69.

L-Art 47(9) tal-Kostituzzjoni jipprovdi :

"*Ebda haga fl-artikolu 37 ta` din il-Kostituzzjoni ma ghandha tolqot il-hdim ta` xi ligi fis-sehh minnufih qabel it-3 ta` Marzu, 1962 jew xi ligi maghmula fi jew wara dik id-data li temenda jew tissostitwixxi xi ligi fis-sehh minnufih qabel dik id-data (jew xi ligi li, minn zmien ghal zmien, tkun emendata jew sostitwita bil-mod deskritt f`dan is-subartikolu) u li ma –*

(a) izzidx max-xorta ta` proprjetà li jista` jittiehed pussess taghha jew id-drittijiet fuq u interess fi proprjetà li jistghu jigu miksuba;

(b) izzidx mal-finijiet li ghalihom jew cirkostanzi li fihom dik il-proprjetà jista` jittiehed pussess taghha jew tigi miksuba;

(c) taghmilx il-kondizzjonijiet li jirregolaw id-dritt ghal kumpens jew l-ammont tieghu anqas favorevoli lil xi persuna li jkollha jew li tkun interessata fil-proprjetà; jew

(d) tipprivax xi persuna minn xi dritt bhal dak li huwamsemmi fil-paragrafu (b) jew paragrafu (c) tal-artikolu 37(1) ta` din il-Kostituzzjoni."

Ir-rikorrenti baqghu siekta dwar dan il-punt anke meta saru s-sottomissjonijiet tal-ahhar bil-fomm, ghad illi kienu notifikati bin-nota ta` osservazzjonijiet tal-intimati Avukat Generali u Kummissarju tal-Pulizija. Dawn ghamlu l-argument li l-ilment tar-rikorrenti hekk kif imsawwar fuq l-Art 37 tal-Kostituzzjoni ma jistax ikun milqugh billi dak l-artikolu ma jistax jolqot l-applikazzjoni ta` ligi li kienet fis-sehh minnufih qabel it-3 ta` Marzu 1962 jew xi ligi li saret f`dik id-data jew wara li temenda jew tissostitwixxi xi ligi fis-sehh minnufih qabel dik id-data. Ikompli jinghad illi l-kirja favur il-Kummissarju tal-Pulizija ghandha t-tutela tal-Kap 69 li dahal fis-sehh qabel l-1962 u allura ghandu jsib il-protezzjoni tal-Art 47(9) tal-Kostituzzjoni.

Il-Qorti rat il-gurisprudenza dwar l-Art 37 u l-Art 47(9) tal-Kostituzzjoni fil-kuntest tal-Kap 88 tal-Ligijiet ta` Malta.

Fil-kawza fl-ismijiet **Lawrence Fenech Limited vs Kummissarju tal-Artijiet et** li kienet deciza mill-Qorti Kostituzzjonali fid-9 ta` Novembru 2012 kien tressaq aggravju fis-sens li l-Ewwel Qorti ma setghetx issib ksur tal-Art. 37 tal-Kostituzzjoni minhabba l-Art 47(9). L-aggravju kien milqugh propju ghaliex il-promulgazzjoni tal-Kap 88 kien jipprecedi t-3 ta` Marzu 1962.

Fis-sentenza ta` din il-Qorti ta` l-4 ta` Ottubru 2016 fil-kawza fl-ismijiet **Melina Micallef vs Il-Kummissarju tal-Artijiet** (hekk kif riformata mill-Qorti Kostituzzjonali fl-24 ta` Novembru 2017) kien ribadit illi billi *d-disposizzjonijiet tal-Kap 88 kienu saved bl-Art 47(9) tal-Kostituzzjoni ma tistax tigi nvokata vjolazzjoni tal-Art 37 tal-Kostituzzjoni.*

Similment fis-sentenza ta` din il-Qorti kif presjeduta tat-30 ta` Ottubru 2014 fil-kawza fl-ismijiet **Francis Bezzina Wettinger et vs Kummissarju tal-Artijiet et** (konfermata mill-Qorti Kostituzzjonali fl-24 ta` April 2015) inghad hekk :-

> *"L-intimati jikkontendu li l-Art 37 tal-Kostituzzjoni mhuwiex applikabbli ghall-kaz tal-lum in vista tal-Art 47(9) tal-Kostituzzjoni.*
>
> *Il-Qorti terga` taghmel riferenza ghas-sentenza tal-Qorti Kostituzzjonali fil-kawza "**Bezzina Wettinger et vs Il-Prim` Ministru et**" (op. cit.)*
>
> *Fis-sentenza taghha, il-Qorti Kostituzzjonali kkonfermat dak li qalet l-Ewwel Qorti :-*
>
> *Illi ghalhekk din il-Qorti taqbel mal-konkluzjoni ta` l-Ewwel Qorti illi l-Kapitolu 88 – bhala ligi li kienet fis-sehh qabel it-3 ta` Marzu 1962 – huwa salvagwardjat bl-istess Kostituzzjoni ai termini ta` l-Artikolu 47(9), u konsegwentement dan l-aggravju qed jigi respint.*
>
> *Illi dwar dan il-punt, din il-Qorti taghmel riferenza wkoll ghas-sentenza ta` din il-Qorti (PA/RCP) tat-22 ta` Marzu 2002 fil-kawza "**Francis Bezzina Wettinger et vs Kummissarju tal-Artijiet**" fejn inghad hekk :-*

Illi kif inghad f`**Pawlu Cachia vs Avukat Generali et** (9/4/99 Rik. Nru. 586/97/VDG), il-hdim ta` xi ligi fis-sehh minnufih qabel id-data msemmija ma tistax tkun anti-kostituzzjonali fis-sens li tippekka kontra l-artikolu 37. L-istess jinghad ghal xi amending act jew substituting act maghmula f`dik id-data jew wara dik id-data purche` li tali att li hekk jemenda jew jissostitwixxi dik il-ligi ma jkunx jaghmel xi wahda mill-affarijiet imsemmi fil-paragrafi (a) sa (d) tal-imsemmi artikolu 47(9).

Illi kif kompliet tghid dik il-Qorti, ma hemmx dubbju li l-Kap. 88 kien fis-sehh qabel it-3 ta` Marzu 1962. Ma hemmx dubju wkoll li l-imsemmija ligi giet emendata wara dik id- data, izda r-rikorrent f`ebda hin ma ndika xi emenda li b`xi mod taqa` taht xi wiehed mill-paragrafi (a) sa (d) tal-artikolu 47(9). Illi hafna mill-emendi maghmula wara t-3 ta` Marzu 1962 kienu ta` natura formali bhas-sostituzzjoni tal-Gvernatur Generali bil-President ta` Malta. Illi din il-Qorti b`hekk ezaminat jekk fir-rigward tad-dikjarazzjonijiet ta` esproprjazzjoni meritu ta` din il-kawza u fir-rigward tal-proceduri ghall-kumpens gewx imhaddma xi amending provisions li jaqghu taht l-imsemmija paragrafi (a) sa (d). Din il-Qorti ma tarax li dan huwa l-kaz, fis-sens li d-dispozizzjonijiet imhaddma fir-rigward tal-ordnijiet ta` esproprjazzjoni de quo huma kollha salvati bl-Artikolu 47(9) milli jiksru l-Artikolu 37.

Issa l-Qorti tirribadixxi li fil-kawza tal-lum, ir-rikorrenti qeghdin jilmentaw minn vjolazzjoni tal-Art 37 tal-Kostituzzjoni ghaliex il-Bord tal-Arbitragg dwar l-Artijiet illikwida kumpens li, skond ir-rikorrenti, ma kienx xieraq u adegwat.

Il-Qorti tirrileva li l-kumpens li l-Bord kien u ghadu jillikwida jsegwi l-kriterji li huma stabbiliti fid-disposizzjonijiet tal-Kap 88. Ghalhekk billi l-Kap 88 huwa ligi li giet saved ai termini tal-Art 47(9) tal-Kostituzzjoni, din l-Qorti mhijiex sejra tqis ix-xorta ta` ilment li ghandhom ir-rikorrenti skond l-Art 37 tal-Kostituzzjoni fejn dan l-ilment jolqot it-twettieq tal-Kap 88.

Riferibbilment ghall-kaz tal-lum, ma hemmx dubju illi l-ligijiet relattivi ghall-kirja mertu tal-kawza kienu saru qabel it-3 ta` Marzu 1962.

Huwa minnu wkoll li saru emendi ghal dawk il-ligijiet.

Il-Qorti tghid li d-disposizzjonijiet in kwistjoni tal-Kap 69 kienu *saved* bl-Art 47(9) tal-Kostituzzjoni.

<u>Ghal din ir-raguni</u>, ir-rikorrenti ma jistghux javvanzaw pretensjoni dwar vjolazzjoni skont l-Art 37 tal-Kostituzzjoni.

VIII. <u>L-Art 37 tal-Kostituzzjoni</u>

In vista tal-premess, il-Qorti sejra tilqa` l-eccezzjonijiet l-ohra li jolqtu <u>fil-mertu</u> l-applikazzjoni tal-Art 37 tal-Kostituzzjoni fir-rigward tat-talbiet tar-rikorrenti, bil-konsegwenza li sejra tichad it-talbiet tar-rikorrenti safejn dawn qeghdin igibu `l quddiem l-ilment taghhom abbazi tal-istess disposizzjoni tal-Kostituzzjoni.

IX. <u>L-Art 1 Prot 1 tal-Konvenzjoni</u>

Id-disposizzjoni taqra hekk :-

Kull persuna naturali jew persuna morali ghandha d-dritt ghat-tgawdija pacifika tal-possedimenti taghha.

Hadd ma ghandu jigi pprivat mill-possedimenti tieghu hlief fl-interess pubbliku u bla hsara tal-kundizzjonijiet provduti bil-ligi u bil-principji generali tal-ligi internazzjonali.

Izda d-disposizzjonijiet ta` qabel ma ghandhom b`ebda mod inaqqsu d-dritt ta` Stat li jwettaq dawk il-ligijiet li jidhrulu xierqa biex jikkontrolla l-uzu tal-proprjeta skond l-interess generali jew biex jizgura l-hlas ta` taxxi jew kontribuzzjonijiet ohra jew pieni.

Id-disposizzjoni hija gwidata minn tliet principji :-

a) Illi kull persuna, sew dik naturali kif ukoll dik morali, ghandha dritt ghat-tgawdija tal-proprjeta` b`mod pacifiku.

b) Illi tnaqqis fit-tgawdija tal-proprjeta` jista` jkun biss gustifikat jekk jintwera li jkun sar fl-interess pubbliku. Ghalhekk id-dritt mhuwiex assolut u huwa soggett ghall-kundizzjonijiet mahsuba fil-ligi u ghall-principji tad-dritt internazzjonali. Min ikun imcahhad, huwa ntitolat ghal kumpens xieraq.

c) Illi jibqa` d-dritt tal-Istat illi jghaddi ligijiet sabiex *inter alia* b`mod xieraq jikkontrolla l-uzu tal-gid fl-interess pubbliku, bhal meta jintroduci legislazzjoni ntiza sabiex ittaffi problemi ta` akkomodazzjoni.

1. <u>Gurisprudenza</u>

a) <u>ECtHR</u>

L-Istat ghandu s-setgha u d-dritt li jirregola l-uzu tal-propjeta` fl-interess generali. Madanakollu l-interess tal-privat ghandu jkun tutelat ukoll ghaliex fl-ezercizzju tas-setgha tal-Istat li jikkontrolla l-uzu tal-proprjetà ghandu jkun sodisfatt ir-rekwizit tal-proporzjonalità.

Fis-sentenza **<u>Amato Gauci vs Malta</u>** (15 ta` Settembru 2009 : finali 15 ta` Dicembru 2009) l-ECtHR kienet qalet :-

56. Any interference with property must also satisfy the requirement of proportionality. As the Court has repeatedly

*stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see **Sporrong and Lönnroth** cited above, §§ 69-74, and **Brumărescu v. Romania** [GC], no. 28342/95, § 78, ECHR 1999-VII).*

*57. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article the Court must therefore ascertain whether by reason of the State`s interference the person concerned had to bear a disproportionate and excessive burden (see **James and Others**, cited above, § 50; **Mellacher and Others**, cited above, § 48, and **Spadea and Scalabrino v. Italy**, judgment of 28 September 1995, § 33, Series A no. 315-B).*

*58. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. …. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, and in an appropriate and consistent manner (see **Immobiliare Saffi v. Italy**, [GC], no. 22774/93, § 54, ECHR 1999-V; and Broniowski, cited above, § 151).*

59. Moreover, in situations where the operation of the rent-control legislation involves wide-reaching consequences for

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

…

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

Ta` rilevanza kien il-pronunzjament tal-ECtHR fil-kaz ta` **Cassar vs Malta** deciz fit-30 ta` Jannar 2018 fejn inghad :-

43. The Court reiterates that in order for an interference to be compatible with Article 1 of Protocol No. 1 it must be lawful, be in the general interest and be proportionate, that is to say it must strike a “fair balance” between the demands of the general interest of the community and the requirements

of the protection of the individual`s fundamental rights (see, among many other authorities, ***Beyeler v. Italy*** *[GC], no. 33202/96, § 107, ECHR 2000-I, and* ***J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom*** *[GC], no. 44302/02, § 75, ECHR 2007-III). The Court will examine these requirements in turn.*

(a) Whether there was an interference

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

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

*46. Subsequently, in **R & L, s.r.o. and Others** (cited above) the Court specifically examined whether Article 1 of Protocol No. 1 protected applicants who had purchased property in the knowledge that rent restrictions imposed on the property might contravene the Convention. In that case, when the applicants had acquired their respective properties their rents had been set in accordance with the rent regulations applicable at the time and the applicants could not have increased the rents above the threshold set by the State. Nor were they free to terminate the rent agreements and conclude new ones with different – higher – levels of rent. The Court did not find it decisive that one of the applicants had purchased the property before the domestic courts had taken issue with the legislation in place which had given a legitimate expectation that the status of such properties would be addressed by the national legislator in due course. The Court held that it could not be said that the applicants as landlords had implicitly waived their right to set the level of rents, as, for the Court, waiving a right necessarily presupposed that it would have been possible to exercise it. There was no waiver of a right in a situation where the person concerned had never had the option of exercising that right and thus could not waive it. It followed that the rent-control regulations had constituted an interference with the landlords` right to use their property (ibid., § 106).*

*47. In the more recent **Zammit and Attard Cassar** (cited above, § 50) case, in a situation where the applicants` predecessor in title had knowingly entered into a rent agreement in 1971 with relevant restrictions (specifically the inability to increase rent or to terminate the lease), the Court held that, at the time, the applicants` predecessor in title could not reasonably have had a clear idea of the extent of inflation in property prices in the decades to follow. Moreover, the Court observed that when the applicants had inherited the property in question they had been unable to do anything more than attempt to use the available remedies,*

which had been to no avail in their circumstances. The decisions of the domestic courts regarding their request had thus constituted interference in their respect. Furthermore, as in ***R & L, s.r.o. and Others****, in* ***Zammit and Attard Cassar*** *(both cited above) the applicants, who had inherited a property that had already been subject to a lease, had not had the possibility to set the rent themselves (or to freely terminate the agreement). It followed that they could not be said to have waived any rights in that respect. Accordingly, the Court found that the rent-control regulations and their application in that case had constituted an interference with the applicants` right (as landlords) to use their property (****Zammit and Attard Cassar****, cited above, § 51).*

48. Turning to the present case, the Court also notes that the applicants had bought their property before the European Court of Human Rights took issue with the Maltese legislation applicable in cases such as ***Amato Gauci*** *(cited above). That judgment was eventually followed in most cases in domestic case-law. However, again the Court finds this not to be decisive given the passage of time between the purchase of the property and now. In this connection the Court reiterates that what might be justified at a specific time might not be justified decades later (see* ***Amato Gauci****, cited above, § 60). In the present case, while it is true that the applicants knowingly entered into the rent agreement in 1988 with the relevant restrictions (specifically the inability to increase the rent or to terminate the lease), the Court considers that the applicants could not reasonably have foreseen the extent of inflation in property prices in the decades that followed (see* ***Zammit and Attard Cassar****, cited above, § 50). Once the discrepancy in the rent applied and that on the market became evident, they were unable to do anything more than attempt to use the available remedies, which they did in 2010, but which were to no avail in their circumstances. The decisions of the domestic courts regarding their application thus constituted interference in their respect. Furthermore, the applicants, who bought a property that was already subject to a restricted lease, did not have the possibility to*

*set the rent themselves or to freely terminate the agreement. Clearly, they could not be said to have waived any rights in that connection (see **Zammit and Attard Cassar**, cited above, § 50).*

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

*50. The Court has previously held that rent-control schemes and restrictions on an applicant`s right to terminate a tenant`s lease constitute control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1. It follows that the case should be examined under the second paragraph of Article 1 of Protocol No. 1 (see **Hutten-Czapska v. Poland** [GC], no. 35014/97, §§ 160-61, ECHR 2006-VIII; **Bittó and Others v. Slovakia**, no. 30255/09, § 101, 28 January 2014; and **R & L, s.r.o. and Others**, cited above, § 108).*

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

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

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

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

(c) Whether the Maltese authorities struck a fair balance

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

55. The Court will consider the impact that the application of the 1979 Act had on the applicants` property. It notes that the applicants could not exercise their right of use in terms of physical possession as the house was occupied by tenants and they could not terminate the lease. Thus, while the applicants remained the owners of the property they were subjected to a forced landlord-tenant relationship for an indefinite period of time.

*56. Despite any reference to unidentified procedural safeguards by the Government (see paragraph 41 above) the Court has on various occasions found that applicants in such a situation did not have an effective remedy enabling them to evict the tenants either on the basis of their own needs or those of their relatives, or on the basis that the tenants were not deserving of such protection (see **Amato Gauci**, cited*

*above, § 60, and **Anthony Aquilina**, cited above, § 66). Indeed, when their need arose (some years after they had purchased it) and later despite the little need of it by the tenant – who was not in any particular need of housing (at least after 2008) – the applicants were unable to recover the property. Consequently, the application of the law itself lacked adequate procedural safeguards aimed at achieving a balance between the interests of the tenants and those of the owners (see **Anthony Aquilina**, cited above, § 66, and mutatis mutandis, **Zammit and Attard Cassar**, cited above, § 61). The Court further considers that the possibility of the tenant leaving the premises voluntarily was remote, especially since the tenancy could be inherited – as in fact happened in the present case. It is clear that these circumstances inevitably left the applicants in uncertainty as to whether they would ever be able to recover their property.*

*57. As to the rent payable, the Court is ready to accept that EUR 466 annually was a more or less reasonable amount of rent in 1988 - particularly given that it was an amount of rent which the applicants were aware of and in spite of which they decided to purchase the property with the relevant restrictions. Furthermore, it was an amount of rent which the applicants expected to receive for a number of years, at least until the demise of J.G. and his wife. Moreover, the Court accepts that at the relevant time the measure pursued a legitimate social-policy aim (see paragraph 53 above) which may call for payments of rent at less than the full market value (see **Amato Gauci**, § 77).*

*58. The same cannot be said after the passage of decades, during which the rent had remained the same (as stated by the parties and the domestic courts, the rent is still EUR 466 annually). The Court has previously held that there had been a rise in the standard of living in Malta over the past decades (see **Amato Gauci**, cited above, § 63, and **Anthony Aquilina**, cited above, § 65). Thus, the needs and the general interest which may have existed in 1979 must have decreased over the three decades that ensued (see **Anthony***

***Aquilina**, cited above, § 65). It is noted that as stated by the Government in paragraph 40 above, the minimum wage in 2015 was EUR 720.46 per month, while in 1974 (the date when Malta adopted a national minimum wage) it amounted to the equivalent of less than EUR 100 per month (see **Amato Gauci**, cited above, § 60).*

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

60. In particular, even if one had to concede that the valuations submitted by the applicants are on the high side, the Court notes that the first-instance domestic court, in 2011, accepted EUR 3,000 per month (that is to say EUR 36,000 per year) as the rental market value of the property (see paragraph 18 above). Thus, the amount of rent received by the applicants, around EUR 39 a month, that is to say EUR 466 per year, for a fourteen-room house in Sliema, a highly sought-after location, is indeed "derisory" as was also found by the first-instance domestic court (see paragraph 18 above). Indeed, that amount of rent contrasts sharply with the market value of the premises in recent years, as accepted

*by the domestic court or as submitted by the applicant, as it amounted to a little more than 1% of the market value. The Court considers that State control over levels of rent falls into a sphere subject to a wide margin of appreciation by the State and its application may often cause significant reductions in the amount of rent chargeable. Nevertheless, this may not lead to results which are manifestly unreasonable (see **Amato Gauci**, cited above, § 62).*

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

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

Kaz iehor ta` interess kien dak ta` **Zammit and Attard Cassar v Malta** li kien deciz mill-ECtHR fit-30 ta` Lulju 2015.

L-ilment tal-applikanti kien illi r-restrizzjonijiet dwar kera kienu ta` piz eccessiv.

Kienet lamentata vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni.

Il-kaz kien jittratta dwar kirja ta` fond kummercjali li kienet qed tigi mgedda b`mod awtomatiku skont il-Kap 69.

L-ECtHR sabet li kien hemm lezjoni tal-Art 1 Prot 1 tal-Konvenzjoni minkejja l-emendi tal-2009.

Inghad hekk :-

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

(a) Whether there was interference

48. In previous cases concerning restrictions on lease agreements, the Court considered that there had been interference (as a result of the domestic courts` refusals of the applicants` demands) despite the applicants` knowledge of the applicable restrictions at the time when they entered into the lease agreement, a matter which however carried weight in the assessment of the proportionality of the measure (see ***Almeida Ferreira and Melo Ferreira v. Portugal****, no. 41696/07, §§ 27 and 34, 21 December 2010).*

49. More recently, in ***R & L, s.r.o. and Others v. the Czech Republic*** *(nos. 37926/05, 25784/09, 36002/09, 44410/09 and 65546/09, 3 July 2014) the Court specifically*

examined whether Article 1 of Protocol No. 1 protected applicants who had purchased property in the knowledge that rent restrictions imposed on the property might contravene the Convention. In that case, when the applicants had acquired their respective houses their rents had been set in accordance with the rent regulations applicable at the time and the applicants could not have increased the rents above the threshold set by the State. Nor were they free to terminate the rent agreements and conclude new ones with different – higher – levels of rent. The Court held that it could not be said that the applicants as landlords had implicitly waived their right to set the level of rents, as, for the Court, waiving a right necessarily presupposed that it would have been possible to exercise it. There was no waiver of a right in a situation where the person concerned had never had the option of exercising that right and thus could not waive it. It followed that the rent-control regulations had constituted an interference with the landlords` right to use their property (ibid. § 106).

50. In the present case the Court observes that the applicants` predecessor in title knowingly entered into the rent agreement in 1971. It is the Court`s considered opinion that, at the time, the applicants` predecessor in title could not reasonably have had a clear idea of the extent of inflation in property prices in the decades to come. Moreover, the Court observes that when the applicants inherited the property in question they had been unable to do anything more than attempt to use the available remedies, which were to no avail in their circumstances. The decisions of the domestic courts regarding their request thus constitute interference in their respect. Furthermore, as in ***R & L, s.r.o. and Others*** *(cited above), the applicants in the present case, who inherited a property that was already subject to a lease, did not have the possibility to set the rent themselves (or to freely terminate the agreement). It follows that they could not be said to have waived any right in that respect.*

51. Accordingly, the Court considers that the rent-control regulations and their application in the present case constituted an interference with the applicants` right (as landlords) to use their property.

52. The Court has previously held that rent-control schemes and restrictions on an applicant`s right to terminate a tenant`s lease constitute control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1. It follows that the case should be examined under the second paragraph of Article 1 of Protocol No. 1 (see ***Hutten-Czapska v. Poland*** *[GC], no. 35014/97, §§ 160-161, ECHR 2006-VIII,* ***Bittó and Others v. Slovakia****, no.30255/09, § 101, 28 January 2014; and* ***R & L, s.r.o. and Others****, cited above, § 108).*

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

53. The first requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions be lawful. In particular, the second paragraph of Article 1, while recognising that States have the right to control the use of property, subjects their right to the condition that it be exercised by enforcing "laws". Moreover, the principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see, mutatis mutandis, ***Broniowski v. Poland*** *[GC], no. 31443/96, § 147, ECHR 2004-V, and* ***Amato Gauci,*** *cited above, § 53).*

54. Furthermore, a measure aimed at controlling the use of property can only be justified if it is shown, inter alia, to be "in accordance with the general interest". Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the "general" or

"public" interest. The notion of "public" or "general" interest is necessarily extensive. Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has on many occasions declared that it will respect the legislature`s judgment as to what is in the "public" or "general" interest unless that judgment is manifestly without reasonable foundation (see, mutatis mutandis, ***Hutten-Czapska****, cited above, §§ 165-66, and* ***Fleri Soler and Camilleri v. Malta****, no. 35349/05, § 65, ECHR 2006-X).*

55. The Court finds that the restriction was imposed by the Reletting of Urban Property (Regulation) Ordinance and was "lawful" within the meaning of Article 1 of Protocol No. 1. This was not disputed by the parties.

56. As to the legitimate aim pursued, the Government submitted that the measure, as applied to commercial premises, aimed to protect the stability of businesses and the public services such businesses provided. The measure was also aimed at protecting the employment of those persons who depended on the activity of those businesses and safeguarded against property owners taking advantage of the economic activity of a tenant. The Court observes that the Commission has previously accepted that rent regulation to preserve the economic viability of commercial enterprises in the interest of both those enterprises and the consumer, was in the general interest (see ***G v. Austria*** *no. 12484/86, Com. Dec., 7 June 1990). Similarly, the Court can accept that, in principle, the overall measure, which also applied to commercial premises, may be considered as being in the general interest.*

(c) ***Whether the Maltese authorities struck a fair balance***

57. In each case involving an alleged violation of Article 1 of Protocol No. 1, the Court must ascertain whether by

*reason of the State`s interference, the person concerned had to bear a disproportionate and excessive burden (see **James and Others**, cited above, § 50, and **Amato Gauci**, cited above, § 57).*

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

59. The Court notes, in the first place, that the Government`s final argument (submitted at an advanced stage in the proceedings, see paragraph 46 above) is misconceived in so far as the property they were referring to was not the property at issue in the present case. From the documents and submissions provided to the Court it transpires that the property is in use and thus the applicants were not entitled, on the grounds established by law (Article 12 of Ordinance, paragraph 26 above), to evict the tenant.

60. The Court observes that in the present case the lease was subject to renewal by operation of law and the applicants had no possibility to evict the tenant on the basis of any of the limited grounds provided for by law. Indeed, any such

request before the RRB, in the circumstances obtaining in their case, would have been unsuccessful, despite the fact that the tenant was a commercial enterprise that possessed other property (a matter which has not been disputed), as the latter fact was not a relevant consideration for the application of the law. Furthermore, the applicants were unable to fix the rent – or rather to increase the rent previously established by their predecessor in title. The Court notes that, generally, increases in rent could be done through the RRB. They were, however, subject to capping, in that any increase could not go beyond 40% of the fair rent at which the premises were or could have been leased before August 1914. Indeed, in the applicants` case no increase was possible at all, because the rent originally fixed in 1971 was already beyond the capping threshold.

61. Whereas the RRB could have constituted a relevant procedural safeguard by overseeing the operation of the system, in the present case it was devoid of any useful effect, given the limitations imposed by the law (see, mutatis mutandis, see ***Amato Gauci****, cited above, § 62 and* ***Anthony Aquilina v. Malta****, no. 3851/12, § 66, 11 December 2014). Consequently, the application of the law itself lacked adequate procedural safeguards aimed at achieving a balance between the interests of the tenants and those of the owners (ibid and, mutatis mutandis,* ***Statileo v. Croatia****, no. 12027/10, § 128, 10 July 2014).*

62. The Court further notes that for the first decade of the rental contract, during which – according to the applicants – the market value of the property was EUR 7,000, the rent payable to the applicants was EUR 862 a year. Subsequently, for the year 2010 the rent amounted to EUR 990, for 2011 EUR 1,138, for 2012 EUR 1,309 and for 2013 EUR 1,505. For the years 2014 onwards it would increase by 5% a year. The Court reiterates that State control over levels of rent falls into a sphere that is subject to a wide margin of appreciation by the State, and its application may often cause significant reductions in the amount of rent chargeable. Nevertheless,

*this may not lead to results which are manifestly unreasonable, such as amounts of rent allowing only a minimal profit (see **Amato Gauci**, cited above, § 62). While the applicants do not have an absolute right to obtain rent at market value, the Court observes that, despite the 2009 amendments, the amount of rent is significantly lower than the market value of the premises as submitted by the applicants, which was not effectively contested by the Government. However, the applicants have not argued that they were unable to make any profit. Even so, this element must be balanced against the interests at play in the present case.*

63. While the Court has accepted above that the overall measure was, in principle, in the general interest, the fact that there also exists an underlying private interest of a commercial nature cannot be disregarded. The Government have not argued that in the present case the viability of the tenant`s commercial enterprise was in any way dependent on the favourable conditions of the lease on the premises used for storage – a matter which was irrelevant in the application of the law to the premises. In such circumstances, both States and the Court in its supervisory role must be vigilant to ensure that measures such as the one at issue, applied automatically, do not give rise to an imbalance that imposes an excessive burden on landlords while allowing tenants of commercial property to make inflated profits. It is also in such contexts that effective procedural safeguards become indispensable.

*64. Lastly, the Court notes that unlike in other rent-control cases where the applicants were in a position of uncertainty as to when and if they would recover their property (see, inter alia, **Amato Gauci**, cited above, § 61, and **Saliba and Others v. Malta**, no. 20287/10, § 67, 22 November 2011), in the present case, under the laws currently in force and in the absence of any further legislative interventions, the applicants` property will be free and unencumbered as of 2028. It follows that the effects of such rent regulation are*

circumscribed in time. However, the Court cannot ignore the fact that by that time, the restriction on the applicants` rights would have been in force for nearly three decades, and to date has been in force for over a decade.

65. Having assessed all the elements above, and notwithstanding the margin of appreciation allowed to a State in choosing the form and deciding on the extent of control over the use of property in such cases, the Court finds that, having regard to the relatively low rental value of the premises and the lack of procedural safeguards in the application of the law, a disproportionate and excessive burden was imposed on the applicants, who have had to bear a significant part of the social and financial costs of supporting a commercial enterprise. It follows that the Maltese State failed to strike the requisite fair balance between the general interests of the community and the protection of the applicants` right to the enjoyment of their property.

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

b) <u>Il-Qrati Maltin</u>

Fis-sentenzi taghhom, il-qrati taghna applikaw l-Art 1 Prot 1 tal-Konvenzjoni ghall-fattispeci ta` kull kaz li kellhom quddiemhom fuq il-linji traccjati fil-gurisprudenza tal-Qorti ta` Strasbourg.

Kien riaffermat mill-qrati taghna li l-Art 1 Prot 1 huwa msejjes fuq tliet principji : illi ghandu jkun hemm it-tgawdija pacifika tal-proprjeta` ; illi l-privazzjoni minn possedimenti hija soggetta ghal kondizzjonijiet ; u li l-Istat ghandu l-jedd illi jikkontrolla l-uzu tal-proprjeta` konformement mal-interess generali.

Kien imsostni mill-qrati taghna li t-tliet principji ghalkemm distinti mhumiex disgunti, peress illi l-ahhar tnejn jittrattaw sitwazzjonijiet partikolari ta` indhil fid-dritt ghall-godiment pacifiku tal-proprjeta` u ghalhekk iridu jinftehmu fid-dawl tal-principju generali espost fl-ewwel principju.

Kien ukoll ribadit mill-qrati taghna li kwalsiasi interferenza trid tkun kompatibbli mal-principji ta` (i) l-legalita`, (ii) l-ghan legittimu fl-interess generali, u (iii) l-bilanc gust. Hija vitali z-zamma ta` proporzjon ragjonevoli bejn il-mezzi uzati mill-Istat u l-ghan persegwit mill-Istat sabiex jikkontrolla l-uzu tal-proprjeta` tal-persuna. Din il-proporzjon issib r-*raison d`etre* tieghu fil-principju tal-"*bilanc xieraq*" li ghandu jinzamm bejn l-esigenzi tal-interess generali tal-komunita` u l-htiega tal-harsien tad-drittijiet fundamentali tal-persuna.

Il-qrati ghandhom jaghmlu analizi komprensiva tal-varji interessi, u jaccertaw jekk bhala konsegwenza tal-interferenza tal-Istat l-persuna tkunx spiccat garret piz eccessiv u sproporzjonat.

c) <u>Sfond</u>

Meta sar il-Kap 16 fl-1868, is-suq tal-kera kien totalment hieles b`mod u manjiera illi meta kirja kienet tigi fi tmiemha, is-sid kellu l-jedd jgholli l-kera jew ma jgeddidhiex. Meta la s-sid u lanqas l-inkwilin ma kienu jitolbu tibdil fil-kondizzjonijiet tal-kirja, il-kirja kienet tiggedded *ope legis.*

Wara l-Ewwel Gwerra Dinija, il-kirjiet bdew joghlew b`rata mghaggla. Ghalhekk kienet mehtiega regolamentazzjoni.

L-Att I tal-1925 kien l-ewwel att legislattiv li kien intiz sabiex jirregola zidiet fil-kera tant li mpona arbitragg meta ma kienx jintlahaq ftehim dwar iz-zidiet fil-kera. Dan l-Att kellu jkollu effett temporanju sal-31 ta` Dicembru 1927.

Inhasset il-htiega ta` kontroll aktar strett.

Ghalhekk kien promulgat l-Att XXIII tal-1929, li permezz tieghu, is-sidien gew prekluzi milli jghollu l-kera jew milli jirrifjutaw li jgeddu l-kera minghajr il-permess tal-Bord li Jirregola l-Kera. Il-Bord inghata s-setgha illi jilqa` talba ghal zgumbrament biss wara li jkunu sodisfatti numru ta` kondizzjonijiet. In kwantu ghat-talbiet ghal zieda fil-kera, il-Bord seta` jawtorizza awment sa massimu ta` 40% tal-kera gusta vigenti f`Awissu 1914. Din il-mizura wkoll kellha tkun wahda temporanja sakemm is-suq jistabilizza ruhu. Infatti l-Att XXIII tal-1929 kellu jkollu effett sal-31 ta` Dicembru 1933.

L-Ordinanza XXI tal-1931 li Tirregola t-Tigdid tal-Kiri ta` Bini (illum Kap 69 tal-Ligijiet ta` Malta) li hadet post l-Att XXIII tal-1929 kienet promulgata fid-19 ta` Gunju 1931 u kienet intiza sabiex ikollha effett sal-31 ta` Dicembru 1933. Biss in segwitu saret definittiva. Saret din il-ligi l-aktar minhabba nuqqas kbir ta` djar ta` abitazzjoni wara l-herba tat-Tieni Gwerra Dinija. Kien mehtieg illi l-kera tad-djar titrazzan fi zmien ta` skarsezza. Kien frott dan l-intervent legislattiv illi hafna nies setghu jifilhu jhallsu sabiex ikollhom saqaf fuq rashom. Waqt li l-ligi serviet l-iskop originali taghha, maz-zmien gabet maghha konsegwenzi negattivi fis-sens illi bdiet tohnoq is-suq u bdew jonqsu l-postijiet disponibbli ghall-kera. Tajjeb jinghad li l-Kap 69 kien jirregola propjeta` urbana (*urban property*) u allura mhux biss fondi ntizi ghall-finijiet residenzjali izda anke ghal propjeta` kummercjali. Kien biss bosta snin wara bl-Att XXXI tal-1995 illi l-legislatur addotta posizzjoni differenti sabiex jaghti nifs lis-suq tal-kera. B`dan l-Att il-kirijiet il-godda u cioe` dawk li jsiru wara l-1 ta` Gunju 1995 ma baqghux soggetti ghal-ligijiet specjali tal-kera. Ghall-kirijiet li saru qabel l-1 ta` Gunju 1995 baqghu jghoddu l-ligijiet ta` qabel. Ghalkemm saru diversi emendi, ftit li xejn ittaffa l-piz fuq is-sidien.

d) <u>Risultanzi</u>

L-Ordinanza XXI tal-1931 kellha skop legittimu u saret fl-interess generali. L-istorja socjali u ekonomika tal-pajjiz tixhed li l-legislazzjoni saret ghaliex kienet necessarja. Il-legislatur ipprova jsib bilanc bejn interessi konfliggenti. Fl-istess waqt ghandu jinghad li t-tkattir tal-gid fil-kors tas-snin wera li dak l-intervent legislattiv, ghalkemm kellu propositi tajbin, ma kienx baqa` joffri bilanc, anzi holoq sproporzjon u zvantagg evidenti u notevoli ta` parti fil-konfront ta` ohra.

Abbinati l-fatti tal-kaz tal-lum mal-insenjamenti gurisprudenzjali, il-Qorti tqis illi d-disposizzjonijiet dwar it-tigdid awtomatiku tal-kera u kif ukoll il-kontroll fl-ammont tal-kera huma mizuri mahsuba sabiex jikkontrollaw l-uzu u t-tgawdija tal-proprjeta`. Kemm il-modalita` tat-tigdid tal-kera u kif ukoll il-kontroll fl-ammont ta` kera percepibbli jikkostitwixxu interferenza fl-uzu u t-tgawdija tal-proprjeta`.

Fil-kaz tal-lum, hemm qbil li l-kirja tal-fond de quo favur il-Kummissarju tal-Pulizija ghandha titqies bhala kummercjali. Il-kostatazzjonijiet u l-osservazzjonijiet li ghamlu l-periti *ex parte* taz-zewg nahat huma konferma.

Jirrizulta ppruvat illi l-kera li r-rikorrenti setghu jippercepixxu minhabba l-effetti tal-Kap 69 meta mqabbla mal-kera fis-suq hieles oggettivament hija bil-wisq baxxa. Meta l-Gvern beda jikri l-fond minghand l-antekawza tar-rikorrenti fl-1935 kien ihallas £22 fis-sena. Il-kera telghet ghal £30 fis-sena wara decizjoni tal-Bord li Jirregola l-Kera. Illum qeghda tithallas kera ta` €384.42 fis-sena.

Ir-rikorrenti m`akkwistawx f`daqqa l-intier tal-fond izda akkwistaw terz indiviz kull darba (flimkien ma` propjeta` ohra) bis-sahha ta` tliet kuntratti : l-ewwel kuntratt kien dak tat-18 ta` Lulju 2011 fl-atti tan-Nutar Joseph Lia, it-tieni kuntratt kien dak tal-25 ta` Gunju 2016 fl-atti tan-Nutar Jean Carl Debono u l-ahhar kuntratt kien dak tas-6 ta` Awissu 2016 fl-atti tan-Nutar Jean Carl Debono. F`kull

wiehed mit-tliet kuntratti huwa specifikat fil-kaz tal-fond de quo li l-fond kien soggett ghal kirja.

L-intimati jaghmlu l-argument illi r-rikorrenti kienu jafu bil-kirja u volontarjament accettaw illi xorta wahda jixtru l-fond kif soggetta ghal dik il-kirja. Ghalhekk ir-rikorrenti ma jistghux jikkontendu li kienu sorprizi bl-effetti tal-Kap 69. Ighidu wkoll illi lanqas ma jistghu ir-rikorrenti jilmentaw mill-fatt illi garrbu lezjoni tal-jeddijiet fondamentali taghhom bl-applikazzjoni tal-Kap 69. Anzi jishqu li bil-fatt li l-fond kien diga` soggett ghal kirja r-rikorrenti kisbu vantagg fis-sens li hallu prezz aktar baxx ghall-fond milli kienu jhallsu li kieku kien qed jinxtara liberu u frank.

Specifikament ghall-fond in kwistjoni, ma jirrizultax mill-ewwel kuntratt kemm kien il-valur attribwit ghall-akkwist tat-terz indiviz.

Fil-kaz tat-tieni u tat-tielet kuntratti, il-valur ta` kull terz indiviz rimanenti huwa ndikat fl-ammont ta` €14,500, li jfisser total ta` €29,000.

Anke jekk ma jirrizultax kemm kien il-prezz tal-akkwist tal-ewwel terz indiviz, jibqa` l-fatt li l-prezz tal-intier tal-fond imhallas mir-rikorrenti kien oggettivament baxx meta mqabbel ma` kemm kien stmat li jiswa l-fond liberu u frank mill-periti *ex parte* taz-zewg nahat anke bejn dawn kien hemm diskrepanza fl-istimi.

Premessi dawn il-fatti, jirrizulta li r-rikorrenti xtraw il-fond *de quo* u accettaw illi kien diga` mikri lill-Kummissarju tal-Pulizija skont kirja li tiggedded *ope legis* ghal hlas ta` €384.42 fis-sena. Jirrizulta wkoll li hekk kif r-rikorrenti akkwistaw il-fond ma accettawx aktar il-hlas tal-kera tant li l-Kummissarju tal-Pulizija beda jiddepozita l-kera taht l-awtorita` tal-qorti.

Dwar din il-kwistjoni, il-Qorti tesprimi ruhha fis-sens illi kienu x`kienu c-cirkostanzi li wasslu ghall-kirja mill-antekawza tar-rikorrenti, ghad li kienu jafu jew messhom kienu jafu li l-kirja eventwalment kienet sejra tkun regolata bil-Kap 69, u ghad li r-rikorrenti kienu jafu meta akkwistaw li kien hemm kirja, b`daqshekk ma jfissirx li r-rikorrenti accettaw li kellhom jibqghu regolati bir-regim tal-Kap 69 ladarba ix-xejriet fis-socjeta` Maltija nbidlu radikalment miz-zmien meta kien promulgat il-Kap 69. Fil-kaz tar-rikorrenti, l-accettazzjoni da parti taghhom tal-fatt tal-kirja m`ghandhiex tiftiehem bhal xi rinunzja tat-tuteli li jinsorgu mill-Art 1 Prot 1 tal-Konvenzjoni. L-applikazzjoni ndiskriminata tal-Kap 69 ghal ghexieren ta` snin gabet zbilanc sproporzjonat kontra s-sidien, *multo magis* fil-kaz ta` *urban property* mikri ghal finijiet kummercjali, baqghet tissussisti sa zminijiet ricenti. L-isvolta giet mis-sentenzi tal-Qorti Kostituzzjoni u tal-ECtHR fejn kien dikjarat illi l-applikazzjoni tal-ligijiet specjali tal-kera jiksru l-jeddijiet fondamentali tas-sidien.

Fid-decizjoni tal-ECtHR fil-kaz ta` **Zammit and Attard Cassar v Malta** (op. cit.) kien rimarkat illi :-

> *"at the time, the applicants` predecessor in title could not reasonably have had a clear idea of the extent of inflation in property prices in the decades to come ..." (para 50).*

Fis-sentenza li tat il-Qorti Kostituzzjonali fid-29 ta` April 2016 fil-kawza fl-ismijiet **Maria Ludgarda sive Mary Borg vs Rosario Mifsud et** inghad hekk :-

> *"kien biss fl-ahhar snin illi ghall-ewwel darba gie dikjarat li l-Artikolu 12(2) jilledi d-dritt fundamentali protett taht l-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni Ewropea (sentenza tal-Qorti Ewropea fil-kaz Amato Gauci vs Malta, 15 ta` Dicembru 2009). …. Dan m`huwiex kaz ta` ksur ta` dritt fundamentali li jsehh ta` darba, izda vjolazzjoni kontinwata tal-Artikolu 1 tal-Ewwel Protokoll. Fic-cirkostanzi dan l-argument hu nfondat. Issir ukoll riferenza ghas-sentenza tal-*

> *Qorti Ewropea fil-kaz Anthony Aquilina v Malta Applikazzjoni 3851/12) tal-11 ta` Dicembru 2014, li kienet titratta wkoll kaz ta` controlled rent. Minkejja li s-sid kien baqa` jircievi l-kera l-qorti xorta ddikjarat ksur tal-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni, ghalkemm ikkunsidrat dan `il fatt meta llikwidat id-danni."*

(ara wkoll : **Rose Borg vs Avukat Generali et** deciza mill-Qorti Kostituzzjonali fil-11 ta` Lulju 2016 ; u **Rebecca Hyzler et vs Avukat Generali et** deciza minn din il-Qorti diversament presjeduta fid-9 ta` Mejju 2018)

Tajjeb jinghad illi filwaqt li l-inkwilini nghataw protezzjoni ma garax l-istess lis-sidien ghaliex il-legislatur naqas milli joffrilhom rimedju adegwat skont il-ligi ordinarja sabiex joggezzjonaw b`mod effettiv ghar-restrizzjonijiet fuq il-kundizzjonijiet lokatizzji. L-uniku triq li kellhom kienet li jfittxu kenn quddiem il-qrati ta` indole kostituzzjonali jew konvenzjonali.

Dan apparti, hemm konsiderazzjoni ohra li tajjeb li tkun rilevata. Ladarba l-fond tar-rikorrenti jinkwadra ruhu fit-tifsira tal-Art 2 tal-Kap 69, ir-rikorrenti jkollhom a tenur tal-Art 3 tal-Kap 69 jibqghu igeddu l-kirja sija bl-istess kera u kif ukollbl-istess kondizzjonijiet. L-eccezzjoni ghall-Art 3 tinsab fl-Art 14 tal-Kap 69 fejn skont din id-disposizzjoni : is-sid illi "*irid jgholli l-kera jew ibiddel il-kondizzjonijiet tal-kiri*" ghandu jsegwi l-procedura hemm stabbilita u jindika l-kondizzjonijiet il-godda qabel l-iskadenza tal-kirja. L-inkwilin ghandu l-jedd li jressaq l-oggezzjoni tieghu quddiem il-Bord li Jirregola l-Kera. Ghal dik li hija kera, il-Bord ma jistax jawtorizza awment fil-kera li tkun oghla minn 40% tal-valur lokatizju tal-fond fl-1914. Anke fil-kaz li s-sid jitlob lura l-pussess tal-fond, il-legislatur haseb li jindika cirkostanzi fejn il-Bord jista` jilqa` t-talba tas-sid (ara l-Art 9 tal-Kap 69). Premess dan kollu, ebda wahda minn dawn id-dispozizzjonijiet ma tghodd ghall-kirja in kwistjoni ghaliex il-kirja saret favur il-Gvern. Dan ifisser illi filwaqt li l-Kap 69 jobbliga lir-rikorrenti li jkomplu jgeddu l-kirja kif soggetta ghal kera u kondizzjonijiet li kienu pattwiti fil-bidu m`ghandhomx

mezz kif itejjbu l-qaghda taghhom. L-uniku rimedju illi kellhom ir-rikorrenti kien propju li jirrikorru quddiem din il-Qorti.

Kif inghad minn din il-Qorti diversament presjeduta fis-sentenza li tat fit-30 ta` Mejju 2018 fil-kawza fl-ismijiet **David Pullicino et vs Avukat Generali et** :

> *"Il-fatt wahdu li sid jipprova jikseb l-akbar gid minn sitwazzjoni legali li tikkundizzjonah, ma jfissirx b`daqshekk li jkun qabel ma` dik il-qaghda u warrab kull ilment li jista` ghandu dwar ic-cahda jew l-indhil fit-tgawdija ta` hwejgu minhabba f`ligi bhal dik jew illi rrinunzja ghall-jedd li jitlob rimedju (ara **Robert Galea vs Avukat Generali et**, 07/02/2017)"*

Jirrizulta li l-legislazzjoni attwali tolqot lir-rikorrenti bi sproporzjon evidenti u sfavorevoli ghalihom. Forsi kien propju ghalhekk li fit-tieni domanda, ir-rikorrenti talbu mill-qorti dikjarazzjoni ta` nullita` tal-artikoli 3, 4, 5 u 9 tal-Kap 69 u/jew dikjarazzjoni li dawk id-disposizzjonijiet m`ghandhom isibu applikazzjoni ghal din il-kirja. Fil-fehma ta` din il-Qorti, dikjarazzjoni ta` nullita` ghandha tkun eskluza ghaliex il-legalita` tal-legislazzjoni m`ghandhiex ghalfejn titqieghed in diskussjoni. Il-kwistjoni tibqa` l-attwalita` ta` dik il-legislazzjoni fix-xenarju prezenti ta` pajjizna u allura l-applikazzjoni taghha fl-ambitu ta` fatti u cirkostanzi bhal dawk li rrizultaw fil-kawza odjerna. Fil-verita` lanqas il-legittimita` tal-iskop ghaliex sar m`ghandha tkun ikkontestata. Mhuwiex in diskussjoni l-jedd tal-Istat illi jikkontrolla b`legislazzjoni l-uzu tal-proprjeta` meta dan ikun fl-interess pubbliku. Fl-istess waqt l-Istat huwa obbligat juri li fl-applikazzjoni ta` dik il-legislazzjoni jkunu qeghdin jinzammu bilanc u proporzjonalita` bejn l-interess generali u ta` dak privat. Il-kwistjoni ghandha tibqa` nkwadrata madwar il-fatt illi bl-applikazzjoni tad-disposizzjonijiet citati tal-Kap 69 ghas-sitwazzjoni taghhom qed ikun hemm ksur tal-Art 1 Prot 1 tal-Konvenzjoni.

Huwa evidenti li matul iz-zmien anke l-legislatur irrealizza li dak li wasslu biex jintervjeni fl-1931 kien jehtieg ripensament motivat minn bidla lejn l-ahjar fil-qaghda ekonomika u socjali tal-pajjiz. Il-Qorti tosserva illi waqt illi bl-Att XXXI tal-1995 il-legislatur intervjena favur il-liberalizzazzjoni tal-kera, ghazel illi jillimita dan ghal dawk il-kirjiet illi bdew wara l-1 ta` Gunju 1995, bil-konsegwenza illi kollox baqa` kif kien ghal dawk il-kirjiet (bhal din tal-lum) li kienu saru qabel l-1 ta` Gunju 1995. Tajjeb ikompli jinghad illi bl-emendi li dahlu fil-Kap 16 bl-Att X tal-2009, ghad li kien hemm awment fil-kera, xorta wahda halla sproporzjon kontra s-sid. Apparti dan, is-sid baqa` kostrett joqghod ghal quantum ta` zieda dettat minn ligi li mhux iddeterminat kemm kellu jkun l-awment izda wkoll kull meta dak l-awment kellu jkun operattiv.

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

Fil-kaz ta` **Zammit and Attard Cassar v Malta** (op. cit.) l-ECtHR irrimarkat :-

> "*While the applicants do not have an absolute right to obtain rent at market value, the Court observes that, despite the 2009 amendments, the amount of rent is significantly lower than the market value of the premises as submitted by the applicants, which was not effectively contested by the Government. …While the Court has accepted above that the overall measure was, in principle, in the general interest, the fact that there also exists an underlying private interest of a commercial nature cannot be disregarded."*

Fil-kaz ta` **Ian Peter Ellis et vs Avukat Generali et** (24/06/2016) il-Qorti Kostituzzjonali stabbiliet illi :-

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

Il-Qorti qeghda tichad l-eccezzjonijiet kollha tal-intimati safejn dawn jolqtu dik il-parti ta` l-ewwel (1) talba li tirrigwarda d-dikjarazzjoni ta` ksur tal-jeddijiet fondamentali tar-rikorrenti kif protetti bl-Art 1 Prot 1 tal-Konvenzjoni.

Qeghda tilqa` l-ewwel (1) talba tar-rikorrenti safejn din tirrigwarda ksur tal-jeddijiet fondamentali taghhom kif tutelati bl-Art 1 Prot 1 tal-Konvenzjoni.

X. <u>L-Art 6 tal-Konvenzjoni u l-Art 39 tal-Kostituzzjoni</u>

Kemm fil-premessi tar-rikoors promotur, kif ukoll fl-ewwel talba, ir-rikorrenti jilmentaw minn vjolazzjoni tal-jeddijiet fondamentali taghhom hekk kif dawn huma mharsa bl-Art 39 tal-Kostituzzjoni u bl-Art 6 tal-Konvenzjoni.

Ir-raguni tal-ilment ma tirrizultax la mill-provi u lanqas mit-trattazzjoni.

Ghalkemm mhuwiex kompitu taghha li timla l-vojt li hallew ir-rikorrenti, il-Qorti sejra xorta wahda taghmel l-istharrig taghha tenut kont tan-natura tal-procediment odjern.

Id-disposizzjonijiet in kwistjoni jittrattaw id-dritt ghal smigh xieraq.

Ir-rikorrenti jidher li qeghdin jindirizzaw l-ilment taghha lejn il-kwistjoni tal-access ghall-qorti li huwa parti ewlieni mill-jedd ghal smigh xieraq.

Issir referenza ghas-sentenza moghtija fil-5 ta` April 2018 mill-Grand Chamber tal-ECtHR fil-kaz **Zubac v. Croatia** fejn inghad :-

> "*76. The right of access to a court was established as an aspect of the right to a tribunal under Article 6 § 1 of the Convention in Golder v. the United Kingdom (21 February 1975, §§ 28-36, Series A. no. 18). In that case, the Court found the right of access to a court to be an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary power which underlay much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court (see Roche v. the United Kingdom [GC], no. 32555/96, § 116, ECHR 2005-X; see also Z and Others v. the United Kingdom [GC], no. 29392/95, § 91, ECHR 2001-V; Cudak v. Lithuania [GC], no. 15869/02, § 54, ECHR 2010; and Lupeni Greek Catholic Parish and Others v. Romania [GC], no. 76943/11, § 84, ECHR 2016 (extracts)).*
>
> *77. The right of access to a court must be "practical and effective", not "theoretical or illusory" (see, to that effect, Bellet v. France, 4 December 1995, § 36, Series A no. 333-B). This observation is particularly true in respect of the guarantees provided for by Article 6, in view of the prominent place held in a democratic society by the right to a fair trial (see Prince Hans-Adam II of Liechtenstein v. Germany [GC],*

no. 42527/98, § 45, ECHR 2001-VIII, and Lupeni Greek Catholic Parish and Others, cited above, § 86).

78. However, the right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, which regulation may vary in time and in place according to the needs and resources of the community and of individuals (see Stanev v. Bulgaria [GC], no. 36760/06, § 230, ECHR 2012). In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention`s requirements rests with the Court, it is no part of the Court`s function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see Lupeni Greek Catholic Parish and Others, cited above, § 89, with further references)."

Il-Qorti taghmel referenza ghall-**Guide on Article 6 of the European Convention on Human Rights – Right to a fair trial (Civil Limb)**. Din hija pubblikazzjoni tal-Kunsill tal-Ewropa u tal-ECtHR. Sejra ticcita mill-harga li kienet aggornata sal-31 ta` Dicembru 2017 ghall-kwistjoni specifika li ghandha quddiemha fil-kaz tal-lum :-

85. The right to a fair trial, as guaranteed by Article 6 § 1, requires that litigants should have an effective judicial remedy enabling them to assert their civil rights (Běleš and

Others v. the Czech Republic, § 49; Naït-Liman v. Switzerland [GC], § 112).

86. Everyone has the right to have any claim relating to his "civil rights and obligations" brought before a court or tribunal. In this way Article 6 § 1 embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before courts in civil matters, constitutes one aspect (Golder v. the United Kingdom, § 36; Naït-Liman v. Switzerland [GC], § 113). Article 6 § 1 may therefore be relied on by anyone who considers that an interference with the exercise of one of his or her civil rights is unlawful and complains that he or she has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6 § 1. Where there is a serious and genuine dispute as to the lawfulness of such an interference, going either to the very existence or to the scope of the asserted civil right, Article 6 § 1 entitles the individual concerned "to have this question of domestic law determined by a tribunal" (Z and Others v. the United Kingdom [GC], § 92; Markovic and Others v. Italy [GC], § 98). The refusal of a court to examine allegations by individuals concerning the compatibility of a particular procedure with the fundamental procedural safeguards of a fair trial restricts their access to a court (Al-Dulimi and Montana Management Inc. v. Switzerland [GC], § 131).

87. The "right to a court" and the right of access are not absolute. They may be subject to limitations, but these must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (Philis v. Greece (no. 1), § 59; De Geouffre de la Pradelle v. France, § 28; Stanev v. Bulgaria [GC], § 229; Baka v. Hungary [GC], § 120; Naït-Liman v. Switzerland [GC], § 113).2 Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (Lupeni Greek Catholic Parish and

Others v. Romania [GC], § 89; Naït-Liman v. Switzerland [GC], § 115)."

Fid-decizjoni li tat l-ECtHR fil-kaz ta` **Bellet v. France** tal-4 ta` Dicembru 1995 inghad hekk :-

"*36. The fact of having access to domestic remedies, only to be told that one`s actions are barred by operation of law does not always satisfy the requirements of Article 6 para. 1 (art. 6-1). The degree of access afforded by the national legislation must also be sufficient to secure the individual`s "right to a court", having regard to the principle of the rule of law in a democratic society. For the right of access to be effective, an individual must have a clear, practical opportunity to challenge an act that is an interference with his rights (see the de Geouffre de la Pradelle judgment previously cited, p. 43, para. 34).*"

Hemm limitazzjonijiet ghad-dritt.

Fl-istess **Guide** appena citat, ikompli jinghad hekk :-

"*105. Nonetheless, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a "legitimate aim" and if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be achieved" (Ashingdane v. the United Kingdom, § 57; Fayed v. the United Kingdom, § 65; Markovic and Others v. Italy [GC], § 99; Naït-Liman v. Switzerland [GC], §§ 114-115).*"

Il-Qorti sejra tichad l-eccezzjonijiet kollha tal-intimati safejn dawn jolqtu dik il-parti ta` l-ewwel (1) talba li tirrigwarda d-dikjarazzjoni ta` ksur tal-jeddijiet fondamentali tar-rikorrenti kif protetti bl-Art 6 tal-Konvenzjoni u l-Art 39 tal-Kostituzzjoni.

Qeghda tilqa` l-ewwel (1) talba tar-rikorrenti safejn din tirrigwarda ksur tal-jeddijiet fondamentali taghhom kif tutelati bl-Art 6 tal-Konvenzjoni u l-Art 39 tal-Kostituzzjoni.

XI. <u>L-Art 13 tal-Konvenzjoni</u>

Ir-rikorrenti jilmentaw mill-fatt illi r-regim regolatorju skont il-Kap 69 ma jaghtihom ebda dritt ta` azzjoni sabiex jikkontestaw it-tigdid *ope legis* tal-kirja u l-quantum tal-kera percepibbli. Ghalhekk kellhom jirrikorru ghall-procediment odjern. Din il-pretensjoni hija kontestata fuq bazi ta` dritt mill-intimati.

<u>L-Art 13 tal-Konvenzjoni</u> jaqra :-

> "*Kull min ikollu miksura d-drittijiet u l-libertajiet tieghu kontemplati f`din il-Konvenzjoni ghandu jkollu rimedju effettiv quddiem awtorità nazzjonali ghalkemm dak il-ksur ikun sar minn persuni li jkunu qed jagixxu f`kariga ufficjali."*

Tajjeb jinghad illi jista` jinghata kull rimedju dment illi jkun effettiv, prattiku u legali.

L-ghazla tar-rimedju tiddependi mic-cirkostanzi partikolari tal-kaz.

Martin Kuijer fil-kitba tieghu : "**Effective Remedies as a Fundamental Right" : Seminar on Human Rights and Access to Justice in the EU : European Judicial Training Network : 2014** : ighid :-

> "*The Court demands a domestic remedy to deal with the substance of an "arguable complaint" under the Convention. Article 13 does not require a domestic remedy in respect of any supposed grievance, no matter how unmeritorious; the claim of a violation must be an arguable one. The question of whether the claim is arguable should be determined in the light of the particular facts and the nature of the legal issue or issues raised.*
>
> *Likewise, the domestic remedy should be able to grant appropriate relief. The latter condition is to say that the `authority` needs to be competent to take binding decisions (which means that an Ombudsman does not meet the required standards) and that it should be competent to order restitutio in integrum or award damages. Likewise, the notion of an effective remedy under Article 13 requires that the remedy may prevent the execution of measures that are contrary to the Convention and whose effects are potentially irreversible.*
>
> *The remedy required by Article 13 needs to be "effective" in practice as well as in law. Its effectiveness does not, however, depend on the certainty of a favourable outcome for the applicant.*

(ara wkoll: **Kudla v. Poland** deciz mill-Qorti Ewropeja dwar Drittijiet tal-Bniedem fis-26 ta` Ottubru 2000; **Scordino v. Italy** deciz mill-Qorti Ewropeja dwar Drittijiet tal-Bniedem fid-29 ta` Marzu 2006)

Din il-gurisprudenza taghti direzzjoni fis-sens illi l-Art 13 ma jitlob ebda procedura partikolari ghall-applikazzjoni tieghu. Kull ma

jehtieg huwa li ladarba jirrizulta ksur ta` dritt fondamentali ghandu jkun disponibbli rimedju effettiv.

Fejn il-ligi ordinarja tonqos milli tipprovdi rimedju ghal lezjoni tad-drittijiet fondamentali, ghandha tkun qorti ta` ndole kostituzzjonali u/jew konvenzjonali li taghti rimedju effettiv, dment illi min jirrikorri ghandha jipprova l-vjolazzjoni tad-drittijiet fondamentali tieghu.

Fil-kaz tal-lum, jirrizulta li l-Qorti sabet li kien hemm vjolazzjoni tal-jedd tar-rikorrenti skont l-Art 1 Prot 1 tal-Konvenzjoni.

Ma jirrizultax li r-rikorrenti kellhom fejn imorru hlief quddiem din il-qorti.

Qeghda tichad l-eccezzjonijiet kollha tal-intimati safejn dawn jolqtu dik il-parti ta` l-ewwel (1) talba li tirrigwarda d-dikjarazzjoni ta` ksur tal-jeddijiet fondamentali tar-rikorrenti kif protetti bl-Art 13 tal-Konvenzjoni.

Ghalhekk qeghda tilqa` l-ewwel (1) talba tar-rikorrenti safejn din tirrigwarda ksur tal-jeddijiet fondamentali taghhom kif tutelati bl-Art 13 tal-Konvenzjoni.

XII. <u>L-Art 45 tal-Kostituzzjoni u l-Art 14 tal-Konvenzjoni</u>

Iz-zewg disposizzjonijiet jittrattaw il-protezzjoni tal-persuna minn diskriminazzjoni.

a) <u>L-Artikolu 45 tal-Kostituzzjoni</u>

Fis-subartikolu (1) hemm stabbilit illi : "*ebda ligi ma ghandha taghmel xi disposizzjoni li tkun diskriminatorja sew fiha nnifisha jew fl-effett taghha.*"

Is-subartikolu (3) jitlob li l-ilment ikun abbinat ma` wiehed elementi li jaghmlu d-diskriminazzjoni. Tant hu hekk li s-subartikolu jghid :-

> "*F`dan l-artikolu, il-kelma "diskriminatorju" tfisser ghoti ta`trattament differenti lil persuni differenti attribwibbli ghal kolloxjew principalment ghad-deskrizzjoni taghhom rispettiva skont ir-razza, post ta` origini, opinjonijiet politici, kulur, fidi, sess, orjentazzjoni sesswali jew identità tal-generu li minhabba fihom persuni ta` deskrizzjoni wahda bhal dawn ikunu suggetti ghalinkapacitajiet jew restrizzjonijiet li persuni ta` deskrizzjoni ohrabhal dawn ma jkunux suggetti ghalihom jew ikunu moghtija privileggi jew vantaggi li ma jkunux moghtija lil persuni ta`deskrizzjoni ohra bhal dawn.*"

Il-kaz ta` llum ma jinkwadra ruhu taht ebda wiehed mill-kriterji. Konsegwentement ma hemmx ksur tal-Art 45 tal-Kostituzzjoni. Ghalhekk qeghdin ikunu milqugha l-eccezzjonijiet tal-intimati safejn l-ewwel (1) talba hija ndirizzata lejn vjolazzjoni tal-Art 45 tal-Kostituzzjoni.

b) <u>L-Art 14 tal-Konvenzjoni</u>

Id-disposizzjoni tghid :-

> "*It-tgawdija tad-drittijiet u libertajiet kontemplati f`din il-Konvenzjoni ghandha tigi assigurata minghajr diskriminazzjoni ghal kull raguni bhala huma s-sess, raza, kulur, lingwa, religjon, opinjoni politika jew opinjoni ohra,*

origini nazzjonali jew socjali, assocjazzjoni ma` minoranza nazzjonali, proprjeta`, twelid jew status iehor."

Fin-nota ta` osservazzjonijiet taghhom l-intimati Avukat Generali u Kummissarju tal-Pulizija jaghmlu distinzjoni netta bejn l-Art 45 tal-Kostituzzjoni u l-Art 14 tal-Konvenzjoni, billi jikkontendu li bis-sahha ta` l-Art 45 tal-Kostituzzjoni, il-harsien minn diskriminazzjoni huwa garantit bhala jedd *per se* fis-sens li mhuwiex mehtieg li allegata diskriminazzjoni tkun konnessa ma`vjolazzjoni ta` xi dritt fundamentali iehor, mentri fil-kaz tal-Art 14 tal-Konvenzjoni tehtieg ta` bilfors illi l-allegata diskriminazzjoni tkun marbuta ma` ksur ta` jedd fondamentali iehor tutelat bil-Konvenzjoni.

Issir referenza ghas-sentenza ta` din il-Qorti kif diversament presjeduta tad-19 ta` Ottubru 2000 fil-kawza fl-ismijiet **Victoria Cassar vs Awtorita` Marittima ta` Malta et,** fejn inghad hekk dwar l-applikazzjoni tal-art 14 tal-Konvenzjoni :-

Illi kif gie ritenut mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fil-kaz ***Abdulaziz, Cabales and Balkandali*** *(28 ta` Mejju 1985):*

Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence, since it has effect solely in relation to the "enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not necessarily presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter.

*Illi fis-sentenza "**Angelo Xuereb vs Kummissarju tal-Pulizija**" (Qorti Kost. 17 ta` Frar 1999), il-Qorti qalet li lawturi van Dijk u van Hoof, b`referenza ghal dan ilpassagg mis-sentenza Abdalaziz, spejgaw li:*

*"This formula makes it clear that Article 14 is not independent in the sense that there has to be at least some kind of relation with the right and freedoms of the Convention; differential treatment in a field which falls outside the scope of the Convention cannot amount to a violation of Article 14" (**Theory and Practice of the European Convention on Human Rights, Kluwer, 1990, p 536**).*

…

Illi in effetti fil-kaz appena citat, iktar komunament maghruf bhala "Abdulaziz, Cabales and Balkandali" (1973) holoq precedent u wessa sew l-applikazzjoni tal-artikolu 14, billi ghalkemm gie ritenut li l-istess artikolu mhux awtonomu, pero` jaghti tifsira iktar wiesgha lid-drittijiet fundamentali l-ohra, bhal dak tal-artikolu 8, meta applikat flimkien mal-istess artikolu 14.

…

*Illi dan l-izvilupp certament ifisser li l-import tal-istess artikolu 14 meta abbinat mal-artikoli l-ohra tal-istess Konvenzjoni, jaghti lill-istess artikoli applikazzjoni u interpretazzjoni iktar wiesgha fid-dawl tal-principji kontra ddiskriminazzjoni enuncjati fl-artikolu 14, bil-konsegwenza li ta` indubjament interpretazzjoni aktar libera ghall-kazi li jistghu jaqaw taht l-istess artikoli, li minghajr it-test tal-artikolu 14, kienu jibqghu barra mill-ambitu ta` protezzjoni tal-istess imsemmija drittijiet fundamentali. (**European Human Rights Law - Mark Janis** - page 257).*

Ir-rikorrenti ma rabtux l-ilment **<u>specifiku</u>** taghhom abbazi tal-Art 14 tal-Konvenzjoni ma` jedd iehor tutelat taht il-Konvenzjoni.

Dan premess, jidher li l-ilment tar-rikorrenti huwa dirett lejn diskriminazzjoni fit-trattament bejn sidien ta` propjeta` li tkun mikrija lill-privat u ohrajn fejn il-propjeta` taghhom tkun mikrija lill-Gvern. F`dan il-kuntest ghalhekk l-Art 14 huwa abbinat mal-Art 1 Prot 1 tal-Konvenzjoni.

Fin-nota ta` sottomissjonijiet taghhom ir-rikorrenti ghamlu l-argument li bil-fatt illi kien liberalizzat s-suq tal-kera b`effett mid-dhul fis-sehh tal-Att XXXI tal-1995, huma kienu diskriminati ghaliex kirja li kienu fis-sehh kew bdew qabel l-1 ta` Gunju 1995 thallew barra.

Hija l-fehma ta` din il-Qorti li r-rikorrenti ma jistghux jilmentaw illi kienu trattati diversament minn sidien ohra fl-istess sitwazzjoni taghhom.

L-ghazla mil-legislatur tad-data tal-1 ta` Gunju 1995 ma tistax titqies bhala diskriminatorja specifikament kontra r-rikorrenti.

L-ilment tar-rikorrenti jsir aktar rilevanti fil-kuntest tal-emendi ghal-ligijiet tal-kera li saru bl-Att X tal-2009.

Hemm il-legislatur fl-isforz tieghu sabiex itaffi r-restrizzjonijiet fuq il-kera, ghamel intervent, minghajr ma kien gustifikat, fejn impona limitazzjoni fuq id-dritt ta` kif ghandu jkun hemm awment fil-kera.

Barra minn hekk, filwaqt li kien iffissat terminu definittiv ghat-tmiem tar-rilokazzjoni, rimedju ta` dik ix-xorta ma kienx estiz ghal sitwazzjonijiet fejn bhar-rikorrenti ghandhom propjeta` mikrija lill-Gvern.

Ezaminati u meqjusa l-fatti u c-cirkostanzi kollha tal-kaz, il-Qorti qeghda ssib illi r-rikorrenti garrbu lezjoni tad-drittijiet fondamentali taghhom, kif imharsa bl-Art 14 tal-Konvenzjoni,

meta l-lezjoni tkun abbinata ma` ksur tal-Art 1 Prot 1 tal-Konvenzjoni, kif diga` kien accertat u rrizulta fil-kaz tal-lum.

Ghalhekk qeghda tichad l-eccezzjonijiet kollha tal-intimati safejn dawn jolqtu dik il-parti ta` l-ewwel (1) talba li tirrigwarda d-dikjarazzjoni ta` ksur tal-jeddijiet fondamentali tar-rikorrenti kif protetti bl-Artikolu 14 tal-Konvenzjoni. Bhala konsegwenza qeghda tilqa` l-ewwel (1) talba tar-rikorrenti safejn din tirrigwarda ksur tal-jeddijiet fondamentali taghhom kif tutelati bl-Arttikolu 14 tal-Konvenzjoni.

XIII. <u>It-tieni (2) u t-tielet (3) talbiet</u>

Sa issa l-Qorti esprimiet ruhha dwar l-ewwel talba u dwar l-eccezzjonijiet li gabu l-intimati kontra dik it-talba.

Sejra tghaddi issa ghall-konsiderazzjoni tat-tieni talba.

Il-Qorti tirreferi ghad-decizjoni li tat il-Qorti tal-Appell fl-24 ta` April 2015 fil-kawza fl-ismijiet **<u>Michael Angelo Briffa et vs Nadia Merten</u>** fejn inghad hekk :-

> *" ... illi l-art. 6 tal-Kostituzzjoni jghid car illi "jekk xi ligi ohra tkun inkonsistenti ma` din il-Kostituzzjoni, ... il-ligi l-ohra ghandha, safejn tkun inkonsistenti, tkun bla effett". Il-qorti ghalhekk, jekk issib ksur tal-Kostituzzjoni, ma tistax thalli illi, bis-sahha tal-art. 12(4) tal-Kap. 158, issir il-konverzjoni tac-cens ghax jekk taghmel hekk tkun qieghda thalli li jinghata effett lil ligi wkoll safejn tkun inkonsistenti mal-Kostituzzjoni (Ara Cedric Mifsud et noe v. Avukat Generali u Carmelo Camilleri, Kost. 31 ta` Jannar 2014). Ir-rimedju ghalhekk jista` jkun biss illi l-qorti taqta` l-kawza bhallikieku l-art. 12(4) ma ghandu ebda effett, i.e. billi ma*

thallix illi ssehh il-konverzjoni, bil-konsegwenza illi l-konvenuta tibqa` bla titolu.

16. Lanqas ma huwa relevanti l-fatt illi r-rimedju moghti mill-Qorti Ewropea tad-Drittijiet tal-Bniedem fil-kaz ta` Amato Gauci kien il-kundanna tal-gvern li jhallas id-danni u mhux il-kundanna tal-kerrej ghal zgumbrament. Qabel xejn kawzi quddiem il-Qorti Ewropea jsiru kontra l-istat u mhux kontra cittadini privati: il-kerrej, li ma kienx parti fil-kawza, ma setax jigi kundannat li jizgombra. Barra minn hekk, ir-rimedju li tista` taghti dik il-qorti huwa biss kontra l-istat: ma ghandha ebda setgha tordna zgumbrament ta` cittadini privati. Ukoll, dik il-qorti tista` biss tghid illi irravvizat ksur ta` xi disposizzjoni tal-Konvenzjoni ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali izda ma ghandha ebda setgha li tghid illi l-ligi domestika "tkun bla effett"."

Il-Qorti tikkondividi dan l-insenjament u taghmlu taghha.

Fir-rigward tat-tieni talba, filwaqt li mhijiex sejra tiddikjara bhala nulli u bla effett id-disposizzjonijiet tal-Kap 69 citati mir-rikorrenti fl-ewwel talba, sejra tiddikjara li dawk id-disposizzjonijiet m`ghandhomx ikunu applikabbli ghall-kirja mertu ta` din il-kawza.

Nigu issa ghat-tielet talba.

Fil-parti senjalata (i) tat-tielet talba, ir-rikorrenti mhux qed jitolbu lil din il-Qorti sabiex tordna l-izgumbrament tal-Kummissarju tal-Pulizija mill-fond de quo. Li kieku saret talba f`dak is-sens, ma kenitx tkun milqugha fuq l-iskorta ta` ghadd ta` sentenzi tal-Qorti Kostituzzjonali fosthom : **Angela sive` Gina Balzan v. l-Onorevoli Prim Ministru et** (07/12/2012) ; **Dr. Cedric Mifsud et v. L-Avukat**

Generali et (25/10/2013) ; **Maria Ludgarda sive Mary Borg et vs Rosario Mifsud et** (29/04/2016) ; u **Rose Borg vs Avukat Generali et** (11/07/2016), kif ukoll fuq l-iskorta tas-sentenzi tal-ECtHR fil-kazi : **Frendo Randon and Others v. Malta** (22/02/2012) ; u **Lindheim and Others v. Norway** (12/02/2012). Dan ghaliex procediment ta` x-xorta tal-lum mhuwiex il-forum appozitu sabiex tinghata decizjoni dwar jekk inkwilin ghandux jigi zgumbrat jew le, billi huma t-tribunali jew qrati ordinarji li ghandhom il-kompetenza li jesprimu ruhhom dwar talba ghal zgumbrament. Billi t-talba kienet diversa, u tinkwadra ruhha fit-talba ghal dikjarazzjoni li kien hemm vjolazzjoni tal-jeddijiet fondamentali tar-rikorrenti, allura qeghda tkun milqugha.

Dwar il-parti senjalata (ii) fit-tielet talba, u cioe` t-talba ghall-hlas ta` kumpens, huwa principju ben assodat illi l-kumpens li jista` jinghata fi procediment ta` natura kostituzzjonali mhuwiex ekwivalenti ghad-danni civili li jigu likwidati mill-qrati ordinarji (ara : QK : **Philip Grech pro et noe v. Direttur tal-Akkomodazzjoni Socjali et** deciza fis-17 ta` Dicembru 2010 ; **Victor Gatt et v. Avukat Generali et** deciza fil-5 ta` Lulju 2011 ; u **Ian Peter Ellis et v. Avukat Generali et** deciza fl-24 ta` Gunju 2016). Fid-decizjoni fil-kawza **Maria Stella sive Estelle Azzopardi et v. Avukat Generali et** tat-30 ta` Settembru 2016, il-Qorti Kostituzzjonali kompliet tippreciza illi r-"*rimedju li taghti din il-Qorti huwa kumpens ghall-ksur tad-dritt fondamentali u mhux danni civili ghal opportunita` mitlufa.*"

Meta jinghata kumpens fi procediment ta` din ix-xorta, ghandu jinghata konsiderazzjoni l-ghan li jkun immotiva l-mizura u cioe` l-interess pubbliku. Ghall-fini ta` quantum ta` kumpens u relattiva motivazzjoni, il-Qorti tirreferi ghad-decizjonijiet :- QK : **Angela sive Gina Balzan v. L-Onorevoli Prim Ministru** : op. cit. ; **Dr. Cedric Mifsud et v. l-Avukat Generali et** : op. cit. ; **Concetta sive Connie Cini v. Eleonora Galea et** (31/01/2014) ; **Robert Galea v. Avukat Generali et** : PA/GK : 07/02/2017 ; **Sergio Falzon et v. Alfred Farrugia et** : PA/GK : 30/01/2018, kif ukoll id-decizjoni ta` **Cassar v. Malta** moghtija mill-ECtHR fit-30 ta` Jannar 2018.

Il-proceduri odjerni min-natura taghhom kienu diretti sabiex jindirizzaw lezjoni kostituzzjonali u/jew konvenzjonali. Il-Qorti sabet ksur tal-Konvenzjoni. Ghalkemm id-diskrepanza bejn il-kera attwalment percepita u l-valur lokatizju li l-fond de quo jgib fis-suq hieles hija fattur determinanti sabiex ikun stabbilit jekk kienx vjolat il-principju tal-proporzjonalita`, fl-istess waqt hemm fatturi ohra li wkoll ghandhom rilevanza.

Il-fatturi li jidderminaw l-entita` tal-kumpens huma :-

i) L-interess generali li jaghti legittimita` lill-intervent legislattiv.

ii) L-interess pubbliku li ghadu prevalenti sal-lum huwa fattur iehor. Il-post in kwistjoni ilu jservi bhala Ghassa tal-Pulizija mis-snin tletin. Mhijiex Ghassa kwalunkwe izda Ghassa centrali li taqdi l-htigijiet ta` distrett li ghandu popolazzjoni mdaqqsa. Ghandha funzjoni li manifestament tmur ben oltre r-rwol strett taz-zamma tal-ordni pubbliku.

iii) L-isproporzjon bejn il-kera attwalment percepita mir-rikorrenti u dik li setghu jippercepixxu fis-suq li kienu ma kienux soggetti ghall-vinkoli tal-Kap 69.

iv) Kien x`kien l-uzu li riedu jaghmlu bil-fond meta sar l-akkwist fi tliet stadji, jibqa` l-fatt li r-rikorrenti kienu jafu li kienu qeghdin jakkwistaw fond li mhux biss soggett ghal kirja, izda li kien ukoll soggett ghal kirja regolata bil-Kap 69, bl-inkwilin ikun il-Gvern tramite l-Kummissarju tal-Pulizija.

v) Id-daqs tal-fond, l-area tieghu, il-pozizzjoni centrali u fuq kollox l-adattabilita` li ghandu sabiex ikun konvertit f`ufficcini.

vi) Il-valur kummercjali tal-fond.

vii) L-incertezza dwar ir-ripreza mir-rikorrenti tal-pussess battal tal-fond.

viii) Il-fatt li mal-akkwist ir-rikorrenti kienu pronti juru d-determinazzjoni li jiehdu lura l-post, haga li l-antekawza taghhom ma ghamlux, tant li mill-ewwel ma kienx accettat il-hlas tal-kera.

ix) L-inerzja tal-Istat bil-fatt li baqa` lura milli jsib tarf tal-kwistjoni b`legislazzjoni ad hoc. Fil-kaz tal-lum il-materja tassumi rilevanza minhabba l-fatt li l-Istat kien "moqdi" meta ghal post bhal dak hallas quantum ta` kera ghal kollox irrizorju minn kull aspett.

Kull kaz ghandu l-isfond u l-fattispeci partikolari tieghu u ghalhekk ma jistax ikun hemm uniformita` fil-quantum tal-kumpens li jigi likwidat mill-qrati taghna.

Skont il-Perit Denis Camilleri, inkarigat *ex parte* mir-rikorrenti, il-valur tal-propjeta` fl-intier taghha, libera u franka, meqjusa bhala kummercjali, ghaliex hekk hi, tammonta ghal €832,625. Il-valur lokatizju prezenti ta` l-fond de quo huwa ta` €63,787.50 fis-sena. Mill-banda l-ohra, skont il-Perit Paul Buhagiar, inkarigat *ex parte* mill-intimati Avukat Generali u Kummissarju tal-Pulizija, il-valur tal-propjeta` fl-intier taghha, libera u franka, meqjusa bhala kummercjali, ghaliex hekk hi, tammonta ghal €690,000. Il-valur lokatizju prezenti ta` l-fond de quo huwa ta` €39,700 fis-sena jekk jigi applikat metodu ta` valutazzjoni partikolari, jew inkella ghal €42,200 fis-sena skont metodu ta` valutazzjoni iehor. Tajjeb jinghad illi kif xehed u stqarr il-Perit Buhagiar, il-valutazzjoni tieghu ma tiehux in konsiderazzjoni l-kantina li hemm sottoposta ghall-fond, ghaliex qal li ma kienx jaf biha meta ghamel l-access.

Ghalkemm iz-zewg periti mhumiex konkordi fl-istimi taghhom, jibqa` l-fatt illi l-valutazzjonijiet taghhom igibu fix-xejn l-ammont ta` kera li qed jithallas fil-prezent ghal fond li t-tnejn li huma qablu u accettaw li ghandu jitqies bhala fond kummercjali ; ghalhekk il-ksur tal-jeddijiet tar-rikorrenti skont

il-Konvenzjoni, thares mnejn thares, tfittex kemm tfittex gustifikazzjonijiet. Dak li huwa oggettiv ma jistax jitwarrab.

Il-Qorti tghid li r-rikorrenti haqqhom jithallsu kumpens.

Dwar l-ghadd ta` l-kumpens li haqqhom jithallsu, hasbet fit-tul u zammet quddiemha l-fatti u cirkostanzi partikolari ta` dan il-kaz.

Hija tal-fehma li r-rikorrenti ghandhom jithallsu kumpens shih ta` €200,000. Din il-figura tikkomprendi kemm kumpens pekunjarju u morali, kif ukoll kumpens kemm ghall-ksur li kien determinat, kif ukoll ghall-ksur li se jkompli jirrikorri sakemm ir-rikorrenti ma jiehdux lura l-post jew ma jaslux fi ftehim ta` xi xorta mal-Istat. Dan il-kumpens ghandu jithallas mill-Avukat Generali li fil-kawza tal-lum jirrapprezenta l-Istat.

<u>Decide</u>

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

Riferibbilment ghall-eccezzjonijiet li kienu sollevati kemm mill-intimata Awtorita` tal-Artijiet, kif ukoll mill-intimati Avukat Generali u Kummissarju tal-Pulizija, qeghda tichadhom kollha, hlief ghal dawk l-eccezzjonijiet li jirrigwardaw il-lanzjanzi tar-rikorrenti abbazi ta` l-Art 37 u 45 tal-Kostituzzjoni ta` Malta, liema eccezzjonijiet qeghdin jigu milqugha.

Tilqa` l-ewwel talba limitatament u safejn din tirrigwarda d-disposizzjonijiet li kienu citati, hlief ghall-Art 37 tal-

Kostituzzjoni ta` Malta, fil-kaz ta` liema disposizzjoni wahedha dik il-parti tat-talba qeghda tkun michuda.

Tilqa` t-tieni talba limitatament billi tiddikjara li l-artikoli 3, 4 , 5 u 9 tal-Ordinanza li Tirregola t-Tigdid tal-Kiri tal-Bini (Kap 69) mhumiex applikabbli ghall-kirja mertu ta` din il-kawza. Ghall-bqija t-tieni talba qeghda tkun respinta.

Riferibbilment ghat-tielet talba, tiddikjara li r-rikorrenti mhumiex obbligati jgeddu l-kirja tal-fond de quo.

Riferibbilment ukoll ghat-tielet talba, tillikwida favur ir-rikorrenti kumpens shih ta` mitejn elf Ewro (€200,000) skont kif fuq spjegat, u tikkundanna lill-Avukat Generali sabiex ihallas din is-somma hekk likwidata lir-rikorrenti.

Bl-applikazzjoni tal-Art 223(3) tal-Kap 12, tordna lil kull parti sabiex thallas l-ispejjez taghha.

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

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur