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Constitutional Redress for Institutional Failures

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The wife and daughter of marine biologist Albert Brian Rosso, who disappeared nearly 20 years ago, have been awarded €350,000 in compensation after the court found that the state had failed to protect his fundamental right to life.

The case in the names of *Mary Rose Rosso and Desiree Marie Grech Rosso vs. the State Advocate, Attorney General, and Commissioner of Police*, was heard before the First Hall of the Civil Court in its Constitutional Jurisdiction. The proceedings were initiated by Rosso's wife and daughter as his immediate relatives, following his disappearance on 10 October 2005. These constitutional proceedings were triggered due to procedural pitfalls that severely impacted the Rosso family following Mr. Rosso's disappearance in 2005.

This disappearance led to the arrest of two individuals who were subsequently found guilty of the disappearance of Mr. Rosso. Although they declared themselves not guilty, the two individuals were found guilty due to the absence of a lawyer. Eventually, a Bill of Indictment was also issued. The Criminal Court of Appeal confirmed that the statements made by the accused were obtained under duress. On 17th of June, 2023. All this occurred against the background of the fact that it took the Rosso family nearly twenty years to find out what happened to the body.

The Court considered that the First Hall of the Civil Court in its constitutional jurisdiction was the appropriate forum, since it is precisely such forum that could effectively compensate the defendant in the case and able to bear responsibility for institutional shortcomings—including non-pecuniary damages.

In determining what Mr. Rosso's relatives had suffered, the Court also poignantly noted that in the area where Mr. Rosso was found, illegal dumping was taking place and continued to occur without being stopped. This was also noted in the context of the right to life as enshrined in Article 2 of the European Convention on Human Rights. The Court pointed out that this same right also extends to the relatives of the victim and their natural urgency to be

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informed regarding the disappearance of their loved one. This could only happen through the apparatus provided by the State, which should have prioritized this—even if the expenditure was not minimal.

On this same right, it was also considered that from it stems the State's obligation to take all necessary steps to safeguard the lives of its people, as established in *L.C.B. vs. UK*. This consideration was made in light of testimony from the daughter, who stated that as soon as they informed the police of the disappearance, the police's reaction suggested that such news was almost expected. In addition, some details regarding their relative's murder were learned from the news, when elementary decency and seriousness dictate that such information be given to the victim's relatives in a timely and appropriate manner.

Apart from the delay in reaching a decision, the Court also noted that throughout this time, before the accused were cleared of all charges partly due to the weakness of the evidence, they were also granted bail while the relatives were left to navigate in uncertain waters. This led to the conclusion that both the victim and his family were all victims of a failing system where the State was deficient both in preserving evidence and in the manner in which investigations were conducted. Therefore, while the Court is not endowed with the power to fully restore the situation as it was before 2005, it can monetarily compensate and make good for the fact that the applicants' health deteriorated and that Mr. Rosso's wife was not receiving a pension because her husband's death had not yet been officially registered.

These considerations were made in the context of the principle considerations that the applicants are, after all, victims of a criminal act which, although not committed by the State, was allowed to go unpunished by the State and its systems.

The compensation set by the Court was €350,000—attributable to: The State Advocate, for failing institutional apparatus, The Commissioner of Police, for the way investigations were conducted and the lack of adequate protection for Mr. Rosso, and the Attorney General, as the State's lawyer in the criminal process, in relation to the deficiencies in that same process.

Is-sentenza '*Mary Rose Rosso u Desiree Marie Grech Rosso vs Avukat tal-Istat, l-Avukat Generali u l-Kummissarju tal-Pulizija*' deciza mill-Pim'Awla tal-Qorti Civili (Sede Kostituzzjonali) kienet imqanqla mir-rikorrenti bhala qrafa immedjati ta' Albert Brian Rosso li kien gie rrapurtat nieqes lura fl-10 t'Ottubru, 2005. Dawn il-proceduri kostituzzjonali skattaw in vista ta' mankanzi procedurali li kienu detrimental ferm ghall-familja Rosso, li seggew l-ghejbien tas-Sur Rosso lura fl-2005.

Dan l-ghejbien wassal ghall-arrest ta' zewg persuni li kienu sussegwentement imressqa u akkuzati bl-omicidju tal-istess Sur Rosso. Għad illi ddikjaraw li m'humiex hatja, dawn iz-zewg persuni kienu rrilaxxaw stqarrijiet, liema stqarrijiet gew maghmula fl-assenza t'avukat. Eventwalment kienet anka nharget Att t'Akkuza kontra t-tnejn imsemmija. Madanakollu, fl-2022, il-Qorti tal-Appell Kriminali kkonfermat illi l-istqarrijiet maghmula mill-akkuzati kienu inamissibbli fic-cirkustanzi li fihom gew maghmula. Barra min hekk, iz-zewg akkuzati gew ukoll iliberati minn kull akkuza nhar is-17 ta' Gunju tal-2023. Dan kollu fl-isfond ukoll tal-fatt illi l-istess qrafa kienu kostretti jistennew kwazi ghoxrin sena sabiex isiru jafu x'gara mill-katavru.

Il-Qorti kkunsidrat illi l-Prim'Awla fil-vesti kostituzzjonali tagħha kienet fil-fatt il-forum addattat stante illi huwa proprju tali forum illi seta effettivament jikkumpensa lill-familjari, fejn għandek l-istat bhala konvenut fil-kawza illi jrid u jista' effettivament iħallas għad-difetti fl-apparat istituzzjonali, anka in linea ta' danni non-pekunjarji.

Fid-determinazzjoni ta' dak li qrabat is-Sur Rosso issubew, il-Qorti pungentement tinnota wkoll illi fiz-zona li fiha kien jinsab is-Sur Rosso kien u baqa jsir dumping, liema dumping naqas milli jitwaqqaf. Dan jigi innutat ukoll fil-kuntest tad-dritt tal-hajja kif sancit fl-Artiklu 2 tal-Karta Ewropeja tal-Jeddijiet tal-Bniedem, fejn il-Qorti tissenjala illi dan l-istess jedd jintercedi wkoll għal qrabat il-vittma u l-urgenza naturali tagħhom li jigu mgharrfa rigward l-ghejbien ta' qaribhom. Dan ma setax isir jekk mhux grazzi għal apparat provvdut mill-iStat illi kellu jiprioritizza dan anke jekk id-dispendju ma jkunx wiehed zgħir. Fuq l-istess jedd jigi wkoll kkunsidrat illi minnu jiskatura wkoll l-obbligu tal-iStat illi jiehu l-passi necessarji kollha sabiex jissalvagwardja l-hajja ta' niesu, hekk kif gie stabbilit f' '*L.C.B. vs UK*'. Dan il-konsiderazzjoni giet maghmula in vista tal-fatt illi skont xieħda tal-bint, appena infurmaw lill-pulizija bl-ghejbien, ir-reazzjoni tal-Pulizija kienet indikattiva tal-għarfien tagħhom li aħbar bħal din bħal kienet alkwantu mistennija. Dan apparti wkoll il-fatt li certu dettalji relatati mal-qtil ta' qaribom kienu jsiru jafu bihom biss mill-aħbarijiet, haga li certament hija inaccettabbli.

Apparti t-tardivita sabiex tinghata decizjoni, l-Qorti ssemmi wkoll kif tul dan kollu, qabel ma l-akkuzati gew liberati minn kull htija sforz ukoll il-poverta tal-provi, dawn gew ukoll mogħtija l-helsien mill-arrest filwaqt li l-qrafa thallew jinnavigaw fil-limbu. Dana wassal għad-determinazzjoni illi kemm il-vittma u kif ukoll niesu kienu l-koll vittmi ta' sistema mankanti fejn l-iStat kien deficenti kemm fl-ippreservar debitu tal-provi u fil-manjera tal-investigazzjonijiet. Għaldaqstant, filwaqt li l-Qorti m'hix mogħnija bis-setgħa li tirrestawra għal kollox is-sitwazzjoni għall-perjodu qabel l-2005, tista tinghamel gustizzja b'mod pekunjarju li jkopri l-fatt li saħħet ir-rikorrenti ddegenerat u anka l-fatt illi mart is-Sur Rosso ma kinetx qed tircievi pensjoni minabba li l-mewt ta' zewgħa kien għadu mhux regisrat. Dawn il-kunsiderazzjonijiet gew maghmula fl-isfond tal-konsiderazzjoni principali illi r-rikorrenti huma vittmi t'att kriminali illi għad li ma kienx kommess mill-iStat, l-istess Stat u s-sistemi adoperati minnu lliberat minflok ikkastigat lil dawk li kkomettw l-att kriminali.

Il-kumpens iffissat mill-Qorti kien dak ta' 350,000 ewro, attribwibbli lill-Avukat tal-Istat kwantu għall-apparat istituzzjonali mankanti, lill-Kummissarju kwantu għall-mod kif saru l-investigazzjonijiet u n-nuqqas ta' protezzjoni adegwata lis-Sur Rosso u lill-Avukat Generali bhala l-Avukat tal-Istat fil-process penali.

