

Tribunal tal-Appelli dwar l-  
Informazzjoni u l-Protezzjoni tad-Data



MALTA

Information and Data Protection  
Appeals Tribunal

## **TRIBUNAL TAL-APPELLI DWAR L-INFORMAZZJONI U L- PROTEZZJONI TAD-DATA**

Appell Numru 11/2012:

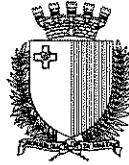
**Antoinette Calleja**

**Vs**

**Il-Kummissarju ghall-  
Informazzjoni u l-Protezzjoni tad-  
Data**

Illum 15 ta' Dicembru 2016

Chairman: Dr Anna Mallia LL.D., LL.M. (Lond), Dip.Tax . (MIT)  
Membri : Mr Charles Cassar M.B.A.(Exec.), Dip.Lab.Stud., Cert.Mediator (UK)  
Mr David Bezzina HNDip C.S., BSc IT (Hons)



It-Tribunal,

Ra l-verbal tas-seduta tat-8 ta' Jannar 2013 li permezz tieghu l-partijiet kienu qablu li dan l-appell u l-appell numru 11/2012 jinstemghu flimkien u x-xhieda li tinghata f'kull appell tigi kunsidrata wkoll fl-ohra.

Ra l-appell tal-appellanti ai termini tal-artiklu 7(a) 7(b) 7 (d) 7(f) u 7(g) tal-Kap 440 tal-Ligijiet ta' Malta li permezz tieghu hija qed tilmenta li s-Segretarju Permanenti fil-Ministeru tal-Finanzi Sur Alfred Camilleri ma kellux jghaddi jghid hekk fuqha lil Ombudsman cioe "*It is to be noted that relations between the DG Contracts and Ms Calleja have never been cordial at the best of times. Ms Calleja tends to avoid any form of contact with her Director General and corresponds through emails*" (para 19 tal-appell taghha) meta mitlub jghaddi l-kummenti tieghu dwar l-ilment li hija ghamlet mal-Ombudsman fl-1 ta' Settembru 2011. L-ilment taghha tal-1 ta' Settembru 2011 kien dwar il-mod irregolari u ksur tal-proceduri kif stabbiliti fis-settur pubbliku fir-rigward ta' evalwazzjoni tal-prestazzjoni tax-xoghol (performance appraisal) ta' impjegati li jkunu jokkupaw 'headship position' ghal perjodu mill-1 ta' April 2010 sal-31 ta' Dicembru 2010.

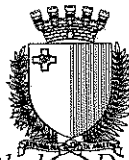
Ra r-risposta tal-Kummissarju ghall-Infomazzjoni u l-Protezzjoni tad-Data li permezz taghha huwa jikkontendi li d-decizjoni tieghu tal-21 ta' Ottubru 2012, li tali kliem jammontaw ghal opinjoni u mhux ghal data personali u data personali sensittiva ai termini tad-definizzjoni ta' data personali u data personali sensittiva f'artikolu 2 tal-Att dwar il-Protezzjoni u l-Privatezza tad-Data u artikolu 7 u 9 ( c ) tal-istess att kif ukoll artikolu 19(1) tal-Att dwar l-Ombudsman u ghalhekk dan l-appell ghandu jigi michud ai termini tal-artikolu 49(2)(a)(b)(c)(d) tal-Kap 440 tal-Ligijiet ta' Malta.

Ra x-xhieda u l-provi kollha prodotti u n-nota tal-osservazzjonijiet tal-partijiet.

### **Ikkunsidra**

Dan huwa kaz fejn l-appellanti li tahdem jew kienet tahdem mad-Dipartiment tal-Kuntratti ghamlet ilment fl-Ufficju tal-Ombudsman ghax skond hi l-Kap taghha, s-Sur Francis Attard: "*Failed in his duties to: discuss with me my performance review report for 2010; indicate my performance review report rating for 2010 (bonus); justify my performance review report rating for 2010.*"

Meta gew mitlub iwiegbu l-Kap taghha s-Sur Frans Attard u s-sur Alfred Camilleri s-Segretarju Permanenti fil-Ministeru tal-Finanzi, l-appellanti tikkontendi li dak li ghadda s-Segretarju Permanenti fil-Ministeru tal-Finanzi cioe li *It is to be noted that relations between the DG Contracts and Ms Calleja have never been cordial at the best of times. Ms Calleja*



*tends to avoid any form of contact with her Director General and corresponds through emails*" hija data personali u data personali sensitiva'

Sar ilment mal-Kummissarju għall-Infommazzjoni u l-Protezzjoni tad-Data mill-appellanti fid-19 ta' April 2012 u d-decizjoni tal-Ombudsman inghatat fit-23 ta' Mejju 2012. L-ilment tagħha gie michud mil-Kummissarju fil-21 ta' Ottubru 2012 stante li skond l-istess Kummissarju l-infommazzjoni mghoddija lil Ombudsman ma taqghax taht id-definizzjoni ta' '*personal data*' u '*sensitive personal data*' ai termini tal-artikolu 2, ma tiksirx l-artiklu 7 u 9 (c) tal-istess Att cioe l-Kap 440 al-Ligijiet ta' Malta.

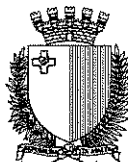
Skond l-istess Kummissarju dan il-kliem uzat mis-superjuri tagħha ma jikkostitwix processar ta' data personali jew saħansitra processar ta' data personali sensitiva u dan minhabba l-fatt li huma kienu qed jagħtu opinjoni dwar il-karattru tal-appellanti.

Ra x-xhieda tal-appellanti, u ta' Francis Attard, Direttur Generali fid-Dipartiment tal-Kuntratti u d-dokumenti kollha esebiti, f'liema xhieda a fol 132 l-appellanti permezz tal-avukat tagħha Dr Maria Cardona sottomettiet li dwar infommazzjoni sensitiva relatata u konnessa mal-mizuri dixxiplinari kellhom jigu skrepjati u ma kellhomx jintuzaw fir-risposta mid-Direttur Generali fid-Dipartiment tal-Kuntratti. Fl-istess xhieda hareg car u anke mill-provi prodotti li l-operat tal-Ombudsman mhux sindakabbli u li l-kaz quddiem l-Ombudsman tal-appellanti inghatat ragun għal dak li jirrigwardaw il-process ta' kif sar l-appraisal tal-performance tagħha għall-perjodu mill-1 ta' April 2010 sal-31 ta' Dicembru 2010 (fol 37 overleaf) u għalhekk il-kaz waqa' kollu u skont l-Public Service Management Code, ladarba hija giet liberata, l-file dwar id-dixxiplina tal-appellanti gie distrutt (vide fol 118) u għalhekk ebda tracci ta' dawn il-kummenti ma' fadal fil-personal file tal-istess appellant.

Illi għalhekk dan it-Tribunal sejjer janalizza x'jikkostitwixxi '*personal data*' u '*sensitive personal data*' ai termini tal-artikolu 2 tal-Kap 440.

Illi preliminarjament dan it-Tribunal ma jistax jifhem il-kummenti mhux flokħom li saru mit-Tribunal diversament kostitwit meta a fol 153 u 154 jirrizulta li c-Chairman ta' dak iz-zmien għadda a fol 154 kummenti li 'jekk l-Ombudsman ma waqfux lanqas jista' jwaqqfu d-Data Protection Commissioner', dan għaliex iz-zewg dekasteri għandhom funzjoni differenti.

Illi dwar il-Kap 440 tal-Ligijiet ta' Malta, jigi rilevat li d-definizzjoni ta' '*sensitive data*' kemm taht il-Konvenzjoni 108 (artiklu 6) u id-Data Protection Directive (artiklu 8) data personal rigward saħha u hajja sesswali jaqghu taht '*personal data*'. Fil-kaz **Bodil Lindqvist (CIEU, C-101/01 Bodil Lindqvist, 6 ta' Novembru 2003 para 51)**, gie ritenut li "*reference to the fact that an individual has injured her foot and is on half time on medical grounds constitutes personal data concerning health within the meaning of Article 8(10) of Directive 95/46.*"



Rigward '*personal data*' din dejjem giet interpretata bhala li it '*covers information pertaining to the private life of a person as well as information about his or her professional or public life.*' U fil-kaz **Bodil Lindqvist vs Aklagarkammaren I Jonkoping** – case Commissioner - 101/01 European Court of Justice moghti fid-19 ta' Settembru 2002, gie ritenut fl-Opinjoni tal-avukat Generali Tizzano para 24 li '*The terms 'personal data' undoubtedly covers the name of a person in conjunction with his telephone number or information about his working conditions or hobbies.*'

L-artikolu 2 tal-Kap 440 jaghti definizzjoni ta' 'data personali u 'data personali sensitivi' . B'data personali l-istess Kap jghid li *tfisser kull informazzjoni li tirrigwarda persuna naturali identifikata jew identifikabbli: persuna identifikabbli hija persuna li tista' tigi identifikata, direttament jew indirettament, b'mod partikolari b'referenza ghal numru ta' identifikazzjoni jew ghal xi fattur wiehed jew iktar specifiku ghall-identita fizika, fizjologika, mentali, ekonomika kulturali jew socjali taghha.* Filwaqt li 'data personali sensitivi' skond l-istess Kap 440 tfisser '*data personali li jkunu jizvelaw r-razza jew l-origini etnika, fehmiet politici, twemmin religjuz jew filosofiku, shubija fi trade union, sahha jew attivita sesswali*'.

Inoltre l-Qrati tal-Unjoni Ewropea kemm-il darba rritenew li "*the right to respect for private life, embodied in article 8 of the ECHR and deriving from the common constitutional traditions of the Member States, is one of the fundamental rights protected by the legal order of the Community, It includes in particular a person's right to keep his state of health secret.*" Article 2(a) of Regulation 45/2001 jiddefinixxi "personal data" as *any information relating to an identified or identifiable natural person*; filwaqt li l-artiklu 2(b) tal-istess regolament jiddefinixxi i "*processing of personal data* " bhala "*any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction*".

Il-Kummissarju tad-Data fl-Ingilterra fil-publikazzjoni tieghu **The Guide to Data Protection** jghid hekk dwar *sensitive personal data*: "*The categories of sensitive personal data are broadly drawn so that, for example, information that someone has a broken leg is classed as sensitive personal data, even though such information is relatively matter of fact and obvious to anyone seeing the individual concerned with their leg in plaster and using crutches. Clearly details about an individual's mental health, for example, are generally much more "sensitive" than whether they have a broken leg.*" ( fol 7 tal-istess). Tajjeb jigi osservat li t-tifsira ta' *sensitive personal data* fl-Ingilterra hija l-istess bhal taghna ghax ovvjament ibbazata fuq l-istess regolament tal-Unjoni Ewropea.

Dan it-Tribunal wera li fela bir-reqqa dawn it-tifsiriet u l-provi kollha prodotti, jiddeciedi li f'dan il-kaz l-appellanti ma ghandhiex ragun stante li dak li ghadda lil Ombudsman kien tenut jghaddih bhala segretarju permanenti stante li mhux data personali jew data personali

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sensittiva jew it-tnejn, izda huwa biss l-agir tal-appellanti fuq il-post tax-xoghol dwar il-mod taghha kif tikkomunika mas-superjur taghha.

**Ghaldaqstant dan it-Tribunal jaqta' u jiddeciedi billi jichad l-appell tal-appellanti ghar-ragunijiet premessi.**

Dr Anna Mallia  
Chair person

Mr Charles Cassar  
Membru

Mr David Bezzina  
Membru