



FIRST HALL CIVIL COURT

(Constitutional Jurisdiction)

JUDGE

HON. JOSEPH R. MICALLEF LL.D.

THIS DAY, Friday, January 26th, 2024.

Case No. 2(Const.)

Applic. No. 83/15JRM

Glen James SCOTT

VS

L-ONOR. PRIM MINISTRU; L-Avukat Ġenerali, illum imsejjaħ l-Avukat tal-Istat; Il-Kummissarju tal-Pulizija; u Direttur-Ġenerali – Qrati ta’ Malta u b’digriet tat-18 ta’ Frar, 2016, Jolanda Drobez interveniet fil-kawża “*in statu et terminis*”

The Court:

Having taken cognizance once more of the Application filed by Glen James Scott on the 13th of November, 2015, by virtue of which and for the reasons and arguments therein mentioned, he requested that this Court (a) declare that he has

suffered a breach of his fundamental human rights in terms of Article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “the Convention”) and Article 37(1) of the Constitution of the Republic of Malta (hereinafter referred to as “the Constitution”), pursuant to the issue of a request raised by the District State Prosecutor of the Republic of Slovenia through a Note¹ dated October 29th 2015², for the return of the marine vessel ‘*Azimut 55, No IZ-2152*’ to a Slovenian company named ‘Nejc Turizem’, and this following a pretrial procedure instituted against the applicant and his former wife in the Courts of the Slovenian Republic for the criminal offence of misappropriation of the same boat which had been entrusted to them by the same ‘Nejc Turizem’; and (b) issue such orders in order to safeguard his property and specifically the marine vessel ‘*Azimut 55, No IZ-2152*’, in terms of the Constitution and the Convention.

Having seen the decree dated November 17th, 2015,³ whereby the Court ordered service upon respondents and set the application for hearing;

Having taken cognizance of the joint Reply filed by the respondents⁴, except for the Director-General (Courts), whereby, by way of preliminary pleas, they claimed that (a) they are non-suited given that the applicant’s claim relates to a request put forward by the District State Prosecutor of the Republic of Slovenia dated 29th October, 2015, and not to any act or wrong-doing imputed to them; (b) for the reasons stated, insofar as the claim arises from a request put forward by the District State Prosecutor of the Republic of Slovenia, the Court lacks jurisdiction to take cognizance of the applicant’s claims; (c) in so far as the claim relates to who has rights on the vessel and owing to the fact that the request put forward by the District State Prosecutor of the Republic of Slovenia is still pending before the Maltese Courts, the Court should refrain from exercising its special “constitutional” and “conventional” jurisdiction, in terms of Article 46(2) of the Constitution and of Article 4(2) of Chapter 319 of the Laws of Malta. As to the merits, respondents pleaded that the applicant’s claims and demands are unfounded both in fact and at law. More specifically, the respondents deny that applicant has indeed suffered a breach of his rights under Article 37 of the Constitution or under Article 1 of the First Protocol to the Convention and this on the basis that: (a) the circumstances complained of neither amount to the forceful taking of property nor to deprivation of property; (b) paragraph 2 of Article 37 of the Constitution stipulates that nothing contained in paragraph 1 of that Article shall be construed as affecting the making or operation of any law in so far as it provides for the taking of possession of property in the execution of judgements

¹ Issued under the European Convention on Mutual Assistance in Criminal Matters of the Council of Europe, and the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union.

² Pg. 5 – 7 of the records.

³ Pp. 16 – 17 of the records.

⁴ Pp. 22 – 24 of the records.

or court orders; (c) Article 1 of the First Protocol to the Convention provides three distinct rules, the third one of which demands that nothing contained in that article shall impair the right of a State to enforce such laws as it deems necessary for the control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties; and (d) they neither interfered with, nor imposed restrictions on the applicant's right for the enjoyment of his property, in terms of Article 37 of the Constitution and/or Article 1 of the First Protocol of the Convention, and consequently any allegations in this sense are both unfounded and unsustainable;

Having ruled by a decree during the hearing of December 1st, 2015⁵, that all proceedings of this case be heard in English, in terms of Article 3 of Chapter 189 of the Laws of Malta, and that judgment will be likewise delivered in English;

Having ruled by a decree *in camera* of December 29th, 2015⁶, and for the reasons therein stated, not to uphold the request put forward by the applicant on November 16th, 2015, to grant a provisional or interim remedy relating to the vessel in question;

Having ruled, during the hearing on January 14th, 2016⁷, that before proceeding further into the merits, this Court should rule as to the validity of the first three preliminary pleas of the respondents;

Having ruled by a decree of February 18th, 2016⁸, on a request filed on January 14th, 2016, by Jolanda Drobez in her own personal capacity and as a representative of Slovenian companies NEJC Turizem d.o.o. and VBKS Leasing d.o.o., to allow said Jolanda Drobez to intervene in the case "*in statu et terminis*", and ordered that the records of the case be amended to reflect this change;

Having considered that by means of a preliminary judgement delivered on December, 17th, 2020⁹, this Court: (i) upheld the first preliminary plea raised by the respondents and consequently declared that the Prime Minister, Commissioner of Police and Director-General (Courts) to be non-suited to stand as respondents in the applicant's action; (ii) upheld the third preliminary plea raised by the respondents and declared that the Court was availing itself of the discretion to decline to exercise its 'constitutional' and its 'conventional' jurisdiction in terms of Article 46(2) of the Constitution and Article 4(2) of the European Convention Act (Chapter 319), on the basis that the applicant did not exhaust the ordinary remedies available to him to redress his grievance; and (iii)

⁵ Pg. 39 of the records.

⁶ Pg. 43 of the records.

⁷ Pg. 58 of the records.

⁸ Pg. 61 of the records.

⁹ Pp. 240 – 248 of the records.

abstained from considering the second preliminary plea, in view of the fact that the Court had upheld the third preliminary plea;

Having taken cognizance of the judgement of the Constitutional Court delivered on the January 26th, 2022¹⁰, whereby for the reasons mentioned therein, that Court upheld the appeal of the applicant and varied the judgement of this Court of the 17th of December, 2020 by cancelling that part wherein this Court upheld the third preliminary plea, and instead rejected that plea and therefore remitted the records to this Court to decide the claim on the merits;

Having seen that by means of a decree dated February 1st, 2022,¹¹ this Court re-appointed the case for hearing on February 24th, 2022;

Having heard the evidence tendered by the parties and seen the documentary evidence produced by them in relation to the merits of this case;

Having acceded to the request of parties to grant them adequate time to seek a possible amicable resolution of the civil issues prior to giving further orders with respect to the constitutional request which is the merit of the main proceedings in this case¹²;

Having been informed that the parties failed to reach an amicable settlement¹³;

Having declared as closed that the stage of production of evidence and having granted time to the parties to file their respective submissions in writing¹⁴;

Having revoked *contrario imperio* its order of June 27th, 2023, and ordered that submissions be made orally during the hearing of November 7th, 2023¹⁵;

Having ordered that the written note of submissions filed by the State Advocate on October 12th, 2023, be admitted into the records of the case, and this on the basis of a request of the State Advocate which was unopposed by the applicant¹⁶;

Having seen the written note of submissions filed by the State Advocate on October 12th, 2023;¹⁷

¹⁰ Pp. 277 – 281 of the records.

¹¹ Pp. 282 – 283 of the records.

¹² Pg. 308 of the records.

¹³ Pg. 326 of the records.

¹⁴ Pg. 327 of the records.

¹⁵ Pg. 328 of the records.

¹⁶ Pg. 339 of the records.

¹⁷ Pp 330 – 6 of the records.

Having heard the final oral submissions by counsel to the parties and put off the case for judgment for to-day's hearing;

Having Considered:

That this case calls into question a claim in relation to an alleged breach of the fundamental right to the peaceful enjoyment of one's possessions pursuant to a request for mutual assistance in criminal matters, submitted by the District Prosecutor of the Republic of Slovenia to the corresponding Maltese authorities, for the restitution of a vessel (hereinafter referred to as "the Vessel") to the 'injured party' on the basis of two conventions on Mutual Assistance in Criminal Matters, namely the: 'European Convention on Mutual Assistance in Criminal Matters of the Council of Europe', and the 'Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union';

That in particular, the Slovenian authorities requested the Maltese authorities to execute an order of the District State Prosecutor of the Republic of Slovenia, which instructed: "*that the vessel Azimut 55, plate no IZ 2152, No of the boat IT-AZI55228G606, which has been seized on Malta on the basis of the alert in Schengen information system, issued by the competent authorities of the Republic of Slovenia, is returned to the company Nejc Turizem prodaja in najem plovii d.o.o – Jolanda Drobez, through the assistance of the Maltese authorities and in accordance with their procedure*"¹⁸. The said order, which was founded on Article 110(1) of the Criminal Procedure Act of the Republic of Slovenia¹⁹, was in turn issued following the commencement of a pre-trial procedure instituted against the applicant and his former wife in the Courts of the Slovenian Republic, for the criminal offence of misappropriation of the Vessel in caption and subsequent to a criminal complaint;

That the applicant claims to be **suffering from a breach of his fundamental right to the peaceful enjoyment of his property**, due to the fact that he has legal title to the vessel the restitution of which is being demanded and because the pre-trial proceedings in Slovenia were the result of a malicious attempt by the intervenor Jolanda Drobez (on behalf of Nejc Turizem) (hereinafter referred to as "the intervenor") to illegally appropriate the funds which he had already disbursed for the acquisition of the Vessel, and to abusively

¹⁸ Extract taken from the order of the District State Prosecutor of the Republic of Slovenia, enclosed with the request dated October 29th, 2015, at pg. 8 of the records.

¹⁹ At the time of the request, Article 110(1) of the Criminal Procedure Act of the Republic of Slovenia read thus: "*(1) If it is beyond doubt that the property claimed belongs to the injured party, and that this property need not be exhibited as evidence in criminal proceedings, it shall be delivered to the injured party before the end of the proceedings*".

deprive him of his possession thereof. Regarding the legal title to the Vessel, the applicant explains that by means of an agreement dated April 3rd, 2013, he had concluded a sale and purchase agreement with Nejc Turizem, and adds that his proprietary interest in the Vessel further stems from a boat rental agreement which covered the period between May 1st of 2013, and October 5th of 2016. In view of this, the applicant claims that the proceedings initiated in Slovenia, of which he was not even aware nor duly represented, are frivolous, vexatious and were instituted on the malicious initiative of the intervenor with the intent to unjustly deprive him of the possession thereof. Whilst admitting that he had fallen behind on some rental payments, which in particular accumulated whilst he was undergoing divorce proceedings, the applicant insists that the dispute which he has with Nejc Turizem and the intervenor is of a strictly civil nature, so much so that the rights of Nejc Turizem are limited to the payment of the balance of price, and not for the restitution of the vessel. In this context, the applicant argues that the Court of Magistrates as a Court of Criminal Inquiry cannot decide on disputes regarding ownership and that, in any case, the value of the Vessel exceeds the competence '*ratione valoris*' of that Court;

That at the stage of oral submissions, learned counsel to the applicant elaborated further on applicant's complaints as originally put forward in the Application of November 13th, 2015. In particular, counsel submitted that in this case, the Maltese authorities were grossly misled by the Slovenian authorities, due mainly to the fact that they incorrectly invoked the Convention on Mutual Assistance in Criminal Matters between Member States of the EU, in relation to a dispute which is of a purely civil nature. Whilst reiterating that the applicant is the owner of the Vessel in terms of the 'Business Cooperation Contract / Agreement' of April 3rd, 2013, learned counsel to the applicant explained that the roots of the dispute between the applicant and Nejc Turizem are grounded on a disagreement as to the nature of that agreement because, whilst on the one hand Nejc Turizem was considering that agreement as being a 'hire-purchase agreement', the applicant was considering that agreement as an outright sale. In this context, the applicant's counsel held that the intervenor in this case tried all sorts stratagems to claim back the Vessel's possession, and in the end managed to manipulate a system whereby, through a provision in the criminal law, misled the Slovenian authorities to make use of the Convention on Mutual Assistance in Criminal Matters, when the matter in issue is merely a civil one. To back up this argument, applicant's learned counsel submitted that, in the end, the criminal proceedings in Slovenia were eventually discontinued due to lack of evidence, and in the circumstances there is no legal basis whatsoever for the Maltese authorities to persist in complying with what the Slovenian authorities were demanding from them, namely, to deprive him from the property of his vessel and to hand it over to the intervenor. Applicant's counsel further claimed that the company Nejc Turizem even discontinued the civil proceedings which it had

instituted against the applicant in Malta, and that eventually that company was eventually struck-off from the Register of companies;

That as regards to the remedy which is being sought by means of these proceedings, counsel to the applicant submitted that his client is demanding that, being the rightful owner of the Vessel, he would not be forcibly deprived of its possession. In response to the State Advocate's submission that the Court of Magistrates as a Court of Criminal Inquiry had, in the meantime, ordered the vessel to be returned to the intervenor, applicant's counsel expressed surprise at this information and argued that now, more than ever, there existed a real peril that his client would be unjustly deprived of his property and this in the absence of any public interest and even more so in the absence of any judgement from the Courts of the Republic of Slovenia;

That the State Advocate rejects these claims by pleading that this Court lacks competence to take cognizance of the applicant's complaints. As to the merits, the State Advocate then considers the applicant's complaints as unfounded both in fact and at law and denies that he has indeed suffered any breach of his rights, either under the Constitution or under the Convention. In particular, the State Advocate submits that there should be no doubt that, in this case, the Maltese authorities acted upon a request made by the Slovenian authorities for the mutual cooperation in criminal matters, and that this request was in turn based on Slovenian law regarding the restitution of property to the injured party. As regards to the seizure of the vessel in Malta, the State Advocate submits that the police proceeded on the basis of Article 355E(3)(b) and 355P of the Criminal Code, whilst the *repertus* was drawn up by the Court of Magistrates as a Court of Criminal Inquiry in terms of Article 558 of the Criminal Code. The State Advocate insists that the seizure of the vessel by the Maltese authorities was carried out in conformity to the precepts of law, in the public interest and above all in a proportionate manner especially due to Malta's obligation to assist their Slovenian counterparts in terms of the Convention on mutual assistance in criminal matters. In these circumstances the State Advocate submits that no violation of article 37(1) of the Constitution of Malta, or of Article 1 of the First Protocol to the Convention subsists;

That as to the relevant facts arising from the records, evidence shows that on April 3rd, 2013, an agreement was entered between 'Nejc Turizem d.o.o.', as landlord, and company 'The 88 Holdings Limited', as lessee, in relation to the lease of the vessel '*Azimut 55, with registration number IZ-2152, and hull number IT-AZI55228G606*' for a period of approximately three years, and specifically between May 1st 2013, to October 5th 2016²⁰. That on the same date Nejc 'Turizem d.o.o.', as landlord, and the applicant and his wife as

²⁰ Pg.12 of the records.

‘users/administrators’, entered into another agreement entitled as ‘*Business Co-operation Contract/Agreement*’, wherein it was stated that “*the Landlord makes a commitment that, upon payment of total debt-leasing, which is = 349.000,00EUR, the ownership is transferred to the personal Users/Administrators: Ms SCOTT JETTE and Mr SCOTT GLEN JAMES OR any other name or company as stated by the Users to determine the designated person of this Agreement*”²¹. That as conceded in the application by means of which the applicant instituted this case²², the Scotts failed to effect punctually the payments for a number of months, while applicant Glen Scott still retained the possession of the vessel. This fact appears to have been reported by Nejc Turizem to the police authorities in Slovenia and on June 24th, 2015, the police station of Piran lodged a criminal complaint against the Scotts for the criminal offence of misappropriation under paragraph 4 of Article 208 of the Criminal Code of the Republic of Slovenia²³;

That, subsequently, the Slovenian authorities entered an alert in the Schengen Information System, known as SIS II, and this in accordance with articles 38(1) and 38(2) of Council Decision 2007/533/JHA of June 12th, 2007 entitled ‘on the establishment, operation and use of the second generation Schengen Information System (SIS II)’²⁴. The instructions which came with this alert were for the seizure of the Motor Yacht ‘*Azimut, 55, 2006*’ with manufacturing code ‘*ITAZI55228G606*’, and registration number ‘*IZ2152*’. The features of this alert were that the object subject of the alert was: ‘*stolen*’ or was with a ‘*false registration*’²⁵. Given that the vessel was located in Malta, the local authorities communicated this alert to the inquiring Magistrate, and the vessel was subsequently seized on the basis of a warrant which was issued by the same inquiring Magistrate, on the strength of Article 355E(3)(b) of the Criminal Code (Chapter 9 of the Laws of Malta)²⁶. Upon seizure of the vessel, the inquiring Magistrate ordered the drawing up of a *repertus* and for this purpose the Court appointed Colonel Lanfranco as a Court expert²⁷;

That after the vessel was seized in Malta, on August 10th, 2015, the Slovenian authorities requested the Maltese authorities to return the vessel to the intervenor in this case, Jolanda Drobez²⁸. At the same time, the Maltese authorities were informed that the police in the Republic of Slovenia were treating

²¹ Pg. 11 of the records.

²² Paragraph (j) of pg. 4 of the records.

²³ See the communication sent by the District Prosecutor of the Republic of Slovenia to the Attorney General, on October 29th, 2015, and the order attached therewith. Pp.5 and 8 of the records.

²⁴ ‘Doc CGS1’, pg. 302 of the records.

²⁵ *Ibid.*

²⁶ See the communication sent by the District Prosecutor of the Republic of Slovenia to the Attorney General, on October 29th, 2015, at pg 5 records, and the testimony of Supt. Chirstopher Galea Scannura of April, 7th, 2022, at pp. 288D and 288J of the records. It is also to be noted that in his appeal application from the judgement of this Court of December 17th, 2020, the applicant himself admitted that: “*That the parte civile and the defendants were clear in their actions in Malta whereby they availed themselves of Art 355E(3)(b)*”, at pg. 253 of the records.

²⁷ See the testimony of Supt. Chirstopher Galea Scannura of: (i) March 10th, 2016 at pg 140 of the records; (ii) April, 7th, 2022, at pg 288J of the records, and (iii) July 12th, 2022 at pg 28 of the records.

²⁸ ‘Doc CGS2’, pg 303 of the records.

this as a “*criminal case under art. 208 (misappropriation) of Slovenian Penal Code*”²⁹. A similar request was then made through a formal communication addressed to the Office of the Attorney General in Malta and dated October 29th, 2015³⁰. By means of this communication, the Attorney General was requested to execute an enclosed order of the District Prosecutor of the Republic of Slovenia which read: “*On the basis of the article 110 of the Criminal procedure Act in relation to the European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 20.IV.1959, Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union as well as the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, I hereby ORDER that the vessel Azimut 55, plate no IZ 2152, No of the boat IT-AZI55228G606, which has been seized on Malta on the basis of the alert in Schengen information system, issued by the competent authorities of the Republic of Slovenia, is returned to the company Nejc Turizem prodaja in najem plovii d.o.o – Jolandi Drobe, through the assistance of the Maltese authorities and in accordance with their procedure*”³¹;

That it appears that the Attorney General forwarded the aforementioned request to the Court of Magistrates as a court of Criminal Inquiry. Indeed, on March 10th, 2016, whilst testifying, Supt. Chirstopher Galea Scannura (at that time holding the rank of a Police Inspector) stated that the communication and relative request of the District Prosecutor of the Republic of Slovenia was appointed for hearing before Magistrate Dr. Stafrace Zammit for May 12th, 2016³². Subsequently, during a hearing held before this Court on May 12th, 2016, Galea Scannura confirmed that earlier on that day the applicant had given evidence in the Court of Magistrates, and that he was also spoken to by the Court-appointed expert³³. This was also confirmed by the applicant himself, whilst testifying on the sitting of May 12th, 2016, when he confirmed that earlier on the same day he gave evidence and “*proceeded to give a summarised version of how [he] saw things*”³⁴. Later on in the proceedings, Supt. Galea Scannura re-confirmed that the request by means of rogatory letters was heard in 2016 and 2017 before Magistrate Claire Stafrace Zammit, and that during those sittings Mr. Scott, Yolanda Drobez and a representative of the Kalkara yacht marina gave their testimony to the Court³⁵. Supt. Galea Scannura also explained that the request of the District Prosecutor of the Republic of Slovenia was not decided, and there was a sort of stalemate between the Maltese and the Slovenian authorities because

²⁹ *Ibid.*

³⁰ Pp 5-7 of the records.

³¹ Extract taken from the order of the District State Prosecutor of the Republic of Slovenia, enclosed with the request dated October 29th, 2015, at pg. 8 of the records.

³² Pg 140 of the records.

³³ Pg 174 of the records.

³⁴ Pp 165-166 of the records.

³⁵ See the testimony of Supt. Chirstopher Galea Scannura of July 12th, 2022 at pg 298 of the records.

the Maltese authorities were insisting on handing over the yacht to the Republic of Slovenia directly, and not to the intervenor in this case³⁶;

That in the meantime and precisely on December 3rd, 2015, the applicant instituted civil proceedings in the District Court of Koper against Nejc Turizem d.o.o and VBKS Leasing d.o.o.³⁷. As appears from a copy of the relative Court application³⁸, that civil action (bearing reference number P 664/2015³⁹) was based on the '*Boat Rental Contract*' and the '*Business Cooperation Contract/Agreement*' of the 3rd April, 2013. The demands of the applicant in his lawsuit were basically three, being: (i) in the first place, that NEJC Turizem be declared the owner of the vessel in dispute, and subordinately VBKS Leasing d.o.o. would be obliged to unconditionally submit for the registration of the vessel in the name of NEJC Turizem; (ii) that NEJC Turizem would be obliged to unconditionally submit for the registration of the vessel in the name of the applicant, and subordinately it would be declared that the applicant is the owner of the vessel in dispute; and (iii) finally, and only if the Court would not sustain the first two demands, NEJC Turizem would be obliged to pay the applicant the amount of €41,908.20 together with statutory interest from the date of filing of the action, whereas VBKS Leasing would be obliged to pay him €193,900 together with statutory interest to run from the date of filing of the action until the date of actual payment, together with judicial costs⁴⁰;

That from a document dated January 20th, 2020, which was issued by the State Prosecutor of the Republic of Slovenia, it appears that, by means of a judgment delivered on October 12th, 2018 (File No. P 664/2015), the District Court in Koper rejected applicant's claims against NEJC Turizem d.o.o and VBKS Leasing d.o.o.⁴¹. It also appears that the applicant appealed this judgement to the High Court in Koper which, however, by a judgment delivered on July 9th of 2019, rejected the appeal and confirmed the judgment of the District Court in Koper⁴²;

That eventually in January, 2020, the Maltese authorities were advised that the Prosecutor of the Republic of Slovenia had formally informed the Court of Koper that it would not continue with the criminal proceedings against Glen James Scott and his former wife due to lack of evidence⁴³. Detailed reasons as to why the State Prosecutor came to this conclusion are found in the document referred to in the preceding paragraph. Amongst others, in that

³⁶ See the testimony of Supt. Chirstopher Galea Scannura of: (i) April 7th, 2022, at pp 288D-288E of the records, and (ii) July 12th, 2022 at pp. 300-301 of the records.

³⁷ See the testimony of Glen James Scott of May 12th, 2016, at pp 168-169 of the records.

³⁸ 'Dok. GJS2', pp 148-160 of the records.

³⁹ See the note of submissions of the applicant at pp 215-216 of the records.

⁴⁰ Pp 157-158 of the records.

⁴¹ Pg. 319 of the records. Since this document was presented in a language which this Court is not familiar with, this Court out of its own initiative and in the best interests of justice, resorted to technological means to informally translate this document to the English language.

⁴² *Ibid.*

⁴³ Pg. 324.

document, the prosecutor explained that from the evidence it appeared that the Scotts genuinely thought that the vessel was theirs and therefore the criminal intent required for the offence of misappropriation was missing⁴⁴. The prosecutor was also of the view that the dispute stemmed from a disagreement as to the essential elements on the contractual relationship between the Scotts and Nejc Turizem d.o.o⁴⁵;

That notwithstanding the discontinuation of criminal proceedings, the Slovenian authorities were still insisting that the vessel be returned to the intervenor in this case⁴⁶. Indeed, in a communication dated January 23rd 2020, and addressed to a lawyer at the Office of the Attorney General, the Maltese authorities were informed that “*the status relating to the legal owner (VBKS Leasing) and possessor (Jolanda Drobez) has not changed*”⁴⁷;

That it also appears that, eventually, the Court of Magistrates as a Court of Criminal Inquiry has issued a decree whereby it ordered that the vessel be handed over to the intervenor in this case and taken out of Maltese territorial waters as soon as possible⁴⁸. According to the State Advocate, such development occurred after the sitting held before this Court on June 27th, 2023⁴⁹;

That as to the legal considerations applicable to this case, the Court deems it expedient to commence by evaluating the **second preliminary plea** of the State Advocate, which this Court abstained from deciding in its preliminary judgment of December 17th, 2022;

That in the second preliminary plea, the State Advocate is pleading the defence that this Court lacks competence to take cognizance of the applicant’s claims. On this point, the State Advocate is submitting⁵⁰ that this dispute concerns a matter which is regulated by Slovenian Law and therefore it is the Slovenian Courts which are the proper forum to take cognizance of the applicant’s claims. According to the State Advocate, the grievances of the applicant are inextricably intertwined with the request forwarded by the District State Prosecutor of the Slovenian Republic and in this respect the State Advocate argues that if the applicant wants to contest such a request, he could do so before the Slovenian Courts. The State Advocate further submits that the cooperation offered by the Maltese authorities is merely the result of a European Convention on Mutual Assistance in Criminal Matters and the laws of the European Union. On this basis, the State Advocate submits that the question on whether the

⁴⁴ Pg. 319.

⁴⁵ Pg. 323.

⁴⁶ See the testimony of Supt. Galea Scannura of January 26th, 2023, at pp 309 – 311 of the records.

⁴⁷ Pg. 324.

⁴⁸ Pg. 336 of the records. The legal representative of the State Advocate, reiterated this point at the sitting of November 7th 2023, and this whilst the legal representative of the applicant was delivering his oral submissions.

⁴⁹ *Ibid.*

⁵⁰ See the note of submissions of the State Advocate, at pp 201 – 2 of the records.

Slovenian authorities acted in a correct manner and in accordance to the proper procedure, is for the Slovenian Authorities to decide. The State Advocate also refers to the applicant's statements that this is a case of a purely civil nature, and in this light concludes that should this Court decide to reject this preliminary plea, this Court would be seised of a dispute arising out of Slovenian Law which should be decided exclusively by the Courts of the Republic of Slovenia;

That on the other hand, the applicant rebuts⁵¹ that these proceedings concern a decision which must be taken in Malta, is in relation to a sea vessel situated in Malta, and also against a person residing in Malta. The applicant submits that it is up to the Maltese authorities, and specifically the local courts, to decide on the request of the Slovenian Authorities and therefore it should be clear that this Court is vested with jurisdiction to rule upon his claims. In furtherance to this, the applicant makes it clear that he is not requesting the intervention of the local courts to scrutinize those actions which were carried out in Slovenia, but he is merely requesting this Court to prevent the forceful taking of the property which in his words, belongs to him, and which he should not be deprived of without any judgment or an executive order of a similar nature;

That in order to determine a plea of this sort, this Court must necessarily refer to contents of the claims and in particular the final demands as put forward by the applicant in the initial application by means of which this action was instituted. Even from a cursory look at the final demands, the Court notes that it is sufficiently clear that the applicant is claiming to have suffered a breach of his fundamental human right to the peaceful enjoyment of his property on the basis of Article 1 of the First Protocol to the Convention and Article 37(1) of the Constitution of Malta. Furthermore, the applicant is also requesting the protection of this Court, and specifically to issue orders by means of which his right to property on the vessel 'Azimut 55 IZ-2152', would be safeguarded, and this both in terms of the Constitution of Malta and the Convention. Given that both Article 46(2) of the Constitution of Malta and Article 4(2) of Chapter 319 of the Laws of Malta, vest this Court with original jurisdiction to hear and determine any application made by any person who alleges that any of the human rights and fundamental freedoms, has been, is being or is likely to be contravened in relation to him, and considering also that according to the same articles this Court is vested with the power to issue such writs and give directions as it may consider appropriate for the protection of those rights and freedoms, this Court deems that it is vested with the necessary competence to be seised of the applicant's claims and demands;

That, moreover, from an in-depth examination of the recitals contained in the applicant's application of November 13th, 2015, the Court notes

⁵¹ See the note of submissions of the applicant at pg. 215 of the records.

that whilst it is true that the plaintiff is complaining about the behaviour of the Slovenian authorities and that of Nejc Turizem as represented by Jolanda Drobez, at the same time, the applicant is also referring to the proceedings before the Court of Magistrates as a Court of Criminal Inquiry and is claiming that such Court cannot decide on matters regarding the ownership of the vessel. Indeed, the applicant is implying that the Court of Magistrates as a Court of Criminal Inquiry cannot accede to the demands of the Slovenian authorities and this because he is the owner of the vessel and the dispute involving that vessel is only of a civil nature and thereby beyond the competence of that Court and outside the scope of the Conventions on mutual assistance in criminal matters;

That whilst the above considerations should suffice for the rejection of the defendant's second preliminary plea, this Court considers it important to make it clear that such a rejection should not be construed in any way as an assertion that this Court has the power to hold the Slovenian authorities responsible for any breach of the applicant's fundamental human rights and freedoms. In proceedings of this sort, it is only the Maltese state through its organs, which can be held responsible for their own acts or omissions. It is therefore in this perspective that this Court is going to examine the merits of applicant's complaints;

That, in the light of these considerations, the said preliminary plea is rejected;

That as to **the merits** of this case, it is manifest that the applicant is basing his claims on the provisions of Article 1 of the First Protocol to the Convention and Article 37(1) of the Constitution. Being an integral element of an action of this sort⁵², the Court shall first and foremost examine whether the applicant has managed to prove his most basic assertion, and specifically whether he has the rights to which he claims on the vessel '*Azimut, 55, IZ-2152*'. This examination will lead the Court to assess whether the applicant has a proprietary interest which is eligible for protection under Article 1 of the First Protocol to the Convention and Article 37(1) of the Constitution of Malta. If such propriety interest is identified, the Court will then proceed by determining whether such proprietary interest was interfered with in a manner which is not compatible in terms of the exceptions found under Article 37(2) of the Constitution of Malta, and the second and third rules of Article 1 of the First Protocol to the Convention. On the other hand, if such a propriety interest is missing, then this action will necessarily fail⁵³;

⁵² See amongst others: (i) Constitutional Court, 13.4.2018 in the names *George Ciappara v. L-Awtoritá ta' Malta dwar l-Ambjent u l-Ippjanar et'*; (ii) Constitutional Court, 27.5.2016 in the names *Raymond Farrugia et v Avukat Generali et'*; (iii) Civil Court First Hall (Constitutional Jurisdiction), 27.6.2014 in the names *Francis Saviour Borg v. Kummissrju tal-Artijiet'*; (iv) Constitutional Court, 31.5.2010 in the names *Nazzareno Muscat et v. Avukat Generali* and (v) Constitutional Court, 31.7.1996, '*Micheal Zammit v. Perit Joseph Ellul Vincenti*'.

⁵³ Constitutional Court, 6.2.2015 in the names *Peter sive Rino Muscat Scerri et. v. Avukat Generali et. '*

That the applicant is claiming a proprietary interest on the vessel which gave rise to this dispute on the basis of two private agreements, one being entitled as a ‘Boat Rental Contract’⁵⁴, and the other one entitled as a ‘Business Cooperation Contract/Agreement’⁵⁵. Although these agreements have been entered into on the same day (April 3rd, 2013) and relate to the same vessel ‘Azimut, 55, IZ-2152’, these agreements are however not between the same parties. Indeed, whilst the ‘Business Cooperation Contract/Agreement’ was entered into between Nejc Turizem d.o.o. on one side, and the applicant and his ex-wife on the other⁵⁶, the ‘Boat Rental Contract’ was on the other hand entered into by and between: Nejc Turizem d.o.o. on one side, and a company named “The 88 Holdings Limited”, with registered address “Suites 1601-1603, Kinnick Centre, 32, Holloyoof Road, Hong Kong”, on the other⁵⁷. Although the applicant claims that he has a title of lease on the vessel, in reality the title of lease is therefore not in his own personal name but in the name of a company named ‘The 88 Holdings Limited’. Irrespective of whether the applicant is the beneficial owner of such company or otherwise, it is a universal principle that a limited liability company has a separate juridical personality from its beneficiaries, and given that the applicant instituted this case in his own personal name only, and not also on behalf of the company ‘The 88 Holdings Limited’, the applicant cannot claim that he has a propriety interest in the vessel as a lessee in terms of the ‘Boat Rental Contract’. It should be also noted that at no stage of the proceedings did the applicant submit any proof that the vessel was leased to him, in his own personal name, and instead the applicant insisted that he is the owner of the vessel by means of the ‘Business Cooperation Contract/Agreement’. Without prejudice to the fact that the ‘Boat Rental Contract’ does not grant any propriety interest to the applicant in his personal capacity, it is also worth noting that the term of the agreed lease was between May 1st, 2013 and October 5th, 2016. The applicant failed to provide any evidence that such term has been extended, and consequently even the lease to the company ‘The 88 Holdings Limited’ has lapsed;

That as regards to the claim that the applicant is the owner of the vessel ‘Azimut, 55, IZ-2152’, and this by means of the ‘Business Cooperation Contract/Agreement’, this Court, whilst recognising that there has been indeed a dispute on the interpretation of the nature of that agreement, notes, that by the fact alone that the applicant has filed civil proceedings at the District Court of Koper in the Republic of Slovenia, whereby he demanded that VBKS Leasing d.o.o. would be forced to allow Nejc Turizem d.o.o. to register the boat in the latter’s name, and for Nejc Turizem d.o.o. to in turn be forced to allow the boat

⁵⁴ Pg. 12 of the records.

⁵⁵ Pg. 11 of the records.

⁵⁶ *Ibid.*

⁵⁷ Pg 12 of the records.

to be registered in his own name⁵⁸, the applicant himself admits that he is indeed not the registered owner of the vessel in dispute, and that in reality the vessel is registered in the name of ‘VBKS Leasing d.o.o.’. Whilst this tallies exactly with what the Slovenian authorities have been claiming in a consistent manner⁵⁹, this is also ultimately evident from a copy of the certificate of the registration of the vessel which was submitted by the intervenor⁶⁰. The final nail in the coffin for the applicant’s claims was the negative outcome of the civil proceedings he had instituted in Slovenia by means of which in 2019, the High Court in Koper confirmed the judgment of the District Court in Koper of October 12th, 2018, rejecting the applicant’s claims against Nejc Turizem d.o.o. and VBKS Leasing d.o.o.⁶¹. Although, regrettably, the applicant seems to have done his best to try and hide this crucial fact from this Court, now that this Court has evidence that the civil courts of Koper – which, after all, were vested with the exclusive competence to determine any disputes arising from the ‘Business Cooperation Contract/Agreement’ and the ‘Boat Rental Contract’ – have decided against the applicant’s assertion that he is the owner of the vessel in question, the Court cannot but conclude that the applicant has failed to prove that he is the owner of the vessel ‘Azimut, 55, IZ-2152’. Ironically, what has been proved is rather the contrary, that is, the applicant is definitely not the owner of the vessel ‘Azimut, 55, IZ-2152’;

That in light of the above considerations, and given that the applicant has based his claims on the premise that he has a proprietary interest in the vessel ‘Azimut, 55, IZ-2152’, in terms of the ‘Business Cooperation Contract/Agreement’ and the ‘Boat Rental Contract’, this Court concludes that the applicant has failed to prove that he has a sufficient proprietary interest on such vessel which is eligible for protection under either Article 1 of the First Protocol to the Convention or under Article 37(1) of the Constitution of Malta. Considering that one of the constitutive and fundamental elements for any action on the basis of article 37(1) of the Constitution of Malta, and Article 1 of the First Protocol to the Convention is missing, this Court has no other option than that of rejecting the applicant’s claims⁶² as lacking adequate legal basis;

For the above-mentioned reasons, the Court hereby declares and decides by:

⁵⁸ Pp. 157-158 of the records.

⁵⁹ Pp. 9 and 324 of the records.

⁶⁰ Pg. 98 of the records.

⁶¹ Paragraph 1, pg. 319 of the records. After taking the initiative to translate this paragraph by electronic means, the Court noted that this paragraph reads: “The prosecutor’s office here obtained file P 664/2015 from the District Court in Koper, from the judgment of 12 October 2018, it follows that the court rejected the claims of Glen James Scott against the company Nejc Turizem D.o.o and the company VBKS leasing d.o.o.... After the evidentiary procedure, the court of first instance rejected the claims of Glen James Scott, and after the latter’s appeal, the High Court in Koper Judgment I Cp 48/2019 of 09/07/2019 rejected the appeal and confirmed the contested first instance judgement”.

⁶² See footnotes 53 and 54 *supra*.

Rejecting the second preliminary plea raised by the Attorney General, now the State Advocate, as being unfounded in law and in fact;

Upholding the fourth and ninth pleas of the Attorney General, now the State Advocate, and consequently **rejecting applicant's claims** as being unfounded both in fact and at law on the basis that the applicant failed to show that he has a proprietary interest in the vessel in question which is eligible for protection under either Article 1 of the First Protocol to the Convention or under Article 37(1) of the Constitution of Malta; and

Orders that applicant bear the **costs** of these proceedings, except those in connection with the second preliminary plea raised by the State Advocate and the appeal from this Court's preliminary judgment, which shall be borne by the said respondent, and those incurred by the intervenor, which shall be borne by the intervenor: provided that any fees due to the appointed Official Curators representing the intervenor shall be provisionally borne by the applicant.

Read and delivered.

**Hon. Joseph R. Micallef LL.D.,
Judge**

**Geraldine Rickard
Deputy Registrar**

26th January, 2024.