

Case No OMB-24-4958

6 August 2024

The Chairman
Gozo Channel Company Limited
Channel House
Mġarr Harbour
Mġarr Gozo

Dear Sir

Final Opinion

I. *The complaint*

[omissis], holder of [omissis], ("**the Complainant**") was on holiday in Malta. On the 1st June 2024 he crossed by ferry operated by Gozo Channel Company Limited ("**the Company**") from Ċirkewwa to Mġarr and back. He was accompanied by [omissis], a Maltese National, and holder of Identity Card No. [omissis] ("**the Witness**"), and another foreign national. At the ticketing booth of the Company in Mġarr, the Complainant was charged the passenger fare, even though the cashier was informed that the Complainant was a senior citizen, aged 60+ and was a citizen of Portugal, a Member State of the European Union ("**EU**"). The official concerned did not ask to be shown Complainant's Portuguese identification document, from where the cashier could establish: a) that he was more than 60 years of age; and b) that he was a citizen of Portugal. The cashier contended that it was Company policy that exemption from payment of the passenger fare applied only to Maltese 60+ nationals. The Witness acting also on the Complainant's behalf filed a complaint with this Office. He requested the Company to change its current policy as that policy was doing harm to the country.

II. *The reply of the Company*

The Complaint was served on the Company which in turn replied.

The Company did not contest the facts.

The reservations of the Company relate **in substance** to points of law.

The Company submits that the Complainant had an obligation to pay the passenger fare because of the provisions of the **Gozo Passenger and Goods Service (Fares) Regulations** (as amended) ("**S.L. 499.01**")

III. Findings

1. The Core Issue

Does the interpretation and application by the Company of S.L. 499.01 in order to charge fares on 60+ aged passengers who are citizens of other EU Member States unlike Maltese 60+ aged passengers who are not charged any fares infringe the rules of the Internal Market of the EU?

2. S.L. 499.01

Malta became a Member State of the EU on the **1 May 2004**.

The Regulations to which the Company refers came into force on the **1 June 2004**.

S.L. 499.01 was then amended in 2007, 2012 and 2017.

In support its position, the Company makes particular reference to **Reg 4**. The provision (which was amended in 2012) states as follows:

*"A commuter may be requested to produce his **legally valid identification document or "Karta Anzjan"** at the time of the issuing of the ticket, or at any other time of boarding the vessel or during the trip, so as to establish his identity as a Gozo resident **or senior citizen** respectively." (emphasis by the undersigned)*

The Company **also** refers to the provision **no 4 of the First Schedule** of S.L. 499.01 which provides that *the Senior Citizen Subsidised Fare – "The fare is applicable to all holders of the "Karta Anzjan"."*

The Company argues that as only Malta residents hold the *Karta Anzjan*, it *stands to reason* (expression used by the Company) that the subsidised fare is only applicable to Malta residents.

The Company concludes as follows:

"One should understand that the *financial implications on the company of a contrary application of this subsidy would be substantial. And for this reason ... one should apply a restrictive interpretation to the applicable dispositions of the law.*" (emphasis by the undersigned)

3. Considerations

Without any shade of doubt whatsoever, the Company advocates a **restrictive interpretation** of the Maltese domestic legislation in question because it alleges that otherwise the financial implications on the Company would be substantial.

The reason given by the Company not only has not been proven in any manner, not even at a *prima facie* level, but does not hold in any regard whatsoever.

There is a precedent that *mutatis mutandis* does not give comfort to the present position of the Company.

By means of a Petition No. 1317/2012, Oisín Jones-Dillon, a national of the Republic of Ireland (an EU Member State) presented a complaint to the European Parliament regarding an alleged breach by Malta of the rules of the Internal Market in the public transport system of Malta, when he alleged to have sustained discrimination on grounds of nationality when he was charged a different bus transport tariff. The matter was referred to the Commission.

In August 2012, the Commission made an inquiry with regard to possible discrimination on several grounds: a) nationality and/or residence on the one hand, b) appearance and language on the other.

Within the framework of that inquiry, in December 2012, the Maltese authorities explained the reasons for differential fares for residents and non-residents of Malta. *Inter alia* and within the same context, the Malta authorities stated that the reduced fare was conditional upon the

presentation of a proof of residence but could in no way be based on physical appearance and language.

The Commission was not satisfied with the justifications of differential treatment of residents and non-residents. Consequently, infringement proceedings against Malta were instituted in January 2013 for indirect discrimination based on nationality. Malta replied to the letter of formal notice on 15 March 2013 and the Commission assessed the Maltese reply. At the same time, it terminated the procedure regarding any other potential aspects of discrimination based on appearance and language.

On 15 February 2013, the Commission sent the petitioner a closure letter with regard to his formal complaint, informing him of the on-going infringement proceedings, and explaining that following the concrete steps taken by the Maltese Government to address and prevent any cases of discrimination based on physical appearance and language, the procedure had been closed as far as physical appearance and language were concerned.

The Commission then continued with a formal notice to Malta that its inquiry would proceed on the issue of discrimination on grounds of nationality.

A development however ensued when the Malta authorities amended the Regulations in force until then where the discriminatory element was removed. This was done on the 25th March 2014: Legal Notice 94 of 2014, Passenger Transport Services (Amendment) Regulations.

Because of this development, the Commission closed the infringement case.

Back to the present complaint.

In the present case, the issue is not really and actually one of change in legislation, but rather a question of interpretation of the provisions of S.L. 499/31, in the sense that the Company is invoking a restrictive interpretation – this Office says erroneously – simply and allegedly to cater for its balance sheet.

The Company has no right to apply a restrictive interpretation of current legislation to favour its position to the detriment of all 60+ citizens of EU Member States.

The Company is not just a limited liability company but a company that by virtue of **Sec 12(1)(b) of Chapter 385** falls under the remit of the Office of the Ombudsman and has important social and public functions and objectives.

The Company is moulding its line of argument on the *Karta Anzjan*. This is wrong and the website itself of the Company disproves this argument as a matter of fact.

The *Karta Anzjan* could have been relevant in earlier times but not anymore with the reform of the Maltese Identity Card. In fact, in the new Identity Cards the feature 60+ is borne of the face of the card itself thereby eliminating completely the need to produce any *Karta Anzjan* when producing the Identity Card as evidence of any sort.

For all holders of Maltese Identity Cards that are coming up for renewal on the 15 September 2004, and which do not bear the 60+ feature printed on the face of the card, establishing the age of the holder comes from a quick calculation of the age in matter of seconds based on the last two digits of the number borne on the Identity Card.

It is an uncontested matter of fact that today **all** Maltese holders of Identity Cards who wish to avail themselves of non-payment of the passenger fare because aged 60+ in practice only show their Identity Card to the booth cashier.

So much on the question of *Karta Anzjan*.

What S.L. 499.31 describes as **legally valid identification document** includes Identity Cards or Passports issued by EU Member States and which are valid all over the EU for travel purposes. Therefore S.L. 499.31 applies to EU Member States citizens as well. Any treatment by the Company of these persons that differs from those applicable to Maltese nationals is illegal, irregular and unacceptable.

When a senior citizen of an EU Member State at the Company ticketing office is asked to produce a **legally valid identification document** issued by an EU Member State in order to avail himself of the same rights as Maltese nationals, and from that document it results that the person concerned is actually a senior citizen i.e. who has over 60 years of age, then he has every right to be treated in the same way as any holder of a Maltese Identity Card who is 60+ of age.

The financial issue raised by the Company is untenable to justify what S.L. 499.31 does not state.

Sec 22 (1) of Chapter 385 states as follows:

"The provisions of this article shall apply in every case where, after making any investigation under this Act, the Ombudsman is of opinion that the decision, recommendation, act or omission which was the subject-matter of the investigation –

(a) **appears to have been contrary to law;** or

(b) *was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a law or a practice that is or may be unreasonable, unjust, oppressive, or **improperly discriminatory;** or*

(c) *was based wholly or partly on a mistake of law or fact;*

or

(d) **was wrong**

I find that the complainant was justified when he submitted his complaint.

I find that the Company was in breach of subparagraphs **(a) (b) and (d) of Sec 22(1) of Chapter 385.**

4. Recommendation

I recommend that with effect from one month from today, any person who holds a legally valid identification document (such as a Passport or an Official Identity Card) issued by a Member State of the European Union, from which document it results that the person concerned is 60 years of age or more, and who produces that document for the purposes of travel as a passenger on any vessel operated by Gozo Channel Company Limited has the right to avail himself from Gozo Channel Company Limited of all rights and conditions of carriage as Maltese nationals, and to be treated by Gozo Channel Company Limited in the same manner for the purposes of travel as a passenger just as any holder of a Maltese

legally valid identification document (such as a Passport or an Official Identity Card) from where it results that he is aged 60 years or more.

You are directed to advise this Office **promptly but not later than a month from today** whether you intend to implement this recommendation.

Yours sincerely

Judge Joseph Zammit McKeon
Ombudsman

Copy: The Hon. Clint Camilleri, Minister for Gozo and Planning

Mr John Borg, Permanent Secretary – Ministry for Gozo and Planning

Mr Oreste Cassar – Director General (Coordination and Implementation) – Office of the Prime Minister