MALTA

QORTI TA' L-APPELL

S.T.O. PRIM IMHALLEF
VINCENT DE GAETANO

ONOR. IMHALLEF
ANTON DEPASQUALE

ONOR. IMHALLEF
ALBERT J. MAGRI

Seduta tad-9 ta' Jannar, 2007

Appell Civili Numru. 92/2006/1

Fl-atti ta' l-appell tas-socjeta` Zeturf Limited (C 35469)
tal-10
ta' April 2006 mid-digriet tal-Prim Awla tal-Qorti Civili
tas-16 ta' Marzu 2006 fl-ismijiet:

GIE Pari Mutuel Urbain (PMU) socjeta` estera
(Numru ta' Registrazzjoni 775 671 258 fir-Registru tal-Kummerc u
Kumpaniji ta' Parigi, Franza)

v.

Zeturf Limited (C 35469)

Il-Qorti:

1. Dan hu provvediment – it-tielet wiehed f'dawn il-proceduri – li ser jindirizza l-appell proprju interpost minn Zeturf Limited mid-decizjoni tal-Prim Awla tal-Qorti Civili tas-16 ta' Marzu 2006, permezz ta' liema decizjoni dik il-Qorti laqghet talba maghmula mill-Avukat Dott. Joseph Caruana Scicluna (bhala mandatarju specjali tas-socjeta` estera GIE Pari Mutuel Urbain)[1] sabiex jigi dikjarat li d-decizjoni tal-Qorti tal-Appell ta' Parigi tal-4 ta' Jannar 2006 moghtija fil-kawza bejn GIE Pari Mutuel Urbain minn naha u Zeturf Ltd u Eturf SA min-naha l-ohra "ghandha tigi nfurzata kontra s-socjeta` intimata ai termini tar-Regolament 44/2001" tal-U.E. Jinghad li dan huwa t-tielet provvediment ghax b'decizjoni moghtija (fl-ismijiet premessi) fis-6 ta' Gunju 2006, din il-Qorti ddisponiet mir-rikors tas-socjeta` Zeturf Ltd tas-27 ta' April 2006 sabiex tigi ordnata s-sospensjoni tal-proceduri ghall-enfurzar pendenti l-ezitu ta' proceduri quddiem il-*Cour de Cassation*, u dana billi astjeniet milli tiehu konjizzjoni ulterjuri ta' l-istess rikors; filwaqt li b'decizjoni ohra, din id-darba tas-27 ta' Gunju 2006, iddikjarat irritu u null l-appell interpost mill-Awtorita` dwar Lotteriji u Loghob, filwaqt li ammettiet tliet xhieda biex jiddeponu f'dawn il-proceduri. Fl-udjenza tal-25 ta' Settembru 2006, il-kawza thalliet ghas-sentenza.

2. Din il-Qorti, wara li ezaminat l-atti kollha tal-kawza – inkluza d-deposizzjoni tax-xhud Andre` Meillassoux (fol. 363 sa 384), kif ukoll id-dokumenti kollha u d-diversi noti ta' sottomissjonijiet eruditi tal-partijiet, u, s'intendi, ukoll is-sottomissjonijiet verbali tal-abbili difensuri taghhom fid-diversi udjenzi, issa tinsab f'posizzjoni li tippronunzja s-segwenti sentenza.

3. Fir-rikors ta' appell taghha, is-socjeta` Zeturf Ltd tressaq erba' aggravji kontra d-decizjoni tal-Prim Awla tal-Qorti Civili tas-16 ta' Marzu 2006. Dawn huma, fi kliem l-istess socjeta` rikorrenti

[1] Permezz ta' rikors datat 23 ta' Frar 2006.

1. Preliminarjament l-eskluzjoni tar-Regolamenti [recte: Regolament] **ghall-kaz odjern a tenur tal-Art.1(1) tal-istess regolamenti, stante li dan si tratta ta' materja amministrattiva;**
2. Preliminarjament ukoll, is-sentenza tal-Qorti Franciza ma tikkontjeni l-ebda ordni li hija enforzabbli f'Malta;
3. Ai termini tal-Artikolu 34(ii) tar-Regolamenti is-socjeta` appellanti ma nghatatx smigh xieraq fil-proceduri Francizi…; u
4. Ai termini ta' l-Artikolu 34(i) tar-Regolamenti, is-sentenza premessa tmur kontra l-*public policy* ta' Malta…

Din il-Qorti ser tibda billi tikkonsidra l-ewwel ilment.

4. L-Artikoli 1(1) tal-*Council Regulation (EC) no. 44/2001* tat-22 ta' Dicembru 2000 jipprovdi illi:

"This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters."

Kif spjegat fil-ktieb kompendju **European Civil Practice**[2]:

"There is no definition in the Brussels-Lugano regime of the term "civil and commercial matters", but the European Court of Justice has ruled that it is to be given an independent interpretation. The concept is known to the domestic legal systems of many of the Brussels-Lugano states and appears in most of the former bilateral conventions between them on recognition and enforecement of judgments, as well as in Hague Conventions dating as far back as 1896 and other EU instruments adopted under Title IV of Part III of the EC Treaty. The legal systems of the civil law Brussels-Lugano states generally recognise a distinction between public and private law and it is clear that it is private law which includes "civil and

[2] Layton & Mercer, General Editors, Thomson/Sweet & Maxwell (2004), 2nd Ed. Vol. 1

commercial" matters. The fact that matters of public law are generally excluded from the scope of the Brussels-Lugano regime is made clear by the second sentence of Article 1(1) (first introduced by the 1978 Accession Convention). The distinction between public and private law, though, is not the same in each Brussels-Lugano state and matters which the domestic law of one such state would regard as matters of public law might not be so regarded by the law of another, or by the European Court of Justice for the purposes of the Brussels-Lugano regime."[3]

Huwa proprju minhabba din id-divergenza fid-diversi stati li l-Qorti tal-Gustizzja Ewropea addottat interpretazzjoni hekk imsejha "indipendenti" li tmur lil hinn mid-diversi kuncetti u fl-istess hin tipprova tarmonizzahom. Fil-proceduri fil-kors tal-kawza quddiem l-imsemmija Qorti fl-ismijiet ***Gemeente Steenberger v. Baten*** (eventwalment deciza mill-Hames Sezzjoni ta' dik il-Qorti fl-14 ta' Novembru 2002) l-Avukat Generali Tizzano esprima ruhu hekk:

"To begin with, I would also recall, as have the parties, that the concept of civil and commercial matters referred to in Article 1 of the Convention must be regarded as independent and must be interpreted by reference, first, to the objectives and scheme of the Convention and, secondly, to the general principles which stem from the corpus of national legal systems. Similarly, I should point out, again as the Court has held, that in order to determine whether a decision comes within the concept of civil matters, <u>the nature of the persons party to the legal relationship in question is to a certain extent irrelevant</u>, irrespective of the national law applicable; the decisive criterion is rather whether the relationship is based on an act *iure imperii* of the public authority. Accordingly, determination of this question will entail an assessment of whether the public authority possesses, in the case in question,

[3] pp. 336-337, para. 12.001.

powers which differ from and are broader than those which a private individual, in a similar situation, would enjoy, and in particular whether it acts in the exercise of its power." (sottolinear ta' din il-Qorti).

U dik il-Qorti, fis-sentenza taghha (tal-14/11/2002) qalet hekk:

"It is settled case-law that, since Article 1 of the Brussels Convention serves to indicate the area of application of the Convention, it is necessary, in order to ensure, as far as possible, that the rights and obligations which derive from it for the Contracting States and the persons to whom it applies are equal and uniform, that the terms of that provision should not be interpreted as a mere reference to the internal law of one or other of the States concerned. The concept referred to must therefore be regarded as an independent concept to be interpreted by reference, first, to the objectives and, secondly, to the general principles which stem from the national legal systems as a whole (Case 29/76 *LTU* [1976] ECR 1541, paragraph 3; Case 133/78 *Gourdain* [1979] ECR 733, paragraph 3; Case 814/79 *Rüffer* [1980] ECR 3807, paragraph 7; and Case C-172/91 *Sonntag* [1993] ECR I-1963, paragraph 18). The Court has made it clear that that interpretation results in the exclusion of certain judicial decisions from the scope of the Brussels Convention, owing either to the legal relationships between the parties to the action or to its subject-matter….Thus the Court has held that, although certain judgments in actions between a public authority and a person governed by private law may come within the scope of the Brussels Convention, it is otherwise where the public authority is acting in the exercise of its public powers (*LTU*, cited above, paragraph 4, and *Rüffer*, paragraph 8).[4]

5. Fi kliem iehor, dak li huwa importanti ghad-determinazzjoni tal-kwistjoni jekk, fil-kaz *de quo*, hux qed

[4] Para. 28-30.

nitkellmu dwar "a civil (or) commercial matter" jew dwar "(an) administrative matter(s)", huwa li wiehed jara x'poteri ezattament parti jew ohra ezercitat. Jekk dawn il-poteri jkunu differenti jew superjuri minn dawk normalment applikabbli bejn persuni privati fir-relazzjonijiet ta' bejniethom fil-kamp tad-dritt privat, il-kwistjoni ma tkunx tista' verament titqies bhala wahda civili jew kummercjali. Jigi pprecizat li t-tieni parti ta' l-Artikolu 1(1) tghid li r-Regolament "…shall not extend, in particular, to revenue, customs or administrative matters" (sottolinear ta' din il-Qorti), lokuzzjoni li tindika li materji fiskali, doganali w amministrattivi huma wkoll ("in particular") eskluzi, izda dak li hu importanti hu li jigi determinat posittivament jekk il-materja hix wahda civili jew kummercjali, cioe` li taqa' fl-ambitu tad-dritt privat a differenza tad-dritt pubbliku. Fil-ktieb **European Civil Practice**, hawn aktar 'l fuq citat, l-awturi, wara li jghaddu in rassenja disa' sentenzi tal-Qorti Ewropea (inkluza ***Steenbergen v. Baten***), jaghmlu s-segwenti osservazzjoni:

"It is apparent from these decisions that, on the current state of the cases, it is not sufficient to exclude a case from the scope of the Brussels-Lugano regime that the action is one brought by or against a public body acting in the exercise of its public law powers. It is necessary to go further and consider whether the rights and duties of the public body are those which are conferred on it as such, that is, whether they go beyond those which apply to private persons. If they are rights and duties which would attach to private persons, the claim is not thereby excluded from the scope of the regime. This is true even if the public body's conduct was governed by rules which, as a matter of domestic law, are regarded as public law, and irrespective of whether in the state where the public body is constituted, those rights and obligations would be justiciable before administrative courts rather than the ordinary courts."[5] (sottolinear ta' din il-Qorti).

[5] p. 345, para. 12.021. Ara wkoll **Jaffey on the Conflict of Laws** (2nd. Ed.) 2005, OUP, p. 190-191: **"The difficulty with requiring the public authority to be acting in the exercise of its powers, before the matter can be excluded from the Convention, is**

6. Applikati dawn il-principji, u wara li ezaminat l-atti u d-dokumenti kollha, din il-Qorti hi tal-fehma li ghalkemm GIE Pari Mutuel Urbain hija registrata bhala socjeta` kummercjali[6], il-ligijiet li tahthom twaqqfet[7] u l-iskop li ghaliha twaqqfet imorru ferm lil hinn, ghal dawk li huma drittijiet u doveri moghtija lill-istess socjeta`, minn dawk applikabbli bejn persuni privati. Kemm mid-dokument Z2 (fol. 30 *et seq.*) kif ukoll mid-deposizzjoni tax-xhud Andre` Meillassoux (li fisser l-interess qawwi li l-istat Franciz ghandu fi, u supervizjoni li jezercita fuq, din is-socjeta`) hu evidenti li hawn si tratta ta' socjeta` li l-iskop primarju taghha huwa li tittutela il-*public policy* Franciza fir-rigward tal-imhatri fuq tlielaq taz-zwiemel. Huwa minnu li l-membri ta' din il-GIE (*Groupment d'Interet Economique*) huma socjetajiet tat-tlielaq taz-zwiemel (li, kif osservat il-*Conseil d'Etat* ta' Franza fis-sentenza taghha tad-9 ta' Frar 1979[8], bhala tali *"…en tant qu'elles sont chargees d'organiser les courses et le pari mutuel, ne sont pas investies d'une mission de service public et qu'elles ont le caractere de personnes morales de droit prive…"*), pero` l-istess sentenza li s-socjeta` appellata talbet l-enfurzar taghha, cioe` dik tal-Qorti ta' l-Appell ta' Parigi tal-4 ta' Jannar 2006, tghid bl-aktar mod car (ara pagna sitta tat-traduzzjoni):

"Whereas concerning the first point[9], the French provisions, which do not have an economic objective (the GIE is controlled by the State and is a non-profitmaking organisation as is specified in article 3

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that it is often hard to tell whether a public authority is acting in a private capacity or in the exercise of its powers. In *Netherlands State v. Ruffer* the Court of Justice held that a public authority, in this case the Dutch State, was acting in the exercise of its powers in respect of a public waterway when it sought to recover from a German shipowner the costs of removing a wreck, even though under Dutch law (the Dutch courts being seised of the matter) the action was classified as one in tort. The case was concerned with a community concept and it would therefore be inappropriate to allow Dutch law to classify it according to domestic criteria…".

[6] Ara d-dokument PMU1 anness mar-risposta tal-istess GIE Pari Mutuel Urbain tat-3 ta' Marzu 2006 ipprezentata quddiem il-Prim Awla.

[7] Li wahda minnhom tmur lura ghat-2 ta' Gunju, 1891.

[8] Ara dokument PMU3 anness mar-risposta msemmija fin-nota *in calce* numru 6.

[9] Cioe` jekk l-imhallef Franciz kellux jezercita s-setghat tieghu *"in view of French public policy regulations in the absence of any 'clear and incontestable contrariety' with community law"* jew jekk l-istess imhallef kellux jezercita dawn is-setghat *"directly in view of community law"*.

of the articles of association) are intended to protect French public policy."

Is-socjeta` appellata, ghalhekk, agixxiet fil-kaz *de quo* fil-Qrati Francizi mhux fl-ambitu tad-dritt privat li jirregola n-negozju, civili jew kummercjali, bejn persuni privati, izda fl-ambitu tad-dritt pubbliku biex tittuleta monopolju fl-interess ta' *l'ordre public francais*. Isegwi necessarjament, ghalhekk, li l-materja tad-decizjoni tal-Qorti tal-Appell ta' Parigi tal-4 ta' Jannar 2006, ghalkemm formalment jew apparentement ta' natura civili jew kummercjali, fir-realta` taqa' fl-ambitu tad-dritt pubbliku, u ghalhekk hija espressament eskluza mill-operat tar-Regolament 44/2001 in vista ta' dak li jipprovdi l-Artikolu 1(1) tal-istess regolament, aktar 'l fuq imsemmi.

7. Isegwi wkoll li mhux mehtieg li din il-Qorti tezamina l-aggravji l-ohra tas-socjeta` appellanti.

8. Ghall-motivi premessi, tilqa' t-tieni talba tas-socjeta` appellanti u konsegwentement thassar u tirrevoka d-decizjoni tal-Prim Awla tal-Qorti Civili tas-16 ta' Marzu 2006 li biha ddikjarat li d-decizjoni tal-Qorti tal-Appell ta' Parigi tal-4 ta' Jannar 2006 fl-ismijiet **GIE Pari Mutuel Urbain v. Zeturf Ltd et** (numru 05/15773) ghandha tigi enfurzata ai termini tar-Regolament 44/2001 u konsegwentement tichad it-talba kif dedotta fir-rikors ta' GIE Pari Mutuel Urbain tat-23 ta' Frar 2006; fic-cirkostanzi ma tarax li ghandha ghalfejn tipprovdi dwar l-ewwel u dwar it-tielet talba kif migjuba fir-rikors ta' appell, u ghalhekk tastjeni milli tiehu konjizzjoni ulterjuri ta' dawn iz-zewg talbiet l-ohra. L-ispejjez, kemm ta' dana l-appell kif ukoll ta' l-ewwel istanza (jekk hemm) jithallsu mis-socjeta` appellata GIE Pari Mutuel Urbain.

< Sentenza Finali >

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