THE FIRST HALL OF THE CIVIL COURT
CONSTITUTIONAL JURISDICTION

MADAME JUSTICE DR. DOREEN CLARKE LL.D

Application Number 80/2023DC

Carmelo Turu Spiteri (ID Number 842452M)

vs

Robert Abela as the Prime Minister for the Democratic Republic of the Island of Malta; Byron Camilleri as the Minister for Home Affairs, Security, Reforms and Equality, for the Democratic Republic of the Islands of Malta; and Christopher Soler as State Advocate

Today, the 28th day of January, 2025

The Court

Having seen **the Application** filed by the plaintiff on the 20th February, 2023 whereby he premised:-

*I. **INTRODUCTION***

2. This action arises from the undisputed fact that Article 19 of Chapter 188 of the Citizenship Act deprives the general public from understanding, knowing, and evaluating the acts and omissions of the Respondent Minister's decision making-process, and how the Minister and/or her/his designee reaches the decision to revoke the citizenship of one of this Maltese community, without informing same of the adverse information purportedly or allegedly reviewed, admitted as fact in support of a viable, probative and factual basis in ruling for revocation of said citizenship.

*II. **THE ARTICLE AT ISSUE***

3. The Citizenship Act, Chapter 188, Article 19 which in relevant part states:

The Minister shall not be required to assign any reason for the grant or refusal of any application under this Act and the decision of the Minister on any such application shall not be subject to appeal to or review in any court.

III. ISSUES BEING RAISED

FIRST ISSUE

4. *Does the Citizenship Act, Chapter 188, Article 19 Violate Fundamental Rights of a citizen subject to the revocation of citizenship procedures, in that it prevents and obstructs the citizen to redress before a Court of Competent Jurisdiction the Ministry's Decision?*

SECOND ISSUE

5. *Does the Citizenship Act, Chapter 188, Article 19 effectively place the minister or her/his designee in an above the Law Status, shielding her/him from questioning if such a decision to revoke citizenship was based on improper, third party influence, politically and discriminatory oriented, unlawful and retaliatory concessions?*

THIRD ISSUE

6. *Does the Citizenship Act, Chapter 188, Article 19 deprive and violate the public right to know true, honest, unblemished and transparent reason(s) for revoking a member of its society and community her/his citizenship?*

FOURTH ISSUE

7. *Does the Citizenship Act, Chapter 188, Article 19, as enacted and implemented constitute an abuse of parliamentary authority and/or discretion by designating and classifying the respondent minister and/or her/his designee that they are above the law, and their decision to revoke the citizenship of a citizen of this nation for their constituents and the general public are to be preventing from potentially addressing and questioning if such act was illegally motivated, unlawful, discriminatory, politically oriented and/or retaliatory?*

FIFTH ISSUE

8. *Whether the immunity to demand a viable, probative, transparent and truth reason for non-disclosure only constituted a procedural bar to an action for the enforcement of personal rights, which potential include is not limited, that the citizen to such revocation decision has the right to challenge, correct and/or address any inaccurate, false, pretexted and unfounded information taken into account by the minister and/or her/his designee to revoke her/his citizenship, in which case, petitioner asserts and opine that among other statutory or acts assertions, European convention on human rights, article 6(1) would be applicable and the immunity not to disclose and be redress before an Honorable Court of competent jurisdiction would require justification?*

IV. LEGAL AND OTHER ARGUMENTS

9. *Petitioner respectfully asserts and opines that the Honorable Court, should it assert and accept both personam and subject matter jurisdiction on the issue(s) raised herein, must not always accept the decision-maker's evidence at face value.*

10. *Inconsistencies in the Respondent Ministry's evidence or other objective evidence may prove the decision-maker's evidence to be outright wrong, or just unreliable.*

11. *However, should the Honorable Court accept the Respondent Ministry's evidence as honest, and has properly tested that evidence against the surrounding circumstances for consistency and reliability, then the Respondent Ministry's evidence must stand and will be a good defense.*

12. *This Petitioner will not ask nor is it his intent to ask the Honorable Court to "go behind" the Respondent Ministry's evidence or guess at her or his subconscious reasons.*

13. *Petitioner respectfully seeks that this Honorable Court must ensure that Respondent Ministrys understands that it cannot without viable, provable, substantive and genuine admissible factual proof stripe a citizen of this Nation of her/his citizenship, and hide any appearance of criminality, unlawfulness, politically or otherwise discriminatory action or appearance thereof, under color of law, by abusing the privilege of ' non-accountability" for the Respondent Ministry's decision to take any other adverse action pursuant to the above mentioned Constitutionally protected rights, immunities and privileges afforded to all citizens.*

14. *Furthermore, Petitioner respectfully seeks that this Honorable Court reminds Respondent Ministry to ensure that they properly document the reasons for all revocation of citizenship and other decisions that could amount to adverse action.*

15. *Most importantly, Petitioner also respectfully seeks that this Honorable Court reminds Respondent Ministry to make sure when terminating the citizenship of a citizen, it ensure that there are proper grounds for doing so. Those grounds may be factually present, but must not be causally connected to a protected characteristic or activity, such as, a citizen's complaint regarding the administration of government or its entities procedure, policies, custom and practice; and/or whistle-blowing, potential criminal acts, cover-ups, political third party influence or wrongdoing by employees, agents, contractors, representatives, member of the cabinet, etc..*

16. *Petitioner's asserts that absent oversight by the public and the Honorable Court of competent jurisdiction on such a deprivation and revocation of citizenship by the Minister and/or her/his designee breads suspicion of an unlawful decision that could potentially be based on unlawful conduct, i.e., not limited to:*

    a. *Reprisal against a whistleblower;*
    b. *Reprisal against protected speech or conduct;*

c. *Discriminate on the basis of race, colour, religion, sex, national origin, age, disability, marital status, ethnicity, sexual preference or orientation, political affiliation or opinion.*
d. *Solicit or consider input or opinion from third parties and/other members of a political party or association, based on factors other than personal knowledge or records of patriotism, abilities or characteristics in conformity to the allegiance to the Nation and its laws.*
e. *Coercion by third parties and/other members of a political party or association against the revocation subject as reprisal for refusing to engage in potential unlawful, unethical and/or criminal activity and/or restrain for bring such issues to the attention of the Minister and/or her/his designee and/or the government-of-the-day.*
f. *Deceive or willfully obstruct a person's right to retain her/his citizenship.*
g. *Influence by third party to revoke said citizenship, based on selective, arbitrary, capricious and improper/ unlawful interference with the independent authority and discretionary power of the decision-maker whether to allow or revoke the subject's citizenship.*
h. *Give unauthorized preference or advantage to the influence of a third party injure the citizenship status of a member of this Nation, by engaging, supporting or ratifying an act of nepotism.*
i. *Retaliate against the subject because of an individual i s legal disclosure of information evidencing wrongdoing ("whistleblowing").*
j. *Retaliate against the subject for exercising a complaint or grievance right; testifying or assisting another in exercising such a right, cooperating with law enforcement and members of parliament, or refusing to obey an order that would break a law.*
k. *Discriminate against the subject based on conduct which is not adverse to national security of this Nation or others, bu t the underlying reason(s) are not compatible with a fair, meaningful, just, transperant and equitable process.*
l. *Violatez any law, rule, or regulation which implements or directly concerns the merit principles.*

17. *Petitioner asserts that access to Justice enables individuals to protect themselves against infringements of their rights, to remedy civil wrongs, to hold GAV executive power accountable and to defend or prosecutor her/his claim before 4 a court or governmental entity of competent jurisdiction.*

18. *Access to Justice is both a process and a goal, and is crucial for individuals 6 seeking to benefit from other procedural and substantive rights.*

19. *Pursuant to applicable International and European Human Rights law, the notion of access to justice obliges States to guarantee each individual's right to be heard and seek redress when an Administrative decision renders her/him to non-judicial and external punishment or impunities and seeks to obtain a remedy if it is found that the individual's rights have been violated. It is thus also an enabling right that helps individuals enforce other rights.*

20. *Access to justice encompasses a number of core human rights, such as the right to a fair, meaningful, truthful, transparent and equity under the European Convention on Human Rights, Article 6 and the European Union Charter of Fundamental Rights, Article 47 of the, and the right to an effective remedy under the European Court of Human Rights, Article 13 of the European Union Charter of Fundamental Rights, Article 47.*

21. *The abovementioned Convention and statutory citations are intended to guarantee not rights, entitlements or immunities that are theoretical or illusory but rights that are practical and effective.*

22. *European Convention on Human Rights, Article 6 S 1, in relevant parts reads as follows:*

In the determination of his civil rights and obligations everyone is entitled to a fair … hearing … by (a) … tribunal … *(Emphasis added)*

23. *Furthermore, and significantly fundamental to the issues raised herein, the European Union Charter of Fundamental Rights, Title V, Article 41 mandates:*

1. *Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.*

2. *This right includes:*

   (a) *the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;*
   (b) *the right of every person to have access to his or her file, white respecting the legitimate interests of confidentiality and of professional and business secrecy;*
   (c) *the obligation of the administration to give reasons for its decisions.*

3. *Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.*

4. *Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.*

V. STANDING TO BRING THIS ACTION

24. *Petitioner is informed and believe that in accordance with the Democratic Republic of the Islands of Malta Constitution, Article 116 he has standing to bring this action before this Honorable Court, to wit:*

a. *Democratic Republic of the Islands of Malta's Constitution, Chapter X I, Article 116, mandates:*

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)

25. *As a direct and foreseeable consequence of the wrongful conduct, acts and/ or omissions of Respondents, and each of them, the subject could and would potentially sustain and continues to sustain serious impediment, obstruction and subjugation of her/ his protected constitutional and statutory protected rights to retain or regain her/his citizenship and effectively challenged wrongful, inaccurate, fabricated, non-probative and viable information, under among other statutes, including, but not limited to:*

    a. *Malta Data Protection Act, Chapter 586.*
    b. *Malta Freedom of Information, Chapter 496.*
    c. *Universal Declara tion of Human Rights (1948), Article 19.*
    d. *Council of Europe Convention on Access to Official Documents (2009).*
    e. *European Charter of Fundamen tal Rights, Article 42.*
    f. *Treaty of Lisbon, Article 15 and*
    g. *European Convention on Human Rights, Article 10.*

VI. JURISDICTION AND VENUE

26. *This Honorable Court has jurisdiction over this pursuant to the Code of Organization and Civil Procedure because the Respond ents are all citizens of the Republic of the Islands of Malta, and residing and conducting their profession government business therein.*

27. *Venue is proper in the Capital City of Valletta because the substantial part of the events, acts, omissions and/or constitutional infringement and unlawful restrains complained of herein occurred in and/or originated in Republic of the Islands of Malta per se. Valletta is also the seat of the government-of-the-day.*

VII. PARTIES

A. PETITIONER

28. *CARMELO TURU SPITERI (08424521M]), hereinafter "Petitioner," is a 24 free natural person, citizen of this Democratic Republic, European Union and the United States of America in good standing.*

29. *Petitioner is and has been for the past four (4) decades a pro-active non- attorney victim, Forensic, Constitutional, Civil and Human Rights advocate and activist, around the globe.*

30. *At all times relevant to this Petition, Petitioner was and is, a resident of the township of Marsaskala, with a postal mailing address of 98 Brighton Flats, Suite 3, Saint Ann's Street, Marsaskala MSK 2121.*

31. *Prior to filing this action, Petitioner timely exhausted his administrative remedies, by timely filing a complaint with the Office of the Prime Minister to no avail.*

B. RESPONDENTS

i. *The Honorable Mister ROBERT ABELA, As the Prime Minister for the Democratic Republic of the Islands of Malta, who is being sued in his official capacity.*
ii. *--The Honorable Mister BYRON CAMILLERI as the Minister for Home Affairs, Security, Reforms and Equality, for the Democratic Republic of the Islands of Malta, who is being sued in his official capacity.*
iii. *CHRISTOPHER SOLER, State Advocate, who issued in his official capacity.*
iv. *The true names and capacities of DOES 1 through 10, inclusive ('DOES'), are unknown to Petitioner at this time, and Petitioner therefore sues such DOE Respondents under fictitious names. Petitioner is informed and believes, and thereon alleges, that each Respondent designated as a DOE is in some manner highly responsible for the occurrences alleged herein. Petitioner will seek leave of the court to amend this complaint to allege the true names and capacities of such DOE Respondents when ascertained. (See Subsidiary Legislation 12.09, Court Practice and Procedure and Good Order Rules, Article 3, et seq.)*

VIII. MEMORANDUM OF POINTS AND AUTHORITIES

32. *Petitioner asserts that in the past few years this Democratic Republic had been criticized and blacklisted on the basis of factors arising from alleged, actual and potential political corruption, which included and was not limited to unlawfully interfering with citizens' rights, protection, equality, fairness and the right to exist with the community in a peaceful, tranquil and non-stressful environment.*

33. *Moreover, should an act or omission of the Minister or her/his designee raise to a level of plain error, should the citizen be afforded under the plain error doctrine which would be so fundamental that either new Ministerial procedure or other relief must be granted even though the action was not objected to at the time. Petitioner contends that the error, however, must be obvious and substantial. Petitioner also suggests and opines that the Honorable Courts should use the plain error doctrine sparingly. Thus, as a threshold requirement, invoking the plain error doctrine requires that an error exist.*

34. *When such revocation order/ decree is issued in the shadow of darkness and behind secret contemplation and door Petitioner asserts that the citizen subject to such revocation of citizenship should be given the opportunity to cross-examine witness and confront the evidence against her/him, in order that there is a fair playing field where inaccurate, false, misleading, molested or fake evidence and information is confront in the interest of justice and the rule of natural law.*

35. *Because Article 19 (supra) does not require the Minister and/or her/ his designee to conduct any informal or formal evidentiary process and can act contrary to a favor Board*

decision to the citizen, the citizen constitutionally and human rights are not satisfied to her/ his right to confrontation.

36. *Therefore, there is a fundamental depravity, selective, arbitrary and potentially capricious enforcement and constitutional error to place, which is very much a plain one.*

37. *The right of any citizen subject to an administrative adverse decision, order and/ or decree involves the right to confront the witnesses, evidence and tangible things which are inculpatory or exclupatory against her/him. The question of whether a citizen who is facing administrative adverse action has the right to confrontation is alleged to have been violated is one of constitutional fact, subject to independent appellate review.*

38. *Code of Organization and Civil Procedure, Chapter 12, Article 469A introduced by way of Act XXIV of 1995, provided the judiciary with a new set of parameters, beyond which an administrative act would be declared null and without effect. Saving as is otherwise provided by law, the courts of justice of civil jurisdiction may enquire into the validity of any administrative act or declare such act null, invalid or without effect only in the following cases:*

(a) where the administrative act is in violation of the Constitution;
(b) when the administrative act is ultra vires on any of the following grounds:
(i) when such act emanates from a public authority that is not authorised to perform it; or
(ii) when a public authority has failed to observe the principles of natural justice in performing the administrative act or in its prior deliberations thereon; or
(iii) when the administrative act constitutes an abuse of the public authority's power in that it is done for improper purposes or on the basis of irrelevant considerations; or
(iv) when the administrative act is otherwise contrary to law.'

39. *In accordance with Code of Organization and Civil Procedure, Chapter 12, Article 469A, in relevant parts states that 'An 'administrative Act' is defined as any act' involving 'the issuing by a public authority of any order, licence, permit, warrant, decision, or a refusal to any demand of a claimant'.*

40. *If it appears from the record that the real controversy has not been fully tried, or that it is probable that justice has for any reason miscarried, Petitioner asserts that this Honorable Court may reverse the judgment or order appealed from, regardless of whether the proper motion or objection appears in the record or not, and the issue is raise through this Honorable Constitutional Jurisdiction Chamber.*

41. *A miscarriage of justice may be found when there is a probability of a different result on a reconsideration or redetermination such that a decision to either declare a statute unconstitutional/ null and void or overturn the Administrative entity's order/ decree in the interest of justice is warranted.*

42. *The power to grant reconsideration or redetermination when it appears the real controversy has not been fully presented within the administrative process is formidable,*

and should be exercised sparingly and with great caution. This Honorable Court should only exercise such power to grant a discretionary reversal in exceptional cases.

43. *In short, this is an exceptional case in which the 'do and decide as a please' notwithstanding facts contrary to the Minister and/ or her/ his designee, i.e. absent judicial review, suggests that the real controversy might not fully revealed or there was any miscarriage of justice. Citizen's under the constitutionally behead process of absolute immunity of the Minister and/or her/his designee from having such decision reviewed by a court of competent jurisdiction, breads disparity, deprived indifference, political interference, discrimination, subjugation and violation of natural law. Petitioner asserts and opine that it was a fundamental prejudicial error to the lawful administration of justice and natural law to place the Minister and/or her/his designee in a position of above the law status, in light of the recent political corruption, which forced a good and zealous previous Prime Minister to resign and for this Honorable Gentleman new Prime Minister to completely change the structure of certain Ministry's to conform with both public policy and natural law which breads, fairness, equality, transparency and accountability.*

IX. RELIEF REQUESTED

44. *Petitioner respectfully requests that this Honorable Court, among other things:*

a. *Declare that the Maltese Citizenship, Chapter 188, Article 19 breaches constitutional and human protected fundamental rights in terms, but not limited to:*

   (i) *Malta Constitution, Article 34 (Protection from selective, capricious, onerous, arbitrary administrative decision and that Right Be Done);*
   (ii) *Malta Constitution, Article 36 (Protection front inhuman treatment, i.e. treated with deprived indifference and discriminated on the basis that she/he is prevent from confronting any inaccurate, erroneous, pretextual or otherwise fabricated information potentially given to the Ministry and/or her/his designee in determination such revocation of citizenship and to seek and assert her/his rights before an Honorable Court of Competent Jurisdiction);*
   (iii) *Malta Constitution, Article 39 (Provisions to secure protection of law from any selective, arbitrary, capricious, retaliatory and oppression by the State);*
   (iv) *Malta Constitution, Article 40 (Protection of freedom of conscience, i.e. God's given right that all humans are created equal and that they are guaranteed the freedom that Right Be Done without the interference, hindrance, oppression and subjugation of the State);*
   (v) *Malta Constitution, Article 41 (Protection of freedom of expression, i.e. expression of mind, thought, opinion and liberty of thought as a citizen without the interference, hindrance, oppression and subjugation of the State);*

b. *Malta Constitution, Article 45 (Protection from discrimination and retaliation for protected challenge and complaint).*

45. Wherefore, Petitioner asserts and affirms that there is not a plain, speedy, and adequate remedy, in the ordinary course of law to address the above unconstitutional and human right restrain of the Minister and/or her/his designee's final order or decree, since Chapter 188, Article 19 was enacted, implement and enforced that such an order or decree, no matter how illegal, unfair, unconstitutional or retaliatory it might be, the victim of such an order or decree is denied access to the law courts, for the Honorable Court' s review on the viable, probative and factual basis such an order or decree had issued.

46. In addition, Petitioner asserts and affirms that he has established a beneficial interest to be served and a particular right to be preserved or protected through the issuance of a Decree declaring the abovementioned Chapter 188, Article 19 unconstitutional, null and void.

47. Wherefore, Petitioner respectfully requests:

a. That he be afforded an expedited hearing in accordance pursuant to the Court Practice and Procedure and Good Order, S. L. 12.09, Article 4, to wit:

… the court shall fix a date for hearing within eight (8) working days from the date of the filing of the application, or from the filing of a reply by respondent within the time limit therefore (Emphasis added)

b. Declare that the Citizenship Act, Chapter 188, Article 19 violates fundamental rights of a citizen subjected to a revocation of citizenship procedures, in that it prevents and obstructs the citizen to redress before a court of competent jurisdiction the Minister and/ or her/his designee's decision.

c. Declare that the Citizenship Act, Chapter 188, Article 19 is contrary to public policy and the rule of law by effectively placing the Minister or her/ his Designee in an above the law status, shielding her/him from having to answer to a court of competent jurisdiction questioning if such a decision to revoke citizenship was based on improper, third party influence, politically and discriminatory oriented, unlawful and retaliatory concessions.

d. Declare that the Citizenship Act, Chapter 188, Article 19 as implemented and enforced deprives and violates the public right to know true, honest, unblemished and transparent factual reason(s) for revoking a member of its society and community her/his citizenship.

e. For such other and further relief as this court may deem just and proper.

X. VERIFICATION UNDER OATH

I, CARMELO TURU SPITERI, Petitioner, declares as follows:

1. I am not an attorney licensed or warranted to practice in any of the courts of the Republic of the Islands of Malta and the European Union. I am a forensic/ human/ civil and

constitutional rights analyst and non-attorney victims' advocate, acting in propria persona.

2. *In that capacity I make this verification that the facts alleged therein are within my knowledge, information and believe and to the best of my recollection. I have read the foregoing petition to be lodged with this Honorable Court, and, except for those matters stated on information and belief which I believe to be true, I know the contents thereof to be true and correct to the best of my knowledge.*

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 17th day of the month of February, 2023.

Having seen **the Reply filed by the defendants** on the 21st March, 2023 whereby the following pleas were raised:-

1. *That, as a preliminary plea, the respondents contend that the plaintiff must request a correction in the acts of the proceedings since the Democratic Republic of the Islands of Malta does not exist;*

2. *That, as preliminary plea, in the applicant's 'petition' there is a violation of the form required by law since the application is not in Maltese and lacks the signature of a lawyer under article 178 of Chapter 12 of the Laws of Malta and therefore the same application must be declared void under article 789 of Chapter 12 of the Laws of Malta;*

3. *That, as a preliminary plea, although the applicant initiates his 'petition' by stating that this action is being brought forward under article 116 of the Constitution his claims specifically listed in Section IX and under the title 'relief requested' do not request any declaration of nullity of article 19 of Chapter 188 of the Laws of Malta and therefore applicant has no juridical interest in bringing forward these proceedings since there was no decision taken against him;*

4. *That, as a preliminary plea and without prejudice to the previous submissions, if this Honourable Court accepts that this is an action under Article 116 of the Constitution such an action is also inadmissible to the extent that it is also related to articles 34, 36, 39, 40, 41 and 45 of the Constitution;*

5. *That also, as a preliminary plea, Prime Minister Robert Abela and Minister Byron Camilleri were wrongly suited in the proceedings as stated under artictle 181B of the Chapter 12 of the Laws of Malta and article 17(8) of Chapter 595 of the Laws of Malta and therefore they should be declared as non-suited;*

6. *That the applicant's claims lacks basis both in fact and in law;*

7. *On the merits, the respondents contend that Article 19 of Chapter 188 of the Laws of Malta does not relate to the process of the deprivation of citizenship as the plaintiff claims. The procedure for deprivation of citizenship is framed under article 14 of Chapter 188 of the Laws of Malta. Under this article the Minister responsible for citizenship has an*

obbligation to inform a person who may be subject to an order of deprivation of an order to remove citizenship in writing and this person has a right to be heard before an inquiry composed of a chairman with judicial experience;

8. *The respondents contend that the granting fo nationality is a prerogative of the State and is therefore a decision which is necessarily discretionary and secret as it may impinge on national security and the public interest and therefore the State is not required to give reasons. There is therefore no reason for a declaration stating that Article 19 of Chapter 188 of the Laws of Malta is uncontitutional;*

9. *Further, it should be stated that in the Constitution, the granting of citizenship is regulated in article 22 of the same Constitution, which specifies that the acquisiton, possession, renunciation and loss of Maltese citizenship shall be governed by law. Consequently, since Article 19 of Chapter 188 of the Laws of Malta is no way contradicts or violated that provision – rather it is there as part of the implementation of article 22 – there can never be a declaration that article 19 is in breach of the Constitution;*

10. *That the respondents contend that Article 19 of Chapter 188 of the Laws of Malta does not violate articles 34, 36, 39, 40, 41 and 45 of the Constitution;*

11. *In view of the foregoing, the applicant's claim and claims must therefore be rejected at the expense of the applicant;*

12. *That the exponsents humbly submit that this Honourable Court should declare these proceedings to be frivolous and vexatious under Article 46(5) of the Constitution.*

Having seen the minutes of the sitting held on the 22nd March 2023[1] where it was decided that a judgement is to be given regarding the preliminary pleas raised by the defendants.

Having seen the minutes of the sitting held on the 16th May 2023[2] when submissions regarding the preliminary pleas were made by the parties.

Having seen the minutes of the sitting held on the 26th September 2023[3] when it was decided that the Court should not proceed with the judgement regarding the preliminary pleas until the request for an interim measure filed in the case 368/2024AJD was decided.

Having seen the minutes of the sitting held on the 17th April 2024[4] when, after refering to the decision of the Constitutional Court given on the 8th April 2024 regarding the interim measure requested in the case 368/2024AJD, the Court

[1] Fol 39.
[2] Fol 149.
[3] Fol 195.
[4] Fol 202.

ordered that these present proceedings should not continue until the case number 368/2024AJD was finally decided.

Having seen that by means of a decree given in camera on the 20th September 2024[5], and for reasons specified in that decree, the then presiding judge Mr Justice Grixti abstained from sitting in this case.

Having seen the decree given by His Honor the Chief Justice on the 30th October 2024[6] whereby these proceedings were assigned to this Court as presided.

Having seen the minutes of the sitting held on the 12th November 2024[7] when it was decided that the proceedings should continue in the English language. In that same sitting the parties agreed that in view of the change in the presiding judge, the Court could proceed with a decision regarding the preliminary pleas.

Having heard the submissions o f the parties regarding the preliminary pleas made during the sitting of the 10th December 2024.

Having seen the acts of the proceedings.

Having considered

The action filed by the plaintiff is one in terms of article 116 of the Constitution of Malta[8], the so called *actio popolaris*. This is clearly affirmed by the plaintiff:

- in the title given to the application, prior to the table of contents, where he describes his application as a "*Petition pursuant the Democratic Republic of the Islands of Malta Constitution Article 116*";
- in part V of the application, entitled "S*tanding to bring this action*" where he claims that he "*is informed and believes that in accordance with the Democratic Republic of the Islands of Malta Constitution, Article 116 he has standing to bring this action*"; and
- in the note filed on the 25th November 2024[9], specifically in Part II entitled "*Legal Argument*", where he "*asserts and proposes that this honorable Court has subject matter jurisdiction as plaintiffs bring this cause of action under article 116 of the Malta Constitution*".

[5] Fol 203.
[6] Fol 247.
[7] Fol 249.
[8] Hereinafter referred to as "the Constitution".
[9] Fol 250

From a reading of the application it appears that by means of these proceedings plaintiff is questioning article 19 of the Maltese Citizenship Act, Chapter 188 of the Laws of Malta. In terms of this provision of law the Minister responsible for matters relating to Maltese citizenship shall not be required to assign any reason for the grant or refusal of any application under that Act; Article 19 also provides that the decision of the Minister on any such application shall not be subject to appeal to, or review in any court.

For reasons cited in the application, plaintiff requested the Court inter alia:

- to declare that Article 19 breaches a number of fundamental human rights, namely those protected in terms of articles 34, 36, 39, 40, 41 and 45 of the Constitution;
- to declare that Article 19 is unconstitutional, null and void; and
- to declare that Article 19 is contrary to public policy and the rule of law.

The defendants raised a number of preliminary pleas; they claim that:

1. plaintiff mistakenly referred to "*the Democratic Republic of the Islands of Malta*" which does not exist;
2. the application is null and void since it was filed in the English language and was not signed by a lawyer;
3. plaintiff has no juridicial interest since although filing an action under Article 116 of the Constitution he does not request a declaration of nullity of Article 19 and no decision in terms of the said Article 19 was taken in his regard;
4. the action is inadmissable since although it was filed in terms of article 116 of the Constitution, plaintiff's complaints refer to a breach of articles 34, 36, 39, 40, 41 and 45 of the Constitution; and
5. Prime Minister Robert Abela and Minister Byron Camilleri were wrongly suited and should be declared non-suited.

Having considered

It has long been established in jurisprudence that if a plea of nullity is validly raised, such that an application is found to be null and void, then the Court should not take further cognisance of the case since a declaration of nullity of the application would imply that there is no case being heard. In those circumstances the Court should not take cognisance of any other pleas, even if preliminary in nature.

In this regard reference is being make to a judgement given on the 27th June 1955 by the Court of Appeal in the case **Joseph Galea et vs Nutar Dottor Antonio Galea** it was held that:

> *l-eċċezzjoni ta'l-irritwalita` ta' l-istanza, li tammonta għan-nullita` ta' l-istanza, mhux biss hija kwestjoni essenzjalment preliminari bħal ma hija dik ta' l-inkompetenza, imma anke tirbaħ lil dik ta' l-inkompetenza. **Għax jekk hi nulla l-istanza, allura t-tribunal**, għandu jew m'għandux ġurisdizzjoni, **ma jistax jieħu konjizzjoni tal-kawża, stante li ma jkunx debitament investit biha**, u lanqas jista' jieħu konjizzjoni ta' l-eċċezzjoni ta' l-inkompetenza*.[10]

By means of their second prelimimary plea the defendants are raising the issue of the nullity of plaintiff's application. In conformity with the cited jurisprudence the Court will proceed to first decide this plea since if it is upheld and plaintiff's application declared null and void the Court would then be precluded from taking any other plea, or any other matter raised by the parties, into consideration.

The Plea of Nullity of the Application

The second plea raised by the defendants reads as follows:

> *That, as preliminary plea, in the applicant's 'petition' there is a violation of the form required by law since the application is not in Maltese and lacks the signature of a lawyer under article 178 of Chapter 12 of the Laws of Malta and therefore the same application must be declared void under article 789 of Chapter 12 of the Laws of Malta;*

From its reading it is very clear that the defendants are basing the plea of nullity on two grounds:

1. the fact that the application was filed in the English language; and
2. the fact that the application lacks the signature of a lawyer.

Having considered

The Language Used in the Application

Article 21 of Chapter 12 of the Laws of Malta[11], in its subparagraph (1), provides that:

[10] The emphasis is of this Court. This principle emanating from this judgement was reaffirmed in a judgement given on the 15th July 2009 by the Court of Appeal (in its Inferior Jurisdiction) in the case **Avukat Dottor Carmel Galea vs Silvio Zammit**.

[11] The Code of Organisation and Civile Procedure, hereinafter referred to as "Chapter 12".

> *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.*

The general principle emerging form this provision of law is that the language of the courts shall be the Maltese language. This implies that all business in the Maltese Courts shall be conducted in Maltese: all proceedings shall be conducted in Maltese, and all acts shall be filed in Maltese.

The law does take into consideration the fact that there may be persons who seek access to Court (in any of the various ways contemplated by law) who do not know or adequately understand Maltese and thus would not be able to fully and effectively participate in any ensuing proceedings when these are commenced and conducted in Maltese. The law provides a number of solutions depending on the circumstances and depending on the languages spoken and undertood by the parties. Insofar as English-speaking persons are concerned, solutions are provided for in The Judicial Proceedings (Use of English Language) Act, Chapter 189 of the Laws of Malta, reference to which is made in article 21 of Chapter 12.

The said Chapter 189 provides[12], insofar as civil proceedings are concerned, that:

> *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;*

[12] In article 2.

(d) where a court has ordered proceedings to be conducted in the English language, that language shall be used in all ***subsequent***[13] *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.

It is clear from a reading of these provisions of Chapter 189 that in the circumstances therein contemplated proceedings may be held in English. However it is equally clear from a reading of these provisions, especially when read in conjunction with Article 21 of Chapter 12, that the choice of language to be used is not a matter left to the arbitrary decision of any one of the parties who believes, for any reason, that proceedings should be conducted in the English language. Chapter 189 is very clear that a decision as to whether proceedings may or should be conducted in the English language is deferred solely to the Court's authority[14]:

- Article 2(a): "***the court shall order*** *that the proceedings be conducted in the English language"*;
- Article 2(b): "***the court may order*** *that the proceedings be conducted in the English language";*
- Article 2(c): ***the court shall order*** *that the proceedings be conducted in the English language";*
- Article 2(d): "*where* ***a court has ordered*** *proceedings to be conducted in the English language".*

It is also very clear that the use of the English language is not mandatory in all circumstances where one of the parties is English-speaking. Chapter 189 distingushes between various circumstances, establishing in which of those

[13] Emphasis of the Court
[14] Article 2(a): "***the Court shall order*** *that the proceedings be conducted in the English language"*; Article 2(b): "***the court may order*** *that the proceedings be conducted in the English language";* Article 2(c): ***the court shall order*** *that the proceedings be conducted in the English language";* Article 2(d): "*where* ***a court has ordered*** *proceedings to be conducted in the English language".*

circumstances the use of the English language is mandatory and in which of those circumatances the use of the English language is deferred to the discretion of the Court.

The use of the English language is mandatory:

- where all the parties are English-speaking [ref subparagraph (a)]; and
- where some of the parties are English-speaking and none of the other parties are Maltese-speaking [ref subparagraph (c)].

In any other circumstance that is

- where some of the parties are Maltese-speaking and the other parties are English-speaking; and
- where the all the parties are neither Maltese-speaking nor English-speaking;

then the Court "*may"* in its discretion order that proceedings be held in English [ref subparagraph (b)].

It is very important to note that in the first circumstance provided for in subparagraph (b), where some of the parties are Maltese-speaking and the other parties are English-speaking, there is a formality which must be adhered to before the Court may exercise its discretion and decide whether proceedings are to continue in Maltese or English. In fact in terms of the said subparagraph (b) the Court cannot order proccedings to be conducted in the English unless *the Maltese-speaking parties make a declaration in the records of the court consenting to the proceedings being conducted in the English language*.

Having established that it is only the Court who can direct in which language proceedings are to be conducted, and having established in which circumtances the Court should and/or may so direct, it would be relevant for a resolution of the plea at hand to also establish at what stage such an order should be given.

It is Chapter 189 itself which resolves this issue, in subparagraph (d) of article 2. In terms of this provision *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*.

From a reading of this provision, and in particular the use of the term "*subsequent stages of the proceedings*", it can logically be deduced that such an order can only be given if proceedings have already commenced. This may also be inferred from subparagraph (b) of article 2 in referring to a declaration being made in the records

by the Maltese-speaking parties. For there to be "parties" and "records" the case must have already commenced.

Since the proceedings must have commenced before an order is made regarding language to be *subsequently* used, and since in terms of article 21 of Chapter 12 the language of the Courts is Maltese, it can also be logically deduced that the proceedings must have been commenced in the Maltese language.

From these considerations there should be no doubt that the judicial act (the application) commencing judicial proceedings should be filed in the Maltese language, that the ensuing case should also initially be conducted in the Maltese language and that it should continue to be so conducted until a request is made for the proccedings to continue in the English language and such a request is upheld by Court ordering that the English language is used in subsequent stages of those proceedings.[15]

For all intents and purposes, and in conclusion of this part of the court's considerations, reference should also be made to Legal Notice 279/2008, the Court Practice and Procedure and Good Order Rules[16], article 7 of which provides that:

> *Saving what is provided for in these rules, the provisions of the Code of Organization and Civil Procedure, …, and any subsidiary legislation made thereunder* ***shall*** *mutatis mutandis apply before the Civil Court, First Hall, and the Constitutional Court referred to in rule 2.*

By application of this provision of law the rule set out in article 21 of Chapter 12, and consequently the rules set out in article 2 of Chapter 189, apply to all civil proceedings and to all proceedings before courts exercising a constitutional jurisdiction.

From the above there can be no doubt that the rules set out in article 21 of Chapter 12 and in article 2 of Chapter 189 apply to these present proceedings.

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[15] At this stage it would be pertinent to refer to article 81(1)(f) of Chapter 12 in terms of which no person may obtain a warrant to exercise the profession of advocate *unless he possesses full knowledge of the Maltese language as being the language of the courts.* Since article 178 of Chapter 12 provides that written pleadings must be signed by an advocate and all advocates practicing in Malta must be proficient in the Maltese language, any party who is not Maltese-speaking will not suffer any prejudice since the act whereby the proceedings are commenced will be drawn up by an advocate who is proficient in the Maltese language. In reality article 178 is the subject matter of the second part of the preliminary plea being considered and will be dealt with in a subsequent part of this judgement.

[16] Subsidiary Legislation 12.09

In these present proceedings the application was drawn up in the English language following an arbitrary decision taken by pliantiff, this in clear violation of the mentioned provisions of law.

Having further considered

The signature of a lawyer

Article 178 of Chaper 12 of the Laws of Malta (Chapter 12) clearly provides that:

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

It has been established in the previous part of this judgement that by application of article 7 of Legal Notice 279/2008 (Subsidiary Legislation 12.09) the provisions of Chapter 12 shall apply to Courts exercising Constitutional jurisdiction. Consequently an application commencing an action for redress sought under the Constitution should have been signed by an advocate as dictated by article 178.

Defendants claim that the application filed by plaintiff is not signed by an advocate and is in bearch of the said article 178.

A perusal of plaintiff's application, specifically the last two pages thereof[17], will show that the application is signed by plaintiff himself who, in Part X of the application, prior to his signature, declares that:

> *I am not an attorney licensed or warranted to practice in any of the courts 1 of the Republic of the Islands of Malta and the European Union.*
>
> *I am a forensic/human/civil and constitutional rights analyst and non-attorney victims' advocate, acting in propria persona.*
>
> *In that capacity I make this verification that the facts alleged therein are within my knowledge, information and believe and to the best of my recollection. I have read the foregoing petition to be lodged with this Honorable Court, 1 and, except for those matters stated on information*

[17] Fol 18 and 19.

and belief which I believe to be true, I know the contents thereof to be true and correct to the best of my knowledge.

Following plaintiff's signature, and in Part XI entitled: *Firma in Favore by An Attorney Authorized to Practice Law*, above the typewritten words "*Name of Attorney*" there are the handwritten words "*Carol M Peralta*" and above the type written words "*Signature of Attorney*" there is a signature. It should be noted that there is no indication of the professional address of the advocate required in terms of article 174(c) of Chapter 12[18].

At this stage it is pertinent to point out that the notion of "*firma di favore*" is not contemplated by our law. It is merely a questionable practice, which evolved as a matter of cooperation between advocates, whereby, in urgent situations which do not allow for delay in the filing of judicial acts, an advocate signs judicial acts on behalf of an other advocate who, for whatever reason, might not be in a position to sign the said act himself for a timely filing in court. The advocate signing "*in favore*" would however clearly indicate on behalf of whom he is signing such that it is clear which advocate is assuming primary responsability for that act and which advocate is consequently acting on behalf of the party in who's name that act was filed.

It is also pertinent to point out that the requirement, in article 178, of an advocate's signature in written pleadings is not merely *pro forma*, if this were the case that signature would be superflous and would serve no real purpose. On the contrary the advocate's signature serves a very significant purpose and carries a number of responsabilities for the advocate owning that signature That signature in fact reflects the need to have a person well versed in the laws of Malta, acting on the strength of a warrant duely issued by competent authorities, who will ensure that judicial acts are filed in a timely and appropriate manner and in conformity with the dicatates of law. That signature will identify the person who, on behalf of the parties, will facilitate the proper conduct of the proceedings and who will ensure that Court orders are carried out in an appropriate and timely manner[19].

From the acts of the proceedigs and indeed as admitted by the plaintiff the "*firma di favore*" in question was not obtained in the spirit of cooperation between advocates as described above; but it was obtained by the plaintiff to ensure that his application is accepted by the Registrar. In fact there can be no doubt that the plaintiff obtained that signature to in an attempt to circumvent the law. In these

[18] In reality the Registrar should not have accepted the application since in terms of article 184 of Chapter 12 any written pleading in violation of inter alia article 174, should not be accepted for filing.
[19] This is one of the reasons for which the law requires not only the advocates signature but also his professional address since this would facilitate communication.

circumstances, and although there is a signature of an advocate, it cannot be said that is not the signature required by article 178 and which carries the responsabilities tied to the signature required by that ptrovision of law. Consequently it must be concluded that the application filed by plaintiff does not have the signature required by article178 and is therefore in violation of that provision of law.

Having considered further

Having established that plaintiff's application is in breach of article 21 of Chapter 12 in that it was not filed in the Maltese Language, and that it is also in breach of article 178 of Chapter 12 in that it cannot be said to have been signed by an advocate as dictated by that article, the Court must now establish whether these violations render the application null and void as claimed by the defendants.

Subarticle 1 of article 789 of Chapter 12 provides that:

> *The plea of nullity of judicial acts is admissible –*
> *(a) ... ...*
> *(b)... ...*
> *(c)... ...*
> *(d) if the act is defective in any of the essential particulars expressly prescribed by law:*
> *Provided that such plea of nullity as is contemplated in paragraphs (a),(c)and (d) shall not be admissible if such defect or violation is capable of remedy under any other provision of law*

There can be no doubt that the case at hand falls squarely under subparagraph (d) here reproduced. This is being said because plaintiff's application is clearly defective in at least two essential particulars which are expressly required by law: the drawing up of the application in the Maltese language, expressly required by article 21; and having the application signed by an advocate, expressly required by article 178. Furthermore it does not appear that plaintiff made any attempt to remedy these defects in an effort to salvage his application.

In these circumstances the Court finds that plaintiff's application is indeed null and void as rightly claimed by the defendants in their second preliminary plea which is consequently being upheld.

For completeness' sake it should be said that the nullity of written pleadings which were not signed by an advocate has consistently been upheld by the Courts.

In this regard reference is being made to a judgement on the 28th March 2006 by this Court as otherwise presided in the case **Bruce Clark vs Ir-Reġisratur tal-Qorti** where it was held that:

> *Il-firma ta' avukat tassew hija meħtieġa ad validitatem u n nuqqas tagħha jwassal biex l-att jitqies null taħt l-art. 789(d) tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili:*
>
> *789. (1) L-eċċezzjoni ta' nullità ta' l-atti ġudizzjarji tista' tingħata - (d) jekk l-att ikun nieqes minn xi partikolarità essenzjali espressament meħtieġa mil-liġi:*
>
> *Il-ħtieġa li parti tkun megħjuna minn avukat ma hijiex biss ħtieġa ta' formalità iżda hija meħtieġa fl-interess tal-ħeffa u l-effiċjenza tal-proċeduri ġudizzjarji sabiex ma jinħeliex ħin fuq episodji proċedurali li jitqanqlu għax min iħejji l-att ma jagħmlux sew għax ma jkunx jaf xi trid il-liġi tal proċedura. Il-liġijiet tal-proċedura qegħdin hemm bi ħsieb u għalhekk għandhom jitħarsu; wara kollox, huwa wkoll, jew għandu jkun, fl-interess ta' min jippreżenta l-atti li l kawża tiegħu ma tiġix arenata għax, billi ma jafx sew il proċedura, l-atti tiegħu ma jagħmilhomx kif għandhom isiru.*
>
> *L-eċċezzjoni taħt l-artt. 178 u 789(1)(d) tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għalhekk għandha tintlaqa'.*

This reasoning was upheld in a more recent judgement also given by this court as otherwise presided on the 12th October 2012 in the case **Salvatore Grech vs Avukat Ġenerali** where, after refering to the abovequoted part of the judgement given in Clark vs Reġistratur tal-Qorti, the court held that:

> *Din il-Qorti, kif issa presjeduta, taqbel ma dan l-insenjament.*
>
> *Il-htiega ta' avukat f'dawn il-proceduri hija essenzjali biex jiggwida lir-rikorrent kif iressaq u jitratta l-ilmenti tieghu, specjalment f'dan il-kaz meta talbiet kif elenkati f'dan ir rikors kienu gia' gew trattati u michuda mill-Qorti Kostituzzjonali fi proceduri ohra inizzjati mir-rikorrent (rikors 11/2003 deciz fil-31 ta' Jannar 2005). Din il-Qorti ma tistax tirrevedi sentenza ta' qorti ohra sakemm ma ssirx allegazzjoni ta' smiegh mhux xieraq. Hu, ghalhekk, li r-rikorrent kellu bzonn li jinghata assistenza ta' avukat, izda ghalkemm din il-Qorti spjegatlu l-konsegwenzi, ir-rikorrent baqa' ma hax passi biex jitlob din l-assistenza. Din il-Qorti ma tistax, ovvjament, taghmel xoghol ta' parti*

fil-kawza, u, ghalhekk, ma ghandhiex triq ohra hlief li tiddikjara null ir-rikors tar-rikorrent u tastjeni milli tkompli tiehu konjizzjoni tieghu.

These principles were reiterated in the judgement given on the 27th September 2013 by the Court of Magistrates (Gozo) in its Superior Jurisdiction (Family Section) in the case **Violet Camilleri vs Reġistratur tal-Qorti tal-Maġistrati (Għawdex).**

In conclusion it is pertinent to point out that in a judgement given by this Court as otherwise presided on the 30th April 2024 in the case also filed by the plaintiff, **Carmelo sive Turu Spiteri vs Court Services Agency et**, it was held that the requirements of articles 21 and 178 of Chapter 12 are not in breach of his fundamental human rights.

Having established that the application filed by plaintiff is null and void, in line with the longstanding principle established in jurisprudence quoted in the initial part of these considerations, the Court must abstain from taking further cognizance of this case and cannot consider the other preliminary pleas raised by defendants or any other matter that may be raised by the parties.

Wherefore, the Court is upholding the second preliminary plea raised by the defendants, and is consequently declaring the application filed by plaintiff null and void and is therefore abstaining from taking further cognizance of the said application. Judicial costs incurred by all defendants are to be borne by the plaintiff.

MADAME JUSTICE
DR. DOREEN CLARKE

MARVIC PSAILA
DEPUTY REGISTRAR