MALTA

QORTI KOSTITUZZJONALI

S.T.O. PRIM IMHALLEF
VINCENT DE GAETANO

ONOR. IMHALLEF
JOSEPH D. CAMILLERI

ONOR. IMHALLEF
JOSEPH A. FILLETTI

Seduta tal-15 ta' Jannar, 2007

Appell Civili Numru. 10/2005/2

Professur Anthony Jaccarini B.Sc., B.Pharm., M.D., M.A. (Oxon), B.Sc. (London), Ph.D. (London), F.R.S.C., C.Chem.

v.

Il-Prim Ministru, l-Avukat Generali, Il-Ministru tal-Gustizzja u l-Intern, ir-Rettur ta' l-Universita` ghan-nom u in rappresentanza ta' l-istess Universita`, il-Ministru ta' l-Edukazzjoni, l-ex-Imhallef Dottor Albert Manche` fil-kwalita` tieghu ta' *Chairman* tal-Kummissjoni Permanenti tal-Korruzzjoni (<u>recte</u>: Kummissjoni Permanenti kontra l-Kummissjoni) kif ukoll ghan-nom u in rappresentanza ta' l-istess

Kummissjoni Permanenti tal-Korruzzjoni (recte: Kummissjoni Permanenti kontra l-Korruzzjoni), kif ukoll John Harrison u l-Avukat Dott. Raymond Zammit fil-kwalita` taghhom ta' membri tal-Kummissjoni Permanenti tal-Korruzzjoni (recte: Kummissjoni Permanenti kontra l-Korruzzjoni)

Il-Qorti:

Preliminari

1. Dan hu appell minn sentenza moghtija mill-Prim Awla tal-Qorti Civili fl-14 ta' Gunju 2006 li permezz taghha dik il-Qorti laqghet it-tieni eccezzjoni sollevata mill-Kummissjoni intimata u lliberat lill-intimati kollha mill-osservanza tal-gudizzju.

2. Brevement l-*iter* ta' din il-kawza – li fiha din il-Qorti, kif komposta, diga` kellha l-opportunita` li tippronunzja ruhha fis-sentenza preliminari taghha tat-2 ta' Dicembru 2005 (fol. 159) – kien is-segwenti:

i. Fil-25 ta' Frar 2005, ir-rikorrent – illum appellant – Professur Anthony Jaccarini ippresenta rikors ta' 32 faccata quddiem il-Prim Awla tal-Qorti Civili li permezz tieghu huwa allega li l-intimati kienu lledew id-drittijiet fondamentali tieghu kif protetti bl-"Artikoli 36 u 39 tal-Kostituzzjoni ta' Malta" u bl-"Artikoli 1, 3, 6 u 13 tal-Konvenzjoni Ewropea ghad-Drittijiet u Libertajiet fondamentali tal-Bniedem" (ara fol. 29 tar-rikors promotorju[1]), kif ukoll id-dritt protett bl-Ewwel Artikolu tal-Ewwel Protokoll ta' l-imsemmija Konvenzjoni. A fol. 8 u a fol. 29 ir-rikorrent, pero`, jippreciza li d-drittijiet fondamentali tieghu li gew lezi huma (a) id-dritt ghal smigh xieraq, (b) id-dritt ghal rimedju nazzjonali effettiv, (c) id-dritt ghall-protezzjoni minn trattament inuman u

[1] Din il-Qorti hi tal-fehma li r-referenza ghall-Artikolu 1 tal-Konvenzjoni Ewropea f'pagna 29 tar-rikors promotorju huwa zball ghax dana l-Artikolu jghid semplicement: *The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convetion.* Din id-disposizzjoni anqas hi inkorporata fl-Ewwel Skeda tal-Kap. 319 u ghalhekk din id-disposizzjoni ma tistax tigi invokata taht l-Artikolu 4 tal-imsemmi Kap. 319.

degradanti, u (d) id-dritt ghad-dgawdija pacifika tal-possedimenti tieghu.

ii. Il-lamenteli tar-rikorrent huma bbazati in gran parti, izda mhux ghal kollox, fuq il-procedura addottata mill-Kummissjoni intimata (KPK)[2] meta, wara lment jew "kwerela" mill-istess rikorrent, din il-Kummissjoni pprocediet biex tinvestiga skond il-ligi – kaz numru 139. Infatti, jekk wiehed jara minn pagna 8 sa pagna 25 tar-rikors promotorju, wiehed isib elenku ta' ilmenti dwar il-procedura addotta minn din il-Kummissjoni li, kif jippremetti l-istess rikorrent a fol. 5 tar-rikors, fir-rapport taghha kienet iddecidiet illi *"ma jistax jinghad li hemm provi li l-Professur Peter Serracino Inglott ikkommetta xi reati ta' korruzzjoni bejn il-Professur Anthony Jaccarini u l-Universita` dwar ir-reinstatement tieghu."* Ir-rikorrent jilmenta wkoll li gie michud id-dritt tieghu ghal rimedju nazzjonali effettiv, pero` dan hu bbazat – ara fol. 25 tar-rikors – fuq il-fatt li "ma gietx ezegwita w implimentata d-decizjoni tal-Kummissjoni ghall-Investigazzjoni tal-Ingustizzji"[3]. Kwantu ghall-ilment ta' trattament inuman u degradanti – ara fol. 26 u 27 tar-rikors promotorju – ir-rikorrent jallega li dan huwa dovut minhabba "il-metodi li gew uzati…sabiex ir-rikorrent jigi svestit minn xoghlu u d-drittijiet tieghu kalpestati, ir-raggiri ippjanati u l-qerq kollu" li, skond l-istess rikorrent, "kienu tant gravi li ittrasferew sens ta' umiljazzjoni fir-rikorrent bi ksur ta' l-Artikolu 36 tal-Kostituzzjoni u tal-Artikolu 3 tal-Konvenzjoni Ewropea illi jipprojbixxi trattament inuman u degradanti." Finalment, kwantu ghall-ilment ta' vjolazzjoni tad-dritt ghat-tgawdija pacifika tal-possedimenti tieghu ir-rikorrent qed jibbaza dan l-ilment fuq il-premessa li l-"*entitlement*" tieghu ghal "*reinstatement*" u d-decizjoni tal-Kummissjoni ghall-Investigazzjoni tal-Ingustizzji "huma, ghall-finijiet u effetti kollha tal-Ligijiet taghna, *possessions* fi hdan l-Ewwel Artikolu ta' l-Ewwel Protokoll tal-Kap. 319" (fol. 27).

iii. Fost it-talbiet maghmula mir-rikorrent fir-rikors promotorju tieghu kien hemm dik li l-Qorti tordna bhala

[2] Fl-udjenza tat-2 ta' Marzu 2005, id-difensuri tar-rikorrent "iccaraw" li l-azzjoni mhix indirizzata kontra c-Chairman u l-membri tal-Kummissjoni Permanenti kontra l-Korruzzjoni, "izda kontra l-istess istituzzjoni.

[3] Din il-Kummissjoni mhix l-istess Kummissjoni intimata, cioe` l-Kummissjoni Permanenti kontra l-Korruzzjoni.

"*interim measure*" li huwa jinghata access liberu u minghajr kundizzjoni ghall-atti kollha tal-Kummissjoni Permanenti kontra l-Korruzzjoni rigwardanti l-"kawza" numru 139 jew alternattivament illi tordna illi, fil-presenza ta' l-istess rikorrent u ta' ufficjal tal-Qorti, l-atti kollha rigwardanti dan il-kaz[4] jigu ssigillati, "trasferiti mill-KPK u migjuba fil-kustodja u l-pussess ta' din l-Onorabbli Qorti u annessi mar-rikors odjern u ghalhekk isiru parti integrali tal-proceduri kostituzzjonali odjerni jew alternattivament tordna illi l-Marixxall taghha jiehu pussess tal-atti kollha…kawtelatorjament u jallegahom ma' l-atti ta' din il-kawza…". Permezz ta' rikors iehor presentat kontestwalment mar-rikors promotorju, r-rikorrent Professur Anthony Jaccarini rega' bazikament ghamel it-talba ghal dak li huwa jsejjah "*interim measure/relief*" konsistenti filli jinghata access tal-atti riferibbilment ghall-kaz 139, jew li dawn l-atti jigu ssigillati u/jew trasferiti taht il-kontroll tal-Qorti w allegati mal-atti tal-proceduri odjerni kostituzzjonali.

iv. Fuq dan it-tieni rikors, il-Prim Awla tal-Qorti Civili, minghajr ma semghet lill-kontro-parti, b'digriet moghti fit-**23 ta' Frar 2005**, cioe` dik il-gurnata stess li z-zewg rikorsi gew intavolati, laqghet it-tielet talba tar-rikorrent kif ukoll ir-raba' talba tieghu. It-tielet talba kienet li "l-Marixxall taghha jiehu pussess tal-atti kollha (il-process tal-KPK) kawtelatorjament u jallegahom mal-atti ta' din il-kawza, u sussegwentement tisma' lil partijiet kollha koncernati fuq dan il-punt sabiex il-Qorti tkun tista' tiddeciedi fuqu definittivament". Ir-raba' talba kienet li dik il-Qorti "tordna d-divjet tal-pubblikazzjoni ta' l-istess rikorsi naturalment sakemm l-intimati jkunu jafu bl-esistenza ta' l-istess rikorsi odjerni." Jirrizulta li meta l-Marixxalli tal-Qorti marru biex jezegwixxu dana l-ordni, huma gew infurmati mis-segretarju tal-KPK li jekk johrog process mill-ufficcju tal-istess Kummissjoni hu (is-segretarju) jigi inkriminat, u ghalhekk huwa ma kkonsenjax il-process imsemmi lill-istess Marixxalli. Il-Marixxalli infurmaw b'dan kollu lill-Qorti, filwaqt li gharrfuha wkoll bl-Artikolu 15 tal-Kap. 326[5]

[4] Ir-rikorrent daqqa jirreferi ghal "kawza" u daqqa ghal "kaz" riferibbilment ghall-proceduri quddiem il-Kummissjoni intimata, illum appellata.

[5] L-Artikolu 15 tal-Kap. 326 jipprovdi hekk: "(1) Information obtained by members of the Commission, by any person appointed under article 12 or by any other of its officers in

li kien ingieb a konjizzjoni taghhom. Fil-25 ta' Frar 2005 ir-rikorrent rega' ppresenta rikors iehor (fol. 29) li fih, wara li ghamel referenza ghar-riferta tal-Marixxalli u nforma lill-Qorti li fuq insistenza tal-Prokuratur Legali tieghu – Mario Mifsud Bonnici – il-Marixxalli kienu regghu marru lura fl-ufficcju tal-KPK u ssigillaw "dak li skond l-istess Kummissjoni jikkostitwixxi l-inkartament kollu relatat mal-kaz imressaq mir-rikorrent quddiem il-Kummissjoni liema inkartament baqa' ghand il-Kummissjoni Permanenti Kontra l-Korruzzjoni", rega' talab li dawn l-atti jigu allegati mal-atti tal-proceduri odjerni jew alternattivament li dak l-inkartament jitqieghed f'kamra li tigi ssigillata mill-ufficjali tal-Qorti u li tkun accessibbli biss ghall-Qorti sakemm il-Qorti "tiddeciedi definittivament fuq it-talbiet elenkati fil-fuq imsemmi rikors intavolat kontestwalment mar-rikors promotur ta' din il-kawza u dan sabiex jigu salvagwardati d-drittijiet kostituzzjonali ta' l-esponent kif ukoll ir-retta amministrazzjoni tal-Gustizzja." Din id-darba l-Prim Awla ordnat in-notifika tar-rikors lill-KPK. Ghall-finijiet tal-odjerna sentenza ma hemmx ghalfejn li jigu riprodotti aktar atti in konnessjoni ma' din il-kwistjoni ta' dak li r-rikorrent Jaccarini jsejjah "*interim measures*"; bizzejjed jinghad li l-ewwel Qorti, b'digriet moghti *seduta stante* fl-udjenza tal-**11 ta' Mejju 2005** (fol. 123) ipprovdiet hekk: *"Rat in-noti tal-partijiet u filwaqt li tapprezza l-importanza tal-hekk imsejha* interim measures *billi f'dan il-kaz dawn il-mizuri gia` ttiehdu in parte u certament m'hemmx biza' li l-provi jigu b'xi mod perikolati, tilqa' t-talba tal-intimati u ghalhekk ser tiddeciedi l-ewwel jekk ir-rikorrenti kellux mezzi ohra u jekk l-artikoli msemmija fir-rikors promotur humiex applikabbli ghal-kaz in kwistjoni."*

v. Ir-rikorrent Jaccarini, b'rikors iehor presentat fis-16 ta' Mejju 2005, talab rikonsiderazzjoni ta' dana d-digriet. B'digriet moghti *seduta stante* fil-**20 ta' Gunju 2005** (fol. 134), il-Prim Awla cahdet din it-talba. B'rikors

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the course of or for the purpose of an investigation under this Act shall not be disclosed except for the purposes of the investigation and of any report to be made thereon under this Act, or for the purpose of any proceedings relating to the investigation or under article 10, and the members of the Commission and its officers shall not be called upon to give evidence in any proceedings, other than such as aforesaid, of matters coming to their knowledge in the course of an investigation under this Act. (2) Article 133 of the Criminal Code shall apply to and in relation to members and officers of the Commission as it applies to or in relation to a public officer or servant referred to in article 133 of the Criminal Code."

datat 28 ta' Gunju 2005 huwa appella quddiem din il-Qorti – il-Qorti Kostituzzjonali – u talab, "a tenur tal-Artikolu 229(3) tal-Kapitolu 12 tal-Ligijiet ta' Malta" li din il-Qorti tirrevoka *contrario imperio* id-digriet tal-20 ta' Gunju 2005 u tordna illi qabel ma jigu trattati l-eccezzjonijiet preliminari sollevati mill-intimati, "tigi implimentata u enforzata l-*interim measure* billi tordna illi l-Marixxall tal-Ewwel Qorti jiehu pussess tal-atti kollha (il-process tal-KPK) kawtelatorjament u jallegahom mal-atti ta' din il-kawza, u billi tassigura illi, sabiex jitratta l-eccezzjonijiet preliminari, l-appellant jinghata access liberu ghall-atti ta' din il-kawza (liema atti ser jinkludu l-process tal-KPK)". Fit-2 ta' Dicembru 2005, din il-Qorti ddikjarat l-appell interpost irritu u null, u rrinvjat l-atti quddiem l-ewwel Qorti biex din tkompli tisma' l-kawza skond il-ligi.

vi. Intant – u hawn wiehed irid imur lura fiz-zmien – l-intimati kienu ppresentaw ir-risposti taghhom ghar-rikors promotorju. Ta' relevanza ghall-finijiet tas-sentenza odjerna hija biss ir-risposta tal-Kummissjoni (KPK) intimata. Din il-Kummissjoni, fir-risposta taghha tal-15 ta' Marzu 2005 (fol. 69), eccepiet, fost affarijiet ohra, (1) illi fl-ewwel lok ir-rikorrent kellu jezawrixxi r-rimedji ordinarji, u (2) fit-tieni lok li hija mhix organu gudizzjarju jew kwazi-gudizzjarju ghax ma tiddetermina ebda "dispute" bejn partijiet, izda biss tinvestiga "atti ta' korruzzjoni" – bil-konsegwenza, ghalkemm din mhix espressa b'mod daqshekk car fir-risposta msemmija, li mhux applikabbli fil-konfront taghha l-Artikolu 6 tal-Konvenzjoni u l-Artikolu 39 tal-Kostituzzjoni. Is-sentenza appellata odjerna tirrigwarda (in parte[6]) proprju dawn iz-zewg eccezzjonijiet. Infatti, fl-udjenza tal-25 ta' April 2006 il-Prim Awla iddifferiet "ir-rikors ghas-sentenza fuq l-ewwel zewg eccezzjonijiet tal-Kummissjoni" ghall-14 ta' Gunju 2006 filwaqt li tat lill-partijiet zmien biex jaghmlu noti ta' osservazzjonijiet.

Is-sentenza tal-14 ta' Gunju 2006

3. Is-sentenza tal-14 ta' Gunju 2004 tghid, fil-partijiet relevanti taghha, hekk:

[6] Jinghad "in parte" ghax l-ewwel Qorti ddecidiet it-tieni eccezzjoni u ma ppronunzjatx ruhha dwar l-ewwel wahda ghax dehrilha li ma kienx hemm ghalfejn.

“Illi dawn iz-zewg eccezzjonijiet jirrigwardjaw id-diskrezzjoni ta’ din il-Qorti li tiddeklina li tisma’ l-kawza jekk jidhrilha li hemm rimedji ohra sufficjenti fil-ligi ordinarja u li f’kull kaz l-artikoli msemmija fir-rikors promotur humiex applikabbli ghall-kaz in kwistjoni.

“Il-Qorti thoss, ghal ragunijiet li jidhru iktar car iktar il-quddiem, illi huwa utili li tinvestiga jekk il-provvedimenti tal-Kostituzzjoni dwar l-osservanza tad-drittijiet fundamentali tal-bniedem u dawk tal-Konvenzjoni Ewropeja dwar l-istess, humiex applikabbli ghall-proceduri quddiem il-Kummissjoni intimata.

“Dan il-punt gia` gie investigat b’mod dettaljat fir-rigward tal-kummissjoni dwar l-investigazzjoni tal-ingustizzji fil-kawza Antoine Tagliaferro et vs Onor. Prim Ministru deciza mill-Qorti Kostituzzjonali fil-21 ta’ Frar, 1996 u li kopja taghha giet esebita mill-intimati. Din is-sentenza, illi kkonfermat sentenza ta’ din il-Qorti, ma thalli ebda ombra ta’ dubbju li din l-eccezzjoni hija fondata. Fil-fatt il-Qorti qalet hekk:

“Diga` gie stabbilit illi l-Kummissjoni ma tiddetermina ebda dritt jew obbligu fil-konfront tac-cittadin izda tinvestiga biss jekk id-decizjoni amministrattiva, independentement minn dan id-dritt jew obbligu, jekk jesisti, kinitx influwenzata minn xi pregudizzju li jkun allura li tigi kreata diskriminazzjoni jew eskluzjoni li jwassal ghal-ingustizzja. Ghalhekk il-Kummissjoni mhux organu gudizzjarju li jiddetermina drittijiet u obbligi u d-decizjoni tal-Kummissjoni ma tikkreax drittijiet fil-persuna li tkun gabet l-ilment taghha; konsegwentement ir-rekwisiti kostituzzjonali u tal-Konvenzjoni Ewropeja dwar smigh xieraq ma japplikawx ghall-proceduri quddiema u ghad-decizjoni taghha.”

“Il-Qorti, wara li ezaminat il-ligi in kwistjoni (Kapitolu 326) taqbel mas-sottomissjonijiet tal-Kummissjoni li lanqas hi ma hija tribunal li tohloq xi drittijiet jew obbligi fit-terminu tal-Kostituzzjoni u l-Konvenzjoni. Il-Kummissjoni tinvestiga l-ilment u mbaghad obligata tissottometti r-rapport taghha lill-Ministru tal-Gustizzja. Ma taghti ebda

decizjoni u lanqas jekk tirrakkomanda xi azzjoni ulterjuri, din issir quddiem il-Qorti kompetenti u li mbaghad tiddeciedi dwar il-kolpevolezza o meno tal-indagat. Kif sewwa rrimarkat il-Kummissjoni fin-nota taghha r-rikorrent ma kienx parti fil-proceduri quddiemha ghaliex strettament ma hemmx partijiet quddiema – kien il-persuna li ressaq l-ilment u naturalment xhud principali. Ma setax pero` jigi moghti xi drittijiet civili li solitament wiehed jakkwista minn Qorti jew tribunal. Il-Kummissjoni, l-istess bhall-Kummissjoni ghall-investigazzjoni tal-ingustizzji kreata bl-Att XV tal-1987 *ma hix Qorti ghall-ghanijiet tal-Artikolu 39 tal-Kostituzzjoni u l-Artikolu 6 tal-Konvenzjoni Ewropeja ghad-drittijiet tal-bniedem u d-dritt garantit b'dawk l-artikoli ma japplikax ghall-procedimenti quddiem il-Kummissjoni* (Prim'Awla – Eddie Cachia vs Dottor Joseph Galea Debono et, deciza fil-21 ta' Mejju, 1993).

"Kif gie ritenut fis-sentenza tal-Qorti Ingliza fil-kawza Bushell vs Secretary of State for the Environment (1981) citata fil-manwal *European Human Rights Law* (pagna 390);

"*A trial ends with a decision in favour of one party. An inquiry does not. There is no 'lis' between a minister and his department on the one hand and the objectors on the other. The Minister then has to decide and in reaching thedecision he may have regard to the policy considerations not discussed at the inquiry.*

"Stabbilit dan il-Qorti ma thossx li ghandha ghalfejn tinvestiga jekk ghandhiex tiddeklina li tisma' l-kaz, a skans tal-possibilita` li l-kawza titwal ghal xejn.

"**Ghal dawn il-mottivi l-Qorti tilqa' it-tieni eccezzjoni tal-Kummissjoni ntimata u tillibera l-intimati kollha mill-osservanza tal-gudizzju. Spejjez a kariku tar-rikorrent."**

L-appell tar-rikorrent

4. Minn din is-sentenza appella r-rikorrent, b'rikors intavolat fis-26 ta' Gunju 2006. Huwa qieghed jappella kemm mis-sentenza in kwantu laqghet it-tieni eccezzjoni tal-Kummissjoni Permanenti kontra l-Korruzzjoni u lliberat lill-intimati kollha mill-osservanza tal-gudizzju, kif ukoll mid-digrieti tal-11 ta' Mejju 2005 u 20 ta' Gunju 2005. Huwa qed jitlob hekk, u cioe` li din il-Qorti,

"1. thassar u tirrevoka d-digrieti tal-Prim Awla tal-Qorti Civili tal-11 ta' Mejju 2005 u tal-20 ta' Gunju 2005,

"2. tikkonferma d-digriet ta' dik l-istess Qorti tat-23 ta' Frar 2005 u taghti dawk il-provvedimenti kollha neccessarji u opportuni sabiex jinghata effett lil dan l-ahhar imsemmi digriet li permezz tieghu gie akkordat l-*interim measure* mitlub mir-rikorrent appellant fl-ewwel talba tar-rikors promotur minnu ntavolat fit-23 ta' Frar 2005, u

"3. thassar u tirrevoka s-sentenza appellata moghtija mill-Prim Awla tal-Qorti Civili fl-14 ta' Gunju 2006 billi tichad it-tieni eccezzjoni tal-Kummissjoni Permanenti kontra l-Korruzzjoni appellata u terga' tibghat l-atti lura lil dik il-Qorti ghall-kontinwazzjoni hemm fil-konfront tal-intimati appellanti [recte: appellati] **kollha hemm skond il-ligi."**

5. L-appellant ghandu tliet aggravji, li jistghu jigu riassunti hekk. L-ewwel aggravju hu fis-sens illi l-ewwel Qorti ma kienitx korretta meta lliberat mill-osservanza tal-gudizzju lill-intimati kollha. Skond l-appellant hemm diversi lanjanzi fil-konfront tad-diversi intimati – appellati f'dina l-istanza – u l-ewwel Qorti kkunsidrat biss jekk l-Artikoli 6 u 39 tal-Konvenzjoni u tal-Kostituzzjoni rispettivament kienux japplikaw ghall-Kummissjoni intimata. It-tieni aggravju hu bazikament fis-sens illi l-proceduri quddiem l-ewwel Qorti fihom infushom naqsu milli jaghtuh smigh xieraq ghax minhabba d-digrieti tal-11 ta' Mejju 2005 u 20 ta' Gunju 2005 hu ghadu ma kellux access ghall-inkartament tal-proceduri quddiem il-KPK. Hu jikkontendi li ghandu bzonn ikollu access ghal dan l-inkartament proprju sabiex ikun

f'posizzjoni li jirribatti t-tieni eccezzjoni tal-Kummissjoni. Fl-ahharnett – it-tielet aggravju – hu jghid li bil-procedura kif addottata mill-istess Kummissjoni meta kienet qed tezamina l-"kwerela" tieghu, cioe` l-procedura addottata fil-kaz numru 139, kien hemm "adversarial proceedings" u li dawk il-proceduri kienu "in the determination of his civil rights and obligations", b'mod ghalhekk li kienu japplikaw l-Artikoli 6 u 39 imsemmija, bil-konsegwenza li t-tieni eccezzjoni tal-KPK ma kellhiex tintlaqa'.

6. Il-Kummissjoni Permanenti kontra l-Korruzzjoni fir-risposta taghha tal-31 ta' Lulju 2006, kif ukoll il-Prim Ministru, il-Ministru tal-Gustizzja u l-Intern u l-Avukat Generali bir-risposta taghhom tal-5 ta' Lulju 2006 rribattew is-sottomissjonijiet kontenuti fir-rikors ta' l-appell. Dawn bazikament jikkontendu li ghall-finijiet tad-determinazzjoni tat-tieni eccezzjoni tal-Kummissjoni ma kienx mehtieg li r-rikorrent ikollu access ghall-inkartament tal-proceduri fil-kaz numru 139 quddiem l-istess KPK ghax din l-eccezzjoni hija strettament wahda ta' indoli legali. Inoltre huma jikkontendu li l-KPK, indipendentement mill-procedura li hija talvolta setghet addottat f'kaz partikolari, ma tiddeterminax "civil rights and obligations" jew "a criminal charge", u ghalhekk l-ewwel Qorti ddecidiet korrettement meta laqghet it-tieni eccezzjoni tal-Kummissjoni. L-intimati appellati l-ohra ma jirrizultax li ppresentaw risposta.

<u>Konsiderazzjonijiet ta' din il-Qorti</u>

7. Din il-Qorti tibda billi tosserva li l-veru pern tal-kwistjoni, kif f'certu sens gustament tirrileva l-Kummissjoni appellata, huwa jekk l-imsemmija Kummissjoni hix korp jew awtorita` li b'xi mod tiddetermina "civil rights and obligations" jew "a criminal charge". Biex tigi determinata din il-kwistjoni din il-Qorti ma tarax li huwa necessarju li jkollha a disposizzjoni taghha, jew li l-partijiet f'din il-kawza ikollhom a disposizzjoni taghhom, l-inkartament tal-proceduri fil-kaz numru 139, kif qed jinsisti l-appellant. In-natura tal-proceduri quddiem il-Kummissjoni Permanenti kontra l-Korruzzjoni ma tohrogx mill-procedura li talvolta tista' tigi wzata f'kaz partikolari, izda minn ezami akkurat

tad-disposizzjonijiet tal-ligi li joholqu l-istess Kummissjoni, li jatribwixxu lilha l-funzjonijiet u d-doveri taghha, u li b'mod generali jistabilixxu kif din ghandha tipprocedi fit-twettiq ta' dawk il-funzjonijiet u doveri. Minn ezami ta' dawn id-disposizzjonijiet kontenuti fil-Kap. 326 huwa evidenti li l-imsemmija Kummissjoni hija organu amministrattiv imwaqqaf primarjament biex jinvestiga (u ghalhekk la biex jiddeciedi dwar drittijiet jew obbligi ta' persuni, fizici jew guridici, u anqas biex jiddeciedi dwar akkuzi kriminali fil-konfront taghhom) u, bhala rwol sekondarju, biex jaghti pariri. Il-paragrafi (a), (b) u (c) tal-Artikolu 4 tal-imsemmi Kap. 326 jistabilixxu l-funzjoni investigattiva tal-Kummissjoni fejn ikun hemm allegazzjoni jew suspett ta' korruzzjoni minn xi ufficjal pubbliku jew minn xi persuna li tkun giet fdata b'xi funzjoni bhalma indikat fl-imsemmi paragrafu (c). F'dawn il-kazijiet il-Kummissjoni, wara li hekk tinvestiga, taghmel rapport skond l-Artikolu 11 tal-istess Att, jigifieri rapport tar-rizultanzi ta' kull investigazzjoni lill-Ministru responsabbli mill-Gustizzja[7], u darba f'sena jew aktar ta' spiss jekk jidhrilha li jkun spedjenti, rapport generali lill-President ta' Malta[8] dwar ix-xoghol taghha. Il-Kummissjoni tista' tagixxi fuq inizjattiva taghha stess jew fuq allegazzjoni maghmula u mahlufa minn xi persuna[9]. Il-Kummissjoni tista' wkoll tinvestiga atti jew ommissjonijiet konnessi ma' att ta' korruzzjoni, allegat jew suspettat, li jkun qed jigi nvestigat[10]; u jekk il-Kummissjoni, fil-kors ta' investigazzjoni ta' atti ta' korruzzjoni, allegati jew suspettati, tkun tehtieg l-assistenza tal-Pulizija, il-Pulizija hija obbligata li tippresta dik l-assistenza mitluba[11]. Kwantu ghall-procedura li ghandha tigi wzata fil-kors ta' investigazzjonijiet, l-Artikolu 9 tal-Kap. 326 jipprovdi hekk:

"(1) Meta mix-xiehda migbura waqt investigazzjoni il-Kummissjoni jkollha raguni tahseb li persuna setghet ghamlet att ta' korruzzjoni taht dan l-Att, dik il-persuna ghandha tinghata l-opportunita` li tinstema',

[7] Art. 11(a).
[8] Art. 11(b).
[9] Art. 5.
[10] Art. 7.
[11] Art. 8.

bil-gurament, mill-Kummissjoni dwar dak l-att ta' korruzzjoni. Waqt is-smigh quddiem il-Kummissjoni, dik il-persuna tista' tkun assistita minn avukat jew prokuratur legali.

"(2) Kull investigazzjoni bhal dik ghandha ssir skond il-principji tal-gustizzja naturali u b'dak il-mod li l-Kummissjoni tqis xieraq ghat-tikxif tal-verita`, izda salv dak li intqal il-procedura tal-investigazzjoni ghandha tkun dik li l-Kummissjoni tqis xieraq fic-cirkostanzi tal-kaz. <u>L-investigazzjoni ghandha ssir fil-privat</u>.

"(3) Bla hsara ghall-generalita` tas-subartikolu (2), il-Kummissjoni tista' tikseb informazzjoni minn dawk il-persuni u b'dak il-mod, u taghmel dawk l-indagini li tqis xierqa, u ghal dan il-ghan tista' tehtieg minn kull ufficjal ta' l-awtorita`, dipartiment jew korp koncernat li jaghti informazzjoni jew jipproduci kull dokument rilevanti ghall-investigazzjoni minkejja d-disposizzjonijiet ta' l-artikolu 637(3) sa (6) tal-Kodici ta' Organizzazzjoni u Procedura Civili." (sottolinear ta' din il-Qorti).

Kull xhud imharrek biex jixhed quddiem il-Kummissjoni jista' jkun assistit minn avukat jew minn prokuratur legali[12] u kull min jigi mharrek biex jixhed quddiem il-Kummissjoni u jonqos jew jirrifjuta minghajr raguni xierqa milli jaghmel hekk u passibbli ta' proceduri penali (inizjati bil-kunsens ta' l-Avukat Generali) u, jekk jinstab hati, jista' jehel anke prigunerija[13].

8. Minn dan kollu, ma jistax ikun hemm l-icken dubbju li l-Kummissjoni hija organu investigattiv <u>u mhux aggudikattiv</u>. Il-fatt li ghandha taghti l-opportunita` lill-persuna li fuqha jaqa' s-suspett jew li tkun qed tigi investigata li tinstema' bil-gurament u li ghandha timxi wkoll skond il-principji tal-gustizzja naturali ma jnaqqas xejn mill-funzjoni investigattiva taghha u b'ebda mod ma jikkonverti dik il-funzjoni f'wahda aggudikattiva, u,

[12] Art. 10(4).
[13] Art. 10(5)(6).

ghalhekk, wisq anqas aggudikattiva ta' xi drittijiet jew obbligi civili jew ta' xi akkuza kriminali. Naturalment, l-ezitu ta' tali investigazzjoni jista', skond ic-cirkostanzi, jghin lil xi persuna (li tista' anke tkun il-persuna li ghamlet l-allegazzjoni, bhalma jidher li ghamel ir-rikorrent appellant) biex tasserixxi xi dritt jew obbligu taghha civili, bhalma jista' jghin ukoll lill-Pulizija fil-prosegwiment ta' proceduri kriminali – izda bl-istess mod jistghu jkunu ta' utilita` u ghajnuna l-investigazzjonijiet kondotti mill-Pulizija Ezekuttiva jew l-investigazzjoni dwar l-*in genere* kondotta minn Magistrat. Il-fatt li jistghu hekk ikunu ta' utilita` ghal xi persuna biex tasserixxi tali dritt jew obbligu ma jikkonvertix dawk l-investigazzjonijiet fi proceduri kwazi-gudizzjarji determinattivi, direttament jew indirettament, ta' drittijiet jew obbligi civili. L-obbligu impost fuq il-Kummissjoni li hija timxi "skond il-principji tal-gustizzja naturali" huwa intiz sabiex jassigura li l-proceduri investigattivi jimxu b'mod "fair". Sitwazzjoni simili, infatti, irrikorriet fil-kaz **Fayed v United Kingdom**, deciz mill-Qorti Ewropea tad-Drittijiet tal-Bniedem fil-25 ta' Awissu 1994. Dak il-kaz kien jikkoncerna, bazikament, investigazzjoni minn Spetturi mahtura minn ministru tal-Gvern taht id-disposizzjonijiet tal-*Companies Act 1985* (tar-Renju Unit). Dawn l-Ispetturi kellhom ukoll id-dover li jagixxu skond il-principji tal-gustizzja naturali:

"The Inspectors are bound by the rules of natural justice; they have a duty to act fairly and to give anyone whom they propose to criticise in their report a fair opportunity to answer what is alleged against them (In re Pergamon Press Ltd [1971] 1 Chancery 388 (Court of Appeal)). The Inspectors in the present case accepted as applicable to them the principle of natural justice whereby a person exercising an investigatory jurisdiction must base his or her findings on material having probative value…" [14]

Minkejja dan, dik il-Qorti kkonkludiet hekk:

[14] Para. 39.

“55. The first stage of the applicants' argument, which was disputed by the Government and not accepted by the Commission, was that Article 6 para. 1 (art. 6-1) was applicable to the investigation by the Inspectors.

“56. In order for an individual to be entitled to a hearing before a tribunal, there must exist a "dispute" ("contestation") over one of his or her civil rights or obligations. It follows, so the Court's case-law has explained, that the result of the proceedings in question must be directly decisive for such a right or obligation, mere tenuous connections or remote consequences not being sufficient to bring Article 6 para. 1 (art. 6-1) into play (see, inter alia, the Le Compte, Van Leuven and De Meyere v. Belgium judgment of 23 June 1981, Series A no. 43, pp. 20-22, paras. 44-50).

“57. The applicants claimed to identify three different disputes (contestations) arising in and during the investigation by the Inspectors: firstly, the dispute between the applicants and Lonrho, which the applicants described as giving rise to and forming the subject-matter of the proceedings conducted by the Inspectors; secondly, a dispute between the applicants and the Inspectors, in that the applicants had contested the Inspectors' actions in investigating their honesty and then arriving at conclusions in this regard; and, thirdly, a dispute between the applicants and the Secretary of State, in that, notwithstanding their opposition, the Secretary of State had initially considered there to be circumstances suggesting dishonest conduct by them, and had thereafter adopted the contents of the Inspectors' report, so they asserted, and decided to publish it.

“In the applicants' submission, one of the objects of the inquiry by the Inspectors was to make findings as to whether the applicants were guilty of misconduct and the central conclusion of the report was that the applicants had dishonestly misled the authorities. Even though the Inspectors' role may in theory have

been investigative, the manner in which they performed their functions in the present case was in fact determinative. The Inspectors' report, published to the world at large, had the force of a judgment convicting the applicants of dishonesty. The result of the inquiry was thus directly decisive for the applicants' civil right to a good reputation. In short, so they argued, the Inspectors' report effectively "determined" their civil right to reputation without any of the procedural guarantees of Article 6 para. 1 (art. 6-1) being respected.

“58. Having regard to the cases of Golder v. the United Kingdom (judgment of 21 February 1975, Series A no. 18, p. 13, para. 27) and Helmers v. Sweden (judgment of 29 October 1991, Series A no. 212-A, p. 14, para. 27), the respondent Government did not dispute the existence and "civil" character of the right under English law to a good reputation.

“However, they submitted that neither the investigation by the Inspectors nor the publication of the report "determined" the applicants' civil right to a good reputation or, indeed, any right at all. The principal purpose of the investigation and report of the Inspectors, they maintained, was to acquire, marshal and set down factual information which would enable the various competent authorities - such as the Director General of Fair Trading, the prosecuting authorities, the Bank of England, the Takeover Panel and the Secretary of State (see paragraphs 23, 27, 30 and 34 above) – to decide what action, if any, to take. Four further purposes also existed, none of which, however, included ascertaining whether the applicants merited their good reputation. These additional purposes were dispelling public speculation about the events surrounding the takeover, enabling those concerned in takeovers to learn lessons, laying the foundations for reform of company law and practice, and providing information to HOF's employees, shareholders and creditors.

“59. The Commission, after analysing the purposes served by the preparation and publication of the Inspectors' report, came to the conclusion that the Inspectors had an "investigative rather than determinative" role (paragraph 64 of the Commission's report). The Commission was therefore of the opinion that Article 6 para. 1 (art. 6-1) was not applicable to the proceedings conducted by Inspectors because those proceedings did not determine any civil right or obligation of the applicants.

“60. The Court notes that under the terms of section 432 (2) of the Companies Act 1985 Inspectors can only be appointed if it appears to the Secretary of State that there are circumstances suggesting one or more types of specified wrongdoing or unlawful action in the conduct of a company's affairs (see paragraph 36 above). The Act confers on the Inspectors wide powers to obtain information and obstruction of the Inspectors may, upon reference by them to a court, be treated by it as a contempt of court and punished accordingly (sections 434 and 436 of the Act - see paragraph 38 above). The principal question addressed by the Inspectors in the instant case can be reduced to whether the Fayed brothers had dishonestly misled the authorities and the public in order to obtain Government clearance and acceptance by the HOF Board of their bid (see paragraphs 13 and 14 above). The Inspectors' published findings - that the applicants had indeed made dishonest representations concerning their origins, their wealth, their business interests and their resources and had thereafter knowingly submitted false evidence to the Inspectors (see paragraph 22 above) – undoubtedly damaged the applicants' reputations. The competent Ministers and a Parliamentary Select Committee - quite apart, it can be supposed, from a substantial section of public opinion - showed a disposition to accept as correct these findings, publication of which was seen as a

kind of sanction (see paragraphs 26, 30, 31, 33 and 34 above).

“Such elements or consequences are, it is true, not infrequently found in the context of adjudicatory proceedings.

“61. However, the Court is satisfied that the functions performed by the Inspectors were, in practice as well as in theory, essentially investigative (see the similar analysis by the Supreme Court of the United States of America of the function of the Federal Civil Rights Commission in the case of Hannah v. Larche (363 US 420 (1960)). The Inspectors did not adjudicate, either in form or in substance. They themselves said in their report that their findings would not be dispositive of anything (see paragraph 21 above). They did not make a legal determination as to criminal or civil liability concerning the Fayed brothers, and in particular concerning the latter's civil right to honour and reputation. The purpose of their inquiry was to ascertain and record facts which might subsequently be used as the basis for action by other competent authorities - prosecuting, regulatory, disciplinary or even legislative.

“Lonrho admittedly exhibited a clear interest in the inquiry and its outcome, by being instrumental in bringing about the appointment of the Inspectors, by submitting evidence and by seeking to prompt action by the Secretary of State (see paragraphs 12 in fine, 13, 19, 24, 25 and 35 above). The Inspectors described Lonrho and the Fayed brothers as "bitterly antagonistic parties" (see paragraph 19 in fine above). Nonetheless, whilst there was a close connection between Lonrho's grievance against the Fayed brothers and the matters investigated by the Inspectors (see, inter alia, paragraphs 10-13 and 22 above), the object of the proceedings before the Inspectors was not to resolve any dispute (contestation) between Lonrho and the applicants. Those disputes, and in particular the applicants' libel

claims that Lonrho, through The Observer, had wrongfully damaged their reputations, were being adjudicated by the ordinary courts (see paragraphs 11 and 12 above). Likewise, no dispute (contestation) between the Secretary of State or the Inspectors and the applicants as to the lawfulness of any alleged interference with the applicants' right to reputation arose merely because the applicants contested the grounds on which the Minister decided to appoint the Inspectors and on which the Inspectors conducted their lines of inquiry.

"In short, it cannot be said that the Inspectors' inquiry "determined" the applicants' civil right to a good reputation, for the purposes of Article 6 para. 1 (art. 6-1), or that its result was directly decisive for that right.

"62. Acceptance of the applicants' argument would entail that a body carrying out preparatory investigations at the instance of regulatory or other authorities should always be subject to the guarantees of a judicial procedure set forth in Article 6 para. 1 (art. 6-1) by reason of the fact that publication of its findings is liable to damage the reputation of the individuals whose conduct is being investigated. Such an interpretation of Article 6 para. 1 (art. 6-1) would in practice unduly hamper the effective regulation in the public interest of complex financial and commercial activities. In the Court's view, investigative proceedings of the kind in issue in the present case fall outside the ambit and intendment of Article 6 para. 1 (art. 6-1).

"63. The Court accordingly concludes that the investigation by the Inspectors was not such as to attract the application of Article 6 para. 1 (art. 6-1)."

9. F'sens simili hafna ppronunzjat ruhha l-istess Qorti fid-decizjoni taghha, aktar recenti, tat-23 ta' Marzu 2006 fil-kaz **van Vondel v. The Netherlands** fir-rigward ta' proceduri quddiem *Parliamentary Commission of Inquiry* (PEC):

“The Court is required to determine at the outset whether the impugned proceedings before the PEC fall within the scope of Article 6, that is to say whether they entailed a determination of the applicant’s “civil rights and obligations” or “a criminal charge” against him within the meaning of Article 6 § 1 of the Convention.

“The Court notes that the applicant was called as a witness in parliamentary inquiry proceedings, the aim of which was to investigate criminal investigation methods used in the Netherlands in cases concerning organised crime and the supervision of such methods. According to the Court’s case-law, the concept of “civil rights and obligations” under Article 6 § 1 of the Convention is “autonomous” and cannot be interpreted solely by reference to the domestic law of the respondent State (see *Ferrazzini v. Italy* [GC], no. 44759/98, § 24, ECHR 2001-VII). The Court further reiterates that there may exist obligations vis-à-vis the State or its subordinate authorities which, for the purpose of Article 6 § 1, are to be considered as belonging exclusively to the realm of public law and are accordingly not covered by the notion of ‘civil rights and obligations’. This will be the case, in particular, where an obligation is part of normal civic duties in a democratic society (see *Editions Périscope v. France*, judgment of 26 March 1992, Series A no. 234-B, p. 66, § 40).

“The Court finds that the obligation at issue, namely to appear and give truthful evidence before a parliamentary commission of inquiry – which is of crucial importance for the adequate operation of a parliamentary scrutiny mechanism in a democratic society – is to be regarded as forming part of such normal civic duties. Consequently, the proceedings before the PEC in the instant case cannot be regarded as falling within the scope of Article 6 under its civil head.

“As to the question whether these proceedings entailed a determination of a “criminal charge”, the Court has found no reason for holding that the inquiry conducted by the PEC in any way amounted to a disguised form of criminal proceedings directed against the applicant. It concerned a broad inquiry into controversial methods of criminal investigation used in cases concerning organised crime and, moreover, Article 24 of the Parliamentary Inquiries Act explicitly prohibits the use of statements made before the PEC as evidence in criminal proceedings. This is not altered by the fact that subsequent criminal proceedings were brought against the applicant, as that is irrelevant to the question whether the proceedings before the PEC, as such, determined a criminal charge (see *I.P. v. Austria*, no. 17072/90, Commission decision of 29 June 1992). The Court therefore finds that the proceedings before the PEC also fall outside the scope of Article 6 under its criminal head (see *Montera v. Italy* (dec.), no. 64713/01, 9 July 2002).

“It follows that this part of the application must be rejected for being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 §§ 3 and 4 of the Convention.”

10. Parimenti, din il-Qorti hija wkoll tal-fehma li fil-kaz in dizamina ghandna biss investigazzjoni, kondotta fuq medda ta’ zmien (ara d-dokumenti AJ1 sa AJ22 annessi man-nota tar-rikorrent tal-20 ta’ April 2006), li waslet ghall-konkluzjoni li l-persuna li dwara kienet saret allegazzjoni ma kienx hemm fil-konfront taghha provi li kienet ikkommettiet xi reat ta’ korruzzjoni. Tali konkluzjoni ma ddeterminat xejn in kwantu jirrigwarda d-drittijiet u l-obbligi civili tal-appellant – drittijiet u obbligi civili, riferibbilment ghar-*reinstatement* tieghu fil-posizzjoni li huwa kellu ma’ l-Universita`, li huma jew kienu suggetti li jigu determinati mill-qrati kompetenti skond il-ligi. Hekk ukoll l-imsemmija Kummissjoni la ddeterminat u anqas setghet tiddetermina xi akkuza kriminali – il-konkluzjoni taghha, bhalma kien

ukoll il-fatt li kienu qed jigu kondotti l-proceduri ta' investigazzjoni minnha, ma kienu u ma huma ta' ebda ostakolu ghall-prosegwiment ta' proceduri kriminali skond il-ligi kontra l-persuna li dwara saret l-allegazzjoni originali. Il-fatt li, kif jirrizulta mid-Dokumenti AJ1 sa AJ22 aktar 'l fuq imsemmija, kif ukoll kif jirrizulta mid-deposizzjonijiet tal-Avukat Stefan Frendo, tal-Prokuratur Legali Mario Mifsud Bonnici u tal-istess Professur Anthony Jaccarini moghtija fit-3 ta' April 2006, r-rikorrent kien jinghata l-fakolta` li jkun presenti u jikkontro-ezamina xhieda, u li ghal certu zmien il-procedura adoperata mill-Kummissjoni taht ic-*chairmanship* ta' Dott. Albert Camilleri kienet wahda simili hafna ghal dik ta' Qorti – skond il-P.L. Mifsud Bonnici dan ic-*chairman* addirittura accetta "li jista' jkun hemm pubbliku biex jisma' dawn is-seduti"[15] – dan kollu ma jbiddel xejn min-natura tal-proceduri tal-Kummissjoni skond il-ligi. Il-Kummissjoni kellha (u ghandha) biss il-funzjonijiet u d-doveri (kif ukoll il-poteri) moghtija lilha skond il-ligi, u l-fatt li, kif komposta f'certu zmien, addottat proceduri simili hafna ghal dawk ta' qorti ordinarja, ma jfissirx li b'hekk akkwistat il-funzjoni jew is-setgha li tiddetermina "civil rights and obligations" jew "a criminal charge". Ghal dawn ir-ragunijiet ukoll, it-tieni aggravju ta' l-appellant – *vide* para. **5**, *supra* – huwa infondat.

11. Stabbilit dan, isegwi li t-tieni eccezzjoni tal-KPK kif migjuba fir-risposta taghha tal-15 ta' Marzu 2005 – fis-sens li l-Artikolu 6 u l-Artikolu 39 tal-Konvenzjoni u tal-Kostituzzjoni rispettivament ma japplikawx ghaliha – kienet fondata u giet ghalhekk gustament milqugha mill-ewwel Qorti. Tali akkoljiment, pero`, kif ukoll gustament josserva l-appellant, ma jgibx bhala konsegwenza l-liberazzjoni tal-intimati kollha mill-osservanza tal-gudizzju. Kif tajjeb josserva l-appellant[16], ir-rikors promotorju ghandu diversi lmenti fil-konfront ta' diversi intimati. Bl-akkoljiment tat-tieni eccezzjoni tal-KPK kullma qed jigi determinat huwa li l-Artikoli 6 u 39 imsemmija ma japplikawx fir-rigward taghha. Jibqa', ghalhekk, x'jigu determinati l-ilmenti l-ohra kollha fl-konfront tal-intimati l-

[15] Minkejja dak li jistipula kjarament l-Artikolu 9(2) li l-investigazzjoni ghandha ssir fil-privat.
[16] Ara in partikolari n-nota spjegattiva tar-rikorrent appellant tal-4 ta' Marzu 2005, fol. 66.

ohra, inkluz l-ilment fir-rigward tal-allegat ksur tad-dritt ghall-protezzjoni minn trattament inuman jew degradanti, liema lment qed jigi avanzat anke fil-konfront tal-Kummissjoni. Huwa ghalhekk, u cioe` minhabba l-provvediment li din il-Qorti sejra tiehu, li ma jkunx opportun f'dana l-istadju li din il-Qorti tippronunzja ruhha fir-rigward tad-digrieti ta' l-ewwel Qorti tal-11 ta' Mejju 2005 u 20 ta' Gunju 2005. B'dawn iz-zewg digrieti ma jirrizultax li sa issa gie b'xi mod pregudikat ir-rikorrent appellant; u, kif inhuma redatti, hemm il-flessibilita` kollha mehtiega sabiex l-ewwel Qorti, jekk jidhrilha opportun, tipprovdi mod iehor. Kieku din il-Qorti kellha tippronunzja ruhha dwarhom, kif qed jitlob l-appellant bl-ewwel zewg talbiet tieghu fir-rikors ta' appell, jista' jaghti l-kaz li din il-Qorti tkun qed torbot idejn l-ewwel Qorti jew tippronunzja ruhha inutilment.

Decide

12. Ghall-motivi premessi, tipprovdi dwar l-appell interpost billi filwaqt li tastjeni milli tippronunzja ruhha f'dana l-istadju dwar l-ewwel u t-tieni talba ta' l-appellant (cioe` fejn huwa talab ir-revoka tad-digrieti tal-11 ta' Mejju 2005 u 20 ta' Gunju 2005 u li din il-Qorti tikkonferma d-digriet tal-Prim Awla tat-23 ta' Frar 2005 u "taghti dawk il-provvedimenti kollha neccessarji u opportuni sabiex jinghata effett lil dan l-ahhar imsemmi digriet") u tiddikjara li qed tirriserva li tipprovdi dwarhom fi stadju ulterjuri *si et quatenus*, tilqa' in parti it-tielet talba tal-appellant u konsegwentement tirriforma s-sentenza appellata billi, filwaqt li tikkonfermaha f'dik il-parti fejn laqghet it-tieni eccezzjoni tal-Kummissjoni appellata, thassarha u tirrevokaha fil-bqija, cioe` fejn illiberat lill-intimati kollha mill-osservanza tal-gudizzju u fejn ikkundannat lir-rikorrrent ibati l-ispejjez, u minflok tibghat l-atti lura lill-ewwel Qorti sabiex din tipprocedi skond il-ligi fil-konfront tal-intimati kollha fir-rigward tal-allegazzjonijiet l-ohra mhux milquta bit-tieni eccezzjoni msemmija. Fic-cirkostanzi l-ispejjez, kemm ta' l-ewwel istanza kif ukoll ta' dana l-appell ghandhom jibqghu bla taxxa bejn il-partijiet.

< Sentenza Finali >

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