QORTI KOSTITUZZJONALI

IMHALLFIN

S.T.O. PRIM IMHALLEF SILVIO CAMILLERI
ONOR. IMHALLEF GIANNINO CARUANA DEMAJO
ONOR. IMHALLEF NOEL CUSCHIERI

Seduta ta' nhar il-Gimgha 12 ta' Frar 2016

Numru 10

Rikors numru 66/14 LSO

Jason Genovese

v.

Il-Kummissarju tal-Pulizija u l-Avukat Generali

Il-Qorti:

Preliminari

1. Dan huwa appell maghmul mir-rikorrent, minn sentenza [is-sentenza appellata] moghtija mill-Prim'Awla tal-Qorti Civili, fil-kompetenza kostituzzjonali taghha fit-12 ta' Mejju 2015 li permezz taghha dik il-Qorti laqghet l-eccezzjoni preliminari tal-intimati u

iddisponiet mit-talbiet tar-rikorrent billi iddikjarat l-azzjoni inammissibbli inkwantu li s-Subinciz 1 tal-Art. 6 ta' l-Ewwel Skeda tal-Kap 319 mhiex applikabbli ghat-talba tar-rikorrent. Ghaldaqstant astjeniet milli tkompli tiehu konjizzjoni tal-mertu tal-kaz.

<u>Mertu</u>

2. Ir-rikorrent hawnhekk appellant intavola kawza fl-ismijiet premessi li permezz taghha lmenta li hu garrab lezjoni tad-drittijiet fundamentali tieghu skont l-Artikolu 6 u l-Artikolu 13 tal-Konvenzjoni Ewropea rispettivament, u dan minhabba dewmien fil-proceduri fl-ismijiet **Pulizija v. Giacomo Farrugia et** li fihom huwa parti civili, u li ilhom pendenti quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti Struttorja ghal dawn l-ahhar erba' snin. Ghalhekk talab lill-Qorti sabiex tiddikjara li huwa sofra ksur tad-dritt tieghu ghal smigh xieraq u wkoll ksur tad-dritt tieghu ghal rimedju effettiv. Konsegwentement talab lill-Qorti takkordalu kumpens.

3. Fir-rikors tal-appell tieghuipprezentat fl-1 ta' Gunju 2015, ir-rikorrent talab lil din il-Qorti sabiex thassar s-sentenza tal-Ewwel Qorti, u tiddikjara illi l-Artikolu 6(1) tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fundamentali [il-Konvenzjoni] huwa applikabbli ghall-kaz odjern, u konsegwentement tirrimetti l-atti

lura lill-Ewwel Qorti ghal prosegwiment tas-smigh tal-kawza fil-mertu, bl-ispejjez kontra l-appellati.

4. Da parti taghhom l-appellati, ghar-ragunijiet indikati minnhom fir-risposta taghhom ipprezentata fil-15 ta' Gunju 2015, isostnu illi s-sentenza appellata hija gusta u timmerita konferma fl-intier taghha.

Is-Sentenza Appellata

5. L-Ewwel Qorti waslet ghad-decizjoni taghha, a bazi tas-segwenti kunsiderazzjonijiet:

> "Illi r-rikorrent qed jitlob dikjarazzjoni li gie lez id-dritt tieghu ghas-smigh xieraq sancit mill-artiklu 6 tal-**Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem -Kap. 319 tal-Ligijiet ta' Malta, '**l quddiem imsejjah "**Il- Konvenzjoni**" u dan minhabba dewmien irragjonevoli fil-proceduri inkorsi quddiem il-Qorti tal-Magistrati (Malta) fl-ismijiet ***Il-Pulizija vs Giacomo Farrugia et***. Ir-rikorrent mhuwiex akkuzat f'dawk il-proceduri, imma gie ammess bhala *parte civile.*
>
> "Jghid ukoll li qed jigi lez id-dritt tieghu ghar-rimedju effettiv skont **l-artiklu 13 tal-Konvenzjoni** billi m'ghandu l-ebda mezz iehor sabiex jassigura n-nuqqas ta' dewmien tal-proceduri kriminali imsemmija u jipprevjeni jew inaqqas il-ksur tad-dritt ghal smigh xieraq soffert minnu.
>
> "L-intimati opponew ghat-talba u ssollevaw eccezzjonijiet preliminari kif ukoll sostantivi.
>
> "Din is-sentenza ser tiddisponi mill-eccezzjonijiet mfissra fil-paragrafi erbgha (4) sa disgha (9) tar-Risposta tal-Intimati li kollha jistghu jigu imfissra f'eccezzjoni wahda - l-**Inapplikabilita' tal-artiklu 6 tal-Konvenzjoni ghall-kaz in ezami.**
>
> "**<u>Fatti</u>**

Kopja tal-atti tal-process istruttorju hija esebita fl-atti ta' din il-kawza. Jirrizulta li fit-tnax (12) ta' Ottubru tas-sena elfejn u ghaxra (2010) ir-rikorrent kien gie aggredit minn numru ta' persuni, sofra griehi gravi u gie misruq.

“L-akkuzati cioe' Giacomo Farrugia, Duncan Fenech, Zoran Kutlic u Srdjan Tintor, tressqu quddiem il-Qorti tal-Magistrati bhala Qorti Istruttorja fl-erbatax (14) ta' Frar elfejn u hdax (2011) fuq akkuzi ta' *inter alia,* griehi gravi, hsara volontarja u serq ikkwalifikat bil-vjolenza, bil-mezz, bil-valur u bil-hin. Sal-prezentata tal-proceduri odjerni, jirrizulta li l-Prosekuzzjoni ma bdietx tressaq il-provi taghha minhabba raguni jew ohra li jirrizulta mill-atti tal-kaz u li skont ir-rikorrent, mhumiex imputabbli lilu.

“Mhuwiex ikkontestat li r-rikorrent gie ammess bhala *parte civile* fil-proceduri ***Il-Pulizija kontra Giacomo Farrugia et.***

“**Fis-7 ta' Mejju 2013** ir-rikorrent odjern ipprezenta rikors quddiem il-Qorti tal-Magistrati fejn gab a konjizzjoni tal-Qorti d-dispost tal-**artiklu 532A tal-Kodici Kriminali** (Fol.72 tal-process).

“Jirrizulta wkoll mill-atti tal-process kriminali ghadhom ma bdewx jitressqu provi u jirrizulta, *inoltre*, li mill-imputati, daqqa ikun imsiefer wiehed, daqqa jkun assenti l-iehor - u dan a skapitu tal-prosegwiment tal-proceduri inkorsi.

“**<u>L-Eccezzjoni Preliminari - L-Inapplikabilita' tal-Art.6 tal-Konvenzjoni.</u>**

“Din hija sentenza *in parte* dwar l-eccezzjoni premessa sollevata mill-intimati.

“**L-artiklu 6(1) jiddisponi hekk:-**

> “*6 (1) Fid-deċiżjoni tad-drittijiet ċivili u tal-obbligi tiegħu jew ta’ xi akkuża kriminali kontra tiegħu, kulħadd huwa ntitolat għal smigħ imparzjali u pubbliku fi żmien raġonevoli minn tribunal indipendenti u imparzjali mwaqqaf b’liġi. .....*”

“**Hu ovvju li r-rikorrent mhuwiex wiehed mill-akkuzati fil-proceduri in kwistjoni u ghalhekk il-qofol tal-kwistjoni li trid tigi ezaminata llum huwa jekk il-proceduri kriminali jistghu jiddeterminaw xi dritt civili tieghu gjaldarba huwa ammess f'dawk il-proceduri bhala *parte civile*.**

“Jekk it-twegiba ghal din il-mistoqsija hija fl-affermattiv, allura l-artiklu 6(1) huwa applikabbli ghall-kaz tallum.

“Ikun utili li jigi riprodott **l-artiklu 410 (3) tal-Kodici Kriminali (Kap.9 tal-Ligijiet ta' Malta** li japplika f'dan il kaz. Il-process kriminali kontra l-

akkuzati gie introdott mill-Pulizija *ex officio,* u allura huwa lejn dan is-subartiklu li wiehed ghandu jhares sabiex jiddetermina d-drittijiet u obbligi tal-*parte civile* fi proceduri *ex officio:*

> "***410*** *(3) Fil-każijiet ta' proċeduri magħmulin mill-Pulizija 'ex officio', il-Pulizija u l-parti offiża jistgħu jkunu assistiti minn avukat jew prokuratur legali, illi jista' jagħmel eżami u kontro eżami lix-xhieda, iġib provi u jagħmel, sabiex isaħħaħ l-akkuża, kull osservazzjoni oħra li l-qorti jidhrilha li tista' ssir skont il-liġi. Il-parti offiża tista' tkun preżenti fil-qorti waqt is-seduti.*
>
> *(4) Mingħajr preġudizzju għad-disposizzjonijiet tas-subartikolu (3) u bla ħsara għad-disposizzjonijiet tas-subartikolu (6), parti offiża li jkollha interess li tkun preżenti matul proċeduri magħmulin mill-Pulizija jkollha l-jedd li tikkomunika dak linteress lill-pulizija billi tagħti l-partikolaritajiet tagħha flimkien mal-indirizz fejn tkun toqgħod u malli jsir dan dik il-parti offiża għandha tiġi notifikata b'avviż li jkun fih id-data, il-post u l-ħin tal-ewwel smigħ f 'dawk il-proċeduri u jkollha l-jedd li tkun preżenti fil-qorti matul dak is-smigħ u matul kull smigħ ieħor li jiġi wara wkoll jekk tkun xhud.*"

"<u>**Kwistjonijiet ta' Dritt**</u>

"<u>**Distinzjoni bejn l-Azzjoni Civili u l-Azzjoni Kriminali**</u>

"Il-Ligi taghna taghmel distinzjoni netta bejn iz-zewg tipi ta' azzjoni li jitnisslu mill-istess reat izda jimxu indipendentement minn xulxin,bi kriterji differenti li japplikaw ghall-piz probatorju. Fil-kamp kriminali l-prova trid tkun *oltre kull dubbju ragjonevoli* filwaqt li fil-kamp civili huwa bizzejjed li l-prova ssir skont il-grad inqas rigoruz tal-*bilanc ta' probabilita'.*

"Ghaldaqstant hija wisq possibbli li akkuzat li jinheles mill-akkuzi migjuba kontrih fil-forum kriminali minhabba li l-prosekuzzjoni ma tkunx ippruvat il-kaz sal-grad rikjest xorta jinstab li hu responsabbli ghad-danni fil-forum civili.

"Din id-distinzjoni ssib espressjoni elokwenti u semplici **fl-artikolu 3 tal-Kap. 9 tal-Ligijiet ta' Malta:**

> "***3.*** *(1) Kull reat inissel azzjoni kriminali u azzjoni ċivili.*
> *(2) L-azzjoni kriminali titmexxa quddiem il-qrati ta' ġurisdizzjoni kriminali, u biha tintalab piena kontra l-ħati.*
> *(3) L-azzjoni ċivili titmexxa quddiem il-qrati ta' ġurisdizzjoni ċivili, u biha jintalab il-ħlas tal-ħsara li ssir bir-reat*"

"Minn dan l-artiklu jitinissel ukoll l-iskop ewlieni taz-zewg toroq procedurali, s-sejba ta' htija tal-akkuzat u l-hlas tal-hsara kkagunata bir-reat rispettivament.

"L-intimati jiccitaw minn sentenza moghtija mill-Qorti Kostituzzjonali fil-kaz **Francis Xavier sive Frank Mifsud vs Avukat Generali** (Dec. fit-

2 ta' Novembru 2011). Dik il-kawza kienet tikkoncerna kwerela ghall-allegat malafama kommessa fejn ir-rikorrent, allura kwerelant/parte civile, fil-process kriminali, ssottometta li irrispettivament minn jekk il-proceduri minnu tentati kienux civili jew kriminali, hu kellu "d-*dritt ghal smiegh xieraq una volta illi jkun accettat li kien igawdi dritt civili ghal reputazzjoni tajba."* F'dik il-kawza wkoll il-prosekuzzjoni tmexxiet mill-Pulizija esekuttiva u mhux mill-kwerelant jew parti leza, tant li s-sentenza nghatat fil-konfront tal-Pulizija u l-akkuzat.

“Il-Qorti ser tirraporta dak iccitat mill-Qorti Kostituzzjonali li fil-fehma konsiderata taghha huwa ta' rilevanza ghall-punt legali in ezami:

> “*Gie ritenut illi “A criminal prosecution brought by an applicant will involve the determination of his civil rights and obligations where such an obligation <u>is the remedy</u> provided in national law for the enforcement of a civil right, as for example, in the case in some legal systems in connection with the right for a reputation. Art. 6 also applies on the basis that civil rights and obligations are being determined when the victim of a crime joins a criminal prosecution as a civil party claiming compensation or injury caused by the crime. (**Helmers vs Sweden**,(A212 1991) **Tomasi vs France** (A241 1992) u **Moreira de Azevedo vs Portugal** (A189 1990).*”

“FIl-kaz deciz fis-27 ta’ **Tomasi vs. France** Awwissu 1992, (application no. 12850/87) gie ritenut (mill-*Grand Chamber* tal-Qorti Ewropea) illi:-

> “*The right to compensation claimed by Mr. Tomasi therefore <u>depended on the outcome of his complaint,</u> in other words on the conviction of the perpetrators of the treatment complained of. It was a civil right notwithstanding the fact that the Criminal Courts had jurisdiction. (see mutatis mutandis the **Moreira de Azevedo vs Portugal** -Judgment of October 23rd, 1990)*”. (sottolinear ta' din il-Qorti)

“*F’dan il-kaz (**Tomasi)** il-Qorti sabet illi kien applikabbli s-subinciz 1 ta’ l-artikolu 6 tal-Konvenzjoni.*”

“Il-Qorti Kostituzzjonali fil-kaz citat ta' **Francis Xavier sive Frank Mifsud vs Avukat Generali** applikat is-segwenti kejl sabiex jigi determinat l-applikabilita' tal-artikolu 6:

> “*Jekk jirrizulta li kien essenzjali ghad-determinazzjoni tad-dritt civili ta’ l-appellant l-process kriminali provokat minn diskors diffamatorju, allura kien japplika l-insenjament appena citat. Jekk, ghall-kuntrarju, dan ma kienx il-kaz, u allura jirrizulta illi l-appellant kellu rimedju iehor quddiem il-qrati civili, indipendenti mill-process kriminali li kien jassiguralu l-protezzjoni ta’ tali dritt, allura din il-Qorti difficilment setghet taccetta s-sottomissjoni li kien ikun applikabblins-subinciz 1 ta’ l-art. 6 ta’ l-ewwel skeda tal-Kap 319 u ta’ l-art. 39 tal-Kostituzzjoni.*”
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> “*Din l-interpretazzjoni, fil-fehma tal-Qorti, tirrifletti l-insenjament tal-Qorti Ewropea li ghalih saret riferenza, b’mod partikolari l-kaz*

*“**Helmers”** kif ukoll il-kaz **“Fayed vs. United Kingdom**” minnha deciz fil-21 ta’ Settembru, 1994, u li ghalih l-istess appellat ghamel riferenza. 'The result of the “criminal” proceedings in question must be directly decisive for such a right or obligation: mere tenuous connections or remote consequences not being sufficient to bring art. 6 (1) to play*”.

“**Sottomissjonijiet**

“L-argument tal-intimati huwa li l-Qorti fil-kawza **L-Pulizija v Giacomo Farrugia *et***., mhux ser jiddeciedi xi dritt jew obbligu civili jew akkuza kriminali fil-konfront tar-rikorrent. Il-Qorti tal-Magistrati ghandha biss tiddetermina jekk l-akkuzi huma ppruvati kontra l-akkuzati. Jissottomettu li "*l-ghan tal-process kriminali huwa li jikkastiga lill-akkuzat jekk jirrizulta skont il-Ligi li huwa hati ta' l-akkuzi migjuba kontrih u mhux li jiddetermina d-drittijiet civili li jista' jkollu l-persuna offiza.*"[1]

“Ir-rikorrent irribatta b'riferenza ghall-**artiklu 532A tal-Kodici Kriminali**[2] skont liema l-Qorti ta' kompetenza kriminali tista' taghti ordnijiet ghall-hlas ta' danni meta tinghata s-sentenza. Jghid li dan l-artiklu "*jipprovdi espressament ghall-possibilita' li l-akkuzat, jekk jinstab hati, jigi kkundannat li jhallas id-danni lill-vittma, minghajr il-bzonn tal-intavolar ta' proceduri civili.*" F'dan il-kuntest huwa sottomess li l-azzjoni kriminali tista' twassal, bhal kawza civili, ghal titolu esekuttiv kontra l-akkuzati li jinstabu hatja ghall-hlas tad-danni li kkagunaw. Dan ir-rizultat (hlas tad-danni) jista’ jigi ottjenut minghajr il-bzonn li jigu intavolati proceduri civili separati. Ghaldaqstant jghid li ghandu d-dritt taht l-artikolu 6 ghal smigh xieraq fi zmien ragonevoli peress li *"l-proceduri kriminali ser jiddeterminaw ukoll dritt civili tieghu, u cioe`, d-dritt ghall-kumpens ghad-danni minnu sofferti.*”

“**L-Art 532A tal-Kap.9** jiddisponi:-

“***532A.*** *Id-disposizzjonijiet tal-artikolu 24 tal-Att dwar il-Probation għar-rigward tas-setgħa li għandha l-qorti li tordna lill-ħati jħallas id-danni għandhom ukoll 'mutatis mutandis' japplikaw kull meta jiġri li persuna tingħata sentenza wara li tkun instabet ħatja ta’ delitt.*”

“**L-Art.24 tal-Att Dwar il-*Probation* (Kap.446 tal-Ligijiet ta' Malta)** jghid hekk:-

“***24.*** *(1) Meta Qorti tagħmel ordni ta’ probation, ordni ta’ servizz fil-komunità, ordni ta’ probation u servizz, ordni għal liberazzjoni kondizzjonata jew meta tillibera lil xi ħati għal kollox tista’, mingħajr preġudizzju għall-poter li għandha dwar l-ispejjeż taħt l-artikoli 380 u 533 tal-Kodiċi Kriminali, tordna lill-ħati jħallas dawk id-danni għal xi feriment jew b’kumpens għal xi telfien hekk kif il-qorti jkun jidhrilha li jkun l-aktar raġonevoli.*

[1] Nota ta' sottomissjonijiet tal-intimati ,pp 3,4 a fol 106-107 tal-process.
[2] Introdott bl-ATT *XVI. 2006.11*

"*(2) Ordni għall-ħlas ta' danni jew kumpens kif hawn qabel imsemmi tista' tiġi infurzata bl-istess mod bħallikieku din kienet ingħatat f'azzjoni ċivili bejn il-ħati u l-persuna lil min id-danni jew il-kumpens jiġu ordnati li għandhom jitħallsu:*

"*Iżda ebda naħa f'dan l-artikolu m'għandha tidderoga mid-dritt ta' dik il-persuna li tkopri kull ammont ieħor li jifdal b'xi mezz ieħor mingħand il-ħati jew mingħand xi persuna oħra li tista' tkun responsabbli għall-istess ħlas.*"

"**<u>Gurisprudenza tal-Qorti Ewropea</u>**

"Sabiex **l-artiklu 6** jigi applikat, irid ikun hemm kontestazzjoni bejn zewg partijiet privati izda dan gie ezaminat ukoll fil-kuntest partikolari tal-process kriminali.

"Bhala principju generali l-Qorti Ewropea kellha l-okkazzjoni li tidhol fid-definizzjoni ta' "*drittijiet u obbligazzjonijiet civili* " sabiex tiddetermina l-ammissibilita' ta' kwistjoni taht l-**artiklu 6(1) :**

"*Although the Court has stated in some cases that the concept of civil rights and obligations is autonomous and cannot be interpreted solely by reference to the domestic law of the respondent state,*[3] *it has also stated that for Article 6 to apply there must be a* ***right in national law*** *which is capable of being classified by the European Court as civil.*[4] *(**Guide to the Implementation of Article 6 of the European Convention on Human Rights - Echr Handbook No.3 p.11).***"

"Huwa principju ammess li dak li hu rilevanti mhuwiex il-karattru tal-ligi li minnha jitnissel id-dritt, imma l-karattru sostantiv tad-dritt fih innifsu.[5]

"Fil-kaz in ezami, r-rikorrent qed ifittex kumpens ghad-danni sofferti b'kagun tal-aggressjoni u serq kommess mill-akkuzati. Id-dritt ghall-kumpens minhabba att illecitu huwa palezament dritt ta' karattru civili. (Ara ad.ez. l-**Art.3 tal-Kap 9** fuq citat, il-kuncett ta' delitt fil-ligi civili, u l-preskrizzjoni kif stabbilita fl-**artiklu 2154(1) tal-Kap.16**) u jista', f'certu gurisdizzjonijiet, jintalab anke fil-kors ta' proceduri kriminali. B'hekk issorgi l-kwistjoni tal-applikabbilita' tal-artiklu 6(1).

"Skont l-awturi ***Harris, O'Boyle & Warbrick***[6]**:**

"*Civil rights and obligations may be determined in criminal proceedings. This is so, for example, where a criminal prosecution is the remedy provided in national law for the enforcement of a civil right, as, for example, in some legal systems in connection with the right to a*

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[3] See e.g. *Ringeisen v. Austria*, 16 July 1971, para. 94, and *König v. the Federal Republicof Germany*, 28 June 1978, para. 88
[4] *Z and others v. the United Kingdom*, 10 May 2001, and *Roche v. the United Kingdom*,19 October 2005.
[5] *Ringeisen v AUstria* Op.cit.
[6] *Law of the European Convention on Human Rights,* 3rd edition, p.392

reputation.[7]*Article 6 also applies where a legal system allows the victim of a crime to be joined as a civil party in criminal proceedings against the offender in order to obtain damages or otherwise protect his or her civil rights; however, it does not apply in such cases where the victim's purpose in being joined is to punish the offender or to intervene on an 'actio popularis' basis not to obtain a personal civil remedy.”*[8]

“Il-Qorti Ewropea, fil-kawzi **Tommasi vs France**[9]**, Acquaviva vs France**[10] u **Perez vs France**[11] kienet rinfaccjata b'sitwazzjoni fejn il-*parte civile* fi proceduri kriminali seta' jitlob kumpens ghad-danni .Fil-kuntest tal-procedure kriminali Franciza, l-ghotja tal-kumpens hija preordinata ghas-sejba ta' htija fil-process kriminali b'differenza mal-procedura taghna.

“Il-pozizzjoni tal-Ligi Franciza giet imfissra mill-Qorti Ewropea fil-kaz ta' **Perez:-**

“1.'*Civil proceedings must await the outcome of criminal proceedings'”(Article 4 § 2 of the Code of Criminal Procedure). The civil court must suspend judgment until the criminal court has issued a final ruling in the prosecution.*

2. 'A final criminal judgment prevails over a civil claim.” A civil court is bound by the final decision in a prosecution. The primacy of a decision in a criminal case is not prescribed by law in the strict sense but derives from case-law;”

“Fl-istess kaz**, Perez v France,** il-Qorti Ewropea ikkumentat fuq il-kaz **Tommasi v France** u sabet li:

“*The right to compensation claimed by Mr Tomasi therefore depended on the outcome of his complaint, in other words on the conviction of the perpetrators of the treatment complained of. It was a civil right, notwithstanding the fact that the criminal courts had jurisdiction (see, mutatis mutandis, the Moreira de Azevedo v. Portugal judgment of 23 October 1990, Series A no. 189, p. 17, § 67).”*[12]

“Fil-kaz **Acquaviva v France,** il-Qorti irriteniet li:

“*47. The Court notes that the Acquaviva's application, which was allowed by the investigating judge and not opposed by the prosecuting authority, temporarily denied them access to the civil courts for the purpose of seeking compensation for any damage that they may have*

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7 "*See e.g.Helmers vs Sweden A 212-A (1991); 15 EHRR 285 PC. But Article 6 does not apply if the defamation prosecution is intended to punish:*Rekasi v Hungary No 315061/96, 87-1 DR 164(1996)."

8 "*Perez v France 2004 - 1 ;40 EHRR 909 GC .See also Garimpo v Portugal No.66752/01 hudoc (2004)DA.*

9 App. No. 12580/87 - 27 August 1992.

10 App. No. 19248/91 (GC) - 21 November 1995

11 App.No. 47287/99 - 12 February 2004

12 *§ 47 tas-sentenza.*

sustained. By choosing the avenue of criminal procedure, the applicants set in motion judicial criminal proceedings with a view to securing a conviction, which was a prior condition for obtaining compensation, and retained the right to submit a claim for damages up to and during the trial.

The finding of self-defense – which excluded any criminal or civil liability – made by the Indictment Division of the Versailles Court of Appeal .... deprived them of any right to sue for compensation. The outcome of the proceedings was therefore, for the purposes of Article 6 § 1, directly decisive for establishing their right to compensation."

"F'kaz iehor, **Calvelli and Giglio v Italy**[13] intqal hekk:

"***62. ....****It notes that it is common ground that the applicants were joined as civil parties and that, accordingly, even though the proceedings in the criminal courts concerned only the determination of the criminal charge against the doctor, they were apt to have repercussions on the claims made by the applicants as civil parties. The Court considers that Article 6 § 1 is applicable to the criminal proceedings, <u>the decisive factor being that, from the moment the applicants were joined as civil parties until the conclusion of those proceedings by a final ruling that prosecution of the offence was time-barred, the civil limb of those proceedings remained closely linked to the criminal limb.</u> In that connection, the applicants were entitled, in accordance with the Court's settled case-law, to rely on Article 6 § 1 (see, among many other authorities, Torri v. Italy, judgment of 1 July 1997, Reports 1997-IV, p. 1179, § 23).*"(Sottolinear ta' din il-Qorti.)

"Il-Qorti Ewropea fil-kaz ta' **Perez,** rat il-htiega li tfisser "*a new approach"* ghar-raguni li :-

"*3.The Court considers that its case-law may present a number of drawbacks, particularly in terms of legal certainty for the parties, in that after* ***Tomasi*** *it found it necessary to ascertain whether, firstly, there was a "dispute" over a "civil right" which was arguably recognised under domestic law and, secondly, whether the outcome of the proceedings was directly decisive for such a right.*

"*4.The Court thus wishes to end the uncertainty surrounding the applicability of Article 6 § 1 of the Convention to civil-party proceedings, particularly since a number of other High Contracting Parties to the Convention have similar systems.*"

-omissis-

"*5.The Court further notes that, even where criminal proceedings are determinative only of a criminal charge, the decisive factor for the applicability of Article 6 § 1 is whether, from the moment when the applicant is joined as a civil party until the conclusion of those criminal proceedings, the civil component remains closely connected with the*

[13] *Application no. 32967/96 - 17 January , 2002.*

criminal component (see Calvelli and Ciglio v. Italy [GC], no. 32967/96, § 62, ECHR 2002-I), in other words whether the criminal proceedings affect the civil component. A fortiori, Article 6 must apply to proceedings relating both to the criminal charge and to the civil component of the case."(sottolinear ta' din il-Qorti).

"Applikati l-principji hawn fuq traccjati, hija l-fehma konsiderata ta' din il-Qorti li l-proceduri kriminali fil-Ligi Maltija mhumiex determinanti ghall-otteniment tad-dritt civili ghad-danni mfittxa mir-rikorrent.

"**L-Art .532A** ma jbiddel xejn minn din is-sitwazzjoni.

"Ghalkemm id-dritt ghall-kumpens reklamat mir-rikorrent huwa indubbjament dritt civili, mhix konvinta li, bl-applikazzjoni **tal-artiklu 532A tal-Kap.9** ikun hemm *joinder of the civil and criminal actions* bl-iskop ,ghall-azzjoni civili, ta' risarciment tad-danni. Minn ezami tal-**artiklu 410 (3) tal-Kap 9,** jirrizulta biss li l-*parte civile* tinghata certu drittijiet procedurali fil-kors tal-process kriminali. Essenzjalment ir-rwol tal-*parte civile* huwa biex jiehu sehem attiv, minghajr ma jissostitwixxi l-prosekuzzjoni, fl-ezami tax-xhieda, fl-interrogatorju, fil-kontro-ezamijiet, li jressaq il-provi tieghu u anke li jaghmel sottomissjonijiet. Imma l-iskop tal-process kriminali jibqa' dejjem wiehed - is-sejba ta' htija oltre kull ragjonevoli dubju.

"Minn harsa lejn l-**art.532A,** gja rapportat iktar 'il fuq, il-Qorti tikkonkludi li l-kundanna tal-akkuzat, gjaladarba jinsab hati, ghall-hlas tad-danni lill-vittma, hija biss fakultattiva ghall-Qorti, - mizura li tista' tordna meta tipprefiggi l-piena applikabbli. Difatti fir-rikors tieghu quddiem il-Qorti tal-Magistrati, ir-rikorrent kull ma ghamel kien li "*ressaq ghall-attenzjoni tal-Qorti d-disposizzjoni tal-artiklu 532A tal-Kap.9*" minghajr talba *ut sic* ghal-likwidazzjoni, hlas u kundanna ghad-danni. Talba simili mhix kontemplata fil-ligi procedurali kriminali taghna ghalhiex il-piena li ghandha tigi applikata tibqa' fid-diskrezzjoni tal-gudikant.

"*Inoltre* ma jistax jinghad li l-proceduri kriminali ghandhom impatt determinanti fuq l-azzjoni civili. L-artiklu 3 tal-Kap.9 jitkellem car dwar is-separazzjoni bejn iz-zewg azzjonijiet. L-azzjoni civili mhix sospiza sakemm tigi determinata l-htija tal-akkuzat u tista' tirnexxi anke jekk l-akkuzat jigi liberat fil-process kriminali. Difatti, anke l-applikazzjoni tal-**artiklu 532A** m'hi determinanti fuq l-azzjoni civili in kwantu **l-artiklu 24 tal-Kap 446** espressament jhalli lill-vittma l-jedd li jfittex kull ammont iehor in eccess tad-danni li joghgobha tordna l-Qorti kriminali.

"Ghaldaqstant fid-dawl tal-premess ir-rimedju civili li ghandu r-rikorrent jibqa' wiehed indipendenti mill-process kriminali, filwaqt li l-process kriminali bl-ebda mod ma jincidi fuq il-jedd li jfittex tali rimedju civili. Konsegwentement mhuwiex applikabbli ghall-kaz in ezami s-subinciz 1 ta' l-art. 6 ta' l-ewwel skeda tal-Kap 319*."*

L-Appell

6. Ir-rikorrent jibbaza l-appell tieghu fuq aggravju wiehed: illi l-Ewwel Qorti kienet zbaljata meta sabet illi l-esponenti, qua parte civile fi proceduri kriminali, ma ghandux dritt ghal smigh xieraq fi zmien ragjonevoli fl-istess proceduri, minhabba interpretazzjoni erroneja tal-gurisprudenza tal-Qorti ta' Strasbourg, li wassalha biex tapplika l-ezami hazin fir-rigward tal-applikabilita` tal-Artikolu 6(1).

L-Aggravju

7. Ir-rikorrent jissottometti illi minn qari tal-gurisprudenza tal-Qorti ta' Strasbourg ma jirrizultax illi sabiex l-Artikolu 6(1) ikun applikabbli ghal parte civile fi proceduri kriminali, il-proceduri civili ghandhom necessarjament jiddependu fuq l-ezitu tal-proceduri kriminali. Hu jiccita **Calvelli and Ciglio v. Italy**, fejn jghid li l-proceduri kriminali u dawk civili kienu kompletament separati u indipendenti, tant, illi ghalkemm l-akkuzat kien eventwalment gie liberat minhabba preskrizzjoni huwa hallas kumpens finanzjarju lill-vittmi wara li l-partijiet ittransigew sussegwentement ghall-intavolar ta' proceduri civili. F'dik il-kawza il-Gvern Taljan kien eccepixxa l-inapplikabilita` tal-Art 6(1) minhabba l-fatt li l-vittma kien qed jilmenta fuq il-proceduri kriminali, meta l-kumpens finanzjarju kien gie ottjenut minn proceduri civili separati. Il-Qorti ta'

Strasbourg pero` rrilevat illi kienet il-prassi li vittmi jigu ammessi bhala parte civile fil-proceduri kriminali u li dawn setghu ikollhom impatt fuq il-proceduri civili u ghalhekk sabet l-Artikolu 6(1) applikabbli in kwantu kien hemm ness sufficjenti bejn il-proceduri kriminali u d-drittijiet civili tar-rikorrenti.

8. Ikompli jissottometti illi fis-sentenza **Moreira de Azevedo v. Portugal**, ma ssir ebda referenza ghal proceduri civili li setghu jigu intavolati mill-vittma jew x'impatt seta' kellhom il-proceduri kriminali fuq proceduri civili. Il-punt krucjali ghall-Qorti ta' Strasbourg kien illi l-vittma *qua* parti civili kellu d-dritt li jircievi kumpens finanzjarju ghad-danni li sofra tramite l-proceduri kriminali stess, u ghalhekk kien intitolat ghal smigh xieraq fi zmien ragjonevoli.

9. Jaghmel ukoll referenza ghas-sentenza **Gorou v. Greece** fejn il-Qorti ta' Strasbourg irrilevat illi *'Article 6 § 1 of the Convention applies to proceedings involving civil-party complaints from the moment the complainant is joined as a civil party, unless he or she has waived the right to reparation in an unequivocal manner.'* Il-Qorti ghalhekk sabet li Gorou kellu dritt iressaq ilment a bazi tal-Artikolu 6(1) anke ghaliex '*...the proceedings had an economic aspect on account of the sum – however symbolic – of about three euros which the applicant claimed in joining them as a civil party'.*

10. Ir-rikorrent jaghmel ukoll referenza ghall-**Guide on Article 6: Right to a Fair Trial (Civil Limb)** ippubblikat mill-Kunsill tal-Ewropa stess fejn jintqal: '*Article 6 § 1 is applicable to a civil-party complaint in criminal proceedings ... except in the case of a civil action brought purely to obtain private vengeance or for punitive purposes*'.

11. Ir-rikorrent jghid li in vista tal-gurisprudenza su-riferita, l-ezami li kellu jsir mill-Ewwel Qorti ma kienx wiehed li jiccentra fuq in-necessita` ta' impatt determinanti tal-proceduri kriminali fuq il-proceduri civili. Dak li hu rikjest hu li l-proceduri in dizamina jistghu jwasslu ghal determinazzjoni ta' dritt civili hekk kif interpretat fil-gurisprudenza tal-Qorti ta' Strasbourg. Il-possibilita` li l-vittma jikseb ordni ghar-risarciment tad-danni kontra l-imputat fi proceduri kriminali johloq dak id-dritt civili rikjest sabiex il-parte civile jkollha dritt ghal smigh xieraq kif sancit fl-Artikolu 6(1) tal-Konvenzjoni.

12. Ghalhekk l-appellant jghid li l-Ewwel Qorti kienet zbaljata meta sabet li l-Artikolu 6(1) mhuwiex applikabbli fil-konfront tieghu bhala parte civile, u dan peress illi l-ligi taghtih dritt illi jikseb rizarciment ghad-danni sofferti minnu tramite l-istess proceduri kriminali minghajr ma jiftah proceduri civili. Isegwi li, bhal fil-kaz **Gorou v. France**, il-proceduri in dizamina ghandhom aspett ekonomiku fil-konfront tal-esponenti, liema

aspett ekonomiku jissarraf fi dritt civili ai termini tal-gurisprudenza tal-Qorti ta' Strasbourg.

13. Jghid inoltre illi ma huwiex kontestat li l-proceduri kriminali huma separati u distinti fis-sistema legali taghna u li l-vittma ghandu dejjem dritt jintavola proceduri civili ghar-rizarciment tad-danni irrispettivament mill-ezitu tal-proceduri kriminali, izda dan ma jfissirx li l-applikabilita` tal-Artikolu 6(1) fil-konfront tal parti civili tigi awtomatikament eskluza. Il-legislatur jaghti lill-vittmi ta' reat id-dritt illi jiksbu kumpens finanzjarju ghad-danni sofferti tramite l-proceduri kriminali stess, minghajr bzonn li jintavolaw proceduri civili separati u konsegwentement l-istat ghandu jizgura li dan id-dritt ikun wiehed prattiku u effettiv u mhux biss teoretiku.

14. Jissottometti illi l-fatt li jista' jintavola proceduri civili separati indipendentement mill-ezitu tal-proceduri kriminali se mai jaffettwaw id-dritt tieghu ghal rimedju effettiv izda mhux id-dritt ghal smigh xieraq fi proceduri kriminali fejn huwa ghandu dritt *ex lege* li jikseb kumpens finanzjarju ghad-danni sofferti minnu. Gia` ladarba l-proceduri kriminali jistghu jiddeterminaw dritt civili tieghu, l-istat ghandu l-obbligu li jassigura u jipprotegi d-dritt fundamentali tieghu ghal smigh xieraq indipendentement mill-fatt li r-rikorrent ghandu rimedju iehor quddiem il-Qrati Civili.

15. Ghaldaqstant ir-rikorrent jissottometti illi in linja mal-ispirtu tal-emendi li gew introdotti mill-legislatur fis-sena 2006, mahsuba sabiex inaqqsu d-duplicita` tal-kawzi u jaghmlu iktar gustizzja ma' vittmi ta' reat u wkoll mal-insenjament tal-Qorti ta' Strasbourg, l-Artikolu 6(1) huwa applikabbli fil-kaz de quo.

16. Illi min-naha taghhom, fir-risposta tal-appell taghhom, l-intimati jghidu illi stante li la hemm dritt civili jew obbligu li jrid jigi deciz u wisq inqas r-rikorrenti ma hu qed jigi mixli li wettaq reat kriminali, l-Artikolu 6 ma jistax jigi invokat mir-rikorrent minhabba dewmien irragjonevoli.

17. Huma jikkwotaw l-Artikolu 6 u jirribadixxu illi l-Artikolu 6(1) ma jghoddx ghar-rikorrent ghaliex dak li trid tiddeciedi l-Qorti tal-Magistrati huwa jekk l-akkuzati Giacomo Farrugia, Duncan Fenech, Zoran Kutlic u Srdjan Tintor humiex hatja tal-akkuzi migjuba kontrihom, ossia jekk il-prosekuzzjoni rnexxiliex tipprova l-kaz taghha sal-grad rikjest mill-ligi u f'kaz affermattiv tinfliggi piena.

18. Ikomplu jirrilevaw illi marbut ma' dan kollu huwa l-principju basilari fl-ordinament guridiku Malti li l-azzjoni kriminali u l-azzjoni civili huma indipendenti minn xulxin u regolati b'mod differenti. Jaghmlu referenza ghall-Artikolu 3 tal-Kap 9 u fost affarijiet ohra, jargumentaw illi anke jekk persuna tinheles mill-akkuzi migjuba kontriha, ma jfissirx li ma

ghandhiex tirrispondi civilment ghad-danni kkagunati minnha. Jghidu li ghalhekk l-ghan tal-process kriminali hu li jikkastiga lill-akkuzat jekk jirrizulta hati tal-akkuzi migjuba kontrih u mhux li jiddertermina d-drittijiet civili li jista' jkollu l-persuna offiza.

19. Ikomplu jghidu li l-Ewwel Qorti ghamlet ezami dettaljatissimu kemm tal-ligijiet applikabbli ghall-kaz odjern kif ukoll tal-gurisprudenza li gejja mill-Qorti Ewropea, u huma jaqblu kompletament mal-konsiderazzjonijiet u l-konkluzjonijiet taghha. L-appellant seta' facilment jipprocedi civilment ghall-likwidazzjoni tad-danni allegatament sofferti minnu indipendentement mill-ezitu tal-kawza kriminali. L-azzjoni civili mhijiex sospiza sakemm tigi determinata l-htija tal-akkuzat u tista' tirnexxi anke jekk l-akkuzat jigi liberat fil-process kriminali.

20. L-intimati jghidu wkoll li fir-rikors tal-appell tieghu, ir-rikorrent jaghmilha cara li l-interess tieghu fil-kawza kriminali hija unikament sabiex jikseb kumpens finanzjarju tad-danni li allegatament garrab – azzjoni li taqa` perfettament fil-paramentri tal-ligi ordinarja ghall-hlas tal-hsarat ikkagunati b'reat, liema azzjoni hija separata u indipendenti minn dik kriminali istitwita mill-pulizija. Ghalhekk jissottomettu illi stante illi l-kawza '**Il-Pulizija v. Giacomo Farrugia et**' ma hijiex se tiddetermina xi dritt civili tar-rikorrent, l-Artikolu 6(1) ma japplikax ghalih u ma jistax jigi nvokat minnu.

Konsiderazzjonijiet tal-Qorti

21. Jibda billi jinghad illi sabiex waslet ghall-konkluzjoni taghha, l-Ewwel Qorti ghamlet analizi dettaljata u bir-reqqa kemm tal-gurisprudenza tal-Qorti ta' Strasbourg, u kif ukoll ta' kazistika nostrana, u spjegat il-motivazzjonijiet li wassluha ghad-decizjoni taghha.

22. Ir-rikorrent jissottometti illi l-interpretazzjoni tal-Ewwel Qorti tal-gurisprudenza tal-Qorti ta' Strasbourg ikkwotata minnha, kienet wahda erroneja. Jikkwota fost ohrajn, **Calvelli u Giglio v. Italy**, **Gorou v. Greece**, kif ukoll **Moreira de Azevedo v. Portugal**, u jirrileva illi l-ezami li kellu jsir mill-Ewwel Qorti sabiex tiddeciedi dwar l-applikabilita` o meno tal-Artikolu 6(1) ma kienx jiccentra fuq in-necessita` ta' impatt determinanti tal-proceduri kriminali fuq dawk civili, izda jekk il-proceduri in kwistjoni setghux iwasslu ghal determinazzjoni ta' dritt civili.

23. Din il-Qorti tinnota illi l-ezami riportat mill-appellant huwa kemmxejn semplicistiku, fis-sens illi l-appellant ma dahalx fis-sistema guridiku tal-pajjizi in kwistjoni sabiex jistharreg x'rabta jista' jkun hemm bejn il-procedimenti penali u dawk civili fis-sistema gudizzjarja in kwistjoni.

24. Jirrizulta pacifiku illi abbazi tal-Artikolu 3 tal-Kap 9 tal-Ligijiet taghna, l-azzjoni kriminali u dik civili huma separati u distinti u wahda la timpingi fuq l-ezitu tal-ohra u wisq inqas tistenna l-ezawriment tal-ohra sabiex tigi deciza. Dan ma jistax jinghad ghas-sistemi guridici Ewropej kollha. Per ezempju, kif osservat mill-Ewwel Qorti, b'differenza mal-procedura taghna, fil-process kriminali Franciz, l-ghotja tal-kumpens hija konsegwenzjali ghas-sejba ta' htija.

25. Hekk ukoll huwa differenti l-istatus li jinghata lill-'assistente' (parte civile) fis-sistema Portugiza, fejn kif spjegat il-Qorti ta' Strasbourg fis-sentenza **Moreira de Azevedo v. Portugal***:*

> "67. The impact on civil proceedings of the status of assistente, which attached to the applicant during the criminal proceedings, is the subject of controversy among Portuguese legal writers. Clearly the applicant could have used the right made available to him under Article 32 of the Code of Criminal Procedure to submit a formal claim for damages, but the Court cannot disregard the principles laid down by the Supreme Court in its "ruling" judgment (assento) of 28 January 1976 (see paragraph 54 above). In the light of these principles it appears that to intervene as an assistente is equivalent to filing a claim for compensation in civil proceedings.
>
> "By acquiring this status, Mr Moreira de Azevedo demonstrated the importance which he attached not only to the criminal conviction of the accused but also to securing financial reparation for the damage sustained. Moreover, his application that the decision as to quantum be deferred until the subsequent enforcement proceedings (see paragraph 46 above) confirms that he genuinely expected to be paid damages.
>
> "68. In conclusion, Article 6 para. 1 (art. 6-1) applies to this case."[14]

14 ECHR 11296/84, 23/10/1990, para 67,68

26. Ghalhekk huwa car, illi b'differenza ghall-figura tal-parte civile fis-sistema taghna, is-sistema Portugiza tipprevedi illi l-fatt inniffsu illi wiehed jintervjeni fil-kawza penali bhala parti civili huwa ekwivalenti ghal talba ghal kumpens f'azzjoni civili.

27. Hekk ukoll fis-sistema Taljana, specjalment qabel is-sena 1990 meta saru r-riformi fil-Kodici Penali, l-azzjoni civili u l-azzjoni penali kienu dipendenti wahda fuq ohra, tant li kien hemm (u ghad hemm xi whud)[15] cirkostanzi fejn l-azzjoni civili tigi sospiza sakemm tigi determinata l-azzjoni penali. Tant hu hekk illi l-Qorti ta' Strasbourg ikkonsidrat f'**Calvelli and Ciglio v. Italy**[16] illi '*from the moment the applicants were joined as civil parties until the conclusion of those proceedings by a final ruling that prosecution of the offence as time-barred, the civil limb of those proceedings remained closely linked to the criminal limb.*' Dan ifisser, li ma kinitx biss mera possibilita` li l-parte civile jitlob kumpens fil-procedura penali (bhal ma huwa l-kaz tar-rikorrent odjern fil-proceduri penali de quo abbazi tal-Artikolu 532A tal-Kap 9) izda kien hemm rabta cara u dipendenza bejn iz-zewg azzjonijiet. Kien ghalhekk li l-Qorti Ewropea ddecidiet illi ghandu japplika l-Artikolu 6(1).

15 Vide Codice di Procedura Penali, Parte Prima, Libro Primo, Titolo V, Art 75 – *Rapporti tra Azione Civile e Azione Penale*
16 ECHR 32967/96, 17/01/2002, para 62

28. Kien imbaghad fil-kaz **Perez v. France**[17], li l-Qorti ta' Strasbourg iccarat illi it-test li jrid isir sabiex jigi determinat huwiex applikabbli l-Artikolu 6(1) huwa: '*whether, from the moment when the applicant is joined as a civil party until the conclusion of those criminal proceedings, the civil component remains closely connected with the criminal component (see Calvelli and Ciglio v. Italy [GC], no. 32967/96 § 62, ECHR 2002-1), in other words whether the criminal proceedings affect the civil component*'.

29. L-Ewwel Qorti tajjeb irriteniet illi l-principji hawn fuq enuncjati mill-Qorti ta' Strasbourg ma japplikawx ghas-sistema Maltija, fejn id-distinzjoni bejn l-azzjoni civili u l-azzjoni kriminali hija ben distinta u separata, mhux biss ghax hekk jipprovdi l-Artikolu 3 tal-Kodici Civili lokali, izda wkoll ghaliex anke l-grad ta' prova rikjest f'kull wahda minnhom huwa differenti. Huma korretti ghalhekk l-intimati meta jghidu illi jista' jigri li ghalkemm wiehed jinheles mill-akkuzi migjuba kontrih, izda xorta jista' jinsab responsabbli ghad-danni rekati minnu fl-azzjoni civili. Dan jista' jsehh biss in kwantu l-azzjonijiet huma separati u indipendenti u ghalhekk ma tezistiex il-'*close connection*' li ghamlet referenza ghaliha l-Qorti ta' Strasbourg.

30. Fir-rigward imbaghad tas-sentenza tal-Qorti ta' Strasbourg li jikkwota r-rikorrenti **Gorou v. Greece**, jinghad illi dan ikkwota biss

17 ECHR 47287/99, 12/02/2004, para 5

partijiet individwali mill-konsiderazzjonijiet tal-Qorti, li wahedhom ma jirrendux tajjeb l-ideja ta' dak li sahhqet dwaru l-istess Qorti. Is-segwenti bran, jaghmel diversi referenzi ghall-kaz tal-istess Qorti **Perez v. France** u jispjega t-taghlim tal-Qorti Ewropea dwar meta l-Artikolu 6(1) ghandu japplika ghall-parte civile:

> "24. The Court reiterates that the Convention does not confer any right, as such, to have third parties prosecuted or sentenced for a criminal offence. To fall within the scope of the Convention such right must be indissociable from the victim's exercise of a right to bring civil proceedings in domestic law, even if only to secure symbolic reparation or to protect a civil right such as the right to a "good reputation" (see Perez, cited above, § 70).
>
> "25. The import of this case-law is that Article 6 § 1 of the Convention applies to proceedings involving civil-party complaints from the moment the complainant is joined as a civil party, unless he or she has waived the right to reparation in an unequivocal manner (see Perez, cited above, § 66).
>
> "26. In the present case the applicant applied for civil-party status, claiming a sum equivalent to about three euros, in criminal proceedings concerning charges of perjury and defamation. Accordingly, Article 6 § 1 is applicable, above all because the impugned proceedings involved the right to a "good reputation" (see Perez, cited above, §§ 70-71, and Schwarkmann v. France, no. 52621/99, § 41, 8 February 2005). Moreover, the proceedings had an economic aspect, on account of the sum – however symbolic – of about three euros which the applicant claimed in joining them as a civil party.
>
> "Having regard to the foregoing, this preliminary objection of the Government must be dismissed."[18]

31. Dawn il-principji gew ukoll ikkonfermati fil-*Practical Guide to Article 6 – Civil Limb*[19] fejn jinghad:

18 ECHR 12686/03, 20/03/2009, para 24-26
19 Council of Europe / European Court of Human Rights, 2013, pg 8

> “23. Article 6 § 1 is applicable to a civil-party complaint in criminal proceedings (Perez v. France [GC], §§ 70-71), except in the case of a civil action brought purely to obtain private vengeance or for punitive purposes (Sigalas v. Greece, § 29; Mihova v. Italy (dec.)). The Convention does not confer any right, as such, to have third parties prosecuted or sentenced for a criminal offence. To fall within the scope of the Convention, such right must be **indissociable** [enfasi ta’ din il-Qorti] from the victim’s exercise of a right to bring civil proceedings in domestic law, even if only to secure symbolic reparation or to protect a civil right such as the right to a “good reputation” (Perez v. France [GC], § 70; see also, regarding a symbolic award, Gorou v. Greece (no. 2) [GC], § 24). Therefore, Article 6 applies to proceedings involving civil-party complaints from the moment the complainant is joined as a civil party, unless he or she has waived the right to reparation in an unequivocal manner”.

32. Jirrizulta ghalhekk illi l-Artikolu 6(1) ma japplikax ghal parte civile meta l-azzjoni tkun biss sabiex tigi stabbilita l-htija o meno tal-imputat skont l-akkuzi migjuba kontrih, izda jehtieg illi dik l-azzjoni kriminali tkun strettament marbuta mal-jedd tal-vittma illi tipprocedi b’azzjoni civili, anke jekk tali azzjoni civili tkun semplicement talba ghal kumpens simboliku jew ghal protezzjoni tar-reputazzjoni tal-istess.

33. Kif ben ikkwotat l-Ewwel Qorti mis-sentenza tal-Qorti Kostituzzjonali **Francis Xavier sive Frank Mifsud v. Avukat Generali** deciza fit-2 ta’ Novembru 2001, l-Artikolu 6(1) ma jistax jitqies illi japplika jekk l-appellant “*kellu rimedju iehor quddiem il-qrati civili, indipendenti mill-process kriminali li kien jassiguralu l-protezzjoni ta’ tali dritt...*”[20] bhal ma hu fil-kaz odjern fejn l-appellant ghandu a disposizzjoni tieghu rimedju quddiem il-Qorti Civili li jimxi indipendentement mill-procediment kriminali.

20 Pg 21

34. Ir-rikorrent jissokta jghid illi gia` ladarba, permezz tal-Artikolu 532A tal-Kap 9, huwa ghandu dritt ex lege illi jikseb kumpens finanzjarju ghad-danni sofferti minnu permezz tal-proceduri kriminali, l-istess proceduri huma determinanti ta' dritt civili tieghu u ghalhekk l-istat ghandu l-obbligu li jassigura u jipprotegi d-dritt fundamentali tieghu ghal smigh xieraq. Izda din il-Qorti ma tqisx illi l-Artikolu 532 gab il-fuzjoni ta' l-azzjoni kriminali u dik civili naxxenti minn reat.

35. Fis-sentenza appellata[21] l-Ewwel Qorti irriteniet illi ma hijiex konvinta li bl-applikazzjoni tal-Artikolu 532A, ikun hemm *joinder of the civil and criminal actions*. L-istess tirritjeni din il-Qorti. L-iskop ewlieni ta' proceduri kriminali jibqa` s-sejba ta' htija tal-imputat oltre kull dubju ragjonevoli u l-konsegwenti attribuzzjoni tal-piena f'kaz affermattiv. Il-kelma '*tista*'[22] turi illi tali mizura mhijiex obbligatorja izda diskrezzjonali ghall-Qorti. Inoltre, l-Artikolu lanqas ma jipprekludi lill-parti leza milli tipprocedi bi proceduri civili sabiex tizgura l-jedd civili taghha fil-konfront tal-imputati. Lanqas ma jigri, bhal f'gurisdizzjonijiet ohra, illi l-azzjoni civili tigi sospiza sabiex u sakemm tigi determinata l-kawza kriminali, tant, illi kif gia` gie osservat, il-kawza civili tista` tirnexxi minkejja l-helsien tal-akkuzat fil-proceduri kriminali.

[21] Pga.29
[22] Fl-Art.24[1] tal-Kap.446

36. Ghaldaqstant, dan kollu jmur biex juri illi l-indipendenza tal-azzjoni civili minn dik kriminali fis-sistema gudizzjarja taghna hija wahda cara u inekwivoka u tenut kont tal-fatt illi l-process kriminali li fih huwa *parte civile* l-appellant ma jincidi bl-ebda mod fuq l-infurzar ta' dritt civili tieghu quddiem il-qrati civili, l-Artikolu 6(1) ma huwiex applikabbli ghall-kaz odjern.

Decide

Ghar-ragunijiet premessi, din il-Qorti tichad dan l-appell u tikkonferma s-sentenza tal-ewwel Qorti fl-intier taghha.

L-ispejjez tal-ewwel istanza jibqghu kif decizi filwaqt li dawk relatati mal-appell ikunu kollha a karigu tal-appellant

Silvio Camilleri Prim Imhallef	Giannino Caruana Demajo Imhallef	Noel Cuschieri Imhallef

Deputat Registratur
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