QORTI ĊIVILI – PRIM'AWLA

(Sede Kostituzzjonali)

ONOR. IMĦALLEF DR. MIRIAM HAYMAN LL.D.

Rikors Kostituzzjonali Nru.: 166/2021 MH

Illum, 15 ta' Lulju 2022

Edwina Vassallo (K.I. 208256M) u Annunziata sive Nancy Vincenti (K.I. 0237229M)

vs

Maria Dolores Portelli (K.I 145532M) u Avukat tal-Istat

Il-Qorti:

Rat **ir-rikors kostituzzjonali tar-rikorrenti tas-17 ta' Maru 2021** li permezz tiegħu ġie premess u mitlub:

1. Illi r-rikorrenti huma proprjetarji tal-fond 126, gja 49, Triq Spinola, Paceville, San Giljan, li l-mejjet zewgha Louis Vincenti akkwista b'kuntratt tal-29 ta' Dicembru 1967 fl-atti tan-Nutar Dottor Joseph Vella Galea, hawn anness u mmarkat bhala 'Dokument A'.
2. Illi l-imsemmi Louis Vincenti miet fis-6 ta' Settembru 2019, u skont testament unica charta tal-12 ta' Jannar 2012 fl-atti tan-Nutar Dottor Jean

Paul Farrugia, l-wirt tieghu ddevolva fuq l-unika bint tieghu ossia r-rikorrenti Edwina Vassallo, bhala l-unika eredi universali tal-gid tieghu kollu filwaqt li lill-martu ossia r-rikorrenti Anunziata Vincenti, hallielha l-uzu, t-tgawdija u l-uzufrutt tal-assi tireghu kollha, kopja taghha hawn annessa u mmaekata 'Dokument B'.

3. Illi b'dikjarazzjoni causa mortis tas-17 ta' Frar 2020 fl-atti tan-Nutar Dottor Jean Paul Farrugia l-wirt tieghu immobiljari gie debitament denunzjat lil kumissarju tat-Taxxi Interni, skont dokument hawn anness u mmarkat bhala 'Dokument C'
4. Illi l-fond in kwistjoni mhux fond dekontrollat kif jirrizulta mid-'Dokument C' hawn anness.
5. Illi l-imsemmi fond ilu mikri lill-intimata Portelli ghal dawn l-ahhar cirka 75 sena bil-kera mizera ta' LM 24 fis-sena u illum b'kera ta' €242.08c fis-sena pagabbi kull tlett xhur ai termini tal-Att X tal-2009 u minhabba x-xoghlijiet sturrurali li kienu saru fil-fond l-intimata Portelli awmentat il-kera b'mod tenwu a tenur

Rat **ir-risposta tal-Avukat tal-Istat tal-14 ta' Mejju 2021**[1] li permezz tagħha tressqu s-segwenti eċċezzjonijiet –

Risposta tal-Avukat tal-Istat

Jesponi bir-rispett

1. Illi in vena preliminarji r-rikorrenti jridu jġibu l-aħjar prova rigward it-titolu li għandu fil-fond mertu ta` din il-kawza u cioé ta' **125, ġja 49, Triq Spinola, Paceville, San Ġiljan** ukoll irid jġib prova tal-kirja li skontu qiegħda tilledi d-drittijiet fondamentali tiegħu**;**

2. Illi l-esponent jirrespinġi dawn l-allegazzjonijiet bħala infondati fil-fatt u fid-dritt *stante* li, kif ser jiġi spjegat aktar 'l isfel, l-ebda aġir tal-esponent ma kiser jew

[1] Fol 104 et seq

illeda xi dritt fundamentali tar-rikorrenti għar-raġunijiet segwenti li qiegħdin jiġu elenkati mingħajr preġudizzju għal xulxin:

3. Illi safejn l-ilment tar-rikorrenti jinsab dirett kontra l-Kap. 69 tal-Liġijiet ta' Malta tajjeb li jingħad li skont l-ewwel Arikolu tal-ewwel Protokoll tal-Konvenzjoni Ewropeja huwa ben magħruf li l-marġini ta` apprezzament mogħtija lill-Istat huma wiesa' ħafna. Illi għalhekk huwa aċċettat kemm mill-ġurisprudenza nostrali kif ukoll dik tal-Qorti Ewropeja tad-Drittijiet tal-Bniedem li l-liġijiet li jagħtu setgħa lill-Istat li jikkontrolla u jieħu proprjetà ta' individwi huma rikonoxxuti bħala meħtieġa f'soċjetà demokratika biex jassiguraw l-attwazzjoni ta' żvilupp soċjali u ekonomiku fl-interess tal-kollettiv. Tali diskrezzjoni tal-leġiżlatur m'għandhiex titbiddel sakemm din ma tkunx manifestament mingħajr bażi raġonevoli – li żġur mhux il-każ;

4. Illi inoltre dwar l-ilment tal-allegata sproporzjon fil-kera, jiġi rilevat li fil-każ tar-rikorrenti, l-ammont tal-kera li qiegħed jipperċepixxi mhijiex kera sproporzjonata tenut ukoll kont tal-fatt li f'ċirkostanzi bħal dawn, fejn jeżisti interess ġenerali leġittimu, ma jistax isir paragun mal-valur lokatizzju tal-proprjetá fis-suq ħieles kif pretiż mir-rikorrenti u dan wisq inqas meta wiehed jipparaguna kera jew cens pagabbli fil-passat ma valuri kurrenti;

5. Illi jsegwi għalhekk li fil-każ odjern din l-Onorabbli Qorti m`għandhiex tevalwa din il-liġi fil-kuntest prinċipalment ta` spekulazzjoni tal-proprjetá imma għandha tiskrutinja u tapplika l-ligi fil-qafas aktar wiesa' u ċioé mill-aspett tal-proprozjonalitá fid-dawl tar-realtá ekonomika u soċjali tal-pajjiż in ġenerali;

6. Illi dejjem mingħajr preġudizzju għas-suespost, *dato ma non concesso*, li din l-Onorabbli Qorti jidhrilha li kien hemm xi ksur tad-drittijiet fundamentali tar-rikorrent, fatt li qiegħed jiġi kontestat, l-esponent jirrileva li fiċ-ċirkostanzi odjerni, dikjarazzjoni ta` ksur tkun suffiċjenti u ma hemmx lok għar-rimedji oħra mitluba mir-rikorrent;

7. Illi huwa risaput li l-Qorti Ewropeja stess fil-ġurisprudenza tagħha fosthom fil-każ ta' ***Amato Gauci vs Malta*** rrikonixxiet li: "*State control over levels of rent*

falls into a sphere subject to a wide margin of appreciation by the State and its application may often cause significant reductions in the amount of rent chargeable." Il-Qorti Kostituzzjonali fis-sentenza tagħha fl-ismijiet ***Peter Ellis pro et noe vs Maggur Alfred Cassar Reynaud et*** tas-27 ta' Jannar, 2017, qalet illi: "*huwa paċifiku li fejn tidħol il-materja ta' akkomodazzjoni soċjali l-istati membri għandhom mariġini wiesa' ta' apprezzament u, sakemm il-miżuri jkunu leġittimi, l-għan soċjali għandu jwassal għal kumpens li jista' jkun ferm anqas mill-valur tal-fond jew il-valur lokatizju ta' fond fis-suq ħieles"*;

8. Illi jekk ir-rikorrenti qiegħed jilmenta li qiegħed tiġi ppreġudikata minħabba l-fatt li l-ammont tal-kera ma jirriflettix il-valur reali tal-fond de quo, dan ma jistax jiġi rrimedjat bit-tneħħija tal-Kap. 69 jew tal-Att X tal-2009 jew bl-iżgumbrament tal-okkupanta. Dan jingħad għaliex ma jkunx jagħmel sens li wieħed jagħraf l-iskop, il-ħtieġa u l-leġittimita` tal-miżuri msemmija biex imbgħad jinnewtralizzahom billi jagħmilhom inapplikabbli bl-iżgumbrament tal-okkupanta;

9. Illi rigward l-emendi li daħlu fis-seħħ permezz tal-Att X tal-2009, tajjeb li jingħad ukoll li l-emendi li jirrigwardaw il-kera daħlu fis-seħħ wara konsultazzjoni vasta fejn ġiet ukoll ippublikata l-*White paper* li ġġib l-isem: "*Liġijiet tal-Kera: Il-ħtieġa ta' Riforma"* f'Ġunju tal-2008. Illi din il-konsultazzjoni kienet proċess bi tlett saffi u li għaliha ppartecipaw il-partijiet interessati kollha. Dan kollu jingħad għaliex huwa ben evidenti li l-emendi dwar il-kera ma sarux b'mod superfluwu iżda saret wara konsultazzjoni serja u intensa mal-pubbliku ġeneral u mal-entitajiet kollha milquta minn dan l-istatut;

10. Illi xieraq ukoll li jiġi ssottolineat li dan il-fond ġie mikri bi qbil bejn ir -rikorrenti u l-inkwilin u ħadd ma mpona fuq ir-rikorrent li dan il-fond irid jinkera ta' bilfors. Ma jirriżulta minn imkien li kien hemm xi theddida imminenti u attwali li sfurzathom li jagħtu dan il-fond b'kiri (*vide* ***Frances Montanaro et vs Avukat Ġenerali et***, deċiż nhar it-13 ta' April, 2018 mill-Qorti Kostituzzjonali) u fil-fatt kien hemm diversi toroq li r-rikorrenti seta' jagħżel dak iż-żmien, bħal li jbiegħ l-fond jew jikri l-fond bħala fond kummerċjali;

11. Salv eccezzjonijiet ulterjuri.

Għaldaqstant, l-esponent jitlob bir-rispett lil din l-Onorabbli Qorti jogħġobha tiċħad il-pretensjonijiet kif dedotti fir-rikors promotur bħala infondati fil-fatt u fid-dritt ġialadarba r-rikorrenti ma sofrew l-ebda ksur tad-drittijiet tal-bniedem u l-libertajiet fondamentali, u dan bl-ispejjeż kontra l-istess rikorrenti.

Rat **ir-risposta tal-intimata Maria Dolores Portelli tat-22 ta' Ġunju 2021**[2] permezz ta' liema ressqet is-segwenti eċċezzjonijiet –

Rat illi waqt is-seduta tat-3 ta' Novembru 2021 <u>ir-rikorrenti ċedew il-kawża fil-konfront tal-intimata Maria Dolores Portelli</u> wara li seħħet transazzjoni bejniethom. Ir-rikorrenti ddikjaraw pero' li qegħdin iżommu ferm it-talbiet tagħhom fil-konfront tal-Avukat tal-Istat.

Rat il-provi mressqa mill-partijiet.

Rat ir-relazzjoni tal-perit inkarigata minnha Elena Borg Costanzi dwar il-valur lokatizju tal-fond mertu tal-proċeduri odjerni.

Semgħet it-trattazzjoni finali tad-difensuri tal-partijiet.

Rat li l-kawża tħalliet għall-lum għas-sentenza.

Rat l-atti kollha tal-kawża.

Ikkunsidrat:

[2] Fol 30 et seq

Ir-rikorrenti huma sidien tal-fond numru 126 ġja 49, Triq Spinola, Paceville, San Ġiljan li jinsab mikri lill-intimata Maria Dolores Portelli. L-ilment tar-rikorrenti huwa marbut mal-protezzjoni mogħtija lill-intimata bit-tħaddim tal-Ordinanza li Tirregola t-Tiġdid tal-Kiri ta' Bini (Kap 69 tal-Liġijiet ta' Malta) partikolarment l-artikoli 3 u 4 tal-istess u l-Att X tal-2009 stante li fil-fehma tagħhom dawn ma jilħqux bilanċ ta' proporzjonalita' bejn id-drittijiet tas-sidien u dawk tal-inkwilini partikolarment f'dak li huwa valur lokatizju stabbilit mill-liġi meta mqabbel mal-valur lokatizju fis-suq ħieles. Dan kollu skont ir-rikorrenti jwassal għall-ksur tad-drittijiet fundamentali tagħhom kif protetti bl-ewwel artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea għad-Drittijiet tal-Bniedem u Libertajiet Fundamentali ("il-Konvenzjoni"). Huma talbu rimedju effettiv għal tali leżjoni.

Minn naħa tiegħu l-Avukat tal-Istat irrespinġa l-pretensjonijiet tar-rikorrenti bħala nfondati fil-fatt u fid-dritt.

A. PROVI

Mill-atti jirriżulta li –

1. **Ir-rikorrent Edwina Vassallo** ippreżentat affidavit[3] fejn fost oħrajn tat dettalji dwar il-provenjenza tal-fond in kwistjoni u spjegat ukoll ir-raġunijiet li wasslu lill-istess rikorrebnti sabiex iressqu l-ilmenti ta' natura kostituzzjonali fil-kawża odjerna. Hija saħqet li għandhom jirċievu kumpens adegwat sabiex jagħmel tajjeb għall-vjolazzjoni tad-drittijiet fundamentali tar-rikorrenti għat-tgawdija tal-proprjeta'.

[3] Fol 7 et seq

2. Fir-relazzjoni tagħha **l-esperta teknika nkarigata mill-Qorti l-perit Elena Borg Costanzi** spjegat il-konstatazzjonijiet li saru fuq il-post waqt l-aċċess li għamlet fil-post fl-4 t'Awissu 2021. Hija kkonkludiet li l-valur fis-suq miftuħ tal-fond in kwistjoni kien ta' €1, 260,000.00 u l-valur lokatizju annwali huwa kif ġej–

1966 -1971	€330
1972 – 1977	€750
1978 – 1983	€1,500
1984 - 1989	€2,000
1990 – 1995	€3,500
1996 – 2001	€5,500
2002 – 2007	€8,500
2008 – 2013	€12,000
2014-2021	€16,000

Il-perit tekniku wieġbet għal domandi li sarulha in eskussjoni.

Issir referenza għall-**artikolu 681 tal-Kap 12** jipprovdi hekk –

"Il-qorti mhix marbuta li taċċetta l-konklużjonijiet tar-rapporti tal-periti kontra l-konvinzjoni tagħha nfisha."

Jiġi sottolineat li l-insenjament ġurisprudenzjali dwar il-piż probatorju ta' opinjonijiet ta' natura teknika huwa wieħed konkordi u ormai ben kristalizzat. Kif ingħad fil-każ **A.F. Ellis (Home Decor) Limited vs Raymond Azzopardi et deċiż fil-15 ta' Mejju 2014**[4] -

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

[4] Rik 988/08

Kemm il-kostatazzjonijiet tal-perit tekniku nominat mill-Qorti kif ukoll il-konsiderazzjonijiet u opinjonijiet esperti tiegħu jikkostitwixxu skond il-liġi prova ta` fatt li kellhom bħala tali jigu meqjusa mill-Qorti. Il-Qorti ma kenitx obbligata li taċċetta r-rapport tekniku bħala prova determinanti u kellha dritt li tiskartah kif setgħet tiskarta kull prova oħra. Mill-banda l-oħra pero', huwa ritenut minn dawn il-Qrati li kellu jingħata piż debitu lill-fehma teknika ta' l-espert nominat mill-Qorti billi l-Qorti ma kellhiex leġġerment tinjora dik il-prova. Hu manifest mill-atti u hu wkoll sottolinejat fir-rikors ta' l-appell illi l-mertu tal-preżenti istanza kien kollu kemm hu wieħed ta' natura teknika li ma setax jiġi epurat u deċiż mill-Qorti mingħajr l-assistenza ta' espert in materja. B'danakollu dan ma jfissirx illi l-Qorti ma kellhiex tħares b'lenti kritika lejn l-opinjoni teknika lilha sottomessa u ma kellhiex teżita li tiskarta dik l-opinjoni jekk din ma tkunx waħda sodisfaċentement u adegwatament tinvesti l-mertu, jew jekk il-konklużjoni ma kenitx sewwa tirriżolvi l-kwežit ta' natura teknika.

*In linea ta` prinċipju, għalkemm qorti mhix marbuta li taċċetta l-konklużjonijiet ta` perit tekniku kontra l-konvinzjoni tagħha (dictum expertorum numquam transit in rem judicata), fl-istess waqt dak ma jfissirx pero` illi qorti dan tista' tagħmlu b' mod leġġer jew kapriċċjuż. Il-konvinzjoni kuntrarja tagħha kellha tkun ben informata u bażata fuq raġunijiet li gravament ipoġġu fid-dubju dik l-opinjoni teknika lilha sottomessa b' raġunijiet li ma għandhomx ikunu privi mill-konsiderazzjoni ta` l-aspett tekniku tal-materja taħt eżami ("**Grima vs Mamo et noe**" – Qorti tal-Appell – 29 ta' Mejju 1998).*

*Jiġifieri qorti ma tistax tinjora r-relazzjoni peritali sakemm ma tkunx konvinta li l-konklużjoni ta` tali relazzjoni ma kienetx ġusta u korretta. Din il-konvinzjoni pero` kellha tkun waħda motivata minn ġudizzju ben informat, anke fejn meħtieġ mil-lat tekniku. (ara - "**Cauchi vs Mercieca**" – Qorti tal-Appell – 6 ta` Ottubru 1999 ; "**Saliba vs Farrugia**" – Qorti tal-Appell – 28 ta` Jannar 2000 ; "**Tabone vs Tabone et**" – Qorti tal-Appell – 5 ta` Ottubru 2001 ; "**Calleja noe vs Mifsud**" – Qorti tal-Appell – 19 ta` Novembru 2001 ; `**Attard vs Tedesco et**` - Qorti tal-Appell – 1 ta` Ġunju 2007 u "**Poll & Spa Supplies Ltd vs Mamo et**" (Qorti tal-Appell Inferjuri – 12 ta` Diċembru 2008).*

*Din il-Qorti tirribadixxi li l-giudizio dell`arte espress mill-perit tekniku ma jistax u ma għandux, aktar u aktar fejn il-parti nteressata ma tkunx ipprevaliet ruħha mill-fakolta` lilha mogħtija ta' talba għan-nomina ta` periti addizzjonali, jiġi skartat faċilment, ammenokke` ma jkunx jidher sodisfaċentement illi l-konklużjonijiet peritali huma, fil-kumpless kollha taċ-ċirkostanzi, irraġonevoli" – ("**Bugeja et vs Muscat et**" – Qorti tal-Appell – 23 ta` Ġunju 1967)."*

Fid-dawl ta' dan kollu suespost isegwi li għalkemm Qorti mhijiex marbuta li tadotta l-konklużjonijiet ta' rapport peritali redatt fuq inkarigu minnha mogħti, madankollu hija m'għandhiex b'mod leġġer tiskarta tali riżultanzi tenut kont li dawn ikunu magħmula minn espert imqabbad apposta mill-Qorti biex jeżamina materja teknika bħal ma hu l-każ odjern. Għalhekk sakemm ma tkunx konvinta li l-konklużjonijiet ta' tali relazzjoni mhumhiex korretti u ġusti hija għandha tadotta tali konklużjonijiet.

Hija l-fehma tal-Qorti li ma rriżulta xejn fil-konklużjonijiet raġġunti mill-perit inkarigat Elena Borg Cosatnzi fir-relazzjoni peritali tagħha li jirriżultawlha bħala li mhumhiex korretti, ġusti u raġjonevoli jew li jmorru kontra l-konvinzjoni tagħha u għalhekk hija tiddeċiedi li tadotta u tagħmel tagħha tali konklużjonijiet.

B. <u>EĊĊEZZJONIJIET PRELIMINARI</u>

1. Skont **l-ewwel eċċezzjoni tal-intimat Avukat tal-Istat** ir-rikorrenti għandhom iġibu prova ċara sabiex juru t-titolu tagħhom fuq il-fond in kwistjoni.

Fl-ewwel lok, kif ġie ripetutament asserit mill-Qrati, f'kawżi ta' natura kostituzzjonali mhuwhiex imperattiv li r-rikorrenti jressqu prova tat-titolu assolut fuq il-proprjeta' mertu tal-kawża.

Fis-sentenza li tat fis-7 ta` Frar 2017 fil-kawża **Robert Galea vs Avukat Ġenerali et** din il-Qorti diversament preseduta qalet hekk :-

*"Illi biex wieħed ikun f`qagħda li juri li ġarrab ksur tal-jedd fundamentali tiegħu taħt l-artikolu 37 tal-Kostituzzjoni m`għandux għalfejn jipprova titolu assolut u lanqas wieħed oriġinali bħallikieku l-azzjoni dwar ksur ta` jedd fundamentali kienet waħda ta` rivendika (Kost. 27.3.2015 fil-kawża fl-ismijiet **Ian Peter Ellis et vs Avukat Ġenerali et**). Huwa biżżejjed, għall-finijiet ta` dak l-artikolu, li wieħed juri li għandu jedd fil-ħaġa li tkun li bih jista` jieqaf għall-pretensjonijiet ta` ħaddieħor. Imbagħad, għall-finijiet al-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni, huwa biżżejjed li l-persuna turi li kellha l-pussess tal-ħaġa li tkun."*

Fi kwalunkwe każ, fil-każ odjern jirriżulta li r-rikorrenti Edwina Vassallo mhux biss xehdet bil-ġurament fl-affidavit tagħha dwar il-provenjenza tat-titolu li bih

akkwistaw fuq il-fond in kwistjoni iżda ġew esebiti fl-atti wkoll il-prova tal-akkwist tal-fond li kien sar fid-29 ta' Diċembru 1967 minn missierha[5], it-testment ta' missierha tat-12 ta' Jannar 2012 u d-dikjarazzjoni *causa mortis*.

Il-Qorti hija għalhekk sodisfatta bil-prova tat-titolu mressqa mir-rikorrenti u kwindi sejra **tastjeni milli tieħu konjizzjoni ulterjuri tal-ewwel eċċezzjoni preliminari tal-intimat Avukat tal-Istat.**

Ċ. MERTU

Fl-ewwel żewġ talbiet tagħhom ir-rikorrenti qed jitolbu lill-Qorti ssib li b'riżultat tat-tħaddim tal-Kap. 69 tal-Liġijiet ta' Malta, senjatament l-artikolu 3 u 4 (kif kien viġenti fl-epoka tal-preżentata tar-rikots promotur), u l-Att X tal-2009, bl-operazzjonijiet tal-liġijiet viġenti qed jinkisrulhom id-drittijiet fundamentali tagħhom kif protetti bl-Ewwel Artikolu ta' l-Ewwel Protokol tal-Konvenzjoni. Huma qegħdin jitolbu li jingħataw ir-rimedji opportuni.

L-Artikolu 1 tal-Ewwel Protokol tal-Konvenzjoni jipprovdi hekk –

"Kull persuna naturali jew persuna morali għandha d-dritt għat-tgawdija pacifika tal-possedimenti tagħha.

Ħadd ma għandu jiġi pprivat mill-possedimenti tiegħu ħlief fl-interess pubbliku ġu bla ħsara tal-kundizzjonijiet provduti bil-liġi u bil-prinċipji ġenerali tal-liġi internazzjonali.

*Iżda d-disposizzjonijiet ta` qabel ma għandhom b`ebda mod inaqqsu d-dritt ta` Stat li jwettaq dawk il-liġijiet li jidhrulu xierqa biex **jikkontrolla l-użu tal-proprjeta`** skond l-interess ġenerali jew biex jiżgura l-ħlas ta` taxxi jew kontribuzzjonijiet oħra jew pieni.".*

Fl-analiżi tagħha fil-kuntest ta' dan l-artikolu l-Qorti trid tara jekk ġewx rispettati t-tlett prinċipji distinti tiegħu u ċioe' illi (a) il-miżura meħuda mill-Istat saret taħt qafas legali; (b) l-iskop tal-miżura kien wieħed leġittimu; u (c) il-miżura meħuda

[5] Fol 10

mill-Istat żammet bilanċ ġust u proporzjonat bejn l-għan pubbliku u l-ħtieġa li jiġu rispettati d-drittijiet fundamentali tas-sidien tal-proprjeta'.

Fil-każ **Rik 75/14 Josephine Azzopardi pro et noe vs L-Onor Prim Ministru et deċiż fit-28 ta' Settembru 2017** il-Qorti qalet hekk dwar dan l-artikolu -

"Huwa magħruf li l-Istat għandu marġni ta` apprezzament wesgħin meta jiġi biex jintroduċi leġislazzjoni sabiex itaffi problemi ta` akkomodazzjoni.

Fil-każ ta` **Spadea and Scalabino vs Italy** deċiż fit-28 ta` Settembru 1995 l-ECHR osservat :-

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

.. . . Such laws are especially common in the field of housing, which in our modern societies, is a central concern of social and economic policies. . . . . In order to implement such policies, the legislature must have a wide margin of appreciation . . . .The Court will respect the legislature`s judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation. . . . . an interference must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights. . . .There must be a reasonable relationship of proportionality between the means employed and the aim pursued."

Madanakollu, l-interess tal-privat għandu wkoll jiġi salvagwardjat għaliex għalkemm kien rikonoxxjut illi l-Istat għandu dritt jikkontrolla l-użu tal-proprjetà, għandu jkun sodisfatt ir-rekwiżit tal-proporzjonalità.

*Fis-sentenza ta` **Amato Gauci vs Malta** (op. cit.) l-ECHR qalet hekk :-*

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

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

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

59. Moreover, in situations where the operation of the rent-control legislation involves wide-reaching consequences for numerous individuals and has economic and social consequences for the country as a whole, the authorities must have considerable discretion not only in choosing the form and 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."

Għalhekk l-ECHR ikkonkludiet li kien hemm ksur tal-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni.

*Relevanti wkoll huwa dak li qalet l-istess Qorti fis-sentenza tat-22 ta` Novembru 2011 fil-każ ta` **Saliba et vs Malta** :-*

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

Fil-każ ta` **Zammit & Attard Cassar vs Malta** li kien deciz fit-30 ta` Lulju 2015, l-ECHR irriaffermat il-prinċipji li kienu enunzjati fis-sentenzi tagħha ta` qabel dwar il-kontroll ta` kiri ta` djar billi rriteniet:

"57. In each case involving an alleged violation of Article 1 of Protocol No. 1, the Court must ascertain whether by reason of the State`s interference, the person concerned had to bear a disproportionate and excessive burden (see 9 App.No.1046/12) -ECHR 25 ta` Frar 2016. James and Others, cited above, § 50, and Amato Gauci, cited above, § 57).

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. That assessment may involve not only the conditions of the rent received by individual landlords and the extent of the State`s interference with freedom of contract and contractual relations in the lease market, but also the existence of procedural and other safeguards ensuring that the operation of the system and its impact on a landlord`s property rights are neither arbitrary nor unforeseeable. Uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State`s conduct (see Immobiliare Saffi v. Italy, [GC], no. 22774/93, § 54, ECHR 1999-V, and Broniowski, cited above, §151)."

Il-Qorti Ewropea għad-Drittijiet tal-Bniedem qalet hekk fil-każ **Cassar v Malta deċiż fit-30 ta' Jannar 2018** -

"43. The Court reiterates that 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 to say 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 (see, among many other authorities, Beyeler v. Italy [GC], no. 33202/96, § 107, ECHR 2000-I, and J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom [GC], no. 44302/02, § 75, ECHR 2007-III). The Court will examine these requirements in turn.

(a) Whether there was an interference

44. In connection with the development of property, the Court has previously found that having been aware of the fact that their property had been encumbered with restrictions when they had bought it (for example, its designation in a local development plan), the applicants could not hold that circumstance against the authorities (see Lacz v. Poland, (dec.) no. 22665/02, 23 June, 2009; and the case-law cited therein), specially when a complaint has not been made that they had a legitimate reason to believe that the restrictions encumbering their property would be removed after they bought the property. However, the Court has not excluded that there might be particular cases where an applicant who bought a property in full knowledge that it was encumbered with restrictions may subsequently complain of an interference with his or her property rights, for example, where the said restrictions are alleged to be unlawful (ibid.).

45. More specifically in the context of restrictions on lease agreements (in particular the prohibition on bringing a tenant's lease to an end), the Court has found that there was an interference as a result of the domestic courts' refusals of the applicants' demands, despite the applicants' knowledge of the applicable restrictions when they had entered into the lease agreement, a matter which however carried decisive weight in the assessment of the proportionality of the measure (see Almeida Ferreira and Melo Ferreira v. Portugal, no. 41696/07, §§ 27 and 34, 21 December 2010).

46. Subsequently, in R & L, s.r.o. and Others (cited above) the Court specifically examined whether Article 1 of Protocol No. 1 protected applicants who had purchased property in the knowledge that rent restrictions imposed on the property might contravene the Convention. In that case, when the applicants had acquired their respective properties their rents had been set in accordance with the rent regulations applicable at the time and the applicants could not have increased the rents above the threshold set by the State. Nor were they free to terminate the rent agreements and conclude new ones with different – higher – levels of rent. The Court did not find it decisive that one of the applicants had purchased the property before the domestic courts had taken issue with the legislation in place which had given a legitimate expectation that the status of such properties would be addressed by the national legislator in due course. The Court held that it could not be said that the applicants as landlords had implicitly

waived their right to set the level of rents, as, for the Court, waiving a right necessarily presupposed that it would have been possible to exercise it. There was no waiver of a right in a situation where the person concerned had never had the option of exercising that right and thus could not waive it. It followed that the rent-control regulations had constituted an interference with the landlords' right to use their property (ibid., § 106).

47. In the more recent Zammit and Attard Cassar (cited above, § 50) case, in a situation where the applicants' predecessor in title had knowingly entered into a rent agreement in 1971 with relevant restrictions (specifically the inability to increase rent or to terminate the lease), the Court held that, at the time, the applicants' predecessor in title could not reasonably have had a clear idea of the extent of inflation in property prices in the decades to follow. Moreover, the Court observed that when the applicants had inherited the property in question they had been unable to do anything more than attempt to use the available remedies, which had been to no avail in their circumstances. The decisions of the domestic courts regarding their request had thus constituted interference in their respect. Furthermore, as in R & L, s.r.o. and Others, in Zammit and Attard Cassar (both cited above) the applicants, who had inherited a property that had already been subject to a lease, had not had the possibility to set the rent themselves (or to freely terminate the agreement). It followed that they could not be said to have waived any rights in that respect. Accordingly, the Court found that the rent-control regulations and their application in that case had constituted an interference with the applicants' right (as landlords) to use their property (Zammit and Attard Cassar, cited above, § 51).

48. Turning to the present case, the Court also notes that the applicants had bought their property before the European Court of Human Rights took issue with the Maltese legislation applicable in cases such as Amato Gauci (cited above). That judgment was eventually followed in most cases in domestic case-law. However, again the Court finds this not to be decisive given the passage of time between the purchase of the property and now. In this connection the Court reiterates that what might be justified at a specific time might not be justified decades later (see Amato Gauci, cited above, § 60). In the present case, while it is true that the applicants knowingly entered into the rent agreement in 1988 with the relevant restrictions (specifically the inability to increase the rent or to terminate the lease), the Court considers that the applicants could not reasonably have foreseen the extent of inflation in property prices in the decades that followed (see Zammit and Attard Cassar, cited above, § 50). Once the discrepancy in the rent applied and that on the market became evident, they were unable to do anything more than attempt to use the available remedies, which they did in 2010, but which were to no avail in their circumstances. The decisions of the domestic courts regarding their application thus constituted interference in their respect. Furthermore, the applicants, who bought a property that was already subject to a restricted lease, did not have the possibility to set the rent

themselves or to freely terminate the agreement. Clearly, they could not be said to have waived any rights in that connection (see Zammit and Attard Cassar, cited above, § 50).

49. Accordingly, the Court finds that the rent-control regulations and their application in the present case constituted an interference with the applicants' right (as landlords) to use their property (see Zammit and Attard Cassar, cited above, § 51). Nevertheless, in circumstances such as those of the present case a number of considerations need to be made in connection with the proportionality of the interference.

50. The Court has previously held that rent-control schemes and restrictions on an applicant's right to terminate a tenant's lease constitute control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1. It follows that the case should be examined under the second paragraph of Article 1 of Protocol No. 1 (see Hutten-Czapska v. Poland [GC], no. 35014/97, §§ 160-61, ECHR 2006-VIII; Bittó and Others v. Slovakia, no. 30255/09, § 101, 28 January 2014; and R & L, s.r.o. and Others, cited above, § 108).

(b) Whether the Maltese authorities observed the principle of lawfulness and pursued a "legitimate aim in the general interest"

51. The Court refers to its general principles on the matter as set out in Amato Gauci (cited above, § 53-54).

52. That the interference was lawful has not been disputed by the parties. The Court finds that the restriction arising from the 1979 amendments was imposed by Act XXIII of 1979 and was therefore "lawful" within the meaning of Article 1 of Protocol No. 1.

53. In the present case the Court can accept that the applicable legislation in the present case pursued a legitimate social-policy aim, specifically the social protection of tenants (see Amato Gauci, cited above, § 55, and Anthony Aquilina, cited above, § 57). It is, however, also true that the relevance of that general interest may have decreased over time, particularly after 2008 (see Anthony Aquilina, cited above, § 57), even more so given that following that date, the only person benefiting from the impugned measures was P.G., whose financial situation as shown before the domestic courts and which is not being contested before this Court, leaves little doubt as to P.G's necessity for such a property, and at a regulated rent. This Court will therefore revert to this matter in its assessment as to the proportionality of the impugned measure.

(c) Whether the Maltese authorities struck a fair balance

54. The Court refers to its general principles on the matter as set out in Amato Gauci (cited above, § 56-59).

55. The Court will consider the impact that the application of the 1979 Act had on the applicants' property. It notes that the applicants could not exercise their right of use in terms of physical possession as the house was occupied by tenants

and they could not terminate the lease. Thus, while the applicants remained the owners of the property they were subjected to a forced landlord-tenant relationship for an indefinite period of time.

56. Despite any reference to unidentified procedural safeguards by the Government (see paragraph 41 above) the Court has on various occasions found that applicants in such a situation did not have an effective remedy enabling them to evict the tenants either on the basis of their own needs or those of their relatives, or on the basis that the tenants were not deserving of such protection (see Amato Gauci, cited above, § 60, and Anthony Aquilina, cited above, § 66). Indeed, when their need arose (some years after they had purchased it) and later despite the little need of it by the tenant – who was not in any particular need of housing (at least after 2008) – the applicants were unable to recover the property. Consequently, the application of the law itself lacked adequate procedural safeguards aimed at achieving a balance between the interests of the tenants and those of the owners (see Anthony Aquilina, cited above, § 66, and mutatis mutandis, Zammit and Attard Cassar, cited above, § 61). The Court further considers that the possibility of the tenant leaving the premises voluntarily was remote, especially since the tenancy could be inherited – as in fact happened in the present case. It is clear that these circumstances inevitably left the applicants in uncertainty as to whether they would ever be able to recover their property.

57. As to the rent payable, the Court is ready to accept that EUR 466 annually was a more or less reasonable amount of rent in 1988 - particularly given that it was an amount of rent which the applicants were aware of and in spite of which they decided to purchase the property with the relevant restrictions. Furthermore, it was an amount of rent which the applicants expected to receive for a number of years, at least until the demise of J.G. and his wife. Moreover, the Court accepts that at the relevant time the measure pursued a legitimate social-policy aim (see paragraph 53 above) which may call for payments of rent at less than the full market value (see Amato Gauci, § 77).

58. The same cannot be said after the passage of decades, during which the rent had remained the same (as stated by the parties and the domestic courts, the rent is still EUR 466 annually). The Court has previously held that there had been a rise in the standard of living in Malta over the past decades (see Amato Gauci, cited above, § 63, and Anthony Aquilina, cited above, § 65). Thus, the needs and the general interest which may have existed in 1979 must have decreased over the three decades that ensued (see Anthony Aquilina, cited above, § 65). It is noted that as stated by the Government in paragraph 40 above, the minimum wage in 2015 was EUR 720.46 per month, while in 1974 (the date when Malta adopted a national minimum wage) it amounted to the equivalent of less than EUR 100 per month (see Amato Gauci, cited above, § 60).

59. The Court need not identify the exact year at which the rent payable was no longer reasonable. It observes that cases against Malta concerning the same subject matter, that is to say renewal of leases by operation of law - whose rent

had been set on an open market – (see Amato Gauci, Anthony Aquilina, and Zammit and Attard Cassar, all cited above), which have invariably lead to findings of a violation of Article 1 of Protocol No. 1, concerned periods after the year 2000. Furthermore, the Government of the respondent State have often argued that Malta suffered a boom in property prices in 2003 (see, for example, Apap Bologna v. Malta, no. 46931/12, § 97, 30 August 2016). Lastly, although not determinative, it was only in 2008 that the applicants refused to accept the rent, once P.G. had inherited the property. In the light of the above it suffices for the Court to consider that a rent based on the value of the property as it stood in 1962 with the relevant adjustment which amounted to EUR 466 annually in 1988 and thereafter – was certainly not reasonable for the years following 2000.

60. In particular, even if one had to concede that the valuations submitted by the applicants are on the high side, the Court notes that the first-instance domestic court, in 2011, accepted EUR 3,000 per month (that is to say EUR 36,000 per year) as the rental market value of the property (see paragraph 18 above). Thus, the amount of rent received by the applicants, around EUR 39 a month, that is to say EUR 466 per year, for a fourteen-room house in Sliema, a highly sought-after location, is indeed "derisory" as was also found by the first-instance domestic court (see paragraph 18 above). Indeed, that amount of rent contrasts sharply with the market value of the premises in recent years, as accepted by the domestic court or as submitted by the applicant, as it amounted to a little more than 1% of the market value. The Court considers that State control over levels of rent falls into a sphere subject to a wide margin of appreciation by the State and its application may often cause significant reductions in the amount of rent chargeable. Nevertheless, this may not lead to results which are manifestly unreasonable (see Amato Gauci, cited above, § 62).

61. In the present case, having regard to the low rental payments to which the applicants have been entitled in recent years, the applicants' state of uncertainty as to whether they would ever recover their property, which has already been subject to this regime for nearly three decades, the rise in the standard of living in Malta over the past decades, and the lack of procedural safeguards in the application of the law, which is particularly conspicuous in the present case given the situation of the current tenant as well as the size of the property and the needs of the applicants, the Court finds that a disproportionate and excessive burden was imposed on the applicants. 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 applicants' right of property.

62. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention."

Fid-dawl ta' dawn il-prinċipji ġurisprudenzjali l-Qorti tirrileva li huwa paċifiku li l-Istat għandu d-dritt u l-obbligu li jippromulga l-liġijiet li jidhirlu xierqa biex jikkontrolla l-użu tal-proprjeta' skont l-interess ġenerali. Infatti l-Istat għandu f'idejh diskrezzjoni wiesgħa sabiex jidentifika x'inhu meħtieg fl-interess ġenerali u sabiex jistabilixxi liema huma dawk il-miżuri meħtieġa għall-ħarsien tal-interess ġenerali. Madankollu, fit-tħaddim ta' din id-diskrezzjoni tiegħu li joħloq mekkaniżmu li jipproteġi kategorija ta' persuni (utilisti ta' fondi għal fini tal-każ tal-lum) huwa xorta m'għandux il-*mano libera* li jippreġudika b'mod sproporzjonat id-drittijiet ta' kategorija ta' persuni oħra (sidien ta' dawk il-fondi għal fini tal-każ tal-lum). Fin-nuqqas huwa l-Istat li għandu jġorr ir-responsabbilta' għal dan l-iżbilanċ bejn il-varji drittijiet imsemmija.

Meħudin iċ-ċirkustanzi kollha tal-każ odjern il-Qorti tqis li d-dispożizzjonijiet tal-liġijiet in eżami qegħdin iċaħħdu lir-rikorrenti mit-tgawdija l-proprjeta' tagħhom partikolarment in kwantu l-leġislatur qiegħed jiddetta u jikkontrolla l-*quantum* li l-istess rikorrenti jistgħu jirċievu bħala kera. Huwa minnu li kien hemm xi titjib fil-valur tal-kera bis-saħħa tal-emendi fosthom tal-Att X tal-2009 kif sussegwentement emendati, iżda meta mqabbla mal-valuri lokatizji tal-fond in kwistjoni skont is-suq ħieles ma hemm ebda dubju li hemm disparita' enormi u dan kif jirriżulta mit-tqabbil bejn il-valuri lokatizji fis-suq ħieles elenkati fir-relazzjoni tal-perit Borg Costanzi u l-kera li effettivament kienet ilha snin titħallas mill-intimata Maria Dolores Portelli.

Fil-każ suċċitat **Simone Galea et vs Avukat Ġenerali et** il-Qorti nfatti qalet hekk-

"Tajjeb jingħad illi bl-emendi li kienu ntrodotti għall-Kap 16 bl-Att X tal-2009, għad li kien hemm awment fil-kera, xorta waħda baqa` jirriżulta sproporzjon kontra r-rikorrenti bejn l-awment fil-kera skont l-Art 1531Ċ tal-Kap 16 u l-valur lokatizju tal-fond fis-suq ħieles. Dan oltre għall-fatt li s-sid baqa` kostrett joqgħod għal quantum ta` żieda dettat mil-liġi li stabbiliet mhux biss kemm għandu jkun l-awment iżda anke kull meta. Qabel id-dħul fis-seħħ tal-emendi, ir-rikorrenti odjerni kienu ilhom snin twal iġarrbu lezjoni tal-jedd tagħhom skont l-Art 1 Prot 1 tal-Konvenzjoni.

*Fid-deċiżjoni tagħha tal-11 ta` Diċembru 2014 fil-każ ta` **Anthony Aquilina vs Malta** l-ECtHR irrimarkat illi : "the 2009 and 2010 amendments (only) slightly improved a landlord`s position".*

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

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

*Fil-każ ta` **Ian Peter Ellis et vs Avukat Ġenerali et**, (op cit) il-Qorti Kostituzzjonali stabbiliet illi :-*

"Lanqas l-emendi għall-Kodiċi Ċivili li seħħew bl-Att tas-sena 2009 ma jistgħu jitqiesu bħala li jagħtu rimedju effettiv għall-lanjanzi tar-rikorrenti, kemm għax teżisti diskrepanza enormi bejn l-awment fil-kera kontemplat fl-artikolu 1531Ċ u l-valur lokatizju tal-fond fis-suq ħieles, kif ukoll għax id-disposizzjonijiet tal-artikolu 1531F, fiċ-ċirkostanzi tal-każ, jagħmlu remota l-possibilita` li dawn jipprendu l-pussess tal-fond tagħhom."

B` referenza għall-każ tal-lum, jirriżulta ppruvat illi l-kera perċepita mir-rikorrenti, abbażi tad-disposizzjonijiet tal-Kap 69, hija bil-wisq inferjuri għall-kera fis-suq. Il-figuri li saret referenza għalihom aktar kmieni jitkellmu waħedhom. Għalhekk huwa ppruvat l-isproporzjon li ma jridx l-Art 1 Prot 1 tal-Konvenzjoni u li qed jingarr mis-sid.

Hija l-fehma konsiderata ta` din il-Qorti illi meqjusa l-fatti u ċirkostanzi tal-każ tal-lum kif evolvew mal-medda tas-snin sal-lum il-piż li kellu jġorr is-sid kien sproporzjonat u eċċessiv."

Jiġi sottolineat ukoll li anke jekk il-valur tal-kera stabbilit mill-liġi mhux bilfors ikun daqs kemm irendi s-suq ħieles xorta jirriżulta li hemm qabża kbira meta mqabbel mal-valur lokatizju massimu li r-rikorrenti jistgħu jirċievu mingħand l-inkwilina ntimata. Kif diġa' ngħad ripetutament fil-varji sentenzi in materja, ~~€€€~~r-rata ta' ħlas tal-kera stabbilita mill-liġi la tista' titqies li hija kompatibbli

mar-realta' soċjali f'Malta fiż-żminijiet tal-lum u lanqas mar-rati lokatizji applikabbli fis-suq ħieles tal-proprjeta'.

Fil-każ fl-ismijiet **Louis Apap Bologna vs Avukat Ġenerali et deċiż fl-4 ta' Ġunju 2018** il-Qorti qalet hekk -

"Għalkemm ir-ratio legis wara d-disposizzjonijiet tal-Kap 69 kien illi tkun ippreservata b`intervent legislattiv mirat il-vijabbilita` ekonomika ta` l-azjendi kummerċjali, ma hemmx l-iċken dubju li l-qagħda ekonomika u finanzjarja tal-pajjiż illum toffri xejriet lejn il-posittiv u mhijiex dik li kienet fiż-żmien meta sar il-Kap 69."

Dan kollu jfisser li bil-liġijiet imsemmija l-Istat naqas li jikkontrobilanċja l-miżuri li ħa - fejn ġab taħt il-kontroll tiegħu l-użu tal-proprjeta' tas-sidien involuti - b'salvagwardji adegwati li jipproteġu d-drittijiet ta' dawn l-istess sidien tal-fondi milquta b'tali liġijiet. Għaldaqstant ir-rikorrenti odjerni, l-istess bħal sidien oħra fl-istess pożizzjoni tagħhom, spiċċaw iġorru piż sproporzjonat u nġust fuqhom peress li nħoloq żbilanċ bejn il-jeddijiet tagħhom min-naħa waħda u l-interess ġenerali min-naħa l-oħra.

Il-Qorti tinnota wkoll li bis-saħħa tal-Att Numru XXIV tal-2021 (artiklu 4A tal-Kap 69) saru xi emendi oħra fosthom emenda marbuta maż-żieda fil-kera permezz ta' liema s-sidien għandhom il-possibilita' li jitolbu lill-Qorti tawtorizza ż-żieda fil-kera sa 2% tal-valur tal-fond fis-suq miftuħ. Saru anke emendi fl-artiklu 4 tal-Kap 69 li l-i-stess rikorrenti qegħdin jattakkaw fil-proċeduri odjerni. Għalkemm dawn l-emendi ġabu aktar titjib fl-eżerċizzju tad-drittijiet tas-sidien bħar-rikorrenti, tali emendi ma jinnewtralizzawx il-leżjoni li kienu ilhom isofru fit-tgawdija tal-proprjeta' tagħhom għas-snin ta' qabel ma daħal fis-seħħ dan l-Att. Jingħad pero' li mill-introduzzjoni tagħhom fit-28 ta' Mejju 2021 'il quddiem il-Qorti hija sodisfatta li l-emendi ntrodotti qegħdin jilħqu bilanċ propozjonat bejn id-drittijiet tas-sidien u dawk tal-inkwilini.

Fid-dawl tas-suespost l-ewwel żewġ talbiet tar-rikorrenti jimmeritaw li jiġu milqugħa safejn hija mibnija fuq l-ewwel artikolu tal-ewwel protokol tal-Konvenzjoni u dan għall-perjodu sa qabel l-emendi li saru għall-artikolu 4 fl-2021 u sa qabel l-introduzzjoni tal-artikolu 4A tal-Kap 69.

In vista tas-suespost, il-bqija tal-eċċezzjonijiet tal-Avukat tal-Istat sejrin jiġu miċħuda.

D. RIMEDJU

B'referenza għall-bqija tat-talbiet **tar-rikorrenti**, in vista tal-fatt li l-Qorti sabet ksur tad-drittijiet fundamentali tar-rikorrenti huma jimmeritaw li jingħataw rimedju adegwat, liema rimedju ser jingħata kif ġej -

i. Fir-rigward ta' ħlas ta' kumpens u danni adegwati, il-Qorti tibda billi tirreferi għall-prinċipji ġurisprudenzjali fir-rigward kif elenkati fil-każ suċċitat **Simone Galea et vs Avukat Ġenerali et** li uħud minnhom jgħidu hekk-

*"Huwa prinċipju ben assodat illi l-kumpens li jista` jingħata fi proċediment ta` natura kostituzzjonali mhuwiex ekwivalenti għad-danni ċivili li jiġu likwidati mill-qrati ordinarji (ara : QK : **Philip Grechpro et noe v. Direttur tal-Akkomodazzjoni Soċjali et** deċiża fis-17 ta` Diċembru 2010 ; **Victor Gatt et v. Avukat Ġenerali et** deċiża fil- 5 ta` Lulju 2011 ; u **Ian Peter Ellis et v. Avukat Ġenerali et** deċiża fl-24 ta` Ġunju 2016).*

Fid-deċiżjoni ta` **Maria Stella sive Estelle Azzopardi et vs Avukat Ġenerali et** deċiża fit-30 ta` Settembru 2016, il-Qorti Kostituzzjonali kompliet tippreċiża illi r-"rimedju li tagħti din il-Qorti huwa kumpens għall-ksur tad-dritt fondamentali u mhux danni ċivili għal opportunita` mitlufa."

Dan premess, huma diversi l-konsiderazzjonijiet li l-Qorti għandha tqis sabiex tistabilixxi l-quantum tal-kumpens.

Deċiżjoni li kkunsidrat fid-dettall din il-kwistjoni hija s-sentenza li tat il-Qorti Kostituzzjonali fil-kawża ***Raymond Cassar Torregiani et vs Avukat Ġenerali et*** *(op. cit.)*

Il-Qorti qalet hekk : -

"Dwar il-quantum tal-kumpens dovut issir referenza għas-sentenza ta` din il-Qorti* ***Igino Trapani Galea Feriol pro et noe et v Kummissarju tal-Artijiet et*** *deċiża fil-31 ta` Ottubru 2014, fejn f`materja ta` komputazzjoni ta` kumpens għal lezjoni ta` dritt fondamentali sanċit fl-artikolu konvenzjonali fuq ċitat ġie osservat:

"Rigward il-quantum tal-kumpens stabbilit mill-ewwel Qorti, din il-Qorti tosserva fl-ewwel lok li kull każ ghandu jigi trattat u deċiż fuq il-fattispecie tiegħu. Barra minn hekk, jekk il-Qorti Ewropeja ħasset li f`ċerti każijiet kellha tagħti kumpens f`ammont inferjuri għal dak li ngħata lir-rikorrenti mill-ewwel Qorti, ma jfissirx li allura l-Qrati Maltin tilfu l-awtonomija tagħhom b` mod li bilfors kumpens li jingħata ikun f`ammont viċin dak li tagħti l-Qorti Ewropeja. Fil-kaz odjern l-ewwel Qorti ħadet in konsiderazzjoni l-fatturi kollha li jimmilitaw kemm favur kif ukoll kontra r-rikorrenti u deherilha li l-kumpens xieraq li għandha tagħti f`dan il-każ ikun fl-ammont ta` ħamsa u għoxrin elf Euro (EUR 25,000).

Hija kkonsidrat id-dewmien da parti tar-rikorrenti li jieħdu l-proċeduri opportuni, il-valur tal-immobbli, iż-żmien tant twil li r-rikorrenti ilhom privati mill-godiment tal-proprjeta` tagħhom mingħand ma ngħata ebda kumpens, l-istat tal-fond u l-eżistenza tal-fattur tal-interess pubbliku. Ma` dawn għandu jiġi senjalat il-fatt li qabel l-ispossessament tal-proprjeta` tagħhom ir-rikorrenti kellhom permess mill-Bord kompetenti sabiex jiżviluppaw il-fond."

Issa għalkemm, huwa minnu illi l-valur tal-kumpens akkordat mill-Qorti wara sejba ta` leżjoni tad-drittijiet fondamentali ma jekwiparax neċessarjament ma` likwidazzjoni ta` danni ċivili attwali sofferti, ma jfissirx li d-danni materjali għandhom jiġu njorati għall-finijiet tal-eżercizzju odjern. Il-Qorti trid tqis il-fatturi kollha rilevanti għall-każ odjern sabiex tasal għad-determinazzjoni tal-quantum. Dawn huma (1) it-tul ta` żmien li ilha sseħħ il-vjolazzjoni konsidrat ukoll fid-dawl tat-tul taż-żmien li r-rikorrenti damu sabiex resqu l-proċeduri odjerni biex jirrivendikaw id-drittijiet kostituzzjonali tagħhom ; (2) il-grad ta` sproporzjoni relatat mal-introjtu li qed jiġi perċepit ma` dak li jista` jiġi perċepit fis-suq ħieles, konsidrat ukoll l-għan soċjali tal-miżura; (3) id-danni materjali sofferti mir-rikorrenti konsidrat ukoll l-ispejjeż sostanzjali li għamlu l-

intimati Tabone ssabiex jirrendu l-fond abitabbli u (4) l-ordni li ser tagħti din il-Qorti dwar l-eżenzjoni f`dan il-każ mill-effetti legali tal-Artikolu 5 tal-Kap 158."

Meta jingħata kumpens fi proċediment ta` din ix-xorta, għandu jingħata konsiderazzjoni l-għan li jkun immotiva l-miżura u ċioe` l-interess pubbliku. Għall-fini ta` quantum ta` kumpens u relattiva motivazzjoni, ara dawn id-deċiżjonijiet li jirreferu wkoll għall-pronunzjamenti tal-ECtHR :- QK : ***Angela sive Gina Balzan v. LOnorevoli Prim Ministru*** *: op. cit. ;* ***Dr. Cedric Mifsud et vs l-Avukat Ġenerali et*** *: op. cit. ;* ***Concetta sive Connie Cini vs Eleonora Galea et*** *: op. cit. ;* ***Robert Galea vs Avukat Ġenerali et*** *: PA/GK : op cit ;* ***Sergio Falzon et vs Alfred Farrugia et*** *: PA/GK : op. cit. ; PA/GK : 15 ta` Frar 2018 :* ***Alessandra Radmilli vs Joseph Ellul et*** *; PA/GK : 2 ta` Marzu 2018 :* ***Thomas Cauchi et vs Avukat Ġenerali et****) [ara wkoll għall-istess skop : ECtHR: 30 ta` Jannar 2018 :* ***Cassar vs Malta*** *: Application 50570/13]*

Il-proċeduri odjerni min-natura tagħhom huma diretti sabiex jindirizzaw leżjoni kostituzzjonali u/jew konvenzjonali.

Il-Qorti sabet vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni.

Għalkemm id-diskrepanza bejn il-kera attwalment perċepita u l-valur lokatizju li l-fond de quo jġib fis-suq ħieles hija fattur determinanti sabiex ikun stabbilit jekk kienx vjolat il-prinċipju tal-proporzjonalita`, fl-istess waqt hemm fatturi oħra li wkoll għandhom rilevanza, u li flimkien għandhom iwasslu għall-għoti ta` kumpens ġust għall-leżjoni subita.

Fis-sentenza li tat fil-31 ta` Jannar 2014 fil-kawża fl-ismijiet ***Concetta sive Connie Cini vs Eleonora Galea et*** *il-Qorti Kostituzzjoni rrilevat:*

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

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

Applikati dawn il-prinċipji għall-każ tal-lum il-Qorti hija tal-fehma li għandhom jittieħdu diversi konsiderazzjonijiet għal fini ta' kumpens primarjament li -

1. Anke jekk il-kumpens mhux neċessarjament ikun daqs kemm irendi s-suq ħieles, huwa sostanzjali l-isproporzjon fid-differenza bejn il-kera li jitħallas attwalment lir-rikorrenti u dik li setgħu jirċievu skont is-suq ħieles li kieku ma kienx hemm id-dispożizzjonijiet tal-liġi mpunjati;

2. L-istat ta' nċertezza li r-rikorrenti damu fih matul is-snin u l-perjodu li ilhom ibatu sproporzjon fid-drittijiet tagħhom;

3. L-inerzja da parti tal-Istat, li matul is-snin, sa qabel ma ntroduċa l-Att XXIV tal-2021, baqa' passiv għall-ħtieġa ta' ntervent legislattiv effettiv sabiex joħloq bilanċ aktar proporzjonat bejn il-piżijiet u d-drittijiet ta' persuni fil-qagħda tar-rikorrent.

Il-Qorti tirreferi għal dak li qalet il-Qorti Kostituzzjonali fil-każ **Av. Dr Mallia et vs Avukat tal-Istat et deċiż fl-4 ta' Mejju 2022** dwar il-komputazzjoni tal-kumpens –

*"Illum-il ġurnata l-likwidazzjoni tal-kumpens dovut f'dawn it-tip ta' każijiet issegwi l-kriterji ta' komputazzjoni stabbiliti fis-sentenza tal-Qorti Ewropea fl-ismijiet **Cauchi v. Malta** (QEDB, 25/03/2021). F'din is-sentenza ġie spjegat, in suċċint, illi sabiex jiġi likwidat kumpens xieraq għandu jsir tnaqqis ta' ċirka 30% mis-somma li kienet tkun perċepibbli mill-atturi fuq is-suq liberu minħabba l-għan leġittimu tal-liġi mpunjata, u tnaqqis ieħor ta' 20% fuq is-somma riżultanti sabiex jittieħed kont tal-inċertezza illi l-atturi kien jirnexxilhom jżommu l-proprjeta` mikrija tul iż-żmien relevanti kollha għall-prezzijiet indikati mill-perit tekniku. Mis-somma riżultanti għandha mbagħad titnaqqas il-kera perċepita mill-atturi, jew il-kera li kienet perċepibbli skont il-liġi."*

Applikat għal każ odjern, jirriżulta skont ir-rapport tal-Perit tekniku tal-Qorti Elena Borg Costanzi li t-**total tal-kera** li r-rikorrenti kienu jirċievu skont is-suq ħieles mill-1966 sal-2021 huwa hekk –

1966 sal-1971: €330 x 5 = €1650

1972 sal-1977: €750 x 5 = €3,750

1978 sal-1983: €1,500 x 5 = €7,500

1984 sal-1989: €2,000 x 5 = €10,000

1990 sal-1995: €3,500 x 5 = €17,500

1996 sal-2001: €5,500 x 5 = €27,500

2002 sal-2007: €8,500 x 5 = €42,500

2008 sal-2013: €12,000 x 5 = €60,000

2014 sal-2021: €16,000 x 7 = €112,000

TOTAL ta' kera perċepibbli mir-rikorrenti bejn l-1966 u l-2021 huwa ta' €282,400. Issa skont l-insenjament tas-sentenza appena ċitata, minn din is-somma ser isir tnaqqis ta' 30%. Dan jammonta għal €197,680. Minn din is-somma ser jerġa jitnaqqas 20% sabiex jittieħed kont tal-inċertezza illi r-rikorrenti kien jirnexxilhom jżommu l-proprjeta` mikrija tul iż-żmien relevanti kollha għall-prezzijiet indikati mill-perit tekniku. 20% ta' €197,680 huwa €39,536. Għalhekk iċ-ċifra tiġi €158,144.

Minn din is-somma ta' €158,144 trid titnaqqas l-ammont ta' kera perċepita mir-rikorrenti. Għalkemm ma ndikawx u lanqas ma nġabet prova minn ebda parti ta' ċifra preċiża, miċ-ċifri indikati mir-rikorrenti huwa meqjus li huma rċevew circa €7,000 bħala ħlas ta' kera matul is-snin imsemmija.[6]

Jirriżulta għalhekk li s-somma finali li għandhom jitħallsu r-rikorrenti bħala danni pekunarji hija € 151,144.

Il-Qorti tqis ukoll li għandha tillikwida wkoll is-somma ta' tlett elef Ewro (€3,000) bħala kumpens non-pekunarju.

Dan il-kumpens għandu jagħmlu tajjeb għalih l-Avukat tal-Istat.

[6] **Ċifra ndikata mir-rikorrenti stess fir-rikors promotur innifsu fil-paragrafu 5 ta' l-istess u mhux kontradetta mill-kontra partijiet. Il-Qorti tqies li ebda prova sostanzjali ma ġiet prodotta fir-rigward u li spiċċat kostretta tiprova tagħmel hi l-kalkoli tagħha.**

Għal dawn il-motivi l-Qorti taqta' u tiddeċiedi l-kawża billi –

1.Tastjeni milli tieħu konjizzjoni ulterjuri tal-ewwel eċċezzjoni preliminari tal-intimat Avukat tal-Istat u tiċħad l-eċċezzjonijiet l-oħra tiegħu;

2. Tilqa' l-ewwel talba u tiddikjara li fil-konfront tar-rikorrenti, il-provi mressqa u l-operazzjonijiet tal-Kap 69 tal-Liġijiet ta' Malta, senjatament l-artikolu 3 u l-artikolu 4 (għall-perjodu sa qabel l-emendi li sarulu bl-Att XXIV tal-2021) u l-Att X tal-2009 bl-operazzjonijiet tal-liġijiet viġenti huma leżivi tad-drittijiet fundamentali tagħhom kif protetti bl-ewwel artikolu tal-ewwel protokol tal-Konvenzjoni fir-rigward tal-fond 126 ġia 49, Triq Spinola, Paceville, San Ġiljan;

3. Tilqa' t-tieni talba kif dedotta;

4. Tilqa' t-talbiet rimanenti u tillikwida s-somma globali ta' mija erba' u ħamsin elf mija u erbgħa u erbgħin Ewro (€154,144) in kwantu għal mija wieħed u ħamsin elf u mija u erbgħa u erbgħin Ewro (€151,144) bħala kumpens pekunarju u tlett elef Ewro (€3,000) bħala kumpens non-pekunarju u tordna lill-Avukat tal-Istat jħallas tali somma lir-rikorrenti;

5. L-ispejjeż tal-kawża għandhom jitħallsu mill-Avukat tal-Istat.

Onor. Dr. Miriam Hayman LL.D.
Imħallef

Victor Deguara
Dep. Reġ.