

Qorti tal-Appell  
(Kompetenza Inferjuri)

Imħallef Anthony Ellul

Appell numru: 97/2018

**Fabio Vespa (appellant)**

**Vs**

**Id-Direttur tad-Dipartiment għaċ-Ċittadinanza u l-Espatrijati (appellat)**

12 ta' Lulju, 2019.

1. Ir-rikorrent appella mid-deċiżjoni tal-Bord tal-Immigrazzjoni tat-13 ta' Settembru, 2018 li biha ddecieda:-

*"The Board carefully examined the content of the appeal. At the outset, the Board's competence is to assess whether the Director's decision of 29th May, 2018 is solidly grounded in fact and in law or not. The Board concludes that Regulations 12 and 14 of S.L. 460.17 were applied correctly and that decision of the 29th May, 2018 is solidly grounded in fact and at law.*

*After thorough consideration of the above pleas, sitting held, case law, the Board rejects the appeal".*

2. B'rikors prezentat fl-20 ta' Settembru, 2018 ir-rikorrent appella mis-sentenza. L-aggravji huma:-

- i. Id-deċiżjoni tal-Bord hija żbaljata meta tgħid li l-appell quddiem dak il-Bord ġie ipprezentat fl-20 ta' Ġunju, 2018;
- ii. In-nullita tad-deċiżjoni tad-Direttur appellat stante li dik id-deċiżjoni ma nharhitx minn uffiċjal awtorizzat skont il-liġi;
- iii. Ma tressqet ebda prova li l-appellant Fabio Vespa ġie misjub ħati ta' xi reati mill-Qrati Maltin u għalhekk, il-Bord ma kellux jikkonferma d-deċiżjoni tad-Direttur;
- iv. Id-deċiżjoni tad-Direttur ma tikkonformax mal-istipulazzjonijiet tar-Regolament 12 u 14 tal-L.S. 460.17 u inoltre, l-aġir tad-Direttur appellat qabel inħarġet id-deċiżjoni jilledi d-drittijiet tal-appellant li joħorġu mill-Art. 41 taċ-*Charter of Fundamental Rights* tal-Unjoni Ewropea.

3. Mill-atti jirrizulta li b'ittra datata 29 ta' Mejju, 2018 il-kap eżekuttiv ta' *Identity Malta* għarraf lir-rikorrent li skont regolamenti 12 u 14(1) tal-Leġislazzjoni Sussidjarja 460.17 (*Free Movement of European Union Nationals and their*

Family Members Order), "... **your rights of free movement in Malta are being restricted on grounds of public policy and public security. Such decision is being taken in light of **your criminal conduct in the country and the related decisions of the Courts of Justice of Malta**". B'dik l-istess ittra r-rikorrent ingħata wkoll avviz li jekk jibqa' f'Malta wara xahar mid-data tagħha, ikun bi ksur tad-disposizzjonijiet tal-Att dwar l-Immigrazzjoni (Kap. 217).**

4. Leġislazzjoni Sussidjarja li saret taħt l-Att dwar l-Unjoni Ewropea (Kap. 460)
5. B'riferenza **għall-ewwel aggravju**, l-ilment sar bla bżonn għaliex il-Bord ma ċaħadx l-appell minħabba li kien tardiv. Għaldaqstant, mhemmx bżonn li l-qorti tqies iktar dak l-aggravju.
6. Fir-rigward **tat-tieni aggravju**, il-Bord qal:

*".... It results that letter dated 29th of May, 2018 is signed by the Chief Executive Officer which position is an Executive position. Decision dated 29th May, 2018 although signed by the Chief Executive Officer who carries a headship position within Identity Malta was taken on behalf of Identity Malta. The Board cannot agree with appellants plea simply on the basis that decision was not issued by a competent official. On the contrary and as already stated the Chief Executive Officer carries an important role within Identity Malta and is certainly not a clerk who has no decision making powers. Besides decision was not taken in his personal name but in his capacity as Chief Executive Officer of Identity Malta.*

*Also, the Board refers to sub-legislation 497.07, Article 9(1) and (2) of the Laws of Malta wherein it states that, (1) 'The Agency shall have a Chief Executive Officer to be style as the 'Chief Executive Officer', Identity Management and Ancillary Services who shall be responsible for the performance, functions and duties of the Agency and who shall be responsible for the daily management of the Agency in accordance with the Act.... This re-affirms that the Chief Executive Officer is responsible for the performance, functions and duties of the Agency and certainly has the remit and power to issue decisions".*

7. Il-qorti tosserva:-
  - 7.1 L-avviz li nħareġ minn *Identity Malta* datat 29 ta' Mejju, 2018 jirreferi għar-regolament 12 u 14 tal-Leġislazzjoni Sussidjarja 460.17;
  - 7.2 L-avviz isemmi ordni ta' restrizzjoni li tinħareġ *ai termini* tar-regolamenti 12 tal-istess leġislazzjoni sussidjarja;
  - 7.3 Minn qari tar-regolament 3, hu evidenti li l-ordni ta' restrizzjoni għandha tinħareġ mid-Direttur tad-Dipartiment tač-Ċittadinanza u *Expatriates*;

- 7.4 Leġislazzjoni Sussidjarja 595.07 (*Ordni li Jwaqqaf l-Aġenzija Identita' Malta*) hi dik li biha twaqqfet *Identity Malta*. Skont regolament 9, l-aġenzija għandha uffiċjal kap eżekuttiv li "... jkun responsabbli **għall-prestazzjoni, il-funzjonijiet u d-dmirijiet tal-Aġenzija** u li jkun resposabbli għat-tmexxija ta' kuljum tal-Aġenzija skont l-Att";
- 7.5 Minn qari tal-Att dwar l-Amministrazzjoni Pubblika, hu evidenti li d-Dipartiment taċ-Ċittadinanza u *Expatriates* ma baqax jeżisti (ara tieni skeda ta' Kap. 497 u issa sostitwit bil-Kap. 595) u minflok twaqqfet l-aġenzija Identita Malta. Meta daħal fis-seħħ Kap. 497 (Att 1 tal-2009), id-Dipartiment kien għadu jeżisti tant hu hekk li jissemma fit-Tieni Skeda tal-Att bħala wieħed mid-Dipartimenti tal-Gvern.
- 7.6 Dak li qabel kien il-funzjoni tad-Dipartiment għadda għand l-aġenzija Identita' Malta.
8. Fiċ-ċirkostanzi, il-qorti hi tal-fehma li r-raġunament tal-Bord kien korrett minkejja li l-kariga ta' Direttur għal Affarijiet dwar Cittadinanza u *Expatriates* għadha tidher fil-liġi.
9. **Bit-tielet aggravju** l-appellant argumenta li ma tressqet l-ebda prova li r-rikorrent kien instab ħati ta' reati minn qrati f'Malta.
10. Il-qorti ikollha ssemmi l-mod dilettantesk ta' kif Identita Malta ddefendiet il-każ f'materja li min-natura tagħha hi ta' ordni pubbliku. F'dan il-każ l-aġenzija lanqas biss ma ndenjat ruħha li tipprezenta kopja legali tas-sentenzi li ngħataw mill-qrati Maltin kontra Vespa.
11. Il-fatt li l-Bord ħa l-inizjattiva u għamel *on line search* tas-sentenzi li ngħataw kontra l-appellant, m'huwiex ser jiġi kkundannat minn din il-qorti. Il-Bord m'huwiex marbut bi proċedura partikolari. Fl-istess waqt l-appellant ma ressaq l-ebda prova li dak li qal il-Bord m'huwiex minnu.
12. Fil-fatt jirriżulta li:
- i. B'sentenza **tal-14 ta' Jannar, 2016** il-Qorti tal-Appell Kriminali ikkonfermat sentenza ta' ħtija tal-appellant li fost'affarijiet oħra kien importa jew ġġiegħel li tkun importata f'Malta medicina perikoluża, kif ukoll kellu l-cannabis fil-pussess tiegħu. L-appellant kien kundannat sentejn prigunerija. Il-każ seħħ fil-21 ta' Frar, 2012 meta l-appellant kien dieħel Malta minn Katanja. Fis-sentenza tal-Qorti tal-Appell Kriminali jingħad li waqt tfittxija nstabu żewġ pakketti b'ħamsa u għoxrin (25) żerriegħa kull wieħed tal-pjanta cannabis. Inoltre, irriżulta

li l-appellant għamel użu minn dokument falsifikat meta daħal Malta, fis-sens li ppreżenta karta tal-identita' li tgħajjat lil ċertu Michele Vespa bir-ritratt tal-imputat.

- ii. B'sentenza **tat-28 ta' Frar, 2018** il-Qorti tal-Maġistrati (Malta) bħala Qorti ta' Ġudikatura Kriminali ikkundannat lill-appellant għall-prigunerija ta' sitt (6) xhur wara li sabitu ħati ta' falsifikazzjoni ta' karta ta' identita' Taljan maħruġa f'isem Giacomo Cona u li għamel użu mill-istess dokument. Reat li wettaq f'dak iż-żmien.

13. L-appellant jaf tajjeb x'kienu l-kazijiet li kellu f'Malta, bl-iktar wieħed riċenti hu dak dwar reat li wettaq fi Frar, 2018 u fir-rigward ta' liema tirreferi s-sentenza tat-28 ta' Frar, 2018. L-appellant żgur li ma ġiex sorpriż b'dawk il-fatti ġialadarba kien personalment involut f'dawk il-kawzi.

14. Għal dak li jirrigwarda **l-aħħar aggravju**, hu evidenti li l-appellant hu *repeat offender* bl-aħħar każ ikun dak li seħħ fi Frar, 2018. Każijiet li min-natura tagħhom huma serji. Saħansitra jirriżulta wkoll li l-appellant kien fid-9 ta' Lulju, 2009 diġa instab ħati mit-Tribunal ta' Katanja u wehel piena ta' prigunerija ta' tlett (3) snin (ara sentenza tal-11 ta' Ottubru, 2016 tal-Qorti tal-Maġistrati (Malta) bħala Qorti Rimandanti fi proċeduri ta' estradizzjoni li saru skont il-Kap. 276) li wkoll kellhom x'jaqsmu ma' traffikar ta' droga u sustanzi psikotropiċi. F'dik is-sentenza l-qorti ordnat l-estradizzjoni tiegħu minn Malta sabiex jiskonta l-piena ta' ħabs. M'huwiex ċar jekk dik l-ordni kinitx twettqet.

15. L-appellant għandu 35 sena u skont l-avviż mibgħut lill-appellant, l-ordni ta' restrizzjoni nħarġet minħabba r-reati li wettaq f'Malta u li nstab ħati tagħhom.

16. Skont artikolu 27(1) tad-Direttiva 2004/38:-

*"1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of **public policy, public security** or public health. These grounds shall not be invoked to serve economic ends.*

*2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively **on the personal conduct of the individual concerned**. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.*

*The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat **affecting one of the fundamental interests of society**. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted".*

17. Fis-sentenza **H.F. vs Belgische Staat** (C-366/16) tat-2 ta' Mejju 2018, il-Qorti Ewropea (Grand Chamber) osservat:

39. *It is apparent from Article 27(1) of Directive 2004/38 that Member States may adopt measures which restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, **on grounds, in particular, of public policy or public security, but those grounds may not be invoked to serve purely economic ends.***
40. *In accordance with the Court's settled case-law, while Member States essentially retain the freedom to determine the requirements of public policy and public security in accordance with their national needs, which can vary from one Member State to another and from one era to another, particularly as justification for a derogation from the fundamental principle of free movement of persons, those requirements must nevertheless be interpreted strictly, so that their scope cannot be determined unilaterally by each Member State without any control by the institutions of the European Union (judgment of 22 May 2012, I., C-348/09, EU:C:2012:300, paragraph 23 and the case-law cited; see, to that effect, judgment of 13 July 2017, E, C-193/16, EU:C:2017:542, paragraph 18 and the case-law cited).*
41. *Accordingly, the concept of '**public policy**', in Articles 27 and 28 of Directive 2004/38 has been interpreted in the Court's case-law as meaning that recourse to that concept presupposes, in any event, the existence, in addition to the social disturbance which **any infringement of the law involves, of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society** (judgment of 24 June 2015, H.T., C-373/13, EU:C:2015:413, paragraph 79 and the case-law cited).*
42. *As regards the concept of 'public security', it is clear from the Court's case-law that this concept covers both the internal and external security of a Member State (judgment of 23 November 2010, Tsakouridis, C-145/09, EU:C:2010:708, paragraph 43). Internal security may be affected by, inter alia, **a direct threat to the peace of mind and physical security of the population of the Member State concerned** (see, to that effect, judgment of 22 May 2012, I., C-348/09, EU:C:2012:300, paragraph 28).....*

*Moreover, while, in general, the finding of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, within the meaning of the second subparagraph of Article 27(2) of Directive 2004/38, implies **the existence in the individual concerned of a propensity to repeat the conduct constituting such a threat in the future**, it is also possible that past conduct alone may constitute such a threat to the requirements of public policy (judgment of 27 October 1977, Bouchereau, 30/77, EU:C:1977:172, paragraph 29).*

18. Għal dawk li huma l-każijiet ta' traffikar ta' droga, jirriżulta li ilhom is-snin li ġraw, bl-aħħar wieħed ikun seba' (7) snin ilu. Dawk il-każijiet waħedhom mhumieq biżżejjed sabiex jikkonvinċu lill-qorti, meta tqies kemm ilhom li ġraw.

19. Fid-deċiżjoni l-Bord tal-Appelli qal:

*"The matter pertinent to case C-348/09 discussed above regarded an Italian national who was expelled from Germany following conviction of offences relating to sexual assault, sexual coercion and rape of a minor. The competent German court had condemned the Italian national to incarceration for seven years and six months. **In the current case, the Criminal Court condemned the appellant to imprisonment for eight years.** Therefore, the Board believes that if incarceration for seven years fell within the notion of imperative grounds of public security, the so does the appellant's condemnation, which was for a longer period of time".*

20. Lill-qorti ma rrizultalhiex li l-appellant kellu każ quddiem il-Qorti Kriminali u li kien ikkundannat għal tmien (8) snin prigunerija. Il-Bord ma tax dettalji dwar dik is-suppst deċiżjoni. L-appellata stess mat-twegiba tal-appell ipprezentat żewġ sentenzi u l-ebda waħda mhi tal-Qorti Kriminali u ma fihix kundanna għal tmien snin prigunerija.

21. Il-qorti żżid li filwaqt li l-każ C-348 tal-Qorti Ewropea kien dwar każ ta' persuna li wehlet seba' snin u nofs ħabs *"for the sexual assault, sexual coercion and rape of a minor"*, f'dan il-każ il-Bord m'għamel l-ebda riferenza għar-reat li suppost wettaq l-appellant u li nstab ħati tiegħu.

22. Madankollu l-appellant ma ressaqx prova:

- i. Li f'Malta għandu rabtiet familjari;
- ii. Li f'Malta għandu xi attivita' ekonomika bi qliegħ jew impieg;
- iii. Li f'Malta integra ruħu;
- iv. Kemm ilu residenti Malta b'mod kontinwat u eskluż il-perjodu li kien qiegħed jiskonta sentenza fil-ħabs. Ma tax prova li f'Malta jgawdi minn dritt ta' residenza permanenti (ara l-każ ta' **B and Vomero** (C-316/16) tas-17 ta' April, 2018);
- v. Dwar il-qagħda finanzjarja tiegħu f'Malta;

23. Il-qorti żżid li bla dubju n-natura tal-akkużi li l-appellant instab ħati tagħhom, huma serji. L-appellant agħmel użu minn dokument uffiċjali ta' identifikazzjoni bid-dettalji ta' persuna oħra. Hu fl-interess tas-soċjeta li persuna ma tagħmilx użu minn dokumenti uffiċjali falsifikati, li jqarrqu dwar l-identita' tal-persuna. Fir-rigward tal-aħħar reat kien qiegħed jiffaċċa piena ta' prigunerija sa massimu ta' sentejn. Il-fatt li l-appellant reġa għamel użu minn karta ta' identita' falsifikata, hi wkoll indikazzjoni li l-appellant hu propens li jwettaq dak it-tip ta' reat u li għadu ma tgħallimx. Inoltre, waqt il-proċeduri quddiem il-Bord ma ta l-ebda tagħrif dwar x'kien wasslu sabiex iwettaq l-aħħar reat. Agir li fih innifsu hu indikazzjoni oħra li m'hemmx riskju baxx li l-appellant ma jwettaqx reat ieħor.

24. Magħmula dawn il-konsiderazzjonijiet il-qorti tqies li m'hemmx bażi biex tilqa' l-appell.

**Għal dawn il-motivi tiċhad l-appell bl-ispejjeż kontra l-appellant.**

Anthony Ellul.