



**THE FIRST HALL OF THE CIVIL COURT  
(CONSTITUTIONAL JURISDICTION)**

**HON. JUDGE  
IAN SPITERI BAILEY LL.M. LL.D.**

**Today, Monday 12<sup>th</sup> February, 2024.**

**Case No. 8**

**Application No. 424/2023 ISB**

**Dr. Paul Scarrow**

**Vs**

**Avukat Ġenerali u  
Kummissarju tal-Pulizija**

**THIS IS A DECREE GIVEN TODAY IN OPEN COURT TO THE APPLICATION FILED BY THE PLAINTIFF ON THE 14<sup>TH</sup> NOVEMBER 2023, IN VIRTUE OF WHICH AN INTERIM MEASURE HAS BEEN REQUESTED TO THE EFFECT THAT THIS COURT ORDERS THE STAY OF PROCEEDINGS BEFORE THE COURT OF MAGISTRATES (MALTA) AS A COURT OF CRIMINAL JUDICATURE IN THE NAMES “POLICE VS DR PAUL SCARROW”**

**The Court:**

Having seen the application filed by the plaintiff on the 28<sup>th</sup> August 2023;

Having seen its decree of the 30<sup>th</sup> August 2023;

Having seen the reply filed by the defendants on the 15<sup>th</sup> September 2023;

Having seen the minutes of the sitting of the 27<sup>th</sup> October 2023;

Having seen the application filed by the plaintiff on the 14<sup>th</sup> November 2023, asking for an interim/provisional measure, for which this decree is being given.

Having seen the decree of the 15<sup>th</sup> November 2023;

Having seen the reply of the defendants to the said application, which reply was filed on the 17<sup>th</sup> November 2023;

Having noted the evidence produced to date;

Having heard the lawyers' submissions in respect of the application requesting the interim/provisional measure during the sitting of the 17<sup>th</sup> January 2024;

Having noted that the case was put off for today for the delivery of this decree in open court;

**The Court Considers:**

That the plaintiff has filed proceedings before this Court claiming a breach of his fundamental human rights in respect of criminal proceedings that the same plaintiff is facing before the Court of Magistrates in its Criminal Judicature jurisdiction, wherein he is answering for charges related to involuntary homicide of a person who was patient at St. James Hospital.

That during the said criminal proceedings, plaintiff (therein defendant), asked the Court to refer the matter to the First Hall of the Civil Court in its Constitutional Jurisdiction, which request was denied.

That following said Court decision, the defendant informed the Court that he would be filing Constitutional proceedings (hence these present) and that an interim order would be sought about which he would keep the Court of Magistrates informed.

**The Court further considers:**

That the plaintiff is putting forward this request for an interim measure stating that he had to proceed with this case once the Court of Magistrates decided to dismiss a request for a preliminary reference, even though that court did not conclude that the request was merely frivolous and vexatious.

The plaintiff states that the Court of Magistrates' position was that unless there is an interim order, then it will continue with the proceedings before it. He states that

once the Court of Magistrates decided that it was up to the plaintiff to obtain an interim measure, then he had no alternative but to request it. He further states that the interim measure is needed because, in the lack of such, the Court of Magistrates will proceed with the hearing of the criminal case.

During his submissions, the plaintiff's legal representative stressed that before the Magistrate's Court it was the office or the Attorney General itself which declared that the constitutional issues raised by the 'there' defendant, were to be decided upon by the First Hall of the Civil Court in its Constitutional jurisdiction as a first instance, and despite such a declaration, the Attorney General then opposed the Constitutional reference. He stressed that the Magistrate's Court stated that the plaintiff had to obtain an *interim order* and then it would stop.

The plaintiff's legal representative draws the distinction between the ECHR and local courts in so far as interim measures are concerned, underlining that the ECHR looks at cases *ex post facto*, as opposed to the local scenario.

He stresses that this Court is not being asked to issue a measure to stop the case indefinitely, but solely until the plaintiff's alleged human rights issues are resolved, and the case is decided by this Court on its merits. He further explains that before the Court of Magistrates, the prosecution concluded the production of evidence and when the defendant was asked to produce his evidence, it was then that he decided to withdraw his consent. Consequently, once the request to withdraw his consent was refused, the plaintiff alleged breach of his fundamental human rights.

### **The Court further considers:**

That in its reply to the interim measure request, the defendant Attorney General refers to various decrees already given by our Courts and the ECHR in respect of interim measures.

The Attorney General refers to the acts of the criminal proceedings as exhibited and notes that despite the fact that the accused was taken to court in June 2021, it was only in March 2023 that he raised his human rights alleged breaches.

Once more making reference to the acts of the criminal proceedings, the Attorney General notes that it does not results that the defendant, in those proceedings, made a request for the Court to stay proceedings pending the outcome of this *interim measure*.

As for the *prima facie* requirement, the Attorney General stresses that the plaintiff failed to prove that he has suffered a human rights breach, even though the Court of Magistrates had already dismissed the request for a reference.

The Attorney General further contends that should the criminal proceedings be continued, the defendant can never suffer serious prejudice, since he is in a stage

where he can produce any evidence he wishes, he has a right of appeal in case of a conviction and in any case, this Court always has the right to quash a conviction in case it finds in favour of the plaintiff when a final decision is given.

The Attorney General further replied to the request by stating that the institution of constitutional redress proceedings is not, in and of itself, a ground to warrant the suspension of ordinary proceedings, otherwise, this would give rise to abuse.

In his submissions, the Attorney General states that he considers the plaintiff's claim that he will suffer irreparable harm just by bringing forward his evidence to be very farfetched. He questions whether this Court should grant an *interim measure* when a competent court to decide upon a reference procedure had already declared the claims to be frivolous and vexatious.

### The Court further considers:

Having noted the respective positions and submissions made by the parties, the Court will start by referring to certain legal principles well-established by our case-law. In the case, '**Emmanuel Camilleri vs Spettur Louise Calleja et**'<sup>1</sup>, the Court stated:

*"Illi l-miżuri provviżorji huma maħsuba biex iżommu milli ssir ħsara li ma tissexwiex lil vittma ta' ksur ta' jedd fundamentali b'tali mod li ma jsir xejn li jista' jxejjen jew inaqqas mill-awtorita' u l-effikaċja tas-sentenza li tingħata dwar l-istess ilment [fn. 2 Q.E.D.B. 6.2.2003 fil-kawża fl- ismijiet Mamatkulov et vs Turkija (Applik. Nru. 46837/99) § 110].*

*F'dan ir-rigward, biex jista' jingħata rimedju provviżorju, jeħtieġ li min jitolbu juri li hemm każ 'prima facie' ta' ksur ta' jedd fundamentali u li n-nuqqas tal-għoti tal-miżura provviżorja sejra qgħib ħsara li ma titreġġax lura fil-każ tiegħu [fn. 3 Van Dijk, van Hoof, van Rijn, Zwaak Theory & Practice of the European Convention on Human Rights (4th Edit, 2006) §.2. 2.8.3, p. 113].*

*Għalhekk, m'huwiex biżżejjed li wieħed joqgħod biss fuq xi sitwazzjoni ipotetika jew li mhix ċerta li sseħħ. Minħabba f'hekk, l-għoti ta' provvediment provviżorju f'kawża ta' allegat ksur ta' jedd fundamentali jitolb li jintwerew ċirkostanzi eċċezzjonali li jagħmluh meħtieġ [fn.4 Deg P.A. (Kost.) AE 16.4.2014 fil-kawża fl- ismijiet Daniel Alexander Holmes vs Avukat Generali et.] ;*

*"Illi fuq kollox, l-għoti tar-rimedju interlokutorju jew provviżorju ma għandu gatt jintalab jew jingħata b'mod li jippreġudika l-mixi nnifsu tal- proċedura li fiha jintalab u bl-ebda mod ma għandu jintuża biex jorbot idejn il-Qorti li*

<sup>1</sup> Decided on the 2<sup>nd</sup> June 2014

*tagħtih dwar il-mod kif fl-aħħar mill-aħħar tagħti s-sentenza tagħha jew kif tikkunsidra bis-serenita' jew l-indipendenza meħtieġa l-provi u l-argumenti li l-partijiet iressqu quddiemha."*

**"Fil-ktieb "A Practitioner`s Guide to the European Convention on Human Rights" (4th Edition – Sweet & Maxwell) Karen Reid tgħid illi: :-**

*"As a general practice, measures (riferibbilment għal interim relief) are applied only where there is an apparent real and imminent risk of irreparable harm to life and limb ... While the procedure has been invoked in respect of other types of cases e.g. adoption of children, which may be arguably be of an irreparable nature, r.39 (riferibbilment għar-Rule 39 tar-Rules of Court tal-ECHR) has not been applied save in a few exceptional cases. Matters of detention or interference with property, for example, are not regarded as necessitating interim measures." (sottolinear ta' din il-Qorti).*

*"... it is only in cases of extreme urgency that interim measures are indicated : the facts must prima facie point to a violation of the Convention, and the omission to take the proposed measures must result or threaten to result in irreparable injury to certain vital interests of the parties or the progress of the examination!"<sup>2</sup>.*

As stated by this Court, albeit differently composed<sup>3</sup> and with reference to the "Factsheet" of the European Court of Human Rights on "Interim Measures", this type of remedy remains an exceptional one u described it as such:

*Interim measures are urgent measures which, according to the Court's well-established practice, apply only where there is an imminent risk of irreparable harm. Such measures are decided in connection with proceedings before the Court without prejudging any subsequent decisions on the admissibility or merits of the case in question. In the majority of cases, the applicant requests the suspension of an expulsion or an extradition. The Court grants such requests for an interim measure only on an exceptional basis, when the applicant would otherwise face a real risk of serious and irreversible harm ... In practice, interim measures are applied only in a limited number of areas and most concern expulsion and extradition. They usually consist in a suspension of the applicant's expulsion or extradition for as long as the 3 application is being examined. The most typical cases are those where, if the expulsion or extradition takes place, the applicants would fear for their lives (thus engaging Article*

<sup>2</sup> Theory and Practice of the European Convention on Human Rights (4<sup>th</sup> edition – 2006) by van Dijk, van Hoof, van Rijn u Zwaak

<sup>3</sup> 12/2021/1AF Castillo Lourdes vs Avukat tal-Istat 26.01.2021

2 of the Convention) or would face ill-treatment prohibited by Article 3 (prohibition of torture or inhuman or degrading treatment). More exceptionally, such measures may be indicated in response to certain requests concerning the right to a fair hearing (Article 6 § 1) and the right to respect for private and family life (Article 8).

Reference is also made to the case **Rosette Thake et vs Prim Ministru et**<sup>4</sup>:

..... biex jista' jinghata rimedju provvizorju, jehtieg li min jitolbu juri li hemm kaz prima facie ta' ksur ta' jedd fundamentali u li n-nuqqas tal-ghoti tal-mizura provvizorja serja ggib hsara li ma titreggax lura fil-kaz tieghu.

Minhabba f'hekk, l-ghoti ta' provvediment provvizorju f'kawza ta' allegat ksur ta' jedd fundamentali jitlob li jintwerew cirkostanzi eccezzjonali li jaghmluh mehtieg ara Daniel Alexnader Holmes vs Avukat Generali et – digriet P.A. kostit. AE 16.04.2014

#### **The Court further considers:**

Having made the above considerations, the Court will start by stating that the plaintiff failed to provide proof and satisfy the minimum requirement of *prima facie* evidence that his fundamental human rights were or are being breached.

Furthermore, the plaintiff has not convinced the Court that should the criminal proceedings proceed, then he will be prejudiced. To the contrary, this Court embraces the Attorney General's submission that the case is now pending for the production of evidence of the defense, and hence, by no stretch of imagination, will the Court accept that this should be prejudicial to the plaintiff.

As will be stated further down, this Court will deal with this case with priority, but in any case, even in the eventuality of a conviction of the defendant by the Criminal Court in the meantime, this Court always has the possibility of choosing to quash that decision of guilt should it find in the plaintiff's favour.

This Court has listened attentively to the submissions put forward by the parties, and in so far as this particular matter is concerned, namely the request for an *interim measure*, the Court concludes that there do not exist the requirements for this Court to uphold this request.

#### **The Court further considers:**

---

<sup>4</sup> Application 50/16/1JRM

The Court is hereby making it amply clear that its statements and conclusions do not, and should not be interpreted to have an impact of the final decision which the Court will eventually pronounce on the merits of the case. This is being stated in line with what our Constitutional Court has stated in the case **Repubblika vs Avukat tal-Istat**<sup>5</sup>:

*L-għan wara miżura proviżorja m'għandux ikun li jagħti rimedju finali qabel ma jkunu tressqu l-provi kollha u l-Qorti tkun f'pożizzjoni li tiddeċiedi l-kawża. F'dak l-istadju l-Qorti tkun f'pożizzjoni li tiddeċiedi jekk kienx hemm ksur, ikunux qegħdin jiġu miksura, jew x'aktarx ser jiġu miksura jeddijiet fundamentali.*

*It-talba għall-ħruġ ta' ordni proviżorja m'għandha lanqas isservi sabiex Qorti tagħti xi fehma dwar il-meritu tal-kawża li jkollha quddiemha. Li wieħed jippretendi li Qorti tippronunzja ruħha b'xi mod dwar il-meritu f'dan listadju bikri tal-kawża kostituzzjonali, hu żbaljat.*

#### **The Court further considers:**

That during the submissions put forward by the respective parties, it was made evidently clear that these proceedings should not last long. In reply to a question specifically asked by the Court as to what evidence the plaintiff intends to produce in respect of the merits of the case, the plaintiff's representative replied:

*"simple, I think his own evidence, the recent proceedings which are already part of the case, and probably, probably, he would, he would ask, he would ask the, the two, the two court experts, perhaps, perhaps to testify. But I'm not sure about you because we haven't discussed it yet. Yes, yes, yes. But there isn't, there isn't, you know, a list of 20 witnesses".*

The Attorney General on the other hand stated that *"from my understanding, there is relatively little. Realistically speaking, I think they could be concluded in a single sitting"*.

With a copy of the proceedings already exhibited, the Court thus deems that it itself and the parties should make an effort to finalise these proceedings without undue delay, and possibly in a faster manner than the criminal proceedings in question are progressing. In this way, the Court will ensure that this pending constitutional procedure will in no way hinder the proceedings before the Court of Magistrates, and all this, without prejudice to any remedy that would be available to the plaintiff should his requests be acceded to.

---

<sup>5</sup> 472/2022/1 deciza 24.11.2022

**Decision:**

**THEREFORE**, in view of all the considerations made above, the Court hereby:

1. Dismisses the plaintiff's request filed through his application of the 14<sup>th</sup> November 2023 requesting an *interim measure* to have the criminal proceedings before the Court of Magistrates and a Court of Criminal Judicature suspended pending the determination of this case on its merits.
2. Orders that the case be put off for a date within which all evidence by the parties is to be produced, with the clear intention that following such sitting, the parties will make submissions, orally or in writing, with the aim that this case will be put off for decision without delay.

Expenses in respect of this request will be borne by the plaintiff.

**Decree given in open Court today the 12<sup>th</sup> of February 2024.**

**Ian Spiteri Bailey**  
Hon. Judge

**Amanda Cassar**  
Deputy Registrar