CONSTITUTIONAL COURT

THE HON. CHIEF JUSTICE MARK CHETCUTI
THE HON. MR. JUSTICE GIANNINO CARUANA DEMAJO
THE HON. MR. JUSTICE ANTHONY ELLUL

Sitting of Monday, 23rd June, 2025

Number: 29

Application Number: 87/2019/1 MH

Sylvana Brannon in her name and representing her minor children Eva, Kieran and Tristan, siblings Brannon, and in representation of her other minor son Ethan Cappello, and

with a decree dated 15th November, 2019, Dr Tanya Sammut was appointed as the Children's Advocate, whereby later this decree was revoked and a decree dated 22nd January, 2020, Dr Mary Muscat was appointed in her stead

v.

State Advocate formerly Attorney General,

the Commissioner of the Police, and

with a decree dated 22nd January, 2020 Travis Leigh Brannon was allowed as a joinder in the case, and by virtue of decree dated 29th December, 2023, Dr Leontine Calleja and Legal Procurator Gillian Muscat were appointed as curators to represent the absent joinder Travis Leigh Brannon

The Court:

1. This is an appeal by the plaintiff Sylvana Brannon from the judgement delivered by the First Hall of the Civil Court in its constitutional jurisdiction (hereinafter called the First Court) on the 5th July, 2023 by virtue of which that Court: (i) acceeded in part to the second request of the plaintiff, and declared that she suffered a violation of **Article 6** of her right to a fair hearing within a reasonable time; and (ii) acceeded to the plaintiff's eighth request and ordered the State Advocate solely to pay the applicant by way of compensation, the sum of four thousand Euros (EUR4,000) for the above mentioned violation, with interest accruing from the date of this judgement until payment in full is effected.

Introduction:

2. By means of an application, filed on the 4th June, 2019, the plaintiff together with her children, complained about how the Civil Court (Family Section) (hereinafter Family Court) is dealing with two (2) legal proceedings before it, which proceedings are against Travis Leigh Brannon as the ex-husband of Sylvana Brannon regarding family issues particularly care, custody and maintenance of their children. In light of this, the plaintiffs requested the First Court to:

*«(1) tiddikjara li r-rikorrenti u wliedha sofrew ksur ta' l-**Artikolu 8 tal-Konvenzjoni Ewropeja għad-Drittijiet tal-Bniedem u tal-Artikolu 7 tac-Charter tad-Drittijiet Fundamentali tal-Unjoni Ewropeja** li jiggarantixxi d-dritt għall-hajja privata u d-dritt għall-hajja tal-familja;*

*(2) tiddikjara li r-rikorrenti u wliedha sofrew ksur ta' l-**Artikolu 6 u 13 tal-Konvenzjoni Ewropeja għad-Drittijiet tal-Bniedem u tal-Artikolu 47 tac-Charter tad-Drittijiet Fundamentali tal-Unjoni Ewropeja** li jiggarantixxu d-dritt għal smiegħ xieraq u d-dritt għal rimedju effettiv;*

*(3) tiddikjara li r-rikorrenti u wliedha sofrew ksur tal- **Artkolu 3 ECHR u Artikolu 4 tac-Charter tad-Drittijiet Fundamentali tal-Unjoni Ewropeja** li jiggarantixxu l-protezzjoni minn trattament inuman jew degradanti;*

*(4) tiddikjara li r-rikorrenti u wliedha sofrew ksur ta' drittijiet oħra applikabbli skont ic-**Charter tad-Drittijiet Fundamentali tal-Unjoni Ewropeja,** inkluż l-**Artikolu 1** li jiggarantixxi d-dinjita` tal-persuna; **Artikolu 24** li jiggarantixxi l-protezzjoni għad-drittijiet lit-tfal; u l-**Artikoli 51, 52 u 53** dwar l-iskop tad-drittijiet u l-livell ta' protezzjoni, u tordna t-twettiq ta' dawn id-drittijiet fir-rigward tar-rikorrenti u wliedha kollha;*

*(5) tiddikjara li seħħet leżjoni oħra aggravata in kwantu d-decizjonijiet tal-Qorti Ċivili (Qorti tal-Familja) li zradikaw lill-minuri ulied ir-rikorrenti mir-rabta familjari bit-tibdil tar-residenza tat-tfal u bis-segregazzjoni ta' Eva minn ommha kienu r-riżultat ta' għażliet diskriminatorji bi ksur tal-**Artikolu 14 tal-Konvenzjoni abbinat mal-Artikolu 8 tal-Konvenzjoni u mal-Artikolu 7 tac-Charter**;*

*(6) tordna li jittieħdu l-mizuri kollha neċessarji sabiex is-sitwazzjoni li ġiet ikkawżata b'riżultat ta' aġir kriminali, doluż u malizzjuz tiġi ripristinata u jkun hemm **restitutio in integrum** skont il-ġurisprudenza tal-Qorti Ewropeja għad-Drittijiet tal-Bniedem billi t-tfal imorru lura għand l-omm biex jirrisjedu magħha bħal qabel;*

(7) tordna li jinbdew proċeduri kontra Travis Leigh Brannon għal disprezz lejn l-awtorita` tal-Qorti talli intenzjonalment żvija lill-Qorti b'tagħrif qarrieqi li wassal għat-telf tad-drittijiet tar-rikorrenti u għal preġudizzju serju u devastanti għaliha u għal uliedha;

(8) tordna l-ħlas ta' kumpens xieraq lil Sylvana Brannon proprio kif ukoll kumpens lil kull wieħed mill-ulied minuri Eva Brannon, Kieran Brannon u Tristan Brannon separatament, kif ukoll Ethan Cappello.»

3. The State Advocate and the Commissioner of Police replied on the 28th June, 2019, whereby following their preliminary pleas, and in

the merits of the case they stated that all of the plaintiffs' requests should be rejected since none of their fundamental rights have been violated.

4. By a preliminary judgement delivered on the 15th November, 2019, the First Court acceded to the defendants' first two preliminary pleas in respect to: (i) whether Travis Leigh Brannon should be joined in the suit; and (ii) the appointment of a Children's Advocate to represent the minors in these proceedings.

5. The joined party Travis Leigh Brannon filed his reply on the 26th February, 2020, whereby he contested the allegations put forward by the plaintiffs.

6. The final judgment was delivered on the 5th July, 2023, whereby the First Court, decided that:

> *«For the reasons above premised, the Court accepts the State Advocate's and the Commissioner of Police's pleas in respect of applicant's complaints under **Article 8** and **Article 3 of the European Convention on Human Rights** and rejects the State Advocate's et. plea and Travis Leigh Brannon's plea relating to the applicant's complaint relating to **Article 6 of the European Convention on Human Rights** and thus:*
>
> *1. Accedes in part to the second request of the Applicant, and declares that Applicant suffered a violation of **Article 6** of her right to a fair hearing within a reasonable time;*
>
> *2. Accedes to the eight request of the Applicant and orders the State Advocate only to pay the applicant by way of compensation the sum of four thousand Euros (€4,000) for the violation of the right to a fair trial*

within a reasonable time, with interest accruing from the date of this judgement until payment in full is effected.

Two-thirds of the costs of these proceedings are to be borne by the applicant, while the remaining one third is to be borne by the State Advocate and Travis Leigh Brannon equally.»

7. The reasoning of the First Court was as follows:

*«**Considerations***

(…)

First claim – Violation of Article 8 of the European Convention on Human Rights

*The applicant is alleging that there has been a violation of **Article 8 of the European Convention on Human Rights**. **Article 8** states:*

> *«Everyone has the right to respect for his private and family life, his home, and his correspondence.*
> *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.»*

In Law of the European Convention on Human Rights, from the authors DJ Harris, M O'Boyle, and C Warbick, it was said that:

> *«It should be noticed at the outset that the obligation on the state is to respect family life: it does not allow persons to claim a right to establish family life, eg by marrying or having the opportunity to have children, nor a general right to establish family life in a particular jurisdiction.»*

Applicant is basing her alleged violation principally on the issue of parental alienation which was not justified and that had its basis on false allegations advanced by her husband This Court has seen the proceedings before the Family court and notes the following.

This whole saga started after applicant's ex-husband filed an application alleging certain behaviour on the part of applicant and thus requesting the Family Court to give him care and custody. The Family Court ordered applicant to be notified and she replied on the 17th of June, 2016. Following a report by the children's advocate on the 13th of July, 2016, the Family Court issued a court decree on the 14th of

July that care and custody should be given to the father, whilst the applicant should have access to the minors on specific dates and times.

Following this, on the 8th of March, 2017, the family court asked applicant to file an application in respect of the care and custody of the children. On the 2nd of May, 2017, social worker Andreanna Gellel finalized a report in which she recommended that the minors should go and live with their mother. Then on the 8th of June, 2017, the Family Court gave a preliminary judgement in which it revoked its decree of the 14th of July, 2016. On the 18th of October, 2017, there was another report in which it was advised that the access of applicant to the minor Eva should be temporarily suspended. On the 19th of June, 2018, there was another report by Andreanna Gellel in which she advised:

> *«In the light of the above information, the Agency is of the humble opinion that the monitoring sessions should be suspended with immediate effect since the situation seems to be stable and is not negatively influencing the children's wellbeing.»*

Following this, applicant filed an application dated 10th August, 2018, in which she requested that the children go and reside with her. Subsequently applicant filed an application on the 28th of March, 2019, requesting court to take action on what was decided on the 8th of June, 2017.

From the above timeline, this Court notes that in reality care and custody of the minors was returned to the mother on the 8th of June 2017, that is just under a year from when the Family Court had given such care and custody to the father.

However, it seems that this in fact did not take place. Also, this Court does not understand the reason why although the Family Court had ordered that the care and custody resume in applicant's name on the 8th of June 2017, this seems not to have happened and that it was only on the 10th of August, 2018, that applicant filed an application for the children to go and reside with her. This means that applicant waited for a year to file an application in this sense.

*As was noted before applicant is basing the alleged violation of **Article 8** on parental alienation. Reference is being made to **Khusnutdinov and X v. Russia** decided by the European Court of Human Rights on the 18th of December 2018:*

> *«80. It follows that the national authorities' obligation to take measures to facilitate reunion is not absolute, since the reunion of a parent with children who have lived for some time with other persons may not be able to take place immediately and may require preparatory measures to be taken. The nature and extent of such preparation will depend on the circumstances of each*

> *case, but the understanding and cooperation of all concerned is always an important ingredient. Whilst national authorities must do their utmost to facilitate such cooperation, any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention. Where contact with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them (see Hokkanen, cited above, § 58; Ignaccolo-Zenide v. Romania, no. 31679/96, § 94, ECHR 2000-I; and Kosmopoulou v. Greece, no. 60457/00, § 45, 5 February 2004).*
>
> *81. It must be borne in mind that generally the national authorities have the benefit of direct contact with all the persons concerned.»*

As has been already stated, The Court considers that in this case everything commenced from the application filed by Travis Leigh Brannon on the 3rd of June, 2016 (fol. 127). The report filed by Dr. Stephanie Galea on the 13th of July, 2016 concluded that:

> *«Illi l-esponenti, in kunsiderazzjoni tal-ahjar interessi u x-xewqat tat-tfal, umilment tissugerixxi lil din il-Onorabbili Qorti li tordna li t-tfal jigu fdati fil-kura u kustodja ta' missierhom waqt li jkollhom access ghal ommhom bhal m'ghandhom fil-prezent ghal missierhom.»*

This was then infact confirmed by court decree on the 14th of July, 2016 (fol. 134).

This was then turned around in a court decree dated 8th June, 2017 (fol. 139) whereby care and custody were returned to applicant and access given to the father.

There were a number of reports made by experts both on the minors and even on the parents, and it is clear from the reading of these reports that all the members of this family needed help. This Court notes with pleasure that the Family Court did take the necessary steps to make this possible and that it contributed to help the minors and even the parents in the best way it could. It is also clear that the Family Court followed the suggestions made by the experts and that the best interest of the minors was always taken into consideration.

Although the applicant did not have the care and custody of the minors, and this for just under one year, she always had access to them, and this was not removed. Such access was temporarily suspended for the minor Eve, although this Court deems that according to the expert reports such suspension was necessary. Thus, although applicant did not have the care and custody of the minors, she continued seeing them every week.

*A recent judgement handed down by the Court in Strasbourg in the names Case of **N.V. And C.C. v. Malta**[1] does find the said violation on breach of procedural rules. It was therin stated:*

> *«39. In **Louis Cutajar v. Josette Farrugia gja' Cutajar**, Cit. 1438/1995/1, Civil Court (Family Section), decided on 29th April, 2004, the court held:*
>
> *«That this means that the rights of the parents over their children are subject to the best interests of the same children, and this principle has been indicated as "the paramount interest of the child or children", since in the context of the rights of children, the rights of the parents are there, above all else, to protect the interests and welfare of the minors. This, in fact, is the concept of the family and the interests of minors is one of the pillars of the same, so much so that the court is obliged, at every stage of the proceedings before it, both during the cause (in light of what is provided in Article 47 of Chapter 16), and in its judgment, and even after judgment (see Article 56 of Chapter 16), and also during and after a contract of separation, as was emphasized on the basis of Article 61 of Chapter 16, to see that the supreme interest of the minors remains the primary consideration in every decree that it delivers about the care and custody of the children, and every decree must, even after an agreement between the parents, be aimed to benefit the minors.»*
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> *...*
>
> *The Court's assessment*
>
> *(a) General principles*
>
> *54. The mutual enjoyment by members of a family of each other's company constitutes a fundamental element of family life (see Nasr and Ghali v. Italy, no. 44883/09, § 308, 23 February 2016). According to the Court's well-established case-law, domestic measures hindering such mutual enjoyment of each other's company amount to an interference with the right to respect for family life (see, inter alia, Strand Lobben and Others v. Norway [GC], no. 37283/13, § 202, 10 September 2019, and Penchevi v. Bulgaria, no. 77818/12, § 53, 10 February 2015).*
>
> *55. Any such interference would constitute a violation of this Article unless it is, first of all, "in accordance with the law". The phrase "in accordance with the law" does not merely refer back to domestic law but also relates to the quality of the law, requiring it to be clear, accessible and foreseeable. Furthermore, the interference must pursue aims that are legitimate under paragraph 2 of Article 8 and can be regarded as "necessary in a democratic society". Necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. That in turn requires*

[1] Application 4952/21 final judgement 10/02/2023.

that "relevant" and "sufficient" reasons be put forward by the authorities to justify the interference (ibid. § 54).

56. Regard must be had to the fair balance which has to be struck between the competing interests at stake, within the margin of appreciation afforded to States in such matters. The margin of appreciation to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake, such as, on the one hand, the importance of protecting a child in a situation which is assessed as seriously threatening his or her health or development and, on the other hand, the aim to reunite the family as soon as circumstances permit (see Jansen v. Norway, no. 2822/16, § 90, 6 September 2018).

57. It is not for the Court to substitute itself for the competent domestic authorities, it has to rather review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation. In assessing those decisions, the Court must ascertain more specifically whether the domestic courts conducted an in-depth examination of the entire family situation and of a whole series of factors, in particular of a factual, emotional, psychological, material and medical nature, and whether they made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what the best solution would be for the child (see Neulinger and Shuruk v. Switzerland [GC], no. 41615/07, § 139, 6 July 2010).

58. Undoubtedly, consideration of what is in the best interest of the child is of crucial importance (see, inter alia, T.P. and K.M. v. the United Kingdom [GC], no. 28945/95, § 70, ECHR 2001-V (extracts), and Diamante and Pelliccioni v. San Marino, no. 32250/08, § 176, 27 September 2011). Indeed, the Court has often reiterated that there is a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (see, for example, X v. Latvia [GC], no. 27853/09, § 96, ECHR 2013). Furthermore, the child's best interests may, depending on their nature and seriousness, override those of the parents (see Neulinger and Shuruk, cited above, § 134, and Sahin v. Germany [GC], no. 30943/96, § 66, ECHR 2003-VIII). In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (ibid.).

59. The Court further recalls that whilst Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8. What has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests. If they have not, there will have been a failure to respect their

family life and the interference resulting from the decision will not be capable of being regarded as 'necessary' within the meaning of Article 8 (see T.P. and K.M. v. the United Kingdom, cited above, § 72). In conducting its review in the context of Article 8 the Court may also have regard to the length of the local authority's decision-making process and of any related judicial proceedings (see Diamante and Pelliccioni, cited above, § 177, and T.C. v. Italy, no. 54032/18, § 57, 19 May 2022).

60. In various contexts the Court has also held that there is a positive duty to take measures to facilitate family reunification as soon as reasonably feasible (see, for example, Strand Lobben and Others, cited above, § 205, and Abdi Ibrahim v. Norway [GC], no. 15379/16, § 145, 10 December 2021 and the case-law cited therein).

...

65. However, the Court considers that the measure was not proportionate, for a plethora of reasons, including the inability to satisfy relevant procedural requirements, some of which have already been identified by the domestic courts (see paragraphs 30 and 33 above). In this connection, the Court notes the entire lack of any meaningful involvement of the second applicant in the decision-making process, as well as the limited involvement of the first applicant in so far as all her requests had been rejected, without giving her the possibility of adducing any evidence, or challenging the Children's Advocate report, the content of which was never shown to her, as well as the lack of reasoning in the Family Court's decisions.

66. In the absence of any such reasoning, and bearing in mind the information available to the Family Court before it issued the decree (see paragraph 47 above), the Court cannot but consider that the Family Court failed to look into whether there had been any real and specific risk for the child and overlooked relevant information brought to its attention (compare Penchevi, cited above, § 69). In setting out the measure (more than two months after J.'s request), it had failed to conduct an in-depth examination of the entire family situation allowing for a balanced and reasonable assessment of the respective interests of each person. Even admitting that by issuing the decree (on 1 October 2015) the Family Court was erring on the side of caution and acting 'speedily' in order to protect E., whose interests were paramount, there seems to be no justification for the inaction during the subsequent years. The Court notes that when the Family Court realised (from the report of the expert psychologist submitted on 25 November 2015) that the order was no longer necessary, it failed to take any action, such as calling on the parties and inviting them to make submissions in order for it to undertake the relevant assessment including a balancing exercise of the interests at play, including the best interest of the child, at that stage. Nor did it take any such action at any later point in time. It thus left in place the order, contrary to the positive obligation of the State to facilitate reunification as soon as

> *reasonably feasible, which the Court considers applied equally in the circumstances of the present case. While the Government insisted on arguing that the applicant could have requested a (or a further) revocation, the Court notes that both domestic courts have already dismissed these arguments (see paragraphs 27 and 33 above) and the Court finds no reason to alter those findings.*
>
> *67. Lastly, the Court observes that de jure the decree remained valid for over four years, until the appeal judgment of the Constitutional Court confirming the prior decision to declare the decree null and void. It appears from the testimony of the second applicant in the constitutional redress proceedings that the situation continued in practice until the birth of their child on 4 November 2016 (see paragraph 23 above), and thus de facto it significantly affected the applicants for a little over a year. Nevertheless, the Court is of the view that the fact that, subsequent to that date, the applicants may have breached the order of the Family Court (with or without the agreement of J. and the constitutional jurisdiction's blessing) without consequences, does not mean that the applicants had not suffered of the alleged violation of Article 8 for the entire period until the constitutional redress proceedings came to an end. In the absence of the revocation of the decree by the Family Court, or an interim decision by the constitutional jurisdictions, during such period the applicants could have been subject to any form of sanction or consequence and continued to suffer the anxiety as to whether they would ever be able to reunite legally.*
>
> *68. In the light of all the foregoing considerations the Court finds that the decision-making process at domestic level was flawed, and the measure constituted a disproportionate interference with the right of each of the applicants to respect for their family life.*
>
> *69. There has therefore been a violation of Article 8 in respect of both applicants.»*

Considering the above cited, although applicant does complain about the sealed documents, nothing in her line of defence indicated that she was unaware of their contents. Also both parties were afforded ample time to present their case relative to concerned application. The Family Court ensured the aid of appropriate experts in the field to establish the best interests of the minors as it was so burdened to do according to law. Truth be said, where such interests are concerned it is best to err on the side of caution, not that this Court is imputing or finding any error in the Family Court's procedure. In the circumstances the Family Court was presented with, upon husband's application, it acted swiftly and upheld nothing but the prime interests of the minors till proper contrary evidence was presented for it's consideration. The Family Court acted in a legitimate and equally proportionate manner in the dire circumstances backed with the expert's reports indicated. To be noted also that when Marica Busietta testified in front of this Court[2]*,*

[2] Folio 419D.

she was again adamant that it was imperative in the best interest of the minor Eva that the outcome of meetings with the minor would not be here disclosed to either parent. Again in front of this court, unchallenged she advised that her report would not form part of these proceedings.

To be noted that after the Court converged with the parties concerned, it was accepted by Mrs Brannon, that Mrs Marica Busietta's report remained sealed and not made available to the parties, always in the best interests of the minor Eva.

Thus, taking into consideration the above premised, the Court considers that there was no parental alienation and that thus there was no violation of ***Article 8 of the European Convention on Human Rights****.*

Second claim - Alleged violation of Article 6 of the European Convention on Human Rights:

The applicant also alleged a violation of ***Article 6 of the European Convention on Human Rights****. Said Article states:*

> *«In determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.»*

Regarding this alleged violation, applicant submits that this is based on i) the fact that the proceedings she submitted and those submitted by her ex-husband where co joined and that thus the judicial process was prolonged by 9 years; ii) that she was treated differently and that there was no equality of arms, in the sense particularly that her ex-husband was given a number of extensions whilst she was not.

Reference is being made to the judgement ***Colin John Morland v. The Advocate General*** *decided by the First Hall Civil Court (Constitutional Jurisdiction) on the 16th of March, 2018, which was confirmed by the Constitutional Court:*

> *«The Court recognises that according to the jurisprudence of both the Maltese courts, as well as that of the European Court of Human Rights, in order to assess whether the case under examination was excessively lengthy and thus in breach of the right to a fair trial, the Court must have regard not merely to the*

duration of the case alone, but must rather examine four factors, that is:

(1) The complexity of the case;
(2) The conduct of the applicant;
(3) The conduct of the competent authorities;
(4) What is at stake for the applicant.

This has been held to be due to the fact that the time factor must not be examined in the abstract, but it must rather be examined in the light of the particular circumstances of the case before the Court. Furthermore, no single criterion is conclusive on its own, as the Court must instead assess the cumulative effect of the four.

The Court further notes that regarding the reasonsable of the length of the proceedings, Maltese Courts have opined that the term 'reasonable' connotes a strong discretionary element, leaving it up to the Court to determine whether, considering the particular facts of the case under examination, the length of time it took for the case to be decided is such that it exceeds what is, or should normally be, acceptable in a democratic society. This therefore means that every case must be examined in light of its own special set of cicumstances.

It is the State's duty to ensure that the judicial proceses can run its course without undue delay. The Constitutional Court has previously observed that the Maltese courts are burdened with a heavy case load which often serves as an obstacle to the speedy determination of cases. This Courts agrees with the opinion expressed many times by this Court as otherwise composed and the Constitutional Court that there exists an inherent deficiency in the justice system because the public authorities are failing their duty ensure that there are enough resources for the court to be able to perform its duties satisfactorily. In this regard, the Court makes reference to the teachings of the ECHR that:

«...it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee to everyone the right to a final decision within a reasonable time in the determination of his civil rights and obligations.»

*In the decision **John Bugeja v. Avukat Generali et**[3] decided on the 11 of August, 2003 it was additionally argued that:*

«Meta jinstab li kawza damet pendenti ghal zmien twil u damet irragonevolment biex inqaghtet, ikun gudizzju simplicistiku wisq li tintefa' l-htija ghad-dewmien fuq limhallef partikolari li jkun sema' l-istess kawza li damet. Ikun gudizzju x' aktarx immensament ingust li takkuza jew li tinsinwa li dak l-imhallef partikolari ikun tghazzen, tnikker jew generalment ma kienx diligenti f' xogholu. Dan ghaliex, fil-verita`, l-abilita` ta' dak l-imhallef li jiddisponi mill-kawzi fi zmien ragonevoli ma tiddependix biss fuq il-kwalitajiet

[3] Constitutional Court.

intrinsici u personali tieghu, izda, fil-parti l-kbira tiddependi fuq l-effikacja o meno tal-ambjent li jahdem fih. Fost il-fatturi li jikkondizzjonaw dan l-ambjent, insibu nnumru kbir ta' kawzi "qodma" (backlog) li "jitghabba" bih appena jilhaq imhallef, in-numru sinjifikanti ta' kawzi godda li jigu assenjati lilu regolarment, u dawk li jista' "jiret" meta jirtira xi gudikant, il-kwalita` u l-kumplessita` tal-istess kawzi, jekk l-imhallef jinghatax persuni debitament kwalifikati biex jassistuh, jekk jinghatax rrizorsi necessarji biex jaghmel ir-ricerka tieghu, biex izomm ruhu aggornat fl-istudji tieghu, u biex isib il-hin necessarju ghad-deliberazzjoni u l-kitba tas-sentenzi.

«Id-dritt fundamentali tal-individwu li jkollu l-kawza tieghu mismugha u finalizzata eghluq iz-zmien ragonevoli, jimponi tassattivament fuq l-istat, li jrid josserva s-Saltna tad-Dritt, l-obbligu li jkollu fis-sehh sistema efficjenti t' amministrazzjoni tal-gustizzja. Il-gudikatura tifforma ttielet kolonna li fuqha hu mibni l-istat. Fis-sistema taghna, huma z-zewg kolonni l-ohra tal-istat, cjoe` l-ezekuttiv u llegislattiv, li ghandhom obbligu li jipprovdu r-rizorsi, l-istrutturi u l-ghodod l-ohra kollha necessarji biex il-Qrati jkunu f' pozizzjoni li jwettqu l-gustizzja fi zmien ragonevoli.

«Il-Qorti Ewropeja tad-Drittijiet tal-Bniedem dejjem ghallmet li l-artikolu 6 tal-Konvenzjoni:

«…. imposes on the Contracting States the duty to organise their juridical system in such a way that the Courts can meet the requirements of this provision Salesi vs Italy (26/02/1993). It wishes to reaffirm the importance of administerting justice without delays which might prejudice its effectiveness and credibility Katte Klitsche de la Grange vs Italy (27/10/1994) – (ara A.P. v. Italy 28/07/1999 Application 35265/97 – para. 18).»

This Court considers that the judicial proceedings were filed by applicant before the Family Court on the 11th of April 2013 and lasted until 30th of March 2022 and the judicial proceedings filed by her ex-husband lasted from 2016 till the 30th of March 2022. Thus, there was a total period of nine (9) years for applicant. This Court has also noted that applicant concluded her proof before the Family Court on the 16th of January 2020, thus after seven (7) years. This Court has gone through the sittings that were held before the Family Court and notes in particular:

- *Sitting of the 4th of June 2016 - this was cancelled because applicant did not notify the witness;*
- *Sitting of the 22nd of January 2017 – parties asked for sitting not to be fixed;*
- *19th February 2017 – none of the parties appeared before the Court;*
- *17th April 2017 – Applicant said witness was not available;*
- *23rd June 2018 - none of the parties appeared before the Court;*

- *17th November 2018 - none of the parties appeared before the Court;*
- *5th April 2019 – Applicant did not appear before Court;*

It also results that applicant had to present her affidavit on the 5th of June, 2013, however she presented it on the 13th of April, 2016, that is after three (3) years.

Infact it is clear from the above that the majority of the delay was caused by applicant.

Thus, with reference to the first criterion established, that is, the complexity of the case it is clear that the matter between the parties was very contentious and that due to the particular situation of all the parties involved, this was not a simple and straight forward case, so easily determined by the Court. It did present challenges and careful and many considerations especially due to the very best interest of the minors concerned as already premised.

This Court notes that the case file is quite voluminous and that a number of experts were nominated in order to assess both the minors and the parents. There was more than one report which was presented in the acts of the case, and this was due to the fact that therapist sessions with the minors were necessary and as one expert also noted, even the parents needed to undergo therapy sessions.

Regarding the fact that there was a joinder of proceedings, the facts of both proceedings were essentially the same and thus one can note that the same proof was being presented in both cases. Thus, this did not add any element of complexity to the case. Therefore, although it did take nine (9) years to decide, this case was certainly not straightforward or simple. Besides, the joinder, as is the intention behind this institution, serves to avoid duplicity [*sic*] *and further waste of time. Well administered it is a convenient instrument of expediency.*

With reference to the second and third criterion, the court has already noted a number of instances whereby the applicant either did not appear or did not notify the witness or delayed in the presentation of her affidavit for over three (3) years. This also refutes her statement that she was never allowed any type of extension, as it is clear from the acts that she was. It is also very clear from the minutes of the Court that applicant and her legal counsel did not appear in more than one sitting before the Court.

In light of all this, however this Court does consider that the period of nine (9) years for the conclusion of the judicial proceedings before the Family Court was unnecessarily lengthy. As above reiterated the Courts are too heavily burdened to deal with cases more expeditiously, and this can only be imputed to lack of adequate resources, but length of time in especially sensitive cases, some more

than others, does lead to this breach. However, applicant is also at fault for the length of the proceedings and this will be considered when remedy is afforded. Thus, there has been a violation of ***Article 6 of the European Convention on Human Rights****.*

Third claim - Alleged violation Article 3 of the European Convention on Human Rights:

The applicant also alleges that there has been a violation of ***Article 3 of the Convention****, that is:*

> *«No one shall be subjected to torture or to inhuman or degrading treatment or punishment.»*

With regard to this alleged violation, applicant contends that this stems from the fact that her children were deprived of their mother, and she was deprived of contact with her children. Applicant contends that ignoring the recommendations of Andreanna Gellel was tantamount to inhuman treatment. Applicant contends as well that she was persistently degraded and was treated as an unfit mother for allegations which turned out to be baseless.

With reference to this human right, it has been said by the First Hall Civil Court (Constitutional Jurisdiction) in the case ***Koster v. Kummissarju tal-Pulizija et*** *decided on the 17th of December, 2020 that:*

> *«Illi r-rikorrenti ssejjes dan l-ilment tagħha kemm fuq dak li jgħid l-artikolu 36 tal-Kostituzzjoni u kif ukoll dak li jipprovdi l-artikolu 3 tal-Konvenzjoni. F'dawn iċ-ċirkostanzi, il-Qorti sejra tqis l-ilment tar- rikorrent taħt l-aspett tal-imsemmija żewġ artikoli flimkien, u tqishom fil-qafas taċ-ċirkostanzi fattwali li joħorġu mill-provi mressqin mill-partijiet;*
>
> *Illi l-artikolu 36 tal-Kostituzzjoni jgħid li: "(1) Ħadd ma għandu jkun assoġġettat għal piena jew trattament inuman jew degradanti. (2) Ebda ħaġa li hemm fi jew magħmula skond l-awtorità ta' xi liġi ma titqies li tkun inkonsistenti ma' jew bi ksur ta' dan l-artikolu safejn il-liġi in kwestjoni tawtoriżża l-għoti ta' xi deskrizzjoni ta' piena li kienet legali f'Malta minnufih qabel il-ġurnata stabilita. ....*
>
> *Min-naħa l-oħra, l-artikolu 3 tal-Konvenzjoni jgħid li: "Ħadd ma għandu jkun assoġġettat għal tortura jew għal trattament jew piena inumana jew degradanti;*
>
> *Illi xieraq jingħad li l-imsemmija dispożizzjonijiet jinqdew bi kliem li juri li l-projbizzjoni li xi ħadd jittratta lil xi ħadd ieħor b'mod inuman jew degradanti hija waħda assoluta (hija mfissra bħala "an unqualified prohibition") u li ma tħallix eċċezzjonijiet jew tiġbid. Huma dispożizzjonijiet li jitfgħu fuq l-Istat ukoll obbligazzjoni pożittiva li jaraw li l-jedd jitħares u mhux biss waħda fejn l-Istat jirrimedja wara li jkun hemm ksur tiegħu. Huwa wkoll minħabba f'hekk li huwa mistenni li l-imġiba li minnha wieħed*

jilminta trid tkun ta' qawwa jew qilla ta' ċerta gravità u li tkun ippruvata fi grad għoli daqskemm xieraq skond in-natura tal-proċediment li jkun;

Illi huwa aċċettat ukoll li t-'tortura', it-'trattament inuman' u t-'trattament li jbaxxi' 'l dak li jkun huma kunċetti li jirkbu fuq xulxin u mhumiex maqtugħin għal kollox minn xulxin, ladarba huma mġiba mhux xierqa fuq xi ħadd li hija differenti minħabba l-grad ta' severità li tintuża, b'tal-ewwel tikkostitwixxi l-għamla l-aktar ħarxa ta' mġiba u tal-aħħar l-għamla l-inqas kiefra;

Illi kemm dan huwa tabilħaqq hekk, bil-kliem "trattament degradanti" wieħed jifhem "treatment that humiliates or debases ... Degrading treatment in the sense of article 3 is conduct that 'grossly humiliates', although causing less suffering than torture. The question is whether a person of the applicant's sex, age, health, etc., of normal sensibilities would be grossly humiliated in all the circumstances of the case." Hemm differenza wkoll bejn trattament inuman u trattament degradanti. Kull trattament inuman huwa minnu nnifsu wieħed ukoll degradanti, iżda mhux kull trattament degradanti jsir trattament inuman, liema trattament "covers at least such treatment as deliberately causes severe mental and physical suffering";

Illi mġiba li twassal lil persuna biex tagħmel xi ħaġa kontra r-rieda jew kontra l-kuxjenza tagħha tista' wkoll titqies bħala trattament degradanti. F'xi każijiet tqies li, flimkien ma' dawn il-kriterji, jkun irid jintwera wkoll li min ikun wettaq l-għemil degradanti jkun għamel dan bil-fehma jew l- intenzjoni li jżeblaħ, iċekken jew jumilja 'l vittma, imma jidher li jkun iżjed għaqli li wieħed iqis it-trattament li jkun ingħata fiċ-ċirkostanzi konkreti tal-persuna li tkun għaddiet minn dak it-trattament u tal-każ li fih ikun iġġarrab, għalkemm ma tiddependix lanqas għal kollox fuq dak li suġġettivament tħoss il-persuna mġarrba;

Illi biex iseħħ ksur tal-artikolu 3, it-trattament degradanti jrid jintwera li "gravement ibaxxi lil dak li jkun quddiem ħaddieħor .... u jidher li llum hu ġeneralment aċċettat li biex trattament determinat jaqa' taħt il-komminazzjonijiet tad-dispożizzjonijiet fuq ċitati, jeħtieġ ċertu grad ta' gravità", li mingħajru ma jkunx jista' jingħad li seħħ ksur ta' dak il-jedd. Għalhekk, biex trattament jitqies li jkun degradanti, irid jintwera li jmur lil hinn minn sempliċi inkonvenjenza jew disaġju;

Illi b'żieda ma' dan, huwa miżmum ukoll li minħabba li 'trattament degradanti u inuman' huma konċetti astratti, biex tassew jista' jingħad li seħħew iridu "jikkonkretiżżaw neċessarjament f'xi fatt jew fatti materjali" li jkunu ta' ċerta gravità li jitkejlu fuq l-effett li tali trattament ħalla fuq il-persuna li kienet suġġetta għalih. Minbarra dan, jista' jkun il-każ li l-qies dwar jekk imġiba partikolari tkunx waħda li ġġibx ksur tal- imsemmi jedd irid ikun "judged by the circumstances of the case and the prevalent views of the time .. .. It is clear that the answer to the question whether Article 3 has been violated, although depending on all the circumstances of the case, including such factors as the mental effects on the

person concerned, is not entirely dependent on his subjective appreciations and feelings";

Illi għal dak li jirrigwarda l-piż tal-prova ta' ksur tal-artikolu 3, jidher li jaqa' fuq min jilminta mill-ksur tal-imsemmi jedd li jressaq prova lil hinn mid-dubju raġonevoli li tabilħaqq ikun seħħ ksur ta' l-imsemmi artikolu. Irid jingħad li din mhijiex fehma li magħha jaqbel kulħadd. Iżda "such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. The conduct of the parties when evidence is being obtained has to be taken into account";

Illi l-qies ta' jekk trattament jaqax fil-parametri tal-artikolu 3 irid isir b'riferenza għaċ-ċirkostanzi kollha tal-każ li jkun fil-qafas tiegħu, magħduda l-mod ta' kif jingħata, it-tul tiegħu, l-effetti fiżiċi u morali li jħallu fuq il-persuna hekk trattata, u ċirkostanzi oħrajn bħas-sess, l-età u s-saħħa tal-vittma. Trattament jitqies bħala inuman meta tal-anqas iġib fuq il-vittma tbatija fiżika jew psikika "intensa" mqar jekk mhux akkompanjata bi ġrieħi li jidhru fuq il-ġisem, u jekk "iqajjem f'dak li jkun sentimenti ta' biża', angoxxia u sens ta' inferjorità li jumiljaw u jiddenigraw lil dak li jkun saħansitra sakemm possibilment jabbattu r-reżistenza fiżika jew morali tiegħu" . L-istħarriġ li trid tagħmel il-Qorti dwar jekk it-trattament mogħti jiksirx l-artikolu 3 tal-Konvenzjoni (jew l-artikolu 36 tal-Kostituzzjoni) huwa marbut maż-żmien li l-każ ikun qiegħed quddiemha biex tqis l-ilment;»

Applicant gives a number of reasons due to which she thinks that there has been this violation. In the first place she contends that she was subjected to inhuman treatment because the recommendations of Andreanna Gellel were ignored. Court notes that Andreanna Gellel submitted two reports, one date 2nd of May, 2017 (fol. 143) and the second 19th of June, 2018. The applicant is contending that the conclusions of the first report where ignored. The recommendations where that:

1. The Brannon minors, Eva, Kieran, and Tristan live with their mother, Sylvana Brannon;
2. That the minor Eva and her mother Mrs Brannon attend family therapy with the possibility that the minors Kieran, Tristan and Ethan attend too, to establish a new relationship between the family members;
3. That the father Mr. Brannon attends psychotherapy sessions;
4. That the minors Kieran and Tristan have supervised access with their father and that for the time being Eva does not attend until the minor's therapist deems it fit for Eva to attend, but not before Mr. Brannon had needed his therapy sessions.»

Following this report, the Family Court gave a preliminary judgement on the 8th of June, 2017 and confirmed what was said by Gellel in her report and decided to i) revoke contrario imperio its decree dated 14th

of July, 2016; ii) it nominated a psychotherapist; iii) it nominated a psychologist and iv) that the children reside with the father and mother in specific dates and times. The court also considered that a decision regarding contempt of court on the part of Travis Leigh Brannon be decided at a later stage.

This Court does not deem that the report of Gellel was thus ignored due to the fact that the Family Court implemented the recommendations.

In the second report of Andreanna Gellel which was dated 19th June 2018, she stated that:

> *«In the light of the above information, the Agency is of the humble opinion that the monitoring sessions should be suspended with immediate effect since the situation seems to be stable and is not negatively influencing the children's wellbeing.»*

The Court has also gone through the applicant's cross-examination a fol. 292, due to which she submits that she felt humiliated and degraded. The Court has read that testimony and the manner in which the applicant replies portrays her as a strong woman who was not intimidated by the sort of questions which were being posed. Thus, the Court does not feel that this type of questioning can be equated to inhuman treatment.

As has been mentioned above, in order for "treatment" to be seen as degrading, it must be such as grossly humiliating to the victim. It must also be proved that the inhuman or degrading treatment gravely degraded the victim before third parties. However, it has now been accepted that for this to take place, the treatment must be seriously grave otherwise there would be no violation. In order for a" treatment" to be seen as degrading, it has to be proved that this is more serious than any type of inconvenience. In order to prove this type of violation, the victim has to prove it "beyond reasonable doubt". In order to assess whether a type of treatment is to be deemed inhuman, one has to consider all the circumstances of the case, including the manner this treatment was given, its' length, and the physical and moral effects that such a treatment has on the victim. A treatment is deemed to be inhuman when as a result the victim suffers intense physical and/or psychological pain, and it brings forward in the victim anxiousness, fear, and a sense of inferiority. The victim must have passed through intense physical and mental suffering.

Having considered the circumstances of the case with these principles in mind, the Court considers that there has been no violation of Article 3 of the European Convention on Human Rights. Although it is clear that the proceedings before the Family Court were not easy ones, strenuous also, and that a number of problems arose especially between the parties, with the children literally being used as a ball

between the parents, this does not mean that the applicant suffered inhuman or degrading treatment.

Fifth claim: That the decisions taken by the Family Court were a result of discrimination and that thus Article 14 in conjunction with Article 8 has been violated.

***Article 14** states that:*

> *«The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.»*

*As was stated by this Court, presided differently in the case **Joseph Micallef et v. Avukat Generali** decided on the 1st of July 2020:*

> *«Fil-każ ċitat ta' **Amato Gauci v. Malta**, il-Qorti ddeskriviet is-sitwazzjoni b'dan il-mod:*
>
> *«The Court reiterates that **Article 14** complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of **Article 14** does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (**Petrovic v. Austria**, 27 March 1988).»*

*As has been premised above, the Court did not find any violation of **Article 8 of the European Convention on Human Rights**, and thus as Applicant has alleged that she has been discriminated and this in conjunction with alleging that her right to a family has been violated, this Court finds that there has been no violation of **Article 14 of the Convention**.*

Sixth Claim

In her preliminary application to this Court, applicant in her sixth claim asked this Court to take the necessary measures so that the minors go and reside with her. As it now results from the acts of this case, this situation is now resolved and the minors are in fact residing with their mother, the applicant. Thus the Court does not need to consider this issue any further.

Seventh Claim

In her seventh claim, applicant is asking this court to commence contempt proceedings in respect of defendant Travis Leigh Brannon. In this respect the Court has been informed that Travis Leigh Brannon

has now left Malta. Thus, the Court does not deem it necessary to consider this issue any further.

Remedy

In respect of the remedy requested by applicant, she submits that this should include the payment of the arrears due in maintenance and amounting to twenty-six thousand Euros (€26,000).

This Court does not agree with this. There is already a court judgement which declared that Travis Leigh Brannon should pay this amount due as arrears of maintenance, and thus this Court does not need to enter into that matter. Neither does it deem that the question of maintenance arrears is of it's competence or related to any Costitutional or Conventional breach.

However due to the fact that this court did find that there has been a violation of ***Article 6 of the European Convention on Human Rights****, the applicant should be compensated in this respect. The Court notes that the Constitutional Court has previously held that in these types of violations, the court does not award pecuniary damages but only moral damages –* ***John A. Said pro noe v. l-Avukat Generali***[4]*, Constitutional Court, 11th of November 2011. It stated in caption:*

> *«17. ir-rimedju li tista' taghti l-Prim' Awla (kif ukoll din il-Qorti) bhala rimedju ghad-dewmien jista' jvarja minn semplici dikjarazzjoni ta' lezjoni, ghal danni morali jew, eccezzjonalment, anke ghal danni materjali.»*
>
> *18. Illi din il-Qorti taqbel mal-appellant li kien ikun ahjar, li kieku, la darba l-ewwel Qorti ddistingwiet biex danni morali u danni materjali, hija specifikat liema kienu d-danni morali u liema d-danni materjali. Madanakollu din ilQorti hi tal-fehma li f'kazijiet bhal dawn fejn jirrigwarda dewmien, il-Qorti Kostituzzjonali generalment ma takkordax danni materjali biex ikopru danni allegatament sofferti imma taghti kumpens bhala danni morali biex jaghmel tajjeb ghal lezjoni kostituzzjonali. Il-Qorti Kostituzzjonali ma takkordax danni civili. Inoltre ma jirrizultax li meta l-ewwel Qorti llikwidat il-kumpens kellha f'mohha li tkopri d-danni materjali partikolari kollha.»*

On the other hand, the European Court of Human Rights has detailed the manner in which these damages should be liquidated. In the judgement ***Pizzatti v. Italy*** *decided on the 10th of November 2004, it held that a sum of between one thousand Euros (€1,000) and one thousand five hundred Euros (€1,500) should be awarded for every year that the proceedings were still pending. This basic figure is then reduced according to the applicant's conduct, and the standard of*

[4] Constitutional Court 11/11/11: 63/2010/1.

living of the country concerned. Thus, the basic figure in this case would amount to nine thousand Euros (€9,000), however this should be reduced due to the fact that the applicant was also responsible for such a delay.

In light of the above, the Court concludes that the compensation due to the applicant should amount to four thousand Euros (€ 4,000).

One last point that should be dealt with is the recourse to ***The European Charter of Human Rights*** *applicant made in her application.*

Reference is made to a decision of this Court differently presided in the names of ***Maria Theresa Cuschieri v. Attorney General***[5] *that in regards states:*

> *«L-artikoli ccitati mir-rikorrenti huma s-segwenti:*
>
> *Artikolu 7 Ir-rispett għall-ħajja privata u tal-familja*
>
> *Kull persuna għandha d-dritt għar-rispett tal-ħajja privata u tal-familja tagħha, ta' darha u tal-kommunikazzjonijiet tagħha."*
>
> *Artikolu 21 Non-diskriminazzjoni*
>
> *1. Kull diskriminazzjoni bbażata fuq is-sess, ir-razza, il-kulur, l-oriġini etnika jew soċjali, il-karatteristiċi ġenetiċi, il-lingwa, ir-reliġjon jew ittwemmin, l-opinjoni politika jew xi opinjoni oħra, l-appartenenza għal minoranza nazzjonali, il-proprjetà, it-twelid, id-diżabbiltà, l-età, jew lorjentazzjoni sesswali għandha tkun projbita.*
>
> *2 - omissis.»*
>
> ***«Illi aparti li l-Qorti Ewropea (CJEU) tapplika l-principji kif enuncjati u interpretati mill-Qorti ta' Strasbourg, ghandu jigi senjalat li l-Karta tad-Drittijiet Fundamentali ghandha l-forza ta' Ligi f'pajjizna u hija mqeghda fuq l-istess livell daqs it-Trattati. Madanakollu l-Karta titqies li hija ligi ordinarja b'differenza mal-Kostituzzjoni u hija applikabbli biss fir-rispett ta' materja li taqa' tal-kompetenzi u kompiti tal-Unjoni Ewropea. Dan mhuwiex il-kaz odjern li jirrigwarda materja ta' kompetenza nazzjonali.***
>
> ***«Ghaldaqstant in kwantu li t-talba hija imsejsa fuq it-Trattat, mhiex ser tigi milqugha minnhabba li l-kwistjoni sollevata quddiem din il-Qorti tesorbita mill-kompetenza tat-Trattati.» (emphasis of this Court).***

[5] Cost. Court 52/16 LSO as quoted by the Court of First Instance.

This citation speaks for itself. The competence of this Court is not one of an ordinary nature. Therefore the court cannot deal with such greviances.»

8. The plaintiff Sylvana Brannon filed an appeal on the 24th July, 2023, with eight (8) grievances:

a. *«The Court took no account whatsoever of the breach of rights alleged on the part of the minor children Eva Brannon, Kieran Brannon, Tristan Brannon and Ethan Cappello»;*

b. *«The Court did not establish whether parental alienation had taken place and if so, whether this could be attributed to the Family Court's actions or lack thereof»;*

c. *«The Court had no regards for the fact that the two family proceedings were needlessly joined resulting in the delay in their conclusion»;*

d. *«The Court wrongly attributed blame for delay in proceedings to the applicant»;*

e. *«The Court did not even assess the length of delay of the criminal proceedings to which the applicant Sylvana Brannon is parte civile»;*

f. *«The Court should have found a violation of Article 3 of the Convention and dismissed the claim on an erroneous basis»;*

g. *«The Court only awarded moral damages for the breach of Article 6, when clear material damages were proven to have arisen from the same breach»;*

h. *«The applicant was made to bear two thirds of the costs at first instance even though the Court found a violation of her human rights».*

9. The State Advocate and the Commissioner of Police replied on the 4th August, 2023, opposing all of the plaintiff's grounds of appeal and submitting that such appeal should be rejected *in toto*.

Considerations:

10. In the **first ground of appeal**, the appellant complains about how *«The Court took no account whatsoever of the breach of rights alleged on the part of the minor Eva Brannon, Kieran Brannon, Tristan Brannon and Ethan Cappello»*. She explains that the application was not submitted only by her, but also by her children. Despite this, she argues that the First Court ignored this state of fact, and did not make any considerations in relation to the same children in the appealed judgement. In view of this, she is thus requesting for the records of the case to be sent before the First Court so that the latter would be in a position to consider the facts also in light of her children's fundamental rights.

11. This Court notices that from the records of the case, the application was indeed filed by the appellant, in her own name and also on behalf of her children. Subsequently and because of the defendants' preliminary plea, the said children were represented by a children's lawyer. Notwithstanding this, it results that the First Court decided the claims put forward in the original application only in relation to the appellant. None of these claims were decided in relation to the four children.

12. This failure of the First Court, can be seen as *omissa decisio* in

the terms of **Article 235 of the Code of Organization and Civil Procedure**, which states that when one request is omitted in the decision, an appeal *ab omissa decisione* cannot be entertained. It follows therefore, that the remedy requested by the appellant is not feasible in the circumstances and the appropriate procedure should be followed by that affected person.

13. Therefore, this ground of appeal is being rejected.

14. In the **second ground of appeal**, the appellant complains that *«The Court did not establish whether parental alienation had taken place and if so, whether this could be attributed to the Family Court's actions or lack thereof»*. In her view, the appellant says that none of the evidence presented in the court case seems to have been assessed in the light of the very serious allegation of parental alienation. She also submits that the timeline of events was also ignored. As a result, she continues to say that the Family Court: (i) did not conduct an evaluation whether the continued inaction and delay on its part contributed towards the alleged parental alienation; and (ii) did not evaluate whether the measures taken were effective and swift enough so as to satisfy the positive obligation on the State to protect the applicants' mutual enjoyment of each other's company as well as their family relationship.

15. It is held that the mutual enjoyment by the parent and child of each other's company constitutes a fundamental element of family life, and this even when the relationship between the parents has broken down. This relationship is to be protected also by the State and where individuals are unable to maintain such relationship, this calls for action by the authorities in line with their positive obligations to adopt measures to reunite, or help re-establish contact between a parent and a child. However, such obligation on the national authorities to take measures is not absolute, since the reunion of a parent with a child may not be able to take place immediately and may require preparatory measures, which depend on the circumstances of each case.

16. Furthermore, any domestic measures hindering the enjoyment of family life constitute an interference with the right to respect for family life under **Article 8 of the Convention**. Any such interference constitutes a violation of **Article 8** unless it is in accordance with the law and pursues an aim/s that are legitimate which can be regarded as necessary in a democratic society, being a necessity corresponding to a pressing social need and proportionate to the legitimate aim pursued.

17. The following must be observed for the determination of whether there is a violation of **Article 8** in such cases dealing with parental alienation:

a. Coercion is limited since freedoms and rights of all concerned must be taken into account (see ***Hokkanen v. Finland***, 23 September 1994, § 58; and ***Ignaccolo-Zenide v. Romania***, no. 31679/96, § 94);

b. Whether the domestic authorities have taken all necessary steps to facilitate contact that can reasonably be demanded in the special circumstances of each case (see ***Kříž v. the Czech Republic***, no. 26634/03, § 85, 9 January 2007);

c. National authorities have the benefit of direct contact with all the persons concerned, whilst also enjoying a wide margin of appreciation when deciding custody matters – keeping in mind that they should strike a fair balance between the interests of the child and those of the parents (see ***X and others v. Slovenia***, 19 December, 2024);

d. Court's obligation is to review, in the light of the convention, the decisions taken by those authorities in the exercise of their power of appreciation. Also, conduct an indepth examination of the entire family situation and a whole series of factors, in particular factors of a factual, emotional, psychological, material and medical nature, and make a balanced and reasonable

assessment of the respective interests of each person, with a constant concern for determining what the best solution would be for the child. It shall also examine whether the parents were sufficiently involved in the decision making process, which process must be fair, and ensure respect (see, *inter alia*, ***Hokkanen v. Finland***, 23 September 1994, § 55, Series A no. 299-A; ***Görgülü v. Germany***, no. 74969/01, § 41, 26 February 2004; ***Sommerfeld v. Germany****, no. 31871/96*, § 62; and ***Katsikeros v. Greece****,* no. 2303/19*,* § 53; ***Antonyuk v. Russia***, no. 47721/10, § 134, 1 August 2013).

e. Chidren's views to be taken into account, even if those views are not necessarily immutable and children's objections, which must be given due weight, are not necessarily sufficient to override the parents' interests especially if their interest is having regular contact with their child (see ***K.B. and Others v. Croatia***, no. 36216/13, § 143, 14 March 2017);

f. Duty to exercise exceptional diligence (see, for example, ***Ignaccolo-Zenide v. Romania***, § 102; ***Süß v. Germany***, no. 40324/98, § 100, 10 November 2005; ***St/römblad v. Sweden***, no. 3684/07, § 80, 5 April 2012; and ***Ribić v. Croatia*****,** no. cited above, § 92).

18. Having established the premise, this Court sees that the main complaint of the appellant is essentially whether the authorities complied with their obligations under **Article 8**. Therefore, it will proceed to examine the chronology of events so as to determine whether the Family Court had indeed: (i) failed to act; (ii) hindered the process because of delay; and (iii) applied ineffective measures, which as a result contributed to parental alienation against the appellant:

3rd June, 2016	Travis Leigh Brannon filed an application in the mediation records with number 865/2016 TC, after his minor children allegedly discovered their mother's intimate electronic portfolio, as well as a number of objects for sexual stimulation. In this application, he requested the Court to take the necessary measures for the protection of the minors until a final decree is issued;
6th June, 2016	A Court decree whereby it ordered that the documents attached to the application remain sealed, whist it gave the appellant five (5) days to file her reply;
17th June, 2016	The appellant replied to the application in question, whereby she denied all the allegations made against her;
20th June, 2016	Court decree appointing Dr. Stephanie Galea as the Children's Advocate to speak with the children, examine the exhibited documents, and report on Travis Leigh Brannon's request;
13th July, 2016	Report by Dr. Stephanie Galea, whereby in the children's best interests and wishes, she recommended that the children should be placed in the custody of their father while maintaining access to their mother;
14th July, 2016	Court decree and in view of the considerations of the Children's Advocate, it upheld Travis Leigh Brannon's request;

27th February, 2017	Application by Travis Leigh Brannon, requesting the Court to: (i) take the necessary measures to protect the minors; (ii) appoint a Children's Advocate and/or child psychologist to speak with the children; and (iii) vary the decree of 14th July 2016 by suspending the minors' sleepovers at their mother's home or take other measures as necessary in the circumstances;
8th March, 2017	Court decree ordering that the parties and their lawyers shall have access to all documents found in the mediation file number 865/2016;
10th March, 2017	Application by the appellant whereby she asked the Court to order that the minor children reside with her and be given therapy by a child psychologist;
17th March, 2017	Court decree given *in camera*, whereby after reviewing: (i) application number 208/2016; (ii) the sworn reply to the same; (iii) the pending applications (dated 27th February and 10th March 2017); (iv) all the case records; and (v) the testimonies, including that of Travis Leigh Brannon, Conrad Bajada, and Inspector John Spiteri, the Court appointed Aġenzija Appoġġ to: (i) prepare a social report in respect of the minor children, their parents, and other family members and partners with whom the children come into contact; (ii) make recommendations to the Court on whether any of the minor children and/or parents need psychological assessment and/or therapy; (iii) take cognizance of the two pending cases and the mediation proceedings; and (iv) order the parents not to talk to the children directly or indirectly about the merits of the judicial proceedings, as any resulting breach would be considered contempt of court;
2nd May, 2017	Report by Andreana Gellel whereby she recommended that: (i) the Brannon minors live with their mother; (ii) the minor Eva and her mother attend family therapy with the possibility that the minors Kieran, Tristan and Ethan attend too, to establish a new relationship between the family members; (iii) that the father attends psychotherapy sessions; (iv) that the minors Kieran and Tristan have supervised access with their father and that for the time being Eva does

	not attend until the minor's therapist deems it fit for Eva to attend, but not before Mr Brannon has ended his therapy sessions;
4th May,2017	During the hearing, Andreanna Gellel testified that Charmaine Zerafa, another social worker, informed her that a call was received at Aġenzija Appoġġ from the maternal grandmother and aunt, reporting that the children were made aware of the contents of the report dated 2nd May, 2017 and expressed that they did not want to live with their mother;
4th May, 2017	Court decree given *in camera*, where after hearing Andreana Gellel's testimony, the Court appointed and authorised Aġenzija Appoġġ to monitor the minors at different times of the day through surprise visits at their parents' homes, schools, or any other location deemed necessary. The Court further ordered that it has to be informed immediately if there are reasons to believe that the minors might be in danger;
15th May, 2017	Application by the appellant, requesting that the recommendations of Andreana Gellel as per the report dated 2nd May, 2017, come into effect immediately and that contempt proceedings be initiated against Travis Leigh Brannon for breaching the court order of 17 March 2017;
1st June, 2017	Court decree given *in camera*, where the appellant's application was appointed for hearing on the 6th of June, 2017;
6th June, 2017	In this court session, Andreana Gellel testified, and after that, the Court ordered: (i) that social workers from Aġenzija Appoġġ are to pick up the minors; and (ii) that the parties are not to communicate with the minors before the Court interviews them on that same day at 3pm. After having heard the minors, the Court also heard the oral submissions of both parties through their lawyers;
8th June, 2017	Court decree given *in camera*, whereby after having seen: (i) the pending applications of the 27th February, 10th March and 15th May, 2017; (ii) acts of mediation; (iii) acts of the two pending court cases; (iv) the testimony of the minor children; (v) testimony of several witnesses; (vi) oral submissions of the respective advocates of the parties; (vii) minors are in urgent need of

	psychological help; (viii) that *prima facie*, Travis Leigh Brannon has manipulated and abused of the judicial process; (ix) that prima facie, Travis Leigh Brannon has misled the Court and still feeding his children information on the pending judicial proceedings; it proceeded by: (i) revoking *contrario imperio* the decree of the 14th July, 2016 with effect from the 1st July, 2017; (ii) appoints psychotherapist Carmen Delicata to provide therapy sessions to the minor children, whereby she is to provide the Court or the parties report about the therapy sessions, which are to be coordinated through Agenzija Appogg; (iii) appoints as court expert clinical psychologist Carmen Sammut to prepare a psychological report about both parents with particular emphasis on their suitability or othweise as custodial parents of the minors; (iv) with effect from 1st July, 2017, the minors are to reside with the father from Monday at 8am till Thursday at 6pm, and with the mother from Thursday at 6pm till Monday at 8am – and the father is to exercise acess to the chidren on Saturday from 4pm till 7pm, and the mother on Wednesday from 4pm till 7pm; (v) prevent any contact between the minors and any partners of the parents; (vi) appoints Agenzija Appogg to provide monitoring of the minors; (vii) orders that the father is to ensure there is no contact between the minors and their maternal grandmother and aunt; (viii) it shall decide whether contempt proceedings are to be instituted against Travis Leigh Brannon at a later stage;
13th June, 2017	Application of Carmen Delicata where she requested the Court to substituted due to the fact that in the past she has worked with Conrad Bajada;
14th June, 2017	Court decree whereby it revoked the appointment of Carmen Delicata;
16th June, 2017	Court decree given *in camera*, whereby it appointed psycotherapist Marica Busietta to provide therapy sessions to the 3 minors instead of Carmen Delicata;
11th July, 2017	Counter-examination of Andreana Gellel before the Court; and following such testimony, it

	appointed social worker Steve Libreri in order to act as a parental coach for the parents and the children;
28th August, 2017	Note filed by Steve Libreri whereby he informed the Court that he cannot work with the Brannon Family due to the fact that from the information he gathered from the session with the parents, he has no reason to expect that the applicant and Travis Leigh Brannon will stop their litigation and change their attitude towards each other. He explains that the conditions needed for him to work are not present, and intervening with the child would only create false hope. Furthermore, he explains that during his session, both have mentioned that the other is on the spectrum of psychopathy, and thus he opines that new safety concerns arise which go beyond parent-alienation concerns. His final recommendation is to perform a diagnosis with both parents to test for psychopathic traits and that the child is given the space with the psychologist to process her thoughts and emotional reactions;
4th September, 2017	Court decree by which it revoked the appointment of Steve Libreri as parental coach;
18th October, 2017	Application of psychotherapist Marica Busietta whereby she states that she is giving support to Eva Brannon, and it would be opportune in the circustances that another psychotherapist will be appointed to deal specifically with the other two minors;
18th October, 2017	Court decree given *seduta stante*, whereby it appointed Charlene Aquilina as a psychotherapist for the minors Kieran and Tristan Brannon;
18th October, 2017	After hearing the testimony of: (i) Andreana Gellel; (ii) the appellant; and (iii) Travis Leigh Brannon; the Court decreed that temporarily the visits of Eva to her mother are suspended;
23rd February, 2018	Note of Marica Busietta as psychotherapist of Eva Brannon, whereby she explained that after 6 sessions: (i) the minor made it clear that she does not want any contact and relationship with her mother due to her painful past; (ii) the minor does not want to work therapeutically and this was evident by her attitude during therapy

	sessions; (iii) despite Travis Leigh Brannon has always confirmed the appointments, Eva arrived late for one session, whilst did not show up for another without any explanation. Thus she opined that it is pointless continuing with these sessions since the minor is not only not being receptive during the sessions but there is also no willingness to make use of the sessions provided;
23rd February, 2018	Court decree given *in camera*, whereby following: (i) the note of Marica Busietta of the 23rd February, 2018; and (ii) decrees of the 8th June, 2017, 16th June, 2017 and 18th October, 2017; it ordered that: (i) no further therapy sessions are to be held in respect to Eva Brannon; and (ii) unless there is a prior authorisation, there shall be no contact between Eva and appellant;
19th June, 2018	Note of Andreana Gellel whereby she informed the Court that: (i) during the very few monitored visits that were conducted, the workers reported that the siblings were at ease and comfortable; (ii) the siblings felt uncomfortable to talk to professionals involved about their situation; (iii) from information gathered, the children are settled and well integrated in school and do not seem to show any difficulties in apprehending social skills. In light of this the Agency recommended that the monitoring sessions should be suspended with immediate effect since the situation seems to be stable and is not negatively influencing the children's wellbeing;
10th August, 2018	Application of the appellant, whereby she requested that: (i) *"tordna li jittiehdu l-miżuri kollha neċessarji minnufih sabiex is-sitwazzjoni li nġabet b'riżultat ta' aġir kriminali, doluż u malizzjuż tiġi ripristinata billi t-tfal jingħataw lura lill-esponenti ommhom biex jirrisjedu magħha";* u (ii) *"tordna minnufih li jinbdew proċeduri kontra Travis Leigh Brannon għal disprezz lejn l-awtorita tal-Qorti talli intenzjonalment u b'malizzja żvija lill-Qorti b'tagħrif qarrieqi li wassal għat-telf tad-drittijiet tar-rikorrenti u għal preġudizzju serju għaliha u għal uliedha";*
9th November, 2018	Reply of Travis Leigh Brannon to the application of Sylvana Brannon of the 10th August, 2018;

8th January, 2019	Court's decree given *in camera,* whereby it refused to acceed the appellant's request;
28th March, 2019	Application of Sylvana Brannon, whereby she requested the Court to take action along the lines as contained in the report of Andreana Gellel of the 2nd May, 2017;
4th June, 2019	Appellant initiated constitutional proceedings;
1st July, 2019	Report of Marica Busietta, whereby she concluded that: (i) Eva is fully aware of the animosity between her parents, and thus they should act responsibly and respect her; (ii) the minor has built up anger towards her mother due to her past experiences, thus she was resisted to address this issue; (iii) if therapeutic sessions would be resumed, a psychologist/psychotherapist independently from Court shall be appointed; and (iv) reconciliation sessions with the mother should only be planned after both have attended individual therapeutic support;
4th July, 2019	Report of Charlene Aquilina, whereby she recommended: (i) Kieran and Tristan Brannon attend joint therapeutic sessions to work on enhancing their sibling relationship; (ii) offering the siblings one to one sessions may support them in having more space to reflect about their thoughts and feelings; (iii) the chosen therapist is to liaise with the other therapists involved so as to offer a more systematic and holistic approach; (iv) parents receive individual therapeutic support to help them process, reflect and develop healthier means of coping with losses and pain; (v) parents to work on co-parenting relationship;
20th August, 2019	Report of Carmen Sammut, whereby she concluded that: *"I would suggest Parenting sessions for them as soon as possible. (...) They were finding it very difficult to understand their children's actual needs. It seemed that they were more focused on their own needs as adults than actually understanding their children's needs which may be different to theirs (...). I would like to recommend that both parents attend family therapy with the aim to work mostly in their own roles as parents to their children. Although they can choose to attend on*

	their own for these sessions, it is very important that they go to the same family therapist, as this could possibly help them not just learn and strengthen their own skills as parents, but also to be able to co-ordinate with each other so as not to keep the children uncomfortably caught up in the damaging dynamic that exists between them. (...) On a practical aspect, both parents need consistent monitoring as to the kind of environment that they are creating for their children, and this should also be hopefully able to provide some hands-on support to the parents in their role. (...) A review of the situation in 6 months time would help to assess the situation once again and more finalised decisons about the family situation can be taken";
22nd October, 2020	The plaintiff asked *seduta stante* that she and her daughter speak and attend therapy together with the aim of establishing a relationship between them, through the help of a court appointed expert. The Court re-appointed Carmen Sammut to hold therapy sessions for such purposes;
27th November, 2020	Note by Carmen Sammut, whereby she informed the Court that it is impossible for her to hold therapy sessions if there is no cooperation from the father with whom Eva lives;
7th July, 2021	Seduta stante there appeared Sylvia Galea and provided information to the Court at the request of the parties; it was also agreed that: (i) she will hold a session with the minors Kieran and Eva; and (ii) Tristan will live with the appellant for a week while having free access to his father;
19th July, 2021	*Seduta stante* there appeared Dr. Gabriel Ellul and provided information to the Court about the minors;
6th December, 2021	The Court was informed that the defendant left the Maltese Islands, and the appellant asked to be vested with the care and custody of the minors. The Court upheld such request;
30th March, 2022	Judgement was given.

19. It appears from the records of the case, that before the filing of the application by Travis Leigh Brannon on 3rd June, 2016, the appellant was the primary caregiver of their children, and they resided with her. This Court is of the opinion that after the application was filed, which included allegations of a serious nature, the Family Court always acted in the best interest of the minors within the parameters of the law. The Family Court did not simply rely on the allegations made by Travis Leigh Brannon, as the appellant is suggesting, but instead, given the circumstances, appointed a Children's Advocate, especially since the application stated that it was the children themselves who discovered the electronic portfolio and intimate objects. After the Children's Advocate spoke with the children and presented her recommendations to the Family Court, the latter had no reason not to adopt those recommendations and making them its own through the decree July 14th July, 2016. It should also be noted that this was an interlocutory decree and thus not final. The law provides that this type of decree does not constitute *res judicata* for the Court issuing it, and thus it could be revoked *contrario imperio* at any stage, in accordance with **Article 230 of the Code of Organization and Civil Procedure**.

20. After almost eight months from the decree of the 14th July, 2016, on March 10th, 2017, the appellant filed an application requesting that her children live with her and receive the necessary therapy. In this

case, it does not appear that the Family Court was slow or failed to act, as on the 17th March, 2017, the Court issued an *in camera* decree appointing Aġenzija Appoġġ to: (i) prepare a social report regarding the minors, their parents, and family members with whom the minors have contact; and (ii) make recommendations on whether any of the minors and/or parents required psychological assessment and/or therapy. This was done so that the Family Court would be in a position to evaluate the situation and balance the rights of the parents and the children. Aġenzija Appoġġ, as the national authority, completed and submitted their report on the 2nd May, 2017. During the hearing of the 4th May, 2017, Andreana Gellel in representation of Aġenzija Appoġġ, informed the Family Court of the children's resistance to living with the appellant, despite her recommendations. On the same day, the Court ordered, *in camera*, that Aġenzija Appoġġ shall continue monitoring the minors.

21. Without giving the Family Court and Aġenzija Appoġġ the chance to see how things would evolve given the children's resistance, the appellant immediately filed an application on 15th May, 2017, requesting that Aġenzija Appoġġ's recommendations come into immediate effect. Once again, the Family Court acted promptly as through a decree dated 1st June, 2017, it appointed the application for hearing on 6th June, 2017. During this session, after hearing Andreana Gellel again, the Family Court ordered that it will hear the children on that day, whilst

taking all possible measures to ensure that their testimony is not influenced from either parent. On that day, the lawyers for both parties submitted also their oral arguments.

22. Following this and on 8th June, 2017, the Court issued another interlocutory decree, whereby it revoked *contrario imperio* its prior decree of the 14th July, 2016, and proceeded with the appointment of Carmen Delicata as a psychotherapist to provide the necessary therapy to the minors and also that of Carmen Sammut as a psychologist to prepare a report after the closing of the parties' evidence, with a special focus on the suitability of each parent as a custodian. Meanwhile, the Court ordered that the minors live half the week with the mother and the remaining half with the father. It is clear that through this decision, the Family Court did not deny the appellant’s right to see, enjoy, and build a relationship with her children but instead sought to create a balance between everyone’s wishes so that the right to family life would be respected holistically. While it is true that the Family Court did not adopt Andreana Gellel’s recommendations word for word, in the circumstances and after having heard the children, various witnesses, and the lawyers' submissions, the Family Court believed there were enough valid reasons so as to not fully adopt the recommendations and this in the best interests of the children.

23. After hearing Andreana Gellel again on the 11th July, 2017, the Family Court, also appointed Steve Libreri as a parental coach. However, this appointment was revoked on September 4th, 2017, after the expert informed the Court that he could not fulfill his role until a civil relationship between the parties was first established. Following this, it results that the Family Court did not adopt Steve Libreri's recommendations. However, this Court is of the opinion that this was because the Court was still awaiting the report from the appointed psychologist, Carmen Sammut. Furthermore, it appears that throughout the two cases, the Court remained proactive, ensuring that evidence was gathered both before the Judicial Assistants and in court, while being updated on the experts' progress.

24. The appellant also criticised the Family Court for unilaterally deciding to suspend her access to her daughter Eva. However, the records show that this decision was made on the 18th October, 2017, after the Court heard Andreana Gellel and the parents. From the appellant's own testimony, it appears that at that particular period she did not want Eva at home, as she confirmed:

> *«When she comes, and I cannot, I have even taken the decision to not even have her come to ny home anymore, she destroys photos of me and her together, she rips them apart, she writes psychotic bitch, excuse the language but it's hers, on toys that her little brother creates for her. (…) to an extent that her little brother who adored her and adores her, he himself doesn't want to see her anymore because she hurts his feelings*

> *when he sees these kind of things. It'not because I don't want to see my daughter, I will continue fighting for my daughter forever and I will do whatever it takes to bring her back to me but at this point I cannot have her ruin the little bit of time I have with the others as well including her little brother and tell them things even in my presence just ignore her we're going back to daddy soon don't worry about what she says, let her say what she wants and then when she is with me she is constantly chatting with her father and sending hin messages. I don't feel safe in my own home when she is there. Lanqas sleepovers for example I don't let her, she ran away from home».*

25. Given this situation, the Court had to weigh the child's actions and the appellant's concerns. It wouldn't have been prudent to continue access when the appellant herself expressed feeling unsafe. Neither the appellant nor the child wanted access at that point, so the Court decided that a temporary suspension was the best decision. The Family Court's intention was not to cut access entirely but to suspend it temporarily to assess what would be the best way forward in such a delicate situation. Therefore, the appellant's claim that the Court assisted in parental alienation is unfounded.

26. Furthermore, it results that such resistance from Eva's end continued and in view of this, another decree was given on the 23rd February, 2018, whereby the Family Court decided to stop Eva Brannon's therapy sessions and also her contact with the appellant until the Court granted further authorisation. This decision followed a report from Eva's psychotherapist, who noted that despite multiple sessions, Eva's behavior remained the same, and she showed no willingness to

engage in therapeutic work. In such circumstances, even the therapist felt she could not push the child beyond her emotional boundaries.

27. As established by our Courts, expert opinions fall under judicial scrutiny like any other evidence. In this case, as Eva became more resistant to a relationship with her mother over time, the Court accepted the experts' recommendations since there was no valid reason not to. Despite all this and whilst the appellant continued to present her evidence, on 28th March, 2019, she filed yet another application asking the Court to adopt Andreana Gellel's recommendations from the report dated 2nd May, 2017. A few months later, on 4th June, 2019, the appellant filed the present constitutional proceedings.

28. This all happened despite the fact that, during a hearing on 29th January, 2019, the Family Court ordered the appellant to summon Marica Busuttil, Charlene Aquilina, and Carmen Sammut to testify and explain what had been done and what could be done moving forward. They testified on 11th April and 29th May, 2019, and submitted their reports on 1st July, 4th July, and 20th August, 2019, respectively.

29. Even after the constitutional proceedings began, the Family Court continued to act within its possibilities, whilst considering the challenges brought by the COVID-19 pandemic, until Travis Leigh Brannon

eventually left Malta at the end of 2021. Upon the appellant's request, care and custody of the minors were vested exclusively in her pending further proceedings. On 30th March, 2022, the Family Court ruled that, amongst other things, care and custody of the minors would be exclusively entrusted to the appellant.

30. In light of the above, this Court does not agree with the appellant's claim that the Family Court acted improperly, delayed proceedings, or took ineffective measures. The Court was proactive and cautious, listening to all parties with the main aim to help the situation rather than worsen it. It appointed the necessary experts and relied on their recommendations where appropriate. It appears that regarding Kieran and Tristan Brannon, the appellant always had access to them, whist in Eva's case, access was suspended due to the child's own resistance and the appellant's safety concerns. The Court tried to encourage communication between them, and after access and therapy were paused, communication between the appellant and Eva gradually resumed.

31. Therefore, this Court finds that this grievance should be dismissed.

32. In the **third and fourth grounds of appeal**, the appellant states

that she should not be held responsible for the delay in the proceedings before the Civil Court (Family Section), as she claims that:

a. *«The Court had no regard for the fact that the two family proceedings were needlessly joined resulting in the delay in their conclusion*, which led the First Court to wrongly conclude that somehow she was responsible for the delay of the two proceedings*»*;

b. *«The Court wrongly attributed blame for delay in proceedings to the applicants»*.

33. Since the merits of these two grounds of appeal are interconnected, this Court considers it wise to address them together.

34. From the records of the two cases before the Family Court, it appears that:

11th April, 2013	Proceedings with number 72/2013 AGV were initiated by the appellant;
18th April, 2013	Court decree whereby, amongst other things, the appellant was ordered to submit her affidavit by the 28th May, 2013;
5th June, 2013	First sitting before Family Court;
7th November, 2013	Travis Leigh Brannon was notified with the acts of the case;
28th November, 2013	Travis Leigh Brannon filed his sworn reply;
23rd January, 2014	A judicial assistant was appointed to hear the evidence (which was heard from 23rd April,

	2014, to 30th November, 2016). Nine (9) sessions were held, of which five (5) were unproductive due to the plaintiff; two (2) were unproductive due to the defendant; and one (1) was cancelled by mutual agreement between the parties;
15th July, 2016	The appellant filed her affidavit;
23rd September, 2016	Proceedings with number 208/16AGV were initiated by the appellant;
24th November, 2016	The Court noted that there are two related cases, and in view of the fact that there was no objection from the parties, it decided that the cases should proceed together;
22nd March, 2017	Submissions on the preliminary pleas raised in the second case;
4th May, 2017	Preliminary judgement given;
6th June, 2017	Hearing before the Court for the appellant's application dated 15th May, 2017;
11th July, 2017	Testimony of the social worker Andreana Gellel before the Court;
18th October, 2017	Testimony of the social worker Andreana Gellel before the Court; and thereby was appointed another Judicial Assistant to hear the evidence (which was heard from the 21st November, 2017, to 21st June, 2018). Eight (8) sessions were held, of which three (3) were unproductive due to the appellant; two (2) were canceled by Travis Leigh Brannon; in two (2) sessions, the appellant's cross-examination took place; and one (1) session was cancelled by both parties;
12th January, 2018	The appellant filed a number of documents;
15tgh January, 2018	The appellant filed her afidavit;
23rd October, 2018	Counter-examination of the appellant before the Family Court;
29th January, 2019	Counter-examination of the appellant before the Family Court;
6th July, 2018	Travis Leigh Brannon filed his affidavit;
11th July, 2019	An application by the appellant whereby she requested that the two (2) actions will no longer be connected;
4th May, 2021	The appellant declared for the last time that she doesn't have more proof;
17th January, 2022	It was declared that the stage of proof for Travis Leigh Brannon was closed;
30th March, 2022	Judgement was given.

35. In the context of these grounds of appeal, this Court reinterates that in order to determine whether the duration of the proceedings was reasonable or not for the purposes of the Constitution and the Convention, it is not only the actual length of time taken to decide the case that should be considered. Other factors must also be taken into account, including: (i) all the particular circumstances of the case, especially the complexity of the case being decided; (ii) how the applicant behaved during the course of the proceedings being complained about; (iii) how the Courts conducted themselves throughout the same process; and (iv) what the applicant stood to lose as a consequence of the proceedings, in addition to, of course, the actual time taken for the case to be finally decided (see ***Frydlender v. France***, decided by the Grand Chamber on the 27th June, 2000; ***Joseph Gatt et v. Avukat Generali***, decided by the Constitutional Court on the 28th February, 2014; ***Zakkarija Calleja v. Avukat Ġenerali***, decided by the Constitutional Court on the 15th December, 2015).

36. With these principles in mind, this Court notes that the case before the Family Court with number 72/2013 AGV lasted nine (9) years, and the case with number 208/2016 AGV lasted six (6) years.

These cases were connected on the 24th November, 2016 by the Court under **Article 793(1) of Chapter 12 of the Laws of Malta**. It results that there is a connection between the two (2) cases because both, amongst other things, concern Tristan Brannon. Therefore, in light of this, the Court does not agree with the appellant's argument that these two cases were unnecessarily connected. Moreover, when the Family Court informed the parties of the connection between the two cases, none of them objected.

37. It is true that after almost three (3) years, the appellant submitted a request to disconnect the cases, and from the records, it does not appear that this request was decided. However, in any case, this Court does not see that such a connection contributed to the delay in the proceedings.

38. Taking this into account, this Court agrees with the Family Court that the major part of the delay in the proceedings was caused by the appellant herself, as shown in the table above. The Court did what it could under the circumstances to be sensitive to the issues brought before it. The proceedings before the Family Court were not straightforward matters of care, custody, maintenance and arrears, but involved serious allegations, including parental alienation. In light of this, the Family Court had an obligation to proceed with caution, appoint the

necessary experts, and give the parties time to substantiate their cases. In fact, the appellant took eight years to conclude her evidence definitively. It is therefore somewhat ironic that she is now complaining that the proceedings lasted nine years whilst pointing fingers at the Court.

39. Therefore, these two grievances are being dismissed.

40. In the **fifth ground of appeal**, the appellant states that *«The Court did not even assess the length of delay of the criminal proceedings to which the applicant Sylvana Brannon is parte civile».* The applicant claims that in her original application she already complained about the shortcomings of the police and the undue delay in the proceedings against Travis Leigh Brannon and Conrad Bajada, which she argued amounted to a denial of justice. According to her, these unresolved proceedings were prejudicial to her, as they were highly relevant to the proceedings before the Civil Court (Family Section).

41. In this regard, this Court observes that it is true that the appellant complained about the criminal proceedings against Travis Leigh Brannon and Conrad Bajada in the original application. However and despite this, the appellant failed to present evidence to support her

claims, relying solely on her assertions. How could this Court consider such claims without supporting evidence? It is an established principle in jurisprudence that whoever alleges must prove — *qui allegat probat*. There is no doubt that the burden of proof lies on the one who asserts a fact, not on the one who denies it — *ei incumbit probatio qui dicit, non ei qui negat*, as established **in Article 562 of Chapter 12 of the Laws of Malta**.

42. Therefore, this grievance is being dismissed.

43. In the **sixth ground of appeal**, the appellant complains that *«the Court should have found a violation of Article 3 of the Convention and dismissed the claim on an erroneous basis».* She argues that she was subjected to inhuman treatment because: (i) the recommendations of social worker Andreana Gellel from Aġenzija Appoġġ, as listed in her report dated 2nd May, 2017, were ignored; and (ii) she was treated as an unfit mother and humiliated in Court through questioning about her sexual abuse and sexual preferences.

44. **Article 3 of the Convention** states: *«No one shall be subjected to torture or to inhuman or degrading treatment or punishment».* In the present case, there is no issue - nor is it even remotely alleged - of torture or punishment. The only claims made are that the ignoring of

expert recommendations and the sexually related questions posed to her amounted to inhuman treatment.

45. For such treatment to fall within the parameters of **Article 3**, it must reach a minimum level of severity, the assessment of which is necessarily relative and depends on all the circumstances of the case - such as the nature of the treatment, its context, the manner in which it was carried out, its duration, and its physical and mental effects. In certain circumstances, factors like the victim's sex, age and state of health may also be relevant. As a rule, and based on the judgment of the European Court in ***Ireland v. United Kingdom*** (18/1/78), inhuman treatment occurs when there is the *«infliction of intense physical or mental suffering»* (see also *Short Guide to the European Convention on Human Rights*, Council of Europe, Strasbourg, 1998, p.12). For treatment - or rather, mistreatment - to amount to inhuman or degrading treatment (or both): *«...it must attain a minimum level of severity... The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim»* (***Ireland v. United Kingdom***, 18/1/78, A.21 (1978), p.65).

46. Regarding the level of severity required to establish a violation of

this fundamental right, reference is made to the judgement in the names ***Charles Fenech et v. Hon. Prime Minister***, decided by the First Hall of the Civil Court (Constitutional Jurisdiction) on the 14th October, 2004, where it was stated:

> *«F'dan il-kuntest, l-awturi van Dijk u van Hoof, fil-ktieb **«Theory and Practice of the European Convention on Human Rights»** (3rd Edit pag. 313) jagħmlu analiżi ta' kawża oħra, l-East African Asians Case (irrapportata mill- Kummissjoni fl-14 ta' Dicembru, 1973) li għandha ċerta xebħ mal-każ mertu ta' din il-kawża. Jingħad hekk mill-awturi fil-kuntest ta' dan il-każ:*
>
> > *««It is clear that the answer to the question whether Article 3 has been violated, although depending on all the circumstances of the case, including such factors as the mental effects on the person concerned, is not entirely dependent on the latter's subjective appreciations and feelings. In the East African Asians Case the Commission did not accept the «subjective» definition that the treatment of a person is degrading in the sense of Article 3 «if it lowers him in rank, position, reputation or character, whether in his own eyes or in the eyes of other people», and argued that – given the general purpose of this provision to prevent interferences with the dignity of man of a particularly serious nature – an action which lowers a person in rank, position, «reputation or character can only be regarded as «degrading treatmen»t in the sense of Article 3 where it reaches a certain level of severity».*
>
> *«Dan l-element ta' gravita' jinsab ribadit ukoll mill-awturi **Jacobs & White, fil-ktieb "European Convention on Human Rights»** (3rd Edit. pag. 65) meta jghidu:*
>
> > *««The defining feature of degrading treatment is the element of humiliation or debasement; the threshold of severity would appear to require that the humiliation is gross.»»*
>
> *«Il-htiega li din l-umiljazzjoni tkun wahda gravi giet ennuncjata wkoll mill-Qrati taghna, partikolarment fil-kawza **Galea v. Segretarju tad-Djar**, deciza mill-Onorabbli Qorti Kostituzzjonali fl-20 ta' Lulju, 1977; f'din il-kawza ntqal ukoll li trattament degredanti jehtieg ukoll li jwassal ghal vjolazzjoni serja ghad-dinjita' tal-bniedem.*

> *«Dawn il-principji ta' intensita' jew severita' gew ribaditi mill-istess Onorabbli Qorti Kostituzzjonali fil-kawza* ***Fenech v. Kummissarju tal-Pulizija****, minnha deciza fl-20 ta' Frar, 1979, u fil-kawza* ***Wilch v. Seg. Parlamentari ghad-Djar et****, deciza minn din il-Qorti fil-11 ta' Ottubru, 1989. Filfatt, jekk wiehed janalizza l-gurisprudenza lokali fejn sabet kaz ta' trattament degredanti, jinduna li l-kazijiet iridu jkunu ta' certu serjeta' u gravita». Hekk, per ezempju, instabu kazi ta' trattament degredanti fejn sid ta' dar jitkecca mill-istess dar li jkun qed jokkupa, bis-sahha ta' ordni ta' rekwizzjoni, sabiex jigi akkomodat xi hadd iehor (****Antonio Pace v. Seg. Djar et****, deciza mill-Onorabbli Qorti Kostituzzjonali fis-17 ta' Ottubru, 1988, u* ***Lucrezia Borg v. Seg. Djar et****, deciza minn din il-Qorti fit-2 ta' Settembru, 1986), jew fejn persuna tigi nterrogata fid-Depot tal-Pulizija minghajr ma tkun infurmata bl-akkuza kontriha jew b'metodi li gew deskritti bhala inumani jew degredanti (****Tonio Vella v. Bonello****, deciza minn din il-Qorti fil-5 ta' Dicembru, 1986, u* ***Jimmy Vella et v. Bonello****, deciza wkoll minn din il-Qorti fit-3 ta' April, 1997) jew meta mpjegat gie kostrett jiffirma dikjarazzjoni li meta ma marx ghax-xoghol f'gurnata wahda f'Gunju tal-1982, kien qed jipperikola l-istabbilita' u d-demokrazija f'pajjizna (****Joseph Vassallo Gatt v. Cassar noe****, deciza minn din il-Qorti fid-19 ta' Marzu, 1987).»*

> *«Dwar x'inhu kkunsidrat bhala trattament degredanti, inghad ukoll: «Interpretation of the meaning of degrading treatment is accompanied in the case-law by consideration of the severity of the alleged treatment suffered. The minimum level of severity is the threshold, or «boundary»,[6] that has been developed, which a situation must cross in order to activate the protection of Article 3. This is an essential element of the Court's assessment. 'Difficult' or «undoubtedly unpleasant or even irksome'[7] treatment does not equate to degrading treatment. The ECtHR has stated that a practice was «discreditable and reprehensible»,[8] and that a situation may have been «distressing and humiliating»,[9] whilst neither obtained the minimum level of severity.»[10]*

47. Applying the above principles to the present case, it is very clear that, as correctly observed by the First Court, the elements necessary to

[6] Cooper (2003) at 27, para. 2-01.

[7] López Ostra v. Spain, para. 60; Guzzardi v. Italy, judgment of 06 November 1980, Series A, no. 39, para. 107, respectively.

[8] Ireland v. UK, para. 181.

[9] Smith and Grady v. UK, para. 121.

[10] Elaine Webster, ***Exploring the prohibition of degrading treatment within article 3 of the european convention on human rights***, PHD Thesis, THE UNIVERSITY OF EDINBURGH, 2009 <https://www.era.lib.ed.ac.uk/bitstream/handle/1842/4062/Webster2010.pdf?sequence=1> accessed 14/06/2017

establish inhuman treatment do not exist in this case. It results that the appellant's allegation is based on a subjective interpretation, which is in no way corroborated by evidence or objective testimony confirming this alleged inhuman treatment.

48. This Court finds that:

a. Regarding the recommendations of Andreanna Gellel, the Family Court, through its decree of 8th June, 2017, issued orders as it deemed appropriate in the circumstances, and this after *«having deliberated at length on the evidence tendered to date, the submissions made, and what, under the particular circumstances of this case, is the best way forward in the best interest of the three minor children pending the final outcome of the court cases»* - including the children's testimony and the social worker Andreana Gellel's report. It is true that the Family Court did not adopt the expert's recommendations in their entirety, however the Court has full discretion not to adopt the conclusions reached by court-appointed experts if they go against its own conviction (see **Article 681** and ***John Saliba v. Joseph Farrugia***, decided by the Court of Appeal on January 28, 2000); and

b. Regarding the questions put to the appellant during her

cross-examination, this Court finds that the questions were related to the subject of the application filed by Travis Leigh Brannon on the 3rd June, 2016. This took place during a hearing before the Judicial Assistant. Now, under **Article 579 of Chapter 12 of the Laws of Malta**, during cross-examination, the opposing party may ask direct or suggestive questions. Therefore, in the present case, while the questions asked may have been uncomfortable for the appellant - especially since the opposing party was inquiring about intimate matters - this Court finds that nothing illegal occurred during the cross-examination, nor do the questions appear to have been posed in a way that was *«grossly humiliating»* for the appellant.

49. Therefore, this grievance is dismissed.

50. In the appellant's **seventh ground of appeal**, she complains that *«The Court only awarded moral damages for the breach of Article 6, when clear material damages were proven to have arisen from the same breach».* The appellant explains this grievance in detail, reiterating that:

> *«In the present case, it is submitted that the arrears of maintenance claimed were due, and an application to this effect was filed in 2013 — ten years ago. That claim was not decided in a reasonable time, and in the meantime, the debtor (the father) left the island, and his whereabouts are not known to the applicant. If the judgment on arrears was given within a*

> *reasonable time, the applicant may have been able to enforce the judgment against the debtor in this case — a situation which has become impossible. And it had become so impossible because the executive title comes only now, ten years later, when the debtor has fled the country. There is thus certainly a causal link between the delay in the family court proceedings and the pecuniary damage claimed, and the First Court should have awarded it.»*

51. This Court notes that in her note of submissions, the appellant contends that due to delays and inaction on the part of the Family Court, Travis Leigh Brannon managed to leave the Maltese Islands with an outstanding maintenance arrears amounting to €26,000, as determined in the judgment ***Sylvana Brannon v. Travis Leigh Brannon***, case number 72/2013 AGV, decided on 30th March 2022 (not appealed). She explains that because the children's father left Malta, she was unable to execute and enforce the judgment in question against him, and thus she believes that the Civil Court, in its constitutional competence, should have also awarded her pecuniary compensation in the amount of €26,000 to make up for the material damage she suffered.

52. It is true that, according to local jurisprudence, the remedy for delay can range from a declaration of violation to moral damages or, exceptionally, material damages. The Court acknowledges that the remedy for a finding of a fundamental rights breach must be compatible with the nature of the action under which the remedy is sought. The primary and most appropriate remedy would be to stop the breach or prevent a potential future breach. However, where a breach has already

occurred, or the remedy cannot be achieved by reversing the action that caused the breach, compensation must be awarded to eliminate the effects of the breach and provide, as far as possible*, restitutio in integrum* - restoring the situation as if the breach had never occurred (see ***Victor Gatt et v. Avukat Ġenerali et***, Constitutional Court, 5th July 2011). In this particular case, the harm cannot be undone, so compensation is due - and generally, moral damages are awarded as the appropriate remedy (see ***John A. Said pro et no et v. Avukat Ġenerali***, decided by the Constitutional Court on the 11th November, 2011).

53. Our courts have established that three (3) cumulative and central criteria determine the appropriate remedy when compensation is the right response to a breach of a fundamental right. These criteria are: (i) lack of an adequate remedy in the ordinary legal system**;** (ii) Causal link between the breach and the loss**;** and (iii) Severity of the loss (especially for moral damages) (see ***Anthony Farruġia et v. Tabib Prinċipali tal-Gvern (Saħħa Pubblika) et***, decided by the Constitutional Court on the 5th October, 2018; and ***Emanuela Caruana et v. Tabib Prinċipali tal-Gvern (Saħħa Pubblika) et***, decided by the Constitutional Court on the 5th October, 2018).

54. In relation to the present case, where the appellant is seeking

pecuniary compensation, the Court refers to the ***Practice Directions on Just Satisfaction Claims***,[11] which states:

> *«It is for the applicant to show that pecuniary damage has resulted from the violations alleged. A direct causal link must be established between the damage and the violation found. A merely tenuous or speculative connection is not enough. The applicant should submit relevant evidence to prove, as far as possible, not only the existence but also the amount or value of the damage. Normally, the Court's award will reflect the full calculated amount of the damage, unless it finds reasons in equity to award less (see point 4 above). If the actual damage cannot be precisely calculated, or if there are significant discrepancies between the parties' calculations thereto, the Court will make an as accurate as possible estimate, based on the facts at its disposal».*

55. By applying the above principles to the present case, this Court finds that the appellant failed to prove the causal link between the damages (the failure to recover the maintenance arrears) and the violation (delay and inaction by the Family Court), as no evidence was submitted in this regard. Indeed, the appellant did not present any evidence demonstrating her efforts to recover what was owed to her, such as: (i) filing executive warrants against Travis Leigh Brannon in Malta; and (ii) exhausting all attempts to enforce and execute the judgment issued by the Family Court in any country where he might be residing. It is true that the appellant, in her appeal application, claimed that she did not know Travis Leigh Brannon's whereabouts. However, this Court finds such a claim hard to believe, given the inconsistencies in her statements: (i) in an application dated 17th January, 2022 (filed in

[11] Issued by the President of the European Court of Human Rights on 28th March, 2007 and amended on 9th June, 2022.

case number 208/2016 AGV), she stated that the children's father had permanently relocated to Canada; (ii) in her submissions dated 16th January, 2023, presented in the proceedings before the First Court, she stated that the children's father was in Australia; (iii) yet, in her appeal application dated 24th July, 2023, the appellant claimed that she did not know the children's father's whereabouts.

56. In light of the above, this Court sees little reason to uphold the appellant's complaint. The appellant has *ad hoc* remedies available to recover what is owed to her, and it should not be the role of this Court to compensate for her lack of initiative in pursuing those remedies. Furthermore, this Court notes that while proceedings were ongoing before the Family Court, nothing prevented the appellant from safeguarding her interests through the filing of precautionary warrants as necessary.

57. Therefore, this grievance is dismissed.

58. The **eighth ground of appeal** raised by the appellant concerns the fact that: *«the applicant was made to bear two thirds of the costs at first instance even though the Court found violation of her human rights».* She further states that: *«the Court should not punish a victim of a human rights violation by awarding costs against said victim for claims*

made but not upheld». In this regard, this Court refers to the judgment in the names of ***Josephine Azzopardi pro et noe v. The Honorable Prime Minister et***, decided by this Court on the 31st January, 2019, where it was stated:

> *«L-aħħar aggravju tal-intimat l-Avukat Ġenerali jirrigwarda l-kundanna tiegħu mill-Ewwel Qorti ghall-ħlas tal-ispejjeż tal-proċedura fl-ewwel istanza. Dan l-aggravju hu msejjes fuq l-**Artikolu 223 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili** li jgħid li l-Qorti tista' tordna li kull parti tbati l-ispejjeż tagħha meta kull parti tkun telliefa f'xi punt tal-kawża bħal fil-każ tal-lum fejn ir-rikkorrenti Saddemi kienet rebbieħa fejn talbet dikjarazzjoni ta' ksur tad-drittijiet tagħha taħt l-**Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni** u rimedju għal dak il-ksur iżda telliefa fejn talbet dikjarazzjoni ta' ksur ta' drittijiet oħra fundamentali. Dan huwa minnu. Ir-rikorrenti Saddemi għamlet talbiet li ġew miċħuda u huwa xieraq li l-ispejjeż relattivi tħallashom hi.»*

59. In the present case, this Court notes that out of the eight claims submitted by the appellant in the initial application, the First Court only upheld two of them. Therefore, this Court sees nothing wrong with the way the costs of the proceedings before the First Court were decided, and this in line with the spirit of **Article 223 of Chapter 12 of the Laws of Malta**.

60. Accordingly, this grievance is being dismissed.

Decision:

Therefore, for the reasons mentioned above, this Court decides to

dismiss the plaintiff's appeal.

The costs of the appeal proceedings are to be borne by the plaintiff.

Mark Chetcuti	Giannino Caruana Demajo	Anthony Ellul
Chief Justice	Judge	Judge

Deputy Registrar
jb