



**QORTI TA' L-APPELL**

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

**ONOR. IMHALLEF  
ANTON DEPASQUALE**

**ONOR. IMHALLEF  
ALBERT J. MAGRI**

Seduta ta' l-14 ta' Frar, 2006

Appell Civili Numru. 6/2003/2

**Pierre Caruana**

**vs**

**Bord tal-Professjonijiet Supplementari tal-Medicina  
illum maghruf bhala Kunsill ghall-Professjonijiet  
Kumplimentari ghall-Medicina**

**Il-Qorti:**

Rat id-decizjoni - intitolata *Report of Board of Inquiry in respect of Mr Pierre Caruana Senior Physiotherapist* -

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moghtija - bil-lingwa ingliza - mill-Bord intimat fit-tletin (30) ta' Dicembru, 2002 illi fiha jinghad hekk:

*"The Board for the Profession Supplementary to Medecine acted as a Board of Inquiry following a report by Raymond Bezzina Principal Physiotherapist, Out-Patient Section of Physiotherapy Department at St Luke's Hospital to inquire about a complaint taken on oath by Ms Maria Rosaria Casha Monsigneur of Flat 4 Blk E5 Qasam Bini tal-Gvern Ta' Xbiex I.D. card number 758555M.*

*"The Board met on the following dates:*

*5<sup>th</sup> November 2002,*

*7<sup>th</sup> November 2002,*

*12<sup>th</sup> November 2002*

*18<sup>th</sup> November 2002*

*With a final discussion held during the Board meeting on 16<sup>th</sup> December 2002.*

*"Mr Pierre Caruana was assisted by Dr Joseph Brincat as his legal Advisor. The main complaint by Ms Casha Monsigneur was that she had an appointment at the Physiotherapy Department and was told by Mr Pierre Caruana that she needed insoles. After being asked by the same Ms Casha Monsigneur, Mr Caruana informed her that if he were to take the measurements, he would have to come to her house and she would have to give him Lm25 deposit.*

*"After referring the matter back to Mr. Gatt, the Consultant, the same Mr. Gatt insisted on hydrotherapy treatment.*

*"Mr Caruana appeared in front of the Board of Inquiry on circumstances leading to the breach of the code of Ethics so as to establish whether there were failures, shortcomings, acts or omissions in his professional*

*behaviour towards Ms Casha Monsigneur which goes [recte: go] against the Code of Ethics.*

*“Documents presented to the Board were:*

- the physiotherapy referral form of Mr P Caruana in respect of Ms Casha Monsigneur*
- a photocopy of Mr Caruana’s diary.*

*“As witnesses that gave evidence before the Board were Mr Raymond Bezzina, Principal Physiotherapist, Out-Patient Section and Ms Edmea Mifsud, who is the head of the Orthotic and Prosthetic Unit (OPU) at St. Luke’s Hospital.*

*“From the evidence submitted it results in the widest manner that there is a severe lack of communication and direction between the out-patient section of the Physiotherapy Department and the OPU, and between physiotherapists working in the out-patient section, vis a vis the requirements of patients.*

*“Both the witness, that is Mr Bezzina, and Mr Caruana have informed the Board of Inquiry that they did not know that the OPU at St. Luke’s Hospital supplies insoles - even specially made insoles - free of charge, without the need for the ‘Pink Card’ or the ‘Yellow Card’ (karta roza u karta safra).*

*“The Board of Inquiry also concluded from the evidence given by Ms Edmea Mifsud that patients are entitled to free insoles - even specially made insoles or tailor-made insoles - for the patients, free of charge.*

*“The Board finds these issues of great concern, namely the clear lack of communication between one Department and another (OPU and Physiotherapy), and more importantly that it is the patient who is suffering at the end of the day. Patients should not be put through this unnecessary distress especially if the patient is already distressed coming to the hospital for treatment.*

*“The Board also finds it worrying how Mr Caruana did not record the treatment he recommended i.e. the insoles. The Board entered into the issue of whether a physiotherapist is entitled to alter the treatment recommended by the consultant. In this case the consultant had recommended hydrotherapy but the physiotherapist recommended the insoles. The Board discussed the issue of whether the physiotherapist is entitled to recommend a treatment different to that which is recommended by the consultant, without liaison with the referrer (i.e. the consultant).*

*“The Board finds nothing wrong in that the physiotherapist recommended the insoles, given that a physiotherapist may after assessing a patient come to a conclusion as to the cause of a patient’s symptoms and perform appropriate physiotherapy.*

*“In this case, the physiotherapist, Mr. Caruana recommended the insoles. Even though this was decided after an assessment, the Board agreed that there should have been a record of this in the referral form of the patient, as well as effective communication with the referrer i.e. the consultant, so as to provide an effective and efficient service to the patient.*

*“The Board did not find anything of this and it strongly feels that there was a lack of professionalism on behalf of [sic] Mr Caruana, as liaison with the referrer in the diagnosis and management of patients is paramount.*

*“The Board also would like to note over here, that one cannot tolerate lack of communication between the consultant and the physiotherapist. If the physiotherapist is to recommend a different treatment the minimum that the Board expects that the physiotherapist puts a note down and sends it to the consultant informing him of his change of recommended treatment.*

*“The Board also discussed the issue whether Mr Caruana recommended the insoles purposely for personal gain,*

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*even though it was within the parametres of his competence to do so.*

*“The Board also noted the attitude of Mr. Caruana following the cancellation of the appointment by Ms. Casha Monsigneur.*

*“The Board having seen the evidence, having heard the witnesses and the documents submitted, decides as follows:*

*“The Board finds Mr Pierre Caruana guilty of impinging the Code of Ethics of physiotherapists, in particular Article B2 and 3, C7 and Article E2.*

*“The Board under the powers vested in him, under section 106 of the Medical and Kindred Professions Ordinance Chapter 31 decides that Mr Caruana be inflicted a fine of Lm100 to be paid to the Health Department within one week of notification of this decision.”*

Rat ir-rikors tal-10 ta' Jannar 2003 ipprezentat quddiemha illi permezz tieghu r-rikorrent, ghar-ragunijiet fih esposti, talab hekk:

“... illi din l-Onorabbli Qorti joghgobha tirrevoka d-decizjoni moghtija mill-Bord tal-Professjoni Supplimentari ghall-medicina hawn fuq imsemmija u tilliberah minn kull htija u piena.

“Bl-ispejjez kontra l-parti intimata appellata”;

Rat ir-risposta ta' l-intimat illi permezz taghha, ghar-ragunijiet hawn moghtija, issottometta illi l-appellant instab hati korrettement ta' diversi vjolazzjonijiet tal-Kodici tal-Etika u l-appell tieghu ghandu jigi michud, bl-ispejjez;

Ezaminat l-atti kollha tal-kawza kif ukoll il-*file* tal-Bord intimat relativ ghall-kaz odjern;

Trattat l-appell;

Ikkunsidrat:

Illi dina l-Qorti issollewat *ex officio* (ara l-verbali ta' l-udjenzi tat-8 ta' Novembru 2005, tas-27 ta' Jannar 2006 u tal-31 ta' Jannar 2006) il-kwistjoni dwar jekk ir-rikorrent setghax jappella quddiemha mid-decizjoni hawn fuq imsemmija tal-Bord intimat. Kien ghalhekk illi fl-udjenza tat-tmienja (8) ta' Novembru, 2005 - illi ghaliha id-difensur tar-rikorrent, ghalkemm issejjah ripetutamente, ma deherx - gie verbalizzat hekk, fost affarijiet ohra:

“Il-kawza giet differita ghas-sentenza in difett ta' ostakolu ghas-27 ta' Jannar, 2006 fid-9.00 a.m. b'dan illi Dr. Tonio Azzopardi [id-difensur tal-Kunsill intimat] qed jobbliga ruhu li mhux aktar tard mit-30 ta' Novembru 2005 jindika permezz ta' nota id-disposizzjonijiet tal-ligi kemm taht il-Kap. 94 kif ukoll taht il-Kap. 460 [*recte*: 464] li jaghtu dritt ta' appell f'kazijiet bhal dawn quddiem din il-Qorti ...”;

Permezz ta' nota ipprezentata fit-tmintax (18) ta' Novembru, 2005 il-Kunsill intimat issottometta hekk:

“Illi l-artikoli taht il-*Medical and Kindred Professions Ordinance* (Kap. 31) li kienu jippermettu li jsir appell quddiem l-Onorabbli Qorti ta' l-Appell huma l-artikoli 113 sa 115.

Il-*Medical and Kindred Professions Ordinance* m'ghadhiex aktar fis-sehh b'effett minn Novembru 2003, u minflok dahlet fis-sehh il-*Health Care Professions Act* (Kap. 464) b'effett mill-21 ta' Novembru 2003.

L-artikolu taht il-*Health Care Professions Act* li fil-prezent jippermetti li jsir appell quddiem l-Onorabbli Qorti ta' l-Appell huwa l-artikolu 36.

L-appell ta' Pierre Caruana [ir-rikorrent] gie pprezentat fl-10 ta' Jannar 2003 meta kien ghad hemm fis-sehh il-*Medical and Kindred Professions Ordinance*.”

Waqt l-udjenza tas-sebgha u ghoxrin (27) ta' Jannar, 2006 gie verbalizzat hekk:

“Il-Qorti tissospendi il-prolazzjoni tas-sentenza u tordna li sa l-udjenza li jmiss l-appellant jindika permezz ta' nota id-

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disposizzjoni ta' ligi, principali jew sussidjarja, li taghtih id-dritt ta' appell f'dan il-kaz.

Il-kawza giet differita ghal[il-]kontinwazzjoni ghall-31 ta' Jannar, 2006”;

Permezz ta' nota ipprezentata fit-tletin (30) ta' Jannar, 2006 l-appellant issottometta hekk:

“Li permezz taghha jindika li l-appell illum johrog mill-Art 36(4) tal-Kap 464 *Health Care Professions Act*, promulgat fit-23 ta' Novembru, 2003, li ssostitwixxa dak li qabel kien hemm taht il-*Medical and Kindred Profession[s] Ordinance* Kap 31.

Il-professjoni tal-fisjoterapija taqa' illum taht l-artiklu 28 tal-kap 464 (kif indikat ukoll fit-Tielet Skeda).

Dan l-appell kien gie presentat fil-10 ta' Jannar, 2003, u kien sar taht il-ligi li giet emendata u illum sostitwita kif inghad. Hemm *saving clause* taht l-Artiklu 52 tal-*Health Care Professions Act*” (sottolinear ta' din il-Qorti);

Waqt l-udjenza tal-wiehed u tletin (31) ta' Jannar, 2006 gie verbalizzat hekk:

“Il-Qorti rat in-nota ta' l-appellant tat-30 ta' Jannar, 2006 izda din fil-fehma tal-Qorti ma taghtix l-informazzjoni mitlub[a] fil-verbal tas-27 ta' Jannar, 2006 u cioè d-disposizzjoni tal-ligi, principali jew sussidjarja, li kienet fis-sehh fl-10 ta' Jannar, 2003 u li a bazi taghha sar l-appell indirizzat lil din il-Qorti.

Il-Qorti taghti zmien jumejn millum lill-appellant biex jipprezenta tali nota.

Il-kawza giet differita ghas-sentenza ghall-14 ta' Frar, 2006 f'nofsinhar”;

L-appellant sallum ma pprezenta ebda nota ohra;

Ikkunsidrat:

Illi fil-parti konkluziva tad-decizjoni appellata jinghad hekk:

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*“The Board finds Mr Pierre Caruana guilty of impinging the Code of Ethics of physiotherapists, in particular Article B2 and 3, C7 and Article E2.*

*The Board under the powers vested in him, under section 106 of the Medical and Kindred Professions Ordinance Chapter 31 decides that Mr Caruana be inflicted a fine of Lm100 to be paid to the Health Department within one week of notification of this decision”* (sottolinear ta' dina l-Qorti);

Jirrizulta, ghalhekk, illi d-decizjoni appellata inghatat *ai termini* ta' l-artikolu 106 tal-Kap.31;

Illi mhux kontestat bejn il-kontendenti illi, meta gie intavolat ir-rikors ta' appell odjern fl-ghaxra (10) ta' Jannar, 2003, minn naha wahda l-artikoli 106, 113, 114, u 115 tal-Kap. 31 kienu ghadhom fis-sehh u, min-naha l-ohra, il-Kap. 464 kien ghadu ma giex promulgat. Ghalhekk, il-kwistjoni dwar l-ezistenza *o meno* tad-dritt ta' appell trid tigi fl-ewwel lok determinata fid-dawl ta' dak biss illi kien jipprovdi il-Kap. 31 fl-10 ta' Jannar, 2003. Huwa biss jekk dan id-dritt ta' appell kien jezisti f'din id-data illi l-provvedimenti tal-Kap. 464 jistghu b'xi mod ikollhom rilevanza ghas-soluzzjoni tal-vertenza in ezami;

Jinghad mill-ewwel illi, la darba id-decizjoni appellata hija wahda moghtija mill-Bord dwar il-Professjonijiet Supplimentari ghall-Medicina, l-artikoli 113 u 114 tal-Kap. 31, kif kienu fis-sehh fl-10 ta' Jannar, 2003, ma ghandhom ebda rilevanza ghall-kwistjoni in ezami. Dana peress illi l-artikolu 113 jirrigwarda decizjonijiet tal-Kunsill Mediku u l-artikolu 114 jirrigwarda decizjonijiet tal-Bord dwar l-Ispizjara;

L-artikolu 115 tal-Kap. 31, kif kien fis-sehh fl-10 ta' Jannar, 2003, fil-parti tieghu illi hija rilevanti ghall-finijiet tal-kwistjoni in ezami, jaqra hekk:

**“115. (1)** Meta skond l-artikolu 106, l-artikolu 110 jew l-artikolu 112 ta' din l-Ordinanza il-Bord dwar il-Professjonijiet Supplimentari ghall-Medicina jiddeciedi illi isem ta' persuna jigi mhassar mir-registru relattiv, is-



segretarju ghandu jibghatilha notifika tad-decizjoni tal-Bord.

(2) ...

(3) F'kull zmien eghluq wiehed u ghoxrin gurnata min-notifika skond is-subartikolu (1) ta' dan l-artikolu, il-persuna li tkun giet notifikata tista' tappella lill-President ta' Malta.

(4) ...

(5) ...

(6) Id-decizjoni tal-President ta' Malta fuq kull appell skond dan l-artikolu tkun finali." (sottolonear ta' dina l-Qorti);

Mill-artikolu appena citat jirrizulta minghajr dubju illi d-dritt ta' appell minn decizjoni tal-Bord intimat moghtija *ai termini* ta' l-artikolu 106 tal-Kap. 31 kien moghti biss meta permezz ta' tali decizjoni "isem ta' persuna jigi mhassar mir-registru relattiv". *Inoltre*, tali appell irid jigi indirizzat lill-Eccellenza Tieghu il-President tar-Repubblika u mhux lil din il-Qorti;

Huwa kwazi superfluwu illi jinghad illi d-decizjoni appellata ma ordnatx illi isem l-appellant "jigi mhassar mir-registru relattiv"; minn kundanna ghall-hlas ta' multa, bhalma seh fil-kaz ta' l-appellant Caruana, ma kien hemm ebda dritt ta' appell, anqas lil din il-Qorti.

A skans ta' ekwivoci huwa utili illi jinghad illi ma gie indikat mill-appellant ebda provvedimenti iehor tal-ligi illi jaghti - jew ahjar, fl-10 ta' Jannar, 2003 kien jaghti – lill-istess appellant id-dritt illi jappella ghal quddiem din il-Qorti, kif fil-fatt ghamel.

Ghalhekk, dina l-Qorti tasal ghall-konkluzjoni illi meta gie intavolat ir-rikors ta' appell ir-rikorrent ma kellu ebda dritt ta' appell quddiemha mid-decizjoni appellata;

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Ghal dawn il-motivi:

Tiddikjara l-appell interpost mir-rikorrent appellant irritu u null u, konsegwentement, tastjeni milli tiehu konjizjoni ulterjuri tieghu, bl-ispejjes kontra r-rikorrent appellant.

**< Sentenza Finali >**

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