the provisions of article 142 et seq. of Cap. 12 do not envisage the possibility of filing one application containing more than one appeal from separate decisions or judgements – these provisions speak only in the singular and hence do not allow multiple appeals to be brought before this Court by means of one application – the Court considers matters of procedure pertaining to public order, therefore no derogation from the rule should be allowed – the intention of the legislator was to ensure that each dispute brought before the courts or tribunals should retain separate proceedings until final adjudication, and in that manner the dispute would be given its due attention in an expeditious manner by the court or tribunal having competence to entertain it, without the possibility of confusion with any other issue that there may be between the parties to the first dispute

MALTA

COURT OF APPEAL
(Inferior Jurisdiction)

HON. JUDGE
LAWRENCE MINTOFF

Sitting of the 28th February, 2024

Inferior Appeal number 63/2023 LM

Ahmad Aziz (K.I. nru. 0392507L)
('the appellant')

***vs*.**

Jobsplus Malta
('the appellee')

The Court,

<u>Preliminary</u>

1. This appeal has been filed by the applicant **Ahmad Aziz (K.I. nru. 0392507L)** [hereinafter 'the appellant'] from the two decisions delivered on the

1st of June, 2023, [hereinafter 'the appealed decisions'] by the Information and Data Protection Appeals Tribunal [hereinafter 'the Tribunal'], whereby it rejected his respective appeals no. CDP/COMP/457/2022 and CDP/COMP/526/2022 against respondent **Jobsplus Malta** [hereinafter 'the appellee'].

Facts

2. The facts of the present proceedings concern appellant's request to the appellee to provide him with his personal data, which he contends is related to his permanent diplomatic employment with the European Commission, the European Union diplomatic service, and Government of Malta as envoy.

Merits

3. The appellant instituted the present proceedings by filing two separate applications before the Tribunal against the appellee. In his first appeal no. CDP/COMP/457/2022 he claimed breach of Articles 7, 8, 41 and 50 of the EU Charter on Fundamental Rights and breach of Articles, 4, 5, 6, 13, 77 and 78 of GDPR by Jobsplus, and that the decision of the Commissioner for Information and Data Protection [hereinafter 'the Commissioner'] of the 4th November, 2022 was in default in law and in fact and asked for it to be annulled. In his second appeal no. CDP/COMP/526/2022 he claimed that contrary to the Commissioner's decision of the 22nd February, 2023, his appeal was not inadmissible.

4. The appellee failed to reply to both appeals within the legal time limit.

The Appealed Decisions

5. The Tribunal made the following considerations in deciding appeal no. CDP/COMP/457/2022:

> *"Having seen the appeal made by the appellant wherein Ahmad Aziz claims breach of article 7, 8, 41 and 50 of the EU Charter on Fundamental Rights and breach of article 4, 5, 6, 13, 77 and 78 of GDPR by Jobsplus; that the decision of the Commissioner for Information and Data Protection is in default in law and in fact, and that therefore the decision of the Commissioner dated 4th November 2022 is to be annulled.*
>
> *Having seen that the complaint by the appellant relates to a number of documents he submitted to Jobsplus in order to register his employment with Jobsplus and that Jobsplus illegally destructed, erased and altered his personal data which in his view constituted a breach of articles 7,8 and 14 of the EU Charter of Fundamental Rights; that Jobsplus informed him that there was no need to send three copies of the same email, each of which contained an attachment of eleven (11) megabytes and informed him that such unsolicited emails would have been deleted since the required details of the appellant were alread available on Jobsplus system.*
>
> *Having seen that the appellant pleaded that Jobsplus did not reply within the prescribed time limit of twenty (20) days as imposed by Chapter 586 of the Laws of Malta. From the pink card it results that Jobsplus was notified with the appeal on the 2nd November 2022 and filed no reply and the Tribunal, therefore, declared Jobsplus to be contumacious and gave Jobsplus the right to file a note of submissions as entitled to it by our Code of Civil Procedure Chapter 12 of the Laws of Malta.*
>
> *Having seen that the note of submissions filed by the appellant and by Jobsplus and the minute of the sitting of the 13th April 2023 wherein all the parties declared that they are closing the case and that the appeal can be adjourned for judgement.*
>
> *Having seen that the statement by the Information and Data Protection Commissioner wherein he states that prior to investing the complaint made by the appellant he is bound by law to assess the admissibility of the complaint before opening an investigation. The Commissioner examined the documents filed by the appellant and decided that there was no '*indicia*' that Jobsplus qua controller*

processed personal data relating to the complainant in a manner which infringed the Regulation and particularly that Jobsplus unlawfully erased the complainant's personal data and decided that the complaint of Ahmad Aziz as inadmissible. Having seen all the documents filed in this appeal and the note of submissions of the parties; the Tribunal makes the following considerations:

Regarding the breaches of articles 4, 5, 6, 13 77 and 78 of the GDPR as alleged by the appellant, the Tribunal notes that:

Article 4 of Chapter 586 of the Laws of Malta which implements Regulation (EU) 2016/679, that is, the GDPR, makes it clear that GDPR applies to the processing of personal data and that the processing of personal data applies in the context of the activities of an establishment of a controller or a processor in Malta.

Article 4 of GDPR sets out all the principles for processing personal data: lawfulness, fairness and transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity and confidentiality, and accountability. The transparency principle is the basis for the requirement to provide information under Articles 13 and 14 GDPR and the integrity and confidentiality principles are detailed by Article 32 GDPR as security.

Article 4(7) of GDPR defines the controller as the natural and legal person which, alone or jointly with others, determines the 'purpose' of the processing. Article 5(1)(b) GDPR itself stipulates that personal data shall be collected only for specified, explicit and legitimate purposes. Article 6(1)(a) GDPR allows consent for one or more 'specific purposes'. This makes the proper definition of purposes a crucial step for compliance with the GDPR. The principles specified by Article 5 GDPR are the main 'bottleneck' for the legality of any processing operation – together with the requirement to have a legal basis under Article 6 GDPR. Any controller or processor must comply with all elements of Article 5 GDPR for each processing operation.

In fact principle of purpose limitation shall ensure that controllers do not engage in 'secondary use ('further processing') of personal data when such processing is incompatible with the original purpose(s).

The use of the word 'incompatible' in Article 6(1)(b) of the previous Data Protection Directive 96/46/EC has however raised questions if there would also be 'compatible' purposes. Article 8(2) of the EU Charter does not used the word 'incompatible' hence any departure from the principle of purpose limitation must be seen as a limitation of EU Charter rights under Article 52(1) of the EU Charter and must therefore by provided by law and are subject to a proportionality test.

The GDPR introduced for archiving purposes in the public interest, scientific or historical research purposes, or statistical purposes under Article 89(1) GDPR:

- *Further processing for archiving purposes in the public interest, scientific or historical research purposes, or statistical purposes under Article 89(1) GDPR;*
- *Further processing allowed or required by Union or Member State law*
- *Further processing for a compatible purpose under Article 6(4) of GDPR and*
- *Further processing based on the data subject's consent.*

The Tribunal notes that archiving is not in issue in this appeal; what is in issue is whether Jobsplus had the right to delete information which Jobsplus considered irrelevant for its purposes.

Article 5 GDPR sets out all the principles for processing personal data:

1. *Lawfulness, fairness and transparency*
2. *Purpose limitation*
3. *Data minimisation*
4. *Accuracy*
5. *Storage limitation*
6. *Integrity and confidentiality*
7. *Accountability.*

Many of these principles form the basis for the rules in more detailed Articles throughout the Regulation. In fact the transparency principle is the basis for the requirement to provide information under Articles 13 and 14 GDPR.

Lawfulness: in order to be 'lawful' processing should comply with Article 6 GDPR which requires that any processing operation must be based on at least one of the six legal basis in the exhaustive list provided. The principle of lawful processing is linked to the general prohibition on processing personal data and is also enshrined in Article 8(2) of the EU Charter ('...data...must be processed...on the basis of consent of the person concerned or some other legitimate basis laid down by law'.)

Fairness is an overall requirement of the GDPR and is also enshrined in Article 8(2) of the EU Charter.

The EDPB Guidelines 4/2019 on Data Protection by Design and by Default provides that in order for the processing to be 'fair' no deception is allowed in data processing and that all options should be provided in an objective and neutral way avoiding any deceptive or manipulative language or design.

Transparent – in general terms the transparency principle requires that the data subject is fully aware of the processing of any personal data. The transparency

principle is closely linked to more detailed provisions such as Article 12(1) GDPR ensures that information must be provided in a "concise, transparent, intelligible and easily accessible form using clear and plain language". *Articles 13 and 14 GDPR provide for a right to receive information regarding the planned processing, even before processing takes place. Article 15 GDPR provides for a right to access information about the actual processing of the individual's data.*

Purpose limitation: the principle of purpose limitation ensures that personal data may only be processed for one or more specified purposes. Personal data that was collected for one purpose cannot freely be used for another purpose. The principle of purpose limitation is also enshrined in Article 9(2) of the EU Charter. While the controller is free to define any legitimate purpose, Article 5(1)(b) sets out the principle of purpose limitation in the processing of personal data. It requires that personal data be collected for specified, explicit and legitimate purposes and ensures that, after collection, data are not used for purposes that are incompatible with the specified original purpose(s).

Collected – the purpose has to be specified in the moment the personal data is first 'collected' by the controller. Collection (see Article 4(2) GDPR) is to be understood as the first step in any processing operation.

Specific – the purpose is meant to limit processing operations to a specific, pre-defined aim. Any overly broad purpose would defeat the aim of purpose limitation It is true that our GDPR does not define these terms. Clearly, though this will depend on the specified purpose for collecting and using the personal data.

Explicit – the purposed must be explicitly stated. Article 5(1)(b) does not foresee a certain form of documentation but articles 5(2) or 30(1)(a) GDPR require documentation and Articles 6(1)(a) and 14(1)(c) GDPR required the disclosure of the specific purpose(s) to the data subject.

The principle of purpose limitation ensures that controllers do not engage in 'secondary use' ('further processing') of personal data when such processing is incompatible with the original purpose or purposes.

Legitimate – the use of personal data for the stated purpose must be legal.

Data Minimisation: The three elements in Article 5(1)(c) GDPR for data minimisation are:

- *Personal data is 'adequate if it is appropriate to use such data for the purposes;*

- *Personal data is 'relevant' if it leads to a different outcome in relation to the purpose;*
- *Personal data is 'limited to what is necessary' when the purpose cannot reasonable be achieved without the processing of that personal data.*

Regarding the principle of data minimisation, this indirectly flows from Article 8 of the EU Charter given that any interference with the fundamental right to data protection must be proportionate. The principle of proportionality, requires that any processing of personal data is 'necessary'. Unlike the previous Data Protection Directive 95/46/EC, under which data processing did not have to be 'excessive' the GDPR specified that it must be 'limited to what is necessary' to achieve the purpose. The principle of data minimisation is therefore closely related to the principle of purpose limitation and only leads to accurate results if the specific purpose is well defined by the controller, which in this case it is.

In C-708/18 TK v Associatia de Proprietari bloc M5a – ScaraA the CJEU had to provide some guidance on how to assess whether a certain processing (in tis case a video survillance system) could be considered 'necessary' for the purpose of the legitimate interests pursued by the controller. The Court held that the necessity of processing operation must be examined in conjunction with the data minimisation principle which restricts the controller's options to those 'adequate, relevant and not excessive in relation to the purposes for which they are collected.'

Accuracy – Article (1)(d) requires that personal data must be accurate and, where necessary, kept up to date and that all reasonable steps be taken to delete or rectify inaccurate data promptly.

Storage limitation – the principle of storage limitation imposes a time limit on any processing operation which forms a type of 'data minimisation' in a temporal dimension. It follows from Article 8 of the EU Charter that once all purposes of a processing operation are fulfilled the operation must stop for it to still be 'proportionate'.

Integrity and confidentiality – the principle is further specified in Article 32 GDPR on the security of processing.

Reading article 13 GDPR as quoted by the appellant, this article relates to the right to be informed and that of transparency in more detail than in Article 5 GDPR quoted above.

The Tribunal refers to Articles 77 and 78 of the GDPR on which the appellant is also basing this appeal and notes that these refer to complaint procedures under Article 77 GDPR or civil litigation under Article 78 GDPR.

In taking all the above into consideration and applying them to the facts of this case, the Tribunal finds that:

Jobsplus in this case was clear about what amount of personal data it needs from the appellant and it was the appellant who decided to sent to Jobsplus more than it is required. The information requested according to GDPR and Chapter 586 of the Laws of Malta must be for specified, explicit and legitimate purposes.

Jobsplus duty was duty bound to hold the personal data that is still relevant and adequate for the purposes it was sent and there is nothing in the law, that is the GDPR and Chapter 586 of the Laws of Malta, which prohibits Jobsplus from deleting unnecessary information – on the contrary the duty of Jobsplus is to keep what is strictly relevant and necessary for the purpose the information was sent. This is closely linked with the storage limitation principle. Jobsplus is duty bound not to process personal data if it is insufficient for its intended purposes.

The appellant was bound to supply Jobsplus only the information requested and when he provided information that was not requested by Jobsplus he did this at his own risk; Regarding the decision of the Commissioner dated 4th January 2023 wherein examined the documents filed by the appellant and decided that there was no 'indicia' *that Jobsplus qua controller processed personal data relating to the complainant in a manner which infringed the Regulation and particularly that Jobsplus unlawfully erased the complainant's personal data and decided that the complaint of Ahmad Aziz as 'inadmissible', the Tribunal notes that once that the Commissioner has conducted in inquiries and the investigations regarding the alleged infringements of data protection legislation, he could not declare the complaint made by Ahmad Aziz is inadmissible (as inadmissible refers to something inadmissible ab initio which is not the case in this case) but reject his complaint.*

The Tribunal have regard of Article 28 of Chapter 586 of the Laws of Malta modifies the decision made by the Commissioner in that the complaint made by Ahmad Aziz is being rejected and not 'inadmissible' and for all the reasons above stated, rejects this appeal, and confirms the decision of the Commissioner dated 4th January 2023 as modified by this Tribunal.'

6. The Tribunal made the following considerations in deciding appeal no. CDP/COMP/526/2022:

"Having seen the appeal filed by the appellant where he is requesting the Tribunal to revoke the decision given by the Commissioner for Information and Data Protection

Commissioner on the 2nd February 2023 wherein the Commissioner decided that the complaint submitted by the appellant is inadmissible.

Having seen the complaint submitted by the appellant to the Commissioner on 28th November 2022 wherein appellant requested the Commissioner to declare that Jobsplus infringed articles 7, 8, 41 and 50 of the Charter, that Jobsplus erred in assessing articles 4, 5, 6, 13 and 64 of the Regulation and that as a result the Commissioner should order Jobsplus to provide him with the access to his personal data and to rectify his employment history.

Having seen the decision of the Commissioner for Information and Data Protection Commissioner dated 22nd February 2023.

Having seen the statement of case submitted to this Tribunal by the same Commissioner. Having seen the request made by the appellant to Jobsplus where he requested Jobsplus to give him access to his personal data;

Having seen that Jobsplus in this case failed to submit its reply within the time limits imposed by Chapter 586 of the Laws of Malta.

Makes the following considerations:

That the appeal filed by the appellant based his apply mainly on: an error in law when the advocate of Jobsplus by requesting him proof of identity in terms of article of GDPR because article 64 of GDPR is not applicable; breach of article 8 of EU Charter by not providing him with his personal data; breach of article 7 of EU Charter by asking for his Maltese ID card through their advocate and further Jobsplus breached article 7 of the EU Charter right of private life of applicant to transfer his contact details to the advocate of Jobsplus without his consent; Jobsplus failed to apply case-law which in accordance with Article 13 (c) of Regulation 45/2001 which gives him the right to obtain communication of his personal data; That the reply and the Statement submitted by the Commissioner explain in detail why the complaint made by the appellant both to the Commissioner and repeated by the appellant in this appeal was declared inadmissible.

That the appellant submitted the photcopy of his identity card to Jobsplus;

Decision

Having seen all the documents and evidence produced in this appeal, decides as per following:

That although Jobsplus failed to submit its reply to the appeal filed by the appellant, the Tribunal is still bound to decide the appeal according to law.

That in Maltese Law it is the right of every person, company, authority, entity to appoint a lawyer to write on its behalf; such lawyer is bound by professional secrecy which is sacred in our law. That the lawyer appointed by his client in the Maltese legal system has the role of mandator of his client. The Tribunal referes to the judgement given by the Court of Appeal in its inferior jurisdiction on 16th March 2005 in the case Carmelo Farrugia vs Grezzju Farrugia et wherein the court states this precise point: "Huwa paċifiku illi l-avukat huwa, fis-sens tal-Artikolu 1862 Kodiċi Ċivili mandatarju tal-klijent tiegħu" (vol X paġna 301 u Vol XIX P1 p 129). And in the judgement Maureen Scicluna v Dr Anthony P Farrugia decided by the Court of Appeal in its inferior jurisdiction on 6th April 2005: "...Jitnissel minn dan l-inkarigu konferit lill-professjonista jimplika fil-mandatarju l-poter li jagħmel dak kollu li hu meħtieġ għall-eżkuzzjoni tal-inkarigu li jkun irċeva." In English it means that the lawyer acts as a mandator of his client and the mandator has the power to do all that is necessary to execute the mandate.

The ground of appeal on this issue is therefore being rejected in that Jobsplus did not breach in any way the provisions of Chapter 586 of the Laws of Malta.

Regarding the basis of the request as quoted by the lawyer of Jobsplus, that is, the recital number, the appellant must understand that recitals in EU law are set in the preambles of any regulation setting out the reasons for the operative provisions of the regulation and preambles are not regulations. In his appeal the appellant is failing to make the distinction between recitals and regulations and in any case he provided Jobsplus with the document requested, that is, a copy of his Maltese identity card.

That regarding the other grievances mentioned by the appellant in his appeal, this Tribunal concurs fully with the decision made by the Commissioner on 22nd February 2022 and the statement of case submitted by the same Commission in this appeal and has nothing further to add except that the appellant must understand that Jobsplus is bound by the provisions of Chapter 594 of the Laws of Malta in the registration of the details of the applicant's employment history and if the appellant feels that Jobsplus has breached the provisions of Chapter 594 of the Laws of Malta by not rectifying his employment history as he instructed Jobsplus, this Tribunal is not the right forum to challenge that decision by Jobsplus."

The Appeal

7. The appellant filed an appeal before this Court on the 2nd June, 2023 whereby he is requesting that *"...this Honourable Court ...revoke and reverse*

the judgements of the Information and Data Protection Appeals Tribunal of 01 June, 2023 in case numbers CDP/COMP/457/2022 and CDP/COMP/526/2022. Appellant requests that this appeal be allowed".

8. The appellee presented its reply on the 22nd June, 2023, whereby it submitted its reasons for which this Court should reject the appeal.

Considerations

9. This Court shall firstly consider the preliminary plea presented by the appellee in the first paragraph of its reply. The latter contends that the present appeal should be considered inadmissible *ab initio* because two appeals have been filed in one application. It explains that this is in breach of article 143 of Cap. 12 of the Laws of Malta, and in defence of its argument, the appellee refers to the judgement of this Court of the 23rd June, 1952 in the names **Michele Parnis *vs.* Carmelo Caruana** where it was stated that *"procedure is a Law of public order. Therefore, the substitution of procedure which has been legally established cannot be admitted, not even with the consent of the opposing party".*

10. The Court acknowledges that this is the correct legal position. It considers that the provisions of article 142 *et seq.* of Cap. 12 do not envisage the possibility of filing one application containing more than one appeal from separate decisions or judgements. They speak only in the singular and hence do not allow multiple appeals to be brought before this Court by means of one application. As opined in its judgement quoted by the appellee, the Court considers matters of procedure pertaining to public order, therefore no

derogation from the rule should be allowed. In the present case it is clear that the intention of the legislator was to ensure that each dispute brought before the courts or tribunals should retain separate proceedings until final adjudication, and in that manner the dispute would be given its due attention in an expeditious manner by the particular court or tribunal having competence to entertain it, without the possibility of confusion with any other issue that there may be between the parties to the first dispute.

11. The Court considers that the provisions of article 793 of Cap. 12 are of particular relevance to this issue raised by the the appellee. From these provisions which regulate those actions where the subject matter is connected, or the decision in one action may affect that in another, it is clear that it is at the adjudicator's discretion to entertain those actions simultaneously or otherwise, but always by means of separate proceedings, even at the appellate stage. But subsection 793(3) of Cap. 12 makes it clear that a separate judgment must be given in each of the proceedings at first instance as well as at the appeal stage. The Court considers that in accepting the present appeal, this will not be possible and it would be sanctioning the appellant's unilateral decision to treat separate actions rather than simultaneously but in one appeal procedure.

Decide

For the above reasons, the Court declares the present appeal null and void and refrains from taking cognizance of it.

All expenses in respect of the present proceedings shall be borne by the appellant.

Read.

Hon. Dr Lawrence Mintoff LL.D.
Judge

Rosemarie Calleja
Deputy Registrar