MALTA

QORTI TA' L-APPELL

S.T.O. PRIM IMHALLEF
VINCENT DE GAETANO

ONOR. IMHALLEF
ALBERT J. MAGRI

ONOR. IMHALLEF
TONIO MALLIA

Seduta tas-26 ta' Gunju, 2007

Appell Civili Numru. 224/2006/1

GIE Pari Mutuel Urbain (PMU)

v.

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

Il-Qorti:

1. Dan hu provvediment in segwitu ghar-rikors prezentat minn GIE Pari Mutuel Urbain fil-11 ta' Mejju 2007, f'liema rikors din is-socjeta` talbet li ssir referenza pregudizzjali

(*preliminary reference*) lill-Qorti Ewropeja tal-Gustizzja (ECJ). B'risposta prezentata fil-21 ta' Mejju 2007 is-socjetajiet appellanti – Bell Med Ltd u Computer Aided Technologies Limited – opponew din it-talba. L-abbili difensuri tal-partijiet ittrattaw dwar dan il-punt fl-udjenza tat-22 ta' Mejju 2007.

2. Tajjeb li wiehed, qabel xejn, jaghti ftit l-isfond tal-kawza, li huwa wkoll, naturalment, l-isfond ghat-talba ghar-referenza pregudizzjali. Fl-**14 ta' Gunju 2006**, il-Qorti ta' l-Appell ta' Parigi kkonfermat sentenza moghtija fit-**2 ta' Novembru 2005**, mit-*Tribunal de Grande Instance*, ukoll ta' Parigi, li permezz taghha s-socjetajiet appellanti gew ikkundannti *in solidum* ihallsu lil GIE Pari Mutuel Urbain 210,000 euro kif ukoll ammonti ohra (bhala spejjez u xort'ohra taht il-Kodici ta' Procedura Civili Gdid Franciz) – kopja ufficjali bl-ingliz tas-sentenza tat-Tribunal de Grande Instance tinsab annessa bhala Dok. C mar-rikors ta' GIE Pari Mutuel Urbain ippresentat fil-Prim Awla tal-Qorti Civili fis-**27 ta' Lulju, 2006**[1]. Bl-imsemmi rikors tas-27 ta' Lulju 2007, ippresentat fil-Prim Awla tal-Qorti Civili, GIE Pari Mutuel Urbain talbet li s-sentenza tal-Qorti ta' l-Appell ta' Parigi tigi enforzata kontra s-socjetajiet intimati – illum appellanti – in forza tar-Regolament tal-Kunsill (KE) 44/2001. Il-Prim Awla tal-Qorti Civili, b'digriet moghti fit-28 ta' Lulju 2006, ipprovdiet hekk: "*Il-Qorti: Rat ir-rikors u l-atti relattivi; Rat ir-reg. [recte: artikolu] 41 tar-Regolament nru 44/2001 u tordna l-ezekuzzjoni tas-sentenza moghtija mill-Cour d'appel de Paris fl-14 ta' Gunju 2006 fil-kawza fl-ismijiet GIE Pari Mutuel Urbain v. Bell Med Limited et. Kopja ta' dan id-digriet ghandha tigi notifikata minnufih lill-partijiet.*"

3. Bell Med Limited u Computer Aided Technologies Limited (CAT) appellaw quddiem din il-Qorti minn din id-decizjoni b'rikors in data 4 ta' Settembru 2006. L-ewwel aggravju taghhom, fost diversi aggravji ohra, huwa li r-Regolament in kwistjoni ma hux applikabbli peress li l-Artikolu 1(1) tieghu jirrestringi l-applikazzjoni ta' l-istess Regolament ghal materji civili u kummercjali, mentri l-

[1] Kopja tas-sentenza tal-Qorti ta' l-Appell ta' Parigi, ukoll ufficjali u bl-ingliz, tinsab annessa ma' l-imsemmi rikors u mmarkata bhala Dok. B2.

materja meritu tas-sentenzi Francizi hija ta' natura amministrattiva: "1.1: This Regulation shall apply in civil and commercial matters whatever ther nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters." GIE Pari Mutuel Urbain qed tikkontesta dana l-aggravju billi, in sostanza, tghid li l-*astreinte* hija multa ta' natura purament civili, pagabbli lil kumpanija privata u mhux lill-Istat Franciz, imposta minn Qorti Franciza ta' kompetenza civili u li, kwindi, il-materja tinkwarda perfettament bhala wahda civili jew kummercjali.

4. Il-kwistjoni li qed tigi issa sollevata mis-socjeta` appellata hija in sustanza din: galadarba Bell Med u CAT, quddiem il-qrati Francizi, invokaw in difiza taghhom ir-Regolament 44/2001 u galadarba l-Qorti ta' l-Appell ta' Parigi "ibbazat il-gurisdizzjoni taghha fuq il-meritu sostantiv tal-vertenza fuq l-Artikolu 5(3) ta' l-imsemmi Regolament", din il-Qorti – il-Qorti ta' l-Appell f'Malta – kienet prekluza milli tiftah mill-gdid il-kwistjoni dwar jekk ir-Regolament hux applikabbli a bazi ta' l-Artikolu 1(1) tieghu. Fid-dawl ta' dan id-"dubbju" dwar l-interpretazzjoni tar-Regolament in kwistjoni, is-socjeta` appellata ghalhekk talbet li ssir referenza pregudizzjali b'zewg kweziti li, in sintesi, jistaqsu hekk: **(i)** tista' l-Qorti ta' l-Appell f'Malta tezamina jekk ir-Regolament 44/2001 hux applikabbli meta l-qorti li tat is-sentenza li taghha tkun qed tintalab l-enfurzar tkun diga` ddikjarat f'dik is-sentenza li r-Regolament hu applikabbli ghall-materja in kontestazzjoni u z-zewg partijiet ikunu invokaw dak ir-regolament fis-sottomissjonijiet taghhom quddiem dik il-qorti *("…in circumstances where the court of origin would, in its said judgment, have already itself declared Regulation EC 44/2001 to be applicable to the matter in dispute and, furthermore, both parties would have invoked the Regulation in their respective submissions before the said court of origin?"* fi kliem l-istess rikorrenti appellati)? U **(ii)** sentenzi bhal dik moghtija mill-Qorti ta' l-Appell ta' Parigi ghandhom jitqiesu bhala sentenzi *"[which] concern a 'civil or commercial matter' within the meaning of Article 1 of Regulation EC 44/2001 and consequently such judgment*

may be enforced in accordance with the provisions of said regulation EC 44/2001?".

5. Jibda biex jinghad li ghalkemm ma hemmx dubbju li fejn ikun hemm kwistjoni dwar l-interpretazzjoni ta' xi disposizzjoni ta' ligi kommunitarja din il-Qorti, bhala Qorti ta' Appell, hi obbligata li taghmel referenza pregudizzjali, il-kwistjoni trid tkun verament dwar l-interpretazzjoni tal-ligi, u mhux kwistjoni jekk il-fatti partikolari tal-kaz jinkwadrawx ruhhom o meno f'xi disposizzjoni tal-ligi. Fil-fatt it-tieni kwezit suggerit mis-socjeta` appellata huwa fir-realta` talba mhux biex tigi interpretata l-ligi – dwar l-espressjoni "civil and commercial matters" hemm gurisprudenza mhux insinjifikanti kemm tal-Qorti Ewropea, kif ukoll ta' Qrati domestici[2] – izda biex isir apprezzament ta' provi (li diga` ngabu quddiem din il-Qorti) minn Qorti ohra biex dawn jigu applikati minn dik il-Qorti l-ohra. L-Artikolu 234 tat-Trattat ta' l-Ewropa jitkellem dwar "interpretazzjoni" u mhux dwar "applikazzjoni" tal-ligi kommunitarja. Huwa minnu li xi minn daqqiet il-linja ta' demarkazzjoni bejn il-wahda u l-ohra tkun wahda pjuttost fina, pero` huwa importanti li din il-linja, fejn tista' tigi traccjata, tingibed. Fi kliem l-awturi Craig u De Burca[3]: *"Indeed the very distinction between interpretation and application is meant to be one of the characteristic features of the division of authority between the ECJ and national courts: the former interprets the Tretay, the latter apply that interpretation to the facts of a particular case. This distinction is, moreover, perceived to be a further reason for differentiating the relationship between the national courts and the ECJ from that which exists in a more truly federal, appellate system where the superior court may well decide the actual case…The willingness of the ECJ to provide very specific answers to questions serves to blur the line between interpretation and application. It also serves to render the idea of the ECJ and the national courts being separate but equal, each*

[2] Ara **European Civil Practice, Vol. 1** Alexander Layton *et al.* eds, Sweet & Maxwell (London), 2nd ed., 2004, pp. 336-349; Briggs, A. u Rees, P. **Civil Jurisdiction and Judgments** LLP (London), 4th ed., 2005, pp. 46-51.

[3] Craig, P. u De Burca, G. **EU Law – Texts, Cases and Materials** OUP, 3rd ed., pp. 472, 473.

having their own assigned roles, more illusory." Fil-kaz in dizamina din il-Qorti ma tistax tikkondividi li hemm xi neccessita` jew utilita` li t-tieni kwezit, kif formulat u suggerit mis-socjeta` appellata, jigi trasmess lill-Qorti Ewropea.

6. Dwar l-ewwel kwezit trid issir distinzjoni bejn kwistjonijiet ta' gurisdizzjoni u l-applikabilita` o meno tar-Regolament fih innifsu. Huwa evidenti li l-kwistjoni ta' l-applikabilita` o meno tar-Regolament hija indipendenti mill-kwistjoni ta' l-assunzjoni ta' gurisdizzjoni mill-*court of origin*. Kif spjegat fil-ktieb ***European Civil Practice*** (ara nota in kalce nru 2, supra): *"It is important to distinguish between a decision by a court addressed that the judgment falls outside the Brussels-Lugano regime altogether and a decision that the original court wrongly assumed jurisdiction under the Brussels-Lugano regime. The latter type of decision is prohibited, save in the limited circumstances envisaged by Art. 35(1). The reasons why the court of origin accepted jurisdiction are irrelevant in any other case (except under the transitional provisions), even if the acceptance of jurisdiction appears to the court addressed to have been blatantly wrong, whether according to the rules of the Brussels-Lugano regime's or according to the law of the state or origin. A decision that the Brussels-Lugano regime did not apply at all could, therefore, normally only be made by a court addressed on the basis that the subject matter of the judgment fell outside the scope of the regime."* [4] Issa, is-socjeta` appellata qed tikkontendi bazikament illi galadarba l-appellanti, quddiem il-Qrati ta' Franza, fid-difiza[5] taghhom irriferew ghal disposizzjonijiet tar-Regolament u galadarba l-Qrati ta' Franza ddecidew li kien applikabbli l-imsemmi Regolament *("…where the court of origin would…have already itself declared Regulation EC 44/2001 to be applicable…")*, din il-Qorti – il-Qorti tal-Appell f'Malta – hija prekluza milli tezamina jekk ir-Regolament hux applikabbli in bazi ta' l-Artikolu 1(1). Skond is-socjeta` appellata dan

[4] *Op. cit.* p. 935.

[5] Anke s-socjeta` appellata ghamlet xi referenza ghal xi disposizzjonijiet tar-Regolament in risposta ghad-difiza.

huwa punt ta' dritt li jirrikjedi interpretazzjoni, u hu ghalhekk li qed tintalab ir-refenza pregudizzjali.

7. Din il-Qorti, pero`, ma taqbilx li dan huwa kaz li jinnecessita referenza simili. Kwantu ghall-ewwel premessa jew sottomissjoni, u cioe` li l-appellanti kienu invokaw huma stess disposizzjonijiet tar-Regolament in difiza taghhom, dan il-punt gia` gie deciz. Kif jispjegaw Briggs u Rees[6] *"…it is now tolerably clear that the question whether Article 1 governs a case is not affected by any defence which may be raised to the claim. In Preservatrice Fonciere TIARD Compagnie d'Assurances v. Netherlands State, the state sought to recover from the guarantor of another's customs liabilities, on a contarct of guarantee which the guarantor had chosen to enter. It was held that the claim was not excluded from Article 1 because the rights enforced were those of a private and voluntary legal guarantee. It was argued, against this, that a question of customs law would arise if the guarantor were to dispute the validity of the customs levies, and that this should take the case outside the scope of Article 1. The Court disagreed, saying it would make no difference. For the pleas raised by way of defence were held to be irrelevant to the proper application of Article 1 which is focused solely on the claim advanced."* [7] Ghalhekk is-semplici fatt li, biex jikkontestaw il-gurisdizzjoni tal-Qrati ta' Franza l-appellanti, quddiem dawk il-qrati, invokaw xi disposizzjoni tar-Regolament, dan il-fatt ma jincidi b'ebda mod fuq l-applikabbilita` o meno tar-Regolament a bazi ta' l-Artikolu 1.

8. Differenti hija l-kwistjoni jekk il-Qorti ta' l-origini tkun iddikjarat, espressament (jew b'implikazzjoni necessarja), li r-regolament japplika ghall-materja tal-kontroversja bejn il-partijiet, cioe` li l-azzjoni kif proposta tkun tirrigwarda materja civili jew kummercjali. Il-problema hija impostata hekk minn Briggs u Rees: *"But suppose that the adjudicating court has expressly held that the claim was within Article 1 of the Regulation and not excluded by Article 1(2). In these circumstances, is it still open to the*

[6] *Op. cit.* f.n. 2.
[7] P. 51, para. 2.25.

recognising court to re-examine this question for itself? The arguments are finely balanced…if this issue has been fully argued before and decided in the adjudicating court, the general scheme of the Judgments Regulation would not favour allowing it to be re-argued all over again, at least without some regard to what was reasoned and decided in the first court." [8]

9. Issa, din il-Qorti, wara li ezaminat bir-reqqa is-sentenzi Francizi – sintendi fil-verzjonijiet ufficjali bl-Ingliz – kemm tat-*Tribunal de Grande Instance* kif ukoll tal-Qorti ta' l-Appell ta' Parigi, hi tal-fehma li mkien fihom ma gie deciz espressament jew b'implikazzjoni neccessarja li l-Artikolu 1 japplika. Il-kwistjoni jekk il-kontroversja bejn il-partijiet, jew, ahjar jekk "the claim advanced", kenitx "[a] civil [or] commercial matter[s]" fis-sens ta' l-Artikolu 1(1) qatt ma qamet, direttament jew indirettament, u ghalhekk wisq anqas giet deciza. Gew decizi, iva, kwistjonijiet ta' gurisdizzjoni li, pero`, kif rajna ma humiex l-istess haga bhall-applikabbilita` tar-Regolament a bazi ta' l-Artikolu 1. Gew decizi minn dawk iz-zewg Qrati kwistjonijiet procedurali – il-validita` tat-tahrika, *lis alibi pendens*, gurisdizzjoni – kemm billi gew invokati disposizzjonijiet tar-Regolament kif ukoll disposizzjonijiet tad-dritt "domestiku" Franciz, pero` mkien ma hemm l-ickenn accenn ghall-kwistjoni tal-applikabilita` o meno tar-Regolament fuq il-bazi ta' l-Artikolu 1.

10. Ghal dawn il-motivi, ma hemm ebda lok ta' referenza pregudizzjali, u f'dan is-sens it-talba kif migjuba fir-rikors tal-11 ta' Mejju 2007, qed tigi michuda. Il-Qorti tordna l-prosegwiment ta' l-appell. Spejjez, jekk hemm, riservati ghall-gudizzju finali.

< Sentenza In Parte >

----------TMIEM----------

[8] Pp. 495-496, para. 7.07.