MALTA

QORTI CIVILI
PRIM' AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
TONIO MALLIA

Seduta tad-19 ta' Ottubru, 2007

Rikors Numru. 11/2007

Anthony Grech

vs

Claire Calleja, u b`digriet moghti fl-20 ta` April, 2007, giet ordnata l-kjamata fil-kawza tal-Avukat Generali tar-Repubblika

Il-Qorti:

Rat ir-referenza maghmula mit-Tribunal ghal Talbiet Zghar fl-14 ta` Frar, 2007, li in forza tieghu dak it-Tribunal irrefera ghad-decizjoni ta` din il-Qorti l-vertenza, fid-dawl tal-artikolu 39 tal-Kostituzzjoni u l-artikolu 6 tal-Kap. 319 tal-Ligijiet ta` Malta, jekk l-Avviz Legali 279/2005, fejn jolqot kazijiet li jaqghu taht il-gurisdizzjoni tat-Tribunal taht

il-Kap. 380, hux rimedju kostituzzjonalment accettabbli u jekk hux validu u jorbotx ukoll lill-imsemmi Tribunal.

Dak it-Tribunal ghamel din ir-referenza wara li ghamel is-segwenti konsiderazzjonijiet:

Ra l-Avviz tat-talba li bih l-attur talab li l-konvenuta tigi kkundannata thallas is-somma ta` erba` mija w erba` liri Maltin u sebghin centezmu (Lm404.70c) rapprezentanti danni kkagunati fil-vettura ta` l-attur Skoda Felicia bin-numru ta` registrazzjoni ABG 352 nhar it-30 ta` Jannar, 2005 fi Triq ix-Xghajra, Zabbar waqt li l-konvenuta ghamlet U-turn fl-istess triq u baqghet diehla fil-karozza tieghu.

Ra r-Risposta tal-konvenuta li biha wiegbet illi preliminarjament, l-azzjoni ta` l-attur huwa rritu u null u dan stante l-fatt li skond l-Avviz Legali 420/2004 u 421/2004 li dahlu fis-sehh fl-24 ta` Settembru, 2004 kwistjonijiet u talbiet rigwardanti vetturi ghandhom jinstemghu quddiem ic-Centru ta` l-Arbitragg u ghalhekk dan it-Tribunal m'ghandu ebda kompetenza li jiehu konjizzjoni ta` talba bhal din. Illi bla pregudizzju ghas-suespost, it-talbiet atturi huma nfondati fil-fatt u fid-dritt.

Ra l-verbal tas-seduta tat-8 ta` Frar, 2007 fejn l-avukati difensuri tal-partijiet ittrattaw il-kawza fuq l-eccezzjoni preliminari.

Ra l-atti kollha tal-kawza.

Ikkunsidra

Il-gurisdizzjoni tat-Tribunal huwa regolat bl-Art. 3 tal-**Kap. 380 – Att Dwar Tribunal Ghal Talbiet Zghar** u l-kawza odjerna taqa` entro l-kompetenza ta`din il-ligi kif hemm stabbilit.

Izda l-Art. 15 (11) tal-**Kap. 387 – Att Dwar L-Arbitragg** kif emendat fl-2005 jiddisponi:

“(11) B’zieda ma` dawk imsemmija b’kull ligi ohra, l-klassijiet ta` tilwimiet imsemmija fir-Raba` Skeda huma soggetti ghall-arbitragg mandatorju u f’dawk il-kazijiet il-partijiet ghandhom jitqiesu li jkunu marbutin bi ftehim ta` arbitragg relatat ma` dawk it-tilwimiet.”
Fir-Raba` Skeda , emendat b’**Avviz Legali 279/2005** hemm dispost hekk:

“Arbitragg Mandatorju (sic)

It-tilwimiet hawn izjed ’l isfel imsemmija fit-Taqsima A ghandhom jigu determinati b’arbitragg u ghandhom jittiehdu f’arbitragg taht ir-regoli msemmija fit-Taqsima B b’zieda ma` dawk ir-regoli li jistghu jigu mahruga mic-centru minn zmien ghal zmien.

Taqsima A
1.1 Tilwimiet dwar *Condominium – omissis*
1.2 Tilwimiet dwar it-Traffiku ta` Vetturi bil-Mutur
Kull tilwima civili jew kummercjali, li ma tkunx wahda li jkollha x’taqsam ma` talba ghal danni ghal hsara fil-persuna, li tkun tilwima li torigina minn:
(*a*) kollizjoni bejn vetturi, jew
(*b*) hsara involontarja fil-proprjetà li tinvolvi l-vetturi, jew
(*c*) talba bhal dik kontra assiguratur awtorizzat, kumpanija assiguratrici fuq il-hajja, *underwriter* approvat mill-Ministru responsabbli ghat-trasport jew persuna ohra li skond l-Ordinanza dwar l-Assigurazzjoni ta` Vetturi tal-Mutur ghar-Riskji ta` Terzi Persuni (Kap. 104) jew xi polza ta` assigurazzjoni, tista` tkun responsabbli dwarha, u
(*d*) li l-valur taghha ma jkunx jeccedi l-hamest elef lira.”

Illi ghalhekk jidher evidenti li, stante li ma saru ebda emendi korrispondenti fil-Kap. 380, li hemm kunflitt bejn il-Kap. 380 u l-Avviz Legali 279/2005.

It-Tribunal jibda sabiex jghid li telf ta` gurisdizzjoni jew kompetenza ma jistax jigi meqjus leggerment u jekk dan ikun b’rizultat ta` interpretazzjoni biss, tali interpretazzjoni ghandha tkun favur il-gurisdizzjoni u kompetenza.

Taht il-Kap. 380 dan it-Tribunal ghandu gurisdizzjoni filwaqt li taht l-Avviz Legali 279/2005 donnu li tali kompetenza giet esklussivament riservata ghall-procedura ta` Arbitragg hemm kontemplata.

Tajjeb li jigi spjegat li bl-Att IX tal-2004 giet inserita l-Klawsola 15 (13) tal-Kap. 387 li taghti poter lill-Ministru koncernat li jzid dawk is-setturi li jidhirlu xierqa li ghandhom jidhlu taht ir-Raba` Skeda ta` l-Att, liema Raba` Skeda wkoll giet inserita bl-istess Att IX tal-2004.

Mis-sena 2004 bdew jizdiedu dawk it-tilwimiet fejn l-arbitragg sar “mandatory” u f’dak li jirrigwarda kollizjonijiet bejn vetturi u danni rizultanti minn hekk, l-ewwel ma gew effettwati kienu dawk il-kawzi li solitament kienu jaqghu fil-kompetenza tal-Qorti tal-Magistrati (Malta) izda ma kien hemm l-ebda emenda korrispondenti fil-Kap. 12 tal-Ligijiet ta` Malta. (Forsi ma nhassitx il-htiega stante illi l-Kap. 12 hija ligi generali u ghalhekk f’kaz ta` kunflitt ghandha tirbah il-ligi specjali).

Permezz ta` Avviz Legali numru 279 tal-2005 saret bidla ohra fir-Raba` Skeda tal-Kap. 387 biex b’hekk anki l-kawzi dwar il-kollizjonijiet li solitament kienu jaqghu entro l-ambitu ta` dan it-Tribunal issa jinsabu elenkati bhala kwistjonijiet li jaqghu taht id-definizzjoni ta` “Arbitragg Mandatorju”.

Liema miz-zewg ligijiet ghandha tirbah? Il-Ligi specjali taht il-Kap. 380 jew l-Avviz Legali 279 tal-2005? Il-poter li jaghmel l-Avviz Legali 279/2005 inghata lill-Ministru bis-sahha tal-Art. 15(13) liema Sub-Artikolu gie introdott bl-Att IX tal-2004. Dak iz-zmien ma sarx obbligatorju li l-kawzi bhal dawk mertu ta` dan it-Tribunal isiru b’arbitragg.

Il-Kap. 380 ma jaghti l-ebda poter simili lill-Ministru. L-ahhar emenda saret ghall-Kap. 380 kienet permezz ta` l-Att XXXI tal-2003 meta *inter alia* zdiedet il-kompetenza ta` dan it-Tribunal ghall-kwistjonijiet sa valur ta` elf u hames mitt lira Maltin (Lm1,500).

Fattur iehor huwa li ghalkemm Tribunal jista` jitqies bhala Qorti ghall-finijiet ta` l-Art. 39 tal-Kostituzzjoni u l-Art. 6 tal-Kap. 319, proceduri ta` Arbitragg zgur ma jaqghux taht id-definizzjoni ta` Qorti u ghalhekk huwa dubjuz kemm proceduri mandatorji ta` arbitragg jikkostitwixxu rimedju sufficjenti sabiex jigi sodisfatt il-vot ta` l-Art. 39 tal-Kostituzzjoni u l-Art. 6 tal-Kap. 319.

Huwa ovvju li dan it-Tribunal huma marbut biex jimxi skond id-dettami tal-ligi, komprizi naturalment il-Kostituzzjoni u l-Kap. 319 u li, stante li dawn iz-zewg ligijiet huma ta` natura fundamentali u superjuri ghal-ligijiet ohra, dan it-Tribunal isib ruhu f'sitwazzjoni fejn biex jaghzel triq jew ohra jista` jsib ruhu f'kunflitt, liema kunflitt ma jistax jigi determinat minn dan it-Tribunal stante li determinazzjoni fuq materja kostituzzjonali u validita` o meno ta` ligi jezorbita` l-gurisdizzjoni tieghu.

L-Artikolu 46(3) tal-Kostituzzjoni jiddisponi li meta tqum kwistjoni ta` natura Kostituzzjonali quddiem kull Qorti li ma tkunx il-Prim` Awla tal-Qorti Civili, tali Qorti ghandha tirreferi l-kwistjoni quddiem il-Prim` Awla tal-Qorti Civili.

Il-kwistjoni ma qamitx quddiem il-Prim` Awla tal-Qorti Civili.

Dan it-Tribunal huwa Qorti? Fl-Art. 47 tal-Kostituzzjoni nsibu li fejn jidhlu drittijiet fundamentali "Qorti" tfisser "kull Qorti f'Malta…" u dan it-Tribunal iqis li s-sens li riedet tinkludi l-ligi kien li tembraccja l-interpretazzjoni tal-kelma "Qorti" f'sens estensiv biex jinkludi wkoll kull struttura legali li fiha jigu determinati drittijiet civili. Il-Kap. 380 jissalvagwarda l-indipendenza u imparzjalita` ta` l-Aggudikatur, jistabbilixxi process kif il-litigju ghandu jigi regolat u jipprovdi ghad-dritt ta` appell. It-Tribunal ma jistax jigi meqjus bhala semplici Bord amministrattiv partikolarment billi l-Aggudikaturi ghandhom "security of tenure" ghaz-zmien tal-hatra taghhom u inoltre, matul iz-zmien tal-hatra huma specifikatament eskluzi milli jezercitaw il-professjoni taghhom bhala avukati quddiem it-Tribunal, anki jekk diversament kompost.

Illi ghalhekk it-Tribunal huwa tal-fehma illi f'dan il-kaz huwa ntitolat jaghmel referenza ghal quddiem il-Prim` Awla tal-Qorti Civili taht l-Art. 46 (3) tal-Kostituzzjoni ta` Malta.

Rat ir-risposta tal-Avukat Generali li in forza taghha osserva illi:

Ir-referenza kostituzzjonali li giet imressqa quddiem dina l-Onorabbli Qorti mit-Tribunal ghal Talbiet Zghar hija ghal kollox neboluza. L-esponent, ghaldaqstant bir-rispett jitlob illi t-talba kif imressqa lil dina l-Onorabbli Qorti mit-Tribunal, tigi ahjar spjegata sabiex huwa jkun f`pozizzjoni ahjar li jottempora ruhu mal-verbal ta` dina l-Onorabbli Qorti tal-20 ta` April, 2007.

Preliminarjament, it-Tribunal ghal Talbiet Zghar m`huwiex Qorti. Ghaldaqstant, ai termini tas-subartikolu (3) tal-Artikolu 46, dina l-Onorabbli Qorti m`ghandhiex il-kompetenza li tikkonsidra t-talba mressqa quddiema.

Preliminarjament ukoll r-referenza ma hijiex ta` natura kostituzzjonali stante li ma tittrattax dwar ksur ta` wiehed mill-artikoli li jiggarantixxu drittijiet fundamentali (i.e. artikolu 33 – 45) ai termini ta` l-istess artikolu 46(3) tal-Kostituzzjonali. Ghaldaqstant, ghal darb`ohra, dina t-talba m`ghandhiex tigi kkonsidrata.

Bla pregudizzju ghas-suespost, ma hijiex il-mansjoni tat-Tribunal ghal Talbiet Zghar li jistharreg il-Kap. 387.

Fil-mertu u kuntrarju ghal dak allegat mit-Tribunal ghal Talbiet Zghar, it-Tribunal ta` l-Arbitragg jiggarantixxu smiegh xieraq ai termini ta` l-artikolu 39 tal-Kostituzzjoni, bl-istess mod kif dan id-dritt huwa garantit mit-Tribunal ghal Talbiet Zghar nnifsu.

Salv eccezzjonijiet ulterjuri.

Rat l-atti tat-talba numru 1461/05 pendenti quddiem it-Tribunal ghal Talbiet Zghar;

Rat l-atti kollha tal-kawza u d-dokumenti ezebiti;

Rat li l-kawza thalliet ghal-lum ghas-sentenza;

Ikkunsidrat;

Jirrizulta li fis-7 ta` Lulju, 2005, Anthony Grech fetah kawza quddiem it-Tribunal ghal Talbiet Zghar fejn talab danni f`ammont ta` Lm404.70, allegatament kkawzati fuq il-vettura tieghu rizultat ta` incident awtomobilistiku li sehh fit-30 ta` Jannar, 2005. Il-konvenuta eccepiet, in linea preliminari, li t-talba kienet rrita u nulla, u dana stante l-fatt li skond l-Att numru IX tal-2004 (Taqsima VII) u l-Avvizi Legali 420/2004 u 421/2004, li lkoll dahlu fis-sehh fl-24 ta` Settembru, 2004, (ara ukoll Avviz Legali 419/2004), kwistjonijiet u talbiet rigwardanti vetturi ghandhom jinstemghu quddiem ic-Centru tal-Arbitragg. Dawn l-atti, pero`, ma kienux jolqtu l-kompetenza tal-imsemmi Tribunal biex jisma` l-kawza. Bl-Avviz Legali 279/2005, li dahal fis-sehh fl-1 ta` Awissu, 2005, minghajr klawsola transitorja, lis-skeda relattiva giet emendata biex tkopri il-kwistjonijiet fuq imsemmija meta l-valur relattiv *"ma jkunx jeccedi l-hamest elef lira"*, u, ghalhekk, it-Tribunal ghal Talbiet Zghar ma kellux aktar kompetenza li jiehu konjizzjoni tat-talba. Fl-14 ta` Frar, 2007, l-imsemmi Tribunal ta` d-decizjoni fuq indikata li in forza taghha ghamel ir-riferenza imsemmija lil din il-Qorti.

Din il-Qorti, fl-ewwel lok, tiddeplora l-fatt li ebda parti fil-kawza, inkluz l-Avukat Generali, ma iddenja ruhu jressaq sottomissjonijiet biex jassisti lill-Qorti fid-decizjoni taghha fuq materja hekk importanti. Kien mistenni li l-Avukat Generali, in partikolari, jiehu aktar interess fil-kwistjoni darba li si tratta minn validita` ta` ligi. Darba, pero`, li lil din il-Qorti saritilha r-riferenza indikata, hu dmir taghha li tezaminha fil-limiti tal-kontestazzjoni kif formulata.

Din ir-riferenza hi bazata fuq l-allegazzjoni li l-Avviz Legali 279/2005, li emenda r-Raba` Skeda tal-Kap. 387 – Att Dwar l-Arbitragg – billi fost *"Arbitragg Mandatarju"*, zied kazijiet li jinvolvu kollizzjonijiet bejn vetturi u li qabel kienu jaqghu fil-kompetenza tat-Tribunal ghal Talbiet Zghar,

huwa anti-kostituzzjonali ghaliex jikser u jmur kontra d-dispozizzjonijiet tal-artikolu 39 tal-Kostituzzjoni ta` Malta u kontra l-artikolu 6 tal-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem (Kap. 319).

L-artikolu 39(2) tal-Kostituzzjoni ta` Malta jghid hekk:-

"Kull qorti jew awtorita` ohra gudikanti mwaqqfa b`ligi ghad-decizjoni dwar l-ezistenza jew l-estensjoni ta` drittijiet jew obbligi civili ghandha tkun indipendenti u mparzjali; u meta l-proceduri ghal decizjoni bhal dik huma mibdija minn xi persuna quddiem qorti jew awtorita` ohra gudikanti bhal dik, il-kaz ghandu jigi moghti smiegh xieraq gheluq zmien ragonevoli".

L-artikolu 6(1) tal-Konvenzjoni Ewropeja jipprovdi illi:-

"Fid-decizjoni tad-drittijiet civili u ta` l-obbligi tieghu jew ta` xi akkuza kriminali kontra tieghu kulhadd huwa ntitolat ghal smiegh imparzjali u pubbliku fi zmien ragonevoli minn tribunal indipendenti u mparzjali mwaqqaf b`ligi. Is-sentenza ghandha tinghata pubblikament izda l-istampa u l-pubbliku jista` jigi eskluz mill-proceduri kollha jew minn parti minnhom fl-interess tal-morali, ta` l-ordni pubbliku jew tas-sigurta` nazzjonali f`socjeta` demokratika, meta l-interesi ta` minuri jew il-protezzjoni tal-hajja privata tal-partijiet hekk tehtieg, jew sa fejn tkun rigorozament mehtieg, fil-fehma tal-Qorti, f`cirkostanzi specjali meta l-pubblicita` tista` tippregudika l-interessi tal-gustizzja".

Il-Kapitolu 387, l-Att dwar l-Arbitragg, jipprovdi fl-artikolu 15(11) tieghu, illi:

"(11) B`zieda ma` dawk imsemmija b`kull ligi ohra, il-klassijiet ta` tilwimiet imsemmija fir-Raba` Skeda huma soggetti ghal arbitragg mandatorju u f`dawk il-kazijiet il-partijiet ghandhom jitqiesu li jkunu marbutin bi ftehim ta` arbitragg relatat ma` dawk it-tilwimiet".

Ir-Raba` Skeda ta` dak l-Att, kif emendat bl-Avviz Legali 279/2005, jipprovdi, fost hwejjeg ohra, li tilwima civili jew kummercjali dwar traffiku ta` vetturi bil-mutur li torigina

minn kollizzjoni bejn vetturi, u l-valur tat-tilwima ma jkunx jeccedi l-Lm5,000, ghandhom jigu determinati b`arbitragg.

Huwa l-validita` ta` dan il-provvediment li issa, din il-Qorti, trid tistharreg.

Fil-waqt li l-Kostituzzjoni ta` Malta hija kuntenta jekk kwistjonijiet jigu determinati minn *"Qorti jew awtorita` ohra gudikanti mwaqqfa b`ligi"*, il-Konvenzjoni Ewropeja tuza kliem differenti; f`dan il-kaz, l-enfazi tal-materja hi fuq ir-rekwizit li jrid jkun hemm *"tribunal indipendenti u mparzjali mwaqqaf b`ligi"*.

Kif josservaw van Dijk u van Hoof, fil-ktieb *"Theory and Practice of the European Convention on Human Rights"*, (Tielet Edizzjoni, pagna 418).

"Article 6(1) not only guarantees procedural remedies in relation to judicial proceedings, but also grants a right to judicial proceedings for the cases mentioned in this article; the right of access to court. This right has not been laid down in express terms in article 6. Its first paragraph only refers to entitlement to a fair and public hearing by a court, leaving it unclear whether this entitlement only exists where judicial proceedings have been provided for under domestic law, or implies – or rather presupposes – a right to such judicial proceedings. This unclarity was lifted by the Court in its Golder judgement (21st February, 1975. There the Court held that article 6 must be read in the light of the following two legal principles:

(1) the principle whereby a civil claim must be capable of being submitted to a judge, as one of the universally recognized fundamental principles of law; and

(2) the principle of international law which forbids the denial of justice".

Fil-kaz "Le Compte, van Leuven and Meyere", deciza mill-Qorti Ewropeja tad-Drittijiet Fundamentali tal-Bniedem fit-23 ta` Gunju, 1981, dik il-Qorti tenniet li:

"According to the Court's case-law (the above-mentioned "Neumeister jdgt", p. 44; the "De Wilde, Ooms & Versyp jdgt" of 18th June, 1971, Series A no. 12, p. 41, & 78; the above-mentioned "Ringeisen jdgt", p. 39 & 95), use of the term "tribunal" is warranted only for an organ which satisfies a series of further requirements – independence of the executive and of the parties to the case, duration of its members` term of office, guarantees afforded by its procedure – several of which appear in the text of Art. 6 (1) itself".

Fis-sentenza "Campbell and Fell", moghtija mill-imsemmija Qorti Ewropeja fit-28 ta` Gunju, 1984, il-Qorti Ewropeja kkummentat illi:-

"In determining whether a body can be considered to be 'independent' – notably of the executive and of the parties to the case (See, inter alia, the "Le Compte, Van Leuven and De Meyere jdgt" of 23rd June, 1981, Series A, no. 43, p. 24, para. 55) -, the Court has had regard to the manner of appointment of its members and the duration of their term of office (ibid., pp. 24-25, para. 57), the existence of guarantees against outside pressures (see the "Piersack jdgt" of 1 October, 1982, Series A. no. 53, p.13, para. 27) and the question whether the body presents an appearance of independence (see the "Delcourt jdgt" of 17 Jan 1970, Series A no. 11, p. 17, para. 31)".

Fil-kaz "Findlay vs United Kingdom", (deciza fil-25 ta` Frar, 1997), il-Qorti elenkat b`mod car x`inhuma r-rekwiziti sabiex il-Qorti tasal ghall-konkluzzjoni li kien hemm smiegh xieraq minn tribunal indipendenti u mparzjali:-

"(a) The Court recalls that in order to establish whether a tribunal can be considered as "independent", regard must be had 'inter alia' to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence.

(b) As to the question of "impartiality", there are two aspects to this requirement. First, the tribunal must be subjectively free of personal prejudice or bias. Secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect.

(c) The concepts of independence and impartiality are closely linked and the Court will consider them together as they relate to the present case".

Illi l-Kummissjoni f`dak il-kaz kompliet issostni li f`dawn il-kazijiet anki l-apparenzi jistghu jkunu importanti ghaliex hemm fin-nofs il-fiducja li l-Qorti trid tispira fil-persuna li ghandha proceduri quddiemha u dak li hu decisive huwa jekk il-biza` ta` l-applikant dwar in-nuqqas ta` imparzjalita` tistax titqies bhala "oggettivament gustifikabbli.

Jinghad ukoll mill-awtur Sieghart fil-ktieb *"The International Law of Human Rights"*, illi:

"The term independent comprises two elements, namely the tribunals' independence from the Executive and their independence from the parties. In "Sutton vs Switzerland", EUCM observed that a judge's independence does not necessarily entail that he should be appointed for life, or that he should be irremovable in law; that is he cannot be given other duties without his consent. But it is essential that he should enjoy certain stability, if only for a specific period, and that he should not be subject to any authority in the performance of his duties as a Judge. In "Zand vs Austria" however, the Commission emphasized that the irremovability of Judges during their term of office, whether it be for a limited period of time or for life, is a necessary corollary of their independence and is thus included in the guarantees of H.E.R. 6(1)".

Illi, fid-dawl tal-premess jidher li biex jigi deciz jekk *"tribunal"* hux indipendenti, wiehed irid ihares lejn:

“(i) the manner of appointment of its members and their term of office; (ii) the existence of guarantees against outside pressures; u (iii) the question whether the body presents an appearance of independence”.

F`dan il-kaz, it-Tribunal ta` Arbitragg hu compost minn arbitru wiehed, jew, jekk iridu l-partijiet, minn tlett arbitri. F`kaz li ma jkunx hemm qbil ghall-hatra tal-arbitru uniku jew ghall-hatra tal-arbitri li jippresjedi mat-tnejn l-ohra, in-nomina issir mic-Chairman tac-Centru dwar l-Arbitragg ta` Malta, u d-decizjoni ta` dan *“tkun finali u konkluziva”* (artikolu 20 (3) tal-Kap. 387). Meta jkun qed jaghmel il-hatra, ic-Chairman ghandu jqis kull haga li x`aktarx tizgura l-hatra ta` arbitru indipendenti u imparzjali, u l-membri tal-Gruppi ta` Arbitragg Domestiku mwaqqfa skond il-ligi (artikolu 20 (4) ibid). Dawn il-Gruppi ta` Arbitragg Domestiku jinhatru mic-centru dwar l-Arbitragg ta` Malta minn fost persuni li *“fil-fehma tac-Centru”* jkollhom kwalifiki tajba biex jaqdu d-doveri ta` arbitri. Persuna tista` titnehha minn xi grupp ta` arbitri mic-Centru *“f`kull zmien”*, b`dan li kull tnehhija ma tkunx torbot xi procedimenti ta` arbitragg li huwa jkun seta` diga` gie mahtur fihom. (artikolu 10(2)(6) ibid).

Mill-premess jirrizulta li, f`kaz li l-partijiet ma jaqblux dwar hatra ta` arbitru, l-ghazla tal-arbitru hi mhollija fid-diskrezzjoni assoluta tac-Chairman tac-Centru dwar l-Arbitragg ta` Malta, li hu persuna mpoggija f`dik il-kariga mill-Ministru responsabbli ghall-gustizzja (artikolu 4 ibid). Hu jkun mahtur ghal perjodu ta` sitt snin, u ghalkemm hu, bhal membri l-ohra tac-Centru, ghandhom iwettqu l-funzjonijiet taghhom skond l-arbitriju individwali taghhom u m`ghandhomx ikunu suggetti ghad-direzzjoni jew kontroll ta` xi persuna jew awtorita` ohra (artikolu 4(4) ibid), *“huwa jkun eligibbli ghal hatra mill-gdid “* meta jintemm iz-zmien tal-hatra (Artikolu 6(1) ibid). Il-Ministru jista` wkoll itemm il-hatra tac-Chairman u ta` kull membru fuq rakkomandazzjoni tal-Kummissjoni ghall-Amministrazzjoni tal-Gustizzja imwaqqfa bl-artikolu 101A tal-Kostituzzjoni ta` Malta (artikolu 6(1) ibid). Ic-Chairman u l-membri tal-Centru m`ghandhomx salarju fiss, izda huma intitolati ghal

dik ir-rimunerazzjoni u dawk l-allowances li l-Ministru jista` jistabbilixxi minn zmien ghal zmien (Artikolu 6(2) ibid).

Fil-fehma tal-Qorti, dawn il-provedimenti ma tantx jaghtu garanzija xierqa u oggettiva ta` imparzjalita` u indipendenza fit-Tribunal tal-Arbitragg meta l-arbitru ma jkunx maqbul mill-partijiet. L-arbitru maghzul huwa sottomess ghal pjacir tac-Centru u m`ghandu ebda *"security of tenure"*. Ic-Centru, jew ahjar, ic-Chairman, jista` jiddeciedi, ghar-raguni hi x`inhi, li ma jahtarx persuna bhala arbitru, u meta tqies li c-centru huwa, ftit jew wisq, taht il-kontroll tal-Ministru, ma jistax jinghad li l-hatra ta` arbitru hija kompletament indipendenti mill-Exekuttiv. Mhux biss in-nomina ta` persuna biex iservi bhala arbitru hija ghazla soggettiva, pero`, aktar minn hekk, jekk dik il-persuna tibqax titqies bhala misthoqqa biex terga tinghazel, jiddependi hafna fuq apprezzament soggettiv tac-Chairman u tac-Centru dwar l-Arbitragg ta` Malta.

Huwa minnu li kull Imhallef u Magistrat jiddependi, ghall-hatra tieghu, ftit jew wisq, mill-esercizzju tad-diskrezzjoni soggettiva tal-Gvern tal-gurnata, pero`, darba mahtur, kull gudikant jgawdi minn *"security of tenure"*, b`mod li ma jistax jitnehha mill-kariga jekk mhux minhabba inkapacita` pruvata u wara adessjoni minn zewg terzi tal-membri tal-Kamra tar-Rapprezentanti.

Kif qalet il-Qorti tal-Appell fl-Iskozja fil-kawza "Clancy vs Dempsey Caird", deciza fl-4 ta` April, 2000;

"The most basic requirement for independence is security of tenure such as to provide a guarantee against any interference with the judge's function from any outside source and in particular from the Executive. The obvious and ideal way to ensure such security is for every judical appointment to be permanent and full-time with tenure "ad vitam aut culpam".

Dan ma jfissirx li l-gudikant ma jistax jinhatar ghal perjodu fiss, tant li anke l-Imhallfin tal-Qorti Ewropea huma appuntati ghal terminu fiss. Fil-fatt, dik l-istess Qorti Skociza tenniet li:

"Accordingly, it appears to me clear that there can be no objection 'per se' to the appointment of judges for a fixed term, provided that during that period there is security of tenure which guarantees against interference by the Executive in a discretionary or arbitrary manner".

Fil-fatt, fil-kawza "Brincat vs Avukat Generali",deciza minn din il-Qorti fl-10 ta` Jannar, 2003, wahda mill-konsiderazzjonijiet li hadet din il-Qorti biex tqies li t-Tribunal ghal Talbiet Zghar huwa Tribunal indipendenti u imparzjali huwa l-fatt li l-gudikatur ta` dak it-Tribunal ghandu terminu fiss tal-kariga mhux rinovabbli, element li l-Qorti qieset bhala garanzija ta` l-imparzjalita` tieghu. Fil-fatt, anke il-Qorti Ewropeja affermat illi tribunali appuntati ghal terminu fiss jissodisfaw l-artikolu 6(1) tal-Konvenzjoni (ara s-sentenzi "De Wilde, Ooms and Versyp", moghtija fit-18 ta` Gunju, 1971, u "Ringeisen", moghtija fis-17 ta` Lulju, 1972).

Fil-kaz tal-arbitru, dan m`ghandu ebda terminu fiss u, maghzul ghal kaz wiehed, jista`, jekk *"ma jinghogobx"* ma jintghazel qatt aktar biex iservi ta` arbitru. L-*"assignment of duties"* jiddependi mic-Centru dwar l-Arbitragg ta` Malta li, ftit jew wisq, huwa taht il-Kontroll tal-Ministru tal-Gustizzja. L-arbitru ma jokkupa ebda *"ufficcju"* jew *"kariga"*, u jaqdix jew le l-funzjoni tieghu ta` arbitru jiddependi, ghal kull kaz fuq l-amministrazzjoni.

Inoltre, l-arbitru hu soggett ghall-proceduri ta` dixxiplina li wkoll huma ezercitati mic-Centru dwar l-Arbitragg ta` Malta. Dawn id-dispozizzjonijiet ta` dizziplina jinsabu f`Taqsima XI tar-Regoli dwar l-Arbitragg, ippubblikati fl-Avviz Legali 421 tal-2004. Dawn il-provedimenti jikontemplaw ukoll indhil mir-Registratur tac-Centru fil-mod ta` kif l-arbitru jmexxi l-process. L-artikolu 72 ta` dan l-Avviz Legali jaghti poteri vasti lic-Centru u fl-ewwel tlett sub-paragrafi tieghu jipprovdi indhil b`dan il-mod:

"(1) F`kaz ta` ksur mill-arbitru ta` xi dmir li ghandu in konnessjoni ma` l-immaniggar tal-procedimenti, ir-Registratur jista` johrog ordnijiet bil-miktub lill-arbitru,

liema ordnijiet ghandhom jigu obduti mill-arbitru mill-aktar fis possibli.

(2) Il-Bord jista` jqabbad lir-Registratur biex johrog ordnijiet lill-arbitru, jekk, meta jkun qed isegwi l-progress ta` l-arbitragg, jinnota li disposizzjonijiet ta` l-Att, ta` dawn ir-regoli jew ta` xi linji ta` pincipju ma jkunux gew osservati jew li l-arbitru jkun qed jonqos milli jimmanigga l-process ta` l-arbitragg b`mod efficjenti.

(3) Meta l-arbitru jonqos milli josserva l-ordnijiet tar-Registratur mahruga skond din ir-regola, ir-Registratur ghandu jirraporta b`dawn ic-cirkostanzi lill-Bord u l-Bord ghandu jiddetermina x`azzjoni dixxiplinari jiehu kontra dak l-arbitru".

Is-sub-paragrafu (6), imbaghad, jaghti poteri lill-Bord tac-Centru biex, minghajr pregudizzju ghad-drittijiet tal-partijiet taht il-ligi, jiehu azzjoni dixxiplinarja li jistghu jinkludu:

"(a) ordnijiet mahruga in konnessjoni mal-procedimenti;
(b) it-tnehhija ta` l-arbitru mill-arbitragg;
(c) it-tnehhija ta` l-arbitru mill-gruppi ta` l-arbitri; u
(d) l-impozizzjoni ta skwalifika milli jkun arbitru f`Malta ghal perjodu li ma jeccedix it-tliet snin".

Fi kliem iehor, arbitru li ma jkunx mexa b`mod precis mal-principji ta` procedura jew l-ordnijiet tar-Registratur, jista` anki jitnehha minn dak il-kaz li jkun qed jisma! Fil-fehma ta` din il-Qorti, dawn ir-regoli u provedimenti ma jaghtux garanzija ta` imparzjalita` u nuqqas ta` indhil fl-operat tal-arbitru, u l-process kollu tal-hatra tal-arbitru u l-kontrolli kontemplati ma jaghtux zgur *"an appearance of independence"*.

Din il-Qorti rat ukoll li l-arbitragg dejjem gie meqjus bhala li ma jipprovdix il-garanziji kollha rikjesti fl-artikolu 6(1) tal-Konvenzjoni Ewropeja, izda l-arbitragg jitqies process legali validu peress li l-partijiet ikunu volontarjament ghazlu dak il-process ghar-rizoluzzjoni tat-tilwima. Fil-*"Journal of the Chartered Institute of Arbitrators"* (Vol. 72 Nru. 3 – Awissu 2006), f`artikolu miktub minn Hew R.

Dundas, intitolat *"Recent Arbitration Cases in English Courts"*, saret riferenza ghall-kawza "Weissfisch vs Julius & Others", deciza fl-2006. F`dik il-kawza qamet kwistjoni jekk riferenza ghal arbitragg jissodisfax il-provediment tal-artikolu 6(1) tal-Konvenzjoni Ewropeja. L-awtur jghid dan fuq dak li osservat il-Qorti tal-Appell (pagna 278):

"Colman J. considered that parties to a commercial contract, including a public authority, could undoubtedly, without breach of Art. 6, enter into arbitration agreements disentitling them to access to "a public hearing by a tribunal established by law". If Parliament had decided in 1996 that the public interest had required deletion of s. 69, no argument could have been advanced that arbitration agreements entered into thereafter by public authorities infringed Art. 6 since neither party would be permitted to resile from its agreement that all disputes should be resolved otherwise than by "public hearing by a tribunal established by law". The right of access to the courts would have had to yield to the public policy of adherence to freely-contracted agreements for the means of dispute resolution. It followed that parties whose arbitration agreements brought them within the restricted supervisory regime of s. 69 were not thereby acting inconsistently with the ECHR rights of the opposite party, regardless of whether one of them was a public authority. Although they possessed a very restricted right of appeal, such was not impermissible under the ECHR. Equally, if they had mutually agreed to exclude s. 69, they were also acting entirely consistently with Art. 6 in the sense that they had preferred s.69(1)'s finality and privacy to the prospect of subsequent court proceedings and, having so agreed, they could not be permitted to rely on Art. 6 and complain that there had been anything unlawful in one party, whether or not a public authority, inviting agreement to the exclusion of a restricted right of appeal".

Hu car minn qari ta` din il-bran li d-dritt ghall-Qorti li jgawdi kull cittadin jista` jigi rinunzjat b`rizultat tal-ftehim li waslu ghalih il-partijiet li jirrikorru ghall-arbitragg, pero`, dan id-dritt ma jistax jigi mcahhad bl-awtorita` ta` ligi.

Arbitragg, fih innifsu, iwassal ghal telf ta` dritt ghall-access ghal *"a public hearing by a tribunal established by law"*, u ebda ligi ma tista` ccahhad lic-cittadin minn dan id-dritt.

F`artikolu iehor li l-istess awtur ippubblika fil-Vol. 73, Nru. 1 (Frar, 2007) tal-indikat gurnal (intitolat *"The Finality of Arbitration Awards and the Jurisdiction of the Court of Appeal"*), f`pagna 136 jaghmel is-segwenti riferenza:

"In Nordström-Janzon, the European Court held: (i) by choosing arbitration, the parties had renounced the requirement of a procedure before the ordinary courts which satisfied all the Art. 6 guarantees; (ii) nevertheless account had to be taken of any legislative framework affording a measure of control of the arbitration proceedings and whether that control had been properly exercised; (iii) different states could legitimately afford different grounds for challenging an award and each contracting state could decide for itself what grounds should suffice for setting aside an award; (iv) neither Netherlands law nor the Netherlands courts had acted in breach of the ECHR and the application was manifestly ill-founded. If Netherlands law had in addition provided that there was to be no appeal unless the judge gave permission, the Commission would have likewise decided that the application was ill-founded".

Ghal darba ohra, l-enfazi hija fuq l-ghazla tal-partijiet li jmorru ghall-arbitragg, u ghax hekk ghazlu ghandhom jitqiesu li irrinunzja ghad-dritt li jadixxu *"Qorti"* kif irid l-artikolu 6(i) tal-Konvenzjoni Ewropeja.

Fil-kaz tal-legislazzjoni lokali, ic-cahda mir-rikors ghall-Qrati giet imposta mil-Legislatur, u ghalkemm il-Konvenzjoni titkellem, kif rajna, fuq *"tribunal"*, l-alternattiva li impona l-Legislatur mhix ta` tribunal indipendenti u imparzjali kif jirrikjedu l-Kostituzzjoni ta` Malta u l-Konvenzjoni Ewropeja.

Apparti dan, u bhala punt ta` interess, jista` jizdied li meta persuni jintbaghtu quddiem tribunal ta` arbitragg, jistghu jkunu zvantaggati fis-sens li, jekk tqum kwistjoni ta`

interpretazzjoni ta` ligi jew regolament tal-Unjoni Ewropeja, l-arbitru probabilment ma jkunx jista` jaghmel riferenza preliminari lill-Qorti tal-Gustizzja tal-Unjoni Ewropeja. Kif qalet dik il-Qorti fil-kaz numru 102/81 "Nordsee Deutsche Hochseefischerei", deciza fl-1982, ir-riferenzi jistghu jsiru biss minn *"court or tribunal"* u arbitru ma hu ebda minn dawn.

Inoltre, decizjoni ta` arbitru mhix enforzabbli taht Council Regulation nru 44/2001 tal-Unjoni Ewropea peress li hi eskluza bl-artikolu 2(d). Dan johloq zvantagg meta si tratta ta` kwistjonijiet bejn persuni residenti fi stati membri differenti, u jista` jaghti lok ghal dewmien fl-esekuzzjoni tad-decizjoni, a kuntrarju ta` dak li jigri f`kaz ta` decizjoni ta` Qorti.

Intqal ukoll li, f`kull kaz, id-dritt ta` parti li tirrikorri ghall-Qorti mhux eskluz peress li kontra decizjoni arbitrali hemm dejjem dritt ta` appell. Id-dritt ta` appell moghti mil-ligi hu, pero`, wiehed limitat ghal punt ta` ligi. Kif qalet l-Onorabbli Qorti tal-Appell (Sede Inferjuri) fil-kawza "Gasan Mamo Insurance plc vs Grima", deciza fil-15 ta` Novembru, 2006, *"Minn dan jitnissel illi biex ikun hemm lok ta` appell mil-lodo ta` l-Arbitru jrid jirrizulta li dan ikun fondat fuq "punt ta` ligi". Hu infatti provvediment car ta` l-Att II ta` l-1996 dwar l-Arbitragg illi "parti fil-procediment ta` l-arbitragg tista` tappella lill-Qorti ta` l-Appell fuq punt ta` ligi li jitnissel minn decizjoni finali …" [Artikolu 70A (1)]. Mhux hekk biss pero`. Jinkombi wkoll fuq min jappella taht dan l-artikolu illi "jidentifika l-punt ta` ligi li ghandha tittiehed decizjoni fuqu u ghandu jispecifika t-tifsira li r-rikorrenti jallega li hi t-tifsira korretta tal-punt ta` ligi identifikat" [Artikolu 70B (1)]"*.

Kompliet tghid dik l-Onorabbli Qorti li *"is-semplici applikazzjoni tal-ligi ghall-fattijiet tal-kawza ma tikkostitwix dak il-punt ta` dritt li trid il-ligi"* u li *"jekk Tribunal ikun semplicement enuncja d-disposizzjoni tal-ligi ma hemmx punt ta` dritt li dwaru jista` jsir appell"*.

Intqal ukoll minn dik l-istess Onorabbli Qorti fil-kawza "Spiteri vs Bonett", deciza fl-4 ta` Ottubru, 2006, li *"Fuq*

kollox, kif gja nghad ukoll, minn irid jimpunja sentenza arbitrali ghandu l-oneru li jidentifika l-principju ta` dritt li hu jidhirlu li gie vjolat (u mhux sempliciment il-kap tad-decizjoni li hu jintendi jikkontesta), u kif u fejn l-Arbitru ddiskosta ruhu minn tali principju. Certament mhux sufficjenti s-semplici kritika tad-decizjoni sfavorevoli, formulta bi prospettazzjoni ta` interpretazzjoni diversa u allura izjed favorevoli, minn dik ta` l-Arbitru. Dan ghaliex talba konsimili ma tistax hlief titraduci ruhha in sostanza f`rikjesta ta` accertament ex novo tal-fatti, u dan huwa inammissibbli. Fil-kaz de quo, gjaladarba ope legis din il-Qorti mhix abilitata li tindaga ulterjorment fil-fatti probatorji, ic-censura dedotta mill-appellanti quddiem din il-Qorti fil-kontestazzjoni tal-lodo ta` l-Arbitru, u in kwantu din tattjeni ruhha sic et simpliciter ghall-valutazzjoni tal-provi, ma tista` qatt tkun ammissibbli".

Minn dan isegwi li, parti fi proceduri ta` arbitragg, m`ghandu qatt rikors ghal Qorti b`fakolta` li tistharreg il-kaz tieghu mil-lati kollha taghha. Ma hemm xejn irregolari li ligi tipprovdi appell limitat ghal min jaghzel li jkollu l-kaz tieghu misthareg minn arbitru, pero`, persuna ma jistax jigi mcahhad li, f`xi stadju, il-kaz tieghu jigi kollu kemm hu misthareg minn Qorti indipendenti u imparzjali.

Fil-ktieb fuq indikat ta` van Dijk u van Hoof jinghad, fil-fatt, (op. cit. pagna 419) li:

"The right to access had its full meaning only if the court concerned has full jurisdiction to determine the case before it. This means, that the court must have competence to judge both on the facts and on the law as a basis of its determination".

Aktar 'il quddiem (pagna 420), l-istess awturi jkomplu jamplifikaw fuq dan il-punt meta, b`riferenza ghal-gurisprudenza tal-Qorti Ewropea osservaw:

"The right of access to court means that the person concerned not only has a right to apply to a court for the determination of this rights or obligations and to present his case properly and satisfactory, but – as mentioned

before – also has a right to it that there is an independent and impartial court to make this determination; otherwise his right of access is not secured. In addition, that court must have the required jurisdiction to make the determination. Thus, in the cases of W, B and R v. the United Kingdom the Court held that, although the parents could apply for judicial review or institute wardship proceedings and thereby have certain aspects of the authority's access decisions examined by an English court, during the currency of the parental resolutions the court's powers were not of sufficient scope to fully satisfy the requirements of Article 6(1), as they did not extend to the merits of the matter. And in the Obermeier Case the Court held that there had been a violation of the right of access to court, since the court in question could only determine whether the administrative authorities had exercised their discretionary power in a way compatible with the object and purpose of the applicable law".

Fl-ahharnett, ma jkunx ghal kollox barra minn loku li din il-Qorti taghmel referenza ghall-kawza "Azzopardi vs Onor. Prim Ministru et", deciza mill-Onorabbli Qorti Kostituzzjonali fl-14 ta` Novembru, 1992, fejn gie deciz li l-Gvern ma setax jahtar agenti mhallfin f`sitwazzjoni fejn ma kien hemm ebda mhallef illi telaq jew irtira, izda biss biex il-Gvern izid in-numru ta` mhallfin fil-Qorti tal-Appell temporanjament sakemm jinqata` certu *'backlog'* ta` kawzi.

Din il-Qorti trid taghmila cara li hi mhix kontra l-istitut tal-arbitragg. Qabel mal-gudikant sedenti inhatar mhallef, huwa kien socju tas-Chartered Institute of Arbitrators tal-Ingilterrra, u huwa konxju tal-vantaggi kbar li jitnizzlu mill-uzu ta` dik is-sistema alternattiva ta` rizoluzzjoni ta` ilmenti. Pero`, il-process kollu, inkluz l-ghazla tal-arbitru, irid ikun f`idejn il-partijiet, u meta l-process, jew parti minnu, jittiehed minn taht idejn il-partijiet, il-fiducja tal-partijiet fil-process jispicca, u jkun ahjar, allura, li l-ilment jibqa` li jigi misthareg mill-Qrati li joffru fiducja u l-garanziji mehtiega lill-partijiet.

B`riferenza ghall-eccezzjoni li t-Tribunal ghal Talbiet Zghar ma jistax jaghmel referenza kostituzzjonali, din il-Qorti tara li biex wiehed jara jekk awtorita` hijiex *"Qorti"* jew le, ghandu jhares mhux lejn l-isem ta` dik l-awtorita`, izda lejn il-funzjoni ta` dik l-awtorita`. Gia gie deciz minn din il-Qorti li t-Tribunal ghal Talbiet Zghar ghandu funzjoni gudizzjari u jaghti garanziji xierqa ghal smiegh gust fid-determinazzjoni ta` kwistjonijiet ta` natura civili (ara "Brincat vs Avukat Generali et", deciza fl-10 ta` Jannar, 2003). Intqal ukoll li ghalkemm dan it-Tribunal ghandu jimxi skond il-gustizzja u l-ekwita`, ma jistax jinjora l-ligi, u ma ghandux dritt li jissorvola kompletament l-applikazzjoni tal-ligi ghall-meritu (ara "Portelli vs Buttigieg", deciza mill-Onorabbli Qorti tal-Appell (Sede Inferjuri) fil-5 ta` Lulju, 2006). Dan it-Tribunal ghandu funzjoni li jiddetermina kwistjonijiet ta` natura civili, huwa mwaqqaf bil-ligi, u huwa presjedut minn gudikatur li ghandu terminu fiss mhux rinovabbli. La darba, ai fini tal-artikolu 6(1) tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem, gie deciz li dak it-Tribunal huwa *"Qorti"*, marbut b`obbligu li jaghti smiegh xieraq lill-partijiet li jidhru quddiemu, ghandu jitqies *"Qorti"* li ghandu kompetenza jaghmel tali riferenza.

La darba, kif gie deciz mill-Qorti Ewropea tad-Drittijiet tal-Bniedem fil-kaz Golder (deciz fil-21 ta` Frar, 1975), biex l-artikolu 6(1) tal-Konvenzjoni jaghmel sens, irid ikun hemm *"Qorti"* li tiggudika fuq id-drittijiet civili tac-cittadin, u la darba gie deciz ukoll, kif intwera, li dan it-Tribunal jissodisfa l-kriterji ta` *"an independent and impartial Tribunal established by law"*, allura m`hemm xejn xi jzomm lil dan it-Tribunal, li ghandu funzjoni ta` Qorti, milli jaghmel tali riferenza.

Ghaldaqstant, ghar-ragunijiet premessi, tiddisponi mir-riferenza billi tiddikjara li l-Avviz 279 tal-2005, fejn jolqot kazijiet li jaqghu taht il-gurisdizzjoni tat-Tribunal ghal Talbiet Zghar taht il-Kap. 380, imur kontra l-provvedimenti tal-artikolu 39(2) tal-Kostituzzjoni ta` Malta u l-artikolu 6(1) tal-Konvenzjoni Ewropea (Kap. 319), u kwindi m`huwiex vinkolanti u ma jorbotx lill-imsemmi Tribunal.

Il-Qorti tordna li kopja ta` din id-decizjoni tintbaghat lill-ispeaker tal-Kamra tad-Deputati biex din tirregola ruha skond il-ligi.

L-ispejjez ta` din id-decizjoni jithallsu mill-kjamat fil-kawza, l-Avukat Generali tar-Repubblika.

Tordna li l-atti tal-kawza jintbaghtu lura lit-Tribunal ghal-Talbiet Zghar sabiex din tkompli tisma` u tiddetermina l-kaz skond il-ligi.

< Sentenza Finali >

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