

# **CONSTITUTIONAL COURT**

## **JUDGES**

**HIS HONOUR THE CHIEF JUSTICE SILVIO CAMILLERI  
THE HON. MR JUSTICE GIANNINO CARUANA DEMAJO  
THE HON. MR JUSTICE NOEL CUSCHIERI**

**Sitting of Friday 28<sup>th</sup> April 2017**

**Number 1**

**Constitutional Application Number 60/2014 JZM**

**Ignatius Busuttil**

**vs**

**The Commissioner of Police and the Attorney General**

1. This is an appeal of the Commissioner of Police and the Attorney General from a judgement given by the First Hall of the Civil Court in its constitutional competence on 29<sup>th</sup> September 2016 that assented to the plaintiff's request for a remedy because it found that his right to freedom of expression protected under Art. 41 of the Constitution of Malta ("the Constitution") and Art. 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") had been violated.

2. The facts of the case as well as the plaintiff's requests, the respondents' objections and the reasons which led the first court to its decision were explained as follows in the judgement from which the appeal was lodged:

»The first objection

»In the first objection it was pleaded that the Attorney General is not the plaintiff's legitimate defendant since there is nothing in the premises of the plaintiff's act that can be attributed to him.

»Art. 181B of Cap. 12 establishes that –

»(1) The judicial representation of the Government in judicial acts and actions shall vest in the head of the government department in whose charge the matter in dispute falls:

»Provided that, without prejudice to the provisions of this article:

»(a) actions for the collection of amounts due to Government may in all cases be instituted by the Accountant General;

»(b) actions involving questions relating to Government employment or to obligations to serve Government may in all cases be instituted by the Principal Permanent Secretary;

»(c) actions relating to contracts of supplies or of works with Government may in all cases be instituted by the Director of Contracts.

»(2) The State Advocate shall represent Government in those all judicial acts and actions which owing to the nature of the claim may not be directed against one or more heads of other government departments.

»It is evident from this provision when and where the Attorney General should be prosecuted.

»Taking into account the facts and circumstances today's case is not a case where the Attorney General should be prosecuted. In fact, it transpires that the plaintiff's complaint regarding the alleged violation of his right to freedom of expression is directed towards the conduct of members of the police corps in his regard. According to the plaintiff, through their behaviour, the members of the corps violated his right to freedom of expression, a right protected by Art. 41 of the Constitution and by Art. 10 of the Convention. In the application as deduced and initiated by the plaintiff, the Attorney General does not feature anywhere - not even indirectly. It is evident that the plaintiff's application is directed against the Commissioner of Police because within his duties lies the objective responsibility for the conduct of the members of the corps. Therefore, he is the plaintiff's legitimate defendant with the exclusion of the Attorney General.

»The court is assenting to the first objection and releases the Attorney General from the observance of the judgement.

»Consideration regarding the merit

»1. The facts in brief

»a) The first incident (4<sup>th</sup> August 2014)

»On 4<sup>th</sup> August 2014, the plaintiff had a meeting at MEPA with an authority official and he was of the opinion that he was ill served. Therefore, he went near Auberge de Castille with his car because he wanted to speak to the Prime Minister. When he arrived at Castille Square, he stopped his vehicle near the pavement in front of the Auberge steps. A member of the police corps who was on duty at the location told the plaintiff to drive away. The plaintiff told the police officer that he was only going to be a few minutes, got out of the car, went up the Castille steps and went to speak to the AFM member who guards the main door of the Auberge. The latter did not allow the plaintiff inside and he told him that he needed to have an appointment. The plaintiff went back near his car and saw the previous police officer giving him a parking contravention ticket. Therefore, the plaintiff went off and sat down on the Castille steps. The police officer tried to make the plaintiff get up, but the latter refused. Some police officers turned up from the Valletta Police Station and after the plaintiff moved his vehicle, he went with them to the Police Station. After some time at the Police Station, he went back for his vehicle and left.

»b) The second incident (5<sup>th</sup> August 2014)

»On 5<sup>th</sup> August 2014, the plaintiff went back to Castille. This time, the plaintiff stuck a number of posters on his vehicle in order to protest against MEPA's conduct in his regard. He went to park near the statue of George Borg Olivier, and after getting out of his vehicle, he leant against it. The police officer who was stationed at Castille told him that he was badly parked because he was on the double yellow line. Therefore, he told him to remove the vehicle from there and the plaintiff refused. Once again, police officers from the Valletta Police Station turned up at the location and took the plaintiff to the Police Station. After releasing a statement, he was allowed to leave.

»c) The third incident (8<sup>th</sup> August 2014)

»On 8<sup>th</sup> August 2014, the plaintiff returned to Castille with his car, which had posters stuck on the inside and parked where he had parked on 5<sup>th</sup> August 2014. The police officer who was on duty at Castille approached the plaintiff again, and told him that, because he was irregularly parked, he had to remove the vehicle. The plaintiff left the vehicle in place. That police officer phoned the Valletta Police Station, from where some police officers turned up, and took the plaintiff under arrest to the Police Station.

»Since it was alleged on the part of the police that the plaintiff mentioned to them that he was being treated for mental health reasons, the plaintiff was taken to the Floriana Health Centre and after being seen by the doctor who was on duty, she issued a referral ticket to the plaintiff so that the following day he would go for an examination at Mater Dei Hospital. The referral ticket was held by the police. From the Health Centre, the plaintiff was taken to the Police General Headquarters where he was questioned by Inspector Darryl Borg from the Valletta Police Station and by Inspector James Grech from the CID. The plaintiff released a statement.

»From the Headquarters, the plaintiff was taken to Mater Dei Hospital where he was seen by the doctor on duty at the Crisis Unit. After being seen and since the plaintiff did not want his family to be informed, an emergency order was issued and the plaintiff was taken to Mount Carmel Hospital.

»When he arrived at Mount Carmel, the plaintiff was seen by a doctor who was on duty who admitted him to hospital. At Mount Carmel, the plaintiff received no care or treatment. The next day he was seen by the consultant Dr Giorgio and after that examination, the plaintiff was released.

»The complaint

»The plaintiff is complaining that the manner in which he was treated by the Police, he suffered an infringement of his fundamental right to freedom of expression as protected by Art. 41 of the Constitution and by Art. 10 of the Convention.

»a) Art. 41 of the Constitution

»The provision reads:-

»“(1) Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of ) and freedom from interference with his correspondence.

»“(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of sub-article (1) of this article to the extent that the law in question makes provision –

»(a) that is reasonably necessary –

»“(i) in the interests of defence, public safety, public order, public morality or decency, or public health; or

»“(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, protecting the privileges of Parliament, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or

»“(b) that imposes restrictions upon public officers,

»“and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.”

»Whilst, on his part, the plaintiff maintains that all that he did in the three instances was to have gone to Castille Square, Valletta, setting himself within the right to express his opinion within the parameters of Art. 41(1), on the other part, the Commissioner of Police countered by stating that the corps members had every right according to law to act in the way they did with the plaintiff for public security or public order reasons as stipulated by Art. 41(2); therefore, there was no violation of Art. 41(1) of the Constitution.

»..... In today's case, the right to freedom of expression in its diverse aspects is not being scrutinised in a general manner, but it is being established whether there was a violation or not in the case in point of this case.

»... ..

»b) Art. 10 of the Convention

»The provision reads:-

»“1. Everybody has the right to freedom of expression. This right shall include freedom to hold opinions and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

»“2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

»That which the court pointed out earlier on as the parameters of the plaintiff's complaint according to Art. 41(1) of the Constitution and the Commissioner of Police's defence for the plaintiff's action on the basis of Art. 41(2) of the Constitution and the Commissioner of Police's defence for the plaintiff's action on the basis of Art. 10(1) of the Constitution and the Commissioner of Police's defence for the plaintiff's action on the basis of Art. 10(2) of the Convention.

»... ..

»The first request

»Substantially the provisions cited earlier on and which safeguard the fundamental right to freedom of expression, include the right that a person has an opinion, and to disseminate their opinion without interference from public authority. At the same time, this right is subject to conditions or restrictions according to that which is reasonable and according to what is necessary in a democratic society.

»The court shall consider the conduct of the plaintiff and of the members of the Police corps in the three days in question.

»On the first day, that is 4<sup>th</sup> August 2014, the plaintiff's conduct in its entirety was not indicative of any danger to anybody. What he had done that day was a contravention because he had parked where it was not permitted. The fact that he sat down on the steps of Auberge de Castille rather than an act of illegality was an act of imprudence motivated by desperation in reality. Whether he had every reason to be desperate or not is not relevant. Up to that day he had not even staged a protest because on that day the plaintiff wanted to speak to the Prime Minister – nothing more. His conduct

– even perhaps unconventional taking into account the *forma mentis* of our people  
– did not go beyond that. When the police officers told him to get up, he did so and did not resist in any way.

»On the second day, that is, 5<sup>th</sup> August 2014, the court considers the plaintiff's conduct as a form of silent protest in that he parked the car, got out of it, and leaned against it. In the vehicle he had protest posters, however it does not appear that he took them out. Incidentally, it transpired that those posters were not against the Head of Government, that is the Prime Minister, but against MEPA. The police reacted because the corps members realised that the plaintiff was the same person from the previous day. This court does not consider that at some point on that day the plaintiff initiated a situation of risk to the public order or to the security of the country. The plaintiff wanted to protest in the manner he chose in

the most prominent place of the country, that is, the seat of government. Since he was not parked properly, just like the previous day, the police ordered the plaintiff to move away. In truth, the concern of the police was not the bad parking. It was not the fact that he was given an order and the plaintiff did not obey that order because otherwise they would have issued charges in that regard against the plaintiff. The interest of the police was that the plaintiff would leave that spot for a hundred reasons – one of which however was not a danger to security.

»On the third day, that is, 8<sup>th</sup> August 2014, the plaintiff went back to Castille Square, and parked the vehicle. This time, the posters were stuck to the car in such a way that they could be seen by everyone. And he remained there. The posters were in protest against MEPA. Inspector Darryl Borg testifies that it was his decision to have the plaintiff arrested. The reason for his arrest was that the plaintiff did not obey the legitimate Police orders, that is, to move away because he was badly parked. As regards the measure in the police conduct, it must be stated that it is not the norm that a person is arrested for bad parking and the person refusing to move away. Therefore, the suspicion arises that the arrest was made because, in truth, the vehicle was not correctly parked; in truth, the driver did not remove the vehicle when ordered; but, in truth as well, because there were posters of protest against MEPA stuck to the vehicle in front of the office of the Prime Minister, of all places! In the opinion of this court the entirety was a pretext in order that the plaintiff is not permitted at the place because of his protest.

»It proceeds to state that after being arrested, the plaintiff was taken to the Floriana Health Centre because it appears that the plaintiff was receiving care for depression, a fact which appears to have been stated by the plaintiff himself. The court points out that there transpired to be no relation between the controlled depressive state of the plaintiff (see Dr Mark Xuereb's deposition) and the plaintiff's conduct at Castille Square. For further clarity, the plaintiff's depressive state was never a risk to anyone, and by anyone, the court means – no one! Dr Scalpello from the Floriana Health Centre was not of the opinion that the plaintiff had to be taken immediately to Mater Dei Hospital or Mount Carmel Hospital due to his alleged condition. In fact, she gave him a referral ticket to go the next day alone and not accompanied by the police. It was a Police decision to take him to Mater Dei Hospital on the same day. What happened afterwards is a consequence of that fact and one cannot shift the blame on the doctors. The climax of everything occurred at Mount Carmel Hospital where he stayed overnight and the next day he was released because he did not require any treatment.

»The court denounces without reservation the police conduct because in truth they were afraid of the plaintiff's protest and sought every pretext to not allow the plaintiff from staging his protest. They proceeded from an issue of bad parking to a totally futile admission – at a cost to the State – at Mount Carmel Hospital. In this the latter instance, they went beyond because they prejudiced the very dignity of the plaintiff. The right to protest is an integral part of the right to freedom of expression – and that is how it should remain – not in principle but because that is required in the best interest of a country's democracy.

»... .. the court emphasises the fact that in order for an intervention that impinges on the right to freedom of expression to be justified, it must be proven – and the evidence must be decisive and conclusive – that there was a clear danger to public order and security, a danger that was imminent, and that could not be avoided in any way. If this evidence is inadequate, therefore there would be a violation and nobody should present the pretext of public order as an excuse for their conduct. In today's case, the court is insisting that it does not transpire that there was ever any danger to public order of some sort or nature.

»This court does not have the slightest doubt that the manner in which the police reacted to the plaintiff's conduct exceeded every acceptable limit within a democratic society where the functioning of a person's fundamental rights not only should be respected but should find the safeguards that they merit in exercising them in such a way that they should never face any obstacles – regardless of the nature of these obstacles!

»Therefore, the court shall accept the first request of the plaintiff.

»The second and third requests

»In today's case, the court is of the opinion that these two requests should be considered together under one provision in the sense that having faced a violation, the plaintiff merits fair and adequate compensation in view of the facts and circumstances of the case.

»When considering the occurrence in its entirety, in particular the humiliation suffered by the plaintiff, in particular when he ended up being taken to Mount Carmel Hospital – when it transpired that there was no need – it states that the plaintiff should be given compensation to the amount of two thousand Euro (€2,000) for the violation suffered.

»For all the premised reasons, the court is pronouncing and deciding this cause by:

»refuting the respondents' objections;

»accepting the first request of the plaintiff.

»making provision for the second and third plaintiff's requests by apportioning compensation in favour of the plaintiff for the violation suffered of Art. 41 of the Constitution of Malta and Art. 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Therefore, it orders the respondents to pay the plaintiff compensation for the said violation to the amount of two thousand Euro (€2,000).

»ordering the respondents to pay all costs for this case.«

3. The Commissioner of Police and the Attorney General appealed this judgement by application of 13<sup>th</sup> October 2016 to which the plaintiff replied on 1<sup>st</sup> November 2016.
4. The first grievance concerns the decision of the first court which “refutes the respondents’ objections”, including therefore the objection that the Attorney General is not the legitimate defendant. The plaintiff did not object to this grievance.
5. In fact it is evident from reading the judgement in appeal that the first court assent to the respondents’ reasoning regarding this objection and it appears that only due to lack of attention and oversight, an error occurred in the judgement in

the sense that instead to assenting to the first objection of the respondents and therefore releasing the Attorney General from observing the judgement prior to refuting the other objections, the first court ended up refuting all the respondents' objections.

6. Therefore, this first grievance filed by the appellant respondents is being accepted.

7. The second grievance is explained herewith:

»That the respondents feel aggrieved also by the fact that the first honourable court accepted the first request of the plaintiff and found that he suffered a violation of his rights sanctioned in Article 41 of the Constitution of Malta or Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. They are of the humble opinion that on the basis of the evidence presented, the first honourable court should have refuted the plaintiff's allegations and claims hereby in appeal today in this sense as unfounded in fact and in right for the following reasons which are being listed herewith without prejudice to each other:

»... ..

»That from all the evidence acquired, the following facts transpire:

»On Monday, 4<sup>th</sup> August 2014: The plaintiff in appeal went to Castille at around ten o'clock in the morning (10:00 hrs) in order to speak to the Prime Minister following a meeting he had at MEPA earlier that day because he felt that he was ill-treated. As transpires from the testimony of the said appellee, he parked on a yellow line and PC 690 approached him to move the car from there but he switched on the hazard lights and replied saying that 'I will only take a minute'. He went up Castille steps where he was stopped by an AFM officer who informed him that he could not enter without an appointment. PC 690 testified that he told him again to move the car but he did not move it and instead sat down on Castille steps. On this occasion he issued him a ticket because he did not move the car which was badly parked. He explained that they do not allow anybody to sit on Castille steps for security reasons and therefore he asked Mr Busuttil to get up, 'I kept asking him to get up from there; meanwhile he was telling me because the previous government did not help him, because this government did not help him either, and told me also that he had some mental health problems, and then I reiterated to him to get up'. Since Mr Busuttil did not want to get up from Castille steps and remove the car from where it was irregularly parked, PC 690 phoned the Valletta Police Station for assistance. On this occasion there were no placards stuck onto the car. A short while after the police car with officers from Valletta Police Station turned up, including PS 1114 Marlon Hili who asked him to go to the Police Station with them so that they would speak to him calmly, however he was not under arrest at any time. The appellee got up from the steps





voluntarily, went in the car with them and went to the station. PS 1114 testified that on this occasion, the appellee told him of his issues with MEPA and the reason why he wished to speak to the Prime Minister, and among other things, he mentioned to him that he suffered from a mental problem and was not taking the treatment. PS 1114 testified that he had never met Mr Busuttil before. Meanwhile, his vehicle remained in front of Castille and while PC 690 Kenneth Pace was communicating with the Valletta orderly to check whether someone was going to move it or whether it was going to be towed, Mr Busuttil went back to the spot and drove the car away. The appellee testified that he was angry, went home and filled up the car with posters as shown in the photos he exhibited;

»On Tuesday 5<sup>th</sup> August 2014, the appellee returned to Castille, this time with the car with posters stuck on and as soon as he arrived in front of Castille, his mobile rang. As he himself testified 'obviously I stopped to answer it, a police officer approached me and told me to move it, I signalled him to show him that I was on the line ... as soon as I hung up, I drove off and went near the taxi stand opposite, in front of that garden, and I parked there: I found an empty parking space where the taxis park and I parked there despite that his car is not a taxi. He testified that the police approached him to move on from there and therefore he kept driving round the roundabout and stopping in different spots, always in places where stopping was not allowed. PC 710 and PC 322 testified that they were called to the place at around one o'clock in the afternoon (13:00 hrs). They confirmed that they asked Mr Busuttil to go to the Valletta Police Station with them so that they would speak to him and he accepted to go with them but he was not under arrest at any time. The appellee's car was left at Castille Square – they left it alone and the constables testified that they left it without touching anything from it. At the Valletta Police Station, he was spoken to by Inspector Darryl Borg. Whilst waiting for him, the appellee himself testified that he ate and drank and even smoked some cigarettes. Inspector Darryl Borg spoke to him at around quarter to two in the afternoon (13:45 hrs) in his office. The Inspector confirmed that Mr Busuttil was not arrested on this occasion and he only took a declaration regarding that which the plaintiff, herein the appellee, stated to him ... .. in the presence of PC 780 who confirmed the same thing and not a statement as reported in the judgement in appeal. Informed by his subordinates with what had happened, he asked several questions to the appellee regarding the events, including in regard to the mental problems which he mentioned he had with PC 690 and PS 1114. The appellee replied 'I used to see Dr Mark Xuereb M.D. who certified that I was suffering from a mental condition (schizophrenia) where he had given me some tablets for this'. The appellee himself confirmed that he signed this declaration without any problems because 'all there is in the statement is correct, I have no objection and I signed it'. It transpires that they were ready by ten past two in the afternoon (14:10 hrs), he was given a copy of the statement. In effect, the police officers took him back to the car which was still near Castille and he drove off from there.

»On Friday, 8<sup>th</sup> August 2014:

»Castille Square

»The appellee plaintiff returned to Castille with his car with the same posters stuck to the windows. PC 1073 confirmed that at around nine

o'clock in the morning (09:00 hrs) the car driven by Mr Busuttil stopped at the roundabout – "it was obstructing some traffic and I went to tell him to move on from there ... this car had some placards stuck to it and so on; I did not approach him because of the placards, I went to him because he stopped in the middle of the road and traffic was getting congested. I asked the gentleman to drive on because he was in the middle of the road". He explained that the appellee plaintiff drove round the roundabout and stopped once again at a spot where he could not park. The appellee himself confirmed that he parked in about three spots then "I ended up in the same one where there is the taxi stand ... and afterwards the same thing, they moved me from there, they moved me from here, and I kept on driving round the roundabout. Then I ended up again near the taxi stand because they moved me from one space to another, and I ended up there". PC 3096 was on duty at Castille Square and told PC 780 to continue with his duties near the Office of the Prime Minister and that he would speak to Mr Busuttil himself. PC 3096 testified that Mr Busuttil started insisting with him that he wanted to "speak to the Prime Minister as he said that he suffered an injustice on the part of MEPA; we did not really go into that matter, however we told him because he had stopped the vehicle, opened the doors, he was in the middle of the road, the square up to sometime previously had a roundabout and he was starting to obstruct traffic somewhat at the time. We told him to drive on, he began to refuse, got out of the car, leant on it, he told us that we would not remove him from there until the Prime Minister arrived; and we tried to make him understand courteously, both myself and my colleague, and he still refused. When I realised this, he told me that I could take the key if I wanted to, he told me and leave me alone, he told me, because I am out of sorts, my friend. I told him that I was not going to touch him; I told him, I am only telling you to remove the vehicle; in fact, I issued him a contravention notice from my part; I told him, you understand that you are obstructing traffic here ... And I kept on dealing with him trying courteously, courteously; I know that I remember that he moved the car from the spot, went round the roundabout and returned next to me, right? Because this car, this has to be said, he moved this car; originally at first it was not next to me ... I could not absolutely convince him to move this vehicle; in the meantime, some traffic started to build up at that time; I called for assistance from my colleagues at the Valletta Police Station ... he was shouting, refusing to move the car, he started telling me that he was out of sorts, right? He started telling me, 'if you want, you can move the car for me because I am not going to move it from here', and something against MEPA and all the time insisting that 'I will not move from here before the Prime Minister turns up and I speak to him'." He confirmed that at no time did he remove the posters as alleged by the appellee; "he told me 'make sure you do not touch the posters'; I told him that I was not interested in the posters, I told him I was only interested in him not leaving the vehicle in the middle of the road. ... I recall that he opened the doors and the luggage booth too, I do not know for what reason." In the cross-examination he categorically denied any allegation on Mr Busuttil's part in the sense that he took or touched the car keys or the posters. Then, police officers from the Valletta Police Station turned up at the location. PS 1114 confirmed that Mr Busuttil moved the car to the side;

## »The Valletta Police Station

»After parking at the taxi stand, the appellee was arrested on the order of Inspector Borg and he was taken to the Valletta Police Station. When questioned during the cross-examination, Inspector Borg categorically denied that he ordered Mr Busuttil's arrest because he was protesting as alleged by the appellee plaintiff. He reiterated that at no time did he stop him from protesting but warned him to maintain order. Since the previous day Mr Busuttil himself had informed him that he was under the care of Dr Mark Xuereb, the Inspector gave out an order to take him to the Floriana Health Centre to be examined. He was escorted by PC 134 and PC 1023.

## »The Floriana Health Centre

»There he was seen by Dr Scalpello who referred him to the hospital outpatients to speak to Dr Mark Xuereb the next day. Dr Scalpello testified that it was Mr Busuttil himself who mentioned to her that he was already seeing a psychiatrist, Psychiatrist Mark Xuereb "and that he had stopped going to the appointments and had stopped taking the medication and I explained to him that he could have had some concerns because he stopped the treatment and therefore perhaps this had led to certain behaviour which the police noted". She tried to phone Dr Mark Xuereb however it happened that he was abroad and instead she spoke to the outpatients consultant who suggested that Mr Busuttil should go to the hospital to be seen by another doctor.

»She explained everything to Mr Busuttil and in the presence of PC 134 who confirmed these facts. A short time later he left the health centre. Dr Scalpello testified that everything was triggered because Mr Busuttil himself told her that he was under psychiatric care since it is normal procedure that when they have a patient who cut themselves off from the doctor and stopped the treatment and maybe there would be some signs that some symptoms were emerging, they send that person to their doctor or to another doctor who would be available. She testified: "I made arrangements for him for an appointment the next day with a consultant who happened to be on duty; it was not Mark Xuereb but, on the telephone, I was told that they would make arrangements regardless and he had told me that it would be okay with him." When questioned by the lawyer of the plaintiff Busuttil whether the police tried to suggest to her that "he may be crazy" or to refer him to a psychiatrist, she confirmed under oath that "no, they had taken no initiative in that respect". She was the one that had taken an interest to phone Dr Mark Xuereb because she knew nothing about Mr Busuttil and when she could not speak to him because he was abroad, she spoke to the outpatients consultant whom she did not know and it was that consultant who suggested to her to refer him with urgency to Mater Dei Hospital; nevertheless, ultimately, the decision for the referral was hers exclusively. ....;

## »The Floriana Headquarters

»It transpires that from there, the appellee was taken to the Floriana Headquarters once again. At the office of Inspector James Grech at the Floriana Headquarters, he was given the right to a lawyer which he refused as also confirmed by PS 426 and the caution with all his rights and a statement was taken, which he signed voluntarily. The appellee himself testified that he read this statement prior to signing it and he was given a copy thereafter. The appellee plaintiff also confirmed

the declaration he released on 8<sup>th</sup> August 2014 and also confirmed that he himself had informed the inspector that he was under psychiatric care, that the psychiatrist had given him medication however he chose not to take them "because he feels that he does not need them". Inspector Grech testified that, "We made it clear to him that if was going to protest, he had to protest according to law without breaking the law because if he does not obey police orders, that is a breach of the law; if he parks incorrectly, this would be a breach of the law. We made it very clear to him that if he was going to protest, he should protest according to law. Nobody told him not to protest." From there he was taken to Mater Dei immediately;

»Mater Dei Hospital

»That at Mater Dei Hospital the plaintiff was seen by Dr Sant who formed part of the emergency crisis team who concluded that the appellee should be admitted to Mount Carmel Hospital u he referred there that same day. Dr Kris Sant testified that "when I started talking to him, he started showing that he had so-called certain misgivings about people; I also saw the statement that the police gave me and, in the statement, there was also a lot of discourse which deviated from one subject to another. He did not have enough information about the patient but he told me that he was being seen by Psychiatrist Dr Mark Xuereb and that he had just changed some medication for him around a week ago I think, that is very recently, and I was getting suspicious that this could possibly be something to do with the change in treatment". He requested Mr Busuttil to speak to his relatives for collateral history but the appellee did not wish to involve them and Dr Sant had to respect his wishes but 'I did not feel that is was safe to send him back home in that case'. As a precaution he felt that it would be more 'safe to observe for now and to admit him to hospital for a while for observation not treatment'. When asked by the Court to explain further, "maybe he was anxious, but here at Mount Carmel, it is not only persons who are schizophrenic or psychotic who are admitted. We admit persons who are depressed and even anxious. Which means that at the time, we, together with the crisis team, took a decision that was purely considering the fact that we do not have enough information about him, considering the fact that he was already being treated by Dr Mark Xuereb as a psychiatrist, that he did not want to involve the family when I made it clear to him, I told him, listen if I do not have information from the family, I will have to end up admitting you to hospital because I do not have enough information and he still persisted not to involve the family." When asked whether he was pressured by the police, he replied under oath that 'I did not take my decision because I was under pressure or something. I took my decision for observation, for the best interest of the patient and for the risk of others'. ... ..

» Mount Carmel Hospital

»The appellee plaintiff was accompanied to Mount Carmel Hospital by ambulance and there he was released from arrest. From the records it transpires that he was admitted to Mount Carmel Hospital at twenty past six in the evening (18:20 hrs). As soon as he was admitted, he was assessed by the Mount Carmel resident doctor, Dr Donatella Gauci, and after admitting him, she phoned Dr Giorgio to inform him of this. Asked what diagnosis she conducted, she replied that "a particular diagnosis cannot be conducted over two hours or one and a half hours talking to him, a patient had to be observed. At the time, certain things were unclear and I could not

confirm with other information because he did not wish us to inform his relatives, therefore I only heard one side of the story. At the time I could not issue a diagnosis there and then but I think that he needed to be observed from our side.” Since it was out of hours, Dr Giorgio directed Dr Gauci to keep Mr Busuttil under observation and that he would see him the next day. Under examination, Dr Gauci said that the police officer who escorted Mr Busuttil suggested to her to treat him; however, at the same time, she declared that as a state of fact he was admitted to Mount Carmel through an emergency order whereby, in her opinion, since “the papers were ready”, she had no choice but to admit him. In effect, upon direction given by Dr Giorgio over the telephone, she kept the plaintiff, now appellee, under observation until the next morning when he was to be seen by Dr Giorgio personally.

»On Saturday, 9<sup>th</sup> August 2014: At around nine o'clock in the morning (09:00 hrs), Dr Giorgio came in to see him. In the meantime, he was only under observation and was not given any psychiatric treatment. Dr Pierre Giorgio, consultant psychiatrist on call at Mount Carmel Hospital, explained that he was referred to Mount Carmel Hospital under the Mental Health Act by the Mater Dei Hospital crisis team on 8<sup>th</sup> August 2014. The referral ticket was signed by Dr Kris Sant, trainee psychiatrist, and said ‘fifty-nine year old was being seen by Dr Mark Xuereb; in brackets there was a question mark schizophrenia non-compliant to treatment for years. Multiple parallel delusions’. Dr Giorgio testified that ‘he was normal in the sense a person with perhaps a slightly rebellious character’ however he did not need long-term treatment and asked him to see him just one more time at outpatients. In the cross-examination Dr Giorgio confirmed that he did not consult with Dr Mark Xuereb, the psychiatric specialist who was following him previously and who some years previously had prescribed him some medication because he felt he did not need to. He only spoke to Mr Busuttil and his son. Dr Giorgio testified that there was no file regarding the appellee plaintiff at Mount Carmel Hospital and he got to know that he was being seen by Dr Mark Xuereb because Mr Busuttil himself told him. Dr Giorgio testified that the appellee did not suffer from schizophrenia and consequently he was discharged on that same day. His son took him home.

»That, from all this, it is clear that the appellee was never prohibited from the freedom of expression but he was only prohibited from parking his vehicle in a spot where parking is prohibited near Auberge de Castille. It also transpires that the appellee repeatedly did not obey legitimate police orders in order to remove his vehicle from irregular parking in various spots at Castille Square where he was obstructing traffic and in order to get up from Castille steps but at no time was he stopped from protesting as decided by the first honourable court. Despite the fact that he was spoken to and cautioned on Monday 4<sup>th</sup> and Tuesday 5<sup>th</sup> August 2014, the appellee persisted in this illegal conduct until finally, on 8<sup>th</sup> August 2014, Inspector Borg had no other choice but to order his arrest;

»That it ensues therefore that the appellee was at no time denied his freedom of expression;

»That the basis of the decision of the honourable First Hall of the Civil Court in its Constitutional Jurisdiction was founded on the following considerations:

»"On the second day, that is, 5<sup>th</sup> August 2014, this court considers the plaintiff's conduct as a form of silent protest in that he parked the car, got out of it, and leaned against it. Since he was not parked properly, just like the previous day, the police ordered the plaintiff to move away. In truth, the concern of the police was not the bad parking. It was not the fact that he was given an order and the plaintiff did not obey that order because otherwise they would have issued charges in that regard against the plaintiff. The interest of the police was that the plaintiff would leave that spot for a hundred reasons – one of which however was not danger."

»That, with all due respect, nowhere does it transpire that "in truth, the concern of the police was not the bad parking. It was not the fact that he was given an order and the plaintiff did not obey that order because otherwise they would have issued charges in that regard against the plaintiff. The interest of the police was that the plaintiff would leave that spot for a hundred reasons – one of which however was not a danger to security" and there is nothing in the evidence provided which could have led to such a conclusion;

»That from the evidence provided, it is clear that the appellee was at no point obstructed from exercising his right of expression. The events as they occurred on 4<sup>th</sup> August 2014 are evidence of this as well. On that date, the plaintiff had no placards on the car and he did not go to Castille to protest but to speak with the Prime Minister. Even on that occasion, he was cautioned and spoken to, because he was improperly parked (and in effect a parking contravention ticket was issued to him) and because he did not obey legitimate police orders. It ensues therefore that the placards themselves bore no weight on the police conduct. As the evidence shows, "the posters do not interest me, I told him, I am interested in that you do not leave the vehicle in the middle of the road" and "We made it clear to him that if was going to protest, he had to protest according to law without breaking the law because if he does not obey police orders, that is a breach of the law; if he parks incorrectly, this would be a breach of the law. We made it very clear to him that if he was going to protest, he should protest according to law. Nobody told him not to protest."

»That the first honourable court resumed as follows:

»On the third day, that is, 8<sup>th</sup> August 2014, the plaintiff went back to Castille Square, and parked the vehicle. This time, the posters were stuck to the car in such a way that they could be seen by everyone. And he remained there. The posters were in protest against MEPA. Inspector Darryl Borg testifies that it was his decision to have the plaintiff arrested. The reason for his arrest was that the plaintiff did not obey the legitimate Police orders, that is, to move away because he was badly parked. As regards the measure in the police conduct, it must be stated that it is not the norm that a person is arrested for bad parking and the person refusing to move away. Therefore, the suspicion arises that the arrest was made because, in truth, the vehicle was not correctly parked; in truth, the driver did not remove the vehicle when ordered; but, in truth as well, because there were posters of protest against MEPA stuck to the vehicle in front of the office of the Prime Minister, of all places! In the opinion of this court the entirety was a pretext in order that the plaintiff is not permitted at the place because of his protest."

»That, with all due respect, the above-mentioned "suspicion" of the first honourable court does not amount to any proof to the degree required by law that could have led to its decision. In effect, there is no fact that leads

to the decision of the first honourable court in the sense that the appellee plaintiff was denied of his rights protected by Article 41 of the Constitution and Article 10 of the European Convention and therefore it is the humble opinion of the respondents that the decision of the first honourable court is wrong;

»That without prejudice to the premised, granted but not conceded that the appellee plaintiff was deprived from his freedom of expression, it is not true that there was no threat to national security or public security or the possibility of disorder or execution of crimes. The manner in which the facts unfolded over a number of days, including the declarations repeatedly and voluntarily submitted by the plaintiff with the Police, indicate otherwise;

»That in its decision, the first honourable court resumed as follows:

»"It then states that after being arrested, the plaintiff was taken to the Floriana Health Centre because it appears that the plaintiff was receiving care for depression, a fact which appears to have been stated by the plaintiff himself. The court points out that there transpired to be no relation between the controlled depressive state of the plaintiff (see Dr Mark Xuereb's deposition) and the plaintiff's conduct at Castille Square. For further clarity, the plaintiff's depressive state was never a risk to anyone, and by anyone, the court means – no one! Dr Scalpello from the Floriana Health Centre was not of the opinion that the plaintiff had to be taken immediately to Mater Dei Hospital or Mount Carmel Hospital due to his alleged condition. In fact, she gave him a referral ticket to go the next day alone and not accompanied by the police. It was a Police decision to take him to Mater Dei Hospital on the same day. What happened afterwards is a consequence of that fact and one cannot shift the blame on the doctors. The climax of everything occurred at Mount Carmel Hospital where he stayed overnight and the next day he was released because he did not require any treatment."

»That the respondents with all due respect reiterate that they are not competent to determine the appellee plaintiff's mental health status and that at no time did they attempt to do so. The testimony of psychiatrist Dr Mark Xuereb regarding his interpretation of the plaintiff's *forma mentis* whilst the facts were unfolding, facts which he is not aware personally but which are based on the version of facts as told by the plaintiff – his private client and by the media – is only his opinion, and not facts. The fact that Dr Giorgio release him because he did not need long-term treatment except to go one more time at outpatients is not relevant either. With all due respect, the first court should have never come to the above-mentioned conclusions and censure without reservation the police conduct on the basis of the medical examinations which ensued the events in question. What the first honourable court should have considered was whether the police, faced with such a situation and with the declarations that the plaintiff was making to them, were acting reasonably when they referred him to the doctors as they did. The reply is clearly in the affirmative. From then onwards, the decisions taken were not theirs but exclusively those of the doctors concerned;

»That in this context, the respondents humbly also maintain that the first honourable court should never have found that the police prejudiced the dignity of the plaintiff, now the appellee;

»That, as transpires from the records, that is from the testimony of PC 690, PS 1114, Inspector Darryl Borg, PC 780, PC 3096, Inspector James Grech



as well as PC 134, it was the appellee plaintiff himself that over three days declared with several members of the corps [that] Dr Mark Xuereb had certified that he had a mental condition called schizophrenia and that he was "out of sorts". He also stated that the said doctor had been following him since 2011 and that despite having prescribed him 'several medicines', he did not take them. This also transpires in the declaration and statement issued by the plaintiff on 5<sup>th</sup> and 8<sup>th</sup> August 2014 respectively, whereby the declaration and statement reflect what the appellee plaintiff stated as he himself testified;

»That, faced with this situation, where the appellee was repeatedly going against the legitimate police orders and in context of that which he stated to them himself on every one of the days during which this event unfolded, the Police felt the need to refer the appellee to a medical check-up in that it is their responsibility to ensure themselves that the person under arrest is given medical attention where it is required;

»That, as transpires from the evidence, Dr Christine Scalpello from the Floriana Health Centre, under oath confirmed that the decision to refer him to Mater Dei was solely hers after she called the consultant at Mater Dei and consulted with him. From there, the appellee was taken to the Floriana Headquarters once again. At the office of Inspector James Grech at the Floriana Headquarters, he was given the right to a lawyer which he refused as also confirmed by PS 426 and the caution with all his rights and a statement was taken, which he signed voluntarily.

..... The appellee testified that he read this statement prior to signing it and he was given a copy thereafter. The plaintiff also confirmed the declaration he released on 8<sup>th</sup> August 2014 and also confirmed that he himself had informed the inspector that he was under psychiatric care, that the psychiatrist had given him medication however he chose not to take them "because he feels that he does not need them". Inspector Grech testified that, "We made it clear to him that if was going to protest, he had to protest according to law without breaking the law because if he does not obey police orders, that is a breach of the law; if he parks incorrectly, this would be a breach of the law. We made it very clear to him that if he was going to protest, he should protest according to law. Nobody told him not to protest." From there, in view of that statement as well as Dr Scalpello's referral, the plaintiff was taken to Mater Dei immediately not capriciously, as decided by the first honourable court, but because he was under arrest;

»That Dr Kris Sant, the doctor on duty at Mater Dei, who took the decision for the plaintiff to be recovered at Mount Carmel Hospital under the Mental Health Act, when asked whether he was under any pressure from the police, under oath he confirmed that "I took my decision for observation, for the best interest of the patient and for the risk of others";

»That then Dr Donatella Gauci stated that when he arrived at Mount Carmel, "At the time, certain things were unclear and I could not confirm with other information because he did not wish us to inform his relatives, therefore I only heard one side of the story. At the time I could not issue a diagnosis there and then but I think that he needed to be observed from our side." She testified that as a state of fact he was admitted to Mount Carmel by means of an emergency order which had already been issued by Mater Dei and according to her, only Dr Giorgio could override this order because the doctor who had issued it was at her same level and therefore it had to be a senior to override that emergency order in that, in

her opinion, since “the papers were ready”, she had no choice except to admit him. When she phoned Dr Giorgio, he told her to keep him under observation and that he would see him the next morning. This direction was given over a telephone conversation in which the police were not participant;

»That on the basis of this evidence it is clear that it is not true that the appellee was denied the right to freedom of expression in violation of Article 41 of the Constitution of Malta and of Article 10 of the European Convention as decided by the first honourable court which should never had come to decide that “the manner in which the police reacted to the plaintiff’s conduct exceeded every acceptable limit within a democratic society where the functioning of a person’s fundamental rights not only should be respected but should find the safeguards that they merit in exercising them in such a way that they should never face any obstacles – regardless of the nature of these obstacles!”«

8. The plaintiff answered as follows:

»The right to freedom of expression can never be denied and may be subject to formalities only in particular circumstances that would be in the interest of national security, territorial integrity or public safety for the prevention of disorder or crime, for the protection of health or morals or the protection of the reputation or rights of others. In the case in question there transpires to be none of these circumstances because as a fact the respondent hereby appealed could not cause any one of these circumstances because as a fact he went alone, he was calm and did not even make his voice heard and did not behave irrationally when he was stopped to exercise that which was his fundamental right. With all due respect, the appellant never even provided a justification for that interference except that the appellee parked his vehicle in a spot where parking is prohibited. For this reason, according to the appellant, the police were justified to have ordered the arrest of the appellee. The appellant fails to mention that the respondent went specifically to protest and the police were aware of this because he went on three different occasions and each time, the respondent made it clear that the only thing that he wanted was to protest until he caught the attention of Prime Minister or someone in a high position. The appellant fails to see the extremes that the police went to in order to keep the respondent from staging a protest which was a very pacific one.

»That in fact, on the first day, after the police had given a ticket to the respondent for parking badly, the respondent sat on Castille steps and because he remained there, around five or six police officers turned up and they took the respondent to the Valletta Police Station and after ten minutes, they let him go. But instead of removing the vehicle which was supposed to be the thing that was troubling the police most, they removed the respondent and therefore they stopped the protest. The next day, the respondent stuck the protest posters on his vehicle in order to attract the attention of the Prime Minister or a minister and he went in front of Castille again. Here, the police told him to go and protest in front of MEPA and because he remained there, they arrested him and took him to the Valletta Police Station again where they kept him for two and a half hours, and after taking a statement, he left and went for the car which in fact had been left all that time in front of Castille too despite the fact that the police insisted that he could not leave the vehicle there, not even for a few minutes. Three days later, he went in front of Castille again to exercise his right of expression again and this time, he was arrested and prior to taking the respondent to the Valletta Police Station, they made the respondent move the car and park it corner with Merchant Street and they coerced him

to remove the posters. This is a clear confirmation that not even the car was bothering the police because the spot where they forced him to park it was also an obstacle, but what bothered them most were the posters because they forced him to remove them before they took him to the police station because in fact the vehicle remained there until it was the respondent who went to remove it. After not succeeding with the first doctor at the polyclinic, they went to seek another doctor and after putting pressure and lying by the police to the various doctors the respondent was sent to Mount Carmel Hospital for three days. One can see that in fact the police's concern was not the car but it was the person who was staging the protest because in fact, although they arrested the appellee, the car was not removed.

»That here one is dealing with a protest staged by a person who was totally alone, and in a silent manner, he exercised his right to go and protest in front of Castille simply by putting up posters in his car and such was there no reason for him to be stopped because all that he did was park and lean on the car and cooperated with the police that they all testified that he was calm and obeyed every police order. But the police refrained him from exercising his right to freedom of expression and arrested him and took him to the Valletta Police Station. Then they humiliated him by first taking him to the Floriana polyclinic, and afterwards, although he was referred to Mater Dei as an outpatient the next day, the police felt that they should be the ones to decide to take him to Mater Dei immediately and not to wait till the next day. The police put pressure and even lied to Dr Kris Sant, the Mater Dei doctor, because in his testimony, he stated that the police had told him that the appellee had tried to attack the President and that he was going to drive after the President which as a fact does not transpire anywhere and in no testimony of the police who testified before the first honourable court. In the notes of the same doctor, he wrote for the appellee be admitted to Mount Carmel, the doctor states that 'driving after President' and that he was 'currently under arrest section under emergency order.' When the doctor was asked whether there was any pressure from the police because they had told him about the President, he said that there could have been some tension and in fact he wrote a referral for him to go to Mount Carmel for three days. Several doctors who testified declared that there was pressure from the police so that the respondent would be held at Mount Carmel. Dr Scalpello who was the first doctor who saw the respondent at the Floriana health centre in fact had conducted the mini mental state test which transpire to be totally normal but she made appointments for the respondent at Mater Dei for the next day as an outpatient appointment and therefore there was no reason why the police had to take the respondent to Mater Dei on that same day but in fact that is what they did. Dr Giorgio who was the consultant testified that after seeing him the next morning, he could find no sign of serious mental health disorders; that is, he could not understand why he was there and therefore he released him that same day.

»That the testimony of police officer Marlon Hili PS 1114 states that PC 1073 had phoned him to say that there was a person who was protesting in front of Castille. Here the police's concern is clear because otherwise PC 1073 would not have said that there was a person protesting in front of Castille but that there was someone who was badly parked. According to the same PS 1114, the respondent was staging a silent protest and, in the cross-examination, he states that it could be he had told the respondent to remove the placards from the car. PC 3096 also confirms in the cross-examination that he had told the respondent to remove the placards. PS 426 testified that on 8<sup>th</sup> August 2014, he was informed that there was something happening in front of Castille, although he does not state what was happening, but bad parking surely is not something that should be given attention because it is something that is happening.

»The police try to give the impression that the respondent complained that he was not feeling well mentally and that he had a mental problem when in reality, the first time that it was mentioned, that he had once gone to the psychiatrist, was actually when he was issuing the statement to the police before Inspector James Grech after he had been specifically asked whether he had ever been to a psychiatrist and at this time he heard that he had gone to Dr Mark Xuereb a few years before. The fact that one goes to visit a doctor because they have a problem does not mean that they have mental problems. If this were true, we can say, as the same Dr Xuereb confirmed, that a quarter of the population has mental problems because at one point or another, these seek the help of these doctors.

»... ..«

9. Essentially the issue is whether the police acted as they did with the plaintiff
- (i) because they wanted to keep him from protesting in public, and thus hinder the right to free expression, or (ii) because he was breaking the law by parking the vehicle where it was not permitted and did not obey the orders that he was given and because it was feared that his mental condition was a risk to himself and to others. In this second hypothesis, the question arises whether the measures taken by the police were proportionate to the need to remove the risk.
10. This court does not see that it can disagree with the first court that the concerns of the police was to silence the plaintiff rather than keep him from parking in breach of the law. Just the fact that the car was left where it was – parked in breach of the law – until the plaintiff was taken to the police station and it was removed only later by the plaintiff himself after he returned from the police station is already enough of an indication that it was scarcely the car that concerned the police in as much as the plaintiff's actions. To then call a whole contingent of police officers in order to take a person to the police station, arrest him and interrogate him because he was badly parked is certainly not a proportionate reaction to the administrative offence of parking where it was not permitted.

11. The testimonies show that the police were afraid of the plaintiff's silent protest – maybe also because it took place in front of the office of the Prime Minister – and that they did not wish that this protest be given the publicity that the plaintiff was seeking. It was for this reason that the police strived to ensure that the plaintiff moves away quickly from Auberge de Castille. The police's reaction – when they attempted to make the plaintiff get up from the steps of Auberge de Castille to move away from there and called several other police officers in order to force the appellee plaintiff to obey their orders and remove his vehicle because it was badly parked – was totally disproportionate for the legitimate purpose to not allow parking in a prohibited location. In normal circumstances the police would have simply fined the plaintiff, maybe towed away the vehicle too, and the issue would have ended there.
  
12. Nevertheless, this court cannot also not state that the first court was perhaps slightly stricter than necessary when it reprimanded the police for taking the plaintiff to a mental health hospital as if they only did so to humiliate the plaintiff. It is not altogether irrelevant that the plaintiff told the police that he was under psychiatric care and that he was not taking the treatment that the psychiatrist prescribed. When the plaintiff told the police about this and continued stating "I am out of sorts" in effect he was saying "Be wary of me because I do not know if I can control my behaviour". Combined with the fact that the plaintiff did not want his family members to be informed, this information given by the plaintiff regarding his mental health did not leave many alternatives for the police and the doctors who saw him. When one considers that they did not have enough information about the true mental state of the plaintiff, except that he was under

psychiatric care and that he was not taking the treatment he was prescribed, and that he said, “I am out of sorts”, with all the implications that this suggests, the police and the doctors would perhaps have been irresponsible if they did not keep him under observation. If the plaintiff were allowed to leave and cause harm to himself or to others, the police would have been swiftly called up to justify these consequences of their shortcoming. That the plaintiff was kept in hospital under observation was a prudent precautionary measure and not a measure intended to humiliate him.

13. The information regarding the plaintiff’s mental state was obtained after the police had already taken the plaintiff to the police station to interrogate him, and therefore this does not justify ex post the disproportionate measure of taking him to the station, but should bear relevance for the purposes of the liquidation of damages in particular when considering that a main factor which led to the first court to apportion damages to the amount of two thousand Euro (€2,000) was “in particular the humiliation which the plaintiff had to experience, particularly when he ended up being taken to Mount Carmel Hospital”. This does not mean that no compensation should be given to the plaintiff – as the respondent is expecting in his third grievance – but that the compensation should be less than what was decided by the first court. In the opinion of this court a compensation of one thousand Euro (€1,000) should be an appropriate and sufficient remedy in the circumstances.
14. For these reasons, the court decides on the appeal by amending the appealed judgement:
  - i. revoking it where it denies the objection of absence of active legitimisation



- ii. of the Attorney General, and, instead, accepts that objection and releases the Attorney General from the observance of the judgement;
- iii. confirming it where it found a violation of the plaintiff's rights protected under Art. 41 of the Constitution and Art. 10 of the Convention;
- iv. revoking it where it liquidated the compensation that should be paid to the plaintiff to the amount of two thousand Euro (€2,000) and, instead, to liquidate the compensation to the amount of one thousand Euro (€1,000) and sentences the respondent Commissioner of Police to pay the plaintiff the compensation as liquidated.

15. The Attorney General's costs, both for the first instance and for the appeal, are to be borne by the plaintiff; the other costs of the first instance and of the appeal are to be divided as follows: one-fifth (1/5) to be borne by the plaintiff and four-fifths (4/5) to be borne by the respondent Commissioner of Police.

Silvio Camilleri  
President

Giannino Caruana Demajo  
Judge

Noel Cuschieri  
Judge

Deputy Registrar  
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