



**CIVIL COURT
FIRST HALL
(CONSTITUTIONAL JURISDICTION)**

**THE HON. MR. JUSTICE
JOSEPH ZAMMIT MC KEON**

Sitting of the 16 th January, 2014

Citation Number. 19/2013

1. Patricia Graham British Passport 707260831, 2. James Parsons Irish PT3712106, 3. Richard Cooper British Passport 801299620, 4. Johanna Van` TVerlatt Dutch Passport NS 5CH9JK7, 5. Nigel Hall British Passport 703242974, 6. Margaret Alder British Passport 761077078, 7. Julia Partridge British Passport 800978954, 8. David Pike British Passport 108200710, 9. Bryan Douglas Irish PC1316947, 10. John Wilks British Passport 205468746, 11. Brian Bush British Passport 029729096, 12. John Besford British Passport 093163442, 13. Peter Sellers British Passport 706199934, 14. Elana Bianchi Italian Passport Y406692, 15. Nuot Raschar Swiss Passport F 2851139, 16. Kevin Bryant British Passport 507014072, 17. Marie Poule Wagner French Passport 12 AV215281, 18. Michael Murray British Passport 706452911, 19. John Murgatroyd British Passport 107244391, 20. Howard Hodgson IPS 801292081, 21. Dr Robin Smith-Saville British Passport 707472998,

**22. Maria Wiborg Sweedish Passport No. 34292287,
23. Anders Wiborg Sweedish Passport No. 85599606,
24. Reginald Joseph Fitzpatrick Maltese I.D.
0033588A, 25. George Thomas Goodall Maltese I.D.
0028358A**

vs

**1. The Attorney General ; 2. The Minister of Finance,
the Economy and Investment (as responsible for
Enemalta Corporation and the Water Services
Corporation) ; 3. The Minister for Resources and
Rural Affairs ; 4. The Malta Resources Authority ; 5.
Enemalta Corporation ; 6. Water Services Corporation**

The Court :

I. Introduction

On the 26th February 2013, claimants filed the application in the Maltese language – together with a translation in English.

By decree of the 28th February 2013, this Court ordered service of the application on respondents, who were granted a period of twenty (20) days to enter a reply, and set the first hearing of the suit for the 26th March 2013.

Following service, respondents filed each their reply in the Maltese language. The acts in question were all served on applicants' legal counsel.

At the hearing of the 26th March 2013, applicants requested the Court that proceedings be conducted in

English as none were familiar with the Maltese language. There was no opposition to this request. The Court acceded. From that moment onwards, proceedings were conducted in English.

II. The application

The English version of the application states as follows –

*That the scope of these proceedings is to declare null acts of parliament (precisely regulations that, according to **Art 2(1) of Chapter 249** of the Laws of Malta, are deemed as such) on the basis of their being ultra vires of the legislative powers conferred upon Parliament by the Maltese People : **Article 65(1) of the Constitution of Malta** reads thus :*

“Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Malta in conformity with full respect for human rights, generally accepted principles of international law and Malta’s international and regional obligations in particular those assumed by the treaty of accession to the European Union signed in Athens on the 16th April, 2003.” ;

*Therefore this application is being filed before this Honorable Court in terms of **Art. 46(3) of the Constitution of Malta** and according to disposition 5 of **Subsidiary Legislation 12.09 of the Laws of Malta** ;*

As in exercise of the powers conferred by articles 20 and 39 of the Enemalta Act, Enemalta, with the approval of the Minister responsible for Enemalta, and with the approval of the Malta Resources Authority and the Minister for Resources and Rural Affairs, or any of the

same, a series of regulations were laid on the table of the House of Representatives and, in due course, were published by means of Legal Notices and today form part of the **Electricity Supply Regulations (1940) (S.L.423.01)** ;

As the said regulations introduced in Malta, as of the 1st October of 2008, a dual-tariff system for the non-commercial use of electricity - denominated as residential and domestic tariffs (see Regulation 36(1) and 36(3) of L.S.423.01). For the purposes of this action, the following is highlighted :

i) Domestic Tariffs, unit per unit, are roughly 30% higher than Residential Tariffs. This results from the First Schedule (Residential Tariffs) and the Third Schedule (Domestic Tariffs) of S.L. 423.01 ;

ii) Primary and Secondary Residences benefit from an Eco Reduction Scheme on the amount due for the consumption of electricity for the period covered in the bill, calculated on a pro rata basis, of 25% on the first 2000 kwh in the case of a single resident, and in the case of multiple residents 25% on the first 1000 kwh and 15% on the subsequent 750 kwh of the relative cumulative annual consumption (First Schedule of S.L. 423.01) whereas a domestic resident does not benefit at all from the said Eco Reduction Scheme ;

As in the European Union the electricity sector is regulated by the same through a series of directives which Member States of the Union are bound to implement ;

As amongst these directives, there is in force **Directive 2009/72/EC (Concerning Common Rules for the Internal Market in Electricity)**. The scope of this Directive is to establish common rules for the generation, transmission, distribution and supply of electricity, together with consumer protection provisions, with a view

to improving and integrating competitive electricity markets in the Community. It lays down the rules relating to the organisation and functioning of the electricity sector, open access to the market, the criteria and procedures applicable to calls for tenders and the granting of authorisations and the operation of systems. It also lays down universal service obligations and the rights of electricity consumers and clarifies competition requirements (See Chap. I, Art. 1).

As Directive 2009/72/EC distinguishes between a 'household customer' which means a customer purchasing electricity for his own household consumption, excluding commercial or professional activities and a 'non-household customer' which means a natural or legal persons purchasing electricity which is not for their own household use and includes producers and wholesale customers (see Chap. I, Art. 2, 10 and 11) ;

As Directive 2009/72 obliges Member States to impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and environmental protection, including energy efficiency, energy from renewable sources and climate protection. Such obligations shall be clearly defined, transparent, non-discriminatory, verifiable and shall guarantee equality of access for electricity undertakings of the Community to national consumers. (see Chap. II. Art. 2, 3) ;

As Directive 2009/72 obliges Member States to ensure that all household customers, enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable, transparent and non-discriminatory prices. (see Chap. II. Art. 3, 3) ;

*As in exercise of the powers conferred on the Minister responsible for the Water Services Corporation, the same Corporation with the approval of the Malta Resources Authority, or any of the same, a series of regulations were laid on the table of the House of Representatives and, in due course, were published by means of Legal Notices and today form part of the **Water Supply Regulations (1940)** (L.S.423.03) ;*

As the said amendments introduced in Malta, as of the 1st of January 2010, a dual-system of tariffs for the non-commercial use of water designated as residential and domestic tariffs (see Regulation 12(1) u 12(3) respectively of S.L. 423.03). The residential tariff for the consumption of water for each quantity not in excess of 33 m³ is set at €1.47 per m³ whereas the domestic tariff for the consumption of water for each quantity not in excess of 33m³ is set at €2.30 per m³ (see Schedule 1 (residential) and Schedule 3 (domestic) of S.L. 423.03) ;

As Directive 2006/123/EC (On Services in the Internal Market) delineates :

(95) The principle of non-discrimination within the internal market means that access by a recipient, and especially by a consumer, to a service on offer to the public may not be denied or restricted by application of a criterion, included in general conditions made available to the public, relating to the recipient's nationality or place of residence. It does not follow that it will be unlawful discrimination if provision were made in such general conditions for different tariffs and conditions to apply to the provision of a service, where those tariffs, prices and conditions are justified for objective reasons that can vary from country to country, such as additional costs incurred because of the distance involved or the technical characteristics of the provision of the service, or different market conditions, such as higher or lower demand influenced by seasonality, different vacation periods in the Member States and pricing by different competitors, or

extra risks linked to rules differing from those of the Member State of establishment.

As Directive 2006/123/EC (On Services in the Internal Market) provides in Section 2, Article 14 :

Member States shall not make access to, or the exercise of, a service activity in their territory subject to compliance with any of the following :

1. discriminatory requirements based directly or indirectly on nationality ...

and in Article 20 :

1. Member States shall ensure that the recipient is not made subject to discriminatory requirements based on his nationality or place of residence.

2. Member States shall ensure that the general conditions of access to a service, which are made available to the public at large by the provider, do not contain discriminatory provisions relating to the nationality or place of residence of the recipient, but without precluding the possibility of providing for differences in the conditions of access where those differences are directly justified by objective criteria.

As the ultimate effect of this dual-system of water and electricity tariffs for non-commercial use based on the criterion of residency or otherwise of a E.U. national in Malta (created-as aforementioned-by means of S.L.423.01 and L.S. 423.03 respectively) undermines the applicant's exertion of their rights under Articles 43 and 49 of the TEU and is in violation of the scope of the Directives above-mentioned ;

Let therefore the defendants submit their reasons as to why this Court should not :

Declare null and without effect the dual-tariff system for electricity and water for non-commercial use based on the criterion of residency of a E.U. National in Malta created by means of S.L.423.01 and L.S. 423.03 respectively by tenure of Article 65(1) of the Constitution of Malta and Chapter 460 of the Laws of Malta and in violation of Directives 2009/72, and 2006/123 and Articles 43 u 49 of the TEU, or any thereof ;

The applicants reserve every right at law for reimbursement of payment effected, including legal interest, for their water and electricity bills when the said payments effected were not legally due.

The applicants subpoena the defendants, and request the reimbursement of all expenses and damages incurred in connection with the subject of these proceedings, including legal interest, and including the expenses of the judicial protests filed against any of the defendants to date.

With the application, claimants filed a list of witnesses and a list of documents. The Court has seen the documents that were filed.

III. The replies

1) The Attorney General, the Minister of Finance, the Economy and Investment and the Minister for Resources and Rural Affairs

These three respondents filed one reply, common for the three, on the 22nd March 2013. They stated the following in Maltese –

1. *Illi fl-ewwel lok u **in linea preliminari** :*

(i) *Illi l-azzjoni tar-rikorrenti in kwantu bazata fuq l-Artikolu 46(3) tal-Kostituzzjoni ta` Malta u l-Artikolu 5 tal-Legislazzjoni Sussidjarja 12.09 tal-Ligijiet ta` Malta hija irrita u nulla stante li dawn l-Artikoli japplikaw biss ghall-poter ta` Qorti (li ma tkunx Prim Awla jew Kostituzzjonali) sabiex tibghat riferenza kostituzzjonali lill-Prim Awla tal-Qorti Civili u ma jikkoncedu ebda dritt lil xi parti li taghmel "riferenza kostituzzjonali" hi kif qed jaghmlu r-rikorrenti odjerni ;*

(ii) *Illi kull wiehed mir-rikorrenti ghandu jipprova x`inhu l-interess guridiku tieghu biex jippromwovi l-proceduri odjerni ;*

(iii) *Illi ghalkemm fl-introduzzjoni tar-rikors promotur ir-rikorrenti jindikaw li l-iskop ta` dawn il-proceduri huwa sabiex jigu attakkati Atti tal-Parlament, effettivament mis-sustanza u mit-talbiet taghhom jidher b`mod car li l-ghan tal-proceduri odjerni huwa li jattakkaw legislazzjoni sussidjarja mahruga bil-poter tal-Ministru koncernat, liema Ministru huwa debitament parti minn din il-kawza – konsegwentement l-esponent Avukat Generali m`huwiex il-legittimu kontradittur ghat-talbiet tar-rikorrenti u ghandu jigi liberat mill-osservanza tal-gudizzju ;*

(iv) *Illi inoltre, subordinament u bla pregudizzju ghas-suespost, din l-Onorabbli Qorti ghandha tiddeklina milli tezercita l-gurisdizzjoni kostituzzjonali taghha a tenur tal-proviso tal-Artikolu 46(2) tal-Kostituzzjoni stante d-disponibilita` ta` mezzi ohra xierqa ta` rimedju ordinarju li r-rikorrenti ghandhom sabiex jivvantaw il-pretensjonijiet taghhom fosthom dik ta` azzjoni ta` stharrig gudizzjarju quddiem il-Qrati ordinarji, kif ukoll rimedji ohra opportuni kontemplati mill-Kap 387 u l-Kap 423 tal-Ligijiet ta` Malta ;*

(v) *Illi fi kwalunkwe kaz u bla pregudizzju ghas-suespost minkejja li dawn huma proceduri kostituzzjonali ma hemm ebda ndikazzjoni ta` liema mill-Artikoli 33 sa 45*

tal-Kostituzzjoni gew allegatament lezi fil-konfront tar-rikorrenti u ghalhekk l-esponenti qeghdin minn issa jirrizervaw id-dritt li jirrispondu ulterjorment wara li r-rikorrenti jiccaraw il-lanjanzi taghhom ;

(vi) Illi wkoll bla pregudizzju ghas-suespost ir-rikorrenti ma specifikawx liema partijiet mil-legislazzjoni sussidjarja 423.01 u 423.03 huma allegatament lezivi tad-drittijiet fundamentali taghhom u f'dan il-kuntest l-esponent qeghdin ukoll minn issa jirrizervaw id-dritt li jirrispondu ulterjorment wara li r-rikorrenti jaghmlu din il-kjarifika.

*2. Illi fit-tieni lok, **fil-mertu**, l-allegazzjonijiet u l-pretensjonijiet tar-rikorrenti huma nfondati fil-fatt u fid-dritt.*

3. Illi kemm ir-Regolamenti fuq il-Provvista tal-Elettriku (L.S. 423.01) kif ukoll ir-Regolamenti dwar il-Fornitura ta' l-Ilma (L.S. 423.03) huma pjenament konformi mal-provvedimenti tal-Artikolu 65(1) tal-Kostituzzjoni, mal-Kap 460 tal-Ligijiet ta' Malta, mad-Direttivi 2006/123 u 2009/72 u mal-Artikoli 43 u 49 tat-Trattat tal-Unjoni Ewropea.

4. Illi l-ligi tal-Unjoni Ewropea mkien ma tipprojbixxi r-regolamentazzjoni ta' tariffi. Ghal finijiet tal-kaz odjern jigi fil-fatt rilevat li din ir-regolamentazzjoni saret, u saret b'mod proporzjonali minghajr ebda distinzjoni bejn cittadini tal-Unjoni Ewropea inkluzi dawk Maltin.

5. Illi finalment id-Direttivi citati mir-rikorrenti mkien ma jipprekludu l-uzu ta' tariffi li mhumieq specifikati fid-Direttivi stess.

Ghalhekk u fid-dawl tas-suespost l-allegazzjonijiet u t-talbiet tar-rikorrenti ghandhom jigu michuda bl-ispejjez kontra taghhom.

Salvi eccezzjonijiet ulterjuri.

2) Enemalta Corporation

In its reply filed on the 22nd March 2013, respondent Enemalta Corporation stated as follows in Maltese –

1. *Illi preliminarjament l-azzjoni odjerna hija rrita u nulla stante illi hija msejsa fuq artikoli, senjatament l-artikolu 46(3) tal-Kostituzzjoni u l-artikolu 5 tal-Legislazzjoni sussidjarja 12.09 tal-Ligijiet ta` Malta, li jaghtu poter lill-Qrati hemm definiti sabiex jaghmlu referenza kostituzzjonali u mhux sabiex ir-referenza kostituzzjonali ssir mir-rikorrenti ;*

2. *Illi wkoll preliminarjament kull rikorrent ghandu jgib prova tal-locus standi tieghu sabiex jinterponi din l-azzjoni ;*

3. *Illi wkoll preliminarjament din l-Onorabbli Qorti ghandha tirrifjuta li tezercita s-setghat kostituzzjonali taghha ai termini tal-artikolu 46(2) tal-Kostituzzjoni stante illi r-rikorrenti ghogobhom jinterponu din l-azzjoni minghajr ma ezawrew ir-rimedji ordinarji li tipprovdihom il-ligi, fost l-ohrajn, taht il-Kap 423 u l-Kap 387 tal-Ligijiet ta` Malta ;*

4. *Illi fi kwalunkwe kaz u minghajr pregudizzju ghas-suespost il-Korporazzjoni tirriserva li tipprezenta risposta ulterjuri jekk ikun mehtieg u dan minhabba l-fatt illi r-rikorrenti ma ghamlu l-ebda referenza ghal dak li skont huma huwa d-dritt fundamentali taghhom stabbilit*

mill-artikoli 33 sa 45 tal-Kostituzzjoni li gie lez, liema artikoli tal-ligijiet sussidjarji, skont huma, ghandhom jigu dikjarati nulli u bla effett u in generali ma ssostanzjawx il-premessi taghhom f`mod car u ezawrient i;

5. *Illi fil-mertu u minghajr pregudizzju ghas-suespost, it-talbiet tar-rikorrenti huma nfondati stante illi ma gie lez ebda dritt taghhom u regolamenti ghall-provvista tal-elettriku (SL423.01) huma pjenament konformi mal-Kostituzzjoni ta` Malta, mal-Kap 460 tal-Ligijiet ta` Malta u mad-Direttivi 2009/72, 2006/123 u l-Artikoli 43 u 49 tat-TEU (sic) ;*

6. *Illi fil-fatt is-sistema tat-tariffi in kwistjoni hija perfettament kompatibbli mar-rekwiziti tal-ligi u fl-ebda mod ma ccahhad lill-ebda cittadin tal-Unjoni Ewropeja, inkluzi dawk Maltin, minn kwalsiasi dritt li jista` jkollhom;*

7. *Salv eccezzjonijiet ulterjuri.*

Ghaldaqstant, in vista tas-suespost, il-Korporazzjoni Enemalta titlob bir-rispett li din l-Onorabbli Qorti joghghobha tichad it-talbiet tar-rikorrent bhala nfondati kemm fil-fatt kif ukoll fid-dritt ;

Bl-ispejjez.

3) Water Services Corporation

In its reply filed on the 22nd March 2013, respondent Water Services Corporation stated as follows in Maltese –

Illi preliminarjament, l-intempestivita` tal-azzjoni odjerna, stante li fil-konfront tal-Korporazzjoni ghas-

Servizzi tal-Ilma, qatt ma kien hemm xi nterpellazzjoni ufficjali da parti tar-rikorrenti, jew min minnhom, sabiex l-esponenti tirregola l-pozizzjoni taghha ;

Illi minghajr pregudizzju ghas-suespost, u in linea preliminarj wkoll, il-Korporazzjoni esponenti ma hijjex il-legittimu kontradittur, stante li hija m'ghandha l-ebda awtorita` li taghmel jew tibdel il-ligi, u ghaldaqstant ghandha tigi liberata mill-osservanza tal-gudizzju ;

Illi intant, u minghajr pregudizzju ghas-suespost, il-process tat-twaqqif ta` tariffa mill-Korporazzjoni esponenti, huwa soggett ghal ex ante awtorizzazzjoni mill-Awtorita` ta` Malta dwar ir-Rizorzi u dan ai termini tal-Artikolu 27 tal-Kap. 255 tal-Ligijiet ta` Malta ;

Illi minghajr pregudizzju ghas-suespost, u inoltre, ir-rikorrenti jehtiegilhom, qabel xejn, jindikaw b`mod ezatt dawk l-emendi, ossija Avvizi Legali, illi huma qeghdin jittantaw jimpunjaw permezz tal-proceduri odjerni ;

Illi di piu, il-Korporazzjoni esponenti tikkontendi li l-Avviz/i Legali mertu ta` din il-vertenza jikkostitwixxu mizuri tal-Istat ;

Illi minghajr pregudizzju ghas-suespost, u in linea preliminarj wkoll, l-azzjoni odjerna, in kwantu hija bbazata fuq l-Artikolu 46(3) tal-Kostituzzjoni ta` Malta u l-Artikolu 5 tal-Legislazzjoni Sussidjarja 12.09 tal-Ligijiet ta` Malta hija rrita u nulla stante illi l-poter hemm imnissel huwa mholli biss lill-Qrati hemm definiti sabiex jaghmlu riferenza kostituzzjonali u mhux lir-rikorrenti kif donnhom qed jikkontendu ;

Illi minghajr pregudizzju ghas-suespost, u in linea preliminarj wkoll, din l-Onorabbli Qorti ghandha tirrifjuta li

tezercita s-setghat kostituzzjonali taghha a tenur tal-artikolu 46(2) tal-Kostituzzjoni stante li r-rikorrenti ma ezawrewx ir-rimedji ordinarji li tipprovdlhom il-ligi, partikolarment, imma mhux limitatament, dawk kontemplati taht il-Kapijiet 387 u 423 tal-Ligijiet ta` Malta ;

Illi minghajr pregudizzju ghas-suespost, u inoltre, ir-rikorrenti jehtiegilhom jispecificaw liema dritt fundamentali taghhom suncit fl-artikoli 33 sa 45 tal-Kostituzzjoni, allegatament gie lez. Ghaldaqstant il-Korporazzjoni esponenti qeghda minn issa tiriserva illi tipprezenta risposta ulterjuri ;

Illi minghajr pregudizzju ghas-suespost, u inoltre, ir-rikorrenti jehtiegilhom ilkoll jippruvaw l-interess u r-relazzjoni guridika rispettiva taghhom u li b`xi mod gew diskriminati skont il-pretensjonijiet rispettivi taghhom ;

Illi fil-mertu, u minghajr pregudizzju ghas-suespost, id-distinzjoni bejn tariffi residenzjali u tariffi domestici fil-legislazzjoni lokali fiha nnifisha ma hijiex projbita mid-dritt Malti jew dak Ewropej, senjatament mal-Artikolu 65(1) tal-Kostituzzjoni, mal-Kap 460 tal-Ligijiet ta` Malta, mad-Direttivi 2006/123 u 2009/72 u mal-Artikoli 43 u 49 tat-Trattat tal-Unjoni Ewropea; u ma hijiex applikata b`mod diskriminatorju bejn cittadini Maltin u dawk tal-Unjoni Ewropea ;

Illi ghaldaqstant, it-talbiet tar-rikorrenti, fil-konfront tal-Korporazzjoni intimata ghandhom jigu michuda bl-ispejjez kontra l-istess rikorrenti ;

B`riserva ghall-eccezzjonijiet ulterjuri.

Bl-ispejjez.

4) Malta Resources Authority

On the 22 March 2013, respondent Malta Resources Authority filed a reply in Maltese, together with a translation in English. The latter states as follows –

The exponent is contesting the allegations and claims made by the applicant as unfounded in fact and in law for the following reasons :

1. Whereas, preliminarily the Malta Resources Authority is not the correct respondent at law in terms of Article 181B of the Code of Organisation and Civil Procedure (Cap. 12 of the Laws of Malta) and is hence humbly requesting to be non suited with costs.

2. Whereas, also preliminarily the action of the applicants is null and void as it is based on Article 46(3) of the Constitution of Malta and regulation 5 of S.L. 12.09 of the Laws of Malta, as those provisions apply only to the power of a Court which is not the First Hall of the Constitutional Court to make a constitutional reference to the First Hall of the Civil Court and that the same does not confer any right to any party to make “a constitutional reference” itself such as in the case of the applicants.

3. Whereas, also preliminarily, the applicants should prove their juridical interest proof of which is totally absent in their first application.

4. Whereas, preliminarily the applicants should correctly specify their claims for the reason that they are vague and that there does not result any nexus between the facts as exposed and the claims made in their first application.

5. *Whereas, preliminarily the applicants should specify which of the provisions of articles 33 to 45 (inclusive) of the Constitution of Malta (Cap. 1 of the Laws of Malta) which allegedly they are entitled of their protection thereof.*

6. *Whereas, preliminarily the application and the claims made therein lack any legal basis under the Constitutional procedure for the reason that Article 65(1) of the Constitution and Chapter 460 of the Laws of Malta and Directives 2009/72/EC and 2006/123 and articles 43 and 49 of the TFEU, do not in any manner substantiate the applicants' claims under the Constitutional procedure.*

7. *Whereas, preliminarily the applicants are making abuse of the Constitutional procedure in that they are making use of an extraordinary procedure as the current procedure is when they instead may avail themselves of ordinary remedies to safeguard any rights asserted by themselves. In this instance the exponent refers to Article 46(2) of the Constitution and to the proviso to Article 4(2) of Chapter 319 of the Laws of Malta. Whereas also the same applicants may have filed a complaint with the exponent Authority to investigate the alleged breach of the relevant laws or of a regulatory requirement by means of a formal and substantive complaint. Whereas the same applicants were informed of this by means of the Authority's counter-protest of the 4th January 2013 (see doc. MRA attached with this reply), instead of which the applicants chose to proceed by filing an action by means of this extraordinary procedure.*

8. *In that on the merits, subordinately and without prejudice to what has been premised, even if for the sake of argument it has to be conceded that the applicants have any right which is protected under the current procedure, the subsidiary legislation 423.01 does*

not contravene any of the rights protected under the Constitution. In that inasmuch even the same applicants are not specifying in their application which fundamental human right protected under the Constitution is being contravened by the exponent.

9. *In that subordinatedly and without prejudice to what has been premised, the claim made by the applicants that this Honourable Court should “declare null and without effect the dual-tariff system for the electricity and water” simply on the basis of their allegations runs counter to the Constitution and this because it is based as it is, on mere allegations that it is not compliant with Constitutional obligations, and must hence be denied. Whereas in any case such tariffs are wholly compatible in fact and in law with Maltese and European law.*

10. *In that subordinatedly and without prejudice to what has been premised, in view of the nebulous and abstract manner the alleged breaches have been expressed by the applicants, the exponent Authority is hereby as from now reserving its right to respond further as the case may be.*

Saving any other pleas.

Therefore the applicant, respectfully requests this Honourable Court to deny all the claims of the applicants with expenses against them.

Note has been taken of this respondent's list of witnesses and list of documents.

IV. The preliminary pleas

The Court **directed** the parties to present evidence and make submissions regarding the preliminary pleas as it was the intention of the Court to give judgement on the preliminary pleas before considering the merits.

V. **The proceedings**

The Court refers to **two matters** that evolved in the course of these proceedings.

1) **The first matter** :

The *note verbal* of the hearing of the 26th March 2013 states *inter alia* as follows –

Dr Galea for the applicants refers to the third paragraph of the application which reads from "Therefore this application is being filed" till "Laws of Malta", and declares that this premise is not an integral part of the claims but is merely a supporting argument. Therefore, for clarity's sake, applicants declare that their action is based exclusively on Art. 65(1) of the Constitution, for reasons laid down in the application and which still hold to date. Furthermore, for clarity's sake, applicants declare that they are not relying on any alleged violation of the human rights' provisions of the Constitution as a basis for their claim.

Dr Galea re-affirms the position that the lawsuit was filed in the proper Court, in the sense that according to the premises and claims being made by applicants, this remains a case with Constitutional application, for reasons already explained.

Dr Sciberras, Dr Degiorgio, Dr Young and Dr Pace, having heard the explanation submitted by applicants' lawyer, submit as follows :

That contrary to what Dr Galea is stating, the reference to Art 46(3) of the Constitution is not merely a supporting argument, but it is the article on which the whole action is based, as emerges from the wording of the application. Therefore they insist that for these reasons the application is null and void as indicated in the preliminary pleas.

The Court, having heard the submissions of parties lawyers', orders that submissions be made for eventual judgement by this Court, on all pleas which are of a preliminary nature, and which do not enter into the merits of the dispute between the parties.

By decree delivered in open court on the 6th June 2013, the Court acceded to claimants' request for the deletion of the third paragraph of their original application and its substitution with the following –

Therefore this application is being filed before this Honorable Court in terms of Art 46(1) of the Constitution of Malta and according to disposition 4 of Subsidiary Legislation 12.09 of the Laws of Malta.

Claimants had filed their request by an application of the 17th April 2013 or reasons therein explained, which request was opposed by all respondents.

2) The second matter

The hearing of the 20th June 2013 was adjourned to the 30th September 2013 for final submissions. At the hearing of the 20th June 2013, applicants filed a note of observations regarding the preliminary pleas. Respondents were granted leave to file their note of observations either individually or collectively. The respondents (with the exception of the Water Services

Corporation) filed a note of submissions within the time limit of the 16th September 2013.

At the hearing of the 30th September 2013, applicants entered the following *note verbal* -

Plaintiffs make reference to fol. 195 of the proceedings. This is an annex indicating a list of plaintiffs together with their official identification document references and a corresponding ARMS account number. The defendants have raised in their note of submissions on the preliminary plea that this information is not sufficient as is. The plaintiffs in view of the Constitutional nature of this procedures are humbly requesting this Court to witness one of the plaintiffs who will verify on oath her passport or ID Number together with an electricity bill for the purpose approving the locus standi of at least one of the plaintiffs. The plaintiffs however leave the matter regarding the sufficiency of the evidence regarding the locus standi to the better Judgement of this Honorable Court.

The respondents opposed the request for reasons that result from the *note verbal* of the hearing.

The Court gave the following decree in open court –

***Having heard the request made by Applicants.
Having noted the objections of respondents.***

Considers that the nature of these procedures render it imperative onto Court to look thoroughly into the aspects of the proper administration of justice in a manner that respects the rights of each party.

Considers that the request made is not in consistent with any rule of substantive justice and more than that is not in any matter prejudicial to the

position taken by respondents in this proceedings taking it into account that the preliminary pleas are various in nature.

Therefore the Court authorises each respondent to confirm the statement at folio. 195 of the Court file by way of evidence for the purposes of the matter under scrutiny, and if need be should the Court enter into the merits of the dispute.

Following that decree, the Court heard the testimony of those applicants who were present. With regard to the others who were absent, their lawyer Dr Juliette Galea gave an account on oath. In essence, the applicants – each in his or her regard – confirmed their nationality, testified that they were resident in Malta, gave details of their Maltese identity card and of their ARMS account.

By decree given at that same hearing, the Court adjourned the cause for today to give judgement on the preliminary pleas.

Having seen the acts of these proceedings, the Court makes the following considerations.

VI. Nullity of the action

All respondents pleaded nullity of the action :-

1) The Attorney General ; the Minister of Finance, the Economy and Investment ; and the Minister for Resources and Rural Affairs : by means of the plea marked 1(i).

2) Enemalta Corporation : by means of the plea marked 1.

3) Water Services Corporation : by means of its sixth plea.

4) Malta Resources Authority : by means of its second plea.

All respondents shared the same position, namely that as originally drafted, claimants application was null and void as it referred to Art 46(3) of the Constitution of Malta and to Reg 5 of S.L. 12.09 of the Laws of Malta. Those provisions applied only to the power of a Court (which does not include this Court in its present competence) to make a constitutional reference to the First Hall Civil Court.

Considerations of the Court

Following the decree of the 6th June 2013 where, the Court acceded to claimants` request for the deletion of the third paragraph of their original application and its substitution with the following – *Therefore this application is being filed before this Honorable Court in terms of Art 46(1) of the Constitution of Malta and according to disposition 4 of Subsidiary Legislation 12.09 of the Laws of Malta*, the plea does not require further consideration, as all respondents have acknowledged in their notes of observations.

For these reasons, the Court abstains from taking further cognizance of plea marked 1(i) of respondents the Attorney General ; the Minister of Finance, the Economy and Investment ; and the Minister for Resources and Rural Affairs ; plea marked 1 of respondent Enemalta Corporation ; the sixth plea of respondent Water Services Corporation ;

and the second plea of respondent Malta Resources Authority.

VI. Juridical interest

All respondents pleaded that applicants had to prove their interest at law to commence this action.

1) The Attorney General ; the Minister of Finance, the Economy and Investment ; and the Minister for Resources and Rural Affairs : by means of the plea marked 1(ii).

2) Enemalta Corporation : by means of the plea marked 2.

3) Water Services Corporation : by means of its ninth plea.

4) Malta Resources Authority : by means of its third plea.

1) Evidence

At the hearing of the 30th September 2013, the Court heard the testimony of those applicants who were present at the hearing. With regard to the others who were absent, their lawyer Dr Juliette Galea gave an account on oath. In essence, the applicants – each in his or her regard – confirmed their nationality, testified that they were resident in Malta, gave details of their Maltese identity card and of their ARMS account.

2) Submissions

a) **Respondents**

The common position taken by respondents was in the sense that claimants had not proven their interest at law to undertake these proceedings.

b) **The applicants**

They contend that they have a legal interest to file this lawsuit on the principle that where the favourable outcome of an action may form the basis of a second action, that fact in itself guarantees the subsistence of juridical interest.

c) **Considerations of the Court**

In a judgement delivered on the 28th June 2010 in re “**Adrian Buckle et vs Teresa Friggieri et**” (confirmed by a judgement of the Constitutional Court of the 29th November 2012) this Court stated as follows –

*Huwa principju ewlieni tad-dritt li min jipproponi kawza, irid ikollu l-interess. Dan irid ikun (a) **guridiku**, jigifieri d-domanda jrid ikun fiha ipotesi ta' l-ezistenza ta' dritt u l-vjolazzjoni tieghu ; (b) **dirett u personali** : fis-sens li jkun dirett meta jezisti fil-kontestazzjoni jew fil-konsegwenzi taghha, u jkun personali fis-sens li jirrigwarda l-attur, hlief ghall-azzjoni popolari (li mhix il-kaz tal-lum) ; (c) **attwali** fis-sens li jrid johrog minn stat attwali ta' vjolazzjoni ta' dritt, jigifieri l-vjolazzjoni attwali tal-ligi trid tikkonsisti f'kondizzjoni posittiva jew negattiva kontrarja ghall-godiment ta' dirett legalment appartenenti jew spettanti lid-detentur.’ (**Muscat vs Buttigieg : Vol. LXXIV.II.481**).*

*Fis-sentenza taghha tat-28 ta' Novembru 2003 fil-kawza "**Formosa Gauci vs Lanfranco**" il-Qorti tal-Appell elenkat l-principji li jikkwalifikaw dan l-interess -*

(i) L-interess (guridiku) mehtieg irid ikun wiehed dirett, legittimu, kif ukoll attwali ;

(ii) L-istat attwali ta' ksur ta' jedd jikkonsisti f'kundizzjoni pozittiva jew negattiva li xxejjien jew tinnewtralizza dritt li jkun jappartjeni lid-detentur jew lil dak li lilu jkun misthoqq ;

iii) L-interess guridiku fl-attur huwa dak li l-imharrek jirrifjuta li jaghraf il-jedd ta' l-istess attur u dan billi kull persuna ghandha d-dritt titlob li, fil-konfront taghha, isir haqq jew tigi msewwija ingustizzja li tkun giet maghmula kontriha ;

iv) L-interess guridiku irid ikun iwassal ghal rizultat ta' utilita' u vantagg ghal min irid jezercita l-jedd. Jekk l-azzjoni ma tistax twassal ghal tali rizultat ghal min jibdiha, dik l-azzjoni ma tistax tregi ;

v) L-interess guridiku jrid jibqa' jissussisti tul il-hajja kollha ta' l-azzjoni u mhux biss fil-bidu taghha. Jekk l-interess jintemm, il-konsegwenza mmedjata tkun li l-imharrek jinheles milli jibqa' fil-kawza ;

vi) L-interess ta' l-attur ghandu jkun jidher mill-att tac-citazzjoni nnifisha. Ghalkemm il-mottiv ta' l-interess mhux mehtieg li jkun imsemmi fic-citazzjoni, dan ghandu jirrizulta mill-provi jekk kemm-il darba jigi kkuntrastat ;

vii) fil-prattika gudizzjarja, wiehed jista' jippromwovi kawza biex jikseb dikjarazzjoni preordinata ghal azzjoni definittiva u ahharija, minkejja li din ma tkunx giet inkluza fl-azzjoni ta' accertament. Madankollu, f'kaz bhal dan, il-Qorti trid tkun sodisfatta li jkun hemm l-interess mehtieg, anki preordinat ghall-kawza l-ohra, u li d-dikjarazzjoni hekk miksuba tkun tiffirma l-bazi tal-kawza l-ohra li tista' ssir aktar 'il quddiem ;

viii) *l-interess mhux bilfors ikun wiehed li jigi kkwantifikat f'somma determinata ta' flus jew gid, imma jista' jkun imsejjes biex ihares jew jaghti gharfien ghal jedd morali jew soggettiv, imbasta l-jedd invokat ma jkunx wiehed ipotetiku ;*

ix) *jekk azzjoni, ghalkemm tkun imsejsa fuq jedd ta' l-attur, tkun mahsuba biss biex tirreka hsara lill-imharrek bla ebda vantagg utli lill-attur tali azzjoni titqies bhala wahda llegali – azzjoni maghrufa fid-duttrina bhala wahda acta ad aemulationem – u titqies li fiha jkun jonqos l-interess guridiku mehtieg.*

*Fis-sentenza “**Fenech Adami vs Abela et**” (A.C. – 6 ta' Ottubru 1999 – Vol. LXXXIII.II.331) il-Qorti ta' l-Appell sostniet -*

“Illi d-definizzjoni accettata fil-gurisprudenza nostrana ta' interess guridiku hija dik tal-Mortara li jghid li l-interess guridiku huwa ‘l'utilita' finale della domanda giudiziale nel tema dell'asserita esistenza o violazione del diritto’.

Illi ...huwa rekwizit essenzjali li jkun hemm dritt legali li jkun il-bazi li bih l-attur ikun jista' jippromwovi u jitlob l-accertament tieghu permezz ta' l-awtorita' gudizzjarja”.

*Fis-sentenza ta' din il-Qorti tal-15 ta' Lulju 1952 (Vol.36.II.493), fil-kawza fl-ismijiet “**Baldacchino vs Bellizzi et**” inghad li -*

... min jistitwixxi azzjoni jrid bilfors ikollu xi dritt – ‘l'azione civile non puo' essere promossa che per far valere un diritto, e da colui a cui il diritto spetti. Mancando l'uno e l'altro di questi requisiti, l'azione e' infondata ed inammissibile’.

*Hekk ukoll fis-sentenza “**Eminyan vs Mousu’ pro et noe et**” (A.C. 28 ta’ Frar 1997 - Vol. LXX1.II.429) u fis-sentenza “**Scerri et vs Farrugia et**” (P.A. – RCP - 1 ta’ Ottubru 2002) kien affermat “li l-interess guridiku jrid ikun reali u attwali u ghandu jiskaturixxi minn vjolazzjoni jew theddida ta’ vjolazzjoni ta’ xi dritt li jappartjeni lill-attur u f’dan is-sens allura jrid ukoll ikun personali. Irid jigi stabbilit in-ness guridiku bejn l-agir abbuziv u illegali allegatament kommess mill-konvenut u d-danni jew almenu l-pregudizzju allegatament subit mill-attur konsegwenzjali ghal tali agir”.*

Fil-kawza “**Persiano vs Il-Kummissarju tal-Pulizija**” (P.A. – JRM - 18 ta’ Jannar 2001), il-Qorti qalet hekk -

*“Illi ghal bosta snin il-Qrati taghna fissru li l-elementi mehtiega biex isawru interess ta’ l-attur f’kawza huma tlieta, u jigifieri li l-interess irid ikun guridiku, li l-interess irid ikun dirett u personali u li dak l-interess ikun attwali. B’ ta’ l-ewwel, wiehed jifhem li dak l-interess ghandu jkollu mqar iz-zerriegha ta’ l-ezistenza ta’ jedd u l-htiega li tilqa’ ghal kull attentat ta’ ksur tieghu minn haddiehor. Dan l-interess m’hemmx ghalfejn ikun jissarraff fi flus jew f’valur ekonomiku [ara per eżempju, Qorti ta’ l-Appell fil-kawza flismijiet “**Falzon Sant Manduca vs Weale**”, maqtugha fid-9 ta’ Jannar 1959, Kollezz. Vol XLIII.I.11”] Illi minbarra dawn l-elementi, gie mfisher ukoll li biex wiehed ikollu interess li jiftah kawza, dak l-interess (jew ahjar, il-motiv) tat-talba ghandu jkun konkret u jezisti fil-konfront ta’ dak li kontra tieghu t-talba ssir [ara, per eżempju, sentenza ta’ din il-Qorti (PASP) moghtija fit-13 ta’ Marzu 1992, fil-kawza fl-ismijiet “**Francis Tonna vs Vincent Gixti**”, Kollezz. Vol LXXV1.III.592].”*

Fuq l-iskorta ta’ din il-gurisprudenza, u sentenzi ohra li jsegu l-istess hsieb, din il-Qorti tghid li l-interess guridiku huwa essenzjalment distint mid-dritt. Huwa propju ghalhekk li l-interess mhux biss irid ikun dirett u attwali,

izda anki legittimu, cioe' konformi mid-dritt ta' min ikun fil-kawza.

Il-Mattirolo (Vol. I. p.50) f'dan ir-rigward ifisser li "l'azione compete soltanto a tutela dei diritti ; l-interesse e' scompagnato dal diritto, non vi ha azione, non giudizio possibile ; cosi' che, per istituire un guidizo, non basta che un fatt d'altri pregiudichi i nostri interessi, ma occorre che questo fatto arrechi un danno giuridico, che non esiste se non e' 'injuria datum' se cioe' non e' prodotto da chi, esorbitando dalla sfera del diritto proprio, offende un nostro diritto".

Il-ligi qieghda hemm biex thares dak l-interess li ghandu dritt bhala bazi tieghu. Huwa propju ghalhekk li jinghad li l-interess huwa l-mizura ta' l-azzjoni ("Il mezzo di tutelare un diritto leso o immediatamente minacciato non puo' essere esercitata senza un interesse, essendo assiomatico che l'interesse e' la misura delle azioni ed e' il motivo che giustifica l'accesso alle aule di giustizia" - Vol XXV.I.506).

*L-interess irid ikun guridiku fis-sens li dan l-interess irid ikun rikonoxxut bil-ligi u l-azzjoni trid tkun preordinata ghall-otteniment ta' rimedju protett bil-ligi ("**Darmenia vs Borg Olivier**" – Qorti tal-Appell – 18 ta' Frar 1966). "Meta l-azzjoni ma tkunx kapaci twassal ghal rizultat utli ghal min jipproponiha minhabba fatt sopravvenut ghall-istituzzjoni tal-kawza li jezawrixxi jew jestingwi l-interess, dik l-azzjoni ma tistax tregi." ("**Amato Gauci et vs Zammit**" – Qorti tal-Appell Inferjuri – 19 ta' Mejju 2004).*

L-insenjament tal-Mortara (l'utilita' finale della domanda giudiziale sul tema dell'asserita esistenza e violazione di un diritto – Vol.II Pg.588) ikompli jsostni r-rekwizit ta' l-interess guridiku kostitwit mill-attwalita' tal-interess.

*Kif kien deciz mill-Qorti tal-Appell fil-kawzi “**Flynn vs Zammit**” (22 ta’ Marzu 1992), “**Brockdorff vs Pace Balzan**” (8 ta’ April 1899), “**Xuereb vs Petrococcchino**” (4 ta’ Dicembru 1944) “**Zammit vs Formosa et**” (11 ta’ Gunju 1948), mill-Qorti Kostituzzjonali fil-kawzi “**Cacopardo vs Ministru tax-Xogholijiet et**” (25 ta’ Marzu 1985) u minn din il-Qorti fil-kawzi “**Strickland vs Caruana Gatto**” (16 ta’ Dicembru 1932) u “**Baluci vs Vella**” (12 ta’ Marzu 1946), min jipproponi kawza ghandu mhux biss ikollu interess fl-ezitu taghha, imma dan l-interess ghandu jkun jissussiti fil-konfront tal-konvenut.*

The Court, without hesitation, is of the considered opinion that all claimants (without exclusion) have interest at law to proceed with this action. The merits of their claim are not the object of this judgement. However that claimants have an interest to seek redress in the manner they have directed their action is more than evident, not only from the premises that form the basis of their application, but also from their declared intention regarding future action they would pursue, should their claim in these proceedings be acceded to on the merits.

For these reasons, the Court rejects the plea marked 1(ii) of respondents the Attorney General ; the Minister of Finance, the Economy and Investment ; and the Minister for Resources and Rural Affairs ; plea marked 2 of respondent Enemalta Corporation ; the ninth plea of respondent Water Services Corporation ; and the third plea of respondent Malta Resources Authority.

VII. The Attorney General

Respondents the Attorney General ; the Minister of Finance, the Economy and Investment ; and the Minister for Resources and Rural Affairs pleaded in their third plea

that the Attorney General should not have been cited as a proper defendant in this action and should therefore be declared non-suited.

a) Respondents

Their position is in the sense that once claimants' contestation is specifically directed as subsidiary legislation and not the Act of Parliament itself, the matter is competence and responsibility of the Minister not of the Attorney General.

b) The applicants

They contend that once they are requesting the Court to annul subsidiary legislation which they allege to be in conflict with the Constitution, representation should vest in the Attorney General.

c) Considerations of the Court

From the nature of the action, it is evident for this Court that claimants are not contesting the Acts of Parliament *ut sic* by virtue of which the specific subsidiary legislation was made law, but what they are contesting is the constitutionality of some of the substantive provisions of that legislation. They are not even contesting the process how that subsidiary legislation was made law.

Taking into account the fact that no Acts of Parliament are not in dispute. What is in dispute is the manner how the Minister exercised his powers according to the enabling Acts, more precisely the product of that exercise being the subsidiary legislation allegedly running counter to their fundamental rights. That being the case

this Court is of the considered opinion that the Attorney General is definitely not a proper defendant in this action, taking into account his role as defined in the Constitution, and his representative role in judicial functions as established in Chap 12.

For these reasons, the Court accepts the plea marked 1(iii) of respondents the Attorney General ; the Minister of Finance, the Economy and Investment ; and the Minister for Resources and Rural Affairs, declares respondent the Attorney General as an improper defendant in this cause and declares the Attorney General as non-suited.

VIII) Non-exhaustion of ordinary remedies

All respondents raised this plea :-

- 1) The Attorney General ; the Minister of Finance, the Economy and Investment ; and the Minister for Resources and Rural Affairs : by means of the plea marked 1(iv).
- 2) Enemalta Corporation : by means of the plea marked 2.
- 3) Water Services Corporation : by means of its seventh plea.
- 4) Malta Resources Authority : by means of its seventh plea.

a) Evidence

In an affidavit at fol 156 et seq of the acts of these proceedings, Dr Andre` Buttigieg on behalf of the Malta Resources Authority testified that prior to the filing of the present application, claimants did not seek ordinary remedies that were at their disposal.

The first remedy is to make a formal complaint to the Authority for the determination of an issue raised. In that case the Authority could have attempted to find a solution between the parties, or failing that, decide the dispute. From that decision, there is a right of appeal to the Administrative Review Tribunal, and from that tribunal, a right of appeal on a point of law before the Court of Appeal.

The second remedy is a formal complaint to the Authority to take the appropriate measures including the imposition of administrative fines in the case of non-compliance with its decisions.

Before the present proceedings were filed, applicants` legal representative was invited by the Authority to resort to these ordinary procedures, rather than resort to a constitutional application, but that suggestion was rejected.

b) Respondents

In their submissions, respondents take a common position and refer to the non-exhaustion of these remedies as prejudicial at law to claimants to resorting directly to the present action.

c) Applicants

The only remedy for a party to seek a declaration of nullity of legislation is to seek redress through a constitutional procedure. As long as the contested legislation remains in force, it must be applied by the judicial or quasi-judicial authorities of the State. There are no satisfactory measures in Chap 387 and 423 that provide a remedy for applicants' claims.

d) Considerations of the Court

In the judgement delivered on the 28 June 2010 in re "**Adrian Buckle et vs Teresa Friggieri et**" (confirmed by a judgement of the Constitutional Court of the 29 November 2012) [op cit] this Court stated as follows –

*L-ezistenza ta' rimedju iehor lill-parti li tressaq azzjoni ghal allegat ksur ta' jedd fundamentali taht il-Kostituzzjoni jew taht il-Konvenzjoni ghandha tirrizulta lill-Qorti bhala **stat ta' fatt attwali u obbjettiv**, u d-diskrezzjoni ta' l-*

*Qorti li ma tezercitax is-setghat taghha "jekk tqis li jkun desiderabbli li hekk taghmel" minhabba l-ezistenza ta' rimedju iehor hija decizjoni fuq tali **stat ta' fatt**. Huwa biss meta jew jekk jirrizulta lill-Qorti bhala fatt li jezisti rimedju iehor **effettiv** lir-rikorrent li l-Qorti tista' tiddelibera li ma tezercitax is-setghat taghha li tisma' l-ilment imressaq quddiemha. F'kaz li ma jirrizultax li kien hemm rimedju iehor xieraq, il-Qorti trid tiehu konjizzjoni tal-ilment. Izda anke f'kaz li jirrizulta li kien hemm rimedju iehor, il-Qorti xorta wahda jibqaghlha s-setgha li tiddeciedi li ma ccedix l-ezercizzju tas-setgha taghha.*

Id-diskrezzjoni li l-Qorti ghandha f'dan ir-rigward trid titwettag b'mod korrett u tkun mmirata lejn l-iskop tal-legislatur, u cioe' li filwaqt li ma jithallewx isiru kawzi kostituzzjonali bla bzonn, fl-istess waqt persuna ma tinzammx milli tipprocedi b'azzjoni bhal din meta jkun jidher li l-kaz huwa wiehed serju li jista' jimplika l-ksur ta'

jedd fundamentali. Ghalhekk din id-diskrezzjoni ghandha tkun uzata dejjem fl-ahjar interess tal-amministrazzjoni tal-gustizzja sabiex minn naha wahda, il-Qrati ta' indoli kostituzzjonali ma jkunux rinfaccjati b`kawzi li messhom jew setghu tressqu quddiem Qrati ohrajn kompetenti jew li dwarhom messhom jew setghu jfittxu rimedji ohrajn effettivi, u min-naha l-ohra sabiex persuna ma tkunx imcahhda mir-rimedji li ghandha jedd tfittex taht il-Kostituzzjoni jew taht il-Konvenzjoni.

L-esistenza ta' rimedju iehor ghandha titqies fil-kuntest tal-ksur tad-dritt fundamentali li jkun qed jigi allegat li nkiser. Ghandu jkun rimedju accessibbli, xieraq, effettiv u adegwat biex jindirizza l-ksur. M'hemmx ghalfejn li, biex jitqies bhala effettiv, ir-rimedju jintwera bhala wiehed li sejjer jaghti lir-rikorrent success garantit.

Huwa bizzzejjed li jintwera li jkun wiehed li jista' jigi segwit b`mod Prattiku, effettiv u effikaci. Diversi kienu s-sentenzi moghtija mill-Qorti Kostituzzjonali fejn kien determinati l-principji li ghandhom jigu segwiti minn Qorti biex tqis jekk huwiex minnu li r-rikorrent kellu ghad-dispozizzjoni tieghu rimedju alternattiv effettiv.

Fost dawn il-principji, hemm li –

(a) Meta jidher car li jezistu mezzi ordinarji disponibbli biex jikseb rimedju ghall-ilment tieghu, ir-rikorrent ghandu jirrikorri ghal dawk il-mezzi, qabel ma jirrikorri ghar-rimedju kostituzzjonali, u huwa biss wara li jkun fittex dawk il-mezzi jew wara li jidher li dawk il-mezzi ma jkunux effettivament disponibbli li ghandu jintuza r-rimedju kostituzzjonali.

(b) Ghandha torbot id-diskrezzjoni tal-Qorti biex tqis jekk ghandhiex twettaq is-setghat taghha li tisma' kawza ta' natura kostituzzjonali, sakemm ma tingiebx xi

raguni serja u gravi ta' illegalita', ingustizzja jew zball manifest fl-uzu taghha.

(c) Ma hemm l-ebda kriterju stabbilit minn qabel dwar l-uzu ta' din id-diskrezzjoni, billi kull kaz irid jitqies fuq il-fatti u c-cirkostanzi tieghu.

(d) In-nuqqas wahdu ta' tehid ta' mezzi ordinarji mir-rikorrent mhuwiex raguni bizzejjed biex Qorti ta' xejra kostituzzjonali tiddeciedi li ma tuzax is-setghat taghha li tisma' l-ilment, jekk jintwera li l-imsemmija mezzi ma kinux tajbin biex jaghtu rimedju shih lir-rikorrent.

(e) In-nuqqas ta' tehid ta' rimedju ordinarju – ukoll jekk seta' kien ghal kollox effettiv biex jindirizza l-ilment tar-rikorrent - minhabba l-imgieba ta' haddiehor m'ghandux ikun raguni biex il-Qorti ma tezercitax is-setghat taghha li tisma' l-ilment kostituzzjonali tar-rikorrent.

(f) L-ezercizzju minn Qorti (tal-ewwel grad) tad-diskrezzjoni taghha bla ma tistharreg il-materja necessarja li fuqha tali diskrezzjoni ghandha titwettaq, jaghti lil Qorti tat-tieni grad is-setgha li twarrab dik id-diskrezzjoni.

(g) Meta r-rimedju jaqa' fil-kompetenza ta' organu iehor jew meta s-smigh tal-ilment tar-rikorrent sejjer iwassal biex l-indagni gudizzjarja u l-process l-iehor tas-smigh tar-rimedju ordinarju jkunu duplikazzjoni ta' xulxin, il-Qorti kostituzzjonali ghandha ttendi lejn ir-rifjut li tuza s-setghat taghha kostituzzjonali, sakemm l-indagni gudizzjarja tal-kaz ma tkunx, min-natura taghha, ixxaqleb izjed lejn kwistjoni kostituzzjonali.

Fuq kollox, l-uzu tad-diskrezzjoni ghandha tigi ezercitata bi prudenza, u b'mod li fejn jidher li hemm ksur serju ta' drittijiet fundamentali jew anke fejn sejjer ikun hemm ksur ta' dawk id-drittijiet, allura l-Qorti ghandha xxaqleb lejn it-twettiq ta' dawk is-setghat.

Ghall-konsiderazzjonijiet premessi, din il-Qorti ssib il-konfort ta' dawn is-sentenzi : Qorti Kostituzzjoni - 31.5.1999 – **“Zahra vs Awtorita’ tal-Ippjanar”** (Kollez.Vol: LXXXIII.i.179) ; Qorti Kostituzzjonali - 27.2.2003 – **“Sammut vs Awtorita’ tal-Ippjanar et”** ; QortiKostituzzjonali - 5.4.1991 – **“Vella vs Kummissarju tal-Pulizija et”** (Kollez. Vol: LXXV.i.106) ; Qorti Kostituzzjonali - 7.3.1994 – **“Vella vs Bannister et”** (Kollez. Vol:LXXVIII.i.48) ; Qorti Kostituzzjonali -12.12.2002 – **“Visual & Sound Communications Ltd. vs Il-Kummissarju tal-Pulizija et”** ; Qorti Kostituzzjonali – 14.5.2004 – **“Axiaq vs Awtorita’ Dwar it-Trasport Pubbliku”**; Qorti Kostituzzjonali – 31.10.2003 – **“Mediterranean Film Studios Limited vs Korporazzjoni ghall-Izvilupp ta’ Malta et”** ; Qorti Kostituzzjonali – 9.10.2001 – **“McKay vs Kummissarju tal-Pulizija et”** ; Qorti Kostituzzjonali – 25.6.1999 – **“Spiteri vs Chairman Awtorita’ tal-Ippjanar et”** (Kollez. Vol: LXXXIII.i.201) ; Qorti Kostituzzjonali – 7.4.2000 – **“Adel Mokhtar Al Sakalli v. Onor. PrimMinistru et”**.; Qorti Kostituzzjonali – 31.5.2000 – **“Rapa v.Chairman ta’ l-Awtorita` ta’ l-Ippjanar et”** ; QortiKostituzzjonali – 16.1.2006 – **“Olena Tretyak v. Direttur tac-Cittadinanza u Expatriate Affairs”** ; QortiKostituzzjonali – 6.1.2006 – **“Melita Cable p.l.c. v. Lavukat Generali et”** ; Qorti Kostituzzjonali – 13.4.2007 – **“Green et v. Avukat Generali et”** ; Qorti Kostituzzjonali – 7.9.2007 – **“Chircop v. Il-Kummissarju tal-Pulizija et”** ;Qorti Kostituzzjonali – 27.2.2009 – **“Xuereb et v. Diretturtax-Xogholijiet et”** ; Qorti Kostituzzjonali – 15.1.1991 – **“Balzan v. Prim Ministru et** ; Qorti Kostituzzjonali –14.6.1995 – **“Briffa v.Kummissarju tal-Pulizija”**.

This Court is of the view that the remedies indicated by respondents have as their point of departure the premise that the legislation in question is valid for all intents and purposes of law, whereas the focal point in the procedure instituted by applicants is the opposite. That being the case, and without in any manner whatsoever,

entering into the merits, this Court holds the opinion that save the present proceedings, applicants do not have another remedy to address in order to seek redress for the alleged violation of their constitutional rights.

For these reasons, the Court rejects the plea marked 1(iv) of respondents the Attorney General ; the Minister of Finance, the Economy and Investment ; and the Minister for Resources and Rural Affairs, the plea marked 2 of respondent Enemalta Corporation ; the seventh plea of respondent Water Services Corporation ; and the seventh plea of respondent Malta Resources Authority..

IX) Unspecified pretensions

All respondents raised the plea or pleas that applicants did not specify the alleged violations to their fundamental rights and how these were specifically affected by the legislation they want to impugn.

- 1) The Attorney General ; the Minister of Finance, the Economy and Investment ; and the Minister for Resources and Rural Affairs : by means of the pleas marked 1(v) and (vi).
- 2) Enemalta Corporation : by means of the plea marked 4.
- 3) Water Services Corporation : by means of its fourth and eighth pleas.
- 4) Malta Resources Authority : by means of its fifth and eight pleas.

a) Considerations of the Court

Respondents are stating that while in essence the applicants are alleging a breach of their fundamental human rights on the basis of their nationality, the parts of the contested legislation identified by the applicants do not refer in any manner whatsoever to nationality as a criterion. According to respondents, the violation of the alleged right is nowhere “*apparent*” as the “*facts*” as they relate to the applicants have never been specifically explained. Nor has there been any evidence submitted which gives comfort to that allegation.

On their part the legislation regarding electricity and water tariffs which is being contested has been specifically identified and indicated in the premises to the application. Furthermore applicants are seeking redress against discrimination and the right to the peaceful enjoyment of their property.

The Court is of the view that respondents’ pleas are definitely not preliminary in nature and not prejudicial for the further consideration of the merits of applicants’ claims.

For these reasons, the Court rejects the pleas marked 1(v) and (vi) of respondents the Attorney General ; the Minister of Finance, the Economy and Investment ; and the Minister for Resources and Rural Affairs, the plea marked 4 of respondent Enemalta Corporation ; the fourth and eight pleas of respondent Water Services Corporation ; and the fifth and eight pleas of respondent Malta Resources Authority..

X) The Malta Resources Authority as defendant

In its first plea, the Malta Resources Authority is alleging its being non-suited as a defendant in these proceedings.

a) Considerations of the Court

Applicants submits that the necessary presence of the Authority as defendant in this proceeding derives from its very functions as these result from Art 4 of Chap 423. The Authority has a measure of autonomy and therefore must answer for the exercise of its functions.

On its part, the Authority submits that according to current legislation in force, the Minister has a duty to consult the Authority but is not bound to implement its advice. The absence of legislative power on the part of the Authority is a guarantee of good legislative governance.

It is the considered opinion of this Court that where the making of subsidiary legislation is concerned, the role of the Authority is consultative not legislative. The latter function vests in the Minister.

For these reasons, the Court accepts the plea marked 1 of respondent Malta Resources Authority, declares said respondent as an improper defendant in this cause and declares the Malta Resources Authority as non-suited.

XI) The Water Services Corporation as defendant

In its second plea, the Water Services Corporation is alleging its being non-suited as a defendant in these proceedings.

a) Considerations of the Court

According to applicants, once Parliament has devolved part of its powers to the Corporation, then the Corporation is answerable as well.

This Court does not endorse the line taken by applicants once their primary concern in undertaking this action was to annul legislation that the Corporation is responsible only for its implementation not for its making.

For these reasons, the Court accepts the plea marked 2 of respondent Water Services Corporation, declares said respondent as an improper defendant in this cause and declares the Water Services Corporation as non-suited.

Decide

For the reasons above, respondents' preliminary pleas are being hereby decided as follows –

The Court abstains from taking further notice of plea marked 1(i) of respondents the Attorney General ; the Minister of Finance, the Economy and Investment ; and the Minister for Resources and Rural Affairs ; of the plea marked 1 of respondent Enemalta Corporation ; of the sixth plea of respondent Water Services Corporation ; and the second plea of respondent Malta Resources Authority.

The Court orders applicants to bear the costs of judgement on this matter.

The Court rejects the plea marked 1(ii) of respondents the Attorney General ; the Minister of Finance, the Economy and Investment ; and the Minister for Resources and Rural Affairs ; plea marked 2 of respondent Enemalta Corporation ; the ninth plea of respondent Water Services Corporation ; and the third plea of respondent Malta Resources Authority.

The Court orders that each party bears its own costs with regard to judgement on this matter.

The Court accepts the plea marked 1(iii) of respondents the Attorney General ; the Minister of Finance, the Economy and Investment ; and the Minister for Resources and Rural Affairs, declares respondent the Attorney General as an improper defendant in this cause and declares the Attorney General as non-suited.

The Court orders applicants to bear the costs of judgement on this matter.

The Court rejects the plea marked 1(iv) of respondents the Attorney General ; the Minister of Finance, the Economy and Investment ; and the Minister for Resources and Rural Affairs, the plea marked 2 of respondent Enemalta Corporation ; the seventh plea of respondent Water Services Corporation ; and the seventh plea of respondent Malta Resources Authority..

The Court orders respondents to bear the costs of judgement on this matter.

The Court rejects the pleas marked 1(v) and (vi) of respondents the Attorney General ; the Minister of Finance, the Economy and Investment ; and the Minister for Resources and Rural Affairs, the plea marked 4 of respondent Enemalta Corporation ; the fourth and eight pleas of respondent Water Services Corporation ; and the fifth and eight pleas of respondent Malta Resources Authority.

The Court orders that each party bears its own costs with regard to judgement on this matter.

The Court accepts the plea marked 1 of respondent Malta Resources Authority, declares said respondent as an improper defendant in this cause and declares the Malta Resources Authority as non-suited.

The Court orders applicants to bear the costs of judgement on this matter.

The Court accepts the plea marked 2 of respondent Water Services Corporation, declares said respondent as an improper defendant in this cause and declares the Water Services Corporation as non-suited.

The Court orders applicants to bear the costs of judgement on this matter.

< Partial Sentence >

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