

Qorti tal-Appell
(Kompetenza Inferjuri)

Imhalled Anthony Ellul

Appell: 78/2018

Istok Lazarevic (appellant)

Vs

Direttur tad-Dipartiment tac-Cittadinanza (appellat)

11 ta' Frar, 2019.

1. Ir-rikorrent appella mid-decizjoni tal-Bord tal-Appelli tal-Immigrazzjoni tas-6 ta' Gunju, 2018 li biha cahad appell tar-rikorrent dwar applikazzjoni ghall-hrug ta' *single permit* biex jirrisjedi f'Malta. Id-decizjoni tal-Bord taqra:

"The Board saw the Director's letter dated 8th January 2018 wherein the Director stated that:

"The new application submitted on the 3rd July 2017 has been re-examined under the provisions of the Immigration Act, Chapter 217 of the Laws of Malta, and the Single Application Procedure for a Single Permit as regards Residence and Work and a common set of Rights for those Third-Country Workers Legally Residing in Malta (Subsidiary Legislation 217.17).

Following the examination of the new application, I regret to inform you that your request cannot be acceded to on grounds of public policy and public security".

The Board also saw the affidavit of Inspector Victor Aquilina wherein he stated on oath that the necessary research regarding the appellant had been carried out and it resulted to the Police that if granted the relative permit, the appellant would pose to a threat to national security. Insp. Aquilina also stated that on 18th July 2017, he had communicated the objections of the Police to Identity Malta.

The Board also saw the appellant's permit wherein he declared:

- *That on 16th January, 2017 he filed an application with Identity Malta for the renewal of his Single Permit;*
- *That on 14th March 2017, his application was refused;*
- *That on 26th June 2017, this Board accepted his appeal;*
- *That thereafter, he immediately visited Identity Malta's office to ask them to act according to the Board's decision. This was not considered a fresh application and in fact, he was not asked to submit the usual set of documents accompanying a fresh application and neither was he asked to pay the usual fee of two hundred and eighty Euros and fifty cents (€280.50); and*
- *That on 8th January, 2018 Identity Malta issued a fresh refusal in which they claimed that when the appellant visited their premises following the Board's decision of 26th June 2017, he was in effect, filing a fresh application.*

The Board saw its decision of 26th June 2017 wherein it had stated that it was not convinced that the appellant posed a threat to national security.

The Board observed that notwithstanding its decision, Identity Malta apparently refused to abide by the decision and decided instead to refuse to issue a Single Permit once again. It was however noted that this time, Insp. Aquilina confirmed on oath that the Police had objected to the granting of a Single Permit due to their belief that the appellant constituted a threat to national security.

The Board sees that in confirming such a statement on oath as well as in twice refusing to issue the appellant with a Single Permit, Identity Malta and its stakeholders must have necessarily conducted even more thorough checks which confirmed their initial assessment that the appellant should not be issued with a Single Permit.

The Board has no evidence before it which inclines it to believe that the appellant is not a threat to national security. In fact, the appellant's affidavit only recounts a timeline of events as opposed to testimony as to his conduct in Malta and abroad.

For these reasons, the Board rejects the appellant's appeal and confirms the Director's decision of 8th January, 2018".

2. Fil-15 ta' Gunju, 2018 l-appellant appella mid-decizjoni. L-aggravji huma:

- i. Id-decizjoni hi nulla peress li s-sentenza tal-5 ta' Gunju, 2018 intbghatet lilu fis-6 ta' Gunju, 2018.
- ii. Il-Bord tal-Appelli naqas milli jaghmel apprezzament xieraq tal-provi u d-decizjoni hi *extra petita*.
- iii. Il-Bord tal-appell ma osservax il-ligi meta naqas milli jisma' lill-partijiet u dan bi ksur tal-Kap. 217.

3. Fir-rikors tal-appell l-appellant talab lil din il-qorti sabiex:

"... thassar, tannulla u tirrevoka s-sentenza appellata tal-Bord tal-Appelli dwar l-Immigrazzjoni tas-sitta (6) ta' Gunju, 2018 fl-ismijiet premissi u (i) tibghat l-Atti lura lill-istess Bord tal-Appelli dwar l-Immigrazzjoni sabiex wara li jisma' lill-partijiet ighaddi ghad-decizjoni jew fin-nuqqas (ii) wara li tisma' lill-partijiet u tiddeciedi dwar il-meritu billi tilqa' t-talba tal-esponenti appellant u tordna lill-intimat appellat joghgbu johrog single permit to reside for the purpose of work in Malta, bl-ispejjez taz-zewg istanzi kontra l-intimat appellat".

4. Fl-20 ta' Novembru, 2018 l-appellat wiegeb u ta r-ragunijiet ghalfejn l-appell ghandu jkun michud.

5. Dwar l-ewwel aggravju, il-qorti ma teskludix li d-data fid-decizjoni tal-Bord hi zbaljata. Dan meta tqies id-dokument a fol. 11. Madankollu zball fid-data m'ghandux iwassal ghan-nullita' tad-decizjoni, iktar u iktar meta l-appellant ma sofra l-ebda pregudizzju. Ghaldaqstant, l-ewwel aggravju hu michud.

6. Din il-qorti ma taqbel xejn mal-mod kif ipproceda u ddecieda l-Bord, għaliex:

i. Warrab id-decizjoni li hu stess kien ta fis-26 ta' Gunju, 2017 u li fiha laqa' l-appell tal-appellant u ddecieda:

"In view of the above, Board concludes that according to those who provided written testimony, the appellant is an upstanding and trustworthy individual. As a result, it is not convinced that Mr Lazarevic poses a threat to public policy and/or to public security and therefore, revokes the Director's decision dated 14th March 2017".

ii. Fid-decizjoni tas-6 ta' Gunju, 2019 il-Bord naqas milli jikkunsidra l-konsegwenzi tad-decizjoni li hu stess ta fis-26 ta' Gunju, 2017 u li minnha ma jirrizultax li d-Direttur appella. Materja wkoll rilevanti kien jekk wara dik id-decizjoni tas-6 ta' Gunju, 2019 l-appellant kienx ipprezenta applikazzjoni ohra. L-appellant jichad li pprezenta applikazzjoni gdida wara d-decizjoni tas-26 ta' Gunju, 2017. Hu minnu li f'ittra datata 8 ta' Jannar, 2018 ta' *Identity Malta* saret riferenza ghal *'new application submitted on the 3rd July 2017'*, pero ladarba l-appellant ikkontesta tali fatt, l-inqas li kellu jaghmel il-Bord kien li jordna lill-appellat sabiex jipprezenta kopja tal-istess. Dan iktar u iktar meta tigi wahedha l-mistoqsija, ghalfejn l-appellant kellu japplika mill-gdid meta kellu favur tieghu d-decizjoni tal-Bord tas-26 ta' Gunju, 2017.

iii. Inoltre, d-decizjoni tas-6 ta' Gunju, 2018 hi bazata biss fuq spekulazzjoni. Hu veru li f'affidavit tas-26 ta' April, 2018 l-Ispettur Victor Aquilina qal li kienu saru verifiki dwar l-appellant u, *"... rrizulta li l-appellant ikun ta' theddida għas-sigurta tal-pajjiż f'każ li jingħata dan il-permess"*. Pero' dikjarazzjoni bħal dik m'hijjex sufficjenti. Ix-xhud

kellu jgħid għalfejn l-appellant kien ta' theddida u mhux jagħmel biss *sweeping statement*. L-eżekuttiv għandu diskrezzjoni, iżda sabiex tiġi mistharrga mill-Bord għandu jkollu l-fatti kollha quddiemu.

- iv. Hu fatt li fit-twegiba l-appellat qal li l-appellant kien instab hati ta' reat gravi. Fl-atti l-uniku sentenza relatata ma' proceduri kriminali kontra l-appellant li ssemmiet hi dik li l-Bord ikkunsidra fid-decizjoni tas-26 ta' Gunju, 2017 u li dwarha qal:

"Although the Director's decision was not enlightening, the Board noted that in the relative appeal, the appellant's advocate, in a remarkable show of honesty on the part of the appellant, stated that the appellant had been found guilty of a crime related to narcotics in Serbia and had served a prison term of just over six years in Serbia. From that point on, he never had any problems with law enforcement authorities in Serbia or in Malta. The appeal also referred to his ongoing employment with Mtarfa Glass Blowers Limited and attached to the appeal were various letters and testimonials testifying to the appellant's trustworthiness and good character.

The Board also noted a letter from the lawyer who had defended the appellant in Serbia when he was tried for the offence for which he was eventually convicted. From this lawyer's letter as well as from translations of documentation he provided, it appears to have been alleged by this lawyer that the appellant's conviction was not based on particularly solid legal ground".

Jekk dak li xehed l-Ispettur Aquilina kien b'riferenza għal dawk il-proceduri kriminali, allura dik il-materja diga' giet ikkunsidrata u ttiehdet decizjoni dwarha mill-Bord.

- v. Il-Bord, li wara kollox hu tribunal amministrattiv, għamel żball kardinali meta qies li dik id-dikjarazzjoni tal-Ispettur Aquilina kienet prova meta ma kinitx. Il-provi huma fatti. Opinjoni ta' spettur tal-pulizija m'hijiex prova. Il-Bord ma kellux il-fatti quddiemu, u għalhekk ma seta' qatt jasal għall-konkluzjoni li l-appellat kien gustifikat li rrifjuta l-applikazzjoni.
- vi. Il-Bord kompli jżbalja meta qal, *"The Board has no evidence before it which inclines it to believe that the appellant is not a threat to national security"*. Hu l-eżekuttiv li qiegħed igħid li l-appellant hu theddida

għas-sigurta' nazzjonali. Mela l-oneru tal-prova qiegħed fuq l-eżekuttiv u mhux fuq l-appellant. Dan hu principju elementari li m'għandhomx isiru żbalji fih.

- vii. Żball ieħor li għamel il-Bord hu li stried fuq l-affidavit tal-Ispettur Aquilina minghajr ma kellu l-fatti quddiemu. Dan apparti li mill-atti lanqas ma jirrizulta' li ta l-opportunita' lill-appellant biex jirribatti dak li qal l-Ispettur Aquilina jew li jagħti l-verzjoni tiegħu. Dak m'huwiex il-mod kif issir il-gustizzja.

Għal dawn il-motivi sa fejn kompatibbli ma' dak li ngħad hawn fuq, tilqa' l-appell u tħassar id-deċiżjoni tal-Bord tal-Appelli tal-Immigrazzjoni tas-6 ta' Ġunju, 2018, bl-ispejjeż kontra l-appellat.

Tordna li l-atti jintbagħatu lura quddiem il-Bord sabiex jiddeciedi skont il-ligi.

Anthony Ellul.