FIRST HALL CIVIL COURT

THE HON. JUDGE TONI ABELA LL.D.

Sitting of Thursday the 16th day of May, 2024

Number 19

Application number 364/21TA

Dr. Isabel Cristina Yepes Chavarriaga

vs

Il-Kunsill Mediku

The Court:

Having seen the sworn application of Dr. Isabel Cristina Yepes Chavarriaga (the Plaintiff) of the 22nd April 2021 in virtue of which she premises and requested the following:

1. "Premess illi l-esponenti Dr.Isabel Cristina Yepes Chavarriaga iggradwat bhala tabib mediku f`Columbia f`Gunju 2008, u fis-sena 2010 dawn il-kwalifici gew rikonoxxuti mill-Ministeru ta`Edukazzjoni ta`Spanja bhala "*equivalent to the Spanish official Degree in Medicine, with the same effects in all the national territory."*

2. U Billi L-esponent ipprattikat il-professjoni taghha fil-Columbia inizjalment bhala GP u wara fis-settur ta` *Occupational Health and Safety*;

3. U Billi l-esponenti emigrat ghal Malta fejn tghix b`mod permanenti mal-partner Malti taghha;

4. U Billi c-Centru Malti ghal Rikonoxximent ta` Kwalifiki u ta` Informazzjoni (MQRIC) ikkonfermat li l-kwalifiki taghha huma rikonoxxuti f`Malta ghall-istess livel ta` tabib mediku;

5. U Billi ghalhekk l-esponenti applikat sabiex tigi ammessa fir-registru mediku biex tkun tista` tipprattika l-professjoni taghha, liema talba giet michuda mill-Kunsill Mediku permezz ta` decizjoni tal-10 ta`Lulju 2019.

6. U Billi l-esponenti,fis-17 ta`Lulju 2019 appellat minn dina d-decizjoni;

7. U Billi Kumitat tal-Appelli ghall-professjonijiet tal-kura ha zewg decizjonijiet:

    a. Fl-ewwel wahda b`mod preliminari tal-20 ta`Dicembru 2019(kopja ta`liema hija hawn annessa bhala Dokument A) gie dikjarat li a tenur ta`l-Art 11(1)(c) tal-Kap 464,applikabbli ghall-esponenti,kelhu jigi stabbilit is-siwi tar-rikonxximent fi Spanja tal-kwalifiki taghha;

    b. U b`decizjoni finali tad-19 ta`Novembru 2020 (li gie notifikat lilha biss nhar is-27 ta`Novembru 2020, kopja ta`liema qieghda tigi hawn anness bhala Dokument B) giet michuda t-talba ta` l-esponenti ghal registrazzjoni taghha fir-Registru Mediku;

8. U Billi r-rikorrenti temmen li d-decizjoni kemm tal-Kunsill Mediku u kemm tal-Kumitat tal-Appelli huma zbaljati u japplikaw u jinterpretaw il-ligi (kemm taghna u tal-Unjoni Ewropeja) hazin u kif ukoll jmorru kontra l-principji tal-amministrazzjoni tajba u ghalhekk ghandhom jigu annullati u revokati;

9. U billi bid-decizjonijiet premessi il-ligi giet applikata u interpretata skorrettement, partikolarment l-Artikolu 11 tal-Kap 464,liema artikolu japplika ghall-esponenti bhala persuna li hija stabbilita f`Malta,u jaghtiha d-dritt li tigi registrata fir-Registru Mediku kemm jekk il-kwalifiki taghha gew rikonoxxuti fi stat member u kemm jekk gew rikonoxxuti f`pajjiz barra mill-Unjoni Ewropea.

10. Illi l-esponenti qieghda ssofri danni kbar minhabba l-agir tal-Kunsill Mediku u d-decizjonijiet,kontra l-ligi,li saru kontriha. Id-dewmien tal-ghoti ta`dak li haqqha bil-ligi ifisser li hi ma tistax tesercita l-professjoni taghha b`mod irragjonevoli u kontra l-ligi u l-principji applikabbli huwa ta` hsara ghaliha.

11. Illi d-decizjonijiet sia tal-Kunsill Mediku u sia tal-Kumitat tal-Appelli huma sindikabbli permezz tal-procedura odjerna u ghandhom jigu mistharga,annulati u rrevokati minn din l-Onorabbli Qorti.

Ghaldaqstant l-esponenti filwaqt li tirriserva li tressaq dawk is-sottomissjonijiet u provi kollha lilha permess fil-ligi titlob lil l-Onorabbli Qorti sabiex fid-dawl tar-ragunijiet fuq premessi u dawk li ser jirrizultaw tul it-trattazzjoni ta` dina l-kawza joghogbha u prevja kull dikjarazzjoni xierqa u opportuna:

1. Tiddikjara li d-decizjonijiet premessi u cioe tal-Kunsill Mediku tal-10 ta`Lulju 2019 u z-zewg decizjonijiet tal-**Kumitat tal-Appelli ghall-professjonijiet tal-kura medik**a tal-20 ta`Dicembru 2019 u tad-19 ta` Novembru 2020 huma zbaljati,ingusti,illegali,ultra-vires,bi ksur tal-ligijiet ewropeja u kontra l-principju tal-gustizzja naturali kif ukoll minhabba interpretazzjoni zbaljata tal-ligi;

2. Tiddikjara ghalhekk li d-decizjonijet de quo huma nulli u invalidi u ghalhekk tirrevoka l-istess decizjonijiet;

3. Tordna lill-Kunsill intimat sabiex fi zmien qasir u peremptorju fissat minn din l-Onorabbli Qorti jirregistra lir-rikorrenti fir-Registru appozitu tal-Kunsill Mediku skont kif minnha rikjest;

4. Tiddikjara l-Kunsill Mediku intimat risponsabbli ghad-danni li l-istess rikorrenti soffriet u li qieghda ssofri;

Bl-ispejjez, inkluż tal-protest giudizzjarju nru. 49/2021 u bl-ingunzjoni in subizzjoni tal-intimati."

Having seen the sworn answer of the Kunsill Mediku Malti (the respondent)

of the 8th of June 2021 by virtue of which it answered the following:

1. "a) Illi fl-ewwel lok, jinghad illi fid-decizjoni tal-10 ta`Lulju 2019,il-Kunsill Mediku esponent agixxa b`mod ghal kollox regolari,u dan ai termini tal-poter lilu moghti permezz tal Kapitolu 464 tal-Ligijiet ta`Malta;

   b) Illi fir-rigward tal-fuq imsemmija decizjoni u hekk kif ser jirrizulta ahjar mit-trattazzjoni tal-kawza odjerna, jinghad illi l-istess rikorrenti dejjem inghatat kull opportunita` sabiex tressaq quddiem il-Kunsill esponent kwalunkwe prova, u hekk fil-fatt ir-rikorrent ippartecipat b`mod shih matul il kors kollu tal-proceduri illi eventwalment wasslu sabiex tittiehed mill-istess Kunsill Mediku esponent id-decizjoni tal-10

ta Lulju 2019 li minnha r-rikorrent ghazlet li tappella quddiem il-Kumitat tal-Appelli ghall-professjonijiet tal-kura medika;

2. Illi fit-tieni lok, ir-rikonoxximent tac-Centru Malti ghal Rikonoxximent ta` Kwalifiki u ta` Informazzjoni (MQRIC) ma jissarrafx f`obbligu fil-konfront tal-Kunsill Mediku sabiex jirregistra lir-rikorrenti fir-Registru appozitu tal-Kunsill Mediku u dan kif ser jirrizulta matul it-trattazzjoni tal-kawza odjerna;

3. Illi fit-tielet lok,ir-rikorrenti effettivament qed titlob lil dina l-Onorabbli Qorti rikonixximent awtomatiku u dan espressivament imur kontra id-disposizzjonijiet tal-Artikolu 42A ta` Kapitolu 464 tal-Ligijiet ta`Malta;

4. Illi fir-raba lok,fir-rigward tat-talba maghmula mir-rikorrent sabiex tiddikjara l-Kunsill Mediku intimat risponsabbli ghad-danni li l-istess rikorrenti allegatament soffriet u li qieghda issofri, jinghad illi l-kunsill esponent bl-ebda mod ma jista`jinzamm responsabbli fir-rigward tal-allegati danni hawn imsemmija ghaliex fl-agir tieghu u fl-ezercizzju tal-poteri lilu akkordati mill-provvedimenti tal-Kap 464 huwa dawk dejjem irrispetta u onora kemm il-principji tal-gustizzja naturali ,u kif ukoll dawk l-obbligi kolha fuqu mposti permezz tal-ligi applikabbli, u dan kif ser jirrizulta matul it-trattazzjoni tal-kawza odjerna.

Salv eccezzjonijiet ulterjuri.

Bl-ispejjez.”

Having seen the acts and documents of the case.

Having read and heard the witnesses adduced by both parties during the course of these proceedings.

Having seen that the case was adjourned for today for final decision.

Points of facts

1. The plaintiff graduated as a medical practitioner from the University of Colombia in 2010. Parties agree, that these qualifications were recognised by the Minister of Education in Spain as being equivalent to the

Spanish official Degree in Medicine, with the same effects in all the national territory.

2. Notwithstanding this recognition, it also transpires that as fact the plaintiff never practised in Spain and was not registered with relevant medical authority in Spain. However it does transpire that she exercised the medical profession in Columbia quite extensively.

3. The maltese competent authorities (MQRIC) have acknowledged that the qualifications of the plaintiff are equivalent to those obtained in Malta in the same medical discipline. However, when plaintiff applied to be able to practice in Malta, the Medical Council of Malta refused her the request by decision of the 10th July 2019. It is also worth noting that the plaintiff transferred her residence permanently to Malta to live with her Maltese partner.

4. The plaintiff appealed to the Appeals Committee for Health Care Professions Care. The first decision set out the usefulness of the recognition in Spain of its qualifications before considering any further the plaintiff's reuest. On the 19th November 2020, the said Appeals Committee definitively rejected the request for registration of the plaintiff.

5. As a result, the Plaintiff brought this case, claiming that the local authorities applied the law incorrectly or misinterpreted it.

Points of law

6. The plaintiff desires that the above decisions of the respondent Council be annulled on the basis, that article 11 of Chapter 464 of the Laws of Malta has been wrongly applied and interpreted. Therefore, the matter at hand clearly amounts to an action of judicial review, this meaning, that the court can only go as far as to annul the decision but not to substitute the discretion that the Medical Council holds at law.

7. The same applies as in the English common law rule, supported by local case law, that a court in judicial review, never substitutes its discretion for that of the public authority in deference to the doctrine of separation of powers. This meaning, that the general principle applicable under section 469A of Chapter 12 of the Laws of Malta is equally applicable to this case. But this is as far as this Court can go in so far as article 469A is concerned, since it has not been pleaded by the respondent.

8. As has been rightly observed "*The system of judicial review is radically different from the systems of appeal. When hearing an appeal the Court is concerned with the merits of the decision: is it correct? When subjecting some administrative act or order to judicial review, the Court is concerned with its legality: is it within the limits of the powers granted? On an appeal the question is 'right or wrong'. On review the question is 'lawful or unlawful'"* (Vide **Administrative Law, 8th Ed, Wade & Forsyth, pg 33**).

9. Therefore, in the light that Chapter 464 does not expressly refer matters to this Court and in so far as article 469A has not been pleaded, this Court can take cognisance of matters which are presently being considered, by virtue of article 32 of Chapter 12 of the Laws of Malta.

Considerations

10. At first glance, reasonabilness dictates that the claims of the plaintiff are founded on the principles of justice. She has obtained a medical decree in a non EU Country (Columbia), extensively practised the profession for a number of years in Columbia, had its degree recognised in a EU Country (Spain), and has also been recognised by the Maltese Centre of Recognition of Qualifications (MQRIC). Even the decisions of the European Court of Justice (ECJ) seem at first sight to give comfort to the plaintiffs claim in the present case.

11. Alas, notwithstanding all these positive factors, the Plaintiff's request, as already explained above, was damningly rejected by the appropriate adjudicatory bodies. This Court has to discover not whether justice was done and served but whether the conclusions reached by the relevant adjudicatory bodies are correct at law.

12. In this regard, keeping in mind that the law and justice do not always coincide and that behind this lack of coincidence there must be a clear logical objective to be achieved and that this must pass the test of

reasonableness. In other words, the decisions reached should be in accordance with sound thinking and within the bounds of common sense.

13. In her submissions to the Medical Council, the plaintiff made frequent reference to the case of the ECJ of the **7th May 1991 in the names of Irène Vlassopoulou -vs- Ministerium für Justiz, Bund.** In this particular case it was observed that *"If completion of a period of preparation or training for entry into the profession is required by the rules applying in the host Member State, those national authorities must determine whether professional experience acquired in the Member State of origin or in the host Member State may be regarded as satisfying that requirement in full or in part".* (Emphasis of the Court).

14. It seems to this court, that according to this judgment, the key factor involved in evaluating entitlement to registration mainly consists in the experience acquired by way of practice in the Member State of origin or the host Country member State.

15. No matter how much the plaintiff finds it unpalatable, article 2 of Chapter 464 does state that *"'evidence of formal qualifications' means diplomas, certificates and other evidence issued by the competent authority in a Member State designated pursuant to legislative, regulatory or administrative provisions of that Member State and certifying successful completion of professional training obtained mainly in the Community. Evidence of formal qualifications issued by a third country shall be regarded as evidence of formal qualifications if the holder has three years formal*

experience in the profession concerned on the territory of the Member State which recognised that evidence of formal qualification, certified by that Member State".

16. There is no doubt that the member State in question is Spain and not Columbia. The plaintiff herself agrees that she did not work in Spain and was not registered in another member State (a' fol 67). It is also undoubted, that the qualifications she holds do make her eligible to be registered and licensed in Spain. However, she did never register with the relevant Spanish authorities let alone practiced the profession in that State.

17. Furthermore The General System Directive 89/48/EEC lays down as follows in article 1:

"*For the purposes of this Directive the following definitions shall apply:*

(a) diploma: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other evidence: which shows that the holder has the professional qualifications required for the taking up or pursuit of a regulated profession in that Member State". (Emphasis of the Court).

18. Now, under Maltese law a three year period of practice whether in the member State of origin or the hosting member State is one of the qualifications required to taking up or persuing a medical profession. Indeed Arthur Camilleri, secretary to the Council, in examination keeps

insisting, that one of the *sine qua non* requirements is that the applicant must have undergone three year experience practising (a' fol 77 to 79).

19. This is also consonant with article 1(e) of article 42A of Chapter 464 of the Laws of Malta wherein it is stated that holders of qualifications issued by a third Country not being a member State must have three years experience in the profession concerned on the territory of a member State. According to this provision, if the holder is a migrant, notwithstanding the period of experience this does not entitle the holder automatic recognition by the host State. (Emphasis by the Court)

20. The plaintiff is a migrant seeking to practice her medical profession in Malta. However article 42A (1)(e) explicitly lays down that migrants must have *"in possession of evidence of formal qualifications issued by a third country and having three years professional experience in the profession concerned on the territory of that Member State which has recognised that evidence of formal qualification and certified by that member State"* (Emphasis of this Court).

21. The Court does not consider these provisions and requirements as running against the principle established in the ruling of **Irène Vlassopoulou** nor the relevant regulation of the EU. The EU leaves it to the member State to regulate matters as regards the qualifications required to establish elegibilty for registration. What the EU prohibits is the unreasonable refusal of registration once all the qualifications of the member state have been satisfied by the applicant.

22. However the plaintiff also complains that the Council failed to provide information regarding "*the knowledge, skills and competencies acquired by the appellant in the course of her professional experience or through lifelong learning"* as required by the Health Appeals Committee were nor carried out. This may be true, but it has little or no relevance to the matter in question. For the matter is determined by the criterion of three year experience in a member State, being that original or hosting.

23. There is no doubt that the Plaintiff did have this experience in Columbia. However, the regulation, the ECJ decision and local law all request that such experience refers to that happening on the territory of the Member State of Origin or in the host country member State. Columbia is not a member State nor a host country member state.

24. If this Court were to accept plaintiff's demand as to the nature of experience required under the law, it will not only be opening a flood gate to the prejudice to the local health care but would also be possibly discriminating against those that may have before been refused registration for the same reasons.

25. After having studied the detailed decision of the Health Care Professions Appeals Committee of the 19th November 2020, and in view of the above considerations, this Court will be rejecting the demands of the plaintiff.

Decide

For the above mentioned reasons the Court is hereby deciding this suit by **rejecting all the demands** of the plaintiff.

Expenses of the case to be borne by the Plaintiff.

Hon. Judge Toni Abela

Deputy Registrar