QORTI ĊIVILI

(SEZZJONI FAMILJA)

ONOR.IMHALLEF

JACQUELINE PADOVANI GRIMA LL.D., LL.M. (IMLI)

Illum 27 ta' Novembru 2024

Rik. Gur.Nru.:200 /2023 JPG

Kawza nru.: 20

AP u JP

Vs

CB u MB

Il-Qorti:

Rat ir-rikors ta' AP datat 28 ta' August 2023, a fol 1, li jaqra hekk:

1.0 <u>Fatti Preliminari</u>

1.1 Illi r-rikorrenti huma l-genituri tal-konvenuta CB, li hija mizzewwga lill-konvenut l-iehor MB.

1.2 Illi miz-zwieg tal-konvenuti CB u MB twieldu t-tfal minuri EB, li ghandha X snin u l-minuri LB, li ghandu Y snin, minn issa 'l quddiem flimkien riferuti f'dan ir-rikors guramentat bhala n-"Neputijijiet Minuri".

1.3 Illi n-Neputijijiet Minuri huma, ghaldaqstant, in-Neputijijiet maternali tar-rikorrenti.

1.4 Illi n-Neputijijiet Minuri minn dejjem kellhom relazzjoni tajba hafna mar-rikorrenti, u kienu sahansitra jqattghu hin twil gewwa d-dar tal-istess rikorrenti.

1.5 Illi jinghad r-rikorrent AP huwa fin-negozju mal-konvenut MB, b'dana li huma azzjonisti –direttament fil-kaz tar-rikorrent AP u indirettament fil-kaz tal-konvenut MB – fis-socjetajiet A.C.I. Ltd (C 51305) u Marsa Rebar Limited (C 65986).

1.6 Illi gara li bejn ir-rikorrent AP u l-intimat MB nqala' dizgwid fin-negozju u kellhom diversi argumenti esklussivament fuq kwistjonijiet li jappartjenu s-socjeta' u n-negozju taghhom, b'konsegwenza ta' liema llum prezentement hemm ghaddejjin proceduri gudizzjarji quddiem il-Qorti tal-Kummerc.

1.7 Illi sfortunatament, minn mindu nqala' d-dizgwid ta' natura kummercjali bejn l-imsemmija rikorrent AP u l-konvenut MB, ir-rikorrenti qeghdin jigu mcahhda ghal kollox mir-relazzjoni taghhom man-Neputijijiet Minuri, u dan minkejja li certament l-istess Neputijijiet Minuri ma ghandhom xejn x'jaqsmu man-negozju ta' bejn il-partijiet u d-dizgwid kummercjali ta' bejniethom.

1.8 Illi r-rikorrenti ma ghadhomx qeghdin jinghaw mill-konvenuti l-opportunita' sabiex iqaqttghu hin man-Neputijijiet taghhom u sahansitra gew imcahhda totalment minn kwalunkwe access jew komunikazzjoni man-Neputijijiet Minuri minn circa Jannar 2022.

1.9 Illi jidher li tali terminazzjoni tar-relazzjoni bejn ir-rikorrenti u n-Neputijijiet Minuri kienet unikament per konsegwenza tad-dizgwid fin-negozju bejn il-partijiet, u f'kull kaz ma tezisti ebda raguni valida sabiex huma jigu mcahhda milli jsahhu u jkomplu r-relazzjoni taghhom man-Neputijijiet.

1.10 Illi r-rikorrenti huma nanniet li jhobbu, jirrispettaw u verament iqisu l-ahjar interessi tan-Neputijijiet Minuri, li min-naha taghhom dejjem irrikonoxxew lir-rikorrenti bhala nanniet tajbin u li jridu l-ahjar interessi taghhom.

1.11 Illi r-rikorrenti ghamlu hafna sforzi sabiex jitkellmu mal-konvenuti u jipprovaw jaslu ghal ftehim li jilhaq l-ahjar interessi tan-Neputijijiet Minuri. Biss, il-konvenuti adottaw il-posizzjoni li sakemm il-kwistjonijiet kummercjali jibqghu pendenti, ir-rikorrenti m'huma se jkollhom ebda access ghan-Neputijijiet Minuri.

1.12 Illi qatt ma kienet l-intiza tar-rikorrenti sabiex jigu istitwiti dawn il-proceduri, u hi ghamlet kull tentattiv possibli sabiex kwalunkwe problema li jista' jkun tezisti bejnha u l-konvenuti jigu diskussi u rizolti b'mod informali, u minghajr il-bzonn ta' proceduri gudizzjarji. Tali tentattivi jinkludu komunikazzjoni permezz ta' messaggi, telefonati u anke ittri, inkluz dawk legali, intizi sabiex il-konvenuti jiltaqghu mar-rikorrenti u mhux biss jigu rizolti kwalunkwe problemi li jezistu bejniethom, izda anke sabiex jinghataw l-opportunita' li jkomplu jsahhu relazzjoni tajba man-Neputijijiet Minuri, liema tentattivi dejjem gew injorati da parti tal-konvenuti.

1.13 Illi ta' min jinghad illi r-rikorrenti istitwew ukoll proceduri ta' medjazzjoni nhar il-wiehed u ghoxrin (21) ta' April tas-sena elfejn, tlieta u ghoxrin (2023), fl-ismijiet AP et vs. CB et (ittra numru ta' riferenza 490/230), sabiex jigu diskussi l-problemi tal-kontendenti u sabiex jintlahaq ftehim fir-rigward ta' kif ir-rikorrenti jistghu jibdew jaraw lin-Neputijijiet Minuri u jqattghu ftit tal-hin maghhom. Minkejja dan, il-konvenuti ma wrew ebda interess f'li jippartecipaw fil-medjazzjoni u sahansitra ghamlu talba sabiex jinghalqu dawn il-proceduri.

1.14 Illi r-rikorrenti jhossu li mhuwiex gust li qeghdin jigu mcahhda milli jistabilixxu relazzjoni man-Neputijijiet Minuri, liema relazzjoni hija fl-ahjar interess anke tan- Neputijijiet Minuri. Tali sitwazzjoni qieghda tikkawza lir-rikorrenti diffikultajiet psikologici u r-rikorrenti jinsabu verament dispjacuti li s-sitwazzjoni familjari krollat b'dan il-mod.

1.15 Illi ghaldaqstant, in vista ta' dak suespost u kif ser jigi pprovat matul it-trattazzjoni ta' din il-kawza, kellhom jigu istitwiti dawn il-proceduri.

2.0 <u>Kunsiderazzjonijiet legali u fattwali</u>

2.1 Illi filwaqt li r-rikorrenti japprezzaw li genituri huma risponsabbli ghall-kura u l-kustodja tan-Neputijijiet Minuri, ma tezisti ebda gustifikazzjoni ghalfejn ir-rikorrenti ghandhom ikunu imcahhda mill-possibbilita' li jkollhom relazzjoni affettiva man-Neputijijiet taghhom.

2.2 Illi permezz ta' decizjoni ricenti tal-Qorti Ewropea tad-Drittijiet tal-Bniedem ("Il-Qorti Ewropea") fl-ismijiet ***Neli Vacheva vs Georgios Babanarakis,*** *deciza nhar il-wiehed u tlettin (31) ta' Mejju tas-sena elfejn u tmintax (2018), Il-Qorti Ewropea, meta ffacjata bil-mistoqsija ta' jekk ir-Regolament tal-Kunsill (KE) Nru. 2201/2003 dwar il-gurisdizzjoni u r-rikonoxximent u l-infurzar ta' sentenzi fi kwistjonijiet matrimonjali u kwistjonijiet ta' responsabbilta' tal-genituri jestendix il-kuncetti ta' "responsabbilta' paternali" u "drittijiet ta' access" anke ghan-nanniet, qalet illi:*

> *"It must be noted that 'rights of access' are defined broadly, encompassing in particular the right to take a child to a place other than that child's habitual residence for a limited period of time.*
>
> *That definition does not impose any limitation in regard to the persons who may benefit from those rights of access."*
>
> *Din is-sentenza ziedet illi:*
>
> *"Regulation No. 2201/2003 does not expressly exclude a request made by grandparents for rights of access to their grandchildren from coming within the scope of that regulation."*
>
> *...*

"It follows that the concept of rights of access referred to in Article 1 (2) (a) and in Article 2.7 and 2.10 of Regulation 2201/2003 must be understood as referring not only to the rights of access of parents to their child, but also to the rights of access of other persons with whom it is important for the child to maintain a personal relationship, among others, that child's grandparents, whether or not they are holders of parental responsibility."

2.3 Illi bis-sahha ta' din id-decizjoni, il-Qorti Ewropea kkonfermat il-principju illi 'responsabbilita' paternali' testendi anke ghan-nanniet, b'dan ifisser li m'ghandhomx ikunu mcahhda mid-drittijiet ta' access minghajr ebda raguni valida.

2.4 Illi sahansitra, il-Qrati Nostrana recentament kellhom l-opportunita' li jaghmlu analezi tal-interess guridiku tan-nanniet f'kawzi istitwiti ghall-access tan-Neputijijiet taghhom. Issir referenza ghas-sentenza tal-Qorti tal-Appell (Sede Superjuri) fl-ismijiet Cosmino Marziano et Vs. Silvia Marziano et., deciza nhar it-tmienja u ghoxrin (28) ta' Jannar tas-sena elfejn, wiehed u ghoxrin (2021), u kkonfermata mill-Qorti tal-Appell ghal darb' ohra wara talba ghal ritrazzjoni permezz ta' sentenza deciza nhar id-disgha u ghoxrin (29) ta' Marzu tas-sena elfejn, tlieta u ghoxrin (2023), fejn gie deciz illi:

"the issue in the present case is whether or not Maltese ordinary law grants the grandparents a possibility to make a request to the court to be granted access to their grandchildren.

27. In the Civil Code there is no express provision of law granting such a right.

28. However, according to article 7(2) of the Civil Code grandparents have an obligation to provide maintenance for their grandchildren in particular circumstances:

"7(2) In default of the parents, or where the parents do not possess sufficient means, the liability for the maintenance and education of the children devolves on the other ascendants".

29. An obligation which leads to the participation of the grandparents in the life of grandchildren. The law also provides that children have an obligation to provide maintenance to their ascendants in case of indigence (art. 8 of the Civil Code). Such obligations would not seem to be justified if it is declared that in all cases, irrespective of the circumstances, grandparents have absolutely no right to ask the Court to authorize them to have some form of contact with their grandchild.

30. <u>These obligations are in themselves a confirmation that Maltese law recognizes the existence of a special relationship between grandparents and their grandchildren, and therefore grandparents have an interest in making a request to have some form of contact with their grandchildren."</u>

2.5. Illi anke permezz ta' decizjoni tat-tlettax (13) ta' Gunju tas-sena elf disa' mija disgha u sebghin (1979) fl-ismijiet Marckx vs. Belgium, il-Qorti Ewropea kienet diga' stabbiliet il-principju illi:

"In the Court's opinion, "family life", within the meaning of Article 8 (art. 8), includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life."

*2.6. Illi, inoltre, il-preambolu tal- "**Convention on Contact Concerning Children**" iffirmata, fil-hmistax (15) ta' Ottubru tas-sena elfejn u tlieta (2003) mill-Istati Membri tal-Kunsill tal-Ewropa u Firmatarji Ohra taghmel referenza ghall-bzonn li minuri jkollhom kuntatt u relazzjoni mhux biss mal-familja immedjata taghhom, u cioe' l-genituri, izda anke ma' persuni ma' min tali minuri jista' jkollhom 'family ties', u cioe':*

"the need for children to have contact not only with both parents but also with certain other persons having family ties with children and the importance for parents and those other persons to remain in contact with children, subject to the best interests of the child."

2.7. Illi l-eta' tenera tan-Neputijijiet Minuri zzid il-bzonn li ma jigux deprivati mill-possibbilita' li jibbenifikaw minn relazzjoni qariba u affetwata man-nanna maternali taghhom.

2.8. Illi jsegwi li d-drittijiet tar-rikorrenti li jistabilixxu relazzjoni ma' u jkollhom access ghan-Neputijijiet Minuri, flimkien mad-dritt tan-Neputijijiet Minuri li jkollhom kuntatt man-nanniet materni taghhom m'ghandhomx jigu interpretati bhala limitazzjjoni tar-responsabbiltajiet u drittijiet tal-genituri. Min-naha l-ohra isegwi li d-decizjoni tal-konvenuti li jcahhdu lin-Neputijijiet Minuri milli jistabilixxu relazzjoni mar-rikorrenti jmur kontra d-dritt ghar-rispett tal-hajja privata u tal-familja tan-Neputijijiet Minuri kif protett mill-Artikolu 8 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal- Bniedem. Inoltre, id-dritt u obbligu ta'genitur illi jiehu decizjonijiet f'isem uliedu ma jista' qatt jinghata precedenza fuq l-importanza li jigi accertat li l-aqwa interessi ta' minuri qeghdin jigu rispettati, kuncett li jirrizulta mill-Artikolu 149 tal-Kodici Civili (Kapitolu 16 tal-Ligijiet ta' Malta), li jipprovdi illi:

"B'dak kollu li jinsab f'kull dispozizzjoni ohra ta' dan il-Kodici, il-qorti tista', jekk tigi murija raguni tajba, taghti dawk l-ordnijiet dwar il-persuna jew il-propjeta' ta' persuna li tkun taht l-eta' kif jidrilha xieraq fl-ahjar interessi tat-tifel."

2.9. Illi hija certament fl-ahjar interess tan-Neputijiet Minuri li jesperjenzaw l-imhabba u l-affezzjoni li tista' toffri r-rikorrenti bhala nanna taghhom, u dan kif anke jista' jigi ppruvat matul it-trattazzjoni ta' dawn il-proceduri odjerni.

3.0. Talbiet

Ghaldaqstant, ghar-ragunijiet hawn fuq permessi, u abbazi tad-decizjonijiet tal-

qrati fuq indikati, ir-rikorrenti umilment titlob lil din il-Onorabbli Qorti sabiex:

A. *Tiddikjara li huwa fl-ahjar interess tan-Neputijijiet Minuri EB u LB li r-rikorrenti jkollhom access ghall-istess Neputijiet Minuri u li jkunu jistghu jiltaqghu u jqattghu hin maghhom;*
B. *Taghti access lir-rikorrenti ghan-Neputijijiet Minuri billi tistabilixxi dawk il-granet, hinijiet u direttivi li dina l-Onorabbli Qorti jidrilha li huma xierqa u li jwaslu sabiex in-Neputijijiet Minuri jkomplu jibnu relazzjoni man-nanniet rikorrenti;*
C. *Taghti dawk id-direttivi ohra li jidrilha xierqa u opportuni dina l-Onorabbli Qorti.*

Rat illi r-rikors promotur, l-atti esebiti u d-digriet ta' din il-Qorti gew notifikati skond il-ligi;

Rat ir-risposta ta' CB u MB datata 16 ta' Ottubru 2023, a fol 10 li taqra hekk:

1.Il-karenza ta' interess guridiku, u konsegwentement, in-nuqqas ta' legittimita' attiva, tal-atturi biex jipprosegwu t-talbiet taghhom fl-att promotur.

Il-ligi civili f'Malta tassoggetta lill-minuri ghall-awtorita' tal-genituri flimkien, bl-eskluzjoni ta' terzi, salv fejn il-ligi tipprovdi mod iehor fl-assenza tal-presenza jew tal-kapacita' fizika jew legali tal-genituri, jew tal-anqas wiehed minnhom. F'dan il-kaz, l-eccipjenti flimkien, bhala genituri naturali u legali tal-minuri in kwistjoni, qed jezercitaw f'unjoni bejniethom, u fl-ahjar interess ta' uliedhom, l-istess awtorita' ta' genituri.

2. Fil-mertu, it-talbiet tal-attur huma infondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez.

3. Mhux minnu li d-decizjoni mehuda mill-eccepjenti flimkien, li jwaqqfu l-komunikazzjoni mal-atturi, kienet motivata minn ragunijiet jew interessi kummercjali, u dan kif ser jirrizulta ahjar fil-kors ta' din il-kawza.

4. F'kull kaz u minghajr pregudizzju, it-talbiet tal-atturi mhumiex fl-ahjar interess

tal-minuri, li prezentement qed igawdu tfulija serena bi trobbija f'valuri u f'ghaqda mal-eccepjenti genituri taghhom.

Rat id-dokumenti ezebiti u l-atti kollha tal-kawza;

Semghet lill-avukati difensuri tal-partijiet jittrattaw l-eccezzjoni preliminari sollevata mill-konvenuti;

Ikkunsidrat:

Illi din l-eccezzjoni preliminari giet sollevata wkoll ricentement b'mod identiku quddiem din il-Qorti diversament preseduta fir-**Rikors Guramentat 25/2024 AGV**[1] u l-Qorti ghamlet ezami rigoruz tal-gurisprudenza li waslitha sabiex tichad l-eccezzjoni preliminari u tkompli bis-smiegh tal-kaz. Dan l-insenjament segwa wkoll il-linja li hadet il-Qorti fil-kaz ta' ***Cosimo Marziano et vs Silvia Marziano et*** **(Rik. 200/19)** deciza fit-tmienja u ghoxrin ta' Jannar elfejn u wiehed u ghoxrin u kkonfermat fi ritrattazzjoni fid-disgha u ghoxrin ta' Marzu elfejn tlieta u ghoxrin fil-Qorti tal-Appell.

Din il-Qorti taghmel taghha l-istess insenjament kemm ghaliex taqbel mieghu kif ukoll fl-interess tal-gustizzja naturali li titlob konsistenza fl-insenjament u l-hsibijiet tal-Qrati, anke jekk f'Malta l-Qorti mhix marbuta bil-precedent.

Konsiderazzjonijiet legali:

1. Illi Kap. 16 tal-Liġijiet ta' Malta jipprovdi kif ġej fir-rigward ta' manteniment:

> ***7.(1) Il-ġenituri għandhom l-obbligu li jieħdu ħsieb,imantnu, igħallmu u jedukaw lil uliedhom bil-mod stabbilit fl-artikolu 3B.***
>
> ***(2) Meta ma hemmx il-ġenituri, jew jekk dawn ma jkollhomx mezzi biżżejjed, id-dmir tal-manteniment u tal-edukazzjoni tal-ulied jaqa' fuq l-axxendenti l-***

[1] Digriet tal-10 ta' Ottubru 2024 fl-ismijiet AGC U NGC VS AGC U JGC ghal kull interess li jista' jkollu.

oħra.

20.(1) Il-manteniment għandu jingħata skont il-bżonn ta' min jitolbu u l-mezzi ta' min għandu jagħtih.
(2) Fl-istħarriġ sabiex jinsab jekk min jitlob il-manteniment jistax jaqalgħu xort'oħra, għandu jittieħed qies ukoll tal-ħila tiegħu fl-eżerċizzju ta' xi professjoni, arti jew sengħa.

(3) Meta jinqiesu l-mezzi ta' min hu obbligat għall-manteniment, għandu jingħadd biss il-qligħ tiegħu mix-xogħol tal-professjoni, arti jew sengħa, is-salarju jew il-pensjoni tiegħu mogħtija mill-Gvern jew minn ħaddieħor, u tal-utili tal-beni, sew mobbli kemm immobbli u kull dħul li jinħoloq taħt trust.

(4) Ma jitqiesx li għandu mezzi biżżejjed biex jagħti l-manteniment min ma jistax jagħtih ħlief billi jilqa' f'daru l-persuna li titlob dak il-manteniment, jekk din il-persuna ma tkunx axxendent jew dixxendent.

Huwa taht il-Kodici Civili li hemm **referenza ghan-nanniet** jew ahjar "**axxendenti**" u effettivament fis-Sub-titolu II tat-Titolu I tal-Kodici Civili ntitolat "**Fuq il-Jeddijiet u d-Dmirijiet bejn Axxendenti, Dixxendenti u Ahwa**," il-Qorti tipprovdi dwar l-obbligu ta' manteniment li f'kaz biss li l-genituri jew jekk dawn ma jkollhomx mezzi bizzejjed, id-dmir tal-manteniment u tal-edukazzjoni jaqa' fuq l-axxendenti l-ohra, u cjoe' n-nanniet tal-minuri (Artikolu 7). Il-ligi tipprovdi anke l-gradi ta' kif u min huwa intitolat li jithallas manteniment (Artikolu 12).

Ukoll, fl-istess Sub-Titolu li l-ligi tipprovdi biss dwar il-manteniment ghat-tfal minuri mill-axxendenti u cioe' f'dan il-kaz in-nanniet tal-minuri, filwaqt li l-Artikoli li jirrelataw dwar l-access tal-minuri qedghin taht s-sub-Titolu III tat-Titolu I tal-Kodici Civili li huwa intitolat "Fuq il-Firda Personali."

Inoltre, Titolu IV tal-Ewwel Ktieb tal-Kodici Civili li huwa intitolat "Fuq is-Setgha tal-Genituri" fejn il-ligi tipprovdi dwar l-effetti u t-terminazzjoni tas-setgha tal-genituri tal-ulied minuri. B'mod partikolari, taht l-Artikolu 149 tal-Kodici Civili, il-ligi tipprovdi kif il-Qorti ghandha tiddeciedi dwar il-minuri dwar kwalunkwe disposizzjoni tal-Kodici fl-ahjar interess

taghhom.

Mill-analizi tad-diversi ligijiet, ma jirrizultax karament illi li l-Qorti Civili (Sezzjoni tal-Familja) ghandha l-kompetenza li tisma' u tiddeciedi dwar access tal-minuri versu l-axxendenti taghhom u cioe' n-nanniet paterni. Madanakollu, il-Legislatur gharaf li ghandu jkun hemm partecipazzjoni tan-nanniet fil-hajja tan-neputijiet u dan bid-disposizzjonijiet fuq citati rigward il-hlas ta' manteniment, fejn in-nanniet ghandhom jikkontribwixxu lejn il-manteniment tal-minuri jekk kemm il-darba l-genituri mhumiex fi stat li jmantnu lil uliedhom.

Inoltre, l-Artikolu 149 tal-Kodici Civili, jaghti diskrezzjoni wiesgha lil Qorti fejn, b'dak kollu li jinsab f'kull dispożizzjoni oħra tal-Kodiċi Civili, il-Qorti tista' taghti ordnijiet fejn jezistu ragunijiet tajba, biex dejjem thares l-ahjar interessi tal-minuri u f'din l-istess disposizzjoni generali jfisser li jekk ikun opportun li t-tfal minuri jkollhom kuntatt man-nanniet u ser jibbenifikaw minn dan il-kuntatt, taht dina d-disposizzjoni tal-ligi, il-Qorti ghandha s-seta' li tawtorizza dan.

Kif jidher mill-gurisprudenza nostrali fir-rigward ta' aċċess għan-nanniet, l-Onorabbli Qorti tal-Appell fis-sentenza **Cosimo Marziano et vs Silvia Marziano et** mogħtija nhar it-28 ta' Jannar tas-sena 2021 ippronunzjat is-segwenti:

> ***"it will now be up to the Family Court to decide on the merits of the case, and therefore whether the grandparents should have any contact with their granddaughter. The Court is certainly not declaring that the plaintiffs have a guaranteed right to visit or have contact with their granddaughter. However, as grandparents, they do have a right to ask for visitation. The Family Court will then take a decision based on the best interests of the child."***

2. Illi l-Onorabbli Qorti tal-Appell għamlet is-segwenti konsiderazzjonijiet li huma applikabbli wkoll għal każ *de quo:*

> ***However, according to article 7(2) of the Civil Code grandparents have an obligation to provide maintenance for their grandchildren in particular***

circumstances:

"7(2) In default of the parents, or where the parents do not possess sufficient means, the liability for the maintenance and education of the children devolves on the other ascendants."

29. An obligation which leads to the participation of the grandparents in the life of grandchildren. The law also provides that children have an obligation to provide maintenance to their ascendants in case of indigence (art. 8 of the Civil Code). <u>Such obligations would not seem to be justified</u> if it is declared that in all cases, irrespective of the circumstances, grandparents have absolutely no right to ask the Court to authorize them to have some form of contact with their grandchild (enfasi ta' din il-Qorti).

30. These obligations are in themselves a confirmation that Maltese law recognises the existence of a special relationship between grandparents and their grandchildren, and therefore grandparents have an interest in making a request to have some form of contact with their grandchildren.

Illi ghalhekk kif irriteniet din il-Qorti diversament preseduta fir-Rikors Gur 25/2024:

In-nanniet ghandhom dritt jirrikorru ghall-qrati biex ifittxu access ghan-neputijiet minuri taghhom, bid-decizjoni ahharija dejjem tittiehed fl-ahjar interess tat-tifel. Din kienet id-dikjarazzjoni finali tal-Qorti tal-Appell fejn il-fatti kienu jirrigwardaw nanniet Taljani ta' tifla minuri li kienet qed ighix hawn Malta ma' binthom imwarrba u zewgha, li kienu qed ifittxu sabiex jistabilixxu kuntatt mat-tifla.

Il-Qorti Civili (Sezzjoni tal-Familja) gharrfet l-interess guridiku taghhom li jfittxu access, li madanakollu ma kienx dritt awtomatiku u assolut. Il-Qorti tal-Appell ikkonfermat dina s-sentenza u fuq kollox osservat illi ghalkemm il-Kodici Civili ma kien fih ebda disposizzjoni espressa li taghti tali dritt li tfittex access, madanakollu, imponiet fuq in-nanniet obbligu li jipprovdu "ghall-manteniment u l-edukazzjoni tat-tfal" meta l-genituri naqsu jew ma kellhomx bizzejjed tfisser,

Il-Qorti tal-Appell ukoll osservat li l-ligi tiddisponi li f'kaz tal-bzonn tal-axxendenti taghhom, it-tfal huma marbuta li jipprovdu ghalihom. Obbligi bhal dawn wasslu sabiex in-nanniet jippartecipaw fil-hajja tan-neputijiet. Il-Qorti ziedet tghid li ma jkunx gustifikat li ssir dikjarazzjoni generali li n-nanniet assolutament m'ghandhom l-ebda dritt li jfittxu xi forma ta' kuntatt permezz tal-qrati. Ghalhekk jista' jigi konkluz li l-qorti gharrfet li tezisti "relazzjoni specjali" bejn in-nanniet u n-neputijiet u giet rikonoxxuta taht il-ligi Maltija u konsegwentement kien fl-interess guridiku tan-nanniet li jitolbu xi forma ta' kuntatt.

3. Illi sa mill-1979, **Il-Qorti Ewropea għad-Drittijiet Fundamentali tal-Bniedem (ECHR)** irrikonoxxiet illi r-relazzjonijiet bejn minuri u n-nanniet jikkostitwixxu parti fundamentali tad-dritt għal ħajja ta' familja protett mill-Artikolu 8 tal-**Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem**. Senjatament fis-sentenza mogħtija nhar it-13 ta' Ġunju 1979 fl-ismijiet ***Marckx vs Belgium***, il-Qorti ppronunzjat is-segwenti:

"In the Court's opinion, "family life", within the meaning of Article 8 (art. 8), includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life."

Din il-Qorti inoltre irriteniet is-segwenti fir-Rikors 25/2024:

"Quddiem il-Qorti Ewropea ghad-Drittijiet Fundamentali tal-Bniedem il-kuncett ta' "family life" jirrikjedi dak li gie stabbilit fil-kaz fuq surreferit li "there are sufficiently close family ties between them," jigifieri bejn in-nanniet u n-neputijiet. Il-Qrati marru oltru, fejn enuncjaw li ma hemmx il-htiega li jkun hemm xi tip ta' [k]oabitazzjoni, ghax dan mhux prerekwizit ai fini ta' "family life" izda "close relationships created by frequent contact also suffice."

Kien hemm zewg sentenzi, Manuello et Nevi (2015) u Beccarini et Ridolfi (2017), fejn il-Qorti ma hassitx in-necessita' li jkun hemm "close family ties"

bizzejjed jekk ikun hemm [k]oabitazzjoni.

"In Beccarini et Ridolfi, the grandparents had in fact been caring for their three grandchildren for approximately eight years, from when the children were very young. In Manuello et Nevi, on the other hand, there is nothing to indicate that they had ever lived together, and nevertheless the existence of a family life is not questioned."

Il-Qorti fil-kaz ***Johanna Petreski vs Andrew Borg Manduca et. Deciza fit-8 ta' Ottubru, 2024****, ghamlet studju estensiv fuq dina l-"grey area" u qalet hekk:-*

"Developments in society have therefore created grey areas in the law, because these developments take place at a much faster pace than legislative adaption. It therefore, becomes challenging because these grey areas may give risk to uncertainties concerning the existence of rights of access by persons other than parents, in this case grandparents.

In Valcheva vs Babanarakis decided on the 31st May, 2018, the Court questioned the following "with regard to grandparents specifically, is not that uncertainty disconcerting considering that, in principle and subject to the best interests of the child, contact between grandparents and their grandchildren, in particular in an ever-changing society, remains an essential source of stability for children and an important factor in the intergenerational bond which undoubtedly contributes to building their personal identity?"

"The reasoning in the Valcheva case is however based upon a general presumption that grandparents are indispensable in their grandchildren's life as they offer them support and stability. Acting on this presumption can be dangerous as not every grandparent can necessarily offer that support and stability and if grandparents are seeking access rights to their grandchildren, this is obviously a consequence of conflict with the parents, who in exercising their parental authority have denied access between the grandparents and grandchildren for reasons they are aware of. It is here that the Court plays a significant role because it can override any parental decision if denying access

to the grandparents is not in the best interests of their chidren. However, each case needs to be assessed individually."

In sintesi, il- Qorti Ewropea ghad-Drittijiet Fundamentali tal-Bniedem qatt ma warrbet kawzi li gew intavolati minn nanniet a bazi ta' nuqqas ta' kompetenza, kif ghamlet wara kollox il-Qorti Civili (Sezzjoni tal-Familja) hawn Malta, fil-kaz ta' ***Marziano****, ghaliex apparti lin-nanniet ghandhom dritt u interess guridiku li jistitwixxu proceduri, jekk jinghatawx dan id-dritt jidddependi mic-cirkostanzi. Il-punto di partenza huwa li fil-kamp tal-ligi Civili stess, jekk kemm il-darba n-nanniet jifthu proceduri sabiex jinghataw access ghan-neputijiet, dan huwa r-rizultat ta' dizgwid bejn in-nanniet u l-genituri tal-minuri/neputijiet, li jezercitaw "parental authority" fuq uliedhom. Dan iwassal sabiex tinholoq atmosfera ta' nuqqas ta' kooperazzjoni u stabbilita' fil-familja, anke estiza, fejn generalment il-presunzjoni hi li n-nanniet jistghu joffru sapport lin-neputijiet.*

*Il-presunzjoni generali dejjem hi li n-nanniet huma importanti u relevanti f'hajjet in-neputijiet, ghax jifformaw parti minn nukleju familjari, izda il-Qorti qatt ma tista' titlaq minn din il-presunzjoni, ghaliex jekk kemm il-darba n-nanniet jispiccaw il-Qorti huwa evidenti li r-relazzjonijiet mal-genituri tal-ulied mhix wahda stabbli u l-istess nanniet jixtiequ jisfidaw id-decizjonijiet ezercitati mill-genituri tan-neputijiet minhabba li ghandhom "parental authority" u dawk l-istess decizjonijiet mhux qed jilledu d-dritt taghhom "****to a family life."***

Isegwi ghalhekk li, ghalkemm il-Qorti hija kompetenti, dan id-dritt tan-nanniet li jipprocedu, bhal fil-kaz odjern, mhux dritt assolut u l-ewwel kompitu li trid taghmel il-Qorti hija li trid tiddetermina jekk l-access man-nanniet ser ikun ta' gid u fl-ahjar interess tal-minuri. Il-Qorti ma tistax titlaq mill-presunzjoni li n-nanniet huma indispensabbli f'hajjet in-neputijiet, ghaliex tkun qed tpoggi lil istess minuri f'posizzjoni inferjuri ghal dak tan-nanniet, posizzjoni li tippregudika l-iskop tal-istess proceduri, fejn il-minuri ghandhom ikunu fic-centru tal-kaz, fejn il-kaz ghandu biss jirrivolvi lejn l-interessi taghhom, irrispettivament mill-"parental authority ezercitat fir-relazzjoni bejn genituri u ulied.

Ghalhekk, huwa evidenti li l-Legislatur gharraf li l-interessi tal-minuri

ghandhom ikunu supremi u ghalhekk ried l-Artikolu 149 tal-Kodici Civili ikun disposizzjoni li joffri flessibilita' enormi lill-Qorti biex dejjem tissalvagwardja dawn l-interessi.

Fil-kaz ***N.V. and C.C. vs. Malta*** *deciza mill-Qorti Ewropeja tad-Drittijiet Fundamentali fl-10 ta' Novembru, 2022, il-Qorti qalet hekk in konsiderazzjoni tal-Artikolu 149 tal-Kap.16 tal-Ligijiet ta' Malta:-*

"In assessing those decisions, the Court must ascertain more specifically whether the domestic courts conducted an in-depth examination of the entire family situation and of a whole series of factors, in particular of a factual, emotional, psychological, material and medical nature, and whether they made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what the best solution would be for the child (see Neulinger and Shuruk vs Switzerland (GC) No. 41615/07 §139, 6 July 2010).

Il-Qorti marret oltre fejn spjegat illi:

Indeed, the Court has often reiterated that there is a broad consensus- including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (see for example, X vs Latvia (GC) no. 27853/09, §96, ECHR, 2013). Furthermore, the child's best interests may, depending on their nature and seriousness, override those of the parents (see Neulinger and Shuruk, cited above, §134, and Sahin v. Germany (GC), no. 30943/96, §66, ECHR 2003-VIII). In particular a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development.

Certament, in-nanniet ghandhom dritt li jifthu kawza sabiex jinghataw access ghan-neputijiet, peress li taht l-Artikolu 8 tal-Konvenzjoni, ghandhom dritt ***"to a family life",*** *liema Konvenzjoni tiehu precedenza fuq il-ligi domestika u ghalhekk il-Qorti hija kompetenti sabiex tikkunsidra tali kaz, ghaliex jekk il-genituri qed jiehdu decizjonijiet ghal uliedhom fejn jikkoncernaw lin-nanniet u jimpeduhom milli ikollhom kuntatt maghhom u l-istess nanniet iridu dak il-kuntatt, dina l-Qorti trid taccerta ruhha li dina l-awtorita' tal-genituri mhix qed tilledi d-*

drittijiet tan-nanniet.

*Dan kien ir-ragunament tal-**Profs. K. Sandberg** fl-Artikolu tieghu "**Grandparents' and Grandchildren's right to contact under the European Convention on Human Rights**:-*

"Grandparents and parents acting as opponents in a courtroom may be harmful to the children involved. It does not facilitate an atmosphere of cooperation where the grandparents can act as a support for the child.[2] A case brought before the ECHR often is a sign that there is not a peaceful relationship between the parties. In the private law cases, the parents for some reason do not want the grandparents to see the children, which is why the court system has become involved.

Grandparents may be good for their grandchildren, including in conflict cases. However, decisions in individual cases cannot be based on this as a general presumption. Whether the grandparents' right to family life has been violated in a specific case should depend not only on the consequences for the grandparents but also – and more importantly – on whether contact is in the child's best interests. The best interest assessment has to be made individually, as required by Article 3(1) CRC. A result based on a general presumption may potentially be contrary to the best interests of the child in a specific case. Once a child is capable of forming a view, which children are from an early age, their best interests cannot be determined without hearing the child's own view. An awareness in this respect is all the more important as the ECHR cases under Article 8 are brought by adults for violations of their right to family life. The best interests of the child only enter the case in the proportionality assessment and children's own rights are absent from the scene. If their best interests are not even properly examined and their views taken into account, children are placed in a subordinate position that does not harmonise with their being at the centre of the case".

Ghalhekk, ghandu jinghad pero' ukoll li kull kaz huwa individwali u l-Qorti fl-

[2] Elevenjournals.com, Family & Law "Grandparents' and grandchildren's right to contact under the European Convention of Human Rights" Profs. K. Sandberg

ambitu tal-kompetenza taghha bhala Qorti Civili (Sezzjoni tal-Familja) ghandha tiddetermina jekk hemmx ragunijiet sufficjenti li tawtorizza tali access, pero' li huwa l-iktar important huwa li d-decizjoni taghha ser tissalvagwardja l-ahjar interessi tal-minuri.

Illi dan ma jfissirx illi ghax in-nanniet ghandhom dritt illi jintavolaw dawn il-proceduri, din il-Qorti ma tirrikonoxxix id-diffikultajiet li hemm fir-relazzjonijiet prezenti. Madanakollu minghajr ma l-partijiet jinghataw l-opportunita li jressqu l-provi rispettivi taghhom, din il-Qorti ma tistax tesegwixxi l-ezami approfondit rikjest skont il-gurisprudenza.

Fid-dawl ta' dan l-insenjament moghti gurisprudenza nostrali kif ukoll dak tal- ECHR, huwa evidentissimu li l- atturi ghandhom l-interess rikjest u il-legittima' attiva biex jintavolaw u jipprosegwixxu bit-talbiet taghhom.

Ghaldaqstant, din il-Qorti tichad l-eccezzjoni preliminari sollevata mill-konvenuti u tordna l-prosegwiment tal-kawza.

L-ispejjez ta' din s-sentenza in parte huma riservati ghall-vertenza finali.

Moqrija.

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