MALTA

QORTI CIVILI
PRIM' AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
JOSEPH ZAMMIT MC KEON

Seduta tat-28 ta' April, 2011

Rikors Numru. 32/2007

Domenic Mintoff (I.D. 371216M), Daniel Mintoff (I.D. 194422M), Joseph Mintoff (I.D. 288920M), Mary Grech (I.D. 39233M), Mary Anne Carbonaro (I.D. 249338M), Raymond Mintoff (I.D. 111326M) f`ismu propju u f`isem u ghan-nom ta` Melinda Frendo (I.D. 454236M) u Lorenza sive` Lola Doe (I.D. 57332M)

kontra

Direttur tal-Akkomodazzjoni Socjali, Avukat Generali u Leo Leyland

Il-Qorti :

Rat ir-rikors presentat fit-28 ta` Mejju 2007 li jaqra hekk –

Illi huma propjetarji tal-fond Assunta House, Nazzarene Street, Paola, li jgib in-numru 7 ;

Illi dan il-fond kien inghata mill-propjetarji b`cens ghal sbatax (17) –il sena fil-31 ta` Marzu 1962 lill-certu James Sauness, u dan b`kuntratt tal-istess data fl-atti tan-Nutar Dottor George Cassar, hawn esebit u mmarkat Dokument A ;

Illi din il-koncessjoni enfitewtika ghalqet fl-1979 meta in okkupazzjoni tal-fond kien hemm Charles Cassar li kien dahal wara li akkwista r-rimanenti perijodu tac-cens ;

Illi fit-terminazzjoni tal-istess cens Charles Cassar baqa` jokkupa l-fond bhala inkwilin bil-kera ta` sitta u tmenin lira maltija u hamsa u erbghin centezmu (Lm 86.45) u dan b`awment mir-rata tac-cens precedenti ta` hamsa u erbghin lira maltija (Lm 45) fis-sena ;

Illi fl-1986 il-fond tar-rikorrenti gie rekwisizzjonat mid-Direttur ghall-Akkomodazzjoni Socjali hawn intimat b`ordni ta` rekwizizzjoni numru 22104 u gie allokat lil Dolores Leyland li qabel kienet tirrisjedji fil-fond 67 Our Lady of Sorrows Street Senglea ; illi dina l-allokazzjoni ma saritx minhabba li s-sinjuri Leyland kienu `homeless` jew fil-periklu jew minhabba raguni ta` anzjanita` imma biss bhala `normal case` u dan kif jirrizulta mid-dokument hawn anness u mmarkat Dokument B ;

Illi f`Mejju 2002 d-Direttur irrikonoxxa lill-Leo Leyland bhala l-persuna li lilu kien qieghed jalloka l-fond u din l-approvazzjoni saret ufficjali f`Settembru 2003 ;

Illi r-rikorrenti kienu lmentaw minn dawn il-fatti u anke mill-fatt li l-kera baqa` ma gietx awmentata ghalkemm kien hemm decizjoni tal-Ombudsman fid-29 ta` Ottubru 2003 li l-ilmenti tal-propjetarji ma kienux inghataw mid-dipartiment konsiderazzjoni xierqa ;

Illi wara dan id-dipartiment koncernat baqa` ma ghamel xejn u ma huwa jhallas l-ebda kumpens ghat-tehid tal-fond in kwistjoni ;

Illi inoltre l-imsemmi Leo Leyland, li huwa guvni wahdu, issa qieghed jipprospetta anke li jaghmel xogholijiet fil-fond u jannetti kamra ohra mal-fond tal-istess sidien minghajr il-permess u kontra r-rieda ta` dawn is-sidien ;

Illi fi kwalsijasi kaz il-kumpens li qieghed joffri d-dipartiment mhux wiehed li jirrifletti l-valur tal-fond fuq is-suq illum billi dan il-fond fuq is-suq hieles jista` jgib kera ferm ahjar minn dik li kien qieghed joffri li jhallas id-dipartiment ; illi inoltre dan il-fond issa ilu rekwisizzjonat ghal ghoxrin (20) sena u l-esponenti qeghdin igorru piz sproporzjonat bhala effett ta` dan it-tehid ;

Illi ghalhekk qeghdin jigu vjolati d-drittijiet tal-esponenti ghat-tgawdija tal-propjeta` taghhom bl-ordni ta` rekwisizzjoni u tehid fuq imsemmi kif protetti bl-Ewwel Artikolu tal-Ewwel Protekoll tal-Konvenzjoni Ewropea ;

Ghaldaqstant l-esponenti jitolbu bir-rispett illi din l-Onorabbli Qorti joghgobha :

1. Tiddikjara li bir-rekwisizzjoni fuq imsemmija u t-tehid tal-fond taghhom numru 7, Assunta House, Nazzarene Street, Paola, qeghdin jigu vjolati d-drittijiet

fondamentali taghhom imsemmi kif protetti bl-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea ;

2. Tikkundanna ghalhekk lill-intimati jirrilaxxjaw liberu u vojt f`idejn ir-rikorrenti l-fond fuq imsemmi wara li tannulla l-ordni ta` rekwisizzjoni mahruga kontra taghhom ;

3. Tillikwida kull kumpens lilhom dovut b`rizultat tal-okkupazzjoni tal-fond fuq imsemmi u b`konsegwenza tal-vjolazzjoni tad-drittijiet fondamentali taghhom kif fuq inghad ;

4. Taghti kull ordni u rimedju iehor xieraq jew opportun biex tigi spurgata il-vjolazzjoni tad-drittijiet fondamentali taghhom hawn lamentata.

Bl-ispejjez.

Rat il-lista tax-xhieda ndikati mir-rikorrenti u l-elenku tad-dokumenti li kienu esebiti mar-rikors.

Rat ir-risposta tad-Direttur tal-Akkomodazzjoni Socjali u tal-Avukat Generali presentata fis-6 ta` Gunju 2007 li taqra hekk -

Illi fil-kawza odjerna l-esponenti qed jallegaw lezjoni tad-drittijiet fundamentali taghhom senjatament taht l-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea ghad-Drittijiet tal-Bniedem konsegwenza tar-rekwisizzjoni tal-fond in kwistjoni u qed jitolbu lil din l-Onorabbli Qorti sabiex wara li tannulla r-rekwisizzjoni msemmija tirrilaxxja l-fond liberu u vojt lir-rikorrenti u takkorda kumpens u rimedji ohra xierqa.

Illi l-esponenti jeccepixxu li l-allegazzjonijiet u l-pretensjonijiet vantati mir-rikorrenti huma kollha nfondati fil-fatt u fid-dritt ghar-ragunijiet segwenti –

Illi in linea preliminari in kwantu l-allegazzjoni ta` ksur ta` drittijiet fundamentali hija allaccjata ma` ordni ta` rekwizzjoni li saret fl-1986 u d-disposizzjonijiet tal-Kap.319 ma jghoddux ghaliha stante dak li hemm provdut fl-Artikolu 7 tal-istess Kap.

Illi in linea preliminari din l-Onorabbli Qorti ghandha tiddeklina milli tezercita l-kompetenza kostituzzjonali taghha a tenur tal-proviso tas-subinciz (2) tal-Artikolu 4 tal-Kap.319 stante li r-rikorrenti ma ezawrewx ir-rimedji ordinarji ghad-disposizzjoni taghhom.

Illi in linea preliminari in kwantu l-esponent Avukat Generali m`ghandux il-mansjoni li johorg ordnijiet ta` rekwizizzjoni u ma hemm ebda allegazzjoni direttament jew indirettament imputabbli lilu huwa mhuwiex il-legittimu kontradittur ghat-talbiet tar-rikorrenti u ghalhekk ghandu jigi liberat mill-osservanza tal-gudizzju.

Illi in linea preliminari ir-rikorrenti ghandhom igibu prova li huma l-propjetarji tal-fond in kwistjoni.

Illi subordinatament u bla pregudizzju ghas-suespost fil-mertu il-hrug tal-ordni ta` rekwizizzjoni u l-allokazzjoni tal-fond in kwistjoni lill-familja Leyland u sussegwentement lil binhom Leo huma gusti u skond il-ligi kif ser jigi pruvat ahjar waqt it-trattazzjoni tal-kawza.

Illi ma hemm ebda ksur tal-Ewwel Artikolu tal-Ewwel Protokol in kwantu l-Kap.158 tal-Ligijiet ta` Malta ghandu biss l-ghan li jikkontrolla l-uzu tal-propjeta`. Isegwi

ghalhekk li la f`kazijiet bhal dawn hemm biss limitazzjonijiet fuq it-tgawdija tal-istess propjeta`, u m`hemmx tehid, kull argument migjub mir-rikorrenti anke dwar kumpens huwa rrilevanti, specjalment meta qed nirreferu ghal djar ta` abitazzjoni li jiffurmaw parti mportantissima mill-qafas socjali.

Ghaldaqstant it-talbiet tar-rikorrenti ghandhom jigu michuda bl-ispejjez kontra taghhom.

Rat ir-risposta ta` l-intimat Leo Leyland prezentata fil-15 ta` Ottubru 2007 li taqra hekk -

1. Illi preliminarjament l-esponenti mhuwiex il-legittimu kontradittur u ghandu jigi liberat mill-osservanza tal-gudizzju ;

2. Illi preliminarjament ukoll ir-rikorrenti ma ezawewx ir-rimedji ordinarji taghhom fil-Qrati Civili u/jew Bordijiet kompetenti u ghalhekk it-talba kostituzzjonali taghhom ma hiex proponibbli skond il-ligi ;

3. Illi minghajr pregudizzju ghal fuq espost u fil-meritu l-ordni ta` rekwizizzjoni in kwistjoni u r-rikonoxximent ta` l-esponent fl-allokazzjoni tal-fond "Assunta House", Triq Nazzarenu, Paola, saru skond il-ligi u ma sar l-ebda ksur tad-drittijiet fondamentali tar-rikorrenti ;

4. Illi minghajr pregudizzju ghal fuq espost, it-talba tas-sidien biex jizgumbraw lill-esponenti mill-fond in kwistjoni u msemmi aktar `il fuq ma tistax tigi milqugha mill-Qorti stante li huwa pacifikament stabbilit li r-rikwizizzjoni ta` fond ghandha effett li tispossessa lis-sidien rekwizizzjonati minn mindu ssir u sakemm tibqa` ssehh ir-rekwizizzjoni il-pussess tal-fond u d-disponibilita` tieghu ma tibqax aktar

f`idejhom izda f`idejn l-amministrazzjoni li rrekwizzjonat il-fond, u konsegwentement ir-rikorrenti m`ghandhomx l-ezercizzju jew l-amministrazzjoni libera tal-jeddijiet dwar l-okkupazzjoni tal-fond u in sostanza mhumiex il-persuni li jistghu joqghod in gudizzju dwarhom ;

5. Illi minghajr pregudizzju ghal fuq espost, konsegwentement isegwi li l-esponenti ma jista` qatt jinstab responsabbli ghad-danni stante li l-okkupazzjoni tieghu tal-fond de quo hija skond il-htigijiet vigenti u r-rikorrenti m`ghandhomx l-ezercizzju jew l-amministrazzjoni libera tal-jeddijiet dwar l-okkupazzjoni tal-fond ;

6. Illi minghajr pregudizzju ghal fuq espost, l-offerta li r-rikorrenti ghamlu lill-intimat id-Direttur tal-Akkomodazzjoni Socjali fis-6 ta` Mejju 2003 li jakkomodaw lill-esponenti f`post izghar f`Mary House, Triq Nazzarenu, Paola, mhiex proponibbli stante li dan il-fond jinsab fi stat delapidat u mhuwiex abitabbli ;

7. Illi fi kwalunkwe kaz l-esponenti m`ghandu jbati l-ebda spejjez.

Salvi risposti ulterjuri.

Rat id-digriet ta` din il-Qorti diversament presjeduta moghti fl-udjenza tad-29 ta` Ottubru 2007 (fol 44) fejn ipprovdiet li kellhom jigu trattati l-ewwel tliet eccezzjonijiet preliminari tal-intimat Direttur tal-Akkomodazzjoni Socjali u l-ewwel zewg eccezzjonijiet preliminari tal-intimat Leo Leyland.

Rat in-nota ta` sottomissjonijiet tal-intimati Direttur tal-Akkomodazzjoni Socjali u Avukat Generali (fol 45 et

seq) dwar l-ewwel tliet eccezzjonijiet preliminari taghhom li kienetipprezentata fit-3 ta` Dicembru 2007.

Rat in-nota ta` sottomissjonijiet tal-intimat Leo Leyland (fol 53 et seq) dwar l-ewwel zewg eccezzjonijiet preliminari tieghu li kienet ipprezentata fit-12 ta` Dicembru 2007.

Rat in-nota ta` osservazzjonijiet tar-rikorrenti (fol 59 et seq) li kienet ipprezentata fis-7 ta` Mejju 2008.

Rat is-sentenza *in parte* moghtija minn din il-Qorti diversament presjeduta fit-28 ta` Marzu 2008 (fol 109) fejn, filwaqt li cahdet l-ewwel u t-tieni eccezzjonijiet tal-intimat Direttur tal-Akkomodazzjoni Socjali u Avukat Generali, laqghet it-tielet eccezzjoni taghhom fis-sens li kien dikjarat li l-Avukat Generali ma kienx il-legittimu kontradittur tar-rikorrenti, u fejn cahdet l-ewwel zewg eccezzjonijiet ta` l-intimat Leo Leyland. Il-kap tal-ispejjez baqa` rizervat ghad-decizjoni finali.

Rat li fl-istess sentenza kienet deciza wkoll ir-raba` eccezzjoni tal-intimati Direttur tal-Akkomodazzjoni Socjali u Avukat Generali meta kien affermat hekk -

L-intimat Direttur fin-nota tieghu jaghmel riferenza ghall-eccezzjoni ohra tieghu fis-sens li r-rikorrenti ghandhom igibu prova li huma propjetarji tal-fond in kwistjoni u jghid li r-rikorrenti ma gabux prova konkreta li huma effettivament il-propjetarji tal-fond in kwistjoni u li l-kuntratt li gie esebit dwar il-koncessjoni enfitewtika mhiex bizzejjed. Il-Qorti tirrileva li l-kawza ma kenitx thalliet ghas-sentenza fuq din l-eccezzjoni, izda biex jigu evitati sentenzi ohra, u billi l-partijiet ittrattaw dina l-eccezzjoni fin-noti taghhom il-Qorti tirrileva li r-rikorrenti pprezentaw diversi dokumenti (ara nota datata 7 ta` Frar 2008) minn fejn tirrizulta dina l-prova dwar it-titolu.

Rat id-dikjarazzjoni tar-rikorrenti fl-udjenza tal-21 ta` Mejju 2008 fejn ghalqu l-istadju tal-provi taghhom (fol 124).

Rat id-dikjarazzjoni ta` l-intimati Direttur ghall-Akkomodazzjoni Socjali u Avukat Generali fl-udjenza tad-19 ta` Novembru 2008 fejn ghalqu l-provi taghhom (fol 148).

Rat id-dikjarazzjoni ta` l-intimat Leo Leyland fl-udjenza tal-21 ta` Jannar 2009 fejn ghalaq l-istadju tal-provi tieghu (fol 149).

Rat id-digriet ta` din il-Qorti diversament presjeduta tal-25 ta` Frar 2009 (fol 151) fejn laqghet it-talba tal-intimati Direttur tal-Akkomodazzjoni Socjali u Avukat Generali sabiex, in vista tax-xhieda tal-intimat Leo Leyland fejn xehed li kien qed jokkupa ambjenti li ma kienux koperti bl-ordni ta` rekwizzjoni, jispjegaw ahjar liema partijiet tal-fond kienu koperti bl-ordni ta` rekwizzjoni u dan peress li din il-prova kienet importanti fid-determinazzjoni tad-danni.

Hadet konjizzjoni u qieset bir-reqqa l-provi tal-partijiet.

Rat in-nota ta` osservazzjonijiet tar-rikorrenti dwar il-mertu li kienet prezentata fit-3 ta` Settembru 2009 (fol 174-175).

Rat in-nota responsiva tal-intimat Direttur ta` l-Akkomodazzjoni Socjali dwar il-mertu tat-2 ta` Novembru 2009 (fol 178 et seq).

Rat in-nota responsiva tal-intimat Leo Leyland dwar il-mertu tat-2 ta` Novembru 2009 (fol 183 et seq).

Qieset is-sottomissjonijiet finali tal-partijiet waqt l-udjenza tas-7 ta` Dicembru 2009 (fol 187 et seq).

Rat id-digriet taghha moghti fl-udjenza tas-7 ta` Dicembru 2009 fejn halliet il-kawza ghas-sentenza *in difett ta` ostakolu.*

Rat ir-rikors tal-intimat Direttur Ghall-Akkomodazzjoni Socjali tal-15 ta` Settembru 2010 fejn, ghar-ragunijiet hemm indikati, talab is-sospensjoni tal-prolazzjoni tas-sentenza.

Rat il-verbal tal-udjenza tat-30 ta` Settembru 2010 fejn id-difensur tal-intimati Direttur Ghall-Akkomodazzjoni Socjali u Avukat Generali ddikjarat li l-fond de quo ma kienx ghadu rekwizizzjonat u li, safejn kienet taf hi, l-inkwilin ma kienx ghadu qieghed jokkupa l-fond de quo. Id-difensur tar-rikorrenti ddikjara li sa dakinhar ir-rikorrenti ma kienux nghataw ic-cwievet tal-fond de quo. Min-naha tieghu, id-difensur tal-intimat Leo Leyland iddikjara li l-intimat ma kienx qieghed jokkupa l-fond de quo mhux b`kapricc izda kellu johrog minnu sakemm jitlestew xogholijiet li kienu qeghdin isiru go fih. Iddikjara wkoll li l-intimat Leyland kien xtara post iehor.

Rat id-digriet taghha moghti fl-istess udjenza tat-30 ta` Settembru 2010 fejn halliet il-kawza ghas-sentenza ghal-lum.

Rat l-atti tal-kawza.

Ikkunsidrat :

In kwantu ghar-raba` eccezzjoni preliminari tal-intimati Direttur tal-Akkomodazzjoni Socjali u Avukat Generali li tittratta dwar il-prova tat-titolu tar-rikorrenti, *anke* din il-Qorti *kif presjeduta* ttenni li din il-prova saret kif trid il-ligi ghas-sodisfazzjon taghha u hija ben dokumentata. Fi kwalunkwe kaz, dik tar-rikorrenti mhix l-*actio rei vindicatoria* u ghalhekk mhix mehtiega l-prova diabolica ta` titolu originali. F`kawza ta` din ix-xorta, l-importanti huwa li r-rikorrenti juru interess guridiku. U l-interess li trid il-ligi jirrizulta ppruvat fil-kaz tal-lum tant li anke l-intimati stess jirrikonoxxu li ghandhom relazzjoni guridika mar-rikorrenti.

Ghalhekk din il-Qorti qeghda tichad ir-raba` eccezzjoni preliminari tal-intimati Direttur tal-Akkomodazzjoni Socjali u Avukat Generali.

Ikkunsidrat :

Il-mertu tal-kwistjoni bejn il-partijiet hija mpernjata fuq l-ewwel talba u cioe` jekk bir-rekwizizzjoni tal-fond 7, Assunta House, Nazzarene Street, Paola, kienx hemm ksur tad-drittijiet fundamentali tar-rikorrenti, bhala propjetarji tal-istess fond, kif huma protetti bl-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea. Il-bqija tat-talbiet tar-rikorrenti jiddependu fuq dak li din il-Qorti sejra tiddeciedi dwar l-ewwel talba.

In sintesi, il-provi tal-partijiet kienu dawn –

1) DOK A : Kopja ta` kuntratt tal-31 ta` Marzu 1962 fl-atti tan-Nutar George Cassar (fol 5 sa 9) fejn jirrizulta li Lorenzo Mintoff (missier ir-rikorrenti) ikkonceda lil James Souness b`titolu ta` subcens temporanju ghal

zmien 17-il sena b`effett mid-data tal-kuntratt id-dar bla numru jisimha "Casa Assunta", Triq in-Nazzarenu, Paola.

2) DOK B : Kopja ta` ittra (fol 10) datata 17 ta` Ottubru 1986 iffirmata minn rappresentant tas-Segretarju tad-Djar indirizzata lill-Onor. L. Brincat, Segretarju Parlamentari, fl-Ufficcju tal-Prim`Ministru, li tghid –

Your approval is requested so that Mrs. Leyland of 67 Our Lady of Sorrows Street Senglea be allocated premises at 5 Nazzarene Street Paola. This is a normal case. It-talba kienet approvata.

3) DOK C : Decizjoni tal-Ombudsman datata 29 ta` Ottubru 2003 (fol 11 sa 16) dwar ir-rekwizzjoni ta` Assunta House, 5 Triq in-Nazzarenu, Paola.

4) DOK D : Serje ta` dokumenti inkluz pjanti (fol 17 sa 20) fejn ir-rikorrenti oggezzjonaw mal-MEPA ghal bdil strutturali li kien propost fl-2007 fil-fond Casa Assunta, 7 Triq in-Nazzarenu, Paola.

5) DOK A : Rapport b`deskrizzjoni, valutazzjoni ghall-fini ta` kumpens u konsiderazzjonijiet ohra dwar il-fond 7, Assunta House, Nazarene Street, Paola, datat 16 ta` Gunju 2007 (fol 36 sa 39) iffirmat mill-Perit Dr. Edwin Mintoff u minnu debitament konfermat bil-gurament.

Fost hwejjeg ohra, ir-rapport ighid hekk –

Taking into account the size, the state and location of the property, its planning designation and planning history, its amenities, finishes and services and other factors which bear an influence on the value of the property, the undersigned architect and civil engineer is hereby certifying the fair current market value of the

premises No.7, Assunta House, Nazzarenu Street, Pawla, at sixty-five thousand Malta Liri (Lm 65,000).

The estimated rental value of the premises amounts to two hundred and fifty Maltese Liri (Lm 250) monthly.

6) DOK A : Denunzja tas-successjoni ta` Concetta mart Lorenzo Mintoff li mietet fil-15 ta` Lulju 1967 u ta` l-istess Lorenzo Mintoff li miet fit-13 ta` Mejju 1979.

7) DOK B : Testment ta` Lorenzo Mintoff tat-12 ta` Jannar 1968 fl-atti tan-Nutar Dottor Joseph Felix Abela, u testment *unica charta* ta` Lorenzo u Concetta konjugi Mintoff tat-2 ta` Marzu 1940 fl-atti tan-Nutar Angelo Cachia.

8) Ghalkemm fin-nota tar-rikorrenti a fol 63, jinghad li kien esebit bhala DOK C – att ta` akkwist, dan l-att fil-fatt ma kienx esebit. Id-dokumenti li kienu esebiti man-nota jinbdew minn fol 64 sa 104.

9) DOK D : Certifikat (bla data) tan-Nutar Dottor Francis Micallef fejn jinghad li l-fond 7, Assunta House, Nazarene Street, Paola, huwa propjeta` indiviza tal-familja Mintoff li akkwistatha b`wirt minghand il-genituri taghha Lorenzo u Concetta konjugi Mintoff. L-istess Nutar iddikjara li kien fil-process li jippubblika l-att relattiv ta` divizjoni.

10) Ix-xhieda tal-Perit Dr. Edwin Mintoff (fol 139 sa 141).

11) Ix-xhieda ta` Carmen Azzopardi bhala rapprezentant tad-Dipartiment tad-Djar (fol 142 sa 144) li

esebiet “case summary” dwar 7 gia` 5, Nazarene Street, Paola (fol 128 u 138).

12) Ix-xhieda ta` Ivor Robinich bhala rapprezentant tal-MEPA (fol 145) li esebixxa “full development permission” datat 3 ta` Jannar 2007 ghal “internal alterations and changes to facade replacement roof” fil-fond Casa Assunta, 7 Triq Nazzrenu, Paola (fol 129 sa137).

13) Ix-xhieda ta` l-intimat Leo Leyland (fol 149A sa 149C).

14) DOK DAS1 : l-affidavit ta` l-fuq imsemmija Carmen Azzopardi (fol 153 u 154) u tliet dokumenti markati minn DOK CA1A sa CA1C (fol 155 sa 160).

15) DOK X : Kopja tax-xhieda tal-intimat Leo Leyland fil-proceduri kriminali fl-ismijiet “Il-Pulizija vs Leo Leyland” (fol 165 sa 170)

16) DOK A : Kopja tal-komparixxi fil-kawza “Il-Pulizija vs Leo Leyland”. Din kienet esebita mill-intimat Leo Leyland flimkien man-nota responsiva tieghu.

17) DOK HA1 : Kopja ta` notifika ta` derekwizizzjoni fir-rigward tal-fond de quo datata 11 ta` Frar 2010.

18) DOK HA2 : Kopja ta` cheque ghal €4507.30 mahrug f`isem ir-rikorrenti Mary Grech ghar-rikorrenti.

Ikkunsidrat :

Dan huwa l-kwadru tal-fatti li johrog minn dawn il-provi.

Permezz ta` kuntratt tal-31 ta` Marzu 1962 fl-atti tan-Nutar George Cassar (fol 5 sa 9), Lorenzo Mintoff (missier ir-rikorrenti) ikkonceda lil James Souness b`titolu ta` subcens temporanju ghal zmien 17-il sena b`effett mid-data tal-kuntratt id-dar bla numru jisimha "Casa Assunta", Triq in-Nazzarenu, Paola. Il-canone patwit kien ta` Lm 45 fis-sena. Il-koncessjoni ghalqet fil-31 ta` Marzu 1979.

Qabel ma ghalaq il-perijodu originali patwit, is-subcens kien trasferit a favur ta` Charles Cassar u fil-31 ta` Marzu 1979 kien dan Charles Cassar li kien qieghed jokkupa l-fond.

Wara li ghalaq is-subcens, Charles Cassar baqa` jokkupa l-fond b`titolu ta` kera. Skond ir-rikorrenti, bdiet tithallas kera ta` Lm 86.45c fis-sena.

Dan Charles Cassar inghata post tal-Gvern u l-fond in kwistjoni kien rekwizizzjonat fid-9 ta` April 1986 permezz ta` ordni ta` rekwizizzjoni Nru. RO 22104. Ic-cwievet tal-fond kienu depositati d-Dipartiment tad-Djar fid-29 ta` Settembru 1986 mill-istess Charles Cassar li kien qieghed jokkupa l-fond dak iz-zmien.

Id-Dipartiment alloka l-fond lil Dolores Leyland ghal skop ta` abitazzjoni fit-30 ta` Ottubru 1986. Id-Dipartiment idderiega lill-inkwilina sabiex thallas kera ta` Lm 86 fis-sena lis-sidien. Dawn ma accettawx il-kera u ghalhekk bdiet tigi depositata fid-Dipartiment.

Intant is-sidien avzaw lid-Dipartiment li l-inkwilina kienet qeghda taghmel uzu minn kamra li kienet taghmel

minn fond iehor u cioe` Mary House, Nazarene Street, Paola.

Wara l-mewt tal-inkwilini fl-2001, binhom l-intimat Leo Leyland ghamel talba lid-Dipartiment fit-30 ta` Jannar 2002 sabiex dan jirrikonoxxi lilu bhala l-inkwilin tal-fond. Fl-27 ta` Marzu 2002 ir-rikorrenti oggezzjonaw ghall-allokazzjoni tad-dar lill-intimat Leyland. It-talba tieghu kienet accettata mid-Dipartiment fis-16 ta` Settembru 2003. Is-sidien ma accettawx kera minghand l-intimat Leyland u lanqas tawh rikonoxximent bhala inkwilin. Leyland beda jiddeposita kera ta` Lm 86 fis-sena fid-Dipartiment u hekk baqa` jaghmel.

Il-quantum tal-kera ta` Lm 86 fis-sena baqa` l-istess.

Fil-11 ta` Frar 2010, l-Awtorita` tad-Djar avzat lir-rikorrenti Mary Grech f`isimha propju u ghan-nom tar-rikorrenti l-ohra li l-fond de quo kien qed jigi rekwizizzjonat.

Fit-8 ta` April 2010, inhareg cheque a favur tar-rikorrenti fl-ammont ta` €4507.30 fir-rigward tal-fond de quo, liema cheque kien rifjutat mir-rikorrenti, ghax ma kienux lesti jaccettawh bhala pagament ghas-saldu, izda biss bhala akkont ta` dak li kienu qeghdin jippretendu bhala kumpens minghand il-Gvern.

Ikkunsidrat :

F`din il-kawza, ir-rikorrenti mhumiex jallegaw ksur tad-drittijiet fundamentali taghhom kif protetti mill-Kostituzzjoni ta` Malta izda jsostnu li kien hemm ksur tal-jeddijiet taghhom skond l-Ewwel Artikolu ta` l-Ewwel Protokoll tal-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem (“Il-Konvenjoni”).

L-Ewwel Artikolu ta` l-Ewwel Protokoll tal-Konvenzjoni jaqra hekk –

Kull persuna naturali jew persuna morali ghandha dritt ghat-tgawdija pacifika tal-possedimenti taghha. Hadd ma ghandu jigi privat mill-possedimenti tieghu hlief fl-interess pubbliku u bla hsara tal-kundizzjonijiet provduti bil-ligi u bil-principji generali tal-ligi internazzjonali.

Izda d-disposizzjonijiet ta` qabel ma ghandhom b`ebda mod inaqqsu d-dritt ta` Stat li jwettaq dawk il-ligijiet li jidhrulu xierqa biex jikkontrolla l-uzu ta` proprjetà skond l-interess generali jew biex jizgura l-hlas ta` taxxi jew kontribuzzjonijiet ohra jew pieni.

Bl-Ingliz –

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.

Skond il-gurisprudenza ormai konsolidata tal-Qorti ta` Strasbourg, din id-disposizzjoni tikkomprendi tliet regoli distinti –

... 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.

(ara - ***James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37, *Beyeler v. Italy* [GC], no. 33202/96, § 98, ECHR 2000-I, and *Saliba v. Malta*, no. 4251/02, § 31, 8 November 2005).**

Ikkunsidrat :

Meta r-rikorrenti pprezentaw din il-kawza, l-ordni ta` rekwizizzjoni in kwistjoni u cioe` dik bin-Nru.RO22104 kienet ghadha fis-sehh. Kif rajna, dik l-ordni tnehhiet b`effett mill-11 ta` Frar 2010 u cioe` fil-mori tal-kawza.

Nonostante d-*derequisition order* din il-Qorti tghid li fl-isfond tal-kwistjoni bejn il-partijiet hija obbligata tqis xorta wahda c-cirkostanzi li wasslu ghall-hrug ta` l-ordni sabiex tghid jekk *a tempo vergine* bil-hrug tal-ordni bhala tali kienx hemm ksur inkella le tal-jeddijiet fondamentali tar-rikorrenti kif tutelati mill-Konvenzjoni.

Skond l-Art.2 tal-Kap.125 tal-Ligijiet ta` Malta, “rekwizizzjoni” tfisser *it-tehid ta` pussess ta` bini jew il-htiega li l-bini jithalla f`idejn l-awtorità li tohrog ir-rekwizizzjonijiet*.

Fiz-zmien meta harget l-ordni ta` rekwizizzjoni fil-kaz tal-lum, l-Art.3(1) tal-Kap.125 kien jaqra hekk –

The Secretary, if it appears to him to be necessary or expedient to do so in the public interest or for providing living accommodation to persons or for ensuring a fair distribution of living accommodation, may requisition any building, and may give such directions as appear to him to be necessary or expedient in order that the requisition may be put into effect or complied with.

Fil-Kap.125, in linea ta` principju, l-intiza wara l-hrug ta` ordni ta` rekwizizzjoni ma kienx li l-Istat jiehu propjeta` jew il-pussess taghha izda li jadotta mizura fejn ikun hemm kontroll ta` l-uzu tal-proprjeta` fil-forma ta` detenzjoni temporanja ta` dik il-proprjeta` fl-interess pubbliku bl-iskop socjali li jittaffa l-problema ta` nuqqas ta` akkomodazzjoni u jigi zgurat kemm jista` jkun ir-rispett fis-socjeta` lejn id-dritt ghall-intimita` tad-dar, liema dritt huwa relatat fil-qrib u dipendenti mid-disponibilita` ta` djar biex l-individwi jkollhom fejn jghixu.

Wara l-emendi li saru bl-Att XXXVII tal-1989, l-Art.3(1) tal-Kap.125 gie jaqra hekk –

Jekk id-Direttur ghall-Akkomodazzjoni Socjali jidhirlu li hu mehtieg jew xieraq li jaghmel hekk fl-interess pubbliku, izda biss bil-ghan biex jipprovdi lin-nies lok fejn wiehed jista` jghammar jew biex jizgura t-tqassim xieraq ta` dawk il-postijiet fejn wiehed jista` jghammar, huwa jista` johrog rekwizizzjoni ghal kull bini, u jista`, jaghti struzzjonijiet li jidhirlu li huma mehtiega jew xierqa sabiex ir-rekwizizzjoni tista` jkollha effett u tkun tista` ssehh."

F`din id-disposizzjoni, hemm specifikati l-iskop u l-parametri li ghandhom jidderiegu lid-Direttur ta` l-Akkomodazzjoni Socjali meta jigi biex johrog ordni ta` rekwizizzjoni. Ir-rekwizizzjoni ghandha ssir dejjem fl-interess pubbliku. Izda mhux biss. Il-legislatur illum

jikkwalifika dan l-interess u jispecifika illi rekwizizzjoni ghandha ssir biss bil-ghan li tipprovdi lin-nies lok fejn wiehed jista` jghammar jew bil-ghan li jigi zgurat t-tqassim xieraq ta` dawk il-postijiet fejn wiehed jista` jghammar.

L-Art.3(1) tal-Kap.125 kien trattat fis-sentenza ta` din il-Qorti (PA.K/PS) tat-3 ta` Ottubru 2003 fil-kawza "**Edwards pro et noe vs Direttur ta` l-Akkomodazzjoni Socjali**" fejn inghad hekk -

"Huwa ragjonevolment car li l-ligi qeghda hawn tikkonsidra tliet ipotesijiet indipendenti (i) dik ta` l-interess pubbliku ; (ii) dik tal-provizjoni ta` djar ; u (iii) dik tat-tqassim ekwu tad-djar. Logikament pero` "mhux bizzejjed illi r-rekwizizzjoni tkun saret inter alia, fl-interess pubbliku, ghaliex ladarba dak il-`public interest` gie limitat bil-kliem `for providing living accomodation`, il-portata tr-rekwizizzjoni giet limitata ghall-iskop ta` l-abitazzjoni, u mhux ukoll ghal skopijiet ohra ta` interess pubbliku"

Skond l-Art.8(1) tal-Kap.125, *meta xi persuni jkunu gew ipprovduti fejn ighammru f `bini mizmum permezz ta` rekwizizzjoni, id-Direttur jista` f `kull zmien, b`ittra ufficjali, jordna lir-rekwizizzjonat li jirrikonoxxi bhala kerrejja lill-persuni li jkunu hekk ipprovduti jew bhala sullokaturi tal-bini, skond il-kaz.*

Fil-kaz tal-lum, ma hemmx prova li d-Direttur ghall-Akkomodazzjoni Socjali pprezenta din l-ittra ufficjali kontra s-sidien u ghaldaqstant is-sidien ma kellhom l-ebda obbligu jmexxu bil-procedura sabiex ma joqghodux ghal dik it-talba kif jipprovdu l-Art.8(2) u (3) tal-Kap.125.

Is-sid ta` fond rekwizizzjonat ghandu jedd ghal kumpens skond il-kriterji li huma stabbiliti fl-Art.11(1) tal-Kap.125.

Bis-sahha tal-ordni ta` rekwizizzjoni, is-sid jigi dispossessat mill-fond, b`mod illi, minn mindu ssir u sakemm tibqa` ssehh ir-rekwizizzjoni, il-pussess tal-fond u d-disponibilita` ta` dak il-pussess ma hux aktar f`idejn is-sid izda f`idejn l-awtorita` rekwizizzjonanti (ara **<u>“Cassar v. Zammit”</u>** - Qorti tal-Appell - 29 ta` Mejju, 1959).

Ikkunsidrat :

L-interess pubbliku hu marbut mal-finalita` ahharija li ghaliha l-proprjeta` tkun sejra tintuza. Pero` anke jekk ikun hekk, id-drittijiet ghandhom jigu kawtelati dejjem.

Fis-sentenza taghha tat-30 ta` Mejju 2003 fil-kawza “**<u>Abdilla v. Onor. Segretarju Parlamentari ghall-Ambjent u Artijiet et</u>**”, il-Qorti Kostituzzjonali ccitat mis-sentenza taghha [diversament komposta] tat-30 ta` Novembru, 2001 fil-kawza fl-ismijiet “**<u>Cutajar noe v. Il-Kummissarju ta` l-Art et</u>**” fejn kienet inghad hekk :

Il-Qorti Ewropea fir-rigward tas-sinjifikat tat-terminu “the public interest” fl-ewwel artikolu ta` l-ewwel Protokoll tal- Konvenzjoni, irriteniet illi “a deprivation of property effected for no reason other than to confer a private benefit on a private party cannot be “in the public interest”. Nonetheless, the compulsory transfer of property from one individual to another may, “depending upon the circumstances, constitute a legitimate aim for promoting the public interest”. Din l-enuncjazzjoni ta` principju fil-kawza James and others (1986) giet ulterjorment elaborata fl-istess gudizzju hekk: “The taking of property effected in pursuance of legitimate social, economic or other policies may be “in the public interest” even if the community at large has no direct use or enjoyment of the property taken”.

Fil-kaz tal-lum, din il-Qorti tghid li l-hrug ta` l-ordni ta` rekwizizzjoni de qua, bhala tali, kienet legali u legittima fil-kuntest tal-Ewwel Artikolu tal-Ewwel Protocol ghaliex inharget fl-interess pubbliku sabiex tipprovdi abitazzjoni lill-familja Leyland li dak iz-zmien kienet tehtieg fejn toqghod.

Fis-sentenza “**<u>Ghigo vs Malta</u>**”, inghad hekk –

In the present case, the Court can accept the Government`s argument that the requisition and the rent control were aimed at ensuring the just distribution and use of housing resources in a country where land available for construction could not meet the demand. These measures, implemented with a view to securing the social protection of tenants (see, mutatis mutandis, Hutten-Czapska, cited above, § 178), were also aimed at preventing homelessness, as well as at protecting the dignity of poorly-off tenants.

Dak li ghad irid jigi accertat huwa jekk fil-kaz tal-lum kienx rispettat il-kriterju tal-*fair balance* li huwa vitali ghall-fini ta` l-Ewwel Artikolu tal-Ewwel Protocol.

Ikkunsidrat :

Fis-sentenza tal-Qorti ta` Strasbourg tas-26 ta` Settembru 2006 fil-kawza “**<u>Fleri Soler et v. Malta</u>**”, li wkoll kien kaz dwar il-hrug ta` ordni ta` rekwizizzjoni, wara li kien stabbilit li l-ordni kienet inharget fl-interess pubbliku, inghad hekk -

68. Not only must an interference with the right of property pursue, on the facts as well as in principle, a “legitimate aim” in the “general interest”, but there must also be a reasonable relation of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including measures

designed to control the use of the individual`s property. That requirement is expressed by the notion of a "fair balance" that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights.

F`dak il-kaz, il-Qorti kompliet tespandi fuq il-fatt li l-kera li kien intitolat ghaliha s-sid tant kienet baxxa, li ma kienx jirrizulta li sehh "*a fair balance*" bejn l-interessi tal-pubbliku u tal-privat.

Fl-ahhar parti tas-sentenza taghha, il-Qorti affermat hekk -

The prolongation of the requisition over a period of decades, coupled with the low level of rent and the absence of sufficient procedural safeguards has, after a certain lapse of time, upset the reasonable relation of proportionality which should subsist between the means employed and the aim sought to be achieved.

Fis-sentenza tas-26 ta` Settembru 2006 fil-kawza "**<u>Ghigo vs Malta</u>**", il-Qorti ta` Strasbourg ghamlet din l-osservazzjoni –

61. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article the Court must therefore ascertain whether by reason of the State`s interference the person concerned had to bear a disproportionate and excessive burden (see James and Others, cited above, p. 27, § 50; Mellacher and Others v. Austria, judgment of 19 December 1989, Series A no. 169, p. 34, § 48; Spadea and Scalabrino v. Italy, judgment of 28 September 1995, Series A no. 315-B, p. 26, § 33).

62. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall

examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. In cases concerning the operation of wide-ranging housing legislation, that assessment may involve not only the conditions for reducing the rent received by individual landlords and the extent of the State`s interference with freedom of contract and contractual relations in the lease market but also the existence of procedural safeguards ensuring that the operation of the system and its impact on a landlord`s property rights are neither arbitrary nor unforeseeable. Uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State`s conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (see Immobiliare Saffi, cited above, § 54, and Broniowski, cited above, § 151).

Mela l-*fair balance* illi jesigi l-Ewwel Artikolu ta` l-Ewwel Protokoll tal-Konvenzjoni ghandu qabel xejn jigi verifikat permezz ta` ezami komparattiv bejn il-htigijiet ta` individwu u l-htigijiet tal-kollettivita`. Hekk kif tkun determinata l-htiega tat-tehid tal-proprjeta` fl-interess tal-kollettivita`, hemm irid ikun assikurat li l-hlas ta` kumpens xieraq.

Huwa rikonoxxjut li l-Istat ghandu d-dritt u s-setgha li jirregola l-uzu tal-propjeta` fl-interess generali. F`dan l-esercizzju l-Istat ghandu jgawdi margini wiesgha ta` diskrezzjoni, ghad illi l-esercizzju ta` diskrezzjoni ghandu jibqa` dejjem f`limiti li jassiguraw li bejn il-mezzi adoperati u l-iskop persegwit ikun hemm proporzjon fis-sens li min ikun sofra l-ingerenza jew privazzjoni tal-propjeta` tieghu ma jkunx assoggettat ghal sagrificcju partikolari.

Anke fil-kaz tal-lum din il-Qorti trid tassikura li billi ordni ta` rekwizizzjoni timponi implikazzjonijiet legali fuq is-sid in relazzjoni mal-persuna li lilu jkun gie allokat il-fond de quo, is-sid ma jinkorrix *a disproportionate and excessive burden.*

Fil-kaz tal-lum, din il-Qorti ssib li r-rikorrenti garrbu dan id- *disproportionate and excessive burden.*

Irrizulta minn naha wahda li r-rikorrenti kellhom jissokkombu kontra r-rieda taghhom ghal ordni ta` rekwizzjoni ta` fond propjeta` taghhom, u fl-istess waqt kien pretiz minnhom li jithallsu l-ammont ta` kera li kien jithallas fiz-zmien li harget l-ordni ta` rekwizizzjoni u dak l-ammont jibqa` nvarjat ghal erba` u ghoxrin (24) sena shah u cioe` sal-2010 meta harget d-*derequisition order.*

Fil-kaz tal-lum, ir-rikorrenti garrbu *a disproportionate and excessive burden* ghaliex kienu mistennija *to bear most of the social and financial costs of supplying housing accommodation* bl-Istat Malti jonqos milli jfittex u jsib *the requisite fair balance between the general interests of the community and the protection of the applicant`s right of property*.

Fis-sentenza tas-26 ta` Settembru 2006 fil-kawza "**Ghigo vs Malta**", il-Qorti ta` Strasbourg (op. cit.) kompliet tghid hekk –

67. As the Court has already stated on many occasions, in spheres such as housing of the population, States necessarily enjoy a wide margin of appreciation not only in regard to the existence of the problem of general concern warranting measures for control of individual property but also to the choice of the measures and their implementation. The State control over levels of rent is one such measure and its application may often cause significant reductions in the amount of rent chargeable

(see, in particular, Mellacher and Others, cited above, § 45).

68. Moreover, in situations where the operation of the rent-control legislation involves wide-reaching consequences for numerous individuals and has economic and social consequences for the country as a whole, the authorities must have considerable discretion not only in choosing the form and deciding on the extent of control over the use of property but also in deciding on the appropriate timing for the enforcement of the relevant laws. Nevertheless, that discretion, however considerable, is not unlimited and its exercise cannot entail consequences at variance with the Convention standards (see, mutatis mutandis, Hutten-Czapska, cited above, § 223).

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.

Hekk issostni din il-Qorti ukoll fil-kaz tal-lum u cioe` kien hemm ksur tal-jeddijiet tar-rikorrenti kif tutelati bl-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni. <u>Ghalhekk qeghda tilqa` l-ewwel talba tar-rikorrenti</u>.

Ikkunsidrat :

Accertat li kien hemm ksur tal-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni, din il-Qorti sejra tqis x`ghamla ta` *just satisfaction* ghandha taghti lir-rikorrenti skond l-Art.41 tal-Konvenzjoni.

Fit-tieni talba, ir-rikorrenti qeghdin jitolbu r-revoka tal-ordni ta` rekwizizzjoni u r-rilaxx tal-fond favur taghhom.

Una volta rrizulta li fil-*mori* tal-kawza u precizament fil-11 ta` Frar 2010 harget *derequisition order* fir-rigward tal-fond de quo din il-Qorti sejra tastjeni milli tiehu konjizzjoni ulterjuri tat-tieni talba tar-rikorrenti limitatament ghar-revoka tal-ordni ta` rekwizizzjoni.

In kwantu ghat-talba ghar-rilaxx tal-fond kif dedotta wkoll fit-tieni talba, din il-Qorti tghid li t-talba ghandha tkun akkolta stante li bil-hrug tad-*derequisition order* intemm il-pussess tad-Direttur tal-Akkomodazzjoni Socjali tal-fond de quo u dan b`effett mill-11 ta` Frar 2010. Ma rrizultax li r-rikorrenti qatt taw rikonoxximent lill-intimat Leo Leyland. Ghalhekk l-istess intimat ma jista` jivvanta l-ebda titolu ghall-fond fil-konfront tar-rikorrenti. *Di piu`* illum l-istess intimat mhux jabita fil-fond de quo, ghar-ragunijiet illi fisser id-difensur tieghu fl-udjenza tat-30 ta` Settembru 2010, u akkwista fond iehor li fih jista` eventwalment jabita. Mela bla dubbju r-rilaxx tal-fond jibqa` r-rimedju ewlieni li ghandhom igawdu minnu r-rikorrenti.

Ghar-rigward tat-tielet talba, din il-Qorti tghid li r-rikorrenti ghandhom dritt ghal kumpens.

Mill-assjem tal-provi, irrizulta li fid-9 ta` April 1986, u cioe` id-data meta l-fond kien rekwizizzjonat, Charles Cassar (li kien l-ahhar okkupant tal-fond) kien qieghed ihallas kera

ta` Lm 86.45c. Huwa evidenti li dik il-figura giet kalkolata abbazi tad-disposizzjonijiet tal-Kap.158 tal-Ligijiet ta` Malta fis-sens li Charles Cassar kien l-ahhar utilista tal-fond u pprevalixxa ruhu mid-dritt li jikkonverti t-titolu ghal kera f`gheluq il-koncessjoni enfitewtika. Fi kwalunkwe kaz, il-figura ta` kera li d-Dipartiment tad-Djar stabilixxa li kellhom ihallsu l-familja Leyland kien ta` Lm 86 fis-sena, figura li baqghet invarjata u li qatt ma giet accettata mis-sidien.

Fix-xhieda tieghu l-Perit Edwin Mintoff (fol 139) stima r-*rental value* tal-fond fis-suq fl-ammont ta` Lm 250 fix-xahar. Fl-istima tieghu pero` jirrizulta li huwa nkluda kamra ohra li ma kenitx parti mill-fond de quo meta saret ir-rekwizizzjoni izda kienet taghmel parti minn fond adjacenti u li ghal xi raguni giet annessa mal-fond de quo. Mela certament ghall-fini tal-kumpens ghar-rekwizizzjoni, dik il-kamra deskritta fil-pjanti bhala *sitting room* ma tistax tittiehed in konsiderazzjoni.

Issa huwa minnu li l-istima tal-Perit Edwin Mintoff, ghajr ghal dan l-akkorgiment, ma kenitx kontradetta mill-intimati b`xi prova teknika ohra. U lanqas ma saret talba lill-Qorti sabiex tahtar perit tekniku sabiex jistabilixxi l-*market rental value* tal-fond de quo. Fl-istess waqt din il-Qorti mhijiex marbuta b`dik l-istima *multo magis* fi proceduri ta` indole kostituzzjonali fejn il-Qorti ghandha diskrezzjoni wiesgha fir-rimedji li tista` taghti.

Ghall-fini tat-<u>tielet talba</u>, din il-Qorti tghid li jkun gust u ekwu jekk il-likwidazzjoni tal-kumpens issir bil-mod segwenti. Li kieku ma` saritx l-ordni ta` rekwizizzjoni, il-hlas tal-kera bejn is-sidien u Charles Cassar (l-ahhar okkupant tal-fond qabel ir-rekwizizzjoni) kien jibqa` regolat bid-disposizzjonijiet tal-Kap.158. Li jfisser li kull hmistax-il sena, kien ikun hemm awment tal-kera skond l-indici tal-inflazzjoni mhux aktar mid-doppju. Ghall-fini ta` dan l-ezercizzju, is-snin rilevanti huma l-1979, l-1994, u l-2009. Mhux kontestat li s-sidien kienu jithallsu kera ta` Lm

86.45c fis-sena sad-9 ta` April 1986. U kellhom jedd jibqghu jithallsu dik il-kera li kieku ma kienx hemm ir-rekwizizzjoni sal-31 ta` Marzu 1994 meta l-kera b`effett tad-disposizzjonijiet tal-Kap.158 kienet titla` ghal Lm 141.09c fis-sena. U kien ikollhom jedd ghal awment iehor fil-31 ta` Marzu 2009 skond l-istess Kap.158 bil-kera tigi Lm 207.39c fis-sena. Din kienet tkun il-kera attwali.

Abbazi ta` dan il-metodu, il-kumpens gust u ekwu tar-rikorrenti ghandu jkun ta` Lm3234.54c (u cioe` €7534.45 arrotondat ghal **€7535**) diviz kif gej –

1) Ghaz-zmien ta` bejn id-9 ta` April 1986 u l-31 ta` Marzu 1994 : Lm 86.45c fis-sena. Il-figura totali tigi Lm687.51c.

2) Ghaz-zmien ta` bejn il-31 ta` Marzu 1994 u l-31 ta` Marzu 2009 : Lm 141.09c fis-sena. Il-figura totali tigi Lm2116.35c.

3) Ghaz-zmien ta` bejn il-31 ta` Marzu 2009 sal-lum : Lm207.39c fis-sena. Il-figura totali tigi Lm430.68c.

Dwar il-"kumpens xieraq" l-awturi Harris, O`Boyle & Warbrick fil-ktieb *"Law of the European Convention on Human Rights"* (Oxford University Press – Second Edition – 2009) - Pg.680 – 686 ighidu hekk -

What it (b`riferenza ghall-Qorti Ewropea) *has said is that the need for a `fair balance` between the public and the private interest that runs through Article 1 of the First Protocol requires, in all but the exceptional case, some compensation …*

The level of compensation must be `reasonably related` to the value of the property taken. The general measure of compensation for an expropriation is stated in Pincova and Pinc v Czech Republic (2002) as one that is `reasonably related` to its "market" value as determined at the time of the expropriatrion. However Article 1/1/2 requires neither full compensation nor the same level of

compensation for every category of deprivation. In James v UK (op cit) the Court said that where the state was pursuing economic reform or social justice, less reimbursement was due to the dispossessed owners than full market value. The State enjoys a wide margin in assessing the appropriate level of compensation and, indeed, in estimating the value of property in the first place. Where the amounts are fixed by reference to objective standards, with the possibility of representation for those deprived of property in the process, intervention by the Court is unlikely … it would be a rare case for the Court to find a breach of Article 1 of the First Protocol by reason of the level of compensation alone. (sottolinear ta` din il-Qorti) *To summarize, in general the guiding principle remains the `fair balance`, reliance upon which is necessary to establish any right to compensation for nationals. It is also a principle that leaves a wide, though not unlimited, margin of appreciation to the state to determine what the level of compensation should be.*

Ghar-ragunijiet kollha premessi, din il-Qorti qeghda taqta` u tiddeciedi din il-kawza hekk –

Tichad l-eccezzjonijiet tal-intimati li baqghu mhux decizi bis-sentenza ta` din il-Qorti diversament presjeduta tat-28 ta` Marzu 2008.

Tilqa` l-ewwel talba.

Tastjeni milli tiehu konjizzjoni ta` fejn fit-tieni talba, ir-rikorrenti qeghdin jitolbu li tigi annullata l-ordni ta` rekwizizzjoni Nru. RO22104 mahruga kontra taghhom fir-rigward tal-fond 7, Nazarene Street, Paola, stante li fil-mori tal-kawza u precizament fil-11 ta` Frar 2010 harget in-Notifika ta` Derekwizizzjoni tal-istess fond.

Tilqa` l-bqija tat-tieni talba tar-rikorrenti u ghalhekk tordna lill-intimati sabiex sa zmien tlitt xhur mil-lum jirrilaxxjaw liberu u vojt favur ir-rikorrenti l-fond 7, Nazarene Street, Paola.

Tilqa` t-tielet talba u tordna lill-intimat Direttur tal-Akkomodazzjoni Socjali sabiex ihallas lir-rikorrenti s-somma ta` sebat elef hames mija hamsa u tletin Ewro (€7535) bl-imghax legali b`effett mil-lum.

Tastjeni milli tiehu konjizzjoni ulterjuri tar-raba` talba.

Tikkundanna lill-intimat Direttur tal-Akkomodazzjoni Socjali sabiex ihallas l-ispejjez kollha ta` din il-kawza.

< Sentenza Finali >

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