PRIM`AWLA TAL-QORTI CIVILI
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON

Illum il-Hamis 18 ta` Marzu 2021

Kawza Nru. 7
Rikors Nru. 228/2019 JZM

Avukat Dottor Francis Lanfranco (K.I. 381250M)

kontra

Avukat Generali u b` digriet moghti fit-13 ta` Jannar 2020 l-isem tal-intimat "Avukat Generali" gie jaqra "Avukat tal-Istat"

Pawlu Galea (K.I. 514841M)

Maria Galea (K.I. 88643M)

Il-Qorti :

I. Preliminari

Rat ir-rikors li kien prezentat fil-21 ta` Novembru 2019 li jaqra hekk :–

i. *Illi huwa l-unika proprjetarju tar-razzett, illum residenza, tal-Hamri, fil-limiti tar-Rabat (Malta), flimkien mar-raba` annessa maghha, msejha Ta` Ruman sive Ta` Fazola, fil-limiti tar-Rabat (Malta) tal-kejl ta` 9,440 m.k., liema proprjeta` giet assenjata lilu permezz ta` kuntratt ta` divizjoni fl-atti tan-Nutar Peter Fleri Soler tat-18 ta` Novembru 2015, "Dokument A" hawn anness.*

ii. *Illi l-istess raba` u razzett/camere rurali, illum adebiti b`meters tad-dawl u ilma, minghajr il-kunsens u l-approvazzjoni tas-sidien, huma mqabbla lill-intimat Pawlu Galea bil-qbiela annwali ta` €23.50c pagabbli lir-rikorrenti f`Santa Marija ta` kull sena, unikament ghal skopijiet agrikoli ta` biedja sabiex l-art tinhadem ghat-tkabbir tal-prodott, u dan kif regolat bil-Kap. 199 tal-Ligijiet ta` Malta.*

iii. *Illi r-rikorrenti b`rikors nru. 8/2016 FDP fl-ismijiet `Avukat Dottor Francis Lanfranco vs Pawlu Galea et`, deciz mill-Bord dwar il-Kontroll tal-Kiri tar-Raba fit-28 ta` Novembru 2018, skont "Dokument B" hawn anness, u finalment mill-Qorti tal-Appell (Sede Inferjuri) fil-11 ta` Ottubru 2019 skont "Dokument C" hawn anness, kien talab lill-istess Bord jordna l-izgumbrament tal-intimat/i mir-razzett Tal-Hamri flimkien mar-raba` adjacenti tal-kejl ta` 9,440 metri kwadri msejha Ta` Ruman` sive Ta` Fazola t-tnejn fil-limiti tar-Rabat, Malta u dana fi tmiem il-presenti perjodu lokatizju.*

iv. *Illi fl-atti ta` dik il-kawza surreferita hemm zewg rapporti wiehed ex-parte tal-Perit Dennis Camilleri, minn fejn jirrizulta illi dawn il-kmamar tal-bhejjem ma kienux ghadhom jezistu u li minflokom l-intimat Pawlu Galea kien bena dar ta` residenza ghalih u ghal martu mghammra b`kull kumdita` kif deskritta fl-istess rapport.*

v. *Illi wkoll, l-Membri Teknici tal-Bord ossia l-Periti Edgar Rossignaud u Anthony Mifsud, fil-21 ta` Frar 2017, ipprezentaw ir-rapport taghhom kif jirrizulta mill-istess atti processwali u sentenzi rikors nru. 8/2016 FDP, minn fejn jirrizulta illi fil-fondi in kwistjoni hemm illum minflok kmamar rurali, residenza adebita b`kollox.*

vi. *Illi l-ghalqa, razzett u ambjenti in kwistjoni ilhom mikrija ghal generazzjonijiet shah lill-antekawza ta` Pawlu Galea*

bil-qbiela ta` €23.50c fis-sena pagabbli kull 15 ta` Awwissu ta` kull sena.

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

vii. Illi l-valur tal-ghalqa de quo huwa ta` circa €2,900,000 skont rapport tal-Perit Michael Lanfranco tat-18 ta` Novembru 2019, "Dokument D" hawn anness, u ghalhekk tenut kont tal-fatt illi l-qbiela pagabbli hija ta` biss €23.50c fis-sena, certament illi hemm sproporzjon flagranti bejn il-valur lokatizju fuq is-suq hieles u l-valur lokatizju kif impost mill-Kap. 199 tal-Ligijiet ta` Malta, u konsegwentement bejn id-drittijiet tar-rikorrenti bhala sid l-ghalqa u l-intimati Galea bhala gabillotti tal-istess ghalqa.

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

x. Illi r-rikorrent ittenta jitlob l-izgumbrament tal-intimati Galea mill-fond, ghar-ragunijiet msemmija fl-istess rikors promotur surreferit, u pero`, minkejja li pprova bdil fid-destinazzjoni tal-fond, ossia li le camere rurali gew sostitwiti f`residenza adebita bid-dawl u l-ilma b`mod regolari, u dan minghajr il-kunsens u l-approvazzjoni tal-istess sidien, il-Bord dwar il-Kontroll tal-Kiri tar-Raba` cahad it-talbiet tar-rikorrenti ghar-ragunijiet hemm msemmija.

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

jkollu effettivament jissokkombi ghall-proroga indefinita tal-lokazzjoni bl-istess kundizzjonijiet, irrispettivament minn kull kunsiderazzjoni ohra li tista` tkun rilevanti ghall-kaz.

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

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

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

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

xvi. Illi a tenur tal-Att XVI tal-1967 ossia l-Kap 199 tal-Ligijiet ta` Malta l-mittenti ma jistghu qatt jitterminaw il-qbiela tar-raba` peress illi minkejja li l-proprjeta` mhijiex tal-inkwilini huma ghandhom dritt li jassenjaw l-istess kirja lill-uliedhom u/jew lin-nies li jigu minnhom kif tistipula din l-istess Ligi filwaqt illi r-rikorrenti huwa kostrett jkompli jircievi l-qbiela irrizorja ta` circa €23.50c fis-sena, u dan meta l-valur tal-ghalqa de quo fis-suq hieles huwa ta` madwar €2,900,000.

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

xvii. Illi r-rikorrenti m`ghandux rimedju effettiv ai termini tal-Artikolu 6 tal-Konvenzjoni Ewropea stante illi huwa ma jistax jzid il-kera b`mod ekwu u gust skont il-valur tas-suq illum stante illi dak li effettivament huwa jista` tircievi huwa dak kif limitat bil-Kap. 199 tal-Ligijiet ta` Malta.

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

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

xxi. Illi zgur ma jistax jigi implikat illi r-rikorrenti rrinunzja ghad-dritt tieghu biex huwa jircievi kera gusta ghall-fond tieghu stante li ilu jipprova jizgombra lill-inkwilini imma dan huwa impossibli.

xxii. Illi r-regolamenti ta` kontroll tal-kera huma interferenza mad-dritt tas-sid ghall-uzu tal-proprjeta` taghhom stante illi dawn l-iskemi ta` kontroll tal-kera u restrizzjonijiet fuq id-dritt tas-sid li jittermina l-kirja tal-inkwilin u wisq inqas ta` min qed jipprova jippresta lilu nnifsu bhala inkwilin meta mhuwiex jikkostitwixxi kontroll tal-uzu tal-proprjeta` fit-termini tat-tieni paragrafu tal-Ewwel Artikolu tal-Ewwel Protokol tal-Konvenzjoni Ewropea (vide Hutten-Czapska vs Poland [GC], nru. 35014/97, §§ 160-161, ECHR 2006-VIII, Bitto and Others vs Slovakia, nru. 30255/09, § 101, 28 ta` Jannar 2014 u R&L, s.r.o. and Others §108).

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

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

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

(i) Tiddikjara u Tiddeciedi illi l-fatti suesposti u d-disposizzjonijiet tal-Kap. 199 tal-Ligijiet ta` Malta, b`mod partikolari izda mhux biss l-artikoli 3, 4 u 14, qeghdin jaghtu dritt ta` rilokazzjoni lill-intimati konjugi Galea tar-razzett, llum residenza, tal-Hamri, fil-limiti tar-Rabat (Malta), flimkien mar-raba annessa maghha, msejha Ta` Ruman sive Ta` Fazola, fil-limiti tar-Rabat (Malta) tal-kejl ta` 9,440 m.k, proprjeta` tar-rikorrenti, u jirrenduha impossibli lill-istess rikorrenti li jirriprendi l-pussess tal-imsemmija proprjeta`.

(ii) Konsegwentement tiddikjara u tiddeciedi illi qed jigu lezi d-drittijiet fundamentali tar-rikorrenti ghat-tgawdija tal-proprjeta tieghu ossia r-razzett, illum residenza, tal-Hamri, fil-limiti tar-Rabat (Malta), flimkien mar-raba annessa maghha, msejha Ta` Ruman sive Ta` Fazola, fil-limiti tar-Rabat (Malta) tal-kejl ta` 9,440 m.k, kif protetti mill-Artikolu 37 u 39 tal-Kostituzzjoni ta` Malta u mill-Ewwel Artikolu tal-Ewwel Protokol tal-Konvenzjoni Ewropea (l-Ewwel Skeda tal-Kap. 319 tal-Ligijiet ta` Malta) u anke mill-Artikolu 6 tal-istess Konvenzjoni u b`hekk taghtih ir-rimedji li jidhrilha xierqa fis-sitwazzjoni inkluz ir-ripresa tar-razzett, llum residenza, tal-Hamri, fil-limiti tar-Rabat (Malta), flimkien mar-raba annessa maghha, msejha Ta` Ruman sive Ta` Fazola, fil-limiti tar-Rabat (Malta) tal-kejl ta` 9,440 m.k.

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

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

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

Bl-ispejjez u bl-ingunzjoni tal-intimati ghas-subizzjoni

Rat id-dokumenti li kienu prezentati mar-rikors.

Rat ir-risposta li pprezenta l-Avukat Generali (illum Avukat tal-Istat) fl-<u>10 ta` Dicembru 2019</u> li taqra hekk :-

Illi l-lanjanza tar-rikorrent hija fis-sens illi bit-thaddim tad-dispozizzjonijiet tal-Kap. 199 tal-Ligijiet ta` Malta, b`mod partikolari l-artikoli 3, 4 u 14, qeghdin jigu lezi d-drittijiet fundamentali tieghu u

dan billi qed jigi mcahhad mit-tgawdija tal-proprjeta` senjatament razzett, llum residenza, tal-Hamri, fil-limiti tar-Rabat (Malta), flimkien mar-raba` annessa maghha, msejha Ta` Ruman sive Ta` Fazola, minghajr ma qed jinghata kumpens adegwat. Ir-rikorrent qieghed jitlob illi din l-Onorabbli Qorti tiddikjara u tiddeciedi li d-dispozizzjonijiet tal-Kap. 199 qeghdin jaghtu dritt ta` rilokazzjoni lill-intimati u jirrenduha impossibbli lir-rikorrent li jirriprendi l-pussess tal-imsemmija proprjeta, tiddikjara u tiddeciedi illi qed jigu lezi d-drittijiet fundamentali tar-rikorrent kif protetti mill-artikolu 37 u 39 tal-Kostituzzjoni ta` Malta, kif ukoll l-artikolu 6 u l-ewwel artikolu tal-ewwel protokoll tal-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem, kif ukoll qieghed jitlob kumpens u danni allegatament sofferti mir-rikorrent.

1. *Illi r-rikorrenti jrid igib prova li huwa tassew suggett ghal kirja li hija regolata bil-Kap. 199 tal-Ligijiet ta` Malta;*

2. *Illi r-rikorrent ma jistax jilmenta dwar perjodi qabel ma hu sar sid tal-proprjeta` in kwistjoni;*

3. *Illi l-azzjoni tar-rikorrent ma tiswiex in kwantu mibnija fuq l-artikolu 14 tal-Ewwel Protokol tal-Konvenzjoni Ewropea u dan peress illi dan l-artikolu ma jezistix;*

4. *Illi l-allegazzjonijiet tar-rikorrent huma nfondati fil-fatt u fid-dritt u ghaldaqstant ghandhom jigu michuda;*

5. *Illi l-ewwel talba tar-rikorrent mhijiex misthoqqha ghaliex mhux minnu li l-Kap. 199 tal-Ligijiet ta` Malta jaghmilha impossibbli ghalih li jiehu l-proprjeta` lura minhabba l-obbligu ta` rilokazzjoni. Anzi l-artikolu 4 tal-Kap. 199 tal-Ligijiet ta` Malta jsemmi ghadd kbir ta` sitwazzjonijiet fejn il-kirja agrikola tista` ma tiggeddidx;*

6. *Illi safejn ir-rikorrent qieghed jattakka t-thaddim tal-Kap. 199 tal-Ligijiet ta` Malta fuq is-sahha tal-artikolu 37 tal-Kostituzzjoni, dan ma jistax jigi mistharreg. Dan qed jinghad ghaliex skont l-artikolu 37(2)(f) tal-Kostituzzjoni, ebda haga f`dan l-artikolu m`ghandha tinftiehem li tolqot l-ghemil jew hdim ta` xi ligi safejn din tkun tipprovdi ghat-tehid ta` pussess jew akkwist ta` proprjeta`, li ssehh fil-kuntest ta` kirja;*

7. Illi fi kwalunkwe kaz ir-rikorrent ma garrab l-ebda ksur tal-jedd tieghu ghat-tgawdija ta` gidu taht l-artikolu 37 tal-Kostituzzjoni u dan peress li dan l-artikolu jghodd biss meta jkun hemm tehid forzuz tal-proprjeta`. Sabiex wiehed jista` jitkellem dwar tehid forzuz, persuna trid tigi mnezza` minn kull dritt li ghandha fuq dik il-proprjeta`. Pero` dan mhuwiex il-kaz hawnhekk, ghaliex bl-applikazzjoni tal-Kap. 199 tal-Ligijiet ta` Malta ir-rikorrent ma tilifx ghal kollox il-jeddijiet kollha tieghu fuq il-gid in kiwstjoni. Tant hu hekk li l-artikolu 4 tal-Kap. 199 isemmi lista shiha ta` cirkostanzi ta` meta sid ta` art agrikola jista` jitlob li l-kirja tieghu ma tibqax tiggedded u b`hekk tigi lura ghandu;

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

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

10. Illi fir-rigward tal-allegat nuqqas ta` rimedju effettiv, l-esponent isostni illi bl-intavolar ta` dawn il-proceduri kostituzzjonali u konvenzjonali ir-rikorrenti stess qed jirrikonoxxu li s-sistema Maltija tipprovdi ghal rimedju domestiku li huwa effettiv. Li kieku ma kienx hekk ir-rikorrenti ma kienux ser joqghodu jifthu dawn il-proceduri;

11. Illi ghal dak li jirrigwarda l-artikolu 45 tal-Kostituzzjoni ta` Malta, dan ukoll mhuwiex applikabbli minhabba li l-imgieba diskriminatorja allegata mir-rikorrent ma gietx impoggija taht wahda mill-irjus ta` diskriminazzjoni li ghalihom jirreferi l-artikolu 45(3) tal-Kostituzzjoni;

12. Illi fir-rigward tal-artikolu 14 tal-Konvenzjoni Ewropea, l-esponent jissottometti illi dak li qed jilmenta minnu r-rikorrent ma jiffigura mkien fil-parametri ta` protezzjoni minn trattament diskriminatorju kif sancit minn dan l-artikolu;

13. Illi mizjud ma` dan, u dan jghodd kemm ghad-dispozizzjoni tal-Kostituzzjoni kif ukoll ghal dik tal-Konvenzjoni Ewropea, huwa manifest li l-ligijiet li qed jigu attakkati mir-rikorrent, japplikaw indiskriminatament ghal kull kirja agrikola. Ghalhekk ir-rikorrent ma jistax jargumenta li huwa gie zvantaggat meta mqabbla ma haddiehor ghaliex dak il-haddiehor qieghed jigi trattat ezattament bhalu;

14. Ghal dak li jirrigward l-artikolu 34 tal-Kostituzzjoni, l-esponent jirrileva illi dan huwa inaplikabbli ghal kaz odjern u dan peress illi dan l-artikolu jitratta protezzjoni minn arrest jew detenzjoni arbitrarja u l-fatti specie tal-kaz odjern ma jittrattawx xi arrest jew detenzjoni;

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

16. Salv eccezzjonijiet ulterjuri.

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

Rat ir-risposta tal-intimati konjugi Galea li kienet prezentata fit-<u>3 ta` Jannar 2020</u> u li taqra hekk :-

1. Illi fl-ewwel lok l-esponenti umilment jeccepixxu illi, filwaqt li jirrikonoxxu li ghandhom locus standi, huma bl-ebda mod ma jistghu qatt ikunu responsabbli, qua cittadini privati, ta` xi lezjoni ta` drittijiet fondamentali tar-rikorrent u ghalhekk la ghandhom jigu kkundannati jhallsu xi kumpens u wisq anqas l-ispejjez ta` din il-procedura;

2. Illi fit-tieni lok, l-istess rikorrent ma jistax juza dan il-forum kostituzzjonali sabiex jintavola appell iehor minn dak legittimament deciz mill-Qorti tal-Appell (Sede Inferjuri) fil-11 t` Ottubru 2019, anke il-ghaliex kieku jithalla jsir dan, dan ikun jikkostittwixxi abbuz tal-ligi u tal-procedura. F`kull kaz, l-esponenti ma bidlux id-destinazzjoni tal-fond in kwistjoni kif gustament deciz mill-istess Qorti tal-Appell (Sede Inferjuri);

3. Illi fit-tielet lok id-disposizzjonijiet tal-Kapitolu 199 tal-Ligiiiet ta` Malta fihom infushom ma humiex lezivi tal-jeddijiet fondamentali tar-rikorrent u bl-ebda mod ma jmur kontra l-ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea u certament ma ghandhomx jaghtu lok ghall-izgumbrament tal-esponenti. Invece dawn l-istess ligijiet, isahhu l-jeddijiet tas-sid billi jikkontemplaw dawk ic-cirkostanzi fejn il-kirja agrikola tista` ma tiggeddidx u kif ukoll jillimitaw il-jedd tar-rilokazzjoni;

4. Illi fir-raba` lok, u minghajr ebda` pregudizzju ghall-premess, ir-rikorrent ghandu kull jedd jitlob ghal zieda fil-qbiela u b`hekk qed jigi eccepit illi huwa ma ezawrietx ir-rimedji ordinarji skont il-ligi kif gustament jitlob il-proviso tas-subinciz (2) tal-artikolu 46 tal-Kostituzzjoni ta` Malta stante illi huwa talab l-izgumbrament taghhom fil-proceduri istitwiti quddiem il-Bord Dwar il-Kontroll ta` Kiri ta` Raba` u ma talabx zieda fil-kirja agrikola;

5. Illi fil-hames lok u minghajr ebda` pregudizzju ghall-premess, jinghad illi l-antekawza tar-rikorrent liberament ikkoncedew

il-fond oggett ta` din il-kawza b`titolu ta` qbiela a favur tal-esponenti u dawn taht dawk il-kundizzjonijiet illi huma dehrilhom xierqa u minghajr ebda` indhil minn hadd. In fatti l-istess antekawza, setghu kieku riedu jistipulaw zieda fil-qbiela u jekk ma sarx dar; certament li ma jahtu xejn l-esponenti u zgur li ma ghandomx ibatu xi konsegwenzi bhall-izgumbrament taghhom kif mitlub mir-rikorrent;

6. Illi fis-sitt lok, u minghajr ebda` pregudizlu ghall-premess, jigi eciepit illi l-Istat ghandu kull dritt li jikkontrolla l-uzu tal-proprjeta` kemm-il darba dan il-kontroll huwa preskritt bil-ligi u jservi ghan legittimu u cioe` fl-interess generali;

7. Illi fis-seba` lok, u minghajr ebda` pregudizzju ghall-premess, l-esponenti umilment jikkontendu illi din l-Onorabbli Qorti ma ghandha l-ebda` setgha tordna l-izgumbrament tal-esponenti, u li f`kull kaz, u dejjem minghajr pregudizzju, ir-rimedju tal-kumpens, jekk misthoqq, ikun bizzejjed u effettiv filwaqt li r-rimedju ulterjuri tal-izgumbrament ikun bil-wisq ingust u sproporzjonat;

8. Illi finalment l-esponenti umilment jirrizervaw, minn issa l-jedd ta` rivalsa kontra l-Gvern ta` Malta f`kaz illi huma jigu intortament u minghajr ebda` htija ta` xejru zgumbrati mill-fond lilhom mikri, inkluz li jzommu l-istess responsabbli ghal kull dannu u hsara li jistghu isofru.

9. Salv eccezzjonijiet ulterjuri.

Ghaldaqstant ghal dawn ir-ragunijiet l-esponenti umilment jitolbu li dina l-Onorabbli Qorti joghgobha tichad it-talbiet kollha tar-rikorrent bl-ispejjez kontra tieghu.

Rat id-digriet li tat fl-udjenza tat-13 ta` Jannar 2020 fejn laqghet it-talba tar-rikorrent ghall-hatra ta` perit tekniku sabiex jistma u jirrelata dwar il-valur lokatizju fis-suq tar-razzett, illum residenza, tal-Hamri, fil-limiti tar-Rabat (Malta), flimkien mar-raba` annessa maghha, msejha Ta` Ruman sive Ta` Fazola, fil-limiti tar-Rabat (Malta) ghaz-zmien mid-19 ta` Awwissu 1987 u kull hames snin sussegwenti sal-21 ta` Novembru 2019. Kien mahtur bhala perit tekniku ghal dan l-iskop il-Perit Mario Cassar.

Rat id-digriet li tat fl-istess udjenza fejn laqghet talba tal-intimati ghall-allegazzjoni tal-atti tal-kawza fl-ismijiet : *L-Avukat Dr Francis Lanfranco v. Pawlu Galea et (Rik Nru 8/16 FDP)* : liema atti jikkostitwixxu prova ghall-fini ta` din il-kawza.

Rat l-atti ta` dik il-kawza.

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

Semghet ix-xiehda u rat il-provi l-ohra li tressqu fil-kors tal-kawza, inkluz ir-risposti moghtija mill-perit tekniku ghad-domandi li saru in eskussjoni.

Rat in-noti ta` osservazzjonijiet li kienu prezentati.

Rat illi l-kawza thalliet ghas-sentenza ghal-lum.

Rat l-atti l-ohra tal-kawza.

II. Provi

1. Xhieda

Ir-rikorrent xehed illi huwa l-uniku proprjetarju tar-razzett u tal-art li taghmel mieghu mertu ta` din il-kawza wara li kienu assenjati lilu bis-sahha ta` att ta` divizjoni tat-18 ta` Novembru 2015 fl-atti tan-Nutar Peter Fleri Soler. Il-proprjeta` kienet ilha moghtija bi qbiela lill-antekawza tal-intimati Galea ghal generazzjonijiet shah. Originarjament il-proprjeta` kienet tikkonsisti f`razzett jew *camere rurali*. Maz-zmien, minghajr il-permess tas-sidien, l-intimati Galea istallaw *meters* tad-dawl u tal-ilma u kkonvertew ilr-razzett f`dar ta` abitazzjoni fejn jghixu. L-intimati Galea qeghdin ihallsu qbiela ta` €23.50 fis-sena.

Kompla jixhed illi qabel sar proprjetarju huwa kien amministratur tal-proprjeta` mill-1990. Qablu l-amministratrici kienet Joanne Vella Muscat. Fis-6 ta` Awwissu 2000 huwa kien wiret kwart indiviz tal-proprjeta`. In segwitu meta giet biex issir id-divizjoni kien inkarikat Perit Dennis Camilleri sabiex ihejji skema ta` divizjoni.

Ighid illi hadd ma kellu idea li l-intimati Galea kienu bnew ir-residenza taghhom fuq il-proprjeta` peress illi l-ambjenti ma jidhrux mit-triq billi jinsabu mdawwrin b`hajt gholi.

L-intimata Maria Galea xehdet illi kienet ilha 34 sena tghix fil-proprjeta` mertu tal-kawza odjerna. Tghid illi zewgha kien jahdem l-art. Tghid illi l-post kien diga` kellu *meters* tad-dawl u ilma. Maz-zmien waqghet kamra, u huma hadu hsieb jsewwuha ; illlum dik il-kamra saret garage.

Rigward il-hlas tal-kera xehdet illi meta bdiet il-kawza kontra taghhom ir-rikorrent kien talabhom ihallsu kera ta` €2000 fis-sena izda huma dehrilhom li dak li talabhom kien gholi wisq.

Fissret li hija ghandha proprjeta` ohra li kienet wirtet minghand missierha. Zammet dik il-proprjeta` ghaliex jekk jigi nieqes zewgha ma kenitx behsiebha tibqa` tghix fil-proprjeta` mertu ta` din il-kawza.

Marthese Debono mill-Awtorita` tal-Ippjanar xehdet illi l-l-ambjenti mertu ta` din il-kawza hija art agrikola li ghaliha tapplika l-*policy* tan-North West Local Plan. L-ambjenti mibnija jammontaw ghal cirka 130 metru kwadru. Ghal din il-parti tapplika r-Rural Policy and Design Guidance 2014. Spjegat illi jista` jsir zvilupp sa massimu ta` 200 metru kwadru jigifieri zieda ta` ambjenti msaqqfa ta` 70 metru kwadru mal-binja ezistenti.

L-intimat Paul Galea xehed illi l-kirja bdiet lin-nanniet tieghu imbaghad ghaddiet ghandu. Stqarr illi hu u l-mara tieghu jahdmu l-art u jaqilghu l-ghixien taghhom minnha. Peress iilli tfal m`ghandhomx u avvanzati fl-eta`, ir-rikorrenti jqabbdu n-nies sabiex jghinuhom jahdmu r-raba`. Apparti huma, ma hemmx haddiehor joqghod maghhom. Qal illi madwar erba` snin ilu r-rikorrent ma baqax jaccetta l-hlas tal-kera u ghalhekk beda jiddepozita l-kera l-qorti. Fl-istess zmien ir-rikorrent kien talabhom jizgombraw. Huma rrifjutaw.

2. **Il-provi teknici fil-kawza Rik. Nru. 8/16 FD**

Il-qorti hadet vizjoni tar-relazzjoni teknika *ex parte* kif ukoll dik tal-perit gudizzjarju li jaghmlu parti mill-atti tal-kawza fl-ismijiet **L-Av. Dr. Francis Lanfranco v. Pawlu Galea et** (Rik. Nru. 8/16 FD).

3. **Ir-relazzjoni tal-perit tekniku**

Fil-kors tal-kawza odjerna, kien mahtur Perit Mario Cassar bhala perit tekniku.

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

- Il-proprjeta` tikkonsisti f`residenza rurali antika li maz-zmien gew ristrutturati partijiet minnha.
- Il-proprjeta` jirrizulta illi ghad ghandha l-istess arja superficjali li kien hemm fl-1968 kif jirrizulta mis-site plan ghas-sena 1968.
- L-arja superficjali tal-proprjeta` kollha hija ta` cirka 9486 metri kwadi.
- Il-parti tal-proprjeta` illi hija mibnija ghandha arja ta` cirka 130 metru kwadru.
- Il-bqija tal-art hija art agrikola, u din ghandha arja superficjali ta` cirka 9356 metri kwadri.

Il-perit tekniku ghamel dawn il-**konsiderazzjonijiet** :

a) Proprjetajiet ohra simili li jinkludu binjiet u rziezet fiz-zona ODZ ghandhom valur fis-suq ta` €400 circa ghal kull metru kwadru.

b) Parti biss mill-proprjeta` ghandha tigi kkunsidrata bhala li ghandha valur ta` €400 ghal kull metru kwadru. Il-bqija tal-art hija art agrikola li ghandha meqjusa li ghandha valur ta` €40 kull metru kwadru.

Il-**konkluzjonijiet** tal-perit tekniku ghar-rigward tal-valur tal-proprjeta` fis-suq kienu :

i) Illi l-ambjenti msaqqfa illi jammontaw ghal cirka 130 metri kwadri, flimkien ma` tomna raba` adjacenti ghall-istess ambjenti msaqqfa, ghandhom valur fis-suq ta` **€501,600**.

ii) Illi l-bqija tar-raba` li ghandha arja superficjali ta` cirka 8232 metri kwadri ghandha valur fis-suq ta` **€329,280**.

iii) Komplessivament il-valur tal-proprjeta` fis-suq jammonta ghal **€830,880**.

Il-**konkluzjonijiet** tal-perit tekniku ghar-rigward tal-valur lokatizju tal-proprjeta` fis-suq relattiv ghaz-zmien mertu tal-perizja kienu :

i) Fil-kaz tal-ambjenti msaqqfa, flimkien ma` tomna raba` adjacenti ghall-istess ambjenti msaqqfa, il-valur lokatizju totali kien ta` **€112,559**.

ii) Fil-kaz tal-bqija tar-raba`, il-valur lokatizju totali kien ta` **€29,745**.

iii) B`hekk il-valur lokatizju komplessiv kien ta` **€142,304**.

4. L-eskussjoni tal-perit tekniku

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

Xehed illi sal-1967 l-parti msaqqfa tal-art jidher illi kienet ta` cirka 130 metri kwadri.

5. **Il-piz probatorju ta` relazzjoni teknika**

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 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 v. 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 v. Mercieca" –** Qorti tal-Appell – 6 ta` Ottubru 1999 **; "Saliba v. Farrugia**" – Qorti tal-Appell – 28 ta` Jannar 2000).

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 v. 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 izda saret eskussjoni.

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

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

Fis-sentenza li tat fis-7 ta` Frar 2017 fil-kawza **<u>Robert Galea 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 fundamentali tieghu taht l-artikolu 37 tal-Kostituzzjoni m`ghandux ghalfejn jipprova titolu assolut u lanqas wiehed originali bhallikieku l-azzjoni dwar ksur ta` jedd fundamentali kienet wahda ta` rivendika (Kost. 27.3.2015 fil-kawza fl-ismijiet **<u>Ian Peter Ellis et vs Avukat Generali et</u>**). Huwa bizzejjed, ghall-finijiet ta` dak l-artikolu, li wiehed juri li ghandu jedd fil-haga li tkun li bih jista` jieqaf ghall-pretensjonijiet ta` haddiehor.*

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

Dan premess, il-qorti tosserva illi r-rikorrent ghamel il-prova tat-titolu. Infatti pprezenta il-kuntratt ta` divizjoni tat-18 ta` Novembru 2015 fl-atti tan-Nutar Dottor Peter Fleri Soler (Dok A) mnejn jirrizulta li kien assenjat lir-rikorrent b`titolu ta` proprjeta` r-razzett, illum residenza, tal-Hamri, fil-limiti tar-Rabat (Malta), flimkien mar-raba` annessa maghha, msejha Ta` Ruman sive Ta` Fazola, fil-limiti tar-Rabat (Malta) tal-kejl ta` 9,440 m.k.

Din il-prova ma kenitx ikkontestata.

Il-qorti hija sodisfatta illi r-rikorrent ghandu titolu tajjeb ghall-proprjeta`, li jaghtih il-jedd li thares id-drittijiet tieghu, inkluz li jitlob il-protezzjoni, fil-kaz li tirrizulta ppruvata vjolazzjoni.

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

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

Ir-rikorrent qed jitlob lill-qorti sabiex tiddikjara u tiddeciedi li l-kirja favur l-intimati Galea kif regolata bl-Artikoli 3, 4 u 14 tal-Kap 199 taghmilha impossibbli ghas-sid illi jikseb lura l-pussess battal tal-proprjeta` tieghu.

L-Avukat tal-Istat ressaq l-eccezzjoni numru hamsa (5) fejn eccepixxa li r-ripreza tal-pussess mhijiex impossibbli ghaliex l-Art. 4 tal-Kap 199 jelenka lista ta` cirkostanzi li jippermettu lis-sid jitlob lura l-pussess battal tal-proprjeta`.

Jirrizulta illi b`rikors tal-14 ta` Settembru 2016 fl-ismijiet **__L-Av. Dr. Francis Lanfranco v. Pawlu Galea et__** (Rik. Nru 8/16 FD) ir-rikorrent talab l-izgumbrament tal-intimati Galea. B`sentenza tat-28 ta` Novembru 2018 il-Bord Dwar il-Kontroll ta` Kiri tar-Raba cahad it-talba tar-rikorrent. Sar appell u l-Qorti tal-Appell (Sede Inferjuri) b`sentenza tal-11 ta` Ottubru 2019 ikkonfermat is-sentenza tal-Bord.

L-intimati Galea ressqu l-eccezzjoni numru tnejn (2) fejn eccepew li l-kawza odjerna ma tistax iservi bhala pretest sabiex ikun hemm revizjoni tas-sentenza moghtija mill-Qorti tal-Appell (Sede Inferjuri).

Imbaghad fl-eccezzjoni numru erbgha (4), l-intimati Galea eccepew li r-rikorrent ma ezawriex ir-rimedji ordinarji disponibbli skont il-Kap 199 qabel ma ppropona l-azzjoni odjerna.

Il-qorti sejra tqis it-talba fl-isfond ta` dawn l-eccezzjonijiet.

L-**__Art 46 (2) tal-Kostituzzjoni__** jipprovdi :-

Il-Prim`Awla tal-Qorti Civili ghandu jkollha gurisdizzjoni originali li tisma` u tiddecidi kull talba maghmula minn xi persuna skont is-subartikolu (1) ta` dan l-artikolu, u tista` taghmel dawk l-ordnijiet, tohrog dawk l-atti u taghti dawk id-direttivi li tqis xierqa sabiex twettaq, jew tizgura t-twettiq ta` kull wahda middisposizzjonijiet tal-imsemmija artikoli 33 sa 45 (maghdudin) li ghall-protezzjoni taghhom tkun intitolata dik il-persuna :

Izda l-Qorti tista`, jekk tqis li jkun desiderabbli li hekk taghmel, tirrifjuta li tezercita s-setghat taghha skont dan is-subartikolu f`kull kaz meta tkun sodisfatta li mezzi xierqa ta` rimedju ghall-ksur allegat huma jew kienudisponibbli favur dik il-persuna skont xi ligi ohra.

L-istess principju jinstab fl-**__Art 4(2) tal-Kap 319__**.

Kif inghad minn din il-qorti diversament preseduta fil-kawza **__John Grech et v. Onor. Prim Ministru et deciza__** deciza fid-29

ta` April 2013 (u konfermata mill-Qorti Kostituzzjonali fil-31 ta` Jannar 2014) :-

Illi din il-kwistjoni giet dibattuta diversi drabi fil-Qrati taghna. Il-Qorti Kostituzzjonali dahlet fil-fond taghha fis-sentenza taghha fil-kawza fl-ismijiet ***__"Dr Mario Vella vs Joseph Bannister nomine"__*** *(deciza fis-7 ta` Marzu 1994) fejn, wara li elenkat numru ta` sentenzi precedenti, qalet fost affarijiet ohra illi :*

"Minn din ir-rassenja kemm tal-Prim` Awla u kemm ta` din il-Qorti jistghu jitnisslu dawn il-linji gurisprudenzjali :

a. Meta hu car li hemm mezzi ordinarji disponibbli ghar-rikorrenti biex ikollu rimedju ghad-danni li qed jilmenta, bhala principju generali dawn ghandhom jigu adoperati u r-rikors ghall-organi gudizzjarji ta` natura Kostituzzjonali ghandu jsir wara li l-ordinarji jigu ezawriti jew meta mhumiex disponibbli;
b. Din il-Qorti Kostituzzjonali sakemm ma jirrizultawlhiex ragunijiet serji gravi ta` llegalita` jew ta` gustizzja jew zball manifest ma tiddisturbax l-ezercizzju ta` diskrezzjonalita` tal-ewwel Qorti kkonferita mill-artikolu 46 (2) tal-Kostituzzjoni;

c. Kull kaz ghandu l-fattispecje partikolari tieghu;

d. Meta r-rikorrenti ma jkunx ghamel uzu minn rimedju li seta` kellu dan ma jfissirx li l-Qorti ghandha tikkonsidra li ma ghandhiex tezercita l-gurisdizzjoni taghha jekk dak il-possibbli rimedju ma kienx pero` jirrimedja hlief in parti l-lanjanzi tar-rikorrenti;

e. Meta r-rikorrenti ma jkunx ezawrixxa r-rimedju ordinarji, jekk pero` dan in-nuqqas ikun ikkontribwixxa ghalih l-operat ta` haddiehor allura ma jkunx desiderabbli illi l-Qorti tieqaf u ma tipprocedix bit-trattazzjoni tal-kaz;

f. Meta l-ewwel Qorti tezercita d-diskrezzjoni taghha u tieqaf mit-trattazzjoni minghajr ma tezamina l-materja necessarja li fuqha dik id-diskrezzjoni ghandha tigi ezercitata, il-Qorti tat-tieni grad ghandha twarrab dik id-diskrezzjoni."

*Illi l-istess Qorti fil-kawza fl-ismijiet "****__Philip Spiteri vs Sammy Meilaq__****" (deciza fit-8 ta` Marzu 1995) qalet ukoll li:*

"Meta l-oggett tal-kawza jkun ta` natura komplessa – u jkollu kwistjonijiet li ghandhom rimedju f` xi ligi ohra, u ohrajn li ma

ghandhomx, rimedju hlief Kostituzzjonali – allura ghandha tipprevali din l-ahhar azzjoni". F`din is-sentenza l-Qorti osservat li jkun sewwa li mal-kelma `komplessa` jizdied il-kliem `jew inkella mhallta`.

*Fil-kawza fl-ismijiet "**<u>Maria sive Marthese Attard et vs Policy Manager tal-Malta Shipyards et</u>**" (deciza mill-Prim` Awla, Sede Kostituzzjonali, fit-30 ta` Settembru 2010) gie dikjarat illi :*

"L-ezistenza ta` rimedju iehor trid titqies fil-kuntest tal-allegat ksur tad-dritt fundamentali. Ghandu jkun rimedju accessibbli, xieraq, effettiv u adegwat biex jindirizza dan il-ksur. Fl-istess waqt ma hemmx ghalfejn li biex jitqies effettiv ikun jirrizulta li r-rimedju sejjer jaghti lir-rikorrenti success garanti. Huwa bizzejjed li jintwera li jkun wiehed li jista` jigi segwit b`mod prattiku, effettiv u effikaci.

Meta jidher li jezistu mezzi ordinarji disponibbli biex jikseb rimedju ghall-ilment tieghu r-rikorrent ghandu jirrikorri ghal dawk il-mezzi, qabel ma jirrikorri ghar-rimedju Kostituzzjonali u huwa biss wara li jkun fittex dawk il-mezzi jew wara li jidher li dawk il-mezzi ma jkunux effettivament disponibbli li ghandu jintuza r-rimedju Kostituzzjonali."

*Illi f`dan is-sens wiehed jista` jsib ukoll l-insenjament fir-rigward fis-sentenza tal-Qorti tal-Appell fl-ismijiet "**<u>Joseph Fenech vs Awtorita` tal-Ippjanar et"</u>** deciza fid-9 ta` Novembru 2012*

…
Illi wiehed ghandu jqis li kemm l-artikolu invokat mill-intimati u kemm il-Kostituzzjoni ta` Malta ssemmi mezzi li `kienu disponibbli` u allura anke jekk kien hemm mezzi li `kienu` disponibbli ghar-rikorrent izda li minhabba t-trapass taz-zmien ma jkunux ghadhom (disponibbli), il-Qorti tista` jekk hekk jidhrilha tiddeklina li tezercita l-gurisdizzjoni taghha.

Fid-decizjoni li tat fis-27 ta` Frar 2006 fil-kawza **<u>Sonia Zammit et v. Ministru tal-Politika Socjali et</u>** din il-qorti diversament presjeduta rreferiet ghal aktar gurisprudenza :-

"Meta huwa car li hemm mezzi ordinarji disponibbli ghar-rikorrent biex ikollu rimedju ghad-dannu li qed jillamenta, bhala principju generali dawn ghandhom jigu adoperati, u r-

rikors ghall-organi gudizzjarji ta` natura kostituzzjonali ghandu jsir wara li l-ordinarji jigu ezawriti jew meta ma humhiex disponibbli." (**Dr Mario Vella vs Joseph Bannister noe** – Qorti Kostituzzjonali deciza 7 ta` Marzu 1994).

*"Hu veru li kull persuna tista` tirrikorri lill-Prim Awla ghal rimedju ta` indole Kostituzzjonali, imma l-ewwel subinciz ta` dak l-Artikolu 46 irid jigi moqri mal-proviso tat-tieni subinciz tieghu li jipprovdi li l-Qorti tista`, jekk tqis li jkun desiderabbli li hekk taghmel, tirrifjuta li tezercita s-setghat taghha skond dak l-artikolu f`kull kaz meta tkun sodisfatta li mezzi xierqa ta` rimedju ghall-ksur allegat `huma jew kienu disponibbli favur dik il-persuna skond xi ligi ohra.`" (**Lawrence Cuschieri vs Onor Prim Ministru** – Qorti Kostituzzjonali deciza 6 t`April 1995.)*

"Sakemm tibqa` l-possibilita` li l-lezjoni tad-dritt fundamentali setghet kienet jew ghad tista` tigi rettifikata bil-proceduri u mezzi provduti bil-ligi, ikun generalment il-kaz li l-Qorti tiddeklina milli tezercita s-setghat kostituzzjonali taghha." (**Stephen Falzon vs Registratur tal-Qorti et** – Qorti Civili Prim Awla (Sede Kostitizzjonali) deciza 14 ta` Frar 2002).

*"Il-Prim Awla tal-Qorti Civili ghandha poteri diskrezzjonali wiesgha biex tiddeciedi li ma tezercitax il-poteri taghha meta r-rikorrent ma ezawriex ir-rimedji possibbli taht il-ligi ordinarja." (**Domenico Savio Spiteri vs Chairman Planning Authority et"** – Qorti Kostituzzjonali deciza 31 ta` Mejju 2000).*

Stabbiliti dawn il-parametri, li johorgu mill-gurisprudenza, din il-qorti trid tqis jekk skont il-fatti tal-kaz tal-lum :

- jekk ir-rikorrent kellux ghad-dispozizzjoni tieghu rimedji ordinarji li kienu accessibbli, xierqa, effettivi u effikaci sabiex jindirizza l-lanjanzi tieghu ; u

- jekk ir-rimedju ordinarju kienx ikopri ghal kollox il-lanjanzi tar-rikorrent. Fi kwalunkwe kaz, tibqa` d-diskrezzjoni ta`l-qorti li taghzel "*li tezercita s-setghat taghha*" anke meta min iressaq l-ilment ikollu jew kellu mezzi ohra ta` rimedju.

Il-qorti tqis illi l-ghan ewlieni ta` procediment ta` natura kostituzzjonali u/jew konvenzjonali huwa li l-persuna illi tkun qed

tilmenta minn ksur tal-jeddijiet fondamentali taghha tinghata rimedju effettiv u minghajr dewmien.

Hija gurisprudenza stabbilita illi, anke jekk procediment kostituzzjonali huwa ntiz biex ikun straordinarju, cittadin li jilmenta minn ksur tal-jeddijiet fondamentali tieghu m`ghandux ikun obbligat ifittex rimedju ordinarju, jekk ir-rimedju li jista` jinghata ma jkunx effettiv sabiex jindirizza l-ilment tieghu.

Fis-sentenza li tat fis-27 ta` Marzu 2015 fil-kawza fl-ismijiet **__Ian Peter Ellis et v. Avukat Generali et__** il-Qorti Kostituzzjonali ghamlet l-osservazzjoni illi :-

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

L-intimati Galea jikkontendu illi jekk ir-rikorrent ried zieda fil-qbiela kellu jagixxi skont il-Kap 199. Fil-kaz ta` llum jirrizulta li r-rikorrent diga` ha azzjoni quddiem il-Bord Dwar il-Kontroll tal-Kiri tar-Raba`. Hemm ma talabx zieda fil-qbiela izda talab l-izgumbrament tal-intimati mill-art in kwistjoni.

Fir-rikors promotur ir-rikorrent jippremetti illi awment fil-kera u r-ripreza tal-pussess huma mpossibbli ghaliex hija l-ligi stess li tipprotegi l-kirja billi tahseb ghal tigdid kwazi kwazi bla limitu u taht l-istess kondizzjonijiet.

Ir-rikorrent ghamel referenza ghall-Art 3, 4 u 14 tal-Kap 199. Il-qorti rat dawn id-disposizzjonijiet.

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

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

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

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

L-**<u>Art 14 tal-Kap 199</u>** espressament jimponi divjet.

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

Isegwi li ghax il-kirja hija regolata b`disposizzjonijiet stretti u limitati, ir-rikorrent huwa kostrett li ma jmurx quddiem il-Bord ghaliex dak li jipprovdi l-Kap 199 ma jindirizzax il-vjolazzjoni li allegatament qieghed igarrab ir-rikorrenti.

Ghal aktar kjarezza.

Anke li kieku r-rikorrent iressaq talba ghal awment fil-qbiela quddiem il-Bord, xorta wahda jibqa` l-fatt illi l-ammont illi l-Bord jista`

jiffissa bil-ligi huwa baxx hafna meta mqabbel mal-valur lokatizju tal-art fis-suq hieles. Il-hsieb tal-ligi kien li l-art agrikola tibqa` sservi bhala ghajn ta` ghejxien ghal min jahdem l-art u ghal min mill-familja tieghu jkun baqa` jahdem l-art. Tant hu hekk li l-ligi tintervjeni b`sahha meta l-art agrikola tithalla sdingata ghal aktar minn sena. Pero` tajjeb jinghad ukoll li anke f`kazi bhal dawn il-Bord mexa b`kawtela fl-apprezzament tal-provi.

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

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

Din il-qorti diversament presjeduta fis-sentenza li tat fit-30 ta` Jannar 2018 fil-kawza fl-ismijiet **Sergio Falzon et v. Avukat Generali et** ghamlet dawn l-osservazzjonijiet li jghoddu *mutatis mutandis* ghall-kaz tal-lum :-

> "*Illi konsegwenza tal-istess, l-imsemmi disposizzjonijiet li huma applikabbli mill-Bord li Jirregola l-Kera jikkostitwixxu in effett ostakolu legali ghar-rikorrenti biex jirriprendu l-pussess tal-proprjeta` taghhom stante li l-intimati Farrugia ssodisfaw ir-rekwiziti tac-cittadinanza u tar-residenza ordinarja fuq indikati kif ukoll il-kondizzjonijiet tal-kirja. Certament f`tali kuntest il-Bord wiesgha kemm hi wiesgha il-kompetenza tieghu, mhuwiex fakoltizzat bil-Ligi li jizgumbra inkwilin li qed jonora l-obbligazzjonijiet tal-kirja - materja li hija ghal kollox irrilevanti ghall-ezercizzju tallum.*

Illi huwa ovvju li it-talbiet odjerni, fis-sustanza taghhom, imorru oltre konsiderazzjoni ta` allegat ksur tal-obbligi tal-kerrej. Anzi l-intimati inkwilini ghamlu enfasi fuq l-osservazzjoni rigida taghhom tal-kondizzjonijiet tal-kirja.

Inoltre r-rikorrenti qed jitolbu kumpens ghall-ksur tad-drittijiet fondamentali li, kif gie ribadit mill-Qorti Ewropea f`Strasbourg:

[t]o date the Court has always held that constitutional redress proceedings are effective in respect of complaints under Article 1 of Protocol No. 1, in so far as it has always been considered that there are no limits on the means of redress (including financial redress) which may be provided by the courts of constitutional jurisdiction." (Apap Bologna v. Malta, ECHR 46931/12 deciza 30 ta` Awwissu 2016)."

Ghalhekk fil-konfront tar-rikorrent it-thaddim tal-Artikoli 3, 4 u 14 tal-Kap 199 mhux talli jaghmilha difficli li r-rikorrent jikseb tibdil fil-kondizzjonijiet lokatizzji izda talli jaghti dritt ta` rilokazzjoni li jaghmilha difficli u haga x`aktarx incerta ghas-sid li jiehu lura l-pussess tal-proprjeta` tieghu.

Fid-dawl tal-premess il-qorti hija tal-fehma li, tenut kont tal-fattispeci tal-kaz, ma jistax validament jinghad li r-rikorrent kellu rimedju ordinarju effettiv u adegwat fejn u kif jindirizza il-lanjanzi tieghu. Is-setgha ta` din il-qorti bhala qorti ta` gurisdizzjoni kostituzzjonali u konvenzjonali huwa cirkoskritt u arginat ghall-istharrig ta` jekk avveratx ruhha lezjoni tal-jeddijiet fondamentali tar-rikorrenti. Hija biss din il-qorti li jekk issib vjolazzjoni tal-jeddijiet fondamentali tista` tghaddi sabiex taghti kumpens ghall-vjolazzjoni subita. Kwalunkwe konsiderazzjoni ohra tmur oltre l-kompetenza taghha. Fic-cirkostanzi ilmenti kostituzzjonali u konvenzjonali ghandhom jigu trattati u decizi mill-qrati ta` gurisdizzjoni kostituzzjonali.

Il-hames (5) eccezzjoni tal-intimat Avukat tal-Istat kif ukoll t-tieni (2) u r-raba` (4) eccezzjonijiet tal-intimati Galea qeghdin jigu respinti.

Fir-rigward tal-ewwel (1) talba sejra tipprovdi fis-sens illi sejra tiddikjara u tiddeciedi li bl-applikazzjoni tal-Art 3, 4 u 14

tal-Kap 199 qieghed jinghata lill-intimati Galea dritt ta` rilokazzjoni tal-kera fir-rigward tas-sit deskritt fl-istess talba.

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

1. <u>X`m`ntalabx skont il-premessi</u>

Fil-premessi, ir-rikorrent allega li garrab diskriminazzjoni kontra dak li jipprovdi l-Art 14 tal-Konvenzjoni u l-Art 45 tal-Kostituzzjoni (ara para. XXIII u XXIV).

Imbaghad pero` ma ressaqx talba lill-qorti sabiex tiddikjara u tiddeciedi li kien hemm diskriminazzjoni kontra dak li jipprovdi l-Art 14 tal-Konvenzjoni u l-Art 45 tal-Kostituzzjoni.

Fis-sentenza li tat fl-24 ta` Gunju 2011 fil-kawza "**<u>Joseph Mary Farrell v. Il-Kummissarju tat-Taxxa fuq il-Valur Mizjud</u>**" il-Qorti tal-Appell qalet hekk :-

"Hu maghruf li kawzi quddiem il-qrati superjuri jridu jimxu a bazi tal-kawzali kif imressqa ghal quddiemha mir-rikorrenti, u jekk talba tkun mitluba a bazi ta` kawzali partikolari. Mhux lecitu ghall-parti jew ghall-qorti li tinvestiga lill`hinn minn dik il-kawzal. Kif intqal, per ezempju, mill-Prim`Awla tal-Qorti Civili fil-kaz **<u>Azzopardi v. Azzopardi</u>** deciza fil-31 ta` Jannar 2003 : "il-qorti ghandha toqghod fuq il-kawzali u t-talba dedotta <u>u xejn izjed</u>."

Fis-sentenza li tat fid-19 ta` Mejju 2004 fil-kawza **<u>Veronique Amato Gauci et v. Marco Zammit</u>**, il-Qorti ta` l-Appell Inferjuri qalet hekk :-

"Huwa principju maghruf illi l-Imhallef civili ghandu, fl-ghoti tas-sentenza f`kawza, joqghod rigorozament fil-limiti tal-kontestazzjoni b`mod illi waqt li hu obbligat jokkupa ruhu mill-kwestjonijiet kollha dedotti fil-gudizzju mill-partijiet, minn naha l-ohra ma jistax jitratta u jirrizolvi kwestjonijiet li l-partijiet ma ssollevawx u ma ssottomettewx ghad-decizjoni tieghu, ammenokke non si

*tratta minn kwestjonijiet ta` ordni pubbliku li l-Imhallef hu obbligat jirrileva "ex officio" – "**Joseph Gatt –vs- Joseph Galea**", Appell Civili, 12 ta` Lulju 1965; "**Regina mart Francis Cacciottolo –vs- Francis Cacciottolo**", Appell Civili, 30 ta` Gunju 1976 ; "*

(ara wkoll : Qorti ta` l-Appell Inferjuri : 10 ta` Ottubru 2005 : **Grobett Holdings Ltd v. Abela pro et noe** ; Qorti ta` l-Appell Inferjuri : 20 ta` Ottubru 2003 : **Borg v. Halmann Limited** ; Prim`Awla tal-Qorti Civili : 2 ta` Frar 1990 : **Gatt v. Debono et**)

Fis-sentenza li tat fit-28 ta` Settembru 2012 fil-kawza fl-ismijiet **Edwin Cilia v. Carmela Cilia** il-Qorti tal-Appell irrimarkat illi :- "*mhux lecitu allura, li l-Qorti tmur lil hinn mit-talba, ghax is-sentenza trid tirrispekkja biss dak li gie mitlub.*"

Billi r-rikorrent ma ressaqx talba lill-qorti sabiex tiddikjara u tiddeciedi li garrab diskriminazzjoni kontra dak li jipprovdi l-Art 14 tal-Konvenzjoni u l-Art 45 tal-Kostituzzjoni, ghalkemm accenna ghal allegata diskriminazzjoni fil-premessi, il-qorti mhijiex sejra taghti konsiderazzjoni ghall-pretensjoni tar-rikorrent dwar allegata diskriminazzjoni kif tirrizulta mill-premessi.

2. X`intalab skont il-premessi

Ir-rikorrent talab dikjarazzjoni u decizjoni mill-qorti li fir-rigward tar-razzett, illum residenza, tal-Hamri, fil-limiti tar-Rabat (Malta), flimkien mar-raba` annessa maghha, msejha Ta` Ruman sive Ta` Fazola, fil-limiti tar-Rabat (Malta), garrabu vjolazzjoni tal-jedd fondamentali tieghu ghat-tgawdija tal-proprjeta` hekk kif dak il-jedd huwa mhares bl-Art 37 u 39 tal-Kostituzzjoni u bl-Art 1 Prot 1 u l-Art 6 tal-Konvenzjoni. Talab rimedji xierqa nkluz ir-ripreza tal-pussess tal-proprjeta`.

a) L-Art 37 tal-Kostituzzjoni

Dwar dan l-allegat ksur, l-Avukat tal-Istat jeccepixxi li r-rikorrent ma jistax jindirizza l-ilment tieghu lejn l-Art 37 tal-Kostituzzjoni :

i) ghaliex skont il-paragrafu (f) tas-subiniciz (2), ebda haga f`dan l-artikolu m`ghandha tinftiehem li tolqot l-ghemil jew it-thaddim ta` ligi safejn din tipprovdi ghat-tehid tal-pussess jew akkwist ta` prorjeta` li jsehh fil-kuntest ta` kirja ;

ii) ghaliex din id-disposizzjoni tghodd biss fil-kaz ta` tehid forzuz tal-proprjeta` li mhuwiex il-kaz tal-lum.

Sabiex ikun hemm tehid forzuz, jehtieg illi l-persuna tkun giet fattwalment zvestita minn kull dritt li ghandha fuq il-proprjeta`. Fil-kaz odjern, skont l-Avukat tal-Istat, ma gara xejn minn dan ghaliex bit-thaddim tal-Kap 199 ir-rikorrent ma tilef ebda dritt ghall-proprjeta` in kwistjoni.

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

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

(a) ghall-hlas ta` kumpens xieraq ;

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

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

Izda f`kazijiet specjali l-Parlament jista`, jekk hekk jidhirlu xieraq li jaghmel fl-interess nazzjonali, b`ligi jistabbilixxi l-kriterji li ghandhom jitharsu, maghduda l-fatturi u c-cirkostanzi l-ohra li ghandhom jitqiesu, biex jigi stabbilit il-

kumpens li ghandu jithallas dwar proprjetà li jittiehed pussess taghha jew li tigi akkwistata b`mod obbligatorju; u f`kull kaz bhal dak il-kumpens ghandu jigi iffissat u ghandu jithallas skont hekk.

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

i. Gurisprudenza anqas ricenti

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 : **Josephine Bugeja v. Avukat Generali et** tas-7 ta` Dicembru 2009, **Angela sive Gina Balzan v. L-Onorevoli Prim Ministru et** tas-7 ta` Dicembru 2012, **Mary Anne Busuttil v. Tabib John Cassar et** tal-31 ta` Ottubru 2014) kienet illi bl-applikazzjoni tal-emendi ghall-Kap 158 li saru bl-Att XXIII tal-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 **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-**<u>27 ta` Marzu 2020</u>** 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 tal-lum 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 ghax tghodd *mutatis mutamdis* ghall-kaz taht ezami.

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>

Id-disposizzjoni tipprovdi illi :-

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

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

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

Id-disposizzjoni hija gwidata minn tliet principji :-

a) Illi kull persuna, sew jekk tkun persuna fisika, kif ukoll jekk tkun entita` morali, ghandha dritt ghat-tgawdija tal-proprjeta` taghha b`mod pacifiku ;

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

c) Illi jibqa` d-dritt tal-Istat illi jghaddi ligijiet sabiex *inter alia* b`mod xieraq jikkontrolla l-uzu tal-gid fl-interess pubbliku.

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

Huwa pacifiku li l-Istat ghandu s-setgha u d-dritt li jirregola l-uzu tal-propjeta` fl-interess generali. Madanakollu l-interess tal-privat ghandu jkun tutelat ukoll ghaliex fl-ezercizzju ta` dik is-setgha mill-Istat ghandu jkun sodisfatt ir-rekwizit tal-proporzjonalità.

Dwar ksur tal-Art 1 Prot 1 tal-Konvenzjoni, il-gurisprudenza tal-Qorti ta` Strasbourg, specjalment fejn tidhol Malta, tittratta dwar bini (residenzjali u kummercjali). Il-qorti sejra tirreferi ghal din il-gurisprudenza ghaliex il-principji li kienu traccjati fiha ghandhom ighoddu wkoll *mutatis mutandis* ghall-artijiet.

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

> *56. Any interference with property must also satisfy the requirement of proportionality. As the Court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see **Sporrong and Lönnroth** cited above, §§ 69-74, and **Brumărescu v. Romania** [GC], no. 28342/95, § 78, ECHR 1999-VII).*
>
> *57. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article the Court must therefore ascertain whether by reason of the State`s interference the person concerned had to bear a disproportionate and excessive burden (see **James and Others**, cited above, § 50; **Mellacher and Others**, cited above, § 48, and **Spadea and Scalabrino v. Italy**, judgment of 28 September 1995, § 33, Series A no. 315-B).*

58. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. …. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, and in an appropriate and consistent manner (see ***Immobiliare Saffi v. Italy****, [GC], no. 22774/93, § 54, ECHR 1999-V; and Broniowski, cited above, § 151).*

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

…

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

Maltese State failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant`s right of property.

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

L-ECtHR b`konsistenza affermat illi *in order for an interference to be compatible with Article 1 of Protocol No. 1 it must be lawful, be in the general interest and be proportionate, that is, it must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights.* (ara *inter alia* s-sentenzi tal-Grand Chamber : **Beyeler v. Italy**, no. 33202/96, § 107, ECHR 2000-I u **J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom** no. 44302/02, § 75, ECHR 2007-III. Imbaghad fil-kaz ta` Malta ara wkoll : **Saliba et v. Malta** : 22 ta` Novembru 2011 ; **Zammit & Attard Cassar v. Malta** : 30 ta` Lulju 2015 ; **Cassar v. Malta** : 30 ta` Jannar 2018 ; **Buttigieg and others vs Malta** : 11 ta` Dicembru 2018. F`dawn id-decizjonijiet, kienet riskontrata vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni u kien likwidat kumpens favur ir-rikorrenti)

ii) Gurisprudenza tal-Qrati Maltin

Fejn jidhol l-Art 1 Prot 1 tal-Konvenzjoni, kienu diversi d-decizjonijiet tal-qrati taghna fejn kienet dikjarata vjolazzjoni. Il-qorti tosserva illi l-bicca l-kbira tad-decizjonijiet tal-qrati taghna kienu jolqtu l-applikazzjoni tal-Kap 158. Ohrajn kienu jirrigwardaw l-applikazzjoni tal-Kap 69. Il-kaz tal-lum jittratta dwar allegata vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni bl-applikazzjoni tal-Kap 199. Il-qorti tghid illi, anke ghall-kaz in ezami, ghandu jghodd dak li hareg mill-gurisprudenza tal-qrati taghna fil-kazi li ghalihom saret referenza aktar kmieni, anke tenut kont tas-sentenza li tat il-Qorti Kostituzzjonali fil-kawza **`J&C Properties Limited v. Nazzareno Pulis et` (op. cit.)**

iii) **Risultanzi**

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

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

Hija din il-motivazzjoni li wasslet lil-legislatur sabiex jahseb ghal li kirja ta` art agrikola tghaddi minn persuna ghal ohra fil-familja minghajr ebda xkiel. Jekk din il-motivazzjoni hijiex gusta jew jekk ghadhiex tghodd ghaz-zminijiet ta` llum hija kwistjoni ohra. Jibqa` l-fatt illi r-rikorrent u l-antekawza tieghu, una volta illi sa minn zminijiet imghoddija kellhom kirja ghaddejja favur l-intimati, ma kienx hemm ghazla ghajr illi jkompli l-kirja ghalkemm fi zminijiet aktar ricenti ir-rikorrent mar quddiem il-Bord fejn talab l-izgumbrament tal-intimati Galea izda ma rnexxielux.

Huwa kwazi cert il-fatt illi meta nghatat il-qbiela l-ewwel darba ma setax ikun ragjonevolment previst li fl-1967 kienet sejra ssir ligi sabiex tikkontrolla l-kiri tar-raba`. Inoltre r-rikorrent u lanqas l-antekawza tieghu ma setghu jipprevedu kif kien ser jinbidel is-suq matul iz-zmien. Tajjeb jinghad illi l-introduzzjoni tal-Att XVI tal-1967 kellu skop legittimu u sar fl-interess generali ghaliex kien intiz sabiex jipprotegi is-settur agrikolu fi zmien meta hafna familji kienu jiddependu fuq il-biedja ghall-ghixien taghhom.

L-istorja socjali u ekonomika tal-pajjiz turi li, meta saret, il-ligi kienet necessarja, u l-hsieb warajha kien tajjeb. L-izvilupp tal-pajjiz matul is-snin wara l-1967 gab mieghu mobilita` mghaggla ta` persuni li ma baqghux jahdmu l-ghelieqi sabiex jghixu minnhom u marru lejn

setturi ohra fejn it-tkattir tal-gid huwa akbar ghaliex mhuwiex dipendenti fuq dak li jigi min-natura u fejn it-tbatija fisika hija anqas minn dik ta` xoghol iehor.

Gara ghalhekk illi dak l-intervent legislattiv ghalkemm kellu propositi tajba ma baqax joffri bilanc bejn l-interessi tas-sid u tal-kerrej anzi inholoq sproporzjon u zvantagg qawwi kontra s-sid. Fil-kaz ta` llum mhux maghruf meta bdiet il-kirja bejn l-antekawza tar-rikorrent u l-antekawza tal-intimati Galea. Li certament irrizulta huwa li l-kirja kienet ilha ghaddejja ghexieren ta` snin dejjem favur il-familjari tal-intimati. Ir-rata ta` kera li r-rikorrent u l-antekawza tieghu setghu jippercepixxu skont id-disposizzjonijiet tal-Kap 199 meta mqabbla mal-kera fis-suq hieles hija <u>oggettivament</u> baxxa. Il-kostatazzjonijiet, l-osservazzjonijiet u l-konkluzjonijiet tal-perit tekniku huma prova nkonfutabbli.

Il-protezzjoni li l-ligi prezentement taghti lit-tkomplija tal-kirja ma tippermettix lis-sid u lill-inkwilin li jiftehmu zmien ghat-tmiem tal-kirja. Kjarament il-Kap 199 jiffavorixxi lill-inkwilin a skapitu tas-sid ghaliex dan m`ghandux kontroll la fuq ripreza tal-pussess u lanqas fuq l-ammont ta` qbiela li jista` jithallas. Il-kriterji tal-ligi kif inhuma sal-lum ma jirriflettux is-suq.

Il-legalita` tal-Kap 199 mhijiex kontestata. Fl-istess waqt tajjeb jinghad ukoll li ghandu ragun ir-rikorrent meta jilmenta li bl-applikazzjoni tad-disposizzjonijiet tal-Kap 199 qed igarrab ksur tal-Art 1 Prot 1 tal-Konvenzjoni ghaliex jirrizulta ppruvat li mill-mod kif l-Istat kkontrolla l-uzu tal-proprjeta` tieghu b`dik il-ligi holoq zbilanc u sproporzjon kontra tieghu, fatturi dawn li ma kienux isehhu li kieku r-rikorrent thalla jgawdi l-propjeta` sal-milja taghha.

Il-qorti tishaq li mhuwiex in diskussjoni l-jedd tal-Istat illi jikkontrolla b`legislazzjoni l-uzu tal-proprjeta` meta dan ikun fl-interess pubbliku. Fl-istess waqt l-Istat huwa obbligat juri li fl-applikazzjoni ta` dik il-legislazzjoni jkunu qeghdin jinzammu bilanc u proporzjonalita` bejn l-interess generali u ta` dak privat.

Tajjeb jinghad illi ghalkemm fil-kaz ta` bini residenzjali u kummercjali, il-legislatur haseb ghal bidliet fil-legislazzjoni, anke effett ta` sentenzi li nghataw kontra l-Istat Malti mill-ECtHR, jibqa` l-fatt li baqa` lura milli jintervjeni fil-kaz ta` art agrikola. Ghalhekk fl-istat tad-dritt kif inhu llum f`materji ta`

fondi agrikoli, kollox huwa vinkolat b`parametri li huma determinati fil-Kap 199.

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

c) <u>L-Art 6 tal-Konvenzjoni u l-Art 39 tal-Kostituzzjoni</u>

Fil-kwadru tat-tieni talba, kienet lamentata mir-rikorrent vjolazzjoni tal-jedd tieghu ghal smigh xieraq.

Fid-disa` (9) eccezzjoni, l-Avukat tal-Istat jikkontesta l-pretensjoni tar-rikorrent billi jeccepixxi li l-principju ta` smigh xieraq ghandu jinghata nterpretazzjoni ristretta u limitata ghal dak illi jolqot il-gustizzja procedurali. Access ghall-qorti m`ghandux ifisser li l-ligi trid tkun modellata skont l-ezigenzi tal-persuna partikolari.

Tajjeb li jkun rilevat li skont il-gurisprudenza, il-jedd ghal smigh xieraq joqghod fuq zewg pilastri :

i) zmien ragjonevoli sabiex jibda u jintemm procediment minn qorti jew tribunal indipendenti u mparzjali ; u

ii) access ghall-qorti.

L-ilment odjern jidher li huwa mpernjat fuq it-tieni kwistjoni.

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

> *"76. The right of access to a court was established as an aspect of the right to a tribunal under Article 6 § 1 of the Convention in Golder v. the United Kingdom (21 February 1975, §§ 28-36, Series A. no. 18). In that case, the Court found the right of access to a court to be an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary*

power which underlay much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court (see Roche v. the United Kingdom [GC], no. 32555/96, § 116, ECHR 2005-X; see also Z and Others v. the United Kingdom [GC], no. 29392/95, § 91, ECHR 2001-V; Cudak v. Lithuania [GC], no. 15869/02, § 54, ECHR 2010; and Lupeni Greek Catholic Parish and Others v. Romania [GC], no. 76943/11, § 84, ECHR 2016 (extracts)).

77. The right of access to a court must be "practical and effective", not "theoretical or illusory" (see, to that effect, Bellet v. France, 4 December 1995, § 36, Series A no. 333-B). This observation is particularly true in respect of the guarantees provided for by Article 6, in view of the prominent place held in a democratic society by the right to a fair trial (see Prince Hans-Adam II of Liechtenstein v. Germany [GC], no. 42527/98, § 45, ECHR 2001-VIII, and Lupeni Greek Catholic Parish and Others, cited above, § 86).

78. However, the right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, which regulation may vary in time and in place according to the needs and resources of the community and of individuals (see Stanev v. Bulgaria [GC], no. 36760/06, § 230, ECHR 2012). In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention`s requirements rests with the Court, it is no part of the Court`s function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see Lupeni Greek Catholic Parish and Others, cited above, § 89, with further references)."

Il-qorti tagħmel ukoll referenza għall-**Guide on Article 6 of the European Convention on Human Rights – Right to a fair trial**

<u>(civil limb)</u>, pubblikazzjoni tal-Kunsill tal-Ewropa u tal-ECtHR aggornat sal-31 ta` Dicembru 2017, fejn ghal dak li huwa rilevanti ghall-kaz taht ezami, in partikolari d-dritt ta` access ghall-qorti, jinghad hekk :-

85. The right to a fair trial, as guaranteed by Article 6 § 1, requires that litigants should have an effective judicial remedy enabling them to assert their civil rights (Běleš and Others v. the Czech Republic, § 49; Naït-Liman v. Switzerland [GC], § 112).

86. Everyone has the right to have any claim relating to his "civil rights and obligations" brought before a court or tribunal. In this way Article 6 § 1 embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before courts in civil matters, constitutes one aspect (Golder v. the United Kingdom, § 36; Naït-Liman v. Switzerland [GC], § 113). Article 6 § 1 may therefore be relied on by anyone who considers that an interference with the exercise of one of his or her civil rights is unlawful and complains that he or she has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6 § 1. Where there is a serious and genuine dispute as to the lawfulness of such an interference, going either to the very existence or to the scope of the asserted civil right, Article 6 § 1 entitles the individual concerned "to have this question of domestic law determined by a tribunal" (Z and Others v. the United Kingdom [GC], § 92; Markovic and Others v. Italy [GC], § 98). The refusal of a court to examine allegations by individuals concerning the compatibility of a particular procedure with the fundamental procedural safeguards of a fair trial restricts their access to a court (Al-Dulimi and Montana Management Inc. v. Switzerland [GC], § 131).

87. The "right to a court" and the right of access are not absolute. They may be subject to limitations, but these must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (Philis v. Greece (no. 1), § 59; De Geouffre de la Pradelle v. France, § 28; Stanev v. Bulgaria [GC], § 229; Baka v. Hungary [GC], § 120; Naït-Liman v. Switzerland [GC], § 113).2 Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of

proportionality between the means employed and the aim sought to be achieved (Lupeni Greek Catholic Parish and Others v. Romania [GC], § 89; Naït-Liman v. Switzerland [GC], § 115).”

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

“36. The fact of having access to domestic remedies, only to be told that one`s actions are barred by operation of law does not always satisfy the requirements of Article 6 para. 1 (art. 6-1). The degree of access afforded by the national legislation must also be sufficient to secure the individual`s "right to a court", having regard to the principle of the rule of law in a democratic society. For the right of access to be effective, an individual must have a clear, practical opportunity to challenge an act that is an interference with his rights (see the de Geouffre de la Pradelle judgment previously cited, p. 43, para. 34).”

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

“105. Nonetheless, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a “legitimate aim” and if there is not a “reasonable relationship of proportionality between the means employed and the aim sought to be achieved” (Ashingdane v. the United Kingdom, § 57; Fayed v. the United Kingdom, § 65; Markovic and Others v. Italy [GC], § 99; Naït-Liman v. Switzerland [GC], §§ 114-115).”

Fil-kaz odjern, il-qorti diga` esprimiet ruhha fis-sens illi r-rikorrent thalla minghajr rimedju prattiku u effettiv bl-uniku forum fejn isib tarf tal-lanjanzi tieghu tkun il-kawza tal-lum.

Ghalhekk, filwaqt illi d-disa` (9) eccezzjoni tal-Avukat tal-Istat qeghda tkun michuda, qeghda tigi milqugha dik il-parti

tat-tieni talba safejn ir-rikorrenti jilmenta minn ksur tal-jedd fondamentali tieghu ghal smigh xieraq hekk kif dak il-jedd huwa tutelat bl-Art 6 tal-Konvenzjoni u bl-Art 39 tal-Kostituzzjoni.

d) **<u>Rimedji xierqa</u>**

Fl-ambitu tat-tieni talba, ir-rikorrent talab li jinghata rimedji xierqa.

Skont ir-rikorrent, rimedju xieraq ikun li jiehu lura l-pussess tal-proprjeta` kollha mikrija lill-intimati Galea.

L-intimati Galea wiegbu bit-tielet (3) eccezzjoni.

Kontra ta` dak li ntalab mir-rikorrent il-qorti tirreferi ghall-insenjament illi hareg mis-sentenza li nghatat mill-Qorti Kostituzzjonali fit-23 ta` Novembru 2020 fil-kawza **`<u>J&C Properties Limited v. Nazzareno Pulis et</u>`** fejn *inter alia* nghad hekk :-

31. Qorti Kostituzzjonali ma taghtix rimedji kontra persuni privati ; il-privati jistghu biss jintlaqtu indirettament jekk ifittxu li jinqdew b`ligi li ma tkunx kompatibbli mal-Kostituzzjoni izda ma jigux kundannati jaghtu rimedji huma ghax ma humiex huma li jahtu ghall-anti-kostituzzjonalità tal-ligi. Ghalhekk l-izjed li jista` jinghad f`kawza bhal din tallum hu illi l-kerrej ma jistax jinqeda b`dawk id-disposizzjonijiet tal-ligi li huma bi ksur tad-drittijiet fundamentali tas-sid. Imbaghad kwistjonijiet dwar jekk il-kerrej ghandux titolu biex ikompli jzomm ir-raba` jew, jekk ghandu jigi zgumbrat, jisthoqqlux jew le kumpens, huma materja fil-kompetenza tal-qrati jew tribunali ordinarji.

…

33. L-attrici talbet ukoll illi, jekk ma tintlaqax it-talba ghal zgumbrament, il-qorti ghandha ghallinqas tghid illi l-konvenuti Pulis ma jistghux jistriehu fuq id-disposizzjonijiet tal-art. 3, 4 u 14 tal-Kap. 199 biex izommu l-pussess tar-raba` tal-atturi.

34. Dan huwa minnu, u huwa konsegwenza naturali tal-fatt illi safejn ligi ordinarja hija inkompatibbli mal-Kostituzzjoni jew mal-Konvenzjoni, dik il-ligi ma ghandhiex tinghata effett. Dan ifisser biss illi l-konvenuti Pulis ma jistghux jinqdew bil-jedd ta` rilokazzjoni obbligatorja li jaghtu d-disposizzjonijiet fuq imsemmija ; ma jfissirx illi ma jistghux jinqdew bi drittijiet ohra li taghtihom il-ligi.

Il-qorti sejra tadotta dan ir-*ratio* u taghmlu taghha.

Ghalhekk filwaqt illi sejra tichad bhala rimedju xieraq ir-ripreza tal-pussess mir-rikorrent tal-proprjeta` mertu tal-kirja sejra fl-istess waqt tiddikjara li l-intimati Galea ma jistghux jibqghu jinqdew bil-jedd ta` rilokazzjoni obbligatorja li jaghtu d-disposizzjonijiet tal-Kap 199.

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

Ir-rikorrent qieghed jitlob dikjarazzjoni li l-intimati jew min minnhom ikunu dikjarati responsabbli ghall-hlas ta`kumpens ghall-vjolazzjoni subita tal-jeddijiet fondamentali tieghu.

L-Istat (rapprezentat mill-Avukat tal-Istat) huwa responsabbli ghall-promulgazzjoni ta` ligi. 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 li r-rikorrent garrab.

L-intimati Galea m`ghandhom ihallsu ebda kumpens jew danni lir-rikorrent ghaliex jirrizulta li ottempraw ruhhom mal-ligijiet vigenti. Ghalhekk m`ghandhom ibatu xejn, lanqas spejjez gudizzjarji.

Ghalhekk it-tielet (3) talba qeghda tkun milqugha limitatament fil-konfront tal-intimat Avukat tal-Istat.

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

Ir-rikorrent talab 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.

Fis-sentenza li tat il-Qorti Kostituzzjonali fil-31 ta` Ottubru 2014 fil-kawza fl-ismijiet **Igino Trapani Galea Feriol pro et noe v. Kummissarju tal-Artijiet et** nghad hekk :-

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

ghandu jigi senjalat il-fatt li qabel l-ispossessament tal-proprjeta` taghhom ir-rikorrenti kellhom permess mill-Bord kompetenti sabiex jizviluppaw il-fond."

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

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

A. Damage

84. The applicants claimed 1,260,996 euros (EUR) in respect of pecuniary damage. That sum reflected (i) the rent due to them from 1998 to 2015 amounting to EUR 730,330 calculated on the basis of the valuation of an estate agent at EUR 3,500 per month, (EUR 42,000 annually) in 2015, projected backwards to the year 1998 based on two indices for property prices published by the Central Bank of Malta – by means of example, such projections show the rents for the respective years as follows: EUR 6,857 annually in 1988, EUR 18,476 in 1998 and EUR 41,649 in 2008; (ii) EUR 502,006 in simple interest at 8% (capped so as not to exceed the rent of

a particular year); and (iii) EUR 28,660 (supported by an architect`s report) in repairs needed to the property since the tenant had failed to take adequate care of the property. In this connection the applicants noted that as things stand, they will remain suffering the effects of the violation even after the Court judgment, for an unspecified amount of years to come. In this light they also considered that their claim of EUR 54,000 in respect of non-pecuniary damage already suffered, representing EUR 2,000 annually since 1988, should be upheld in full.

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

86. The Court notes that the applicants are entitled to compensation in respect of the loss of control, use, and enjoyment of their property from around 2000 to date. The Court notes on the one hand that the rent suggested by the Government is not based on any valuation or other criteria, and appears to be a simple division of an aleatory sum they proposed. On the other hand, while the applicant`s valuation is based on an estate agent, and was not accompanied by an architect`s report, the domestic court found that EUR 3,000

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

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

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

89. The Court reiterates that an award in respect of pecuniary damage under Article 41 of the Convention is

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

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

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

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

Fuq l-istess 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."

Meta giet biex tillikwida l-kumpens fis-sentenza taghha tat-23 ta` Novembru 2020 fil-kawza fl-ismijiet **`J&C Properties Limited v. Nazzareno Pulis et`** (op. cit.) il-Qorti Kostituzzjonali ghamlet dawn l-osservazzjonijiet dwar il-konkluzjonijiet tal-perit tekniku :-

" … l-ewwel qies kemm tiswa l-art u mbaghad qies il-valur lokatizju bhala tant fil-mija ta` kemm tiswa l-art.

Il-qorti ma tarax illi fic-cirkostanzi dan il-metodu huwa ghalkollox realistiku.

23. Meta tqis kemm tirrendi art agrikola xejn ma hu realistiku li ssib bdiewa li lesti jew jistghu jhallsu daqskemm qal il-perit biex jahdmu l-art. Safejn imbaghad l-art hija tajba ghall-bini, hadd ma huwa sejjer jiehu b`kera art biex jibni fuqha ; se mai jew jixtriha jew jehodha b`cens ghal zmien twil, jekk mhux ghal dejjem. F`dak il-kaz izda, ladarba ma ntweriex illi l-art hija saqwija, min jixtri l-art jew jehodha b`cens ikun jista` jizgombra lill-kerrej taht l-art. 4(2)(b) tal-Kap. 199. F`dawk ic-cirkostanzi ir-restrizzjonijiet fuq il-jeddijiet tas-sid ikunu ferma anqas drastici.

24. Meqjusa dawn il-fatturi kollha, mhux biss il-ghan socjali tal-ligi izda wkoll, partikolarment, il-fatt illi, ghar-ragunijiet moghtija fil-paragrafu ta` qabel dan, ma tarax illi l-valur lokatizju nhadem b`mod ghal kollox realistiku, il-qorti hija tal-fehma illi l-aggravju tal-Avukat tal-Istat dwar il-kumpens ghandu jintlaqa` waqt illi dak tas-socjetà attrici ghandu michud. Meqjusa l-fatturi kollu relevanti, kemm dawk imsemmija fil-paragrafu ta` qabel dan u kemm dawk imsemmija mill-ewwel qorti, din il-qorti hija tal-fehma illi kumpens ta` ghoxrin elf euro (€20,000) ghad-danni materjali u elfejn euro (€2,000) ghad-danni morali, b`kollox tnejn u ghoxrin elf euro (€22,000), ikun tajjeb u bizzejjed fic-cirkostanzi ta` dan il-kaz.

ii) <u>Likwidazzjoni</u>

Il-proceduri odjerni min-natura taghhom huma diretti sabiex jindirizzaw lezjoni kostituzzjonali u/jew konvenzjonali, lezjoni li fil-kaz odjern kienet ippruvata (*supra)*.

Ghalkemm id-diskrepanza bejn il-kera li attwalment tithallas ghall-proprjeta` in kwistjoni u l-valur lokatizju li dik il-proprjeta` ggib 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>

Il-qorti tibda billi tosserva illi ghalkemm il-kirja favur l-intimati Galea u l-antekawza taghhom kienet ilha tigi tramandata minn generazzjoni ghal ohra, il-vjolazzjoni lamentata kienet cirkoskritta mir-rikorrent ghaz-zmien ta` bejn id-**<u>19 ta` Awwissu 1987 u l-21 ta` Novembru 2020</u>**.

Ghalkemm il-perizja kienet tkopri dak iz-zmien kollu, ma jfissirx li fil-kaz tar-rikorrent il-vjolazzjoni riskontrata ghandha tinfirex fuq dak iz-zmien kollu.

Dan qed jinghad propju ghaliex ir-rikorrent sar sid tal-proprjeta` fit-<u>18 ta` Novembru 2015</u> (Dok A).

Id-dritt ta` azzjoni tar-rikorrent beda b`effett minn dakinhar, u allura huwa biss minn dakinhar sad-data tal-prezentata tar-rikors promotur tal-azzjoni li ghandu jitqies ghall-fini tal-ghoti ta` kumpens.

Il-qorti diga` affermat illi l-accertamenti tal-perit tekniku jikkostitwixxu prova ta` fatt.

Affermat ukoll li kienet sejra toqghod fuqhom.

Skont l-accertamenti tal-perit tekniku, meta applikati ghaz-zmien li qeghda tadotta din il-qorti, il-figura tad-danni pekunjarji wassal ghal €33,971, liema figura li qeghda tkun arrotondata ghal <u>€34,000</u>.

Dwar kemm attwalment haqqu jircievi r-rikorrent, il-qorti sejra tqis :-

i) L-interess generali li jaghti legittimita` lill-intervent legislattiv.

ii) L-isproporzjon bejn il-kera li jhallsu l-intimati Galea u dik li tista` tkun percepita fis-suq hieles li kieku ma jkunux applikati d-disposizzjonijiet tal-Kap 199.

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

iv) Ir-rikorrent accetta l-assenjazzjoni ta` proprjeta` soggetta ghall-qbiela.

v) Id-daqs tal-proprjeta` soggetta ghall-kirja.

vi) L-incertezza dwar meta u jekk ir-rikorrent ikun jista` jiehu lura l-proprjeta`.

vii) Iz-zmien tal-sproporzjon safejn dan jirrigwarda r-rikorrent.

viii) L-inerzja tal-Istat meta baqa` passiv meta ma aggornax id-disposizzjonijiet tal-Kap 199.

Wara li qieset il-kaz fil-perspettiva partikolari tieghu sejra tillikwida favur ir-rikorrent kumpens u/jew danni pekunarji fl-ammont ta` €22,000.

b) Danni mhux pekunjarji

Indipendentement mid-danni pekunjarji li jikkostitwixxu telf effettiv ghar-ragunijiet fuq premessi, il-qorti tghid li r-rikorrent haqqu jircievi wkoll hlas ta` danni morali fl-ammont ta` **€2,000**

Persuna m`ghandhiex tkun kostretta tirrikorri ghal procediment ta` din ix-xorta ghaliex l-Istat Malti qaghad lura ghal ghexieren ta` snin milli jsib tarf tal-izbilanc u tal-isproporzjon li kienu qeghdin igarrbu sidien ta` proprjetajiet soggetti ghal qbiela.

VIII. Il-hames (5) talba

Ir-rikorrent ghandu jithallas kumpens u danni totali fl-ammont ta` €24,000 minghand l-Avukat tal-Istat.

Decide

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

Tastjeni milli tiehu konjizzjoni ulterjuri tal-ewwel (1) eccezzjoni tal-intimat Avukat tal-Istat.

Tichad il-hames (5) eccezzjoni tal-intimat Avukat tal-Istat.

Tichad it-tieni (2) u r-raba` (4) eccezzjonijiet tal-intimati Galea.

Tipprovdi dwar l-ewwel (1) talba billi tiddikjara u tiddeciedi li l-Art 3, 4 u 14 tal-Kap 199 tal-Ligijiet ta` Malta qeghdin jaghtu dritt ta` rilokazzjoni lill-intimati Galea ghall-proprjeta` li jikru u li hija deskritta fl-istess talba.

Riferibbilment ghat-tieni (2) talba, tiddikjara u tiddeciedi li r-rikorrent garrab vjolazzjoni tal-jeddijiet fondamentali tieghu kif dawn huma mharsa bl-Art 37 u bl-Art 39 tal-Kostituzzjoni ta` Malta. Ghalhekk qeghda tichad l-eccezzjonijiet kollha tal-intimati safejn dawn kienu ntizi sabiex jikkontestaw din il-vjolazzjoni.

Riferibbilment ukoll ghat-tieni (2) talba, tiddikjara u tiddeciedi li r-rikorrent garrab vjolazzjoni tal-jeddijiet fondamentali tieghu kif dawn huma mharsa bl-Art 6 u bl-Ewwel (1) Artikolu tal-Ewwel (1) Protokoll tal-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem u Jeddijiet Fondamentali. Ghalhekk qeghda tichad l-eccezzjonijiet kollha tal-intimati safejn dawn kienu ntizi sabiex jikkontestaw din il-vjolazzjoni.

Riferibbilment ukoll ghat-tieni (2) talba, tichad safejn ir-rikorrent talab bhala rimedju xieraq ir-ripreza tal-pussess tal-proprjeta` ndikata fl-ewwel (1) talba.

Riferibbilment ukoll ghat-tieni (2) talba, tiddikjara bhala rimedju xieraq illi l-intimati Galea ma jistghux jibqghu jistriehu fuq id-disposizzjonijiet tal-Kap 199 tal-Ligijiet ta` Malta sabiex jibqghu jokkupaw il-proprjeta` ndikata fl-ewwel (1) talba.

Tilqa` t-tielet (3) talba limitatament fil-konfront tal-intimat Avukat tal-Istat u ghalhekk qeghda tilqa` l-eccezzjonijiet tal-intimati Galea safejn dawn jirrigwardaw din it-talba.

Filwaqt li tichad kull eccezzjoni fir-rigward, qeghda tilqa` r-raba` (4) talba billi tillikwida favur ir-rikorrent is-somma ta` erbgha u ghoxrin elf ewro (€24,000) in kwantu ghal tnejn u ghoxrin elf ewro (€22,000) bhala kumpens/danni pekunjarji u in kwantu ghal elfejn ewro (€2,000) bhala kumpens/danni morali ghall-vjolazzjonijiet li garrab tal-jeddijiet fondamentali tieghu skont it-tieni (2) talba.

Tipprovdi dwar il-hames (5) talba billi tikkundanna lill-intimat Avukat tal-Istat sabiex ihallas lir-rikorrent s-somma likwidata skont it-talba precedenti, bl-imghax legali b`effett mil-lum.

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

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

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur