FIRST HALL OF THE CIVIL COURT

JUDGE

HON. MR JUSTICE JOSEPH R. MICALLEF LL.D.

This day Tuesday November 15th, 2022

Case No. 2

Appl. No. 511/13JRM

Mussa Abdalla **SADEK**

vs

BORD TA' L-APPELLI DWAR IR-RIFUĠJATI u l-Avukat Ġenerali, illum magħruf bħala l-Avukat tal-Istat

The Court:

Having taken cognizance again of the Sworn Application filed by Sadek Mussa Abdalla on the 29th of May, 2013, by virtue of which and for the reasons therein mentioned, he requested that this Court (a) declare that (i) he has a right to appeal from a decision which rejected his claim for subsidiary protection status as a form of internationally-recognised protection, and that (ii) either the decision handed down by the defendant Refugees Appeals Board (hereinafter "the Board") on November 23rd., 2012, from a decision by the Refugee

Commissioner in his regard denying him asylum was the result of a wrong interpretation of the law, or if it was according to law, (iii) that Maltese law is not in conformity with the requirements of article 39(1) of Council Directive 2005/85/CE of December 1st, 2005 regarding minimum procedural standards in Member States for granting and withdrawing refugee status; (b) declare that, in the present case, the defendant Board failed to observe the principles of natural justice and procedural obligations when determining his case for the purposes of regulation 9(2) of the Procedural Standards in Examining Applications for Refugee Status Regulations 2008 (Legal Notice 243 of 2008 (S.L. 420.07[1])(hereinafter "the Regulations") and generally in terms of the principles upheld in the Maltese legal system; (c) consequently, quash the decision handed down by the defendant Board as afore-said; and (d) otherwise remit the matter to the defendant Board to reconsider the merits of his application and otherwise to grant him any other remedy which the Court may deem expedient to grant in the circumstances. Plaintiff requested also payment of costs;

Having seen its interlocutory decree of the 6th of June, 2013, whereby it ordered service of the Application on the defendants and gave orders to the plaintiff as to the production of evidence on his part;

Having taken cognizance of the Sworn Reply filed by defendants jointly on July 1st, 2013, whereby, by way of preliminary pleas, they claimed that plaintiff's action cannot be raised against the defendant Board by a person aggrieved by a decision handed down by it since no action lies against a quasi-judicial tribunal in that respect. Furthermore, the present action is procedurally null and void in terms of article 7(9) of Chapter 420 of the Laws of Malta[2] (hereinafter "the Act") which provides that the decision of the Board shall be final and conclusive and shall not be enquired into by any Court, since the present action is neither based on an alleged breach of a fundamental right in terms of article 46 of the Constitution nor on an alleged breach of a fundamental right protected under article 4 of Chapter 319 of the Laws of Malta. As to the merits, defendants pleaded that the impugned decision was sound and valid at law. In particular, defendants reject the plaintiff's claim that the decision handed down by the Board lacked reasons backing it as required under regulation 9 of the Regulations, and averred that the fact that the decision was not what plaintiff desired did not render it unjust or unsound. They also pleaded that the Regulations were not applicable to the stage of plaintiff's appeal before the Board, but only to that phase where his application for international status was still being considered by the Commissioner for Refugees. They submit that the Board acted correctly in terms of the principle contained in article 3(2)(h) of the

[1] Since repealed and substituted by the Procedural Standards for Granting and Withdrawing International Protection Regulations, 2015 (L.N. 416/2015, S.L. 420.07)
[2] International Protection Act (Act XX of 2000) originally designated the Refugees Act

Administrative Justice Act[3] regarding the giving of reasons for any decision, where the Board explained why it was rejecting plaintiff's appeal. Defendants robustly rebut the allegation that the Board's decision was flawed and based on a wrong interpretation of the law, and submit that actually the (Refugee) Act provides a specific definition of the term "applicant" which applies only to those persons who apply for refugee status and excludes those who apply for subsidiary protection status. Defendants argue that that Act actually deals with persons seeking refugee status differently from those seeking subsidiary and proceed to refer to articles 8(3), 9(2) and 10(3) of that Act to show that those provisions apply to one category and exclude the other. Finally, they plead that the decisions does not fall foul of the norms contained in the Directives in force and as transposed into Maltese Law;

Having ruled by decree made during the hearing of July 11th, 2013, on a request to that effect by counsel to plaintiff, that all proceedings of this case would henceforth be conducted in English;

Having pronounced a preliminary judgment on October 22nd 2013[4], whereby, for the reasons therein stated, the Court upheld the first preliminary plea and declared the defendant Board non-suited, but rejected the defendants' second preliminary plea;

Although defendants requested leave to appeal by an application filed by them on October 25th 2013 in terms of law, that request was withdrawn during the hearing of January 22nd 2014[5];

Having heard witnesses summoned by both parties and having taken cognizance of all the documentary evidence submitted during the trial;

Having taken note of its interlocutory ruling of January 28th 2016[6], whereby it rejected a request by respondent State Advocate made by his counsel during the hearing of December 9th 2015[7], to stay proceedings pending a fresh appeal lodged by plaintiff before the Board;

Having taken note of the decision delivered by the Board on February 25th, 2016[8], on the fresh appeal filed by the applicant;

[3] Act V of 2007 (Chap 490)
[4] Pp. 65 – 74 of the records
[5] Pg. 81 of the records
[6] Pp. 133 – 6 of the records
[7] Pg. 121 of the records
[8] Document at pp. 126 to 132 of the records

Notwithstanding the said decision, plaintiff filed a note on April 29th 2016[9] in the records of the case stating that he still had an interest in pursuing this suit. However, due to developments connected with that decision, plaintiff's counsel declared during the hearing of May 25th 2016[10] that he was renouncing to the third and fourth requests in the Sworn Application as their merit had been superseded by the said decision;

Having taken note of the Note of Submissions filed by applicant on August 31st, 2016[11];

Having taken note of the Note of Submissions filed by the State Advocate on December 15th, 2016[12];

Thereafter, the records were misplaced and by decree of February 22nd, 2022[13], the Court ordered the parties to reconstitute them;

On a declaration made by parties' legal counsel during the hearing of May 12th, 2022[14], the case was again put off for judgment, which is being handed down to-day;

Having considered:

This is an action for judicial review. Plaintiff felt aggrieved by a decision handed down by the Board on November 23rd, 2012, from an appeal lodged by him against a decision taken by the Refugee Commissioner on October 8th, 2011 by virtue of which he refused to grant plaintiff subsidiary protection status. Plaintiff's case rests on the claim that the defendant Board did not adequately motivate its decision by giving the reasons which led it to reject his appeal. He claims that this is in violation of the express provisions of the law regarding administrative tribunals in general (article 3(h)[15] of the Administrative Justice Act, Chapter 490 of the Laws of Malta) as well as the law relating to refugee applications in particular (regulation 9(2) of the Regulations). Furthermore, he claims that the impugned decision is based on a wrong interpretation of the law leading to an incorrect application thereof, or alternatively, if it were based on a correct interpretation of the law by the Board,

[9] Pg. 140 of the records
[10] Pg. 141 of the records
[11] Pp. 142 to 158 of the records
[12] Pp. 160 – 6 of the records
[13] P. 194 of the records
[14] P. 198 of the records
[15] Now denoted as art. 3(2)(h) of that Act

then Maltese law as transposed is not inconformity with the provisions of the relative Directive;

Defendants raised two preliminary procedural pleas to plaintiff's action. They also raised pleas on the merits which, in essence, rebut all the allegations raised by plaintiff as to the procedural faults inherent in the impugned decision of the Board, in the Board's observance of the principles of natural justice and proper execution of its functions. While insisting that the impugned decision is sound at law and valid, they fault the plaintiff's requests as being unfounded in fact and in law and that this Court should reject them on those grounds;

The Court disposed of the first two preliminary pleas by its preliminary judgment of October 22nd, 2013, whereby it declared the Board to be non-suited and rejected the other plea that the action was null;

During the course of the trial, plaintiff renounced to his third and fourth requests in view of fresh procedures he filed before the Board and the ensuing decision of the 25th February, 2016, quashing the Refugee Commissioner's recommended refusal of his application and recommending that the Minister declares him a beneficiary of subsidiary protection status;

Therefore, this Court is now tasked with having to consider the first two outstanding requests as well as the pleas on the merits raised to those requests by the defendant State Advocate;

The relevant facts which emerge from the records of the case show that plaintiff hails from the Sudan and he was born there in January of 1991. He landed in Malta on April 8th 2011 after a voyage by sea from Libya. He admits that he was an irregular migrant when he landed in Malta[16]. Sometime after his arrival on the Island, he requested asylum on the basis of persecution he had been subjected to in the Darfur Region. Plaintiff states that at the time he filed that application he was still "in a daze" from the ordeal of having to cross over to Malta by sea, and that his application for asylum was made on the strength of recommendations made to him by "others in detention" at the centre where he was detained for some six months[17];

The Refugee Commissioner provided plaintiff with the necessary documentation for the filing of the application in a language of the plaintiff's own choice. Plaintiff had opted to be given information in Arabic, which he declared to understand and be able to speak, and he complied in the filling of his

[16] Doc "NMZ" at p. 101 of the records
[17] Plaintiff's sworn statement at p. 84 of the records

application form[18]. He was interviewed by personnel of the Refugee Commissioner's Office on September 20th;

Plaintiff's request was turned down by the Refugee Commissioner six (6) months later, for the reasons therein stated[19] with a recommendation being made to the Minister of Justice and Home Affairs that the request be rejected[20]. A copy of this recommendation was served on plaintiff on or around October 8th, informing him also of his right to lodge an appeal;

Plaintiff engaged the services of a lawyer and duly appealed to the Board on March 16th, 2012, by filing a detailed and profusely motivated application reiterating his request that he be granted refugee status in Malta or, failing this, that he be granted at least subsidiary protection on the grounds that he would face serious harm in terms of article 17 of the Act were this protection not be accorded to him[21];

The Board unanimously rejected the appeal by a decision handed down on November 23rd, 2012[22], but went on to state that the present circumstances surrounding the plaintiff could avail him of "some other form of asylum protection" which was, however, beyond its remit. A copy of that decision was served, amongst others, on plaintiff's legal counsel;

Evidence tendered during the trial shows that, at the time of plaintiff's application, the Board had been given legal advice to the effect that the they could decide only on applications specifically requesting refugee status and not any other protection (like asylum) and that therefore that was the reason why, in plaintiff's case, it had decided that it could not entertain his request and why it had suggested (in the impugned decision) that he attempt fresh procedures with an alternative request[23]. Later the matter was clarified to the effect that the Board had been acting on the practice of guidelines provided by the UK Home Office's own application of the reading of the law (referred to as the "*Home Office Position Guidance Notes*"), as well as on its own interpretation of regulation 2 of Legal Notice 252 of 2001 and article 7 of the Act[24];

Plaintiff filed this action on May 29th, 2013;

On May 23rd 2015, the Office of the Refugee Commissioner received a fresh application by plaintiff which the Office informed plaintiff that it would

[18] Doc "NMZ1", at pp. 104 – 7 of the records
[19] Docs "SMA1" and "NMZ4", at pp. 12 and 117 of the records
[20] Docs "SMA2" and "NMZ6", at pp. 13 and 119 of the records
[21] Dok "SMA3", at pp. 14 – 30 of the records
[22] Dok "SMA5", at pp. 40 – 1 of the records
[23] Evidence of Dr Ian Spiteri Bailey at p. 91 of the record
[24] *Ibid.* at p. 95 of the records

consider under the provisions of article 7A of the Act[25]. The Refugee Commissioner examined the application and, by a decision dated November 7th 2015[26], recommended once more that plaintiff's application for international protection be rejected. This decision was communicated to plaintiff in writing on that same day, informing him of the right to appeal[27];

Plaintiff did avail himself of that right and duly filed an appeal to the Board on November 26th, 2015. The Board upheld that appeal by a decision dated February 25th 2016[28], whereby it quashed the Commissioner's recommendation and recommending instead that plaintiff be granted subsidiary protection status;

The legal considerations which this Court has to deal with at this juncture concern, substantially, the correctness of the decision of the Board within the ambit of the competence vested in it at the time the impugned decision was given, as well as the proper construction of the applicable law at the time. In view of the developments regarding plaintiff's status while the case was proceeding, these considerations assume more of an academic exercise into the question, given that amendments to the Act since then seem to have also clarified the issue, particularly as regards the competence of the Board (which, under the Act, is now designated as the International Protection Appeals Tribunal, but shall still be referred to as "the Board" for the purposes of this judgment) with respect to certain procedures raised before it. Furthermore, in view of the fact that this is an action for judicial review, this exercise must be carried out within the parameters of that type of action. In this context, the Court purports to evaluate plaintiff's request against the provisions of the relevant law as applicable at the time of his filed application before the Commissioner and, subsequently, before the Board;

The Court nevertheless considers it pertinent to point out that, since the time when plaintiff filed his applications, the law has been extensively amended to the extent that even the Board's nomenclature has been overhauled to eliminate any reference to 'refugee', and to encompass "international protection" which term expressly includes both refugee status as well as subsidiary protection[29]. The same applies to the Commissioner whom the Act now designates as the Chief Executive Officer (for the purposes of this judgment, the former designation of "commissioner" shall be retained). The very name of the Act has also been changed through the same amendments. More substantive amendments were incorporated through Act XL of 2020 which also appear to have broadened the competence of the Board;

[25] Sworn declaration by Nathalie Massa Żerafa at p. 103 of the records
[26] Doc. "KR" at p. 123 of the records
[27] Doc "KR2" at p. 125 of the records
[28] Doc at pp. 126 to 132 of the records
[29] Art. 2 Chap 420. It is now designated as the International Protection Appeals Tribunal (Art. 5).

In essence plaintiff's **first request** aims at asserting the right of a person in his situation to have access to the Board by way of appeal from a decision of the Commissioner of which he feels aggrieved. The Board rejected plaintiff's appeal principally because the Commissioner's decision had been a rejection of his application to be granted asylum. The Board stated that it had competence to entertain only appeals from recommendations of the Commissioner rejecting requests for refugee status and not also requests of subsidiary protection like asylum;

On the other hand, plaintiff's **second request** is aimed at obtaining a declaration that the Board failed to observe and apply one of the basic principles of natural justice, namely the duty to provide reasons for its decision, as well as the corresponding rule of good administration. Plaintiff argues that the duty to give reasons for decisions made is incumbent upon any administrative tribunal, not only on the Board, and that the law itself which empowers the Board expressly provides for this duty to give reasons. In support of this submission, plaintiff refers to regulation 9(2) of the Regulations, regulation 5(1)(n) of the Refuge Appeals Board (Procedures) Regulations[30] and article 3(2)(h) of Chapter 490 of the Laws of Malta;

As to the **first request**, plaintiff argues that a person like him who had applied for asylum (and not for the grant of refugee status) had a right to appeal the Commissioner's refusal, and the Board's rejection of such an appeal constituted a wrong construction of the law in force and an abdication of its duties. He contests the Board's finding that the law distinguishes between grantees of refugee status and grantees of subsidiary protection as a reason for determining its competence in appeals from the Commissioner's recommendations. Although he acknowledges that, as the law stood at the time, various provisions of the Act dealt separately with persons seeking refugee status from those seeking subsidiary protection, plaintiff argues that the operable regulations made no such distinction as to the Board's competence to deal with all appeals from the Commissioner's decisions. In this regard he relies on the provisions of article 7(1) of the Act which refers expressly to the right of appeal to the Board and which does not distinguish between recommendations for refusal of applications for refugee status and those for subsidiary protection;

Plaintiff furthermore attempts to buttress his thesis by referring to the provisions of article 39(1) of Council Directive 85 of the 1st of December 2005[31], as well as to those of article 2 of Council Directive 83 of the 29th April

[30] L.N. 252/01 (S.L. 420.01) now designated as the International Protection Appeals Tribunal (Procedures) Regulations
[31] Dir. 2005/85EC on minimum standards on procedures in Member States for granting and withdrawal of refugee status (OJ L326) (repealed with effect from July 20th 2015 by Dir 2013/32EU of June 26th 2013 (recast))

2004[32]. While he acknowledges that the provisions of national law are "indeed unclear and ambiguous" when dealing with applications from persons requesting subsidiary protection, plaintiff argues that the Board ought to have applied the provisions of the Directives which provide an unambiguous direction as to the remedies available – by way of appeal to the Board – also to persons in his predicament. Citing case-law of the European Court of Justice, plaintiff suggests that those Directives had a direct effect and should have supplanted national law if it was in any way not compliant with the provisions of the Directives, so that the Board ought to have applied those provisions and found that it had the competence to hear his appeal;

Defendants argue that the Board gave a correct rendition of its competence at law and that the interpretation given by it as to the type of appeals raised before it was in full conformity with the Act's enabling powers as well as the correct reading of the provisions of the law. They further submit that national law faithfully transposed the provisions of the relevant Directives and has in actual fact incorporated those provisions in both the Act and the subsidiary legislation emanating from that Act;

The Court considers that the Board's *vires* at the relevant times was determined by the provisions of the Act as well as by specific subsidiary legislation. As to the provisions of the Act, the competence of the Board was determined by article 7(1) thereof which tersely stated that: "*The Board shall have the power to hear and determine appeals against a recommendation of the Commissioner*". It was only about two years after plaintiff instituted this suit that the law stated expressly that for the purposes of that article an appeal on both facts and points of law may be permitted against a recommendation taken on an application for international protection, including a decision considering an application to be unfounded in relation to refugee status and/or subsidiary protection status[33]. On the other hand, when the Act was amended in 2008[34], different provisions were incorporated which treated differently a person seeking refugee status[35] from one seeking subsidiary protection status[36];

As to the provisions of the specific subsidiary laws, the Board's powers and functions were determined by the 2001 Regulations, which specifically stated that it shall be the function of the Board to hear and determine appeals against a recommendation of the Commissioner in accordance with

[32] Dir. 2004/83 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L304/12) (repealed with effect from December 21st 2013 by Dir 2011/95 of December 13th 2011 (recast))
[33] Art. 7(1A)(a)(i) of Chap 240, introduced by art. 4 of Act VI of 2015
[34] Art. 8 of Act VII of 2008
[35] Artt. 8 to 16 of Chap 420
[36] Artt. 17 to 22 of Chap 420

articles 5 to 7 of the Act[37]. However, under those same Regulations, an "appellant" is to be understood as one appealing in terms of article 7 of the Act, while an "applicant" who filed an "application" before the Board was to be understood as a person who had filed an application for refugee status in terms of article 8 of the Act. Those definitions have remained unaltered over time, even though the Board's competence has subsequently been extended by virtue of the afore-mentioned amendments to the enabling Act. In more ways than one, those Regulations are a special law to the more general provisions of the Act, since they specifically purport to regulate the procedural aspects of the Board's competence and functions. As such, those Regulations fall within the parameters of that enabling law. But, being a special law, they prevail over general provisions to be found even in the enabling Act;

The other subsidiary legislation which regulates the powers and functions of the Board[38] still distinguishes between refugee status and subsidiary protection[39], although it is now accepted that the competence of the Board encompasses appeals from both refugee status seekers and persons seeking subsidiary protection due to the amendments introduced by article 7(1A) of the Act: but those provisions were not yet in force at the time the Board gave the decision impugned by the plaintiff in this case;

The Court, on examining these various provisions of law as well as the evidence proffered by the defendant in this regard, concludes that the powers of the Board to hear appeals (at the time when the plaintiff filed his appeal from the Commissioner's decision) were indeed circumscribed to appeals lodged by persons who had applied for refugee status and did not extend also to those filed by persons who had applied for subsidiary status. In essence, therefore, the Board acted within the powers vested in it by law and did not abdicate its functions when declaring that the appeal filed by applicant was non-suited. Although one might argue that the Board's interpretation of the law and of the powers granted to it was rather strict, it still boils down to a correct reading of the enabling powers as determined by the legislator at the time;

Having arrived at this conclusion, the Court must examine the third limb of plaintiff's first request, namely, whether the fact that the Board correctly applied the law means that the legislator had failed to correctly transpose into national law the applicable rules in order for national law to be in conformity with the corresponding Directives;

[37] Reg 3 of S.L. 420.01
[38] The Procedural Standards for Granting and Withdrawing International Protection Regulations 2015 (L.N. 416/15)(S.L. 420.07)
[39] Reg. 2 of S.L. 420.07

In this regard, the Court observes that, as regards the Act[40], the references to European Union acts is to this day still limited to Council Directive 2011/95 and to Council Directive 2005/85, the latter of which has been repealed since July of 2015 and replaced by Council Directive 2013/32, which, in turn, finds no specific reference in the Act. On the other hand, the 2001 Regulations[41] make no specific reference to any European Union acts, and have hardly been emended since they were promulgated in 2001, that is, well before Malta's accession to the European Union. The other Regulations[42], which do make specific reference to the pertinent Directives and expressly purport to transpose into Maltese Law the provisions of the recast Directives 2011/95EU, 2013/32EU and 2013/33EU, were not yet made (and thus were not applicable) when the Board handed down its decision regarding the plaintiff;

Within this legislative context, at the time the Board handed down the decision impugned by plaintiff, it is not correct to state that the legislator had not transposed the provisions of the Directives upon which the plaintiff relies. The question which lingers is whether that transposition was comprehensive and faithful or whether, as plaintiff alleges, it was selective and incomplete. The records of the case do not reveal whether the European Institutions had taken any steps to draw the attention of the national authorities in Malta that the Directives were not properly transposed, nor did plaintiff offer proof to this effect. As to the provisions of article 2 of the 2004 Directive referred to by plaintiff, his reference is limited to definitions of "international protection" and "refugee status" and "subsidiary protection status" for the purposes of that Directive, which definitions have been incorporated into the Act as well;

Regarding plaintiff's reference to article 39(1) of the 2005 Directive[43], this fell specifically within the ambit of Chapter V of the (now repealed) Directive which dealt with "Appeal Procedures". Essentially, that provision required Member States to ensure that applicants for asylum have the right to an effective remedy before a court or tribunal against, *inter alia* "a decision taken on their application for asylum, including a decision: (i) to consider an application inadmissible pursuant to Article 25(2), (ii) taken at the border or in the transit zones of a Member State as described in Article 35(1), (iii) not to conduct an examination pursuant to Article 36". It is to be understood that plaintiff places his case within the first of these contingencies owing to the recommendation for refusal by the Commissioner, as the other two contingencies do not correspond to his situation. Article 25 of the Directive dealt with "Inadmissible applications". In particular, article 25(2) of the Directive dealt with

[40] Cfr. Art. 2 of Chap 420 for the definition of "Directives" (introduced by art. 2(g) of Act VII of 2008 and as amended by art. 3(g) of Act VI of 2015)
[41] L.N. 252/01 (S.L. 420.01)
[42] L.N. 416/15 (S.L. 420.07)
[43] Corresponding to the current art. 46 of Dir. 2013/32EU (recast)

instances where Member States could consider applications for asylum as inadmissible;

Nevertheless, a cursory reference to the seven grounds of inadmissibility contained in that sub-article would show that the recommendation for refusal made by the Commissioner in plaintiff's case had nothing to do with any one of the reasons envisioned in that sub-article. The Commissioner's reason for his recommendation to reject plaintiff's application was based on the plaintiff's failure to prove in a manner which would convince him that he hailed from the Darfur region or that he was indeed eligible for subsidiary protection[44]. It is arguably clear that the reason for which, rightly or wrongly, the Commissioner recommended that applicant's application was to be rejected did not, by any stretch of the imagination, fall within the parameters of the contingencies contemplated in article 25(2) of the Directive. In such an eventuality, therefore, even if it were true that national law failed to incorporate a remedy for appeal in the circumstances envisioned in articles 39(1) and 25(2) of the Directive, the unavailability of an appeal to the Board in plaintiff's case at the time did not constitute a breach of his rights for failed correct transposition of the Directive into national law;

For these reasons, the Court concludes that the Board correctly abided by its powers and did not shirk from exercising its competence in regard to the appeal filed by plaintiff. It concludes also that the law upon which the Board based its decision was in conformity with European Law extant at the time, and that the reasons for which the Commissioner decided to recommend rejection of plaintiff's claim for subsidiary protection did not engage the provisions of the relevant Directive to provide an appeal therefrom before a court or a tribunal as an effective remedy. In actual fact, the law provided an alternative remedy – that of a subsequent application after a final decision provided for under article 7A of the Act – which means that an appeal from a recommendation of a rejection of an application for subsidiary protection was not the only effective remedy open at law to a person in plaintiff's situation;

In view of these legal considerations, the Court finds that plaintiff's first request is unfounded in fact and at law and does not merit being upheld;

The Court will now consider **plaintiff's second request**. Through this request the plaintiff argues that the Board failed to abide by one of the principal tenets of natural justice which requires the giving of reasons for any administrative decision. He claims that, as an administrative tribunal vested with quasi-judicial functions, the Board had a duty to give reasons for its decision not

[44] Dok "SMA3" at p. 16 of the record

to uphold his appeal from the Commissioner's negative recommendation. He says that the Board failed to do so and, thus, fell short of its obligation to uphold one of the basic tenets of natural justice. The giving of reasons for decisions is not a faculty but an obligation binding similar adjudicating bodies. Plaintiff refers to regulation 9 of the (now repealed) Procedural Standards in Examining Applications for Refugee Status Regulations of 2008[45], to regulation 5(1)(n) of the Refugee Appeals Board (Procedures) Regulations of 2001[46], and to the provisions of article 3(2)(h) of Administrative Justice Act[47] as being the legal provisions which bind the Board with the duty to give reasons for its decisions;

The defendant rebuts plaintiff's allegations. He says that all of the plaintiff's requests have now been exhausted by virtue of the grant to him of subsidiary protection made by the Board in 2016, while the case was in progress. Specifically on the issue of whether the Board did motivate its decision, defendant states that indeed the decision carried clear reasons why plaintiff's appeal was being rejected. He holds that there is nothing in the decision which falls short of the duties imposed by law on the Board;

There should be no doubt that the Board, as a quasi-judicial tribunal, is bound to observe and apply the widely-accepted principles of natural justice as a standard of good governance. The rule that reasons must be motivated is amongst them. The Court reminds that plaintiff's action refers exclusively to the Board's decision. Therefore, any reference to the 2008 Regulations is not pertinent to this case, as those Regulations clearly applied only to proceedings before the Commissioner and at a stage preceding the Board's competence;

The Court will therefore evaluate the validity of the plaintiff's second request on the basis of the rule of natural justice which calls for the giving of reasons in decisions made and handed down by administrative boards or quasi-judicial bodies in the light of the provisions of article 3(2)(h) of Chapter 490 of the Laws of Malta;

There is no question that the observance of all the principles of natural justice in the field of administrative decisions is a very useful measure to ascertain the decision's own validity, as well as the validity of the process which led to such a decision being taken. The giving of reasons which specify why a decision has been made is a useful tool to help determine its validity, because it is on the strength of those declared reasons that one can appreciate why an administrative body has come to such a decision, what considerations it made in

[45] L.N. 243/08
[46] L.N. 252/01 (S.L. 420.01)
[47] Act V of 2007 (Chap 490)

order to come to such a decision[48], and what remedies may be available to the person affected by it. Poignantly, established authorities point out that "*The principles of natural justice do not, as yet, include any general rule that reasons should be given for decisions. Nevertheless there is a strong case to be made for the giving of reasons as an essential element of administrative justice. The need for it has been sharply exposed by the expanding law of judicial review, now that so many decisions are liable to be quashed or appealed against on grounds of improper purpose, irrelevant considerations and errors of law of various kinds. Unless the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is reviewable or not, and so he may be deprived of the protection of the law. A right to reasons is therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice. It is also a healthy discipline for all who exercise power over others. .. .. Notwithstanding that there is no general rule requiring the giving of reasons, it is increasingly clear that there are many circumstances in which an administrative authority which fails to give reasons will be found to have acted unlawfully*"[49];

This standard applies even more where the public authority concerned carries the role of a tribunal with quasi-judicial powers. As outined above, the main purpose underlying the rule of giving reasons for decisions derives from the fact that a person effected by such a decision deserves being able to understand it and, if the case permits, to appeal from that decision or from the reasonableness of that reasoning, or to seek any other remedy at law. This rule is akin to the rule that parties ought to be given the same opportunities to advance their respective positions before such tribubals or bodies (the principle of "*equality of arms*");

In considering whether the duty to provide a reasoned decision has been observed, it has been established that such a decision ought to contain a clear exposition of those reasons which led to the decision actually arrived at and in a manner which the person effected by it can understand[50]. A decision need not be elaborate or long-winded, as conciseness is not contrary to clarity nor to substance[51]. Nor is it necessary to outline all the points or submissions made by the parties. However, as succinctly described in a particular judgment of our Courts, "*għandha tissodisfa fuq kollox lill-partijiet in kawża fuq il-korrettezza fattwali u ġuridika tar-raġunijiet li wasslu għad-deċiżjoni. .. .. ir-razzjonalità tal-motivazzjoni kellha fil-minimu tindika raffront bejn ir-raġuni tad-deċiżjoni u r-*

[48] Ċiv. App. **4.3.1992** in the case ***Alfred Sant vs Kummissarju tat-Taxxi Interni*** (unpublished); Civ App. **28.3.2008** in the case ***Mary Żarb vs Emma Azzopardi***
[49] HWR Wade & CF Forsyth *Administrative Law* (11th Edit, 2014) paġġ. 440 – 1
[50] Cfr. Inf. App.**12.6.2009** in the case ***Christopher Falzon vs Noel Gauċi***
[51] Cfr. FH CFS **21.2.2022** in the case ***Mare Blu Tuna Farm Ltd vs Direttur Ġenerali Dipartiment tas-Sajd u Akkwakultura*** §§ 44 –5

riżultanzi probatorji u l-prinċipju tad-dritt applikabbli .. .. kull min hu fdat bl-inkarigu li jiġġudika għandu jassikura, għall-aħjar korrettezza fil-qadi tad-dmirijiet tiegħu, illi jipprovdi tifsira ċara u raġjonata dwar il-kontenut sostanzjali tal-kontroversja. Dan anke jekk il-ħsieb formattiv tiegħu jkun wieħed konċiż, basta dejjem li, fl-istess waqt jindika ċirkostanzi speċifiċi li kienu jitqiesu minnu hekk idonej biex isostnu jew, xort'oħra jirrespingu l-fatt kostitutiv tad-dritt, oġġett tal-ġudizzju"[52]. These very qualities were deemed as desirable also in decisions handed down in appeals raised before the Board[53];

The Court takes note of the version of the Board's decision impugned by the plaintiff[54]. The part cited by the plaintiff in the sworn application is the part which disposes of the appeal. That part follows a number of paragraphs outlining the evidence and the circumstances upon which the plaintiff raised his appeal from the Commissioner's negative recommendation, as well as the Board's own evaluation of the reasons why it considered itself unconvinced of plaintiff's appeal. Rather than simply dismissing the appeal for reasons which it would have been justified in doing as mentioned above under the considerations made regarding the first of plaintiff's requests, the Board entertained the merits of his appeal and went so far as to provide a recommendation in the operative part of the decision. The Court finds that, in the concise manner in which it expressed itself, the Board related to the relevant chronological and factual circumstances which resulted in its evaluation of the grounds put forward by the plaintiff in his appeal. The operative part of the decision is a natural and logical result of that evaluation. This Court, in its present function of a review court, is in no way attempting to approve or otherwise the substantive appreciation of facts made by the Board: it is not the Court's remit to substitute its appreciation of the facts to that made by the Board. The considerations which the Court has just made address only the formal aspects of the impugned decision against the yardstick of the afore-said rule of natural justice;

It finds that the Board's decision is not lacking in its observance of the particular rule requiring the giving of reasons;

For these reasons, it considers that plaintiff's second request is bound to fail as unfounded in fact and at law, and will therefore not be upheld;

Given that plaintiff renounced to his other requests, the Court will abstain from taking cognizance thereof;

[52] Cfr. Inf. App. **18.6.2010** in the case ***Eugene Cardona vs Transport Malta***
[53] Cfr. Civ. App. **30.9.2016** in the case ***Teshome Tensae Gebremariam et vs Bord tal-Appelli dwar ir-Rifuġjati et*** §§ 41 – 4
[54] Doc "SMA5", at pp. 40 – 1 of the records

For the above-mentioned reasons, the Court decides and definitively resolves:

To abstain from taking cognizance of plaintiff's **third and fourth requests** to which he renounced through his declaration of May 25th 2016;

To reject the first and the second requests as being unfounded at law and in fact, and to uphold the relative **pleas on the merits** raised thereto by the defendant State Advocate;

And orders plaintiff to bear the **legal costs**, provided that those in connection with the preliminary judgment of October 22nd 2013, shall be borne by the respective parties as ordered in that judgment.

Read and delivered

Joseph R. Micallef LL.D.,
Judge

15th November 2022

Geraldine Rickard
Deputy Registrar