MALTA

# QORTI TAL-APPELL
**(Sede Inferjuri)**

**ONOR. IMĦALLEF**
**LAWRENCE MINTOFF**

Seduta tat-23 ta' Frar, 2022

Appell Inferjuri Numru 90/2021 LM

**Elizaveta Guseva (Passaport Russu 51N6283409)**
*('l-appellanta')*

***vs.***

**Aġenzija Identità Malta**
*('l-appellata')*

**Il-Qorti,**

**<u>Preliminari</u>**

1. Dan huwa appell magħmul mill-appellanta **Elizaveta Guseva (Passaport Russu 51N6283409)** [minn issa 'l quddiem 'l-appellant'] mid-deċiżjoni tat-30 ta' Awwissu, 2021, [minn issa 'l quddiem 'id-deċiżjoni appellata'] mogħtija mill-Bord tal-Appelli dwar l-Immigrazzjoni [minn issa 'l quddiem 'il-Bord'], fejn ċaħad

l-appell tagħha fil-konfront tal-**Aġenzija Identità Malta** [minn issa ’l quddiem ‘l-Aġenzija appellata’].

**Fatti**

2. Il-fatti tal-każ odjern jirrigwardaw l-applikazzjoni tal-appellanta għal permess ta’ residenza *“for an indefinite period on economically self-sufficient reasons”,* li ġiet miċħuda mill-Aġenzija Identità Malta fis-27 ta’ April, 2021 għar-raġuni li *“...in order that you may continue to reside here on such basis, you would need to provide evidence that you are a beneficiary of a Malta tax scheme of the Malta Residency Visa Programme. ... paying tax in Malta does not automatically confer eligibility to reside here. The Agency would also consider an application for a work residence permit should you have prospects to engage in employment in Malta”.*

**Mertu**

3. L-appellanta ħasset ruħha aggravata mid-deċiżjoni tal-Aġenzija Identità Malta tas-27 ta’ April, 2021 u istitwiet proċeduri ta’ appell quddiem il-Bord fit-3 ta’ Mejju, 2021.

4. L-Aġenzija Identità Malta wieġbet fit-28 ta’ Mejju, 2021 fejn issottomettiet li d-deċiżjoni tagħha kellha tiġi kkonfermata għar-raġunijiet li hija fissret fir-risposta tagħha.

## Id-deċiżjoni appellata

5. Il-Bord wasal għad-deċiżjoni appellata wara li għamel is-segwenti konsiderazzjonijiet:

"**1. Preliminary**

*The Board:*

*Saw that in virtue of a decision dated 27th April 2021, Identity Malta Agency stated that the relative application for a Residence Permit had been rejected for the following reason:*

"l refer to your immigration position in Malta. In this regard, notwithstanding that the Principal Immigration Officer has regularised your position, you do not qualify to reside in Malta for an indefinite period on economically self-sufficient basis.

In order that you may continue to reside here on such basis, you would need to provide evidence that you are a beneficiary of a Malta tax scheme or the Malta Residency Visa Programme. I wish to emphasise that paying tax in Malta does not automatically confer eligibility to reside here.

The Agency would also consider an application for a work residence permit should you have prospects to engage in employment in Malta.

Reference is being made to Chapter 217 of the Laws of Malta and any subsidiary legislation currently in force at the date of receipt of this letter, in terms of which you may lodge an appeal to the Immigration Appeals Board within three days of the receipt of this letter at the following address";

*Saw the appeal registered on 3rd May 2021; and*

*Saw the reply filed by Identity Malta Agency on 28th May 2021.*

**2. Submissions filed, evidence produced and considerations of the Board**

***a. The parties' submissions***

*The Board observed that when the appeal was filed, the receipt issued instructed the parties to submit any further documentation within fifteen days. At the outset, the Board declares that although it is not legally bound to hold sittings, Art. 3(2) of the Administrative Justice Act (Chapter 490 of the Laws of Malta) stipulates that amongst*

*the principle which this Board, amongst other bodies, is bound to uphold, is the principle of equality of arms. The Board refers to the judgment of the Court of* ***Appeal Edwin Zarb et vs. Gilbert Spiteri et*** *(decided on 6th February 2015) in which it was held that the principle audi alteram partem does not necessarily mean that the parties must be physically heard but that they must be given sufficient time to present the evidence they wish to present. It is up to the court (or in this case, the Board) to decide what should be done in the interest of justice.*

*The appellant presented:*

- *A copy of a letter dated 28th September 2020 in which the Commissioner for Revenue declared that the appellant had no income tax liabilities up to and including the Year of Assessment 2020 (Basis Year 2019) and further declaring that such certificate did not cover liability in relation to any additional income that may arise or be revealed to the department after 28th September 2020;*
- *An identical letter as the one above, but addressed to Ms Viktoriya Guseva;*
- *Evidence of payment of tax in relation to the Year of Assessment 2019;*
- *Various e-mails between the appellant, the Board's secretariat, the Ministry for Home Affairs, Identity Malta Agency, the Commissioner for Revenue and others;*
- *A copy of the Agency's decisions (all dated 27th April 2021) in relation to the appellant, to Viktoriya Guseva and Alexander Gusev;*
- *A copy of the checklist issued by the Agency in relation to third-country nationals who apply for a residence permit on the basis of economic self-sufficiency; and*
- *Copies of the applications and supporting documentation provided to Identity Malta Agency.*

*In its reply, the Agency explained:*

- *That in order to apply for a residence permit on the basis of economic self sufficiency, an applicant had to be registered under one of the available tax schemes. Alternatively, an applicant could apply for a temporary permit on such basis through a covering letter explaining his intention to stay in Malta;*
- *That one of the requirements listed in the Agency's checklist for applications on the basis of economic self-sufficiency is a certificate or approval letter from a competent authority administering a residence, investment or tax programme, or a covering letter explaining in detail the reasons underpinning the request to reside in Malta together with supporting documentation;*

- *That the* "Nil Balance Certificate" *issued by the Commissioner for Revenue declaring that the appellant had no liabilities did not amount to a certificate or letter of approval issued by a competent authority administering a residence, tax or investment programme or the aforementioned covering letter;*
- *That the appellant did not qualify under the second option (the covering letter accompanied by supporting documentation) given that the intended duration of stay was not temporary, but indefinite. The appellant had been residing in Malta for fourteen years and has now submitted an application for a temporary permit. However, he did not prove that he intended to acquire a residence permit for a definite period;*
- *That another requirement was evidence of financial means through presentation of a bank statement. In relation to this, the appellant only presented a bank statement issued in 2018;*
- *That the Agency had made it clear that it would consider an application for a* "work residence permit" *should he have any prospects of engaging in employment in Malta.*

*The Board noted in particular document C attached to the Agency's reply, which was a bank statement issued by Bank of Valletta plc which stated that as of 24th December 2018, the appellant's account held €3,292.83.*

*The essence of the appellant's appeal is contained in several e-mails dated 11th May 2021. The essential points made by the appellant are:*

- *Firstly, that after receiving the Agency's decision, she and her co-applicants wrote to the Ministry for Home Affairs asking for instructions as to how to appeal. She stated that for ten days, they had e-mailed a certain Mr Peter Diacono* "trying to know how to appeal legally"*;*
- *Secondly, that the Agency allegedly failed to explain why the relative applications were rejected. She argued that the Agency did not consider paid taxes as enough to obtain residence on the basis of self-sufficiency. She then asked this Board to ask the Commissioner for Revenue to* "confirm our self-sufficiency or I can submit them documents myself by their request. But I need to know exactly what documents do they need. The final documents from Inland Revenue confirming our self-sufficiency are Nil Balance Certificates".

*The Board notes that as the appellant declared that the decision was received on 30th April 2021 (a Friday) and the appeal was registered on 3rd May 2021 (a Monday), the*

*appeal is not fuori termine. As a result, the Board shall not take further cognisance of the appellant's complaints in relation to the filing of the appeal.*

***b. The merits***

*The documentation presented by the appellant indicates that she lodged an application for a residence permit based on economic self-sufficiency.*

*Although there are various pieces of subsidiary legislation which regulate various kinds of permits, there is no specific piece of subsidiary legislation which regulates residence permits based on economic self-sufficiency.*

*Article 7(1) of the Immigration Act states that* "the Minister may issue, subject to such conditions as he may deem proper to establish, a residence permit to any person who makes an application for retirement, settlement or an indefinite stay in Malta."

*Regulation 3(1)(a) of Subsidiary Legislation 595.07 states that Identity Malta Agency* "shall carry out functions and duties of the public administration" in relation to "visas, residence permits, work permits and other administrative matters related to expatriates".

*Regulation 3(2)(d) of Subsidiary Legislation 595.07 states that Identity Malta Agency shall* "see to the carrying out of the functions and duties of the Director for Citizenship and Expatriate Affairs provided for under the Immigration Act and subsidiary legislation made thereunder".

*There is therefore no question that Identity Malta Agency was competent to examine this application.*

*However, as there seems to be no primary or subsidiary legislation which specifically regulates residence permits based on economic self-sufficiency, the only legal basis for the examination of such applications is Article 7(1) of the Immigration Act.*

*In view of the aforesaid, the Board considers it only logical for the Agency to adopt criteria according to which it should decide whether to accept or reject such applications.*

*The appellant was well aware of the applicable criteria firstly as these are available online and secondly, as he attached a copy of the relative checklist to the appeal.*

*The reason the appellant's application was rejected falls squarely within point "4" of the checklist. This requires the applicant to present a* "certificate or letter of approval from the relevant authority administering the residence, investment or tax programme, or, a covering letter explaining in detail the reasons for the request to

reside in Malta together with any supporting documentation to substantiate the request".

*As the appellant did not submit a covering letter, it is assumed that he applied under the first option. This means that before applying for residence on the basis of self-sufficiency, he had to be a beneficiary of some residence, investment or tax programme.*

*The appellant argues that the Nil Balance Certificate issued by the Commissioner for Revenue fulfils this requirement.*

*However, the Board disagrees. The Nil Balance Certificate is available to any individual and only certifies that the person to whom it is issued has no pending payments to make to the Commissioner for Revenue. It essentially means that holder of the certificate is in good standing insofar as taxation is concerned. Such a certificate, whilst obviously a positive development for any person, does not, on its own, entitle the holder to any kind of residence permit.*

*Another requirement in the checklist is the submission of a bank statement. The Board understands that to prove self-sufficiency, one must provide not just one bank statement, but several. These would evidence that over the years, the appellant would have owned or had access to considerable funds. However, the appellant only presented a Bank of Valletta plc statement issued on 24th December 2018 which indicated the very minimal amount of €3,292.83.*

*Given that the existence of the certificate is the crux of the appellant's appeal, the Board sees no reason to entertain the appellant's appeal any further.*

*For the sake of completeness, the Board emphasises that the Agency's decision and its submissions in this case make it clear that the rejection of the relative application is not tantamount to removal from Malta or deportation or to any stain on the appellant's immigration status. Rather, it simply means that the appellant, who according to the Agency has resided in Malta for several years, must reside in Malta on a basis other than economic self-sufficiency.*

***3. <u>Decision</u>***

*Therefore, after having read the relative submissions as well as after having seen the provisions of Chapter 217 of the Laws of Malta and of S.L. 217.17, the Board rejects the appellant's appeal and confirms the Agency's decision, albeit without prejudice to the appellant's residence status in Malta.*

*The Board orders that this decision be served on the parties without delay.".*

## L-Appell

6. L-appellanta ippreżent r-rikors tal-appell tagħha fid-9 ta' Settembru, 2021 fejn talbet lil din il-Qorti sabiex (i) tannulla d-deċiżjoni appellata billi l-proċess quddiem il-Bord kiser id-drittijiet fundamentali tal-appellant kif sanċiti fl-Artikolu 6 tal-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem u l-artikolu 39 tal-Kostituzzjoni ta' Malta; u (ii) tirrevoka u tħassar id-deċiżjonijiet meħuda fil-konfront tal-appellanta abbażi tal-Artikolu 8 tal-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem u tipprovdi għal rimedju effettiv.

7. L-Aġenzija appellata wieġbet fit-23 ta' Settembru, 2021 fejn issottomettiet li l-aggravji tal-appellanta mhumiex mistħoqqa għar-raġunijiet li tfisser fir-risposta tagħha, u għalhekk tikkontendi li l-appell għandu jiġi miċħud.

## Konsiderazzjonijiet ta' din il-Qorti

8. Il-Qorti ser tgħaddi sabiex tikkonsidra l-aggravji tal-appellanta fid-dawl ta' dak li ġie deċiż mill-Bord, u dan meħudin in konsiderazzjoni s-sottomissjonijiet magħmulin mill-Aġenzija appellata.

9. *L-ewwel aggravju*: l-appellanta tikkontendi li d-deċiżjoni appellata hija nulla għar-raġuni li l-Bord ma semgħax lill-partijiet bi ksur lampanti tal-Kap. 217 tal-Liġijiet ta' Malta u bi ksur tal-artikolu 39 tal-Kostituzzjoni ta' Malta u tal-Artikolu 6 tal-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem. L-appellanta tgħid li l-artikolu 25A (1)(ċ) tal-Kap. 217 jistipula illi *"il-Bord ikollu ġurisdizzjoni li*

*jisma' u jiddeċiedi appelli jew applikazzjonijiet..."*. L-appellanta tikkontendi li hija qatt ma ngħatat iċ-ċans li tittratta l-każ tagħha quddiem il-Bord, bi ksur tad-drittijiet fundamentali tagħha. L-appellanta tagħmel riferiment għad-deċiżjoni tal-Qorti Ewropea tad-Drittijiet Fundamentali tal-Bniedem fl-ismijiet **Fredin vs. Sweden**[1], fejn skont is-sottomissjonijiet magħmula mir-rikorrent, l-appell tiegħu seta' jqajjem kwistjonijiet kemm ta' fatt u kemm ta' dritt, u kien meħtieġ għalhekk li jsiru ċerti kjarifiċi fuq ċerti punti permezz ta' smigħ bil-fomm, u r-rifjut da parti tal-Qorti Amministrattiva Suprema tal-Iżvezja li tagħmel smigħ bil-fomm, kien jikser l-Artikolu 6.1 tal-Konvenzjoni Ewropea.

10. Fir-rigward tal-ewwel aggravju tal-appellant, l-Aġenzija appellata tibda billi tissottometti li m'hemmx il-ħtieġa li tiġi ffissata seduta u li jitressqu sottomissjonijiet bil-fomm fi proċeduri ġudizzjarji jew kważi ġudizzjarji, għaliex huwa biżżejjed li ż-żewġ partijiet jingħataw l-istess opportunità sabiex iressqu s-sottomissjonijiet tagħhom, u din l-opportunità tista' tkun bil-miktub u m'hemmx għalfejn tkun bil-fomm. Biex persuna tiġi 'mismugħa', mhuwiex meħtieġ li din tingħata dejjem u f'kull każ id-dritt li titkellem, basta li tingħata l-opportunità li b'xi mod, tikkomunika l-ħsibijiet tagħha. Meta l-Qorti taqra dak li jkun kiteb parti biex isostni l-punt tiegħu, huwa jkun qed jingħata smigħ xieraq.[2] Il-prinċipju *audi alteram partem*, ma jfissirx li l-parti milquta trid bilfors tinstema', iżda li tingħata l-opportunità li tressaq il-każ tagħha.[3] L-Aġenzija appellata tikkontendi li fil-kawża odjerna ż-żewġ partijiet kellhom l-opportunità li jippreżentaw l-każ tagħhom quddiem il-Bord permezz ta' dokumentazzjoni u

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[1] Applikazzjoni nru. 18929/91, deċiża fit-23 ta' Frar, 1994.
[2] Gourmet Company Limited *vs.* Avukat Ġenerali, Q.Kost., 27.06.2006.
[3] A & J Ta' Miema Ltd *vs.* Kummissarju tat-Taxxa fuq il-Valur Miżjud, P.A.(Sede Kostituzzjonali), 14.10.2004.

sottomissjonijiet, u fil-fatt permezz ta' ittra datata 3 ta' Mejju, 2021, is-Segretarja tal-Bord għarfet lill-appellant illi kellu ħmistax -il ġurnata mid-data tal-intavolar tar-rikors tal-appell sabiex jippreżenta s-sottomissjonijiet tiegħu bil-miktub. L-Aġenzija appellata tgħid illi ma tistax taċċetta r-raġunament tal-appellant li l-Bord kellu nuqqasijiet kbar meta ma appuntax il-każ għas-smigħ, għaliex is-smigħ isir meta l-Bord ikollu xi dubju fuq xi punt li jrid jiġi kjarifikat, u mhux meta l-Bord jiġi rinfaċċjat b'appell bla ebda prova li tista' xxejjen id-deċiżjoni tal-Aġenzija appellata. Tgħid ukoll illi fi kwalunkwe każ l-artikolu 25A(1)(ċ) tal-Kap. 217 ma jipprevedix proċedura fejn il-Bord għandu tassivament jappunta l-kawża għas-smigħ. L-Aġenzija appellata tirrileva li l-appellanta lanqas ittentat tispjega għalfejn seduta bil-fomm kienet kruċjali sabiex tegħleb id-deċiżjoni tal-Aġenzija appellata. Kwantu fejn l-appellanta fl-aggravju tagħha qegħda tallega ksur tal-artikolu 6 tal-Konvenzjoni Ewropea u l-artikolu 39 tal-Kostituzzjoni, din il-Qorti li hija qorti tal-appell u mhux qorti munita b'poteri kostituzzjonali, m'għandhiex tgħaddi biex tagħmel dikjarazzjoni illi hemm xi allegat ksur tad-drittijiet fundamentali tal-appellanta. L-appell odjern mhuwiex azzjoni intavolata *ai termini* tal-artikolu 46 tal-Kostituzzjoni, 'il għaliex huwa biss dan l-artikolu illi jippermetti illi ssir dikjarazzjoni li kien hemm ksur ta' dritt fundamentali tal-bniedem. L-Aġenzija appellata tgħid ukoll illi l-artikolu 39 tal-Kostituzzjoni u l-Artikolu 6 tal-Konvenzjoni japplikaw *for the determination of a civil right or obligation*, mentri l-appell odjern jittratta ċ-ċaħda ta' *self-sufficient application*, li taqa' fl-isfera ta' dritt pubbliku u mhux ta' dritt ċivili.

11. Il-Qorti tibda biex tgħid illi huwa prinċipju stabbilit fil-ġurisprudenza tal-Qrati tagħna, illi d-dritt għal smigħ xieraq ma jippresupponix illi kawża tassattivament trid bilfors tiġi appuntata għas-smigħ, imma huwa biżżejjed illi fi proċeduri ġudizzjarji jew kważi-ġudizzjarji, il-partijiet fil-kawża jingħataw l-istess opportunità biex jippreżentaw il-każ tagħhom, u dan jista' jkun kemm bil-fomm u anki bil-miktub. Din il-Qorti tgħid li meta s-sottomissjonijiet isiru bil-miktub, ħafna drabi dawn jistgħu saħansitra jiġu artikolati b'mod ferm aktar ċar u konvinċenti, milli meta jsiru bil-fomm.

12. L-awturi Ingliżi **H.W.R. Wade** u **C.F. Forsyth**[4] jispjegaw:

> *"In many cases it may suffice to give an opportunity to make representations in writing provided that no adverse material is disclosed and provided, as always, that the demands of fairness are substantially met.*
> *...*
> *Some statutory tribunals have power to dispense with oral hearings, but if they do so, they must be careful to give a party a fair opportunity to comment on any adverse statement submitted.".*

Din il-Qorti tirrileva illi l-appellanta fir-rikors tal-appell tagħha, għar-rigward tal-lanjanza tagħha li l-Bord naqas milli jappunta l-appell għal smigħ bil-fomm, ma tispeċifikax b'liema mod id-dritt tagħha għal smigħ xieraq quddiem il-Bord ġie ppreġudikat. Appellant jista' jiġi preġudikat bin-nuqqas ta' smigħ bil-fomm, meta pereżempju jkollu xhieda xi jressaq *viva voce,* jew ikun irid jagħmel il-kontro-eżami ta' xi xhud li jkun ta d-deposizzjoni tiegħu, u ma jingħatax l-opportunità li jagħmel dan. Imma fil-każ odjern, fir-rikors tal-appell tagħha quddiem din il-Qorti, l-appellanta bl-ebda mod ma indikat fhiex seta' jikkonsisti

[4] Administrative Law, 11th Edition, p. 436-437.

dan il-preġudizzju, tenut kont li hija kellha ħmistax-il jum minn meta ntavolat l-appell tagħha quddiem il-Bord sabiex tressaq is-sottomissjonijiet tagħha bil-miktub. Fir-rikors tal-appell tagħha, l-appellanta ma tat l-ebda ħjiel ta' xi provi oħra kienet tressaq waqt is-smigħ bil-fomm, li hija ma setgħetx tressaq fl-istadju tas-sottomissjonijiet bil-miktub. Is-smigħ għandu jsir meta l-Bord ikollu xi dubju fuq xi punt li jkun jeħtieġ li jiġi ċċarat, u mhux meta l-Bord jkollu quddiemu appell bla ebda ħjiel ta' prova li tista' xxejjen id-deċiżjoni tal-Aġenzija appellata. Din il-Qorti tirrileva illi l-appell li għandha quddiemha mhuwiex dwar il-mertu *per se* tad-deċiżjoni tal-Aġenzija appellata, imma dwar allegat ksur tad-drittijiet fundamentali tal-appellanta fil-proċeduri quddiem il-Bord. Fi kwalunkwe każ bħala Qorti tal-Appelli (Inferjuri), din il-Qorti mhijiex munita b'ġurisdizzjoni kostituzzjonali u konvenzjonali, u m'għandhiex is-setgħa li tiddikjara li l-proċeduri quddiem il-Bord kienu leżivi tad-drittijiet fundamentali tal-appellanta. Din is-setgħa skont l-artikolu 46 tal-Kostituzzjoni ta' Malta u l-artikolu 4 tal-Att dwar il-Konvenzjoni Ewropea (Kap. 319), hija mogħtija lill-Prim'Awla tal-Qorti Ċivili (Ġurisdizzjoni Kostituzzjonali)[5], u għalhekk din il-Qorti ma tistax tikkunsidra l-ewwel aggravju tal-appellanta, u tiċħdu.

13. Fit-tieni aggravju tagħha, l-appellanta tgħid li hija tifla minuri u tirrisjedi flimkien mal-ġenituri tagħha ġewwa Malta, u għalhekk id-deċiżjoni tal-Aġenzija appellata li ma taċċettax ir-residenza tal-appellanta, tmur kontra l-Artikolu 8 tal-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem. L-appellanta tgħid ukoll li Malta rratifikat il-Konvenzjoni tal-1989 'United Nations Convention on the Rights of the Child', u għandha obbligi internazzjonali fil-konfront tal-appellanta

[5] Ara s-sentenza fl-ismijiet **Aleksandra Nicolic *vs.* The Director of the Department for Citizenship and Expatriate Affairs**, deċiża fil-21.04.2021.

u tal-familja tagħha wara li rrisjedew ġo Malta għal erbatax-il sena, u dan speċjalment fil-kuntest tal-fatt li l-appellanta għexet t-tfulija tagħha kważi kollha ġewwa Malta. L-appellanta tikkontendi li l-*policy* kurrenti tal-Aġenzija appellata, toħloq stigma u abbuż psikoloġiku fuq sezzjoni ta' persuni vulnerabbli għaliex effettivament iċċaħħad id-drittijiet ta' persuni ta' pajjiżi terzi, inkluż tfal milli jiġu akkordati l-istess drittijiet mogħtija lill-persuni f'Malta irrispettivament min-nazzjonalità u n-natura tar-residenza tagħhom.

14. Kwantu għat-tieni aggravju tal-appellant, l-Aġenzija appellata tgħid illi lanqas l-Artikolu 8 tal-Konvenzjoni Ewropea m'huwa invokabbli fil-proċeduri odjerni, stante illi lment kostituzzjonali jitressaq a tenur tal-artikolu 46 tal-Kostituzzjoni u mhux tramite appell quddiem din il-Qorti illi għandu jkun ibbażat fuq punt ta' dritt abbażi tal-artikolu 25A(8) tal-Kap. 12 tal-Liġijiet ta' Malta.

15. Fir-rigward tat-tieni aggravju tal-appellanta, kwantu jekk huwiex invokabbli l-Artikolu 8 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem, din il-Qorti tgħid illi l-imsemmi artikolu ma jistax jiġi invokat fil-proċeduri odjerni, għall-istess raġunijiet li ma setgħux jiġu invokati l-artikolu 39 tal-Kostituzzjoni ta' Malta u l-Artikolu 6 tal-Konvenzjoni Ewropea, u dan għaliex din il-Qorti m'għandhiex is-setgħa li tisma' u tiddeċiedi kwistjonijiet ta' allegat ksur tad-drittijiet fundamentali tal-bniedem kif sanċiti fil-Kostituzzjoni u/jew il-Konvenzjoni Ewropea, liema setgħa skont l-artikolu 46 tal-Kostituzzjoni u l-Artikolu 4 tal-Att dwar il-Konvenzjoni Ewropea [Kap. 319], hija mogħtija lill-Prim'Awla tal-Qorti Ċivili. In kwantu għal dik il-parti tat-tieni aggravju tal-appellant fejn qegħda tallega wkoll ksur tal-Konvenzjoni tal-1989 'United Nations Convention on the Rights of the Child', l-appellanta bl-ebda mod ma

indikat kif fil-każ odjern qegħdha tinkiser l-imsemmija konvenzjoni, u lanqas ma tindika kif l-imsemmija Konvenzjoni toħloq drittijiet u obbligi li huma direttament infurzabbli bħala parti mill-ordinament legali tal-pajjiż. Għalhekk tqis li t-tieni aggravju tal-appellanta mhuwiex mistħoqq, u tiċħdhu.

**Decide**

**Għar-raġunijiet premessi, il-Qorti tiċħad l-appell odjern, u tikkonferma d-deċiżjoni appellata fl-intier tagħha, bl-ispejjeż tal-proċeduri kollha kontra l-appellanta.**

Moqrija.

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

**Rosemarie Calleja**
**Deputat Reġistratur**