



MALTA TAX LAW UPDATE

Update 16

EDITOR'S NOTE

In May, our Constitutional Court delivered one of its most important tax judgments to date. The judgment in *Zahra v. PM* does not come as a surprise but its implications are very far-reaching. In the meantime, judgments delivered by the Administrative Review Tribunal continue to provide much-needed clarity with respect to a number of basic principles. The system is moving in the right direction and the recent years have witnessed a marked improvement in the quality of tax judgments.

Meanwhile, our legislator kept us busy with a number of new tax laws. Act XIII of 2015, the Budget Act, makes major changes to the whole tax system, our property transfers tax especially. A number of important tax legal notices have been published. The Tax Account Rules have been rendered clearer and changes to the rules relating to the tax credit which is granted to women returning to work create fairness.

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1. THE BUDGET ACT

On 30 April 2015, the Maltese Parliament passed Act XIII of 2015, an Act to implement Budget Measures for the financial year 2015 and other administrative measures ('The Budget Act').

Changes brought about by the Budget Act include the following:

1. New Definitions for the terms 'Company' and 'Dividend';
2. New Rules regulating the tax treatment of Civil Unions;
3. Clarification relating to the Remittance Basis of Taxation;
4. Major Changes to the Property Transfers Tax System;
5. Changes to the Participation Exemption;
6. New Tax Exemptions for Disability Trusts and Disability Foundations
7. FRFTC to apply to Rule 9 Companies;
8. Changes relating to Tax Accounting and Advance Company Income Tax; and
9. Refunds on profits distributed by former International Trading Companies.

1. New Definitions for the terms 'Company' and 'Dividend'

A number of important rules are linked to the definitions of the terms 'Company' and 'Dividend'. Act XIII introduces a new definition of the term 'Company' which is significantly wider than the previous definition. The new definition of the term reads:

- (a)(i) a limited liability company constituted under the Companies Act or under the Commercial Partnerships Ordinance; or
- (ii) any other company constituted as such under any other law in force in Malta;
- (iii) (1) any partnership en nom collectif and any partnership en commandite constituted under the Companies Act or under the Commercial Partnerships Ordinance;
- (2) any partnership regulated by the applicable provisions of the Civil Code and registered in such manner as may from time to time be provided in terms of the Second Schedule to the Civil Code;
- (3) any European Economic Interest Grouping (EEIG) formed pursuant to the provisions of the Companies Act (European Economic Interest Grouping) Regulations; and which partnership of EEIG as the case may be, has elected to be treated as a company in terms of sub-article (6) of article 27 of the Income Tax Management Act and for as long as such election remains in force:

Provided that in the case of a cell company as defined in the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations, (in this proviso referred to as 'the Regulations') as may be amended from time to time, or in any other law or regulations replacing the Regulations, for all intents and purposes of the Income Tax Acts, every cell of a cell company and that part of a cell company in which non-cellular assets are held, shall each be deemed to be a separate company and any words and expressions in the Income Tax Acts which are relevant to a company shall be constituted accordingly. The interpretation of such words and expressions insofar as applicable to a cell company shall be made on the basis of the relevant provisions of the Regulations:

Provided further that a partnership en commandite with its capital divided into shares constituted prior to the 1st January, 2015 shall be deemed to have elected to be treated as a company in terms of sub-article (6) of article 27 of the Income Tax Management Act and for as long as such election remains in force;

- (b) (i) any body of persons constituted, incorporated or registered outside Malta, and of a nature similar to a company referred to in sub-paragraphs (i) or (ii) of paragraph (a) above;*
- (ii) any body of persons constituted, incorporated or registered outside Malta and of a nature similar to any partnership referred to in sub-paragraph (iii) of paragraph (a) above, where such body of persons has elected to be treated as a company in terms of sub-article (6) of article 27 of the Income Tax Management Act and for as long as such election remains in force;*
- (c) any co-operative society duly registered as such under the appropriate law for the time being in force in Malta;*

The definition of the term 'dividend' has been changed too. In view of the new definition of the term 'company', amounts credited to partners will be treated as dividends too.

The new definition of the terms 'company' and 'dividend' applies as from year of assessment 2016.

2. New Rules regulating the tax treatment of Civil Unions

Definitions of the terms 'married couple', 'married individual', 'married' and 'spouse' have been changed to incorporate civil unions within their remit. For the purposes of tax law, civil Unions will be subject to the same rules of married persons.

3. Clarification relating to the Remittance Basis of Taxation

The remittance basis of taxation which applies to persons who are either not ordinarily resident or not domiciled in Malta provides that, in certain cases, foreign source profits are not taxed in Malta. Act XIII clarifies that the remittance basis of taxation may not be applied by an individual who is married to an individual who is both ordinarily resident and domiciled in Malta.

4. Major Changes to the Property Transfers Tax System

Act XIII changes the tax system that applies to transfers of immovable property situated in Malta. Key changes include:

- (i) Clarifications relating to the 'Own Residence' Exemption;
- (ii) A special Rule for Disability Trusts and Disability Foundations;
- (iii) Right to Opt-Out of Property Transfers Tax Restricted;
- (iv) Special Rules for Certain Listed Companies;
- (v) The Introduction of an 8% Rate of Property Transfers Tax;
- (vi) The Introduction of a 5% Rate of Property Transfers Tax;
- (vii) The Introduction of a 10% Rate of Property Transfers Tax;

4.1 Clarifications relating to the 'Own Residence' Exemption

In certain cases, gains derived from the transfer of a property which, prior to the sale, was occupied as the taxpayer's own residence are exempt from tax. Act XIII introduces rules providing that even grounds and gardens incorporated in the residence are subject to the exemption but, with respect to grounds and gardens, is limited to an area not exceeding two times the area of the house and transferred through the same deed with the principal residence. A garage is subject to the exemption provided that it is not more than 70 square metres.

An 'own residence' must be registered as such via a special election to be made to the Commissioner in terms of rules that will be prescribed. With respect to undivided properties, the 'own residence' exemption may be restricted proportionately. Act XIII regulates changes in the use of parts of dwelling houses providing for proportional reductions to the property subject to the exemption.

4.2 A Special Rule for Disability Trusts

Transfers of property by the trustee of a disability trust or disability foundation to any one or more of the remaining beneficiaries of such trust or foundation or the heirs of the disabled beneficiary upon the death of the disabled beneficiary of such trust or foundation and where such heirs are only close relatives have been excluded from the scope of property transfers tax.

4.3 Right to Opt-Out of Property Transfers Tax Restricted

In certain cases, taxpayers have a right to opt out of property transfers tax (broadly a tax on the higher of consideration/fair market value) paying capital gains tax (a tax on profit) instead of property transfers tax. The right to opt-out of property transfers tax has been restricted as follows:

- (a) With respect to property a transfer of property made not later than 12 years after date of acquisition, the right to opt-out is limited to transfers before 1 January 2016. Additional conditions have been introduced;
- (b) With respect to a transfer of a property within a Special Designated Area the transfer must be made before 1 January 2015. Additional conditions apply.

Persons not resident in Malta and who are resident for tax purposes in another country who opt out of the property transfers tax and pay provisional tax on the transfer of property may not receive refunds for provisional tax paid on the transfer.

4.4 Special Rules for Certain Listed Companies

A new ground to opt-out of property transfers tax has been introduced. As from 1 January 2015, certain listed companies who meet a number of conditions can exercise this right too. The new ground to opt-out of property transfers tax in favour of capital gains tax has been extended to transfers meeting all of the following conditions:

- (a) A transfer of property forming part of a project;

- (b) A transfer made by a company which has issued debt securities to the public and such debt securities are listed on a stock exchange recognized under the Financial Markets act;
- (c) The transferor elects, by means of a declaration made to the Notary at the time of publication of the deed of the transfer and recorded in the said deed, to declare the transfer outside the scope of property transfers tax;
- (d) The transfer is the first transfer made on or after 1 April 2015 of property forming part of that project; and
- (e) The reason for the offer and use of the proceeds, as disclosed in the prospectus published when the debt securities are offered to the public, is solely to develop and construct the project.

A new Article, Article 27G ITA will regulate transfers of property by listed companies when listed companies elect to opt-out of property transfers tax. Article 27 G provides that income derived from such transfers will constitute separate chargeable income to be taxed separately at 35%. Provisional tax is to be charged at 8% but a special provisional tax rate of 10% will apply to transfers of property acquired before 1 January 2004.

Excess provisional tax paid may be refunded but the right to a refund is restricted by an ad hoc formula and the unutilized provisional tax is carried forward but the maximum amount of set-off may not exceed an amount determined by another formula. If a loss is incurred, it may not set-off capital gains or income from other sources but shall be carried forward for set-off against income from the same source.

Profits taxed under Article 27G are allocated to the Final Tax Account. Dividends distributed out of such profits may not give rise to a refund or set-off of tax.

4.5 The Introduction of an 8% Rate of Property Transfers Tax

A new 8% rate of property transfers tax has been introduced. The 8% rate will apply to transfers of property made on or after 1 January 2015 which do not qualify in terms of the transitory provisions applicable to projects and Special Designated Areas. Different rates may however apply when certain conditions are met.

4.6 The Introduction of a 5% Rate of Property Transfers Tax

A new 5% rate of property transfers tax has been introduced. The 5% rate will apply to transfers that meet the following criteria:

- (a) Transfers of property made on or after 1 January 2015;
- (b) Of property not forming part of a project; and
- (c) Transfers made not later than 5 years after the date of acquisition.

The new rate of 5% will also apply to:

- (a) Transfers of property situated in Valletta;
- (b) Acquired by the transferor before 31 December 2018;

(c) Before 2018 such property has been restored/and or rehabilitated and such restoration has been duly certified by MEPA; and

(d) The transfer of property is made not later than 5 years from 31 December 2018.

4.7 The Introduction of a 10% Rate of Property Transfers Tax

A new 10% rate of property transfers tax has been introduced. The 10% rate will apply to transfers that meet the following criteria:

(a) Transfers of property made on or after 1 January 2015;

(b) Of property that was acquired by the transferor before 1 January 2004; and

(c) In respect of which a notice of a promise of sale agreement has not been filed before 17 November 2014.

Anti-abuse provisions with respect to transfers of property between companies forming part of a group have been introduced.

4.8 The Introduction of a 2% Rate of Property Transfers Tax

A new 2% rate of property transfers tax has been introduced. The 2% rate will apply to transfers that meet the following criteria:

(a) Transfers of property made on or after 1 January 2015;

(b) Of property owned by an individual or co-owned by individuals;

(c) Of property acquired for the purpose of establishing the transferor/s' sole ordinary residence;

(d) The transfer is made not later than 3 years after the date of acquisition thereof; and

(e) At the time of transferor, the transferor/s do not own any other residential property.

A 7% rate of tax shall apply from 1 January 2015 onwards to transfers of certain restored properties. Conditions apply.

5. Changes to the Participation Exemption

Changes to the Parent Subsidiary Directives have resulted in minor restrictions to the Participation Exemption. As from 1 January 2016, the Participation Exemption shall only apply to the extent that such profits are not deductible by the relevant subsidiary in the EU Member State.

6. New Tax Exemptions for Disability Trusts and Disability Foundations

Income derived by either the trustee of a disability trust or a disability foundation upon the disposal of immovable property are exempt from tax if the proceeds are to be exclusively utilised in favour of the maintenance of the disabled beneficiary. Certain conditions apply.

7. FRFTC to Apply to Rule 9 Companies;

Companies who have elected to allocate all of their income to the Immovable Property Account in terms of Rule 9 of the Tax Accounts (Income Tax) Rules may now be able to claim the Flat-Rate Foreign Tax Credit in respect of any foreign sourced income which, were not for the said election, would have fallen to be allocated to the Foreign Income Account.

8. Changes relating to Tax Accounting and Advance Company Income Tax

For the purposes of the surrender of trading losses between companies in the same group, elections by such companies to allocate their Maltese Taxed Account and Foreign Income Account profits to their Immovable Property Account in terms of Rule 9 of the Tax Accounts (Income Tax) Rules should be ignored.

Dividends received by a person from a company registered outside Malta which were originally distributed to the non-Maltese registered company from the Final Tax Account of a company registered in Malta will be deemed to have been distributed to such person directly from the Final Tax Account of the Maltese registered company.

It is no longer mandatory for companies to distribute from the Final Tax Account profits before the Maltese Taxed Account.

The definition of “Advance Company Income Tax” has been amended such that it is now to be determined gross of any tax credits other than the Flat-Rate Foreign Tax Credit.

9. Refunds on profits distributed by former International Trading Companies

The deadline for shareholders of former International Trading Companies from availing themselves of the refundable tax credit system in respect of profits earned by the distributing company before 31 December 2010 has been lifted. Such shareholders may now claim a refund of 6/7ths of Advance Company Income Tax in terms of Article 48(4A) of the Income Tax Management Act.

1.2 LEGAL NOTICES

L.N. 117 of 2015 INCOME TAX ACT (CAP. 123) Personal Retirement Scheme (Amendment) Rules, 2015

For 2015, The maximum amount of tax credit provided for by article 57(1)(b) ITA has been set at €300.

121 of 2015 - Refund of Value Added Tax in terms of Diplomatic and Consular Arrangements (Amendment) Regulations, 2015

This LN provides for tax refunds to diplomatic missions, consular posts, international organizations and resident officials. Nonetheless the LN provides that the supply of motor vehicles to diplomatic missions, consular posts and international organizations and to resident officials shall be considered as exempt with credit.

The intra-Community acquisition of motor vehicles by diplomatic missions, consular posts and international organizations and by resident officials are considered as exempt acquisitions.

Where there is a bilateral agreement of reciprocity between Malta and any other country, which regulates the refund or exemption of the tax, then the provisions of that agreement shall prevail over the Legal Notice.

L.N. 136 of 2015 INCOME TAX ACT (CAP. 123) Individual Savings Account (Amendment) Rules, 2015

This LN increases the amount of the tax benefit. With respect to 2015 the amount has been increased to EUR2,000. The LN also provides for some clarifications.

L.N. 147 of 2015 DUTY ON DOCUMENTS AND TRANSFERS ACT (CAP. 364) Duty on Documents and Transfers (Amendment) Rules, 2015

This LN provides for information that must be given by a transferee on the transfer of residential property. The Schedule to the LN incorporates a form which must be completed by a Notary publishing a deed of transfer and must be filed by the Notary in duplicate within 15 working days from the date of the transfer.

L.N. 180 of 2015 DUTY ON DOCUMENTS AND TRANSFERS ACT (CAP. 364) Remission of Interest and Penalties Rules, 2015

This LN empowers the Commissioner with the discretion to remit wholly or in part any interest and penalty chargeable on any person under the provisions of the Duty on Documents and Transfers Act. The Commissioner may only remit such interest and penalty if he is satisfied that the duty due was not paid within the prescribed period due to a reasonable cause, so however that reliance placed on any other person to perform any task shall not constitute a reasonable excuse. The Commissioner may impose any condition that he may consider appropriate for any remission.

L.N. 181 of 2015 - Income Tax Exemption (Amendment) Order, 2015

This L.N. provides that certain social benefits are tax exempt.

L.N. 182 of 2015 - Exemption of Duty in terms of article 23 (Amendment No. 2) Order, 2015

This L.N. incorporates transitory provisions relating to the application of the duty exemption applicable in 2015.

L.N. 183 of 2015 INCOME TAX ACT (CAP. 123) Tax Accounts (Income Tax) (Amendment) Rules, 2015

This LN incorporates a recent guidance note published by the Inland Revenue Department as well as a number of important rules namely:

- Rental income subject to the special tax schemes incorporated in articles 31A-31D ITA is to be allocated to the FTA.
- As from year of assessment 2015 certain allocations which previously used to be made to the FTA must be made to the MTA. Chargeable income relieved by tax credits that are exempt on distribution will no longer be allocated to the FTA but will be allocated to the MTA. Similarly, income that has been relieved by certain tax credits administered by the Malta Enterprise should be allocated to the MTA instead of the FTA. The amount that must be allocated to the MTA instead of the FTA is the net amount after deducting the tax chargeable and adding the amount of tax credits utilised. The following proviso will be added to Rule 3 regulating allocations to the FTA:

‘Provided that with effect from year of assessment 2015 the provisions of paragraphs (c) and (l) shall no longer be applicable and the amount of chargeable income the tax on which has been relieved from payment by any tax credits shall after deducting the tax chargeable thereon and adding the amount of tax credits utilised to relieve the payment of such tax be allocated to the Maltese taxed account.’

- Sub-Rule 8 of Rule 5 has been substituted with an anti-avoidance rule which is wider in scope.
- A number of anti-abuse provisions that seek to curtail artificial arrangements intended to shift profits between tax accounts have been introduced.

L.N. 185 of 2015 INCOME TAX ACT (CAP. 123) Tax Credit (Women Returning to Employment) (Amendment) Rules, 2014 (Amendment) Rules 2015

The LN provides that a restriction introduced last year will not apply as from the year of assessment 2015 but will apply only as from the year of assessment 2016. The element of retrospectivity has been removed.

1.3 Bills

None that we are aware of.

2 JUDICIAL DECISIONS

Rikors Numru. 69/2011 XXX Vs Il-Kummissarju tat-Taxxi Interni

This case involved an assessment to income tax. The Inland Revenue had rejected a number of business expenses claimed by the taxpayer but when the taxpayer was asked to bring evidence of his expenditure, the taxpayer said that he could not bring such proof because his house had been destroyed in a fire and important documents had been irretrievably lost. The Tribunal allowed taxpayer to bring evidence in lieu of the documents requested but the Tribunal did not find the evidence produced credible. The case was decided in favour of the Inland Revenue.

Rikors Numru. 11/2015 L-Avukat Raymond Borg [Karta ta` L-identita` Nru 194856(M)] u Carmel Borg [Karta ta` L-identita` Nru 617654(M)] kontra Id-Direttur Generali (Taxxi Interni)

Taxpayer was being prosecuted for a number of infringements of the FSS regulations. Taxpayer filed a constitutional case alleging violations of a number of human rights including a request for an interim measure. Taxpayer asked the First Hall Civil Court to order the criminal court to suspend its procedures and await the outcome of the constitutional case. The First Hall Civil Court turned down the request for interim measures because it held that the case did not warrant such an extreme measure.

Numru. 632/2010 Il-Pulizija (Spettur Maurice Curmi) vs MARIO CACHIA (ID: 855254M)

Cachia was, qua director of a company, prosecuted for misappropriating VAT. Cachia admitted that he owed VAT to the Department saying that he had not yet paid because he was bankrupt. Citing authorities, the Court held that non-payment of VAT amounted to misappropriation because it consisted in a misuse of third party property and an abuse of trust. The fact that Cachia was bankrupt meant that he did not genuinely intend to pay the VAT Department the monies due to them. Cachia was found guilty and sentenced to a suspended sentence.

Rikors Numru. 63/2013 Xxx Limited Vs Direttur Generali (Taxxa fuq il-Valur Mizjud)

This judgment is a very important judgment on the principle of VAT neutrality. A VAT registered company demolished the house it owned building 5 villas on the premises previously occupied by the house. Initially, the company intended to rent out some of the properties and sell the rest of the properties. Consequently, the company claimed VAT credits only in respect of the properties covered by a Vatable activity but, later on, the directors of the company changed their mind. They decided that they would rent out all properties and that they would not sell any of the properties. The company filed retrospective adjustment forms (within the deadline) claiming VAT credits for all properties. The Vat Department denied the request and taxpayer took his case to the Tribunal. Previously, in a case involving similar issues, the Court of Appeal had decided in favour of the VAT Department but the Tribunal felt that it had to depart from the line taken previously by the Court of Appeal. The Tribunal based its conclusions on some recent CJEU judgments. The VAT Department appealed this judgment.

Case was decided against taxpayer and the judgment has been appealed from but this important case consolidates our case-law on the right to legitimate expectations. At this stage, discussions of the facts in issue would be judged irrelevant but what the Tribunal is saying is that whilst the Revenue authorities are entitled to change their interpretations and 'rulings' they can do so only prospectively and not retrospectively.

2. JUDICIAL DECISIONS

Rikors Numru. 236/2012 XXX Vs Kummissarju tat-Taxxa fuq il-Valur Mizjud

Case was decided against taxpayer and the judgment has been appealed from but this important case consolidates our case-law on the right to legitimate expectations. At this stage, discussions of the facts in issue would be judged irrelevant but what the Tribunal is saying is that whilst the Revenue authorities are entitled to change their interpretations and 'rulings' they can do so only prospectively and not retrospectively.

Rikors Numru. 19/2014 Ph. Borg Limited Vs Direttur Generali (Dwana)

The Tribunal over-turned a decision of the Comptroller of Customs because the Comptroller's decision was found to be disproportionate. The Comptroller of Custom had refused taxpayer's application to register him for excise duty because of taxpayer's outstanding debt with the Comptroller. The Tribunal decided for taxpayer concluding that the debt due did not justify the denial of an excise registration number.

Appell Civili Numru. 15/2011 PHONE BOX (MALTA) LIMITED Vs KUMMISSARJU TAT-TAXXA FUQ IL-VALUR MIZJUD

This eco-appeal mainly involved a disagreement over an interpretation issue. The parties disagreed in connection with the tax classification of line telephony bearing HS Code 8517 having duo and trio sets. Taxpayer was declaring the sets as one set when, according to the Department, Eco Contribution is due on each unit, separately. Basing itself on the Explanatory notes to the General Interpretation Rules of the Harmonized System, the Court found for the Department.

Appell Civili Numru. 519/2005/2 Victor Zammit v. Kummissarju tat-Taxxa fuq il-Valur Mizjud u l-Avukat Generali

This case (a retrial) involved a successful attempt to rescind an executive title issued by the tax authorities against a taxpayer qua director of a company that was heavily indebted to the department. The Court confirmed that an executive title may be enforced against a director of a company only when such director is served personally with a demand note.

Appell Civili Numru. 33/2013/1 Angelo Zahra v. L-Onorevoli Prim Ministru, l-Avukat Generali, Direttur Generali Taxxi Nterni, il-Kummissarju tal-Pulizija

This judgment of the Constitutional Court is one of the few known Maltese cases when the defence of double jeopardy was raised successfully.

In brief, Zahra, the director of a limited liability company, did not file valid FSS forms within the deadline. His failure to abide by FSS rules resulted in a series of punitive measures. The Commissioner of Inland Revenue raised an assessment against the taxpayer and the assessment incorporated an element of additional tax. Thus, Zahra was punished with an 'administrative penalty'. Subsequently, the Inland Revenue Department instituted criminal proceedings against Zahra. Criminal proceedings referred to the same wrongdoing that had been previously sanctioned with the administrative penalties.

2. JUDICIAL DECISIONS

The Magistrates Court found Zahra guilty of the offence fining him EUR1,000. Zahra did not appeal but the prosecution appealed insisting on the application of a daily fine that could translate to an effective jail term. The Court of Criminal Appeal found for the prosecution imposing the dreaded daily penalty.

Whilst proceedings before the Court of Criminal Appeal were still pending, Zahra filed a Constitutional case questioning the legality of the Maltese tax penalty system and draconian measures on vicarious liability. Zahra argued that the institution of criminal proceedings amounted to double jeopardy which was prohibited by the European Convention on Human Rights. Zahra's constitutional application was dismissed and Zahra appealed to the Constitutional Court. Zahra made extensive references to recent judgments of the European Court of Human Rights on non bis in idem (Lucky Dev v. Sweden especially). Zahra argued that, given that in John Geranzi v. PM, our Constitutional Court had established that so called administrative penalties are of a criminal nature it should follow that a person who had been previously punished should not be charged again for the same offence. Predictably, the Constitutional Court found for Zahra awarding nominal financial damages. More importantly, the Constitutional Court overturned the judgment of the Criminal Court and the prospect of an effective prison term was eliminated. The line of thought pursued by the Constitutional Court is in line with a number of important judgments delivered by the European Court of Human Rights very recently. Extracts from this judgment follow:

“24. L-Artikolu 4 tas-Seba’ Protocoll tal-Konvenzjoni fil-parti rilevanti jaqra hekk:

“1. Hadd ma jista’ jkun ipprocessat jew jerga’ jigi kkastigat ghal darb’ohra fi procedimenti kriminali taht il-gurisdizzjoni tal-istess Stat ghal xi reat li dwaru jkun diga` gie finalment liberat jew misjub hati skond il-ligi u l-procedura penali ta’ dak l-Istat.”

25. Fir-rigward din il-Qorti tosserva li hemm certu kazijiet fejn il-multa amministrattiva tant tkun severa li tikkwalifika bhala piena penali ghax tenut kont tas-severita` taghha titqies derivanti minn akkuza kriminali ghall-finijiet tal-Artikolu 6 tal-Konvenzjoni tal-Artikolu 39 tal-Kostituzzjoni...

29. Fid-dawl tal-premess, fil-kaz odjern jirrizulta li, fiz-zmien meta ttiehdu passi kriminali kontra r-rikorrent konkluzi bis-sejbien ta’ htija tar-reati li bihom kien gie akkuzat u konsegwentement ikkundannat piena, kienu gia` gew imposti fuqu multi “amministrattivi” ta’ entita` tant severa li ghandhom jitqiesu sanzjoni ta’ natura penali. Ghaldaqstant fid-dawl tal-fatti kif zvolgew, ilproceduri kriminali kontra tieghu huma vjolattivi tal-Artikoli 4 tal-Protokoll 7.

Dan ghandu jwassal ghan-nullita` tas-sentenza moghtija mill-Qorti tal-Magistrati [Malta] fid-9 ta’ Marzu 2010 kif riformata mill-Qorti Kriminali fil-31 ta’ Ottubru 2013...

31. Rigward ir-rimedju ghall-vjolazzjoni riskontrata, din il-Qorti apparti milli tiddikjara nulla s-sentenza fuq indikata, hi tal-fehma li ghandha taghti ammont bhala danni mhux pekunjarju ghall-ansjeta` u frustrazzjoni li tali vjolazzjoni kkagunat lir-rikorrent...”

This case could have set an interesting precedent at European Court level.

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