



**QORTI CIVILI PRIM` AWLA
(GURISDIZZJONI KOSTITUZZJONALI)**

**ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON**

Illum il-Hamis 30 ta` Jannar 2020

**Kawza Nru. 1
Rikors Nru. 93/18 JZM**

Emanuel Delia – K.I. Nru. 0560176M

kontra

**L-Onorevoli Ministru tal-Gustizzja,
Kultura u Gvern Lokali Owen Bonnici
(I.D. 273280M)**

u

**d-Direttur Generali tad-Divizjoni tat-
Tindif u l-Manutenzjoni Ramon Deguara
(I.D. 83474M)**

u

**b`digriet tal-14 ta` Jannar 2019 l-Av.
Dr. Joseph Brincat kien ammess
jintervjeni fil-kawza *in statu et terminis***

Il-Qorti :

I. Preliminari

Rat ir-rikors prezentat fl-24 ta' Settembru 2018 li jaqra hekk –

Il-Fatti

1. *Illi nhar is-Sibt 15 ta' Settembru 2018 għall-habta tal-ghaxra u nofs ta' filghodu (10.30 a.m.), ir-rikorrent bl-ghajnuna ta' numru ta' attivisti ohra qiegħed banner mal-hoarding li qiegħed jgħatti l-monument tal-Assedju l-Kbir fi Triq ir-Repubblika, il-Belt Valletta, liema banner kien jirraffigura l-bandiera ta' Malta, flimkien mal-kelma "GUSTIZZJA" u l-immagni tal-gurnalista assassinata Daphne Caruana Galizia. Fl-istess hin, ir-rikorrent fil-prezenza ta' numru ta' attivisti u persuni ohra qiegħed ukoll fjuri, xemghat u oggetti ohra relatati quddiem l-istess banner u dan kollu b' tifikira tal-istess Daphne Caruana Galizia u bhala sejha biex issir gustizzja għall-assassinju tagħha u fil-konfront tal-persuni li hi nvestigat bhala parti minn xogħla.*

2. *Illi għall-habta tas-sagħtejn ta' wara nofsinhar (2.00 p.m) tal-istess jum, ir-rikorrent ircieva informazzjoni li l-imsemmija banner, fjuri, xemghat u oggetti ohra kienu tnehhew minn haddiema tal-Gvern.*

3. *Illi peress illi dan il-fatt kien għadu mhux ikkonfermat mir-rikorrent fil-mument tat-tnehhija tal-oggetti hawn fuq imsemmija, huwa pproceda billi għamel rapport fl-Għassa tal-Pulizija gewwa l-Belt Valletta (**kopja hawn annessa u mmarkata Dok. A**) fejn huwa spjega dak li kien gara u talab lill-Pulizija sabiex tagħmel l-investigazzjoni tagħha.*

4. *Illi waqt li kien qiegħed jagħmel ir-rapport lill-Pulizija, ir-rikorrent gie mgharraf illi kienu l-haddiema tad-Divizjoni tat-Tindif u l-Manutenzjoni fi hdan il-Ministeru tal-Gustizzja, Kultura u Gvern Lokali li nehhew l-imsemmi banner, fjuri, xemghat u oggetti ohra. Ir-rikorrent*

permezz tal-avukat tieghu u fil-prezenza tal-Pulizija ghamel kuntatt mall-intimat Direttur Generali tad-Divizjoni tat-Tindif u l-Manutenzjoni fi hdan il-Ministeru għall-Gustizzja, Kultura u Gvern Lokali, is-Sur Ramon Deguara, li kkonferma li l-banner, fjuri, xemghat u oggetti ohra kienu tnehhew mill-haddiema tad-Divizjoni tat-Tindif u l-Manutenzjoni. Ir-rikorrent permezz tal-avukat tieghu talab lid-Direttur Generali tad-Divizjoni tat-Tindif u l-Manutenzjoni sabiex b`mod immedjat jigu rritornati lilu fl-Għassa tal-Pulizija tal-Belt Valletta l-imsemmija banner, fjuri, xemghat u oggetti ohra. Da parti tieghu d-Direttur Generali tad-Divizjoni tat-Tindif u l-Manutenzjoni informa lill-avukat tar-rikorrent li l-imsemmija banner, fjuri, xemghat u oggetti ohra kienu ser jigu rritornati lir-rikorrent mill-haddiema tad-Divizjoni fl-Għassa tal-Pulizija tal-Belt Valletta, kif fil-fatt sehh ftit tal-hin wara.

5. Illi hekk kif gew ritornati lura lilu l-imsemmija banner, fjuri, xemghat u oggetti ohra u cjoè għall-habta tal-hamsa u nofs ta` wara nofsinhar (5.30 p.m.), ir-rikorrent mill-gdid qieghed l-imsemmi banner mal-hoarding li qieghed jghatti l-monument tal-Assedju l-Kbir kif ukoll rega` qieghed il-fjuri, ix-xemghat u oggetti ohra relatati mal-art quddiem l-istess monument u dan anke bi thejjija għall-attività li kellha ssir l-ghada, u cjoè nhar il-Hadd 16 ta` Settembru 2018, hdax-il xahar wara l-qtil ta` Daphne Caruana Galizia.

6. Illi għall-habta tat-tmienja ta` filghaxija (8.00 p.m) tal-istess jum tas-Sibt 15 ta` Settembru 2018, ir-rikorrent ipprezenta rikors urgenti għall-ftuh tar-registru wara l-hinijiet u dan sabiex jipprezenta rikors għall-hrug ta` mandat ta` inibizzjoni kontra l-awtoritajiet intimati, li kienu, ex admissis responsabbli għat-tnehhija u t-tehid tal-imsemmija banner, fjuri, xemghat u oggetti ohra, li huma fil-fatt il-manifestazzjoni tal-protesta tar-rikorrent, kif ukoll ta` sezzjoni tal-poplu li għadu qieghed jinsisti u jistenna li ssir gustizzja għall-hajja misruqa ta` Daphne Caruana Galizia u fil-konfront tal-persuni li hi nvestigat bhala parti minn xoghlha.

7. Illi b`digriet ta` dakinhar stess u cjoè s-Sibt 15 ta` Settembru 2018, l-Onorabbli Prim`Awla tal-Qorti Civili ordnat in-notifika tal-mandat lill-intimati bi zmien ghaxart ijiem għar-risposta filwaqt li appuntat l-istess mandat għas-smigh nhar il-5 ta` Ottubru 2018 fil-11.30 a.m. u għalhekk kwazi tliet gimghat wara l-fatti li wasslu biex ir-rikorrenti pprezenta rikors

urgenti. Fid-digriet taghha, il-Qorti ma pprovdietx li l-mandat ghandu jigi milqugh provizorjament.

8. *Illi in vista ta` dan kollu, ir-rikorrent flimkien ma` xi persuni ohra kellu jibqa` ghasa mal-imsemmija banner, fjuri, xemghat u oggetti ghal matul il-lejl ta` bejn is-Sibt 15 ta` Settembru 2018 u l-Hadd 16 ta` Settembru 2018 kif ukoll matul il-jum tal-Hadd 16 ta` Settembru 2018 sabiex jizgura illi dawn ma jergghux jitnehhew mill-intimati, responsabbilita` li r-rikorrent gustament iqis li hija tal-Istat. Ghall-habta tal-erbgha ta` filghodu (4.00 a.m.) tal-Hadd 16 ta` Settembru 2018, haddiema tad-Divizjoni tat-Tindif u l-Manutenzjoni marru quddiem il-monument tal-Assedju l-Kbir biex jergghu jnehhu u jiehd u l-imsemmija banner, fjuri, xemghat u oggetti ohra, izda meta raw il-prezenza tar-rikorrent u ta` persuni ohra fuq il-post l-istess haddiema ddecidew li jitolqu minn fuq il-post.*

9. *Illi fis-sighat bikrija ta` nhar it-Tlieta 18 ta` Settembru 2018, haddiema tad-Divizjoni tat-Tindif u l-Manutenzjoni regghu ghal darb` ohra nehhew u hadu l-imsemmija banner, fjuri, xemghat u oggetti ohra minn quddiem il-monument tal-Assedju l-Kbir u ghalhekk ir-rikorrent mill-gdid ghamel rapport fl-Ghasa tal-Pulizija tal-Belt Valletta. Ghal darb` ohra haddiema li jaqghu taht ir-responsabbilita` tal-intimati Direttur Generali tad-Divizjoni tat-Tindif u l-Manutenzjoni, u tal-Ministru ghall-Gustizzja, Kultura u Gvern Lokali regghu ammettaw mal-Pulizija li kienu huma li nehhew u hadu l-imsemmija banner, fjuri, xemghat u oggetti ohra u fil-prezenza tal-ufficjali u membri tal-Korp tal-Pulizija nfurmaw lir-rikorrent li l-intimat Ministru tal-Gustizzja personalment kien ta struzzjonijiet lid-Divizjoni tat-Tindif u l-Manutenzjoni sabiex jaghmlu hekk. Ir-rikorrent rega` gie moghti lura l-imsemmija banner, fjuri, xemghat u oggetti ohra mill-haddiema tad-Divizjoni tat-Tindif u l-Manutenzjoniu kien mitlub jiffirma ircevuta li tindika dak kollha, kopja taghha hawn mehmuz u mmarkata bhala Dok. B. Ir-rikorrent minnufih flimkien ma` diversi persuni ohra rega` mar quddiem il-monument tal-Assedju l-Kbir u, flimkien ma` persuni ohra, rega` qieghed il-banner mal-hoarding li qieghed jghatti l-monument tal-Assedju l-Kbir kif ukoll qieghed il-fjuri, xemghat u oggetti ohra relatati quddiem l-istess banner.*

10. Illi nhar l-Erbgha 19 ta' Settembru 2018, ghal darb'ohra fis-sighat bikrija ta' filghodu, haddiema tad-Divizjoni tat-Tindif u l-Manutenzjoni regghu nehhew u hadu l-imsemmija banner, fjuri, xemghat u oggetti ohra minn quddiem il-monument tal-Assedju l-Kbir u minflok ma l-intimat Direttur Generali tad-Divizjoni tat-Tindif u l-Manutenzjoni offrihom lura lir-rikorrent, ipproceda bid-depożitu taghhom fir-registru tal-Prim`Awla tal-Qorti Civili permezz tac-cedola ta' depożitu bin-numru 1750/2018 fl-atti tal-mandat ta' inibizzjoni fl-ismijiet Emanuel Delia et vs Il-Ministru ghall-Gustizzja, Kultura u Gvern Lokali et (Mandat ta' Inibizzjoni Nru 1462/2018), liema cedola ta' depożitu giet iffirmata mill-Ufficcju tal-Avukat Generali u li fiha jinghad li l-imsemmija oggetti ghandhom jigu rilaxxati "lil min ghandu d-dritt ghalihom skont il-ligi".

11. Illi bhala fatt ir-rikorrenti jaf bi sbatax-il (17) okkazzjoni li tnehhew l-oggetti msemmija minn fuq jew minn hdejnil-monument jew iktar recentament, il-hoarding tieghu, izda peress li dejjem sehh matul il-lejl qatt ma seta' jidentifika minn kien qed iwettaq dan l-agir. Kien biss nhar il-15 ta' Settembru 2018 li r-rikorrent kien sar jaf b'certezza li kienu impjegati tal-Gvern u cjoè haddiema li jaqghu taht ir-responsabbilità tal-intimati Ministru ghall-Gustizzja, Kultura u Gvern Lokali, is-Segretarju Permanenti u d-Direttur Generali tad-Divizjoni tat-Tindif u l-Manutenzjoni, kienu qeghdin, b'ordni tal-istess intimati, inehhu u jiehdw kwalunkwe fjuri, xemghat, posters u oggetti ohra li jkunu gew imqeghda quddiem il-monument tal-Assedju l-Kbir.

12. Illi f'dan l-istadju, ir-rikorrent hass illi kellu jipprocedi b'din il-kawza, peress illi jidher car illi l-procedura tal-hrug ta' mandat ta' inibizzjoni kontra l-intimati u li r-rikorrent talab mill-Qorti, ma hix ser tigi rispettata mill-intimati nfushom tant li minnufih regghu irrepetew l-agir li r-rikorrent talab illi jkun inibiti milli jwettqu, u b'hekk l-istess rikorrent ma kellu ebda alternattiva ohra ghajr li jfittex li jissalvagwardja d-drittijiet fundamentali tieghu quddiem din il-Qorti.

L-ilmenti kostituzzjonali tal-esponenti

Ksur tal-Artikolu 10 tal-Konvenzjoni Ewropea u l-Artikolu 41 tal-Kostituzzjoni ta' Malta

13. Illi m`ghandux ikun ta` kontestazzjoni li f`socjeta` demokratika, l-esponenti ghandu jgawdi d-dritt li jesprimi ruhu u li jipprotesta fejn ihoss li l-awtoritajiet m`humix qeghdin jaghmlu bizzejjed sabiex jizguraw is-saltna tad-dritt. Fil-fatt, dan huwa dritt sancit bl-Artikolu 10 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem. Illi dan id-dritt mhux b`xi mod kwalifikat jew limitat skont il-fehma ta` ufficjali tal-iStat dwar dak li dwaru qed issir protesta u li anke jekk l-ufficjali ghandhom fehma li ma taqbilx ma` dak li jkun qed jinghad minn min jipprotesta, xorta jibqghu fid-dmir li jharsu d-dritt tal-individwu.

14. L-esponenti qieghed isostni li t-tnehhija konsistenti min-naha tal-iStat tal-mafkar u l-oggetti relatati, li ghandhom jitqiesu — u li ripetutament u pubblikament kien dikjarat mill-esponent u persuni ohrajn li hu intenzjonat — bhala l-manifestazzjoni tal-protesta tieghu u ta` sezzjoni mill-poplu, sar u qieghed isir bi vjolazzjoni tad-dritt fundamentali tieghu li jesprimi ruhu liberament u minghajr indhil mill-iStat.

15. Illi ghandu jkun pacifiku wkoll illi sabiex din il-Qorti tistabilixxi kienx hemm vjolazzjoni tad-dritt ghall-espressjoni hielsa tal-esponenti, ghandha tistharreg : jekk kienx hemm interferenza min-naha tal-iStat, jekk tali interferenza kinitx wahda legali, jekk kinitx mahsuba ghal skop legittimu u jekk kinitx necessarja f`socjeta` demokratika. Jekk l-interferenza in kwistjoni tfalli fuq binarju wiehed biss, allura jkun hemm vjolazzjoni tad-dritt tal-espressjoni hielsa.

16. L-esponenti jsostni li l-agir tal-intimati tfalli mit-tlett testijiet u ghalhekk jammonta ghal vjolazzjoni tal-Atikolu 10 tal-Konvenzjoni fil-konfront tieghu.

17. Illi sabiex l-agir tal-intimati jkun jista` jitqies bhala legali, irid ikun ibbazat fuq ligi li m`hix arbitrarja, li hija cara u accessibbli ghall-poplu. Jinghad illi ma hemm ebda ligi li jawtorizza lill-Ministru tal-Gustizzja, Kultura u Gvern Lokali sabiex inehhi affarijiet intenzjonati bhala protesta u mafkar. Fil-fatt ebda ligi ma giet iccittata mill-Ministru fid-diversi stqarrijiet

li huwa ta lill-midja lokali, sabiex jiggustifika t-tnehhija arbitrarja tal-oggetti fuq imsemmija.

18. *Illi lanqas ma hemm skop legittimu ghat-tnehhija tal-banner, fjuri u xemghat. L-Artikolu 10 jsemmi d-disa` istanzi ta` skopijiet legittimi. Dawn huma, meta l-interferenza hija mahsuba ghall-*

- a) protezzjoni tas-sigurta` nazzjonali;*
- b) protezzjoni tal-integrita` territorjali;*
- c) protezzjoni tas-sigurta` pubblika;*
- d) prevenzjoni ta` dizordni jew twettiq ta` delitti;*
- e) protezzjoni tas-sahha;*
- f) protezzjoni tal-morali;*
- g) protezzjoni tar-reputazzjoni jew drittijiet ta` haddiehor;*
- h) prevenzjoni ta` kxif ta` informazzjoni ricevuta b`sigriet;*
- i) manteniment tal-awtorita` u imparzjalita` tal-gudikatura.¹*

Huwa car u manifest illi l-azzjoni tal-intimati ma taqa` taht ebda wahda minn dawn l-iskopijiet legittimi.

19. *Illi fuq kollox, l-agir tal-intimati ma huwiex necessarju f`socjeta` demokratika. Anzi jinghad illi l-agir tal-intimati huwa propju anti-demokratiku. Huwa principju ben maghruf illi sabiex interferenza fi dritt titqies bhala "necessarja f`socjeta` demokratika" ghandu jkun hemm ezigenza urgenti fis-socjeta` ("pressing social need") li ssir l-interferenza. Bir-rispett jinghad illi ma kien hemm ebda ezigenza tali f`dan il-kaz ; fil-fatt is-socjeta` kienet tibqa` ghaddejja bil-hajja normali taghha li kieku l-protesta tal-esponenti ma tnehhietx u ghalhekk ma kien hemm ebda raguni impellenti ghalfejn kellha titnehha. Ghalhekk l-agir tal-intimati jfalli wkoll fuq dan il-binarju.*

20. *Illi ghalhekk l-esponent isostni li l-agir tal-intimati hija forma ta` censura abbuziva u illegitima, li mhix f`lokha f`pajjiz demokratiku, u ghalhekk tikser id-dritt fundamentali tal-esponenti li jesprimu ruhu b`mod hieles.*

¹ D.J. Harris et al, "Law of the European Convention on Human Rights" (Oxford, 2018) 631-632

Ksur tal-Artikolu 6 u l-Artikolu 13 tal-Konvenzjoni Ewropea

21. Illi f`kull mandat ta` inibizzjoni kontra l-Gvern, sabiex dan jintlaqa`, qabel xejn, irid ikun hemm dikjarazzjoni min-naha ta` rapprezentant tal-Gvern, illi dak li r-rikorrent ried li jwaqqaf bil-mandat, fil-fatt il-Gvern kien bi hsiebu li jaghmlu. Minghajr din id-dikjarazzjoni, il-mandat jitlef l-iskop tieghu, u ma jistax hlief jigi michud.

22. Illi fil-kaz tal-esponenti, l-intimati, billi mhux prekluzi b`ordni provizorja tal-Qorti sabiex ma jnehhux il-banner, fjuri, xemghat u oggetti ohra relatati mill-monument tal-Assedju l-Kbir sas-smiegh tal-istess mandat, ghamlu propju dan. U sal-lum, ghad ma hemm xejn li jwaqqafhom milli jergghu jaghmluha. Di piu`, jinghad illi minflok ma rritornaw l-oggetti elevati, kif kien gara qabel ma gie pprezentat il-mandat, l-intimati, minghajr ma l-ewwel offrew l-affarijiet lill-esponenti, ddepozitawhom il-Qorti rilaxxabbli lil min ghandu d-dritt ghalihom skont il-ligi.

23. Illi ghalhekk anke li kieku l-esponent seta` juri li ghandu d-dritt ghal dawn l-affarijiet u jerga` jtellagghom kif kienu, ma hemm xejn li jzomm lill-intimati milli jergghu jnehhuhom u jiddepozitawhom il-Qorti, anke allura fil-gurnata tas-smiegh tal-mandat. Jekk dan isir, u l-esponenti tghallem issa, u huwa kwazi cert, li dan ser isir, id-dikjarazzjoni necessarja dakinhar tas-smiegh, ma tkunx tista` ssir, u l-mandat innifsu jkun ta` xejn, ghaliex l-esponenti ma jkunx jista` jwaqqaf lill-intimati milli jaghmlu xi haga li diga jkunu ghamluha.

24. Illi ghalhekk jinghad illi l-intimati qeghdin, bl-agir taghhom, jiffrustraw il-procedura civili tal-mandat u jhallu lill-esponenti minghajr ebda rimedju ghall-ksur evidenti tad-dritt tieghu ghall-espressjoni hielsa; u dan bi ksur tal-Artikolu 6 bil-fatt li qeghdin irendu l-procedura tal-mandat ineffettiva u jagixxu bhala l-Gvern sabiex unilateralment jinfluwenzaw ir-rizultat ta` procedura gudizzjarja, in vjolazzjoni wkoll tal-principju tal-ugwaljanza tal-armi. U dan ukoll bi ksur tal-Artikolu 13 tal-Konvenzjoni Ewropea kif ser jigi trattat iktar fid-dettal waqt is-smiegh tal-kawza.

Ghaldaqstant u ghar-ragunijiet hawn elenkati, l-esponenti umilment jitlob li din il-Qorti joghgobha :

1. *Tiddikjara li bl-agir tal-intimati nkiser id-dritt fundamentali tal-esponenti kif protett mill-Artikolu 10 tal-Konvenzjoni Ewropea u l-Artikolu 41 tal-Kostituzzjoni ta` Malta.*

2. *Tiddikjara li bl-agir tal-intimati nkiser id-dritt fundamentali ta` access ghall-qorti u rimedju effettiv, hekk kif protetti mill-Artikolu 6 u l-Artikolu 13 tal-Konvenzjoni Ewropea.*

3. *Konsegwentament, tordna lill-intimati jirritornaw l-affarijiet mehuda mis-sit tal-protesta, liema affarijiet gew depozitati kontra l-ligi taht l-awtorita` tal-Qorti u jiddesistu milli jergghu jnehhuhom.*

4. *Tillikwida ammont ta` kumpens ghad-danni pekunjarji u non-pekunjarji ghall-vjolazzjonijiet hawn imsemmija.*

5. *Tikkundanna lill-intimati jhallsu l-kumpens hekk likwidat.*

6. *Taghti kull ordni u provvedimento li jidhrilha li huwa xieraq sabiex tizgura d-drittijiet fundamentali tal-esponenti u safejn huwa possibbli, tqiegghu fl-istat li kien fih qabel il-vjolazzjoni.*

Bl-ispejjez, inkluz tal-mandat ta` inibizzjoni fl-istess ismijiet u bin-numru 1750/2018.

Rat ir-risposta li pprezentaw l-intimati flimkien fl-10 ta` Ottubru 2018 li taqra hekk –

Illi l-pretensjonijiet tar-rikorrenti huma mibnija fuq zewg binarji fis-sens illi fl-ewwel lok "qiegghed isostni li t-tnehhija konsistenti min-naha tal-

iStat tal-mafkar u l-oggetti relatati, li ghandhom jitqiesu – u li ripetutament u pubblikament kien dikjarat mill-esponent u persuni ohrajn li hu intenzjonat – bhala l-manifestazzjoni tal-protesta tieghu u ta` sezzjoni tal-poplu, sar u qieghed isir bi vjolazzjoni tad-dritt fundamentali tieghu li jesprimi ruhu liberament u minghajr indhil mill-iStat” u fit-tieni lok illi “ghalhekk jinghad illi l-intimati qeghdin, bl-agir taghhom, jiffrustraw il-procedura civili tal-mandat u jhallu lill-esponenti minghajr ebda rimedju ghall-ksur evidenti tad-dritt tieghu ghall-espressjoni hielsa, u dan bi ksur tal-Artikolu 6 bil-fatt li qeghdin irendu l-procedura tal-mandat ineffettiva u jagixxu bhala l-Gvern sabiex unilateralment jinfluwenzaw ir-rizultat ta` procedura gudizzjarja, in vjolazzjoni wkoll tal-principju tal-ugwaljanza fl-armi. U dan ukoll bi ksur tal-Artikolu 13 tal-Konvenzjoni Ewropeja kif ser jigi trattat iktar fid-dettal waqt is-smigh tal-kawza”.

Illi l-esponenti jissottometti li l-pretensjonijiet tar-rikorrenti huma nfondati fil-fatt u fid-dritt ghar-ragunijiet segwenti :-

1. Illi ghal dak li jirrigwarda l-allegata lezzjoni tal-Artikolu 10 tal-Konvenzjoni Ewropeja u l-Artikolu 41 tal-Kostituzzjoni ta` Malta, l-esponenti jissottometti li kemm l-Artikolu 10 tal-Konvenzjoni Ewropeja kif ukoll l-Artikolu 41 tal-Kostituzzjoni ta` Malta filwaqt illi jenuncjaw bhala dritt fundamentali d-dritt tal-liberta` ta` l-espressjoni, fis-subinciz (2) tieghu jikkontempla l-eccezzjonijiet f`liema kazijiet huwa permissibbli mill-istess Konvenzjoni li jirrendi legali u lecitu indhil mill-Istat b`deroga ta` dan id-dritt fundamentali. L-esponenti jissottometti illi huwa evidenti illi d-dritt protett b`dana l-Artikolu mhuwiex wiehed assolut izda hemm certi restrizzjonijiet illi l-Istat jista` b`mod proporzjonat jimponi fir-rigward ta` l-ezercizzju tieghu abbazi ta` ragunijiet specifici. L-ezercizzju ta` dan id-dritt jimporta wkoll obbligi u responsabbilitajiet.

L-esponenti jissottometti illi l-Istat igawdi certu margini ta` apprezzament sabiex jillimita dan id-dritt. Kif dejjem gie ritenut mill-Qorti Ewropeja dwar id-Drittijiet tal-Bniedem dawn ir-restrizzjonijiet huma permissibbli meta jkunu preskritti b`ligi, jsiru ghal ghan legittimu u jkunu necessarji f`socjeta` demokratika.

Illi l-esponenti jissottometti li skont l-Artikolu 4 (2) tal-Att dwar il-Patrimonju Kulturali (Kap. 445 tal-Ligijiet ta' Malta « (2) Kull cittadin ta' Malta kif ukoll kull min ikun prezenti f' Malta ghandu jkollu d-dmir li jipprotegi l-patrimonju kulturali kif ukoll id-dritt li jibbenefika minn dan il-patrimonju kulturali permezz tat-tagħlim u tat-tgawdija. Il-patrimonju kulturali huwa assi ta' valur spiritwali, kulturali, socjali u ekonomiku li ma jistax jigi mibdul, u l-protezzjoni u l-promozzjoni tieghu huma indispensabbli għal hajja bilancjata u kompluta ». L-Artikolu 2 tal-Kap. 445 tal-Ligijiet ta' Malta jipprovdi illi « patrimonju kulturali » tfisser oggetti mobbli jew immobbli ta' importanza artistika, arkitettonika, storika, arkeologika, etnografika, paleontologika u geologika u tinkludi informazzjoni jew data relattivi għall-patrimonju kulturali li jappartjeni lil Malta jew lil xi pajjiz iehor. Dan jinkludi wkoll siti jew depożiti arkeologici, paleontologici jew geologici, paesagg, gruppi ta' bini, kif ukoll kollezzjonijiet xjentifici, kollezzjonijiet ta' oggetti artistici, manuskritti, kotba, materjal ippubblikat, arkivji, materjal awdjo-viziv u riproduzzjonijiet ta' xi wahda minn dawn hawn qabel imsemmija, jew kollezzjonijiet ta' valur storiku, kif ukoll assi kulturali intangibbli li jinkludi l-arti, it-tradizzjonijiet, id-drawwa u l-hiliet li jintuzaw fl-arti dimostrattiva, fl-arti applikata u fl-artiggjanat u assi intangibbli ohra li għandhom valur storiku, artistiku jew etnografiku ». Illi l-Artikolu 53 (1) (a) tal-Kap. 445 li jitratta hsara volontarja jew qerda ta' certu proprjeta', jipprovdi li huwa reat kriminai li persuna « xjentement, jew b'negligenza, nuqqas ta' hila jew ta' osservanza ta' regolamenti jikkaguna dannu lil jew jeqred proprjeta' kulturali sew jekk tali proprjeta' kulturali tkun sew jekk ma tkunx registrata f'xi inventarju skont dan l-Att, u kemm jekk is-sid ta' tali proprjeta' ta' patrimonju kulturali jkun il-persuna li tkun ikkagunat il-hsara jew il-qerda, kemm dik il-persuna tkun qeghda tamministraha b' mod legittimu ». Illi dan kollu jfisser li r-rikorrenti ma jistax jinvoka dritt fundamentali u l-ezercizzju ta' tali dritt sabiex jagħmel hsara fuq monument nazzjonali liema monument nazzjonali jaqa' fl-ambitu tal-patrimonju kulturali Malti u li l-istess rikorrenti bħala cittadin Malti u persuna li ttrissjedi f' Malta għandha l-obbligu li tharsu kif għandu l-istess obbligu kull cittadin iehor Malti u kull persuna li tinstab f' Malta.

Illi dan huwa wkoll rifless fl-Artikolu 161 tal-Kodici Kriminali (Kap. 9 tal-Ligijiet ta' Malta) li jitratta hsarat f' monumenti pubblici u senjatement jipprovdi illi « Kull min ikisser, igarraff, jisfigura jew b'xi mod iehor jagħmel hsara lil monumenti, statwi jew oggetti ohra ta' arti, li qegħdin għall-vantagg pubbliku jew għat-tisbih pubbliku u li jkunu gew imwaqqfin mill-

awtorita` pubblika, jew bis-setgha taghha, jehel, meta jinsab hati, il-piena ta` prigunerija minn sitt xhur sa tmintax-il xahar jew ta` multa ta` mhux izjed minn tliet elef u hames mitt euro (€3,500) : Izda l-qorti tista`, fil-kazijiet hfief, tapplika wahda jew ohra mill-pieni stabbiliti ghall-kontravvenzjonijiet ».

Illi fil-fehma tal-esponenti d-dritt tal-liberta tal-espressjoni mhuwiex intiz sabiex persuna taghmel hsara lill-wirt kulturali nazzjonali izda ghandu jigi ezercitat mill-individwu b`rispett kemm lejn il-wirt kulturali kif ukoll b`mod li jirrispetta l-ligijiet vigenti. Illi bl-ebda mod ma jista` jinghad li l-esponenti b`xi mod interfera fit-tgawdija jew fl-ezercizzju tad-dritt tar-rikorrenti u dan stante li hadd ma ghandu d-dritt li jaghmel hsara lill-monument nazzjonali u cioe` lill-monument tal-Assedju l-Kbir u lanqas ghandu dritt li jhalli b`mod permanenti oggetti mwahhla jew depozitati ma` jew fuq parti mill-monument tal-Assedju l-Kbir. Illi dwar dan ta` l-ahhar, ir-Regolament 4 tar-Regolamenti dwar l-Abbandun, ir-Rimi u t-Tnehhija ta` Skart fit-Toroq u f`Postijiet jew Zoni Pubblici (L.S. 549.40) jipprovdu li mhux permissibbli li persuna thalli jew tiddepozita rifjuti jew « kull oggett, materjal jew sustanza ohra ddepozitata f`post pubbliku li tikkawza jew izzid id-dehra mhawwda ta` dak il-post jew li tikkawza effett b`mod li ggib dannu ghall-uzu xieraq tal-post, jew li tista`, b`mod generali, izzid ir-riskju ta` periklu ghas-sahha jew ghall-ambjent ghall-pubbliku jew ghall-ambjent ta` madwar, jew li tista` tkun haga li ddejjaq lill-pubbliku ». Illi fl-Iskeda 2 tal-istess regolamenti nsibu li f`kaz li ssir xi protesta jew laqgħa pubblika jew attivita` simili, l-post pubbliku jrid jigi mnaddaf minn min jorganizza tali attivita` u jekk dan ma jsirx fi zmien erba` u ghoxrin siegha mit-tmiem tal-grajja organizzata dawn l-oggetti hekk depozitati jigu kunsidrati bhala hwejjeg mormija, zibel, skart, swill jew oggetti li ntremew jew gew depozitati.

Illi ghalhekk anke jekk għall-grazzja tal-argument jigi ritenut li t-tnehhija tal-oggetti jikkostitwixxu interferenza fl-ezercizzju tad-dritt tar-rikorrenti, madankollu huwa car u tali interferenza hija preskritta bil-ligi kif intwera mill-esponenti. Illi ma hemm lanqas ebda dubju li tali indhil huwa wiehed legittimu u necessarju f`socjeta` demokratika. Illi aktar minn hekk, ir-rikorrenti mhuwiex qieghed jitwaqqaf bl-ebda mod milli jezercita d-dritt għall-liberta` tal-espressjoni stante li ma jezisti l-ebda divjet fuq ir-rikorrenti sabiex isemma` lehnu u l-idejat tieghu. Certament li r-rikorrenti ma jistax jippretendi li sabiex jezercita d-dritt tieghu jaghmel hsara lill-

monument nazzjonali u jiddepozita affarijiet permanentement fuqu liema monument nazzjonali u t-tharis tieghu hija protetta mill-ligi domestika.

2. Illi lanqas ma hija siewja l-allegazzjoni tar-rikorrenti li garrab lezjoni tad-dritt ghal-smigh xieraq bi ksur tal-Artikolu 6 tal-Konvenzjoni Ewropeja stante nuqqas ta' access ghall-qorti u li ghalhekk huwa m'ghandux rimedju taht il-ligi domestika bi ksur tal-artikolu 13 tal-Konvenzjoni Ewropea.

Illi ghal dak li jirrigwarda l-principju ta' access ghall-qorti, l-esponenti jagħmel riferenza għall-awturi van Dijk and van Hoof fil-pubblikazzjoni tagħhom **Theory and Practice of the European Convention on Human Rights** (tielet edizzjoni) josservaw illi "This right of access to court means that the person concerned not only has a right to apply to a court for the determination of his rights and obligations and to present his case properly and satisfactorily, but - as mentioned before - also has a right to it that there is an independent and impartial court to make this determination; otherwise this right of access is not secured. In addition, that court must have the required jurisdiction to make the determination". Illi rigward dan id-dritt ta' access ghall-qorti, l-esponenti jirriveva illi l-Qorti Ewropea kellha diversi okkazzjonijiet fejn elaborat li "the right to a court" għalkemm ma jirrizultax mid-dicitura ta' l-artikolu innifsu, huwa ciononostante parti importanti mid-dritt protett permezz tal-Artikolu 6 u interpretatu bħala "the right of access to a court". Illi l-esponenti ma kellu l-ebda ordni mahruġa in konfront tiegħu sabiex iwaqqaf milli jagħmel xi haga kif donnu qiegħed jallega r-rikorrenti. Illi aktar minn hekk, ir-rikorrenti min rajh talab u ottjena l-hruġ ta' kontro mandat sabiex iwaqqa t-talba għall-hruġ tal-mandat ta' inibizzjoni minnħu stess intavolat u dan fuq il-pretest li l-oġġetti gew depozitati fl-atti tar-rikors għall-hruġ tal-mandat u li skont ir-rikorrenti dak li kien qiegħed jitlob li jitwaqqaf fil-fatt sar. Illi kien dan il-fatt wahdu u xejn aktar li waqqaf il-procedura tal-mandat u xejn aktar u dan irid jinftiehem ukoll fil-kuntest li talba għall-hruġ ta' mandat ta' inibizzjoni hija biss mezz kawtelatorju li persuna thares id-drittijiet tagħha liema mezz mhuwiex wieħed definitiv.

L-artikolu 13 tal-Konvenzjoni ma jezigix xi procedura partikolari dwar kif għandu jingħata r-rimedju. L-importanti huwa li jingħata rimedju effettiv quddiem awtorità nazzjonali. Fil-fehma tal-esponenti din l-Onorabbli Qorti

fi-sede kostituzzjonali taghha hija awtorità nazzjonali li tista` taghti rimedju effettiv lir-rikorrenti jekk jinstab li sehew infrazzjonijiet konvenzjonali. Tassew hija ghandha s-sahha li taghti kumpens morali lir-rikorrenti jekk huwa jinghata ragun fl-ilmenti tieghu.

Fi kliem iehor, l-artikolu 13 ma jitlobx li r-rimedju ghandu jkun fil-qafas tal-proceduri ordinarji kif donnu qed jippretendi r-rikorrenti. Bil-kontra l-importanti huwa li jkollok rimedju quddiem awtorità nazzjonali, dan irrispettivament jekk bil-mezz ta` talba quddiem il-Qrati ordinarji jew bil-mezz ta` kawza kostituzzjonali/konvenzjonali.

Hekk per ezempju ilment taht l-artikolu 13 kien gie mwarrab mill-Qorti Ewropea Ghad-Drittijiet tal-Bniedem fis-sentenza Nazzareno Zarb vs. Malta deciza fl-4 ta` Lulju 2006, ghaliex ghan-nuqqas fil-ligi ordinarja li tipprovdi ghal rimedju fil-kaz ta` dewmien ingustifikat fil-proceduri, kien jaghmel tajjeb ir-rimedju taht il-Kap 319 tal-Ligijiet ta` Malta quddiem il-qrati b` setghat kostituzzjonali.

Proprju dawn il-proceduri kostituzzjonali ghandhom il-potenzjal li jaghtu dak li qieghed ifittex r-rikorrenti u cioe` rimedju. Illi bl-intavolar ta` dawn il-proceduri konvenzjonali ir-rikorrenti stess qieghed jirrikonoxxi li s-sistema Maltija tipprovdi ghal rimedju domestiku li huwa effettiv. Li kieku ma kienx hekk ir-rikorrenti ma kienx ser joqghod jehlu l-hin u l-flus tieghu biex jiftah dawn il-proceduri.

Ghalhekk safejn ir-rikorrenti qieghed jilmenta minn ksur tal-artikolu 13 tal-Konvenzjoni Ewropeja dan huwa manifestamnet infondat jekk mhux ukoll fieragh ghaliex dawn il-proceduri u din l-Onorabbli Qorti bhala awtorita` nazzjonali ghandhom is-setgha li jaghtu rimedju effettiv lir-rikorrenti jekk kemm-il darba jirnexxielu juri li tassew gew imkasbra lillu xi wiehed mill-jeddi jiet fundamentali tieghu kif imhares taht il-Konvenzjoni Ewropea.

3. Illi jsegwi li l-lanjanzi u t-talbiet kollha tar-rikorrenti ghandhom jigu michuda.

4. *Salv eccezzjonijiet ulterjuri.*

5. *Bl-ispejjez.*

Rat id-digriet li tat fl-udjenza tal-14 ta` Jannar 2019 fejn accettat li l-Av. Dr. Joseph Brincat jintervjeni fil-kawza *in statu et terminis* limitament sabiex jasserixxi d-dritt tieghu tal-liberta` tal-espressjoni hekk kif protett mill-Artikolu 10 tal-Konvenzjoni sabiex il-Monument tal-Assedju l-Kbir sitwat il-Belt Valletta jibqa` bla mittiefes.

Rat id-digriet li nghata fit-12 ta` Frar 2019 fejn akkordat lill-intimati permess sabiex jipprezentaw risposta ulterjuri dwar l-allegata karenza ta` interess guridiku tar-rikorrenti.

Rat ir-risposta ulterjuri tal-intimati li kienet prezentata fl-14 ta` Frar 2019 li taqra hekk –

Illi l-esponenti jeccepixxu li r-rikorrenti ma ghandux l-interess guridiku necessarju sabiex jippromwovi l-azzjoni odjerna. Illi certament li r-rikorrenti ma jikkwalifikax u ma jistax jitqies bhala "vittma" ai termini tal-Konvenzjoni Ewropeja u tal-Kostituzzjoni ta` Malta;

Illi wiehed mill-presupposti processwali biex persuna tkun tista` tressaq azzjoni kostituzzjonali jew konvenzjonali huwa li dak li jkun irid juri li huwa vittma tal-vjolazzjoni kostituzzjonali jew konvenzjonali li tkun qed tigi allegata (ara L-Irlanda vs Ir-Renju Unit – applikazzjoni numru 5310/71 deciza mill-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fit-18 ta` Jannar 1978 u D vs Ir-Repubblika Federali tal-Germanja – applikazzjoni numru 9320/81 deciza fil-plenarja mill-Kummissjoni fil-15 ta` Marzu 1984). Ghalhekk mhuwiex permissibbli li persuna tressaq azzjoni konvenzjonali jew kostituzzjonali fl-astratt (ara Klass u ohrajn vs Il-Germanja – applikazzjoni numru 5029/71 deciza fis-6 ta` Settembru 1978) fejn jinghad illi « ... an individual applicant should claim to have been actually affected by the violation he alleges » u aktar ` il quddiem li l-azzjoni konvenzjonali

« ... does not institute for individuals a kind of actio popularis for the interpretation of the Convention ; it does not permit individuals to complain against a law in abstracto simply because they feel that it contravenes the Convention ».

L-esponenti jaghmlu wkoll riferenza ghas-sentenza ta` dina l-Onorabbli Qorti kif presjeduta fl-ismijiet Carmel Aquilina vs Il-Kummissarju tal-Pulizija et (rikors kostituzzjonali numru 83/2018JZM) deciza fil-31 ta` Jannar 2019 fejn dina l-Onorabbli Qorti ghamlet riferenza estensiva kemm ghall-gurisprudenza nostrana kif ukoll ghal dik ta` Strasburgu fuq il-kwistjoni ta` x` jikkostitwixxi victim status. Illi azzjoni ta` allegat ksur ta` drittijiet fundamentali ma tistax issir in abstracto jew tiehu s-sura ta` actio popularis.

Illi fil-fehma tal-esponenti n-nuqqas ta` victim status tar-rikorrenti huwa fatali ghall-azzjoni odjerna u dan stante li ghaladarba l-istess rikorrent ma ghandux l-interess guridiku necessarju li jirrikjedu kemm il-Kostituzzjoni kif ukoll il-Konvenzjoni Ewropeja sabiex tigi proposta azzjoni straordinarja bhal dik odjerna, fil-fehma tal-esponenti, dina Onorabbli Qorti ghandha tghaddi sabiex tiddikjara tali nuqqas da parti tar-rikorrent.

Salv u mpregudikata kwalunkwe eccezzjoni ohra f`kaz ta` bzonn.

Rat id-digriet taghha tal-14 ta` Frar 2019 fejn cahdet it-talba tal-intimati kif dedotta fir-rikors tagghom tal-4 ta` Frar 2019 sabiex tinghata sentenza in parte limitatament dwar l-eccezzjoni ulterjuri tagghom.

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

Rat illi l-kawza thalliet ghas-sentenza ghal-lum dwar il-kawza fl-assjem taghha, u cioe` dwar it-talbiet u dwar l-eccezzjonijiet kollha nkluzo l-eccezzjoni kif dedotta fir-risposta ulterjuri.

Rat illi l-partijiet u l-intervenut fil-kawza nghataw il-fakolta` li jipprezentaw noti ta` osservazzjonijiet.

Rat in-noti ta` osservazzjonijiet li pprezentaw kemm il-partijiet kif ukoll l-intervenut fil-kawza.

Rat l-atti l-oħra tal-kawza.

II. L-azzjoni

Ir-rikorrent jilmenta li minhabba serje ta` incidenti li sehhew il-Belt Valletta, Triq ir-Repubblika, quddiem il-Monument tal-Assedju, bejn il-15 u d-19 ta` Settembru 2018 garrab ksur tal-jedd tieghu għal-liberta` tal-espressjoni kif dan huwa mħares bl-Art 10 tal-Konvenzjoni Ewropea għall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali ("**il-Konvenzjoni**") u bl-Art 41 tal-Kostituzzjoni ta` Malta ("**il-Kostituzzjoni**").

Ir-rikorrent ighid illi fil-15 ta` Settembru 2018 hu flimkien ma` attivisti oħra qeghdu quddiem il-Monument tal-Assedju l-Kbir banner raffiguranti l-bandiera ta` Malta, bil-kliem "GUSTIZZJA" u b` ritratt tal-gurnalista Daphne Caruana Galizia li sfat maqtula fis-16 ta` Ottubru 2017. Apparti l-banner, tqeghdu wkoll fjuri, xemghat u oggetti oħra bhala tifikira tal-gurnalista maqtula.

Jikkontendi li dakinhar stess, ftit tal-hin wara li tpoggew l-affarijiet, ircieva nformazzjoni li haddiema tal-Gvern kienu nehhew l-oġġetti kollha inkluz il-banner minn quddiem il-Monument. Ighid li għamel rapport dwar dan fl-Għassa tal-Pulizija ta` Belt u talab li l-oġġetti jingħatawlu lura. Hekk sar u ha kollox lura. Ighid li dak il-hin stess mar hdejn il-Monument tal-Assedju l-Kbir u rega` qiegħed l-oġġetti kollha fejn kienu quddiem il-Monument.

Dan l-istat ta' fatt baqa' ghaddej ghal numru ta' jiem fis-sens illi hu u l-attivisti shabu jqeghdu l-oggetti quddiem dak il-Monument u l-haddiema tal-Gvern inehhuhom minn hemm.

In segwitu sar depozitu tal-oggetti mid-Direttur Generali ntimat taht l-Awtorita' tal-Qorti.

Ir-rikorrent jilmenta li bl-imgieba tal-Istat, rapprezentat fil-kawza tal-lum mill-intimati, safa' mfixkel fl-esercizzju liberu tal-jedd tal-espressjoni. It-tnehhija tal-oggetti, bil-mod u manjiera kif saret, tikkostitwixxi vjolazzjoni ta' dak il-jedd billi hu (u attivisti ohra bhalu) ghazel dak il-mod u dak il-post fejn jezercita l-jedd. L-Istat ma kellu ebda jedd jindahal jew ifixkel il-mod kif huwa jezercita dak id-dritt.

Ir-rikorrent ikompli jilmenta li sal-lum ma hemm xejn xi jzomm lill-awtoritajiet governattivi milli jnehu oggetti li jitqeghdu quddiem il-Monument tal-Assedju l-Kbir.

Jikkontendi li talba tieghu ghall-hrug ta' mandat ta' inibizzjoni kienet resa nutili ghaliex billi si trattava ta' procediment dirett kontra l-Gvern, il-ligi kienet tesigi, fost ir-rekwiziti ghall-hrug tal-mandat, illi kellu jkun hemm dikjarazzjoni mill-Gvern dwar dak li kien fi hsiebu jaghmel. Fil-kaz in ezami l-Gvern fl-ebda waqt ma ddikjara l-intenzjoni tieghu li jkompli bit-tnehhija ta' l-oggetti minn quddiem il-Monument de quo. F'dik is-sitwazzjoni ir-rikorrent sostna li kien qiegħed ikun prekluz milli jitlob il-hrug ta' mandat ta' inibizzjoni. Skont ir-rikorrent dan kien jikkostitwixxi vjolazzjoni tal-jedd tieghu ghal smigh xieraq skont l-Art 6 tal-Konvenzjoni ghaliex ma kienx qed ikun hemm *equality of arms* ; inoltre kien qiegħed ikun privat minn access ghall-qorti. B'dan kollu, sostna r-rikorrent, safa' miksura il-jedd tieghu ghal rimedju effettiv skont l-Art 13 tal-Konvenzjoni.

Daqstant safejn jirrigwarda l-ilmenti tar-rikorrent.

Nigu issa għad-difiza tal-intimati kontra dawn l-ilmenti.

Dwar l-allegat ksur tal-jedd ghal-liberta` tal-espressjoni, l-intimati jikkontendu li dak id-dritt mhuwix assolut izda huwa soggett ghal restrizzjonijiet li jaghmlu l-indhil tal-Istat mhux biss permissibbli izda wkoll lecit u legali. Ir-restrizzjonijiet jillimitaw id-dritt tal-espressjoni meta l-intervent tal-Istat ikun determinat b`ligi, l-intervent ikollu ghan legittimu, u jkun mehtieg f`socjeta` demokratika.

L-intimati jaghmlu referenza ghall-Att dwar il-Patrimonju Kulturali (Kap 445 tal-Ligijiet ta` Malta) u jgibu `l quddiem l-argument illi ma jistax jigi nvokat il-harsien ta` dritt fundamentali sabiex issir hsara fuq monument nazzjonali li jikkwalifika bhala patrimonju kulturali. Hemm imbaghad l-Art 161 tal-Kap 9 li jaghmlu reat min jaghmel hsara f`monumenti pubblici.

L-intimati jikkontestaw il-pretensjoni tar-rikorrent illi kisru l-jedd tar-rikorrent ghal-liberta` tal-expressjoni.

Ighidu li t-tnehhija tal-oggetti minn mal-Monument u minn mal-madwar kien intiz unikament sabiex ma ssirx hsara lill-istess Monument.

Jirreferu wkoll ghar-Regolamenti dwar l-Abbandun, ir-Rimi u t-Tnehhija ta` Skart fit-Toroq u f`Postijiet jew Zoni Pubblici (L.S. 549.40) fejn huwa projbit it-thollija ta` oggetti f`post pubbliku li thawwad id-dehra ta` dak il-post jew li tista` ddejjaq lill-pubbliku. Bis-sahha tar-Regolamenti, min jorganizza attivita` pubblika ghandu l-obbligu li jnaddaf minn fuq il-post fi zmien erbgha u ghoxrin siegha l-oggetti li jkun halla. Ghalhekk, skont l-intimati, anke jekk kellu jigu dikjarat li t-tnehhija tal-oggetti tikkostitwixxi forma ta` interferenza fid-dritt tar-rikorrent, dik l-interferenza kienet naxxenti minn ligi, li trendi l-indhil tal-Istat mhux biss legittimu izda necessarju wkoll.

L-intimati jafferma illi r-rikorrent bl-ebda mod ma twaqqaf milli jimmanifesta l-ideat tieghu. Fl-istess waqt jinsistu li fl-ezercizzju tad-drittijiet, ir-rikorrent ma kellux jippretendi, u lanqas ma kien se jkun tollerat lilu, illi jaghmel hsara lill-Monument jew li jpoggi mal-Monument, b`mod u manjiera li dawn isiru permanenti, ghaliex il-harsien ta` dak il-Monument bhala parti mill-patrimonju nazzjonali ghandu l-protezzjoni tal-ligi.

Dwar l-allegat ksur tad-drittijiet tar-rikorrent hekk kif tutelati bl-Art 6 tal-Konvenzjoni, l-intimati jghidu li dan l-ilment huwa nfondat ghaliex ir-rikorrent ma ccahhad minn ebda access ghall-qorti. Kien ir-rikorrent li minn jeddu ghazel li jwaqqaf il-procedura ghall-hrug ta' mandat ta' inibizzjoni wara li kien sodisfatt li l-oggetti in kwistjoni kienu gew depozitati taht l-Awtorita' tal-Qorti.

Dwar l-allegat ksur tad-drittijiet tar-rikorrent skont l-Art 13 tal-Konvenzjoni, l-intimati osservaw illi din id-disposizzjoni tal-Konvenzjoni ma tistabilixxi ebda formula dwar kif ghandu jinghata r-rimedju jew jekk ir-rimedju jehtiegx tabilhaqq illi jkun disponibbli permezz tal-proceduri ordinarji. Dak li jghodd huwa li jinghata rimedju ghall-ilment. Il-Qorti ghandha kemm l-awtorita' u kif ukoll is-setgha illi taghti dak ir-rimedju jekk kemm il-darba r-rikorrenti jirnexxi fl-ilment tieghu.

III. Xiehda

Is-Segretarju Parlamentari, Onor. Tabib Dr. Deo Debattista xehed illi t-Taqsima tat-Tindif u tal-Manutenzjoni taqa' taht ir-responsabbilita' tieghu bhala Segretarju Parlamentari.

Xehed illi t-tnehhija tal-fjuri, ritratti, xemghat u messaggi ohra li thallew hdejn il-Monument tal-Assedju l-Kbir ("**il-Monument**") saret mill-haddiema tat-Taqsima tat-Tindif u l-Manutenzjoni.

Xehed li r-rimozzjoni saret fuq ordni tal-Onor. Ministru Dr Owen Bonnici ("**il-Ministru**").

Xehed li l-ordni ngihat lilu personalment bil-fomm.

Xehed li r-raguni li ngkata ghar-rimozzjoni kienet ghaliex kien ser isir xoghol ta' restawr fuq il-Monument.

Stqarr illi ma jafx id-data meta ttiehdet id-decizjoni li jsir xoghol ta' restawr fuq il-Monument ghaliex il-monumenti nazzjonali ma jaqghux taht ir-responsabbilita' tieghu. Il-Ministru ma kienx obligat illi jzommu nfurmat b'kull decizjoni li tittiehed dwar restawr ta' monumenti. Huwa jidhol fil-mument li jintalab it-tindif tal-monumenti.

Kompla stqarr li huwa personalment qatt ma ta ebda ordni biex isir it-tindif hdejn il-Monument.

Lanqas ma seta' jghid meta sar it-tindif u cioe' jekk huwiex qabel jew wara li tpogga l-hoarding madwar il-Monument. Biss it-tindif sar b'mod regolari u f' aktar minn ghoxrin okkazjoni. Kien hemm diskussjonijiet dwar meta kellu jkun l-ahjar hin li jsir it-tindif, u kien hemm qbil li dan isir filghaxija waqt in-nightshift, meta l-haddiema mill-10.00 p.m. 'il quddiem jaghmlu r-ronda biex inadddu l-Belt Valletta.

L-Ispettur tal-Pulizija Priscilla Caruana Lee xehdet in rappresentanza tal-Kummissarju tal-Pulizija.

Xehdet illi in konnessjoni mal-kaz kien saru tmien rapporti fl-Ghassa tal-Pulizija tal-Belt bejn Settembru u Ottubru 2018. Kienu jinkludu rapporti dwar tehid ta' banner, fjuri u xemghat minn fuq il-Monument.

Qalet li l-Pulizija qatt ma kienu nfurmati minn qabel li l-affarijiet kienu ser jitnehnew.

L-ewwel rapport li dahal dwar tnehhija tal-oggetti kien f' Marzu 2018. Sar minn pulizija li kienu *on foot patrol* fil-Belt u nnotaw li l-oggetti kienu tnehnew. Eventwalment saru rapporti dwar tnehhija ta' oggetti mirrikorrent, Christopher Roman Schwaiger, Karol Aquilina u Robert Aquilina.

Xehdet illi meta jkun ser isir restawr ta' monument nazzjonali l-Pulizija mhux dejjem tkun ikkonsultata. Ikun hemm dejjem konsultazzjoni

meta tkun mehtiega l-ghajnuna tal-Pulizija biex jitnehhew affarijiet jew biex jitpoggew barriers.

Ziedet tghid li kien hemm incident partikolari fejn pulizija avvistaw xi nies qrib il-Monument. Dwar dawn ittiehdu u gew ezaminati diversi cctv footage. Minnhom ma rrizulta xejn illegali, u fuq il-persuni li kienu hdejn il-Monument ma nstab xejn. Konsegwentement ma kienx hemm lok li jittiehdu passi.

Fil-kontroezami xehdet illi ghalkemm saru diversi rapporti qatt ma ttiehdu ebda passi.

Xehdet illi mhux kull meta ssir protesta jew manifestazzjoni pubblika tkun avzata l-Pulizija minn qabel. Gieli jaghti l-kaz illi l-Pulizija lanqas tkun taf xejn.

Il-Pulizija hija edotta mill-fatt li wara l-qtil ta` Daphne Caruana Galizia kull 16 ta` kull xahar issir manifestazzjoni pubblika. Il-Pulizija tkun prezenti sabiex tassikura li tinzamm l-ordni.

Frank Mercieca - Direttur Generali – Qrati tal-Gustizzja xehed illi r-Registratur tal-Qorti rcieva hames cedoli ta` depozitu li kienu prezentati kollha mid-Direttur Generali tad-Divizjoni Tindif u Manutenzjoni (**id-Direttur**) fi hdan il-Ministru tal-Gustizzja, Kultura u Gvern Lokali. Ic-cedoli kienu jirrigwardaw id-depoziitu ta` banner, fjuri, xemghat u ritratti. Fic-cedoli t-talba kienet fis-sehh li dawn jigu rilaxxjati lil min ghandu dritt ghalihom skont il-ligi.

Ramon Deguara - Direttur Generali - Divizjoni tat-Tindif u l-Manutenzjoni xehed li d-Divizjoni tieghu taqa` taht il-Ministeru tal-Gustizzja, Kultura u Gvern Lokali. Huwa jircievi struzzjonijiet kemm minghand il-Ministru kif ukoll minghand is-Segretarju Parlamentari Debattista.

Xehed illi t-tindif ta' monumenti pubblici jsir fuq bazi regolari fis-sens li jekk jitpogge fuq nhar festa pubblika, dawn jitnehhew ftit zmien wara. Anke meta tkunx inghatat ordni specifika sabiex isir it-tindif, dan isir xorta ghaliex huwa parti mill-kompiti tad-Divizjoni.

Riferibbilment għall-Monument in kwistjoni, stqarr illi d-decizjoni għat-tindif ittiehdet in konnessjoni mar-restawr tal-Monument.

It-tindif beda jsir b'effett minn Settembru 2018 minn impjegati tad-Divizjoni.

Qabel Settembru 2018, huwa kien ta struzzjonijiet cari lill-haddiema tiegħu biex ma jintmess xejn minn hdejn il-Monument tal-Assedju l-Kbir.

Imbagħad fil-bidu ta' Settembru 2018 il-Ministru Bonnici ta struzzjonijiet sabiex isir it-tindif in konnessjoni mar-restawr tal-Monument.

Minn hemm 'il quddiem ta' kuljum sar tindif kull filghaxija mill-haddiema tad-Divizjoni bħala parti mill-mansjonijiet tagħhom.

Mill-bidu ta' Settembru 2018 'il quddiem il-haddiema bdew inadffu bil-lejl bejn l-10.00 p.m. u t-3.00 a.m. kemm gewwa l-hoarding kif ukoll barra.

Xehed illi l-istruzzjonijiet li kellu kienu li għal certu zmienijiet qabel Settembru ma jintervjenux. Wara li kien deciz li jsir ir-restawr, kien deciz ukoll li jsir it-tindif kemm wara l-hoarding u kif ukoll barra. Din l-ordni ngħatat direttament mill-Ministru bil-fomm waqt telefonata.

Stqarr illi meta bdew jingabru l-affarijiet f'Settembru 2018, bħala Divizjoni kienu tkellmu mal-Pulizija dwar dan. Il-Pulizija hadu l-affarijiet l-Għassa.

Eventwalment l-affarijiet gew depozitati l-qorti.

Kienu kollha oggetti li kienu tqeghdu barra l-hoarding. Kien hemm oggetti mqeghda ma` l-art quddiem il-hoarding u ritratti li twahhlu mal-hoarding stess. Tnehha kull ma kien hemm. Kull oggett estraneju ghall-Monument jitnehha f`temp ta' 24 siegha minn meta jitqieghead mal-Monument.

Stqarr illi quddiem il-Monument kienu qeghdin jitpoggew oggetti bi frekwenza akbar milli jsir ma` monumenti pubblici ohra. Minflok jitqeghdu girlandi kommemorattivi kif isir ma` monumenti pubblici ohra, mal-Monument tal-Assedju l-Kbir kienu qeghdin jitpoggew bukketti ta` fjuri, xemghat, ritratti u karti bil-kitba fuqhom. Peress illi ma kienx maghruf ta` min kienu l-oggetti li tnehhew, dawn kienu depozitati l-qorti sabiex jigu zbankati minn min kellu jedd ghalihom skont il-ligi. Fil-fatt, fost l-affarijiet li tnehhew, kien hemm ukoll pittura bil-kliem "Be Yourself a Butterfly", li rrizulta li l-kustodju taghha huwa Dr Edward Duca, lettur l-Universita`, kif ukoll l-organizzatur ta` Science in the City. Fil-fatt intalab l-izbank ta` din il-pittura.

Nutar Dr. Robert Aquilina xehed li huwa wiehed mill-attivisti li regolarment jinghaqdu fi protesti biex iqajjmu kuxjenza fost il-poplu ta` dak li huma jikkunsidraw li hija krizi demokratika ta` illegalita`. L-animu tal-protesti huwa li jkun hemm piena ghal kull min jikser il-ligi biex b`hekk verament tkun qed issir gustizzja b`mod ugwali ma` kulhadd u fl-istess waqt tkun miggielha d-delinkwenza.

Xehed li l-ghazla taz-zona fejn jitpoggew l-oggetti kienet ghal kollox spontanja. Biss l-ghazla kien fiha skop. Iz-zona ta` madwar il-Monument tal-Assedju l-Kbir hija zona prominenti quddiem il-Qrati tal-Gustizzja. Il-Monument jirraffigura tlett figuri li jirrapprezentaw il-Fidi, il-Qlubija u c-Civilta`. Dawn il-valuri wkoll jirriflettu l-iskop u s-sens tal-protesti.

Fisser illi ghalkemm fis-16-il jum ta` kull xahar tinzamm protesta quddiem il-Bini tal-Qrati, kull jum ikun hemm persuni li jqeghdu quddiem il-Monument : fjuri, xemghat u messaggi : b`sens ta` protesta.

Stqarr illi f' Jannar 2018 inqala` incident fejn mara marret fuq il-post u nehiet hafna mill-affarijiet li kien hemm. Dwar dan il-fatt sar rapport lill-Pulizija. Din il-mara kienet mitkellma fejn spjegat li kienet laqtet xi oggetti meta kienet ser taqa`, mentri CCTV footage wera li din il-mara qabdet il-bastun u deliberatament bdiet tizbarazza l-oggetti li kien hemm. Wara dan l-incident, esponenti tal-Gvern bdew jitolbu li jitwaqqaf dak li kien qieghed isir mill-attivisti. Sahansitra Jason Micallef – Chairman ta` Valletta 2018 – u Kunsillier tal-Belt Valletta ressqu mozzjoni fil-Kunsill Lokali tal-Belt biex jitnehha u jitwaqqaf dak li kien qieghed isir mill-attivisti.

Xehed illi s-sitwazzjoni eskalat fis-7 ta` Settembru 2018 meta xi haddiema tal-Gvern dilku l-figuri tal-bronz tal-Monument b`xi zejt bil-konsegwenza li ttebba` l-pedestall. L-ghada, fit-8 ta` Settembru 2018, Jum il-Vittorja, wara li l-President tar-Repubblika poggiet girlanda tal-fjuri mal-Monument, dan inghalaq b`armar tal-injam ("**hoarding**"). Iz-zona li ngħalqet bl-injam kienet imdaqqsa hafna.

Zied jghid ill meta tpogga dan il-hoarding tpoggew ukoll barriers taht it-tarag biex b`hekk inghalaq kull access għall-Monument u ghaz-zona tal-madwar.

Meta mbagħad marru xi attivisti biex ipoggu xemghat, fjuri u ritratti, dawn twaqqfu mill-awtoritajiet milli jagħmlu dan. Prezenti kien ikun hemm ukoll grupp ta` nies, x`aktarx sostenituri tal-Gvern, li kienu joggezzjonaw għat-tqegħdin tal-oggetti. Kull oggett li beda jitpogga hemm beda jitnehha.

Stqarr illi gheluq is-sena mill-qtil ta` Daphne Caruana Galizia, u cioe` fis-16 ta` Ottubru 2018, inzammet velja ta` kommemorazzjoni. Tpoggew quddiem il-hoarding għadd kbir ta` xemghat, fjuri u messaggi. Fil-lejl ta` bejn it-18 u d-19 ta` Ottubru 2018 l-attivisti rceview informazzjoni li l-oggetti kollha kienu tnehhew. L-attivisti talbu li l-oggetti jigu ritornati sabiex jergghu jqegħduhom fejn kienu. Dawk l-oggetti ma kinux skart mormi hdejn il-Monument izda tqegħdu hemm għal għan specifiku u bil-hsieb li l-oggetti jibqghu proprjeta` tal-attivisti.

Qal illi kull meta l-oggetti tnehnew mill-post l-informazzjoni li nghataw kienet li tnehnew b' ordni tal-Ministru.

Spjega illi fost l-oggetti li ttiehdu kien hemm zewg banners : l-ewwel banner juri l-bandiera ta` Malta bil-kelma GUSTIZZJA ; waqt li t-tieni banner, li sar f` għelqu l-ewwel anniversarju mill-mewt ta` Daphne Caruana Galizia, juri l-bandiera ta` Malta b` wicc Daphne Caruana Galizia fuqha.

Xehed illi mhuwiex determinat iz-zmien meta l-protesti sejin jieqfu. Il-protesti jieqfu meta ssir gustizzja dwar il-qtil ta` Daphne Caruana Galizia. Dak iz-zmien għadu ma wasalx għaliex għalkemm saru allegazzjonijiet serji fil-konfront ta' esponenti tal-Gvern, dawn il-persuni mhux qeghdin jigu nvestigati. Il-protesti ser ikompli sakemm issir investigazzjoni serja u jigu segwiti t-tracci kollha. Il-protesti mhux qeghdin isiru għal skop ta` luttu għaliex mietet persuna izda għaliex qeghdin isiru hwejjeg f'pajizna li dwarhom trid issir gustizzju.

Kompla stqarr illi prezenti għall-protesti ikun hemm ir-rikorrent fost ohrajn.

Ir-rikorrent kien prezenti fil-15 ta` Settembru 2018 meta twahhal strixxun u tpoggew fjuri u xemghat. Qassam leaflets b`gabra ta` disposizzjonijiet mill-Kosituzzjoni u mill-Konvenzjoni li jittrattaw dwar il-liberta` tal-espressjoni.

Maria Grazia Cassar - President - Għaqda "Din l-Art Helwa" - xehdet l-kompitu ta` "Din l-Art Helwa" ("**DLH**") huwa li jidentifika dawk il-monumenti illi jkunu jehtiegu restawr u ssib sponsors li lesti jhallsu għar-restawr ; imbagħad tagixxi bħala *project coordinator*.

Xehdet illi fl-2010 sar il-progett tar-restawr tal-Monument tal-Assedju l-Kbir. Fimbank kompriet l-ispejjez kollha tal-progett waqt li l-armar kien ipprovdut mill-Progett għar-Riabilitazzjoni tal-Belt Valletta, li kienet entita` governattiva. F` dak il-kaz, wara li kien accertat il-bzonn tar-restawr tal-Monument, DLH għamlet kuntatt mal-Ministeru tat-Terizmu u l-kwistjoni kienet trattata mal-Onor. Dr. Mario de Marco li dak iz-zmien kien

Segretarju Parlamentari. Intlahaq ftehim fis-sens li r-restawr kellu jibda u jispicca sat-8 ta' Settembru, peress li dakinhar issir ic-cerimonja commemorattiva ta' Jum il-Vittorja. Ir-restawr kien kondott taht is-sorveljanza tal-Progett ghar-Riabilitazzjoni tal-Belt Valletta.

Stqarret li r-restawr tlesta fil-hin. Wara l-2010 DLH la kienet infurmata u lanqas kienet involuta f'xogholijiet ulterjuri ta' restawr tal-istess Monument.

Fissret illi meta mal-Monument bdew jitpoggew ix-xemghat u oggetti ohra, il-pozizzjoni li hadet DLH kienet li b'daqshekk ma kenitx se ssir hsara lill-Monument. Il-fjuri tqieghdu fuq il-pedestall u l-Monument bil-figuri tal-bronz ma kienx qieghed jintmess.

Fil-kontroezami xehdet illi l-pozizzjoni ta' DLH ghar-rigward tal-fatt illi l-fjuri, ix-xemghat u l-oggetti l-ohra ma kienux qeghdin jaghmlu hsara lill-monument giet diskussa bit-telefon. Qalet li jista' jaghti l-kaz illi din il-kwistjoni qatt ma kienet diskussa formalment f'laqgha tal-Ghaqda. Bhala fatt l-Ghaqda ma hasset ebda htiega li tiddiskuti l-fatt li Monument kien issa qieghed jintuza bhala simbolu ta' protesta.

Xehdet illi hi personalment, zvestita minn kull kariga li ghandha f' DLH, tkellmet dwar din il-kwistjoni ma' attivisti ta' Occupy Justice.

Qalet ukoll li mindu bdew jitpoggew regolarment l-oggetti hdejn il-Monument, hija qatt ma spezzjonat il-Monument sabiex tara jekk kinitx qeghda ssir hsara.

Ir-rikorrent xehed illi huwa attivista fis-socjeta' civili kif ukoll blogger.

Ighid illi lura fis-16 ta' Ottubru 2018 meta sar il-qtil tal-gurnalista Daphne Caruana Galizia ma kienx ghadu wisq attiv fis-socjeta' civili ghaliex dak iz-zmien kien impjegat. L-ghada tal-qtil ulied il-vittma marru l-qorti in

konnessjoni ma` kawzi li ommhom kellha pendent. Malli hargu mill-bieb principali tal-bini tal-qorti qasmu t-triq u quddiem il-Monument tal-Assedju l-Kbir qeghdu ritratt ta` ommhom u fjuri.

Fit-18 ta` Ottubru 2018 grupp ta` gurnalisti ltaqghu u flimkien imxew fi protesta minn Bieb il-Belt sal-Monument fejn tpoggew fjuri u messaggi b`sejha ghall-gustizzja u ghall-protezzjoni tas-sorsi li kienu jghaddu l-informazzjoni lill-gurnalista.

Wara dakinhar kienu bosta d-drabi meta hu personalment mar pogga quddiem il-Monument fjuri, xemghat, messaggi, poster u anke strixxun. L-oggetti riposti kien xtrahom hu personalment.

Stqarr illi l-Hadd ta` wara saret protesta ohra minn grupp iehor ta` cittadini ; din ukoll spiccat quddiem il-Monument fejn thallew fjuri, xemghat u messaggi ta` soghba.

Saret protesta ohra fejn hu ha sehem personalment. Anke din spiccat quddiem il-bini tal-Qorti b`diversi persuni jqeghdu xemghat, fjuri u oggetti ohra quddiem il-Monument.

Fisser li kemm hu personlament kif ukoll diversi nies ohra zammew hajja l-protesta taghhom billi regolarment poggew quddiem il-Qorti : fjuri, xemghat u diversi messaggi : u dan sabiex jappellaw ghall-gustizzja sabiex l-istejjer li Daphne Caruana Galizia ppubblikat u investigat jimxu `l quddiem u ssir gustizzja.

Sahaq li l-attivisti dejjem raw li jzommu l-post f`kundizzjoni tajba u regolarment kienu jibdlu l-fjuri u x-xemghat, isaqqu l-pjanti, u jibdlu ritratti u messaggi qabel jikriehu.

Kemm kien ilhom jinzammu dawn il-protesti ma sar ebda lment li kienet qeghda ssir xi hsara fuq il-Monument.

Qal illi bejn it-18 ta' Ottubru 2017 u t-8 ta' Settembru 2018 kien hemm 26 darba fejn l-oggetti ta' protesta tnehhew minn persuni mhux maghrufa. L-attivisti gieli ma sabu xejn mill-oggetti li jkunu hallew. Gieli wkoll sabu l-oggetti mormija f'landa tal-iskart u gieli wkoll sabu l-oggetti mcaqilqin u mkissrin. F'dan l-istess zmien bdew isiru appelli fosthom minn Jason Micallef (Chairman tal-Valletta 2018) sabiex l-oggetti jitnehhew. Fl-istess waqt, il-Kunsill tal-Belt ukoll iddiskuta mozzjoni ta' Kunsillier sabiex jitnehhew l-oggetti minn quddiem il-Monument. Il-mozzjoni kienet respinta ghaliex il-Monument ma kienx jaqa' fil-kompetenza tal-Kunsill Lokali.

Fisser li fil-jiem ta' qabel is-6 ta' Settembru 2018, xi impjegati tal-Gvern nehhew l-oggetti minn quddiem il-Monument u dehru li kienu qeghdin jaghmlu xoghol preparatorju ghac-cerimonja kommemorattiva ta' Jum il-Vittorja li kellha ssir fis-6 ta' Settembru. Ittella' wkoll scaffolding; deher li l-figuri tal-bronz kienu qeghdin jigu trattati sabiex jigu jleqqu. Meta tlesta x-xoghol feggew fuq il-pedestall tbajja taz-zejt. Meta tlestiet ic-cerimonja kommemorattiva, l-attivisti regghu poggew l-oggetti ta' protesta lura quddiem il-Monument. Il-haddiema tal-Gvern regghu ghal darb'ohra naddfu qabel ic-cerimonja li saret fit-8 ta' Settembru. Dakinhar stess, immedjatament wara li saret ic-cerimonja, intrama mill-impjegati tal-Gvern scaffolding madwar il-Monument u l-Pulizija mbarraw l-access ghall-Monument ghajr ghat-tarag li jwassal qrib il-Monument fil-parti elevata tal-pjazza. Il-girlanda tal-fjuri li kienet tpoggiet mill-President ta' Malta dakinhar stess tpoggiet fuq quddiem tal-armar f'rigel il-Monument. L-attivisti rega' bdew iqeghdu lura l-oggetti ta' l-protesta b'uhud sahansitra jinfilzaw xemghat minn bejn il-barrikati. Dawn tnehhew immedjatament.

Xehed illi fl-10 ta' Settembru 2018 huwsa kiteb fuq il-blog tieghu li l-armar ta' madwar l-iscaffolding kien biss skuza ghaliex il-Monument kien fi stat tajjeb anke ghaliex kien sar restawr estensiv fuqu tmien snin qabel. Qal ukoll illi ma kienx bzonn tal-barriers li tpoggew mill-Pulizija. Anzi kienu qeghdin ixekklu l-access liberu ghall-pjazza pubblika. Il-barrikati tnehhew f'it tal-jiem wara.

Stqarr illi fil-15 ta' Settembru 2018 hu flimkien ma' attivisti ohra dendlu strixxun mal-armar. Dan kien juri l-bandiera Maltija, ritratt grafiku

ta` Daphne Caruana Galizia u l-kelma 'GUSTIZZJA'. Kien hu stess li ordna u hallas ghall-istrixxun. Tpoggew ukoll fjuri u xemghat ma` l-art quddiem l-armar li kien qieghed jghatti l-Monument. Tqassam ukoll manifest dwar il-liberta` tal-espressjoni.

Kompla stqarr li ftit tal-hin wara haddiema tal-Gvern nehhew kollox. Dakinhar stess kiteb lill-Kummissarju tal-Pulizija fejn talbu jinvestiga l-kaz u jirritorna lura l-oggetti propjeta` tar-rikorrent tieghui. Sar ukoll rapport l-Ghassa tal-Pulizija tal-Belt. In segwitu kien infurmat mill-Pulizija li d-Dipartiment tal-Protezzjoni Civili kien gibed l-attenzjoni tal-Pulizija tal-Belt li l-attivisti kienu hallew xi oggetti ta` periklu ghall-pubbliku. Il-Pulizija marru fuq il-post u ma sabu xejn li seta` johloq periklu. Ghalhekk hallew l-oggetti kollha fejn poggewhom l-attivisti. Ftit tal-hin wara xi haddiema tal-Gvern naddfu z-zona. Fuq insistenza tieghu u tal-avukat tieghu Dr Karol Aquilina sar kuntatt mad-Direttur tad-Dipartiment tat-Tindif. Irrizulta li l-oggetti kienu tnehhew minn haddiema tieghu u wara ttiehdu lura l-Ghassa tal-Belt. Wara li hadhom lura rega` tpoggew quddiem il-Monument.

Ipprezenta pendrive b`serje ta` ritratti fejn jidher hu qed ipoggi oggetti quddiem il-Monument. Wiehed mir-ritratti juri wkoll skrizzjoni fuq l-istrixxun illi tghid li dak l-istrixxun huwa proprjeta` ta` Occupy Justice u ta` Manuel Delia.

Fil-15 ta` Settembru 2018 ipprezenta rikors fejn talab il-hrug ta` mandat ta` inibizzjoni sabiex il-Gvern ikun mizmum milli jerga` jnehi l-oggetti ta` l-protesta. Ir-rikors kien appuntat ghas-smigh ghall-5 ta` Ottubru 2018. Fil-lejl ta` bejn il-15 u s-16 ta` Settembru 2018 l-attivisti baqghu ghassa mal-post u nzammet velja fis-16 ta` Settembru 2018.

Kompla stqarr illi fit-18 ta` Settembru 2018 l-oggetti rega` tnehhew din id-darba bl-addocc ghaliex fl-art kien fadal fdalijiet ta' petali, frak tal-plastik tax-xemghat u xemgha minn xemghat maqluba. Sar rapport iehor u l-oggetti gew ritornati mid-Dipartiment tat-Tindif. L-oggetti rega` tpoggew lura hdejn il-Monument. Flimkien ma` attivisti ohra lmentha mill-fatt li l-Gvern kien agixxa minghajr ma stenna s-seduta tal-5 ta' Ottubru 2018. Fil-lejl ta` bejn it-18 u d-19 ta` Settembru 2018 l-oggetti

rega` tnehew ; din id-darba gew depozitati l-qorti. L-attivisti rega` qeghdu oggetti ohra quddiem il-Monument.

Stqarr li bhala fatt il-girlanda tal-fjuri li kienet tqeghdet mill-President tar-Repubblika fit-8 ta` Settembru 2018 kienet ghadha hemm minkejja li kienet tbielet u tmermret.

L-istorja komplet tirrepeti ruhha bl-oggetti jitnehew kull darba.

Xehed illi l-ghazla tas-sit saret b` kumbinazzjoni. Pero` dan is-sit ta` protesta sar simbolu ta` l-espressjoni ta` diversi cittadini li ma jaqblux mal-mod kif sfat maqtula Daphne Caruana Galizia, u jemmnu li l-istituzzjonijiet naqsu milli jissalvagwadaw il-liberta` tal-espressjoni. Iz-zamma hajja ta` dan is-sit ta` protesta taghti lok ghal min jixtieq illi jesprimi ruhu liberament. Dan is-sit zgur li mhuwiex intiz bhala qabar jew monument ghall-vittma. Il-protesta mhijiex intiza unikament biex turi soghba. Ghandha principalment skopijiet civici : il-bzonn li ssir gustizzja ; il-bzonn li gurnalisti jahdmu fil-liberta` ; u l-htiega li meta gurnalisti jiskopru korruzzjoni, l-istituzzjonijiet jagixxu dwarha. Dawn it-talbiet legittimi qeghdin jitressqu f` post pubbliku.

Sostna li l-Monument *per se* m`ghandux relevanza partikolari fil-protesta. Huwa s-sit li ghandu rilevanza u cioe` post fil-belt kapitali tal-pajjiz, fi pjazza ewlenija fejn protesta dwar aspetti important tal-hajja civika u pubbliku, u cioe l-gustizzja, id-demokrazija u s-saltna tad-dritt, jehtieg li jigu promossi f`post prominenti. Barra minn hekk, is-sit jinsab ukoll proprju quddiem il-bieb principali tal-Qrati fejn tintalab u ssir gustizzja.

Is-simboli tal-protesta jzommu l-protesta hajja sakemm min qieghed jipprotesta jkun sodisfatt illi saret gustizzja.

Sahaq illi l-protesta mhijiex grajja permanenti anzi hemm certu impazzenza da parti tal-attivisti inkluz hu li l-aspettattivi tagghom jintlaqghu u jkunu jistghu ikomplu b`hajjithom.

Sakemm gustizzja ssir, il-protesta tibqa` gustifikata.

Fil-kontroezami xehed illi kienu diversi d-drabi meta pogga quddiem il-Monument fjuri jew xemghat, izda qatt ma ha permess mill-awtoritajiet, ghaliex ma deherlu li dan kien necessarju. Ikkonferma illi kienu diversi n-nies li poggew oggetti quddiem il-Monument u bosta drabi dan sar fil-prezenza tieghu. Fost l-affarijiet kien ikun hemm ukoll xemghat mixghulin.

Qal illi kien hemm madwar tlett okkazjonijiet fejn l-oggetti li tnehhew gew ritornati lura. Kien hemm ukoll okkazjonijiet fejn l-oggetti gew depozitati l-qorti. Dan jafu ghaliex kien notifikat bic-cedoli. Huwa qatt ma talab li jirtira l-oggetti depozitati.

Xehed illi b`rabta ma` l-protesti tqeghdu biss oggetti quddiem il-Monument.

Ikkonferma illi la hu u lanqas l-attivisti l-ohra ma gew imwaqqfa milli jipprotestaw jew milli jaghmlu xi manifestazzjoni.

Lanqas qatt ma gie mwaqqaf milli jesprimi ruhu jew milli jippubblika l-kitbiet tieghu fuq il-blog tieghu.

Lanqas qatt ma kien arrestat jew interrogat.

Lanqas ma twaqqaf milli jipprotesta.

Sahaq li l-ilment tieghu huwa dirett unikament lejn it-tnehhija tal-oggetti ta` protesta minn quddiem il-Monument.

Fisser illi t-tqeghid tal-oggetti huwa mod kif jipprotesta u ghalhekk it-tnehhija taghhom tikser id-dritt tieghu li jesprimi ruhu.

Jaccetta li l-Monument huwa proprjeta` pubblika.

Mhuwiex jallega li ghandu xi pussess fuq dan il-Monument.

Ma jippretendix li hadd ma jista` jkellmu dwar l-azzjonijiet tieghu.

Jippretendi li l-oggetti li jqiegghdu jibqghu hemm dment li ma jostakolaw lil hadd u ma joholqux periklu.

Joseph Magro Conti – Sovrintendent tal-Patrimonju u Wirt Kulturali – xehed illi ha l-kariga f` April 2018.

Xehed illi s-sovrintendenza ghandha rwol wiesa` hafna. Fost hwejjeg ohra, tassigura li jigi mhares il-patrimonju kulturali sew dak immobbiljari, mobbli, u intangibbli. Tippromwovi l-kura u r-restawr. Tiehu hsieb ukoll izzomm inventarju. Taghti konsulenza lill-entitajiet governattivi b` mod partikolari lill-Awtorita` tal-Ippjanar fejn jidhol zvilupp. Toffri konsulenza lill-Gvern dwar *policies*.

Xehed illi kemm kien ilu fil-kariga qatt ma rcieva senjalazzjoni jew applikazzjoni ghal xogholijiet li kellhom isiru fuq il-Monument tal-Assedju l-Kbir.

Fil-kontroezami xehed illi s-sovrintendenza tidhol biss meta r-restawr li jkun mehtieg ikun ta` certa portata u cioe` fejn is-sitwazzjoni tkun gravi minhabba tkissir jew nuqqas. Isiru wkoll xogholijiet ta` manutenzjoni li jkunu jinkludu tindif superficjali. Is-sovrintendenza ma tidholx f` materji ta` mautenzjoni regolari u superficjali.

Anne Demarco xehdet illi qabel it-8 ta' Settembru 2018 l-oggetti li kienu jitpoggew quddiem il-Monument tal-Assedju l-Kbir fil-Belt kienu jithallew hemm anke tlett gimghat qabel jitnehhew. Sakemm l-oggetti kienu jkunu ghadhom hemm kienu jmorru jnaddfu, jirrangaw l-affarijiet, inehhu x-xemghat l-qodma u jpoggu ohrajn godda. Malli l-affarijiet jitnehhew kienu jmorru jqeghdu kollox mill-gdid. Wara t-8 ta' Settembru 2018, il-Monument kien imbarrat u l-oggetti bdew jitnehhew kuljum. Ghalhekk hi bdiet tidhol il-Belt, tal-inqas darbtejn kuljum, biex tpoggi ritratt, xemgha u fjuri.

Kompliet tixhed li l-oggetti jitpoggew fuq il-pedestall jew fil-hamrija ta' madwar il-pedestall. Fil-hamrija addirittura nzerghu il-pjanti li l-attivisti personalment imorru jsaqqu, u jnaddfu l-pjanti mill-weraq mejta. Fil-post kienu jitpoggew ukoll oggetti ohra li jfakkru l-qtil ta' Daphne Caruana Galizia.

Fissret illi s-sens tal-protesti u t-tqeghid tal-oggetti huwa mmirat lejn li xi darba ssir gustizzja u ssir investigazzjoni xierqa.

L-ghazla tal-post saret b' mod kazwali wara li kienu diga' tpoggew fis-sit xi fjuri minn terzi. Il-post huwa wiehed ideali ghaliex qieghed f' post centrali fejn jarah kulhadd. Fuq kollox qieghed faccata tal-bieb principali tal-Qorti fejn tigi amministrata l-gustizzja.

Qalet li r-rikorrent huwa fost dawk li jkunu prezenti waqt il-protesti. F'okkazzjoni minnhom anke pprovda strixxun u kiteb fuqu li dak kien proprjeta' tieghu u sahansitra hallas ghalih minn butu. Konsistentement baqa' jiehu mieghu ghall-attivitajiet pjanti, fjuri u xemghat.

Fil-kontroeami xehdet illi jkun hemm fjuri, xemghat u oggetti ohra li huma taghha. Dak kollu illi taghmel jew li tpoggi taghmlu f'gest spontaneju minghajr ma jqabbadha hadd. Ir-rikorrenti qatt ma qalilha biex tmur tqieghed affarijiet hdejn il-Monument. Effettivament ir-rikorrent lanqas jaghmel parti minn Occupy Justice, li huwa *pressure group* iffurmat minn grupp ta' nisa li nghaqdu flimkien fi protesta wara l-qtil ta' Daphne Caruana Galizia.

Christopher Schwaiger xehed illi huwa gurnalista impjegat ma` newsbook.com.mt.

Xehed illi fil-15 ta` Settembru 2018 kien miexi fi Triq ir-Repubblika, Valletta, u meta wasal quddiem il-Monument tal-Assedju l-Kbir ra zewg haddiema tad-Dipartiment tat-Tindif qeghdin inehhu l-istixxuni, fjuri u xemghat li kien hemm minn quddiem il-Monument. Beda jiehu filmat ta` dak illi kien qiegħed isehh. Dak il-hin mar fuqu ragel li identifika ruhu bhala Maurice Spiteri, is-senior fuq dawk il-haddiema. Talbu biex jieqaf milli jiehu l-film ghaliex qal illi seta` jipperikola lill-haddiema li kienu qegħdin inaddfu. Huwa baqa` jiffilmja. Spiteri beda jzomm idejn ix-xhud u jghattilu l-lenti tal-apparat. Sar rapport l-Għassa tal-Pulizija tal-Belt.

Av. Dr. Karol Aquilina xehed kemm fil-kwalita` personali tieghu kif ukoll bhala konsulent legali tar-rikorrenti, fil-kaz tal-ahhar, wara li kien ezentat mis-sigriet professjonali.

Xehed illi huwa wiehed mill-persuni li jpoggu xemghat u fjuri quddiem il-Monument tal-Assedju l-Kbir il-Belt. Attenda wkoll għal kull velja, kull protesta u kull attivita` ohra relatata.

Prezenti għall-protesti, partikolarment dawk li jsiru quddiem il-Monument, u meta jitpoggew l-oggetti quddiem il-Monument, ikun hemm għadd ta` nies fosthom ir-rikorrent, li jattendi għal kull attivita`.

Jaf illi r-rikorrent u persuni ohra pogga wkoll diversi oggetti quddiem il-Monument inkluz fjuri, xemghat, u strixxuni li huma proprjeta` tar-rikorrent. Sahansitra r-rikorrent kien kiteb fuq wiehed mill-istrixxuni li dan kien proprjeta` tieghu u meta ngabru lura l-affarijiet li kienu tnehhew dawn gew ritornati lir-rikorrent.

Stqarr li l-ghazla tal-post fejn qeghdin jitpoggew l-oggetti hija kazwali u marbuta biss mal-fatt li tinsab quddiem il-bini tal-Qorti, ghalhekk hija s-sejha ghall-gustizzja.

Fl-20 ta' Marzu 2018 hu personalment xtara xi xemghat minghand il-Wembly Store u poggiehom quddiem il-Monument. L-ghada x-xemghat kienu ghadhom hemm, biss il-gurnata ta' wara nsterqu. Dwar dan ghamel rapport mal-Pulizija u sahasitra ghaddilhom ritratti tax-xemghat. Talab li wkoll ssir investigazzjoni.

Zied jghid illi kien infurmat illi kienu zewg persuni partikolari fil-lejl tal-21 ta' Marzu 2018 u fil-lejl tat-22 ta' Marzu 2018 kienu nehhew l-oggetti minn quddiem il-Monument. Dan kien rappurtat lill-Pulizija u nghataw ukoll l-ismijiet tal-persuni koncernati. Il-Pulizija ma hadet ebda azzjoni dwar dan.

In segwitu kien hemm incidenti ohra fejn l-oggetti tnehhew minn quddiem il-Monument.

Kompla jixhed illi fil-15 ta' Settembru 2018 saret protesta ohra li ghalha kien mitlub jattendu biex fil-kaz ta' hteiga jaghti parir skont il-bzonn. Dakinhar il-Monument kien imdawwar bil-barrikati. Ghalhekk l-attivisti dendlu strixxun mal-barrikati tal-injam li kien hemm madwar il-Monument. Tqieghdu wkoll xi affarijiet quddiem il-Monument. Xi hin wara nofsinhar gurnalista tal-RTK u newsbook.com lemah xi haddiema tal-Gvern inaddfu quddiem il-Monument. Dan gibed filmat li kien ippubblikat. Ir-rikorrent, il-gurnalista u hu marru jaghmlu rapport l-Ghassa tal-Belt. Sar kuntatt ma' Ramon Deguara, Direttur tal-Cleansing, li ta struzzjonijiet lill-haddiema tieghu sabiex jirritornaw l-oggetti lura lir-rikorrent. Hekk kif l-oggetti gew ritornati regghu tpoggew quddiem il-Monument. Meta tkellem ma' Deguara, dan qallu li kien mexa fuq struzzjonijiet li nghata direttament mill-Ministru Bonnici. Hu tkellem personalment mal-Ministru Bonnici u qallu li l-ordni tat-tnehhioja tal-oggetti kienet inaccettabbli u kienet tikkostitwixxi ksur tal-jedd tal-liberta' tal-espressjoni. Bhala fatt l-ordni baqghet ma gietx irtirata.

Sostna li dwar kull incident sar rapport lill-Pulizija.

Rachel Williams mill-Grupp Occupy Justice xehdet li fis-16-il jum ta` kull xahar jitpoggew fjuri u xemghat quddiem il-Monument tal-Assedju l-Kbir Valletta.

Xehdet illi hija rat lir-rikorrent iqieghed fjuri u xemghat quddiem il-Monument.

Qalet li r-rikorrent huwa prezenza kostanti fil-manifestazzjonijiet ta` protesta li jsiru quddiem il-Monument. Fil-15 ta` Settembru 2018 kien il-mohh wara l-istrixxun li ttella` dakinhar.

Emanuel Sciriha - Direttur - Qrati Civili u Tribunali xehed illi gew intavolati tmien cedoli ta` depozitu li lkoll saru mid-Direttur Generali tad-Divizjoni tat-Tindif u Manutenzjoni. L-oggetti depozitati jikkonsistu fi fjuri, xemghat, strixxuni u ritratti. Spjega li fost ic-cedoli kien hemm wahda rigwardanti strixxun b`farfett fuqu. Dwar dan intalab zbank minn Dr Edward Duca li huwa kemm lettur l-Universita` kif ukoll organizzatur ta` Science in the City.

Francis Chetcuti – Senior Conservator - Heritage Malta xehed illi r-restawr tal-monumenti nazzjonali jikkompeti lil Heritage Malta.

Xehed illi fl-2011 kien sar restawr tal-Monument tal-Assedju l-Kbir il-Belt li kien ikkommissjonat minn terzi. Wara li sar dan ir-restawr, Heritage Malta hadet hsieb taghmel il-manutenzjoni tal-Monument billi daret il-*protective coating* tal-Monument. Din il-manutenzjoni ssir b`mod perjodiku. L-ahhar manutenzjoni saret fl-2018.

Kompla xehed illi waqt ix-xogholijiet li saru fl-2018 Heritage Malta intebhet bi hsara fil-gebla tal-Monument liema hsara kienet dovuta ghax-xemghat u qsari li kienu qeghdin jithallew fuq il-Monument. Saret ukoll hsara mill-adezivi li ntuzaw sabiex jitwahhlu xi ritratti. Irrizultaw ukoll

tracci ta' kulur li hareg mir-ritratti stampati li gew imwahnha. Dan issarraf fi hsara fil-valur estetiku tal-monument billi rrizultaw xi tbajja. Saret ukoll hsara fil-gebla billi l-wax tax-xemgha ghalaq il-pori tal-gebla bil-konsegwenza li din tista' tiddisintegra. Il-wax tax-xemghat huwa parrafin li bir-raggi tax-xemx jigi diskolorit u dan ikompli jtellif mill-valur estetiku billi l-wax isir safrani. Billi l-gebla hija raffa kull haga illi taqa' fuqha ittebba. Il-gebla qeghda tittebba wkoll bil-posts tal-qasari li madwarhom ihallu tebgha tal-hamrija li tirrizulta f' diversi tondjaturi.

Stqarr illi meta sar ix-xoghol ta' manutenzjoni saru diversi trattamenti fuq il-gebla biss hemm tbajja li baqghu b' mod permanenti u ghad hemm tracci ta' xema' fil-pori tal-gebla. Zied jghid illi kull darba li jitpoggew affarijiet fuq il-gebla tal-monument, nkluz fjuri artificjali kkuluriti, ritratti, karti bil-kulur, xemghat u oggetti ohra estranji ghall-Monument, dawn jixxarbu bin-nida u jtebbghu il-gebla b' mod permanenti. Ghalhekk qeghda ssir hsara fil-gebla apparti li qiegħed jittellif il-valur estetiku tal-Monument.

L-intervenut fil-kawza xehed illi waqt li ma jsib ebda oggezzjoni għal li r-rikorrenti jikteb dak li jidhirlu u li jimmanifesta l-opinjoni tieghu. Kif l-ahjar jahseb, id-dritt għal-liberta' tal-espressjoni ma jagħti ebda dritt lir-rikorrent li jagħmel dak li jrid bi hwejjeg li mħumiex fid-dominju tieghu.

Lanqas m' għandu oggezzjoni li jsir mafkar f'għieh Daphne Caruana Galizia f' post permess mil-ligi. Madankollu, hadd m' għandu l-jedd li jagħmel mafkar fejn diga' jezisti mafkar iehor li jappartjeni lill-wirt komuni tal-Maltin.

Xehed li huwa dritt tal-espressjoni tieghu dak illi jinsab imfisser fid-diversi monumenti, fil-wirt storiku u dak kulturali tal-pajjiz.

Zied jghid illi li l-Monument huwa oggett materjali li juri espressjoni kollettiva ta' hsieb, twemmin, fehma u anki ta' qima. Meta jittella' monument, hu x' inhu, dan jigi ta' dominju pubbliku. Ikun jappartjeni lill-poplu kollu u għandu jircievi l-protezzjoni tal-poplu kollu. Monument pubbliku huwa ta' kulhadd u fl-istess hin mhu ta' hadd. Għalhekk ladarba

huwa pubbliku hadd m`ghandu l-jedd ibiddel xi haga fih minghajr il-kunsens tal-Gvern.

L-Assistent Kummissarju tal-Pulizija Stephen Mallia xehed illi bhala regola fejn si tratta ta` manifestazzjoni minn gemgha ta' aktar minn ghoxrin persuna, tkun trid issir applikazzjoni mal-"meetings office" fil-Kwartieri Generali tal-Pulizija sabiex il-Kummissarju tal-Pulizija jaghti in-"no objection".

Xehed li dwar il-kazi mertu ta` din il-kawza, jidher illi dejjem saret applikazzjoni b`email lill-"meetings office".

Irrefera ghall-attivitajiet li saru fid-distrett tal-Mosta u fil-Belt fis-16 ta` Ottubru 2018.

Ghal dak li kellu jsir il-Belt saret applikazzjoni mir-rikorrent ghal permess biex issir dimostrazzjoni.

Bhala fatt mhux qed jintalab permess ghall-manifestazzjoni illi ssir ta` kull xahar fil-Belt.

Da parti taghha l-Pulizija mhux qed jintalab permess qabel kull manifestazzjoni.

Madankollu billi huwa fatt maghruf li kull 16-il jum ta` kull xahar qeghda ssir manifestazzjoni fil-Belt.

Propju ghaliex hekk qed ikun il-kaz, il-Pulizija saret tahseb ghal dan minn qabel. Fil-fatt tibda sa mil-lejl ta` qabel taghmel ghassa akbar fiz-zona tal-Monument tal-Assedju l-Kbir u tara li tinzamm il-bon ordni anke waqt il-manifestazzjoni u li kollox jimxi b`mod pacifiku.

Spjega illi ghar-rigward it-tqeghid ta' oggetti quddiem il-Monument, ma jezisti ebda obbligu illi l-Pulizija tigi nfurmata a priori.

Lanqas ma huwa l-kompitu tal-Pulizija li tnehhi l-affarijiet li jkunu thallew wara d-dimostrazzjoni.

Zied jghid illi l-Pulizija lanqas ma tidhol fil-kwistjoni ta' oggetti li jkunu tpoggew quddiem Monument.

Tintervjeni biss meta jsiru atti ta' vandalizmu.

F' dak il-kaz isir rapport u ssir investigazzjoni.

Lill-Pulizija ma sar ebda rapport dwar hsarat.

Stqarr illi meta tkun indirizzata folla ta' aktar minn ghoxrin ruh f' manifestazzjoni pubblika, il-ligi mkien ma tesigi li jrid jintalab il-permess. F' kull kaz, sew meta attivita' tkun diga' bdiet u kif ukoll meta tkun ghadha ser tibda, il-Pulizija ma tintervjenix biex twaqqaf persuna milli tesprimi ruhha.

Dawn il-manifestazzjonijiet kienu pacifici u ghalhekk ma sar ebda ksur ta' ligi.

Ir-rwol tal-Pulizija huwa dak illi thares lil min qiegħed jesprimi ruhu u tendenzjalment il-prezenza tal-Pulizija waqt l-attivita' sservi unikament sabiex tara li l-attivita' ma tigix imxekkla.

Rigward dan il-kaz partikolari, il-Pulizija qatt ma ngħatat struzzjonijiet sabiex twaqqaf lill-attivisti.

IV. Ir-risposta ulterjuri

Kien eccepit mill-intimati fir-risposta ulterjuri li hemm karenza ta' interess guridiku min-naha tar-rikorrent sabiex jippromwovi u jsegwi l-azzjoni odjerna.

Jikkontendu li r-rikorrent ma jikkwalifikax bhala "vittma" skont il-Konvenzjoni u l-Kostituzzjoni.

Biex isostnu l-eccezzjoni, l-intimati jirreferu għall-provi li, skont huma, juru li kienu diversi l-persuni li pprotestaw bit-tqeghid ta' oggetti mal-Monument, kif ukoll provi li, skont huma, juru li r-rikorrent personalment ma hax sehem fl-attività ta' protesta u fit-tqeghdin tal-oggetti.

Ir-rikorrent wiegeb għal din l-eccezzjoni billi għamel elenku dettaljat tad-drabi meta kien prezenti personalment.

Barra minn dan, xehdu diversi persuni li kkonfermaw li r-rikorrent kien prezenza sinonima mal-protesti.

Kien esebit mir-rikorrent compact disc b'sensiela ta' ritratti fejn tidher il-presenza tiegħu waqt il-protesti, kif ukoll it-tqeghid min-naha tiegħu ta' dawk li sejjah oggetti ta' protesta mal-Monument.

Kienu prezentati ukoll ritratt u fattura li juru li l-istrixxun li jirraffigura l-bandiera ta' Malta, b'ritratt ta' Daphne Caruana Galizia, u bil-kelma 'GUSTIZZJA' kien ordnat u thallas personalment mir-rikorrent. Fil-fatt ir-rikorrent għamel notament fuq l-istrixxun fejn jindika li dak kien propjeta' tiegħu u ta' Occupy Justice.

L-intervenut fil-kawza wiegeb għal din l-eccezzjoni billi ppremetta illi *"fejn tidhol il-liberta' tal-espressjoni certament ikun hemm interess*

guridiku kemm-il darba ghallinqas jigi identifikat illi persuna ppruvat bil-mezzi taghha u bil-mezzi disponibbli normalment ghaliha tesprimi l-fehmiet taghha."

Ikompli jinghad mill-intervenut fil-kawza li r-rikorrent m`ghandu ebda jedd fuq il-Monument tal-Assedju l-Kbir. Ghalhekk ma jistax jghid li huwa "vittma" tan-nuqqas ta' liberta` tal-espressjoni ghaliex jippretendi li jbiddel dak li hemm diga` rapprezentat bil-Monument biex minflok jaghmel xi haga aktar recenti.

Minn ezami akkurat tal-atti processwali, jidher bic-car illi r-rikorrent jichad li qieghed jippretendi li ghandu xi jedd fuq il-Monument, tant illi l-lezjoni lamentata minnu b`ebda mod ma tirreferi ghal xi dritt pretiz fir-rigward tal-Monument.

L-ilment tar-rikorrent huwa centrat specifikament fuq il-fatt li bir-romozzjoni arbitrarja tal-oggetti li kienu tqeghdu quddiem il-Monument garrab lezjoni tal-jedd fundamentali tieghu li jipprotesta kontra l-qtil ta` Daphne Caruana Galizia, u li jipprotesta sabiex issir gustizzja kemm dwar l-istess qtil, kif ukoll dwar l-investigazzjonijiet dwar min kien responsabbli ghal dak il-qtil, u dwar xi rabta li seta` kien hemm ma` esponenti tal-Gvern jew ta` persuni vicini tal-Gvern – allegazzjoni din ta` gravita` massima.

L-ilment tar-rikorrent huwa ghalhekk cirkoskritt ghall-protesti, u ghall-oggetti li hu, u attivisti ohra, ghazlu li jaghmlu uzu minnhom sabiex iwasslu l-protesta u l-messagg taghhom. Il-mezzi uzati kienu identifikati bhala r-ritratti ta` Daphne Caruana Galizia, il-fjuri, ix-xemghat, il-messaggi u l-istrixxuni li tqeghdu mal-Monument li jinsab ezatt faccata tal-bini tal-Qrati, li huwa l-post fejn tigi amministrata l-gustizzja.

Dan premess, il-Qorti sejra tqis jekk l-ilment huwiex bizzzejjed biex ir-rikorrent jikkwalifika bhala vittma u allura biex ikollu l-interess guridiku sabiex jippromwovi din il-kawza.

L-intimati jaghmlu referenza ghas-sentenza li tat din il-Qorti kif presjeduta fil-31 ta` Jannar 2019 fil-kawza fl-ismijiet "**Carmel Aquilina vs**

Il-Kummissarju tal-Pulizija et". Fid-decizjoni kien saret referenza estensiva għall-gurisprudenza tal-ECtHR dwar x`jfirser u min jikkwalifika għal '*victim status*'.

Il-Qorti tirrileva li minn din is-sentenza kien sar appell mir-rikorrent f`dik il-kawza.

Fis-sentenza li tat fis-27 ta` Settembru 2019 f`dik il-kawza, il-Qorti Kostituzzjonali laqgħet l-aggravju parzjalment u bagħtet lura l-atti lill-Ewwel Qorti sabiex tkompli tisma` l-kawza.

Għall-fini ta` l-interpretazzjoni ta` '*victim status*', il-Qorti tirreferi għall-gurisprudenza li ssemmiet fis-sentenza fil-kawza '**Carmel Aquilina vs Il-Kummissarju tal-Pulizija et**'.

Abbazi tal-gurisprudenza hemm traccjata, jidher illi l-jedd tutelat bl-Art 6 tal-Konvenzjoni huwa accessibbli biss għal dik il-persuna li tkun hija stess *the subject* ta` proceduri fejn se jkunu determinati drittijiet jew obbligi civili, jew inkella dik il-persuna tkun imputata fi proceduri kriminali li jiddeterminaw il-htija o meno tagħha.

Fil-kaz ta` llum il-materja tittratta dwar id-determinazzjoni ta` drittijiet civili li r-rikorrent jilmenta li kienu vvjolati.

Il-Qorti tirreferi għall-osservazzjoni li għamlet il-Qorti Kostituzzjonali fil-kawza fl-ismijiet **Carmel Aquilina vs Il-Kummissarju tal-Pulizija et** (*supra*) fejn ingħad hekk :

12. *Għandu jingħad qabel xejn illi l-legittimazzjoni attiva biex tressaq azzjoni taht id-disposizzjonijiet tal-Kostituzzjoni li jharsu d-drittijiet fondamentali u dik biex tressaq azzjoni taht l-Att dwar il-Konvenzjoni Ewropea, għalkemm jixxiebh u qrib xulxin, ma humiex għalkollox identici. L-art. 116 tal-Kostituzzjoni jrid illi biex titressaq azzjoni taht l-art. 33 sa 45 tal-Kostituzzjoni huwa meħtieġ "interest persunali b'appogg għall-azzjoni", waqt li taht*

I-Att dwar il-Konvenzjoni Ewropea huwa mehtieg illi l-attur juri illi huwa "vittma" ta' ksur ta' xi jedd imhares taht il-Konvenzjoni Ewropea. Ghalkemm, kif inghad, iz-zewg kuncetti huma qrib xulxin u jixxiebh, ghax kull min hu vittma ghandu wkoll, minhabba f'hekk, interess persunali, ma humiex identici, ghax l-interess persunali jista' wkoll ikun usa'.

Riferibbilment ghall-kaz ta' illum, il-Qorti tqis illi r-rikorrent ressaq provi bizzejjed biex juri li hu personalment kien prezenti waqt il-protesti u vigili li kienu organizzati. Uhud minnhom kienu organizzati minnu stess tant li ghall-manifestazzjoni li saret il-Belt fl-okkazzjoni ta' gheluq sena mill-qtil ta' Daphne Caruana Galizia kien huwa stess li avza lill-Pulizija u ottjena clearance biex il-manifestazzjoni tkun tista' tipprocedi minghajr xkiel. Ir-rikorrent ipprova b`mod sodisfacjenti wkoll li qieghed quddiem il-Monument diversi oggetti bhala turija ta' protest (kif fuq inghad) inkluz strixxun li kien ikkommissjonat u mhallas minn stess.

Dawn il-fatti huma bizzejjed biex juru li r-rikorrent ghandu interess guridiku, dirett u personali sabiex jilmenta dwar ir-rimozzjoni tal-oggetti tal-protesta.

Jirrizulta li l-interess tar-rikorrent, rikjest mil-ligi, kien u baqa` jissussisti u attwali, kemm meta kienet intavolata l-kawza, kif ukoll fil-kors tal-kawza sal-lum.

Il-Qorti tirrimarka li r-ritorn tal-oggetti lir-rikorrent ghandu jkun meqjus independentment mil-lezjoni bhala tali.

Jekk kellux jedd l-Istat jew xi entita` governattiva li tiddisponi jew twarrab l-oggetti minn post fejn tqeghdu hija kwistjoni ohra.

Tghid hekk ghaliex independentment mill-fatt jekk sehhitx lezjoni fis-sens lamentat mir-rikorrent, l-oggetti baqghu proprjeta` tar-rikorrent. Se mai tinsorgi l-kwistjoni ta` jekk l-uzu li ghamel minn dawk l-oggetti, jew l-uzu li jsir minn oggetti bhalhom fil-futur, huwiex soggett ghal limitazzjoni.

Ghalhekk l-eccezzjoni sollevata fir-risposta ulterjuri qeghda tkun respinta.

V. L-ewwel talba

Bl-ewwel talba, ir-rikorrent qiegħed jitlob dikjarazzjoni mill-qorti li bl-agir tal-intimati huwa garrab ksur tal-jedd fundamentali tiegħu tal-liberta` tal-espressjoni, hekk kif dan il-jedd huwa protett bl-Art 10 tal-Konvenzjoni u bl-Art 41 tal-Kostituzzjoni.

1. Generali

Il-liberta` tal-espressjoni hija jedd essenzjali u fundamentali f` socjeta` demokratika u pluralista. Fil-fatt ma jistax ikun hemm demokrazija mingħajr pluralizmu. Il-liberta` tal-hsieb, u allura d-diversita` u t-tolleranza, huma valuri vitali u mill-aktar basici għall-progress ta` socjeta` u għall-izvilupp ta` l-individwu. L-Istat huwa l-garanti tal-jedd għal-liberta` tal-espressjoni u għalhekk għandu l-obbligu li jħares u jipprotegi dak il-jedd, kemm meta l-ideat imxerrdin jew il-manifestazzjonijiet promossi jkunu jintlaqgħu tajjeb, izda fuq kollox meta l-ideat ikunu joffendu, jipprovokaw, jiddisturbaw u saħansitra jixxokkjaw.

2. L-Art 41 tal-Kostituzzjoni

a) Dritt

Id-disposizzjoni taqra :-

(1) Hlief bil-kunsens tiegħu stess jew bhala dixxiplina tal-għenituri, hadd ma għandu jigħi mfixkel fit-tgawdija tal-libertà tiegħu ta' espressjoni, magħduda libertà li jkollu fehmiet mingħajr indhil, libertà li jirciēvi idejiet u tagħrif mingħajr indhil, libertà li jikkomunika idejiet u tagħrif mingħajr

indhil (kemm jekk il-komunikazzjoni tkun lill-pubbliku in għenerali jew lil xi persuna jew klassi ta' persuni) u libertà minn indhil dwar il-korrispondenza tieghu.

(2) Ebda hagħa li hemm fi jew maghmula skont l-awtorità ta' xi ligħi ma għandha titqies li tkun inkonsistenti ma' jew bi ksur tas-subartikolu (1) ta' dan l-artikolu safejn dik il-ligħi tagħmel provvedimenti

(a) li jkun mehtiegħ ragħonevolment –

(i) fl-interess tad-difizħa, sigurtà pubblika, ordni pubbliku, moralità jew decħenza pubblika, jew sahha pubblika ; jew

(ii) sabiex jigħu protetti r-reputazzjonijiet, drittijiet u libertajiet ta' persuni ohra, jew il-hajja privata ta' persuni li jkollhom x'jaqsmu ma' proċħeduri legali, jigħi evitat il-kxif ta' tagħrif ricħevut sigriet, tigħi mizħmuma l-awtorità u l- indipendenza tal-qrati, jigħu protetti l-privilegħgħi tal-Parlament, jew jigħu regolati t-telefonu, it-telegrafu, il-posta, ix-xandir bil-wireless, it- televizħjoni jew mezzi ohra ta' komunikazzjoni, esibizzjonijiet pubblicħi jew divertimenti pubblicħi ; jew

(b) li jimponi restrizzjonijiet fuq ufficħjali pubblicħi,

u hliet safejn dak il-provvediment jew, skont il-kazħ, il-hagħa maghmula skont l-awtorità tieghu tigħi murija li ma tkunx ragħonevolment għustifikabbli f'socħjetà demokratika.

b) Gurisprudenza tal-Qrati Maltin

Il-Qorti tagħmel riferenza għas-sentenza li nġatat fil-25 ta' Gunju 1976 fil-kawza fl-ismijiet "**Mons Philip Calleja vs Spettur Dennis Balzan**" fejn il-Qorti ta' l-Appell qalet illi –

"Wiehed mill-elementi posittivi tal-liberta' tal-espressjoni hi l-ghazla tal-medium ta' l-espressjoni nnifisha ..."

Fis-sentenza li tat fid-29 ta' Novembru 1986 fil-kawza "**Dott. Eddie Fenech Adami noe vs Il-Kummissarju tal-Pulizija et**", il-Qorti Kostituzzjonali qalet hekk :-

"Il-Qorti, fil-hin li zzomm quddiem ghajnejha l-preokkupazzjoni ta' l-awtoritajiet ikkoncernati u x-xewqa tagħhom li jigu skansati incidenti serji

f'pajjizna, ma tistax tinsa li ahna nies li nuru tolleranza ghal xulxin, civilizzati bizzejjed sabiex nizguraw li haddiehor ghandu jkun liberu li jiltaqa` u jittellem avvolja dak li jista` jinghad ma jkun jinzel xejn ghal widnejna, u min-naha l-ohra nizguraw ukoll li fil-laqqhat taghna pubblici jew privati, x'ikunu, jithallew mhux mittiefsa d-drittijiet u libertajiet ta' haddiehor. Jekk hemm xi biza` li jkun hemm xi whud li jimminaccaw dawn d-drittijiet u libertajiet li m'humix biss drittijiet u libertajiet affermati fil-karta tal-Kostituzzjoni, imma jezistu qabel kollox fl-essenza stess tal-bniedem, ikun id-dmir ta' l-awtorita responsabbli ghaz-zamma tas-sigurta` pubblika u ta' l-ordni pubbliku, li tara li l-minaccja tigi mxejna bl-uzu tal-mezzi kollha disponibbli ghaliha, imma qatt billi xxejjien l-istess drittijiet u libertajiet li jkun hekk illegalment minaccati."

(ara wkoll : Qorti Kostituzzjonali : "Ignatius Busuttil vs Kummissarju tal-Pulizija et" : 28 ta` April 2017)

3) L-Art 10 tal-Konvenzjoni

a) Dritt

Id-disposizzjoni taqra :-

1. Kulhadd ghandu d-dritt ghal-liberta` ta' espressjoni. Dan id-dritt jinkludi l-liberta li jkollu opinjonijiet u li jirciuevi u jaghti informazzjoni u ideat minghajr indhil mill-awtorita` pubblika u minghajr ma jittiehed kont ta' fruntieri. Dan l-Artikolu ma ghandux jimpedixxi Stati milli jehtieg u licenzi ghax-xandir, televizjoni jew imprizi cinematografici.

2. L-ezercizzju ta' dawn il-libertajiet, billi jgib mieghu dmirijiet u responsabbiltajiet, jista' jkun suggett ghal dawk il-formalitajiet, kundizzjonijiet, restrizzjonijiet jew penali kif preskritti b'ligi u li jkunu mehtiega f' socjeta` demokratika, interessi tas-sigurta` nazzjonali, integrita` territorjali jew sigurta` pubblika, biex jig i evitat id-dizordni jew l-eghmil ta' delitti, ghall-protezzjoni tas-sahha jew tal-morali, ghall-protezzjoni tar-reputazzjoni jew drittijiet ta' haddiehor, biex jig i evitat il-kxif ta' informazzjoni ricivuta b'sigriet, jew biex tig i mizmuma l-awtorita` u l-imparzjalita` tal-gudikatura.

b) Dottrina

Fil-pag 779 et seq ta' "**Theory and Practice of the European Convention on Human Rights**" (Fourth Edition – 2006 – Intersentia) Pieter van Dijk, Fried van Hoof, Arjen van Rijn u Leo Zwaak ighidu hekk :-

... the first paragraph of Article 10 offers a broad protection ... The content of the expressions seems to be irrelevant too as the Court has held, with reference to the demands of a democratic society, that Article 10 is also applicable to information or ideas that offend, shock or disturb.

The fact that Article 10 protects the free expression of opinions implies that a rather strong emphasis is laid on the protection of the specific means by which the opinion is expressed. The Court has expressly upheld that Article 10 protects not only the substance of ideas and information but also the form in which they are conveyed.

... the Court has taken the position that the exceptions to the freedom of expression "must be narrowly interpreted and the necessity for any restrictions must be convincingly established". (enfasi ta' din il-qorti)

... Even when statements paint an extremely negative picture ... they can be permissible as long as they do not encourage violence, armed resistance or insurrection and do not constitute hate speech.

Fil-pag 444 et seq ta' "**Law of the European Convention on Human Rights**" (Oxford - Second Edition – 2009) I-awturi Harris, O' Boyle & Warwick ighidu hekk :-

The scope of protection under Article 10 is to be broadly interpreted so as to encompass not only the substance of information and ideas, but also a diverse variety of forms and means in which they are manifested, transmitted, and received. Because of the demands of pluralism, tolerance and broadmindedness, the scope of protection under Article 10 is broadened to cover information or ideas that are unpalatable to the State. (enfasi ta' din il-qorti)

...

The notion of public interest has an autonomous and broad meaning in the Convention. It has been liberally construed in the case law to encompass social, economic, cultural or even commercial and religious aspects ...

Fil-pag 278 et seq ta' "**European Human Rights Law**" (Oxford – Third Edition – 2008) l-awturi Janis, Kay & Bradley ighidu hekk :-

Necessarily States feel a particular need to restrict expression in situations affecting military, diplomatic or intelligence matters. When such restrictions have been challenged under the Convention, the European Court has considered them under Article 10(2) which permits limitations on expression "necessary in a democratic society in the interests of public safety (and) for the prevention of disorder or crime."

Fil-pag 428 et seq ta' "**The European Convention on Human Rights**" (Oxford – Fifth Edition – 2010) l-awturi White & Ovey ighidu :-

The situations in which a restriction may be justifiable include the need to protect important public interests – such as national security, territorial integrity, freedom from crime and disorder, health and morality, and the authority and impartiality of the judiciary – and also other individual rights, such a person's right to privacy and reputation. The margin of appreciation allowed to Contracting Parties in restricting freedom of expression will vary depending on the purpose and nature of the limitation and of the expression in question ...

On the other side of the balance, to be weighed against the importance of the aim pursued by the restriction, is the nature of the expression restricted. The Strasbourg Court takes into account the fact that, in the context of effective political democracy and respect for human rights mentioned in the Preamble to the Convention, freedom of expression not only is important in itself but also plays a central role in the protection of the other rights under the Convention. Thus the Court consistently gives a higher level of protection to publications and speech which contribute towards social and political debate, criticism, and information – the broadest sense.

c) Gurisprudenza tal-ECtHR

Fil-kaz ta' **Handyside v. the United Kingdom** li kien deciz fis-7 ta' Dicembru 1976, id-dritt tal-liberta' tal-espressjoni kien deskritt bhalha "*one of the basic conditions for the progress of democratic societies and for the development of each individual*".

(ara wkoll : **Lingens v. Austria**, 8 ta' Lulju 1986 ; **Sener v. Turkey**, 18 ta' Lulju 2000 ; **Thoma v. Luxembourg**, 29 ta' Marzu 2001 ;

Marônek v. Slovakia, 19 ta` April 2001 ; u **Dichand and Others v. Austria**, 26 ta` Frar 2002)

Il-jedd ihaddan fih tlett komponenti :

- a) **il-liberta` li persuna jkollha opinjoni** : din il-liberta` ghandha tigi ezercitata prattikament minghajr ebda limitu ghaliex id-dritt per se li persuna jkollha opinjoni huwa prekondizzjoni ta` kull socjeta` demokratika. Ebda Stat – tabilhaqq demokratiku - ma jista` jimponi ideat fuq ic-cittadini jew jaghmel diskriminazzjoni bejn cittadini li ghandhom opinjonijiet differenti. Kulhadd huwa fil-liberta` illi jhaddan dik l-opinjoni jixtieq, liema opinjoni ghandha tkun rispettata, anke fejn ma jkunx hemm qbil.
- b) **il-jedd li persuna tircievi informazzjoni u idejat** – kull cittadin ghandu d-dritt ghall-informazzjoni partikolarment dwar materji ta' nteress pubbliku.

u

- c) **il-jedd li tinghata informazzjoni u ideat** – b`hekk ic-cittadini jkollhom jedd jaghmlu ghazla minn ohra.

Ghalkemm id-dritt ghal-liberta` ta` l-espressjoni ghandu jigi ezercitat minghajr ebda indhil da parti tal-Istat, anzi dak il-jedd ghandu jkun protett mill-Istat, fl-istess waqt dak id-dritt mhuwiex assolut tant li fis-subinciz (2) tal-Art 10 tal-Konvenzjoni hemm elenkati lista shiha (exhaustive) ta' kazi u sitwazzjonijiet fejn tkun permessa nterferenza ta' l-Istat fl-ezercizzju tad-dritt.

Tajjeb jinghad illi kull referenza ghall-Istat ghandha tinftiehem f`sens wiesa` u ghalhekk tinkludi kull entita`, dipartiment jew awtorita` pubblika.

Fi-kawza tal-lum, ir-rapprezentanti tal-Istat huma z-zewg intimati.

Sabiex l-interferenza tal-Istat tkun legittima jehtieg illi jkunu sodisfatti tliet rekviziti ewlenin :-

- i) l-interferenza u cioe` l-impozizzjoni ta` limitazzjonijiet, kondizzjonijiet, restrizzjonijiet jew penali triq ta' bilfors tkun imposta b'ligi.
- ii) l-interferenza hija necessarji f` socjeta` demokratika.
- iii) l-interferenza hija ntiza sabiex thares wiehed jew aktar mis-segwenti valuri u interessi :
 - 1. is-sigurta` nazzjonali.
 - 2. l-integrita territorjali tal-pajjiz.
 - 3. is-sigurta pubblika.
 - 4. il-prevenzjoni tad-dizordni fil-pajjiz jew it-twettiq ta` xi reat iehor.
 - 5. il-harsien tas-sahha.
 - 6. il-harsien tal-moralita` .
 - 7. il-harsien tar-reputazzjoni jew id-drittijiet ta` persuni ohra;.
 - 8. il-harsien mill-kxif ta` sigriet mghoddija kunfidenzjalment.
 - 9. iz-zamma ta` l-awtorita` u l-imparzjalita` tal-gudikatura.

It-tliet elementi li jsawwru l-harsien tad-dritt ghal-liberta` tal-espressjoni huma kumulattivi u mhux alternattivi ghal xulxin.

Ghalhekk, jekk jirrizulta li l-interferenza tfalli mqar fuq rekwizit wiehed, dik l-interferenza tkun tikkostitwixxi lezjoni tad-dritt ghal-liberta` tal-espressjoni.

L-ezercizzju li trid taghmel il-qorti huwa li tara li jkun hemm proporzjonalita` bejn l-interferenza fl-ezercizzju tad-dritt u l-ghan li dik ir-restrizzjoni tittenta li tilhaq.

Jekk l-interferenza tizboq l-ghan legittimu, dik l-interferenza titqies bhala mhux necessarja f` socjeta` demokratika, u konsegwentement tkun leziva tad-dritt ghal-liberta` tal-espressjoni.

Hekk inghad id-decizjoni tal-21 ta` Jannar 1999 fil-kaz ta` **Janowski v. Poland**.

Hemm l-ECtHR irrimarkat :-

30. The Court reiterates the fundamental principles which emerge from its judgments relating to Article 10 :

(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly ...

(ii) *The adjective "necessary", within the meaning of Article 10 § 2, implies the existence of a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see the above-mentioned Lingens judgment, p. 25, § 39).*

(iii) *In exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole, including the content of the remarks held against the applicant and the context in which he made them. In particular, it must determine whether the interference in issue was "proportionate to the legitimate aims pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see the above-mentioned Lingens judgment, pp. 25-26, § 40, and the Barfod v. Denmark judgment of 22 February 1989, Series A no. 149, p. 12, § 28). In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an acceptable assessment of the relevant facts (see the above-mentioned Jersild judgment, p. 24, § 31).*

(i) Forza ta` ligi

Fejn l-interferenza tal-Istat tkun intiza sabiex tkun enforzata l-ligi, il-Qorti tkun trid tqis il-kwalita` tal-ligi in kwistjoni, kif ukoll l-animu tal-legislatur.

Il-ligi trid tkun pubblika, accessibbli, certa u jkollha konsegwenzi prevedibbli.

Fil-kaz ta` **The Sunday Times v. the United Kingdom** deciz fis-26 ta` April 1979, kien osservat illi :

[f]irstly, the law has to be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice.

Ghalkemm fil-kaz appena citat l-ECtHR sabet li l-ligi kienet kwalitattiva u sodisfacenti, fil-kaz ta' **Rotaru v. Romania** li kien deciz fl-4 ta' Mejju 2000, sabet li l-ligi citata ma kinitx tikkwalifika bhala ligi ghaliex ma kinitx imfassla u miktuba b`mod preciz sabiex ic-cittadini jirregolaw ruhhom b`mod adegwat.

Fil-kaz ta' **Magyar Jeti Zrt v Hungary** deciz fl-4 ta' Dicembru 2018, inghad hekk :-

59. The Court reiterates that the expression "prescribed by law" in the second paragraph of Article 10 not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects. The level of precision required of domestic legislation – which cannot provide for every eventuality – depends to a considerable degree on the content of the law in question, the field it is designed to cover and the number and status of those to whom it is addressed. The Court has found that persons carrying on a professional activity, who are used to having to proceed with a high degree of caution when

pursuing their occupation, can on this account be expected to take special care in assessing the risks that such activity entails (see Karácsony and Others v. Hungary [GC], nos. 42461/13 and 44357/13, §§ 123-25, ECHR 2016 (extracts), and the cases cited therein).

ii) **Għan legittimu**

Wara li tkun qieset il-kwalita` tal-ligi, il-Qorti trid tghaddi sabiex tezamina l-valur jew l-interess illi dik il-ligi tkun mirata li thares billi tara jekk dan jinkwadrax taht xi wahda mic-cirkostanzi elenkati fis-subinciz (2).

Diga` rrilevat aktar kmien li l-lista ta' cirkostanzi indikata fl-Art 10(2) li tippermetti interferenza mill-Istat, fuq bazi ta' għan legittimu, hija shiha u ezawrjenti (*exhaustive*). Ebda raguni ohra li mhijiex indikata hemm ma tista` tikkwalifika bhala legittima.

iii) **Necessarja f` socjeta` demokratika**

Jekk jirrizulta li l-interferenza għandha sahha ta` ligi u hija r-rizultat ta` għan legittimu, allura l-Qorti trid iddur fuq l-ahhar element u cioe` tistabilixxi jekk l-interferenza tkunx mehtiega f` socjeta` demokratika.

Jehtieg li tirrizulta proporzjonalita` bejn l-għan li jrid jintlahaq u l-mezzi uzati biex jintlahaq dak l-għan.

Il-mezzi li juza l-Istat sabiex jilhaq l-għan tieghu huma l-interferenza li jahseb għaliha s-subinciz (2).

Ikun hemm proporzjonalita` **biss** jekk jintwera b` mod sodisfacjenti li l-indhil huwa fondat fuq għan socjali impellenti.

Fil-kaz ta' **Kandzhov v Bulgaria** deciz fis-6 ta' Novembru 2008 kien osservat illi :-

" ... For the Court, it is clear that in gathering signatures calling for the resignation of the Minister of Justice and in displaying two posters making statements about the Minister the applicant was exercising his right to freedom of expression (see, mutatis mutandis, Appleby and Others v. the United Kingdom, no. 44306/98, § 41, ECHR 2003-VI). His arrest and subsequent detention for doing so therefore amounted, quite apart from the opening of criminal proceedings against him, to an interference with the exercise of this right (see Chorherr v. Austria, judgment of 25 August 1993, § 23, Series A no. 266-B; and Steel and Others, cited above, §§ 92 and 93).

71. *Such interference gives rise to a breach of Article 10 unless it can be shown that it was "prescribed by law", pursued one or more legitimate aim or aims as defined in paragraph 2 and was "necessary in a democratic society" to attain them.*

72. *The Court has already found that the applicant's arrest and detention were not "lawful" within the meaning of Article 5 § 1 (c). Since the requirement under Article 10 § 2 that an interference with the exercise of freedom of expression be "prescribed by law" is similar to that under Article 5 § 1 that any deprivation of liberty be "lawful" (see Steel and Others, cited above, p. 2742, § 94; and Hashman and Harrup v. the United Kingdom [GC], no. 25594/94, § 34 in fine, ECHR 1999-VIII), it follows that the applicant's arrest and detention were not "prescribed by law" under Article 10 § 2.*

73. *Furthermore, assuming that the measures taken against the applicant may be taken to pursue the legitimate aims of preventing disorder and protecting the rights of others (see Steel and Others, cited above, § 96), they were clearly disproportionate to these aims. The events must be seen in the context of a political debate which, although, critical of the Government, was not violent. Thus, as found by the Supreme Court of Cassation, the applicant's actions on 10 July 2000 were entirely peaceful, did not obstruct any passers-by and were hardly likely to provoke others to violence (see*

paragraphs 25 and 26 above, and *Steel and Others*, cited above, § 110). However, the authorities in Pleven chose to react vigorously and on the spot in order to silence the applicant and shield the Minister of Justice from any public expression of criticism. They also kept the applicant in custody for an inordinate amount of time – three days and twenty-three hours – before bringing him before a judge who ordered his release. These measures were clearly not “necessary in a democratic society”. In a democratic system the actions or omissions of the Government and of its members must be subject to close scrutiny by the press and public opinion. Furthermore, the dominant position which the Government and its members occupy makes it necessary for them – and for the authorities in general – to display restraint in resorting to criminal proceedings, and the associated custodial measures, particularly where other means are available for replying to the unjustified attacks and criticisms of their adversaries (see, *mutatis mutandis*, *Castells v. Spain*, judgment of 23 April 1992, § 46, Series A no. 236)."

Fil-kaz ta' **Observer and Guardian v. the United Kingdom** li kien deciz fis-26 ta' Novembru 1991, l-ECtHR qalet hekk dwar l-aggettiv "necessarju" ndikat fis-subinciz (2) :

70. *The key issue in the present case is whether it was necessary in the circumstances to impose temporary injunctions on the applicants at any stage.*

71. *The adjective "necessary" within the meaning of Article 10 para. 2 (Art. 10-2) of the Convention is not synonymous with "indispensable" or as flexible as "reasonable" or "desirable", but it implies the existence of a pressing social need.*

72. *The notion of necessity implies that the interference of which complaint is made corresponds to this pressing social need, that it is proportionate to the legitimate aim pursued and that the reasons given by the national authorities to justify it are relevant and sufficient (Eur. Court H.R., Barthold judgment of 25 March 1985, Series A No. 90, pp. 24-25, para. 55).*

73. *The initial responsibility for securing Convention rights and freedoms lies with the individual Contracting State. Accordingly Article 10 para. 2 (Art. 10-2) of the Convention leaves the Contracting State a margin of appreciation, ultimate supervision of which remains with the Convention organs. The scope of the margin of appreciation will vary depending on the aim pursued under Article 10 para. 2 (Art. 10-2) of the Convention. The aim of the restriction in the present case is the maintenance of the authority of the judiciary, the protection of national security being a background element (see paras. 67-69 above).*

74. *The Court has acknowledged that the margin of appreciation available to States in assessing the pressing social need to protect certain aspects of national security is a wide one (Eur. Court H.R., Leander judgment of 26 March 1987, Series A No. 116, p. 25, para. 59). The Court has also held that the expression "maintaining the authority and impartiality of the judiciary" not only refers to maintaining public confidence in the ability of the machinery of justice to determine legal rights and obligations and to settle disputes, but also encompasses the protection of the rights of litigants (Eur. Court H.R., aforementioned Sunday Times judgment, p. 34, paras. 55-56). However, the State's margin of appreciation in this area is more restricted as the notion of the "authority" of the judiciary has a more objective basis, reflecting a fairly substantial measure of common ground in the domestic law and practice of the Contracting States (ibid, pp. 35-37, para. 59).*

75. *Freedom of expression constitutes one of the essential foundations of a democratic society, in particular freedom of political and public debate. This is of special importance for the free press which has a legitimate interest in reporting on and drawing the public's attention to deficiencies in the operation of Government services, including possible illegal activities. It is incumbent on the press to impart information and ideas about such matters and the public has a right to receive them (cf. mutatis mutandis the aforementioned Sunday Times judgment, p. 40, para. 65, and Eur. Court H.R., Lingens judgment of 8 July 1986, Series A No. 103, p. 26, paras. 41-42).*

Diversi kienu l-kazi fejn l-ECtHR osservat illi huma l-awtoritajiet nazzjonali li jridu jgħarblu x` jikkostitwixxi għan soċjali impellenti.

Madanakollu l-awtoritajiet nazzjonali għandhom ifittxu direzzjoni mill-principji li johrogu mill-gurisprudenza tal-ECtHR.

Fis-sentenza li ngħatat fil-kaz **Nadtoka v Russia (No. 2)** fit-8 ta' Ottubru 2019 il-Qorti rrimarkat :-

42. The Court will examine the issue of whether the interference was "necessary in a democratic society" in the light of the relevant principles developed in its case-law that were summarised, in particular, in Novaya Gazeta and Milashina (cited above, §§ 55-57).

43. The Court further reiterates that, when examining whether there is a need for an interference with freedom of expression in a democratic society in the interests of the "protection of the reputation or rights of others", it may be required to ascertain whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely on the one hand freedom of expression protected by Article 10, and on the other the right to respect for private life enshrined in Article 8 (see, with further references, Axel Springer AG v. Germany [GC], no. 39954/08, § 84, 7 February 2012). Furthermore, when analysing an interference with the right to freedom of expression, the Court must, inter alia, determine whether the reasons adduced by the national authorities to justify it were relevant and sufficient. In doing so, the Court has to satisfy itself that these authorities applied standards which were in conformity with the principles embodied in Article 10 and relied on an acceptable assessment of the relevant facts (see Perinçek v. Switzerland [GC], no. 27510/08, § 196, ECHR 2015 (extracts)).

Fil-kaz ta' **Elvira Dmitriyeva v Russia** deciz fit-30 ta' April 2019, il-Qorti saħqet illi :

74. The Court has consistently held that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society" (see *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24; *Von Hannover v. Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, § 101, ECHR 2012; and *Bédat v. Switzerland* [GC], no. 56925/08, § 48, ECHR 2016).

75. As enshrined in Article 10, freedom of expression is subject to exceptions which must, however, be construed strictly, and the need for any restrictions must be established convincingly. The adjective "necessary", within the meaning of Article 10 paragraph 2, implies the existence of a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the law and the decisions applying it, even those given by independent courts. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 187, 8 November 2016).

76. The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to

justify it are "relevant and sufficient". In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts (see *Mouvement raëlien suisse v. Switzerland* [GC], no. 16354/06, § 48, ECHR 2012 (extracts); *Morice v. France* [GC], no. 29369/10, §124, ECHR 2015; and *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no 17224/11, § 75, ECHR 2017).

...

84. The Court reiterates that it is normally not sufficient that the interference was imposed because its subject-matter fell within a particular category or was caught by a legal rule formulated in general or absolute terms; what is rather required is that it was necessary in the specific circumstances (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 275, ECHR 2015 (extracts), and *The Sunday Times v. the United Kingdom* (no. 1), 26 April 1979, § 65 in fine, Series A no. 30). In the context of public assemblies, this means that the absence of prior authorisation and the ensuing "unlawfulness" of the action do not give carte blanche to the authorities; they are still restricted by the proportionality requirement of Article 11 (see *Kudrevičius and Others*, cited above, § 151). It follows that the fact that the applicant breached a statutory prohibition by "campaigning" for participation in a public event that had not been duly approved is not sufficient in itself to justify an interference with her freedom of expression. The Court must examine whether it was necessary in a democratic society to sentence her to a fine, having regard to the facts and circumstances of the case.

85. The Court notes in this connection that the message published by the applicant criticised the authorities for not allowing a public event demanding the resignation of the Prime Minister, Mr Medvedev, suspected of large-scale corruption. The issues raised in that Internet post were a matter of public concern and the applicant's comments therein contributed to an

on-going political debate. The Court reiterates in this connection that under its case-law, expression on matters of public interest is entitled to strong protection (see Perinçek, cited above, § 230). There is therefore little scope under Article 10 § 2 of the Convention for restrictions on political speech or on expression on matters of public interest (see Sürek v. Turkey (no. 1) [GC], no. 26682/95, § 61, ECHR 1999-IV) and very strong reasons are required for justifying such restrictions (see Feldek v. Slovakia, no. 29032/95, § 83, ECHR 2001-VIII, and Sergey Kuznetsov, cited above, § 47, with further references).

86. *The Court further reiterates that it is important for the public authorities to show a certain degree of tolerance towards peaceful unlawful gatherings (see Kudrevičius and Others, cited above, § 150, and Navalnyy v. Russia [GC], nos. 29580/12 and 4 others, § 143, 15 November 2018). There was no reason to believe that the event in question, although not duly approved, would not be peaceful. Indeed, the impugned Internet post did not contain any calls to commit violent, disorderly or otherwise unlawful acts during the public event.*

(ara wkoll id-decizjoni tal-ECtHR moghtija fit-23 ta' April 2015 fil-kaz ta' **Morice vs France**)

Il-kaz ta' **Murat Vural v. Turkey** li kien deciz fil-21 ta' Ottubru 2014 kien jittratta dwar piena ta' 13-il sena prigunerija li kienet inflitta fuq Murat Vural wara li xehet zebgha fuq l-istatwa ta' Kemal Ataturk, li huwa meqjus bhala l-fundatur tat-Turkija moderna u lajka.

Il-Qorti ta' Strasbourg sabet li kien ivvjolat il-jedd ta' Murat Vural ghal-liberta' tal-espressjoni.

Il-Qorti qalet hekk :-

"54. *In light of its case-law the Court considers that, in deciding whether a certain act or conduct falls within the ambit of Article 10 of the Convention, an assessment must be made of the nature*

of the act or conduct in question, in particular of its expressive character seen from an objective point of view, as well as of the purpose or the intention of the person performing the act or carrying out the conduct in question. The Court notes that the applicant was convicted for having poured paint on statues of Atatürk, which, from an objective point of view, may be seen as an expressive act. Furthermore, the Court notes that in the course of the criminal proceedings against him the applicant very clearly informed the national authorities that he had intended to express his "lack of affection" for Atatürk (see paragraphs 11, 18 and 22 above), and subsequently maintained before the Court that he had carried out his actions with a view to expressing his dissatisfaction with those running the country in accordance with the Kemalist ideology and the Kemalist ideology itself (see paragraph 40 above).

55. *In this connection, regard must be had to the fact that, contrary to what was submitted by the Government, the applicant was not found guilty of vandalism, but of having insulted the memory of Atatürk (see paragraph 20 above). In fact, the national courts accepted that the applicant had carried out his actions in order to protest against the Ministry of Education's decision not to appoint him as a teacher (see paragraph 19 above).*

56. *In light of the foregoing the Court concludes that through his actions the applicant exercised his right to freedom of expression within the meaning of Article 10 of the Convention and that that provision is thus applicable in the present case. It also finds that the applicant's conviction, the imposition on him of a prison sentence and his disenfranchisement as a result of that conviction constituted an interference with his rights enshrined in Article 10 § 1 of the Convention."*

Se ssir referenza wkoll ghad-decizjoni li nghatat fil-15 ta' Jannar 2019 mill-Qorti ta' Strasbourg fil-kaz ta' **Matasaru v. The Republic of Moldova**. Ghal din id-decizjoni ghamlu referenza kemm ir-rikorrent kif ukoll l-intimati. Pero' iz-zewg nahat mhux qed jaqblu dwar materji ta' interpretazzjoni.

Il-kaz ta' **Matasar v. The Republic of Moldova** kien jittratta dwar is-sejbien ta' htija ta' Matasaru ghalix kien ipprotesta pubblikament quddiem l-ufficcju tal-Prosekutur Generali billi ghamel uzu minn skulturi oxxeni. L-iskulturi kienu ntizi sabiex ixebbhu ufficjali pubblici ma' organi genitali bl-iskop li juru l-korruzzjoni u l-kontroll politiku fuq l-istituzzjonijiet. Il-qradi domestici ttrattaw l-azzjoni bhala mmorali u offensiva fir-rigward tal-ufficjali pubblici u politici li kienu fil-mira ta' Matasaru. Dan kien ikkundannat ghal piena karcerarja sospiza.

Il-kaz wasal quddiem l-ECtHR li sabet li l-interferenza da parti tal-Istat, li giet in konflitt mad-dritt tal-espressjoni libera ta' Matasaru, ma kenitx mehtiega f'socjeta' demokratika. Ghalhekk lanqas ma kienet gustifikata piena imposta fuqu, anke jekk si trattava ta' piena karcerarja sospiza.

Il-Qorti ta' Strasbourg qieset illi l-piena ma kenitx izzomm il-bilanc necessarju bejn id-dritt tar-rikorrent li jesprimi l-fehmiet tieghu liberament u d-dritt tal-politici u tal-ufficjali pubblici ghad-dinjita' taghhom. Addirittura l-Qorti qalet li l-interferenza kienet mahsuba bhala deterrent kontra li persuni ohra jezercitaw id-dritt skont l-Art 10 tal-Konvenzjoni.

Fis-sentenza saru dawn ir-riflessjonijiet :

29. The Court has also held that opinions, apart from being capable of being expressed through the media of artistic work, can also be expressed through conduct. For example, it has considered that the public display of several items of dirty clothing for a short time near Parliament, which had been meant to represent the "dirty laundry of the nation", amounted to a form of political expression (see Tatár and Fáber v. Hungary, no. 26005/08 and 26160/08, § 36, 12 June 2012). Likewise, it has found that pouring paint on statues of Atatürk was an expressive act performed as a protest against the political regime at the time (see Murat Vural v. Turkey, no. 9540/07, §§ 54-56, 21 October 2014). Detaching a ribbon from a wreath laid by the President of Ukraine at a monument to a famous Ukrainian poet

on Independence Day has also been regarded by the Court as a form of political expression (see Shvydka v. Ukraine, no. 17888/12, §§ 37-38, 30 October 2014).

30. In Maria Alekhina and Others v. Russia (no. 38004/12, 17 July 2018) the Court examined the actions of the Pussy Riot punk band (who attempted to perform a song from the altar of Moscow's Christ the Saviour Cathedral against Vladimir Putin and in response to the ongoing political process). It considered their actions, described by them as a "performance", to constitute a mix of conduct and verbal expression which amounted to a form of artistic and political expression and that it was to be protected as such.

31. In the present case, the domestic courts convicted the applicant in criminal proceedings for his protest in front of the Prosecutor General's Office on 29 January 2013. The conviction interfered with the applicant's right to freedom of expression and the parties agree on that. Such interference will constitute a breach of Article 10 of the Convention unless it was "prescribed by law", pursued one or more legitimate aims under paragraph 2 and was "necessary in a democratic society" for the achievement of those aims.

32. As regards the issue whether the interference in question was prescribed by law, the applicant agreed that there was legal basis under Article 287 of the Criminal Code but argued that that provision was not applicable to the particular circumstances of his case. He expressed the view that his case fell to be examined under the provisions of Article 354 of the Code of Administrative Offences. The Court takes note of the domestic courts' finding that the sculptures exposed in public by the applicant were obscene and their classification of that act as hooliganism within the meaning of the Moldovan law. However, the domestic courts failed to explain in a satisfactory manner why they opted for the criminal sanction provided for by Article 287 of the Criminal Code and not for that provided for by Article 354 of the Code of Administrative Offences. Be that as it may, in view of its findings below, the Court considers it unnecessary to decide whether the interference with the applicant's right to freedom of expression was prescribed by law. Furthermore, the Court is prepared to

accept that the interference in question pursued the legitimate aim of protecting the reputation of others.

*33. The test of whether the interference complained of was "necessary in a democratic society" requires it to determine whether it corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued, and whether the reasons given by the national authorities to justify it are relevant and sufficient. In assessing whether such a "need" exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not, however, unlimited but goes hand in hand with European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression, as protected by Article 10 of the Convention (for an analysis of the relevant principles in more detail, see *Gündüz v. Turkey*, no. 35071/97, § 38, ECHR 2003-XI; *Murphy v. Ireland*, no. 44179/98, §§ 65-69, ECHR 2003-IX (extracts), including the further references cited therein; *Aydın Tatlav v. Turkey*, no. 50692/99, §§ 22-27, 2 May 2006; and *Giniewski v. France*, no. 64016/00, §§ 43-54, ECHR 2006-I).*

34. The Court notes that the applicant was found guilty of hooliganism on account of the fact that during his protest in front of the Prosecutor General's Office he had exposed in public sculptures of an obscene nature and because he had attached to them pictures of a politician and several senior prosecutors, thus offending them and infringing their right to dignity.

35. The Court notes in the first place that the domestic courts found Article 10 of the Convention to be inapplicable to the applicant's conduct (see paragraph 10 above), a finding the Court cannot agree with. It also notes that they did not conduct a proper balancing exercise of the different interests involved and imposed a very heavy sanction on the applicant in the form of a suspended prison sentence. In the Court's view, the circumstances of the instant case present no justification whatsoever for the imposition of a prison sentence. Such a sanction, by its very nature, not only had negative repercussions

on the applicant but it could also have a serious chilling effect on other persons and discourage them from exercising their freedom of expression. The fact that the sentence was suspended does not alter that conclusion (see Cumpănă and Mazăre v. Romania [GC], no. 33348/96, § 116, ECHR 2004-XI).

36. *In the light of the above, the Court concludes that although the national authorities' interference with the applicant's right to freedom of expression may have been justified by the concern to restore the balance between the various competing interests at stake, the criminal sanction imposed on him by the national courts was manifestly disproportionate in its nature and severity to the legitimate aim pursued by the domestic authorities. Thus, the domestic courts went beyond what would have amounted to a "necessary" restriction on the applicant's freedom of expression."*

L-istess linja ta' hsieb kienet riaffermata fis-sentenza tas-7 ta' Marzu 2019 fil-kaz ta' **Sallusti v. Italy** fejn l-ECtHR qalet hekk :

52. *In particular, the Court points out that the test of "necessity in a democratic society" requires it to determine whether the interference complained of corresponded to a "pressing social need", whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient" and whether the sanction imposed was "proportionate to the legitimate aim pursued"*

Jekk ikunu sodisfatti flimkien it-tliet rekwiziti fuq riferiti li jsawwru l-limitazzjoni għall-jedd tal-liberta' tal-espressjoni, allura jkun ifisser li l-Istat jkun agixxa fil-parametri tal-Art 10, bil-konsegwenza li l-interferenza ma tkunx tikser il-jedd għal-liberta' tal-espressjoni.

Fil-kaz ta' **Autronic AG v. Switzerland** li kien deciz fit-22 ta' Mejju 1990, inghad hekk :-

Where there has been an interference in the exercise of the rights and freedoms guaranteed in paragraph 1 of Article 10, the supervision must be strict, because of the importance of the rights in question; the importance of these rights has been stressed by the Court many times. The necessity for restricting them must be convincingly established.

(ara wkoll : ECtHR : **Worm v. Austria** :29 ta` Awwissu 1997)

Fil-Pag 12 ta` l-**Handbook for legal practioners on Protecting the Right to Freedom of Expression under the European Convention on Human Rights** (ippubblikat mill-Kunsill tal-Ewropa) l-awtrici **Dominika Bychawska-Siniarska** tghid hekk :

States are compelled to justify any interference in any kind of expression. In order to decide the extent to which a particular form of expression should be protected, the Court examines the type of expression (political, commercial, artistic, etc.), the means by which the expression is disseminated (personal, written media, television, etc.), and its audience (adults, children, the general public, a particular group). Even the "truth" of the expression has a different significance according to these criteria.

Kull interferenza tal-Istat ghandha tinghata interpretazzjoni mill-aktar restrittiva, ghaliex kull limitazzjoni ghall-ezercizzju tad-dritt fundamentali – ikun liema jkun id-dritt invokat - tekwi para ma` cahda tal-esercizzju tad-dritt.

Fil-pronunzjament taghha tat-18 ta` Mejju 1977 fil-kaz ta` **The Sunday Times v. the United Kingdom**, il-European Commission of Human Rights tal-Kunsill tal-Ewropa kienet qalet hekk dwar l-eccezzjonijiet li jahseb ghalihom l-Art 10(2) tal-Kummissjoni :

"[s]trict interpretation means that no other criteria than those mentioned in the exception clause itself may be at the basis of

any restrictions, and these criteria, in turn, must be understood in such a way that the language is not extended beyond its ordinary meaning ...

In the case of exceptional clauses ... the principle of strict interpretation meets certain difficulties because of the broad wording of the clause itself. It nevertheless imposes a number of clearly defined obligations on the authorities."

Ghalhekk fejn ikun hemm dubju, dan ghandu jmur favur l-ezercizzju tad-dritt.

L-awtrici tal-Handbook (op. cit.) **Dominika Bychawska-Siniarska** tkompli tghid hekk :

Where the Court finds that all three requirements are fulfilled, the state's interference will be considered legitimate. The burden to prove that all three requirements are fulfilled stays with the state. The Court examines the three conditions in the order provided above. Once the Court finds that the state has failed to prove one of the three requirements, it will not examine the case further and will decide that the respective interference was unjustified, and therefore that freedom of expression was violated.

(ara wkoll id-decizjoni moghtija mill-ECtHR fl-20 ta` Novembru 2018 fil-kaz ta` **Toranzo Gomez v Spain**) li kien deciz fl-20 ta` Novembru 2018 l-ECtHR qalet hekk :

d) Konsiderazzjonijiet ta` din il-Qorti

Mhuwiex kontestat mill-intimati u mill-intervenut fil-kawza d-dritt tar-rikorrent li jesprimi l-fehmiet tieghu liberament, inkluz il-jedd li jipprotesta.

Fil-kaz tal-lum, jirrizulta li meta saru protesti fil-pubbliku, kemm meta ntalab permess ghalihom, kif ukoll meta dawn saru bla ma ntalab permess minn qabel, il-Pulizija hallew lill-persuni li kienu qeghdin jipprotestaw bhala gemgha li jaghmlu dan b`liberta` shiha u bla xkiel.

Il-Qorti taghmel referenza ghax-xiehda skjetta, responsabbli, cara u inekwivoka tal-Assistent Kummissarju tal-Pulizija Stephen Mallia.

Hadd ma kkontesta dak li kien mistqarr bil-gurament mix-xhud.

Il-kawza tal-lum skattat bhala konsegwenza ta` li gara fil-15 ta` Settembru 2017 u l-granet ta` wara, hdejn il-Monument tal-Assedju l-Kbir, fi Triq ir-Repubblika, in-naha l-ohra tat-triq, faccata tal-bieb principali tal-Qrati tal-Gustizzja, fil-Belt Valletta.

L-oggetti li ntuzaw fil-protesta dakinhar stess, u li tpoggew fuq barra tal-Monument, kienu rimossi ftit tal-hin biss wara li kienu tqeghdu fil-post.

Jirrizulta ppruvat li fiz-zmien imsemmi mir-rikorrent fir-rikors promotur, l-oggetti tal-protesta li qieghed ir-rikorrent, u persuni ohra bl-istess fehmiel bhal tieghu, tnehhew mis-sit kull darba li tqeghdu hemm.

Qabel daww il-granet jirrizulta ppruvat li kienu diversi d-drabi meta tpoggew fl-istess sit oggetti simili ghall-fini ta` protesta u baqghu ma ntmessewx.

Anzi l-intimat Ramon Deguara, Direttur Generali tad-Divizjoni tat-Tindif u Manutenzjoni, xehed li l-ordnijiet li kellu kienu fis-sens li l-oggetti ma kellhomx jintmessu.

Bhala fatt jirrizulta li nholoq u twettaq stat ta` fatt ghal kollox surreali bejn l-Istat (rapprezentat mill-intimati) u r-rikorrent fejn kull darba li r-rikorrent qieghed, jew ohrajn tal-istess fehmiel bhal

tieghu, qeghdu oggetti fis-sit, liema oggetti kienu ntizi sabiex ikunu oggetti ta` protesta, dawn tnehnew mill-Istat (rapprezentat mill-intimati) mill-post li kien maghzul. Skont ir-rikorrent, kif korlaborat minn persuni ohra li xehdu, is-sit maghzul kien kazwali.

L-imsemmi Ramon Deguara xehed illi riferibbilment ghall-Monument in kwistjoni, id-decizjoni dwar it-tindif kienet ittiehdet b`rabta mar-restawr li kien ser isir tal-Monument.

Francis Chetcuti, *Senior Conservator* fi hdan Heritage Malta, kkonferma li sar ix-xoghol ta` restawr.

Sabiex ikun jista` jsir ix-xoghol ta` restawr, il-Monument gie mdawwar b`armar tal-injam li ghatta l-Monument u l-ispazju tal-madwar. Tpoggew ukoll barrikati tal-Pulizija li ghalqu kull access ghat-tarag li jaghti hdejn il-Monument.

L-intimati jikkontendu l-interferenza mill-Istat saret b`sahha ta` ligi, kienet qeghda taqdi skop legittimu, u kienet mehtiega f`socjeta` demokratika.

i) Sahha ta' ligi

L-intimati ghamlu referenza ghall-**Art 4(2) tal-Kap 445** li jaqra hekk :-

"Kull cittadin ta' Malta kif ukoll kull min ikun prezenti f'Malta ghandu jkollu d-dmir li jipprotegi l-patrimonju kulturali kif ukoll id-dritt li jibbenefika minn dan il-patrimonju kulturali permezz tat-tagħlim u tat-tgawdija. Il-patrimonju kulturali huwa assi ta' valur spiritwali, kulturali, socjali u ekonomiku li ma jistax jigi mibdul, u l-protezzjoni u l-promozzjoni tieghu huma indispensabbli ghal hajja bilancjata u kompluta."

Saret ukoll referenza ghat-tifsira li l-**Art 2 tal-Kap 445** jaghti ghal dak li ghandu jitqies bhala "*patrimonju kulturali*" :

"tfisser oggetti mobbli jew immobbli ta'importanza artistika, arkitettonika, storika, arkeologika, etnografika, paleontologika u geologika u tinkludi informazzjoni jew data relattivighall-patrimonju kulturali li jappartjeni lil Malta jew lil xi pajjiz iehor. Dan jinkludi wkoll siti jew depoziti arkeologici, paleontologici jew geologici, fdalijiet umani, pajsagg tal-art, tal-bahar u ta' taht il-bahar, gruppi ta' bini, kif ukoll kollezzjonijiet xjentifici, kollezzjonijiet ta'kampjuni naturali u ta' oggetti artistici, manuskritti, kotba, materjal ippubblikat, arkivji, materjal awdjo-viziv u riproduzzjonijiet ta' xiwahda minn dawn hawn qabel imsemmija, jew kollezzjonijiet ta' valurstoriku, kif ukoll assi kulturali intangibbli li jinkludu l-arti, it-tradizzjonijiet, id-drawwiet u l-hiliet li jintuzaw fl-arti dimostrattiva, fl-arti applikata u fl-artigjanat u assi intangibbli ohra li ghandhom valurstoriku, artistiku jew etnografiku"

L-**Art 70(1)(a) tal-Kap 445** iqis bhala reat l-atti ta' kull min :

"xjentement jew b'negligenza, nuqqas ta' hila jew ta'osservanza ta' regolamenti jikkaguna dannu lil jew jeqred proprjeta' kulturali sew jekk tali proprjeta' kulturali tkun sew jekk ma tkunx registrata f'xi inventarju skont dan l-Att, u kemm jekk is-sid ta' tali proprjeta' ta' patrimonju kulturali jkun il-persuna li tkun ikkagunat il-hsara jew il-qerda, kemm dik il-persuna tkun qeghda tamministraha b'mod legittimu"

Mhuwiex kontestat mir-rikorrent li l-Monument tal-Assedju l-Kbir huwa espressjoni tal-Maltin kollha ghaliex ifakkar grajja importanti fl-istorja ta' pajjizna.

Huwa pacifiku li l-Monument jifforma parti integrali mill-patrimonju Malti.

Bhala Monument nazzjonali, il-proprjeta` tieghu hija tal-Maltin kollha bl-istituzzjonijiet iservu ta' kustodji.

Isir l-argument li r-rikorrent ma jistax jippretendi li juza l-Monument bhala mafkar ghal Daphne Caruana Galizia li sfat maqtula fis-16 ta' Ottubru 2017.

L-intimati jaghmlu l-argument li r-rikorrent ma jistax minn naha wahda jinvoka dritt fundamentali, u min-naha l-oħra, sabiex jezercita dak id-dritt, jaghmel hsara lil Monument nazzjonali.

Premess dak li ngħad mill-intimati, il-Qorti tghid illi fil-kaz tal-lum, ghalkemm fil-paragrafu 14 tar-rikors promotur, tissemma` l-kelma "mafkar" b`riferenza għas-sit, fil-kors tal-gbir tal-provi, irrizulta li l-post ma kienx magħzul sabiex ikun mafkar fis-sens ta` memorjal permanenti.

Mill-assjem tal-provi hareg car għaliex ingħazel is-sit tal-Monument. Certament ma kienx intiz sabiex ikun mafkar ; u lanqas qatt seta` dak is-sit iservi ta` mafkar. Il-Monument tal-Assedju l-Kbir, opra tal-iskultur Antonio Sciortino, kien inawgurat fit-8 ta` Mejju 1927. Tqiegħed u baqa` fl-istess sit fejn qiegħed illum u cioe` f`Misrah l-Assedju l-Kbir. Il-bini li kien hemm faccata tieghu kien l-Auberge d`Auvergne, li pero` safa` mgarraf bil-hidma tal-ghadu fit-Tieni Gwerra Dinija. Fis-snin sittin tas-seklu l-iehor, il-bini tal-Qrati tal-Gustizzja ha post l-Auberge. Huwa bil-wisq evidenti li s-sit tal-Monument ma seta` qatt ikollu funzjoni ta` mafkar għaliex diga` dak il-Monument ifakkar b`mod permanenti grajja storika u gloriuza tal-poplu tagħna u cioe` l-Assedju l-Kbir tal-1565.

Certament pero` rrizulta li s-sit kien intiz li jkun post mnejn tkun tista` ssir protesta, u cioe` minn spazju pubbliku u prominenti li jolqot l-attenzjoni tal-pubbliku. L-iskop tat-tqegħid tal-oggetti fis-sit de quo kien intiz sabiex dak is-sit bl-oggetti tal-protesta mqegħda hemm iservi bhala gardjola bil-ghan li jfakkar lil kull min għandu responsabilita` fl-osservanza tas-saltna tad-dritt illi l-persuni kollha li kienu direttament jew indirettament involuti fil-qtil ta` Daphne Caruana Galizia jingiebu quddiem il-qrati, iwiegħbu għar-responsabilitajiet tagħhom, u jieħdu l-haqq.

Dan premiss, Francis Chetcuti, *senior conservator*, xehed fid-dettal dwar ix-xoghol ta' restawr li sar f' Settembru 2018. Dwar l-istat tal-Monument qabel beda r-restawr xehed hekk :

"Nghid illi fit-2011 r-restawr tal-monument tal-Assedju l-Kbir kien gie ikkommissjonat lil terzi, li ghamlu r-restawr li ghadni kif spjegajt. Nispjega illi wara li sar dan ir-restawr minn kumpanija private fuq kummissjoni, Heritage Malta ghamlet il-manutenzjoni ta' tali restawr billi daret il-protective coating tal-monument, liema manutenzjoni trid issir b'mod perjodiku. Illi dan sar is-sena li ghaddiet. Nghid illi meta ghamilna l-manutenzjoni da parti tal-Heritage Malta giet ravvizata hsara fil-gebla tal-monument tal-Assedju l-Kbir li kienet tikkonsisti fi hsara kkagunata minn xemghat u qsari li kienu qed jithallew fuq il-monument u kien hemm ukoll hsara minn adesivi li ntuzaw biex jitwawhlu xi ritratti. Kien hemm ukoll tracci ta' kulur li hareg minn xi ritratti pprintjati li twawhlu. Dawn tal-ahhar ikkrejaw hsara fil-valur estetiku tal-monument permezz ta' tbajja. Illi mill-banda l-oħra x-xemghat kienu qeghdin jaghmlu hsara fil-gebla li hija poruza (apparti pori miftuhin) peress li kienu qeghdin jaghlqu l-pori tal-gebla bil-konsegwenza li l-arja tal-gebla kienet qed tinghalaq bil-possibilita' li l-gebla jkollha disintegration tal-wicc u spalling tal-gebla permezz ta; kristallizzazzjoni tal-implu. Barra minn hekk il-wax tax-xemghat huma paraffin waxes li bir-raggi tax-xemx jigi diskolorit u anki vizwalment tiflef mill-valur estetiku tal-monument peress li l-wax isir safrani. Illi l-gebla tal-monument hija maghmula bhala raffa u kull ma jitwaqqa' fuq il-gebla ta' dan it-tip itebba' u jtellef il-valur artistiku tal-gebla. Inkluzi wkoll huma t-tbajja tal-hamrija mat-tundjaturi tal-qsari li jekk ma jitnaddafux mill-ewwel itebbghu il-gebla permanentement. Ta' min isemmi li meta kien hemm ix-xoghol ta' tindif tal-gebla saru diversi tipi ta' trattamenti izda sfortunatament kien hemm certu waq li nqabad gol-pori li bl-ebda mod ma seta' jitnehha, bil-konsegwenza li l-monument gha ghandu traccita' xema fil-gebla. Illi kull darba li jitpoggew affarijiet fuq il-gebla tal-monument (anki fjuri kkuluriti artificjali) mxarrbin bin-nida per eżempju, karti bil-kulur, xemghat, oggetti oħra li huma foreign għall-monument) dan jista' jtebba l-gebla tal-monument u għalhekk jirreka hsara lill-istess monument speċjalment ta' valur estetiku."

L-intimati jaghmlu wkoll referenza ghall-**Art 161 tal-Kap 9** li jghid hekk :-

"Kull min ikisser, igarraf, jisfigura jew b'xi mod iehor jaghmel hsara lil monumenti, statwi jew oggetti ohra ta' arti, li qeghdin ghall-vantagg pubbliku jew ghat-tisbih pubbliku u li jkunu gew imwaqqfin mill-awtorità pubblika, jew bis-setgha taghha, jehel, meta jinsab hati, il-piena ta' prigunerija minn sitt xhur sa tmintax-il xahar jew ta' multa ta' mhux izjed minn tliet elef u hames mitt euro (€3,500) :

Izda l-qorti tista', fil-kazijiet hfief, tapplika wahda jew ohra mill-pieni stabbiliti ghall-kontravvenzjonijiet."

Il-Qorti gharblet sewwa x-xiehda tal-Assistent Kummissarju Stephen Mallia u tal-Ispettur Priscilla Caruana Lee. It-tnejn huma kondordi dwar il-fatt li ghalkemm saru diversi rapporti qatt ma tressaq hadd b`rabta ma` hsara lill-Monument. Anzi l-Assistent Kummissarju Mallia jghid :-

"Hemm f'dan il-kaz kien hemm, jekk qed nitkellmu fuq hsarat ma jidhirlix li kien hemm rapport. Ir-rapporti li kellna kienu fuq allegazzjonijiet ta' serq ta' xemghat u afarijiet minn fuq il-monument u fjuri pero` ta' hsarat safejn naf jien ma kellniex."

Xehed ukoll li generalment il-prezenza tal-Pulizija tkun biss ghall-fini tal-kontroll tal-ordni. Il-Pulizija *"tissalvagwardja min qieghed jesprimi ruhu."*

Minkejja dak li xehed Francis Chetcuti, jidher illi la Heritage Malta, u lanqas il-Ministeru ghall-Gustizzja, Kultura u Gvern Lokali, ma dehrilhom li kellhom jaghmlu rapport dwar il-hsara lill-Monument, kif deskritta minn Chetcuti, sabiex min kien responsabbli jwiegeb ghaliha.

Fil-kaz tal-lum, l-oggetti in kwistjoni tnehhew minn quddiem u minn mal-*hoarding* tal-injam li kien ittella` mal-Monument. Il-*hoarding* kien ilu mtella` sa mit-8 ta` Settembru 2018 u, kif ikkonferma Ramon Deguara, wara l-*hoarding* qatt ma nstabu fjuri, xemghat jew ritratti.

Ghalhekk ladarba l-oggetti tnehnew minn quddiem il-*hoarding*, ma jistghux isibu applikazzjoni l-ligijiet dwar il-harsien tal-monumenti u l-wirt kulturali.

Dawn il-ligijiet *setghu* jsibu applikazzjoni li kieku l-oggetti tnehnew direttament minn fuq il-Monument. Hemm ukoll kienet issir analizi ta' jekk kenitx tkun tissussisti l-interferenza tal-Istat fuq bazi ta' ligi ghall-fini tal-Art 10 tal-Konvenzjoni.

Kemm l-intimati u kif ukoll l-intervenut fil-kawza ghamlu referenza ghal-Legislazzjoni Sussidjarja 549.40 intitolata Regolamenti Dwar l-Abbandun, ir-Rimi u t-Tnehhija ta' Skart fit-Toroq u f'Postijiet jew Zoni Pubblici.

L-Art 2 tar-Regolamenti jaghti definizzjoni ta' proprjeta' pubbliku bhala li *"tinkludi izda mhux limitata ghall-bini, hitan, recinti, swar, arbli tad-dawl jew tal-elettriku, bus stop, trafficlights, sinjali tat-traffiku, sigar, recipjenti tal-iskart, bankijiet u monumenti."*

Tirrizulta tifsira ta' *"zibel"* li *tinkludi* :-

(i) *kull skart solidu jew likwidu, domestiku jew kummercjali, kemm jekk migbur kif ukoll sfuz, hwejjeg mormija, irdim jew laqx u minghajr ma tillimita l-generalità tal-fuq imsemmija tinkludi kull hgieg, metall, plastik, karta, drapp, injam, ikel, chewing gum, cikka ta' sigarett, vettura mitluqa, recipjent, taghmir, jew makkinarju, shih jew f'bicciet, **fdalijiet u qtugh tal-gnien**, hamrija, ramel, blat tal-konkos jew kull materjal tal-bini iehor;*

(ii) *kull oggett, materjal jew sustanza ohra ddepozitata f'post pubbliku li tikkawza jew izzid id-dehra dizordinata ta' dak il-post jew li tikkawza effett b'mod li ggib dannu ghall-uzu xieraq tal-post, jew li tista', b'mod generali, izzid ir-riskju ta' periklu ghas-sahha jew ghall-ambjent ghall-pubbliku jew ghall-ambjent ta' madwar, jew li tista' tkun haga li ddejjaq lill-pubbliku ..."*

L-Art 4 tar-Regolamenti jipprovdi dwar it-thollija ta' zibel u oggetti ohra. Ighid :-

"Hadd ma jista' jarmi, jitfa', ihalli, jew xort'ohra iqattar jewjiddepozita xi zibel f'xi post pubbliku, triq, bahar, jew spazju fil-miftuh li ghalih il-pubbliku ghandu access, sakemm dak id-depozitu u t-thollija ma jkunux awtorizzati b'ligi:

Izda ghall-fini ta' dan ir-regolament, l-Iskeda 1 telenka, izda mhux b'mod tassattiv, l-atti u n-nuqqasijiet li ghandhom jitqiesu li jkunu offiza ta' thollija ta' zibel jew depozitu jew tixridta' oggetti skont dan ir-regolament."

L-artikolu appena citat jaghmel referenza ghall-Ewwel Skeda tar-Regolamenti.

Ghal-kaz ta' llum ighodd il-paragrafu (a) :-

"Skond ir-regolament 4, l-atti jew in-nuqqasijiet elenkati hawn taht ghandhom jitqiesu li jkunu reat skont l-imsemmi regolament :

(a) iddepozita, waqqa', qieghed jew xehet xi trab, hmieg, karta, rmied, cikka ta' sigarett, zibel, kaxxa, bittija, jew kull artikolu jew haga ohra f'xi post pubbliku"

Imbaghad fit-Tieni Skeda jinghad :-

"Skont ir-regolament 10(4), l-oggetti u l-materjali elenkati hawn taht ghandhomjitqiesu li jkunu hwejjeg mormija, zibel, skart, swill jew xi oggetti ohra li intremew jew gew depozitati:

...

(k) Zibel mhux migbur li jibqa' wara li jghaddu erba' u ghoxrin siegha mit-tmiem ta' grajja organizzata minn persuna, korp ta' persuni, f'post pubbliku, inkluz gmigh, protesta, kuncert, festa pubblika, laqgha pubblika jew attività simili, sakemm l-

organizzatur ma jurix li kienu saru arrangamenti bizzzejjed ghat-tindif wara l-grajja."

L-intimati jikkontendu li l-oggetti li thallew quddiem il-Monument kienu "skart".

Ir-rikorrent jikkontesta dan bhala fatt u jghid li daww l-oggetti kienu mezz ta' protesta.

Fix-xieghda tieghu, ir-rikorrent stqarr illi l-iskop li ghalih jitpoggew l-oggetti huwa mezz li bih hu u attivisti ohra jzommu hajja l-protesta taghhom. B'hekk wara li tkun intemmet il-manifestazzjoni ta' protesta, il-wirja ta' protesta tkompli billi kull min jghaddi minn quddiem il-Monument jara l-oggetti u jiftakar ghaliex tkun saret il-protesta.

Din il-Qorti teskludi li l-oggetti li thallew fiz-zmien lamentat, u li ghadhom qeghdin jithallew sal-lum, jikkwalifikaw bhala "skart".

Il-Qorti tistaqsi :

Jekk l-ghan huwa li tinzamm fit-tul u hajja l-protesta, sejjer jiehu riskju r-rikorrent u ohrajn tal-istess fehma bhal tieghu li l-oggetti ewlenin bhal ma huma x-xemghat jinhlew u jintfew bla ma jkunu sostitwiti, jew il-fjuri jithallew jinxfu u jmutu bla ma jigu rimpjazzati b'ohrajn friski ?

Altrimenti xi protesta tkun ?

Min se jkun attirat lejn l-ghan tal-protesta jekk fis-sit tal-protesta se jara xemghat mitfija jew fjuri mejta ?

Apparti dawn il-kwesiti, tirrizulta l-prova ta` xhud partikolari (mhux kontradetta), u cioe` Anne Demarco, li darbtejn kuljum tmur fuq is-sit sabiex tqieghed xemghat u fjuri friski.

Jirrizulta li l-oggetti in kwistjoni tnehnew minn persuni mpjegati fid-Dipartiment, li tieghu huwa responsabbli l-intimat Direttur Generali Ramon Deguara, fuq ordni diretta tal-Ministru Owen Bonnici.

Ramon Deguara xehed :

"Tindif madwar il-monumenti jsiru fuq bazi regolari, jigifieri jekk inti jitpoggew il-fjuri in konnessjoni ma' festa pubblika ovvjament wara certu zmien jitnehnew ukoll."

Ghalkemm fjuri riposti quddiem monumenti pubblici jitnehnew ghaliex jitbielu u jitmermru, Deguara xehed li dan isir "wara certu zmien".

Din l-istqarrija hija rilevanti ferm fil-kuntest tal-kaz odjern ghaliex filwaqt li hija konferma li ta` dak li solitament isir, fil-oggetti murtu ta` din il-kawza ma jirrizultax illi sar kif solitament kien isir hdejn monumenti pubblici ohra. Tant hu hekk li fil-kaz tal-oggetti tal-kaz in ezami jirrizulta li dawn tnehnew ftit tal-hin biss wara li tqeghdu fis-sit.

Ghaliex gara hekk fil-kaz tal-lum ghad-differenza ta` dak li sar ma` monumenti pubblici ohra, l-intimati ma taw l-ebda spjegazzjoni.

Il-Qorti tishaq ukoll li qabel Settembru 2018, l-ordnijiet li kellhom il-haddiema tad-Divizjoni tat-Tindif u l-Manutenzjoni kienet fis-sens li dawn ma jmissu xejn minn quddiem il-Monument.

Din l-ordni baqghet fis-sehh sakemm inbidlet b`decizjoni diretta tal-Ministru ntimat (ara x-xiehda tal-Onor Dr. Deo Debattista u ta` Ramon Deguara).

U l-oggetti tnehhew mis-sit mhux ghax kienu skart izda ghalix kien hemm ordni tal-Ministru Bonnici.

Mill-provi ma tirrizulta l-ebda spjegazzjoni ghala sa Settembru 2018 l-oggetti tal-protesta thallew fil-post.

Ix-xemghat u l-fjuri thallew mill-awtoritajiet pubblici ta` kuljum mal-Monument sa minn Ottubru 2017.

Matul dawk il-hdax-il xahar l-ebda awtorita` pubblika ma lmentat dwar hsara jew inkonvenjent mal-Monument.

Lanqas ma hadd qies dawk l-oggetti bhala skart.

Qamet il-kwistjoni tal-htiega ta` restawr, u allura li jitnehhew l-oggetti, hdax-il xahar wara li l-oggetti jew ohrajn bhalhom tpoggew fis-sit ghall-ewwel darba.

Ghal din il-Qorti, dan il-*modus operandi* tal-intimati ma huwa konvincenti xejn.

Il-Qorti hija mhassba dwar il-mod kif ittiehdet id-decizjoni li jsir restawr tal-Monument. Irrizulta fic-cert li s-Sovrintendenza tal-Patrimonju u Wirt Kulturali ma kenitx infurmata (ara x-xiehda ta` s-Sovrintendent Joseph Magro Conti).

Irrizulta li l-Monument kien restawrat b`mod estensiv fl-2011. Sa qabel sar dak ir-restawr ma kienux jitqieghdu oggetti ta` protesta mal-Monument. Eppure xorta kien hemm bzonn ta` restawr.

Minkejja d-deposizzjoni ta` Francis Chetcuti, din il-Qorti mhijiex moralment serena u konvinta li r-restawr kien ordnat ghaliex il-Monument kien garrab hsara bl-oggetti tal-protesta. Kieku tassew kien hekk l-oggetti ma kienux jithallew fis-sit ghal hdax-il xahar bla ma jitnehhew.

Jekk restawr kien ippjanat, ma jidhirx li d-decizjoni li jrid isir it-tindif ittiehdet formalment.

Mix-xiehda ta' Ramon Deguara, jirrizulta li rcieva struzzjonijiet **direttament** minghand il-Ministru Bonnici permezz ta' telefonata.

Li kieku d-decizjoni dwar ir-restawr u t-tindif kienet ippjanata x`aktarx kienet tkun formali, mhux semplici telefonata direttament mill-Ministru lil ufficjal gholi ta` dipartiment li jaqa` fl-ambitu tal-Ministeru. Mhuwiex traskurabbli l-fatt li anke s-Segretarju Parlamentari, Onor. Dr Deo Debattista, inghata struzzjonijiet bhal dawk tal-ufficjal koncernat.

Ghal din il-Qorti huwa bil-wisq diffici li taccetta, abbazi tal-kriterju tal-probabbli, li d-decizjoni tar-restawr kienet ilha li ttiehdet.

Fil-kaz tal-lum dan mhuwiex verosimili.

Il-htiega tar-restawr ma rrizultax ippruvat minn xi att pubbliku ufficjali. Jekk ir-restawr kien ippjanat – u allura ma kienx urgenti – possibbli li kollox kellu jiddependi fuq telefonata tal-Ministru ntimat ?

Il-Qorti hija tal-ferma konvinzjoni, li hija fondata fuq l-assjem tal-provi akkwiziti fil-kawza odjerna, li r-rimozzjoni tal-oggetti tal-protesta saret bil-hsieb u l-intenzjoni specifika li jixxekkel il-jedd tar-rikorrent, u ta` ohrajn li jahsbuha bhalu, li jesprimi l-fehmiet tieghu liberament b`dak il-mod, u minn dak is-sit u cioe` post sitwat faccata tal-bieb principali tal-bini tal-Qrati.

Min-naha tar-rikorrenti, xehdu persuni li stqarrew li l-Monument *ut sic* ma jiccentra xejn mal-iskop tal-protesta. Il-Monument dahal in xena kawzalment ghaliex inzerta sitwat propju faccata tal-bini tal-Qorti.

L-iskop tal-protesti li ilhom ghaddejnin fuq bazi regolari sa minn l-ghada tal-qtil ta` Daphne Caruana Galizia, u cioe` sa mis-17 ta` Ottubru 2017, huma sejha u ghajta qawwiya biex issir gustizzja. Huwa fatt maghruf u accertat, kemm Malta, kif ukoll barra minn Malta, li qabel sfat maqtula, Daphne Caruana Galizia kienet qeghda tikkonduci stharrig gurnalistiku mirat lejn diversi persuni, inkluzi persuni vicini hafna ghall-Gvern tal-gurnata. Ghall-fini tal-kwistjoni li qeghda tkun deciza llum, mhuwiex rilevanti l-kontenut ta' dawn l-investigazzjonijiet u l-persuni koncernati. Dak rilevanti huwa jekk il-fatt tal-qtil huwiex marbut mal-investigazzjonijiet li l-gurnalista kienet qeghda tistharreg dwarhom. Kien ghalhekk li numru ta' persuni nghaqdu flimkien – fosthom ir-rikorrent - sabiex iwasslu l-messagg taghhom li ghandha ssir gustizzja fis-sens illi jsiru d-debiti investigazzjonijiet mhux biss biex jinsatab min kien il-mandant u l-ezekutur tal-qtil tal-gurnalista izda wkoll biex tigi segwita kull pista moghtija mill-gurnalista bil-ghan li jinkixfu r-reati u l-persuni li wettqu dawk ir-reati..

L-istituzzjoni fdata bit-twettiq tal-Gustizzja huma l-Qrati. Quddiem il-Qrati, jigu mixlija persuni akkuzati b`reat. Wara li jkun hemm *due process*, il-persuni akkuzati jinghataw gudizzju skont l-akkuzi dedotti kontra taghhom. Ghalhekk ghalkemm il-Monument *ut sic* kien ghazla kazwali, il-post u l-madwar tal-Monument ma kienx maghzul b`kumbinazzjoni sabiex issir protesta fuq il-htiega li ssir gustizzja skont il-ligi propju ghaliex dak is-sit jinsab faccata tal-bini tal-Qrati tal-Gustizzja.

Tenut kont ta` kollox, il-Qorti tghid illi fil-kaz tal-lum ma jirrizultax ippruvat illi l-interferenza tal-Istat kellha s-sahha tal-ligi.

ii) Skop Legittimu

Sabiex l-iskop tal-interferenza jkun wiehed legittimu, jehtieg illi jinkwadra taht wahda mill-eccezzjonijiet ravvizati fis-subinciz (2) tal-Artikolu 10 tal-Konvenzjoni.

Fin-nota ta` sottomissjonijiet taghhom l-intimati jindikaw illi l-interferenza kienet legittima, u ssib il-bazi taghha fil-harsien tad-drittijiet ta` haddiehor billi l-ezercizzju tad-dritt kif pretiz mir-rikorrent qiegħed ixekkel it-tgawdija tal-Monument.

Huwa minnu li fil-kaz ta' llum l-oggetti tnehhew meta kienu quddiem il-*hoarding*, biss jibqa` l-fatt li meta tnehha l-*hoarding* l-oggetti xorta wahda baqghu jitpoggew u jitnehhew.

Mill-provi li ressaq ir-rikorrent jirrizulta li l-protesti kellhom u għad għandhom skop determinat. Milhuq dak il-ghan ma jkunx hemm aktar htiega li jsiru protesti u allura li jitqegħdu fis-sit oggetti ta` protesta. L-ghan huwa wiehed u cioe` dak li ssir gustizzja kif kien imfisser aktar kmieni.

Fir-rigward tal-oggetti tal-protesta tajjeb jingħad li dawn ilhom jigu depozitati fl-istess post sa mis-17 ta` Ottubru 2017 u allura sal-lum għal aktar minn sentejn. Il-gustizzja trid tiehu l-kors taghha kif ukoll iridu jsiru l-investigazzjonijiet li hemm bzonn. Mhux bilfors ir-rizultat ser jintlahaq fi zmien qasir għalkemm huwa fatt li l-istharrig diga` wassal għal rizultati. Dan pero` ma jfissirx li r-rikorrent, u persuni ohra li jahsbuha bħalu, għandhom jitwaqqfu milli jesprimu ruhhom bil-mod u manjiera li diga` kienet trattata *in extenso* aktar kmieni.

Diga` kien rilevati li fil-kaz tal-lum jirrizulta ppruvat ghas-sodisfazzjon tal-qorti li l-finalita` tat-tnehhija tal-oggetti tal-protesta ma kienx il-harsien tal-Monument izda r-rieda li jigi mxekkel il-prosegwiment tal-protesti.

Hemm differenza notevoli bejn li tipprotesta darba kull xahar, billi taghmel manifestazzjoni, u tqiegħed l-oggetti biex dawn jitnehhew ftit tal-hin wara, u kollox ighaddi sax-xahar ta` wara, ma` li tfakkar ta` kuljum li l-protesta kienet għadha hajja bit-tqegħid tal-oggetti.

Għalhekk l-ghan tal-interferenza tal-Istat ma kienx legittimu għall-fini tal-Art 10(2) tal-Konvenzjoni.

iii) Necessarja f` socjeta` demokratika

Il-gurisprudenza tfisser bl-aktar mod car illi sabiex tkun tista` ssir l-interferenza din trid tkun necessarja f` socjeta` demokratika għax tkun dettata minn "*a pressing social need*".

Il-Qorti ma ssibx li kienu fondati r-ragunijiet li gabu l-intimati sabiex jiggustifikaw l-interferenza tal-Istat fl-ezercizzju tad-dritt tal-liberta` tal-espressjoni tar-rikorrent.

L-ECtHR għamlitha cara kemm-il darba li għalkemm l-awtoritajiet nazzjonali għandhom diskrezzjoni sabiex jistabilixxu dak li huwa necessarju, u jadoperaw il-mezzi sabiex dak l-ghan jintlahaq, finalment jibqa` tal-Qorti biss id-dritt u l-obbligu li tiddeciedi jekk hemmx proporzjonalita` bejn l-ghan u l-ezercizzju tad-dritt.

L-iskop tal-protesti tar-rikorrent diga` kien imfisser.

Il-Qorti m` għandhiex l-icken dubju li r-risvolti tal-protesti jdejjqu lill-Istat.

Idejqu wkoll lil dawk mill-opinjoni pubblika li la jikkondividu l-iskop tal-protesta u lanqas il-metodu ta' kif din tkun espressa.

Dan is-sentiment pero' mhuwiex bizzzejjed sabiex irrendi t-tnehhija tal-oggetti ta' protesta necessarja f' socjeta' demokratika.

Il-Qorti ssib li r-rikorrent garrab vjolazzjoni tal-jeddijiet fundamentali tieghu hekk kif imharsa bl-Art 10 tal-Konvenzjoni u bl-Art 41 tal-Kostituzzjoni.

Ghalhekk qeghda tilqa' l-ewwel talba kif dedotta kontra l-intimati.

VI. It-tieni talba

1. L-Art 6 tal-Konvenzjoni

Ir-rikorrent jilmenta li garrab ukoll vjolazzjoni tal-jeddijiet fundamentali tieghu kif dawn huma mharsa bl-Art 6 tal-Konvenzjoni.

Skont ir-rikorrent, l-ilment tieghu huwa centrat fuq il-fatt li safejn jidhol il-Gvern, il-procedura tal-mandat ta' inibizzjoni titlef is-siwi taghha minhabba dak rikjest bit-tielet (3) subartikolu tal-Art 873 tal-Kap 12.

Ir-rikorrent jikkontendi li meta jintalab il-hrug ta' mandat ta' inibizzjoni kontra l-Gvern, huwa rekvizit li l-Gvern ikun irid jiddikjara li kien fi hsiebu jaghmel dak li l-mandat ikun qiegħed jittanta li jwaqqaf. Fin-nuqqas ta' dikjarazzjoni f' dan is-sens, il-mandat ma jkunx jista' johrog. Ir-rikorrent jilmenta li dan huwa propju dak illi gara fil-kaz tieghu. Infatti ma kien hemm ebda dikjarazzjoni min-naha tal-Gvern jew rapprezentanti tieghu dwar il-hsieb tal-Gvern li jnehhi l-oggetti tal-protesta. Ghalhekk ir-

rikorrenz iġid illi tilef l-oportunità` li jitolb il-hrug tal-mandat, u allura skont ir-rikorrenz, kien imcahhad mid-dritt li jaccedi għall-qorti.

Din il-Qorti tistqarr illi mhijiex kompetenti li tidhol fil-mertu ta` kif jigi kondott procediment dwar talba għall-hrug ta` mandat ta` inibizzjoni, għaliex dik hija materja determinata mil-ligi, regolata bl-Art 873 tal-Kap 12, li hija kompetenza ta` qorti ta` ġurisdizzjoni ordinarja.

Barra minn hekk irrizulta li quddiem il-qorti ordinarja r-rikorrenz irtira t-talba għall-hrug ta` mandat ta` inibizzjoni kontra l-Gvern jew rappreżentanti tiegħu.

Stabbiliti l-fatti, il-Qorti sejra tqis dawk il-punti ta` dritt li jsawwru dawk l-aspetti tal-jedd għal smigh xieraq kif imhares mill-Konvenzjoni, li huma rilevanti għall-kaz tal-lum.

i) Id-dritt ta' access għall-qorti

Il-Qorti tirreferi għas-sentenza li nġatat fil-5 ta` April 2018 mill-Grand Chamber tal-ECtHR fil-kaz ta` **Zubac v. Croatia** fejn ingħad :-

"76. The right of access to a court was established as an aspect of the right to a tribunal under Article 6 § 1 of the Convention in Golder v. the United Kingdom (21 February 1975, §§ 28-36, Series A. no. 18). In that case, the Court found the right of access to a court to be an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary power which underlay much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court (see Roche v. the United Kingdom [GC], no. 32555/96, § 116, ECHR 2005-X; see also Z and Others v. the United Kingdom [GC], no. 29392/95, § 91, ECHR 2001-V; Cudak v. Lithuania [GC], no. 15869/02, § 54, ECHR 2010; and Lupeni Greek Catholic Parish and Others v. Romania [GC], no. 76943/11, § 84, ECHR 2016 (extracts)).

77. *The right of access to a court must be "practical and effective", not "theoretical or illusory" (see, to that effect, Bellet v. France, 4 December 1995, § 36, Series A no. 333-B). This observation is particularly true in respect of the guarantees provided for by Article 6, in view of the prominent place held in a democratic society by the right to a fair trial (see Prince Hans-Adam II of Liechtenstein v. Germany [GC], no. 42527/98, § 45, ECHR 2001-VIII, and Lupeni Greek Catholic Parish and Others, cited above, § 86).*

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

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

85. *The right to a fair trial, as guaranteed by Article 6 § 1, requires that litigants should have an effective judicial remedy*

enabling them to assert their civil rights (Běleš and Others v. the Czech Republic, § 49; Naït-Liman v. Switzerland [GC], § 112).

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

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

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

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

Hemm limitazzjonijiet ghad-dritt.

Infatti fil-**Guide** appena citat, ikompli jinghad hekk :-

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

Ir-rikorrent ma jistax jilmenta minn nuqqas ta' access ghall-qorti.

Tghid hekk ghaliex jirrizulta bhala fatt li r-rikorrent bl-ebda mod ma kien imfixkel milli jmur quddiem il-qrati ghal kull lanzzanza li kellu.

B`mod specifiku, u b`riferenza ghat-talba ghall-hrug ta` mandat ta' inibizzjoni, tajjeb jinghad illi n-nuqqas ta' dikjarazzjoni min-naha tal-Gvern fil-kuntest tal-Art 873(3) tal-Kap 12 ghandha rilevanza minima. Tghid hekk ghaliex anke li kieku saret id-dikjarazzjoni, u anke li kieku konsegwenza ta' dik id-dikjarazzjoni, kien milqugh il-hrug tal-mandat, dak kien ser jibqa` mandat kawtelatorju. Tqis li r-rikorrent kien hieles li jipprezenta kull att gudizzjarju li dehrlu opportun.

ii) **Equality of arms**

Fil-Pag 201 ta` "**Law of the European Convention on Human Rights** (Second Edition ; 2009 ; OUP) l-awturi **Harris, O`Boyle u Warbrick** ighidu hekk dwar l-Art 6 tal-Konvenzjoni :-

The Court (b`riferenza ghall-Qorti ta` Strasbourg) has stressed that "the right to a fair trial holds so prominent a place in a democratic society that there can be no justification for interpreting Article 6(1) of the Convention restrictively" (Perez v France – 2004-I ; 40 EHRR 909 para 64 GC).

Fil-Pag 224 ighidu :-

Article 6 does not control the content of a state`s national law ; it is only a procedural guarantee of a right to a fair hearing in the determination of whatever legal rights and obligations a state chooses to provide in its law.

Imbaghad fil-Pag 251 isostnu illi :-

The right to a fair hearing supposes compliance with the principle of equality of arms. This principle, which applies to civil as well as criminal proceedings, requires each party to be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent. In general terms, the principle incorporates the idea of a fair balance between the parties.

Fil-ktieb intitolat **Protecting the right to a fair trial under the European Convention on Human Rights** (Council of Europe Human Rights Handbooks - 2012), l-awturi **Dovydas Vitkauskas u Grigoriy Dikov** ifissru l-principju tal-*equality of arms* kif se jinghad :-

"Equality of arms" requires that each party be afforded a reasonable opportunity to present its case under the conditions that do not place it at a substantial disadvantage vis-à-vis another party (Brandstetter).

While "equality of arms" essentially denotes equal procedural ability to state the case, it usually overlaps with the "adversarial" requirement – the latter in accordance with the rather narrow understanding of the Court concerning the access to and knowledge of evidence – and it is not clear on the basis of the Court`s consistent case-law whether these principles in fact have independent existence from each other (but see Yvon v. France, §§29-40). It can safely be said that issues with non-disclosure of evidence to the defence²⁴ may be analysed both from the standpoint of the requirement of adversarial character of the proceedings (ability to know and test the evidence before the judge) and the "equality of arms" guarantee (ability to know and test evidence on equal conditions with the other party).

In some civil cases it would not appear inappropriate to also look at the question of the ability to access and contest evidence as part of the general requirement of "access to a court" (McGinley and Egan v. the United Kingdom). In Varnima Corporation International S.A. v. Greece (§§28-35), for instance, the domestic courts applied two different limitation periods to the respective claims of each party (the applicant company and the state), disallowing the applicant`s claim while admitting the one filed by the authorities).

A minor inequality which does not affect fairness of the proceedings as a whole will not infringe Article 6 (Verdú Verdú v. Spain, §§23-29). At the same time, as a general rule, it is for the parties alone to decide whether observations filed by another

participant in the proceedings call for comment, no matter what actual effect the note might have had on the judges (Ferreira Alves (No. 3) v. Portugal, §§35-43).

While there is no exhaustive definition as to what are the minimum requirements of "equality of arms", there must be adequate procedural safeguards appropriate to the nature of the case and corresponding to what is at stake between the parties. These may include opportunities to: a) adduce evidence, b) challenge hostile evidence, and c) present arguments on the matters at issue (H. v. Belgium, §§49-55).

The opposing party must not be given additional privileges to promote its view, such as the right to be present before a court while the other party is absent (Borgers v. Belgium, §§24-29).

The presence of a prosecutor in civil proceedings opposing two private parties can be justified if the dispute affects also the public interest or if one of the parties belongs to a vulnerable group in need of special protection (Batsanina v. Russia, §§20-28).

The requirement of "equality of arms" enjoys a significant autonomy but is not fully autonomous from the domestic law since Article 6 takes into account the inherent differences of accusatorial systems – for instance, to the extent that it is for the parties to decide in that system which evidence to present or witnesses to call at trial – and inquisitorial systems, where the court decides what type and how much of the evidence is to be presented at trial. An applicant in an inquisitorial system, for instance, cannot rely on the principle of the "equality of arms" or Article 6 §3d in order to call any witness of his choosing to testify at trial (Vidal).

The case-law on the question of experts is rather complicated, because on the one hand they appear to be treated as any other witness (Mirilashvili); on the other, certain additional requirements of neutrality may be levelled at the experts who play a "more substantive procedural role" than a mere witness (Boenisch v. Austria, §§28-35; Brandstetter, §§41-69).²⁶

It may be stated that there is no unqualified right, as such, to appoint an expert of one's choosing to testify at trial, or the right to appoint a further or alternative expert. Moreover, the Court has traditionally considered that there is no right to demand the neutrality of a court-appointed expert as long as that expert does not enjoy any procedural privileges which are significantly disadvantageous to the applicant (Brandstetter).

The requirement of neutrality of official experts, however, has been given more emphasis in the Court's recent case-law, especially where the opinion of the expert plays a determining role in the proceedings (Sara Lind Eggertsdóttir v. Iceland, §§55-41). The right to appoint a counter-expert may appear where the conclusions of the original expert commissioned by the police trigger a criminal prosecution, and there is no other way of challenging that expert report in court (Stoimenov v. "the former Yugoslav Republic of Macedonia", §§38-43).

There could be other exceptional circumstances – such as a sudden and complete change of evidence given by a court-appointed expert in the course of the same hearing – where a problem of fairness and defence rights may arise if the court does not consider calling a further expert to testify (G.B. v. France, §§56-70).

In a criminal trial, the requirement of equality of arms under Article 6 §1 sometimes overlaps with the defence rights under Article 6 §3, such as the right to question witnesses. Hence, alleged violations of these provisions are usually examined in conjunction (Bricmont). »

Fid-decizjoni ta' din il-Qorti kif presjeduta tad-29 ta' April, 2014 fil-kawza fl-ismijiet **Edgar Publio Bonnici Cachia vs Avukat Generali** (li kienet ikkonfermata b'sentenza tal-Qorti Kostituzzjonali tal-5 ta' Dicembru 2014) inghad hekk :-

*Minn Pag 81 sa Pag 267 tar-Raba' Edizzjoni (2011) ta' **A Practitioner's Guide to the European Convention on Human Rights** (Sweet & Maxwell), il-gurista Karen Reid tittratta dak li hija ssejjah il-"problem areas" tal-"fair trial*

guarantees". Il-Qorti sejra tislet brani minn din il-kitba li fil-fehma taghha huma rilevanti ghall-mertu tal-kawza tal-lum :-

Pag 81 :-

The key principle governing Art 6 is fairness ... of the proceedings as a whole ...

Pag 82 :-

The right to a fair trial is seen as holding so prominent a place in democratic society that the Court has stated that there is not justification for interpreting Art 6 Para 1 restrictively. Whatever the importance of public interest in, for example, fighting organised crime, the fair administration of justice cannot be sacrificed to expedience ...

As to fairness, it is perhaps simpler to say what it does not mean.

The Commission frequently stated, and the Court continues to emphasise, that the Convention organs are not courts of appeal from domestic courts and cannot examine complaints that a court has made errors of fact or law or reached the wrong decision or that a person was, for example, wrongly convicted. They will not enter into the merits of decisions. For this reason, complaints concerning miscarriages of justice are unlikely to succeed before them.

Domestic courts are in the best position to assess the evidence before them, to decide what is relevant or admissible. Matters of appreciation of domestic law and the categorisation of claims in domestic law are also primarily for the appreciation of domestic courts ...

Pag 83 :-

From the Convention point of view it is not so much the result that is in question but the process of "hearing" ...

Equality of arms between the parties, or "a fair balance" must be achieved. This means that each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions which do not place him at a substantial disadvantage vis-à-vis his opponent ...

Pag 84 :-

The accused, and in civil proceedings the parties, must be able to participate effectively in proceedings ...

Pag 85 :-

Measures taken in the conduct of a criminal trial must be reconcilable with an adequate and effective exercise of the rights of the defence. The importance of securing defence rights in criminal proceedings has been identified as a principle of democratic society and, in this respect, Art 6 must be interpreted to render them practical and effective rather than theoretical and illusory ...

The proceedings are looked at as a whole and one restriction on the defence may be insufficient to render the proceedings as a whole unfair ...

Pag 156 :-

The Commission did not exclude that the refusal by a court to order an expert, hear a witness or to accept other types of evidence might in certain circumstances render the proceedings unfair. Since, however, it was for the national courts to decide what was necessary or essential to decide a case, it commented that only in exceptional circumstances would it conclude that a decision of a national court in such a matter violated the right to a fair hearing. It gave the example of where an applicant adduced some evidence which the court rejected outright, refusing to allow verification of it and without giving sufficient reasons for its refusal ...

*Where in "**Accardi v. Italy**" (30598/02 – Dec. January 20. 2005 – ECHR 2005-II) the decision of a domestic court not to order a*

psychologist's report or to call the expert requested by the defence was based on logical and pertinent arguments and the conclusion that such evidential measures were of no relevance to the proceedings, there was no infringement of the rights of the defence or the fairness principle....

...

*Fis-sentenza taghha tas-26 ta' Lulju 2011 fil-kawza "**Huseyn and Others vs Azerbaijan**" il-Qorti ta' Strasbourg qalet hekk :-*

175. More specifically, all of the applicants consistently claimed that neither they nor their counsel had been given sufficient access to the prosecution evidence after the pre-trial investigation had been completed and before the trial commenced, nor had they enjoyed such access after the trial had commenced, despite their repeated complaints to that effect. The Court reiterates that the right to an adversarial trial under Article 6 § 1 of the Convention means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. Various ways are conceivable in which national law may meet this requirement. However, whatever method is chosen, it should ensure that the other party will be aware that observations have been filed and will have a real opportunity to comment on them (see **Brandstetter v. Austria**, 28 August 1991, §§ 66-67, Series A no. 211). Article 6 § 3 (b) guarantees the accused "adequate time and facilities for the preparation of his defence" and therefore implies that the substantive defence activity on his behalf may comprise everything which is "necessary" to prepare the main trial. The accused must have the opportunity to organise his defence in an appropriate way and without restriction as to the possibility of putting all relevant defence arguments before the trial court and thus of influencing the outcome of the proceedings (see **Can v. Austria**, no. 9300/81, Commission report of 12 July 1984, § 53, Series A no. 96; **Connolly v. the United Kingdom**, no. 27245/95, Commission decision of 26 June 1996; and **Mayzit v. Russia**, no. 63378/00, § 78, 20 January 2005). The facilities which

everyone charged with a criminal offence should enjoy include the opportunity to acquaint himself for the purposes of preparing his defence with the results of investigations carried out throughout the proceedings (see **C.G.P. v. the Netherlands**, no. 29835/96, Commission decision of 15 January 1997, and **Foucher v. France**, 18 March 1997, §§ 31-38, Reports 1997-II). The issue of the adequacy of the time and facilities afforded to an accused must be assessed in the light of the circumstances of each particular case.

...

188. The Court reiterates that the principle of equality of arms, as one of the fundamental elements of the broader concept of a fair trial, requires each party to be given a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis his opponent (see **Nideröst-Huber v. Switzerland**, 18 February 1997, § 23, Reports 1997-I). That right means, inter alia, the opportunity for the parties to a trial to present their own legal assessment of the case and to comment on the observations made by the other party, with a view to influencing the court's decision (see, mutatis mutandis, **Lobo Machado v. Portugal**, 20 February 1996, § 31, Reports 1996-I, with further references). The requirement of equality of arms, in the sense of a "fair balance" between the parties, applies in principle to both criminal and civil cases ; in criminal cases a lesser degree of latitude is allowed for any deviations from that requirement (see **Dombo Beheer B.V. v. the Netherlands**, 27 October 1993, §§ 32-33, Series A no. 274).

...

196. At the outset, the Court notes that the prosecution's case was based to a large degree on numerous witnesses whose pre-trial statements were produced in court. However, it appears that all of these witnesses were called to testify at the trial and that, in principle, the applicants were given an opportunity to question them. As to the defence witnesses, it is true that the Assize Court allowed the examination of only some of the witnesses requested by the defence, but refused to call all of

the persons whom the defence sought to examine. While Article 6 § 3 (d) of the Convention is aimed at ensuring equality in criminal proceedings between the defence and the prosecution as regards the calling and examination of witnesses, it does not give an accused person an unlimited right to obtain the attendance of witnesses in court. The domestic law may thus lay down conditions for the admission and examination of witnesses provided that such conditions are identical for witnesses on both sides. Similarly, the domestic court is free, subject to compliance with the terms of the Convention, to refuse to call witnesses proposed by the defence, for instance on the ground that the court considers their evidence unlikely to assist in ascertaining the truth (see **X v. Austria**, no. 4428/70, Commission decision of 1 June 1972). Having regard to the available material, the Court finds that it has not been clearly shown how any of the witnesses whom the Assize Court refused to examine would have been able to assist the applicants' defence against the specific accusations put forward against them.

...

200. In determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence have been respected. It must be examined in particular whether the applicants were given the opportunity to challenge the authenticity of the evidence and to oppose its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (see *Khan*, cited above, §§ 35 and 37, and *Allan*, cited above, § 43). Where the reliability of evidence is in dispute the existence of fair procedures to examine the admissibility of the evidence takes on an even greater importance (see *Allan*, cited above, § 47, and **Bykov v. Russia** [GC], no. 4378/02, § 95, ECHR 2009-...)

Fil-kawza "**Klimentyev vs Russia**" li kienet deciza mill-Qorti ta' Strasbourg fis-16 ta' Novembru 2006 l-ilment tal-applikant kien illi huwa sofra vjolazzjoni tad-dritt tieghu ghal smigh xieraq ghaliex ma kienx inghata l-opportunita' li jezamina r-rapporti tal-esperti tal-qorti. F'dik il-kawza il-Qorti Ewropea ma kenitx

sabet vjolazzjoni ghalix il-ligi domestika kienet taghti l-opportunita` lill-akkuzat li jezamina dawk ir-rapporti u ghalhekk kien nuqqas tal-applikant li ma hax dik l-opportunita`. Il-Qorti qalet hekk :-

'95. The Court recalls that according to the principle of equality of arms, as one of the features of the wider concept of a fair trial, each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent (see e.g. **Jespers v. Belgium**, no. 8403/78, Commission decision of 15 October 1980, Decisions and Reports (DR) 27, p. 61; **Foucher v. France**, judgment of 18 March 1997, Reports of Judgments and Decisions 1997-II, § 34; **Bulut v. Austria**, judgment of 22 February 1996, Reports of Judgments and Decisions 1996-II, p. 380-381, § 47).

96. On the facts, the Court observes that the case for the prosecution rested, inter alia, on a number of expert reports (technical, medical, graphological and other) ordered by the prosecution during the pre-trial stage of proceedings in 1995 and 1996. Four out of more than sixteen decisions ordering such reports were served on the applicant with delays ranging from two to three and a half months, whilst the remaining twelve decisions were served within a month from the respective dates of their delivery (see paragraphs 34-37 in the summary of facts). The applicant principally argued that the late notification of these decisions had effectively deprived him of the possibility to participate in the ordering of the expert examinations and that the subsequent admission of the respective expert examinations had been in breach of Article 6.

97. Having regard to the circumstances of the case, the relevant domestic law and the parties' submissions, the Court cannot subscribe to the applicant's argument. To begin with, the Court observes that at the time of service of these sixteen decisions both the applicant and his counsel were officially informed about the procedural rights of the accused, including the right to challenge an expert, seek the appointment of a particular person as an expert, adduce further questions, be present during the expert examination in person and make any

comments and be informed of expert conclusions (see paragraph 37 above). The applicant and his counsel had an unrestricted opportunity to make related requests and motions in writing and, indeed, there is no indication in the case-file that any of the requests of the defence were turned down as belated or otherwise inadmissible. On the contrary, the authorities granted and implemented all of the applicant's requests in this respect. Moreover, there is nothing in the case-file to suggest, and indeed the applicant has not alleged that he was unable, personally or with the assistance of his defence counsel, to study the impugned expert examinations beforehand, contest them throughout the trial and appeal proceedings or avail himself of his rights under Sections 89 and 290 of the Criminal Procedure Code by requesting the trial court to order additional or repetitive expert examinations.'

...

Fis-sentenza taghha tat-30 ta' Settembru 2011 fil-kawza **"J.E.M Investments Ltd v. Avukat Generali et"** il-Qorti Kostituzzjonali qalet hekk –

'id-dritt ghas-smigh xieraq ma jiggarrantix il-korrettezza tas-sentenzi fil-meritu izda jiggarrantixxi biss l-aderenza ma' certi principji procedurali (indipendenza u imparzjalita' tal-Qorti u tal-gudikant, audi alteram partem u smigh u pronuncjament tas-sentenza fil-pubbliku) li huma konducenti ghall-amministrazzjoni tajba tal-gustizzja.

Il-funzjoni tal-Qorti, fil-gurisdizzjoni Kostituzzjonali taghha, m'hijiex illi tirrevedi s-sentenzi ta' Qrati ohra biex tghid jekk dawn gewx decizi `sewwa` jew le, izda hija limitata ghall-funzjoni li tara jekk daww is-sentenzi kistrux il-Kostituzzjoni jew il-Konvenzjoni Ewropea.'

Ighidu Harris, O'Boyle & Warbrick fil-ktieb **"Law of the European Convention on Human Rights"** (Tieni Edizzjoni – 2009 - OUP) illi in linea ta' principju the Court (u cioe' l-ECHR) allows States a wide margin of appreciation as to the manner in which national courts operate ... A consequence of this is that in certain contexts the provisions of Article 6 are as much

obligations of results as of conduct, with national courts being allowed to follow whatever particular rules they choose so long as the end result can be seen to be a fair trial. (enfasi ta' din il-Qorti) [ara pag 202]. U jkomplu li in some contexts a breach of Article 6 will only be found to have occurred upon proof of "actual prejudice" to the applicant ... [ara pag 204]

B'equality of arms wiehed ifisser illi kull parti ghandha tinghata opportunita' ndaqs biex tressaq il-kaz taghha u tfisser ir-ragunijiet li jaghmlu l-kaz taghha.

Id-dritt tas-smigh xieraq ghandu jitqies fil-kuntest tal-ligijiet ta' procedura tal-pajjizi membri tal-Konvenzjoni, u m'ghandu qatt jigi nterpretat li bhala addirittura **sostitutiv** ta' dawk il-ligijiet.

Talba ghall-hrug ta' mandat ta' inibizzjoni kontra bl-Gvern hija determinata bl-Art 873(3) tal-Kap 12. Jekk ma jkunux sodisfatti r-rekwiziti specifici li tistabilixxi l-ligi, mandat ta' inibizzjoni kontra l-Gvern ma jkunx jista' johrog. Fost dawn ir-rekwiziti hemm id-dikjarazzjoni. Jekk id-dikjarazzjoni ma ssirx jew ma tkunx tista' ssir b'daqshekk ma jfissirx li l-principju tal-equality of arms ikun gie vjolat.

Ghalhekk qeghda tkun michuda t-tieni talba safejn din tirrigwarda allegat ksur tal-jeddijiet fundamentali tar-rikorrent kif tutelati bl-Art 6 tal-Konvenzjoni.

2. L-Art 13 tal-Konvenzjoni

It-tieni talba testendi wkoll ghal allegata vjolazzjoni tal-Art 13 tal-Konvenzjoni.

Fin-nota ta' sottomissjonijiet tieghu, ir-rikorrent ma ttrattax l-ilment f'dettall ; infatti kemm ilmenta minn lezjoni.

L-intimati jikkontestaw l-ilment fuq bazi ta` dritt billi jaghmlu l-argument li l-Art 13 tal-Konvenzjoni ma jitlobx li r-rimedju ghandu tabilhaqq ikun disponibbli fil-qafas tal-proceduri ordinarji. Dak illi jghodd huwa li jkun hemm rimedju disponibbli u effettiv.

L-Art 13 tal-Konvenzjoni jaqra :-

"Kull min ikollu miksura d-drittijiet u l-libertajiet tieghu kontemplati f`din il-Konvenzjoni ghandu jkollu rimedju effettiv quddiem awtorità nazzjonali ghalkemm dak il-ksur ikun sar minn persuni li jkunu qed jagixxu f`kariga ufficjali."

Tajjeb jinghad illi jista` jinghata kull rimedju dment illi jkun effettiv, prattiku u legali.

L-ghazla tar-rimedju tiddependi mic-cirkostanzi partikolari tal-kaz.

Martin Kuijer fil-kitba tieghu : **"Effective Remedies as a Fundamental Right" : Seminar on Human Rights and Access to Justice in the EU : European Judicial Training Network : 2014** : ighid :-

"The Court demands a domestic remedy to deal with the substance of an "arguable complaint" under the Convention. Article 13 does not require a domestic remedy in respect of any supposed grievance, no matter how unmeritorious; the claim of a violation must be an arguable one. The question of whether the claim is arguable should be determined in the light of the particular facts and the nature of the legal issue or issues raised.

Likewise, the domestic remedy should be able to grant appropriate relief. The latter condition is to say that the `authority` needs to be competent to take binding decisions (which means that an Ombudsman does not meet the required standards) and that it should be competent to order restitutio in integrum or award damages. Likewise, the notion of an effective

remedy under Article 13 requires that the remedy may prevent the execution of measures that are contrary to the Convention and whose effects are potentially irreversible.

The remedy required by Article 13 needs to be "effective" in practice as well as in law. Its effectiveness does not, however, depend on the certainty of a favourable outcome for the applicant.

Minn qari tal-gurisprudenza tal-ECtHR dwar l-applikazzjoni tal-Art 13 tal-Konvenzjoni, jidher illi d-direzzjoni tal-qorti kienet fis-sens illi l-Art 13 ma jitlob ebda procedura partikolari għall-applikazzjoni tiegħu. Dak mehtieg huwa li l-ligi tagħmel disponibbli rimedju effettiv. Għalhekk fejn il-ligi tipprovdi għal rimedju, ma jkunx lok ta' ilment skont l-Art 13.

Hekk inghad fil-kaz ta' **Amann v Switzerland** deciz fis-16 ta' Frar 2000 fejn l-ECtHR osservat illi :

"88. The Court reiterates first of all that in cases arising from individual petitions the Court's task is not to review the relevant legislation or practice in the abstract; it must as far as possible confine itself, without overlooking the general context, to examining the issues raised by the case before it (see the Holy Monasteries v. Greece judgment of 9 December 1994, Series A no. 301-A, pp. 30-31, § 55).

It further observes that Article 13 of the Convention requires that any individual who considers himself injured by a measure allegedly contrary to the Convention should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress (see the Leander judgment cited above, pp. 29-30, § 77). That provision does not, however, require the certainty of a favourable outcome (see the D. v. the United Kingdom judgment of 2 May 1997, Reports 1997-III, p. 798, § 71).

89. In the instant case the Court notes that the applicant was able to consult his card as soon as he asked to do so, in 1990, when the general public became aware of the existence of the card index being kept by the Public Prosecutor's Office. It also

points out that the applicant brought an administrative-law action in the Federal Court and that on that occasion he was able to complain, firstly, about the lack of a legal basis for the telephone tapping and the creation of his card and, secondly, the lack of an "effective remedy" against those measures. It notes that the Federal Court had jurisdiction to rule on those complaints and that it duly examined them. In that connection it reiterates that the mere fact that all the applicant's claims were dismissed is not in itself sufficient to determine whether or not the administrative-law action was "effective".

90. *The applicant therefore had an effective remedy under Swiss law to complain of the violations of the Convention which he alleged. There has not therefore been a violation of Article 13."*

Fil-kaz ta' **Kudla v Poland** tas-26 ta' Ottubru 2000 il-Qorti ta' Strasbourg irriteriet illi :

"151. The Court finds nothing in the letter of Article 13 to ground a principle whereby there is no scope for its application in relation to any of the aspects of the "right to a court" embodied in Article 6 § 1. Nor can any suggestion of such a limitation on the operation of Article 13 be found in its drafting history.

*Admittedly, the protection afforded by Article 13 is not absolute. The context in which an alleged violation – or category of violations – occurs may entail inherent limitations on the conceivable remedy. In such circumstances Article 13 is not treated as being inapplicable but its requirement of an "effective remedy" is to be read as meaning "a remedy that is as effective as can be having regard to the restricted scope for recourse inherent in [the particular context]" (see the *Klass and Others v. Germany* judgment of 6 September 1978, Series A no. 28, p. 31, § 69). Furthermore, "Article 13 does not go so far as to guarantee a remedy allowing a Contracting State's laws to be challenged before a national authority on the ground of being contrary to the Convention" (see the *James and Others v. the United Kingdom* judgment of 21 February 1986, Series A no. 98, p. 47, § 85). **Thus, Article 13 cannot be read as requiring the provision***

of an effective remedy that would enable the individual to complain about the absence in domestic law of access to a court as secured by Article 6 § 1. (enfasi mizjuda)

...

152. On the contrary, the place of Article 13 in the scheme of human rights protection set up by the Convention would argue in favour of implied restrictions of Article 13 being kept to a minimum.

By virtue of Article 1 (which provides: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention"), the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. This subsidiary character is articulated in Articles 13 and 35 § 1 of the Convention.

The purpose of Article 35 § 1, which sets out the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, as a recent authority, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). The rule in Article 35 § 1 is based on the assumption, reflected in Article 13 (with which it has a close affinity), that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (*ibid.*).

In that way, Article 13, giving direct expression to the States' obligation to protect human rights first and foremost within their own legal system, establishes an additional guarantee for an individual in order to ensure that he or she effectively enjoys those rights. The object of Article 13, as emerges from the *travaux préparatoires* (see the *Collected Edition of the "Travaux Préparatoires" of the European Convention on Human Rights*, vol. II, pp. 485 and 490, and vol. III, p. 651), is to provide a means whereby individuals can obtain relief at national level

for violations of their Convention rights before having to set in motion the international machinery of complaint before the Court. From this perspective, the right of an individual to trial within a reasonable time will be less effective if there exists no opportunity to submit the Convention claim first to a national authority; and the requirements of Article 13 are to be seen as reinforcing those of Article 6 § 1, rather than being absorbed by the general obligation imposed by that Article not to subject individuals to inordinate delays in legal proceedings.

...

157. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, among many other authorities, the Kaya judgment cited above). The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law (see, for example, İlhan v. Turkey [GC], no. 22277/93, § 97, ECHR 2000-VII).

The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see, among many other authorities, the Silver and Others v. the United Kingdom judgment of 25 March 1983, Series A no. 61, p. 42, § 113, and the Chahal v. the United Kingdom judgment of 15 November 1996, Reports 1996-V, pp. 1869-70, § 145)."

L-istess linja kienet riaffermata fis-sentenza li tat l-ECtHR fit-8 ta' Gunju 2006 fil-kaz ta' **Surmeli v Germany** :-

"98. Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. The effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so. It is therefore necessary to determine in each case whether the means available to litigants in domestic law are "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see Kudła, cited above, §§ 157-58)."

Ta' nteress huwa dak li nghad mill-ECtHR fid-decizjoni tad-9 ta' Lulju 2013 fil-kaz ta' **Maria Theresa Deguara Caruana Gatto and Others v Malta** :-

"80. The Court reiterates that the remedy required by Article 13 must be "effective" in practice as well as in law (see, for example, İlhan v. Turkey [GC], no. 22277/93, § 97, ECHR 2000-VII). The term "effective" is also considered to mean that the remedy must be adequate and accessible (see Paulino Tomás v. Portugal (dec.), no. 58698/00, ECHR 2003-XIII). However, the Court also reiterates that the effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see Sürmeli v. Germany [GC], no. 75529/01, § 98, ECHR 2006-VII) and the mere fact that an applicant's claim fails is not in itself sufficient to render the remedy ineffective (Amann v. Switzerland, [GC], no. 27798/95, §§ 88-89, ECHR 2002-II).

81. *The Court notes that in respect of their complaints under Article 1 of Protocol No. 1 and Article 6 of the Convention, the applicants asked the Court of Appeal to refer the case to the constitutional jurisdictions. A referral was made in respect of the applicants' complaints concerning their property rights, encompassing the complaint regarding the alleged legislative interference with pending proceedings.*

82. *Thus, the Court notes that a remedy was provided under Maltese law, enabling the applicants to raise their Convention complaints with the national courts. Following the referral, they pursued constitutional proceedings before the Civil Court (First Hall) in its constitutional jurisdiction and, on appeal, before the Constitutional Court. Moreover, the Court observes that the applicants were in fact successful at first instance, and although the judgment was overturned on appeal, there is nothing to indicate that, had the Constitutional Court found in favour of the applicants, it would not have provided adequate redress (see, mutatis mutandis, Gera de Petri Testaferrata Bonici Ghaxaq v. Malta, (merits) no. 26771/07, § 70, 5 April 2011).*

83. *It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention."*

Din il-gurisprudenza tikkonferma li dak li jitlob l-Art 13 tal-Konvenzjoni huwa li l-ligi nazzjonali tkun taghti rimedju, fis-sens illi jekk qorti tkun imsejjha sabiex tqis jekk kienx hemm lezjoni ta' dritt fundamentali imhares mill-Konvenzjoni, u ssib li kien hemm lezjoni, allura f' dak il-kaz taghti rimedju effettiv. Dment li l-ligi domestika toffri rimedju effettiv ma jistax iregi lment abbazi tal-Art 13..

Lanqas ma jista' jregi lment minhabba l-mod kif tkun tfasslet il-procedura fil-ligi domestika.

Fil-kaz tal-lum, ma jirrizultax ksur tal-Art 13.

Ghalhekk qeghda tkun michuda wkoll il-bqija tat-tieni talba safejn din tirrigwarda allegat ksur tal-jeddijiet fundamentali tar-rikorrent kif tutelati bl-Art 13 tal-Konvenzjoni.

VII. L-ewwel parti tat-tielet talba

Kif dedotta, it-tielet talba tinqasam fi tnejn.

Fl-ewwel parti, ir-rikorrent qiegħed jitlob sabiex il-Qorti tordna lill-intimati li jagħtu lura l-oġġetti li ttiehdu mis-sit tal-protesta u li kienu depozitati taħt l-awtorita` tal-qorti.

Fit-tieni parti, ir-rikorrent qiegħed jitlob lill-Qorti sabiex tordna lill-intimati milli jiddesistu milli jergħu jnehħhom.

F`dan l-istadju, il-Qorti sejra tqis biss l-ewwel parti tat-tielet talba, għaliex `il quddiem sejra tqis it-tieni parti tat-tielet talba flimkien mas-sitt talba.

Dwar l-ewwel parti tat-tielet talba, tagħmel referenza għax-xieħda mogħtija minn Frank Mercieca, Direttur Generali tal-Qrati, fl-udjenza tat-12 ta` Novembru 2018.

Ix-xhud ipprezenta hames cedoli ta` depozitu :

Dok FM1 : Cedola Nru. 1908/18 :
Banner go kaxxa tal-kartun.

Dok FM2 : Cedola Nru. 1795/18 :
Oġġetti konsistenti f` ritratti, xemgħat u fjuri.

Dok FM3 : Cedola Nru. 1750/18 :
Banner, xemgħat u fjuri li kienu mal-*hoarding*,
kif ukoll fjuri u xemgħat li kienu fuq il-pedestall tal-Monument.

Dok FM4 : Cedola Nru. 1889/18 :
Ritratti, fjuri u xemghat go erba` kaxxi tal-kartun.

Dok FM5 : Cedola Nru. 1973/18 :
Banner, fjuri u xemghat go sitt kaxxi tal-kartun.

Fil-mori ta` din il-kawza, ir-Registratur Qrati Civili u Tribunali pprezenta erba` rikorsi li ngabu a konjizzjoni ta` din il-Qorti, tnejn minn dawn ir-rikorsi kienu dwar ic-Cedoli Nru. 1973/2018 u 1889/2018, fejn talab sabiex ikun jista` jiddisponi limitatament mill-fdalijiet tal-fjuri u xemghat. Il-Qorti ordnat li r-rikorsi jigu notifikati lir-rikorrent li nghata zmien sabiex jipprezenta risposta. Ir-rikorrent ma pprezentax risposta. Il-Qorti laqghet it-talbiet tar-Registratur sabiex jiddisponi mill-fdalijiet tal-fjuri u xemghat.

Dan ifisser li r-Registratur ghad ghandu fil-pussess tieghu ritratti u zewg banners.

Il-Qorti qeghda tilqa` l-ewwel parti tat-tielet talba billi tordna li l-izbank mir-rikorrent tar-ritratti u taz-zewg banners.

VIII. Ir-raba` u l-hames talbiet

Safejn jirrigwarda danni pekunjarji, il-Qorti tqis li r-rikorrent ghandu jkun pjenement sodisfatt bil-mod kif ipprovdiet dwar l-ewwel parti tat-tielet talba tieghu.

Billi danni pekunjarji ohra ma kinux sostanzjati, it-talba ghal-likwidazzjoni ta` dawn id-danni qeghda tkun respinta.

It-talba ghal-likwidazzjoni ta` danni mhux pekunjarji tiehu xejra diversa.

Tenut kont tal-assjem ta` l-fatti u cirkostanzi ta` dan il-kaz, il-Qorti hija tal-ferma konvinzjoni li dikjarazzjoni ta` ksur skont l-ewwel talba ma tkunx bizzżejżed sabiex tagħmel tajjeb għall-gravita` tal-vjolazzjoni subita mir-rikorrent.

Tgħid dan tenut kont tal-iskuza li ngabet mill-intimati sabiex tkun gustifikata ir-rimozzjoni tal-oggetti tal-protesta. Huwa biss pretest bla siwi li wiehed jinqeda bis-sit tal-Monument sabiex jiehu vantaġġ ta` xi xorta. Il-Monument huwa dak li hu : unur għall-poplu Malti ta` kull zmien. U hekk għandu jibqa`. Min jinqeda bih għal xort`ohra m`għandux isib kenn. Il-Qorti tqis li dan ma jghoddx għar-rikorrent. Jghodd però` għall-intimati.

Ir-rimozzjoni kienet intiza sabiex tiskoraggixxi dik il-forma ta` protesta. Il-rimozzjoni b` pika kull darba li jitpoggew l-oggetti kien evidentement metodu sistematiku ta` xkiel u impediment li qatt ma messu kien. Kien assurđ da parti ta` min ordna t-tnehhija li jahseb li r-rikorrent kellu xi interess jara s-sit tal-Monument jitgħharraq sabiex ikun imzeblah talli halla telqa fis-sit. It-tnehhija kienet att għal kollox sproporzjonat. Mhuwiex l-interess ta` l-Istat li jara l-firda ssehh. Fil-kaz tal-lum, tort tal-imġieba tal-intimati, dak is-sit iddawwar fi strument ta` firda, li m`għandu qatt ikun.

Sabiex tibgħat sinjal car li d-dritt għal-liberta` tal-espressjoni għandu jkun imħares bis-serjeta`, il-Qorti qegħda tillikwida favur ir-rikorrent danni mhux pekunjarji fl-ammont ta` ta` **€1,000**.

Hija l-istess figura li kienet likwidata mill-Qorti Kostituzzjonali fl-aħħar pronunzjament tagħha f`materia ta` vjolazzjoni tal-jedd tal-liberta` tal-espressjoni, u cioe` Ignatius Busuttil vs Kummissjarju tal-Pulizija et (op. cit.)

IX. It-tieni parti tat-tielet talba u s-sitt talba

Il-Qorti sejra tittratta flimkien it-tieni parti tat-tielet talba u s-sitt talba ghaliex provvedimenti taghha jinvestihom it-tnejn.

Tibda mis-sitt talba.

Ir-rikorrent qed jitlob li safejn ikun possibbli d-drittijiet fundamentali tieghu ghandhom jitqeghdu fl-istat li kienu qabel saret il-vjolazzjoni.

Il-qagħda tas-sitt tal-protesta f' Settembru 2018 mhux l-istess illum. Dak iz-zmien mal-Monument kien hemm il-*hoarding*. Illum m'ghadx hemm *hoarding* ghaliex il-Monument huwa mikxuf wara li sar restawr.

Billi l-*hoarding* tnehha, il-jedd fundamentali vvjolat tar-rikorrent ma jistax jitqiegħed fl-istat li kien dakinhar tal-vjolazzjoni. B' daqshekk pero' ma jfissirx li r-rikorrent se jkun sprovvist minn rimedju effettiv għall-gejjieni.

Fl-ambitu tas-sitt talba għall-istat ta' fatt li hemm illum, il-Qorti tagħmel dawn l-osservazzjonijiet.

Il-Monument tal-Assedju l-Kbir fil-Belt Valletta llum jidher hekk :

- a) it-Tliet Figuri tal-bronz li jirrapprezentaw il-Fidi, il-Fortitudini, u c-Civilta' .
- b) wara t-tliet figuri u tahtom hemm pedestall ta' gebel jew irham abjad.
- c) fuq il-parti tan-nofs tal-pedestall hemm imnaqqxa s-sena 1565 bl-ittri bil-Latin MDLXV is-sena tal-Assedju l-Kbir.
- d) il-pedestall bil-figuri fuqu huwa mdawwar b'gebla rozza rettangolari.

e) il-qigh tal-istruttura huwa mdawwar bi fjuri u xtieli ppjantati fil-hamrija.

Dwar is-sitt talba, il-Qorti qeghda **tirrakkomanda** lir-rikorrent (u lil persuni ohra li jahsbuha bhalu) li fl-esercizzju tal-jedd ghal-liberta` tal-espressjoni, inkluz fil-mod u manjiera ta` kif issir il-protesta, ghandu juri sens gholi ta` kura, responsabilita`, rispettu u sensitivita` lejn il-Monument tal-Assedju u lejn iz-zona taz-zona tal-madwar billi :-

i) Bhala principju ta` civilita`, ghandu jigi evitat kull twahhil jew tqeghid ta` oggetti ta` protesta, kif deskritti aktar kmieni, mat-Tliet Figuri, u mal-pedestall abjad.

ii) Ghandu jigi evitat li fuq il-pedestall ta` gebel jew irham abjad jitqeghdu oggetti ta` protest, kif deskritti aktar kmieni, inkluzi xemghat, fjuri jew xtieli.

iii) Mal-parti tal-istruttura komposta minn gebra rozza, jistghu jitqeghdu l-oggetti tal-protesta dejjem b`kawtela u responsabilita` fl-ghola livell taghha sabiex ma ssirx hsara.

iv) L-istess jghodd ghall-parti ta` isfel nett li hija mizrugha.

Il-buon sens, l-imhabba sinciera lejn il-pajjiz, is-simboli tieghu u anke l-imghoddi, ir-rispett lejn id-diversita` ta` fehmiel, huma valuri fost hafna ohra li jaghmlu minn dan il-poplu, poplu b`sahthu. Dawn il-valuri ghandhom jibqghu dejjem *un punto di riferimento* u ghandhom jiswew sabiex ukoll filwaqt li jibqa` mhares id-dritt tal-protesta, jinzamm bilanc tant mehtieg. Ghalhekk meta ma jkunx hemm aktar htiega ghar-rikorrent (u ghal ohrajn li jahsbuha bhalu) li jipprotesta minn dak is-sit, kollox ghandu jerga` lura kif kien qabel is-16 ta` Ottubru 2017. Lanqas m`ghandha tkun eskluza r-ricerka ta` sit alternattiv daqstant prominenti anke fl-akkwati jew fil-prossimita` tas-sit attwali.

Fl-isfond tal-premess, ghall-fini tas-sitt talba l-Qorti tordna li l-oggetti tal-protesta jistghu jitqeghdu fis-sit bil-mod u manjiera rakkomandata u ndikata mill-Qorti.

Ghar-rigward tat-tieni parti tat-tielet talba qeghda tordna li dment li tkun osservata l-ordni taghha skont is-sitt talba, l-oggetti tal-protesta m'ghandhomx ikun rimossi. Qeghda tghid hekk ghaliex qeghda tifhem mill-imgieba tar-rikorrent li l-interess tieghu huwa li tibqa` hajja l-ghajta tieghu ghall-gustizzja, li allura jfisser li l-ghajta tal-gustizzja ma tkunx tista` titwassal b`xemghat mohlija u mitfija, fjuri mejta, ritratti koroh, hsara jew fatti negattivi ohra. Anke f`dan il-kuntest ghandu jirrenja l-buon sens, ir-responsabilita` u l-kontabilita` li huma kollha valuri ewlenin ta` socjeta` demokratika.

Decide

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

Tichad l-eccezzjoni tal-intimati kif dedotta fir-risposta ulterjuri taghhom.

Tichad l-eccezzjonijiet fil-mertu tal-intimati kif dedotti kontra l-ewwel talba tar-rikorrent.

Tilqa` l-ewwel talba tar-rikorrent.

Tilqa` l-eccezzjonijiet fil-mertu tal-intimati kif dedotti kontra t-tieni talba tar-rikorrent.

Tichad it-tieni talba tar-rikorrent.

Tichad l-eccezzjonijiet fil-mertu tal-intimati kif dedotti kontra t-talbiet l-ohra tar-rikorrent.

Tilqa` l-ewwel parti tat-tielet talba tar-rikorrent billi tordna l-izbank mir-rikorrent tar-ritratti u taz-zewg banners mir-registru tal-Qorti, u s-segwenti rilaxx taghhom lir-rikorrent.

Tipprovdi dwar ir-raba` talba tar-rikorrent billi tillikwida favur ir-rikorrent kumpens mhux pekunjarju fl-ammont ta` elf Ewro (€1,000) ghall-vjolazzjoni subita mir-rikorrent skont l-ewwel talba.

Tipprovdi dwar il-hames talba billi tordna lill-intimati sabiex ihallsu lir-rikorrent is-somma ta` elf Ewro (€1,000) likwidata bhala kumpens mhux pekunjarju ghall-vjolazzjoni subita mir-rikorrent skont l-ewwel talba.

Tilqa` it-tieni parti tat-tielet talba u s-sitt talba tar-rikorrent skont il-modalijiet rakkomandati u ndikati fil-Parti IX ta` din is-sentenza.

Tordna lir-rikorrent sabiex ihallas l-ispejjez relatati mat-tieni talba u dawk tal-mandat ta` inibizzjoni bin-nru. 1750/2018.

Tordna lill-intervenut fil-kawza sabiex ihallas l-ispejjez tieghu.

Tordna lill-intimati sabiex ihallsu l-ispejjez kollha l-ohra.

**Onor. Joseph Zammit McKeon
Imhallef**

**Amanda Cassar
Deputat Registratur**