MALTA
Fil-Qorti tal-Magistrati (Malta)
Magistrat
Dr.Gabriella Vella B.A., LL.D.

Rikors Nru. 259/15VG

Fl-Atti tac-Cedola ta' Depozitu Numru 1337/15 wara l-hrug ta' Mandat ta' Sekwestru Ezekuttiv Numru 1547/15 mahrug fit-13 ta' Lulju 2015 fl-ismijiet:

Paul Pace (ID 126164M), Colin Galea (ID 83169M), George Saliba (ID 645458M) u Maria Cutajar (ID 426575M)

Vs

Steve Mallia (ID 391671M) u Ariadne Massa (ID 65774M)

Illum 5 ta' Ottubru 2015

Il-Qorti,

Rat ir-Rikors ipprezentat minn Steve Mallia u Ariadne Massa fis-7 ta' Awwissu 2015 permezz ta' liema jitolbu li l-Qorti tordna li jinzamm l-izbank tal-flus depozitati taht l-Awtorità Taghha bic-Cedola tad-Depozitu Numru 1337/15 pendenti l-ezitu finali tal-proceduri Kostituzzjonali fl-ismijiet "Steve Mallia et v. Avukat Generali" Rik. Kost. Nru. 39/15JPG f'Malta u, jekk ikun il-kaz, sa ma tigi finalment deciza l-kwistjoni ta' l-allegat ksur tad-dritt tal-libertà ta' l-espressjoni taghhom mill-Qorti Ewropea dwar id-Drittijiet tal-Bniedem, bl-ispejjez kontra Paul Pace, Colin Galea, George Saliba u Maria Cutajar u b'riserva u minghajr pregudizzju ghad-drittijiet jew azzjonijiet ohra li ghandhom skond il-Ligi;

Rat id-dokumenti annessi mar-Rikors promotur a fol. 3 sa' 54 tal-process;

Rat ir-Risposta ta' Paul Pace, Colin Galea, George Saliba u Maria Cutajar permezz ta' liema jopponu ghat-talba tar-Rikorrenti u jitolbu li l-istess tigi michuda, bl-ispejjez kontra taghhom, stante li: (i) kemm-il darba t-talba tar-Rikorrenti kellha tigi milqugha jkun qed jigi accettat il-kuncett ta' appell minn sentenza tal-Qorti ta' l-Appell, kuncett dan li huwa espressament ipprojbit mill-Ligi procedurali; u (ii) ir-Rikorrenti ma adoperawx ir-rimedji moghtija

lilhom mill-Kap.12 tal-Ligijiet ta' Malta biex jigi attakkat il-Mandat ta' Sekwestru li nhareg kontra taghhom izda minflok irrikorrew ghal forma ta' kontestazzjoni ohra li ma hijiex rikonoxxuta u sostnuta mill-Ligi b'dana ghalhekk li t-talba taghhom hija proceduralment monka w ineffikaci;

Semghet it-trattazzjoni orali da parte tad-difensuri tal-partijiet kontendenti;

Rat l-atti tal-kawza;

Ikkunsidrat:

Bil-proceduri odjerni r-Rikorrenti jitlobu li l-Qorti tordna li jinzamm l-izbank tal-flus iddepozitati taht l-Awtorità Taghha bic-Cedola ta' Depozitu Numru 1337/15 in segwitu ghall-Mandat ta' Sekwestru Ezekuttiv bin-Numru 1547/15 fl-ismijiet "Paul Pace et v. Steve Mallia et" u dana pendenti l-ezitu finali tal-proceduri kostituzzjonali f'Malta fl-ismijiet "Steve Mallia et v. Avukat Generali" Rik. Kost. Nru. 39/15 u, jekk ikun il-kaz, sa' ma tigi finalment deciza il-kwistjoni dwar l-allegat ksur tad-dritt tal-libertà ta' espressjoni taghhom mill-Qorti Ewropea dwar id-Drittijiet tal-Bniedem.

Essenzjalment it-talba odjerna skattat in segwitu ghas-segwenti fatti:

- Fil-harga ta' The Sunday Times tat-22 ta' Awwissu 2010 gie ippubblikat artikolu intitolat *Patients swindled in scam – Top MUMN official investigated*;
- Paul Pace, Colin Galea, George Saliba u Maria Cutajar, dak iz-zmien rispettivament President, Segretarju Generali, Segretarju Finanzjarju u Vici-President ta' l-MUMN, hassewhom malafamati bl-artikolu in kwistjoni w istitwew proceduri giudizzjarji fil-konfront ta' Steve Mallia u Ariadne Massa fl-ismijiet "Paul Pace et v. Steve Mallia et" Rik. Nru. 301/10 fejn talbu li l-Qorti tikkundanna lill-konvenuti jew min minnhom ihallsuhom somma li tigi likwidata Minnha in linea ta' danni a tenur tal-Kap.248 tal-Ligijiet ta' Malta minnhom sofferti b'konsegwenza ta' malafama lilhom jew min minnhom arrekata bl-artikolu in kwistjoni u dana billi dak hemm riportat huwa inveritier u malafamanti fil-konfront taghhom u huwa intiz biex jesponihom ghad-disprezz u redikolu tal-pubbliku;
- Steve Mallia u Ariadne Massa kkontestaw it-talba ta' l-atturi stante li: (i) l-artikolu in kwistjoni ma jallega xejn fil-konfront taghhom u cioè ma humiex identifikabbli bhala l-persuna li giet allegatament libellata fl-artikolu; u (ii) in subsidium, l-artikolu in kwistjoni huwa biss kronaka gusta w informattiva, minghajr sensazzjonalizmu, dwar rapport li sar mid-Dipartiment tas-Sahha u Inkjesta sussegwenti li qed issir mill-Pulizija dwar allegata frodi fuq pazjenti ta' l-Isptar Mater Dei, haga ta' interess pubbliku;
- B'sentenza pronuncjata fis-17 ta' Settembru 2012, il-Qorti tal-Magistrati (Malta) cahdet l-eccezzjonijiet tal-konvenuti u minflok laqghet it-talbiet

attrici u kkundannat lil Ariadne Massa thallas in linea ta' danni s-somma ta' €3,000 kull wiehed lil Paul Pace u Colin Galea u s-somma ta' €2,000 kull wiehed lil George Saliba u Maria Cutajar u kkundannat lil Steve Mallia jhallas lill-atturi lkoll flimkien in linea ta' danni s-somma ta' €1,500, bl-ispejjez u l-imghax legali dekoribbli mid-data tal-prezentata tal-proceduri kontra Massa u Mallia in solidum;

- Steve Mallia u Ariadne Massa appellaw mill-imsemmija sentenza u b'sentenza pronuncjata fl-14 ta' Jannar 2015 il-Qorti ta' l-Appell (Sede Inferjuri) laqghet l-appell taghhom limitatament fir-rigward ta' l-ammont tad-danni likwidati mill-Qorti ta' Prim' Istanza u dana billi ikkundannat lil Steve Mallia u lil Ariadne Massa jhallsu in solidum bejniethom is-somma ta' €4,000 li ghandha tinqasam b'mod ugwali bejn Paul Pace, Colin Galea, George Saliba u Maria Cutajar, bl-imghax dekoribbli mid-data ta' tali sentenza u bl-ispejjez tal-Prim' Istanza jigu sopportati minn Mallia u Massa filwaqt illi l-ispejjez ta' l-Appell jigu sopportati in kwantu ghal ¾ mill-istess Mallia u Massa u ¼ minn Pace u l-appellati l-ohra;
- B'e-mail datata 13 ta' Mejju 2015 l-Avukat ta' Steve Mallia u Ariadne Massa gharraf lill-Avukat ta' Paul Pace, Colin Galea, George Saliba u Maria Cutajar li b'referenza *to your letter of 24 April 2015 to our clients and to our subsequent telecons. Please be informed that our clients have just filed a constitutional law suit on the basis of their claim that the above judgment and the judgment of the Court of First Instance in the same case violate their fundamental human right to freedom of expression. On 6 August 2013 (Application Number 354/2013JPG) the First Hall Civil Court decided that proceedings in respect of human rights constituted a "legitimate impediment" against the enforcement of a judgment until final outcome of those proceedings. This decision was confirmed by the same Court in the same case on 7 November 2013 (Application Number 829/2013JPG). Accordingly in view of the constitutional proceedings filed by our clients, nothing is yet due to your clients in terms of the judgment in caption which remains unenforceable at this stage;*
- Fit-13 ta' Lulju 2015 Paul Pace, Colin Galea, George Saliba u Maria Cutajar talbu w ottjenew il-hrug ta' Mandat ta' Sekwestru Esekuttiv fil-konfront ta' Steve Mallia u Ariadne Massa;
- In segwitu ghal tali Mandat wiehed mis-sekwestratarji, senjatament Allied Newspapers Limited, iddepozita taht l-Awtorità tal-Qorti l-ammont kopert bil-Mandat permezz tac-Cedola ta' Depozitu bin-Nurmu 1337/15;
- In segwitu ghal tali depozitu Steve Mallia u Ariadne Massa talbu u ottjenew il-hrug tal-kontro-mandat relattiv ghall-Mandat ta' Sekwestru Ezekuttiv bin-Numru 1547/15; u
- Fis-7 ta' Awwissu 2015 ressqu t-talba odjerna ghaz-zamma ta' l-izbank tal-flus depozitati taht l-Awtorità tal-Qorti bic-Cedola ta' Depozitu bin-Numru 1337/15.

Fis-sustanza taghha t-talba tar-Rikorrenti ghaz-zamma ta' l-izbank tal-flus depozitati taht l-Awtorità Taghha bic-Cedola ta' Depozitu Nru. 1337/15 pendenti l-ezitu tal-proceduri kostituzzjonali minnhom istitwiti u jekk ikun il-kaz, ta' proceduri eventwali quddiem il-Qorti Ewropea dwar id-Drittijiet tal-Bniedem, hija talba ghas-sospensjoni ta' l-esekuzzjoni tas-sentenza tal-Qorti ta' l-Appell (Sede Inferjuri) fl-ismijiet "Paul Pace et v. Steve Mallia et" pronuncjata fl-14 ta' Jannar 2015 stante li l-izbank ta' flus depozitati wara l-hrug ta' Mandat ta' Sekwestru Ezekuttiv huwa parti integrali tal-process ta' l-esekuzzjoni ta' sentenza, possibilment addirittura l-parti konklussiva ta' tali process meta l-ammont depozitat jekwivali ghat-totalità tal-kreditu pretiz. In effetti l-Artikolu 944(1) tal-Kap.12 tal-Ligijiet ta' Malta jipprovdi li bla *hsara ta' fejn il-ligi tghid xort' ohra, il-flus hekk imqieghda ma jistghux jigu zbankati, kollha jew bicca minnhom, minghajr ma jigu mharsa l-kondizzjonijiet maghmulin fic-cedola ta' depozitu, hlief jekk l-izbank isir b'esekuzzjoni ta' sentenza li tkun ghaddiet f'gudikat jew wara kunsens espress tal-persuni interessati.*

Ir-Rikorrenti jibbazaw it-talba taghhom fuq dak osservat mill-Prim' Awla tal-Qorti Civili f'zewg Digrieti moghtija fil-proceduri fl-ismijiet "Dr. Joseph Zammit Tabona et v. Charles sive Charlie Saliba" rispettivament datati 6 ta' Awwissu 2013 u 7 ta' Novembru 2013, dwar l-esegwibilità ta' sentenza f'kaz fejn in segwitu ghal tali sentenza jigu intavolati proceduri quddiem il-Qorti Ewropea dwar id-Drittijiet tal-Bniedem dwar allegata vjolazzjoni ta' xi wiehed jew iktar mid-drittijiet u libertajiet fondamentali sanciti fil-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fundamentali.

Din il-Qorti kkunsidrat l-imsemmija zewg Digrieti u minnhom jirrizulta li f'dawk il-proceduri, li jittrattaw dwar il-bejgh in subbasta ta' proprjetajiet tad-debitur ezekutat u b'mod specifiku t-talba tad-debitur ezekutat ghas-sospensjoni tal-bejgh in subbasta, u senjatament fid-Digriet moghti fis-6 ta' Awwissu 2013, il-Prim' Awla tal-Qorti Civili *inter alia* ghamlet is-segwenti osservazzjoni: *jidher illi l-intimat Charles Saliba intavola proceduri quddiem il-Qorti Ewropea dwar id-Drittijiet tal-Bniedem fuq l-ilment tieghu li s-sentenza tal-Qorti ta' l-Appell tas-6 ta' Ottubru 2009 ivvjolat id-drittijiet tieghu kif protetti bl-Artikolu 6 tal-Konvenzjoni Ewropea Dwar id-Drittijiet tal-Bniedem u ghalhekk dawn il-proceduri jikkostitwixxu "impediment legittimu" ai termini ta' l-Artikolu 326(1) tal-Kap.12 tal-Ligijiet ta' Malta. Ghaldaqstant il-Qorti tilqa' t-talba ta' l-intimat Charles Saliba u tordna t-twaqqif tas-subbasta odjerna sakemm jigu terminati finalment il-proceduri quddiem il-Qorti Ewropea dwar id-Drittijiet tal-Bniedem.*

Dik il-Qorti kkonfermat il-posizzjoni minnha adottata f'Digriet sussegwenti moghti fis-7 ta' Novembru 2013 in segwitu ghal talba tal-krediturі ezekutanti ghat-thassir ta' l-ewwel Digriet, fejn osservat illi: *apparti minn dawn in-nuqqasijiet serji l-Qorti sabet impediment legittimu ai termini tal-Artikolu 326(1) tal-Kap.12 'l ghaliex l-intimat Charles Saliba intavola proceduri*

quddiem il-Qorti Ewropea dwar id-Drittijiet tal-Bniedem fuq ilment tieghu li is-sentenza tal-Qorti ta' l-Appell tas-6 ta' Ottubru 2009 tivvjola d-drittijiet tieghu kif protetti bl-Artikolu 6 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem. ***Din hija l-istess sentenza illi l-attur nomine qieghed jissokta jezegwixxi bis-Subbasta odjerna***[1]*. Il-Qorti rat u ezaminat il-paragrafi fir-rikors promotur ta' l-attur nomine dwar l-eventwali decizjoni tal-Qorti Ewropea tad-Drittijiet tal-Bniedem. Bir-rispett din il-Qorti bl-ebda mod ma tista' tikkondividi ma dak sollevat mill-attur nomine. Dan qieghed jinghad ghal diversi ragunijiet. Kull decizjoni tal-Qorti Ewropea dwar id-Drittijiet tal-Bniedem, f'konfront ta' gudizzju moghti mill-Qrati Maltin jista' jirrizulta f'diversi mizuri li l-Qrati Maltin ghandhom isegwu – vide "San Leonardo Band Club v. Malta" apparti li l-istat Malti jista' wkoll jigi obbligat li jirrimborsa lill-individwu afflitt. L-Istat Malti m'huwiex sors ta' fondi u kwalunkwe fondi mhallsa mill-Istat Malti jrid johrog mit-taxxi tac-cittadin Malti.* ***Illi ghalhekk dawn il-Qrati jridu jimxu b'kawzjoni kbira meta jigu intavolati proceduri quddiem il-Qorti Ewropea***[2]*.*

Bid-dovut rispett lejn il-Prim' Awla tal-Qorti Civili u dak minnha osservat fil-precitati zewg Digrieti tas-6 ta' Awwissu 2013 u tas-7 ta' Novembru 2013, din il-Qorti ma thossx li ghandha – u wisq inqas li tista' – tabbraccja u b'hekk tapplika dak hemm Minnha osservat u dana ghar-raguni li l-insenjament u l-posizzjoni kemm tal-Qrati ta' gurisdizzjoni Kostituzzjonali nostrali kif ukoll tal-Qorti Ewropea dwar id-Drittijiet tal-Bniedem fil-kuntest ta' l-esegwibilità ta' sentenza f'kaz fejn in segwitu ghal tali sentenza jigu intavolati proceduri quddiemhom dwar allegata vjolazzjoni ta' xi wiehed jew iktar mid-drittijiet u libertajiet fondamentali sanciti fil-Kostituzzjoni u/jew fil-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fundamentali, huma al quanto differenti mill-posizzjoni adottata mill-Prim' Awla tal-Qorti Civili.

Fid-decizjoni fl-ismijiet **Raymond Caruana v. L-Avukat Generali, Rik. Nru. 36/03** moghtija fit-23 ta' April 2004 dwar it-talba ta' Raymond Caruana sabiex jinghata ordni fis-sens li ma jkunx rikjest li jhallas multa imposta fuqu mill-Qorti Kriminali sakemm ma jkunx hemm ezitu finali ghall-proceduri kostituzzjonali minnu istitwiti, il-Prim' Awla tal-Qorti Civili (Sede Kostituzzjonali) cahdet l-imsemmija talba in bazi ghas-segwenti osservazzjoni: *skond il-prassi taht il-Konvenzjoni Ewropeja dwar id-drittijiet tal-bniedem interim relief jinghata meta "there is an apparent real and imminent risk of irreparable harm" u generalment jinghata f'kazijiet fejn hemm "an alleged risk to life or ill treatment" fosthom kazijiet ta' deportation u explusion ghal stati fejn ir-riskju ghall-hajja huwa kbir hafna. Matters of detention, interference with property rights m'humiex fost il-kazijiet fejn jinghata interim relief (Poku vs UK 1996). Fil-kaz in ezami ma hemmx dak l-estrem ta' irreparable harm li r-rikorrent jista' jsofri jekk is-sentenza ma tigix sospiza.*

[1] Enfasi tal-Prim' Awla tal-Qorti Civili.
[2] Enfasi tal-Prim' Awla tal-Qorti Civili.

Fil-fatt l-aktar li jista' jigi mitlub ir-rikorrent hu li jhallas il-multa li wehel. Jekk eventwalment is-sentenza tigi mhassra, dina l-multa tista' terga' tigi rifuza.

Fid-decizjoni fl-ismijiet **Joseph Emanuel Ruggier et v. Joseph Oliver Ruggier pro et noe et, Rik. Nru. 21/05** moghtija fl-4 ta' Lulju 2005 dwar it-talba tad-debituri ezekutati ghat-twaqqif ta' l-esekuzzjoni tas-sentenza kontra taghhom sakemm tinqata' kawza kostituzzjonali minnhom istitwita b'talba biex il-Qorti tiddikjara li s-sentenza inghatat bi ksur tad-drittijiet fondamentali taghhom, il-Prim' Awla tal-Qorti Civili (Sede Kostituzzjonali) cahdet it-talba taghhom in bazi ghas-segwenti osservazzjoni: *ghalkemm huwa minnu illi, fil-kompetenza kostituzzjonali taghha, din il-qorti ghandha wkoll is-setgha li tholl lill-partijiet mir-rabta ta' res iudicata jekk dan ikun mehtieg biex taghti rimedju kontra ksur ta' drittijiet fondamentali, dan ma ghandux isir leggerment u zgur mhux qabel ma tkun inghatat sentenza li ssib illi tassew kien hemm dak il-ksur. Allegazzjoni ex parte illi sar ksur ta' dritt fondamentali ma hijiex ekwivalenti ghal sejbien gudizzjarju ta' ksur ta' drittijiet fondamentali, u hija ghal kollox inkompatibbli mas-serjetà tal-process gudizzjarju u l-finalità ta' res iudicata illi sentenza tinzamm milli titwettaq ghax xi hadd jallega li kien hemm ksur ta' drittijiet fondamentali. Fil-fehma ta' din il-qorti, sentenzi li saru res iudicata ghandhom jitqiesu li jiswew u li nghataw rite et recte sakemm ma jintweriex mod iehor.*

Dak osservat mill-Prim' Awla tal-Qorti Civili (Sede Kostituzzjonali) fis-sentenza fl-ismijiet **Raymond Caruana v. L-Avukat Generali** dwar il-posizzjoni tal-Qorti Ewropea dwar id-Drittijiet tal-Bniedem fir-rigward ta' *interim measures* isib konferma f'dak osservat fl-artikolu ***Interim Measures in the European System of Human Rights*** pubblikat fl-Inter-American and European Human Rights Journal, 2009, Vol.2, nº 1-2, 2009, pp. 99-118: *the requests for interim measures generally made by the applicants and submitted to the Court cover a broad range of rights guaranteed by the Convention. Nevertheless, in practice, it can be shown that the quasi totality of interim measures indicated by the former Commission and the new Court concerned grievances based on breaches of Article 2 (the right to life) and Article 3 (the prohibition of torture and of inhuman or degrading treatment or punishment) of the Convention as well as Protocol n°6 (abolition of the death penalty) concerning matters of expulsion and extradition. Indeed, these "serious cases" – which highlight the risk incurred by the applicant of being subject for example to ill-treatment in the event of effective implementation of a deportation measure – gave legitimacy to the Commission's initial approach. In the same vein, the Court has not departed from this philosophy and has applied Article 39 "strictly". In other words, the Court will only indicate interim measures (which very often consist in requesting the suspension of the execution of a national measure) only if there is a risk of creating an irreversible situation or an "irreparable damage" and that this risk is "imminent". The bulk of cases concerns situations of expulsion and extradition towards third countries where the*

applicants risk being subjected to ill-treatment. The Jabari and D. and a. cases are good examples. Indeed the Court held that the corporal punishments provided for under Islamic criminal law – such as stoning and flogging – violated the dignity and the physical and psychological integrity of human beings. The question posed at this stage is whether the binding force of interim measures only applies to "absolute" rights to which there is no exception. In addition to the practice of the Court, the extract in paragraph 108 of the decision in Mamatkoulov suggests this may be the case. Should such a material limitation be confirmed – which currently appears to be the case given that the Court replicated word for word that extract in its judgment in Mostafa in 2008 – it would mark the existence of "two standards of protection". Professor Flauss notes in this regard that interim judicial protection may be subject to less stringent requirements than those imposed on national courts in relation to the protection of rights guaranteed by the Convention. Indeed, in the Conka case, the European judge was especially keen for the applicants to benefit from interim judicial protection that was genuinely effective at national level and going far beyond the simple scope of "core rights". Is this limitation likely to be overcome? This is a fairly tricky question. On the one hand, the current case-law does not leave any scope for a possible evolution, whereas on the other hand, the practice of other international jurisdictions for the protection of human rights would suggest that this would not only be possible but that it would also be desirable. ... The two cases that concerned prima facie rights other than "absolute rights" were in fact cases where the right to life was at stake. The Öcalan and Evans cases show that risks of "irreparable damage", which are likely to trigger interim measures, are not just limited to litigation concerning foreign nationals (who have subsequently moved outside their territory); nevertheless, these cases reveal in essence that the Court continues to apply a strict analysis on the use of Article 39. In relation to the first case, the applicant – known for his fierce defence of the Kurdish identity in Turkey, as leader of the PKK – complained about his arrest in Kenya by Turkish secret agents and of his transfer to Turkey where he was the subject of criminal proceedings for attempting to bring about the secession of part of the national territory, an offence for which the prosecution had sought the death penalty. The Court applied Article 39 of its Rules in order to protect the rights guaranteed by Article 6§1. Nonetheless, the life of the applicant was ultimately at stake given that he had been condemned to death. Therefore, the specific circumstances of the case may explain why Article 39 was applied in order to ensure the requirements of a fair trial. Above all, would not the use of Article 34 in situations where Article 6§1 is at stake, surely commit the Court, in some cases, "to grant extra-territorial effects" to the requirements of the right to a fair trial, which the Court has always refused to do in relation to this provision? One must note here the significant difference between the treatment afforded by Article 6§1 and by Article 3. The Court has not hesitated to recognise the extra-territorial scope of Article 3 of the Convention, thereby projecting the values of a "democratic society" towards third party States that are not signatories of the Convention. On this

point, the Court does not play lightly with those values that it has decided to defend, nor does it accept that the "pluralism of cultures or of legal traditions" justifies "practices or rules that are incompatible with the fundamental values of a democratic society". In the Evans case, the question concerned the possible destruction of frozen embryos of a couple that had a few years before undergone treatment for in vitro fertilisation (IVF) but where the male partner had subsequently withdrawn his consent. In this case, the Court hid behind the lack of a European consensus in order not to bring the question of the beginning of life within the scope of Article 2 of the Convention; it dealt with the case exclusively from the angle of Article 8 of the Convention. One might have thought that the seeds had been sown for a substantive extension of Article 39 of the Rules. However, in reality, what was at the heart of the interim measures in this case was in fact the "potential life" of the frozen embryos. Indeed, when the President of the Chamber indicated to the British government that the Court was applying Article 39 of the Rules, it did so "without prejudice to any decision of the Court as to the merits of the case". Indeed, it was "desirable in the interests of the proper conduct of the proceedings that the Government take appropriate measures to ensure that the embryos, the destruction of which formed the subject-matter of the applicant's complaints, were preserved until the Court had completed its examination of the case". Thus, one may observe that a material extension on the basis of an innovative shake-up of the European case-law is not on the agenda. However, the fact that the binding force has been elevated to the rank of "general principle of international law" by the ICJ and that the Inter-American Court of Human Rights does not in any way limit the application of interim measures to intangible rights should encourage the Court to be less restrained. We dare not imagine that the over-stretched capacity of the Court, which is suffocating under its case-load, could be the cause of such judicial restraint ...

Kif ukoll fil-***Factsheet-Interim Measures*** ippubblikata mill-Press Unit tal-Qorti Ewropea dwar id-Drittijiet tal-Bniedem f'Jannar 2013, fejn jinghad: *In the majority of cases, the applicant requests the suspension of an expulsion or an extradition. The Court grants such requests for an interim measure only on an exceptional basis, when the applicant would otherwise face a real risk of serious and irreversible harm. Such measures are then indicated to the respondent Government. However, it is also possible for the Court to indicate measures under Rule 39 to applicants (see, for example, the judgment in Ilaşcu and Others v. Moldova and Russia (§ 11), where the Court asked the applicant to stop a hunger-strike). ... In practice, interim measures are applied only in a limited number of areas and most concern expulsion and extradition. They usually consist in a suspension of the applicant's expulsion or extradition for as long as the application is being examined. The most typical cases are those where, if the expulsion or extradition takes place, the applicants would fear for their lives (thus engaging Article 2 of the Convention) or would face ill-treatment prohibited by Article 3 (prohibition of torture or inhuman or degrading treatment). More exceptionally, such*

measures may be indicated in response to certain requests concerning the right to a fair hearing (Article 6 § 1) and the right to respect for private and family life (Article 8). In the Court's case-law as it currently stands, Rule 39 is not applied in the following cases: to prevent the imminent demolition of property, imminent insolvency, the enforcement of an obligation to do military service, to obtain the release of an applicant who is in prison pending the Court's decision as to the fairness of the proceedings, to ensure the holding of a referendum, or to prevent the dissolution of a political party.

Minn dan jidher car li ghall-Qrati ta' gurisdizzjoni Kostituzzjonali nostrali u ghall-Qorti Ewropea dwar id-Drittijiet tal-Bniedem biex tigi sospsiza l-esekuzzjoni ta' sentenza li hija *res judicata* pendenti l-ezitu ta' proceduri dwar allegat ksur ta' xi wiehed jew iktar mid-drittijiet u libertajiet tal-bniedem sanciti fil-Kostituzzjoni jew fil-Konvenzjoni, skond il-kaz, irid effettivament jissussisti *a risk of creating an irreversible situation or an irreparable damage and that this risk is imminent*, liema riskju generalment jissussisti u huwa rikonoxxut li jissussiti fil-kazijiet l-iktar gravi li jittrattaw dwar id-dritt ghall-hajja, id-dritt li persuna ma tigix assoggettata ghal trattament inuman jew degradanti jew addirittura li tista' tiffaccja l-piena tal-mewt ezempju fil-pajjiz lejn liema tkun giet ordnata l-espulsjoni taghha jew awtorizzata l-estradizzjoni taghha.

In verità approcc inqas stringenti minn hekk jew addirittura approcc fejn s-sospensjoni ta' l-esekuzzjoni tas-sentenza tigi awtorizzata f'kull kaz fejn hemm allegazzjoni li dik is-sentenza tkun illediet xi wiehed jew iktar mid-drittijiet u libertajiet fondamentali tal-bniedem, iwassal ghas-sitwazzjoni assurda u fil-fehma tal-Qorti perikoluza hafna li kull min irid b'xi mod jew iehor jostakola l-esekuzzjoni ta' gudizzju fil-konfront tieghu semplicement jipprocedi billi jistitwixxi proceduri kostituzzjonali u eventwalment proceduri quddiem il-Qorti Ewropea dwar id-Drittijiet tal-Bniedem, u b'hekk jistultifika l-iter gudizzjarju kollu. Kif gustament osservat mill-Prim' Awla tal-Qorti Civili (Sede Kostituzzjonali) fid-decizjoni **Joseph Emanuel Ruggier et v. Joseph Oliver Ruggier pro et noe et, Rik. Nru. 21/05**, *sentenzi li saru res iudicata ghandhom jitqiesu li jiswew u li nghataw rite et recte sakemm ma jintweriex mod iehor*.

Fil-fehma tal-Qorti fil-kaz in ezami, fejn bis-sentenzi attakkati r-Rikorrenti essenzjalment instabu responsabbli ta' malafama fil-konfront ta' l-Intimati u gew ikkundannati jhallsuhom s-somma ta' €4,000 li ghandha tinqasam b'mod ugwali bejniethom, oltre l-imghax u l-ispejjez, ma ntwera li hemm l-ebda *risk of creating an irreversible situation or an irreparable damage and that this risk is imminent* ghar-Rikorrenti kif mifhum kemm mill-Qorti Ewropea dwar id-Drittijiet tal-Bniedem u l-Prim' Awla tal-Qorti Civili (Sede Kostituzzjonali) fl-eventwalità ta' l-esekuzzjoni kompluta tas-sentenza in kwistjoni in kwantu appuntu jirrigwarda l-kundanna ghall-hlas tad-danni.

Fid-dawl ta' dan ghalhekk il-Qorti tqis li t-talba tar-Rikorrenti ghaz-zamma ta' l-izbank tal-flus depozitati taht l-Awtorità Taghha bic-Cedola ta' Depozitu bin-Nurmu 1337/15 hija guridikament u proceduralment insostenibbli u bhala tali ghandha tigi michuda.

Ghal dawn ir-ragunijiet il-Qorti tichad it-talba avvanzata mir-Rikorrenti bir-Rikors ipprezentat fis-7 ta' Awwissu 2015 fl-atti tac-Cedola ta' Depozitu Nru. 1337/15 fl-ismijiet "Paul Pace et v. Steve Mallia et" wara l-hrug tal-Mandat ta' Sekwestru Ezekuttiv Nru. 1547/15 fl-istess ismijiet.

L-ispejjez ta' dawn il-proceduri ghandhom jigu sopportati mir-Rikorrenti *in solidum* bejniethom.

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