QORTI CIVILI PRIM`AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON

Illum il-Hamis 28 ta` Jannar 2021

Kawza Nru. 3
Rikors Nru. 202/2019 JZM

(1) Joseph u Johanna konjugi Tabone

(2) Joseph Tabone

(3) Emanuel Tabone f`ismu propju u f`isem hutu l-imsefrin Louis Tabone u Carmela Borg

(4) Maria Tabone

(5) Margaret Tabone

(6) Frank Tabone

kontra

(1) L-Avukat Generali *u* b`digriet tal-24 ta` Frar 2020 l-isem "Avukat Generali" inbidel u gie jaqra "Avukat tal-Istat"

(2) Michaelino Cordina (KI 0066240G) u Josephine Cordina (KI 0077850G) ghal kull interess li jista` jkollhom

Il-Qorti :

I. <u>Preliminari</u>

Rat ir-rikors li kien prezentat fis-<u>16 ta` Ottubru 2019</u> li jaqra :–

1. Illi permezz ta` kuntratt ta` komprovendita tat-22 ta` Ottubru 1969 fl-atti tan-Nutar Dottor Antonio Galea, Joseph Tabone [K.I. 9643G] akkwista nofs indiviz tal-fond bin-numru ufficjali 23, Triq Ghar Gerduf, gja Triq Wara Sant Wistin, Fontana gja Rabat, Ghawdex (kuntratt hawn anness u mmarkat "Dok. C").

2. Illi l-istess Joseph Tabone akkwista sehem ulterjuri ta` 1/14 mill-wirt u successjoni ta` ommu Maria Tabone li mietet fit-18 ta` Mejju 2003 skont it-testment taghha tal-14 ta` Mejju 1969 fl-atti tan-Nutar Dottor Antonio Galea (hawn anness u mmarkat "Dok. D").

3. Illi r-rikorrenti Emanuel, Louis, Maria, Margaret, Frank ahwa Tabone u ohthom Carmela Borg akkwistaw kull wiehed is-sehem ta` 1/14 permezz tal-istess wirt u successjoni fuq indikati.

4. Illi sussegwentament r-rikorrenti Joseph u Johanna konjugi Tabone akkwistaw l-istess fond permezz ta` kuntratt ta` komprovendita tas-7 ta` Novembru 2006 fl-atti tan-Nutar Mariosa Grech fejn huma xtraw nofs indiviz tal-fond de quo minghand ir-rikorrenti l-ohra u akkwistaw in-nofs indiviz rimanenti minghand Joseph Tabone permezz ta` att ta` donazzjoni tas-26 ta` Settembru 2008 fl-atti tan-Nutar Mariosa Grech (kuntratti hawn annessi u mmarkati "Dok. E" u "Dok. F").

5. Illi permezz ta` kuntratt fl-atti tan-Nutar John Busuttil tat-2 ta` Jannar 1967 ir-rikorrent Joseph Tabone [K.I. 9643G] flimkien ma` ommu Maria Tabone kkoncedew b`titolu ta` koncessjoni enfitewtika temporanja lill-intimati Michaelino Cordina l-fond bin-numru tmienja u ghoxrin (28), Triq Ghar Gherduf gja Triq Wara Sant Wistin, Rabat Ghawdex u dana versu c-cens annwu u temporanju ta` ghoxrin Lira Maltin (Lm 20) ekwivalenti ghal sitta u erbghin ewro u disgha u hamsin cenezmu (€46.59) fis-sena li jithallsu kull sena b`lura.

6. Illi din il-koncessjoni emfitewtika temporanja skadiet fit-2 ta` Jannar 1984 u peress li l-intimati konjugi Cordina kienu cittadini Maltin u residenti fil-fond fuq imsemmi, proprjeta` tar-rikorrenti, a tenur tal-artikolu 12(2)(b)(i) tal-Kap 158 tal-Ligijiet ta` Malta, ic-cens temporanju gie kkonvertit f`kera.

7. Illi ai termini tal-Att XXII tal-1979 l-intimati konjugi Cordina ppretendew li huma jistghu jibqghu jghixu fil-fond bhala residenza ordinarja taghhom billi jhallsu kera doppja.

8. Illi fit-2 ta` Jannar 1999, il-kera tal-fond imsemmi zdiedet ai termini tal-Kap 158 tal-Ligijiet ta` Malta u rega` zdied ai termini tal-Att X tal 2009 u kull tliet snin sussegwenti skont ir-rata ta` inflazzjoni u kellu jerga` jizdied ai termini tal-Att XXVII tal-2018.

9. Illi dan il-fond ma kienx fond dekontrollat.

10. Illi r-rikorrenti u l-antekawza taghhom ippretendew illi fit-terminazzjoni tal-koncessjoni emfitewtika temporanja, jergghu jiehdu lura hwejjighom minghajr okkupazzjoni.

11. IIli bid-dhul fis-sehh tal-Att XXIII ta` 1979, is-sitwazzjoni tal-atturi jew l-antekawza taghhom tbiddlet radikalment u l-intimati gew moghtija d-dritt li jibqghu jghixu fil-fond basta b`kera kif stabbilita, liema kera ma tirriflettix is-suq u wisq anqas tohloq bilanc bejn id-drittijiet tas-sid u tal-inkwilini.

12. Illi ghalhekk ir-rikorrenti jew l-antekawza taghhom gew spossessati mid-dritt ta` uzu tal-proprjeta` taghhom, wara li skada t-terminu lokatizzju u gew soggetti ghal relazzjoni forzata ta` sid u inkwilin ghal perjodu indefinit.

13. Illi l-emendi naqsu milli jipprovdu ghal salvagwardji procedurali xierqa immirati sabiex jiksbu bilanc bejn l-interessi tas-sid u tal-inkwilini.

14. Illi r-rikorrenti qieghdin jigu mcahhda mit-tgawdlja ta` hwejjighom u/jew minn kera adegwata in konsiderando tal-kirjiet kurrenti.

15. Illi l-kundizzjonijiet impost mil-ligi huma sproporzjonati ghall-ghanijiet tal-istess ligi.

16. Illi fi kwalunkwe kas m`hemmx proporzjon bejn l-iskop li trid tilhaq il-Ligi li huwa dak li n-nies ma jispiccawx bla djar ghal l-effett tal-mizura tal-Ligi li hija dik li l-esponenti qieghdin effettivament jigu mcahhda mill-possediment taghhom.

Ghaldaqstant l-esponenti umilment jitolbu lil din l-Onorabbli Qorti sabiex :

1. Tiddikjara u tiddeciedi illi l-ligijiet vigenti senjatament l-artikolu 12, 12A u 12B tal-Kap 158 tal-Ligijiet ta` Malta kif emendati bl-Att XXIII tal-1979, bl-Att X ta` 2009 u bl-Att XXVII tal-2018 qeghdin jissalvagwardjaw u jaghtu dritt ta` rilokazzjoni l-fond 28, Triq Ghar Gerduf, Fontana, Ghawdex u jirrenduha impossibli lir-rikorrenti Joseph u Joanna konjugi Tabone li jirriprendu l-pussess tal-proprjeta` taghhom.

2. Tiddikjara u tiddeciedi illi gew u qed jigu vjolati d-drittijiet tar-rikorrenti ghat-tgawdija tal-proprjeta` taghhom bi vjolazzjoni tal-artikolu 37 tal-Kostituzzjoni ta` Malta u l-Ewwel Artikolu ta-Ewwel Protokoll tal-Konvenzjoni Ewropea u konsegwentament taghtihom ir-rimedju li jidhrilha xierqa.

3. Tiddikjara u tiddeciedi illi l-intimati jew min minnhom huma responsabbli ghal kumpens u danni sofferti kemm pekunjarji kif ukoll non pekunjarji lir-rikorrenti.

4. Tillikwida l-istess kumpens u danni kif sofferti mir-rikorrenti ai termini tal-Artikolu 41 tal-Konvenzjoni Ewropea.

5. Tikkundanna lill-intimati jew minn minnhom ihallsu l-istess kumpens u danni likwidati ai termini tal-Artikolu 41 tal-Konvenzjoni Ewropea.

Bl-ispejjez.

Rat id-dokumenti li kienu prezentati mar-rikors.

Rat ir-risposta li pprezenta l-Avukat Generali (illum l-Avukat tal-Istat) fit-28 ta` Ottubru 2019 u li taqra hekk :-

1. Illi in linea preliminari, ir-rikorrenti ghandhom igibu prova cara tat-titolu taghhom sabiex juru li huma l-proprjetarji tal-fond in kwistjoni kif qed jallegaw fir-rikors promotur.

2. Illi in linea preliminari wkoll, u minghajr pregudizzju ghall-paragrafu precedenti, ir-rikorrenti ghandhom ukoll jindikaw id-data preciza ta` meta saru sidien tal-fond ghaliex l-ilment kostituzzjonali u konvenzjonali taghhom jista` jigi kkunsidrat mid-data ta` meta r-rikorrenti saru s-sidien tal-fond mertu ta` dan il-kaz u mhux qabel.

3. Illi fil-mertu, it-talbiet kollha tar-rikorrenti ghandhom jigu michuda in toto peress li huma nfondati fil-fatt u fid-dritt u dan ghar-ragunijiet segwenti li qed jigu hawn elenkati minghajr pregudizzju ghal xulxin :

4. Peress li r-rikorrenti qed jinvokaw il-protezzjoni tal-Artikolu 37 tal-Kostituzzjoni, l-esponent qed jeccepixxi l-improponibilità tal-Artikolu 37 tal-Kostituzzjoni u dan peress li dan l-artikolu japplika biss f`kaz ta` tehid forzuz tal-proprjetà. Sabiex wiehed jista` jitkellem dwar tehid forzuz jew obbligatorju, persuna trid tigi zvestita jew spussessata minn kull dritt li ghandha fuq dik il-proprjetà u mhux tircievi l-kera, kif mizjuda permezz tal-Att X tal-2009 u tal-Att XXVII tal-2018. Huwa evidenti li fil-kaz prezenti, tali zvestiment ma sarx u r-rikorrenti ma tilfux ghal kollox il-jeddijiet taghhom fuq il-fond in kwistjoni u ghalhekk dan il-kaz ma jammontax ghal deprivazzjoni totali tal-proprjetà. L-Istat ha mizura li tinkwadra ruhha taht kontroll ta` uzu fejn irregolarizza sitwazzjoni ta` natura socjali fl-ambitu tal-gid komuni b`dana però li jibqghu mpregudikati d-drittijet tas-sidien. Fid-dawl ta` dan kollu, l-ilment tar-rikorrenti ma jinkwadrax ruhu fil-parametri tal-artikolu 37 tal-Kostituzzjoni u ghandu jigi michud.

5. Illi minghajr pregudizzju ghall-paragrafu precedenti, dato ma non concesso li l-Artikolu 37 japplika ghal dan il-kaz, xorta wahda ma hemm ebda ksur tal-Artikolu 37 tal-Kostituzzjoni u tal-Ewwel Artikolu tal-Ewwel Protokol tal-Konvenzjoni Ewropea stante li l-fatti tal-kaz prezenti ma jikkostitwixxux tehid forzuz jew obbligatorju tal-proprjetà izda jikkostitwixxu biss kontroll ta` uzu ta` proprjetà fil-parametri tal-Kostituzzjoni u tal-Konvenzjoni Ewropea.

6. Illi safejn l-ilment tar-rikorrenti huwa msejjes fuq l-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea, l-esponenti jirrileva li skont il-proviso tal-istess artikolu, l-Istat ghandu kull jedd li jghaddi dawk il-ligijiet li jidhrulu xierqa biex jikkontrolla l-uzu tal-proprjetà skont l-interess generali. Anki skont il-gurisprudenza kostanti tal-Qorti ta` Strasburgu, l-Istat igawdi diskrezzjoni wiesgha sabiex jidentifika x`inhu mehtieg fl-interess generali u x`mizuri ghandhom jittiehdu sabiex jigu ndirizzati dawk il-htigijiet socjali.

7. Illi tali diskrezzjoni tal-legislatur m`ghandhiex tinbidel sakemm din ma tkunx manifestament minghajr bazi ragonevoli – li zgur ma hux il-kaz ghaliex hemm bazi ragjonevoli li tiggustifika l-promulgazzjoni tal-legislazzjoni li tinsab taht skrutinju fil-kawza odjerna. Qabel ma dahal fis-sehh l-Att XXIII tal-1979, wara l-iskadenza ta` koncessjoni enfitewtika temporanja, l-intimati kienu jigu zgumbrati mill-fond in kwistjoni.

8. Illi kienet dik ir-raguni wara l-promulgazzjoni tal-Att XXIII tal-1979, li jinkorpora emendi ntizi sabiex jipprotegu persuni milli jigu mkeccija mid-dar ta` abitazzjoni taghhom f`gheluq it-terminu koncess lilhom fil-kuntratt tal-enfitewsi. B`hekk dan l-Att zgur ma jistax jigi kklassifikat bhala wiehed mhux legittimu jew mhux fl-interess generali u l-esponent jara li dan l-Att m`ghandux jitqies li jmur kontra d-drittijiet fundamentali tal-bniedem.

9. Illi f`cirkostanzi bhal dawn fejn jezisti interess generali legittimu ma tistax tpoggi fl-istess keffa l-valur tal-proprjetà fis-suq hieles ma` dak il-valur li wiehed ghandu jhallas fil-kuntest ta` social housing. Huwa risaput li l-Qorti Ewropea stess fil-gurisprudenza taghha fosthom fil-kaz ta` "Amato Gauci vs Malta" 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."

10. Illi ghalhekk anke jekk fil-kaz odjern hemm tnaqqis fil-kera dovuta lir-rikorrenti meta mqabbla mal-valur lokatizju fis-suq, dan it-tnaqqis huwa kontro-bilancjat bil-margini wiesgha tal-Istat li jillegisla fil-kuntest ta` mizuri socjali fosthom fil-qasam tad-djar.

11. Ma hemm l-ebda dubju li kieku kellu jigi applikat il-prezz tal-kirjiet fis-suq ugwalment u fuq l-istess binarju ghall-binjiet kollha, kemm dawk fl-ambitu tal-qafas socjali u anke fl-ambitu ta` dawk li mhumiex, allura r-rizultat ikun li tinholoq krizi li tghabbi lil hafna familji b`pizijiet li ma jifilhux ghalihom.

12. Illi jekk ir-rikorrenti qed jilmentaw li qed jigu ppregudikati minhabba l-fatt li l-ammont tal-kera ma jirriflettix il-valur reali tal-fond in kwistjoni, dan ma jistax jigi rrimedjat bl-izgumbrament tal-intimati. Dan qed jinghad ghaliex ma jkunx jaghmel sens li wiehed jaghraf l-iskop, il-htiega u l-legittimità tal-artikoli nvokati mir-rikorrenti biex imbaghad jinnewtralizzaha billi jaghmilha inapplikabbli bl-izgumbrament tal-okkupanti.

13. Illi l-Ewwel Artikolu tal-Ewwel Protokol ma jikkoncedi ebda dritt li xi hadd jircievi profitt, allura fil-kuntest ta` proprjetà li qed isservi ghall-finijiet ta` social housing zgur li ma jistax jigi kkontemplat xi dritt simili.

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

15. Illi mir-rikors promotur jidher li r-rikorrenti qed jilmentaw ukoll mill-Att XXVII tal-2018 izda dawn l-ilmenti assolutament mhumiex gustifikati ghaliex l-emendi huma specifikament intizi sabiex isahhu izjed il-bilanc bejn l-interessi tas-sidien u l-interessi ta` min ikun qed jokkupa fond.

16. Illi l-Istat ghamel riforma fil-ligijiet tal-kera bl-introduzzjoni tal-Att XXVII tal-2018, liema riforma gabet aktar rilassament ta` tali

ligijiet favur is-sid (fejn fil-fatt is-sid gie moghti ferm iktar drittijiet) izda assigurat li xorta wahda l-interess generali tal-inkwilini jibqa` protett, u kwindi l-bilanc bejn is-sid u l-inkwilin gie milhuq ahjar minn qatt qabel. In fatti, permezz tal-Att XXVII tas-sena 2018, l-Artikolu 12B tal-Kap 158 jistipula li r-rikorrent bhala s-sid tal-fond in kwistjoni ghandu d-dritt li jipprezenta rikors quddiem il-Bord li jirregola l-Kera fejn jitlob li l-kera tigi riveduta ghal ammont li ma jeccedix it-tnejn fil-mija fis-sena tal-valur liberu u frank tas-suq miftuh tad-dar ta` abitazzjoni fl-1 ta` Jannar tas-sena li matulha jigi pprezentat ir-rikors. Is-sid jista` wkoll jitlob li jigu stabbiliti kundizzjonijiet godda fir-rigward tal-kera.

17. Din il-ligi tezigi wkoll li jekk l-inkwilin ma jissodisfax it-test tal-mezzi li bil-fors irid jitwettaq mill-Bord tal-Kera, il-Bord ghandu, wara li jkun sema` kwalunkwe evidenza u sottomissjonijiet imressqa mill-partijiet, jaghti decizjoni li tippermetti lill-kerrej zmien ta` hames snin sabiex jivvaka l-fond. Dan jimplika allura li r-rikorrent jista` jerga` jiehu l-fond lura – ghall-kuntrarju ta` dak li qed isostni b`mod zbaljat ghall-ahhar ir-rikorrent fit-tieni talba tieghu.

18. Tajjeb li jinghad li jekk l-inkwilin jibqa` fil-fond, din il-kera terga` toghla wara sitt snin, sakemm ma jkunx intlahaq ftehim iehor bejn is-sid u l-inkwilin.

19. Il-ligi tipprevedi li sahansitra jekk ikun hemm bdil fic-cirkostanzi tal-inkwilin, sid il-kera ghandu dritt jipprezenta rikors quddiem il-Bord fejn jitlob li l-kundizzjonijiet tal-kirja jigu riveduti minhabba l-piz sproporzjonat li qed jikkawzawlu.

20. Illi sid il-fond jista` anki jitlob li l-kirja tigi xolta jekk juri li l-kerrej huwa persuna li ma tehtiegx protezzjoni socjali provduta fl-artikoli 5, 12 jew 12A u f`dan l-artikolu.

21. Illi l-artikolu 12B huwa l-artikolu li qed jgholli l-kera ghal ammont ragonevoli ghaz-zminijiet tal-lum u li jaghti fakultà li jigu stabbiliti kundizzjonijiet godda fir-rigward tal-kera, inkluz dak li jirrigwarda l-izgumbrament tal-inkwilin. Huwa ghalhekk li l-legizlatur permezz tal-artikolu 12B(11) qed isemmi li qabel ma persuna tigi zgumbrata d-disposizzjonijiet ta` dan l-artikolu jridu l-ewwel jigu sodisfatti.

22. Illi r-rikorrenti ghandhom igibu prova cara ta` kif tali ligijiet qeghdin allegatament icahhduhom mit-tgawdija ta` hwejjighom (bi ksur tal-artikolu 37 tal-Kostituzzjoni u tal-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni).

23. Salv eccezzjonijiet ulterjuri.

Ghaldaqstant, l-esponent jitlob bir-rispett lil din l-Onorabbli Qorti joghgobha tichad il-pretensjonijiet kif dedotti fir-rikors promotur bhala infondati fil-fatt u fid-dritt stante li r-rikorrenti ma sofrew l-ebda ksur tad-drittijiet tal-bniedem u l-libertajiet fondamentali, u dan bl-ispejjez kontra l-istess rikorrenti.

Rat ir-risposta li pprezentaw l-intimati Cordina fit-12 ta` Novembru 2019 li taqra :-

1. Illi preliminarjament, ghal dak li jirrigwarda l-allegata vjolazzjoni tad-drittijiet fundamentali tar-rikorrenti, huwa l-Istat u mhux l-esponenti li ghandu jwiegeb ghal din l-allegazzjoni, dan peress li l-Ligi li qieghda tigi attakkata saret mil-istat u huma kull ma ghamlu huwa li osservaw il-Ligi vigente.

2. Illi minghajr pregudizzju ghas-suespost, it-talbiet tar-rikorrenti huma nfondati fil-fatt u fid-dritt u konsegwenement ghandhom jigu michuda.

3. Illi minghajr pregudizzju ghas-suespost, l-ewwel talba tar-rikorrenti hija manifestament infondata stante illi bl-emendi introdotti permezz tal-Att Nru XXVII tal-2018 mhux impossibbli ghas-sid li jirriprendi lura l-fond billi hemm rimedju ordinarju disponibbli kif prvdut fl-Artikolu 12B tal-Kapitolu 158 tal-Ligijiet ta` Malta.

4. Illi il-Ligi ordinarja tikkontempla diversi cirkostanzi fejn kirja krejata taht l-operat tal-Artikolu 12 tal-Kapitolu 158 tal-Ligijiet ta` Malta ghandha tintemm u meta l-istess kerrejja ghandhom jizgumbraw il-fond. Bid-dovut rispett ma huwiex kompitu tal-Onorabbli Qorti li tqis u tiwerifika jekk tali cirkostanzi humiex prezenti fil-kaz odjern stante li tali kwistjoni ghandha tigi kkunsidrata u sindakata mill-Bord li Jirregola l-kera kif titlob il-Ligi.

5. Illi in kwantu ghall-fatt li t-talba tar-rikorrenti hija bbazata fuq allegat ksur tal-Artikolu 37 tal-Kostituzzjoni ta` Malta u l-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea) (l-Ewwel Skeda tal-Kapitolu 319 tal-Ligijiet ta` Malta), jigi rilevat li ma hemm ebda ksur ta` dan l-Artikolu stante illi l-Ligijiet li jirregolaw il-kirja de quo ma jipprevedux id-deprivazzjoni totali tal-proprjeta`, izda se mai, jirrigwardaw il-kontroll jew limitazzjoni tal-uzu ta` proprjeta`. Fi kwalunkwe kaz, ir-rikorrenti ma ghandhom ebda dritt kwezit ghal propjeta` vakanti.

6. Illi inoltre, mir-rikors promotur jidher li r-rikorrenti Joseph u Johanna konjugi Tabone saru sidien ta` nofs indiviz tal-fond fis-7 ta` Novembru 2006 wara li akkwistaw dan is-sehem minghand ir-rikorrenti l-ohra, mentri Joseph Tabone wahdu sar sid tan-nofs indiviz rimanenti fis-26 ta` Settembru 2008 wara li akkwista dan is-sehem permezz ta` kuntratt ta` donazzjoni minghand missieru, ir-rikorrenti l-iehor Joseph Tabone. Ghalhekk, l-ilment kostituzzjonali u konvenzjonali taghhom jista` jigi kkunsidrat biss mid-data meta r-rikorrenti saru s-sidien tal-fond mertu ta`dan il-kaz u mhux qabel.

7. Illi r-rikorrenti Joseph u Johanna konjugi Tabone ma jistghux jippretendu li jidhlu fiz-zarbun tas-sidien precedenti billi jistqarru li d-drittijiet taghhom gew vjolati bl-emendi fil-Ligi tal-1979. Dawn ir-rikorrenti ma kellhom ebda` konnessioni mal-fond in kwistjoni qabel ma akkwistaw sehemhom fl-2006 u fl-2008, u konsegwentement ma kellhom ebda interess guridiku qabel l-istess dati u kwalunkwe dritt ta` azzjoni li hija msejsa fuq kunsiderazzjonijiet li min-natura taghhom stess kienu applikabbli biss qabel id-dati tal-akkwist ma jispettax lil dawn ir-rikorrenti.

8. Illi fir-rigward tar-rikorrenti l-ohra li trasferew sehemhom minn dan il-fond lil Joseph u Johanna konjugi Tabone, kwalunkwe konsiderazzjoni dwar l-allegat ksur tal-jeddijiet fundamentali taghhom ghandha ssir ghar-rigward ta` dak iz-zmien li l-artikoli tal-Ligi li minnhom jilmentaw ir-rikorrenti kienu jolqtu d-drittijiet taghhom fuq l-istess propjeta`. Il-fatt li dawn ir-rikorrenti trasferew id-drittijiet proprjetarji taghhom fuq l-istess fond, ghandu jigi kkunsidrat ukoll ghall-finijiet tax-xorta ta` rimedju li jista` jinghata ghal-lezjoni li minnha jilmentaw dawn ir-rikorrenti.

9. Illi l-esponenti qeghdin igawdu d-drittijiet taghhom fuq il-proprjeta` de quo b`titolu ta` kera kif permessi skont il-Ligi u fl-ammont ta` kera kif stabbilita taht il-Ligijiet tal-Kera u ghalhekk m`humiex qed jippregudikaw id-drittijiet tar-rikorrenti. Oltre dan, permezz tal-Artikolu 1531C tal-Kodici Civili inholoq mekkanizmu ta` awment fil-kera li permezz tieghu l-kera tizdied kull tliet snin b`mod proporzjonali ghall-mod li bih ikun zdied l-indici tal-inflazzjoni.

10. Illi fir-rigward tal-ilment tar-rikorrenti li l-ammont ta` kera ma jirriflettix il-valur tas-suq, f`dawn ic-cirkostanzi fejn l-Istat igawdi margini wiesa` ta` apprezzament fl-interess generali ma jistax isir paragun mal-valur tal-proprjeta` fis-suq hieles kif pretiz mir-rikorrent. Kif huwa risaput, l-Istat ghandu l-jedd li jghaddi dawk il-Ligijiet li jidhirlu xierqa biex jikkontrolla l-uzu tal-proprjeta` fl-interess generali u sabiex il-Gvern iwettaq il-politika socjali u ekonomika tieghu fil-qasam tal-akkomodazzjoni.

11. Illi finalment, ir-rimedju tar-rikorrenti ma ghandux ikun l-izgumbrament tal-esponenti miil-fond de quo, u lanqas l-esponenti ma ghandhom jigu pregudikati finanzjarjament billi huma ma kissru ebda Ligi izda semplicement avallaw ruhhom minn Ligi li ghadha fis-sehh. In oltre, l-esponenti ma ghandhomx mezzi sufficjenti sabiex isibu akkomodazzjoni alternattiva xierqa, u li ilhom ighixu fil-fond mertu tal-kawza tul il-hajja matrimonjali taghhom;

12. Illi ghalhekk it-talbiet tar-rikorrenti ghandhom jigu michuda bl-ispejjez.

Salv eccezzjonijiet ulterjuri permessi mil-Ligi.

Rat id-digriet li tat fl-udjenza tal-21 ta` Novembru 2019 fejn laqghet it-talba tar-rikorrenti ghall-hatra ta` perit tekniku sabiex jistma u jirrelata dwar il-valur lokatizju fis-suq tal-fond 28, Triq Ghar Gerduf gia Triq Wara Santu Wistin, Fontana gia Rabat, Ghawdex, ghaz-zmien ta` bejn it-2 ta` Jannar 1984 u kull hames snin sussegwenti sal-21 ta` Novembru 2019. Kienet mahtura ghal dan l-iskop il-Perit Marie Louise Caruana Galea.

Rat illi fl-udjenza tat-23 ta` Gunju 2020 kienet akkolta talba biex jigu allegati l-atti tal-kawza Nru. 6/87 fl-ismijiet *Joseph Tabone et vs*

*Michelino Cordin*a li kienet deciza fit-12 ta` Marzu 1990 mill-Qorti tal-Appell.

Rat ir-relazzjoni li pprezentat l-perit tekniku, il-kontenut ta` liema relazzjoni kien ikkonfermat bil-gurament.

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.

Rat l-atti l-ohra tal-kawza.

II. <u>Provi</u>

1. <u>Il-kuntratt tat-2 ta` Jannar 1967</u>

L-intimati Cordina akkwistaw il-fond b`titolu ta` cens temporanju bis-sahha ta` kuntratt tat-2 ta` Jannar 1967 fl-atti tan-Nutar John Busuttil. Il-koncessjoni kellha tintemm fit-2 ta` Jannar 1984. Il-canone kien ta` Lm 20 fis-sena.

2. <u>It-titolu tar-rikorrenti</u>

Is-sidien tal-fond de quo huma r-rikorrenti Joseph u Johanna konjugi Tabone. Ir-rikorrent l-iehor Joseph Tabone huwa missier ir-rikorrenti Joseph Tabone. Ir-rikorrenti l-ohra jigu hut ir-rikorrent Joseph Tabone u z-zijiet tieghu. Dawn kellhom sehem mill-fond qabel sar proprjeta` tar-rikorrenti Joseph u Johanna konjugi Tabone.

Il-fond wasal ghand Joseph u Johanna konjugi Tabone billi :

- B`kuntratt ta` bejgh tat-22 ta` Ottubru 1969 fl-atti tan-Nutar Dottor Antonio Galea, ir-rikorrent Joseph Tabone, li jigi missier ir-rikorrent l-iehor Joseph Tabone, akkwista minghand Maria Tabone nèe Attard mart George Tabone u huha George Attard in-nofs indiviz tal-fond bin-numru ufficjali 28, Triq Ghar Gerduf, gja Triq Wara Santu Wistin, Fontana gja Rabat, Ghawdex.

- B`testment tal-14 ta` Mejju 1969 fl-atti tan-Nutar Dottor Antonio Galea, l-istess Joseph Tabone u hutu r-rikorrenti l-ohra Emanuel, Louis, Maria, Margaret, Frank ahwa Tabone u ohthom Carmela Borg akkwistaw kull wiehed is-sehem ta` 1/14 mill-wirt ta` ommhom Maria Tabone.

- B`kuntratt ta` bejgh tas-7 ta` Novembru 2006 fl-atti tan-Nutar Mariosa Grech, ir-rikorrenti Joseph u Johanna konjugi Tabone xtraw nofs indiviz tal-fond de quo minghand ir-rikorrenti l-ohra.

- B`kuntratt ta` donazzjoni tas-26 ta` Settembru 2008 fl-atti tan-Nutar Mariosa Grech, ir-rikorrenti Joseph u Johanna konjugi Tabone akkwistaw b`titolu ta` donazzjoni ir-rimanenti nofs indiviz tal-fond de quo minghand ir-rikorrenti l-iehor Joseph Tabone.

3. <u>Xiehda</u>

<u>Ir-rikorrent Joseph Tabone</u> kkonferma bil-gurament it-titolu.

Xehed illi hu u martu xtraw u akkwistaw l-intier tal-fond bit-tama li minnu jsir zvilupp f`appartamenti. Il-hsieb kien li meta jsir l-izvilupp, huwa stess imur joqghod f`appartament, bil-hames uliedu madwaru, kull wiehed f`appartament ghalih.

Qal illi ma kienx qed jirrikonoxxi l-kirja tant li l-intimati Cordina kienu qeghdin jiddepozitaw taht l-awtorita` tal-qorti.is-somma l-qorti.

Fil-prezent kienet qeghda tigi depozitata s-somma ta` €93.17 kull sitt xhur.

Xehed illi hu u martu qeghdin jaghmlu l-almu taghhom sabiex jiksbu l-pussess battal tal-fond.

Stqarr illi huwa talab lill-intimati Cordina sabiex jippermettu li jsir zvilupp. Offrielhom appartament fejn jibqghu jghixu sa mewthom billi jhallsu kera ragionevoli. L-intimati m`accettawx l-offerta.

Joseph Tabone, missier ir-rikorrent Joseph Tabone, xehed illi l-fond kien inbena min-nanniet tieghu Luigi u Margherita Attard. Wara li mietu, il-wirt taghhom ghadda ghand iz-zewg uliedhom : George Attard, u ommu Maria Tabone.

Qal illi fl-1967 il-fond inghata b`cens temporanju favur l-intimati Cordina. Il-hsieb kien illi meta jaghlaq ic-cens, il-fond kellu jmur lura ghand is-sidien.

Qal illi meta inbidlet il-ligi fl-1979 (u allura qabel ghalaq ic-cens temporanju) gara li t-titolu li kellhom l-intimati Cordina seta` jinbidel ghal kera. U hekk sar bhala fatt ghaliex Cordina baqghu jokkupaw il-post abbazi ta` pretensjoni li kellhom kirja.

Kien hemm zmien fejn Cordina ma kinux puntwali fil-hlas tal-kera.

Ghalhekk ittiehdu passi legali kontra taghhom sabiex jizgumbraw mill-post.

Il-kawza kienet deciza favur Cordina.

Kien deciz mill-Bord li Jirregola l-Kera li l-kera dovuta minn Cordina kellha tkun ta`Lm 40 fis-sena.

L-intimat Michaelino Cordina kkonferma li bil-kuntratt tat-2 ta` Jannar 1967 huwa akkwista l-fond in kwistjoni b`titolu ta` cens

temporanju ghal zmien 17-il sena. Dejjem ghixu fil-post anke wara li ghalaq ic-cens u hemm ghadhom jirrisjedu sal-lum.

Xehed illi fil-bidu l-post kellu biss zewgt ikmamar u bitha. Matul is-snin ghamlu diversi meljoramenti.

Cahad li qatt kien moruz fil-hlasijiet. Spjega illi wara li nghatat is-sentenza tat-8 ta` Ottubru 1986, Maria Tabone irrifjutat il-kera u ghalhekk huma bdew jiddepozitaw taht l-awtorita` tal-qorti. Il-kera ghadha sal-lum tigi rifjutata u tigi depozitata.

Kompla jghid illi fl-2010 il-kera zdiedet ghal €185 fis-sena u baqghet tizdied kull tliet snin skont il-ligi.

L-intimata Josephine Cordina kkonfermat id-deposizzjoni ta` zewgha.

4. Ir-relazzjoni tal-perit tekniku

Il-perit tekniku ghamlet dawn **il-kostatazzjonijiet** :-

- Il-fond ilu mibni aktar minn mitt sena.
- Ghandu *internal footprint* ta` 130 mk u gnien ta` cirka 180 mk.
- Il-*finishes* huma qodma u mhux konformi mal-*istandards* tal-lum.
- L-istruttura hija komposta minn hitan tal-gebel u soqfa bi travi tal-injam u xorok hlief ghall-kcina u parti mill-garage li huma tal-konkos rinfurzat. Parti mill-garage ssaqqaf bil-pjanci mill-intimat.
- Il-fond jinsab f`zona residenzjali u mfittxija fil-Fontana Ghawdex.

- Strutturalment il-fond jinsab fi stat tajjeb ghalkemm is-saqaf u l-hitan tal-kcina u l-kamra tal-pranzu huma ghandhom tbajja suwed ikkagunati minn perkolazzjoni ta` ilma jew nuqqas ta` ventilazzjoni.

- Skont il-Pjan Lokali il-bini jista` jigi zviluppat bil-hrug ta` permess ghall-bini ta` tlett sulari u basement sa gholi massimu ta` 12.3 metri sal-livell tal-opramorta tal-bejt tal-ahhar sular.

- Tenut kont tal-ghamla, id-daqs u l-istat attwali tal-post, il-perit tekniku waslet ghall-konkluzjoni li l-fond ghandu valur fis-suq, jekk liberu u frank, ta` **€300,000**.

- Fl-1984 il-valur lokatizju tal-fond kien ta` **€750** fis-sena.

- Fl-2019 il-valur lokatizju kien ta` **€6,000** fis-sena.

5. L-eskussjoni

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

Xehdet illi il-valur lokatizju tal-proprjeta` kien ikkapitalizzat bit-3% ghas-snin 1984, 1989 u 1994 waqt illi ghas-snin 1999, 2004, 2009, 2014 u 2019 kien ikkapitalizzat bir-rata ta` 2%.

6. Il-piz probatorju ta` relazzjoni teknika

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* ("**Grima vs Mamo et noe**" **–** 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. ("**Cauchi vs Mercieca**" **–** Qorti tal-Appell – 6 ta` Ottubru 1999 **; "Saliba vs Farrugia**" – Qorti tal-Appell – 28 ta` Jannar 2000 u "**Calleja *noe* vs Mifsud**" – 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*" – ("**Bugeja *et* vs Muscat et**" **–** Qorti tal-Appell – 23 ta` Gunju 1967).

Fil-kaz tal-lum, jirrizulta bhala fatt li wara li kienet prezentata u mahlufa r-relazzjoni tal-perit tekniku, il-partijiet ma ressqux talba ghall-hatra ta` periti addizzjonali izda saret eskussjoni tal-perit tekniku.

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

III. <u>L-eccezzjonijiet ta` xejra preliminari</u>

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

Kien eccepit illi r-rikorrenti ghandhom jaghmlu l-prova tat-titolu ghall-proprjeta` de qua.

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 vs Avukat Generali et</u>** din il-qorti diversament presjeduta qalet hekk :-

> *"Illi biex wiehed ikun f`qaghda li juri li garrab ksur tal-jedd 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 l-prova tat-titolu bid-dokumenti li pprezentaw mar-rikors promotur, bir-

ricerki pprezentati fil-mori tal-kawza u bix-xiehda tar-rikorrent Joseph Tabone u r-rikorrent l-iehor missieru Joseph Tabone.

Il-fatti li johorgu mill-provi tar-rikorrenti **ma gewx kontestati** mill-intimati.

Wara li rat l-atti, il-qorti hija sodisfatta li r-rikorrenti ghandhom titolu tajjeb ghall-proprjeta` sabiex jipproponu l-kawza odjerna.

Billi t-titolu tar-rikorrenti jirrizulta ppruvat, sejra tastjeni milli tiehu konjizzjoni ulterjuri tal-ewwel (1) eccezzjoni tal-intimat Avukat tal-Istat.

2. It-tieni (2) eccezzjoni tal-intimat Avukat tal-Istat u l-eccezzjonijiet bin-nru. sitta (6), sebgha (7) u tmienja (8) tal-intimati Cordina

Bit-tieni eccezzjoni l-intimat Avukat tal-Istat eccepixxa illi r-rikorrenti ghandhom jaghmlu prova tad-data meta saru sidien sabiex b`hekk l-ilment taghhom ikun jghodd biss minn dakinhar.

Simili huma l-eccezzjonijiet bin-nru. sitta (6), sebgha (7) u tmienja (8) tal-intimati Cordina fejn kien eccepit li d-dritt tar-rikorrenti Joseph u Johanna konjugi Tabone ghandu jibda jiddekorri mill-2006 meta saru sidien waqt illi d-dritt tar-rikorrenti l-ohra ghandu jitqies illi waqaf fid-data meta sar it-trasferiment tal-proprjeta`.

Mill-provi akkwiziti jirrizulta :

- Illi fit-2 ta` Jannar 1967, meta nghata c-cens, is-sidien kienu George Attard u ohtu Maria Tabone.

- Illi fit-22 ta` Ottubru 1969 Joseph Tabone akkwista minghand Maria Tabone nèe Attard mart George Tabone u huha George Attard in-nofs indiviz tal-fond 28, Triq Ghar Gerduf, gja Triq Wara Santu Wistin, Fontana gja Rabat, Ghawdex. Joseph

Tabone akkwista sehem iehor ta` 1/14 b`wirt minghand ommu. Ghalhekk, fil-kaz ta` Joseph Tabone, it-titolu tieghu, anke jekk mhux fuq l-intier tal-fond, imur lura sal-1969.

- Illi t-titolu tar-rikorrenti l-ohra Emanuel, Louis, Maria, Margaret, Frank ahwa Tabone u ohthom Carmela Borg ghas-sehem ta` 1/14 mill-wirt ta` ommhom Maria Tabone skont testment tal-14 ta` Mejju 1969 imur lura wkoll ghall-1969.

- Illi fil-kaz tar-rikorrenti Joseph u Johanna konjugi Tabone jirrizulta li b`kuntratt ta` bejgh tas-7 ta` Novembru 2006 fl-atti tan-Nutar Mariosa Grech, huma xtraw u akkwistaw nofs indiviz tal-fond de quo kif fuq deskritt waqt illi b`kuntratt ta` donazzjoni tas-26 ta` Settembru 2008 fl-atti tal-istess Nutar, huma akkwistaw b`titolu ta` donazzjoni ir-rimanenti nofs indiviz tal-fond de quo minghand ir-rikorrent l-iehor Joseph Tabone. Jirrizulta ghalhekk illi t-titolu taghhom, anke jekk fuq parti mill-proprjeta`, imur lura sal-2006.

Kemm ghal ragunijiet ta` interess guridiku, kif ukoll ragunijiet ta` gustizzja u sewwa, il-qorti tghid illi fil-kaz li ssib lezjoni tal-jeddijiet fondamentali u/jew konvenzjonali tar-rikorrenti, il-lezjoni ghandha tigi kkunsidrata b`effett mid-data li fiha kull rikorrent ikun akkwista titolu, anke jekk ta` komproprjeta, fir-rigward tal-fond de quo. Ghalhekk mhux kaz li jigu kkunsidrati lmenti dwar lezjonijiet li jmorru lura ghal zmien fejn ir-rikorrenti jew min minnhom ma kellhomx titolu ghall-proprjeta`.

Ghalhekk qeghda tilqa` t-tieni (2) eccezzjoni tal-intimat Avukat tal-Istat, u l-eccezzjonijiet nru. sitta (6), sebgha (7) u tmienja (8) tal-intimati Cordina.

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

Waqt li tkun qeghda tqis it-talbiet, il-qorti sejra taghti konsiderazzjoni wkoll ghall-eccezzjonijiet l-ohra li ressqu l-intimati.

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

Fl-ewwel talba, il-qorti qeghda tkun mitluba sabiex :-

Tiddikjara u tiddeciedi illi l-ligijiet vigenti senjatament l-artikolu 12, 12A u 12B tal-Kap 158 tal-Ligijiet ta` Malta kif emendati bl-Att XXIII tal-1979, bl-Att X ta` 2009 u bl-Att XXVII tal-2018 qieghdin jissalvagwardjaw u jaghtu dritt ta` rilokazzjoni l-fond 28, Triq Ghar Gerduf, Fontana, Ghawdex u jirrenduha impossibli lir-rikorrenti Joseph u Joanna konjugi Tabone li jirriprendu l-pussess tal-proprjeta` taghhom.

Jirrizulta li l-intimati Cordina hadu l-fond b`titolu ta` enfitewsi temporanja ghal zmien ta` 17-il sena b`effett mit-2 ta` Jannar 1967. .

i. Dwar l-Art 12 tal-Kap 158

Bl-**Art 12(2) u (3) tal-Kap 158**, li kienu ntrodotti bl-Att XXIII tal-1979, u li gew fis-sehh b`effett mill-15 ta` Gunju 1979, inghata lill-persuna li kellha titolu ta` cens temporanju l-jedd li jaqleb it-titolu ghal kera purche`li l-persuna tkun cittadin Malti u li l-fond ikun ir-residenza ordinarja taghha.

Ir-rikorrenti Joseph Tabone u ommu Maria Tabone ma accettawx il-konverzjoni tat-titolu tal-intimati Cordina ghal kera. Saret kawza ghall-izgumbrament tal-intimati Cordina mill-fond de quo. Il-kawza kienet deciza kontra r-rikorrenti b`sentenza li tat il-Qorti tal-Appell fit-12 ta` Marzu 1990.

Il-kera kienet rifjutata u ghalhekk bdiet tigi depozitata taht l-awtorita` tal-qorti. Hekk ghadha s-sitwazzjoni llum.

Tajjeb jinghad li ghalkemm ir-rikorrenti Joseph u Johanna Tabone kienu jafu li fil-post kien hemm inkwilin, huma kellhom idejhom marbuta dwar dak illi seta` jsir mill-proprjeta`. Fil-fatt anke l-antekawza taghhom kienu fl-istess posizzjoni. Ir-rikorrenti u l-antekawza taghhom qaghdu ghal dak li gab mieghu l-izvilupp fil-legislazzjoni.

Il-qorti taghmel referenza ghas-sentenza li tat il-Qorti Kostituzzjonali fis-27 ta` Marzu 2020 fil-kawza fl-ismijiet **Matthew Said**

<u>et v. Arthur Vella et</u> fejn ippronunzjat ruhha dwar talba li tixbah (ghalkemm b`mod limitat) l-ewwel talba fil-kaz tal-lum.

F`dak il-kaz 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 tas-sentenza 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 l-pussess 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.

ii. <u>Dwar l-Art 12A tal-Kap 158</u>

Id-disposizzjoni dahlet fis-sehh fl-14 ta` Dicembru 2007.

Relattivament ghall-ewwel talba, il-qorti taghmel referenza ghal dak li kien deciz mill-Qorti Kostituzzjonali fit-8 ta` Ottubru 2020 fil-

kawza fl-ismijiet **Angela sive Gina Balzan v. L-Onorevoli Prim Ministru et** fejn *inter alia* inghad hekk :-

41. Fattur iehor li jsemmi l-Avukat tal-Istat fir-rikors tal-appell tieghu huwa illi l-protezzjoni li taghti l-ligi hija "ghal zmien temporanju bil-konsegwenza li hemm certezza li l-fond ser jerga` jirritorna ghand ir-rikorrenti". Dan huwa minnu izda taht l-art. 12A xorta hemm incertezza dwar meta dan sejjer jigri. Se mai dan il-fattur jista` jkollu relevanza ghall-quantum tal-kumpens li jinghata ghall-ksur tad-dritt, izda certament ma jeliminax dak il-ksur.

iii. Dwar l-Art 12B tal-Kap 158

L-Art 12B sar parti mill-Kap 158 bl-Att XXVII tal-2018, u gie fis-sehh fl-1 ta` Awissu 2018.

Bl-Art 12B is-sid inghata l-jedd li jmur quddiem il-Bord li Jirregola l-Kera sabiex jitlob revizjoni tal-kera sa ammont li ma jkunx jeccedi t-2% tal-valur liberu u frank fis-suq miftuh ta` fond ta` abitazzjoni. Id-disposizzjoni tahseb ukoll sabiex fil-bidu ta` kull procediment b`talba ghal awment fil-kera isir test tal-mezzi tal-inkwilin. Il-legislatur haseb ukoll sabiex jirregola talbiet minn sidien ta` fondi li jitolbu l-izgumbrament ta` persuni li jkunu qeghdin jokkupaw fondi proprjeta` taghhom. Jidher li l-legislatur ittenta johloq bilanc bejn l-interessi tas-sidien u dawk tal-inkwilini, billi filwaqt li kien imhares id-dritt tal-inkwilin ghar-rilokazzjoni, dak id-dritt ma kienx jibqa` jissussisti aktar jekk l-inkwilin ma jkunx f`qaghda illi jhallas awment fil-kera.

Il-qorti taghmel referenza ghas-sentenza li tat il-Qorti Kostituzzjonali fit-23 ta` November 2020 fil-kawzsa fl-ismijiet **Henry Deguara Caruana Gatto et v. L-Avukat tal-Istat et** fejn inghad :-

14. …. bl-emendi introdotti permezz tal-Att XXVII tas-sena 2018 gew introdotti diversi dispozizzjonijiet li jaghmulha anqas difficli ghas-sidien li jirriprendu l-pussess tal-proprjeta` taghhom minghand l-inkwilin. B`mod partikolari ghall-argument tal-appellant illi l-appellata Grima m`ghandhiex bzonn il-protezzjoni ta` sistema legali ta` kirjiet protetti, il-Qorti tirrileva illi permezz tal-Artikolu 12B(4) introdott fl-2018, il-Bord li Jirregola l-Kera inghata l-poter illi jordna lil inkwilin sabiex ibattal il-fond fil-kaz illi ma jkunx jissodisfa l-kriterji tad-dhul u

tal-kapital tat-test tal-mezzi. Ghalhekk jidher illi dan l-ilment tal-appellant diga fil-fatt jinsab rimedjat mill-legislatur u m`ghadx hemm il-htiega illi jinghata rimedju straordinarju permezz ta` proceduri konvenzjonali meta huwa ghandu rimedju ordinarju disponsibbli ghalih li jista` jirrivendika permezz ta` proceduri quddiem il-Bord Li Jirregola l-Kera. Ghalhekk l-ewwel Qorti kienet korretta ma ddecidiet illi t-talba ghall-izgumbrament tal-appellata hija intempestiva. Kif jargumenta l-Avukat tal-Istat, kien l-appellant stess li talab sabiex il-Qorti tiehu kont ukoll tal-Artikolu 12B u ghalhekk ma setghax imbaghad jippretendi illi l-ewwel Qorti tinjora r-rimedji illi diga jinsabu provduti f`dan l-artikolu meta qisiet it-talba tieghu ghall-izgumbrament tal-appellata.

…

16. … bl-introduzzjoni tal-Artikolu 12B tal-Kapitolu 158 il-legislatur holoq mekkanizmu li jippermetti lis-sid idahhal kera xierqa, meqjusa l-ghanijiet u l-htigijiet socjali fil-kamp talakkomodazzjoni socjali.

Wara li hadet in konsiderazzjoni l-aspetti kollha rilevanti ghall-ewwel talba, inkluza l-gurisprudenza l-aktar ricenti, il-qorti sejra tipprovdi dwarha billi tiddikjara li huwa biss bl-applikazzjoni tal-Art 12 tal-Kap 158 tal-Ligijiet ta` Malta li l-inkwilini Cordina nghataw dritt ta` rilokazzjoni li jaghmilha difficli u haga x`aktarx incerta ghar-rikorrenti li jiehdu lura l-pussess tal-proprjeta` taghhom.

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

Il-vjolazzjoni lamentata hija cirkoskritta ghaz-zmien ta` bejn it-**<u>2 ta` Jannar 1984 u l-21 ta` Novembru 2019</u>**.

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

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

<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 : **<u>Josephine Bugeja v. Avukat Generali et</u>** tas-7 ta` Dicembru 2009, **<u>Angela sive Gina Balzan v. L-Onorevoli Prim Ministru et</u>** tas-7 ta` Dicembru 2012 u **<u>Mary Anne Busuttil v. Tabib John Cassar et</u>** 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.

b) <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-intimati jikkontestaw fil-mertu l-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 **Beyeler v. Italy** 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* ***Iatridis v. Greece*** *[GC], no. 31107/96, § 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`. Ghalkemm il-legislazzjoni saret ghal skop tajjeb fl-interess pubbliku, il-fatt li thalliet nieqsa minn adattament ghall-esigenzi taz-zminijiet dghajjef il-legittimita` taghha. L-effetti tajbin taghha bdew jisfumaw aktar ma beda ighaddi z-zmien – mhux sena jew tnejn, izda snin twal - ghaliex il-mekkanizmi taghha baqghu distakkati mir-realtajiet tas-suq.

Kellhom jghaddu aktar minn tletin (30) sena wara li gie fis-sehh l-Att XXIII tal-1979 sakemm l-Istat ipprova bil-konkret itaffi l-effetti negattivi li dak il-kontroll gab mieghu u li wassal ghal vjolazzjonijiet ippruvati tal-jeddijiet fondamentali tas-sidien ta` proprjeta`.

L-izball minghajr gustifikazzjoni kien illi l-Istat dam jahsibha s-snin sabiex jipprova jsib tarf tal-izbilanc u l-isproporzjon kontra s-sidien li kien ilu jipprevali s-snin ; u agixxa ghaliex kien inkalzat b`decizjonijiet sfavorevoli tal-qrati, b`mod partikolari tal-ECtHR.

Ghalkemm huwa pacifiku li l-Istat ghandu margini ta` apprezzament wesghin meta jigi biex jaghmel ligijiet sabiex fl-interess pubbliku jkunu ndirizzati problemi fil-qasam tal-akkomodazzjoni ghall-fini residenzjali, 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` **<u>Amato Gauci v. Malta</u>** 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*
<u>Josephine Azzopardi et v. L-Onor Prim Ministru et</u>
25 ta` April 2018 ;

<u>Sergio Falzon et v. Alfred Farrugia et</u>
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 tishaq li l-bdil fil-legislazzjoni kien tardiv. Min-naha tal-Istat matul is-snin kien hemm wisq riluttanza li jintervjeni b`mod decisiv. Dan it-`tkaxkir tas-saqajn` wassal ghal pronunzjamenti wiehed wara l-iehor mill-ECtHR kontra Malta.

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) <u>Risultanzi</u>

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.

Meta ghalaq ic-cens temporanju, l-intimati Cordina 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 temporanja 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 dwar il-fond wara t-tmiem tac-cens temporanju. Bil-bdil tat-titolu *ope legis* is-sid tilef ukoll kontroll fuq kemm ghandu jithallas kera ghaliex l-ammont tal-kera 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, ir-rikorrenti jilmentaw illi l-applikazzjoni tad-disposizzjonijiet tal-Kap 158 fuq citati ghas-sitwazzjoni taghhom tikkostitwixxi ksur tal-jeddijiet fondamentali taghhom, ghaliex gabet sproporzjon qawwi kontra taghhom fil-kera li setghu jippercepixxu li kieku t-tgawdija tal-proprjeta` thalliet tilhaq il-milja taghha.

M`ghandux ikun kontestat il-jedd tal-Istat illi b`ligi jikkontrolla l-uzu tal-proprjeta` meta dan ikun fl-interess pubbliku. Fl-istess waqt, l-Istat ghandu l-obbligu li jassikura li bil-ligijiet li jghaddi, u allura anke bl-applikazzjoni taghhom, jinzammu 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-jeddijiet fondamentali taghhom. Tajjeb jinghad li dawk l-emendi ma sehhilhomx jilhqu bilanc u proporzjonalita`, ghaliex ghalkemm kien hemm miljorament ghas-sid meta mqabbel mas-sitwazzjoni precedenti, is-sid 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 "**<u>Ian Peter Ellis et v. Avukat Generali et</u>**, 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."

Kienu l-emendi l-ohra li kienu ntrodotti bl-Att XXVII tal-2018, u li dahlu fis-sehh fl-1 ta` Awissu 2018, li tejbu mhux ftit il-qaghda tas-sidien.

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

Qeghda <u>tichad</u> l-eccezzjonijiet tal-intimati 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.

Fl-eccezzjonijiet erbgha (4) u hdax (11), kien eccepit mill-intimati Cordina li l-izgumbrament ta` inkwilin u t-tmiem ta` kirja huma materji li johorgu barra mill-kompetenza ta` din il-qorti.

Il-qorti tosserva li r-rikorrenti **<u>b`mod specifiku</u>** ma talbux bhala rimedju, fil-kaz ta` accertata vjolazzjoni tal-jeddijiet fondamentali u/jew konvenzjonali taghhom, l-izgumbrament tal-intimati Cordina mill-fond de quo.

Dan premess, il-qorti tirrileva li procediment kostituzzjonali u/jew konvenzjonali mhuwiex u m`ghandux ikun is-sede fejn jigi deciz jekk inkwilin ghandux ikun zgumbrat minn fond inkella le bhala rimedju ghal vjolazzjoni ta` jedd fondamentali tutelat mill-Kostituzzjoni u/jew mill-

Konvenzjoni. Fl-ambitu ta` procediment bhal dak odjern, fil-kaz ta` vjolazzjoni, ir-rimedji ghandhom ikunu ohrajn mhux l-izgumbrament tal-inkwilini.

Bhala rimedju, il-qorti tghid li r-rimedju xieraq ghandu jkun kostitwit **<u>principalment</u>** mill-ghoti ta` kumpens fl-ghamla ta` danni pekunjarji u danni morali.

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

3. <u>It-tielet talba</u>

Ir-rikorrenti talbu dikjarazzjoni u decizjoni mill-qorti li l-intimati jew min minnhom huma responsabbli ghall-hlas ta` kumpens in vista tal-vjolazzjoni subita tal-jeddijiet fondamentali taghhom.

Fl-ewwel (1) eccezzjoni, l-intimati Cordina eccepew illi fil-kaz ta` lezjonijiet ghall-jeddijiet fundamentali tal-persuna, huwa l-Istat li ghandu jwiegeb.

Il-qorti tirrileva li 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 <u>tilqa</u>` t-tielet talba kif dedotta kontra l-Avukat tal-Istat.

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 lezjoni 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 **<u>Cassar v. Malta</u>** 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. <u>Damage</u>

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) **Likwidazzjoni**

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 *ope legis* 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.

Id-danni li jigu likwidati fi procediment kostituzzjonali u 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 kienet mahtura fil-kaz odjern jikkostitwixxu **prova ta` fatt**.

Fir-relazzjoni peritali hemm inkluza tabella (a fol 224) li turi ghaz-zmien ta` bejn it-2 ta` Jannar 1984 u l-31 ta` Dicembru 2019 il-valur lokatizju fis-suq tal-fond 28, Triq Ghar Gerduf gia Triq Wara Santu Wistin, Fontana gia Rabat, Ghawdex, kien ilahhaq total ta` **€76,415**. Dan l-ammont huwa mifrux fuq intervalli ta` hames snin fuq il-perijodu kollu.

Aktar kmieni, il-qorti ddikjarat li kienet sejra taghmel taghha dak li rrizulta mir-relazzjoni.

Il-figura ta` €76,415 tikkostitwixxi l-massimu tad-danni pekunjarji. Dan l-ammont ghandu pero` jkun aggjustat skont il-linji gwida li sejra taghti.

- **Linji gwida**

i. Tnaqqis ta` kera li tkun mhallsa u accettata fiz-zmien in kwistjoni

Jirrizulta ppruvat li wara li ghalaq il-kuntratt ta` subcens temporanju fl-1984, ir-rikorrenti ma accettawx hlasijiet ta` kera minghand l-intimati Cordina li baqghu jirrisjedu fil-post wara li t-titolu li kellhom kien konvertit ghal kera bis-sahha tal-Att XXIII tal-1979. Fil-fatt minn dak iz-zmien sal-lum il-kera qeghda tigi depozitata taht l-awtorita` tal-qorti.

Il-qorti mhijiex sejra tadotta tnaqqis.

ii. <u>Il-fond</u>

Il-qorti rat ir-relazzjoni.

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

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

Abbazi tal-kostatazzjonijiet tal-perit tekniku, anke fondati fuq il-Pjan Lokali taz-Zona fejn jinsab il-fond, jirrizulta ppruvat illi mill-fond kif inhu sal-lum jista` jsir zvilupp ta` appartamenti.

Dan ifisser li l-vjolazzjoni qeghda tikkaguna dannu reali lir-rikorrenti.

Percio` m`ghandux ikun hemm tnaqqis minn dan l-aspett.

iii. <u>L-interess generali</u>

Il-qorti m`ghandhiex dubju mis-siwi u mil-legittimita` tal-intervent legislattiv **<u>fic-cirkostanzi taz-zmien li sar</u>**.

Dan il-fattur ghandu jwassal ghal <u>tnaqqis ta` 35%</u>

B`hekk il-figura massima tad-danni pekunjarji tinzel minn <u>€76,415</u> ghal <u>€49,669.75</u>. **(<u>€49,670</u>** : ghad-dritt).

Kienet adottat din ir-rata sabiex tpatti ghas-snin 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.

iv. **<u>Passivita`</u>**

Il-qorti tqis li ghandu jkun hemm tnaqqis iehor ta` **<u>35%</u>** minhabba l-komportament kjarament passiv tar-rikorrenti.

Kienet ghazla tar-rikorrenti li ma jaccettawx il-hlas tal-kera ghal 35 sena.

Kienet ghazla taghhom li ghal 35 sena ma pprezentawx azzjoni ta` indole kostituzzjonali.

Kienet ukoll ghazla taghhom li joqghodu lura ghal 32 sena milli jipprezentaw azzjoni ta` indole konvenzjonali.

Ghal din il-qorti, l-imgieba tar-rikorrenti ma kenitx kwistjoni ta` kawtela izda pjuttost attitudini ta` *wait and see* skont dak li qed jigi deciz mill-qrati.

Ghalhekk il-qorti m`ghandhiex tikkondixxendi din l-ghamla tal-passivita`.

Id-danni pekunjarji ghandhom jigu ridotti ghal **<u>€32,285</u>**.

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

Indipendentement mid-danni pekunjarji li jikkostitwixxu telf effettiv ghar-ragunijiet fuq premessi, 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 effettiv tal-proprjeta` b`dak l-Att halla l-qaghda legislattiva stagnata ghal ghadd konsiderevoli ta` snin ghalkemm il-hajja socio-ekonomika tal-pajjiz kienet avvanzat b`mod u manjiera li l-applikazzjoni ta` dawk id-disposizzjonijiet tal-ligi kienu qeghdin materjalment joholqu zbilanc u sproporzjon kontra s-sidien.

Il-qorti qeghda tillikwida l-ammont ta` €5,000 bhala danni morali.

c) Riassunt

Qeghdin jigu likwidati danni komplessivi fl-ammont ta` €37,285 in kwantu ghal €32,285 bhala danni pekunjarji u in kwantu ghal €5,000 bhala danni morali.

5. Il-hames talba

Il-kumpens totali ta` €37,285 ghandu jithallas biss mill-Avukat tal-Istat.

L-intimati Cordina m`ghandhom ihallsu ebda kumpens jew danni lir-rikorrenti ghaliex jirrizulta li ottempraw ruhhom mal-ligijiet vigenti.

Anke ghalhekk lanqas ghandhom ihallsu spejjez gudizzjarji.

6. Ripartizzjoni

Id-danni ghandhom jinqasmu bejn ir-rikorrenti kif ser jinghad :-

- **Ir-rikorrenti Joseph Tabone u r-rikorrenti l-ohra Emanuel, Louis, Maria, Margaret, Frank ahwa Tabone u ohthom Carmela Borg akkwistaw titolu ghall-fond fl-1969. Huma ttrasferew is-sehem indiviz taghhom ta` $^{1}/_{14}$ fl-2006.**

- **Ir-rikorrent Joseph Tabone ttrasferixxa t-titolu tieghu b`att ta` donazzjoni favur ir-rikorrenti Joseph u Johanna Tabone fl-2008.**

- **Ir-rikorrenti Joseph u Johanna konjugi Tabone akkwistaw titolu fl-2006.**

- **Ir-rikorrenti konjugi Tabone garrbu lezjoni tad-drittijiet fondamentali taghhom bejn l-2006 u l-2019.**

- **Ir-rikorrenti l-ohra garrbu lezjoni bejn l-1984 u l-2006.**

- **L-ammont ta` €37,285 ghandu jinqasam in kwantu ghal ghal €24,857 (zewg-terzi) favur ir-rikorrenti Joseph Emanuel, Louis, Maria, Margaret, Frank ahwa Tabone u ohthom Carmela Borg, u in kwantu ghal €12,428 (terz) favur ir-rikorrenti Joseph u Johanna konjugi Tabone.**

IV. <u>Spejjez gudizzjarji</u>

L-ispejjez gudizzjarji ghandhom jithallsu fl-intier taghhom mill-Avukat tal-Istat.
<u>Decide</u>

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

Tastjeni milli tiehu konjizzjoni ulterjuri tal-eccezzjoni bin-numru wiehed (1) tal-intimat Avukat tal-Istat stante li r-rikorrenti ghamlu l-prova tat-titolu taghhom ghall-fond 28, Triq Ghar Gerduf, gia Wara Santu Wistin, Fontana, gia Rabat, Ghawdex.

Tilqa` l-eccezzjoni bin-numru tnejn (2) tal-intimat Avukat tal-Istat.

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

Tilqa` l-eccezzjonijiet bin-numru erbgha (4), sitta (6), sebgha (7), tmienja (8) u hdax (11) tal-intimati konjugi Cordina.

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

Tipprovdi dwar l-ewwel (1) talba billi tiddikjara li bl-applikazzjoni tal-Art 12 u tal-Art 12A (mhux tal-Art 12B) tal-Kap 158 tal-Ligijiet ta` Malta l-intimati konjugi Cordina nghataw dritt ta` rilokazzjoni li jaghmilha difficli u haga x`aktarx incerta ghar-rikorrenti li jiehdu lura l-pussess tal-proprjeta` taghhom.

Tilqa` t-tieni (2) talba.

Riferibbilment ghat-tieni (2) talba, tiddikjara li l-intimati konjugi Cordina ma jistghux jibqghu jistriehu fuq id-disposizzjonijiet tal-Kap 158 sabiex jibqghu jokkupaw l-fond fuq deskritt bhala r-residenza ordinarja taghhom.

Tilqa` t-tielet (3) talba limitatament fil-konfront tal-intimat Avukat tal-Istat.

Riferibbilment ghar-raba` (4) talba, tillikwida favur ir-rikorrenti kumpens komplessiv fl-ammont ta` sebgha u tletin elf, mitejn sitta u tmenin ewro (€37,286) in kwantu ghal tnejn u tletin elf, mitejn sitta u tmenin ewro (€32,286) 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 fit-tieni (2) u t-tielet (3) talbiet.

Riferibbilment ghall-hames (5) talba, tordna lill-intimat Avukat tal-Istat sabiex ihallas (a) lir-rikorrenti Joseph, Emanuel, Louis, Maria, Margaret, Frank ahwa Tabone u ohthom Carmela Borg fi kwoti ndaqs bejniethom is-somma ta` erbgha u ghoxrin elf, tmien mija sebgha u hamsin ewro (€24,857) bl-imghax legali

b`effett mil-lum, u (b) lir-rikorrenti Joseph u Johanna konjugi Tabone s-somma ta` tnax-il elf, erba` mija tmienja u ghoxrin ewro (€12,428) bl-imghax legali b`effett mil-lum.

Tordna li l-ispejjez kollha ta` din il-kawza ghandhom jithallsu mill-intimat Avukat tal-Istat.

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