In The First Hall of the Civil Court
(Constitutional Jurisdiction)

Hon. Judge DR. MIRIAM HAYMAN LL.D.

Sitting of the 5th July, 2023

Costitutional Application Numru: 87/2019 MH

Number: 1

Sylvana Brannon in her name and representing her minor children Eva, Kieran u Tristan siblings Brannon, and in rapresentation of her other minor son Ethan Cappello and with the degree dated 15 of November, 2019 Dr. Tanya Sammut was appointed as the Children's Advocate. Later this last decree was revoked and by a decree dated 22/1/2020 Dr. Mary Muscat was appointed in her stead.

Vs

The State Advocate already The Attorney General and the Commissioner of Police and with a decree dated 22 of January, 2020

Travis Leigh Brannon was allowed as a Joinder in the Issue.

The Court;

Having seen the application entered by Sylvana Brannon on the 4th of June, 2019 where the following was premised:

"Illi r-rikorrent hija separata minn ma' zewgha Travis Leigh Brannon b'kuntratt ta' separazzjoni magħmul fl-14 ta' Frar 2007. Skont dan il-kuntratt, ir-rikorrenti għandha l-kura u kustodja esklussiva ta' uliedha Eva u Kieran. Hija għandha

wkoll il-kura u kustodja 'de facto' ta' binha l-ieħor Tristan li twieled wara s-separazzjoni. Inoltre, hija għandha l-kura u kustodja tal-minuri Ethan Capello.
Illi fl-2013 hija ppreżentat Rikors Ġuramentat Numru 72/2013 li fih talbet illi l-kundizzjonijiet fil-kuntratt ta' Separazzjoni jiġu modifikati fir-rigward tal-manteniment u xi ħwejjeg ohra. Dan ir-Rikors Ġuramentat għadu ma ġiex deċiż.

Illi fit-3 ta' Gunju 2016, Travis Leigh Brannon ippreżenta rikors fil-Qorti Ċivili (Sezzjoni tal-Familja) b'Dokument A anness mieghu, li fih għamel allegazzjonijiet serji kontra r-rikorrenti. B'digriet tas-6 ta' Ġunju 2016 fl-atti tal-Ittra Numru 865/16 AL, il-Qorti Ċivili (Sezzjoni tal-Familja) ordnat li r-rikors jiġi notifikat lilha filwaqt li ordnat ukoll li d-Dokument A jibqa' ssiġillat.
Illi fis-17 ta' Ġunju 2016 ir-rikorrenti ppreżentat risposta għar-rikors tat-3 ta' Ġunju 2016 li fiha kkontestat bil-qawwa dak li ġie allegat fuqha fir-rikors ta' Travis Leigh Brannon.

Illi fl-20 ta' Gunju 2016 il-Qorti Ċivili (Sezzjoni tal-Familja) ħatret Avukat tat-Tfal biex tkellem lit-tfal u tirrelata dwar it-talba ta' Travis Leigh Brannon. Hija ppreżentat ir-rapport tagħha ta' żewġ paġni fit-13 ta' Lulju 2016, wara laqgħa ta' mhux aktar minn 10 minuti ma' kull wild Brannon.

Illi in segwitu għar-riċezzjoni tar-rapport tal-Avukat tat-Tfal ma nżammet l-ebda seduta biex il-Qorti tisma' x'għandhom x'jgħidu r-rikorrenti u/jew Travis Leigh Brannon.

Illi fl-14 ta' Lulju 2016 il-Qorti ddegretat "Tilqa' t-talba u tordna li t-tfal jirrisjedu ma' missierhom bl-istess aċċess għal ommhom kif kellhom għal missierhom." Il-Qorti ma ordnatx illi d-digriet għandu jiġi notifikat lir-rikorrenti qabel ma tingieb fis-seħħ il-bidla dwar fejn it-tfal għandhom jirrisjedu.

Illi f'waħda mid-dati tal-aċċess li l-missier kellu mat-tfal, mingħajr l-ebda preavviz, huwa qabad u ma ħadhomx lura għand ommhom u ħallielha kopja tad-digriet, u b'hekk hija saret taf bil-bidla ordnata mill-Qorti. It-tfal kienu ġew ippreparati mill-missier biex jaġixxu bil-moħbi ta' l-omm u għalhekk ikkoperaw bis-sħiħ miegħu.

Illi jirriżulta illi fl-imsemmi rikors tiegħu tat-3 ta' Gunju 2016 Travis Leigh Brannon iddikjara illi: "Ġara illi f'dawn l-aħħar ġranet it-tfal minuri tal-

kontendenti skoprew portafol elettroniku tal-intimata ommhom b'ħafna ritratti oxxeni, u in oltre skoprew għadd ta' oġġetti illi ġeneralment jintużaw għal stimulazzjoni sesswali." Id-Dokument A esibit mar-rikors kien jirriferixxi għal dan.

Illi kien proprju b'riżultat tad-dikjarazzjonijiet ta' missier it-tfal illi ġie meħud lir-rikorrenti d-dritt li t-tfal ikomplu jirrisjedu esklussivament magħha, u dan mingħajr l-ebda smiegħ u mingħajr l-ebda investigazzjoni fuq l-allegazzjonijiet speċifiċi foloz li saru u dwar il-provenjenza tal-materjal ta' natura intima, li fih ir-rikorrenti ma kienet bl-ebda mod rikonoxxibbli. Inoltre, ir-rikorrenti ma ngħatat l-ebda opportunita` biex tikkummenta dwar il-kontenut tar-rapport tal-Avukat tat-Tfal qabel ma l-Qorti qabdet u ddeċidiet. Id-dikjarazzjonijiet qarrieqa magħmula minn żewġha ġew aċċettati ċjekament u emmnuti, u b'hekk il-qagħda fir-rigward ta' uliedha ġiet serjament ippreġudikata. Iżda, fir-realta`, kien hemm pjan qed jitwettaq, li r-rikorrenti ma kinitx taf bih, illi kien jinvolvi assoċjazzjoni biex jitwettqu reati (artikolu 48 tal-Kap 9), bl-użu ta' materjal ta' natura intima, biex isir 'frame-up' kontra tagħha, liema assoċjazzjoni biex isiru reati saret bejn certu Conrad Bajada u Ingrid Anastasi u l-imsemmi Travis Leigh Brannon. Traġikament, missier it-tfal, bla ebda skruplu, involva wkoll lill-istess uliedu u lil membri oħra tal-familja tagħha fit-twettiq ta' dan il-pjan – bir-riżultat li r-rikorrenti ġiet iżolata kompletament mis-'support system' tal-familja tagħha. Ġie determinat mill-Qorti Ċivili (Sezzjoni tal-Familja) fil-kors tal-proċeduri ġudizzjarji li żvolġew wara quddiem ġudikant differenti (Rikors Numru 208/16 RGM, ***Digriet tat-8 ta' Gunju 2017****) illi –*

> *"Having considered that prima facie it now results from evidence tendered to date that Travis Leigh Brannon manipulated and abused of the judicial process when on the 9th June 2016 he filed an application, together with a considerable number of photos of a pornographic nature, stating that the three minor children "skoprew portafol elettroniku tal-intimata ommhom b'hafna ritratti oxxeni" when it now results from evidence tendered before this court that the photos exhibited in the acts of the said mediation were given to Mr Brannon by a certain Conrad Bajada who gave these photos to Mr Brannon with the intention to help him take away the three minor children from their mother as a form of revenge following the breakup of the relationship between Mr Bajada and Ms Sylvana Brannon.*

Having considered that Mr Brannon not only misled the Court when he intentionally failed to inform this Court as differently presided about the true source of those pornographic photos but went as far as to strongly insinuate that the photos exhibited were pornographic photos of Mrs Brannon discovered by her three minor children on the internet."

Illi malli gew skoperti dawn il-fatti ġodda dwar il-konġjura bejn Travis Leigh Brannon, Conrad Bugeja u Ingrid Anastasi, inħolqot obbligazzjoni pożittiva fuq il-Qorti Ċivili (Sezzjoni tal-Familja) li tieħu azzjoni rimedjali, azzjoni effettiva u sħiħa, mhux frammentarja, bil-għan li tirripristina minnufih l-istatus quo ante. Iżda, filwaqt li d-digriet tal-14 ta' Lulju 2016 fuq imsemmi mogħti fl-atti tal-medjazzjoni 865/16 AL ġie revokat contrario imperio fit-8 ta' Gunju 2017, b'danakollu ġie ordnat mill-istess Qorti illi t-tfal jibdew jirrisjedu mit-Tnejn sal-Ħamis ma' missierhom u mill-Ħamis sat-Tnejn ma' ommhom, b'aċċess ta' 3 sigħat fil-ġimgħa kull wieħed.

Illi, barra minn hekk, il-Qorti Ċivili (Sezzjoni tal-Familja) minkejja li kellha quddiemha l-ammissjoni ta' Travis Leigh Brannon, kif ukoll l-ammissjoni ta' Conrad Bajada u x-xiehda ta' l-Ispettur John Spiteri, dwar dan l-aġir kriminali, doluż u malizzjuż ("... I asked Ingrid to give me the porn and she did and Conrad gave me supplemental images and has been doing so ever since. That's how I got the porn. I asked for it." – xiehda tieghu tas-17 ta' Marzu 2018), l-Onorabbli Qorti Ċivili (Sezzjoni tal-Familja) naqset li tieħu azzjoni drastika u effettiva biex treġġa' lura l-qagħda ghall-istatus quo ante fl-interess suprem tal-ulied, u dan billi qalet sempliċiment: "8.The Court shall decide whether contempt proceedings are to be instituted against defendant at a later stage of these proceedings."

Iżda sallum, wara tant zmien, il-Qorti Ċivili (Sezzjoni tal-Familja) baqgħet ma ħadet l-ebda passi kontra Travis Leigh Brannon għal disprezz lejn l-awtorita` tal-Qorti sabiex tipproteġi d-drittijiet tar-rikorrenti Sylvana Brannon. Agħar minn hekk, ir-rikorrenti tilfet il-kura tat-tfal billi dawn ġew ordnati jaqsmu l-ġranet tal-ġimgħa bejn iż-żewġ ġenituri.
Illi skont rapport tal-Aġenzija Appoġġ ippreżentat il-Qorti minn Adreana Gellel fit-2 ta' Mejju 2017 –

> *"the transition from the mother's house to the father's house* ***has left them scarred with insecurity****. All three siblings are at a particular development stage where security and stability are of great importance. The children's safety net has become unstable especially after they were uprooted from the place that they have always called home. In this new place they have been listening to verbal or nonverbal cues encouraging them to believe that the relationship that they had before with their mother and their way of being home was untrue."*

Iżda, minkejja dan l-ammoniment kontenut fir-rapport tas-Senior Social Worker ta' l-Aġenzija Appoġġ maħtura mill-Qorti stess, il-Qorti Ċivili (Sezzjoni tal-Familja) ma ħadet l-ebda azzjoni biex il-kawża tal-ħsara serja terġa' titħassar u biex is-sitwazzjoni tiġi ripristinata. Il-prinċipju tar-Restitutio in integrum applikat fis-sentenzi tal-Qorti Ewropeja għad-Drittijiet tal-Bniedem ġie skartat. B'riżultat ta' dan in-nuqqas serju, il-minuri komplew isofru l-effetti kollha tal-ħsara li saritilhom, minflok ma s-sitwazzjoni ġiet ripristinata minnufih kif kien neċessarju li jsir fl-aħjar interess tat-tfal tagħha.
Illi fl-istess ħin, il-Qorti tal-Familja, b'dan id-dilungar fit-tul, esponiet il-proċess ġudizzjarju għal kontaminazzjoni tax-xhieda u tal-provi, kif fil-fatt ġara meta l-imsemmija Senior Social Worker ġiet avviċinata minn terzi persuni biex tbiddel ir-rakkomandazzjonijiet tagħha meta titla' tixhed. Fil-fatt żewġ persuni ġew imressqa quddiem il-Qorti tal-Maġistrati u mixlija dwar dawn ir-reati li jolqtu r-retta amministrazzjoni tal-ġustizzja.

Illi minkejja li r-rikorrenti ppreżentat rikors urġenti fil-15 ta' Mejju 2017 iffirmat minn Dr. Vincent Galea li fih intqal 'inter alia' illi – "7. ... Travis Leigh Brannon has not followed and is not following the Court's order of the 17th March 2017 and has thus made himself liable to contempt. 8. Moreover, the minor children are being exposed to a harmful situation in that their mother is continuously being put in a bad light with them ... It is thus of paramount importance that the recommendations made by Ms Andreana Gellel in her report filed on the 2nd May 2017 take effect immediately.", xorta baqa' ma sarx dak illi hemm fir-rapport tas-Senior Social Worker ta' l-Aġenzija Appoġġ, li hija kienet irrakkomandat li għandu jsir b'urġenza sabiex titwaqqaf il-ħsara lit-tfal.

Illi apparti l-fatt li t-tfal żgħar tagħha ġew imċaħħda mill-għożża tal-omm li tant hija indispensabbli fis-snin ta' formazzjoni u dina l-ħsara tidher fihom u f'kull

rapport li jsir dwarhom, inklużi dawk tal-iskejjel li jattendu, it-tifla l-kbira Eva ġarrbet tħassir morali u konsegwenzi oħra ta' natura tassew gravi speċjalment bl-assenteiżmu regolari tagħha mill-iskola, jekk mhux ukoll irriversibbli. Fiż-żmien meta minn tifla kienet qiegħda tiżviluppa f'xebba, l-omm kienet mifruda minn bintha.

Illi is-sitwazzjoni ġiet reża ferm iktar gravi meta l-Qorti Ċivili (Sezzjoni tal-Familja) ħarġet ordni permezz ta' ***Digriet mogħti fit-23 ta' Frar 2018*** *sabiex ma jkun hemm l-ebda kuntatt bejn Eva u ommha, ordni li tmur kontra n-natura, u l-ordni u l-istint tal-bniedem. Permezz ta' dan id-digriet tagħha, il-Qorti aġixxiet 'ultra vires' u kisret il-Kostituzzjoni u l-Kap 319 billi qatt ma kellu jinħareġ ordni bi vjolazzjoni tad-drittijiet fondamentali tal-bniedem, partikolarment l-Artikolu 8 tal-Konvenzjoni Ewropeja. Diffiċli biex titkejjel il-ħsara devastanti li kkawża dan id-digriet tal-Qorti tal-Familja:*

> *"Decrees as follows:*
>
> 1. *Orders that no further therapy sessions be held in respect of the minor child Eva.*
> 2. *Orders that unless there is prior Court authorisation, there is no contact between Eva and her mother."*

Illi għalkemm ir-rikorrenti talbet rimedji b'mod konkret permezz ta' rikors tal-10 ta' Awissu 2018 u oralment 'seduta stante', xejn ma għadu nbidel sa llum.
Illi anke l-Pulizija naqsu li jieħdu azzjoni effettiva biex jipproteġu lir-rikorrenti mill-aġir abbużiv ta' Travis Leigh Brannon, senjatament in konnessjoni ma' inċident li gara fl-Isptar St James, li fih Travis Leigh Brannon kien zeblaħha u offendiha quddiem kulħadd, inklużi membri tal-istaff u tobba tal-Isptar St James Hospital. Seduta wara l-oħra quddiem l-ewwel il-Magistrat (illum Onorevoli Mħallef) Grazio Mercieca u wara il-Maġistrat Caroline Farrugia Frendo ma seta' jsir xejn għaliex Travis Leigh Brannon baqa' ma ġiex notifikat mill-Pulizija minkejja li r-rikorrenti diversi drabi, f'kull seduta, tathom l-indirizz tiegħu f'Marsaskala. B'hekk l-imputat qatt ma attenda għas-seduti, minkejja li huwa stess kien esibixxa kopja tal-avviż tal-kawża fl-atti tal-kawża ċivili. L-imputazzjonijiet dedotti kontra tiegħu tħallew jaqgħu mill-Pulizija, minflok għamlu dak li kien meħtieġ minnhom biex jipproteġu lir-rikorrenti. Min-naħa tar-rikorrenti, dawn l-akkużi setgħu irnexxew stante li hija għandha recording fuq il-mobile tal-inċident li ġara fl-Isptar St James, li bih Travis Leigh Brannon kien ġie akkużat wara rapport magħmul minnha lill-Pulizija. Dan l-inċident kien ukoll jikser il-kundizzjonijiet imposti fuq l-imsemmi Travis Leigh Brannon b'sentenza

mogħtija qabel mill-Maġistrat (illum Onorevoli Mħallef) Antonio Giovanni Vella. Barra minn hekk, kontra r-rieda u mingħajr il-kunsens tagħha, il-Pulizija kkunsinnaw taħrika ta' xhud lit-tifla Eva. Dan l-avviż intuża mill-missier fil-proċeduri ċivili fejn intqal li r-rikorrenti ppruvat tisforza lil Eva biex tixhed kontra l-volonta` tagħha; u dan meta skont l-affidavit tal-Pulizija, kien fil-fatt Travis Leigh Brannon stess li talab biex it-tfal jittellgħu jixhdu. Il-Pulizija baqgħu jibgħatu n-notifika fl-indirizz ħażin avolja r-rikorrenti marret hija stess l-Għassa tal-Pulizija ta' Ħaż-Żebbuġ biex tistaqsihom kienux jafu fejn joqgħod Travis Leigh Brannon u l-Pulizija weġibha illi għandhom l-indirizz il-ġdid tiegħu iżda ma setgħux jagħtuhulha. Fil-fatt, fis-16 ta' April 2019, il-proċeduri ntemmu u l-imputazzjoni ġiet dikjarata preskritta, waqt li l-imputazzjoni l-oħra ġiet abrogata b'riżultat ta' bidla fil-liġi, li sadanittant laħqet saret effettiva.
Illi l-proċeduri kriminali kontra Conrad Bajada fir-rigward ta' diversi dispożizzjonijiet tal-Kodiċi Kriminali, li qegħdin jinstemgħu quddiem il-Qorti tal-Maġistrati (Malta) baqgħu jitwalu minħabba raġunijiet barra mill-kontroll tagħha, u għadhom ma ġewx determinati, u dan bi vjolazzjoni tar-"reasonable-time requirement" u bi preġudizzju notevoli għar-rikorrenti. Dawn il-proċeduri għandhom rilevanza kbira fil-proċeduri ċivili li għadhom pendenti quddiem il-Qorti Ċivili (Sezzjoni tal-Familja).

Illi b'hekk, ġie miksur id-dritt għall-ħajja tal-familja (Artikolu 8 ECHR u Artikolu 7 taċ-Charter tad-Drittijiet Fundamentali tal-Unjoni Ewropeja) billi –
(1) b'riżultat ta' interferenza arbitrarja da parti tal-Qorti Ċivili (Sezzjoni tal-Familja) ir-rikorrenti sofriet ammont sostanzjali ta' żmien b'aċċess limitat għat-tliet uliedha ta' erba' (4) siegħat fil-ġimgħa, fejn tali arranġament ikkawża deterjorament bla bżonn fir-relazzjoni bejn l-omm u l-ulied;

(2) il-Qorti Ċivili (Sezzjoni tal-Familja) naqset mill-obbligu pożittiv tagħha biex tiżgura illi d-drittijiet tar-rikorrenti u tal-erba' uliedha jiġu rispettati u inforzati, u li b'dan in-nuqqas tagħha ġew miksura d-drittijiet tar-rikorrenti u l-erba' uliedha għat-tgawdija reċiproka tal-kumpanija ta' xulxin; barra minn hekk, ir-rikorrenti u l-bint Eva, li għadha minuri, ilhom imċaħħda mill-imħabba u l-għożża ta' xulxin għal tlett (3) snin.

(3) l-azzjoni u d-deċiżjoni tal-Qorti Ċivili (Sezzjoni tal-Familja) li tordna li jinħargu t-tlett aħwa Brannon mir-residenza tal-omm fejn twieldu u trabbew fil-kustodja esklussiva tagħha mit-twelid, caħħdu lit-tlett aħwa Brannon u lir-raba'

wild Ethan Cappello milli jkomplu jgawdu mir-relazzjoni ta' familja li dejjem gawdew matul ħajjithom;

(4) b'riżultat tad-digriet maħruġ mill-Onorevoli Mħallef li bdiet tisma' l-kawża u b'riżultat tan-nuqqas ta' rimedju effettiv da parti tal-Onorevoli Mħallfin li quddiemhom ġiet assenjata l-kawża, ir-raba' wild Ethan Cappello safa' vittma ta' azzjonijiet u deċiżjonijiet indipendenti mir-rieda tiegħu u li ma kellux kontroll fuqhom (u lanqas tar-rikorrenti), u tal-eta` tenera ta' ħames (5) snin tilef ir-relazzjoni familjari li tant kien jgħożż u jgawdi ma' ħutu; tilef lil oħtu Eva kompletament tant li hu jaħseb li mietet għax qatt aktar ma raha minn dakinhar; u spiċċa mitfugħ f'ambjent ta' dieqa kbira u solitudni fejn qabel l-ambjent domestiku kien wieħed allegru u pjaċevoli;

(5) il-hajja sesswali privata u personali tar-rikorrenti fil-privatezza ta' darha ġiet imxandra, kompriżi gideb dwarha, mingħajr l-ebda rilevanza, u ingħata valur morali fuq kwistjoni li tirrigwarda legalita` mhux moralita` u li affettwat id-deċiżjoni meħuda mill-Qorti fejn din ma kellha l-ebda rilevanza, speċjalment meta ħarġu l-fatti veri, iżda ma sar l-ebda restitutio in integrum mill-Qorti;

(6) il-proċess tal-interrogazzjoni li tmexxa quddiem l-Assistent Ġudizzjarju da parti tal-avukat tal-avversarju Dr Stephen Thake kien abbużiv u ammonta għal ksur tad-dritt tal-privatezza u għal aġir intimidatorju u diskriminatorju, u dan mingħajr ma ġie mwaqqaf mill-Assistent Ġudizzjarju li b'ebda mod ma pproteġiet lir-rikorrenti minn dan l-assalt bid-domandi li ma kellhomx jitħallew isiru;

(7) id-dritt tar-rikorrenti li tiżviluppa relazzjoni ma' persuna oħra gie miksur b'riżultat tad-digriet tat-8 ta' Ġunju 2017, li pprojbixxa kuntatti għal nofs il-ġimgħa mal-persuna li miegħu r-rikorrenti kienet bdiet relazzjoni ġdida, liema deċiżjoni drastika ma kien hemmx il-ħtieġa għaliha;

(8) id-deċiżjoni tal-Qorti tal-Familja kkawżat xiżma u firda aggressiva tar-rabta bejn ir-rikorrenti omm u l-ulied, meta kien id-dmir ta' dik l-istess Qorti, b'obbligazzjoni pożittiva espliċita, li tiżgura li tissewwa l-ħsara sabiex tinbena mill-ġdid ir-relazzjoni familjari li kienet tkissret b'konsegwenza ta' dan kollu;

(9) id-deċiżjonijiet li żradikaw lill-minuri ulied ir-rikorrenti mir-rabta familjari bit-tibdil tar-residenza tat-tfal u bis-segregazzjoni ta' Eva minn ommha

kienu r-riżultat ta' għażliet diskriminatorji (Artikolu 14 tal-Konvenzjoni abbinat mal-Artikolu 8);

(10) il-Qorti tal-Familja naqqset ukoll mid-dover li teżerċita diliġenza u 'duty of care' versu il-familja tar-rikorrenti li ġiet esposta għal deterjorament fir-relazzjoni familjari bejn ġenitur u wild b'riżultat ta' żmien eċċessiv tal-proċeduri, liema deterjorament wassal biex il-familja ġarrbet separazzjoni de facto bejn il-ġenitur u l-wild.

Illi barra minn hekk, ġie miksur ukoll id-dritt għal smiegħ xieraq (Artikolu 6 ECHR u tal-Artikolu 47 taċ-Charter tad-Drittijiet Fundamentali tal-Unjoni Ewropeja) tar-rikorrenti billi –

(1) il-Qorti Ċivili (Sezzjoni tal-Familja) naqqset li tadotta l-miżura essenzjali u indispensabbli sabiex iġġib restitutio in integrum, kif kienet obbligata li tagħmel;
(2) il-Qorti ma żammitx seduta biex tisma' x'għandha x'tgħid bħala parti fil-kawża qabel ma jitneħħew id-drittijiet lilha, u lanqas ġiet notifikata bid-digriet tal-Qorti dwar it-tibdil fil-kwistjoni tar-residenza tat-tfal qabel ma dan ġie 'inforzat' fuqha għall-arrieda minn Travis Leigh Brannon;
(3) il-Qorti tal-Familja ordnat li d-dokument esibit minn Travis Leigh Brannon jinżamm issiġillat u konsegwentement ir-rikorrenti ma kellhiex aċċess għall-provi proċesswali u għalhekk ma setgħetx twieġeb għall-provi u sottomissjonijiet b'mod xieraq;
(4) id-dewmien fil-proċeduri ġab preġudizzju serju għar-rikorrenti u għal uliedha in vista tal-gravita` tas-sitwazzjoni b'mod partikolari għall-minuri affettwati mid-dewmien, liema dewmien ma kienx meħtieġ u ma kienx raġonevoli u kien barra mill-kontroll tagħha;
(5) id-dewmien fil-proċeduri kriminali kontra Conrad Bajada, liema proċeduri għadhom mexjin quddiem il-Qorti tal-Maġistrati u dan għal raġunijiet barra mill-kontroll tagħha;
(6) in-nuqqas tal-Pulizija li jieħdu l-azzjonijiet neċessarji tempestivament fil-konfront ta' Travis Leigh Brannon fil-proċeduri kriminali kontra tiegħu, liema nuqqas wassal biex huwa jeħles mir-responsabbilta' legali b'impunita`, u b'hekk il-Pulizija naqsu li jipprovdu protezzjoni effettiva u fil-ħin lir-rikorrenti Sylvana Brannon minn abbuż domestiku, u dan bi ksur tal-liġijiet lokali u trattati internazzjonali;
(7) ksur tal-prinċipju dwar proporzjonalita` u nuqqas ta' applikazzjoni korretta ta' dan il-prinċipju da parti tal-Qorti Ċivili (Sezzjoni tal-Familja);

(8) il-Qorti tal-Familja għabbiet lir-rikorrenti b'formaliżmi, piżijiet u spejjeż żejda u inutli meta naqset li tiddegreta dwar l-awtorizzazzjoni lill-partijiet biex jipproċedu b'kawża, liema nuqqas ġie aggravat meta l-istess Qorti diversament preseduta ddeċidiet li ma tkomplix tittratta l-kawża qabel tingħata formalment l-approvazzjoni biex il-partijiet jipproċedu b'kawża, liema miżuri kienu preġudizzjevoli għal aċċess għal Qorti u amministrazzjoni tal-ġustizzja mingħajr dewmien żejjed;

(9) il-Qorti tal-Familja ripetutament aġixxiet b'nuqqas ta' ugwaljanza u proporzjonalita` meta l-konvenut Travis Leigh Brannon regolarment ingħata estensjonijiet ta' żmien sabiex idaħħal ir-risposti tiegħu u saħansitra tħalla jdaħħalhom anke xahrejn tard mingħajr l-ebda konsegwenza, u b'hekk intlaħaq l-għan tiegħu li jikkawża aktar dewmien bla bżonn għar-rikorrenti, li dejjem osservat u żammet maż-żmien mogħti mill-Qorti;

(10) il-bdil tal-Imħallfin stante li f'dawn il-proċeduri kien hemm s'issa tliet (3) ġudikanti differenti (Imħallfin Lofaro, Mangion u Vella), liema miżura ma tistax twassal biex l-Istat jiġi eżonerat mir-responsabbilta` biex jiżgura illi l-amministrazzjoni tal-ġustizzja tkun organizzata u mmexxija b'mod xieraq u korrett.

*(11) bħala riżultat tad-deċiżjonijiet meħuda mill-Qorti fil-każijiet tar-rikorrenti, ir-rikorrenti ġiet imqiegħda f'pożizzjoni finanzjarja diffiċli li b'danakollu r-rikorrenti ma setgħetx ma tgħaddix minnha, sabiex hija tiddefendi d-drittijiet tagħha u dawk ta' uliedha. Dina l-qagħda prekarja li ġiet imqiegħda fiha kkontribwiet għall-vjolenza domestika finanzjarja minn Travis Leigh Brannon li b'hekk seta' jkompli jeżerċita kontroll u dominanza fuq ir-rikorrenti, u dan anke tnax-il sena wara separazzjoni personali legali; u tali atteġġjament ġie ttollerat u skużat mill-Qorti meta huwa tħalla jtawwal il-proċeduri ġudizzjarji bla bżonn. Illi, inoltre, ir-rikorrenti u l-erba' (4) uliedha ġarrbu trattament inuman u degradanti (**Artkolu 3 ECHR u Artikolu 4 tac-Charter tad-Drittijiet Fundamentali tal-Unjoni Ewropeja**) minħabba li għaddew u għadhom għaddejjin minn tbatija kbira u ansjeta` immensa b'riżultat tad-deċiżjonijiet meħuda mill-Qrati tal-Ġustizzja li jolqtu lilhom. Barra minn hekk, minħabba l-attitudni adottata mill-Qorti, ir-rikorrenti ġiet esposta għal żeblieh, parental alienation, abbuż domestiku, abbuż finanzjarju u piżijiet eċċessivi, tbatija mentali mill-aktar iebsa, u post-traumatic stress disorder. Barra minn hekk, l-ulied ukoll qegħdin juru sintomi ta' stress emozzjonali f'eta` tant tenera, inkluz abbuz minn drogi fl-etajiet ta' 13 u 14-il sena.*

Għaldaqstant l-esponenti titlob bir-rispett illi din l-Onorabbli Qorti jogħġobha twettaq u tiżgura t-twettiq tad-drittijiet fundamentali tar-rikorrenti hawn fuq imsemmija u

*(1) tiddikjara li r-rikorrenti u wliedha sofrew ksur ta' l-**Artikolu 8 tal-Konvenzjoni Ewropeja għad-Drittijiet tal-Bniedem u tal-Artikolu 7 tac-Charter tad-Drittijiet Fundamentali tal-Unjoni Ewropeja** li jiggarantixxi d-dritt għall-hajja privata u d-dritt għall-hajja tal-familja;*

*(2) tiddikjara li r-rikorrenti u wliedha sofrew ksur ta' l-**Artikolu 6 u 13 tal-Konvenzjoni Ewropeja għad-Drittijiet tal-Bniedem u tal-Artikolu 47 tac-Charter tad-Drittijiet Fundamentali tal-Unjoni Ewropeja** li jiggarantixxu d-dritt għal smiegħ xieraq u d-dritt għal rimedju effettiv;*

*(3) tiddikjara li r-rikorrenti u wliedha sofrew ksur ta' l- **Artkolu 3 ECHR u Artikolu 4 tac-Charter tad-Drittijiet Fundamentali tal-Unjoni Ewropeja** li jiggarantixxu l-protezzjoni minn trattament inuman jew degradanti;*

*(4) tiddikjara li r-rikorrenti u wliedha sofrew ksur ta' drittijiet oħra applikabbli skont ic-**Charter tad-Drittijiet Fundamentali tal-Unjoni Ewropeja,** inkluż l-**Artikolu 1** li jiggarantixxi d-dinjita` tal-persuna; **Artikolu 24** li jiggarantixxi l-protezzjoni għad-drittijiet lit-tfal; u l-**Artikoli 51, 52 u 53** dwar l-iskop tad-drittijiet u l-livell ta' protezzjoni, u tordna t-twettiq ta' dawn id-drittijiet fir-rigward tar-rikorrenti u wliedha kollha;*

*(5) tiddikjara li seħħet leżjoni oħra aggravata in kwantu d-decizjonijiet tal-Qorti Ċivili (Qorti tal-Familja) li zradikaw lill-minuri ulied ir-rikorrenti mir-rabta familjari bit-tibdil tar-residenza tat-tfal u bis-segregazzjoni ta' Eva minn ommha kienu r-riżultat ta' għażliet diskriminatorji bi ksur tal-**Artikolu 14 tal-Konvenzjoni abbinat mal-Artikolu 8 tal-Konvenzjoni u mal-Artikolu 7 tac-Charter**;*

*(6) tordna li jittieħdu l-mizuri kollha neċessarji sabiex is-sitwazzjoni li ġiet ikkawżata b'riżultat ta' aġir kriminali, doluż u malizzjuz tiġi ripristinata u jkun hemm **restitutio in integrum** skont il-ġurisprudenza tal-Qorti Ewropeja għad-Drittijiet tal-Bniedem billi t-tfal imorru lura għand l-omm biex jirrisjedu magħha bħal qabel;*

(7) tordna li jinbdew proċeduri kontra Travis Leigh Brannon għal disprezz lejn l-awtorita` tal-Qorti talli intenzjonalment żvija lill-Qorti b'tagħrif qarrieqi li wassal għat-telf tad-drittijiet tar-rikorrenti u għal preġudizzju serju u devastanti għaliha u għal uliedha;

(8) tordna l-ħlas ta' kumpens xieraq lil Sylvana Brannon proprio kif ukoll kumpens lil kull wieħed mill-ulied minuri Eva Brannon, Kieran Brannon u Tristan Brannon separatament, kif ukoll Ethan Cappello."

Seen the reply entered by defendantson the 28th of June, 2019 where in they entered the following line of defence[1]:-

"Illi in succinct ir-rikorrent qieghda tilmenta minn dak li gara u minn dak li qieghed jigri f'kawzi u proceduri li ghandha quddiem il-Qorti Civili (Sezzjoni Familja) mal — eks ragel taghha Travis Leigh Brannon dwar kwistjonijiet familjari partikolarmant ilkura u 1-kustodja tat- tfal taghhom.

Illi bid-dovut rispett, 1-esponent ma jistghax ma jirrimarkax kif permezz tar-rikors promotur r-rikorrenti infexxet tattakka lil kulhadd specjalment lill- Qorti Civili (Sezzjoni Familja) sensiela ma tispicca qatt ta allegazzjonijiet u stejjer infondati fejn fost affarijiet ohra qed tghid li gew lezi il-jeddijiet fundamentali taghha senjatament dwar nuqqas proporzjonalita s mill-Qorti, interferenza fil-hajja familjari taghha, trattament inuman u degradanti, diskrimniazzjoni, nuqqas ta' smigh xieraq, nuqqas ta' azzjoni mill-Kummissarju intimat u li dan wassal sabiex gew vjolati id-drittijiet fundamentali taghha.
Illi 1-esponenti jirrespingi dawn 1-allegazzjonijiet bhala infondati fil-fatt u fid-dritt stante li, kif ser jigi spjegat aktar 'l isfel, bl-ebda mod ma gew mittiefsa d-drittijiet fundamentali tar-rikorrenti liema eccezzjonijiet qeghdin jigu elenkati minghajr pregudizzju ghal-xulxin.

1. *Illi preliminarjment jigi eccepit li ghal-ahjar integrita N tal-gudizzju nfhemm lebda dubju li ghandu jissejjah fil-kawza Travis*

[1] Folio 16

Leigh Brannon mhux biss ghaliex il-kwistjonijiet li ghandha r-rikorrenti jikkoncernaw lilu u lilu biss (e.g. kustodja tat-tfal) izda wkoll ghaliex fir-rikors promotur hemm talbiet specifici li jekk jintlaqghu jolqtu lill-istess Travis Leigh Brannon bhal per ezempju talba biex jittiehdu proceduri kontrih.

2. *Illi preliminarjment ukoll, ir-rikorrent ma tistghax taghmel kawza ghan-nom tat-tfal taghha meta hi stess tghid li fil-prezent m il-kura u 1-kustodja taghhom. Ghalhekk ghall-ahjar amministrazzjoni tal-gustizzja it-tfal minuri ghandhom ikunu rapprezentati minn Avukat tat-Tfal sabiex 1-ewwel u qabel kollox jitharsu 1-interessi taghhom.*

3. *Illi in linea preliminari, ir-rikorrenti qeghdin jabbuzaw mill-process kostituzzjonali stante illi huma qeghdin jadoperaw procedura straordinarja bhal ma hija 1-procedura odjerna meta kellhom a disposizzjoni taghhom rimedju ordinarju sabiex iharsu d-drittijiet pretizi minnhom. In fatti, irrikorrenti ghandhom rimedju tramite talba ghall-varjazzjoni tad-Digrieti talQorti Civili (Sezzjoni tal-Familja) kif ukoll azzjoni quddiem il-Prim Awla talQorti Civili sabiex jattakkaw tali digrieti u dan taht il-poteri residwali tal-Prim Awla tal-Qorti Civili.*

4. *Huwa evidenti li r-rikorrenti qed tuza 1-proceduri odjerni sabiex din lOnorabbli Qorti tiddeciedi dwar diversi kwistjonijiet li ghadhom pendenti quddiem il-Qorti Civili (Sezzjoni Familja) jew sabiex jigu riveduti digrieti li tat dik il-Qorti biex Whekk tuza din 1-0norabbli Qorti bhala Qorti tat-tielet grad. Haga li ma tistghax issir. Mhux Qorti ta' revizzjoni*

5. *Illi jigi eccepit ukoll li galadarba 1-proceduri in kwistjoni ghadhom ma gewx decizi definittivament ir-rikorrenti ghandha dejjem ir-rimedju ordinarju tal-appell.*

6. *Illi ghalkemm r-rikorrenti evidentement mhijiex qed taqbel ma certu digrieti u decizjonijiet li tat il-Qorti tal-Familja, dan il-fatt wahdu zgur li mhux sufficjenti sabiex din 1-0norabbli Qorti issib*

li hemm vjolazzjoni tal-jeddijiet fundamentali li semmiet r-rikorrenti fir-rikors promotur.

7. *11-Qorti tal-Familja bhala kull Qorti/Tribunal indipendenti u imparzjali hija obbligata li tisma lill-partijiet, tevalwa u tapprezza ix-xhieda u 1-provi migjuba sabiex finalment taghti gudizzju. Ghalkemm ir-rikorrenti ma qajmitx espressament ilment dwar 1-indipendenza u 1-imparzjalita' tal-Qorti Civili (Sezzjoni Familja) minflok qed taghmel l- insinwazzjonijiet gratuwiti u infondati li I-Qorti qeghda tinterferixxi arbitrarjament fil-hajja privata taghha u ta' uliedha u li I-Qorti stess ivvjolat I-jeddijiet fundamentali tar-rikorrenti Wdecizjonijiet diskriminatorji! L-esponenti jirrilevaw illi ma sar xejn matul ilprocess relattiv li b'xi mod seta' jincidi fuq id-dritt tar-rikorrenti ta' process gust u Wisq inqas saret xi influwenza Iil min kellu jiggudika.*

8. *Illi fil-proceduri civili in dizamina fl-ebdahin u fl-ebda mument ir-rikorrent ma giet trattata b'mod differenti mill-parti I-ohra u lanqas ma jirrizulta li giet mcahhda minn xi dritt li meta wiehed ihares lejn il-proceduri fit-totalita* taghhom jista jikkonkludi li ma kienx hemm a fair hearing. Bil-fatt wahdu li lQorti tat certu decizjonijiet li kienu sfavorevoli ghar-rikorrenti, dan ma jfissirx li kien hemm ksur tal-drittijiet fundamentali taghha. Huwa sintomatiku kif firrikors promotur ir-rikorrent qed tattakka d-decizjonijiet tal-Qorti ma tghidx ezattament fliema aspetti tal- "fair hearing" il-Qorti allegatament ma osservatx.*

Illi ghalhekk m [A]hemm I-ebda lezjoni tal-jedd ghal-smigh xieraq.

9. *Illi r-rikorrent qed tilmenta li garbet lezjoni tad-dritt ghal-hajja privata u ghallhajja tal-familja garantit mill-artikolu 8 tal-Konvenzjoni Ewropea u fic-Charter tad-Drittijiet Fundamentali tal-EU.*

Fis-sentenza taghha tal-4 ta' Dicembru 2007 fil-kawza Dickson vs UK il-Qorti Ewropeja qalet hekk — The object of article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities. Ghalhekk I-indhil mill-

awtorita' pubblika ghandu jkun fil-kazi specifikament kontemplati fittieni paragrafu ta[A] I-Art.8 (ara d-decizjoni tal-Qorti Ewropeja tal-24 ta' Settembru 2007 fil-kawza "Tysiac vs Poland"). Fil-kuntest tal-Art.8 dak li jrid hajja familjari li haqqha protezzjoni u jekk I-interferenza tkunx gustifikata (ara "Raid Mabruk El Masri vs L-Onorevoli Prim Ministru et" - PAK/GV - 4 ta[s] Ottubu 2004).

Dwar dan jinghad li jekk evidentement hemm problemi kbar bejn ir-rikorrenti u I-eks ragel taghha fejn tidhol il-kura u I-kustodja tat-tfal u kwistjonijiet ohra ta [A] pika u glied dan zgur li ma giex ikkawzat mill-Qorti jew minn xi awtorita' guddizzjara ohra. Meta ma jkunx hemm ftehim bejn il-partijiet, hija I-Qorti li ghandha tiddetermina I-kura u I-kustodja tat-tfal fi proceduri ta' separazzjoni billi tissalvagwardja primarjament I-ahjar interessi tat-tfal. F 'dan il-kaz ma hemmx dubju li I-Qorti hadet in konsiderazzjoni il-fatturi kollha biex waslet ghad-digrieti taghha. Illi huwa risaput li fkawzi bhal dawn huwa kwazi impossibbli li tissodisfa Iil kulhadd pero [s] ma hemm I-ebda dubju li dak kollu li qed issir huwa sabiex primarjament jitharsu t-tfal u jkun hemm bilanc bejn id-drittijiet tar-rikorrenti bhala omm it-tfal u d-drittijiet ta missierhom Travis Leigh Brannon. Fuq kollox kif ir-rikorrenti ghandha kull dritt ma taqbilx mad-digrieti tal-Qorti I-istess Travis Leigh Brannon ghandu d-drittijiet tieghu biex anke hu ikollu access ghat-tfal u juza I-ghodda kollha legali sabiex jitharsu dawk id-drittijiet.

Illi effettivament meta jkun hemm limitazzjoni fuq access ta' genitur ghallminuri wliedu inevitabbilment dan igib mieghu xi tip ta' interferenza fil-hajja familjari tal-genitur izda fl-istess waqt dan ma jgibx bhala konsegwenza 1vjolazzjoni tal-Artik01u 8 tal-Konvenzjoni Ewropeja u dan peress illi tali mizuri huma proprju intizi sabiex jigarantixxu rispett lejn il-hajja, id-dinjita', I-kura u I-protezzjoni tal-minuri.
Illi dak illi huwa imperattiv fil-kunsiderazzjoni ta' I-allegazzjoni tar-rikorrenti huwa jekk, filwaqt li I-interess tal-minuri jinzamm bhala kunsiderazzjoni primarja, jekk fid-decizjonijiet pendente lite tal-Qorti Civili (Sezzjoni tal-Familja) zammewx dak il-bilanc gust

bejn I-interessi kunfliggenti tal-genituri. F'dan lezercizzju I-qrati ghandhom diskrezzjoni wiesgha hafna u sakemm dina lOnorabbli Qorti ma ssibx li tali ezercizzju ta' diskrezzjoni sar b'mod irragonevoli, jew ma jsegwiex ghan legittimu, jew mhux necessarju allura ma ghandux jigi mibdul.

Illi ghalhekk ma hemm I-ebda ksur tal-artikolu 8 tal-Konvenzjoni Ewropea.

10. *Illi r-rikorrent qieghdha tilmenta ukoll bi trattament inuman u degradanti filkonfront taghha.*

Illi I-esponent jirrilevaw li dan huwa ilment ezagerat u assurd.

Tajjeb li wiehed ifakkar li skont il-gurisprudenza tal-Qorti Ewropea ta' Strasbourg, "inhuman treatrnent covers at least such treatment as deliberately causes severe mental and physical suffering". It-trattament jitqies inuman meta jkun mahsub minn qabel u ppremeditat biex jikkaguna "intense physical and mental suffering" — kaz "Tekin v. Turkey", deciz fid-9 ta' Gunju, 1998. Gharrigward ta' trattament degredanti dan jitqies li jirreferi ghal dak it-trattament li jgieghel lil dak li jkun ikisser ir-resistenza kemm fizika u morali tal-vittma jew li jgieghel lill-vittma li tagixxi kontra I-volonta taghha. It-trattament ikun ukoll degradanti jekk ikun tali li jqajjem f'dak li jkun sentimenti ta' biia', angoxxia u sens ta' inferjorita' li jumiljaw u jiddenigraw lil dak li jkun sahansitra sakemm possibilment jabbattu r-reiistenza fiüika jew morali tieghu.

Illi I-protezzjoni ghad-drittijet fundamentali hija kontra trattament fost affarijet Ohra premeditat, li jikkawza tbatija fizika u mentali, u <u>trattament intenzjonat u apposta</u> li johloq biza, twerwir, angoxxa ecc <u>bil-ghan specifiku</u> li jumilja u jiddegrada lid-dinjita' tal-persuna.
Illi fid-dawl ta' dan QATT ma jista' jinstab minn din 1-0norabbli Qorti li fil-kai odjern sar xi agir min-naha tal-intimati li jista' jitqies li jammonta ghal dan it-tip ta' trattament u ghaldaqstant din 1-0norabbli Qorti m'ghandiex

issib ksur tal-Artikolu 3 tal-Konvenzjoni Ewropeja u talartikolu 7 tac-Charter;

11. *Illi ilment iehor li qajmet ir-rikorrent jirrigwarda dewmien irragjonevoli fil-kawza ta [A] separazzjoni u kif ukoll dewmien biex tigi deciza kawza kriminali li hemm fil-konfront ta' certu Conrad Bajada.*

Illi huwa pacifiku kif konstatat anke mill-gurisprudenza lokali kif ukoll dik talQorti Ewropea tad-Drittijiet tal-Bniedem li I-fatturi li principalment ghandhom jittiehdu in konsiderazzjoni sabiex jigi determinat jekk is-smiegh ta' process eccediex il-parametri tas-smiegh fi zmien ragjonevoli huma I-komplessita' talkaz, I-agir tal-partijiet fil-kawza u I-agir ta' I-awtorita' jew awtoritajiet relevanti — f'dan il-kaz I-agir ta' awtorita' gudizzjarja. Ghalhekk, skond il-gurisprudenza assodata kemm nostrali kif ukoll dik Ewropeja, sabiex Qorti tasal ghal konkluzjoni dwar jekk kienx hemm ksur tad-dritt ta' smiegh xieraq fi zmien ragonevoli, il-procedura gudizzjarja mertu tal-allegazzjonijiet trid tkun ezaminata fl-assjem taghha u ma jistax ikun ezaminat biss element jew parti wahda minn din il-procedura.

Ma jidhirx li kien hemm xi nuqqas lampanti mill-Qorti meta huwa pjutost ovvju li I-fattur ewlieni li qed jikkawza dilungar zejjed huwa il-komportament tar-rikorrenti u Travis Leigh Brannon. II-Qorti li qed tisma il-kawza m[l] ghandha I-ebda interess li I-kawza iddum iktar milli sippost izda meta jkollok kawza bhal din fejn il-partijiet jaghmlu min kollox biex jostakolow Iil xulxin rikorsi fuq rikorsi ovvjament dan ser iwassal inevitabilment ghaldewmien.
Illi rigward d-dewmien fil-kawza kriminali li hemm kontra Conrad Bajada jinghad li r-rikorrenti m[s] ghandha I-ebda jedd tinvoka din il-lanjanza rigward kawza li hi m'hijiex parti fiha. II-kawza kriminali u I-andament taghha jikkoncernaw Iil Conrad Bajada u mhux lir-rikorrenti u ghalhek kif ser jigi spjegat iktar I quddiem fil-kawza, I-artikolu 6 tal-Konvenzjoni Ewropea ma japplikax ghas-sitwazzjoni tar-rikorrenti.

12. *Illi I-esponent Kummissarju jirrespingi ukoll kwalunkwe akkuza li hu naqas rnilli obbligazzjoni pozittiva li iharess il-jeddijeit li ssemmi r-rikorrenti jew li b'xo mod abdica mir-responsabilitajiet tieghu u ghalhekk kull allegazzjoni u talba fdan is-sens hija infondata fil-fatt u fid-dritt kif ser jigi ppruvat iktar 'l quddiem fdin il-kawza*

Ghaldaqstant fid-dawl tas-suespost ma hemm I-ebda lezjoni tad-drittijiet fundamentali tar-rikorrenti u din I-Onorabbli Qorti ghandha tichad I-allegazzjonijiet u t-talbiet kollha bhala infondati fil-fatt u fid-dritt."

It is being noted that on the 15th of November 2019, this Court delivered a preliminary judgement regarding the first and second defence pleas filed by defendant, that is, whether Travis Leigh Brannon should be a joinder in the suit and the Children's Advocate to be appointed to represent the minors in these proceedings.. The Court acceded to these requests. [2]

Seen that the proceedings for the benefit of Travis Leigh Brannon proceeded in the English language.[3]

However, probably not conscious of the language the hearing was proceeding in, the joinder in the issue **Travis Leigh Brannon entered his reply[4] on the 26th of February, 2020 in which he premised that:-**

1.Illi pendenti quddiem il-Qorti kompetenti, hemm proceduri civili prezentati mir-rikorrenti odjerna kontra 1-esponent (kawza numru 72/13 AGV "Sylvana Brannon vs Travis Leigh Brannon" u kawza numru 208/16 ACV "Brannon Sylvana vs BrannonTravis Leigh") illi jikkoncernaw il-kura u 1-kustodja tat-tfal minuri tal-kontendenti. F' dawn il-proceduri, 1-attrici, ir-rikorrenti odjerna, ghalqet il-provi taghha fl-udjenza tas-16 ta' Jannar 2020 u fl-udjenza sussegwenti, tat-18 ta' Frar 2020, ma setgha jsir xejn ghaliex la giet 1-attrici u lanqat 1-avukat taghha. Ghaldaqstant huwa car illi r-rikorrenti odjerna qeghda tirrikorri ghal proceduri kostituzzjonali — illi min-natura stess taghhom huma rimedju eccezzjonali mghoti wara li

[2] Folio 49
[3] Folio 111
[4] Folio 113

dawk ordinarji jkunu ezawriti — sempliciment bhala alternattiva ghal dawk civili illi d-dewmien taghhom sallum hija haga illi ghaliha tista' tkun biss responsabbli 1-istess rikorrenti.

2.Illi r-rikorrenti, skont dak mistqarr minnha stess, tidher illi batiet fil-kors tal-kawza mill-hwejjeg illi dwarhom tilmenta minghajr ma qatt ippruvat effettivament tindirizzhom fil-proceduri civili.

3.Illi 1-allegazzjonijiet kollha maghmula mir-rikorrenti huma kkontestati mill-esponent.

During the sitting of the 22nd of January 2020, there was an objection regarding the appointment of Dr. Tanya Sammut to act as the Children's Advocate thus Dr. Mary Muscat was duly so appointed.

Evidence advanced.

The applicant Sylvana Brannon testified several times, explaining that she separated on the 14th of February 2007. After some time, she had another child and due to the fact that he was not included in the separation contract, judicial proceedings were presented in order for him to start receiving maintenance. Also due to the fact that there were maintenance arrears amounting to around twenty-seven thousand Euros (€ 27,000), judicial proceedings were commenced in 2013. On the other hand, Travis Leigh Brannon had commenced proceedings for the care and custody of the children. In the meantime, applicant had also started criminal proceedings due to the fact that the man with whom she had had a relationship, Conrad Bajada, had passed on some photos allegedly depicting her in a compromising sexual position, to her ex-husband. She explains that she had not seen the photos and that the Court had ordered for them to remain sealed.

During the proceedings before the Family Court, Dr. Stephanie Galea had been appointed as the Children's Advocate and the applicant noted (and lamented)[5]

[5] As reflected in the promoting application.

that she, the Children's Advocate, only had short meetings of around ten minutes with the children. Following such meetings, she had prepared a report of around a page and a half, and she had recommended that the children should reside with the father. Applicant was not notified with this report or with the subsequent court decree. However, when asked by the Court whether she had replied to the court decree of the 6th of June 2016, she confirms that she did. Applicant explains her main concern that time is passing, and she is not seeing her children.

Applicant continued to testify on the 16th of October 2020. She explains that due to the fact that she could not testify before the Family Court to reply to the allegations made, her expenses amounted to twenty-six thousand Euros (€ 26,000). (The court here notes that as per document exhibited a fol. 164, these were judicial expenses including the fees due to applicant's lawyers.)

Applicant continued to testify on the 29th of November 2021. Here she stated that Eve was now living with her and that the father Travis Leigh Brannon had left for Canada a week before.

To be noted that applicant had tesitifed on other occasions which for technical reasons were not recorded but parties minuted that the Court could proceed to determine the case and pronounce judgement in absence thereof.

Witness **Eric Capello**[6] for applicant testifies that he had a relationship with applicant, and they have a child together, Ethan. They had started dating in 2009, Ethan was born in 2010 and they stopped dating in 2010. He explains that she is a good mother and that she has a very good relationship with their son. He knows that there are court proceedings regarding the minors but does not know the details. His son Ethan was affected and had to start counselling also due to the fact that he misses his sister Eve, one of his sibblings, or rather half-sibbling. He stated that he did not know the reason why Eve has not spoken to her mother for the past years. However he does testify that Eva and her mother had had a very good relationship and that all of a sudden the minor had just almost overnight removed herself.

[6] Folio 366

Witness **Charlo Cassar**[7] for applicant testifies that he met applicant for the first time on the 1st of September 2016 and dated till September 2019. When they were together there was a court decree and she used to see the children for only a couple of days during the week. He saw Eve only once, but testified that the mentioned child she was completely detached from them.

Witness **Carmen Sammut**[8] for applicant testifies that she was appointed as a court expert by the family court. She had *"to prepare a psychological report about Travis Leigh Brannon and Sylvana Brannon with particular emphasis on their suitability or otherwise as custodial parents of the three minor children."* In her assessment, she noticed that although both parents are very bright and intellectual, due to a very difficult background, they were not prepared to be parents. From their affidavits it also resulted that they emphasized more their needs than their children's. She had thus suggested family therapy.

She confirms that although there was a court decree in order for Eve to undergo therapy, this never happened as the father, who was afforded custody by this time, never contacted her.

Witness **Marica Busietta**[9] for applicant testified that she is a physiotherapist and that she was appointed by the Family Court on the 16th of June 2017 to work with the Brannon minors. After preliminary meetings, she had informed court that the minors were on different levels and needed different support. She continued working with Eve, who at the time was 13 years old, although she did not attend all the sessions. She explains that the girl was very resistant to therapy, and she was afraid that whatever she said would be disclosed in Court. She had filed the report in secrecy as the Court had ordered that this could not be disclosed.

To be noted that Travis Leigh Brannon, though sittings were adjourned for this purpose, did not testify or advance forward any witnesses. Infact account should be taken that the joinder in the issue, regardless of his oppository reply, hardly even bothered to attend the Court sittings and finally just left the Maltese islands and his own children.

[7] Folio 371
[8] Folio 383A
[9] Seduta 12 ta' Lulju, 2021.

- **Notes of submission**

- **Applicant**

The applicant submits that these proceedings are centred on several shortcomings of the Family Court and the consequential violation of the applicant's right to respect for their family life due to parental alienation she suffered. The applicant makes a long summary of the facts that took place before the Family Court. She also laments, though briefly, that the Commissioner of Police was lacking in Criminal proceedings.

Applicant submits that the Family Court should have noticed the gravity and urgency of the situation and ought not to have allowed proceedings to be prolonged necessarily. According to the jurisprudence of the European Court of Human Rights *"the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life."* - **A.K. & L vs Croatia** decided on the 8th of January 2013. This enjoyment is protected under Article 8 of the European Convention on Human Rights. This should be protected by the State and thus the State has the obligation to take positive measures to ensure such enjoyment. In referring to **Ignaccolo-Zenide vs Romania** decided on the 25th of January 2000, the applicant states that Article 8 includes a parent's right to take the necessary measures in order to be reunited with the child and that there is an obligation on the national authorities to facilitate such reunion. This in so far as the interest of the child dictates that everything must be done to preserve personal relations and when it is appropriate to *"rebuild"* the family.

It has also been held that in cases concerning the enforcement of a decision in the sphere of family law, that the national authorities must take all the necessary steps to facilitate the execution of such a decision. The applicant continues to refer to European Jurisprudence and explains that the adequacy of the measures taken is to be judged by the swiftness of their implementation, because the passage of time can have an irremediable effect on the relationship between the parent and the child.

It is submitted that during the proceedings before the Family Court, the Court did not do enough to prevent the parental alienation of the applicant from her children.

Applicant submits that she should have never been put in a position where even though she did nothing wrong she could not communicate with her daughter, and she had to ask the constitutional court to intervene urgently. Applicant claims that she has been treated inhumanly because she was separated from her children.

According to applicant it has also been held that unreasonable delay in domestic proceedings leading to a loss of relationship between the parent and the child is in violation of Article 8 of the European Convention on Human Rights. It was held by the European Court in the case **Schrader vs Austria** decided on the 12th of October 2021 that –

"30. Having regard to its case-law on the subject (see Kopf and Liberda, cited above, § 46), the Court observes that the proceedings began on 7 May 2013, when the applicant requested visiting rights in respect of the children (see paragraph 4 above), and ended on 25 October 2018, when the Regional Court's decision of 18 October 2018 was served on him (see paragraph 9 above). Thus, the proceedings lasted five years and five months at two levels of jurisdiction, including remittals.

31. In these circumstances, the Court cannot find that the domestic courts complied with their duty under Article 8 to deal expeditiously with the applicant's request. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

32. The Court therefore finds that the procedural requirements implicit in Article 8 of the Convention were not complied with and that there has been a breach of that provision on account of the length of the proceedings."

Additionally, applicant submits that there has also been a violation of Article 6 of the European Convention on Human Rights due to the fact that proceedings which were filed by her in 2013, were conjoined with the proceedings filed by her ex-husband in 2016, and thus prolonged for 9 years. Applicant quotes passages from her testimony and cross-examination. She also submits that contrary to what the State Advocate submitted she was treated differently and

there was not equality of arms. This is based on her allegation that her ex-husband was allowed various extensions whilst she was not.

Reference is also made to the criminal proceedings against Conrad Bajada, however this Court does not deem that these proceedings are part of the merit of these constitutional proceedings.

In respect of the violation of Article 3 of the European Convention on Human Rights, applicant submits that this stems from the fact that her children were deprived of their mother, and she was deprived of contact with her children. Applicant contends that ignoring the recommendations of Andreanna Gellel was tantamount to inhuman treatment. Applicant contends as well that she was persistently degraded and was treated as an unfit mother for allegations which turned out to be baseless.

Applicant refers to the preliminary plea of the State Advocate that she did not avail herself of ordinary remedies. Applicant submits that she made several attempts for the situation to be remedied but to no avail.

Applicant refers to **Dr. Ivan Sammut noe vs Il-Avukat tal-Istat et** decided by this Court, presided differently, on the 26th of November 2020, which judgement refers extensively to **Cengiz Kilic vs Turkey** -

"126. The decisive point in the present case is therefore whether the national authorities took all the measures which could reasonably be required of them in the context of the proceedings which had as their object the exercise of the right of custody and visit and aimed at the applicant's reunion with his son.

127. The Court observes that, according to the documents contained in the file, throughout the two divorce proceedings, in particular between October 2005 and December 2008, the applicant made requests, no less than ten times, for the maintenance of his personal relations with his son or informing the court that his right of access had been hindered by the mother of the child.

In addition, it notes that the applicant remained without contact, or in very limited contact, with his child for periods of up to two years.

128. It also notes that the psychological expertise of the parents and the child was not requested until September 2008 and that the corresponding reports were submitted in December 2008, namely more than seven years after the couple separated. and the first petition for divorce filed by the applicant, together with an application for the granting of parental authority.

129. It notes in this regard that, according to the experts' reports (see paragraph 55 above), the lapse of time without adequate contact between the applicant and his son played a decisive role in the attitude of rejection that the latter manifested vis-à-vis his father.

130. While admitting that the situations of non-performance encountered in matters of parental authority and visitation and custody rights are particularly difficult to resolve through the courts, the Court notes the absence, in the file, of elements indicating that the family court judge has made efforts to reconcile the parties in their respective claims or that he has taken measures to facilitate the voluntary execution of court decisions."

In respect of the remedy requested, applicant submits that the arrears due in maintenance and amounting to twenty-six thousand Euros (€ 26,000), are still due, especially because the father of the children had left the island.

- **State Advocate And Commissioner of Police**

The defendants submitted their final written submissions on the 24th of October 2022. These constitutional proceedings seem to be a result of the separation proceedings between applicant and her ex-husband Travis Leigh Brannon, and due to the fact that she did not have the care and custody of the minors. The proceedings before the family court have been concluded per judgement dated 30th March 2022, and no appeal has been filed. It has been also noted that Travis Leigh Brannon has left Malta and is now residing in Canada and in fact this Honourable Court was informed about this during the sitting of the 21st of March 2022. Thus, not only as per decree dated 1st December 2021, but now also as per judgement given by the Family Court it has been confirmed that applicant has the care and custody of the minors.

In respect of the alleged violation of Article 8 of the European Convention of Human Rights, although this article provides that everyone has the right to his private life and that of his family, in those situations were minors are concerned, it is Court practice to take into consideration first and foremost the best interest of the minors. The removal of children from their parents does not end the natural ties of the family, but it can be deemed to be an interference in the right to a family life. In order for such interference not to be deemed as a violation of this fundamental human right, this must have been ordered according to the law and it has to be deemed as *"necessary in a democratic society."* In order for such an interference to be deemed as necessary in a democratic society, it has to be proven that it was socially necessary, and it is proportionate in its undertaking. Article 8 of the Convention refers to the respect that the State has to have towards the rights listed in that Article. This means that there is a passive obligation on the State not to interfere unnecessarily nor in an excessive manner in those rights, in such a manner that not all interferences are prohibited.

There is agreement that part and parcel of the right to family life as per article 8, this includes the right that a parent and child can enjoy each other's company – **Gluhakovic vs Croatia** decided on the 12th of April 2011. When the parents are separated or they do not live together, then the parents have the right to stay with their children and the state should facilitate such a union – **Shaw vs Hungary** decided on the 26th of July 2011.

They futher submit that the fulcrum of these proceedings seems to be a decree dated 14th July 2016, whereby Court acceded to a request by Travis Leigh Brannon asking for the care and custody of the children and to grant only access to applicant. In this application Travis Leigh Brannon alleged a number of facts in respect of the applicant in particular facts regarding her intimate and sexual sphere. Before the Family Court it was alleged that she was involved in a service of striptease and/or pole dancing and she also admitted owning a box full of sex toys and other such objects of the same purpose and nature.

According to defendants it is not being contested that the decrees given by the Family Court where not according to the law. The Family Court has the power as per Article 47 of the Civil Code of The Laws of Malta to give those orders which are necessary for the care and custody of minors, and this is in the best interest of

the minors. If it is necessary and it is in the best interest of the minors, it is possible that one of the parents is denied access. In this case the interest of the minor has to prevail on that of the parents – **V. vs Malta** decided by the Commission on the 9th of April 1992.

Thus, in this case, the Family Court had all the right to order for the children not to be exposed to certain facts which were alleged in respect of applicant. The Family Court could not remain passive when faced with such serious allegations. In these circumstances the interference was justified and within the remits of Article 8 of the European Convention of Human Rights and Article 32 of the Constitution.

Regarding the alleged violation of Article 6 of the European Convention of Human Rights, one must not just look at a single and particular episode but must evaluate the whole process. Reference is made to **Gregorio sive Godwin Scicluna vs Avukat Generali et** decided by the Constitutional Court on the 15th of October 2003 and **Martin Dimech vs Malta** decided by the European Court of Human Rights on the 2nd of April 2015. The main principle is that one should wait for the proceedings to end before seeing whether there was a fair hearing or not.

It must not be forgotten that the family court proceedings were concluded when judgement was given on the 30th of March 2022 and applicant's requests were acceded too in both judicial proceedings.

In respect of the protection given by Article 3 of the European Convention of Human Rights, according to European jurisprudence "*inhuman treatment covers at least such treatment as deliberately causes severe mental and physical suffering*" (Karen Reid, A Practitioner's Guide to the European Convention on Human Rights, page 522). Treatment is deemed as inhuman when it is premeditated in order to cause "*intense physical and mental suffering*" (**Tekin vs Turkey** decided on the 9th of June 1998.

Regarding the protection from inhuman treatment, defendants refer to **Calleja et vs Commissioner of Police et** decided by the Constitutional Court on the 19th of February 2008. The Constitutional Court insisted that a distinction should be made between inhuman treatment and degrading treatment, because although it

is true that inhuman treatment is per se degrading, the contrary is not necessarily so.

In the case **Peers vs Greece** decided by the European Court of Human Rights on the 19th of April 2001, it was observed that - *"The Court recalls that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall with the scope of Article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, Ireland vs The United Kingdom, judgment of 18 January 1978, Series A no. 25, p. 65,162)."* This was also reiterated in the case **Yancov vs Bulgaria** decided by the European Court of Human Rights on the 11th of December 2003.

Although the applicant has problems with her ex-husband, this was not due to some direct intervention by the defendants. Thus, in light of what has been premised, this Honourable Court should not find that there has been a violation of Article 3 of the Convention.

Defendant Travis Liegh Brannon never presented any form of submissions for the consideration of this Court.

PROOF

Both applicant and defendants presented the court with documentation relative to the proceedings in the family court. This court will outline only the relevant parts of these proceedings.

Proceedings number 72/2013 presented on the 11th of April 2013, whereby applicant requested the court to a) declare that the care and custody of Tristan is vested solely in applicant; b) to order Travis Leigh Brannon to pay arrears of maintenance; c) declare that access to the son will be in certain days and hours; d) vary a clause in the separation contract and e) to order Travis Leigh Brannon to refund half of the sum paid by applicant for the children's' expenses.

The *iter* of the family court proceedings were that the First sitting was held on the 5th of June 2013. Travis Leigh Brannon was notified and presented a reply on the 28th of November 2013. A judicial assistant was appointed in the sitting of the 23rd of January 2014, in order for him to gather the necessary evidence. Judgment in this case was delivered on the 30th of March 2022. Applicant's requests were accepted, and there was no appeal also due to the fact that in the meantime Travis Leigh Brannon has left Malta.

The second set of proceedings between the parties was application number 208/2016 in the names **Sylvana Brannon vs Travis Leigh Brannon** whereby applicant requested court so that i) that the care and custody of the minors be vested exclusively in applicant's name; and ii) to give the necessary recommendations regarding the minors. These proceedings were filed on the 23rd of September 2016.

On the 8th of March 2017, the Court ordered applicant to file an application regarding the care and custody of the minors. The Court decreed on the 17th of March 2017, whereby it ordered amongst other things that i) it appointed Agency Appogg to prepare a social report in respect of the minors, in respect of the parents and in respect of family members and/or partners with whom the children come into contact and to make recommendations to the Court; and ii) it ordered the parties not to talk to the children about the merits of the judicial proceedings.

These proceedings also included the reports submitted by Dr. Stephanie Galea and Andreanna Gellel. On the 18th of October 2017, the Court suspended temporarily the visits between applicant and the minor Eva. The on the 19th of June 2018, Andreanna Gellel presented another report whereby she concluded that:

"In the light of the above information, the Agency is of the humble opinion that the monitoring sessions should be suspended with immediate effect since the situation seems to be stable and is not negatively influencing the children's wellbeing."

From these proceedings before the Family Court, this Court notes in particular the following facts. The separation contract dated 14th February 2007, in the acts

of Notary Patricia Hall was exhibited and according to clause 6.1, the care and custody of the children had been entrusted to applicant.

An application was entered by Travis Leigh Brannon on the 3rd of June 2016, whereby after exhibiting a number of photos which allegedly portrayed applicant in a supposedly compromising sexual situation, requested the Family Court to grant him the care and custody of the children. On the 6th of June, the Family Court had ordered for these photos to remain sealed and ordered that applicant be notified in order to reply to this application. Applicant replied on the 17th of June 2016.

A report was filed by the Children's Advocate Dr. Stephanie Galea (fol. 133) dated 13th July 2016, in which she concluded that the care and custody should be assigned to the father and that the mother should have access to the children according to specific dates and times. The Family Court gave a court decree in this sense on the 14th of July 2016.

Senior social worker Andreanna Gellel presented her report on the 2nd of May 2017 (fol. 143) and recommended that:

1. *The Brannon minors, Eva, Kieran, and Tristan live with their mother, Sylvana Brannon;*

2. *That the minor Eva and her mother Mrs Brannon attend family therapy with the possibility that the minors Kieran, Tristan and Ethan attend too, to establish a new relationship between the family members.*
3. *That the father Mr. Brannon attends psychotherapy sessions;*

4. *That the minors Kieran and Tristan have supervised access with their father and that for the time being Eva does not attend until the minor's therapist deems it fit for Eva to attend, but not before Mr. Brannon had needed his therapy sessions."*

Following a judgement given on the 8th of June 2017 (fol. 139) in the proceedings 208/2016 **Sylvana Brannon vs Travis Leigh Brannon**, the Family Court explained that after hearing the children *"in camera",* it arrived to the conclusion that Travis Leigh Brannon had manipulated and abused of the judicial process.

Thus, it ordered to i) the revocation *contrario imperio* of its decree dated 14th of July 2016; ii) it nominated a psychotherapist; iii) it nominated a psychologist and iv) that the children reside with the father and mother in specific dates and times. The court also considered that a decision regarding contempt of court on the part of Travis Leigh Brannon be decided at a later stage.

However, after an application filed by the psychotherapist Marica Busietta, the Family Court during the sitting of the 18th of October 2017 (fol. 278), decreed to suspend temporarily applicant's access to the minor Eva.

On the 10th of August 2018, applicant filed an application requesting that the children return to reside with her and in order for court to act on the contempt of Court of Travis Leigh Brannon.

In a report presented by Carmen Sammut (fol. 398) dated for the Family Court the following concluding comments are made -

i) "*The splitting that exists in this family is very worrying, as both parents are so influenced by their own childhood and family of origin backgrounds that they do not seem to be able to realise how they are recreating the same dynamic in their own family."*

ii) *"I met this family in 2017, and from what I had seen then (I hope that things have improved for the sake of these children), it is very difficult to identify one of them as being in a position to be the kind of parent that these vulnerable children really need."*

iii) *They were finding it very difficult to understand their children's actual needs. It seemed they were more focused on their own needs, as adults, then actually understanding their children's needs, which may be different to theirs …"*

On the 28th of March 2019, applicant filed an application requesting judge to act after court decree of the 8th of June 2017 – **two years after.**

Considerations

First and foremost the preliminary decrees not yet dealt with should be considered at this stage.

Exhaustion of local Remedies.

Before the court embarks to consider the alleged breaches applicant is imputing, it is apt to deal with the plea entered by the Attorney General and The Commissioner of Police that all claims advanced should be denied on the basis that applicant has not exhausted all local remedies before having exceptional recourse to Constitutional and Conventional remedies. Defendants therefore advance that the claim is premature.

Reference is made to a decision delivered by the European Court of Human Rights in the **Case Vuckovic and others vs Serbia** G.C. 25/3/2014, wherein it was so explained-:

"(a) General principles of the Court's case-law

69. It is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. This Court is concerned with the supervision of the implementation by Contracting States of their obligations under the Convention. It should not take on the role of Contracting States, whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected on a domestic level. The rule of exhaustion of domestic remedies is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available in respect of the alleged violation. The rule is therefore an indispensable part of the functioning of this system of protection.

70. States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a

State are thus obliged to use first the remedies provided by the national legal system (see, among many authorities, Akdivar and Others v. Turkey, 16 September 1996, § 65, Reports 1996-IV). It should be emphasised that the Court is not a court of first instance; it does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the finding of basic facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions (see Demopoulos and Others v. Turkey (dec.)[GC],
nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 199 93/04 and 21819/04, § 69, ECHR 2010, where the Court in addition quoted the comprehensive statement of principles set out in §§ 66 to 69 of the Akdivar and Others judgment, which in so far as relevant are reiterated here below).

71. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see Akdivar and Others, cited above, § 66).

72. Article 35 § 1 also requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance (see, for instance, Castells v. Spain, 23 April 1992, § 32, Series A no. 236; Gäfgen v. Germany [GC], no. 22978/05, §§ 144 and 146, ECHR 2010; and Fressoz and Roire v. France [GC], no. 29183/95, § 37, ECHR 1999-I) and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (Akdivar and Others, cited above, § 66). Where an applicant has failed to comply with these requirements, his or her application should in principle be declared inadmissible for failure to exhaust domestic remedies (see, for example, Cardot v. France, 19 March 1991, § 34, Series A no. 200, and Thiermann and Others v. Norway (dec.), no. 18712/03, 8 March 2007).

73. However, there is, as indicated above, no obligation to have recourse to remedies which are inadequate or ineffective. In addition, according to the "generally recognised rules of international law" there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his or her disposal. The rule is also inapplicable where an administrative practice consisting of a repetition of acts incompatible with the Convention and official tolerance by the State authorities has been shown to exist, and is of such a nature as to make proceedings futile or ineffective (see Akdivar and Others, cited above, § 67).

74. To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see Balogh v. Hungary, no. 47940/99, § 30, 20 July 2004, and Sejdovic v. Italy [GC], no. 56581/00, § 46, ECHR 2006-II). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see Akdivar and Others, cited above, § 71, and Scoppola v. Italy (no. 2) [GC], no. 10249/03, § 70, 17 September 2009).

75. In so far as there exists at the national level a remedy enabling the domestic courts to address, at least in substance, the argument of a violation of a given Convention right, it is that remedy which should be exhausted (see Azinas, cited above, § 38). It is not sufficient that the applicant may have unsuccessfully exercised another remedy which could have overturned the impugned measure on other grounds not connected with the complaint of a violation of a Convention right. It is the Convention complaint which must have been aired at national level for there to have been exhaustion of "effective remedies". It would be contrary to the subsidiary character of the Convention machinery if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument (see Van Oosterwijck, judgment of 6 November 1980, Series A no. 40, pp. 16-17, §§ 33-34, and Azinas, cited above, § 38).

76. The Court has, however, also frequently underlined the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (see Ringeisen v. Austria, 16 July 1971, § 89, Series A no. 13, and Akdivar and Others, cited above, § 69). It would, for example, be unduly formalistic to require the applicants to exercise a remedy which even the highest court of their country would not oblige them to exhaust (see D.H. and Others v. the Czech Republic [GC], no. 57325/00, §§ 117 and 118, ECHR 2007-IV).

77. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see Akdivar and Others, cited above, § 68; Demopoulos and Others, cited above, § 69; and McFarlane v. Ireland [GC], no. 31333/06, § 107, 10 September 2010).”

As premised applicant finally did acquire full care and custody of her children today, and seems to be fully reunited therewith. Frankly the Court finds this plea somewhat strange as it transpires that on a domestic level applicant did file relative applications to the competent Court[10] to address her grievances. The fact that she did not have recourse to the appellate Court should not be deemed to barr her recourse for Constitutional and Conventional remedies.

Above all the alleged breaches cannot be effectively remedied by the local domestic Courts. In actual fact the applicant is alleging that it is the very Court itself that breached her rights due to the length of time involved in the resolution of the issue and parental alienation amongst others. No court of ordinary competence can determine such an allegation. Thus the plea advanced invariably fails.

[10] As even to the Criminal Court in the case of Conrad Bajada.

First claim – Violation of Article 8 of the European Convention on Human Rights

The applicant is alleging that there has been a violation of Article 8 of the European Convention on Human Rights. Article 8 states-

> *"Everyone has the right to respect for his private and family life, his home, and his correspondence.*
>
> *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

In Law of the European Convention on Human Rights**, from the authors DJ Harris, M O'Boyle, and C Warbick, it was said that –**

> *"It should be noticed at the outset that the obligation on the state is to respect family life: it does not allow persons to claim a right to establish family life, eg by marrying or having the opportunity to have children, nor a general right to establish family life in a particular jurisdiction."*

Applicant is basing her alleged violation principally on the issue of parental alienation which was not justified and that had its basis on false allegations advanced by her husband This Court has seen the proceedings before the Family court and notes the following.

-This whole saga started after applicant's ex-husband filed an application alleging certain behaviour on the part of applicant and thus requesting the Family Court to give him care and custody. The Family Court ordered applicant to be notified and she replied on the 17th of June 2016. Following a report by the children's advocate on the 13th of July 2016, the Family Court issued a court decree on the 14th of July that care and custody should be given to the father, whilst the applicant should have access to the minors on specific dates and times.

-Following this, on the 8th of March 2017, the family court asked applicant to file an application in respect of the care and custody of the children. On the 2nd of May 2017, social worker Andreanna Gellel finalized a report in which she recommended that the minors should go and live with their mother. Then on the 8th of June 2017, the Family Court gave a preliminary judgement in which it revoked its decree of the 14th of July 2016. On the 18th of October 2017, there was another report in which it was advised that the access of applicant to the minor Eva should be temporarily suspended. On the 19th of June 2018, there was another report by Andreanna Gellel in which she advised –

"In the light of the above information, the Agency is of the humble opinion that the monitoring sessions should be suspended with immediate effect since the situation seems to be stable and is not negatively influencing the children's wellbeing."

-Following this, applicant filed an application dated 10th August 2018, in which she requested that the children go and reside with her. Subsequently applicant filed an application on the 28th of March 2019, requesting court to take action on what was decided on the 8th of June 2017.

From the above timeline, this Court notes that in reality care and custody of the minors was returned to the mother on the 8th of June 2017, that is just under a year from when the Family Court had given such care and custody to the father.

However, it seems that this in fact did not take place. Also, this Court does not understand the reason why although the Family Court had ordered that the care and custody resume in applicant's name on the 8th of June 2017, this seems not to have happened and that it was only on the 10th of August 2018, that applicant filed an application for the children to go and reside with her. This means that applicant waited for a year to file an application in this sense.

As was noted before applicant is basing the alleged violation of Article 8 on parental alienation. Reference is being made to **Khusnutdinov and X vs Russia** decided by the European Court of Human Rights on the 18th of December 2018 -

"80. It follows that the national authorities' obligation to take measures to facilitate reunion is not absolute, since the reunion of a parent with children who have lived for some time with other persons may not be able to take place immediately and may require preparatory measures to be taken. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and cooperation of all concerned is always an important ingredient. Whilst national authorities must do their utmost to facilitate such cooperation, any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention. Where contact with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them (see Hokkanen, cited above, § 58; Ignaccolo-Zenide v. Romania, no. 31679/96, § 94, ECHR 2000-I; and Kosmopoulou v. Greece, no. 60457/00, § 45, 5 February 2004).

81. It must be borne in mind that generally the national authorities have the benefit of direct contact with all the persons concerned".

As has been already stated, The Court considers that in this case everything commenced from the application filed by Travis Leigh Brannon on the 3rd of June 2016 (fol. 127). The report filed by Dr. Stephanie Galea on the 13th of July 2016 concluded that –

"Illi l-esponenti, in kunsiderazzjoni tal-ahjar interessi u x-xewqat tat-tfal, umilment tissugerixxi lil din il-Onorabbili Qorti li tordna li t-tfal jigu fdati fil-

kura u kustodja ta' missierhom waqt li jkollhom access ghal ommhom bhal m'ghandhom fil-prezent ghal missierhom."

This was then infact confirmed by court decree on the 14th of July 2016 (fol. 134).

This was then turned around in a court decree dated 8th June 2017 (fol. 139) whereby care and custody were returned to applicant and access given to the father.

There were a number of reports made by experts both on the minors and even on the parents, and it is clear from the reading of these reports that all the members of this family needed help. This Court notes with pleasure that the Family Court did take the necessary steps to make this possible and that it contributed to help the minors and even the parents in the best way it could. It is also clear that the Family Court followed the suggestions made by the experts and that the best interest of the minors was always taken into consideration.

Although the applicant did not have the care and custody of the minors, and this for just under one year, she always had access to them, and this was not removed. Such access was temporarily suspended for the minor Eve, although this Court deems that according to the expert reports such suspension was necessary. Thus, although applicant did not have the care and custody of the minors, she continued seeing them every week.

A recent judgement handed down by the Court in Strasbourg in the names **Case of N.V. And C.C. vs Malta**[11] does find the said violation on breach of procedural rules. It was therin stated:-

"39. In Louis Cutajar v. Josette Farrugia gja' Cutajar, Cit. 1438/1995/1, Civil Court (Family Section), decided on 29 April 2004, the court held:

> *"That this means that the rights of the parents over their children are subject to the best interests of the same children, and this principle has been indicated as "the paramount interest of the child or children", since in the context of the rights of children, the rights of the parents are there, above all else, to protect the interests and welfare of the minors. This, in fact, is the concept of*

[11] Application 4952/21 final judgement 10/02/2023.

the family and the interests of minors is one of the pillars of the same, so much so that the court is obliged, at every stage of the proceedings before it, both during the cause (in light of what is provided in Article 47 of Chapter 16), and in its judgment, and even after judgment (see Article 56 of Chapter 16), and also during and after a contract of separation, as was emphasized on the basis of Article 61 of Chapter 16, to see that the supreme interest of the minors remains the primary consideration in every decree that it delivers about the care and custody of the children, and every decree must, even after an agreement between the parents, be aimed to benefit the minors."

...

The Court's assessment

(a) General principles

54. The mutual enjoyment by members of a family of each other's company constitutes a fundamental element of family life (see Nasr and Ghali v. Italy, no. 44883/09, § 308, 23 February 2016). According to the Court's well-established case-law, domestic measures hindering such mutual enjoyment of each other's company amount to an interference with the right to respect for family life (see, inter alia, Strand Lobben and Others v. Norway [GC], no. 37283/13, § 202, 10 September 2019, and Penchevi v. Bulgaria, no. 77818/12, § 53, 10 February 2015).

55. Any such interference would constitute a violation of this Article unless it is, first of all, "in accordance with the law". The phrase "in accordance with the law" does not merely refer back to domestic law but also relates to the quality of the law, requiring it to be clear, accessible and foreseeable. Furthermore, the interference must pursue aims that are legitimate under paragraph 2 of Article 8 and can be regarded as "necessary in a democratic society". Necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. That in turn requires that "relevant" and "sufficient" reasons be put forward by the authorities to justify the interference (ibid. § 54).

56. Regard must be had to the fair balance which has to be struck between the competing interests at stake, within the margin of appreciation afforded to States in such matters. The margin of appreciation to be accorded to the competent national authorities will vary in the light of the nature of the issues and the

seriousness of the interests at stake, such as, on the one hand, the importance of protecting a child in a situation which is assessed as seriously threatening his or her health or development and, on the other hand, the aim to reunite the family as soon as circumstances permit (see Jansen v. Norway, no. 2822/16, § 90, 6 September 2018).

57. It is not for the Court to substitute itself for the competent domestic authorities, it has to rather review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation. In assessing those decisions, the Court must ascertain more specifically whether the domestic courts conducted an in-depth examination of the entire family situation and of a whole series of factors, in particular of a factual, emotional, psychological, material and medical nature, and whether they made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what the best solution would be for the child (see Neulinger and Shuruk v. Switzerland [GC], no. 41615/07, § 139, 6 July 2010).

58. Undoubtedly, consideration of what is in the best interest of the child is of crucial importance (see, inter alia, T.P. and K.M. v. the United Kingdom [GC], no. 28945/95, § 70, ECHR 2001-V (extracts), and Diamante and Pelliccioni v. San Marino, no. 32250/08, § 176, 27 September 2011). Indeed, the Court has often reiterated that there is a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (see, for example, X v. Latvia [GC], no. 27853/09, § 96, ECHR 2013). Furthermore, the child's best interests may, depending on their nature and seriousness, override those of the parents (see Neulinger and Shuruk, cited above, § 134, and Sahin v. Germany [GC], no. 30943/96, § 66, ECHR 2003-VIII). In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (ibid.).

59. The Court further recalls that whilst Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8. What has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests. If they have not, there will have been a failure to respect their family life and the interference resulting from the decision will not

be capable of being regarded as 'necessary' within the meaning of Article 8 (see T.P. and K.M. v. the United Kingdom, cited above, § 72). In conducting its review in the context of Article 8 the Court may also have regard to the length of the local authority's decision-making process and of any related judicial proceedings (see Diamante and Pelliccioni, cited above, § 177, and T.C. v. Italy, no. 54032/18, § 57, 19 May 2022).

60. In various contexts the Court has also held that there is a positive duty to take measures to facilitate family reunification as soon as reasonably feasible (see, for example, Strand Lobben and Others, cited above, § 205, and Abdi Ibrahim v. Norway [GC], no. 15379/16, § 145, 10 December 2021 and the case-law cited therein).

...

65. However, the Court considers that the measure was not proportionate, for a plethora of reasons, including the inability to satisfy relevant procedural requirements, some of which have already been identified by the domestic courts (see paragraphs 30 and 33 above). In this connection, the Court notes the entire lack of any meaningful involvement of the second applicant in the decision-making process, as well as the limited involvement of the first applicant in so far as all her requests had been rejected, without giving her the possibility of adducing any evidence, or challenging the Children's Advocate report, the content of which was never shown to her, as well as the lack of reasoning in the Family Court's decisions.

66. In the absence of any such reasoning, and bearing in mind the information available to the Family Court before it issued the decree (see paragraph 47 above), the Court cannot but consider that the Family Court failed to look into whether there had been any real and specific risk for the child and overlooked relevant information brought to its attention (compare Penchevi, cited above, § 69). In setting out the measure (more than two months after J.'s request), it had failed to conduct an in-depth examination of the entire family situation allowing for a balanced and reasonable assessment of the respective interests of each person. Even admitting that by issuing the decree (on 1 October 2015) the Family Court was erring on the side of caution and acting 'speedily' in order to protect E., whose interests were paramount, there seems to be no justification for the inaction during the subsequent years. The Court notes that when the Family

Court realised (from the report of the expert psychologist submitted on 25 November 2015) that the order was no longer necessary, it failed to take any action, such as calling on the parties and inviting them to make submissions in order for it to undertake the relevant assessment including a balancing exercise of the interests at play, including the best interest of the child, at that stage. Nor did it take any such action at any later point in time. It thus left in place the order, contrary to the positive obligation of the State to facilitate reunification as soon as reasonably feasible, which the Court considers applied equally in the circumstances of the present case. While the Government insisted on arguing that the applicant could have requested a (or a further) revocation, the Court notes that both domestic courts have already dismissed these arguments (see paragraphs 27 and 33 above) and the Court finds no reason to alter those findings.

67. Lastly, the Court observes that de jure the decree remained valid for over four years, until the appeal judgment of the Constitutional Court confirming the prior decision to declare the decree null and void. It appears from the testimony of the second applicant in the constitutional redress proceedings that the situation continued in practice until the birth of their child on 4 November 2016 (see paragraph 23 above), and thus de facto it significantly affected the applicants for a little over a year. Nevertheless, the Court is of the view that the fact that, subsequent to that date, the applicants may have breached the order of the Family Court (with or without the agreement of J. and the constitutional jurisdiction's blessing) without consequences, does not mean that the applicants had not suffered of the alleged violation of Article 8 for the entire period until the constitutional redress proceedings came to an end. In the absence of the revocation of the decree by the Family Court, or an interim decision by the constitutional jurisdictions, during such period the applicants could have been subject to any form of sanction or consequence and continued to suffer the anxiety as to whether they would ever be able to reunite legally.

68. In the light of all the foregoing considerations the Court finds that the decision-making process at domestic level was flawed, and the measure constituted a disproportionate interference with the right of each of the applicants to respect for their family life.

69. There has therefore been a violation of Article 8 in respect of both applicants."

Considering the above cited, although applicant does complain about the sealed documents, nothing in her line of defence indicated that she was unaware of their contents. Also both parties were afforded ample time to present their case relative to concerned application. The Family Court ensured the aid of appropriate experts in the field to establish the best interests of the minors as it was so burdened to do according to law. Truth be said, where such interests are concerned it is best to err on the side of caution, not that this Court is imputing or finding any error in the Family Court's procedure. In the circumstances the Family Court was presented with, upon husband's application, it acted swiftly and upheld nothing but the prime interests of the minors till proper contrary evidence was presented for it's consideration. The Family Court acted in a legitimate and equally proportionate manner in the dire circumstances backed with the expert's reports indicated. To be noted also that when Marica Busietta testified in front of this Court[12], she was again adamant that it was imperative in the best interest of the minor Eva that the outcome of meetings with the minor would not be here disclosed to either parent. Again in front of this court, unchallenged she advised that her report would not form part of these proceedings.

To be noted that after the Court converged with the parties concerned, it was accepted by Mrs Brannon, that Mrs Marica Busietta's report remained sealed and not made available to the parties, always in the best interests of the minor Eva.

Thus, taking into consideration the above premised, the Court considers that there was no parental alienation and that thus there was no violation of Article 8 of the European Convention on Human Rights.

- **Second claim - Alleged violation of Article 6 of the European Convention on Human Rights**

The applicant also alleged a violation of Article 6 of the European Convention on Human Rights. Said Article states –

[12] Folio 419D

"In determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

Regarding this alleged violation, applicant submits that this is based on i) the fact that the proceedings she submitted and those submitted by her ex-husband where co joined and that thus the judicial process was prolonged by 9 years; ii) that she was treated differently and that there was no equality of arms, in the sense particularly that her ex-husband was given a number of extensions whilst she was not.

Reference is being made to the judgement **Colin John Morland vs The Advocate General** decided by the First Hall Civil Court (Constitutional Jurisdiction) on the 16th of March 2018, which was confirmed by the Constitutional Court -

The Court recognises that according to the jurisprudence of both the Maltese courts, as well as that of the European Court of Human Rights, in order to assess whether the case under examination was excessively lengthy and thus in breach of the right to a fair trial, the Court must have regard not merely to the duration of the case alone, but must rather examine four factors, that is:

(1) The complexity of the case;
(2) The conduct of the applicant;
(3) The conduct of the competent authorities;
(4) What is at stake for the applicant.

This has been held to be due to the fact that the time factor must not be examined in the abstract, but it must rather be examined in the light of the particular circumstances of the case before the Court. Furthermore, no single criterion is

conclusive on its own, as the Court must instead assess the cumulative effect of the four.

The Court further notes that regarding the reasonsable of the length of the proceedings, Maltese Courts have opined that the term 'reasonable' connotes a strong discretionary element, leaving it up to the Court to determine whether, considering the particular facts of the case under examination, the length of time it took for the case to be decided is such that it exceeds what is, or should normally be, acceptable in a democratic society. This therefore means that every case must be examined in light of its own special set of cicumstances.

It is the State's duty to ensure that the judicial proceses can run its course without undue delay. The Constitutional Court has previously observed that the Maltese courts are burdened with a heavy case load which often serves as an obstacle to the speedy determination of cases. This Courts agrees with the opinion expressed many times by this Court as otherwise composed and the Constitutional Court that there exists an inherent deficiency in the justice system because the public authorities are failing their duty ensure that there are enough resources for the court to be able to perform its duties satisfactorily. In this regard, the Court makes reference to the teachings of the ECHR that:

"...it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee to everyone the right to a final decision within a reasonable time in the determination of his civil rights and obligations."

In the decision **John Bugeja vs Avukat Generali** et[13] decided on the 11 of August, 2003 it was additionally argued that:

"Meta jinstab li kawza damet pendenti ghal zmien twil u damet irragonevolment biex inqaghtet, ikun gudizzju simplicistiku wisq li tintefa' l-htija ghad-dewmien fuq limhallef partikolari li jkun sema' l-istess kawza li damet. Ikun gudizzju x' aktarx immensament ingust li takkuza jew li tinsinwa li dak l-imhallef partikolari ikun tghazzen, tnikker jew generalment ma kienx diligenti f' xogholu. Dan ghaliex, fil-verita`, l-abilita` ta' dak l-imhallef li jiddisponi mill-kawzi fi zmien ragonevoli ma tiddependix biss fuq il-kwalitajiet intrinsici u personali tieghu, izda, fil-parti l-kbira tiddependi fuq l-effikacja o meno tal-ambjent li jahdem fih. Fost il-fatturi li jikkondizzjonaw dan l-ambjent, insibu nnumru kbir ta' kawzi

[13] Constitutional Court

"qodma" (backlog) li "jitghabba" bih appena jilhaq imhallef, in-numru sinjifikanti ta' kawzi godda li jigu assenjati lilu regolarment, u dawk li jista' "jiret" meta jirtira xi gudikant, il-kwalita` u l-kumplessita` tal-istess kawzi, jekk l-imhallef jinghatax persuni debitament kwalifikati biex jassistuh, jekk jinghatax rrizorsi necessarji biex jaghmel ir-ricerka tieghu, biex izomm ruhu aggornat fl-istudji tieghu, u biex isib il-hin necessarju ghad-deliberazzjoni u l-kitba tas-sentenzi.

"Id-dritt fundamentali tal-individwu li jkollu l-kawza tieghu mismugha u finalizzata eghluq iz-zmien ragonevoli, jimponi tassattivament fuq l-istat, li jrid josserva s-Saltna tad-Dritt, l-obbligu li jkollu fis-sehh sistema efficjenti t' amministrazzjoni tal-gustizzja. Il-gudikatura tifforma ttielet kolonna li fuqha hu mibni l-istat. Fis-sistema taghna, huma z-zewg kolonni l-ohra tal-istat, cjoe` l-ezekuttiv u llegislattiv, li ghandhom obbligu li jipprovdu r-rizorsi, l-istrutturi u l-ghodod l-ohra kollha necessarji biex il-Qrati jkunu f' pozizzjoni li jwettqu l-gustizzja fi zmien ragonevoli.

"Il-Qorti Ewropeja tad-Drittijiet tal-Bniedem dejjem ghallmet li l-artikolu 6 tal-Konvenzjoni:

"*.... imposes on the Contracting States the duty to organise their juridical system in such a way that the Courts can meet the requirements of this provision* ***Salesi vs Italy*** *(26/02/1993). It wishes to reaffirm the importance of administerting justice without delays which might prejudice its effectiveness and credibility* ***Katte Klitsche de la Grange vs Italy*** *(27/10/1994)* – (ara A.P. vs Italy 28/07/1999 Application 35265/97 – para. 18)."

This Court considers that the judicial proceedings were filed by applicant before the Family Court on the 11th of April 2013 and lasted until 30th of March 2022 and the judicial proceedings filed by her ex-husband lasted from 2016 till the 30th of March 2022. Thus, there was a total period of **nine (9) years** for applicant. This Court has also noted that applicant concluded her proof before the Family Court on the 16th of January 2020, thus after seven (7) years. This Court has gone through the sittings that were held before the Family Court and notes in particular –

- Sitting of the 4th of June 2016 - this was cancelled because applicant did not notify the witness;
- Sitting of the 22nd of January 2017 – parties asked for sitting not to be fixed;
- 19th February 2017 – none of the parties appeared before the Court;
- 17th April 2017 – Applicant said witness was not available;
- 23rd June 2018 - none of the parties appeared before the Court;
- 17th November 2018 - none of the parties appeared before the Court;
- 5th April 2019 – Applicant did not appear before Court;

It also results that applicant had to present her affidavit on the 5th of June 2013, however she presented it on the 13th of April 2016, **that is after three (3) years.**

Infact it is clear from the above that the majority of the delay was caused by applicant.

Thus, with reference to the first criterion established, that is, the complexity of the case it is clear that the matter between the parties was very contentious and that due to the particular situation of all the parties involved, this was not a simple and straight forward case, so easily determined by the Court. It did present challenges and careful and many considerations especially due to the very best interest of the minors concerned as already premised.

This Court notes that the case file is quite voluminous and that a number of experts were nominated in order to assess both the minors and the parents. There was more than one report which was presented in the acts of the case, and this was due to the fact that therapist sessions with the minors were necessary and as one expert also noted, even the parents needed to undergo therapy sessions.

Regarding the fact that there was a joinder of proceedings, the facts of both proceedings were essentially the same and thus one can note that the same proof was being presented in both cases. Thus, this did not add any element of complexity to the case. Therefore, although it did take nine (9) years to decide, this case was certainly not straightforward or simple. Besides, the joinder, as is the intention behind this institution, serves to avoid duplicity and further waste of time. Well administered it is a convenient instrument of expediency.

With reference to the second and third criterion, the court has already noted a number of instances whereby the applicant either did not appear or did not notify the witness or delayed in the presentation of her affidavit for over three (3) years. This also refutes her statement that she was never allowed any type of extension, as it is clear from the acts that she was. It is also very clear from the minutes of the Court that applicant and her legal counsel did not appear in more than one sitting before the Court.

In light of all this, however this Court does consider that the period of nine (9) years for the conclusion of the judicial proceedings before the Family Court was unnecessarily lengthy. As above reiterated the Courts are too heavily burdened to deal with cases more expeditiously, and this can only be imputed to lack of adequate resources, but length of time in especially sensitive cases, some more than others, does lead to this breach. However, applicant is also at fault for the length of the proceedings and this will be considered when remedy is afforded. Thus, there has been a violation of Article 6 of the European Convention on Human Rights.

- **Third claim - Alleged violation Article 3 of the European Convention on Human Rights**

The applicant also alleges that there has been a violation of Article 3 of the Convention, that is –

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

With regard to this alleged violation, applicant contends that this stems from the fact that her children were deprived of their mother, and she was deprived of contact with her children. Applicant contends that ignoring the recommendations of Andreanna Gellel was tantamount to inhuman treatment. Applicant contends as well that she was persistently degraded and was treated as an unfit mother for allegations which turned out to be baseless.

With reference to this human right, it has been said by the First Hall Civil Court (Constitutional Jurisdiction) in the case **Koster vs Kummissarju tal-Pulizija et** decided on the 17th of December 2020 that -

"Illi r-rikorrenti ssejjes dan l-ilment tagħha kemm fuq dak li jgħid l- artikolu 36 tal-Kostituzzjoni u kif ukoll dak li jipprovdi l-artikolu 3 tal-Konvenzjoni. F'dawn iċ-ċirkostanzi, il-Qorti sejra tqis l-ilment tar- rikorrent taħt l-aspett tal-imsemmija żewġ artikoli flimkien, u tqishom fil-qafas taċ-ċirkostanzi fattwali li joħorġu mill-provi mressqin mill-partijiet;

"Illi l-artikolu 36 tal-Kostituzzjoni jgħid li: "(1) Ħadd ma għandu jkun assoġġettat għal piena jew trattament inuman jew degradanti. (2) Ebda ħaġa li hemm fi jew magħmula skond l-awtorità ta' xi liġi ma titqies li tkun inkonsistenti ma' jew bi ksur ta' dan l-artikolu safejn il-liġi in kwestjoni tawtoriżża l-għoti ta' xi deskrizzjoni ta' piena li kienet legali f'Malta minnufih qabel il-ġurnata stabilita. ...".

"Min-naħa l-oħra, l-artikolu 3 tal-Konvenzjoni jgħid li: "Ħadd ma għandu jkun assoġġettat għal tortura jew għal trattament jew piena inumana jew degradanti";

"Illi xieraq jingħad li l-imsemmija dispożizzjonijiet jinqdew bi kliem li juri li l-projbizzjoni li xi ħadd jittratta lil xi ħadd ieħor b'mod inuman jew degradanti hija waħda assoluta (hija mfissra bħala "an unqualified prohibition") u li ma tħallix eċċezzjonijiet jew tiġbid. Huma dispożizzjonijiet li jitfgħu fuq l-Istat ukoll obbligazzjoni pożittiva li jaraw li l-jedd jitħares u mhux biss waħda fejn l-Istat jirrimedja wara li jkun hemm ksur tiegħu. Huwa wkoll minħabba f'hekk li huwa mistenni li l-imġiba li minnha wieħed jilminta trid tkun ta' qawwa jew qilla ta' ċerta gravità u li tkun ippruvata fi grad għoli daqskemm xieraq skond in-natura tal-proċediment li jkun;

"Illi huwa aċċettat ukoll li t-'tortura', it-'trattament inuman' u t-'trattament li jbaxxi' 'l dak li jkun huma kunċetti li jirkbu fuq xulxin u mhumiex maqtugħin għal kollox minn xulxin, ladarba huma mġiba mhux xierqa fuq xi ħadd li hija differenti minħabba l-grad ta' severità li tintuża, b'tal-ewwel tikkostitwixxi l-għamla l-aktar ħarxa ta' mġiba u tal-aħħar l-għamla l-inqas kiefra;

"Illi kemm dan huwa tabilħaqq hekk, bil-kliem "trattament degradanti" wieħed jifhem "treatment that humiliates or debases ... Degrading treatment in the sense

of article 3 is conduct that 'grossly humiliates', although causing less suffering than torture. The question is whether a person of the applicant's sex, age, health, etc., of normal sensibilities would be grossly humiliated in all the circumstances of the case." Hemm differenza wkoll bejn trattament inuman u trattament degradanti. Kull trattament inuman huwa minnu nnifsu wieħed ukoll degradanti, iżda mhux kull trattament degradanti jsir trattament inuman, liema trattament "covers at least such treatment as deliberately causes severe mental and physical suffering";

"Illi mġiba li twassal lil persuna biex tagħmel xi ħaġa kontra r-rieda jew kontra l-kuxjenza tagħha tista' wkoll titqies bħala trattament degradanti. F'xi każijiet tqies li, flimkien ma' dawn il-kriterji, jkun irid jintwera wkoll li min ikun wettaq l-għemil degradanti jkun għamel dan bil-fehma jew l- intenzjoni li jżeblaħ, iċekken jew jumilja 'l vittma, imma jidher li jkun iżjed għaqli li wieħed iqis it-trattament li jkun ingħata fiċ-ċirkostanzi konkreti tal-persuna li tkun għaddiet minn dak it-trattament u tal-każ li fih ikun iġġarrab, għalkemm ma tiddependix lanqas għal kollox fuq dak li suġġettivament tħoss il-persuna mġarrba;

"Illi biex iseħħ ksur tal-artikolu 3, it-trattament degradanti jrid jintwera li "gravement ibaxxi lil dak li jkun quddiem ħaddieħor .... u jidher li llum hu ġeneralment aċċettat li biex trattament determinat jaqa' taħt il-komminazzjonijiet tad-dispożizzjonijiet fuq ċitati, jeħtieġ ċertu grad ta' gravità", li mingħajru ma jkunx jista' jingħad li seħħ ksur ta' dak il-jedd. Għalhekk, biex trattament jitqies li jkun degradanti, irid jintwera li jmur lil hinn minn sempliċi inkonvenjenza jew disaġju;

"Illi b'żieda ma' dan, huwa miżmum ukoll li minħabba li 'trattament degradanti u inuman' huma konċetti astratti, biex tassew jista' jingħad li seħħew iridu "jikkonkretiżżaw neċessarjament f'xi fatt jew fatti materjali" li jkunu ta' ċerta gravità li jitkejlu fuq l-effett li tali trattament ħalla fuq il-persuna li kienet suġġetta għalih. Minbarra dan, jista' jkun il-każ li l-qies dwar jekk imġiba partikolari tkunx waħda li ġġibx ksur tal- imsemmi jedd irid ikun "judged by the circumstances of the case and the prevalent views of the time .. .. It is clear that the answer to the question whether Article 3 has been violated, although depending on all the circumstances of the case, including such factors as the mental effects on the person concerned, is not entirely dependent on his subjective appreciations and feelings";

"Illi għal dak li jirrigwarda l-piż tal-prova ta' ksur tal-artikolu 3, jidher li jaqa' fuq min jilminta mill-ksur tal-imsemmi jedd li jressaq prova lil hinn mid-dubju raġonevoli li tabilħaqq ikun seħħ ksur ta' l-imsemmi artikolu. Irid jingħad li din mhijiex fehma li magħha jaqbel kulħadd. Iżda "such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. The conduct of the parties when evidence is being obtained has to be taken into account";

"Illi l-qies ta' jekk trattament jaqax fil-parametri tal-artikolu 3 irid isir b'riferenza għaċ-ċirkostanzi kollha tal-każ li jkun fil-qafas tiegħu, magħduda l-mod ta' kif jingħata, it-tul tiegħu, l-effetti fiżiċi u morali li jħallu fuq il-persuna hekk trattata, u ċirkostanzi oħrajn bħas-sess, l-età u s-saħħa tal-vittma. Trattament jitqies bħala inuman meta tal-anqas iġib fuq il-vittma tbatija fiżika jew psikika "intensa" mqar jekk mhux akkompanjata bi ġrieħi li jidhru fuq il-ġisem, u jekk "iqajjem f'dak li jkun sentimenti ta' biża', angoxxia u sens ta' inferjorità li jumiljaw u jiddenigraw lil dak li jkun saħansitra sakemm possibilment jabbattu r-reżistenza fiżika jew morali tiegħu" . L-istħarriġ li trid tagħmel il-Qorti dwar jekk it-trattament mogħti jiksirx l-artikolu 3 tal-Konvenzjoni (jew l-artikolu 36 tal-Kostituzzjoni) huwa marbut maż-żmien li l-każ ikun qiegħed quddiemha biex tqis l-ilment;"

Applicant gives a number of reasons due to which she thinks that there has been this violation. In the first place she contends that she was subjected to inhuman treatment because the recommendations of Andreanna Gellel were ignored. Court notes that Andreanna Gellel submitted two reports, one date 2nd of May 2017 (fol. 143) and the second 19th of June 2018. The applicant is contending that the conclusions of the first report where ignored. The recommendations where that -

1. *The Brannon minors, Eva, Kieran, and Tristan live with their mother, Sylvana Brannon;*
2. *That the minor Eva and her mother Mrs Brannon attend family therapy with the possibility that the minors Kieran, Tristan and Ethan attend too, to establish a new relationship between the family members.*
3. *That the father Mr. Brannon attends psychotherapy sessions;*
4. *That the minors Kieran and Tristan have supervised access with their father and that for the time being Eva does not attend until the minor's*

therapist deems it fit for Eva to attend, but not before Mr. Brannon had needed his therapy sessions."

Following this report, the Family Court gave a preliminary judgement on the 8th of June 2017 and confirmed what was said by Gellel in her report and decided to i) revoke *contrario imperio* its decree dated 14th of July 2016; ii) it nominated a psychotherapist; iii) it nominated a psychologist and iv) that the children reside with the father and mother in specific dates and times. The court also considered that a decision regarding contempt of court on the part of Travis Leigh Brannon be decided at a later stage.

This Court does not deem that the report of Gellel was thus ignored due to the fact that the Family Court implemented the recommendations.

In the second report of Andreanna Gellel which was dated 19th June 2018, she stated that –

"In the light of the above information, the Agency is of the humble opinion that the monitoring sessions should be suspended with immediate effect since the situation seems to be stable and is not negatively influencing the children's wellbeing."

The Court has also gone through the applicant's cross-examination a fol. 292, due to which she submits that she felt humiliated and degraded. The Court has read that testimony and the manner in which the applicant replies portrays her as a strong woman who was not intimidated by the sort of questions which were being posed. Thus, the Court does not feel that this type of questioning can be equated to inhuman treatment.

As has been mentioned above, in order for *"treatment*" to be seen as degrading, it must be such as grossly humiliating to the victim. It must also be proved that the inhuman or degrading treatment gravely degraded the victim before third parties. However, it has now been accepted that for this to take place, the treatment must be seriously grave otherwise there would be no violation. In order for a" treatment" to be seen as degrading, it has to be proved that this is more serious than any type of inconvenience. In order to prove this type of violation, the victim has to prove it "beyond reasonable doubt". In order to assess whether

a type of treatment is to be deemed inhuman, one has to consider all the circumstances of the case, including the manner this treatment was given, its' length, and the physical and moral effects that such a treatment has on the victim. A treatment is deemed to be inhuman when as a result the victim suffers intense physical and/or psychological pain, and it brings forward in the victim anxiousness, fear, and a sense of inferiority. The victim must have passed through intense physical and mental suffering.

Having considered the circumstances of the case with these principles in mind, the Court considers that there has been no violation of Article 3 of the European Convention on Human Rights. Although it is clear that the proceedings before the Family Court were not easy ones, strenuous also, and that a number of problems arose especially between the parties, with the children literally being used as a ball between the parents, this does not mean that the applicant suffered inhuman or degrading treatment.

- **Fifth claim: That the decisions taken by the Family Court were a result of discrimination and that thus Article 14 in conjunction with Article 8 has been violated.**

Article 14 states that –

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

As was stated by this Court, presided differently in the case **Joseph Micallef et vs Avukat Generali** decided on the 1st of July 2020 -

Fil-każ ċitat ta' Amato Gauci vs. Malta, il-Qorti ddeskriviet is-sitwazzjoni b'dan il-mod:

"The Court reiterates that Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous –

there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (Petrovic vs Austria, 27 March 1988).''

As has been premised above, the Court did not find any violation of Article 8 of the European Convention on Human Rights, and thus as Applicant has alleged that she has been discriminated and this in conjunction with alleging that her right to a family has been violated, this Court finds that there has been no violation of Article 14 of the Convention.

- **Sixth Claim**

In her preliminary application to this Court, applicant in her sixth claim asked this Court to take the necessary measures so that the minors go and reside with her. As it now results from the acts of this case, this situation is now resolved and the minors are in fact residing with their mother, the applicant. Thus the Court does not need to consider this issue any further.

- **Seventh Claim**

In her seventh claim, applicant is asking this court to commence contempt proceedings in respect of defendant Travis Leigh Brannon. In this respect the Court has been informed that Travis Leigh Brannon has now left Malta. Thus, the Court does not deem it necessary to consider this issue any further.

- **Remedy**

In respect of the remedy requested by applicant, she submits that this should include the payment of the arrears due in maintenance and amounting to twenty-six thousand Euros (€ 26,000).

This Court does not agree with this. There is already a court judgement which declared that Travis Leigh Brannon should pay this amount due as arrears of maintenance, and thus this Court does not need to enter into that matter. Neither

does it deem that the question of maintenance arrears is of it's competence or related to any Costitutional or Conventional breach.

However due to the fact that this court did find that there has been a violation of Article 6 of the European Convention on Human Rights, the applicant should be compensated in this respect. The Court notes that the Constitutional Court has previously held that in these types of violations, the court does not award pecuniary damages but only moral damages – **John A. Said pro noe vs l-Avukat Generali**[14], Constitutional Court, 11th of November 2011. It stated in caption:-

> *17. "ir-rimedju li tista' taghti l-Prim' Awla (kif ukoll din il-Qorti) bhala rimedju ghad-dewmien jista' jvarja minn semplici dikjarazzjoni ta' lezjoni, ghal danni morali jew, eccezzjonalment, anke ghal danni materjali."*
>
> *18. Illi din il-Qorti taqbel mal-appellant li kien ikun ahjar, li kieku, la darba l-ewwel Qorti ddistingwiet biex danni morali u danni materjali, hija specifikat liema kienu d-danni morali u liema d-danni materjali. Madanakollu din ilQorti hi tal-fehma li f'kazijiet bhal dawn fejn jirrigwarda dewmien, il-Qorti Kostituzzjonali generalment ma takkordax danni materjali biex ikopru danni allegatament sofferti imma taghti kumpens bhala danni morali biex jaghmel tajjeb ghal lezjoni kostituzzjonali. Il-Qorti Kostituzzjonali ma takkordax danni civili. Inoltre ma jirrizultax li meta l-ewwel Qorti llikwidat il-kumpens kellha f'mohha li tkopri d-danni materjali partikolari kollha."*

On the other hand, the European Court of Human Rights has detailed the manner in which these damages should be liquidated. In the judgement **Pizzatti vs Italy** decided on the 10th of November 2004, it held that a sum of between one thousand Euros (€ 1000) and one thousand five hundred Euros (€ 1,500) should be awarded for every year that the proceedings were still pending. This basic figure is then reduced according to the applicant's conduct, and the standard of living of the country concerned. Thus, the basic figure in this case would amount to nine thousand Euros (€ 9,000), however this should be reduced due to the fact that the applicant was also responsible for such a delay.

[14] Constitutional Court 11/11/11 : 63/2010/1

In light of the above, the Court concludes that the compensation due to the applicant should amount to four thousand Euros (€ 4,000).

One last point that should be dealt with is the recourse to **The European Charter of Human Rights** applicant made in her application.

Reference is made to a decision of this Court differently presided in the names of **Maria Theresa Cuschieri vs Attorney General**[15] that in regards states;-

> *"L-artikoli ccitati mir-rikorrenti huma s-segwenti:*
>
> *"Artikolu 7 Ir-rispett għall-ħajja privata u tal-familja*
>
> *""Kull persuna għandha d-dritt għar-rispett tal-ħajja privata u tal-familja tagħha, ta' darha u tal-kommunikazzjonijiet tagħha."*
>
> *"Artikolu 21 Non-diskriminazzjoni*
>
> *""1. Kull diskriminazzjoni bbażata fuq is-sess, ir-razza, il-kulur, l-oriġini etnika jew soċjali, il-karatteristiċi ġenetiċi, il-lingwa, ir-reliġjon jew ittwemmin, l-opinjoni politika jew xi opinjoni oħra, l-appartenenza għal minoranza nazzjonali, il-proprjetà, it-twelid, id-diżabbiltà, l-età, jew lorjentazzjoni sesswali għandha tkun projbita.*
> *2 - omissis."*
>
> ***"Illi aparti li l-Qorti Ewropea (CJEU) tapplika l-principji kif enuncjati u interpretati mill-Qorti ta' Strasbourg, ghandu jigi senjalat li l-Karta tad-Drittijiet Fundamentali ghandha l-forza ta' Ligi f'pajjizna u hija mqeghda fuq l-istess livell daqs it-Trattati. Madanakollu l-Karta titqies li hija ligi ordinarja b'differenza mal-Kostituzzjoni u hija applikabbli biss fir-rispett ta' materja li taqa' tal-kompetenzi u kompiti tal-Unjoni***

[15] Cost. Court 52/16LSO as quoted by the Court of First Instance.

Ewropea. Dan mhuwiex il-kaz odjern li jirrigwarda materja ta' kompetenza nazzjonali.

"Ghaldaqstant in kwantu li t-talba hija imsejsa fuq it-Trattat, mhiex ser tigi milqugha minnhabba li l-kwistjoni sollevata quddiem din il-Qorti tesorbita mill-kompetenza tat-Trattati." (enphasis of this Court).

This citation speaks for itself. The competence of this Court is not one of an ordinary nature. Therefore the court cannot deal with such greviances.

For the reasons above premised, the Court accepts the State Advocate's and the Commissioner of Police's pleas in respect of applicant's complaints under Article 8 and Article 3 of the European Convention on Human Rights and rejects the State Advocate's et. plea and Travis Leigh Brannon's plea relating to the applicant's complaint relating to Article 6 of the European Convention on Human Rights and thus:

1. **Accedes in part to the second request of the Applicant, and declares that Applicant suffered a violation of article 6 of her right to a fair hearing within a reasonable time;**
2. **Accedes to the eight request of the Applicant and orders the State Advocate <u>only</u> to pay the applicant by way of compensation the sum of four thousand Euros (€ 4,000) for the violation of the right to a fair trial within a reasonable time, with interest accruing from the date of this judgement until payment in full is effected.**

Two-thirds of the costs of these proceedings are to be borne by the applicant, while the remaining one third is to be borne by the State Advocate and Travis Leigh Brannon equally.

Onor Madame Justice Dr. Miriam Hayman LL.D.

Rita Falzon
Dep. Reg.