



**MALTA**

**QORTI CIVILI  
PRIM'AWLA**

**ONOR. IMHALLEF  
SILVIO MELI**

LL.D.; Dip. Stud. Rel.; Dip. Can. Matr. Jur. & Proc.;  
Cert. Jur. & H.R. (Strasbourg);  
P.G. Dip. European Competition Law (King's College, London),  
P.G. Dip. European Law (King's College, London).

**Illum is-7 ta' Jannar, 2019**

**Rikors Numru 29/2018**

**Prim Awla tal-Qorti Civili  
(Sede Kostituzzjonali)**

**Alfred Degiorgio  
(Karta tal-Identita` Numru 541264 (M))**

**vs.**

**L-Avukat Generali  
u b'digriet datat l-20 t'April, 2018,  
awtorizzat lill-Avukat Peter Caruana  
Galizia, detentur tal-karta tal-identita`  
numru 0030056M, Matthew Caruana  
Galizia, detentur tal-karta tal-identita`  
numru 0130886M, Andrew Caruana  
Galizia, detentur tal-karta tal-identita`  
numru 0384287M, u Paul Caruana  
Galizia, detentur tal-karta tal-identita`  
numru 0008989M, bhalla intervenuti  
fil-kawza.**

Il-Qorti,

1. Illi permezz tal-procedura odjerna pprezentata *in atti* fit-23 ta' Marzu, 2018, (ara foll 1), l-qorti qed tintalab taghti provvedimenti provizorju fir-rigward tan-nomina tal-Avukat Dottor Martin Bajjada bhala l-espert tekniku, fl-Inkjesta Magisterjali u fl-Atti tal-Kumpilazzjoni prezentement pendenti in konnessjoni mal-istess rikorrenti, biex din in-nomina tigi sospiza b'effett immedjat sakemm tinstema' l-kawza kostituzzjonali li l-istess rikorrenti introduca kontestwalment mal-istess procedura odjerna;
2. Illi l-procedura hawn in dizamina qed tittiehed mir-rikorrenti ghaliex qed jilmenta minn ksur tad-dritt fundamentali tieghu ghal smigh xieraq kif sancit mill-artiklu 39 tal-Kostituzzjoni ta' Malta, (minn issa 'l quddiem il-Kostituzzjoni), u mill-artiklu 6 tal-Konvenzjoni Ewropea tad-Drittijiet Fundamentali tal-Bniedem, (minn issa 'l quddiem il-Konvenzjoni);
- 3.0. Illi permezz tad-digriet taghha datat ukoll it-23 ta' Marzu, 2018, (ara foll 5), din il-qorti:
  - 3.1. Laqghet it-talba tar-rikorrenti provizorjament;
  - 3.2. Ordnat in-notifika tal-istess rikors promotur lill-intimat u lill-espert in kwistjoni biex jirrispondu skont il-ligi;
  - 3.3. Appuntat l-istess rikors ghas-smigh ghall-udjenza hemm indikata, (ara ukoll foll 7);
- 4.0. Rat ir-risposta tal-intimat Avukat Generali datata s-26 ta' Marzu, 2018, li permezz taghha sintetikament irrisponda bil-mod segwenti, (ara foll 8):
  - 4.1. Illi t-talba tar-rikorrenti hi wahda abbuziva;
  - 4.2. Illi permezz tal-istess r-rikorrenti qieghed biss jipprova jtawwal il-Kumpilazzjoni li hu involut fiha;
  - 4.3. Illi mizuri ta' natura provizorja huma l-eccezzjoni u dejjem gew interpretati b'mod ristrett hafna;

- 4.4. Illi permezz tar-rikors odjern ir-rikorrenti qieghed effettivament jistieden lill-qorti odjerna tiddeciedi l-mertu li qieghed jigi analizzat fi proceduri ohra;
- 4.5. Illi m'hemmx cirkostanzi gravi li jimmilitaw favur il-hrug tal-mizura provizorja hawn mitluba;
5. Rat id-digriet taghha datat l-20 t'April, 2018, (ara foll 24 u 38), li permezz tieghu, wara li semghet lir-rikorrenti, (ara foll 35), u lill-intimat, (ara foll 30), awtorizzat l-intervent fil-kawza hemm indikat;
6. Rat ir-risposta tal-intervenuti fil-kawza datata t-2 ta' Mejju, 2018, (ara foll 45), li essenzjalment ibbollah ir-rikors promotur bhal wiehed frivolu u vessatorju, (ara foll 45);
7. Rat id-digriet taghha datat il-21 ta' Novembru, 2018, li permezz tieghu, wara talba appozita tal-abbli rapprezentant legali tar-rikorrenti, opposta mill-intervenut izda li ghaliha irrimettiet ruhha l-abbli rapprezentant legali tal-intimat, awtorizzat lill-istess biex jittrattaw il-kawza bil-modalita` u fit-termini hemm indikati, (ara foll 64);
8. Rat in-noti ta' sottomissjonijiet kollha tal-partijiet, (ara foll 65 sa 80);

Ikkunsidrat:

9. Illi fis-sentenza taghha fl-ismijiet **Raymond Caruana vs. L-Avukat Generali** datata t-23 t'April, 2004, il-Prim'Awla tal-Qorti Civili irriteniet is-segwenti f'dan ir-rigward hawn in dizamina:

“Illi skont il-prassi taht il-Konvenzjoni 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 alledged risk to life or ill treatment*” fosthom kazijiet ta' *deporation* u *expulsion* ghal stati fejn ir-riskju ghall-hajja hu kbir hafna”;

Ikkunsidrat:

10. Illi biex jigi issa ivverifikat jekk jezistux l-estremi biex ikun jista' jinghata r-rimedju hawn mitlub mir-rikorrenti issir referenza ghas-sentenza tal-**Qorti Kostituzzjonali** fl-ismijiet **Joseph Camilleri vs. Avukat Generali**, datata l-1 ta' **Lulju, 2013** li f'dan ir-rigward irritereniet is-segwent:

*“Kif inghad fil-ktieb “Theory and Practice of the European Convention on Human Rights”, ta' van Dijk et (4 ediz. 2006, pagna 113),*

*“In the majority of cases the interim measures are taken seriously by the national authorities. In fact it is only in cases of extreme urgency that interim measures are indicated: the facts must prima facie point to a violation of the Convention, and the omission to take the proposed measures must result or threaten to result in irreparable injury to certain vital interests of the parties or to the progress of the examination. Such would be the case, for instance, if an expulsion threatens to constitute a violation of Article 3 of the Convention, in view of a serious risk that the person concerned will be exposed to torture or inhuman treatment or punishment. In that case a stay of expulsion may be requested until the Court has had the opportunity to investigate the case. However, it will do so only if there is a high degree of probability that a violation of Article 3 is likely to occur. This requires that the applicant state his case in a convincing manner and possibly also presents some evidence showing the danger to life or limb to which he may be exposed if expelled or extradited to a particular country. It is not sufficient for the applicant to provide information about the danger or uncertain situation in the country of destination and/or his being an opponent of the ruling Government”;*

Ikkunsidrat:

11. Illi finalment, fir-rigward tar-rimedju li r-rikorrenti qiegħed jindirizza fil-procedura odjerna, ssir referenza ghas-sentenza tal-**Prim'Awla tal-Qorti Civili** fl-ismijiet **Stephen**

**Pirotta vs. L-Avukat Generali et** datata z-19 t'April, 2016, li rriteniet is-segwenti:

“Illi ghalkemm hu minnu, kif jallegaw l-intimati, li l-ghoti tal-provvediment provvizorju quddiem il-Qorti ta' Strasburgu taht ir-regolament 39 tar-Regoli tal-Procedura ta' dik il-qorti jkun bosta drabi marbut ma' ksur ta' jedd taht l-artiklu 2 jew l-artiklu 3 tal-Konvenzjoni, ma hemm l-ebda dispozizzjoni li tillimita l-ghoti ta' provvediment bhal dak biss ghall-imsemmija zewg artikoli. Kemm hu hekk, kien hemm kazijiet fejn l-ghoti ta' provvediment inghata wkoll waqt proceduri li kienu jirrigwardaw ukoll ilment ta' ksur tal-artikolu 6 tal-istess Konvenzjoni”;

Ikkunsidrat:

12. Illi ghandu jirrizulta pacifiku li minn ezami tal-atti pprezentati fil-procedura odjerna ic-cirkostanzi estremi u eccezzjonali indikati fil-gurisprudenza fuq elenkata li jistghu jiggustifikaw l-attwazzjoni ta' tali mizura provvizorja kif mitluba mir-rikorrenti effettivament ma jirrizultawx;
13. Illi in effetti, jigi sottolineat li r-rikorrenti m'irnexxilux juri li n-nuqqas tal-ghoti tal-mizura provvizorja minnu mitluba ser ikollha l-konsegwenza li ggiblu hsara irrimedjabbli jew li jkun hemm riskju iminenti u apparenti ta' hsara irreparabbli fil-kaz tieghu, kemm -il darba din l-ordni jew mizura provvizorja minnu mitluba – biex in-nomina tal-Avukat Dottor Martin Bajjada - ma tinharigx;

Ikkunsidrat:

14. Illi in vista tal-premess din il-qorti mhix sodisfatta li r-rikorrenti pprova l-kaz tieghu skont il-ligi, u konsegwentement:

**DECIDE:**

- 14.1. Tirrespingi t-talbiet tar-rikorrenti;

- 14.2. Takkolji r-risposti tal-intimat flimkien ma dawk tal-intervenuti fil-kawza;
- 14.3. Tirrevoka ghalhekk *contrario imperio* d-digriet provizorju taghha datat it-23 ta' Marzu, 2018;
- 14.4. Bl-ispejjez kontra r-rikorrenti.

---

Onor. Imhalledf Silvio Meli

## **DECIZJONI FINALI**