QORTI CIVILI – PRIM'AWLA

ONOR. IMHALLEF DR. MIRIAM HAYMAN LL.D.

Rikors Guramentat Nru.: 106/2018 MH

Illum, 19 ta' Gunju, 2020

Paul Deguara Caruana Gatto

-vs-

L-Avukat Ġenerali, Maria Theresa Grech (ID 000141G) u l-Awtorità tad-Djar għal kull interess li jista` jkollha

Il-Qorti;

Rat **ir-rikors guramentat**[1] ta' Paul Deguara Caruana Gatto, li gie prezentat fit-23 ta' Ottubru, 2018 li permezz tieghu espona:

"Illi fis-27 ta` April 2014 huwa wiret lil ommu Maria Theresa Deguara Caruana Gatto u permezz ta` kuntratt fl-atti tan-Nutar Dr Alicia Agius tat-3 ta` Novembru 2016 saret id-diviżjoni tal-assi tagħha u l-fond konsistenti fl-appartament numru 2 Triq San Federiku, l-Belt Valletta ġie assenjat lill-mittenti.

[1] Folio 1

Illi dan il-fond huwa mikri lill-intimata Maria Theresa Grech u ilu hekk mikri, sa ċertu sens b'mod ko-att, sa minn qabel Ġunju 1995 u dan kif ser jiġi spjegat b'aktar dettal waqt it-trattazzjoni tal-kawża.

Illi l-fond preżenzjalment huwa soġġett għall-kera ta` €197.38 dovuta fl-1 ta` Jannar ta` kull sena li hija kera baxxa ħafna, kemm issa kif ukoll fil-passat, relattivament ma kemm jinkrew postijiet il-Belt fiż-żminijiet tal-lum. Skond stima tal-Perit Hector Zammit hawn annessa, l-valur lokatizju presenti fuq is-suq liberu huwa ta ` €900 fix-xahar u l-post huwa stmat li jiswa` madwar €300,000.

Illi apparti dan il-kirja hija indefinita u m'hemmx mekkaniżmu jew rimedju effettiv li permezz tiegħu l-esponenti jista` jawmenta l-kera biex jilħaq il-valur tas-suq jew li jirriprendi l-fond fi żmien raġonevoli.

Illi b'riżultat ta` dan, l-esponenti qiegħed isofri preġudizzju serju konsistenti f'deprivazzjoni fit-tgawdija tal-possedimenti tiegħu u nuqqas ta` rimedju effettiv, liema jeddijiet huma sanċiti mil-Konvenzjoni Ewropeja dwar id-Drittijet Fondamentali fl-Artikoli 1 Protokol 1 u l-Artikolu 13. Illi din il-leżjoni hija waħda kontinwata u qiegħda taggrava ruħha iktar ma jgħaddi ż-żmien.

Illi konsegwentement à tenur tal-Artikolu 41 tal-Konvenzjoni Ewropeja, ġaladarba hemm ksur tad-dispożizzjonijiet fuq imsemmija, hemm lok li jkun hemm sodisfazzjoni ġusta biex tiġi indirizzata l-leżjoni kemm dik sofferta fil-

passat kif ukoll dik li qiegħed u għad jista` jsofri minħabba sakemm tali leżjoni tiġi sodisfaċentement indirizzata.

Għaldaqstant l-esponenti jitlob bir-rispett li din l-Onorabbli Qorti:

i. *Tiddikjara illi fid-dawl tal-premess ġew u għadhom qed jiġu mittiefsa d-drittijiet fondamentali tal-esponenti kif sanċiti fl-Artikolu 1 Protokol 1 u fl-Artikolu 13 tal-Konvenzjoni Ewropeja Dwar id-Drittijet Fondamentali tal-Bniedem (Kap 319).*

ii. *Tagħti sodisfazzjoni ġusta u xierqa li tikkomprendi u ma jkunx limitat għall- iżgumbrament tal-intimata mil-fond de quo fi żmien qasir u perentorju li ma jeċċedix l-perjodu ta` sena, li fil-frattemp u sakemm iseħħ tali żgumbrament ikun hemm awment fil-kera li jkun ekwivalenti għal jew viċin il-prezz tas-suq, u tagħti kumpens għad-danni materjali sofferti mill-esponenti.*

iii. *Tillikwida d-danni non pekunjarji sofferti mil-esponenti minħabba l-leżjonijiet sofferti.*

Bl-ispejjeż kontra l-intimati kompriżi dawk tal-protest numru 334/2017 tal-31 ta` Ottubru 2017 liema intimati huma minn issa nġunti għas-subizzjoni."

Rat **ir-risposta guramentata**[2] ta' l-Avukat Ġenerali u tal-Awtorita` tad-Djar, li giet prezentata fit-13 ta' Novembru, 2018 li permezz taghha espona:

[2] Folio 1

1. *"Illi l-esponenti jirrespingu l-allegazzjonijiet kif imfissra fir-rikors promotur bhala infondati fil-fatt u fid-dritt stante li, kif ser jigi spjegat aktar 'l isfel, l-ebda agir ta' l-esponenti ma kiser jew illeda xi dritt fundamentali tar-rikorrenti.*

2. *Illi in linea preliminari r-rikorrenti ghandu jgib prova tat-titolu li fuqu qed jibbaza l-azzjoni odjerna.*

3. *Bhala fatti jirrizulta li l-propjeta in kwistjoni u cioe` Flat 2, Triq San Federiku, Valletta kienet rekwiżizzjonata fil-31 ta' Awwissu 1961 u giet de-rekwiżizzjonata fid-19 ta' Frar 1969.*

4. *Illi jigi rilevat u minghajr pregudizzju ghas-suespost li l-ordni ta` rekwizizzjoni saret skond il-ligi, ghal skop pubbliku u fl-interess pubbliku. F`kaz ta` rekwizizzjoni, is-sid jibqa' sid tal-proprjeta' u jircievi kumpens ghan-nuqqas ta' tgawdija taghha u d-dar tinkera lil terzi biex tipprovdilhom post t'abitazzjoni. Hawn si tratta ta` rekwizizzjoni maghmula in forza ta` ligi intiza biex tikkontrolla l-uzu ta` proprjeta` skond l-interess generali. L-ordni ta' rekwizizzjoni ma jikkostitwix "tehid" ta' proprjeta`jew tehid ta' "pussess" fis-sens legali taht l-ewwel artikolu tal-ewwel protokoll tal-Konvenzjoni, izda jikkostitwixxi biss mizura ta' kontroll ta' uzu ta' proprjeta` fil-forma ta' detenzjoni temporanea fl-interess pubbliku bi skop socjali li tittaffa l-problema ta' nuqqas t'akkomodazzjoni u jigi zgurat id-dritt ghall-intimita` tad-dar li hu relatat u dipendenti mid-disponibilta` ta' djar biex l-individwi jkollhom fejn jghixu.*

5. *Illi safejn l-ilment tar-rikorrenti huwa msejjes fuq l-Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea, l-esponenti jirrileva li skont il-proviso tal-istess artikolu, l-Istat għandu kull jedd li jgħaddi dawk il-liġijiet li jidhrulu*

xierqa biex jikkontrolla l-użu tal-proprjetà skont l-interess ġenerali. Fir-rigward ta` policies ta` natura socjo-ekonomika, huwa ben maghruf li l-margini ta` apprezzament moghtija lill-Istat huma wiesgha hafna. Fir-rigward tal-espressjoni "interess generali", il-Qorti Ewropea ukoll accettat li l-Istat ghandu a wide margin of appreciation u l-Qorti tirrispetta l-gudizzju tal-legislatura kemm-il darba dan ma jkunx manifestament minghajr bazi – ***Attilio Ghigo vs. Direttur ghall-Akkomodazzjoni Socjali, Qorti Kostituzzjonali, 28/2/05.*** *Illi ghalhekk huwa accettat kemm mill-gurisprudenza nostrali kif ukoll dik tal-Qorti Ewropeja tad-Drittijiet tal-Bniedem li l-ligijiet li jaghtu setgha lill-Istat li jikkontrolla proprjeta' ta' individwi huma rikonoxxuti bhala mehtiega f'socjeta' demokratika biex jassiguraw l-attwazzjoni ta' zvillup socjali u ekonomiku fl-interess tal-kollettivita'.*

6. *Illi rigward il-kumpens mitlub wiehed irid jiehu in konsiderazzjoni wkoll il-fatt li r-rikorrenti hallew hafna snin jghaddu sakemm infethu dawn il-proceduri. It-trapass ta` dan iz-zmien kollu jitfa dubji serji kemm effettivament r-rikorrenti hassewhom aggravati bl-ordni ta` rekwizizzjoni.*

7. *Illi dejjem minghajr pregudizzju ghal-fuq espost u fl-isfond ta` dan kollu l-esponent jirrileva wkoll li l-intimata Grech m`ghandhiex tigi zgumbrata peress li r-rekwizizzjoni harget bhala mizura fl-interess generali.*

8. *Illi minghajr pregudizzju ghas-suespost, il-kumpens xieraq ghall-privazzjoni tal-propjeta` ma ghandux ikun il-valur kummercjali tal-kera tal-fond.*

9. *Ghaldaqstant fid-dawl tas-suespost ma hemm l-ebda lezjoni tad-drittijiet fundamentali tar-rikorrenti u din l-Onorabbli Qorti ghandha tichad l-allegazzjonijiet u t-talbiet kollha bhala infondati fil-fatt u fid-dritt.*

10.Salv eccezzjonijiet ulterjuri.

11.Bl-ispejjez."

Rat **ir-risposta guramentata**[3] ta' l-intimata Maria Theresa Grech, li giet prezentata fl-4 ta' Jannar 2019 li permezz taghha espona:

"Illi l-kirja tal-fond residenzjali taghha hija protetta bil-ligi u dan stante li giet mikrija volontarjament lil omm l-esponenti minn omm ir-rikorrenti ferm qabel l-1995 u sussegwentement intirtet mill-esponenti;

Illi l-esponenti dejjem hallset il-kera dovuta kemm lir-rikorrenti u kif ukoll qabel lill-ommu Maria Theresa Deguara Caruana Gatto u din il-kera dejjem giet accettata hlief ghall-ahhar zewg skadenzi;

Illi skond l-emendi tal-2010 din il-kirja jezisti mekkanizmu li filwaqt li l-kirja ta' l-esponenti baqghet protetta din kellha toghla kull tlett snin skond l-indici ta' l-gholi tal-hajja.

Illi jekk ir-rikorrenti qieghed ihoss li qieghed isofri xi pregudizzju dan zgur ma hux dovut ghall-esponenti jew b' xi mod ghalih tat kontribut l-esponenti;

[3] Folio 1

Illi l-esponenti dejjem imxiet mal-ligijiet tal-pajjiz u ghalhekk ma ghandhiex bl-ebda mod tkun pregudikata jew titlef xi jedd li ghandha llum skont il-ligi u dan stante li dan hija ma haditux la b' qerq u lanqas b' ghemil skorrett.

Illi jekk din l-Onorabbli Qorti joghgobha thoss li ghandha tirradrizza kwalunkwe pregudizzju li tista' tiddeciedi li sofra r-rikorrent dan umilment ma ghandu bl-ebda mod jimpingi fuq id-drittijiet tal-kirja li qeghda tgawdi l-esponenti jew fuq l-ammont tal-hlas taghha;

Salv eccezzjonijiet ragunijiet ohra li jistghu jirrizultaw;

Bl-ispejjez kontra r-rikorrenti."

Rat id-digriet tagħha ta' l-appuntament għas-smigħ tar-rikors in eżami.

Rat il-provi kollha miġjuba.

Rat in-noti ta' sottomissjonijiet.

Semgħet it-trattazzjonijiet.

Ikkonsidrat

Dan ir-rikors Kostituzzjonali jittratta primarjament dwar propjeta' imsemmija fir-rikors promotur fejn originalment l-istess propjeta' dak iż-żmien ta' Maria

Theresa Caruana Gatto kienet ġiet rekwizzjonata mill-Awtorita' tad-Djar fuq talba ta' ċertu Joseph Camilleri. Sussegwetement ġara illi l-Awtorita' anke bagħtet ittra lil istess sid imsemmija fejn l-istess ġiet infurmata li ma kienx hemm oġġezzjoni da parti ta' l-istess Awtorita' għal użu tal-fond mill-istess sid. Aktar tard l-Awtorita' ħarget anke *derequisition order* fuq il-fond mertu ta' dawn il-proċeduri.

Ġara ukoll li l-fond wara li kien mikri lil parenti ta' l-inkwilina tal-lum, għada għandha bil kunsens tas-sid dan bil-kera kif hekk maqbula bejniethom. Għalhekk l-istess inkwilna jew ommha qabilha kienu jħallsu debitament il-kera lil istess imsemmija Caruana Gatto awttriċi fit-titlu tar-rikorrenti presenti.

Il-pern tal-kawza odjerna huwa l-ilment dwar ir-*requistion order* ukoll għax l-istess omm ir-rikorrenti tat minn jedda l-propjeta' b'kera, b'dan pero lil llum ir-rikorrenti werriet ta' l-istess propjeta' jilmenta mill Ligijiet tal-kera, senjamtement il-Kap 69 tal-Liġijiet ta' Malta li jagħti protezzjoni lil kerrej u l-membri tal-familja li joqgħodu miegħu fir-rigward tat-tul tal-kirja, waħda indeffinitiva f'dak l-aspett, ukoll għal kontroll lil liġi timponi fir-rigward tal-ammont ta' kera li tista tiġi awmentata fid-dawl ta' dak li realment huwa l-valur lokatizzju ta' propjeta' simili llum.

Provi

Ir-rikorrenti ressaq żewġ rapporti tal-perit minnu inkarigat Hector Zammit. Wieħed jagħti il-valur lokatizzju tal-propjeta' *de quo agitur* [4] l-ieħor dak tal-propjeta' fuq is-suq miftuħ u kurrenti[5]. Rispettivament qed nitkellmu fuq kirja ta' disa' mitt ewro fix-xahar (€ 900) u ta' (€300, 000) valur. L-istess Perit maħtur *ex parte* f'affidavit presentat mill-attur ikkonferma l-istimi li hu ta fir-relazzjonijiet imsemmija.

Aktar tard ir-rikorrenti tramite l-avukat difensur anke talab li jiġi maħtur mill-Qorti perit arkitett. Il-Qorti ħatret li perit David Pace[6]. Dana presenta d-debita relazzjoni[7] tiegħu fejn ikkonkluda lli *"...il-valur tal-fond bħala liberu u frank huwa ta' mittejn u tnejn u għoxrin elf ewro (€220,000), w il-valur lokattizju tiegħu huwa ta' tminn mitt ewro(€ 800) fix-xahar."*[8]

Ir-rikorrenti ressaq affidavit[9] tiegħu fejn spjega illi wara l-mewt ta' ommu fis-27 ta' April, 2004, hu kien wiret il-propjeta' mingħandha: peremezz ta' kuntratt fl-atti tan-Nutar Dr.Alicia Agius tat-3 ta' Novembru, 2016 saret divizzjoni bejnu u bejn ħutu u l-porzjon A li mess lilu kien jinkludi ukoll l-propjeta' mertu ta' dan il-proċess.

---

[4] Folio 3
[5] Folio 7
[6] Folio 35
[7] Folio 59
[8] Folio 70.
[9] Folio 25

Qal li meta dan l-appartament kien ġia okkupat mill-intimata meta wirtu u li dan kien mikri versu l-prezz ta' €197.38 fis-sena kif stipulat bil-liġi.

Għalkemm igħid li kien jaf lil fond ġie *derequistione*d fis-19 ta' Frar, 1969, żid ukoll li ma setax igħid meta l-intimata daħħlet fil-fond in kwistjoni pero kien jaf għax qaltlu l-istess inkwilina li l-ewwel kienet tokkupa l-flat numru 5 flimkien ma ommha imbagħad wara fi flat numru 1 u spiċċat daħħlet fi flat numru 2. Ma kienx jaf ezattament d-dati ta' dawn l-ispustamenti u lanqas ma kien involut f'xi arrangament fir-rigward.

Żid li minn file ta' ommu kien jirizulta li Ms Grech, l-intimata kienet daħħlet fi flat 1 minflokk ċertu Anthony Satariano.

Qal ukoll li Grech kienet qed tħallas kera mizera u li mis-sena 1974 sas sena 2005 Maria Theresa Grech kellha karta ta' l-identita' registrata fuq Għawdex.

B'nota tat-8 ta' Mejju, 2019 ir-rikorrenti esebixxa żewġ dokumenti, kuntratti, wieħed fl-atti tan-Nutar Paul George Pisani li juri li Maria Theresa Grech, ċioe' l-intimata akkwistat fond ġewwa Marsalforn Għawdex[10] u l-ieħor att ta' Causa Mortis li juri propjeta immobiljari li għaddiet b'wirt għand l-istess inkwilna.[11] (dan biex juri il-ġid immobiljarju ta' l-istess inkwilina)

Joseph Rivas prodott mir-rikorrenti in rappresentanza ta' Identity Malta wieġeb li mis-sena 2015 l-inkwilina bħala residenza kienet registrata bħala karta ta' l-identita' fuq il-fond Flat no 2, Triq San Federiku, il-Belt Valletta.

---

[10] Folio 41
[11] Folio 43

Da parti tagħha **Maria Theresa Grech**, ukoll msejjħa mir-rikorrenti, xehdet li kienet tgħix ġol fond mertu tal-kawza u li kienet hemm tabita mis-snin sebgħin. Qalet li qabel kienet toqgħod ġo flat 1 llum ġo flat 2. Dejjem fl-istess blokka bini u ta' l-istess sid. Fi flat 1 kienet ilha tgħix mis-sena 1965. Qabel qalet li kienet toqgħod Għawdex. Ġol flats ta' omm ir-rikorrenti daħħlet għax skontha minn kien tefa' l-istess flat mal *housing* (L-Awtorita') qalilhom biex johduh huma. Dan dejjem fil-konfront ta' Flat 1. Imma qablet li qabel dan il-fond kien tqiegħed mall-*housing*. Qalet li fil-fatt hi kienet ħadet il-fond bil-kera mingħand ir-rappresentant tas-sid. Semmiet li dan kien ċertu Sander Apap Bologna, skontha ż-żijiu jew ħu s-sid. .

Dwar kif trasferit ruħha ġewwa flat 2 wieġbet illi darba li kien se joħrog minn dan il-fond l-okkupant ħadha għand is-sid, għand il-barunessa u din tatha l-permess li dan jgħaddi bil-kera ghandħa. Insistit li hi l-flat numru tnejn ma ħaditux mill-*housing* imma direttament mingħand il-barunessa, għalina omm ir-rikorrenti. Qalet li kull sena kienet tħallas kera għal madwar mittejn ewro annwali.

Ikkonfermat min jedda lli hi kienet ilha tgħix ġol fond *de quo agitur* minn meta ħareg minnu Domnic Attard il-pulizija, dan mis-snin 1970's. Ikkonfermat li kien dan Domnic li fil-fatt ħadha għand il-kontessa.

Savio Borg bħala rappresentant tal-Kummissjoni Elettorali[12] xehed li qabel 2005 l-inkwilina kienet registrata fuq Għawdex wara s-sena indikata fil-flat mertu tal-kawza.[13]

---

[12] 47A

[13] Ara dokumenti esebiti minn folio 48 sa 58

Domnic Attard[14] issa prodott mill-intimata inkwilina ikkonferma li kien hu li qabel kien jabita ġol fond mertu ta' dan ir-rikors. Qal li hu mar igħix fih fis-sena 1972 hu kien mar għand il-kontessa Strada Sant'Ursula u hemmhekk għamlu kuntratt, għamlu ktieb tal-kera. Qal li n-nanna tal-mara tiegħu kienet ħaditu għand il-kontessa u li din kienet taf bil-fond għaliex kienet toqgħod ġewwa Flat 1. Qal ukoll li hi, n-nanna, riedet tibdel flat1 ma flat 2 għaliex ta' l-aħħar kien akbar. Qal li anke dan il-bdil ġie aċċettat mill-kontessa, sar bil-bona volonta tagħha u għalhekk inbiddel il-ktieb ta' tal-kera ta' flat 2 fuq isimha, omm l-intimata. Xehed li anke ta' dan il-Kontessa kienet ukoll aċċettanti. Qal li ġewwa flat 2 daħħlu jgħixu n-nanna tal-mara tiegħu u żijitha, allura l-inkwilina kurrenti.

In kontro ezami ikkonferma li hu kien ħa l-fond in kwistjoni fis-sena 1972 u li f'dan ma kienx involut il-*housing*. Meta ħareg mill-fond flat 2 u daħħlu fih in-nanna tal-mara, Adelina Grech u l-intimata pero ma kienx jaf jirrispondi eżattament fuq min kienet daret il-kera. Ikkonferma pero lil ktieb tal-kera ta' flat 2 għaddih lil kontessa. Qal ukoll li tal-fond *unfurnished* kien iħallas dak iż-żmien tlettin lira fis-sena.

Emmanuel Micallef[15] xehed li anke hu kien jgħix ġewwa Starda Federico ġo fond li pero llum skontu kien ħadulu r-rikorrenti**.** Ikkonferma illi l-inkwilina/ intimata kien jafha toqgħod fil-fond imsemmi għal żmien twil, tnejn u ħamsin sena. Qal lil Grech kien jafha l-ewwel tgħix ġo flat 1 u wara marret ġewwa flat 2, madwar ħamsin sena ilu. Ikkonferma li fil-fond ta' l-aħħar qabel kien igħix Domnic Attard.

[14] Folio 66
[15] Folio 107

Lilian Azzopardi[16] li kkonfermat illi lil intimata kienet tafha tgħix ġol fond mertu tal-kawza u qabel ġo flat 1.

Dr. Bryony Balzia Bartolo[17] da parti tagħha esebit affidavit tagħha dana għannom ta' l-Awtorita' tad-Djar. [18] Ikkonfermat illi kienet inħarget ordni ta' rekwisizzjoni fuq il-fond *de quo agitur* fil-31 ta' Awwissu, 1961. Kopja ta' dan ġiet esebita bħala dok BB1[19]. Qalet li dina l-ordni ġiet notifikata lil Kontessa Maria Theresa Deguara Caruana Gatto nhar il-31 ta' Awwissu 1961 ġewwa 193, St Ursula Street, Valletta; Dok BB2[20]. Qalet li ġia fit-23 ta' Novembru, 1961 id-Dipartiment tad-Djar wara ittra mingħand is-sid kien bagħat ittra lil istess sid lil fond seta' jintuza mill-istess sid. Żiedet ukoll illi fis-19 ta' Frar, 1969, ħarget ordni ta' derekwizzizjoni liema ordni ħassret l-ordni ta' rekwisizzjoni numru 20284. Qalet li dina l-ordni ġiet notifikata lil Kontessa fl-indirizz indikat., Dok BB4[21]

Ikkonfermat lir-*requistion order* kienet ħarget fuq talba ta' Joseph Camilleri. Ma kienetx taf tirrispondi u lanqas ma rrizulta mill-kopji tal-file ta' l-Awtorita' esebiti, għala sussegwentement kienet inħarget id-*derequisition order*.

---

[16] Folio 114
[17] Folio 71
[18] Folio 74
[19] Folio 77
[20] Folio 78
[21] Folio 80

Ikkonsidrat

Fl-ewwel lok għandu jingħad illi fil-verbal ta' 13 ta' Novembru, 2018 Dr. Borg Costanzi għar-rikorrenti iddikjara li n vista ta' dak li kien irrizulta mix-xhieda tar-rappresentant ta' l-Awtorita' tad-Djar, (fil-konfront ta' l-ordni ta' *derequistion*) huwa kien se jirregola ruħu fir-rigward tax-xilja ta' l-istess. Fil-fatt aktar tard fin-nota ta' sottomissjonijiet tiegħu huwa ddikjara fl-istess illi kien qiegħed iċedi l-atti tal-kawza fil-konfront tal-Awtorita' tad-Djar b'dan li kien qed iżomm ferm t-talbiet fil-konfront tal-intimati l-oħra.[22] Għalkemm din iċ-ċesssjoni li ċertament ma segwitx in-norma formali mitluba turi b'mod ċar l-intenzjoni tar-rikorrenti fir-rigward.

lli konsegwentement l-Qorti se tgħaddi biex teżamina l-eċċezzjonijiet mressqa mill-intimati Avukat Generali, llum Avukat ta' L-Istat, ukoll tal-inkwilina Maria Theresa Grech.

L-Avukat Generali jilqa għat-talbiet billi fl-ewwel lok jitlob lir-rikorrenti għandu jġib prova tat-titolu. Din hija eċċezzjoni ġia deċiża u miċħuda għal diversi drabi kif stabbilit fil-vasta ġurisprudenza nostrali. Għalhekk kif ingħad fis-sentenza fl-ismijiet **Robert Galea vs Avukat Ġenerali et[23]** minn din il-Qorti diversament presjeduta :- *"Illi biex wieħed ikun f`qagħda li juri li ġarrab ksur tal-jedd fundamentali tiegħu taħt l-artikolu 37 tal-Kostituzzjoni m`għandux għalfejn jipprova titolu assolut u lanqas wieħed oriġinali bħallikieku l-azzjoni dwar ksur ta` jedd fundamentali kienet waħda ta` rivendika."*

[22] Folio 129
[23] Deciza fis-7 ta' Frar 2017

Għalkemm hawn ir-referenza hija għal artikolu 37 tal-Kostituzzjoni, aktar fil-fatt restritiv minn dak invokat f'din il-lanjanza n eżami, jista' u għandu faċilmet japplika mutatis mutandis għal kaz in eżami.

Hekk ingħad ukoll fid-deċizzjoni **Ian Peter Ellis et vs Avukat Ġenerali et**[24].

"Huwa biżżejjed, għall-finijiet ta` dak l-artikolu, li wieħed juri li għandu jedd fil-ħaġa li tkun li bih jista` jieqaf għall-pretensjonijiet ta` ħaddieħor. Imbagħad, għall-finijiet tal-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni, huwa biżżejjed li l-persuna turi li kellha l-pussess tal-ħaġa li tkun."

L-istess ġie ritenut mill-Qorti Kostituzzjonali fil-kawza fl-ismijiet **Victor Gatt et vs Avukat Generali et**.[25]

Fi kwalunkwe kaz jirrizulta mhux inkontestat illi r-rikorrenti wiret il-propjeta' in kwistjoni b'wirt wara il-mewt ta' ommu.

Konsegwentement tiċħad din it-tieni eċċezzjoni.

It-tielet r-raba' u ħames eċċezzjoni ta' l-Avukat Generli huma relatati n kwantu l-ilment tar-rikorrenti huwa dirett lejn il-limitazzjoni tas-sid ta' l-użu tal-propjeta' tiegħu in vista ta' ordni ta' rekwizzizzjoni f' isem l-interess generali ukoll il-kontroll eżerċitat mill-liġijiet tal kera, u l-oggezzjoni tar-

[24] Kost. 27.3.2015 :
[25] Deċiża fil-5 ta' Lulju 2011).

rikorrenti għal dan. L-Avukat Generali jsaħħaħ fuq id-dritt ta' l-Istat biex jikkontrolla l-użu tal-propjeta'. Jagħmel referenza għad-deċizjoni tal-Qorti Ewropeja għad-Drittijiet tal-Bniedem fl-ismijiet Attilio Ghigo vs Direttur għall Akkomodazzjoni Soċjali. Pero jingħad ukoll illi minn imkien fir-rikors promotur ma jirrizulta lir-rikorrenti jilmenta dwar ir-rekwisizzjoni[26]. Jilmenta dwar kera baxxa li bih hu marbut minħabba l-liġijiet eżistenti u ż-żmien indefinit tal-kirja.

Fl-imsemmija deċizjoni ta' Attilio Ghigo l-Qorti Ewroperja għad-Drittijiet tal-Bniedem[27] kellha dan xi tgħid fuq is-suggett in eżami[28];

"*2. The Court's assessment*

(a) Applicable rules in Article 1 of Protocol No. 1

48. As the Court has stated on a number of occasions, Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, inter alia, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle

---

[26] Ghalkemm dan l-ilment jiġi indirizzat aktar tard fil-mori.

[27] Application 31122/05; 26.12.20062

[28] U hawn il-Qort se tiċċitta fit-tul għax tingħata spjegazzjoni dettaljata ta' l-elenti ta' l,-artikolu imsemmi m

enunciated in the first rule (see, among other authorities, James and Others v. the United Kingdom, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37, Beyeler v. Italy [GC], no. 33202/96, § 98, ECHR 2000-I, and Saliba v. Malta, no. 4251/02, § 31, 8 November 2005).

49. The Court observes that in the present case, by requisitioning and assigning his property to others, the applicant has been prevented from exercising his right of use of the property as the house has been occupied by tenants. Also, his right to receive a market rent and to terminate leases has been substantially affected. However, the applicant has never lost his right to sell his property, nor have the authorities applied any measures resulting in the transfer of his ownership of the property.

50. In the Court's view, the measures taken by the authorities were aimed at subjecting the applicant's house to a continuing tenancy and not at taking it from him permanently. Therefore, the interference complained of cannot be considered a formal or even de facto expropriation, but constituted a means of State control of the use of property. 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, 19 June 2006).

(b) Whether the Maltese authorities respected the principle of lawfulness

51. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should 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 Saliba, cited above, § 37).

52. In the present case, it is not disputed by the parties that the requisition of the applicant's house had been carried out in accordance with the provisions of the Housing Act. The latter defines the notion of "requisition" (see paragraph 18 above) and indicates the grounds for issuing requisition orders (paragraph 19 above). Furthermore, the legal and financial consequences of the requisition, notably the imposition of a landlord-tenant relationship and the criteria for calculating the compensation due to the owner of the premises, are stated in the Housing Act (see paragraphs 21-24 above). There is nothing to show that these provisions are unclear and/or not foreseeable.

53. The measure complained of was, therefore, "lawful" within the meaning of Article 1 of Protocol No. 1. It remains to be ascertained whether it pursued a legitimate aim in the general interest and whether a "fair balance" had been struck between the means employed and the aim sought to be realised.

(c) Whether the Maltese authorities pursued a "legitimate aim in the general interest"

54. Any interference with the enjoyment of a right or freedom recognised by the Convention must pursue a legitimate aim. The principle of a "fair balance"

inherent in Article 1 of Protocol No. 1 itself presupposes the existence of a general interest of the community (see Broniowski, cited above, § 148).

55. 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. Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures to be applied in the sphere of the exercise of the right of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a margin of appreciation.

56. The notion of "public" or "general" interest is necessarily extensive. In particular, spheres such as housing of the population, which modern societies consider a prime social need and which plays a central role in the welfare and economic policies of Contracting States, may often call for some form of regulation by the State. In that sphere decisions as to whether, and if so when, it may fully be left to the play of free market forces or whether it should be subject to State control, as well as the choice of measures for securing the housing needs of the community and of the timing for their implementation, necessarily involve consideration of complex social, economic and political issues (Hutten-Czapska, cited above, §§ 165-166).

57. 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 Immobiliare Saffi v. Italy, [GC], no. 22774/93, § 49, ECHR 1999-V, and, mutatis mutandis, Broniowski, cited above, § 149).

58. In the present case, the Court can accept the Government's argument that the requisition and the rent control were aimed at ensuring the just distribution and use of housing resources in a country where land available for construction could not meet the demand. These measures, implemented with a view to securing the social protection of tenants (see, mutatis mutandis, Hutten-Czapska, cited above, § 178), were also aimed at preventing homelessness, as well as at protecting the dignity of poorly-off tenants (see paragraphs 36 and 42 above).

59. The Court accepts that the impugned legislation had a legitimate aim in the general interest, as required by the second paragraph of Article 1.

(d) Whether the Maltese authorities struck a fair balance between the general interest of the community and the applicant's right to the peaceful enjoyment of his possessions

60. 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 (see Saliba, cited above, § 37).

61. 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, p. 27, § 50; Mellacher and Others v. Austria, judgment of 19 December 1989, Series A no. 169, p. 34, § 48; Spadea and Scalabrino v. Italy, judgment of 28 September 1995, Series A no. 315-B, p. 26, § 33).

62. 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. In cases concerning the operation of wide-ranging housing legislation, that assessment may involve not only the conditions for reducing 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 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. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (see Immobiliare Saffi, cited above, § 54, and Broniowski, cited above, § 151).

63. In the present case, the applicant's house was seized without prior notice by the Government through a requisition order on 31 March 1984 (see paragraph 6 above). Approximately five months later, on 23 August 1984, the applicant was informed that his house had been allocated to a certain Mr G. (see paragraph 7 above).

64. The Court notes that a requisition order imposes on the owner of the premises concerned a landlord-tenant relationship (see paragraph 21 above). While this can be seen as creating a quasi-lease agreement between a landlord and a tenant, landlords have little or no influence on the choice of the tenant or the essential elements of such an agreement (see, mutatis mutandis, Hutten-Czapska, cited above, § 196). In particular, the owner may seek authorisation for non-compliance with the Director of Social Housing's request to recognise the tenant only if he is able to show "to the satisfaction of the court that serious hardship would be caused to him by complying with that request". The wish to take possession of the building for the owner's use or for the use of any member of his family cannot amount, in itself, to hardship (see section 8(2) and (3) of the Housing Act – paragraph 22 above). Therefore, it was not open to the applicant to obtain restitution of his property solely on the basis that he needed to move into the house in Paola with his family (see paragraph 5 above).

65. The Court further observes that the applicant claimed that he never received any compensation for the loss of the control over his property (paragraphs 9 and 46 above). In any event, the rental value established by the Land Valuation Officer was MTL 23 (approximately EUR 55) per year (see paragraph 16 above). The Government themselves acknowledged that controlled rents did not reflect the market value of the properties affected (see paragraph 42 above).

66. Even assuming that the applicant was not made to cover the costs of extraordinary maintenance and repairs of the building as required by law, the Court cannot but note that the sum at issue – amounting to less than EUR 5 per month – is extremely low and could hardly be seen as fair compensation for the use of a house. The Court is not convinced that the interests of the landlords, "including their entitlement to derive profits from their property" (see Hutten-Czapska, cited above, § 239), have been met by restricting the owner to a return of less that EUR 5 per month from his property. It is true that the Government reproached the applicant for his failure to institute proceedings before the Rent Regulation Board to fix a fair rent for the premises (see paragraph 42 above). However, it has not been shown by any concrete examples from domestic law and practice that this remedy would have been an effective one. Moreover, it is to be recalled that when the applicant had produced a report from his architect stating that the yearly rental value of the house was MTL 120 (approximately EUR 288) in 1984 and MTL 250 (approximately EUR 600) in 1993, the Constitutional Court concluded that he had failed to produce evidence in rebuttal of the defendant's statement that the rent due was MTL 23 per year (see paragraph 16 above).

67. As the Court has already stated on many 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 (see, in particular, Mellacher and Others, cited above, § 45).

68. 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).

69. In the present case, having regard to the extremely low amount of the rental value fixed by the Land Valuation Officer, to the fact that the applicant's premises have been requisitioned for more than twenty-two years, as well as to the above-mentioned restrictions of the landlord's rights, the Court finds that a disproportionate and excessive burden has been imposed on the applicant. The latter had been requested to bear most of the social and financial costs of supplying housing accommodation to Mr G. and his family (see, mutatis mutandis, Hutten-Czapska, cited above, § 225). It follows that the Maltese State has failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant's right of property.

70. There has accordingly been a violation of Article 1 of Protocol No.”

Kif ingħad ir-rikorrenti ċeda l-ilmenti tiegħu fil-konfront ta' L-Awtorita' tad-Djar. Pero dak kollu ċitat fejn si tratta ta' rekwizzizjoni huwa daqstant ieħor relevanti għal liġijiet tal-kera li skont ir-rikorrenti qegħdin jimminaw kemm l-awment tal-kera ukoll ir-ripussess tal-propjeta' tiegħu għal żmien indefinit.

Deċiżjoni oħra li tisa titfa' dawl fuq il-kwistjoni hija dik fl-ismijiet **George Gauci vs. Avukat Generali et**.[29] li għalkemm m'għandhiex il-istess fatti speċe tal-kaz in eżami xorta hija relevanti fil-prinċipji hemm ennuċjati aktar u aktar meta kif irriżulta mill-provi l-propjeta' *de quo* ġiet anke mikrija volontarjament lil intimata jew ommha mill-kontessa sidha .

"L-ewwel aggravju tal-intimat l-Avukat Generali: [l-ewwel Qorti ma kellhiex issib ksur tal-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni]

12. L-intimat Avukat Generali jissottometti li l-awturi tar-rikorrent kienu jafu sew bil-konsegwenzi legali u r-restrizzjonijiet imposti mid-dispozizzjonijiet tal- Kap. 69 meta huma ffirmaw ghall-kirja, proprju ghaliex din il-ligi kienet ilha fis-sehh sa mis-sena 1931 u l-fond kien ilu jinkera mill-hamsinijiet skond kif xehed l-stess rikorrent fl-affidavit tieghu. Kellu jigi meqjus ukoll li ma tressqet l-ebda prova li kien hemm xi biza li l-fond jigi rekwizizzjonat mill-awtoritajiet u li allura l-awturi tar-rikorrent ma kellhom l-ebda ghazla ghajr li jaghtu l-fond b'kirja. Galadarba r-rikorrent dahal fiz-zarbun tal-awturi tieghu, hu llum ma kellux raguni valida sabiex jilmenta li d-drittijiet fondamentali tieghu gew miksura. In sostenn tat-tezi tieghu l-Avukat Generali jiccita sentenzi ta' din il-Qorti fosthom ***Albert Cassar et v. Il-Prim Ministru et*** *maqtugha fit-22 ta' Frar, 2012, u dik fl-ismijiet* ***Sean***

[29] 31.05.2019 : 40/15SM

Bradshaw et v. Avukat Generali et *deciza fis-6 ta' Frar, 2015, fejn gie osservat li ma jistax jitressaq ilment ta' ksur meta l-awtur ikun jaf bil-konsegwenzi tal-ligi fil-mument li ttrasferixxa l-proprjeta`. B'hekk l-intimat l-Avukat Generali jissottometti li hu ma jaqbilx mal-konsiderazzjoni tal-ewwel Qorti fejn din qalet li r-rikorrent Gauci kien imgieghel jibqa' fil-kirja minhabba d-disposizzjonijiet tal-Kap. 69.*

13. Min-naha tieghu r-rikorrent iwiegeb li, kif irriteniet l-ewwel Qorti f'dan il-kaz, ma hemmx dubju li hemm ksur manifest tal-principju ta' proporzjonalita` u ghalhekk il-konkluzjoni tal-ewwel Qorti kienet tajba.

14. Din il-Qorti tibda bl-osservazzjoni opportuna relevanti ghal kaz odjern, maghmula fis-sentenza moghtija fil-kawza fl-ismijiet ***Gabriella Mangion et v. Avukat Generali,*** *deciza fil-31 ta' Jannar 2019*[30]

'24. L-istess jista' jinghad ghall-kaz odjern. Izda hawn l-ewwel Qorti ghamlet riferenza ghas-sentenza li kienet inghatat minn din il-Qorti fl-ismijiet ***Cassar v. Prim Ministru*** *fit-22 ta' Frar, 2013, u qalet "...il-Qorti Kostituzzjonali cahdet it-talba tar-rikorrent proprju ghaliex meta kien akkwista l-fond, kienet diga` fis-sehh il-ligi li kien qieghed jilmenta minnha.". Il-Qorti taghraf il-qawwa logika tal-argument tal-ewwel Qorti: ragunament li kienet ressqet din il-Qorti stess fil-kaz ta'* ***Cassar*** *appena citat. Wara kollox, min jixtri d-dirett dominju ta' fond moghti b'enfitewsi perpetwa mitt sena ilu ma jistax illum ighid li mitt sena ilu ma kienx maghruf kemm kienet ser tkun l-inflazzjoni u ghalhekk illum qed igarrab ksur tal-jedd ghat-tgawdija tal-proprjeta`. Madanakollu wara d-decizjoni tal-*

[30] Q.Kos. 47/14 - Kaz fejn koncessjoni enfitewtika kienet saret wara l-emendi tal-Att XXII 1979.

Qorti Ewropea appena citata, l-insenjament ta' din il-Qorti llum isegwi dak tal-Qorti Ewropea. [Ara Q. Kost. 1/12, Raymond Cassar Torreggiani et v. Avukat Generali et, deciz ta' April, 2016, Q. Kost. 1/2017, Chemimart Ltd (C74) v. Avukat Generali et, deciz 14 ta' Dicembru, 2018.]…'

15. Ferm il-premess din il-Qorti tibda bl-osservazzjoni li skond il-gurisprudenza tal-Qorti Ewropeja, il-kontroll fuq il-kera u r-restrizzjonijiet fuq it-tmiem ta' kuntratt ta' kera jikkostitwixxu kontroll fuq l-uzu tal-proprjeta` tal-individwu a tenur tat-tieni paragrafu tal-Artikolu 1 tal-ewwel Protokoll tal-Konvenzjoni, u ghalhekk il-kaz ghandu jigi kkunsidrat taht dak il-paragrafu. Izda sabiex l-indhil tal-Istat ikun jaqa' fit-termini ta' dak l-artikolu, hemm bzonn li l-indhil ikun legali, maghmul fl-interess generali u jilhaq bilanc gust bejn l-interess generali tal-komunita` u l-protezzjoni tad-drittijiet fondamentali tal-individwu[31]*. Is-silta li ssegwi tigbor fiha l-ezercizzju shih li ghandha taghmel il-Qorti qabel ma tiddikjara sehhitx lezjoni jew le:*

"56. 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 Amato Gauci, cited above, §57). 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

---

[31] 2 Ara Bradshaw and Others v. Malta, App. Nru. 37121/15, deciza 23 ta' Ottubru, 2018.

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).[32]

16. Din il-Qorti tirrileva li l-hsieb taghha llum dwar is-sokkombenza o meno tal-awturi tar-rikorrent – u konsegwentement tar-rikorrent stess - ghad-disposizzjonijiet tal-Kap. 69, hu rifless f'dak li qalet il-Qorti Ewropea fid-decizjoni taghha fl-ismijiet ***Cassar v. Malta***[33]*. L-ewwel punt li gie deciz kien jekk sahansitra hemmx indhil:*

"45. More specifically in the context of restrictions on lease agreements (in particolar the prohibition on bringing a tenant's lease to an end), the Court has found that there was in 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).

---

[32] Ibid

[33] App. 50570/13 deciza 30 ta' Jannar, 2018.

"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 econclude 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 implicity 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."

17. Il-kaz appena citat ghandu rilevanza ghall-kaz odjern ghaliex il-fatti relevanti huma simili: f'dak il-kaz ir-rikorrenti kienu akkwistaw il- proprjeta' minghand terzi fil-11 ta' Jannar, 1988, jigifieri wara li sar l-Att XXII tal-1979, konsapevoli tal-fatt li dik il-proprjeta` kienet mizmuma minn inkwilin rikonoxxut li kellu tlett itfal. Ghalhekk il-Qorti Ewropeja irrilevat li huma kienu xtraw soggett ghal kondizzjonijiet ristrettivi imposti minn dak l-Att li permezz tad-disposizzjonijiet tieghu ma setghux jistabbilixxu huma stess il-kera dovuta jew jitterminaw liberament il-kirja. Meta d-diskrepanza kibret bejn il-kera mhallsa u dik dettata

mis-suq, huma rrikorrew ghar-rimedji li kienet toffri l-ligi izda fic-cirkostanzi dawn ma swewx u d-decizjonijiet tal-qrati domestici fil-konfront taghhom kienu jikkostitwixxu ndhil:

"48 ... 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 tohave waived any rights in that connection (see Zammit and Attard Cassar, cited above, §50)."

18. Ghal dak li jirrigwarda l-osservazzjoni taghha dwar ir-rimedji domestici quddiem il-qrati, il-Qorti Ewropea addottat il-hsieb kif imfisser fis-sentenza fl-ismijiet ***Zammit and Attard Cassar v. Malta*** *citata mill-ewwel Qorti*[34]

19. Jirrizulta wkoll mis-sentenza fuq indikata li l-Qorti ghandha wkoll necessarjament tqies jekk tezistix protezzjoni, inkluza dik procedurali, sabiex

[34] App. 1046/12, deciza 30 ta' Lulju, 2015. – ara para.29 tas-sentenza appellata

tassigura ruhha li l-operat tas-sistema u l-impatt taghha fuq id-drittijiet proprjetarji tas-sid humiex ta' natura arbitrarja jew sahansitra jhallux lok ghall-incertezza. Ghalhekk il-Qorti Ewropeja qieset ukoll il-funzjoni tal-Bord tal-Kera, fattur iehor ferm important fis-sejbien ta' lezjoni, fejn osservat li, filwaqt li dan il-Bord seta' offra l-protezzjoni procedurali adegwata sabiex ihares l-operat tas-sistema ta' kontroll, fil-fatt li funzjoni tieghu giet ristetta mil-ligi b'tal-mod li effettivament dan ma' ghandu l-ebda effett utili li seta' ipprevjena l-lezjoni:

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).".

20. Fil-kaz odjern, l-ewwel Qorti waslet ghall-konkluzjoni li minkejja li l-Istat ghandu margini ta' diskrezzjoni wiesgha taht il-Konvenzjoni, jirrizulta minghajr dubju ksur tal-principju ta' proporzjonalita` minhabba d-diskrepanza qawwija bejn il-kera li seta' jircievi r-rikorrent skond il-ligi u dik dovuta skond is-suq hieles. Din il-Qorti tikkondividi dan il-hsieb, ukoll fil-kaz odjern fejn l-awturi tar-rikorrent kienu dahlu fi ftehim ta' kirja fi zmien meta diga` kienu gew fis-sehh id-disposizzjonijiet tal-Kap. 69 u allura applikabbli ghal dak il-ftehim. Hekk hija l-gurisprudenza tal-Qorti Ewropea u ta' din il-Qorti illum[35].

[35] Ara Q.kost. 1/2017 Chemimart Ltd. v Avukat Generali et. 14/12/2018.

21. Ghal dawn ir-ragunijiet din il-Qorti ma issibx l-ewwel aggravju gustifikat u ghalhekk qed jigi michud".

Sentenza oħra li tista ukoll tagħti dawl fuq din il-vertenza u dan fil-konfront tal-Liġijiet tal-kera nostrali, kemm huma dawn in linea ma l-invokat artikolu 1 ta' l-Ewwel Protokol hija dik deċiża minn din il-Qorti diversament presjeduta fl-ismijiet **Saviuor Paul Portelli vs Avukat Generali et.**[36]**.** Per parentesi ġia kif intqal fuq il-kwistjoni ta' rekwisizzjoni, għalkemm l-ilment jirrgwarda l-artikolu 37 tal-Kostituzzjoni jibqa xorta applikabbli u relevanti għal kwistjoni in ezami

"47. Jigi osservat li, ghalkemm il-kaz odjern ma jittrattax esproprijazzjoni imma jirrigwardja t-tehid ta' interess fi proprjeta` ghal skopijiet ta' kirja, dan it-tehid ta' interess tant hu rigidu u wiesa' li fil-prattika jservi sabiex jippriva lir-rikorrenti bhala sidien mill-uzu u mit-tgawdija tal-proprjeta` taghhom. Ghaldaqstant din il-Qorti, fil waqt li hi konxja tal-gurisprudenza indikata mill-Avukat Generali li tghid li l-kontroll ta' uzu u tgawdija ta' proprjeta` huwa ezenti mill-applikazzjoni tal-Artikolu 37[1] tal-Kostituzzjoni, hi tal-fehma li f'dan il-kaz non si tratta semplicement ta' kontroll ta' uzu izda si tratta ta' tehid ta' interess fi proprjeta` u ghalhekk jaqa' fil-protezzjoni tal-artikolu kostituzzjonali fuq citat." (Ara wkoll ***Ian Peter Ellis et vs Avukat Generali et****, Kost 24/06/2016 u* ***Rose Borg vs Avukat Generali****, 11/07/2016 - ghalkemm f'din ta' l-ahhar il-pronunzjament tal-Qorti saret obiter fil-mankanza ta' appell fuq dak il-punt; u l-*

[36] P.A. Sede Kost. 36/2019. 16/07/2019

*aktar recentement - **Anthony Aquilina vs Avukat Generali et** – PA (Kost) MCH - dec. fid-9 ta' Ottubru 2017).*

*Illi kif irriteniet il-**Qorti Kostituzzjonali** fil-kawza fl-ismijiet **Mary Anne Busuttil vs Tabib John Cassar et.** datata l-31 ta' Ottubru, 2014:*

"L-artiklu 37 tal-Kostituzzjoni jhares mhux biss kontra t-tehid tal-proprjeta` shiha minghajr kumpens xieraq, b'mod li tinholoq sitwazzjoni fejn 'is-sid originali gie zvestit u mnezza` minn kull dritt li ghandu fuq dik il-proprjeta`, izda jrid ukoll illi ebda interess ..... jew dritt fuq proprjeta` ta' kull xorta li tkun' ma ittiehed minghajr kumpens xieraq."

…

*"Rigward l-**Artikolu 1 tal-Ewwel Protokoll** l-interpretazzjoni moghtija mill-Qorti Ewropea ghal dan l-Artikolu hu ormai kostanti fis-sens li :*

"1. Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognizes that the Contracting States are entitled, inter alia, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second

and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule ***Rikors Kostituzzjonali Nru: 36/2019/LSO. 34***

16 ta' Lulju 2019.

(see, among other authorities, ***James and Others v. the United Kingdom****, 21 February 1986, § 37, Series A no. 98, which reiterates in part the principles laid down by the Court in* ***Sporrong and Lönnroth v. Sweden****, 23 September 1982, § 61, Series A no. 52; see also* ***Broniowski v. Poland [GC****], no. 31443/96, § 134, ECHR 2004-V).* ***Hutten-Czapska v Poland).***[37]

*Tlieta huma r-rekwiziti li ghandhom jigu sodisfatti sabiex interferenza mill-Istat tkun wahda permissibli ai termini tal-****Ewwel Artikolu tal-Ewwel Protokoll tal-Konvenzjoni Ewropea*** *u cioe`:*

(a) Il-mizura mehuda mill-Istat tkun saret taht qafas legali;

(b) L-iskop tal-mizura jkun wiehed ghal ghan legittimu; u

(c) Il-mizura mehuda zammet bilanc gust u proporzjonat bejn l-ghan socjali u l-htiega li jigu rispettati d-drittijiet fundamentali tas-sidien;"

...

"Bilanc Xieraq - Proporzjonalita'

[37] 2 App. No. 35015/97 - 19 June 2006.

*Hija b'referenza ghal dan it-tielet element li l-vertenza ghandha tigi ezaminata. Ikkonsidrat li dwar l-interess pubbliku, il-Qorti Ewropea tad-Drittijiet tal-Bniedem qalet hekk fil-każ ta' **James v. Ir-Renju Unit** (21 ta' Frar 1985):*

"46. 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 public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment both of the existence of a problem of public concern warranting measures of deprivation of property and of the remedial action to be taken (see, mutatis mutandis, the Handyside judgment of 7 December 1976,Series A no. 24, p. 22, para. 48). Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation. Furthermore, the notion of "public interest" is necessarily extensive. In particular, as the Commission noted, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues on which opinions within a democratic society may reasonably differ widely. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is "in the public interest" unless that judgment be manifestly without reasonable foundation. In other words, although the Court cannot substitute its own assessment for that of the national authorities, it is bound to review the contested measures under Article 1 of Protocol No. 1 (P1-1) and, in so doing, to make an inquiry into the facts with reference to which the national authorities acted."

Huwa ċar illi il-margini ta' diskrezzjoni u aprezzament li għandu f'idejh l-Istat biex jillegisla fuq livell domestiku huwa wieħed wisgħa ħafna fejn jirrigwarda dawk il-Liġijiet meħtiega biex jaqdu il-ħtieġijiet soċjali u ekonomiċi tal-mument. Spetta pero għall din il-Qorti biex fin in fondo tara jekk intlaħħaqx dak il bilanċ bejn l-interess generali u d-dritt ta' propjeta' tas-sid, għalhekk li tiżamm il-proporzjonalita' biex iwassal lil liġi jew azzjoni anke waħda ta' natura amministrattiva li tmiss il-liberta' ta' użu ta' propjeta' hux in konformi mall-vot ta' l-artikolu in eżami.

"Fi kliem iehor, irid jigi ezaminat jekk, l-applikazzjoni fil-kaz konkret ta' ligi li hija maghmula prima facie "skont l-interess generali" tivvjolax il-principju tal-proporzjonalita`. Kif jinghad f'kaz deciz mill-Qorti ta' Strasbourg aktar kmieni s-sena li ghaddiet - ***Hutten-Czapska v. Poland*** *- fejn hemm l-intervent tal-Istat, dan irid johloq bilanc bejn l-interess generali u l-interess tal-privat, u l-kaz partikolari (jigifieri l-fattispeci partikolari tal-kaz) irid jigi ezaminat ghall-fini ta' tali determinazzjoni. Dik il-Qorti qalet hekk f'paragrafu :*

...

Aktar recentement fil-kaz ***Zammit and Attard Cassar v Malta4*** *il-Qorti Ewropea regghet affermat il-principji enunzjati fi skorta ta' sentenzi precedenti dwar kontroll ta' kiri ta' djar u irriteniet hekk:*

"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).

...

" Inoltre, din il-Qorti kif ippresjeduta mill-On. Imh. Mark Chetcuti fil-kaz fl-ismijiet ***Catherine Tabone noe v Avukat Generali et,*** *dec. fit-28 ta' Mejju 2019, irriteniet li :*

"Fil-fehma tal-Qorti l-fatt li r-rikorrenti accettaw il-kera ma jigiex li huma rratifikaw kull ma gara, ghaliex il-fatt innifsu li kienet accettata kera ma jammontax ghal rinunzja jewakolu biex jittiehdu proceduri bhal dik odjerna. Huwa evidenti li l-awturi tar-rikorrenti u r-rikorrenti accettaw il-hlas tal-kera fil-kuntest ta` regim legali partikolari li ma kienx jaghtihom triq ohra hlief dik. Is-sid ma kellux alternattiva ohra (ara ***Maria Ludgarda sive Mary Borg et vs Rosario Mifsud et****, Kost 29/04/2016). Ghalhekk f'cirkostanzi fejn is-sidien sabu ruhhom f'pozizzjoni guridika forzatament imposta fuqhom mill-awtoritajiet tal-Istat, l-accettazzjoni tal-kera da parti taghhom bhala sidien ghall-okkupazzjoni tal-post taghhom mill-intimati Stewart ma jistax legalment jitqies bhala rinunzja tad-drittijiet taghhom. Kif gie diversi drabi ritenut, ir-rinunzja ghad-drittijiet ghandha tirrizulta minn provi cari u univoci." Huwa minnu li dan il-kaz kien jittratta kera taht il-Kap 69 filwaqt li l-kaz odjern jittratta kirja li bdiet taht il-qafas legali li jirregola ordnijiet ta' rekwizizzjoni. Izda tali ragunament japplika multo magis fil-kaz odjern fejn is-sid kien rinfaccjat b'att li b'effett tieghu gie spussessat mill-proprjeta' tieghu.*

Inoltre din il-qorti tqis li r-rinunzja (waiver) ghad-dritt ghandha tkun wahda libera u espressa, fejn id-drittijiet li qed jigu rinunzjati huma certi, u prevedibbli. Fil-materja ta' drittijiet fondamentali tal-bniedem fejn jirrizulta l-isproporzjon tant lesiv tad-drittijiet protetti mill-Konvenzjoni, l-ezami tal-Qorti ghandha tkun wahda li tiffavorixxi l-protezzjoni tad-dritt ."

Magħduda ma dawn l-eċċezzjonijiet wieħed jista' jikkonsidra l-ewwel tlett eċċezzjonijiet ta' l-intimata li ssostni lil kera kienet dejjem imħallsa, li kienet in konformi mal-liġi vigenti, ukoll li l-istess bl-emendi tas-sena 2010 kienet taħseb għal mekkaniżmu ta' awment perjodikament.

Tkomppli is-sentenza ċitata Saviour Paul Portelli[38] ;

"Regim Legali tal-Kap 69

Illi ghal dak li jirrigwarda r-regim legali tal-Kap 69, gie ribadit fil-kaz citat ta' ***Catherine Tabone noe:***

"Illi fil-fehma tal-Qorti huwa minnu illi l-konsegwenzi legali tal-Kap. 69 kienu maghrufa meta gie ffirmat il-ftehim fin-1995 izda r-rikorrenti ma jidhirx li kellhom ghazla libera u lanqas ma setghu "reasonably have foreseen the extent of inflation in property prices in the decades that followed" (ara ***Zammit and Attard Cassar vs Malta*** *§50). Li tali sitwazzjoni ta` nuqqas ta` ghazla kienet tezisti f`Malta sa zmien recenti gie kkonfermat f`diversi sentenza ta`dawn il-Qrati u anke tal-Qorti Ewropea. L-ghazla ghalhekk ma tistax titqies bhala wahda hielsa*

[38] Op.cit.

u l-awturi tar-rikorrenti u r-rikorrenti ma jistghux jitqiesu li, ghax kienu jafu bil-konsegwenzi taht il-Kap. 69, dahlu minn jeddhom ghal dawk il-konsegwenzi b'mod li rrinunzjaw ghall-protezzjoni li jaghtuhom il-ligijiet li jharsu d-drittijiet fondamentali. (Ara fost ohrajn Qorti Kost. ***Rose Borg vs Avukat Generali et****, 11/07/2016;* ***Chemimart Limited vs Avukat Generali et****, 31/10/2017; u* ***Victor Portanier et vs Avukat Generali et****, u* ***Perit David Psaila vs Avukat Generali et****, 29/09/2018)."*

...

"Illi ghal dak li jirrigwarda r-regim li jirregola l-kirjiet f'Malta, l-Qorti Ewropea tad-Drittijiet tal-Bniedem wkoll ippronunzjat ruħha f'dan ir-rigward f'deċiżjoni fl-ismijiet ***Amato Gauci vs. Malta*** *fejn qalet:*

"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 placed on the applicant. The latter requested to bear most of the social and financial costs of supplying housing accommodation to Mr and Mrs P. 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 to property."

*Ghal dak li jirrigwarda l-Att X tal-2009, fid-decizjoni taghha tal-11 ta` Dicembru 2014 fil-kaz ta` **Anthony Aquilina vs Malta** l-Qorti ta' Strasburgu rrimarkat illi: "the 2009 and 2010 amendments (only) slightly improved a landlord`s position".*

*Illi fil-kaz **Apap Bologna v Malta**[39] il-Qorti Ewropea regghet sabet li kien hemm ksur tal-Ewwel Artikolu tal-Ewwel Protokoll u fissret il-hsieb hekk:*

*"4. The Court takes note of the efforts made by the Government to make changes to the legislation (in the form, inter alia, of the 2010 amendments) in the wake of the execution phase before the Committee of Ministers in connection with a series of judgments delivered against Malta concerning this subject matter (see **Ghigo**, cited above; **Edwards,** cited above and **Fleri Soler and Camilleri v. Malta**, no. 35349/05, ECHR 2006-X). Indeed, in the first two of those cases the Court, having regard to the systemic situation it had identified, considered that general measures at national level were called for.*

Nevertheless, despite the passage of ten years, those cases remain open before the Committee of Ministers. In this connection, the Court cannot but note that the rents provided for by the amended law remain in stark contrast to the values of such property.

5. In relation to the present case, the Court observes that the amelioration brought about by the 2010 amendments increased the annual rent payable to the applicant in 2010 from EUR 93 to EUR 185 – the latter sum will continue to

---

[39] 8 Application no. 46931/12) 30th August 2016

increase by a few euro every three years thereafter (for example, the rent in 2014 was EUR 197). The Court also observes that according to the court-appointed architect's valuation and also the Government's own estimate, the annual rent of the property at issue for 2010 was EUR 2,850 and EUR 2,000 respectively. Thus, for the same year, according to the new laws in force, the applicant was to receive in rent less than 10% of the market value estimated by the Government.

6. Having regard to the meagre amount of rent received by the applicant, which persists to date despite the relevant amendments, the Court finds that a disproportionate and excessive burden continues to be imposed on the applicant, who has been ordered to bear most of the social and financial costs of supplying housing accommodation to C.C. It follows that the Maltese State has failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant's right of property (ibid; see also, mutatis mutandis, in connection With the above-mentioned amendments, Anthony Aquilina v. Malta, §§ 63 and 67, no. 3851/12, 11 December 2014). "

"Dan kollu jinsab rifless fil-gurisprudenza l-aktar recenti tal-Qrati taghna.

Fis-sentenza tas-27 ta` Marzu 2015 fil-kawza citata ***Ian Peter Ellis et vs Avukat Generali et****, 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 ghal-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 1531, fic-cirkostanzi tal-kaz, jaghmlu remota l-possibilita` li dawn jipprendu l-pussess tal-fond taghhom."

Fid-dawl ta' dan kollu premess din il-Qorti taqbel li r-rikorrent sofra lezjoni tad-dritt ghat-tgawdija pacifika tal-proprjeta' tieghu minhabba li r-restrizzjonijiet taht il-Kap. 69 stante li sofra diminuzzjoni fil-valur tal-proprjeta' tieghu; gie assoggettat ghall-relazzjoni forzata fil-konfront tal-okkupant; li fl-isfond tal-ligijiet applikabbli, kellu jissubixxi incertezza dwar ir-ripresa pussess tal-fond proprjeta' tieghu; u inoltre il-kumpens offrut huwa wiehed irrizorju."

Magħmula dawn l-osservazzjonijiet tqies s-segwenti fatturi;

Illi jiriżulta mill-provi mressqa lli l-fond in kwistjoni ġie l-ewwel *requistioned* u dana dejjem taħt il-kappa tal-Ligi, l-Housing Act u ngħata b'kirja forzata fuq is-sid lil ċertu Joseph Camilleri. Sussegwentement kienet anke inħarget, għar-raguni njota, ordni ta' derekiżiżżjoni fuq l-istess fond li ġiet notifikata lil sid il-fond l-Kontessa msemmija.

Id-Dipartiment/Awtorita' anke kien bagħat ittra wara li l-istess sid kien ikkomunika miegħu li ma kellu ebda oġġezzjoni lis-sid jagħmel użu mill-fond.

Fis-19 ta' Frar 1969 ħarget l-ordni ta' derekwiżizzjoni msemmija. Id-Dipartiment igħid illi din ġiet notifikata lis-sid. Il-Qorti m'għandħa ebda raguni ma tqies dan bħala fatt nonostante l-kontestazzjoni dwar l-istess mill-istess rikorrenti fin-nota ta' sottomissjonijiet[40].

[40] Fol 123 et. seq.

Ġie pruvat ukoll illi wara lil fond kien ġie derekwiżiżżjonat, snin wara dana ngħata mill-istess kontessa b'kera lil Domnic Attard sussegwetement lil ommha u lil inkwilina odjerna wara li dawn biddlu minn flat għall-ieħor diversi drabi, dejjem sa fejn jirrigwarda propjeta' ta' l-istess kontessa. Din il-kera u bdil sar bil-barka tal-propjetarja u sintendi bi qbil magħha.

Huwa veru ukoll illi sal lum l-inkwilina għada tghix fl-istess propjeta' nonostante li hi jidher li għandha propjeta' oħra tagħha u tħallas il-kera ġia indikata bl-awment kif regolat bl-emendi rellattivi.

Esposti dawn il-fatti tara li bla dubbju kemm ir-rekwiżiżżjoni ukoll l-ammont ta' kera impost huma riżultat ta' qafas legali, b'mod rispettiv; *Housing Act* u Liġijiet ta' Kera vigenti, sintendi kif emendati. Għalhekk tara illi l-ewwel aspett diskuss ta' '*lawfulness'* huwa sodisfatt.

Żgur ukoll illi tenut kont tal-qagħda soċjali u ekonomika tal-pajjiż fiż-żmienijiet li taw bidu għal lanjanzi, meta titqies in-neċessita' tal-*housing,* il-populazzjoni u l-bżonnijiet tas-soċjeta' in generali komparat anke mad-distribuzzjoni tal-ġid, kienu jirrendu neċessarju l-interventi legislattivi n kwistjoni. Pero mehud kont taż-żmien li fih dawn l-liġijiet ġew implementati komparat mar-realta' soċjali u ekonomika tal-lum, b'mod lampanti qed tiġi kreata deskrepanza qawwija fil-konfront tad-drittijiet tas-sid b'mod partikolari fejn jirrigwarda l-valur lokatiżżju .

Huwa vera lli is-sid Kontessa, awtur fit-titolu tar-rikorenti odjern, tat l-fond *de quo agitur* b'kirja, pero wieħed żgur u qatt ma seta' jimmagina li mal milja taż-

żmien il-valur tal-propjeta' fuq is-suq ħieles u anke dak lokatizzju tagħha, kien se jiskala bil-mod kif naraw kurrentement, u b'mod partikolari iżda mhux esklussiv ġewwa l-Belt. Anke jekk il-liġijiet ħasbu għal ċerta emendi biex jemeljoraw l-ammont ta' kirja li tista tiġi mposta, xorta il-fond in kwistjoni hu milqut b'limitazzjonijiet serji u divergenti fil-konfront u għalhekk hemm sproporzjon kbir mixħut kompletament fuq is-sid.

Minn naħa l-oħra fil-konfront ta' l-ilment li hu indirizzat lejn id-diffikulta' ta' ripussess tal-propjeta' tqies li hawn, bl-istess mod, sakemm kien hemm ir-relazzjoni arbitrarja u forżata maħluqa mir-rekwiżiżżjoni tal-fond, is-sid ma kellu ebda ċertezza ta' durata ta' l-istess *'teħid'*. Llum saru varji emendi li jikkontrollaw minn jista' jkun kerrej wara mewt tal-kerrej originali bħal ma hu dak provdut fl-artikolu 1531F tal-Kap 16 ukoll id-definizzjoni ta' *'kerrej'* ai termini tal-Kap 69. Għalhekk għalkemm id-durata tal-kera llum mhux waħda indefinita, pero in kwantu mhux provduta kif sew jilminta r-rikorrenti, b'mekaniżmu li jgħin tramite awment ġust għat-tul tat-tenuta tagħha, u r-ripussess tal-fond jaf ikollu durata *assai* twila, tqies li anke f'dan il-konfront is-sid tal-fond *de quo* qed jiġi lez fit-tgawdija ġusta tal-propjeta' tiegħu.

Għalhekk hija l-fehma tal-Qorti lli fil-konfront tal-Liġiet tal-Kera vigenti, u fil-konfront tar-rekwisizzjoni ma giex milħuqq l-element ta' propozjonalita' kif żillupat fil-ġurisprudenza indikata u dana meta wieħed jagħti ukoll ħarsa lejn dak li kkonkluda l-Perit David Pace fir-relazzjoni tiegħu suriferuta u l-kera attwali perċepita.

Konsegwetement tilqa l-ewwel talba sa fejn jirrigwarda l-ksur ta' l-Artikoli 1 ta' L-Ewwel Protokol tal-Konvenzzjoni Ewropeja għad-Drittijiet tal-

Bniedem u tiċħad l-eċċezzjonijiet ta' L-Avukat Generali u l-intimata fir-rigward.

L-ewwel talba tikkomprendi ukoll ksur ta' l-artikolu 13 ta' l-imsemmija Konvenzjoni, Kap 319 tal-Liġijiet ta' Malta.

Dwar dan l-artikolu naraw li fil-pubblikazzjoni maħruga mill-Kunsill Ewropew fl-ismijiet **Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights Protection of property**[41] fost l-oħrajn jingħad dan**:**

"219. For Article 13 of the Convention to come into play, the applicants should have an "arguable" claim. In the affirmative, they should have effective and practical remedies in order to have their claim decided and, if appropriate, to obtain redress for the losses.

220. In Iatridis v. Greece [GC], § 65, concerning the authorities' failure to return the cinema to the applicant, the Court found that there was a difference in the nature of the interests protected by Article 13 of the Convention and Article 1 of Protocol No. 1: the former affords a procedural safeguard, namely the "right to an effective remedy", whereas the procedural requirement inherent in the latter is ancillary to the wider purpose of ensuring respect for the right to the peaceful

[41] Updated on 31 August 2019

enjoyment of possessions. Both a violation of Article 1 of Protocol No. 1 and of Article 13 was found."

Fil-ktieb **Harris, O'Boyle and Warbrick' The Law of the European Convention on Human Rights**[42] insibu:

"Article 13 gives 'direct expression to the States' obbligation to protect human rights first and foremost within their own legal system. [43]*It establishes 'an additional gaurantee for an idividual in order to ensure that he or she effectively enjoys those rights"*[44]

Article 13 cases will therefore involve the Court examing the domestic legal regime relevant to the applicant's Convention claim to see if it was possible for him or her to obtain relief at the national level. Generally speaking, the Court will be examing whether domestic law provided an 'effective remedy' in the sense that, if resorted to, it could have prevented the alleged violation occurring or continuing, or for any violation that had already occurred, the applicant could have achieved appropiate redress[45]*"*

Il-Qrati tagħna f'deċizjoni fl-ismijiet **Saviour Paul Portelli vs. Avukat Generali et**[46]**.** qalu li :

"ARTIKLU 13 TAL-KONVENZJONI

---

[42] Pagna 746

[43] **Kudha v Poland** 2000-XI: 35 EHRR 198 para 152GC

.

[46] Op.cit.

Illi r-rikorrent ma jgħid xejn dwar dan l-artikolu li lanqas ġie trattat dan il-punt fit-trattazzjoni orali. **(li per parentesi hija anke s-sitwazzjoni fil-kaz in eżami)**

L-Artikolu 13 *jiddisponi li "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."*

L-awturi ***Jacobs & White and Ovey,*** *fil-ktieb "European Convention on Human Rights ", (3.ed) jghidu li "Article 13 offers a measure of respect for national procedural autonomy; this refers to the ability of each Contracting State to determine the form of remedies offered to meet its obligations under the article....National procedural autonomy does not however, extend to the very existence of a remedy, since Article 13 requires that there is an effective remedy to enforce the substance of the Convention rights in the national legal order."*

Illi fid-deċizjoni tal-Grand Chamber tal-Qorti Ewropea fil-kaz ***Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*** *[GC][47] mogħti fis-17 ta' Lulju 2014 ingħad:*

"Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The

[47] App Nru. 47848/08

effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law. In particular, its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see Paul and Audrey Edwards v. the United Kingdom, no. 46477/99, §§ 96-97, ECHR 2002-II).[48]"

Illi inoltre, l-Qorti Ewropea, fl-eżami tal-artikolu 13, tqies li dan l-artikolu jkun soddisfatt anke jekk ir-rimedju effettiv jinkiseb b'aggregate of remedies. Fil-kaz ***Brincat and Others v Malta,*** *fuq ċitat, il-Qorti, wara li eżaminat il-qafas legali Malti in materja, irriteniet li dan joffri rimedji fuq żewġ binarji, dak ordinarju ċivili għad-danni materjali (damnum emergens u lucrum cessans) kif ukoll rimedju għad-danni non-pekunjarji quddiem il-Qrati fil-kompetenza kostituzzjonali tagħhom*[49]*.*

Illi f'kazijiet bħal dak odjern, ir-rimedji li jeżistu huma dawk quddiem il-qrati tagħna aditi mill-kompetenza kostituzzjonali tagħhom in kwantu li l-liġi ordinarja ma tagħtix rimedju effettiv lis-sidien biex jindirizzaw l-izbilanċ maħluq bil-qafas legali tal-liġijiet tal-kera.

---

[48] 10 Para 148.

[49] Ara ad. Ez. Gera de Petri Testaferrata bonici Għaxaq vs Malta nru. 26771/07 §

Għaldaqstant din it-talba qed tiġi respinta."

Riprodotti dawn l-osservazzjonijiet li huma għal kollox applikabbli għal kaz odjern tiċħad dik il-parti tat-talba fir-rigward ta' l-artikolu 13 ċitat.

It-tieni talba tar-rikorrenti tirrigwarda is-sodissfazzjon ġust u xieraq għal ksur misjub liema talba tikkomprendi ukoll l-izġumbrament ta' l-inkwilna mill-fond *de quo* ukoll l-awment tal-kera ekwivalenti jew viċin il-prezz tas-suq u li jingħata kumpens għad-danni materjali lir-rikorrenti sofferenti. Ukoll intalbu id-danni pekunjarji u non pekunjarji minħabba l-lezjonijiet sofferti.

Da parti ta' l-intimati tara is-sitt, s-seba' u t-tmien eċċezzjoni mressqa mill-Avukat Generali, ukoll kull linja difenzjonali li ressqet l-intimata inkwilina fir-rigward, tqies illi ġia fid-deċiżjoni mogħtija mill-Qorti Kostituzzjonali fl-ismijiet **Gabriella Mangion et. vs Avukat Generali** intqal li[50]

"Il-Qorti tirrileva li rigward l-ordni ta' zgumbrament ikun opportun li dan l-aspett tal-vertenza jigi determinat minn procedura ohra quddiem qorti jew tribunal appozitu li tipprovdi ghalihom il-ligi, u hawn taghmel riferenza ghas-

[50] Rikors 47/14AF deċiza 31/01/2019

sentenza fl-ismijiet ***Maria Stella sive Estelle u John konjugi Azzopardi Vella v. Avukat Generali u Henry u Judith konjugi Azzopardi***[51]*:*

"Dan ma jfissirx illi din il-qorti sejra tordna l-izgumbrament tal-konvenuti Azzopardi; dan ma huwiex kompitu ta' din il-qorti. Li qieghda tghid il-qorti huwa biss illi f'kawza ghall-izgumbrament tal-konvenuti Azzopardi quddiem il-qorti jew tribunal kompetenti, il-konvenuti Azzopardi ma jkunux jistghu jinqdew bl-art. 5 tal-Kap. 158 ghad-difiza taghhom.".

Ukoll fir-rigward għat-talba ta' żgumbrament il-Qorti se tagħmel tagħha dawn il-varji insenjamenti stabbiliti mill-Qrati nostrali:-

Josephine Azzopardi pro et noe vs L-Onorevoli Prim Ministru et deciz fis-27 ta' Gunju 2017 (Rik 96/2014) fejn inghad hekk –

"Illi gie deciz diversi drabi mill-Qrati taghna li l-proceduri kostituzzjonali mhumiex il-forum addattat sabiex jigi deciz jekk inkwilin ghandux jigi zgumbrat jew le. Din il-vertenza tispetta lill-qrati ordinarja jew lill-Bord li Jirregola l-Kera skont il-kaz. Dak li huwa rilevanti hija l-konsiderazzjoni li, fil-kaz li jinstab li ligi hija vjolattiva tad-drittijiet fundamentali ta' xi parti, dik il-ligi ma tistax tibqa' tinghata effett bejn il partijiet kemmil darba u sakemm l-applikazzjoni taghha tkun leziva ghad-drittijiet fundamentali ta' dik il-parti (ara sentenza ***Curmi vs Avukat Generali****, Kost 24/06/2016).*

---

[51] App. Kost. 15/2014, deciza 30 ta' Settembru, 2016; ara wkoll App. Kost. 2/2017, **Maria Pia sive Marian Galea v. Avukat Generali et**, deciz 14 ta' Dicembru, 2018.

""Fl-istess sens is-sentenza ***Portelli vs Avukat Generali****,*

45/2014 – deciza fil-25 ta' Novembru 2016 fejn il-Qorti qalet hekk:

""Dan ma jfissirx illi din il-qorti sejra tordna l-izgumbrament tal-konvenut; dan ma huwiex kompitu ta' din il-qorti u lanqas ma huwa meritu ta' kawza kostituzzjonali illi l-qorti tara jekk il-konvenut ghandux xi titolu iehor li jaghtih jedd ikompli jzomm il-fond: dak ikun il-meritu ta' kawza ad hoc quddiem il-qorti jew tribunal kompetenti. Li qieghdha tghid din il-qorti huwa biss illi f'kawza li jistghu jifthu l-atturi ghall izgumbrament tal-konvenut quddiem il-qorti jew tribunal kompetenti, ilkonvenut ma jkunx jista' jinqeda bl-art. 12(2) tal-Kap. 158 ghad-difiza tieghu billi dak l-artikolu huwa, fir-relazzjoni bejn l-atturi u l-konvenut, bla effett". [Ara s-sentenza moghtija fid-29 ta' April 2016 fl-ismijiet ***Victor Portanier et v. Avukat Generali et****]*

"Kif gie deciz fil-kawza ***Azzopardi et vs Avukat Generali*** *et, nru. 15/2014, PA 28/01/2016 "La darba l-ligi li tat lok ghal dan il-ksur hi wahda 'legali' u saret fl-interess pubbliku, l-izgumbrament tal-inkwilini bla ebda konsiderazzjonijiet ohra rilevanti jkun qed jizbilancja l-mizien kollu favur is-sidien".*[52]

L-istess ingħad fid-deċizzjoni fl-ismijiet **Gerald Neville et vs Direttur Akkomodazzjoni Soċjali et.**[53]

---

[52] Ara appell Rebecca Hyzler vs Avukat Generali Kost 42/15MH 29/3/2009

[53] Appell Ċivili 46/2008/1 deċiza 25/11/2011

*“**60.** Fil-kaz in ezami din il-Qorti hija tal-fehma li ladabra, kemm l-ewwel Qorti kif ukoll din il-Qorti rriskontraw vjolazzjoni tad-dritt fundamentali tar-rikorrenti billi ma nzammx bilanc bejn l-interessi tas-sidien u dawk tal-inkwilin fir-rigward tal-kera li l-inkwilin kellu jhallas, l-ewwel Qorti kellha bhala rimedju tordna li l-izbilanc riskontrat jigi indirizzat u mhux li l-fond jinghata lura lis-sid, ladarba l-validita` tal-lokazzjoni ma kienitx in diskuzzjoni u r-rekwizizzjoni ma gietx attakkata. Fil-fehma ta’ din il-Qorti ma kienx indikat li tinghata l-ordni ta’ terminazzjoni tal-lokazzjoni. La l-ewwel Qorti u anqas din il-Qorti ma sabu li t-tehid b’rekwizizzjoni tal-fond de quo kien bhala tali b’xi mod kontra l-ligi jew li ma sarx ghal skop pubbliku.*

***61.** Ghalhekk din il-Qorti qeghdha tirrevoka l-ordni tal-ewwel Qorti li tigi terminata l-lokazzjoni u li l-fond jigi ritornat lir-rikorrenti.”*

Il-Qorti tagħmel tagħha b’mod totali dan l-insenjament, u tqies li dana għandu japplika *mutatis mutandis* għat-talba ta’ awment fil-kirja. Ragunament mod ieħor iwassal għal xejn anqas minn ksur issa lejn id-drittijiet ta’ l-inkwilin li fiż-żewġ vertenzi ma jkollhom ebda ċans li fil forum domestiku appositu jiġu eżaminati dawn it-talbiet u fuq kollox jitressqu id-difiża għalihom. Ma l-istess tabina ukoll l-argument illi lanqas hu relevanti għalija lli l-inkwilina seta’ kellha propjeta’ alternattiva, din hija kusiderazzjoni li ssir f’forum ieħor.

Għalhekk dawn it-talbiet sa fejn jirrigwarda t-tabiet ta' żgumbrament u awment fil-kera qed jiġu miċħuda.

Sa fejn it-talbiet jikkonċernaw id-danni materjali, pekunjarji u non pekunjarji fit-tieni u t-tielet talba, l-intimat Avukat Generali u l-inkwilina/intimata Maria Theresa Grech rispettivament irrispondew illi fl-għoti tal-kumpens irid jittieħed in konsiderazzjoni illi għadda ħafna żmien sakemm infetħet din il-kawza, ukoll lli l-kummens xieraq għall-privazzjoni ta' propjeta' m'għandux ikun il-valur kummerċjali tal-kera tal-fond, ukoll li jekk kien hemm xi preġudizzju soffrut mir-rikorrenti dan ma kienx attribwibbli lil inkwilina.

Dwar ir-rimedju mitlub u li jista jingħata minn din il-Qorti naraw illi fid-deċizzjoni fl-ismijiet **George Gauci v. Avukat Generali et.**[54] ingħad:-

"32. L-aggravju tal-intimat l-Avukat Generali hawn hu li l-ewwel Qorti llikwidat kumpens gholi wisq u li din kellha tqies is-segwenti fatturi fl-ezercizzju taghha: (a) li l-kawza kienet tirrigwarda fond wiehed biss stante li l-kaz fil-konfront tal-intimat Balzan li kien jokkupa l-fond numru 46 gie cedut wara li l-istess intimat ikkonsenja c-cwievet lir-rikorrent; (b) li r-rikorrent u l-awturi tieghu qatt ma kienu talbu ghal zieda fil-kera quddiem il-Bord li Jirregola l-Kera; (c) li bl-emendi fil-kodici civili il-kera kienet ser tizdied kull tlett snin. L-istess intimat jaghmel riferenza ghas-sentenza ta' din il-Qorti fl-ismijiet ***John Bugeja v. Il-Provincjal Reverendu Alfred Calleja OFM Conv.et*** *u wkoll ghad-decizjonijiet tal-Qorti Ewropeja tas-17 ta' Lulju, 2008, fl-ismijiet* ***Ghigo v. Malta*** *u* ***Edwards v. Malta*** *u jsostni li l-gurisprudenza kienet gharfet li l-kumpens ghandu jkun anqas mill-kumpens shih skond is-suq hieles fejn hemm cirkostanzi ta' mizuri legittimi mehuda fil-qasam tal-akkomodazzjoni socjali. Min-naha taghhom is-*

[54] Rikors 40/15 31/05/2019

sidien kienu naqqsu milli jgibu evidenza dwar kirjiet li huma tilfu jew li sofrew xi zvantaggi ekonomici.

33. Ir-rikorrent Gauci ma jaqbilx li l-kumpens hu wiehed gholi, tenut kont ukoll tal-insenjament tal-qrati taghna li fejn jinstab ksur, sa fejn hu possibbli l-Istat ghandu jipprovdi ghal restitutio in integrum. Hu jsostni li l-konsegwenzi li sofra ma kienux zghar u fil-fatt kien gie kostrett ifittex akkomodazzjoni alternattiva ghalih u ghal membri tal-familja tieghu u wkoll, il-kera li kien qed jircievi ma kinitx wahda realistika. Jsostni li minghajr l-ebda dubju l-ewwel Qorti hadet in konsiderazzjoni diversi fatturi fl-ezercizzju taghha ghal-likwidazzjoni tal-kumpens.

34. L-intimat Borg issottometta li t-talba ghal kumpens tar-rikorrent Gauci kienet fil-konfront tal-Istat. Min-naha tieghu hu dejjem okkupa l-fond skond id-disposizzjonijiet tal-ligi.

35. Din il-Qorti tibda bl-osservazzjoni li r-rikorrent Gauci kien ceda l-atti fil-konfront tal-Avukat Generali u tal-intimat Balzan fir-rigward tal-ilment imressaq dwar l-indhil fit-tgawdija tal-fond 46, Triq GM Camilleri, Hamrun u ghalhekk dan kien jinnecessita` konsiderazzjoni mill-ewwel Qorti fil-fissazzjoni tal-quantum tal-kumpens.

36. It-tieni fattur imressaq mill-intimat l-Avukat Generali bhala raguni ghal tnaqqis hu li r-rikorrent Gauci u l-awturi tieghu qatt ma ressqu talba quddiem il-Bord li Jirregola l-kera taht l-Artikolu 4 tal-Kap. 69 sabiex tizdied il-kera. Din il-Qorti diga` kellha l-opportunita` li tesprimi ruhha f'din is-sentenza dwar l-

inadegwatezza ta' dan ir-rimedju fil-harsien tal-operat tas-sistema ta' kontroll u m'ghandhiex ghalfejn terga' tikkunsidra dan l-argument li ma jipprezentax raguni tajba ghat-tnaqqis tal-kumpens.

37. It-tielet fattur li jaghti l-intimat l-Avukat Generali u li skond hu kellha tigi kkunsidrata mill-ewwel Qorti fil-likwidazzjoni tal-kumpens, hu l-fatt li l-emendi l-godda tal-Kodici Civili jipprovdu ghal zieda fil-kera kull tlett snin proporzjonalment maz-zieda fl-indici tal-inflazzjoni. Jissenjala li dan sar biex il-kera aktar tirrifletti r-rejaltajiet tallum. Din il-Qorti diga` kellha l-opportunita` li tesprimi ruhha f'sentenzi ohra dwar din iz-zieda li jipprovdi ghaliha l-Artikolu 1531C tal-imsemmi kodici, permezz tal-Att X tal-2009, fejn osservat li z-zieda ta' 5% xorta wahda thalli sproporzjon qawwi bejn il-kera percepita u l-kera dovuta skond is-suq hieles Q.Kost. 9/2017, Louis Apap Bologna v. Avukat Generali et, deciz 31 ta' Jannar, 2019.

38. Din il-Qorti issa ser tqies jekk il-kumpens moghti fil-kaz odjern huwiex wiehed xieraq u li jaghmel gustizzja mar-rikorrenti, jew huwiex gholi wisq kif qed jilmenta l-intimat l-Avukat Generali. Issir referenza in propositu ghas-sentenza tal-5 ta' Lulju 2011, fl-ismijiet ***Victor Gatt et v. Avukat Generali, u Maltapost plc*** *(C22796), fejn din il-Qorti ghamlet is-segwenti osservazzjonijiet relevanti f'materja ta' kumpens:*

"Dwar just satisfaction, ir-regola hija li meta l-Qorti ssib li hemm vjolazzjoni, sa fejn hu possibbli, l-istat ghandu jipprovdi ghal restitutio in integrum. Meta dan ma jkunx possibbli jew inkella jkun biss parzjalment possibili l-Qorti ghandha taghti just satisfaction. Id-decizjoni li d-dikjarazzjoni ta' vjolazzjoni wahedha tkun bizzejjed hija l-eccezzjoni u ghandha tkun riservata ghal kazijiet fejn hemm

rimedju jew il-konsegwenzi huma zghar. Fil-kazijiet l-ohra fejn il-lezjoni hija aktar serja l-Qorti ghandha taghti kumpens pekunjarju ghal dik il-vjolazzjoni.

...

"Kif inghad fis-sentenza Amato Gauci v. Malta deciza fil-15 ta' Settembru 2009, "Under Article 41 of the Convention the purpose of awarding sums by way of just satisfaction is to provide reparation solely for damage suffered by those concerned to the extent that such events constitute a consequence of the violation that cannot otherwise be remedied (ibid., § 249)ċ ...(para 80)."

39. Il-Qorti tosserva mill-banda l-ohra li l-kawza odjerna mhijex wahda ghal danni civili izda ghal dikjarazzjoni ta' ksur tad-drittijiet fondamentali tal-bniedem u ghar-rimedju legittimu li jidhrilha gust u xieraq fic-cirkostanzi biex jigi assigurat l-waqfien tal-lezjoni u restitutio in integrum safejn huwa possibbli, inkluz kumpens monetarju ghal tali ksur. Hu ben stabbilit fil-gurisprudenza ta' dawn il-qrati li rimedju kostituzzjonali ma jfissirx ***necessarjament*** *ir-rimbors tal-valur shih fuq is-suq lis-sid. S'hawn taqbel mal-intimat l-Avukat Generali. Dan ghal diversi ragunijiet li din il-Qorti fissret kif gej fis-sentenza fl-ismijiet* ***Josephine Azzopardi pro et noe v. Onor. Prim'Ministru et:***

"Jigi osservat li l-kalkoli tal-attrici ma jqisux il-ghan legittimu u socjali tal-ligi, il-fatt illi l-ligi tehlisha mill-obbligazzjoni tat-tiswijiet, il-fatt li fost ir-rimedji hemm dak li jippermettilha tfittex li tiehu lura l-fond bla ma tinzamm milli taghmel hekk b'applikazzjoni tal-Art. 12A tal-Kap. 158, u l-fatt illi l-Art. 1 tal-Ewwel Protokoll ma jiggarantix dhul daqskemm jaghti s-suq hieles. Qieghda tassumi wkoll illi kienet sejra ssib min jikri l-appartament ghaz-zmien kollu li ghalih qieghda tippretendi kumpens, u wkoll mill-2002, u li dan il-kerrej kien sejjer jassumi hu l-obbligazzjoni ta' manutenzjoni u tiswijiet."

40. Kif gie ritenut fis-sentenza ta' din il-Qorti deciza fil-31 ta' Ottubru, 2014, fl-ismijiet ***Igino Trapani et v. Kummissarju tal-Artijiet u Avukat Generali****, kull kaz ghandu jigi trattat u deciz fuq il-fattispecie tieghu. Il-Qorti zzid tghid ma' dan li ghandu jigi kkunsidrat, kemm il-htiega li l-Istat jipprovdi ghal akkomodazzjoni socjali u wkoll dawk il-fatturi elenkati fis-sentenza ta' din il-Qorti fl-ismijiet* ***Raymond Cassar Torreggiani et v. Avukat Generali et.***

41. Il-Qorti tikkunsidra li l-ewwel Qorti ma naqqset bl-ebda mod fl-ezercizzju taghha fil-komputazzjoni tal-kumpens, izda izzid mal-kunsiderazzjonijiet tal-ewwel Qorti, ukoll dawk maghmula minn din il-Qorti stess fis-sentenzi taghha ricenti fl-ismijiet ***Josephine Azzopardi pro et noe v. Onor. Prim'Ministru et****, fejn f'isfondi u f'cirkostanzi simili, din il-Qorti elenkat diversi fatturi relevanti ghal-likwidazzjoni ta' kumpens xieraq applikabbli ghal kaz odjern.*

42. L-intimat l-Avukat Generali jikkontendi li r-rikorrent ma ressaq l-ebda prova li hu kien tilef xi kirjiet jew li sofra xi zvantagg ekonomiku. Din il-Qorti diga` kellha l-opportunita` tesprimi ruhha fuq aggravju simili fis-sentenza taghha fl-ismijiet ***Maria Stella sive Estelle u John konjugi Azzopardi Vella v. Avukat Generali et13*** *u ma ssib l-ebda raguni ghaliex ghandha titbieghed minn dan ir-ragunament:*

"...il-qorti, ... tosserva illi din ma hijiex kawza civili ghal danni minhabba opportunita` mitlufa bi htija tal-konvenuti izda kawza ghal rimedji minhabba dak li l-atturi jqisu ksur tal-jedd taghhom ghat-tgawdija ta' hwejjighom; ghalhekk il-prova li riedu l-Avukat Generali u l-konvenuti Azzopardi ma hijiex strettament

mehtiega ghalkemm tista' tkun fattur utli fost ohrajn bhal kriterju ghal-likwidazzjoni tad-danni. Barra minn hekk, ma huwiex realistiku li tistenna li l-atturi jressqu xhieda li jghidu li kienu lesti jikru l-fond minghandhom bil-kera ta' tant euro fis-sena. L-atturi ma ghandhomx id-disponibilita' tal-fond u ghalhekk ma jistghux realistikament jistiednu offerti ghall-kiri tieghu u jkollhom bilfors joqoghdu fuq prova ta' kemm jinkrew postijiet simili fl-istess inhawi, prova li tista' ssir anki bil-hatra ta' perit tekniku.".

43. Tenut kont li l-Qorti hi tal-fehma li m'ghandhiex tiddipartixxi fil-kaz odjern mil-limiti tal-kumpens generalment likwidat f'kazijiet simili u biex jinzamm certu grad ta' relattivita`, wara li hadet is-suespost in konsiderazzjoni, qeghda tikkunsidra li l-aggravju tal-intimat Avukat Generali hu gustifikat. Tosserva li, ghalkemm ma jirrizulta l-ebda valur lokatizju mir-rapporti tal-periti ex parte nkarigati mir-rikorrent Gauci u mill-intimat Borg rispettivament, jirrizulta li l-valur fis-suq tal-fond intier fl-ammonti ta' €75,000 kif stmat mill-Perit Ian Camilleri Cassar inkarigat mir-rikorrent Gauci16u ta' €60,000 kif stmat mill-Perit Joseph Saliba inkarigat mill-intimat Borg inkarigat mir-rikorrent Borg, u filwaqt li tikkunsidra wkoll li l-ewwel Qorti ma jidhirx li hadet in konsiderazzjoni li r-rikorrent Gauci fil-mori tal-kawza ceda l-pretensjonijiet fir-rigward tieghu u tal-intimat Balzan, tnaqqas il-kumpens ta' hamsa u ghoxrin elf ewro (€25,000) likwidat mill-ewwel Qorti ghal ghaxart elef (€10,000) bhala kumpens ghad-danni non pekunjarji u dawk pekunjarji.

44. Ghaldaqstant dan l-aggravju huwa gustifikat fil-limiti tal-konsiderazzjonijiet premessi."

Ukoll fid-deċizzjoni fl-ismijiet **Andrew Attard et. Vs l-Awtorita` tal-Artijiet, l-Awtorita` tad-Djar u l-Avukat Generali**[55] intqal li:-

" KUMPENS GHALL-LEZJONI -DANNI PEKUNJARJI U DANNI NON-PEKUNJARJI

Ikkonsidrat li l-Qrati taghna dejjem irritenew li l-kumpens li jista` jinghata fi procediment ta` natura kostituzzjonali mhuwiex ekwivalenti ghal 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).*

Illi izda l-istess Qorti Kostituzzjonali fil-kaz ta' ***Raymond Cassar Torreggiani et*** *succitat irriteniet ". 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` sproporzjon 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-*

[55] Rikors Kostituzzjonali 35/2013 deċiż 30.10.2018

intimati Tabone sabiex jirrendu l-fond abitabbli u (4) l-ordni li ser taghti din il-Qorti dwar l-ezenzjoni f` dan il-kaz mill-effetti legali tal-Artikolu 5 tal-Kap 158".

Hekk ukoll il-Qorti Ewropea fil-kaz ***Amato Gauci v. Malta,*** *[Appl.47045/06, deciz 15 ta' Dicembru 2009] irriteniet:*

"... [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 vs Germany [GC] nos.46720/99, 72203/01 and 72552/01, para. 94.]"*

Illi r-rikorrenti qed jitolbu bhala kumpens pekunjarju ammont ekwivalenti ghall-imghaxijiet bir-rata ta' 5% ghal kull sena dekoribbli mis-sena 1973 sallum, fuq l-average price bejn il-prezzijiet komputati mill-Perit Tekniku, cioe` €65,390 (rapprezentanti l-valur tal-fondi fis-sena 1973), u €277,200 (rapprezentanti l-valur attwali). Ghaldaqstant qed jitolbu : (€65,390 + €277,200 = €342,590 ) / 2 = €171,295. Kwindi qed jitolbu 5% fis-sena u cioe` €8564.75 x 45 sena = €385.413.

Ikkonsidrat li r-rikorrenti ilhom imcahhda mill-proprjeta' taghhom ghal iktar minn erbghin sena (minn 1973) minghajr kumpens gust u xieraq, minghajr ma jgawdu frottijiet civili fuq il-beni taghhom, kif ukoll minghajr access ghar-rimedju effettiv. Ikkonsidrat, inoltre, li l-intimat ghazel triq, dak ta' pussess u uzu, meta kellu jaghzel triq ohra, cioe`, xiri assolut, sabiex jevita li jledi d-drittijiet fondamentali tas-sidien. Ghalhekk ghandu iwiegeb ghall-agir tieghu.

Huwa minnu li l-proprjetajiet kienu mikrija qabel ma ttiehdu b'titolu ta' pussess u uzu. Madanakollu din il-Qorti ma tistax tinjora li l-valur tal-bini fil-Belt illum sploda u l-fatt li dan il-bini illum qed jigi gawdut, b'effett tal-process ta' gentrification tal-Belt, minn terzi injoti, li bbenefikaw mill-benevolenza tal-Gvern a diskapitu tal-proprjetarji legittimi. Huwa gust li d-dewmien jahdem favur is-sid u mhux kontra billi huwa s-sid li gie zvestit mid-drittijiet tieghu u ma jistax, bhal ma gara f'dan il-kaz, jigi presunt li irrinunzja ghad-drittijiet fundamentali tieghu. It-tnehhija minn idejn is-sid fisser li huma ma setghu qatt juzufruwixxu mill-akkrexximent fil-valur tal-proprjeta` taghhom.

.

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."

Insibu li fid-deċizzjoni **Saviour Paul Portelli (ID 685236M) vs Avukat Generali u l-Awtorita` tad-Djar** ġia ampjament ċitata li:-

"Danni Pekunjarji

Illi r-rikorrent qed jitlob li jigi kkumpensat f'danni pekunjarji tat-telf li garrab. L-intimati jishqu li kumpens fil-qafas kostituzzjonali mhuwiex sinonimu ma' danni civili u lanqas m'ghandu iwassal ghall-kumpens ibbazat fuq il-valur tal-fond fuq is-suq. Il-kumpens li ghandu jinghata ghandu jindirizza l-lezjoni subita.

Illi, izda, kif osservat il-Qorti Kostituzzjonali fil-kawza ***Dr Cedric Mifsud nomine vs l-Avukat Generali*** *(33/2010/1):*

"Illi l-kera mhux bilfors ikun daqskemm jagħti s-suq ma jfissirx illi jista' leġittimament jkun hekk baxx illi ma jkollu ebda relazzjoni ta' xejn ma' dik li l-Avukat Ġenerali jsejħilha r-'realtà ekonomika".

Ikkonsidrat li fil-kaz odjern, d-disposizzjonijiet restrittivi tal-Kap 69 tal-Ligijiet ta' Malta jikkostitwixxu ksur sistemiku tad-drittijiet tas-sidien. Dan huwa izjed lampanti fid-diskussjoni li hija ghaddejja fil-prezent dwar riforma fil-ligi tal-kera ghal dak li jirrigwarda kirjiet mhux milquta mill-Kap 69 fejn il-liberta' kontrattwali ser tibqa' bla mittiefes. Effettivament dawn ir-riformi ser ikomplu jghaksu lis-sidien tal-fondi mikrija pre-1995 li ser ikomplu ibaghtu huma l-piz ta' abitazzjoni socjali minghajr ma dan jittaffa b'riformi effettivi across the board.

Ghalhekk fid-dawl ta' lezjoni sistemika, din il-Qorti ma taqbilx li ghandha thalli lis-sid minghajr kumpens xieraq ghat-telf tieghu. Fl-ahhar mill-ahhar, l-Istat gie meghjun tul is-snin billi gie esonerat milli jipprovdi social housing lill-koppja Bonello - spiza li certament iffranka l-Erarju a skapitu tas-sid privat ***anke fis-snin l-aktar recenti fejn l-iskop legittimu ta' dan il-qafas legali tqieghed dubbju.*** *(Ara sentenza ta' din il-Qorti fil-kaz* ***Sergio Falzon et v Alfred Farrugia et*** *- dec. fit-30 ta' Jannar 2018 u l-konsiderazzjonijiet hemm rapportati).*

Difatti hija rilevanti s-sentenza tal-Qorti Ewropea fil-kaz ***Saliba et vs Malta*** *fit-22 ta' Novembru 2011 kkummentat dwar ".... the rise in the standard of living in*

Malta over these decades and the diminished need to secure social housing compared to the post-war era....". Qalet ukoll ***"....it is clear that what might have been justified years ago, will not necessarily be justified today*** *(see Amato Gauci, cited above, 60)."* ***(Emfasi ta' din il-Qorti).***

Illi ghar-rigward tad-danni pekunjarji, tqis li hemm avarija kbira bejn il-valur lokatizju (€7,000) attwali u l-ammont li r-rikorrent jista' jippercepixxi f'kera. Dan il-valur ma giex ikkontestat mill-intimati minkejja li gie stmat minn perit ex parte. Din il-Qorti taccetta r-rata ta' 3.5% bhala rata medja ghall-fini tal-valur lokatizju ta' immobbli.

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 (€200,000) 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."

Il-Qorti tqies li ovvjament il-fattispeċie ta' kull kaz hawn ċitat mhux identiku għal kaz in eżami, pero l-konsiderazzjonijiet hemm magħmula huma għal kollox applikabbli n kwantu;-

-li anke wara li saret id-derekwiżiżżjoni s-sid baqa jikri l-fond minn jeddu anzi ippermetta l-inkwilina u ommha li saħansitra jibdlu minn fond għal iehor dejjem bl-istes kirja kif premess;

-pero wieħed irid jiftakkar ukoll illi originalment il-fond kien ġie rekwiżiżżjonat u mogħti b'kirja li ċertu Camilleri, dan allura qiegħed lil istess fond f'kirja arbitrarja u mposta fuq is-sid;

-illi nonostante it-trapass ta' ħafna żmien, il-fond illum intiret mir-rikorrenti u kien issa li nfetħu dawn il-proċeduri; ma jirriżultawx proċeduri oħra fil-forum kompetenti fir-rigward;

-jitqies ukoll l-ammont irrizorju, anke jekk dan skont il-liġi, li s-sid jirċievi f'kera u dak li ġie stabbilit mill-perit tal-Qorti. Ta' rilevanza ukoll il-valur ta' l-istess fond fuq is-suq ħieles liema valur m'għandux ikun xejn ta' sorpriża konsidrando id-desiderabilta' tal-propjeta' llum ġewwa l-Belt kif ben jiriżulta mir-rapporti tekniċi tal-periti;

-kif ntqal fis-sentenzi ċċitati lanqas pero m'għandu jitqies bħala sikur u ċert ebda valur lokatizzju dan kif rajna anke fiż-żmiemijiet kurrenti bil-ġrajjiet tal-mxija tal-virus li hija afflitta bija d-dinja u l-effett li dan ħalla fuq is-suq tal-propjeta'.

Tqies li hawn għandha tagħmel referenza għal dak li riċentement iddeċidiet il-Qorti Ewropeja għad-Drittijiet tal-Bniedem f'deċizjoni riċenti fl-ismijiet **Aquilna vs Malta**[56]**.** Għandu jiġi preċiżat illi hawn il-Qorti barranija kienet qegħda titratta dwar l-impatt tal-Kap 158 tal-Liġijiet ta' Malta u l-emendi sussegwenti li saru fil-

[56] Application 40246/18: 9/6/2020

liġijiet tal-kera nostrana. Din il-lanjanza fil-fatt titratta terminazzjoni ta' ċens li fuq saħħa tal-liġi n vigore ġiet mibdula f'kera forżata.

Fil-konfront tal-kumpens ġust il-Qorti Ewropeja qalet dan:-

1. The Court observes that in the present case the Constitutional Court reversed on 13 April 2018 the first-instance judgment of the court of constitutional competence. The Constitutional Court did not find a violation of the applicant's property rights given that the applicant was aware of the applicable regime when he rented the property in 1985. However, the Court notes that it has already held, in similar circumstances, that, at the time, the owners (ancestors of the applicants) could not reasonably have had a clear idea of the extent of inflation in property prices in the decades to come, and that the decisions of the domestic courts regarding their request challenging such laws constituted interference in the applicants' (heirs) respect (see, mutatis mutandis, Zammit and Attard Cassar, v. Malta, no. 1046/12, §§ 50-51, 30 July 2015). In such cases the Court proceeded to examine the merits and found a violation (see, for example, Zammit and Attard Cassar, cited above, §§ 65-66). There is no reason to make different conclusions in the present case. While it is true that the applicant knowingly entered into the rent agreement and set his own conditions to the extent possible, the Court considers that in 1985 he 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). In 2006, on the expiry of the contract of temporary emphyteusis, at which point the discrepancy in the rent imposed and that on the market became evident, he was unable to do anything other than attempt to use the available remedies, which he did but which were to no avail. The decisions of the domestic courts thus constituted interference with the peaceful enjoyment of

his property (compare Cassar v. Malta, no. 50570/13, § 48, 30 January 2018). Accordingly, the Court finds that the rent-control regulations and their application in the present case constituted an interference with the applicant's right (as landlord) to use his property (ibid., § 49).

...

2. As to whether a fair balance was struck, the Court notes that, as in other similar cases, the application of the Act XXIII of 1979 amending the Ordinance had a considerable impact on the applicant's property (see for details, Amato Gauci, cited above, § 61). As to the amount of the rent, the Court cannot ignore that the court-appointed expert's valuation in the present case was based on its potential in case of full refurbishment in 2016 (see paragraph ***Error! Reference source not found.*** *above). Nevertheless, those valuations show that after 2006 the applicant was receiving in rent only 10% of the rental potential of the refurbished property. In 2019 the rent was significantly raised by the RRB, in virtue of the 2018 amendments (see paragraph* ***Error! Reference source not found.*** *above); that decision is pending before an appeal instance. The above is sufficient for the Court to conclude that the rent received by the applicant was disproportionally low in the period between 2006 and until at least 2019. The Court reiterates 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 chargeable rent. Nevertheless, this may not lead to results which are manifestly unreasonable, such as amounts of rent allowing only a minimal profit (ibid., § 62).*

3. The Court further notes that while it is true that the applicant could have increased the rent following the amendments provided by Act X of 2009, he failed to do so (see paragraph ***Error! Reference source not found.*** *above). However, the Court has already held that the 2009 and 2010 amendments affecting different controlled rent regimes had only slightly improved the situation of landlords and such rents remained in stark contrast with the market values of the property (see, for example, Anthony Aquilina v. Malta, no. 3851/12, § 63, 11 December 2014; Montanaro Gauci and Others v. Malta*, no. 31454/12, §§ 54-55, 30 August 2016; and *Zammit and Attard Cassar*, *cited above, § 62).”*

Konsegwentement għal dawn ir-ragunijiet fost oħrajn il-Qorti sabet ksur ta’ l-Artikolu 1 ta’ L-Ewwel Protokol tal-Konvenzjoni.

Tkompli dwar id-danni appositi li-:

“Damage

4. The applicant claimed 90,000 euros (EUR) in respect of pecuniary damage based on the difference between the valuations by the court-appointed expert and the rent he was receiving which only reflected a tenth of the market value, and EUR 15,000 in non-pecuniary damage.

5. The Government submitted that the evaluations of the court-appointed expert were significantly inflated and the applicant had not justified the request of EUR 90,000. Indeed the estimate which appeared to cover loss of rent had not taken account of various factors such as the probability of the property having been rented out throughout, the expenses incurred by the tenants, and that measures intended to achieve greater social justice did not require payment at market

values. Thus, they considered that a joint award in pecuniary damage should not exceed EUR 2,500 and EUR 1,500 in non-pecuniary damage.

6. On the basis of the considerations relevant in such cases (see, for example, Portanier v. Malta, no. 55747/16, §§ 62-64, 27 August 2019) and bearing in mind the lump sum paid to the applicant in 1985 and the applicant's failure to demand the rent increases allowed by law, as well as the Court's considerations at paragraph 2 above (concerning the court-appointed expert's report), in the circumstances of the present case, the Court considers it appropriate to award the applicant EUR 12,500 in pecuniary damage for the loss of rent as of 2006 onwards and EUR 2,500 in respect of non-pecuniary damage, plus any tax that may be chargeable."

Konsegwentement il-Qorti tqies illi fid-dawl ta' dak kollu kkonsidrat u anke in linea mal-ġurisprudenża kurrenti, tenut kont ukoll ta' dak konkluz mill-periti, il-fatt li għajr dan ma tressaq ebda prova oħra, lli l-ammont monetarju ġust u komplessiv li għandu jkoppri it-talbiet in eżami għandu jkun dak komplessiv ta' **għoxin elf ewro, (€20,000), maqsuma fil-ħmistax il-elf ewro, (€15,000) f'danni pekunjarji u ħamest'elef, (€5,000) f'danni non pekunjarji li għalihom għandu jagħmel tajjeb biss l-Avukat Generali llum l-Avukat ta' l-Istat.**

Konsegwentement taqta u tiddeċidi billi tilqa t-talbiet tar-rikorrenti b'dan illi ssib illi ġew u qed jiġu leżi d-drittijiet fondamentali tal-esponenti kif sanċiti

fl-Artikolu 1 ta' l-Ewwel Protokol tal-Konvenzjoni Ewropeja Għad-Drittijiet tal-Bniedem, Kap 319, pero tiċħad l-istess sa fejn jirrigwarda l-artikolu 13 tal-Konvenzjoni ukoll fejn intalab l-iżġumbrament u awment tal-kera u tilqa kull difiza mressqa fir-rigward;

Tillikwida t-talbiet ta' danni fl-ammont komplessiv ta' għoxrin elf ewro, (€20,000) a karigu ta' l-Avukat Generali llum l-Avukat ta' l-Istat.

Tiċħad ghalhekk kull linea difensjonali inkompatibbli ma l-istess talbiet mressqa mill-partijiet intimati.

Bl-ispejjez li għandhom ikunu kwart a karigu tar-rikorrenti u tlett kwarti a karigu ta' l-Avukat Generali.

Onor.Imħallef Miriam Hayman

Imhallef

Victor Deguara

Dep Reg