



**FIRST HALL, CIVIL COURT  
CONSTITUTIONAL JURISDICTION**

**JUDGE**

**HON. DR JOANNE VELLA CUSCHIERI  
B.A., MAG. JUR. (EUR. LAW.), LL.D.**

**TODAY Tuesday 30th April, 2024**

**Case Number: 6**

**Application Number:- 529/2022 JVC**

**CARMELO TURU SPITERI, (0842452[M]**

*Plaintiff,*

**vs**

**COURT SERVICES AGENCY, EUNICE  
GRECH FIORINI, Chief Executive Officer  
for the Court Services Agency; ETIENNE  
SCICLUNA, Court Services Agency Civil  
Registrar Director, ANNALISE SPITERI,  
Assistant Civil Registrar; ROSE MARIA**

**VELLA**, Assistant Civil Registrar Supervisor, **THE MINISTRY OF JUSTICE**, hereinafter "**Ministry**"; **JONATHAN ATTARD**, Esq., the Minister of Justice, hereinafter "**Minister**" , **CHRISTOPHER SOLER**, Esq., *the State Advocate*, **VICTORIA BUTTIGIEG**, Esq., the Attorney General.,

*Defendants*

## **The Court**

Having seen applicants' constitutional complaint which reads as follows:

'1. This action is being brought on the basis of facts that Defendants **COURT SERVICES AGENCY**, hereinafter "**Agency**"; **EUNICE GRECH FIORINI**, Chief Executive Officer for the Court Services Agency, hereinafter "**CEO**"; **ETIENNE SCICLUNA**, Court Services Agency Civil Registrar Director, hereinafter "**Director**"; **ANNALISE SPITERI**, Assistant Civil Registrar; **ROSE MARIA VELLA**, Assistant Civil Registrar Supervisor, hereinafter "**Annalise**"; **THE MINISTRY OF JUSTICE**, hereinafter "**Ministry**"; **JONATHAN ATTARD**, Esq., the Minister of Justice, hereinafter "**Minister**" , have and continue to violate Plaintiff's portected and pretende rights, pursuant, but not limited to:

- a. The Maltese Constitution, Article 116.<sup>1</sup>
- b. *The Code of Organization and Civil Procedure, (COCP) Chapter 12, Article 178.*<sup>2</sup>
- c. *The COCP, Chapter 12, Title IV, Provisions Applicable to Written Pleadings and other Acts of procedure, Article 174 et seq.*
- d. *The COCP, Chapter 12, Article 12, Article 176(1)*<sup>3</sup>
- e. *The COCP, Chapter 12, Article 184(1)*<sup>4</sup>
- f. *The Criminal Code, Article 85.*

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<sup>1</sup> "A right of action for a declaration that any law is invalid on any grounds other than inconsistency with the provisions of articles 33 to 45 of this Constitution shall appertain to all persons without distinction and a person bringing such an action shall not be required to show any personal interest in support of his action". (*Emphasis added*)

<sup>2</sup> "The written pleadings and the applications whether sworn or not shall be signed by the advocate and also by the legal procurator, if any." (*Emphasis added*)

<sup>3</sup> Pleadings shall be printed, type written or written in ink.

<sup>4</sup> "If any difficulty shall arise in or about the filing of any written pleading, the registrar shall inform the party concerned, but he may not refuse to receive such pleading, except in the cases in which he is expressly enjoined or authorized so to do under the provisions of this Code. In the case of any such difficulty, he shall, as soon as possible, make a report thereof to the court, which shall give the necessary directions for his guidance. He shall, however, refuse to receive any written pleading which is in open violation of the provisions of articles 174,176 and 178." PLEASE NOTE that Plaintiff complied with these statutory requirements.¶(2)"In all cases, the registrar shall, upon a request to effect, state in writing the reason for this refusal.

- g. **The Charter of Fundamental Rights of the European Union, adopted in 2000 and made legally binding the Treaty of Lisbon, prohibits discrimination on grounds of language, Article 21 and places an obligation on the Union to respect linguistic diversity, Article 22 and Articles 47 and 6(1).**
- h. *Venice commission, CDL-AD(2018)012, Amicus Curiae brief for the Constitutional Court of Georgia on the effects of Constitutional Court decisions on final judgments in civil and administrative cases, ¶ 26).*
- i. *European Convention for Human Rights, Article 5 (Right to Liberty and Liberty interest);*
- i. *Article 9 (Freedom of thought);*
- ii. *Article 10(Freedom of expression);*
- iii. *Article 13(right to an effective remedy);*
- iv. *Article 14 (Prohibition of discrimination);*
- v. *Article 17(Prohibition of abuse of rights);*

vi. **Article 18**(*Limitation on the use of restrictions for rights*);  
**Article 20** (*Everyone is equal before the law*); and

vii. **Article 21** (*discrimination on the ground of disability, reinforce persons with disabilities' right to access justice*).

j. **Constitutional of Malta, Article 32** (*Fundamental rights and freedoms of the individual*);

i. **Article 36(1)** (*Protection from inhuman treatment*);

ii. **Article 44(1)** (*Protection of freedom of expression*);

iii. **Article 45. (1)** (*Protection from discrimination*);

iv. **Article 46** (*Enforcement of protective provisions*) et seq.

k. **The United Nations Universal Declaration of Human Rights, Article 8**, provides that “ *Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.* ”

l. **International Covenant on Civil and Political Rights, Article 1** (*All peoples have the right of self-discrimination. By virtue of that right*

*they freely determine their political status and freely pursue their economic, social and cultural development,etc.);*

- i) **Article 2** *(Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, etc.);*
- ii) **Article 5***(Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.);*
- iii) **Article 6** *(Every human being has the inherent right to life. This right shall be protected by law.);*
- iv) **Article 7** *(No one shall be subjected to.... cruel, inhuman or degrading treatment or punishment.);*
- v) **Article 9** *(Everyone has to the right to liberty, etc.);*
- vi) **Article 14** *(All persons shall be equal before the courts and tribunals.);*

- vii) **Article 17** (No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation);
- viii) **Article 18** (Everyone shall have the right of freedom of thought, conscience, etc.);
- ix) **Article 19** (Everyone shall have the right to hold opinions without interference);
- x) **Article 25** (Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in **Article 2** and without unreasonable restrictions, etc.);
- xi) **Article 26** (All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.);

2. Plaintiff asserts that this Honorable Court has both *personam* and *subject matter jurisdiction* to adjudicate and issue a judgement on the basis of factors arising among others, from the **COCP, Chapter 12, Article 469A.**

3. Plaintiff is an American /Maltese citizen with Maltese Language disability, deficiency in the reading and writing of the Maltese language.

4. This complaint seeks among other relief, for a declaratory injunctive relief to Order Defendants Ministry and Agency and their named Defendants employees, agents, attorneys and those individuals who act on behalf of said Defendants Ministry and Agency from obstructing, impeding, preventing, refusing, accepting and interfering with Plaintiff's *in propria person* Exhibit 1, which is incorporated in its entirety herein, since Plaintiff had and did secure and obtain an **in favore signature** (See COCP, **Article 179**) from a warranted Maltese lawyer (The *Honorable Magistrate and International Criminal Court Justice Emeritus* Carol Peralta).

5. The present custom, practice and usage by the Defendants Ministry and Agency, *et al.*, is to obstruct, impede, prevent, refuse, accept and interfere with Plaintiff's Exhibit 1 which is written in the English language. Plaintiff alleges that the Defendants Ministry and Agency, *et al.*, violates:

- a. The *Judicial Proceedings* (Use of English Language), *Chapter* 189, Article 2(a) mandates that, " **In a court of civil jurisdiction where all the parties are English-speaking**



persons, the court shall order that the proceedings be conducted in the English Language” (*Emphasis added*).

b. *The Consitution of Malta at Article 5(2) states “The Maltese and the English languages shall be the official languages of Malta” (Emphasis added. )*

c. The COCP, Chapter 12,Article 184 (1) explicitly mandates that Defendants Ministry and Agency, *et.al.*, and their Registrars “**MAY NOT REFUSE TO RECEIVE SUCH PLEADING**”, (*Emphasis added*) and

d. The COCP, Chapter 12, Article 184(1) (2) that in all cases, the registrar shall” . . . **state in writing the reason for his refusal**”, (*emphasis added*) which they have refused to so do.

6. Plaintiff asserts that both the Maltese Legislature at **Chapter 189, Article 2 (a)** and the Venice Commission, in **CDL-AD(2018)012, Amicus Curiae** brief (*supra*) have created a clear, strong, consistent, enforceable standards, addressing discrimination against individuals with language disabilities or deficiencies.

7. Plaintiff alleges that the Defendants Ministry and Agency’s,*et al.*, non-written and self-serving-executing custom,

practice and usage as indicated above runs counter to the plain language on the statutes, local, European Union. and the international public policies, treaties and directives. Plaintiff asserts that established anti-discriminatory constitutional, acts, treaties, etc., prohibit public entities from denying individuals with language disabilities or deficiencies the benefits of any service, program or activity on the basis of language disability or deficiency.

...

...

8. Generally speaking, provision and filing of a system of legal pleadings for *in propria persona* litigants to present their lawsuits, pleadings, or complaints before the Law Courts is a service that the Defendants Ministry and Agency, *et al.*, provide to all litigants whether they are represented by legal counsel or not. Indeed, it is one of the most fundamental services provided through legislative enactments and implementation. The provision of that such service is dependant on the Defendants Ministry and Agency, *et al.*, activities ranging from the initial receipt, filing and processing of legal documents to the assignment to a competent, un-bias, fair and honorable members of the judiciary. In most cases, the provision of that service likely is undertaken as part of the pre-judicial process. When an individual with a language disability or

deficiency is denied the use of the Defendants Ministry and Agency, *et al.*, registrar's services it implies discrimination by the entity. In this case the Agency.

9. Through this Complaint, Carmelo Turu Spiteri, hereinafter "Plaintiff", Malta Identification Number 0842452[M] who lives at address 98 Brighton Flats, Suite 3, Saint Anna Street, Marsascala MSK 2121, is suing Defendants Agency, CEO, Director, Annalise and Vella, on the basis, but not limited to factors arising from their wilful, malicious, discriminatory, retaliatory, unlawful refusal, and rejection of the attached Exhibit 1.

10. The **THE MINISTRY OF JUSTICE**, hereinafter "Ministry" and **JONATHAN ATTARD**, Esq., the Minister of Justice, hereinafter "Minister" are being sued under vicarious liability and respondent superior, as the are in charge of monitoring, training and supervising the personnel for the Agency. (See *Civil Code, Chapter 16, Article 1037*)<sup>5</sup>

11. On August 05th, 2022, Plaintiff appeared before the agency located at the Hall of Justice, Republic Street, Valletta, on - 1 floor to file a Application, a copy of which is hereto attached, marked

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<sup>5</sup> ...whoever employs a worker must answer for the acts of their workers, insofar as the worker does not follow the instructions or precautions forewarned by the employer, or unless the employee causes an accident of his own violation." This *Article* equally applies to Defendant Fiorini who supervises Defendant Scicluna, Spiteri, and Vella; it also applied to Scicluna who supervised Spiteri and Vella, and applies to Vella who supervised Spiteri.

Exhibit 1, incorporated herein by reference. Plaintiff being a non-attorney and acting in *propria persona* was statutorily required to seek and obtain an *in favore signature* from a lawyer warranted to practice law before the Maltese Law Courts. As evident in Exhibit 1, on page 6 of 7, Plaintiff sought, secured and obtained the *in favore signature* from the Honorable Magistrate and International Criminal Court Justice Emeritus Carol Peralta. (See **COCP, Chapter 12, Article 178**)

12. Plaintiff is a citizen with Maltese language disability, deficiency in the reading and writing the Maltese language.

13. Plaintiff alleges that the Defendants Ministry and agency, *et al.*, non-written and self-serving-executing custom, practice and usage as indicated above runs counter to the plain language of the statutes, local, European Union. And the international public policies, treaties and directives. Plaintiff asserts that established anti-discriminatory constitutional, acts, treaties, etc., prohibit public entities from denying individuals with language disabilities or deficiencies the benefits of any service, program or activity on the basis of language disability or deficiency.

14. Generally speaking, provision and filing of a system of legal pleadings for *in propria persona* litigants to present their lawsuits, pleadings, or complaints before the Law Courts is a service that

the Defendants Ministry and Agency, *et al* purported provide to all litigants whether they are represented by legal counsel or not. Indeed, it is one of the most fundamental services provided through legislative enactments and implementation. The provision of such service is defendant on the Agency's activities ranging from the initial receipt, filing and processing of legal documents to the assignment to a competent, un-bias, fair and honorable members of the judiciary.

15. Plaintiff alleges that such acts and omissions obstructs the rule of law, the *Equality of Arms* doctrine/principal and the free access to the law courts, *ergo* preventing Plaintiff from being heard before the honorable court of competent jurisdiction.

16. Plaintiff is an American/Maltese/European Union citizen and is deficient, disabled and unable to read and write the Maltese language.

17. Plaintiff alleges that the Defendants Agency, Ceo, Director, Annalise, Vella, Ministry and minister have established an unlawful custom, practice and usage when it comes to the Plaintiff by depriving him access to the Laws Court without being heard, without ever being given the opportunity to defend himself from any kind of claims by said Defendants, and this in violation of the "*audi alteram partem*" rule.

18. Plaintiff seeks a decree and judgement against the Defendants and each of them respectively in the following manner:

19. An order of Judgement declaring that *COCP, Chapter 12, Article 178* is unconstitutional because it deprives the plaintiff from acting in propria persona, signing his own legal court pleadings, force him to pay an attorney and procurator for in favore signature, and depriving Plaintiff access to the Law Court to be heard, absent such in favore signature.

20. An Order of decree and/or Judgement declaring the Defendant **Agency**, violated to wit:

a. *Code of Organisation and Civil Procedure, Chapter 12, Article 184(2)*.

b. Conspired to deprive Plaintiff access to the Law Court and be heard by a court of competent jurisdiction.

c. The *Criminal Code, Article 85*.

d. *The Charter of Fundamental Rights of the European Union*, adopted in 2000 and made legally binding by the Treaty of Lisbon, prohibits discrimination on grounds of language,

*Article 21* and places an obligation on the Union to respect linguistic diversity, *Article 22* and *Articles 47* and *6(1)*.

- e. *European Convention for Human Rights, Article 5 (Right to Liberty and Liberty interest).*
- f. *European Convention for Human Rights, Article 9 (Freedom of thought).*
- g. *European Convention for Human Rights, Article 10 (Freedom of expression).*
- h. *European Convention for Human Rights, Article 13 (Right to an effective remedy).*
- i. *European Convention for Human Rights, Article 14 (Prohibition of discrimination).*
- j. *European Convention for Human Rights, Article 17 (Prohibition of abuse of rights).*
- k. *European Convention for Human Rights, Article 18 (Limitation on the use of restrictions for rights).*

- l. *European Convention for Human Rights, Article 20*  
(*Everyone is equal before the law* ).
  
- m. *European Convention for Human Rights, Article 21*  
(*discrimination on the ground of disability, reinforce persons with disabilities' right to access justice* ).
  
- n. *Constitutional of Malta, Article 32* (*Fundamental rights and freedoms of the individual*).
  
- .
  
- o. *Constitutional of Malta, Article 36(1)* (*Protection from inhuman treatment* ).
  
  
- p. *Constitutional of Malta, Article 44(1)* (*Protection of freedom of expression* ).
  
  
- q. *Constitutional of Malta, Article 45(1)* (*Protection from discrimination* ).
  
  
- r. *Constitutional of Malta, Article 46* (*Enforcement of protective provisions*) *et seq.*
  
  
- s. *The United Nations Universal Declaration of Human Rights, Article 8*, provides that: *Everyone has the right to an effective*



*remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."*

- t. ***International Covenant on Civil and Political Rights, Article 1*** (*All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development, etc.*).
- u. ***Article 2*** (*Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the right recognized in the present Covenant, without distinction of any kind, etc. )*
- v. ***Article 5*** (*Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation- to a greater extent than is provided for in the present Covenant.*).
- w. ***Article 6*** (*Every human being has the inherent right to life. This right shall be protected by law.*).
- x. ***Article 7*** (*No one shall be subjected to. .. cruel, inhuman or degrading treatment or punishment*).

- y. *Article 9* (Everyone has the right to liberty, etc.).
- z. *Article 14* (All persons shall be equal before the courts and tribunals.).
- aa. *Article 17* (No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation).
- bb. *Article 18* (Everyone shall have the right to freedom of thought, conscience, etc.,).
- ac. *Article 19* (Everyone shall have the right to hold opinions without interference).
- dd. *Article 25* (Every citizen shall have the right and the opportunity, without any of the distinctions mentioned Article 2 and without unreasonable restrictions, etc.).
- ae. *Article 26* (All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.)
- af. Liable for damages pursuant to **Civil Code, Chapter 16, Article 1031** which lays down the fundamental principle

that every person shall be liable for the damage which occurs through her / his fault.

ag. Furthermore, *Civil Code, Chapter 16, Article 1033* further provides that any person who, with or without intent to injure, voluntarily or through negligence, imprudence, or want of attention, is guilty of an act or omission constituting a breach of the duty imposed by law, shall be liable for any damage resulting therefrom.

1. *An Order of Decree and/or Judgement declaring that Defendant **EUNICE GRECH FIORINI**, violated, to wit:*

a. *Code of Organisation and Civil Procedure, Chapter 12, Article 184(2).*

b. *Conspired to deprive Plaintiff access to the Law Court and be heard by a court of competent jurisdiction.*

c. *The Criminal Code, Article 85.*

d. *The Charter of Fundamental Rights of the European Union*, adopted in 2000 and made legally binding by the Treaty of Lisbon, prohibits discrimination on grounds of language, *Article 21* and places an obligation on the

union to respect linguistic diversity, *Article 22* and *Articles 47* and 6(1).

- e. *European Convention for Human Rights, Article 5 (Right to Liberty and liberty interest).*
  
- f. *European Convention for Human Rights, Article 9 (Freedom of thought).*
  
- g. *European Convention of Human Rights, Article 10 (Freedom of expression).*
  
- h. *European Convention of Human Rights, Article 13 (Right to an effective remedy ).*
  
- i. *European Convention of Human Rights, Article 14(Prohibition of discrimination).*
  
- j. *European Convention of Human Rights, Article 17(Prohibition of abuse of rights).*
  
- k. *European Convention of Human Rights, Article 18 (Limitation on the use of restrictions for rights).*

- l. *European Convention of Human Rights, Article 20*  
(Everyone is equal before the law)
- m. *European Convention of Human Rights, Article 21*  
(discrimination on the ground of disability, reinforce persons with disabilities' right to access justice).
- n. *Constitutional of Malta, Article 32* (Fundamental rights and freedoms of the individual).
- o. *Constitutional of Malta, Article 36(1)* (Protection from inhuman treatment).
- p. *Constitutional of Malta, Article 44*(Protection of freedom of expression).
- q. *Constitutional of Malta, Article 45.(1)* (Protection from discrimination)
- r. *Constitutional of Malta, Article 46* (Enforcement of the protective provisions) et seq.
- s. *The United Nations Universal Declaration of Human Rights, Article 8*, provides that "Everyone has the right to

*an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. "*

t. *Article 26* (All persons are equal before the law and are entitled without any discrimination to the equal protection of the law).

u. Liable of damages pursuant to *Civil Code, Chapter 16, Article 1031* which lays down the fundamental principle that every person shall be liable for the damage which occurs through her/ his fault.

v. Furthermore, *Civil Code, Chapter 16, Article 1033* furthermore provides that any person who, with or without intent to injure, voluntarily or through negligence, imprudence, or want of attention, is guilty of an act or omission constituting a breach of the duty imposed by law, shall be liable for any damage resulting therefrom.

1. An Order of Decree and/or Judgement declaring that Defendant **ETIENNE SCICLUNA**, violated, to wit:

- a. *Code of organisation and Civil Procedure, Chapter 12, Article 184(2).*
- b. Conspired to deprive Plaintiff access to the Law Court and be heard by a court of competent jurisdiction.
- c. The *Criminal Code, Article 85.*
- d. *The Charter of Fundamental Rights of the European Union*, adopted in 2000 and made legally binding by the Treaty of Lisbon, prohibits discrimination on grounds of language, *Article 21* and places an obligation on the Union to respect linguistic diversity, *Article 22* and *Articles 47* and *6(1)*.
- e. *European Convention of Human Rights, Article 5 (Right to Liberty and liberty interest).*
- f. *European Convention of Human Rights, Article 9 (Freedom of thought).*
- g. *European Convention of Human Rights, Article 10 (Freedom of expression).*
- h. *European Convention of Human Rights, Article 13(Right to an effective remedy).*

- i. **European Convention of Human Rights, Article 14**  
(Prohibition of discrimination).
- j. **European Convention of Human Rights, Article 17**  
(Prohibition of abuse of rights).
- k. **European Convention of Human Rights, Article 18**  
(Limitation on the use of restrictions for rights).
- l. **European Convention of Human Rights, Article 20** (Everyone is equal before the law)
- m. **European Convention of Human Rights, Article 21**(discrimination on the ground of disability, reinforce persons with disabilities' right to access justice).
- n. **Constitution of Malta, Article 32** (Fundamental rights and freedoms of the individual).
- o. **Constitution of Malta, Article 36 (1)** (Protection from inhuman treatment).
- p. **Constitution of Malta, Article 44(1)** (Protection of freedom of expression)



- q. **Constitution of Malta, Article 45.(1)** (Protection from discrimination).
- r. **Constitution of Malta, Article 45**(Enforcement of protective provisions) et seq.
- s. **The United Nations Universal Declaration of Human Rights, Article 8**, provides that: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”
- t. **International Covenant on Civil and political Rights, Article 1** (All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development, etc.).
- u. **Article 2**(Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within the territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, etc.).
- v. **Article 5** (Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the

*rights or freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.)*

*w. Article 6 (Every human being has to inherit right to life. This right shall be protected by law.)*

*x. Article 7 (No one shall be subjected to .. cruel, inhuman or degrading treatment or punishment.)*

*y. Article 9 (Everyone has the right to liberty, etc.)*

*z. Article 14 (All persons shall be equal before the courts and tribunals.)*

*aa. Article 17 (No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor an unlawful attacks on his honour and reputation)*

*ab. Article 18 (Everyone shall have the right to freedom of thought, conscience, etc.,)*

*ac. Article 19 (Everyone shall have the right to hold opinions without interference)*

*ad. Article 25 (Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions, etc.).*

*ae. Article 26 (All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.)*

af. Liable for damages pursuant to *Civil Code, Chapter 16, Article 1031* which lays down fundamental principle that every person shall be liable for the damage which occurs through her / his fault.

ag. Furthermore, *Civil Code, Chapter 16, Article 1033* further provides that any person who, with or without intent to injure, voluntarily or through negligence, imprudence, or want for attention, is guilty of any act or omission constituting a breach of the duty imposed by law, shall be liable for any damage resulting therefrom.

1. An Order of Decree and/or Judgement declaring that Defendant **ANNALISE SPITERI**, violated, to wit:

*a. Code of Organisation and Civil Procedure, Chapter 12, Article 184(2).*

- b. Conspired to deprive Plaintiff access to the Law Court and be heard by a court of competent jurisdiction.
  
- c. **The Criminal Code, Article 85.**
  
- d. *The Charter of Fundamental Right of the European Union*, adopted in 2000 and made legally binding by the treaty of Lisbon, prohibits discrimination on grounds of language, **Article 21** and places an obligation on the Union to respect linguistic diversity, **Article 22** and **Articles 47** and 6(1).
  
- e. *European Convention for Human Rights, Article 5 (Right to Liberty and liberty interest).*
  
- f. *European Convention for Human Rights, Article 9(Freedom of thought).*
  
- g. *European Convention for Human Rights, Article 10 (Freedom of expression).*

- h. European Convention for Human Rights, Article 13 (Right to an effective remedy).*
- i. European Convention for Human Rights, Article 14 (Prohibition of discrimination).*
- j. European Convention for Human Rights, Article 17 (Prohibition of abuse of rights).*
- k. European convention for Human Rights, Article 18(Limitation on the use of restrictions for rights).*
- l. European Convention for Human Rights, Article 20 (Everyone is equal before the law)*
- m. European Convention for Human Rights, Article 21(discrimination on the ground of disability, reinforce persons with disabilities' right to access justice).*
- n. Constitutional of Malta, Article 32(Fundamental rights and freedoms of the individual).*
- o. Constitutional of Malta, Article 36(1)(Protection from inhuman treatment).*

- p. **Constitutional of Malta, Article 44(1)** (Protection of freedom of expression).
- q. **Constitutional of Malta, Article 45. (1)** (Protection from discrimination).
- r. **Constitutional of Malta, Article 46** (Enforcement of protective provisions) *et seq.*
- s. **The United Nations Universal Declaration of Human Rights, Article 8**, provides that: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."
- t. **International Covenant on Civil and political rights, Article 1** (All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development, etc.).
- u. **Article 2** (Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within the territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, etc.).

- v. **Article 5** (Nothing in the present covenant may be interpreted as implying for any state, group or person any right to engage in the activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.).
- w. **Article 6** (Every human being has the inherent right to life. The right shall be protected by law.).
- x. **Article 7** (No one shall be subjected to . . .cruel, inhuman or degrading treatment or punishment.).
- y. **Article 9** (Everyone has the right to liberty, etc.).
- z. **Article 14** (All persons shall be equal before the courts and tribunals.).
- aa. **Article 17** (No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation).
- ab. **Article 18** (Everyone shall have the right to freedom of thought, conscience, etc.,).

*ac. Article 19 (Everyone shall have the right to hold opinions without interference).*

*ad. Article 25 (Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions, etc.).*

*ae. Article 26 (All persons are equal before the law and are entitled without any discrimination to the equal protection of th law.)*

*af. Liable for damages pursuant to **Civil Code, chapter 16, Article 1031** which lays down the fundamental principle that every person shall be liable for the damage which occurs through her / his fault.*

*ag. Furthermore, **Civil Code, Chapter 16, Article 1033** further provides that any person who, with or without intent to injure, voluntarily or through negligence, imprudence, or want of attention, is guilty of act or omission constituting a breach of duty imposed by law, shall be liable for any damage resulting therefrom.*

1. An order of Decree and/or Judgement declaring that Defendant **ROSE MARIA VELLA**, violated, to wit:

*a. **Code of Organisation and Civil Procedure, Chapter 12, Article 184(2).***



- b. Conspired to deprive Plaintiff access to the Law Court and be heard by a court of competent jurisdiction.
- c. *The Criminal Code, Article 85.*
- d. *The Charter of Fundamental Rights of the European Union*, adopted in 2000 and made legally binding by the Treaty of Lisbon, prohibits discrimination on grounds of language, **Article 21** and places an obligation on the Union to respect linguistic diversity, **Article 22** and **Articles 47** and 6(1).
- e. *European Convention for Human Rights, Article 5* (*Right to Liberty and Liberty interest*).
- f. *European Convention for Human Rights, Article 9* (*Freedom of thought*).
- g. *European Convention for Human Rights, Article 10* (*Freedom of expression*)
- h. *European Convention for Human Rights, Article 13* (*Right of an effective remedy*).

- i. European Convention for Human Rights, Article 14  
(Prohibition of discrimination).*
- j. European Convention for Human Rights, Article 17  
(Prohibition of abuse of rights).*
- k. European Convention for Human Rights, Article 18  
(Limitation on the use of restrictions for rights).*
- l. European Convention for Human Rights, Article 20  
(Everyone is equal before the law)*
- m. European Convention for Human Rights, Article 21  
(discrimination on the ground of disability, reinforce  
persons with disabilities' right to access justice).*
- n. Constitutional of Malta. Article 32 (Fundamental rights  
and freedoms of the individual).*
- o. Constitutional of Malta. Article 36(1) (Protection from  
inhuman treatment).*
- p. Constitutional of Malta. Article 44(1) (Protection of  
freedom of expression).*

- q. **Constitutional of Malta. Article 45.(1)** (Protection from discrimination).
- r. **Constitutional of Malta. Article 46**(Enforcement of protective provisions) et seq.
- s. **The United Nations Universal Declaration of Human Rights, Article 8**, provides that: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."
- t. **International Covention on Civil and Political rights, Article 1**(All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development, etc.).
- u. **Article 2**(Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within the territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind,etc).

v. **Article 5** (Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent that is provided for in the present Covenant.).

w. **Article 6** (Every human being has the inherent right to life. This right shall be protected by law.).

x. **Article 7** (No one shall be subjected to. ... cruel,inhuman or degrading treatment or punishment.).

y. **Article 9** (Everyone has the right to liberty, etc.).

z. **Article 14** (All persons shall be equal before the courts and tribunals.).

aa.**Article 17** (no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation).

ab.**Article 18**(Everyone shall have the right to freedom of thought, conscience, etc.,).

*ac. Article 19*(Everyone shall have the right to hold opinions without interference).

*ad. Article 25*(Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions, etc.).

*ae. Article 26* (All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.)

*af. Liable of damages pursuant to Civil Code, Chapter 16, Article 1031* which lays down the fundamental principle that every person shall be liable for the damage which occurs through her/ his fault.

*ag.* Furthermore, *Civil Code, Chapter 16, Article 1033* further provides that any person who, with or without intent to injure, voluntarily or through negligence, imprudence, or want of attention, is guilty of an act or omission constituting a breach of the duty imposed by law, shall be liable for any damage resulting therefrom.

1. An Order of Decree and/or Judgement declaring that Defendant **MINISTRY OF JUSTICE**, violated, to wit:
  - a. *Code of Organisation and Civil Procedure, Chapter 12, Article 184(2).*
  - b. Conspired to deprive Plaintiff access to the Law Court and be heard by a court of competent jurisdiction.
  - c. The criminal Code, Article 85.
  - d. The Chapter of fundamental Rights of the European Union, adopted in 2000 and made legally binding by the Treaty of Lisbon, prohibits discrimination on grounds of language, **Article 21** and places an obligation on the Union to respect linguistic diversity, **Article 22** and **Articles 47** and 6(1).
  - e. **European Convention for Human Rights, Article 5** (*Right to Liberty and Liberty interest*).
  - f. **European Convention for Human Rights, Article 9** (Freedom of thought).

- g. **European Convention for Human Rights, Article 10**  
(Freedom of expression).
- h. **European Convention for Human Rights, Article 13**  
(Right of an effective remedy).
- i. **European Convention for Human Rights, Article 14**  
(Prohibition of discrimination)
- j. **European Convention for Human Rights, Article 17**  
(Prohibition of abuse of rights).
- k. **European Convention for Human Rights, Article 18**  
(Limitation on the use of restrictions for rights).
- l. *European Convention for Human Rights, Article 20*  
(Everyone is equal before the law)
- m. *European Convention for Human Rights, Article 21*  
  
(discrimination on the ground of disability, reinforce persons with disabilities' right to access justice).
- n. **Constitutional of Malta, Article 32** (*Fundamental rights and freedoms of the individual*).

- o. **Constitutional of Malta, Article 36(1)** (*Protection from inhuman treatment*).
- p. **Constitutional of Malta, Article 44(1)**(*Protection of freedom of expression*).
- q. **Constitutional of Malta, Article 45.(1)**(*Protection from discrimination*).
- r. **Constitutional of Malta, Article 46**(*Enforcement of protective provisions*) *et seq.*
- s. ***The United Nations Universal Declaration of Human Rights, Article 8***, provides that “*Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law*”.
- t. ***International Covenant on Civil and Political Rights, Article 1***(*All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development, etc.*).



- u. **Article 2**(Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, etc.).
  
- v. **Article 5**(Nothing in the present Covenant may be interpreted as implying for any State, group or person ay right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitations to a greater extent than is provided for in the present Covenant.).
  
- w. **Article 6**(Every human being has to inherit right to life. This right shall be protected by law).
  
- x. **Article 7**(No one shall be subjected to . . . cruel, inhuman or degrading treatment or punishment.).
  
- y. **Article 9** (Everyone has the right to liberty, etc.).
  
- z. **Article 14** (All persons shall be equal before the courts and tribunals.).

*aa. Article 17 (No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation).*

*ab. Article 18 (Everyone shall have the right to freedom of thought, conscience, etc.).*

*ac. Article 19 (Everyone shall have the right to hold opinions within interference).*

*ad. Article 25 (Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions, etc.).*

*ae. Article 26 (All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.)*

**af.** Liable for damages pursuant to *Civil Code, Chapter 16, Article 1031* which lays down the fundamental principle that every person shall be liable for the damage which occurs through her / his fault.

**ag.** Furthermore, *Civil Code, Chapter 16, Article 1033* further provides that any person who, with or without intent to injure, voluntarily or through negligence,

imprudence, or want of attention, is guilty of an act of omission constituting a breach of the duty imposed by law, shall be liable for any damage resulting therefrom.

1. An Order of Decree and/or Judgement declaring that *Defendant JONATHAN ATTARD, Esq., the MINISTER OF JUSTICE, violated, to wit:*

a. *Code of Organisation and Civil Procedure, Chapter 12, Article 184(2).*

b. Conspired to deprive Plaintiff access to the Law Court and be heard by a court of competent jurisdiction.

c. *The Criminal Code, Article 85.*

d. *The Charter of Fundamental Rights of the European Union*, adopted in 2000 and made legally binding by the Treaty of Lisbon, prohibits discrimination on grounds of language, Article 21 and places an obligation on the Union to respect linguistic diversity, Article 22 and Articles 47 and 6(1).

e. *European Convention for Human Rights, Article 5* (Right to Liberty and Liberty interest).

- f. *European Convention for Human Rights, Article 9 (Freedom of thought).*
- g. *European Convention for Human Rights, Article 10 (Freedom of expression).*
- h. *European Convention for Human Rights, Article 13 (Right to an effective remedy).*
- i. *European Convention for Human Rights, Article 14 (Prohibition of discrimination).*
- j. *European Convention for Human Rights, Article 17 (Prohibition of abuse of rights).*
- k. *European Convention for Human Rights, Article 18 (Limitation on the use of restrictions for rights).*
- l. *European Convention for Human Rights, Article 20 (Everyone is equal before the law)*
- m. *European Convention for Human Rights, Article 21 (discrimination on the ground of disability, reinforce persons with disabilities' right to access justice). N*

- n. **Constitutional of Malta, Article 32** (Fundamental rights and freedoms of the individual).
  
- o. **Constitutional of Malta, Article 36(1)**(Protection from inhuman treatment).
  
- p. **Constitutional of Malta, Article 44(1)**(Protection of freedom of expression).
  
- q. **Constitutional of Malta, Article 45.(1)**(Protection from discrimination).
  
- r. **Constitutional of Malta, Article 46** (Enforcement of protective provisions) et seq.
  
- s. *The United Nations Universal Declaration of Human Rights, Article 8, provides that: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."*

...

...

- t. **International Covenant on Civil and Political Rights, Article 1** (All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development, etc.)
- u. **Article 2**(Each State Party to present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the right recognized in the present Covenant, without distinction of any kind, etc.).
- v. **Article 5** (Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.).
- w. **Article 6** (Every human being has the inherent right to life. This right shall be protected by law.).
- x. **Article 7** (No one shall be subjected to. .. cruel, inhuman or degrading treatment or punishment.).
- y. **Article 9** (Everyone has the right to liberty, etc.).

- z. **Article 14** (All persons shall be equal before the courts and tribunals.).
- aa. **Article 17** (No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.).
- ab. **Article 18**(Everyone shall have the right to hold opinions without interference).
- ac. **Article 19** (Everyone shall have the right to hold opinions without interference).
- ad. **Article 25** (Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in **Article 2** and without unreasonable restrictions, etc.).
- ae. **Article 26** (All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.)
- af. Liable for damages pursuant to **Civil Code, Chapter 16, Article 1031** which lays down the fundamental principle that every person shall be liable for the damage which occurs through her /his fault.

*ag. Furthermore, Civil Code, Chapter 16, Article 1033 further provides that any person who, with or without intent to injure, voluntarily or through negligence, imprudence, or want of attention, is guilty of an act or omission constituting a breach of the duty imposed by law, shall be liable for any damage resulting therefrom.*

d. Order that said Defendants permit Plaintiff to file the original of Exhibit 1 and assign it to a justice of competent jurisdiction.

e. Order the waiving of any filing fees and services fees as sanctions and moral damages <sup>66</sup>

f. For any other relief this Honorable Court deems just, equitable and fair.

**Rat ir-risposta tal-Ministeru tal-Ġustizzja, Jonathan Attard fil-vesti personali tiegħu u bħala Ministru tal-Ġustizzja,**

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<sup>6</sup> On December 09<sup>th</sup>, 2016 the then Attorney General Peter Grech, who in 1995 was Senior Counsel in the Attorney General's Office. "I had examined the Fenech model which is based on four clear and concise principles: incompetence, vitiated form, abuse of power and breach of law. I had also examined instances under French law(which is also the basis of EU Administrative law) where Government may be held liable in damages for acts ultra vires, and I based the provision on such model." (See also Brown and Bell French Administrative law (Fifth Edition)(Oxford University Press):239:"The principle of legality prescribes a line of conduct for the administration from which it cannot depart without committing an *exces de pouvoir*....proceedings are based on one of four grounds namely incompetence, *vice delorme*, violation de la loi and *detournement de pouvoir*. These traditional grounds are by no means mutually exclusive, and it is not always easy to see why a particular case is considered under one head rather than another."



**Christopher Soler fil-vesti personali tiegħu u bħala l-Avukat tal-Istat u Victoria Buttigieg fil-vesti personali tagħha u bħala l-Avukat Ġenerali:**

1. 'Illi qabel xejn, l-esponenti jiddikjaraw li huma qegħdin iwiegħbu għar-rikors promotur kemm fil-vesti personali tagħhom kif ukoll għan-nom tal-karigi rispettivi tagħhom minħabba n-natura konfuza ta' kif gie redatt ir-rikors promotur.

**Eċċezzjonijiet Preliminari**

2. Illi preliminarjament, jiġi eċċepit in-nullità tal-kawża odjerna billi *ai termini* tal-Artikolu 21 tal-Kap. 12 tal-Liġijiet ta' Malta, l-ilsien Malti huwa l-ilsien tal-qrati u għalhekk, ir-rikorrent kien obligat li jippreżenta l-kawża tiegħu bil-Malti, u mhux bl-Ingliż biss. Illi dan huwa wkoll rifless tal-Att dwar Proceduri Ġudizzjarji (Użu tal-Ilsien Ingliż), Kap. 189 tal-Liġijiet ta' Malta li jipprovdi illi f'qrati ta' ġurisdizzjoni ċivili, hija l-qorti li tordna b'liema lingwa proċediment għandu jinstema' li għalhekk ifisser li l-ewwel att ġudizzjarju, u cioè r-rikors promotur, għandu dejjem jiġi intavolat bil-lingwa Maltija u sta għall-Qorti ta' ġurisdizzjoni ċivili li tkun ser tibda tisma' l-kawża li tohrog ordni dwar b'liema lingwa tkun ser tinstema' l-kawża;

3. Illi mingħajr preġudizzju għas-suespost, *ai termini* tal-Artikolu 178 tal-Kap. 12 tal-Liġijiet ta' Malta, il-kawża odjerna hi nulla wkoll peress li ma jidhirx li r-rikors promotur għie iffirmit minn avukat. F'pagna għoxrin (20) tar-rikors promotur, taht isem u l-firma tar-rikorrent hemm firma ta' individwu mhux speċifikat u l-kliem "*firma di favore*". Jekk din hi l-firma ta' avukat, dak l-avukat għandu jidentifika ruhu u mingħajr preġudizzju għal dan, ir-rikorrent ma jistax jinqeda b'firma ta' avukat mogħtija *di favore* sempliciment biex jipprova jiskappa l-obbligu mahluq mill-Artikolu 178 tal-Kap. 12. L-Artikolu 174(2)(c) tal-Kap. 12 imur oltre minn hekk u jipprovdi li att gudizzjarju għandu jindika *ad validatem* l-indirizz professjonali tal-avukat u jew tal-prokuratur legali.
4. Illi mingħajr preġudizzju għas-suespost, il-Ministru Jonathan Attard, l-Avukat tal-Istat Christopher Soler u l-Avukat Ġenerali Victoria Buttigieg fil-vesti personali tagħhom mhumiex legittimi kontraditturi tal-azzjoni odjerna billi huwa paċifiku li f'proċeduri kostituzzjonali jwieġeb l-Istat Malti u mhux individwi fil-vesti personali tagħhom u għalhekk, ċertament minn dan l-aspett għandhom jigu liberati mill-osservanza tal-ġudizzju.
5. Illi *in linea* mal-premess, l-Avukat Ġenerali, il-Ministru Jonathan Attard fil-vesti uffiċċjali tiegħu u l-Ministeru tal-

Ġustizzja wkoll mhumiex legittimi kontraditturi bil-konsegwenza li għandhom jiġu liberati mill-osservanza tal-gudizzju. Jidher li l-ilment tar-rikorrent huwa bbażat fuq kif l-Artikolu 178 tal-Kap. 12 tal-Liġijiet ta' Malta jiġi applikat. L-Avukat Ġenerali, il-Ministru u l-Ministeru ma għandhom ebda involviment fl-applikazzjoni ta' din il-liġi ta' proċedura ċivili u fi kwalunkwe każ mhumiex il-legittimi kontraditturi meta tkun qed tiġi attakkata l-validità kostituzzjonali ta' liġi. Apparti minn hekk, in kwantu għall-Ministeru, għandu jiġi mfakkar li *ai termini* tal-Artikolu 17(8) tal-Kap. 595 tal-Liġijiet ta' Malta, ir-rappreżentanza ġuridika ta' ministeru hi fdata f'idejn is-segretarju permanenti ta' dak il-ministeru, u ma jistax jitharrek ministeru fl-astratt.

Ulterjorment, għal raġunijiet li ser jiġu spjegati ahjar aktar 'l quddiem f'din ir-risposta, l-esponenti ma kellhom xejn x'jaqsmu mal-allegati ksur tad-drittijiet varji invokati mir-rikorrent u fi kwalunkwe każ, l-invokazzjoni tagħhom hi infondata fil-fatt u fid-dritt.

## **Mertu**

6. Illi mingħajr preġudizzju għas-suespost u fil-mertu t-talbiet tar-rikorrenti huma infondati fil-fatt u fid-dritt. Illi meta wieħed iqis il-kontenut kollu tar-rikors promotur, jidher li l-

ilment prinċipali tar-rikorrent huwa li l-Artikolu 178 tal-Kap. 12 tal-Liġijiet ta' Malta jmur kontra Kostituzzjoni.<sup>7</sup> Ir-rikorrent ma abbinax dan l-allegat ksur ma' xi dritt fundamentali partikolari u minflok, fir-rigward ta' intimati varji indikati minnu, jallega li kkaġunawlu ksur ta' diversi dispożizzjonijiet tal-liġi u saħansitra trattati.

7. Illi r-rikorrent jallega li l-Artikolu 178 huwa anti-kostituzzjonali għaliex skond hu, hu għandu jedd li jaġixxi għan-nom tiegħu nniffsu, jiffirma d-dokumenti legali tiegħu u li m'għandux ikun obligat jinkariga avukat biex ikollu aċċess għall-qorti. Ghalkemm imkien fir-rikors promotur ma jissemma l-Artikolu 6 tal-Konvenzjoni jew l-Artikolu 39 tal-Kostituzzjoni, peress li b'dan l-ilment jista' jinftiehem li r-rikorrent qed jallega ksur ta' dawn l-artikoli, l-esponenti jeċċepixxu s-segwent.
8. Illi huwa pacifiku li rappreżentanza legali tista' tkun legalment obligatorja fuq individwi sabiex ikunu jistgħu jadixxu l-qorti domestika u dina l-limitazzjoni bl-ebda mod ma ssarraf fi ksur tad-dritt għal smiġh xieraq tar-rikorrenti u, għal kuntrarju, tali obligu jħares id-drittijiet tal-partijiet quddiem il-qrati, u cioè, billi jiżgura atti preżentati mill-partijiet f'kawża jkunu gew preżentati minn persuna kwalifikata fil-qasam tal-liġi (avukat) u li d-dmir ta' din il-

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<sup>7</sup> Ara paragrafu 19 tar-rikors promotur.

persuna huwa li tippromwovi l-azzjoni tal-parti fil-parametri tal-ligi proċedurali u sostantiva. Fil-każ ta' **Bąkowska v. Il-Polonja**<sup>8</sup> intqal:

“44. The Convention does not compel the Contracting States to set up courts of appeal or of cassation. However, where such courts do exist, the guarantees of Article 6 must be complied with, for instance in that it guarantees to litigants an effective right of access to the courts for the determination of their “civil rights and obligations” (see, among many other authorities, *Levages Prestations Services v. France*, 23 October 1996, Reports 1996-V, pp. 1544-45, § 44, and *Poitrimol v. France*, judgment of 23 November 1993, Series A no. 277-A, § 13-15). The manner in which this provision applies to courts of appeal or of cassation depends on the special features of the proceedings concerned and account must be taken of the entirety of the proceedings conducted in the domestic legal order and the court of cassation's role

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<sup>8</sup> *Bąkowska v. Il-Polonja* [33539/02], Qorti Ewropea tad-Drittijiet tal-Bniedem, 12 ta' Jannar, 2010.

in them. Given the special nature of the court of cassation's role, which is limited to reviewing whether the law has been correctly applied, the Court is able to accept that the procedure followed in such courts may be more formal (see *Meftah and Others v. France* [GC], nos. 32911/96, 35237/97 and 34595/97, § 41, ECHR 2002-VII).

**45. A requirement that an appellant be represented by a qualified lawyer before the court of cassation, such as in the present case, cannot in itself be seen as contrary to Article 6. This requirement is clearly compatible with the characteristics of the Supreme Court as a highest court examining appeals on points of law and it is a common feature of the legal systems in several member States of the Council of Europe (see *Gillow v. the United Kingdom*, judgment of 24 November 1986, Series A no. 109, § 69; *Vacher v. France*, judgment of 17 December 1996, Reports of Judgments and Decisions 1996-VI, pp.**

2148-49, §§ 24 and 28; Tabor v. Poland, no. 12825/02, § 42, 27 June 2006; Staroszczyk v. Poland, no. 59519/00, § 129, 22 March 2007; Siałkowska v. Poland, no. 8932/05, § 106, 22 March 2007).” [Enfasi tal-esponenti]

9. Illi fis-sistema ġuridika Maltija ma għandniex qorti ta' kassazzjoni, iżda ċertament bl-istess mod jista' jingħad li l-obbligu maħluq fl-Artikolu 178 huwa konformi mal-Artikolu 6 tal-Konvenzjoni u l-Artikolu 39 tal-Kostituzzjoni. Dan l-obbligu huwa konformi mal-amministrazzjoni retta tal-ġustizzja u għandu mira legittima, cioè li atti ġudizzjarji quddiem il-Qrati Superjuri ta' Malta ikunu proċeduralment korretti u sostantivament b'bażi legali. Referenza ssir għas-sentenza ta' **Salvatore Grech vs. L-Avukat Ġenerali**<sup>9</sup> fejn intqal:

“Illi din hija deċiżjoni marbuta mal-validità tar-rikors promotorju peress li mhux iffirmit minn avukat. Dan il-punt għa' gie deċiż minn din il-Qorti (diversament presjeduta) fil-kawża “Clark vs. Ir-Registratur tal-Qorti” deċiża fit-28 ta'

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<sup>9</sup> Salvatore Grech vs. L-Avukat Ġenerali, Prim'Awla tal-Qorti Ċivili (Sede Kostituzzjonali), 12 ta' Ottubru, 2012. Sentenza għaddiet in ġudikat.

Marzu 2006. Intqal hekk a propożitu ta' din il-materja:

...

Il-htieġa li parti tkun mgħejjuna minn avukat ma hijiex biss htieġa ta' formalità iżda hija meħtieġa fl-interess tal-heffa u l-effiċjenza tal-proċeduri ġudizzjarji sabiex ma jinħeliex hin fuq episodji proċedurali li jittqanqlu għax min ihejji l-att ma jagħmlux sew għax ma jkunx jaf xi trid il-liġi tal-proċedura. Il-liġijiet tal-proċedura qegħdin hemm bi hsieb u għalhekk għandhom jitharsu; wara kollox, huwa ukoll, jew għandu jkun, fl-interess ta' min jipprezenta l-atti li l-kawża tiegħu ma tiġix arenata għax, billi ma jafx sew il-proċedura, l-atti ma jagħmilhomx kif għandhom isiru."

10. Illi ta' min ifakkar li l-Artikolu 178 ma japplikax għal kull tip ta' proċedura kontenzjuża. Quddiem tribunali fejn jiġu kontestati materji inqas serji bħal ma huma t-Tribunal għal Talbiet Żgħar jew t-Tribunal għal Talbiet ta' Konsumaturi ma hemmx bżonn il-firma jew l-assistenza ta' avukat. Dawk huma fora fejn, minhabba n-natura tat-talbiet li jsiru



quddiemhom, ma hemmx bzonn ir-rigidità u l-formalizmu meħtieġ quddiem il-Qrati Superjuri.

11. Illi r-rikors promotur huwa forsi l-aħjar eżempju għala l-Artikolu 178 huwa mhux biss proporzjonat, iżda saħansitra meħtieġ f'proċeduri quddiem il-Qrati Superjuri; minn eżami tar-rikors promotur jirriżulta li huwa mifni b'żbalji ta' kull tip li jikxef il-fatt li kien ir-rikorrent stess, b'stil kompletament aljen għall-ordinament ġuridiku Malti u kjarament mingħajr taġrif legali, li kiteb ir-rikors promotur.
12. Illi l-kwistjoni ta' jekk ir-rikorrent jafx jaqra jew jikteb bil-Malti huwa irrilevanti. L-atti ġudizzjarji quddiem il-Qrati Superjuri jeħtieġu l-involviment ta' avukat bil-*warrant* biex jipprattika quddiemhom u, kif diġà ġie spjegat, din hi liġi neċessarja, proporzjonata u fl-interess tal-amministrazzjoni tal-ġustizzja.
13. Illi kif diġà nġhad, ir-rikors promotur jidher li huwa primarjament indirizzat lejn l-applikazzjoni u l-validità tal-Artikolu 178 tal-Kap. 12 tal-Liġijiet ta' Malta. Madankollu iżda, ir-rikorrent isemmi numru varjat ta' artikoli tal-liġi, trattati u prinċipji li fil-fehma tiegħu ġew leżi.
14. Illi l-esponenti jikkontestaw dak kollu allegat mir-rikorrent bħala infondat fil-fatt u fid-dritt. In kwantu għall-artikoli u

trattati invokati mir-rikorrent fil-konfront tal-Ministeru u l-Ministru, jiġi rilevat is-segwenti:

- a. Billi din hi kawża kostituzzjonali, *ai termini* tal-Artikolu 46 tal-Kostituzzjoni, l-Artikolu 4 tal-Kap. 319 tal-Liġijiet ta' Malta u l-L.S. 12.09, l-uniċi drittijiet fundamentali li r-rikorrent jista' jqajjem quddiem dan il-forum minn dawk li semma huma l-Artikoli 36, 44 u 45 tal-Kostituzzjoni u l-Artikoli 5, 9, 10, 13, 14, 17 u 18 tal-Konvenzjoni;
- b. In kwantu għall-Artikolu 32 tal-Kostituzzjoni, dan mhuwiex dritt li jista' jiġi invokat u dan *ai termini* tal-Artikolu 46 tal-Kostituzzjoni. Intant, l-Artikolu 46 tal-Kostituzzjoni jirreferi għal kif jiġi żgurat it-twettiq tad-dispożizzjonijiet protettivi u mhuwiex dritt *per se*;
- c. In kwantu għall-Artikoli 20 u 21 tal-Konvenzjoni Ewropea, dawn mhumiex drittijiet invokabbli *ai termini* tal-Artikolu 2 tal-Kap. 319 tal-Liġijiet ta' Malta;
- d. In kwantu għall-Artikoli 6, 21, 22 u 47 tal-Karta tad-Drittijiet Fundamentali tal-Unjoni Ewropea, dawn ma jinkwadrawx taht id-drittijiet invokabbli quddiem din l-Onorabbli Qorti *ai termini* tal-Artikolu 46 tal-Kostituzzjoni, l-Artikolu 4 tal-Kap. 319 tal-Liġijiet ta' Malta u l-L.S. 12.09. Ulterjorment, għandu jiġi mfakkar

li l-Karta hi ntiza sabiex tassisti fl-implementazzjoni u interpretazzjoni ta' ligijiet tal-Unjoni Ewropea. L-Artikolu 178 kjament huwa ligi procedurali purament Maltija u mhux frott ta' traspożizzjoni ta' ligi tal-Unjoni Ewropeja, għalhekk, ebda sħarriġ tiegħu taħt il-Karta ma hu possibbli.

- e. In kwantu għad-Dikjarazzjoni Universali tad-Drittijiet tal-Bniedem tan-Nazzjonijiet Magħquda u l-*International Covenant on Civil and Political Rights*, għandu jiġi mfakkar li sabiex trattat li fih Malta tkun parti jkun direttament applikabbli fir-rigward tar-relazzjonijiet bejn l-Istat u l-individwu, dan irid jiġi traspost f'leġislazzjoni domestika u dan *ai termini* tal-Artikolu 3 tal-Kap. 304 tal-Ligijiet ta' Malta.<sup>10</sup> Dawn l-instrumenti ma gewx trasposti fil-ligi domestika u għalhekk ma jistgħux jiġu invokati mir-rikorrent;
- f. Dan mhux il-forum xieraq biex tinstema' kawża fejn seħħ allegat ksur tal-Artikolu 184 tal-Kap. 12, l-Artikolu 85 tal-Kap. 9 jew biex issir kawża għad-danni peress li gew invokati l-Artikoli 1031 u 1033 tal-Kap. 16.

15. Illi tenut kont is-suespost, in kwantu għad-drittijiet fundamentali indikati mir-rikorrent, l-esponenti

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<sup>10</sup> Ara, per eżempju, Adrian Marmara et vs. L-Avukat Ġenerali et, Qorti Kostituzzjonali, 16 ta' Diċembru, 2013.

sempliciment josservaw li l-limitazzjonijiet imposti mill-Artikolu 178 assolutament ma jxekklux il-libertà personali tar-rikorrent, il-libertà tal-espressjoni u l-kuxjenza tiegħu, mhumiex diskriminatorji, assolutament ma jikkostitwixxux trattament inuman jew degradanti u f'kull każ huma limitazzjonijiet proporzjonati u xierqa.

16. Illi fi kwalunkwe każ, il-pretensjonijiet u allegazzjonijiet tar-rikorrent huma infondati fil-fatt u fid-dritt.

17. Illi magħdud dan kollu, ma seħhet ebda leżjoni tad-drittijiet fundamentali tar-rikorrent u għalhekk it-talbiet tiegħu għandhom jiġu miċhuda. Ulterjorment, l-esponenti huma tal-fehma li din il-kawża hi sempliciment frivola u vessatorja u konsegwentement, din l-Onorabbli Qorti għandha tapplika s-sanzjonijiet kontemplati fl-Artikolu 46(5) tal-Kostituzzjoni u l-Artikolu 4(5) tal-Kap. 319 tal-Ligijiet ta' Malta kif ukoll is-sanzjonijiet kontemplati fl-Artikolu 10 tat-Tariffa A tal-Iskeda A tal-Kap. 12 tal-Ligijiet ta' Malta.

18. Salv eċċezzjonijiet ulterjuri.

Mingħajr preġudizzju għall-eċċezzjonijiet surreferiti, kopja ta' din ir-risposta fedelment tradotta għal-lingwa Ingliża qed tiġi annessa mal-istanti unikament għall-benefiċċju tar-rikorrent.

Bl-ispejjeż.'

**'Reply of the Ministry for Justice, Jonathan Attard in his personal capacity and as Minister for Justice, Christopher Soler in his personal capacity and as State Advocate and Victoria Buttigieg in her personal capacity and as Attorney General**

Humbly submit:

1. That preliminarily, the respondents declare that they are filing this reply in their personal capacity and in their respective official capacities in view of the confusing manner the initial application was drafted.

### **Preliminary Pleas**

2. That preliminarily, the respondents plea the nullity of the case since in terms of Article 21 of Chap. 12 of the Laws of Malta, the Maltese language is the language of the courts and hence the plaintiff was obliged to present his application in Maltese and not just in the English language. This is also reflected in the Judicial Proceedings (Use of English Language) Act, Chap. 189 of the Laws of Malta wherein it is stated that before the courts of civil jurisdiction, it is the court which orders with which language proceedings are to be conducted, which means that the first judicial act, that is, the initial application is to always be filed in the Maltese language and it is up to the court of civil jurisdiction that is

to hear the case to give the order as to which language is to apply in the case.

3. That without prejudice to the above, in terms of Article 178 of Chap. 12 of the Laws of Malta, the case is also null since it would not seem that the initial application was signed by an advocate. In page twenty (20) of the initial application, under the name and signature of the plaintiff there is a signature of an unidentified individual and the words "*firma di favore*". If this is the signature of an advocate, that advocate needs to identify himself and without prejudice to this, the plaintiff cannot simply make use of an advocate's signature given *di favore* simply to try to avoid the obligation imposed by Article 178 of Chap. 12. Article 174(2)(c) goes further and provides that for a judicial act to be legally valid, the professional address of the advocate or legal procurator must be indicated.
4. That without prejudice to the above, Minister Jonathan Attard, State Advocate Christopher Soler and Attorney General Victoria Buttigieg in their personal capacities are not the proper defendants to this action as it is undisputed that in constitutional proceedings, it is the Maltese State which is responsible and not individuals in their personal capacity and hence, certainly from this aspect, they are to be declared as non-suited.

5. That in line with the above, the Attorney General, Minister Jonathan Attard in his official capacity and the Ministry of Justice are also not the proper defendants to this action and hence should be declared as non-suited. It would seem that the plaintiff's complaint is based on how Article 178 of Chap. 12 of the Laws of Malta is applied. The Attorney General, Minister and Ministry are not involved in the application of this law and in any case are not the proper defendants when the constitutional validity of a law is being contested. Moreover, with respect to the Ministry, one should note that in terms of Article 17(8) of Chap. 595 of the Laws of Malta, the judicial representation of a ministry is entrusted to the permanent secretary of that ministry and a ministry cannot be sued in the abstract.

Moreover, for reasons which will be explained further on in this reply, the respondents had nothing to do with the alleged breaches of the various rights invoked by the plaintiff and in any case, their invocation is unfounded in fact and at law.

### **Merits**

6. That without prejudice to the above, the plaintiff's requests are unfounded in fact and at law. When one considers the content of the initial application in its entirety, it would seem

that the primary complaint of the plaintiff is that Article 178 of Chap. 12 of the Laws of Malta is anti-constitutional.<sup>11</sup> The plaintiff did not connect this alleged breach with any fundamental right in particular and instead, with regard to the various defendants indicated by him in the suit, alleged that they breached several laws and even treaties.

7. That the plaintiff alleged that Article 178 is anti-constitutional because according to him, he has a right to act in his own name, sign his own legal documents and that he should not be obliged to engage an advocate to have access to a court. Even though the initial application makes no mention of Article 6 of the Convention or Article 39 of the Constitution, since this complaint may be understood in such a manner that the plaintiff is alleging a breach of such, the respondents plea the following.
8. That it undisputed that legal representation may be obliged from individuals in order for them to appear before domestic courts and this limitation in no way is in breach of the plaintiff's right to a fair trial, and on the contrary, ensures the rights of the parties before the court by ensuring that judicial acts presented during a cause are filed by a qualified person in the law (an advocate) who is obliged to promote his client's interests within the procedural and

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<sup>11</sup> See paragraph 19 of the initial application.



substantive parameters of the law. In the case of **Bąkowska v. Poland**<sup>12</sup> the following was said:

“44. The Convention does not compel the Contracting States to set up courts of appeal or of cassation. However, where such courts do exist, the guarantees of Article 6 must be complied with, for instance in that it guarantees to litigants an effective right of access to the courts for the determination of their “civil rights and obligations” (see, among many other authorities, *Levages Prestations Services v. France*, 23 October 1996, Reports 1996-V, pp. 1544-45, § 44, and *Poitrinol v. France*, judgment of 23 November 1993, Series A no. 277-A, § 13-15). The manner in which this provision applies to courts of appeal or of cassation depends on the special features of the proceedings concerned and account must be taken of the entirety of the proceedings conducted in the domestic legal order and the court of cassation's role in them. Given the special nature of the

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<sup>12</sup> *Bąkowska v. Poland* [33539/02], European Court of Human Rights, 12 of January, 2010.

court of cassation's role, which is limited to reviewing whether the law has been correctly applied, the Court is able to accept that the procedure followed in such courts may be more formal (see *Meftah and Others v. France* [GC], nos. 32911/96, 35237/97 and 34595/97, § 41, ECHR 2002-VII).

**45. A requirement that an appellant be represented by a qualified lawyer before the court of cassation, such as in the present case, cannot in itself be seen as contrary to Article 6. This requirement is clearly compatible with the characteristics of the Supreme Court as a highest court examining appeals on points of law and it is a common feature of the legal systems in several member States of the Council of Europe** (see *Gillow v. the United Kingdom*, judgment of 24 November 1986, Series A no. 109, § 69; *Vacher v. France*, judgment of 17 December 1996, Reports of Judgments and Decisions 1996-VI, pp. 2148-49, §§ 24 and 28; *Tabor v. Poland*, no.

12825/02, § 42, 27 June 2006; Staroszczyk v. Poland, no. 59519/00, § 129, 22 March 2007; Siałkowska v. Poland, no. 8932/05, § 106, 22 March 2007).” [Emphasis of the respondents]

9. That the Maltese judicial system does not have a court of cassation, but it is certain that the obligation created under Article 178 is in conformity with Article 6 of the Convention and Article 39 of the Constitution. This obligation is in line with the proper administration of justice and has a legitimate aim, that is that judicial acts before the Superior Courts of Malta are procedurally correct and substantively based at law. Reference is made to the judgment in the names of **Salvatore Grech vs. L-Avukat Ġenerali**<sup>13</sup> wherein it was stated:

“That this decision is tied with the validity of the initial application since it was not signed by an advocate. This point has already been decided by this Court (presided differently) in the case “Clark vs. Ir-Registratur tal-Qorti” decided on 28th of

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<sup>13</sup> Salvatore Grech vs. L-Avukat Ġenerali, First Hall of the Civil Court (Constitutional Competence), 12 of October, 2012. Judgment is final.

March 2006. On this matter the following was said:

...

The need for a party to be assisted by an advocate is not merely a formality but is required in the interest of expediency and efficiency of judicial proceedings so that no time is wasted on procedural episodes provoked because the person who drafted the act did not do so correctly because he does not know what is required under procedural law. Laws of procedure are there for a reason and hence need to be observed; after all, it is also, or should be, in the interests of he who presents acts that his case is not ruined because, since he does not know procedure, the acts were not prepared as they should have."

10. That one should recall that Article 178 does not apply to all kinds of contentious procedures. Before tribunals where less serious matters are brought such as the Small Claims Tribunal or the Consumer Claims Tribunal there is no need for the signature or assistance of advocate. Those are fora where, due to the nature of the claims made before them,

there is no need for the rigidity and formalities required before the Superior Courts.

11. That the initial application is perhaps the best example of why Article 178 is not just proportionate but also required before the Superior Courts; when one reads the initial application, it is clearly littered with mistakes of all kinds and exposes the fact it was the plaintiff himself, in a style completely alien to the Maltese legal style and clearly without any legal background, who wrote the initial application.

12. That the matter as to whether the plaintiff is literate in Maltese is irrelevant. Judicial acts before the Superior Courts require the involvement of an advocate warranted to practise before them and, as has already been explained, this law is necessary, proportionate and in the interests of the administration of justice.

13. That as previously stated, the initial application seems to be primarily concerned with the application and validity of Article 178 of the Laws of Malta. Notwithstanding this however, the plaintiff mentions a variety of articles of the law, treaties and principles which he believes were breached.

14. That the respondents contest all that is alleged by the plaintiff as unfounded in fact and at law. With reference to

the articles and treaties invoked by the plaintiff in respect of the Ministry and the Minister, the following is being submitted:

- a. That since this is a constitutional case, in terms of Article 46 of the Constitution, Article 4 of Chap. 319 of the Laws of Malta and S.L. 12.09, the only fundamental rights which the plaintiff can bring before this forum which were indicated by him are Article 36, 44 and 45 of the Constitution and Article 5, 9, 10, 13, 14, 17 and 18 of the Convention;
- b. With regard to Article 32 of the Constitution, this is not a right which can be invoked as specified by Article 46 of the Constitution. Moreover, Article 46 of the Constitution refers to the enforcement of protective provisions and is not a right *per se*;
- c. With regard to Articles 20 and 21 of the European Convention, these are not rights which can be invoked in terms of Article 2 of Chap. 319 of the Laws of Malta;
- d. With regard to Articles 6, 21, 22 and 47 of the Charters of Fundamental Rights of the European Union, these are not rights which may be invoked before this Honourable Court in terms of Article 46 of the Constitution, Article 4 of Chap. 419 of the Laws of

Malta and S.L. 12.09. Moreover, one should recall that the Charter is intended to help in the implementation and interpretation of European Union law. Article 178 is clearly a pure Maltese procedural law and is not the result of the transposition of some European Union law and hence, no analysis of it under the Charter is possible;

- e. With regard to the United Nations Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, one should recall that in order for a treaty which Malta has ratified be applicable between the State and the individual, the treaty must be implemented by means of domestic legislation as is specified by Article 3 of Chap. 304 of the Laws of Malta.<sup>14</sup> This instruments were not transposed to domestic law and hence cannot be invoked by the plaintiff;
- f. That this is not the appropriate forum to hear a case where there was an alleged breach of Article 184 of Chap. 12, Article 85 of Chap. 9 or for a case for damages in view of the invocation of Articles 1031 and 1033 of Chap. 16.

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<sup>14</sup> See, for example, Adrian Marmara et vs. L-Avukat Ġenerali, Constitutional Court, 16 of December, 2013.

15. That in view of the above, with regard to the fundamental rights indicated by the plaintiff, the respondents simply observe that the limitations imposed by Article 178 absolutely do not impede on his personal liberty, his freedom of expression and conscience, they are not discriminatory, they absolutely do not constitute inhuman or degrading treatment and in any case, the limitations are proportionate and proper.

16. That in any case, the expectations and allegations of the plaintiff are unfounded in fact and at law.

17. That when one considers all of the above, there has been no breach of the plaintiff's fundamental rights and hence his requests are to be rejected. Moreover, the respondents believe that this case is simply frivolous and vexatious and consequently, this Honourable Court is to apply the sanctions contemplated under Article 46(5) of the Constitution and Article 4(5) of Chap. 319 of the Laws of Malta as well as the sanctions contemplated under Article 10 of Tariff A of Schedule A of Chap. 12 of the Laws of Malta.

18. Further pleas are being reserved.

Without prejudice to the above pleas, a copy of this reply is being faithfully translated into the English language and attached purely for the benefit of the plaintiff.



With costs.'

Rat ir-risposta tal-Agenzija dwar is-Servizzi tal-Qrati, tal-Kap Ezekuttiv Eunice Grech Fiorini, ir-Registratur tal-Qrati Civili u Tribunali Etienne Scicluna, Annalise Spiteri u Rose Marie Vella:

1. 'Illi fl-ewwel lok jigi sottomess illi t-talbiet attrici odjerni huma nfondati fil-fatt u fid-dritt u ghandhom jigu respinti *inter alia* minhabba dawn ir-ragunijiet.
2. Illi b'riferenza ghal esponenti Annalise Spiteri u Rose Maria Vella jigi rilevat illi dawn huma impjegati mal-Agenzija dwar is-Servizzi tal-Qrati u b'riferenza ghal azzjoni odjerna jigi sottomess illi meta allegatament huma rrifjutaw li jipprocessaw l-att illi r-rikorrenti ittenta jipprezenta huma kienu qedghin jaghmlu dan fil-vesti ta' deputat registratur u mhux fil-vesti taghom personali.
3. Illi l-esponenti allegatament irrifjutaw li jipprocessaw l-att li ttenta jipprezenta r-rikorrenti minhabba illi l-att ma kienx in konformi mad-dettami tal-ligi.

4. Illi f' dan il-kuntest l-esponenti jagħmel riferenza għal artiklu 184 tal-Kap 12 tal-Ligijiet ta' Malta li jstipula:

*'meta tinqala' xi diffikultà dwar il-prezentata ta' skrittura, ir-registratur għandu jgħarraf b'dan lill-parti interessata, iżda ma jistax jirrifjuta li jirċievi l-iskrittura, hlief meta dan il-Kodiċi espressament jordna jew jagħti s-setgħa lilu li jagħmel hekk. Fil-kaz ta' diffikultà bhal din, hu għandu, mill-aktar fis, jagħmel rapport lill-qorti, u din tagħtih l-ordnijiet meħtieġa sabiex fuqhom huwa jimxi. Iżda hu għandu jirrifjuta li jirċievi skrittura li tkun tikser biċ-ċar id-dispożizzjonijiet tal-artikoli 174, 176 u 178'.*

5. Illi l-artiklu 178 tal-Kapitlu 12 tal-Ligijiet ta' Malta li jaqra:

*'l-skritturi u rikorsi guramentati jew le għandhom ikunu ffirmati mill-avukat u meta jkun hemm minn prokuratur legali'.*

6. Illi b'riferenza għal kaz li qed jirreferi għalih ir-rikorrenti, r-rikors li ried jipprezenta ma kienx iffirmit minn Avukat u prokuratur legali iżda kien anness ma nota li eventwalment gie accettat u mghoddi lil Qorti u sussegwentement inghata digriet;

7. Illi b'riferenza ghal lanjanza tar-rikorrenti fejn intqal illi huwa qed jigi mcahhad mill-access ghal gustizzja stante li ghandu problema bil-lingwa Maltija minhabba li huwa cittadin Amerikan/Malti u f'dan il-kuntest jigi rilevat illi huwa principju car tal-liġi li kull min jixtieq jagħmel uzu mis-sistema ġudizzjarja ta' pajjiż, għandu jsegwi r-regoli ta' dak il-pajjiż. Ir-regola dwar l-uzu tal-ilsien Malti fil-Qrati hija cara fis-sens li l-uzu tal-ilsien Malti huwa r-regola u l-uzu tal-ilsien Ingliz huwa l-eccezzjoni. Fil-fatt meta xi parti ma tifhimx l-ilsien li bih ikunu qed isiru l-proceduri orali, issir traduzzjoni mill-Qorti jew minn interpretu.

8. Illi l-uzu tal-lingwa Maltija u l-prezentata tal-atti bil-lingwa Maltija fil-Qrati hija mandatorja u hija korollarja ghal fatt li cittadini Maltin ghandhom dritt li jircievu atti tal-Qorti bil-lingwa li huma jifhmu u cioe` bl-lingwa Maltija. Kieku fil-Qrati kellu jigi accettat li jigu prezentati atti u dokumenti b'lingwi ohra jista` jpoggi lil cittadini Maltin f'posizzjoni li ma jifhmux proceduri jew dokumenti li jircievu. Ir-rekwizit li atti ġudizzjarji jigu prezentati bil-lingwa Maltija bl-ebda mod m'hu qed icahhad lil xi persuna barranija milli tirrikorri ghal Qrati Maltin. Dan ghaliex persuna dejjem tista` tipprezenta att bil-lingwa li hija tifhem u titlob li ssir traduzzjoni tagħha. Kuntrarjament jista` jkun hemm lok

ghal ksur ta' drittijiet tal-bniedem jekk persuna ta' nazzjonalita` Maltija tircievi att gudizzjarju go pajjizha b'lingwa li hija ma tifhimx.

9. Illi jekk jigi accettat li atti tal-Qrati jistghu jigi prezentati b'lingwa ohra oltre dik Maltija, f'kawzi civili il-parti li titlob it-traduzzjoni ta' dawn id-dokumenti prezentati b'lingwa barranija trid tbatu l-ispejjez konnessi ma' dawn it-traduzzjonijiet. Dan ikun ifisser li persuna ta' nazzjonalita Maltija go pajjizha stess ikollha tinkorri spejjez ulterjuri ghal traduzzjoni ta' att sabiex tkun tista` tifhmu u tipprepara d-difiza taghha.

10. Salvi, jekk ikun il-kaz, eccezzjonijiet ossia risposti ulterjuri.

Ghaldaqstant l-esponenti jitlob bir-rispett illi dina l-Onorabli Qorti joghgobha tichad *in toto* t-talbiet tar-rikorrenti bl-spejjez kontra l-stess rikorrenti.'

The Court, having seen that these procedures are Constitutional procedures alleging breach of fundamental Human Rights on the 7th of October 2022 chose to appoint the application for hearing even though it was filed in the English language and therefore procedurally and by law incorrect and gave such order in the

English language in order that applicant could understand such decree. This being a provisional decree giving the benefit of doubt to the applicant;

Having seen that on the 17th of November, 2022 this Court ordered that procedures continue in the English language due to the fact that applicant does not understand the Maltese language;

Having seen the reply filed by applicant dated the 26th of December, 2023 even though procedurally this was not correct and it was not authorised by Court;

Having seen the reply filed by applicant dated the 5th of January, 2023 even though the filing of this further reply was procedurally incorrect and it was not authorised by Court;

Noted that in this last reply applicant gave details and information about court cases in which he was involved including cases in front of the courts of criminal jurisdiction which cases have nothing to do with his original application dated the 4th of October, 2022;

Having seen that in the Court minutes dated the 12th of January, 2023 it was declared as follows:

'The Court having seen the reply dated 26th December 2022 filed by plaintiff, orders that both the preliminary pleas and the merits of the case are heard together and one final judgement is given. Plaintiff refers to his note dated the 5th of Januar 2023 and clarifies that it is intended to be a summons for Court CEO Eunice Grech Fiorini to testify in Court and present documents.'

In the same minutes this Court ordered:

'Courts orders limitedly and solely for this case that the Court Registrar allows palitniff to file acts within the registry without the need of a signature of a lawyer.'

Having seen that in the minutes dated the 23rd of February, 2023 the parties agreed to attach to these proceedings the acts of Case 352/22ISB Spiteri vs. Grech.

Having seen that in the minutes dated the 30th of March, 2023 applicant requested the Court to attach to these proceedings the file bearing number 80/2023 pending in front of Judge Giovanni Grixti and file 63/16SM/FDP.

Court acceded to the request and also allowed that legal copies may be attached instead of the original files.

Having seen the application by State Advocate Christopher Soler dated the 11th of April, 2023 at fol. 226 et seq of the file wherein for the reasons stated therein mainly that he received from applicant a memorandum which he describes as being threatening (filed at folio 228 et seq) and reasons therein this Court was requested:

‘to give those orders which it deems necessary in these circumstances, including by ordering the plaintiff Carmelo Turu Spiteri to cease and desist from communicating with the undersigned and the aforementioned lawyers in any manner in the course of these proceedings and to cease and desist from continuing to carry out the aforementioned actions, under pain of contempt of court.’

Having seen the reply at fol. 248 et seq of the file and this Court’s decree dated the 6th of June, 2023 as follows:

‘Whilst the Court directs the State Advocate to direct any grievances of a criminal nature to the competent authorities not to this Constitutional Court, Court orders all the parties to only communicate between them through legal channels provided to them by law and not by direct communication. The Court reserves to give further orders for contempt of court if need be.’

Having seen the further application for clarification filed by applicant with reference to this Court's decree above mentioned dated the 9th of June 2023 at folio 291 et seq of the file, having seen the reply and this Court's decree dated the 26th of April, 2024 wherein it was declared that the Court agreed that the decree is sufficiently clear and abstains from taking further note of the same.

Having seen that although applicant declared his evidence closed on the sitting of the 10th of May, 2023, consequently in the acts of the case he insisted on filing 'summons' for witnesses to appear and give evidence which summons this Court had to refuse due to the simple fact that applicant's evidence had been declared closed.

Having seen that during the sitting of the 8th of June, 2023 all parties declared their evidence closed and court authorised applicant to submit written submission by the end of August, 2023.

Having seen applicant's submissions bearing 73 pages filed on the 30th of August, 2023 at folio 298 et seq of the case. The Court, whilst takinh note of such submissions, notes the foul and offensive language used by the applicant in the same such as the use of the words 'bigots', 'racists and fascists' (fol. 359) with reference to lawyers and Court also notes the reference to some of



the respondents as coming from a TV series and also as coming from some other country including undemocratic countries and movies. Court deplores such words and language used in the note of submissions and reserves taking further action with regards to the same later on in this judgement.

Having seen that during the sitting of the 3rd of October, 2023 the following was minuted:

'Dr Julian Farrugia for the State Advocate requests that the document filed by the plaintiff on the 2nd October 2023 is removed from the acts for the proceedings for the following reasons:

1. Plaintiff had declared that he had no evidence to produce during the last sitting. In view of this declaration plaintiff suddenly exhibition of new documents constitutes a unilateral attempt by him to re open his stage for evidence.

2. A number of the documents exhibited by plaintiff essentially relate to proceedings in the case of Carmelo Turu Spiteri vs Robert Abela et 80/23GG which proceedings and acts were being heard before the last sitting.

2. A number of the documents exhibited by plaintiff essentially relate to proceeding in the case of Carmelo Turu Spiteri vs Robert Abela et 80/23GG which proceedings and acts were being heard before the last sitting.

3. Apart from constituting new evidence the plaintiff's documents also contents new legal submissions, in terms of the decree handed by this Court in the last sitting plaintiff had until the end of August to submit his note of submissions which he did. However the plaintiff's effective presentation of additional legal submissions is also inbrech of this Court decree.

Plaintiff states that this document does not constitute new evidence because it is already in front of the Constitutional Court presided by different Judges.

Plaintiff in any case requests the Court to admit this as further submissions prior to the delivery of judgement.

The Court having seen the document dated 2nd of October 2023 notes that part of the document is in fact submissions on behalf of plaintiff, constitutional cases which have been filed by plaintiff after the present application heard by this judge and this also applies for the exhibits attached with the said submissions.

Court allows limitedly the submissions dated 2nd October 2023 from pages 1 to page 14 paragraph 29 and orders the rest of the document to be removed from the acts of the case.'

Having seen the so called 'applicant's affidavit' at fol. 373 et seq of the case.

Having heard oral submissions by both parties on the 3rd of October, 2023 which submissions have also been transcribed and inserted in the Court file.

Having adjourned the case for judgement for today.

Having seen that applicant filed further submissions after that the case had been adjourned for judgment and that since these were not authorised Court ordered that this submissions are removed from the acts.

Having seen applicant's further application dated the 23rd of November, 2023 requesting the Court to allow him to file an additional submission in accordance with article 175 (1) which application was again refused by this Court since the case was adjourned for judgement whilst submissions had already been done.

Having seen the acts of this case and the acts attached by order of this Court.

**Considered:**

That by means of this application filed by applicant after obtaining a *firma di favore* and in the English language, applicant states that respondents are to be declared in breach of various fundamental human rights emanating from the Maltese Constitution, the European Convention on Human Rights and various other international covenants and treaties, including the EU Charter of Fundamental Human Rights and this mainly due to four problems he encountered within the Maltese Courts as follows:

- (i) That he was precluded from representing himself before any court of competent jurisdiction;
- (ii) That he was not allowed to sign his own pleadings without obtaining the signature of a lawyer;
- (iii) That once he submits a pleading to the Civil Court's Registrar under his signature without the signature in favore of the lawyer the Registrar should be obliged to process it and file it;
- (iv) That he is obliged to submit in the Maltese language to the Maltese Court and not only in English.

In his 'application' the applicant requests that this Court declares the breach of his rights and also a condemnation of damages against respondents whom he insists were summoned both in their official position and personally.

Respondents being the Minister, the Ministry, the State Advocate and the Advocate General raised five preliminary pleas being:

- (i) That the case is null because it's drafted in English and not in Maltese;
- (ii) That the case is null because it is not clear whether it was actually signed by a lawyer;
- (iii) That the concept of *firma di favore* is not intended to maliciously circumvent what is stated in article 178 of the Code of Organisation and Civil Procedure;
- (iv) That it is not clear whether the Minister, Attorney General and State Advocate were sued also personally.

The rest of the respondents also claimed that they have no *locus standi* to *stare in the case*, especially in their personal capacity.

All respondents above mentioned on the merits of the claims and in short replied that the case raised by applicant should be dismissed since the applicable procedure is in the public interest and not in breach of any fundamental human right.

**Evidence:-**

That in the merits of the case Court heard the **evidence given by applicant Carmelo Turu Spiteri dated the 12 of January, 2023 at**

**folio 110 et seq.** He states that he is a forensic analyst and his work is usually in the United States doing penal cases. He does not practice in Malta. When he arrived in Malta 10 years ago according to him he found out that there are archaic statutes in Malta such as article 116 of the Constitution saying that a citizen of Malta has the right to bring a case to the Constitutional Court even if he has no personal interest however he was informed by the then Director of Court Frank Mercieca that this could not be done without a lawyer. He got a *firma di favore* from Arthur Azzopardi and from Edward Gatt but according to him they both got in trouble with the administration and the Judges for signing his acts.

He testifies about a case he tried to file a few days before this case and he states that he went to the registry, he had an *in favore* signature but he was not allowed to file it because it was in the English Language. They stated that it was not the language of the Court. The Judge to which that case went refused it because it was indicated as a '*nota*' not as a '*rikors*'.

This Court saw that the acts of this case bearing number 352/2022 have been attached to this case and notes the contents therein where in actual fact applicant filed a '*nota*' signed by Dr. Edward Gatt with a '*petition*' attached to it and that Court decreed on the 6<sup>th</sup> of July 2022 as follows:

'Il-Qorti

Rat in-nota tat-28 ta' Gunju, 2022;

Hadet konjizzjoni ta' l-istess.

Tordna illi gia la darba l-prezentata hija nota, ir-Registratur ma ghandux jikkunsidra din bhala kawza.'

Applicant continued to testify stating that when he had a conflict about it with the lady in the Registr, allegedly, she told him that this is not America and to go back to America. His feeling is that they did not let him access to Court because he was a foreigner. He continues to testify as follows:

'Witness: Who went through the same thing I did. But apparently lot worse than I did. I would like to have the freedom that when I walk through the front doors of this hall, to feel that I am in a place that reveals the truth and reveals me as an individual having issues to address and be heard before the member of the Judiciary, fairly, meaningfully, and without prejudice. 178 doesn't afford you that. 178 tells you you're stupid, get a lawyer to sign it. So I have to have a lawyer to sign it. Then, the big question that I had in my mind, if the lawyers sign and I lose this case, do I sue him for my practise? Do I say that you signed something that was .... to me, when you read my complaint, you said that was ok, but I lost it

because now you signed it? That's the prejudice. That's the biased ... putting lawyers. They are putting them in a position where they have to help somebody sign with in favore signature and then they walk away. Which the Law doesn't say he has to represent you. All the Law says you have to have the signature. Period. And when I approached Arthur, I told Arthur why is this? ... it's a little bit archaic but, that's how Malta works. I'm trying to change how Malta works positively by coming to the Honourable Court and saying please, look at the ... of what the meaning of freedom and liberty is. It cannot be allocated to certain aspects of the human dignity in addressing issues of concern, in addressing issues of concern. We have to be able to open, when we open or when we enter the door to know we're gonna be treated fairly. To know that I'm gonna be treated with a meaningful hearing and the adjudication of the hearing is based because I don't, know how to write or read Maltese, which is true, and I've been beating my head against the wall. I just applied to go to University and learn it. So, it won't cause me any problems. And that is what I am seeking. I'm seeking that what has happened to me, is very insulting.'

Asked in cross-examination whether the lawyers from which he acquired the signature where engaged by him he states that article 178 only requires him to acquire a firma di favore, it does not say that the person who is signing is to represent the individuals, hire



them just to sign. He also specified that with regards to this specific application ICC Justice Emeritus International Court Justice emeritus Peralta signed it but according to him he did ask him to read it before he signs it. Asked whether he drafted all the application filed in Court he replies not really and states:

‘Witness: I work for several lawyers in the United States that also ... Maltese Law. S before I write anything, I do my legal research, ..., than I pass my legal research certain judges that are retired. Certain Magistrates that are retired to make sure I do waste ... time –‘

This Court at this point makes reference to the original application and states that the signature of the alleged lawyer on the first page has nothing to do with the surname Peralta and it looks more like Dr. N. Bianco and the same for the signature on folio which is even less clear and shows a surname starting with the letter B.

Applicant in his evidence proceeds to confirm that he typed the application himself. Asked whether his complaint is solely related to the provision of Article 178 of Chapter 12 requiring a lawyer’s signature for the filing of documents in Court he replies:

‘Witness: It's integrated, because you have, we call them causes of action. I don't know what you call them in Malta. Because under Maltese Law, if somebody offends you, you can seek damages to them. Whether to ... relief, or whether to monetary relief. I don't

know what the Court will choose, so when I named individuals, I named them because they acted under state law, in order to violate the law, and there is one principle under International Law. If the Law is wrong, you have the right not to obey it. Or you have the right to address it. And Malta doesn't work that way. It doesn't work. They are so afraid the employees to ... the supervisor listen, this is just wrong. Because the guy is an American and he doesn't know how to write Maltese to dump him into garbage can. So, the mentality of the Maltese people, no disrespect, I am Maltese and I love Malta. I will take a bullet for it. Is that we need to expand the employees to act independent when they address the supervisors to say listen, this situation, and the law provides for it by the way. I don't know whether you are aware of it, which you might be aware, They couldn't have denied my application. The only thing they should have done is to send it to the Court, the Law is very clear, under 184.

Court: Of Chapter 12.

Witness: Yes. Is to send it to the Court, and the Court determines ok let him do it, no, this is no good. They don't do that. They stop you at the desk. That means, now they act on behalf of the Judiciary, which are not part of the Judiciary, it's an administrative Agency. It is part of the Government, part of the state, and they don't do that. They decide right there and then. I'm saying to you,

please change the policy on that. If there is an issue because I filed something wrong, don't make the determination you're gonna deny me access to the Court. The Law says send it to the Magistrate or to the Judge, I think it mentions a Judge. Send it to the Judge and let them decide. That means suspend it for, until a decision is made. That's all I am saying to you. Comply with the actual Law. You cannot take ... of the Law, and say this is applicable to you and then throw the rest because we don't like it. You're never gonna be consistent. That's what the equality of ... is about. Equal protection of the Law is the essence of our Justice system and unfortunately they spit on it here. No disrespect. And it's not the Judge ta. I'm sorry.

Court: The employees.'

Asked about in what personality did he sue the respondents he states that in their official capacities since he had contacted them and written to them various times but nothing was done.

Having heard **respondent's PL Eunice Grech Fiorini, Chief Ececuties of the Court Services Agency a folio 124 et seq of the file.** She states that her job is taking care of the Adminsitrative side of the Law Courts and acts under the instructions of the Permanent Secretary of the Ministry of Justice, Mr. Johann Galea. With regards to Civil cases these are paid and financed by the

parties themselves. The fees are established in the Code of Organisation and Civil Procedure. Asked whether a person is required to pay registry fees if a document needs to be served to the State Advocate she replies:

‘Witness: If I recall correctly, the State Advocate if the person is trying to serve the state advocate is charged if the State Advocate is party to the case. If the State Advocate is being served with a document for his information, he is not, the party is not, is not bound to pay –’

Asked whether she got information about how many cases there were of cases filed ‘in persona’ she states that the Court system does not allow her to get such information since the system links the cases to lawyers including this particular case which shows Dr. Peralta. Asked about the hierarchy of the employees of the Court she replies as follows:

‘Witness: So, there is me, there is Deputy CEO and Legal Director, then there are two Registrars, three Registrars, sorry, one for Gozo Court, one for Criminal Court and one for Civil Court. There is support services, financial controller and HR.’

Asked what can a citizen do to report an employee she stated that one can send an e-mail, a letter or a phone call to the CEO, she

than launches an investigation and nominates an investigation board. This comes out of the Public Service Management Code. Asked whether she acted on the e-mail sent to her by plaintiff she replied that she did not appoint any board the reason being that this present case was filed. The custodian of the documents when a complaint is filed is the Human Resources Department. She explains that a Board was not appointed because the discussion between the Directors concluded that it was a procedural issue since the complaint from plaintiff was that he was not allowed to file in the English Language and not signed by a lawyer. She does not know whether there is a difference between the in favore signature being on the top of the documents of the bottom of the document, however she does not know about the incident.

Having seen the evidence given by **respondent Etienne Sicluna Registrar of the Civil Courts and Administrative Tribunal at folio 139 et seq of the acts.** He does know a lawyer by the name of Noel Bianco and that there was incident wherein a note was filed and it was signed at the top not at the bottom and that he directed the applicant to get it signed properly at the bottom of the documents. Asked upon which law he based his decision he replies that he cannot tell but any documentation should be signed below the submission otherwise it does not make sense. However he insists that this case is not about the document but about an application that was missing a lawyer's signature. With regards to

Judge Ian Spiteri Bailey refusing the note the witness states that of course he had no contact with the judge.

Having seen the further 'recourse' containing submissions by the applicant dated the 20th February, 2023 at folio 168 et seq of the case to which this court, after notifying the same to the other party and having seen the reply, declared that it was taking note of the content of the same and reserved to provide further in the final judgement. By means of this 'recourse', from what the Court can understand applicant sought to clarify that as a result of events which allegedly transpired on the 20th of February, 2023 (therefore after the filing of this case), he wished to retract the statement he made on the 12th of January 2023 and instead now insists that he is suing defendants Annalise Spiteri and Rose Maria Vella in their personal capacity.

Having seen the further 'nota' dated the 13th of April, 2023 wherein the applicant requested the court that even the other respondents are considered as being sued in their personal aspect not only in their official position (fol. 209 at seq).

Having heard the evidence given by **respondent Analise Spiteri dated the 30th of March, 2023 at folio 178 et seq of the file.** Asked who did she speak to when she received the summons to appear in Court she says that she spoke to her colleagues deputy

Registrars namely Rose Marie Vella, Simon Simpson and Josianne Vella. She informed Rose Marie Vella that they had to prepare to appear before the Judge. She states that she could not produce any of the requested documents as she did not have them in her control since she does not keep any documents in her control, after they are processed they go to the judge in fact the documentation is in this Court's file. With regards to any communication with the Judges she states that she does not communicate with any member of the Judiciary. Asked what her education criteria are she replies that she has a tertiary post education level, Bachelor of Law, Diploma of Notary Public and Doctorate of Laws. Asked what language was used at University she replies a mixture of Maltese, English, Italian, French and Latin. Lectures being predominantly in English but laws in Maltese. She has been in her position as deputy registrar for four years and that in order to obtain it she applied and underwent an interview. She graduated two months after obtaining the position. Asked what kind of training did she get she replies that she spent two months in various Judges chambers so that she could learn from their Deputy Registrar about what the job entails. As a Deputy Registrar she is governed by the Code of Organisation and Civil Procedure, Chapter 12 of the Laws of Malta as a main legislation. Asked what her duties are she replies that her duties are in the Registry of the Superior Courts and they mainly centre around the

receiving and processing of acts. If she has any doubt on the filing of an act she speaks to the Registrar Mr. Etienne Scicluna.

With regards to this specific case she had a problem with the filing of the act since it was in the English language mainly because the act in question was firstly in the English Language and secondly it did not follow the formalities of Chapter 12. Since the language of the Courts is primarily Maltese that stops her from accepting something in the English language and that come out of Article 21 of Chapter 12. She therefore explained her difficulty to Mr. Scicluna who on his part told her that he had to discuss with his superiors. The instructions from Mr. Etienne Scicluna and Dr. Vanessa Grech was that the act had to be processed therefore that the reciever of the acts had to accept the document. Once accepted it is assigned to a Judge.

The same respondent and witness with reference to case 352/2012 ISB states that she was involved and that she discussed this documents with the receiverss of the act Graziella and Nicholas since there was some confusion as to whether it was actually an application or some other documents, it was not apparent. She also went to the Registrar Etienne Scicluna and he came back with instructions to receive the act. In that occasion she refused to tax it even though the Registrar gave her instructions to accept as an application and the act was given to the Assistant Registrar



Charmaine Bugeja to process it in her stead and than it went up to the Judge. She refused to process this document on the basis of Chapter 12 and particular reference to the articles that refer to the formality of the act articles 174, 176, 178 and 184. This petition was in particular in violation of Article 178 because it was not signed by an Advocate/lawyer. She did not deem the signature on the first page as sufficient (fol. 1) since it was not made on the application itself but on a separate act. Had the signature been on the application she would have accepted it. There where other omissions because the original was not in the Maltese language accompanied by an English translation and the nature of the act was not clear. She refused to accept it even when instructed to do so because she considered herself replaceable. She refused to process it due to all these issues. She refused to sign it but the Registry accepted the act in the end.

Having seen the evidence given by **respondent Rose Mary Vella dated the 30th of March, 2023 at folio 202 et seq of the acts.** Her position is that of Deputy Registrar. The application should have been filed in Maltese as Article 21 of the COCP regulates. She was not in Court on the day. She came to know the day after and it was all done and sent to the Judge (with reference to the case sent to Judge Ian Spiteri Bailey).

Having seen the further evidence by respondent Rose May Vella dated the 10th of May, 2023 at folio 220 et seq of the acts. Asked how many times she refused to allow applicant to file pleadings in English she replies various times because the pleadings should be in Maltese, filed along with an English Version and this comes out of article 21 of the Code of Organization and Civil Procedure. Asked whether the English Language Act allows a Registrar to accept a pleading in English she replies that she knows about the Act but does not know its content. Whenever someone files in the English language she always asks for a Maltese version, it does not happen a lot but it happens and it was not from applicant. The lawyers have always come up with a translation. She does not recall any other cases apart from Mr. Spiteri's cases wherein a person wanted to file in the English version in propria persona. She presumes there were others but cannot remember them. Before refusing she would always refer to her superior, she rarely refuses something.

**Considers further:**

That applicant in his last note of submissions at fol. 382 lists the so called 'Three (3) fundamental unlawful prohibitions' being the basis of this procedure as a result of article 178 of the Code of

Organization and Civil Procedure (Chapter 12 of the Laws of Malta) as being the following:

'18. There are three (3) fundamental issues in this matter which are the trust of this action, to wit:

- a. **Whether I have the right to represent myself before any court of competent jurisdiction?**
- b. **Whether I have the right to sign my own pleadings?**
- c. **Whether once I submit a pleading to the Civil Court's Registrar under my signature without any in firma di favore the Registrar is obligated to process it and file it?'**

Additionally in his oral submission adds the question of being required according to law to submit to the Courts documents in the Maltese Language.

**The plea of nullity of the procedure since it was filed in the English language and the issue of Article 21 of the Code of Organization and Civil Procedure, Chapter 12 of the Laws of Malta:-**

The Court makes reference to article 21 of the Code of Organization and Civil Procedure, Chapter 12 of the laws of Malta which reads as follows:

'21. (1) The Maltese language shall be the language of the courts and, subject to the provisions of the Judicial Proceedings (Use of English Language) Act, all the proceedings shall be conducted in that language.

(2) Where any party does not understand the language in which the oral proceedings are conducted, such proceedings shall be interpreted to him either by the court or by a sworn interpreter.

(3)\* Any evidence submitted by affidavit shall be drawn up in the language normally used by the person taking such affidavit. The affidavit, when not in Maltese is to be filed together with a translation in Maltese, which translation is furthermore to be confirmed on oath by the translator.'

The Court at this point also makes reference to the Judicial Proceedings (Use of English Language) Act, Chapter 189 of the Laws of Malta particularly articles 2 and 3 which state:

'2. In a court of civil jurisdiction –

(a) where all the parties are English-speaking persons, the court shall order that the proceedings be conducted in the English language;

(b) where of the parties one or more is or are Maltese-speaking and one or more is or are English-speaking and all the Maltese-speaking parties make a declaration in the records of the court consenting to the proceedings being conducted in the English language, or where none of the parties is either a Maltese-speaking person or an English-speaking person, the court may order that the proceedings be conducted in the English language;

(c) where any one of the parties is an English-speaking person and none of the parties is a Maltese-speaking person, the court shall order that the proceedings be conducted in the English language;

(d) where a court has ordered proceedings to be conducted in the English language, that language shall be used in all subsequent stages of the proceedings, unless the order is revoked by that court or any other court before which the proceedings are pending;

(e) the notes of the evidence of witnesses shall be taken down in Maltese, except where the evidence is given in English, in which case such notes shall be taken down in English:

Provided that where the notes are taken down in English in proceedings which are conducted in the Maltese language or in Maltese in proceedings which are conducted in the English language, a translation of such notes into the language in which the proceedings are being conducted shall be inserted by the registrar in the record of the proceedings as soon as practicable.

3. In a court of criminal jurisdiction –

(a) where all the persons charged are English-speaking, the court shall order that the proceedings be conducted in the English language;

(b) where of two or more persons charged together one or more is or are Maltese-speaking and one or more is or are English-speaking and all the Maltese-speaking persons so charged make a declaration in the records of the court consenting to the proceedings being conducted in the English language, or where none of the parties is either a Maltese-speaking person or an English-speaking person, the court may order that the proceedings be conducted in the English language;

(c) where of two or more persons charged together one or more is or are English-speaking and none of the others is Maltese-

speaking, the court shall order that the proceedings be conducted in the English language;

(d) where a court has ordered proceedings to be conducted in the English language, that language shall be used in all subsequent stages of the proceedings, unless the order is revoked by that court or any other court before which the proceedings are pending;

(e) where the evidence of witnesses is to be taken down, it shall be taken down in Maltese, except where it is given in English, in which case it shall be taken down in English:

Provided that where the evidence is taken down in English in proceedings which are conducted in the Maltese language or in Maltese in proceedings which are conducted in the English language, a translation of such evidence into the language in which the proceedings are being conducted shall be inserted by the registrar in the record of the proceedings as soon as practicable.'

With regards to the above, applicant states that his fundamental rights have been breached because the law does not allow him to file acts directly in the Maltese Courts in the English Language without providing a Maltese version of the same.

On the other hand the respondents state that applicant's application should be declared null and void because it was filed in the English language without a Maltese version.

Applicant states that according to the Judicial Proceedings (Use of English Language) Act Chapter 189 of the Laws of Malta he should be allowed to file acts even if only in the English Language.

The Court confirms that article 21 of the COCP (Chapter 12 of the Laws of Malta) clearly states that the language of the Maltese Courts is Maltese. This article is subjected to Chapter 189 above mentioned. However Court notes that Chapter 189 does not in any way provide an exception to the rule in article 21 of the COCP but, it does provide adequate and ample solutions to English speaking parties in case they need to present acts and submit in Court. In fact the only rule is that the first act is to be filed in the Maltese language with a translation in the English language if need be, otherwise the law provides for various scenarios wherein the Court can than provide that the proceedings continue in the English language.

With reference to this particular case, it therefore transpires that the original application presented by applicant did not comply to article 21 of the COCP (Chapter 12 of the Laws of Malta). Also, applicant never provided a Maltese version of it within the



procedures, therefore procedurally the application is null and void and this Court strictly speaking could uphold respondent's preliminary plea on this point and just stop these proceedings at this point and refuse the application. However, given that these are Constitutional proceedings concerning fundamental human rights the court will go on and consider the application in its merits.

As already said, the law simply requires that the first act to be submitted to the Court should be in the Maltese language accompanied by an English translation if need be. If this criteria is satisfied (saving other criteria imposed by law) the Registrar of Court is obliged to accept this application. After this procedure, the Court may be asked to change the language of the proceedings to English and in fact this happens in many cases within the Maltese Court. This is in fact what was also done in this particular case.

This Court considers that applicant may find it irrational that a 'Maltese' version should be provided due to the fact that in Malta most of its citizens also understand the English language. However, the Court may consider other scenarios for example of a person wanting to file acts in an other language which, unlike English, is not so easily understood in Malta. If this Court had to accede to applicants request and declare article 21 of the COCP in

breach of his fundamental right, this would entail that anyone in Malta could file procedures in any language existing on earth thus provoking chaos within the administration of the courts and within the judiciary who would not be able to understand most of the languages.

This Court therefore deems article 21 of the COCP to be justifiable and reasonable in the circumstances and necessary to safeguard the public interest. The Court also deems that the simple request of providing a Maltese version of the initial act being filed together with the English version as being a very minimal request and therefore proportionate to the aim for which it is intended, that is, first of all to emphasize the importance of the country's language and secondly to enable the judiciary and the administration of the court to understand the act.

Even more, in this particular case it transpires that notwithstanding the act being filed in the English language without a Maltese version, it was still accepted by the court registrar therefore no prejudice at all was suffered by the applicant. It also transpires that previous acts filed only in the English language by applicant were also accepted by the Registrar notwithstanding the lack of the Maltese version - take for example application number 352/2022 ISB. Also, it results to this Court that respondents, all employees of the Court Services Agency in

charge of the Court's administration, where just doing their job in their capacity by applying article 21 of the COCP and would therefore have been legally justified to refuse the presentation of the act in line with article 184 of the same code as quoted hereunder.

This Court therefore finds that article 21 of the Code of Organization and Civil Procedure, Chapter 12 of the Laws of Malta does not in any way infringe applicant's constitutional rights, fundamental human rights and international covenants as listed in his application .

**Applicant's pretended right to sign his own acts without the need for the signature of a lawyer, the pretended right to represent himself in Court and respondent's preliminary plea that it is not clear whether the original application is signed by a lawyer or not:-**

The Court at this point makes reference to article 178 of the Code of Organization and Civil Procedure (Chapter 12 of the Laws of Malta) which reads as follows:

'The written pleadings and the applications whether sworn or not shall be signed by the advocate and also by the legal procurator, if any.'

Court also at this point makes reference to article 174 (Contents of Written pleadings), 176 (Mode of drawing up pleadings) and article 184 of the COCP which reads as follows:

'(1) If any difficulty shall arise in or about the filing of any written pleading, the registrar shall inform the party concerned, but he may not refuse to receive such pleading, except in the cases in which he is expressly enjoined or authorized so to do under the provisions of this Code. In the case of any such difficulty, he shall, as soon as possible, make a report thereof to the court, which shall give the necessary directions for his guidance. He shall, however, refuse to receive any written pleading which is in open violation of the provisions of articles 174, 176 and 178.

(2) In all cases, the registrar shall, upon a request to that effect, state in writing the reason for his refusal.'

With regards to the preliminary plea raised by respondents it results to this court that the application is probably signed by Dr. N. Bianchi however it is clearly stated that it is signed 'di favore'. Applicant however throughout the procedure kept stating that the

application is signed by retired Magistrate Dr. Carol Peralta. Although undoubtedly the signature on the act and the claims made by applicant contradict each other, since it results that this act is in actual fact signed, this Court deems that the plea of nullity due to the lack of signature of a lawyer is not justified.

The Court however notes that applicant's contention in the present case is that he should be allowed to file acts in Court without the need of a signature of a lawyer and that the imposition of this requirement is in breach of his constitutional and fundamental human rights. Applicant goes as far as stating that the requisite of requiring a lawyer's signature stops him from having adequate access to court. Applicant also states that he should be allowed to represent himself in Court once his application is filed.

On the other side respondents state that even by just getting a 'firma di favore' both applicant and the lawyers giving such signature are abusing the custom of 'firma di favore' and the lawyers could also be in breach of their code of ethics since they gave away their signature without knowing the contents of the act they were signing.

This Court first of all starts by noting that in Criminal Procedures, an accused has all the right to represent himself and this in

accordance with article 39 of the Constitution of Malta and article 6 of the European Convention on Human Rights. One should however note that in its judgement the European Court of Human Rights does not recommend this in the best interest of the party involved. This Court therefore does not see any point of contention as raised by the applicant with regards to criminal procedures.

Being in the Code of Organization and Civil procedure evidently Article 178 applies to the Civil Courts. However, this Court disagrees with applicant's submissions that this requisite is intended to stop him from having adequate right of recourse to the Courts or to stop him from being able to resort to the Courts due to the financial burden imposed resulting from lawyer's fees and court registry fees. It also does not agree that according to this particular article of law citizens or claimants who are not lawyers than they are therefore treated as being 'dumb'.

The Court notes that Maltese Law provides for legal aid even in the Civil arena for those who cannot afford to pay a lawyer or to pay Court registry fees. Therefore in such a case all that applicant needed to do was to apply for such legal aid and he would have obtained it if his financial position justified it. Obviously if he is financial position enables him to pay himself registry fees and

legal fees than he is being treated just like an other person in his same position and is required to pay his own expenses.

With regards to applicant's submission that requiring people to have a lawyer's signature or to be assisted by a lawyer is treating them like being 'dumb', Court states that this is certainly not the case. Lawyers are not expected to know what medical doctors do, medical doctors are not expected to know what economists or accountants do, whilst teacher are not expected to know how to build houses and vice versa. Logically no one would go to any person for medical treatment but he or she would go to a doctor or expert in the field and this is also what occurs in court. Not being versed in one profession but in an other does not make a person 'dumb' as proposed by applicant. Lawyers are experts in the legal field and thus their work is required in order to have a more efficient working environment in Court for the sake of all those involved, just like medical doctors are experts in the field of medicine and thus one requires their services to be treated and cured.

Thus, also in line with the above, with regards to the requisite of the signature of a lawyer on the act, Court disagrees with applicant's point of view that this is just a matter of rubber stamping the act. When a lawyer signs an act to be filed in Court he legally assumes responsibility for the contents of the said act

and all that follows. The lawyer is also bound to act according to law and in accordance with the Code of Ethics being also considered an official of the Court. Applicant's idea of just getting a 'firma di favore' from a lawyer without such lawyer assuming responsibility of its contents is a very wrong application of the custom of 'firma di favore'. In fact this court agrees with the submissions made by respondents that the custom of 'firma di favore' is intended simply as a friendly custom between colleagues in cases where a lawyer who needs to urgently file an act cannot make it to actually sign the act therefore an other lawyer signs instead of him. This does not mean that whoever signs the act is not also assuming certain responsibilities related to the same act, for example, that he has no legal conflict against the party whom he is signing. What the applicant is doing by obtaining a signature just to circumvent the need to be assisted by a lawyer is ethically, legally and procedurally wrong.

This Court emphasizes that the requisite for a party in Civil procedures to be represented by a lawyer is not symbolic as applicant wants it to think, the signature of lawyers entails various things with it such as that the act is filed according to applicable procedure, that it does not contain anything that is illegal and that it is not offensive or abusive, apart from various other criteria such as that it is filed in the appropriate Court and in the appropriate format understandable to all parties involved thus enabling the



efficient running of the case. Apart from the procedural aspect, it is also in every party's interest to be adequately legally represented by a lawyer in order that his/her rights are properly and adequately safeguarded. The requisite of a lawyer running the procedure for a party or the other is also necessary in order that Court proceedings can be heard smoothly without the extra hurdles due to fact that a party representing himself in most cases would not know the procedure.

In fact the present case is a clear example of what happens when a party is not properly legally represented and versed. In these acts applicant filed all kind of applications, acts, recourses, nota, affidavits, summons, submissions which were either not in the format requested according to law or could not even be identified as to what they represented. Also, applicant insisted on withdrawing statements that he had made in previous sittings under oath and on summoning witnesses even after he had declared his evidence closed. The same happened with his submissions and not to mention all the evidence that was filed by applicant which had nothing to do with his original application. Court also refers to the offensive and foul language used by applicant in some of his submissions.

This Court believes that article 178 of the COCP requires the signature of a lawyer specifically in order to ensure the smooth

running of procedures in the Civil Courts in the best interests of all the parties involved and the public at large leading finally to a proper administration of justice. It is therefore a proportionate requirement imposed by the Maltese State and is not in breach of any fundamental human right appertaining to the applicant. In fact Court notes that where minor cases are involved the law does allow self-representation even in civil cases for example in the Small-Claims Tribunal and in the Consumer Claims Tribunal.

**The respondents being sued in their personal capacity:**

As it clearly transpired during these procedures, applicant's claims concerned allegations of breach of his human rights and constitutional rights and this through the application of civil procedural law to his particular case by respondents being employees of the Court Services Agency. It is clear from that act of the case that none of the Court Services Agency employees had anything to do with this case personally but only through their capacity as employees of the Court Services Agency and therefore have no legal standing in this case in their personal capacities. The same applies for the Minister of Justice, the State Advocate and the Attorney General in their personal capacity. With regards to the claim being directed to respondents in their capacity the law states that the Maltese State is legally represented

by the State Advocate and therefore applicant should have directed the case solely against the State Advocate and none of the other respondents. Had applicant been adequately represented by a lawyer he would have been informed of the above and a lot of unnecessary procedure would have been avoided.

### **Contempt of Court:**

The Court at this point makes reference to applicant's attitude in the acts of this case especially to the use of offensive language in his submissions, as already pointed out above in this judgement and will therefore proceed to condemn him for contempt of Court in the final part of this judgement.

### **Conclusion:**

The Court, in view of all the considerations above, since it does not result to it that any of applicant's Constitutional, Fundamental Rights or International Covenant rights as listed in his application have been breached, finds therefore that his claims are not justified and it shall proceed to dismiss applicant's application in toto.

## **Decision**

Thus, in view of the above and the contents of the acts, Court proceeds to accept the reply of the respondents as far as the contents are compatible with what has been decided in this judgement and since it does not deem applicant's claims as justified, rejects all the claims forwarded by applicant in his application.

For the reasons above-mentioned the Court also finds applicant Carmelo Turu Spiteri guilty of contempt of Court and imposes a fine "multa" of €500.

With all costs against applicant.

**Read.**

**Hon. Judge Dr. Joanne Vella Cuschieri**

**B.A., Mag. Jur. (EUR.LAW), LL.D.**

**30th April, 2024**

**Cora Catania**

**Deputy Registrar**

**30th April, 2024**