MALTA

QORTI TA' L-APPELL

**S.T.O. PRIM IMHALLEF
VINCENT DE GAETANO**

**ONOR. IMHALLEF
ALBERT J. MAGRI**

**ONOR. IMHALLEF
TONIO MALLIA**

Seduta tat-28 ta' Settembru, 2007

Appell Civili Numru. 224/2006/1

GIE Pari Mutuel Urbain (PMU)

v.

**Bell Med Ltd (C 26412) u
Computer Aided Technologies Ltd (C 18050)**

Il-Qorti:

Rat ir-rikorsipprezentat fil-Prim Awla tal-Qorti Civili fis-27 ta' Lulju 2006 minn Dr. Brigitte Zammit bhala mandatarja specjali tas-socjeta` estera GIE Pari Mutuel Urbain li tghid hekk:

"1. Illi permezz ta' sentenza moghtija fl-14 ta' Gunju, 2006 (kopja originali bl-ilsien Franciz u traduzzjoni ufficjali bl-ilsien Ingliz annessi hawnhekk u mmarkati rispettivament bhala **Dok B1** u **Dok B2**), il-Qorti ta' l-Appell ta' Parigi, Franza ikkonfermat sentenza moghtija fit-2 ta' Novembru 2005 mit-*Tribunal de Grande Instance* ta' Parigi, Franza fl-ismijiet GIE Pari Mutuel Urbain (PMU) vs Bell Med Limited (C26412) u Computer Aided Technologies Limited (C18050), u iddeciediet *inter alia* s-segwenti (f'pagna 7 tas-sentenza **Dok B2**):

"…

"*Dismisses the claims of the appellant companies;*

"*Upholds the order under attack except as concerns the amount of the provision;*

"*Orders Computer Aided Technologies Limited and Bell Med Limited jointly and severally to pay GIE Pari Mutuel Urbain a provision of 210,000 euros;*

"*Orders Bell Med Limited and Computer Aided Technologies Limited to pay GIE Pari Mutuel Urbain 50,000 euros under Article 700 of the New French Code of Civil Procedure;*

"*Orders Computer Aided Technologies Limited and Bell Med Limited to pay the costs of the appeal that may be recovered according to the provisions of article 699 of the New French Code of Civil Procedure.*

…".

"2. Illi f'materji civili u kummercjali ai termini ta' l-Artikolu 1 tar-Regolament 44/2001 dwar il-Gurisdizzjoni u r-Rikonoxximent u l-Infurzar ta' Sentenzi f'Materji Civili u Kummercjali[1], huma d-disposizzjonijiet ta' dan ir-Regolament li jirregolaw l-infurzar ta' sentenzi moghtija minn qrati ta' Stati Membri ta' l-Unjoni Ewropeja.

[1] OJ L 12, 16.1.2001, p.1

Fi kliem l-Artikolu 1 tar-Regolament 44/2001:

"*This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal*".

"3. Illi dan il-principju li r-Regolamenti Ewropej ghandhom effett dirett fl-Istati Membri ta' l-Unjoni Ewropeja u jikkostitwixxu parti mill-legislazzjoni ta' l-istess Stati Membri huwa principju baziku tal-ligi ta' l-Unjoni Ewropeja. L-Artikolu 249 tat-Trattat ta' l-Unjoni Ewropeja jghid hekk:

"… A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States…"

"4. Illi dan il-principju huwa inoltre ribadut fl-Att ta' l-Unjoni Ewropeja (Kap. 460 tal-Ligijiet ta' Malta), li fl-Artikolu 3 jghid hekk:

"(1) Mill-Ewwel ta' Mejju 2004, it-Trattat u atti ezistenti u futuri adottati mill-Unjoni Ewropea ghandhom jorbtu lil Malta u ghandhom ikunu parti mill-ligi domestika taghha taht il-kondizzjonijiet stipulati fit-Trattat.

"*(2) Kull disposizzjoni ta' ligi li mid-data msemmija tkun inkompatibbli ma' l-obbligazzjonijiet ta' Malta taht it-Trattat jew li tidderoga minn xi dritt moghti lil xi persuna bit-Trattat jew tahtu ghandha, safejn dik il-ligi tkun inkompatibbli ma' dawk l-obbligazzjonijiet jew safejn tkun tidderoga minn dawk id-drittijiet, tkun bla effett u ma tkunx tista' tigi infurzata."*

"Inoltre, l-Artikolu 4(1) ta' l-istess Att jghid hekk:

"*Dawk id-drittijiet, setghat, responsabbiltajiet, obbligi u restrizzjonijiet li minn zmien ghal zmien jinholqu jew johorgu minn jew taht it-Trattat, u dawk ir-rimedji u proceduri kollha li minn zmien ghal zmien ikun hemm provdut dwarhom bi jew taht it-Trattat, li skond it-Trattat ghandhom, <u>minghajr ebda htiega ohra ta' ghemil ta' ligi</u>,*

jinghataw effett legali jew jintuzaw f'Malta, ghandhom jigu rikonoxxuti u jkunu legalment invokabbli, u jigu infurzati, permessi u mharsa bhala tali." (enfazi mizjuda)

"5. Illi Artikolu 38(1) tar-Regolament 44/2001 jghid hekk:

"A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there". (enfazi mizjuda)

"6 Illi ghalhekk, sentenza li l-infurzar taghha jkun qed jigi mitlub ai termini tar-Regolament 44/2001 ghandha (a) tikkwalifika bhala "sentenza" ghall-finijiet ta' l-Artikolu 32 ta' l-istess Regolament; u (b) tkun enfurzabbli fl-Istat Membru li fih tkun giet moghtija, f'dan il-kaz fi Franza.

"7 Illi ghall-finijiet tar-Regolament 44/2001, il-kelma "sentenza" ("*judgment*") hija definita mill-Artikolu 32 ta' l-imsemmi Regolament 44/2001 bhala:

"*any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court*".

"Is-sentenza li s-socjeta` rikorrenti qed titlob hawnhekk illi tigi enfurzata minn din l-Onorabbli Qorti (**Dok B1, B2**) tikkwalifika bhala "*judgment*" ai termini ta' din id-definizzjoni.

"8. Illi, kif gia' citat f'paragrafu 1 ta' dan ir-rikors, il-Qorti ta' l-Appell ta' Parigi taghmilha cara illi "*… (it) (u)pholds the order under attack except as concerns the amount of the provision; …*" (f'pagna 7 tas-sentenza **Dok B2**), liema "*order*" (u cioe` is-sentenza ta' l-Ewwel Istanza (*Tribunal de Grande Instance*) ta' Parigi – traduzzjoni ufficjali bl-ilsien Ingliz annessa hawnhekk u mmarkata **Dok C**) ghamlitha bic-car li tali sentenza ghandha tkun

"…*served by way of interim enforcement ipso jure*" (f'pagna 13 tas-sentenza **Dok C**).

"Ghalhekk huwa car illi s-sentenza hija enfurzabbli fi Franza.

"9. Illi skond Artikolu 39(1) tar-Regolament 44/2001, ir-rikors ikkontemplat mill-Artikolu 38(1) (citat f'paragrafu 5 ta' dan ir-rikors), ghandu jigi maghmul fil-qorti kompetenti indikata fit-tieni Anness tar-Regolament 44/2001. Skond dan l-imsemmi Anness tar-Regolament 44/2001, il-qorti kompetenti fil-kaz ta' Malta hija l-Prim'Awla tal-Qorti Civili.

"Inoltre, skond l-Artikolu 40(1) tar-Regolament 44/2001, hija l-*lex fori* li ghandha tirregola l-procedura li wiehed ghandu jsegwi meta jaghmel tali rikors. Fi kliem dan l-Artikolu 40(1): "*the procedure for making the application shall be governed by the law of the Member State in which enforcement is sought*".

"L-Artikoli dwar l-infurzar ta' sentenzi moghtija minn qrati ta' pajjizi barra minn Malta, kontenuti taht Titolu V tal-Kodici ta' l-Organizzazzjoni u Procedura Civili (Kap. 12 tal-Ligijiet ta' Malta) ("KOPC"), huma ghalhekk applikabbli ghall-kaz odjern.

"10. Illi l-Artikolu 826 tal-KOPC jghid hekk:

"*is-sentenzi moghtija minn qorti kompetenti ta' pajjiz barra minn Malta, u li jkunu saru gudikat, jistghu jigu ezegwiti mill-qorti kompetenti ta' Malta, bhas-sentenzi moghtija f'Malta, fuq citazzjoni b'talba biex tigi ordnata l-ezekuzzjoni ta' dawk is-sentenzi.*" (enfazi mizjuda).

"11. Illi skond l-Att XXII tas-sena 2005, li dahal in vigore fil-15 ta' Jannar 2006, il-kelma "citazzjoni" fl-imsemmi Artikolu 826 tal-KOPC giet sostitwita bil-kelma "rikors".

"Ghalhekk qieghed isir dan ir-rikors.

“12. Illi inoltre l-Artikolu 40(3) tar-Regolament 44/2001 jipprovdi illi d-dokumenti li ghalihom jaghmel referenza l-Artikolu 53 ta’ l-imsemmi Regolament ghandhom jigu annessi ma’ rikors ghall-infurzar ta’ sentenza moghtija minn qorti ta’ Stati Membri ta’ l-Unjoni Ewropeja.

“13. Illi l-Artikolu 41 tar-Regolament 44/2001 jghid hekk:

“*The judgment shall be declared enforceable <u>immediately on completion of the formalities in Article 53</u> without any review under Articles 34 and 35. <u>The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application</u>”.* (enfazi mizjuda)

"14. Illi skond Artikolu 53 ta’ l-imsemmi Regolament, is-segwenti dokumenti qeghdin jigu annessi ma’ dan ir-rikors:

"i) Anness immarkat “**Dok B1**” – kopja legali tas-sentenza moghtija fl-14 ta’ Gunju, 2006 mill-Qorti ta’ l-Appell ta’ Parigi, Franza, li s-socjeta` rikorrenti qieghda titlob li tigi infurzata kontra s-socjetajiet intimati permezz ta’ dan ir-rikors;

"ii) Anness immarkat “**Dok B2**” – traduzzjoni ufficjali tas-sentenza immarkata Dok B1, bl-ilsien Ingliz, liema traduzzjoni hija certifikata minn traduttur ikkwalifikat u rikonoxxut fi Franza, skond ma hu rikjest mill-Artikolu 55(2);

"iii) Anness immarkat “**Dok D**” – ic-certifikat mahrug mill-Qorti ta’ l-Appell ta’ Parigi, Franza, kif rikjest mill-Artikolu 54.

"15. Illi inoltre jidher bic-car mic-citat Artikolu 41 ta’ l-imsemmi Regolament 44/2001 illi <u>s-socjetajiet intimati m’ghandhom l-ebda dritt u mhuwiex ammess li jaghmlu sottomissjonijiet ta’ kwalunkwe tip f’dan l-istadju tal-process</u> ghall-infurzar tas-sentenza tal-Qorti ta’ l-Appell ta’ Parigi, Franza (**Dok B1, B2**).

"16. Illi in vista tal-premess, is-socjeta` rikorrenti bir-rispett titlob lil din l-Onorabbli Qorti sabiex minnufih tiddikjara li s-sentenza tal-Qorti ta' l-Appell ta' Parigi, Franza (**Dok B1, B2**) ghandha tigi enfurzata kontra s-socjetajiet intimati ai termini tar-Regolament 44/2001, kif sottomess hawn fuq, taht kwalunkwe provvediment illi din l-Onorabbli Qorti joghgobha taghti.

“Bl-ispejjez kontra s-socjetajiet intimati.”

Rat id-decizjoni moghtija mill Prim Awla tal-Qorti Civili fit-28 ta' Lulju, 2006, li in forza taghha ordnat l-esekuzzjoni tas-sentenza moghtija mill-Cour d'appell de Paris fl-14 ta' Gunju, 2006, fil-kawza fl-ismijiet GIE Pari Mutuel Urbain versus Bell Med Limited et.;

Rat ir-rikors ta' l-appell tal-4 ta' Settembru 2006 tas-socjetajiet intimati li, ghar-ragunijiet hemm premessi, talbu li din il-Qorti joghgobha tirrevoka d-digriet tal-Prim Awla tal-Qorti Civili tat-28 ta' Lulju 2006 li biha ddikjarat li d-decizjoni tal-Qorti ta' l-Appell ta' Parigi tal-14 ta' Gunju 2006 fl-ismijiet *GIE Pari Mutuel Urbain vs Bell Med Ltd et (Numru 05/22459)* ghandha tigi infurzata ai termini tar-Regolamenti 44/2001, u konsegwentement tiddikjara li l-istess decizjoni tal-Qorti ta' l-Appell ta' Parigi tal-14 ta' Gunju 2006 fl-ismijiet *GIE Pari Mutuel Urbain vs Bell Med Ltd. et. (Numru 05/22459)* ma tistax tigi rikonoxxuta u jew enfurzata ai termini tar-Regolamenti ghar-ragunijiet fuq esposti.

Rat ir-risposta tar-rikorrenti nomine li, ghar-ragunijiet hemm premessi, talbet ic-cahda bl-ispejjez ta' l-appell interpost mis-socjetajiet intimati;

Rat il-provvediment li tat din il-Qorti fis-26 ta' Gunju, 2007 li permezz tieghu cahdet it-talba ghal referenza pregudizzjali;

Rat l-atti kollha u d-dokumenti esebiti;

Semghet lid-difensuri tal-partijiet;

Ikkunsidrat;

Illi f'dawn il-proceduri s-socjeta` rikorrenti qed titlob l-esekuzzjoni f'Malta ta' sentenza moghtija mill-Qorti ta' l-Appell f'Parigi li in forza taghha giet kanonizzata kreditrici taz-zewg socjetajiet intimati. Din it-talba saret ai termini tal-Council Regulation (EC) numru 44/2001. In linea preliminari is-socjetajiet appellanti issollevaw l-eskluzzjoni tar-Regolament ghall-kaz odjern a tenur ta' l-Artikoli 1(1) ta' l-istess Regolament, stante li hawn si tratta ta' materja amministrattiva.

Din il-Qorti ser tibda biex tikkonsidra dan l-ewwel ilment.

L-Artikolu 1(1) tar-Regolament 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 qalet din il-Qorti diversament komposta, fil-kawza b'materja simili deciza fid-9 ta' Jannar, 2007, fl-ismijiet "<u>GIE Pari Mutuel Urbain v Zeturf Ltd.</u> (rikors numru 92/06): ".... dak li huwa importanti ghad-determinazzjoni tal-kwistjoni jekk, fil-kaz *de quo*, hux qed 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, <u>in particular</u>, to revenue, customs or administrative matters" (sottolinear ta' din il-Qorti), lokuzzjoni li tindika li materji fiskali, doganali w amministrattivi huma <u>wkoll</u> ("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. Il-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 whcih are conferred on it as such, <u>that is, whether they go beyond those which apply to private persons</u>. 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."[2]**" (sottolinear ta' din il-Qorti)".

Dik l-istess Qorti, wara li ghamlet analizi u studju tal-materja involuta, fid-dawl tal-funzjoni specjali li ghandha s-socjeta` rikorrenti, ikkonkludiet li:
"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 monpolju fl-interess ta' *l'ordre public francais*. Isegwi necessarjament, ghalhekk, li l-materja tad-decizjoni tal-Qorti ta' l-Appell ta'

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[2] 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 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…".**

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) ta’ l-istess regolament, aktar ’l fuq imsemmi.”

Din il-Qorti, kif issa komposta, regghet ezaminat il-kwistjoni u ma tarax li ghandha tbiddel il-posizzjoni li hadet fil-konfront tas-socjeta` rikorrenti u l-funzjoni taghha. Jista’ jkun li l-kumpaniji tat-tigriji fi Franza “are considered private corporations”, u jista’ jkun ukoll li s-socjeta` rikorrenti ma hijiex “a government authority”, pero`, hu car li din tirregola materja ta’ ordni pubbliku, u giet moghtija b’ligi funzjoni regulatrici u poter li tohrog licenzji ghal min irid jorganizza sistema ta’ imhatri fuq tigrijiet ta’ zwiemel fi Franza. Fl-esercizzju tal-funzjonijiet taghha timmanifesta poteri publici konsistenti fil-kontroll u regolamentazzjoni ta’ attivita` konnessa ma’ imhatri fuq tigrijiet taz-zwiemel. Kif gie muri, ghandha “status” imhares minn tlett ministri governattivi, u kif anke ammettiet ix-xhud espert tas-socjeta` rikorrenti, il-Professur Horatia Muir Watt, “there is a strong state interest in supervising horse betting activities”. Dan jikkonferma li hawn si tratta ta’ socjeta` li l-iskop primarju taghha huwa li tittutela il-*public policy* Franciza fir-rigward ta’ l-imhatra fuq tlielaq taz-zwiemel. <u>L-agir taghha f’dan il-kaz kien fil-kuntest ta’ dan il-poter</u>. Kif spjega ix-xhud espert tas-socjetajiet appellanti, l-Avukat Andre` Meillassoux, is-socjeta` rikorrenti hija “a special body to carry out a public mission”, ghal liema missjoni is-socjeta` rikorrenti appellata nghatat monopolju.

L-ewwel aggravju tas-socjetajiet intimati jimmerita, ghalhekk, li jkun akkolt.

Isegwi wkoll li mhux mehtieg li din il-Qorti tezamina l-aggravji l-ohra tas-socjetajiet appellanti u konsegwentement thassar u tirrevoka d-decizjoni tal-Prim Awla tal-Qorti Civili tar-28 ta’ Lulju 2006 li biha ddikjarat li d-decizjoni tal-Qorti ta’ l-Appell ta’ Parigi tal-14 ta’ Gunju 2006 fl-ismijiet **GIE Pari Mutuel Urbain v. Bell Med Ltd et (numru 05/22459)** ghandha tigi enfurzata ai termini tar-

Regolament 44/2001 u konsegwentement tichad it-talba kif dedotta fir-rikors ta' GIE Pari Mutuel Urbain tas-27 ta' Lulju 2006. 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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