MALTA

QORTI TAL-MAGISTRATI (GHAWDEX) GURISDIZZJONI SUPERJURI

MAGISTRAT DR. ANTHONY ELLUL

Seduta tat-18 ta' Frar, 2011

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Anthony Camilleri f'ismu proprju u bhala mandatarju generali ta' ohtu assenti minn dawn il-gzejjer Carmen Xuereb, John Camilleri, Agnes Camilleri f'isimha proprju u f'isem binha assenti minn dawn il-gzejjer David Camilleri, Kevin Camilleri u Natalie mizzewwga lil Manuel Hili, Michael Camilleri

Vs

Marija mart Peter Paul Camilleri, l-istess Peter Paul Camilleri ghal kull interess li jista' jkollu, Lilian mart John Gatt u Mary Louise mart Raymond Muscat u b'digriet tat-12 ta' Jannar 2011 il-qorti awtorizzat it-trasfuzjoni tal-gudizzju f'isem il-konvenuti Marija Camilleri, Robert Camilleri, Mary Louise Muscat, Lilian Gatt, Stephen Camilleri, u Denis Camilleri wara l-mewt ta' Peter Paul Camilleri.

Permezz ta’ din il-kawza l-atturi qeghdin jitolbu l-porzjon rizervata mill-wirt ta’ Ursola Camilleri li mietet fil-21 ta’ April 1997. Ursola Camilleri xebba Vella kellha sitt itfal; Nazzareno Camilleri, John Camilleri, Carmen mizzewwga Xuereb, Anthony Camilleri, Michael Camilleri u Maria Camilleri. L-atturi huma wlied Ursola Camilleri, bl-eccezzjoni ta’ David, Kevin u Natalie mizzewwga Hili ahwa Camilleri li huma wlied il-mejjet Nazzarenu Camilleri[1] u Agnes Camilleri li kienet mart il-mejjet Nazzarenu Camilleri.

Permezz tal-hames eccezzjoni l-konvenuti qeghdin isostnu li l-hlas ta’ porzjon rizervata jilledi d-drittijiet fundamentali tal-werriet ghall-proprjeta kif protetti mill-Artikolu 37(1) tal-Kostituzzjoni ta’ Malta u l-Artikolu 1 tal-Ewwel Protokol tal-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem. Il-konvenuti jsostnu li dak li qeghdin jitolbu l-atturi *“.... jikkostitwixxi esproprju privat u mhux fl-interess pubbliku da parti tal-atturi tal-proprjeta tad-de cuius minghajr ma l-anqas jinghata l-ebda kumpens.”*. Ghalkemm ma saret l-ebda talba espressa ghal riferenza, il-qorti tqies li t-talba saret b’mod implicitu mehud in konsiderazzjoni tan-natura tal-hames (5) eccezzjoni.

F’dan l-istadju din il-qorti trid tara jekk it-talba hijiex frivola jew vessatorja.

Skond l-Artikolu 615(1) tal-Kodici Civili, qabel l-emendi li dahlu fis-sehh bl-Att XVIII tal-2004:-

“Il-legittima hija sehem mill-beni tal-mejjet, moghti mil-ligi lid-dixxendenti, u, fin-nuqqas ta’ dixxendenti, lill-axxendenti tal-mejjet.”.

Wara l-emenda introdotta bl-Att XVIII tal-2004 l-Artikolu 615(1) jipprovdi:-

“Is-sehem rizervat huwa l-jedd fuq il-beni tal-mejjet rizervat mil-ligi favur dixxendenti tal-mejjet u min mill-mara jew ir-ragel jibqa’ haj.”.

[1] Iben Ursola Camilleri.

Illum il-jedd hu kreditu u jitgawda biss mid-dixxendenti tal-mejjet u l-mara jew ir-ragel li jibqa' haj.

Hu accettat fil-gurisprudenza lokali li legittimarju mhu qatt werriet tat-testatur.

Maria Camilleri qeghda ssostni li l-Artikolu 615 tal-Kodici Civili jilledi d-drittijiet fundamentali kontemplati fl-Artikolu 37 tal-Kositutuzzjoni u Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni Ewropea ghad-Drittijiet tal-Bniedem, ghaliex l-ghoti tal-legittima jwassal ghal esproprju, mhux fl-interess pubbliku, ta' proprjeta li kienet tat-testatur minghajr ma jithallas kumpens.
Jibda biex jinghad li fir-rigward tal-ilment relatat mal-Artikolu 37 tal-Kostituzzjoni, li jittratta l-protezzjoni mill-privazzjoni tal-proprjeta bla kumpens, l-Artikolu 47(9) tal-Kostituzzjoni jipprovdi li *"Ebda haga fl-artikolu 37 ta' din il-Kostituzzjoni ma ghandha tolqot il-hdim ta' xi ligi fis-sehh minnufih qabel it-3 ta' Marzu 1962....."*. L-Artikolu 615 tal-Kodici Civili, kif kien qabel l-emendi li gew introdotti bl-Att XXIV tal-2004[2], kien it-test originali tal-Ordinanza VII ta' l-1868. Ghalhekk ma jistax jigi mpunjat il-validita ta' din id-disposizzjoni billi jigi nvokat l-Artikolu 37 tal-Kostituzzjoni. Dan apparti li l-qorti tqies li l-legittima tista' tigi inkluza bhala wahda mill-eccezzjonijiet kontemplati fl-Artikolu 37(2) [ara paragrafu *(g)*][3].

M'hemmx dubju li l-Artikolu 615 tal-Kodici Civili jillimita d-diskrezzjoni ta' testatur li jiddisponi minn hwejgu kif irid. L-ghanijiet principali ta' dan il-provvediment jidhru li huma:

a. Ma jkunx hemm preferenza eccessiva bejn l-ulied; u

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[2] Ghal dan il-kaz japplika l-provvediment kif kien originarjament peress li Ursola Camilleri mietet fl-1997.

[3] *"(2) Ebda haga f'dan l-artikolu ma ghandha tiftiehem li tolqot l-eghmil jew hdim ta' xi ligi safejn tipprovdi ghat-tehid ta' pussess jew akkwista ta' proprjeta – omissis*
(g) bhala l-ghoti jew l-amministrazzjoni ta' proprjeta ghan-nom u ghab-beneficcju tal-persuna intitolata ghall-interess beneficjarju fiha, proprjeta fi trust, proprjeta ta' l-ghadu jew il-proprjeta ta' persuni dikjarati falluti b'sentenza jew xort'ohra dikjarati falluti jew insolventi, ***persuni ta' mohh marid****, persuni mejta, jew ghaqdiet korporati jew mhux korporati fil-kors ta' stralc jew likwidazzjoni."*.

b. Il-proprjeta ma tohrogx kollha kemm hi barra mill-familja.

c. *"This restriction imposed by law.... is founded on the very functions of property;* ***property, in fact, serves amongst other purposes to enable the owner to fulfil his obligations****. It is true that, once man is a free being, he should be the one to see that his obligations are fulfilled and that the law, therefore, cannot interfere without destroying the very conception of the right of ownership as well as the freedom of the owner. But, on the other hand,* ***when the testator has persons who are closely related to him by consanguinity or affinity, his duty towards them is a positive and not a hypothetical one founded on social and domestic relationship****: this duty is, therefore, raised by law to a legal obligation. "Chiamare un'essere all'esistenza – says Franch in his 'Memorie della Accademia delle Scienze Morali" (Vol. VIII. p. 443) ' e' prendersi l'impegno di essere la sua providenza e di allontanare da lui ogni sofferenza ed ogni bisogno.". It is equally certain that a person is bound to provide for those to whom he owes his existence as well as for the spouse."* (*Notes on Succession Law*, Prof. Victor Caruana Galizia pagna 996).

Jidher li dan johloq bilanc bejn il-liberta li wiehed jiddisponi kif irid minn gidu mal-kuncett morali ta' solidarjeta u obbligu bejn il-membri ta' familja. Madankollu ma jidhirx li l-punt sollevat mill-konvenuti qatt kien il-meritu ta' kawza li giet deciza fil-qorti ta' Strasbourg.

Fis-sentenza li nghatat mill-Qorti Ewropea fil-kawza *Marckx v Belgium* deciza fit-13 ta' Gunju 1979 il-qorti osservat:

"Matters of intestate succession – and of disposition – between near relatives prove to be intimately connected with family life. ***Family life does not include only social, moral or cultural relations, for example in the sphere of children's education, it also comprises interests of a material kind, as is shown by, amongst other things, the obligations in respect of maintenance and the position occupied in the domestic legal systems of***

the majority of the Contracting States by the institution of the reserved portion of an estate (reserve hereditaire)*.....*

Nevertheless, it is not a requirement of Article 8 that a child should be entitled to some share in the estates of his parents or even of other near relatives*: in the matter of patrimonial rights also, Article 8 in principle leaves to the Contracting States the choice of the means calculated to allow everyone to lead a normal life (see paragraph 31 above) and such an entitlement is not indispensable in the pursuit of a normal family life”*.

M’hemmx dubju li dan il-kuncett ipoggi certu limitazzjonijiet dwar id-dritt tat-testatur li jiddeciedi fuq id-distribuzzjoni tal-gid tieghu ghal wara mewtu. Limitazzjonijiet li jezistu wkoll per ezempju fejn jidhlu donazzjonijiet li jaghmel *inter vivos*.

Hu fatt li l-kuncett ta’ porzjon rizervata insibuh f’diversi pajjizi tal-Ewropa ezempju Franza, Italja, Olanda, Spanja, Belgju, Germanja, Irlanda, Awstrija, Polonja, Cipru, Monaco, Lussemburgu Estonja, Repubblika Ceka, Grecja, Slovakia u ohrajn. Dan minkejja li m’hemmx uniformita dwar min hu intitolat ghal din il-porzjon, jekk ghandix tinghata bhala sehem fi proprjeta jew sempliciment bhala kreditur, u d-daqs tal-porzjon. Hu fatt li f’numru ta’ pajjizi, bhal per ezempju Spanja, jezisti dibattitu dwar jekk il-jedd ghall-porzjon rizervata ghandix tibqa’ tifforma parti mil-ligi. Fost l-argumenti kontra din is-sistema hemm li:-

(a) ma jaghmilx sens li testatur matul hajtu ghandu l-liberta assoluta li jiddisponi minn hwejgu filwaqt li l-ligi timponi restrizzjonijiet fuqu fir-rigward ta’ trasferiment *causa mortis*;
(b) filwaqt li d-dmir biex tmantni u l-porzjon rizervata huma bazati fuq principju komuni tad-**dmir biex tipprotegi l-familja**, tal-ewwel hu bazat fuq il-bzonn reali tal-beneficjarju filwaqt li l-porzjon rizervata hi sehem fissa li ma tikkunsidrax il-htigijiet ekonomici ta’ min hu intitolat ghaliha;

Fil-Germanja wkoll kien hemm dibattitu biex jigi ristrett il-kuncett tal-porzjon rizervata (*Pflichtteil*) u tinghata iktar liberta lit-testatur. Madankollu b'sentenza li nghatat mill-Qorti Kostituzzjonali fl-2005, gie dikjarat li taht il-ligi Germaniza, il-liberta tat-testatur li jiddisponi minn hwejgu kif irid m'ghandha l-ebda preferenza fuq il-principju tad-drittijiet ta' successjoni ta' dixxendenti.

Minn qari tal-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni jirrizultaw tlett regoli differenti:-

"a. First, the general rule that every person is entitled to the peaceful enjoyment of his possessions (paragraph 1, first sentence);

b. next, it contains the conditions governing deprivation of possessions (paragraph 1, second sentence); and

c. finally, it recognises that the Contracting states are entitled to control the use of property in accordance with the general interest (paragraph 2).

In the Handyside and Marckx judgments the European Court considered that the right to dispose of one's possessions by donation or testamentary disposition constitutes a traditional and fundamental aspect of the right of property protected by Article 1 of the First Proocol. However, the second paragraph of Article 1 sets the Contracting States up as sole judges of the "necessity" of laws to control use of property in accordance with the general interest."[4].

M'huwiex il-kompitu ta' din il-qorti sabiex tikkunsidra jekk il-legittima hijiex wahda mill-eccezzjonijiet fejn tehid ta' proprjeta' jista' jsir skond l-Artikolu 1 tal-Ewwel Protokoll tal-Kovenzjoni[5]. Hi l-qorti f'sede kostituzzjonali li ghandha

[4] *Legal Problems Relating To Parentage*, XXVIIth Colloquy on European Law, Foundation for International Studies, Valletta (Malta) 15-17 September 1997 li sar mill-Kusill tal-Ewropa (pagna 23).

[5] Artikolu 1 jipprovdi: "*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****.*

l-kompetenza sabiex taghmel l-apprezzament dwar jekk il-legittima tikkwalifikax bhala kontroll ta’ proprjeta, u fl-affermattiv jekk tali kontroll huwiex gustifikat fit-termini tal-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni[6].

F’dawn ic-cirkostanzi l-qorti m’hijiex tal-fehma li t-talba tal-konvenuti sabiex issir riferenza, skond l-Artikolu 4(3) tal-Kap. 319, hi frivola u vessatorja. Ghalhekk ser tordna riferenza quddiem il-Prim’Awla tal-Qorti Civili (Sede Kostituzzjonali) f’liema stadju jkun jista jigi msejjah fil-kawza l-Avukat Generali limitatament ghal finijiet tar-riferenza li ser tigi ordnata[7].

Ghaldaqstant il-qorti qeghda tordna r-riferenza lill-Prim’Awla tal-Qorti Civili (Sede Kostituzzjonali) sabiex taghti decizjoni dwar jekk l-Artikolu 615(1) tal-Kodici Civili kif kien jaqra qabel l-emendi introdotti bl-Att XVIII tal-2004, jilledix id-dritt fundamentali tat-testatur u tal-werrieta tieghu ghat-tgawdija tal-proprjeta kif garantit permezz tal-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni Ewropeja ghall-Protezzjoni tad-Drittijiet tal-Bniedem.

Spejjez ta’ dan il-provvediment jibqghu minghajr taxxa bejn il-partijiet.

< Provediment >

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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 contributinos or penalties.****”.*

[6] *"More recent case-law has placed greater emphasis on the need to secure a fair balance between the invdividual interest and the general interest, though it has been acknowledged that a wide margin of appreciation will be accorded to States.”* (*The European Convention on Human Rights*, Robin White u Clare Ovey (Oxford University Press 2010), pagna 502).

[7] Ara per ezempju decizjoni li nghatat mill-Prim’Awla tal-Qorti Civili (Sede Kostituzzjonali), presjeduta mill-Imhallef T. Mallia, fil-25 ta’ April 2008 fil-kaz **Janice Cassar vs Simon Deguara et**.