QORTI CIVILI
PRIM'AWLA
ONOR IMHALLEF ANNA FELICE
(SEDE KOSTITUZZJONALI)

Illum 05 ta' Dicembru, 2022

Rikors Kostituzzjonali Nru: 315/2020 AF

Catherine Cauchi

vs

Remigio Cassar u Cecilia Cassar

Avukat tal-Istat

Il-Qorti:

Rat ir-rikors tal-attriċi Catherine Cauchi, li permezz tieghu wara li gie premess illi:

Ir-rikorrenti hija proprjetarja tal-fond 101, gja 43, Triq Xatt is-Sajjieda, Marsaxlokk, li hija akkwistat *per via di successione* minghand il-mejjet missierha l-Prokuratur Legali John Zammit li miet fid-9 ta' Marzu 1963, u l-istess ghalqa giet denunzjata skond denunzja nru. 500/1964 (Item 113), skond estratt mill-istess denunzja "Dokument A" hawn anness.

Il-fond in kwistjoni mhux fond dekontrollat kif jirrizulta mid-"Dokument B" hawn anness.

L-imsemmi fond ilu mikri lill-intimati Cassar u l-antekawza taghhom, ghal dawn l-ahhar cirka hamsin (50) sena bil-kera miżera ta' Lm4.50c fis-sena, wara li kien gie hekk lokat mill-antekawza tar-rikorrenti u llum bil-kera ta' €209.00c fis-sena ai termini tal-Att X tal-2009.

Il-fond in kwistjoni mhux fond dekontrollat, kif jirrizulta mid-"Dokument B" hawn anness.

Kif fuq inghad, l-kera li l-intimati Cassar qed jhallsu a tenur tal-ligi jammonta ghal €209.00c fis-sena, meta l-valur lokatizju tal-fond fis-suq huwa ferm u ferm aktar minn dak stabbilit bid-disposizzjonijet tal-Kap. 69 tal-Ligijiet ta' Malta, liema disposizzjonijet gew mibdula bi ftit bl-Att X tal-2009.

Ai termini tal-Ordinanza XVI tal-1944, ir-rikorrenti u l-antekawza minnha ma setghu qatt jikru l-fond in kwistjoni fis-suq stante illi l-kera tar-residenzi ta' fondi li ma kienux dekontrollati ossia li ma jaqghux taht id-disposizzjonijiet tal-Kap. 158 tal-Ligijiet ta' Malta, u huma regolati bil-Kap. 69 tal-Ligijiet ta' Malta, ma setghu qatt jizbqu l-valur lokatizju ta' dak li l-fond seta' jgib fl-4 ta' Awwissu 1914.

Ai termini tal-istess ligi bl-emendi li sarulha bl-Att X tal-2009, r-rata tal-kera ghandha tizdied biss kull tlett snin b'mod

proporzjonali ghal mod li bih ikun jizdied l-Indici ta' Inflazzjoni skond l-Artikolu XIII tal-Ordinanza li Tnehhi l-Kontroll tad-Djar bl-awment li jmiss fl-1 ta' Jannar 2022, liema awmenti huma tenwi ghall-ahhar.

Il-protezzjoni moghtija lill-inkwilini intimati Cassar bid-dispozizzjonijiet tal-Kap. 69 tal-Ligijiet ta' Malta u tal-Att X tal-2009 mhumiex gusti u ma jikkreawx bilanc ta' proporzjonalità bejn id-drittijiet tas-sid u dawk tal-inkwilina stante li l-valur lokatizju tal-fond huwa ferm oghla minn dak stabbilit fil-ligi u ghalhekk huma bi ksur tal-Kostituzzjoni ta' Malta u tal-Ewwel Artikolu ta' l-Ewwel Protokol tal-Konvenzjoni Ewropea u tal-Artikolu (6) tal-Konvenzjoni.

Il-livell baxx tal-kera, l-istat tal-incertezza tal-possibilità tat-tehid lura tal-proprjetà, in-nuqqas ta' salvagwardji procedurali, iz-zieda fil-livell tal-ghejxien f'Malta f'dawn l-ahhar decenni u l-interferenza sproporjzonata bejn id-drittijiet tas-sid u dawk tal-inkwilini ikkreaw piz eccessiv fuq ir-rikorrenti.

Ir-rikorrenti m'ghandhiex rimedju effettiv ai termini tal-Artikolu 6 tal-Konvenzjoni Ewropea stante illi hija ma tistax izzid il-kera b'mod ekwu u gust skond il-valur tas-suq illum, stante illi dak li effettivament huwa jista jitlob li jircievi huwa dak kif limitat bl-artikolu 1531C tal-Kap. 16 tal-Ligijiet ta' Malta.

Dan kollu gja gie determinat fil-kawzi Amato Gauci Vs Malta no. 47045/06 deciza mill-Qorti Ewropea tad-Drittijiet Fundamentali tal-Bniedem fil-15 ta' Settembru 2009 u Lindheim and others vs Norway nru. 13221/08 u 2139/10 deciza fit-12 ta' Gunju 2012 u Zammit and Attard Cassar vs Malta applikazzjonu nru. 1046/12 deciza fit-30 ta' Lulju 2015; Anthony Debono et vs Avukat Generali et deciza mill-Prim'Awla tal-Qorti Civili (Sede Kostituzzjonali) fit-8 ta' Mejju 2019; u Rikors Kostituzzjonali Nru. 22/2019 fl-ismijiet Joseph Grima et vs Avukat Generali et, deciza mill-Prim' Awla tal-Qorti Civili (Sede Kostituzzjonali) nhar l-10 ta' Ottubru 2019.

Gialadarba r-rikorrenti qed isofri minn nuqqas ta' "fair balance" bejn l-interessi generali tal-komunità u l-bzonnijiet u protezzjoni tad-drittijiet fundamentali tal-bniedem kif deciz b'Beyeler vs

Italy nru. 33202/96, J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd vs the United Kingdom [GC], nru. 44302/02, § 75, ECHR 2007-III) u ghalhekk hemm lezjoni tal-principju ta' proporzjonalita kif gie deciz f'Almeida Ferreira and Melo Ferreira vs Portugal nru. 41696/07 § 27 u 44 tal-21 ta' Dicembru 2010.

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

Lanqas huwa gust u ekwu illi l-fond in kwistjoni ghandu jkollu l-istess valur lokatizzju impost bil-ligi ai termini tal-Artikolu 1531C tal-Kap 16 tal-Ligijiet ta' Malta.

Il-valur lokatizju tal-post huwa ferm oghla minn dak li l-ligi imponiet li r-rikorrenti ghandu jircievi, b'tali mod illi bid-dispozizzjonijiet tal-Artikoli 37 u 45 tal-Kostituzzjoni ta' Malta u l-Artikolu 1 tal-Ewwel Protokol tal-Konvenzjoni Ewropea il-Kap. 69 tal-Ligijiet ta' Malta kif emendat bl-Att XXXI tal-1995 u l-emendi li saru bl-Att X tal-2009 jilledi d-drittijiet kostituzzjonali tar-rikorrenti kif protetti taht l-Artikolu tal-Kostituzzjoni ta' Malta, kif ukoll ta' l-Artikolu 1 tal-Protocol Nru. 1 tal-Konvenzjoni Ewropea u ghalhekk il-Ligi fuq imsemmija ghandha tigi ddikjarata anti-kostituzzjonali u ghandha tigi emendata, kif *del resto* diga gie deciz mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fil-kawza Amato Gauci vs Malta – deciza fil-15 ta' Settembru, 2009 u Zammit and Attard Cassar vs Malta deciza fit-30 ta' Lulju 2015 mill-Qorti Ewropea tad-Drittijiet Fundamentali tal-Bniedem.

Il-Qorti Ewropea tad-Drittijiet tal-Bniedem digà kellha okkazjoni tikkummenta diversi drabi f'kazi li rrigwardjaw lil Malta li ghalkemm m'hemmx dubju li l-Istat ghandu dover u allura d-

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

B'sentenza deciza mill-Prim'Awla tal-Qorti Civili (Sede Kostituzzjonali), Rikors Nru. 89/18 LM fl-ismijiet Anthony Debono et vs l-Avukat Generali et, fit-8 ta' Mejju 2019, din l-Onorabbli Qorti ddecidiet illi l-Kap. 69 tal-Ligijiet ta' Malta u l-emendi tal-Att X tal-2009 jilledu d-drittijiet kostituzzjonali tas-sidien stante li ma nzammx proporzjon bejn id-drittijiet tas-sid u dawk tal-inkwilin, u li s-sidien mhux qed jircievu l-kera gusta fis-suq, biex b'hekk l-Avukat Generali gie kkundannat jhallas danni ta' €20,000 lir-rikorrenti oltre l-ispejjez kollha tal-kawza, u l-istess gie deciz fil-kawza Rikors Kostituzzjonali Nru. 22/2019 fl-ismijiet Joseph Grima et vs Avukat Generali et, deciza mill-Prim'Awla tal-Qorti Civili (Sede Kostituzzjonali) nhar l-10 ta' Ottubru 2019 u kkonfermata mill-Qorti Kostituzzjonali nhar is-27 ta' Marzu 2020.

Fil-kawza Rikors Nru. 39/18 FDP fl-ismijiet George Olof Attard et vs Avukat Generali et deciza finalment mill-Prim' Awla tal-Qorti Civili (Sede Kostituzzjonali) nhar il-21 ta' Novembru 2019 u mhux appellata, din l-Onorabbli Qorti, f'cirkostanzi simili ghal dawk odjerni, izda fejn il-ksur lamentat sab l-origini tieghu fid-disposizzjonijiet tal-Kap. 158 tal-Ligijiet ta' Malta, u b'hekk xorta wahda japplika l-istess insenjament ghall-kaz odjern, il-Qorti sahansitra laqghat t-talba biex jiġi żgumbrat l-intimat Edgar Warrington u kwindi jingħata pussess liberu lir-rikorrenti tal-fond

in kwistjoni u ordnat lill-istess Edgar Warrington jiżgombra l-fond u dan entro sitt xhur mid-data tas-sentenza bl-obbligu fuq l-intimat li jħallas lir-rikorrenti kera ta' sebgħa mitt Euro (€700) fix-xahar mid-data tas-sentenza sal-eventwali ritorn tal-fond lir-rikorrenti.

In vista tal-kazistika surreferita, sahansitra dik tal-Qorti Ewropea tad-Drittijiet tal-Bniedem, u in vista tal-fatt illi certament li ma hemm ebda dubju illi r-rikorrenti qed jsofri lezjoni tad-drittijiet fundamentali tieghu ta' proprjetà kif sanciti bl-imsemmi Artikolu 1 ta' l-Ewwel Protokol tal-Konvenzjoni Ewropea u tal-Artikolu 37 tal-Kostituzzjoni ta' Malta, l-istess ghandha taghmel din l-Onorabbli Qorti u ghandha oltre illi tillikwida kumpens pekunjarju u non-pekunjarju sodisfacenti ghall-ksur lamentat, tordna l-izgumbrament tal-intimata Rita Attard mill-fond *de quo*.

Intalbet din il-Qorti sabiex:

1. Tiddikjara u tiddeciedi illi fil-konfront tar-rikorrenti il-fatti suesposti u l-operazzjonijiet tal-Ordinanza li Tirregola l-Tigdid tal-Kiri tal-Bini ossija l-Kap. 69 tal-Liġijiet ta' Malta u l-Att X tal-2009, bl-operazzjonijiet tal-Ligijiet vigenti qieghdin jaghtu dritt ta' rilokazzjoni indefinita lill-intimati konjugi Cassar ghall-fond 101, Triq Xatt is-Sajjieda, Marsaxlokk, u dan bi vjolazzjoni tad-drittijiet fundamentali tar-rikorrenti kif sanciti inter alia fl-Ewwel Artikolu ta' l-Ewwel Protocol tal-Konvenzjoni Ewropeja (l-Ewwel Skeda tal-Kap. 319 tal-Liġijiet ta' Malta), u b'hekk ghar-ragunijiet fuq esposti u dawk li ser jirrizultaw waqt it-trattazzjoni ta' dan ir-rikors, ir-rikorrenti ghandha tinghata r-rimedji kollha li din l-Onorabbli Qorti jidhrulha xierqa fis-sitwazzjoni.

2. Tiddikjara u tiddeciedi illi l-intimat Avukat tal-Istat huwa responsabbli ghal kumpens u danni sofferti mir-rikorrenti b'konsegwenza ta' l-operazzjonijiet tal-Kap. 69 u l-Att X tal-2009 tal-Ligijiet ta' Malta talli ma nzammx bilanc u proporzjon bejn id-drittijiet tas-sid u dawk tal-inkwilina peress illi l-kera pagabbli a tenur tal-ligijiet vigenti ma tirriflettix is-suq u l-anqas il-valur lokatizzju tal-proprjetà in kwistjoni wkoll ai termini tal-Ligi.

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

4. Tikkundanna lill-intimat Avukat tal-Istat jhallas l-istess kumpens u danni likwidati ai termini tal-Ligi, bl-imghax legali mid-data tal-prezentata tar-rikors odjern sad-data tal-effettiv pagament.

Bl-ispejjeż u bl-inġunzjoni ta' l-intimati minn issa għas-subizzjoni.

Rat id-dokumenti annessi.

Rat ir-risposta maħlufa tal-konvenuti Remigio Cassar u Cecilia Cassar, li permezz taghha gie eccepit illi:

It-talbiet rikorrenti, huma infondati kemm fil-fatt kif ukoll fid-dritt, kif ser jirriżulta waqt is-smigħ tal-kawża odjerna.

Fl-ewwel lok, ir-rikorrenti kellhom qabel xejn jeżawrixxu kwalunkwe rimedju ordinarju ai termini tal-liġi, b'mod partikolari kellhom qabel xejn jipproċiedu ai termini tar-regolament 4 tal-Avviż Legali 364 tal-2020, u ai termini tal-kumplament tar-regolamenti fl-istess Avviż Legali.

Fit-tieni lok, l-esponenti dejjem imxew skont id-dispożizzjonijiet tal-liġi, anzi addirittura huma l-inkwilini idoneji ai termini tal-liġi, saħansitra rikonoxxuti wkoll mir-rikorrenti, qatt ma kisru il-kundizzjonijiet tal-kiri, jew il-liġi, dejjem ħallsu fil-ħin il-kera, u għalhekk ma għandhom isofru l-ebda konsegwenzi ta' dan, u ma għandhomx jiġu kkundannati la responsabbli għad-danni, u konsegwentement lanqas responsabbli sabiex iħallsu xi kumpens bħala danni.

Għandu wkoll jingħad, illi l-esponenti, kif ukoll l-antekawża tagħhom fit-titolu ta' inkwilini ai termini tal-liġi, għamlu wkoll diversi xogħlijiet u benefikati fl-imsemmi fond, kif ser jirriżulta waqt is-smigħ tal-kawża, u dan għandu ukoll jittieħed in konsiderazzjoni meta din l-Onorabbli Qorti, tevalwa il-valur lokatizju ta' l-istess fond.

L-esponenti igawdu mill-protezzjoni tal-liġi, u għalhekk ma għandhom lanqas isofru l-ebda konsegwenza, u għalhekk ma għandhom bl-ebda mod jiġi kkundannati responsabbli ta' xi ksur tad-drittijiet fundamentali tar-rikorrenti, jew responsabbli għal xi danni, jew responsabbli illi jħallsu xi kumpens in linea ta' danni.

Dan il-fond huwa r-residenza unika ta' l-esponenti.

Kif inhu ben saput, l-esponenti ma għamlu l-ebda liġijiet u per konsegwenza ma għandhomx jinstabu ħatja ta' ebda ksur tad-drittijiet fundamentali tar-rikorrenti, kif minnhom allegat, u lanqas konsegwentement ma għandhom ibatu ebda konsegwenzi, jew jiġu dikjarati responsabbli għal xi danni, u lanqas ikkundannati iħallsu ebda kumpens, u lanqas ma għandhom isofru ebda spejjeż kif mitlub fir-rikors promotur.

Salv risposti oħra.

Bl-ispejjeż kontra r-rikorrenti, li minn issa huma nġunti għas-subizzjoni.

Rat id-dokumenti annessi.

Rat ir-risposta tal-konvenut Avukat tal-Istat li permezz taghha eccepixxa illi:

Preliminarjament ir-rikorrenti ghandha tipprova meta giet stabbilita l-allegata kirja bejnha u bejn l-intimati Cassar u dan sabiex jigi stabbilit minn meta bdiet ir-relazzjoni lokatizja mal-istess intimati.

Fil-mertu t-talbiet tar-rikorrenti ghandhom jigu michuda *in toto* peress li huma infondati fil-fatt u fid-dritt u dan ghar-ragunijiet segwenti li qed jigu hawn elenkati minghajr pregudizzju ghal xulxin.

B'referenza lejn l-ewwel talba tar-rikorrenti u peress li r-rikorrenti qeghda tinvoka l-protezzjoni tal-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea, l-esponent jirrileva li skond it-tieni paragrafu tal-istess artikolu, l-Istat ghandu kull

jedd li jghaddi dawk il-ligijiet li jidhrulu xierqa biex jikkontrolla l-uzu tal-proprjetà skond l-interess generali.

F'cirkostanzi bhal dawn fejn jezisti interess generali legittimu, ma tistax tpoggi fl-istess keffa l-valur tal-proprjetà fis-suq hieles ma' dak il-valur li wiehed ghandu jhallas fil-kuntest ta' social housing. L-ghan wara dawn il-ligijiet huwa li jipprovdu ghall-interess generali u cioè li jipprovdu dar ta' abitazzjoni.

B'referenza wkoll lejn l-ewwel talba, r-rikorrenti ghandha tfisser car x'inhuma l-pretensjonijiet taghha oltre l-kumpens mitlub minnha u dan sabiex l-esponent ikun jista' jiddefendi ruhu ahjar.

B'referenza lejn it-tieni, it-tielet u r-raba' talba, dawn it-talbiet ghandhom jigu michuda stante li ma hemm l-ebda ksur ta' xi dritt fundamentali, izda, u minghajr pregudizzju ghas-suespost, jekk din l-Onorabbli Qorti ssib li hemm xi ksur, din l-istess Onorabbli Qorti ghandha, jekk tkun ha taghti xi kumpens, taghti dan l-istess kumpens in proporzjon mal-fatti tal-kawza odjerna hekk kif iridu ghadhom jigu provati mir-rikorrenti stess.

Di più l-esponent umilment jissottometti illi stante l-fatt li l-azzjoni odjerna hi bbazata fuq l-allegazzjoni ta' ksur tal-Konvenzjoni Ewropea, din l-Onorabbli Qorti, fil-kaz li ha tkun ha taghti xi kumpens, m'ghandhiex tiehu in konsiderazzjoni dawk is-snin li fihom l-istess Konvenzjoni Ewropea ma kienitx applikabbli u minghajr pregudizzju, wisq anqas qabel din il-Konvenzjoni giet imfassla.

Stante l-fatt li l-fatti tal-kawza odjerna ghadhom mhux maghrufin *in toto* l-esponenti qieghed jirriserva d-dritt tieghu li jitlob lil Onorabbli Qorti jqajjem eccezzjonijiet ulterjuri.

Ghaldaqstant, l-esponent huwa tal-umli fehma li t-talbiet kif dedotti ma jimmeritawx illi jintlaqghu u kwindi jitlob bir-rispett lil din l-Onorabbli Qorti joghgobha tichad il-pretensjonijiet kif dedotti fir-rikors promotur bhala infondati fil-fatti u fid-dritt stante li r-rikorrenti ma sofrew l-ebda ksur tad-drittijiet tal-bniedem u l-libertajiet fundamentali, u dan bl-ispejjez kontra l-istess rikorrenti.

Rat ir-relazzjoni tal-perit tekniku, il-Perit Marie Louise Caruana Galea, innominata minn din il-Qorti fl-udjenza tas-17 ta' Frar 2021 sabiex tirrelata dwar il-valur lokatizju tal-proprjetà mertu tal-kawża minn l-1 ta' Jannar 1965 sat-22 ta' Diċembru 2020 b'intervalli ta' ħames snin.

Rat ir-risposta ulterjuri tal-Avukat tal-Istat fejn permezz taghha gie eccepit illi:

Wara eccezzjonijiet imressqa mill-esponenti, dahal fis-sehh l-Att 24 tal-2021.

L-esponent intavola rikors b'talba lil din l-Onorabbli Qorti sabiex iressaq eccezzjonijiet ulterjuri, liema talba giet milqugha permezz ta' digriet seduta stante nhar il-11 ta' Ottubru 2021.

L-esponent qieghed umilment jeccepixxi, u dan minghajr pregudizzju ghall-eccezzjonijiet imressqa fir-risposta guramentata tieghu, s-segwenti:

Bid-dhul fis-sehh tal-Att XXIV tal-2021, mill-1 ta' Gunju 2021 `il quddiem, ir-rikorrenti certament ma tistax tilmenta aktar mill-fatt li l-kirja ma tistax toghola b'mod proporzjonat. Dan ghaliex skond l-artikolu 4A tal-Kap. 69 tal-Ligijiet ta' Malta huwa jista' jitlob lill-Bord li Jirregola l-Kera, li l-kera tigi mizjuda ghal ammont li ma jaqbizx it-tnejn fil-mija fis-sena tal-valur hieles fis-suq miftuh tal-fond ta' abitazzjoni fl-1 ta' Jannar tas-sena li matulha tigi mressqa t-talba ghaz-zieda fil-kera. Zieda b'din ir-rata zzomm bilanc tajjeb bejn l-interessi tas-sid u tal-kerrej. Wara kollox, hawnhekk wiehed ma jridx jinsa li meta jkun hemm prezenti ghanijiet legittimi mehuda fl-interess pubbliku, bhalma huwa f'dan il-kaz, il-kumpens dovut lis-sidien minhabba l-indhil fit-tgawdija ta' gidhom, jigbed lejh ammont li jkun ferm inqas mill-valur shih tas-suq.

Hekk ukoll, dejjem skondd l-artikolu 4A tal-Kap. 69 tal-Ligijiet ta' Malta, ir-rikorrenti tista' titlob li tiehu lura l-post u ma ggeddidx il-kirja, jekk jigi muri li l-inkwilina ma haqqhiex li jkollha protezzjoni mill-Istat. Jigi b'hekk, li b'effett mill-1 ta' Gunju 2021 ma hemm l-ebda ksur tad-drittijiet fundamentali tar-rikorrenti. Ghaldaqstant, fid-dawl ta' dan, l-esponent

qieghed jeccepixxi li din l-Onorabbli Qorti ma tistax tiddikjara li l-inkwilina ma tistax tistrieh aktar fuq id-dispozizzjonijiet tal-Kapitolu 69 tal-Ligijiet ta' Malta sabiex tghix fil-fond mertu ta' din il-kawza.

Salv eccezzjonijiet ulterjuri migjuba fuq bil-permess ta' din l-Onorabbli Qorti.

Rat ukoll ir-risposta ulterjuri li ppreżentaw l-konvenuti konjuġi Cassar fejn eċċepew illi:

Ai termini tad-digriet ta' din l-Onorabbli Qorti tas-seduta tal-11 ta' Ottubru 2021, huma qeghdin iressqu s-segwenti risposta ulterjuri.

Jirrizulta, li permezz tal-emendi introdotti permezz tal-Att XXIV tal-2021, is-sid inghata wkoll il-possibilità bl-introduzzjoni tal-Artikolu 4A tal-Kap. 69 tal-Ligijiet ta' Malta, illi jibda jircievi kera annwali li tista' tlahhaq ghal mhux aktar minn tnejn fil-mija (2%) tal-valur liberu u frank tas-suq miftuh tad-dar ta' abitazzjoni, apparti mill-fatt, illi fic-cirkostanzi odjerni tal-esponenti, l-imsemmija kirja ma tistax tipperdura wara li jigi nieqes l-ahhar wiehed mill-esponenti, u inoltre bl-imsemmija emendi nholoq bilanc gust bejn id-drittijiet tas-sid u dak tal-inkwilini, u ghalhekk il-lamentazzjoni tar-rikorrenti, giet newtralizzata bl-introduzzjoni tal-imsemmija emendi.

Rat in-nota ta' sottomissjonijiet tal-Avukat tal-Istat.

Rat illi minkejja l-fakoltà lilhom konċessa la l-attriċi u lanqas il-konvenuti Cassar ma ppreżentaw nota ta' sottomissjonijiet finali.

Rat li l-kawża tħalliet għas-sentenza.

Rat l-atti kollha tal-kawża.

Ikkunsidrat illi permezz ta' din l-azzjoni, l-attriċi qegħda titlob lill-Qorti ssib leżjoni tad-dritt fundamentali tagħha għat-tgawdija tal-proprjetà kif imħares taħt l-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea Dwar il-Protezzjoni tad-Drittijiet tal-Bniedem u Libertajiet Fondamentali. L-ilment tal-

attriċi huwa msejjes fuq ir-relazzjoni forzuża kkawżata mid-dħul fis-seħħ tal-Kapitolu 69 tal-Liġijiet ta' Malta. Għalhekk, l-attriċi qegħda titlob rimedju għall-ksur lamentat inkluż ukoll danni u/jew kumpens għall-ksur tad-drittijiet tagħha.

Il-kawża ta' llum tikkonċerna l-fond 110, ġja 43, Triq Xatt is-Sajjieda, Marsaxlokk.

L-Avukat tal-Istat sfida lill-attriċi sabiex fl-ewwel lok tagħmel il-prova ta' meta bdiet il-relazzjoni lokatizja. F'dan ir-rigward l-attriċi xehdet illi hija wirtet il-proprjetà mill-poteri ta' missierha, il-Prokuratur Legali John Zammit li ġie nieqes fid-9 ta' Marzu 1963. Dak iż-żmien il-kirja kienet diġà fis-seħħ favur l-ante-kawża tal-konvenuti Cassar. Xehed ukoll il-konvenut Remigio Cassar li fl-affidavit tiegħu spjega illi huwa twieled fid-29 ta' Diċembru 1947 proprju fid-dar mertu ta' din il-vertenza. Issokta jgħid illi hu dejjem għex f'din ir-residenza l-ewwel flimkien mal-ġenituri tiegħu u maż-żewġ ħutu imbagħad mal-konvenuta l-oħra martu wara li dawn iżżewwġu fis-7 ta' Diċembru 1969. Jidher għalhekk illi l-kirja *de quo* ilha għaddejja mill-anqas mis-sena 1947 u cioè ċertament għal dawn l-aħħar 75 sena.

Tqis għalhekk illi l-ewwel eċċezzjoni sollevata mill-konvenut Avukat tal-Istat bħala sorvolata.

In linea preliminari, l-konvenuti konjuġi Cassar eċċepew illi qabel ipproċediet bl-istanza ta' llum, l-attriċi kien messha eżawriet ir-rimedji ordinarji partikolarment dawk maħsuba ai termini tar-Regolament 4 tal-Avviż Legali 364 tal-2020 liema regolament jawspika għall-medjazzjoni f'każ ta' tilwim dwar kirjiet miftiehma fil-31 ta' Mejju 1995 jew qabel din id-data.

Mill-atti ma jirriżultax li l-partijiet f'din il-kawża daħlu fi proċess ta' medjazzjoni. Biss, anki li kieku l-partijiet resqu għall-medjazzjoni, żgur illi dak il-proċess ma kienx il-forum idoneju jew kompetenti li jindirizza l-ilment tal-attriċi in kwantu leżjoni tad-drittijiet fondamentali tagħha.

Il-fond huwa dekontrollat kif jirriżulta miċ-ċertifikat tat-22 ta' Diċembru 2020. Madanakollu, peress li l-konvenuti Cassar jokkupaw il-fond bħala l-unika residenza tagħhom, u stante illi l-

fond ġie konċess lilhom qabel l-1995, il-kirja hija waħda protetta bil-liġi. Fi ftit kliem dan ifisser illi l-attriċi m'għandha ebda triq oħra għajr illi tkompli ġġedded il-kirja fit-termini ta' dak li jipprovdi l-Artikolu 3 tal-Kapitolu 69 tal-Liġijiet ta' Malta. Id-disposizzjoni taqra hekk:

> "*Sid il-kera ta' xi fond ma jistax, meta jagħlaq iż-żmien tal-kiri (sew jekk dan iż-żmien ikun skont il-ftehim, legali, skont l-użu jew imnissel mid-disposizzjonijiet ta' din l-Ordinanza), jirrifjuta li jġedded il-kiri jew li jgħolli l-kera jew li jagħmel kondizzjonijiet ġodda għat-tiġdid tal-kiri mingħajr il-permess tal-Bord*."

Waqt illi l-Kap. 69 jaħseb għal sitwazzjonijiet fejn il-Bord jista' jordna l-awment fil-kera jew saħansitra t-terminazzjoni tal-kirja, dawn iċ-ċirkostanzi huma speċifiċi u limitati ferm. In oltre, il-kera li l-Bord jista' jirrevedi hija regolata bis-saħħa tal-Artikolu 4(1)(b) tal-Kap. 69 liema disposizzjoni hija maħsuba illi tħares il-*fair rent*. Ai termini tal-Artikolu 4(1)(b) tal-Kap. 69, il-Bord jista' jawtorizza żieda fil-kera biss '*jekk il-kera ġdid ma tkunx iżjed minn 40% mill-kera ġusta (stabbilit, meta meħtieġ, bi stima) li bih il-fond kien mikri jew seta' jinkera f'kull żmien qabel l-4 ta' Awwissu tal-1914: il-Bord jista' jistabbilixxi dan il-kera ġust*.'

Permezz tal-Att X tal-2009, daħlu fis-seħħ emendi għal-liġi tal-kera. L-artikolu 1531Ċ tal-Kap. 16 jaqra hekk:

> "*(1) Għall-kera ta' dar ta' abitazzjoni li kienet fis-seħħ qabel l-1 ta' Ġunju, 1995 għandha tibqa' tgħodd il-liġi kif kienet fis-seħħ qabel l-1 ta' Ġunju, 1995 hekk iżda li fin-nuqqas ta' ftehim mod ieħor milħuq bil-miktub wara l-1 ta' Jannar, 2010, ir-rata tal-kera mill-ewwel ħlas tal-kera dovuta wara l-1 ta' Jannar, 2010, għandha, fejn din kienet anqas minn mija u ħamsa u tmenin euro (€185) fis-sena, titla' għal dan l-ammont.*
>
> *Iżda fejn ir-rata ta' kera kienet aktar minn mija u ħamsa u tmenin euro (€185) fis-sena, din għandha tibqa' bir-rata ogħla hekk stabbilita.*

(2) F'kull każ imsemmi fis-subartikolu (1) ir-rata tal-kera għandha tiżdied kull tliet snin b'mod proporzjonali għall-mod li bih ikun żdied l-indiċi tal-inflazzjoni skont l-artikolu 13 tal-Ordinanza li Tneħħi il-Kontroll tad-Djar; l-ewwel awment isir fid-data tal-ewwel ħlas tal-kera dovut wara l-1 ta' Jannar, 2013:

B'dan iżda li fejn il-kera tkun fl-1 ta' Jannar, 2010 aktar minn mija u ħamsa u tmenin euro (€185) fis-sena, u b'kuntratt bil-miktub qabel l-1 ta' Ġunju, 1995 il-partijiet ikunu qablu fuq metodu ta' żjieda fil-kera, wara l-1 ta' Jannar, 2010 iż-żjidiet fil-kera għandhom jibqgħu jkunu regolati skont dak il-ftehim sakemm jibqa' fis-seħħ."

L-ilment tal-attriċi huwa fis-sens illi t-tħaddim tad-disposizzjonijiet tal-Kap. 69 qiegħed jikser id-drittijiet fondamentali tagħha għat-tgawdija tal-proprjetà stante l-fatt illi l-kera hija baxxa u l-kirja hija waħda forzata. Konsegwentement, qiegħda titlob lill-Qorti sabiex tillikwida kumpens għal-leżjoni minnha mġarrba.

Skont il-perit tekniku, fis-sena 2021 il-proprjetà kellha valur fis-suq ħieles ammontanti għal €1,500,000 waqt illi l-valur lokatizzju fl-istess perijodu kien ta' €6,368 fis-sena.

L-ewwel artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea jipprovdi li kulħadd għandu d-dritt għat-tgawdija paċifika tal-proprjetà tiegħu u ħadd ma għandu jiġi pprivat mill-possedimenti tiegħu ħlief fl-interess pubbliku.

Il-Qorti ser tibda billi tagħmel referenza għall-ġurisprudenza tal-Qrati ta' Malta u tal-Qorti Ewropea li għalkemm tirreferi għad-disposizzjonijiet u tħaddim tal-Kap. 158 tal-Liġijiet ta' Malta, fiha hemm miġbura prinċipji li japplikaw bis-sħiħ għal każ li għandha quddiemha din il-Qorti llum:

M'hemmx dubju li kif ingħad minn din il-Qorti diversament presjeduta fis-sentenza tagħha fl-ismijiet Anna Fleri Soler et vs Direttur għall-Akkomodazzjoni Soċjali et, tas-26 ta' Novembru 2003, ikkonfermata mill-Qorti Kostituzzjonali fit-18 ta' Marzu 2005, l-istat għandu d-dritt li jagħmel liġijiet sabiex jikkontrolla

l-użu tal-proprjetà, liema dritt huwa soġġett in sostanza għall-interess ġenerali. Depożizzjoni din li hija skolpita f'termini wiesgħa u li tagħti skop ampju u diskrezzjoni wiesgħa lill-istat f'dan ir-rigward.

Fis-sentenza tal-Qorti Ewropea ta' Amato Gauci v Malta, tal-15 ta' Settembru 2009, li kienet tirrigwarda l-artikolu 12(2) tal-Kap. 158 ingħad illi:

> "*...a measure aiming at controlling the use of property can only be justified if it is shown, inter alia, to be "in accordance with the general interest". Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the "general" or "public" interest. The notion of "public" or "general" interest is necessarily extensive. In particular, spheres such as housing of the population, which modern societies consider a prime social need and which plays a central role in the welfare and economic policies of Contracting States, may often call for some form of regulation by the State. In that sphere decisions as to whether, and if so when, it may fully be left to the play of free market forces or whether it should be subject to State control, as well as the choice of measures for securing the housing needs of the community and of the timing for their implementation, necessarily involve consideration of complex social, economic and political issues. Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has on many occasions declared that it will respect the legislature's judgment as to what is in the "public" or "general" interest unless that judgment is manifestly without reasonable foundation*."

Madanakollu, il-Qorti Ewropea dejjem illimitat din id-diskrezzjoni li jgawdu l-istati membri billi sostniet li anke din ir-regola għandha tiġi interpretata fid-dawl tal-prinċipju ġenerali tal-'*fair balance*'. Kif ingħad mill-Qorti Ewropea fis-sentenza ta' Lithgrow and Others v. United Kingdom, tat-8 ta' Lulju 1986:

"*The Court recalls that not only must a measure depriving a person of his property pursue, on the facts as well as in principle, a legitimate aim "in the public interest", but there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. This latter requirement was expressed in other terms in the above-mentioned Sporrong and Lönnroth judgment by the notion of the "fair balance" that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (Series A no. 52, p. 26, para. 69). The requisite balance will not be found if the person concerned has had to bear "an individual and excessive burden" (ibid., p. 28, para. 73). Although the Court was speaking in that judgment in the context of the general rule of peaceful enjoyment of property enunciated in the first sentence of the first paragraph, it pointed out that "the search for this balance is ... reflected in the structure of Article 1 (P1-1)" as a whole (ibid., p. 26, para. 69)*."

Il-Qorti Kostituzzjonali fis-sentenza tagħha fl-ismijiet Louis Apap Bologna vs Calcidon Ciantar et, tal-24 ta' Frar 2012, spjegat illi:

"*F'kazijiet bhal dawn il-kumpens xieraq ghandu jiehu in konsiderazzjoni l-ghan legittimu li mmotiva l-mizura tar-rekwizizzjoni u li l-kumpens jista' jkun anqas mill-kumpens shih li altrimenti jkun dovut skont il-kriterji tas-suq. Il-Qorti Ewropeja fil-kazijiet ta' Edwards v. Malta u Ghigo v. Malta ddecidiet li:*

"(Para 76). As the Court has already stated on many 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 (emfazi tal-Qorti u Mellacher and Others, cited above, § 45.""

Hekk ukoll, kif osservat il-Qorti Ewropea fis-sentenza msemmija ta' Amato Gauci v Malta:

> "*[The Court] reiterating that legitimate objectives in the "public interest", such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value*."

Il-Qorti Ewropeja, għalkemm irrikonoxxiet li l-istat għandu dritt jikkontrolla l-użu tal-proprjetà, sostniet li għandu jkun sodisfatt ir-rekwiżit tal-proporzjonalità:

> "*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, HuttenCzapska, cited above, § 223)."

Il-Qorti Ewropea ikkunsidrat fid-dettall l-impatt li l-Att tal-1979 kellu fuq il-proprjetà tal-applikant Amato Gauci. Innutat li l-applikant ma setax igawdi l-pussess fiżiku tal-proprjetà tiegħu u ma setax jittermina l-kera: '*Thus while the applicant remained the owner of the property he was subjected to a forced landlord-tenant relationship for an indefinite period of time*.' Ikkunsidrat li l-applikant ma kellux rimedju biex jiżgombra lill-inkwilini f'każ li kellu bżonn il-proprjetà għalih jew għall-familja tiegħu. Ikkunsidrat ukoll li l-inkwilini ma kienux '*deserving of such protection*' għaliex kellhom proprjeta alternattiva. Għalhekk, ikkummentat li l-liġi '*lacked adequate procedural safeguards*

aimed at achieving a balance between the interests of the tenants and those of the owners'.

Ikkunsidrat ukoll illi l-possibilità tal-inkwilini li jivvakaw il-proprjetà kienet waħda remota peress li l-kirja tista' tintiret. Aċċennat għall-fatt li dawn iċ-ċirkostanzi ħallew lill-applikant '*in uncertainty as to whether he would ever be able to recover his property*.' Ikkunsidrat ukoll li l-ammont massimu ta' kera li seta' jirċievi l-applikant (€420 fis-sena) kien ferm baxx u jikkontrasta bil-qawwi mal-valur tas-suq.

Wara li qieset dawn il-fatturi, il-Qorti Ewropea kienet tal-fehma li '*a disproportionate and excessive burden was imposed on the applicant….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, sabet li kien hemm ksur tal-ewwel artikolu tal-Ewwel Protokoll tal-Konvenzjoni. Fil-każ ta' **Cassar v Malta**, deċiż mill-Qorti Ewropea fit-30 ta' Jannar 2018, intqal hekk:

> *"(a) <u>Whether there was an interference</u>*
>
> *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.).*
>
> *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).

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).

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).

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).

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.

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"

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

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.

In the present case the Court can accept that the applicable legislation in the present case pursued a legitimate socialpolicy 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

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

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.

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.

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).

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).

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.

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).

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.

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

Stabbilit dan kollu, l-ewwel artikolu tal-Ewwel Protokoll tal-Konvenzjoni huwa mibni fuq tlett principji:

i. Għandu jkun hemm it-tgawdija paċifika tal-proprjetà;
ii. Il-privazzjoni minn possedimenti hija soġġetta għall-kondizzjonijiet; u
iii. L-Istat għandu l-jedd illi jikkontrolla l-użu tal-proprjetà skont l-interess ġenerali.

Dawn it-tlett prinċipji, għalkemm distinti, huma relatati, peress illi l-aħħar tnejn jittrattaw sitwazzjonijiet partikolari ta' indħil fid-dritt għall-godiment paċifiku tal-proprjetà u għalhekk iridu jinftehmu fid-dawl tal-prinċipju ġenerali espost fl-ewwel principju.

Kwalsiasi interferenza trid tkun kompatibbli mal-principji (i) tal-legalità, (ii) tal-għan leġittimu fl-interess ġenerali, u (iii) tal-bilanċ ġust. Irid jinżamm proporzjon raġjonevoli bejn il-mezzi

użati u l-għan persegwit mill-Istat sabiex jikkontrolla l-użu tal-proprjetà tal-individwu. Dan il-proporzjon isib il-qofol tiegħu fil-prinċipju tal-'bilanċ xieraq' li għandu jinżamm bejn l-esiġenzi tal-interess ġenerali tal-komunità u l-ħtieġa tal-ħarsien tad-drittijiet fundamentali tal-individwu. Għalhekk, il-Qorti trid tagħmel analiżi komprensiva tal-varji interessi, u taċċerta ruħha jekk bħala konsegwenza tal-indħil mill-Istat, l-individwu kellux iġarrab piż eċċessiv u sproporzjonat.

Fil-każ ta' Emanuel Bezzina et vs Avukat Ġenerali et, tat-30 ta' Mejju 2019, din il-Qorti diversament presjeduta għamlet riassunt tal-isfond leġislattiv li wassal għall-promulgazzjoni tal-Ordinanza XXI tal-1931 li Tirregola t-Tigdid tal-Kiri ta' Bini (illum il-Kap. 69 tal-Liġijiet ta' Malta). Qalet hekk:

> "*Meta sar il-Kap 16 fl-1868, is-suq tal-kera kien totalment hieles b'mod u manjiera illi meta taghlaq is-sid kellu l-jedd jgholli l-kera jew ma jgeddidhiex. Meta la s-sid u lanqas l-inkwilin ma kienu jitolbu tibdil fil-kondizzjonijiet tal-kirja, il-kirja kienet tiggedded ope legis.*
>
> *Wara l-Ewwel Gwerra Dinija, il-kirjiet bdew joghlew b'rata mghaggla. Ghalhekk kienet mehtiega regolamentazzjoni. L-Att I tal-1925 kien l-ewwel att legislattiv li kien intiz sabiex jirregola zidiet fil-kera tant li mpona arbitragg meta ma kienx jintlahaq ftehim dwar iz-zidiet fil-kera. Dan l-Att kellu jkollu effett temporanju biss sal-31 ta' Dicembru 1927.*
>
> *Inhasset il-htiega ta' kontroll aktar strett. Ghalhekk kien promulgat l-Att XXIII tal-1929, li permezz tieghu, is-sidien gew prekluzi milli jghollu l-kera jew milli jirrifjutaw li jgeddu l-kera minghajr il-permess tal-Bord li Jirregola l-Kera. Il-Bord inghata s-setgha illi jilqa' talba ghal zgumbrament biss wara li jkunu sodisfatti numru ta' kondizzjonijiet. In kwantu ghat-talbiet ghal zieda fil-kera, il-Bord seta' jawtorizza awment sa massimu ta' 40% tal-kera gusta f'Awwissu 1914. Din il-mizura wkoll kellha tkun wahda temporanja sakemm is-suq jistabilizza ruhu. L-Att XXIII tal-1929 kellu jkollu effett sal-31 ta' Dicembru 1933.*

L-Ordinanza XXI tal-1931 li Tirregola t-Tigdid tal-Kiri ta' Bini (illum Kap 69 tal-Ligijiet ta' Malta) li hadet post l-Att XXIII tal-1929 kienet promulgata fid-19 ta' Gunju 1931 u kienet intiza sabiex ikollha effett sal-31 ta' Dicembru 1933. Biss in segwitu saret definittiva. Il-ligi kienet necessitata minhabba nuqqas kbir ta' djar ta' abitazzjoni wara l-herba tat-Tieni Gwerra Dinija. Kien mehtieg illi l-kera tad-djar titrazzan fi zmien ta' skarsezza u li l-valur lokatizju kellu jkun gust. Kien frott dan l-intervent legislattiv illi hafna nies setghu jifilhu jhallsu sabiex ikollhom saqaf fuq rashom. Waqt li l-ligi serviet l-iskop originali taghha, maz-zmien gabet maghha konsegwenzi negattivi fis-sens illi bdiet tohnoq is-suq u bdew jonqsu l-postijiet disponibbli ghall-kera.

Kien biss bl-Att XXXI tal-1995 illi l-legislatur addotta posizzjoni differenti sabiex jaghti nifs lis-suq tal-kera. B'dan l-Att il-kirijiet il-godda u cioè dawk li jsiru wara l-1 ta' Gunju 1995 ma baqghux soggetti ghal-ligijiet specjali tal-kera. Ghall-kirijiet li saru qabel l-1 ta' Gunju 1995 baqghu jghoddu l-ligijiet ta' qabel. Ghalkemm saru diversi emendi, ftit li xejn ittaffa l-piz fuq is-sidien."

Madanakollu, kif kompliet tgħid il-Qorti:

"*L-introduzzjoni tal-Ordinanza XXI tal-1931 kellha skop legittimu u sar fl-interess generali ghaliex kien intiz sabiex jiskansa li nies jispiccaw barra t-triq, u assikurat li persuni jkollhom fejn joqghodu. L-istorja socjali u ekonomika tal-pajjiz tixhed li l-legislazzjoni saret ghal skop tajjeb u kienet necessarja. Il-legislatur ipprova jsib bilanc bejn interessi konfliggenti. It-tkattir tal-gid fil-kors tas-snin wera però li dak l-intervent legislattiv ghalkemm kellu propositi tajba ma kienx baqa' joffri bilanc anzi holoq sproporzjon u zvantagg evidenti u notevoli ta' parti fil-konfront ta' ohra. Il-kera li r-attriċi setghu jippercepixxu bl-effett tal-Kap 69 meta mqabbla mal-kera fis-suq hieles oggettivament hija bil-wisq baxxa*."

Isegwi mill-ġurisprudenza citata li l-provvedimenti ta' liġi tax-xorta taħt eżami huma leżivi tad-drittijiet fundamentali tas-

sidien meta jkun hemm nuqqas ta' proporzjonalità bejn il-valur lokatizju attwali tal-fond, u l-kera stabbilita mill-istess liġi.

Fil-każ tal-lum, l-attriċi mhijiex tikkontesta il-legalità tal-leġislazzjoni. Lanqas ma qegħda tikkontesta l-leġittimità tal-iskop għaliex saret. Madanakollu, il-piż sabiex jintlaħaq dan l-għan ma kellux jintrefa kollu mis-sidien imma kellu jiġi żgurat bilanċ bejn id-drittijiet tagħhom u dawk tas-soċjetà in ġenerali.

Il-kera li s-sid tista' eventwalment tipperċepixxi għadha marbuta bil-kera ġusta a tenur tal-artikolu 4(2) tal-Kap. 69. Peress illi l-kirja tal-konvenuti Cassar hija regolata bil-Kap. 69, l-attriċi ma tista tagħmel xejn biex itejjeb il-posizzjoni tagħha. Anke kieku l-attriċi kellha tressaq talba għall-awment fil-kera quddiem il-Bord, jibqa' l-fatt illi l-ammont illi l-Bord jista' jiffissa bil-liġi huwa baxx ħafna meta mqabbel mal-kera li fond bħal dak mikri lill-konvenuti Cassar jista' jikseb fis-suq ħieles. Għal dik li hija kera, il-Bord ma jistax jawtorizza awment fil-kera li tkun ogħla minn 40% tal-valur lokatizju tal-fond fl-1914 – aktar minn mitt sena ilu!

Il-Qorti tosserva wkoll li l-emendi għall-Kap. 16 li saru bl-Att X tal-2009 ma jistgħux jitqiesu bħala li jagħtu rimedju effettiv għal-lanjanzi tal-attriċi għaliex anke b'dawk l-emendi jirriżulta sproporzjon bejn l-awment fil-kera skont l-artikolu 1531Ċ tal-Kap. 16 u l-valur lokatizju tal-fond fis-suq ħieles.

Għalkemm illum bl-artikolu 1531Ċ tal-Kap. 16 il-kera togħla kull tlett snin, din iż-żieda mhijiex tali li jista' jingħad li hija l-kera ġusta fis-suq li ġġib magħha din il-proprjetà. Meta jittieħed in konsiderazzjoni l-valur lokatizju attwali tal-fond in kwistjoni, jirriżulta ċar li hemm sproporzjon fil-kera u li huma l-atturi li qegħdin ibatu l-preġudizzju għaliex il-piż finanzjarju ġie mitfugħ kollu fuqhom.

Fil-fatt, fid-deċiżjoni tagħha tal-11 ta' Diċembru 2014 fil-każ ta' Aquilina v Malta, il-Qorti Ewropea irrimarkat illi '*the 2009 and 2010 amendments (only) slightly improved a landlord`s position*.'

Imbagħad, wara l-1995, bil-liberalizzazzjoni tal-kera, il-qagħda tal-atturi, a paragun ma' sidien oħra, li ma kienux vinkolati bil-Kap. 69, tgħarrqet aktar.

Apparti dan kollu, hemm ukoll l-inċertezza għar-rigward ta' meta s-sid ikollu d-dritt jieħu lura l-pussess ta' ħwejġu u li l-kera tista' tibqa' tiġġedded għal żmien indefinit.

Il-Bord li Jirregola l-Kera għandu idejh marbutin b'dak li tipprovdi l-liġi u jista' jordna l-iżgumbrament tal-inkwilin biss f'każijiet limitati. L-ilment tar-attriċi huwa materja li teżorbita l-kompetenza tal-Bord għaliex dwar ir-relazzjoni forzata ta' sid u inkwilin imposta fuq l-atturi, il-Bord ma jista' jagħmel xejn. Ma jistax ikun hemm ripreża tal-fond għaliex jeħtieġ li jkunu sodisfatti numru ta' kondizzjonijiet strinġenti qabel ma' l-Bord ikun jista' jilqa' t-talba tas-sid.

Fil-każ ta' Zammit and Attard Cassar v Malta, deċiża mill-Qorti Ewropea fit-30 ta' Lulju 2015, intqal hekk:

> "*Whereas the RRB could have constituted a relevant procedural safeguard by overseeing the operation of the system, in the present case it was devoid of any useful effect, given the limitations imposed by the law (see, mutatis mutandis, see Amato Gauci, cited above, § 62 and Anthony Aquilina v. Malta, no. 3851/12, § 66, 11 December 2014). 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 (ibid and, mutatis mutandis, Statileo v. Croatia, no. 12027/10, § 128, 10 July 2014)*."

Hekk ukoll, fil-każ ta' Ian Peter Ellis et vs Avukat Generali et, deċiż fis-27 ta' Marzu 2015, il-Qorti Kostituzzjonali stabbiliet illi:

> "*Lanqas l-emendi ghall-Kodici Civili li sehhew bl-Att tas-sena 2009 ma jistghu jitqiesu bhala li jaghtu rimedju effettiv ghall-lanjanzi tar-attriċi, kemm ghax tezisti diskrepanza enormi bejn l-awment fil-kera kontemplat fl-artikolu 1531C u l-valur lokatizju tal-fond fis-suq hieles, kif ukoll ghax id-disposizzjonijiet tal-artikolu 1531F, fic-cirkostanzi tal-kaz,*

jaghmlu remota l-possibilità li dawn jipprendu l-pussess tal-fond taghhom."

Il-provvedimenti tal-Kap. 69 u tal-artikolu 1531Ċ tal-Kap. 16 jipproteġu lill-inkwilini mingħajr konsiderazzjoni għall-bilanċ ġust bejn id-drittijiet tas-sid u dawk tal-inkwilini, b'mod li bħal fil-każ odjern, ġie leż il-prinċipju ta' proporzjonalità. Skont l-istima magħmulha mill-perit tekniku, is-sidien potenzjalment qalgħu fuq il-miljun ewro f'kirjiet mill-1965 sal-2021 iżda minflok qalgħu biss ftit mijiet billi inizzjalment il-konvenuti kienu qegħdin iħallsu s-somma ta' Lm4.50 fis-sena sakemm il-kera żdiedet għal €209 fis-sena wara l-emendi introdotti permezz tal-Att X tal-2009 u baqgħet tiżdied skont ma' tipprovdi l-liġi.

Għalkemm huwa minnu illi sal-lum l-atturi għadhom qegħdin jaċċettaw il-kera, huwa daqstant ieħor minnu illi meta bdiet għaddejja l-kirja f'xi żmien qabel is-sena 1947, l-awturi fit-titolu tal-attriċi, *qua* sidien, ma setgħux jipprevedu li t-tħaddim tal-Kapitolu 69 kien ser jinterferixxi b'mod daqshekk drastiku fid-drittijiet tagħhom aktar ma bdew jgħaddu s-snin. Lanqas ma kellhom għażla x'jagħmlu bil-proprjeta' tagħhom li ċertament ma setgħux joħduha lura.

Fid-deċiżjoni tal-Qorti Ewropea fil-każ ta' Zammit and Attard Cassar vs Malta intqal proprju li:

"*at the time, the applicants' predecessor in title could not reasonably have had a clear idea of the extent of inflation in property prices in the decades to come* ..."

Kif ingħad ukoll minn din il-Qorti diversament presjeduta fis-sentenza tagħha tat-30 ta' Mejju 2018, fil-kawża fl-ismijiet David Pullicino et vs Avukat Generali et:

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

Tal-istess ħsieb kienet din il-Qorti diversament presjeduta fil-każ ċitat ta' Emanuel Bezzina et vs Avukat Ġenerali et:

> "...*jibqa' fatt illi jekk dak iz-zmien is-sid ried jiehu xi gwadann mill-proprjetà tieghu kien ta' bilfors kostrett jottempra ruhu mal-ligi vigenti fiz-zmien ghar-rigward ilkera. Zgur illi fl-1993 ma setax ikun prevedibbli bdil fis-suq jew fil-ligi. Din il-Qorti tghid illi kienu x'kienu c-cirkostanzi tal-kaz meta s-sidien krew il-post u ghad li kienu jafu l-kirja kienet sejra tispicca regolata bil-Kap 69 b'daqshekk ma jfissirx illi bl-applikazzjoni ta' dik il-ligi fir-realtajiet tassocjetà Maltija il-qaghda taghhom bhala sidien kienet ben tutelata. Fil-kaz tar-attriċi, l-accettazzjoni da parti taghhom tal-fatt tal-kirja m'ghandhiex tiftiehem jew testendi sabiex tfisser illi ma kienx hemm vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni. L-istat ta' nuqqas ta' ghazla kienet realtà fil-pajjiz li baqa' jippersisti anke sa zminijiet ricenti. L-isvolta giet mis-sentenzi tal-Qorti Kostituzzjoni u tal-ECtHR fejn kien dikjarat illi l-applikazzjoni tal-ligijiet specjali tal-kera jiksru l-jeddijiet fondamentali tas-sidien.*
>
> *....*
>
> *Jirrizulta ghalhekk illi l-kirja tal-fond de quo kienet imgedda ope legis b'mod u manjiera illi s-sid kien kostrett a suo malgrado li joqghod ghal dak ir-regim ta' dritt certament sfavorevoli ghalih. Anke li kieku ntalab awment fil-kera, illigi ma kinitx tipprovdi ghal kondizzjonijiet biex eventwali awment ikun tassew reali u gust. Ghalhekk ir-rikorrent u l-awturi taghhom ma kellhomx rimedji effettivi*."

Għalkemm tista' tintalab żieda fil-kera quddiem il-Bord li jirregola l-Kera, kif diġà ntqal xorta jibqa' l-fatt illi hemm limitazzjonijiet dwar kif tiżdied il-kera, u m'għandhom l-ebda relazzjoni mal-kera fis-suq miftuħ.

Fil-każ tal-lum, din il-Qorti għandha quddiemha kemm tiswa l-proprjetà, kemm hu l-valur lokatizju tagħha u kemm qed titħallas kera mill-konvenuti Cassar. Kif diġà ntqal, meta wieħed iqabbel il-valur lokatizju tal-proprjetà mal-kera li l-attriċi

għandha dritt tipperċepixxi taħt l-effetti tal-artikolu 1531Ċ, wieħed isib li hemm sproporzjon bejn qagħda u oħra. Meħud in konsiderazzjoni wkoll illi r-rapport tekniku fih element inevitabbli ta' soggettività, illi mhux bilfors l-attriċi kienet sejra issib tikri b'kemm qalet il-perit tekniku, u illi meta tqis l-iskop socjali l-kera ma jkunx bilfors daqs il-kera fis-suq ħieles, xorta jibqa' l-fatt illi hemm diskrepanza konsiderevoli bejn il-kera xierqa u l-kera li tirċievi l-attriċi. Ir-rapport tal-perit juri illi din id-diskrepanza kompliet tikber aktar ma għaddew is-snin.

Għalhekk, minkejja li l-Istat għandu marġini ta' diskrezzjoni wiesgħa, billi l-ammont ta' kera dovut bil-liġi bl-applikazzjoni tal-artikolu 1531Ċ tal-Kap. 16 huwa tant baxx meta mqabbel mal-valur lokatizju stabbilit mill-perit tekniku, ma jistax jingħad li l-attriċi qegħda tingħata kumpens adegwat għat-tfixkil sostanzjali fid-dritt ta' tgawdija tal-proprjetà tagħha. Huwa prinċipalment dan il-fattur li, fil-fehma tal-Qorti, jitfa' a '*disproprotionate and excessive burden*' fuq is-sidien.

Il-Qorti qiegħda tqis ukoll illi (a) diġà l-attriċi ilha għexieren ta' snin b'idejha marbuta, prekluża milli titlob dik il-kera li jidrilha hi mingħand l-konvenuti Cassar; (b) din is-sitwazzjoni ser tkompli għal diversi snin oħra u, (c) l-attriċi m'għandha ebda ċertezza dwar meta sejra tintemm il-kirja.

Dan iwassal lill-Qorti biex tqis illi l-attriċi ġarrbet ksur tal-jedd tagħha għat-tgawdija ta' ħwejjiġha kif garantit bl-applikazzjoni tal-ewwel artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea. Għall-ksur tal-jedd fundamentali huwa l-Istat, f'dan il-każ rappreżentat mill-Avukat tal-Istat li għandu jwieġeb għal din il-vjolazzjoni.

Fil-fehma tal-Qorti, fil-każ preżenti d-dikjarazzjoni ta' vjolazzjoni waħedha ma tkunx biżżejjed imma l-Qorti għandha tagħti kumpens għal vjolazzjoni tad-drittijiet fundamentali tal-attriċi. Għal dan il-ksur tad-dritt fundamentali tagħha kif protett mill-Kostituzzjoni u mill-Konvenzjoni Ewropea, l-attriċi għandha tiġi kompensata għaż-żmien li ġiet imċaħħda mill-godiment tal-proprjeta tagħha.

Huwa stabbilit fil-ġurisprudenza illi l-kumpens dovut f'każijiet fejn il-ligi impunjata ikollha skop leġittimu fl-interess ġenerali, m'għandux jirrifletti il-valur lokatizju sħiħ li kien ikun perċepibbli fuq is-suq liberu. Fil-każ riċenti fl-ismijiet Cauchi v Malta, tal-25 ta' Marzu 2021, il-Qorti Ewropea kellha xi tgħid hekk dwar il-likwidazzjoni ta' kumpens pekunjarju f'kawżi ta' din ix-xorta:

> "*102. In assessing the pecuniary damage sustained by the applicant, the Court has, as far as appropriate, considered the estimates provided and had regard to the information available to it on rental values in the Maltese property market during the relevant period (see, inter alia, Portanier, cited above, § 63).*
>
> *103. It has also considered the legitimate purpose of the restriction suffered, bearing in mind that legitimate objectives in the "public interest", such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (ibid.; see also Ghigo v. Malta (just satisfaction), no. 31122/05, § 18 and 20, 17 July 2008). In this connection, the Court notes that, to date, it has accepted that in most cases of this type, the impugned measure pursued a legitimate social policy aim, namely the social protection of tenants. It has also found, however, that the needs and general interest which may have existed in Malta in 1979 (when the law in question was put in place by Act XXIII) must have decreased over the three decades that followed (see, for example, Anthony Aquilina v. Malta, no. 3851/12, § 65, 11 December 2014). With that in mind, the Court considers that for the purposes of awarding compensation, such estimates may be reduced by around 30% on the grounds of that legitimate aim. It notes, however, that other public interest grounds may not justify such a reduction (see, for example, Marshall and Others, cited above, § 95, and the case-law cited therein).*
>
> *104. Furthermore, the Court is ready to accept, particularly in view of the recent boom in property prices, that if the property had not been subject to the impugned regime it would not necessarily have been rented out throughout the*

entire period. Therefore, it is acceptable to consider that the actual losses were less than those claimed, by at least 20%.

105. Furthermore, the rent already received by the applicant for the relevant period must be deducted from the relevant calculation (see, inter alia, Portanier, cited above, § 63). In this connection, the Court notes that it is the rent applicable by law which should be deducted in the present case, as the applicant chose of her own volition not to increase the rent for a certain period of time.

106. The global award made by the domestic court, which remains payable if not yet paid to the applicant, must also be deducted.

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

Il-Qorti Ewropea kkonkludiet li l-kumpens jista’ jonqos b’xi 30% minħabba l-għan leġittimu wara l-protezzjoni u 20% tnaqqis ieħor minħabba l-inċertezza dwar kemm il-proprjetà kienet ser tkun mikrija għall-perjodu kollu.

Il-Qorti sejra għalhekk tieħu in konsiderazzjoni s-segwenti fatturi fil-likwidazzjoni tal-quantum tal-kumpens dovut lill-attriċi għal-leżjoni tad-drittijiet fundamentali sofferta minnhom:

i. L-isproporzjon fid-differenza bejn il-kera perċepita u dik li setgħet tkun perċepita fis-suq ħieles li kieku ma kienitx kontrollata bil-liġi;

ii. Iż-żmien li l-attriċi ilha tbati minn dan in-nuqqas ta' proporzjonalità;

iii. L-inerzja tal-Istat li baqa' u sa llum għadu ma rrimedjax għas-sitwazzjoni b'leġislazzjoni *ad hoc*;

iv. Il-fatt illi l-attriċi damet tistenna għexieren ta' snin qabel ma tat bidu għall-proċeduri odjerni;

v. Il-kera mħallsa mill-inkwilin.

(Ara f'dan is-sens id-deċiżjoni riċenti ta' din il-Qorti diversament presjeduta fl-ismijiet Anthony Zammit et vs L-Avukat tal-Istat et, tal-15 ta' April 2021, li kienet tirrigwarda l-kirjiet protetti permezz tal-Kap. 69 tal-Liġijiet ta' Malta).

Għalhekk, il-Qorti, wara li qieset dawn il-fatturi kollha u qieset ukoll l-istima magħmula mill-perit tekniku, kif ukoll illi l-funzjoni tagħha mhijiex li tillikwida danni ċivili iżda danni għall-ksur ta' jeddijiet fundamentali, hi tal-fehma illi s-somma ta' ħamsin elf Ewro (€50,000) għandha titħallas lir-rkorrenti bħala kumpens pekunjarju. Il-Qorti tqis ukoll illi tenut kont tal-fatti tal-każ, l-attriċi għandha tirċievi wkoll is-somma ta' għaxart'elef Ewro (€10,000) bħala kumpens non-pekunjarju.

Dwar l-effett li jibqgħalhom id-disposizzjonijiet rilevanti tal-Kapitolu 69 u l-artikolu 1531Ċ tal-Kap. 16, il-Kostituzzjoni u l-Att dwar il-Konvenzjoni Ewropea (Kap. 318 tal-Liġijiet ta' Malta) jagħmluha ċara illi fejn xi liġijiet huma inkonsistenti magħhom, dawn huma 'bla effett'.

L-artikolu 6 tal-Kostituzzjoni ta' Malta jistipula hekk:

> "*Bla ħsara għad-dispożizzjonijiet tas-subartikoli (7) u (9) tal-Artikolu 47 u tal-Artikolu 66 ta' din il-Kostituzzjoni, jekk xi liġi oħra tkun inkonsistenti ma' din il-Kostituzzjoni, din il-Kostituzzjoni għandha tipprevali u l-liġi l-oħra għandha, safejn tkun inkonsistenti, tkun bla effett*."

L-artikolu 3(2) tal-Att dwar il-Konvenzjoni Ewropea jaqra hekk:

> "*Fejn ikun hemm xi liġi ordinarja li tkun inkonsistenti mad-Drittijiet tal-Bniedem u Libertajiet Fundamentali, l-imsemmija Drittijiet u Libertajiet Fundamentali għandhom jipprevalu, u dik il-liġi ordinarja, safejn tkun inkonsistenti, tkun bla effett*."

Minkejja li din il-Qorti tifhem l-ilment tal-konvenuti Cassar li l-proprjetà in kwistjoni hija l-unika residenza tagħhom, jekk għandhomx fejn imorru joqgħodu hija rrilevanti għall-vertenza odjerna.

Ġialadarba din il-Qorti qiegħda ssib li d-disposizzjonijiet rilevanti tal-Kapitolu 69 u l-artikolu 1531Ċ tal-Kap. 16 huma inkonsistenti mal-Kostituzzjoni u mal-Konvenzjoni in kwantu huma leżivi tad-drittijiet fundamentali tal-attriċi kif protetti taħt l-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni, allura isegwi li tali liġijiet ma jistgħux jiġu invokati mill-konvenuti Cassar sabiex ikomplu jokkupaw l-fond *de quo*.

Għalhekk u ghal dawn ir-ragunijiet, il-Qorti qiegħda taqta' u tiddeċiedi din il-kawża billi filwaqt illi tiċħad l-eċċezzjonijiet kollha tal-konvenuti, tiddisponi mit-talbiet attriċi kif ġej:

1. Tilqa' l-ewwel talba u tiddikjara illi t-tħaddim tad-disposizzjonijiet tal-Kapitolu 69 qegħdin jagħtu dritt ta' rilokazzjoni u b'hekk jilledu d-drittijiet fundamentali tal-attriċi kif imħarsa permezz tal-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea;

2. Tilqa' t-tieni, it-tielet u r-raba' talba u tillikwida kumpens fl-ammont ta' sittin elf Ewro (€60,000), kwantu għal ħamsin elf Ewro (€50,000) rappreżentanti danni pekunjarji u għaxart'elef Ewro (€10,000) bħala danni non pekunjarji. Tordna lill-intimat Avukat tal-Istat iħallas lir-rikorrenti l-ammont likwidat.

L-ispejjez tal-kawża għandhom jitħallsu mill-Avukat tal-Istat.

IMHALLEF

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