BORD LI JIRREGOLA L-KERA

GĦAL GZEJJER T'GĦAWDEX U KEMMUNA

Maġistrat Dr. Monica Vella LL.D., M.Jur.
CHAIRPERSON

Rikors numru 01/2006MV

fl-ismijiet:

Alfred u Maria Concetta sive Cettina konjugi Vella

vs

Mikelangelo Haber

Illum, l-Erbgħa, 28 ta April 2021,

Il-Bord;

Ra r-rikors tas-17 ta' Mejju 2016 ta' Alfred u Maria Concetta sive konjugi Vella li jgħid hekk:

Illi huma proprjetarji ta' zewġ biċċiet raba imsejjaħ "ta' fejn il-barriera" kuntrada ta' Mġarr ix-Xini, fil-limiti ta' Għajnsielem, Għawdex tal-kejl superfiċjali ta' 2497mq (elfejn erba' mija u sebgħa u disgħin metru kwadru) pari għal bejn wieħed u ieħor għal zewġt itmiem u siegħ, konfinanti minn naħa tal-nofsinhar ma' beni ta' Loretu Attard, tramuntana ma' beni ta' Antonio Attard, u lvant ma' triq, liema biċtejn kienu mqabbla għand missier l-intimat bil-qbiela ta' erba' liri Maltin (LM4) fis-sena li jitħallsu fil-15 ta' Awwissu ta' kull sena.

Illi dawn iz-zewġ biċċiet art anke minn meta kienu f'idejn missier l-intimat Salvu Haber kienu zdingati kif ukoll bdew jintuza mhux skont id-destinazzjoni tagħħom peress li l-intimat qed juza l-istess raba bhala mansab.

Illi oltre dan l-intimat tefa' jew ippermetta lil min jitfa ġebel u ħamrija fli stess raba' mingħajr il-kunsens tal-esponenti.

Illi oltre dan l-esponenti għandhom bzonn dawn l-istess biċċiet raba għall-uzu tagħhom u tal-familja tagħhom.

Għaldaqstant għar-raġunijiet fuq imsemmija l-esponenti jitolbu umilment li dan il-Bord jogħoġbu prevja l-likwidazzjoni u l-ħlas tal-kumpens li talvolta jista' jkun dovut lill-intimat skont il-liġi, jawtorizża lill-esponenti sabiex jirriprendu l-pussess ta' l-imsemmija biċċtejn raba' u ma jawtorizżax it-tiġdid tal-qbiela wara l-15 ta' Awwissu tas-sena korrenti.

Ra r-risposta tal-istess Mikelangelo Haber (I D number 19956 (G)) fejn espona bir-rispett:-

Illi dan ir-rikors huwa null peress illi ma fihx talba għal-likwidazzjoni ta' kwalunkwe kumpens talvolta dovut lill-intimat skont il-liġi;

Illi, fil-mertu u mingħajr ebda preġudizzju għall-premess, m'huwiex minnu li l-istess raba qiegħed jitħalla zdingat, kif ukoll l-anqas m'huwa minnu li dan ir-raba qiegħed jintuza' għall-mansab u li ntefa' xi terrapien fih, kif jiġi pruvat dettaljatament waqt is-smiegħ tal-kawza.

Illi, oltre dan m'huwiex minnu li l-istess rikorrenti għandhom bzonn l-istess raba għall-uzu tagħhom u tal-familja tagħhom u oltre dana l-istess raba huwa fonti mportanti tal-għexien tal-esponenti u l-membri tal-familja tiegħu, kif dettaljatament jigi pruvat waqt is-smiegh ta' dan ir-rikors.

Salvi risposti oħra fid-dritt u fil-fatt.

Ra s-sentenza tat-12 ta' Ottubru, 2017 tal-Bord hekk kif diversament preseduta.

Ra s-sentenza tat-08 ta' Ġunju 2018, tal-Qorti tal-Appell, fejn laqghet it-tielet aggravju tal-appellanti u varjat is-sentenza tal-Bord in kwantu hassret is-sentenza tal-Bord f'dik il-parti fejn cahdet it-talba ta' sidien il-kera fir-rigward tar-raguni li tissemma' fl-Artikolu 4 (2) (a) tal-Kap. 199 u bagħtet lura l-atti lil dan il-Bord sabiex issir it-talba relattiva għall-korrezzjoni fir-rikors promotur billi tizdied talba għal-likwidazzjoni tal-kumpens li jista' jkun dovut lill-inkwilin; u mill-kumplament ikkonfermat is-sentenza.

Ra l-verbal tal-udjenza tas-16 ta' Lulju 2020 fejn il-partijiet informaw lill-Bord illi fadal biss illi tinghata decizjoni fuq it-tielet (3) kawzali illi hija dik tal-bzonn u li huma ser jistrieħu fuq l-atti u fuq in-noti tas-sottomissjonijiet diġa pprezentati[1].

Ra l-verbal tas-seduta tad-29 ta' Jannar 2021 fejn ir-rikors ġie differit għas-sentenza.

Ra d-digriet tieghu tas-26 t'April 2021 fejn ordnat korrezzjoni fir-rikors promotur ai termini tal-imsemmija sentenza tal-Qorti ta' l-Appell.

Ra l-atti kollha tal-kawza.

Ra u qies id-dokumenti u provi kollha prodotti.

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

Ikkunsidra:

Illi din hija sentenza dwar it-tielet kawzali u cioe' "il-bzonn tas-sid" liema premessa taqra hekk: "*Illi oltre dan l-esponenti għandhom bzonn dawn l-*

[1] A folio erbgħa mija u wiehed u sebgħin (471) tal-proċess u erbgħa mija u sebgħa u tmenin tal-proċess (487).

istess biċċiet raba għall uzu tagħhom u tal-familja tagħhom." U permezz tal-korrezzjoni awtorizzata ai termini tas-sentenza tal-Qorti ta' l-Appell tat-08 ta'

Gunju 2018 it-talba relattiva giet taqra hekk: "*Ghaldaqstant ghar-ragunijiet fuq imsemmija l-esponenti jitolbu umilment li dan il-Bord joghgbu prevja l-likwidazzjoni u l-hlas tal-kumpens li talvolta jista' jkun dovut lill-intimat skont il-ligi, jawtorizza lill-esponenti sabiex jirriprendu l-pussess tal-imsemmija bicctejn raba u ma jawtorizzax it-tigdid tal-qbiela wara l-15 ta' Awwissu tas-sena kurrenti*".

Il-Ligi u Gurisprudenza Applikabbli

Illi din il-kawzali u t-talba relattiva huma msejsa fuq l-Artiklu 4 (1) u (2) (a) tal-Kap. 199 tal-Ligijiet ta' Malta li jaqra hekk[2]:

4.(1) Bla ħsara tad-dispożizzjonijiet ta' dan l-Att, meta sid il-kera jkun irid jieħu lura l-pussess ta' xi raba', jekk il-kerrej ma jkunx ftiehem bil-miktub kemm dwar it-tmiem tal-lokazzjoni u kemm dwar il-kumpens dovut, huwa għandu japplika lill-Bord permezz ta' rikors li jkun fih-

(a) raġunijiet dettaljati l-għala jrid jieħu lura l-pussess, u

[2] Il-Bord qed jiccita biss il-partijiet relevanti ghall-kaz in ezami.

(b) talba għal-likwidazzjoni ta' kull kumpens li jkollu jitħallas skont id-dispożizzjonijiet ta' dan l-artikolu, u jiġi ippreżentat mhux aktar tard minn tliet xhur qabel id-data li fiha tagħlaq il-kirja:

Iżda, meta xi kirja bħal dik ma tagħlaqx fil-15 ta' Awissuta' xi sena, ebda deċiżjoni li tapprova dak it-teħid lura ta' pussess ma għandha sseħħ

qabel il-15 ta' Awissu li jiġi wara d-data tat-terminazzjoni tal-kirja korrenti.

(2) Il-Bord jilqa' r-rikors ta' sid il-kera jekk sid il-kera jipprova li - (a) jeħtieġ ir-raba' biex jiġi wżat għal skopijiet agrikoli minnu personalment jew minn xi membru tal-familja personalment għal perijodu ta' mhux anqas minn erba'snin konsekuttivi li jibdew minnufih wara d-data tat-terminazzjoni; ……

Iżda ċ-ċirkostanza msemmija fil-paragrafu (a) ma tkunx raġuni biżżejjed biex jiġi milqugħ ir-rikors ta' sid il-kera, jekk il-kerrej jipprova li r-raba' in kwistjoni jkun fonti importanti tal-għixien tiegħu u tal-familja tiegħu u jekk il-Bord ikun sodisfatt li l-kerrej ibati aktar minn sid il-kera jekk ir-rikors jiġi milqugħ:…".

Illi l-kawzali tal-bzonn tas-sid versu l-bzonn ta' l-inkwilin giet ezaminata diversi drabi mill-Qrati taghna u l-principji regolatorji huma ben assodati fil-gurisprudenza tal-Qrati taghna.

Hekk fil-kawza fl-ismijiet: **Grezzju Caruana et vs Guzeppi Degabriele** Appell Civili Numru. 12/1993/1 deciza fit-3 ta' Novembru, 2004, il-Qorti tal-Appell irriteniet:

"*Effettivament, mill-qari tas-sentenza appellata jidher ben evidenti illi l-Bord illimita ruhu ghall-konsiderazzjonijiet dwar il-kawzali li*

originarjament kienet rizervata ghall-kwestjoni tal-bzonn vantat mir-rikorrenti sidien. Kawzali din li tirriproduci, mod jew iehor, il-lokuzzjoni tas-subparagrafu 2 (a) ta' l-Artikolu 4 tal-Kapitolu 199 li jipprovdi li l-Bord jilqa' t-talba tas-sid jekk dan jipprova illi "jehtieg ir-raba biex jigi wzat ghal skopijiet agrikoli minnu personalment jew minn xi membru tal-familja personalment ...";

Ghandu jigi nnotat illi ma' dan l-artikolu hu abbinat ukoll il-proviso li jghid li anke fil-kaz prevvist fl-imsemmi subparagrafu 2(a), "mhux raguni bizzejjed biex jigi milqugh ir-rikors ta' sid il-kera, jekk il-kerrej jipprova li r-raba in kwestjoni jkun fonti importanti ta' l-ghixien tieghu u tal-familja tieghu u jekk il-Bord ikun sodisfatt li l-kerrej ibati aktar minn sid il-kera jekk ir-rikors jigi milqugh.";

Jinsab spjegat fis-sentenza fl-ismijiet "Jane armla minn John Mary Calleja et -vs- Francesco Calleja et", Appell, 6 ta' Ottubru 2000, illi skond it-test tal-ligi fuq riprodott, "l-iter procedurali li kellu allura jigi segwit mill-Bord kien issegwenti:- "(a) Il-Bord kellu jkun sodisfatt illi s-sid tar-raba kien jehtiegu biex jigi wzat ghal skopijiet agrikoli minnu personalment jew minn xi membru tal-familja. Din il-prova kellha ssir qabel kollox u fl-ewwel lok minn sid il-kera; "(b) Il-kerrej kellu mbaghad jipprova li r-raba in kwistjoni kien fonti importanti ta' l-ghixien tieghu u tal-familja tieghu; "(c) Jekk dan l-element jigi sodisfacentement pruvat mill-kerrej, il-Bord kellu jikkonduci l-ezami komparattiv li l-ligi tesigi biex ikun sodisfatt li l-kerrej kien ser ibati aktar minn sid il-kera jekk ir-rikors jigi milqugh.";

Issa kwantu jolqot il-proposizzjoni nkwadrata taht (a) fis-sentenza precitata, jinsab deciz illi d-disposizzjoni tas-subinciz 2(a) ta' l-Artikolu

4 "tistabbilixxi bhala prerekwiziti sine qua non ghar-ripreza tal-fond fuq din il-kawzali (a) li r-ripresa tkun mehtiega ghal skopijiet agrikoli; (b) illi sid il-kera kien qed jitlob ripreza tieghu biex juza r-raba personalment jew biex jigi wzat minn xi membru tal-familja tieghu personalment; (c) li allura l-persuna, kwalifikata skond din id-

disposizzjoni biex taghmel uzu mir-raba, tkun gabillott." - *"Mario Mizzi et -vs- Victor Stellini", Appell, 23 ta' Gunju 2000;*

Jidher mis-sentenza appellata illi l-Bord kien sodisfatt illi dawn it-tliet elementi gew ipprovati mis-sidien tar-raba fuq il-bazi tar-rizultanzi processwali u ghadda biex accetta l-kawzali kif impustata. F' dan, mid-dicitura ta' l-istess Artikolu 4 (2), jidher li l-ligi riedet taghti lill-Bord diskrezzjoni ampja u halliet l-apprezzament tac-cirkostanzi fil-prudenza ghaqlija tieghu biex jiddeciedi jekk ir-rikorrenti ssodisfawx l-element tal-bzonn.

Ri-ezaminati l-istess provi din il-Qorti ma ssibx li tista' ticcensura l-konkluzjoni tal-Bord fuq dan il-punt. Bhal Bord tinsab sodisfatta illi rrikorrenti rnexxielhom jiddemostraw li r-raba de quo kien mehtieg fl-interess ta' George Caruana, iben ir-rikorrenti Grezzju Caruana biex dan jissupplimenta d-dhul tieghu. Skond l-istess George Caruana huwa lest li jahdem dan ir-raba bl-ghajnuna ta' missieru u zitu li huma ulied ir-raba (ara affidavit tieghu a fol. 7). Fuq kollox, kif sewwa gie notat ukoll mill-Bord, ma jidherx li fuq dan l-aspett l-appellant kkontrasta l-bzonn hekk kwalifikat u spjegat mir-rikorrenti sidien;

Fil-verita` l-vera kontestazzjoni ta' l-appellant kienet dik li jirrezisti t-talba tar-rikorrenti fuq id-difiza li r-raba kien fonti importanti ghall-ghixien tieghu u tal-familja. "Dan ifisser illi l-inkwilin jista' jinvoka u

jottjeni l-protezzjoni shiha tal-ligi kontra l-izgumbrament biss jekk qabel xejn jipprova li r-raba hu fonti importanti ghall-ghixien tieghu. Mhux bizzejjed illi r-raba jkun ghall-inkwilin fonti ta' dhul; irid ikun fonti mportanti tal-ghixien. Dana fis-sens illi jekk jonqos dak id-dhul, il-mezzi tal-ghixien tieghu kienu ser ikunu markatament pregudikati, anke

jekk mhux necessarjament b' mod determinanti jew vitali. Din il-prova trid - skond il-ligi - issir mill-inkwilin." - "Giuseppa Mizzi et -vs- Joseph Sacco", Appell, 31 ta' Mejju 1996; "Nazzareno Farrugia -vs- John Aquilina", Appell, 29 ta' April 1996;

F' dan il-kaz jidher li l-Bord ma kienx sodisfatt illi l-appellant skarika l-piz tal-prova hekk inkombenti fuqu. Huwa ddeduca dan mill-fatt illi l-intimat naqas li jaghti ndikazzjoni dwar id-dhul tieghu mir-raba fil-mument ta' l-intavolar ta' l-azzjoni da parte tas-sidien fl-1993; L-appellant ma jidherx li jikkontesta din id-deduzzjoni tal-Bord izda jikkritikaha ghall-fatt illi l-Bord ma hax konjizzjoni tat-tibdil fil-qaghda tieghu meta ntemmlu l-impjieg bhala bennej u ghadda biex assuma x-xoghol fir-raba bhala "full time farmer" fl-1 ta' Jannar 1995 (ara dokument ta' l-ETC a fol. 119);

Kieku din il-Qorti kellha taccetta dan l-ilment ta' l-appellant tkun qed tirriskja li tiftah il-bieb berah ghal kull min fil-kors tal-proceduri jfettillu bil-volonta unilaterali tieghu jimmodifika u jvarja l-istat ta' fatt minn dak li kien fil-bidu tal-proceduri. Dan bir-riskju ovvju li tigi stultifikata kull talba konsimili ghal din intiza ghar-ripreza tar-raba fuq il-bazi tal-bzonn u jew wkoll ghal kull talba taht xi wiehed mill-motivi l-ohra elenkati mil-ligi fl-Artikolu 4(2) tal-ligi specjali (Kapitolu 199). Hekk, per ezempju, kif hekk sehh proprju f' dan il-kaz, intimat jinghata brevett ta' immunita` mill-konsegwenzi tas-subparagrafu (f) jekk fil-mori tal-

kawza jiddeciedi li jsewwi l-hitan tar-raba mill-istat li kienu fil-bidunett tal-kawza u tat-talba bazata fuq dik il-mankanza tieghu li jzomm fi stat tajjeb l-istess hitan jew xi obbligu iehor tal-kirja. Dan, ghal din il-Qorti mhux accettabbli;

Il-Qorti mhix propensa tiskarta l-fatt illi fil-kaz in ispecje l-appellant, kif hekk kien fid-dover li jaghmel, naqas li jgib prova dwar kemm effettivament kien id-dhul tieghu annwali mill-prodott tar-raba in kwestjoni fl-1993 u fis-snin precedenti. Hekk ukoll allura naqas milli jipprova l-proporzjoni tad-dhul minn dak ir-raba fil-konfront tad-dhul kollu tieghu. F' dawn ic-cirkostanzi ghalhekk ma jistax ragonevolment jinghad illi gie provat illi r-raba, proprjeta` tar-rikorrenti, jikkostitwixxi fonti mportanti ghall-ghixien ta' l-intimat jew tal-familja tieghu;

In vista ta' din il-konkluzjoni hekk affermanti r-ragonament tal-Bord, din il-Qorti ma jidhrilhiex li hu l-kaz li tghaddi biex tezamina kwestjonijiet ohra. Dan anke ghaliex, kif gja manifest, hu biss wara li jigi stabbilit li r-raba kien hekk fonti ghall-ghixien illi l-Bord, u allura wkoll din il-Qorti, kien mistenni li jidhol biex jaghmel studju komparattiv bejn it-tbatija li jkun ser isofri l-kerrej jekk jigi ordnat jitlaq ir-raba, u t-tbatija li jsofri s-sid u l-familja tieghu jekk ma jigux awtorizzati jirriprendu l-pussess tieghu. Ara "Anthony Abela et -vs- Francis Degabriele", Appell, 9 ta' Lulju 1999.

Ghal dawn il-motivi l-appell qed jigi respint u s-sentenza appellata konfermata, bl-ispejjez taz-zewg istanzi kontra lintimat appellant. Ghall-fini ta' l-izgumbrament din il-Qorti jidhrilha li hu xieraq li tikkonferma d-data tal-15 ta' Awissu 2003, stabbilit mill-Bord, tenut rigward tal-fatt li dan irrikors issa ilu pendenti ormai hdax-il sena.".

Illi fil-kawza fl-ismijiet **Gioacchino Farrugia et vs Joseph Farrugia et** l-Bord fis-sentenza tieghu tas-16 ta' Novembru, 2009, kien iddikjara hekk:

"*Illi kif ravvizat fl-artikolu 4(2)(a) tal-Kap 199 kominat mal-insenjament tal-Qrati taghna (ara Carmelo Mifsud et vs Carmelo Fenech App 9.04.1979 u Joseph Aquilina vs George Camilleri 26.10.1983 fost ohrajn), huma tlett elementi li ghandhom jiggwidaw lil-Bord f'kawzi ta' din in-natura;*

Fl-ewwel lok, il-Bord ghandu jkun sodisfatt li r-raba ghandu bzonnu s-sid biex jahdmu hu personalment jew membri tal-familja tieghu. Mill-provi migjuba a konjizzjoni ta' dan il-Bord, huwa inkontestat li r-rikorrenti mhux biss huwa bidwi fulltime izda jiehu hsieb ukoll raba' ta' terzi fejn jaghmel xoghol ta' natura varja b'ingenji tieghu. Apparti dan, bint ir-rikorrenti hija ukoll akkademikament imharrga fl-agrikoltura u tixtieq li tinghata din ir-raba biex tqieghed fis-sehh progetti li tghallmet dwarhom in linja max-xoghol ta' missierha u dan billi jinbnew serer appoziti fuq l-istess art jekk hemm bzonn. L-uniku kontest li qajjem l-intimat dwar dan l-element hu li qatt ma ra lil bint ir-rikorrenti tahdem l-ghalqa. Izda dwar dan irid jinghad illi x-xoghol tal-agrikoltura llum mhux necessarjament dik l-attivita marbuta mas-sengha fil-passat. Dak li qed jifhem il-Bord mill-kontestazzjoni tal-intimati ghal din it-talba hu li rrikorrenti ghandu bizzejjed raba' biex jghix u ma ghandux ghalfejn jitlob ir-ripresa tar-raba taht il-pussess tieghu.

Jehtieg inoltre li l-Bord jezamina il-konkors bejn zewg elementi ulterjuri f'talbiet simili, u cioe, sew li l-kerrej irid jipprova li r-raba huwa fonti ghal ghixien tieghu jew tal-familja tieghu kif ukoll illi l-kerrej ser ibati

iktar min sid il-kera jekk it-talba tieghu tkun milqugha (ara decizjonijiet citati supra). Fix-xhieda tieghu, r-rikorrenti pprezenta prospett li juri x'jista' jkun il-qliegh tal-intimat miz-zewgt itmiem raba tieghu meta dan jizirghu bilqamh. L-istess intimat xehed li l-ghalqa jkollha wicc tal-qamh u ma kkontestax din il-valutazzjoni li tammonta ghal-Lm13 fis-

sena wara li jitnaqqsu l-ispejjez. Naturalment il-Bord qed iqis din il-parti tax-xhieda b'certu kawtela ghaliex mill-esperjenza li ghandu f'kawzi simili d-dhul minn zewgt itmiem raba bil-qamh jammonta ghal ftit aktar minn hekk, izda jibqa' l-fatt illi anke li kieku ghal grazzja tal-argument dan kien id-doppju jew anke erba darbiet aktar, il-Bord irid jara minn mit-tnejn ser ibati l-aktar. Certament dan huwa l-ghixien tar-rikorrenti u huwa wiehed minn dawk il-kazijiet fejn hemm investiment qawwi da parti tar-rikorrenti, konfermat mill-intimat, biex jahdem l-ghelieqi tieghu u ta' terzi. Dak li jista' jsofri l-intimati bit-tehid tal-ghalqa huwa somma zghira ta' flus fis-sena u t-telf tas-serhan tal-mohh waqt li jkun qed jahdem l-istess, li frankament ma tantx huwa rejali ghaliex huwa jqabbad lill-terzi biex jahartu u biex jahsdu u jippakjaw il-qamh (li qabel il-kawza kien isir mir-rikorrenti stess);

Il-Bord ghalhekk hu tal-fehma li r-rikorrenti ssodisfa l-kriterji kollha rikjesti mil-ligi ghar-ripresa tal-ghalqa u ghalhekk filwaqt li jilqa' t-talba tar-rikorrenti jawtorizzahom jirriprendu l-ghalqa taghhom deskritta fir-rikors u dan wara l-15 t'Awissu, 2010."

Minn din is-sentenza sar appell u l-Qorti tal-Appell fis-sentenza taghha tal-05 ta' Marzu, Appell Civili Numru. 18/2006/1 irriteniet hekk:

"Jinzel sostanzjalment mill-aggravju kif koncepit illi l-punt kollu li fuqu dan l-appell jirrigwarda hu intrinsikament konness mal-fattur "bzonn"

fl-ambitu ta' l-Artikolu 4 (2) (a) tal-Kapitolu 199. Intqal minn din il-Qorti kif presjeduta illi "l-principju generali li ghandu jirregola din il-materja huwa dak li l-uzu tal-verb "jehtieg" fit-test ta' l-Artikolu 4 (2) (a) jimplika bzonn, u mhux merament volonta` jew xewqa. Htiega din li ghandha dejjem ikollha rabta ma' xi haga mposta minn necessita u

"immirata biex tissodisfa xi bzonn tas-sid jew tal-familja tieghu" ("Anthony Abela et - vs- Francis Degabriele", Appell, 9 ta' Lulju 1999).

Ghalkemm dak il-bzonn mhux relatat ma' xi kriterju partikulari, hu cert pero` li dan ma jridx ikun inventat jew ghas-semplici pjacir, jew kapricc, jew suggerit minn inkejja, jew ukoll ispirat minn animu ta' spekulazzjoni. Is-sens logiku jiddetta li l-interpretazzjoni ghandha tikkoncilja b'mod ragonevoli u skond dak li hu gust u ekwu l-interessi konfliggenti tas-sid u tal-kerrej. Dan fis-sens li jigi accertat jekk verament jissussistix grad ragonevoli ta' bzonn fis-sid ghax altrimenti l-kerrej-gabillott ma ghandux jigi disturbat inutilment u bla bzonn fit-tgawdija tar-raba' lokat lilu.

Jitnissel minn dan kollu illi l-interess tas-sid ma jridx ikun fondat fuq pretensjonijiet kwalsiasi imma ghandu jkun biss salvagwardat jekk, u una volta, jinstab li dak l-interess u dak il-bzonn ikunx konsistenti ma' l-"iskopijiet agrikoli" skond il-vot tad-disposizzjoni tal-ligi u, fuq kollox, fuq l-istregwa tal-bwona fede u tal-korrettezza". Ara "Francis Zammit et -vs- Joseph Zammit et", Appell mill-Bord, 8 ta' Gunju, 2006.

Ghandu jigi osservat illi n-ness tal-bzonn mal-principju tal-bwona fede gie diversi drabi esplorat minn din il-Qorti f'decizjonijiet ohra taghha. Ara, ad ezempju, "Maria Vella et -vs- Carmelo Ellul", 7 ta' Dicembru, 2005;

Premessa din l-introduzzjoni, huwa utli illi ghall-ilmenti sottoposti mill-appellanti jinghataw dawn it-twegibiet:-

(1) Kontra l-affermazzjoni illi l-appellati ghandhom raba' iehor disponibbli ghandu jinghad illi ghalkemm dan il-fatt jista' jkun konsiderazzjoni importanti ghall-aspett ta' l-assenza tal-bzonn, tali mhux dejjem u bilfors irid jittiehed bhala enuncjazzjoni ta' xi principju assolut. Kull kaz ghandu l-fattezzi partikolari tieghu u jiddependi minn bosta fatturi u cirkostanzi. Proprju l-gurisprudenza enuncjata tirrikonoxxi l-ezistenza ta' elementi sew oggettivi kif ukoll soggettivi in kwantu l-bzonnijiet jistghu jkunu multiformi u varjati. In effetti, hu ammess illi oltre l-bzonn ekonomiku hemm ukoll bzonnijiet ohra inqas apparenti, imma daqstant iehor validi biex jawtorizzaw ir-ripreza tar-raba' mis-sid;

(2) Fiz-zgur, mhux bzonn validu ta' sid ir-raba' li jkun irid jottjeniha biex jispekulaha favur haddiehor. Ara "Evangelista Xuereb -vs- John Agius proprio et nomine", Appell, 16 ta' Jannar, 1976. Fil-kaz prezenti l-insinwazzjoni li jaghmlu l-appellanti illi jezisti s-sospett li l-appellati intenzjonati jiehdu r-raba' lura biex ibieghuha lil terzi ma ssib ebda riskontru fil-provi. Hi mera kongettura spekulattiva u xejn aktar minn hekk. Di fatti l-appellanti nnifsu mkien ma jaghmel minimu accenn ghaliha fl-Affidavit tieghu (fol. 69). L-istess haga fil-kaz ta' martu Adelina Farrugia (ara Affidavit taghha a fol. 71);

(3) Diversament minn dak ritenut mill-appellanti, il-kawzali tal-bzonn proposta mill-appellati ma hi xejn fittizja. L-appellat Gioacchino Farrugia pprova li r-raba' jridu biex jisfruttah u jimmeljorah b'mod

aktar produttiv. Dan mhux biss ghaliex hu ghandu ghad-disposizzjoni tieghu l-attrezzaturi agrikoli mehtiega izda wkoll billi jirrendi saqwi dak l-istess raba' peress li fil-vicinanzi ghandu borehole ghall-estrazzjoni ta' l-ilma. Ara Affidavit ta' l-appellat a fol. 46 u d-dokument a fol. 23. Ukoll jekk ir-raba' hu intiz biex ikun utilizzat minn bintu Joyce ghall-progett ta' serer (ara deposizzjoni taghha a fol. 27), flimkien jikkostitwixxu bzonnijiet ghal "skopijiet agrikoli". Din il-konstatazzjoni tkompli ssahhah il-fehma illi l-bzonn allegat ma kienx wiehed inventat, bhal ma kien hekk il-kaz in re: "Doris Camenzuli et -vs- Carmelo Camilleri", Appell mill-Bord, 8 ta' Gunju, 2006, citata mill-appellanti. Pjuttost il-prova fir-rigward mill-appellati hi wahda konvincenti in kwantu ghat-tishih ta' dik il-presunzjoni tal-bwona fede ghal liema jirreferi l-Artikolu 532 tal-Kodici Civili. Anzi din il-Qorti difficilment tista' taccetta, fir-rifless tal-kumpless tal-provi, l-asserzjoni gratuwita ta' l-appellanti illi l-qaghda propunjata mill-appellati ghandha sapur ta' finzjoni, jew, addirittura, razenti l-mala fede ghall-fatt tas-supposta spekulazzjoni. Ghax jekk dan huwa hekk, l-allegazzjoni ma gietx b'mod univoku u konklussiv ipprovata ghall-konvinciment divers tal-Bord, u issa ta' din il-Qorti;

Dan ikkunsidrat, mhux ghal din il-Qorti li tinoltra ruhha fl-ezami dwar jekk ir-raba' huwiex fonti importanti ghall-ghajxien ta' l-appellanti, tant ghaliex in mertu l-istess appellanti ma avvanzaw ebda deduzzjoni bi gravam, tant ghaliex ukoll, fir-realta` tal-vicenda processwali, il-prova relattiva dwar dan l-aspett hi, inekwivokabilment, eskluza. Dan anke ghaliex d-dikjarazzjoni maghmula mill-appellat fl-Affidavit tieghu dwar il-qligh insinjifikanti li jibqalu l-appellant mill-kultivazzjoni tar-raba' ma giet minn imkien kontradetta, jew skossata bi prova kuntrarja.

Ghall-motivi kollha suesposti din il-Qorti qed tichad l-appell u tikkonferma s-sentenza tal-Bord, kompriz dik tad-data ghal fini ta' l-

izgumbrament ta' l-appellanti mir-raba'. L-ispejjez ta' dan l-appell jibqghu a karigu ta' l-intimati appellanti."

Illi mhux biss gew stabbiliti l-principji regolatorji fil-materja tar-ripreza ta' fondi rurali, izda l-izbilanc u n-nuqqas ta' proporzjonalita bejn id-drittijiet proprjetarji tas-sid u d-drittijiet ta' l-inkwilin f'materja ta' kirja agrikola kienu wkoll ezaminati mill-ambitu ta' ksur tad-drittijiet fundamentali tal-bniedem, bl-aktar sentenza ricenti tkun is-sentenza moghtija mill-**Qorti Civili Prim Awla (Gurisdizzjoni Kostituzzjonali)** Rikors Numru: 133/2018, Imhallef Joseph Zammit McKeon, fl-ismijiet **J & C Properties Limited vs Nazzareno Pulis u Antonia Pulis u Avukat Generali, li kien sostitwit ope legis bl-Avukat tal-Istat** deciza fis-27 ta` Frar 2020.

F'din is-sentenza l-Qorti dahlet fid-dettal dwar il-ksur tad-drittijiet fundamentali tar-rikorrenti illi attakkat l-applikazzjoni tal-Kap. 199 tal-Ligijiet ta' Malta u in partikolari l-Artikolu 3, 4 u 14 ta' l-istess Att. Dik il-Qorti waslet ghall-konkluzjoni li l-Gurisprudenza applikabbli ghall-kirjiet ta' fondi urbani u kummercjali ghandhom jpplikaw mutatis mutandis ghall-kirjiet ta' art agrikola, bhal fil-kaz quddiem il-Bord illum.

Izda dik il-Qorti qalet ukoll illi l-Qorti Kostituzzjonali ma tistax taghti rimedju tar-ripreza tal-fond, u li dan jispetta lill-Bord tal-Qbiela.

Dan il-Bord se jiccita partijiet estensivi mill-imsemmija sentenza relevanti ghall-kaz in ezami quddiem il-Bord illum.

Il-Qorti Kostituzzjonali f'dik is-sentenza qalet hekk:

“ ***IV. It-tielet (3) eccezzjoni tal-intimat Avukat tal-Istat (gia Avukat Generali) u t-tielet (3) eccezzjoni tal-intimati konjugi Pulis. Iz-zewg eccezzjonijiet huma simili ghalkemm dik tal-intimat Avukat tal-Istat hija aktar diretta minn dik tal-intimati konjugi Pulis.*** *Infatti fit-tielet eccezzjoni, l-Avukat tal-Istat jikkontendi li l-Art 4 tal-Kap 199 joffri lista shiha ta` sitwazzjonijiet li jirrendu possibbli r-ripriza tal-pussess, mentri fit-tielet eccezzjoni, l-intimati konjugi Pulis jistiednu lill-qorti sabiex tiddeklina milli tezercita s-setghat kostituzzjonali taghha, jekk is-socjeta` rikorrenti tonqos li taghti prova sodisfacjenti li ma kellhiex rimedji ordinarji alternattivi u effettivi. Sejra tqis flimkien l-eccezzjonijiet tal-intimati kollha.*

Fis-sentenza li tat fid-29 ta` Mejju 2015 fil-kawza fl-ismijiet* ***Lawrence Grech et vs Tabib Principali tal-Gvern (Sahha Pubblika) et****, il-Qorti Kostituzzjonali ghamlet din l-osservazzjoni : “Apparti l-kunsiderazzjonijiet l-ohra li gia` saru fis-sentenza ta` din il-qorti fl-ismijiet George Spiteri v. Policy Manager talMalta Shipyards et, tenut kont tal-konkluzjonijiet raggunti fissentenza msemmija ta` Brincat and Others v. Malta, din il-qorti hi tal-fehma li fic-cirkostanzi kif issa zviluppaw mhux aktar desiderabbli li l-qrati kostituzzjonali jirrifjutaw li jezercitaw is-setghat taghhom kif previst fl-artikoli 46(2) tal-Kostituzzjoni u 4(2) tal-Kap. 319 ... minkejja r-rimedji li indubbjament kellhom ghad-disposizzjoni taghhom ir-rikorrenti appellanti”.

Din il-Qorti tikkondividi din il-linja ta` hsieb u taghmilha taghha. L-ghan ewlieni ta` procediment kostituzzjonali u konvenzjonali huwa li l-persuna li tilmenta u tipprova li tkun garrbet ksur tad-drittijiet

fondamentali taghha tinghata rimedju effettiv u minghajr dewmien. Fl-eccezzjoni taghhom, l-intimati konjugi Pulis jikkontendu li fuq is-socjeta` rikorrenti jinkombi l-oneru tal-prova li kienu sprovvisti minn rimedju ordinarju effettiv u accessibbli qabel ittentaw procediment tax-xorta li huwa dak tal-lum. Din il-linja ta` difiza tal-intimati konjugi Pulis mhijiex kondiviza minn din il-Qorti ghaliex il-prova li r-rikorrenti kellha rimedju ordinarju accessibbli, xieraq, effettiv u adegwat tispetta lil min bhall-intimati konjugi Pulis qeghdin iqanqlu l-eccezzjoni.

Hija gurisprudenza ormai assodata li persuna li tkun qeghda tilmenta minn ksur tal-jeddijiet fondamentali taghha mhijiex obbligata tfittex rimedju quddiem il-qrati ordinarji jekk l-ilment ma jkunx jista` jigi ndirizzat b`rimedju effettiv. Propju ghaliex procediment kostituzzjonali u konvenzjonali huwa eccezzjonali, persuna tirrikorri ghalih meta ma jkunx hemm rimedju effettiv quddiem il-qrati ordinarji li jista` jindirizza l-allegat ksur tal-jeddijiet fondamentali. Fis-sentenza taghha tas-27 ta` Marzu 2015 fil-kawza fl-ismijiet ***Ian Peter Ellis et vs Avukat Generali et*** *il-Qorti Kostituzzjonali ccitat mid-decizjoni tal-ECtHR f`****Ghigo v. Malta*** *billi qalet hekk :- 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."

Is-socjeta` rikorrenti kkonfermat illi dawk ta` llum huma l-unici proceduri li ttiehdu kontra l-intimati Pulis ghar-rigward il-kirja tal-ghalqa. Jirrizulta illi kien hemm biss intimazzjoni wahda b`ittra ufficjali

tas-16 ta` Novembru 2018. Dan l-att ippreceda biss dawn il-proceduri bi ftit gimghat biss. Fix-xiehda taghha, Helen Camilleri taghmel l-argument illi huwa inutli li jittiehdu proceduri quddiem il-Bord dwar il-Kontroll tal-Kiri tar-Raba` ghaliex dak illi trid ir-rikorrenti huwa proprju r-ripriza tal-pussess tal-ghalqa mhux xi awment tal-qbiela b`ammont irrizorju.

Fir-rikors promotur ir-rikorrenti taghmel ukoll l-argument illi r-ripreza tal-pussess hija mpossibbli ghaliex hija l-ligi stess li tipprotegi l-kirja billi tahseb ghal tigdid kwazi kwazi bla limitu. Ir-rikorrenti tirreferi ghall-Art 3, 4 u 14 tal-Kap 199. Il-Qorti rat dawn id-disposizzjonijiet. L-Art 3 tal-Kap 199 jipprekludi awment fil-kirja jew tibdil fil-kondizzjonijiet lokatizji jekk mhux bil-permess tal-Bord dwar il-Kontroll ta` Kiri tar-Raba`. L-Art 4 tal-Kap 199 jistabilixxi l-procedura li trid tkun segwita mis-sid fil-kaz illi ma jkunx irid ikompli jgedded il-kirja. L-Art 4(2) jelenka sitt cirkostanzi fejn sid jista` jitlob l-izgumbrament tal-inkwilin. Huma cirkostanzi partikolari 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-Art 14 tal-Kap 199 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-rikorrenti hija kostretta li ma tmurx quddiem il-Bord ghaliex dak li jipprovdi l-Kap 199 ma jindirizzax il-vjolazzjoni li allegatament qeghda ggarrab ir-rikorrenti. Ghal aktar kjarezza. Anke li kieku r-rikorrenti tressaq 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 lpern tal-lanzjanza kostituzzjonali u konvenzjonali tar-rikorrenti. Kif qatt jistghu ghalhekk ir-rimedji li l-Kap 199 qieghed ghad-disposizzjoni tas-sid jitqiesu bhala effettivi meta r-rikorrenti qeghda tqieghed 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 taljeddijiet fondamentali lamentati mir-rikorrenti. Dikjarazzjoni dwar lezjoni ta` drittijiet fondamentali, kif mitlub mir-rikorrenti, 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 vs 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 tal-lum. 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)." Fid-dawl tal-premess il-Qorti hija tal-fehma li, tenut kont tal-fattispeci tal-kaz, ma jistax validament jinghad li r-rikorrenti kellhom rimedju ordinarju effettiv u adegwat fejn u kif jindirizzaw il-lanjanzi taghhom. Fic-cirkostanzi l-ilmenti kostituzzjonali u konvenzjonali taghhom ghandhom jigu trattati u decizi mill-qrati ta` gurisdizzjoni kostituzzjonali.*

Ghalhekk it-tielet (3) eccezzjoni tal-intimat Avukat tal-Istat (gia Avukat Generali) u t-tielet (3) eccezzjoni tal-intimati konjugi Pulis qeghdin jigu respinti.

V. Ir-raba` (4) eccezzjoni tal-intimati konjugi Pulis

Fir-raba`eccezzjoni l-intimati Pulis jikkontendu li mhumiex legittimi kontraditturi tar-rikorrenti fil-kawza odjerna billi huwa biss l-Istat illi jista` jikkommetti vjolazzjoni tad-drittijiet fondamentali. Huwa accettat mill-gurisprudenza taghna illi f`kawzi ta` indole kostituzzjonali u/jew konvenzjonali huwa l-Istat illi ghandu jwiegeb ghall-vjolazzjoni ta` drittijiet fondamentali billi huwa l-Istat illi ghandu l-obbligu illi jassigura illi l-ligijiet ma joholqux zbilanc jew sproporzjon ingust bejn id-drittijiet tal-persuna u l-obbligi tal-Istat.

Fil-kawza tal-lum, is-socjeta` rikorrenti qeghda tilmenta li bid-disposizzjonijiet tal-Kap 199 qeghda tinholoq ex lege relazzjoni forzuza ghad-detriment taghhom mal-intimati Pulis. Ghalhekk qeghdin jitolbu dikjarazzjoni mill-qorti li l-Kap 199 jikser il-jeddijiet fondamentali taghhom principalment dawk li huma mharsa bl-Art 37 tal-Kostituzzjoni ta` Malta ("il-Kostituzzjoni") u bl-Art 1 Prot 1 tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali ("il-Konvenzjoni").

Fis-sentenza li tat fis-7 ta` Dicembru 1990 fil-kawza fl-ismijiet Joseph Abela v. Onor. Prim` Ministru et, il-Qorti Kostituzzjonali qalet hekk :- "F`kawzi ta` natura kostituzzjonali bbazati fuq id-drittijiet fundamentali, il-legittimi kontradittur ta` dawk l-azzjonijiet jinqasmu fi

tliet kategoriji.

L-ewwel kategorija tikkomprendi dak li huwa allegat li huma, direttament jew indirittament, responsabbli ghall-kummissjoni jew omissjoni ta` xi fatt li jikser xi dritt fundamentali protett mil-ligi.

Fit-tieni kategorija huma dawk li ghall-omissjonijiet jew kummissjonijiet tal-persuni tal-ewwel kategorija jistghu jkunu responsabbli biex jaghtu jew jiffornixxu r-rimedji li s-sentenza, li takkolji l-lament tal-ksur ta` dritt fundamentali, tissanzjona.

It-tielet kategorija mbaghad hemm dawk il-partijiet kollha li jkunu in kawza meta l-kwistjoni kostituzzjonali tinqala` fuq jew waqt xi procedura gudizzjarja.

Dawn it-tliet kategoriji ta` persuni huma kollha legittimi kontraditturi fi proceduri ta` natura kostituzzjonali, li f`dan ir-rigward ukoll hija specjali, ghaliex biex zgumbrament ikunu kompiti u effikaci jirrikjedu l-prezenza ta` persuni li normalment fi proceduri ordinarji jithallew barra, ghaliex minghajrhom il-gudizzju xorta wahda huwa integru.

F`azzjoni ta` natura kostituzzjonali wkoll, il-gudizzju jkunu integru, jekk il-persuni tat-tieni kategorija jithallew barra mill-kawza, ghalkemm jista` jkun li l-azzjoni tirrizulta ineffikaci."

L-Avukat Generali, illum l-Avukat tal-Istat, effett tal-Kap 603 tal-Ligijiet ta` Malta, jirrapprezenta l-Istat. Jekk tirnexxi l-istanza tar-rikorrenti, u jinghata rimedju, dak ir-rimedju jkun irid jinghata mill-Istat. L-intimati Pulis jidhlu fl-istanza ghaliex – iridu jew ma jridux – ghandhom l-interess li jkunu parti fil-kawza, mhux biss ghall-fini ta` integrita` ta` gudizzju, izda wkoll ghaliex xi konsegwenzi talvolta rizultanti minn dak li jista` jkun deciz jista` realment (mhux per mera ipotesi) jolqothom direttament. Ghalhekk jekk il-harsien tal-jeddijiet fondamentali tal-persuni ghandu jaghmel sens fl-essenza tieghu, l-

intimati Pulis ghandhom ikunu parti fil-procediment anke sabiex ikun imhares dak li huwa jedd taghhom, u cioe` il-jedd tas-smigh.

Procediment bhal dak tal-lum jinvolvi zewg aspetti : i) ir-responsabbilita` ghall-vjolazzjoni, li ghaliha ghandu jwiegeb l-Istat ; u ii) ir-rimedju opportun fil-kaz ta` vjolazzjoni accertata ghaliex ippruvata. Iz-zewg materji mhux bilfors huma konnessi ghaliex jistghu jolqtu soggetti u cioe` persuni differenti.

Fil-kawza fl-ismijiet Raymond Cassar Torreggiani et vs Avukat Generali et li kienet deciza mill-Qorti Kostituzzjonali fit-22 ta` Frar 2013, inghad hekk :- " ... biex gudizzju jkun integru jehtieg li, ghall-ahjar gudizzju tal-Qorti, jippartecipaw fih dawk kollha li huma nteressati fil-kawza. B`hekk tigi assigurata kemm jista` jkun l-effikacita` tal-gudizzju inkwantu dan jorbot biss lil dawk li jkunu partecipi fih, kif ukoll jigi rispettat il-principju talekonomija tal-gudizzju sabiex ma jkunx hemm bzonn ta` ripetizzjoni ta` proceduri kontra l-persuni kollha interessati fiddiversi kawzi billi dawn ma jkunux hadu parti f`gudizzju wiehed. Il-gudizzju jibqa` integru mill-mument li jiehdu parti fih dawk li jkollhom id-dritt, u dawk li kontra taghhom dak l-istess dritt jikkompeti". (enfasi mizjuda) ... Mill-premess ghandu jirrizulta car li l-intimati konjugi Tabone, bhala inkwilini tal-fond de quo, u tenut kont tal-fatt li proprju linkwilinat taghhom jifforma l-mertu tal-kawza odjerna, ghandhom interess guridiku u ghalhekk ikunu partecipi fil-kawza li jista` jkollha effetti legali anke fuqhom."

Il-Qorti tkompli taghmel referenza wkoll ghal dak illi nghad fis-sentenza li tat il-Qorti Kostituzzjonali fis-6 ta` Frar 2015 fil-kawza fl-ismijiet Sam Bradshaw et vs l-Avukat Generali et :-

"20. Din il-Qorti tosserva li, ghalkemm taqbel mat-tezi li, ladarba l-kazin agixxa skont il-ligi, allura m`ghandux legalment jirrispondi ghall-inkostituzzjonalita` tal-ligi applikata minnu jew jehel spejjez tal-kawza, izda mill-banda l-ohra, il-proceduri odjerni necessarjament jaffettwaw lill-kazin stante li dan hu parti fir-rapport guridiku li huwa regolat b`ligi li l-kostituzzjonalita` taghha qed tigi attakkata. Ghaldaqstant il-prezenza tieghu f`dawn il-proceduri hija necessarja ghall-finijiet tal-integreta` tal-gudizzju. Il-kazin bhala inkwilin tal-fond ghandu interess guridiku f`din il-kawza peress li l-meritu jikkoncerna lilu direttament. Ghal din ir-raguni huwa ghandu jkun partecipi fil-gudizzju u ghalhekk huma legittimi kuntraditturi. Ghaldaqstant l-ewwel Qorti kienet korretta meta laqghet it-talba ghas-sejha fil-kawza tal-kazin intimat."

Tajjeb jinghad a skans ta` ekwivoci li fil-kawza tal-lum is-socjeta` rikorrenti mhijiex titlob bhala rimedju, fil-kaz li tirrizulta vjolazzjoni, l-izgumbrament tal-intimati Pulis mill-ghalqa de qua. Cio` nonostante l-Qorti hija tal-fehma li bil-fatt li l-effett ta` dak li qed jintalab mir-rikorrenti jolqot lill-intimati Pulis fl-aspetti sostanzjali tal-qbiela li ghandhom, huma ghandhom l-interess li trid il-ligi sabiex ikunu parti fil-kawza tal-lum sabiex jiddefendu l-posizzjoni taghhom. Ir-raba` (4) eccezzjoni tal-intimati konjugi Pulis qeghda tkun respinta.

VI. L-ewwel (1) talba

Dwar l-ewwel talba kif dedotta, din il-Qorti tghid illi mhuwiex kompitu taghha, bhala qorti ta` gurisdizzjoni kostituzzjonali u/jew konvenzjonali, illi tinvestiga jekk it-thaddim tad-disposizzjonijiet tal-Kap 199 huwiex sejjer jaghmel impossibbli ghar-rikorrenti li tirriprendi pussess tal-proprjeta` de qua. Jekk hemmx din l-impossibilita` hija materja li

ghandha tkun trattata quddiem il-qrati u/jew tribunali ta` kompetenza "ordinarja". Ghalhekk il-Qorti sejra tichad l-ewwel talba.

VII. It-tieni talba

L-allegata lezjoni ghall-jeddijiet fondamentali tar-rikorrenti tinstab fit-tieni talba. Fis-sostanza, ir-rikorrenti qeghda titlob mill-qorti dikjarazzjoni u decizjoni li bl-applikazzjoni tad-disposizzjonijiet tal-Kap 199 ghall-kirja vigenti ta` l-ghalqa u tar-razzett ta` go fiha in kwistjoni, propjeta` taghha, qed ikun hemm lezjoni tal-jeddjiet fondamentali tar-rikorrenti. In partikolari fl-istess talba, ir-rikorrenti qeghda tallega ksur tal-Art 37 u 39 tal-Kostituzzjoni, u tal-Art 6 u tal-Art 1 Prot 1 tal-Konvenzjoni.

1. L-Art 37 tal-Kostituzzjoni Dwar dan l-allegat ksur, l-Avukat tal-Istat jeccepixxi li r-rikorrenti ma tistax tindirizza l-ilment taghha lejn l-Art 37 tal-Kostituzzjoni, billi din d-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 ilproprjeta`. Fil-kaz odjern, skont l-Avukat tal-Istat, ma gara xejn minn dan ghaliex bit-thaddim tal-Kap 199 ir-rikorrenti ma tilfet ebda dritt fuq ilpropjeta` in kwistjoni.

Ghall-kaz tal-lum il-parti rilevanti tal-Art 37 hija s-subartikolu (1) 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 lkriterji 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 talKostituzzjoni.

Ghalkemm ir-rikorrenti jilmentaw minn ksur ta` din iddisposizzjoni tal-Kostituzzjoni, din il-Qorti hija tal-fehma li kemm il-fattispeci kif ukoll id-disposizzjonijiet tal-ligi mertu ta` din ilkawza ma jwasslux ghal tehid forzuz tal-propjeta` izda ghal kontroll fl-uzu taghha. (ara inter alia is-sentenzi QK - Josephine Bugeja vs Avukat Generali et – 7 ta` Dicembru 2009 ; QK - Angela sive Gina Balzan v. L-Onorevoli Prim Ministru et – 7 ta` Dicembru 2012 ; PA/K - Rose Borg vs Avukat Generali et - 25 ta` Frar 2016 ; QK - : Mary Anne Busuttil vs Tabib John Cassar et – 31 ta` Ottubru 2014 ; QAS - Michael Angelo Briffa et v. Nadia Merten – 24 ta` April 2015 ; PA/K - Robert Galea vs Avukat Generali et - 7 ta` Frar 2017 ; PA/K – Catherine Cauchi et vs Avukat Generali et - 2 ta` Mejju 2017 ; PA/K - Anthony Aquilina vs Avukat Generali - 9 ta` Ottubru 2017) Ghalhekk it-tieni (2) talba safejn din tirrigwarda ksur tal-Art 37 tal-Kostituzzjoni qeghda tkun michuda.

2. L-Art 1 Prot 1 tal-Konvenzjoni

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 flinteress 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.

a) Gurisprudenza tal-ECtHR 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). Din il-Qorti sejra tirreferi ghal din il-gurisprudenza ghaliex ilprincipji li kienu delinati fiha ghandhom

ighoddu wkoll mutatis mutandis ghall-artijiet. Fis-sentenza Amato Gauci vs 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 rentcontrol 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 fil-gurisprudenza taghha 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) b) Gurisprudenza ta` l-Qrati Maltin Fejn jidhol l-Art 1 Prot 1 tal-Konvenzjoni, kienu diversi ddecizjonijiet tal-qrati taghna fejn kienet dikjarata vjolazzjoni. Din il-Qorti tosserva illi l-bicca l-kbira tad-decizjonijiet talqrati taghna kienu jolqtu l-applikazzjoni tal-Kap 158. Ohrajn kienu jirrigwardaw l-applikazzjoni tal-Kap 69.

Il-kaz tal-lum huwa divers fis-sens li kien jittratta dwar allegata vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni blapplikazzjoni tal-Kap 199. Wara li hasbet fit-tul, din 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.

c) 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-rikorrenti, jew ahjar il-membri tal-kumpannija, una volta illi sa minn zminijiet imghoddija kellhom kirja ghaddejja favur il-familja tal-intimat ma kellhomx ghazla ohra ghajr illi jkomplu l-kirja. Helen Camilleri xehdet illi l-familja taghha mhijiex familja ta` gabillotti u ma jahdmux l-art. Tistqarr illi l-biza` taghhom kienet li jekk ihallu l-art ghal rihha kienet tispicca okkupata minn xi hadd bir-riskju ghalihom li jispiccaw jitilfu l-art ; kien ghalhekk li ghazlu li jaghtu l-art bi qbiela.

Huwa kwazi cert il-fatt illi meta nghatat il-qbiela l-ewwel darba ma setax ikun ragjonevolment previst li fl1967 kienet sejra ssir ligi sabiex tikkontrolla l-kiri tar-raba`. Inoltre r-rikorrenti u lanqas l-antekawza taghha 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 issettur 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 socio-ekonomiku talpajjiz matul is-snin wara l-1967 gab mieghu mobilita` mghaggla ta` persuni li ma baqghux jahdmu l-ghelieqi

sabiex ighixu minnhom 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. Ir-rata ta` kera li r-rikorrenti setghet tippercepixxi skont id-disposizzjonijiet tal-Kap 199 meta mqabbla mal-kera fis-suq hieles hija oggettivament baxxa.

Fil-kaz ta` llum mhux maghruf meta bdiet il-kirja bejn aventi kawza tal-partijiet (mhux l-Avukat tal-Istat). Li certament irrizulta huwa li l-kirja kienet ilha ghaddejja ghexieren ta` snin dejjem favur il-familjari talintimat Nazzareno Pulis sakemm fl-1983 ghaddiet ghand l-istess Pulis. 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 ripriza tal-pussess u lanqas fuq l-ammont ta` qbiela li jista` jithallas billi dan huwa determinat mil-legislatur skont formola pre-determinata marbuta bil-fattur taz-zmien u tal-indici talinflazzjoni, kriterju dan tal-ahhar li l-prova taz-zmien uriet li ma jirrifletti c-caqlieq tas-suq. Fix-xiehda taghha Helen Camilleri tirreferi ghall-Kap 199 bhala ligi infami. Jaghti l-kaz li kien uzat aggettiv hazin sabiex tiddeskrivi l-ligi. Ma teskludix li Camilleri ma tafx sewwa sew xi tfisser il-kelma. Lanqas ma teskludi li seta` kien haddiehor li ndikalha dak l-aggettiv.

Il-Qorti tosserva li waqt li huwa dritt ta` kull persuna li f`socjeta` demokratika jesprimi l-hsieb tieghu, fl-istess waqt wiehed ghandu jizen sewwa l-kliem illi juza u l-kuntest illi fih jintuza dak il-kliem. Dan premess il-Qorti tqis illi l-introduzzjoni tal-Att XVI tal-1967 kellha skop

legittimu u ghalhekk il-ligi kienet kollox barra infami. Ma kien xejn kapriccjuz il-mottiv tal-legislatur li jintroduci kontroll fil-kiri tar-raba` ghaliex ried jipprotegi s-settur talbiedja u jevita s-sitwazzjoni li l-gabillotti jitilqu l-art li jkunu jahdmu ghaliex toghla l-kera f`regim mhux kontrollat.

Din il-Qorti ssib li r-rikorrenti ma kkontestatx bi provi l-legalita` tal-Kap 199. Lanqas mill-provi li ressqet ir-rikorrenti ma jirrizulta li xejnet illegittimita` tal-iskop ghaliex sari l-Kap 199. Fl-istess waqt tajjeb jinghad ukoll li ghandha ragun ir-rikorrenti tilmenta li bl-applikazzjoni tad-disposizzjonijiet tal-Kap 199 ghassitwazzjoni taghha kienet qeghda ggarrab ksur tal-Art 1 Prot 1 tal-Konvenzjoni ghaliex jirrizulta ppruvat li mill-mod kif l-Istat kkontrolla luzu tal-propjeta` taghha b`dik il-ligi holoq zbilanc u sproporzjon kontra taghha, fatturi dawn li ma kienux isehhu li kieku r-rikorrenti thalliet tgawdi l-propjeta` taghha 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, kull awment fil-qbiela jiddependi minn talba li trid issir fil-Bord dwar il-Kontroll ta` Kiri ta` Raba`, li fid-decizjonijiet li jaghti huwa vinkolat b`parametri li huma determinati fil-Kap 199.

Fuq l-iskorta tal-provi akkwiziti fil-kawza tal-lum, jirrizulta li l-qbiela li qeghda tithallas mill-intimati Pulis skont kif jipprovdi l-Kap 199 hija

bil-wisq inqas mill-kera li jgib is-suq wara l-1983 sal-lum. Il-figuri li saret referenza ghalihom aktar kmieni jitkellmu wahedhom u ghalhekk huwa ppruvat l-isproporzjon li l-Art 1 Prot 1 tal-Konvenzjoni ma jridx li jsehh, liema sporporzjon qed jingarr mir-rikorrenti. Ghalhekk it-tieni (2) talba safejn din tirrigwarda ksur tal-Art 1 Prot 1 tal-Konvenzjoni qeghda tkun milqugha.

3. L-Art 6 tal-Konvenzjoni u l-Art 39 tal-Kostituzzjoni

Il-Qorti sejra tittratta l-allegat ksur tal-jedd ghal smigh xieraq lamentat mir-rikorrenti fl-ambitu tat-tieni talba. Fis-seba` (7) eccezzjoni, l-Avukat tal-Istat jikkontesta l-pretensjoni tar-rikorrenti billi jeccepixxi li l-principju ta` smigh xieraq ghandu jinghata nterpretazzjoni ristretta u limitata ghal dak illi jolqot gustizzja procedurali. Access ghall-qorti m`ghandux ifisser li l-ligi trid tkun modellata skont lezigenzi 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 prociediment minn qorti jew tribunal indipendenti u mparzjali ; u ii) access ghall-qorti. L-ilment odjern huwa mpernjat fuq it-tieni minn dawn iz-zewg pilastri. Il-Qorti taghmel referenza ghas-sentenza moghtija mill-Grand Chamber tal-ECtHR fil-5 ta` April 2018 fil-kaz ta` Zubac v. Croatia 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 HansAdam 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 taghmel ukoll referenza ghall-Guide on Article 6 of the European Convention on Human Rights – Right to a fair trial (civil limb), 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; NaïtLiman 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-rikorrenti thalliet minghajr rimedju prattiku u effettiv bl-uniku fórum fejn issib tarf tal-lanjanzi taghha tkun il-kawza tal-lum. Ghalhekk filwaqt illi s-seba` (7) eccezzjoni tal-Avukat talIstat qeghda tkun michuda, qeghda tkun tkun milqugha dik il-parti tat-tieni talba safejn ir-rikorrenti tilmenta minn ksur tal-jedd fondamentali taghha ghal smigh xieraq hekk kif dak il-jedd huwa tutelat bl-Art 6 tal-Konvenzjoni u bl-Art 39 tal-Kostituzzjoni.

4. Ir-ripreza tal-ghalqa, razzett u ambjenti relatati

Fil-kuntest tat-tieni talba, ir-rikorrenti talbet li bhala rimedju favur taghha li tinghata lura minn din il-qorti l-ghalqa, ir-razzett u ambjenti relatati llum okkupati mill-intimati Pulis. Kontra din il-pretensjoni,

tirrizulta t-tmien (8) eccezzjoni tal-intimati Pulis. Fir-ricerka taghha, din il-Qorti ma rriskontratx gurisprudenza dwar talbiet ta` din ix-xorta li jirrigwardaw artijiet jew ambjenti agrikoli. Hemm pero` gurisprudenza li tittratta dwar bini residenzjali u kummercjali. Qeghda tirreferi inter alia ghas-sentenzi tal-Qorti Kostituzzjonali : Angela sive Gina Balzan v. L-Onorevoli Prim Ministru et tas-7 ta` Dicembru 2012 ; Dr. Cedric Mifsud et vs l-Avukat Generali et tal-25 ta` Ottubru 2013 ; Maria Ludgarda Borg et vs Rosario Mifsud et tad-29 ta` April 2016 ; Rose Borg vs Avukat Generali et tal-11 ta` Lulju 2016.

Fil-fehma ta` din il-Qorti, l-insenjamenti jistghu jigu estizi mutatis mutandis ghall-fondi agrikoli mertu ta` din il-kawza. Fid-decizjoni tal-ECtHR tat-22 ta` Frar 2012 dwar just satisfaction fil-kaz ta` Frendo Randon and Others v. Malta, inghad :-

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

allow - or allows only partial reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate."

Issir referenza wkoll ghad-decizjoni tal-ECtHR tat-12 ta` Gunju 2012 fil-kaz ta` Lindheim and Others v. Norway fejn inghad :- "Whilst in reaching the above conclusion the Court has focused on the particular circumstances of the applicants` individual complaints, it adds by way of a general observation that the problem underlying the violation of Article 1 of Protocol No. 1 concerns the legislation itself and that its findings extend beyond the sole interests of the applicants in the instant case. This is a case where the Court considers that the respondent State should take appropriate legislative and/or other general measures to secure in its domestic legal order a mechanism which will ensure a fair balance between the interests of lessors on the one hand, and the general interests of the community on the other hand, in accordance with the principles of protection of property rights under the Convention."

Il-Qorti tishaq illi procediment ta` x-xorta tal-lum mhuwiex il-forum appozitu sabiex tinghata decizjoni dwar jekk inkwilin (li sal-lum kellu titolu naxxenti minn ligi tal-pajjiz) ghandux jigi zgumbrat jew le. Huma t-tribunali jew qrati ordinarji li ghandhom il-kompetenza li jesprimu ruhhom dwar talbiet mis-sid ghar-ripreza ta` fondi li jistghu jinvolvu l-izgumbrament tal-inkwilin. Ghall-fini tal-procediment odjern, dik rilevanti hija l-konsiderazzjoni ta` jekk ligi u/jew l-applikazzjoni taghha tkunx ivvjolat il-jeddijiet fondamentali tal-persuna u allura jekk abbazi talfattispeci ta` kull kaz dik il-ligi ghandhiex tkun applikata bejn il-partijiet kemm-il darba l-applikazzjoni taghha tkun leziva ghad-drittijiet fundamentali ta` l-persuna koncernata. Riferibbilment ghall-kaz tal-lum, jirrizulta li ladarba l-inkwilini agixxew skont il-ligijiet vigenti

m`ghandhomx legalment jirrispondu ghallkostituzzjonalita` o meno tal-ligi kif applikata, jew li jkunu ordnati jaghtu rimedju lir-rikorrenti jew jehlu l-ispejjez tal-kawza. L-Istat huwa responsabbli ghall-promulgazzjoni tal-ligi u ghalhekk ghandu jkun l-Istat illi jwiegeb.

VIII. L-Art 45 tal-Kostituzzjoni u l-Art 14 tal-Konvenzjoni

Ghalkemm fit-talbiet ma ssemma xejn, fil-kawzali tar-rikors promotur, in partikolari fil-paragrafu dsatax (19), ir-rikorrenti tirreferi ghal dawn id-disposizzjonijiet tal-Konvenzjoni u tal-Kostituzzjoni. Ghalkemm mhumiex mertu tat-talbiet, u ghalkemm dawk id-disposizzjonjet ma kienux trattati mir-rikorrenti fin-nota ta` osservazzjonijiet taghha, il-Qorti sejra tqishom xorta, kemm tenut kont tan-natura tal-procediment odjern, u kif ukoll ghaliex inghataw eccezzjonijiet dwar l-applikazzjoni taghhom ghall-kaz odjern mill-Avukat tal-Istat.

a) L-Art 45 tal-Kostituzzjoni

Kien eccepit mill-Avukat tal-Istat li l-Art 45 tal-Kostituzzjoni mhuwiex applikabbli ghall-kaz tal-lum billi l-allegata diskriminazzjoni ma kenitx inkwadrata taht wahda mill-irjus elenkati fis-subartikolu (3) tal-istess disposizzjoni. L-Art 45 tal-Kostituzzjoni jipprovdi illi "ebda ligi ma ghandha taghmel xi disposizzjoni li tkun diskriminatorja sew fiha nnifisha jew fleffett taghha."

Din tal-Kostituzzjoni hija disposizzjoni li tixbah l-Art 14 tal-Konvenzjoni li jaqra hekk :- "It-tgawdija tad-drittijiet u libertajiet kontemplati f`din ilKonvenzjoni ghandha tigi assigurata minghajr diskriminazzjoni ghal kull raguni bhala huma s-sess, raza, kulur, lingwa, religjon, opinjoni politika jew opinjoni ohra, origini

nazzjonali jew socjali, assocjazzjoni ma` minoranza nazzjonali, proprjeta`, twelid jew status iehor."

L-Art 45(3) tal-Kostituzzjoni jitlob li lment ikun abbinat ma` kwalifika li tirrizulta specifikament indikata fid-dispozizzjoni. Tghid hekk ghaliex id-disposizzjoni taqra :- "F`dan l-artikolu, il-kelma "diskriminatorju" tfisser ghoti ta`trattament differenti lil persuni differenti attribwibbli ghal kolloxjew principalment ghad-deskrizzjoni taghhom rispettiva skont ir-razza, post ta` origini, opinjonijiet politici, kulur, fidi, sess,orjentazzjoni sesswali jew identità tal-generu li minhabba fihompersuni ta` deskrizzjoni wahda bhal dawn ikunu suggetti ghalinkapacitajiet jew restrizzjonijiet li persuni ta` deskrizzjoni ohrabhal dawn ma jkunux suggetti ghalihom jew ikunu moghtija privileggi jew vantaggi li ma jkunux moghtija lil persuni ta`deskrizzjoni ohra bhal dawn." Il-kaz ta` llum ma jinkwadra taht ebda wiehed mill-kwalifiki. Kwindi ma tirrizultax vjolazzjoni skont l-Art 45 talKostituzzjoni. Ghalhekk qeghda tilqa` t-tmien (8) eccezzjoni tal-Avukat tal-Istat.

b) L-Art 14 tal-Konvenzjoni

Fid-disa` (9) eccezzjoni l-Avukat tal-Istat jikkontendi li l-ilment tar-rikorrenti dwar l-Art 14 tal-Konvenzjoni ghandu jigi michud, peress illi r-rikorrenti naqsu milli jindikaw fuq liema bazi jew status imsemmi fl-istess disposizzjoni kienu diskriminati. Skont l-Art 14 :- "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

M`ghandux ikun ikkontestat li lment li jirreferi ghall-Art 14 tal-Konvenzjoni, sabiex jissussisti, ghandu jkun abbinat ma` vjolazzjoni

ta` jedd iehor tutelat mill-Konvenzjoni. Fis-sentenza li tat din il-Qorti diversament presjeduta fid-19 ta` Ottubru 2000 fil-kawza fl-ismijiet Victoria Cassar vs Awtorita` Marittima ta` Malta et, inghad hekk dwar l-applikazzjoni tal-Art 14 tal-Konvenzjoni :-

Illi kif gie ritenut mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fil-kaz Abdulaziz, Cabales and Balkandali (28 ta` Mejju 1985):

Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence, since it has effect solely in relation to the "enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not necessarily presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter.

Illi fis-sentenza "Angelo Xuereb vs Kummissarju tal-Pulizija" (Qorti Kost. 17 ta` Frar 1999), il-Qorti qalet li l-awturi van Dijk u van Hoof, b`referenza ghal dan il-passagg missentenza Abdalaziz, spejgaw li: "This formula makes it clear that Article 14 is not independent in the sense that there has to be at least some kind of relation with the right and freedoms of the Convention; differential treatment in a field which falls outside the scope of the Convention cannot amount to a violation of Article 14" (Theory and Practice of the European Convention on Human Rights, Kluwer, 1990, p 536). … Illi ineffetti fil-kaz appena citat, iktar komunament maghruf bhala "Abdulaziz, Cabales and Balkandali" (1973) holoq precedent u wessa sew l-applikazzjoni tal-artikolu 14, billi ghalkemm gie ritenut li l-istess artikolu mhux awtonomu, pero` jaghti tifsira iktar wiesgha lid-drittijiet fundamentali l-ohra, bhal dak tal-artikolu 8, meta applikat flimkien mal-istess artikolu 14. … Illi dan l-izvilupp

certament ifisser li l-import tal-istess artikolu 14 meta abbinat mal-artikoli l-ohra tal-istess Konvenzjoni, jaghti lill-istess artikoli applikazzjoni u interpretazzjoni iktar wiesgha fid-dawl tal-principji kontra d-diskriminazzjoni enuncjati flartikolu 14, bil-konsegwenza li ta` indubjament interpretazzjoni aktar libera ghall-kazi li jistghu jaqaw taht l-istess artikoli, li minghajr it-test tal-artikolu 14, kienu jibqghu barra mill-ambitu ta` protezzjoni tal-istess imsemmija drittijiet fundamentali. (European Human Rights Law - Mark Janis - page 257).

Ghalkemm huwa minnu li r-rikorrenti ma ndikatx b`mod preciz ma` liema disposizzjoni tal-Konvenzjoni kienet qeghda torbot l-applikazzjoni tal-Art 14, tajjeb jinghad ukoll illi minn qari tal-kawzali u tat-talbiet, jidher evidenti li r-rikorrenti riedet tabbina l-allegata vjolazzjoni tal-Art 14 mal-allegat ksur tal-Art 1 Prot 1 tal-Konvenzjoni. Fic-cirkostanzi d-disa` (9) eccezzjoni tal-Avukat tal-Istat qeghda tkun michuda.

IX. Id-diskriminazzjoni … fil-mertu

Il-Qorti tirreferi ghad-decizjoni tal-ECtHR tal-20 ta` Gunju 2006 fil-kaz ta` Zarb Adami and others v. Malta fejn saru dawn l-osservazzjonijiet dwar l-applikazzjoni tal-Art 14 tal-Konvenzjoni :-
71. The Court`s case-law establishes that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see Willis v. the United Kingdom, no. 36042/97, § 48, ECHR 2002-IV). However, not every difference in treatment will amount to a violation of Article 14. It must be established that other persons in an analogous or relevantly similar situation enjoy preferential treatment and that this distinction is discriminatory (see Ünal Tekeli v. Turkey, no. 29865/96, § 49, ECHR 2004-X).

72. As a difference of treatment is discriminatory within the meaning of Article 14 if it has no objective and reasonable justification. The existence of such a justification must be assessed in relation to the principles which normally prevail in democratic societies. A difference of treatment in the exercise of a right laid down by the Convention must not only pursue a legitimate aim: Article 14 will also be violated when it is clearly established that there is no "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see, for example, Petrovic, cited above, § 30, and Lithgow and Others v. the United Kingdom, 8 July 1986, § 177, Series A no. 102).

73. In other words, the notion of discrimination includes in general cases where a person or group is treated, without proper justification, less favourably than another, even though the more favourable treatment is not called for by the Convention (see Abdulaziz, Cabales and Balkandali v. the United Kingdom, 28 May 1985, § 82, Series A no. 94). Article 14 does not prohibit distinctions in treatment which are founded on an objective assessment of essentially different factual circumstances and which, being based on the public interest, strike a fair balance between the protection of the interests of the community and respect for the rights and freedoms safeguarded by the Convention (see, among other authorities, G.M.B. and K.M. v. Switzerland (dec.), no. 36797/97, 27 September 2001).

74. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a difference in treatment (see Gaygusuz v. Austria, 16 September 1996, § 42, Reports 1996-IV). The scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background (see Rasmussen v. Denmark, 28 November 1984, § 40, Series A no. 87, and Inze v. Austria, 28

October 1987, § 41, Series A no. 126), but the final decision as to observance of the Convention`s requirements rests with the Court.

Since the Convention is first and foremost a system for the protection of human rights, the Court must, however, have regard to the changing conditions in Contracting States and respond, for example, to any emerging consensus as to the standards to be achieved (see Ünal Tekeli, cited above, § 54, and, mutatis mutandis, Stafford v. the United Kingdom [GC], no. 46295/99, § 68, ECHR 2002-IV).

Fil-kaz ta` D.H. and Others v. The Czech Republic tat-13 ta` Novembru 2007 il-Qorti ta` Strasbourg qalet hekk :- "175. The Court has established in its case-law that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see Willis v. the United Kingdom, no. 36042/97, § 48, ECHR 2002-IV, and Okpisz v. Germany, no. 59140/00, § 33, 25 October 2005). However, Article 14 does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them; indeed in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article (see Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium (merits), 23 July 1968, p. 34, § 10, Series A no. 6; Thlimmenos v. Greece [GC], no. 34369/97, § 44, ECHR 2000-IV; and Stec and Others v. the United Kingdom [GC], no. 65731/01, § 51, ECHR 2006-VI). The Court has also accepted that a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory notwithstanding that it is not specifically aimed at that group (see Hugh Jordan, cited above, and Hoogendijk, cited above), and that discrimination potentially contrary to the Convention may result from a de facto situation (see Zarb Adami, cited above). …

177. As to the burden of proof in this sphere, the Court has established that once the applicant has shown a difference in treatment it is for the Government to show that it was justified (see, among other authorities, Chassagnou and Others v. France [GC], nos. 25088/94, 28331/95 and 28443/95, §§ 91- 92, ECHR 1999-III, and Timishev, cited above, § 57).

178. As regards the question of what constitutes prima facie evidence capable of shifting the burden of proof on to the respondent State, the Court stated in Nachova and Others (cited above, § 147) that in proceedings before it there are no procedural barriers to the admissibility of evidence or predetermined formulae for its assessment. The Court adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties` submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. ...

179. The Court has also recognised that Convention proceedings do not in all cases lend themselves to a rigorous application of the principle affirmanti incumbit probatio (he who alleges something must prove that allegation – see Aktaş v. Turkey, no. 24351/94, § 272, ECHR 2003-V). In certain circumstances, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof may be regarded as resting on

the authorities to provide a satisfactory and convincing explanation (see Salman v. Turkey [GC], no. 21986/93, § 100, ECHR 2000-VII, and Anguelova v. Bulgaria, no. 38361/97, § 111, ECHR 2002-IV). In Nachova and Others (cited above, § 157), the Court did not rule out requiring a respondent Government to disprove an arguable allegation of discrimination in certain cases, even though it considered that it would be difficult to do so in that particular case in which the allegation was that an act of violence had been motivated by racial prejudice. It noted in that connection that in the legal systems of many countries proof of the discriminatory effect of a policy, decision or practice would dispense with the need to prove intent in respect of alleged discrimination in employment or in the provision of services.

180. As to whether statistics can constitute evidence, the Court has in the past stated that statistics could not in themselves disclose a practice which could be classified as discriminatory (see Hugh Jordan, cited above, § 154). However, in more recent cases on the question of discrimination in which the applicants alleged a difference in the effect of a general measure or de facto situation (see Hoogendijk, cited 50 above, and Zarb Adami, cited above, §§ 77-78), the Court relied extensively on statistics produced by the parties to establish a difference in treatment between two groups (men and women) in similar situations." Thus, in Hoogendijk the Court stated: "[W]here an applicant is able to show, on the basis of undisputed official statistics, the existence of a prima facie indication that a specific rule – although formulated in a neutral manner – in fact affects a clearly higher percentage of women than men, it is for the respondent Government to show that this is the result of objective factors unrelated to any discrimination on grounds of sex. If the onus of demonstrating that a difference in impact for men and women is not in practice discriminatory does not shift to the respondent

Government, it will be in practice extremely difficult for applicants to prove indirect discrimination."

Meta tigi allegata diskriminazzjoni fuq bazi ta` xi dritt protett bil-Konvenzjoni, il-kwistjoni centrali illi tinsorgi hija jekk it-trattament allegatament divers kienx gustifikat inkella diskriminatorju. Fil-Belgian Linguistic case li kien deciz mill-Qorti ta` Strasbourg fit-23 ta` Lulju 1968 inghad hekk :-

10. In spite of the very general wording of the French version ("sans distinction aucune"), Article 14 (art. 14) does not forbid every difference in treatment in the exercise of the rights and freedoms recognised. This version must be read in the light of the more restrictive text of the English version ("without discrimination"). In addition, and in particular, one would reach absurd results were one to give Article 14 (art. 14) an interpretation as wide as that which the French version seems to imply. One would, in effect, be led to judge as contrary to the Convention every one of the many legal or administrative provisions which do not secure to everyone complete equality of treatment in the enjoyment of the rights and freedoms recognised. The competent national authorities are frequently confronted with situations and problems which, on account of differences inherent therein, call for different legal solutions; moreover, certain legal inequalities tend only to correct factual inequalities. The extensive interpretation mentioned above cannot consequently be accepted. It is important, then, to look for the criteria which enable a determination to be made as to whether or not a given difference in treatment, concerning of course the exercise of one of the rights and freedoms set forth, contravenes Article 14 (art. 14). On this question the Court, following the principles which may be extracted from the legal practice of a large number of democratic States, holds that the principle of equality of treatment is violated if the distinction has no objective and reasonable

justification. The existence of such a justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevail in democratic societies. A difference of treatment in the exercise of a right laid down in the Convention must not only pursue a legitimate aim: Article 14 (art. 14) is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised. In attempting to find out in a given case, whether or not there has been an arbitrary distinction, the Court cannot disregard those legal and factual features which characterise the life of the society in the State which, as a Contracting Party, has to answer for the measure in dispute. In so doing it cannot assume the rôle of the competent national authorities, for it would thereby lose sight of the subsidiary nature of the international machinery of collective enforcement established by the Convention. The national authorities remain free to choose the measures which they consider appropriate in those matters which are governed by the Convention. Review by the Court concerns only the conformity of these measures with the requirements of the Convention."

Riferibbilment ghall-kaz ta` llum, il-Qorti diga` ddeterminat illi r-rikorrenti garrbet ksur tal-jeddijiet fondamentali taghha hekk kif dawn huma mharsa bl-Art 1 Prot 1 tal-Konvenzjoni. Fl-istess waqt ma jfissirx li, ta` bilfors jew bhala konsegwenza, ir-rikorrenti garrbet ukoll ksur tal-jeddijiet taghha skont l-Art 14 tal-Konvenzjoni. Ir-rikorrenti abbinat l-ilment taghha mal-fatt illi fejn si tratta ta` kirja agrikola jidher li l-legislatur holoq diskriminazzjoni ghaliex bl-emendi li ghamel bl-Att XXXI tal-1995 u bl-Att X tal-2009 eskluda ghal kollox l-kiri tar-raba`.

Il-Qorti tistqarr illi r-rikorrenti mhijiex korretta. Ikun hemm diskriminiazzjoni jekk persuni fl-istess kategorija jigu trattati

diversament. Mhuwiex dan il-kaz tal-lum. L-emendi li ghalihom irreferiet ir-rikorrenti jghoddu kollha kemm huma ghall-bini. Ebda wahda minnhom ma tapplika ghal art agrikola. Diversa kienet tkun il-kwistjoni li kieku bini regolat b`ligijiet li japplikaw ghall-bini kien trattat b`regoli diversi ghall-isvantagg ta` bini iehor. L-ghaxar (10) eccezzjoni tal-Avukat tal-Istat qeghda tkun milqugha.

X. It-tielet (3) talba

Ir-rikorrenti qeghda titlob dikjarazzjoni mill-qorti li ghalvjolazzjonijiet li garrbet ghandha jedd ghall-hlas ta` kumpens u danni. L-Art 41 tal-Konvenzjoni jghid :- "Jekk il-Qorti ssib li kien hemm ksur tal-Konvenzjoni jew talProtokolli taghha, u jekk il-ligi interna tal-Parti Gholja Kontraenti kkoncernata tippermetti biss riparazzjoni parzjali, il-Qorti ghandha taghti s-soddisfazzjon xierqa lil-parti leza jekk ikun necessarju."

Il-Qorti taghmel referenza ghas-sentenza ta` din il-Qorti diversament presjeduta tas-7 ta` Frar 2017 (mhux appellata) fil-kawza Robert Galea vs Avukat Generali et fejn inghad hekk : "Illi ghal dak li jirrigwarda t-talba tal-kumpens il-Qorti tqis li din it-talba hija l-effett naturali tas-sejbien tal-ksur tal-jedd invokat. Huwa mizmum li, ladarba Qorti ssib li r-rikorrent garrab ksur taljedd tieghu kif imhares bl-artikolu 1 tal-Ewwel Protokoll talKonvenzjoni, ma huwiex bizzejjed li tieqaf b`semplici dikjarazzjoni bhal dik. Ghalkemm ir-rimedju xieraq mhuwiex lanqas u tabilfors il-kundanna ta` hlas ta` kumpens bhallikieku l-haga li dwarha sehh il-ksur kienet inbieghet, xi ghamla ta` kumpens huwa misthoqq u doveruz. Hawn ukoll, il-Qorti qieghda zzomm quddiem ghajnejha li l-ksur imgarrab mir-rikorrent jikkonsisti f`indhil dwar u mhux f`tehid tal-gid tieghu; Illi b`zieda ma` dan, ir-rikorrent jitlob ukoll il-hlas tad-danni "ai termini tal-artikolu 41 tal-Konvenzjoni Ewropeja";

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

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

Illi b`daqshekk ma jfissirx li t-talbiet tar-rikorrent dwar l-ghoti ta` rimedju mhumiex sejrin jintlaqghu. Jekk ma jistghux jintlaqghu talbiet ghal-likwidazzjoni ta` kumpens u danni bissahha tal-imsemmi artikolu 41 tal-Konvenzjoni, jista` u sejjer jinghata rimedju taht il-kriterji tal-ghoti ta` rimedju bhal dan minn din il-Qorti fis-setghat u kompetenza attwali taghha (Kost. 17.12.2010 fil-kawza fl-ismijiet Philip Grech pro et noe vs Direttur tal-Akkomodazzjoni Socjali et). Ghalhekk, il-Qorti tasal ghall-fehma li t-tieni rimedju mitlub mir-rikorrenti fit-tielet, irraba` u l-hames talbiet tieghu ma jisthoqqlux jintlaqa`, imma sejjer jinghata kumpens taht it-tieni talba tieghu”

Bhala fatt jirrizulta li l-Art 41 tal-Konvenzjoni ma kienx traspost fil-ligi taghna. Il-Konvenzjoni u l-Protokolli taghha jitqiesu illi jifformaw parti mil-ligi nazzjonali safejn dawn gew inkorporati fil-corpus juris domestiku. L-Art 41 kien intiz sabiex jigi applikat mill-ECtHR, wara

talba ghal dan l-iskop, fil-kazi fejn il-qrati tal-pajjizi firmatarji tal-Konvenzjoni ma jkunux taw kumpens ghall-vjolazzjoni accertata. Hemm l-ECtHR tkun tista` taghti kumpens. Hemm pero` gurisprudenza tal-Qorti Kostituzzjonali li tghid li fejn jirrizulta ppruvat li jkun sehh ksur tal-Konvenzjoni, ikun filgurisdizzjoni taghha li taghti rimedju li jkun indikat fic-cirkostanzi, inkluz kumpens. L-eccezzjoni numru hdax (11) tal-Avukat tal-Istat qeghda tkun rigettata. Kif accennat aktar kmieni, fir-ricerka taghha, din il-Qorti ma sabitx gurisprudenza dwar likwidazzjoni ta` kumpens fil-kaz ta` artijiet jew ambjenti agrikoli, billi l-gurisprudenza li ltaqghet maghha kienet tittratta dwar bini residenzjali u kummercjali.

Fl-istess waqt tghid li d-direzzjoni u l-insenjamenti li hargu minn dik il-gurisprudenza jistghu jigu estizi mutatis mutandis ghall-fondi agrikoli mertu ta` din il-kawza abbazi tal-fatti u cirkostanzi talkaz. 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 vs Direttur tal-Akkomodazzjoni Socjali et deciza fis-17 ta` Dicembru 2010 ; Victor Gatt et vs Avukat Generali et deciza fil-5 ta` Lulju 2011 ; u Ian Peter Ellis et vs Avukat Generali et deciza fl-24 ta` Gunju 2016). Fid-decizjoni li tat fit-30 ta` Settembru 2016 fil-kawza fl-ismijiet Maria Stella sive Estelle Azzopardi et vs Avukat Generali et, il-Qorti Kostituzzjonali kompliet tippreciza illi r-"rimedju li taghti din il-Qorti huwa kumpens ghall-ksur tad-dritt fondamentali u mhux danni civili ghal opportunita` mitlufa."

Dan premess, huma diversi l-konsiderazzjonijiet li l-Qorti ghandha tqis sabiex tistabilixxi l-quantum tal-kumpens. Decizjoni li qieset x`ghandhom ikunu l-kriterji li jiddeterminaw il-quantum tal-kumpens

kienet dik moghtija fil-31 ta` Ottubru 2014 mill-Qorti Kostituzzjonali fil-kawza fl-ismijiet Igino Trapani Galea Feriol pro et noe et v. Kummissarju tal-Artijiet et, fejn inghad 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 talimmobbli, iz-zmien tant twil li r-rikorrenti ilhom privati millgodiment 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 ghaddeterminazzjoni tal-quantum. Dawn huma (1) it-tul ta` zmien li ilha ssehh il-vjolazzjoni konsidrat ukoll fid-dawl tat-tul taz-zmien li r-rikorrenti damu sabiex resqu l-proceduri odjerni biex jirrivendikaw id-drittijiet kostituzzjonali taghhom ; (2) il-grad ta`

sproporzjoni relatat mal-introjtu li qed jigi percepit ma` dak li jista` jigi percepit fis-suq hieles, konsidrat ukoll l-ghan socjali tal-mizura; (3) id-danni materjali sofferti mir-rikorrenti konsidrat ukoll l-ispejjez sostanzjali li ghamlu l-intimati Tabone ssabiex jirrendu l-fond abitabbli u (4) l-ordni li ser taghti din il-Qorti dwar l-ezenzjoni f` dan il-kaz mill-effetti legali tal-Artikolu 5 tal-Kap 158."

Il-proceduri odjerni min-natura taghhom huma diretti sabiex jindirizzaw lezjoni kostituzzjonali u/jew konvenzjonali. Il-Qorti sabet vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni. Ghalkemm id-diskrepanza bejn il-kera attwalment percepita u l-valur lokatizju li s-sit igib fis-suq hieles hija fattur determinanti sabiex ikun stabbilit jekk kienx vjolat ilprincipju tal-proporzjonalita`, fl-istess waqt hemm fatturi ohra li wkoll ghandhom rilevanza, u li flimkien ghandhom iwasslu ghall-ghoti ta` kumpens gust ghal-lezjoni subita. Fattur minnhom huwa l-ghan li jkun immotiva l-mizura u cioe` l-interess pubbliku.

Fid-decizjoni li tat l-ECtHR fit-22 ta` Gunju 2004 fil-kaz ta` Bronoiswki v. Poland, inghad :- "The Court would reiterate that compensation terms under the relevant legislation may be material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate balance on applicants. The taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference." Fis-sentenza tas-17 ta` Lullju 2008 fil-kaz ta` Edwards v. Malta l-ECtHR osservat hekk :- 76. As the Court has already stated on may occasions, in spheres such as housing of the population, States necessarily enjoy a wide margin of appreciation not only in regard to the existence of the problem of general concern warranting measures for control of individual property, but also to the choice of the measures

and their implementation. The State control over levels of rent is one such measure and its application may often cause significant reductions in the amount of rent chargeable ...

Fis-sentenza li tat fil-15 ta` Dicembru 2009 fil-kaz ta` Amato Gauci v. Malta, l-ECtHR irrimarkat :- ... legitimate objectives in the `public interest`, such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less that reimbursement of the full market value.

Fis-sentenza ta` din il-Qorti diversament presjeduta tas-7 ta` Frar 2017 fil-kawza fl-ismijiet Robert Galea vs Avukat Generali et, (op. cit.) inghad :- Illi huwa llum stabilit li r-rimedju li tista` taghti din il-Qorti huwa kumpens ghall-ksur tad-dritt fundamentali u mhux danni civili ghal opportunita` mitlufa (Kost. 22.2.2013 fil-kawza fl-ismijiet Albert Cassar et vs Onor. Prim Ministru et). Biex tasal ghal dan, il-Qorti jehtigilha tqis ghadd ta` fatturi, fosthom it-telf effettiv li jkun garrab is-sid, l-ghan socjali mahsub mil-ligi, il-grad ta` sproporzjon fit-tqabbil bejn id-dhul attwali li qieghed jircievi rrikorrent mad-dhul li jista` jinkiseb fis-suq hieles, id-danni materjali li l-parti rikorrenti tista` tipprova li garrbet u wkoll leffetti tal-ordni li l-Qorti tista` taghti dwar jekk l-okkupant jistax jibqa` jistrieh aktar fuq it-thaddim tal-ligi attakkata.

Minn kif wiehed jista` jara, dawn il-kriterji huma firxa shiha li trid titqies f`kull kaz ghalih u jiddependu hafna mic-cirkostanzi partikolari ta` kull kaz. Fis-sentenza li tat fit-2 ta` Marzu 2018 fil-kawza fl-ismijiet Thomas Cauchi et vs Avukat Generali et il-Qorti Kostituzzjonali fissret

il-fatturi li ghandhom rilevanza ghall-fini ta` likwidazzjoni ta` kumpens:-

id-diskrepanza bejn il-kera li l-atturi kellhom jedd ghalih taht il-Kap. 158 u l-kera li l-fond seta`gab fuq is-suq hieles; iz-zmien minn meta beda jinhass dan in-nuqqas ta` proporzjonalità; il-fatt li l-valuri moghtija mill-perit huma biss indikazzjoni tattelf ekonomiku li setghu garrbu l-atturi u mhux prova ta` telf reali; il-fatt li, meqjus l-interess pubbliku u l-ghan socjali tal-ligi attakkata, il-kumpens misthoqq lis-sidien mhux bilfors ikun daqs il-kumpens shih li seta` kien dovut kieku wiehed kellu jistrieh fuq l-indikaturi tas-suq hieles; l-incertezza tal-atturi dwar meta jistghu, jew jekk jistghux qatt matul hajjithom, jiehdu hwejjighom lura, fin-nuqqas ta` mekkanizmu biex is-sidien jiehdu hwejjighom lura jew biex isir tqabbil bejn il-htigijiet tas-sidien u l-htigijiet tal-kerrejja, izda wkoll ir-rimedji li jistghu jaghtu lill-atturi s-setgha li jiehdu lura lfond bis-sahha tad-dikjarazzjoni li l-konvenuta ma tistax tistrieh fuq il-ligi attakkata biex fuqha ssejjes titolu biex tibqa`zzomm il-fond; il-quantum ta` kumpens moghti mill-qrati f`kawzi ohra fejn ic-cirkostanzi kienu bejn wiehed u iehor jixxiebhu; il-fatt li ghandu jinghata kumpens kemm morali u kemm materjali ghall-ksur tad-dritt fondamentali.

Fid-decizjoni Cassar vs Malta tat-30 ta` Jannar 2018, l-ECtHR ghamlet dawn l-osservazzjonijiet :-

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 nonpecuniary 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-iskorta tal-gurisprudenza, din il-Qorti sejra tqis dawn il-fatturi sabiex tistabilixxi l-quantum tal-kumpens :- i) L-interess generali, kif ukoll l-interess pubbliku, li jaghti legittimita` lill-intervent legislattiv. ii) L-isproporzjon bejn il-kera attwalment percepita mir-rikorrenti u dik li setghet tippercepixxi fis-suq hieles li kieku ma kienux applikati ddisposizzjonijiet tal-Kap 199. iii) L-istima tal-prezz tas-suq huwa kriterju ndikattiv mhux assolut. iv) Ir-rikorrenti kisbet is-sit de quo soggett ghall-qbiela li diga` kienet vigenti favur l-intimati Pulis. v) Id-daqs tas-sit li huwa compost minn raba`, razzett u ambjenti ohra. vi) L-incertezza dwar meta u jekk ir-rikorrenti tistax tiehu lura ssit minghajr l-inkwilini. vii) Kemm ilu ghaddej l-istat ta` sproporzjon. viii) Il-fatt li r-rikorrenti baqghet is-snin taccetta l-qbiela u li kien biss immedjatament qabel saret din il-kawza li r-rikorrenti baghtet intimazzjoni wahda lill-intimati Pulis. ix) L-inerzja tal-Istat meta baqa` passiv billi mhux biss ma aggornax id-disposizzjonijiet tal-Kap 199 izda

lanqas il-hsieb wara dik illegislazzjoni. x) In-nuqqas ta` rimedju effettiv u l-konsegwenti vjolazzjoni tad-drittijiet tar-rikorrenti.

Il-Qorti tqis illi kull kaz ghandu l-isfond u l-fattispeci partikolari tieghu. Ghalhekk ma jistax ikun hemm uniformita` fil-quantum talkumpens li jigi likwidat. Tqis illi meta saret il-kirja qabel is-sit gie ghand ir-rikorrenti, l-awturi tar-rikorrenti ma setghux ragjonevolment jipprevedu x-xejriet ekonomici tal-pajjiz li gabu maghhom zieda qawwija fil-prezz talpropjeta`, sahansitra ta` art agrikola, minkejja r-restrizzjonijiet mposti fil-legislazzjoni. Tqis li l-valur lokatizju tas-sit huwa bil-wisq oghla millqbiela li qeghda tithallas fil-prezent, kif irrizulta b`mod evidenti millkostatazzjonijiet tal-perit tekniku. Tqis li l-izbilanc u l-isproporzjon kontra r-rikorrenti huwa lampanti. Tghid ghalhekk b`referenza ghat-tielet (3) talba li rrikorrenti ghandha tithallas kumpens. Ghall-hlas ta` dan il-kumpens ghandu jkun responsabbli l-Avukat tal-Istat ghaliex filkaz li jirrizulta li ligi jew l-applikazzjoni taghha tkun leziva taddrittijiet konvenzjonali jew kostituzzjonali huwa l-Istat u mhux iccittadin li ghandu jirrispondi, ghax huwa l-obbligu tal-Istat u mhux tal-inkwilin li jassigura li d-drittijiet fundamentali tas-sid ma jinkisrux.

XI. Ir-raba` (4) talba

Wara li kkunsidrat il-provi li rrizultaw fil-kaz tal-lum, wara li accertat li kien hemm vjolazzjoni tal-Konvenzjoni u talKostituzzjoni, u wara li rat il-gurisprudenza, il-Qorti qeghda tillikwida favur ir-rikorrenti l-ammont komplessiv ta` mitt elf Ewro (€100,000) bhala danni pekunjarji u morali ghall-vjolazzjoni tal-jeddijiet fondamentali taghha.

XII. Il-hames (5) talba

Dan il-kumpens komplessiv ghandu jithallas lir-rikorrenti mill-Avukat tal-Istat.

XIII. Spejjez

Anke jekk il-procediment odjern kien intavolat permezz ta` rikors guramentat mhux b`rikors semplici, il-Qorti mhijiex tirriskontra nullita`. L-inizjar tal-procediment bir-rikors guramentat kien issenjalat mill-intimati Pulis fl-ewwel (1) eccezzjoni taghhom. Il-Qorti sejra tastjeni milli tiehu konjizzjoni ulterjuri ta` din l-eccezzjoni partikolari anke ghaliex l-intimati Pulis mhux se jinkorru spejjez fil-kawza odjerna.

***Decide**:*

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

Tilqa` t-tmien (8) u l-ghaxar (10) eccezzjonijiet tal-Avukat tal-Istat (gia` Avukat Generali).

Tilqa`dawk l-eccezzjonijiet tal-intimat Avukat tal-Istat (gia` Avukat Generali) li bihom kienet ikkontestata t-tieni (2) talba abbazi tal-Art 37 tal-Kostituzzjoni ta` Malta.

Tichad l-ewwel (1), it-tieni (2), it-tielet (3), id-disa` (9) u lhdax (11) l-eccezzjonijiet tal-intimat Avukat tal-Istat (gia` Avukat Generali).

Tichad dawk l-eccezzjonijiet tal-intimat Avukat tal-Istat (gia` Avukat Generali) li bihom kienet ikkontestata t-tieni (2) talba abbazi tal-Artikolu 39 tal-Kostituzzjoni ta` Malta u talArtikolu 6 tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u Libertajiet Fondamentali. Tichad dawk l-eccezzjonijiet tal-intimat Avukat tal-Istat (gia` Avukat Generali) li bihom kienet ikkontestata t-tieni (2) talba abbazi tal-Ewwel Artikolu tal-Ewwel Protokoll talKonvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u Libertajiet Fondamentali. Tastjeni milli tiehu konjizzjoni ulterjuri tal-ewwel (1) eccezzjoni tal-intimati konjugi Pulis.

Tilqa` s-seba` (7) u t-tmien (8) eccezzjonijiet tal-intimati konjugi Pulis. Tichad l-eccezzjonijiet l-ohra tal-intimati konjugi Pulis.

Tichad l-ewwel (1) talba.

Tichad it-tieni (2) talba limitatament u safejn ir-rikorrenti tallega li garrbet vjolazzjoni tal-jeddijiet fondamentali taghha skont l-Artikolu 37 tal-Kostituzzjoni ta` Malta.

Tichad it-tieni (2) talba limitatament u safejn ir-rikorrenti talbet rimedju sabiex tkun tista` tirriprendi pussess tal-propjeta` deskritta fit-tieni (2) talba u li hija mikrija lill-intimati konjugi Pulis.

Tilqa` t-tieni (2) talba limitatament u safejn ir-rikorrenti garrbet vjolazzjoni tal-jeddijiet fondamentali taghha skont lEwwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u Libertajiet Fondamentali.

Tilqa` t-tieni (2) talba limitatament u safejn ir-rikorrenti garrbet vjolazzjoni tal-jeddijiet fondamentali taghha skont lArtikolu 39 tal-Kostituzzjoni ta` Malta u tal-Artikolu 6 talKonvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u Libertajiet Fondamentali.

Riferibbilment ghat-tielet (3) talba tiddikjara li r-rikorrenti ghandha jedd ghall-hlas ta` danni pekunjarji u morali. Tiddikjara wkoll li huwa biss l-Avukat tal-Istat (gia` Avukat Generali) responsabbli li jhallas danni pekunjarji u morali lir-rikorrenti. Riferibbilment ghar-raba` (4) talba tillikwida favur irrikorrenti l-ammont komplessiv ta` mitt elf Ewro (€100,000) bhala danni pekunjarji u morali ghall-vjolazzjoni tal-jeddijiet fondamentali taghha kif fuq inghad.

Riferibbilment ghall-hames (5) talba tordna lill-Avukat tal-Istat (gia` Avukat Generali) sabiex ihallas lir-rikorrenti l-ammont komplessiv ta` mitt elf Ewro (€100,000) bhala danni pekunjarji u morali ghall-vjolazzjoni tal-jeddijiet fondamentali taghha kif fuq inghad. Waqt illi tiddikjara li l-intimati konjugi Pulis m`ghandhomx ihallsu spejjez tal-kawza, tordna li l-ispejjez ta` din il-kawza jithallsu in kwantu ghal terz mir-rikorrenti u in kwantu ghal zewg terzi mill-intimat Avukat tal-Istat (gia` Avukat Generali).

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.

Din is-sentenza giet konfermata mill-Qorti tal-Appell bis-sentenza taghha bejn l-istess partijiet deciza fit-23 ta’ Novembru 2020 in kwantu ghall-

argumenti u osservazzjonijiet hemm enuncjati u giet varjata biss fl-ammont tal-kumpens erogat lir-rikorrenti.

Ikkunsidra:

Illi f'dawn l-ahhar snin u in partikolari f'dawn l-ahhar xhur kien hemm ukoll diversi sentenzi mill-Qorti Kostituzzjonali illi gew ukoll konfermati mill-Qorti Ewropeja dwar ksur tad-drittijiet fundamentali tas-sid fil-kamp tal-kera ta' proprjetajiet urbani. In partikolari, il-Bord jaghmel referenza ghas-sentenza Carmen Lanzon et vs Joseph Boffa et deciza mill-Bord tal-Kera tas-15 ta' Lulju 2016, liema sentenza giet konfermata mill-Qorti tal-Appell bis-sentenza taghha tat-23 t'April 2018.

F'dan il-kaz is-sidien ghamlu ukoll kawza quddiem il-Qorti Kostituzzjonali minhabba ksur tad-dritt fundamentali taghhom ghat-tgawdija tal-proprjeta. U wara l-istess sentenza ghamlu proceduri ukoll quddiem il-Qorti Ewropeja fejn attakkaw il-ligi li kienet giet introdotta sabiex taghti protezzjoni lill-kazini. Dik il-Qorti fil-fatt sabet li kien hemm ksur tad-drittijiet tas-sidien u ddikjarat li l-imsemmija ligi kienet tmur kontra d-dritt fundamentali tas-sidien ghat-tgawdija tal-proprjeta'.

Ikkunsidra ulterjorment:

Illi l-Bord iqis illi ghandu japplika dawn l-istess principji fil-kamp tal-Kera tar-Raba ossija tal-Qbiela, dan ghaliex ma ghandux ikun hemm differenza, diskrepanza jew diskriminazzjoni fl-applikazzjoni tad-dritt fundamentali ghat-tgawdija tal-proprjeta' tas-sid u m'ghandux ikun hemm applikazzjoni diversa fir-rigward tat-tip ta' proprjeta' u cioe' jekk hux fond urban, kummercjali jew rurali.

Ikkunsidra ulterjorment:

Illi r-ripreza ta' kwalunkwe tip ta' fond, hu x'inhu, huwa kompetenza tal-Bord tal-Kera, tant illi fis-sentenza fuq citata, il-Qorti Kostituzzjonali ddikjarat illi ma kinitx il-Qorti kompetenti sabiex tilqa' t-talba tas-sidien ghar-ripreza tal-fond, stante illi dik il-kompetenza kienet taqa' fi hdan il-Bord tal-Kera.

Illi hekk ukoll il-kompetenza ghar-ripreza ta' fond rurali hija tal-Bord li Jikkontrolla l-Kiri ta' Raba u cioe' l-Bord odjern, fil-kaz ta' Ghawdex u Kemmuna.

Illi l-Bord iqis illi dawn l-insenjamenti u dawn is-sentenzi ghandhom japplikaw *mutatis mutandis* quddiem il-Bord li Jikkontrolla l-Kiri ta' Raba.

Ikkunsidra ulterjorment:

Illi fir-rigward tal-likwidazzjoni tal-kumpens li jista' talvolta jkun dovut lill-inkwilin, minkejja illi l-intimat kellu kull opportunita li jaghmel tali talba dan anke ai termini tas-sentenza tal-Qorti tal-Appell tat-08 ta' Gunju 2018[3], u minkejja r-riserva maghmula fil-konkluzjoni tar-risposta tal-intimat[4], stante illi l-partijiet iddikjaraw illi m'ghandhomx aktar provi x'iressqu[5], u dan mhux f'okkazzjoni wahda izda fi tliet seduti diversi u stante li l-intimat ma talabx il-hatra ta' espert sabiex jillikwida tali kumpens u dan minkejja illi kellu kull opportunita' li jaghmel dan, il-Bord iqis illi l-intimat irrinunzja ghal kwalunkwe kumpens illi seta' jirreklama.

[3] A folio 538 et sequitur tal-process
[4] A folio 557 tal-process
[5] Ara l-verbal tas-seduta tal-10 t'Ottubru 2019 u l-verbal tas0seduta tas-16 ta' Lulju 2020 u l-verbal tas-seduta tad-29 ta' Jannar 2021

Decide:

Ghal dawn ir-ragunijiet, dan il-Bord jaqta' u jiddeciedi li l-bzonn tas-sid ghar-ripreza tar-raba mertu tal-kawza huwa ferm akbar minn dak ta' l-inkwilin u in linja mal-imsemmija gurisprudenza jilqa' t-talba tas-sid ghar-ripreza tal-imsemmija proprjeta' u dan mill-15 t'Awwissu 2021 u cioe' tas-sena kurrenti.

In vista li din hija materja pjuttost gdida, il-Bord iqis illi l-ispejjez ta' din is-sentenza ghandhom ikunu a karigu tar-Registratur tal-Qorti.

Jordna 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.

Moqrija u moghtija llum 28 t'April 2021

(ft.) **Dr. Monica Vella LL.D., M.Jur.**

Magistrat

(ft.) Maureen Xuereb

Deputat Registratur

Vera kopja

D/Registratur