QORTI CIVILI PRIM`AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON

Illum il-Hamis 28 ta` Jannar 2021

Kawza Nru. 2
Rikors Nru. 185/2019 JZM

Tabiba Dottor Anna Busuttil (K.I. 272656M) u Joseph Zammit (K.I. 546444M)

kontra

George Polidano (K.I. 737951M) u Salvina Polidano (K.I. 281853M)

Avukat Generali

u

b`effett tal-Kap 603 tal-Ligijiet ta` Malta u l-Avviz Legali 329/19 l-isem "Avukat Generali" gie jaqra "Avukat tal-Istat"

Il-Qorti :

I. <u>Preliminari</u>

Rat ir-rikors li kien prezentat fis-<u>27 ta` Settembru 2019</u> li jaqra hekk :–

i Illi r-rikorrenti huma proprjetarji tal-fond 12 gja 93, "Paeonia", Triq il-Qalb ta` Gesu, Paola, li huma akkwistaw mill-wirt tal-mejta Ersilia Zammit u b`trasferiment minghand Lawrence Balzan, u dawn il-mejta genituri da parti taghhom akkwistaw il-proprjeta` mill-wirt ta` ommhom Maria Concetta Balzan, li mietet fl-10 ta` Marzu 1961.

ii. Illi b`kuntratt tal-21 ta` Ottubru 1988 fl-atti tan-Nutar Dottor Pierre Attard, li kopja tieghu qed jigi hawn anness u mmarkata bhala "Dokument A", il-mejjet Lawrence Balzan biegh in-nofs indiviz tieghu lil Dottor Raymond Busuttil u lit-Tabiba Anna Busuttil.

iii. Illi l-konjugi Busuttil huma legalment separati u l-fond in kwistjoni gie assenjat lir-rikorrenti b`kuntratt tat-3 ta` Lulju 2003 fl-atti tan-Nutar Dottor Joseph Sciriha li kopja tieghu qed jigi hawn anness u mmarkat bhala "Dokument B".

iv. Illi l-imsemmija Ersilia Zammit mietet bla testment fit-23 ta` Dicembru 1987 u l-wirt taghha ghadda skont il-ligi fuq l-uniku binha r-rikorrent Joseph Zammit, liema wirt gie debitament denunzjat lill-Kummissarju tat-Taxxi Interni b`avviz nru. 385/88, li kopja taghha ser tigi ezebita matul it-trattazzjoni tal-kawza.

v. Illi b`koncessjoni enfitewtika temporanja tas-26 ta` Novembru 1982 fl-atti tan-Nutar Dottor George Cassar, li kopja tieghu qed jigi hawn anness u mmarkat bhala "Dokument C", il-mejtin genituri tar-rikorrenti kkoncedew lil Joseph Galea l-fond imsemmi b`cens annwu u temporanju ghal wiehed u ghoxrin (21) sena versu c-cens annwu u temporanju ta` mitt lira (Lm 100) li kien jithallas kull tliet xhur bil-quddiem mis-26 ta` Novembru 1982.

vi. Illi b`kuntratt ta` sub-enfitewsi temporanja tal-24 ta` Frar 1984 fl-atti tan-Nutar Dottor George Cassar li kopja tieghu huwa hawn anness u mmarkat bhala "Dokument D", Joseph Galea ttrasferixxa z-zmien li kien ghad fadal minn din il-koncessjoni lill-intimat George Polidano.

vii. Illi din il-koncessjoni enfitewtika temporanja skadiet fil-25 ta` Novembru 2003 u l-intimati Polidano peress li kienu cittadini Maltin u ordinarjament residenti fil-fond in kwistjoni a tenur tal-Att XXIII tal-1979, gie moghti lilhom id-dritt biex jibqghu jghixu fil-fond b`kera sad-doppju li kellha tkun ta` Lm 149.79c u li kienet toghla darba kull hmistax-il sena ai termini tal-Att XXIII tal-1979.

viii. Illi a tenur tal-Att X tal-2009, fl-1 ta` Jannar 2013, il-kera zdiedet ghal Lm 190.19c ekwivalenti ghal €443.00c, u hekk baqghet tizdied kull tliet snin ossia fl-1 ta` Jannar 2016 u fl-1 ta` Jannar 2019 skont l-indici tal-gholi tal-hajja.

ix. Illi bi skrittura ta` lokazzjoni tas-29 ta` Lulju 2019 li kopja taghha qed tigi hawn annessa u mmarkata bhala "Dokument E", l-inkwilni llum qed jhallsu € 200 fix-xahar, u dan a tenur tal-Att XXVII tal-2018.

x. Illi mit-terminazzjoni tal-koncessjoni enfitewtika temporanja ossia mill-25 ta` Novembru 2003 sal-31 ta` Dicembru 2018, id-drittijiet Kostituzzjonali tar-rikorrenti gew lezi stante li huma ma rcevewx kumpens adegwat skont is-suq ghall-proprjeta` taghhom hawn fuq msemmija minhabba d-disposizzjonijiet tal-Att XXIII tal-1979.

xi. Illi l-intimati Polidano kienu qed jhallsu kera irrizorja ghall-fond in kwistjoni u b`mod abbuziv u llegali stante illi l-Att XXIII tal-1979 li dahal fis-sehh fil-21 ta` Gunju 1979, tat protezzjoni mhux misthoqqa lill-intimati Polidano stante li huma kienu cittadini Maltin u ordinarjament residenti fil-fond in kwistjoni minkejja l-ftehim raggunt bejn d-direttarji u l-enfitewti.

xii. Illi l-antekawza tar-rikorrenti fuq pariri legali li kienu hadu biex jipprotegu l-proprjeta` taghhom minn rekwizizzjoni u/jew minn okkupazzjoni perpetwa ma kellhomx triq ohra hlief li jikkoncedu b`titolu ta` enfitewsi temporanja l-fond imsemmi u dan stante illi gialdarba l-fond ma kienx dekontrollat u/jew dekontrollabbli kif ser jirrizulta matul it-trattazzjoni tal-kawza, oltre li kien soggett ghar-rekwizizzjoni kien soggett wkoll ghall-`fair rent` ossia d-disposizzjonijiet tal-Kap. 69 tal-Ligijiet ta` Malta u tal-Ordinanza XVI tal-1944 li huma marbutin mal-kera li l-fond seta` jgib fl-4 ta` Awwissu 1914.

xiii. Illi dan kien assolutament inaccettabbli ghall-antekawza tar-rikorrenti u ghalhekk l-unika mod biex jipprotegu l-proprjeta` taghhom mir-rekwizizzjoni u mill-fair rent kien illi jikkonceduh lill-mejjet zewg l-intimata Mizzi b`titolu ta` enfitewsi temporanja kif fil-fatt ghamlu.

xiv. Illi l-antekawza tar-rikorrenti ma kellhom l-ebda ghazla ohra biex jgawdu hwejjighom u jipprotegu l-istess kif fuq inghad, salv li jbieghu l-istess fond, haga li huma ma riedux jaghmlu ghax riedu jibqghu jgawdu hwejjighom.

xv. Illi r-rikorrenti gew imcahhda mit-tgawdija tal-proprjeta` taghhom, zgur sal-31 ta` Dicembru 2018, minghajr ma gew moghtija kumpens xieraq ghat-tehid tal-istess fond b`mod sfurzat u mhux skont il-pattijiet kuntrattwali minnhom raggunti. Infatti, l-unika kumpens li gie offrut kien li jithallas iz-zieda fir-rata ta` inflazzjoni li ma setghet qatt teccedi d-doppju kif stabbilit fil-kuntratt originali, meta fil-fatt il-valur lokatizju tal-istess fond, dak iz-zmien u iktar illum, kien ferm izjed mill-kera annwali ta` €419.10c liema kera bl-emendi tal-Att X tat- 2009 u tal-Att XXVII tal-2018 huma xorta lezivi tad-drittijiet fundamentali tar-rikorrenti stante li ma jzommux il-proporzjon bejn id-drittijiet tas-sidien u dawk tal-inkwilin billi jircievu kera gusta fis-suq.

xvi. Illi d-dispozizzjonijiet tal-Att XXVII tal-2018 ma kienux jkopru l-okkupazzjoni tal-intimati mit-terminazzjoni tal-koncessjoni enfitewtika temporanja imma ghall-perjodu wara l-31 ta` Dicembru 2018.

xvii. Illi l-Att XXIII tal-1979 ippriva lir-rikorrenti mill-proprjeta` taghhom minkejja li huma hadu hsieb biex jassiguraw li dan ma jsirx oltre li l-istess ligi qed tilledi d-drittijiet fundamentali tar-rikorrenti ta` proprjeta` kif protetti mill-Kostituzzjoni u mill-Konvenzjoni Ewropea stante li huma mhux qed jircievu l-kumpens adegwat u dan qed jikkawza sproporzjon bejn id-drittijiet tas-sidien u dawk tal-inkwilin Polidano.

xviii. Illi b`sentenza deciza mill-Qorti Ewropea tad-Drittijiet tal-Bniedem fil-15 ta` Settembru, 2009, fl-applikazzjoni numru 47045/06 fl-ismijiet "Amato Gauci vs. Malta", gie deciz illi f`kaz simili bhal dan ir-rikorrenti ghandha dritt titlob ukoll barra dikjarazzjoni ta` ksur tad-drittijiet fundamentali d-danni li hija soffriet minhabba din it-tali lezjoni tad-drittijiet fundamentali kif protetti mill-istess Kostituzzjoni u mill-Konvenzjoni Ewropea kif ukoll l-izgumbrament mill-fond imsemmi tal-istess inkwilina intimati Polidano.

xix. Illi r-rikorrenti ghandhom jircievu sia danni pekunjarji kif ukoll non pekunjarji f`ammonti sodisfacenti ghat-telf taghha kif gie deciz fil-kawza "Albert Cassar vs Malta" deciza mill-Qorti Ewropea tad-Drittijiet Fundamentali tal-Bniedem fit-30 ta` Jannar 2018.

xx. Illi kif gie deciz recentement mill-Qorti Ewropea tad-Drittijiet Fundamentali tal-Bniedem fil-11 ta` Dicembru 2018 (Rikors nru. 22456/15) fil-kawza fl-ismijiet Franco Buttigieg and Others vs Malta l-imsemmija Qorti ikkonfermat illi l-insenjament kollu li saret referenza ghalih supra jghodd wkoll ghall-dawk il-kazijiet fejn il-koncessjoni enfitewtika temporanja inghatat wara id-dhul fis-sehh tal-Att XXIII tal-1979, kif gara fil-kaz odjern, u l-istess Qorti sabet illi f`kaz simili ghal dak ta` llum wkoll tezisti vjolazzjoni tal-Ewwel Artikolu tal-Ewwel Protokol tal-Konvenzjoni Ewropea u dan ghar-ragunijiet imsemmija fl-istess sentenza u konsegwentement kkundannat lill-Istat Malti jhallas €22,000 bhala danni pekunjarji, €4,500 bhala danni non pekunjarji u €9,000 oltre kull taxxa pagabbli bhala spejjez legali lir-rikorrenti. Illi ai termini tas-sentenza fuq msemmija, l-Qorti Ewropea tad-Drittijiet Fundamentali tal-Bniedem iddecidiet illi f`kaz fejn ma jistax jkun hemm restitutio in integrum, ossia li l-fond jigi moghti lura battal lir-rikorrenti, d-danni minnhom sofferti ghandhom jigu kalkulati fuq id-differenza bejn dak li tkun effettivament rciviet tul iz-zmien mit-terminazzjoni tal-koncessjoni enfitewtika temporanja sal-prezentata tar-rikors odjern u dak li suppost rciviet skont ir-rata tas-suq fl-istess perjodu.

xxi. Illi b`sentenza ohra deciza mill-Qorti Ewropea ghad-Drittijiet Fundamentali tal-Bniedem fis-27 ta` Awwissu 2019, (Application no. 55747/16) fl-ismijiet Portanier vs Malta, l-imsemmija Qorti ammoniet lill-Qorti Kostituzzjonali Maltija talli qieghda b`mod kontinwu u sistematika tabdika mir-responsabbilta` taghha u tonqos milli tordna l-izgumbrament tal-inkwilini f`kazijiet simili ghal dak odjern, meta fl-istess nifs ssib illi hemm lezjoni tad-drittijiet fundamentali tal-bniedem.

xxii. Illi l-kawza odjerna qieghda tigi limitata ghall-effetti taghha sal-31 ta` Dicembru 2018 wara liema perjodu r-rikorrenti bdew jircievu kera a tenur tal-Att XXVII tal-2018, pero` jippretendu li nel frattemp huma ghandhom jircievu d-danni kemm pekunjarji u kemm non-pekunjarji ai termini tal-Ligi li huma sofrew tul iz-zmien mit-terminazzjoni tal-koncessjoni enfitewtika temporanja sal-31 ta` Dicembru 2018, b`riserva ghal kull azzjoni ohra biex l-Att XXVII tal-2018 jigi dikjarat wkoll li jilledi d-drittijiet kostituzzjonali u fundamentali tar-rikorrenti kif protetti mill-Kostituzzjoni ta` Malta u mill-Konvenzjoni Ewropea.

GHALDAQSTANT ir-rikorrenti jitolbu bil-qima lil din l-Onorabbli Qorti, prevja kwalsiasi dikjarazzjoni necessarja u opportuna, u ghar-ragunijiet premessi, jghidu l-intimati ghaliex m`ghandhiex :

i. Tiddikjara u Tiddeciedi illi fil-konfront tar-rikorrenti l-operazzjonijiet tal-Artikolu 12 partikolarment l-Artikolu 12(2) tal-Kap. 158 tal-Ligijiet ta` Malta kif emendat bl-Att XXIII tal-1979, u bl-operazzjonijiet tal-Ligijiet vigenti l-intimati Polidano inghataw dritt ta` rilokazzjoni li rrendiha impossibbli lir-rikorrenti li jirriprendu l-pussess tal-fond 12 gja 93, "Paeonia", Triq il-Qalb ta` Gesu, Paola, proprjeta` tal-istess rikorrenti.

ii. Konsegwentement Tiddikjara u Tiddeciedi illi gew vjolati d-drittijiet tar-rikorrenti ghat-tgawdija tal-proprjeta` 12 gja 93, "Paeonia", Triq il-Qalb ta` Gesu, Paola bi vjolazzjoni tal-Artikolu 37 tal-Kostituzzjoni ta` Malta, u l-Ewwel Artikolu tal-Ewwel Protocol tal-Konvenzjoni Ewropea (l-Ewwel Skeda tal-Kap. 319 tal-Ligijiet ta` Malta) u b`hekk taghti lir-rikorrenti ir-rimedji kollha li jidhrulha xierqa fis-sitwazzjoni.

iii. Tiddikjara u Tiddeciedi illi l-intimat Avukat Generali huwa responsabbli ghal kumpens u danni sofferti mir-rikorrenti b`konsegwenza tal-operazzjonijiet tal-Att XXIII tal-1979 li ma kreawx bilanc gust bejn id-drittijiet tas-sidien u dawk tal-inkwilini, stante illi ma jirriflettux is-suq u lanqas il-valur lokatizju tal-proprjeta` in kwistjoni ai termini tal-Konvenzjoni Ewropea u tal-Ligi.

iv. Tillikwida l-istess kumpens u danni pekunjarji u non pekunjarji kif sofferti mir-rikorrenti ai termini tal-ligi.

v. Tikkundanna lill-intimat Avukat Generali jhallas l-istess kumpens u danni hekk likwidati ai termini tal-Ligi.

Bl-ispejjez kollha u bl-ingunzjoni tal-intimati minn issa ghas-subizzjoni.

Rat id-dokumenti li kienu prezentati mar-rikors.

Rat ir-risposta li pprezenta l-intimat Avukat Generali (illum Avukat tal-Istat) fit-18 ta` Ottubru 2019 li taqra hekk :-

Illi l-lanjanza tar-rikorrenti hija fis-sens illi bit-thaddim tad-dispozizzjonijiet tal-artikolu 12 partikolarment l-artikolu 12(2) tal-Kap. 158 tal-Ligijiet ta` Malta u bl-operazzjonijiet tal-ligijiet vigenti, fil-konfront taghhom qed jigu miksura l-artikolu 37 tal-Kostituzzjoni ta` Malta u l-ewwel artikolu tal-ewwel protokoll tal-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem u dan billi qed jigu mcahhda mit-tgawdija tal-fond 12, "Paeonia", Triq il-Qalb ta` Gesu`, Paola, minghajr ma qeghdin jinghataw kumpens adegwat.

1. Illi in linea preliminari r-rikorrenti jridu prova tat-titolu taghhom fuq il-proprjeta` in kwistjoni.

2. Illi t-talbiet tar-rikorrenti kif dedotti fir-rikors promotur huma nfondati fil-fatt u fid-dritt in kwantu l-ligi senjatament l-Att XXIII tal-1979 dahal qabel iz-zmien meta saret l-iskrittura ta` lokazzjoni ma` Joseph Galea u ghaldaqstant l-iskrittura saret b`mod volontarju u bil-konsapevolezza tar-regim legali li kien jiggverna dak il-ftehim dak iz-zmien u fil-futur. Ghalhekk ghandu jipprevali l-principju pacta sunt servanda.

3. Illi r-rikorrenti ma jistghux jitolbu lil din l-Onorabbli Qorti tiddeciedi dwar allegat ksur tad-drittijiet fundamentali taghhom minghajr ma tiehu in konsiderazzjoni r-regim legali kollu fit-totalita` tieghu skont il-ligi in vigore.

4. Subordinament u minghajr pregudizzju ghas-suespost fil-mertu l-esponent jopponi l-allegazzjonijiet u l-pretensjonijiet kollha tar-rikorrenti bhala infondati fil-fatt u fid-dritt.

5. Illi l-esponent jeccepixxi l-inapplikabilita` tal-artikolu 37 tal-Kostituzzjoni u dan peress illi dan l-artikolu japplika biss f`kaz ta` tehid forzuz tal-proprjeta`. Illi sabiex wiehed ikun jista` jitkellem fuq tehid forzuz jew obbligatorju, persuna trid tigi zvestita minn kull dritt li ghandha fuq dik il-proprjeta`. Pero` certament li fil-kaz odjern tali zvestiment ma jsirx u dan peress illi bit-thaddim tal-artikolu 12 tal-Kap. 158 tal-Ligijiet ta` Malta, ir-rikorrenti ma tilfux ghal kollox id-drittijiet kollha fuq il-fond in kwistjoni. Il-mizura msemmija fil-ligi li qed jattakkaw ir-rikorrenti, ghalkemm tinkwadra ruhha taht kontroll ta` uzu, madakollu din

certament ma twassalx ghal deprivazzjoni totali tal-proprjeta`. Isegwi ghalhekk li l-ilment tar-rikorrenti ma jinkwadrax fil-parametri tal-artikolu 37 tal-Kostituzzjoni u konsegwentement ghandu jigi michud;

6. Illi safejn l-ilment tar-rikorrenti huwa msejjes fuq l-ewwel artikolu tal-ewwel protokoll tal-Konvenzjoni Ewropea, l-esponenti jirreleva li skont il-proviso tal-Ewwel Artikolu tal-Ewwel Protokol tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem, l-Istat ghandu kull jedd li jghaddi dawk il-ligijiet li jidhirlu xierqa biex jikkontrolla l-uzu tal-proprjeta` skont l-interess generali. Illi hija gurisprudenza kostanti tal-Qorti ta` Strassburgu li l-Istat igawdi minn diskrezzjoni wiesgha sabiex jidentifika x`inhu mehtieg fl-interess generali u sabiex jistabilixxi liema huma dawk il-mizuri mehtiega ghall-harsien tal-interess generali;

7. Illi tali diskrezzjoni tal-legislatur m`ghandiex titbiddel sakemm din ma tkunx manifestament minghajr bazi ragjonevoli. Kif spjegat fis-suespost l-esponent jishaq li fil-kaz odjern hemm bazi ragjonevoli li tiggustifika l-promulgazzjoni tal-legislazzjoni li tinsab taht skrutinju fil-kawza odjerna. Dan peress illi hemm il-htiega illi l-enfitewta jigi protett u li jigi stabbilit bilanc fir-relazzjoni tieghu mas-sid f` sitwazzjoni fejn s-sid ikollu poter negozjali sproporzjonat in relazzjoni mal-enfitewta;

8. Illi dejjem minghajr pregudizzju ghas-suespost, ma hemm ebda ksur tal-Ewwel Protokol tal-Konvenzjoni Ewropea u dan peress illi dak li gara fil-kaz odjern huwa li l-Istat tramite l-artikolu 12 irregola sitwazzjoni ta` natura socjali fl-ambitu tal-gid komuni b`dana pero` li baqghu impregudikati d-drittijiet tas-sidien qua proprjetarji tal-fond in kwistjoni;

9. Illi fir-rapport tal-Kummissjoni fil-kaz Connie Zammit et vs Malta (applikazzjoni numru 16756/9) tat-12 ta` Jannar 1991 gie osservat illi "the Court has found no violation of the Convention in cases where the State has adopted measures in the field of housing regulations where a more far reaching interference with property rights was involved. Thus in James and others (Eur. Court. H.R., James and Others judgment of 21 February 1986, Series A no. 98) the leaseholders were accorded a statutory right to acquire the property from the owners, while in Mellacher and others Eur. Court. H.R., Mellacher and Others judgment of 19 December 1989, Series A no. 169) the legislation constituted an inducement to the leaseholder not to comply with the terms of a previously validly contracted tenacy agreement".

Fil-fehma tal-esponent mizuri socjali implimentati sabiex jipprovdu akkomodazzjoni lill-persuni fil-bzonn certament jaqghu fil-kappa tal-interess generali. Illi l-artikolu 12 tal-Kap. 158 tal-Ligijiet ta` Malta huwa mahsub biex jipprotegi persuni milli jigu mkeccija mid-dar ta` abitazzjoni taghhom f`gheluq it-terminu tal-kirja. Isegwi li dan l-artikolu ma jistax jigi klassifikat bhala wiehed mhux legittimu jew mhux fl-interess generali.

10. Illi stabbilit li l-artikolu 12 tal-Kap. 158 tal-Ligijiet ta` Malta ghandu ghanijiet legittimi u huwa fl-interess generali ma hemm xejn hazin taht il-Konvenzjoni Ewropea li l-ligi nostrana tiddisponi li fl-gheluq il-kirja l-okkupant li jkun qed juza l-fond bhala r-residenza tieghu ghandu jithalla fid-dar taht titolu ta` kera u b` kondizzjonijiet riveduti. Ifisser b`hekk li safejn ir-rikorrenti qeghdin jitolbu dikjarazzjoni gudizzjarja li l-ligi tikser il-Konvenzjoni Ewropea tali talba mhijiex misthoqqa.

11. Illi inoltre dwar l-ilment tal-allegat sproporzjon fil-kera, jigi rilevat li fil-kaz tar-rikorrenti, l-ammont tal-kera li qieghda tigi percepita mhijiex kera sproporzjonata tenut ukoll kont tal-fatt li f`cirkostanzi bhal dawn, fejn jezisti interess generali legittimu, ma jistax isir paragun mal-valur odjern tal-proprjeta` fis-suq hieles kif pretiz mir-rikorrenti u dan wisq inqas meta wiehed jipparaguna kera jew cens pagabbli fil-passat u spejjez biex tigi zviluppata proprjeta` residenzjali ma valuri kurrenti.

12. Illi l-Qorti Ewropea stess fil-gurisprudenza taghha fosthom fil-kaz ta` Amato Gauci v Malta(1) rrikonoxxiet li "State control over levels of rent falls into a sphere subject to a wide margin of appreciation by the State and its application may often cause significant reductions in the amount of rent chargeable"(2)

13. Illi ghalhekk anke jekk fil-kaz odjern jirrizulta li l-kera dovuta lir-rikorrenti hija inferjuri ghall-valur lokatizju fis-suq, dan it-tnaqqis huwa kontro-bilancjat bil-margini wiesgha tal-Istat li jillegisla fil-kuntest ta` mizuri socjali u mill-htiega socjali ta` dawk il-mizuri.

14. Illi fl-umli fehma tal-esponent fil-kaz odjern din l-Onorabbli Qorti m`ghandhiex tevalwa din il-ligi fil-kuntest principalment ta` spekulazzjoni tal-proprjeta` imma ghandha tevalwa u tapplika l-ligi fil-qafas aktar wiesgha u cioe` mill-aspett ta` proporzjonalita` fid-dawl tar-realta` ekonomika u socjali tal-pajjiz in generali.

[1] App Nru 47045/06 Deciz 15/09/2009
[2] Enfasi tal-esponent

15. Illi bid-dhul fis-sehh tal-emendi l-godda fl-2009 fil-Kap 16 tal-Ligijiet ta` Malta, tnaqqsu l-possibilitajiet illi l-kirja tibqa` tintiret kif ukoll il-kera li r-rikorrenti tista` ddahhal mhux ser tibqa` stagnata ghal dejjem izda ser toghla kull tliet snin b`mod proporzjonali skont id-dispozizzjonijiet tal-artikolu 1531C tal-Kap 16 tal-Ligijiet ta` Malta. Illi minn dan jirrizulta wkoll illi bl-emendi introdotti bl-Att X tal-2009 il-pozizzjoni tar-rikorrenti giet miljorata minn dak meta saret il-kirja u ghaldaqstant ir-rikorrenti ma jistghu jallegaw ebda ksur tad-drittijiet fundamentali taghhom.

16. Illi bl-introduzzjoni tal-Att XXVII tal-2018 li permezz tieghu iddahhal l-artikolu 12B tal-Kap. 158 tal-Ligijiet ta` Malta, il-legislatur kompla jsahhah fuq l-element ta` propozjonalita` tant illi llum il-gurnata ir-rikorrenti ghandhom l-possibilita` illi jibdew jircievu kera f`ammont li jlahhaq sa tnejn fil-mija (2%) fis-sena tal-valur liberu u frank tas-suq miftuh tad-dar ta` abitazzjoni, hemm ukoll il-possibilita` wkoll illi r-rikorrenti jitlolbu illi jigu stabbiliti kundizzjonijiet godda fir-rigward tal-kera jekk hekk jixtiequ kif ukoll hemm il-possibilita` illi r-rikorrenti jitolbu illi l-kirja versu l-inkwilin titwaqqaf jekk jirrizulta illi l-inkwilin ma jissodisfax il-kriterji biex ikompli fil-kirja. Ghaldaqstant certament illi r-rikorrenti ma jistghux jallegaw ksur tad-drittijiet fundamentali taghhom.

17. Illi jsegwi ghalhekk li meta wiehed jizen dan fl-assjem kollu, il-konkluzjoni hija li anke dina l-parti tal-ilment tar-rikorrenti dwar in-nuqqas ta` propozjonalita` ma huwiex gustifikat ghaliex ma hemm ebda ksur tal-ewwel artikolu tal-ewwel protokoll tal-Konvenzjoni Ewropea u kwindi kull talba ghall-kumpens prospettata mir-rikorrenti mhijiex misthoqqa.

18. Illi minkejja li f`kazijiet ohra kontra l-Istat Malti fejn saret lanjanza ta` ksur tad-dispozizzjonijiet tal-ewwel artikolu tal-ewwel protokoll tal-Konvenzjoni Ewropea bbazata fuq it-thaddim tal-artikolu 12 tal-Kap 158 tal-Ligijiet ta` Malta, il-Qorti Ewropea kienet waslet ghall-konkluzjoni li kien hemm sproporzjonalita` u tqassim mhux xieraq tal-pizijiet u l-beneficcji, jigi rilevat li tali gurisprudenza hija limitata ghall-fattispecie u ghac-cirkostanzi partikolari ta` dawk il-kazijiet. Huwa rilevanti pero` li l-istess Qorti Ewropea rrikonoxxiet principju importanti: "The Court considers that the legislation at issue in the present case pursued a legitimate social policy aim, namely the social protection of tenants"(3)

[3] ***Amato Gauci v Malta*** paragrafu 55.

19. Illi dejjem minghajr pregudizzju ghas-suespost, dato ma non concesso li din l-Onorabbli Qorti jidhrilha li kien hemm xi ksur tad-drittijiet fundamentali tar-rikorrenti, fatt li qed jigi kontestat, l-esponent jirrileva li fic-cirkostanzi tal-kaz, dikjarazzjoni ta` ksur hija sufficjenti u ma hemmx lok ghar-rimedji ohra mitluba mir-rikorrenti.

20. Illi minghajr pregudizzju ghas-suespost, jekk din il-Qorti thoss illi ghandha tillikwida kumpens, l-esponenti jhoss illi l-Qorti ghandha tiehu in kunsiderazzjoni introduzzjoni tal-artikolu 12B fil-Kap. 158 tal-Ligijiet ta` Malta u l-effetti tieghu fuq is-sidien. Dan kif anke kkonstat il-Qorti Kostituzzjonali fis-sentenza "Victoria Amato Gauci v. Avukat Generali et" deciza mill-Qorti Kostituzzjonali fis-17 ta` Ottubru 2018. Il-Qorti ghandha tiehu in konsiderazzjoni wkoll il-fatt illi llum il-gurnata r-rikorrenti dahlu f`kuntratt gdid tal-kera bil-pattijiet u l-kundizzjonijiet illi xtaqu huma u ghaldaqstant ir-regim legali illi minnu qed jilmentaw m`ghadux applikabbli fil-konfront taghhom.

21. Salv eccezzjonijiet ulterjuri

Ghaldaqstant ghal dawn ir-ragunijiet l-esponent umilment jitlob lil din l-Onorabbli Qorti joghgobha tichad it-talbiet kollha tar-rikorrenti bl-ispejjez kontra taghhom.

Rat illi ghalkemm kienu debitament notifikati, l-intimati Polidano baqghu ma pprezentawx risposta.

Rat id-digriet li tat fl-udjenza tat-18 ta` Novembru 2018 fejn laqghet it-talba tar-rikorrenti ghall-hatra ta` perit tekniku sabiex jistma u jirrelata dwar il-valur lokatizju fis-suq tal-fond 12 gia 93, "Paeonia", Triq il-Qalb ta` Gesu`, Paola, ghaz-zmien ta` bejn il-25 ta` Novembru 2003 u u kull hames snin sal-21 ta` Dicembru 2018. Kien mahtur ghal dan l-iskop il-Perit Mario Cassar.

Rat ir-relazzjoni li pprezenta l-perit tekniku, il-kontenut ta` liema relazzjoni kkonferma bil-gurament quddiemha.

Rat il-provi l-ohra li tressqu fil-kors tal-kawza, inkluza l-eskussjoni tal-perit tekniku.

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

Rat in-noti ta` osservazzjonijiet skambjati.

Rat l-atti l-ohra tal-kawza.

II. <u>L-ewwel (1) eccezzjoni tal-intimat Avukat tal-Istat</u>

Kien eccepit mill-Avukat tal-Istat li r-rikorrenti ghandhom jaghmlu l-prova tat-titolu taghhom ghall-fond in kwistjoni.

Il-gurisprudenza kostanti tal-qrati taghna hija fis-sens illi fil-kawzi ta` indole kostituzzjonali mhuwiex **<u>indispensabbli</u>** illi r-rikorrent jipprova t-titolu tieghu ghall-proprjeta` ghaliex kawzi bhal din tal-lum mhumiex kawzi ta` rivendika fejn il-prova tat-titolu hija *sine qua non* sabiex tirnexxi l-azzjoni.

Fis-sentenza li tat fis-7 ta` Frar 2017 fil-kawza **<u>Robert Galea v. Avukat Generali et</u>** din il-qorti diversament presjeduta qalet hekk :-

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

Dan premess, il-qorti tosserva illi r-rikorrenti <u>fil-fatt</u> ghamlu <u>l-prova tat-titolu</u> taghhom.

Fl-affidavit tieghu r-rikorrent Joseph Zammit xehed illi hu u r-rikorrenti Dr Anna Busuttil huma kugini ; huma sidien tal-fond de quo f`sehem ta` nofs indiviz kull wiehed/wahda.

Ersilia Zammit u Lawrence Balzan (illum mejtin it-tnejn) kienu ahwa. Ir-rikorrent Joseph Zammit jigi iben Ersilia Zammit waqt li r-rikorrenti Dr Anna Busuttil tigi t-tifla ta` Lawrence Balzan.

Il-fatti tat-titolu (kif imfissra fil-kawzali tar-rikors promotur bl-iskorta tad-dokumenti) huma korraborati kif trid il-ligi.

Daqstant fejn si tratta tal-jedd tar-rikorrenti.

Ghar-rigward tal-enfitewsi, jirrizulta ppruvat ukoll li bis-sahha ta` kuntratt tas-26 ta` Novembru 1982 fl-atti tan-Nutar Dottor George Cassar, Lawrence Balzan u r-rikorrent Joseph Zammit bhala mandatarju ta` Ersilia Zammit ikkoncedew il-fond de quo (mhux dekontrollat) favur Joseph Galea b`titolu ta` subenfitewsi temporanja ghal zmien 21 sena soggett ghal canone annwu ta` Lm 100 pagabbli kull tlett xhur bil-quddiem mis-26 ta` Novembru 1982.

B`kuntratt ta` subenfitewsi tal-24 ta` Frar 1984 fl-atti tan-Nutar Dottor George Cassar, Joseph Galea ttrasferixxa favur l-intimati Polidano kull ma kien fadal mill-koncessjoni originali li jirrizulta li ghalqet fil-25 ta` Novembru 2003.

Fil-25 ta` Novembru 2003, l-intimati Polidano, bis-sahha tal-Att XXIII tal-1979, Polidano ghazlu li jibqghu fl-okkupazzjoni tal-fond de quo b`titolu ta` kera.

Mal-gheluq tac-cens temporanju, il-hlas annwu f`kera sar Lm 149.79.

Fl-2013 il-kera zdiedet ghal Lm 190.19 - ekwivalenti ghal €443.00 fis-sena.

In segwitu saret skrittura ta` lokazzjoni (data : 29/07/2019) fejn l-inkwilini bdew ihallsu kera ta` €200 fix-xahar.

Kull prova li ghamlu r-rikorrenti ma kenitx ikkontestata mill-intimati.

Propju ghaliex ir-rikorrenti ghandhom titolu ta` proprjeta`, ghandhom dritt jippretendu mhux biss li jgawdu l-jedd taghhom, izda wkoll li jitolbu l-harsien ta` dak id-dritt.

L-ewwel (1) eccezzjoni tal-intimat Avukat tal-Istat qeghda tkun <u>respinta</u>.

III. <u>It-talbiet</u>

Waqt li tkun qeghda tqis it-talbiet, il-qorti sejra taghti konsiderazzjoni wkoll ghall-eccezzjonijiet l-ohra li ressaq l-Avukat tal-Istat.

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

Fir-rigward tal-ewwel talba, il-qorti taghmel referenza ghas-sentenza li tat il-Qorti Kostituzzjonali fis-27 ta` Marzu 2020 fil-kawza fl-ismijiet **<u>Matthew Said et v. Arthur Vella et</u>** fejn ippronunzjat ruhha dwar talba identika.

L-appell kien interpost mill-intimati Vella. It-tielet aggravju taghhom kien dwar id-dikjarazzjoni li ghamlet l-ewwel qorti : "*illi l-art. 12 tal-Kap. 158 jaghmilha impossibbli ghall-atturi li jiehdu lura l-pussess tal-propjeta` taghhom*."

Il-Qorti Kostituzzjonali qalet hekk :

17. Huwa minnu illi, ukoll taht l-art. 12 tal-Kap. 158, u bla ma tqis ukoll l-art. 12B, ma kienx ghal kollox "impossibbli" li s-sid jiehu lura l-propjeta`, ghalkemm x`aktarx difficli u kien hemm incertezza dwar meta. Ghalhekk kien ikun ahjar li kieku, flok esprimiet ruhha f`termini assoluti ta` impossibilita`, l-ewwel qorti esprimiet ruhha f`termini aktar relativi.

18. Ghalhekk l-aggravju sejjer jintlaqa` fis-sens illi l-parti tassentenza fejn jinghad "li jaghmilha impossibbli ghar-rikorrenti li jirriprendu pussess tal-propjeta` taghhom" tinbidel hekk : "li jaghmilha

difficli u haga x`aktarx incerta ghall-atturi li jiehdu lura lpussess tal-propjeta` taghhom.

19. … il-konsiderazzjonijiet li ghamlet u r-rimedju li tat l-ewwel qorti kienu relativi ghaz-zmien u ghall-posizzjoni legali qabel ma dahlu fis-sehh l-emendi maghmula bl-Att XXVII tal-2018 u ghalhekk ma jolqtux il-jeddijiet tal-partijiet taht dawk l-emendi. Fil-fatt it-talbiet tal-atturi kienu dwar l-effett tal-art. 12 tal-Kap. 158 fuq id-drittijiet taghhom u mhux dwar l-effett tal-art. 12B li ddahhal fil-Kap. 158 bl-art. 4 tal-Att XXVII tal-2018, u ghalhekk id-drittijiet li jista` jkollhom il-partijiet taht l-art. 12B ma jintlaqtux bid-dikjarazzjoni tal-ewwel qorti.

Din il-qorti taghmel taghha dan il-pronunzjament.

Ghalhekk sejra tipprovdi dwar l-ewwel talba kif dedotta billi tiddikjara u tiddeciedi illi fil-konfront tar-rikorrenti l-operazzjonijiet tal-Artikolu 12, partikolarment l-Artikolu 12(2) tal-Kap. 158 tal-Ligijiet ta` Malta, kif emendat bl-Att XXIII tal-1979, u bl-operazzjonijiet tal-ligijiet vigenti, qeghdin jaghtu dritt ta` rilokazzjoni lill-intimati Polidano li jaghmilha difficli u haga x`aktarx incerta ghar-rikorrenti li jiehdu lura l-pussess tal-proprjeta` taghhom.

2. <u>It-tieni (2) talba</u>

Il-vjolazzjoni lamentata hija cirkoskritta ghaz-zmien ta` bejn il-**<u>25 ta` Novembru 2003 u l-31 ta` Dicembru 2018</u>**.

a) <u>Provi</u>

i. <u>Ir-relazzjoni tal-perit tekniku</u>

Fil-kors tal-kawza kien mahtur perit tekniku li pprezenta relazzjoni.

Il-perit tekniku ghamel dawn **<u>il-kostatazzjonijiet</u>** :-

- Il-fond in kwistjoni huwa *terraced house* komposta minn zewg sulari u bejt. L-arja u s-sottoswol huma haga wahda mal-fond.

- Il-fond huwa abitabbli, bis-servizzi tad-dawl u tal-ilma, u jinzamm fi stat tajjeb ta` manutenzjoni.

- Wara li qies l-ghamla, id-daqs u l-istat attwali tal-post, il-perit ikkonkluda illi l-fond ghandu valur fis-suq, jekk liberu u frank, ta` **€160,000**.

- Fl-2003 il-valur lokatizju tal-fond kien ta` **€2,473** fis-sena.

- Fl-2018 il-valur lokatizju tal-fond kien ta` **€5,600** fis-sena.

ii. L-eskussjoni tal-perit tekniku

Il-perit tekniku wiegeb ghal domandi **in eskussjoni.**

Xehed illi l-fond ghandu arja superficjali interna u esterna ta` cirka 115 m.k.

Meta mqabbel ma` fondi simili, il-valur lokatizju fis-suq tal-fond huwa ta` €1385 kull metru kwadru.

Il-fond ma jgawdix minn potenzjal ta` zvilupp peress illi fiz-zona hemm *height limitation* ta` zewg sulari biss.

iii. Il-piz probatorju tal-konsiderazzjonijiet teknici

Fis-sentenza taghha tad-19 ta` Novembru 2001 fil-kawza "**Calleja vs Mifsud**", il-Qorti tal-Appell qalet hekk -

***Kemm il-kostatazzjonijiet tal-perit tekniku nominat mill-Qorti kif ukoll il-konsiderazzjonijiet u opinjonijiet esperti tieghu jikkostitwixxu skond il-ligi prova ta` fatt li kellhom bhala tali jigu meqjusa mill-Qorti.*** *Il-Qorti ma kenitx obbligata li taccetta r-rapport tekniku bhala prova determinanti u kellha dritt li tiskartah kif setghet tiskarta kull prova ohra. Mill-banda l-ohra pero` huwa ritenut minn dawn*

*il-Qrati li kellu jinghata piz debitu lill-fehma teknika tal-espert nominat mill-Qorti billi l-Qorti ma kellhiex leggerment tinjora dik il-prova. Hu manifest …. illi l-mertu tal-prezenti istanza kien kollu kemm hu wiehed ta` natura teknika li ma setax jigi epurat u deciz mill-Qorti minghajr l-assistenza ta` espert in materja. B`danakollu dan ma jfissirx illi l-Qorti ma kellhiex thares b`lenti kritika lejn l-opinjoni teknika lilha sottomessa u ma kellhiex tezita li tiskarta dik l-opinjoni jekk din ma tkunx wahda sodisfacentement u adegwatament tinvesti l-mertu, jew jekk il-konkluzjoni ma kenitx sewwa tirrizolvi l-kwezit ta` natura teknika.* (enfasi u sottolinear ta` din il-qorti)

Ghalkemm qorti mhix marbuta li taccetta l-konkluzjonijiet ta` perit tekniku kontra l-konvinzjoni taghha (*dictum expertorum numquam transit in rem judicata*), fl-istess waqt dak *ma jfissirx pero` illi qorti dan tista` taghmlu b` mod legger jew kapriccjuz. Il-konvinzjoni kuntrarja taghha kellha tkun ben informata u bazata fuq ragunijiet li gravament ipoggu fid-dubju dik l-opinjoni teknika lilha sottomessa b` ragunijiet li ma ghandhomx ikunu privi mill-konsiderazzjoni tal-aspett tekniku tal-materja taht ezami* ("**<u>Grima vs Mamo et noe</u>" –** Qorti tal-Appell – 29 ta` Mejju 1998)**.**

Jigifieri qorti ma tistax tinjora r-relazzjoni peritali sakemm ma tkunx konvinta li l-konkluzjoni ta` tali relazzjoni ma kienetx gusta u korretta. Din il-konvinzjoni pero` kellha tkun wahda motivata minn gudizzju ben informat, anke fejn mehtieg mil-lat tekniku. ("**<u>Cauchi vs</u> <u>Mercieca</u>" –** Qorti tal-Appell – 6 ta` Ottubru 1999 **; "<u>Saliba vs Farrugia</u>**" – Qorti tal-Appell – 28 ta` Jannar 2000 u "**<u>Calleja *noe* vs Mifsud</u>**" – Qorti tal-Appell – 19 ta` Novembru 2001).

Il-*giudizio dell`arte espress mill-perit tekniku ma jistax u ma ghandux, aktar u aktar fejn il-parti nteressata ma tkunx ipprevaliet ruhha mill-fakolta` lilha moghtija ta` talba ghan-nomina ta` periti addizzjonali, jigi skartat facilment, ammenokke` ma jkunx jidher sodisfacentement illi l-konkluzjonijiet peritali huma, fil-kumpless kollha tac-cirkostanzi, irragonevoli*" – ("**<u>Bugeja *et* vs Muscat et</u>" –** Qorti tal-Appell – 23 ta` Gunju 1967).

Fil-kaz tal-lum, jirrizulta bhala fatt li wara li kienet prezentata u mahlufa r-relazzjoni mill-perit tekniku, il-partijiet ma ghamlux talba ghall-hatra ta` periti addizzjonali. Kien biss l-Avukat tal-Istat li ghamel domandi in eskussjoni.

Wara li rat ir-relazzjoni, u wara li qieset dak li wiegeb il-perit tekniku waqt l-eskussjoni, il-qorti sejra taghmel taghha l-kostatazzjonijiet u l-konkluzjonijiet tieghu, u sejra tqishom bhala prova ta` fatt flimkien mal-provi l-ohra.

b) <u>L-Art 37 tal-Kostituzzjoni</u>

Safejn it-tieni talba tirreferi ghal allegata vjolazzjoni tal-Art 37 tal-Kostituzzjoni, kienet eccepita mill-Avukat tal-Istat l-inapplikabbilita` ta` dik id-disposizzjoni tal-Kostituzzjoni.

<u>Is-subartikolu (1) tal-Art 37 tal-Kostituzzjoni</u> jghid :-

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

(a) ghall-hlas ta` kumpens xieraq ;

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

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

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

i. <u>Gurisprudenza anqas ricenti</u>

Bosta kienu fl-ghadd id-drabi fejn il-qrati taghna qiesu jekk limitazzjoni fit-tgawdija ta` proprjeta` tistax tigi ekwiparata ma` tehid forzuz kif kontemplat fl-Art 37 tal-Kostituzzjoni.

Il-linja traccjata fid-decizjonijiet tal-Qorti Kostituzzjonali li huma anqas ricenti fiz-zmien (fosthom : **Josephine Bugeja v. Avukat Generali et** tas-7 ta` Dicembru 2009, **Angela sive Gina Balzan v. L-Onorevoli Prim Ministru et** tas-7 ta` Dicembru 2012 u **Mary Anne Busuttil v. Tabib John Cassar et** tal-31 ta` Ottubru 2014) kienet illi bl-applikazzjoni tal-emendi ghall-Kap 158 li saru bl-Att XXIII tal-1979 il-proprjeta` baqghet tas-sid u kwindi ma kienx hemm tehid forzuz li jaghti dritt ghal kumpens ghaliex dak li sehh kien kontroll fl-uzu tal-proprjeta` li mhuwiex tehid forzuz.

Fl-istess waqt kif inghad fis-sentenza li tat il-Qorti Kostituzzjonali fid-29 ta` Marzu 2019 fil-kawza fl-ismijiet **Rebecca Hyzler et vs Avukat Generali et**, *`illum il-gurisprudenza turi li l-qrati ma baqghux tal-istess hsieb`.*

ii. Gurisprudenza aktar ricenti

Il-gurisprudenza aktar ricenti jidher illi hadet xejra diversa.

Fid-decizjoni li nghatat fid-**29 ta` Novembru 2018** fil-kawza fl-ismijiet **Brian Psaila v. Avukat Generali et**, din il-qorti diversament sabet ksur tal-Art 37 tal-Kostituzzjoni, u cahdet eccezzjoni li kienet inghatat mill-Avukat Generali li bl-emendi ghall-Kap 158 li dahlu bl-Att XXIII tal-1979 ma kienx hemm tehid forzuz ta` proprjeta` izda kontroll tal-uzu fl-interess pubbliku.

Saru zewg appelli minn din id-decizjoni. Il-qorti sejra tillimita ruhha ghall-appell tal-Avukat tal-Istat li ntant ha post l-Avukat Generali bhala legittimu kontradittur f`kawzi ta` din ix-xorta. In partikolari qeghda tirreferi ghall-aggravju li kien jirrigwarda l-Art 37 tal-Kostituzzjoni.

Fis-sentenza li tat fis-**27 ta` Marzu 2020** il-Qorti Kostituzzjonali qalet hekk :-

11. Fl-ewwel aggravju tal-appell tieghu l-Avukat tal-Istat jghid illi, peress li kien hemm biss kontroll ta` uzu tal-proprjetà tal-attur u ma kien

hemm ebda "tehid forzuz ta` proprjetà", u s-sid ma giex "zvestit minn kull dritt li ghandu fuq dik il-proprjetà", il-kaz ma jintlaqatx bl-art. 37 tal-Kostituzzjoni.

12. Dan l-aggravju huwa manifestament hazin.

13. L-artikolu 37 tal-Kostituzzjoni ma jghidx biss li ma tista` tittiehed ebda proprjetà minghajr il-hlas ta` kumpens xieraq, izda wkoll illi "ebda interess fi jew dritt fuq proprjetà" ma jista` jittiehed minghajr dak il-kumpens. Fic-cirkostanzi tal-kaz tallum huwa car illi lill-attur, bis-sahha tal-ligi impunjata, ittehidlu l-jedd li jkollu l-pussess battall tal-fond, li certament huwa "interess" fil- proprjetà u dritt fuqha.

14. Dan l-ewwel aggravju tal-Avukat tal-Istat huwa ghalhekk michud.

Fuq l-istess linja kienu s-sentenzi li tat il-Qorti Kostituzzjonali fil-kawzi fl-ismijiet : <u>Estelle Azzopardi et v. Mikelina Said et</u> tal-14 ta` Dicembru 2018 ; <u>Gabriella Mangion et v. Avukat Generali et</u> tal-31 ta` Jannar 2019 ; <u>Rebecca Hyzler et v. Avukat Generali et (op. cit.)</u> ; <u>Alfred Testa pro et noe et v. Avukat Generali et</u> tal-31 ta` Mejju 2019 ; u <u>Josephine Azzopardi pro et noe et v. l-Onor. Prim Ministru et</u> tad-29 ta` Novembru 2019.

Il-qorti sejra tadotta l-gurisprudenza l-aktar ricenti.

Il-qorti qeghda <u>tichad</u> kull fejn kien eccepit li mhuwiex applikabbli l-Art 37 tal-Kostituzzjoni ghall-kaz odjern.

c) <u>L-Art 1 Prot 1 tal-Konvenzjoni</u>

Safejn it-tieni talba tirreferi ghal allegata vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni, l-eccezzjonijiet tal-Avukat tal-Istat huma diretti sabiex jikkontestaw il-pretensjoni tar-rikorrenti.

Id-disposizzjoni tipprovdi illi :-

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

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

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

Il-qorti taghmel referenza ghad-decizjoni moghtija mill-Grand Chamber tal-ECtHR fil-5 ta` Jannar 2000 fil-kaz **<u>Beyeler v. Italy</u>** fejn inghad hekk :-

"98. As the Court has stated on a number of occasions, Article 1 of Protocol No. 1 comprises three distinct rules: "the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest ... The three rules are not, however, `distinct` in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule" (see, among other authorities, the ***James and Others v. the United Kingdom*** *judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37, which reproduces in part the analysis given by the Court in its* ***Sporrong and Lönnroth v. Sweden*** *judgment of 23 September 1982, Series A no. 52, p. 24, § 61; see also the* ***Holy Monasteries v. Greece*** *judgment of 9 December 1994, Series A no. 301-A, p. 31, § 56, and* ***<u>Iatridis v. Greece</u>*** *[GC], no. <u>31107/96</u>, § 55, ECHR 1999-II)."*

L-Art 1 Prot 1 huwa gwidat minn tliet principji :-

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

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

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

Dak li ried jikseb il-legislatur bl-Att XXIII tal-1979 kien kontroll tal-uzu tal-proprjeta`.

Huwa pacifiku li l-Istat ghandu margini ta` apprezzament wesghin meta jigi biex jintroduci legislazzjoni li tkun intiza sabiex fl-interess pubbliku jkunu ndirizzati problemi fil-qasam tal-akkomodazzjoni ghall-fini residenzjali.

Dan premess, l-interferenza mill-Istat trid tkun (i) legali, (ii) motivata b`ghan legittimu fl-interess generali, u (iii) tohloq bilanc gust.

Ghandu jinzamm proporzjon ragjonevoli bejn il-mezzi u l-ghan persegwiti mill-Istat sabiex jikkontrolla l-uzu tal-proprjeta`. Ir-*raison d`etre* tal-proporzjonalita` huwa l-"*bilanc xieraq*" bejn l-esigenzi tal-interess generali u l-htiega tal-harsien tad-drittijiet fondamentali tal-persuna.

Il-qrati huma msejha sabiex jaghmlu analizi komprensiva tal-interessi tal-partijiet kollha sabiex ikun accertat li konsegwenza tal-indhil tal-Istat il-persuna ma titghabbiex b`piz eccessiv u sproporzjonat.

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

Fil-kaz ta` **<u>Spadea and Scalabino v. Italy</u>** deciz fit-28 ta` Settembru 1995 kien osservat :-

"The second paragraph reserves to States the right to enact such laws as they deem necessary to control the use of property in accordance with the general interest.

…

Such laws are especially common in the field of housing, which in our modern societies, is a central concern of social and economic policies.

…

In order to implement such policies, the legislature must have a wide margin of appreciation.

…

The Court will respect the legislature`s judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation.

…

an interference must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights.

…

There must be a reasonable relationship of proportionality between the means employed and the aim pursued."

Fil-kaz ta` **Amato Gauci v. Malta** li kien deciz fil-15 ta` Settembru 2009, l-ECtHR qalet :-

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

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

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

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

…

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

Il-qorti sabet vjolazzjoni ta` Art 1 Prot 1 tal-Konvenzjoni.

Fid-decizjoni taghha tat-22 ta` Novembru 2011 fil-kaz ta` **Saliba et v. Malta**, l-ECtHR irrimarkat :-

" … the rise in the standard of living in Malta over these decades and the diminished need to secure social housing compared to the post-war era……..it is clear that what might have been justified years ago, will not necessarily be justified today (see ***Amato Gauci****, cited above, 60)."*

(ara wkoll : **Zammit & Attard Cassar v. Malta** li kien deciz mill-ECtHR fit-30 ta` Lulju 2015 ; u **Cassar v. Malta** li kien deciz mill-ECtHR fit-30 ta` Jannar 2018).

Fid-decizjoni li tat l-ECtHR fil-11 ta` Dicembru 2018 fil-kaz ta` **Buttigieg and others v. Malta** inghad :-

"41. The Court notes that it has found in plurality of cases against Malta concerning the same subject matter that, despite the considerable discretion of the State in choosing the form and deciding on the extent of control over the use of property in such cases, having regard to the low rental value which could have or was received by the applicants, their state of uncertainty as to whether they would ever recover the property (despite more recent amendments), the lack of procedural safeguards in the application of the law and the rise in the standard of living in Malta over the past decades, a disproportionate and excessive burden was imposed on the

applicants who were made to bear most of the social and financial costs of supplying housing accommodation (see Amato Gauci, cited above, § 63; Anthony Aquilina v. Malta, no. 3851/12, § 67, 11 December 2014; and Cassar v. Malta, no. 50570/13, § 61, 30 January 2018). In those cases the Court found that the Maltese State had failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant`s right of property and that there had thus been a violation of Article 1 of Protocol No.1 to the Convention.

42. Having regard to the facts of the case and the parties` observations, the same considerations apply in the present case. There has accordingly been a violation of Article 1 of Protocol No.1 to the Convention."

ii) <u>Gurisprudenza tal-Qrati Maltin</u>

Fejn jidhol l-Art 1 Prot 1 tal-Konvenzjoni, bil-bosta matul is-snin kienu d-decizjonijiet tal-qrati taghna fejn kienet dikjarata vjolazzjoni. Taghmel referenza biss ghal xi whud fost hafna ohra :

<u>Dr. Cedric Mifsud et v. l-Avukat Generali et</u>
25 ta` Ottubru 2013 ;

<u>Angela sive` Gina Balzan v. L-Onorevoli Prim Ministru et</u>
7 ta` Dicembru 2012 ;

<u>AIC Joseph Barbara et v. L-Onor Prim Ministru et</u>
31 ta` Jannar 2014 ;

<u>Maria Ludgarda Borg et v. Rosario Mifsud et</u>
29 ta` April 2016 ;

<u>Concetta sive` Connie Cini v. Eleonora Galea et</u>
31 ta` Jannar 2014 ;

<u>Robert Galea v. Avukat Generali et</u>
7 ta` Frar 2017 ;

<u>Rose Borg v. Avukat Generali et</u>
11 ta` Lulju 2016 ;

id-diversi kawzi bl-*occhio*
Josephine Azzopardi et v. L-Onor Prim Ministru et
25 ta` April 2018 ;

Sergio Falzon et v. Alfred Farrugia et
30 ta` Jannar 2018.

Il-lista tad-decizjonijiet hija twila u facilment traccjabbli. Fl-assjem taghhom dawn id-decizjonijiet indirizzaw il-qofol tal-kwistjoni u kellhom piz sinjifikanti li wassal ghal bidla fil-legislazzjoni.

Fl-istess waqt tghid ukoll li l-bdil fil-legislazzjoni kien tardiv.

Min-naha tal-Istat matul is-snin kien hemm tkaxkir tas-saqajn evidenti li wassal ghal pronunzjamenti wiehed wara l-iehor mill-ECtHR kontra Malta.

Tishaq illi fil-qasam tal-harsien tal-jeddijiet fondamentali tal-persuna, l-espressjoni : *meglio tardi che mai* : ma tregix. Tista` tkun ta` konfort ghall-gejjieni ; certament pero` ma tghoddx ghall-imghoddi.

Fejn si tratta ta` ksur ta` jeddijiet fondamentali, l-Istat ghandu l-obbligu li jirrimedja, anke b`legislazzjoni, fil-pront u bla dewmien, ladarba din taghna hija socjeta` demokratika fondata fuq is-saltna tad-dritt u l-gustizzja.

iii) Risultanzi

Fil-mertu dak li se jinghad ighodd kemm ghall-Art 37 tal-Kostituzzjoni kif ukoll ghall-Art 1 Prot 1 tal-Konvenzjoni li t-tnejn jikkostitwixxu l-bazi tal-ilment tar-rikorrenti.

Fil-kaz tal-lum, jirrizulta li s-subcens temporanju beda jiddekorri b`effett mill-1982 ghal 21 sena u ghalaq fl-2003.

Waqt li kien ghaddej il-kuntratt, dahal fis-sehh l-Att XXXIII tal-1979 fejn *inter alia* dahal l-Art 12 fil-Kap 158.

Bl-applikazzjoni tas-subartikoli (2) u (3) tal-Art 12, meta cens temporanju ma jkunx jeccedi t-30 sena, fi tmiem il-kuntratt, l-okkupant ghandu l-ghazla li jikkonverti it-titolu tieghu *ope legis* ghal kera dment li l-okkupant ikun cittadin Malti, li l-fond ikun id-dar ta` abitazzjoni tieghu, u li jhallas kera li tasal sad-doppju li kien ihallas bhala cens bil-quantum tal-kera ikun determinat skont indici ta` inflazzjoni bil-modalita` stabbilita fil-ligi.

Fi tmiem is-subcens temporanju l-okkupanti kienu l-intimati Polidano. Jirrizulta li dawn ghazlu li jibqghu fil-post b`titolu ta` kera skont il-ligi.

Bl-Att XXIII tal-1979, l-ammont ta` kera li kellha tithallas ma thalliex ghall-kontrattazzjoni libera ta` bejn is-sid u l-inkwilin (gia` censwalist) [kif kien il-kaz meta nghatat il-koncessjoni] izda kien determinat mil-ligi stess. Meta nghatat il-koncessjoni enfitewtika in kwistjoni, il-partijiet kienu liberi illi jikkontrattaw il-pattijiet u kondizzjonijiet, inkluz ukoll l-ammont tal-canone u z-zmien tal-koncessjoni.

Din il-liberta` twarrbet mil-legislatur bl-Att XXIII tal-1979.

Indubbjament l-intervent legislattiv biex jirregola x`jigri meta jigi fi tmiemu cens temporanju gab mizura ta` kontroll li kienet mahsuba sabiex tkun evitata sitwazzjoni fejn min kien qed jokkupa b`cens temporanju fond residenzjali ma jispiccax minghajr saqaf fuq rasu jew ghaliex ma jkunx jiflah ihallas aktar jew ghaliex ma jkunx wasal fi ftehim mas-sid.

Bl-intervent legislattiv, is-sid tilef il-jedd li jikkontratta liberament il-kirja li kellha titwieled wara t-tmiem tac-cens temporanju. Tilef ukoll kontroll fuq kemm ghandu jircievi kera ghaliex l-ammont li kellu jithallas kien determinat mill-Istat b`formola stabbilita fil-ligi stess, marbuta mal-fattur taz-zmien u b`indici tal-inflazzjoni, kriterju dan tal-ahhar li l-prova taz-zmien uriet li ma kienx jirrifletti r-realta` tas-suq.

Is-sitwazzjoni ekonomika u socjali ta` Malta fiz-zmien li sar l-Att XXIII tal-1979 kienet tirrendi necessarju l-intervent tal-Istat sabiex jipprova johloq bilanc bejn interessi konfliggenti.

It-tkattir tal-gid mal-medda tas-snin wera pero` li dak l-intervent legislattiv, ghalkemm kellu skop tajjeb, ma kienx baqa` joffri bilanc adegwat. Anzi holoq sproporzjon u zvantagg konsiderevoli kontra s-sidien. Il-kera li s-sidien setghu jippercepixxu bl-effett tal-Art 12(2) tal-Kap 158, imqabbla mal-kera fis-suq hieles, oggettivament bdiet issir baxxa wisq, u sena wara l-ohra zdiedet id-disparita` kontra s-sidien.

Minkejja l-firxa ta` negattivita` li gabet maghha l-pandemija tal-COVID-19, illum is-sitwazzjoni ekonomika tal-pajjiz (ghalkemm certament mhijiex ward u zahar ghal kulhadd, specjalment ghal dawk li huma vulnerabbli jew zvantaggjati jew li jinsabu taht nett fl-istrati socjali tas-socjeta` Maltija) hija bil-wisq ahjar minn dik li kienet fl-1979, meta l-Istat hass il-htiega mpellenti li jghaddi l-emendi ghall-Kap 158.

Fil-kaz tal-lum, il-pern tal-ilment tar-rikorrenti huwa l-fatt illi l-applikazzjoni tal-Art 12 tal-Kap 158 ghas-sitwazzjoni taghhom tikkostitwixxi ksur tal-jeddijiet fondamentali taghhom, ghaliex jirrizulta sproporzjon qawwi kontra taghhom fil-kera li jistghu jippercepixxu li kieku t-tgawdija tal-propjeta` kellha tithalla tilhaq il-milja taghha.

M`ghandux ikun in kontestazzjoni il-jedd tal-Istat illi b`ligi jikkontrolla l-uzu tal-proprjeta` meta dan jirrizulta illi huwa fl-interess pubbliku. Fl-istess waqt, l-Istat ghandu l-obbligu li jassikura li bid-disposizzjonijiet tal-ligi, u allura bl-applikazzjoni taghhom, jinzamm bilanc u proporzjonalita`.

Tajjeb li jkun rikonoxxjut il-fatt li matul iz-zmien anke l-Istat intebah li dak li wasslu biex jintervjeni fl-1979 kien jehtieg ripensament motivat minn bidla lejn l-ahjar fil-qaghda ekonomika u socjali tal-pajjiz.

Il-qorti tqis li bl-emendi tal-2009 u tal-2010 ghall-Kap 16, il-kera kellha tizdied kull tlett snin (mhux kull 15-il sena kif kienet il-ligi bl-emendi tal-1979). Qabel id-dhul fis-sehh ta` dawk l-emendi, ir-rikorrenti kienu ilhom snin twal igarrbu lezjoni tal-jedd taghhom skont l-Art 1 Prot 1 tal-Konvenzjoni. Cio` nonostante xorta wahda dawk l-emendi ma sehhilhomx jilhqu dak il-bilanc rikjest mill-Art 1 tal-Prot 1 tal-Konvenzjoni, ghaliex ghalkemm kien hemm miljorament ghas-sid meta mqabbel mas-

sitwazzjoni precedenti, baqa` kostrett joqghod ghal quantum ta` zieda rigida u dettat mil-ligi li mponiet mhux biss kemm ghandu jkun l-awment izda anke kull meta.

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

Fis-sentenza tas-27 ta` Marzu 2015 fil-kawza "**Ian Peter Ellis et v. Avukat Generali et**, il-Qorti Kostituzzjonali stabbiliet illi :-

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

L-emendi l-ohra li kienu ntrodotti bl-Att XXVII tal-2018 u li dahlu fis-sehh fl-1 ta` Awissu 2018 tejbu sostanzjalment il-qaghda tas-sidien. Dawk l-emendi mhux se jincidu fuq l-esitu ta` din il-kawza ghaliex fil-kawza tal-lum mhijiex qeghda tkun disputata l-kostituzzjonalita` tal-Art 12B tal-Kap 158 li kien introdott bl-Att XXVII tal-2018.

Fil-kaz tal-lum, jirrizulta li r-rikorrenti garrbu sproporzjon li l-Art 1 Prot tal-Konvenzjoni ma jridx.

Qeghda tichad l-eccezzjonijiet tal-Avukat tal-Istat ghar-rigward tal-allegata vjolazzjoni lamentata mir-rikorrenti tal-Art 1 Prot 1 tal-Konvenzjoni.

Fl-ambitu tat-tieni talba, ir-rikorrenti talbu lill-qorti sabiex taghtihom rimedji xierqa.

Il-qorti tghid li r-rimedju xieraq ghandu jkun kostitwit **principalment** mill-ghoti ta` kumpens fl-ghamla ta` danni pekunjarji u danni morali.

Tghid "**principalment**" ghaliex ghalkemm mhijiex sejra tordna bhala rimedju l-izgumbrament tal-intimati Polidano mill-fond de quo. (ara s-sentenzi : **Angela sive Gina Balzan v. L-Onorevoli Prim Ministru et** : 07/12/2012 ; 25/10/2013 : **Dr. Cedric Mifsud et v. L-Avukat Generali et** ; 29/04/2016 : **Maria Ludgarda sive Mary Borg et vs Rosario Mifsud et** ; 11/07/2016 : **Rose Borg vs Avukat Generali et** ; 22/02/2012 : ECtHR : **Frendo Randon and Others v. Malta** ; 12/06/2012 : ECtHR : **Lindheim and Others v. Norway**) fl-istess waqt sejra tiddikjara li l-intimati Polidano ma jistghux jibqghu jistriehu fuq id-disposizzjonijiet l-Art 12 tal-Kap 158 sabiex jibqghu jokkupaw l-fond de quo bhala r-residenza ordinarja taghhom.

3. It-tielet talba

Ir-rikorrenti talbu dikjarazzjoni u decizjoni mill-qorti li l-Avukat Generali (illum l-Avukat tal-Istat) huwa responsabbli ghall-hlas ta` kumpens in vista tal-vjolazzjoni subita tal-jeddijiet fondamentali taghhom.

Lejn l-ahhar tar-risposta tieghu, l-Avukat tal-Istat eccepixxa illi jekk il-qorti tkun tal-fehma li kien hemm ksur tad-drittijiet fondamentali tar-rikorrent, allura semplici dikjarazzjoni li kien hemm ksur tkun sufficjenti minghajr il-htiega ta` rimedji ohra.

Fid-decizjoni li tat il-Qorti Kostituzzjonali fil-5 ta` Lulju 2011 fil-kawza fl-ismijiet **Victor Gatt et v. Avukat Generali et** inghad illi :-

> *"d-decizjoni li d-dikjarazzjoni ta` vjolazzjoni wahedha tkun bizzejjed hija l-eccezzjoni u ghandha tkun riservata ghal kazijiet fejn hemm rimedju jew konsegwenzi huma zghar. Fil-kazijiet l-ohra fejn il-lezjoni hija aktar serja l-Qorti ghandha taghti kumpens pekunjarju ghal dik il-vjolazzjoni."*

Il-qorti sejra tichad l-eccezzjoni ghax jidhrilha li, tenut tal-fatti u cirkostanzi ta` dan il-kaz, dikjarazzjoni ta` vjolazzjoni wahedha mhijiex bizzejjed sabiex tpatti ghall-piz sproporzjonat u eccessiv illi garrbu r-rikorrenti. Ghalhekk haqqhom li jinghataw kumpens u/jew danni.

L-Istat (rapprezentat mill-Avukat tal-Istat) huwa responsabbli ghall-promulgazzjoni ta` ligi. Ghalhekk jekk bl-applikazzjoni ta` ligi ssehh vjolazzjoni tal-jeddijiet fondamentali

tal-persuna, l-Avukat tal-Istat ghandu jaghmel tajjeb ghall-vjolazzjoni tal-jeddijiet fondamentali li din il-qorti accertat (*supra*) li r-rikorrenti garrbu. Billi accertat li r-rimedju favur ir-rikorrenti ghandu jinkludi l-ghoti ta` kumpens, il-qorti sejra __tilqa`__ t-tielet talba.

4. __Ir-raba` talba__

Ir-rikorrenti talbu l-likwidazzjoni ta` kumpens u danni.

i) __Gurisprudenza__

Huwa principju ben assodat illi l-kumpens li jista` jinghata fi procediment ta` natura kostituzzjonali mhuwiex ekwivalenti ghad-danni civili li jigu likwidati mill-qrati ordinarji (ara : QK : **__Philip Grech pro et noe v. Direttur tal-Akkomodazzjoni Socjali et__** deciza fis-17 ta` Dicembru 2010 ; **__Victor Gatt et v. Avukat Generali et__** deciza fil-5 ta` Lulju 2011 ; u **__Ian Peter Ellis et v. Avukat Generali et__** deciza fl-24 ta` Gunju 2016).

Fil-kawza fl-ismijiet **__Maria Stella sive Estelle Azzopardi et v. Avukat Generali et__** li kienet deciza fit-30 ta` Settembru 2016, il-Qorti Kostituzzjonali kompliet tippreciza illi r-"*rimedju li taghti din il-Qorti huwa kumpens ghall-ksur tad-dritt fondamentali u mhux danni civili ghal opportunita` mitlufa."*

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

Decizjoni li kkunsidrat fid-dettall din il-kwistjoni hija s-sentenza li tat il-Qorti Kostituzzjonali fil-kawza **__Raymond Cassar Torregiani et v. Avukat Generali et__** deciza fid-29 ta` April 2016.

Il-qorti qalet hekk :-

"Dwar il-quantum tal-kumpens dovut issir referenza ghas-sentenza ta` din il-Qorti* ***Igino Trapani Galea Feriol pro et noe et V Kummissarju tal-Artijiet et*** *deciza fil-31 ta` Ottubru 2014, fejn f` materja ta` komputazzjoni ta` kumpens ghal

lezzjoni ta` dritt fondamentali sancit fl-artikolu konvenzjonali fuq citat gie osservat:

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

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

Meta jinghata kumpens fi procediment ta` din ix-xorta, ghandu jinghata konsiderazzjoni l-ghan li jkun immotiva l-mizura u cioe` l-interess pubbliku (ara : QK : **Carmen Cassar vs Direttur ghall-Akkomodazzjoni Socjali et** : 12 ta` Lulju 2011).

Issir referenza ghas-sentenza tal-Qorti Kostituzzjonali tal-31 ta` Jannar 2014 fil-kawza : **<u>Concetta sive Connie Cini v. Eleonora Galea et</u>** : fejn inghad :-

"25. F`materja ta` kumpens il-gurisprudenza patria kif ukoll dik tal-Qorti Ewropeja identifikat is-segwenti principji :

"The Court would reiterate that compensation terms under the relevant legislation may be material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate balance on applicants. The taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference." [ECHR 31443/96 para.176 Bronoiswki v. Poland, decided 22 June 2004].

26. Fil-kawza Louis Apap Bologna v. Calcidon Ciantar et deciza 24 Frar 2012, din il-Qorti osservat hekk:

"F`kazijiet bhal dawn il-kumpens xieraq ghandu jiehu in konsiderazzjoni l-ghan legittimu li mmotiva l-mizura tar-rekwizizzjoni u li l-kumpens jista` jkun anqas mill-kumpens shih li altrimenti jkun dovut skond il-kriterji tas-suq. Il-Qorti Ewropea fil-kazijiet ta` Edwards v Malta u Ghigo v Malta 17 Lulju 2008] ddecidiet li :

"Para.76. As the Court has already stated on may occasions, in spheres such as housing of the population, States necessarily enjoy a wide margin of appreciation not only in regard to the existence of the problem of general concern warranting measures for control of individual property, but also to the choice of the measures and their implementation. The State control over levels of rent is one such measure and its application may often cause significant reductions in the amount of rent chargeable (….Mellacher and Others v Austria para.45]."

27. Inoltre, "In the absence of a formal expropriation that is to say a transfer of ownership, the Court considers that it must look behind the appearances to investigate the realities of the situation complained of!.. Since the Convention is intended to guarantee rights that are practical and effective it has to be ascertained whether that situation amounted to a de facto expropriation [Sporrong & Lonnroth v. Sweden 18/12/1994; ara ukoll kawza Perit Duminku Mintoff, supra]".

28. Fil-kaz in dizamina, l-ewwel Qorti waslet ghall-konkluzjoni li l-kumpens dovut ex lege lill-intimati bis-sahha tal-artikolu precitat huwa wiehed irizorju meta komparat mal-valur tal-fond fis-suq. L-Avukat Generali jhossu aggravat bil-fatt li fid-determinazzjoni tal-fattur tal-proporzjonalita` tal-mizura relattivament ghall-kumpens dovut, l-ewwel Qorti ma kellhiex timxi fuq l-istima tal-valur tal-fond fl-ammont ta` mija, hamsa u tletin elf Euro (€135,000) moghti ex parte mill-Perit inkarigat mill-intimati, izda se mai kellha timxi fuq l-istima ta` disghin elf Euro (€90,000) tal-Perit inkarigat mir-rikorrenti, stante li l-Konvenzjoni "ma tikkoncedi ebda dritt li xi hadd jircievi profitt, aktar u aktar fil-kuntest ta` proprjeta` li qed isservi ghall-finijiet ta` social housing."

29. Fir-rigward din il-Qorti tosserva li dan l-ilment tal- Avukat Generali huwa fondat. Inkwantu huwa konformi mal-principju, illum assodat kemm fil-gurisprudenza patrija kif ukoll f`dik tal-Qorti Ewropeja, li f`kaz ta` legislazzjoni li ghandha ghan socjali l-kumpens offrut jista` ma jkunx jekwivali ghall-valur tal-fond fis-suq.

30. Kif osservat il-Qorti Ewropeja fil-kaz Amato Gauci v. Malta, [Appl.47045/06, deciz 15 Dicembru 2009] :

"... [the Court] reiterating that legitimate objectives in the `public interest`, such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less that reimbursement of the full market value [see James and Others, cited above, para.54 and Jahn and Others v Germany [GC] nos.46720/99, 72203/01 and 72552/01, para.94..]

31. Illi jirrizulta pacifiku li fiz-zmien meta nghatat il-koncessjoni sub-enfitewtika, fil-11 ta` Jannar 1960 ic-cens annwu kien gie stabbilit fl-ammont ta` £35, illum wiehed u tmenin Euro, tlieta u hamsin centezmi (€81.53), li bl-applikazzjoni tal-Artikolu 12 jizdied ghal erba; mija, disgha u tmenin Euro u tmintax-il centezmi (€489.18)3. Inoltre, l-utilista, allura perpetwa tista` tifdi c-cens versu l-prezz ta` disat elef u tmien mitt Euro (€9,800) li minnu ghandu jitnaqqas il-capital gains tax ta` 12%.

32. Din il-Qorti tikkondividi l-hsieb tal-ewwel Qorti li l-ammont ta` cens dovut ex lege lill-intimati huwa baxx sal-punt li ma jistax jinghad li ghat-tfixkil sostanzjali fit-tgawdija tal-proprjeta` taghhom huma nghataw kumpens adegwat, kemm ghax fiz-zminijiet tal-lum il-quantum tac-cens annwu dovut ex lege

jitqies bhala wiehed baxx meta jigi relatat mal-valur tal-fond, kif ukoll tenut kont tal-konsiderazzjoni li lir-rikorrenti, okkupanti tal-fond b`titolu ta` uzufrutt biss, qed tinghatalha dritt gdid li tibqa` tokkupa l-fond b`titolu ta` enfitewsi perpetwa, bil-possibilita` tarripreza tal-pussess fiziku tal-fond da parti tas-sidien tkun wahda remota hafna. Huwa principalment dan il-fattur li, fil-fehema ta` din il-Qorti, jitfa` `a disproportionate and excessive burden` fuq is-siden.

33. Kif gja` osservat minn din il-Qorti fil-kawza Josephine Bugeja v. Avukat Generali, deciza 7 Dicembru 2009, ghad-determinazzjoni tal-fattur tal-proporzjonalita` ghandu jittiehed kont tal-effetti legali u prattici li l-applikazzjoni tal-artikolu ser iggib mieghu. Dan l-ezami ghandu jsir mhux in vacuo, izda skont il-fattispecje tal-kaz. "Huwa l-ezercizju ta` dak id-dritt fil-prattika u b`mod konkret, u mhux l-ezistenza tieghu fl-astratt, li jista` bhal fil-kaz in ezami, talvolta jammonta ghal-lezjoni ta` dritt fondamentali" [para.45]. Jigi ribadit li l-Qorti ghandha thares lejn l-effett prattiku tas-sitwazzjoni, peress li, kif sostnut mill-Qorti Ewropeja, il-konvenzjoni tiggarantixxi drittijiet li huma "practical and effective" biex jigi stabbilit jekk is-sitwazzjoni fil-fatt tammontax ghal esproprijazzjoni de facto."

Fis-sentenza ta` din il-qorti diversament presjeduta tas-7 ta` Frar 2017 fil-kawza : **<u>Robert Galea v. Avukat Generali et</u>**, inghad :-

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

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

Illi l-Qorti tibda biex tghid li l-kumpens misthoqq lill-persuna wara li jkun instab li din garrbet ksur ta` xi jedd fondamentali taghha ma huwiex l-istess bhal-likwidazzjoni u hlas ta` danni mgarrba. Minbarra dan, ir-rikorrent ma jistax jistrieh fuq l-ghoti ta` kumpens taht l-artikolu minnu msemmi tal-Konvenzjoni. Fl-

ewwel lok, il-Konvenzjoni taghmel mil-ligijiet ta` Malta safejn id-dispozizzjonijiet taghha kienu inkorporati fil-Kapitolu 319 tal-Ligijiet ta` Malta. L-imsemmi artikolu ma kienx hekk inkorporat. Fit-tieni lok, huwa maqbul li d-dispozizzjonijiet ta` dak l-artikolu jghoddu ghall-Qorti ta` Strasbourg u mhux ghall-qrati domestici tal-Pajjizi Membri tal-Kunsill tal-Ewropa (Ara Kost. 30.9.2016 fil-kawza fl-ismijiet Maria Stella Azzopardi Vella et vs Avukat Generali et);

Illi b`daqshekk ma jfissirx li t-talbiet tar-rikorrent dwar l-ghoti ta` rimedju mhumiex sejrin jintlaqghu. Jekk ma jistghux jintlaqghu talbiet ghal-likwidazzjoni ta` kumpens u danni bis-sahha tal-imsemmi artikolu 41 tal-Konvenzjoni, jista` u sejjer jinghata rimedju taht il-kriterji tal-ghoti ta` rimedju bhal dan minn din il-Qorti fis-setghat u kompetenza attwali taghha (Kost. 17.12.2010 fil-kawza fl-ismijiet Philip Grech pro et noe vs Direttur tal-Akkomodazzjoni Socjali et).

Ghalhekk, il-Qorti tasal ghall-fehma li t-tieni rimedju mitlub mir-rikorrenti fit-tielet, ir-raba` u l-hames talbiet tieghu ma jisthoqqlux jintlaqa`, imma sejjer jinghata kumpens taht it-tieni talba tieghu;

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

Illi dwar il-kumpens dovut lir-rikorrent, madankollu, tqum konsiderazzjoni ohra. Ghalkemm ir-rikorrent harrek ukoll lill-intimati Ganado, izda dan ma jfissirx li huma l-istess intimati Ganado li jridu jhallsu lir-rikorrent il-kumpens li sejjer jinghata jew li jaghmlu tajjeb ghal ghazla li kienet taghtihom il-ligi. Kumpens bhal dak ghandu jbatih biss l-Istat minhabba li l-ksur li qed igarrab ir-rikorrent huwa l-effett dirett tal-ligi li ddahhlet bl-Att XXIII tal-1979. L-intimati Ganado nqdew b`ligi li tathom jeddijiet godda li ma kellhomx fiz-zmien meta nghatat il-

koncessjoni enfitewtika, izda ma ghamlu xejn biex jiksbu dan il-jedd b`mod illegali. Fid-dawl tal-massima qui suo jure utitur neminem laedere videtur, l-Qorti ma tistax issib li l-intimati Ganado jridu jaghmlu tajjeb huma wkoll ghall-hlas tal-kumpens lir-rikorrent minhabba s-sejbien ta` ksur tal-jedd fondamentali tieghu. Din il-fehma tinbena wkoll fuq il-fatt li l-ilment tar-rikorrent jirrigwarda ligi li jaghmilha l-Istat u mhux ic-cittadin li, min-naha tieghu, ghandu jedd jinqeda biha fil-parametri taghha u safejn din ma titqiesx li qieghda tikser il-jedd fondamentali tas-sid;

Illi kif inhu mizmum u mghallem "fil-kaz ta` ligi leziva tad-drittijiet konvenzjonali jew kostituzzjonali, huwa l-Istat u mhux ic-cittadin li ghandu jirrispondi. Ghax huwa principalment l-obbligu tal-Istat, u mhux tal-inkwilin, li jassigura li d-drittijiet fondamentali tas-sid ma jinkisrux" (Kost. 24.2.2012 fil-kawza fl-ismijiet Louis Apap Bologna vs Kalcidon Ciantar et; u Kost. 6.2.2015 fil-kawza fl-ismijiet Sean Bradshaw et vs L-Avukat Generali et);

Illi meta wiehed iqis ic-cirkostanzi kollha li johorgu mill-provi mressqa u jhaddem dwarhom ir-regoli li dawn il-qrati minn zmien ghal zmien inqdew bihom f`kazijiet li jixxiebhu (Kost. 29.4.2016 fil-kawza fl-ismijiet Raymond Cassar Torregiani et vs Avukat Generali et), il-Qorti ssib li jkun xieraq li jithallas kumpens lir-rikorrent fis-somma ta` sebat elf euro (€ 7,000). Din is-somma qieghda tqis ukoll iz-zmien li r-rikorrent ha biex ressaq l-ilment tieghu quddiem il-Qorti (Ara Kost 25.5.2012 fil-kawza fl-ismijiet Josephine Mary Vella vs Direttur tal-Akkomodazzjoni Socjali et)."

Fis-sentenza ta` din il-qorti diversament ippreseduta moghtija fit-30 ta` Jannar 2018 fil-kawza fl-ismijiet **Sergio Falzon et v. Alfred Farrugia et** (u konfermata b`sentenza tal-Qorti Kostituzzjonali tal-14 ta` Dicembru 2018) inghad :-

Illi fil-kaz odjern il-Qorti taqbel li dikjarazzjoni ta` ksur mhijiex sodisfacenti in vista tal-fatt li skont ir-rapport peritali, l-esponenti ghamlu telf pekunjarju konsiderevoli u ser ikomplu jaghmlu telf bl-applikazzjoni tal-ligi sakemm il-fond jintradd lura. Ghaldaqstant taqbel mar-rikorrenti li dikjarazzjoni ta` ksur mhijiex idonea sabiex terga` issir reintegrazzjoni tal-proporzjonalita` u tpoggi lir-rikorrenti fl-istatus quo ante ;

…

Ghal dak li jirrigwarda kumpens bhala rimedju ghad-danni non-pekunjarji ghas-sejbien ta` lezjoni tad-dritt fondamentali tar-rikorrenti kawza tal-applikazzjoni f`dan il-kaz tal-Artikolu 12(2) tal-Kap. 158, ir-rikorrenti ghandhom jedd ghalih meta tqis li ilhom mis-sena 1985 (izjed minn tletin sena) ma jiehdu kumpens gust ghall-fond taghom, u dan minkejja l-liberalizzazzjoni tas-suq fis-sena 1995 u li l-iskop legittimu sfuma mat-trapass taz-zmien. Tali jedd ghandu jigi kkalkulat mid-data tat-terminazzjoni tal-koncessjoni subenfitewtika, cioe`, mis-sena 1985.

*Skont il-prospett tal-perit tekniku il-rendita` mill-valur lokatizju fuq is-suq kellu jammonta ghal €93,217 ghas-snin 1985 sa 2016. Il-kera attwalment imhallsa kienet tammonta ghall-€16,765.50 (Tabella 4.0) (17%) Madanakollu hu assodat li r-rimedju kostituzzjonali ma jfissirx necessarjament ir-rimbors tal-valur shih fuq is-suq lis-sid. (Ara ad ez. ECtHR Kaz **Ghigo vs. Malta** 17 ta` Lulju 2008, #18; Kaz **Edwards vs. Malta**, 17 ta` Lulju 2008; #21; u l-QK fil-kaz **Borg vs Mifsud** sucitata) Specjalment meta bhal fil-kaz odjern, il-proprjeta` ma ittiehditx mill-Istat imma ghandha eventwalment tigi liberata favur is-sid minhabba r-rimedju li ser taghti din il-Qorti apparti l-kumpens.*

*Il-Qorti Kostituzzjonali f`**Borg vs Mifsud** citat supra, wara li qieset li:*

"l-ghan principali tal-proceduri odjerni u ta` dak mitlub mir-rikorrenti, li huwa dak li jigi determinat jekk ir-rikorrenti sofrewx lezjoni tad-dritt fondamentali taghhom, u fil-kaz affermattiv, "… tiffissa kumpens xieraq ghal tali vjolazzjoni stante li r-rikorrenti baqghu dawn is-snin kollha [mill-1 ta` Dicembru 1998 sallum] minghajr il-pussess u t-tgawdija tal-proprjeta` taghhom" u taghti dawk ir-rimedji li l-Qorti jidhrilha xierqa inkluz li jiehdu lura l-pussess tal-fond proprjeta` taghhom…".

Ikkonsidrat li

"Din id-diskrepanza ta` 18% bejn il-kera fis-suq hieles u l-kera attwalment percepita mir-rikorrenti, timmilita favur ir-rikorrenti fil-komputazzjoni tal-kumpens ghax hija fattur relevanti hafna fil-komputazzjoni tal-estent tal-vjolazzjoni."

Izda dik il-Qorti kkonsidrat ukoll il-fattur li r-rikorrenti damu milli jipprevalu ruhhom mir-rimedju kostituzzjonali kif ukoll kkonsidrat ir-rimedju li kien ser jinghata b`dak il-gudizzju, li permezz tieghu l-intimati ma jistghux ikomplu aktar jistriehu fuq l-Att XXIII.1997 biex jibqghu jokkupaw il-fond de quo. Din il-

Qorti ma taqbilx li ghandu jkun hemm tnaqqis dwar id-dewmien. (Dwar id-dewmien vide contra s-sentenza tal-Qorti Ewropea fil-kaz fl-ismijiet "Apap Bologna vs Malta" deciza r fit-30 ta` Novembru 2016 fejn irrimarkat:-

"46. The Court also takes issue with the fact that in line with domestic case-law, such compensation awards are reduced on the grounds that the applicants have instituted constitutional redress proceedings several years after they started suffering the violation complained of. In this connection, the Court notes, first and foremost, that domestic law does not impose a time-limit for the institution of constitutional redress proceedings. The legislator leaves the choice of timing to the applicant. Moreover, in circumstances such as those of the present case, the violation complained of is a continuing one. The Court thus finds that such reasoning is questionable in the light of the circumstances of the case and the domestic legal framework, which appears to give great latitude to individuals seeking redress for human rights violations.")

Ghaldaqstant wara li qieset bir-reqqa l-provi u s-sottomissjonijiet kollha, din il-Qorti qed tillikwida l-kumpens fl-ammont ta` hmistax-il elf ewro (€15,000) tenut kont il-valur tal-proprjeta` bhala liberu u vakanti (€145,000) u li l-izbilanc bejn il-kera imhallsa u l-valur lokatizju qed ikompli jizdied kull ma jghaddi z-zmien anke bl-applikazzjoni tal-emendi tal-2010. Dan il-kumpens ghandu jithallas mill-Intimat Avukat Generali flimkien mal-imghaxijiet bir-rata ta` hamsa fil-mija (5%) sad data tal-pagament effettiv."

(ara wkoll : 2 ta` Marzu 2018 : QK : **Thomas Cauchi et v. Avukat Generali et**)

Fid-decizjoni **Cassar v. Malta** tat-30 ta` Jannar 2018 (App. 50570/13) l-ECtHR qalet hekk dwar kif kellu jkun applikat l-Art 41 tal-Konvenzjoni ghal dak il-kaz :-

"A. Damage

84. The applicants claimed 1,260,996 euros (EUR) in respect of pecuniary damage. That sum reflected (i) the rent due to them from 1998 to 2015 amounting to EUR 730,330 calculated on the basis of the valuation of an estate agent at EUR 3,500 per month, (EUR 42,000 annually) in 2015, projected backwards to the year 1998 based on two indices for property prices

published by the Central Bank of Malta – by means of example, such projections show the rents for the respective years as follows: EUR 6,857 annually in 1988, EUR 18,476 in 1998 and EUR 41,649 in 2008; (ii) EUR 502,006 in simple interest at 8% (capped so as not to exceed the rent of a particular year); and (iii) EUR 28,660 (supported by an architect`s report) in repairs needed to the property since the tenant had failed to take adequate care of the property. In this connection the applicants noted that as things stand, they will remain suffering the effects of the violation even after the Court judgment, for an unspecified amount of years to come. In this light they also considered that their claim of EUR 54,000 in respect of non-pecuniary damage already suffered, representing EUR 2,000 annually since 1988, should be upheld in full.

85. The Government submitted that if a violation were to be found a declaration to that effect would suffice. In any event, they considered that the valuations were exorbitant, speculative and not based on an architect`s report. They noted that the property had been purchased in 1988 at EUR 25,600 it had therefore hardly been imaginable that it could now have a rental value of EUR 42,000 annually. Indeed if it had to be divided over the years, their claim in rent amounted to around EUR 27,000 annually which would surely not reflect the rental value in the eighties and nineties. They further considered that since the applicants had accepted rent until 2008, their claim should only refer to the subsequent years. Moreover, the tenant had deposited rent for the period between 2009-15 amounting to EUR 2,796 which had to be deducted from the award of compensation. As to interest the Government noted that under domestic law, interest was due only on amount liquidated, which was not the case here. Moreover a rate of 8% was far beyond any commercial rate of interest currently available in the banking sector in respect of deposits. As to the structural works the Government considered this clam unproven and hypothetical. Lastly, the Government considered that an award under this head should not exceed EUR 10,000, which would be EUR 2,123.66 annually over six years, and an award for pecuniary damage should not exceed EUR 4,000.

86. The Court notes that the applicants are entitled to compensation in respect of the loss of control, use, and enjoyment of their property from around 2000 to date. The Court notes on the one hand that the rent suggested by the Government is not based on any valuation or other criteria, and appears to be a simple division of an aleatory sum they proposed. On the other hand, while the applicant`s valuation is

based on an estate agent, and was not accompanied by an architect`s report, the domestic court found that EUR 3,000 as opposed to the EUR 3,500 alleged by the applicants appeared reasonable. However, the Court also notes that the comparators used by the estate agent refer to renovated buildings with high quality finishing and furnishing. While no information has been submitted as to the quality of the interior of the applicants` property the Court observes that the applicants claim that their property needs repairs as it has not been well taken care of (see paragraph 84 above). Thus, the latter cannot be considered to be in the same condition and at the same rental value as the former. Therefore, the Court considers that the valuation submitted by the applicants is on the high side, but may nonetheless provide a relevant indication and workable basis.

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

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

89. The Court reiterates that an award in respect of pecuniary damage under Article 41 of the Convention is intended to put the applicant, as far as possible, in the position he or she would

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

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

91. The Court, thus, awards the applicants the sum of EUR 170,000 jointly.

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

Fuq l-istess linja kienet id-decizjoni li tat l-ECtHR fil-kaz ta` **Portanier v. Malta** fis-27 ta` Novembru 2019 (App. 55747/16) fejn inghad :-

"55. The Court notes that it has repeatedly found that the sums awarded in compensation by the Constitutional Court do not constitute adequate redress. The Court makes reference to its considerations in paragraphs 24 and 25 above. The Court considers that, just like an award for pecuniary damage under Article 41 of the Convention, an award for pecuniary damage made by a domestic court must be intended to put the applicant, as far as possible, in the position he would have enjoyed had the breach not occurred. It transpires from the information and cases brought before the Court that this is often not the case.

Such pecuniary awards are also often not accompanied by an adequate award of non-pecuniary damage and/or an order for the payment of the relevant costs (ibid. § 90 and Grech and Others, cited above, § 62). No domestic case-law dispelling such conclusions has been brought to the Court`s attention in the present case.

56. In the light of the above considerations relating to the relevant time, the Court concludes that although constitutional redress proceedings are an effective remedy in theory, they were not so in practice, in cases such as the present one. In consequence, they cannot be considered an effective remedy for the purposes of Article 13 in conjunction with Article 1 of Protocol No. 1 concerning arguable complaints in respect of the rent laws in place, which, though lawful and pursuing legitimate objectives, impose an excessive individual burden on applicants.

...

62. The Court must proceed to determine the compensation the applicant is entitled to in respect of the loss of control, use and enjoyment of the property which he has suffered for the period December 2008 to September 2017, when the violation came to an end.

63. The Court notes that the annual rental value of the property estimated on the basis of its sale value according to the court-appointed architect was EUR 5,600. Nevertheless the domestic court considered its value to be more likely EUR 3,000 to 4,000 (see paragraph 14 above). The latter appears to be in line with the Government`s architect`s valuation which also reflects similar figures. With that in mind, in assessing the pecuniary damage sustained by the applicants, the Court has, as far as appropriate, considered the estimates provided and had regard to the information available to it on rental values on the Maltese property market during the relevant period. It has also considered the legitimate purpose of the restriction suffered, bearing in mind that legitimate objectives in the "public interest", such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (see, inter alia, Ghigo v. Malta (just satisfaction), no. 31122/05, § 18 and 20, 17 July 2008). Furthermore, the rent already received by the applicant for the relevant period must be deducted.

64. The Court reiterates that an award for pecuniary damage under Article 41 of the Convention is intended to put the applicant, as far as possible, in the position he would have

enjoyed had the breach not occurred. It therefore considers that interest should be added to the above award in order to compensate for the loss of value of the award over time. As such, the interest rate should reflect national economic conditions, such as levels of inflation and rates of interest. The Court thus considers that a one-off payment of 5% interest should be added to the above amount (ibid., § 20).

65. The Court thus awards the applicant EUR 8,000.

Issir referenza wkoll ghall-gurisprudenza mill-aktar ricenti, senjatament id-decizjoni tal-ECtHR fil-kaz ta` **Marshall and Others v. Malta** tal-11 ta` Gunju 2020 fejn inghad :-

"94. The Court must proceed to determine the compensation the applicants are entitled to in respect of the loss of control, use and enjoyment of the property which they have suffered. However, the Court notes that the only valuation submitted by the court-appointed architect referred to 2014. The rental value of the premises was clearly not the same in the preceding decades. In consequence the Court is unable to identify in which year the disproportionality arose. For the same reasons the Court considers that it has no objective basis on which to determine the pecuniary damage for the years preceding 2014.

95. Thus, in assessing the pecuniary damage sustained by the applicants, the Court has, as far as appropriate, considered the estimates provided and had regard to the information available to it on rental values on the Maltese property market during the relevant period. It has also considered the legitimate purpose of the restriction suffered, bearing in mind that legitimate objectives in the "public interest", such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (see, inter alia, Ghigo v. Malta (just satisfaction), no. 31122/05, § 18 and 20, 17 July 2008). In the present case however, the Court keeps in mind that the property was not used for securing the social welfare of tenants or preventing homelessness (compare, Fleri Soler and Camilleri v. Malta (just satisfaction), no. 35349/05, § 18, 17 July 2008). Thus, the situation in the present case might be said to involve a degree of public interest which is significantly less marked than in other cases and which does not justify such a substantial reduction compared with the free market rental value (see, Zammit and Attard, cited above, § 75).

96. Furthermore, the sums already received by the applicants for the relevant period must be deducted.

97. The Court reiterates that an award for pecuniary damage under Article 41 of the Convention is intended to put the applicant, as far as possible, in the position he would have enjoyed had the breach not occurred. It therefore considers that interest should be added to the above award in order to compensate for loss of value of the award over time. As such, the interest rate should reflect national economic conditions, such as levels of inflation and rates of interest. The Court thus considers that a one-off payment of 5% interest should be added to the above amount.

98. The Court thus awards the applicants, jointly, EUR 500,000. As requested, the amount awarded is to be paid directly into the bank account designated by the applicants` representatives.

99. Bearing in mind the Constitutional Court`s award of EUR 25,000, which remains payable to the applicants, the Court need not award a further sum in non-pecuniary damage, it therefore rejects such claim."

ii) <u>Likwidazzjoni</u>

Il-proceduri odjerni min-natura taghhom huma diretti sabiex jindirizzaw lezjoni kostituzzjonali u/jew konvenzjonali.

Il-qorti sabet vjolazzjoni kemm tal-Art 37 tal-Kostituzzjoni kif ukoll tal-Art 1 Prot 1 tal-Konvenzjoni.

Ghalkemm id-diskrepanza bejn il-kera attwalment percepita (bl-applikazzjoni tal-Art 12 tal-Kap 158) u l-valur lokatizju li l-fond igib fis-suq hieles hija il-fattur determinanti sabiex ikun stabbilit jekk kienx vjolat il-principju tal-proporzjonalita`, fl-istess waqt hemm fatturi ohra li l-qorti ghandha tqis meta tigi ghal-likwidazzjoni tal-kumpens ghal-lezjoni subita.

Kien rilevat aktar kmieni li d-danni li jigu likwidati fi procediment kostituzzjonali u/jew konvenzjonali mhumiex danni civili li jigu likwidati f`kawzi kondotti fi procedimenti ordinarji ghaliex huma danni li jigu likwidati minhabba vjolazzjoni accertata tal-jeddijiet fondamentali tal-persuna. Propju ghalhekk meta fi procediment tax-xorta bhal dak tal-lum

il-qorti tigi biex taghmel il-likwidazzjoni ghandha tqis fatturi li ghandhom rilevanza u li jincidu fuq il-komputazzjoni tal-quantum tal-kumpens.

Dwar quantum ta` kumpens, kemm ghar-rigward tad-danni pekunjarji, kif ukoll ghar-rigward tad-danni morali, il-qorti tosserva li ma hemmx uniformita` ghaliex il-qrati taghna kienu kawti sabiex iqisu kull kaz fuq il-fattispeci partikolari tieghu.

a) Danni pekunjarji

- **Osservazzjoni generali**

Fejn si tratta ta` danni pekunjarji din il-qorti hija tal-fehma illi, tenut kont tal-likwidazzjonijiet li qeghdin isiru mill-ECtHR f`kazi fejn tirrizulta vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni li fihom Malta tkun l-intimata, fl-ahjar interess tal-gustizzja, il-qrati taghna ghandhom ifasslu linji gwida ghall-fini ta` likwidazzjoni, bla ma jiddipartixxu mill-principju li kull kaz ghandu jkun gudikat fuq il-fatti u cirkostanzi partikolari tieghu.

Il-qorti sejra tghid fil-fehma taghha x`ghandhom ikunu l-linji gwida u kif ghandhom jigu applikati ghall-kaz prezenti.

- **Il-massimu**

Il-kostatazzjonijiet, l-osservazzjonijiet u l-konkluzjonijiet tal-perit tekniku li kien mahtur fil-kawza tal-lum jikkostitwixxu **prova ta` fatt**.

Fir-relazzjoni peritali hemm tabella (a fol 71) li turi li fejn jirrigwarda z-zmien ta` bejn **il-25 ta` Novembru 2003 u l-21 ta` Dicembru 2018** il-valur lokatizju fis-suq komplessiv tal-fond 12 gia 93, "Paeonia", Triq il-Qalb ta` Gesu`, Paola, jasal ghal total ta` **€64,906.**

Il-figura ta` €64,906 tikkostitwixxi l-massimu tad-danni pekunjarji, liema ammont ghandu pero` jkun aggjustat skont il-linji gwida li sejra taghti.

- **<u>Linji gwida</u>**

i. <u>Ghandha titnaqqas il-kera li kienet mhallsa u accettata fiz-zmien in kwistjoni</u>

Jirrizulta ppruvat illi wara li ghalaq il-kuntratt tas-subcens temporanju fil-25 ta` Novembru 2003, l-intimati Polidano baqghu jokkupaw il-post b`titolu ta` kera.

Il-qorti tghid illi l-kera kollha li hallsu l-inkwilini (ex-censwalisti) fil-perijodu in kwistjoni ghandha tonqos mill-figura ta` <u>€64,906</u>.

Jirrizulta li fiz-zmien meta kien ghadu fis-sehh il-kuntratt ta` subcens temporanju kien jithallas canone ta` Lm 100 fis-sena [ekwivalenti ghal €233] ghall-perjodu kollu ta` 21 sena.

Jidher illi meta t-titolu qaleb ghal kera, kien hemm l-aggustament fil-hlas li kellu jsir abbazi tal-Art 12 tal-Kap 158.

Dan qed jinghad ghaliex min-naha tar-rikorrenti saret il-prova li fl-2003 il-kera gholiet ghal Lm 149.79 fis-sena [ekwivalenti ghal € 348.92].

Imbaghad fl-2013 kien hemm awment ghal Lm 190.19 fis-sena [ekwivalenti ghal €443].

Fl-2019 il-partijiet ghamlu kuntratt (bi skrittura privata) fejn kien maqbul li l-intimati Polidano kellhom jibqghu fil-post b`titolu ta` kera u li kellhom ihallsu lis-sidien kera ta` €200 fix-xahar.

Ghalhekk jirrizulta li ghaz-zmien ta` bejn l-2003 u l-2012 thallset kera fl-ammont komplessiv ta` €3489.20 [i.e. €348.92 x 10] waqt li ghaz-zmien ta` bejn l-2013 u l-2018 thallset kera fl-ammont globali ta` €2658 [i.e. €443 x 6] : b`kollox - €6147.20 jew **<u>€6147</u>** ghad-dritt.

Abbazi ta` dawn l-accertamenti, il-figura massima ta` €64,906 ghandha tinzel ghal <u>€58,759.</u>

ii. L-interess generali

Il-qorti m`ghandhiex dubju mis-siwi u mil-legittimita` tal-intervent legislattiv tenut kont tac-cirkostanzi taz-zmien li sar.

Dan il-fattur ghandu jwassal ghal tnaqqis ta` 35% fil-figura ridotta ta` €58,759.

B`hekk il-figura tinzel ghal €38,193.35 li qeghda tigi arrotondata ghal €38,193.

Kienet adottat rata ta` 35% sabiex tpatti ghas-snin l-ohra li ha l-Istat Malti sabiex jipproponi bidliet fil-ligijiet sabiex isewwi l-isproporzjon li garrbu s-sidien. Ir-rata kienet tkun diversa li kieku l-Istat Malti gharaf jintervjeni fil-pront qabel ma beda jsib ruhu rinfaccjat b`decizjonijiet sfavorevoli moghtija mill-qrati Maltin u mill-ECtHR.

iii. Il-fond

Il-qorti rat ir-relazzjoni.

Qieset b`reqqa dak li wiegeb il-perit tekniku ghad-domandi in eskussjoni.

Rat ukoll ir-ritratti li ttiehdu u li kienu prezentati mill-perit tekniku.

Il-qorti ma tarax li ghandu jkun hemm tnaqqis fid-danni pekunjarji fejn si tratta tal-fond.

iv. Passivita`

Kemm ir-rikorrenti kif ukoll l-antekawza taghhom accettaw il-hlas tal-kera.

Qabel kienet istitwita din il-kawza ma jirrizultax li qatt kienu istitwiti proceduri gudizzjarji ohra dwar il-fond kontra l-intimati Polidano.

Ir-rikorrenti sahansitra ddikjaraw li in vista tal-ftehim li ntlahaq mal-intimati fl-2019 dwar l-awment fil-quantum tal-kera, ma kellhomx ghalfejn jibdew proceduri quddiem il-Bord li Jirregola l-Kera.

Meta tqis is-snin twal li ghaddew bejn meta ghalaq ic-cens temporanju u kemm damu passivi r-rikorrenti sakemm marru ghall-kawza odjerna, il-qorti hija tal-fehma li r-rikorrenti m`ghandhomx jiehdu vantagg mill-passivita` taghhom.

Ghalhekk sejra taghmel tnaqqis ulterjuri ta` **<u>35%</u>.**

B`hekk id-danni pekunjarji finali se jinzlu minn €38,193 ghal €24,825.45 u allura **<u>€24,835 ghad-dritt</u>**.

b) <u>Danni mhux pekunjarji</u>

Indipendentement mid-danni pekunjarji li jikkostitwixxu telf effettiv ghar-ragunijiet fuq premessi, il-qorti tghid li r-rikorrenti haqqhom jircievu wkoll il-hlas ta` danni morali fl-ammont ta` **<u>€5,000</u>** ghaliex ghaz-zmien in kwistjoni, sprovvisti minn rimedju ordinarju effettiv kif jindirizzaw il-lanjanzi taghhom, kienu kostretti jirrikorru ghal procediment ta` din ix-xorta ghaliex l-Istat Malti qaghad lura ghal ghexieren ta` snin milli jsib tarf b`legislazzjoni adegwata u effettiva tal-izbilanc u tal-isproporzjon li kienu qeghdin igarrbu sidien ta` proprjetajiet, inkluz ir-rikorrenti. Il-vjolazzjoni li garrbu r-rikorrenti ma kenitx dovuta ghall-fatt li sar l-Att XXIII tal-1979 fiz-zmien meta kien promulgat, izda bil-fatt li l-Istat li diga` kien qieghed jikkontrolla l-uzu tal-proprjeta` bl-Att XXIII tal-1979 halla l-qaghda legislattiva stagnata ghal bosta snin, ghad illi l-hajja socio-ekonomika tal-pajjiz kienet avvanzat b`mod u manjiera li l-applikazzjoni tad-disposizzjonijiet li dahlu fil-Kap 158 bl-Att XXIII tal-1979 kienu qeghdin materjalment joholqu zbilanc u sproporzjon kontra r-rikorrenti.

c) <u>Riassunt</u>

Il-qorti qeghda tillikwida l-kumpens totali dovut lir-rikorrenti fl-ammont ta` <u>€29,825</u> in kwantu ghal €24,825 bhala danni pekunjarji u in kwantu ghal €5,000 bhala danni morali.

5. <u>Il-hames talba</u>

Is-somma likwidata ta` <u>€29,825</u> ghandha tithallas <u>biss</u> mill-intimat Avukat tal-Istat.

6. <u>Spejjez</u>

L-ispejjez gudizzjarji ghandhom jithallsu fl-intier taghhom ukoll mill-Avukat tal-Istat.

Il-qorti tghid li l-intimati Polidano m`ghandhomx ihallsu spejjez gudizzjarji, billi rrizulta li qaghdu mal-ligijiet vigenti.

<u>Decide</u>

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

Tastjeni milli tiehu konjizzjoni ulterjuri tal-eccezzjoni preliminari tal-intimat Avukat tal-Istat stante li r-rikorrenti ghamlu l-prova tat-titolu taghhom ghall-fond 12, gia` 93, "Paeonia", Triq il-Qalb ta` Gesu`, Paola.

Tichad l-eccezzjonijiet l-ohra tal-intimat Avukat tal-Istat.

Tipprovdi dwar l-ewwel (1) talba billi tiddikjara u tiddeciedi li fil-konfront tar-rikorrenti l-operazzjonijiet tal-Artikolu 12, partikolarment l-Artikolu 12(2), tal-Kap. 158 tal-Ligijiet ta` Malta, kif emendat bl-Att XXIII tal-1979, u bl-operazzjonijiet tal-ligijiet vigenti, qeghdin jaghtu dritt ta` rilokazzjoni lill-intimati konjugi Polidano li jaghmilha difficli u haga x`aktarx incerta ghar-rikorrenti li jiehdu lura l-pussess tal-fond proprjeta` taghhom fuq riferit.

Tilqa` t-tieni (2) u t-tielet (3) talbiet.

Riferibbilment ghar-raba` (4) talba, tillikwida favur ir-rikorrenti kumpens komplessiv fl-ammont ta` disgha u ghoxrin elf tmien mija u hamsa u ghoxrin ewro (€29,825) in kwantu ghal erbgha u ghoxrin elf tmien mija u hamsa u ghoxrin ewro (€24,825) in linea ta` danni pekunjarji u in kwantu ghal hamest elef ewro (€5,000) in linea ta` danni morali ghall-vjolazzjoni li garrbu tad-drittijiet fondamentali taghhom skont kif deciz dwar it-tieni (2) u t-tielet (3) talbiet.

Riferibbilment ghall-hames (5) talba, tordna lill-intimat Avukat tal-Istat sabiex ihallas lir-rikorrenti s-somma hekk likwidata, bl-imghax legali b`effett mil-lum.

Tordna lill-intimat Avukat tal-Istat sabiex ihallas l-ispejjez kollha ta` din il-kawza.

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

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur