QORTI CIVILI PRIM`AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON

Illum il-Hamis 25 ta` Frar 2021

Kawza Nru. 1
Rikors Nru. 144/2019 JZM

Noelle Azzopardi
(K.I. 520288M)

u

Maryanne Darmanin
(K.I. 637539M)

kontra

L-Awtorita` tad-Djar

u

Teresa Sive Tessie Azzopardi
(K.I. 0055440G)

Il-Qorti :

I. Preliminari

Rat ir-rikors li kien prezentat fis-7 ta’ Awwissu 2019 li jaqra :–

1. Illi r-rikorrenti huma proprjetarji tal-fond 58 gia 77, Triq is-Sur, L-Isla li huma akkwistaw minghand nannuha u zewgha Emanuel Darmanin u dan skont kif jirrizulta mill-kuntratt causa mortis datat fil-25 ta` Settembru 2006 fl-atti tan-Nutar Dottor Gertrude Farrugia Wismayer li qed tigi hawn annessa u mmarkata bhala Dokument A u b`kuntratt causa mortis tas-7 ta` Jannar 2008 fl-atti tan-Nutar Gertrude Farrugia Wismayer hawn anness u mmarkat bhala Dokument D.

2. Illi l-mejta Maria Carmela Micallef, omm ir-rikorrenti Noelle Azzopardi, mietet fis-17 ta` Ottubru 2007 skont Dokument E hawn anness, u l-wirt taghha ddevolva fuq l-unika bintha b`testment tas-16 ta` Lulju 2003 fl-atti tan-Nutar Dottor Angelo Vella, li kopja tieghu qed jigi hawn anness u mmarkat bhala Dokument F.

3. Illi l-mejta Maria Carmela sive Marilyn Micallef, omm ir-rikorrenti Noelle Micallef, kienet wirtet il-fond imsemmi minghand il-mejjet missierha Emanuel Darmanin li b`testment tieghu unica charta mal-attrici Mary Anne Darmanin datat 16 ta` Gunju 2003 fl-atti tan-Nutar Dottor Angelo Vella li kopja tieghu qed tigi hawn annessa u mmarkata bhala Dokument B, hallew biex jirtu l-fond 58 gia 77, Triq is-Sur, L-Isla, lil msemmija Maria Carmela Micallef u soggett ghal-usufrutt ta`martu r-rikorrenti Maryanne Darmanin.

4. Illi ghalhekk il-proprjeta` in kwistjoni llum hija kollha proprjeta` ta` Noelle Micallef soggetta ghall-uzufrutt ta` Maryanne Darmanin, u dan kif jirrizulta mid-dokumenti hawn annessi.

5. Illi din il-proprjeta` giet rekwizizzjonata mill-Housing Secretary, b`rekwizizzjoni numru 42220/79 u dan fl-10 ta` Lulju 1979, biex inghatat lil Bastjan Azzopardi, u cioe` missier ir-ragel tal-intimata Theresa Azzopardi, minghajr il-kunsens u l-approvazzjoni tas-sidien b`kera irrizorja ta` Lm 15 u li bl-Att X tal-2009 il-kera saret €185 fis-sena pagabbli bis-sena bil-quddiem u mill-1 ta`Jannar 2019 il-kera saret €209.

6. Illi fis-6 ta` Novembru 1995 harget l-ordni ta` derekwizizzjoni tal-istess fond kif jirrizulta mid-Dokument C li qed jigi hawn anness, pero` l-intimata Teresa sive Tessie Azzopardi baqghet tirrisjedi fl-istess fond u llum qeghda thallas €209 fis-sena li huwa l-minimu stabbilit mil-ligi ai termini tal-Att X tal-2009.

7. Illi l-antekawza tar-rikorrenti giet affaccjata b`din l-Ordni ta` Rekwizizzjoni b`mod ingust u b`mod abbuziv u liema Ordni ta` Rekwizizzjoni tikser id-drittijiet kostituzzjonali taghha a tenur tal-Artikolu 37 tal-Kostituzzjoni u l-Ewwel Artikolu ta` l-Ewwel Protokoll tal-Konvenzjoni Ewropea.

8. Illi kawza ta` din l-Ordni ta` Rekwizizzjoni r-rikorrenti kellhom jaccettaw lill-intimata Teresa sive Tessie Azzopardi bhala inkwilina taghhom kif l-istess kienu imgeghelha jaghmlu in-nanna taghha Maryanne Darmanin kif ukoll ommha Maria Carmela Micallef meta kienet ghadha hajja.

9. Illi huma bdew jircievu l-kera tal-fond in kwistjoni kif impost fuqhom mil-Ligi, u issa waqfu jaghmlu dan.

10. Illi l-Gvern arbitrarjament iffissa l-kera pagabbli fis-sena lir-rikorrenti liema somma hija naturalment wahda minima hafna u zgur ma kinitx tirrifletti l-valur kummercjali tal-fond ai termini tal-Att X tal-2009.

11. Illi l-Awtorita` tad-Djar ghandha thallas id-danni sofferti mir-rikorrenti minhabba dak impost fuqhom b`din ir-rekwizizzjoni li kisret id-drittijiet taghhom kostituzzjonali taghhom kif protetti mill-Artikolu 37 tal-Kostituzzjoni u l-Ewwel Artikolu ta` l-Ewwel Protokoll tal-Konvenzjoni Ewropea.

12. Illi ghalhekk ghad li huwa minnu li r-rikorrenti baqghu titolarji u proprjetarji tal-fond de quo, gie impost fuqhom `landlord /tenant relationship` u fil-verita` l-agir huwa esporprjazzjoni de facto u dan ikkrea pregudizzju sproporzjonat u eccessiv fuq l-esponenti bi ksur tal-Ewwel Protokol tal-Artikolu Wiehed tal-Konvenzjoni Ewropea kif gia gie stabbilit fil-kawza "Fleri Soler & Camilleri vs MALTA" deciza fis-26 ta` Dicembru 2006 u "Gerald Montanaro Gauci vs MALTA" deciza fit-30 ta` Awwissu 2016.

13. Illi ghad illi l-Istat ghandu margini ta` diskrezzjoni wiesa` biex jassikura abitazzjoni decenti lil min ma jistax ikollu dan bil-mezzi tieghu stess, huwa ghandu pero` jassigura wkoll li bejn il-mezzi adoperati u l-iskop li jrid jilhaq, ikun hemm proporzjon bejn il-piz li jrid ibati s-sid li fuq il-proprjeta` tieghu tohrog l-ordni ta` rekwizizzjoni u l-interess ghas-socjeta` in generali u li b`din l-ingerenza sid ma jkunx assoggettat ghal disproportionate burden.

14. Illi l-Qorti Ewropea tad-Drittijiet tal-Bniedem diga` kellha okkazjoni tikkummenta f`kazi li rrigwardjaw lil Malta li ghalkemm m`hemmx dubju li l-Istat ghandu dover u allura d-dritt li jintervjeni biex jassikura abitazzjoni decenti lil min ma jistax ikollu dan bil-mezzi tieghu stess, li ndividwu jigi privat mill-uzu liberu tal-proprjeta` ghal hafna snin u fil-frattemp jircievi kera mizera, jammonta ghall-ksur tad-dritt in kwistjoni. Fil-kawza "Ghigo vs Malta", deciza fis-26 ta` Settembru 2006, il-Qorti sabet li jezisti l-ksur tad-dritt in kwistjoni ghaliex ir-rikorrenti gie privat mill-proprjeta` tieghu tnejn u ghoxrin (22) sena qabel u kien jircievi hamsa u hamsin (55) Euro fis-sena bhala kera. Fil-sentenza "Fleri Soler et vs Malta", moghtija fl-istess data, l-istess Qorti wkoll sabet li d-dritt fundamentali tar-rikorrenti gie lez u allura qalbet sentenza tal-Qorti Kostituzzjonali ta` Malta kif gara wkoll fil-kawza ta` "Franco Buttigieg & Others vs Malta" deciza mill-Qorti Ewropea tad-Drittijiet Fundamentali tal-Bniedem (ECHR) fil-11 ta` Dicembru 2018 u "Albert Cassar vs Malta" deciza mill-Qorti Ewropea tad-Drittijiet Fundamentali tal-Bniedem (ECHR) tat-30 ta` Jannar 2018.

15. Illi fil-kawza surreferita "Fleri Soler & Camilleri vs MALTA" deciza mill-Qorti Ewropea tad-Drittijiet tal-Bniedem fis-26 ta` Dicembru 2006 il-Qorti kienet qalet "Not only must an interference with the right of property pursue, on the facts as well as in principle, a "legitimate aim" in the "general interest", but there must also be `a reasonable relation of proportionality` between the means employed and the aim sought to be realised by any measures applied by the State, including measures designed to control the use of the individual`s property. That requirement is expressed by the notion of a "fair balance" that 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."

16. Illi fil-kaz de quo certament li ma kienx hemm dan il-fair balance jew a reasonable relation of proportionality.

17. Illi in vista tal-kazistika surreferita, sahansitra dik tal-Qorti Ewropea tad-Drittijiet tal-Bniedem, certament li ma hemm ebda dubju li din l-Onorabbli Qorti ghandha tiddeciedi l-kawza odjerna billi ssib illi r-rikorrenti nkisrilhom id-dritt fundamentali taghhom sancit bl-imsemmi Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni Ewropea u tal-Artikolu 37 tal-Kostituzzjoni ta` Malta.

Ghaldaqstant ir-rikorrrenti jitolbu bir-rispett lil din l-Onorabbli Qorti prevja kwalsiasi dikjarazzjoni necessarja u opportuna u ghar-ragunijiet premessi jghidu l-intimati ghaliex m`ghandhiex :

1. Tiddikjara u tiddeciedi illi l-ordni ta` rekwizizzjoni numru (42220/79) kienet tilledilhom id-drittijiet fundamentali taghhom kif ukoll jilledulhom id-drittijiet fundamentali taghhom id-dispozizzjonijiet tal-Kap. 69 tal-Ligijiet ta` Malta u l-Att X tal-2009 li jaghtu d-dritt ta` rilokazzjoni in perpetwu kif ukoll hlas ta` kera minimu mhux skont is-suq u dan kif sanciti fl-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni Ewropea u tal-Artikolu 37 tal-Kostituzzjoni ta` Malta.

2. Konsegwentement tiddikjara u tiddeciedi illi l-lokazzjoni tal-fond bin-numru 58 gia 77, Triq is-Sur, L-Isla, proprjeta` tar-rikorrenti, a favur tal-intimat Teresa sive Tessie Azzopardi tilledi d-drittijiet fundamentali tar-rikorrenti kif sanciti fl- Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni Ewropea u tal-Artikolu 37 tal-Kostituzzjoni ta` Malta u minkejja d-derekwizizzjoni l-fond baqa` okkupat mill-intimat imsemmija Teresa sive Tessie Azzopardi biex b`hekk tordna lill-intimata Azzopardi sabiex fi zmien qasir u perentorju tittermina l-lokazzjoni relattiva, oltre rimedji ohra li din l-Onorabbli Qorti jidhrulha xierqa sabiex tassigura illi r-rikorrenti jigu rrintegrati fil-pussess shih u reali godiment ta` hwejjighom.

3. Tiddikjara u Tiddeciedi illi l-intimata Awtorita` tad-Djar hija responsabbli ghal kumpens u danni sofferti mir-rikorrenti b`konsegwenza tar-rekwizizzjoni in kwistjoni li ma kkreatx bilanc gust bejn id-drittijiet tas-sid u dak ta` l-inkwilin, stante illi ma jirriflettux is-suq u lanqas il-valur lokatizju tal-proprjeta` in kwistjoni.

4. Tillikwida l-istess kumpens u danni kif sofferti mir-rikorrenti ai termini tal-Ligi.

5. Tikkundanna lill-intimata Awtorita` tad-Djar thallas l-istess kumpens u danni likwidati kif ukoll ai termini tal-Artikolu 41 tal-Konvenzjoni Ewropea.

Bl-ispejjez, komprizi dawk tal-ittra ufficjali tal-20 ta` Gunju 2019 li kopja taghha qed tigi hawn esebita u mmarkata bhala "Dokument G" u bl-ingunzjoni ta` l-intimati ghas-subizzjoni.

Rat id-dokumenti li kienu prezentati mar-rikors.

Rat ir-risposta li pprezentat l-intimata Awtorita` tad-Djar fis-<u>26 ta' Awwissu 2019</u> li taqra :-

1. Illi t-talbiet attrici huma infondati fil-fatt u fid-dritt.

2. Illi l-attrici Noelle Azzopardi trid tipprova li hi u hi wahedha hi s-sid tal-fond in kwistjoni.

3. Illi id-dikjarazzjoni kawza mortis mhux dokument li jista` jikkonferixxi titolu.

4. Illi fl-ewwel talba taghhom l-atturi qed jghidu li l-ligi tal-kera kienet tledi d-drittijiet fundamentali taghhom. Dwar dan l-aggravju ebda wiehed mill-konvenuti ma hu l-legittimu kontradittur u ghalhekk fl-ewwel lok il-gudizzju mhux integru u fit-tieni lok ghal dak li jirrigwarda din l-ewwel talba l-esponent ghandu jigi liberat mill-osservanza tal-gudizzju.

5. Illi lill-attrici ma nkisrilha ebda dritt fundamentali ladarba hi ma kenitx propjetarja jew ma kenitx propjetarja unika tal-fond in kwistjoni meta sehh l-allegat aggravju. U irid jinghad li l-azzjoni dwar ksur ta` dritt fundamentali hi wahda personali u ma tistax tigi trasmessa lill-terzi – l-anqas bi trasferiment kawza mortis.

6. Illi jekk l-attrici hasset li kienet qed tiret fond difettuz ghax xi darba kien milqut b`ordni ta` rekwizizzjoni setghet dejjem tirrrinunzja ghall-eredita`.

7. Illi id-drittijiet fundamentali mhumiex materji patrimonjali u reali imma personali ghal min isofrihom u mhumiex trasferibbli.

8. Illi parti kbira mill-kawza, mill-premessi u mit-talbiet huma konsonanti ma` kawza ghad-danni li allegatament saru mill-konvenuti fil-propjeta`. Ma tistax l-attrici tiftah kawza ta` danni taht libsa ta` kawza kostituzzjonali biex tevita l-istitut tal-preskrizzjoni jew konsiderazzjonijiet legali ohra.

9. Illi ghalhakk safejn f` din il-kawza qed jintalbu danni il-Qorti ghandha tichad it-talbiet ghaliex l-attrici kellha tadixxi l-Qrati ordinarji u din il-Qorti mhijiex kompetenti biex tiddeciedi dwar id-danni.

10. Ukoll din il-Qorti qed tintalab li tordna l-izgumbrament tal-konvenuta Tessa Azzopardi – imma f` kawza kostituzzjonali hu l-istat biss li jista` jkun il-legittimu kontradittur ghax Tessa Azzopardi kienet biss qed tuzufruwixxi mid-dipozizzjonijiet tal-ligi fir-rigward. Ghalhekk ebda zgumbrament ma ghandu jew ma jista` jigi ordnat.

11. Illi ma kien hemm xejn hazin fil-hrug tal-Orni ta` Rekwizizzjoni u intant anke hawn ma gewx ezawriti r-rimedji ordinarji ghaliex hadd ma pproceda biex tigi sindakata gudizzjarjament id-diskrezzjoni amministrattiva li ttiehdet meta hargu l-ordnijiet.

12. Illi t-trapass ta` tant zmien juri li hadd mill-awturi tal-atturi ma hass li bil-hrug tal-ordnijiet kienu qed jigu lezi xi drittijiet fundamentali – tali trapass taz-zmien minghajr azzjoni ghandu jimmilita kontra l-attrici kemm biex jigi stabbilit li kien hemm ksur kif ukoll jekk u biex jigi stabbilit kull kumpens li talvolta jista` jkun dovut.

13. Illi hi l-ligi li l-hrug ta` ordnijiet ta` rekwizizzjoni ma jledux id-drittijiet fundamentali jekk dawn isiru ghal skopijiet socjali – ghalhekk ma hemm xejn fl-akkadut li jista` jitqies li huwa leziv tad-drittijiet proprjetarji tal-attrici.

14. Illi tant ma hemm ebda lezjoni u ebda piz zejjed li kien qed jingarr mill-atturi li din l-azzjoni inbdiet biss hafna snin wara li kienet harget l-ordni ta` rekwizizzjoni.

15. Illi tul il-premessi kollha hu evidenti li l-atturi qed jitolbu hlas ghal danni kemm f` lucrum cessans kif ukol f` damnum emergens li batew (mhux huma) imma l-awturi taghhom – issa l-Qorti Kostituzzjonali mhijiex is-sede apposita ghal tali materji. U l-ligi li tahtha jaqghu dawn il-lanjanzi mhijiex dik kostituzzjonali konnessa mad-drittijiet fundamentali imma hi il-ligi civili ordinarja dwar obbligazzjonijiet.

16. Illi ma hemm ebda raguni ghaliex il-persuni li qed jokkupaw il-fondi in kwistjoni ghandhom jigu zgumbrati. L-allokazzjoni tal-fondi kienet maghmula ghal skopijiet ta` akkomodazzjoni socjali.

Rat illi l-intimata Tereza sive Tessie Azzopardi, ghalkemm debitament notifikata bir-rikors promotur u bl-avviz tas-smigh tal-kawza, ma pprezentatx risposta.

Rat id-digriet li tat fl-udjenza tal-4 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 58 gia 77, Triq is-Sur, l-Isla, ghaz-zmien ta` bejn l-10 ta' Lulju 1979 u s-7 ta' Awwissu 2019, b`intervalli ta` hames snin matul dan il-perijodu. Perit Mario Cassar kien mahtur bhala perit tekniku ghal dan l-iskop.

Rat ir-relazzjoni li pprezenta l-perit tekniku, liema relazzjoni kienet ikkonfermata bil-gurament.

Rat illi fl-udjenza tad-19 ta' Novembru 2020 kien hemm qbil bejn il-partijiet li l-allokazzjoni tal-fond de quo li saret lill-intimata Azzopardi kienet ghal skopijiet ta' akkomodazzjoni socjali.

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

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

Rat in-noti ta` osservazzjonijiet.

Rat l-atti l-ohra tal-kawza.

II. <u>Provi</u>

1. <u>Xhieda</u>

<u>Ir-rikorrenti Noelle Azzopardi</u> xehdet illi hija, flimkien man-nanna taghha r-rikorrenti l-ohra Maryanne Darmanin, huma l-proprjetarji tal-fond bin-numru 58 gia 77, Triq is-Sur, l-Isla.

It-titolu taghhom jirrizulta kif gej :

- B`testment unica charta tas-16 ta' Gunju 2003 fl-atti tan-Nutar Dottor Angelo Vella, Emanuel Darmanin innomina lil bintu Maria Carmela Micallef nèe Darmanin bhala l-eredi tieghu waqt li halla lil martu r-rikorrenti Maryanne Darmanin l-uzufrutt generali tal-beni kollha tieghu.

- Maria Carmela Micallef nèe Darmanin mietet fis-17 ta' Ottubru 2007 u l-wirt taghha ghadda fuq l-unika wild taghha u cioe` r-rikorrenti Noelle Azzopardi skont testment tas-16 ta' Lulju 20013 fl-atti tan-Nutar Dottor Angelo Vella.

- In-nuda propjetarja tal-fond hija r-rikorrenti Noelle Azzopardi waqt li r-rikorrenti l-ohra Maryanne Darmanin hija l-uzufruttwarja tal-istess fond.

Xehdet illi b`ordni ta' rekwizizzjoni numru 42220/79 tal-10 ta' Lulju 1979, il-fond de quo kien rekwizizzjonat u kien allokat ghal skop ta` akkomodazzjoni socjali lil Bastjan Azzopardi li jigi missier ir-ragel tal-intimata Azzopardi. Il-kera kienet iffissata fl-ammont ta` Lm 15 fis-sena. L-ordni ta` rekwizizzjoni u l-konseg]wenti allokazzjoni saru minghajr il-kunsens tan-nannu taghha Emanuel Darmanin.

Kompliet tixhed illi fis-6 ta' Novembru 1995 harget ordni ta' derekwizizzjoni tal-fond izda l-intimata Azzopardi baqghet tirrisjedi hemm bis-sahha tal-Att 69 tal-Ligijiet ta' Malta.

<u>Ir-rikorrenti Maryanne Darmanin</u> ikkonfermat fis-sostanza d-deposizzjoni tar-rikorrenti Noelle Azzopardi.

<u>Andrew Xuereb</u> (rapprezentant tal-Awtorita` tad-Djar) xehed illi fl-10 ta' Lulju 1979 is-Segretarju tad-Djar hareg ordni ta' rekwizizzjoni bin-numru 42220 fuq il-fond 77, Triq is-Sur, Isla. L-ordni kienet notifikata lir-rikorrenti u sid tal-fond Maryanne Darmanin fl-14 ta' Settembru 1979. L-istess ordni kienet notifikata wkoll lil Joseph Pace li kien qieghed jirrisjedi fil-fond. Fit-13 ta' Jannar 1981 il-fond kien allokat lil Sebastian Azzopardi versu hlas ta' kera fl-ammont ta' Lm 12 fis-sena pagabbli direttament lis-sid. Fis-6 ta' Novembru 1995 id-Direttur tal-Akkomodazzjoni Socjali hareg ordni ta' derekwizizzjoni li kienet notifikata kemm lill-inkwilin Sebastian Azzopardi kif ukoll lir-rikorrenti Maryanne Darmanin.

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

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

- Il-fond jikkonsisti f'mezzanin illi jinsab f'kantuniera.
- Il-proprjeta' ghandha 'l fuq minn tmenin sena.
- Il-fond ghandu *footprint* ta' cirka 71 metru kwadru.
- Tenut kont tas-sit, id-daqs u l-istat attwali tal-post, il-fond ghandu valur fis-suq, jekk liberu u frank, ta` **<u>€156,000</u>**.
- Fl-1979 il-valur lokatizju tal-fond kien ta` **<u>€618</u>** fis-sena.
- Fl-2019 il-valur lokatizju kien ta` **<u>€5,460</u>** fis-sena.

3. <u>Il-piz probatorju ta` relazzjoni teknika</u>

Fis-sentenza taghha tad-19 ta` Novembru 2001 fil-kawza **"Calleja v. 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 ta` l-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 ta` l-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" – ("**<u>Bugeja *et* vs Muscat et</u>" –** Qorti tal-Appell – 23 ta` Gunju 1967).

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

Wara li rat ir-relazzjoni, 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 preliminari</u>

1. <u>It-tieni (2) eccezzjoni</u>

L-Awtorita` ntimata eccepiet illi r-rikorrenti kellhom jaghmlu l-prova tat-titolu ghall-proprjeta`.

L-eccezzjoni ma kenitx trattata fin-nota ta' osservazzjonijiet li pprezentat l-Awtorita' intimata.

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

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

> *"Illi biex wiehed ikun f`qaghda li juri li garrab ksur tal-jedd fondamentali tieghu taht l-artikolu 37 tal-Kostituzzjoni m`ghandux ghalfejn jipprova titolu assolut u lanqas wiehed originali bhallikieku l-azzjoni dwar ksur ta` jedd fondamentali kienet wahda ta` rivendika (Kost. 27.3.2015 fil-kawza fl-*

*ismijiet **<u>Ian Peter Ellis et vs Avukat Generali et</u>**). Huwa bizzejjed, ghall-finijiet ta` dak l-artikolu, li wiehed juri li ghandu jedd fil-haga li tkun li bih jista` jieqaf ghall-pretensjonijiet ta` haddiehor.*

Imbaghad, ghall-finijiet tal-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni, huwa bizzejjed li l-persuna turi li kellha l-pussess tal-haga li tkun."

Dan premess, il-qorti tosserva illi bhala fatt ir-rikorrenti ghamlu l-prova tat-titolu bid-dokumenti li pprezentaw mar-rikors promotur, u bix-xiehda tar-rikorrenti. Il-fatti li johorgu mill-provi tar-rikorrenti ma gewx kontestati. 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 tat-tieni (2) eccezzjoni tal-intimata Awtorita' tad-Djar.

2. <u>Ir-raba` (4) eccezzjoni</u>

L-Awtorita` intimata teccepixxi li ladarba m`ghandhiex il-jedd li tghaddi ligijiet bhal dawk li minnhom qeghdin jilmentaw ir-rikorrenti mhijiex il-legittima kontradittur tar-rikorrenti.

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

Fil-kawza tal-lum, ir-rikorrenti qeghdin jilmentaw mill-fatt illi d-disposizzjonijiet tal-Kap 69 qeghdin johloqu relazzjoni forzuza ghad-detriment taghhom vis-à-vis l-intimata Azzopardi bhala inkwilina taghhom. Ghalhekk qeghdin jitolbu dikjarazzjoni illi dak li johrog mill-Kap 69 jikser il-jeddijiet fondamentali taghhom skont l-Art 37 tal-Kostituzzjoni u l-Art 1 Prot 1 tal-Konvenzjoni.

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

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

Fil-procediment tal-lum l-Awtorita' tad-Djar hija r-rapprezentant tal-Istat. Mal-medda tas-snin, anke wara interventi legislattivi ad hoc, is-setghat li kellu l-Gvern, tramite il-kap tad-dipartiment responsabbli mid-djar u/jew mill-akkomodazzjoni socjali, ghaddew ghand l-Awtorita` tad-Djar li llum ghandha l-obbligu li twiegeb ghall-istanza promossa mir-rikorrenti. Mhuwiex kontestat il-fatt illi l-Awtorita` tad-Djar ma tghaddix ligijiet, izda daqstant iehor m`ghandux ikun kontestat il-fatt li fl-applikazzjoni tal-ligijiet li jaqghu taht ir-responsabilitajiet taghha jew bl-ezekuzzjoni tas-setghat li ghandha jew li kellu haddiehor u li wara saru responsabilita` taghha ghandha l-obbligu li twiegeb ghal istanzi bhal dik tar-rikorrenti.

Ir-raba' (4) eccezzjoni qeghda tigi <u>michuda</u>.

IV. <u>Mertu</u> : <u>It-talbiet u l-eccezzjonijiet</u>

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

Ir-rikorrenti qeghdin jitolbu mill-qorti dikjarazzjoni u decizjoni li d-dispozizzjonijiet tal-Kap 69, kif inhu llum, jaghti lill-intimata Azzopardi dritt ta' rilokazzjoni in perpetwu versu l-hlas ta' kera irrizorju.

L-**<u>Art 3 tal-Kap 69</u>** jipprekludi awment fil-kera jew bdil fil-kondizzjonijiet tal-kirja, jekk mhux bil-permess tal-Bord li Jirregola l-Kera.

L-**<u>Art 4(b) tal-Kap 69</u>** imbaghad jistabilixxi kif ghandu jkun gwidat il-Bord meta jigi biex iqis ghandux ikun hemm zieda fil-kera. Jinghad :-

> *"jekk il-kera gdid ma jkunx izjed minn 40% mill-kera gust (stabbilit, meta mehtieg, bi stima) li bih il-fond kien mikri jew seta' jinkera f'kull zmien qabel l-4 ta' Awissu tal-1914: il-Bord jista' jistabbilixxi dan il-kera gust."*

Barra dan hekk, ma jistax ikun hemm ripreza tal-fond ghaliex jehtieg li jkunu sodisfatti numru ta' kondizzjonijiet stringenti qabel ma' l-Bord ikun jista' jilqa' t-talba tas-sid.

Isegwi ghalhekk illi peress illi l-kirja tal-intimata Azzopardi hija regolata bil-Kap 69, ir-rikorrenti difficilment jistghu jtejbu l-posizzjoni taghhom. Anke li kieku r-rikorrenti pprezentaw talba ghall-awment fil-kera quddiem il-Bord, jibqa' l-fatt illi l-ammont illi l-Bord jista' jiffissa bil-ligi huwa baxx hafna meta kkomparat mal-kera li fond bhal dak mikri lill-intimata jista' jinkiseb fis-suq hieles. Ma hemm l-ebda paragun bejn il-valur tal-proprjeta` lura fl-1914 u dak tal-lum.

Il-qorti tkompli tosserva li l-emendi ghall-Kap 16 li saru bl-Att X tal-2009 ma jistghux jitqiesu bhala li jaghtu rimedju effettiv ghal-lanjanzi tar-rikorrenti ghaliex anke b`dawk l-emendi kompla jippersisti sproporzjon kontra r-rikorrenti bejn l-awment fil-kera skont l-Art 1531C tal-Kap 16 u l-valur lokatizju tal-fond fis-suq hieles.

Ghalhekk, filwaqt li qeghda tichad l-eccezzjonijiet li jirrelataw mal-ewwel talba, qeghda tipprovdi dwar din l-istess

talba billi tiddikjara u tiddeciedi illi fil-konfront tar-rikorrenti l-applikazzjoni tad-dispozizzjonijiet tal-Kap. 69 tal-Ligijiet ta` Malta u tal-Att X tal-2009 qeghdin jaghtu dritt ta` rilokazzjoni lill-intimata Azzopardi li jaghmilha difficli u haga x`aktarx incerta ghar-rikorrenti li jiksbu lura l-pussess tal-fond de quo, kif ukoll illi jiksbu kera gusta u adegwata ghall-istess.

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

Fit-tieni domanda, ir-rikorrenti qeghdin jitolbu **<u>principalment</u>** dikjarazzjoni u decizjoni mill-qorti li l-lokazzjoni tal-fond lill-intimata Azzopardi bl-applikazzjoni tad-disposizzjonijiet tal-Kap 69 tikser il-jeddijiet fundamentali taghhom hekk kif dawn huma imharsa bl-Art 37 tal-Kostituzzjoni ta` Malta ("**<u>il-Kostituzzjoni</u>**") u bl-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali ("**<u>il-Konvenzjoni</u>**").

Il-vjolazzjoni lamentata mir-rikorrenti hija cirkoskritta ghaz-zmien ta` bejn l-<u>10 ta' Lulju 1979 u s-7 ta' Awwissu 2019</u>.

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

Is-**<u>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 bl-Art 37 tal-Kostituzzjoni. Il-linja traccjata fid-decizjonijiet tal-Qorti Kostituzzjonali li huma anqas ricenti fiz-zmien (fosthom : **<u>Josephine Bugeja vs 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>Mary Anne Busuttil vs 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-1958 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. Izda kif inghad fis-sentenza li tat il-Qorti Kostituzzjonali fid-29 ta` Marzu 2019 fil-kawza fl-ismijiet **<u>Rebecca Hyzler et vs Avukat Generali et</u>**, *'illum il-gurisprudenza turi li l-qrati ma baqghux tal-istess hsieb'.*

ii. <u>Gurisprudenza aktar ricenti</u>

Il-gurisprudenza aktar ricenti jidher illi hadet xejra diversa.

Fid-decizjoni li nghatat fid-**<u>29 ta` Novembru 2018</u>** fil-kawza fl-ismijiet **<u>Brian Psaila v. Avukat Generali et</u>**, 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-**<u>27 ta` Marzu 2020</u>** il-Qorti Kostituzzjonali qalet hekk :-

11. Fl-ewwel aggravju tal-appell tiegħu l-Avukat tal-Istat jgħid illi, peress li kien hemm biss kontroll ta' użu tal-proprjetà tal-attur u ma kien hemm ebda "teħid forzuż ta' proprjetà", u s-sid ma ġiex "żvestit minn kull dritt li għandu fuq dik il-proprjetà", il-każ ma jintlaqatx bl-art. 37 tal-Kostituzzjoni.

12. Dan l-aggravju huwa manifestament ħażin.

13. L-artikolu 37 tal-Kostituzzjoni ma jgħidx biss li ma tista' tittieħed ebda proprjetà mingħajr il-ħlas ta' kumpens xieraq, iżda wkoll illi "ebda interess fi jew dritt fuq proprjetà" ma jista' jittieħed mingħajr dak il-kumpens. Fiċ-ċirkostanzi tal-każ tallum huwa ċar illi lill-attur, bis-saħħa tal-liġi impunjata, itteħidlu l-jedd li jkollu l-pussess battall tal-fond, li ċertament huwa "interess" fil- proprjetà u dritt fuqha.

14. Dan l-ewwel aggravju tal-Avukat tal-Istat huwa għalhekk miċħud.

Fuq l-istess linja kienu s-sentenzi li tat il-Qorti Kostituzzjonali fil-kawzi fl-ismijiet : <u>Estelle Azzopardi et vs 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 vs 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.

Ghal dawn ir-ragunijet, il-qorti tikkonkludi l-lokazzjoni lill-intimata Azzopardi tikser il-jeddijiet fundamentali tar-rikorrenti hekk kif dawn huma mharsa bl-artikolu 37(1) tal-Kostituzzjoni.

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

Id-disposizzjoni tipprovdi illi :-

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

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

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

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

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

Monasteries v. Greece *judgment of 9 December 1994, Series A no. 301-A, p. 31, § 56, and* ***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.

Huwa pacifiku li l-Istat ghandu margini ta` apprezzament wesghin meta jigi biex idahhal ligijiet li jkunu ntizi sabiex jindirizza problemi fil-qasam tal-akkomodazzjoni ghall-fini residenzjali. Madanakollu l-interferenza mill-Istat trid tkun (i) legali (ii) motivata b`ghan legittimu fl-interess generali, u (iii) tohloq bilanc gust. Jehtieg li 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*” li ghandu jinzamm 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 vs 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 **<u>Sporrong and Lönnroth</u>** cited above, §§ 69-74, and **<u>Brumărescu v. Romania</u>** [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 illi :- " *… 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 ta` l-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. Il-lista tad-decizjonijiet hija twila u facilment traccjabbli. Fl-assjem taghhom id-decizjonijiet kienu mirquma, attenti u marru ghall-qofol tal-kwistjoni.

Id-decizjonijiet tal-qrati taghna wasslu ghal ripensament mill-qiegh tal-ordni ta` rekwizizzjoni. Il-hsieb warajha kien li tassikura kemm jista` jkun disponibbilita` ta` akkomodazzjoni socjali ghal firxa wiesgha ta` persuni li kienu jehtiegu fejn joqghodu. Meta ordni ta` rekwizizzjoni harget abbuzivament, inkella ghal ragunijiet mhux gustifikati, l-imgieba tal-awtoritajiet kienet censurata mill-qrati.

Fil-kaz odjern, irrizulta li l-allokazzjoni lill-inkwilin saret ghall-finijiet ta` akkomodazzjoni socjali. Pero` dak il-fatt wahdu ma jeskludix vjolazzjoni tal-jeddijiet fundamentali tar-rikorrenti ghaliex anke jekk wara bosta snin fis-sehh harget ordni ta` derekwizizzjoni l-inkwilina baqghet tirrisjedi fil-post ghaliex kienet protetta b`legislazzjoni li qajla fittxet li tnehhi l-izbilanc u l-isproporzjon li huwa fattwalment ippruvat li garrbu r-rikorrenti kemm ghar-rigward tal-pussess tal-post kif ukoll ghall-kera li tithallas. Fejn si tratta ta` ksur ta` jeddijiet fondamentali, l-Istat ghandu l-obbligu, ladarba qeghdin nghixu f`socjeta` demokratika fondata fuq is-saltna tad-dritt u l-gustizzja, li jintervjeni sabiex b`mod tempestiv jindirizza zbilanci fit-tutela tal-jeddijiet fondamentali ta` l-persuni.

iii) <u>Risultanzi</u>

Tenut kont tal-insenjamenti gurisprudenzjali, il-qorti tqis illi d-disposizzjonijiet dwar it-tigdid awtomatiku tal-kera, u kif ukoll il-kontroll

fl-ammont tal-kera, huma mizuri mahsuba sabiex jikkontrollaw l-uzu u t-tgawdija tal-proprjeta'. Kemm il-modalita' tat-tigdid tal-kera u kif ukoll il-kontroll fl-ammont ta' kera percepibbli jikkostitwixxu forma ta' interferenza fl-uzu u t-tgawdija tal-proprjeta`.

Fil-kaz tal-lum jirrizulta illi l-kirja tal-fond bdiet wara li harget l-ordni ta` rekwizizzjoni. Il-kera kienet ta` Lm 12 fis-sena. L-intimata u l-antekawza taghha baqghu jirrisjedu fil-fond skont kirja regolata bid-dispozizzjonijiet tal-Kap 69 anke wara li harget l-ordni ta` derekwizizzjoni. Il-kera baqghet invarjata sakemm wara li gie fis-sehh l-Att X tal-2009 il-kera zdiedet *ope legis* ghal €185 fis-sena, u b`effett mill-1 ta' Jannar 2019 rega` zdiedet ghal €209 fis-sena.

Ghalkemm ir-rikorrenti jilmentaw illi ma ridux jibqghu marbuta bil-kirja, jidher li r-rikorrenti u l-awturi taghhom fit-titolu qatt ma talbu awment fil-kera la permezz ta' ittra ufficjali u lanqas permezz ta' proceduri quddiem il-Bord li Jirregola l-Kera. Jirrizulta illi kien biss ftit tal-granet qabel saret din il-kawza li r-rikorrenti pprezentaw ittra ufficjali kontra l-intimata fil- 25 ta' Lulju 2019 fejn kienet interpellata biex tizgumbra mill-fond in kwistjoni.

Tajjeb jinghad pero` li ghalkemm matul iz-zmien tal-kirja r-rikorrenti accettaw il-hlas tal-ker, dak ma jfissirx li rrinunzjaw ghall-jeddijiet taghhom. Lanqas ma huwa fondat l-argument li ghaliex fond li jaghmel parti mill-assi ereditarji ta` persuna jkun regolat bil-Kap 69 allura jekk eredi u/jew uzufruttwarju ma jkunux iridu jaccettaw il-*fait accompli* ghandhom l-ghazla li jirrinunzjaw ghall-wirt. Jekk il-kirja tkun tikser il-jeddijiet fondamentali, l-eredi u/jew uzufruttwarju ghandhom jedd ifittxu rimedju.

Hija l-fehma ta` din il-qorti li fil-kaz odjern il-konsegwenzi tal-ordni ta` rekwizizzjoni u d-dritt tal-inkwilinat cahhdu lir-rikorrenti mill-ghazla ta` kif jiddisponu mill-fond. Il-fatt li l-antekawza taghhom accettaw is-sitwazzjoni dettata mill-istat tad-dritt ma kienx jipprekludi lir-rikorrenti li jahsbuha diversament tenut kont tal-kambjamenti socjali u ekonomici li ghaddiet minnhom is-socjeta` maltija matul is-snin. L-istat ta` nuqqas ta` ghazla kienet realta' fil-pajjiz li baqa` jippersisti anke sa zminijiet ricenti. L-isvolta giet mis-sentenzi tal-Qorti Kostituzzjonali u tal-ECtHR fejn kien dikjarat illi l-applikazzjoni tal-ligijiet specjali tal-kera jiksru l-jeddijiet fondamentali tas-sidien.

Fid-decizjoni tal-ECtHR fil-kaz ta` **Zammit and Attard Cassar v Malta** (op. cit.) kien rimarkat illi :- *"at the time, the applicants` predecessor in title could not reasonably have had a clear idea of the extent of inflation in property prices in the decades to come ..." (para 50).*

Bl-emendi ricenti fiz-zmien gara li filwaqt li l-inkwilini nghataw protezzjoni ma garax l-istess lis-sidien li kellhom joqghodu ghal dak li kienet tipprovdi l-ligi ghaliex il-legislatur naqas milli joffrilhom rimedju adegwat skont il-ligi ordinarja sabiex joggezzjonaw b`mod effettiv ghar-restrizzjonijiet fuq il-kundizzjonijiet lokatizzji. L-uniku triq li kellhom kienet li jfittxu kenn quddiem il-qrati ta` indole kostituzzjonali jew konvenzjonali. (ara s-sentenza li tat din il-Qorti diversament presjeduta fil-11 ta` Mejju 2017 fil-kawza fl-ismijiet **Josephine Azzopardi et vs L-Onorevoli Prim Ministru et**)

Hekk ghamlu r-rikorrenti fil-kaz tal-lum.

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

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

Jirrizulta ghalhekk illi l-kirja tal-fond kienet imgedda *ope legis* b`mod u manjiera illi s-sid kien kostrett *a suo malgrado* li joqghod ghal dak ir-regim ta` dritt certament sfavorevoli ghalih. Anke li kieku ntalab awment fil-kera, il-ligi ma kinitx tipprovdi ghal kondizzjonijiet biex eventwali awment ikun tassew reali u gust. Ghalhekk ir-rikorrenti u l-awturi taghhom ma kellhomx rimedji effettivi.

Fil-kaz tal-lum, ir-rikorrenti jaccettaw li l-allokazzjoni tal-fond sar ghall-finijiet ta` akkomodazzjoni socjali. Il-pern tal-ilment taghhom huwa li bl-applikazzjoni tad-disposizzjonijiet tal-Kap 69 ghas-sitwazzjoni taghhom qed ikun hemm ksur tal-Art 1 Prot 1 tal-Konvenzjoni ghaliex jirrizulta ppruvat sproporzjon qawwi kontra taghhom fir-ritorn li jista`

jkollhom li kieku t-tgawdija tal-propjeta` kellha tithalla tilhaq il-milja taghha.

Mhuwiex in diskussjoni l-jedd tal-Istat illi jikkontrolla b`legislazzjoni l-uzu tal-proprjeta’ meta dan ikun fl-interess pubbliku. Fl-istess waqt l-Istat huwa obbligat juri li fl-applikazzjoni ta` dik il-legislazzjoni jkunu qeghdin jinzammu bilanc u proporzjonalita’ bejn l-interess generali u ta` dak privat. Bl-emendi tal-2009 ghall-Kap 16, l-Istat haseb sabiex il-kera tizdied kull tlett snin. Cio` nonostante xorta wahda baqghet karenti l-proporzjonalita` li jrid l-Art 1 Prot 1 tal-Konvenzjoni, ghaliex ghalkemm b`dawk l-emendi kien hemm titjib ghas-sid meta mqabbel mas-sitwazzjoni precedenti, baqa` kostrett joqghod ghal quantum ta` zieda dettat mil-ligi li stabbiliet mhux biss kemm ghandu jkun l-awment izda anke kull meta kien permess awment. Qabel id-dhul fis-sehh ta’ l-emendi, ir-rikorrenti odjerni kienu ilhom snin twal igarrbu lezjoni tal-jedd taghhom skont l-Art 1 Prot 1 tal-Konvenzjoni, ghaliex ghal snin shah kienu kostretti jippercepixxu kera kif dettata mill-Kap 69.

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*”.

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

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

Fil-kaz ta’ **Ian Peter Ellis et vs Avukat Generali et**, (op cit) 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."

Fil-kaz tal-lum, jirrizulta ppruvat illi l-kera li qeghda tithallas mill-intimata Azzopardi, abbazi tad-disposizzjonijiet tal-Kap 69, hija bil-wisq inferjuri ghall-kera fis-suq matul iz-zmien kollu mertu tal-perizja teknika, liema perizja tikkostitwixxi prova ta` fatt. Il-figuri mhux ikkontestati jitkellmu wahedhom. Ghalhekk huwa ppruvat l-isproporzjon li ma jridx Art 1 Prot 1 tal-Konvenzjoni u li qed jingarr mir-rikorrent.

Wara li qieset il-provi fl-assjem taghhom, il-qorti hija tal-fehma li r-rikorrenti garrbu ksur tal-jeddijiet fondamentali taghhom kif imharsa bl-Art 1 Prot 1 tal-Konvenzjoni.

Ghalhekk qeghda <u>tilqa` dik il-parti tat-tieni (2) talba</u> tar-rikorrenti safejn din tirrigwarda ksur tal-jeddijiet fondamentali taghhom kif imharsa bl-Artikolu 37 tal-Kostituzzjoni u bl-Art 1 Prot 1 tal-Konvenzjoni, waqt li qeghda tichad l-eccezzjonijiet tal-intimata Awtorita` tad-Djar.

Fit-tieni domanda, ir-rikorrenti talbu <u>wkoll</u> it-tmiem tal-lokazzjoni lill-intimata Azzopardi li fis-sostanza tfisser l-izgumbrament taghha mill-post.

Il-qorti sejra taghmel referenza ghal gurisprudenza li *mutatis mutandis* issib applikazzjoni anke ghall-kaz odjern.

Fis-sentenza li tat il-Qorti tal-Appell fl-24 ta` April 2015 fil-kawza **<u>Michael Angelo Briffa et v. Nadia Merten</u>** : inghad illi :-

16. Lanqas ma huwa relevanti l-fatt illi r-rimedju moghti mill-Qorti Ewropea tad-Drittijiet tal-Bniedem fil-kaz ta` Amato Gauci kien il-kundanna tal-gvern li jhallas id-danni u mhux il-kundanna tal-kerrej ghal zgumbrament. Qabel xejn kawzi quddiem il-Qorti Ewropea jsiru kontra l-istat u mhux kontra cittadini privati: il-kerrej, li ma kienx parti fil-kawza, ma setax

jigi kundannat li jizgombra. Barra minn hekk, ir-rimedju li tista` taghti dik il-qorti huwa biss kontra l-istat: ma ghandha ebda setgha tordna zgumbrament ta` cittadini privati. Ukoll, dik il-qorti tista` biss tghid illi irravvizat ksur ta` xi disposizzjoni tal-Konvenzjoni ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali izda ma ghandha ebda setgha li tghid illi l-ligi domestika "tkun bla effett".

Fis-sentenza li tat il-Qorti Kostituzzjonali fil-kawza : **Dr. Cedric Mifsud et v. L-Avukat Generali et** : fil-25 ta` Ottubru 2013 : inghad hekk :-

13. It-tieni aggravju jolqot ir-rimedju li tat l-ewwel qorti meta qalet illi l-konvenuti Azzopardi ma jistghux jinqdew bl-art. 12(2) biex izommu l-proprjetà tal-atturi b`kiri. …

14. Huwa minnu illi l-Avukat Generali bhala rapprezentant tal-gvern ghandu interess generali fit-twettiq tal-politika ta` social housing. Madankollu, ghall-ghanijiet ta` proceduri gudizzjarji interess generali bhal dak jista` ma jkunx bizejjed jekk il-parti interessata ma tkunx se tiehu vantagg fil-kaz partikolari.

15. Fil-kaz tal-lum il-konvenuti Azzopardi ma appellawx mis-sentenza li ghalhekk, ghalihom, hija res iudicata. L-istess konvenuti Azzopardi ghalhekk huma marbuta bid-decizjoni tal-ewwel qorti illi "ma jistghux jinvokaw dan il-provvediment [tal-art. 12(2) tal-Kap. 158] biex jibqghu jabitaw fil-fond oggett ta` dawn il-proceduri". Huwa ovvju ghalhekk illi, ghall-ghanijiet tal-kawza tallum, l-Avukat Generali ma jista` jikseb ebda vantagg minn dan l-aggravju.

16. Ghal din ir-raguni l-qorti ma tqisx aktar dan l-aggravju.

Fis-sentenza : **Robert Galea v. Avukat Generali et** : deciza minn din il-qorti diversament presjeduta fis-7 ta` Frar 2017 : inghad :-

"Illi ghal dak li jirrigwarda r-rimedju l-iehor mitlub mir-rikorrent, il-Qorti taghraf li saret talba specifika fir-rikors promotur innifsu biex hija tikkunsidra l-izgumbrament tal-intimati Ganado mill-post;

Illi l-Qorti tifhem li kulma jmur, ir-rikorrent fil-qaghda attwali qieghed igarrab ksur tal-jedd tieghu dwar hwejgu. Kif sewwa

jghid, jekk il-Qorti kellha tieqaf biss bl-ghoti ta` kumpens, ma tkunx qieghda teqred l-ghajn tal-vjolazzjoni li qieghed igarrab u kull kumpens f`kull kaz ikun rimedju parzjali li jieqaf malli tinqata` l-kawza billi l-Qorti ma tistax f`kawza bhal din taghti kumpens ghall-gejjieni li mhux maghruf kemm jista` jtul (Ara Amato Gauci vs Malta §80);

Illi, min-naha l-ohra, sejbien ta` ksur ta` jedd fundamentali jitlob l-ghoti ta` rimedju effettiv, kemm fil-prattika u kif ukoll fil-ligi, b`mod li l-ghoti wahdu ta` kumpens jista` ma jitqiesx bhala rimedju tajjeb bizzejjed. F`kazijiet ta` dawn l-ahhar zmien, il-Qorti fi Strasbourg qieset li r-rimedju tat-tnehhija tal-okkupant minn post kien ir-rimedju effettiv li messu nghata, u li ghat-tbatija li ggarrab il-parti mnehhija jrid jaghmel tajjeb l-Istat Malti (Ara Q.E.D.B. 30.8.2016 fil-kawza fl-ismijiet Apap Bologna vs Malta (Applik. Nru. 46931/12) §§ 76 sa 91 (kaz li jirrigwarda Ordni ta` Rekwizizzjoni);

Illi f`dan ir-rigward u wara li hasbet fit-tul, il-Qorti taghzel li taghmel taghha l-principji imwettqa mill-Qorti Kostituzzjonali f`cirkostanza bhal din (Ara Kost. 31.1.2014 fil-kawza fl-ismijiet Dr. Cedric Mifsud et vs L-Avukat Generali et §§ 32 – 36) u tghid li l-intimati Ganado ma jistghux jibqghu jinqdew bid-dispozizzjonijiet tal-artikolu 12 tal-kapitolu 158 tal-Ligijiet ta` Malta ladarba b`dak il-mod ir-rikorrent ikun qieghed igarrab ksur tal-jedd tieghu taht l-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni. Min-naha l-ohra, huwa wkoll stabbilit li mhuwiex il-kompitu ta` Qorti mitluba tistharreg ilment ta` ksur ta` jedd fundamentali dwar it-tgawdija bil-kwiet tal-gid u l-ghoti ta` kumpens xieraq biex tordna t-tnehhija mill-post tal-okkupant li jkun. F`kaz bhal dak, ir-rimedju jrid jitfittex quddiem it-tribunal xieraq li lilu l-ligi taghti l-kompetenza specjali biex iqis kwestjonijiet bhal dawn. Dan jinghad ukoll minkejja li din il-Qorti tgawdi setghat wesghin ta` rimedju li tista` taghti f`kaz li ssib ksur ta` xi jedd fundamentali tal-parti attrici;

Illi, kif inghad aktar qabel, ladarba fil-kaz tallum hemm kirja li ghadha fis-sehh fiz-zmien "konvenzjonali" taghha, il-kwestjoni tat-tnehhija mill-post tal-intimati Ganado tkun tfisser li b`dak il-kuntratt u minghajru, il-jeddijiet pattwiti taghhom ikunu ngabu fix-xejn. Jixraq li l-kwestjoni tas-siwi u z-zamma fis-sehh ta` dak il-kuntratt jitqiesu ghalhekk mit-tribunal xieraq f`azzjoni apposta;

Illi ghalhekk, ghall-finijiet tal-istess tieni talba tar-rikorrenti, il-Qorti sejra tordna li l-intimati Ganado ma jistghux jistriehu izjed

fuq id-dispozizzjonijiet tal-artikolu 12 tal-kapitolu 158 tal-Ligijiet ta` Malta biex jiggustifikaw iz-zamma taghhom tal-post tar-rikorrent."

(ara wkoll : **<u>Angela sive Gina Balzan v. L-Onorevoli Prim Ministru et</u>** : 7 ta` Dicembru 2012)

Fid-decizjoni illi tat l-ECtHR fil-kaz ta` **<u>Frendo Randon and Others v. Malta</u>** tat-22 ta` Frar 2012 inghad illi :-

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

Tghodd ukoll il-konkluzjoni li waslet ghaliha l-ECtHR fil-kaz ta` **<u>Lindheim and Others v. Norway</u>** tat-12 ta` Gunju 2012 :-

"Whilst in reaching the above conclusion the Court has focused on the particular circumstances of the applicants` individual complaints, it adds by way of a general observation that the problem underlying the violation of Article 1 of Protocol No. 1 concerns the legislation itself and that its findings extend beyond the sole interests of the applicants in the instant case.

This is a case where the Court considers that the respondent State should take appropriate legislative and/or other general measures to secure in its domestic legal order a mechanism which will ensure a fair balance between the interests of lessors on the one hand, and the general interests of the community on the other hand, in accordance with the principles of protection of property rights under the Convention."

Din il-qorti tishaq illi – wiesgha kemm jista` wiehed jifhem li huma s–setghat taghha - mhuwiex dan il-forum appozitu sabiex tinghata decizjoni dwar jekk ghandhiex tintemm lokazzjoni jew jekk ghandux inkwilin jigi zgumbrat jew le. Huma t-tribunali jew qrati ordinarji li ghandhom jesprimu ruhhom dwar talbiet ta` din ix-xorta. Fil-kaz tal-lum jirrizulta li l-inkwilina gabet ruhha skont il-ligijiet vigenti. Ghalhekk m`ghandhiex tirrispondi ghall-kostituzzjonalita` ta` kif kienu applikati l-ligijiet li jharsu l-posizzjoni taghha.

Konsegwentement dik il-parti tat-tieni domanda tar-rikorrenti fejn intalbet it-tmiem tal-lokazzjoni u l-konsergwenti zgumbrament tal-inkwilina Azzopardi mill-fond qeghda tkun <u>respinta.</u>

Fit-tieni domanda, ir-rikorrenti talbu wkoll li jinghataw rimedji ohra xierqa.

Il-qorti tqis li r-rimedju ewlieni ghandu jkun l-ghoti ta` kumpens fl-ghamla ta` danni pekunjarji u morali.

Fl-istess waqt tghid ukoll li sabiex il-vjolazzjoni tal-jeddijiet fundamentali tar-rikorrenti ma tibqax tippersisti wara s-sentenza taghha tal-lum issir gudikat, il-qorti sejra tiddikjara li l-intimata Azzopardi ma tistax tibqa` toqghod fuq id-dispozizzjonijiet tal-Kap 69 sabiex tibqa` tokkupa l-fond in kwistjoni.

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

Ir-rikorrenti qeghdin jitolbu dikjarazzjoni li l-Awtorita` tad-Djar tkun dikjarata responsabbli ghall-hlas ta`kumpens u danni ghall-

vjolazzjoni subita tal-jeddijiet fondamentali taghhom. Billi fil-kawza odjerna l-Awtorita` tad-Djar tirrapprezenta l-Istat fl-applikazzjoni ta` ligijiet, li rrizultat f`lezjoni tal-jeddijiet fundamentali u konvenzjonali tar-rikorrenti, il-qorti qeghda tilqa` t-tielet domanda.

4. **Ir-raba` (4) 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).

Fid-decizjoni ta` **Maria Stella sive Estelle Azzopardi et vs Avukat Generali et** 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 Torreggiani et vs Avukat Generali et** fejn inghad 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`dan il-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.

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

A. <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 binarju kienet id-decizjoni fil-kaz ta' **Portanier v. Malta**, tas-27 ta' Novembru 2019 (App. 55747/16). Inghad hekk:

"55. The Court notes that it has repeatedly found that the sums awarded in compensation by the Constitutional Court do not constitute adequate redress. The Court makes reference to its considerations in paragraphs 24 and 25 above. The Court considers that, just like an award for pecuniary damage under Article 41 of the Convention, an award for pecuniary damage made by a domestic court must be intended to put the applicant, as far as possible, in the position he would have enjoyed had the breach not occurred. It transpires from the information and cases brought before the Court that this is often not the case. Such pecuniary awards are also often not accompanied by an adequate award of non-pecuniary damage and/or an order for the payment of the relevant costs (ibid. § 90 and Grech and Others, cited above, § 62). No domestic case-law dispelling such conclusions has been brought to the Court's attention in the present case.

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

...

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

63. The Court notes that the annual rental value of the property estimated on the basis of its sale value according to

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

64. The Court reiterates that an award for pecuniary damage under Article 41 of the Convention is intended to put the applicant, as far as possible, in the position he would have enjoyed had the breach not occurred. It therefore considers that interest should be added to the above award in order to compensate for the loss of value of the award over time. As such, the interest rate should reflect national economic conditions, such as levels of inflation and rates of interest. The Court thus considers that a one-off payment of 5% interest should be added to the above amount (ibid., § 20).
65. The Court thus awards the applicant EUR 8,000."

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

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

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

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

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

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

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

ii) <u>Likwidazzjoni</u>

Il-proceduri odjerni min-natura taghhom huma diretti sabiex jindirizzaw lezjoni kostituzzjonali u/jew konvenzjonali. Il-qorti sabet vjolazzjoni tal-Art 37 tal-Kostituzzjoni kif ukoll tal-Art 1 Prot 1 tal-Konvenzjoni. Ghalkemm id-diskrepanza bejn il-kera attwalment percepita u l-valur lokatizju li l-fond igib fis-suq hieles hija 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. Dwar quantum ta` kumpens, kemm f`danni pekunjarji, kif ukoll f`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) <u>Danni pekunjarji</u>

- **<u>Osservazzjoni generali</u>**

Fejn si tratta ta` danni <u>pekunjarji</u> din il-qorti hija tal-fehma li wasal iz-zmien, meta tqis il-quantum 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, illi fl-ahjar interess tal-gustizzja, il-qrati taghna jfasslu <u>linji gwida</u> meta tigi biex issir likwidazzjoni, bla ma jiddipartixxu mill-principju li kull kaz ghandu jkun gudikat fuq il-fatti u cirkostanzi partikolari tieghu. Fid-decizjoni tal-lum, il-qorti sejra tghid fil-fehma taghha x`ghandhom ikunu l-linji gwida <u>u</u> kif ghandhom jigu applikati ghall-kaz prezenti.

- **<u>Il-massimu</u>**

Fir-relazzjoni peritali hemm inkluza tabella (a fol 60) li turi li ghaz-zmien ta` bejn l-10 ta' Lulju 1979 u s-7 ta' Awissu 2019 il-valur lokatizju fis-suq tal-fond 58 gia 77, Triq is-Sur, l-Isla, kien ilahhaq total ta` **<u>€82,775</u>**. Dan l-ammont huwa mifrux fuq perijodi ta` hames snin bejn l-ewwel u l-ahhar data. Aktar kmieni, il-qorti ddikjarat li kienet sejra taghmel taghha dak li rrizulta mir-relazzjoni anke ghaliex l-accertamenti tal-perit tekniku ma kienux kontestati minn ebda parti fil-kawza.

Il-qorti sejra tqis il-figura ta` €82,775 bhala li tikkostitwixxi __l-massimu__ tad-danni pekunjarji. Dan l-ammont ghandu pero` jkun aggjustat skont il-linji gwida li sejra taghti.

- **__Linji gwida__**

L-isproporzjon bejn il-kera attwalment percepita mir-rikorrenti u dik li setghet tkun ippercepita fis-suq hieles mhuwiex kriterju assolut meta tigi biex isir il-likwidazzjoni tal-kumpens. Aktar kmieni rrilevat li d-danni li jigu likwidati fi procediment kostituzzjonali u/jew konvenzjonali mhumiex danni civili li jigu likwidati f`kawzi kondotti fi procedimenti ordinarji ghaliex huma danni li jigu likwidati minhabba l-vjolazzjoni accertata tal-jeddijiet fondamentali tal-persuna. Dan ifisser li 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.

a. __Ghandha titnaqqas il-kera li kienet mhallsa u accettata fiz-zmien in kwistjoni__

Jirrizulta ppruvat li l-intimata Azzopardi dejjem hallset il-kera dovuta saz-zmien meta din giet rifjutata mir-rikorrenti ftit qabel kienet prezentata l-kawza odjerna. Il-qorti tghid illi kull kera li tkun thallset mill-inkwilin ghandha tonqos mill-figura ta` €82,775. Fil-kaz tal-lum nafu li minn mindu bdiet il-kirja sal-2008 il-kera kienet dik ta' €34.94 fis-sena. Nafu wkoll illi fl-2009 il-kera zdiedet ghal €185 fis-sena sakemm fl-2019 saret €209 fis-sena. Dan ifisser illi l-kera li thallset matul il-perijodu in kwistjoni kienet ta` **__€3072.26__** (fuq firxa ta` 40 sena).

B`hekk il-figura originali ta` €82,775 ghandha tinzel ghal €79,702.74 arrotondata ghal __€79,702__.

b. __L-interess generali__

Il-qorti taccetta s-siwi u l-legittimita` tal-intervent tal-Istat. Dan il-fattur ghandu jwassal ghal tnaqqis ta` **__35%__** fil-figura ridotta ta` €79,702. Kienet adottata din ir-rata ta` tnaqqis sabiex tpatti ghas-snin fit-tul li ha l-Istat Malti sabiex jipproponi ligijiet li jsewwu l-isproporzjon li garrbu s-sidien bhala konsegwenza tal-applikazzjoni tal-ligijiet specjali

tal-kera matul is-snin. Ir-rata kienet tkun diversa li kieku l-Istat Malti gharaf jintervjeni tempestivament qabel ma beda jsib ruhu rinfaccjat b`decizjonijiet sfavorevoli moghtija mill-qrati Maltin u mill-ECtHR.

Il-figura tinzel ghalhekk ghal <u>€51,806.30</u> li qed tigi arrotondata ghal <u>€51,806</u>.

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

Il-qorti rat ir-relazzjoni.

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

Tqis illi l-fond joffri potenzjal f`zona urbana bhall-Cottonera.

Tghid li dawn huma fatturi li jzidu l-piz kontra r-rikorrenti.

Ghalhekk m`ghandux ikun hemm tnaqqis.

d. <u>Ir-ripreza tal-fond</u>

Ghalkemm il-qorti ddikjarat li l-intimata Azzopardi ma tistax tibqa` tistrieh fuq id-disposizzjonijiet tal-Kap 69 sabiex tibqa` tokkupa l-fond, tissussisti incertezza dwar meta u jekk ir-rikorrenti jkunux jistghu jiehdu lura l-pussess battal tal-fond jekk jirrikorru quddiem it-tribunali u/jew qrati ordinarji.

Ghalhekk m`ghandux ikun hemm tnaqqis.

e. <u>Passivita`</u>

Il-kera baqghet tigi accettata kwazi sal-ghatba tal-prezentata tal-kawza. Kienet ghazla tas-sidien li jdumu s-snin qabel jiehdu azzjoni. Tqis li t-talba tar-rikorrenti sabiex il-valur lokatizju tal-fond jigi stmat

b`effett mill-10 ta` Lulju 1979 hija eccessiva. Il-qorti jidhrilha li r-rikorrenti u l-antekawza taghhom m`ghandhomx jithallew jibbenefikaw mill-passivita` taghhom. Ghalhekk ghandu jkun hemm tnaqqis ulterjuri ta` **35%.** Il-figura ghalhekk ghandha terga` tinzel u ssir **€33,673.90** arrotondata ghas-somma ta' **€33,673**. Din il-figura tirrapprezenta d-danni pekunjarji.

ii) Danni mhux pekunjarji

Indipendentement mid-danni pekunjarji li jikkostitwixxu telf effettiv ghar-ragunijiet fuq premessi, il-qorti tghid li r-rikorrenti haqqhom jircievu wkoll il-hlas ta` danni morali fl-ammont ta` **€5,000** ghaliex sprovvisti kif kienu minn rimedju ordinarju effettiv kif jindirizzaw il-lanjanzi taghhom kienu kostretti jirrikorru ghal procediment ta` din ix-xorta semplicement ghaliex l-Istat qaghad lura ghal ghexieren ta` snin milli jsib tarf ta` l-izbilanc u ta` l-isproporzjon li kienu qeghdin igarrbu sidien ta` proprjetajiet b`legislazzjoni adegwata u effettiva.

iii. Riassunt

Il-kumpens qieghed jigi likwidat fl-ammont globali ta` €38,673

5. Il-hames (5) talba

Il-hlas tal-kumpens kif likwidat ghandu jsir mill- Awtorita` tad-Djar. L-intimata Azzopardi m`ghandha thallas ebda kumpens jew danni lir-rikorrenti ghaliex jirrizulta li ottemprat ruhha mal-ligijiet vigenti. M`ghamlet xejn kontra dik il-ligi. Ghalhekk lanqas m`ghandha thallas spejjez gudizzjarji.

Decide

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

Tastjeni milli tiehu konjizzjoni ulterjuri tat-tieni (2) eccezzjoni tal-intimata Awtorita` tad-Djar.

Tichad il-bqija tal-eccezzjonijiet tal-intimata Awtorita` tad-Djar.

Tipprovdi dwar l-ewwel (1) talba billi tiddikjara u tiddeciedi illi fil-konfront tar-rikorrenti l-applikazzjoni tad-dispozizzjonijiet tal-Kap. 69 tal-Ligijiet ta` Malta u tal-Att X tal-2009 qeghdin jaghtu dritt ta` rilokazzjoni lill-intimata Teresa sive` Tessie Azzopardi li jaghmilha difficli u haga x`aktarx incerta ghar-rikorrenti li jiksbu lura l-pussess tal-fond de quo, kif ukoll illi jiksbu kera gusta u adegwata.

Tipprovdi limitatament dwar it-tieni (2) talba billi tiddikjara u tiddeciedi li bl-applikazzjoni tad-disposizzjonijiet tal-Kap 69 tal-Ligijiet ta` Malta u tal-Att X tal-2009 ir-rikorrenti garrbu vjolazzjoni ghat-tgawdija tal-jeddijiet taghhom fir-rigward tal-fond 58 gia 77, Triq is-Sur, L-Isla, hekk kif dawn il-jeddijiet huma mharsa bl-Artikolu 37 tal-Kostituzzjoni ta' Malta u bl-Ewwel (1) Artikolu tal-Ewwel (1) Protokoll tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u Libertajiet Fondamentali.

Tichad dik il-parti tat-tieni (2) talba fejn ir-rikorrenti talbu t-terminazzjoni tal-lokazzjoni favur l-intimata Teresa sive` Tessie Azzopardi.

Tkompli tipprovdi dwar it-tieni (2) talba billi tiddikjara u tiddeciedi li l-intimata Teresa sive` Tessie Azzopardi ma tistax tibqa` toqghod fuq id-dispozizzjonijiet tal-Kap 69 sabiex tibqa` tokkupa l-fond in kwistjoni.

Tilqa' t-tielet (3) talba.

Riferibbilment ghar-raba` (4) talba, tillikwida favur ir-rikorrenti kumpens komplessiv fl-ammont ta` tmienja u tletin elf u sitt mija tlieta u sebghin ewro (€38,673) in kwantu ghal tlieta u tletin elf u sitt mija tlieta u sebghin ewro (€33,673) bhala danni pekunjarji u in kwantu ghal hamest elef ewro (€5,000)

bhala danni morali ghall-vjolazzjoni li garrbu tad-drittijiet fondamentali taghhom.

Riferibbilment ghall-hames (5) talba, tordna lill-intimata Awtorita` tad-Djar sabiex thallas lir-rikorrenti s-somma hekk likwidata bhala kumpens fl-ammont komplessiv ta` tmienja u tletin elf u sitt mija tlieta u sebghin ewro (€38,673) bl-imghax legali b`effett mil-lum.

Tordna li l-ispejjez kollha ta` din il-kawza ghandhom jithallsu mill-intimata Awtorita` tad-Djar.

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