



MALTA

QORTI CIVILI

PRIM' AWLA

ONOR. IMHALLEF

ANNA FELICE

Seduta tat-13 ta' Mejju, 2015

Citazzjoni Numru. 489/1991/1

Karol Farrugia, Sylvana Zarb, Lilian Ellul, Georgina Pavia, Iris Mifsud, Vincent Camilleri, Dion Cardona, Avukat Dottor Andrew Azzopardi, Anthony Meli, David M. Grech, Monica Fenech Close, Gloria Bugeja, David Mallia, Sandra Mallia, Carmen Che tcuti, Anna Isabella Borg, Marie Louise Rausi, Lorraine Flores Martin, Martin Chetcuti, Rita Gauci, Marie Josette Scalpello, Marcette Cefai, Rita Said, Victoria Camilleri, Rosette Tufigno, Simone Anastasi, Georgette Maistre, Anouk Ellul Sullivan, Maria Anna Duca, Mary Ellul, Pauline Bartolo, John Buttigieg, Ian Wirth, Maria Spiteri, Marica Warrington, Audrey Demanuele, Sarah Jane Pulis, Mariella von Brockdorff, Magda Axiak, Marisa Bonnici, Rita Jones, Moira Pace Lupi, Joseph Bowman, Victor Zammit, Celestina Zammit, Josephine Magro, Sandra Vella, Theresa Vassallo, Neville Curmi, Patrick Caruana Dingli, May Pantalleresco, Ivan

Azzopardi, Violet Fenech, Jennifer Gauci, Grace Lanzon, Theresa Psaila, Joanne Mahoney, Monica Cilia Vincenti, Pauline Valentino, Nathalie Vella, Maria Ancilleri, Alfred Griscti, Carmel Zammit, Josephine Grieve, Mabel Cefai, Elizabeth Cassar, Paul Abela, Joseph Lupi, Adrian Ellul Soler, George Gusman, Noel Curmi, Peter Wirth, Phyllis Debono, Antonia Hudson, Marlene Sadowski, Antoinette Borg, Carmen Rossiter, Letizia Libreri, Joseph Camilleri Bowman, Anna Azzopardi, Marion Mercieca, Carol Bonnici, John A. Fenech, Carmelo sive Charles Wallbank, Julian Pace Bonello, Edward Cachia, Michael Demaria, Susan McClean, Robert Desira Buttigieg, Paul Grima, Joseph Camilleri, Vincent Tabone, Joseph Vella, Rita Vella, Karmen Buttigieg, Myriam Spiteri, John Zammit, Joseph Galea, John Zimelli, Raymond Bonnici, Louis Sciberras, Josephine Cross, Rita Borg, Josephine Calleja, Irene Cardona, Lizette Said Pullicino, Marie Banavage, Tania Camilleri Fava, Pierre P. Azzopardi, Carmelo sive Charles Pace, Denis Curmi, Catherine Vella, Marie Testa, Mark Camilleri, Joanna Wallbank, Marguerite Pace Bonello, Joan Demaria, Marie Therese Falzon, David Wallbank, David Calleja Urry, Paul Wismayer, William Martin, Victor Camilleri Bowman, Noel Azzopardi, George Bonnici, Vivienne Gusman, Madeleine Camilleri, Anna R. Said, Victor Camilleri, Richard Galea, Carmen Borg, Bianca Tonna, Antonia Xuereb, Kevin Bonnici, Maryrose Azzopardi, Sandra Aquilina, Arthur I. Cassar, Aurelio Theuma, Alexander Borg, Louis R. Naudi, Theresa sive Tessie Cauchi Gera, Andrew Anastasi, Vincent A. Rizzo, Vincent J. Rizzo, Alfred Mifsud, Joseph Abela, Andrew Agius, Pauline Apap, Mary Aquilina, Frances Azzopardi, Joyce Beck, Joseph Bonnici, Teresa Bonnici, Angela Borg, Christine Borg, Maria Concetta Borg, Maria Concetta Borg nee' Grech, Adrian Borg Cardona, Christopher Briffa, Anne Marie Brincat, Louise Anne Cachia, Silvana

Cachia Caruana, Rita Calleja, Anita Camilleri, Mary Anne Camilleri, Marguerite Cassar, Lynn Ciantar, Anthony R. Curmi, Mary Cutajar, Marie Louise Farrugia, Antoinette Fava, Maria Isabella Fenech Adami, Marie Louise Galea, Mary Galea, Maria sive Maryse German, Robert Laurenti, Valerie Mangion, Doris Micallef, Camilla M. Pace Vincenti, Mariella Pisani Bencini, Mary G. Portelli, Henry S. Restall, Heidi Rizzo, Mary Grace Sacco, Evelyn Said, Joseph Said, Claire Saliba, Franco J. Scicluna, Josette Testa, Avukat Dottor Henry Vassallo, Henry Xuereb, Josephine Zahra, Lucienne Zahra, Alfred H. Zammit, Carmen Zammit, Maris Zammit, Imperia Baron, Emanuela sive Lilian Caligari, Josephine Calleja, Patricia Coppini, Norbert Crockford, Marie Josette D'Agostino, Avukat Dottor Ethelbert Fenech Adami, Rosette Montanaro, Carmel sive Lino Farrugia, Anna Muscat, Marina Sammut, Marylene Savona Ventura, Carmela Schembri, Carmen Thompson, Mary Rose Vella Haber, Pauline Abela, Rita Bonello, Denis Borg, Maria Borg Olivier, Carmen Bugeja, Henry Buhagiar, Anne Camilleri, Margaret Camilleri, William Caruana, Catherine Cassar, Marianne Ellul, Mary Ellul, Godfrey Farrugia, Josette Farrugia, Marie Therese sive Marty Farrugia, Anna Ferris, Gilbert Gatt, Robert Gatt, Joseph E. Grech, Vera Lungaro Mifsud, Oliver Magri, Alfred Mallia, Hugh Mercieca, Sandra Mercieca, George Mifsud, Marlene Mizzi, Mary sive Mariucca Muscat, Rita Muscat, Jo-Anna Portelli, Catherine Schembri, Lucia Scicluna, Monica Spiteri Paris, Myriam Warrington, Patrick Warrington, Carmen Zammit, Peter Zammit Lupi, Osanna Borg, Doreen Buttigieg, Glorianne Georgii, Claude Calleja, Raymond Vella, Doreen Borg, Josette Mifsud, Josanne Degaetano, Marie Louise Cassar, kif ukoll Alfred Mangion bhala mandatarju specjali ta' l-assenti Edward G. Abela, Claude Amato Gauci, Anna Baldacchino, Carmelo sive Charles Attard, Robin A. Beck,

Alice Bonavia, Anna Borg, Adrian Borg Olivier, Mark Castillo, Rosanne Darmanin, Malcolm Debono, Nazzareno sive Reno Demicoli, John Dingli, Alfred Felice, David Fuller, George L. Gauci, Anthony Griscti, Arthur Micallef, Marthese Pace, James Miller, Stephen Miller, Moyra Pullicino, Rose Marie Skaletz, Cettina Berger, Victor Pullicino, Yvonne Serra, Maria Micallef, Rita Ponente, Oliver Galea, Maria Galea, Enzo Gusman, Frank Dimech, Carmelo sive Charles Aquilina, John Caruana, Lilian Cachia, John Victor Grima, Raymond Pandolfino u Anthony Busuttil, Doris Reiff, Joseph M. Muscat, Joseph A. Spiteri; u in kwantu ghal dawk l-atturi li huma mizzewga: Alfred Mifsud, David Mallia, H Roderick Rausi, Louis Camilleri, Mario Tufigno, Louis Maistre, Paul Ellul Sullivan, Joseph J. Spiteri, Joseph Axiak, Aldo Vella, Patrick Lanzon, Gaetano sive Guy Mahoney, George Valentino, Frank Ancilleri, John Thomas Grieve, Pierre Azzopardi, Reginald Bonnici, Joseph Vella, Charles Borg, Raymond Cardona, Philip Said Pullicino, David Wallbank, Julian Pace Bonello, Michael Demaria, Anthony Falzon, George Gusman, Joseph Tonna, Emanuel Xuereb, Noel Azzopardi, John Cauchi Gera, Martin Aquilina, Frank Azzopardi, William Beck, Martin Bonnici, Carmelo Borg, Joseph Borg, Joseph Brincat, Paul Cachia, Edward Cachia Caruana, Josef Camilleri, Orlando Cassar, Joseph Ciantar, Anton Cutajar, Joseph Norman Farrugia, Mario Fava, Avukat Dottor Ethelbert Fenech Adami, Ernest Galea, Mario Galea, Brian German, Alfred Mangion, Joseph Micallef, Geoffrey Pisani Bencini, Anthony Rizzo, Joseph Sacco, Joseph Said, Stephen Saliba, Paul Zahra, Joseph F. X. Zahra, Ludgardo Zammit, Alfred Zammit, Saviour Baron, Joseph Caligari, Anthony Calleja, Marcel Coppini, Edward D'Agostino, Gerald Montanaro, Joseph Muscat, John Sammut, Carmelo sive Charles Savona Ventura, Avukat Dottor Louis Thompson, Dentist Michael Vella

Haber, Joseph Abela, Raymond Bonello, Godwin Borg Olivier, Carmelo sive Charles Bugeja, Edward Cassar, Mario Ellul, George Farrugia, Philip Farrugia, Carmelo sive Lino Ferris, Romwald Lungharo Mifsud, Joseph Mercieca, Alexander Mizzi, George Muscat, Michael Muscat, John Portelli, Eugene Schembri, George Scicluna, Anthony Spiteri Paris, Patrick Warrington, Alfred Zammit, Mario Buttigieg, Raymond Borg, Paul Mifsud, Anthony Cassar, kif ukoll l-istess Alfred Mangion bhala mandatarju specjali ta' l-imsiefrin Aldo Borg, Karl-Michael Skaletz, Ivan Micallef, Francis Cachia, Oliver Galea, Andreas Reiff bhala amministraturi tal-komunjoni ta' l-akkwisti u tal-beni parafernali tan-nisa taghom

VS

Avukat Dottor Riccardo Farrugia bhala Chairman in rappresentanza tal-Mid-Med Bank Limited;

Robert Scott f'ismu proprju u bhala ex-Chairman tat-Trustees tal-Mid-Med Staff Pension Association u f'nota tal-11 ta' Gunju 1991 l-Avukat Dr. Henry Mamo assumma l-atti tal-kawza minflok Dr. Riccardo Farrugia bhala Chairman tal-Mid-Med Bank Limited u fl-interess tal-istess Bank u b'nota tal-10 ta' Novembru 1999 l-isem Mid-Med Bank p.l.c. inbidel ghal HSBC Bank Malta p.l.c.

Il-Qorti:

Rat ic-citazzjoni mressqa minn Karol Farrugia fl-1991 u Sylvana Zarb, Lilian Ellul, Georgina Pavia, Iris Mifsud, Vincent Camilleri, Dion Cardona, Avukat Dottor Andrew Azzopardi, Anthony Meli, David M. Grech, Monica Fenech Close, Gloria Bugeja, David

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Dentist Michael Vella Haber, Joseph Abela, Raymond Bonello, Godwin Borg Olivier, Carmelo sive Charles Bugeja, Edward Cassar, Mario Ellul, George Farrugia, Philip Farrugia, Carmelo sive Lino Ferris, Romwald Lungharo Mifsud, Joseph Mercieca, Alexander Mizzi, George Muscat, Michael Muscat, John Portelli, Eugene Schembri, George Scicluna, Anthony Spiteri Paris, Patrick Warrington, Alfred Zammit, Mario Buttigieg, Raymond Borg, Paul Mifsud, Anthony Cassar, kif ukoll l-istess Alfred Mangion bhala mandatarju specjali ta' l-imsiefrin Aldo Borg, Karl-Michael Skaletz, Ivan Micallef, Francis Cachia, Oliver Galea, Andreas Reiff bhala amministraturi tal-komunjoni ta' l-akkwisti u tal-beni parafernali tan-nisa taghhom li permezz taghha, wara li gie premess illi:

Il-bicca l-kbira tal-atturi kienu lkoll impjegati mal-Bank konvenut f'xi perjodu bejn l-1 ta' Ottubru 1975 u l-15 ta' Jannar 1979 izda rtiraw mill-Bank f'dati differenti, f'dak il-perjodu jew wara. Uhud huma mizzewga lil ex-impjegati.

L-impjegati kienu eligibbli ghal pensjoni msejjha "Mid-Med Staff Pension" li l-fondi taghha kienu amministrati mill-Mid Med Staff Pension Association.

Wara l-introduzzjoni tal-pensjoni taz-zewg terzi fil-15 ta' Jannar 1979 il-Bank ittermina l-imsemmi Pension Fund.

Il-Pension Fund gew mghoddija illegalment lill-Bank konvenut mit-Trustees tal-Mid-Med Staff Pension Association – haga li giet deskritta fir-Report & Accounts 1989 tal-Bank bhala "write-back of the balance on the Bank's pension fund on final liquidation of the scheme".

Il-kontribuzzjonijiet ghall-imsemmi Pension Fund maghmula mill-Bank konvenut jikkostitwixxu "deferred pay" u jappartjenu eskluzivament lil min kien impjegat fid-dati meta saru l-kontribuzzjonijiet relattivi mill-Bank fl-interess tal-istess impjegati.

Permezz ta' Protest ipprezentat fit-30 ta' Dicembru 1987, jigifieri qabel ma gie xjolt l-imsemmi Pension fund, il-konvenut Robert Scott kien gie interpellat personalment bhala fiducjarju biex jiddezisti milli jaghmel pagamenti mill-fondi tal-Mid-Med Pension Fund li jippregudikaw id-drittijiet tal-atturi u gie mqieghed in dolo, culpa u mora ghall-finijiet tal-ligi, u ghalhekk irrenda ruhu responsabbli personalment "in solidum" mal-bank konvenut ghall-hlas tal-kreditu dovut lill-atturi mill-Bank konvenut.

Intalbet din il-Qorti biex:

1. Tiddikjara illi kull wiehed mill-atturi huwa kreditur tal-konvenuti "in solidum" bejniethom fl-ammont ekwivalenti ghal sehmu mill-Mid-Med Staff Pension Fund li gie xjolt fit-30 ta' Novembru 1987.

Bl-ispejjez, komprizi dawk tal-ittra ufficjali tal-21 ta' Frar, 1991, kontra l-konvenuti li huma mharrkin ghas-subizzjoni.

Bl-imghax relattiv mit-30 ta' Novembru 1987.

B'rizerva ta' kull azzjoni ohra spettanti lill-atturi.

Rat id-dikjarazzoni mahlufa minn Karol Farrugia.

Rat in-nota tal-eccezzjonijiet tal-konvenut Dr. Riccardo Farrugia bhala Chairman tal-Mid-Med Bank li ghalih assuma l-atti l-Avukat Dottor Henry Mamo, u Robert Scott f'ismu proprju u bhala ex-Chairman tat-Trustees tal-Mid-Med Staff Pension Association li permezz taghha gie except illi:

L-atturi m'ghandhomx u qatt ma kellhom is-sehem taghhom mill-Mid-Med Staff Pension Fund.

Mhux minnu li l-kontribuzzjonijiet maghmula mill-Bank jikkostitwixxu "deferred pay" appartenenti lill-atturi.

L-ebda disposizzjoni tal-Ligi, l-ebda kundizzjoni tal-kuntratt tal-impieg u l-ebda klawsola tar-regolamenti tal-Pension Fund ma jaghtu lill-ex-impjegati d-drittijiet li jippretendu l-atturi.

Fi kwalunkwe kaz l-atturi tilfu kull eventwali dritt malli volontarjament itterminaw l-impieg taghhom mal-Bank.

Salvi eccezzjonijiet ohrajn.

Rat illi, minkejja li ma jirrizulta ebda digriet formali f'dan is-sens, tul is-snin din il-kawza baqghet tistenna l-ezitu ta' kawza identika pendent quddiem il-Qorti diversament presjeduta.

Rat is-sentenza ta' din il-Qorti diversament presjeduta fil-kawza 265/1991 liema sentenza giet moghtija fit-13 ta' Frar 2007.

Rat is-sentenza tal-Qorti tal-Appell pronunzjata fit-18 ta' Settembru 2009.

Rat is-sentenza tal-Qorti tal-Appell pronunzjata fil-25 ta' Gunju 2010.

Rat l-atti tal-proceduri 265/1991 li, skond l-ordni moghtija fit-3 ta' Frar 2011, gew allegati mal-atti tal-proceduri odjerni.

Semghet xhieda viva voce.

Rat in-noti ta' sottomissjonijiet mressqa mill-partijiet.

Rat l-atti kollha.

Rat li l-kawza thalliet ghas-sentenza.

Ikkunsidrat illi permezz ta' din il-kawza mitejn u seba' u disghin persuna li kienu impjegati ma' Mid-Med Bank fiz-zmien bejn l-1 ta' Ottubru 1975 u l-15 ta' Jannar 1979 qed jitolbu sehemhom minn Mid-Med Bank Staff Pension Fund li kien gie xjolt fit-30 ta' Novembru 1987.

Il-konvenuti jecepixxu illi l-impjegati qatt ma kellhom sehem mill-fond.

Din il-Qorti tibda biex tirrimarka enfatikament illi certu kliem dispregattiv uzat mill-atturi fin-noti ta' sottomissjonijiet taghhom ma jaghmlu ebda gieh la lill-atturi u wisq anqas lid-difensuri li kitbuhom. Il-Qorti tishaq illi l-istess noti ma gewx sfilzati addirittura mill-atti ghar-raguni biss illi tali azzjoni tikkomprometti l-posizzjoni tal-istess atturi li seta' ma kellhom ebda kontroll fuq l-istess sottomissjonijiet.

Dan premess, il-Qorti kkunsidrat illi l-pern tal-pretensjonijiet tal-atturi huwa li l-flus tal-fond mertu ta' din il-kawza, huma effettivament "deferred pay" u ghaldaqstant jibqghu tal-impjegati.

Peress illi t-talba f'din il-kawza hija ghal sehem kull wiehed mill-atturi mill-fond in kwistjoni, u mhux ghall-pensjoni, li ma jidhirx li l-atturi baqghu eligibbli ghaliha, hija limitatament f'dawk il-parametri li l-Qorti qeghda tqis il-vertenza.

Din il-Qorti diversament presjeduta fis-sentenza taghha tat-13 ta' Frar 2007 cahdet it-talbiet attrici wara li qieset li l-flus li originarjament gew imwarrba mill-Bank konvenut biex iservu bhala fond ghall-pensjoni tal-impjegati taghha, ma kienux jappartjenu lill-ex-haddiema u lanqas ma kienu jirraprezentaw parti (imnaqqsa) mis-salarju taghhom u allura meta l-iskema tal-pensjoni giet imwaqqfa u l-fond likwidat, l-ex-haddiema ma kellhom ebda dritt ghal sehem minn dawk il-flus.

Il-Qorti tal-Appell imbaghad ikkonfermat kategorikament:

"Hu car li l-hlasijiet li l-bank kien jiddeposita fil-pension fund, ma kienux flus li kien qed izomm mis-salarju tal-impjegati taghha. Is-salarju stabbilit kien li kien, u gie stabbilit biex ikun relatat mas-salarji generali fis-servizz pubbliku. Ma giet iffissata ebda rata li minnha kellu jsir tnaqqis, u l-kontribuzzjonijiet li ghamel il-bank ghall-fond tal-pensjoni ma kienux qed isiru mill-flus "tagghom", cioè, tal-impjegati. Hu maghruf li mill-paga tal-impjegati ma jista' jsir ebda tnaqqis jekk mhux fejn awtorizzat mill-ligi jew bi ftehim mal-istess impjegati (ara bhala rifless fuq dan, il-kawza Camilleri noe v. Ragonesi et, deciza minn din il-Qorti fit-22 ta' Jannar 2001), u f'dan il-kaz ma jirrizultax li sar "ftehim" li l-impjegati jinghataw paga imnaqqsa, jigifieri anqas minn dik stabbilita, biex jaghmel tajjeb ghall-iskema tal-pensjoni li holoq il-Bank il-gdid."

Inoltre, il-Qorti tal-Appell kompliet hekk:

"Il-pensjoni, skond ir-regoli tat-twaqqif taghha, kien intitolat ghalha min ikun ilu jahdem ghaxar snin mal-bank, u min ma jkunx irrizenja volontarjament bhala mpjegat tal-bank."

Il-Qorti tal-Appell imbaghad ghattiet biex tikkonferma s-sentenza tal-ewwel Qorti "in toto".

L-atturi f'dawk il-proceduri ghaddew biex imbaghad ghamlu talba ghal ritrattazzjoni quddiem l-istess Qorti tal-Appell u dan ghar-raguni li qiesu li l-Qorti tal-Appell applikat il-ligi hazin u ghamlet disposizzjonijiet kontra xulxin. Din it-talba taghhom giet ukoll michuda permezz ta' sentenza pronunzjata fil-25 ta' Gunju 2010.

Fid-dawl tal-fuq citati pronunzjamenti ta' dawn il-Qrati din il-Qorti hi tal-fehma li tista' ragonevolment tiddipartixxi minn dak digà deciz fir-rigward tal-fond de quo biss jekk ingiebu lilha fl-ambitu tal-proceduri odjerni, fatti, provi u argumenti godda li ma kienu gew qatt a konjizzjoni tal-Qorti diversament presjeduta u lanqas tal-Qorti tal-Appell.

F'dawn il-proceduri xehed Anthony Curmi, già assistant general manager ta' Barclays Bank f'Malta (3 ta' Frar 2011) li rega' spjega r-raguni wara l-krejazzjoni tal-fond u x'kellu jsir minnu f'kaz ta' xoljiment tal-Bank. Hu kkonferma li l-iskop ahhari kien garanzija ta' pensjoni, liema garanzija nghatat lill-impjegati mad-dhul tal-ligi tal-pensjoni taz-zewg terzi fl-1979.

L-uniku xhud gdid f'dawn il-proceduri kien espert fil-kontabilità imressaq "ex parte" li donnu tefa' dubbji dwar l-appartenenza tal-fondi mill-mod kif kienu jigu inkluzi l-fondi tal-pension fund fil-balance sheet tal-Bank. Dwar dan, il-Qorti tal-Appell kienet digà ddikjarat is-segwenti:

"Lanqas ma hu ta' sostenn ghat-terzi tal-atturi appellanti l-fatt li l-flus depozitati fil-fond tal-pensjoni ma baqghux jidhru bhala assi fil-balance sheet ta' kull sena tal-Mid-Med Bank. Il-versamenti li l-bank kien jaghmel versu l-fond

kienu jammontaw ghal provizjoni ghal hlas futur (liema hlas il-bank kellu l-obbligu li jiggarentih anke skond ir-regoli li kienu jirregolaw il-fond kif citati ben tajjeb fis-sentenza appellata fejn il-Qorti rrimarkat li l-Bank "gharaf ir-responsabbilità solidali tieghu ghall-hlas ta' pensjoni") u gialadarba l-Bank kellu l-aspettativa regjonevoli illi dawn il-flus ser ikollhom jithallsu in kwantu claims fuq il-pensjonijiet dawn il-flus kienu fil-fatt jitqiesu bhala spiza."

Finalment il-Qorti tinnota illi ebda wiehed mill-mijiet ta' atturi ma ressaq l-icken prova li huwa kien impjegat ta' Mid-Med Bank. Minhabba dan in-nuqqas ta' prova tal-interess essenzjalment rikjest mil-ligi wkoll ghandhom jigu michuda t-talbiet attrici. Il-Qorti tirreferi fil-kuntest ghas-sentenza tal-Prim'Awla fil-kawza Laferla vs Attard (30 ta' Jannar 2002) u Fenech Adami vs Abela (6 ta' Ottubru 1999).

Ghal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi billi filwaqt li tilqa' l-eccezzjonijiet tal-konvenuti, tichad it-talba tal-atturi.

L-ispejjez jithallsu mill-atturi.

< Sentenza Finali >

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