RIFERENZA PRELIMINARI LILL-CJEU FIT- TERMINI TAL-ARTIKOLU 267 TAL-TFEU

QORTI CIVILI
PRIM' AWLA

MHALLEF

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Seduta ta' nhar it-Tlieta, 23 ta' Frar 2016

Kawza Numru : 16
Rikors Guramentat Numru : 424/2012/LSO

Malta *Dental Technologists* Association rapprezentata minn John Salomone Reynaud (I.D. no. 756753M), u l-istess John Salomone Reynaud f' ismu proprju

vs

Superintendent tas-Sahha Pubblika u Kunsill tal-Professjonijiet

Kumplimentari ghall-Medicina

Il-Qorti,

PRELIMINARI.

Rat ir-rikors ipprezentat fl-atti tal-kawza, tal-Malta *Dental Technologist*s Association rapprezentata minn John Salomone Reynaud (I.D. no. 756753M), datata 27 ta' Frar 2014 (aktar il-quddiem imsejha l-MDTA) fejn ir-rikorrenti talbet li ssir riferenza preliminari lill-Qorti tal-Gustizzja tal-Unjoni Ewropea fit-termini tal-**artikolu 267 tat-TFEU**.[1]

Rat ir-risposti tal-intimati fejn opponew ghat-talba.

It-Talbiet fil-kawza maghmula flr-Rikors Guramentat fl-ismijiet premessi:-

Illi permezz tar-rikors promotur, il-**Malta *Dental Technologist*s Association,** (ghal fini ta' dan id-Digriet imsejha l-MDTA), qed tfittex li jinghata gharfien lill-*Clinical Dental Technologists* (CDT) maghrufa wkoll bhala *Denturist*s, u li l-posizzjoni taghhom tigi regolarizzata mill-Awtoritajiet tas-Sahha f'Malta u, in segwitu, qed titlob li l-intimati jigu ordnati biex jipprocedu ghar-registrazzjoni tal-CDT's rikonoxxuti bhala tali fl-Istati Membri tal-Unjoni Ewropea sabiex jkunu jistghu jezercitaw il-professjoni taghhom f'Malta. Inoltre l-Assocjazzjoni qed titlob li dawk il-CDT's li jezercitaw il-professjoni taghhom f'Malta jkunu

[1] Fol 195 tal-process

awtomatikament eligibbli ghar-registrazzjoni mill-Awtoritajiet tas-Sahha f'Malta. L-Assocjazzjoni qed tfittex dikjarazzjoni li CDT jista' jezercita' l-professjoni tieghu/taghha minghajr il-htiega ta' riferenza minn dentist.

Fir-rikors guramentat l-MDTA ippremettew ukoll li l-professjoni taghhom ghandha tinghata gharfien u b'dan il-mod biss jistghu jkunu liberi li jiccaqilqu minn pajjiz ghall-iehor tal-Unjoni Ewropea u jipprovdu s-servizzi taghhom f' dawn il-pajjizi. Fil-prezent, dan mhux il-kaz. L-intimati qed jirrifjutaw li jaghtu dan l-gharfien u l-posizzjoni hija imfissra f'korrispondenza mibghuta mis-Superintendent lill-MDTA fejn tenna li "*there is no indication to establish Clinical Dental Technology as a separate regulated Health Care Profession distinct from Dental Technology as currently regulated under the Health Care Professions Act.*" (ittra datata 7 ta' Mejju 2008).

Ippremettew ghaldaqstant li dan kollu jmur kontra l-principju tal-moviment hieles tas-servizzi *(free movement and establishment of services)* kif ukoll moviment hieles tal-haddiema/professjonisti *(free movement of workers/professionals)* u r-rikonoxximent reciproku ta' kwalifiki professjonali. Barra minn hekk, l-Unjoni Ewropea tiffavorixxi l-kompetizzjoni hielsa u t-titjib fis-servizzi tas-sahha bhala rizultat ta' caqlieq transkonfinali *(cross border movement)* u l-politika ta' suq wiehed *(single market policy).* Jaghmlu riferenza ghad-**Direttiva 2005/36/EC** li tiggarantixxi lill-persuni li jkunu kisbu l-kwalifiki professjonali fi Stat Membru tal-Unjoni Ewropea jkollhom access ghall-istess professjoni u jezercitawha fi Stat Membru iehor u dan bl-istess drittijiet bhal professjonisti nazzjonali.

L-intimati opponew ghat-talbiet dedotti fil-kawza kif ukoll fir-rikors odjern. Ghal dak li hu rilevanti ghar-rikors odjern, huma jghidu li hemm bzonn tibdil fil-ligi sabiex it-talbiet jigu milqugha.

Fatti fil-Qosor

Illi dwar ir-retroxena fattwali, huwa pacifiku bejn il-kontendenti li *Clinical Dental Technologists* ma inghatawx gharfien mill-awtoritajiet tas-sahha u ma jistghux jezercitaw din il-professjoni f'Malta imma huma biss *Dental Technicians* li huma hekk mgharrfa u registrati. Dan johrog mill-korrispondenza esebita, kif ukoll mix-xhieda ta' **Juliana Mifsud,** Registratur tal-CPCM[2], **David James,**[3] u **John Salomone Reynaud**[4]**,** President tal-Malta *Dental Technologist*s Association.

Jirrizulta pacifiku wkoll li l-professjoni ta' *Clinical Dental Technologist* ma hijiex inkluza u rikonoxxuta bhala professjoni fil-provvedimenti tal-ligi illi tirregola l-Professjonijiet Kumplimentari ghall-Medicina, u cioe' **l-Att Dwar il-Professjonijiet tas-Sahha** (Kapitolu 464 tal-Ligijiet ta' Malta) kif ukoll il-Legislazzjoni Sussidjarja **LS 464.10** illi tikkontjeni *'Regolamenti li jaghmlu Ordnijiet Permanenti ghall-Kunsill tal-Professjonijiet Kumplimentari ghall-Medicina'*.

Lanqas hu kkontestat id-definizzjoni tal-professjoni ta' *Clinical Dental Technician* ossia *Denturist* kif deskritt fir-rikors promotur fis-sens li huma esperti fil-qasam ta' 'dental appliances' li jinkludi l-manifattura ta' dentieri, il-manifattura ta' snien foloz,

[2] Affidavit a fol 56 tal-process.
[3] Xhieda esebita f ol 63A et seq.
[4] Affidavit a fol. 68.

xoghlijiet ohra ancillari bhal tiswijiet, zidiet u alterazzjonijiet ta' dentieri, u 'dental prosthesis' direttament ghall-pazjent.[5]

Mill-provi imressqa kien hemm rifjut da parti tal-CPCM ta' applikazzjoni maghmula minn persuni kwalifikati bhala CDT fl-UE sabiex jigu registrati bl-iskop li jkunu jistghu jipprattikaw il-professjoni taghhom f'Malta bhala CDT - minn Marco Sarno (3 ta' Awwissu 2009), Mario Viveros (11 ta' Dicembru 2009 - Spanjol) u Philip Tucker (20 ta' Novembru 2012 - UK). David James, Segretarju tal-MDTA, xehed li CDT's huma rikonoxxuti fir-Renju Unit, fir-Repubblika tal-Irlanda, id-Danimarka, u fl-Olanda.[6]

Bazikament il-pretensjoni tal-MDTA hija li l-klijent jista' jitlob is-sevizzi tal-CDT direttament minghajr li jkun mehtieg lid-dentist bhala intermedjarju. Li jinghataw gharfien bhala *Dental Technicians* mhuwiex bizzejjed ghaliex l-istharrig, l-*expertise* u l-kwalifiki ta' CDT's jeccedi dak ta' *Dental Technician*.

Il-premessa fondamentali tar-rikorrenti hija mibbnija fuq dik tal-principju tal-moviment hieles ta' servizzi u professjonijiet, partikolarment b'riferenza **ghall-*Professional Qualifications Directive* tal-Unjoni Ewropea (2005/36/EC)** li tiggarantixxi li persuni li jkunu kisbu kwalifiki professjonali fi Stati Membri tal-Unjoni Ewropea jkunu jistghu jezercitaw il-professjoni taghhom f'Malta. Fil-kors tal-proceduri odjerni, l-assocjazzjoni pprezentat

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[5]Termini ohra li jintuzaw b'riferenza ghall-CDT huma:"Denturologist/Dental Prosthetist/Dental Protetik/ *Clinical* Dental Technologist//Kliniske Tandteknickere/ Erikoishammasteknikko/ Specialised *Dental Technician*/Tandprothetici/Zubnych Protetikov (fol 15).

[6] Effettivament jirrizulta mill-**Regulated Professions Database** tal-Kummissjoni Ewropea, li Clinicat *Dental Technicians*/*Denturist*s jinghataw gharfien ghall-fini tad-Direttiva 2005/36/EC ukoll fl-Awstrija, Belgium, Bulgaria, Croatia, Cyprus, Finland, France, Germany, Greece u fl-Ungerija.

talba ghar-referenza preliminari lill-Qorti tal-Gustizzja tal-Unjoni Ewropea (CJEU) *inter alia* sabiex tinghata interpretazzjoni awtorevoli dwar l-applikabbilita' tad-Direttiva imsemmija ghall-kaz ta' CDT's senjatament tenut kont tal-fatt li l-Awtoritajiet tas-Sahha qed jirrifjutaw li jaghtuhom rikonoxximent sabiex ikunu jistghu jezercitaw il-professjoni taghhom f'Malta u fl-Istati Membri tal-Unjoni Ewropea.

Jargumentaw li fir-rigward ta' certi oqsma ohra tal-Kura tas-Sahha jista' jkun gustifikat illi xi ghamla ta' servizzi tkun riservata ghal persuni li jappartjenu lill-professjoni medika, per ezempju, certi servizzi relatati mal-kura ta' l-ghajnejn, ghar-raguni li jekk tali servizz ma jigix moghti kif ghandu jkun u konformament ma' *standards* medici stabbiliti, l-pazjent jista' jigi espost ghal hsara irriversibbli (e.g. isofri hsara serja fil-vista tieghu). Madanakollu fil-kaz ta' *Clinical Dental Technologists* bhala *Allied/Oral Health Care Professionals*, dan ir-riskju huwa inezistenti ghas-semplici raguni illi jekk dentiera tkun difettuza, l-unika konsegwenza tkun dik li d-'dental appliance' difettuza tkun trid tigi aggustata jew mibdula.

Jigi precizat li t-talba tal-MDTA mhix biex *Clinical Dental Technologist* jigi mgharraf bhala professjoni tas-sahha distinta u separata minn dik ta' *Dental Technologist* imma, kif jirrizulta minn korrispondenza indirizzata lid-Direttur Generali tas-Sahha Pubblika (fol 115) huma talbu "*to have Clinical Dental Technologist included in the Dental Technologists Registry of the CPCM.*"

Konsiderazzjonijiet ta' Dritt.

Il-kaz odjern jikkoncerna gharfien ta' professjoni kumplimentari ghall-medicina u bhala tali jaqa' fl-ambitu regolatorju tal-**Kap 464 tal-Ligijiet ta' Malta** (L-Att Dwar il-Professjonijiet tas-Sahha). F'dana l-Att :-

"professional complementary to medicine" means a health care professional whose name is entered in the Registers of Professions Complementary to Medicine referred to in article 28;"(**art.2)**

Rilevanti wkoll is-segwenti artikoli tal-Kap 464:-

"25. *(1) No person shall practise any of the professions complementary to medicine unless his name is entered in the respective register kept by the Council for Professions Complementary to Medicine, in accordance with the provisions of this Act.*

28. *(1) The Council for the Professions Complementary to Medicine shall keep separate registers, in respect of each of the professions complementary to Medicine listed in the Third Schedule to be known as the Registers of Professions Complementary to Medicine, in which, following an application to this effect by the person concerned, shall be entered the name of any citizen of Malta or of a Member State, who holds –*

(a) such qualification, as may be prescribed, obtained from the University of Malta, or from a training institution, or after

following a training course organised by the Department of Health, in the profession for which a separate Register is kept; or

(b) a qualification obtained from a Member State and recognised in accordance with the Mutual Recognition of Qualifications Act, or any regulations made thereunder; or

(c) a qualification in the said profession obtained from any other university, college or school recognized by the said Council:

Provided that for the purposes of such qualification, the said Council may require that the person concerned sits for and passes a professional and linguistic proficiency test.

(2) The Council for Professions Complementary to Medicine shall keep a separate register for each of the professions listed in the Third Schedule, in which, following an application to that effect by the person concerned, shall be entered, for a period not exceeding two years and subject to any condition as the Council may deem necessary, the name of every person, not being a citizen of Malta or a citizen of a Member State, who holds a degree, diploma or qualification referred to in subarticle (1)(a), (b) and (c).

(3) Notwithstanding the provisions of sub article (1) the Council for the Professions Complementary to Medicine shall keep a separate register for each of the professions listed in the Third Schedule, in which shall be registered, following an application to that effect by the person concerned, the names of any citizen of Malta or of a Member State who has qualified for the

qualifications referred to in paragraphs (a) or (b) or, subject to the provisions of the proviso thereto, paragraph (c) of sub-article (1), but who have not yet obtained such qualification."

Il-professjonijiet kumplimentari ghall-Medicina li huma elenkati fit-Tielet Skeda huma:

- Acupuncture
- Audiologists
- Dietetics
- Physiotherapy
- Dental Hygiene
- Chiropractic
- Nutrition
- Optometry
- Orthoptics
- Osteopathy
- Speech Language Pathology
- *Clinical* Perfusion
- Podiatry
- Psychotherapy
- Radiography
- Environmental Health
- **Dental Technology**
- Occupational Therapy
- Medical Laboratory Science
- Medical Physicists
- Nutritional Therapists

S'intendi l-professjoni ta' *Clinical Dental Technician* mhix fost dawk elenkati fit-Tielet Skeda tal-Att filwaqt li *Dental Technicians* huma registrati f'din l-Iskeda.

Sottomissjonijiet tal-Partijiet

Ir-rikorrenti spjegaw li hemm distinzjoni bejn *Dental Technologist* u *Clinical Dental Technologist*, ossia *Denturist*. Attwalment persuna kwalifikata u rikonoxxuta bhala CDT jew *Denturist* f'pajjiz iehor tal-UE mhix rikonoxxuta f'Malta bhala "*regulated profession"* u allura ma tistax tistabbilixxi ruhha biex tezercita din il-professjoni f'Malta. L-MDTA issostni li CDT's ma jikkrejaw l-ebda perikolu ghall-pazjent bix-xoghol taghhom. Ma hemm l-ebda patologija involuta fix-xoghol taghhom li jikkonsisti fil-misurar u thejjiha tal-*mould* tad-dentiera u ta' *dental prosthesis*. Ghalhekk huma iqiesu li d-dentist ghandu jitnehha bhala intermedjarju ghall-ezercitar tal-professjoni imsemmija. Jishqu li jekk *Denturist* jinduna b'patologija, huwa obbligat jirreferi l-kaz lid-dentist. Ghalhekk ma hemmx kwistjoni ta' htiega ta' protezzjoni tas-sahha pubblika sabiex CDT / *Denturist* jista' jezercita' l-professjoni tieghu minghajr id-dentist bhala intermedjarju. Issottomettew li l-Qorti tal-Gustizzja tal-Unjoni Ewropea ghadha ma ppronunzjatx ruhha dwar il-kaz ta' CDT's u ccitaw il-kaz ta' **Denis MacQuen and others v Grandvision Belgium SA, formerly Vision Express Belgium SA,*et.***[7] .Huma jghidu li kien jittratta kaz differenti ghal dak tallum billi l-Qorti sabet f'dan il-kaz li kien hemm ragunijiet ta' sahha pubblika li ggustifikaw mizuri intizi biex l-ezami tal-pazjent ikun riservat ghall-optalmologi, jew cioe`, persuni li ghandhom

[7] Case C - 108/96 , 1.2.2001

kwalifiki professjonali medici ad eskluzjoni ta' kategorija ohra ta' professjonisti li m'ghandhomx dawn il-kwalifiki partikolari.

Issottomettew ukoll li dan il-kaz jimpingi fuq konsiderazzjonijiet ta' moviment hieles ta' haddiema u servizzi, l-istabbiliment hieles ta' professjonisti, u ir-rikonoxximent reciproku tal-kwalifiki professjonali.

Is-Superintendent tas-Sahha Pubblika issottometta li din il-Qorti mhix obbligata li taghmel riferenza preliminari. Inoltre irrileva li r-rikorrenti ma ssemmiex id-disposizzjoni tal-ligi li fuqu qed tistrieh.

Il-CPCM ssottometta li t-talba ghandha tigi kkonsidrata wara li jinghalqu l-provi kollha.

Il-Qorti hi tal-fehma li ghandha quddiemha fatti bizzejjed sabiex taghti definizzjoni tal-kuntest fattwali u legali tal-kaz b'mod li tista' tasal biex tindirizza t-talbiet tar-rikorrent.

Ragunijiet ghal din ir-Referenza

Din il-Qorti hi tal-fehma li r-rizoluzzjoni tal-kwistjoni preliminari hija necessarja ghad-determinazzjoni tat-talbiet f'din il-kawza. L-intimati qed jirrifjutaw li jaghtu gharfien lill-professjoni ta' CDT peress li jsostnu li l-ligi ma tobbligahomx li jaghtu tali gharfien. Madanakollu l-ilment tar-rikorrenti jikkoncerna l-prattika transkonfinali tal-professjoni bejn applikanti li jixtiequ jistabbilixxu l-professjoni taghhom f'Malta u l-gharfien li jsegwi tal-professjoni ta' CDT anke ghall-professjonisti Maltin.

Tippreciza li fil-kaz odjern, ma jirrizultax li hemm diskriminazzjoni bejn cittadini ta' Malta u dawk tal-Istati Membri tal-UE billi l-professjoni ta' *Clinical Dental Technician* mhuwiex rikonoxxut bhala "*regulated profession"* kemm ghac-cittadini Maltin, kif ukoll ghall-cittadini tal-Unjoni Ewropea. Madanakollu b'effett ta' dawn il-mizuri nazzjonali, irrizulta li applikanti cittadini tal-pajjizi Membri tal-UE gew imcahhda milli jistabbilixxu ruhhom f'Malta biex jipprattikaw professjoni kif rikonoxxuta fil-pajjizi membri ohra tal-UE.

Ghalhekk din il-Qorti qed taghmel din ir-riferenza partikolarment sabiex jigi stabbilit jekk in-nuqqas tal-awtoritajiet tas-sahha nazzjonali li jaghtu gharfien lill-kaz partikolari tal-professjoni ta' *Clinical Dental Technicians*/*Denturists* hija inkompatibbli mal-principji fondamentali stabbiliti fl-artikoli **49 TFEU, 52 TFEU, u 56 TFEU** u **fid-Direttiva 2005/36/EC** tal-Parlament Ewropew u tal-Kunsill tas-7 ta' Settembru 2005 u dan minnkejja li ma hemmx diskriminazzjoni fil-Ligi izda fil-prattika, applikanti minn Stati Membri ohra qed jigu projbiti li jistabbilixxu l-professjoni taghhom f'Malta.

<u>**DECIDE**</u>

Fid-dawl tal-premess, il-Qorti qed tilqa' t-talba maghmula mill-Assocjazzjoni rikorrenti sabiex issir referenza preliminari fit-termini tal-**artikolu 267 tal-TFEU** fis-sens kif hawn imfisser u qed tirreferi s-segwenti mistoqsijiet lill-Qorti tal-Gustizzja tal-Unjoni Ewropea (CJEU). Hawnhekk il-Qorti tinnota li l-punt ewlieni li qed tishaq fuqu l-Assocjazzjoni hija li ma hemm l-ebda periklu ghas-sahha pubblika. Din it-tema hija konsistenti fil-

mistoqsijiet li huma ssuggerew lil din il-Qorti, li mhux kollha gew akkolti sabiex jigu trasmessi lill-CJEU.

Mistoqsijiet:

1. Jekk il-projbizzjoni tal-Awtoritajiet tas-Sahha f'Malta, ossia ir-rifjut taghhom li jaghtu gharfien lill-professjoni ta' *Clinical Dental Technologists/Denturists* minnkejja li ma hemmx diskriminazzjoni fil-Ligi izda fil-prattika, applikanti minn Stati Membri ohra qed jigu projbiti li jistabbilixxu l-professjoni taghhom f'Malta hija inkompatibbli mal-principji u disposizzjonijiet tal-holqien tas-*Single Market* ,partikolarment kif jemanu mill-artikoli **49 TFEU, 52 TFEU u 56 TFEU** meta ma hemmx periklu ghas-sahha pubblika.

2. Jekk **id-Direttiva 2005/36/EC** tal-Parlament Ewropew u tal-Kunsill tas-7 ta' Settembru 2005, imsejha l-Professional Qualifications Directive, ghandhiex tigi applikata fir-rigward ta' *Clinical Dental Technologists* peress illi jekk dentiera tkun difettuza, l-unika konsegwenza tkun li dik id-'dental appliance' difettuza tkun trid tigi aggustata jew mibdula, minghajr l-ebda periklu ghall-pazjent.

3. Jekk il-projbizzjoni tal-Awtoritajiet tas-Sahha f'Malta li qieghda tigi kkontestata ma tistax isservi biex tassigura l-objettiv li jkun hawn livell gholi ta' harsien tas-sahha pubblika peress li kull dentiera difettuza tista' tigi mibdula minghajr l-ebda periklu ghall-pazjent.

4. Jekk hux qed jigi vvjolat il-principju tal-proporzjonalita' minhabba l-mod kif il-konvenut Superintendent tas-Sahha

Pubblika qed jinterpreta u jenforza d-Direttiva 2005/36/EC tal-Parlament Ewropew u tal-Kunsill tas-7 ta' Settembru 2005 fir-rigward ta' *Clinical Dental Technologists* li japplikaw ghal rikonoxximent mill-istess Awtoritajiet tas-Sahha f'Malta.

Ghaldaqstant tordna lir-Registratur Qrati Civili u Tribunali[8] sabiex jikkomunika lir-Registru tal-Qorti tal-Gustizzja tal-Unjoni Ewropea (CJEU) permezz ta' posta registrata, d-Digriet tallum sabiex il-kwistjonijiet preliminari jigu decizi minn dik il-Qorti skont id-dettami tal-Artikolu 267 tal-TFEU u tar-Regolamenti Procedurali tal-Qorti tal-Gustizzja tal-Unjoni Ewropea u l-Istatut tal-istess Qorti.

Degretat.

Onor. Imhallef Lorraine Schembri Orland
LL.D., M.Jur.(Eur.Law), Dip.Trib.Eccles.Melit.
23 ta' Frar 2016

Josette Demicoli
Deputat Registratur
23 ta' Frar 2016

[8] SL 12.09 reg 21(4).