



## PRIM'AWLA TAL-QORTI ĆIVILI

Onor. Imħallef Henri Mizzi

**Illum 31 ta' Lulju 2025**

**Nru: 2**

**Rikors Nru. 93/2019/1**

**Avv. Charlene Baldacchino Gauci f'isem  
Adrien Malgonne**

**V**

### **HOSI Malta Limited**

#### **Fil-qosor**

- Ir-rikorrent Adrien Malgonne (minn hawn ‘il quddiem ir-‘rikkorrent’ jew ‘Malgonne’) qiegħed ifitħex lis-socjetà konvenuta ‘HOSI Malta Limited’ (minn hawn ‘il quddiem is-‘socjetà konvenuta’ jew ‘HOSI’) għall-ħlas li huwa jgħid li huwa dovut skont kuntratt ta’ impjieg li hu kċċu ma HOSI. Fil-meritu, HOSI teċċepixxi li dan il-kuntratt m’huwiex enforzabbli u li fi kwalunkwe każ, ma għiet sodisfatta l-ebda mill-kondizzjonijiet meħtieġa biex l-obbligu assunt minnha biex tħallas l-ammont mitlub minn Malgonne jiskatta.

#### **Kuntratti bejn Malgonne u HOSI**

- Fis-16 ta’ Jannar 2017 Malgonne daħal f’kuntratt t’impjieg għal terminu definit ta’ sentejn mill-1 ta’ Jannar 2017 sal-31 ta’ Dicembru 2018. Xogħolu kien bhala l-‘Head of Maintenance and Leonardo Products and Deputy Maintenance Manager B1.3’ ma’ Heliconia Aero Solutions (minn hawn ‘il quddiem ‘Heliconia’), “a Moroccan airline

*Company engaged in transport activities and helicopter work*”, u dana versu remunerazzjoni ta’ €11,808 fix-xahar.<sup>1</sup> Għalkemm Malgonne kien iwettaq ix-xogħol għal Heliconia, il-kuntratt t’impjieg tiegħu ġie ffirmat ma’ HOSI, li ssekondatu lil Heliconia.<sup>2</sup>

3. Fl-2017, kien hemm il-pjan li HOSI tiġi ristrutturata.<sup>3</sup> Malgonne avviċina lil HOSI, u esprima t-thassib tiegħu li dan kien ser ikun qed jiippreġudika l-impjieg definit tiegħu. Fit-22 ta’ Novembru 2017, il-partijiet ftehma fuq emenda għall-kuntratt t’impjieg ta’ Malgonne. Żdiedet din il-klawsola fis-sezzjoni intitolata ‘Termination’:

“In case of termination by Heliconia or if the contract is not renewed by decision of Heliconia or followed by another contract with Heliconia, The Company [HOSI] shall pay to the Employee [Malgonne] a 3 weeks’ pay off for each year of Service completed at time of the Contract (considering the employee’s date of entry with Heliconia Group’s Service as of 01 February 2014).”<sup>4</sup>

4. Ftit ġranet wara, ic-Chairman ta’ HOSI, Daniel Sigaud bagħat email lil Malgonne biex jiispjegalu x’kien ser jiġri. F’dan l-email mibghut fil-25 ta’ Novembru 2017, Sigaud qal hekk:-

“Early next Year, Chris – as CEO – and after having taken stock of where we are and of the contributions which all current managers can make towards developing Heliconia’s plans, will revert to the Board with an up-dated Group’s Organisation Chart – including that of HI. I am completely confident that you can have an important role within those structures and we shall then finalize a new Contract, as your current one, needs in any case to be up-dated in terms of Position, Responsibilities, Working Schedule including ‘rotation’ and of course overall financial compensation. I am confident that we shall ultimately agree Terms and Conditions for a much longer working relationship meeting both Parties’ aspirations.”<sup>5</sup>

### **Diskussjonijiet għat-tiġidid tal-kuntratt t’impjieg jew għall-iffirmar ta’ kuntratt ġdid**

5. Malgonne jgħid li bejn Jannar u Ġunju 2018, huwa għamel diversi attentati sabiex jara x’kien ser jiġri wara li jiskadi l-kuntratt t’impjieg tiegħu fil-31 ta’ Dicembru 2018:

Adrien Malgonne: I kept asking them several times from my direct management, or the managing director, what was going on about my contract because it was ending at the end of the year, and as discussed with Daniel.....the chairperson of ... I knew we had to do something about my contract even before we ended, because it wasn't fit for the work pattern and my position anymore. And that's something Daniel agreed

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<sup>1</sup> Ara l-kuntratt t’impjieg bejn Malgonne u HOSI datat is-16 ta’ Jannar 2017, f’paġni 34-43.

<sup>2</sup> *Ibid.* HOSI tifforma parti mill-istess grupp ta’ kumpannija flimkien ma’ Heliconia. HOSI għiet ingaġġata minn Heliconia, “to supply a range of Services as part of the development of its business activity, including the deployment of qualified and trained aeronautics personnel, particularly for the development of transport, business on behalf of oil companies.”

<sup>3</sup> Ara l-affidavit ta’ Malgonne f’paġni 32-33.

<sup>4</sup> Ara l-emenda fil-kuntratt t’impjieg ta’ bejn Malgonne u HOSI datata t-22 ta’ Novembru 2017, f’paġni 269-270.

<sup>5</sup> Ara l-emails f’paġni 46-49.

on and he also agreed to do something about the contract. And after that agreement and that discussion with Daniel, I kept asking the management of .....in Marrakesh, the CEO Chris.....and Caroline, the director of human resources, can we discuss about my contract and can we enter into a discussion to finalise something, and they were never available nor even listening, so they never did anything about my contract as Daniel.....<sup>6</sup>

6. Malgonne jghid li d-direct manager tiegħu, li jiġi l-industrial director ta' Heliconia, Julien Hoff, serva bħala l-punt ta' kuntatt tiegħu f'dawn id-diskussionijiet.<sup>7</sup> Hoff xehed u kkonferma li kien ipprova jkellem lil Heliconia diversi drabi biex isaqsi kif kienu ser jinbidlu r-responsabbiltajiet u l-pożizzjoni ta' Malgonne wara r-ristrutturar ta' HOSI. Fl-affidavit tiegħu, huwa jghid li "From January to end of June 2018, despite my different attempts, the CEO and HR, never addressed with Adrien the subject of the new contract and new position."<sup>8</sup> Meta ġie mistoqsi waqt il-kontro-eżami tiegħu, Hoff insista li, li kieku l-kwistjoni qatt ġiet indirizzata, dan kien ser jingieb a konoxxenza tiegħu peress li huwa kien is-superjur ta' Malgonne. Apparti minn hekk huwa qal li kien jirrapporta direttament lic-CEO ta' Heliconia, u għalhekk kwalsiasi diskussionijiet bejn ic-CEO u Malgonne kienu neċċessarjament ser jinkludu lilu ukoll.<sup>9</sup>
7. Ic-Chief Executive Officer tal-Heliconia Group, Chris Krajewski, jghid li qatt ma tkellem ma' Malgonne dwar il-futur ta' Malgonne f'Heliconia qabel il-laqgħa li kellu ma Maglonne li tissemma' iktar 'l-isfel. Huwa jikkonferma wkoll li Heliconia qatt ma kienet ippjanat xejn għal Malgonne u f'moħħha kellha biss il-ħsieb li Malgonne jibqa' impjegat fl-istess pożizzjoni. Krajewski jikkonferma dak allegat minn Hoff u Malgonne; cioè li Heliconia qatt m'għamlet proposta jew offerta lil Malgonne biex jiġgedded il-kuntratt jew biex jiġi ffirmat kuntratt ġdid:-

Dr Gauci: Yes, did the company ever have a conversation with a proposal or a discussion about his future with the company?

Chris Krajewski: No, other than he was going to continue in this position as maintenance manager, that was the plan but there was no discussion about after x amount of months or years, there was no career path mapped out so to speak.<sup>10</sup>

[Omissis]

Chris Krajewski: Our plans was position, I was not familiar with any other plans for Adrien. He was hired for that position, I don't think I can't recall any other plans for him.

<sup>6</sup> Ara l-kontro-eżami ta' Adrien Malgonne f'paġni 138-146.

<sup>7</sup> Malgonne jispjega li minħabba c-chain of command, hafna drabi kien Julien Hoff li kien jibgħat l-emails rigward dan; iżda li huwa ġieli kellem lil Carolien Arents (id-direttur tal-Human Resources) dwar dan meta kien jaraha.

<sup>8</sup> Ara l-affidavit ta' Hoff f'paġna 50.

<sup>9</sup> Ara l-kontro-eżami ta' Hoff f'paġni 164-171.

<sup>10</sup> Ara l-kontro-eżami ta' Chris Krajewski f'paġni 158-163.

[Omissis]

Dr Gauci: But did you have a discussion with him that the company wanted to renew the contract?

Chris Krajewski: No, not in May, because this was quite early when he came to see us in May and the contract expired in December 31 if I remember correctly, I would not have had that conversation with him in May, no.

Dr Gauci: Ok. So there was never an offer made to Adrien for an extension of his contract?

Chris Krajewski: No that I'm aware of, certainly not while I was there or talking or dealing with him, no.<sup>11</sup>

8. Xehdet ukoll Aurelie Giraud, “*shareholder and the accountable manager*” tal-Heliconia Group. Din ukoll ikkonfermat li ma kienx gie abbozzat xi ftehim ġdid għal Malgonne, iżda ssemmi li kien hemm diversi diskussionijiet bejn Malgonne u l-Human Resources ta’ Heliconia f’dan ir-rigward:-

Aurelie Giraud: Well to me we offered a new contract-oh, maybe we didn't offer a-I don't think we drafted a contract and said this is a new contract, would you like to sign it? But what I recall is that we discussed terms as to what would be the contract and-

[omissis]

Dr Gauci: Who discussed these terms? Did you discuss these terms with him?

Aurelie Giraud: No, I believe it's Carolina (     ) was the HR at the time.... I'm not aware that a contract was drafted but again remember that at that time I was not on the operational side of the company, so what would we report to me was the highlights and you know, and you had someone drafted the contract, and I don't believe I've seen a contract proposed to him, but I know that this was discussed many times.<sup>12</sup>

### Tmiem tal-impjieg ta' Malgonne

9. Krajewski u Giraud isemmu laqgħa li Krajewski kellu ma' Malgonne fil-11 ta' Mejju 2018 li waqtha, skont Krajewski, Malgonne allegatament qal li ma xtaqx ikompli jaħdem ma' Heliconia wara l-31 ta' Diċembru 2018. Krajewski jixhed li dakinar Malgonne avviċinah mingħajr avviż, u qallu li ma kienx beħsiebu jkompli jaħdem hemm wara li jiskadi t-terminu kuntrattwali tiegħu:

“Chris Krajewski: No, I can't say that I remember the exact words but basically he told me, advised me that since his contract was coming to an end at the end of the year and he wanted to give us timely notification that he had no intentions to renew the contract because it takes quite a bit of time to find a suitable replacement and he was, he held a pretty critical position in the company as maintenance manager so he thought it was the right thing to do to let us know on time that he had no plans to renew the contract with the company, he was going to leave.”

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<sup>11</sup> Ara l-kontro-eżami ta' Chris Krajewski f'pagni 158-163.

<sup>12</sup> Ara l-kontro-eżami ta' Aurelie Giraud f'pagni 147-157.

10. Skont Krajewski, Malgonne ma tah l-ebda raġuni spċificika għalfejn xtaq jitlaq:-

Chris Krajewski: I believe, I discussed it with him, he felt it was time to leave the company; there was no specific reason, let's say there was no dispute with his manager or, there was nothing else, I believe he just had- he didn't have a job he just wanted to be in Europe, I can't remember exactly but it was just from his place where he was in his life, this career change to do something different was the right decision for him...he explained to me that he wanted to do something different in his life and I believe he just had a child if I remember correctly, him and his partner, and it was time for him to do something different. There were no specific reasons given that he wanted to have more responsibility, that I was unhappy with the position, or anything like that. I don't recall that.<sup>13</sup>

11. Krajewski jgħid li f'din il-konverżazzjoni, li damet bejn 10-15 minuta, huwa ma pprovax jiskopri x'kienu eżattament il-motivi ta' Malgonne. Lanqas ma pprova jirrisolvi xi kwistjonijiet li seta' kelli ma' Heliconia. Sempliċiement irringrażza lil Malgonne u rreferredi għand Carolien Arents (li dak iż-żmien kienet id-direttur tal-Human Resources). Wara li Malgonne kien għamel dan, Krajewski jgħid li mar fl-uffiċju ta' Arents sabiex dawn jjiddiskutu x'kien ser jiġi.
12. Malgonne ma jiċħad li kelli laqgħa informali ma' Krajewski dakinar tal-11 ta' Mejju 2018 iż-żda jiċħad li qatt qal li ma riedx ikompli jaħdem ma' Heliconia. Malgonne jallega li dakinar huwa informa lil Krajewski li ma setax jibqa' jaħdem bl-istess kondizzjonijiet t'impieg, u li b'hekk kien hemm bżonn li dawn jinbidlu:-

Adrien Malgonne: I don't remember me saying that I think I know the meeting you are talking about, it's probably when I went to see Chris. It was probably May, when I came back from my off duty, and as nothing yet had happened from my contract, I think I went to see him and I believe I told him that I cannot keep working under these conditions, we need to do something about my contract; I probably said something like that. But I never say I don't want to renew or to work with you or that strong as you mention. Definitely not.

Dr Robert Galea: If I were to suggest that during that meeting you had actually informed him that you had no intent to renew the contract and even letters were sent subsequently to you making reference to that declaration on your end, would you be aware of that?

Adrien Malgonne: No, that's not correct.<sup>14</sup>

13. Wara din il-laqgħa, bejn Ĝunju u Lulju 2018, ġie impjegat xi ġadd ġdid għall-pożizzjoni ta' Malgonne. Malgonne jgħid li meta ra dan, huwa ppreżuma li Heliconia ma kinitx bihsiebha tiproponi xi emenda fil-kuntratt u li minħabba f'hekk huwa ma regħax semma l-

<sup>13</sup> Ara l-kontro-eżami ta' Chris Krajewski f'paġni 158-163.

<sup>14</sup> Ara l-kontro-eżami ta' Adrien Malgonne f'paġni 138-146.

kwistjoni ma' Heliconia;<sup>15</sup> lanqas ma pprova jqajjem xi oggezzjoni. Minflok huwa wettaq dak li kien meħtieg minnu u pprovda l-*handover* lill-impjegat il-ġdid.

14. F'Diċembru 2018 ġie għall-ewwel darba indirizzat f'korrispondenza miktuba l-fatt li Malgonne kien ser jitlaq mill-kumpanija. Dana fi skambju ta' bejn Malgonne u Arents (fost oħra), li beda bl-email li Arents bagħtet lil Malgonne u lil diversi individwi oħra fit-18 ta' Dicembru 2018 bis-suġġett 'Early closure for Payroll December.' F'dan l-email intqal hekk:-

"As announced last month, we will run the payroll for December early, so you will have your salaries before Christmas. Can I kindly remind you, if you have any outstanding claims, invoices, or vacation requests, to notify me preferably today?"<sup>16</sup>

15. Malgonne wieġeb għal dan l-email dakinhar stess. Fir-risposta tiegħu, li ntbagħtet ukoll lil Krajewski u lil *Payroll Team*, huwa semma li kien għadu jrid jirċievi xi ħlas u xi dokumentazzjoni minn Heliconia.<sup>17</sup> Arents irrispondiet li d-dokumentazzjoni imsemmija kienet għadha qiegħda tiġi ppreparata u talbet lil Malgonne biex jissottometti l-"*outstanding claims*" tiegħu. Wara li wieġeb b'konferma li kien għamel dan, Malgonne bagħat email ieħor biex isaqsi:

"Can you confirm my final pay (including end-of-contract pay-off as per amendment signed in NOV2017) will be paid with salaries in December, or do you prefer we separate this and leave it for my last day (31DEC2018) as it is standard practice?"<sup>18</sup>

16. Fit-tweġiba tagħha, Arents qalet li peress li kienet id-deċiżjoni ta' Malgonne li ma jgħeddidx il-kuntratt t'impjieg, HOSI ma kinitx obbligata li tkallu l-*pay-off*:-

"I read it that the contract says that in case Heliconia decides not to renew your contract, you are entitled to end of contract pay, but there is no end-of contract payment if the initiative is yours. See snip below."<sup>19</sup>

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<sup>15</sup> Hoff ma xehedx dwar dan, prezummibilment għaliex kien telaq minn xogħolu f-Ġunju 2018.

<sup>16</sup> Ara l-emails ta' bejn Arents u Malgonne f'Diċembru 2019, f'paġni 46-49.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

17. Fl-email tad-19 ta' Dicembru 2018, Malgonne insista li safejn kien jaf hu, Heliconia ma kienet għamlet l-ebda proposta biex iġġedded il-kuntratt tiegħu jew biex tidħol f'kuntratt ġdid, u li għalhekk avveraw ruħhom tnejn mit-tliet ċirkostanzi stipulati fil-kuntratt addizzjonali tat-22 ta' Novembru 2017:-

"Dear Carolien,

I read it that indeed the first two cases, namely: "in case of termination by Heliconia" "OR if the contract is not renewed by decision of Heliconia" mention the initiative of one of the parties, Heliconia.

True, my contract was not terminated by Heliconia, but it is not followed by any new contract with Heliconia, nor did Heliconia intend to renew it, to my knowledge.

At the time of signature of this amendment (November 2017), Daniel Sigaud himself, Chairman of the Company, expressed the intention of keeping me onboard and even finalize a new contract with me, stating that the current one, in any case could not remain as was.

Cf mail from Daniel Sigaud, dated from 2017-11-25, subject: Way Forward":

"Early next Year, Chris- as CEO -and after having taken stock of where we are and of the contributions which all current managers can make towards developing Heliconia's plans, will revert to the Board with an up-dated Group' Organization Chart- including that of HI. I am completely confident that you can have an important role within those structures, and we shall then finalize a new Contract, as your current one, needs in any case to be up-dated in terms of Position, Responsibilities, Working schedule including 'rotation', and of- course overall financial Compensation. I am confident that we shall ultimately agree Terms and Conditions for a much longer working relationship meeting both Parties' aspirations."

I am afraid, this never materialized within the first half of 2018, when the Company was working on its re-organization.

All this to explain that this led me to understand that the Company after all did not want to sign a new contract with me, nor of course renew the current one which had been deemed unsuitable. (Correct me if I am wrong but I don't recall having received any proposal from Heliconia to sign a new contract or renew the current one).

Therefore, I was understanding that we fell in the second and third cases provided for in that clause, entitling me to the pay-off."<sup>20</sup>

18. Malgonne bagħat email fil-25 ta' Dicembru 2018, fejn żied:-

"I am afraid you might have missed the question in my previous email. Let me rephrase:

- did Heliconia offer to renew my contract at some point before it expires, and did I refuse?

- if so, would you be so kind as to provide me the evidence please?

Additionally, I still have not received any of the requested documents yet. Can you please look into it?"<sup>21</sup>

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<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

19. Ma jidhirx li Arents reġgħet wieġbet. Minflok wieġeb Krajewski f'korrispondenza elettronika mibgħuta fl-10 ta' Jannar 2019. Dan tenna l-istess konklużjoni ta' Arents:-

"Following your question to the Director HR regarding the final clause of article 9; I reiterate that the situation described in the clause refers to a termination of the contract on the initiative of the employer. You have personally informed me, the CEO of Heliconia, on Friday May 11th 2018, that you had no intent to renew the contract that expired December 31st 2018. You confirmed this to the Director HR the same day.

So the initiative for not continuing the employment, lies with you, not with the company. Therefore there is no reason for the company to offer you a new contract. To be more explicit: not offering you a contract was a result of your decision to discontinue the employment, it wasn't the cause for termination. Therefore, you have no entitlement to the pay-off mentioned in the article.

I kindly remind you that the following articles remain intact after termination: article 5: Non-solicitation and Non-competition; article 6: intellectual Property and article 8: Data- protection.

I thank you for all your contributions to Heliconia and wish you success in your future endeavours."<sup>22</sup>

## Kawża tal-lum

20. Il-kwistjoni ta' bejn il-partijiet baqgħet ma ġietx riżolta. Għal din ir-raġuni, fil-15 ta' Marzu 2019 Malgonne fetaħ kawża quddiem it-Tribunal Industrijali, b'talba sabiex HOSI tiġi ordnata thallsu s-somma ta' €32,700 rappreżentanti l-pay-off dovut skont il-ftiehim addizzjonali tat-22 ta' Novembru 2017, ikkalkulat fuq is-somma ta' €8,175 rappreżentanti tliet ġimħat paga għal kull sena servizz mill-1 ta' Frar 2014 sal-31 ta' Diċembru 2018.<sup>23</sup>
21. Fir-risposta tagħha,<sup>24</sup> HOSI eċċepiet b'mod preliminari, in-nuqqas ta' kompetenza tat-Tribunal Industrijali biex jikkunsidra u jiddeċiedi l-kawża. Din l-eċċeżżjoni ġiet eventwalment milqugħha mill-Qorti tal-Appell (Kompetenza Inferjuri), li ġassret id-deċiżjoni tat-Tribunal Industrijali,<sup>25</sup> u bagħtet l-atti tal-kawża quddiem din il-qorti biex tkompli tisma' l-kawża għall-kumpens pre-likwidat.<sup>26</sup> Wara li l-kawża ġiet assenjata lil din il-qorti, ingħataw dawk l-ordnijiet u l-provvedimenti meħtieġa taħt l-artikolu 741(d) tal-Kap. 12 sabiex is-smiegħ tal-kawża jkompli skont il-ħtiġijiet formali u processwali applikabbli quddiemha. Konsegwentement, it-talbiet ta' Malgonne u r-risposta ta' HOSI

<sup>22</sup> Ara l-ittra ta' Krajewski lil Malgonne fl-1 0 ta' Jannar 2019 mibgħuta b'email, f'paġna 86.

<sup>23</sup> Ara r-rikors ta' Malgonne fil-process tat-Tribunal Industrijali, f'paġni 1-4.

<sup>24</sup> Ara r-risposta ta' HOSI u d-dikjarazzjoni tal-każ fil-process tat-Tribunal Industrijali, f'paġni 41-42.

<sup>25</sup> Ara d-deċiżjoni preliminari numru 2637 tat-3 ta' Diċembru 2019 , każ numru 3735DP fil-kwistjoni tax-xogħol bejn Adrien Malgonne u HOSI Malta Ltd, fil-process tat-Tribunal Industrijali f'paġni 57-60.

<sup>26</sup> Ara s-sentenza 93/2019 LM, *Adrien Malgonne vs HOSI Malta Limited*, Qorti tal-Appell (Kompetenza Inferjuri), f'paġni 17-23.

gew imressqa fil-forma ta' rikors ġuramentat,<sup>27</sup> u risposta maħlufa,<sup>28</sup> u gew imħallsa l-ispejjeż relattivi għall-preżentata ta' dawn l-atti.

22. Apparti l-eċċeżzjoni hawn fuq imsemmija, HOSI qiegħda teċepixxi li (a) l-kawża m'għandhiex konnessjoni ma' Malta; (b) il-klawsola miżjudha bil-ftehim tat-22 ta' Novembru 2017 m'hijiex enforzabbli; u (c) li lanqas li kieku l-klawsola kienet enforzabbli, m'hijiex applikabbli.<sup>29</sup>

### **Nuqqas ta' konnessjoni ma' Malta**

23. Is-soċjetà konvenuta teċepixxi li r-rikorrent m'għandu l-ebda konnessjoni ma' Malta u li l-unika konnessjoni li l-kawża għandha ma' Malta hija l-fatt li s-soċjetà konvenuta hija registrata f'Malta. Malgonne jargumenta li l-qrati Maltin għandhom il-ġurisdizzjoni li jqisu t-talbiet tiegħu skont il-provvedimenti tar-Regolament 1215/2015 kif ukoll taħt id-dispożizzjonijiet tal-kuntratt t'impjieg tiegħu.
24. Skont l-artikolu 21(1) tar-Regolament 1215/2012,<sup>30</sup> min jimpjega jiista' jiġi mfittex fejn ikun domilċċat jew fejn l-impjegat abitwalment iwettaq ix-xogħol tiegħu jew fil-qrati tal-ahħar post fejn kien jagħmel hekk. F'każ li l-impjegat ma jkunx jew inkella ma kienx abitwalment iwettaq ix-xogħol tiegħu f'pajjiż wieħed, min jimpjega jiista' jiġi mfittex fejn jijsab in-negozju li kien impjega lill-impjegat. F'dan il-każ, HOSI hija domilċċata f'Malta u għalhekk tista' tiġi mharrka hawn skont l-artikolu 21(1) tar-Regolament 1215/2012.<sup>31</sup>
25. Apparti minn hekk, skont l-artikolu 23 tar-Regolament 1215/2012, id-dispożizzjonijiet tat-Taqsima jistgħu jitwarrbu biss bi ftehim (1) li jkun seħħ wara li tkun qamet il-kwistjoni; jew (2) li jippermetti lill-impjegat li jressaq proċedimenti fi qrati parti dawk indikati fl-istess Taqsima. Issa skont l-ahħar klawsola tal-kuntratt t'impjieg ta' Malgonne:

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<sup>27</sup> Ara r-rikors ġuramentat ta' Malgonne f'paġni 254-258.

<sup>28</sup> Ara r-risposta maħlufa ta' HOSI f'paġni 276-278.

<sup>29</sup> Tressqu xi eċċeżzjonijiet oħra rigward in-nullità tal-att promotur u l-irritwalità tal-azzjoni minħabba n-nuqqas ta' rappreżenza formali tar-rikorrent ġewwa Malta. Il-partijiet ingħataw il-fakoltà biex jressqu s-sottomissjonijiet tagħhom dwar dawn l-eċċeżzjonijiet. Wara, il-qorti tat-deċiżjoni li permezz tagħha gew sorvolati l-eċċeżzjonijiet imsemmija (Ara d-deċiżjoni tal-qorti tat-28 ta' Frar 2025 dwar ir-rikors u n-nota ta' Adrien Malgonne tal-14 ta' Mejju 2024, f'paġni 246-253.)

<sup>30</sup> L 351/1, Regolament (UE) Nru 1215/2012 tal-Parlament Ewropew u tal-Kunsill tat-12 ta' Diċembru 2012 dwar il-ġurisdizzjoni u r-rikonoximent u l-eżekuzzjoni ta' sentenzi fi kwistjonijiet civili u kummerċjali (riforġulazzjoni).

<sup>31</sup> Malgonne jgħid li kienet HOSI li kienet toħrog il-paga tiegħu u li din kienet toħrog fil-munita Ewro.

**“Law and jurisdiction**

The validity, construction and performance of this Agreement shall be governed by the laws of Malta and shall be subject to the non-exclusive jurisdiction of the Maltese courts to which the Parties submit.”<sup>32</sup>

26. Minn dan isegwi li l-kuntratt t’impieg ta’ Malgonne, li jistabbilixxi li l-qrati Maltin għandhom ġurisdizzjoni mhux esklussiva biex jiddeċiedu vertenzi dwar il-“validity, construction and performance of this Agreement”, jista’ wkoll iservi bħala baži ta’ ġurisdizzjoni skont l-artikolu 23 tar-Regolament 1215/2012. Għal dawn ir-raġunijiet, qiegħda tiġi miċħuda l-eċċeazzjoni ta’ HOSI.

**Jekk il-klawsola hix enforzabbli**

27. HOSI targumenta li l-klawsola miftiehma fil-kuntratt addizzjonali tat-22 ta’ Novembru 2017, m’hiċċiex enforzabbli. Dana għaliex ir-rikorrent qatt ma kien impiegat ta’ Heliconia u għalhekk il-kuntratt t’impieg tiegħu qatt ma seta’ jiġi tterminat minn Heliconia, “renewed by decision of Heliconia or followed by another contract with Heliconia.” Hija tikkonkludi li, peress li Heliconia m’hiċċiex firmatarja tal-kuntratt tat-22 ta’ Novembru 2017, ix-xenarji previsti f’din il-klawsola huma legalment inkonċepibbli u ma setgħu qatt jiġu fis-seħħ; b’hekk il-klawsola ma tistax tiġi enforzata.
28. Il-qorti ma taqbilx ma’ dan. Fil-kuntratt t’impieg ta’ Malgonne, ġiet spjegata r-relazzjoni ta’ bejn HOSI u Heliconia, żewġ kumpaniji fl-istess grupp:-<sup>33</sup>

**RECITALS**

- (A) HELICONIA AERO SOLUTIONS, a Moroccan airline Company engaged in transport activities and helicopter work, (the "Client") has asked the Company to supply a range of services as part of the development of its business activity, including the deployment of qualified and trained aeronautics personnel, particularly for the development of transport business on behalf of oil companies. The Client and the Company have entered into an agreement (the "Main Contract") for the Company to provide the requested services to the Client in accordance with the provisions of the Main Contract.
- (B) Under these obligations attached to the Main Contract, the Company has agreed that the Employee will be seconded to the Client where he will hold the position of Head of Maintenance Leonardo Products and Deputy Maintenance Manager Bl.3, in accordance with the provisions of this Agreement.<sup>34</sup>

29. Minn dan joħrog li għalkemm ir-relazzjoni kuntrattwali ta’ Malgonne hija ma’ HOSI, Malgonne ġie ssekondat minn HOSI lil Heliconia. Fil-kuntratt tat-22 ta’ Novembru 2017,

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<sup>32</sup> Ara l-kuntratt t’impieg bejn Malgonne u HOSI datat is-16 ta’ Jannar 2017, f’paġni 34-43.

<sup>33</sup> Ara wkoll il-kontro-eżami ta’ Adrien Malgonne f’paġni 138-146.

<sup>34</sup> Ara l-kuntratt t’impieg bejn Malgonne u HOSI datat is-16 ta’ Jannar 2017, f’paġni 34-43.

HOSI għażlet li taċċetta r-responsabbiltà għall-atti u ommisionijiet ta' Heliconia; fil-fatt obbligat ruħha li tkallas il-pay-off f'każ li Heliconia tittermina, tirrifjuta li ġġedded jew ma tidħolx f'kuntratt ieħor ma' Malgonne. M'hemm xejn li jipprekludi lil parti kuntrattwali milli taċċetta r-responsabbiltà għall-azzjonijiet ta' terz parti jew li tassumi obbligu li jiġi fis-seħħ fuq deċiżjoni ta' terz parti. B'hekk m'hemm xejn li jipprekludi t-tali klawsola milli tiġi enforzata u l-eċċeżżjoni ta' HOSI qiegħda tiġi miċħuda.

### **Dwar il-pagament allegatament dovut**

#### *It-tliet ċirkostanzi għall-pay-off*

30. Malgonne jgħid li l-obbligu ta' HOSI biex tkallas il-pay-off stipulat fil-kuntratt tat-22 ta' Novembru 2017 jiskatta f'każ li tiġi fis-seħħ waħda minn dawn it-tliet ċirkostanzi:
- jekk il-kuntratt t'impieg ta' Malgonne jiġi tterminat minn Heliconia; jew
  - jekk il-kuntratt t'impieg ta' Malgonne ma jiġix imġedded fuq deċiżjoni ta' Heliconia; jew
  - jekk il-kuntratt t'impieg ta' Malgonne ma jiġix segwit b'kuntratt ieħor.<sup>35</sup>

### **It-tieni kondizzjoni**

31. Malgonne jargumenta li kemm it-tieni kondizzjoni ġiet sodisfatta, għaliex minkejja tentattivi tiegħu u ta' Hoff sabiex jiddiskutu t-tiġidid jew il-bidla tal-kuntratt t'impieg ma' Heliconia, il-kuntratt t'impieg ta' Malgonne ma ġiex imġedded minn Heliconia jew segwit b'abbozz ta' ftehim. Minflok Heliconia impjegat lil xi hadd ieħor biex jieħu post Malgonne.
32. HOSI twieġeb li t-tieni kondizzjoni ma ġietx sodisfatta għaliex fil-laqgħa li Malgonne kellu ma' Krajewski fil-11 ta' Mejju 2018, Malgonne esprima l-intenzjoni li ma jkomplix l-impieg tiegħu wara 1-31 ta' Diċembru 2018. Hija targumenta li Heliconia ma setgħetx tkun mistennija li tressaq proposta konkreta għat-tiġidid tal-kuntratt jew għal kuntratt ġdid, meta

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<sup>35</sup> Ara n-nota ta' sottomissionijiet ta' Malgonne f'paġni 119-137. Fil-fatt, it-tielet kondizzjoni tgħid li l-ħlas ikun dovut mhux jekk il-kuntratt ma jiġix segwit b'kuntratt ieħor, imma jekk jiġi segwit b'kuntratt ieħor; li jagħmel din il-kondizzjoni ftit jew wisq assurda. Hemm diffikultajjiet oħra fl-interpretażżjoni ta' din it-tielet kondizzjoni, iżda dawn m'għandhomx għalfejn jitqiesu għaliex il-qorti sejra ssib li ġiet soddisfatta t-tieni kondizzjoni. Naraw kif il-qorti waslet għal din il-konklużjoni.

Malgonne għamilha cara mad-dirigenti tal-kumpanija u li ma kellux l-intenzjoni li jgħedded il-kuntratt tiegħu wara t-trapass tat-terminu tal-impjieg.

33. Il-kwistjoni kollha ddur fuq dak li ġara fil-laqgħa tal-11 ta' Mejju 2018. Jekk hu minnu li Malgonne qal, b'mod ċar u deċiż, li ma riedx jiddiskuti tiġid tal-kuntratt, allura l-kundizzjoni m'avvertax ruħha. Iżda jekk dan mhux minnu, isegwi li n-nuqqas ta' tiġid, jew tal-inqas in-nuqqas ta' offerta ta' tiġid, kien nuqqas ta' Heliconia, li trid tkalllas għaliex HOSI.
34. Kif rajna, il-verżjoni ta' Krajewski hi li Malgonne mar jarah mingħajr ma kien mistenni fil-11 ta' Mejju 2018 u ħabbar l-intenzjoni cara li ma jibqax ma' Heliconia, anke jekk jiġi ffirmat kuntratt ġdid.<sup>36</sup> Ma taħx raġuni cara; qal biss li ried xi forma ta' bidu ġdid. Krajewski jgħid li ma ppruvax ibiddillu fehmtu minkejja li ma kienx skuntent bih; u jgħid li wara l-laqgħa Malgonne ikkonferma l-istess diskors lid-direttur tal-HR. Jgħid ukoll li anki hu mar għand id-direttur tal-HR biex jiddiskutu kif kien ser imexxu.
35. Arents ma tressqitx biex tikkorrobora kemm l-allegazzjoni li Malgonne avža anki lilha bl-intenzjoni, jew aħjar deċiżjoni tiegħu li ma jgħeddidx l-impjieg, anki taħt kundizzjonijiet ġodda; u lanqas biex tikkorrobora l-allegazzjoni li Krajewski avža lilha ukoll, anki jekk bil-fomm biss.
36. Malgonne jgħid li f'dik il-laqgħa hu ma qalx dan il-kliem. Jgħid li seta' qal li ma kienx bi ħsiebu jkompli mingħajr kuntratt b'kundizzjonijiet ġodda, imma żgur li ma qalx li ma riedx iġedded skont il-verżjoni ta' Krajewski.
37. Ma hemm ebda dokument kontemporanju dwar din il-laqgħa. Krajewski ma jidherx li kiteb la lil Malgonne u lanqas internament. Jekk kiteb, il-kitba ma tressqitx bħala prova.
38. Għalhekk, u billi ma kien hemm ħadd ħlief Malgonne u Krajewski fil-laqgħa, irridu nqisu liema verżjoni hi l-iktar probabbli fid-dawl tal-provi ċirkostanzjali, inkluż in-nuqqas ta' dokumentazzjoni li għadha kif issemมiet. Dan biex naraw jekk dak allegat minn HOSI hux ippruvat; għaliex il-prova tal-fatt allegat – jiġifieri tal-avviż min-naħha ta' Malgonne – jinkombi fuqha.

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<sup>36</sup> Ara l-kontro-eżami ta' Krajewski f'paġni 158-163.

39. Ix-xhieda ta' Krajewski ma tantx hi kompatibbli ma' dik li ngħad minn xhieda oħra, partikularment Giraud,<sup>37</sup> ta' Hoff,<sup>38</sup> dwar il-kwistjoni tat-tiġdid prospettiv tal-kuntratt ta' Malgonne. L-effett tax-xhieda tagħhom hi li Malgonne ried jiddiskuti kuntratt ġdid imma li ma kienx hemm reazzjoni min-naħha ta' HOSI. Fid-dawl ta' dan hu versomili li, fil-laqgħa in kwistjoni, Malgone qal li ma kienx ser jibqa' fl-impieg mingħajr kuntratt ġdid. Hu inqas probabbli li qal li ma kienx sejjjer jibqa', anki jekk kienet issirlu offerta ġdida, qabel biss kellu l-opportunità li jikkunsidraha. Apparti minn hekk, għalkemm issemmew affarrijiet li setgħu jikkorroraw ix-xhieda ta' Krajewski, dawn tressqux. Kif rajna, Krajewski jgħid li fil-11 ta' Mejju 2018, Malgonne kellu l-istess konverżazzjoni ma' Arents; iżda din qatt ma telgħet tixhed biex tikkonferma dan kollu, jew il-konverżazzjoni li suppost kellu magħha Krajewski. Apparti minn hekk ma ġie esibit l-ebda dokument probatorju (bħal xi email jew id-dikjarazzjoni ta' Malgonne, jew xi email interna) biex jikkonferma li dik kienet fil-fatt l-intenzjoni ta' Malgonne.
40. F'dan ir-rigward HOSI targuenta li ma kienx hemm il-ħtiega li l-intenzjoni ta' Malgonne tkun formalizzata bil-miktub specjalment għaliex din ma kinitx preċiżiżament 'riżenja' iżda nuqqas ta' tiġid ta' kuntratt, u li konsegwentement li ma "kienx hemm ħtiega tal-ebda att pozittiv estern biex jintlaħaq l-għan tal-attur i.e. li ma jgħed id-didx il-kuntratt eżistenti u li ma jsirx ieħor floku." Iżda dan m'huwiex il-każ. Kif HOSI stess tammetti, Malgonne kien ilu impiegat għal iktar minn 4 snin u li konsegwentement skont l-artikolu 7 tal-Legislazzjoni Sussidjarja 452.81, l-impieg tiegħu kien ġie konvertit għal wieħed indefinit. Dana jfisser li, għall-kuntrarju ta' dak allegat minn HOSI, Malgonne ma kienx qiegħed – skont il-verżjoni tagħha - sempliciment jesprimi l-intenzjoni li ma jgħed id-didx kuntratt t'servizz fiss, iżda kien qiegħed effettivament iressaq ir-riżenja tiegħu minn kuntratt ta' servizz indefinit, anki jekk effettiva fil-futur.
41. Meħud kont ta' dan kif ukoll tal-obbligi li HOSI assumiet fil-konfront ta' Malgonne taħt il-kuntratt addizzjonali, ma jagħmel l-ebda sens li Malgonne (suppost) esprima l-intenzjoni ċara, anzi deċiżjoni, li ma jibqax jaħdem ma' Heliconia anki taħt kondizzjonijiet godda, u li ħadd ma talbu biex jagħmel dan bil-miktub, jew tal-inqas li jkun hemm xi prova dokumentarja ta' dan, tal-inqas interna. Apparti minn hekk qabel il-laqgħa tal-11 ta' Mejju

<sup>37</sup> Fil-fatt Giraud taċċenna li l-impieg ta' Malgonne ġie diskuss diversi drabi; mentri Krajewski qal li ma kien hemm l-ebda diskussjoni dwar dan. (Ara l-kontro-eżami ta' Giraud f'paġni 147-157 u l-kontro-eżami ta' Krajewski f'paġni 158-163).

<sup>38</sup> Bħal Malgonne, Hoff qal li kien hemm diversi attentati biex jiddiskutu l-impieg ta' Malgonne ma' Krajewski. (Ara l-affidavit ta' Hoff f'paġna 50 u l-kontro-eżami ta' Hoff f'paġni 164-171).

2018, Malgonne kien dejjem esprima l-intenzjoni li jkompli jaħdem ma' Heliconia, u kien fil-fatt għamel xħur sħaħ jinsisti ma' Heliconia biex din tagħtih risposta rigward l-impieg tiegħu. Meħud kont ta' dan, mhux verosimili li Malgonne biddel b'mod daqstant radikali, speċjalment meta ma kienx għadu sab impieg iehor (fil-fatt jgħid li kien biss wara l-2018 li huwa beda jfittex impieg ġdid).<sup>39</sup>

- 42. Fil-fehma tal-qorti hija b'hekk aktar verosimili l-verżjoni tar-rikorrent, cioè li Malgonne qal lil Krajewski li ma riedx li jibqa' soġġett ghall-istess kondizzjonijiet t'impieg iżda li baqa' dispost li jilhaq ftehim fuq kondizzjonijiet ġoddha. Din il-verżjoni fil-fatt mhix inkompatibbli mal-kliem użat minn Krajewski fl-ittra tal-10 ta' Jannar 2019: “*You have personally informed me, the CEO of Heliconia, on Friday May 11th 2018, that you had no intent to renew the contract that expired December 31st 2018. You confirmed this to the Director HR the same day.*”<sup>40</sup> [enfasi miżjud] kif ukoll fl-affidavit tiegħu (“*Mr Adrien Malgonne...entered my office to formally notify me that he was not going to renew his employment contract.*”).<sup>41</sup>
- 43. Fi kwalunkwe kaž u fil-fehma tal-qorti, kien jinkombi lil Heliconia li tressaq proposta jew offerta għal kuntratt ġdid, u dana kif ġie imwieghed lil Malgonne fl-email ta' Daniel Sigaud. Ma jistax jingħad li Malgonne seta' qatt ‘jirrifjuta’ li jidħol f'kuntratt ġdid jekk qatt ma saritlu proposta jew offerta, u għalhekk kien in-nuqqas ta' HOSI biex tagħmel dak li wiegħdet li direttament wassal biex tavvera ruħha t-tieni ċirkostanza.

## Konklużjoni

- 44. Għal dawn ir-raġunijiet, il-qorti qiegħda tasal għall-konklużjoni li t-tieni ċirkostanza stipulata fil-kuntratt addizzjonali tat-22 ta' Novembru 2017 ġiet sodisfatta għaliex il-kuntratt ta' Malgonne ma ġiex imġedded b'konsegwenza ta' deċiżjoni ta' Heliconia.
- 45. HOSI tagħmel l-argument li kien biss fl-2017 li Malgonne ffirma l-ewwel kuntratt t'impieg magħha u li b'hekk, fl-agħar ipotesi għaliha, il-pay-off għandu jiġi kkalkulat mill-2017.<sup>42</sup> Però jingħad kjarament fil-kuntratt addizzjonali li l-pay-off għandu jiġi kkalkulat “*considering the employee's date of entry in Heliconia Group's Service as 01 February*

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<sup>39</sup> Huwa wkoll ta' rilevanza li lil Malgonne qatt m'għamlulu *exit interview*, kif evidentement kienet titlob il-proċedura interna ta' Heliconia.

<sup>40</sup> Ara l-ittra ta' Krajewski lil Malgonne fl-10 ta' Jannar 2019 mibgħuta b'email, f'paġna 86.

<sup>41</sup> Ara l-affidavit ta' Krajewski f'paġna 85.

<sup>42</sup> Ara n-nota ta' sottomissjonijiet ta' HOSI f'paġni 175-188.

2014”.<sup>43</sup> Dawn il-kliem huma suffiċċentament ċari u ma jirrikjedux l-interpretazzjoni ta’ din il-qorti. B’hekk meħud kont tal-fatt li fil-31 ta’ Dicembru 2018 kienu ġew kompluti erba’ snin ta’ servizz, u li tliet ġimġħat paga jikkonsistu f’€8,174.77, il-*pay-off* dovut lil Malgonne jammonta għal **€32,699.08**.

## Parti deċiżiva

Għaldaqstant, din il-qorti qiegħda:

- a. tiċħad l-eċċeżzjonijiet tas-soċjetà konvenuta;
- b. tiddikjara illi s-soċjetà konvenuta hija debitriċi tar-rikorrent fis-somma ta’ €32,699.08 rappreżentanti l-*pay-off* dovut lir-rikorrent skont il-kuntratt addizzjonali tat-22 ta’ Novembru 2017; u
- c. tikkundanna lis-soċjetà konvenuta sabiex tkallax ir-rikorrent is-somma ta’ €32,699.08.

Bl-imġħax legali dekorribbli mid-data tas-sentenza. L-ispejjeż tal-kawża, ħlief dawk tat-Tribunal Industrijali u tal-Qorti tal-Appell, jitħallsu mis-soċjetà konvenuta.

Henri Mizzi  
Imħallef

Tristan Duca  
Deputat Registratur

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<sup>43</sup> Ara l-emenda fil-kuntratt t’impjieg ta’ bejn Malgonne u HOSI datata t-22 ta’ Novembru 2017, f’paġni 269-270.