QORTI ĊIVILI – PRIM'AWLA

(Sede Kostituzzjonali)

Onor. Imħallef Dr. Giovanni M Grixti LL.M., LL.D.

Rikors Nru: 411/22 GG

Josephine Cassar (K.I. 319167M)
Jane sive Jennifer Sammut (K.I. 40970M)
Charlotte Sammut (K.I. 124576M)

vs.

Avukat tal-Istat

Alfred Gatt (K.I. 0280940M)
Maria Dolores sive Doris Gatt (K.I. 0111541M)

Illum 7 ta' Marzu 2024.

Il-Qorti,

Rat ir-**Rikors ta' Josephine Cassar et** ippreżentat fir-registru ta' din il-Qorti fit-2 ta' Awissu 2022, bis-segwenti premessi u talbiet:

1. Illi r-rikorrenti huma proprjetarji tal-fond **8 gja 147, xi drabi maghruf bhala 147/2 Triq Anici, Hal-Qormi,** li huma akkwistaw minghand il-

mejta ommhom Maria Borg Mizzi li mietet fl-24 ta' Lulju 2001 skond certifikat tal-mewt hawn anness u mmarkat bhala **Dokument A**.

2. Illi skond l-ahhar testment taghha tal-20 ta' Lulju 1983 fl-atti tan-Nutar Dottor Victor John Bisazza, skond dokumenti hawn annessi u mmarkati bhala **Dokument B, C u D**, l-mejta Maria Borg Mizzi nnominat bhala eredi universali taghha, lill-uliehda, r-rikorrenti odjerni, suggett ghall-uzufrutt ta' zewgha Joseph Borg.

a. Illi fl-14 ta' Jannar 2002 fl-atti tan-Nutar Dottor Mario Bugeja, r-rikorrenti flimkien mal-mejjet missierhom, bhala uzufruttwarju tal-mejta martu Maria Borg Mizzi, ddikjaraw causa mortis l-fond in kwistjoni u hallsu t-taxxa relattiva lill-Kummissarju tat-Taxxi Interni, skond **Dokument E** hawn anness.

3. Illi Joseph Borg miet fl-10 ta' Frar 2008 skond **Dokument F**.

4. Illi l-ahhar testment tieghu kien it-testment unica charta li huwa ghamel ma' martu, Maria Borg Mizzi, kif jirrizulta mid-dokumenti hawn annessi, **Dokumenti G u H.**

5. Illi l-fond in kwistjoni huwa mikri lill-konjugi Gatt u ilu hekk mikri mill-1963, bil-kera mizera ta' £m14.00 fis-sena, sussegwentement £m20.00c fis-sena, u llum €185.00c fis-sena ai termini tal-Att X tal-2009, u dan kif jirrizulta mir-ricevuti tal-kera hawn annessi u mmarkati bhala **Dokument I1 sa I13**.

6. Illi l-fond mhux dekontrollat kif jirrizulta mid-**Dokument J** hawn anness.

7. Illi kif fuq inghad, l-kera li l-intimati Gatt jhallsu a tenur tal-ligi jammonta ghal **€185.00c** fis-sena, meta l-valur lokatizju tal-fond fis-suq huwa ferm u ferm aktar minn dak stabbilit bid-disposizzjonijet tal-Kap. 69 tal-Ligijiet ta' Malta, liema disposizzjonijet gew mibdula bi ftit bl-Att X tal-2009.

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

9. Illi ai termini tal-istess ligi bl-emendi li sarulha bl-Att X tal-2009, r-rata tal-kera ghandha tizdied biss kull tlett snin b'mod proporzjonali ghal mod li bih ikun jizdied l-Indici ta' Inflazzjoni skond l-Artikolu XIII tal-Ordinanza li Tnehhi l-Kontroll tad-Djar bl-awment li jmiss fl-1 ta' Jannar 2022, liema awmenti huma tenwi ghall-ahhar.

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

11. Illi l-livell baxx tal-kera, l-istat tal-incertezza tal-possibilità tat-tehid lura tal-proprjeta', in-nuqqas ta' salvagwardji procedurali, iz-zieda fil-livell tal-

ghejxien f'Maltaf' dawn l-ahhar decenni u l-interferenza sproporjzonata bejn id-drittijiet tas-sid u dawk tal-inkwilini ikkreaw piz eccessiv fuq ir-rikorrenti.

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

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

14. Illi gialadarba r-rikorrenti qed jsofri minn nuqqas ta' "fair balance" bejn l-interessi generali tal-komunita' u l-bzonnijiet u protezzjoni tad-drittijiet fundamentali tal-bniedem kif deciz b' **Beyeler vs Italy nru. 33202/96, J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd vs the United Kingdom [GC], nru. 44302/02, § 75, ECHR 2007-III)** u ghalhekk hemm lezjoni tal-principju ta' proporzjonalita kif gie deciz f'**Almeida Ferreira and Melo Ferreira vs Portugal nru. 41696/07 § 27 u 44 tal-21 ta' Dicembru 2010.**

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

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

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

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

GHALDAQSTANT ir-rikorrenti jitolbu bir-rispett lil din l-Onorabbli Qorti prevja kwalsiasi dikjarazzjoni necessarja u opportuna, u ghar-ragunijiet premessi, sabiex jghidu l-intimati ghalhiex m'ghandhiex:-

(I) **Tiddikjara u Tiddeciedi** illi fil-konfront tar-rikorrenti il-fatti suesposti u l-operazzjonijiet tal-Ordinanza li Tirregola l-Tigdid tal-Kiri tal-Bini ossija l-Kap. 69 tal-Liġijiet ta' Malta u l-Att X tal-2009 u l-Att XXIV tal-2021, bl-operazzjonijiet tal-Ligijiet vigenti qieghdin jaghtu dritt ta' rilokazzjoni indefinita lill-intimati Alfred Gatt (K.I. 0280940M) u Maria Dolores sive Doris Gatt (K.I. 0111541M) ghall-fond 8 gja 147, xi drabi maghruf bhala 147/2 Triq Anici, Hal-Qormi, u dan bi vjolazzjoni tad-drittijiet

fundamentali tar-rikorrenti kif sanciti inter alia fl-Ewwel Artikolu ta' l-Ewwel Protocol tal-Konvenzjoni Ewropeja (l-Ewwel Skeda tal-Kap. 319 tal-Liġijiet ta' Malta), u b'hekk ghar-ragunijiet fuq esposti u dawk li ser jirrizultaw waqt it-trattazzjoni ta' dan ir-rikors, ir-rikorrenti ghandha tinghata r-rimedji kollha li din l-Onorabbli Qorti jidhrulha xierqa fis-sitwazzjoni.

(II) **Tiddikjara u Tiddeciedi** illi l-intimat Avukat tal-Istat huwa responsabbli ghal kumpens u danni sofferti mir-rikorrenti b'konsegwenza ta' l-operazzjonijiet tal-Kap. 69 u l-Att X tal-2009 u l-Att XXIV tal-2021 tal-Ligijiet ta' Malta talli ma nzammx bilanc u proporzjon bejn id-drittijiet tas-sidt u dawk tal-inkwilina peress illi l-kera pagabbli a tenur tal-ligijiet vigenti ma tirriflettix is-suq u l-anqas il-valur lokatizzju tal-proprjeta' in kwistjoni wkoll ai termini tal-Ligi.

(III) **Tillikwida** l-istess kumpens u danni kif sofferti mir-rikorrenti, wkoll ai termini tal-Ligi.

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

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

Rat ir-**Risposta tal-Avukat tal-Istat** ippreżentata quddiem din il-Qorti, diversament presjeduta, fl-10 ta' Ottubru 2022, bis-segwenti eccezzjonijiet:

1. Illi preliminarjament, ir-rikorrenti iridu iġibu prova sodisfaċenti tat-titolu tagħhom għall-fond in kwistjoni;
2. Illi mingħajr preġudizzju għas-suespost, ir-rikorrenti iridu jġibu prova li l-kirja in kwistjoni f'dawn il-proċeduri hi verament imħarsa mill-Kap. 69 tal-Liġijiet ta' Malta;
3. Illi mingħajr preġudizzju għas-suespost, u fil-mertu, l-esponent jikkontendi li ma kien hemm ebda ksur tal-Ewwel Artikolu tal-Ewwel Protokoll stante li fil-każ odjern sar biss kontroll fl-użu tal-proprjetà in kwistjoni fil-parametri ta' dak permessibbli taħt dan id-dritt fundamentali.
4. Illi l-esponent jikkontendi illi l-Att XXIV tal-2021 joffri rimedju li jżomm bilanċ u proporzjon bejn id-drittijiet tas-sid u tal-inkwilin;
5. Illi fi kwalunkwe każ, l-allegazzjonijiet u pretensjonijiet tar-rikorrent huma infondati fil-fatt u fid-dritt;
6. Illi r-rikorrenti ma jistgħux jippretendu kumpens anke għaż-żmien li l-antekawża tiegħu kienu propjetarji tal-fond stante illi d-drittijiet fundamentali huma fihom infushom drittijiet personali u ma jistgħux la jiġu trasferiti inter vivos;
7. Illi mingħajr preġudizzju għas-suespost, l-esponent jikkontendi li jekk din l-Onorabbli Qorti tqis li seħħ ksur tal-Ewwel Artikolu tal-Ewwel Protokoll, dan il-ksur jista' jissustixxi biss bejn it-30 ta' April, 1987 sal-31 ta' Mejju, 2021 u cioè mid-data stabbilita fl-Artikolu 7 tal-Kap. 319 tal-Liġijiet ta' Malta sa l-aħħar data qabel id-dħul fis-seħħ tal-Att XXIV tal-2021;

Bl-ispejjeż.

Rat ir-**Risposta tal-intimati Alfred Gatt et**ipprezentata quddiem din il-Qorti ukoll diversament presjeduta, fl-1 ta' Novembru 2022, li permezz taghha eccepew li:

1. Illi preliminarjament u minghajr pregudizzju ghall-eccezzjoni dawk sussegwenti, l-eccipjenti ma humiex il-legittimi kontradditturi sabiex iwiegbu ghat-talbiet tar-rikorrenti u ghalhekk ghandhom jigi lliberati mill-osservanza tal-gudizzju fir-rigward tal-istess talbiet u dan stante li fir-rigward tal-ewwel (1) talba, min-natura taghha stess, tali talba tista' tingieb biss kontra l-Gvern jew enti pubblici li huma kostituzzjonalment vestiti bil-garanzija tad-drittijiet fundamentali fit-termini tal-Kostituzzjoni u/jew tal-Att dwar il-Konvenzjoni Ewropea; u fir-rigward tat-tieni (2), it-tielet (3) u r-raba' (4) talbiet tar-rikorrenti dawn huma indirizzati biss fil-konfront tal-Avukat tal-Istat;

2. Illi minghajr pregudizzju ghall-eccezzjonijiet precedenti u dawk sussegwenti, ir-rikorrenti ghandhom igibu prova cara u inekwivoka tat-titolu taghhom, ossia li huma proprjetarji tal-imsemmija proprjeta';

3. Illi minghajr pregudizzju ghall-eccezzjonijiet precedenti u dawk sussegwenti, jigi rrilevat illi l-eccipjenti jokkupaw taht titolu ta' kera parti biss mill-fond 8 gja 147, Triq Anici, Hal Qormi u dan stante li tali fond jikkonsisti f'kerrejja u konsegwentement hemm terzi persuna/i ohra jghix/u fl-istess fond minbarra l-eccipjenti;

4. Illi minghajr pregudizzju ghall-eccezzjonijiet precedenti u dawk sussegwenti, it-talbiet tar-rikorrenti ghandhom jigu michuda bl-ispejjes, stante li l-istanza tar-rikorrenti hija msejsa fuq allegati lezjonijiet tad-drittijiet fundamentali ta' l-istess rikorrenti, kkawzati mill-ligijiet vigenti kif minnhom msemmija, mentri l-eccipjenti ma ghamlu ebda ligijiet, anzi huma dejjem mxew tajjeb mal-ligijiet legittimi promulgati mill-legislatur tal-Istat u fil-parametri ta' l-istess ligijiet, u allura bl-ebda mod ma seta' jilledi d-drittijiet fundamentali tar-rikorrenti, u per konsegwenza, ma ghandhomx jinstabu responsabbli ghal allegat ksur tad-drittijiet fundamentali tar-rikorrenti, u lanqas konsegwentement ma ghandhom ibatu konsegwenzi jew jigu mgieghla joffru xi rimedju;

5. Illi minghajr pregudizzju ghall-eccezzjonijiet precedenti u dawk sussegwenti in kwantu ghall-ewwel (1) talba jigi rrilevat illi ma hemm ebda ksur tad-drittijiet stante li tali Ligijiet kif emendati tul is-snin fosthom permezz tal-Att X tal-2009 u kif ukoll tal-Att XXIV tal-2021 saru taht qafas legali bi skop legittimu stante li tali ligijiet gew promulgati fl-interess generali sabiex jigu indirizzati htigijiet socjali filwaqt li jzommu bilanc gust u proporzjonat bejn l-ghan socjali u d-drittijiet fundamentali tas-sidien;

6. Illi minghajr pregudizzju ghall-eccezzjonijiet precedenti u dawk sussegwenti in kwantu ghall-ewwel (1) talba jigi rrilevat illi sa mill-ewwel (1) ta' Gunju tas-sena elfejn u wiehed u ghoxrin (2021) gie introdott rimedju ghall-ilmenti tas-sidien u dan permezz tal-Att XXIV tal-2021 liema rimedju jzomm bilanc gust u proporzjonat bejn l-ghan socjali u d-drittijiet fundamentali tas-sidien. Filfatt

kontestwalment mar-rikors kostituzzjonali promotur ir-rikorrenti pprezentaw rikors fil-Bord li Jirregola l-Kera sabiex tigi awmentata l-Kera skond l-Att XXIV tal-2021. Konsegwentement l-ewwel (1) talba ghandha tigi michuda stante li r-rikorrenti diga' ghandhom rimedju;

7. Illi minghajr pregudizzju ghall-eccezzjonijiet precedenti u dawk sussegwenti, it-talbiet tar-rikorrenti ghandhom jigu michuda bl-ispejjes, stante illi l-eccipjenti dejjem aderixxew ruhhom skond il-ligi, u inoltre kienu dejjem ben rikonoxxuti bhala l-idoneju inkwilini mis-sidien ta' parti mill-fond in kwistjoni matul is-snin, l-eccipjenti dejjem adoperaw, mxew ma u strahu fuq id-disposizzjonijiet tal-ligijiet vigenti rigwardanti l-istess titolu lokatizzju taghhom u d-drittijiet taghhom naxxenti mill-istess, mentri qatt ma kisru ebda kundizzjoni relattiva ghall-kirja *de quo*, u kif wkoll, dejjem halsu l-kera relattiva;

8. Illi minghajr pregudizzju ghall-eccezzjonijiet precedenti u dawk sussegwenti jigi rrilevat illi kwalunkwe ilment kostituzzjonali tal-atturi jew min minnhom ghandu jigi kkonsidrat biss mid-data ta' meta huma saru sid il-fond mertu tal-kawza u mhux qabel;

9. Illi minghajr pregudizzju ghall-eccezzjonijiet precedenti u dawk sussegwenti, din l-Onorabbli Qorti ghandha tiehu kont tal-emendi fil-ligi senjatament izda mhux limitatament ghall-Att XXIV tal-2021 u konsegwentement l-ewwel (1) talba tal-atturi ghandha tigi michuda stante li l-atturi diga' ghandhom ir-rimedji opportuni fir-rigward;

10. Illi inoltre, jingieb a konjizzjoni ta' din l-Onorabbli Qorti li l-eccipjenti ghamlu diversi xogholijiet u benefikati fil-fond in kwistjoni u dan kif ser jirriżulta fil-mori u s-smiegħ tal-kawża u dan anke stante il-fatt illi huma investew f'dan l-istess fond li dejjem serva bhala r-residenza ordinarja taghhom;

11. Illi minghajr pregudizzju ghall-eccezzjonijiet precedenti u dawk sussegwenti, u ghar-ragunijiet fuq dedotti, l-eccepjenti ma ghandhom ibatu l-ebda spejjez konnessi ma dawn il-proceduri stante li l-istess eccepjenti dejjem ottemperaw ruhhom mill-ahjar li setghu mal-ligijiet legittimi u vigenti, u dak li ghamlu kien biss li uzufruwixxew mid-drittijiet moghtija lilhom mill-ligi;

12. Illi minghajr pregudizzju ghall-eccezzjonijiet precedenti, it-talbiet tar-rikorrenti ghandhom jigu michuda bl-ispejjez stante li l-istanza tar-rikorrenti hija kompletament infondata fil-fatt u fid-dritt.

13. B'riserva ta' eccezzjonijiet ulterjuri skont il-Ligi, jekk jkun il-kaz;

Bl-ispejjez kontra r-rikorrenti.

Rat ir-Relazzjoni tal-Perit Tekniku mahtur mill-Qorti, l-AIC Michael Lanfranco [1] u mahlufa fit-13 ta' Jannar 2023.

Rat il-provi dokumentarji tal-partijiet.

Rat il-mistoqsijiet in eskussjoni lill-Perit Tekniku[2], u t-twegibiet tieghu ghall-istess[3].

[1] Fol. 59 sa 75
[2] Fol. 83
[3] Fol. 85 sa 88

Rat is-sottomissjonijiet bil-miktub tal-partijiet.

Ikkunsidrat li:

1. Dan huwa ilment kostituzzjonali li r-rikorrenti qed iressqu kontra l-Avukat tal-Istat minhabba fl-obbligu li ghandhom, skond l-**art. 3** tal-Ordinanza li Tirregola t-Tigdid tal-Kiri tal-Bini (Kap. 69 tal-Ligijiet ta' Malta), li jgeddu l-kirja tal-fond residenzjali 147 (xi drabi msejjah 147, Flat 2[4]), Triq Anici, Qormi, favur l-inkwilini intimati konjugi Gatt, b'kera kontrollat li ma jeccedix il-minimu tal-kera stabbilit fl-**art. 1531C** tal-Kodici Civili wara d-dhul fis-sehh tal-Att X tal-2009, li jqisu li huwa kera irrizorju fir-realta' kummercjali u tal-proprjeta' f'Malta llum. Fid-dikjarazzjonijiet taghhom fl-att promotur, ir-rikorrenti jilmentaw li sofrew ksur tad-dritt fundamentali taghhom kif protett bl-**Ewwel Artikolu tal-Ewwel Protokoll** tal-Konvenzjoni Ewropea bit-thaddim tal-Kapitolu 69 tal-Ligijiet ta' Malta;

2. Ir-rikorrenti qed jistrieh fuq ix-xiehda bl-affidavit tar-Josephine Cassar u fuq id-dokumenti tat-titolu taghhom. Minn dawn il-provi mhux kontradetti u lanqas kontestati mill-partijiet l-ohra fil-kawza[5], jirrizulta li:

(i) ir-rikorrenti huma kollha ulied, u eredi, tal-genituri taghhom Guzeppi sive Joseph Borg u Mary Borg sive Borg Mizzi;

(ii) Mary Borg Mizzi mietet fl-24 ta' Lulju 2001[6], u zewgha Guzeppi Borg miet fl-10 ta' Frar 2008[7];

(iii) is-successjoni ta' Guzeppi Borg u Mary Borg Mizzi hija regolata[8] b'testment *unica charta* in atti tan-Nutar Dottor

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[4] Ara paragrafi wiehed (1) tal-affidavit tar-rikorrenti Josephine Cassar, fol. 6
[5] Fol. 6 *et seq.*
[6] Fol. 11
[7] Fol. 25
[8] Fol. 15 sa 17 u 25 sa 28

Victor Bisazza fl-20 ta' Lulju 1983[9], li permezz tieghu hallew l-uzufrutt generali lis-superstiti fosthom, u nnominaw b'eredi universali taghhom lit-tlett uliedhom, cioe' Josephine, Jennifer, u Charlotte, ahwa Borg, ossia r-rikorrenti odjerni, fi kwoti ugwali bejniethom;

(iv) is-successjoni ta' Mary Borg Mizzi kienet dikjarata, u thallset it-taxxa skond il-ligi, b'att tan-Nutar Dottor Mario Bugeja tal-14 ta' Jannar 2002[10]; filwaqt li ma kienitx ezibita d-dikjarazzjoni *causa mortis* ta' Guzeppi Borg[11];

(v) il-fond in kwistjoni jifforma parti minn kerrejja, li kienet tinkludi fond residenzjali iehor, maghruf bhala 147, Flat 1, Triq Anici, Qormi, li kien okkupat b'kiri minn terzi, u li mhux parti mill-fond mertu tal-kawza;

(vi) il-fond mertu tal-kawza, izda, huwa mikri lill-intimati konjugi Gatt bil-kera minima komputata skond id-disposizzjonijiet tal-**art. 1531C** tal-Kodici Civili.

3. Fl-affidavit taghha r-rikorrenti Josephine Cassar[12] spjegat din il-provenjenza u wkoll l-istat fiziku tal-fond. Qalet li mill-istess entrata bin-numru 147, fi Triq Anici, kien hemm access ghal zewg residenzi, din mertu tal-kawza denominata bhala Flat 2, u ohra denominata bhala Flat 1 li kienet mikrija lil Alfred u Mary Cumbo. Skond ir-rikorrenti, il-fond mertu tal-kawza ilu mikri lill-intimati Gatt mis-sena 1963, originarjament b'kera ta' LM14 (ekwivalenti llum ghal €32.61) fis-sena, u mbaghad bil-kera minima skond il-ligi wara t-tibdil legislattiv li sehh bl-Att X tal-2009.

5. Mill-intimati xehedet ukoll bil-mezz tal-affidavit Maria Dolores sive Doris Gatt[13]. Hija kkonfermat li hi u zewgha jghixu f'parti diviza minn kerrejja bin-numru 147, Triq Anici,

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[9] Fol. 12 sa 14
[10] Fol. 19 sa 24
[11] Ara dikjarazzjoni tan-Nutar Dottor Mario Bugeja, fol. 18
[12] Ara affidavit, fol. 73
[13] Fol. 79 sa 82

Hal-Qormi, u fil-parti l-ohra tirrisjedi bil-kera certa Mary Cumbo. Hija kompliet tghid li din ir-residenza tikkonsisti f'kamra tas-sodda, kamrin tat-*toilet*, spazju taht it-tarag fejn issajjar u bitha li trid tghaddi minnha ghall-ambjenti l-ohra. Hija spjegat ukoll ix-xoghlijiet li ghamlu hi u zewgha fil-post, bil-kunsens tas-sidien, biex ikollhom il-htigijet bazici ghall-ghixien decenti fir-realta' tal-lum. Qalet ukoll li, bil-kunsens tal-kerrejja l-ohra Cumbo, li tigi ohtha, tuza l-bejt li proprjament huwa parti mill-kirja taghha u mhux minn din il-kirja. Hija pprezentat ukoll ritratti tal-ambjenti interni tal-fond mertu tal-kawza, li juru li huwa post modest, zghir hafna u antik.

Ikkunsidrat li:

6. Bl-ewwel zewg eccezzjonijiet tal-intimat Avukat tal-Istat, u bit-tieni eccezzjoni tal-intimati konjugi Gatt, dawn eccepew li r-rikorrenti ghandhom iressqu prova sodisfacenti tat-titolu taghhom fuq il-fond mertu tal-kawza, u li l-kirja impunjata hija regolata bid-disposizzjonijiet tal-Ordinanza li Tirregola t-Tigdid tal-Kiri tal-Bini (Kap. 69 tal-Ligijiet ta' Malta).

7. Din il-Qorti diga' spjegat, aktar 'il fuq, il-provi ta' fatt li ressqu r-rikorrenti mar-Rikors promotur dwar il-provenjenza tat-titolu taghhom fuq dan il-fond. Ma tressqet ebda prova kuntrarja, u lanqas saret kontestazzjoni ghar-rizultanza li l-intimati inkwilini irrikonoxxew lir-rikorrenti kollha flimkien bhala sidien ta' dan il-fond, u lokaturi taghhom, u li kienu jhallsuhom il-kera minghajr rizerva sakemm bdiet din il-kawza[14]. Fihom infushom, dawn il-provi juru – fuq bilanc ta' probabiltajiet – kemm l-ezistenza tar-relazzjoni lokatizja, u wkoll tad-drittijiet tar-rikorrenti fuq l-istess fond. Fis-sottomissjonijiet tieghu, l-intimat Avukat tal-Istat insista li r-rikorrenti naqsu li jipproducu kopja tad-dikjarazzjoni *causa mortis* ghar-rigward tan-nofs indiviz mill-fond mertu tal-kawza li wirtu minghand missierhom Guzeppi Borg. Ghalkemm dan huwa minnu, wara t-trapass taz-zmien ta' ghaxar snin imsemmi fl-**art. 63(4)** tal-Att dwar it-Taxxa fuq Dokumenti u

[14] Ara kopji tar-ricevuti tal-hlas tal-kera, fol. 31 sa 41

Trasferimenti (Kap. 364 tal-Ligijiet ta' Malta), il-prova tas-successjoni tista' ssir bil-mezzi kollha li tippermetti l-ligi, u din il-Qorti tinsab sodisfatta, mill-provi dokumentarji prezentati, li dan il-fond kien jappartjeni lill-komunjoni tal-akkwisti li kien hemm bejn Guzeppi Borg u Maria Borg Mizzi, u li z-zewg successjonijiet ghaddew fl-intier taghhom ghand ir-rikorrenti f'din il-kawza.

8. Dwar dan l-aspett, din il-Qorti tirreferi għas-sentenza mogħtija fis-7 ta' Frar, 2017, fil-kawża fl-ismijiet **Robert Galea vs Avukat Ġenerali et (Numru 50/2015)** fejn din il-Qorti, diversament preseduta, irriteniet hekk:

> *"Illi biex wieħed ikun f'qagħda li juri li ġarrab ksur tal-jedd fundamentali tiegħu taħt l-Artikolu 37 tal-Kostituzzjoni m'għandux għalfejn jipprova titolu assolut u lanqas wieħed oriġinali bħallikieku l-azzjoni dwar ksur ta' jedd fundamentali kienet waħda ta' rivendika*[15]*. Huwa biżżejjed, għall-finijiet ta' dak l-artikolu, li wieħed juri li għandu jedd fil-ħaġa li tkun li bih jista' jieqaf għall-pretensjonijiet ta' ħaddieħor. Imbagħad, għall-finijiet tal-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni, huwa biżżejjed li l-persuna turi li kellha l-pussess tal-ħaġa li tkun'.*

9. Aktar ricenti, dan ir-ragunament kien abbraccjat f'diversi gudikati ta' din il-Qorti, diversament presjeduta, u kien konfermat ukoll mill-Qorti Kostituzzjonali fis-sentenza **Catherine Tabone pro et noe vs L-Avukat Generali et**.[16]

10. Din il-Qorti tabbraccja dan ir-ragunament u minn din l-ottika jirrizulta li l-intimati Gatt infushom jaccettaw li din il-kirja ilha ghaddejja minn qabel l-1 ta' Gunju 1995, u ghalhekk ma hemmx kwistjoni li hija soggetta ghad-disposizzjonijiet tal-Kap. 69, u li t-tigdid kontinwu b'kera kontrollat favur taghhom sal-prezent sehh bl-applikazzjoni ta' dik il-ligi specjali.

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[15] Kost. 27.3.2015 fil-kawża fl-ismijiet **Ian Peter Ellis et vs Avukat Ġenerali et**
[16] Rik. Nru. 27/18MCH, 27.3.2020

11. Ghalhekk, dawn l-eccezzjonijiet jirrizultaw infondati, u ser jigu michuda.

Ikkunsidrat ukoll li:

12. Bir-raba' sitt u seba' eccezzjonijiet tieghu, l-intimat Avukat tal-Istat ikkontesta l-pretensjoni tar-rikorrenti dwar perjodi qabel ma huma saru s-sidien, u ghaz-zmien wara d-dħul fis-sehh tal-Att XXIV tal-2021, meta lir-rikorrenti inghatalhom rimedju ordinarju ghall-awment fil-kera. Huwa irritjena li r-rikorrenti messhom ezawrew ir-rimedju ordinarju mizjud fil-ligi impunjata bl-Att XXIV tal-2021, u li r-regim legali kontestat ghandu jitqies fit-totalita' tieghu, b'dan l-ahhar Att inkluz.

13. Ghal dan l-aggravju preciz, wiegbet il-Qorti Kostituzzjonali fis-sentenza **Catherine Farrugia et vs Avukat tal-Istat et**[17], b'konferma tal-gurisprudenza anterjuri[18], bis-segwenti spjegazzjoni:

19. Ir-rikorrenti għandha raġun targumenta illi għall-għanijiet tal-kalkolu tal-kumpens pekunjarju (iżda mhux ukoll tad-danni morali), jekk il-ksur beda jseħħ meta l-fond kien għadu f'idejn l-awtur tagħha, għall-finijiet ta' kumpens pekunjarju d-dies a quo jibda minn meta r-rikorrenti wirtet lil zijuha. Dan għaliex bħala suċċessuri universali, il-werrieta jġarrbu d-danni direttament meta l-patrimonju li jirtu jkun anqas milli kien ikun li kieku dak il-patrimonju ma ġarrabx dak it-telf. Is-suċċessuri jirtu għalhekk, mhux tant id-dritt fundamentali tal-awturi fit-titolu tagħhom, iżda d-danni patrimonjali.

20. F'dan il-każ, mhux kontestat li l-intimat Zammit ilu jgħix fil-fond in kwistjoni minn mindu twieled u li hu u l-ġenituri tiegħu qablu okkupawh b'kera għal ċirka tmienja u sittin (68) sena, ossija mis-sena 1953. B'hekk, l-intimat Zammit u qablu l-ġenituri tiegħu gawdew il-protezzjoni tal-Kap. 69 ferm qabel ma daħal fis-seħħ il-Kap. 319 fit-30 ta' April, 1987. Dan a

[17] Rik. Nru. 445/2021/1MH, 12.7.2023
[18] Ara fost ohrajn **d**, Rik. Nru. 202/2020/1, Qorti Kostituzzjonali, 4.5.2022

skapitu tar-rikorrenti u l-awtur li rċevew kera baxxa mingħand l-inkwilin.

21. Billi għalhekk il-patrimonju li wirtet ir-rikorrenti mingħand John Muscat, kien anqas milli kien ikun li kieku f'dak il-patrimonju daħal ħlas ta' kera b'rata kummerċjali flok b'rata kontrollata, m'hemmx dubju li l-kumpens dovut lilha għal-leżjoni ravviżata mill-Ewwel Qorti jrid jiġi *<u>kalkulat mit-30 ta' April, 1987</u>*.

14. Fl-istess sentenza, il-Qorti Kostituzzjonali wiegbet ukoll dwar l-adegwatezza tar-rimedji introdotti favur is-sidien ta' fondi soggetti ghal kiri kontrollat bid-dritt li jitlob awment fil-kera sa 2% tal-valur tal-fond mikri fis-suq miftuh:

17. Kif ipprovdiet din il-qorti fil-każ ta' ***Albert Cassar et v. Il-Prim Ministru et***[19]*:*

»... il-fatt waħdu li l-liġi tagħti biss il-possibilità illi l-kera jogħla sa mhux aktar minn tnejn fil-mija ta' kemm jiswa l-post, ma jfissirx li hemm ksur tal-jedd fundamentali għat-tgawdija tal-proprjetà, partikolarment fiddawl tal-fatt illi l-kera jibqa' kontrollat biss sakemm il-kerrej jibqa' jeħtieġ protezzjoni soċjali u illi tista' tintalab reviżjoni tal-kera kull sitt snin...«

18. Jibqa' relevanti wkoll dak li qalet din il-qorti fis-sentenza mogħtija fil-15 t'Ottubru 2020 fl-ismijiet ***Gerald Camilleri et v. l-Avukat Ġenerali et****:*

»"Il-fatt illi jista' jkun illi fis-suq ħieles tista' ssib lil min jista' u huwa lest li jħallas b'kera daqs erbgħa fil-mija (4%) fis-sena ta' kemm jiswa l-fond mikri, ma jfissirx illi ma hemmx sezzjoni mdaqqsa tal-popolazzjoni li ma tiflaħx tħallas daqshekk, u għalhekk, meta tqis ukoll il-valur soċjali tal-akkommodazzjoni, jibqa' meħtieġ li jkun hemm forma ta' kontroll fuq iż-żjidiet fil-kera. F'suq tassew ħieles il-prezz li jitħallas għal oġġett jew servizz – fil-każ tallum il-kera – ma huwiex wieħed aritmetikament fiss, fis-sens li dejjem sejjer

[19] "Q.K., 4. ta' Mejju 2022 (Rik. Kost. Nru. 130/2019/1 LM)"

ikun bejn tlieta u nofs u erbgħa fil-mija (3.5-4%) iżda jiddependi mid-domanda u ddisponibilità, u għalhekk ma hemm xejn minqux fil-ġebel illi sid il-fond sejjer isib dejjem li jikrih b'kera ta' bejn tlieta u nofs u erbgħa fil-mija tal-valur kapitali.

»Il-qorti għalhekk taqbel mal-Avukat tal-Istat illi d-disposizzjonijiet tal-art. 12B tal-Kap. 158 joħolqu mekkaniżmu li jippermetti lis-sid li jdaħħal kera xieraq, meqjusa wkoll il-ħtiġijiet u l-għanijiet soċjali.«

15. L-istess kunsiderazzjonijiet jghoddu f'dan il-kaz wara d-dhul fis-sehh tal-Att XXIV tal-2021 li introduca l-istess jedd ghal awment fil-kera favur il-lokatur, f'relazzjoni lokatizja kontrollata skond l-Ordinanza li Tirregola t-Tigdid tal-Kiri tal-Bini (Kap. 69).

16. Konsegwentement, din il-Qorti sejra tichad dawn l-eccezzjonijiet biss in kwantu l-Avukat tal-Istat qed jittenta jillimita l-parametri taz-zmien li fihom sehh il-ksur ghal meta r-rikorrenti wirtu dan il-fond minghand l-awturi taghhom, u tilqaghhom ghall-bqija, u fl-istess sens tilqa' l-eccezzjonijiet tal-intimati Gatt sa fejn kompatibbli ma' dak hawn deciz, u tichadhom ghall-bqija.

Ikkunsidrat ukoll li:

17. Bil-hames eccezzjoni tieghu[20], l-intimat Avukat tal-Istat jikkontesta b'mod generiku li l-kontrolli stipulati fl-Ordinanza li Tirregola t-Tigdid tal-Kiri tal-Bini (Kap. 69 tal-Ligijiet ta' Malta), u t-thaddim taghhom ghall-kirja mertu ta' din il-kawza, tul is-snin, kisru d-dritt fundamentali tar-rikorrenti, u tal-awturi qraba taghhom, kif protett bl-**Ewwel Artikolu tal-Ewwel Protokoll** tal-Konvenzjoni Ewropea, li jipprovdi hekk:

1.*Kull persuna naturali jew persuna morali għandha dritt għat-tgawdija paċifika tal-possedimenti tagħha. Ħadd ma għandu jiġi pprivat mill-possedimenti tiegħu*

[20] Kif spjegat ahjar fis-sottomissjonijiet bil-miktub imressqa mill-Avukat tal-Istat, fol. 101 sa 105

ħlief fl-interess pubbliku u bla ħsara għall-kundizzjonijiet provduti bil-liġi u bil-prinċipji ġenerali tal-liġi internazzjonali.

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

18. Fis-sentenza **Hutten-Czapska v. Polonja**[21] li kienet tirrigwardja kontestazzjoni tal-protezzjoni li l-ligi Pollakka kienet taghti lil kirjiet ta' fondi residenzjali, il-Qorti Ewropea segwiet il-gurisprudenza taghha dwar l-interpretazzjoni ta' dan l-artiklu, u qalet hekk:

"157. Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, inter alia, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among other authorities, James and Others v. the United Kingdom, 21 February 1986, § 37, Series A no. 98, which reiterates in part the principles laid down by the Court in Sporrong and Lönnroth v. Sweden, 23 September 1982, § 61, Series A no. 52; see also Broniowski v. Poland [GC], no. 31443/96, § 134, ECHR 2004-V)"

[21] Applikazzjoni 35014/97, Grand Chamber, 19.6.2006

19. Mill-atti jirrizulta li din il-kirja bdiet fis-sena 1963, u li l-kera percepita mill-awturi tar-rikorrenti bejn dik is-sena u l-2009 kienet fis-somma ta' LM14 (€32.61) kull sena. Wara dakinhar, din gholiet l-ewwel ghal €185 fis-sena, u dik il-kera baqghet tithallas – minkejja li r-rikorrenti kellhom dritt ghaz-zidiet minimi perjodici fit-termini tal-**art. 1531C** tal-Kodici Civili – sakemm bdiet din il-kawza.

20. Jirrizulta ghalhekk li l-kirja li l-awturi tar-rikorrenti kienu taw lill-intimati Gatt bdiet wara d-dhul fis-sehh tal-Ordinanza li Tirregola t-Tigdid tal-Kiri tal-Bini (Kap. 69). Dan imma ma jiggustifikax, u ma jnaqqas xejn, mill-ezistenza ta' ksur tad-dritt fundamentali tal-lokatur jekk effettivament it-thaddim ta' dik il-ligi, ghall-kirja mertu tal-kawza, ma kienx jissodisfa l-elementi tal-jedd fundamentali kif spjegat fid-disposizzjoni fuq citata. Ghalkemm huwa minnu li l-legislatur ghandu d-diskrezzjoni li jdahhal fis-sehh ligijiet li jaqdu interessi generali, dik id-diskrezzjoni ma tistax tigi ezercitata semplicement bl-imposizzjoni ta' piz sproporzjonat fuq sezzjoni partikolari mill-poplu, u lanqas ma jista' l-legislatur jinheba wara l-principju tal-*pacta sunt servanda* biex jillegittimizza regim regolatorju li jkun vjolattiv tad-drittijiet fundamentali, u li jkun diga' fis-sehh qabel bdiet ir-relazzjoni kuntrattwali partikolari.

21. Din il-posizzjoni kienet kristallizata mill-Qorti Ewropea tad-Drittijiet Fundamentali fis-sentenza **R & L, S.R.O. and Others vs. Czech Republic**[22], citata b'approvazzjoni fil-kaz **Cassar vs Malta**[23]:

> *101. The Court further observes that the inability of landlords to raise the rents originated from State regulations. ... The applicants had to comply with them as they constituted the valid law. In this context is immaterial when the respective regulations were*

[22] 3.7.2014, ghadda f'gudikat fit-3.10.2014

[23] EctHR, Applikazzjoni numru 50570/13, *Fourth Section*, 30.1.2018. F'dan il-kaz, il-Qorti Kostituzzjoni kienet cahdet l-ilmenti dwar ksur ta' drittijiet fundamentali tar-rikorrenti proprju minhabba li kienu akkwistaw il-proprjeta' ga soggetta ghall-kirja protetta, meta kienu jafu li l-ligijiet vigenti kienu jimpeduhom milli jzidu l-kera, jibdlu l-kundizzjonijiet tal-kiri jew ma jirrilokawx.

adopted. ***Even if had they been adopted before the entry into force of the Convention for the State concerned, their effect continued afterwards.***[24]

...

105. The Court notes that the applicants never explicitly agreed to the level of rent paid by their tenants in the rent-regulated flats. When they had acquired their respective houses those rents had been set with regard to the rent regulations applicable at the time. The applicants could not have increased the rents above the maximum amounts set by the State, nor freely terminated the rent agreements and concluded new ones with different – higher – levels of rent.

106. As to the Government's argument that the landlords had implicitly waived their right to set the level of rents, the Court considers that waiving a right necessarily presupposes a possibility of exercising it. There is no waiver of a right in a situation where the person concerned has never had the option of exercising that right and thus could not waive it.

107. Accordingly, the Court considers that the rent-control regulations constituted an interference with the landlords' right to use their property.

22. Fis-sentenza fuq citata **Hutten-Czapska v. Polonja**[25], il-Qorti Ewropea elenkat, u spjegat, il-principji generali li jridu jkunu sodisfatti f'kull kaz ta' ndhil mill-Istat fl-uzu ta' proprjeta' privata, biex dak l-indhil ma jiksirx id-dritt fundamentali protett bl-**Ewwel Artikolu tal-Ewwel Protokol** tal-Konvenzjoni:

162 The Court will consider the case in the light of the following principles:

(a) Principle of lawfulness

[24] Enfasi ta' din il-Qorti

[25] Applikazzjoni 35014/97, Grand Chamber, 19.6.2006

163. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. In particular, the second paragraph of Article 1, while recognising that States have the right to control the use of property, subjects their right to the condition that it be exercised by enforcing "laws". Moreover, the principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see, mutatis mutandis, Broniowski, cited above, § 147, with further references).

(b) Principle of legitimate aim in the general interest

164. Any interference with the enjoyment of a right or freedom recognised by the Convention must pursue a legitimate aim. The principle of a "fair balance" inherent in Article 1 of Protocol No. 1 itself presupposes the existence of a general interest of the community. Moreover, the various rules incorporated in Article 1 are not distinct, in the sense of being unconnected, and the second and third rules are concerned only with particular instances of interference with the right to the peaceful enjoyment of property (see Broniowski, cited above, § 148).

165. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the "general" or "public" interest. Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures to be applied in the sphere of the exercise of the right of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a margin of appreciation.

166. The notion of "public" or "general" interest is necessarily extensive. In particular, spheres such as housing, which modern societies consider a prime social need and which plays a central role in the welfare and economic policies of Contracting States, may often call for some form of regulation by the State. In that sphere decisions as to whether, and if so when, it may fully be left to the play of free-market forces or whether it should be subject to State control, as well as the choice of measures for securing the housing needs of the community and of the timing for their implementation, necessarily involve consideration of complex social, economic and political

issues. Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has on many occasions declared that it will respect the legislature's judgment as to what is in the "public" or "general" interest unless that judgment is manifestly without reasonable foundation. These principles apply equally, if not a fortiori, to the measures adopted in the course of the fundamental reform of the country's political, legal and economic system in the transition from a totalitarian regime to a democratic State (see Mellacher and Others, cited above, § 45; Scollo v. Italy, 28 September 1995, § 27, Series A no. 315-C; Immobiliare Saffi, cited above, § 49; and, mutatis mutandis, James and Others, cited above, §§ 46-47, and Broniowski, cited above, § 149).

(c) Principle of a "fair balance"

167. Not only must an interference with the right of property pursue, on the facts as well as in principle, a "legitimate aim" in the "general interest", but there must also be a reasonable relation of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including measures designed to control the use of the individual's property. That requirement is expressed by the notion of a "fair balance" that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article the Court must therefore ascertain whether by reason of the State's interference the person concerned had to bear a disproportionate and excessive burden (see James and Others, cited above, § 50; Mellacher and Others, cited above, § 48; and Spadea and Scalabrino v. Italy, 28 September 1995, § 33, Series A no. 315-B).

168. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. In cases concerning the operation of wide-ranging housing legislation, that assessment may involve not only the conditions for reducing the rent received by individual landlords and the extent of the State's interference with freedom of contract and contractual relations in the lease market, but also the existence of procedural and

other safeguards ensuring that the operation of the system and its impact on a landlord's property rights are neither arbitrary nor unforeseeable. Uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (see Immobiliare Saffi, cited above, § 54, and Broniowski, cited above, § 151)"

23. Fil-kawza **Cassar v. Malta**[26], il-Qorti Ewropea applikat dawn il-principji ghal-ligi li dwarha jilmentaw ir-rikorrenti, jew ligijiet simili, vigenti f'Malta. Il-Qorti Ewropea ghamlitha cara li:

"*what might be justified at a specific time might not be justified decades later (see* ***Amato Gauci****, cited above, § 60). In the present case, while it is true that the applicants knowingly entered into the rent agreement in 1988 with the relevant restrictions (specifically the inability to increase the rent or to terminate the lease), the Court considers that the applicants could not reasonably have foreseen the extent of inflation in property prices in the decades that followed (see* ***Zammit and Attard Cassar****, cited above, § 50). Once the discrepancy in the rent applied and that on the market became evident, they were unable to do anything more than attempt to use the available remedies, which they did in 2010, but which were to no avail in their circumstances. The decisions of the domestic courts regarding their application thus constituted interference in their respect …*

50. The Court has previously held that rent-control schemes and restrictions on an applicant's right to terminate a tenant's lease constitute control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1. It follows that the case should be examined under the second

[26] Applikazzjoni numru 50570/13, *Fourth Section*, 30.1.2018

paragraph of Article 1 of Protocol No. 1 (see Hutten-Czapska v. Poland [GC], no. 35014/97, §§ 160-61, ECHR 2006-VIII; Bittó and Others v. Slovakia, no. 30255/09, § 101, 28 January 2014; and R & L, s.r.o. and Others, cited above, § 108)

...

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

...

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

58. The same cannot be said ***after the passage of decades, during which the rent had remained the same*** *(as stated by the parties and the domestic courts, the rent is still EUR 466 annually).* ***The Court***

has previously held that there had been a rise in the standard of living in Malta over the past decades (see Amato Gauci, cited above, § 63, and Anthony Aquilina, cited above, § 65). Thus, the needs and the general interest which may have existed in 1979 must have decreased over the three decades that ensued *(see Anthony Aquilina, cited above, § 65)..”*[27]

24. F'dan il-kaz, tal-anqas minn April 1987 'l hawn, meta dahal fis-sehh f'Malta l-Att dwar il-Konvenzjoni Ewropea (Kap. 319 tal-Ligijiet ta' Malta) baqa' fis-sehh, u b'mod forzat fuq is-sidien, sproporzjon bejn il-kera li kienu qed jippercepixxu, u l-frottijiet li s-suq hieles kien kapaci jaghtihom minn dan l-istess fond. Hekk, jirrizulta li filwaqt li r-rikorrenti u l-awturi taghhom ircevew l-oghla kera b'rata ta' €32.62 fis-sena sal-2009, u bir-rata ta' €185 fis-sena – li setghet zdiedet ghal €211.50 fis-sena sakemm bdiet din il-kawza – wara dakinhar, il-valur lokatizju annwali ta' dan il-fond kien ivarja bejn €182 u €1500 fis-sena fl-istess zmien.

25. B'hekk, din il-Qorti ssib li, bl-applikazzjoni tad-disposizzjonijiet impunjati fl-Ordinanza li Tirregola t-Tigdid tal-Kiri tal-Bini (Kap. 69), ir-rikorrenti fil-kapacita' personali, u bhala successuri tal-awturi taghhom Guzeppi Borg u Maria Borg Mizzi, sofrew lezjoni tad-dritt fundamentali taghhom ghat-tgawdija pacifika tal-possedimenti protett bl-**Ewwel Artikolu tal-Ewwel Protokoll** tal-Konvenzjoni Ewropea. Konsegwentement, hija ser tghaddi biex tichad il-hames eccezzjoni tal-intimat Avukat tal-Istat, u tal-intimati Gatt safejn l-eccezzjonijiet taghhom huma inkompatibbli ma' din il-konkuzjoni.

Ikkunsidrat ukoll li:

26. Determinat ghalhekk li r-rikorrenti sofrew lezjoni tad-dritt fundamentali taghhom kif protett bl-**Ewwel Artikolu tal-Ewwel Protokoll** tal-Konvenzjoni Ewropea, bit-thaddim ta' din

[27] Enfasi tal-Qorti

il-ligi specjali sad-data tad-dhul fis-ssehh tal-Att XXIV tal-2021, din il-Qorti ser tghaddi issa biex tqis u tiddeciedi dwar ir-rimedju li ghandhom jinghataw ir-rikorrenti ghall-istess lezjoni.

27. Irrizulta mill-provi li r-rikorrenti, u l-awturi taghhom, lahqu kienu sidien u lokaturi ta' dan il-fond minn qabel id-dhul fis-sehh f'Malta ta' dan id-dritt fundamentali sostantiv. Il-jedd li jippercepixxu l-kera gie ghand ir-rikorrenti wara l-mewt ta' missierhom Guzeppi Borg fl-10 ta' Frar 2008, minhabba li kellu l-jedd ta' uzufrutt imholli lilu bit-testment *unica charta* mill-premorta martu ghal tul hajtu kollha.

28. Irrizulta wkoll mir-Relazzjoni Teknika tal-Perit Michael Lanfranco nominat mill-Qorti kif spjegat *supra* fil-parti introduttorja ta din is-sentenza, li l-kera annwali percepibbli fis-suq miftuh minn dan il-fond kienet tammonta ghal €182 fis-sena 1987, li zdiedet ghal madwar €299 fis-sena 1992, €534 fis-sena 1987, €660 fis-sena 2002, €1011 fis-sena 2007, €1012 fis-sena 2012 u €1337 fis-sena 2017. Min-naha 'l ohra, jirrizulta li r-rikorrenti baqghu jippercepixxu kera fis-somma ekwivalenti ghal €32.62 sas-sena 2009, u mbaghad fis-somma ta' €185 fis-sena wara dakinhar.

29. Il-gurisprudenza tal-Qorti Kostituzzjonali f'dan ir-rigward, li segwiet il-gurisprudenza prevalenti tal-Qorti Ewropea tad-Drittijiet tal-Bniedem turi li r-rimedju adegwat f'cirkostanzi bhal dawk in ezami jikkonsisti fil-hlas ta' kumpens, pekunjarju u mhux pekunjarju, lill-vittmi tal-lezjoni min-naha tal-Istat.

30. Ghal dak li jirrigwarda l-kwantifikazzjoni tal-kumpens pekunjarju, din il-Qorti taghzel li timxi fuq l-nsenjament tal-Qorti Ewropea tad-Drittijiet tal-Bniedem fil-kawża fl-ismijiet **Cauchi v. Malta**[28] fejn kien ritenut hekk:

> *"103. It has also considered the legitimate purpose of the restriction suffered, bearing in mind that legitimate*

[28] Deċiża fil-25 ta' Marzu 2021 li għandha Numru 14013/19

objectives in the "public interest", such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (ibid.; see also Ghigo v. Malta (just satisfaction), no. 31122/05, § 18 and 20, 17 July 2008). In this connection, the Court notes that, to date, it has accepted that in most cases of this type, the impugned measure pursued a legitimate social policy aim, namely the social protection of tenants. It has also found, however, that the needs and general interest which may have existed in Malta in 1979 (when the law in question was put in place by Act XXIII) must have decreased over the three decades that followed (see, for example, Anthony Aquilina v. Malta, no. 3851/12, § 65, 11 December 2014). With that in mind, the Court considers that for the purposes of awarding compensation, such estimates may be reduced by around 30% on the grounds of that legitimate aim. It notes, however, that other public interest grounds may not justify such a reduction (see, for example, Marshall and Others, cited above, § 95, and the case-law cited therein).

104. Furthermore, the Court is ready to accept, particularly in view of the recent boom in property prices, that if the property had not been subject to the impugned regime it would not necessarily have been rented out throughout the entire period. Therefore, it is acceptable to consider that the actual losses were less than those claimed, by at least 20%.

105. Furthermore, the rent already received by the applicant for the relevant period must be deducted from the relevant calculation (see, inter alia, Portanier, cited above, § 63). In this connection, the Court notes that it is the rent applicable by law which should be deducted in the present case, as the applicant chose of

her own volition not to increase the rent for a certain period of time.

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

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

31. Fil-każ **Rita Falzon vs Dun Saverin Cutajar et**[29], il-Qorti Kostituzzjonali segwiet kif gej:

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

[29] Rik. Nru. 62/20/1, 30.3.2022

32. Applikati ghall-kaz in ezami, u b'varjazzjoni minn dak argumentat mir-rikorrenti fis-sottomissjonijiet taghhom, dawn il-principji jfissru li r-rikorrenti haqqhom jircievu minghand l-Istat kumpens pekunjarju fis-somma ta' €10,504.33[30] (ghaxart elef hames mija u erba' Ewro u tlieta u tletin centezmu).

33. Kwantu ghad-danni mhux pekunjarji, huwa palezament akkolt li z-zmien li ghandu jitqies fil-komputazzjoni tal-kumpens huwa dak biss li matulu r-rikorrenti personalment kienu sidien, u lokaturi, tal-fond mikri, u mhux ukoll iz-zmien li matulu l-lezjoni garrbuha l-predecessuri taghhom.[31] F'dan il-kaz, billi l-jedd ta' proprjeta' shiha gie jvesti fir-rikorrenti fl-2008, din il-Qorti tqis li d-danni mhux pekunjarji ghandhom jinghataw lir-rikorrenti kollha flimkien ghal medja ta' hmistax ((15)-il sena. Bir-rata adoperata f'diversi gudikati ricenti f'materja simili, il-kumpens ghad-danni non-pekunjarji li sofrew ir-rikorrenti bil-lezjoni tad-drittijiet fundamentali taghhom kif hawn deciz ghandu jammonta ghal €7,500 (sebat elef u hames mitt Ewro), li din il-Qorti tqis li huwa adegwat fic-cirkostanzi pruvati.

34. Ghal dawn ir-ragunijiet kollha, din il-Qorti taqta' u tiddeciedi din il-kawza, u tiddisponi mit-talbiet tar-rikorrenti u mill-eccezzjonijiet tal-intimati billi:

1. Tilqa' l-eccezzjonijiet tal-intimat Avukat tal-Istat, u tal-intimati Gatt safejn kompatibbli ma' dak fuq deciz u tichadhom ghall-bqija;
2. Tilqa' t-talbiet tar-rikorrenti biss in kwantu dawn jirreferu ghaz-zmien sad-data tad-dhul fis-sehh tal-Att XXIV tal-2021, u tichadhom ghall-bqija;
3. Tillikwida l-kumpens pekunjarju dovut lir-rikorrenti fis-somma ta' €10,504.33 (ghaxart elef hames mija u erba' Ewro u tlieta u tletin centezmu) u l-kumpens ghad-danni mhux

[30] [€23,838 [tenut kont li l-Att XXIV tal-2021 dahal fis-sehh f'Gunju 2021, u l-komputazzjoni tibda b'riferenza ghal April 1987, il-valur lokatizju indikat mill-Perit Tekniku ghas-sena 2022 ma giex meqjus] x 70%) x 80% - ([22 x €32.62] + (11.5 x €185))]
[31] Ara fost ohrajn **Mary Borg et vs Avukat tal-Istat et**, Kostituzzjonali, 25.1.2023 u **Maria Rosa Buttigieg vs Avukat tal-Istat et**, Kostituzzjonali, 25.1.2023

pekunjarji fis-somma ta' €7,500 (sebat elef u hames mitt Ewro), u tikkundanna lill-intimat Avukat tal-Istat ihallas lir-rikorrenti s-somma komplessiva hekk likwidata u dovuta lilhom fl-ammont ta' €18,004.33 (tmintax-il elf u erba' Ewro u tlieta u tletin centezmu), bl-imghax legali mid-data meta din is-sentenza tghaddi f'gudikat.

4. Billi din il-Qorti ma laqghetx it-talba tar-rikorrenti li sofrew ksur tad-drittijiet fundamentali taghhom bid-dhul fis-sehh tal-Att XXIV tal-2021, u wara dak it-tibdil legislattiv, l-ispejjez tar-rikorrenti ghandhom jithallsu nofshom minnhom flimkien bejniethom, u nofshom mill-intimat Avukat tal-Istat, li ghandu jhallas ukoll il-bqija tal-ispejjez tal-kawza.

Onor. Dr. Giovanni M Grixti
Imħallef

Nicole Cini
Deputat Reġistratur