QORTI CIVILI
PRIM'AWLA

ONOR. IMHALLEF
ROBERT G. MANGION

Illum, 11 ta' Dicembru 2020

Mandat t'Inib. Nru 1665/2020 RGM

Fl-Atti tar-Rikors ghall-Hrug ta' Mandat ta' Inibizzjoni
Numru 1665/2020 fl-ismijiet:

Is-Segretarju Permanenti fil-Ministeru tas-Sahha

vs

Malta Union of Midwives and Nurses (MUMN)

Il-Qorti

Rat ir-Rikors imressaq fil-25 ta' Novembru 2020, li bih u ghar-ragunijiet hemm imfissra, Is-Segretarju Permanenti fi hdan il-Ministeru tas-Sahha talab li din il-Qorti tohrog Mandat ta' Inibizzjoni biex izzomm lill-intimati milli

(a) Tinizzja u/jew tordna, u/jew twettaq, u/jew isejjah, u/jew tippromulga, u/jew kull mod iehor torganizza u/jew tkompli b'direttivi u/jew azzjoni u/ jew azzjonijiet industrijali, diretti jew indiretti, bil-partecipazzjoni taghha stess u/jew tal-membri taghha, b'mod partikolari in konnessjoni mad-dikjarazzjoni t'azzjoni notifikata lill-esponenti fit-23 ta' Novembru 2020;

(b) Tiehu xi azzjoni li tippregudika, itellef jew b'xi mod iehor ixxekkel l-provizjoni tas-Sahha Pubblika fl-ahjar interess tal-komunità; u
(c) Tiehu kwalunkwe azzjoni li tirrizulta, jew li tista' tirrizulta, fi pregudizzju, telf jew xi forma ohra ta' tfixil lill-provediment ta' servizz essenzjali.

Rat id-digriet taghha tal-25 ta' Novembru 2020, li bih laqghet it-talba b'mod provizorju, ordnat in-notifika tar-rikors u dan id-digriet lill-intimati bil-fakultà li jipprezentaw risposta sal-hin tas-seduta u appuntat ir-rikors ghas-smigh ghat-2 ta' Dicembru 2020;

Rat illi fl-1 ta' Dicembru 2020, il-Union intimata pprezentat risposta;

Rat l-atti kollha tar-rikors;

Semghet ix-xhieda;

Semghet it-trattazzjoni tal-avukati tal-partijiet;

Rat il-verbal tas-seduta tat-2 ta' Dicembru 2020, fejn halliet ir-rikors ghall-provvediment *in camera*.

Ikkunsidrat

Fatti antecedenti r-rikors ghall-Mandat ta' Inibizzjoni

Fit-2 ta' Novembru 2020 Malta Union of Midwives and Nurses (minn issa 'l quddiem MUMN jew il-Union) bghatet *Open Letter* indirizzata lil Ministru tas-Sahha fejn fiha gie informat li l-infermiera u l-qwiebel gew ingannati mid-Divizjoni tas-Sahha meta :

1. *"all allowances have been allowed to be superseded by the ALlied Health sectoral agreement;*
2. *By omitting any form of Appraisal Performance reports from the Allied Health sectoral agreement;*

3. *By handing over hard-earned incventives belonging to the nursing/midwifery profession such as the famous SLSL to UHM*."

Kien ghalhekk li l-Union informat lill-Ministru li hija kienet tat ordni lill-infermiera u l-qwiebel sabiex ir-rapport ta' stima (*appraisal report*) jigi mmarkat bhal 100% u dan stante li d-Divizjoni tas-Sahha li kienet responsabbli ghall-iffirmar tal-ftehim mal-*Allied Health Professionals* m'adottatx l-istess approcc meta iffirmat il-ftehim "*of the Allied Health, thus omitting any appraisal reports that all alowances pertaining in the Allied Health sectoral agreement provided by their agreement can be enjoyed to the fullest."*

Fl-20 ta' Novembru 2020 intbaghtet korrispondenza elettronika lis-Segretarji Permanenti fi hdan it-Taqsima *People & Standards* fl-Ufficcju tal-Prim Ministru, fi hdan il-Ministeru tas-Sahha u fi hdan il-Ministeru tal-Familja, Solidarjetà Socjali u Drittijiet tat-Tfal. Fiha ghamlu referenza ghal-laqghat li kienu saru u li kienu qeghdin jistennew appuntament ghal laqgha ohra izda kienu baqghu ma rcevew l-ebda appuntament iehor. B'dan l-attegjament huma fehmu li l-Gvern ma kienx interessat li jsib soluzzjoni u kien ghalhekk li l-Union irregistrat Tilwima Industrijali mal-Ministeru tas-Sahha u mal-Ministeru tal-Familja, Solidarjeta Socjali u Drittijiet tat-Tfal u l-Ufficcju tal-Prim'Ministu Taqsima PSD f'isem il-membri kollha tal-MUMN.

Fit-23 ta' Novembru 2020, l-MUMN informat lill-membri taghha mxerdin ma' diversi sptarijiet f'Malta u Ghawdex sabiex mill-25 ta' Novembru 2020 mis-sebgha ta' filghodu jibdew isegwu numru ta' direttivi. Skont l-ittra li intbaghtet lill-membri taghha, dawn id-direttivi nhargu wara li "*the Health Division and the Office of the Prime Minister refused to reopen the sectorial agreement of the Nurses and Midwives as to address the substantial discrepancies given to the Allied Health Professionals in their sectorial agreement."* Fl-ittra mibghuta mill-MUMN lill-membri taghha kien hemm numru ta' direttivi li huma elenkati aktar 'l quddiem. L-MUMN ordnat ukoll lill-infermiera li jahdmu fl-*Operating Theatres* ewlenin, sabiex "*Nurses working in theatre are to remain working in these four theatres but the agreement of theatre nurses helping out in ITU is to be maintained."* Waqt il-gbir tal-provi, irrizulta li dan l-arrangament kien fis-sens illi infermiera ta' teatri ohra

ghandhom jibqghu jassistu gewwa l-ITU minhabba is-sitwazzjoni tal-imxija. Mill-ittra annessa mar-rikors promotur jidher ukoll li inghataw numru ta' direttivi lil *Endoscopy Unit, Out-Patient's Department, SVPR, MCH, RKGH, GGH* u *Health Centres*.

Fis-sena 2017 il-union intimata li tirraprezenta l-qwiebel u l-infermiera l-MUMN iffirmat ftehim kollettiv li dahal fis-sehh fl-1 ta' Jannar 2018, hekk imsejjah Ftehim Settorjali, mal-Gvern, intitolat *Agreement between the Government and The Malta Union of Midwives and Nurses Pertaining to the Nurses and Midwives Employed within the Public Service*, liema ftehim jibqa' validu sal-31 ta' Dicembru 2022. Fl-20 t'April 2017, l-MUMN, flimkien ma' numru ta' unions tal-haddiema ohra, iffirmat ukoll il-ftehim kollettiv intitolat *Collective Agreement for Employees in the Public Service* li huwa validu sal-31 ta' Dicembru 2024 li jkopri l-impjegati kollha fis-settur pubbliku..

Aktar kmieni din is-sena ghal habta ta' nofs Ottubru 2020 il-Gvern dahal fi ftehim kollettiv mal-*Allied Health Professionals* kif rapprezentati mill-Union Haddiema Maghqudin – Voice of the Workers. L-MUMN qed issostni illi b'effett ta' dan il-collectivve agreement is-salarji tal-*Allied Health Professionals* huma aktar favorevoli minn dawk li jgawdu minnhom il-membri taghha u kien ghalhekk li l-istess union ordnat id-direttivi fuq imsemmija.

Mill-banda l-ohra r-rikorrent Segretarju Permanenti fil-Ministeru tas-Sahha qed jinsisti illi l-ftehim settorjali bejn il-Gvern u l-MUMN ghadu vigenti u tahditiet ghal ftehim settorjali gdid ghandhom jibdew mhux aktar kmieni minn disa' xhur qabel l-iskadenza tal-istess ftehim. In oltre, ir-rikorrent jinsisti li l-Artikolu 8.2 tal-ftehim kollettiv generali li sar bejn il-Gvern u l-impjegati kollha tas-settur pubbliku ffirmat fl-20 t'April 2017, jipprovdi "li l-ebda revizjoni ghalih ma tista' ssir sakemm mhux konsegwenza ta' cirkostanzi eccezzjonali **u** li r-revizjoni hija maqbula bejn l-amministrazzjoni u l-union rispettiva."[1] Fir-rikors promotur, ir-rikorrent jinsisti li b'konsegwenza tal-azzjonijiet industrijali ordnati mill-MUMN, is-sahha pubblika kif

[1] "*Sectoral agreements, signed following the signing of this Collective Agreement, are to be valid for a period of not less than 5 years from the date of signing. Revision prior to the elapse of 5 years will only be made in exceptional circumstances and subject to agreement of the Administration and the respective Union/s.*"

ukoll il-hajja tal-utenti tas-servizz mediku sejra tkun ipperikolata partikularment dawk l-aktar vulnerabbli, specjalment minhabba l-pandemija tal-Covid-19. Huwa ghalhekk li r-rikorrent hass il-htiega li jressaq dan il-mandat sabiex l-MUMN tigi inibita milli tkompli bid-direttivi moghtija minnha lill-membri taghha.

Ghal dan il-mandat, il-union intimata irrispondiet billi qalet li is-Segretarju Permanenti qieghed jitlob lill-Qorti tohnoq u xxekkel ghal kollox il-jeddijiet kostituzzjonali taghha sanciti taht l-Artikolu 11 tal-Konvenzjoni Ewropeja tad-Drittijiet tal-Bniedem u l-Artikolu 42 tal-Kostituzzjoni u dawk tal-haddiema membri taghha. In oltre, il-Union tinsisti li bil-ftehim settorjali mal-*Allied Health Professions* il-principju kardinali taht l-Artikolu 27 tal-Kaptiolu 452 u cioe *equal pay for equal work* qieghed jinkiser u dan ghaliex il-Gvern m'huwiex qieghed ihallas l-istess lill-haddiema tieghu. Il-Union qalet ukoll li "l-azzjonijiet mehuda, filwaqt li ovvjament li huma mahsuba biex ikunu effettivi, huma appozitament imfassla sabiex fl-ebda mod u fl-ebda hin u fl-ebda sptar ma titqieghed fil-periklu s-sahha – ahseb u ara l-hajja – tal-utenti tas-servizz tas-sahha pubbliku". fl-ebda hin u fl-ebda sptar ma titqieghed fil-periklu sahha tal-utenti tas-servizz tas-sahha pubblika". Mar-risposta giet ukoll annessa lista ta' servizzi illi bl-ebda mod ma gew milquta bid-direttivi u dawn huma s-segwenti:

1. "Is-servizzi kollha tal-emergenza, inkluz is-servizzi moghtija mill-infermiera meta johorgu mal-ambulanzi;
2. NPICU (maghrufa komunement bhalal l-"ITU" tat-trabi);
3. Intesive Therapy Unit (mhux talli d-direttivi moghtija ma jolqtux l-infermiera li jadmu l-ITU talli anke infermiera li jahdmu fis-swali m'ghandhom ebda direttivi biex ma jassistux u jghinu infermiera li jahdmu fl-ITU kull meta jigu hekk ordnati li jaghmlu skond il-bzonn);
4. Renal Dialysis Unit;
5. Cardiac Intensive care unit;
6. Delivery Suite;
7. Paediatric Wards;
8. Id-djar kollha tal-anzjani;
9. L-isptar Boffa."

Ikkunsidrat

Provi

Ix-xhieda nfethet bis-Segretarju Permanenti fil-Ministeru tas-Sahha, **Joseph Rapa**. Huwa spjega li minn dak li jiftakar hu, huwa kien iltaqa darbtejn mal-union intimata flimkien ma' Mr. Thomas Woods ghall-Ufficcju tal-Prim Ministru. Lejliet li dahlu fis-sehh id-direttivi huwa kkuntatja permezz tat-telefown lill-President tal-MUMN fejn, f'diskussjoni twila, huwa informah li huwa ma kienx qieghed jara skop ghal-laqgha u dan ghaliex internament ma kellux l-awtoritazzjoni sabiex jaghmel laqghat ta' certu utilità u ma xtaqx jaqla lil tal-union biex jghidilhom affarijiet li ma jindirizzax it-thassib taghhom. Dan ma kienx l-eghluq tad-diskussjonijiet. Ix-xhud kien informah ukoll li huwa m'huwiex awtorizzat li jaghmel l-ebda offerta s'issa biss huwa kien informah li sejjer jaghmel hiltu sabiex igib l-awtorizzazzjoni da parti tal-Gvern, sabiex ikun jista' joffri xi haga partikolari. Jghid li kien ser jitkellem internament fuq il-possibilità li jinghata approvazzjoni u ghalhekk jinforma formalment lil union l-irtirar tal-projbizzjoni li hemm fil-PSMC, liema projbizzjoni ma kinitx thalli lill-infermiera jibbenefikaw minn *Shift Allowance*. Li kieku din kellha tigi rtirata kienet tissarraf f'ghotja ta' bejn mitejn ewro u erba' mitt ewro fis-sena (€200 - €400 p.a.) u dan ghaliex jiddependi mir-*rosters* differenti tal-infermiera. Din l-offerta kienet giet ikkunsidrata mill-MUMN bhala inadegwata. Ix-xhud spjega li l-ftehim li jirregola l-*Allied Health Professionals* kien precedentement ffirmat fl-2013 fejn skadenza formalizzata ma kienx hemm u ghalhekk ma kellux terminu fiss. Gara li mis-sena 2013 sas-sena 2018 huma baqghu bl-istess kuntratt u baqa fis-sehh sakemm gie iffirmat dak riċenti f'Ottubru 2020 li kellu effett rettroattiv mill-1 ta' Jannar 2019.

In kontro-ezami ir-rikorrent xhed illi huwa m'huwiex f'posizzjoni jghid li x-xoghol tal-*Allied Health Professionals* u x-xoghol tal-infermiera u l-qwiebel huma ugwali, izda li jista' jghid huwa li huma kumplimentari. Jghid ukoll in kontro-ezami li l-MUMN ipprezentat workings fejn juru li b'effett tal-ftehim li ntlahhaq mal-UHM ghan-nom tal-*Allied Health Professionals* huma, cioe l-infermiera u l-qwiebel, kienu qeghdin jircievu salarju anqas. Huwa kompla jghid li min-naha taghhom huma weghduhom li ser jaghmlu l-kalkoli u ricerka min-naha taghhom u li kellhom

jergghu jiltaqghu sabiex jiddiskutu l-istess. Xhed li l-Gvern kien lest li jahtar 30 Charge Nurse gdid.

In ri-ezami x-xhud spjega li l-membri rispettivi tal-UHM u tal-MUMN huma setturi kumplimentari / differenti fis-settur tas-sahha li jaqghu taht ftehim kollettiv differenti u dawn dejjem hekk kienu. Jghid li l-varjazzjoni tal-paga skont l-iskali li gew moghtija lilhom kienet ta' bejn elfejn Ewro u hamest elef Ewro, ras ghal ras, b'total ta' sitt miljun Ewro ghal haddiema kollha li jikkwalifikaw. L-ewwel darba li l-union MUMN ikkomunikat ghal zieda kien bejn wiehed u iehor fil-bidu tax-xahar ta' Novembru 2020.

Xehdet **Celia Falzon**, Kap Ezekuttiv tal-Isptar Mater Dei. Spjegat li kieku gew attwati dawn id-direttivi l-isptar kien jieqaf u dan ghaliex jahdem bhala katina. Pazjent jidhol l-ewwel l-Emergenza u jekk ikun hemm il-htiega li jigi ammess l-isptar tkun trid tinstab sodda u dan isir b'konsultazzjoni bejn *unit* li jsibu dawn is-sodod u s-swali fejn jilqghu l-pazjenti.

Minhabba l-pandemija Covid-19, il-process gie aktar kompless u dan ghaliex l-ewwel il-pazjent jidhol fi swali fejn jistennew ir-rizultat tal-Covid imbaghad skont ir-rizultat u skont il-kundizzjoni, il-pazjent jiccaqlaq ghal swali ohrajn. Generalment isir dan it-trasferiment, jidhol f'sala jinghata l-kura u jekk ikun hemm bzonn u jekk il-kundizzjoni tal-pazjent tinbidel dan jerga jiccaqlaq ghal swali ohrajn fejn jiehu l-kura adegwata u wara li jghaddilu, il-pazjent jigi *discharged* u jintbaghat id-dar. Dan jinvolvi koordinament bejn is-swali, l-infermiera, bejn il-*bed management team*, it-tobba u t-tims multi-dixxiplinarji li hemm. Il-Kap Ezekuttiv sostniet li jekk id-direttivi tal-MUMN jigu attwati dawn ser iwaqqfu l-infermiera li huma l-pern tas-sistema ospedaljera milli jaghmlu dan il-koordinament. Issostni li dan iku ifisser li jkun difficli ferm sabiex isiru jafu fejn hemm sodod vojta, li huma ndaf sabiex jaccettaw il-pazjenti, sabiex jiggwidaw lil fattigi biex inaddfu s-sodod, it-trasferimenti ma jsirux u allura l-process ta' trasferiment minn sala ghal ohra jieqaf, u ukoll il-process tar-rilaxx jigi mxekkel ferm u dan ghaliex huwa koordinat mill-infermier responsabbli mis-sala. Jekk ma johorgux il-pazjenti, ma jkunx hemm sodod disponibbli ghal pazjenti l-godda. Il-Kap Ezekuttiv kompliet tixhed illi dawn id-direttivi ser jolqtu l-katina li hemm gewwa l-isptar u dan ghaliex iwaqqfu l-kommunikazzjoni bit-telefon, wicc imb'wicc, u bis-sistema digitali. L-isptar b'mod

generali jkollu ghoxrin-il teatru joperaw, minhabba l-imxija dawn nizlu ghal hdax / tnax-il teatru, bid-direttivi dawn nizlu ghal erbgha. Il-konsegwenza ta' dan huwa li jekk jinqalghu xi emergenzi dawn ma jkunux jistghu jigu trattati f'waqthom.

In kontro-ezami l-Kap Ezekuttiv Celia Falzon spjegat illi bid-direttivi, it-teatri ta' *trauma* u CEPOD gew specifikatament ezentati mid-direttivi. Tikkonferma li direttivi fuq l-Emergenza per se ma kienx hemm. Tikkonferma wkoll li ma kien hemm l-ebda direttiva sabiex infermier ma jittrasferixxix pazjent mill-Emergenza ghas-swali. Ix-xhud ikkonfermat ukoll li l-isptar ghandha *bed-management team* li jikkonsisti f'infermiera izda d-direttiva ma kinitx tolqot lilhom. Ix-xoghol sabiex tintuza l-*IT system* principarjament huwa x-xoghol ta' *ward clerks* izda tispjega li bil-lejl hemm swali li ma jkunx hemm dawn il-*clerks*. Ghal mistoqsija tal-Qorti jekk sarx xi ezercizzju ta' kemm kull sala ghandha jkollha infermiera fiha sabiex topera, ix-xhud spjegat li sar ezercizzju sabiex jigi determinat kemm hemm htiega ta' infermiera skont is-swali li ghandhom. Tikkonferma li hemm nuqqas ta' infermiera irrispettivament mid-direttivi tal-MUMN.

In ri-ezami x-xhud spjegat li jekk ma jkunx hemm rilaxx ta' pazjenti, il-process tad-dhul ser isir bil-mod u minhabba l-imxija, fejn il-process huwa aktar kumpless, it-trasferimenti ser isiru ferm aktar bil-mod. Ix-xhud spjegat b'referenza ghall-*IT clerk* li dan jikseb l-informazzjoni m'ghand l-infermiera. Tghid li f'kull direttiva hemm imnizzel "*do not coordinate/instruct any ward/hospital personnel (including ward clerks [...]) to carry out any of the above"*. In kontro-ezami ulterjuri ticcara li huwa l-infermier li jaghti l-informazzjoni sabiex jigi rilaxxat pazjent u mhux l-*IT clerk*, dan tal-ahhar idahhal biss l-informazzjoni fis-sistema digitali.

Ir-rikorrent sejjah bhala xhud lil **Dr. Walter Busuttil**, *Medical Director,* Sptar Mater Dei fejn huwa inkarigat mit-tobba tal-isptar, u jghin lil CEO u *nursing director* fit-tmexxija tal-isptar kollu. Xhed illi d-direttivi kif inhuma miktubin ma jhallix l-operat tal-isptar jimxi kif suppost. Ix-xhud spjega li l-Emergenza tahdem billi jkun hemm dak li jsejhulu *"forward flow"*, jigifieri jekk il-pazjenti m'ghandhomx swali fejn imorru, l-Emergenza sejra timtela. Ix-xhud spjega li l-infermier tal-Emergenza, apparti li jghaddi l-*file* tal-pazjent, jikkomunika mal-infermier tas-sala, u dan jsir ghal beneficcju tal-kura tal-pazjent u dan ghaliex il-kura

tal-pazjent tiddependi fuq il-*hand over of care* u din trid issir kull darba li jsir trasferiment. Minn filghodu sas-6 ta' filghaxija, is-sodod disponibbli jiehdu hsiebha il-*bed-management unit*, u wara dak il-hin dan il-process isir mis-*Senior Nursing Officer*. Din l-informazzjoni tigi ottjenuta mill-infermiera tas-swali. Ix-xhud spjega li f'sitwazzjoni normali jintuzaw ghoxrin-il teatru, izda minhabba l-pandemija COVID-19 dawn nizlu ghal bejn hdax u tnax-il sala u dan sar sabiex l-infermiera jassistu fl-ITU. Dawn it-teatri kienu qeghdin jintuzaw sabiex isiru operazzjonijiet t'emergenza u cioe operazzjonijiet ta' pazjenti bil-kancer, operazzjonijiet ta' pazjenti mugugha, u operazzjonijiet li jekk ma jsirux ikun ta' periklu ghas-sahha tal-pazjent. Operazzjonijiet mhux urgenti, bhal ezempju ftuq, tal-marara, *hip replacement* gew posposti minhabba l-pandemija. Jghid li jista' jaghti l-possibilità li jinghalqu aktar swali minhabba l-pandemija sabiex ikun hemm koncentrazzjoni ta' infermiera fl-ITU.

In kontro-ezami jikkonferma li l-infermiera tal-Emergenza ma inghatawx direttivi sabiex ma jaghmlux xogholhom. Jikkonferma wkoll li ma inghatat l-ebda direttiva li l-infermiera ma jakkumpanjax il-pazjent sas-sala. Bid-direttivi izda l-infermier li jakkumpanja l-pazjent m'huwiex sejjer jaghti *hand-over* u cioe informazzjoni dwar il-pazjent lill-infermier tas-sala. Jekk min-naha l-ohra ma jkunx hemm il-htiega li l-pazjent ikun akkumpanjat minn infermiera ghaliex ma jkunx akut, dan jittiehed minn sala ghal ohra mill-*porter* wahdu. F'dak il-kaz il-kommunikazzjoni issir bit-telefon. Nonostante li jkun hemm *hand-over* bil-kitba, din l-informazzjoni tkun minima u huwa ghalhekk li jehtieg li jkun hemm komunikazzjoni verbali. Fl-Emergenza hemm *clerk* u rwol tieghu huwa li jcempel lis-sala li ser tkun ser tircievi l-pazjent. Sat-3 ta' wara nofsinhar din it-telefonata titwiegeb mill-*ward clerk* tas-sala, li m'ghandu l-ebda gharfien kliniku (*clinical knowledge*). L-informazzjoni lil *ward clerk* tinghata mill-infermiera. Rigward l-irwol tal-*bed management team* ix-xhud spjega li dan jigbor l-informazzjoni minn ghand l-infermiera dwar is-sodod disponibbli jew li ser ikunu disponibbli f'hin qasir fis-swali sabiex ikollhom fejn iqassmu l-pazjenti. Mod wiehed kif tingabar din l-informazzjoni hija permezz tat-telefon. It-tieni mod huwa permezz tas-sistema digitali. L-informazzjoni sabiex titqieghed fis-sistema digitali tinkiseb minn ghand l-infermier u l-infermier tista' titfa' din l-informazzjoni hi fis-sistema.

L-ahhar xhud tar-rikorrenti kienet **Carmen D'Amato**, *Director Nursing and Midwifery* - Sptar Mater Dei, SAMOC u Boffa Hospital. Spjegat li d-direttivi tal-Union sejrin iwaqqfu l-isptar mill-funzjonijiet tieghu. Sahhqet illi ser ikun hemm *ripple-effect*, u cioe meta sejjer jitwaqqfu t-trasferimenti ser ikun hemm *bed-blocking*. B'dan ifisser li qieghed jikkawza dewmien sabiex jinbeda t-trattament. Ix-xhud spjegat li hemm saffi differenti ta' infermiera. Hemm ic-*charge nurse* li tmexxi operat tas-sala u cioe tara *daily running* tas-sala, li taghti ambjent sigur, fosthom li taghti ambjent nadif, u kommunikazzjoni bejn il-tim multi-dixxiplinarju. Hemm ukoll l-infermiera, li tghaqqad it-tim kollu flimkien mal-konsulent, fizjoterapisti, etc. Ix-xhud tghid illi jekk din il-kommunikazzjoni sejra tinqaghta, il-pazjent sejjer ibghati. Fir-rigward tad-direttivi, ix-xhud spjegat li l-infermier huwa mehtieg sabiex il-pazjent jigi rilaxxat u dan ghaliex l-infermiera trid taghti l-pjan tar-rilaxx lill-pazjent, tikkomunika mal-qraba, tibbukkja trasport jekk m'ghandux, etc. Il-fatt li l-infermier mhux qieghed jikkomunika, il-pazjent sejjer jibqa' fejn ikun – jekk *porter* mhux ha jissejjah, il-pazjent m'huwiex ser imur ghal kura f'taqsima ohra. Ix-xhud giet mistoqsija, x'impatt jista' jkollha d-direttiva li ma jingabrux il-*files* u noti passati ta' pazjent u x-xhud spjegat li dawn in-noti u *file* huma krucjali aktar u aktar jekk dan il-pazjent sejjer jaghmel operazzjoni, liema *files* ikollhom l-istorja kollha tal-pazjent inkluz fost ohrajn allergiji li jkunu dokumenti fin-noti antiki li tista' taffettwalu hajtu. Ix-xhud tenfasizza li l-kommunikazzjoni hija dover essenzjali tal-infermiera.

In kontro-ezami x-xhud spjegat illi fir-rigward tan-noti antiki d-dover tal-infermiera huwa li dawn jigu migbura min-*nursing aid* / *medical care* u mhux mill-infermiera; id-dover tal-infermiera huwa li tordnhom u mhux li tigborhom. Jekk il-kommunikazzjoni ta' din ser titwaqqaf fl-ebda hin dan il-*file* mhu ha jitla'.

Il-Union intimata MUMN resqet bhala xhud lil **Paul Pace**, President tal-istess union. Huwa beda billi spjega li waqt it-trattattivi tal-ftehim kollettiv tal-2013, min ihaddem kien spjegalhom li x-*shift allowance* mhux sejjer jinghata u li l-*Performance Allowance* hija bbazata fuq rapport annwali li kull infermier jaghmel. In oltre hemm ukoll dik imsejha *Continuous Professional Development Allowance* (CPD), hija somma fissa ta €700 li tinghata lill-professjonist li jkompli l-istudji tieghu. Skont ix-xhud, meta nhareg l-ftehim kollettiv tal-*Allied Health Professionals*

dan il-pedament tmiss. Jghd li waqt l-ewwel laqgha li l-Union kellha ma' Joseph Rapa u Thomas Woods, huma kienu pprezentawlhom kalkoli li juru d-diskrepanza bejn il-haddiema tal-infermiera u l-qwiebel fuq naha u tal-allied health professionals fuq naha ohra, fl-istess skali. Fit-tieni laqgha gew ikkomparati l-*workings* li saru mill-union li jikkomprendu minn Skala 10 sa Skala 5 u l-Gvern ghamel il-*workings* tieghu sabiex jigi determinat id-diskrepanza, jekk kien hemm, fis-salarju bejn l-infermiera u l-qwiebel fuq naha u l-professjonisti tal-*Allied Health Professionals* fuq naha ohra, meta kkomparat fuq l-istess skala. Ix-xhud jghid li waqt din il-laqgha jidher li kien hemm qbil min-naha tal-Gvern li hemm diskrepanza. Bhala soluzzjoni l-Gvern offra li jigu promossi 30 infermier ghal *Charge Nurse*. Però mhux dan li riedu l-Union u dan ghaliex m'hijiex kwistjoni ta' promozjoni ta' 30 infermier li l-MUMN kienet qed tinsiti ghalih izda li jigu fuq l-istess livell tal-haddiema imsejha *Allied Health Professionals*. Ix-xhud jghid li huwa jifhem il-pozizzjoni tal-Gvern li jekk jintmiss ftehim kollettiv wiehed ikun qieghed jirrokka ftehim kollettiv ohra li hemm bejn il-Gvern u dipartimenti governattivi ohra u ghalhekk il-Union, peress li hemm nuqqas ta' infermiera u din ammessa mill-Gvern stess, offriet li l-qwiebel u l-infermiera jinghataw *Shortage of Nurses Allowance*. Kien ghalhekk li ntalab li din l-*allowance* ghandha tvarja bejn tlett elef Ewro (€3,000) u hamest elef Ewro (€5,000), skont il-grad, u dan ikun *allowance* temporanju sakemm jasal iz-zmien li jigi diskuss il-ftehim kollettiv il-gdid fis-sena 2022. B'din il-proposta, l-haddiema jigu fl-istess livell tal-haddiema tal-*Allied Health Professionals.* Fuq din il-proposta kellha ssir laqgha ohra fis-17 ta' Novembru 2020 izda din ma saritx, minflok ix-xhud ircieva telefonata minn ghand is-Sur Rapa jinformah li m'ghandux l-awtorizzazzjoni sabiex jiltaqa' maghhom. Ix-xhud jinnota wkoll li l-Gvern flok din il-kwistjoni hadha ghand il-Rikkonciljatur, bhal ma jsir f'dawn it-tip ta' kwistjonijiet, il-Gvern ghazel li jibda dawn il-proceduri ghall-hrug ta' Mandat ta' Inibizzjoni. Ix-xhud spjega illi sabiex jekk possibbli l-MUMN tevita l-hrug ta' dawn id-direttivi, fit-2 ta' Novembru li ghadda huwa kiteb direttament lill-Ministru sabiex jitolbu jintervjeni fid-diskussjonijiet, izda qatt ma kien hemm twegiba ghal din l-ittra. Kien ghalhekk li s-Segretarju Generali tal-Union, Colin Galea, baghat korrispondenza elettronika jistaqsi ghal twegiba izda ghal din ukoll ma kienx hemm risposta. Ix-xhud jghid li wara li ra dan l-atteggjament ma kellux triq ohra hlief li jinhargu dawn id-direttivi. Jghid li dawn hargu fit-23 ta' Novembru 2020 b'struzzjonijiet ghal 25 ta' Novembru, b'jumejn cans ghall-Gvern sabiex jerga jiftah id-diskussjonijiet. Ix-xhud

jinsisti li x-xoghol tal-infermier huwa li jassisti l-pazjent u mhux joqghod wara skrivanija, jirrispondi t-telefon u fuq kompjuter. Ix-xhud jghid li hemm nuqqas kbir ta’ infermiera f’kull taqsima inkluz fl-ITU. Jikjarifika illi d-direttiva mill-MUMN sabiex l-infermiera ma jmissux kompjuter ilha hemm sena u nofs, kien biss li din regghet giet riaffermata f’dawn id-direttivi. Ix-xhud jiccara wkoll li waqt is-sieghat (li kienu ‘l fuq minn ġurnata) li dahlu fis-sehh id-direttivi qabel ma gie milqugh provizorjament il-mandat u gie notifikat lilhom, it-trasferimenti tal-pazjenti mill-emergenza u mir-*renal unit* mexa minghajr skossi u dan ghaliex il-*bed-management team* hareg mill-ufficju u mar idur is-swali, kif suppost ghandhom jaghmlu dejjem. Ix-xhud jinsisti li l-*bed management team* huma infermiera li joqghdu bilqieghda fl-ufficju taghhom meta suppost xogholhom hu li jduru s-swali sabiex jorganizzaw it-tqassim tal-pazjenti skond l-ezigenzi u d-disponibilita' ta' sodod vojta. Il-*bed management unit* ma ntlaqtux b’dawn id-direttivi. Kien bis-sahha ta’ dawn id-direttivi izda li dawn hargu mill-ufficju taghhom u bdew iduru s-swali, jaraw il-files u jaghmlu l-koordinazzjoni mehtiega. Ix-xhud jghid ukoll li xejn mhu minnu li jsir *hand-over* bil-fomm u dan ghaliex kollox ikun miktub. Dawn isiru biss meta jkun hemm emergenza fejn il-pazjent jittiehed l-ITU. Ix-xhud jinsisti li l-kura lill-pazjent xorta ser tinghata lill-pazjent anke jekk ma jsirx it-trasferiment u dan ghaliex kull sala ghandha pazjenti li jkunu jehtiegu kura differenti. Ix-xhud insista li *Renal unit,* ITU, paediatrics, MPICU (ITU tat-trabi) ma tlaqtux b’dawn id-direttivi ghaliex it-trasferimenti tkomplew isiru anzi b’aktar efficenzja ghaliex dawn l-affarijiet ma baqghux jiddependu fuq l-infermier.

Ix-xhud spjega li fil-passat l-MUMN kienet tat direttivi sabiex l-infermiera ma jahslux pazjenti u ma jigux mcaqalqa minn fuq is-sodda ghal fuq is-siggu, izda jghid li f’din id-direttiva mertu ta' dawn il-proceduri ma hemmx ordnijiet ta’ dik ix-xorta. Ix-xhud jispjega li d-direttiva numru 6 hija ndirizzata lil Health Centres u dan ghaliex fl-isptar hemm dawk li jissejhu *phlebotomists* u li ma gewx affettwati b’dawn id-direttivi. Ix-xhud jaghmel referenza ghal SLSL, cioe l-*early retirement* ta’ wara 30 sena servizz. Dwar ix-*shift allowance,* ix-xhud spjega li huma ma inghatawx din l-*allowance* ghaliex dejjem qalulhom li ghandhom allowances ohrajn li jaghmlu

tajjeb[2], izda l-*Allied Health Professionals* inghataw aktar *allowances* milli ghandhom huma fosthom class allowance, *Professional training allowance*, etc. Jghid li l-SLSL inghatat ukoll lil *Allied Health Professionals.*

In kontro-ezami spjega li dawn id-direttivi kellhom jinhargu mal-isptarijiet tal-Gvern ta' Malta kollha. Jikkonferma li mill-ftehim kollettiv tal-2017 u li dahal fis-sehh fis-sena 2018 kien hemm miljorament minn dak tal-2013. Meta mqabbel mal-ftehim kollettiv tal-*Allied Health Professionals*, huma gawdew miljorament ghal sena aktar u dan ghaliex il-ftehim mal-UHM dahal fis-sehh retroattiv mill-1 ta' Jannar 2019. Jinsisti izda li l-*Allied Health Professionals* ghandhom sitt *allowances* differenti.

Ikkunsidrat

Punti sollevati fis-sottomissjonijiet orali tal-partijiet

Sottomissjonijiet ghan-nom tas-Segretarju Permanenti fil-Ministeru tas-Sahha.

Il-legali tar-rikorrent jispjega li l-Mandat qieghed isir ghal azzjonijiet speċifiċi; ir-raguni ta' din l-azzjoni jinsorgi mid-direttivi li harget il-Union intimata. Il-bazi tal-azzjonijiet li harget il-union ma kienux ghax m'hemmx bizzejjed infermiera imma ghaliex il-Gvern ma fetahx, fuq talba tal-union, il-ftehim settorjali. Kwalunkwe ftehim kollettiv, minkejja n-natura specjali tieghu, fejn hija l-union li qieghda tifthiem u tiffirma ghan-nom tal-membri taghha, ladarba dak il-ftehim kollettiv dahal fis-sehh, dak ghandu l-elementi kollha ta' kuntratt u regolat bil-ligi ordinarja. Dan ifisser ukoll li l-partijiet huma marbutin b'dak li ftehmu. Il-ftehim settorjali jghid li dan ghandu jidhol fis-sehh mill-1 ta' Jannar 2018 u jigi fi tmiemu fl-20 ta' Dicembru 2022 u negozjati ghandhom jibdew disa' xhur qabel. M'hemm xejn fil-ftehim kollettiv li jgieghel lill-Gvern jiftah in-negozjati mill-gdid ghal ftehim kollettiv b'terminu. Ir-rikorrent jinsisti li hadd m'hu qieghed jghid li l-union m'ghandhiex il-jedd li taghmel azzjonijiet industrijali imma dak il-jedd ghandu jibqa' fil-parametri

[2] Il-Ftehim settjorali (skont dak li pprezentatat lill-Qorti iffirmat fit-28 ta' Novembru 2018) jippreciza taht is-sezzjoni 6.1 "*vi. Both parties agree that the awarding of the Nursing Premium is being given in lieu of any form of Shift Allowance. The Union is hereby agreeing that the awarding of the Nursing Premium shall drop any claims related to Shif Allowance, and that in the future the Union shall never present a claim related to Shift Allowances for Nurses and Midwives*."

tal-ftehim kollettiv, bhal per ezempju jekk l-amministrazzjoni mhux qed tapplika l-ftehim kollettiv tajjeb, jew saret dixxiplina hazina, jew ghax kellhom jinghataw beneficcji li m'humiex qeghdin jircievu. Jekk in-negozjati ta' ftehim kollettiv jinfetah meta trid il-*union*, il-kuncett ta' kuntratt jintilef kollu. Gie sottomess ukoll mir-rikorrent li l-principju ta' *equal pay for equal work* ma japplikax ghal dan il-kaz u dan ghaliex sabiex dan japplika jrid ikollok l-istess impjieg u l-istess *employer*. Is-settur *Allied Health Professions*, m'humiex membri tal-Kunsill tal-Infermiera u Qwiebel izda ghandhom kunsill separat. Tant huma distinti u netti minn xulxin, minkejja l-kollaborazzjoni taghhom fuq il-post tax-xoghol hija krucjali u fundamentali fil-provvista tas-sahha, li ma jaqawx taht l-istess settur u ghandhom ftehim settorjali distint. Imkien m'hemm imnizzel fil-ftehim kollettiv jew ftehim settorjali, wiehed jew l-iehor, ir-relattività tal-paga. Il-legali tar-rikorrent spjega li l-manager tas-sala huwa l-infermier li huwa fiżiku, l-infermier huwa l-"pont" klinku bejn il-pazjent u t-tabib u l-infermier ghandu esperjenza u tahrig kliniku. Fil-mument li l-kommunikazzjoni da parti tal-infermier mal-operaturi l-ohra tieqaf, allura s-sistema kollha tieqaf. Dwar il-paragun tal-*allowances*, il-legali tar-rikorrent jissottometti li kien hemm ftehim kollettiv li inghalaq u sar iehor effettiv mill-1 ta' Jannar 2018 li fih kien hemm beneficcji ahjar, il-ftehim mal-UHM baqa' qatt ma inghalaq u inghalaq issa u huwa retroattiv ghal bidu tal-2019. L-MUMN ser ikollha l-possibilità li terga tinnegozja l-ftehim settorjali fil-bidu tas-sena 2022.

Sottomissjonijiet tal-MUMN.

Min-naha taghha, il-Union intimata issottomettiet li l-pern tal-Mandat mitlub mir-rikorrent huwa li d-direttivi moghtija mill-MUMN huma sproporzjonati u li ser jaghmlu hafna hsara. Min jallega jrid jipprova tissottometti l-MUMN. Kien fid-dmir tar-rikorrent li jgib prova li dawk id-direttivi huma sproporzjonati u li qed iweggghu lill-pazjent. Il-prova li ngabet hawn tolqot biss lill-isptar Mater Dei u ma ngabet l-ebda prova li d-direttivi li jolqtu l-isptarijiet l-ohra li jaghtu servizz ta' sahha pubblika li hemm xi eccessivita, jew sproporzjonalità jew li ser taffettwa lill-pazjent. L-intimat jghid ukoll li z-zewg taqsimiet in kwistjoni, cioe l-infermiera u l-qwiebel fuq naha u l-*Allied Health Professions* fuq in-naha l-ohra, m'ghandhom xejn differenti ghajr rapprezentanza tal-union. Taht il-kategorija ta' *Allied Health Professions* hemm professjonijiet differenti – *radiographers, physiotherapists,*

speech therapists, occupational therapists, etc. M'hemm l-ebda ligi li tiddistingwixxihom minn professjonisti ohra. L-MUMN apparti infermiera ghandha membri bhal m'huma *ECG Technicians* u *phlebotomists*, li huma kunsidrati bhala *Allied Health Professionals*, u dan ghaliex certament m'humiex infermiera jew qwiebel, imma huma *health care professions* ohra, u li huma regolati mill-ftehim li gie ffirmat mill-MUMN. Il-legali tal-intimat jispjega li bil-ftehim kollettiv li sar mal-UHM inholqot sitwazzjoni fejn CPD allowance ta' membru tal-*Allied Health Professionals* imsieheb mal-UHM jiehu elf u hames mitt Ewro (€1,500) filwaqt *Allied Health Professional* imsieheb mal-MUMN qieghed jiehu seba' mitt euro (€700). Il-bazi tad-disputa huwa *equal pay for equal value*. Ghal dawn l-ahhar tletin sena dejjem imxew pari passu, izda din id-darba saret eccezzjoni. L-MUMN tissottometti illi ghalkemm il-ftehim kollettiv settorjali huwa kuntratt li jorbot lill-partijiet, kemm ilu vigenti dan il-ftehim settorjali diga nfetah tlett darbiet u dan bi ftehim bejn iz-zewg nahat; b'dak li qieghed jintalab huwa li jerga jinfetah ghal darb'ohra. Il-legali tal-Union ghamel enfazi fuq id-dritt tal-*collective bargaining* u jghid li dan jinkludi fih id-dritt li jittiehdu azzjonijiet industrijali; il-union ma tistax tigi mcahhda milli tiehu azzjoni industrijali sabiex tissalvagwarda d-drittijiet tal-membri taghha. Il-kwistjoni tal-proporzjonalità hawnekk ma tapplikax u dan ghaliex japplika biss meta l-Mandat ta' Inibizzjoni jingieb kontra l-Gvern u mhux meta l-Mandat qieghed jigi mressaq mill-Gvern u dan johrog mill-Artikolu 873 (3) tal-Kapitolu 12, huwa ghalhekk li r-rikorrent ma jistax iressaq dan l-argument. Mandat ta' inibizjoni m'ghandux jintuza ghaliex ser tigi kkawzata skumdità jew dizagju b'effett tad-direttivi tal-MUMN. F'dan ir-rigward inghad li l-ebda direttiva m'hi ser taffettwa lill-pazjenti u li dawn id-direttivi huma indirizzati kontra dak kollu li matul is-snin, minhabba nuqqasijiet tal-amministrazzjoni, gew mghobbija bih l-infermiera, lil hinn mir-rwol principali taghhom illi jaghtu l-kura lill-pazjent. Gie sottomess mill-MUMN li d-direttivi taghha ser jinhassu aktar ghaliex hemm mitejn infermier inqas minn dak li l-isptar jehtieg.

Ikkunsidrat;

L-elementi ta' Mandat ta' Inibizzjoni

Il-mandat interpost mill-atturi huwa wiehed generali mahsub taht l-Artikolu 873 tal-Kapitolu 12. Mandat ta' inibizzjoni taht l-artikolu li fuqu huwa imsejjes ghandu l-iskop li jzomm persuna milli taghmel kwalunkwe haga li tista' tkun ta' pregudizzju ghall-persuna li qed titlob il-mandat[3].

Sabiex jinhareg dan it-tip ta' mandat, din l-Onorabbli Qorti trid taccerta li jigu sodisfatti r-rekwiziti kollha li tirrikjedi l-ligi, specifikament dawk indikati taht l-**Artikolu 873 (2)** tal-Kap. 12 li jipprovdi s-segwenti:

> "(2) Il-Qorti m'għandhiex toħroġ tali mandat jekk ma tkunx sodisfatta li dak il-mandat huwa meħtieġ sabiex jitħarsu l-jeddijiet tar-rikorrenti, u li dak ir-rikorrent *prima facie* jidher li għandu dawk il-jeddijiet."

Jehtieg ghalhekk li jigu sodisfatti zewg rekwiziti sabiex ir-rikorrent ikun jisthoqqlu jikseb l-hrug tal-mandat: (a) irid juri li l-mandat huwa mehtieg sabiex jitharsu jeddijiet li jippretendi li ghandu, u (b) jkun jidher li ghandu, mad-daqqa t'għajn (*prima facie*), dawk il-jeddijiet. Ghaldaqstant sabiex tintlaqa' talba maghmula f'Mandat t'Inibizzjoni, jehtieg li jkun hemm *fumus boni iuris*. Peress li l-Mandat t'Inibizzjoni huwa att kawtelatorju, u ghalhekk jinhareg qabel ma jigi aċċertat min ghandu ragun fil-mertu, il-Mandat jinhareg favur dak li jidher, mad-daqqa t'ghajn, li ghandu ragun.

Il-htiega li jintwera li l-parti li titlob il-hrug ta' Mandat bhal dan ikollha *prima facie* l-jeddijiet pretizi hija htiega oggettiva u mhux soggettiva li tiddependi mid-diskrezzjoni tal-gudikant. Gie ritenut mill-Qorti tal-Appell fis-sentenza tal-14 ta' Lulju 1988 fil-kawza **Sonia Grech pro et noe vs. Stephanie Manfrè** li *'huwa rekwiżit oġġettiv u mhux soġġettiv, ma jiddependix mill-element diskrezzjonali tal-ġudikant. Jew il-jeddijiet jidhru prima facie, ma' l-ewwel daqqa t'għajn, jew ma jidhru xejn, għall-finijiet tal-ħruġ tal-mandat.'*

[3] Artikolu 873 (1) tal-Kapitolu 12.

Bl-uzu tal-kelma ‘u’ fit-tieni sub-artikolu tal-Artikolu 873, il-legislatur ried li z-zewg elementi ikunu kumulattivi u mhux alternattivi. B’dan ifisser ghalhekk illi jekk wiehed minn dawn iz-zewg elementi jkun nieqes, il-Qorti ghandha tichad it-talba ghall-hrug ta’ Mandat bhal dak. Kif spjegat il-Qorti Civili, Prim’Awla fid-decizzjoni taghha fl-ismijiet **Josephine Cutajar vs. Mark Vella** (Mandat ta’ Inibizzjoni Nru 501/2015) moghtija fit-23 ta’ April 2015:

> “Dawn iż-żewġ elementi huma kumulattivi u mhux alternattivi u jekk xi wieħed minn dawn iż-żewġ elementi ma jirriżultax, il-Qorti għandha tiċħad it-talba għal ħruġ ta’ mandat bħal dak; inoltre huma kriterji oġġettivi u fl-applikazzjoni tal-liġi dwar kif u meta għandu jinħareġ mandat il-Qorti għandha tuża interpretazzjoni restrittiva. Dan għaliex il-ħruġ ta’ mandat ta’ inibizzjoni bħal kull mandat kawtelatorju jsir fi żmien meta l-pretensjoni ma tkunx għadha ġiet ġuridikament aċċertata u stabbilita.”

Tajjeb jinghad ukoll li l-procedura tal-mandat hija wahda sommarja, billi m’huwiex mistenni li jitressaq quddiem il-Qorti fi stadju bhal dak kulma jmissu jitressaq quddiemha waqt is-smigh tal-kawza dwar l-istess jedd, huwa ghalhekk li l-attur jrid juri mad-daqqa t’għajn li huwa ghandu jedd u hemm htiega li jigi mharres. Dan billi fil-process dwar il-mertu, l-iskop hu li jigi accertat x’inhu d-dritt fil-kaz konkret, filwaqt li l-iskop tal-process ghall-hrug ta’ Mandat ta’ Inibizzjoni ghandu biss il-funzjoni strumentali li jikkawtela pretensjoni ta’ dritt li jirrizultaw *prima facie*, u dan sakemm tinqata' l-kawza fil-mertu li finalment tiddeciedi jekk il-pretensjoni ta' tali dritt hiex fondata jew le.

F’dan ir-rigward il-Qorti taghmel referenza ghall-provediment fl-ismijiet **AIS Environmental Limited vs. L-Awtorità ta’ Malta dwar l-Ambjent u l-Ippjanar** (Mandat ta’ Inibizzjoni Nru 146/2013) moghti fis-27 ta' Frar 2013 mill-Qorti Civili, Prim’Awla fejn din il-Qorti osservat illi:

> “Unikament ghall-fini tal-akkoljiment o meno tat-talba, **mhux kompitu** ta’ din il-Qorti li tqis il-pretensjonijiet tal-partijiet fil-mertu. Hadd mill-partijiet ma jista` jew m`ghandu jippretendi li mad-“*daqqa t’ghajn*” ghandha tkun propju din il-Qorti li tiddeciedi hi l-mertu tal-kwistjoni bejn il-partijiet bil-procedura **specjali u**

partikolari tal-Mandat ta` Inibizzjoni. Dan kollu qed jinghad sabiex il-kontendenti jifhmu li l-mansjoni ta` din il-Qorti mhuwiex li tiddeciedi finalment dwar il-pretensjonijiet taghhom fil-mertu izda huwa **limitat u cirkoskritt** biex tara jekk huwiex sodisfatt dak li trid il-ligi sabiex ikun operattiv Mandat ta' Inibizzjoni. Il-Mandat ta` Inibizzjoni huwa mezz procedurali **eccezzjonali**. Ghalhekk ma jistax jinhareg il-Mandat jekk il-hsara lamentata mir-rikorrent tkun tista` tigi rimedjata mod iehor."

Jehtieg wkoll li flimkien maz-zewg elementi surreferiti, il-Qorti tikkonsidra wkoll l-element tal-pregudizzju. Il-harsien li l-ligi timmira ghalih fit-talba ghall-hrug tal-mandat ta' inibizzjoni huwa dak li, mingħajr il-hrug tal-Mandat, il-jedd li jista' jkollhom jitnehha darba għal dejjem u b'mod irrimedjabbli.[4] B'irrimedjabbli wieħed għandu jfisser li *'bl-għamil li minnu qiegħed jibża' r-rikorrent, jistax jintilef darba għal dejjem jedd li l-istess rikorrent jidher li għandu fil-waqt li ħareġ it-talba għall-ħruġ tal-Mandat'.* Il-pregudizzju li r-rikorrent jkun irid iwaqqaf irid ikun wiehed li ma jkunx hemm rimedju iehor ghalih jekk mhux bil-hrug tal-Mandat, tant li jekk l-inkonvenjent jew in-nuqqas lamentat jista' jitnehha, mqar b'decizjoni wara li jigi mistharreg il-kaz fil-mertu, jigi nieqes dan l-element mehtieg ghall-hrug tal-Mandat. Huwa ghalhekk li l-Mandat ta' Inibizzjoni huwa meqjus bhala mezz procedurali ta' natura eccezzjonali.[5]

Il-jedd prima facie li jehtieg jithares permezz ta' mandat ta' inibizzjoni mhux bizzejjed li jkun semplici diffikultà, disagju jew thassib[6].

"Ir-rabta ta' Mandat ta' Inibizzjoni m'għandhiex tintuża bħala arma ta' theddid jew ġegħil *(arm twisting)* lill-parti intimata li, jew tagħmel dak li tixtieq il-parti rikorrenti jew ma tagħmel xejn. B'dan il-mod, il-Mandat ma jibqax għodda li tħares il-jedd *prima facie* tal-parti rikorrenti, imma ssir sarima li żżomm lill-parti intimata milli tgawdi l-jeddijiet tagħha. Il-Qorti hi tal-fehma li qatt ma kienet ir-rieda tal-

[4] **Muriel Thake vs. Lars Olav Valdemar Grill et** (Mand. Inib. Nru 1712/2017) degretat fis-27 ta' Dicembru 2017.
[5] **Charles Mugliett vs. Saviour Bonnici** (Rik Nru 2086/1997) degretat fil-25 ta' Jannar 2005; **Angelo Xuereb vs. Marin Hili** (Rik Nru 3135/94) degretat fit-22 ta' Settembru 1995.
[6] **L-Avukat Dottor John Ludvic Gauci noe vs Id-Direttur tal-Kuntratti** (Mandat numru 976/08JRM).

liġi li l-Mandat ta' Inibizzjoni jinbidel f'arma bħal din." [Ara sentenza fl-ismijiet **Avukat Dr John Gauci *vs.* Direttur tal-Kuntratti**, P.A., 18.07.2008].

Ghandu jinghad ukoll illi l-fatt li tintlaqa' talba ghall-hrug tal-mandat ma jfissirx li l-jedd ikun ippruvat. Kif daqstant iehor ma jfissirx, illi ghax talba ghall-hrug ta' mandat ma tintlaqax, allura l-jedd pretiz ma jezistix. Mhux il-kompitu tal-Qorti fl-atti tal-mandat tara jekk il-jedd pretiz huwiex suxxettibbli għal success fl-azzjoni fil-mertu, izda biss jekk il-jedd pretiz jikkwalifikax bhala tali ghall-finijiet oggettivi tal-ligi.

Ikkunsidrat

Eccezzjoni preliminari

Il-Union intimata eccepixxiet li l-Mandat ta' Inibizzjoni huwa intempestiv u dan peress li r-rikorrent naqas milli jirreferi din il-kwistjoni lil ***Joint Negotiating Council*** imwaqqaf bl-**Artikolu 72 tal-Kapitolu 452** li holoq "makkinarju speċjali għal negozjati dwar tilwimiet ta'xogħol li għandhom x'jaqsam ma' kondizzjonijiet tas-servizz ta'persuni li jipprovdu s-servizzi elenkati fl-artikolu 64(6)"[7].

Dwar din l-eccezzjoni l-Qorti, ghalkemm mhux b'referenza ghall-istess artikolu, tirreferi ghal decizzjoni tal-Qorti Civili, Prim'Awla fl-atti tal-Mandat t'Inibizzjoni fl-ismijiet **Il-Malta Union of Teachers (MUT) vs. Ministeru ghall-Edukazzjoni u x-Xoghol et** (Mand t'Inib Nru 347/2015) tas- 26 ta' Marzu 2015 fejn gie ritenut li

> "... hija l-fehma ta' din il-qorti li bhala qorti ordinarja mhijiex prekluza milli tiehu konjizzjoni tat-talba tal-*union* rikorrenti fi procediment specjali bhal ma huwa dak tal-lum. Dan tghidu wara li qieset id-disposizzjonijiet generali tal-Kap 12 dwar il-mandati kawtelatorji, (artiklu 829 *et sequitur*) u l-mandat ta' inibizzjoni huwa mandat kawtelatorju, (artiklu 830(1)(h), wara li qieset id-disposizzjonijiet li jolqtu l-mandat ta' inibizzjoni *ut sic*, (artiklu 873 *et sequitur*), wara li qieset il-kompetenza ta' din il-qorti, u wara li qieset ukoll l-artiklu 77(1) tal-Kap 452.

[7] Artikolu 72 (1) tal-Kapitolu 452.

Partikolarment dwar dan tal-ahhar li jghid li t-Tribunal Industrijali jkollu dawk is-setghat li bil-Kodici ta’ Organizzazzjoni u Procedura Civili huma moghtija lill-Qorti Civili, Prim’ Awla, din il- qorti tghid li d-disposizzjoni trid tkun meqjusa fil-kontest taghha, u taz-zewg subincizi l-ohra li jaghmlu l-artiklu 77, li jfisser li t-Tribunal Industrijali m’ghandux is-setgha li jqis u jiddeciedi dwar it-talba ghall-hrug ta’ mandat ta’ inibizzjoni. B’hekk jinghad illi dan il-mandat ghandu jigi deciz minn din il-qorti”;

Din il-Qorti tabbracja dan l-insenjament u ohrajn bhalu u dan ghaliex in-natura ta’ din l-azzjoni hija wahda kawtelatorja u m’hemm xejn fil-Kapitolu 452 milli jigi istitwiet mandat ta’ din ix-xorta. Ghaldaqstant din l-eccezzjoni qieghda tigi respinta.

Mertu tal-Mandat

L-ghan ta’ dan il-Mandat huwa li l-l-MUMN tigi mwaqqfa milli tkompli bid-direttivi li ordnat lill-membri taghha essenzjalment minhabba l-allegat diskrepanzi fil-pagi bejn l-infermiera u l-qwiebel kif rapprezentati mill-Union intimata u l-*Allied Health Professionals* kif rapprezentati mill-UHM.

Ir-rikors ghall-hrug tal-mandat ta' inibizzjoni prezentat mis-Segretarju Permanenti fil-Ministeru tas-Sahha bhala l-Ministeru responsabbli mill-provista tas-Sahha Pubbliku huwa bbazat fuq zewg binarji:

(1) il-jedd pretiz mill-Ministeru tas-Sahha li l-ftehim kollettiv settorjali bejn il-Gvern u l-MUMN ghadu vigenti b'validita' sal-ahhar ta’ Dicembru 2022 liema ftehim jispecifika illi n-negozjati ghar-revizzjoni ta' dak il-ftheim jistghu jibdew disa’ xhur qabel jiskadi; isostni ghalhekk il-Ministeru tas-Sahha illi ma jistax f'dan il-mument jigi mgieghel jinnegozja mill-gdid il-ftehim kollettiv settorjali; u

(2) il-jedd pretiz mill-Ministeru tas-Sahha li d-direttivi sejrin jippregudikaw serjament il-provizzjoni tas-servizz tas-Sahha Pubblika b’dannu possibbilment irreparabbli ghall-pazjenti u l-utenti tal-istess servizz.

Il-Jedd Pretiz mill-Ministeru tas-Sahha li l-Ftehim Kollettiv Settorjali li jiskadi f'Dicembru 2022 ma jippermettiex lill-MUMN milli tiehu Azzjoni Industrijali sakemm il-Ftehim ghadu vigenti.

Il-Qorti sejra tibda billi tikkunsidra l-ewwel binarju, cioe li l-ftehim kollettiv ghadu *in vigore*. **Artikolu 2 tal-Kapitolu 452, Att dwar l-Impieg u r-Relazzjonijiet Industrijali** jiddefinixxi "ftehim kollettiv" bhala "ftehim magħmul bejn prinċipal, jew organizzazzjoni waħda jew aktar ta' prinċipali, u organizzazzjoni waħda jew aktar ta' impjegati li għandu x'jaqsam mal-kondizzjonijiet tal-impieg skont id-dispożizzjonijiet ta' xi liġi li tkun fis-seħħ f'Malta". Galadarba l-ligi ma ssemmi xejn dwar x'natura ghandu ftehim kollettiv, il-gurisprudenza kellha taghmel tajjeb ghal dan in-nuqqas. L-ewwel referenza fir-rigward hi s-sentenza **Malta Shipyards Limited vs. General Worker's Union** (Cit Nru 158/2005JA) moghtija mill-Qorti Civili, Prim'Awla, fl-10 t'Ottubru 2005 fejn wara li ghamlet konsiderazzjoni dettaljata dwar il-bazi tal-legislazzjoni li tirregola l-impjieg f'Malta waslet ghall-konkluzjoni li ftehim kollettiv huwa kuntratt li jorbot lill-partijiet firmatarji tieghu – *pacta sunt servanda*:

> "Dan il-punt *per se* qatt ma gie mqajjem f'forum gudizzjarju f'pajjizna ghalkemm kien hemm xi kazi fejn il-Qrati esprimew il-fehma taghhom *obiter*. Per ezempju fil-kawza deciza minn din il-Qorti fil-21 ta' Ottubru, 2002 fl-ismijiet Joseph Agius vs Avukat Dottor Richard Galea Debono nomine il-Qorti qalet hekk;
>
> > "*Hu pacifiku illi ftehim kollettiv ghandu bhala oggett li jistabilixxi l-kundizzjonijiet u l-modalitajiet tax-xoghol tal-impjegati u li inoltre ftehim bhal dan jippresupponi dejjem li almenu meta gie ffirmat, dan ikun maghmul f'isem il-maggoranza (hamisn fil-mija u wiehed) tal-impjegati. Ghalhekk hu meqjus bhala kuntratt, u allura ghandu jigi rispettat u osservat fit-termini tieghu kif jesprimu l-volonta' taz-zewg kontraenti (Angelo Fenech noe vs Joseph Tabone nomine deciza fit13 ta' Marzu, 1995 mill-Qorti tal-Appell).*"
>
> Ghalhekk skond din is-sentenza ma hemmx dubbju li in kwantu ghall kondizzjonjiet tax-xoghol il-ftehim kollettiv ghandu s-sahha ta' kuntratt u bhala tali ghandu jigi osservat – isegwi allura li jista' jigi legalment enforzat. Dan

> ghaliex – b'differenza minn kuntratti ohra – parti minnu u cioe' l-ghaqda tax-xoghol taghti l-kunsens taghha ghan-nom tal-haddiema kollha mpjegati mal-parti l-ohra. Fi kliem iehor ma tkunx qed tobbliga ruhha bhala tali u lanqas ma tgawdi mill-obbligazzjoni li jkun dahal ghaliha l-*employer* ghaliex huma fil-fatt il-haddiema li jgawdu mill-pagi u kondizzjonijiet l-ohra tax-xoghol bhal *leave, bonus* u affarijiet ohra – u huma wkoll il-haddiema li jkunu obbligati jaghtu x-xoghol taghhom skond l-istess ftehim."

Il-Qorti tal-Appell (sede Inferjuri) fis-sentenza taghha tas-27 ta' Frar 2009 fil-kawza **Joseph Silvio vs. Corinthia Palace Company Limited** (App Civ 14/2018 PS) qalet hekk dwar in-natura guridika ta' l-ftehim kollettiv:

> "Il-Ftehim Kollettiv huwa kuntratt li jiddixxiplina b'mod generali r-rapporti tax-xoghol ta' kategorija ta' haddiema bl-intervent tal-Union li tirrapprezentahom. Huwa kuntratt importanti hafna mhux biss ghall-kontenut tal-kondizzjonijiet tax-xoghol pattwiti fih imma ghaliex, fundamentalment, dawk l-istess kondizzjonijiet u d-dixxiplini l-ohra tieghu ghandhom jitqiesu r-regoli ta' gudizzju li jridu jigu assunti meta tinsorgi xi kwestjoni jew problema bejn l-interessati. In kwantu kuntratt, il-Ftehim Kollettiv irid jigi interpretat skond l-istregwa tad-dritt komuni u tal-kriterji ordinarji ta' l-ermenewtika kontrattwali, ghalkemm anke hawn, wiehed ma jridx lanqas ihalli jisfuggi mill-vizjoni l-funzjoni tipika tar-regolamentazzjoni tan-normi partikolari applikabbli ghas-settur, u allura ghal dik il-prospettazzjoni interpretattiva li ttendi ghall-kriterju ta' l-armonija tal-kumpless tad-disposizzjonijiet tieghu u tal-volonta komuni f'rapport tax-xoghol."

Nonostane li ftehim kollettiv huwa kuntratt, li jista' jigi emendat bi qbil bejn il-partijiet kontraenti, u ghalkemm ukoll li l-ghan ta' ftehim kollettiv huwa sabiex kemm jista' jkun jigi evitat inkwiet (*unrest*) industrijali fil-futur, ma jirrizultax fil-fehma tal-Qorti li r-rikorrent ghandu l-jedd prima facie li jzomm lill-union intimata milli tiehu azzjonijiet industrijali li jidhrilha li ghandha tiehu fl-interess tal-haddiema li tirraprezenta jekk il-union tqis li inqalghux cirkostanzi li wassluwha tordna azzjoni indurstrijali. Il-Qorti tosserva li l-ligi Maltija ma timpedix lil xi union milli tordna li jsiru azzjonijiet industrijali meta jkun hemm ftehim kollettiv vigenti. In oltre, il-ftehim kollettivi kemm dak settorjali kif ukoll dak generali (datat April 2017) imkien

ma jipprovdu illi sakemm ghadu vigenti l-ftehim collective li l-union hija projbita milli tordna azzjonijiet induztrijali. F'dan l-istadju tal-kwistjoni meta l-kompitu tal-Qorti hu biss li tara jekk ir-rikorrent ghandux almenu sal-livell ta' prima facie id-dritt minnu pretiz, sabiex ir-rikorrent jirnexxi fuq dan il-binarju kien jehtieglu illi mad-daqqa t'ghajn jirrizulta illi skond il-ftehim kollettiv bejn il-Gvern u l-MUMN, din ta' l-ahhar hija projbita milli tiehu azzjonijiet industrijali sakemm tali ftehim ghadu in vigore. Ma jirrizulta minn imkien fil-ftehim kollettiv settorjali jew dak generali illi l-union intimata hija projbita milli tiehu azzjoni industrijali qabel Dicembru 2022.

Il-Qorti ghalhekk tqis illi nonostante li hemm ftehim kollettiv vigenti bejn il-Gvern u l-MUMN dan ma jwassalx ghad-dritt *prima facie* pretiz mill-Ministeru tas-Sahha illi l-MUMN hija projbita bl-istess ftehim kollettiv milli tiehu azzjoni industrijali. Lanqas jirrizulta *prima facie* illi tali projbizzjoni pretiza mir-rikorrent hija naxxenti minn xi ligi.

F'dan ir-rigward il-Qorti taghmel referenza ghall-pubblikazzjoni mahruga mill-Ufficcju Internazzjoni tax-Xoghol, ***ILO Principles Concerning the Right to Strike***:

> "*It should at once be noted that the Committee on Freedom of Association and the Committee of Experts have rejected the notion that the right to strike should be confined to industrial disputes that are likely to be resolved through the signing of a collective agreement.*" [8]

Il-**Kumitat t'esperti tal-Organizzazzjoni Internazzjonali tax-Xoghol** waqt il-Konferenza mizmuma fl-1994 spjega illi:

> "166. *The legislation in many countries does not establish any restrictions on the time when a strike may be initiated, stipulating only that the advance notice established by the law must be observed. Other industrial relations systems are based on a radically different philosophy in which collective agreements are seen*

[8] B. Gernigon et al, "*Ineternational Principles concerning the right to strike", International Labour Office, Geneva,* (2000) pagna 13, http://ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_087987.pdf, access fis-sit elettroniku sar fit-2 ta' Dicembru 2020.

as a social peace treaty of fixed duration during which strikes and lockouts are prohibited under the law itself, with workers and employers being afforded arbitration machinery in exchange. Recourse to strike action is generally possible under these systems only as a means of pressure for the adoption of an initial agreement or its renewal. The Committee considers that both these options are compatible with the Convention and that the choice should be left to the law and practice of each State. In both types of systems, however, workers' organizations should not be prevented from striking against the social and economic policy of the Government, in particular where the protest is not only against that policy but also against its effects on some provisions of collective agreements (for instance, the impact of a wage control policy imposed by the Government on monetary clauses in the agreement)."[9]

In oltre gie ukoll ritenut mill-**Kumitat tal-Organizzazzjoni Industrijali tax-Xoghol** fil-Kaz Nru 2907 (Lithunia) istitwita mit-**Trade Union of Lithuanian Food Producers**, Rapport Numru 367, ippubblikat f'Marzu 2013:

"898. [...] The Committee also recalls that, if strikes are prohibited while a collective agreement is in force, this restriction must be compensated for by the right to have recourse to impartial and rapid mechanisms, within which individual or collective complaints about the interpretation or application of collective agreements can be examined; this type of mechanism not only allows the inevitable difficulties which may occur regarding the interpretation or application of collective agreements to be resolved while the agreements are in force, but also has the advantage of preparing the ground for future rounds of negotiations, given that it allows problems which have arisen during the period of validity of the collective agreement in question to be identified [see Digest op. cit. para. 533]. As in this case there did not appear to be a dispute resolution mechanism provided for in the agreement or a fall-back clause in the event of disagreement, this raises the question as to whether the dispute should not rather have been considered as an interest dispute that would include the possibility of

[9] International Labour Conference 81st Session, "*Freedom of Association and Collective Bargaining", International Labour Office, Geneva* (1994), pagna 73, https://www.ilo.org/public/libdoc/ilo/P/09661/09661(1994-81-4B).pdf access fis-sit elettroniku sar fis-6 ta' Dicembru 2020.

exercising strike action. If this is so, the Committee considers that the strike could indeed have been a legitimate action as a consequence of an interest dispute."[10]

Fuq l-iskorta ta dan it-taghlim, mad-daqqa t'ghajn [prima facie], ir-rikorrent huwa skorrett meta jghid li l-MUMN ma tistax taghti ordnijiet ta' azzjonijiet industrijali ghaliex hemm ftehim kollettiv li ghadu attiv. Lanqas ma jregi prima facie l-argument li peress li ftehim kollettiv huwa kuntratt, il-Union ma tistax titlob li jkun hemm tibdil fih. Huwa minnu li min ihaddem m'huwiex marbut li jbaxxi rasu ghal dak kollu li trid xi Union, li kieku kellu jkun il-kaz il-ftehim kollettiv ma jkunx bilaterali jew multilaterali izda jkun ftehim unilaterali u li kwazi kwazi l-htiega ta' ftehim kollettiv tingieb fix-xejn. Huwa minnu wkoll li l-azzjonijiet industrijali m'ghandhomx jintuzaw bhala ghodda sabiex jigi nponut fuq minn ihaddem dak li l-haddiema qeghdin jitolbu, izda qeghdin hemm sabiex joholqu pressjoni fuq min ihaddem sabiex jersaq ghad-diskussjoni u negozjar.

Dwar id-drittijiet li ghandha union, il-Qorti Civili, Prim'Awla fid-digriet fl-ismijiet **Union Haddiema Maghqudin (Voice of the Workers) vs. Gozo Channel (Operations) Limited et** (Mandat ta' Inibizzjoni 1916/2018 LM) degretat fis-17 ta' Dicembru 2018 gie reaffermat li:

"M'hemm l-ebda dubju li l-*union* rikorrenti għandha kull dritt li toħroġ dawk id-direttivi li hi tħoss li jistgħu ikunu effettivi biex jindirizzaw l-ilmenti tal-ħaddiema li tirrappreżenta, u li l-ebda *employer* m'għandu jagħmel xejn biex ixekkel jew biex jiddiskrimina jew jirritalja kontra ħaddiem li jkun qiegħed isegwi direttiva leġittima maħruġa mill-*union* li tirrappreżentah. F'dan ir-rigward, jekk l-intimati jew min minnhom jagħżlu li jġibu ruħhom b'mod li jista' jiġi interpretat li qiegħed jintimida lill-ħaddiema b'mod tali li dawn ma jifdlilhom l-ebda għażla ħlief li jinjoraw id-direttivi tal-*union* li tirrappreżentahom, u għalhekk ir-rwol ta' dik l-*union* jisfa mxejjen fit-tilwima industrijali li tkun ġiet

10 https://www.ilo.org/dyn/normlex/en/f?p=1000:70006:0::NO:70006:P70006_COMPLAINT_TEXT_ID,P70006_PARAGRAPH_NO:3112089,898 access fis-sitt elettronku sar fis-6 ta' Dicembru 2020. Ara wkoll paragrafu 1245 ta' Kaz Nru 2509 (Romania) istitwiet minn The International Transport Workers' Federation (ITF) and the Free Trade Union of Metro and Aviation Workers (USLM), Rapport Numru 344 ippubblikat f'Marzu 2007: https://www.ilo.org/dyn/normlex/en/f?p=1000:70006:0::NO:70006:P70006_COMPLAINT_TEXT_ID,P70006_PARAGRAPH_NO:2910287,1245 access fis-sitt elettronku sar fis-6 ta' Dicembru 2020.

irreġistrata bejn il-*union* tal-ħaddiema u l-prinċipal tagħhom, f'dak il-każ ikun hemm ksur *prima facie* tal-jeddijiet tal-*union* li mhix titħalla tagħmel użu mill-għodda li għandha f'idejha sabiex tipproteġi l-interessi tal-membri tagħha."

Inghad ukoll fil-provvediment fl-ismijiet **Malta Union of Bank Employees vs. Bank of Valletta plc** (Mandat ta' Inibizzjoni 1949/2013 LSO) degretat mill-Qorti Civili, Prim'Awla fis-27 ta' Jannar 2014 li:

"Hu principju bazilari li Union m'ghandhiex tigi svestita mid-drittijiet taghha b' mod legger u hlief ghar-ragunijiet serjissimi, aktar u aktar meta tali drittijiet huma ntizi sabiex jiddefendu d-drittijiet tal-membri taghha. Dawn id-drittijiet huma essenzjali ghall-progress tad-drittijiet tal-haddiema f'dan il-pajjiz demokratiku u indipendenti."

In oltre, il-Union tgawdi wkoll mid-dritt fundamentali t'assocjazzjoni taht l-**Artikolu 42 tal-Kostituzzjoni** kif ukoll l-**Artikolu 11 tal-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem**. F'dan ir-rigward il-Qorti m'hijiex sejra tidhol f'wisq dettal, ghaliex dan mhux l-ghan ta' din l-azzjoni, izda referenza ghandha ssir ghas-sentenza moghtija mill-Qorti Ewropeja dwar id-Drittijiet tal-Bniedem fl-ismijiet **Ognevenko v. Russia** (Appl Nru 44873/2009) deciza fl-20 ta' Novembru 2018:

"54. The Court reiterates that Article 11 § 1 presents trade union freedom as one form or a special aspect of freedom of association (see National Union of Belgian Police, cited above, § 38; Swedish Engine Drivers' Union v. Sweden, judgment of 6 February 1976, § 39, Series A no. 20; Tüm Haber Sen and Çınar v. Turkey, no. 28602/95, § 28, ECHR 2006-II; and Demir and Baykara, cited above, § 109).
55. The words "for the protection of [one's] interests" which appear in Article 11 § 1 are not redundant and the Convention safeguards freedom to protect the occupational interests of trade union members by trade union action, the conduct and development of which the Contracting States must both permit and make possible (see National Union of Belgian Police, cited above, § 39; Swedish Engine Drivers' Union, cited above, § 40; and Wilson, National Union of Journalists and Others, cited above, § 42). A trade union must thus be free to

strive for the protection of its members' interests, and its individual members have a right, in order to protect their interests, that that trade union should be heard (see National Union of Belgian Police, §§ 40-41). Another essential right of a trade union is the right to collectively bargain with an employer (see Demir and Baykara, cited above, § 154).

56. Article 11 of the Convention does not secure any particular treatment of trade unions or their members and leaves each State a free choice of the means to be used to secure a trade union's freedom to protect the occupational interests of its members (see National Union of Belgian Police, cited above, §§ 38-39; Swedish Engine Drivers' Union, cited above, §§ 39-40; Wilson, National Union of Journalists and Others, cited above, § 42; and Tüm Haber Sen and Çınar, cited above, § 28). The granting of a right to strike constitutes without any doubt one of the most important of such means (see Schmidt and Dahlström, cited above, § 36; UNISON v. the United Kingdom (dec.), no. 53574/99, ECHR 2002-I; and Wilson, National Union of Journalists and Others, cited above, § 45).

57. The Court has on several occasions held that strike action is protected by Article 11 (see National Union of Rail, Maritime and Transport Workers v. the United Kingdom, no. 31045/10, § 84, ECHR 2014, with further references).

58. The right to strike is not absolute and may be subject under national law to regulation of a kind that limits or conditions its exercise in certain instances (see Schmidt and Dahlström, cited above, § 36, and Enerji Yapi-Yol Sen, cited above, § 32).

59. Article 11 § 2 does not exclude any occupational group from its scope. At most, the national authorities are entitled to impose "lawful restrictions" on certain of their employees (see Tüm Haber Sen and Çınar, cited above, §§ 28-29; Demir and Baykara, cited above, § 107, and Sindicatul "Păstorul cel Bun" v. Romania [GC], no. 2330/09, § 145, ECHR 2013 (extracts)). However, the restrictions imposed on the three groups mentioned in Article 11 § 2 are to be construed strictly; only convincing and compelling reasons can justify restrictions on such parties' freedom of association (see Tüm Haber Sen and Çınar, cited above, § 35; see also Adefdromil v. France, no. 32191/09, § 55, 2 October 2014, and Matelly v. France, no. 10609/10, § 71, 2 October 2014). These restrictions should therefore be confined

to the "exercise" and must not impair the very essence of the right to organise (see Demir and Baykara, cited above, § 97)."[11]

Ghal dawn il-motivi l-Qorti qed tirrespingi t-talba tar-rikorrent imsejsa fuq il-pretensjoni illi ghandu l-jedd *prima facie* illi jzomm lill-MUMN milli tiehu azzjoni industrijali in vista tal-ftehim kollettiv vigenti.

Il-Jedd Pretiz mill-Ministeru tas-Sahha li d-direttivi sejrin jippregudikaw serjament il-provizzjoni tas-servizz tas-Sahha Pubblika b'dannu possibbilment irreparabbli ghall-pazjenti u l-utenti tal-istess servizz.

Il-Qorti ma tistax tinjora l-fatt li s-servizz moghtija mill-infermiera u qwiebel huwa wiehed essenzjali u ghalhekk ma jistax jitqieghed fl-istess keffa bhal servizzi ohra. Tant dan huwa l-kaz li l-**Artikolu 64 (4) tal-Kap 452 [Att dwar l-Impiegi u r-Relazzjonijiet Industrijali]** ma japplikax ghal "(ċ) persuni impjegati biex jipprovdu [...] servizzi tas-saħħa medika [...]"[12]. Il-paragrafu (f) tal-Artikolu 64 (6) taghmel referenza b'mod specifiku ghall-fatt li s-servizz mediku huwa wiehed essenzjali: "dak l-għadd ta' persuni li jistgħu jinħtieġu biex jinżammu b'mod kontinwat u mingħajr interruzzjoni s-servizzi elenkati fl-Iskeda ta' dan l-Att[13] u li huma meħtieġa li jitħaddmu f'kull ħin sabiex ikomplu jingħataw mill-Gvern servizzi essenzjali lill-komunità".

Il-Kumitat tal-Libertà t'Assocjazzjoni, li huwa korp supervizorju tal-**Organizzazzjoni Internazzjoni tax-Xoghol**, ikkunsidrat li servizz moghti fl-isptar huwa wiehed essenzjali.[14] L-istess Assocjazzjoni iriteniet li "*To determine situations in which a strike could be prohibited, the criterion which has to be established is the existence of a clear and imminent threat to the life, personal safety or health of the*

[11] Ara wkoll: **Unison v. United Kingdom** (Appl Nru 53574/1999) deciza fl-10 ta' Jannar 2002; **Sidiropoulos and Others v. Greece** (Appl Nru 26695/1995) deciza fl-10 ta' Lulju 1998.
[12] Artikolu 64 (6) (c) tal-Kapitolu 452.
[13] Elenku li jirreferi biss ghall-haddiema li joffru servizz ta' sahha.
[14] Freedom of Association: Compilation of decisions of the Committee on Freedom of Association, International Labour Office, Geneva, pagna 156, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_632659.pdf access fis-sit elettronika sar fis-7 ta' Dicembru 2020.

whole or part of the population."[15] Sabiex il-Qorti tevalwa l-pretensjoni tar-rikorrent fuq dan it-tieni binarju jehtieg illi jigi kkonsidrat x'effetti negattivi jista' ikollhom id-direttivi ordnati mill-union intimata ghas-sahha pubblika.

Filwaqt li l-jedd li ssir azzjoni industrijali irid jigi rispettat, il-Qorti trid tagixxi b'kawtela u jrid jigi assigurat li s-sahha u l-hajja tal-pazjenti ma jitpoggewx f'riskju.

Il-Qorti tirreferi ghal ak li inghad mill-union intimata, kemm fir-risposta kemm waqt ix-xhieda tal-President tal-union kif ukoll fis-sottomissjonijiet, fis-sens illi skond il-union id-direttivi ma jolqtux l-isptarijiet tal-anzjani. Mid-direttivi li gew ipprezentati, din il-Qorti ma taqbilx ma' din is-sottomissjoni u dan ghaliex lill-Qorti jirrizulta li fost il-lista ta' sptarijiet hemm fil-fatt ir-Residenza ta' St. Vincent De Paul kif ukoll Karen Grech Rehabilitation Hospital, zewg sptarijiet li jiehdu hsieb numru konsideravoli ta' anzjani. In segwitu ghal dak li gie sottomess b'insistenza mill-union intimata – li l-isptarijiet tal-anzjani ma gewx affettwati – **il-Qorti qed tilqa' l-hrug ta' mandat ta' inibizzjoni rigwardani d-direttivi in kwantu b'xi mod jolqtu l-infermiera li jahdmu f'dawk l-isptarijiet (St Vincent De Paul u Karen Grech Rehabilitation Hospital).**In oltre, jehtieg li ssir referenza ghad-Direttiva tal-MUMN numru 6 fejn ix-xhud Paul Pace xhed li dik id-direttiva tapplika biss lic-Centri tas-Sahha. Il-Qorti din ma tarax li hija cara mid-direttivi prezentati u dan aktar u aktar meta c-Centri tas-Sahha kellhom direttivi separati.

Il-Qorti tqis illi filwaqt li d-dritt tal-azzjoni industrijali ghandu jigi rispettat u li m'ghandux jigi leggerment imxekkel, fl-istess hin hi tal-fehma illi ghal ragunjiet gravi bhalma huma dawk li jolqtu s-servizzi essenzjali, tali dritt ghandu l-limitazzjonijiet tieghu specjalment fejn jolqtu s-sahha tal-pazjenti; dan aktar u aktar meta fil-prezent ninsabu f'nofs il-Pandemija COVID-19.

Il-Qorti jehtigilha li f'dawn ic-cirkostanzi distingwi bejn dak li *prima facie* jista jipperikola l-hajja u s-sahha tal-pazjent u dak li filwaqt li jista' jikkawza inkonvenjent pero' prima facie ma jpoggiex is-sahha tal-pazjent fil-perikolu. Kif

[15] *ibid.*

inghad aktar 'il fuq wiehed irid jaghraf li l-jedd li jehtieg jithares biex jinhareg mandat ta' inibizzjoin mhux bizzejjed li jkun sabiex ma jinholoqx inkonvenjent, diffikultà, disagju jew thassib. M'hemmx ghalfejn jinghad li azzjoni industrijali minghajr xi forma ta' impatt, tkun azzjoni inutili.

Min-naha l-ohra hemm ukoll id-drittijiet ta' ohrajn li jehtieg li jigu salvagwardati, dan ai termini tal-**Artikolu 42 (2) tal-Kostituzzjoni u l-Artikolu 11 (2) tal-Konvenzjoni Ewropeja.** Iz-zewg artikoli hawn imsemmija wkoll joffru eccezzjoni ghar-regola fis-sens illi m'ghandu jkun hemm l-ebda restrizzjoni sabiex wiehed jezercita d-dritt tieghu ghajr meta dan ikun ta' detriment ghas-sahha tal-pubbliku. Fuq din il-premessa, il-Qorti sejra telenka d-direttivi li inghataw mill-Union intimata u sejra **a bazi ta' prima facie,** tindika liema huma dawk id-direttivi li fil-fehma taghha jistghu prima facie jkunu ta' periklu ghas-sahha tal-pazjent u ohrajn li ghalkemm jistghu jikkawzaw ikkonvenjent prima facie ma jidhirx li huma ta' periklu ghas-sahha tal-pazjent.

Id-Direttivi tal-MUMN li l-Qorti Tqis li *Prima Facie* jistghu jpoggu f'Perikolu s-Sahha tal-Pazjent.

Directive 1

No coordination of DISCHARGED PATIENTS. This include	Prima facie jistghu ipoggi f'periklu is-sahha tal-pazjent	Prima facie ma tpoggix is-sahha tal-pazjent f'periklu
Do not coordinate with bed management neither over the phone nor if managed on ward by their personnel/staff		✓
Do no book transport		✓
Do not inform relatives re discharges[16]		✓
Do not take patients to the billing section		✓

[16] Responsabbiltà ewlenija ta' Staff Nurse: "Maintain effective communications with clients and relatives ensuring that they are kept well informed, […]". Dokument CD2 ipprezentat min Carmen D'Amato.

Do not call for bed cleaning or instruct cleansers to clean bed[17]	×	
Do not give over to other hospital/homes	×	
Do not fill COCF Forms and do not call commcare for referrals		✓
Do not send discharge letters by mail or email to anyone		✓
Do not refer patients to any allied professional including geriatricians[18]	×	
Do not refer patients to Discharge Facility Nurses		✓
Do not refer patients/complex cases to DLN (discharge liaison nurses)		✓
Do not coordinate/liaise any case with any DLN staff member		✓
Do not give any details on discharged patient on the phone or to other hospital personnel who comes around in wards. If they want information on any discharge patients, they can look into the patient file		✓

[17]. "4.3.3 […] to maintain high standards of hygiene. […]", *Code of Ethics and Standards of Professional Conduct for Nurses and Midwives*, Council for Nurses and Midwives Malta, January 2020 (https://deputyprimeminister.gov.mt/en/department-of-health-services/nursing-services/Documents/Legal%20Framework/Code%20of%20Ethics%20and%20Standards%20of%20Professional%20Conduct%20for%20Nurses%20and%20Midwives%20-%20Final.pdf) access fis-sit elettroniku sar fit-3 ta' Dicembru 2020. Din hija wkoll inkluza fir-responsabbiltà principali ta' Staff Nurse: "*Participate in maintaining a clear, [...] which is conducive to the restoration of health and well-being.*" Dokument CD 2 ipprezentat min Carmen D'Amato.

[18] "3.3.2 Optimal patient care can only be achieved when; the patient's needs are kept as the main focus, all health care workers trust and respect each other, and value each other's contributions. Nurses and midwives should strive to build excellent working relationships amongst themselves and with other categories of health care workers, both on a one-to-one basis and collectively through their associations." , *Code of Ethics and Standards of Professional Conduct for Nurses and Midwives*, Council for Nurses and Midwives Malta, January 2020 (https://deputyprimeminister.gov.mt/en/department-of-health-services/nursing-services/Documents/Legal%20Framework/Code%20of%20Ethics%20and%20Standards%20of%20Professional%20Conduct%20for%20Nurses%20and%20Midwives%20-%20Final.pdf) access fis-sit elettroniku sar fit-3 ta' Dicembru 2020.

Do not arrange the CPAS/CBED and do not give any information to other hospital personnel who will be sent around to arrange the CPAS/CBED. If they want any discharge patients, they can look into the patient file		✓
DO NOT coordinate/instruct ANY WARD/HOSPITAL PERSONNEL (including ward clerks or nursing aids or carers) TO CARRY OUT ANY OF THE ABOVE		✓ (excluding, however, information that must be given to the ward clerk and directives ordered by the court not to be followed)

Directive 2

No coordination on TRANSFER OF PATIENTS within the same hospital. This include	Prima facie jistgħu ipoggi f'periklu is-sahha tal-pazjent	Prima facie ma tpoggix is-sahha tal-pazjent f'periklu
Do not transfer (at any time day & night) any patients between wards as instructed by bed management and any personnel seat by their office		✓ (with exception to situations indicated by the Court in this decree)
Do not coordinate any with bed management neither over the phone nor if managed on ward by their personnel/staff		✓
Do not book or call for any porters		✓
Do not inform relatives[19]		✓ (with exception to Staff Nurses as this is considered as one of their main responsibilities)
Do not call for bed cleaning or instruct cleaners to clean	×	

[19] Responsabbiltà ewlenija ta' Staff Nurse: "Maintain effective communications with clients and relatives ensuring that they are kept well informed, […]". Dokument CD2 ipprezentat min Carmen D'Amato.

bed[20]		
Do not give over or inform other wards or units or theatres regarding the transfer	×	
Do not send patient notes/file	×	
Do not arrange the CPAS/CBED and do not give any information to other hospital personnel who will be sent around to arrange the CPAS/CBED. If they want any details of patients who are transferred, they can look into the patient file		✓
Do NOT coordinate/instruct ANY WARD/HOSPITAL PERSONNEL (including war clerks or nursing aid to carers) TO CARRY OUT ANY OF THE ABOVE		✓ (excluding, however, information that must be given to the ward clerk and directives ordered by the court not to be followed)

Directive 3

DO not COORDINATE ANY ADMISSIONS	Prima facie jistghu ipoggi f'periklu is-sahha tal-pazjent	Prima facie ma tpoggix is-sahha tal-pazjent f'periklu
Do not coordinate any with bed management neither over the phone nor if managed on ward by their personnel/staff		✓
Do not admit patients (To await in pantry etc) if the bed is not readily available or cleaned		✓

[20] "4.3.3 […] to maintain high standards of hygiene. […]", *Code of Ethics and Standards of Professional Conduct for Nurses and Midwives*, Council for Nurses and Midwives Malta, January 2020 (https://deputyprimeminister.gov.mt/en/department-of-health-services/nursing-services/Documents/Legal%20Framework/Code%20of%20Ethics%20and%20Standards%20of%20Professional%20Conduct%20for%20Nurses%20and%20Midwives%20-%20Final.pdf) access fis-sit elettroniku sar fit-3 ta' Dicembru 2020. Din hija wkoll inkluza fir-responsabbiltà principali ta' Staff Nurse: "*Participate in maintaining a clear, [...] which is conducive to the restoration of health and well-being.*" Dokument CD 2 ipprezentat min Carmen D'Amato.

Do not coordinate with bed management staff or personnel sent via their office		✓
Do not inform relatives[21]		✓ (with exception to Staff Nurses as this is considered as one of their main responsibilities)
Do not order, trace nor collect any old notes	✕ (This directive is **not** to be followed limitedly with regards to the order of old notes)[22]	
Do not arrange the CPAS/CBED and do not give any coordinate/instruct with other hospital personnel who will be sent around to arrange the CPAS/CBED. If they want any details on newly admitted patients, they can look into the patients' file		✓
DO NOT coordinate/instruct ANY WARD/HOSPITAL PERSONNEL (including ward clerks or nursing aids or carers) TO CARRY OUT ANY OF THE ABOVE		✓ (excluding, however, information that must be given to the ward clerk and directives ordered by the court not to be followed)

Directive 4

	Prima facie jistghu ipoggi f'periklu is-sahha tal-pazjent	Prima facie ma tpoggix is-sahha tal-pazjent f'periklu
Do not REPORT (clingo, email, phone or by any other	✕	

[21] Responsabbiltà ewlenija ta' Staff Nurse: "Maintain effective communications with clients and relatives ensuring that they are kept well informed, […]". Dokument CD2 ipprezentat min Carmen D'Amato.
[22] Mix-xhieda tas-Sinjura Carmen D'Amato, intwera prima facie il-htiega u l-essenzjalita li l-files u noti antiki jigu ordnati.

means) ANY FAULTS in the ward or unit or area[23]		
DO not COORDINATE / INSTRUCT ANY WARD / HOSPITAL PERSONNEL (including ward, clerks, nursing aids or carers) TO CARRY OUT ANY OF THE ABOVE		✓ (excluding, however, information that must be given to the ward clerk and directives ordered by the court not to be followed)

Directive 5

In hospital and Out of hospital referrals[24]	Prima facie jistghu ipoggi f'periklu is-sahha tal-pazjent	Prima facie ma tpoggix is-sahha tal-pazjent f'periklu
Do not send any referrals (email, by hand or by any other means)	×	
Do not call/notify any referral put forward	×	
DO NOT COORDINATE/INSTURCT ANY WARD / HOSPITAL PERSONNEL (Including ward clerks or nursing aids or carers) TO CARRY OUT ANY OF THE ABOVE		✓ (excluding, however, information that must be given to the ward clerk and directives ordered by the court not to be

[23] "3.1.5 Maintain a safe working environment, which does not pose any additional risk to colleagues.", *Code of Ethics and Standards of Professional Conduct for Nurses and Midwives*, Council for Nurses and Midwives Malta, January 2020 (https://deputyprimeminister.gov.mt/en/department-of-health-services/nursing-services/Documents/Legal%20Framework/Code%20of%20Ethics%20and%20Standards%20of%20Professional%20Conduct%20for%20Nurses%20and%20Midwives%20-%20Final.pdf) access fis-sit elettroniku sar fit-3 ta' Dicembru 2020.

[24] "Referrals highlighted hereunder include – Geriatrics, Rehabilitation (RHKG), Social Workers Discharge Facility Team, Tissue Viability, Clinical Nutrition, Urology Outreach, Plasters, Stoma Nurse, Diabetic Nurses, Podology, Psychiatric, Psychologist, Palliative, Discharge Liaison Nurses, Physiotherapist, Occupational therapist, Vascular Nurses, Pain Management, ECG, Commcare, Clingo, Transport booking, Pharmacy, Incontinence Nurse, etc etc"

		followed)
If a referral is given to the CN, DCH or Nurses, this is to be inserted/filed in the patients notes	×	

Directive 6

Bloods and other investigations	Prima facie jistghu jistghu ipoggi f'periklu is-sahha tal-pazjent	Prima facie ma tpoggix is-sahha tal-pazjent f'periklu
No blood letting	×	
No chasing of any blood and other results, including COVID-19 swabs[25]	×	
Do not inform doctors of any blood to take or Chase, including the on call	×	
DO NOT COORDINATE / INSTRUCT ANY WARD / HOSPITAL PERSONNEL (including ward clerks or nursing aids or carers) TO CARRY OUT ANY OF THE ABOVE	×	

Directive 7

Medical Imaging	Prima facie jistghu ipoggi f'periklu is-sahha tal-pazjent	Prima facie ma tpoggix is-sahha tal-pazjent f'periklu
Do not liaise with Medical Imaging		✓
Do not call to coordinate with medical imaging department. They can organise the porters themselves for any booked imaging		✓
DO NOT COORDINATE / INSTRUCT ANY WARD / HOSPITAL PERSONNEL		✓ (excluding, however, information that

[25] Din tista' tkun ta' detriment ghas-sahha tal-infermiera u l-qwiebel stess.

(including ward clerks or nursing aids or carers) TO CARRY OUT ANY OF THE ABOVE		must be given to the ward clerk)

Main Operating Theatre

	Prima facie jistghu ipoggi f'periklu is-sahha tal-pazjent	Prima facie ma tpoggix is-sahha tal-pazjent f'periklu
The only theatres to be used are the Trauma Theatre, CEPOD theatre and only two other theatres. Nurses working in theatre are to remain working in these four theatres but the agreement of theatre nurses helping out in ITU is to be maintained.[26]		✓[27]

Endoscopy Unit

	Prima facie jistghu ipoggi f'periklu is-sahha tal-pazjent	Prima facie ma tpoggix is-sahha tal-pazjent f'periklu
Only two endoscopy theatres are to be used.		✓

Out-Patient's Department

	Prima facie jistghu ipoggi f'periklu is-sahha tal-pazjent	Prima facie ma tpoggix is-sahha tal-pazjent f'periklu
Do not answer any telephone calls		✓
Do not accompany patients to		✓

[26] Il-Qorti m'ghandhiex dan l-arrengament izda waqt is-smiegh tal-Mandat gie spjegat li dan l-arrangament jikkonsisti f'infermiera li jassistu f'dawn it-teatri meta jkun hemm il-htiega anke jekk l-assenjament taghhom kien fi swali ohra.

[27] Din taqa fil-parametri elenkati fl-Iskeda tal-Kapitolu 452, Att dwar l-Impiegi u r-Relazzjonijiet Industrijali.

the wards		
Do not do any errands outside the place of work		✓
Do not order consumables and pharmaceuticals[28]	✕	
Do not accompany patients in the doctor's room	✕	

SVPR (St. Vincent De Paul Residence)[29]

	Prima facie jistghu ipoggi f'periklu is-sahha tal-pazjent	Prima facie ma tpoggix is-sahha tal-pazjent f'periklu
Do not participate in ward rounds	✕	
Do not participate in distribution of meals	✕	
Do not do any errands outside the place of work	✕	
Do not participate in transferring of patients between wards	✕	
Do not do any clerical work	✕	
Do not order any consumables any pharmaceuticals	✕	
Do not use the computer or any similar devices	✕	
Do not do any file preparations	✕	
Do not do any bloodletting	✕	
Do not wear any identification badges	✕	
No washing of patients	✕	

[28] Responsabbiltà ewlenija ta' Charge Nurse / Midwife: "To ensure that there is effective daily running of the ward including stores, supplies, new requisitions and replacement items". Document CD1 ipprezentat min Carmen D'Amato.
[29] Skont ix-xhieda ta' Paul Pace id-djar tal-azzjoni m'humiex effettwati b'din id-direttiva.

MCH (Mount Carmel Hospital)

	Prima facie jistghu ipoggi f'periklu is-sahha tal-pazjent	Prima facie ma tpoggix is-sahha tal-pazjent f'periklu
Do not participate in washing of patients	×	
Do not participate in ward rounds and patient review	×	
Do not participate in distribution of meals		✓
Do not do any errands outside the place of work		✓
Do not participate in transferring of patients between wards, chapel or main garden		✓
Do not do any clerical work		✓
Do not use the computer or any similar devices		✓
Do not do any bloodletting	×	
Do not accompany patients to other hospitals, elderly homes and other clinics except to the A&E Department		✓
Do not attend for sessions of cases review	×	
Do not do any file preparations for ward rounds and reviews[30]	×	
Do not accompany patients to the Courts of Justice		✓
Do not order any pharmaceuticals and consumables[31]	×	

[30] "2.2.7 Maintain clear and accurate records", *Code of Ethics and Standards of Professional Conduct for Nurses and Midwives*, Council for Nurses and Midwives Malta, January 2020 (https://deputyprimeminister.gov.mt/en/department-of-health-services/nursing-services/Documents/Legal%20Framework/Code%20of%20Ethics%20and%20Standards%20of%20Professional%20Conduct%20for%20Nurses%20and%20Midwives%20-%20Final.pdf) access fis-sit elettroniku sar fit-3 ta' Dicembru 2020.

[31] Responsabbiltà ewlenija ta' Charge Nurse / Midwife: "To ensure that there is effective daily running of the ward including stores, supplies, new requisitions and replacement items". Document CD1 ipprezentat min Carmen D'Amato.

Do not wear any identification badges		✓

RKGH (Karen Grech Rehabilitation Hospital)[32]

	Prima facie jistgħu ipoġġi f'periklu is-saħħa tal-pazjent	Prima facie ma tpoġġix is-saħħa tal-pazjent f'periklu
Do not participate in washing and nappy change throughout the day and night	✗	
Do not participate in ward rounds	✗	
Do not participate in distribution of meals	✗	
Do not do errands outside the place of work	✗	
Do not do any clerical work	✗	
Do not accompany patients to other hospitals, elderly homes and other clinics	✗	
Do not accept admission of patients after 18:00hrs	✗	
Do not do any file preparations	✗	
Do not answer any telephone calls	✗	
Do not wear any identification badges	✗	

GGH (Gozo General Hospital)

	Prima facie jistgħu ipoġġi f'periklu is-saħħa tal-pazjent	Prima facie ma tpoġġix is-saħħa tal-pazjent f'periklu
Do not participate in washing of patients	✗	

[32] Skont ix-xhieda ta' Paul Pace id-djar tal-azzjoni m'humiex effettwati b'din id-direttiva.

Do not participate in ward rounds	×	
Do not participate in distribution of meals		✓
Do not do any errands outside the place of work		✓
Do not participate in transferring of patients between wards		✓
Do not do any clerical work		✓
Do not use the computer or any similar devices		✓
Do not do any bloodletting except for oncology patients	×	
Do not accompany patients to other hospitals, elderly homes, other clinics and the Court of Justice		✓
Do not order any repairs	×	
Do not order consumables and pharmaceuticals[33]	×	
Do not accepts any extra beds in wards		✓
Do not wear any identification badges		✓
Do not accompany doctors at the Outpatients Department	×	
Do not do any Triage	×	
Do not do any Tracking	×	
Do not accompany doctors in the Fresh Trauma Clinic	×	
Do not leave your ward to give rest to the nurses in the wards during the night duty		✓
Nurses are not to attend ambulances for transportation purposes		✓ (excluding medical emergencies)

[33] Responsabbiltà ewlenija ta' Charge Nurse / Midwife: "To ensure that there is effective daily running of the ward including stores, supplies, new requisitions and replacement items". Document CD1 ipprezentat min Carmen D'Amato.

Health Centres

	Prima facie jistghu ipoggi f'periklu is-sahha tal-pazjent	Prima facie ma tpoggix is-sahha tal-pazjent f'periklu
Do not work in any other Health Centre except the one you are allocated		✓
Do not do any bloodletting except for anti-coagulant patients	×	
Do not stock and order any stocking of consumables and pharmaceuticals[34]	×	
Do not do any elective dressings outside appointment time i.e. 10am to 5pm		✓
Do not assist in suturing, ear syringing and removal of sutures	×	
Do not file any repair forms	×	
Do not do any portering of patients		✓
DO not wear the identification badges		✓
Do not use any computer or any similar devices except of POC patients		✓
Do not do any dressing to clients who are not in your catchment area		✓
All nurses in the clinic are to attend only to the treatment room except the POC INR		✓
In Mosta Health Centre, nurses are not to participate in any theatre procedures excluding the ophthalmic list (Avastina)	×	

[34] Responsabbiltà ewlenija ta' Charge Nurse / Midwife: "To ensure that there is effective daily running of the ward including stores, supplies, new requisitions and replacement items". Document CD1 ipprezentat min Carmen D'Amato.

Social workers employed with the Public Service & FMS

	Prima facie jistghu ipoggi f'periklu is-sahha tal-pazjent	Prima facie ma tpoggix is-sahha tal-pazjent f'periklu
No new referrals from the Community Mental Health Clinics		✓
No MWO duties outside MCH (only at the gate)		✓
No answering of phone calls even if they pass to clerks first		✓
No seeing of any new patients both in wards, day hospital and PT/OT outpatients		✓

ECG Technicians

	Prima facie jistghu ipoggi f'periklu is-sahha tal-pazjent	Prima facie ma tpoggix is-sahha tal-pazjent f'periklu
Not to do any review in wards after 7:00 pm		✓
All work in out-patients is to be done on go-slow mode		✓

Il-Qorti hija tal-fehma illi dewmien f'kommunikazzjoni jew koordinazzjoni tista' tikkaguna periklu fuq is-sahha tal-pazjent.

Ghaldaqstant filwaqt li mhux ser tilqa' fl-intier taghha t-talba ghall-hrug tal-mandat kif mitlub, taghamilha cara li anke fejn id-direttivi mhux ser jintlaqtu bil-mandat ta' inibizzjoni, dan ser isir bil-kondizzjoni esplicita illi jekk f'xi kaz partikolari is-sahha ta' pazjent tkun fil-fehma tal-infermier jew qabla; jew tat-tabib kuranti, qed tigi pperikolata minhabba wahda jew aktar minn dawk id-direttivi jew tirrizulta emergenza fis-sala taghhom, l-infermiera u l-qwiebel

ghandhom, kif inhu fid-dover taghhom, jassistu dak il-pazjent b'agilta minghajr kont tad-direttivi.

Dan fl-isfond ukoll ta' dak li jipprovdi il-**Kodici ta' Etika u *Standards* ta' Kondotta Professjonali ghall-Infermiera u l-Qwiebel:**

> "It also seeks to ensure that no action or omission by members of the professions, within their sphere of responsibility, would be detrimental to the interests, condition, or wellbeing of patient and society at large."[35]

Ghall-kjarezza ser jigu hawn elenkati s-servizzi illi bl-ebda mod ma gew jew ma ghandhom jigu milquta bid-direttivi:

1. Is-servizzi kollha tal-emergenza, inkluz is-servizz moghtija mill-infermiera meta johorgu mal-ambulanzi;
2. NPICU (maghrufa komunament bhalal l-"ITU" tat-trabi);
3. *Intesive Therapy Unit* (inkluz l-infermiera li jahdmu fis-swali li ghandhom ordni jassistu u jghinu infermiera li jahdmu fl-ITU kull meta jkun hemm il-bzonn);
4. *Renal Dialysis Unit*;
5. *Cardiac Intensive care unit*;
6. *Delivery Suite*;
7. *Paediatric Wards*;
8. *Phlebotomists*[36];
9. Id-djar kollha tal-anzjani, inkluz St. Vincent de Paul Residence u Karen Grech Rehabilitation Hospital;
10. L-isptar Boffa.

---

[35] *Code of Ethics and Standards of Professional Conduct for Nurses and Midwives*, Council for Nurses and Midwives Malta, January 2020 (https://deputyprimeminister.gov.mt/en/department-of-health-services/nursing-services/Documents/Legal%20Framework/Code%20of%20Ethics%20and%20Standards%20of%20Professional%20Conduct%20for%20Nurses%20and%20Midwives%20-%20Final.pdf), pagna 6, access fis-sit elettroniku sar fit-3 ta' Dicembru 2020.

[36] Din skont ix-xhieda ta' Paul Pace.

Decide

Ghal dawn il-motivi l-Qorti qed taqta' u tiddeciedi r-rikors ghall-hrug ta' Mandat ta' Inibizzjoni pprezentat mis-Segretarju Permanenti fil-Ministeru tas-Sahha fil-25 ta' Novembru 2020 bil-mod segwenti:-

1. Tiddikjara illi ma jirrizultax *prima facie* l-jedd pretiz mis-Segretarju Permanenti fil-Ministeru tas-Sahha li l-Ftehim Kollettiv Settorjali li jiskadi f'Dicembru 2022 ma jippermettiex lill-MUMN milli tiehu Azzjoni Industrijali sakemm il-Ftehim ghadu vigenti.

2. Tiddikjara illi jirrizulta *prima facie* illi parti mid-direttivi tal-MUMN mertu tar-rikors jistghu ikunu ta' perikolu ghas-sahha tal-pazjenti u ghalhekk qed tilqa' *in parte* r-rikors bil-mod kif dettaljatament spjegat aktar 'il fuq taht il-kappa: Id-Direttivi tal-MUMN li l-Qorti Tqis li *Prima Facie* jpoggu f'Perikolu s-Sahha tal-Pazjent.

3. Ghaldaqstant tilqa' in parte r-rikors tal-25 ta' Novembru 2020 limitatament ghal dawk id-direttivi tal-MUMN illi fil-lista *supra* huma indikati bhala direttivi li l-Qorti tqis li *Prima Facie* jistghu jpoggu f'Perikolu s-Sahha tal-Pazjent.

4. Tichdu fil-kumplament.

Dwar il-kap tal-ispejjez il-Qorti qed tordna li fic-cirkostanzi kull parti ghandha thallas l-ispejjez rispettivi taghha.

Moghti kameralment illum 11 ta' Dicembru 2020.

Onor. Robert G. Mangion
Imhallef