MALTA

Administrative Review Tribunal
Magistrate
Dr. Gabriella Vella B.A., LL.D.

Application No. 10/16VG

Clement Okoro

Vs

Refugee Appeals Board

The Tribunal,

After having taken cognizance of the Application submitted by Clement Okoro on the 11th February 2016 by means of which he requests the Tribunal to declare the decision by the Refugee Appeals Board dated 28th July 2015, by means of which his request to be granted asylum was rejected, *ultra vires* in the sense that it does not respect the principles of natural justice since the Board adopted the line of least resistance in his regard with the consequence that a great injustice has been perpetrated against him in a situation which is essentially a life or death situation, and consequently: (i) to order the Refugee Appeals Board to re-hear, in his presence duly assisted and in conformity with the principles of natural justice, the appeal lodged by him from the decision by the Refugee Commissioner regarding the granting of asylum; (ii) grant him asylum or in default, subsidiary protection; (iii) alternatively, apply the principle of *non refoulement* which prohibits Member States signatories to the European Convention from resending a refugee, including a failed asylum seeker, to his country of origin when the refugee does not want to go back because of a clear and founded fear of persecution, torture, inhuman treatment and/or physical violence towards him, or (iv) if the Tribunal deems it appropriate in terms of justice and equity and in line with the right to a fair hearing in terms of Section 3(2)(a) of the Administrative Justice Act, uphold *ope legis* his appeal filed on the 10th July 2014 by either granting him asylum in terms of the Law or in default, subsidiary protection and/or alternatively apply the principle of *non refoulement;* with costs against the Refugee Appeals Board;

After having taken cognizance of the documents submitted by the Applicant by means of a Note filed on the 12th February 2016, marked Doc. "A" to Doc. "E" at folios 11 to 28 of the records of the proceedings;

After having taken cognizance of the Reply by the Refugee Appeals Board by means of which it pleads that: (i) the Tribunal must order the Applicant to declare in terms of which provisions of the Law he is filing these proceedings; (ii) the Tribunal is not competent to decide and determine the requests put forth by the Applicant since the competent forum in this case is the Civil Court, First Hall; (iii) if the Applicant is founding his requests on Section 469A of Chapter 12 of the Laws of Malta, then the Tribunal is most definitely not competent to decide and determine these proceedings since proceedings for judicial review in terms of the above-mentioned provision of the Law fall within the competence of the Civil Court, First Hall; (iv) should it result that the Applicant is founding his requests on Section 469A of Chapter 12 of the Laws of Malta and should the Tribunal declare that it is competent to decide and determine the requests put forth by the Applicant, the Applicant's proceedings are time-barred since he submitted the same after the lapse of six months provided for in Section 496A of Chapter 12 of the Laws of Malta; (v) the proceedings as put forth by the Applicant against the Refugee Appeals Board cannot so be put forth since the remedy in this case definitely does not involve suing the adjudicating authority; and (vi) on the merits, the decision by the Refugee Appeals Board bearing number 3644A/14 is just and has been given in terms of Law and therefore must be upheld and confirmed;

After having taken cognizance of the declaration by the parties that in view of the preliminary plea raised by the Refugee Appeals Board regarding the lack of competence of the Tribunal to decide and determine the requests put forth by the Applicant, the Tribunal must first decide and determine said preliminary plea prior to considering the proceedings on the merits[1];

After having taken cognizance of the Note of Submissions by the Refugee Appeals Board regarding the plea of the lack of competence of the Tribunal to decide and determine the requests put forth by the Applicant filed on the 4th April 2016[2] and of the Note of Submissions by the Applicant regarding the same plea filed on the 27th April 2016[3];

After having heard final oral submissions by the parties regarding the plea of the lack of competence of the Tribunal to decide and determine the requests put forth by the Applicant;

After having taken cognizance of all the records of the proceedings;

[1] Sitting held on the 16th March 2016, folio 44 of the records of the proceedings.
[2] Folio 47 to 53 of the records of the proceedings.
[3] Folio 54 to 59 of the records of the proceedings.

Considers:

By virtue of these proceedings the Applicant is requesting the Tribunal to declare the decision by the Refugee Appeals Board dated 28th July 2015, by means of which his request to be granted asylum was rejected (hereinafter referred to as the Decision), *ultra vires* in the sense that it does not respect the principles of natural justice since the Board adopted the line of least resistance in his regard with the consequence that a great injustice has been perpetrated against him in a situation which is essentially a life or death situation, and consequently: (i) to order the Refugee Appeals Board to re-hear, in his presence duly assisted and in conformity with the principles of natural justice, the appeal lodged by him from the decision by the Refugee Commissioner regarding the granting of asylum; (ii) grant him asylum or in default, subsidiary protection; (iii) alternatively, apply the principle of *non refoulement* which prohibits Member States signatories to the European Convention from resending a refugee, including a failed asylum seeker, to his country of origin when the refugee does not want to go back because of a clear and founded fear of persecution, torture, inhuman treatment and/or physical violence towards him, or (iv) if the Tribunal deems it appropriate in terms of justice and equity and in line with the right to a fair hearing in terms of Section 3(2)(a) of the Administrative Justice Act, uphold *ope legis* his appeal filed on the 10th July 2014 by either granting him asylum in terms of the Law or in default, subsidiary protection and/or apply the principle of *non refoulement*.

The Applicant founds his requests on the following grounds: (i) the Decision makes no reference to the arguments and submissions put forth by him in his appeal to the Refugee Appeals Board from the recommendation by the Refugee Commissioner; (ii) the Refugee Appeals Board failed to summon him with the consequence that he did not directly give and further elaborate on his version of events but it merely gave a decision on the basis of the documents available to it; (iii) the Refugee Appeals Board failed to duly consider his fear of persecution, torture, inhuman treatment and/or physical violence towards him should he be re-sent to this country of origin; (iv) the Refugee Appeals Board failed to take into account the fact that he is a political refugee and/or a member of a particular social group or political opinion, and therefore qualifies as a refugee in terms of Section 2 of Chapter 420 of the Laws of Malta; (v) he was not granted a fair hearing by the Refugee Appeals Board and consequently he has been denied the right to an effective remedy provided for by the Law; (vi) by not summoning him to the give evidence, the Refugee Appeals Board denied him the opportunity to submit further relevant and vital proof in support of his request to be granted asylum; and (vii) the Refugee Appeals Board failed to consider the principle of safe country of origin when it failed to consider that Nigeria, his country of origin, is not a safe place for him to return to due to his political inclinations.

The Refugee Appeals Board objects to the requests put forth by the Applicant and requests that the same be denied on the basis of the following pleas: (i) the Tribunal must order the Applicant to declare in terms of which provisions of the Law he is filing these proceedings; (ii) the Tribunal is not competent to decide and determine the requests put forth by the Applicant since the competent forum in this case is the Civil Court, First Hall; (iii) if the Applicant is founding his requests on Section 469A of Chapter 12 of the Laws of Malta, then the Tribunal is most definitely not competent to decide and determine these proceedings since proceedings for judicial review in terms of the above-mentioned provision of the Law fall within the competence of the Civil Court, First Hall; (iv) should it result that the Applicant is founding his requests on Section 469A of Chapter 12 of the Laws of Malta and should the Tribunal declare that it is competent to decide and determine the requests put forth by the Applicant, the Applicant's proceedings are time-barred since he submitted the same after the lapse of six months provided for in Section 496A of Chapter 12 of the Laws of Malta; (v) the proceedings as put forth by the Applicant against the Refugee Appeals Board cannot be so put forth since the remedy in this case definitely does not involve suing the adjudicating authority; and (vi) on the merits, the decision by the Refugee Appeals Board bearing number 3644A/14 is just and has been given in terms of Law and therefore must be upheld and confirmed.

During the sitting held on the 16th March 2016[4], the parties to these proceedings agreed that in view of the preliminary plea raised by the Refugee Appeals Board to the effect that this Tribunal is not competent to decide and determine the requests put forth by the Applicant, the Tribunal should first consider and decide this particular plea prior to entering into the merits of the case. Therefore, this Decree is limited to the preliminary plea raised by the Refugee Appeals Board regarding the lack of competence of the Tribunal to decide and determine the requests put forth by the Applicant.

From a proper reading of the Application filed by the Applicant it is evident that he is requesting the judicial review of the Decision delivered by the Refugee Appeals Board by virtue of which his request to be granted asylum has been rejected. In fact in his application the Applicant clearly states that: *ir-Rimedju li huwa hawn imfittex bil-procedura prezenti, huwa ezattament dak li qeghda hawn tintalab "Judicial Review" ta' l-att amministrattiv ezegwit mill-Bord ta' l-Appelli dwar ir-Rifugjati, li cahad it-talba ta' l-esponent ghall-asil f'Malta, u dan kif sostnut – minhabba procedura u ragunamenti ingusti fil-konfront tieghu. Tant li l-Bord imsemmi naqas milli jezamina b'reqqa sufficjenti l-kaz in ezami kif tirrikjedi l-ligi u specjalment id-direttivi u regolamenti ewropei, kif ukoll naqas milli jagixxi skond il-principji ta' gustizzja naturali li taghti vuci lill-parti Appellanti u li jirrispetta l-'audi alteram partem'*[5].

[4] Folio 44 of the records of the proceedings.
[5] Folio 1 of the records of the proceedings.

Faced with the preliminary plea raised by the Refugee Appeals Board in the sense that the competent forum before which he should have filed his proceedings for a judicial review of the Decision is the Civil Court, First Hall and not the Administrative Review Tribunal, the Applicant, in his Note of Submissions, submits that *the Application to the present Tribunal was therefore made not, as such, in terms of article 469A of the COCP and was not so much intended as an application for review, but more so, and specifically, as a form of appeal to this impartial and independent Tribunal, deemed the protector of the citizen against administrative decisions that deny, disregard or otherwise misinterpret the citizen's rights*[6]. It is very clear that in his Note of Submissions the Applicant is seeking to vary the nature of the proceedings filed by him from proceedings for judicial review of the Decision to appeal proceedings from the said Decision. Apart from the fact that from a juridical point of view what the Applicant is seeking to do at this stage of the proceedings is completely unacceptable, his submissions in any case cannot be upheld since they are not valid at Law.

In terms of Section 5 of the Administrative Justice Act, Chapter 490 of the Laws of Malta, as applicable prior to the amendments which came into force on the 15th February 2016, *there shall be set up in accordance with the provisions of this Part of this Act, an independent and impartial tribunal, to be known as the Administrative Review Tribunal, for the purpose of reviewing administrative acts referred to it in accordance with this Act or any other law, and for the purpose of exercising any other jurisdiction conferred on the Administrative Review Tribunal by or under this or any other law, whether before or after the coming into force of this Act. The Administrative Review Tribunal shall have jurisdiction to review administrative acts.* In terms of Section 7 of the above mentioned Act, also as applicable prior to the amendments which came into force on the 15th February 2016, *the Administrative Review Tribunal shall be competent to review administrative acts of the public administration on points of law and points of fact. It shall also be competent to decide disputes referred to it unless any court or other administrative review tribunal is already seized of such dispute.*

From these provisions it is very clear that the Tribunal's jurisdiction is two-fold: the **review on points of fact and points of law of administrative acts by the public administration**, provided that the review is not requested in terms of Section 469A of Chapter 12 of the Laws of Malta (now made even more clear following the amendments which came into force on the 15th February 2016), and to decide and determine **appeals from administrative decisions** lodged before it in terms of specific provisions of the relevant laws, as is the case for example with appeals from assessments issued by the Commissioner of Revenue as per Section 35 of Chapter 372 of

[6] Note of Submissions filed by the Applicant, folio 54 to 59 of the records of the proceedings.

the Laws of Malta. Therefore, for there to be a **right of appeal from an administrative decision** before the Administrative Review Tribunal, such right must specifically be provided for in the relevant law.

In the present case Section 7(9) of Chapter 420 of the Laws of Malta specifically provides that *notwithstanding the provisions of any other law, but without prejudice to article 46 of the Constitution of Malta and without prejudice to the provisions of article 4 of the European Convention Act the decision of the Board shall be final and conclusive and may not be challenged and no appeal may lie therefrom, before any court of law, saving the provisions of article 7A*. From this provision of the Law it is very clear and evident that there is no right of appeal, least of all a right of appeal before the Administrative Review Tribunal, from a decision of the Refugee Appeals Board. This therefore effectively means that the only way how a decision by the Refugee Appeals Board can be challenged is by review proceedings, specifically by judicial review proceedings instituted before the Civil Court, First Hall.

It is an established principle at Law that it is the Courts in their ordinary jurisdiction, namely the Civil Court, First Hall, which are competent and have the jurisdiction to review acts and decisions by quasi-judicial tribunals or tribunals set up by Law. In this regard reference is made to that observed by the Civil Court, First Hall in the judgment in the names **SM Cables Limited v. Carmelo Monaco, Writ No. 2661/00,** delivered on the 14th February 2002: *illi, qabel xejn, ghandu jinghad li dawn il-Qrati ghandhom gurisdizzjoni generali biex jistharrgu l-imgieba ta' kull tribunal kwazi-gudizzjarju jew mahluq statutorjament. Dan jinghand ghaliex, fi stat ta' dritt, hadd mhu mhelus mir-rabta li jimxi kif tridu l-ligi, u jekk issir xilja li dik il-persuna ma mxietx skond il-ligi huma l-Qrati li ghandhom is-setgha li jqisu l-ilment u li jaghtu r-rimedju jekk ikun il-kaz.*

In the judgment in the names **Salon Services Limited v. Elaine Dimech, Writ No. 5/02**, delivered by the Civil Court, First Hall on the 13th November 2003, the said Court once again observed that: *l-ewwelnett, tajjeb li jigi carat li kif osservat l-Onorabbli Qorti ta' l-Appell fis-sentenza taghha fil-kawza "Eden Leisure Group v. Borg D'Anastasi" moghtija fis-27 ta' Gunju 2003, "illum hu car li l-Qorti Civili tista' tissindika l-operat ta' kwalsiasi Tribunal amministrattiv, l-ewwelnett biex tassigura li l-principji ta' gustizzja naturali huma osservati, u t-tieni biex tassigura li ma kienx hemm xi enunzjazzjoni hazina jew inkompleta ta' l-ipotesi tal-ligi, u dana minghajr ma tipprova b'xi mod tissostitwixxi d-diskrezzjoni taghha ghal dak tat-Tribunal". Pronunzjament fuq l-istess linji kien inghata minn din il-Qorti fil-kawza "Power Projects Ltd. v. Agius", deciza fis-16 ta' Gunju 2003* and in the judgment in the names **Mario Magri v. HSBC Bank Malta p.l.c., Writ No. 2641/00** delivered on the 14th March 2002, the Civil Court, First Hall observed that: *ghalkemm Tribunal jew Bord jista' jinghata b'ligi l-gurisdizzjoni esklussiva sabiex jiddeciedi kazijiet specifici, bl-eskluzzjoni tal-*

Qrati ordinarji, l-istess Qrati ordinarji xorta huma kompetenti biex jissindakaw l-operat ta' l-istess Tribunal u s-sentenzi tieghu però limitatament ghal tlett kategoriji ta' difetti – (a) eccess ta' gurisdizzjoni; (b) non-osservanza ta' l-istess ligi kostitwita; u finalment (c) non-osservanza ta' xi wiehed mill-principji fondamentali tal-gustizzja[7].

From the above-mentioned judgments it clearly results that it is only the Civil Court, First Hall, which has the necessary jurisdiction to review acts/decisions by quasi-judicial tribunals or tribunals set up by Law and that this Tribunal, definitely does not have such jurisdiction. The Tribunal is well aware that the above-mentioned principles have been set out in judgements delivered prior to the coming into force of the Administrative Justice Act, Chapter 490 of the Laws of Malta, and the setting up of the Administrative Review Tribunal, but in its opinion the coming into force of the Administrative Justice Act and the setting up of the Tribunal did not in any way vary or shift the competence of review of acts/decisions of quasi-judicial tribunals or tribunals set up by Law from the Civil Court, First Hall to the Administrative Review Tribunal.

As already observed above, in terms of Section 7 of Chapter 490 of the Laws of Malta, *the Administrative Review Tribunal shall be competent to review administrative acts of the public administration on points of law and points of fact. It shall also be competent to decide disputes referred to it unless any court or other administrative review tribunal is already seized of such dispute*. In terms of Section 2 of Chapter 490 of the Laws of Malta *'administrative act' includes the issuing by the public administration of any order, licence, permit, warrant, authorization, concession, decision or a refusal to any demand of a member of the public, but it does not include any measure intended for internal organization or administration within the said public administration* and *'public administration' means the Government of Malta, including its Ministries and departments, local authorities and any body corporate established by law*. From these definitions it clearly results that a tribunal set up by law or a quasi-judicial tribunal, as is the Refugee Appeals Board, does not fall within the definition of public administration in terms of Chapter 490 of the Laws of Malta and therefore the acts and decisions by the said Board cannot be reviewed by the Administrative Review Tribunal.

In his concluding submissions in his Note of Submissions the Applicant with reference to that provided for in Section 7(9) of Chapter 420 of the Laws of Malta, in particular the proviso thereto, quoted further above in this Decree, submits that *there is plenty of jurisprudence to confirm that a proviso such as that inserted into the quoted art. 7(9) of the Refugees Act 2000, making exceptional reference to article 46 of the Constitution of Malta, as also Art. 4 of the Convention, gives power to the judicial authority seized with the case to override the prohibition of appeal if the underlying basis (as in this case) of the recourse to a court or tribunal is one related to the denial of human*

[7] Wilfred Privitera v. Anthony Bonello, delivered by the Court of Appeal on the 11th February 1993.

rights, the right to a fair hearing, the right to be heard. … It is submitted that this Tribunal was approached specifically because, in exercise of these rights, the Appellant insisted that he was not given a fair hearing the Appeal before the RAB was decided after the Appellant was kept waiting for almost one year, then not sent for, not heard viva voce, case decided in absentia, and disposed of without warning based on an internal sitting of the Refugee Appeals Board held 'in camera' on Appellant's absence, without the prior agreement of the parties. For the sitting of RAB to be done IN CAMERA the mutual agreement of the parties is required by the Procedural Rights for Sittings of the Refugee Appeals Board. … should the Tribunal in fact decide itself to be incompetent, it is respectfully asked to consider the application of article 46(3) of the Constitution which empowers any 'court' other than the First Hall of the Civil Court that deems itself incompetent to refer the matter to the said First Hall of the Civil Court, if any question arises as to the contravention of any of the provisions of sections 33 to 45 inclusive, unless the raising of the question is merely frivolous or vexatious. (The term 'court' is explained in Section 47 of the Constitution as meaning 'any court of law in Malta'… There is precedent to confirm that when 'court' is used so loosely and spelt in small letters, it can include a tribunal or other judicial authority, as the case by be). ALTERNATIVELY to apply the provisions of the NEW PROVISO to Article 20 of Act IV of 2016 amending article 741 of the Code of Organisation and Civil Procedure (Cap.12) which states that: 'PROVIDED THAT IF THE COURT CONSIDERS THAT THE PLEA IS JUSTIFIED THE COURT SHALL BY DECREE IN CAMERA, WHICH SHALL NOT BE SUBJECT TO APPEAL, ORDER THAT THE ACTS OF THE PROCEEDINGS BE TRANSFERRED TO THE COURT, BOARD OR OTHER TRIBUNAL BY WHICH IT CONSIDERS THAT SUCH ACTION IS COGNIZABLE' (Subject to the further provision commencing 'provided further' which is not applicable hereto).

The Applicant is here clearly claiming a violation of his fundamental human right to a fair hearing by the Refugee Appeals Board and is requesting the Tribunal to refer his case to the Civil Court, First Hall in its Constitutional Jurisdiction. Without going into the merits of whether or not there has been a violation of the Applicant's right to a fair hearing by the Refugee Appeals Board, since the Administrative Review Tribunal is not competent to do so, it is hereby being declared that the Tribunal cannot refer the Applicant's case to the Civil Court, First Hall in its Constitutional Jurisdiction since it, that is the Tribunal, does not qualify as a 'court' in terms of Section 46(3) of the Constitution and of Section 4(3) of Chapter 319 of the Laws of Malta.

This particular matter has already been addressed by the Tribunal in various proceedings, amongst which the proceedings in the names **Karl Heinrich Guenter Hobein v. Director General (Inland Revenue), Application No. 45/09** decided on the 26th November 2013, the proceedings in the names **Malcolm Ellul v. Kummissarju tat-Taxxi Interni, Application No. 68/09VG** in a decree dated 18th April 2011 and in the proceedings **Emanuel**

Falzon v. Awtorità ghat-Trasport f'Malta, Application No. 3/10VG in a decree dated 3rd May 2011, wherein it stated that *fi kwalunkwe kaz però anke kieku stess is-sitwazzjoni kienet tali li taghti lok ghal referenza kostituzzjonali, fil-fehma tat-Tribunal it-talba tar-rikorrenti xorta wahda ma tistax tigi milqugha in kwantu dan it-Tribunal ma huwiex fakoltizzat biex iressaq referenza kostituzzjonali ai termini ta' l-Artikolu 46(3) tal-Kostituzzjoni u l-Artikolu 4(3) tal-Kap.319 tal-Ligijiet ta' Malta, billi ma jaqax taht it-tifsira ta' "qorti" kif intiza fl-imsemmija artikoli tal-Kostituzzjoni u tal-Ligi. Mhux kull awtorità gudikanti ghandha s-setgha li tressaq referenza kostituzzjonali quddiem il-Prim' Awla tal-Qorti Civili (Sede Kostituzzjonali). Biex tali setgha tissussisti l-awtorità gudikanti in kwistjoni trid tkun qorti ghall-finijiet ta' l-Artikolu 46(3) tal-Kostituzzjoni u fl-Artikolu 4(3) tal-Kap.319 tal-Ligijiet ta' Malta. Dan il-principju gie stabbilit fis-sentenzi fl-ismijiet Kummissarju ta' l-Artijiet v. Ignatius Licari noe, Rikors Nru. 9/01 u Anthony Grech v. Claire Calleja et, Rikors Nru. 11/07, entrambe decizi mill-Qorti Kostituzzjonali fit-30 ta' Gunju 2004 u 29 ta' Frar 2008 rispettivament – fejn inter alia nghad illi l-organi gudizzjarji ordinarji huma dawk li jikkwalifikaw bhala jew Qorti Superjuri jew Qorti Inferjuri fit-termini tal-Kodici ta' Organizzazzjoni u Procedura Civili, u huwa ghal dawn il-'qrati' li l-legislatur qed jirreferi fl-Artikoli 46(3) u 47(1) tal-Kostituzzjoni (eccettwati dejjem il-qrati marzjali limitatament ghall-Artikoli 33 u 35). Din id-differenza bejn dawk l-organi li jiffurmaw parti mill-istruttura gudizzjarja ordinarja u dawk l-organi l-ohra li, ghalkemm jamministraw il-gustizzja (u jistghu anke jissejhu "qrati"), ma jiffurmawx hekk parti giet senjalata minn din il-Qorti, ukoll diversament komposta, fis-sentenza taghha tat-3 ta' Dicembru 1997 fl-ismijiet "Cecil Pace et v. Onorevoli Prim' Ministru et" fejn inghad hekk: Tribunal jew, kif grafikament espress fil-Kostituzzjoni, "awtorità gudikanti" imwaqqfa b'ligi biex ikun jista' jikkwalifika bhala tali jehtieg li jkun karatterizzat bil-fatt li jkun korp b'funzjoni gudizzjarja bil-fakoltà li jiddetermina u jiddeciedi materji li skond dik il-ligi jaqghu fil-kompetenza tieghu. Hu korp li jehtieg li jipprocedi skond ir-regoli precizi u ben stabbiliti fil-ligi li tikkostitwih u li jiddecidi skond dawk ir-regoli. Ghandu jkollu l-poter li jorbot lill-partijiet li jidhru quddiemu in kontestazzjoni u d-decizjoni tieghu jehtieg allura li jkollha effett vinkolanti anke jekk mhux necessarjament b'mod finali. Mill-banda l-ohra dan il-korp mhux bilfors – kif ga accennat – ghandu jkun jifforma parti mill-istruttura gudizzjarja ordinarja però jrid jinkorpora fih dawk il-karatteristici fondamentali assocjati mal-process gudizzjarju li jkunu jiggarantixxu s-smigh xieraq fosthom dak il-minimu ta' indipendenza u imparzjalità essenzjali biex juru li mhux biss il-gustizzja tkun qed issir sewwa u kif mistenni imma li jkun hemm jidher fid-deher li jkun qed isir. Biex tikkonkludi, ghalhekk, din il-Qorti tafferma li l-qrati li l-legislatur qed jirreferi ghalihom fis-subartikolu (3) tal-Artikolu 46 tal-Kostituzzjoni (moqri fid-dawl kemm ta' l-Artikolu 47(1) kif ukoll tad-disposizzjonijiet l-ohra tal-Kostituzzjoni), kif ukoll fis-subartikolu (3) ta' l-Artikolu 4 tal-Kap.319 li gie mehud testwalment mill-Kostituzzjoni, huma, fil-kamp civili, il-Qorti, Civili, il-Qorti ta' l-Appell u l-Qorti Kostituzzjonali kwantu Qrati Superjuri, u l-Qorti tal-Magistrati (Malta) u l-*

Qorti tal-Magistrati (Ghawdex) kwantu Qrati Inferjuri; u fil-kamp penali l-Qorti tal-Magistrati (Malta) u l-Qorti tal-Magistrati (Ghawdex) ghal dak li huma l-Qrati Inferjuri, u l-Qorti Kriminali u l-Qorti ta' l-Appell Kriminali ghal dak li huma Qrati Superjuri. Fis-sentenza Kummissarju ta' l-Artijiet v. Ignatius Licari noe, Rikors Nru. 9/01 minn fejn ittiehed il-bran appena citat, il-kwistjoni trattata kienet dwar jekk il-Bord ta' Arbitragg dwar Artijiet huwiex fakoltizzat li jaghmel referenza kostituzzjonali u, fil-fehma ta' dan it-Tribunal, dak li inghad mill-Qorti Kostituzzjonali in sostenn tar-risposta Taghha fin-negattiv ghal tali kwezit japplika b'mod partikolari ghat-Tribunal ta' Revizjoni Amministrattiva: Il-Bord ta' Arbitragg dwar Artijiet la jista' jigi ikkunsidrat bhala Qorti Superjuri u anqas bhala Qorti Inferjuri f'dan is-sens [ossia fis-sens premess fil-bran iktar 'l fuq citat]; u ghalhekk l-Artikolu 46(3) tal-Kostituzzjoni u l-Artikolu 4(3) tal-Kap.319 ma japplikawx ghalih. Din il-Qorti hi konfortata f'din id-decizjoni taghha minn zewg konsiderazzjonijiet ohra. Skond l-Artikolu 23(2) tal-Kap.88, ic-Chairman tal-Bord jista' jkun "... persuna li jkollha jew kellha l-kariga ta' mhallef jew persuna li jkollha l-kariga ta' magistrat." Ghalhekk, kieku wiehed kellu jiehu l-kriterju tal-presidenza tal-Bord bhala xi kriterju determinanti ghad-decizjoni jekk l-istess Bord hux "qorti" o meno ... ikun ifisser li dana l-Bord ikun xi mindaqqiet "Qorti Superjuri" u xi mindaqqiet "Qorti Inferjuri" – sitwazzjoni ta' incertezza li hi certament kontroindikata ghall-fini biex jigi determinat il-post ta' organu gudizzjarju fis-sistema gudizzjarja tal-pajjiz. Inoltre, il-Bord jista' jkun presjedut minn persuna li kellha l-kariga ta' mhallef (u meta jkun hekk dik il-persuna trid tiehu l-gurament kif preskritt fl-Artikolu 24(1) tal-Kap.88). Il-Kostituzzjoni, invece, b' "qorti" tifhem biss qorti li tkun presjeduta minn Imhallef jew minn Magistrat li jkun ghadu fil-kariga (ossia jkun ghadu ma rtirax bl-età jew ma irrizenjax jew tnehha) jew minn Agent Imhallef nominat skond l-Artikolu 98(2) ta' l-istess Kostituzzjoni. Konsiderazzjoni ohra temani mill-Artikolu 25(2)(a) tal-Kap.88. Tanti l-Bord ma hux, u ma jistax jitqies li hu, la Qorti Superjuri u lanqas Qorti Inferjuri fis-sens tal-Kostituzzjoni li l-legislatur kellu jinkludi fil-ligi disposizzjoni partikolari biex il-Bord ikollu l-istess setghat tal-Prim' Awla tal-Qorti Civili. Differentement, per ezempju, il-legislatur ipprovda dwar il-Qorti tal-Minorenni mwaqqfa taht il-Kapitolu 287 – Artikolu 3(2) ta' l-imsemmi Kap.287 jippprovdi espressament li: il-Qorti tal-Minorenni titqies li hi Qorti tal-Magistrati u jkollha l-istess gurisdizzjoni dwar is-smigh ta' akkuzi u dawk procedimenti ohra li ghandhom x'jaqsmu ma' tfal jew zghazagh li l-Qorti tal-Magistrati, bhala qorti ta' gudikatura kriminali u bhala qorti ta' inkjesta, kien ikollha, kieku ma kinux ghad-disposizzjonijiet ta' dan l-Att. Fil-kaz ta' dan it-Tribunal fl-Att dwar il-Gustizzja Amministrattiva il-Legislatur ukoll ipprovda li t-Tribunal ta' Revizjoni Amministrattiva jkun maghmul minn President li jippresjedi t-Tribunal. Il-President ta' Malta, li jagixxi fuq il-parir tal-Prim' Ministru, jista' jahtar iktar minn President wiehed fit-Tribunal ta' Revizjoni Amministrattiva, izda f'kull kaz partikolari joqghod President wiehed biss. President, meta jkun ex-imhallef jew ex-Magistrat, ghandu jigi mahtura ghal perijodu ta' erba' snin u ghandu jispicca minn din il-kariga meta jiskadi l-perijodu ta' dik il-kariga. President ghandu jkun

persuna li jokkupa jew kien jokkupa l-kariga ta' mhallef jew magistrat f'Malta – Artikolu 8(1) – (4) tal-Kap.490 tal-Ligijiet ta' Malta u li t-Tribunal ta' Revizjoni Amministrattiva ghandu jkollu l-istess setghet li huma vestiti fil-Prim' Awla tal-Qorti Civili mill-Kodici ta' Organizzazzjoni u Procedura Civili – Artikolu 20(1) tal-Kap.490 tal-Ligijiet ta' Malta. Fid-dawl ta' dawn id-disposizzjonijiet tal-Kap.490 tal-Ligijiet ta' Malta u fid-dawl tal-principju enuncjat fil-precitati sentenzi tal-Qorti Kostituzzjonali ma jistax ghajr li jirrizulta li dan it-Tribunal ma huwiex "qorti" ghall-finijiet ta' l-Artikolu 46(3) tal-Kostituzzjoni u ta' l-Artikolu 4(3) tal-Kap.319 tal-Ligijiet ta' Malta u ghalhekk ma huwiex fakoltizzat li jressaq referenza kostituzzjonali quddiem il-Qorti kompetenti.

Therefore, in the light of the above the Tribunal reiterates that it is not competent to determine claims concerning an alleged violation of Fundamental Human Rights and Freedoms as protected by the Constitution and by the European Convention for Human Rights and Fundamental Freedoms and neither can it refer issues pertaining to alleged violations of Human Rights and Fundamental Freedoms before the Civil Court, First Hall in its Constitutional jurisdiction.

In this case however the Tribunal can, or rather must, in terms of the first proviso to Section 741 of Chapter 12 of the Laws of Malta, introduced in virtue of Act IV of 2016, order that the records of these proceedings be transferred to the Civil Court, Fisrt Hall in its ordinary jurisdiction for eventual determination of the Applicant's requests since, in its opinion it is the said Court and not this Tribunal which is competent to decide and determine the requests put forth by the Applicant.

For the above reasons the Tribunal, whilst reiterating that it is the Civil Court, First Hall in its ordinary jurisdiction which has the necessary jurisdiction to decide and determine the requests put forth by the Applicant, upholds the preliminary plea raised by the Refugee Appeals Board with regard to the lack of competence of the Tribunal to decide and determine the requests put forth by the Applicant and orders that the records of these proceedings be forthwith transmitted to the Secretary of the Administrative Review Tribunal so that the same can be transferred to the Civil Court, First Hall in its ordinary jurisdiction in terms of Law.

This Decree is to be communicated to Dr. Joseph R. Pace for the Applicant and to Dr. Ariana Falzon for the Refugee Appeals Board.

Today, 14th July 2016

MAGISTRATE

DEPUTY REGISTRAR