FIL-QORTI ĊIVILI – SEZZJONI TAL-KUMMERĊ

ONOR. IMĦALLEF

IAN SPITERI BAILEY LL.M. LL.D.

Illum, il-Ġimgħa, 19 ta' April, 2024

Fl-atti tal-istralċ bin-numru 107/2021 ISB fl-ismijiet:

bet-at-home.com Entertainment Limited (C-35055)

vs

X

DAN huwa digriet mogħti in camera għar-Rikors ta' Laura Eisendle nee` Niederbacher tal-25 ta' Ottubru 2023 (fol 234)

Il-Qorti,

Rat ir-Rikors ta' Laura Eisendle nee` Niederbacher tal-25 ta' Ottubru 2023 u li permezz tiegħu tgħid illi hija kreditriċi tas-soċjeta' stralċjata fl-ammont ta' €580,293.01 kif ikkristallizat b'sentenza ta' Qorti Awstrijakka skont ċertifikat maħruġ ai termini tal-Art 53 tar-Regolament 1215/2012.

Tikkontendi illi in segwitu għall-proċeduri meħuda f'Malta, 804/2022TA, is-sentenza tagħha tal-Awstrija għandha tkun awtomatikament enforzabbli f'Malta kontra l-kumpannija stralċjata, u kien biss l-għada illi otteniet is-sentenza tal-Qorti Maltija msemmija illi l-istat Malti introduċa l-Artikolu 56A fuq msemmi.

Tgħid illi fil-5 ta' Settembru 2022 hija kienet bagħtet l-atti rilattivi kollha lill-istralċarju u li l-emenda għall-Att dwar il-Logħob huwa inkonsistenti mar-Regolament 1215/2012 u b'hekk din il-Qorti ma għandhiex tagħti effett lill-emenda msemmija. Tgħid illi ma hemm xejn fis-sentenza tagħha illi huwa kontra l-ordni pubbliku, anzi ssostni illi huwa kontra

l-ordni pubbliku jekk persuna illi sofriet danni minħabba operazzjoni lleċita ta' ħaddieħor ma titħalliex tieħu rimedju.

Titlob għalhekk illi hija tiġi kkunsidrata bħala kreditriċi tal-kumpannija stralċjata.

Rat ir-Risposta tar-Riċevitur Uffiċjali tal-24 ta' Jannar 2024;

Rat ir-Riposta ta' Bet-at-home.com AG tal-25 ta' Jannar 2024;

Rat ir-Risposta ta' Roman Dreher tal-24 ta' Jannar 2024,

Ikkunsidrat:

Illi l-mertu tal-vertenza odjerna ġie ttrattat fid-digriet mogħti kontestwalment u llum stess għar-rikors tar-Ricevitur Ufficjali u għalhekk il-Qorti tagħmel ampja referenza għal dak id-digriet li jwassalha biex tiċħad it-talba li qed issir mir-rikorrenti hawnhekk sabiex hija tiġi meqjusa kreditur a bażi tad-deċiżjoni minnha ottenuta fl-Awstrja.

In kwantu għall-parti tat-talba fejn din il-Qorti ġiet mitluba tirrinvja lill-Qorti Ewropeja tal-Ġustizzja tal-Unjoni Ewropeja, din il-Qorti tirreferi għad-digriet tal-Prim Awla tal-Qorti Ċivili tal-11 ta' Jannar 2024 fil-proċeduri 203/22TA **Mr.Green Limited vs Michael Kugler** fejn, dwar mertu identiku, intqal hekk:

> *It is amply clear that the applicant is requesting to refer the above set of questions to the CJEU in terms of article 267 of the Treaty on the Functioning of the European Union.*
>
> *This article lays down the following: "The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning: (a) the interpretation of the Treaties; (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;*
>
> *Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.*
>
> *Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.*

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay."

Now, from a close inspection of this particular article, it is clear that such reference can only be made in the only two instances above mentioned under para (a) and (b). These two instances make clear reference to treaties and not particular laws or acts. Under the first limb para (a) the interpretation must relate to a Treaty and what this Court has at hand is an act of the Maltese Parliament in relation to an EU regulation and not a Treaty. What is more, it cannot be left unnoted, that the first limb (para a), unlike the second limb (para b), refrains from mentioning acts and in this regards there shouldn't be any doubt as to the nature of article 56A, referred to as the newly introduced provision by the applicant.

However, dato ma non concesso given but not accepted that article 267 is applicable, it is to be noted, that the first question set by the applicant regarding the meaning of the principle of public policy, is a question that can be determined by this Court without the need of seeking guidance from the ECJ. This a matter of pure economic policy, and for the purposes of article 267 it is a matter that falls exclusively within the domain of the Member State in the same manner that the Austrian Courts consider their' s and justly so.

As regards the second question, with the obtainment of a declaration of incompatibility or otherwise from the local Courts, the answer lies in Chapter 460 of Malta. Therefore guidance by the ECJ on this matter is superfluous since an answer to this question in the local laws already exist (Vide Decision in the names of ***Marion Pace Axiaq -vs- Prim Minsitru dated the 17th of October 2019 Constitutional Court****).*

As to the question the Court refers to that part of article 267 which lays down that "Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court." In other words, if there is a judicial remedy under domestic law, the remedy under article 267 is not available. The Court has already hinted to what Chapter 460 of the Laws of Malta laid down on this matter. However there also exists an action at law by seeking to strike down any law by other means available under Maltese Law, means that cannot be stated by this Court otherwise it would be acting as counsel to one of the parties.

As to question 4, again article 267 does not make available the right to obtain a declaration as regards conflicting positions but only a matter of interpretation. It's true that the ECJ decides, but only on matters of

interpretation and not necessarily on all matters of substance such as is the question of conflict between a domestic law of a member State and the European Legal regime. In certain circumstances, amongst which economic matters, which may be tantamount to a question of public policy, these are yet to be determined by this Court. That is why article 45 of the regulation stipulates that a judgement may be refused if the matter to which it refers, is manifestly to a matter of public policy. Again, reference is made to Chapter 460 of the Laws of Malta.

As to the second limb (para b) of article 267, this clearly states that "the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union" and hence the emphasis. This limb solely addresses the validity and interpretation not of the domestic law vis-a-vis the European Legal Regime in general, but strictly to acts emanating from the list of entities under this part of the article pertaining to the Union, without any reference to any acts or laws of a member State. Under which circumstances this part of the article can be envisaged to apply, this Court cannot tell, but only one thing is certain, that the complaints of the defendant under this limb cannot succeed in the circumstances of this case.

Lastly the Court reminds that it is in the absolute discretion of the Court of the Member State to decide whether to refer the matter to the ECJ under article 267. Furthermore, there are a number of points yet to be decided by this Court that may eventually neutralise the need to make a preliminary reference to the ECJ, if ever such reference is applicable in the circumstances.

Din il-Qorti m'għandhiex xi żżid ma' dan u tagħmlu tagħha.

GĦALDAQSTANT, il-Qorti qed tgħaddi biex tiċħad it-talba tar-rikorrenti.

Ian Spiteri Bailey
Onor. Imħallef

Amanda Cassar
Deputat Reġistratur