QORTI ĊIVILI – PRIM'AWLA

(Sede Kostituzzjonali)

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

Rikors Nru: 739/2021 GG

Filippa sive Phyllis Magri (K.I. nru. 191544(M))

vs

L-Avukat tal-Istat; u

Emanuel Magri (K.I. nru. 0230147(M)) ghal kull interess li jista' jkollu

Illum 10 ta' Gunju, 2025

Kawzu nru: 8

Il-Qorti,

Rat ir-**Rikors**[1] **ta' Filippa sive Phyllis Magri** ppreżentat quddiem din il-Qorti, diversament presjeduta, fil-11 ta' Novembru 2021, li permezz tieghu ppremettiet tallega lezjoni tal-jeddijiet fundamentali taghha fit-thaddim tal-Kapitolu 69 tal-Ligijiet ta' Malta bis-segwenti premessi u talbiet:

[1] Fol. 1 sa 2

1. Ir-rikorrenti kienet s-sid tal-proprjetà ossia l-fond 100, New Street, Ħal Luqa (Dok. 'A') sal-ħamsa u għoxrin (25) ta' Ġunju tas-sena 2020 meta din ingħatat b'titolu ta' donazzjoni lil uliedha (Dok. 'B')

2. L-inkwilin Emanuel Magri ilu jokkupa il-fond surriferit għal żmien twil taħt titolu ta' kera stabbilit u miżmum taħt id-disposizzjonijiet tal-Kapitolu 69, senjatament l-artikolu 3, flimkien mad-disposizzjonijiet tal-Att X tal-2009, senjatament l-artikolu 1531Ċ tal-Kapitolu 16 tal-Liġijiet ta' Malta.

3. Illi għalhekk l-intimat baqa' jgawdi kirja sfurzata fuq is-sid u jħallas biss kera ta' €52 kull tlett xhur (Dok. 'Ċ'), illi hija dik il-kera massima li jipprospetta l-artikolu 1531Ċ tal-Kapitolu 16 tal-Liġijiet ta' Malta, mingħajr ma nżamm il-proporzjon bejn id-drittijiet tas-sid u dawk tal-inkwilin. Ma hemm l-ebda dubju illi din hija kera baxxa, speċjalment ikkunsidrat dak li l-proprjetà kapaċi iġġib fis-suq miftuħ.

4. Illi huwa stat ta' fatt illi d-disposizzjonijiet tal-Kapitolu 69 tal-Liġijiet ta' Malta, tal-anqas qabel daħal fis-seħħ l-Att XXIV tal-2021, ta d-dritt lill-intimat Magri li jibqa' jgħix fil-fond suriferit minkejja li skada t-terminu lokatizju, b'kera irriżorja li ma tirriflettix is-suq u lanqas żżomm bilanċ bejn id-drittijiet tas-sid u dawk tal-inkwilin, bl-uniku awment permessibli jkun dak skond ir-rata ta' inflazzjoni kif determinata mill-Awtoritajiet Governattivi. Dan irriżulta għal relazzjoni sforzata ta' sid u inkwilin għall-perjodu indefinit.

5. Illi b'dan il-mod, ir-rikorrenti ġiet mċaħħda mit-tgawdija tal-proprjeta' tagħha, mingħajr ma ġiet mogħtija kumpens xieraq għat-teħid tal-pussess tal-istess fond,. Għaldaqstant ġew privata mill-proprjeta' tagħha bi ksur tal-Ewwel Artikolu tal-Ewwel Protokol tal-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem.

6. Il-livell baxx ta' kera, l-istat tal-inċertezza tal-possibilità tat-teħid lura ta' propjetà, in-nuqqas ta' salvagwardja proċedurali, iż-żieda fil-livell tal-għejxien f'Malta f'dawk l-aħħar deċimi u l-interferenza sproporzjonata bejn id-drittijiet tas-sid u dawk tal-inkwilini ikkreaw piż eċċessiv fuq ir-rikorrenti.

7. Għalhekk fil-fehma umili tar-rikorrenti, d-drittijiet tagħhom ġew miksura l-Ewwel Artikolu ta' l-Ewwel Protocol tal-Konvenzjoni Ewropeja u konsegwentement għandhom dritt jirċievu kumpens a tenur tal-Artikolu 41 tal-Konvenzjoni Ewropeja, stante illi ġew privata, mingħajr ma ngħatat kumpens ġust għat-tgawdija tal-proprjeta' tagħha.

Għaldaqstant ir-rikorrenti titlob bir-rispett lil din l-Onorabbli Qorti prevja kwalsiasi dikjarazzjoni neċessarja u opportuna u għar-raġunijiet premessi jgħidu l-intimati għaliex m'għandhiex:

1. Tiddikjara u Tiddeċiedi illi per konsegwenza tal-Kapitolu 69 tal-Liġijiet ta' Malta kif applikabbli qabel id-dħul fis-seħħ tal-Att XXIV tal-2021, inkluż tal-artikolu 3 tal-istess

Kapitolu fil-liġi, u/jew minħabba l-Att X tal-2009, ġew u vjolati d-drittijiet tar-rikorrenti għat-tgawdija tal-proprjeta' tagħhom fond 100, New Street, Ħal Luqa bi vjolazzjoni tal-Ewwel Artikolu tal-Ewwel Protocol tal-Konvenzjoni Ewropeja (l-Ewwel Skeda tal-Kap. 319 tal-Liġijiet ta' Malta);

2. Tiddikjara u Tiddeċiedi illi l-intimat l-Avukat tal-Istat huwa responsabbli għall-kumpens u danni, li jinkludi danni non-pekunjarji, sofferti mir-rikorrenti b'konsegwenza tal-operazzjonijiet tal-liġijiet suċċitati fit-talba preċedenti u dan ai termini tal-Artikolu 41 tal-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem;

3. Tillikwida l-istess kumpens u danni bil-ħatra ta' perit nominandi;

4. Tikkundanna lill-intimat Avukat tal-Istat jħallas l-istess kumpens u danni likwidati ai termini ta' l-Artikolu 41 tal-Konvenzjoni Ewropeja;

5. Tagħti dawk ir-rimedji kollha meqjusa xierqa;

Bl-ispejjeż u l-imgħax legali kontra l-intimati li minn issa huma nġunti għas-subizzjoni.

Rat id-dokumenti[2] annessi mar-Rikors promotur.

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[2] Fol. 3 sa 16

Rat ir-**Risposta tal-Avukat tal-Istat**[3] ippreżentata quddiem din il-Qorti, diversament presjeduta, fit-30 ta’ Novembru 2021, li permezz tagħha eċċepixxa li:

1. Illi qabel xejn huwa xieraq li r-rikorrenti ġġib prova siewja li turi kif il-kirja mertu ta' din il-kawża hija soġġetta għall-**Ordinanza Li Tirregola t-Tiġdid tal-Kiri Ta' Bini (Kap 69 tal-Liġijiet ta' Malta)**;

2. Bla ħsara għall-ewwel eċċezzjoni u kemm il-darba jirriżulta li I-kirja in mertu tmur lura għal qabel is-sena 1987, ir-rikorrenti ma tistax tinvoka **l-ewwel artikolu tal-ewwel protokoll tal-Konvenzjoni Ewropea** u dan biex tilmenta dwar ġrajjiet li sehhew qabel **it-30 ta' April 1987**. Dan qed jingħad għaliex skont **l-artikolu 7 tal-Kap 319 tal-Liġijiet ta' Malta**, ebda ksur tal-Ewwel Protokoll li jsir qabel it-30 ta' April 1987 m'għandu jagħti lok għal xi azzjoni quddiem il-Qrati Maltin;

3. Safejn ir-rikorrenti qegħda tattakka d-dispożizzjonijiet tal-**Kap 16 u 69 tal-Liġijiet ta' Malta** mill-lenti tal-**Ewwel Artikolu tal-Ewwel Protokoll tal- Konvenzjoni Ewropea**, l-esponent iwiegeb li skont il-*proviso* ta' dan l-artikolu protokollari l-lstat għandu kull jedd li jwettaq dawk il-liġijiet li jidhrulu xierqa biex jikkontrolla l-użu ta' proprjetà skont l-interess ġenerali. F'dan is-sens huwa magħruf fil-ġurisprudenza li l-lstat igawdi minn diskrezzjoni wiesgħa sabiex jidentifika x'inhu meħtieġ fl-interess ġenerali u sabiex jistabbilixxi liema huma dawk il-miżuri meħtieġa għall-

[3] Fol. 23 sa 24

ħarsien tal-interess ġenerali. Tali diskrezzjoni tal-leġislatur m'għandhiex titbiddel sakemm din ma tkunx li manifestament mingħajr bażi raġonevoli – li żgur mhux fil-każ. Fil-fehma tal-esponent u minn kif ser jiġi ppruvat waqt it-trattazzjoni tal-kawża, kemm il-**Kapitolu 16 kif ukoll il-Kapitolu 69 tal-Liġijiet ta' Malta** għandhom: (i) għan leġittimu għax joħorgu mil-liġi; (ii) huma fl-interess ġenerali għax huma maħsuba biex jipproteġu persuni milli jiġu mkeċċija mid-dar tal-abitazzjoni tagħhom; u (iii) jżommu bilanċ bejn l-interessi tas-sid, tal-kerrej u tal-poplu b'mod generali. Għaldaqstant l-esponent ma jidhirlux li għandu jinstab ksur tal-ewwel artikolu tal-**ewwel protokoll tal-Konvenzjoni Ewropea**;

4. Bla ħsara għal dak kollu ġia eċċepit, fir-rigward tal-ilment marbut mal-ammont tal-kera, I-esponent jidhirlu li l-artikolu **1531 C tal-Kap 16 tal-Liġijiet ta' Malta kif ukoll l-artikolu 4A tal-Kap 69 tal-Liġijiet ta' Malta** jipprovdu mekkaniżmi xieraqa ta' kumpens bil-konsegwenza li l-ilment tar-rikorrenti dwar in-nuqqas ta' proporzjonalità mhuwiex ġustifikat;

5. La m'hemmx ksur tal-jeddijiet fundamentali tar-rikorrenti, isegwi li t-tieni, it-tielet, u r-raba' talbiet konsegwenzjali lanqas m'għandhom jintlaqgħu;

6. Bla preġudizzju għal kull eċċezzjoni oħra u indipendentement minn kif ser tkun qed tiġi deċiża l-ewwel talba, ir-rikorrenti ma tistax tilmenta dwar il-perjodu ta' wara li ddisponiet mill-fond mertu ta' din il-kawża. Kull relazzjoni

lokatizzja li seta' kien hemm bejn ir-rikorrenti u l-intimat Magri ġiet mitmuma fid-data tal-aljenazzjoni tal-fond in mertu u b'hekk din l-Qorti m'għandiex tgħaddi biex tiddikjara li I-intimat Magri ma jistax jibqa' jistrieh aktar fuq id-dispożizzjonijiet tal-**Kapitolu 69 u 16 tal-Liġijiet ta' Malta**;

7. Fl-aħħar nett u fid-dawl ta' dak mitlub fit-tieni, u r-raba' talba jiġi eċċepit li f'kull każ ir-rikorrenti ma tistax titlob kumpens u danni bis-saħħa tal-**artikolu 41 tat-Trattat tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem**. Dan qiegħed jingħad għaliex it-tali artikolu jgħodd biss għall-organi ġudizzjarji tal-Kunsill tal-Ewropa u mhux għall-Qrati Maltin. Tant hu hekk li tali artikolu lanqas ma jifforma parti mill-liġi Maltija;

8. Salv eċċezzjonijiet ulterjuri;

Ghaldaqstant fid-dawl ta' dan kollu, I-esponent Avukat tal-Istat umilment jitlob lil din l-Onorabbli Qorti jogħġobha tiċħad it-talbiet kollha tar-rikorrenti bl-ispejjeż kontra tagħha;

Rat ir-**Risposta tal-intimat Emanuel Magri**, prezentata quddiem din il-Qorti, diversament presjeduta, fl-14 ta' Dicembru 2021, li permezz taghha eccepixxa li:

1. Illi preliminarjament, l-esponenti m'għandhomx ikun hu li jkun ikkundannat bi ksur tad-Drittijiet Fundamentali tal-Bniedem, in vista tal-fatt li ebda ċittadin privat ma jista' jkun misjub ħħati li kiser id-drittijiet ta' terzi. In segwitu għal dak eċepit, l-esponenü mhux il-leġittimu kontradittur u

għaldaqstant għandhu jiġi liberati mill-osservanza tal-ġudizzju;

2. Illi preliminarjament ukoll, permezz tar-rikors promotur, ir-rikorrenti qiegħdha tabbuża mill-proċess tal-proċedura kostituzzjonali, dan meta l-istess rikorrenti bdiet proċeduri quddiem il-Bord li jirregola l-Kera, ippresedut mill-Maġistrat Dr Leonard Caruana LL.D, rikors nunuru 716/2021, fl-ismijiet: Jennifer Magri et kontra Emanuel Magri;

3. Illi preliminarjament ukoll, jekk dina l-wisq Onorabbli Qorti ser tillikwida kumpens, tali kumpens ghandu jkun sal-25 ta' Gunju tas-sena 2020 u dan minhabba l-fatt li wara din id-data r-rikorrenti ma baqgħetx is-sid tal-fond mertu ghal dawn il-proteduri;

4. Illi bla preġudizzju għas-suespost u fil-mertu, il-premessi tar-rikorrenti m'ghandhomx mis-sewwa u huma nfondanti kemm fil-fatt u kif ukoll fid-dritt, u dan għas-segwenti raġunijiet;

5. Illi ma jistax jingħad li kien hemm teħid tal-proprjeta' li jikkonstitwixxi ksur tal-Artikolu 37 tal-Kostituzzjoni ta' Malta u l-1 Artikolu tal-Ewwel Protokol tal-Konvenzjoni Ewropea hekk kif traspost fil-Liġi Maltija permezz tal-Att dwar il-Konvenzjoni Ewropea, Kapitolu 319 tal-Liġijiet ta' Malta;

6. Illi jrid jiġi rilevat ukoll li I-Att X tal-2009, ta I-Fakolta' lill-kopropretarji sabiex jghollu I-kirja;

7. Illi mingħajr preġudizzju għas-suespost u fil-mertu, l-esponenti qiegħdin jokkupaw I-fond taħt titolu validu ta' kera, u dan skont dak li tipprovdi l-Ordinanza li Tirregola t-Tiġdid tal-Kiri tal-Bini, Kapitolu 69 tal-Ligijiet ta' Malta;

8. Illi tenut kont tal-aspetti soċjali tal-każ odjern, il-kera li qieghda tiġi mħallsa hija wahda ġusta;

9. Illi mingħajr I-ebda preġudizzju għas-suespost, I-esponenti m' ghandhomx ikunu huma li jbgħatu I-ispejjeż in konnessjoni ma dawn il-proċeduri *stante* li I-istess esponenti ma jistgħux jkunu ikkastigati ghax ottemporaw ruħhom ma' ordni leġittima tal-Liġi;

10. Illi jekk finalment dina I-Wisq Onorabbli Qorti ser tghaddi sabiex tillikwida xi kumpens u/jew rimedju favur ir-rikorrenti, tali kumpens u/jew rimedju m'ghandhux inaqqas b'xi mod id-drittijiet fundamentali tal-esponenti, tenut kont li l-fond mertu għal dawn il-proceduri hija llum il-ġurnata r-residenza tal-esponenti u m' għandhomx post alternattiv fejn huma jmorru jirrisjedu.

11. Salv eċċezzjonijiet ulterjuri.

Għaldaqstant u in vista tas-suespost, l-esponenti qiegħdin umilment jitlobu lil dina l-Wisq Onorabbli Qorti sabiex tiċħad it-talbiet magħmula fir-rikors promotur, filwaqt Ii tilqa' I-eċċezzjonijiet preliminari kollha u/jew in parte miġjuba mill-esponenti.

Dan taht dawk il-provvedimenti kollha li dina l-Wisq Onorabbli Qorti jidhrilha xierqa u opportuni fiċ-ċirkostanzi.

Rat ir-Relazzjoni Teknika tal-Perit mahtur mill-Qorti AIC Elena Borg Costanzi[4] mahlufa fil-11 ta' Marzu 2022, u l-eskussjoni taghha[5].

Rat il-provi dokumentarji mressqa mill-partijiet.

Semghet ix-xiehda tal-intimat Emanuel Magri in kontroezami.

Rat is-sottomissjonijiet bil-miktub tal-partijiet.

Ikkunsidrat li:

1. Dan huwa ilment kostituzzjonali li r-rikorrenti qed tressaq kontra l-Avukat tal-Istat minhabba fl-obbligu li kellha, skond l-**art. 3** tal-Ordinanza li Tirregola t-Tigdid tal-Kiri tal-Bini (Kap. 69 tal-Ligijiet ta' Malta) qabel id-dhul fis-sehh tal-Att XXIV tal-2021, li ggedded il-kirja tal-fond residenzjali **100, Triq il-Gdida, Luqa**, favur l-inkwilin taghha Emanuel Magri, b'kera kontrollat li ma jeccedix il-minimu tal-kera stabbilit fl-**art. 1531C** tal-Kodici Civili wara d-dhul fis-sehh tal-Att X tal-2009, li tqisu li kien kera irrizorju fir-realta' kummercjali u tal-proprjeta' f'Malta llum. Fid-dikjarazzjonijiet taghha fl-att promotur, ir-rikorrenti tilmenta li sofriet ksur tad-dritt fundamentali taghhom kif protett bl-**Ewwel Artikolu tal-Ewwel Protokoll** tal-Konvenzjoni Ewropea.

2. Ir-rikorrenti llimitat ruhha ghax-xiehda bl-affidavit taghha stess, u ghad-dokumenti tat-titolu taghha, diretti biex jindirizzaw l-ewwel eccezzjoni tal-Avukat tal-Istat. Minn dawn il-provi, li ma kienux kontradetti u lanqas kontestati mill-partijiet l-ohra fil-kawza, jirrizulta li:

[4] Fol. 26 sa 28
[5] Ara domandi, fol. 60 u twegibiet, fol. 69

(i) ir-rikorrenti hija l-werrieta universali ta' zewgha Carmel Magri li miet fis-6 ta' Novembru 2020;

(ii) is-successjoni tieghu kienet dikjarata, u thallset it-taxxa tal-boll dovuta, b'att tan-Nutar Dottor Carmel Martinelli tal-31 ta' Mejju 2021[6];

(iii) fost il-gid tal-komunjoni tal-akkwisti li kienet tezisti bejn Carmel Magri u r-rikorrenti kien hemm il-fond mertu tal-kawza, li jidher li kien akkwistat minnhom b'titolu oneruz b'att tan-Nutar Dottor Joseph Agius tas-26 ta' Awissu 1970[7];

(iv) ir-rikorrenti ghaddiet dan il-fond b'donazzjoni lil uliedha b'att tan-Nutar Carmel Martinelli tal-25 ta' Gunju 2021[8] [9].

3. Fix-xiehda[10] taghha, ir-rikorrenti ddikjarat li dan il-fond kien ghal zmien twil mikri lill-intimat Emanuel Magri ghal skop residenzjali, bil-kera ta' €52 (tnejn u hamsin Ewro) kull tlett xhur, u bl-obbligu ta' rilokazzjoni.

5. Ir-rikorrenti ressqet provi dokumentarji li jindikaw li l-valur tal-fond mertu tal-kawza fis-suq miftuh huwa ta' madwar €425,000 (erba' mija u hamsa u ghoxrin elf Ewro), kif stmat mill-Membri Teknici tal-Bord li Jirregola l-Kera fil-procediment intavolat minnha bin-numru 716/21LC, u wkoll privatament mill-perit *ex parte* Pierre Poulton. [11]

6. Min-naha tieghu, in sostenn tal-eccezzjonijiet li ressaq, l-intimat Emanuel Magri[12] ddikjara li jghix f'dan il-fond, u qablu kienu jghixu fih il-ġenituri tieghu, u anke n-nanniet tieghu. Meta zzewweg,

[6] Dok. A, fol. 3 *et seq.*
[7] Ara dikjarazzjoni ghal finijiet ta' provenjenza, fol. 14, ara wkoll kopja tal-att tal-akkwist fejn il-fond jidher li kien enumerat 30 (tletin), fol. 9 sa 11
[8] Erroneament dikjarata bhala 2020 fl-att promotur u fl-affidavit tar-rikorrenti, liema zball din il-Qorti ser tqis li huwa *lapsus calami*
[9] Dok. B, fol. 13 *et seq.*
[10] Fol. 57
[11] Ara fol. 60 sa 68
[12] Ara affidavit, fol. 74 sa 75

baqa' jghix fih ma' martu. Il-kirja bdiet qabel is-snin hamsin. Il-kera li jhallas tammonta ghal €208 fis-sena, u jhallas l-iskadenzi kull tlett xhur. Il-fond dejjem hadu hsiebu, kemm hu, kemm l-awturi tieghu. L-obbligi tieghu ta' nkwilin dejjem wettaqhom, u ghalhekk insista li m'ghandux ibati spejjez in konnessjoni ma' din il-procedura.

7. In kontroezami[13], l-intimat Emanuel Magri ddikjara li r-rikorrenti hija l-mara ta' huh premort. Il-fond kien jappartjeni lil missierhom originarjament, pero' f'xi zmien ghadda bi proprjeta' ghand huh, ghalkemm huwa ma kienx mgharraf. Huh eventwalment emigra, u hu baqa' jiehu hsieb lil missieru u jhallas il-kera dwar dan il-fond. Huwa nsista li ghamel hafna spejjez fil-post, bidel is-soqfa, ghamel il-madum u d-drenagg, bidel it-twieqi u ha hsiebu ghax kien antik u mitluq.

8. Ghalkemm l-intimat impenja ruhu li kien ser jipprezenta kopja tar-ricevuti tal-hlas tal-kera, huwa naqas li jaghmel dan, u din il-prova ma tirrizultax mill-atti bil-konsegwenza li l-eccezzjoni ma tirrizultax sostenibbli;

Ikkunsidrat li:

9. Bl-ewwel eccezzjoni tieghu, l-Avukat tal-Istat eccepixxa li r-rikorrenti trid tipprova t-titolu ta' proprjeta' li tghid li ghandha fuq il-fond mertu tal-kawza.

10. Din il-Qorti diga' spjegat, aktar 'il fuq, il-provi dokumentarji li ressqet ir-rikorrenti dwar il-provenjenza tat-titolu taghha fuq dan il-fond sakemm ghaddietu lil uliedha. Ghalkemm l-intimat jghid li ma jafx kif missieru ghadda din il-proprjeta' lil huh, u jallega li huh ma hallasx il-prezz taghha meta u kif kellu jhallsu, jirrizulta pruvat li huwa kien jaghraf lil huh bhala sid, ghax kien ihallsu l-kera, u llum ihallasha lill-armla tieghu, jew lil uliedha, bhala successuri fit-titolu tieghu. Fih innifsu, dan il-fatt jikkonferma – fuq bilanc ta' probabiltajiet – kemm l-ezistenza tar-relazzjoni lokatizja, u wkoll tad-drittijiet tar-rikorrenti fuq l-istess fond.

[13] Ara xiehda, 19.1.2023, fol. 77 sa 79

11. Din il-Qorti tirreferi għas-sentenza mogħtija fis-7 ta' Frar, 2017, fil-kawża fl-ismijiet **Robert Galea vs Avukat Ġenerali et (Numru 50/2015)** fejn din il-Qorti, diversament preseduta, qalet is-segwenti:

> *"Illi biex wieħed ikun f'qagħda li juri li ġarrab ksur tal-jedd fundamentali tiegħu taħt l-Artikolu 37 tal-Kostituzzjoni m'għandux għalfejn jipprova titolu assolut u lanqas wieħed oriġinali bħallikieku l-azzjoni dwar ksur ta' jedd fundamentali kienet waħda ta' rivendika*[14]*. Huwa biżżejjed, għall-finijiet ta' dak l-artikolu, li wieħed juri li għandu jedd fil-ħaġa li tkun li bih jista' jieqaf għall-pretensjonijiet ta' ħaddieħor. Imbagħad, għall-finijiet tal-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni, huwa biżżejjed li l-persuna turi li kellha l-pussess tal-ħaġa li tkun'.*

12. Aktar ricenti, dan ir-ragunament kien abbraccjat f'diversi gudikati ta' din il-Qorti, diversament presjeduta, u kien konfermat ukoll mill-Qorti Kostituzzjonali fis-sentenza **Catherine Tabone pro et noe vs L-Avukat Generali et**.[15]

13. Ghalhekk, din l-eccezzjoni wkoll ma tirrizultax fondata, u ser tkun michuda.

Ikkunsidrat ukoll li:

14. Bit-tieni, raba' u sitt eccezzjoni tieghu, l-intimat Avukat tal-Istat ikkontesta l-pretensjoni tar-rikorrenti dwar perjodi qabel it-30 ta' April 1987, meta dahlet fis-sehh f'Malta l-Konvenzjoni Ewropea dwar Drittijiet Umani u Libertajiet fundamentali, u perjodi wara li r-rikorrenti ma baqghetx is-sid ta' dan il-fond u wara d-dħul fis-sehh tal-Att XXIV tal-2021, meta lir-rikorrenti inghatalhom rimedju ordinarju.

15. Ghalkemm jirrizulta li r-rikorrenti u zewgha kienu ilhom sidien ta' dan il-fond minn qabel id-dhul fis-sehh tal-Att dwar il-

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

Konvenzjoni Ewropea (Kap. 319 tal-Ligijiet ta' Malta), billi l-lanjanza taghha hija limitata ghad-dritt fundamentali ghat-tgawdija pacifika tal-possedimenti protett bl-**Ewwel Artikolu tal-Ewwel Protokoll** ghall-istess Konvenzjoni, ghandu ragun l-intimat Avukat tal-Istat jinsisti li din il-lanjanza tista' tirnexxi biss b'effett mit-30 ta' April 1987[16].

16. Kif ga inghad aktar 'il fuq, mid-dokumenti tat-titolu prezentati mir-rikorrenti, jirrizulta li hija baqghet sid tal-fond mertu ta' din l-azzjoni sakemm trasferietu b'donazzjoni lil zewg uliedha b'att tan-Nutar Dottor Carmel Martinelli tal-25 ta' Gunju 2021[17]. Wara kollox, lanqas jista' jkun li trasferietu sena qabel, kif erroneament iddikjarat fl-att promotur u fl-affidavit taghha, ghaliex skond id-dikjarazzjoni tar-rikorrenti stess, zewgha miet fis-6 ta' Novembru 2020[18], u kien bis-successjoni tieghu li hija saret sid unika u esklussiva ta' dan il-post.

17. Pero', ir-rikorrenti stess tirrikonoxxi[19] li l-lanjanzi taghha kienu ndirizzati bid-dhul fis-sehh tal-Att XXIV tal-2021, li zied id-dritt fil-ligi favur il-lokatur f'kiri kontrollat skond l-Ordinanza li Tirregola t-Tigdid tal-Kiri tal-Bini (Kap. 69 tal-Ligijiet ta' Malta) li jitlob awment fil-kera sa 2% (tnejn fil-mija) tal-valur tal-fond fis-suq miftuh bl-**artikolu 4A** tal-istess Ordinanza. Dana jfisser allura, kif tajjeb eccepixxa l-intimat Avukat tal-Istat, li l-ilment tar-rikorrenti jista' jirnexxi biss ghaz-zmien li ghadda bejn it-30 ta' April 1987 u l-31 ta' Mejju 2021, jum qabel id-dhul fis-sehh tal-Att XXIV tal-2021. Jirrizulta, effettivament, li s-successuri fit-titolu tar-rikorrenti ezawrew tempestivament dan ir-rimedju gdid, bil-proceduri quddiem il-Bord li Jirregola l-Kera bir-Rikors numru 716/2021LC, li jirrizulta deciz finalment fit-13 ta' Novembru 2023[20].

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[16] Ara **art. 7** tal-Att dwar il-Konvenzjoni Ewropea, Kap. 319 tal-Ligijiet ta' Malta
[17] Fol. 13 *et seq.*
[18] Fol. 3
[19] Ara r-raba' premessa fl-att promotur, fol. 1
[20] **Magri Jennifer et vs Magri Emanuel**, Rik. Nru. 716/2021LC

18. Dwar l-adegwatezza tar-rimedju appena msemmi ghaz-zieda fil-kera f'kirjiet bhal dawn, wiegbet il-Qorti Kostituzzjonali fis-sentenza **Catherine Farrugia et vs Avukat tal-Istat et**[21]:

17. Kif ipprovdiet din il-qorti fil-każ ta' ***Albert Cassar et v. Il-Prim Ministru et***[22]*:*

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

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

»"Il-fatt illi jista' jkun illi fis-suq ħieles tista' ssib lil min jista' u huwa lest li jħallas b'kera daqs erbgħa fil-mija (4%) fis-sena ta' kemm jiswa l-fond mikri, ma jfissirx illi ma hemmx sezzjoni mdaqqsa tal-popolazzjoni li ma tiflaħx tħallas daqshekk, u għalhekk, meta tqis ukoll il-valur soċjali tal-akkommodazzjoni, jibqa' meħtieġ li jkun hemm forma ta' kontroll fuq iż-żjidiet fil-kera. F'suq tassew ħieles il-prezz li jitħallas għal oġġett jew servizz – fil-każ tallum il-kera – ma huwiex wieħed aritmetikament fiss, fis-sens li dejjem sejjer ikun bejn tlieta u nofs u erbgħa fil-mija (3.5-4%) iżda jiddependi mid-domanda u ddisponibilità, u għalhekk ma hemm xejn minqux fil-ġebel illi sid il-fond sejjer isib dejjem li jikrih b'kera ta' bejn tlieta u nofs u erbgħa fil-mija tal-valur kapitali.
»Il-qorti għalhekk taqbel mal-Avukat tal-Istat illi d-disposizzjonijiet tal-art. 12B tal-Kap. 158 joħolqu mekkaniżmu li jippermetti lis-sid li jdaħħal kera xieraq, meqjusa wkoll il-ħtiġijiet u l-għanijiet soċjali.«

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

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[21] Rik. Nru. 445/2021/1MH, 12.7.2023
[22] "Q.K., 4. ta' Mejju 2022 (Rik. Kost. Nru. 130/2019/1 LM)"

20. Konsegwentement, u safejn kompatibbli ma' dak appena konkluz, din il-Qorti ser tghaddi biex tilqa' dawn l-eccezzjonijiet imressqa mill-intimat Avukat tal-Istat.

Ikkunsidrat ukoll li:

21. Bil-bqija tal-eccezzjonijiet tieghu, l-intimat Avukat tal-Istat qed jikkontesta li l-kontrolli stipulati fl-<u>Ordinanza li Tirregola t-Tigdid tal-Kiri tal-Bini</u> (Kap. 69 tal-Ligijiet ta' Malta), u t-thaddim taghhom ghall-kirja mertu ta' din il-kawza, tul is-snin, kisru d-dritt fundamentali tar-rikorrenti, u tal-awturi qraba taghhom, kif protett bl-**Ewwel Artikolu tal-Ewwel Protokoll** tal-Konvenzjoni Ewropea, li jipprovdi hekk:

> 1.*Kull persuna naturali jew persuna morali għandha dritt għat-tgawdija paċifika tal-possedimenti tagħha. Ħadd ma għandu jiġi pprivat mill-possedimenti tiegħu ħlief fl-interess pubbliku u bla ħsara għall-kundizzjonijiet provduti bil-liġi u bil-prinċipji ġenerali tal-liġi internazzjonali.*
> *Iżda d-disposizzjonijiet ta' qabel ma għandhom b'ebda mod inaqqsu d-dritt ta' Stat li jwettaq dawk il-liġijiet li jidhrulu xierqa biex jikkontrolla l-użu ta' proprjeta' skont l-interess ġenerali jew biex jiżgura l-ħlas ta' taxxi jew kontribuzzjonijiet oħra jew pieni.*

22. Fis-sentenza **Hutten-Czapska v. Polonja**[23] li kienet tirrigwardja kontestazzjoni tal-protezzjoni li l-ligi Pollakka kienet taghti lil kirjiet ta' fondi residenzjali, il-Qorti Ewropea segwiet il-gurisprudenza taghha dwar l-interpretazzjoni ta' dan l-artiklu, u qalet hekk:

> *"157. Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions*

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

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

23. Ghalkemm huwa minnu li l-legislatur ghandu d-diskrezzjoni li jdahhal fis-sehh ligijiet li jaqdu interessi generali, dik id-diskrezzjoni ma tistax tkun ezercitata semplicement bl-imposizzjoni ta' piz sproporzjonat fuq sezzjoni partikolari mill-poplu, u lanqas ma jista' l-legislatur jinheba wara l-principju tal-*pacta sunt servanda* biex jillegittimizza regim regolatorju li jkun vjolattiv tad-drittijiet fundamentali, u li jkun diga' fis-sehh qabel bdiet ir-relazzjoni kuntrattwali partikolari.

24. Din il-posizzjoni kienet kristallizata mill-Qorti Ewropea tad-Drittijiet Fundamentali fis-sentenza **R & L, S.R.O. and Others vs. Czech Republic**[24], citata b'approvazzjoni fil-kaz **Cassar vs Malta**[25]:

101. The Court further observes that the inability of landlords to raise the rents originated from State regulations. … The applicants had to comply with them as they constituted the valid law. In this context is immaterial when the respective regulations were adopted. Even if had they been adopted before the entry into

[24] 3.7.2014, ghadda f'gudikat fit-3.10.2014

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

force of the Convention for the State concerned, their effect continued afterwards.

...

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

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

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

25. Fis-sentenza fuq citata **Hutten-Czapska v. Polonja**[26], il-Qorti Ewropea elenkat, u spjegat, il-principji generali li jridu jkunu sodisfatti f'kull kaz ta' ndhil mill-Istat fl-uzu ta' proprjeta' privata, biex dak l-indhil ma jiksirx id-dritt fundamentali protett bl-**Ewwel Artikolu tal-Ewwel Protokol** tal-Konvenzjoni:

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

(a) Principle of lawfulness

163. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. In particular,

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

the second paragraph of Article 1, while recognising that States have the right to control the use of property, subjects their right to the condition that it be exercised by enforcing "laws". Moreover, the principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see, mutatis mutandis, Broniowski, cited above, § 147, with further references).

(b) Principle of legitimate aim in the general interest

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

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

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

as the choice of measures for securing the housing needs of the community and of the timing for their implementation, necessarily involve consideration of complex social, economic and political issues.

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

(c) Principle of a "fair balance"

167. Not only must an interference with the right of property pursue, on the facts as well as in principle, a "legitimate aim" in the "general interest", but there must also be ***a reasonable relation of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including measures designed to control the use of the individual's property. That requirement is expressed by the notion of a "fair balance" that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.***

The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article the Court must therefore ascertain ***whether by reason of the State's interference the person concerned had to bear a <u>disproportionate and excessive burden</u>*** *(see James and Others, cited above, § 50; Mellacher and*

Others, cited above, § 48; and Spadea and Scalabrino v. Italy, 28 September 1995, § 33, Series A no. 315-B).

168. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. ***In cases concerning the operation of wide-ranging housing legislation, that assessment may involve not only the conditions for reducing the rent received by individual landlords and the extent of the State's interference with freedom of contract and contractual relations in the lease market, but also the existence of procedural and other safeguards ensuring that the operation of the system and its impact on a landlord's property rights are neither arbitrary nor unforeseeable. Uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner***[27] *(see Immobiliare Saffi, cited above, § 54, and Broniowski, cited above, § 151)"*

26. Fil-kawza **Cassar v. Malta**[28], il-Qorti Ewropea applikat dawn il-principji ghal-ligi li dwarha jilmentaw ir-rikorrenti, jew ligijiet simili, vigenti f'Malta. Il-Qorti Ewropea ghamlitha cara li:

"what might be justified at a specific time might not be justified decades later (see ***Amato Gauci****, cited above, § 60). In the present case, while it is true that the applicants knowingly entered into the rent agreement in 1988 with the relevant restrictions (specifically the inability to increase the rent or to terminate the lease), the Court considers that the applicants could not reasonably have foreseen the extent of inflation in property prices*

[27] Enfasi tal-Qorti

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

*in the decades that followed (see **Zammit and Attard Cassar**, cited above, § 50). Once the discrepancy in the rent applied and that on the market became evident, they were unable to do anything more than attempt to use the available remedies, which they did in 2010, but which were to no avail in their circumstances. The decisions of the domestic courts regarding their application thus constituted interference in their respect …*

50. The Court has previously held that rent-control schemes and restrictions on an applicant's right to terminate a tenant's lease constitute control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1. It follows that the case should be examined under the second paragraph of Article 1 of Protocol No. 1 (see Hutten-Czapska v. Poland [GC], no. 35014/97, §§ 160-61, ECHR 2006-VIII; Bittó and Others v. Slovakia, no. 30255/09, § 101, 28 January 2014; and R & L, s.r.o. and Others, cited above, § 108)

…

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

57. As to the rent payable, the Court is ready to accept that EUR 466 annually was a more or less reasonable amount of rent in 1988 – particularly given that it was an amount of rent which the applicants were aware of and in spite of which they decided to purchase the property with the relevant restrictions. Furthermore, it was an amount of rent which the applicants expected to receive for a number of years, at least until the demise

of J.G. and his wife. Moreover, the Court accepts that at the relevant time the measure pursued a legitimate social-policy aim (see paragraph 53 above) which may call for payments of rent at less than the full market value (see Amato Gauci, § 77).

58. The same cannot be said ***after the passage of decades, during which the rent had remained the same*** *(as stated by the parties and the domestic courts, the rent is still EUR 466 annually).* ***The Court has previously held that there had been a rise in the standard of living in Malta over the past decades (see Amato Gauci, cited above, § 63, and Anthony Aquilina, cited above, § 65). Thus, the needs and the general interest which may have existed in 1979 must have decreased over the three decades that ensued*** *(see Anthony Aquilina, cited above, § 65).."*[29]

27. F'dan il-kaz, tal-anqas minn April 1987 'l hawn, meta dahal fis-sehh f'Malta l-<u>Att dwar il-Konvenzjoni Ewropea</u> (Kap. 319 tal-Ligijiet ta' Malta) baqa' fis-sehh, u b'mod forzat fuq is-sid lokatur, sproporzjon qawwi bejn il-kera li kienu qed jippercepixxu hi u zewgha, u l-frottijiet li s-suq hieles kien kapaci jaghtihom dan l-istess fond. Hekk, jirrizulta li filwaqt li r-rikorrenti u l-awtur taghha kienu jircievu €208 kera fis-sena minghand l-intimat Magri, il-valur lokatizju ta' dan il-fond kien ivarja minn €700 fis-sena fl-1987, ghal €3,200 fis-sena fl-2005 u ghal €7,000 fis-sena fl-2017.

28. B'hekk, din il-Qorti ssib li, bl-applikazzjoni tad-disposizzjonijiet impunjati fl-<u>Ordinanza li Tirregola t-Tigdid tal-Kiri tal-Bini</u> (Kap. 69), ir-rikorrenti fil-kapacita' personali, u bhala successur ta' zewgha ghal ftit xhur, sofriet lezjoni tad-dritt fundamentali taghha ghat-tgawdija pacifika tal-possedimenti protett bl-**Ewwel Artikolu tal-Ewwel Protokoll** tal-Konvenzjoni Ewropea.

Ikkunsidrat ukoll li:

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[29] Enfasi tal-Qorti

29. Determinat ghalhekk li r-rikorrenti sofriet lezjoni tad-dritt fundamentali taghhom kif protett bl-**Ewwel Artikolu tal-Ewwel Protokoll** tal-Konvenzjoni Ewropea, bit-thaddim ta' din il-ligi specjali sad-data tad-dhul fis-ssehh tal-Att XXIV tal-2021, din il-Qorti ser tghaddi issa biex tqis u tiddeciedi dwar ir-rimedju li ghandha tinghata r-rikorrenti ghall-istess lezjoni.

30. Irrizulta mill-provi li r-rikorrenti kienet xtrat il-proprjeta' ta' dan il-fond minghand missier zewgha, mal-istess zewgha u bhala kompartecipi mieghu fil-komunjoni tal-akkwisti, b'att tan-Nutar Dottor Joseph Agius tas-26 ta' Awissu 1970. Dan ifisser li, sakemm miet zewgha fis-6 ta' Novembru 2020 hija kellha bi proprjeta' nofs indiviz (1/2) minn dan il-fond, u mbaghad saret is-sid esklussiva tieghu bhala eredi universali ta' zewgha.

31. Ghalkemm ir-rikorrenti ressqet provi teknici li juru distakk konsiderevoli fl-opinjoni dwar il-valur fis-suq miftuh ta' dan il-fond, hija naqset li tressaq provi li jikkuntrarjaw il-fehmiet teknici tal-Perit Borg Costanzi dwar il-valur lokatizju ta' dan il-fond bejn is-snin 1987 u 2021. Fin-nuqqas ta' prova kuntrarja, din il-Qorti jibqaghlha biss il-prova li r-rikorrenti ghamlet mill-mezz tal-Perit Tekniku, li esprimiet il-fehma li l-kera annwali percepibbli fis-suq miftuh minn dan il-fond kienet tammonta ghal €700 fis-sena 1987, li zdiedet ghal madwar €1,200 fis-sena 1993, €2,100 fis-sena 1999, €3,200 fis-sena 2005, €5,500 fis-sena 2011 u €7,000 fis-sena 2017.

32. Min-naha 'l ohra, jirrizulta li l-intimat Emanuel Magri kien u baqa' jhallas kera annwali ta' €208 fis-sena.

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

34. Kwantu ghall-kwantifikazzjoni tal-kumpens pekunjarju, il-Qorti Ewropea tad-Drittijiet tal-Bniedem fil-kawża fl-ismijiet **Cauchi v. Malta**[30] qalet hekk:

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

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

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

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

be deducted in the present case, as the applicant chose of her own volition not to increase the rent for a certain period of time.

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

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

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

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

36. Applikati ghall-kaz in ezami, u b'varjazzjoni minn dak argumentat mir-rikorrenti fis-sottomissjonijiet taghhom, dawn il-

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

principji jfissru li r-rikorrenti haqqha tircievi minghand l-Istat kumpens ghal telf pekunjarju fis-somma ta' €52,390.48[32] (tnejn u hamsin elf tlett mija u disghin Ewro u tmienja u erbghin centezmu).

37. Kwantu ghad-danni mhux pekunjarji, huwa stabbilit li z-zmien li ghandu jitqies fil-komputazzjoni tar-rimedju huwa dak biss li matulu r-rikorrenti personalment kienet sid, u lokatrici, tal-fond mikri, u mhux ukoll iz-zmien li matulu l-lezjoni garrbuha l-predecessuri taghhom.[33] F'dan il-kaz, billi r-rikorrenti kienet sid ta' nofs indiviz (1/2) biss ghaz-zmien kollu li ghadda bejn April 1987 u Novembru 2020, u mbaghad ghal ftit xhur sa Mejju 2021 kienet sid il-fond shih, din il-Qorti tqis li kumpens fis-somma ta' hamest elef Ewro (€5,000) huwa sufficjenti biex jaghmel tajjeb ghat-telf mhux pekunjarju, anke fid-dawl tal-fatt li ma tressqet ebda prova dwar it-tbatija jew piz mhux pekunjarju li garrbet l-istess rikorrenti bit-thaddim tal-ligi vjolattiva f'dan il-kaz.[34]

Decide:

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

1. Tilqa' l-eccezzjonijiet tal-intimat Avukat tal-Istat, u tal-intimat Emanuel Magri, safejn kompatibbli ma' dak fuq deciz, u tichadhom ghall-bqija;

2. Tilqa' t-talbiet tar-rikorrenti limitatament ghaz-zmien li ghadda bejn it-30 ta' April 1987 u l-31 ta' Mejju 2021, u tillikwida l-kumpens pekunjarju dovut lir-rikorrenti fis-somma ta' €52,390.48 (tnejn u hamsin elf tlett mija u disghin Ewro u tmienja u erbghin centezmu), u l-kumpens ghad-danni mhux pekunjarji fis-somma ta' €5,000 (hamest elef Ewro), u tikkundanna lill-intimat Avukat tal-

[32] [(€106,183 x 70%) x 80% - (34 x €208)]

[33] Ara fost ohrajn **Mary Borg et vs Avukat tal-Istat et**, Kostituzzjonali, 25.1.2023 u **Maria Rosa Buttigieg vs Avukat tal-Istat et**, Kostituzzjonali, 25.1.2023

[34] Ara t-tifsir tal-iskop ta' dawn id-danni f'para. 38 sa 43 tas-sentenza **Philip Caruana et vs Dr. Evelyn Caruana Demajo et**, Rik. Nru. 58/2023/1, Qorti Kostituzzjonali, 7.4.2025

Istat ihallas lir-rikorrenti s-somma komplessiva hekk likwidata u dovuta lilha fl-ammont ta' €57,390.48 (sebgha u hamsin elf tlett mija u disghin Ewro u tmienja u erbghin centezmu), bl-imghax legali mid-data meta din is-sentenza tghaddi f'gudikat.

3. L-ispejjez ta' dan il-procediment jithallsu fl-intier taghhom mill-intimat Avukat tal-Istat.

Onor. Dr. Giovanni M Grixti
Imħallef

Nicole Cini
Deputat Reġistratur