



QORTI TAL-MAGISTRATI (MALTA)

**MAGISTRAT DR.
DENNIS MONTEBELLO**

Seduta tal-5 ta' Dicembru, 2003

Avviz Numru. 244/2002/1

Avviz numru 244/2002DM

Direttur tas-Sigurta Socjali

Vs

Emanuel Spiteri

Il-Qorti,

Rat l-avviz permezz ta' liema l-attur talab li l-konvenut jigi kkundannat jirrifondi s-somma ta' tlett elef sitt mija u tnejn u disghin lira Maltin u tlieta u hamsin centezmu (Lm3692.53) bilanc minn somma akbar imhallsa lill marthu Carmen Spiteri matul il-perjodu bejn is-16 ta' Novembru 1996 u l-31 ta' Dicembru 1998 bhala ghajnuma socjali meta huwa kien obligat illi jmatniha skond il-ligi.

Bl-ispejjez inkluzi dawk tal-ittra ufficjali datata 12 ta' Frar 2001 u bl-imghax legali mid-data tal-prezentata sad-data

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tal-pagament effettiv kontra l-konvenut li gie ngunt ghas-subizzjoni

Rat in-nota tal-eccezzjonijiet tal-konvenut Emanuel Spiteri li permezz taghha huwa eccepixxa illi:

1 Preliminarjament illi t-talbiet tal-attur huma preskritti a tenur tal-Artikolu 2156 (b) tal-Kap 16 tal-Ligijiet ta' Malta (*liema eccezzjoni giet b'isvista ripetuta fi paragrafu tnejn (2) tan-nota tal-eccezzjonijiet*);

2 Minghajr pregudizzju ghas-suespost, it-talbiet tal-attur huma preskritti a tenur tal-Artikolu 2156 (b) tal-Kap 16 tal-Ligijiet ta' Malta;

3 Minghajr pregudizzju ghas-suespost, l-eccepjenti ma kienx obligat imantni lil marthu fil-perjodu indikat;

4 Minghajr pregudizzju ghas-suespost, it-talbiet attrici huma nfondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez stante illi l-eccepjenti mhux debitur tal-attur;

5 Salvi eccezzjonijiet ohra.

Rat in-nota tal-attur tal-23 t'Ottubru 2002 fejn permezz taghha l-attur irriduca t-talba tieghu ghas-somma ta' Lm3349.81 (tlejt elef tlejt mija u disa' u erbgħin lira Maltin u wiehed u tmenin centezmu).

Semghet ix-xhieda bil-gurament;

Rat id-dokumenti esibiti;

Semghet it-trattazzjoni tad-difensuri tal-partijiet;

Rat l-atti kollha tal-process; u

Ikkunsidrat:-

Kif jirrizulta mid-deposizzjoni tas-senior principal fit-Taqsima tar-Relief fid-Dipartiment tas-Sigurta Socjali, Carmelo Azzopardi, l-attur qieghed jibbaza l-azzjoni tieghu fuq id-dispozizzjonijiet tal-Artikolu 30 (11) tal-Kap 318 tal-Ligijiet ta' Malta.

Dan is-subinciz jipprovdi hekk:

The Director may, if he so deems fit in the circumstances of the case, take proceedings before the competent Civil Court against such relatives being the spouse, father, mother, sons or daughters as the case may be, of any person in respect of whom Social Assistance is claimed or received under this article (other than sub article (8) thereof) to compel them to refund any such assistance that is paid to or on behalf of such person and the court shall order the refund of any sum paid as Social Assistance up to such sum as would have been due by such relatives or relative had the person to whom Social Assistance is paid had claimed maintenance from such relatives in accordance with the provisions of the Civil Code; so however that, in any case where the spouses are separated, whether de jure or de facto, the Director shall refer the case to the Director General (Social and Family Affairs) appointed by the Prime Minister for his investigations and the submission of a situation report to the Director within one month. The Director may, if he so deems fit in the circumstances of the case, request the aforesaid Director General to update any such reports at such intervals as the Director may deem fit, and the Director shall take due account of such reports in the exercise of his discretion under this sub-article.

Ghalhekk jinkombi fuq l-attur sabiex tista' tirnexxi t-talba tieghu li, fl-ewwel lok, jipprova illi l-konvenut bhala mizzewweg lil Carmen Spiteri kien obbligat skond il-ligi illi jissomministralha xi manteniment, u, fit-tieni lok, billi jirrizulta indubbjament, anke mill-kopji ta' digriet esebiti mill-attur stess, illi l-konvenut u marthu kienu *de facto* separate, illi huwa (l-attur) kien ottempra ruhu mad-disposizzjoni tal-istess sub inciz 11 tal-imsemmi Arikolun30 u illi kien irrifera l-kaz in kwistjoni lid-Direttur Generali "Social and Family Affairs" appuntat mill-Prim Ministru ghall-investigazzjonijiet u illi dan id-Direttur Generali kien issottometta ir-rapport tieghu.lid-Direttur attur.

Ghal dak li jirrigwarda l-ewwel kwesit, l-attur ipprezenta kopja tad-digriet moghti mis-Sekond'Awla tal-Qorti Civili fit-23 ta' Marzu tal-1995 "Digriet Nru 277/1995 fir-rikors fl-ismijiet Carmen mart Emanuel Spiteri vs l-istess Emanuel Spiteri" minn fejn anzi jirrizulta illi l-Qorti kienet ikkonkludiet illi ebda manteniment ma kien dovut mill-konvenut billi f'dak il-perjodu l-istess konvenut ma kienx qieghed jahdem.

Dan il-fatt gie in segwitu ikkonfermat minn Edwin Mallia rapprezentant tal-Employment and Training Corporation (ETC) li kkonferma illi bejn is-17 ta' April tal-1994 u s-7 t'Ottubru tal-1996 il-konvenut kien bla xoghol, kif jirrizulta mid-dokument minnhu esibit, Dok.X1 a fol 24 tal-process.

Inoltre ghalkemm il-Kodici Civili jipprovdi illi l-mizzewgin ghandhom l-obbligu illi jmantnu lill xulxin qabel kull obbligu iehor li jmantnu xi axxendent, kull kwistjoni dwar min ikun obligat imantni lil min u f'liema ammont ghandhu jkun dan il-manteniment hija riservata ghal Qorti ta' Gurisdizzjoni Volontarja, kollox kif provdut fl-Artikolu 5 sa 6 (a) tal-Kodici Civili.

Inoltre billi huwa stabbilit illi bejn il-mizzewgin kienu ilhom pendententi sa mis-17 ta' Novembru 1994 proceduri ghas-separazzjoni anke meta l-konvenut setgha beda jahdem regolarment, kull kwistjoni dwar kemm jista' jkun il-manteniment li setgha jkun obligat li jhallas lil marthu, kienet riservata wkoll ghall-Qorti Gurisdizzjoni Volontarja.

Huwa infatti ghalhekk illi l-Kap 318 fl-imsemmi sub inciz 11 jipprovdi illi meta d-Direttur tas-Sigurta Socjali jkun informat biss bil-proceduri tas-separazzjoni bejn il-mizzewgin u illi minn ikun qed jibbenefika jkun separat *de facto*, huwa ghandhu jissottometti l-kaz ghall-investigazzjonijiet lid-Direttur Generali nominat ghal dan il-fini mill-Prim Ministru.

Ghalhekk f'dan il-kaz, apparti li din il-Qorti hija prekluziva tinvestiga u tiddeciedi jekk il-konvenut kienx effettivament obligat ghal manteniment u f'liema ammont setgha kien obligat ihallas dan il-manteniment, jirrizulta wkoll illi,

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qabel ma l-attur ghadha ghal dawn il-proceduri, huwa ma ottemprax ruhhu ma r-rekwisiti tal-ligi, u ghaldqstant tichad it-talba attrici;

Bl-ispejjez kontra l-attur.

< Sentenza Finali >

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