MALTA

QORTI KOSTITUZZJONALI

S.T.O. PRIM IMHALLEF
VINCENT DE GAETANO

ONOR. IMHALLEF
JOSEPH A. FILLETTI

ONOR. IMHALLEF
GEOFFREY VALENZIA

Seduta tad-29 ta' Jannar, 2010

Appell Civili Numru. 358/2008/1

Attilio Ghigo

v.

L-Avukat Generali

Il-Qorti:

1. Dan hu provvediment wara rikors prezentat quddiem din il-Qorti fil-31 ta' Dicembru 2008, li permezz tieghu r-rikorrent Attlio Ghigo talab li din il-Qorti tordna, skond ma jipprovdi l-Artikolu 6(1) tal-Kap. 319, "l-ezegwibilita` tad-

decizjoni…tas-26 ta' Settembru 2006 tal-Qorti Ewropea tad-Drittijiet tal-Bniedem fil-kaz fl-ismijiet Attlio Ghigo kontra Malta f'Malta, bl-ispejjez." Wara li saret ir-risposta mill-Avukat Generali, dana r-rikors gie appuntat ghas-smiegh ghat-2 ta' Marzu 2009. Il-partijiet inghataw zmien sabiex jipprezentaw noti ta' sottomissjonijiet. L-Avukat Generali pprezenta tieghu fit-18 ta' Marzu 2009 (li giet notifikata lill-avukat tar-rikorrent, Dott Ian Refalo, fl-24 ta' Marzu 2009), izda rrikorrent baqa' ma pprezentax nota simili. Fl-udjenza tat-2 ta' Dicembru 2009, minhabba tibdil fil-komposizzjoni ta' din il-Qorti, il-partijiet iddikjaraw li ma kienx hemm ghalfejn li l-kawza terga' tigi trattata u qablu li tista' tibqa' ghas-sentenza fuq l-atti li kien hemm. Il-Qorti ghalhekk iddifferiet il-kawza ghas-sentenza ghal-lum.

2. Kif inghad, permezz tar-rikors promotur ta' dawn il-proceduri, Attlio Ghigo talab li din il-Qorti tordna l-ezegwibilita` f'Malta tas-sentenza tas-26 ta' Settembru 2006 (*Application no. 31122/05*) fl-ismijiet ***Case of Ghigo v. Malta***, u dan fit-termini tal-Artikolu 6(1) tal-Att dwar il-Konvenzjoni Ewropea, Kap. 319. Permezz ta' din is-sentenza, dik il-Qorti kienet sabet li l-imsemmi Ghigo kien garrab lezjoni tad-dritt tieghu kif protett bl-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni u dan minhabba li post rekwizizzjonat mid-Direttur ghall-Akkomodazzjoni Socjali – jew, kif kien jissejjah dak iz-zmien, il-*Housing Secretary* – fil-31 ta' Marzu 1984, kien gie allokat bhala dar ta' abitazzjoni lil terz b'kera (bhala kumpens ghall-istess Ghigo) stabbilita mill-*Land Valuation Officer* li kienet baxxa hafna (anqas minn hames Euro fix-xahar). Dik il-Qorti ghalhekk ikkonkludiet illi:

"69. In the present case, having regard to the extremely low amount of the rental value fixed by the Land Valuation Officer, to the fact that the applicant's premises have been requisitioned for more than twenty-two years, as well as to the above-mentioned restrictions of the landlord's rights, the Court finds that a disproportionate and excessive burden has been imposed on the applicant. The latter had been requested to bear most of the social and financial costs of supplying housing accommodation to Mr G.

and his family (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, § 225). It follows that the Maltese State has failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant's right of property.

"70. There has accordingly been a violation of Article 1 of Protocol No. 1."

3. Bhala "just satisfaction", dik il-Qorti halliet il-kwistjoni tal-kumpens ghad-danni ghal stadju iehor, izda llikwidat "costs and expenses" fis-somma ta' €4,088 li l-Gvern gie ordnat ihallas lil Ghigo "within three months from the date on which the judgment becomes final in accordance with Article 44§2 of the Convention." Hija din is-sentenza – li wiehed jista' jsejhilha sentenza preliminari jew sentenza in parte – tas-26 ta' Settembru 2006 li r-rikorrent Ghigo talab li tigi ezegwita.

4. Fir-risposta tieghu tal-14 ta' Jannar 2009, l-intimat Avukat Generali fisser li, skond hu, it-talba ghall-ezegwibilita` ta' din is-sentenza kienet saret inutilment "stante li t-terminu ghall-hlas tal-kumpens ordnat minn dik il-Qorti ghadu ma skadiex"; subordinatament qal li "l-ezekuzzjoni tas-sentenzi tal-Qorti Ewropea tad-Drittijiet tal-Bniedem issir fl-ewwel lok mill-Kunsill tal-Ministri tal-Kunsill ta' l-Ewropa u ghalhekk huwa fi kwalunkwe kaz prematur li din l-Onorabbli Qorti tintalab tezegwixxi s-sentenza *de quo* qabel, u forsi anke b'mod differenti, milli jezegwiha l-imsemmi Kunsill tal-Ministri." Fit-28 ta' Jannar 2009, l-intimat Avukat Generali ipprezenta permezz ta' nota (1) kopja tat-"tieni" sentenza tal-Qorti Ewropeja tad-Drittijiet tal-Bniedem fl-ismijiet ***Case of Ghigo v. Malta***, cioe` s-sentenza tas-17 ta' Lulju 2008, kif ukoll (2) *debit advice* mahruga mill-Ministeru ghall-Politika Socjali li kienet turi li l-imsemmi Ghigo kien thallas, tramite l-Avukat tieghu Dott. Ian Refalo, is somma ta' €33,720 li huwa l-ammont totali ghal "pecuniary damages" u "non-pecuniary damages" – jigifieri bhala "just satisfaction" li kien gie riservat fl-ewwel sentenza – li l-Gvern Malti gie ordnat

ihallas lill-istess Ghigo permezz ta' din it-tieni (u finali) sentenza.

5. Kif inghad aktar 'l fuq, fl-udjenza tat-2 ta' Marzu 2009 din il-Qorti akkordat zmien lill-partijiet biex jipprezentaw noti ta' sottomissjonijiet, izda kien l-Avukat Generali biss li pprezenta tali nota.

6. Il-principji, jew ghall-anqas xi whud minnhom, li ghandhom jirregolaw l-applikazzjoni tal-Artikolu 6 tal-Kap. 319 gew l-ewwel darba elaborati minn din il-qorti fil-provvediment taghha tat-18 ta' Marzu 2005 fl-ismijiet **Wara r-rikors tal-Kazin tal-Banda ta' San Leonardo ta' Hal Kirkop ippreżentat fil-15 ta' Novembru, 2004**[1]. Issa, ma hemmx dubju li l-"ezegwibilita`" ta' decizjoni ossia sentenza tal-Qorti ta' Strasbourg tiddependi f'mizura kbira, jekk mhux ghal kollox, minn dak li jkun gie deciz li ghandu jkun ir-"rimedju" skond dik il-Qorti – u salv dejjem dak li nghad fid-decizjoni tat-18 ta' Marzu 2005 appena msemmija. Mit-trattazzjoni li saret quddiem din il-Qorti jidher li r-rikorrent Ghigo ried li s-sentenza tas-26 ta' Settembru 2006 tigi dikjarata ezegwibbli skond l-Artikolu 6(1) tal-Kap. 319 biex huwa jkun b'xi mod jista' jimpunja lokalment l-ordni ta' rekwizizzjoni tal-31 ta' Marzu 1984. Ma jidhirx li huwa talab l-ezekuzzjoni semplicement ghax, forsi, kien ghadu ma thallasx is-somma ta' €4,088. Din il-Qorti, pero`, taghmilha cara li l-Qorti ta' Strasbourg, fl-imsemmija sentenza tas-26 ta' Settembru 2006, qalet espressament li ma kienx fil-gurisdizzjoni jew kompetenza taghha li tordna l-annullament jew ir-revoka tal-ordni ta' rekwisizzjoni; u fis-sentenza finali (tas-17 ta' Lulju 2008) kompliet tfisser li f'kazijiet simili il-mod ta' kif ghandu jigi assigurat li ma jkunx hemm vjolazzjonijiet simili fil-futur huwa essenzjalment process politiku rimess ghall-Istat koncernat, pero` taht is-supervizjoni tal-Kumitat tal-Ministri tal-Kunsill tal-Ewropa. Hekk, fis-sentenza tas-26 ta' Settembru 2006, insibu:

[1] Regghet saret referenza ghal dan il-provvediment, ghalkemm f'kuntest differenti, fis-sentenza aktar recenti ta' din il-Qorti fl-ismijiet **Bugeja v. Avukat Generali et** deciza fis-7 ta' Dicembru 2009.

"77. The Court first recalls that it is not empowered under the Convention to direct the Maltese State to annul or revoke the requisition order (see, *mutatis mutandis*, *Sannino v. Italy*, no. 30961/03, § 65, 27 April 2006, *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports* 1997-I, p. 284, § 88, and *Albert and Le Compte v. Belgium* (former Article 50), judgment of 24 October 1983, Series A no. 68, pp. 6-7, § 9).

"78. Having examined the circumstances of the case, it considers that the question of compensation for pecuniary damage and/or non-pecuniary damage is not ready for decision. That question must accordingly be reserved and the subsequent procedure fixed, having due regard to any agreement which might be reached between the respondent Government and the applicant (Rule 75 § 1 of the Rules of Court)."

7. U f'dik tas-17 ta' Lulju 2008:

"22. The Court notes that the Government have not released the property and that the applicant's calculation for future rent has not been met by the Government under the proposed conditions.

"23. The Court points out that by Article 46 of the Convention the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. Furthermore,

subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see, *mutatis mutandis*, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 248, ECHR 2000-VIII).

"24. Accordingly, under Article 41 of the Convention the purpose of awarding sums by way of just satisfaction is to provide reparation solely for damage suffered by those concerned to the extent that such events constitute a consequence of the violation that cannot otherwise be remedied (*idem* § 249). It is therefore not for the Court to quantify the amount of rent due in the future. Consequently, the Court dismisses the applicant's claim for future losses, subject to action being taken by the Government to put an end to the violation found by putting in place a mechanism which would allow for a fair amount of rent to be paid in future years (see paragraph 23 above).

"25. Referring to Article 46 of the Convention, the Court observes that its conclusion in the principal judgment is a result of shortcomings in the Maltese legal system, particularly, Maltese housing legislation, as a consequence of which, an entire category of individuals have been and are still being deprived of their right to the peaceful enjoyment of property. In the Court's view, the unfair balance detected in the applicant's particular case may subsequently give rise to other numerous well-founded applications which are a threat for the future effectiveness of the system put in place by the Convention (see *Driza v. Albania*, no. 33771/02, § 122, ECHR 2007-... (extracts)).

"26. Under Article 46 of the Convention, once a deficiency in the legal system has been identified by the Court, the national authorities have the task,

subject to supervision by the Committee of Ministers, of taking within a determined period of time – retrospectively if needs be – (see, among other authorities, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 233, ECHR 2006 and *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V; and *Di Mauro v. Italy* [GC], no. 34256/96, § 23, ECHR 1999-V) the necessary measures of redress in accordance with the principle of subsidiarity under the Convention, so that the Court does not have to reiterate its finding of a violation in a long series of comparable cases (see *Driza*, cited above, § 123 *in fine*).

"27. In principle it is not for the Court to determine what may be the appropriate measures of redress for a respondent State to perform in accordance with its obligations under Article 46 of the Convention. However, the Court's concern is to facilitate the rapid and effective suppression of a defective national legislation hindering human-rights protection. In that connection and having regard to the systemic situation which it has identified above (see paragraph 25), the Court considers that general measures at national level are undoubtedly called for in the execution of the present judgment.

"28. As regards the general measures to be applied by the Maltese State in order to put an end to the systemic violation of the right of property identified in the present case, and having regard to its social and economic dimension, including the State's duties in relation to the social rights of other persons, the Court considers that the respondent State must above all, through appropriate legal and/or other measures, secure in its domestic legal order a mechanism maintaining a fair balance between the interests of landlords, including their entitlement to derive profit from their property, and the general interest of the community – including the availability of sufficient accommodation for the less well-off – in accordance with the principles of the protection of property rights under the Convention (see *Hutten-*

Czapska v. Poland **[GC], no. 35014/97, § 239, ECHR 2006-...).**

"29. It is not for the Court to specify what would be the most appropriate way of setting up such remedial procedures or how landlords' interest in deriving profit should be balanced against the other interests at stake. The Court would, however, observe that the many options open to the State include measures setting out the features of a mechanism balancing the rights of landlords and tenants and criteria for what might be considered nowadays a "tenant in need" (which, as stated by the Government in their observations regarding the principal judgment, refers to "individuals who would not have been able to afford reasonably priced accommodation"), "fair rent" and "decent profit"."

8. Kjarament, ghalhekk, la fis-sentenza tas-17 ta' Lulju 2008, u anqas f'dik tas-26 ta' Settembru 2006 (li taghha r-rikorrent qed jitlob l-ezegwibilita` skond l-Artikolu 6(1) tal-Kap. 319) ma hemm il-presupposti ghall-applikabilita` tal-imsemmi Artikolu 6(1) tal-Kap. 319. Jinghad biss li jekk l-ammont ta' €4,088 li l-Gvern gie kkundannat ihallas ghadu ma thallasx – ghax prova tal-hlas saret biss fir-rigward tas-somma akbar ta' €33,720 likwidata fit-tieni sentenza – ir-rikorrent jista' dejjem jerga' jadixxi lil din il-Qorti. Pero` kif inghad, il-mira tar-rikorrent bir-rikors tal-31 ta' Dicembru 2008 ma kientx dawn l-erbat' elef Euro!

9. Ghall-motivi premessi tichad it-talba kif kontenuta fl-ismsemmi rikors tal-31 ta' Dicembru 2008. Spejjez, jekk hemm, ikunu a karigu tar-rikorrent.

< Sentenza Finali >

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