



**QORTI CIVILI  
PRIM' AWLA**

**ONOR. IMHALLEF  
ANNA FELICE**

Seduta tal-25 ta' Frar, 2010

Citazzjoni Numru. 279/2005/1

**Raphael sive Rudolph Azzopardi**

**vs**

**Graziella Azzopardi;  
L-Avv. Anthony Cutajar u l-P.L. Veronica Rossignaud  
li b'digriet tas-7 ta' Settembru, 2005 nhatru bhala  
kuraturi nominati sabiex jirraprezentaw lill-minuri  
Redeemer li twieled fil-21 ta' Lulju, 2003; u  
Direttur tar-Registru Pubbliku**

Il-Qorti:

Din ir-referenza kostituzzjonali saret lil din il-Qorti mill-Onorabbli Qorti tal-Appell fid-decizjoni taghha tal-25 ta' Mejju 2007 li permezz taghha, wara li tqajmu diversi argomenti ta' natura kostituzzjonali, talbet lil din il-Qorti tinvestigahom.

Kopja Informali ta' Sentenza

Il-kwistjonijiet ta' natura kostituzzjonali jirrigwardaw principallyment ksur tal-Art. 6, 8 u 14 tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali; u dan fl-applikazzjoni tal-Art. 73 tal-Kodici Civili (Kap. 16).

Il-Qorti tibda biex taghmel zewg rimarki fil-kuntest ta' din il-kawza. L-ewwel wahda hija referenza ghall-verbal tat-12 ta' Frar 2008, li permezz tieghu l-attur originali fil-kawza ddikjara li ma kellu ebda nteress li jipprezenta nota ta' sottomissjonijiet.

Inoltre, il-Qorti tinnota li sussegwentement ghall-emendi fil-Kodici Civili promulgati fl-2008, il-pozizzjoni ta' zewg mara li jrid jinnega paternita' tbiddlet radikalment u ghalhekk element tal-proceduri odjerni huma ta' natura merament akkademika.

Il-fatti fil-qosor kienu s-segwenti u m'humix kontestati. Raphael Azzopardi beda procedura biex jigi dikjarat li t-tifel ta' martu registrat bhala ibnu mhux fil-fatt ibnu.

Ghalkemm il-perjodu ta' sitt xhur moghti mil-Ligi biex tinbeda din il-procedura mill-missier kien skada, il-Qorti xorta wahda laqghet it-talba tieghu wara li qieset fil-fond l-implikazzjonijiet tad-decizjoni moghtija mill-Qorti Ewropea tad-Drittijiet tal-Bniedem (Nru. 26111/2). Id-Direttur tar-Registru Pubbliku appella minn din id-decizjoni u kien mill-Onorabbli Qorti tal-Appell li saret referenza lil din il-Qorti peress illi fir-risposta tal-Appell, l-imsemmi Azzopardi, qajjem kwistjonijiet ta' natura kostituzzjonali.

Il-Qorti tinnota li, essenzjalment, il-fatti fil-kaz odjern huma simili ghal dawk fil-kawza imsemmija ta' Mizzi vs Malta. F'dik il-kawza gie allegat ukoll illi l-imsemmi perjodu ta' dekadenza imur kontra l-Artikoli 6, 8 u 14 tal-Konvenzjoni.

Ghar-rigward tal-Artikolu 6, il-Qorti Ewropea qalet hekk:

*"The Court is of the opinion that in the present case, the practical impossibility of denying paternity from the date of Y's birth until today has impaired the essence of the*

*applicant's right to a court. Therefore the interference complained of has put an excessive burden in the applicant, thus failing to strike a fair balance between the latter's legitimate interest of having a judicial ruling over his presumed paternity and the protection of legal certainty and of the interests of the other persons involved in the case."*

Ghar-rigward tal-Artikolu 8, dik il-Qorti kkunsidrat illi:

*"The Court considers that the fact that the applicant was never allowed to disclaim paternity was not proportionate to the legitimate aims pursued. It follows that a fair balance has not been struck between the general interest of the protection of legal certainty of family relationships and the applicant's right to have the legal presumption of his paternity reviewed in the light of the biological evidence. Therefore, despite the margin of appreciation afforded to them, the domestic authorities have failed to secure to the applicant the respect for his private life, to which he is entitled under the convention."*

Ghar-rigward tal-Artikolu 14, il-Qorti kkonkludiet illi:

*"The rigid application of the time limit coupled with the Constitutional Court's refusal to allow an exception had deprived him of the exercise of the rights guaranteed by articles 6 and 8 of the convention, which were and still are, on the contrary, enjoyed by other interested parties."*

Fic-cirkostanzi, ghaldaqstant, il-Qorti taqta' u tiddeciedi li l-Art. 73, qabel ma gie emendat fl-2008, kien jikser l-imsemmija artikoli tal-Konvenzjoni Ewropea.

Il-Qorti terga' tibghat il-kawza lill-Onorabbli Qorti tal-Appell ghad-decizjoni.

**< Sentenza Finali >**

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