

Qorti tal-Appell
(Kompetenza Inferjuri)
Imhalled Anthony Ellul
Appell numru: 31/2016

Alice Mary Regan (appellanti)

Vs

Direttur tas-Sigurta' Socjali (appellat)

26 ta' Jannar, 2018.

1. L-appellanti hi cittadina Irlandiza. Fl-1 ta' April, 2011, kienet applikat mad-Dipartiment tas-Sigurta' Socjali sabiex tibda tinghata l-pensjoni ta' dizabilita', wara li qalet li bdiet issofri minn attacki tal-epilessija. Jidher li kienet ilha Malta sa mis-sena 2004. Fit-twegiba li l-appellat ipprezenta fis-17 ta' April, 2014, fit-Tribunal tal-Arbitragg, qal li l-appellanti ma kinitx intitolata ghall-beneficju li applikat ghalih u li d-decizjoni tieghu kienet bazata fuq l-Avviz Legali 191 tal-2007, *Free Movement of European Union Nationals and their Family Members Order, 2007* (Legislazzjoni Sussidjarja 460.17). Filwaqt li jissemma li l-applikazzjoni kienet ghal *disability pension*, fid-dokument 'A' mehmuz mat-twegiba tas-17 ta' April, 2014 wiehed jifhem li kienet ghall-ghajjnuna socjali. F'dak id-dokument, datat l-1 ta' Ottubru 2013, jinghad li r-raguni ghalfejn l-applikazzjoni giet michuda.

"You cannot continue to be a burden on the Social Assistance System of Malta, the department has already paid you for 6 months Social Assistance. A citizen of the European Union may reside in Malta if she has sufficient resources for herself and her family members, ensuring that they do not become a burden on the Social Assistance System in Malta (L.N. 191 of 2007). Please be notified that initially the Permit to reside in Malta (Registration Certificate) was granted on the basis of Employment only".

2. B'riferenza ghar-regolamenti li l-appellat irrefera ghalihom fit-twegiba tas-17 ta' April, 2014 il-qorti tosserva:-
 - i. Regolament 3(1) mhuwiex rilevanti ghall-kaz in ezami ghaliex meta l-appellanti applikat ghall-pensjoni ta' dizabilita kienet ilha s-snin tghix f'Malta.
 - ii. Regolament 3(3) ma japplikax ghaliex ir-residenza tal-appellanti f'Malta ma kinitx ghall-perjodu ta' tliet xhur izda ghal snin twal.
 - iii. Regolament 10(2) mhuwiex rilevanti ghall-kaz in ezami gialadarba l-appellanti ma gietx tirrisjedi Malta sabiex tistudja.

- iv. Regolament 11(1)(a), 11(4)(b) u 11(5) ma japplikawx jekk ic-cittadin tal-Unjoni Ewropea jkun ilu jghix Malta ghal iktar minn hames snin ighix kontinwament f'Malta (ara regolament 6).
3. Maghmula dawn il-konsiderazzjonijiet ir-riferenza ghar-regolament 3 fid-decizjoni tat-Tribunal tal-Arbitragg hi barra minn lokha. Ma jidhirx li t-Tribunal ikkunsidra jekk l-appellanti kinitx ilha residenti f'Malta kontinwament ghall-perjodi li jissemmew f'regolament 6. Inoltr r-riferenza ghall-**paragrafu 78** tas-sentenza **E. Dano et vs Jobcentre Leipzig** tal-11 ta' Novembru 2014 tal-Qorti tal-Gustizzja Ewropea hi ghal kollox irrilevanti. Mhemmx prova li l-appellanti giet tghix Malta, "*... Solely in order to obtain another Member State's social assistance...*". Fid-decizjoni t-Tribunal osserva wkoll li ma tressqitx prova li l-appellanti hi kap tal-familja. Pero' din ma kinitx ir-raguni ghalfejn l-appellat cahad l-applikazzjoni. It-Tribunal tal-Arbitragg ghandu jistharreg ir-raguni li fuqha tkun bazata id-decizjoni tal-appellat u mhux johloq ragunijiet godda li ma jkunux gew trattati fil-kors tal-process li jsir quddiemu. It-Tribunal qal ukoll, "*Whereas, European Union Directive 38/2004 makes reference to three categories of EU citizens, i.e. workers, self-employed, and inactive persons such as pensioners. It is to be noted that appellant is currently unemployed and therefore she cannot invoke the provisions of this Directive*". Pero' dik id-direttiva ma tapplikax ghall-imsemmija persuni biss.
4. Jirrizulta li l-appellanti nghatat permess ta' residenza permanenti. Il-qorti fehmet li l-applikazzjoni saret zmien wara li kienet ilha tirisjedi f'Malta ghal hames snin. Minn dak li fehmet il-qorti, jidher li hemm qbil li l-permess ta' residenza nghata fi Frar 2011. Fl-ewwel lok il-fatt li l-persuna ma tkunx ghadha applikat ghall-hrug ta' permess ma jfissirx li qabel dak iz-zmien tkun qeghda tghix Malta illegalment [ara regolament 13(6)]. Id-dritt tar-residenza permanenti ma jigix akkwistat bis-sahha tal-hrug ta' permess izda hu **dritt ex lege**. Ghalhekk il-qorti ma taqbilx mal-argument li ghamel l-appellat f'paragrafu 24 tat-twegiba, fejn issuggerixxa li fil-15 ta' Frar 2011 saret applikazzjoni mill-appellanti sabiex imbaghad tapplika ghall-ghajnuna socjali.
5. Artikolu 7(1)(b) tad-Direttiva jipprovdi li persuna ghandha dritt ta' residenza diment li ghandha:

"... sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State".

Disposizzjoni li nsibu f'Kapitolu III tad-Direttiva. Pero' artikolu 16 tal-istess Direttiva jipprovdi:-

"1. Union citizens who have resided legally for a continuous period of five years in the host Member States shall have the right of permanent residence there. **This right shall not be subject to the conditions provided for in Chapter III**".

Ghalhekk hu evidenti li cittadin tal-Unjoni ghandu jedd, diment li jkun akkwista r-residenza permanenti, li jibqa' ighix fil-host Member State irrISPettivament jekk huwiex *self-sufficient* jew le (ara artikolu 16 tad-Direttiva). Kif osservat il-Qorti tal-Gustizzja fil-kaz **E. Dano et vs Jobcentre Leipzig** (11 ta' Novembru, 2014):

*"Third, it is apparent from Article 16(1) of Directive 2004/38 that Union citizens acquire the right of permanent residence after residing legally for a continuous period of five years in the host Member State and that that right is not subject to the conditions referred to in the preceding paragraph. **As stated in recital 18 in the preamble to the directive, once obtained, the right of permanent residence is not to be subject to any conditions, with the aim of it being a genuine vehicle for integration into the society of that State** (judgment in Ziolkowski and Szeja, EU:C:2011:866, paragraph 41)".*

6. L-appellat argumenta li hu biss f'certifikat wiehed mediku li gie certifikat li l-kundizzjoni tal-appellanti hi ta' natura permanenti. Madankollu dan hu argument bla bazi. Mit-twegiba tas-17 ta' April, 2014 hu evidenti li d-decizjoni ta' rifjut tal-appellat kienet bazata fuq regolamenti li nsibu fil-Legislazzjoni Sussidjarja 460.17.
7. Maghmula dawn il-konsiderazzjonijiet ir-ragunijiet li ta l-appellat ghar-rifjut tal-applikazzjoni, f'dan il-kaz mhumiex gustifikati.

Ghal dawn il-motivi tilqa' l-appell u thassar id-decizjoni tat-Tribunal tal-Arbitragg tal-25 ta' Ottubru 2016 u dik tal-appellat, u tordna lill-appellant sabiex jikkunsidra mill-gdid l-applikazzjoni li kienet ghamlet l-appellanti fl-1 ta' April, 2011. Spejjez kollha a karigu tal-appellat.

Anthony Ellul.