Constitutional and Human Rights Procedure

Three categories:

(a) Human rights cases under art 46 of the Constitution and art 4 of Chapter 319.(EG Mons Ph Calleja v. Spett. D Balzan) (CC-25 June 1976)

(b) challenging of laws on grounds *other* than human rights (art. 116 of the Constitution)(e.g. *Mintoff v. Borg Olivier*;(CC – 5 November 1970)

(c) Cases which do not fall under (a) or (b) e.g. decisions or measures in breach of the Constitution other than human rights (*Darryl Grima v PM* (FH) (17 June 1988).

Jurisdiction of the Constitutional Court

- Election of members of Parliament and disqualifications;
- Electoral cases relating to widespread irregularities
- Human rights cases (appeal)
- Art 116 Constitutional cases : LAWS challenged on non-human rights grounds (appeal)
- Appeal from cases regarding interpretation of Constitution other than Human Rights
- Hybrid cases (appeal)

Art. 46 of the Constitution (HR)

- 46. (1) Subject to the provisions of sub-articles (6) and (7) of this article, any **person** who alleges that any of the provisions of articles 33 to 45 (inclusive) of this Constitution **has been, is being or is likely to be** contravened **in relation to him,** or such other person as the Civil Court, First Hall, in Malta may appoint at the instance of any person who so alleges, may, **without prejudice to any other action with respect to the same matter that is lawfully available**, apply to the Civil Court, First Hall, for redress.(2) The Civil Court, First Hall, shall have original jurisdiction to hear and determine any application made by any person in pursuance of sub-article (1) of this article, **and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of,** any of the provisions of the said articles 33 to 45(inclusive) to the protection of which the person concerned is entitled:
- Person included "legal" persons ; (Borg v. Minister Foreign Affairs (FH)(2 May 1984) and Mgr. G Mercieca ne v Prime Minister (FH)(24 September 1984)

Juridical Interest

- “In relation to him” and arguing *a contrario senso* art 116
- See Dr T Borg : *Juridical Interest in Constitutional Proceedings* (Id-Dritt on Line February 2017) and Dr G. Bonello: *When Civil law trumps the Constitutional Court* : Id-Dritt Vol XIX
- ***Claudette Buttigieg v Electoral Commission*** (CC) (13 March 2013). Once elected through corrective mechanism : no remedy no interest ;
- ***Profs. E Grech v. Prime Minister*** (CC -11 April 2011) ; once Government paid compensation on the basis of decision of lower Court, no interest left to appeal.
- ***Simon Busuttil v. Attorney General*** (CC) (29 October 2018) : interest in the inquiry proceedings did not amount to “a criminal charge or determination of civil right . “

Plaintiffs and Defendants in HR Cases

- No local council may institute HR action against Government
- *Marsascala Local Council* (CC)(28 June 2012)
- Whom to sue on behalf of Government

- Art 181B COCP
- Can private persons be defendants?(*Buttigieg v. Mizzi* (CC) 9 October 1989 Vol LXXII.I.119)
- Giovanni Bonello: Misunderstanding the Constitution p 60

Remedial Powers

- Very vast jurisdiction
- Can it order re hearing?
- Can it award moral or non pecuniary damages ?
- Francis Zammit Dimech v. COP (25 October 1989)VOL LXXIII.I.154)
- Where there is no other remedy(no re-integration) one can award moral damages

Exhaustion of Other remedies

- Art 46(2) :Provided that the Court *may*, **if it considers it desirable so to do**, decline to exercise its powers under this sub-article in any case **where it is satisfied that adequate means of redress** for the contravention alleged are or have been available to the person concerned under any other law.
- This is a double discretion of the Court and no one else.
- The “other remedy has to be adequate.

Rules developed by Jurisprudence

- When evident that remedy is available, this has to be availed of . Constitutional Remedy- one of last resort.
- As a court of revision the CC will not disturb the decision of the lower court on proviso.
- Each case contains its own particular facts;
- A remedy is not adequate if it offers only a partial redress
- If remedies not exhausted , owing to actions of someone else, the proviso is not applied.
- Proviso cannot be applied if the court does not examine the necessary issue on which discretion is to be exercised;
- The other remedy has to be practicable ,effective, adequate and complete. Success is not a requirement.
- Proviso cannot be raised in reference cases

Art 469A and the Proviso

- Normal for plea to be raised that plaintiff should have instituted a 469A action to challenge government decision
- Conflicting judgments
- In *Raymond Farrugia (*CC- 9 June 2004*)* regarding a change in licence conditions of a hall at Zebbug, the Constitutional Court ruled that under article 469A of Chapter 12, applicant had an adequate remedy and that the court could declare as null such a change in the licence condition and thereby put him in the *status quo ante*

- A different attitude in the case of *Ivan Vella* (FH 23 June 2005):

- "In this regard the Court agrees with the submission made by applicant in his note that a judicial review action grants the court the power (in its ordinary civil jurisdiction) to consider the act as "null, invalid and without effect" **but does not grant the power to the court to order how the administrative act has to be performed** , or dictate to the defendant public authority what it ought to do to grant a remedy ."

- *Ivan Vella v. Attorney General* (FH)(23 June 2005)(39/04)(Mr Justice JR Micallef) .

- Government’s Negligence
- Expropriations and Notice to Treat
- When Notice to Treat is not issued, plaintiff can institute HR action without instituting a civil action for govt to do its duty
- ***Victoria Vassallo v. Malta*** (EcrtHR 11 October 2001)
- “Owners should not be expected to incur the expense and burden of instituting proceedings to ensure the authorities’ fulfilment of their legal obligations , “

Reference

- (3) If in any proceedings in any **court,** *other than the Civil Court, First Hall, or the Constitutional Court* any question arises as to the contravention of any of the provisions of the said articles 33 to 45 (inclusive), that court **shall refer** the question to the Civil Court, First Hall, **unless in its opinion the raising of the question is merely frivolous or vexatious**; and that court shall give its decision on any question referred to it under this sub-article and, subject to the provisions of sub-article (4) of this article, the court in which the question arose shall dispose of the question in accordance with that decision.
- (5) No appeal shall lie from any determination under this article that **any application or the raising of any question** is merely frivolous or vexatious.

Rules developed by jurisprudence

- Nicholas Ellul v. Commissioner of Police CC -23 November 1990- Vol LXXIV.I. 227).
- Choice submit application or request reference
- ‘If reference is rejected one cannot file a separate application
- The court where the issue arises is in duty bound to respect the exclusive jurisdiction of the FH in human rights matters
- Reference can be raised ex officio by the Court(Bedingfield v COP (CC) (31 July 2000) (Vol LXXXIV.I.,232)
- It can even be raised by a witness (!) (Pol., v. S Caruana) (CM 30 May 2013) (CC 29 April 2016)

New Hearing in Human Rights Cases

- For a number of years this remedy was accepted. *Ritrattazzjoni*.
- See **Edward Ferro v. Housing Secretary** (CC)(21 February 1977).
- In 1986 CC was faced with two requests for new hearing:
- (a) **Joseph Galea v. Minister Public Works(25 June 1986)** (Vol. LXX.I.48) (where Galea Secretary of PN Club lost);
- (b) **Carmel Cacopardo v. Minister Works(25 June 1986)** **(**Vol. LXX.I.42) (where Labour Minister lost).
- In Solomon like fashion the CC ruled that New Hearing did not apply to HR cases and dismissed bot requests

Jurisprudence

- Jurisdiction Special One . Not lawful to assume powers not expressly mentioned in the Constitution,.
- **Cuschieri v. Prime Minister** (CC 6 April 1995) (Vol LXXIX.I.74) reversed the *Galea* and *Cacopardo* cases
- In 2005 Art 811 amended allowing expressly new hearings in cases of "judgments given in second instance or by the Civil Court of the First Hall in its constitutional jurisdiction;
- In **Kolakovic** (CC- 28 April 2014) New Hearing accepted in principle but rejected on merits.
- **William Vella** (30 May 2014) Another new hearing accepted in principle but rejected on merits ,
- **Barbara** (13 January 2015) CC not merely a court which gives judgments in second instance

Details of Rikors LN 279 of 2008

- 3 (1) An application before the Civil Court, First Hall, shall state concisely and clearly **the facts** out of which the complaint arises and shall indicate **the provision or provisions** of the Constitution of Malta or of the European Convention for the Protection of Human Rights and Fundamental Freedoms alleged to have been, to be or likely to be contravened.
- (2) The application shall also specify **the redress** sought by the applicant: **Provided that it shall be lawful for the court, if the application is allowed, to give any other redress within its jurisdiction which it may consider to be more appropriate**.
- Appeal
- Circumstances relating to question
- Demand (**Revoka**, **tirriforma** ;tikkonferma u thassar)
- Provisions of Constitution relied upon

Flexibility

- Disposal of the Case shall be expeditious (not only reasonable time)
- Consecutive Days : where not possible on dates close to one another
- Default does not bring nullity; but one can present a Note
- Reg. 3 (5) :Default of compliance in the application with the requirements of sub-rules (1), (2), (3) and (4) shall **not** render the application null; but the court may, in any such case, order the applicant to file, within such time as the court shall fix, **a note containing the particulars required** and the costs of such order shall be borne by the applicant.

Flexibility: Ultra Petita Allowed and Other Exceptions

- Flexibility: no need of sworn application,. No need of list of witnesses;
- No need of security of costs (*malleverija*) for appeal;
- **Edwin Bartolo** (CC 15 February 1991) (Vol XXV.I.84)
- Formality is reduced to minimum: discretion of judge prevails
- Judge Not bound by the written procedures; so long as rights of both parties are protected
- This licence authorises court to decide *ultra petita*

Flexibility only for Human Rights cases

- Part I - Court Practice and Procedure concerning Constitutional Matters
- Proceedings before the Civil Court, First Hall, and Constitutional Court to be by application. Cap. 319. 2. Proceedings before the Civil Court, First Hall, under article 46(1) of the Constitution of Malta and under article 4(1) of the European Convention Act and proceedings before the Constitutional Court in cases referred to in article 95(2) of the Constitution of Malta shall be instituted by application.
- Consequently when one files a non-human rights case e.g. *actio popularis* under art 116 or a challenging of any measure on non human rights grounds . the usual procedure i. e sworn application, and list of witnesses has to be followed

Reference and LN 279 of 2008

- 5. (1) In the cases referred to in article 46(3) of the Constitution of Malta, article 4(3) of the European Convention Act, and article 95(2)(b) of the Constitution of Malta, the order of reference **shall state concisely and clearly the facts and the circumstances** out of which the question arises, **the terms of such question** and **indicate the provision or provisions** of the Constitution of Malta or of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as the case may be, allegedly contravened.
- (2) When any such reference has been made, it shall be the duty of the Registrar, Civil Courts and Tribunals, to ensure that **the record of the proceedings or any authenticated copy thereof is brought before the court** to which the reference is made without any delay and with urgency.
- (3) The court to which the reference has been made shall, upon any such reference, set down the cause for hearing at an early date, **in no case later than eight working days** from the date on which the record is brought before it and shall cause notice of such date to be given to the parties and to the Attorney General.

Terms

- In Urgent cases : date of hearing (*primo appuntamento*) l-ewwel dehra (LED) within 8 working days from filing of application or from filing of reply .
- Otherwise twenty days for reply.
- Appeals within 20 days from judgment ; 8 working days from service to reply .
- Court may abridge any term

COCP applies *mutatis mutandis* (used when comparing two or more cases or situations) making necessary alterations while not affecting the main point at issue

- 7. Saving what is provided for in these rules, **the provisions of the Code of Organization and Civil Procedure**, hereinafter referred to as "the Code", and any subsidiary legislation made thereunder shall *mutatis mutandis* apply before the Civil Court, First Hall, and the Constitutional Court referred to in rule 2.
- Precautionary warrants (mandat inibizzjoni)
- Rules of Evidence
- Provisonal Enforcement (Esekuzzjoni Provvisorja) (Anthony Caruana v Housing Secretary (October 1980)

Appeal to Constitutional Court

F'każ ta' appell minn deċizjoni tal-Prim'Awla Qorti Civili, taħt Artikolu 46 tal-Kostituzzjoni :

(1)Semmi n-numru tar-rikors Rik Nru _/_

(2)Fil-Qorti Kostituzzjonali

(3)____ vs ____

(4)Rikors tal-appell ta' (persuna li qiegħda tagħmel ir-rikors)

(5)Jesponi/ Tesponi bir-rispett

(6)Illi + kaz Prim Istanza x'qalet

Remedy to be consonant with legal System

- ARTICLE 13 Right to an effective remedy
- Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.
  - Although this Court enjoys a wide discretion to give such orders as it deems fit to enforce or secure the enforcement of articles 33 to 45 of the Constitution, and the Human Rights and Freedoms under the Convention, such discretion is **not without limits**, since it is circumscribed by our legal system which does not permit our Courts **to change the laws of the country** and transform what is discretion according to the relevant law, into mandatory action: or to bind the respondent Director to pay rent or compensation for requisitioned premises in an amount more than that established by the law which regulates such rent or compensation. The compensation, if at all, which this Court should order to be paid is that relating to the violation found by it of the fundamental right of applicant. The remedy provided for by the court of first instance now under examination, (that the Director gives and pays adequate rent considering the surroundings of the premises) is **vague and uncertain** in its consequences, to the extent that it cannot be foreseen whether such remedy would have the effect of re-establishing the desired balance or indeed leave things as they are today: and this because of the lack of evidence in the records of the case relating to the amount of rent which is paid for premises similar to the one requisitioned. (***Carmen Cassar v. Dir Social Accommodation-C*C 12 July 2011)**

Finally the said remedy fails to give due consideration to the fact that the adequate compensation for the requisitioning of the premises in question must necessarily take into account **the legitimate aim** which motivated that measure, namely the public interest inherent in measures intended to enhance social justice by providing accommodation to persons who need it. In such cases, the compensation which is to be paid **can be less** than the whole compensation which would otherwise have been due according to the criteria of the **market**.

Reference to EcrtHR

- Why reference not Appeal
- Interim Measures Rule 39
- 1987 2 events
- On 30 April. 1987 Malta ratified art 25 and art 46
- Through Act No XIV of 1987 (19 August 1987) ECHR became part of the laws of Malta

Admissibility Criteria

- Six Months
- Exhaustion domestic remedies
- Not incompatible with ECHR provisions
- Not Manifestly Ill founded or abuse of right
- No anonymous applications
- Substantially the same as matter already decided

Six Months period

- Peremptory
- No exceptions
- *Demicoli v. Malta 27 August 1991*
- *13 October 1986 Final judgment CC*
- *9 December 1986 Imposition of £250 fine*

Structure

- Before 1998
- (a) European Commission of Human Rights (admissibility and *prima facie*
- (b) appearance before the Court assisted by the Commission
- After 1998
- SINGLE COURT

All judges meet together only for administration purposes

Case goes before a single judge or a panel of 3 judges: They decide admissibility

If admissible, case goes before CHAMBER of 7 judges

Exceptionally appeal to GRAND CHAMBER of 17 judges

Exhaustion of Domestic Remedies

- To be distinguished from proviso art. 46(2).
- In Maltese Constitution it is “discretionary” (double)
- In ECrtHR it is mandatory considering this is international Court
- Still then ECrtHR has been flexible as well
- In *Brincat et v. Malta* (24 July 2014) the Strasbourg Court considered that fact that moral damages were not allowed in Malta in tort cases , meant that there was no need for recourse to civil remedy

According to the Court's case-law, in the event of a breach of Articles 2 and 3, which rank as the most fundamental provisions of the Convention, compensation for the non-pecuniary damage flowing from the breach should in principle be available as part of the range of possible remedies…… the Court notes that an action in tort which is perfectly capable of awarding material/pecuniary damage does not in general provide for an award of non-pecuniary damage ("moral damage" as understood in the Maltese context).

- The exhaustion rule may be described as one that is **golden rather than cast in stone**. The Commission and the need to apply the rule with some degree of flexibility and without excessive formalism, given the context of protecting human rights (*Ringeisen. vs. Austria*, § 89; *Lehtinen. vs. Finland* (dec.)).
- The rule of exhaustion is neither absolute nor capable of being applied automatically (*Kozacıoğlu. vs. Turkey* [GC], § 40). For example, the Court decided that it would be unduly formalistic to require the applicants to avail themselves of a remedy which even the highest court of the country had not obliged them to use (*D.H. and Others v the Czech Republic* [GC] (13th November 2007) (57325/00) (§§ 116-18).
- The Court took into consideration in one case the tight deadlines set for the applicants' response by emphasizing the "haste" with which they had had to file their submissions (*Financial Times Ltd and Others v the United Kingdom* (15 December 2009) (821/03) §§ 43-44). However, making use of the available remedies in accordance with domestic procedure and complying with the formalities laid down in national law are especially important where considerations of legal clarity and certainty are at stake (*Saghinadze and Others v Georgia* (27 May 2010) (18768/05) (§§ 83-84)."

Manifestly Ill- Founded

- Manifestly ill-founded complaints can be divided into four categories: “fourth instance” complaints, complaints where there has clearly or apparently been no violation, unsubstantiated complaints and, finally, confused or far-fetched complaints.

- The fourth instance complaint refers to applications filed simply on the basis that the European Court can possibly act as a sort of court of appellate jurisdiction on the merits of any case. It is not. The Court deals only with violations of human rights as contained in the Convention and Protocols; and not, to cite an example, to review the admissibility of witnesses and evidence. Again where it is evident that no violation has occurred and there has been no arbitrariness or lack of proportionality, a case is declared inadmissible.

- As regards unsubstantiated complaints, this criterion is usually applied to strike off cases where the applicant cites a provision of the Convention without then explaining how this has been contravened in his regard, or where the applicant omits or refuses to produce documentary evidence in support of his allegations (in particular, decisions of the courts or other domestic authorities), unless there are exceptional circumstances beyond his control which prevent him from doing so or unless the Court itself directs otherwise. A case will also be struck off if its contents are confused and it is not clear what are the allegation or arguments supporting the request.

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- *ibid.* p 88.

Abuse of Right of Petition

- This abuse occurs whenever there is any conduct of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and impedes the proper functioning of the Court or the proper conduct of the proceedings before it constitutes an abuse of the right of application. An application based on untrue facts and tending to mislead the Court, or containing offensive words as distinct from polemical or sarcastic would constitute such an abuse.

- An intentional breach, by an applicant, of the duty of confidentiality of friendly settlement negotiations, imposed on the parties under Article 39 § 2 of the Convention and Rule 62 § 2 of the Rules of Court, may be considered as an abuse of the right of application and result in the application being rejected.

Substantially The Same Matter

This criterion prevents the repetitious and successive applications on matters which have been definitely settled by the Court. The Court examines whether the two applications brought before it by the applicants relate essentially to the same persons, the same facts and the same complaints. As stated in *Lowe. vs. the United Kingdom:*

The rule in Article 35 § 2 of the Convention that an application must not be substantially the same as a previous one is intended to ensure the finality of the Court's decisions and to prevent applicants from seeking, through the lodging of a fresh application, to appeal previous judgments or decisions of the Court.

- Lowe v. UK :(ECrtHR) (8 September 2009) (12486/07).

No Sufficient Disadvantage

- As the *Practical Guide on Admissibility Criteria* issued by the Court states:

  - Article 35 § 3 (b) is composed of three distinct elements

  Firstly, the admissibility criterion itself: the Court may declare inadmissible any individual application where the applicant has suffered no significant disadvantage.

  Next come two safeguard clauses.

  Firstly , the Court may not declare such an application inadmissible where respect for human rights requires an exa mination of the application on the merits.

  Secondly, no case may be rejected under this new criterion which has not been duly considered by a domestic authority. It should be mentioned here that according to Article 5 of Protocol No. 15 amending the Convention, which is currently not yet in force, the second safeguard clause is to be removed. Where the three conditions of the inadmissibility criterion are satisfied, the Court declares the complaint inadmissible under Article 35 § 3 (b) and 4 of the Convention.

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- (n734) p 89.

Remedial Powers

- They are vast according to art 46 make such orders issue such writs and give such directions.
- In one case additional parliamentary seats were given to Opposition following error in vote counting
- Moral damages included or non-pecuniary.
- *F. Zammit Dimech v. COP* 25 October 1989 Vol LXXIII,I,154)
- . But it can well happen that in certain circumstances such reinstatement cannot occur. This notwithstanding, article 46(1) still provides that the person whose rights have been infringed has a right to a remedy without the law in any way restricting such right. The law does not state that a remedy will be provided only when such reinstatement in the contravened right is possible. According to the Constitution there has to be a remedy and if it cannot take the form of a reinstatement in the contravened right, it should, in the Court`s view, be granted through other means; these means can indeed include the payment of adequate compensation. Otherwise the Constitution would not reach the aim envisaged in article 46(2).

- When the infringement is actual or in the future, the remedy need not necessarily be financial; indeed, it would be more in the interests of the person bringing forth the complaint, that the remedy be immediate and effective so that the contravention of the fundamental right is brought to an end or avoided. But in the case of a past violation as in the present case, the only remedy consists in the payment of a pecuniary nature. Otherwise, the protection given by the Constitution is thwarted; since a mere declaration that an infringement of one of the rights has occurred will neither satisfy the injured party nor will it be prejudicial to third parties.*(Tonio Vella v COP* 28 Feb 1994 Vol LXXVIII.I.32)

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- Vincent Spiteri (1977) states that CC can even order a new hearing of a criminal trial.
- Precautionary warrants may be issued (interim measures.
- Consonant with Legal System (*Carmen Cassar* 12 July 2011)
- Although this Court enjoys a wide discretion to give such orders as it deems fit to enforce or secure the enforcement of articles 33 to 45 of the Constitution, and the Human Rights and Freedoms under the Convention, **such discretion is not without limits**, since it is circumscribed by our legal system which does not permit our Courts to change the laws of the country and transform what is discretion according to the relevant law, into mandatory action: or to bind the respondent Director to pay rent or compensation for requisitioned premises in an amount more than that established by the law which regulates such rent or compensation

- *Vincent Curmi v AG* (CC)(24 June 2016) :
- Although the Court ruled that the protection given to tenant under Chapter 69 in this particular case was not in consonance with Article 1 Protocol I of the Convention it refused to order the eviction of the tenant stating that: "the constitutional proceedings are not the appropriate forum to decide whether the tenant should be evicted or not . This issue should be decided , according to the case, by the ordinary courts or the Rent Regulation Board."
- *Apap Bologna v Malta (30 August 2016) Not enough to state that there had been a violation : one has to award an effective remedy thereby protecting victim from a continuing violation . One of two ways: order eviction or raise the amount of rent to an adequate amount*

Portanier v Malta (2019)

- Maltese court had stated that the tenant could no longer rely on the protective Maltese law of lease. Later in civil proceedings landlord sought and obtained eviction.
- The Court however has also stated that sometimes eviction is not necessary(e.g. a legitimate requisition order) and the solution would be raising of rent.

Art 6 Chapter 319

- “6. (1) Any judgment of the European Court of Human Rights to which a declaration made by the Government of Malta in accordance with Article 46 of the Convention applies, **may be enforced** by the Constitutional Court in Malta, in the same manner as judgments delivered by that court and enforceable by it, upon an application filed in the Constitutional Court and served on the Attorney General containing a demand that the enforcement of such

- judgment be ordered.

- (2) Before adjudging upon any such demand the Constitutional Court shall examine if the judgment of the European Court of Human Rights sought to be enforced, is one to which a declaration as is referred to in sub-article (1) applies.

- (3) The Constitutional Court shall order the enforcement of a judgment referred to in this article if it finds that such judgment is one to which a declaration referred to in sub-article (2) applies.”

A Conservative Attitude

- This is an important provision because where, in a case before it the European Court finds that a decision or measure taken by a legal authority or other authority of a state party is incompatible with a provision of the Convention, **it does not go beyond the finding of a violation,** apart from awarding, if necessary, just satisfaction in terms of article 50 (today article 41) of the Convention. The Court`s judgements, condemnatory in themselves, **have no cassation effect and do not themselves annul laws, judgments or acts found to be in violation of the Convention.** Nor again do they prescribe specific measures to be taken... in this context the first question which the Constitutional Court will have to face is one of interpretation, that is to say, **whether to interpret the term "enforcement" in the new law in the domestically accepted narrow sense referable only to the operative part** (dispositif) of the judgment (in which case it will in practice have no more to do than enforce payment of a stated amount under article 50 of the Convention), or in a broader sense, **more consonant with the spirit of the provision itself**…for instance in the case of a civil servant found to have been dismissed in breach of the Convention, would enforcement imply his reinstatement, and if so, by what means would this be secured.?

- Cremona JJ *Selected Papers* (PEG) (1990) Vol. I p 228 "*The European Convention on Human Rights as part of Maltese Law"*

Raphael Aloisio et vs Attorney General (CC) (28 September 2012) (29/04)

- In the opinion of the Court, the remedy granted by the European Court which may be executed according to the present proceedings, apart from the declaration that article 6(1) of the European Convention on Human Rights had been infringed, is the order for payment of six thousand euro (Euro 6000) which it is not denied have been paid already. The judgment of the European Court did not in any way order that the appeal from the partial judgment of 1 December 2003 be heard at this stage. Applicants hold that this remedy was granted by necessary implication. **Remedies however, are granted by an express declaration of a court and not by implication**. Had the European Court wanted to grant a specific remedy that the appeal be heard at this stage, it would have expressly said so. The task of this Court in these proceedings is to order the execution of the judgment of the European Court and **not to see whether there is any implied remedy in some part of the judgment which is not the operative article**

- . In *Attorney General vs. Teresa Deguara Caruana Gatto*, the Court stated that:

  - Where in sub-article (1) of article 6, it is stated that the judgment of the European Court of human Rights "may be enforced by the Constitutional Court" this does not imply that this Court is vested with any discretion as to whether to enforce such judgment or not: but it only means that this Court is being vested with the power to order the enforcement of such judgment; otherwise it would not have had such power. This clearly results from what is provided in sub-article (3) of the said article which states that the Constitutional Court "shall order the enforcement of a judgments as aforesaid" (underlining by the Court). **Article 6 therefore is intended so that the Court in the appropriate cases can establish the modalities of enforcement which should be enforced by it so that any obstacle which our legal system may provide for such enforcement, be overcome.**

- (CC) (6 October 2014) (499/13) .

Enforcing a EcrtHr judgment

- **Article 242. Chapter 12**: "(1) When a court, by a judgment which has become *res judicata*, declares any instrument having the force of law or any provision thereof to run counter to any provision of the Constitution of Malta or to any human right or fundamental freedom set out in the First Schedule to the European Convention Act, or to be *ultra vires*, **the registrar shall send a copy of the said judgment to the Speaker of the House of Representatives,** who shall during the first sitting of the House following the receipt of such judgment inform the House of such receipt and lay a copy of the judgment on the table of the House.

- (2) Where there has been a judgment as is mentioned in sub-article (1) the Prime Minister may, within the period of six months from the date that the judgment has become *res judicata* and to the extent necessary in his opinion to remove any inconsistency with the Constitution of Malta or with the relevant human right or fundamental freedom set out in the First Schedule to the European Convention Act as declared in the said judgment, **make regulations deleting the relevant instrument or any provision thereof declared to run counter to the Constitution or the First Schedule to the European Convention Act** as mentioned in sub-article (1)."

Henry VIII Clause

- **Article 6A. Chapter 319**: "Where by a final judgment in a case against Malta the European Court of Human Rights finds that any instrument having the force of law in Malta or any provision thereof is inconsistent with the Human Rights and Fundamental Freedoms, the Prime Minister may, within the period of six months from the date that the judgment becomes final and to the extent necessary in his opinion to remove the inconsistency, **make regulations deleting any such instrument or provision found to be inconsistent as aforesaid**