



MALTA

**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
RAYMOND C. PACE**

Seduta ta' l-4 ta' Gunju, 2003

Citazzjoni Numru. 613/2001/1

Noel Petroni

vs

Dr. Chris Cilia u l-PL Hilda Ellul Mercer li b'digriet tal-Qorti ta' l-4 ta' Mejju 2001 gew nominati Kuraturi Deputati sabiex jirraprezentaw lill-assenti Elena Monico.

Il-Qorti,

I. PRELIMINARI.

Rat ic-citazzjoni attrici a fol. 1 fejn gie premiss:-

Illi l-attur Noel Petroni u l-konvenuta Elena Monico zzewgu fil-11 ta' April 1987, f'Varallo, l-Italja, kif jirrizulta mic-certifikat taz-zwieg anness u mmarkat bhala Dok. "NP1."

Kopja Informali ta' Sentenza

Illi l-kunsens tal-partijiet ghal dan iz-zwieg kien vizjat b'difett serju ta' diskrezzjoni ta' gudizzju fuq il-hajja mizzewga, jew fuq id-drittijiet u d-dmirijiet essenzjali taghha, jew b'anomalija psikologika serja illi ghamlitha mpossibbli ghall-konvenuta illi taqdi l-obbligazzjonijiet essenzjali taz-zwieg;

Illi l-kunsens tal-konvenuta nkiseb bl-eskluzjoni pozittiva taz-zwieg innifsu, jew ta' xi wiehed jew aktar mill-elementi essenzjali tal-hajja mizzewga, jew tad-dritt ghall-att taz-zwieg;

Illi ghalhekk iz-zwieg bejn il-partijiet kien null u nvalidu skond il-ligi;

Illi ghalhekk l-istess attrici talbet lil din l-Onorabbli Qorti sabiex:-

1. Tiddeciedi u tiddikjara li z-zwieg bejn il-partijiet tal-11 t'April 1987, fuq imsemmi, huwa null u nvalidu ghall-finijiet u effetti kollha tal-ligi.

Bl-ispejjez kontra l-konvenuta li hi minn issa ngunta ghas-subizzjoni.

Rat id-dikjarazzjoni attrici a fol. 3 tal-process;

Rat il-lista ta' xhieda u d-dokumenti esebiti a fol. 4 sa 5 tal-process;

Rat in-nota tal-eccezzjonijiet tal-konvenuti tal-11 ta' Jannar 2002 a fol. 16 fejn gie exceptit:

1. Illi l-eccipjenti m'humix edotti mill-fatti tal-kawza u ghalhekk jirrizervaw id-dritt illi jipprezentaw eccezzjonijiet fil-mertu wara li jkunu kkomunikaw ma' l-assenti Elena Monico.

Rat id-dikjarazzjoni u l-lista tax-xhieda tal-konvenuti a fol. 16 sa 18 tal-process;

Kopja Informali ta' Sentenza

Rat il-verbali tat-2 ta' Mejju 2002, fejn gie nominat Dr. Vincent Galea bhala Assistent Gudizzjarju; tal-5 ta' April 2000 fejn il-kawza giet differita ghan-notifika tal-konvenut ghat-13 ta' Gunju 2000.

Rat ir-rikors ta' l-attur ta' l-10 t'April 2001 fejn talab lill-Qorti sabiex tappunta kuraturi deputati biex jirrapprezentaw lill-assenti Elena Monico fl-atti tal-kawza u jekk ikun il-kaz f'kull att iehor relattiv u sussegwenti;

Rat id-digriet ta' l-4 ta' Mejju 2001 fejn il-Qorti nnominat lill-Avukat Dr. Chris Cilia u lill-Prokuratur Legali, Hilda Ellul Mercer bhala Kuraturi Deputati;

Rat ir-rikors tal-konvenuti ta' l-14 ta' Jannar 2002 fejn talbu lill-Qorti sabiex tordna lill-attur sabiex ihallas depozitu versu l-ispejjez u drittijiet ta' l-istess Kuraturi Deputati;

Rat id-digriet tas-17 ta' Jannar 2002 fejn il-Qorti ordnat in-notifika tar-rikors lill-kontro-parti b'erbat ijiem zmien ghar-risposta;

Rat id-digriet tas-7 ta' Frar 2002 fejn il-Qorti cahdet it-talba;

Rat l-avviz ta' l-1 ta' Frar 2002 fejn il-kawza giet differita quddiem din il-Qorti kif diversament presjeduta mill-Onor. Imhallel Raymond C. Pace;

Rat in-nota tal-Kuraturi Deputati ta' l-1 ta' Frar 2002 fejn permezz taghha esebew l-ittra responsiva ta' Dr. Illona Blackman (Dok. "A") u ittra ohra mibghuta lill-assenti Elena Monico (Dok. "B");

Rat in-nota tal-Kuraturi Deputati tat-18 ta' Marzu 2002 fejn permezz taghha esebew *fax* li rcieva Dr. Chris Cilia minghand Elena Monico (Dok. "A") u ittra bi twegiba datata 15 ta' Marzu 2002 mibghuta lill-istess assenti (Dok. "B");

Kopja Informali ta' Sentenza

Rat ir-rikors ta' l-attur tal-11 ta' Gunju 2002 fejn talab lill-Qorti sabiex tvarja d-digriet taghha tat-2 ta' Mejju 2002 u tawtorizzah sabiex jipprezenta l-affidavits tieghu f'data aktar tard minn dik prefissa;

Rat id-digriet tat-13 ta' Gunju 2002 fejn il-Qorti laqghet it-talba u estendiet it-terminu ghall-prezentata ta' l-affidavits attrici bi tletin (30) gurnata;

Rat in-noti ta' l-attur tat-23 ta' Lulju 2002 u tas-26 t'Awissu 2002 fejn permezz taghhom esebixxa l-affidavits tieghu stess u dak ta' missieru, Alfred Petroni;

Rat in-nota tal-Kuraturi Deputati tal-11 ta' Novembru 2002 fejn permezz taghha esebew dikjarazzjoni mibghuta lil Dr. Chris Cilia *via fax*, mill-assenti Elena Monico;

Rat id-dokumenti esebiti.

Rat l-atti kollha l-ohra tal-kawza.

II. KONSIDERAZZJONIJIET.

i). PROVI PRODOTTI.

Illi fl-affidavit tieghu stess, **Noel Petroni** jghid:-

“Illi nghid li jiena Itqajt ma’ Elena Monico ghall-ewwel darba f’Awissu ta’ l-1985, Elena hija ta’ nazzjonalita’ Taljana. Meta ltaqjna jiena kelli erbgha u ghoxrin (24) sena u hi kellha ghoxrin (20) sena. Missieri u missierha kienu hbieb mill-business. F’dak ix-xahar partikolari u cjoe` Awissu 1985, il-familja tieghi kienet stiednet lil Elena toqghod maghna sabiex ikollha l-opportunita` titghallem l-Ingiliz. Fi ftit kliem hadna grazzja ma’ xulxin u bdejna nohorgu flimkien. L-ewwel darba li rajt lil Elena Monico kien f’Awissu 1985 meta giet id-dar taghna, qabel jiena la kont kellimtha u lanqas rajtha. Meta waslet id-dar niftakar li jiena kont ghamilt xi jumejn id-dar u wara dawn il-jumejn mort gimgha fuq il-bahar mal-hbieb. Meta gejt

lura l-mama` qaltli li Elena qatt ma harget mal-hbieb taghha u dejjem baqghet id-dar tistaqsi ghalija. Meta gejt lura bdejna nitkellmu u bdejna noqghodu flimkien. Fis-sens li nohrog fil-ghaxija mal-hbieb tieghi u hi tigi mieghi. Minn dak ix-xahar ghamilna nohorgu flimkien b' dan il-mod xi gimghatejn u nofs, tlett gimghat.

Illi ghalkemm jiena kelli erbgha u ghoxrin (24) sena, din ir-relazzjoni tieghi ma' Elena kienet l-ewwel wahda li kelli ma' tfajla b'mod serju. Elena kienet l-ewwel tfajla li hrigt maghha ghal tlett gimghat, normalment ma' tfajliet ohra kont nohrog ghal xi jumejn u jispixxa kollox hemm. F'dak l-istess Awissu jiena u Elena kellna relazzjonijiet intimi ma' xulxin. Hi kienet l-ewwel tfajla tieghi f'dan is-sens u jiena kont attacjajt ruhi maghha hafna. Mill-banda l-ohra Elena kellha relazzjonijiet intimi ma' rgjel ohra qabli u meta giet Malta kienet tiehu l-contraceptive pill. Ghal din ir-raguni jiena kont hadt bis-serjetà hafna din ir-relazzjoni ma' Elena. Il-fatt li kellna x'naqsmu flimkien ghalija kien ifisser li r-rabta kienet wahda soda. Jiena gejt minn familja tradizzjonali u qatt ma kien hemm problemi fiz-zwieg tal-genituri tieghi jew fiz-zwiegijiet ta' membri ohra tal-familja. Minn naha l-ohra Elena qaltli li hi kellha xi boyfriends ohra qabli. Ghalkemm nistqarr li din il-haga kienet dejqitni, jiena pprovajt ma nahsibx fuqha.

Illi qattajna Awissu 1985 flimkien u f'dan ix-xahar kien hemm drabi fejn Elena kienet taqbad tibki ghal xejn b'xejn. Minkejja li jiena staqsejtha l-ghaliex kienet qed taghmel hekk hi qatt ma rrispondietni jew qaltli x'kienet ir-raguni. Niftakar li wara xi gimgha u nofs flimkien konna fir-ramla ta' Ghajn Tuffieha, u kien hemm habib tieghi waqaf ikellimni. Introducejthom ma' xulxin u waqt li hu kien qed jitkellem mieghi hi qaghdet tixxemmex. Kif telaq dan il-habib hi bdiet tibki. Kien hemm xi darbtejn ohra fejn bdiet tibki ta' xejn b'xejn, jiena nistaqsiha fuq xiex u hi dejjem tghidli li m' hu xejn.

Illi fl-ahhar ta' Awissu 1985 hi marret lura l-Italja imma bqajna kuntatt ma' xulxin permezz tat-telephone u ittri. Konna ntemplu lil xulxin qisu xi darbtejn fil-gimgha. Elena kienet tikteb ta' kuljum tghidli li thobbni, timmissjani u li

jien l-ahjar, tixtieq li tibqa` mieghi u jiena kont nirrispondiha okkazjonalment. Jiena qatt ma stennejt din ir-reazzjoni u kont inhossni li din it-tfajla mgenna fuqi u b'dawk l-ittri kollha li kont qed nircievi minghandha kont qed inhossni aktar migbud lejha. F'Settembru ta' dik is-sena (1985) jiena ddecidejt rnmur nzurha l-Italja ghal gimgha. Meta f'Awissu telqet minn hawn jiena ghall-ewwel hsibt li daqshekk l-istorja taghna. Pero` mbaghad bdejt nircievi l-ittri kuljum. Kieku ma kenitx qed tigrri warajja hi, jiena ma kontx ser naghmel pass. Pero` tant kienet qed tibghatli ittri li ddecidejt nitla' l-Italja. Biex stajt insiefer il-genituri tieghi halsuli ghax jiena ma kellix flus imgemmajn dak iz-zmien.

Illi meta kont l-Italja hassejtha li birdet minni, u li ma kenetx qed taghti kasi tant li staqsejtha jekk din kenetx l-ahhar darba flimkien. Jien kont surpriz hafna b' dan l-atteggament ghax l-ittri li rcevejt minghandha kienu juru mod iehor. Jiena kont innotajt kif kienet qed tiffliertja mal-hbieb taghha li fil-maggor parti taghom kienu guvintur u jiena kont nithalla barra mill-konverzazzjoni. Hi ma kenitx tinkludini u jien kont qed inhossni huta barra mill-ilma. Tul dik il-gimgha qatt ma hrigna wahedna flimkien b'mod romantiku, konnha nkunu mal-familja taghha jew mal-hbieb taghha, generalment konna inkunu ma' huha. Jiena kont noqghod id-dar tal-familja taghha. Meta ghadde z-zmien u gejna biex nisseparaw Elena kienet qaltli li f'dik il-gimgha riedet thallini. Ghal darb'ohra tul din il-gimgha regghet infaqghet tibki darbtejn minghajr raguni ta' xejn u jiena ghal darb'ohra staqsejtha x'kien qed jigri. Qaltli li jiena m'ghandi nghid lil hadd b'dak li kienet ser tghidli u li dak li kienet ser tghidli kienet xi haga gravi u serja. Qaltli li missierha kellu mara ohra meta hi kellha tmintax-il sena. Allavolja din ir-relazzjoni li kellu kienet wahda sigrieta, il-familja taghha xorta kienet taf x'kien qed jigri. Hi kienet qed tara lil ommha tibki ta' sikwit minhabba f'hekk. Elena kellha hafna stima f'missierha u kienet temmen fih u dan kollu lilha kien jitturbaha tremendement. Niftakar li qaltli waqt li konna qed niehdu cappuccino. Meta qaltli jiena kont surpriz fis-sens li r-reazzjoni taghha kienet eccessiva speccjalment meta qaltli biex ma nghid lil hadd u nzommha

sigrieta. Bdejt nistenna xi haga aktar serja minn dak li qalti.

Wara din il-btala tieghi f'Settembru 1985, Elena giet Malta f'Dicembru ghal gimghatejn. Kien f'dawk il-gimghatejn li ddecidejna li nizzewgu. Id-decizjoni li nizzewgu hadniha lejn l-ahhar tal-btala taghha maghna. Konnha qed nirriversjaw il-karozza fil-garage u hi qaltli li qed tiddejjaq naraw lil xulxin kull tant xhur, jien ghidtilha biex insolvuha nizzewwgu. Ghidtha bla hafna hsieb, ma kellix post fejn noqghod flus il-bank ma kellix u hi rrispondietni 'what?' qisha qablet mieghi. Fil-fatt meta zzewwigna missieri kien offrieli flat il-Gzira. Illum inhares lura ninduna kemm konna immaturi meta hadna d-decizjoni biex nizzewgu.

Il-genituri taghna m'approvawx dan iz-zweg, ma setghux jimmaginaw kif relazzjoni ta' ftit xhur setghet tahdem - madanakollu bqajna ghaddejin u ridna nizzewgu mill-aktar fis possibli. Aktar ma l-familja tieghi bdew jghiduli li kont qed naghmel zball aktar bdejt inwebbes rasi biex nizzewweg. Ahna zzewgina f'April 1987 u qabel ma zzewigna ahna ltqajna ftit drabi u dan meta kellna l-opportunita' nzuru lil xulxin. Hi kienet nizlet Malta fl-Ghid 1986 u f'Awissu 1986. Jiena ma niftakarx li tlajt l-Italja salv ghal ftit qabel it-tieg. Meta kienet tigi Malta, Elena dejjem qaghdet id-dar tal-genituri tieghi. Sakemm izzewgina jiena bqajt noqghod Malta u Elena baqghet toqghod l-Italja.

Illi gimghatejn qabel iz-zwieg taghna jiena kont l-Italja u kont disturbat hafna b'dak li kien qed jigri madwari. Elena qatt ma wriet imhabba jew affezzjoni lejja u kien jidher li hi kienet qed tiehu gost bl-attenzjoni li n-nies kien qed jaghtuha. Dik il-gimgha kienu se jkantawilha d-djakni u niftakar li wiehed minnhom kien gustuz u li hi kellha grazzja mieghu. Indunajt b'dan ghax kienet tfittxu tkellmu izjed mill-ohrajn. Jiena kont inkun maghha u hi qatt ma kienet tinkludini fil-konverzazzjoni allavolja t-taljan tieghi ftit batut.

Illi xi erbat ijjem qabel izzewwigna konna morna niehdu pizza mal-patri li kien ser izewwigna u dawn it-tlett guvintur. Meta gie l-Qassis ghalina bil-vann, Subaru jiena

qadt quddiem u hi wara mat-tlett guvintur hdejn dak li jogghobha. Il-pizzerija bdew jtkellmu bejniethom u jiena hassejtni barra minn kollox u meta gejna biex immorru lura d-dar gara l-istess. Hrigna mill-karozza u qabel ma sellimnilhom hi harget envelope mill-basket u taghtu lil dan il-guvni. Jekk niftakar sew kien il-birthday tieghu fi zmien gimgha.

Illi waqt ic-cerimonja taz-zwieg ukoll hassejtni huta barra mill-ilma, fis-sens li Elena ma kenitx qed taghti kasi. Waqt l-ikla taz-zwieg hi kienet tkellem xi hbieb u jiena ghamilt xi ghoxrin minuta wahdi, tant li dahalli hsieb hazin. Jiena dak iz-zmien kont nahseb li l-atteggjament taghha fil-konfront tieghi kien hekk peress li hi min-Nord ta' l-Italja. Kont nahseb li kont suspettuz iz-zejjed u kont inhalliha. Tista` tghid li qatt ma kien hemm diskussjoni fejn konna se nghixu u cjoè hawn Malta.

Illi meta gejna lura Malta biex nghixu hawnhekk Elena kienet kontinwament tibki u kienet qed timmisja hafna lill-genituri taghha u lill-Italja. Qaltli li ghal xhur shah qabel ma zzewwigna kienet qed tibki hafna. Qaltli li kienet qed tibki minhabba l-incertezza, kienet qaltli wkoll li kienet tikkonfida mal-patri li zewwigna, Don Rioenza li kien Qassis zghir fl-eta` u open-minded hafna. Sirt naf li kienet tikteb ittri u tikkonfida ma' habib taghha. Jiena ghandi kopja ta' wahda minn dawn l-ittri li tispjega kemm kienet affetwata fil-fond bitr-relazzjoni extra - konjugali li missierha kellu.

Illi xi sentejn wara li zzewwigna Elena nqabdet tqila. Xi tlett xhur fit-tqala habib taghha mill-Italja gie jzurna u qaghad id-dar taghna. Allavolja jiena ndunajt li kien hemm xi haga hazina, kellhom jghaddu sitt xhur qabel Elena ammettiet mieghi li hi kellha relazzjoni ma' dan il-habib taghha waqt li kien btala d-dar taghna.”

Illi fl-affidavit tieghu **Alfred Petroni**, missier l-attur, jghid:-

“Illi jiena missier Noel Petroni. Jiena kont habib hafna ta' missier Elena Monico u missierha kien qalli li jixtieq jibghat lit-tifla hawn Malta biex titghallem l-Ingiliz u jien

offrejtlu li tigi ghandi peress li ghandi zewgt ibniet u ghallhekk kelli min idur biha. Missierha kien qalli li xtaq jibghatha Malta biex trabbli l-ghaqal u tissoda. Fil-fatt Elena giet ghandna d-dar la naf tlett gimghat u lanqas erbgha. Dak iz-zmien li kienet maghna osservajt li bil-lejl qed tohrog mill-kamra taghha u tmur fil-kamra mat-tifel Noel u niftakar nghid lill-mara li din bicca nkwieta, ghax din tifla l-Italja kienet dejjem tigri mal-guvintur u li ser tirrovinalna tifel. Niftakar li l-Italja kienet tilbes stil ta' punk. Noel kien guvni kwiet u mohhu kien principalment fil-windsurfing. Il-mara kienet qaltilha xi kelma u hallejniha b'hekk. Niftakar lill-mara ghedtilha "mhux daqt titlaq." Wara li telqet minn Malta sirt naf li baqghet tikkorrispondi ma' Noel. Jiena kont ghedt lit-tifel li dik m'ghandux x'iridha ghax ma tghix it-tip ta' hajja tieghu. L-Italja kont nafha sew u dejjem tigri mal-guvintur. Madanakollu Noel baqa` jikkorrispondi maghha u wara ftit zmien qalilha li jrid jizzewweg. Jiena hadtha kontrih imma fuq kollox mbaghad l-ahhar kelma tieghu.

Illi matul il-perjodu li qed tikkorrispondi mieghu biex tizzewweg sirt naf minn xi hbieb Taljani li Elena xorta baqghet tigri ma' l-irgiel allavolja kienet ser tizzewweg lil Noel u lil Noel kont wissejtu b' dan. Pero` hu kompli jinsisti u ma bqajtx nindahal. Fil-perjodu li kienet tikkorrispondi ma' Noel il-familja taghha kienu ghaddejjin minn problemi serji. Ommha kellha break-down, il-business kien qed ifalli u kellhom hafna sekwestri, sahsitra fuq id-dar. Kullhadd kien surpriz anke hbieb tieghi, li Elena kienet ser tizzewweg lil Noel. Elena riedet tahrab din is-sitwazzjoni familjari ta' l-Italja, tigi Malta u tibqa sinjura. Dan iz-zmien il-business tieghi kien b'sahhtu.

Illi huma zzewwgu gewwa l-Italja u dakinhar tat-tieg dak Noel kien qisu n-naghga l-mitlufa, lanqas tniffes. Mill-banda l-ohra hi ticcaccra mal-hbieb kollha taghha. Niftakar li jiena ghidt lil mara kif din ser tizzewweg b'din il-kunfidenza ma' dawn il-guvintur. Wara z-zwieg ghamlu xi gimghatejn l-Italja u gew joqghodu Malta.

Illi meta gew Malta l-mara kienet qaltli Elena kif inbidlet. Jiena dejjem kelli suspett li dan m'hux minnu u ghedtilha li qed taghmel hekk biex toghgobha u li qed tghix hajja artificjali.

Illi wara ftit zmien joqghodu Malta, Elena gennet lit-tifel biex imur l-Italja jahdem hemm. Jiena hadtha bi kbira hafna u ghedtilha li set tirrovinah lit-tifel ghax mhux kapaci jahdem l-Italja, imma hi baqghet tinsisti u fil-fatt marru. Wara ftit zmien jghixu hemm cempilli t-tifel biex kemm jista' jkun naqtghalu passagg biex jigi lura Malta ghax qed ihossu ser jiggennen. Wara sirt naf li ried jigi lura Malta ghax il-mara tieghu kienet qed tigrigi ma' l-irgjel allavolja kienet pregnant.

Illi fil-fatt jiena dejjem kont nghid li hawn Malta kienet tghix il-hajja artificjali u li lilna kienet turina stampa u kellha xi haga ohra gewwa mohha.”

Illi l-assenti **Elena Monico** tghid:-

“I Elena Monico, met Noel the first time when his family had invited me to stay at their house during the month of August. I needed a holiday since I had passed through a trauma, which affected me deeply. It was my eighteenth birthday when I knew that my father had another woman. I am the second in the family. I have an older brother and a younger sister. To my father I was special and I regarded him as my role model, I used to work in my father's factory and I used to do paper work, bank errands and other similar jobs. My father used to trust me in my work probably he used to see himself in me. I must admit I wasn't the most elegant type of girl but more of a tomboy, ready to do anything. My mother was the type to stay at home and never went out with my father to dinners with business friends. Even when we were young, it was my father who woke me up and helped me for school. I know my father missed a real wife end now I understand why he was attracted to another woman. When I got to know that my father had an affair with another, I was destroyed. I never believed that my father, who was a kind and generous man could do such a thing to us and especially

my mother. At this time my father's business was passing through a bad stage. We were on the verge of losing everything. In fact after about two years, the bank took our business including factory, car and even our house. Luckily my father managed to save half and we still reside there but had to pay rent.

My office was next to my father's and many times I could hear him talk to his girlfriend. Of course he did not know I was listening. It was torture for me hearing my father talk and be intimate with another woman. None of us had told him anything; probably we were all uncomfortable and afraid. After about a year he stopped this affair and I believed everything would return to normal. What I didn't know was that I had gathered an emotional confusion inside me that I never let out.

I felt the world on top of me, and that is when I decided to go for a holiday I went to Malta and stayed with a family who were friends of my fathers, who knew each other through their business. It was an opportunity for me to relax and learn some English. I remember entering the house and seeing Noel for the first time, I had like him at first sight but that was all, I had gone sailing with his friends and I really wanted to get to know him more so I decided to wait. I did not want to go out with Italian friends of mine. When Noel arrived from his trip I managed to attract his attention and after a few days we were going out together. He was a kind and generous boy. I felt very relaxed, far from home and problems. Here it was living like a fantasy dream. However, sometimes the past would reach up with me and haunt me. One time I was with Noel, I think we were on a sandy beach and I just burst into tears. It was like my past overruled my tranquility. Although I was relaxed with Noel. I knew that I had to get back home soon and face the problems that my family was passing through with the business. I did not want to go back. With Noel I felt I was in another world away from all the problems.

When Noel had asked me why I had tears, I told him that it was nothing. Probably I was too ashamed. This incident happened about a couple of more times and I

always refused to say anything. I had an intimate relationship with Noel but I got to know months after that I was his first girl; probably he was shy to admit it because he had told me that he had other girls before me.

I was sad to leave maybe because I didn't want to face the problems at home. With Noel I felt comfortable and good. I used to write a letter to him every day; partly to practice my English and partly to keep in touch with that piece of tranquil world that I had discovered. During November, Noel had come to visit me and stayed at our family. However this time it was different. It is true that I was with him but still the world looked the same with the usual problems. I realized that I did not like or love Noel, but only liked him when I was with him in his country, away from my real world. I felt uncomfortable, but I could not tell him this and hurt his feelings, so I forced myself to continue hoping that this thought of discomfort would go away. One afternoon at a cafeteria, I started crying again but this time I plucked the courage to tell Noel the real story about my father. I told him not to tell anybody about it.

After some time that he had left I wished to see him again. We kept communicating by phone and letters, went to Malta in December for about two and a half weeks. I tried to get that August feeling again but it wasn't quite there. I felt afraid because I did not want to lose that feeling that I had in August when I first visited. I kept telling myself that I have to try and convince myself that I was in love. Today, with the help of a Psychologist I came to understand my biggest mistake was to avoid the anger for my father that had built up during the years and never faced the reality. I did not love Noel but I did my best to lie to myself and continue living this dream. I even put myself in a position to deceive Noel and make him believe that I really loved him. During my stay in December I told Noel that I wished to see each other regularly and not every few months. He told me to marry him to solve the problem and I immediately accepted always making myself believe that everything will work out.

When I got back home, my parents weren't really pleased with what I told them. They knew what character I was and they knew that I wasn't ready for such a commitment. However, I wanted to escape from my house, I wanted to escape from the insecurity of my father's job, I wanted to show my father that I can settle down. I always saw Noel's family well off. His father had a good business, a beautiful house. Noel had told me that his father had bought the house for his two married sisters and that he will give one to him when we got married. All these things built up a false security in my mind. I thought better living with Noel than to stay with my family.

We kept communicating by phone and letters. However, I was having very serious thoughts about marriage. Something inside me was telling me that I don't really love Noel but I kept fighting this feeling. Many times I would burst out crying, while driving the car or in my room at night. I used to phone a friend of mine and spend hours talking. I even sent him letters and explained my actual feelings to him. Today I learnt that the trauma I suffered when I learnt about what my father had done had triggered a depression. I became two persons. One person was the good Elena that wanted to get married to a good boy and live a normal life and the other, the real Elena, was the one the wanted revenge for what my father did. It was very clear to me that I did not love Noel, but I tried so hard to fight myself and convince myself that I had to take this road of marriage.

During my married life I always tried to convince myself that what I did was right. But truly, I was suffering inside me. Slowly, slowly I was keeping these thoughts inside me and covering them. I thought that by having a child would tie me more to my marriage and convince me more. However, even when I was pregnant my real self showed me, that I did not love Noel. I had been unfaithful to him when we invited a friend of mine from Italy to stay at our house.

I kept trying to love but my feelings continued to accumulate inside me until one day I visited a

Psychologist and understood everything. With the help of a Psychologist I was able to say and admit what I always was afraid of since before I got married. I understood that I never loved Noel and that I married him to escape my family's problems and my father."

ii). PRINCIPJI LEGALI.

Illi dawn il-premessi huma kkontemplati fl-**Artikolu 19 (1) (d) u (f) tal-Kap 255 tal-Ligijiet ta' Malta** u cjoe` l-Att dwar iz-Zwieg.

Illi l-attur jissottometti illi z-zwieg bejnu u bejn il-konvenuta ghandu jigi dikjarat null *inter alia* a bazi ta' l-**Artikolu 19 (1) (d) tal-Kap 255** li jghid:

"(d) jekk il-kunsens ta' xi wahda mill-partijiet ikun vizzjat b'difett serju ta' diskrezzjoni ta' gudizzju fuq il-hajja mizzewga, jew fuq id-drittijiet u d-dmirijiet essenzjali taghha, jew b'anomalija psikologika serja li taghmilha mpossibbli ghal dik il-parti li taqdi l-obbligazzjonijiet essenzjali taz-zwieg".

Illi dwar dan is-sub-artikolu din il-Qorti kif presjeduta diga' kellha okkazjoni tezaminah, u ghalhekk taghmel referenza ghas-sentenza "**Joseph Borg vs Maria Nicolina Cutajar gia` Borg**" (Cit. Nru. 1564/97/RCP – deciza fil-21 ta' Ottubru 1999) u ghall-principji hemm enuncjati.

Illi fis-sentenza "**Kevin Spiteri vs Avukat Dr Renzo Porella Flores et noe**" (Cit. Nru. 2443/97/RCP – deciza 18 ta' Jannar 2000) il-Qorti ghamlet referenza ghall-espozizzjoni ta' **Viladrich**:

"Thus, there is grave lack of discretion of judgement when it is proven that a contracting party lacks intellectual and volitional maturity necessary to discern, in view of binding oneself in an irrevocable manner, the essential rights and duties of marriage, which are the object of mutual surrender and acceptance. The discretion of judgement refers to that degree of maturity of comprehension and of

will of the contracting parties which enables them to give and receive each other, through a juridical bond, in a unique community of life and love. This community is indissolubly faithful, ordered to the good of the spouses as well as to the procreation and education of the offspring” (Viladrich, P.J., “Matrimonial Consent in Code of Canon Law Annotated.” (Montreal, 1993), p. 686).

Illi kwantu ghall-obbligazzjonijiet essenzjali taz-zwieg, din il-Qorti tifhem li, fin-nuqqas ta' definizzjoni jew indikazzjoni fil-Kap. 255, dawn l-obbligazzjonijiet essenzjali huma dawk li fis-socjeta` Maltija dejjem u nvarjabbilment gew ritenuti bhala l-obbligazzjonijiet essenzjali taz-zwieg. Dawn huma *“the obligation concerning the conjugal act or carnal union, as bodily union and basis of procreation; the obligation of the community of life and love as an expression of the union between man and woman, mutual well-being, which is inseparable from the provision of an environment conducive to the reception and education of children; and the obligation to receive and bring up children within the context of a conjugal community. It is important to remember that these essential obligations must be mutual, permanent, continuous, exclusive and irrevocable so that there would be incapacity if one of the contracting parties should be, due to a psychological cause, incapable of assuming these obligations with these essential characteristics” (Viladrich, P.J., op.cit., p. 687).*

Illi wkoll fis-sentenza **“Alexandra sive Sandra Farrugia vs Raymond Farrugia”** (P.A. (VGD) 10 ta' Settembru 1997) inghad wkoll li:

“Kwantu ghad-difett serju ta' diskrezzjoni ta' gudizzju – Art. 19 (1) (d) – biex ikun hemm nuqqas serju ta' diskrezzjoni ta' gudizzju jrid ikun hemm inkapacita' psikika (mhux necessarjament anomalija psikologika fis-sens mediku psikjatriku) jew kostituzzjonali li wiehed jaghraf u jirrifletti, jew li jiddeciedi liberalment, fuq l-oggett tal-kunsens matrimonjali (“Isabelle Zarb vs Stephen Attard” – P.A. 21 ta' Novembru 1995). Mhix ghalhekk kwistjoni ta' inkompatibilita' ta' karattru, jew ta' decizjoni jew decizjonijiet zbaljati. Il-paragrafu (d) ikompli jitkellew dwar

“anomalija psikologika serja li taghmilha mpossibbli ghal dik il-parti li taqdi l-obbligazzjonijiet essenzjali taz-zwieg”. Il-Qorti tosserva li l-ligi taghna tirrikjedi mhux biss anomalija psikologika tkun wahda serja, izda li tkun taghmilha mpossibbli mhux semplicement diffiqli, li wiehed jaqdi l-obbligazzjonijiet essenzjali taz-zwieg ossia jassumihom”.

Illi ghalhekk b'difett serju ta' diskrezzjoni ta' gudizzju l-legislatur ma riedx ifisser semplicement kwalsiasi stat ta' mmaturita` li parti jew ohra fiz-zwieg tista' tkun fiha fil-mument li jinghata l-kunsens reciproku (**“Nicholas Agius vs Rita Agius gia Caruana”** – P.A. (VDG) tal-25 ta' Mejju, 1995).

Illi li kieku l-legislatur irrikjeda maturita` shiha u perfetta, ftit jew addirittura ebda zwieg ma kien ikun validu. In-nuqqas ta' *discretio iudicii* hu kuncett guridiku ntrinsikament marbut mal-kapacita` ta' parti jew ohra fiz-zwieg li taghti l-kunsens liberu u xjenti taghha ghar-rabta taz-zwieg. Kif jispjega l-gurista **Colagiovanni** meta sostna li:-

“Il matrimonio, in quanto patto ossia “foedus” richiede una capacita` intellettuale e volitiva al di sopra di ogni altro contratto che e` per lo meno rescindibile, in casi determinati dalla legge, richiede quindi una integrita` di mente e di liberta`, dato che si tratta di assumersi una “servitus” per tutta la vita” (Forum, 1990, Vol. 1 part I, p. 72).

Illi pero`, kif gia inghad, b'immaturita` jew difett serju ta' diskrezzjoni ta' gudizzju d-dottrina u l-gurisprudenza *“non si riferiscono ad una piena e terminale maturita`, non esigono nei nubenti una conoscenza perfetta ed esaustiva di cio` che comporta il matrimonio, non richiedono una preveggenza chiara ed assoluta di cio` che puo` compartare la vita coniugale, ne` un perfetto equilibrio volitivo-affettivo, ne` infine una coscienza perfetta delle motivazioni della scelta matrimoniale. Ecco perche` riesce piu` appropriato l' uso del termine discrezione di giudizio, che fa riferimento ad un certo*

discernimento ma non implica il raggiungimento di una maturita` piena” (**Pompedda, M.F., “Il Consenso Matrimoniale in Grocholewski” – Pompedda – Zagaglia, “Il Matrimonio nel Nuovo Codice di Diritto Canonico”** (Padova, 1984), pagina 46).

Illi kif gie affermat diversi drabi minn din il-Qorti, inkluz fis-sentenza “**Alessandra sive Sandra Mc Monagale qabel Mamo vs Mario Mamo**” (P.A. (VDG) 26 ta' Ottubru 2000) ikun hemm id-difett serju ta' diskrezzjoni ta' gudizzju fis-sens ta' l-ewwel parti tal-paragrafu **(d)** imsemmi kemm-il darba jirrizulta li, *“fil-mument ta' l-ghoti tal-kunsens matrimonjali, parti jew ohra tkun priva b'mod sostanzjali, ossia gravi, minn dik il-fakolta` kritiko-estimativa jew kritiko-valutativa dwar l-oggett tal-kunsens taz-zwieg, jew minn dik il-maturita` affettiva li hija presuppost ghal ghazla libera dwar l-imsemmi oggett. Id-difett serju ta' diskrezzjoni ta' gudizzju, ghalhekk, ma hux semplicement nuqqas ta' hsieb, nuqqas ta' riflessjoni; anqas ma jfisser li wiehed jaghmel ghazliet jew jiehu decizjonijiet zbaljati – in fatti decizjoni jew ghazla zbaljata hi perfettament kompatibbli ma' diskrezzjoni ta' gudizzju”* (ara, “**Emanuel Camilleri vs Carmen Camilleri**”, P.A., 10 ta' Novembru 1995).

Illi l-istess sentenza tkompli tghid *“Li parti fiz-zwieg ma tkunx fehmet sufficjentement, fis-sens li ma tkunx hasbet bizzzejjed jew ma tkunx irriflettiet bizzzejjed fuq il-hajja mizzewga jew fuq id-drittijiet u d-dmirijiet essenzjali tal-hajja mizzewga, ma jammontax necessarjament ghal difett (serju) ta' diskrezzjoni ta' gudizzju (“**Selina-Maria Vella Haber vs Joseph Gatt**”, P.A., 15 ta' April 1996)”*.

Illi ghalhekk biex ikun hemm in-nuqqas jew difett serju ta' diskrezzjoni ta' gudizzju kif ravvizat fl-**artikolu 19(1)(d)** irid ikun hemm l-inkapacita` psikika (mhux necessarjament anomalija psikologika fis-sens mediku / psikjatriku) jew kostituzzjonali li wiehed jaghraf u jirrifletti, u li jiddeciedi liberament, fuq l-oggett tal-kunsens matrimonjali (ara f'dan is-sens, fost ohrajn, “**Jacqueline Cousin vs Bernard Simler**”, P.A., 3 ta' Gunju 1998; “**Roseanne Cassar vs**

Kopja Informali ta' Sentenza

Kenneth Cassar", P.A. 19 ta' Ottubru 1998; u "**Carmelo Grima vs Mary Andrews**", P.A., 2 ta' Novembru 1998).

Illi proprju ghalhekk ukoll il-legislatur jirrikjedi li d-difett ta' diskrezzjoni jrid ikun wiehed serju u l-anomalija psikologika tkun wahda serja.

Illi kif jispjega **Bersini**, id-diskrezzjoni ta' gudizzju tikkonsisti f'zewg elementi distinti izda konkorrenti u interdipendenti:-

*"La piena avvertenza e il deliberato consenso La piena avvertenza si riferisce alla sfera intellettuale, il deliberato consenso a quella volitiva. In altri termini, la discrezione di giudizio comprende la maturita` di giudizio e la maturita` affettiva La maturita` di giudizio comporta una conoscenza critica proporzionata all' atto da compiere, agli obblighi essenziali da assumersi e ai doveri coniugali che ne derivano proiettati nel futuro. La maturita` affettiva comporta generalmente quella adeguata evoluzione degli istinti, degli affetti, dei sentimenti, della emotivita` che se sono turbati o inadeguati intaccano direttamente la volonta` e possono privare della libera scelta interiore. Abbiamo cosi` una mancanza di consenso libero (immaturita` affettiva) e ponderato (immaturita` di giudizio)" (**Bersini, F.**, "Il Diritto Canonico Matrimoniale." (Torino, 1994), p. 97).*

Illi l-istess awtur, imbaghad ikompli jispjega dwar kemm irid ikun serju d-difett ta' diskrezzjoni biex wiehed ikun jista' jghid li hemm id-difett fil-kunsens u l-konsegwenti nullita` taz-zwieg:-

"Se ci si chiede quale grado di discrezione di giudizio possa ritenersi proporzionato al matrimonio, rispondiamo anzitutto che, sia per la conoscenza intellettuale come per la deliberazione volitiva, dovro' essere maggiore di quello richiesto per peccare mortalmente e per stipulare gli altri contratti. Il motivo sta nel fatto che il consenso matrimoniale riguarda obbligazioni che si proiettano nel futuro ed e` ordinato all' assunzione di uno stato di vita che incide su tutta l' esistenza con un contratto perpetuo e

irrescindibile che comporta una serie di gravi obblighi ad esso inerenti. Per dare un valido consenso, non è sufficiente il grado di ragione col quale speculativamente uno sappia che cosa è il matrimonio; è necessaria la maturità di giudizio capace di ponderare in concreto i doveri e i diritti che uno deve assumersi per tutta la vita. In altri termini, è necessaria la discrezione non tanto per l'atto in se, al momento di emettere il consenso, quanto per gli impegni che da quell'atto derivano. Una discrezione che impegni per il futuro. Ovviamente si richiede una ponderazione degli impegni sostanziali del matrimonio e non di tutto il suo valore etico, religioso, sociale, giuridico ed economico, altrimenti ben pochi sarebbero in grado di emettere un valido consenso. Ogni volta che i contraenti abbiano raggiunto l'età prescritta dal legislatore per poter contrarre matrimonio, si presume che essi siano in possesso della debita discrezione di giudizio; tale presunzione, tuttavia, ammette prove in contrario. Pertanto, qualora si possa dimostrare, per qualsiasi motivo, la capacità intellettuale e volitiva sopra descritta sia gravemente alterata o addirittura mancante, si dovrà ritenere che il vincolo matrimoniale sia nullo per difetto di discrezione di giudizio" (ibid. pp. 97-98).

Illi hawnekk il-Qorti, pero`, tixtieq tippreciza li ghazla libera, kunsens hieles, ghar-rabta taz-zwieg mhux sinonimu mal-kuncett ta' ghazla facli, u dan kif gja gie indikat fis-sentenzi fuq kwotati, tant li inghad li:-

"... .. se il soggetto non è in grado di superare [i] condizionamenti interiori, allora si dirà che la scelta di lui non è stata libera; lo sarà invece qualora pur pressato da tali impulsi provenienti dal proprio psichismo, da un' affettività non sufficientemente matura o anomala, e quindi anche di fronte a conflitti interiori, sarà stato capace di superarli, di dominarli razionalmente, di scegliere con autonomia In ogni caso, i nubenti debbono aver coscienza di assumere vere obbligazioni (e reciprocamente di concedere veri diritti) di creare cioè col matrimonio un patto che vincola a un comportamento idoneo e adeguato alla specifica società coniugale, sia nei riguardi dell' altra parte sia nei riguardi della prole" (Pompedda, M.F., "Incapacità di Natura Psichica in

Matrimonio Canonico: Fra Tradizione e Rinnovamento.” (Bologna, 1991), pp. 231, 233).

Illi kwantu ghad-difett fil-kunsens dovut ghall-anomalija psikologika serja li taghmilha mpossibbli ghal dik il-parti li taqdi l-obbligazzjonijiet essenzjali taz-zwieg, il-ligi taghna, bhad-dritt kanoniku (**Can. 1095 (3)**) tirrekjedi mhux semplici diffikulta` izda mpossibbilta` li wiehed jaqdi ossia jassumi l-obbligazzjonijiet essenzjali taz-zwieg. Inkapacita` jew impossibbilta` vera f'dan il-kuntest hi ipotizzabbli biss fil-prezenza ta' anomalija psikologika serja li, independentement minn kif wiehed jaghzel li jiddefiniha jew jiklassifikaha fil-kamp tal-Psikjatrija jew tal-Psikologija, tintakka sostanzjalment il-kapacita` “*di intendere e / o di volere*”. “*L' incapacita` di assumere gli oneri essenziali della vita coniugale*”, jghid il-**Bersini**, “*rende la persona inabile al matrimonio, anche nell' ipotesi che al momento di contrarre le nozze abbia avuto la discrezione di giudizio sufficiente per un valido consenso*” (op. Cit., p. 99).

Illi ghal dak li jirrigwarda l-obbligazzjonijiet essenzjali taz-zwieg, din il-Qorti tifhem li, fin-nuqqas ta' definizzjoni jew indikazzjoni fil-**Kap. 255**, dawn l-obbligazzjonijiet essenzjali huma dawk li fis-socjeta` Maltija dejjem u nvarjabilment gew ritenuti bhala l-obbligazzjonijiet essenzjali taz-zwieg.

Illi dawn huma “*the obligation concerning the conjugal act or carnal union, as bodily union and basis of procreation; the obligation of the community of life and love as an expression of the union between man and woman, mutual well-being, which is inseparable from the provision of an environment conducive to the reception and education of children; and the obligation to receive and bring up children within the context of a conjugal community. It is important to remember that these essential obligations must be mutual, permanent, continuous, exclusive and irrevocable so that there would be incapacity if one of the contracting parties should be, due to a psychological cause, incapable of assuming these obligations with these essential characteristics*” (**Viladrich, P.J.**, op. Cit., p. 687).

Illi tal-istess portata huma s-sentenzi “**Anthony Gaffiero vs Juanita Gaffiero nee’ Sultana**” (P.A. (VDG) 17 ta’ Novembru 2000 u “**Anna Galea v. John Walsh**”, (P.A. (VDG) tat-30 ta’ Marzu 1995). Inerenti, ghalhekk, f’dawn l-obbligazzjonijiet hemm l-obbligu tal-partijiet li jaghtu lilhom infushom lil xulxin fit-totalita` taghhom sabiex tigi stabbilita bejniethom “*the community of life and love*”.

Illi fl-ahharnett din il-Qorti taghmel riferenza ghal dak li nghad fis-sentenza fl-ismijiet “**Nathalie O’Toole vs Patrick O’Toole**” (P.A. (N.A.) 25 ta’ Marzu 2002) fejn inghad li:-

“Il-kunsens moghti fiz-zwieg skond din l-istess jurisprudenza mhuwiex dak il-kunsens simplici rikjest fil-kuntratt in generali ghaliex il-kuntratt taz-zwieg huwa wiehed "sui generis" u ta' ordni pubbliku. Illi ghalhekk il-partijiet f'kuntratt ta' zwieg mhux biss irid ikollhom il-kapacita' li jaghtu dak il-kunsens, izda li l-istess irid jigi moghti bl-iktar mod liberu u xjenti ghal dak kollu li tirrikjedi r-rabta taz-zwieg. Il-kuntratt taz-zwieg ghandu jigi apprezzat mhux biss bl-ghajnejn oggettivi tal-ligi, izda jrid isib is-sinifikat tieghu fir-relazzjonijiet ta' koppja u l-iskop ahhari taz-zwieg, cjoè' li tnejn minn nies jaghtu lilhom nfushom lil xulxin ad esklużjoni ta' kollox u kulhadd. Meta ghalhekk ghal xi raguni jew ohra dak il-kunsens ma jkunx gie moghti bil-konoxxenza shiha ta' dak li jgib mieghu z-zwieg, allura jinholoq dubju kemm dak il-kuntratt matrimonjali huwa wiehed validu.”

Illi kif inghad fis-sentenza “**Al Chahid vs Mary Spiteri**” (P.A. (RCP) 5 ta’ Gunju 2002) *inoltre* l-kunsens irid ikun wiehed tali li permezz tieghu l-parti li tesprimih trid tkun konxja ta' l-obbligi, id-dmirijiet u r-responsabbiltajiet li ggib maghha l-hajja mizzewga bhal ma huma l-elementi ta' unjoni permanenti, esklussiva w irrevokabbli.

Illi dawn il-principji kollha gew kkonfermati f’diversi sentenzi moghtija minn din il-Qorti nkluzi “**Maria Rita Calleja vs Mohamed Ben Mohamed Khemiri**” (P.A. (RCP) 17 ta’ Frar 2000); “**Nicolai Balzan vs Simone**

Cremona” (P.A. (RCP) 9 ta' Marzu 2000); **“Ousama Sadalah vs Doris Tanti”** (P.A. (RCP) 4 ta' April 2000); **“Josephine Gabriel vs Dr. Georg Sapiano et nomine”** (P.A. (RCP) 8 ta' Novembru 2000); **“Josette Lungaro mart Jesmond Lauro vs Jesmond Lauro”** (P.A. (RCP) l-1 ta' Frar 2001); **“Mazen Dadouch vs Maria Dadouch xebba Galea”** (P.A. (RCP) 22 ta' Marzu 2002); **“Albert Grech vs Josette Grech”** (P.A. (RCP) 30 ta' April 2002); **“Marco Tanti vs Catherine Azzopardi”** (P.A. (RCP) 30 ta' Mejju 2002); u **“Giulio Farrugia vs Raquel Anne Farrugia”** (P.A. (RCP) 29 ta' Mejju 2002), **“Suzanne sive Sue Rossi vs Benjamin sive Benny Bugeja”** (P.A. (RCP) 27 ta' Gunju 2002), **“Lorriane Zammit vs Gordon Zammit”** (P.A. (RCP) 27 ta' Gunju 2002), **“Mariella Balzan vs Oswan Murat Kiran”** (P.A. (RCP) 27 ta' Gunju 2002), u **“Ruth Formosa vs Ahmed Enan”** (P.A. (RCP) 27 ta' Gunju 2002) fost ohrain.

Illi min-naha l-ohra fl-**Artikolu 19 (1) (f)** jinghad ukoll li z-zwieg ikun null:

19 (1) (f) *“jekk il-kunsens ta' xi wahda mill-partijiet ikun inkiseb bl-eskluzjoni pozittiva taz-zwieg innifsu jew ta' xi wiehed jew aktar mill-elementi essenzjali tal-hajja mizzewga, jew tad-dritt ghall-att taz-zwieg”.*

Illi dan is-sub-artikolu wkoll gie diskuss u ezaminat fis-sentenza **“Nicolai Balzan vs Simone Cremona”** minn din il-Qorti kif presjeduta (Cit. Nru. 1019/98/RCP – deciza fid-9 ta' Marzu 2000) u **“Mark Spiteri vs Susan Margaret Spiteri”** (P.A. (RCP) 27 ta' Frar 2001) u a skans ta' ripetizzjoni qed issir referenza ghall-principji hemm enuncjati. Illi *inoltre* fis-sentenza **“Theresa Taguri nee Spiteri vs Avukat Christopher Cilia et noe”** (Cit. Nru. 3130/96/NA – deciza P.A. (NA) fl-10 ta' Novembru 1999) gie ritenut illi:-

“Fl-interpretazzjoni ta' dan is-sub-inciz gie ritenut mill-Qorti taghna illi l-eskluzjoni pozittiva ma kellhiex neccesarjament tirrizulta biss minn xi haga espressa direttament izda setghet tigi espressa bl-imgieba ta' xi

parti fil-perjodu mmedjatement qabel u wara li jkun inkiseb l-istess kunsens".

Illi tal-istess portata hija s-sentenza "**Josette Lungaro mart Jesmond Lauro vs Jesmond Lauro**" (P.A. (RCP) l-1 ta' Frar 2001); "**Joseph Gabriel vs Dr. Georg Sapiano nomine**" (P.A. (RCP) 8 ta' Novembru 2000); "**Carmen El Shimi gja Tanti vs Ibrahim Mohamed Mohamed Ibrahim El Shimi**" (P.A. (NA) 20 ta' Gunju 2000); "**Mary Rose Abder Rahim vs Esam Abder Rahim**" (P.A. (NA) 31 ta' Mejju 2000); "**Ousama William Hfez Sadallah vs Doris Dalli**" (P.A. (RCP) 4 ta' April 2000) u "**Albert Grech vs Josette Grech**" (P.A. (RCP) 30 ta' April 2002 Cit. Nru. 793/01/RCP).

(iii) APPREZZAMENT TA' PROVI

Illi mill-provi prodotti jirrizulta li l-kontendenti zzewgu ghar-ragunijiet differenti, li in verita` m'ghandhom x'jaqsmu xejn ma' l-elementi essenzjali tal-hajja mizzewga, tant li mill-provi prodotti unikament mill-attur, jirrizulta li huwa kien izzewweg lill-konvenuta assenti (li hija ta' nazzjonalita` Taljana) minhabba l-fatt li huwa kien litteralment hass ghaliha peress li hija kienet hafna drabi tibki u fi stat dippressiv minhabba avvenimenti li kienu qeghdin jigru fil-familja taghha, fosthom ir-relazzjoni li missierha kellu b'mod extra-maritali u wkoll fi problemi li kellu fin-negozju.

Illi jinghad ukoll li peress li anke li l-partijiet kienu ta' nazzjonalita` differenti u l-familji taghhom rispettivi kienu jghixu fil-pajjizi taghhom, il-kuntatt bejn xulxin ghaz-zmien kollu li huwa damu bhala koppja qabel ma zzewgu kien relattivament qasir, pero` *nonostante* dan m'hemmx dubju li fil-mohh ta' l-attur il-konvenuta halliet l-impressjoni li hija kienet imdejqa hafna mis-sitwazzjoni familjari taghha b'mod li din ikkawzat fl-attur, kwazi l-obbligu, li huwa jizzewwigha sabiex hija tkun tista' tehles minn dan l-inkwiet b'mod li jkollha refugu ma' l-attur.

Illi din hija almenu l-istorja li l-istess attur issottometta quddiem din il-Qorti u mill-provi mressqa dan jirrizulta li

jinsab ikkonfermat mix-xhieda minnu prodotti senjatement dik ta' missieru, Alfred Portelli, u ghalhekk abbazi tal-premess hija l-opinjoni ta' din il-Qorti li r-ragunijiet li ghalihom l-attur dahal f'dan iz-zwieg ma kellhom x'jaqsmu xejn ma dak li jikkostitwixxi bhala l-elementi essenzjali taz-zwieg u l-kunsens necessarju sabiex parti tidhol f'dan l-istat ta' hajja, u minhabba dan il-Qorti tikkonkludi li l-kunsens ta' l-attur f'dan il-kaz, kien vizzjat b'difett serju ta' diskrezzjoni ta' gudizzju fuq il-hajja mizzewga, u fuq id-drittijiet u d-dmirijiet essenzjali taghha abbazi ta' l-**artikolu 19 (1) (d) tal-Kap 255**.

Illi f'dan ir-rigward jinghad ukoll li din il-Qorti tinsab ikkonfortata wkoll mill-fatt li mill-korrispondenza li l-konvenuta assenti baghtet lill-Kuratur Deputat jirrizulta aktar serjament li l-konvenuta ghamlet minn kollox bl-attitudini taghha u bl-ittri taghha lill-attur qabel ma zzewget sabiex hija ggaghlu jhoss dak li fil-verita` huwa rrefera ghalih fix-xhieda tieghu, u dan peress, li minn tali korrispondenza jirrizulta li l-konvenuta sahsitra gaghlet lill-attur jahseb li hija kienet thobbu meta fl-istess komunikazzjoni jirrizulta li dan ma kienx il-kaz, izda ghamlet dan sabiex tinduci lill-attur sabiex jizzewwigha u tibqa' Malta u b'hekk hija tahrab mill-problemi li kellha d-dar.

Illi dan iwassal sabiex f'dan il-kaz jinghad li l-kunsens tal-konvenuta kien ukoll simulat abbazi tal-provvedimenti tal-**artikolu 19 (1) (f) tal-Kap 255** u 'n verita` l-konvenuta qatt ma riedet li tghix hajja mizzewwga ma' l-attur, izda wzatu biss ghall-iskop uniku biex tahrab mill-hajja taghha fl-Italja u ghal xejn izjed.

Illi l-komportament ta' l-istess konvenuta wara z-zwieg, jikkonferma dan kollu *stante* li wriet bruda u nuqqas ta' sentimenti ghall-attur u dan ovvjament ghaliex ma setghatx tilghab il-parti konsistentement u ghal hajjitha kollha, u ma setghatx turi emozzjoni jew imhabba lejn l-attur fejn qatt ma kien hemm. Minn dak prodott quddiem din il-Qorti jirrizulta fil-fatt li ma' l-ewwel okkazzjoni, l-konvenuta harbet minn din ir-rabta u anke kellha relazzjonijiet ma' terzi persuni, b'dan li dan iz-zwieg fazull

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mill-bidu, sfaxxa wkoll fid-dehra tieghu, ghax in verita` sostanza qatt ma kien fih.

Illi abbazi tal-premess din il-Qorti thoss li t-talba attrici ghandha tigi milqugha abbazi ta' **l-artikolu 19 (1) (d) u (f) tal-Kap 255 tal-Ligjiet ta' Malta.**

III. KONKLUZJONI.

Illi ghalhekk ghal dawn il-motivi, din il-Qorti, **taqta' u tiddeciedi**, billi filwaqt li tichad l-eccezzjonijiet tal-Kuraturi Deputati in kwantu l-istess huma nkompatibbli ma' dak hawn deciz, **tilqa' t-talba attrici** b'dan illi:

1. Tiddeciedi u tiddikjara li z-zwieg bejn il-partijiet tal-11 t'April 1987, fuq imsemmi, huwa null u nvalidu *ai termini ta' l-artikolu 19 (1) (d) u (f) tal-Kap 255.*

Bl-ispejjez jinqasmu bin-nofs bejn il-partijiet.

Moqrija.

-----TMIEM-----