



**QORTI CIVILI
PRIM' AWLA
(GURISDIZZJONI KOSTITUZZJONALI)**

**ONOR. IMHALLEF
JOSEPH ZAMMIT MC KEON**

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wara Rik. Gur. Nru. 62/2010/AE

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 mizzewga lil Manuel Hili, Michael Camilleri

kontra

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

Il-Qorti :

I. Preliminari

B`digriet moghti fit-18 ta` Frar 2011 fil-kawza fl-ismijiet premissi, il-Qorti tal-Magistrati (Ghawdex) Gurisdizzjoni Superjuri Sezzjoni Generali ordnat riferenza kostituzzjonali sabiex din il-Qorti *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-propjeta` kif garantit permezz tal-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni Ewropeja ghall-Protezzjoni tad-Drittijiet tal-Bniedem*. (“il-Konvenzjoni”).

Quddiem il-Qorti tal-Magistrati (Ghawdex) Gurisdizzjoni Superjuri Sezzjoni Generali, l-atturi fil-kawza fl-ismijiet premissi qeghdin jitolbu l-hlas ta` l-porzjoni rizervata mill-wirt ta` Ursola Camilleri li mietet fil-21 ta` April 1997. Dik il-Qorti ghamlet din l-ordni ta` riferenza in vista tal-hames eccezzjoni tal-konvenuti, wara li qieset illi ma kenitx frivola u vessatorja l-pretensjoni tagghom illi l-hlas ta` porzjoni rizervata ta` dak il-wirt kien jilledi d-drittijiet fundamentali tagghom bhala werrieta ta` Ursola Camilleri limitatament kif dawn kienu protetti mill-Art.1 tal-Ewwel Protokoll tal-Konvenzjoni.

Fir-risposta tieghu tal-4 ta` April 2011, l-Avukat Generali jghid illi l-allegazzjonijiet u l-pretensjonijiet tal-konvenuti huma nfondati fil-fatt u fid-dritt ghal dawn ir-ragunijiet :

Illi mill-fatti kif esposti mir-rikorrenti jirrizulta illi ma hemm l-ebda rilevanza ghall-Ewwel Artikolu ta` l-Ewwel Protokoll tal-Konvenzjoni u dan peress illi ma kien l-ebda "tehid forzuz" tal-propjeta` tar-rikorrent u wisq anqas l-istess rikorrenti ma gewx spussessati mill-propjeta` jew possedimenti taghhom.

Illi l-Ewwel Artikolu ta` l-Ewwel Protokoll jippresumi illi r-rikorrenti jkollhom l-propjeta` ghandhom. Illi certament l-eredi ma jistghux jillamentaw illi kien hemm xi lezjoni tad-dritt fundamentali taghhom ta` propjeta` in kwantu l-porzjoni rizervata qatt ma tista` tghaddi f`idejhom u ghalhekk qatt ma jista` jkun hemm esproprijju.

... illi l-legittima hija dik il-parti tal-propjeta` tad-decujus li l-ligi tirrizerva lill-uliedu u lil dawk kollha parentati mieghu li ghandhom dritt ghaliha skond il-ligi u hija forma ta` successjoni intestate li tiddevoli ex lege. Salv dina l-limitazzjoni legali, id-decujus ghandu l-fakolta` illi jiddisponi mill-beni tieghu kif jidhirlu.

Illi dina l-limitazzjoni ghad-dritt assolut, appartenenti lid-decjus qaua propjetarju tal-beni tieghu hija biss kontroll ta` uzu tal-propjeta` li jsir ghal ghan legittimu. L-istitut tal-porzjoni rizervata ghandu ghan socjali u dan sabiex jipprotegi s-sien tas-socjeta` u r-rabitiet li jinholqu bil-familja speċjalment dik stretta li tezisit bejn genituri u l-ulied.

... illi l-Qorti Ewropeja tad-Drittijiet tal-Bniedem kellha okkazzjoni tezamina din il-kwistjoni tal-porzjoni rizervata fil-kaz "Marckx v. Belgium" (applikazzjoni numru 6833/74) deciz fit-13 ta` Gunju 1979 ...ghalkemm kienet tirrigwarda d-differenza fit-trattament ta` wild illegittimu xorta wahda hija rilevanti f`dik il-parti fejn il-Qorti Ewropeja ezaminat l-Ewwel Artikolu ta` l-Ewwel Protokoll u ma sabet l-ebda vjolazzjoni naxxenti mill-porzjoni rizervata. Tant hu hekk illi l-Qorti osservat illi t-tieni paragrafu ta` l-Ewwel Artikolu ta` l-Ewwel Protokoll "authorizes a Contracting State to 'enforce such laws as it deems necessary to control the use of property in accordance

with the general interest'. This paragraph thus sets the Contracting States up as sole judges of the 'necessity' for such a law (above-mentioned Handyside judgement, ibid). As regards 'the general interest', it may in certain cases induce a legislature to 'control the use of property' in the area of dispositions inter vivos or by will. In consequence, the limitation complained of by the first applicant is not of itself in conflict with Protocol No. 1

Wara li saru sottomissjonijiet bil-miktub, din il-Qorti halliet il-kawza sabiex taghti dan il-provvediment.

Ikkunsidrat :

II. Sottomissjonijiet bil-miktub

Il-konvenuti, l-atturi u l-Avukat Generali lkoll ghamlu sottomissjonijiet bil-miktub. Din il-Qorti sejra taghmel **gabra fil-qosor** tal-argumenti tagghom –

1) Il-konvenuti

i) Mal-mewt tad-decujus, l-eredi jidhol ghad-drittijiet u l-obbligi tad-decujus. Il-patrimonju tad-decujus jithallat ma` dak tal-eredi, fejn l-eredi jaccetta l-wirt bil-beneficju tal-inventarju. Fil-kaz tal-lum, mal-mewt ta` Ursola Camilleri, il-patrimonju taghha ghadda ghand l-unika eredi taghha : l-“unika” eredi ghaliex il-persuni l-ohra li kienet innominat bhala eredi taghha rinunzjaw ghall-wirt. Dawk l-ulied li jridu l-legittima jew il-porzjoni riservata jridu jirrinunzjaw ghall-wirt. L-effett ta` dik ir-rinunzja huwa li l-wirt jiddevolvi fuq l-eredi l-ohra. Talba ghall-hlas tal-porzjoni riservata mhux biss teffettwa l-wirt izda tista` tinvolvi r-riduzzjoni ta` legati, meta dawn imorru oltre l-kwota disponibbli. Meta jigri hekk, ir-riduzzjoni tal-wirt jew tal-legati ssir a skapitu ta` beni li jkunu diga` saru

propjeta` tal-eredi jew tal-legatarju. Dik ir-riduzzjoni tikkostitwixxi esproprijazzjoni tal-beni tal-eredi minghajr kumpens, bi ksur tal-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni [“Art.1 (P1-1)”].

ii) Fis-sentenza taghha fil-kawza “*Marckx vs Belgium*” tat-13 ta` Gunju 1979 (“*Marckx*”) il-Qorti ta` Strasbourg sabet illi kien hemm ksur tal-Art.1 (P1-1) fil-konfront tal-omm Paula Marckx, izda mhux fil-konfront ta` bintha Alexandra Marckx. Sabet hekk ghaliex l-omm ma thallietx tiddisponi minn gidha a favur tal-wild bijologiku taghha billi ma kenitx mizzewga. Ma kienx hemm ksur fil-konfront tal-bint ghaliex *this Article does no more than enshrine the right of everyone to the peaceful enjoyment of “his” possessions, that consequently it applies only to a person`s existing possessions and that it does not guarantee the right to acquire possessions whether on intestacy or through voluntary dispositions*. Il-Qorti sostniet illi hadd ma ghandu jigi mizmum milli jiddisponi minn gidu minhabba l-istat taz-zwieg tieghu. Issa kif inhi l-ligi taghna illum, Ursola Camilleri ma kenitx libera milli tiddisponi minn gidha wara mewta kif tixtieq hi. Ma hemm l-ebda obbligu fuq l-Istat illi jimponi li xi wild bilfors ikollu dritt jiret lill-*genituri* tieghu.

iii) Ma hemm xejn fil-ligi taghna illi jipprekludi l-applikazzjoni tal-Art.1 (P1-1) f`materji ta` successjoni. Huwa biss fl-interess generali illi Stat kontraenti tal-Konvenzjoni jista` jaghmel ligijiet dwar il-kontroll tal-uzu tal-propjeta` f`disposizzjonijiet *causa mortis*. Fil-kaz tal-istitut tal-legittima jew porzjon riservat, kif inhu maghruf illum, ma jistax jinghad illi hemm “interess generali” xi jigi tutelat. Hekk kif waqt hajjitha persuna tista` tiddisponi minn hwejjigha kif trid, hekk ghandha tkun libera illi taghmel wara mewta. Il-bidla fil-ligi minn *legittima* ghal *porzjon riservat* ma kienx fl-istess izda fis-sostanza. Il-legittimarju mhuwiex eredi izda lanqas ma huwa kreditur tal-wirt. Ghandu biss porzjoni rizervata lilu mill-beni tal-wirt tad-decujus. Bl-emenda ghall-Art.615 tal-Kap.16, il-

jedd ghal sehem riservat sar kreditu kontra l-beni tal-mejjet.

iv) It-tieni paragrafu tal-Art.1 (P1-1) ma jaghmel l-ebda accenn ghal materji ta` successjoni. Ghalkemm it-tieni paragrafu jaghti dritt lill-Istat illi jimponi fuq ic-cittadin kontroll fuq l-uzu tal-propjeta`, jibqa` l-obbligu tal-Istat illi meta fil-kaz ta` tehid forzus ta` propjeta`, huwa jagixxi biss fl-interess pubbliku, skond il-ligi u skond il-principji tad-dritt internazzjonali. Fil-kaz tal-lum, qieghed isir tehid forzuz illi mhux fl-interess pubbliku u minghajr ma jinghata kumpens. Ghalhekk hemm ksur tal-Art.1 (P1-1). Ma hemm l-ebda interess pubbliku jew generali involut izda biss l-interess privat ta` xi wlied tat-testatrici.

2) L-atturi

i) Bl-istitut tal-legittima, hemm limitazzjoni fil-liberta` tat-testatur li jipprovdi ghas-successjoni tieghu. Dan jigri ghaliex porzjon riservat tal-wirt ma jistax jigi trasferit lil persuni li mhux daww li favur taghhom dik il-porzjon tkun giet riservata. Dak li Art.1 (P1-1) qieghed jipprojbixxi huwa t-tehid ta` pussess minn persuni naturali jew legali. Kwindi irid jigi stabbilit jekk id-dritt ghal-legittima u l-applikazzjoni tieghu jikkostitwix tehid ta` pussess. Matul hajtu, it-testatur jista` jiddisponi minn hwejgu kif irid. Meta t-testatur jaghmel testament, jista` jiddisponi wkoll minn hwejgu kif irid, b`limitazzjoni pero` fis-sens illi parti minn hwejgu u cioe` il-legittima trid tghaddi direttament fi propjeta` ghand id-dixxendenti tieghu, u fin-nuqqas ta` dawn, ghand l-axxendenti. L-ebda testatur ma jista` jilmenta minn ksur tad-dritt ta` pussess ghaliex il-legittima tiskatta wara l-mewt tad-decujus meta jkun gie spussessat minn hwejgu. L-eredi jiehu dak li kien tat-testatur, nieqsa l-legittima, ghax dik tispetta *di diritto* lill-legittimarju in piena propjeta`, hielsa minn kull piz jew kundizzjoni.

ii) Mal-mewt tad-decujus, l-eredi ghandu ghazla : jew jaccetta l-wirt bla kondizzjoni ; jew jaccetta l-wirt bil-beneficcju tal-inventarju ; jew jirrinunzja ghall-wirt. L-eredi jidhol fiz-zarbun tat-testatur meta jaghzel li jaccetta l-wirt minghajr kondizzjoni. L-obbligu tieghu jinkludu li jimmetti lil-legittimarji fil-pussess ta` dik il-parti mill-wirt tad-decujus li saret taghhom mal-mewt tad-decujus u qatt ma kienet tal-eredi. Il-legittima tghaddi *ipso jure* mal-mewt tad-decujus, indipendentement mill-ghazla illi jista` jaghmel l-eredi. L-eredi ma jkun qieghed jigi privat minn l-ebda pussess. Eredi ma jstax min-naha wahda jaccetta wirt minghajr kondizzjoni u mbaghad jilmenta illi l-wirt gab fuqu obbligi fosthom dawk fil-konfront tal-legittimarji.

iii) Huwa biss wara l-emendi bl-Att XVIII tal-2004 illi x-xejra legali tal-legittima nbidlet mhux biss fl-isem izda anke fis-sostanza fis-sens illi saret kreditu tal-wirt. Il-legittima kienet sehem mill-beni tal-mejjet li ma tghaddix ghand l-eredi. Lanqas ma tithallat mal-propjeta` personali tal-eredi. Dak provdut fl-Art.614(2) ikompli jaghti sahha lill-argumenti tal-atturi ghaliex dik id-disposizzjoni tghid tassattivament illi meta t-testatur ikollu dixxendenti, axxendenti, zewgu jew martu jew tfal illegittimi, is-sehem tal-beni tieghu li minnu jista` jiddisponi hu dak li jibqa` wara li jitnaqqas is-sehem li jmiss lid-dixxendenti, lill-axxendenti, lil zewgu jew lil martu jew lit-tfal illegittimi. Ghalhekk l-eredi ma jista` jilmenta minn l-ebda ksur ta` dritt skond Art.1 (P1-1).

iv) L-istitut tal-legittima skond l-Art.615(1) kif kien qabel huwa mehtieg fl-interess pubbliku. Il-legittima hija rizervata favur dawk il-qraba l-aktar vicini tad-decujus. Il-ligi tipprezumi illi dawn ghandhom rabta familjari b`sahhitha u ta` valur socjali sufficienti mad-decujus li jisthoqqilhom protezzjoni wkoll fl-aspett tad-dritt ta` successjoni. Fl-ambitu familjari jkun hemm disgwid. Fl-istess waqt, il-legislatur ghazel illi, hlief ghall-kazi li jaghtu lok ghad-dizeredazzjoni, ma jippermettix l-ezkluzjoni tal-qraba vicini mill-wirt minhabba disgwid jew ghax ir-relazzjonijiet familjari jiddeterjoraw. Ir-rabta tad-dem

tinghata rikonoxximent. Ghax fuq ir-rabtiet familjari hija msejsa s-socjeta`. In-nozzjoni ta` interess pubbliku huwa estensiv u l-qorti ghandha *margin of appreciation* wiesgha. Fis-sentenza ta` *Marckx*, il-Qorti ta` Strasbourg irrikonoxxiet illi r-rabtiet socjali u tad-demmm ghandhom effetti socjali inkluz is-successjoni u kwindi l-legittima. Skond *Marckx*, il-legittima huwa regim legali li jimmerita protezzjoni in kwantu jaqa` fl-ambitu tad-dritt ghall-familja kif tutelat mill-Konvenzjoni. Fid-*dissenting opinion* tieghu fis-sentenza ta` *Marckx*, l-Imhalled Farinha jghid illi *the reserved portion – from which only relatives benefit – constitutes a form of family protection arising from the moral and social obligations existing between persons connected by close family ties ; it cannot be excluded by the decujus.*

3) L-Avukat Generali

i) Saret analizi tal-kondizzjonijiet li huma mehtiega sabiex ikun stabbilit ksur tal-Art.1 (P1-1) b`riferenza ghas-sentenza ta` l-Qorti ta` Strasbourg fil-kawza “*Sporrong and Lonroth v. Sweden*” tal-1982. L-Art.1 (P1-1) jaghti harsien ghal beni jew possedimenti li persuna diga` ghandha jew li diga` qeghda tgawdi, mhux ghad-dritt li persuna takkwista beni fil-futur. Jispetta lil min jallega ksur illi jipprova illi fil-mument tal-allegat ksur, kien fil-pussess tal-beni li tagghom qieghed jallega li garrab privazzjoni illegali jew abbusiva.

ii) Fil-kaz tal-lum ma jistax jigi allegat illi t-testatrici garrbet lezjoni tad-dritt taghha skond l-Art.1 (P1-1) ghaliex *vita durante* ma ghamlet l-ebda allegazzjoni f`dak is-sens. Kawza kostituzzjonali ma tistax tigi promossa mill-eredi wara l-mewt tad-decujus fejn jigi allegat li kien hemm ksur tal-jedd fundamentali tad-decujus. Kwalsiasi jedd ghal azzjoni li seta` kellha t-testatrici u li baqghet ma ezercitatx meta kienet ghadha hajja ma jghaddix ghand l-eredi taghha.

iii) L-atturi qua eredi ma jistghux jinvokaw l-harsien tal-Art.1 (P1-1) ghaliex il-legittima hija parti mill-wirt tad-decujus li ma tistax tghaddi ghand l-eredi u ghalhekk ma jistax ikun hemm espropriu jew tehid forzuz. Testatrici hija prekluzza milli tiddisponi favur l-eredi taghha dik il-porzjoni tal-wirt taghha li tikkwalifika bhala legittima.

iv) Il-limitazzjoni tad-dritt assolut li persuna tiddisponi mill-assi taghha hija limitazzjoni msejsa fuq ghan legittimu u cioe` il-harsien tas-sisien tas-socjeta` u tar-rabtiet li jinholqu fil-familji. Ghalhekk l-Istat ghandu l-jedd l- jikkontrolla l-uzu tal-propjeta`.

Ikkunsidrat :

III. Dritt

In kwistjoni huwa l-**Art.615(1) tal-Kap.16** kif kien qabel l-emendi introdotti bl-Att XVIII tal-2004. Id-disposizzjoni kienet taqra hekk –

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

Il-pretensjoni tal-konvenuti hija li dik id-disposizzjoni tmur kontra l-Art.1 (P1-1) li taqra 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` proprjeta` skond l-interess

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generalii jew biex jizgura l-hlas ta` taxxi jew kontribuzzjonijiet ohra jew pieni.

Bl-Ingiliz, id-disposizzjoni taqra 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.

Ikkunsidrat :

IV. Id-Dritt tal-Legittima : Dottrina

Fil-pag.994 sa 996 ta` **The Civil Law Notes**, il-Professor Victor Caruana Galizia jghid hekk dwar id-dritt tal-legittima kif migbura principalment fl-**Art.615(1) tal-Kap.16** (qabel l-emendi) –

As a rule the right to dispose by will has no restrictions since it is an element of the right of ownership itself which includes besides the jus utendi et abutendi, also the jus dispondendi : any person may, therefore, dispose by will or donation of the whole of his estate in favour of any person capable of receiving under a will or by donation.

*Where however the testator has descendants, ascendants, spouse or illegitimate children, **he can only dispose of such portion of his estate as remains after deducting the share which is due to the said persons** under the provisions of Section III, Sub-title 1 of Title III of*

*the Civil Code. The estate, under these circumstances, is divided into two portions, one of which is **reserved** to the above mentioned persons and devolves on them by operation of the law, and the other is the **disposable portion**, of which the testator may freely dispose.*

Where the testator has no descendants, ascendants, spouse or illegitimate children, he may dispose by universal or singular title or by donation of the whole of his estate in favour of any person [Section 651(1) and (2)].

*This restriction imposed by law on the right to dispose freely of one's property 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 relationships : this duty is therefore raised by law to a legal obligation. "Chiamare un'essere all'esistenza – says French in his "Memorie della Accademia delle Scienze Morali" (Vol. VIII, p.443) – e' prendersi l'impegno di essere la sua provvidenza 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.*

The historical origin of the institute of legitim has already been given in the study of Roman Law. Under our Municipal Law, children and descendants were entitled, under the system of "societa` coniugale" to the "terzo filiale" and under the system of "Communiuty of Acquests" to the legitim according to the "jus commune". Also entitled to a reserved portion were the ascendants, in defect of descendants and the "parentato povero e

miserable” to the third degree inclusively, in defect of descendants (Code de Roahn, B.I. and IV.).

Under the system of the “societa` coniugale” the surviving spouse was entitled to the “terzo materno o paterno”. In defect of the societa` coniugale the surviving spouse was entitled, if indigent, to a portion of the estate of the predeceased spouse fixed by the Court according to the circumstances of the case.

Under the laws in force the persons entitled to the legitim are the children and the descendants of the testator, and in failure of descendants, the ascendants of the deceased. The surviving spouse and illegitimate children are entitled to the reserved portion or legitima portio. In case of failure of such persons, the entire estate may be freely disposed of.

(sottolinear u enfasi ta` din il-qorti).

Ikkunsidrat :

V. Dottrina dwar Art.1 (P1-1) u Marckx

Fil-kawza ta` *Marcks* ir-rikorrenti kienu omm mhux mizzewga u bintha. L-ilment kien illi skond il-ligi tal-Belgju, ulied illi jitwiellu barra z-zwieg kienu fi zvantagg fil-familja, partikolarment fid-drittijiet ta` successjoni, ghaliex dawk l-ulied kienu rikonoxxjuti biss bhala ulied ommhom u kienu jitqiesu bhala estranej ghall-familja tal-genituri naturali tagghom. Il-Qorti ta` Strasbourg fis-sentenza taghha tat-13 ta` Gunju 1979 sabet illi bil-ligi tal-Belgju kif kienet dak iz-zmien kien hemm ksur fil-kaz tal-omm tal-Art.8 tal-Konvenzjoni (*right to respect for privacy*) u tal-Art.14 (*prohibition of discrimination*) pero` ma sabet ksur tal-Art.3 (*freedom from torture and other inhuman or degrading treatment or punishment*) u tal-Art.1 (P1-1) fil-kaz tat-tifla ghar-rigward tal-inabilita` taghha illi taret f`dik is-sitwazzjoni oggettiva. Il-Qorti sabet illi kien

diskriminatorju l-fatt illi ghax persuna kienet mitwiela barra z-zwieg kienet privata ghal kollox mid-dritt ta' successjoni *ab intestato*. Fl-istess waqt il-Qorti ghamlitha cara illi Art.1 (P1-1) *does not guarantee the right to acquire possessions whether on intestacy or through voluntary dispositions.*

Fil-**European Human Rights Law – Text and Materials** (Oxford – Third Edition) l-awturi Janis, Kay and Bradley ighidu hekk –

fil-pag.525-526 :

The text of Article 1 of Protocol No 1 refers to 'possessions' rather than to 'property' but in substance these two terms are synonymous and include a wide and varied range of economic interests and assets. In other words, these terms are autonomous concepts and their meaning is not dependent upon domestic classification. 'Possessions' will cover both moveable and heritable property and will include a wide range of interests ... It will also cover a non-registered title or a disputed title to heritable property providing the asserted right has some basis in domestic law. However only existent rights and assets (rather than future claims to property) are covered since the 'possession' must be sufficiently established in its existence. For example an expectation to inherit property is not a 'possession' ...

fil-pag.528 :

The text refers to the peaceful enjoyment of possessions, and thus a broad range of state activity which interferes with any of the normal consequences arising out of ownership or possession will be recognised as giving rise to an issue under the guarantee. "Interference" with the right to property can include ... limitations placed on the right to dispose of possessions after death (Marckx) ... A hindrance can amount to an

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interference with the peaceful enjoyment of possessions
...

Fil-**Cases and Materials on the European Convention of Human Rights** (Oxford – Second Edition), Alastair Mowbray ighid hekk –

By recognizing that everyone has the right to the peaceful enjoyment of his possessions, Article 1 (P1-1) is in substance guaranteeing the right of property.

Fil-**Law of the European Convention on Human Rights** (Oxford – Second Edition) I-awturi Harris, O'Boyle & Warbrick ighidu hekk fil-pag. 660 *The Convention protects an applicant's existing possessions and assets against interference. It is not a right to put into the possession of things one does not already have however strong the individual's interest in this happening may be.*

Fil-ktieb **A Practitioner's Guide to the European Convention on Human Rights** (Third Edition – Thomson – Sweet & Maxwell), I-awtrici Karen Reid tghid hekk fil-pag.503 –

An applicant must generally fulfil the conditions set by domestic law for ownership. However case law recognizes in certain cases that "existing possessions" include claims in respect of which an individual can claim to have at least a "legitimate expectation" of obtaining effective enjoyment of a property right. No legitimate expectation arises where there is a dispute as to the correct interpretation of and application of domestic law and the applicant's submissions are rejected by the domestic courts.

L-awturi van Dijk, van Hoof, van Rijn and Zwaak fil-ktieb **"Theory and Practice of the European**

Convention on Human Rights"- (Fourth Edition – Intersentia) ighidu hekk fil-pag.13 –

Whereas States may complain about 'any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting State' (Article 33) and consequently also about national legislation or administrative practices in abstracto, individuals must claim 'to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention and the Protocols thereto'. (Article 34). This special relationship required is that the individual applicant himself is the victim of the alleged violation.

Imbaghad fil-pag.869-870, ikomplu hekk –

The right or interest can only constitute a 'possession' if it is sufficiently established to be enforceable. There is no question of possessions until the moment at which one can lay claim to the property concerned. A person complaining of an interference with his property right must show that such right existed ... a claim as such may constitute a 'possession' in the sense of Article 1, but it should then be a concrete and adequately specified claim ...nor do claims which a person has as an heir during the testator's lifetime fall under the protection of Article 1 because this provision protects existing property and not the right to acquire property. It does of course protect the right of the testator to dispose of his patrimonial rights and the rights which have already been acquired by inheritance even before the distribution of assets ...

Ikkunsidrat :

VI. Risultanzi

L-analizi tal-Art.1 (P1-1) trid tkun maqsuma fi tnejn. Fl-ewwel lok, irid ikun stabbilit jekk kienx hemm ksur tad-dritt ta` *every natural or legal person ... to the peaceful enjoyment of his possessions*. Fit-tieni lok jekk jirrizulta li *a natural or legal person* kien privat minn *his possessions* irid ikun stabbilit jekk dak it-tehid forzuz kienx *in the public interest and subject to the conditions provided for by law and by the general principles of international law* bl-aggunta tal-principju illi xejn ma jfixkel *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*.

Fil-kaz tal-lum, l-ordni ta` riferenza jolqot il-posizzjoni kemm tat-testatrici kif ukoll tal-eredi. Fl-istess waqt, il-posizzjoni tat-testatrici trid titqies diversament minn dik tal-konvenuti bhala eredi.

Sabiex persuna tfittex il-harsien tad-disposizzjonijiet tal-Konvenzjoni, fosthom l-Art.1 (P1-1), trid timmerita dak il-harsien, u trid tipprova illi hija "vittma" ta` allegat ksur tal-jeddijiet taghha. Fil-kaz tal-lum, it-testatrici, kemm damet hajja, setghet li kieku riedet tittenta azzjoni sabiex tavvanza l-pretensjoni illi l-obbligu taghha li tosserva l-Art.615(1) tal-Kap.16 kien jikkostitwixxi ksur tad-dritt taghha kif tutelat bl-Art.1 (P1-1). Eppure ma hadet l-ebda azzjoni f`dak is-sens. U mal-mewt tat-testatrici, id-dritt taghha f`dak il-kuntest miet maghha ghaliex mal-mewt tat-testatrici, dak id-dritt ta` azzjoni potenzjali li tfittex qua testatrici l-harsien tal-Konvenzjoni ma kienx trasmess lill-eredi taghha, ghaliex l-eredi jidhlu fiz-"zarbun" tad-decujus mal-mewt taghha, u mal-mewt taghha, kisbu mhux dak kollu illi t-testatrici kellha sal-mewt izda dak kollu illi l-ligi tghid li ghandhom jedd ghalih, dan fejn si tratta ta` accettazzjoni ta` wirt minghajr kondizzjoni kif kien il-kaz tal-lum.

Mela ghar-rigward ta` Ursola Camilleri bhala testatrici, ma tistax tigi avvanzata issa wara l-mewt taghha pretensjoni li se *mai* kellha tigi avvanzata minnha *vita durante*.

Diversa hija s-sitwazzjoni tal-konvenuti ghaliex dment illi l-pretensjoni taghhom bhala eredi ta` Ursola Camilleri taqa` fil-parametri tal-Art.1 (P1-1) din tinghata konsiderazzjoni.

Dan premiss, din il-Qorti tghid, minghajr l-icken esitazzjoni, illi l-pretensjoni tal-konvenuti tinkalja fit-tifsira ta` *possessions* li hija l-pern tal-Art.1 (P1-1). Kontra dak li jippretendu l-konvenuti, il-wirt illi ksibu minghand Ursola Camilleri kien jeskludi a priori l-legittima. Dan ghaliex il-legittima mhijiex parti mill-wirt tad-decujus li tghaddi ghand l-eredi. Anzi hija parti mill-propjeta` tad-decujus illi titwarrab fil-genb, tinghata` kollha kemm hi mill-wirt li jrid ighaddi ghand l-eredi, sabiex tinghata esklussivament lill-persuni li ghandhom jedd *ope legis* b`effett tal-Art.615(1) tal-Kap.16. Dak is-sehem ma jsir qatt parti mill-wirt li jigi trasmess lill-eredi u ghalhekk l-eredi m`ghandhom l-ebda jedd fuq dak is-sehem. Hekk kien id-Dritt Ruman u hekk kienet il-ligi taghna, qabel l-emendi. Il-legittima tinghata` minghajr il-htiega ta` intervent da parti tat-testatur. Lanqas hemm htiega ghat-testatur li jaghmel riferenza ghal-legittima fit-testament tieghu. Tghaddi ghand il-persuni koncernati (mhux ghand l-eredi) in piena propjeta` u minghajr pizijiet.

B`dak l-istat tad-dritt kif johrog mill-Art.615(1) qabel l-emendi, il-konvenuti qua eredi ma jistghux jilmentaw minn ksur tal-Art.1 (P1-1) ghaliex ma kienux privati mill-*peaceful enjoyment of their possessions* billi l-legittima ma hijiex parti *of their possessions*. Ladarba l-legittima mhijiex *possession* tal-eredi, ghaliex mhijiex kompriza fil-wirt tad-decujus li tghaddi ghand l-eredi, ma hemmx lok u lanqas il-htiega illi din il-Qorti tidhol ghall-analizi tat-tieni parti tal-Art.1 (P1-1) senjatament fejn si tratta tad-dritt tal-

Kopja Informali ta' Sentenza

Istat illi fl-interess generali jikkontrolla l-uzu tal-propjeta`, u dan propju ghaliex il-konvenuti ma garrbu l-ebda *tehid forzuz*. Xejn ma ttiehed mill-eredi bl-Art.615(1) tal-Kap.16. Dak kien tal-persuni li jissemew fl-Art.615 tal-Kap.16. Kwindi ma tinsorgix il-kwistjoni jekk dak l-allegat *tehid forzuz* kienx fl-interess generali jew ezercizzju mill-Istat tal-prerogattivi tieghu kif imharsa mill-Art.1 (P1-1).

Decide

Ghar-ragunijiet kollha premessi, din il-Qorti qeghda tiddikjara bhala nfondata fil-fatt u fid-dritt il-pretensjoni tal-konvenuti li wasslet ghall-ordni ta` riferenza. Ghalhekk qeghda tiddeciedi illi l-Artikolu 615(1) tal-Kodici Civili kif kien jaqra qabel l-emendi introdotti bl-Att XVIII tal-2004 ma jilledix id-dritt fundamentali tat-testatur u tal-werrieta tieghu ghat-gawdija tal-propjeta` kif garantit permezz tal-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni Ewropeja ghall-Protezzjoni tad-Drittijiet tal-Bniedem. Tordna li l-ispejjez ta` dan il-procediment jithallsu mill-konvenuti.

< Sentenza Finali >

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