



MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tas-7 ta' April, 2021

Appell Inferjuri Numru 7/2021 LM

Aleksander Stojanovic (K.I. 62335A)
("l-appellant")

vs.

L-Uffiċjal Prinċipali tal-Immigrazzjoni
("l-appellat")

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul mir-rikorrent **Aleksander Stojanovic (K.I. 62335A)**, hawnhekk "l-appellant", minn deċiżjoni tal-Bord tal-Appelli dwar l-Immigrazzjoni (minn issa 'l quddiem "il-Bord"), tat-18 ta' Jannar, 2021 (minn issa 'l quddiem "id-deċiżjoni appellata"), li permezz tagħha l-Bord ċaħad l-appell tar-rikorrent minn deċiżjoni ta' ritorn li nħarġet fil-konfront tiegħu fit-13 ta' Lulju,

2020 mill-intimat, hawnhekk “l-appellat”, **I-Uffiċjal Prinċipali tal-Immigrazzjoni**, fl-istess ġurnata li r-rikorrent ħareġ mill-ħabs wara li skonta l-piena.

Fatti

2. Ir-rikorrent huwa raġel ta’ nazzjonalità Serba li ilu jgħix Malta mill-2005, u fis-sena 2008 iżżewweġ ċittadina Maltija. Wara l-mewt ta’ martu fl-2014, ir-rikorrent kien instab ħati ta’ reati kriminali li minħabba fihom skonta piena karċerarja, u dakinhar li ħareġ mill-ħabs fit-13 ta’ Lulju, 2020, huwa ġie nnotifikat bid-deċiżjoni ta’ ritorn maħruġa mill-Uffiċjal Prinċipali tal-Immigrazzjoni, fejn ġie mgħarraf li huwa għandu l-istatus ta’ ‘immigrant ipprojbit’ *ai termini* tal-artikolu 5 tal-Kap. 217 tal-Liġijiet ta’ Malta. Ir-raġunijiet li ngħata r-rikorrent għal din id-deċiżjoni huma li huwa wasal jew qiegħed Malta mingħajr permess, li huwa ma jistax juri li għandu l-mezzi biex jgħajjex lilu nnifsu u lid-dipendenti tiegħu sakemm idum f’Malta, kif ukoll li huwa nstab ħati minn qorti ta’ ġurisdizzjoni kriminali ta’ reat li jaqa taħt il-Kap. 63 jew taħt il-Kap. 101 tal-Liġijiet ta’ Malta, jew li jgħorr piena ta’ ħabs ta’ mhux anqas minn sena. Permezz ta’ din id-deċiżjoni, ir-rikorrent ġie infurmat li huwa ma jistax jibqa’ f’Malta u għalhekk għandu jirritorna lura lejn il-pajjiż tal-origini tiegħu jew lejn xi pajjiż ieħor li lest li jaċċettah. Ir-rikorrent ġie infurmat ukoll bid-dritt tiegħu li jappella minn din id-deċiżjoni. Wara li r-rikorrent ġie infurmat b’din id-deċiżjoni, huwa nżamm fiċ-Ċentru ta’ Detenzjoni ġewwa Ғal Safi.

Mertu

3. Ir-rikorrent appella minn din id-deċiżjoni quddiem il-Bord, fejn spjega li huwa għandu d-dritt ta' moviment liberu kif protett taħt id-Direttiva 2004/38/KE dwar id-drittijiet taċ-ċittadini tal-Unjoni u tal-membri tal-familja tagħhom biex jiċċaqilqu u jgħixu liberament fit-territorju tal-Istati Membri, f'dan il-każ tal-Istat Malti. Ir-rikorrent spjega li huwa kien miżżewweġ mara Maltija, Lisa Claire Stojanovic, kif jirriżulta miċ-ċertifikati esebiti mir-rappreżentant tar-Registru Pubbliku li xehed quddiem il-Bord, u li martu ġiet nieqsa fil-15 ta' Lulju, 2014 wara li kienet ilha marida għal xi żmien. Ir-rikorrent spjega li huwa dejjem għex ma' martu sal-ġurnata li din ġiet nieqsa, u fiż-żwieġ huwa kien jgħin lil martu tmexxi ħanut li din kellha. Ir-rikorrent għamel riferiment għal dak li jgħid l-ewwel subartikolu tal-artikolu 12 tad-Direttiva 2004/38/KE:

“Mingħajr preġudizzju għat-tieni sottoparagrafu, il-mewt jew it-tluq taċ-ċittadin tal-Unjoni mill-Istat Membru ospitanti m'għandux jolqot id-dritt ta' residenza tal-membri tal-familja tiegħu li m'għandhomx ċittadinanza ta' Stat Membru.”

Ir-rikorrent spjega li huwa kien ilu jgħix Malta mill-2005, u l-aħħar permess ta' residenza validu f'ismu kien ikoprih għall-perijodu bejn Frar tal-2011 u Mejju tal-2013. Quddiem il-Bord, uffiċjal mir-Reporting Unit ta' Identity Malta **Mark Scicluna** spjega li r-rikorrent kien għad għandu d-dritt tal-libertà tal-moviment, iżda dan id-dritt inbidel minn dritt protett taħt l-artikolu 4(1)(g) tal-Kap. 217, għal dritt protett taħt l-artikolu 4(1)(h) tal-imsemmija liġi, in vista tal-fatt li mart ir-rikorrent ġiet nieqsa. Ir-rikorrent xehed quddiem il-Bord, fejn spjega li wara l-mewt tal-mara tiegħu huwa pprova jirregolarizza l-permess ta' residenza tiegħu diversi drabi, imma kull darba li kien jipprova jagħmel dan, uffiċjali minn Identity

Malta kienu jgħidulu li kienet meħtieġa konferma minn familjari tal-mara tiegħu li huwa baqa' jgħix mal-mara tiegħu sal-ġurnata tal-mewt tagħha, u li huma ma kinux isseparati qabel din għet nieqsa. Ir-rikorrent spjega li huwa ma setax jipproduci familjari tal-mara tiegħu sabiex jikkonfermaw dan, għax ir-relazzjoni mal-familjari tal-mara tiegħu ma kinitx tajba. Żied jgħid li waqt li kienu għaddejnin dawn il-proċeduri fil-konfront tiegħu, huwa gie infurmat li seta' jipproduci *affidavit* ta' xi ħadd li jaf kemm lilu kif ukoll lil martu, sabiex jikkonferma li fil-fatt huma baqgħu jgħixu flimkien sal-ġurnata meta għet nieqsa martu. Qal li kien għalhekk li huwa ppreżenta l-*affidavit* ta' **Bradley Reno Sapiano**, sid ta' *bar* fir-Rabat, li kien jaf lir-rikorrent u lil martu u li kkonferma li huwa dejjem jafhom jgħixu flimkien, u dawn spiss kienu jmorru fil-*bar* tiegħu flimkien.

4. Ir-rikorrent qal li l-intimat ma jistax jibbaża d-deċiżjoni ta' ritorn fuq il-possibilità li persuna aktarx ser issir dipendenti fuq l-Istat Malti sabiex tgħajjex lilha nnifisha, u stqarrija bħal din kellha tiġi sostanzjata mill-intimat. Qal li d-deċiżjoni ta' ritorn fil-konfront tiegħu nħarget fl-istess ġurnata li huwa ħareġ mill-ħabs, u għalhekk huwa ma setax juri li kellu l-mezzi biex jgħajjex lilu nnifsu. Qal ukoll li l-intimat naqas milli jipprova b'liema mod huwa stabbilixxa li r-rikorrent ma kellux il-mezzi biex jgħajjex lilu nnifsu. Qal li mill-provi ppreżentati quddiem il-Bord permezz ta' uffiċjal tad-Dipartiment tas-Sigurtà Soċjali, intwera li huwa jirċievi biss pensjoni tar-romol, u li qatt ma rċieva xi forma ta' għajjnuna soċjali oħra. Qal li għalhekk m'hemm l-ebda bażi għall-konklużjoni li huwa se jispiċċa jkun ta' piż fuq is-soċjetà Maltija, għaliex il-pensjoni tar-romol huwa intitolat għaliha għax tilef lil martu u mhux għax ried hu.

5. Quddiem il-Bord, ġew ippreżentati diversi deċiżjonijiet mogħtija mill-qrati ta' ġurisdizzjoni kriminali fil-konfront tar-rikorrent, minn fejn jirriżulta li kemm ilu jgħix Malta nstab ħati ta' diversi reati, u għal uħud minnhom wehel sentenzi ta' ħabs effettivi.

Id-Deciżjoni Appellata

6. Permezz tad-deċiżjoni mogħtija mill-Bord fit-18 ta' Jannar, 2021, il-Bord ċaħad l-appell tar-rikorrent, wara li għamel is-segwenti konsiderazzjonijiet:

"The Board observes that this is an appeal from a Return decision issued to appellant on the 13th of July, 2020.

Appellant was issued with the said return decision on the following grounds:

- *You are unable to show that you have means of supporting yourself and your dependants (if any) or you or any of your dependants is likely to become a charge on the public funds;*
- *You landed or are in Malta without leave from the Principal Immigration Officer;*
- *You have been found guilty by a court of criminal jurisdiction in Malta, did not comply or ceased to comply with any of the conditions, including an implied condition, under which you were granted leave to land or to land and remain in Malta or was granted a residence permit.*

Facts of the Case

Appellant was issued with a return decision on the 13th of July, 2020. Appellant was issued with the return decision following his imprisonment from Corradino Correctional Facility. Appellant was sentenced to a term of nine (9) months for aggravated theft and a further three (3) months imprisonment due to the fact that appellant committed the above crime during a four (4) year operation period of a suspended judgment handed on the 23rd of October, 2018.

During the hearing of this appeal, appellant presented a marriage certificate. Appellant married a Maltese national in Serbia on the 8th of January, 2008, which marriage was later registered in Malta. Appellants' wife died on the 15th of July, 2014.

It resulted that appellant had acquired freedom of movement rights due to the marriage between an EU national who continued to reside in her Member State country and appellant who is a non-EU national. It resulted that appellants' identity card expired way back in 2013 and was never renewed. Following the issuance of the return decision appellant through his legal representatives tried to renew the identity card. However, appellant was requested to provide the expired original identity card which appellant could not produce since it was in possession of the Executive Police.

It also resulted that appellant was perceiving a survivor's pension following the death of his wife. In regard to appellant's validity or otherwise of his freedom of movement, Identity Malta representative testified and declared that following the death of appellant's wife, appellant had to amend his status in accordance with Article 4H. Since her death in 2014, appellant did not amend his freedom of movement as stated. It was also stated that appellant's freedom of movement had not been withdrawn.

National legislation

Subsidiary legislation 460.17 – Free movement of European Nationals and their family members order

Article 3(1) provides – Subject to the provisions of this Order, a Union citizen may enter, remain and reside in Malta, seek and take up employment or self-employment therein, and shall enjoy equal treatment with Maltese nationals within the scope of the Treaty, and such right shall, subject to what is stated in this Order, be also applicable to other family members accompanying or joining the Union citizen, including those who are not nationals of a Member State, and to the partner with whom the Union citizen has a durable relationship:

Provided that the Director may refuse, terminate or withdraw any such right in the case of abuse of rights or fraud:

Provided further that the Union citizen shall not be entitled to social assistance during the first three months of residence or, where appropriate, the longer period referred to in sub-article (4) other than workers, self-employed persons, persons who retain such status and members of their families, nor shall he be entitled, prior to acquisition of the right of permanent residence, to maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons.

(2) Subject to limitations justified on grounds of public policy, public security or public health, a Union citizen and his family members accompanying or joining him, may enter and leave Malta simply with a valid identification document in the case of Union citizens and a valid passport in the case of family members who are not nationals of Member States:

Provided that, where appropriate, family members who are not nationals of a Member State shall be required to have an entry visa, which shall be issued free of charge as soon as possible and on the basis of an accelerated procedure, unless they are already in possession of a valid residence card, and no entry or exit stamp shall be placed in the passport of such family members in possession of a valid residence card:

Provided further that the Principal Immigration Officer shall give every reasonable opportunity to a Union citizen or a family member who is not a national of a Member State and who does not have the necessary travel documents available, to obtain the necessary documents or have them brought to him or to corroborate or prove by other means that he is covered by the provisions of Part II of this Order.

(3) Subject to the provisions of sub-articles (1) and (2) and article 4, a Union citizen and his family members accompanying him or joining him may reside and move freely within Malta on the same conditions as Maltese nationals for a period of three months without any conditions or any formalities, commencing on the date of entry or such other period as may be prescribed by subarticle (4):

Provided that a Union citizen and his family members shall so reside as long as they do not become an unreasonable burden on the social assistance system of Malta.

(4) The period of three months referred to in subarticle (3) is extendable to a six-month period, in the case of a person who is seeking employment.

(5) The Director shall give due and proper consideration in relation to the admission and residence of any other family member and of the partner with whom the Union citizen has a durable relationship, duly attested, by undertaking an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.

(6) A Union citizen or a person referred to in sub-Article (1), who arrives in Malta and who is not covered by the provisions of article 31 of the Act applicable to places of accommodation for reward shall, within one month of his arrival, report his presence in Malta to the Principal Immigration Officer by reporting at any office designated by

the Principal Immigration Officer, and shall be issued with an acknowledgment in writing of such report.

(7) Any person who fails to comply with the provisions of sub-Article (1) shall be guilty of an offence and shall be liable, on conviction, to a fine (multa) of two hundred and thirty-two euro and ninety-four cents (€232.94):

Provided that if before the person has been found guilty of having committed an offence under this article, such person pays to the Commissioner of Police an administrative penalty of between twenty-three euro and twenty-nine cents (€23.29) and two hundred and thirty-two euro and ninety-four cents (€232.94), as may be determined by the Commissioner of Police, no proceedings in respect of any criminal offence committed in violation of this article shall be commenced or continued.

Article 12(1) - The rights referred to in article 3(1) shall be restricted by a decision taken on grounds of public policy, public security or public health:

Provided that such rights shall not be restricted solely to serve economic ends.

(2) In the application of the provisions of subarticle (1):

(a) the relevant decision shall comply with the principle of proportionality; (b) the relevant decision must be based exclusively on the personal conduct of the person concerned saving that; (i) the person's previous criminal convictions do not, in themselves, constitute grounds for taking the relevant decision; (ii) the personal conduct of the person concerned represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society; (iii) matters isolated from the particulars of the case or which relate to considerations of general prevention, do not justify a relevant decision.

(3) A decision to restrict right of entry and right of residence on grounds of public health, shall be limited to those diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to Maltese nationals in line with the Public Health Act:

Provided that where there are serious indications that it is necessary, and not as a matter of routine, the Director may, in consultation with and upon the recommendation of the Superintendent of Public Health, within three months of the date of their arrival, require persons entitled to the right of residence to undergo, free of charge, a medical examination to certify that they are not suffering from any such diseases.

13(1) A person who ceases to have the right to reside by virtue of this Order or who becomes an unreasonable burden on the social assistance system, may be removed from Malta:

Provided that a removal order shall not be the automatic consequence of the person's recourse to the social assistance system of Malta:

Provided further that without prejudice to the provisions of this Order, a removal order shall not be issued in the case of a person who is a worker, or a self-employed, or a job-seeker, or can provide evidence that he is continuing to seek employment and that he has a genuine chance of being engaged, or the family members of such persons.

(2) In the case where a decision for removal on grounds of public policy or public security is being taken, the Principal Immigration Officer shall take into account a number of considerations which may include (a) the period of residence in Malta of the person to be removed; (b) the age of such person; (c) the person's state of health; (d) his family and economic situation; (e) his social and cultural integration in Malta; (f) the extent of his links with his country of origin.

(3) A decision for removal shall not be taken in the case of a Union citizen and his family members, irrespective of nationality, who have the right of permanent residence, except on serious grounds of public policy and public security.

(4) A removal decision shall not be taken against a Union citizen, except if the decision is based on imperative grounds of public security, if such citizen: (a) has resided in Malta for a continuous period of at least ten years prior to such decision; or (b) is under the age of eighteen years unless such decision is necessary in his best interests.

(5) Diseases referred to in article 12(3), occurring after a three-month period from the date of arrival, shall not constitute grounds for removal of the Union citizen, his family members or other family members from Malta on grounds of public health.

(6) Expiry of the identification document used by a citizen of the Union and his family members and other family members to enter Malta and the failure of such persons to obtain a residence permit or a residence document, as the case may be, shall not, by itself, justify removal from Malta.

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/36/EEC.

Reference will be made to the EU Directive 2004/38/EC implemented by sub-legislation 460.17 of Chapter 460 of the Laws of Malta. In his note of submissions, appellant makes reference to the Directive, stating that it gives an autonomous right of residence to family members in case of death. Article 12 of the Directive refers. Article 12 of the Directive delineates the requisites allowing retention of the right of residence by family members as in the case of appellant. Board also makes reference to Article 7(1)a, b, c, or d (fn-1: Article 7 – Right of residence for more than three months: 1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they: (a) are workers or self-employed persons in the host Member State; or (b) they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or (c) are enrolled at a private or a public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; or (d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c). 2. The right of residence provided for in paragraph 1 shall extend to family members who are not nationals of a Member State, accompanying or joining the Union citizen in the host Member State, provided that such Union citizen satisfies the conditions referred to in paragraph 1(a), (b) or (c). 3. For the purposes of paragraph 1(a), a Union citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person in the following circumstances: (a) he/she is temporarily unable to work as the result of an illness or accident; (b) he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a job-seeker with the relevant employment office; (c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months; (d) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the retention of the status of

worker shall require the training to be related to the previous employment. 4. By way of derogation from paragraphs 1(d) and 2 above, only the spouse, the registered partner provided for in Article 2(2)(b) and dependant children shall have the right of residence as family members of a Union citizen meeting the conditions under 1(c) above. Article 3(2) shall apply to his/her dependant direct relatives in the ascending lines and those of his/her spouse or registered partner) - of the said Article and it results that appellant does not meet said requirements. Appellant did not produce any evidence to show that he meets said requisites. The documents presented purporting the social benefits appellant perceives (sic) in the form of survivor's pension do not tally to the minimum national standard wage. No other prove (sic) of subsistence was provided, nor a form or employment resulted showing that appellant is duly in employment and in reception of a wage. Appellant fails to meet the requisites of Article 14 mentioned hereunder.

Article 12 – Retention of the right of residence by family members in the event of death or departure of the Union citizen

1. Without prejudice to the second subparagraph, the Union citizen's death or departure from the host Member State shall not affect the right of residence of his/her family members who are nationals of a Member State.

Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in points (a), (b), (c) or (d) of Article 7(1).

2. Without prejudice to the second subparagraph, the Union citizen's death shall not entail loss of the right of residence of his/her family members who are not nationals of a Member State and who have been residing in the host Member State as family members for at least one year before the Union citizen's death.

Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject to the requirement that they are able to show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or that they are members of the family, already constituted in the host Member State, of a person satisfying these requirements. 'Sufficient resources' shall be as defined in Article 8(4).

Such family members shall retain their right of residence exclusively on a personal basis.

3. The Union citizen's departure from the host Member State or his/her death shall not entail loss of the right of residence of his/her children or of the parent who has actual custody of the children, irrespective of nationality, if the children reside in the host Member State and are enrolled at an educational establishment, for the purpose of studying there, until the completion of their studies.

Article 14 – Retention of the right of residence

1. Union citizens and their family members shall have the right of residence provided for in Article 6, as long as they do not become an unreasonable burden on the social assistance system of the host Member State.

2. Union citizens and their family members shall have the right of residence provided for in Articles 7, 12 and 13 as long as they meet the conditions set out therein.

In specific cases where there is a reasonable doubt as to whether a Union citizen or his/her family members satisfies the conditions set out in Articles 7, 12 and 13, Member States may verify if these conditions are fulfilled. This verification shall be carried out systematically.

3. An expulsion measure shall not be the automatic consequence of a Union citizen's or his or her family member's recourse to the social assistance system of the host Member State.

4. By way of derogation from paragraphs 1 and 2 and without prejudice to the provisions of Chapter VI, an expulsion measure may in no case be adopted against Union citizens or their family members if:

(a) The Union citizens are workers or self-employed persons; or

(b) The Union citizens entered the territory of the host Member State in order to seek employment. In this case, the Union citizens and their family members may not be expelled for as long as the Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged.

First ground of the return decision

Appellant contested this ground stating that since appellant enjoys freedom of movement, the Principal Immigration Officer may not issue a return decision against him. Reference is being made to Article 4(1)(g) and(h) and Article 4(2), Article 5 and Article 14 of Chapter 217 of the Laws of Malta which confer such right to the Principal Immigration Officer to issue such return decision as issued.

Second ground of the return decision

Reference to the second ground mentioned it must be highlighted that the burden shifts unto the appellant to substantiate this ground and not vice versa. Article 33 of Chapter 217 refers. Throughout the hearing of this appeal, appellant presented to this Board social benefits perceived (sic) and as mentioned above, amount perceived is way below the national minimum standard wage, which amount is certainly not sufficient for a single person to maintain himself. As also stated no prove (sic) of employment or income of any wages was presented to this Board. This only confirms that appellant is not in employment or is not seeking employment.

Third ground of the return decision

*In view of the third ground issued by the Principal Immigration Office documented evidence to support this ground was presented by the Principal Immigration Officer. Such also presents a ground for expulsion from a Member State. Crimes committed by the appellant are related to public policy. Public policy aims at preventing disturbance of social order (criminal offences, unlawful possession of drugs, violent actions to overthrow the order of the state or others' social harmful behaviour). Personal conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. What needs to be considered in the assessment of a threat to public policy or security is the nature and seriousness of the offences, frequency and time elapsed since the offences. Petty criminality may represent a threat to public policy, even though any single crime, individually, would be insufficient. Danger of re-offending may be considered greater in the case of drug dependency if there is a risk of further criminal offences committed in order to fund the dependancy. In the case of appellant it has resulted that appellant committed a series of crimes and is a repeat offender (**Pulizija vs Aleksander Stojanovic judgment 14/12/2015, judgment 22/06/2011, judgment 30/12/2016**).*

Decide

Board refers to the grounds upon which the return decision was issued, various sittings held, case law, documents presented and note of submissions filed.

The Board also refers to EU Directive 2004/38/EC which clearly defines the requisites required by beneficiaries to retain the right of residence in a Member State as long as they do not become an unreasonable burden on the social assistance system of the host Member State. During the hearing of this case it resulted that appellant's situation is not a temporary one and appellant's personal circumstances have been brought about by appellant's actions. No proof to the contrary has been submitted to show that appellant was ever in employment, not even for the minimum period

required as per EU Directive 2004/38/EC, nor any proof that appellant is currently seeking employment or trying to sustain himself in order to continue being dependant on the Member State.

It has also been sufficiently proven to the satisfaction of this Board that appellant had been found guilty more than once of offences which are punishable with imprisonment for a term of not less than one year.

It was also proven to the satisfaction of the Board that appellant no longer enjoyed the right to reside in Malta, thus his stay was no longer granted by leave of the Principal Immigration Officer.

On the basis of National law, EU law and directives and for reasons mentioned above the Immigration Appeals Board rejects appellant's appeal and confirms return decision."

L-Appell

7. L-appellant ressaq l-appell tiegħu minn din id-deċiżjoni fit-28 ta' Jannar, 2021, fejn talab lil din il-Qorti sabiex,

"... jogħgobha tħassar id-deċiżjoni tal-Bord tal-Appelli dwar l-Immigrazzjoni ta' nhar it-tmintax (18) ta' Jannar tas-sena 2021 u fl-istess ħin tħassar id-deċiżjoni tal-Uffiċjal appellat ta' nhar it-tlethax (13) ta' Lulju tas-sena 2020, iż-żewġ deċiżjonijiet hawn fuq riferiti u tagħti dawk il-provvedimenti opportuni illi din il-Qorti jidhrilha xierqa."

L-appellant qal li huwa ħassu aggravat bid-deċiżjoni tal-Uffiċjal Prinċipali tal-Immigrazzjoni u bid-deċiżjoni tal-Bord tal-Appell dwar l-Immigrazzjoni, għaliex huwa għandu d-dritt għat-tgawdija tal-moviment liberu u l-protezzjoni tal-istess dritt. Qal li l-bażi tad-deċiżjoni ta' ritorn hija fattwalment skorretta u tikser id-dritt tiegħu għall-moviment liberu kif protett taħt id-Direttiva 2004/38/EC. Spjega li huwa pproduċa biżżejjed provi biex juri li huwa kien miżżewweg ċittadina Maltija, Lisa Claire Stojanovic, fatt dan li m'hemm l-ebda

kontestazzjoni dwaru. Qal ukoll li gie ppruvat li huwa qatt ma kien isseparat jew iddivorzzat minn mal-mara tiegħu. L-appellant qal li d-Direttiva ċitata minnu tagħti dritt ta' residenza awtonoma lill-membri tal-familja taċ-ċittadini tal-Unjoni f'diversi każijiet, inkluż f'każ ta' mewt, u dawn id-drittijiet huma riprodotti fil-liġi domestika permezz tal-liġi sussidjarja 460.17. L-appellant qal li huwa ilu jgħix Malta mis-sena 2005, u huwa kellu d-dritt għall-moviment liberu kif ikkonferma x-xhud Mark Scicluna in rappreżentanza tar-Reporting Unit fi ħdan Identity Malta, meta dan ta d-depożizzjoni tiegħu quddiem il-Bord. Kompla jgħid li huwa pprova jirregolarizza s-sitwazzjoni tiegħu kemm-il darba wara li mietet martu, u minkejja li huwa ma kienx f'pożizzjoni li jtella' jixhed xi membru tal-familja tagħha sabiex jikkonferma li huwa baqa' jgħix ma' martu sa meta mietet, huwa xorta waħda ġab tali prova permezz tal-*affidavit* ta' Bradley Reno Sapiano, ħabib tal-appellant u martu, li qal li huwa jaf li dawn baqgħu jgħixu flimkien sa meta giet nieqsa mart l-appellant. L-appellant qal li sad-data tad-deċizzjoni tal-Bord tal-Appelli huwa kien għad għandu d-dritt tal-moviment liberu, u b'hekk id-deċizzjoni ta' ritorn li giet maħruġa fil-konfront tiegħu nħarġet waqt li huwa kien għad għandu d-dritt tal-moviment liberu. Qal li huwa ma jistax jifhem kif inħarġet tali ordni ta' ritorn mingħajr ma gie ristrett il-moviment liberu tiegħu. L-appellant qal li f'każijiet simili, l-Uffiċjal Principali tal-Immigrazzjoni l-ewwel jinforma lill-individwu illi l-moviment liberu tiegħu qiegħed jiġi ristrett, qabel ma jittieħdu xi passi ulterjuri fir-rigward tad-deċizzjoni ta' ritorn. Qal li f'dan il-każ inħarġet ordni ta' ritorn waqt li huwa kien għad għandu d-dritt tal-moviment liberu mingħajr ma dan gie ristrett jew infurmat b'tali restrizzjoni. L-appellant qal li skont il-Liġi Ewropea, persuni li huma membri tal-familja ta' ċittadini tal-Unjoni Ewropea għandhom protezzjoni aktar

b'saħħitha minn individwi jew ċittadini ta' pajjiżi terzi. Żied jgħid li persuni b'halu jistgħu jitkeċċew minn Malta biss għal raġunijiet serji ta' politika pubblika jew ta' sigurtà pubblika, u kwalunkwe tneħħija għandha tirrispetta l-prinċipji ta' proporzjonalità. Qal li sabiex persuna titneħħa mill-pajjiż, dan għandu jippreżenta theddida ġenwina, prezenti u serja bizżejjed għall-interessi generali tas-soċjetà.

8. L-appellant qal li huwa ħass ruħu aggravat ukoll għaliex il-bażi tad-deċiżjoni ta' ritorn mhijiex fattwali u mhijiex ippruvata. Jgħid li l-ewwel raġuni mogħtija, jiġiferi dik li huwa m'għandux permess sabiex jibqa' Malta, giet ikkontestata u qiegħda tibqa' tiġi kkontestata in vista tal-provi mressqa minnu. Qal li l-Uffiċjal tal-Immigrazzjoni Prinċipali ma ressaq l-ebda prova sabiex jissostanzja t-tieni u t-tielet raġuni mogħtija fid-deċiżjoni ta' ritorn, u qal li l-allegazzjoni li, *"you or your dependants are likely to become a charge on the public funds"*, għandha tiġi sostanzjata. L-appellant qal li huwa ngħata d-deċiżjoni ta' ritorn fl-istess ġurnata li huwa ħareġ mill-ħabs, u għalhekk kien f'sitwazzjoni fejn kien impossibbli għalih li jipprova li huwa fil-fatt kellu minn fejn u seta' jsostni lilu nnifsu. Qal li huwa pprova jirregolarizza s-sitwazzjoni tiegħu kemm-il darba sabiex ikun jista' jimpjega lilu nnifsu, imma dan ma kienx possibbli għaliex huwa baqa' jintalab jipproduċi xhieda tal-familjari tal-mara, xi ħaġa li ma kinitx possibbli għalih li jagħmel. Żied jgħid li meta huwa ngħata soluzzjoni oħra, u reġa' għamel tentattiv sabiex jirregolarizza l-pożizzjoni tiegħu, huwa gie mgħarraf li ma seta' jagħmel xejn qabel jiġi deċiż l-appell quddiem il-Bord tal-Appelli. L-appellant qal li din il-Qorti għandha tapprezza dawn l-ostakoli, għaliex dawn ma kinux jiddependu mill-volontà tiegħu. Kompla jgħid li

mhux talli huwa ma ngħatax l-opportunità li jirregolarizza l-pożizzjoni tiegħu wara li skonta l-piena ta' ħabs, talli lanqas l-Uffiċjal appellat ma ssostanzja kif wasal għall-konklużjoni li l-appellant ma kellux mezzi biex jgħajjex lilu nnifsu. Qal li huwa ma jistax jifhem kif il-Bord straħ fuq id-dikjarazzjoni tal-appellat, mingħajr ma talab ebda prova sabiex dak li gie dikjarat mill-appellat jiġi ssostanzjat. Qal li f'dan il-każ huwa ċar li l-Bord naqas milli jeżamina l-bażi tad-deċiżjoni meħuda mill-appellat. Kompla jgħid li huwa pprova li qiegħed jirċievi l-pensjoni tar-romol, liema għajjnuna hija forma ta' għotja awtomatika li tingħata lilu għaliex tilef lil martu. Żied jgħid li din hija prova bizzejjed li huwa qatt ma kien ta' piż fuq is-sistema tal-assistenza soċjali Maltija. Qal li huwa qatt ma kien dispost li jistrieħ kompletament fuq il-pensjoni tar-romol, u l-ħsieb tiegħu huwa li jirregolarizza l-pożizzjoni tiegħu sabiex ikun jista' jerga' jimpjega ruħu.

Ir-Risposta tal-Appell

9. Fir-risposta tiegħu l-appellat wiegħeb li l-appell imressaq mill-appellant huwa bbażat fuq revizzjoni ta' fatti u provi miġjuba quddiem il-Bord, u kif inhu stipulat fl-artikolu 25A (8) tal-Kap. 217, ma jeżisti ebda dritt ta' appell fuq punti ta' fatt, iżda biss fuq punti ta' dritt. Żied jgħid li għalhekk dan l-appell għandu jitqies li huwa irritu u null. L-appellat spjega li b'deċiżjoni tal-Qorti tal-Maġistrati (Ġudikatura Kriminali) tat-22 ta' Ġunju, 2011, l-appellant gie kkundannat għal perijodu ta' sentejn prigunerija sospizi għal erba' snin, u b'deċiżjoni tal-Qorti tal-Maġistrati (Ġudikatura Kriminali) tal-14 ta' Diċembru, 2015, l-appellant gie kkundannat għal perijodu ta' disa' xhur prigunerija effettivi, u b'deċiżjoni tal-

Qorti tal-Maġistrati (Ġudikatura Kriminali) tat-30 ta' Diċembru, 2016, l-appellant ingħata l-libertà kundizzjonata li ma jikkommettix reat ieħor fi żmien sentejn.

L-appellat spjega li wara li l-appellant skonta l-piena tiegħu, huwa ngħata d-deċiżjoni ta' ritorn abbażi ta' dak li jipprovdi l-artikolu 5 tal-Kap. 217, u nżamm f'Ċentru tad-Detenzjoni għaliex huwa kien ikkunsidrat bħala immigrant ipprojbit, in vista tal-fatt li ma kellux permess ta' residenza, kif ukoll għaliex kien skonta sentenza ta' prigunerija għal mhux anqas minn sena. L-appellat spjega li bi żvista ma nħarget l-ebda *removal order* mad-deċiżjoni ta' ritorn, u kien għalhekk illi permezz ta' rikors ta' *habeas corpus* il-Qorti tal-Maġistrati b'deċiżjoni tal-20 ta' Lulju, 2020 illiberat lill-appellat mid-detenzjoni. L-appellant appella mid-deċiżjoni ta' ritorn li ngħatatlu fit-13 ta' Lulju, 2020, u l-Bord iddeċieda li din id-deċiżjoni ta' ritorn kienet waħda valida. L-appellat spjega li l-appellant gie detenut mill-ġdid wara li gie mogħti l-opportunità li jeżercita *voluntary departure*, iżda huwa rrifjuta li jagħmel dan u minflok intavola proċeduri għall-ażil. L-appellat qal li dan l-aġir juri li l-appellant irid jinfluwenza d-deċiżjoni tar-ritorn u hemm biżgħa li dan ma jkunx jista' jiġi intraċċat. Fit-8 ta' Frar, 2021, il-Bord iddeċieda li d-detenzjoni tal-appellant hija waħda valida, iżda hegġeg lill-appellat jesplora soluzzjonijiet oħra li ma jammontawx għad-detenzjoni tal-appellant.

10. B'riferiment għall-ewwel aggravju tal-appellant, l-appellat qal li *ai termini* tal-artikolu 4(1)(g) tal-Kap. 217, persuna li ma tibqax mizzewġa u tgħix ma' persuna li tkun ċittadina Maltija, ma tibqax meqjusa bħala *exempt person*. L-

appellat għamel riferiment għal ittra mibgħuta lil mart l-appellant fil-15 ta' Diċembru, 2008, fejn din giet infurmata li r-raġel tagħha kellu dritt bħala *exempt person* sakemm huma jibqgħu jgħixu flimkien, u dan id-dritt jintilef awtomatikament f'każ ta' separazzjoni *de facto* jew *de jure*. L-appellat qal li l-permess ta' residenza tal-appellant skada fil-31 ta' Mejju, 2013, u ladarba ma giex ikkonfermat li l-appellant ma jgawdix minn *exempt person status* u ma kellu ebda awtorizzazzjoni oħra biex jibqa' jgħix hawn Malta, huwa ma setax ikompli jirrisjedi hawn Malta.

11. L-appellat qal ukoll li l-Aġenzija Identity Malta la kienet parti mill-proċeduri quddiem il-Bord u lanqas kienet parti f'dawn il-proċeduri, u għalhekk huwa ma jistax jirrispondi għaliha. Qal iżda li hija prassi amministrattiva normali li jintalbu ċerti provi, bħal *affidavit* ta' membru tal-familja sabiex jigi assigurat li persuna baqa' jgħix mal-konjuġi sal-mewt tiegħu jew tagħha, u dan fil-kuntest tal-artikolu 4(1)(h) tal-Kap. 217. L-appellat qal li mhux minnu li r-rappreżentant ta' Identity Malta xehed li l-appellant għadu jgawdi d-dritt ta' moviment liberu, u fix-xhieda li ngħatat intqal bl-aktar mod ċar li l-moviment liberu li kien igawdi l-appellant inbidel minn dritt protett taħt l-artiklu 4(1)(g) għal dritt protett taħt l-artikolu 4(1)(h) tal-Kap. 217. L-appellat qal li fl-ebda waqt ma gie kkonfermat li l-appellant għadu jgawdi d-dritt ta' moviment liberu, u mill-files tas-*Central Immigration Office* irrizulta li mart l-appellant kienet għamlet stqarrija fejn din qalet li l-appellant ma kienx għadu jgħix magħha, u għalhekk il-partijiet kienu separati *de facto*. L-appellat qal ukoll li nstabet ittra oħra bid-data tas-17 ta' Lulju, 2013 maħruġa mid-Dipartiment taċ-Ċittadinanza u tal-Expatriates fejn l-

appellat ġie infurmat li l-istatus ta' persuna eżenti li kien igawdi l-appellant kellu jiġi kkanċellat.

12. L-appellat żied jgħid ukoll li d-Direttiva 2004/38/EC ma tapplikax għaċ-ċirkostanzi odjerni. Spjega li Direttiva ma tapplikax b'mod dirett, iżda trid tiġi trasposta fil-liġi nazzjonali, u f'dan il-każ hija l-liġi sussidjarja 460.17 li ttrasponiet dik id-direttiva. Qal li l-artikolu 1(4) ta' dik il-legislazzjoni sussidjarja jgħid li: *“Dan l-Ordni japplika għaċ-ċittadini tal-Unjoni kollha li jidhlu Malta jew li jkunu joqogħdu Malta u li ma jkunux ċittadini Maltin, u għall-membri tal-familji tagħhom jew membri tal-familja oħrajn kif imfissra f'dan l-Ordni, li jakkumpanjawhom jew jingħaqdu magħhom, kif ukoll għal ċittadini ta' pajjiżi terzi.”* Dan ifisser li teżisti deroga mill-applikazzjoni ġenerali ta' dik id-direttiva fir-rigward ta' ċittadini Maltin. L-appellat qal li d-deċiżjoni tal-Bord fis-sens li persuna tista' żżomm ir-residenza abbażi ta' dik id-direttiva hija waħda żbaljata, u talab lil din il-Qorti tiskarta dik il-parti tad-*decide* tal-Bord u minflok tikkonferma li l-appellant m'għadux igawdi minn status ta' *exempt person* għaliex ma ġiex ippruvat li fil-mument tal-mewt ta' martu huma kienu għadhom jgħixu flimkien.

13. B'riferiment għall-possibilità tat-tneħħija ta' persuna għal raġunijiet ta' sigurtà pubblika, l-appellant qal li minkejja li l-liġi ma tipprovdux għall-espulsjoni awtomatika ta' persuna, l-appellant inkwistjoni huwa reċidiv, għandu tliet sentenzi kriminali fil-konfront tiegħu, u skonta pieni ta' prigunerija effettivi. Fost ir-reati li l-appellant instab ħati tagħhom hemm is-serq, li l-appellant jgħid li ċertament li dan huwa reat li ma jistax ma jitqisx li huwa kontra s-sigurtà

pubblika. L-appellat ikkonkluda billi qal li l-appellant la jista' jitqies li huwa persuna eżenti taħt is-subartikolu 4(1)(h) tal-Kap. 217 u lanqas jista' jitqies li huwa membru tal-familja ta' ċittadin tal-Unjoni Ewropea, u għalhekk il-pożizzjoni tiegħu hija dik ta' immigrant ipprojbit *ai termini* tal-artikolu 5 tal-Att.

Konsiderazzjonijiet ta' din il-Qorti

14. L-appellat ipprezenta bħala prova quddiem din il-Qorti kopja ta' dikjarazzjoni li kienet għamlet mart l-appellant fil-31 ta' Awwissu, 2012, fejn din effettivament ikkonfermat li hija u l-appellant ma kinux għadhom jgħixu flimkien u li kien hemm problemi fil-ħajja matrimonjali tagħhom. Il-Qorti aċċettat il-preżentata ta' din id-dikjarazzjoni għaliex id-difiża tal-appellat ma kellhiex għarfien ta' dan id-dokument qabel ingħalqu l-provi quddiem il-Bord.

15. L-appellant qiegħed jitlob lil din il-Qorti tħassar id-deċiżjoni appellata, liema deċiżjoni kkonfermat id-deċiżjoni ta' ritorn maħruġa mill-appellat tat-13 ta' Lulju, 2020, li permezz tagħha l-appellant gie ordnat jirritorna lura lejn pajjiżu jew lejn xi pajjiż ieħor li lest li jaċċettah, għaliex huwa meqjus bħala 'immigrant projbit' skont il-liġi Maltija. Minkejja li l-appellat eċċepixxa li dan l-appell huwa irritu u null għaliex huwa msejjes fuq punti ta' fatt u mhux fuq punti ta' dritt, din il-Qorti hija tal-fehma li dan huwa każ li jimmerita konsiderazzjoni xierqa tal-aggravji kollha sollevati mill-appellant, partikolarment għaliex hija konvinta li hemm punti legali li tqajmu mill-appellant li jimmeritaw approfondiment minn din il-Qorti.

L-Ewwel Aggravju: L-appellant għandu d-dritt ta' moviment liberu u protezzjoni tal-istess u għalhekk ma setgħetx tinħareġ id-deċiżjoni ta' ritorn fil-konfront tiegħu

16. L-appellant isostni li d-deċiżjoni ta' ritorn hija fattwalment skorretta u tilledi l-jedd tiegħu tal-moviment liberu kif protett bid-direttiva 2004/38/KE, kif trasposta fil-liġi Maltija permezz tal-Legislazzjoni Sussidjarja 460.17. L-appellant spjega li huwa jgawdi tali protezzjoni għaliex kien mizzewweg ċittadina Maltija, kif jirriżulta miċ-ċertifikat taż-żwieġ ipprezentat quddiem il-Bord. Jgħid li tali ċertifikat taż-żwieġ ma fih l-ebda annotazzjoni li tista' tindika li huwa kien isseparat jew iddivorzjat minn ma' martu, u huwa baqa' jgħix ma' martu sa dakinhar li din giet nieqsa fl-2014. Qal li huwa ġab bħala prova *affidavit* ta' ċertu Bradley Reno Sapiano, sid ta' *bar* fir-Rabat li jaf lill-appellant u lil martu, li ikkonferma li dawn spiss kienu jmorru fil-*bar* tiegħu flimkien, u sa fejn jaf hu, dawn baqgħu jgħixu flimkien sal-ġurnata tal-mewt ta' mart l-appellant. L-appellant qal li huwa qatt ma ġie infurmat li d-dritt ta' moviment liberu li kien igawdi bis-saħħa tal-fatt li huwa kien mizzewweg mara Maltija kien ġie ristrett, u għalhekk ma setgħetx tinħareġ deċiżjoni ta' ritorn fil-konfront tiegħu, meta d-dritt tal-moviment liberu tiegħu kien għadu mhux mittiefes.

17. Il-Qorti tqis li f'dan il-każ ingabet prova mill-appellant li l-appellant u martu kienu separati *de facto* qabel din giet nieqsa. Fil-fatt f'dikjarazzjoni li għamlet fil-31 ta' Awwissu, 2012 mart l-appellant Lisa Stojanovic, li giet esebita mill-appellant f'dawn il-proċeduri, din iddikjarat li l-appellant kien telaq mid-dar matrimonjali fil-15 t'Awwissu, 2011, u li sa fejn hija kienet infurmata, l-appellant kien qiegħed jiskonta piena ta' ħabs fis-Serbja. Mart l-appellant fid-dikjarazzjoni

tagħha qalet ukoll li sakemm l-appellant kien jgħix Malta, dan kien qabad il-vizzju tad-droga u kien involut f'xi serq, u għalhekk talbet lit-Taqsima tal-Immigrazzjoni tal-Pulizija tikkancella l-moviment liberu li kien igawdi l-appellant bis-saħħa tal-fatt li kien miżżewweġ lilha. Il-Qorti tqis li dan id-dokument huwa prova suffiċjenti li xxejjen għalkollox il-pretensjoni tal-appellant li huwa kien *exempt person* taħt l-artikolu 4(1)(g) jew (h) tal-Kapitolu 217, u dan għaliex fil-mument li l-appellant ma baqax jgħix ma' martu, u għalhekk dawn kienu sseparaw *de facto*, huwa awtomatikament tilef id-dritt li jibqa' meqjus bħala *exempt person* taħt l-artikolu 4(1) tal-Kap. 217. Is-sub-artikolu 4(1)(h) fil-fatt jispjega ċar li biex persuna tibqa' protetta bħala *exempt person*, din trid tkun għadha miżżewġa u tgħix mal-persuna li tiġi nieqsa fil-mument tal-mewt tal-konjuġi:

“(h) li tkun l-armla jew l-armel ta' persuna msemija fil-paragrafu (a) jew (b) u fil-waqt tal-mewt tiegħu jew tagħha kienet għadha tgħix ma' dik il-persuna.”

Il-Qorti tqis li minkejja x-xhieda ta' Mark Scicluna in rappreżentanza ta' Identity Malta, li qal li d-dritt ta' moviment liberu li kien igawdi l-appellant baqa' ma ġiex uffiċjalment irtirat, dan il-jedd intilef awtomatikament hekk kif l-appellant u dik li kienet il-mara tiegħu ma baqgħux jgħixu flimkien. Il-Qorti qieset il-piż probatorju tad-dikjarazzjoni ta' Lisa Stojanovic, u tad-dikjarazzjoni ta' persuna li kienet taf lill-appellant u lil martu bħala klijenti li kienu jiffrekwentaw *bar* partikolari fir-Rabat, u waslet għall-konkluzjoni li dak li qiegħed jgħid l-appellant mhux dak li jirriżulta mill-aktar prova b'saħħitha li giet ippreżentata, jiġifieri id-dikjarazzjoni ta' mart l-appellant. Jirriżulta wkoll li l-permess ta' residenza tal-appellant ilu li skada minn Mejju tal-2013, fi żmien meta dan suppost kien għadu

jgħix ma' martu u martu kienet għadha ħajja, imma għal xi raġuni l-appellant insista li huwa ilu minn dak iż-żmien isib diffikultajiet biex jirregolarizza l-pożizzjoni tiegħu. L-appellant qal li huwa ma kienx jingiebb mal-familjari tal-mara tiegħu u għalhekk ma setax iressaqhom bħala xhieda sabiex jikkonfermaw li huwa kien għadu jgħix magħha sakemm giet nieqsa. Imma l-verità hija li meta l-permess ta' residenza tal-appellant skada fl-2013, martu kienet għadha ħajja, u għalhekk ċertament li ma kienx hemm id-diffikultajiet li l-appellant qed jgħid li sab, li kieku dan ried jipprova li huwa kien għadu jgħix ma' martu f'dak iż-żmien.

In vista ta' dawn il-konsiderazzjonijiet, tqis li l-ewwel aggravju tal-appellant mhuwiex mistħoqq u tiċċdu.

It-Tieni Aggravju: Id-deċiżjoni ta' ritorn mhix fattwali u mhix ippruvata

18. Il-Qorti hija tal-fehma li ladarba l-appellant ma jistax jitqies li huwa *exempt person* taħt xi wieħed mis-sub-artikoli tal-artikolu 4(1) tal-Kap. 217, dan irid jipprova li huwa mhux 'immigrant projbit', kif ġie dikjarat fid-deċiżjoni ta' ritorn li nħarġet fil-konfront tiegħu. L-appellant jgħid li l-ebda waħda mill-kawżali ċċitati mill-appellat, u li fuqhom hija bbażata d-deċiżjoni ta' ritorn, ma giet ippruvata. Fil-fatt lill-Qorti jirriżultalha li l-appellant ilu Malta mingħajr permess u bil-pożizzjoni tiegħu mhux regolarizzata mill-2013, minn meta skadielu l-permess ta' residenza u dan baqa' ma ġiex imġedded. Jirriżulta wkoll li l-appellant mhux jgħid il-verità meta jinsisti li r-raġuni għalfejn dan il-permess ta' residenza baqa' ma ġeddux kien minħabba li kellu bżonn dikjarazzjoni li huwa kien jgħix ma' martu sal-ġurnata li din mietet, u huwa ma kellux relazzjoni tajba mal-qraba tal-mara tiegħu. Fl-2013 mart l-appellant kienet għadha ħajja, billi

jirriżulta li din ġiet nieqsa fl-2014, u jekk ir-relazzjoni bejn l-appellant u martu kienet waħda feliċi, kif qiegħed jinsisti hu, l-appellant ma kellu jsib l-ebda diffikultà jipproduċi prova bħal din. Għaldaqstant jirriżulta li huwa minnu li l-appellant qiegħed Malta mingħajr permess.

19. L-appellant qal ukoll li huwa ħassu aggravat għaliex id-deċiżjoni ta' ritorn ingħatatlu dakinhar stess li huwa ħareġ mill-ħabs, u kien għalhekk li huwa kien fl-impossibiltà li juri li huwa kellu mezzi biex jgħajjex lilu nnifsu. Jgħid li fil-preżent huwa jirċievi biss pensjoni tar-romol, u din l-għajjnuna tingħatalu biss abbażi tal-fatt li martu ġiet nieqsa u mhux għaliex huwa għamel xi ħaġa biex ikun jista' jibbenefika minn xi għajjnuna soċjali. Il-Qorti qieset li l-appellant ma ġab l-ebda prova li kemm kien ilu Malta huwa ħadem f'xi żmien, għajr għad-dikjarazzjoni tiegħu li f'xi żmien kien jgħin lil martu fil-*pet shop* li hija kellha. L-appellant lanqas ma pproduċa prova ta' xi sengħa li huwa għandu xi ħiliet partikolari li jistgħu jgħinuh ifittex impjieġ jew jiftaħ negozju sabiex ikun jista' jgħajjex lilu nnifsu. Minflok l-appellant ġab biss dokument li juri li huwa jirċievi pensjoni tar-romol ta' ftit aktar minn mitejn Euro fix-xahar, liema ammont ċertament li mhuwiex biżżejjed biex l-appellant ikun jista' jgħajjex lilu nnifsu. Kif tajjeb irrimarka l-Bord, dan l-ammont huwa ferm anqas mill-paga minima nazzjonali, u għalhekk l-appellant ma rnexxilux jipprova li huwa għandu mezz kif jgħajjex lilu nnifsu. L-appellant kien jgħin is-sitwazzjoni tiegħu ferm aktar li kieku quddiem din il-Qorti ġie bi prova dwar x'għamel fis-snin kollha li ilu f'pajjiżna mill-2005 sabiex jgħajjex lilu nnifsu, iżda din il-prova baqgħet ma ngabitx. Il-Qorti għalhekk ma tista' tasal għall-ebda konkluzjoni oħra ħlief li l-appellant ma

rnexxilux jipprova li huwa għandu l-mezzi meħtieġa biex jgħajjex lilu nnifsu f'kaz li hu jithalla hawn Malta.

20. It-tielet raġuni li fuqha giet ibbażata d-deċiżjoni tal-appellat, hija li l-appellant instab ħati li kkommetta diversi reati li minħabba fihom huwa kellu jiskonta pieni ta' prigunerija effettiva. Mill-provi prodotti jirrizulta li l-appellant instab ħati mill-Qrati Maltin tliet darbiet għal reati varji, fosthom serq, u kien għalhekk li huwa kellu jiskonta piena ta' prigunerija. Il-Bord fil-fatt spjega li r-reati li nstab ħati tagħhom l-appellant huma reati li jolqtu s-sigurtà pubblika, u li hemm il-biżgħa reali li dawn ir-reati jistgħu jirrepetu ruħhom. Il-Qorti qieset id-diversi reati li l-appellant instab ħati li kkommetta kemm ilu Malta, fosthom serq, serq aggravat, ħsara volontarja fi proprjetà privata, vjolazzjonijiet kontra l-proprjetà, u li xjentement laqa' għandu ħwejjeg misruqa, meħuda b'qerq jew akkwistati b'reat, liema reati ċertament li huma offiżi kontra s-sigurtà pubblika. L-appellant argumenta li ladarba huwa skonta l-pieni marbuta mar-reati li huwa nstab ħati tagħhom, il-Qorti m'għandhiex tiegħu konjizzjoni ulterjuri tal-imġiba tiegħu f'dawn l-aħħar snin. Imma l-Qorti tqis li dan mhux l-ispirtu li bih għandu jiġi interpretat l-artikolu 5 tal-Kap. 217. Bl-imġiba tiegħu kemm ilu Malta, partikolarment fl-aħħar ftit snin, l-appellant xellef dufrejħ mal-ġustizzja diversi drabi, u kkommetta reati li jheddu s-sigurtà pubblika. Teżisti wkoll il-biżgħa reali, li fin-nuqqas ta' prova li l-appellant għandu mezzi biex jgħajjex lilu nnifsu, dawn ir-reati jirrepetu ruħhom.

Għal dawn ir-raġunijiet, din il-Qorti tqis li kemm il-Bord kif ukoll l-appellat kienu korretti fid-deċiżjoni tagħhom li jordnaw lill-appellant jirritorna lura lejn pajjiżu

jew lejn xi pajjiż ieħor li lest li jilqgħu. Għaldaqstant tqis li anki dan l-aggravju mhux ġustifikat, u tiċħdu.

Decide

Għar-raġunijiet premissi, din il-Qorti qiegħda tiċħad l-aggravji kollha mressqa mill-appellant, u tikkonferma d-deċiżjoni appellata fl-intier tagħha.

Spejjeż tal-proċeduri fl-ewwel istanza jibqgħu kif deċiżi, filwaqt li l-ispejjeż ta' dawn il-proċeduri huma a karigu tal-appellant.

Moqrija.

**Onor. Dr Lawrence Mintoff LL.D.
Imħallef**

**Rosemarie Calleja
Deputat Registratur**