MALTA

QORTI CIVILI
PRIM' AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
ABIGAIL LOFARO

Seduta tas-7 ta' Lulju, 2010

Referenza Kostituzzjonali Numru. 25/2008

Emmanuel Said Ltd

vs

Carmel Zammit u Doris Attard Cassar u b'digriet tad-19 ta' Frar, 2009 l-Avukat Generali gie ammess jintervjeni fir-referenza kostituzzjonali "in statu et terminis"

Il-Qorti:

Rat ir-Referenza maghmula mill-Qorti ta' l-Appell fit-13 ta' Mejju, 2008 fl-ismijiet premessi, li tghid hekk :
"Il-Qorti thoss li hemm bazi sabiex issir riferenza kostituzzjonali skond kif rikjest fir-rikors tal-appellanti, allura tibghat il-kawza sabiex l-istess riferenza kostituzzjonali tigi assenjata skond il-Ligi mir-Registratur

tal-Qorti u r-rikors tal-appellat jibqa differit Sine Die riappuntabbli fi zmien tletin gurnata mid-decizjoni finali dwar ir-riferenza kostituzzjonali".

Rat id-digriet taghha tas16 ta' Mejju, 2008, li bih appuntat ir-Referenza ghas-smigh ghat-22 ta' Mejju 2008 fid-9.00a.m. u ordnat li ssir notifika immedjata lill-partijiet;

Rat in-nota ta' sottomissjonijiet ta' Carmel Zammit et u in-nota ta' sottomissjonijiet tas-socjeta' Emmanuel Said Ltd;

Rat id-digriet taghha tad-19 ta' Frar, 2009 fejn l-Avukat Generali gie ammess jintervjeni fir-referenza kostituzzjonali "in statu et terminis";

Rat in-nota ta' osservazzjonijiet tal-Avukat Generali;

Semghet lill-avukati difensuri tal-partijiet jittrattaw;

Rat il-provi kollha li tressqu, id-dokumenti li gew esebiti u l-atti ta' dan il-procediment;

Rat illi r-referenza kostituzzjonali thalliet ghallum ghal sentenza;

Ikkunsidrat :

Illi s-socjeta' Emmanuel Said Ltd kienet ipprezentat rikors quddiem il-Bord illi jirregola l-Kera sabiex it-talba tal-intimati Carmel Zammit u Doris Attard Cassar sabiex jawmentaw il-kera tal-fond maghruf bhala 'Cressi Sub-Store' fi triq Salvu Pulis, Haz-Zabbar, mikri lis-socjeta rikorrenti, tigi michuda u l-Bord intalab sabiex jikkonferma l-kundizzjonijiet attwali.

Rat illi l-intimati irrispondew billi issottomettew illi huma talbu sabiex il-kera tal-fond titla ghas-somma ta' tlett elef lira Maltin (LM3,000) fis-sena, prezz rifless mis-suq u gustifikat skond il-Ligi, u dana peress illi wara tletin sena ta' kirja, il-fond in kwistjoni kien jimmerita tali zieda skond kif gie stabbilit mill-Arkitett Jean Pierre Attard, Perit ex-parte imqabbad mill-intimati f'dawk il-proceduri.

Il-Bord tal-Kera kien talab l-assistenza teknika taz-zewg membri tieghu, il-Perit John Sciberras u il-Perit Frederick Valentino illi, wara li hadu konjizzjoni tal-fatti kollha tal-kaz, ikkonkludew il-kera attwali ta' tlett mija u sebgin lira Maltin (LM370) fis-sena kien diga jeccedi l-erbghin fil-mija (40%) li bih l-istess fond kien mikri, jew li setgha jinkera qabel l-4 ta' Awissu, 1914 a tenur tal-Artikolu 5 (b) tal-Kap. 109 tal-Ligijiet ta' Malta.

Il-Bord tal-Kera, wara li ghamel tieghu ir-rapport tal-membri teknici, laqa t-talba tar-rikorrenti u cahad it-talba

ghall-awment fil-kera skond l-ittra ufficjali li kienet giet mibghuta mill-intimati lir-rikorrenti fit-22 ta' April, 2002 u dan permezz ta' sentenza datata 9 ta' Jannar, 2008.

Ikkunsidrat :

Illi l-intimati f'dawk il-proceduri appellaw quddiem il-Qorti tal-Appell u invokaw vjolazzjoni tad-dritt taghhom li jkollhom smigh xieraq, kif ukoll vjolazzjoni tad-dritt ta' proprjeta kif kawtelati fl-Artikolu 6 u fl-Ewwel Artikolu ta' l-Ewwel Protokol tal-Kapitolu 319 tal-Ligijiet ta' Malta.

Illi l-intimati appellanti issottomettew illi l-Bord illi Jirregola l-Kera, una volta li tqajjmet kwistjoni ta' natura kostituzzjonali quddiemu, kellu exufficio jirreferi il-materja lill-Prim'Awla tal-Qorti Civili (Sede Kostituzzjoni), izda il-Bord ma hax din id-decizjoni u ma ghamilx ir-referenza u ghalhekk issottomettew illi dan huwa punt ta' Ligi li jaghti lok ghall-appell.

Illi l-Qorti ta' l-Appell hasset li kien hemm bazi sabiex issir referenza kostituzzjonali, skond kif rikjest fir-rikors ta' l-appellanti, lil din il-Qorti.

Ikkunsidrat :

Illi fin-nota ta' sottomissjonijiet tieghu l-Avukat Generali issottometta illi ma kien hemm l-ebda ksur ta' l-Artikolu 1 ta' l-Ewwwel Protokol peress illi il-proprjeta mertu tal-kawza odjerna ma gietx mehuda forzivament lir-rikorrenti mill-istat u dana peress illi l-proprjeta in kwistjoni hija proprjeta mikrija lil terzi u baqghet proprjeta tal-appellanti. L-Avukat Generali iccita wkoll sentenzi tal-Qorti Ewropeja tad-Drittijiet tal-Bniedem fis-sens illi l-istat jista jillegizla kif jidhirlu li jkun necessarju sabiex jikkontrolla l-uzu ta' proprjeta, purche' ma jipprivax lis-sid mill-proprjeta tieghu.

Illi ghalhekk l-Avukat Generali argumenta illi fil-qasam tal-kontroll tal-kera l-istat huwa intitolat illi jghaddi legislazzjoni ta' natura socjali u dan ma japplikax biss ghall-kazijiet ta' fondi residenzjali, izda anke ghall-fondi kummercjali u f'dan ir-rigward ikkwota sentenza ta' din il-Qorti tas-16 ta' Novembru 2004 fl-ismijiet Philip Amato Gauci vs Avukat Generali et, liema sentenza giet ikkonfermata mill-Qorti Kostituzzjonali fis-26 ta' Mejju 2006. Huwa ikkwota wkoll sentenzi moghtija fil-kawza fl-ismijiet Oliver Siracusa vs Prim Ministru noe deciza fis-16 ta' Novembru 1989 u sentenza moghtija fil-kawza fl-ismijiet Nazzareno Galea vs Giuseppe Briffa deciza mill-

Qorti Kostituzzjonali fit-30 ta' Novembru 2001. Huwa ikkwota wkoll is-sentenza tal-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fl-ismijiet Mellacher and Others vs Austria tad-19 ta' Dicembru 1984 fejn il-Qorti kienet qalet hekk :

"The contested measures which, admittedly, deprived (the applicants) of part of their income from the property amounted in the circumstances merely to a control of the use of property. Accordingly, the second paragraph of Article 1 applies in this case.

The Court thus reaches the conclusion that when enacting the 1981 Rent Act the Austrian legislature, having regard to the need to strike a fair balance between the general interests of the community and the right of property of landlords in general and of the applicants in particular, could reasonably hold that the means chosen were suited to achieving the legitimate aim pursued."

Illi l-Avukat Generali issottometta wkoll illi ma kien hemm l-ebda ksur tal-Artikolu 6 tal-Konvenzjoni Ewropeja ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fundamentali minhabba l-fatt illi l-Bord li Jirregola l-Kera ghandu gurisdizzjoni esklussiva in materja u tenut kont tal-fatt illi l-istess Bord huwa marbut b'ceiling ai termini tal-Kapitolu 69 tal-Ligijiet ta' Malta, illi allegatament qieghed jiddepriva lir-rikorrenti minn rimedju xieraq ghad-determinazzjoni tad-drittijiet fondamentali taghhom.

Illi l-Avukat Generali issottometta illi d-dritt ghall-access tal-Qorti ma jimplikax dritt illi wiehed ma jkunx soggett ghall-Ligi sostantiva li tirregola jew tikkontrolla l-prezzijiet, jew f'dan il-kaz l-ammont ta' kera, u tali kontroll ma ghandux x'jaqsam mal-kwistjoni ta' access tal-Qrati illi r-rikorrenti appellanti qeghdin iqajjmu.

Ikkunsidrat :

Illi fin-nota ta' sottomissjonijiet taghhom l-intimati, inter alia, irreferew ghal sentenza tal-Qorti Kostituzzjonali deciza fl-14 ta' Lulju 2008 fl-ismijiet Charles Adrian Strickland nomine vs l-Onorevoil Prim Ministru et fejn intqal :

"Illi di fatti l-esponenti qed itennu illi l-Artikoli tal-Kap 69 fuq imsemmija mhux necessarjament hija dejjem anti kostituzzjonali izda, kif applikati ghal kaz odjern qed jigi umilment sottomess illi joholqu lezjoni ta' drittijiet fondamentali ta' l-esponenti".

Il-Qorti ziedet tghid illi b'relazzjoni ghat-tielet regola ta' l-Artikolu 1 ta' L-Ewwel Protokol tal-Konvenzjoni Ewropeja wiehed irid japplika t-test ta' proporzjonalita.

"Din il-Qorti m'ghandhiex dubju li anke fejn si tratta ta' l-applikazzjoni tat-tielet regola ta' l-Artikolu 1 ta' l-Ewwel Protokoll tal-Konvenzjoni Ewropeja wiehed irid japplika t-test tal-proporzjonalita. Forsi l-kaz klassiku, u wiehed mill-aktar recenti, tal-Qorti ta' Strasbourg huwa dak ta' Hutten-Czapska v. Poland, deciz fit-22 ta' Frar 2005. Fi kliem Alastair Mowbray, fil-ktieb tieghu "Cases and Materials on the European Convention on Human Rights" il-kaz kien hekk :

"A unaminous Chamber found a systematic breach of this rule in respect of Polish legislation governing the rents chargeable by private landlords and restrictions on their ability to terminate leases in Hutten-Czapska v. Poland. The Polish Constitutional Court found several of these statutory provisions to be unconstitutional because, inter alia, the low level of rent chargeable only enables landlords to recover about 60 per cent of the maintenacne costs of their properties. In her complaint to the European Court the applicant centended that these restrictions impaired the essence of her right of property."

Illi l-Qorti Kostituzzjonali fil-kawza fuq citata Charles Adrian Strickland nomine vs l-Onorevoil Prim Ministru et qalet illi l-konsiderazzjonijiet imsemmija illi ghamlet il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem japplikaw ugwalment ghall-kaz tar-rikorrent appellant Charles Adrian Strickland noe. "Meta r-restrizzjonijiet imposti bl-Artikolu 11 (1) tal-Kapitolu 158 jigu applikati ghall-kaz konkret ta' l-appartamenti meritu ta' din il-kawza, ma hemmx dubju li jinholoq zbilanc kbir bejn id-dritt tas-socjeta' appellanti ghall-godiment pacifiku tal-possedimenti taghha u l-

interessi legittimi tal-kollettivita li l-istat qed jipprova jittutela billi jikkontrolla l-uzu tal-proprjeta, u dan billi qed jigi impost “a disproportionate and excessive burden” fuq is-sid appellant li fil-kaz de quo ma jistax jigi gustifikat “by any legitimate interest of the community” li l-intimati qed jippruvaw jilhqu bl-applikazzjoni tad-disposizzjoni tal-ligi aktar ‘il fuq imsemmija. Ghalhekk anke fil-kaz odjern din il-Qorti tirravviza lezjoni ta’ l-Artikolu 1 ta’ l-Ewwel Protokol tal-Konvenzjoni Ewropeja.

Illi l-intimati issottomettew illi fil-kaz odjern jirrizulta li hawn si tratta ta’ bini kummercjali u ghalhekk certament, jekk fil-kaz ta’ social housing il-mizien tal-proporzjonalita jkun ftit mxaqleb favur l-Istat, dan m’ghandux jkun l-kaz ghas-sitwazzjoni odjerna fejn sahansitra s-socjeta’ Emmaniel Said Limited kellha bini iehor ghad-disposizzjoni taghha li facilment setghet tuzah, izda minflok ghazlet li tbieghu bil-prezz ta’ mija u hamsin elf lira Maltin (LM150,000) peress illi kien qablilha li tibqa thallas bil-kera baxxa ta’ tlett mija u sebghin liri Maltin (LM 370) fis-sena lill-intimati.

Ikkunsidrat :

Illi l-Qorti tara illi f’dan il-kaz huwa rilevanti ferm il-kaz Amato Gauci v. Malta, Applikazzjoni Nru 47045/06, liema kaz gie deciz mill-Qorti ta’ Strasbourg fil-15 ta’ Settembru 2009.

Illi dan il-kaz kien jirrigwarda proprjeta tas-Sliema illi kienet inghatat b’cens temporanju. Illi s-sid kien informa lic-censwalisti illi ma kienx ser iggeddilhom ic-cens u illi kellhom johorgulu mill-proprjeta tieghu, izda ic-censwalisti infurmaw lis-sid illi kienu qeghdin jevalixxu ruhhom mid-dritt moghti lilhom taht l-Att XX111 ta’ l-1979 fejn setghu jibqghu f’din il-proprjeta b’titolu ta’ kera. Is-sid kien istitwixxa proceduri quddiem il-Bord illi Jirregola l-Kera sabiex dan il-Bord jistabbilixxi l-ammont ta’ kera gusta illi kellha tithallas lilu.

Illi skond il-Ligi l-aktar kera gholja illi setgha jiddetermina l-Bord illi Jirregola l-Kera kien l-ammont ta’ mija u tmenin

lira (LM180) fis-sena li jammontaw ghal erba mija u ghoxrin ewro (€420) fis-sena.

Illi l-Perit ex parte imqabbad mis-sid kien hareg rapport fis-sens illi l-proprjeta kienet tiswa disghin elf u seba mitt ewro (€90,700) u kellha tinkera ghas-somma ta' mitejn u tmenin ewro fix-xahar (€280).

Illi ghalhekk is-sid kien istitwixxa proceduri quddiem il-Prim'Awla tal-Qorti Civili illi kienet cahditlu t-talbiet tieghu u sussegwentement kien appella quddiem il-Qorti Kostituzzjonali, illi wkoll kienet cahditlu it-talba permezz ta' sentenza tas-26 ta' Mejju 2006.

Ikkunsidrat :

Illi Article 1 tal-Protokol numru 1 tal-Konvenzjoni Ewropeja jghid hekk:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

Illi f'dak il-kaz is-sid tal-proprjeta ma kienx ezawrixxa il-proceduri quddiem il-Bord illi Jirregola l-Kera u kien argumenta illi r-rimedju illi setgha jaghti l-Bord illi Jirregola l-Kera ma kienx ser ikun rimedju effettiv peress illi tali Bord ma setghax jiddetermina jekk il-kirja lil terza persuna kienitx tivvjola l-Artikolu 1 tal-Protokol numru 1 tal-Konvenzjoni Ewropeja u ghalhekk il-Bord illi Jirregola l-Kera kien ippospona l-proceduri sabiex sid il-proprjeta jistitwixxi l-proceduri kostituzzjonali.

Ikkunsidrat :

Illi anke fil-kaz odjern l-appellanti, rikorrenti f'din il-kawza, jallegaw illi huma qeghdin jigu imcahda mid-drittijiet taghhom kif sanciti taht l-Artikolu 6 tal-Konvenzjoni Ewropeja.

Illi fil-kaz Amato Gauci v. Malta il-Qorti Ewropeja qablet mas-sottomissjonijiet ta' l-appellant illi l-Bord illi Jirregola l-Kera, anke li kieku wasal ghall-ammont ta' kera permezz ta' sentenza, qatt ma setgha jindirizza l-ilmenti ta' natura kostituzzjonali imqajjma mir-rikorrenti, u ghalhekk il-Qorti tara illi fil-kaz odjern ir-rikorrenti ma kellu l-ebda rimedju hlief illi jaghmel ir-referenza kostituzzjonali illi huwa fil-fatt ghamel.

Ikkunsidrat :

Illi ir-rikorrenti ghandhom ragun jissottomettu illi meta titqajjem kwistjoni quddiem Qorti illi ma tkunx il-Prim Awla tal-Qorti Civili, jew il-Qorti Kostituzzjonali, dik il-Qorti, sakemm ma tkunx ta' l-opinjoni illi l-kwistjoni li tqajjmet hija biss frivola jew vessatorja, ghandha tirreferi l-kwistjoni lill-Prim Awla tal-Qorti Civili (Sede Kostituzzjonali).

Illi r-rikorrenti ghandhom ragun ukoll jissottomettu illi l-Bord illi Jirregola l-Kera ghandu jdejh marbutin bil-Ligi, kif del resto qalet il-Qorti Ewropeja fil-kaz Amato Gauci v. Malta, u li kwalunkwe rimedju li jista jaghti l-Bord li Jirregola l-Kera qatt ma setgha iwassal illi r-rikorrenti jkollu rimedju effettiv, u ghaldaqstant il-Qorti tara illi hawn hekk jirrizulta ksur tal-Artikolu 6 tal-Konvenzjoni Ewropeja.

Il-Qorti Ewropeja, fil-kaz Amato Gauci v. Malta, qalet illi r-rimedji jridu jkunu cari bizzejjed mhux biss fit-teorija, izda anke fil-prattika ghaliex inkella ma jkunx hemm l-effettiva u l-accessibbilita mehtiega u hawn hekk irreferiet ghal sentenza 'Mifsud v. France' (nru 57220/00, ECHR 2002-V111).

Ikkunsidrat :

Illi fil-kaz Amato Gauci v. Malta il-Qorti Ewropeja rat l-istima illi ghamel il-Perit ex-parte tar-rikorrenti.

Illi dan il-kaz kien jikkoncerna dar illi kienet giet moghtija b'cens sabiex tintuza bhala residenza ordinarja mic-censwalisti. Il-Qorti, fil-kaz Amato Gauci v. Malta qalet hekk :

"As the Court has stated on a number of occasions, Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, *inter alia*, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule."

Illi l-Qorti kompliet tghid hekk :

"The Court notes that the application of legislation affecting landlords' rights over many years constitutes a continued interference for the purposes of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Hutten-Czapska v. Poland.* Thus, even considering that the interference in question, as in *Hutten-Czapska*, was the result of subsequent regulatory regimes limiting owners' rights, this does not mean that there was no interference. On the contrary, this means that both the applicant's parents and subsequently the applicant suffered interference with their property rights.

The Court has previously held that a restriction on an applicant's right to terminate a tenant's lease constitutes control of the use of property within the meaning of the second paragraph of Article 1."

Illi l-Qorti Ewropeja sussegwentement ezaminat jekk kienx hemm “a fair balance struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the search for such a fair balance being inherent in the whole of the Convention.”

Illi ghalhekk il-Qorti ezaminat jekk minhabba illi l-istat kien indahal, sid il-proprjeta kellux ibaghti “a disproportionate and excessive burden”.

Illi l-Qorti ezaminat ukoll l-ammont ta’ kera illi kien qieghed jircievi l-applikant u l-massimu ammont ta’ kera illi setgha jottjeni mill-Bord illi Jirregola l-Kera u qalet :

“In the present case, having regard to the low rental value which could be fixed by the Rent Regulation Board, the applicant's state of uncertainty as to whether he would ever recover his property, which has already been subject to this regime for nine years, the lack of procedural safeguards in the application of the law and the rise in the standard of living in Malta over the past decades, the Court finds that a disproportionate and excessive burden was imposed on the applicant. The latter was requested to bear most of the social and financial costs of supplying housing accommodation. It follows that the Maltese State failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant's right of property.

There has accordingly been a violation of Article 1 of Protocol No.1 to the Convention.”

Illi ghalhekk, kif ukoll ghar-ragunijiet kollha imsemmija mill-intimati, kemm fir-rikors tal-appell taghhom quddiem il-Qorti ta’ l-Appell, kif ukoll fin-nota ta’ sottomissjonijiet illi ghamlu f’dawn il-proceduri, il-Qorti qeghda taqta u tiddeciedi din ir-referenza kostituzzjonali billi tiddikjara illi gie lez id-dritt ta’ l-intimati kif protett fl-Artikolu 6 tal-Konvenzjoni Ewropeja u gie lez ukoll id-dritt ta’ l-intimati kif protett fl-Artikolu 1 ta’ l-Ewwel Protokoll tal-Konvenzjoni Ewropeja. Il-Qorti tordna lir-Registratur Qrati Civili u

Tribunali sabiex jghaddi kopja ta’ din is-sentenza lill-Qorti ta’ l-Appell; Bl-ispejjez kontra s-socjeta’ intimata Emmanuel Said Ltd.

< Sentenza Finali >

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