

Qorti tal-Appell
(Kompetenza Inferjuri)
Appell numru: 43/2015

Jutte Windekind (Appellanti)

Vs

Direttur Generali tas-Sigurta Socjali (Appellat)

Il-Gimgha, 24 ta' Gunju, 2016.

Winderkind appellat minn decizjoni tal-Arbitru li cahad l-appell li pproponiet minn decizjoni tad-Direttur Generali li m'hijiex intitolata li tircievi l-ghajjnuna socjali f'Malta, minhabba li:

"A citizen of the European Union may reside in Malta if he has sufficient resources for himself and his family members, ensuring that they do not become a burden on the Social Assistance System in Malta (L.N. 191 of 2007)."

Jirrizulta li l-appellanti hi Germaniza li giet tghix Malta meta kienet tqila. Sa Gunju 2014 kienet ghadha tghix fil-Germanija. Fl-applikazzjoni ghall-ghajjnuna socjali, iddikjarat li thallas kera ta' €330 kull xahar. Il-qorti ma tifhimx kif dan hu possibbli jekk m'ghandhiex mezzi finanzjarji biex tmantni lilha nnifsha u lil uliedha.

L-aggravji tal-appellanti huma li:

- i. Il-ligi (Avviz Legali 191 tal-2007) li kull cittadin tal-Unjoni Ewropea ma jigix diskriminat minn Stat Membru. L-Arbitru njora ghal kollox ir-regolament 3(1).
- ii. L-awtoritajiet lokali naqsu milli jaghmlu l-apprezzament li jissemma fid-decizjoni **Pensionsversicherungsanstalt vs Peter Bray**.
- iii. It-talba tal-appellanti kienet ghall-perjodu li fih ma setatx tahdem, u dan unikament minhabba l-istadju avanzat tat-tqala.

Id-Direttur Generali tas-Sigurta Socjali wiegeb fejn ta r-ragunijiet ghalfejn l-appell kellu jigi michud.

Skond regolament 11 tal-Avviz Legali 191 tal-2007, kull cittadin tal-Unjoni ghandu **jedd jirrisjedi f'Malta** jekk:

- i. Ghandu rizorsi sufficjenti ghalih u l-familja tieghu, li jizguraw li ma jsirx piz fuq is-sistema tal-ghajjnuna socjali f'Malta; u
- ii. Ghandu assikurazzjoni kontra l-mard ghalih u l-familja.

A bazi ta' dan ir-regolament, l-Arbitru qal:

"Ghalhekk huwa mperattiv li cittadin tal-Unjoni Ewropea, meta jigi Malta, jrid ikollu mezzi finanzjarji bizzzejjed sabiex imantni lilu nnifsu u lill-familja tieghu u mhuwiex intitolat ghall-ghajjnuna socjali.

Dan ghax kif ritenut mill-gurisprudenza, il-poplu Malti m'ghandux igorr piz permezz tat-taxxi tieghu ghal min jigi Malta u jiddeciedi ma jahdimx u jippretendi li dak li ma hax minn pajjizu jigi jiehdu minn Malta.

Fil-kaz odjern, l-appellanta kienet qalet li ma kinitx tista' tahdem ghaliex kellha t-tqala li llum huwa car li m'ghadux il-kaz. Ghalhekk illum tinsab f'qaghda li tahdem u m'ghandhiex taqa' fuq is-sistema tas-servizzi lokali, haga li mhux permessa mil-ligi."

Wara li l-qorti rat l-atti, tosserva:

1. Ghalkemm l-appellanti ssostni li l-passaport tat-tifla l-kbira kien ittiehed mill-awtoritajiet, prova ta' dan ma tressqitx. Jirrizulta li fit-2 ta' Settembru 2014 inhareg certifikat mediku bil-parir li minhabba li kellha 29 gimghat tqala u minhabba l-istorja medika, kien floku li ma tivvjaggax.
2. Skond Regolament 3(1) tal-Ordni dwar il-Moviment Liberu ta' Cittadini tal-Unjoni Ewropea u tal-Membri tal-Familja tagghom (L.S. 460.17), *"cittadin tal-Unjoni jista' jidhol, jibqa' u jirrisjedi f'Malta, ifittex u jaqbad impjeg jew impjeg ghal rasu f'Malta, u ghandu jgawdi trattament ugwali ma' cittadini Maltin fl-iskop tat-Tratta"*.
3. Skond regolament 4(1), cittadini tal-Unjoni Ewropea jista' jirrisjedi Malta ghall-perjodu itwal minn tliet xhur.
4. Imbaghad skond ir-regolament 7(1), wara l-ewwel tliet xhur ic-cittadin tal-Unjoni Ewropea ghandu japplika ghall-hrug ta' certifikat ta' registrazzjoni. M'hemmx prova li fil-kaz tal-appellanti nhareg certifikat simili.
5. Skond regolament 11(4), il-jedd ghall-ghoti ta' certifika ta' registrazzjoni jiddependi, minn fost'affarijiet ohra, prova li *"... jkollu rizorsi bizzejjed ghalih innifsu u ghall-membri tal-familja tieghu sabiex dawn ma jkunux ta' piz fuq is-sistema ta' assistenza socjali f'Malta matul il-perjodu ta' residenza tagghom."*
6. Il-kaz ta' Peter Brey li l-appellanti ghamlet riferenza ghalih fir-rikors tal-appell, hu differenti mill-kaz in ezami in kwantu f'dak il-kaz Brey kellhom certifikat ta' residenza. Fil-kaz tal-appellanti ma jirrizultax li ghandha certifikat simili. M'hemm l-ebda prova li r-rikorrenti kienet qeghda legalment tirisjedi f'Malta.
7. L-Arbitru kellu ragun meta sostna li m'hemm xejn x'izomm lill-appellata milli ssib xoghol. Kif tajjeb qal l-appellat, illum hawn il-mezzi sabiex genituri jfittxu xoghol u jinghataw ghajnuna fil-kura ta' wliedhom.
8. L-appellanti ssostni li hi talbet ghall-ghajnuna socjali ghall-perjodu li ma setatx tahdem, u dan unikament minhabba l-istat avanzat tat-tqala u l-perjodu li fih hadet hsieb il-wild taghha matul l-ewwel ftit xhur ta' tqala. Pero' dan il-fatt

kienet tafu qabel ma giet Malta. Ghalkemm qalet li kienet giet Malta ghal vaganza ta' gimghatejn, m'hemmx provi ta' x'wassal biex baqghet Malta.

9. Il-kaz **Elisabeta Dano et vs Jobcenter Leipzig** (C-333/13) deciz mill-Grand Chamber tal-Qorti Ewropea tal-Gustizzja, kien ukoll jitratta dwar hlas ta' beneficcji socjali. Il-qorti qalet:

"68 *Article 24(1) of Directive 2004/38 provides that all Union citizens residing on the basis of the directive in the territory of the host Member State are to enjoy equal treatment with the nationals of that Member State within the scope of the Treaty.*

69 *It follows that, so far as concerns access to social benefits, such as those at issue in the main proceedings, a Union citizen can claim equal treatment with nationals of the host Member State only if his residence in the territory of the host Member State complies with the conditions of Directive 2004/38.*

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71 *Second, for periods of residence longer than three months, the right of residence is subject to the conditions set out in Article 7(1) of Directive 2004/38 and, under Article 14(2), that right is retained only if the Union citizen and his family members satisfy those conditions. It is apparent from recital 10 in the preamble to the directive in particular that those conditions are intended, inter alia, to prevent such persons from becoming an unreasonable burden on the social assistance system of the host Member State (judgment in Ziolkowski and Szeja, EU:C:2011:866, paragraph 40)*

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73 *In order to determine whether economically inactive Union citizens, in the situation of the applicants in the main proceedings, whose period of residence in the host Member State has been longer than three months but shorter than five years, can claim equal treatment with nationals of that Member State so far as concerns entitlement to social benefits, it must therefore be examined whether the residence of those citizens complies with the conditions in Article 7(1)(b) of Directive 2004/38. **Those conditions include the requirement that the economically inactive Union citizen must have sufficient resources for himself and his family members.***

74 *To accept that persons who do not have a right of residence under Directive 2004/38 may claim entitlement to social benefits under the same conditions as those applicable to nationals of the host Member State would run counter to an objective of the directive, set out in recital 10 in its preamble, namely **preventing Union citizens who are nationals of other Member States from becoming an unreasonable burden on the social assistance system of the host Member State.***

75 *It should be added that, as regards the condition requiring possession of sufficient resources, Directive 2004/38 distinguishes between (i) persons who are working and (ii) those who are not. Under Article 7(1)(a) of Directive 2004/38, the first group of Union citizens in the host Member State have the right of residence without having to fulfil any other condition. **On the other hand, persons who are economically inactive are required by Article 7(1)(b) of the directive to meet the condition that they have sufficient resources of their own.***

76 **Therefore, Article 7(1)(b) of Directive 2004/38 seeks to prevent economically inactive Union citizens from using the host Member State's welfare system to fund their means of subsistence.**

77 *As the Advocate General has observed in points 93 and 96 of his Opinion, any unequal treatment between Union citizens who have made use of their freedom of movement and residence and nationals of the host Member State with regard to the grant of social benefits is an inevitable consequence of Directive 2004/38. Such potential unequal treatment is founded on the link established by the Union legislature in Article 7 of the directive between the requirement to have sufficient resources as a condition for residence and the concern not to create a burden on the social assistance systems of the Member States.*

78 *A Member State must therefore have the possibility, pursuant to Article 7 of Directive 2004/38, of refusing to grant social benefits to economically inactive Union citizens who exercise their right to freedom of movement solely in order to obtain another Member State's social assistance although they do not have sufficient resources to claim a right of residence.*

79 *To deny the Member State concerned that possibility would, as the Advocate General has stated in point 106 of his Opinion, thus have the consequence that persons who, upon arriving in the territory of another Member State, do not have sufficient resources to provide for themselves would have them automatically, through the grant of a special non-contributory cash benefit which is intended to cover the beneficiary's subsistence costs.*

80 *Therefore, the financial situation of each person concerned should be examined specifically, without taking account of the social benefits claimed, in order to determine whether he meets the condition of having sufficient resources to qualify for a right of residence under Article 7(1)(b) of Directive 2004/38."*

10.A bazi tal-insenjament fil-kaz ta' **Dano**, il-presenza ta' cittadin tal-Unjoni Ewropea f'Malta m'hijiex bizzejjed sabiex jinghata l-beneficcju socjali. L-appellanti ma ressqet l-ebda prova li turi li kellha r-rizorsi finanzjarji sabiex f'Malta tipprovdi ghalha nnifisha u ghal uliedha, u ghalhekk ma jirrizultax li tikkwalifika ghall-ghoti ta' certifikazzjoni ta' residenza. Pjuttost minn dak li ddikjarat fl-applikazzjoni, fi zmien li applikat ghall-ghajjnuna socjali, ma kellhiex rizorsi finanzjarji ghalha u wliedha. Il-konsegwenza hi li ma tistax tinvoka l-principju tan-non diskriminazzjoni kontemplat fir-regolament 3(1) tal-Ligi Sussidjarja 460.17 sabiex tircievi l-ghajjnuna socjali.

Ghal dawn il-motivi, l-appell hu michud. Peress li l-appellanti kienet bl-ghajjnuna legali, m'hemmx provvedimenti x'jinghata dwar l-ispejjez.

Anthony Ellul.