



MALTA

QORTI CIVILI

PRIM' AWLA

ONOR. IMHALLEF

ANTHONY ELLUL

Seduta tad-9 ta' Gunju, 2014

Citazzjoni Numru. 1081/2013

Joseph u Matilde konjugi Cassar

Vs

L-avukat Muhammed El Ghirani li qed jidher fl-isem, ghan-nom u in rapprezentanza tal-Ministeru ta' l-Affarijiet Barranin u b'digriet tas-26 ta' Dicembru 2013 Ali Othman bhala Acting Charge D'Affaires fl-Ambaxxata Libjana f'Malta gie awtorizzat jassumi l-atti ghan-nom tal-Ministeru tal-Affarijiet Barranin Libjan u b'digriet tal-14 ta' Jannar 2014 il-qorti awtorizzat lil Huseen M. Benown bhala Acting Charge d'Affaires fl-Ambaxxata Libjana f'Malta sabiex jassumi l-atti ghan-nom tal-Ministru ta' l-Affarijiet Barranin Libjan

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Dan hu kaz fejn l-aturi talbu li l-konvenut nomine jigi kkundannat jersaq ghall-pubblikazzjoni ta' kuntratt ta' bejgh biex jixtri villa bl-isem ta' Amass Lodge, numru 20, Triq il-Margerita, limiti tal-Ibragg, Swieqi. Fit-13 ta' Marzu 2013 il-partijiet iffiraw kuntratt ghall-bejgh tal-fond. Il-prezz pattwit hu ta' €1,423,000 li ghandha tithallas fuq l-att ta' bejgh.

Din is-sentenza titratta l-ewwel eccezzjoni li biha l-konvenut nomine qieghed jinvoka l-Artikolu 31 tal-Konvenzjoni ta' Vienna dwar ir-Relazzjonijiet Diplomatici, li f'Malta hi ligi (ara Att dwar l-Immunitajiet u Privileggi Diplomatici – Kap. 191) li jitratta dwar immunita' diplomatika. Fil-kaz Ingliz *Empson v Smith*, il-Qorti tal-Appell Ingliza osservat: *"it is elementary law that diplomatic immunity is not immunity from legal liability, but immunity from suit"* (1966).

L-Artikolu 31 tal-Konvenzjoni jipprovdi:-

"1. Agent diplomatiku ghandu jgawdi immunita' minn gurdizzjoni kriminali tal-Istat riceventi. Ghandu jgawdi wkoll immunita' minn gurdizzjoni civili u amministrattiva, h'ief fil-kaz ta':

(a) azzjoni reali dwar proprjeta' privata immobbli li tkun qieghda fit-territorju tal-Istat riceventi, jekk ma jkunx qed izommha f'isem l-Istat mandanti ghall-iskopijiet tal-missjoni;

(b) azzjoni dwar successjoni li fiha l-agent diplomatiku jkun involut bhala esekutor, amministratur, eredi jew legatarju bhala persuna privata u mhux f'isem l-Istat mandanti;

(c) azzjoni dwar xi attivita' professjonali jew kummercjali ezercitata minn agent diplomatiku fl-Istat riceventi barra mill-funzjonijiet tieghu ufficjali".

Mill-atti jidher li l-fond kellu jinxtara fl-interess tal-Gvern Libjan. Konkluzjoni li l-qorti tasal ghaliha mill-fatt li:

- i. Fuq il-konvenju l-avukat El Ghirani kien deher *"... in the name for and on behalf of the Libyan Ministry of Foreign Affairs"*.
- ii. Fit-30 ta' Lulju 2013, il-Ministeru ghall-Finanzi kien baghat ittra lill-Kap tal-Missjoni fl-Ambaxxata Libjana fejn infurmah li *"The Minister of Finance has authorised that the Libyan Ministry of Foreign Affairs shall be exempt from the payment of stamp duty in terms of Article 23 of the Duty on Documents and Transfers Act (Cap. 364) in respect [of] a deed of*

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acquisition of the Villa numbered twenty (20) and named Amass Lodge, in Triq il-Margerita, Ibragg, Swieqi, by virtue that the said property is purchased by the Libyan Ministry of Foreign Affairs for used by the Libyan Embassy” (fol. 60).

Konferma ta' tali fatt insibuha wkoll fl-atti li pprezenta l-konvenut nomine.

Dr Mohammed El Ghirani, Ali Othman u Huseen M.M. Benown huma kollha agenti diplomatici, kif jirrizulta minn ittra datata 5 ta' Frar 2014 mibghuta mill-Ministeru ghall-Affarijiet Barranin lid-Direttur Generali tal-Qorti (fol. 90) u li maghha kien hemm anness kopja tal-karta tal-identita ta' dawn l-ufficjali diplomatici. Min-naha tal-atturi m'hemmx kontestazzjoni li hekk hu u li dawn l-ufficjali jgawdu mill-privileggi li agent diplomatiku ghandu taht il-Kap. 191 tal-Ligijiet ta' Malta.

L-Artikolu 31 tal-Konvenzjoni qieghed jikkontempla ghal dawk il-kazijiet fejn l-agent diplomatiku jista' jigi mharrek personalment. Kazijiet li m'humiex konnessi mad-dmirijiet ufficjali tal-agent diplomatiku, u ta' natura privata. L-immunita' diplomatika li jgawdi agent diplomatiku hi milli jigi mharrek personalment, salv ghall-eccezzjonijiet li jissemew fl-Artikolu 31. Mill-okkju tar-rikors guramentat hu evidenti li fil-kaz in ezami l-agent diplomatiku ma giex imharrek personalment izda biss bhala rapprezentant tal-Gvern Libjan. Din l-eccezzjoni m'hijiex titratta l-immunita' ta' Stat milli jigi mharrek, imma ta' ufficjal diplomatiku. Eccezzjoni li ghad trid tigi trattata kontestwalment mat-tieni eccezzjoni. Hemm distinzjoni bejn l-immunita' diplomatika u l-immunita' ta' Stat:-

"Diplomatic immunity and State (or sovereign) immunity are often confused. State immunity is the immunity of a State, and its officials and agents, from the jurisdiction of another State. Diplomatic immunity is accorded to the members of a diplomatic mission, and in the case of diplomatic agents amounts to almost total immunity from jurisdiction.

*Take a simple case: an ambassador contracts with a local decorator for the repainting of the embassy. The ambassador disputes the bill, but the decorator will not reduce it. How is this typical dispute to be resolved ? Because the ambassador would in any event have diplomatic immunity, one might think that all the decorator can do is to urge his foreign ministry to put pressure on the ambassador or his government to pay or to negotiate a settlement. But in this case the ambassador would have signed the contract as part of his official functions, and therefore on behalf of his State. It is the sending State that is the party to the contract, not the ambassador..... So can the decorator sue the State ? **Whether a State can be sued in a foreign court will depend on whether under the law of the receiving State a foreign State can claim immunity in the particular circumstances and, if so, whether that immunity is waived....** (enfazi mizjuda)*

*When considering legal proceedings in a matter in which a diplomat has been directly involved, it is crucial to analyse the situation or transaction to see if he is acting on behalf of his State or personally. Issuing legal proceedings against a diplomat when they should be against his State is pointless and will only cause delay and expense. To help to avoid confusion, when a member of a diplomatic mission signs a contract, lease or suchlike as part of his official functions, he should do so expressly on behalf of his State, and only the State should be named as the party" (**Handbook of International Law**, Anthony Aust, Cambridge University Press [2010] pagna 127).*

Fil-kaz in ezami l-pretensjoni tal-atturi m'hijiex kontra l-avukat El Ghirani, Othman jew Benown personalment izda kontra l-Istat Libjan. L-avukat El Ghirani ma giex imharrek personalment. L-istess jinghad dwar l-agenti diplomatici l-ohra li assumew l-atti ghan-nom u in rapprezentanza tal-Gvern Libjan. El Ghirani ssemma fl-okkju tar-rikors guramentat biss bhala rapprezentant u xejn iktar. Ghalhekk dan m'huwiex kaz fejn tista' tirnexxi eccezzjoni dwar immunita' diplomatika bazata fuq il-Konvenzjoni ta' Vienna.

Ghal dawn il-motivi l-qorti tichad l-ewwel eccezzjoni bl-ispejjez kontra l-konvenut nomine.

< Sentenza In Parte >

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