



FIRST HALL, CIVIL COURT

JUDGE

HON. JOSEPH R. MICALLEF LL.D.

THIS DAY, Tuesday, February 14th, 2017

Case Number 14

Applic. No. 740/11JRM

Isabella ZANANIAN DESIRA

VS

KUNSILL MEDIKU

The Court:

Having taken cognizance of the Sworn Application filed by Isabella Zananian Desira on the 6th of August, 2011, by virtue of which and for the reasons therein mentioned, she requested that this Court (a) declare that decisions taken by the respondent Medical Council on February 3rd 2011 as confirmed by the Appeals' Committee of the same Council dated June 22nd 2011, in so far as her request to be registered in Malta as a medical practitioner was not accepted unless she submits herself to and successfully pass the Medical Council Examination for Medical

Practitioners, are manifestly unjust, anti-constitutional, discriminatory, unlawful, *ultra vires*, and violate the basic principles of natural justice as well as because they are founded on a wrongful interpretation of the law; (b) declare that, as a consequence, said decisions are null and without any effect at law whatsoever and to therefore quash the said decisions; (c) orders the respondent Council to register her particulars and qualifications in the Register for Medical Practitioners in Malta and to do this within the short and peremptory time which the Court prescribes; (d) to find that, because of its actions, the respondent Council is liable to make good for the damages sustained by her; (e) liquidate the damages suffered by plaintiff, if need be, by appointing an expert to assist the Court to this effect; and (f) condemn the respondent Council to pay her the damages thus liquidated. Plaintiff requested also payment of costs;

Having seen its interlocutory decree of the 18th of August 2013, whereby it ordered service of the Application on the respondent Council and gave directions to the plaintiff as to the production of evidence on her part;

Having taken cognizance of the Sworn Reply filed by respondent Council on September 14th, 2011, whereby it categorically denied having rejected plaintiff's application for registration into the Medical Register. In particular, it pleaded that it acted entirely within its remit and in proper observance of the provisions of the law under which it is established, and that in regard to plaintiff it followed the practice which is followed with all applicants who are in an analogous situation as plaintiff's own. Furthermore, it pleaded that the policy which it applied in requesting plaintiff to sit for and pass an examination is prescribed in respect to every applicant hailing from a non-European Union State and constitutes a different consideration from the recognition of qualifications which may be granted by the Malta Qualifications Recognition Information Centre, as the Appeals Committee had the occasion to point out in its decision confirming that of respondent Council;

Having ruled by decree made during the hearing of October 10th, 2011¹, on a request to that effect by counsel to plaintiff, that all proceedings of this case would henceforth be conducted in English; as well as acceding to plaintiff's counsel request that, for the time being, it invests the plaintiff's first three (3) requests made in her sworn application and to deliver judgment thereon, leaving the issue of damages to a later stage if necessary;

¹ Pg. 136 of the record

Having heard the witnesses produced by parties and taken cognizance of the filed documentary evidence;

Having ruled by decree dated May 28th 2013², to appoint Dr Maria Dolores Gauči as Judicial Assistant for the purpose of hearing the remaining cross-examinations made by respective parties;

Having read the testimony tendered before the Judicial Assistant and taken cognizance of the further documentary evidence filed at that stage;

Having ruled by decree dated May 22nd 2014³, to revoke the appointment of the Judicial Assistant and to grant parties time for written submissions;

Having seen the Note of Submissions filed by plaintiff on July 22nd, 2014⁴, relating to her first three requests;

Having heard oral submissions by learned counsel to respondent Council during the hearing of October 24th 2014⁵, in rebuttal to those made by plaintiff in her written submissions;

Having examined all the relevant acts in the records of the case;

Having put off the case for judgment;

Having Considered:

This is an action for judicial review. Plaintiff is aggrieved by a decision handed down by the defendant Council (hereinafter referred to as “the Council” or “defendant”) as confirmed by the Appeals Committee (hereinafter referred to as “the Committee”) established under the law⁶, whereby she claims that her request to be registered in the Medical Register (hereinafter referred to as “the Register”⁷) was turned down, unless she submits to and successfully pass an examination assessing her competence. Plaintiff claims that, on the basis of the academic qualifications obtained in her country of origin and which were duly recognised by the Maltese Qualification authorities, her application to the

² Pg. 265 of the record

³ Pg. 494 of the record

⁴ Pgs. 496 to 524 of the record

⁵ Pgs. 529A – 529E of the record

⁶ Art. 49 of the Health Care Professions Act, 2003 (Axt XII of 2003, Chap. 464)

⁷ Art. 11 of Chap 464

Council ought to have been sufficient for registration in the Register and that the condition imposed by the Council was unlawful, unconstitutional, beyond its remit ("*ultra vires*"), discriminatory and based on a wrong reading of the law. She requests a declaration that the said decision is invalid and that it be quashed. She further requests that the Council be ordered to register her in the Register within the short and peremptory time which the Court shall impose upon the Council. She requested damages for the unlawful action of the Council;

By virtue of a decree made upon a request to that effect by plaintiff's learned counsel, the Court will invest the main question relating to the validity of the impugned decision(s) and defer the issue of damages to a further stage, if that would be applicable;

The Council rebutted plaintiff's grievance by stating that it acted in a wholly correct manner and that plaintiff's claims are unfounded. In particular, it pleaded that it acted entirely within its remit and in proper observance of the provisions of the law under which it is established, and that in regard to plaintiff it followed the practice which is followed with all applicants who are in an analogous situation as plaintiff's own. Furthermore, it pleaded that the policy which it applied in requesting plaintiff to sit for and pass an examination is prescribed in respect to every applicant hailing from a non-European Union State and constitutes a different consideration from the recognition of qualifications which may be granted by the Malta Qualifications Recognition Information Centre, as the Committee had the occasion to point out in its decision confirming that of defendant Council;

The relevant facts which emerge from the records of the case show that plaintiff hails from the Republic of Georgia and was born there in 1972. She has Georgian nationality but has since settled in Malta and married a Maltese national;

She pursued studies in Georgia and holds academic qualifications in specialized fields in biology, medical biology and science from Georgian academic institutions⁸, leading to a conferment of a Doctor in Philosophy;

On February 28th 2008⁹, the Malta Qualifications Recognition Information Centre (MQRIC) advised that plaintiff's academic qualifications were recognized in Malta as being tantamount to a Master Degree in Medicine

⁸ Doc "A" at pp. 27 – 8 of the record

⁹ Doc "PVB2" at pp. 245 – 6 of the record

with Honours, a Master Degree in Biology and Chemistry with Honours and a Doctor of Philosophy in Medicine;

After having filed a number of applications since July of 2006¹⁰ for acceptance as a pathologist and a medical laboratory scientist on the basis of her qualifications and hands-on experience in her native country, plaintiff went through an “adaptation period” prescribed by the Council of Professions Complimentary to Medicine (CPCM)¹¹ at Mater Dei Hospital which expired on May 5th 2010¹². On December 2nd 2010¹³, plaintiff re-submitted an application to the Council requesting registration as a pathologist in the Register in order to be able to practice as such in Malta, which application was supported by copious documentation;

Following an exchange of correspondence¹⁴, by a decision taken on February 3rd 2011¹⁵, the Council acknowledged the validity of her academic qualifications as being equivalent to a Degree of Doctor of Medicine conferred in Malta, but that, in order for her name to be enrolled in the Register, she had to sit for and successfully pass examinations under the current Faculty of Medicine and Surgery and based upon the syllabus applicable to fifth year medical students. The Council further advised plaintiff that at that stage the Council’s Examination Committee was in the process of “restructuring” the exam format and could not, therefore, provide her with details as to which exam subjects she would have to sit for. The decision was served on plaintiff on February 8th 2011;

Plaintiff appealed from the decision to the Committee on February 22nd 2011 and a hearing was held on May 31st¹⁶ during which plaintiff attended assisted by legal counsel and both oral and written submissions were made¹⁷. By a decision taken on May 31st, the Committee decided to reject the appeal. The Committee informed plaintiff by letter dated June 22nd, that her appeal had been rejected and the Council’s decision confirmed¹⁸;

On July 20th 2011¹⁹ plaintiff filed a judicial protest in terms of article 460 of Chapter 12 of the Laws of Malta against the Council requesting it to

¹⁰ See documents at pp 111 – 7 and Doc “SC3” at pp 176 to 211 of the record

¹¹ Docs “K” to “M”, at pp 126 – 130 of the record

¹² Plaintiff’s affidavit at pp. 108 – 9 of the record

¹³ Doc “A”, at pp 17 – 8 of the record

¹⁴ Docs “B” and “C”, at pp. 53 – 82 of the record

¹⁵ Doc “D”, at p. 83 of the record

¹⁶ Doc “MA1”, at p. 148 of the record

¹⁷ Testimony of Moira Azzopardi at pp 153 – 4 of the record

¹⁸ Doc “MA2”, at pp 149 – 150 of the record

¹⁹ Doc “G”, at pp 90 – 5 of the record

revoke its decision and to uphold her application and held it liable to damages for failure to abide by her request;

Plaintiff filed this action on August 2nd 2011;

The Court's legal considerations relating to the issue under examination have to focus upon the question of the Council's sphere of action and whether the manner in which it acted falls within its lawful remit. The plaintiff's main contention is that, once her academic qualifications were recognized and accepted by the pertinent Maltese authorities, the Council ought to have accepted her application to work in Malta as a pathologist without attaching any conditions. She argues that the imposition of such conditions – to wit, that before being registered in the Register, she has to submit to and pass an examination set by the Council's own Medical Examination Committee – flouts the express provisions of the law under which the Council was set up as well as being beyond the powers conferred by law on the Council;

In particular, plaintiff ascribes to both the Council and to the Committee's decisions denying her application a number of vitiating vices being unconstitutionality, violation of the principles of natural justice and proper administrative behaviour, discrimination and wrong application of the law;

The Court will examine these separate heads in sequence against the evidence which has been tendered and in the context of the submissions made thereto by respective counsel;

At the outset, the Court considers it expedient to cite the provisions of the law which seem to lie at the heart of the dispute between the parties, and which both parties rely upon to justify their respective positions at law. As a matter of fact, while the Council and the Committee refer to these provisions as the basis for their decision on plaintiff's application²⁰, plaintiff avers that both the Council and the Committee gave an utterly wrong reading of the law and ruled in flagrant breach of its provisions. In so doing, the Court will attempt to address two of plaintiff's main areas of complaint, namely that relating to the violation of the principles of proper exercise of administrative behaviour (in regard to action "*ultra vires*") and that relating to wrong application of the law;

The relevant parts of article 11 of Chapter 464 of the Laws of Malta lay down that "(1) *The Medical Council shall keep a register, in this Act*

²⁰ Cfr Doc "SC2" at p 174 of the record

referred to as "the Medical Register", in which, following an application to that effect by the person concerned, shall be entered the name of any citizen of Malta, or of a Member State or of a person who benefits from the provisions of Article 11 of Regulation 1612/68EEC or of a person who has been established in a Member State, who holds - (a) the degree of Doctor of Medicine and Surgery from the University of Malta: Provided that the Medical Council shall not enter such name unless the applicant, upon qualifying for such degree, has served as a house physician and, or surgeon in a government hospital or other hospital recognized for that purpose by the Medical Council for a period of one or two years as the Minister may prescribe; or (b) any of the qualifications listed in Second Schedule, Parts Ia, Ib, Ic, Id; or (c) a qualification recognised for the purpose by a Member State, obtained from a University College, or Medical School: Provided that in respect of applicants coming from third countries, whose qualifications have not been recognised in a Member State, the Medical Council may, in respect of such qualifications, require the applicant to sit for and pass a professional and linguistic proficiency test, and may also require that he serves as house physician and, or surgeon in a hospital recognized for the purpose by the Medical Council, for such period, being not longer than two years, as the Minister may prescribe, and the provisions of article 7(3) and (4) shall apply to a person required in virtue of this proviso to serve as a house physician or surgeon as if such person were the person referred to in those subarticles";

The Court recalls that plaintiff has shown that the academic qualifications obtained by her following her studies in her native country were effectively recognized by the Maltese competent authorities and given their equivalence as far back as February of 2008. Although from the evidence it does not result whether plaintiff is or has been granted Maltese citizenship, it has not been contested that she was married to a Maltese national and has been established in Malta for a considerable period of time and granted Maltese identity documentation²¹. For the purposes of the relevant provisions of the afore-mentioned article 11, therefore, plaintiff was eligible to be considered by the Council also on the basis of those circumstances. The point is that her qualifications were obtained pursuant to studies in a third country institution of education (therefore, not an institution of a Member State of the European Union) but this in itself is not a valid reason for the rejection of an application for inclusion in the Register, especially if, as happened in this case, those qualifications are recognized by the competent Maltese authorities²²;

²¹ Cfr Doc at p 23 – 4 of the record

²² Under the provisions of the Mutual Recognition of Qualifications Act (Act XVIII of 2002, Chap 451)

The Council rightly argues that its functions are proscribed by the enabling powers conferred to it by the law under which it is set up²³ and that its functions are not those of evaluating academic qualifications, but of ensuring that persons enrolled in the Register are competent professionals entrusted with the proper exercise of their calling for the welfare and general well-being of the public²⁴. This, however, does not make the Council's exercise of its functions altogether detached from considering such academic qualifications. Article 11(1) of the Act itself makes ample provision for this aspect in the three contingencies that are envisaged. Evidence tendered during the hearing of this case clearly shows also that the Council liaised with the competent recognition authorities in Malta as far back as 2007 with respect to the plaintiff's qualifications²⁵ as well as regards the institutions from which plaintiff graduated and secured those qualifications²⁶;

Furthermore, it has been shown that the Council's decision that applicants in plaintiff's situation would only be enrolled in the Register once they submit to and pass a special oral examination in various medical disciplines is an implementation of a "standard policy" and not the result of an express legislative instrument laying down this requisite. Not only that, but this "standard policy" does not appear to have been at least minuted in the records of proceedings before the same Council at any time but was resorted to as a matter of general practice²⁷. Plaintiff argues that this lack of express legal provision is proof in itself that the Council acted "*ultra vires*", because in plaintiff's case, all the Council had to do was to ascertain that her academic qualifications are recognized by the competent Maltese authorities and ratify her application by enrolling her name in the Register and not to resort to any contrived and obscure policy by imposing upon her a condition the law does not prescribe;

The Court considers that both the Council but more specifically the Committee based their decision (regarding plaintiff's application for registration) on the provisions of article 11(1)(c) of the Act. As stated before, documentary proof exhibited in this case clearly states that the Council considers the wording of the *proviso* to that sub-article as the 'enabling law' "on which its 'standard policy' is based"²⁸. This snippet of proof is, in the Court's considered view, of remarkable relevance in the determination of the dispute. Firstly, it arises from the workings of the

²³ Art. 10 of Chap 464

²⁴ Testimony of Dr Brian Flores Martin at p. 257 – 8 of the record

²⁵ Testimony of Philip von Brockdorff at pp. 248 – 9 of the record

²⁶ Dok "PVB1", at pp. 243 – 4 of the record

²⁷ Testimony of Svetlana Cachia at pp. 373 – 4 of the record

²⁸ Doc "SC2" at p. 174 of the record

Council itself and originates from it and thus represents its reasoning behind the decision taken in regard to plaintiff. Secondly, by referring to that particular *proviso* as the basis of the policy, the Council seems to restrict the policy's application to the contingency regulated by that sub-section, namely, in regards to "a qualification recognized for the purpose by a Member State, obtained from a University College or a Medical School". Thirdly, the said *proviso* enables the Council to consider (and thus to exercise a discretion) subjecting the applicant to a professional and linguistic proficiency test as well as to require that applicant serve as a house physician or surgeon for a limited time prior to being enrolled in the Register. Fourthly, that any policy devised on the basis of that *proviso* has to be applied strictly within the terms of that legal provision, and although it implies an element of discretion, it has to be exercised properly;

Plaintiff questions the existence of the policy invoked by the Council and suggests that it is nothing more than a stratagem resorted to by the Council to try to justify the decision taken in regard to her. The Court does not subscribe to this argument, and is of the opinion that the Council truly believed that the said sub-section empowered it to subject the plaintiff to the rigours of an exam prior to registration. This alone, however, does not justify the decision taken in her regard;

The fact that an administrative body – and the Medical Council amply qualifies as such, given the enabling powers conferred upon it by the law – adopts a policy in regard to some standard or quality which must result in an application brought before it does not render such policy void on the basis alone that there is no express legal provision to buttress it. Policy in the broad meaning of the term is a corollary to administrative action and is an attribute of the discretionary power which, under Administrative Law, is vested in almost every administrative body. The invocation of 'policy' by such an administrative body, however, raises the question of the reasonableness of such policy and other kindred issues like the legitimate expectations of those who are aware of the policy's existence;

It has been authoritatively suggested that "*Closely akin to the question of wide discretionary power is the question of policy. Policy is of course the basis of administrative discretion in a great many cases, but this is no reason why the discretion should not be exercised fairly vis-a'-vis any person who will be adversely affected*"²⁹. Thus, where an administrative body invokes policy as the underlying basis for any of its actions or

²⁹ H W R Wade & C F Forsyth *Administrative Law* (9th Edit2004), p. 533

decisions, it has to be cogently shown that such a policy is indeed well-founded and that it is consistently applied. Thus, “*inconsistency of policy may amount to an abuse of discretion, particularly when undertakings or statements of intent are disregarded unfairly*”³⁰;

Where the issue of the exercise of discretion arises, a number of considerations ensue, chiefly among which is the question of the reasonableness of such a discretion. In the present case, plaintiff contests not only the existence of the policy but the reasonableness behind it;

When the law confers upon an administrative body the power to exercise discretion, it is effectively granting it “*(the) power to make a choice between alternative courses of action or inaction*”³¹. In such case, this implies that the empowered administrative body is entitled to apply its discretion beyond the objective elements of the issue of the claim raised before it, and is vested with the subjective right to determine whether to follow a course of action rather than another³² but always within the confines of its powers. It is undoubted that such discretion ought to be exercised within the terms of the enabling law, in a reasonable manner, with equity and a sense of justice³³ and certainly without abuse of that discretion³⁴. Another acclaimed principle is that such exercise of discretion must be free from any interference or subjection to any kind of pressure or threat from any third party which vitiates the discretionary exercise itself, since the proper exercise of discretion implies the free and reasoned deliberation of the person vested with that power;

On the basis of these principles, rules have emerged which determine the proper exercise of discretion by an administrative body and by which Courts may consider the reasonableness thereof. Thus, where an administrative body is vested with discretion in the exercise of its function, a reviewing Court may order such body to exercise it should it result that such body failed to do so. What a Court may not do is to dictate to such body how to exercise such discretion, nor to substitute itself to the administrative body and exercise such discretion itself. This consideration is particularly relevant in the light of plaintiff’s third request and will be duly addressed;

In order that such discretion has been correctly acquitted, it must be shown to the Court’s satisfaction that the vested authority has indeed

³⁰ *Op. cit* p. 372

³¹ DeSmith, Woolfe & Jowell *Principles of Judicial Review* (5th Edit, 1995), p. 296

³² Civ. App. 30.11.1993 in the case *Sammut noe et vs Kontrollur tad-Dwana* (Kollez. Vol: LXXVII.ii.376)

³³ Civ. App. 21.4.1961 in the case *Masini noe vs Podesta’ noe* (Kollez. Vol: XLV.i.110)

³⁴ Civ. App. 26.2.2010 in the case *Peter J. Azzopardi et noe vs Awtorita’ ghas-Servizzi Finanzjarji*

considered all the relevant issues brought before it and that it has done this without any interference by any third party or by not having rendered itself incapable or unable to exercise such discretion³⁵. In the exercise of such a review, the Court must ascertain that the administrative body has not transgressed its authority by not acting in a manner which it is expressly prohibited from doing nor to have failed to act in a manner which it is authorized to observe. It is fundamentally important that the administrative body act *bona fide* and has made the relevant considerations of the matter. In brief, these are the basic principles which Administrative Law upholds in determining whether discretion has been duly exercised or whether such exercise was abusive or excessive;

Any exercise of review of the proper exercise of discretion raises the issue of the reasonableness thereof. The duty upon an administrative body to act reasonably differs from its duty to act *bona fide*³⁶. Thus, while not every reasonable exercise leading to a decision is necessarily correct, nor is an erroneous decision automatically unreasonable³⁷. In such cases, the Court has to consider whether a decision against which a person feels aggrieved is one where a reasonable person might arrive at such a conclusion;

It is authoritatively held that the fundamental role of a reviewing Court is to ascertain that the administrative act does not fall short of legality, more than to assure that the administrative body has come to a correct decision. This distinguishes the role of a reviewing Court from that of an appellate Court, which has to investigate the substantive merits of an appeal. This is also the view upheld by our Courts³⁸;

To determine whether an administrative body has reasonably exercised discretion in the application of its powers and functions, it has to be shown that such body acted as it ought to have acted and not merely as it was entitled to³⁹. This means that the measure of reasonableness is an objective one related to the factual circumstances of the case in which such discretion is exercised⁴⁰. Furthermore, in order that administrative behaviour be found to constitute abusive behaviour, proof of an intention to act abusively and to cause harm has to be brought forward by the party alleging it, which intention can be shown by proving a particular mode of behaviour which forms part of the discretionary process itself. The Court cannot emphasise enough that the exercise of

³⁵ Cfr Civ. App. 20.5.1982 in the case *Fenech Adami et vs Cremona pro et noe* (unpublished)

³⁶ Cfr. *R vs Roberts, ex p. Scurr* (1924) 2 K.B. 695

³⁷ Cfr. *R. vs W* (1971) A.C. 682

³⁸ FH JZM 9.6.2011 in the case *Mario Debono et vs Tabib Principali tal-Gvern et*

³⁹ H.W.R. Wade & C.F. Forsyth, *Administrative Law* (10th. Edit), pg. 295

⁴⁰ Civ. App. 27.3.2009 in the case *Carmelo Dingli et vs Kontrollur tad-Dwana et*

discretion must not only be in conformity with the prescribed procedure (“*rite*”) but also equitable (“*recte*”)⁴¹. This is a necessary corollary of the requirement that discretion be reasonably exercised;

In her final submissions, plaintiff argues that the Council’s so-called ‘standard policy’ was incoherently applied and respected more by its breach than by its observance⁴². She suggests that evidence brought forward by the Council shows that different criteria were applied to different persons, even those who were in the same situation as hers. None of the persons identified by her and who like her were non-EU nationals or who vaunted non-EU academic qualifications were asked by the Council to submit themselves to the exam which she has been asked to undertake;

It is settled law that “*inconsistency of policy may amount to an abuse of discretion, particularly when undertakings or statements of intent are disregarded unfairly or contrary to the citizen’s legitimate expectations*”⁴³. In this regard, plaintiff takes issue with the adopted practice of engaging third country nationals as practising medical doctors at the behest of Government under a temporary registration, without having to submit the chosen candidates to the qualifying exam, and to convert that temporary registration into a permanent one within a short time and still without observing the “standard policy” which the Council says it has devised in regard to all such candidates;

The Council’s earned counsel argued⁴⁴ that plaintiff’s application was never rejected but in accordance with its “standard policy” she was asked to submit herself to the exam, as has been the case with other applicants in a similar situation. He also argues that this “standard policy” is dictated by the overriding concern that the Council must assure that the medical service in Malta attain the highest standards for the benefit of public health and the general public;

Having considered the parties’ respective arguments in the light of the evidence produced, and applying the legal principles outlined above, the Court comes to the conclusion that plaintiff’s claim is justified. First and foremost, when the Council failed to consider that her academic qualifications were duly recognized in Malta by the competent authorities, it put itself in a position which ran counter to the express provisions of the enabling law. As plaintiff rightly avers, the fact that the

⁴¹ Inf. App. PS 26.2.2010 in the case *Peter J. Azzopardi et noe vs Awtorita’ għas-Servizzi Finanzjarji*

⁴² Note of Submissions at pp. 512 and 517 of the record

⁴³ Wade & Forsyth *op. cit.* p 372

⁴⁴ Pp. 529B – 529D of the record

MQRIC had officially and irrevocably accepted that her academic qualifications were to be recognized and considered to be equivalent to a medical doctor's degree was an element which should have engaged the Council to apply its considerations under the proper criterion and category. Secondly, a proper reading of the *proviso* ta article 11(1)(c) of the Act would show that plaintiff's situation was not one to which that *proviso* applied. That *proviso* applies to third-country nationals whose qualifications have not been recognized in a Member State, which is certainly not the case with plaintiff, whose qualifications were recognized by the competent Maltese authorities and thereby recognized by a Member State. Thirdly, insofar as the Committee's decision to reject the appeal was expressly based on the said provisions, it follows that the decision was founded on a wrong application of the correct law and thus cannot stand. Fourthly, once the plaintiff's application would not fall within the category covered by the provisions of article 11(1)(c) of the Act, it does not seem reasonable for the Council to impose upon plaintiff a condition which the enabling law does not give it the discretion to impose. The eventuality of asking an applicant to submit oneself to an exam prior to enrolment in the Register is envisaged only where the applicant's academic qualifications have not been recognized. Fifthly, despite the laudable intentions of the Council to assure that practicing medical or health care professionals in Malta be duly qualified and capable of securing the best health care available, the Court does not consider the condition imposed on plaintiff in order to accept her name to be registered to be reasonable in the particular circumstances of the case when it results that plaintiff had, for a considerable span of time and as requested by the same Council, performed "adaptation work" in a State hospital for many months after the Maltese authorities had recognized her academic qualifications and very close to the time when she resubmitted her application to have her name enrolled in the Register;

Once the Court has found sufficient reason to uphold the plaintiff's grievances on the above-mentioned grounds, it is neither necessary nor useful to inquire into the other grounds flagged by her, as the identification of one valid ground is sufficient to bring about the effects which may lie with the other grievances, should they have been likewise proven;

For these reasons the Court finds that plaintiff's **first request** is well founded at law and will be upheld;

Since the Court has come to the conclusion that the decisions of both the Council as well as that of the Committee were vitiated at law, the **second request** would be a natural consequence of the first request. The role of a reviewing Court lies in the investigative stage as well as in the remedy which it can grant as a result of a finding of a flaw in the administrative act concerned. In this case, the consequence is the quashing of the decisions which are found to be faulty;

For these reasons, plaintiff's second request too is well-founded at law and will likewise be upheld;

As regards plaintiff's **third request** the Court feels it pertinent to point out that the powers of a reviewing Court, as mentioned above, are limited by virtue of the nature of the action brought before it. In particular, it is settled law that a reviewing Court may not substitute the administrative body whose action or omission it is called to review nor to exercise the discretion and powers with which such body is vested by its enabling law. When a Court of review finds that an act fall foul of the law, all it can do is to annul such act and remitting the matter to the administrative body for reconsideration, without venturing to pronounce itself also on the merits or re-deciding the matter which is the preserve of the administrative body reviewed. That administrative body must take note of the Court's decision in its reconsideration, but the role of re-examining the case still vests in the administrative body⁴⁵;

It is remarkable that neither party in the present case made any representations in this regard and seemed to put the issue aside, when it is a question of fundamental relevance in a case of judicial review. Plaintiff's third request enjoins the Court precisely to assume the role of the Council and this is therefore beyond the remit of this Court in a case of this nature;

For these reasons the third request is untenable and will not be upheld;

For these reasons the Court decides the case by:

Upholding plaintiff's first request as being founded in law and in fact in that the decisions handed down by the respondent Council on February 3rd 2011 as confirmed by the Appeals Committee on the 22nd June 2011 were based on a wrong application of the applicable law and *ultra vires* the powers conferred by law on the Council;

⁴⁵ Civ. App. 11.5.2010 in the case *Reginald Fava pro et noe vs Superintendent tas-Sahha Pubblika et*

Upholding plaintiff's second request by declaring the afore-said decisions to be null and void and by quashing the said decisions for all effects and purposes of the law;

Rejecting plaintiff's third request since it falls beyond the remit of this Court as a reviewing Court, but directing the respondent Council to reconsider plaintiff's request to be enrolled in the Register without delay and in conformity with the considerations made in this judgment;

Rejects respondent Council's **pleas on the merits** insofar as they relate to the plaintiff's first two requests;

Ordains that respondent Council bear the **legal costs** in connection with this judgment; and

Adjourns the case for evidence and submissions regarding plaintiff's third, fourth and fifth requests.

Read and delivered

**Joseph R. Micallef LL.D.,
Judge**

February 14, 2017

**Carmen Scicluna
Deputy Registrar**

February 14, 2017