QORTI CIVILI PRIM`AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON

Illum il-Hamis, 27 ta` Frar 2020

Kawza Nru. 1
Rikors Nru. 133/2018 JZM

J & C Properties Limited (C-29114)

kontra

Nazzareno Pulis (K.I. 0087549M)

u

Antonia Pulis (K.I. 0677849M)

u

Avukat Generali, li kien sostitwit *ope legis* bl-Avukat tal-Istat, b`effett tal-Kap 603 tal-Ligijiet ta` Malta, u tal-Avviz Legali 329 tal-2019

Il-Qorti :

I. Preliminari

Rat ir-rikors ipprezentat fit-28 ta` Dicembru 2018 liema rikors kien ikkonfermat bil-gurament minn Helen Camilleri ghan-nom u in rapprezentanza tar-rikorrenti. L-att jaqra hekk :–

1. Illi s-socjeta` rikorrenti hija proprjetarja tal-ghalqa ta` circa hamest elef metri kwadri, b`razzett go fiha, maghrufa l-imsemmija ghalqa ta`Has-Sajd, limiti ta`Haz-Zabbar, tmiss mit-tramuntana ma` sqaq bla isem, rnill-punent ma` beni ta` Salvatore Caruana u minn nofsinhar u l-lvant ma` beni tal-Markiz Cassar Desain, jew l-aventi causa tieghu, soggetta ghac-cens annwu u perpetwu ta` Lm1,40,8, liema ghalqa hija akkwistat permezz ta` kuntratt tat-3 Ta` Gunju 1982 fl-atti tan-Nutar Dottor Carmelo Mangion, li kopja tieghu qed jigi hawn anness u mmarkat bhala "Dohument A".

2. Illi l-ghalqa in kwistjoni ilha mikrija ghal generazzionijiet shah lill-antekawza ta` Nazzareno Pulis bil-qbiela ta` circa €58.23c fis-sena pagabbli kull 15 ta`Awwissu ta`kull sena.

3. Illi galadarba t-titolu ta` lokazzjoni li ghandhom l-intimati konjugi Pulis huwa titolu ta` qbiela ossia lokazzjoni agrikola, japplika l-Kap. 199 tal-Ligijiet ta` Malta.

4. Illi l-valur tal-ghalqa de quo huwa ta`circa €820,000 kif jirrizulta mir-rapport tal-Perit Joseph Cassar u ghalhekk tenut kont tal-fatt illi l-qbiela pagabbli hija ta` biss circa €58.23c fis-sena, certament illi hemm sproporzjon flagranti bejn il-valur lokatizju fuq is-suq hieles u l-valur lokatizju kif impost mill-Kap. 199 tal-Ligijiet ta` Malta, u konsegwentement bejn id-drittijiet tas-socjeta` rikorrenti bhala sid l-ghalqa u l-intimati Pulis bhala gabillotti tal-istess ghalqa.

5. Illi l-Artikolu 4 tal-imsemmi Kap. 199 tal-Ligijiet ta` Malta jiddisponi illi sid ta` raba` li tkun mikrija jista` jigi awtorizzat, jirriprendi lura l-pussess ta` dik ir-raba` biss jekk tikkonkorri xi wahda mic-cirkostanzi tassattivament elenkati fit-tieni subinciz tal-istess artkolu, u fin-nuqqas li tinkorri mqar wahda minn dawn ic-cirkostanzi, is-sid huwa ghall-finijiet u effetti kollha tal-ligi mgieghel illi jaccetta l-proroga

indefinita tal-lokazzjoni, u dan ghad illi tali proroga tkun qed issehh kontra l-volonta` tas-sid innifsu.

6. Illi oltre dan, a tenur tal-Artikolu 3 tal-Kap. 199, is-sid huwa prekluz milli jvarja jew jimmodifika, jew milli jagixxi ghall-varjazzjoni jew ghall-modifika tal-kundizzjonijiet lokatizji, inkluz izda mhux biss, ir-rata ta` kera ossia qbiela pagabbli lilu, jekk mhux bi ftehim bil-miktub mal-inkwilin, salv fil-kaz li tkun tikkonkorri xi wahda mic-cirkostanzi tassattivament elenkati fl-imsemmi artikolu. Fin-nuqqas tal-konkors ta` xi wahda mic-cirkostanzi msemmija, is-sid jkollu effettivament jissokkombi ghall-proroga indefinita tal-lokazzjoni bl-istess kundizzjonijiet, irrispettivament minn kull kunsiderazzjoni ohra li tista` tkun rilevanti ghall-kaz.

7. Illi barra minn hekk, l-Artikolu 14 tal-Kap. 199 tal-Ligijiet ta` Malta espressament jikkommina s-sanzjoni tan-nullita` fil-konfront ta` kull patt jew kundizzjoni li jcahhad lill-inkwilin minn xi beneficcju moghti lilu permezz tal-Kap. 199, biex b`hekk lanqas bil-kunsens tal-inkwilin ma jista` sid jiftiehem biex itejjeb il-qaghda tieghu fil-kuntest tal-kirja li biha hwejjgu jkunu mghobbija.

8. Illi ghalhekk id-disposizzjonijiet tal-Kap. 199 qieghdin icahhdu lis-socjeta` rikorrenti mit-tgawdija pacifika tal-possedimenti taghha b`karenza tal-interess pubbliku necessarju sabiex tali cahda tista` tirrizulta gusitifikata, u dan bi vjolazzjoni tad-drittijiet tar-rikorrenti kif tutelati mill-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea u mill-Artikolu 37 tal-Kostituzzjoni.

9. Illi inoltre d-drittijiet tas-socjeta` rikorrenti qed jigu lezi wkoll billi d-dispozizzjonijiet tal-Kap. 199 tal-Ligijiet ta` Malta qieghdin iwasslu ghal kontroll u interferenza fl-uzu u fit-tgawdija tal-proprjeta` tas-socjeta` rikorrenti liema kontroll u interferernza jikkostitwixxu piz sproporzjonat li qed titghabba bih is-socjeta` rikorrenti minghajr kumpens xieraq u adegwat.

10. Illi apparti dan kollu l-ligi hija diskriminatorja in konfront tas-sidien stante illi l-Att XXXI tal-1995 u l-Att X tat-2009 ma japplikawx ghall-gabbellagg tal-qbiela tar-raba` waqt li fondi ohra ossia proprjeta` immobbiljari ohra l-kirjiet taghhom wara l-1 ta` Gunju 1995 jistghu jigu terminati ghax iz-zmien miftiehem huwa r-rabta bejn il-kontendenti.

11. Illi a tenur tal-Att XVI tal-1967 ossia l-Kap 199 tal-Ligijiet ta` Malta l-mittenti ma jistghu qatt jitterminaw il-qbiela tar-raba` peress illi minkejja li l-proprjeta` mhijiex tal-inkwilini huma ghandhom dritt li jassenjaw l-istess kirja lil uliedhom u/jew lin-nies li jigu minnhom kif tistipula din l-istess Ligi filwaqt illi s-socjeta` rikorrenti hija kostretta tkompli tircievi l-qbiela irrizorja ta` circa €58.23c fis-sena, u dan meta l-valur tal-ghalqa de quo fis-suq hieles huwa ta`€820,000.

12. Illi kull awment li jista` talvolta jakkorda l-Bord dwar il-Kontroll ta` Kiri ta` Raba` huwa xorta irrizorju u ma jikkombacjax mal-valur lokatizju tal-ghalqa fis-suq.

13. Illi s-socjeta` rikorrenti m`ghandhiex rimedju effettiv ai termini tal-Artikolu 6 tal-Konvenzjoni Ewropea stante illi hija ma tistax izzid il-kera b`mod ekwu u gust skont il-valur tas-suq illum stante illi dak li effettivament hija tista` tircievi huwa dak kif limitat bil-Kap. 199 tal-Ligijiet ta`Malta.

14. Illi dan kollu gia determinat fil-kawzi ***Amato Gauci vs Malta no. 47045/06 deciza mill-Qorti Ewropea tad-Drittijiet Fundamentali tal-Bniedem fil-15 ta` Settembru 2009*** *u* ***Lindheim and others vs Norway nru. 13221/08*** *u* ***2139/10 deciza fit-12 ta` Gunju 2012 u Zammit and Attard Cassar vs Malta applikazzjoni, nru. 1046/12 deciza fit-30 ta`Lulju 2015.***

15. Illi galadarba s-socjeta` rikorrenti qed issofri minn nuqqas ta` "fair balance" bejn l-interessi generali tal-komunita` u l-bzonnijiet u protezzjoni tad-drittijiet fundamentali tal-bniedem kif deciz b` ***Beyeler vs Italy nru. 33202/96, J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd us the United Kingdom [GC], nru. 44302/02, § 75, ECHR 2007-III) u ghalhekk il-principju ta` proporzjonalita` kif gie deciz f`Almeida Ferreira and Melo Ferceira vs Portugal nru. 41696/07 § 27 u 44 tal-21 ta`Dicembru 2010.***

16. Illi zgur ma jistax jigi mplikat illi r-rikorrenti rrinunzjat ghad-dritt taghha biex hija tircievi kera gusta ghall-fond taghha stante li ilha tipprova tizgombra lill-inkwilini imma dan huwa impossibli.

17. Illi r-regolamenti ta` kontroll tal-kera huma interferenza mad-dritt tas-sid ghall-uzu tal-proprjeta` taghhom stante illi dawn l-iskemi ta` kontroll tal-kera u restrizzjonijiet fuq id-dritt tas-sid li jittermina l-kirja

tal-inkwilin u wisq inqas ta` min qed jipprova jippresta lilu nnifsu bhala inkwilin meta mhuwiex jikkostitwixxi kontroll tal-uzu tal-proprjeta` fit-termini tat-tieni paragrafu tal-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea ***(vide Hutten-Czapsha vs Poland [GC], nru. 35014/97, §§ 160-161, ECHR 2006-VIII Bitto and Others vs Slovakia, nru. 30255/09, § 101, 28 ta` Jannar 2014 u R&L, s.r.o. and Others §108).***

18. Illi din hija wkoll diskriminatorja sia ai termini tal-Artikolu 45 tal-Kostituzzjoni ta` Malta u l-Artikolu 14 tal-Konvenzjoni Ewropea.

*19. Illi l-valur lokatizju tal-post huwa ferm oghla minn dak li l-ligi imponiet li r-rikorrenti ghandha tircievi b`tali mod illi bid-dispozizzjonijiet tal-Artikolu 34, 37 u 45 tal-Kostituzzjoni ta` Malta u l-Artikolu 14 u l-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni Ewropea il-Kap. 199 tal-Ligijiet ta`Malta mhux biss ikkawzaw diskriminazzjoni bejn proprjeta` immobbiljari u ohra ossia bejn fondi urbani ghax inzerta illi minflok li l-fond huwa dar u/jew fond kummercjali li ghalqa imma xorta fond urban u ghalhekk dan ukoll jillidi d-drittijiet kostituzzjonali kif protetti taht l-Artikolu tal-Kostituzzjoni ta` Malta, kif ukoll tal-Artikolu 1 u 14 tal-Protokoll Nru. 1 u l-Artikolu 6 tal-Konvenzjoni Ewropea u ghalhekk il-Ligi fuq imsemmija ghandha tigi ddikjarata anti-kostituzzjonali u ghandha tigi emendata, kif del resto diga` gie deciz mill-****Qorti Ewropea tad-Drittijiet tal-Bniedem fil-kawza Amato Gauci vs. Malta - deciza fil-15 ta` Settembru, 2009 u Zammit and Attard Cassar vs Malta deciza fit-30 ta` Luliu 2015 mill-Qorti Ewropea tad-Drittijiet Fundamentali tal-Bniedem*** *u fejn gie deciz impost kirja unilaterali ghal perjodu indeterminat lid-dixxendenti tal-inkwilin originali minghajr ebda limitu u minghajr ma pprovditilhom kera gusta u ekwa u ghalhekk fic-cirkostanzi huma ghandhom jircievu danni pekunjari bl-interessi kontra l-intimati u l-izgumbrament mill-fond stante l-piz zejjed li s-socjeta`rikorrenti qed terfa` minhabba legislazzjoni ingusta u mhux ekwa u li ma tikkreax bilanc bejn l-inkwilin u dawk tas-sid.*

Ghaldaqstant is-socjeta` rikorrenti titlob bir-rispett lil din l-Onorabbli Qorti prevja kwalsiasi dikjarazzjoni necessarja u opportuna u ghar-ragunijiet premessi jghidu l-intimati ghaliex m`ghandhiex :-

(I) Tiddikjara u tiddeciedi illi d-disposizzjonijiet tal-Kap.199 tat-Ligijiet ta` Malta b`mod partikolari izda mhux biss l-Artikoli 3, 4 u 14, qeghdin jaghtu dritt ta` rilokazzjoni lill-intimati konjugi Pulis ghall-ghalqa circa hamest elef metri kwadri, b`razzett go fiha, maghrufa l-imsemmija ghalqa ta` Has-Said, limiti ta` Haz-Zabbar, tmiss mit-tramuntana ma`

sqaq bla isem, mill-punent ma` beni ta` Salvatore Caruana u min-nofsinhar u l-lvant ma` beni tal-Markiz Cassar Desain, jew l-aventi causa tieghu, proprjeta` tas-socjeta` rikorrenti, u jirrenduha impossibli lis-socjeta` rikorrenti li tirriprendu l-pussess tal-imsemmija proprjeta`.

(II) Konsegwentement tiddikjara u tiddeciedi illi qed jigu lezi d-drittijiet fundamentali tas-socjeta` rikorrenti ghat-tgawdija tal-proprjeta` taghha ossia l-ghalqa ta` circa hamest elef metri kwadri, b`razzett go fiha, maghrufa l-imsemmija ghalqa ta` Has-Sajd, limiti ta` Haz-Zabbar, tmiss mit-tramuntana ma` sqaq bla isem, mill-punent ma` beni ta`Salvatore Caruana u minn nofsinhar u lvant ma`beni tal-Markiz Cassar Desain, jew l-aventi causa tieghu, kif protetti mill-Artikolu 37 u 39 tal-Kostituzzjoni ta` Malta u mill-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea (l-Ewwel Skeda tal-Kap. 319 tal-Ligijiet ta` Malta) u anke mill-Artikolu 6 tal-istess Konvenzjoni u b`hekk taghtihom ir-rimedji li jidhrilha xierqa fis-sitwazzjoni nkluz ir-ripresa tal-ghalqa, razzett u ambjenti de quo.

(III) Tiddikjara u tiddeciedi illi l-intimati jew min minnhom huma responsabbli ghal kumpens u danni sofferti mir-rikorrenti b`konsegwenza tal-operazzjonijiet tal-Att XVI tal-1967 ossia tal-Kap. 199 tal-Ligijiet ta` Malta li ma kreawx bilanc gust bejn id-drittijiet tas-sid u dak ta` l-inkwilini, stante illi ma jirriflettux is-suq u lanqas il-valur lokatizju tal-proprjeta` in kwistjoni, u dan ai termini tal-Konvenzjoni Ewropeja`.

(IV) Tillikwida l-istess kumpens u danni pekunjarji u non pekunjarji kif sofferti mis-socjeta` rikorrenti ai termini tal-Aritkolu 41 tal-Konvenzjoni Ewropea.

(V) Tikkundanna lill-intimati jew min minnhom jhallsu l-istess kumpens u danni hekk likwidati.

Bl-ispejjez, inkluzi dawk tal-ittra ufficjali tas-16 ta` Novembru 2018 fejn is-socjeta` rikorrenti diga` tat il-congedo lill-intimati Pulis li mhux behsiebha ggedded l-kirja wara l-14 ta`Awwissu 2019 u li kienet behsiebha tipprocedi b`din il-kawza, kopja ta` liema ittra qed tigi hawn annessa u mmarkata bhala "Dokument C" u bl-ingunzjoni ta` l-intimati ghas-subizzjoni.

Rat id-dokumenti li kienu prezentati mar-rikors promotur.

Rat ir-risposta li pprezenta l-Avukat Generali fl-14 ta` Jannar 2019 li taqra hekk :-

1. Illi qabel xejn, il-kumpannija rikorrenti trid tressaq prova konvincenti li tabilhaqq hija soggetta ghall-kirja li hija regolata bil-Kap 199 tal-Ligijiet ta` Malta.

2. Illi bla hsara ghall-premess, il-kumpannija rikorrenti ma tistax tilmenta minn ksur kostituzzjonali jew konvenzjonali jekk meta hija xtrat l-ghalqa in kwistjoni fit-30 ta` Gunju 1982, din l-ghalqa kienet diga` soggetta ghall-kirja li kienet imharsa bil-Kap 199 tal-Ligijiet ta` Malta. F`dawn ic-cirkostanzi allura l-protezzjoni tal-kirja ma kinitx xi haga li giet imposta fuq il-kumpannija rikorrenti b`mod imgieghel mill-lstat, izda kienet konsegwenza naturali tal-ghazla taghha stess li tixtri dik l-ghalqa b`dik il-protezzjoni.

3. Illi l-ewwel talba tal-kumpannija rikorrenti mhijiex misthoqqha ghaliex mhux minnu li l-Kap 199 tal-Ligijiet ta` Malta jaghmilha impossibbli ghaliha li tiehu lura l-ghalqa f` idejha minhabba l-obbligi tar-rilokazzioni. Anzi l-artikolu 4 tal-Kap 199 tal-Ligijiet ta` Malla jsemmi ghadd kbir ta` sitwazzjonijiet fejn il-kirja agrikola tista` ma tiggeddidx.

4. Illi safejn il-kumpannija rikorrenti qieghda tattakka t-thaddim tal-Kap 199 tal-Ligijiet ta` Malta fuq is-sahha tal-artikolu 37 tal-Kostituzzjoni, dan ma jistax jigi mistharreg. Dan qed jinghad ghaliex skont l-artikolu 37(2)(f) tal-Kostituzzjoni, ebda haga f`dan l-artikolu m`ghandha tinftiehem li tolqot l-ghemil jew hdim ta` xi haga safejn dan tkun tipprovdi ghat-tehid ta` pussess jew akkwist ta` proprjeta`, li ssehh fil-kuntest ta` kirja.

5. Illi f`kull kaz il-kumpannija rikorrenti ma garrbet l-ebda ksur tal-jedd taghha ghat-tgawdija ta` gidha taht l-artikolu 37 tal-Kostituzzjoni u dan peress li dan l-artikolu jghodd biss meta jkun hemm tehid imgieghel tal-proprjeta`. Tassew sabiex wiehed jista` jitkellem dwar tehid imgieghel, persuna trid tigi mnezza` minn kull dritt li ghandha fuq dik il-proprjeta` bhal meta jkun hemm ordni ta` esproprijazzjoni ta` xiri dirett. Pero` dan mhuwiex il-kaz hawnhekk, ghaliex bl-applikazzjoni tal-Kap 199 tal-Ligijiet ta` Malta l-kumpanija rikorrenti ma tilfitx ghalkollox il-jeddijiet kollha taghha fuq il-gid in kwistjoni. Tant hu hekk, li l-artikolu 4 tal-Kap 199 isemmi lista shiha ta` cirkostanzi ta` meta sid ta` art agrikola jista` jitlob li l-kirja taghha ma tibqax tiggedded u b`hekk tigi lura ghandu.

6. Illi safejn l-ilment tal-kumpannija rikorrenti huwa msejjes fuq l-ewwel artikolu tal-ewwel protokoll tal-Konvenzjoni Ewropea, ghandu jinghad li skont il-proviso ta` dan l-istess artikolu, l-lstat ghandu kull jedd li jwettaq dawk il-ligijiet li jidhrulu xierqa biex jikkontrolla l-uzu ta` proprjeta` skont l-interess generali. F`dan is-sens huwa maghruf fil-gurisprudenza li l-lstat igawdi minn diskrezzjoni wiesgha sabiex jidentifika x`inhu mehtieg fl-interess generali u sabiex jistabbilixxi liema huma dawk il-mizuri mehtiega ghall-harsien tal-interess generali. Sewwasew fil-kaz taghna, il-Kap 199 tal-Ligijiet ta` Malta ghandu : (i) ghan legittimu ghax johrog mil-ligi, (ii) huwa fl-interess generali ghax huwa mahsub biex iheggeg u jhares it-tkabbir ta` prodotti agrikoli, fjuri u sigar tal-frott li huma mehtiega ghall-hajja; u (iii) izomm bilanc gust u ekwu bejn l-interessi tas-sid, tal-gabillott u tal-poplu b`mod generali. Jigi b`hekk, li l-esponent ma jarax kif il-Kap 199 ghandu jitqies li jmur kontra l-ewwel artikolu tal-ewwel protokoll tal-Konvenzjoni Ewropea.

7. Illi dwar l-ilment mibni fuq l-artikolu 6 tal-Konvenzjoni u l-artikolu 39 tal-Kostituzzjoni, l-esponent jissottometti li l-kuncett kollu ta` smigh xieraq ma jdurx mal-interpretazzjoni tal-ligi sostantiva jew mal-principji tal-ermenewtika legali izda huwa mixhut esklussivament fuq il-"procedural fairness" ta` kawza. L-access ghall-qorti ma jfissirx li l-ligi ghandha tinkiteb kif tkun tixtieq parti. Billi ghalhekk l-ilment tal-kumpanija rikorrenti mhuwiex marbut ma` xi nuqqas procedurali, dan l-ilment ghandu jigi michud ukoll.

8. llli ghal dak li jirrigwarda l-artikolu 45 tal-Kostituzzjoni ta` Malta, dan ukoll mhuwiex applikabbli minhabba li l-imgieba diskriminatorja mixlija mill-kumpannija rikorrenti ma gietx impoggija taht wahda mill-irjus ta` diskriminazzjoni li ghalihom jirreferi l-artikolu 45(3) tal-Kostituzzjoni.

9. llli ghal dak li jolqot l-artikolu 14 tal-Konvenzjoni Ewropea, l-esponent jissottometti li l-kumpannija rikorrenti ma indikatx fuq liema kawzali jew status hija allegatament giet diskriminata. Ghalhekk galadarba t-trattament divers imqanqal minnha mhuwiex xprunat fuq wiehed mill-kawzali li jinsab protett mill-artikolu 14 tal-Konvenzjoni, isegwi li anke minn dan l-aspett, l-istharrig konvenzjonali ma jistax jigi milqugh.

10. llli mizjud ma` dan, u dan jghodd kemm ghad-dispozizzjoni tal-Kostituzzjoni u kif ukoll ghal dik tal-Konvenzjoni Ewropea, huwa manifest li l-ligijiet li qed jigu attakkati mill-kumpannija rikorrenti, japplikaw indiskriminatament ghal kull kirja agrikola. Ghalhekk il-

kumpanija rikorrenti ma tistax targumenta li hija giet zvantaggjata meta mqabbla ma` haddiehor ghaliex dak il-haddiehor qieghed jigi trattat ezattament bhalha.

11. Illi fl-ahharnett, il-kumpannija rikorrenti lanqas m`ghandha ragun tinvoka l-artikolu 41 tat-Trattat tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem ghaliex dan l-artikolu japplika biss ghall-organi gudizzjarji tal-Kunsill tal-Ewropa u mhux ghall-Qrati Maltin. Kemm hu hekk, dan l-artikolu tat-Trattat ma jifformax parti mil-ligi Maltija ghaliex mhuwiex inkluz fit-tifsira ta` Drittijiet tal-Bniedem u Libertajiet Fondamentali kif riprodotta fl-artikolu 2 tal-Kap 319 tal-Ligijiet ta` Malta u lanqas ma gie traspost fil-ligi domestika skont l-artikolu 3(3) tar-Kap 304 tal-Ligijiet ta` Malta. Ghalhekk l-ahhar zewg talbiet tal-kumpannija rikorrenti huma ghal kollox insostenibbli.

12. Salv eccezzjonijiet ulterjuri.

Ghaldaqstant fid-dawl ta` dawn ir-ragunijiet, l-esponent umilment jitlob lil din l-Onorabbli Qorti joghgobha tichad it-talbiet kollha tal-kumpannija rikorrenti bl-ispejjez kontra taghha.

Rat ir-risposta li pprezentaw l-intimati Pulis fl-4 ta` Frar 2019, liema risposta kkonfermaw bil-gurament taghhom. L-att jaqra hekk :-

1. Illi preliminarjament, is-socjeta` rikorrenti ghazlet li tinizja din il-procedura permezz ta` rikors mahluf u mhux b`rikors kif jipprovdi l-Avviz Legali 279/08 ossia r-Rules of Court, regolament 2. Galadarba ghazlet li tadotta din il-procedura ossia dik tar-rikors mahluf, irrendiet applikabbli ghaliha d-disposizzjonijiet li jghoddu ghal din il-procedura. L-esponenti f`kull kaz jopponu ghal kwalunkwe spejjez addizzjonali marbuta mal-ghazla arbitrarja mir-rikorrenti ta` din il-procedura.

2. Illi jispetta lis-socjeta` rikorrenti li tipprova li hija soggetta ghall-kirja li hija regolata bil-Kap 199 tal-Ligijiet ta` Malta.

3. Illi jispetta wkoll lis-socjeta` rikorrenti li tressaq prova li hi ma kellhiex rimedju effettiv u ordinarju alternattiv biex tottjeni rimedju ghal-lanjanzi epurati minnha f`din il-procedura. Fin-nuqqas ta` din il-prova, l-esponenti jeccepixxu li din l-Onorabbli Qorti ghandha tiddeklina milli tezercita s-setghat kostituzzjonali u konvenzjonali taghha.

4. Illi preliminarjament ukoll, l-esponenti ma humiex il-legittimi kontraditturi u ghalhekk ghandhom jigu liberati mill-osservanza tal-gudizzju. L-intimati m`ghandhomx jirrispondu dwar il-validita` ta` ligijiet li qieghdin jigu kontestati fir-rikors odjern u dan ghaliex, qua cittadini huma ma humiex l-awturi ta` dawn il-ligijiet izda qeghdin sempliciment jipprevalixxu ruhhom mill-provvedimenti ta` ligi vigenti u statutorjament validi.

5. Illi minghajr pregudizzju ghas-suespost, l-esponenti jiddetjenu bi qbiela l-ghalqa ta` Has-Sajd, limiti la` Haz-Zabbar, minghand ir-rikorrenti b` titolu validu skont il-ftehim vigenti bejn il-kontendenti u skont il-ligi. Is-socjeta` rikorrenti dejjem accettat bla riserva l-qbiela relattiva, u aktar minn hekk meta l-istess socjeta` xtrat l-ghalqa in kwistjoni fit-30 ta` Gunju 1982, din l-ghalqa kienet gia hekk suggetta ghal-kirja imharsa bil-Kap 199 tal-Ligijiet ta` Malta, u s-socjeta` rikorrenti ghalhekk sa minn meta xtrat l-imsemmi ghalqa kienet accettanti ta` tali kirja, u din l-accettazzjoni hi nkompatibbli mal-azzjoni promossa u l-prosegwiment ta` din l-azzjoni.

6. Illi fil-mertu r-rikkorrenti ma qeghdin isofru minn ebda lezjoni tad-drittijiet taghhom, u/jew diskriminazzjoni skont kif allegat mil-istess fir-rikors promotur, u dan kif ser jintwera waqt it-trattazzjoni tal-kawza. F`kull kaz jispetta lis-socjeta` rikorrenti li tressaq prova ta`dak allegat minnha.

7. Illi l-konvenuti Nazzareno u Antonia Pulis ma jwiegbu qatt ghall-applikazzjoni jew konsegwenzi tal-ligijiet validi u vigenti li qieghdin jigu attakkati fir-rikors odjern. Huwa ben stabbilit li cittadin li juzufruwixxi ruhhu mil-ligijiet m`ghandux ikun tenut isofri xi konsegwenza derivanti mill-fatt li hu jkun uzufruwixxa minn dawk il-ligijiet.

8. Illii t-talba ghall-izgumbrament tal-intimati ghandha wkoll tigi respinta.

Salvi eccezzjonijiet ohra, u bl-ispejjez.

Rat id-digriet li tat fl-udjenza tal-5 ta` Frar 2019 fejn kien mahtur il-Perit Mario Cassar bhala perit tekniku sabiex jistma l-valur lokatizju fis-suq tal-ghalqa maghrufa bhala ta` Has-Sajd, limiti ta` Haz-Zabbar, li tmiss mit-Tramuntana ma` sqaq bla isem, mill-Punent ma` beni ta` Salvatore Caruana, u min-Nofsinhar u Lvant ma` beni tal-Markiz Cassar

Desain jew l-aventi causa tieghu, mill-1982 u f`perijodi ta`kull hames snin sa llum.

Rat ir-relazzjoni li pprezenta l-perit tekniku, liema relazzjoni kkonferma l-kontenut taghha bil-gurament fl-udjenza tal-25 ta` Marzu 2019.

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

Rat illi l-kawza thalliet ghas-sentenza ghal-lum bil-fakolta` li l-partijiet jipprezentaw noti ta` osservazzjonijiet.

Rat in-noti ta` osservazzjonijiet li pprezentaw il-partijiet.

Rat l-atti l-ohra.

Rat illi b`effett tal-Kap 603 tal-Ligijiet ta` Malta u tal-Avviz Legali 329 tal-2019, l-intimat Avukat Generali kien sostitwit *ope legis* bl-Avukat tal-Istat.

II. <u>Provi</u>

B`kuntratt tat-3 ta` Gunju 1982 fl-atti tan-Nutar Dottor Carmel Mangion, ir-rikorrenti akkwistat u saret is-sid tal-ghalqa de qua, li ghandha l-kejl ta` circa 5,000 metri kwadri, tikkomprendi razzett, u hija soggetta ghal cens annwu u perpetwu ta` Lm1.40c8. Il-prezz tal-bejgh li kien ta` Lm 26,000 ma kienx jikkomprendi l-ghalqa de qua izda erba` propjetajiet ohra. Fil-kuntratt il-prezz kien komplessiv tal-hames propjetajiet. Ma kienx indikat il-prezz rispettiv ta` kull propjeta` akkwistata.

<u>Helen Camilleri</u>, direttur manigerjali u azzjonista tas-socjeta` rikorrenti, xehdet illi qabel sar l-akkwist, l-ghalqa de qua kienet

proprjeta` ta` missierha Joseph Camilleri. Qabel missierha l-ghalqa kienet tan-nannu taghha li miet fit-22 ta` Awwissu 1950. Joseph Camilleri llum huwa mejjet u l-wirt tieghu ghadda fuq uliedu. Dawn flimkien waqqfu l-kumpannija rikorrenti li mbaghad akkwistat l-ghalqa. Kienet saret dikjarazzjoni *causa mortis* fis-sens illi l-ghalqa kellha valur ta` Lm 600.

Kompliet tixhed illi bi skrittura tal-11 ta` Awwissu 1983 Marianna Camilleri u Joseph Camilleri, bhala diretturi u in rapprezentanza tas-socjeta` rikorrenti, ghamlu kuntratt ta` qbiela favur l-intimat Pulis. Qabel saret din l-iskrittura, l-ghalqa de qua kienet diga` ilha ghexieren twal ta` snin mikrija lil certu Pullicino, ismu mhux maghruf, li jigi z-ziju ta` l-intimat Pulis. L-ghalqa dejjem kienet ghand il-familja tal-intimat Pulis u baqghet tghaddi minn id ghal ohra. Skont il-ftehim kellha tithallas qbiela ta` €58.23 fis-sena pagabbli kull 15 ta` Awissu. Qatt ma sar aggustament fl-ammont tal-qbiela, ghaliex il-ligi stess kienet tipprekludi kull tibdil kemm fl-ammont tal-qbiela li tithallas kif ukoll fil-kondizzjonijiet li jirregolaw il-qbiela.

Kompliet tixhed illi l-uniku skrittura ta` kirja kienet dik tal-11 ta` Awissu 1983, ghad illi l-kirja kienet ilha fis-sehh ghal ghexieren ta` snin. L-iskrittura saret ghaliex fil-ktieb tal-qbiela qatt ma tnizzlu kondizzjonijiet. Kien hemm miktub biss l-ammont tal-qbiela li kien qieghed jithallas. Ghalhekk meta l-ghalqa ghaddiet ghand ir-rikorrenti, id-diretturi riedu jirregolarizzaw is-sitwazzjoni u jorbtu l-kirja b`certa kondizzjonijiet fosthom li l-ghalqa tintradd lura lis-sid meta dan jitlobha lura.

Qalet illi huma riedu l-ghalqa lura sabiex ibieghuha u bir-rikavat tal-bejgh ighixu komdi.

Sostniet illi l-iskrittura tal-qbiela saret unikament ghaliex ma kellhomx ghazla.

Fissret illi meta art li ma tkunx imqabbla, tispicca okkupata minn persuni li ma jkollhom drittijiet ta` xejn li jispiccaw juzurpawha bil-preskrizzjoni.

Qalet illi l-membri tal-familja taghha mhumiex gabillotti. Billi riedu jibzghu ghall-propjeta` taghhom ghamlu dik l-iskrittura. Fi kwalunkwe kaz l-ghalqa xorta wahda kienet ilha bi qbiela ghand il-familja tal-intimat Pulis, u ghalhekk il-ligi stess kienet taghti lil Pulis id-dritt illi l-qbiela tghaddi ghandu. Anke ghalhekk ma kellhomx ghazla ghajr illi jaghmlu l-iskrittura sabiex il-qbiela tkun regolata.

Stqarret illi l-ligi presenti tiffavorixxi lill-gabillotti billi ma tippermettix bdil fil-quantum tal-qbiela kif ukoll fil-kondizzjonijiet tal-qbiela. Ghalkemm kien miftiehem ma` Pulis li r-rikorrenti kellha jedd taghti pre-avviz ta` tlett xhur qabel l-iskadenza tal-qbiela sabiex din tkun terminata, effettivament il-ligi stess tipprekludi tmiem tal-kirja b`dak il-mod. Ghalhekk ir-rikorrenti bhala sid hija kostretta tkompli ggedded il-kirja minghajr hjiel dwar meta sejra tiehu lura l-pussess tal-ghalqa u minghajr tama ta` zieda fil-qbiela li jirrifletti l-valur lokatizju fis-suq.

Tinsisti li saret l-iskrittura ma kellhomx ghazla ohra x`setghu jaghmlu bl-ghalqa taghhom. Effett tal-ligi garrbu zvalutazzjoni ta` l-art taghhom. Min-naha l-ohra l-gabillott ikompli jkabbar ir-rikavat mill-koltivazzjoni tar-raba` u l-qbiela tibqa` dik li kienet snin ilu.

<u>Fil-kontroezami</u> xehdet illi l-kawza tal-lum hija l-uniku procediment gudizzjarju li r-rikorrenti qatt bdiet sabiex tiehu lura l-pussess tal-ghalqa. Lanqas qatt talbet l-izgumbrament tal-intimati Pulis. Li trid ir-rikorrenti mhuwiex zieda fl-ammont tal-qbiela izda l-pussess battal tal-ghalqa mertu tal-qbiela ghaliex kwalunkwe awment fil-qbiela mhux se jirrifletti l-valur lokatizju tal-ghalqa fis-suq hieles.

<u>L-intimat Nazzareno Pulis</u> xehed illi hu u martu l-intimata Antonia Pulis kisbu bi dritt il-qbiela in kwistjoni fl-1983 minghand Toni Pulis li jigi z-ziju tieghu. Originarjament l-ghalqa kienet inghatat bi qbiela lil Giovanni Pulis li kien in-nannu tieghu. Minghand Giovanni Pulis imbaghad ghaddiet ghand Toni Pulis.

Kompla jixhed illi fl-1983 il-kumpannija rikorrenti rrikonoxxiethom bhala l-inkwilini taghha. Ir-rikorrenti talbithom ihallsu qbiela oghla minn

dik li kien ihallas Toni Pulis. Huma accettaw u ftehmu mar-rikorrenti li jhallsu l-ammont li ntalab minnhom. Dejjem hallsu l-qbiela fil-pront u r-rikorrenti dejjem accettat il-hlasijiet. Illum tithallas qbiela fl-ammont ta` €58.23 fis-sena.

Stqarr illi huma juzaw il-proprjeta` soggetta ghall-qbiela bhala razzett. Hemm jahdmu r-raba` u kabbru anke l-familja taghhom. Meta dahlu fil-qbiela sabu illi fir-razzett kien hemm xi soqfa mgarrfa u xorok imkissrin. It-tiswijiet ghamluhom huma. Bnew ukoll maqjel flok dak li kien imgarraf. Saret ukoll il-manutensjoni tas-soqfa tal-ghorfa li f`xi zmien kienu sfrundaw. Huma dejjem ghamlu kull ma kien hemm bzonn fis-sit, inkluza l-manutensjoni strutturali kif ukoll dik ordinarja.

<u>L-intimta Antonia Pulis</u> ikkonfermat ix-xiehda ta` zewgha.

Mir-relazzjoni tal-perit tekniku, li kien mahtur fil-kors tal-kawza, jemergu dawn il-**<u>fatti</u>** :-

1. Illi l-propjeta` in kwistjoni tikkonsisti f`razzett u raba` li fihom kejl ta` circa 5620 m.k. Fuq barra hemm dwejra b`maqjel maghha, u mandra zghira bil-pal tal-bajtar. Hemm ukoll bicca raba` ta` circa 6 sighan indikata bil-posti. Din il-bicca raba` ma tmissx mar-raba` l-iehor.

2. Illi d-dwejra ghandha access minn ambjent imsaqqaf bi hnejjiet. Flimkien mal-ambjenti mibnija, il-propjeta` tinkludi wkoll habel raba` fuq pjan li ghandha arja superficjali ta` circa 380 m.k.,i u habel raba` itwal li ghandu arja superficjali ta` circa 4795 m.k. Hemm ukoll vaska tal-ilma miftuha li fiha madwar 12 il-metru.

Il-perit tekniku bbaza l-**<u>konsiderazzjonijiet</u>** tieghu :

a) Fuq ir-*Rural Policies and Design Guidance* 2014 mahruga mill-MEPA.

b) Fuq proprjetajiet ohra simili li jinkludu binjiet u rziezet fiz-zona ODZ li ghandhom valur prezenti tas-suq ta` circa €400 ghal kull metru kwadru.

c) Fuq il-valur tal-art agrikola (minghajr ambjenti msaqqfa) li fis-suq ghandha valur ta` €40 ghal kull metru kwadru.

d) Illi hija biss parti mill-proprjeta` li ghandha titqies bhala li tiswa €400 ghal kull metru kwadru. Il-bqija hija art agrikola li tiswa €40 ghal kull metru kwadru.

Il-**konkluzjonijiet** tal-perit tekniku kienu :

i) Illi l-ambjenti msaqqfa, flimkien ma` 1500 m.k. ta` raba` adjacenti ghall-istess ambjenti msaqqfa, ghandhom valur fis-suq ta` **€600,000**.

ii) Illi l-bqija tar-raba` ta` kejl superficjali ta` circa 3889 m.k. ghandu valur fis-suq ta` **€155,000**.

iii) Illi d-dwejra li hemm fuq barra (u l-maqjel ta` maghha) u mandra zghira bil-pal tal-bajtar jiffurmaw parti minn kumpless akbar li ghandu access minn bieb ta` remissa. Dan jikkonsisti f`ambjent imsaqqaf bix-xorok tal-qasab u kileb. Il-maqjel adjacenti ghad-dwejra huwa ambjent estern imsaqqaf bil-pjanci tal-corrugated. Flimkien ghandhom arja superficjali ta` circa 60 m.k. Il-perit ma setax jaccedi ghall-mandra zghira bil-pal tal-bajtar. Qaghad fuq *site plan* li kienet turi kejl ta` circa 45 m.k. Id-dwejwa, maqjel u l-mandra zghira ghandhom valur fis-suq ta` **€43,500**.

iv) Illi l-bicca raba` ta` cirka sitt sighan imdawwra bil-posti ghandha kejl superficjali ta` cirka 1162 m.k. b`access minn moghdija minn fuq proprjeta` ta` terzi. Din ghandha valur fis-suq ta` **<u>€46,480</u>**.

Il-perit tekniku wiegeb ghal domandi in eskussjoni.

Xehed li kiseb informazzjoni dwar prezzijiet fis-suq ta` propjetajiet simili ghall-fini tal-valutazzjoni tieghu minn siti elettronici tal-agenziji tal-bejgh tal-proprjeta`. Huwa ha medja tal-prezzijiet ghal kull metru kwadru li kienu jirrizultaw li huma l-aktar baxxi. Il-medja hija rata ta` €45 ghal kull metru kwadru. Fil-kaz tal-lum, huwa adotta rata aktar baxxa. Ghall-art agrikola applika ata ta` €40 kull metru kwadru.

III. <u>L-ewwel (1) eccezzjoni tal-Avukat tal-Istat (gia` Avukat Generali) u t-tieni (2) eccezzjoni tal-intimati konjugi Pace</u>

Huwa pacifiku fil-gurisprudenza taghna li fil-kawzi ta` ndole kostituzzjonali mhuwiex indispensabbli li r-rikorrent jipprova t-titolu tieghu ghall-propjeta` *de qua*. Kawzi bhal din tal-lum mhumiex kawzi ta` rivendika fejn il-prova tat-titolu huwa *sine qua non* sabiex tirnexxi l-azzjoni.

Fis-sentenza li tat fis-7 ta` Frar 2017 fil-kawza **<u>Robert Galea vs Avukat Generali et</u>** 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* ***<u>Ian Peter Ellis et vs Avukat Generali et</u>****). 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 r-rikorrenti ghamlu l-prova tat-titolu.

Tant hu hekk illi jirrizulta ppruvat illi b`kuntratt tat-3 ta` Gunju 1982 fl-atti tan-Nutar Dr Carmel Mangion, is-sicjeta` rikorrenti akkwistat il-propjeta` mertu ta` din il-kawza.

Din il-prova mhux biss ma kenitx ikkontestata izda kienet accettata mill-konvenuti kollha, kif jidher min-noti ta` sottomissjonijiet tal-intimati.

Il-Qorti hija sodisfatta illi s-socjeta` rikorrenti ghandha titolu tajjeb ghall-proprjeta`, li jaghtiha l-jedd li thares id-drittijiet taghha, inkluz li titlob il-protezzjoni taghhom, fil-kaz li tirrizulta ppruvata vjolazzjoni taghhom.

Billi t-titolu tas-socjeta` rikorrenti jirrizulta ppruvat, sejra tastjeni milli tiehu konjizzjoni ulterjuri tal-ewwel (1) eccezzjoni tal-Avukat tal-Istat (gia` Avukat Generali) u tat-tieni (2) eccezzjoni tal-intimati konjugi Pace.

IV. <u>It-tielet (3) eccezzjoni tal-intimat Avukat tal-Istat (gia Avukat Generali) u t-tielet (3) eccezzjoni tal-intimati konjugi Pulis</u>

Iz-zewg eccezzjonijiet huma simili ghalkemm dik tal-intimat Avukat tal-Istat hija aktar **<u>diretta</u>** minn dik tal-intimati konjugi Pulis.

Infatti fit-tielet eccezzjoni, l-Avukat tal-Istat jikkontendi li l-Art 4 tal-Kap 199 joffri lista shiha ta` sitwazzjonijiet li jirrendu possibbli r-

ripriza tal-pussess, mentri fit-tielet eccezzjoni, l-intimati konjugi Pulis jistiednu lill-qorti sabiex tiddeklina milli tezercita s-setghat kostituzzjonali taghha, jekk is-socjeta` rikorrenti tonqos li taghti prova sodisfacjenti li ma kellhiex rimedji ordinarji alternattivi u effettivi.

Sejra tqis **flimkien** l-eccezzjonijiet tal-intimati **kollha**.

Fis-sentenza li tat fid-29 ta` Mejju 2015 fil-kawza fl-ismijiet **Lawrence Grech et vs Tabib Principali tal-Gvern (Sahha Pubblika) et**, il-Qorti Kostituzzjonali ghamlet din l-osservazzjoni :

> "*Apparti l-kunsiderazzjonijiet l-ohra li gia` saru fis-sentenza ta` din il-qorti fl-ismijiet* ***George Spiteri v. Policy Manager tal-Malta Shipyards et****, tenut kont tal-konkluzjonijiet raggunti fissentenza msemmija ta`* ***Brincat and Others v. Malta****, din il-qorti hi tal-fehma li fic-cirkostanzi kif issa zviluppaw mhux aktar desiderabbli li l-qrati kostituzzjonali jirrifjutaw li jezercitaw is-setghat taghhom kif previst fl-artikoli 46(2) tal-Kostituzzjoni u 4(2) tal-Kap. 319 ... minkejja r-rimedji li indubbjament kellhom ghad-disposizzjoni taghhom ir-rikorrenti appellanti*".

Din il-Qorti tikkondividi din il-linja ta` hsieb u taghmilha taghha.

L-ghan ewlieni ta` procediment kostituzzjonali u konvenzjonali huwa li l-persuna li tilmenta u tipprova li tkun garrbet ksur tad-drittijiet fondamentali taghha tinghata rimedju effettiv u minghajr dewmien.

Fl-eccezzjoni taghhom, l-intimati konjugi Pulis jikkontendu li fuq is-socjeta` rikorrenti jinkombi l-oneru tal-prova li kienu sprovvisti minn rimedju ordinarju effettiv u accessibbli qabel ittentaw procediment tax-xorta li huwa dak tal-lum.

Din il-linja ta` difiza tal-intimati konjugi Pulis mhijiex kondiviza minn din il-Qorti ghaliex il-prova li r-rikorrenti kellha rimedju ordinarju accessibbli, xieraq, effettiv u adegwat tispetta lil min bhall-intimati konjugi Pulis qeghdin iqanqlu l-eccezzjoni.

Hija gurisprudenza ormai assodata li persuna li tkun qeghda tilmenta minn ksur tal-jeddijiet fondamentali taghha mhijiex obbligata tfittex rimedju quddiem il-qrati ordinarji jekk l-ilment ma jkunx jista` jigi ndirizzat b`rimedju effettiv. Propju ghaliex procediment kostituzzjonali u konvenzjonali huwa eccezzjonali, persuna tirrikorri ghalih meta ma jkunx hemm rimedju effettiv quddiem il-qrati ordinarji li jista` jindirizza l-allegat ksur tal-jeddijiet fondamentali.

Fis-sentenza taghha tas-27 ta` Marzu 2015 fil-kawza fl-ismijiet **Ian Peter Ellis et vs Avukat Generali et** il-Qorti Kostituzzjonali ccitat mid-decizjoni tal-ECtHR f`**Ghigo v. Malta** billi qalet hekk :-

> *Dwar il-materja ta` awment fil-kera u n-nuqqas tal-applikanti li jirrikorru quddiem il-Bord li Jirregola l-Kera, il-Qorti Ewropeja fil-kawza **Ghigo v. Malta** [Appl. 31122/05 –para.66] osservat :*
>
> *"It is true that the Government reproached the applicant for his failure to institute proceedings before the Rent Regulation Board to fix a fair rent for the premises.... However it has not been shown by any concrete examples from domestic law and practice that this remedy would have been an effective one."*

Is-socjeta` rikorrenti kkonfermat illi dawk ta` llum huma l-unici proceduri li ttiehdu kontra l-intimati Pulis ghar-rigward il-kirja tal-ghalqa. Jirrizulta illi kien hemm biss intimazzjoni wahda b`ittra ufficjali tas-16 ta` Novembru 2018. Dan l-att ippreceda biss dawn il-proceduri bi ftit gimghat biss.

Fix-xiehda taghha, Helen Camilleri taghmel l-argument illi huwa inutli li jittiehdu proceduri quddiem il-Bord dwar il-Kontroll tal-Kiri tar-Raba`ghaliex dak illi trid ir-rikorrenti huwa proprju r-ripriza tal-pussess tal-ghalqa mhux xi awment tal-qbiela b`ammont irrizorju.

Fir-rikors promotur ir-rikorrenti taghmel ukoll l-argument illi r-ripreza tal-pussess hija mpossibbli ghaliex hija l-ligi stess li tipprotegi l-

kirja billi tahseb ghal tigdid kwazi kwazi bla limitu. Ir-rikorrenti tirreferi ghall-Art 3, 4 u 14 tal-Kap 199.

Il-Qorti rat dawn id-disposizzjonijiet.

L-**Art 3 tal-Kap 199** jipprekludi awment fil-kirja jew tibdil fil-kondizzjonijiet lokatizji jekk mhux bil-permess tal-Bord dwar il-Kontroll ta` Kiri tar-Raba`.

L-**Art 4 tal-Kap 199** jistabilixxi l-procedura li trid tkun segwita mis-sid fil-kaz illi jkunx irid ikompli jgedded il-kirja. L-**Art 4(2)** jelenka sitt cirkostanzi fejn sid jista` jitlob l-izgumbrament tal-inkwilin. Huma cirkostanzi **partikolari** li jekk ma jigux sodisfatti, it-talba tas-sid tkun respinta. Apparti dan, l-istess artikolu jipprovdi wkoll eccezzjonijiet fejn ic-cirkostanzi partikolari ravvizati fil-paragrafi (a) u (b) tal-Art 4(2) ma jistghux japplikaw.

Il-prova li trid issir meta s-sid jitlob li jiehu lura l-art hija rigoruza ferm. Minhabba r-*ratio legis* il-Kap 199 jaghmilha difficli ghas-sid li jirnexxi fit-talba tieghu. Waqt illi l-legislatur haseb ghal numru ta` cirkostanzi fejn ir-ripreza tal-pussess tista` tintalab, fl-istess waqt ghamilha difficli ferm ghas-sid li jirnexxi fl-istanza tieghu. Ittenta jsib rimedju ghas-sid izda fl-istess waqt ic-cirkostanzi li ssemmi l-ligi jmorru favur il-protezzjoni tal-kirja.

Tajjeb jinghad illi lanqas bi ftehim bejn is-sid u l-inkwilin ma jistghu jigu akkordati termini jew kondizzjonijiet li jipprivaw lill-kerrej minn xi jedd jew beneficcju li jkun akkwista bil-Kap 199.

L-**Art 14 tal-Kap 199** espressament jimponi divjet.

Kull varjazzjoni fil-kondizzjonijiet lokatizji trid tghaddi mill-gharbiel rigoruz tal-ligi kif applikata mill-Bord.

Isegwi li ghax il-kirja hija regolata b`disposizzjonijiet stretti u limitati, ir-rikorrenti hija kostretta li ma tmurx quddiem il-Bord ghaliex dak li jipprovdi l-Kap 199 ma jindirizzax il-vjolazzjoni li allegatament qeghda ggarrab ir-rikorrenti.

Ghal aktar kjarezza. Anke li kieku r-rikorrenti tressaq talba ghal awment fil-qbiela quddiem il-Bord, xorta wahda jibqa` l-fatt illi l-ammont illi l-Bord jista` jiffissa bil-ligi huwa baxx hafna meta mqabbel mal-valur lokatizju tal-art fis-suq hieles. Il-hsieb tal-ligi kien li l-art agrikola tibqa` sservi bhala ghajn ta` ghejxien ghal min jahdem l-art u ghal min mill-familja tieghu jkun baqa` jahdem l-art. Tant hu hekk li l-ligi tintervjeni b`sahha meta l-art agrikola tithalla sdingata ghal aktar minn sena. Pero` tajjeb jinghad ukoll li anke f`kazi bhal dawn il-Bord mexa b`kawtela fl-apprezzament tal-provi.

Anke l-valur tal-art bhala art agrikola llum m`ghandux paragun ma` kif kien mhux biss meta saret il-ligi izda anke wara. It-tkattir tal-gid u t-titjib ekonomiku jgib mieghu inflazzjoni ta` prezzijiet specjalment fil-propjeta` anke jekk tkun art agrikola. Il-principji li fil-passat wasslu ghal certa legislazzjoni bhal ma huwa l-Kap 199 hemm bzonn li jigu mahsuba tenut kont tal-izvilupp mghaggel li ghadda minnu l-pajjiz certament matul dawn l-ahhar tletin sena.

Id-disposizzjonijiet tal-Kap 199 u l-applikazzjoni taghhom huma l-pern tal-lanzjanza kostituzzjonali u konvenzjonali tar-rikorrenti. Kif qatt jistghu ghalhekk ir-rimedji li l-Kap 199 qieghed ghad-disposizzjoni tas-sid jitqiesu bhala effettivi meta r-rikorrenti qeghda tqieghed in diskussjoni l-ligi ordinarja ? Anke jekk il-Bord ghandu s-setgha li jzid il-qbiela jew li jordna l-izgumbrament tal-inkwilin jekk jirrizultaw ic-cirkostanzi previsti mil-ligi, il-Bord m`ghandux is-setgha li jistharreg l-allegat ksur tal-jeddijiet fondamentali lamentati mir-rikorrenti. Dikjarazzjoni dwar lezjoni ta` drittijiet fondamentali, kif mitlub mir-rikorrenti, tista` tinghata biss minn din il-Qorti fil-gurisdizzjoni kostituzzjonali taghha.

Din il-Qorti diversament presjeduta fis-sentenza li tat fit-30 ta` Jannar 2018 fil-kawza fl-ismijiet **<u>Sergio Falzon et vs Avukat Generali</u>**

<u>**et**</u> ghamlet dawn l-osservazzjonijiet li jghoddu *mutatis mutandis* ghall-kaz tal-lum :-

> *"Illi konsegwenza tal-istess, l-imsemmi disposizzjonijiet li huma applikabbli mill-Bord li Jirregola l-Kera jikkostitwixxu in effett ostakolu legali ghar-rikorrenti biex jirriprendu l-pussess tal-proprjeta` taghhom stante li l-intimati Farrugia ssodisfaw ir-rekwiziti tac-cittadinanza u tar-residenza ordinarja fuq indikati kif ukoll il-kondizzjonijiet tal-kirja. Certament f`tali kuntest il-Bord wiesgha kemm hi wiesgha il-kompetenza tieghu, mhuwiex fakoltizzat bil-Ligi li jizgumbra inkwilin li qed jonora l-obbligazzjonijiet tal-kirja - materja li hija ghal kollox irrilevanti ghall-ezercizzju tallum.*
>
> *Illi huwa ovvju li it-talbiet odjerni, fis-sustanza taghhom, imorru oltre konsiderazzjoni ta` allegat ksur tal-obbligi tal-kerrej. Anzi l-intimati inkwilini ghamlu enfasi fuq l-osservazzjoni rigida taghhom tal-kondizzjonijiet tal-kirja.*
>
> *Inoltre r-rikorrenti qed jitolbu kumpens ghall-ksur tad-drittijiet fondamentali li, kif gie ribadit mill-Qorti Ewropea f`Strasbourg:*
>
> *[t]o date the Court has always held that constitutional redress proceedings are effective in respect of complaints under Article 1 of Protocol No. 1, in so far as it has always been considered that there are no limits on the means of redress (including financial redress) which may be provided by the courts of constitutional jurisdiction." (Apap Bologna v. Malta, ECHR 46931/12 deciza 30 ta` Awwissu 2016)."*

Fid-dawl tal-premess il-Qorti hija tal-fehma li, tenut kont tal-fattispeci tal-kaz, ma jistax validament jinghad li r-rikorrenti kellhom rimedju ordinarju <u>effettiv u adegwat</u> fejn u kif jindirizzaw il-lanjanzi taghhom.

Fic-cirkostanzi l-ilmenti kostituzzjonali u konvenzjonali taghhom ghandhom jigu trattati u decizi mill-qrati ta` gurisdizzjoni kostituzzjonali.

Ghalhekk it-tielet (3) eccezzjoni tal-intimat Avukat tal-Istat (gia Avukat Generali) u t-tielet (3) eccezzjoni tal-intimati konjugi Pulis qeghdin jigu respinti.

V. <u>Ir-raba` (4) eccezzjoni tal-intimati konjugi Pulis</u>

Fir-raba`eccezzjoni l-intimati Pulis jikkontendu li mhumiex legittimi kontraditturi tar-rikorrenti fil-kawza odjerna billi huwa biss l-Istat illi jista` jikkommetti vjolazzjoni tad-drittijiet fondamentali.

Huwa accettat mill-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 jew sproporzjon ingust bejn id-drittijiet tal-persuna u l-obbligi tal-Istat.

Fil-kawza tal-lum, is-socjeta` rikorrenti qeghda tilmenta li bid-disposizzjonijiet tal-Kap 199 qeghda tinholoq *ex lege* relazzjoni forzuza ghad-detriment taghhom mal-intimati Pulis. Ghalhekk qeghdin jitolbu dikjarazzjoni mill-qorti li l-Kap 199 jikser il-jeddijiet fondamentali taghhom **<u>principalment</u>** dawk li huma mharsa bl-Art 37 tal-Kostituzzjoni ta` Malta ("**<u>il-Kostituzzjoni</u>**") u bl-Art 1 Prot 1 tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali ("**<u>il-Konvenzjoni</u>**").

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

> *"F`kawzi ta` natura kostituzzjonali bbazati fuq id-drittijiet fundamentali, il-legittimi kontradditturi 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 talpersuni 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 kontraditturi 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."

L-Avukat Generali, illum l-Avukat tal-Istat, effett tal-Kap 603 tal-Ligijiet ta` Malta, jirrapprezenta l-Istat.

Jekk tirnexxi l-istanza tar-rikorrenti, u jinghata rimedju, dak ir-rimedju jkun irid jinghata mill-Istat.

L-intimati Pulis jidhlu fl-istanza ghaliex – iridu jew ma jridux – ghandhom l-interess li jkunu parti fil-kawza, mhux biss ghall-fini ta` integrita` ta` gudizzju, izda wkoll ghaliex xi konsegwenzi talvolta rizultanti minn dak li jista` jkun deciz jista` realment (mhux per mera ipotesi) jolqothom direttament.

Ghalhekk jekk il-harsien tal-jeddijiet fondamentali tal-persuni ghandu jaghmel sens fl-essenza tieghu, l-intimati Pulis ghandhom ikunu parti fil-procediment anke sabiex ikun imhares dak li huwa jedd taghhom, u cioe` il-jedd tas-smigh. Procediment bhal dak tal-lum jinvolvi zewg aspetti : i) ir-responsabbilita` ghall-vjolazzjoni, li ghaliha ghandu jwiegeb l-Istat ; u ii) ir-rimedju opportun fil-kaz ta` vjolazzjoni accfertata ghaliex ippruvata. Iz-zewg materji mhux bilfors huma konnessi ghaliex jistghu jolqtu soggetti u cioe` persuni differenti.

Fil-kawza fl-ismijiet **Raymond Cassar Torreggiani et vs Avukat Generali et** li kienet deciza mill-Qorti Kostituzzjonali fit-22 ta` Frar 2013, inghad hekk :-

> *" … **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 tkompli 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."

Tajjeb jinghad a skans ta` ekwivoci li fil-kawza tal-lum is-socjeta` rikorrenti mhijiex titlob bhala rimedju, fil-kaz li tirrizulta vjolazzjoni, l-izgumbrament tal-intimati Pulis mill-ghalqa de qua. Cio` nonostante l-Qorti hija tal-fehma li bil-fatt li l-effett ta` dak li qed jintalab mir-rikorrenti jolqot lill-intimati Pulis fl-aspetti sostanzjali tal-qbiela li ghandhom, huma ghandhom l-interess li trid il-ligi sabiex ikunu parti fil-kawza tal-lum sabiex jiddefendu l-posizzjoni taghhom.

Ir-raba` (4) eccezzjoni tal-intimati konjugi Pulis qeghda tkun <u>respinta.</u>

VI. <u>L-ewwel (1) talba</u>

Dwar l-ewwel talba <u>kif dedotta</u>, din il-Qorti tghid illi mhuwiex kompitu taghha, bhala qorti ta` gurisdizzjoni kostituzzjonali u/jew konvenzjonali, illi tinvestiga jekk it-thaddim tad-disposizzjonijiet tal-Kap 199 huwiex sejjer jaghmel impossibbli ghar-rikorrenti li tirriprendi pussess tal-proprjeta` de qua. Jekk hemmx din l-impossibilita` hija materja li ghandha tkun trattata quddiem il-qrati u/jew tribunali ta` kompetenza "ordinarja".

Ghalhekk il-Qorti sejra <u>tichad</u> l-ewwel talba.

VII. <u>It-tieni talba</u>

L-allegata lezjoni ghall-jeddijiet fondamentali tar-rikorrenti tinstab fit-tieni talba.

<u>Fis-sostanza</u>, ir-rikorrenti qeghda titlob mill-qorti dikjarazzjoni u decizjoni li bl-applikazzjoni tad-disposizzjonijiet tal-Kap 199 ghall-kirja vigenti ta` l-ghalqa u tar-razzett ta` go fiha in kwistjoni, propjeta` taghha, qed ikun hemm lezjoni tal-jeddjiet fondamentali tar-rikorrenti.

In partikolari fl-istess talba, ir-rikorrenti qeghda tallega ksur tal-Art 37 u 39 tal-Kostituzzjoni, u tal-Art 6 u tal-Art 1 Prot 1 tal-Konvenzjoni.

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

Dwar dan l-allegat ksur, l-Avukat tal-Istat jeccepixxi li r-rikorrenti ma tistax tindirizza l-ilment taghha lejn l-Art 37 tal-Kostituzzjoni, billi din d-disposizzjoni tghodd biss fil-kaz ta` tehid forzuz tal-proprjeta`, li mhuwiex il-kaz tal-lum. Sabiex ikun hemm tehid forzuz, jehtieg illi l-persuna tkun giet fattwalment zvestita minn kull dritt li ghandha fuq il-proprjeta`. Fil-kaz odjern, skont l-Avukat tal-Istat, ma gara xejn minn dan ghaliex bit-thaddim tal-Kap 199 ir-rikorrenti ma tilfet ebda dritt fuq il-propjeta` in kwistjoni.

Ghall-kaz tal-lum il-parti rilevanti tal-<u>Art 37</u> hija <u>s-subartikolu (1)</u> li tghid :-

Ebda proprjetà ta` kull xorta li tkun ma ghandu jittiehed pussess taghha b`mod obbligatorju, u ebda nteress fi jew dritt fuq proprjetà ta` kull xorta li tkun ma ghandu jigi miksub b`mod obbligatorju, hlief meta hemm disposizzjoni ta` ligi applikabbli ghal dak it-tehid ta` pussess jew akkwist –

(a) ghall-hlas ta` kumpens xieraq ;

(b) li tizgura lil kull persuna li tippretendi dak il-kumpens dritt ta` access lil Qorti jew tribunal indipendenti u imparzjali mwaqqaf b`ligi sabiex jigi deciz l-interess taghha fi jew dritt fuq il-proprjetà u l-ammont ta` kull kumpens li ghalih tista` tkun intitolata, u sabiex tikseb hlas ta` dak il-kumpens ; u

(c) li tizgura lil kull parti fi proceduri f`dik il-Qorti jew tribunal dwar pretensjoni bhal dik dritt ta` appell mid-decizjoni taghha lill-Qorti tal-Appell f`Malta :

Izda f`kazijiet specjali l-Parlament jista`, jekk hekk jidhirlu xieraq li jaghmel fl-interess nazzjonali, b`ligi jistabbilixxi l-kriterji li ghandhom jitharsu, maghduda l-fatturi u c-cirkostanzi l-ohra li ghandhom jitqiesu, biex jigi stabbilit il-kumpens li ghandu jithallas dwar proprjetà li jittiehed pussess taghha jew li tigi akkwistata b`mod obbligatorju; u f`kull kaz bhal dak il-kumpens ghandu jigi iffissat u ghandu jithallas skont hekk.

Il-qrati taghna kellhom diversi okkazjonijiet fejn ttrattaw fid-dettall jekk limitazzjoni fit-tgawdija ta` proprjeta` tistax tigi ekwiparata ma` tehid forzuz kif kontemplat bl-Art 37 tal-Kostituzzjoni.

Ghalkemm ir-rikorrenti jilmentaw minn ksur ta` din id-disposizzjoni tal-Kostituzzjoni, din il-Qorti hija tal-fehma li kemm il-fattispeci kif ukoll id-disposizzjonijiet tal-ligi mertu ta` din il-kawza <u>ma jwasslux</u> ghal tehid forzuz tal-propjeta` izda ghal kontroll fl-uzu taghha.** (ara *inter alia* is-sentenzi QK - **<u>Josephine Bugeja vs Avukat Generali et</u>** – 7 ta` Dicembru 2009 ; QK - **<u>Angela sive Gina Balzan v. L-Onorevoli Prim Ministru et</u> – 7 ta` Dicembru 2012 ; PA/K - **<u>Rose Borg vs Avukat Generali et</u>** - 25 ta` Frar 2016 ; QK - : **<u>Mary Anne Busuttil vs Tabib John Cassar et</u>** – 31 ta` Ottubru 2014 ; QAS - **<u>Michael Angelo Briffa et v. Nadia Merten</u>** – 24 ta` April 2015 ; PA/K - **<u>Robert Galea vs Avukat Generali et -</u>** 7 ta` Frar 2017 ; PA/K – Catherine Cauchi et vs Avukat Generali et - 2 ta` Mejju 2017 ; PA/K - **<u>Anthony Aquilina vs Avukat Generali</u>** - 9 ta` Ottubru 2017)

Ghalhekk it-tieni (2) talba <u>safejn din tirrigwarda ksur tal-Art 37 tal-Kostituzzjoni</u> qeghda tkun michuda.

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

Id-disposizzjoni tipprovdi illi :-

"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 jekk tkun persuna fisika, kif ukoll jekk tkun entita` morali, ghandha dritt ghat-tgawdija tal-proprjeta` taghha 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.

a) <u>Gurisprudenza tal-ECtHR</u>

Huwa pacifiku li 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 ta` dik is-setgha mill-Istat ghandu jkun sodisfatt ir-rekwizit tal-proporzjonalità.

Dwar ksur tal-Art 1 Prot 1 tal-Konvenzjoni, il-gurisprudenza tal-Qorti ta` Strasbourg, specjalment fejn tidhol Malta, tittratta dwar bini (residenzjali u kummercjali).

Din il-Qorti sejra tirreferi ghal din il-gurisprudenza ghaliex il-principji li kienu delinati fiha ghandhom ighoddu wkoll *mutatis mutandis* ghall-artijiet.

Fis-sentenza **Amato Gauci vs Malta** (li nghatat fil-15 ta` Settembru 2009 u saret finali 15 ta` Dicembru 2009) l-ECtHR irrimarkat illi :-

> *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.*

Il-konkluzjoni kienet li kien hemm vjolazzjoni ta` Art 1 Prot 1 tal-Konvenzjoni.

L-ECtHR b`konsistenza affermat fil-gurisprudenza taghha illi *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.* (ara *inter alia* s-sentenzi tal-Grand Chamber : **Beyeler v. Italy**, no. 33202/96, § 107, ECHR 2000-I u **J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom** no. 44302/02, § 75, ECHR 2007-III. Imbaghad fil-kaz ta` Malta ara wkoll : **Saliba et v. Malta** : 22 ta` Novembru 2011 ; **Zammit & Attard Cassar v. Malta** : 30 ta` Lulju 2015 ; **Cassar v. Malta** : 30 ta` Jannar 2018 ; **Buttigieg and others vs Malta** : 11 ta` Dicembru 2018. F`dawn id-decizjonijiet, kienet riskontrata vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni u kien likwidat kumpens favur ir-rikorrenti)

b) Gurisprudenza ta` l-Qrati Maltin

Fejn jidhol l-Art 1 Prot 1 tal-Konvenzjoni, kienu diversi d-decizjonijiet tal-qrati taghna fejn kienet dikjarata vjolazzjoni.

Din il-Qorti tosserva illi l-bicca l-kbira tad-decizjonijiet tal-qrati taghna kienu jolqtu l-applikazzjoni tal-Kap 158.

Ohrajn kienu jirrigwardaw l-applikazzjoni tal-Kap 69.

Il-kaz tal-lum huwa divers fis-sens li kien jittratta dwar allegata vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni bl-applikazzjoni tal-Kap 199.

Wara li hasbet fit-tul, din il-Qorti tghid illi, anke ghall-kaz in ezami, ghandu jghodd dak li hareg mill-gurisprudenza tal-qrati taghna fil-kazi li ghalihom saret referenza aktar kmieni.

c) Risultanzi

Fis-Seduta tat-22 ta` Frar 1967 tat-Tieni Parlament (ara pp. 4048-4099 tad-Dibattiti) kien imfisser l-ghan ghaliex sar l-Att XVI tal-1967 (illum Kap 199) :

> *" … u dan hemm bzonnu ghaliex meta ghandek dak in-numru kbir li jahdmu l-art, jekk ma jkollhomx protezzjoni, l-art li tkun ilha tinhadem mill-familja taghhom, jitilqughha. Dawn in-nies ghandhom attakament ma` l-art taghhom u ... jekk kemm -il darba il-bidwi ma jkollux il-forza ta` tradizzjoni u attakament ma` dik l-art li qablu hadem missieru jekk ma jkunx hemm dan is-sentiment, difficli li zzomm bniedem ma` l-art jekk ma ittihx dak id-dritt li jibqa` jgedded il-kirja, vuoldiri `protezzjoni`"*

Hija din il-motivazzjoni li wasslet lil-legislatur sabiex jahseb ghal li kirja ta` art agrikola tghaddi minn persuna ghal ohra fil-familja minghajr ebda xkiel. Jekk din il-motivazzjoni hijiex gusta jew jekk ghadhiex tghodd ghaz-zminijiet ta` llum hija kwistjoni ohra. Jibqa` l-fatt illi r-rikorrenti, jew ahjar il-membri tal-kumpannija, una volta illi sa minn zminijiet imghoddija kellhom kirja ghaddejja favur il-familja tal-intimat ma kellhomx ghazla ohra ghajr illi jkomplu l-kirja. Helen Camilleri xehdet illi l-familja taghha mhijiex familja ta` gabillotti u ma jahdmux l-art. Tistqarr illi l-biza` taghhom kienet li jekk ihallu l-art ghal rieha kienet tispicca okkupata minn xi hadd bir-riskju ghalihom li jispiccaw jitilfu l-art ; kien ghalhekk li ghazlu li jaghtu l-art bi qbiela. Huwa kwazi cert il-fatt illi meta nghatat il-qbiela l-ewwel darba ma setax ikun ragjonevolment previst li fl-1967 kienet sejra ssir ligi sabiex tikkontrolla l-kiri tar-raba`. Inoltre r-rikorrenti u lanqas l-antekawza taghha ma setghu jipprevedu kif kien ser jinbidel is-suq matul iz-zmien.

Tajjeb jinghad illi l-introduzzjoni tal-Att XVI tal-1967 kellu skop legittimu u sar fl-interess generali ghaliex kien intiz sabiex jipprotegi is-settur agrikolu fi zmien meta hafna familji kienu jiddependu fuq il-biedja ghall-ghixien taghhom.

L-istorja socjali u ekonomika tal-pajjiz turi li meta saret il-ligi kienet necessarja, u l-hsieb warajha kien tajjeb. L-izvilupp socio-ekonomiku tal-pajjiz matul is-snin wara l-1967 gab mieghu mobilita` mghaggla ta` persuni li ma baqghux jahdmu l-ghelieqi sabiex ighixu minnhom lejn setturi ohra fejn it-tkattir tal-gid huwa akbar ghaliex mhuwiex dipendenti fuq dak li jigi min-Natura u fejn it-tbatija fisika hija anqas minn dik ta` xoghol iehor. Gara ghalhekk illi dak l-intervent legislattiv ghalkemm kellu propositi tajba ma baqax joffri bilanc bejn l-interessi tas-sid u tal-kerrej anzi inholoq sproporzjon u zvantagg qawwi kontra s-sid. Ir-rata ta` kera li r-rikorrenti setghet tippercepixxi skont id-disposizzjonijiet tal-Kap 199 meta mqabbla mal-kera fis-suq hieles hija <u>oggettivament</u> baxxa.

Fil-kaz ta` llum mhux maghruf meta bdiet il-kirja bejn aventi kawza tal-partijiet (mhux l-Avukat tal-Istat). Li certament irrizulta huwa li l-kirja kienet ilha ghaddejja ghexieren ta` snin dejjem favur il-familjari tal-intimat Nazzareno Pulis sakemm fl-1983 ghaddiet ghand l-istess Pulis.

Il-protezzjoni li l-ligi prezentement taghti lit-tkomplija tal-kirja ma tippermettix lis-sid u lill-inkwilin li jiftehmu zmien ghat-tmiem tal-kirja. Kjarament il-Kap 199 jiffavorixxi lill-inkwilin a skapitu tas-sid ghaliex dan m`ghandux kontroll la fuq ripriza tal-pussess u lanqas fuq l-ammont ta` qbiela li jista` jithallas billi dan huwa determinat mil-legislatur skont formola pre-determinata marbuta bil-fattur taz-zmien u tal-indici tal-inflazzjoni, kriterju dan tal-ahhar li l-prova taz-zmien uriet li ma jirrifletti c-caqlieq tas-suq.

Fix-xiehda taghha Helen Camilleri tirreferi ghall-Kap 199 bhala ligi *infami*. Jaghti l-kaz li kien uzat aggettiv hazin sabiex tiddeskrivi l-ligi. Ma teskludix li Camilleri ma tafx sewwa sew xi tfisser il-kelma. Lanqas ma teskludi li seta` kien haddiehor li ndikalha dak l-aggettiv. Il-Qorti tosserva li waqt li huwa dritt ta` kull persuna li f`socjeta` demokratika jesprimi l-hsieb tieghu, fl-istess waqt wiehed ghandu jizen sewwa l-kliem illi juza u l-kuntest illi fih jintuza dak il-kliem. Dan premess il-Qorti tqis illi l-introduzzjoni tal-Att XVI tal-1967 kellha skop legittimu u ghalhekk il-ligi kienet kollox barra *infami.* Ma kien xejn kapriccjuz il-mottiv tal-legislatur li jintroduci kontroll fil-kiri tar-raba` ghaliex ried jipprotegi s-settur tal-biedja u jevita s-sitwazzjoni li l-gabillotti jitilqu l-art li jkunu jahdmu ghaliex toghla l-kera f`regim mhux kontrollat.

Din il-Qorti ssib li r-rikorrenti ma kkontestatx bi provi l-legalita` tal-Kap 199.

Lanqas mill-provi li ressqet ir-rikorrenti ma jirrizulta li xejnet il-legittimita` tal-iskop ghaliex sari l-Kap 199.

Fl-istess waqt tajjeb jinghad ukoll li ghandha ragun ir-rikorrenti tilmenta li bl-applikazzjoni tad-disposizzjonijiet tal-Kap 199 ghas-sitwazzjoni taghha kienet qeghda ggarrab ksur tal-Art 1 Prot 1 tal-Konvenzjoni ghaliex jirrizulta ppruvat li mill-mod kif l-Istat kkontrolla l-uzu tal-propjeta` taghha b`dik il-ligi holoq zbilanc u sproporzjon kontra taghha, fatturi dawn li ma kienux isehhu li kieku r-rikorrenti thalliet tgawdi l-propjeta` taghha sal-milja taghha.

Il-Qorti tishaq li 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.

Tajjeb jinghad illi ghalkemm fil-kaz ta` bini residenzjali u kummercjali, il-legislatur haseb ghal bidliet fil-legislazzjoni, anke effett ta` sentenzi li nghataw kontra l-Istat Malti mill-ECtHR, jibqa` l-fatt li baqa` lura milli jintervjeni fil-kaz ta` art agrikola. Ghalhekk fl-istat tad-dritt kif inhu llum f`materji ta` fondi agrikoli, kull awment fil-qbiela jiddependi minn talba li trid issir fil-Bord dwar il-Kontroll ta` Kiri ta` Raba`, li fid-decizjonijiet li jaghti huwa vinkolat b`parametri li huma determinati fil-Kap 199.

Fuq l-iskorta tal-provi akkwiziti fil-kawza tal-lum, jirrizulta li l-qbiela li qeghda tithallas mill-intimati Pulis skont kif jipprovdi l-Kap 199 hija bil-wisq inqas mill-kera li jgib is-suq wara l-1983 sal-lum. Il-figuri li saret referenza ghalihom aktar kmieni jitkellmu wahedhom u ghalhekk huwa

ppruvat l-isproporzjon li l-Art 1 Prot 1 tal-Konvenzjoni ma jridx li jsehh, liema sporporzjon qed jingarr mir-rikorrenti.

Ghalhekk it-tieni (2) talba <u>safejn din tirrigwarda ksur tal-Art 1 Prot 1 tal-Konvenzjoni</u> qeghda tkun milqugha.

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

Il-Qorti sejra tittratta l-allegat ksur tal-jedd ghal smigh xieraq lamentat mir-rikorrenti fl-ambitu tat-tieni talba.

Fis-seba` (7) eccezzjoni, l-Avukat tal-Istat jikkontesta l-pretensjoni tar-rikorrenti billi jeccepixxi li l-principju ta` smigh xieraq ghandu jinghata nterpretazzjoni ristretta u limitata ghal dak illi jolqot gustizzja procedurali. Access ghall-qorti m`ghandux ifisser li l-ligi trid tkun modellata skont l-ezigenzi tal-persuna partikolari.

Tajjeb li jkun rilevat li skont il-gurisprudenza, il-jedd ghal smigh xieraq joqghod fuq zewg pilastri : i) zmien ragjonevoli sabiex jibda u jintemm procediment minn qorti jew tribunal indipendenti u mparzjali ; u ii) access ghall-qorti. L-ilment odjern huwa mpernjat fuq it-tieni minn dawn iz-zewg pilastri.

Il-Qorti taghmel referenza ghas-sentenza moghtija mill-Grand Chamber tal-ECtHR fil-5 ta` April 2018 fil-kaz ta` **<u>Zubac v. Croatia</u>** fejn inghad hekk :-

> *"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 ukoll referenza ghall-**<u>Guide on Article 6 of the European Convention on Human Rights – Right to a fair trial (civil limb)</u>**, pubblikazzjoni tal-Kunsill tal-Ewropa u tal-ECtHR aggornat sal-31 ta` Dicembru 2017, fejn ghal dak li huwa rilevanti ghall-kaz taht ezami, in partikolari d-dritt ta` access ghall-qorti, jinghad hekk :-

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).”

Fis-sentenza li tat l-ECtHR tal-4 ta` Dicembru 1995 fil-kaz ta` **Bellet v. France** kien inghad illi :-

“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).”

Ghalkemm l-ezercizzju tad-dritt jista` jkun soggett ghal limitazzjonijiet legittimi, fil-**Guide on Article 6 of the European Convention on Human Rights – Right to a fair trial (civil limb)** (op. cit.) ikompli jinghad :-

“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).”

Fil-kaz odjern, il-Qorti diga esprimiet ruhha fis-sens illi r-rikorrenti thalliet minghajr rimedju prattiku u effettiv bl-uniku fórum fejn issib tarf tal-lanjanzi taghha tkun il-kawza tal-lum.

Ghalhekk filwaqt illi s-seba` (7) eccezzjoni tal-Avukat tal-Istat qeghda tkun michuda, qeghda tkun tkun milqugha dik il-parti tat-tieni talba safejn ir-rikorrenti tilmenta minn ksur tal-jedd fondamentali taghha ghal smigh xieraq hekk kif dak il-jedd huwa tutelat bl-Art 6 tal-Konvenzjoni u bl-Art 39 tal-Kostituzzjoni.

4. <u>Ir-ripreza tal-ghalqa, razzett u ambjenti relatati</u>

Fil-kuntest tat-tieni talba, ir-rikorrenti talbet li bhala rimedju favur taghha li tinghata lura minn din il-qorti l-ghalqa, ir-razzett u ambjenti relatati llum okkupati mill-intimati Pulis.

Kontra din il-pretensjoni, tirrizulta t-tmien (8) eccezzjoni tal-intimati Pulis.

Fir-ricerka taghha, din il-Qorti ma rriskontratx gurisprudenza dwar talbiet ta` din ix-xorta li jirrigwardaw artijiet jew ambjenti agrikoli. Hemm pero` gurisprudenza li tittratta dwar bini residenzjali u kummercjali. Qeghda tirreferi *inter alia* ghas-sentenzi tal-Qorti Kostituzzjonali : <u>Angela sive Gina Balzan v. L-Onorevoli Prim Ministru et</u> tas-7 ta` Dicembru 2012** ; **<u>Dr. Cedric Mifsud et vs l-Avukat Generali et</u> tal-25 ta` Ottubru 2013 ; <u>Maria Ludgarda Borg et vs Rosario Mifsud et</u> tad-29 ta` April 2016 ; <u>Rose Borg vs Avukat Generali et</u> tal-11 ta` Lulju 2016. Fil-fehma ta` din il-Qorti, l-insenjamenti jistghu jigu estizi *mutatis mutandis* ghall-fondi agrikoli mertu ta` din il-kawza.

Fid-decizjoni tal-ECtHR tat-22 ta` Frar 2012 dwar *just satisfaction* fil-kaz ta` **<u>Frendo Randon and Others v. Malta</u>**, inghad :-

> *16. As the Court has held on a number of occasions, a judgment in which the Court finds a breach imposes on the*

respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see Iatridis v. Greece (just satisfaction) [GC}, no. 31107/96 §32, ECHR 2000- XI, and Guiso- Gallissay v. Italy Just satisfaction) [GC], no. 58858/00, § 90, 22 December 2009). The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attached to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the violation allows of restitutio in integrum it is the duty of the State held liable to effect it, the Court having neither the power nor the practical possibility of doing so itself. If; however, national law does not allow - or allows only partial reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate."

Issir referenza wkoll ghad-decizjoni tal-ECtHR tat-12 ta` Gunju 2012 fil-kaz ta` **Lindheim and Others v. Norway** fejn inghad :-

"Whilst in reaching the above conclusion the Court has focused on the particular circumstances of the applicants` individual complaints, it adds by way of a general observation that the problem underlying the violation of Article 1 of Protocol No. 1 concerns the legislation itself and that its findings extend beyond the sole interests of the applicants in the instant case. This is a case where the Court considers that the respondent State should take appropriate legislative and/or other general measures to secure in its domestic legal order a mechanism which will ensure a fair balance between the interests of lessors on the one hand, and the general interests of the community on the other hand, in accordance with the principles of protection of property rights under the Convention."

Il-Qorti tishaq illi procediment ta` x-xorta tal-lum mhuwiex il-forum appozitu sabiex tinghata decizjoni dwar jekk inkwilin (li sal-lum kellu titolu naxxenti minn ligi tal-pajjiz) ghandux jigi zgumbrat jew le. Huma t-tribunali jew qrati ordinarji li ghandhom il-kompetenza li jesprimu ruhhom dwar talbiet mis-sid ghar-ripreza ta` fondi li jistghu jinvolvu l-izgumbrament tal-inkwilin. Ghall-fini tal-procediment odjern, dik rilevanti hija l-konsiderazzjoni ta` jekk ligi u/jew l-applikazzjoni taghha tkunx ivvjolat il-jeddijiet fondamentali tal-persuna u allura jekk abbazi tal-fattispeci ta` kull kaz dik il-ligi ghandhiex tkun applikata bejn il-partijiet kemm-il darba l-applikazzjoni taghha tkun leziva ghad-drittijiet fundamentali ta` l-persuna koncernata.

Riferibbilment ghall-kaz tal-lum, jirrizulta li ladarba l-inkwilini agixxew skont il-ligijiet vigenti m`ghandhomx legalment jirrispondu ghall-kostituzzjonalita` o meno tal-ligi kif applikata, jew li jkunu ordnati jaghtu rimedju lir-rikorrenti jew jehlu l-ispejjez tal-kawza.

L-Istat huwa responsabbli ghall-promulgazzjoni tal-ligi u ghalhekk ghandu jkun l-Istat illi jwiegeb.

VIII. L-Art 45 tal-Kostituzzjoni u l-Art 14 tal-Konvenzjoni

Ghalkemm fit-talbiet ma ssemma xejn, fil-kawzali tar-rikors promotur, in partikolari fil-paragrafu dsatax (19), ir-rikorrenti tirreferi ghal dawn id-disposizzjonijiet tal-Konvenzjoni u tal-Kostituzzjoni.

Ghalkemm mhumiex mertu tat-talbiet, u ghalkemm dawk id-disposizzjonjet ma kienux trattati mir-rikorrenti fin-nota ta` osservazzjonijiet taghha, il-Qorti sejra tqishom xorta, kemm tenut kont tan-natura tal-procediment odjern, u kif ukoll ghaliex inghataw eccezzjonijiet dwar l-applikazzjoni taghhom ghall-kaz odjern mill-Avukat tal-Istat.

a) L-Art 45 tal-Kostituzzjoni

Kien eccepit mill-Avukat tal-Istat li l-Art 45 tal-Kostituzzjoni mhuwiex applikabbli ghall-kaz tal-lum billi l-allegata diskriminazzjoni ma kenitx inkwadrata taht wahda mill-irjus elenkati fis-subartikolu (3) tal-istess disposizzjoni.

L-**<u>Art 45 tal-Kostituzzjoni</u>** jipprovdi illi *"ebda ligi ma ghandha taghmel xi disposizzjoni li tkun diskriminatorja sew fiha nnifisha jew fl-effett taghha."*

Din tal-Kostituzzjoni hija disposizzjoni li tixbah l-Art 14 tal-Konvenzjoni li jaqra hekk :-

> *"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."*

L-**<u>Art 45(3) tal-Kostituzzjoni</u>** jitlob li lment ikun abbinat ma` kwalifika li tirrizulta specifikament indikata fid-dispozizzjoni. Tghid hekk ghaliex id-disposizzjoni taqra :-

> *"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 fihompersuni 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 taht ebda wiehed mill-kwalifiki.

Kwindi ma tirrizultax vjolazzjoni skont l-Art 45 tal-Kostituzzjoni.

Ghalhekk qeghda tilqa` t-tmien (8) eccezzjoni tal-Avukat tal-Istat.

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

Fid-disa` (9) eccezzjoni l-Avukat tal-Istat jikkontendi li l-ilment tar-rikorrenti dwar l-Art 14 tal-Konvenzjoni ghandu jigi michud, peress illi r-rikorrenti naqsu milli jindikaw fuq liema bazi jew status imsemmi fl-istess disposizzjoni kienu diskriminati.

Skont l-Art 14 :-

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

M`ghandux ikun ikkontestat li lment li jirreferi ghall-Art 14 tal-Konvenzjoni, sabiex jissussisti, ghandu jkun abbinat ma` vjolazzjoni ta` jedd iehor tutelat mill-Konvenzjoni.

Fis-sentenza li tat din il-Qorti diversament presjeduta fid-19 ta` Ottubru 2000 fil-kawza fl-ismijiet **<u>Victoria Cassar vs Awtorita` Marittima ta` Malta et</u>,** 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 ineffetti 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 d-diskriminazzjoni 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).*

Ghalkemm huwa minnu li r-rikorrenti ma ndikatx b`mod preciz ma` liema disposizzjoni tal-Konvenzjoni kienet qeghda torbot l-applikazzjoni tal-Art 14, tajjeb jinghad ukoll illi minn qari tal-kawzali u tat-talbiet, jidher evidenti li r-rikorrenti riedet tabina l-allegata vjolazzjoni tal-Art 14 mal-allegat ksur tal-Art 1 Prot 1 tal-Konvenzjoni.

Fic-cirkostanzi d-disa` (9) eccezzjoni tal-Avukat tal-Istat qeghda tkun michuda.

IX. <u>Id-diskriminazzjoni … fil-mertu</u>

Il-Qorti tirreferi ghad-decizjoni tal-ECtHR tal-20 ta` Gunju 2006 fil-kaz ta` **<u>Zarb Adami and others v. Malta</u>** fejn saru dawn l-osservazzjonijiet dwar l-applikazzjoni tal-Art 14 tal-Konvenzjoni :-

71. The Court`s case-law establishes that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see Willis v. the United Kingdom, no. 36042/97, § 48, ECHR 2002-IV). However, not every difference in treatment will amount to a violation of Article 14. It must be established that other persons in an analogous or relevantly similar situation enjoy preferential treatment and that this distinction is discriminatory (see Ünal Tekeli v. Turkey, no. 29865/96, § 49, ECHR 2004-X).

72. As a difference of treatment is discriminatory within the meaning of Article 14 if it has no objective and reasonable justification. The existence of such a justification must be assessed in relation to the principles which normally prevail in democratic societies. A difference of treatment in the exercise of a right laid down by the Convention must not only pursue a legitimate aim: Article 14 will also be violated when it is clearly established that there is no "reasonable relationship of proportionality between the means employed and the aim

sought to be realised" (see, for example, Petrovic, cited above, § 30, and Lithgow and Others v. the United Kingdom, 8 July 1986, § 177, Series A no. 102).

73. In other words, the notion of discrimination includes in general cases where a person or group is treated, without proper justification, less favourably than another, even though the more favourable treatment is not called for by the Convention (see Abdulaziz, Cabales and Balkandali v. the United Kingdom, 28 May 1985, § 82, Series A no. 94). Article 14 does not prohibit distinctions in treatment which are founded on an objective assessment of essentially different factual circumstances and which, being based on the public interest, strike a fair balance between the protection of the interests of the community and respect for the rights and freedoms safeguarded by the Convention (see, among other authorities, G.M.B. and K.M. v. Switzerland (dec.), no. 36797/97, 27 September 2001).

74. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a difference in treatment (see Gaygusuz v. Austria, 16 September 1996, § 42, Reports 1996-IV). The scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background (see Rasmussen v. Denmark, 28 November 1984, § 40, Series A no. 87, and Inze v. Austria, 28 October 1987, § 41, Series A no. 126), but the final decision as to observance of the Convention`s requirements rests with the Court. Since the Convention is first and foremost a system for the protection of human rights, the Court must, however, have regard to the changing conditions in Contracting States and respond, for example, to any emerging consensus as to the standards to be achieved (see Ünal Tekeli, cited above, § 54, and, mutatis mutandis, Stafford v. the United Kingdom [GC], no. 46295/99, § 68, ECHR 2002-IV).

Fil-kaz ta` **D.H. and Others v. The Czech Republic** tat-13 ta` Novembru 2007 il-Qorti ta` Strasbourg qalet hekk :-

"175. The Court has established in its case-law that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see Willis v. the United Kingdom, no. 36042/97, § 48, ECHR 2002-IV, and Okpisz v. Germany, no. 59140/00, § 33, 25 October 2005). However, Article 14 does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them; indeed in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article (see Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium (merits), 23 July 1968, p. 34, § 10, Series A no. 6; Thlimmenos v. Greece [GC], no. 34369/97, § 44, ECHR 2000-IV; and Stec and Others v. the United Kingdom [GC], no. 65731/01, § 51, ECHR 2006-VI). The Court has also accepted that a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory notwithstanding that it is not specifically aimed at that group (see Hugh Jordan, cited above, and Hoogendijk, cited above), and that discrimination potentially contrary to the Convention may result from a de facto situation (see Zarb Adami, cited above).

…

177. As to the burden of proof in this sphere, the Court has established that once the applicant has shown a difference in treatment it is for the Government to show that it was justified (see, among other authorities, Chassagnou and Others v. France [GC], nos. 25088/94, 28331/95 and 28443/95, §§ 91-92, ECHR 1999-III, and Timishev, cited above, § 57).

178. As regards the question of what constitutes prima facie evidence capable of shifting the burden of proof on to the respondent State, the Court stated in Nachova and Others (cited above, § 147) that in proceedings before it there are no procedural barriers to the admissibility of evidence or predetermined formulae for its assessment. The Court adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may

flow from the facts and the parties` submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake.

…

179. The Court has also recognised that Convention proceedings do not in all cases lend themselves to a rigorous application of the principle affirmanti incumbit probatio (he who alleges something must prove that allegation – see Aktaş v. Turkey, no. 24351/94, § 272, ECHR 2003-V). In certain circumstances, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see Salman v. Turkey [GC], no. 21986/93, § 100, ECHR 2000-VII, and Anguelova v. Bulgaria, no. 38361/97, § 111, ECHR 2002-IV). In Nachova and Others (cited above, § 157), the Court did not rule out requiring a respondent Government to disprove an arguable allegation of discrimination in certain cases, even though it considered that it would be difficult to do so in that particular case in which the allegation was that an act of violence had been motivated by racial prejudice. It noted in that connection that in the legal systems of many countries proof of the discriminatory effect of a policy, decision or practice would dispense with the need to prove intent in respect of alleged discrimination in employment or in the provision of services.

180. As to whether statistics can constitute evidence, the Court has in the past stated that statistics could not in themselves disclose a practice which could be classified as discriminatory (see Hugh Jordan, cited above, § 154). However, in more recent cases on the question of discrimination in which the applicants alleged a difference in the effect of a general measure or de facto situation (see Hoogendijk, cited

above, and Zarb Adami, cited above, §§ 77-78), the Court relied extensively on statistics produced by the parties to establish a difference in treatment between two groups (men and women) in similar situations."

Thus, in Hoogendijk the Court stated: "[W]here an applicant is able to show, on the basis of undisputed official statistics, the existence of a prima facie indication that a specific rule – although formulated in a neutral manner – in fact affects a clearly higher percentage of women than men, it is for the respondent Government to show that this is the result of objective factors unrelated to any discrimination on grounds of sex. If the onus of demonstrating that a difference in impact for men and women is not in practice discriminatory does not shift to the respondent Government, it will be in practice extremely difficult for applicants to prove indirect discrimination."

Meta tigi allegata diskriminazzjoni fuq bazi ta` xi dritt protett bil-Konvenzjoni, il-kwistjoni centrali illi tinsorgi hija jekk it-trattament allegatament divers kienx gustifikat inkella diskriminatorju.

Fil-**Belgian Linguistic case** li kien deciz mill-Qorti ta` Strasbourg fit-23 ta` Lulju 1968 inghad hekk :-

10. In spite of the very general wording of the French version ("sans distinction aucune"), Article 14 (art. 14) does not forbid every difference in treatment in the exercise of the rights and freedoms recognised. This version must be read in the light of the more restrictive text of the English version ("without discrimination"). In addition, and in particular, one would reach absurd results were one to give Article 14 (art. 14) an interpretation as wide as that which the French version seems to imply. One would, in effect, be led to judge as contrary to the Convention every one of the many legal or administrative provisions which do not secure to everyone complete equality of treatment in the enjoyment of the rights and freedoms recognised. The competent national authorities are frequently confronted with situations and problems which, on account of differences inherent therein, call for different legal

solutions; moreover, certain legal inequalities tend only to correct factual inequalities. The extensive interpretation mentioned above cannot consequently be accepted.

It is important, then, to look for the criteria which enable a determination to be made as to whether or not a given difference in treatment, concerning of course the exercise of one of the rights and freedoms set forth, contravenes Article 14 (art. 14). On this question the Court, following the principles which may be extracted from the legal practice of a large number of democratic States, holds that the principle of equality of treatment is violated if the distinction has no objective and reasonable justification. The existence of such a justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevail in democratic societies. A difference of treatment in the exercise of a right laid down in the Convention must not only pursue a legitimate aim: Article 14 (art. 14) is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised.

In attempting to find out in a given case, whether or not there has been an arbitrary distinction, the Court cannot disregard those legal and factual features which characterise the life of the society in the State which, as a Contracting Party, has to answer for the measure in dispute. In so doing it cannot assume the rôle of the competent national authorities, for it would thereby lose sight of the subsidiary nature of the international machinery of collective enforcement established by the Convention. The national authorities remain free to choose the measures which they consider appropriate in those matters which are governed by the Convention. Review by the Court concerns only the conformity of these measures with the requirements of the Convention."

Riferibbilment ghall-kaz ta` llum, il-Qorti diga` ddeterminat illi r-rikorrenti garrbet ksur tal-jeddijiet fondamentali taghha hekk kif dawn huma mharsa bl-Art 1 Prot 1 tal-Konvenzjoni.

Fl-istess waqt ma jfissirx li, ta` bilfors jew bhala konsegwenza, ir-rikorrenti garrbet **<u>ukoll</u>** ksur tal-jeddijiet taghha skont l-Art 14 tal-Konvenzjoni.

Ir-rikorrenti abbinat l-ilment taghha mal-fatt illi fejn si tratta ta` kirja agrikola jidher li l-legislatur holoq diskriminazzjoni ghaliex bl-emendi li ghamel bl-Att XXXI tal-1995 u bl-Att X tal-2009 eskluda ghal kollox l-kiri tar-raba`.

Il-Qorti tistqarr illi r-rikorrenti mhijiex korretta.

Ikun hemm diskriminiazzjoni jekk persuni fl-istess kategorija jigu trattati diversament.

Mhuwiex dan il-kaz tal-lum.

L-emendi li ghalihom irreferiet ir-rikorrenti jghoddu kollha kemm huma ghall-bini. Ebda wahda minnhom ma tapplika ghal art agrikola. Diversa kienet tkun il-kwistjoni li kieku bini regolat b`ligijiet li japplikaw ghall-bini kien trattat b`regoli diversi ghall-isvantagg ta` bini iehor.

L-ghaxar (10) eccezzjoni tal-Avukat tal-Istat qeghda tkun milqugha.

X. <u>It-tielet (3) talba</u>

Ir-rikorrenti qeghda titlob dikjarazzjoni mill-qorti li ghal-vjolazzjonijiet li garrbet ghandha jedd ghall-hlas ta` kumpens u danni.

L-**<u>Art 41 tal-Konvenzjoni</u>** jghid :-

"Jekk il-Qorti ssib li kien hemm ksur tal-Konvenzjoni jew tal-Protokolli taghha, u jekk il-ligi interna tal-Parti Gholja Kontraenti kkoncernata tippermetti biss riparazzjoni parzjali, il-Qorti ghandha taghti s-soddisfazzjon xierqa lil-parti leza jekk ikun necessarju."

Il-Qorti taghmel referenza ghas-sentenza ta` din il-Qorti diversament presjeduta tas-7 ta` Frar 2017 (**mhux appellata**) fil-kawza **Robert Galea vs Avukat Generali et** fejn inghad hekk :

"Illi ghal dak li jirrigwarda t-talba tal-kumpens il-Qorti tqis li din it-talba hija l-effett naturali tas-sejbien tal-ksur tal-jedd invokat. Huwa mizmum li, ladarba Qorti ssib li r-rikorrent garrab ksur tal-jedd tieghu kif imhares bl-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni, ma huwiex bizzejjed li tieqaf b`semplici dikjarazzjoni bhal dik. Ghalkemm ir-rimedju xieraq mhuwiex lanqas u tabilfors il-kundanna ta` hlas ta` kumpens bhallikieku l-haga li dwarha sehh il-ksur kienet inbieghet, xi ghamla ta` kumpens huwa misthoqq u doveruz. Hawn ukoll, il-Qorti qieghda zzomm quddiem ghajnejha li l-ksur imgarrab mir-rikorrent jikkonsisti f`indhil dwar u mhux f`tehid tal-gid tieghu;

Illi b`zieda ma` dan, ir-rikorrent jitlob ukoll il-hlas tad-danni "ai termini tal-artikolu 41 tal-Konvenzjoni Ewropeja";

Illi l-Qorti tibda biex tghid li l-kumpens misthoqq lill-persuna wara li jkun instab li din garrbet ksur ta` xi jedd fundamentali taghha ma huwiex l-istess bhal-likwidazzjoni u hlas ta` danni mgarrba. Minbarra dan, ir-rikorrent ma jistax jistrieh fuq l-ghoti ta` kumpens taht l-artikolu minnu msemmi tal-Konvenzjoni. Fl-ewwel lok, il-Konvenzjoni taghmel mil-ligijiet ta` Malta safejn id-dispozizzjonijiet taghha kienu inkorporati fil-Kapitolu 319 tal-Ligijiet ta` Malta. L-imsemmi artikolu ma kienx hekk inkorporat. Fit-tieni lok, huwa maqbul li d-dispozizzjonijiet ta` dak l-artikolu jghoddu ghall-Qorti ta` Strasbourg u mhux ghall-qrati domestici tal-Pajjizi Membri tal-Kunsill tal-Ewropa (Ara Kost. 30.9.2016 fil-kawza fl-ismijiet Maria Stella Azzopardi Vella et vs Avukat Generali et);

Illi b`daqshekk ma jfissirx li t-talbiet tar-rikorrent dwar l-ghoti ta` rimedju mhumiex sejrin jintlaqghu. Jekk ma jistghux

jintlaqghu talbiet ghal-likwidazzjoni ta` kumpens u danni bis-sahha tal-imsemmi artikolu 41 tal-Konvenzjoni, jista` u sejjer jinghata rimedju taht il-kriterji tal-ghoti ta` rimedju bhal dan minn din il-Qorti fis-setghat u kompetenza attwali taghha (Kost. 17.12.2010 fil-kawza fl-ismijiet Philip Grech pro et noe vs Direttur tal-Akkomodazzjoni Socjali et). Ghalhekk, il-Qorti tasal ghall-fehma li t-tieni rimedju mitlub mir-rikorrenti fit-tielet, ir-raba` u l-hames talbiet tieghu ma jisthoqqlux jintlaqa`, imma sejjer jinghata kumpens taht it-tieni talba tieghu"

Bhala fatt jirrizulta li l-Art 41 tal-Konvenzjoni ma kienx traspost fil-ligi taghna. Il-Konvenzjoni u l-Protokolli taghha jitqiesu illi jifformaw parti mil-ligi nazzjonali safejn dawn gew inkorporati fil-corpus juris domestiku. L-Art 41 kien intiz sabiex jigi applikat mill-ECtHR, wara talba ghal dan l-iskop, fil-kazi fejn il-qrati tal-pajjizi firmatarji tal-Konvenzjoni ma jkunux taw kumpens ghall-vjolazzjoni accertata. Hemm l-ECtHR tkun tista` taghti kumpens. Hemm pero` gurisprudenza tal-Qorti Kostituzzjonali li tghid li fejn jirrizulta ppruvat li jkun sehh ksur tal-Konvenzjoni, ikun fil-gurisdizzjoni taghha li taghti rimedju li jkun indikat fic-cirkostanzi, inkluz kumpens.

L-eccezzjoni numru hdax (11) tal-Avukat tal-Istat qeghda tkun rigettata.

Kif accennat aktar kmieni, fir-ricerka taghha, din il-Qorti ma sabitx gurisprudenza dwar likwidazzjoni ta` kumpens fil-kaz ta` artijiet jew ambjenti agrikoli, billi l-gurisprudenza li ltaqghet maghha kienet tittratta dwar bini residenzjali u kummercjali. Fl-istess waqt tghid li d-direzzjoni u l-insenjamenti li hargu minn dik il-gurisprudenza jistghu jigu estizi *mutatis mutandis* ghall-fondi agrikoli mertu ta` din il-kawza abbazi tal-fatti u cirkostanzi tal-kaz.

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 vs Direttur tal-Akkomodazzjoni Socjali et** deciza fis-17 ta`

Dicembru 2010 ; **Victor Gatt et vs Avukat Generali et** deciza fil-5 ta` Lulju 2011 ; u **Ian Peter Ellis et vs Avukat Generali et** deciza fl-24 ta` Gunju 2016).

Fid-decizjoni li tat fit-30 ta` Settembru 2016 fil-kawza fl-ismijiet **Maria Stella sive Estelle Azzopardi et vs Avukat Generali et,** 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."*

Dan premess, huma diversi l-konsiderazzjonijiet li l-Qorti ghandha tqis sabiex tistabilixxi l-*quantum* tal-kumpens.

Decizjoni li qieset x`ghandhom ikunu l-kriterji li jiddeterminaw il-quantum tal-kumpens kienet dik moghtija fil-31 ta` Ottubru 2014 mill-Qorti Kostituzzjonali fil-kawza fl-ismijiet **Igino Trapani Galea Feriol pro et noe et v. Kummissarju tal-Artijiet et**, fejn inghad hekk :-

> *"Rigward il-quantum tal-kumpens stabbilit mill-ewwel Qorti, din il-Qorti tosserva fl-ewwel lok li kull kaz ghandu jigi trattat u deciz fuq il-fattispecie tieghu. Barra minn hekk, jekk il-Qorti Ewropeja hasset li f` certi kazijiet kellha taghti kumpens f` ammont inferjuri ghal dak li nghata lir-rikorrenti mill-ewwel Qorti, ma jfissirx li allura l-Qrati Maltin tilfu l-awtonomija taghhom b` mod li bilfors kumpens li jinghata ikun f` ammont vicin dak li taghti l-Qorti Ewropeja. Fil-kaz odjern l-ewwel Qorti hadet in konsiderazzjoni l-fatturi kollha li jimmilitaw kemm favur kif ukoll kontra r-rikorrenti u deherilha li l-kumpens xieraq li ghandha taghti f` dan il-kaz ikun fl-ammont ta` hamsa u ghoxrin elf Euro (EUR 25,000). Hija kkonsidrat id-dewmien da parti tar-rikorrenti li jiehdu l-proceduri opportuni, il-valur tal-immobbli, iz-zmien tant twil li r-rikorrenti ilhom privati mill-godiment tal-proprjeta` taghhom minghand ma nghata ebda kumpens, l-istat tal-fond u l-ezistenza tal-fattur tal-interess pubbliku. Ma` dawn ghandu jigi senjalat il-fatt li qabel l-ispossessament tal-proprjeta` taghhom ir-rikorrenti kellhom permess mill-Bord kompetenti sabiex jizviluppaw il-fond."*

Issa ghalkemm, huwa minnu illi l-valur tal-kumpens akkordat mill-Qorti wara sejba ta` lezjoni tad-drittijiet fondamentali ma jekwiparax necessarjament ma` likwidazzjoni ta` danni civili attwali sofferti, ma jfissirx li d-danni materjali ghandhom jigu injorati ghall-finijiet tal-ezercizzju odjern. Il-Qorti trid tqis il-fatturi kollha rilevanti ghall-kaz odjern sabiex tasal ghad-determinazzjoni tal-quantum. Dawn huma (1) it-tul ta` zmien li ilha ssehh il-vjolazzjoni konsidrat ukoll fid-dawl tat-tul taz-zmien li r-rikorrenti damu sabiex resqu l-proceduri odjerni biex jirrivendikaw id-drittijiet kostituzzjonali taghhom ; (2) il-grad ta` sproporzjoni relatat mal-introjtu li qed jigi percepit ma` dak li jista` jigi percepit fis-suq hieles, konsidrat ukoll l-ghan socjali tal-mizura; (3) id-danni materjali sofferti mir-rikorrenti konsidrat ukoll l-ispejjez sostanzjali li ghamlu l-intimati Tabone ssabiex jirrendu l-fond abitabbli u (4) l-ordni li ser taghti din il-Qorti dwar l-ezenzjoni f` dan il-kaz mill-effetti legali tal-Artikolu 5 tal-Kap 158."

Il-proceduri odjerni min-natura taghhom huma diretti sabiex jindirizzaw lezjoni kostituzzjonali u/jew konvenzjonali. Il-Qorti sabet vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni. Ghalkemm id-diskrepanza bejn il-kera attwalment percepita u l-valur lokatizju li s-sit igib 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, u li flimkien ghandhom iwasslu ghall-ghoti ta` kumpens gust ghal-lezjoni subita. Fattur minnhom huwa l-ghan li jkun immotiva l-mizura u cioe` l-interess pubbliku.

Fid-decizjoni li tat l-ECtHR fit-22 ta` Gunju 2004 fil-kaz ta` **Bronoiswki v. Poland**, inghad :-

"The Court would reiterate that compensation terms under the relevant legislation may be material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate balance on applicants. The taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference."

Fis-sentenza tas-17 ta` Lullju 2008 fil-kaz ta` **Edwards v. Malta** l-ECtHR osservat hekk :-

76. As the Court has already stated on may occasions, in spheres such as housing of the population, States necessarily enjoy a wide margin of appreciation not only in regard to the existence of the problem of general concern warranting measures for control of individual property, but also to the choice of the measures and their implementation. The State control over levels of rent is one such measure and its application may often cause significant reductions in the amount of rent chargeable …

Fis-sentenza li tat fil-15 ta` Dicembru 2009 fil-kaz ta` **Amato Gauci v. Malta**, l-ECtHR irrimarkat :-

… legitimate objectives in the `public interest`, such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less that reimbursement of the full market value.

Fis-sentenza ta` din il-Qorti diversament presjeduta tas-7 ta` Frar 2017 fil-kawza fl-ismijiet **Robert Galea vs Avukat Generali et**, (op. cit.) inghad :-

Illi huwa llum stabilit li r-rimedju li tista` taghti din il-Qorti huwa kumpens ghall-ksur tad-dritt fundamentali u mhux danni civili ghal opportunita` mitlufa (Kost. 22.2.2013 fil-kawza fl-ismijiet Albert Cassar et vs Onor. Prim Ministru et). Biex tasal ghal dan, il-Qorti jehtigilha tqis ghadd ta` fatturi, fosthom it-telf effettiv li jkun garrab is-sid, l-ghan socjali mahsub mil-ligi, il-grad ta` sproporzjon fit-tqabbil bejn id-dhul attwali li qieghed jircievi r-rikorrent mad-dhul li jista` jinkiseb fis-suq hieles, id-danni materjali li l-parti rikorrenti tista` tipprova li garrbet u wkoll l-effetti tal-ordni li l-Qorti tista` taghti dwar jekk l-okkupant jistax jibqa` jistrieh aktar fuq it-thaddim tal-ligi attakkata. Minn kif wiehed jista` jara, dawn il-kriterji huma firxa shiha li trid titqies

f`kull kaz ghalih u jiddependu hafna mic-cirkostanzi partikolari ta` kull kaz.

Fis-sentenza li tat fit-2 ta` Marzu 2018 fil-kawza fl-ismijiet **Thomas Cauchi et vs Avukat Generali et** il-Qorti Kostituzzjonali fissret il-fatturi li ghandhom rilevanza ghall-fini ta` likwidazzjoni ta` kumpens :-

☐ *id-diskrepanza bejn il-kera li l-atturi kellhom jedd ghalih taht il-Kap. 158 u l-kera li l-fond seta`gab fuq is-suq hieles;*

☐ *iz-zmien minn meta beda jinhass dan in-nuqqas ta` proporzjonalità;*

☐ *il-fatt li l-valuri moghtija mill-perit huma biss indikazzjoni tat-telf ekonomiku li setghu garrbu l-atturi u mhux prova ta` telf reali;*

☐ *il-fatt li, meqjus l-interess pubbliku u l-ghan socjali tal-ligi attakkata, il-kumpens misthoqq lis-sidien mhux bilfors ikun daqs il-kumpens shih li seta` kien dovut kieku wiehed kellu jistrieh fuq l-indikaturi tas-suq hieles;*

☐ *l-incertezza tal-atturi dwar meta jistghu, jew jekk jistghux qatt matul hajjithom, jiehdu hwejjighom lura, fin-nuqqas ta` mekkanizmu biex is-sidien jiehdu hwejjighom lura jew biex isir tqabbil bejn il-htigijiet tas-sidien u l-htigijiet tal-kerrejja, izda wkoll ir-rimedji li jistghu jaghtu lill-atturi s-setgha li jiehdu lura l-fond bis-sahha tad-dikjarazzjoni li l-konvenuta ma tistax tistrieh fuq il-ligi attakkata biex fuqha ssejjes titolu biex tibqa`zzomm il-fond;*

☐ *il-quantum ta` kumpens moghti mill-qrati f`kawzi ohra fejn ic-cirkostanzi kienu bejn wiehed u iehor jixxiebhu;*

☐ *il-fatt li ghandu jinghata kumpens kemm morali u kemm materjali ghall-ksur tad-dritt fondamentali.*

Fid-decizjoni **Cassar vs Malta** tat-30 ta` Jannar 2018, l-ECtHR ghamlet dawn l-osservazzjonijiet :-

84. The applicants claimed 1,260,996 euros (EUR) in respect of pecuniary damage. That sum reflected (i) the rent due to them from 1998 to 2015 amounting to EUR 730,330 calculated on the basis of the valuation of an estate agent at EUR 3,500 per month, (EUR 42,000 annually) in 2015, projected backwards to the year 1998 based on two indices for property prices published by the Central Bank of Malta – by means of example, such projections show the rents for the respective years as follows: EUR 6,857 annually in 1988, EUR 18,476 in 1998 and EUR 41,649 in 2008; (ii) EUR 502,006 in simple interest at 8% (capped so as not to exceed the rent of a particular year); and (iii) EUR 28,660 (supported by an architect`s report) in repairs needed to the property since the tenant had failed to take adequate care of the property. In this connection the applicants noted that as things stand, they will remain suffering the effects of the violation even after the Court judgment, for an unspecified amount of years to come. In this light they also considered that their claim of EUR 54,000 in respect of non-pecuniary damage already suffered, representing EUR 2,000 annually since 1988, should be upheld in full.

85. The Government submitted that if a violation were to be found a declaration to that effect would suffice. In any event, they considered that the valuations were exorbitant, speculative and not based on an architect`s report. They noted that the property had been purchased in 1988 at EUR 25,600 it had therefore hardly been imaginable that it could now have a rental value of EUR 42,000 annually. Indeed if it had to be divided over the years, their claim in rent amounted to around EUR 27,000 annually which would surely not reflect the rental value in the eighties and nineties. They further considered that since the applicants had accepted rent until 2008, their claim should only refer to the subsequent years. Moreover, the tenant had deposited rent for the period between 2009-15 amounting to EUR 2,796 which had to be deducted from the award of compensation. As to interest the Government noted that under domestic law, interest was due only on amount liquidated, which was not the case here. Moreover a rate of 8% was far beyond any commercial rate of interest currently available in the banking sector in respect of deposits. As to the structural works the Government considered this clam unproven and

hypothetical. Lastly, the Government considered that an award under this head should not exceed EUR 10,000, which would be EUR 2,123.66 annually over six years, and an award for pecuniary damage should not exceed EUR 4,000.

86. The Court notes that the applicants are entitled to compensation in respect of the loss of control, use, and enjoyment of their property from around 2000 to date. The Court notes on the one hand that the rent suggested by the Government is not based on any valuation or other criteria, and appears to be a simple division of an aleatory sum they proposed. On the other hand, while the applicant`s valuation is based on an estate agent, and was not accompanied by an architect`s report, the domestic court found that EUR 3,000 as opposed to the EUR 3,500 alleged by the applicants appeared reasonable. However, the Court also notes that the comparators used by the estate agent refer to renovated buildings with high quality finishing and furnishing. While no information has been submitted as to the quality of the interior of the applicants` property the Court observes that the applicants claim that their property needs repairs as it has not been well taken care of (see paragraph 84 above). Thus, the latter cannot be considered to be in the same condition and at the same rental value as the former. Therefore, the Court considers that the valuation submitted by the applicants is on the high side, but may nonetheless provide a relevant indication and workable basis.

*87. In assessing the pecuniary damage sustained by the applicants, the Court has, as far as appropriate, considered the estimates provided and had regard to the information available to it on rental values on the Maltese property market during the relevant period. It further notes that from 2008 onwards, the Court found the legitimacy of the aim pursued highly questionable (see paragraph 53 above) and thus does not justify a reduction compared with the free market rental value (compare, **Zammit and Attard Cassar**, § 75; and **Amato Gauci**, § 77, both cited above). It further takes note of the sums already received by the applicants and those, following 2008, which were deposited in court and therefore remain retrievable, which are being deducted from the award.*

88. In the present case the Court must, however, also take note of the fact that the applicants bought the property when it was already subject to such restrictions, and therefore it considers that the purchase price at the time reflected such restrictions. While the applicants consider that the Government`s claim to that effect was unsubstantiated (see paragraphs 37 and 38 above), the Court notes that according to the evaluations submitted by the applicants, the property in 1988, date when they purchased it, had a rental market value of EUR 6,857 annually. The Court observes that such a sum in rent would not be appropriate for a property purchased in the same year at EUR 25,600, if that were its real sale value. In consequence it must be accepted that the limitations on the property affected the purchase price.

*89. The Court reiterates that an award in respect of pecuniary damage under Article 41 of the Convention is intended to put the applicant, as far as possible, in the position he or she would have enjoyed had the breach not occurred (see, mutatis mutandis, **Kingsley v. the United Kingdom** [GC], no. 35605/97, § 40, ECHR 2002-IV). It therefore considers that interest should be added to the award in order to compensate for the loss of value of the award over time (see **Runkee and White v. the United Kingdom**, nos. 42949/98 and 53134/99, § 52, 10 May 2007). As such, the interest rate should reflect national economic conditions such as levels of inflation and rates of interest (see, for example, **Akkuş v. Turkey,** 9 July 1997, Reports of Judgments and Decisions 1997-IV, § 35; **Romanchenko v. Ukraine**, no. 5596/03, 22 November 2005, § 30, unpublished; and **Prodan v. Moldova**, no. 49806/99, § 73, ECHR 2004-III (extracts)). It notes that the applicants claimed the statutory rate of eight per cent, and the Government`s objection in that respect. The Court considers that a rate of five per cent interest is more realistic (see **Amato Gauci**, cited above, § 78, and **Ghigo v. Malta** (just satisfaction), no. 31122/05, § 20, 17 July 2008) thus a one-off payment at 5% interest should be added (see **Anthony Aquilina**, cited above, § 72, in fine).*

90. Lastly, it is not for the Court to award the claim concerning renovation work which was not entered into by this Court.

> *91. The Court, thus, awards the applicants the sum of EUR 170,000 jointly.*
>
> *92. The Court further considers that the applicants must have sustained feelings of anxiety and stress, having regard to the nature of the breach. It therefore awards EUR 3,000 jointly in respect of non-pecuniary damage.*

Fuq l-iskorta tal-gurisprudenza, din il-Qorti sejra tqis dawn il-fatturi sabiex tistabilixxi l-quantum tal-kumpens :-

i) L-interess generali, kif ukoll l-interess pubbliku, li jaghti legittimita` lill-intervent legislattiv.

ii) L-isproporzjon bejn il-kera attwalment percepita mir-rikorrenti u dik li setghet tippercepixxi fis-suq hieles li kieku ma kienux applikati d-disposizzjonijiet tal-Kap 199.

iii) L-istima tal-prezz tas-suq huwa kriterju ndikattiv mhux assolut.

iv) Ir-rikorrenti kisbet is-sit de quo soggett ghall-qbiela li diga` kienet vigenti favur l-intimati Pulis.

v) Id-daqs tas-sit li huwa compost minn raba`, razzett u ambjenti ohra.

vi) L-incertezza dwar meta u jekk ir-rikorrenti tistax tiehu lura s-sit minghajr l-inkwilini.

vii) Kemm ilu ghaddej l-istat ta` sproporzjon.

viii) Il-fatt li r-rikorrenti baqghet is-snin taccetta l-qbiela u li kien biss immedjatament qabel saret din il-kawza li r-rikorrenti baghtet intimazzjoni wahda lill-intimati Pulis.

ix) L-inerzja tal-Istat meta baqa` passiv billi mhux biss ma aggornax id-disposizzjonijiet tal-Kap 199 izda lanqas il-hsieb wara dik il-legislazzjoni.

x) In-nuqqas ta` rimedju effettiv u l-konsegwenti vjolazzjoni tad-drittijiet tar-rikorrenti.

Il-Qorti tqis illi kull kaz ghandu l-isfond u l-fattispeci partikolari tieghu. Ghalhekk ma jistax ikun hemm uniformita` fil-quantum tal-kumpens li jigi likwidat. Tqis illi meta saret il-kirja qabel is-sit gie ghand ir-rikorrenti, l-awturi tar-rikorrenti ma setghux ragjonevolment jipprevedu x-xejriet ekonomici tal-pajjiz li gabu maghhom zieda qawwija fil-prezz tal-propjeta`, sahansitra ta` art agrikola, minkejja r-restrizzjonijiet mposti fil-legislazzjoni. Tqis li l-valur lokatizju tas-sit huwa bil-wisq oghla mill-qbiela li qeghda tithallas fil-prezent, kif irrizulta b`mod evidenti mill-kostatazzjonijiet tal-perit tekniku. Tqis li l-izbilanc u l-isproporzjon kontra r-rikorrenti huwa lampanti.

Tghid ghalhekk b`referenza ghat-tielet (3) talba li r-rikorrenti ghandha tithallas kumpens. Ghall-hlas ta` dan il-kumpens ghandu jkun responsabbli l-Avukat tal-Istat ghaliex fil-kaz li jirrizulta li ligi jew l-applikazzjoni taghha tkun leziva tad-drittijiet konvenzjonali jew kostituzzjonali huwa l-Istat u mhux ic-cittadin li ghandu jirrispondi, ghax huwa l-obbligu tal-Istat u mhux tal-inkwilin li jassigura li d-drittijiet fundamentali tas-sid ma jinkisrux.

XI. <u>Ir-raba` (4) talba</u>

Wara li kkunsidrat il-provi li rrizultaw fil-kaz tal-lum, wara li accertat li kien hemm vjolazzjoni tal-Konvenzjoni u tal-Kostituzzjoni, u wara li rat il-gurisprudenza, il-Qorti qeghda tillikwida favur ir-rikorrenti l-ammont komplessiv ta` mitt elf Ewro (€100,000) bhala danni pekunjarji u morali ghall-vjolazzjoni tal-jeddijiet fondamentali taghha.

XII. <u>Il-hames (5) talba</u>

Dan il-kumpens komplessiv ghandu jithallas lir-rikorrenti mill-Avukat tal-Istat.

XIII. <u>Spejjez</u>

Anke jekk il-procediment odjern kien intavolat permezz ta` rikors guramentat mhux b`rikors semplici, il-Qorti mhijiex tirriskontra nullita`. L-inizjar tal-procediment bir-rikors guramentat kien issenjalat mill-intimati Pulis fl-ewwel (1) eccezzjoni taghhom. Il-Qorti sejra tastjeni milli tiehu konjizzjoni ulterjuri ta` din l-eccezzjoni partikolari anke ghaliex l-intimati Pulis mhux se jinkorru spejjez fil-kawza odjerna.

<u>Decide</u>

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

Tilqa` t-tmien (8) u l-ghaxar (10) eccezzjonijiet tal-Avukat tal-Istat (gia` Avukat Generali).

Tilqa`dawk l-eccezzjonijiet tal-intimat Avukat tal-Istat (gia` Avukat Generali) li bihom kienet ikkontestata t-tieni (2) talba abbazi tal-Art 37 tal-Kostituzzjoni ta` Malta.

Tichad l-ewwel (1), it-tieni (2), it-tielet (3), id-disa` (9) u l-hdax (11) l-eccezzjonijiet tal-intimat Avukat tal-Istat (gia` Avukat Generali).

Tichad dawk l-eccezzjonijiet tal-intimat Avukat tal-Istat (gia` Avukat Generali) li bihom kienet ikkontestata t-tieni (2) talba abbazi tal-Artikolu 39 tal-Kostituzzjoni ta` Malta u tal-Artikolu 6 tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u Libertajiet Fondamentali.

Tichad dawk l-eccezzjonijiet tal-intimat Avukat tal-Istat (gia` Avukat Generali) li bihom kienet ikkontestata t-tieni (2) talba abbazi tal-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u Libertajiet Fondamentali.

Tastjeni milli tiehu konjizzjoni ulterjuri tal-ewwel (1) eccezzjoni tal-intimati konjugi Pulis.

Tilqa` s-seba` (7) u t-tmien (8) eccezzjonijiet tal-intimati konjugi Pulis.

Tichad l-eccezzjonijiet l-ohra tal-intimati konjugi Pulis.

Tichad l-ewwel (1) talba.

Tichad it-tieni (2) talba limitatament u safejn ir-rikorrenti tallega li garrbet vjolazzjoni tal-jeddijiet fondamentali taghha skont l-Artikolu 37 tal-Kostituzzjoni ta` Malta.

Tichad it-tieni (2) talba limitatament u safejn ir-rikorrenti talbet rimedju sabiex tkun tista` tirriprendi pussess tal-propjeta` deskritta fit-tieni (2) talba u li hija mikrija lill-intimati konjugi Pulis.

Tilqa` t-tieni (2) talba limitatament u safejn ir-rikorrenti garrbet vjolazzjoni tal-jeddijiet fondamentali taghha skont l-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u Libertajiet Fondamentali.

Tilqa` t-tieni (2) talba limitatament u safejn ir-rikorrenti garrbet vjolazzjoni tal-jeddijiet fondamentali taghha skont l-Artikolu 39 tal-Kostituzzjoni ta` Malta u tal-Artikolu 6 tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u Libertajiet Fondamentali.

Riferibbilment ghat-tielet (3) talba tiddikjara li r-rikorrenti ghandha jedd ghall-hlas ta` danni pekunjarji u morali. Tiddikjara wkoll li huwa biss l-Avukat tal-Istat (gia` Avukat Generali) responsabbli li jhallas danni pekunjarji u morali lir-rikorrenti.

Riferibbilment ghar-raba` (4) talba tillikwida favur ir-rikorrenti l-ammont komplessiv ta` mitt elf Ewro (€100,000) bhala danni pekunjarji u morali ghall-vjolazzjoni tal-jeddijiet fondamentali taghha kif fuq inghad.

Riferibbilment ghall-hames (5) talba tordna lill-Avukat tal-Istat (gia` Avukat Generali) sabiex ihallas lir-rikorrenti l-ammont komplessiv ta` mitt elf Ewro (€100,000) bhala danni pekunjarji u morali ghall-vjolazzjoni tal-jeddijiet fondamentali taghha kif fuq inghad.

Waqt illi tiddikjara li l-intimati konjugi Pulis m`ghandhomx ihallsu spejjez tal-kawza, tordna li l-ispejjez ta` din il-kawza jithallsu in kwantu ghal terz mir-rikorrenti u in kwantu ghal zewg terzi mill-intimat Avukat tal-Istat (gia` Avukat Generali).

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