



**QORTI CIVILI PRIM`AWLA
(GURISDIZZJONI KOSTITUZZJONALI)**

**ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON**

Illum it-Tnejn 13 ta` Lulju 2020

**Kawza Nru. 1
Rikors Nru. 100/2016/1 JZM**

Grace Spiteri (K.I. 532555)

kontra

L-Avukat Generali

u

**b`digriet tat-30 ta` Jannar
2020 l-isem tal-intimat
"Avukat Generali" gie jaqra
"Avukat tal-Istat"**

u

**b`digriet tal-10 ta` Jannar
2019 gew kjamati in kawza
Amabile Grech, l-Awtorita` ta`
Malta dwar l-Ambjent u l-
Ippjanar, General Services
Board u l-Perit Arkitett Marvin
Ellul**

Il-Qorti :

I. Preliminari

Rat ir-rikors prezentat fit-22 ta` Novembru 2016 quddiem din il-Qorti diversament presjeduta li jaqra hekk :-

Dikjarazzjoni dwar l-oggett u l-Fatti tal-Kawza

1. *Illi r-rikorrenti esponenti hija attrici fi proceduri quddiem il-Prim`Awla tal-Qorti Civili fil-kawza numru 100/2015, presjeduta mill-Onor. Imhallef Lawrence Mintoff, fl-ismijiet Grace Spiteri vs Amabile Grech et, liema kawza titratta binja li bniet fuq in-naha ta` wara taddar tal-abitazzjoni taghha u ta` hutha, liema binja ma r-rispettatx id-distanzi legali mill-proprjeta` taghha, tant li qed tohnoq lill-esponenti u kkawzatilha danni fil-persuni u fil-personalita` taghha;*

2. *Illi r-rikorrenti esponenti, permezz ta` rikors ipprezentat nhar il-Hamis, 27 ta` Ottubru 2016 fil-proceduri msemija, talbet ir-rikuza tal-Onor. Imhallef sedenti (Dok GS 1) fid-dawl illi ma kienet xejn kuntenta u sodisfatta bl-andament tal-kawza minhabba l-atteggjament tal-istess Imhallef sedenti u dan peress illi :*

(i) ghalkemrn f`wahda mis-seduti tal-bidu li nzammet quddiem il-Qorti hija talbet li ghas-spejjez taghha, dik l-Onor Qorti tahtar perit arkitett sabiex jeccedi fil-fondi in kwistjoni u jirrapporta dwar id-distanza li dwahra l-esponenti kienet qed tilmenta, l-istess Qorti cahditilha t-talba ; u

(ii) ghalkemm matul il-gbir tal-provi l-esponenti harket bhala xhud ewlieni lil raprezentant tal-Awtorita` tal-lppjanar sabiex igib il-files kollha relattivi u relatati mal-permessi kollha mitluba minn Amabile Grech, (l-intimat f`dik il-kawza) rigwardanti l-izvilupp li huwa ghamel fis-sit in kwistjoni u cioe`f`41/43, Triq il-Palazzi, Zejtun, b`sorpriza kbira dik l-Onor Qorti nvolvit ruhha l-argument mal-avukat difensur tal-esponenti u opponiet bil-qawwa l-prezentata tal-istess files mitluba u ordnat biss li jigu prezentati ftit folji mill-istess files !

3. Illi r-rikorrenti esponenti b`kull rispettt dovut, thoss li l-atteggjament ta` dik l-Onor Qorti kien wiehed car li jxaqleb kontra taghha b`mod li kien qed jippregudika l-istess kaz tagiha, liema atteggjament ghalhekk tilfilha l-fiducja fl-istess gudikant li qed jisma` l-kawza, speċjalment meta l-istess gudikant beda jghamel dak li kien qed jissugerixxi l-avukat tal-istess Amabile Grech, minghajr ma jzomm l-imparzjalita` tieghu fil-kwistjoni.

4. Illi l-esponenti tishaq li ghalhekk hija ma mhux qed tircievi a fair hearing fis-sens illi l-gudikant ma kienx qed jitratta maghha bl-istess mod kif kien qieghed jittratta lill-parti opposta tant li kien anke qieghed jimpediha milli tressaq l-aqwa prova li setghet tipproduci ossia l-files relattivi tal-Awtorita` tal-Ippjanar rigwardinti l-izvilupp ilmentat u ghalhekk it-talba li ghamlet ghar-rikuza tal-istess gudikant saret fid-dawl tac-cirkostanzi precizi u partikolari tal-kaz u proprju biex jigu evitati dubji u ngerenzi fl-ahjar interess tal-amministrazzjoni tal-Gustizzja.

5. Illi madanakollu, permezz ta` prowediment moghti fil-kawza nhar il-31 ta` Ottubru 2016 il-Prim` Awla tal-Qorti Civili cahdet it-talba ta` rikuza u ordnat il-prosegwiment tal-kawza (Dok GS 2).

Raguni ghat-Talbiet f`dawn il-proceduri

6. Illi konsegwentement l-esponenti kellha tirrikorri ghal l-intavolar ta` dawn il-proceduri kostituzjonali ai termini tal-Artikolu 39 tal-Kostituzzjoni ta` Malta u l-Artikolu 6 tal-Konvenzjoni Ewropea dwar Drittijiet Fundamentali tal-Bniedem (Artikolu 6 tal-Ewwel skeda tal-Kap. 319 tal-Ligijiet ta` Malta), kif ukoll ai termini tal-Artikolu 13 tal-Konvenzjoni Ewropea dwar Drittijiet Fundamentali tal-Bniedem (Artikolu 13 tal-Ewwel skeda tal-Kap. 319 tal-Ligijiet ta` Malta).

7. Illi l-esponenti kellha tirrikorri sabiex tikseb rimedju kostituzjonali, ossia wiehed straordinarju, u dan ghab-bazi tal-Artikoli citati, peress li kemm b`dak li gara fl-iter tal-proceduri kif fuq indikat, kif ukoll minhabba d-dettami tal-ligi procedurali hekk kif vigenti, gie lez kemm id-dritt fundamentali tar-rikorrenti ghall-smigh xieraq, kif ukoll id-dritt fundamentali tar-rikorrenti li tinghata rimedju effettiv.

8. *Illi l-esponenti sejra taghddi sabiex tindirizza l-lanjanzi kostituzzjonali taghha billi l-ewwel tezamina l-ligi procedurali nostrana in materja, taghmel referenza ghall-principji regolatorji fir-rigward tad-dritt fundamentali ghall-smigh xieraq u d-dritt fundamentali ghal rimedju effettiv, imbaghad taghddi sabiex fl-ahhar taghmel is-sottomissjonijiet taghha fil-konfront tal-fattispecie partikolari tal-kaz.*

9. *Illi huwa pacifiku fil-gurisprudenza nostrana, kif ukoll dik ta` qrati esteri u anki supranazzjonali, li d-dritt ghal smigh xieraq jikkompreni kategorikament it-tliet pilastru tal-gustizzja naturali, il-pilastru misjub bil-massimi audi alteram et partem, il-pilastru misjub bil-massima nemo iudex in causa propria u l-pilastru li jirrekjedi li kull decizjoni gudizzjaqa tkun motivata b`mod adegwat.*

10. *Illi ta` rilevanza primarja ghall-fini tar-rikors odjern huma l-principji audi alteram et partem u iudex in causa propria, u partikolarment l-import u l-applikazzjoni tal-elementi tal-indipendenza u l-imparzjalita`, bhala elementi fundamentali tad-dritt ghal smigh xieraq, ghal tali massima. Dan peress li permezz tal-prezenti proceduri l-esponenti qieghda targumenta li d-dettami tal-ligi procedurali fir-rigward tar-rikuza ta` gudikant sedenti, hekk kif misjuba fil-Kap 12 tal-Ligijiet ta` Malta, huma lezivi ghad-drittijiet fundamentali ghal smieh xieraq u rimedju effettiv,*

11. *Illi l-artikoli tal-Ligi li jirregolaw ir-rikuza tal-gudikanti huma misjuba fl-Artikoli 733 et seq. tal-Kap. 12 tal-Ligijiet ta` Malta.*

12. *Illi l-Artikolu 733 jipprovdi li l-imhallfin ma jistghux jigu nikuzati u lanqas jistghu jastjenu ruhhom milli joqoghdu f`kawza mighuba quddiemhom hlief ghal xi wahda mir-ragunijiet delineati fl-Artikolu 734.*

13. *Illi l-Artikolu 734 imbaghad jistipula numru ta` cirkostanzi li fihom il-partijiet f`kawza jistghu jitolbu r-rikuza ta` imhalled jew ghab-bazi ta` liema l-imhalled stess jista` jastjeni milli joqghod fil-kawza.*

14. *Illi mbaghad, l-Artikolu 738(1) jipprovdi li :*

Meta l-qorti hiia kkostitwita minn imhalled wiehed u kontra dan l-imhalled tigi moghtija l-eccezzioni ta` rikuza, ghandu jiddeciedi huwa nnifsu fuq ir-ragunijiet it-ecezzjoini, u kontra din id-decizjoni ma jinghatax appell, u, jew jastjeni ruhu" u jiddigrieta li hemm lok ghas-surroga ta` mhalled iehor, inkella jissoka jisma` l-kawza, skont kif ikun iddecieda.`

15. Illi ghaldaqstant jirrizulta b`mod manifest li fil-ligi procedurali nostrana kwalsiasi talba ghar-rikuza ta` gudikant f`kawza ghandha tigi bilfors deciza mill-istess gudikant li tieghu qieghda tintalab ir-rikuza. Jirrizulta ukoll b`mod espress li minn din id-decizjoni ma hemm l-ebda lok ghall-appell b`dan li l-parti li tkun ghamlet it-talba m`ghandha l-ebda forma ta` rimedju fir-rigward tad-decizjoni mehuda mill-gudikant.

16. Illi dan ifisser li, hekk bhal ma gara fil-kaz li ta lok ghal dawn il-proceduri, meta parti f`kawza thoss li ghandha titlob ir-rikuza tal-gudikant sedenti, hija ma ghandha l-ebda triq ohra ghajr li titlob dan lil l-istess imhalled sedenti, b`dan li l-imhalled sedenti jigi mitlub jiehu decizjoni dwar l-abbilta` u l-idonejita` tieghu stess li jkompli jippresjedi l-proceduri. Ikun x`ikun l-ezitu ta` tali decizjoni introspettiva, ma hemm l-ebda lok ta` appell.

17. Illi l-esponenti umilment tissottometti li ghalkemm dan l-ezercizzju m`ghandux fil-prattika jipprezenta diffikultajiet meta si tratta ta` talba ta` rikuza ghab-bazi ta` certa kawzali kif jemergu mill-Artikolu 734 - hekk per ezempju fejn il-gudikant ikun qarib bid-demmm ma` wahda mill-partijiet - mhux l-istess jista` jinghad ghall-kawzali kollha.

18. Illi dan jinghad ghax uhud mill-kawzali jirrikjedu mhux sempliciment li jigu kunsidrati fatti objettivi li jew jissustixxu jew le, ictu oculi, izda jirrikjedu hsieb approfondit u analizi li tmur oltre tali accertament. Hekk hu fil-kaz, per ezempju, tal-kawzali tatt l-Artikolu 734(1)(d) fejn l-ezercizzju li jrid isir mill-gudikant sabiex jikkunsidra t-talba ghar-rikuza tieghu stess, jirrikjedi necessarjament apprezzament suggettiv tal-ghemil tal-istess gudikant.

19. Illi ghaldaqstant jidher bic-car li l-pozizzjoni legali vigenti hi wahda fejn parti f`kawza li titlob ir-rikuza ta` gudikant tigi rinfaccjata b`sitwazzjoni fejn ikun daf il-gudikant stess li jikkunsidra

jekk huwiex idoneju li jkompli jisma` l-kawza hu, u dan minkejja li tali decizjoni jaf tkun tinpingi fuq analizi suggettiva tal-ghemil precedenti tieghu stess u kif tali ghemil jaf jinpingi fuq il-kawza li fiha tkun saret it-talba ghar-rikuza.

20. Illi huwa umilment sottomess li din il-pozizzjoni legali fil-ligi procedurali manifestament u nostrana hija palezament leziva ghad-dritt fundamentali ghal smigh xieraq u d-dritt ghar-rimedju effettiv u, bid-dovut rispett, tirrapprezenta l-aktar ezempju celebri ta` lezjoni tal-principju fundamentali tal-gustizzja naturali nemo iudex in causa propria.

21. Illi, b`dan maghdud, ma jista` jkun hemm l-ebda dubju li ligi nostrana fir-rigward tar-rikuza tal-gudikanti hija leziva ghad-dritt fundamentali ghal smigh xieraq, kif protett mill-Artikoli 6 u 13 tal-Konvenzjoni Ewropea, liema ligi ghandha titqies suprema stante li hija proprja dik il-ligi li tassigura li l-gustizzja tkun amministrata b`mod li tiggarrantixxi d-dinjita` u l-integrita` tal-persuna u tas-socjeta` kollettiva.

22. Illi huwa ormai kategorikament accettat li, sabiex id-dritt ghal smigh xieraq ikun rispett, huwa bazilari li l-gudikant sedenti ikun indipendenti u imparzjali b`mod li ma jkun hemm l-ebda ombra ta` dubju ragjonevoli dwar il-kapacita` tieghu li jasal ghal-decizjoni libera, serena u gusta.

23. Illi kemm il-Qrati ta` gurdizzjoni kostituzzjonali nostrata kif ukoll l-ECtHR kemm-il darba sostnew li l-kriterju tal-imparzjalita` jehtieg li jkun jissustixxi kemm b`mod suggettiv u kemm b`mod oggettiv, dan tabilhaqq ghax galadarba tkun nieqsa xi wahda minn dawn iz-zewg elementi ta` dan il-kriterju fundamentali tal-imparzjalita`, il-gudikant ma jstax jitqies imparzjali u m`ghandux jippresjedi l-kaz minghajr ma jaghti lok ghal ksur palezi tad-dritt fundamentali ghal smigh xieraq.

24. Illi din il-Qorti, kif diversament presjeduta, diga` kellha opportunita` li taghmel riferenza ghall-gurisprudenza relevanti in materja fil-kawza Lawrence Grech et vs Avukat Generali et, fejn, anki b`referenza ghall-kazistika ricensjuri, intqal hekk :

"Il-Qorti tirreferi ghas-sentenza ta` Grand Chamber fl-ismijiet Morice v. France deciza fit-23 ta` April 2015 u fiha tenkapsula principji ta` dritt ti` sentenzi ricensuri fosthom Rudichenko v. Ukraine deciza

fil-11 ta` Ottubru 2013; Micallef v. Malta deciza fil-15 ta` Ottubru 2009 u Padovani v. Italy deciza fis-26 ta` Frar 1993 oltre dawk imsemmijin fl-istess sentenzi.

Is-sentenza Morice tghid hekk fuq il-principju tal-imparzjalita` tal-gudikant :

The court reiterates that impartiality normally denotes the absence of prejudice or bias and its existence or otherwise can be tested in various ways. According to the Court`s settled case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, for example, Kyprianou v. Cyprus [GC], no 73797/01 § 118, ECHR 2005-XIII, and Micallef s Malta [GC], no. 17056/06, § 93, ECHR 2009)."

25. Illi l-imparzjalita` suggettiva tfisser li gudikant m`ghandux ihalli l-gudizzju tieghu jigi influwenzat minn prigudizzji jew bias personali, u lanqas ghandu jkollu xi fehma jew konvinzjoni a priori dwar il-kaz li jingieb quddiemu.

26. Illi f`Morice v France, sucitata, l-ECtHR komplet tfisser il-konsistenza u l-implikazzjonijiet tal-imparzjalita` suggettiva b`dan il - mod :

"As to the subjective test, the principle that a tribunal must be presumed to be free of personal prejudice or partiality is long-established in the case-law of the court (see Kyprianou, cited above § 119 and Micallef cited above, 94). The personal impartiality of a judge must be presumed until there is proof of the contrary (see Hauschildt v. Denmark, 24 May 1989, § 47, Series A no. 154). As regards the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility or ill will for personal reasons (see De Cubber v. Belgium, 26 October 1984, § 25, Series A no. 86).

In the vast majority of cases raising impartiality issues the court has focused on the objective test (see Micallef cited above, § 95). However, there is no watertight division between subjective and objective impartiality since the conduct of a judge may hot only

prompt objectively held misgivings as to impartiality from the point of view of the external observer (objective test) but may, also go to the, issue of his or her personal conviction (subjective test) (see Kyprianou, cited above, § 119). Thus, in some cases where it may be difficult to procure evidence with which to rebut presumption of the judge`s subjective impartiality, the requirement of objective impartiality provides a further important guarantee (see Pullar v. the United Kingdom, 10 June 1996, § 32, Reports of Judgments and Decisions 1996-III)."

27. *Illi min-naha l-ohra l-imparzjalita` oggettiva tirrikjedi li l-gudikant ghandu jitqies imparzjali anki mill-punto di vista tat-terz ordinarju u ragjonevoli, ossia mill-ordinary reasonable observer. L-imparzjalita` oggettiva trid li f`kaz li jkun hemm l-icken dubju dwar l-imparzjalita` oggettiva tat-gudikant, liemu jkun tali li jista` ragonevolment jigi ppercepit mill-osservatur ordinarju u ragjonevoli, dan ghandu jaghti lok sabiex il-gudikant ma jibqax jippresjedi fuq il-kawza in kwistjoni.*

28. *Illi ghalhekk, l-imparzjalita` oggettiva tinnecessita li gudikant ikun jista` jezercita l-funzjoni tieghu b`mod li jkun hemm garanzija sufficjenti in vigore li jeskludu kwalunkwe dubju leggittimu dwar l-imparzjalita` tal-istess gudikant.*

29. *Illi f`dan ir-rigward tigi kemm-il darba citata l-frazi ta` Lord Hewart CJ fil-kawza R v Sussex Justices, ex parte McCarthy ossia li "it is not merely of some importance but is of fundamental importance that justice should not only be done, but shoul manifestly and undoubtedly be seen to be done." Tali frazi llum hadet postha fost il-massimi legali venerati u ghalhekk giet anki adottata fil-gurisprudenza kemm nostrana u anki dik tal-ECtHR.*

30. *Illi f` dan ir-rigward l-esponenti jerga` jaghmel referenza ghal Morice v France, kif kwotat fil-kawza Lawrence Grech et vs Avukat Generali et, fejn gie enuncjat is-segwenti :*

"As to the objective test, it must be determined whether, quite apart from the judge`s conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge or a body sitting as a bench lacks impartiality, the standpoint of the person concerned is important but not decisive.

What is decisive is whether this fear can be held to be objectively justified (see Micallef, cited above, § 96).

The objective test mostly concerns hierarchical or other links between the judge and other protagonists in the proceedings (ibid., § 97). It must therefore be decided in each individual case whether the relationship in question is of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal (see Pullar, cited above, § 38).

In this connection even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done" (see De Cubber, cited above, § 26) What is at stake is the confidence which the courts in a democratic society must inspire in the public. Thus, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw (see Castiilo Algar v. Spain, 28 October 1998, § 45, Reports 1998-VIII, and Micallef, cited above, § 98)."

31. *Illi fil-prattika l-imparzjalita` oggettiva tirrikjedi kemm li l-Istat jippromulga ligijiet procedurali li jipprovdu r-rimedji adegwati kull fejn jaf tinqala` xi kwistjoni dwar l-imparzjalita` tal-gudikanti, u dan speċjalment fejn si tiatta dwar kwistjonijiet delikati relatati mar-rikuza tal-gudikanti, u kemm li l-gudikanti nfushom jirrikuzaw rwiehhom fejn ikun hemm hemm anki l-mera apparenzata, xi tip ta` konflitt.*

32. *Illi jinghad bl-akbar rispettt li s-sistema legali ta` pajjiz li jgħozz u jzomm fuq quddiem l-ahjar amministrazzjoni tal-gustizzja għandha tipprovdi r-rimedji kollha opportuni sabiex kwalunkwe dubju dwar l-imparzjalita` ta` gudikant jigi indirizzat b`mod dirett, proporzjonat u permezz ta` rimedji ordinarji li ma jirrikjedux l-estremi tar-rimedju kostituzjonali straordinarju.*

33. *Illi del resto jinghad li certament dan huwa essenzjali sabiex il-qrati jispiraw il-kunfidenza fil-pubbliku f`soċjeta demokratika. Fil-fatt l-esponenti jgħid li tali kunfidenza qatt ma tista` tissustixxi b`mod oggettiv tenut kont tal-ligijiet nostrana rilevanti, hekk kif prezentement in vigore, u li tali ligijiet certament jagħtu lok għal dubji legittimi dwar l-imparzjalita` oggettiva ta` gudikant fejn si tratta ta` talba għar-rikuza tal-istess.*

34. *Illi tali dubbji ragjonevoli u oggettivi huma naxxenti mis-sempliċi fatt li fil-prezent gudikant huwa mistenni jiehu decizjoni huwa stess fuq il-kapacita` tieghu stess li jkun imparzjali f`kawza partikolari.*

35. *Illi filwaqt li huwa ukoll veru li gudikant huwa dejjem prezunt imparzjali, tali prezunzjoni hija wahda merament iuris tantum u li ma tistax hlief tigi ribattuta meta tali gudikant jigi mitlub jiddeciedi fuq l-idonejita` tieghu stess li jiddeciedi kawza b`mod imparzjali.*

36. *Illi, maghmulin dawn il-punti, l-esponenti tirrileva wkoll li l-pozizzjoni legali prezenti fir-rigward tal-procedura applikabbli ghar-rikuza tal-gudikanti hija wkoll leizna ghad-dritt fundamentali ghar-rimedju effettiv.*

37. *Illi dan qieghed jinghad ghax, kif imsemmi aktar `il fuq, l-Artikolu 738(1) jipprovdi b`mod espress u inekwivoku li ma hemm l-ebda lok ghall-appell mid-decizjoni ta` gudikant fir-rigward ta` talba ghar-rikuza.*

38. *Illi effettivament bl-eskluzjoni ghad-dritt ta` appell minn tali decizjoni, il-parti hi ghal kollox sprovvista minn rimedju effettiv u tempestiv sabiex jissalvagwardja l-pozizzjoni taghha. Dan ifisser li parti li tkun talbet ir-rikuza ta` gudikant, u dan b`ezitu negattiv, m`ghandha l-ebda possibilita` li tissalvagwardja l-pozizzjoni taghha u mghandhiex triq ohra ghajr li tkompli ssegwi l-proceduri presjeduti mill-istess gudikant.*

39. *Illi huwa tassew minnu li parti tista` dejjem tittenta tikseb rimedju permezztal-intavolar ta` kawza kostituzzjonali, hekk bhal ma qed taghmel l-esponenti permezz tal-prezenti rikors, kif ukoll permezz ta` appell generali intarolat wara li jigi maqtugha l-kawza fuq il-mertu.*

40. *Illi madanakollu l-esponenti umilment tissottometti li tali rimedji ma jistghux jikkonfiguraw ruhhom bhala rimedji effettivi u ordinarji hekk kif irid l-Artikolu 13 tal-Konvenzjoni Ewropea.*

41. *Illi r-rimedju kostituzzjonali huwa rimedju straordinarju b`dan li d-dritt fundamentali ghal rimedju effettiv jirrikjedi li parti*

tinghata rimedju ordinarju, u mhux li tigi sfurzata tfittex rimedji li jmorru oltre l-ordinarju.

42. Illi min-naha l-ohra jinghad li lanqas ma jista` jitqies bhala rimedju effettiv l-appell generali li jista` jsir wara li tinghata sentenza fuq il-mertu mill-gudikant li tieghu tkun intalbet ir-rikuza;

43. Illi dan qieghed jinghad stante li t-trapass taz-zmien li generalment ikun hemm bejn ic-cahda tat-talba ghar-rikuza u l-possibilita` tal-appell generali jkun tali li jxejjen l-effikacja ta` tali rimedju. Dan apparti l-fatt li ma teztix garanzija sufficjenji li l-Qorti tal-Appell jkollha l-fakultajiet u l-kapacitajiet kollha sabiex tissana kwalunkwe aggravju legali u ragjonevoli li jkollha l-parti appellanti, b`dan li huwa wisq koncepibbli li, tal-anqas fir-rigward ta` certa lanjanzi, il-parti appellanti tkun trid tibqa` bil-fait accomplit li jkun sar da parte tal-ewwel qorti kif presjeduta mill-gudikant li tieghu tkun intalbet ir-rikuza.

44. Illi n-nuqqasijiet tal-appell generali bhala forma ta` rimedju effettiv jemergu wkoll meta wiehed jiftakar li l-qrati tal-appell nostrana huma qrati revizuri li hafna drabi ma jisimghux kawza mill-gdid izda biss jikkunsidraw agravji legali. Di piu` minn aspezz ta` apprezzament ta` provi l-Qorti tal-Appell issostni b`mod konsistenti ghall-ahhar li l-funzjoni taghha hija biss li tara jekk l-ewwel qorti setghetx legalment u ragjonevolment tasal ghall-konkluzjonijiet li ghalihom tkun waslet.

45. Illi dan iwassal sabiex jillimita l-funzjoni u l-poteri tal-qrati tal-appell b`mod li ma jistax jinghad li possibilita` tal-appell generali sejjer jipprezenta f`kuli kaz rimedju ordinarju effettiv sabiex jissana kwalsiasi lezjoni tad-dritt fundamentali ghal smigh xieraq li jaf tkun sehhet fil-prim istanza.

46. Illi b`riferenza ghall-kwistjoni tar-rikuza, fil-fatt, jinghad li dicitura tal-Artikolu 378(1) jimplika li mhux biss ma jistax isir appell ad hoc mid-decizjoni ta` gudikant li ma jirrikuzax ruhu, izda lanqas ma tista` tali cahda titressaq bhala aggravju partikolari u specjali fil-kuntest ta` appell generali.

47. *Illi f`kuntest fejn l-unika zewg rimedji li jistghu jigu ravnizati - ossia dak kostituzzjonali u dak ta` appell generali - ma jistqiesu rispettivament, la ordinarji u lanqas necessarjament effettivi, jinghad bl-akbar rispettt li mhux talli l-pozizzjoni legali fir-rigward tar-rikuza tal-gudikanti hi leziva ghad-dritt ghal smigh xieraq izda talli ma jezistux salvagwardji bizzejjed fid-dritt procedurali nostrali sabiex joffru rimedju effettiv kull fejn ikun hemm tali periklu ta` intralc ta` smigh xieraq.*

48. *Illi trattat ukoll dan il-punt, l-esponenti jaghmlu riferenza ghall-kaz ta, A.K. v Liechrenstein, deciz mill-ECtHR nhar id-9 ta` Lulju 2015, liema kaz kien jittratta punti analogi, jekk mhux adirittura identitici ghal dawk mertu ta` dawn il-proceduri.*

49. *Illi l-ilment tal-attur f` A.K. v Liechtenstein kien fis-sens li l-hames gudikanti li kienu jippresjedu l-Qorti Kostituzzjonali ma kienux imparzjali fil-procedura li giet adoperata biex jikkunsidraw it-talba tar-rikuza mressqa mill-atturi u li din kienet leziva tad-dritt ghal smigh xieraq.*

50. *Illi fil-fatt, fl-imsemmi kaz, l-ECtHR tenniet li kien hemm lezjoni tad-dritt ghal smigh xieraq mhux ghax l-Imhallfin hadu decizjoni fuq ii-talba tar-rikuza tagghom stess, izda, adirittura sempliciment ghax meta gew mitluba jiehd, decizjoni dwar it-talb a tar-rikuza fil-konfront ta` xulxin setghu taw lok ghal l-impressjoni oggettiva li kienu qed jiehd decizjoni fuqhom infushom ukoll.*

51. *Illi f` dan ir-rigward l-ECtHR tenniet :*

"Having regard to the foregoing considerations, the court considers that the procedure chosen by the Constitutional Court to dismiss the applicant`s motions raised an issue in respect of the judges` impartiality particularly in so far as they all decided upon motions brought against them on identical grounds and thus appear, in substance, to have rejected the motions concerning themselves. The court considers, in addition, that the fact that judges of the constitutional court, despite the fact that they had been challenged by the applicant and no decision had been taken yet on the applicant`s motion for bias against them` nevertheless-decided upon motions for bias against other judges of that Court could shed further doubts upon those judges` impartiality.-

....

In the present case, the judges of the Constitutional Court in fact gave the impression that themselves deciding on the motion for bias directed against them.

....

In the light of the foregoing, the court concludes that the applicant`s doubts in respect of the impartiality of the five judges of the Constitutional Court were objectively justified in view of the procedure they chose to the reject the applicant`s motions for bias against them.”

52. Illi ghaldaqstant ghandu jirrizulta li l-ligijiet procedurali nostrani fir-rigward tar-rikuza tal-gudikant kif prezentament in vigore huma lezivi ghat-dritt fundamentali ghal smigh xieraq u rimedju effettiv.

54. Illi filwaqt li huwa veru li l-process li minnu qed tilmenta l-esponent ghadu mhuwiex mitmum, l-esponenti qieghda mhux biss tifttex rimedju sabiex tirrimedja l-ksur tad-drittijiet fundamentali taghha izda qieghda wkoll tilmenta mill-provvedimenti tal-ligijiet procedurali relattivi fihom infushom. Dan ghax, irrISPETTIVAMENT mill-ezitu tal-proceduri li ghaddejja minnhom l-esponenti, xorta jibqa` l-fatt li l-ligi kif prezentament in vigore hija fiha nfisha leziva ghad-dritt fundamentali ghal smigh xieraq u rimedju effettiv tal-esponenti.

55. Illi ghaldaqstant, l-indagini dwar jekk l-istat tal-ligi kif vigenti hix leziva ghad-drittijiet fundamentali relattivi, ma tiddependix mill-ezitu tal-kawza in ezami. Dan ifisser li kwalunkwe ecezzjoni fis-sens li l-azzjoni odejrna hija intempestiva tkun wahda infondata fil-fatt u fid-dritt.

56. Illi din l-Onorabbli Qorti mhix tkun mitluba tiddiskuti u tittratta l-kwistjoni dwar il-lezjoni ghad-drittijiet fundamentali in kwistjoni in vacua izda qieghda tigi mitluba tezercita s-setghat kostituzzjonali taghha sabiex tezamina u tindaga jekk l-ligijiet relattivi kif prezentament in vigore humiex lezivi ghad-dirttijiet fundamentali tal-esponenti u jekk konsegwentement ghadhomx jinghataw rimedju specifiku oltre d-dikjarazzjonijiet relattivi.

57. Illi di piu` l-esponenti taghmel umli riferenza ghall-pronunzjament ta` din l-Onorabbli Qorti, kif diversament presjeduta fil-kawza "Ir-Repubblika ta` Malta v Carmel Camillleri" fejn kien enuncjat is-segwenti :

"Issa qed jigi sollevat illi t-tutela tad-dritt ta` smigh xieraq tista` , tigi evalwata biss b`relazzjoni ghall-proceduri kollha u ghalhekk ikun prematur li wiehed jiddeciedi f`dan l-istadju bikri tat-process. F` dan il-kuntest, il-Qorti Tirreferi ghal fuq citata sentenza ta` Privitera, fejn il-Qorti sostniet illi: "Ghalkemm din il-Qorti taqbel ma` dan il-principju, hiia tal-fehma pero` li meta diga` jkun hemm ragunijiet bizzejjed li fuqhom il-Qorti tkun tista` ssib li hemm lezjoni, m`ghandhiex toqghod tistenna, sakemm jintemm il-kaz jew li jigi attwalment miksor id-dritt pretiz biex tiddiciedi jekk hemmx lezjoni jew le. Jista` jaghti l-kaz li ikun tard wisq jew dak li jkun imbaghad jibqa` minghajr rimedju. Kif tikteb Karen Reid, "A Practitioner`s Guide to the European on Human Rights", [3rd Edition page 70] "While the conformity of a trial with the requirements of Article 6 must be assessed on the basis of the trial as a whole, a particular incident may assume such importance as to constitute a decisive factor in the general appraisal of the trial overall."

58. Illi ghaldaqstant l-esponenti qieghda sa minn issa tirrileva li kwalunkwe eccezzjoni ta` intempestivita` li tista` tingieb mill-intimat, ghandha tigi michuda peress li jissustixxu ragunijiet legali bizzejjed sabiex anki f`dan l-istadju din l-Onorabbli Qorti tezercita l-poteri kostituzjonali taghha.

Ghaldaqstant, in vista tas-suespost, l-esponenti umilment titlob li, ghar-ragunijiet fuq imsemmija u ghal qawk kollha li jistghu jirrizultaw fit-trattazzjoni ta` dawn il-proceduri, kif ukoll prevja kwalsiasi dikjarazzjoni necessarja u opportuna, din il-wisq Onorabbli Qorti joghghobha :

1. Tiddikjara li hemm jew li jista` jkun hemm ksur tad-drittijiet fundamentali ta` smigh xieraq ghab-bazi tal-Artiklu 39 tal-Kostituzzjoni ta` Malta u l-Artikolu 6 tal-Konvenzjoni dwar Drittijiet Fundamentali tal-Bniedem (regolata wkoll mill-Kap. 319 tal-Ligijiet ta` Malta) u ksur tad-drittijiet fundamentali ghal rimedju effettiv ghab-bazi tal-Artikolu 13 tal-Konvenzjoni dwar Drittijiet Fundamentali tal-Bniedem (regolata wkoll mill-Kap. 319 tar-Ligijiet ta` Malta) u dan fir-rigward tal-Artikolu 378 tal-Kap. 12 tal-Ligijiet ta` Malla u tal-ligijiet relattivi hekk kif applikati fil-kawza nru 100/2015, presjeduta mill-

Onor. Imhalled Lawrence Mintoff, fl-ismijiet Grace Spiteri et v Amabile Grech et.

2. Tiddikjara li hemm ksur tad-drittijiet fundamentali ta` smigh xieraq ghab-bazi tal-Artikolu 39 tal-Kostituzzjoni ta` Malta u l-Artikolu 6 tal-Konvenzjoni dwar Drittijiet Fundamentali tal-Bniedem (regolata wkoll mill-Kap. 319 tal-Ligijiet ta` Malta) u ksur tad-drittijiet fundamentali ghal rimedju effettiv ghab-bazi tal-Artikolu 13 tal-Konvenzjoni dwar Drittijiet Fundamentali tal-Bniedem (regolata wkoll mill-Kap. 319 tal-Ligijiet ta` Malta) u dan fir-rigward tac-cahda ghat-talba ta` rikuza tar-Onor. Imhalled Lawrence Mintoff permezz ta` provvediment ta` nhar il-31 ta` Ottubru 2016, moghti fil-kawza bin-numru 100/2015 LM fl-ismijiet Grace Spiteri vs Amabile Grech et.

3. Tordna r-rikuza tal-Onor. Imhalled Lawrence Mintoff fir-kawza bin-numru 100/2015 fl-ismijiet Grace Spiteri vs Amabile Grech et.

4. Tahtar gudikant iehor sabiex jippresjedi fuq il-kawza bin-numru 100/2015 fl-ismijiet Grace Spiteri v Amabile Grech et.

5. `Taghti dawk l-ordnijiet u r-rimedji kollha li jidhrilha xierqa l-likwidazzjoni tad-danni u l-ordni ghal-hlas tal-istess.

Salvi sottomissjonijiet ulterjuri u bl-ispejjez.

Rat il-lista tax-xhieda u d-dokumenti li r-rikorrenti pprezentat mar-rikors promotur.

Rat ir-risposta li pprezenta l-intimat Avukat Generali (illum l-Avukt tal-Istat) fid-9 ta` Dicembru 2016 li taqra hekk :-

1. Illi l-allegazzjonijiet u l-pretensjonijiet tar-rikorrenti huma kollha infondati fil-fatt u fid-dritt u t-talbiet minnha mressqa ghandhom jigu michuda ghar-ragunijiet segwenti li qeghdin jigu hawn elenkati minghajr pregudizzju ghal xulxin :

2. Illi fl-ewwel lok, filwaqt li l-esponent jirrileva li mhuwiex parti fil-proceduri bin-numru 100/2015LM fl-ismijiet *Grace Spiteri vs Amabile Grech et li ghalihom taghmel referenza r-rikorrenti fir-rikors in risposta u ghaldaqstant mhuwiex edott bil-mertu tal-istess, umilment jirrileva li r-rikorrenti ghandha qabel xejn tipprezenta kopja legali tal-atti ta` dawk il-proceduri fl-intier taghhom u mhux biss estratti minnhom sabiex din l-Onorabbli Qorti tkun f`pozizzjoni tiddeciedi jekk ghandhiex tiddeklina milli tezercita s-setghat kostituzzjonali u konvenzjonali taghha o tenur tal-provisos tal-artikoku 46(2) tal-Kostituzzjoni ta` Malta u tal-artikolu 4(2) tal-Att dwar il-Konvenzjoni Ewropea.*

3. Illi fit-tieni lok, il-gurisprudenza tghallem li jingharfu tliet kategoriji differenti ta` persuni li jistghu jitqiesu bhala legittimi kuntruditturi f`azzjonijiet kostituzzjonali jigifieri, (a) dawk li jridu jwiegbu direttament jew indirettaoment ghall-ghemil li allegatament jikser id-dritt fundamentali ta` persuna, (b) dawk li jridu jaghmlu tajjeb (billi jipprovdu r-rimedju xieraq) ghan-nuqqasijiet jew l-ghemejjel li bihom haddiehor allegatament jikser xi jedd fundamentali ta` xi hadd, u (c) dawk il partijiet kollha li jkunu f`kawza meta kwistjoni ta` xejra kostituzzjonali jew konvenzjonali tqum waqt is-smigh ta` xi kawza f`qorti. Ma` dawn, u dejjem jekk ikollhom interess fil-kawza, jistghu jiddahhlu persuni ohrajn bil-ghan li jaghmlu shih il-gudizzju u jaghmluh rapprezentattiv ta` kull interess involut fil-kwestjoni. L-esponent huwa ghalhekk tal-umli fehma li jkun opportun li din l-Onorabbli Qorti tordna lir-rikorrenti tinnotifika lill-partijiet l-ohra kollha fil-proceduri bin-numru 100/2015 LM fl-ismijiet *Grace Spiteri vs Amabile Grech et bil-proceduri odjerni ghal kull interess li jista` ikollhom.*

4. Illi fit-tielet lok, hija l-umli fehma tal-esponent li r-rikors in risposta huwa irritwali in kwantu ma josservax id-dispost tal-Artikolu 3(1) tal-Legislazzjoni Sussidjarja 12.09 li jrid li rikors quddiem il-Prim`Awla tal-Qorti Civili (Sede Kostituzzjonali) ghandu jkun fih, b`mod konciz u car, il-fatti li minnhom jinholoq l-ilment u ghandu jsemmi d-dispozizzjoni jew dispozizzjonijiet tal-Kostituzzjoni ta` Malta jew tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali li jkun allegat li jkunu gew, li jkunu qed jigu jew li jkunu x`aktarx ser jigu miksura. Bir-rispett dovut, ir-rikors in risposta mhux talli mhuwiex konciz, talli r-rikorrenti stess tirreferi ghalih bhala `sottomissjonijiet taghhom`.

5. *Illi dejjem bla hsara ghall-premess, kull allegat ksur tal-Artikolu 6 tal-Konvenzjoni Ewropea dwar id-Drittijiet Fundamentali tal-Bniedem u tal-Artikolu 39 tal-Kostituzzjoni ta` Malta huwa intempestiv in kwantu d-dritt ta` smigh xieraq irid ikun evalwat fir-rigward tat-totalita` tal-proceduri kollha.*

6. *Illi fil-mertu u minghajr pregudizju ghas-suespost, l-esponent jirrespingi kull allegazzjoni da porti tar-rikorrenti fis-sens li gie lez id-dritt taghha ghal smigh xieraq bl-applikazzjoni `tal-ligijiet relattivi hekk kif applikati fil-kawza bin-numru 100/2015, presjeduta mill-Onor. Imhalled Lawrence Mintoff, fl-ismijiet "Grace Spiteri vs Amabile Grech et" u `fir-rigward tac-cahda ghat-talba ta` rikuza tal-Onor. Imhalled Lawrence Mintoff permezz ta` provvediment ta` nhar il-31 ta` Ottubru 2016` fl-istess proceduri kif allegat mir-rikorrenti.*

7. *Illi kif gustament osservat l-Onorabbli Prim` Awla tol-Qorti Civili fid-digriet taghhom tal-31 ta` Ottubru 2016, hija dejjem imxiet mil-ligijiet procedurali fl-andament tal-kawza surriferita u kull allegazzjoni da parti tar-rikorrenti li l-gudikant in kwistjoni ma zammx `l-imparzjalita` tieghu fil-kwistjoni` hija manifestament infondoto u nsostenibbli. Lanqas ma gew vjolati l-principji ta` audi alteram partem jew nemo judex in causa propria kif allegat mir-rikorrenti. Ghalkemm din l-Onorabbli Qorti mhijjex Qorti tat-tielet istanza, jigi rilevat li ma tissussisti l-ebda raguni valida la fil-fatt u lanqas fid-dritt li kienet timmerita l-akkoljiment tat-talba tar-rikorrenti ghar-rikuza l-gudikant li jippresjedi l-kawza surriferita.*

8. *Illi bla hsara ghal dan, kif jirrizulta minn `Dok GSI` esebit mir-rikorrenti mar-rikors promutur, it-talba taghha ghal rikuza ma kienet ibbazata fuq l-ebda dispozzjoni specifika tal-ligi b`dan illi huwa inammissibbli allura li f`dan l-istadju r-rikorrenti tallega bl-aktar mod vag li l-artikoli 733 ef seq. tal-Kap. 12 tal-ligijiet ta` Malta huma lezivi ghad-drittijiet fundamentali taghhom. Kif tghallem il-gurisprudenza, allegazzjonijiet dwar drittijiet fundamentali m`ghandhom qatt ikunu biss ezercizju akkademiku.*

9. *Illi f`kull kaz u dejjem bla hsara ghall-premess, id-dispozzjonijiet tal-Kap.12 tal-ligijiet ta` Malta dwar ir-rikuza ta` imhallfin u magistrati bl-ebda mod ma jilledu d-dritt ghal smigh xieraq grantit bil-Kostituzzjoni ta` Malta u bil-Konvenzjoni Ewropea dwar id-Drittijiet Fundamentali tal-Bniedem u dwar dan l-esponent jirrizerva li jressaq is-sottomissjonijiet tieghu wara l-gheluq tal-provi kif trid il-ligi.*

10. Illi jsegwi ghalhekk li l-allegazzjonijiet u l-pretensjonijiet tar-rikorrenti fis-sens li gew jew jistghu jigu lezi d-drittijiet fundamentali taghhom a tenur tal-Artikolu 39 tal-Kostituzzjoni ta` Malta u tal-Artikoli 5 u 13 tal-Konvenzjoni Ewropea dwar id-Drittijiet Fundamentali tal-Bniedem huma kollha infondati u inammissibbli b` dan illi t-talbiet taghha m` ghandhomx jigu milqugha.

11. Illi bla hsara ghal dan, in kwantu l-ewwel talba tar-rikorrenti kif ukoll parti mill-premess jirreferu ghall-artikolu 378 tal-Kap. 12 tal-Ligijiet ta` Malta, liema artikolu jirreferi ghall-mandat ta` sekwestru ezekuttiv, l-esponent jirrileva ulterjorment li tali talba hija wkoll inammissibbli in kwantu l-imsemmi artikolu tal-ligi bl-ebda mod ma jorbot mal-allegazzjonijiet sollevati mir-rikorrenti.

12. Illi f`kull kaz, dato ma non concesso u biss ghall-grazzja tal-argument li din l-Onorabbli Qorti ssib ksur tad-drittijiet fundamentali tar-rikorrenti, ir-rimedji mitluba minnha m` ghandhomx jigu akkolti.

13. Salv eccezzjonijiet ulterjuri.

Ghaldaqstant l-esponet, jitlob bir-rispett lil din l-Onorabbli Qorti joghgobha tichad it-talbiet kollha tar-rikorrenti, bl-ispejjez kontra taghha.

Rat il-lista tax-xhieda li kienet prezentata ma` din ir-risposta.

Rat illi fl-udjenza tal-15 ta` Dicembru 2016, din il-Qorti diversament presjeduta ordnat l-allegazzjoni tal-atti tal-kawza fl-ismijiet "Grace Spiteri vs Amabile Grech et" (Rik. Gur. Nru. 100/2015).

Rat illi bhala fatt kienet prezentata kopja tal-atti ta` dik il-kawza.

Rat illi fl-udjenzi ta` wara kienet trattata l-eccezzjoni preliminari dwar nuqqas ta` integrita` tal-gudizzju.

Rat is-sentenza in parte li tat din il-Qorti diversament presjeduta fl-10 ta` Mejju 2017 fejn cahdet l-eccezzjoni tal-integrita` tal-gudizzju, bl-ispejjez thallew rizervati ghall-gudizzju finali.

Rat li fl-udjenzi ta` wara kien trattat il-mertu tar-rikors promotur.

Rat is-sentenza finali li tat din il-Qorti diversament presjeduta fit-13 ta` Novembru 2017 fejn cahdet it-talbiet tar-rikorrenti, spejjez ghar-rikorrenti.

Rat illi r-rikorrenti appellat quddiem il-Qorti Kostituzzjonali.

Rat is-sentenza li tat il-Qorti Kostituzzjonali fil-25 ta` April 2018 fejn hassret is-sentenza tat-13 ta` Novembru 2017 moghtija mill-qorti tal-ewwel istanza, baghtet lura l-atti lill-ewwel qorti sabiex issir is-sejha fil-kawza, tinstema` l-kawza u tkun deciza mill-gdid b`harsien tal-htiega tal-integrita` tal-gudizzju. Kull parti kellha tbatl ispejjez taghha b`dan illi decizjoni finali dwar l-ispejjez tinghata fis-sentenza finali.

Rat illi wara s-sentenza tal-Qorti Kostituzzjonali, l-Imhallef sedenti fl-Ewwel Qorti irrikuzat ruhha b`digriet moghti fit-28 ta` Mejju 2018.

Rat l-ordni tal-Prim` Imhallef tal-4 ta` Gunju 2018 fejn il-kawza giet assenjata lil Imhallef iehor.

Rat illi fl-udjenza tal-10 ta` Lulju 2018 l-Imhallef li kienet assenjata lil l-kawza astjena milli jkompli jisma` l-kawza.

Rat li l-ordni tal-Prim` Imhallef tal-4 ta` Gunju 2018 fejn il-kawza giet assenjata lil din il-Qorti kif presjeduta.

Semghet ix-xiehda tar-rikorrenti u tal-Av. Dr. Frank Cassar fl-udjenza tat-12 ta` Novembru 2018.

Rat il-provvediment fil-miftuh li tat fl-udjenza tal-10 ta` Jannar 2019 dwar it-talba tal-Avukat Generali kif dedotta fir-rikors tieghu tat-30 ta` Ottubru 2018 fejn ordnat il-kjamata fil-kawza ta` Amabile Grech, l-Awtorita` ta` Malta dwar l-Ambjent u l-Ippjanar, General Services Board u l-Perit Arkitett Marvin Ellul. L-ispejjez tal-provvediment thallew ghall-gudizzju finali.

Rat ir-risposta li pprezenta l-kjamat fil-kawza General Services Board fil-11 ta` Frar 2019 li taqra hekk :-

1. *Illi fl-ewwel lok, il-Bord esponent m`ghandux interess guridiku fil-proceduri odjerni u dan peress li l-Bord esponent mhuwiex parti fil-kawza citata mir-rikorrenti Grace Spiteri fir-rikors promotur u cioe` il-kawza fl-ismijiet "Grace Spiteri vs Amabile Grech et" (100/2015/LM). Illi l-Bord mhuwiex parti f`dik il-kawza wara li Grace Spiteri intavolat nota ta` cessjoni fil-konfront tal-Bord esponent nhar is-26 ta` Ottubru 2015, kopja legali annessa Dok `A`.*

2. *Illi minghajr pregudizzju u b`zieda ghal dak gia espost, il-Bord esponent huwa nieqes mill-interess guridiku, stante li bl-ebda mod ma tinkombi fuqu l-amministrazzjoni tal-gustizzja, u lanqas is-salvagwardji tal-istess.*

3. *Illi minghajr pregudizzju, ghal dak gia eccepit, l-allegazzjonijiet u l-pretensjonijiet tar-rikorrenti huma kollha infondati fil-fatt u fid-dritt u t-talbiet minnha mressqa ghandhom jigu michuda ghar-ragunijiet segwenti li qeghdin jigu hawn elenkati minghajr pregudizzju ghal xulxin :*

4. *Illi fl-ewwel lok, il-Bord esponent jerga` jirrileva li mhuwiex parti fil-proceduri bin-numru 100/2015 LM fl-ismijiet Grace Spiteri vs Amabile Grech et li ghalihom taghmel referenza r-rikorrenti fir-rikors promotur u ghaldaqstant ir-rikorrenti ghandha qabel xejn tipprezenta kopja legali tal-atti ta` dawk il-proceduri fl-intier tagghom.*

5. *Illi, minghajr pregudizzju, ir-rikorrenti ghandha ssemmi ddispozizzjoni jew dispozizzjonijiet tal-Kostituzzjoni ta` Malta jew tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-*

Libertajiet Fondamentali li qieghda tallega li gew, li jkunu qed jigu jew li jkunu x`aktarx ser jigu miksura.

6. *Illi dejjem bla hsara ghall-premess, kull allegat ksur tal-Artikolu 6 tal-Konvenzjoni Ewropea dwar id-Drittijiet Fundamentali tal-Bniedem u tal-Artikolu 39 tal-Kostituzzjoni ta` Malta huwa intempestiv in kwantu d-dritt ta` smigh xieraq irid ikun evalwat fir-rigward tat-totalita` tal-proceduri kollha.*

7. *Illi fil-mertu u minghajr pregudizzju ghas-suespost, il-Bord esponent jirrespingi kull allegazzjoni da parti tar-rikorrenti fis-sens li gie lez id-dritt taghha ghal smigh xieraq bl-applikazzjoni `tal-ligijiet relattivi hekk kif applikati fil-kawza bin-numru 100/2015, presjeduta mill-Onor. Imhalled Lawrence Mintoff fl-ismijiet Grace Spiteri vs Amabile Grech et` u `fir-rigward tac-cahda ghat-talba ta` rikuza tal-Onor. Imhalled Lawrence Mintoff permezz ta` provvedimenti ta` nhar il-31 ta` Ottubru 2016` fl-istess proceduri kif allegat mir-rikorrenti.*

8. *Illi kif gustament osservat l-Onorabbli Prim` Awra tal-Qorti Civili fid-digriet taghha tar-31 ta` Ottubru 2016, hija dejjem imxiet mal-ligijiet Rikors Numru: 100/2016 procedurari fl-andament tal-kawza surriferita u kull allegazzjoni da parti tar-rikorrenti li l-gudikant in kwistjoni ma zammx `l-imparzjalita` tieghu fil-kwistjoni` hija manifestament infondata u insostenibbli. Lanqas ma gew vjolati l-principji ta` audi alteram partem jew nemo judex in causa propria kif allegat mir-rikorrenti.*

9. *Illi f`kull kaz u dejjem bla hsara ghall-premess, id-dispozizzjonijiet tal-Kap.12 tal-rigijiet ta` Malta dwar ir-rikuza ta` imhallfin u magistrati bl-ebda mod ma jilledu d-dritt ghal smigh xieraq grantit bil-Kostituzzjoni ta` Malta u bil-Konvenzjoni Ewropea dwar id-Drittijiet Fundamentali tal-Bniedem u dwar dan l-esponent jirrilerva li jressaq is-sottomissjonijiet tieghu wara l-gheluq tal-provi kif trid il-ligi.*

10. *Illi jsegwi ghalhekk li l-allegazzjonijiet u l-pretensjonijiet tar-rikorrenti fis-sens li gew jew jistghu jigu lezi d-drittijiet fundamentali taghha a tenur tal-Artikolu 39 tal-Kostituzzjoni ta` Malta u tal-Artikoli 6 u 13 tal-Konvenzjoni Ewropea dwar id-Drittijiet Fundamentali tal-Bniedem huma kollha infondati u inammissibbli b`dan illi t-talbiet taghha m`ghandhomx jigu milqugha.*

11. *Illi bla hsara ghal dan, in kwantu l-ewwel talba tar-rikorreni kif ukoll, parti mill-premessi jirreferu ghar-artikolu 378 tal-Kap. 12 tal-Ligijiet ta` Malta, liema artikolu jirreferi ghar-mandat ta` sekwestru ezekuttiv, l-esponent jirrileva urterjorment li tali talba hija ukoll inammissibbli in kwantu l-imsemmi artikolu tal-ligi bl-ebda mod ma jorbot mal-allegazzjonijiet sollevati mir-rikorreni.*

12. *Illi fi kwalunkwe kaz, u minghajr pregudizzju ghal dak gia espost, ir-rimedji mitluba mill-esponenti m` ghandhomx jigu akkolti.*

13. *Salv eccezzjonijiet ulterjuri.*

Ghaldaqstant l-esponet, jitlob bir-rispett lil din l-Onorabbli Qorti joghgobha tichad it-talbiet kollha tar-rikorreni, bl-ispejjez kontra taghha.

Rat id-dokument li kien prezentat ma` din ir-risposta.

Rat ir-risposta li pprezentat il-kjamata fil-kawza Awtorita` ta` Malta dwar l-Ambjent u l-Ippjanar, illum l-Awtorita` tal-Ippjanar, li kienet prezentata fil-11 ta` Frar 2019 li taqra hekk :-

1. *Illi l-Awtorita` msejha fil-kawza ma tistax, u m`ghandhiex, twiegeb ghat-talbiet attrici u l-lanjanzi kostituzzjonali/konvenzjonali hemm imqanqla. Dan mhux biss ghaliex l-ebda wahda fost l-istess talbiet ma hi diretta lejha, u xejn minn dak li tilmenta dwaru r-rikorreni ma tahti ghaliex l-Awtorita`, izda wkoll ghaliex l-azzjoni gudizzjarja, ossia l-kawza fl-ismijiet "Grace Spiteri vs Amabile Grech et" Rikors Mahluf Numru 100/2015 LM li minnha jitnissel l-allegat ksur lamentat mir-rikorreni, giet irtirata fil-konfront tal-Awtorita` esponenti, permezz ta` nota ta` cessjoni prezentata mir-rikorreni, fi stadju bikri tal-proceduri - wara s-smigh tat-tieni udjenza li nzammet fl-istess kawza. Tabilhaqq l-Awtorita` qas biss ghexet, u bl-ebda mod ma kienet partecipi, fl-episodju li jissemma mir-rikorreni paragrafi numerati tnejn (2) sa hamsa (5) tar-rikors kostituzzjonali taghha, billi f`dali l-istadju tal-proceduri l-Awtorita` kienet gia giet estromessa mill-kawza f`Rikors Mahluf Numru 100/2015]. F`kull kaz, zgur li l-Awtorita` bl-ebda mod ma twiegeb ghall-allegat "atteggjament" tal-*

Qorti, u l-pronunzjament dwar ir-rikuza tal-Imhallef sedenti fl-istess kawza, li tilmenta dwarhom r-rikorrenti.

2. Illi b`rabta ma` dak li nghad fl-ewwel paragrafu, issir riferenza ghall-verbal tal-udjenza tal-5 ta` Novembru 2015 fil-kawza Rikors Mahluf Numru 100/2015 LM, fejn gie verbalizzat dan li gej :

"Il-Qorti rat in-noti ta` cessionjoni prezentati fir-Registru mill-attrici li permezz taghhom hija rtirat il-kawza fil-konfront tal-konvenuti l-Awtorita` ta` Malta dwar l-Ambjent u l-Ippjanar u fil-konfront tal-General Services Board.

Il-Qorti ghalhekk tillibera lill-konvenuti l-Awtorita` ta` Malta dwar l-Ambjent u l-Ippjanar u l-General Services Board mill-osservanza tal-gudizzju bl-ispejjez kontra l-attrici."

B`hekk l-Awtorita` esponenti illum hi, kif hekk ilha mis-sena 2015, parti ghal kollox estraneja mill-imsemmija kawza. Minn dan isegwi li l-procediment kosiituzzjonali tal-lum, kif ukoll l-esitu tieghu, jintrabat ma` kawza, ossia r-Rikors Mahluf Numru 100/2015 LM, li fiha l-Awtorita` m`hjiex parti; m`ghandha ghalhekk ebda locus standi fl-istess; u l-eventwali gudizzju moghti fl-istess kawza ma jista` qatt jaghmel stat fil-konfront taghha.

3. Illi wkoll, ghar-ragunijiet kollha mfissra hawn fuq, l-Awtorita` esponenti m`ghandha tbatu ebda spejjez b`rabta ma` dan il-procediment, ikun x`ikun l-esitu tal-istess.

Salvi eccezzjonijiet ohra permessi bil-ligi, u bl-ispejjez kontra r-rikorrenti.

Rat ir-risposta li pprezenta l-kjamat fil-kawza Amabile Grech fit-23 ta` Mejju 2019 li tghid :

1 Preliminarjament l-intempestivita` tal-azzjoni ghaliex ir-rikorrenti naqset li tezawrixxi r-rimedji ordinarji.

2 F`kull kaz l-allegazzjonijiet u l-pretensjonijiet tar-rikorrenti huma ghal kollox infondati fil-fatt u fil-ligi u t-talbiet taghha ghandhom jigu michuda bl-ispejjez.

L-esponent jichad bl-aktar mod kategoriku l-allegazzjoni li tul il-proceduri fl-ismijiet "Grace Spiteri vs Amabile Grech et" (100.2015 LM) l-imhalledf sedenti kien parzjali jew wera xi parzjalita` fil-konfront tieghu jew kontra r-rikorrenti.

Ir-rikorrenti ilha snin, litteralment "imqabbda" mal-esponent, bi procedure kemm civili u kriminali kontra l-esponent u kontra kull min b`xi mod kellu x`jaqsam mal-permess ghall-izvilupp li huwa talab regolarment skont il-ligi b`applikazzjoni tal-perit tieghu liema permess inhareg mill-awtoritajiet kompetenti b`mod regolari u trasparenti, skont il-ligi u l-policies applikabbli. Ir-rikorrenti spiccat takkuza lil kull min kien involut f`dan il-permess b`irregolarita` u komplicita` mal-esponent. L-istess qed taghmel fil-konfront tal-Imhalledf sedenti l-kawza civili li r-rikorrenti ghandha kontra l-esponent.

3 Min-naha tieghu l-Imhalledf Mintoff mexa b`korrettezza kbira, u jekk xejn, kien tolleranti hafna fil-konfront tar-rikorrenti u min kien jassistiha. Huwa ghalhekk ma kellu ebda raguni ghalfejn jilqa` t-talba tar-rikuza. Mod iehor l-Imhalledf kien jonqos fir-rigward tad-dmirijiet tieghu li jisma` u jaqtal-kawza. Il-verbali u l-atti tal-kawza jixhdu li l-Imhalledf Mintoff mexa ghal kollox b`mod korrett. Naturalment wiehed jista` jaqbel jew ma jaqbilx mad-decizjonijiet tieghu, izda n-nuqqas ta` qbil ma jfissirx li b`daqshekk kien qed jonqos.

4 Tul il-proceduri fil-kawza msemija r-rikorrenti inghatat ukoll opportunita` shiha li taghmel il-kaz taghha u li tressaq is-sottomissjonijiet taghha skont il-ligi. Ghalhekk f`dan ir-rigward la nkissru u lanqas kien hemm theddid li jistghu jinkisru xi drittijiet fundamentali tar-rikorrenti jew ta` haddiehor mill-kontendenti.

5 Ghaldaqstant it-talbiet tar-rikorrenti ghandhom jigu michuda bl-ispejjez kontra tagghom.

Semghet ix-xiehda ta` Oliver Magro fl-udjenza tal-24 ta` Settembru 2019.

Rat il-verbal tal-udjenza tat-30 ta` Jannar 2020 fejn id-difensur tar-rikorrenti ghamel din id-dikjarazzjoni :

Dr Cassar informa lill-Qorti illi fil-mori tad-differiment il-kawza principali li skattat dan il-procediment u cioe` dik bin-numru 100/2015 fl-ismijiet "Grace Spiteri vs Amabile Grech et" ma baqghetx assenjata biex tinstema` mill-Onor. Imhalled Lawrence Mintoff izda giet assenjata lill-Onor. Imhalled Anna Felice, dan minhabba bidla fid-dmirijiet tal-Imhallfin. Ghalhekk qieghed jipprezenta nota ta` cessjoni tal-mertu tal-kawza pero` qed izomm ferm il-kap tal-ispejjez.

Rat in-nota ta` cessjoni tal-mertu li pprezentat ir-rikors fl-udjenza.

Rat illi fil-verbal tal-istess udjenza kompli jinghad hekk :-

Billi ma hemmx qbil bejn il-partijiet dwar il-kap tal-ispejjez il-partijiet filwaqt li jiddikjaraw li m`ghandhomx aktar provi xi jressqu dwar il-kap tal-ispejjez una volta li l-mertu kien cedut illum jitolbu lill-Qorti sabiex taghti sentenza dwar l-ispejjez.

Rat illi l-kawza thalliet ghas-sentenza ghal-lum dwar il-kap tal-ispejjez.

Rat l-atti l-ohra.

Rat ukoll l-atti l-kawza fl-ismijiet "Grace Spiteri vs Amabile Grech et" (Rik. Gur. Nru. 100/15)

II. Generali

Ghalkemm din hija sentenza limitata ghall-kap tal-ispejjez, il-Qorti xorta wahda trid taghmel ezami tal-provi fil-mertu sabiex tasal ghad-decizjoni tagha.

III. Xiehda

Ir-rikorrenti xehdet illi fl-2002 Amabile Grech beda jhaffer hdejha biex jibni. Inqalghu kwistjonijiet mieghu u kellha ssir il-kawza li bdiet tinstema` mill-Onor. Imhalled Lawrence Mintoff. Waqt dik il-

kawza, indunat illi meta marru jixhdu r-rapprezentant tal-MEPA u l-perit, Dr Pawlu Lia, li jigi l-avukat ta` Amabile Grech, beda jinterrompi l-hin kollu. Il-Qorti rrifjutat li tibghat perit fuq il-post. Mhux issa izda kull talba li bdiet taghmel giet rifjutata.

Av. Dr. Frank Cassar xehed illi in vista tat-talbiet li saru fil-kawza pendent quddiem l-Onor. Imhalled Mintoff, fl-ewwel dehra tal-kawza, ir-rikorrenti talbet in-nomina ta` perit tekniku biex imur fuq il-post biex jara x` kienet id-distanza fejn kien qed ihaffer Amabile Grech u hekk tigi stradata l-kawza mal-ewwel. It-talba ma kenitx akkolta ghalkemm il-Qorti ghamlet rizerva li tipprovdi fi stadju ulterjuri. Bhala provi, ir-rikorrenti pprezentat affidavit bix-xiehda voluminuza taghha kif ukoll kien imharrek rapprezentant tal-MEPA biex jezebixxi l-file kollu relattiv ghall-izvilupp li kellu jaghmel Amabile Grech. Meta tela` jixhed ir-rapprezentant tal-MEPA kull ma gab mieghu kienu xi erba` karti u mhux l-file kollu. Skont ix-xhud dawk kienu l-unici atti li sab. Ir-rikorrenti qieset stramb dan il-fatt ghaliex kienet ilha tmur il-MEPA ghal snin twal dwar din il-kwistjoni. In segwitu r-rikorrenti talbet ir-rikuza tal-Onor Imhalled Mintoff, liema talba kienet michuda. Ghalhekk saret il-kawza odjerna.

IV. Dritt

L-ilment fil-mertu tar-rikorrenti kien illi bir-rifjut tal-Onor. Imhalled Mintoff li jaccetta t-talba taghha sabiex jirrikuza ruhu hija garrbet vjolazzjoni tal-jedd taghha ghal smigh xieraq hekk kif dan il-jedd huwa mhares bl-Art 39 tal-Kostituzzjoni ta` Malta ("il-Kostituzzjoni") u bl-Art 6 tal-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem u Libertajiet fundamentali ("il-Konvenzjoni").

a) L-Art 39 tal-Kostituzzjoni

Mill-Art 39 il-partijiet rilevanti ghall-kawza tal-lum huma l-ewwel (1) u t-tieni (2) subartikoli li jipprovdu hekk :-

(1) Kull meta xi hadd ikun akkuzat b`reat kriminali huwa ghandu, kemm-il darba l-akkuza

ma tigix irtirata, jigi moghti smigh xieraq gheluq zmien ragonevoli minn qorti indipendenti u mparzjali mwaqqfa b`ligi.

(2) Kull qorti jew awtorità oħra gudikanti mwaqqfa b`ligi għad-decizjoni dwar l-eżistenza jew l-estensjoni ta` drittijiet jew obbligi civili għandha tkun indipendenti u imparzjali; u meta l-proceduri għal decizjoni bħal dik huma mibdija minn xi persuna quddiem qorti jew awtorità oħra gudikanti bħal dik, il-kaz għandu jigi moghti smigh xieraq gheluq zmien ragonevoli.

b) L-Art 6 tal-Konvenzjoni

Mill-Art 6 il-parti rilevanti għall-procediment tal-lum huwa l-ewwel (1) subartikolu li jaqra hekk :-

Fid-decizjoni tad-drittijiet civili u tal-obbligi tiegħu jew ta` xi akkuza kriminali kontra tiegħu, kulhadd huwa ntitolat għal smigh imparzjali u pubbliku fi zmien ragonevoli minn tribunal indipendenti u imparzjali mwaqqaf b`ligi.

c) L-Art 733 tal-Kap 12

Ighid :-

L-imħallfin ma jistghux jigu rrikuzati u lanqas jistghu jastjenu ruħhom milli joqogħdu f`kawza migjuba quddiemhom fil-qorti li fiha huma maħtura biex joqogħdu, hlief għal xi wahda mir-ragunijiet hawn wara msemmin.

d) L-Art 734 tal-Kap 12

Id-disposizzjoni taqra :-

(1) L-imhalled jista` jigi rrikuzat jew jista` jastjeni ruhu milli joqghod fil-kawza -

(a) jekk ikun qarib mid-demm jew bi zwieg, f` linja dritta, ma` wahda mill-partijiet ;

(b) jekk ikun qarib mid-demm fil-grad ta` hu, ziju jew neputi, pro-ziju jew pro-neputi jew kugin, ta` wahda mill-partijiet, jew qarib bi zwieg fi grad ta` hu, ziju jew neputi, ta` wahda mill-partijiet ;

(c) jekk ikun tutur, kuratur, jew werriet prezuntiv ta` wahda mill-partijiet; jew ikun jew kien prokuratur ta` wahda mill-partijiet fil-kawza; jekk ikun l-amministratur ta` stabbiliment jew socjeta` fil-kawza, jew jekk wahda mill-partijiet tkun il-werrieta prezuntiva tieghu ;

(d)(i) jekk ikun ta l-parir tieghu, ittratta quddiem il-qorti jew kiteb dwar il-kawza jew dwar kull haga ohra li ghandha x`taqsam mal-kawza jew tiddependi minnha,

(ii) jekk il-kawza kienet ga giet quddiemu bhala imhalled jew bhala arbitru :

Izda dan ma jghoddx ghal decizjoni, moghtija mill-imhalled, meta ma tkunx qatghet definitivament il-meritu fil-kwistjoni bejn il-partijiet, u lanqas ghal sentenza li tehles ab observantia,

(iii) jekk ikun hareg flus ghall-kawza,

(iv) jekk ikun xehed, jew jekk wahda mill-partijiet tkun bi hsiebha ssejjahlu bhala xhud ;

(e) jekk hu, jew il-mara tieghu, jew ir-ragel taghha, ikollhom interess dirett jew indirett dwar kif tingatal-kawza;

(f) jekk l-avukat jew prokuratur legali li jkun qed jidher quddiem imhalled ikun ibnu jew bintu stess, ir-ragel taghha jew il-mara tieghu jew axxendent tieghu ;

(g) jekk l-avukat jew prokuratur legali li jkun qed jidher quddiem imhalled ikun hu jew oht l-istess gudikant ;

(h) jekk l-imhalled jew ir-ragel taghha jew il-mara tieghu jkollhom kawza pendenti kontra xi wahda mill-partijiet fil-kawza jew ikun kreditur jew debitur ta` xi parti fil-kawza b`mod li jista` ragonevolment jaghti lok ta` suspett ta` interess dirett jew indirett li jista` jinfluwenza l-ezitu tal-kawza.

(2) L-imhalled jista` jigi rikuzat jew jista` jastjeni ruhu milli joqghod f`kawza meta l-kawza tkun ga giet quddiemu u hu jkun tkellem fuq l-istess merti ta` dik il-kawza meta kien qed joqghod bhala mhalled fil-Qorti ta` gurdizzjoni volontarja.

V. Dottrina / Gurisprudenza

Fis-sentenza ta` din il-Qorti kif presjeduta tas-6 ta` Ottubru 2011 (konfermata mill-Qorti Kostituzzjonali) fil-kawza fl-ismijiet **Cecil Pace vs Onorevoli Prim Ministru et** nghad illi :-

"Ir-rikuza mhix haga ta` konvenjenza izda ta` Gustizzja u ghalhekk sabiex wiehed jirrikorri ghaliha, ir-raguni trid tkun fondata ; altrimenti taghti lok ghall-abbuz."

Issir referenza ghal dak li kiteb il-**Professor Hoong Phun** (li kien id-Dekan tal-Fakolta` tal-Ligi fl-Universita ta` Auckland - New Zealand kif ukoll Imhalled fil-Qorti tal-Appell tal-istess pajjiz) fil-ktieb **"Judicial Recusal : Principles, Process and Problems by Grant Hammond"** [Oxford : Hart Publishing 2009] :

"The law relating to judicial recusal may appear to many to be an esoteric topic, with not much significance for the administration of justice. Contrary to such a superficial view, this area of law goes to the very heart of the functioning of a robust and liberal democracy operating under the rule of law. An essential characteristic of the rule of law is the existence of an impartial and independent judiciary. The author expresses this in the following eloquent manner: `Society rightly looks to the courts as bastions of the Rule of Law. If the public cannot look with confidence to judges ... the very notion of a "legal system" as a fundamental pillar of western society would collapse.`"

Judges are individuals who live in the real world: they may own shares in companies; they experience the gamut of human emotions; they may belong to clubs and associations; they may provide voluntary services to charitable organisations; they sometimes engage in public discourse or give speeches on issues of public concern. A number of those who are appointed to senior judicial posts have practised at the Bar or have provided advice to the legislature or executive prior to their judicial appointment. Aspects of this life experience may on occasion

constitute the basis of a challenge to the propriety of the judge adjudicating on a particular case. The law of judicial recusal contributes to the quality of the justice system but at the same time can be manipulated by a party to a litigation who is disappointed by the outcome and who is seeking an opportunity to have another bite of the cherry.

Dan premiss, tajjeb jinghad illi anke jekk skont l-Art 733 u 734 tal-Kap 12 ma jkunx hemm bazi ghar-rikuza jew ghall-astensjoni ta` Imhallef, tista` tinholq sitwazzjoni fejn il-fatt li talba ghal rikuza jew astensjoni tkun respinta ggib maghha konflitt mal-jeddijiet fundamentali tal-persuna, u ghalhekk il-harsien tal-jeddijiet fundamentali jipprevalu fuq id-disposizzjonijiet tal-ligi ordinarja.

(ara : QK : **Sant vs Kummissarju tal-Pulizija** : 2 ta` April 1990 ; QK **Cachia vs Onor Prim Ministru et** : 10 ta` Ottubru 1991 ; QK : **Bugeja et vs Onor Prim Ministru noe et** : 17 ta` Gunju 1994 ; u PA/K : **Ghirxi vs Onor Prim Ministru et** : 1 ta` Novembru 1991)

Indipendentement mill-fatt jekk ic-cirkostanzi jkunux tali li jintitolaw lill-parti li titlob ir-rikuza tal-gudikant skont il-ligijiet ordinarji, il-parametri ta` dawn il-ligijiet ghandhom jitqiesu li jkunu twessghu bid-disposizzjonijiet tal-Kostituzzjoni u tal-Konvenzjoni li jharsu s-smigh xieraq.

(ara : QK : **Dr. A. Mifsud vs On. Prim Ministru et** : 17 ta` Lulju 1996).

Il-Qorti trid tezamina jekk fil-konkret, mhux fl-astratt, jistax jinghad li hemm jew jistax ikun hemm *bias* fil-gudikant li jirrendi l-operat tieghu soggettivament jew oggettivament parzjali. Kollox ghandu jkun meqjus abbazi tal-fatti u cirkostanzi ta` kull kaz

(ara : **Ghirxi vs Onor Prim Ministru et** (op. cit.) u ; QK : **E. T. Rev. Mons. Arcisqof G. Mercieca pro et vs Onor. Prim Ministru noe et** : 22 ta` Ottubru 1984).

Biex raguni twassal għall-astensjoni jew għar-rikuza ta' gudikant, din trid tkun wahda konkreta, mhux merament percepita.

Inghad illi :-

"il-ligi ma trid li, semplicement ghax parti jew ohra f'kawza `thoss` jew `jidhrilha` li gudikant jista` jkun parzjali, allura dak il- gudikant ghandu ma jihux konjizzjoni ta` dik il-kawza. Apparti l-obbligu li l-ligi timponi fuq il-gudikant li joqghod f`kull kawza li tigi lilu assenjata skond il-ligi u li jastjeni jew jilqa` l-eccezzjoni tar-rikuza fil-kazijiet biss fejn ikun legalment gustifikat li huwa ma jkomplix jiehu konjizzjoni ta` dik il-kawza, mhux kull `hsieb` ta` parzjalita` li jista` talvolta jghaddi minn mohh parti jew ohra, jista` jinghad li huwa `oggettivament gustifikat`. It-test oggettiv tal-imparzjalita`, anke kif mifhum mill-Qorti Ewropea tad-Drittijiet tal-Bniedem jirrikjedi li jkun hemm bazi oggettivament riskontrabbli." [ara : QK : **Dr Joseph Zammit Tabona et vs Direttur Generali tal-Qrati tal-Gustizzja et** : 25 ta` Novembru 2016 ; QK : 12 ta` 12 ta` Gunju 2017 : **Joseph Borg et vs Onorevoli Prim Ministru et** ; QK : **Antonio Pace et vs Rev Henry Abela OP et noe** 26 ta` Frar 2009).

Fil-Pag 201 ta` "**Law of the European Convention on Human Rights** (Second Edition ; 2009 ; OUP) l-awturi **Harris, O`Boyle u Warbrick** ighidu hekk dwar l-Art 6 tal-Konvenzjoni :-

*The Court (b` riferenza għall-ECTHR) has stressed that "the right to a fair trial holds so prominent a place in a democratic society that there can be no justification for interpreting Article 6(1) of the Convention restrictively" (**Perez v France** – 2004 I ; 40 EHRR 909 para 64 GC).*

Fil-Pag 202 ikomplu jaffermaw illi :-

The Court also allows States a wide margin of appreciation as to the manner in which national courts operate ... A consequence of this is that in certain contexts the provisions of Article 6 are as much obligations of results as of conduct, with national court being allowed to follow whatever particular rules they choose so long as the end result can be seen to be a fair trial.

Fil-Pag 204 jinsistu illi :-

In some contexts a breach of Article 6 will only be found to have occurred upon proof of "actual prejudice" to the applicant.

Fil-Pag 224 ighidu :-

Article 6 does not control the content of a state`s national law ; it is only a procedural guarantee of a right to a fair hearing in the determination of whatever legal rights and obligations a state chooses to provide in its law.

Imbaghad fil-Pag 251 isostnu illi :-

The right to a fair hearing supposes compliance with the principle of equality of arms. This principle, which applies to civil as well as criminal proceedings, requires each party to be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent. In general terms, the principle incorporates the idea of a fair balance between the parties.

Ighidu wkoll fil-Pag. 291 illi :-

"The objective test of `impartiality` is comparable to the English Law doctrine that `justice must not only be done : it must also be seen to be done`. In this context the [European] Court [of Human Rights] emphasises the importance of `appearances`. As the Court has stated, `[w]hat is at stake is the confidence which the courts in a democratic society must inspire in the public ...`"

*In applying the test, the opinion of the party to the case who is alleging partiality is `important but not decisive`; what is crucial is whether the doubt as to the impartiality can be `objectively justified`. [**Sramek v Austria** (1984) para. 42 ; 7 EHRR 351 **Fey v Austria A 255-A** (1993) ; 6 EHRR 387 para. 30]*

Dan l-ahhar bran minn "**Law of the European Convention on Human Rights** isib konferma fil-kitba : **Judicial Impartiality Under the European Convention on Human Rights** : fejn **I-Imhalef Luzius Wildhaber**, (President tal-ECtHR bejn l-1 ta` Novembru 1998 u t-18 ta` Jannar 2007) ikkummenta hekk :-

"The difficulty in establishing a lack of personal impartiality has led the Court to concentrate on an

objective approach, that is determining whether a judge offers sufficient guarantees to exclude any legitimate doubt as to a lack of impartiality. In other words, in view of the difficulty of establishing to the required standard of proof whether or not a court is actually impartial, the case-law has looked at whether courts can be seen to be impartial. It is here that the Court has introduced the notion of appearances; what is at stake, as the Court has held, is the confidence which the courts must inspire in the public in a

democratic society. Whether misgivings as to impartiality are to be regarded as objectively justified depends on the circumstances of each case. The Court has held that in criminal proceedings "while the standpoint of the accused is important", it is not decisive. What is decisive is whether, in criminal proceedings, the accused's fear that a judge lacks impartiality can be held to be objectively justified. Thus it is not only that the person directly concerned by the proceedings must have apprehensions, but those fears must appear reasonable to the external observer".

L-imparzjalita` skont l-Art 6(1) tal-Konvenzjoni inghatat tifsira fis-sens ta` nuqqas ta` pregudizzju jew *bias* :-

"There are two tests for assessing whether a tribunal is impartial : the first consists in seeking to determine a particular judge's personal conviction or interest in a given case and the second is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect ... As to the second test, when applied to a body sitting as a bench, it means determining whether, quite apart from the personal conduct of any of the members of that body, there are ascertainable facts which may raise doubts as to its impartiality. In this respect even appearances may be of some importance. It follows that when it is being decided whether in a given case there is a legitimate reason to fear that a particular body lacks impartiality, the standpoint of those claiming that it is not impartial is important but not decisive. What is decisive is whether the fear can be held to be objectively justified." (ara : **Lindon Otchakovskylaurens and July v France** deciza fit-22 ta` Ottubru 2007 mill-ECtHR ; u **Piersack v. Belgium** : ECtHR : 1 ta` Gunju 1982).

Fil-kaz ta' **Hauschildt v. Denmark** deciz fl-24 ta' Mejju 1989, l-ECtHR irrimarkat illi :-

"The existence of impartiality for the purpose of Article 6(1) must be determined according to a subjective test, that is on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect."

Fid-decizjoni li tat fil-25 ta' Frar 1997 fil-kaz ta' "**Findlay v. United Kingdom**" l-ECtHR kellha l-okkazjoni tippronunzja ruhha dwar l-indipendenza u l-imparzjalita' ta' tribunal :-

(a) The Court recalls that in order to establish whether a tribunal can be considered as "independent", regard must be had `inter alia` to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence.

(b) As to the question of "impartiality", there are two aspects to this requirement. First, the tribunal must be subjectively free of personal prejudice or bias. Secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect.

Fil-kaz ta' **Daktaras v Lithuania** li kien deciz fl-10 ta' Ottubru 2000, l-ECtHR sostniet il-principju li :-

"The Court recalls that there are two aspects to the requirement of impartiality in Article 6 para. 1

*of the Convention. First, the tribunal must be subjectively impartial, i.e. no member of the tribunal should hold any personal prejudice or bias. Personal impartiality is presumed unless there is evidence to the contrary. Secondly, the tribunal must also be impartial from an objective viewpoint, i.e. it must offer sufficient guarantees to exclude any legitimate doubt in this respect (see **Academy Trading Ltd. And Others v. Greece**, no. 30342/96, 4.4.2000, para. 43)."*

Qalet ukoll:

"Under the objective test, it must be determined whether there are ascertainable facts, which may nevertheless raise doubts as to their impartiality. In this respect even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public and above all in the parties to the proceedings (ibid. para. 45)."

Fil-kaz ta' **Kraska v. Switzerland** li kien deciz fid-19 ta' April 1993, l-EcTtHR osservat illi :-

*"32. The Court has already stressed on numerous occasions the importance of appearances in the administration of justice, but it has at the same time made clear that the standpoint of the persons concerned is not in itself decisive. The misgivings of the individuals before the courts, for instance with regard to the fairness of the proceedings, must in addition be capable of being held to be objectively justified (see, among other authorities, mutatis mutandis, the **Hauschildt v. Denmark** judgment of 24 May 1989, Series A no. 154, p. 21, para. 48)".*

Fil-ktieb : **Protecting the right to a fair trial under the European Convention** (Council of Europe Human Rights Handbook : Strasbourg : 2012) l-awtur **Dovydas Vitkauskas** jaghmel rassenja tal-principji li jsawwru dak li ghandu jfisser "*impartial tribunal*" b`ezempji ta` sitwazzjonijiet li kienu trattati fil-gurisprudenza tal-ECTHR :-

*"While the notion of the "independence" of the tribunal involves a structural examination of statutory and institutional safe-guards against interference in the judicial matters by other branches of power, "impartiality" entails inquiry into the court`s independence vis-à-vis the parties of a particular case (**Piersack**). ... Independent and impartial tribunal established by law may lead to a violation of the impartiality requirement, even if there are no reasons to doubt the impartiality of other (or a majority of other) judges (**Sander v. the United Kingdom, §§18-35**). "Impartiality" is a lack of bias or prejudice towards the parties. The impartiality test exists in two forms: subjective and objective (**Piersack**).*

*The subjective test requires a more stringent level of individualisation/causal link, requiring personal bias to be shown by any member of the tribunal vis-à-vis one of the parties; subjective impartiality is presumed unless there is proof to the con-trary (**Piersack**). Examples of a lack of subjective impartiality :*

*public statements by a trial judge assessing the quality of the defence and the prospects of the outcome of the crimi-nal case (**Lavents**; this case involved a finding of the pre-sumption of innocence on these grounds), or giving negative characteristics of the applicant (**Olujić, §§56-68**);*

statement by judges in the courtroom that they were "deeply insulted" while finding the applicant lawyer guilty of contempt of court (**Kyprianou**, 118-135, where the Court also held that no separate issue under the heading of presumption of innocence arose);

statement by an investigative judge in a decision to commit the applicant for trial that there was "sufficient evidence of the applicant's guilt", where that judge subsequently tried the applicant's case and found him guilty (**Adamkiewicz v. Poland**, §§93-108).

...

The objective test of impartiality necessitates a less stringent level of individualisation/causal link and, accordingly, a less serious burden of proof for the applicant. An appearance of bias or a legitimate doubt as to the lack of bias is sufficient from the point of view of an ordinary reasonable observer (**Piersack**). By contrast with the subjective test, an allegation of lack of objective impartiality creates a positive presumption for the applicant that can only be rebutted by the respondent state if sufficient procedural safeguards are shown which exclude any such legitimate doubt (**Salov v. Ukraine**, §§80-86; **Farhi v. France**, §§27-32). Legitimate doubts as to the impartiality may appear as a result of previous employment of a judge with one of the parties (**Piersack**), intertwining of prosecutorial and judicial functions by the same person at different stages of the same proceedings (**De Cubber v. Belgium**, §§24-30), attempt at participation by the same judges at different levels of court jurisdiction (**Salov**), interference by a non-sitting judge (**Daktaras**), overlap of

legis-lative/advisory and judicial functions (**Procola**, §§41-46), family, business or other previous relations between a party and the judge (**Sigurdsson v. Iceland**, §§37-46), and the same social habits and practices such as religious affiliation involving a party and the member of the tribunal (**Holm v. Sweden**, §§30-33).

Nonetheless, a sufficiently strong causal link must be shown between a feature alleged to call into question the objective impartiality of the tribunal on the one hand, and, on the other, the facts to be assessed (**Kleyn v. the Netherlands**, §§190-202) or the persons (**Sigurdsson**) involved in the particular case. As a few jurors in defamation trial who were members of the political party which had been the principal target of the allegedly defamatory material (**Holm**, but see **Salaman**, dec.). A jury where certain members

had previously made racist jokes concerning the applicant, despite the fact that those damaging statements were subsequently rebutted as improper by an individual juror who had made them and by the jury itself (**Sander**). Prosecutor speaking to jurors informally during a trial break, the presiding judge failing to inquire from the jurors on the nature of the remarks exchanged and the possible influence they might have had on the jurors' opinions (**Farhi**). Close family ties (uncle-nephew) between a judge and lawyer of the opposite party (**Micallef v. Malta**). Two members of a trial court who had earlier set or varied remand – including detention – referring to justification which had not been based on the prosecutor's request for detention and which had implied admission of sufficiency of evidence against the applicant (**Cardona Serrat v. Spain**).

*Extremely virulent press campaign surrounding trial of two minor co-accused, coupled with the lack of effective participation by the defendants (**T. and V. v. the United Kingdom**, §§83-89; see also the effective participation requirement, page 54 below).*

...

*the mere affiliation by the member of the tribunal to ascertain social group or association – such as belonging to the same political party or religious confession as one of the parties in the case – is not sufficient to sustain the legitimacy of the doubt under the objective test; a sufficient degree of individualisation/causal link of the alleged bias of the tribunal is necessary even under the objective test (compare, for instance, the different conclusions in similar circumstances in **Holm and Salaman v. the United Kingdom**, dec. ; **Sigurdsson and Pullar v. the United Kingdom**, dec.).”*

Issir referenza ukoll ghal dak li nghad minn Lord Denning fid-decizjoni fil-kawza **Metropolitan Properties Co. vs. Lannon** (1968) [3 All ER 304] :-

"In considering whether there is a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the Chairman of the tribunal or whoever it might be, who sits in a judicial position. It does not look to see if there was real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was impartial as could be, nevertheless if right-minded persons would think that, in the circumstances, there was

a real likelihood of bias on his part, then he should not sit."

Il-Qorti tirreferi ghas-sentenza li tat il-Qorti Kostituzzjonali fit-12 ta` Lulju 2005 fil-kawza : **Sandro Chetcuti et vs L-Avukat Generali et** : fejn inghad hekk :-

"Dwar x` inhu independent and impartial tribunal, l-artikolu 6 tal-Konvenzjoni u l-artikolu 39 tal-Kostituzzjoni jitolbu li t-tribunal ikun indipendenti u imparzjali. "Indipendenza" tfisser indipendenza kemm mill-partijiet kif ukoll mill-esekuttiv ;

"Imparzialita" tista` tkun soggettiva jew oggettiva. Hija soggettiva meta "the tribunal is subjectively impartial in the sense that its members are free from personal bias" u oggettiva "whether from an objective point of view there is sufficient appearance of impartiality or whether the guarantees of impartiality in a given situation are such as to exclude any legitimate doubt on the matter".

"L-imparzialita` tal-membri tat-tribunal ghandha tkun prezunta sakemm ma tingiebx prova bil-kuntrarju (ara Le Compte, Van Leuven and De Meyere 23.6.91)

Huwa pacifiku wkoll fil-gurisprudenza tal-Qorti Ewropea tad-Drittijiet tal-Bniedem illi, id-decizjoni jekk tezistix jew le imparzialita` ai termini tal-Artikolu 6(1) tal-Konvenzjoni, trid tigi bbazata fuq test soggettiv, cioe` fuq il-konvinzjoni personali tal-gudikant partikolari f`kaz specifiku, u wkoll fuq test oggettiv, u cioe` jekk il-gudikant ikunx fil-kaz partikolari joffri garanziji sufficijenti sabiex jeskludi kull dubbju legittimu ta` parzjalita`.

Il-Qorti sejra terga` ticcita minn "**Law of the European Convention on Human Rights**" (op. cit.) fejn inghad illi :-

"Impartiality` means lack of prejudice or bias. To satisfy the requirement, the tribunal must comply with both a subjective and objective test :

The existence of impartiality for the purpose of article 6(1) must be determined according to a subjective test, that is on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect."

Fil-kaz ta` **Kyprianou vs Cyprus** tal-15 ta` Dicembru 2005 l-ECtHR qalet hekk :-

*"The Court reiterates at the outset that it is of fundamental importance in a democratic society that the courts inspire confidence in the public and above all, as far as criminal proceedings are concerned, in the accused (see **Padovani v. Italy**, judgment of 26 February 1993, Series A no. 257-B, p. 20, § 27). To that end Article 6 requires a tribunal falling within its scope to be impartial. Impartiality normally denotes the absence of prejudice or bias and its existence or otherwise can be tested in various ways. The Court has thus distinguished between a subjective approach, that is endeavouring to ascertain the personal conviction or interest of a given judge in a particular case, and an objective approach, that is determining whether he or she offered sufficient guarantees to exclude any legitimate doubt in this respect (see **Piersack v. Belgium**, judgment of 1 October 1982, Series A no. 53, pp. 14-15, § 30, and **Grievs v. the United Kingdom** [GC], no.*

57067/00, § 69, 16 December 2003). As to the second test, when applied to a body sitting as a bench, it means determining whether, quite apart from the personal conduct of any of the members of that body, there are ascertainable facts which may raise doubts as to its impartiality. In this respect even appearances may be of some importance (see **Castillo Algar v. Spain**, judgment of 28 October 1998, Reports 1998-VIII, p. 3116, § 45, and **Morel v. France**, no. 34130/96, § 42, ECHR 2000-VI). When it is being decided whether in a given case there is a legitimate reason to fear that a particular body lacks impartiality, the standpoint of those claiming that it is not impartial is important but not decisive. What is decisive is whether the fear can be held to be objectively justified (see **Ferrantelli and Santangelo v. Italy**, judgment of 7 August 1996, Reports 1996-III, pp. 951-52, § 58, and **Wettstein v. Switzerland**, no. 33958/96, § 44, ECHR 2000-XII).

...

An analysis of the Court`s case-law discloses two possible situations in which the question of a lack of judicial impartiality arises. The first is functional in nature : where the judge`s personal conduct is not at all impugned, but where, for instance, the exercise of different functions within the judicial process by the same person (see *Piersack*, cited above), or hierarchical or other links with another actor in the proceedings (see court martial cases, for example, *Grieves*, cited above, and **Miller and Others v. the United Kingdom**, nos. 45825/99, 45826/99 and 45827/99, 26 October 2004), objectively justify misgivings as to the impartiality of the tribunal, which thus fails to meet the Convention standard under the objective test (see paragraph 118 above). The second is of a personal character and derives from the conduct of the

judges in a given case. In terms of the objective test, such conduct may be sufficient to ground legitimate and objectively justified apprehensions as in Buscemi, cited above, but it may also be of such a nature as to raise an issue under the subjective test (see, for example, Lavents, cited above) and even disclose personal bias. In this context, therefore, whether a case falls to be dealt with under one test or the other, or both, will depend on the particular facts of the contested conduct."

Importanti kienet is-sentenza li tat il-Qorti Kostituzzjonali fis-7 ta' Marzu 2017 fil-kawza fl-ismijiet **Lawrence Grech et vs L-Avukat Generali**.

Anke hemm kien trattat it-thassib tar-rikorrenti dwar nuqqas ta' imparzjalita' tal-gudikant sedenti.

L-Ewwel Qorti cahdet it-talbiet tal-atturi, wara li ghamlet dawn l-osservazzjonijiet :-

Din il-qorti tqis illi hu minnu li l-gustizzja trid tidher li qed issir. Jibda biex jinghad illi l-ghazla tal-gudikant ghal kawza ma ssirx mill-gudikant innifsu izda minn mekkanizmu appozitu li jithaddem mir-registratur tal-qrati, bla ebda interferenza jew partecipazzjoni jew addirittura l-konnoxxenza a priori tal-istess gudikant li lilu ser tmiss il-kawza. Il-gudikant hu ghal kollox estraneju ghall-mekkanizmu li bih kawza tigi assenjata lilu bl-eccezzjoni ta' kawzi speċjalizzati fejn din partikolari ma taqax f`tali kategorija. Id-dicitura `gustizzja trid tidher li qed issir` ma ghandhiex tifsira soggettiva bhal per ezempju parti mhix kuntenta bl-ghazla tal-gudikant. Lanqas ma tfisser li the ordinary man in the street mhux

ben infurmat fuq il-fatti specifici u t-tema legali involuta b`percezzjoni limitata ghalhekk tal-assiem fattwali u legali ta` dak li qed jigi deciz jista` jew ghandu b`xi mod jinfluwenza l-interpretazzjoni tal-istess dicitura. Id-dicitura `gustizzja trid tidher li qed issir` ghandha tkun miftehma u espressa fil-konkret taghha u applikata mill-kullegg tal-gudikanti skond il-fattispecie u n-natura ta` kull kawza. Wara kollox hu principju regolatur illi l-gudikant hu prezunt imparzjali ghax l-imparzjalità hi parti intima mill-gurament tal-hatra tieghu u li ghandu jzomm quddiem ghajnejh u jattwa f`kull kawza u kull cirkostanza sakemm hu msejjah jippresjedi u jiggudika disputa. Din hi garanzija li l-gudikant hu marbut li jaghti biex isostni l-applikazzjoni tal-gustizzja skond il-ligi, l-ugwaljanza ghal kull min jidher quddiemu, u fil-prattika jsahhah id-demokrazija, fonti tal-libertà tal-bniedem f`socjetà civili (ara artikolu 10 tal-Kap. 12) anki jekk ihossu skomdu ghal kwalsiasi raguni tkun xi tkun bil-vertenza quddiemu ghax dak hu l-prezz tal-gurament li jkun ha quddiem l-istat u quddiem Alla.

Il-kwistjoni attrici hi jekk din il-garanzija fil-kawza civili li tat lok ghal din il-vertenza hiex minsusa b`tali mod li hemm dubju serju oggettiv u konkret u mhux biss percezzjoni astratta jew soggettiva ghar-rikorrenti li l-gustizzja jista` jkun li ma ssirx.

Ir-rikorrenti jibbazaw l-ilment principali taghom fuq nuqqas ta` imparzjalità oggettiva. Qed jallegaw bazikament illi hemm raguni legittima li ggegghelhom jibzghu li l-gudikant jonqos fih l-element ta` imparzjalità. Jorbtu dan il-biza` mal-fatt illi bhala president ta` Radju Marija jista` jxaqleb jew ihares b`ghajn aktar beninja lejn l-intimata Arcidjocesi ta` Malta.

Din il-qorti fliet il-provi u ma tistax issib dan il-biza` bhala wiehed fondat mill-ottika oggettiva. Irrizulta li ma hemm ebda rabta ta` ebda natura bejn il-gudikant involut, Radju Marija u l-intimat Kurja Arciveskovili.

Radju Marija hi organizazzjoni volontarja, maghmula minn socji li jaghtu s-sehem taghhom fl-ispirtu tal-volontarjat. Il-finanzi ta` Radju Marija jigu biss minn donazzjonijiet tal-fidili. L-Arcidjocesi ta` Malta ma tipprovdi ebda ghajjnuna finanzjarja jew mod iehor. Il-gudikant innifsu bhala president jaghti sehmu biss fl-amministrazzjoni tar-radju bla ebda jedd jew poter fuq dak li jixxandar u minn min jixxandar. Dak hu fdat f`idejn sacerdot li hu l-uniku socju jekk trid issejjahlu hekk li jappartjeni lis-sacerdozju. Radju Marija hu fil-fatt assocjazzjoni lajkali.

L-uniku punt ta` vergenza li hemm bejn ir-radju u l-Arcidjocesi hu biss ir-religjon Kattolika. Ir-radju hu kommest li jxandar u jxerred il-kelma ta` Alla b`enfasi specjali fuq il-Madonna kif espressa fir-religjon Kattolika u l-intimita Arcidjocesi ta` Malta thaddan l-istess religjon Kattolika, liema religjon hi wkoll ir-religjon rikonoxxuta ta` Malta fil-Kostituzzjoni ta` Malta artikolu 2.

Din il-qorti ma tqisx illi l-gudikant fil-kawza civili mertu ta` dawn il-proceduri hu oggettivament biased ghax prezumibilment jipprattika l-istess religjon ghalkemm ebda prova ut sic ma saret dwar liema religjon jipprattika l-gudikant in kwistjoni.

...

Li kieku din il-qorti kellha b`eccess ta` kawtela, fil-fehma taghha ingustifikata, taccetta t-tezi tar-rikorrenti, dan ifisser li gudikant li ghandu

kwalsiasi fehma, kemm politika, kemm religjuza, kemm sportiva jew kulturali u li quddiemu jersqu in gudizzju persuni jew entitajiet ta` fehma dikjaratament differenti, allura ser nispicaw bir-riskju li ma ssibx gudikanti li lesti jiddeciedu, jew, aghar, li jsir abbuz mill-partijiet mis-sistema gudizzjarja jew li addiritura l-ghazla ta` gudikant b`fehma li tissimpatizza ma` wahda mill-partijiet fit-twemmin jew fil-politika jew affarijiet ohra ser jispicca bilfors jiddeciedi favur dik il-parti.

...

Il-qorti tenfasizza li ghalkemm il-gudikant ghandu bhal kull persuna ohra l-opinjonijiet personali tieghu fuq kull aspett tal-hajja civili u morali u ghandu l-umanità fragili tieghu bhal kull bniedem iehor però hu wkoll imsejjah ghal servizz li jaghmel gustizzja skont il-ligi, u ghalhekk irid, b`responsabilità akbar u b`obbligu solenni li ghalih ikkommetta ruhu b`gurament, ipoggi fil-genb kull opinjoni jew fehma personali biex b`kuragg, b`sahha u b`kuxjenza safja jqis li ssir gustizzja safejn tippermettilu l-ligi.

Ma hemm xejn fl-atti li juri li l-gudikant imsejjah jiddeciedi l-kawza civili ser jonqos minn dan in-dover jew hemm xi biza` fondat u serju li mhux ser jaqdi dan l-obbligu li hu msejjah jadempixxi b`serjetà, onestà u b`rispett ghal-ligijiet u Kostituzzjoni ta` Malta.

Fid-decizjoni taghha l-Qorti Kostituzzjoni hasbitha diversament.

Qalet hekk :-

"9. Hemm diversi osservazzjonijiet f`dawn is-sottomissjonijiet tal-atturi li ma humiex korretti.

Certament ma huwiex u ma jstax ikun il-kaz illi l-kriterju ta` imparzjalità soggettiva "jiddependi biss mill-perspettiva tal-appellanti", jew li "l-icken dubju ta` imparzjalità oggettiva min-naha tal-gudikant seta` ragonevolment jigi ppercepit mill-appellanti li ser jippregudika d-dritt ta` smigh xieraq", ghax "il-kawza hija tal-appellanti".

Li tammetti dawn it-teoriji jfisser illi parti f`kawza effettivament ghandha veto fuq il-hatra ta` mhallef biex jisma` l-kaz taghha.

10. Ukoll, ma huwiex korrett li tghid illi, ghax imhallef ma jastjenix meta jara li parti ghandha "biza` qawwi jekk hux ser issir gustizzja", dan juri "nuqqas ta` imparzjalità oggettiva". Hija ghalhekk inkorretta l-osservazzjoni tal-atturi illi, ghax il-parti l-ohra fil-kawza wriet "rezistenza qawwija" ghall-eccezzjoni ta` rikuza, dan huwa sinjal ta` parzjalità favur dik il-parti. Jekk eccezzjoni ta` rikuza titressaq mhux ghal ragunijiet oggettivament gustifikabbli izda ghax il-gudikant ma joghgobx lil parti, taghmel sew il-parti l-ohra li tirrezisti l-eccezzjoni.

11. Lanqas ma hu minnu li, ghax gudikant ighix it-twemmin tieghu "pubblikament u b`partecipazzjoni attiva", b`hekk "jinholqu cirkostanzi dubbjuzi"; gudikant mhux bilfors ikollu jghix it-twemmin tieghu fil-katakombi biex jitqies oggettivament imparzjali.

12. L-Imhallef tal-ewwel istanza evidentement kien tal-fehma li r-regoli ta` rekuza fil-Kodici ta` Procedura kienu jipprekluduh milli jastjeni mis-smigh tal-kawza u li skont il-ligi kien ghalhekk obligat li jismaghha.

Mill-perspettiva kostituzzjonali, izda, japplikaw konsiderazzjonijiet ohrajn. Il-kwistjoni hi jekk

hemmx ragunijiet li oggettivament jiggustifikaw il-biza` ta` parzjalità. Ghalkemm dak li thoss jew tahseb jew tibza` parti f`kawza dwar il-parzjalità jew imparzjalità tal-gudikant huwa wkoll relevanti ghall-ghanijiet tal-imparzjalità, ma huwiex il-kriterju determinanti: li hu determinanti hu jekk dak il-biza` jew dik il-percezzjoni huwiex imsejjes fuq konsiderazzjonijiet oggettivi hekk li persuna ragonevoli u minghajr pregudizzji taghha tasal biex hi wkoll ikollha dubji dwar l-imparzjalità tal-gudikant.

13. L-apparenzi wkoll jistghu jkunu konsiderazzjonijiet oggettivi li joholqu dubji. Ukoll jekk ma hemmx rabtiet gerarkici bejn gudikant u parti fil-kawza, jekk l-apparenzi huma hekk li persuna ragonevoli tista` wkoll minghajr wisq tigbid jaghtu x` tahseb li hemm daww ir-rabtiet, id-dubju ta` dik il-persuna dwar l-imparzjalità tal-gudikant jista` jkun dubju oggettivament gustifikat.

14. Fejn jezistu dubji bhal dan, ikun fl-interess mhux biss tal-parti li oggettivament tara ragunijiet ta` parzjalità kontriha li l-gudikant ma jkomplix jisma` l-kaz; ikun ukoll fl-interess tal-parti l-oħra ghaliex il-gudikant jista`, biex jeghleb kull dubju dwar l-imparzjalità tieghu ixaqleb, imqar inkonxjament favur l-parti l-oħra.

15. Il-kwistjoni issa hi jekk fil-kaz tal-lum hemmx ragunijiet oggettivi li f`osservatur ragonevoli u imparzjali jistghu joholqu dehra ta` rabtiet bejn gudikant u parti f`kawza hekk li tiddghajjef il-fiducja fl-imparzjalità ta` dak il-gudikant.

16. Ghalkemm huwa minnu illi, kif jixhed l-istatut tal-Assocjazzjoni Radju Marija, dik l-assocjazzjoni u t-tmexxija tar-radju huma

indipendenti mill-Arcidjocesi, u ma hemm ebda rabta gerarkika formali bejn l-Arcidjocesi u r-radju, ma hijiex ghal kollox imgebbda l-percezzjoni ta` rabta mill-qrib bejniethom. Din il-percezzjoni tigi ggenerata mill-fatt oggettiv illi d-direttur tal-programmi ghandu dejjem ikun kjeriku, meta tqis l-istqarrija tal-istess direttur illi jekk "jisgarra" jibghat ghalih l-Arcisqof, u meta tqis ukoll illi l-Provincjal tad-Dumnikani kellu s-setgha li jesigi u jikseb ir-rizenja tal-istess direttur tal-programmi minn dik il-hatra.

Huwa minnu illi hemm distinzjoni bejn ir-rwol tad-direttur tal-programmi u dak tal-president tal-assocjazzjoni izda t-tnejn ghandhom rwol ewlieni fit-tmexxija tal-istess assocjazzjoni li, ghar-ragunijiet imsemmija fuq, ma hijiex ghal kollox hielsa minn rabta, li tista` wkoll tidher gerarkika, mal-Arcidjocesi.

17. Fic-cirkostanzi ghalhekk, ma hijiex irragonevoli l-percezzjoni li hemm rabta tali bejn l-Arcidjocesi u l-assocjazzjoni li taghha l-imhallef huwa president li tista` tolqot hazin id-dehra ta` imparzjalità oggettiva ta` min ghandu rwol fit-tmexxija ta` dik l-assocjazzjoni. Id-dubju ma huwiex wiehed li ma jitqiesx oggettivament gustifikat, ukoll jekk dak id-dubju ma jolqotx l-imparzjalità soggettiva tal-imhallef.

18. Ghal dawn ir-ragunijiet il-qorti tilqa` l-appell u thassar is-sentenza appellata: tipprovdi dwar l-ewwel zewg talbiet billi tghid illi jkun hemm ksur tal-jedd tal-atturi ghal smigh xieraq jekk ma tintlaqax l-eccezzjoni ta` rikuza tal-imhallef li qieghed jisma` l-kawza fl-ismijiet Lawrence Grech et v. Carmelo Pulis et (rik.489/2013), u ghalhekk tordna li l-kawza ma titkompliex quddiem l-istess imhallef; ma huwa mehtieg ebda provvediment dwar it-tielet u r-raba` talbiet billi s-surroga tal-

*imhalled kif ighid u jrid il-Kodici ta`
Organizzazzjoni u Procedura Civili."*

(ara wkoll il-provvediment ta` din il-Qorti diversament presjeduta moghti fit-30 ta` Mejju 2018 fl-ismijiet **Alfred Degiorgio vs L-Avukat Generali** li ghaddiet in gudikat)

Fis-sentenza li tat fil-31 ta` Mejju 2018 fil-kawza fl-ismijiet **Sharon Rose Roche vs Avukat Generali et** (konfermata b` sentenza tal-Qorti Kostituzzjonali tad-29 ta` Marzu 2019) din il-Qorti diversament presjeduta kien qalet hekk :-

Il-gudikant li jiddeciedi dwar ir-rikuza tieghu stess huwa li huwa indipendenti u imparzjali fid-decizjoni tieghu.

Kif jghid Sir William Blackstone fil-Commentaries on the Laws of England :

"For the law will not suppose a possibility of bias or favor in a judge, who is already sworn to administer impartial justice, and whose authority greatly depends upon that presumption and idea. And should the fact at any time prove flagrantly such, as the delicacy of the law will not presume beforehand, there is no doubt but that such misbehavior would draw down a heavy censure from those, to whom the judge is accountable for his conduct."

2. L-imparzjalita` tal-gudikant huwa valur fundamentali tal-etika gudizzjarja. Gudikant ghandu l-obbligu li jisma` u jiddeciedi kaz fuq il-provi u s-sottomissjonijiet impressqa u mhux fuq konsiderazzjonijiet mhux xierqa (improper considerations), hieles minn xi pregudizzju jew interess, dirett jew indirett, fl-ezitu tal-kawza jew fil-partijiet jew l-avukati li qed jillitigaw quddiemu.

Dan l-obbligu huwa mnisseg fil-guramenti ta` lealta` u ta` hatra li jiehu kull gudikant qabel ma jibda jaqdi dmirijietu.

3. Il-gudikant ghandu jiddisponi minn talba ghar-rikuza tieghu b`mod ekwu u gust (fairly) u jekk ma jaghmilx hekk, ikun qed jabbuza mid-diskrezzjoni tieghu, kif cirkoskritta mil-ligi u ikun hemm konsegwenzi serji ghal tali abbuz.

4. Illi f`kaz li ma jilqax it-talba (tar-rikuza), il-kawza titkompli, munita bil-garanziji kollha stabbiliti fil-qafas legali taghna, inkluzi dawk kostituzzjonali u konvenzjonali ghall-protezzjoni tal-jedd tas-smigh xieraq;

5. Dawn il-garanziji jiprotegu lill-partijiet fil-kawza f`kaz li l-gudikant eventwalment juri li huwa parzjali jew jaghti l-apparenza ta` parzjalita` (bias) biex jiddeciedi l-kwistjoni bejn il-partijiet.

[ara wkoll is-sentenza li tat il-Qorti Kostituzzjonali fil-5 ta` Ottubru 2018 fil-kawza fl-ismijiet **Avukat Peter Caruana Galizia et vs Kummissarju tal-Pulizija et**].

Fil-Judicial Ethics Report (2009-2010) tal-Working Group : European Network of Councils for the Judiciary (ENCJ) :-

"IMPARTIALITY

Impartiality and people`s perception of impartiality are, with independence, essential to a fair trial.

The impartiality of the judge represents the absence of any prejudice or preconceived idea when exercising judgment, as well as in the

procedures adopted prior to the delivery of the judgment.

The judge is aware of the possibility of his own prejudices. (It is a matter of subjective and objective impartiality. Objective impartiality is related to the functions and the subjective impartiality concerns the personality of the individual).

To guarantee impartiality, the judge :

- Fulfils his judicial duties without fear, favouritism or prejudice;

- Adopts, both in the exercise of his functions and in his personal life, a conduct which sustains confidence in judicial impartiality and minimises the situations which might lead to a recusal ;

- Recuses himself from cases when:

o he cannot judge the case in an impartial manner in the eyes of an objective observer ;

o he has a connection with one of the parties or has personal knowledge of the facts, has represented, assisted or acted against one of the parties, or there is another situation which, subjectively, would affect his impartiality;

o he or a member of his family has an interest in the outcome of the trial.

A judge has a duty of care to prevent conflicts of interest between his judicial duties and his social life. If he is a source of actual or potential conflicts of interest, the judge does not take on, or withdraws immediately from, the case, to avoid his impartiality being called into question.

A judge ensures that his private life does not affect the public image of the impartiality of his judicial work.

Impartiality does not prevent a judge from taking part in social life in order to carry on his professional activity.

He is entitled to complete freedom of opinion but must be measured in expressing his opinions, even in countries in which a judge is allowed to be a member of a political organisation.

In any event, this freedom of opinion cannot be manifested in the exercise of his judicial duties.”

F` **The Magna Carta of Judges** li hareg **The Consultative Council of European Judges** jinghad hekk :-

Rule of law and justice

1. The judiciary is one of the three powers of any democratic state. Its mission is to guarantee the very existence of the Rule of Law and, thus, to ensure the proper application of the law in an impartial, just, fair and efficient manner.

Judicial Independence

2. Judicial independence and impartiality are essential prerequisites for the operation of justice.

3. Judicial independence shall be statutory, functional and financial. It shall be guaranteed with regard to the other powers of the State, to those seeking justice, other judges and society in general, by means of national rules at the highest level. The State and each judge are responsible

for promoting and protecting judicial independence.

4. Judicial independence shall be guaranteed in respect of judicial activities and in particular in respect of recruitment, nomination until the age of retirement, promotions, irremovability, training, judicial immunity, discipline, remuneration and financing of the judiciary.

Guarantees of independence

5. Decisions on selection, nomination and career shall be based on objective criteria and taken by the body in charge of guaranteeing independence.

6. Disciplinary proceedings shall take place before an independent body with the possibility of recourse before a court.

7. Following consultation with the judiciary, the State shall ensure the human, material and financial resources necessary to the proper operation of the justice system. In order to avoid undue influence, judges shall receive appropriate remuneration and be provided with an adequate pension scheme, to be established by law.

8. Initial and in-service training is a right and a duty for judges. It shall be organised under the supervision of the judiciary. Training is an important element to safeguard the independence of judges as well as the quality and efficiency of the judicial system.

9. The judiciary shall be involved in all decisions which affect the practice of judicial functions (organisation of courts, procedures, other legislation).

10. *In the exercise of their function to administer justice, judges shall not be subject to any order or instruction, or to any hierarchical pressure, and shall be bound only by law.*

11. *Judges shall ensure equality of arms between prosecution and defence. An independent status for prosecutors is a fundamental requirement of the Rule of Law.*

12. *Judges have the right to be members of national or international associations of judges, entrusted with the defence of the mission of the judiciary in the society.*

Body in charge of guaranteeing independence

13. *To ensure independence of judges, each State shall create a Council for the Judiciary or another specific body, itself independent from legislative and executive powers, endowed with broad competences for all questions concerning their status as well as the organisation, the functioning and the image of judicial institutions. The Council shall be composed either of judges exclusively or of a substantial majority of judges elected by their peers. The Council for the Judiciary shall be accountable for its activities and decisions.*

Access to justice and transparency

14. *Justice shall be transparent and information shall be published on the operation of the judicial system.*

15. *Judges shall take steps to ensure access to swift, efficient and affordable dispute resolution;*

they shall contribute to the promotion of alternative dispute resolution methods.

16. Court documents and judicial decisions shall be drafted in an accessible, simple and clear language. Judges shall issue reasoned decisions, pronounced in public within a reasonable time, based on fair and public hearing. Judges shall use appropriate case management methods.

17. The enforcement of court orders is an essential component of the right to a fair trial and also a guarantee of the efficiency of justice.

Ethics and responsibility

18. Deontological principles, distinguished from disciplinary rules, shall guide the actions of judges. They shall be drafted by the judges themselves and be included in their training.

19. In each State, the statute or the fundamental charter applicable to judges shall define the misconduct which may lead to disciplinary sanctions as well as the disciplinary procedure.

20. Judges shall be criminally liable in ordinary law for offences committed outside their judicial office. Criminal liability shall not be imposed on judges for unintentional failings in the exercise of their functions.

21. The remedy for judicial errors should lie in an appropriate system of appeals. Any remedy for other failings in the administration of justice lies only against the state.

22. It is not appropriate for a judge to be exposed, in respect of the purported exercise of judicial functions, to any personal liability, even by

way of reimbursement of the state, except in a case of wilful default.

International courts

23. These principles shall apply mutatis mutandis to judges of all European and international courts.”

Fil-**Guide for Judges in England and Wales** li kien ippubblikat Marzu 2008¹, jinghad hekk dwar l-imparzjalita` :

3. Impartiality

3.1 Each Justice will strive to ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the individual Justice and of the Court.

3.2 Each Justice will seek to avoid extra-judicial activities that are likely to cause him or her to have to refrain from sitting on a case because of a reasonable apprehension of bias or because of a conflict of interest that would arise from the activity.

3.3 Each Justice will refrain from any kind of party political activity and from attendance at political gatherings or political fundraising events, or contributing to a political party, in such a way as to give the appearance of belonging to a particular political party. They will also refrain from taking part in public demonstrations which might diminish their authority as a judge or create a perception of bias in subsequent cases. They will bear in mind that political activity by a close

¹ Ara s-sit elettroniku:

<https://www.supremecourt.uk/about/judicial-conduct-and-complaints.html>

member of a Justice`s family might raise concern in a particular case about the judge`s own impartiality and detachment from the political process.

3.4 However, the Justices recognise that it is important for members of the Court to deliver lectures and speeches, to take part in conferences and seminars, to write and to teach and generally to contribute to debate on matters of public interest in the law, the administration of justice, and the judiciary. Their aim is to enhance professional and public understanding of the issues and of the role of the Court.

3.5 In making such contributions, the Justices will take care to avoid associating themselves with a particular organisation, group or cause in such a way as to give rise to a perception of partiality towards that organisation (including a set of chambers or firm of solicitors), group or cause.

3.6 In their personal relations with individual members of the legal profession, especially those who practise regularly in the Supreme Court, the Justices will avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

Bias and the appearance of bias

3.7 The question whether an appearance of bias or possible conflict of interest is sufficient to disqualify a Justice from taking part in a particular case is the subject of United Kingdom and Strasbourg jurisprudence which will guide the Justices in specific situations. Recent UK cases include Porter v Magill [2002] 2 AC 357, Locobail (UK) Ltd v Bayfield Properties Ltd [2002] QB 451, Re Medicaments and Related Classes of Goods

(No.2) [2001] 1 WLR 700 and Helow v Secretary of State for the Home Department [2008] 1 WLR 2416.

3.8 Circumstances will vary infinitely and guidelines can do no more than seek to assist the individual Justice in the judgment to be made, which involves, by virtue of the authorities, considering the perception the fair-minded and informed observer would have. What follows are merely signposts to some of the questions which may arise.

3.9 A Justice will not sit in a case where :

he or she has a close family relationship with a party or with the spouse or domestic partner of a partner;

his or her spouse or domestic partner was a judge in a court below;

he or she has a close family relationship with an advocate appearing before the Supreme Court.

3.10 Sufficient reasons for not sitting on a case include :

personal friendship with, or personal animosity towards, a party; friendship is to be distinguished from acquaintance, which may or may not be a sufficient reason depending upon its nature and extent;

current or recent business association with a party; this includes the Justice`s own solicitor, accountant, doctor, dentist or other professional adviser; it does not normally include the Justice`s insurance company, bank or a local authority to which he or she pays council tax.

3.11 Reasons which are unlikely to be sufficient for a Justice not to sit on a case, but will depend upon the circumstances, include:

friendship or past professional association with counsel or solicitors acting for a party;

the fact that a relative of the Justice is a partner in, or employee of, a firm of solicitors or other professional advisers involved in a case; much will depend upon the extent to which that relative is involved in or affected by the result in the case;

past professional association with a party as a client; much will depend upon how prolonged, close, or recent that association was.

...

3.14 Previous participation in public office or public debate on matters relevant to an issue in a case will not normally be a cause for a Justice not to sit, unless the Justice has thereby committed himself or herself to a particular view irrespective of the arguments presented to the Court. This risk will seldom, if ever, arise from what a judge has said in other cases, or from previous findings against a party in other litigation.

3.15 If circumstances which may give rise to a suggestion of bias, or the appearance of bias, are present, they should be disclosed to the parties well before the hearing, if possible. Otherwise the parties may be placed in a difficult position when deciding whether or not to proceed. Sometimes, however, advance notification may not be possible.

3.16 *Disclosure should be to all parties and, unless the issue has been resolved before the hearing, discussion should be in open court. Even where the parties consent to the Justice sitting, the Justice should refuse himself or herself if, on balance, he or she considers that this is the proper course. Conversely, there are likely to be cases in which the Justice has thought it appropriate to bring the circumstances to the attention of the parties but, having considered any submissions, is entitled to and may rightly decide to proceed notwithstanding the lack of consent.*

Fil-kors tar-ricerka taghha l-Qorti ltaqghet ma` kitba bit-titolu : **"A question of judicial bias"** ta` **Matt Evans** li dehret fis-sit elettroniku : <http://www.thejusticegap.com/2012/09/a-question-of-judicial-bias/> : fejn kien trattat dak maghruf bhala : "*subconscious bias*".

L-awtur ighid hekk :-

*So what is the test for apparent judicial bias? At common law it is whether a fair-minded and informed observer, having considered the given facts, would conclude that there was a real possibility of bias. Concretely, would such an observer consider that it was reasonably possible that the judge or tribunal member may be subconsciously biased? **Lawal v Northern Spirit** [2003] ICR 856 at para 21.*

All the cases consistently emphasise that what is in issue is unconscious bias. Judges, like politicians, it seems are incapable of being consciously biased.

`[The] simple fact that bias is such an insidious thing that, even though a person may in good

faith believe that he was acting impartially, his mind may unconsciously be affected by bias. **R v Gough** [1993] AC 646 at 659

‘Bias’ in this sense means that the decision maker ‘might unfairly regard (or have unfairly regarded) with favour, or disfavour, the case of a party to the issue under consideration by him’ or they might be ‘predisposed’ to decide the case or an issue in it in a particular way.

Where a challenge is made then it is for the reviewing court to put itself in the position of such an observer in determining whether the test is made out – **Locabail (UK) Ltd v Bayfield Properties Limited** [2000] 1 QB 451.

In coming to that conclusion the court will not ‘pay attention to any statement by the judge concerning the impact of any knowledge on his mind or his decision: the insidious nature of bias makes such a statement of little value, and it is for the reviewing court and not the judge whose impartiality is challenged to assess the risk that some illegitimate extraneous consideration may have influenced the decision’ – **Locabail** para 19.

The grounds on which a real possibility of bias might arise cannot be definitively stated (though it is arguable that any judge who has kept and still insists on putting on the Black cap or who starts twirling around the birch before hearing a case of TV licence avoidance would give unarguable grounds for challenge). However they include the following as summarised in **AWG v Morrison** [2006] 1 WLR 1163 :

‘[If]there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely

acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case ... or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him ... In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal.

If there is apparent bias then the judge or tribunal member must disqualify himself and there is no discretion not to do so. For the purposes of Article 5(4) and Article 6 of the Convention for the Protection of Human Rights, the Court asks whether suspicions of bias are objectively justified in that there is a rational and demonstrable basis for them. As the above quote makes clear prudence should naturally lean on the side of being safe rather than sorry in cases of alleged bias, and matters of inconvenience, costs and delay will be irrelevant where the principle of judicial impartiality is properly invoked.

Fuq nota finali fil-**Kodici tal-Etika tal-Membri tal-Gudikatura ta` Malta**, hemm stipolat illi :

"15. Il-gudikanti ghandhom jaqdu d-dmirijiet taghhom fid-dawl tal-kuxjenza taghhom b`mod oggettiv bla biza`, bla favuri u minghajr pregudizzji, u dana skond il-ligijiet u d-drawwiet tal-pajjiz.

16. Il-gudikanti ghandhom d-dover li fil-qadi ta` dmirijethom iwarbu kull pregudizzju u

jiddecidu l-kawzi oggettivament u unikament fuq il-meritu legali u fattwali tagghom.

17. Il-gudikanti ghandhom igibu ruhhom, kemm fil-Qorti u kemm ukoll barra l-Qorti, b`mod li ma jpoggux fid-dubbru l-indipendenza u l-imparzjalità tagghom jew tal-ufficju li jokkupaw

23. Il-gudikanti ma ghandhomx joqghodu f`kawza meta huma jkunu jafu li dwarhom hemm wahda mir-ragunijiet ta` rikuza li jissemew fil-Kodici ta`Organizzazzjoni u Procedura Ċivili jew fejn ikun ovvju l-perikolu jew pregudizzju ghal smigh xieraq, altrimenti huma ghandhom l-obbligu li ma jabdikawx mid-doveri tagghom."

L-imparzjalita` ta` gudikant hija dejjem prezunta salv ghal prova kuntrarja. L-istitut tar-rikuza jew tal-astensjoni ta` gudikant jinbena fuq il-presuppost li l-gudikant li quddiemu jitressaq kaz huwa mparzjali u li huwa dmir tieghu (mhux semplici privilegg jew favur) li jisma` u jaqta` kull kawza li titressaq quddiemu. Fil-fehma ta` din il-Qorti, kemm ghal dak li jirrigwarda t-test oggettiv u kif ukoll dak soggettiv, il-fattur li ghandu jaghti lok ghal dubju dwar l-imparzjalita` tal-gudikant ghandu jkun wiehed gravi.

VI. Risultanzi

Il-Qorti gharblet ix-xiehda moghtija kemm mir-rikorrenti kif ukoll mill-Av. Frank Cassar fil-kawza tal-lum. Tat ukoll konsiderazzjoni ghax-xiehda ta` Oliver Magro, li kkonferma l-fatti kif dedotti fir-risposta tal-Awtorita` tal-Ippjanar fil-kawza odjerna.

Kienu ezaminati wkoll l-atti tal-kawza li kienet qeghda tinstema` mill-Onor. Imhallel Lawrence Mintoff.

Meqjusa x-xiehda li nghatat fil-kawza tal-lum u l-atti tal-kawza li dwarha tilmenta r-rikorrenti, fl-isfond tad-disposizzjonijiet kemm tal-Kap 12, tal-Kostituzzjoni, u tal-Konvenzjoni, kif ukoll tad-dottrina u tal-gurisprudenza, il-Qorti ssib li l-Onor. Imhalled Lawrence Mintoff bir-ragun cahad it-talba tar-rikorrenti sabiex jirrikuza ruhu. Bil-fatt li ddecieda hekk b`ebda mod ma nkiser il-jedd tar-rikorrenti ghal smigh xieraq.

Ibda biex abbazi tax-xiehda tar-rikorrenti u Dr Cassar, il-Qorti ma tirrikontra xejn li jista` jwassalha sabiex tikkonkludi li kien hemm jew li seta` kien hemm ksur tal-jedd tar-rikorrenti ghal smigh xieraq fil-kawza in kwistjoni.

Jekk tmur imbaghad ghall-atti ta` dik il-kawza ssib hekk :-

1. L-ewwel dehra tal-kawza kienet il-21 ta` April 2015. Il-konvenut Perit Marvin Ellul, tramite d-difensur tieghu, talab li jigu trattati l-ewwel l-eccezzjonijiet preliminari. Min-naha taghha, ir-rikorrenti, tramite l-avukat taghha, talbet il-hatra ta` perit tekniku, qabel il-qorti tghaddi ghall-eccezzjonijiet preliminari. Il-qorti hadet il-linja li qabel tidhol fil-mertu (u allura jintahar perit tekniku) kellhom jigu trattati l-eccezzjonijiet preliminari. Kienet ordnata l-inverzjoni tal-provi dwar it-tieni, ir-raba` u l-hames eccezzjonijiet tal-Awtortita`, dwar l-ewwel, it-tielet u s-sitt eccezzjonijiet tal-Perit Marvin Ellul, dwar l-ewwel u t-tieni eccezzjonijiet ta` Amabile Grech, u t-tielet u r-raba` eccezzjonijiet tal--Bord tas-Servizzi Generali.

2. Fis-seduta tat-23 ta` Ottubru 2015, ir-rikorrenti, tramite l-avukat taghha, infurmat il-qorti li kienet sejra ccedi l-atti tal-kawza limitatament fil-konfront tal-Awtorita` u tal-Bord.

3. Fil-fatt fis-26 ta` Ottubru 2015, ir-rikorrenti pprezentat zewg noti ta` ccessjoni tal-kawza : wahda kontra l-Awtorita` konvenuta u l-ohra kontra l-Bord konvenut, u kompliet il-kawza kontra l-konvenuti l-ohra.

4 Fis-seduta tal-5 ta` Novembru 2015, il-konvenut Perit Ellul rtira l-ewwel eccezzjoni, u l-kawza thalliet ghat-trattazzjoni tat-tielet u u tas-sitt eccezzjoni tal-istess konvenut.

5 Fid-9 ta` Mejju 2016, inghatat sentenza parzjali fejn kienet milqugha in toto l-ewwel eccezzjoni tal-konvenut Amabile Grech, in toto t-tielet eccezzjoni tal-konvenut Perit Ellul, u in parte s-sitt eccezzjoni tal-Perit Ellul. Kien ordnat il-prosegwiment tal-kawza bl-attrici tressaq il-provi taghha dwar il-mertu tal-hames, tas-sitt u tas-seba` talbiet.

6 Fis-seduta tat-22 ta` Gunju 2016, ir-rikorrenti pprezentat l-affidavit taghha b` sebgħin (70) dokument.

7 Fis-seduta tal-10 ta` Ottubru 2016, xehed Oliver Magro, rapprezentant tal-MEPA, li pprezenta erba` dokumenti. Kien mitlub jipproduci kopja tal-korrispondenza li ghaddiet bejn ir-rikorrenti u l-Awtorita` kif ukoll igib mieghu l-file relattiv għall-konvenut Amabile Grech.

8 Qabel is-seduta tat-30 ta` Ottubru 2016, ir-rikorrenti pprezentat rikors fejn ippremettiet a) illi ghalkemm talbet in-nomina ta` perit tekniku, il-qorti ma kenitx laqghet it-talba ; u b) illi talbet li r-rapprezentant tal-MEPA jipproduci l-files izda cahdet it-talba. Skont ir-rikorrenti, l-atteggjament tal-qorti kien qed ixaqleb kontra taghha, u ghax hekk dehrilha li kien il-kaz, iddikjarat li ma kellhiex aktar fiducja fl-Imhalled sedenti u ghalhekk talbet ir-rikuza tieghu.

9 Fis-seduta tal-31 ta` Ottubru 2016, inghata digriet fejn it-talba għar-rikuza kienet rigettata. Oliver Magro pprezenta l-korrispondenza ta` bejn ir-rikorrenti u l-konvenut Grech. Ir-rikorrenti ma kenitx prezenti għall-udjenza.

10 Fit-22 ta` Novembru 2016, ir-rikorrenti pprezentat nota fejn infurmat il-qorti li kienet ipprezentat ir-rikors kostituzzjonali odjern.

Il-Qorti taghmel dawn il-konsiderazzjonijiet :

a) Is-setgha ta` din il-Qorti bhala qorti ta` gurisdizzjoni kostituzzjonali huwa cirkoskritt u arginat ghall-istharrig ta` jekk avveratx ruhha l-lezzjoni tal-jeddijiet fundamentali lamentat mir-rikorrenti.

b) Meta r-rikorrenti ghamlet it-talba ghall-hatra ta` perit fl-ewwel dehra tal-kawza, il-qorti tat direzzjoni cara lill-partijiet dwar kif kellha tkun stradata l-kawza. Dik hija prerogativa tal-qorti, wara li tkun semghet lill-partijiet. Il-qorti dehrilha opportun li tqis l-ewwel l-eccezzjonijiet preliminari qabel tmiss il-mertu. Billi l-utilita` tal-hatra ta` perit tekniku tkun imkejla fil-kuntest tal-mertu, ghamlet sewwa l-qorti li halliet il-konsiderazzjoni ta` din it-talba ghal stadju ulterjuri tal-kawza. B`daqshekk ir-rikorrenti ma kellhiex ghalfejn tilmenta.

c) Prova tal-ghazla korretta li ghamlet il-qorti kien il-fatt li t-trattazzjoni tal-eccezzjonijiet preliminari wasslet materjalment sabiex l-Awtorita` konvenuta u l-Bord konvenut ma jibqghux fil-kawza biccessjoni tal-atti tal-kawza mir-rikorrenti limitatament fil-konfront taghhom.

d) Wara dik ic-cessjoni l-kawza baqghet ristretta ghall-konvenuti Grech u Ellul u cioe` l-mertu.

e) Ma jirrizulta ppruvat ebda xkiel min-naha tal-qorti ghall-prova li r-rikorrenti riedet tikseb bix-xiehda ta` Oliver Magro. Ipprezenta l-permessi kollha rilevanti ghall-kwistjoni li kellu quddiemu l-Onor. Imhallef Mintoff. Din il-Qorti sejra ticcita bran mid-deposizzjoni ta` Oliver Magro :-

Xhud: Kif nixhed kull darba quddiem il-Qorti, ngib kopja tal-pjanta u l-permess. Issa, jekk iridu kopja tal-file jiena naghmilha mhux problema.

...

Qorti: Jekk hemm xi korrisondenza ta` Grace Spiteri, hu pacjenza erga ejja darba ohra.

...

Qorti: Li trid taghmel idhol fil-files. Jekk hemm korrisondenza, ill jew mibghutha jew intbghatet lis-Sinjura gib kopja taghha.

...

Qorti: Ghal li jista` jkun gib il-files mieghek halli jekk ikun irid jarahom.

f) Ghal din il-Qorti huwa car li dak li qed jigi allegat mir-rikorrenti ossia li l-qorti kienet ostili lejha *non in cielo ne in terra*.

g) Ir-rikors li pprezentat ir-rikorrenti fejn talbet ir-rikuza tal-Onor. Imhallef Mintoff kien intempestiv. Mhux biss huwa wkoll fattwalment infondat. Ma jirrizultax mit-traskrizzjoni tax-xiehda ta` Oliver Magro li l-qorti kienet opposta ghall-produzzjoni tal-files ; proprju xejn minn dan.

h) Dwar il-pretensjoni tar-rikorrenti li ma kellhiex tkun michuda t-talba taghha ghall-hatra ta` perit tekniku, jirrizulta li t-talba saret mir-rikorrenti fil-21 ta` April 2015. X`sehh dakinhar diga` saret referenza ghalih (*supra*). Wara dik is-seduta ma kienx hemm talba ohra mir-rikorrenti. Huwa ghalhekk skorrett dak li nghad mir-rikorrenti fl-atti li pprezentat. Barra minn dan, fl-istadju tal-gbir tal-provi fil-mertu, ma tirrizulta ebda talba mir-rikorrenti ghall-hatra ta` perit tekniku.

i) Id-digriet tal-Onor. Imhallef Mintoff huwa fattwalment u legalment korrett.

j) Ladarba r-rikorrenti kienet cediet il-kawza fil-mertu kontra l-Awtorita` ntimata u kontra l-Bord intimat, din il-Qorti mhijiex tifhem ghaliex ma kenitx opposta min-naha tar-rikorrenti t-talba tal-Avukat Generali ghall-kjamata fil-kawza ta` dawk iz-zewg partijiet ukoll appartu l-intimati l-ohra.

k) Mhuwiex ippruvat li l-Onor. Imhallef Mintoff bil-provvediment ta` rigett tar-rikuza cahhad lir-rikorrenti minn xi jedd kostituzzjonali u/jew konvenzjonali taghha.

l) Din il-Qorti hija tal-fehma illi fil-kaz tal-lum ma rrizultawx fatti jew cirkostanzi daqstant gravi jew impellenti li jaghtu lok ghal dubji serji li l-Onor Imhalled Mintoff ma kienx sejjer ikun imparzjali.

m) It-thassib prospettat mir-rikorrenti dwar allegata parzjalita` tal-Imhalled Mintoff hija ghal kollox infondata.

n) Il-Qorti trid timxi fuq il-provi, u fuq dawn trid issawwar il-konsiderazzjonijiet taghha.

o) Din il-Qorti tistqarr illi ma tressqet l-ebda prova oggettiva li l-Imhalled Mintoff bil-kondotta tieghu esprima xi hjiel ta` pregudizzju reali u attwali kontra r-rikorrenti jew li ta lok li jqum dubju legittimu dwar pregudizzju jew imparzjalita` sal-grad rikjest mill-Kostituzzjoni u mill-Konvenzjoni kif allegat mir-rikorrenti.

Decide

Bla hsara ghal dak kien deciz dwar il-kap tal-ispejjez mill-Qorti Kostituzzjonali fis-sentenza taghha tal-25 ta` April 2018, billi r-rikorrenti cediet il-mertu fil-mori tal-kawza, u billi d-decizjoni tal-lum hija limitata ghall-kap tal-ispejjez, qeghda ghar-ragunijiet kollha premessi taqta` u tiddeciedi billi tordna lir-rikorrenti sabiex thallas l-ispejjez l-ohra ta` din il-kawza.

**Onor. Joseph Zammit McKeon
Imhalled**

**Amanda Cassar
Deputat Registra**