QORTI CIVILI PRIM`AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON

Illum il-Hamis 27 ta` Frar 2020

Kawza Nru. 2
Rikors Nru. 68/19 JZM

Patricia Curmi (K.I. 335066M;

Graziella Pullicino (K.I. 0035270M);

u

Stephanie Mose` Pullicino
(K.I. 0254564M)

kontra

Miriam Pace (K.I. 0566857M)
u zewgha Philip Pace (K.I. 0676859M)

u

Avukat Generali,
li kien sostitwit *ope legis* bl-Avukat tal-Istat, b`effett tal-Kap 603 tal-Ligijiet ta` Malta, u tal-Avviz Legali 329 tal-2019

Il-Qorti :

I. <u>Preliminari</u>

Rat ir-rikors prezentat fid-<u>29 ta` April 2019</u> li jaqra hekk :-

1. Illi r-rikorrenti huma proprjetarji tal-fondi 55/56 (gja 86/87), Triq Santa Skolastika, Birgu li kien originarjament mikri lill-mejta Giuseppa Spiteri, iz-zija tal-intimata Miriam Pace, bil-kera ta` Lm24 fis-sena.

2. Illi din il-kirja wara l-mewt tal-imsemmija Giuseppa Spiteri ghaddiet ghal fuq l-intimata Miriam Pace u zewgha Philip Pace ai termini tal-Kap. 69 tal-Ligijiet ta` Malta pero` dawn qatt ma gew rikonoxxuti mir-rikorrenti.

3. Illi l-fond kien originarjament proprjeta` indiviza tal-mejjet missierhom Anthony Pullicino li miet fit-12 ta` Frar 2003. Illi l-wirt tieghu ddevolva b`testment unica charta tat-22 ta` Jannar 1990 fl-atti tan-Nutar Dottor Maurice Gambin fejn huwa nnomina bhala eredi tieghu lit-tliet uliedu r-rikorrenti odjerni, kif soggett ghall-uzufrutt ta` martu Eileen Pullicino.

4. Illi Eileen Pullicino mietet fil-25 ta` Marzu 2006.

5. Illi b`dikjarazzjoni causa mortis tal-25 ta` Gunju 2003 fl-atti tan-Nutar Dottor Paul Pullicino, hawn anness u mmarkat bhala "Dokument A", l-atturi ddikjaraw l-eredita tal-mejjet missierhom Anthony Pullicino lill-Kummissarju tat-Taxxi Interni u hallsu t-taxxa appozita fuq il-proprjeta` in kwistjoni.

6. Illi b`kuntratt ta` divizjoni tat-12 ta` Mejju 2006 fl-atti tan-Nutar Dottor Margaret Heywood, hawn anness u mmarkat bhala "Dokument B" il-fond in kwistjoni fost affarjiet ohra mess lill-atturi.

7. Illi l-kirja li l-intimati qed jhallsu bdiet tithallas lill-atturi fit-totalita` taghha minn dak iz-zmien tad-divizjoni l`quddiem, u huwa

dak il-minimum stabbilit mill-ligi ossia €209 fis-sena, meta l-valur lokatizju tal-fond fis-suq huwa ferm aktar minn dak stabbilit bid-disposizzjonijet tal-Kap. 69 tal-Ligijiet ta` Malta li huma marbutin mal-kera li fond seta` f`xi zmien igib fl-4 ta` Awwissu 1914, liema disposizzjonijet gew mibdula bi ftit bl-Att X tal-2009.

8. Illi l-fond imsemmi bl-emendi tal-Att X tat-2009 illum ghandu kera ta` €209 fis-sena ai termini tal-Artikolu 1531C tal-Kap 16 tal-Ligijiet ta` Malta u ai termini tal-istess ligi, r-rata tal-kera ghandha tizdied kull tlett snin b`mod proporzjonali ghal mod li bih ikun jizdied l-Indici ta` Inflazzjoni skond l-Artikolu XIII tal-Ordinanza li Tnehhi l-Kontroll tad-Djar bl-awment li jmiss fl-1 ta` Jannar 2022.

9. Illi dan il-fond mhux fond dekontrollat kif jirrizulta mid-"Dokument C" hawn anness mahrug minn Identity Malta.

10. Illi l-protezzjoni moghtija lill-inkwilini bid-dispozizzjonijiet tal-Kap 69 tal-Ligijiet ta` Malta u tal-Att X tal-2009 mhumiex gusti u ma jikkreawx bilanc ta` proporzjonalita` bejn id-drittijiet tas-sid u dawk tal-inkwilin stante li l-valur lokatizzju tal-fond huwa ferm oghla minn dak stabbilit fil-ligi u ghalhekk huma bi ksur tal-Kostituzzjoni ta` Malta u tal-Ewwel Artikolu ta` l-Ewwel Protokol tal-Konvenzjoni Ewropea u tal-Artikolu (6) tal-Konvenzjoni.

11. Illi l-livell baxx tal-kera, l-istat tal-incertezza tal-possibilita` tat-tehid lura tal-proprjeta`, in-nuqqas ta` salvagwardji procedurali, iz-zieda fil-livell tal-ghejxien f`Malta f`dawn l-ahhar decenni u l-interferenza sproporjzonata bejn id-drittijiet tas-sid u dawk tal-inkwilini ikkreaw piz eccessiv fuq ir-rikorrenti.

12. Illi r-rikorrenti m`ghandhomx rimedju effettiv ai termini tal-Artikolu 6 tal-Konvenzjoni Ewropea stante illi huma ma jistghux izidu il-kera b`mod ekwu u gust skond il-valur tas-suq illum stante illi dak li effettivament huma jistghu jircievu huwa dak kif limitat bl-artikolu 1531C tal-Kap. 16 tal-Ligijiet ta` Malta.

13. Illi dan kollu gja` gie determinat fil-kawzi Amato Gauci Vs Malta no. 47045/06 deciza mill-Qorti Ewropea tad-Drittijiet Fundamentali tal-Bniedem fil-15 ta` Settembru 2009 u Lindheim and others vs Norway nru. 13221/08 u 2139/10 deciza fit-12 ta` Gunju 2012 u Zammit and

Attard Cassar vs Malta applikazzjoni nru. 1046/12 deciza fit-30 ta` Lulju 2015.

14. Illi gialadarba r-rikorrenti qed jsofru minn nuqqas ta` "fair balance" bejn l-interessi generali tal-komunita` u l-bzonnijiet u protezzjoni tad-drittijiet fundamentali tal-bniedem kif deciz b` Beyeler vs Italy nru. 33202/96, J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd vs the United Kingdom [GC], nru. 44302/02, § 75, ECHR 2007-III) u ghalhekk il-principju ta` proporzjonalita kif gie deciz f`Almeida Ferreira and Melo Ferreira vs Portugal nru. 41696/07 § 27 u 44 tal-21 ta` Dicembru 2010.

15. Illi r-regolamenti ta` kontroll tal-kera huma interferenza mad-dritt tas-sid ghall-uzu tal-proprjeta taghhom stante illi dawn l-iskemi ta` kontroll tal-kera u restrizzjonijiet fuq id-dritt tas-sid li jittermina l-kirja tal-inkwilin u wisq inqas ta` min qed jipprova jippresta lilu nnifsu bhala inkwilin meta mhuwiex jikkostitwixxi kontroll tal-uzu tal-proprjeta` fit-termini tat-tieni paragrafu tal-Ewwel Artikolu tal-Ewwel Protokol tal-Konvenzjoni Ewropea (vide Hutten-Czapska vs Poland [GC], nru. 35014/97, §§ 160-161, ECHR 2006-VIII, Bitto and Others vs Slovakia, nru. 30255/09, § 101, 28 ta` Jannar 2014 u R&L, s.r.o. and Others §108).

16. Illi barra minn hekk b`mod diskriminatorju l-Artikolu 1531F tal-Kap. 16 tal-Ligijiet ta` Malta jiddistingwi fil-protezzjoni tal-kirja dawk il-persuni li kienu qed jokkupaw dar ta` abitazzjoni qabel l-1 ta` Gunju 2008 u dawk li kienu qed jokkupaw dar ta` abitazzjoni wara l-1 ta` Gunju 2008 stante illi ulied il-wild tal-inkwilin wara l-1 ta` Gunju 2008 il-kirja ma kinitx testendi ghalihom waqt illi qabel l-1 ta` Gunju 2008 il-Kap. 69 tal-Ligijiet ta` Malta tat protezzjoni mhux xierqa lill-dawn l-ulied il-wild.

17. Illi barra minn hekk b`mod diskriminatorju l-Artikolu 1531F tal-Kap. 16 tal-Ligijiet ta` Malta jiddistingwi fil-protezzjoni tal-kirja dawk il-persuni li kienu qed jokkupaw dar ta` abitazzjoni qabel l-1 ta` Gunju 2008 u dawk li kienu qed jokkupaw dar ta` abitazzjoni wara l-1 ta` Gunju 2008 stante illi n-neputijiet tal-inkwilin ossia t-tfal ta` hut ir-ragel wara l-1 ta` Gunju 2008 il-kirja ma kinitx testendi ghalihom waqt illi qabel l-1 ta` Gunju 2008 il-Kap. 69 tal-Ligijiet ta` Malta tat protezzjoni mhux xierqa lill-dawn in-neputijiet ta` hut ir-ragel.

18. Illi din hija wkoll diskriminatorja sia ai termini tal-Artikolu 45 tal-Kostituzzjoni ta` Malta u l-Artikolu 14 tal-Konvenzjoni Ewropea.

19. Illi inoltre, il-ligi hija diskriminatorja bejn dak li hemm dispost fl-Artikolu 1531C tal-Kap 16 tal-Ligijiet ta` Malta u tal-Kap 69 tal-Ligijiet ta` Malta u dak li jiddisponi l-Att XXXI tal-1995 ghal kirjiet li dahlu fis-sehh wara l-1 ta` Gunju 2005.

20. Illi l-valur lokatizju tal-post huwa ferm oghla minn dak li l-ligi imponiet li r-rikorrenti ghandhom jircievu b`tali mod illi bid-dispozizzjonijiet tal-Artikolu 34, 37 u 45 tal-Kostituzzjoni ta` Malta u l-Artikolu 14 u l-Artikolu 1 tal-Ewwel Protokol tal-Konvenzjoni Ewropea il-Kap. 69 tal-Ligijiet ta` Malta kif emendat bl-Att XXXI tal-1995 u l-emendi li saru bl-Att X tal-2009 mhux biss ikkawzaw diskriminazzjoni bejn ulied il-wild u ohrajn kif stipulat fl-artikolu 1531F tal-Kap. 16 tal-Ligijiet ta` Malta imma wkoll jilledi d-drittijiet kostituzzjonali kif protetti taht l-Artikolu tal-Kostituzzjoni ta` Malta, kif ukoll ta` l-Artikolu 1 u 14 tal-Protokoll Nru. 1 u l-Artikolu 6 tal-Konvenzjoni Ewropeja u ghalhekk il-Ligi fuq imsemmija ghandha tigi dikjarata anti-kostituzzjonali u ghandha tigi emendata, kif del resto diga` gie deciz mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fil-kawza Amato Gauci vs. Malta – deciza fil-15 ta` Settembru, 2009 u Zammit and Attard Cassar vs Malta deciza fit-30 ta` Lulju 2015 mill-Qorti Ewropea tad-Drittijiet Fundamentali tal-Bniedem.

21. Illi l-Qorti Ewropea tad-Drittijiet tal-Bniedem diga` kellha okkazjoni tikkummenta f`kazi li rrigwardjaw lil Malta li ghalkemm m`hemmx dubju li l-Istat ghandu dover u allura d-dritt li jintervjeni biex jassikura abitazzjoni decenti lil min ma jistax ikollu dan bil-mezzi tieghu stess, li ndividwu jigi privat mill-uzu liberu tal-proprjeta` ghal hafna snin u fil-frattemp jircievi kera mizera, jammonta ghall-ksur tad-dritt in kwistjoni. Fil-kawza "Ghigo vs Malta", deciza fis-26 ta` Settembru 2006, il-Qorti sabet li jezisti l-ksur tad-dritt in kwistjoni ghaliex ir-rikorrenti gie privat mill-proprjeta` tieghu tnejn u ghoxrin (22) sena qabel u kien jircievi hamsa u hamsin (55) Euro fis-sena bhala kera. Fis-sentenza "Fleri Soler et vs Malta", moghtija fl-istess data, l-istess Qorti sabet li d-dritt fundamentali tar-rikorrenti gie lez u allura qalbet sentenza tal-Qorti Kostituzzjonali ta` Malta kif gara wkoll fil-kawza ta` "Franco Buttigieg & Others vs Malta" deciza mill-Qorti Ewropea tad-Drittijiet Fundamentali tal-Bniedem fil-11ta` Dicembru 2018 u "Albert Cassar vs Malta" deciza mill-Qorti Ewropea tad-Drittijiet Fundamentali tal-Bniedem fit-30 ta` Jannar 2018.

22. Illi fil-kawza surreferita "Fleri Soler & Camilleri vs Malta" l-Qorti qalet "not only must an interference with the right of property

pursue, on the facts as well as in principle, a "legitimate aim" in the "general interest", but there must also be `a reasonable relation of proportionality` between the means employed and the aim sought to be realised by any measures applied by the State, including measures designed to control the use of the individual`s property. That requirement is expressed by the notion of a "fair balance" that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights."

23. Illi fil-kaz de quo certament li ma kienx hemm dan il-fair balance jew a reasonable relation of proportionality u dan minkejja li llum l-fond fis-suq jgib mill-inqas €1,000 kera fix-xahar.

24. Illi in vista tal-kazistika surreferita, sahansitra dik tal-Qorti Ewropea tad-Drittijiet tal-Bniedem, certament li ma hemm ebda dubju li din l-Onorabbli Qorti ghandha tiddeciedi l-kawza odjerna billi ssib illi r-rikorrenti nkisrilhom id-dritt fundamentali taghhom sancit bl-imsemmi Artikolu 1 ta` l-Ewwel Protokol tal-Konvenzjoni Ewropea u tal-Artikolu 37 tal-Kostituzzjoni ta` Malta.

GHALDAQSTANT ir-rikorrrent jitolbu bir-rispett lil din l-Onorabbli Qorti prevja kwalsiasi dikjarazzjoni necessarja u opportuna u ghar-ragunijiet premessi jghidu l-intimati ghaliex m`ghandhiex:

i. Tiddikjara u Tiddeciedi illi fil-konfront tar-rikorrenti l-operazzjonijiet tal-Ordinanza li Tirregola l-Tigdid tal-Kiri tal-Bini ossija l-Kap 69 tal-Ligijiet ta` Malta u bl-operazzjonijiet tal-Ligijiet vigenti qeghdin jaghtu dritt ta` rilokazzjoni lill-intimati konjugi Pace tal-fondi 55/56 (gja 86/87), Triq Santa Skolastika, Birgu, waqt li qed jigu vjolati d-drittijiet fundamentali tar-rikorrenti kif sanciti bl-Artikolu 37 tal-Kostituzzjoni ta` Malta, u l-Ewwel Artikolu ta` l-Ewwel Protocol tal-Konvenzjoni Ewropeja (l-Ewwel Skeda tal-Kap. 319 tal-Ligijiet ta` Malta) u tal-Artikolu 14 tal-istess Konvenzjoni, u ghar-ragunijiet fuq esposti u ta` dawk li ser jirrizultaw waqt it-trattazzjoni ta` dan ir-rikors ir-rikorrenti ghandhom jinghataw r-rimedji kollha li din l-Onorabbli Qorti jidhrilha xierqa fis-sitwazzjoni inkuz l-izgumbrament tal-intimati konjugi Pace mill-fond de quo.

ii. Tiddikjara u Tiddeciedi illi l-intimat Avukat Generali huwa responsabbli ghal kumpens u danni sofferti mir-rikorrenti b`konsegwenza ta` l-operazzjonijiet tal-Kap 69 tal-Ligijiet ta` Malta talli ma kkreatx bilanc bejn id-drittijiet tas-sid u dawk tal-inkwilin stante li ma jirriflettux

is-suq u lanqas il-valur lokatizzju tal-proprjeta` in kwistjoni wkoll ai termini ta` l-Artikolu 41 tal-Konvenzjoni Ewropea.

iii. Tillikwida l-istess kumpens u danni kif sofferti mir-rikorrenti, wkoll ai termini ta` l-Artikolu 41 tal-Konvenzjoni Ewropeja.

iv. Tikkundanna lill-intimat Avukat Generali jhallas l-istess kumpens u danni likwidati ai termini ta` l-Artikolu 41 tal-Konvenzjoni Ewropeja.

Bl-ispejjez, komprizi dawk ta` l-ittra ufficjali tas-16 ta` April 2019 li kopja taghha qed tigi hawn esebita u mmarkata bhala "Dokument D" u bl-ingunzjoni ta` l-intimati ghas-subizzjoni.

Rat id-dokumenti li kienu prezentati mar-rikors promotur.

Rat ir-risposta li pprezenta l-Avukat Generali fl-20 ta` Mejju 2019 li taqra hekk : -

1. Illi in linea preliminari huwa xieraq u opportun li jigi pprezentat il-kuntratt tal-kera li jirrigwarda l-fond mertu tal-kaz odjern u l-esponent qieghed jirrizerva li jressaq eccezzjonijiet ulterjuri jekk ikun il-kaz wara li dan jigi prezentat.

2. Illi in linea preliminari wkoll, ir-rikorrenti iridu jgbu prova tat-titolu taghhom fuq il-proprjeta` in kwistjoni.

3. Illi in linea preliminari l-esponent jeccepixxi illi r-rikorrenti ma jistghux jilmentaw dwar perijodi qabel ma huma saru sidien tal-proprjeta` in kwistjoni.

4. Subordinament u minghajr pregudizzju ghas-suespost u fil-mertu l-esponent jopponi t-talbiet avvanzati fir-rikors promotur u jirrileva illi ma sehh l-ebda ksur tad-drittijiet fundamentali tal-bniedem fil-konfront tar-rikorrenti u dan ghas-segwenti motivi li qeghdin jigu avvanzati minghajr pregudizzju ghal xulxin :

5. Illi l-esponent jikkontesta l-allegazzjonijiet u l-pretensjonijiet tar-rikorrent stante li huma kollha nfondati fil-fatt u fid-dritt.

6. Illi sa fejn l-atturi wirtu il-proprjeta`, l-esponent jeccepixxi illi huma `dahlu fiz-zarbun` tal-predecessur taghhom fit-titlu tal-proprjeta` u allura huma marbutin b`dak li ghamel hu daqs li kieku kien sar minnhom. F`dan ir-rigward l-esponent jeccepixxi illi jekk il-kuntratt tal-kera sehh wara li dahal fis-sehh il-Kapitolu 69 tal-Ligijiet ta` Malta, l-awtur tar-rikorrenti dahal ghal ftehim lokatizju b`mod volontarju u bil-konsapevolezza tar-regim legali li kien jiggverna dak il-ftehim dak iz-zmien. Allura ghandu jipprevali l-principju pacta sunt servanda.

7. Illi l-esponent jeccepixxi wkoll in-nuqqas ta` applikabilita` tal-Artikolu 37 tal-Kostituzzjoni u tal-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni Ewropeja tad-Drittijiet tal-Bniedem stante li taht il-ligijiet tal-kera ma jsehhx `tehid forzuz` jew obbligatorju tal-proprjeta` izda kontroll biss tal-uzu taghha fil-parametri tal-Kostituzzjoni u tal-Konvenzjoni.

8. Illi l-Kap. 69 bl-ebda mod ma jikkostitwixxi tehid forzuz tal-proprjeta` jew tehid obbligatorju izda kontroll ta` uzu ta` proprjeta` fil-parametri tal-Kostituzzjoni u tal-Konvenzjoni Ewropea. Sabiex jinghad li kien hemm tehid forzuz jew obbligatorju, jehtieg li persuna tigi zvestita minn kull dritt li ghandha fuq il-proprjeta`, meta fil-kaz odjern l-Istat sempliciment irregolarizza sitwazzjoni ta` natura socjali fl-ambitu tal-gid komuni b`dana pero` li baqghu impregudikati d-drittijiet tas-sidien qua proprjetarji tal-fondi.

9. Illi l-istat igawdi diskrezzjoni wiesgha fl-apprezzament ta` htigijiet socjali tal-pajjiz u fl-ghazla tal-mizuri li ghandhom jittiehdu sabiex jigu ndirizzati dawk il-htigijiet socjali, specjalment f`kazijiet fejn dawk il-mizuri huma tali li jikkontrollaw l-uzu tal-proprjeta` u mhux li jcahhdu lis-sid mill-proprjeta`.

10. Illi tali diskrezzjoni tal-legislatur m`ghandiex titbiddel sakemm din ma tkunx manifestament minghajr bazi ragjonevoli. Kif spjegt fis-suespost l-esponenti jishaq li fil-kaz odjern hemm bazi ragjonevoli li tiggustifika l-promulgazzjoni tal-legislazzjoni li tinsab taht skrutinju fil-kawza odjerna u effettivament din hija li kulhadd ikollu fejn joqghod u li l-uzu tal-proprjeta` anke privata jghin biex dan isehh.

11. Illi jsegwi ghalhekk, fl-umli fehma tal-esponent, li fil-kaz odjern din l-Onorabbli Qorti m`ghandiex tevalwa din il-ligi fil-kuntest principalment ta` spekulazzjoni tal-proprjeta` imma ghandha tiskrutinja u tapplika l-ligi fil-qafas aktar wiesgha u cioe` l-aspett tal-proporzjonalita` fid-dawl tar-realta` ekonomika u socjali tal-pajjiz in generali.

12. Illi minghajr pregudizzju ghas-suespost, bl-emendi li sehhew fl-ligi permezz tal-Att X tal-2009 u b`referenza specifika ghall-Artikolu 1531C tal-Kap. 16 tal-Ligijiet ta` Malta, gie stabbilit mekkanizmu ghall-awment perjodiku tal-kera u saru diversi mizuri li jagevolaw il-pozizzjoni tas-sidien. Ghaldaqstant minn dan jirrizulta li l-pozizzjoni tar-rikorrent giet miljorata minn dakinhar li saret il-kirja.

13. Illi minghajr pregudizzju ghall-premess anke` jekk fil-kaz odjern jirrizulta li l-kera dovuta lir-rikorrenti hija inferjuri ghall-valur lokatizju fis-suq kieku l-fond kien vojt, dan it-tnaqqis huwa kontro-bilancjat bil-margini wiesgha tal-Istat li jillegisla fil-kuntest ta` mizuri socjali.

14. Ulterjorment jigi rilevat illi fi kwalunkwe kaz l-Artikolu 1 tal-Ewwel Protokoll ma jikkoncedi ebda dritt li xi hadd jircievi profitt. Inoltre, fil-kaz odjern mill-aspett tal-proporzjonalita` l-ligi ghandha tigi applikata f`sens wiesgha u cioe` fid-dawl tar-realta` ekonomika u socjali tal-pajjiz in generali u mhux sempliciment a bazi ta` konsiderazzjonijiet ta` spekulazzjoni tal-proprjeta` in kwistjoni.

15. Illi fir-rigward tal-allegazzjoni illi protezzjoni moghtija mill-Kap. 69 tikser id-dritt fundamentali tar-rikorrent sancit bl-artikolu 14 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem, l-esponent jecepixxi illi dak li qed jilmenta minnu r-rikorrent ma jiffigura mkien fil-parametri ta` protezzjoni minn trattament diskriminatorju kif sancit mill-Artikolu 14 tal-Konvenzjoni Ewropea.

16. Illi l-esponenti jirrelevaw ukoll illi ma tezisti ebda diskriminazzjoni u li r-rikorrent ma nghata ebda trattament dskriminatorju.

17. Ille dejjem minghajr pregudizzju ghas-suespost, dato ma non concesso li din l-Onorabbli Qorti jidhrilha li kien hemm xi ksur tad-drittijiet fundamentali tar-rikorrent, fatt li qed jigi kontestat, l-esponent jirrileva li

fic-cirkostanzi tal-kaz, dikjarazzjoni ta` ksur hija sufficjenti u ma hemmx lok ghal rimedji ohra mitluba mir-rikorrent.

18. Salv eccezzjonijiet ulterjuri.

Ghaldaqstant fid-dawl tas-suespost ma hemm l-ebda lezjoni tad-drittijiet fundamentali tar-rikorrent u din l-Onorabbli Qorti ghandha tichad l-allegazzjonijiet u t-talbiet kollha bhala infondati fil-fatt u fid-dritt u dan bl-ispejjez kontra l-istess rikorrent.

Rat il-lista tax-xhieda li kienet prezentata mar-risposta.

Rat ir-risposta li pprezentaw l-intimati Miriam Pace u Philip Pace fil-21 ta` Mejju 2019 li taqra hekk : -

1. Illi preliminarjament, l-esponenti ma humiex il-legittimi kontradditturi ghal dak li jirrigwarda l-fond numru 57, Triq Santa Skolastika, Birgu, stante li huma inkwilini tal-fondi 55 u 56, Triq Santa Skolastika, Birgu u mhumiex l-inkwilini tal-fond li jgib in-numru 57 fl-istess Triq. Ghal dak li jirrigwarda l-allegata vjolazzjoni tad-drittijiet fundamentali tar-rikorrenti, huwa l-Istat u mhux l-esponenti li ghandhom iwiegbu ghal din l-allegazzjoni, u dan peress li l-Ligi li qeghda tigi attakkata saret mill-Istat u huma kull ma ghamlu huwa li osservaw il-Ligi vigenti.

2. Illi preliminarjament ukoll, ir-rikorrenti ghandhom igibu prova tat-titolu taghhom fuq il-fond de quo skond il-Ligi. Dan qieghed jinghad stante illi d-dokumenti kif esebiti mar-rikors promotur ma jissodisfawx l-element ta` prova stabbilit mill-Ligi.

3. Illi preliminarjament ukoll, ir-rikorrenti ghandhom jindikaw ezattament l-artikoli mill-Ordinanza li Tirregola t-Tigdid tal-Kiri tal-Bini (Kapitolu 69 tal-Ligijiet ta` Malta) li huma qeghdin jallegaw illi jiksrulhom id-drittijiet fundamentali taghhom ghat-tgawdija tal-proprjetà msemmija, u kif tali drittijiet qeghdin jigu lezi bl-applikazzjoni ta` tali artikoli.

4. Illi minghajr pregudizzju ghall-premess, l-Artikolu 37 tal-Kostituzzjoni ta` Malta indikat mir-rikorrenti mhuwiex applikabbli stante illi l-kirja de quo hija mharsa bil-Kapitolu 69 tal-Ligijiet ta` Malta, li hija

Ligi protetta bl-Artikolu 47(9) tal-istess Kostituzzjoni, stante illi kienet gja ezistenti qabel it-3 ta` Marzu 1962.

5. Illi konsegwentement, l-Artikolu 37 tal-Kostituzzjoni ma jistghax jigi invokat fil-kaz tal-kirja de quo stante li l-kirja hija wahda protetta taht id-dispozizzjonijiet tal-Kapitolu 69 tal-Ligijiet ta` Malta.

6. Illi inoltre, in kwantu ghall-fatt li t-talba tar-rikorrenti hija bbazata fuq allegat ksur tal-Artikolu 37 tal-Kostituzzjoni ta` Malta u l-Ewwel Artikolu ta` l-Ewwel Protokoll tal-Konvenzjoni Ewropeja) (l-Ewwel Skeda tal-Kapitolu 319 tal-Ligijiet ta` Malta), jigi rilevat li ma hemm ebda ksur ta` dan l-Artikolu stante illi l-Ligijiet li jirregolaw il-kirja de quo ma jipprevedux id-deprivazzjoni totali tal-proprjeta`, izda se mai, jirrigwardaw il-kontroll jew limitazzjoni tal-uzu ta` proprjeta.

7. Illi l-esponenti qeghdin igawdu d-drittijiet taghhom fuq il-proprjetà de quo b`titolu ta` lokazzjoni kif permessi skond il-Ligi u fl-ammont ta` kera kif stabbilita taht il-Ligijiet tal-Kera u ghalhekk m`humiex qed jippregudikaw id-drittijiet tar-rikorrenti. Oltre dan, permezz tal-Artikolu 1531C tal-Kodici Civili inholoq mekkanizmu ta` awment fil-kera li permezz tieghu il-kera tizdied kull tliet snin b`mod proporzjonali ghall-mod li bih ikun zdied l-indici tal-inflazzjoni.

8. Illi fir-rigward tal-ilment tar-rikorrenti li l-ammont ta` kera ma jirriflettix il-valur tas-suq, f`dawn ic-cirkostanzi fejn l-Istat igawdi margini wiesa` ta` apprezzament fl-interess generali ma jistax isir paragun mal-valur tal-proprjeta` fis-suq hieles kif pretiz mir-rikorrent. Kif huwa risaput, l-Istat ghandu l-jedd li jghaddi dawk il-Ligijiet li jidhirlu xierqa biex jikkontrolla l-uzu tal-proprjeta` fl-interess generali u sabiex il-Gvern iwettaq il-politika socjali u ekonomika tieghu fil-qasam tal-akkomodazzjoni. L-ilment tar-rikorrenti li huma qeghdin iggorru piz sproporzjonat minhabba li l-ammont ta` kera li qed jircievu ma jirriflettix il-valur reali tal-fond inkwistjoni, ma jistax jigi imsewwi bit-tnehhija tal-Ligi jew bl-izgumbrament tal-esponenti. Il-htiega u l-legittimità tal-Kapitolu 69 ma jistghux jigu newtralizzati u rezi inapplikabbli bl-izgumbrament tal-esponenti.

9. Illi konsegwentement, l-esponenti ma ghandhomx jigu zgumbrati mil-fond de quo u lanqas ma ghandhom jigu pregudikati finanzjarjament billi huma ma kissru ebda Ligi izda semplicement avallaw ruhhom minn Ligi li ghadha fis-sehh. In oltre, l-esponenti ma ghandhomx

mezzi sufficjenti sabiex isibu akkomodazzjoni alternattiva xierqa, u li ilhom ighixu fil-fond mertu tal-kawza tul il-hajja matrimonjali taghhom.

10. Illi ghalhekk it-talbiet tar-rikorrenti ghandhom jigu michuda bl-ispejjez.

Salv eccezzjonijiet ulterjuri permessi mil-Ligi.

Rat id-digriet li tat fl-udjenza tat-23 ta` Mejju 2019 fejn laqghet talba tar-rikorrenti sabiex ikun hemm korrezzjoni fl-atti fis-sens illi kull fejn jirrikorru l-kliem "*il-fondi 55/56/57, gia 86/87/88*" dawn jigu jaqraw "*il-fondi 55/56 gia 86/87*".

Rat illi in vista ta` din il-korrezzjoni, l-intimati konjugi Pace irtiraw l-ewwel eccezzjoni taghhom limitatament safejn din tolqot l-identita` tal-fond.

Rat id-digriet li tat fl-istess udjenza fejn kien mahtur il-Perit Mario Cassar bhala perit tekniku sabiex jistma l-valur lokatizju fis-suq tal-fondi 55/56 gia` 86/87 Triq Santa Skolastika, Birgu, mid-19 ta` Awwissu 1987 sad-29 ta` April 2019 b`intervallic ta` hames snin matul il-perijodu kollu.

Rat ir-relazzjoni li pprezenta l-perit tekniku, u li kkonferma bil-gurament il-kontenut taghha fl-udjenza tal-4 ta` Lulju 2019.

Semghet u rat il-provi kollha l-ohra li tressqu fil-kors tal-kawza.

Rat illi l-kawza thalliet ghas-sentenza ghal-lum bil-fakolta` li l-partijiet jipprezentaw noti ta` osservazzjonijiet.

Rat in-noti ta` osservazzjonijiet li pprezentaw il-partijiet.

Rat l-atti l-ohra tal-kawza.

Rat illi b`effett tal-Kap 603 tal-Ligijiet ta` Malta u tal-Avviz Legali 329 tal-2019, l-intimat Avukat Generali kien sostitwit *ope legis* bl-Avukat tal-Istat.

II. <u>Provi</u>

Anthony Pullicino, missier ir-rikorrenti, li miet fit-12 ta` Frar 2003, kien il-proprjetarju ta` terz indiviz minn sehem ta` erbgha minn hames partijiet indivizi tal-fond 55/56 gia`86/87 fi Triq Santa Skolastika, Birgu.

B`testment unica charta tat-22 ta` Jannar 1990 fl-atti tan-Nutar Dottor Maurice Gambin, il-wirt ta` Anthony Pullicino ddevolva fuq ir-rikorrenti uliedu, soggett ghall-uzufrutt favur martu Eileen Pullicino.

Permezz ta` kuntratt ta` divizjoni tat-12 ta` Mejju 2006 fl-atti tan-Nutar Dottor Margaret Heywood, ir-rikorrenti kisbu b`assenjazzjoni l-fond mertu ta` din il-kawza.

Il-fond mhuwiex dekontrollat kif jirrizulta minn certifikat datat 25 ta` April 2019 mahrug minn Identity Malta.

<u>Ir-rikorrenti Patricia Curmi</u> xehdet illi meta r-rikorrenti wirtu l-fond in kwistjoni minghand missierhom Anthony Pullicino, il-fond kien diga` mikri lill-intimati Pace. Il-kirja li qeghda tithallas fil-prezent kien ta` €209 fis-sena.

Xehdet illi l-fond imur lura ghal zmien il-Kavallieri ta` San Gwann. Il-post qatt ma kien dekontrollat ghaliex fiz-zmien meta sari l-Kap 158 il-fond ma kienx okkupat mis-sidien. Infatti fl-1959 kienet tghix fil-fond Giuseppa Spiteri li kienet z-zija tal-intimati Pace. Il-kirja kienet ghaddiet ghand Spiteri minghand il-genituri taghha. Missierha u hutu li lkoll kienu s-sidien tal-post dejjem accettaw lil Spiteri bhala inkwilina.

Kompla tixhed illi in kwantu jirrigwarda l-intimati Pace, sa minn mindu kienet ghada tifla, dejjem kienet tisma` lil missierha u lil hutu jghidu li Pace ghamlu zmien jghixu l-Awstralja izda meta gew lura Malta marru jghixu ma` Giuseppa Spiteri fil-fond de quo. Meta mietet Spiteri, il-kirja daret fuq l-intimati Pace bis-sahha tal-ligi.

Stqarret illi sa mill-bidu nett il-kera kienet ta` Lm 24 fis-sena. Imbaghad, wara l-emendi tal-2009, bdew jircievu kera ta` €185 fis-sena li bdiet toghla kull tlett snin skont l-indici tal-inflazzjoni.

Ipprecizat illi r-rikorrenti ma accettawx il-hlas tal-kera u l-intimati bdew jiddepozitaw il-kera taht l-awtorita` tal-qorti.

Fil-kontroezami stqarret illi la hi u lanqas hutha qatt ma tkellmu dwar kera jew xi zieda fil-kera mal-intimati Pace. Din kienet l-unika kawza li pprezentaw dwar il-fond in kwistjoni.

Jirrizulta illi l-ewwel intimazzjoni saret permezz ta` ittra ufficjali li kienet prezentata fis-16 ta` April 2019.

L-intimat Philip Pace xehed illi huwa beda jghix fil-fond in kwistjoni wara li fl-1980 izzewweg lill-intimata Miriam Pace. Martu kienet ilha tghix man-nanna taghha Giuseppa Spiteri sa mill-1962 meta kellha hames snin.

Cahad illi hu u martu qatt ghexu l-Awstralja.

Stqarr illi meta huma zzewgu baqghu jghixu fl-istess fond. Hemm rabbew il-familja taghhom. Fil-fatt baqghu jirrisjedu hemm sal-lum flimkien maz-zewg uliedhom li ghandhom 39 u 37 sena rispettivament. Iz-zewg uliedhom ghandhom bzonnijiet specjali.

Kompla jixhed illi huma dejjem hallsu l-kera inkluz meta zdiedet skont il-ligi.

Qal illi meta s-sidien ghazlu li ma jaccettawx aktar il-hlas tal-kirja, l-huma bdew jiddepozitaw il-kera taht l-awtorita` tal-qorti.

Zied jghid illi m`ghandhomx post iehor fejn imorru jabitaw.

Lanqas ghandhom mezzi biex ihallsu fejn imorru band`ohra.

Minhabba l-qaghda ta` sahha ta` uliedhom, il-familja taghhom dejjem kellha tiddependi fuq il-paga tieghu. Huwa jahdem bhala ghassies mal-Gvern u l-paga tieghu taqa` fl-iskala 16. Huwa wasal biex jirtira mix-xoghol bl-eta`.

Mir-relazzjoni tal-perit tekniku li kien mahtur fil-kors ta` din il-kawza, jemergu dawn il-fatti :-

1. Il-fond in kwistjoni huwa palazzino ta` dimensjonijiet u proporzjonijiet imponenti. Ghandu madwar 250 sena.

2. Illi l-palazzino ghandu *footprint* ta` circa 100 metru fil-livell tal-pjan terran waqt illi ghandu kejl ta` 121 metri kwadri fil-livell tal-ewwel u tat-tieni sular.

3. Illi l-fond jinkludi l-arja sovrastanti tal-bejt li minnha wiehed jista` jgawdi veduti tal-Port il-Kbir u tal-Marina tal-Birgu.

4. Illi fil-prezent il-fond jinsab fi stat ta` telqa u jehtieg manutensjoni estensiva.

Wara li ha in konsiderazzjoni, il-valur arkitettoniku u storiku tal-post, l-ippjantar tieghu, id-daqs komplessiv ta` 325 metri kwadri li ghandu u l-istat prezenti tas-sit, il-perit tekniku wasal ghall-konkluzjoni illi l-fond ghandu valur fis-suq ta` €1,500,000.

Ghar-rigward tal-valur lokatizju tal-fond, kien determinat mill-perit tekniku li fl-1987 dan kien jammonta ghal €9182 fis-sena, waqt illi fl-2019 tela` ghal €52,500 fis-sena.

Il-perit tekniku wiegeb ghal domandi in eskussjoni.

Xehed illi l-valur lokatizju jigi affettwat mill-valur li l-proprjeta` ghandha fis-suq. Ghalhekk il-valutazzjoni li ghamel tirrifletti tirrelata mal-fond u fondi ohra komparabbli. L-ezami komparattiv sar abbazi ta` informazzjoni li giet minn dak li kien qieghed jigi reklamat minn diversi *estate agents*.

Kompla jixhed li l-valur fis-suq tal-fond mill-1987 sal-2019 zdied bir-rata medja ta` 5.6% fis-sena skont il-*property price index* mahrug mill-Bank Centrali ta` Malta. Il-valur lokatizju huwa 3.5% tal-valur tal-propjeta`.

Stqarr illi waqt l-access seta` josserva li l-binja kienet tehtieg manutensjoni generali. Kien mehtieg ukoll bdil ta` aperturi. Kmamar li kienu qeghdin jintuzaw bhala *box rooms* kienu jehtiegu ristruttura. Li kieku kellu jsir dan ir-ristrutturar il-valur tal-fond jitla` ghal madwar €2,500,000.

III. <u>L-ewwel (1) eccezzjoni tal-Avukat tal-Istat gia` Avukat Generali</u>

B`din l-eccezzjoni, kienet rikjesta mir-rikorrenti l-prova tal-kuntratt tal-kera.

Il-Qorti tosserva illi r-rikorrenti ma pprezentawx kuntratt ta` kera.

Effettivament lanqas kienu f`qaghda li jghidu bil-preciz meta bdiet il-kirja.

Kemm irrilevaw illi fl-1959, diga` kien hemm kirja fis-sehh favur Giuseppa Spiteri li min-naha taghha kienet hadet il-kirja minghand il-genituri taghha *ope legis*.

Anke jekk ma kienx prezentat kuntratt bil-miktub tal-kirja, l-intimati Pace kkonfermaw li kienu jiddetjenu l-fond b`kera wara li t-titolu ghadda ghandhom *ope legis* mingvhand Giuseppa Spiteri.

Billi l-kirja tirrizulta ppruvata, sejra tastjeni milli tiehu konjizzjoni ulterjuri ta` din l-ewwel (1) eccezzjoni.

IV. <u>It-tieni (2) eccezzjoni tal-intimat Avukat tal-Istat gia` Avukat Generali u t-tieni (2) eccezzjoni tal-intimati Pace</u>

L-intimati jesigu l-prova tat-titolu tar-rikorrenti ghall-propjeta` de qua.

Il-gurisprudenza tal-qrati taghna hija fis-sens illi fil-kawza ta` ndole kostituzzjonali mhuwiex indispensabbli illi r-rikorrent jipprova t-titolu tieghu ghall-propjeta` *de qua* ghaliex kawzi bhal din tal-lum mhumiex kawzi ta` rivendika fejn il-prova tat-titolu hija *sine qua non* sabiex tirnexxi l-azzjoni.

Fis-sentenza li tat fis-7 ta` Frar 2017 fil-kawza **<u>Robert Galea vs Avukat Generali et</u>** din il-Qorti diversament presjeduta qalet hekk :-

*"Illi biex wiehed ikun f`qaghda li juri li garrab ksur tal-jedd fundamentali tieghu taht l-artikolu 37 tal-Kostituzzjoni m`ghandux ghalfejn jipprova titolu assolut u lanqas wiehed originali bhallikieku l-azzjoni dwar ksur ta` jedd fundamentali kienet wahda ta` rivendika (Kost. 27.3.2015 fil-kawza fl-ismijiet **Ian Peter Ellis et vs Avukat Generali et**). Huwa bizzejjed, ghall-finijiet ta` dak l-artikolu, li wiehed juri li ghandu jedd fil-haga li tkun li bih jista` jieqaf ghall-pretensjonijiet ta` haddiehor.*

Imbaghad, ghall-finijiet tal-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni, huwa bizzejjed li l-persuna turi li kellha l-pussess tal-haga li tkun."

Dan premess, il-Qorti tghid illi bhala fatt ir-rikorrenti ghamlu l-prova tat-titolu taghhom ghall-fond de quo.

Infatti jirrizulta ppruvat illi :-

a) B`testment unica charta tat-22 ta` Jannar 1990 fl-atti tan-Nutar Dottor Maurice Gambin, il-wirt ta` Anthony Pullicino ddevolva fuq ir-rikorrenti uliedu, soggett ghall-uzufrutt favur martu Eileen Pullicino li mietet fil-25 ta` Marzu 2006.

b) B`dikjarazzjoni causa mortis tat-12 ta` Mejju 2006 fl-atti tan-Nutar Dottor Paul Pullicino, ir-rikorrenti ddikjaraw l-eredita` ta` missierhom u hallsu t-taxxi relattivi inkluz fuq il-proprjeta` de qua.

c) B`att ta`divizjoni tat-12 ta` Mejju 2006 fl-atti tan-Nutar Dottor Margaret Heywood, lir-rikorrenti kien assenjat il-fond de quo.

Dawn il-provi ma gewx kontestati.

Wara li rat l-atti, il-Qorti hija sodisfatta li r-rikorrenti ghandhom titolu tajjeb ghall-proprjeta` kif ukoll li jipproponu l-kawza odjerna.

Billi t-titolu tar-rikorrenti jirrizulta ppruvat, sejra tastjeni milli tiehu konjizzjoni ulterjuri tat-tieni (2) eccezzjoni tal-intimat Avukat tal-Istat gia` Avukat Generali u tat-tieni (2) eccezzjoni tal-intimati konjugi Pace.

V. <u>L-ewwel (1) talba tar-rikorrenti</u>

1. <u>Ir-raba` (4) u l-hames (5) eccezzjonijiet tal-intimati Pace</u>

B`dawn l-eccezzjonijiet, l-intimati Pace jikkontendu li skont l-Art 47(9) tal-Kostituzzjoni ta` Malta ("**<u>il-Kostituzzjoni</u>**") l-Art 37 tal-Kostituzzjoni m`ghandux jimpatta fuq it-thaddim tad-disposizzjonijiet tal-Kap 69.

L-**<u>Art 47(9) tal-Kostituzzjoni</u>** jipprovdi illi :

"*Ebda haga fl-artikolu 37 ta` din il-Kostituzzjoni ma ghandha tolqot il-hdim ta` xi ligi fis-sehh minnufih qabel it-3 ta` Marzu 1962 jew xi ligi maghmula fi jew wara dik id-data li temenda jew tissostitwixxi xi ligi fis-sehh minnufih qabel dik id-data (jew xi ligi li, minn zmien ghal zmien, tkun emendata jew sostitwita bil-mod deskritt f`dan is-subartikolu) u li ma –*

(a) izzidx max-xorta ta` proprjetà li jista` jittiehed pussess taghha jew id-drittijiet fuq u interess fi proprjetà li jistghu jigu miksuba;

(b) izzidx mal-finijiet li ghalihom jew cirkostanzi li fihom dik il-proprjetà jista` jittiehed pussess taghha jew tigi miksuba;

(c) taghmilx il-kondizzjonijiet li jirregolaw id-dritt ghal kumpens jew l-ammont tieghu anqas favorevoli lil xi persuna li jkollha jew li tkun interessata fil-proprjetà; jew

(d) tipprivax xi persuna minn xi dritt bhal dak li huwamsemmi fil-paragrafu (b) jew paragrafu (c) tal-artikolu 37(1) ta` din il-Kostituzzjoni."

Skont l-intimati, l-ilment tar-rikorrenti bbazat fuq l-Art 37 tal-Kostituzzjoni huwa nfondat billi l-Art 37 tal-Kostituzzjoni ma jistax jigi nvokat ghall-applikazzjoni ta` ligi li kienet fis-sehh minnufih qabel it-3 ta` Marzu 1962 jew xi ligi maghmula fi jew wara dik id-data li temenda jew tissostitwixxi xi ligi fis-sehh minnufih qabel dik id-data. Fil-kaz tal-lum qed jinghad mill-intimati Pace illi l-kirja taghhom hija regolata bil-Kap 69 li saret qabel it-3 ta` Marzu 1962 u allura kienet *saved* bl-Art 47(9) tal-Kostituzzjoni.

Il-Qorti rat il-gurisprudenza dwar l-Art 37 u l-Art 47(9) tal-Kostituzzjoni fil-kuntest tal-Kap 88 tal-Ligijiet ta` Malta.

Fil-kawza fl-ismijiet **Lawrence Fenech Limited vs Kummissarju tal-Artijiet et** deciza mill-Qorti Kostituzzjonali fid-9 ta` Novembru 2012 tressaq aggravju fis-sens li l-Ewwel Qorti ma setghetx issib ksur tal-Art. 37 tal-Kostituzzjoni minhabba l-Art 47(9). L-aggravju kien milqugh propju ghaliex il-Kap 88 sar ligi tal-pajjiz qabel it-3 ta` Marzu 1962.

Fis-sentenza ta` din il-Qorti ta` l-4 ta` Ottubru 2016 fil-kawza fl-ismijiet **Melina Micallef vs Il-Kummissarju tal-Artijiet** (hekk kif riformata mill-Qorti Kostituzzjonali fl-24 ta` Novembru 2017) kien riaffermat illi *d-disposizzjonijiet tal-Kap 88 kienu saved bl-Art 47(9) tal-Kostituzzjoni* u ghalhekk *ma tistax tigi nvokata vjolazzjoni tal-Art 37 tal-Kostituzzjoni.*

Similment fis-sentenza ta` din il-Qorti tat-3 ta` Ottubru 2014 fil-kawza fl-ismijiet **Francis Bezzina Wettinger et vs Kummissarju tal-Artijiet et** (konfermata mill-Qorti Kostituzzjonali fl-24 ta` April 2015) inghad hekk :-

"L-intimati jikkontendu li l-Art 37 tal-Kostituzzjoni mhuwiex applikabbli ghall-kaz tal-lum in vista tal-Art 47(9) tal-Kostituzzjoni.

*Il-Qorti terga` taghmel riferenza ghas-sentenza tal-Qorti Kostituzzjonali fil-kawza "**Bezzina Wettinger et vs Il-Prim` Ministru et**" (op. cit.)*

Fis-sentenza taghha, il-Qorti Kostituzzjonali kkonfermat dak li qalet l-Ewwel Qorti :-

Illi ghalhekk din il-Qorti taqbel mal-konkluzjoni ta` l-Ewwel Qorti illi l-Kapitolu 88 – bhala ligi li kienet fis-sehh qabel it-3 ta` Marzu 1962 – huwa salvagwardjat bl-istess Kostituzzjoni ai termini ta` l-Artikolu 47(9), u konsegwentement dan l-aggravju qed jigi respint.

*Illi dwar dan il-punt, din il-Qorti taghmel riferenza wkoll ghas-sentenza ta` din il-Qorti (PA/RCP) tat-22 ta` Marzu 2002 fil-kawza "**Francis Bezzina Wettinger et vs Kummissarju tal-Artijiet**" fejn inghad hekk :-*

Illi kif inghad f`**Pawlu Cachia vs Avukat Generali et** (9/4/99 Rik. Nru. 586/97/VDG), il-hdim ta` xi ligi fis-sehh minnufih qabel id-data msemmija ma tistax tkun anti-kostituzzjonali fis-sens li tippekka kontra l-artikolu 37. L-istess jinghad ghal xi amending act jew substituting act maghmula f`dik id-data jew wara dik id-data purche` li tali att li hekk jemenda jew jissostitwixxi dik il-ligi ma jkunx jaghmel xi wahda mill-affarijiet imsemmi fil-paragrafi (a) sa (d) tal-imsemmi artikolu 47(9).

Illi kif kompliet tghid dik il-Qorti, ma hemmx dubbju li l-Kap. 88 kien fis-sehh qabel it-3 ta` Marzu 1962. Ma hemmx dubju wkoll li l-imsemmija ligi giet emendata wara dik id- data, izda r-rikorrent f`ebda hin ma ndika xi emenda li b`xi mod taqa` taht xi wiehed mill-paragrafi (a) sa (d) tal-artikolu 47(9). Illi hafna mill-emendi maghmula wara t-3 ta` Marzu 1962 kienu ta` natura formali bhas-sostituzzjoni tal-Gvernatur Generali bil-President ta` Malta. Illi din il-Qorti b`hekk ezaminat jekk fir-rigward tad-dikjarazzjonijiet ta` esproprjazzjoni meritu ta` din il-kawza u fir-rigward tal-proceduri ghall-kumpens gewx

imhaddma xi amending provisions li jaqghu taht l-imsemmija paragrafi (a) sa (d). Din il-Qorti ma tarax li dan huwa l-kaz, fis-sens li d-dispozizzjonijiet imhaddma fir-rigward tal-ordnijiet ta` esproprjazzjoni de quo huma kollha salvati bl-Artikolu 47(9) milli jiksru l-Artikolu 37.

Issa l-Qorti tirribadixxi li fil-kawza tal-lum, ir-rikorrenti qeghdin jilmentaw minn vjolazzjoni tal-Art 37 tal-Kostituzzjoni ghaliex il-Bord tal-Arbitragg dwar l-Artijiet illikwida kumpens li, skond ir-rikorrenti, ma kienx xieraq u adegwat.

Il-Qorti tirrileva li l-kumpens li l-Bord kien u ghadu jillikwida jsegwi l-kriterji li huma stabbiliti fid-disposizzjonijiet tal-Kap 88. Ghalhekk billi l-Kap 88 huwa ligi li giet saved ai termini tal-Art 47(9) tal-Kostituzzjoni, din l-Qorti mhijiex sejra tqis ix-xorta ta` ilment li ghandhom ir-rikorrenti skond l-Art 37 tal-Kostituzzjoni fejn dan l-ilment jolqot it-twettieq tal-Kap 88.

Riferibbilment ghall-kaz tal-lum, ma hemmx dubju illi l-ligijiet relattivi ghall-kirja mertu tal-kawza saru qabel it-3 ta` Marzu 1962. Saru emendi ghal dawk il-ligijiet. Il-Qorti m`ghandhiex prova li xi emendi kienu jaqghu taht xi wiehed mill-eccezzjonijiet ravvizati fil-paragrafi (a) sa (d) tal-Art 47(9) tal-Kostituzzjoni. Ghalkemm ir-rikorrenti huma sprovvisti mid-data meta bdiet il-kirja, mhux kontestat illi l-kirja baqghet tigi tramandata ghal ghexieren ta` snin sakemm spiccat ghand l-intimat Pace. Mhuwiex kontestat li l-kirja bdiet ukoll qabel it-3 ta` Marzu 1962.

Din il-Qorti tqis illi d-disposizzjonijiet tal-Kap 69 kienu *saved* bl-Art 47(9) tal-Kostituzzjoni.

Ma tistax tigi avvanzata mir-rikorrenti pretensjoni ta` vjolazzjoni tal-Art 37 tal-Kostituzzjoni.

Ghalhekk filwaqt li qeghda tilqa` l-eccezzjonijiet fuq riferiti tal-intimati Pace, u qeghda tichad dik il-parti tal-ewwel talba tar-rikorrenti safejn din tirreferi ghal vjolazzjoni tal-Art 37 tal-Kostituzzjoni.

2. L-Art 1 Prot 1 tal-Konvenzjoni

Id-disposizzjoni taqra hekk :-

Kull persuna naturali jew persuna morali ghandha d-dritt ghat-tgawdija pacifika tal-possedimenti taghha.

Hadd ma ghandu jigi pprivat mill-possedimenti tieghu hlief fl-interess pubbliku u bla hsara tal-kundizzjonijiet provduti bil-ligi u bil-principji generali tal-ligi internazzjonali.

Izda d-disposizzjonijiet ta` qabel ma ghandhom b`ebda mod inaqqsu d-dritt ta` Stat li jwettaq dawk il-ligijiet li jidhrulu xierqa biex jikkontrolla l-uzu tal-proprjeta skond l-interess generali jew biex jizgura l-hlas ta` taxxi jew kontribuzzjonijiet ohra jew pieni.

Id-disposizzjoni hija gwidata minn tliet principji :-

a) Illi kull persuna, sew jekk tkun persuna fisika, kif ukoll jekk tkun entita` morali, ghandha dritt ghat-tgawdija tal-proprjeta` b`mod pacifiku ;

b) Illi tnaqqis fit-tgawdija tal-proprjeta` jista` jkun biss gustifikat jekk jintwera li jkun sar fl-interess pubbliku. Ghalhekk id-dritt mhuwiex assolut u huwa soggett ghall-kundizzjonijiet mahsuba fil-ligi u ghall-principji tad-dritt internazzjonali. Min ikun imcahhad, huwa ntitolat ghal kumpens xieraq ;

c) Illi jibqa` d-dritt tal-Istat illi jghaddi ligijiet sabiex *inter alia* b`mod xieraq jikkontrolla l-uzu tal-gid fl-interess pubbliku, bhal meta jintroduci legislazzjoni ntiza sabiex ittaffi problemi ta` akkomodazzjoni.

a) Gurisprudenza tal-ECtHR

Huwa pacifiku li l-Istat ghandu s-setgha u d-dritt li jirregola l-uzu tal-propjeta` fl-interess generali. Madanakollu l-interess tal-privat ghandu

jkun tutelat ukoll ghaliex fl-ezercizzju tas-setgha mill-Istat li jikkontrolla l-uzu tal-proprjetà ghandu jkun sodisfatt ir-rekwizit tal-proporzjonalità.

Fis-sentenza **Amato Gauci vs Malta** (15 ta` Settembru 2009 : finali 15 ta` Dicembru 2009) l-ECtHR kienet qalet :-

> *56. Any interference with property must also satisfy the requirement of proportionality. As the Court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see **Sporrong and Lönnroth** cited above, §§ 69-74, and **Brumărescu v. Romania** [GC], no. 28342/95, § 78, ECHR 1999-VII).*
>
> *57. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article the Court must therefore ascertain whether by reason of the State`s interference the person concerned had to bear a disproportionate and excessive burden (see **James and Others**, cited above, § 50; **Mellacher and Others**, cited above, § 48, and **Spadea and Scalabrino v. Italy**, judgment of 28 September 1995, § 33, Series A no. 315-B).*
>
> *58. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. …. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, and in an appropriate and consistent manner (see **Immobiliare Saffi v. Italy**, [GC], no. 22774/93, § 54, ECHR 1999-V; and Broniowski, cited above, § 151).*

59. Moreover, in situations where the operation of the rent-control legislation involves wide-reaching consequences for numerous individuals and has economic and social consequences for the country as a whole, the authorities must have considerable discretion not only in choosing the form and deciding on the extent of control over the use of property but also in deciding on the appropriate timing for the enforcement of the relevant laws. Nevertheless, that discretion, however considerable, is not unlimited and its exercise cannot entail consequences at variance with the Convention standards (see, mutatis mutandis, ***Hutten-Czapska****, cited above, § 223)."*

…

"In the present case, having regard to the low rental value which could be fixed by the Rent Regulation Board, the applicant`s state of uncertainty as to whether he would ever recover his property, which has already been subject to this regime for nine years, the lack of procedural safeguards in the application of the law and the rise in the standard of living in Malta over the past decades, the Court finds that a disproportionate and excessive burden was imposed on the applicant. The latter was requested to bear most of the social and financial costs of supplying housing accommodation to Mr and Mrs P. (see, mutatis mutandis, ***Hutten-Czapska****, cited above, § 225). It follows that the Maltese State failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant`s right of property.*

Ta` rilevanza huwa l-pronunzjament tal-istess Qorti fil-kaz ta` **Cassar vs Malta** deciz fit-30 ta` Jannar 2018 fejn inghad :-

43. The Court reiterates that in order for an interference to be compatible with Article 1 of Protocol No. 1 it must be lawful, be in the general interest and be proportionate, that is to say it must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights (see, among many other authorities, ***Beyeler v. Italy*** *[GC], no. 33202/96, §*

107, ECHR 2000-I, and ***J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom*** *[GC], no. 44302/02, § 75, ECHR 2007-III). The Court will examine these requirements in turn.*

(a) Whether there was an interference

44. In connection with the development of property, the Court has previously found that having been aware of the fact that their property had been encumbered with restrictions when they had bought it (for example, its designation in a local development plan), the applicants could not hold that circumstance against the authorities (see ***Lacz v. Poland****, (dec.) no. 22665/02, 23 June, 2009; and the case-law cited therein), specially when a complaint has not been made that they had a legitimate reason to believe that the restrictions encumbering their property would be removed after they bought the property. However, the Court has not excluded that there might be particular cases where an applicant who bought a property in full knowledge that it was encumbered with restrictions may subsequently complain of an interference with his or her property rights, for example, where the said restrictions are alleged to be unlawful (ibid.).*

45. More specifically in the context of restrictions on lease agreements (in particular the prohibition on bringing a tenant`s lease to an end), the Court has found that there was an interference as a result of the domestic courts` refusals of the applicants` demands, despite the applicants` knowledge of the applicable restrictions when they had entered into the lease agreement, a matter which however carried decisive weight in the assessment of the proportionality of the measure (see ***Almeida Ferreira and Melo Ferreira v. Portugal****, no. 41696/07, §§ 27 and 34, 21 December 2010).*

46. Subsequently, in ***R & L, s.r.o. and Others*** *(cited above) the Court specifically examined whether Article 1 of Protocol No. 1 protected applicants who had purchased property in the knowledge that rent restrictions imposed on the property might*

contravene the Convention. In that case, when the applicants had acquired their respective properties their rents had been set in accordance with the rent regulations applicable at the time and the applicants could not have increased the rents above the threshold set by the State. Nor were they free to terminate the rent agreements and conclude new ones with different – higher – levels of rent. The Court did not find it decisive that one of the applicants had purchased the property before the domestic courts had taken issue with the legislation in place which had given a legitimate expectation that the status of such properties would be addressed by the national legislator in due course. The Court held that it could not be said that the applicants as landlords had implicitly waived their right to set the level of rents, as, for the Court, waiving a right necessarily presupposed that it would have been possible to exercise it. There was no waiver of a right in a situation where the person concerned had never had the option of exercising that right and thus could not waive it. It followed that the rent-control regulations had constituted an interference with the landlords` right to use their property (ibid., § 106).

47. In the more recent ***Zammit and Attard Cassar*** *(cited above, § 50) case, in a situation where the applicants` predecessor in title had knowingly entered into a rent agreement in 1971 with relevant restrictions (specifically the inability to increase rent or to terminate the lease), the Court held that, at the time, the applicants` predecessor in title could not reasonably have had a clear idea of the extent of inflation in property prices in the decades to follow. Moreover, the Court observed that when the applicants had inherited the property in question they had been unable to do anything more than attempt to use the available remedies, which had been to no avail in their circumstances. The decisions of the domestic courts regarding their request had thus constituted interference in their respect. Furthermore, as in* ***R & L, s.r.o. and Others****, in* ***Zammit and Attard Cassar*** *(both cited above) the applicants, who had inherited a property that had already been subject to a lease, had not had the possibility to set the rent themselves (or to freely terminate the agreement). It followed that they could not be said to have waived any rights in that respect. Accordingly, the Court found that the rent-control regulations*

*and their application in that case had constituted an interference with the applicants` right (as landlords) to use their property (**Zammit and Attard Cassar**, cited above, § 51).*

*48. Turning to the present case, the Court also notes that the applicants had bought their property before the European Court of Human Rights took issue with the Maltese legislation applicable in cases such as **Amato Gauci** (cited above). That judgment was eventually followed in most cases in domestic case-law. However, again the Court finds this not to be decisive given the passage of time between the purchase of the property and now. In this connection the Court reiterates that what might be justified at a specific time might not be justified decades later (see **Amato Gauci**, cited above, § 60). In the present case, while it is true that the applicants knowingly entered into the rent agreement in 1988 with the relevant restrictions (specifically the inability to increase the rent or to terminate the lease), the Court considers that the applicants could not reasonably have foreseen the extent of inflation in property prices in the decades that followed (see **Zammit and Attard Cassar**, cited above, § 50). Once the discrepancy in the rent applied and that on the market became evident, they were unable to do anything more than attempt to use the available remedies, which they did in 2010, but which were to no avail in their circumstances. The decisions of the domestic courts regarding their application thus constituted interference in their respect. Furthermore, the applicants, who bought a property that was already subject to a restricted lease, did not have the possibility to set the rent themselves or to freely terminate the agreement. Clearly, they could not be said to have waived any rights in that connection (see **Zammit and Attard Cassar**, cited above, § 50).*

*49. Accordingly, the Court finds that the rent-control regulations and their application in the present case constituted an interference with the applicants` right (as landlords) to use their property (see **Zammit and Attard Cassar**, cited above, § 51). Nevertheless, in circumstances such as those of the present case a number of considerations need to be made in connection with the proportionality of the interference.*

*50. The Court has previously held that rent-control schemes and restrictions on an applicant`s right to terminate a tenant`s lease constitute control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1. It follows that the case should be examined under the second paragraph of Article 1 of Protocol No. 1 (see **Hutten-Czapska v. Poland** [GC], no. 35014/97, §§ 160-61, ECHR 2006-VIII; **Bittó and Others v. Slovakia**, no. 30255/09, § 101, 28 January 2014; and **R & L, s.r.o. and Others**, cited above, § 108).*

(b) Whether the Maltese authorities observed the principle of lawfulness and pursued a "legitimate aim in the general interest"

51. The Court refers to its general principles on the matter as set out in Amato Gauci (cited above, § 53-54).

52. That the interference was lawful has not been disputed by the parties. The Court finds that the restriction arising from the 1979 amendments was imposed by Act XXIII of 1979 and was therefore "lawful" within the meaning of Article 1 of Protocol No. 1.

*53. In the present case the Court can accept that the applicable legislation in the present case pursued a legitimate social-policy aim, specifically the social protection of tenants (see **Amato Gauci**, cited above, § 55, and Anthony Aquilina, cited above, § 57). It is, however, also true that the relevance of that general interest may have decreased over time, particularly after 2008 (see Anthony Aquilina, cited above, § 57), even more so given that following that date, the only person benefiting from the impugned measures was P.G., whose financial situation as shown before the domestic courts and which is not being contested before this Court, leaves little doubt as to P.G`s necessity for such a property, and at a regulated rent. This Court will therefore revert to this matter in its assessment as to the proportionality of the impugned measure.*

(c) Whether the Maltese authorities struck a fair balance

54. The Court refers to its general principles on the matter as set out in Amato Gauci (cited above, § 56-59).

55. The Court will consider the impact that the application of the 1979 Act had on the applicants` property. It notes that the applicants could not exercise their right of use in terms of physical possession as the house was occupied by tenants and they could not terminate the lease. Thus, while the applicants remained the owners of the property they were subjected to a forced landlord-tenant relationship for an indefinite period of time.

*56. Despite any reference to unidentified procedural safeguards by the Government (see paragraph 41 above) the Court has on various occasions found that applicants in such a situation did not have an effective remedy enabling them to evict the tenants either on the basis of their own needs or those of their relatives, or on the basis that the tenants were not deserving of such protection (see **Amato Gauci**, cited above, § 60, and **Anthony Aquilina**, cited above, § 66). Indeed, when their need arose (some years after they had purchased it) and later despite the little need of it by the tenant – who was not in any particular need of housing (at least after 2008) – the applicants were unable to recover the property. Consequently, the application of the law itself lacked adequate procedural safeguards aimed at achieving a balance between the interests of the tenants and those of the owners (see **Anthony Aquilina**, cited above, § 66, and mutatis mutandis, **Zammit and Attard Cassar**, cited above, § 61). The Court further considers that the possibility of the tenant leaving the premises voluntarily was remote, especially since the tenancy could be inherited – as in fact happened in the present case. It is clear that these circumstances inevitably left the applicants in uncertainty as to whether they would ever be able to recover their property.*

57. As to the rent payable, the Court is ready to accept that EUR 466 annually was a more or less reasonable amount of rent in 1988 - particularly given that it was an amount of rent which the applicants were aware of and in spite of which they decided

*to purchase the property with the relevant restrictions. Furthermore, it was an amount of rent which the applicants expected to receive for a number of years, at least until the demise of J.G. and his wife. Moreover, the Court accepts that at the relevant time the measure pursued a legitimate social-policy aim (see paragraph 53 above) which may call for payments of rent at less than the full market value (see **Amato Gauci**, § 77).*

*58. The same cannot be said after the passage of decades, during which the rent had remained the same (as stated by the parties and the domestic courts, the rent is still EUR 466 annually). The Court has previously held that there had been a rise in the standard of living in Malta over the past decades (see **Amato Gauci**, cited above, § 63, and **Anthony Aquilina**, cited above, § 65). Thus, the needs and the general interest which may have existed in 1979 must have decreased over the three decades that ensued (see **Anthony Aquilina**, cited above, § 65). It is noted that as stated by the Government in paragraph 40 above, the minimum wage in 2015 was EUR 720.46 per month, while in 1974 (the date when Malta adopted a national minimum wage) it amounted to the equivalent of less than EUR 100 per month (see **Amato Gauci**, cited above, § 60).*

*59. The Court need not identify the exact year at which the rent payable was no longer reasonable. It observes that cases against Malta concerning the same subject matter, that is to say renewal of leases by operation of law - whose rent had been set on an open market – (see **Amato Gauci, Anthony Aquilina, and Zammit and Attard Cassar**, all cited above), which have invariably lead to findings of a violation of Article 1 of Protocol No. 1, concerned periods after the year 2000. Furthermore, the Government of the respondent State have often argued that Malta suffered a boom in property prices in 2003 (see, for example, **Apap Bologna v. Malta**, no. 46931/12, § 97, 30 August 2016). Lastly, although not determinative, it was only in 2008 that the applicants refused to accept the rent, once P.G. had inherited the property. In the light of the above it suffices for the Court to consider that a rent based on the value of the property as it stood in 1962 with the relevant adjustment which amounted to EUR 466 annually in 1988 and thereafter – was certainly not reasonable for the years following 2000.*

*60. In particular, even if one had to concede that the valuations submitted by the applicants are on the high side, the Court notes that the first-instance domestic court, in 2011, accepted EUR 3,000 per month (that is to say EUR 36,000 per year) as the rental market value of the property (see paragraph 18 above). Thus, the amount of rent received by the applicants, around EUR 39 a month, that is to say EUR 466 per year, for a fourteen-room house in Sliema, a highly sought-after location, is indeed "derisory" as was also found by the first-instance domestic court (see paragraph 18 above). Indeed, that amount of rent contrasts sharply with the market value of the premises in recent years, as accepted by the domestic court or as submitted by the applicant, as it amounted to a little more than 1% of the market value. The Court considers that State control over levels of rent falls into a sphere subject to a wide margin of appreciation by the State and its application may often cause significant reductions in the amount of rent chargeable. Nevertheless, this may not lead to results which are manifestly unreasonable (see **Amato Gauci**, cited above, § 62).*

61. In the present case, having regard to the low rental payments to which the applicants have been entitled in recent years, the applicants` state of uncertainty as to whether they would ever recover their property, which has already been subject to this regime for nearly three decades, the rise in the standard of living in Malta over the past decades, and the lack of procedural safeguards in the application of the law, which is particularly conspicuous in the present case given the situation of the current tenant as well as the size of the property and the needs of the applicants, the Court finds that a disproportionate and excessive burden was imposed on the applicants. It follows that the Maltese State failed to strike the requisite fair balance between the general interests of the community and the protection of the applicants` right of property.

62. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

Kaz relevanti, anke ghaliex ghandu fattispecie simili, ghad li mhux identici, ghas-sitwazzjoni tal-kaz odjern, kien dak ta` **Zammit and Attard Cassar v. Malta** li kien deciz mill-ECtHR fit-30 ta` Lulju 2015.

L-ilment tal-applikanti kien illi r-restrizzjonijiet dwar kera fil-ligijiet vigenti fil-pajjiz kienu ta` piz eccessiv. Kien allegat ghalhekk mill-applikanti li garrbu vjolazzjoni tal-jeddijiet fondamentali taghhom hekk kif tutelati bl-Art 1 Prot 1 tal-Konvenzjoni. Il-kaz kien jittratta dwar kirja ta` fond kummercjali li kienet qed tigi mgedda *ope legis* u cioe` bis-sahha tal-Kap 69. Ghalkemm tal-lum huwa kaz ta` fond residenzjali, il-kirja sfat imgedda sa ma waslet ghand l-intimati Pace bis-sahha tal-Kap 69.

L-ECtHR sabet li kien hemm lezjoni tal-Art 1 Prot 1 tal-Konvenzjoni minkejja l-emendi ghal-ligijiet tal-kera li saru fl-2009.

Il-Qorti ta` Strasbourg qalet hekk :-

47. The Court reiterates that in order for an interference to be compatible with Article 1 of Protocol No. 1 it must be lawful, be in the general interest and be proportionate, that is, it must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights (see, among many other authorities, ***Beyeler v. Italy*** *[GC], no. 33202/96, § 107, ECHR 2000-I, and* ***J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom*** *[GC], no. 44302/02, § 75, ECHR 2007-III). The Court will examine these requirements in turn.*

(a) Whether there was interference

48. In previous cases concerning restrictions on lease agreements, the Court considered that there had been interference (as a result of the domestic courts` refusals of the

*applicants` demands) despite the applicants` knowledge of the applicable restrictions at the time when they entered into the lease agreement, a matter which however carried weight in the assessment of the proportionality of the measure (see **Almeida Ferreira and Melo Ferreira v. Portugal**, no. 41696/07, §§ 27 and 34, 21 December 2010).*

*49. More recently, in **R & L, s.r.o. and Others v. the Czech Republic** (nos. 37926/05, 25784/09, 36002/09, 44410/09 and 65546/09, 3 July 2014) the Court specifically examined whether Article 1 of Protocol No. 1 protected applicants who had purchased property in the knowledge that rent restrictions imposed on the property might contravene the Convention. In that case, when the applicants had acquired their respective houses their rents had been set in accordance with the rent regulations applicable at the time and the applicants could not have increased the rents above the threshold set by the State. Nor were they free to terminate the rent agreements and conclude new ones with different – higher – levels of rent. The Court held that it could not be said that the applicants as landlords had implicitly waived their right to set the level of rents, as, for the Court, waiving a right necessarily presupposed that it would have been possible to exercise it. There was no waiver of a right in a situation where the person concerned had never had the option of exercising that right and thus could not waive it. It followed that the rent-control regulations had constituted an interference with the landlords` right to use their property (ibid. § 106).*

50. In the present case the Court observes that the applicants` predecessor in title knowingly entered into the rent agreement in 1971. It is the Court`s considered opinion that, at the time, the applicants` predecessor in title could not reasonably have had a clear idea of the extent of inflation in property prices in the decades to come. Moreover, the Court observes that when the applicants inherited the property in question they had been unable to do anything more than attempt to use the available remedies, which were to no avail in their circumstances. The decisions of the domestic courts regarding their request thus constitute interference in their respect.

*Furthermore, as in **R & L, s.r.o. and Others** (cited above), the applicants in the present case, who inherited a property that was already subject to a lease, did not have the possibility to set the rent themselves (or to freely terminate the agreement). It follows that they could not be said to have waived any right in that respect.*

51. Accordingly, the Court considers that the rent-control regulations and their application in the present case constituted an interference with the applicants` right (as landlords) to use their property.

*52. The Court has previously held that rent-control schemes and restrictions on an applicant`s right to terminate a tenant`s lease constitute control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1. It follows that the case should be examined under the second paragraph of Article 1 of Protocol No. 1 (see **Hutten-Czapska v. Poland** [GC], no. 35014/97, §§ 160-161, ECHR 2006-VIII, **Bittó and Others v. Slovakia**, no.30255/09, § 101, 28 January 2014; and **R & L, s.r.o. and Others**, cited above, § 108).*

(b) Whether the Maltese authorities observed the principle of lawfulness and pursued a "legitimate aim in the general interest"

*53. The first requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions be lawful. In particular, the second paragraph of Article 1, while recognising that States have the right to control the use of property, subjects their right to the condition that it be exercised by enforcing "laws". Moreover, the principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see, mutatis mutandis, **Broniowski v. Poland** [GC], no. 31443/96, § 147, ECHR 2004-V, and **Amato Gauci,** cited above, § 53).*

54. Furthermore, a measure aimed at controlling the use of property can only be justified if it is shown, inter alia, to be "in

accordance with the general interest". Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the "general" or "public" interest. The notion of "public" or "general" interest is necessarily extensive. Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has on many occasions declared that it will respect the legislature`s judgment as to what is in the "public" or "general" interest unless that judgment is manifestly without reasonable foundation (see, mutatis mutandis, ***Hutten-Czapska****, cited above, §§ 165-66, and* ***Fleri Soler and Camilleri v. Malta****, no. 35349/05, § 65, ECHR 2006-X).*

55. The Court finds that the restriction was imposed by the Reletting of Urban Property (Regulation) Ordinance and was "lawful" within the meaning of Article 1 of Protocol No. 1. This was not disputed by the parties.

56. As to the legitimate aim pursued, the Government submitted that the measure, as applied to commercial premises, aimed to protect the stability of businesses and the public services such businesses provided. The measure was also aimed at protecting the employment of those persons who depended on the activity of those businesses and safeguarded against property owners taking advantage of the economic activity of a tenant. The Court observes that the Commission has previously accepted that rent regulation to preserve the economic viability of commercial enterprises in the interest of both those enterprises and the consumer, was in the general interest (see ***G v. Austria*** *no. 12484/86, Com. Dec., 7 June 1990). Similarly, the Court can accept that, in principle, the overall measure, which also applied to commercial premises, may be considered as being in the general interest.*

(c) Whether the Maltese authorities struck a fair balance

57. In each case involving an alleged violation of Article 1 of Protocol No. 1, the Court must ascertain whether by reason of

*the State`s interference, the person concerned had to bear a disproportionate and excessive burden (see **James and Others**, cited above, § 50, and **Amato Gauci**, cited above, § 57).*

58. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. That assessment may involve not only the conditions of the rent received by individual landlords and the extent of the State`s interference with freedom of contract and contractual relations in the lease market, but also the existence of procedural and other safeguards ensuring that the operation of the system and its impact on a landlord`s property rights are neither arbitrary nor unforeseeable. Uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State`s conduct (see Immobiliare Saffi v. Italy, [GC], no. 22774/93, § 54, ECHR 1999-V, and Broniowski, cited above, § 151).

59. The Court notes, in the first place, that the Government`s final argument (submitted at an advanced stage in the proceedings, see paragraph 46 above) is misconceived in so far as the property they were referring to was not the property at issue in the present case. From the documents and submissions provided to the Court it transpires that the property is in use and thus the applicants were not entitled, on the grounds established by law (Article 12 of Ordinance, paragraph 26 above), to evict the tenant.

60. The Court observes that in the present case the lease was subject to renewal by operation of law and the applicants had no possibility to evict the tenant on the basis of any of the limited grounds provided for by law. Indeed, any such request before the RRB, in the circumstances obtaining in their case, would have been unsuccessful, despite the fact that the tenant was a commercial enterprise that possessed other property (a matter which has not been disputed), as the latter fact was not a relevant consideration for the application of the law.

Furthermore, the applicants were unable to fix the rent – or rather to increase the rent previously established by their predecessor in title. The Court notes that, generally, increases in rent could be done through the RRB. They were, however, subject to capping, in that any increase could not go beyond 40% of the fair rent at which the premises were or could have been leased before August 1914. Indeed, in the applicants` case no increase was possible at all, because the rent originally fixed in 1971 was already beyond the capping threshold.

*61. Whereas the RRB could have constituted a relevant procedural safeguard by overseeing the operation of the system, in the present case it was devoid of any useful effect, given the limitations imposed by the law (see, mutatis mutandis, see **Amato Gauci**, cited above, § 62 and **Anthony Aquilina v. Malta**, no. 3851/12, § 66, 11 December 2014). Consequently, the application of the law itself lacked adequate procedural safeguards aimed at achieving a balance between the interests of the tenants and those of the owners (ibid and, mutatis mutandis, **Statileo v. Croatia**, no. 12027/10, § 128, 10 July 2014).*

*62. The Court further notes that for the first decade of the rental contract, during which – according to the applicants – the market value of the property was EUR 7,000, the rent payable to the applicants was EUR 862 a year. Subsequently, for the year 2010 the rent amounted to EUR 990, for 2011 EUR 1,138, for 2012 EUR 1,309 and for 2013 EUR 1,505. For the years 2014 onwards it would increase by 5% a year. The Court reiterates that State control over levels of rent falls into a sphere that is subject to a wide margin of appreciation by the State, and its application may often cause significant reductions in the amount of rent chargeable. Nevertheless, this may not lead to results which are manifestly unreasonable, such as amounts of rent allowing only a minimal profit (see **Amato Gauci**, cited above, § 62). While the applicants do not have an absolute right to obtain rent at market value, the Court observes that, despite the 2009 amendments, the amount of rent is significantly lower than the market value of the premises as submitted by the applicants, which was not effectively contested by the Government. However, the applicants have not argued that they were unable*

to make any profit. Even so, this element must be balanced against the interests at play in the present case.

63. While the Court has accepted above that the overall measure was, in principle, in the general interest, the fact that there also exists an underlying private interest of a commercial nature cannot be disregarded. The Government have not argued that in the present case the viability of the tenant`s commercial enterprise was in any way dependent on the favourable conditions of the lease on the premises used for storage – a matter which was irrelevant in the application of the law to the premises. In such circumstances, both States and the Court in its supervisory role must be vigilant to ensure that measures such as the one at issue, applied automatically, do not give rise to an imbalance that imposes an excessive burden on landlords while allowing tenants of commercial property to make inflated profits. It is also in such contexts that effective procedural safeguards become indispensable.

64. Lastly, the Court notes that unlike in other rent-control cases where the applicants were in a position of uncertainty as to when and if they would recover their property (see, inter alia, ***Amato Gauci****, cited above, § 61, and* ***Saliba and Others v. Malta****, no. 20287/10, § 67, 22 November 2011), in the present case, under the laws currently in force and in the absence of any further legislative interventions, the applicants` property will be free and unencumbered as of 2028. It follows that the effects of such rent regulation are circumscribed in time. However, the Court cannot ignore the fact that by that time, the restriction on the applicants` rights would have been in force for nearly three decades, and to date has been in force for over a decade.*

65. Having assessed all the elements above, and notwithstanding the margin of appreciation allowed to a State in choosing the form and deciding on the extent of control over the use of property in such cases, the Court finds that, having regard to the relatively low rental value of the premises and the lack of procedural safeguards in the application of the law, a disproportionate and excessive burden was imposed on the applicants, who have had to bear a significant part of the social and financial costs of supporting a commercial enterprise. It

follows that the Maltese State failed to strike the requisite fair balance between the general interests of the community and the protection of the applicants` right to the enjoyment of their property.

66. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

b) <u>Gurisprudenza tal-Qrati Maltin</u>

Fejn jidhol l-Art 1 Prot 1 tal-Konvenzjoni, diversi kienu d-decizjonijiet tal-qrati taghna li kienu jittrattaw kazi li kienu jinvolvu disposizzjonijiet tal-Kap 158 fejn kienet dikjarata vjolazzjoni tal-Art 1 Prot 1. Kienu decizjonijiet dwar fondi residenzjali.

Qeghda tirreferi *inter alia* ghal : **<u>Dr. Cedric Mifsud et vs l-Avukat Generali et</u>** deciza mill-QK fil-25 ta` Ottubru 2013 ; **<u>Angela sive` Gina Balzan vs L-Onorevoli Prim Ministru et</u>** deciza mill-QK fis-7 ta` Dicembru 2012 ; **<u>AIC Joseph Barbara et vs L-Onor Prim Ministru et</u>** deciza 31 ta` Jannar 2014 ; **<u>Maria Ludgarda Borg et vs Rosario Mifsud et</u>** deciza mill-QK fid-29 ta` April 2016 ; **<u>Concetta sive` Connie Cini vs Eleonora Galea et</u>** deciza mill-QK fil-31 ta` Jannar 2014 ; **<u>Robert Galea vs Avukat Generali et</u>** deciza mill-PA/GK fis-7 ta` Frar 2017 ; **<u>Rose Borg vs Avukat Generali et</u>** deciza mill-QK fil-11 ta` Lulju 2016 ; id-diversi kawzi bl-*occhio* **<u>Josephine Azzopardi et vs L-Onor Prim Ministru et</u>** li kienu decizi fil-25 ta` April 2018 ; **<u>Sergio Falzon et vs Alfred Farrugia et</u>** deciza fit-30 ta` Jannar 2018.

Dak li nghad f`din il-gurisprudenza huwa ta` siwi ghall-kaz tal-lum.

It-thaddim tal-Art 1 Prot 1 tal-Konvenzjoni jigma` fih tliet principji : u cioe` : illi ghandu jkun hemm it-tgawdija pacifika tal-proprjeta` ; illi l-privazzjoni minn possedimenti hija soggetta ghal kondizzjonijiet ; u li l-Istat ghandu l-jedd illi jikkontrolla l-uzu tal-proprjeta` konformement mal-interess generali.

It-tliet principji ghalkemm distinti mhumiex disgunti, peress illi l-ahhar tnejn jittrattaw sitwazzjonijiet partikolari ta` indhil fid-dritt ghall-godiment pacifiku tal-proprjeta` u ghalhekk iridu jinftehmu fid-dawl tal-principju generali espost fl-ewwel principju.

Kull tip ta` interferenza trid tkun kompatibbli mal-principji ta` (i) l-legalita`, (ii) ghan legittimu fl-interess generali, u (iii) bilanc gust.

Huwa mehtieg proporzjon ragjonevoli bejn il-mezzi, u l-ghan persegwit bil-mezzi li jkun ghamel uzu minnhom l-Istat, sabiex jikkontrolla l-uzu tal-proprjeta` tal-individwu.

Dan il-proporzjon issib r-*raison d`etre* tieghu fil-principju tal-"bilanc xieraq" li jrid jinzamm bejn l-esigenzi tal-interess generali, u l-htiega tal-harsien tad-drittijiet fundamentali tal-persuna.

F`kazi bhal dak ta` llum, il-Qorti tkun trid tqis il-varji interessi, u taccerta ruhha jekk bhala konsegwenza tal-indhil tal-Istat il-persuna tkujx qeghda ggarrab piz eccessiv u sproporzjonat.

c) <u>Sfond storiku legali</u>

Meta sar il-Kap 16 fl-1868, is-suq tal-kera kien totalment hieles b`mod u manjiera illi meta kirja kienet tigi fi tmiemha, is-sid kellu l-jedd jgholli l-kera jew ma jgeddidhiex. Meta la s-sid u lanqas l-inkwilin ma kienu jitolbu tibdil fil-kondizzjonijiet tal-kirja, il-kirja kienet tiggedded *ope legis.*

Wara l-Ewwel Gwerra Dinija, il-kirjiet bdew joghlew b`rata mghaggla. Ghalhekk kienet mehtiega regolamentazzjoni.

L-Att I tal-1925 kien l-ewwel att legislattiv li kien intiz sabiex jirregola zidiet fil-kera tant li mpona arbitragg meta ma kienx jintlahaq

ftehim dwar iz-zidiet fil-kera. Dan l-Att kellu jkollu effett temporanju sal-31 ta` Dicembru 1927.

Inhasset il-htiega ta` kontroll aktar strett.

Ghalhekk kien promulgat l-Att XXIII tal-1929, li permezz tieghu, is-sidien gew prekluzi milli jghollu l-kera jew milli jirrifjutaw li jgeddu l-kera minghajr il-permess tal-Bord li Jirregola l-Kera. Il-Bord inghata s-setgha illi jilqa` talba ghal zgumbrament biss wara li jkunu sodisfatti numru ta` kondizzjonijiet. In kwantu ghal talbiet ghal zieda fil-kera, il-Bord seta` jawtorizza awment sa massimu ta` 40% tal-kera gusta vigenti f`Awissu 1914. Din il-mizura wkoll kellha tkun wahda temporanja sakemm is-suq jistabilizza ruhu. Infatti l-Att XXIII tal-1929 kellu jkollu effett sal-31 ta` Dicembru 1933.

L-Ordinanza XXI tal-1931 li Tirregola t-Tigdid tal-Kiri ta` Bini (illum Kap 69 tal-Ligijiet ta` Malta) li hadet post l-Att XXIII tal-1929 kienet promulgata fid-19 ta` Gunju 1931 u kienet intiza sabiex ikollha effett sal-31 ta` Dicembru 1933. Biss in segwitu saret definittiva. Saret din il-ligi l-aktar minhabba nuqqas kbir ta` djar ta` abitazzjoni wara l-herba tat-Tieni Gwerra Dinija. Kien mehtieg illi l-kera tad-djar titrazzan fi zmien ta` skarsezza. Kien frott dan l-intervent legislattiv illi hafna nies setghu jifilhu jhallsu sabiex ikollhom saqaf fuq rashom. Waqt li l-ligi serviet l-iskop originali taghha, maz-zmien gabet maghha konsegwenzi negattivi fis-sens illi bdiet tohnoq is-suq u bdew jonqsu l-postijiet disponibbli ghall-kera. Tajjeb jinghad li l-Kap 69 kien jirregola propjeta` urbana (*urban property*) u allura mhux biss fondi ntizi ghall-finijiet residenzjali izda anke ghal propjeta` kummercjali. Kien biss bosta snin wara bl-Att XXXI tal-1995 illi l-legislatur addotta posizzjoni differenti sabiex jaghti nifs lis-suq tal-kera. B`dan l-Att il-kirijiet il-godda u cioe` dawk li jsiru wara l-1 ta` Gunju 1995 ma baqghux soggetti ghal-ligijiet specjali tal-kera. Ghall-kirijiet li saru qabel l-1 ta` Gunju 1995 baqghu jghoddu l-ligijiet ta` qabel. Ghalkemm saru diversi emendi, ftit li xejn ittaffa l-piz fuq is-sidien.

L-introduzzjoni tal-Ordinanza XXI tal-1931 kellha skop legittimu u saret fl-interess generali ghaliex kienet intiza sabiex jigi skanasat li persuni jispiccaw barra t-triq, u jkun assikurat li persuni jkollhom fejn

joqghodu. L-istorja socjali u ekonomika tal-pajjiz tixhed li l-legislazzjoni saret ghal skop tajjeb u kienet necessarja. Il-legislatur ipprova jsib bilanc bejn interessi konfliggenti. It-tkattir tal-gid fil-kors tas-snin wera pero` li dak l-intervent legislattiv ghalkemm kellu propositi tajba ma kienx baqa` joffri bilanc anzi holoq sproporzjon u zvantagg evidenti u notevoli ta` parti fil-konfront ta` ohra.

Abbinati l-fatti tal-kaz tal-lum mal-insenjamenti gurisprudenzjali, il-Qorti tqis illi d-disposizzjonijiet dwar it-tigdid awtomatiku tal-kera u kif ukoll il-kontroll fl-ammont tal-kera huma mizuri mahsuba sabiex jikkontrollaw l-uzu u t-tgawdija tal-proprjeta`. Kemm il-modalita` tat-tigdid tal-kera u kif ukoll il-kontroll fl-ammont ta` kera percepibbli jikkostitwixxu forma ta` interferenza fl-uzu u t-tgawdija tal-proprjeta`.

d) <u>Risultanzi</u>

Jirrizulta illi qabel dahlu fis-sehh l-emendi tal-2009 ghall-Kap 16, il-kera percepita mir-rikorrenti jew l-aventi kawza taghhom kienet ta` Lm 24 fis-sena. Wara l-introduzzjoni tal-emendi b`effett mill-1 ta` Jannar 2010 ir-rikorrenti kellhom jedd jippercepixxu kera fl-ammont ta` €185 fis-sena li tizdied kull tlett snin skont l-gholi tal-hajja. Illum il-kera tammonta ghal €209 fis-sena.

Ir-rikorrenti kienu wirtu minghand missierhom sehem ta` terz indiviz tal-fond de quo. In segwitu b`kuntratt ta` divizjoni tat-12 ta` Mejju 2006 fl-atti tan-Nutar Dottor Margaret Heywood ir-rikorrenti akkwistaw il-fond fl-intier tieghu. Dak iz-zmien il-kirja kienet diga` fis-sehh. Kienet ilha fis-sehh certament sa minn qabel l-1959.

Fil-mertu l-intimat Avukat tal-Istat (qabel l-Avukat Generali) eccepixxa illi r-rikorrenti dahlu fid-drittijiet u l-obbligi tal-aventi causa taghhom u ghalhekk iridu joqghodu ghad-decizjonijiet li kienu ttiehdu mill-predecessuri taghhom fit-titolu. Dawn kien ghamlu lokazzjoni li kienet regolata bil-Kap. 69. Ghalhekk ivinci l-principju : *pacta sunt servanda*.

Kienet x`kienet ir-raguni ghala saret il-kirja bosta snin qabel dahlu fix-xena r-rikorrenti u l-intimati Pace, jibqa` l-fatt illi anke jekk dak iz-zmien is-sid ried jiehu xi gwadann mill-proprjeta` tieghu kien kostrett jottempra ruhu mal-ligijiet vigenti. Certament fl-1959 u fis-snin ta` qabel ma setax ikun previst bdil fis-suq tal-kirja jew fil-legislazzjoni.

Din il-Qorti hija tal-fehma illi kienu x`kienu c-cirkostanzi meta nkera l-post, anke jekk kien diga` fis-sehh il-Kap 69, b`daqshekk ma jfissirx illi bl-applikazzjoni ta` dik il-ligi fir-realtajiet tas-socjeta` Maltija, il-qaghda taghhom bhala sidien kienet ben tutelata. Fil-kaz tar-rikorrenti, l-accettazzjoni da parti taghhom tal-fatt tal-kirja m`ghandhiex tiftiehem jew testendi sabiex tfisser illi ma kienx hemm vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni. L-istat ta` nuqqas ta` ghazla kienet realta` fil-pajjiz li baqa` jippersisti anke sa zminijiet ricenti. L-isvolta giet mis-sentenzi tal-Qorti Kostituzzjoni u tal-ECtHR fejn kien dikjarat illi l-applikazzjoni tal-ligijiet specjali tal-kera jiksru l-jeddijiet fondamentali tas-sidien.

Fid-decizjoni tal-ECtHR fil-kaz ta` **Zammit and Attard Cassar v Malta** (op. cit.) kien rimarkat illi :-

> *"at the time, the applicants` predecessor in title could not reasonably have had a clear idea of the extent of inflation in property prices in the decades to come ..." (para 50).*

Fis-sentenza li tat il-Qorti Kostituzzjonali fid-29 ta` April 2016 fil-kawza fl-ismijiet **Maria Ludgarda sive Mary Borg vs Rosario Mifsud et** inghad illi :-

> *"kien biss fl-ahhar snin illi ghall-ewwel darba gie dikjarat li l-Artikolu 12(2) jilledi d-dritt fundamentali protett taht l-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni Ewropea (sentenza tal-Qorti Ewropea fil-kaz Amato Gauci vs Malta, 15 ta` Dicembru 2009). …. Dan m`huwiex kaz ta` ksur ta` dritt fundamentali li jsehh ta` darba, izda vjolazzjoni kontinwata tal-Artikolu 1 tal-Ewwel Protokoll. Fic-cirkostanzi dan l-argument hu nfondat. Issir ukoll riferenza ghas-sentenza tal-Qorti Ewropea fil-kaz Anthony Aquilina v Malta Applikazzjoni 3851/12) tal-11 ta` Dicembru 2014, li kienet titratta wkoll kaz ta` controlled rent. Minkejja li*

s-sid kien baqa` jircievi l-kera l-qorti xorta ddikjarat ksur tal-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni, ghalkemm ikkunsidrat dan `il fatt meta llikwidat id-danni."

(ara wkoll : **Rose Borg vs Avukat Generali et** deciza mill-Qorti Kostituzzjonali fil-11 ta` Lulju 2016 ; u **Rebecca Hyzler et vs Avukat Generali et** deciza minn din il-Qorti diversament presjeduta fid-9 ta` Mejju 2018)

Bl-emendi l-aktar ricenti gara li filwaqt li l-inkwilini nghataw protezzjoni ma garax l-istess lis-sidien li kellhom joqghodu ghal dak li kienet tipprovdi l-ligi ghaliex il-legislatur naqas milli joffrilhom rimedju adegwat skont il-ligi ordinarja sabiex joggezzjonaw b`mod effettiv ghar-restrizzjonijiet fuq il-kundizzjonijiet lokatizzji. L-uniku triq li kellhom kienet li jfittxu kenn quddiem il-qrati ta` indole kostituzzjonali jew konvenzjonali (ara s-sentenza li tat din il-Qorti diversament presjeduta fil-11 ta` Mejju 2017 fil-kawza fl-ismijiet **Josephine Azzopardi et vs L-Onorevoli Prim Ministru et**).

Tajjeb jinghad illi a tenur ta` l-Art 14 tal-Kap 69, is-sid illi "*irid jgholli l-kera jew ibiddel il-kondizzjonijiet tal-kiri*" ghandu jsegwi l-procedura stabbilita fl-Ordinanza, u jindika l-kondizzjonijiet il-godda qabel l-iskadenza tal-kirja. L-inkwilin ghandu l-jedd illi jaghmel l-oggezzjonijiet tieghu quddiem il-Bord li Jirregola l-Kera.

Minkejja li l-legislatur haseb ghal ezenzjoni ghar-regola stabbilita fl-Art 3, fl-istess waqt holoq eccezzjoni ghall-eccezzjoni bil-provvediment kif kontemplat fl-Art 4. Fil-fatt id-disposizzjoni tillimita s-setghat tal-Bord billi dan ma jistax jawtorizza awment fil-kera li jkun oghla minn 40% tal-valur lokatizju tal-fond kif kien fl-1914.

Anke fil-kaz li s-sid jitlob lura l-pussess tal-fond, il-legislatur haseb ghal cirkostanzi specifici meta l-Bord jista` jilqa` t-talba tas-sid. Dan johrog mid-dispost tal-Art 9 tal-Kap 69.

L-uniku rimedju illi ghandhom ir-rikorrenti huwa proprju procediment bhal dak tal-lum.

Kif inghad minn din il-Qorti diversament presjeduta fis-sentenza li tat fit-30 ta` Mejju 2018 fil-kawza fl-ismijiet **<u>David Pullicino et vs Avukat Generali et</u>** :

> *"Il-fatt wahdu li sid jipprova jikseb l-akbar gid minn sitwazzjoni legali li tikkundizzjonah, ma jfissirx b`daqshekk li jkun qabel ma` dik il-qaghda u warrab kull ilment li jista` ghandu dwar ic-cahda jew l-indhil fit-tgawdija ta` hwejgu minhabba f`ligi bhal dik jew illi rrinunzja ghall-jedd li jitlob rimedju (ara **Robert Galea vs Avukat Generali et**, 07/02/2017)"*

Jirrizulta ghalhekk illi l-kirja tal-fond de quo kienet imgedda *ope legis* b`mod u manjiera illi s-sid kien kostrett *a suo malgrado* li joqghod ghal dak ir-regim ta` dritt certament sfavorevoli ghalih. Anke li kieku ntalab awment fil-kera, il-ligi ma kinitx tipprovdi ghal kondizzjonijiet biex eventwali awment ikun tassew reali u gust. Ghalhekk ir-rikorrent u l-awturi taghhom ma kellhomx rimedji effettivi.

Jirrizulta li l-legislazzjoni attwali tolqot lir-rikorrenti bi sproporzjon evidenti u sfavorevoli ghalihom. Mhuwiex in diskussjoni l-jedd tal-Istat illi jikkontrolla b`legislazzjoni l-uzu tal-proprjeta` meta dan ikun fl-interess pubbliku. Fl-istess waqt l-Istat huwa obbligat juri li fl-applikazzjoni ta` dik il-legislazzjoni jkunu qeghdin jinzammu bilanc u proporzjonalita` bejn l-interess generali u ta` dak privat. Il-kwistjoni ghandha tibqa` nkwadrata madwar il-fatt illi bl-applikazzjoni tad-disposizzjonijiet tal-Kap 69 ghas-sitwazzjoni tar-rikorrenti qed ikun hemm ksur tal-Art 1 Prot 1 tal-Konvenzjoni. Fil-kaz tar-rikorrenti huwa ppruvat sproporzjon qawwi kontra taghhom fir-ritorn li jista` jkollhom li kieku t-tgawdija tal-propjeta` kellha tithalla tilhaq il-milja taghha.

Huwa evidenti li matul iz-zmien anke l-legislatur irrealizza li dak li wasslu biex jintervjeni fl-1931 kien jehtieg ripensament motivat minn bidla lejn l-ahjar fil-qaghda ekonomika u socjali tal-pajjiz. Il-Qorti tosserva illi waqt illi bl-Att XXXI tal-1995 il-legislatur intervjena favur il-

liberalizzazzjoni tal-kera, ghazel illi jillimita dan ghal dawk il-kirjiet illi bdew wara l-1 ta` Gunju 1995, bil-konsegwenza illi kollox baqa` kif kien ghal dawk il-kirjiet (bhal din tal-lum) li kienu saru qabel l-1 ta` Gunju 1995.

Tajjeb jinghad illi bl-emendi li kienu ntrodotti ghall-Kap 16 bl-Att X tal-2009, ghad li kien hemm awment fil-kera, xorta wahda baqa` jirrizulta sproporzjon kontra r-rikorrenti bejn l-awment fil-kera skont l-Art 1531C tal-Kap 16 u l-valur lokatizju tal-fond fis-suq hieles. Dan oltre ghall-fatt li s-sid baqa` kostrett joqghod ghal quantum ta` zieda dettat mil-ligi li stabbiliet mhux biss kemm ghandu jkun l-awment izda anke kull meta. Qabel id-dhul fis-sehh ta` l-emendi, ir-rikorrenti odjerni kienu ilhom snin twal igarrbu lezjoni tal-jedd taghhom skont l-Art 1 Prot 1 tal-Konvenzjoni.

Fid-decizjoni taghha tal-11 ta` Dicembru 2014 fil-kaz ta` **Anthony Aquilina vs Malta** l-ECtHR irrimarkat illi : "*the 2009 and 2010 amendments (only) slightly improved a landlord`s position*".

Fil-kaz ta` **Zammit and Attard Cassar v Malta** (op. cit.) l-ECtHR irrimarkat :-

> "*While the applicants do not have an absolute right to obtain rent at market value, the Court observes that, despite the 2009 amendments, the amount of rent is significantly lower than the market value of the premises as submitted by the applicants, which was not effectively contested by the Government. …While the Court has accepted above that the overall measure was, in principle, in the general interest, the fact that there also exists an underlying private interest of a commercial nature cannot be disregarded."*

Fil-kaz ta` **Ian Peter Ellis et vs Avukat Generali et**, (op cit) il-Qorti Kostituzzjonali stabbiliet illi :-

> *"Lanqas l-emendi ghall-Kodici Civili li sehhew bl-Att tas-sena 2009 ma jistghu jitqiesu bhala li jaghtu rimedju effettiv ghall-lanjanzi tar-rikorrenti, kemm ghax tezisti diskrepanza enormi*

bejn l-awment fil-kera kontemplat fl-artikolu 1531C u l-valur lokatizju tal-fond fis-suq hieles, kif ukoll ghax id-disposizzjonijiet tal-artikolu 1531F, fic-cirkostanzi tal-kaz, jaghmlu remota l-possibilita` li dawn jipprendu l-pussess tal-fond taghhom."

Fil-kaz tal-lum, jirrizulta ppruvat illi l-kera percepita mir-rikorrenti, abbazi tad-disposizzjonijiet tal-Kap 69, hija bil-wisq inferjuri ghall-kera fis-suq. Il-figuri li saret referenza ghalihom aktar kmieni jitkellmu wahedhom. Ghalhekk huwa ppruvat l-isproporzjon li ma jridx l-Art 1 Prot 1 tal-Konvenzjoni u li qed jingarr mis-sid.

Il-Qorti hija tal-fehma konsiderata illi tenut kont tal-fatti u cirkostanzi tal-kaz tal-lum kif evolvew mal-medda tas-snin sal-lum il-piz li kellu jgorr is-sid kien sproporzjonat u eccessiv. Ir-rikorrenti gew imcahhda mit-tgawdija tal-proprjeta` taghhom bla ma nghataw kumpens xieraq ghat-tehid tal-pussess ta` l-fond li garrbu.

Il-Qorti qeghda tichad l-eccezzjonijiet kollha tal-intimati safejn dawn jolqtu dik il-parti ta` l-ewwel (1) talba li tirrigwarda d-dikjarazzjoni ta` ksur tal-jeddijiet fondamentali tar-rikorrenti kif protetti bl-Art 1 Prot 1 tal-Konvenzjoni.

Qeghda tilqa` l-ewwel (1) talba tar-rikorrenti safejn din tirrigwarda ksur tal-jeddijiet fondamentali taghhom kif tutelati bl-Art 1 Prot 1 tal-Konvenzjoni.

e) <u>L-Art 6 tal-Konvenzjoni</u>

Fil-paragrafi 12 u 20 tar-rikors promotur (mhux fit-talbiet) hemm referenza ghall-Art 6 tal-Konvenzjoni.

Ir-rikorrenti jikkontendu li m`ghandhomx rimedju effettiv stante li ma jistghux izidu l-kera b`mod ekwu u gust skont il-valur tas-suq illum

stante li dak li effettivament jistghu jircievu huwa dak li jipprovdi l-Art 1531C tal-Kap 16.

Din hija l-unika referenza ghall-Art 6 tal-Konvenzjoni fl-intier tar-rikors.

Il-pilastri li fuqhom huwa msejjes l-Art 6 huma tnejn : i) smigh xieraq fi zmien ragjonevoli minn qorti ndipendenti u imparzjali ; u ii) access ghall-qorti.

L-ilment tar-rikorrenti jinkwadra ruhu fil-kwistjoni tal-access ghal qorti.

Issir referenza ghas-sentenza moghtija fil-5 ta` April 2018 mill-Grand Chamber tal-ECtHR fil-kaz ta` **Zubac v. Croatia** fejn inghad illi :-

> "*76. The right of access to a court was established as an aspect of the right to a tribunal under Article 6 § 1 of the Convention in Golder v. the United Kingdom (21 February 1975, §§ 28-36, Series A. no. 18). In that case, the Court found the right of access to a court to be an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary power which underlay much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court (see Roche v. the United Kingdom [GC], no. 32555/96, § 116, ECHR 2005-X; see also Z and Others v. the United Kingdom [GC], no. 29392/95, § 91, ECHR 2001-V; Cudak v. Lithuania [GC], no. 15869/02, § 54, ECHR 2010; and Lupeni Greek Catholic Parish and Others v. Romania [GC], no. 76943/11, § 84, ECHR 2016 (extracts)).*
>
> *77. The right of access to a court must be "practical and effective", not "theoretical or illusory" (see, to that effect, Bellet v. France, 4 December 1995, § 36, Series A no. 333-B). This observation is particularly true in respect of the guarantees*

provided for by Article 6, in view of the prominent place held in a democratic society by the right to a fair trial (see Prince Hans-Adam II of Liechtenstein v. Germany [GC], no. 42527/98, § 45, ECHR 2001-VIII, and Lupeni Greek Catholic Parish and Others, cited above, § 86).

78. However, the right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, which regulation may vary in time and in place according to the needs and resources of the community and of individuals (see Stanev v. Bulgaria [GC], no. 36760/06, § 230, ECHR 2012). In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention`s requirements rests with the Court, it is no part of the Court`s function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see Lupeni Greek Catholic Parish and Others, cited above, § 89, with further references)."

Il-Qorti taghmel referenza ghall-**Guide on Article 6 of the European Convention on Human Rights – Right to a fair trial (Civil Limb)**. Din hija pubblikazzjoni tal-Kunsill tal-Ewropa u tal-ECtHR. Sejra ticcita mill-harga li kienet aggornata sal-31 ta` Dicembru 2017 ghall-kwistjoni specifika li ghandha quddiemha fil-kaz tal-lum :-

85. The right to a fair trial, as guaranteed by Article 6 § 1, requires that litigants should have an effective judicial remedy enabling them to assert their civil rights (Běleš and Others v. the Czech Republic, § 49; Naït-Liman v. Switzerland [GC], § 112).

86. Everyone has the right to have any claim relating to his "civil rights and obligations" brought before a court or tribunal. In this way Article 6 § 1 embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before courts in civil matters, constitutes one aspect (Golder v. the United Kingdom, § 36; Naït-Liman v. Switzerland [GC], § 113). Article 6 § 1 may therefore be relied on by anyone who considers that an interference with the exercise of one of his or her civil rights is unlawful and complains that he or she has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6 § 1. Where there is a serious and genuine dispute as to the lawfulness of such an interference, going either to the very existence or to the scope of the asserted civil right, Article 6 § 1 entitles the individual concerned "to have this question of domestic law determined by a tribunal" (Z and Others v. the United Kingdom [GC], § 92; Markovic and Others v. Italy [GC], § 98). The refusal of a court to examine allegations by individuals concerning the compatibility of a particular procedure with the fundamental procedural safeguards of a fair trial restricts their access to a court (Al-Dulimi and Montana Management Inc. v. Switzerland [GC], § 131).

87. The "right to a court" and the right of access are not absolute. They may be subject to limitations, but these must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (Philis v. Greece (no. 1), § 59; De Geouffre de la Pradelle v. France, § 28; Stanev v. Bulgaria [GC], § 229; Baka v. Hungary [GC], § 120; Naït-Liman v. Switzerland [GC], § 113).2 Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (Lupeni Greek Catholic Parish and Others v. Romania [GC], § 89; Naït-Liman v. Switzerland [GC], § 115)."

Fid-decizjoni li tat l-ECtHR fil-kaz ta` **Bellet v. France** tal-4 ta` Dicembru 1995 inghad hekk :-

"*36. The fact of having access to domestic remedies, only to be told that one`s actions are barred by operation of law does not always satisfy the requirements of Article 6 para. 1 (art. 6-1). The degree of access afforded by the national legislation must also be sufficient to secure the individual`s "right to a court", having regard to the principle of the rule of law in a democratic society. For the right of access to be effective, an individual must have a clear, practical opportunity to challenge an act that is an interference with his rights (see the de Geouffre de la Pradelle judgment previously cited, p. 43, para. 34).*"

Hemm limitazzjonijiet ghad-dritt.

Fl-istess **Guide** appena citat, ikompli jinghad hekk :-

"*105. Nonetheless, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a "legitimate aim" and if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be achieved" (Ashingdane v. the United Kingdom, § 57; Fayed v. the United Kingdom, § 65; Markovic and Others v. Italy [GC], § 99; Naït-Liman v. Switzerland [GC], §§ 114-115).*"

Aktar kmieni, relattivament ghall-kaz tal-lum, il-Qorti esprimiet ruhha fis-sens illi r-rikorrenti thallew minghajr rimedju prattiku u effettiv bl-uniku triq sabiex jindirizzaw l-ilmenti taghhom ikun dan il-procediment.

f) L-Art 45 tal-Kostituzzjoni u l-Art 14 tal-Konvenzjoni

Fir-rikors promotur ir-rikorrenti jirreferu ghal dawn id-disposizzjonijiet li jittrattaw il-protezzjoni tal-persuna minn diskriminazzjoni, billi jilmentaw li garrbu vjolazzjoni skont dawn id-disposizzjonijiet. Imbaghad fl-ewwel talba jitolbu biss dikjarazzjoni ta` vjolazzjoni skont l-Art 14 tal-Konvenzjoni.

i) <u>L-Artikolu 45 tal-Kostituzzjoni</u>

Fis-subartikolu (1) hemm stabbilit illi : "*ebda ligi ma ghandha taghmel xi disposizzjoni li tkun diskriminatorja sew fiha nnifisha jew fl-effett taghha.*"

Is-subartikolu (3) jitlob li l-ilment ikun abbinat ma` wiehed elementi li jaghmlu d-diskriminazzjoni. Tant hu hekk li s-subartikolu jghid :-

"*F`dan l-artikolu, il-kelma "diskriminatorju" tfisser ghoti ta`trattament differenti lil persuni differenti attribwibbli ghal kolloxjew principalment ghad-deskrizzjoni taghhom rispettiva skont ir-razza, post ta` origini, opinjonijiet politici, kulur, fidi, sess, orjentazzjoni sesswali jew identità tal-generu li minhabba fihom persuni ta` deskrizzjoni wahda bhal dawn ikunu suggetti ghalinkapacitajiet jew restrizzjonijiet li persuni ta` deskrizzjoni ohrabhal dawn ma jkunux suggetti ghalihom jew ikunu moghtija privileggi jew vantaggi li ma jkunux moghtija lil persuni ta`deskrizzjoni ohra bhal dawn.*"

Billi l-kaz ta` llum ma jinkwadrax ruhu taht ebda wiehed mill-kriterji, ma jirrizultax ksur tal-Art 45 tal-Kostituzzjoni.

ii) <u>L-Art 14 tal-Konvenzjoni</u>

Ilment abbazi tal-Art 14 tal-Konvenzjoni jehtieg necessarjament illi jkun abbinat ma` vjolazzjoni ta` jedd iehor tutelat mill-Konvenzjoni.

Issir referenza ghas-sentenza ta` din il-Qorti kif diversament presjeduta tad-19 ta` Ottubru 2000 fl-ismijiet **Victoria Cassar vs Awtorita` Marittima ta` Malta et, fejn il-Qorti** qalet hekk dwar it-thaddim tal-Art 14 tal-Konvenzjoni :-

*Illi kif gie ritenut mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fil-kaz **Abdulaziz, Cabales and Balkandali** (28 ta` Mejju 1985):*

Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence, since it has effect solely in relation to the "enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not necessarily presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter.

*Illi fis-sentenza "**Angelo Xuereb vs Kummissarju tal-Pulizija**" (Qorti Kost. 17 ta` Frar 1999), il-Qorti qalet li lawturi van Dijk u van Hoof, b`referenza ghal dan ilpassagg mis-sentenza Abdalaziz, spejgaw li:*

*"This formula makes it clear that Article 14 is not independent in the sense that there has to be at least some kind of relation with the right and freedoms of the Convention; differential treatment in a field which falls outside the scope of the Convention cannot amount to a violation of Article 14" (**Theory and Practice of the European Convention on Human Rights, Kluwer, 1990, p 536**).*

…

Illi in effetti fil-kaz appena citat, iktar komunament maghruf bhala "Abdulaziz, Cabales and Balkandali" (1973) holoq precedent u wessa sew l-applikazzjoni tal-artikolu 14, billi ghalkemm gie ritenut li l-istess artikolu mhux awtonomu, pero` jaghti tifsira iktar wiesgha lid-drittijiet fundamentali l-ohra, bhal dak tal-artikolu 8, meta applikat flimkien mal-istess artikolu 14.

…

*Illi dan l-izvilupp certament ifisser li l-import tal-istess artikolu 14 meta abbinat mal-artikoli l-ohra tal-istess Konvenzjoni, jaghti lill-istess artikoli applikazzjoni u interpretazzjoni iktar wiesgha fid-dawl tal-principji kontra ddiskriminazzjoni enuncjati fl-artikolu 14, bil-konsegwenza li ta` indubjament interpretazzjoni aktar libera ghall-kazi li jistghu jaqaw taht l-istess artikoli, li minghajr it-test tal-artikolu 14, kienu jibqghu barra mill-ambitu ta` protezzjoni tal-istess imsemmija drittijiet fundamentali. (**European Human Rights Law - Mark Janis** - page 257).*

Ir-rikorrenti jabbinaw l-ilment taghhom ma` diskriminazzjoni specifikament fil-kwalita` taghhom ta` sidien ta` proprjeta` mikrija lill-intimati Pace. Kwindi l-invokazzjoni tal-Art 14 qeghda tigi abbinata mal-Art 1 Prot 1 tal-Konvenzjoni. Ighidu r-rikorrenti li l-Art 1531F tal-Kap 16 jiddistingwi f`materja ta` kirja bejn persuni li jikru dar ta` abitazzjoni qabel l-1 ta` Gunju 2008 u dawk li jikru wara din id-data.

Il-parti tal-Art 1531F tal-Kap 16 li ghandha rilevanza ghall-kaz ta` llum taqra hekk :

"*Fil-kaz ta` kirja ta` dar uzata bhala residenza ordinarja li tkun saret qabel l-1 ta` Gunju, 1995 ghandha tigi meqjusa bhala inkwilin dik il-persuna li tkun qed tokkupa l-fond b`titolu validu ta` kera fl-1 ta` Gunju, 2008 kif ukoll il-konjugi tieghu jekk jghixuflimkien u mhux separati legalment; meta jmut l-inkwilin il-kirja ghandha tigi terminata :*

Izda wkoll persuna tkompli il-kirja wara l-mewt tal-inkwilin bl-istess kondizzjonijiet tal-inkwilin jekk fl-1 ta` Gunju 2008

(i) tkun il-wild naturali jew legali tal-inkwilin u tkun ilha toqghod mal-inkwilin ghal erba` snin mill-ahhar hames snin; u wara l-1 ta` Gunju, 2008 tibqa` tghix mal-inkwilin sad-data tal-mewt tieghu:

Izda f`kaz li jkun hemm aktar minn wild wiehed lijkunu ilhom joqghodu mal-inkwilin ghal erba` mill-ahhar hames snin qabel l-1 ta` Gunju, 2008 u jkunu baqghu jghixu mal-inkwilin sad-data

ta` mewtu, dawkl-ulied kollha jkomplu l-kirja in solidum; din il-kirjama testendix ghal konjugi, zewg jew ulied il-wild tal-inkwilin"

L-argument tar-rikorrenti huwa dirett lejn ulied l-intimati Pace li ghalkemm maggorenni ghadhom jghixu flimkien mal-genituri taghhom fil-fond in kwistjoni. Di piu` hemm dipendenza mill-ulied fuq il-genituri taghhom minhabba l-bzonnijiet specjali li dawn ghandhom. Dan certament jaghmilha aktar difficli ghar-rikorrenti illi jiksbu lura l-pussess tal-propjeta` taghhom.

Il-Qorti qeghda tilqa` dik il-parti tal-ewwel talba safejn ir-rikorrenti lmentaw minn lezjoni tad-drittijiet taghhom kif imharsa bl-Art 14 tal-Konvenzjoni meta abbinat mal-Art 1 Prot 1 tal-Konvenzjoni. L-eccezzjonijiet erbatax (14) u hmistax (15) tal-intimat Avukat tal-Istat (qabel Avukat Generali) qeghdin jigu respinti.

g) <u>L-izgumbrament tal-intimati Pace</u>

Inserita fl-ewwel domanda, ir-rikorrenti talbu l-izgumbrament tal-intimati Pace.

L-intimati Pace jirreferu ghal din it-talba fit-tmien (8) u fid-disa` (9) eccezzjonijiet taghhom.

Fis-sentenza li tat fis-7 ta` Dicembru 2012 fil-kawza fl-ismijiet **<u>Angela sive Gina Balzan v. L-Onorevoli Prim Ministru et</u>** il-Qorti Kostituzzjonali qalet hekk :-

"Dwar x`ghandu jkun ir-rimedju, l-ewwel Qorti pprovdiet billi qalet illi l-intimati Bajada ma jkunux jistghu jinqdew bl-Artikolu 12A tal-Kap. 158 biex jilqghu ghal kull azzjoni li tista` taghmel ir-rikorrenti fil-forum kompetenti biex tikseb l-izgumbrament

taghhom. Din il-Qorti, wara li hasbet fit-tul fuq din il-materja, tara li dan mhux rimedju li tista` taghti.

Il-bilanc bejn l-interessi differenti jrid joholqu l-Gvern, u hu l-Gvern li jrid ibati l-konsegwenzi jekk jonqos minn dan id-dmir tieghu. Ghan-nuqqas tal-Gvern ma ghandux ibati c-cittadin. La darba, f`dan il-kaz, il-ligi per se ma gietx meqjusa li tikser il-Konvenzjoni Ewropeja tad-Drittijiet tal-Bniedem, ma tistax tigi dizapplikata ghall-kaz. Din il-Qorti gia` osservat f`kuntest iehor li meta jkun hemm ordni ta` rekwizizzjoni u l-Gvern iqieghed persuna ohra in situ b`kera li titqies baxxa, ir-rimedju mhux li tithassar dik l-ordni ta` rekwizizzjoni izda li jinghata kumpens adegwat bhala just satisfaction u dan talli ma nholoqx bilanc gust bejn l-interessi involuti. F`dawn ic-cirkostanzi, ma tkunx l-ordni ta` rekwizizzjoni nnifisha li tkun kisret id-dritt ta` proprjeta` tas-sid, izda l-mekkanizmu ta` kumpens (ara Montanaro Gauci v. Direttur Akkomodazzjoni Socjali et, deciza minn din il-Qorti fil-25 ta` Novembru 2011). Anke l-kaz meritu ta` din il-kawza m`huwhiex il-passi li ha l-Gvern fl-interess generali li huma hziena izda l-mekkanizmu li holoq biex jigi determinat l-applikazzjoni tal-ligi u l-quantum tal-kumpens. Ghalhekk, anke f`dan il-kaz, ir-rimedju ghandu jkun ta` kumpens, kif del resto jipprovdi l-Artikolu 41 ta` Konvenzjoni Ewropeja, l-uniku ligi li nstab li gie miksur.

Din il-Qorti ma tistax taghti ordni li twassal, wisq probabbli, ghat-tkeccija tal-konjugi Bajada mill-fond inkwistjoni, meta l-protezzjoni nfisha, moghtija lilhom mill-Gvern, mhux leziva ghad-drittijiet tas-sid. Veru li jista jinghad li, f`dan il-kaz, il-konjugi Bajada ma haqqhomx jibqghu fil-post la darba ghandhom proprjeta` immobbli ohra, pero`, ghal dan ma hasibx il-Legislatur, u ma jahtux il-konjugi Bajada li jippruvaw jiehdu vantagg mil-ligi kif inhi.

Kif osservat il-Qorti Ewropeja tal-Gustizzja fil-kaz ta` Amato Gauci, aktar qabel imsemmi, meta l-ligi ma tipprovdix li s-sid ikun jista` jikkontesta d-dritt tal-enfitewta li juzufriwixxi ruhu bil-beneficcji li taghtih il-ligi "on the basis that they were not deserving of such protection, as they owned alternative accomodation", ir-rizultat ikun li "the application of the law itself lacked adequate procedural safeguards aimed at achieving a

balance between the interests of the tenants and those of the owners". Kwindi, il-ligi ghandha titqies applikabbli ghall-kaz, izda peress li fl-istess ligi jezistu nuqqasijiet procedurali biex jinholoq bilanc gust, irid jinghata kumpens adegwat lis-sid halli "jinholoq" dan il-bilanc."

[ara wkoll : **Dr. Cedric Mifsud et v. L-Avukat Generali et** (25/10/2013) ; **Maria Ludgarda sive Mary Borg et vs Rosario Mifsud et** (29/04/2016) ; u **Rose Borg vs Avukat Generali et** (11/07/2016)]

Fid-decizjoni tal-ECtHR tat-22 ta` Frar 2012 dwar *just satisfaction* fil-kaz ta` **Frendo Randon and Others v. Malta**, inghad :-

16. As the Court has held on a number of occasions, a judgment in which the Court finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see Iatridis v. Greece (just satisfaction) [GC}, no. 31107/96 §32, ECHR 2000- XI, and Guiso- Gallissay v. Italy Just satisfaction) [GC], no. 58858/00, § 90, 22 December 2009). The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attached to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the violation allows of restitutio in integrum it is the duty of the State held liable to effect it, the Court having neither the power nor the practical possibility of doing so itself. If; however, national law does not allow - or allows only partial reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate."

Issir referenza wkoll ghad-decizjoni tal-ECtHR tat-12 ta` Gunju 2012 fil-kaz ta` **Lindheim and Others v. Norway** fejn inghad :-

> *"Whilst in reaching the above conclusion the Court has focused on the particular circumstances of the applicants` individual complaints, it adds by way of a general observation that the problem underlying the violation of Article 1 of Protocol No. 1 concerns the legislation itself and that its findings extend beyond the sole interests of the applicants in the instant case. This is a case where the Court considers that the respondent State should take appropriate legislative and/or other general measures to secure in its domestic legal order a mechanism which will ensure a fair balance between the interests of lessors on the one hand, and the general interests of the community on the other hand, in accordance with the principles of protection of property rights under the Convention."*

Bla hsara ghall-kuntest ta` dritt fejn kienet ippronunzjata l-gurisprudenza fuq riferita, din il-Qorti tafferma li din il-gurisprudenza tghodd ukoll *mutatis mutandis* ghal-legislazzjoni mertu tal-kawza odjerna.

Il-Qorti tghid ukoll illi procediment ta` x-xorta tal-lum mhuwiex il-forum appozitu sabiex tinghata decizjoni dwar jekk inkwilin ghandux jigi zgumbrat jew le. Huma t-tribunali jew qrati ordinarji li ghandhom il-kompetenza li jesprimu ruhhom dwar talba ghal zgumbrament.

Ghall-fini tal-procediment odjern, dik rilevanti hija l-konsiderazzjoni ta` jekk ligi tkunx ivvjolat il-jeddijiet fondamentali tal-persuna u allura jekk abbazi tal-fattispeci ta` kull kaz dik il-ligi ghandhiex tkun applikata bejn il-partijiet kemm-il darba l-applikazzjoni taghha tkun leziva ghad-drittijiet fundamentali ta` l-persuna koncernata.

Riferibbilment ghall-kaz tal-lum, jirrizulta li ladarba l-inkwilini agixxew skont il-ligijiet vigenti m`ghandhomx legalment jirrispondu ghall-

kostituzzjonalita` ommeno tal-ligi kif applikata, jew li jkunu ordnati jaghtu rimedju lir-rikorrent jew jehlu l-ispejjez tal-kawza.

L-Istat huwa responsabbli ghall-promulgazzjoni tal-ligi u ghalhekk ghandu jkun l-Istat illi jwiegeb.

Ghalhekk dik il-parti tal-ewwel domanda tar-rikorrenti fejn intalab l-izgumbrament tal-intimati Pace qeghda tkun respinta, u kwindi l-eccezzjonijiet fuq riferiti tal-istess intimati qeghdin jigu milqugha.

VI. <u>It-talbiet l-ohra</u>

Fit-tieni domanda, ir-rikorrenti talbu dikjarazzjoni li haqqhom jithallsu kumpens ghall-vjolazzjoni subita ghall-jeddijiet fondamentali taghhom.

Fis-sbatax (17)–l eccezzjoni, l-intimat Avukat tal-Istat (qabel Avukat Generali) eccepixxa illi jekk din il-Qorti jkun jidhrilha li kien hemm ksur tad-drittijiet fundamentali tar-rikorrenti, allura semplici dikjarazzjoni li kien hemm ksur tkun sufficjenti minghajr il-htiega ta` rimedji ohra.

Fid-decizjoni li tat il-Qorti Kostituzzjonali fil-5 ta` Lulju 2011 fil-kawza fl-ismijiet **<u>Victor Gatt et vs Avukat Generali et</u>** inghad hekk :-

> *"Id-decizjoni li d-dikjarazzjoni ta` vjolazzjoni wahedha tkun bizzejjed hija l-eccezzjoni u ghandha tkun riservata ghal kazijiet fejn hemm rimedju jew konsegwenzi huma zghar. Fil-kazijiet l-ohra fejn il-lezjoni hija aktar serja l-Qorti ghandha taghti kumpens pekunjarju ghal dik il-vjolazzjoni."*

Il-Qorti sejra <u>tirrespingi</u> din l-eccezzjoni ghax jidhrilha li d-dikjarazzjoni ta` vjolazzjoni wahedha mhijiex bizzejjed u r-rikorrenti ghandhom jinghataw kumpens u/jew danni.

L-**<u>Art 41 tal-Konvenzjoni</u>** jghid hekk :-

"Jekk il-Qorti ssib li kien hemm ksur tal-Konvenzjoni jew tal-Protokolli taghha, u jekk il-ligi interna tal-Parti Gholja Kontraenti kkoncernata tippermetti biss riparazzjoni parzjali, il-Qorti ghandha taghti s-soddisfazzjon xierqa lil-parti leza jekk ikun necessarju."

Il-Qorti taghmel referenza ghas-sentenza ta` din il-Qorti diversament presjeduta tas-7 ta` Frar 2017 fil-kawza **<u>Robert Galea vs Avukat Generali et</u>** fejn inghad hekk :

"Illi ghal dak li jirrigwarda t-talba tal-kumpens il-Qorti tqis li din it-talba hija l-effett naturali tas-sejbien tal-ksur tal-jedd invokat. Huwa mizmum li, ladarba Qorti ssib li r-rikorrent garrab ksur tal-jedd tieghu kif imhares bl-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni, ma huwiex bizzejjed li tieqaf b`semplici dikjarazzjoni bhal dik. Ghalkemm ir-rimedju xieraq mhuwiex lanqas u tabilfors il-kundanna ta` hlas ta` kumpens bhallikieku l-haga li dwarha sehh il-ksur kienet inbieghet, xi ghamla ta` kumpens huwa misthoqq u doveruz. Hawn ukoll, il-Qorti qieghda zzomm quddiem ghajnejha li l-ksur imgarrab mir-rikorrent jikkonsisti f`indhil dwar u mhux f`tehid tal-gid tieghu;

Illi b`zieda ma` dan, ir-rikorrent jitlob ukoll il-hlas tad-danni "ai termini tal-artikolu 41 tal-Konvenzjoni Ewropeja";

Illi l-Qorti tibda biex tghid li l-kumpens misthoqq lill-persuna wara li jkun instab li din garrbet ksur ta` xi jedd fundamentali taghha ma huwiex l-istess bhal-likwidazzjoni u hlas ta` danni mgarrba. Minbarra dan, ir-rikorrent ma jistax jistrieh fuq l-ghoti ta` kumpens taht l-artikolu minnu msemmi tal-Konvenzjoni. Fl-ewwel lok, il-Konvenzjoni taghmel mil-ligijiet ta` Malta safejn id-dispozizzjonijiet taghha kienu inkorporati fil-Kapitolu 319 tal-

Ligijiet ta` Malta. L-imsemmi artikolu ma kienx hekk inkorporat. Fit-tieni lok, huwa maqbul li d-dispozizzjonijiet ta` dak l-artikolu jghoddu ghall-Qorti ta` Strasbourg u mhux ghall-qrati domestici tal-Pajjizi Membri tal-Kunsill tal-Ewropa (Ara Kost. 30.9.2016 fil-kawza fl-ismijiet Maria Stella Azzopardi Vella et vs Avukat Generali et);

Illi b`daqshekk ma jfissirx li t-talbiet tar-rikorrent dwar l-ghoti ta` rimedju mhumiex sejrin jintlaqghu. Jekk ma jistghux jintlaqghu talbiet ghal-likwidazzjoni ta` kumpens u danni bis-sahha tal-imsemmi artikolu 41 tal-Konvenzjoni, jista` u sejjer jinghata rimedju taht il-kriterji tal-ghoti ta` rimedju bhal dan minn din il-Qorti fis-setghat u kompetenza attwali taghha (Kost. 17.12.2010 fil-kawza fl-ismijiet Philip Grech pro et noe vs Direttur tal-Akkomodazzjoni Socjali et). Ghalhekk, il-Qorti tasal ghall-fehma li t-tieni rimedju mitlub mir-rikorrenti fit-tielet, ir-raba` u l-hames talbiet tieghu ma jisthoqqlux jintlaqa`, imma sejjer jinghata kumpens taht it-tieni talba tieghu"

Huwa fatt li l-Art 41 tal-Konvenzjoni ma kienx traspost fil-ligi taghna. Il-Konvenzjoni u l-Protokolli taghha jitqiesu illi jifformaw parti mil-ligi taghna safejn dawn gew inkorporati fil-Kap 319.

L-Art 41 kien intiz sabiex jigi applikat mill-ECtHR, wara talba ghal dan l-iskop, fil-kazi fejn il-qrati tal-pajjizi firmatarji tal-Konvenzjoni ma jkunux taw kumpens ghall-vjolazzjoni accertata. Hemm l-ECtHR tkun tista` taghti kumpens.

Tezisti gurisprudenza tal-Qorti Kostituzzjonali fejn kien ribadit illi kull fejn sehh ksur tal-Art 1 Prot 1 tal-Konvenzjoni bl-applikazzjoni tal-Kap 69, ir-rimedju ghall-vjolazzjoni huwa l-ghoti ta` kumpens u dan peress illi fil-gurisdizzjoni taghha l-qorti ghandha diskrezzjoni x`tip ta` rimedju taghti.

Dwar l-ghoti ta` kumpens, il-Qorti taghmel dawn l-osservazzjonijiet.

Huwa principju ben assodat illi l-kumpens li jista` jinghata fi procediment ta` natura kostituzzjonali mhuwiex ekwivalenti ghad-danni civili li jigu likwidati mill-qrati ordinarji (ara : QK : **Philip Grech pro et noe vs Direttur tal-Akkomodazzjoni Socjali et** deciza fis-17 ta` Dicembru 2010 ; **Victor Gatt et vs Avukat Generali et** deciza fil-5 ta` Lulju 2011 ; u **Ian Peter Ellis et vs Avukat Generali et** deciza fl-24 ta` Gunju 2016).

Fid-decizjoni ta` **Maria Stella sive Estelle Azzopardi et vs Avukat Generali et** deciza fit-30 ta` Settembru 2016, il-Qorti Kostituzzjonali kompliet tippreciza illi r-"*rimedju li taghti din il-Qorti huwa kumpens ghall-ksur tad-dritt fondamentali u mhux danni civili ghal opportunita` mitlufa.*"

Dan premess, huma diversi l-konsiderazzjonijiet li l-Qorti ghandha tqis sabiex tistabilixxi l-*quantum* tal-kumpens.

Decizjoni li kkunsidrat fid-dettall din il-kwistjoni hija s-sentenza li tat il-Qorti Kostituzzjonali fil-kawza **Raymond Cassar Torregiani et vs Avukat Generali et** deciza fid-29 ta` April 2016.

Il-Qorti qalet hekk :-

> "*Dwar il-quantum tal-kumpens dovut issir referenza ghas-sentenza ta` din il-Qorti* ***Igino Trapani Galea Feriol pro et noe et V Kummissarju tal-Artijiet et*** *deciza fil-31 ta` Ottubru 2014, fejn f` materja ta` komputazzjoni ta` kumpens ghal lezjoni ta` dritt fondamentali sancit fl-artikolu konvenzjonali fuq citat gie osservat:*
>
> *"Rigward il-quantum tal-kumpens stabbilit mill-ewwel Qorti, din il-Qorti tosserva fl-ewwel lok li kull kaz ghandu jigi trattat u deciz fuq il-fattispecie tieghu. Barra minn hekk, jekk il-Qorti Ewropeja hasset li f` certi kazijiet kellha taghti kumpens f` ammont inferjuri ghal dak li nghata lir-rikorrenti mill-ewwel Qorti, ma jfissirx li allura l-Qrati Maltin tilfu l-awtonomija taghhom b` mod li bilfors kumpens li jinghata ikun f` ammont*

vicin dak li taghti l-Qorti Ewropeja. Fil-kaz odjern l-ewwel Qorti hadet in konsiderazzjoni l-fatturi kollha li jimmilitaw kemm favur kif ukoll kontra r-rikorrenti u deherilha li l-kumpens xieraq li ghandha taghti f` dan il-kaz ikun fl-ammont ta` hamsa u ghoxrin elf Euro (EUR 25,000). Hija kkonsidrat id-dewmien da parti tar-rikorrenti li jiehdu l-proceduri opportuni, il-valur tal-immobbli, iz-zmien tant twil li r-rikorrenti ilhom privati mill-godiment tal-proprjeta` taghhom minghand ma nghata ebda kumpens, l-istat tal-fond u l-ezistenza tal-fattur tal-interess pubbliku. Ma` dawn ghandu jigi senjalat il-fatt li qabel l-ispossessament tal-proprjeta` taghhom ir-rikorrenti kellhom permess mill-Bord kompetenti sabiex jizviluppaw il-fond."

Issa ghalkemm, huwa minnu illi l-valur tal-kumpens akkordat mill-Qorti wara sejba ta` lezjoni tad-drittijiet fondamentali ma jekwiparax necessarjament ma` likwidazzjoni ta` danni civili attwali sofferti, ma jfissirx li d-danni materjali ghandhom jigu injorati ghall-finijiet tal-ezercizzju odjern. Il-Qorti trid tqis il-fatturi kollha rilevanti ghall-kaz odjern sabiex tasal ghad-determinazzjoni tal-quantum. Dawn huma (1) it-tul ta` zmien li ilha ssehh il-vjolazzjoni konsidrat ukoll fid-dawl tat-tul taz-zmien li r-rikorrenti damu sabiex resqu l-proceduri odjerni biex jirrivendikaw id-drittijiet kostituzzjonali taghhom ; (2) il-grad ta` sproporzjoni relatat mal-introjtu li qed jigi percepit ma` dak li jista` jigi percepit fis-suq hieles, konsidrat ukoll l-ghan socjali tal-mizura; (3) id-danni materjali sofferti mir-rikorrenti konsidrat ukoll l-ispejjez sostanzjali li ghamlu l-intimati Tabone ssabiex jirrendu l-fond abitabbli u (4) l-ordni li ser taghti din il-Qorti dwar l-ezenzjoni f` da nil-kaz mill-effetti legali tal-Artikolu 5 tal-Kap 158."

Meta jinghata kumpens fi procediment ta` din ix-xorta, ghandu jinghata konsiderazzjoni l-ghan li jkun immotiva l-mizura u cioe` l-interess pubbliku. Ghall-fini ta` quantum ta` kumpens u relattiva motivazzjoni, ara dawn id-decizjonijiet li jirreferu wkoll ghall-pronunzjamenti tal-ECtHR :- QK : **Angela sive Gina Balzan v. L-Onorevoli Prim Ministru** : op. cit. ; **Dr. Cedric Mifsud et vs l-Avukat Generali et** : op. cit. ; **Concetta sive Connie Cini vs Eleonora Galea et** : op. cit. ; **Robert Galea vs Avukat Generali et** : PA/GK : op cit ; **Sergio Falzon et vs Alfred Farrugia et** : PA/GK : op. cit. ; PA/GK : 15

ta` Frar 2018 : **Alessandra Radmilli vs Joseph Ellul et** ; PA/GK : 2 ta` Marzu 2018 : **Thomas Cauchi et vs Avukat Generali et**) [ara wkoll ghall-istess skop : ECtHR : 30 ta` Jannar 2018 : **Cassar vs Malta** : Application 50570/13]

Il-proceduri odjerni min-natura taghhom huma diretti sabiex jindirizzaw lezjoni kostituzzjonali u/jew konvenzjonali.

Il-Qorti sabet vjolazzjoni tal-Konvenzjoni.

Ghalkemm id-diskrepanza bejn il-kera attwalment percepita u l-valur lokatizju li l-fond de quo jgib fis-suq hieles hija fattur determinanti sabiex ikun stabbilit jekk kienx vjolat il-principju tal-proporzjonalita`, fl-istess waqt hemm fatturi ohra li wkoll ghandhom rilevanza, u li flimkien ghandhom iwasslu ghall-ghoti ta` kumpens gust ghal-lezjoni subita.

Fis-sentenza li tat fil-31 ta` Jannar 2014 fil-kawza fl-ismijiet **Concetta sive Connie Cini vs Eleonora Galea et** il-Qorti Kostituzzjoni rrilevat :

> *"25. F`materja ta` kumpens il-gurisprudenza patria kif ukoll dik tal-Qorti Ewropeja identifikat is-segwenti principji :*
>
> *"The Court would reiterate that compensation terms under the relevant legislation may be material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate balance on applicants. The taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference." [ECHR 31443/96 para.176 Bronoiswki v. Poland, decided 22 June 2004].*
>
> *26. Fil-kawza Louis Apap Bologna v. Calcidon Ciantar et deciza 24 Frar 2012, din il-Qorti osservat hekk:*
>
> *"F`kazijiet bhal dawn il-kumpens xieraq ghandu jiehu in konsiderazzjoni l-ghan legittimu li mmotiva l-mizura*

tarrekwizizzjoni u li l-kumpens jista` jkun anqas mill-kumpens shih li altrimenti jkun dovut skond il-kriterji tas-suq. Il-Qorti Ewropea fil-kazijiet ta` Edwards v Malta u Ghigo v Malta 17 Lulju 2008] ddecidiet li :

"Para.76. As the Court has already stated on may occasions, in spheres such as housing of the population, States necessarily enjoy a wide margin of appreciation not only in regard to the existence of the problem of general concern warranting measures for control of individual property, but also to the choice of the measures and their implementation. The State control over levels of rent is one such measure and its application may often cause significant reductions in the amount of rent chargeable (….Mellacher and Others v Austria para.45]."

27. Inoltre, "In the absence of a formal expropriation that is to say a transfer of ownership, the Court considers that it must look behind the appearances to investigate the realities of the situation complained of!.. Since the Convention is intended to guarantee rights that are practical and effective it has to be ascertained whether that situation amounted to a de facto expropriation [Sporrong & Lonnroth v. Sweden 18/12/1994; ara ukoll kawza Perit Duminku Mintoff, supra]".

28. Fil-kaz in dizamina, l-ewwel Qorti waslet ghall-konkluzjoni li l-kumpens dovut ex lege lill-intimati bis-sahha tal-artikolu precitat huwa wiehed irizorju meta komparat mal-valur tal-fond fis-suq. L-Avukat Generali jhossu aggravat bil-fatt li fid-determinazzjoni tal-fattur tal-proporzjonalita` tal-mizura relattivament ghall-kumpens dovut, l-ewwel Qorti ma kellhiex timxi fuq l-istima tal-valur tal-fond fl-ammont ta` mija, hamsa u tletin elf Euro (€135,000) moghti ex parte mill-Perit inkarigat mill-intimati, izda se mai kellha timxi fuq l-istima ta` disghin elf Euro (€90,000) tal-Perit inkarigat mir-rikorrenti, stante li l-Konvenzjoni "ma tikkoncedi ebda dritt li xi hadd jircievi profitt, aktar u aktar fil-kuntest ta` proprjeta` li qed isservi ghall-finijiet ta` social housing."

29. Fir-rigward din il-Qorti tosserva li dan l-ilment tal- Avukat Generali huwa fondat. Inkwantu huwa konformi mal-principju, illum assodat kemm fil-gurisprudenza patrija kif ukoll f`dik tal-

Qorti Ewropeja, li f`kaz ta` legislazzjoni li ghandha ghan socjali l-kumpens offrut jista` ma jkunx jekwivali ghall-valur tal-fond fis-suq.

30. Kif osservat il-Qorti Ewropeja fil-kaz Amato Gauci v. Malta, [Appl.47045/06, deciz 15 Dicembru 2009] :

"... [the Court] reiterating that legitimate objectives in the `public interest`, such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less that reimbursement of the full market value [see James and Others, cited above, para.54 and Jahn and Others v Germany [GC] nos.46720/99, 72203/01 and 72552/01, para.94..]

31. Illi jirrizulta pacifiku li fiz-zmien meta nghatat il-koncessjoni sub-enfitewtika, fil-11 ta` Jannar 1960 ic-cens annwu kien gie stabbilit fl-ammont ta` £35, illum wiehed u tmenin Euro, tlieta u hamsin centezmi (€81.53), li bl-applikazzjoni tal-Artikolu 12 jizdied ghal erba; mija, disgha u tmenin Euro u tmintax-il centezmi (€489.18)3. Inoltre, l-utilista, allura perpetwa tista` tifdi c-cens versu l-prezz ta` disat elef u tmien mitt Euro (€9,800) li minnu ghandu jitnaqqas il-capital gains tax ta` 12%.

32. Din il-Qorti tikkondividi l-hsieb tal-ewwel Qorti li l-ammont ta` cens dovut ex lege lill-intimati huwa baxx sal-punt li ma jistax jinghad li ghat-tfixkil sostanzjali fit-tgawdija tal-proprjeta` taghhom huma nghataw kumpens adegwat, kemm ghax fiz-zminijiet tal-lum il-quantum tac-cens annwu dovut ex lege jitqies bhala wiehed baxx meta jigi relatat mal-valur tal-fond, kif ukoll tenut kont tal-konsiderazzjoni li lir-rikorrenti, okkupanti tal-fond b`titolu ta` uzufrutt biss, qed tinghatalha dritt gdid li tibqa` tokkupa l-fond b`titolu ta` enfitewsi perpetwa, bil-possibilita` tarripreza tal-pussess fiziku tal-fond da parti tas-sidien tkun wahda remota hafna. Huwa principalment dan il-fattur li, fil-fehema ta` din il-Qorti, jitfa` `a disproportionate and excessive burden` fuq is-siden.

33. Kif gja` osservat minn din il-Qorti fil-kawza Josephine Bugeja v. Avukat Generali, deciza 7 Dicembru 2009, ghad-

determinazzjoni tal-fattur tal-proporzjonalita` ghandu jittiehed kont tal-effetti legali u prattici li l-applikazzjoni tal-artikolu ser iggib mieghu. Dan l-ezami ghandu jsir mhux in vacuo, izda skont il-fattispecje tal-kaz. "Huwa l-ezercizju ta` dak id-dritt fil-prattika u b`mod konkret, u mhux l-ezistenza tieghu fl-astratt, li jista` bhal fil-kaz in ezami, talvolta jammonta ghal-lezjoni ta` dritt fundamentali" [para.45]. Jigi ribadit li l-Qorti ghandha thares lejn l-effett prattiku tas-sitwazzjoni, peress li, kif sostnut mill-Qorti Ewropeja, il-konvenzjoni tiggarantixxi drittijiet li huma "practical and effective" biex jigi stabbilit jekk is-sitwazzjoni fil-fatt tammontax ghal esproprijazzjoni de facto."

Fis-sentenza ta` din il-Qorti diversament presjeduta tas-7 ta` Frar 2017 fil-kawza fl-ismijiet **Robert Galea vs Avukat Generali et** inghad :-

Illi huwa llum stabilit li r-rimedju li tista` taghti din il-Qorti huwa kumpens ghall-ksur tad-dritt fundamentali u mhux danni civili ghal opportunita` mitlufa (Kost. 22.2.2013 fil-kawza fl-ismijiet Albert Cassar et vs Onor. Prim Ministru et). Biex tasal ghal dan, il-Qorti jehtigilha tqis ghadd ta` fatturi, fosthom it-telf effettiv li jkun garrab is-sid, l-ghan socjali mahsub mil-ligi, il-grad ta` sproporzjon fit-tqabbil bejn id-dhul attwali li qieghed jircievi r-rikorrent mad-dhul li jista` jinkiseb fis-suq hieles, id-danni materjali li l-parti rikorrenti tista` tipprova li garrbet u wkoll l-effetti tal-ordni li l-Qorti tista` taghti dwar jekk l-okkupant jistax jibqa` jistrieh aktar fuq it-thaddim tal-ligi attakkata. Minn kif wiehed jista` jara, dawn il-kriterji huma firxa shiha li trid titqies f`kull kaz ghalih u jiddependu hafna mic-cirkostanzi partikolari ta` kull kaz;

Illi dwar il-kumpens dovut lir-rikorrent, madankollu, tqum konsiderazzjoni ohra. Ghalkemm ir-rikorrent harrek ukoll lill-intimati Ganado, izda dan ma jfissirx li huma l-istess intimati Ganado li jridu jhallsu lir-rikorrent il-kumpens li sejjer jinghata jew li jaghmlu tajjeb ghal ghazla li kienet taghtihom il-ligi. Kumpens bhal dak ghandu jbatih biss l-Istat minhabba li l-ksur li qed igarrab ir-rikorrent huwa l-effett dirett tal-ligi li ddahhlet bl-Att XXIII tal-1979. L-intimati Ganado nqdew b`ligi li tathom jeddijiet godda li ma kellhomx fiz-zmien meta nghatat il-koncessjoni enfitewtika, izda ma ghamlu xejn biex jiksbu dan il-

jedd b`mod illegali. Fid-dawl tal-massima qui suo jure utitur neminem laedere videtur, l-Qorti ma tistax issib li l-intimati Ganado jridu jaghmlu tajjeb huma wkoll ghall-hlas tal-kumpens lir-rikorrent minhabba s-sejbien ta` ksur tal-jedd fundamentali tieghu. Din il-fehma tinbena wkoll fuq il-fatt li l-ilment tar-rikorrent jirrigwarda ligi li jaghmilha l-Istat u mhux ic-cittadin li, min-naha tieghu, ghandu jedd jinqeda biha fil-parametri taghha u safejn din ma titqiesx li qieghda tikser il-jedd fundamentali tas-sid;

Illi kif inhu mizmum u mghallem "fil-kaz ta` ligi leziva tad-drittijiet konvenzjonali jew kostituzzjonali, huwa l-Istat u mhux ic-cittadin li ghandu jirrispondi. Ghax huwa principalment l-obbligu tal-Istat, u mhux tal-inkwilin, li jassigura li d-drittijiet fundamentali tas-sid ma jinkisrux" (Kost. 24.2.2012 fil-kawza fl-ismijiet Louis Apap Bologna vs Kalcidon Ciantar et; u Kost. 6.2.2015 fil-kawza fl-ismijiet Sean Bradshaw et vs L-Avukat Generali et);

Illi meta wiehed iqis ic-cirkostanzi kollha li johorgu mill-provi mressqa u jhaddem dwarhom ir-regoli li dawn il-qrati minn zmien ghal zmien inqdew bihom f`kazijiet li jixxiebhu (Kost. 29.4.2016 fil-kawza fl-ismijiet Raymond Cassar Torregiani et vs Avukat Generali et), il-Qorti ssib li jkun xieraq li jithallas kumpens lir-rikorrent fis-somma ta` sebat elf euro (€ 7,000). Din is-somma qieghda tqis ukoll iz-zmien li r-rikorrent ha biex ressaq l-ilment tieghu quddiem il-Qorti (Ara Kost 25.5.2012 fil-kawza fl-ismijiet Josephine Mary Vella vs Direttur tal-Akkomodazzjoni Socjali et)."

Fis-sentenza ta` din il-Qorti diversament ippreseduta fil-kawza fl-ismijiet **<u>Sergio Falzon et vs Alfred Farrugia et</u>** tat-30 ta` Jannar 2018 (li minnha sar appell) inghad :-

Ghal dak li jirrigwarda kumpens bhala rimedju ghad-danni non-pekunjarji ghas-sejbien ta` lezjoni tad-dritt fundamentali tar-rikorrenti kawza tal-applikazzjoni f`dan il-kaz tal-Artikolu 12(2) tal-Kap. 158, ir-rikorrenti ghandhom jedd ghalih meta tqis li ilhom mis-sena 1985 (izjed minn tletin sena) ma jiehdu kumpens gust ghall-fond taghom, u dan minkejja l-

liberalizzazzjoni tas-suq fis-sena 1995 u li l-iskop legittimu sfuma mat-trapass taz-zmien. Tali jedd ghandu jigi kkalkulat mid-data tat-terminazzjoni tal-koncessjoni subenfitewtika, cioe`, mis-sena 1985.

*Skont il-prospett tal-perit Tekniku il-rendita` mill-valur lokatizju fuq is-suq kellu jammonta ghal €93,217 ghas-snin 1985 sa 2016. Il-kera attwalment imhallsa kienet tammonta ghall-€16,765.50 (Tabella 4.0) (17%) Madanakollu hu assodat li r-rimedju kostituzzjonali ma jfissirx necessarjament ir-rimbors tal-valur shih fuq is-suq lis-sid. (Ara ad ez. ECtHR Kaz**Ghigo vs. Malta** 17 ta` Lulju 2008, #18; Kaz**Edwards vs. Malta**, 17 ta` Lulju 2008; #21; u l-QK fil-kaz **Borg vs Mifsud** sucitata) Specjalment meta bhal fil-kaz odjern, il-proprjeta` ma ittiehditx mill-Istat imma ghandha eventwalment tigi liberata favur is-sid minhabba r-rimedju li ser taghti din il-Qorti apparti l-kumpens.*

*Il-Qorti Kostituzzjonali f`**Borg vs Mifsud** citat supra, wara li qieset li:*

"l-ghan principali tal-proceduri odjerni u ta` dak mitlub mir-rikorrenti, li huwa dak li jigi determinat jekk ir-rikorrenti sofrewx lezjoni tad-dritt fundamentali taghhom, u fil-kaz affermattiv, "… tiffissa kumpens xieraq ghal tali vjolazzjoni stante li r-rikorrenti baqghu dawn is-snin kollha [mill-1 ta` Dicembru 1998 sallum] minghajr il-pussess u t-tgawdija tal-proprjeta` taghhom" u taghti dawk ir-rimedji li l-Qorti jidhrilha xierqa inkluz li jiehdu lura l-pussess tal-fond proprjeta` taghhom…".

Ikkonsidrat li

"Din id-diskrepanza ta` 18% bejn il-kera fis-suq hieles u l-kera attwalment percepita mir-rikorrenti, timmilita favur ir-rikorrenti fil-komputazzjoni tal-kumpens ghax hija fattur relevanti hafna fil-komputazzjoni tal-estent tal-vjolazzjoni."

Izda dik il-Qorti kkonsidrat ukoll il-fattur li r-rikorrenti damu milli jipprevalu ruhhom mir-rimedju kostituzzjonali kif ukoll kkonsidrat ir-rimedju li kien ser jinghata b`dak il-gudizzju, li permezz tieghu l-intimati ma jistghux ikomplu aktar jistriehu fuq l-Att XXIII.1997 biex jibqghu jokkupaw il-fond de quo. Din il-

Qorti ma taqbilx li ghandu jkun hemm tnaqqis dwar id-dewmien. (Dwar id-dewmien vide contra s-sentenza tal-Qorti Ewropea fil-kaz fl-ismijiet "Apap Bologna vs Malta" deciza fit-30 ta` Novembru 2016 fejn irrimarkat:-

"46. The Court also takes issue with the fact that in line with domestic case-law, such compensation awards are reduced on the grounds that the applicants have instituted constitutional redress proceedings several years after they started suffering the violation complained of. In this connection, the Court notes, first and foremost, that domestic law does not impose a time-limit for the institution of constitutional redress proceedings. The legislator leaves the choice of timing to the applicant. Moreover, in circumstances such as those of the present case, the violation complained of is a continuing one. The Court thus finds that such reasoning is questionable in the light of the circumstances of the case and the domestic legal framework, which appears to give great latitude to individuals seeking redress for human rights violations.")

Ghaldaqstant wara li qieset bir-reqqa l-provi u s-sottomissjonijiet kollha, din il-Qorti qed tillikwida l-kumpens fl-ammont ta` hmistax-il elf ewro (€15,000) tenut kont il-valur tal-proprjeta` bhala liberu u vakanti (€145,000) u li l-izbilanc bejn il-kera imhallsa u l-valur lokatizju qed ikompli jizdied kull ma jghaddi z-zmien anke bl-applikazzjoni tal-emendi tal-2010. Dan il-kumpens ghandu jithallas mill-Intimat Avukat Generali flimkien mal-imghaxijiet bir-rata ta` hamsa fil-mija (5%) sad data tal-pagament effettiv."

Fis-sentenza li tat fit-2 ta` Marzu 2018 fil-kawza fl-ismijiet **Thomas Cauchi et vs Avukat Generali et** il-Qorti Kostituzzjonali ghamlet dawn ir-rilievi :-

"Nghaddu ghalhekk ghal-likwidazzjoni tal-kumpens ghall-ksur tad-dritt tal-atturi ghat-tgawdija ta`hwejjighom. Fost il-fatturi relevanti ghal-likwidazzjoni hemm dawn:

☐ *id-diskrepanza bejn il-kera li l-atturi kellhom jedd ghalih taht il-Kap. 158 u l-kera li l-fond seta`gab fuq is-suq hieles;*

☐ *iz-zmien minn meta beda jinhass dan in-nuqqas ta` pro-porzjonalità;*

☐ *il-fatt li l-valuri moghtija mill-perit huma biss indikazzjoni tat-telf ekonomiku li setghu garrbu l-atturi u mhux prova ta` telf reali;*

☐ *il-fatt li, meqjus l-interess pubbliku u l-ghan socjali tal-ligi attakkata, il-kumpens misthoqq lis-sidien mhux bilfors ikun daqs il-kumpens shih li seta` kien dovut kieku wiehed kellu jistrieh fuq l-indikaturi tas-suq hieles;*

☐ *l-incertezza tal-atturi dwar meta jistghu, jew jekk jistghux qatt matul hajjithom, jiehdu hwejjighom lura, fin-nuqqas ta` mekkanizmu biex is-sidien jiehdu hwejjighom lura jew biex isir tqabbil bejn il-htigijiet tas-sidien u l-htigijiet tal-kerrejja, izda wkoll ir-rimedji li jistghu jaghtu lill-atturi s-setgha li jiehdu lura l-fond bis-sahha tad-dikjarazzjoni li l-konvenuta ma tistax tistrieh fuq il-ligi attakkata biex fuqha ssejjes titolu biex tibqa`zzomm il-fond;*

☐ *il-quantum ta` kumpens moghti mill-qrati f`kawzi ohra fejn ic-cirkostanzi kienu bejn wiehed u iehor jixxiebhu;*

☐ *il-fatt li ghandu jinghata kumpens kemm morali u kemm materjali ghall-ksur tad-dritt fondamentali.*

20. Meqjusin dawn il-fatturi, din il-qorti hija tal-fehma illi kumpens ta` ghaxart elef euro (€10,000) jkun wiehed xieraq fic-cirkostanzi. Dan il-kumpens jinghata mhux taht l-art. 41 tal-Konvenzjoni, kif talbu l-atturi, ghax, kif sewwa osserva l-Avukat Generali, dak l-artikolu ma huwiex parti mil-ligi domestika; il-kumpens jinghata taht is-setgha ta` din il-qorti li taghhti rimedju ghall-ksur ta` drittijiet fondamentali. Dan il-kumpens jithallas mill-Avukat Generali, mhux mill-konvenuta Borg, billi din kull ma ghamlet kien li nqdiet b`jedd li kienet taghtiha l-ligi."

Fid-decizjoni **<u>Cassar vs Malta</u>** tat-30 ta` Jannar 2018 (App. 50570/13) l-ECtHR ghamlet dawn l-osservazzjonijiet :-

A. Damage

84. The applicants claimed 1,260,996 euros (EUR) in respect of pecuniary damage. That sum reflected (i) the rent due to them from 1998 to 2015 amounting to EUR 730,330 calculated on the basis of the valuation of an estate agent at EUR 3,500 per month, (EUR 42,000 annually) in 2015, projected backwards to the year 1998 based on two indices for property prices published by the Central Bank of Malta – by means of example, such projections show the rents for the respective years as follows: EUR 6,857 annually in 1988, EUR 18,476 in 1998 and EUR 41,649 in 2008; (ii) EUR 502,006 in simple interest at 8% (capped so as not to exceed the rent of a particular year); and (iii) EUR 28,660 (supported by an architect`s report) in repairs needed to the property since the tenant had failed to take adequate care of the property. In this connection the applicants noted that as things stand, they will remain suffering the effects of the violation even after the Court judgment, for an unspecified amount of years to come. In this light they also considered that their claim of EUR 54,000 in respect of non-pecuniary damage already suffered, representing EUR 2,000 annually since 1988, should be upheld in full.

85. The Government submitted that if a violation were to be found a declaration to that effect would suffice. In any event, they considered that the valuations were exorbitant, speculative and not based on an architect`s report. They noted that the property had been purchased in 1988 at EUR 25,600 it had therefore hardly been imaginable that it could now have a rental value of EUR 42,000 annually. Indeed if it had to be divided over the years, their claim in rent amounted to around EUR 27,000 annually which would surely not reflect the rental value in the eighties and nineties. They further considered that since the applicants had accepted rent until 2008, their claim should only refer to the subsequent years. Moreover, the tenant had deposited rent for the period between 2009-15 amounting to EUR 2,796 which had to be deducted from the award of compensation. As to interest the Government noted that under domestic law, interest was due only on amount liquidated, which was not the case here. Moreover a rate of 8% was far beyond

any commercial rate of interest currently available in the banking sector in respect of deposits. As to the structural works the Government considered this clam unproven and hypothetical. Lastly, the Government considered that an award under this head should not exceed EUR 10,000, which would be EUR 2,123.66 annually over six years, and an award for pecuniary damage should not exceed EUR 4,000.

86. The Court notes that the applicants are entitled to compensation in respect of the loss of control, use, and enjoyment of their property from around 2000 to date. The Court notes on the one hand that the rent suggested by the Government is not based on any valuation or other criteria, and appears to be a simple division of an aleatory sum they proposed. On the other hand, while the applicant`s valuation is based on an estate agent, and was not accompanied by an architect`s report, the domestic court found that EUR 3,000 as opposed to the EUR 3,500 alleged by the applicants appeared reasonable. However, the Court also notes that the comparators used by the estate agent refer to renovated buildings with high quality finishing and furnishing. While no information has been submitted as to the quality of the interior of the applicants` property the Court observes that the applicants claim that their property needs repairs as it has not been well taken care of (see paragraph 84 above). Thus, the latter cannot be considered to be in the same condition and at the same rental value as the former. Therefore, the Court considers that the valuation submitted by the applicants is on the high side, but may nonetheless provide a relevant indication and workable basis.

87. In assessing the pecuniary damage sustained by the applicants, the Court has, as far as appropriate, considered the estimates provided and had regard to the information available to it on rental values on the Maltese property market during the relevant period. It further notes that from 2008 onwards, the Court found the legitimacy of the aim pursued highly questionable (see paragraph 53 above) and thus does not justify a reduction compared with the free market rental value (compare, ***Zammit and Attard Cassar****, § 75; and* ***Amato Gauci****, § 77, both cited above). It further takes note of the sums already received by the applicants and those, following*

2008, which were deposited in court and therefore remain retrievable, which are being deducted from the award.

88. In the present case the Court must, however, also take note of the fact that the applicants bought the property when it was already subject to such restrictions, and therefore it considers that the purchase price at the time reflected such restrictions. While the applicants consider that the Government`s claim to that effect was unsubstantiated (see paragraphs 37 and 38 above), the Court notes that according to the evaluations submitted by the applicants, the property in 1988, date when they purchased it, had a rental market value of EUR 6,857 annually. The Court observes that such a sum in rent would not be appropriate for a property purchased in the same year at EUR 25,600, if that were its real sale value. In consequence it must be accepted that the limitations on the property affected the purchase price.

89. The Court reiterates that an award in respect of pecuniary damage under Article 41 of the Convention is intended to put the applicant, as far as possible, in the position he or she would have enjoyed had the breach not occurred (see, mutatis mutandis, ***Kingsley v. the United Kingdom*** *[GC], no. 35605/97, § 40, ECHR 2002-IV). It therefore considers that interest should be added to the award in order to compensate for the loss of value of the award over time (see* ***Runkee and White v. the United Kingdom****, nos. 42949/98 and 53134/99, § 52, 10 May 2007). As such, the interest rate should reflect national economic conditions such as levels of inflation and rates of interest (see, for example,* ***Akkuş v. Turkey,*** *9 July 1997, Reports of Judgments and Decisions 1997-IV, § 35;* ***Romanchenko v. Ukraine****, no. 5596/03, 22 November 2005, § 30, unpublished; and* ***Prodan v. Moldova****, no. 49806/99, § 73, ECHR 2004-III (extracts)). It notes that the applicants claimed the statutory rate of eight per cent, and the Government`s objection in that respect. The Court considers that a rate of five per cent interest is more realistic (see* ***Amato Gauci****, cited above, § 78, and* ***Ghigo v. Malta*** *(just satisfaction), no. 31122/05, § 20, 17 July 2008) thus a one-off payment at 5% interest should be added (see* ***Anthony Aquilina****, cited above, § 72, in fine).*

90. Lastly, it is not for the Court to award the claim concerning renovation work which was not entered into by this Court.

91. The Court, thus, awards the applicants the sum of EUR 170,000 jointly.

92. The Court further considers that the applicants must have sustained feelings of anxiety and stress, having regard to the nature of the breach. It therefore awards EUR 3,000 jointly in respect of non-pecuniary damage.

Il-fatturi li jidderminaw l-entita` tal-kumpens huma :-

i) L-interess generali li jaghti legittimita` lill-intervent legislattiv.

ii) It-tul ta` zmien li s-sidien ikunu ilhom igarrbu l-effett tal-intervent legislattiv a skapitu taghhom.

iii) L-isproporzjon bejn il-kera attwalment ihallsa abbazi tal-intervent legislattiv u dik li tista` tigi percepita fis-suq hieles. Ghalkemm dan il-fattur sejjer jittiehed in konsiderazzjoni, il-prezz tas-suq ghandu jitqies bhala kriterju ndikattiv mhux assolut.

iv) Il-fond ghadda ghand ir-rikorrenti kif soggett ghal kirja li diga` kienet vigenti favur l-intimati konjugi Pace.

v) Id-daqs sostanzjali tal-fond, l-area li ghandu, u l-valur arkitettoniku u storiku tieghu.

vi) L-incertezza dwar meta u jekk ir-rikorrenti jistghux jiehdu lura l-pussess battal tal-fond.

vii) Il-fatt li r-rikorrenti mhux jaccettaw il-hlas tal-kera anke jekk mhux maghruf meta r-rikorrenti jew possibilment l-awturi taghhom waqfu jaccettaw il-kera.

viii) L-inerzja tal-Istat meta baqa` passiv ghal tul irragjonevoli ta` zmien sabiex jipprova jirrimedja ghas-sitwazzjoni b`legislazzjoni ad hoc.

ix) Il-fatt illi bl-introduzzjoni tal-Att XXXI tal-1995 u l-konsegwenti liberalizzazzjoni tal-kera ir-rikorrenti gew diskriminati.

x) In-nuqqas ta` rimedju ordinarju effettiv.

xi) Il-fatt illi bl-applikazzjoni tad-dispozizzjonijiet tal-Kap 69 ir-rikorrenti qeghdin igarrbu lezjoni tad-drittijiet fondamentali taghhom kif imharsa bil-Konvenzjoni.

Il-Qorti tishaq illi kull kaz ghandu l-isfond u l-fattispeci partikolari tieghu. Ghalhekk ma jistax ikun hemm uniformita` fil-quantum tal-kumpens li jigi likwidat mill-qrati taghna.

Il-Qorti tifhem u tapprezza illi l-intervent legislattiv kien necessitat mis-sitwazzjoni socjo-ekonomika tal-pajjiz, fis-sens illi sar ghal ghan legittimu li kien mahsub sabiex jaghti serhan lil ghadd kbir ta` nies illi kienu f`riskju reali li jispiccaw minghajr saqaf fuq rashom. Fl-istess waqt tqis ukoll illi meta saret il-kirja, l-awturi tar-rikorrenti certament li ma setghux ragjonevolement jipprevedu l-futur, fis-sens illi jara x`setghu jkunu x-xejriet socjali u ekonomici tal-pajjiz fuq firxa twila ta` snin.

Fil-kaz tal-lum, irrizulta mill-kostatazzjonijiet mhux ikkontestati tal-perit tekniku illi l-fond de quo ghandu valur lokatizju bi-wisq izjed mill-kera li qeghdin ihallsu l-intimati Pace, tant li l-izbilanc u l-isproporzjon kontra r-rikorrenti huwa lampanti.

Il-Qorti qieset bir-reqqa l-assjem ta` l-fatti u cirkostanzi tal-kaz.

Hasbet fit-tul dwar l-accertamenti u kostatazzjonijiet mirquma li ghamel il-perit tekniku kemm fir-relazzjoni kif ukoll fl-eskussjoni, in partikolari l-fatt min-naha wahda li tratta ta` binja mdaqqsa sewwa ta` valur storiku u arkitettoniku, u min-naha l-ohra l-fatt li tinsab fi stat ta` telqa ghalkemm isservi bhala post ta` abitazzjoni ghall-intimati Pace u uliedhom.

Qieset il-konteggi tal-kirja li thallsu matul iz-zmien, l-aggustamenti li saru skont il-ligi sal-lum, il-valur tal-fond fis-suq hieles, u l-valur lokatizju matul iz-zmien sal-lum.

Ikkunsidrat ukoll id-dikjarazzjoni taghha dwar il-vjolazzjonijiet tal-Konvenzjoni subiti mir-rikorrenti.

Rat ukoll il-linja ta` gurisprudenza tal-qrati taghna u tal-ECtHR.

Abbazi ta` l-assjem ta` dan kollu, il-Qorti hija tal-fehma li r-rikorrenti ghandhom jithallsu kumpens shih ta` €200,000 ghall-vjolazzjoni tal-jeddijiet fondamentali taghhom. Il-figura tikkomprendi kumpens pekunjarju u morali. Huwa kumpens ghall-ksur li diga` kien determinat, kif ukoll ghall-ksur li se jkompli jirrikorri sakemm ir-rikorrenti jibqghu jgarrbu l-vjolazzjoni tal-jeddijiet fondamentali taghhom. Dan il-kumpens ghandu jithallas mill-Avukat tal-Istat (qabel l-Avukat Generali) li fil-kawza tal-lum jirrapprezenta l-Istat. L-intimati Pace m`ghandhomx ihallsu kumpens jew spejjez gudizzjarji billi ma kienux responsabbli ghal-lezjoni li garrbu r-rikorrenti.

<u>Decide</u>

Ghar-ragunijiet kollha premessi, il-Qorti qeghda taqta` u tiddeciedi din il-kawza billi :-

Tastjeni milli tiehu konjizzjoni ulterjuri ta`dik il-parti tal-ewwel (1) eccezzjoni tal-intimati Pace li tolqot l-identita`tal-post, u li kienet irtirata fil-mori tal-kawza.

Tastjeni milli tiehu konjizzjoni ulterjuri tal-ewwel (1) u tat-tieni (2) eccezzjonijiet tal-Avukat tal-Istat (qabel Avukat

Generali) kif ukoll tat-tieni (2) eccezzjoni tal-intimati Pace stante li r-rikorrenti ghamlu l-prova kemm tal-kirja kif ukoll tat-titolu ghall-fond ufficjalment immarkat 55 u 56 (gia` 86 u 87) Triq Santa Skolastika, Birgu.

Tilqa` dawk l-eccezzjonijiet tal-intimati kollha ghal dik il-parti tal-ewwel (i) talba fejn ir-rikorrenti talbu dikjarazzjoni u decizjoni li effett tad-disposizzjonijiet tal-Kap 69 tal-Ligijiet ta` Malta garrbu vjolazzjoni ghad-dritt taghhom ta` propjeta` ghall-fond ufficjalment immarkat 55 u 56 (gia` 86 u 87) Triq Santa Skolastika, Birgu, kif dak id-dritt huwa mhares bl-37 tal-Kostituzzjoni ta` Malta.

Tichad dawk l-eccezzjonijiet tal-intimati kollha ghal dik il-parti tal-ewwel (i) talba fejn ir-rikorrenti talbu dikjarazzjoni u decizjoni li effett tad-disposizzjonijiet tal-Kap 69 tal-Ligijiet ta` Malta garrbu vjolazzjoni ghad-dritt taghhom ta` propjeta` ghall-fond ufficjalment immarkat 55 u 56 (gia` 86 u 87) Triq Santa Skolastika, Birgu, kif dak id-dritt huwa mhares bl-Ewwel Artikolu tal-Ewwel Protokoll u l-Artikolu 14 tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u Libertajiet Fondamentali.

Tilqa` d-disa` (9) eccezzjoni tal-intimati Pace.

Tichad dik il-parti tal-ewwel (1) talba fejn kien rikjest l-izgumbrament tal-konjugi Pace mill-fond de quo.

Tilqa` l-ewwel (1) talba limitatament safejn ir-rikorrenti talbu dikjarazzjoni u decizjoni li effett tad-disposizzjonijiet tal-Kap 69 tal-Ligijiet ta` Malta huma garrbu vjolazzjoni ghad-dritt taghhom ta` propjeta` ghall-fond ufficjalment immarkat 55 u 56 (gia` 86 u 87) Triq Santa Skolastika, Birgu, kif dak id-dritt huwa mhares bl-Ewwel Artikolu tal-Ewwel Protokoll u l-Artikolu 14 tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u Libertajiet Fondamentali.

Tichad l-eccezzjonijiet tal-intimati kollha ghat-tieni (ii), it-tielet (iii) u r-raba` (iv) talbiet.

Tilqa` t-tieni (ii) talba.

Tilqa` t-tielet (iii) talba billi tillikwida favur ir-rikorrenti s-somma komplessiva ta` mitejn elf Ewro (EUR 200,000) bhala danni pekunjarji u danni morali ghall-vjolazzjoni li garrbu ghad-dritt taghhom ta` propjeta` tal-fond ufficjalment immarkat 55 u 56 (gia` 86 u 87) Triq Santa Skolastika, Birgu, kif dak id-dritt huwa mhares bl-Ewwel Artikolu tal-Ewwel Protokoll u bl-Artikolu 14 tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u Libertajiet Fondamentali.

Tilqa` r-raba` (iv) talba billi tordna lill-intimat Avukat tal-Istat (gia` Avukat Generali) sabiex ihallas lir-rikorrenti s-somma likwidata skont it-tielet (iii) talba.

Tordna li l-ispejjez ta` din il-kawza jithallsu in kwantu ghal terz mir-rikorrenti u in kwantu ghal zewg terzi mill-intimat Avukat tal-Istat (gia` Avukat Generali).

Tordna lir-Registratur tal-Qorti sabiex kif appena din is-sentenza tghaddi in gudikat jibghat kopja taghha lill-Ispeaker tal-Kamra tad-Deputati kif irid l-Art 242 tal-Kapitolu 12 tal-Ligijiet ta` Malta.

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur