QORTI TAL-APPELL

IMHALLFIN

S.T.O. PRIM IMHALLEF SILVIO CAMILLERI
ONOR. IMHALLEF GIANNINO CARUANA DEMAJO
ONOR. IMHALLEF NOEL CUSCHIERI

Seduta ta' nhar it-Tlieta 18 ta' Lulju 2017

Numru 8

Appell Numru: 355/05 JZM

CCD Limited (C-29169)

v.

Awtorita` dwar it-Trasport ta' Malta u
b'digriet tal-1 ta' Novembru 2010 l-Awtorita`ghat-Trasport f'Malta assumiet l-atti minflok l-Awtorita` dwar it-Trasport ta' Malta

Preliminari

1. Dan huwa appell maghmul mis-socjeta` attrici minn sentenza moghtija mill-Prim'Awla tal-Qorti Civili fit-8 ta' Lulju 2013, li permezz taghha l-ewwel Qorti ddecidiet billi cahdet l-ewwel eccezzjoni tal-Awtorita` konvenuta tan-nullita` tar-rikors guramentat; laqghet l-eccezzjonijiet l-ohra tal-Awtorita` konvenuta; cahdet it-talbiet kollha tas-socjeta` attrici ghal dikjarazzjoni li l-ghemil amministrattiv tal-Awtorita` konvenuta jmur kontra l-Artikolu 469A tal-Kodici ta' Organizzazzjoni u Procedura Civili; laqghet l-ewwel domanda tal-

kontro-talba tal-Awtorita` konvenuta u kkundannat lis-socjeta` attrici biex thallasha s-somma ta` hdax-il elf, sitt mija, sitta u erbghin Euro sebgha u tmenin centezmu (€11,646.87) ekwivalenti ghal hamest elef liri Maltin (Lm5,000), bilanc mis-somma ta' ghaxart elef liri Maltin (Lm10,000) dovuti skont ir-**Regolamenti Dwar Testijiet Biex Jiccertifikaw li Vetturi bil-Mutur huma Tajba ghat-Triq**[1] [ir-Regolamenti] fil-kaz illi s-socjeta` attrici tikkommetti t-tieni infrazzjoni, bl-imghax legali b`effett mit-13 ta` Mejju 2005. L-ispejjez tal-kawza jkunu a karigu tas-socjeta` attrici.

Is-Sentenza Appellata

2. L-ewwel Qorti waslet ghad-decizjoni taghha tat-30 ta' Ottubru 2012 abbazi tas-segwenti kunsiderazzjonijiet, li fihom ukoll esposizzjoni tal-fatti saljenti tal-kaz odjern:

> **"II. L-Art.469A tal-Kap.12**
>
> "Il-kumpannija attrici ("**CCD**") qeghda tibbaza l-istanza taghha fuq l-Art.469A tal-Kap.12 li jaqra hekk –
>
> > *""(1) Hlief hekk kif provdut mod iehor bil-ligi, il-qrati tal-gustizzja ta' kompetenza civili ghandhom gurisdizzjoni biex jistharrgu l-validita ta' xi eghmil amministrattiv jew li jiddikjaraw dak l-eghmil null, invalidu jew minghajr effett fil-kazijiet li gejjin biss:*
> >
> > *"(a) meta l-eghmil amministrattiv jikser il-Kostituzzjoni;*
> >
> > *"(b) meta l-eghmil amministrattiv ikun ultra vires ghal xi raguni minn dawn li gejjin:*
> >
> > *"(i) meta dak l-eghmil jitwettaq minn awtorita` pubblika li ma tkunx awtorizzata sabiex twettqu; jew*

[1] L.S 65.15

"(ii) meta l-awtorita` pubblika tkun naqset milli tosserva l-principji tal-gustizzja naturali jew htigiet procedurali mandatorji fit-twettiq ta' l-eghmil amministrattiv jew fid-deliberazzjonijiet ta' qabel dwar dak l-eghmil; <u>jew</u>

"(iii) meta l-eghmil amministrattiv jikkostitwixxi abbuz tas-setgha ta' l-awtorita` pubblika billi dan isir ghal ghanijiet mhux xierqa jew jissejjes fuq konsiderazzjonijiet mhux rilevanti; <u>jew</u>

"(iv) meta l-eghmil amministrattiv ikun imur mod iehor kontra l-ligi."

"Dwar azzjoni ta` din ix-xorta, din il-Qorti (diversament presjeduta) **<u>[PA/JRM</u>**] qalet hekk fis-sentenza taghha tal-1 ta` Marzu 2004 fil-kawza "**<u>Borg noe vs Gvernatur tal-Bank Centrali ta` Malta</u>**" (li kienet konfermata mill-Qorti tal-Appell fid-9 ta` Marzu 2007) –

""Illi llum huwa accettat li l-azzjoni ghal stharrig gudizzjarju msemmija fl-artikolu 469A tal-Kapitolu 12 tal-Ligijiet ta' Malta hija mahsuba biex taghti rimedju lill-individwu dwar l-imgieba tal-awtorita' pubblika fil-konfront tieghu. Is-setgha li tinghata mill-imsemmi artikolu lil Qorti fil-kompetenza taghha civili dwar ghemil amministrattiv hija jew (a) dik li tistharreg is-siwi ta' dak l-ghemil jew (b) li tiddikjarah ma jiswiex jew minghajr ebda effett. Dan tista' taghmlu meta l-ghemil jikser il-Kostituzzjoni jew meta jkun sar lil hinn mis-setgha ta' min wettqu (ultra vires). F'din l-ahhar ipotezi, dan l-eccess ta' setgha jista' jirrizulta meta l-att isir minn awtorita' pubblika li ma tkunx awtorizzata twettqu, jew meta dik l-awtorita', ghalkemm ikollha setgha twettaq dak l-ghemil, tkun naqset li thares il-principji ta` gustizzja naturali jew htiega procedurali li tabilfors trid thares qabel ma tasal ghal dak l-ghemil, jew jekk l-ghemil jikkostitwixxi abbuz tas-setgha ta' dik l-awtorita' billi jsir ghal xi ghan mhux xieraq jew fuq konsiderazzjoni irrilevanti, jew meta dak l-ghemil imur b'kull mod iehor li jkun kontra l-ligi. Bil-kelma "ghemil", il-ligi tifhem ukoll cahda jew rifjut ta' talba li ssir minn persuna lil xi awtorita' pubblika;

"Illi din l-impostazzjoni tal-azzjoni tabilfors tnissel il-htiega li l-Qorti tqis x'tip ta' stharrig ghandha taghmel skond il-ligi dwar l-ghemil tal-Bank imharrek. Tali ezercizzju huwa wiehed li jmiss l-aspetti sostantivi tal-kawza prezenti. Illum il-gurnata, l-azzjoni ta' stharrig gudizzjarju ta' ghemil amministrattiv tinsab imfissra u delinejata espressament fis-sistema procedurali taghna u l-Qorti hija marbuta li timxi mal-parametri li l-ligi tipprovdi ghal din l-ghamla ta` stharrig, sakemm il-ligi nnifisha ma tipprovdix mod. Wahda minn dawn il-limitazzjonijiet hija li l-ilment imressaq jew ir-rimedju mitlub ma jkunx jista' jinkiseb mod iehor amministrattivament quddiem qorti jew tribunal iehor kif provdut mil-ligi. Fil-kaz li ghandha quddiemha l-Qorti, ma ntweriex li l-kumpannija attrici kellha rimedju iehor procedurali jew statutorju ghall-ilment taghha jekk mhux quddiem din il-Qorti u b'din l-ghamla ta' azzjoni;

"Illi mit-tifsira ta' "awtorita' pubblika" moghtija fl-artikolu 469A(2), johrog car li l-Bank imharrek huwa awtorita' kif hekk imfissra, u dan ukoll ghaliex huwa korp maghqud kostitwit permezz ta' ligi li ghandu funzjoni regolatrici pubblika u amministrattiva. Dawn l-elementi ma gew bl-ebda mod michuda mill-istess Bank u lanqas jidher li tqanqal xi dubju dwar jekk il-Bank huwiex il-kontradittur legittimu tal-azzjoni specjali mibdija kontra tieghu …"

"Fil-kawza tal-lum, dak li kien ighodd ghall-Bank Centrali ta` Malta jghodd ukoll *mutatis mutandis* ghall-Awtorita` konvenuta ("**<u>l-Awtorita</u>**`").

"Fil-kaz tal-lum, CCD qeghda tikkontendi li l-eghmil amministrattiv tal-Awtorita` konvenuta fil-kwistjoni mertu ta` din il-kawza jikser **is-subincizi (1)(a), 1(b)(ii) u 1(b)(iii) tal-Kap 469A**.
"Ikkunsidrat :

"III. Ir-Regolamenti

"Ghad-decizjonijiet li hadet fil-konfront ta` CCD, l-Awtorita` qeghda tistrieh ghal kollox fuq id-disposizzjonijiet tal-***Motor Vehicle Roadworthiness Test Regulations*** **(Regolamenti 65.15)** li kienu saru ghall-ewwel darba bis-sahha tal-Avviz Legali 126 tal-1998, li in segwitu kien emendat.

"In partikolari, l-Awtorita` tirreferi ghas-Sitt Skeda li llum m`ghadhiex fis-sehh wara li kienet revokata bis-sahha tal-Avviz Legali 90 tal-2010. Id-disposizzjoni in kwistjoni u li kienet fis-sehh fiz-zmien taz-zewg kazi mertu tal-istanza tal-lum, l-ewwel parti tas-Sitt Skeda (ara fol 33) u taqra hekk –

> *"Operaturi ta` l-istazzjonijiet ghandhom jiffirmaw kuntratt ma` l-ufficjal awtorizzat li fih jiftehmu li jaccettaw il-kondizzjonijiet imsemmija hawn taht, u jipprovdu jew :*
>
> *"(i) garanzija bankarja ta` Lm10,000 ghal kull stazzjon ; jew*
>
> *"(ii) garanzija bankarja kollettiva ta` mhux anqas minn Lm35,000 provduta konguntivament bejn l-istazzjonijiet kollha li jiddeciedu li jaghtu din il-garanzija,*
>
> *"u, f`kull kaz, jekk fl-opinjoni ta` l-ufficjali awtorizzat, l-operatur jikser il-kuntratt, l-istess operatur ghandu jiddepozita l-ammont ta` Lm5000 favur l-Ufficjal Awtorizzat, u jekk dan ma jsehhx, l-istess Ufficjal Awtorizzat jista` jiehu azzjoni biex jithallas mill-individwu jew garanzija kollettiva, skond il-kaz, u l-operatur ghandu immedjatament jiddepozita s-somma sabiex il-garanzija titregga` lura daqs is-somma originali ; fil-kaz tat-tieni reat, l-operatur jitlef il-garanzija (Lm10,000) u l-ufficjal awtorizzat ghandu jitrira l-licenzja relatata ma` l-istazzjon ..."*

"Ikkunsidrat:

"IV. L-ewwel eccezzjoni

"Din l-eccezzjoni taqra hekk –

> *""Illi preliminarjament, in-nullita` tal-ewwel talba stante illi din ma tirriflettix il-premessi, u dan peress illi filwaqt illi l-ewwel talba taghmel referenza ghall-Artiklu 469(A)(1)(a), liema artiklu jipprovdi li att amministrattiv jista` jinstab null, invalidu u minghajr effett "meta l-eghmil amministrattiv jikser il-Kostituzzjoni" imkien fil-premessi ma gie indikat liema provvediment tal-Kostituzzjoni gie miksur."*

"Wara l-verbal li sar fl-udjenza tat-12 ta` Ottubru 2005, CCDipprezentat nota fil-11 ta` Novembru 2005 (fol 94A) fejn dwar l-Art 469(1)(a) li kien indikat fl-ewwel talba rrilevat illi *fl-istrutturi u l-bordijiet ta` l-Awtorita` konvenuta fejn ittiehdu d-decizjonijiet msemmija fic-citazzjoni hija ma nghatatx smigh xieraq ai termini ta` l-Artikolu 39 tal-Kostituzzjoni ta` Malta u dana meta gew iddeterminati d-drittijiet*

civili taghha mill-istess Awtorita` u dana b`riferenza ghat-totalita` tal-premessi fic-citazzjoni attrici.

"**L-Art.156(1) tal-Kap.12** jipprovdi li c-citazzjoni (illum ir-rikors mahluf) ghandu jkun fiha :

"(a) tifsir car u sewwa ta' l-oggetti u r-raguni tat-talba ; u

"(b) it-talba jew talbiet

"Din id-disposizzjoni tal-ligi nghatat fil-gurisprudenza interpretazzjoni wiesgha fis-sens li ma gietx adottata l-istrettezza li donnhom ifissru l-kliem tal-ligi. Hekk fis-sentenza **"Moore noe vs Falzon et"** (Prim'Awla tal-Qorti Civili – PA/AM – 15 ta' Dicembru 1995) kien deciz li –

> *""U ghalhekk gie ritenut illi l-ligi ma tirrikjedix kliem partikolari ghal kif ghandha ssir ic-citazzjoni, bizzejjed jiftiehem xi jkun qieghed jitlob l-attur, b'mod li l-kawzali tista' tkun espressa lakonikament, u sahansitra tista' tkun anke ridotta mid-domanda" (Kolezz. XXXIV.I.501, XXIX.I.143 u XXXII.I.228).*

"Hekk ukoll inghad fis-sentenza tal-Qorti tal-Appell fil-kawza "**Bonnici vs Zammit noe**" deciza fl-20 ta` Jannar 1986 fejn it-tifsira tal-Art.156(1) kienet spjegata hekk –

> *""Illi l-Artikolu 156(1) jipprovdi li l-oggett u r-raguni tat-talba gudizzjarja ghandhom ikunu mfissra car u sewwa fic-citazzjoni. Dan ma jfissirx pero' li kwalunkwe nuqqas da parte ta' l-attur ghandu mill-ewwel jigi mehud fis-sens li qed imur kontra d-dispost ta' l-Art.155(1) [illum 156(1) tal-Kap.12] u ghalhekk igib mieghu n-nullita' tac-citazzjoni. Infatti biex citazzjoni tigi mwaqqfa jrid ikun hemm raguni gravi, u fost kollox, ghandu jigi ezaminat jekk ic-citazzjoni tkunx defungenti jew zbaljata b'mod li l-konvenut ikun jista' jigi pregudikat fid-difiza tieghu. Dan apparti li c-citazzjoni ghandha tigi ezaminata fit-totalita' taghha u mhux spezzettata."*

"Fil-kawza "**Vella vs Cefai**" (Appell Civili – 4 ta` Novembru 1991 – Vol.LXXV.II.467) il-Qorti tal-Appell sostniet li meta f`citazzjoni tezisti vjolazzjoni tal-forma in kontravvenzjoni tal-Art.156(1)(a) ghax ma jkunx fiha tifsir car u sewwa tal-oggett u r-raguni tat-talba, l-eccezzjoni tan-nullita` tac-citazzjoni tista` tigi milqugha biss kemm-il darba dik il-vjolazzjoni tkun giebet lill-parti li titlob in-nullita` pregudizzju illi ma jistax jissewwa xort`ohra hlief billi l-att jigi annullat. Inoltre l-Qorti kompliet tafferma li f`dawn il-kazi huwa dejjem opportun li l-Qorti, kemm jista` jkun ghall-pratticita` u sabiex tigi evitata moltiplikazzjoni ta` kawzi u spejjez zejda, ghandha tkun iebsa meta tilqa` l-eccezzjoni tan-nullita` u kemm jista` jkun issalva atti gudizzjarji, u att ta` citazzjoni ghandu jigi mwaqqa` u annullat biss ghal ragunijiet gravi. In-nullita` ta` l-atti gudizzjarji hija sanzjoni estrema li l-ligi trid li tigi mposta biss meta n-nuqqas – formali jew sostanzjali – fl-att ma jistax assolutament jigi tollerat minghajr hsara ghal xi principju ta` gustizzja procedurali (ara wkoll :"**Fino vs Fabri noe**" – Qorti tal-Appell – 28 ta` Frar 1997 ; "**Ellul vs Coleiro**" – Qorti tal-Appell – 24 ta` Jannar 1994 ; "**Guillaumier Industries Ltd vs Fava et**" – Prim`Awla tal-Qorti Civili – **PA/RCP**

– 28 ta` Ottubru 1998 ; "**Attard noe vs Galea**" – Qorti tal-Appell – 12 ta` Mejju 1998 ; u "**Aquilina vs Cassar**" – Vol.LXXVI.IV.666).

"Fis-sentenza ta` din il-Qorti (**PA/JRM**) tat-13 ta` Marzu 2003 fil-kawza "**K.B. Real Estate Limited vs Silvio Felice Limited**" jinghad hekk dwar l-element tal-kjarezza fl-att tac-citazzjoni –

""... il-ligi ma tinsististix fuq formola preciza jew kliem partikolari, u sakemm it-talba tkun tista' tiftiehem, ma jimputax jekk il-kawzali tkunx imfissra b'mod xott jew sahansitra mifhuma jew implikata mit-talba nnfisha ...

"... fejn ma jkunx hemm kontradizzjoni ghall-ahhar bejn il-premessi u t-talbiet jew bejn it-talbiet innfishom, il-Qrati ghandhom iqisu b'cirkospezzjoni eccezzjoni ta' nullita' ta' att gudizzjarju. Biex att ta' citazzjoni jghaddi mill-prova tal-validita' huwa bizzejjed li t-talba tkun mfassala b'mod tali li l-persuna mharrka tifhem l-intenzjoni ta' min harrikha u li tali tifsila ma tkunx ta' hsara ghall-imharrek li jiddefendi lilu nnifsu mit-talba tal-attur ...

"... jekk id-difett fit-tfassila tal-att li bih tkun inbdiet il-kawza ma jgibx pregudizzju serju lill-parti mharrka, allura l-procedura tkun tista' tigi salvata basta dan ma jaffettwax is-sustanza tal-azzjoni jew l-eccezzjonijiet ..."

"Bl-applikazzjoni ta` dawn l-insenjamenti, din il-Qorti tghid illi fil-kaz tal-lum l-eccezzjoni tan-nullita` ma tistax tregi ghaliex ghalkemm il-pretensjoni ta` CCD illi ma nghatatx smigh xieraq ma kenitx inserita f`kawzali distinta u separata, tista` xorta tigi derivata mill-kumpless tal-kawzali l-ohra. Tant dan hu hekk illi fl-eccezzjonijiet taghha l-Awtorita` tikkontendi illi hija waslet ghad-decizjoni taghha wara li tat smigh lid-dirigenti ta` CCD. Li allura jfisser illi n-nuqqas ta` CCD li tressaq kawzali *ad hoc* dwar allegat nuqqas ta` smigh xieraq lesiv - skond hi – ghad-drittijiet kostituzzjonali taghha ma gab l-ebda pregudizzju lill-Awtorita` ghaliex din gharfet twiegeb fil-pront ghal kwalsiasi allegazzjoni f`dak is-sens. **L-ewwel eccezzjoni qeghda tkun michuda**.

"Ikkunsidrat:

"V. Sintesi tal-provi

"Fis-16 ta` April 2002 (Dok CCD1) sar ftehim bejn il-*Licensing and Testing Department* ("the Director") u CCD ("the Contracted Operator") fejn CCD kienet kontrattata biex taghti servizzi skond il-Motor Vehicles Roadworthiness Test Regulations 1998. Fost il-pattijiet tal-kuntratt, kien hemm il-patt bin-Nru 9 li jaqra hekk –

""(1) The contracted operator agrees to abide by all the above mentioned conditions, and hereby submits a performance bond of ten thousand Maltese liri (Lm10,000) for each testing station.

"(2) It is agreed between both parties that in the case of a first breach, half of the performance bond shall be automatically forfeited to the Director, and the Contracted Operator undertakes to immediately deposit the amount in order that the bond be equal to the original sum ; in the case of a second breach, the

Contracted Operator will forfeit the performance bond and the Director shall withdraw the licence relating to the authorised testing station."

"CCD kienet mixlija b`zewg *breaches* (f`dati differenti) tal-obbligi taghha skond ir-regolamenti in kwistjoni. Ix-xilja kienet is-segwitu ta` rapporti ta` inadempjenzi allegati fil-konfront ta` CCD li kienet topera minn VRT station bl-isem "CarTech" go Haz-Zebbug. L-istharrig ta` dak li fl-atti huma deskritti bhala *reati* sar mill-VRT Advisory Board. Dan il-Bord huwa mahtur mill-Awtorita` biex jaghmel rakkomandazzjonijiet. L-ahhar decizjoni tkun tal-Awtorita`. Il-persuni appuntati fuq il-Bord (Av. Tonio Ellul, Carlo Cini u Charles Mifsud) huma ndipendenti mill-Awtorita`. Kienu esebiti (ghal aktar minn darba) l-atti kollha tal-proceduri kondotti mill-VRT Advisory Board. Il-Bord sab li r-*reati* fiz-zewg kazi kienu fondati.

"Fost l-atti, kien hemm inkluzi l-minuti ta` laqghat tal-Bord fiz-zewg kazi. Fil-kaz tat-tnejn, instemghu, fost ohrajn, anke jekk separatament, min ghamel ir-rapporti, it-tester Adrian Stellini u Christopher Sammut bhala rapprezentant ta` CCD. Kulhadd inghata c-cans ighid tieghu.

"Kienu prezentati zewg ittri rispettivament tal-15 ta` Novembru 2004 (fol 71 sa fol 73) u tal-1 ta` Ottubru 2004 (fol 74 sa fol 75) li l-Bord baghat lic-Chairman tal-Awtorita` konvenuta. Fiz-zewg ittri kienu esposti l-fatti. Kienet spjegata l-posizzjoni ta` Christopher Sammut u Adrian Stellini ghal CCD. Fil-kaz tat-tieni rapport, kienu spjegati l-kostatazzjonijiet li ghamel operatur iehor Paul Muscat waqt laqgha tal-Board. Tfisser ukoll l-istharrig li sar mit-teknici tal-Awtorita`. Wara li qies kollox, il-Bord wasal ghall-konkluzjoni fiz-zewg kazi illi *the arguments put forward by Mr Christopher Sammut and Mr Adrian Stellini were not sufficiently convincing as to why* (fil-kaz tat-tieni rapport) *the vehicle failed a VRT test on 14 counts only four hours after having passedf a VRT test at Cartech Limited's VRT station* waqt li fil-kaz tal-ewwel rapport *the owner of the vehicle in question had pass certificate when in fact the vehicle should have failed the test.* Fiz-zewg kazi, il-Board irrakkomanda *that the Authority takes the necessary action in respect of CarTech Ltd in accordance with the Motor Vehicle Roadworthiness Test Regulations.*

"Fit-22 ta` Ottubru 2004, l-Awtorita` konvenuta kitbet lil Cartech Ltd (fol 39) fejn wara li ddikjarat illi *vehicle FAW 895 that was supposedly tested on the 21st June 20093 was a) either not actually tested or b) if it was, the test was not carried out according to the prescribed procedures,* interpellatha biex thallas penali ta` Lm5000 fi zmien hmistax-il jum mid-data tal-ittra, b`dan illi jekk l-ammont jibqa` ma jithallasx, l-Awtorita` kienet sejra *to reject all the test certificates issued by your station with effect from the 15th November 2004.*

"Fl-10 ta` Dicembru 2004, l-Awtorita` kitbet lil CCD (fol 56) fejn wara li gharrfitha li kienet hadet Lm5000 mill-garanzija, interpellatha biex terga` ggib il-garanzija ghall-figura ta` Lm10,000.

"Fl-20 ta` Dicembru 2004, l-Awtorita` baghtet avviz lil CCD (fol 40) fejn wara li spjegat r-rizultat ta` l-istharrig, avzatha li l-kuntratt fuq riferit kien qieghed jigi formalment terminat skond il-patt Nru 10 kif ukoll illi *qeghda tigi wkoll irtirata l-*

garanzija bankarja illi bhalissa tammonta ghal Lm5000 u dan minghajr pregudizzju ghad-dritt ta` l-ADT illi tfittex lil CCD Ltd ghall-pagament ulterjuri ta` Lm5000 dovuti minnha f`penali u ghal kwalunkwe azzjoni ohra illi tista` tittiehed kontra l-istess skond il-ligi. L-avviz huwa dettaljat. Hemm riferenza ghall-*breaches*, ghall-istharrig li sar mill-VRT Advisory Board, ghax-xiehda li sema` l-Bord u l-konkluzjonijiet.

“Jidher illi fit-28 ta` Marzu 2005, CCD kitbet lill-Awtorita`. L-ittra pero` baqghet ma gietx esebita. Fid-19 ta` April 2005, l-Awtorita` wiegbet ghal dik l-ittra u wara li tat ir-ragunijiet taghha, u sostniet it-terminazzjoni tal-operazzjoni.

« Apparti t-terminazzjoni tal-operazzjoni, is-sejba ta` htija fl-agir ta` CCD kellu l-konsegwenza illi relattivament ghall-ewwel kaz (Nru 5/2004), fid-9 ta` Dicembru 2004 l-Awtorita` thallset Lm5000 mill-garanzija ta` Lm10,000. Il-garanzija baqghet ridotta ghal Lm5000 u qatt ma kienet *reinstated* ghal Lm10,000. Konsegwenza tat-tieni kaz (Nru 6/2004), l-Awtorita` thallset Lm5000 ohra fit-22 ta` Dicembru 2004.

“Xehdet Audrey Ghigo mill-HSBC Bank Malta plc li kkonfermat illi wara t-tieni pagament ta` Lm5000, il-garanzija spiccat.

“Wara d-decizjonijiet tal-Awtorita`, CCD ippresentat protest gudizzjarju (fol 129 sa 131). F`dak l-att, CCD ipprotestat mal-Awtorita` *ghall-mod kif hija amministrattivament hadet u waslet ghad-decizjoni taghha f`dan ir-rigward liema decizjoni bir-rispett kollu hija nieqas minn motivazzjonijiet u ragunijiet cari u ghalhekk tmur kontra l-principju ormai stabbilit fid-dritt amministrattiv Ingliz ‘ the duty to give reasons’ ai termini tal-Art 469A(b)(iii) tal-Kap 12 tal-Ligijiet ta` Malta.* Ipprotestat ukoll illi *ghalkemm l-Awtorita` protestata ghandha certu diskrezzjoni moghtija lilha mil-ligi din ghandha tigi esercitata b`certu ragonevolezza liema ragonevolezza hija nieqas certament f`dan il-kaz.* Ilmentat ukoll li l-Awtorita` *vvjolat il-principju tal-proporzjonalita`.*

“Fil-protest, in-nuqqas ta` smigh xieraq ma ssemma mkien.

“Ikkunsidrat:

“VI. <u>Risultanzi</u>

“1) <u>L-ewwel u t-tieni talbiet attrici</u>

“Il-kumpannija attrici qeghda titlob mill-qorti dikjarazzjoni ta` nullita`, invalidita` jew minghajr effett tal-ghemil amministrattiv tal-Awtorita` -

> “a) fl-ewwel lok ghax tghid illi jikser id-dritt taghha ghal smigh xieraq kif tutelat bl-Art 39 tal-Kostituzzjoni ta` Malta [Art 469A(1)(a)].
>
> “b) fit-tieni lok ghax tghid illi l-ghemil amministrattiv de quo kien *ultra vires* billi l-Awtorita` naqset milli tosserva l-principji tal-gustizzja naturali jew htigiet procedurali mandatorji fit-twettiq ta’ dak l-eghmil amministrattiv jew fid-deliberazzjonijiet ta’ qabel dwar dak l-eghmil [Art 469A(1)b)(ii)].

"c) fit-tielet lok ghax tghid illi kien ukoll *ultra vires* ghax l-eghmil amministrattiv tal-Awtorita` kien jikkostitwixxi abbuz tas-setgha taghha billi sar ghal ghanijiet mhux xierqa jew jissejjes fuq konsiderazzjonijiet mhux rilevanti [Art 469(1)(b)(iii)].

"Fid-Dritt Amministrattiv Malti, li huwa fondat fuq id-dritt Ingliz (ara "**Cassar Desain vs Forbes noe**" - Qorti ta` l-Appell - 7 ta` Jannar 1935 u "**Lowell et vs Caruana et**" – Prim`Awla tal-Qorti Civili - 14 ta` Awwissu 1972) kemm il-principju tal-*judicial review* kif ukoll il-principji tal-gustizzja naturali kienu ilhom jigu applikati ferm qabel il-Parlament Malti ghamel ligijiet *ad hoc* sabiex jirregola l-materja. Dan sehh ghaliex il-Qrati Maltin kienu affermaw illi fejn tkun tirrizulta *lacuna* fid-Dritt Pubbliku (u d-Dritt Amministrattiv huwa fergha tad-Dritt Pubbliku) ghandha tapplika l-Ligi Ingliza.

"Skond l-Art 469A(1)(b), il-kumpannija attrici identifikat il-ksur tal-Kostituzzjoni ta` Malta fl-allegata lezjoni tad-dritt taghha ghal smigh xieraq. U kompliet twessa` l-pretensjoni taghha billi allegat ksur tal-principji tal-gustizzja naturali skond l-Art 469(1)(b)(ii).

"Huwa risaput li l-principji tal-gustizzja naturali huma dawk il-principji **minimi** li ghandhom ikunu osservati waqt proceduri anke ta` entita' amministrattiva illi ghandha l-kompitu li tiddeciedi dwar fatti li fuqhom imbaghad ghandha s-setgha li tiehu decizjonijiet li jaffettwaw id-drittijiet tal-persuna. Il-principji tal-gustizzja naturali huma *audi alteram partem* u *nemo judex in causa propria.* Fil-kawza "**Board of Education v. Rice"** (1911 – AC 179), Lord Loreburn afferma li l-applikazzjoni tal-principji tal-gustizzja naturali '*is a duty lying upon everyone who decides anything*'.

"Il-principju *audi alteram partem* jirrikjedi li qabel ma tittiehed decizjoni amministrativa fil-konfront ta` persuna, din ta` l-ahhar mhux biss ghandha tkun mgharrfa, izda ghandha tinghata l-opportunita` li tghid taghha. Fuq kollox jinghata widen tassew ghal dak li l-persuna koncernata ghandha xi tghid, u fl-istess waqt tinghata l-opportunita` li tiddefendi l-kaz kif inhu xieraq.

"Fis-sentenza Ingliza "**Ridge v. Baldwin"** (1964 – AC 40) 'the right to a fair hearing' kien iddikjarat bhala '*a rule of universal application'*. F`dik is-sentenza, Lord Reid qal hekk **–** *before attempting to reach any decision they were bound to inform him of the grounds on which they proposed to act and give him a fair opportunity of being heard in his own defence'*. U jkompli hekk – *Accordingly, in my judgment, a local authority is under a duty, when dealing with entertainment licences, first, to inform the applicant of the substance of any objection or of any representation in the nature of any objection … and secondly, to give him an opportunity to make representations in reply'.*

"Fis-sentenza "**Borg vs l-Awtorita' dwar it-Trasport Pubbliku**" deciza fil-21 ta` Mejju 2009 minn din il-Qorti diversament presjeduta (**PA/JRM**) [u konfermata mill-Qorti tal-Appell fit-28 ta` Settembru 2012] inghad hekk dwar il-principji tal-gustizzja naturali -

““Bil-kemm ghandu jinghad li l-htiega li t-tribunal jew awtoritajiet amministrattivi jharsu b’mod skrupoluz it-thaddim ta’ dawn il-principji hija wahda li m’ghandux ikun hemm disposizzjoni espressa tal-ligi sabiex wiehed japplikaha. It-tharis ta’ dawn il-principji fit-tmexxija tal-amministrazzjoni pubblika ghandu jkun il-kejl minimu li jiggarantixxi t-trasparenza u s-siwi tal-eghmil amministrattiv. Ghall-kuntrarju in-nuqqas ta’ tharis ta’ dawn il-principji jwassal ghall-irritwalita’ tal-eghmejjel hekk imwettqa u ghat-thassir taghhom.”

“Fil-pag 196 ta` **Evans De Smith`s Judicial Review of Administrative Action** (4th Edition) inghad hekk –

““Natural Justice generally requires that the persons liable to be directly affected by the proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed, so that they might be in a position : (a) to make representations on their own behalf ; or (b) to appear at a hearing or inquiry (if one is to be held) ; and (c) effectively to prepare their own case and to answer the case (if any) they have to meet … In a large majority of the reported cases where breach of the audi alteram partem rule has been alleged, no notice whatsoever of the action taken or proposed to be taken was given to the person claiming to be aggrieved, and failure to give him proper notice was tantamount to denial of an opportunity to be heard on that matter.”

“Dan il-bran kien citat fis-sentenza “**Borg vs l-Awtorita` dwar it-Trasport Pubbliku**” [op. cit.] u fis-sentenza ta` din il-Qorti [**PA/RCP**] tas-27 ta` Jannar 2011 fil-kawza “**Falzon vs Ministru ghall-Affarijiet Rurali u l-Ambjent et**”.

“Fil-ktieb **“Administrative Law”** (**H.W.R. Wade & C.F. Forsyth** – 10th Edition – Pg 428) kien osservat illi *a proper hearing must always include a “fair opportunity” to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view.*

“Fis-sentenza **“A & J Ta` Miema Ltd vs Kummissarju tat-Taxxa fuq il-Valur Mizjud”** deciza minn din il-Qorti (Sede Kostituzzjonali) (**PAK/TM**) fl-14 ta’ Ottubru, 2004 [u konfermata mill-Qorti Kostituzzjonali] kien ipprecizat li “*ovvjament, il-principju audi alteram partem, ma jfissirx li l-parti milquta trid bilfors tinstema’, izda li tinghata l-opportunita’ tressaq il-kaz taghha*.”

“Fil-kaz “**L`Alliance des Professeurs Catholiques de Montreal vs Labour Relations Board of Quebec**” (1953) riportat f`The Application of the European Convention Human Rights – J.E.S. Fawcett – Pga 148, inghad illi –

““The principle that no one should be condemned or deprived of his rights without being heard, and above all without having received notice that his rights would be at stake, is of universal equity. Nothing less would be necessary than an express declaration of the legislature to put aside this requirement, which applies to all courts and to all bodies called upon to render a decision that might have the effect of annulling a right possessed by an individual.”

“Fil-**Garner’s Administrative Law** (8th Edition – B Jones and K Thompson - Butterworths – 1996) jinghad hekk –

““An issue upon which the courts have failed always to express a consistent view is whether a successful audi alteram partem challenge requires that the court be satisfied that, had the applicant been given the full procedural protection to which he was entitled, the decision taken by the public authority might have been different in substance. Or, alternatively, is there such a thing as a “technical” breach of natural justice, in respect of which the court will grant a remedy in order to uphold procedural rights even though quite satisfied that the decision would have been the same even had the applicant been afforded a fair hearing. The difference between the two possible approaches is a fairly fundamental one, reflecting different ideas as to the aims of judicial review. Is the purpose of judicial review simply to “police” decisions which may be wrong or bad in substance because of procedural irregularities ; or is part of its purpose to prescribe standards of decision-making which it will enforce regardless of whether the end result, when the decision is properly taken, is likely to be different in substance.

“In principle there may be some attraction in the idea that the courts should intervene to protect procedural rights without seeking to pre-judge whether the breach of natural justice was “technical” or “substantial”. There are, indeed, statements in some of the cases which lend support to this idea. However, the preponderance of authority seems now to point to the other way. This is perhaps inevitable. In particular, the discretionary nature of the various judicial review remedies, and the natural unwillingness of courts to seem to be acting in vain, combine to deprive of such a remedy the litigant who is perceived to have no chance of eventual substantive success. To an extent the issue becomes purely linguistic. Should one say that a technical breach of natural justice has occurred but that in the exercise of discretion no remedy will be granted ? Or should one say that because no substantial prejudice appears to have occurred there has been no breach of natural justice?”

“Kien sostna Lord Bridge fil-kawza “**Lloyd vs McMahon”** tal-1987 citata f`pagna 335 tal-*Judicial Review Handbook* (1994) –

““the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates”.

“Il-premess ighodd kemm ghal fejn il-pretensjoni attrici tolqot l-Art 469A(1)(a) kif ukoll fejn tirrigwarda l-Art 469A(1)(b)(ii).

“Fil-kaz tas-subinciz (ii), apparti l-principji tal-gustizzja naturali, id-disposizzjoni titkellem ukoll dwar *htigiet procedurali mandatorji fit-twettiq ta’ l-eghmil amministrattiv.* Fis-sentenza tal-1985 tal-House of Lords fil-kawza ‘**Council of Civil Service Unions and Others v. Minister for the Civil Service’** inghad hekk minn Lord Diplock –

““I have described the third head as ‘procedural impropriety’ rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in

the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

"Qabel ma tghaddi biex tqis x`irrizulta mill-kumpless tal-provi dwar il-pretensjoni attrici skond l-Art 469A(1)(a) u l-Art 469(1)(b)(ii), din il-Qorti se tghaddi ghall-analizi tal-Art 469A(1)(b)(iii).

"Fil-kuntest ta` din l-ahhar disposizzjoni, jidhol l-element ta` dak li huwa "ragonevoli" (*reasonableness*) u li ghandu jkun segwit mill-awtorita` pubblika meta tiddeciedi jew tezercita d-diskrezzjoni taghha.

"**H.W.R Wade** ("**Administrative Law**") jikkumenta hekk –

""A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is intended to do so – he must not in the exercise of his discretion do what he likes but what he ought. In other words, he must by the use of his reason ascertain and follow the course which reason directs. He must act reasonably."

"Ikompli hekk –

""The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the court's function to look further into its merits.

"With the question whether a particular policy is wise or foolish the court is not concerned ; it can only interfere if to pursue it is beyond the powers of the authority. As Lord Halisham L.C. has said [in re W (An Infant) – 1971 – A.C. 682 at 700] two reasonable persons can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable.This is not therefore the standard of 'the man on the Clapham omnibus'. It is the standard indicated by a true construction of the Act which distinguishes between what the statutory authority may or may not be authorised to do. It distinguishes between proper use and improper abuse of power. It is often expressed by saying that the decision is unlawful if it is one to which no reasonable authority could have come."

"Lord Greene MR fil-kawza **"Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation"** [1948] 1 KB 223 ighid hekk –

""It is true that the discretion must be exercised reasonably. Now what does that mean ? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretion often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a

> *general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably.' Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the power of the authority. Warrington LJ in Short v Poole Corporation [1926] Ch 66 at 90, 91 gave the example of the red-haired teacher dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it may be described as being done in bad faith ; and, in fact, all these things run into one another."*

"Dwar *irrelevant considerations* Lord Esher MR fil-kawza **<u>"R. vs St. Pancras Vestry"</u>** (1890) qal hekk –

> ""*they must fairly consider the application and not take into account any reason for their decision which is not a legal one. If people who have to exercise a public duty by exercising their discretion take into account matters which the courts consider not to be proper for the exercise of their discretion, then in the eyeof the law they have not exercised their discretion"*

"In linea ta` principju, il-ligi trid li fit-tmexxija tal-amministrazzjoni pubblika ghandu jkun hemm kejl minimu li jiggarantixxi t-trasparenza. Jekk l-eghmil jirrizulta li jkun irritwali jew addirittura kontra l-ligi, hemm ic-cittadin ikollu kull jirrikorri ghall-intervent tal-Qrati sabiex jistharrgu dak l-eghmil u, jekk ikun il-kaz, jiddikjaraw dak l-eghmil null, invalidu jew minghajr effett. Naturalment il-prova tispetta dejjem lil min jallega.

"Fl-isfond tal-premess, u fuq l-iskorta tal-assjem tal-provi li ghalihom diga` ghamlet riferenza, din il-Qorti hija tal-fehma illi l-kumpannija attrici ma ppruvatx b`mod sodisfacjenti sal-grad rikjest mil-ligi la l-kawzali u lanqas it-talbiet taghha skond id-disposizzjonijiet li ccitat mill-Art 469A tal-Kap 12.

"Fl-istadju tal-protest gudizzjarju, wara li ttiehdet kontriha d-decizjoni mill-Awtorita`, il-posizzjoni ta` CCD ma kienx il-ksur tal-Kostituzzjoni skond is-subinciz (1)(a). Il-protest gudizzjarju huwa car u inekwivoku. CCD marret ghas-subincizi tal-Art 469A li jittrattaw l-*ultra vires.*

"Din il-Qorti m`ghandhiex prova illi fil-kaz tal-kumpannija attrici ma kienx hemm smigh xieraq jew lezjoni tal-principji tal-gustizzja naturali.

"Kienu esebiti bhala prova l-atti tal-procedimenti quddiem il-VRT Advisory Board.

"Ibda biex il-kumpanija attrici ma tistax tghid li fid-decizjoni li ttiehdet kien hemm kaz ta` *nemo judex in causa propria.* Irrizulta li l-Board huwa mahtur mill-Awtorita` biex jaghmel rakkomandazzjonijiet fil-kwadru tas-setghat li l-Awtorita` ghandha skond il-ligi. Il-membri tal-Board huma pero` indipendenti mill-Awtorita` u ghamlu l-istharrig taghhom awtonomu.

"L-assjem tal-provi juri li l-kumpannija attrici kienet taf bl-ilmenti li saru kontra l-operat taghha u fiz-zewg kazi nghatat l-opportunita` li tispjega l-posizzjoni taghha u tiddefendi ruhha. Mhux mehtieg li procediment bhal dak kondott quddiem il-Board ikun hekk formali li jsir jixbah dak li sehh quddiem tribunal gudizzjarju. Ghalkemm il-Board stabilixxa l-procedura tieghu, kollox tmexxa bi trasparenza. Il-Board sema` lil min ilmenta, sema` lil terzi, sema` wkoll lill-kumpannija attrici jew rapprezentanti taghha fiz-zewg kazi, ha decizjoni fuq il-fatti li kellu quddiemu, fisser id-decizjoni tieghu u ghamel rakkomandazzjoni lill-Awtorita` li mxiet skond ir-rakkomdazzjonijiet li kellha. L-Awtorita` ma waqfitx hemm izda meta baghtet l-avviz ta` terminazzjoni lill-kumpannija attrici fissret fid-dettall ir-ragunijiet ghala kienet ittiehdet dik id-decizjoni. Certament dan ma kienx kaz fejn l-Awtorita` naqset f`dan is-sens kif ilmentat il-kumpannija attrici.

"Ma jistax jinghad illi l-Awtorita` mxiet b`mod irragonevoli meqjus il-fatt li d-decizjoni kienet il-frott ta` process ta` stharrig li kien kondott minn persuni indipendenti.
"U fid-decizjoni li hadet l-Awtorita` applikat il-kuntratt bejn il-partijiet li kien rifless ta` dak li kienet tghid is-Sitt Skeda tar-Regolamenti.

"Kull kaz ghandu l-fattispeci partikolari tieghu. Tghid mill-ewwel illi qieset il-fatti li rrizultaw fil-kawzi li kienu decizi mill-Qorti tal-Appell f`"**<u>Borg vs Awtorita` dwar it-Trasport Pubbliku</u>**" (op. cit.) u f`"**<u>Cassar vs Awtorita` </u>dwar it-Trasport ta` Malta**" (deciza fil-25 ta` Jannar 2013) u tghid illi l-fatti hemm – specjalment tat-tieni kaz – huma differenti minn dak tal-lum. Tal-lum huwa kaz fejn din il-Qorti ma tirriskontrax prova tal-lanjanzi li dwarhom ilmentat il-kumpannija attrici. Ix-xoghol tal-qorti mhuwiex li sservi ta` appell jew ta` revizjoni tad-decizjoni tal-Awtorita` izda li tqis jekk id-decizjoni li hadet l-Awtorita` kenitx taqa` fil-parametri tal-ligi.

"Il-Qorti tal-Appell fis-sentenza taghha tal-11 ta` Mejju 2010 fil-kawza "**<u>Fava pro et noe vs Supretendent tas-Sahha Pubblika noe et</u>**" esprimiet il-hsieb taghha bl-aktar mod car –

> *""F'kaz li l-qrati ordinarji jigu mitluba jistharrgu ghemil amministrattiv, il-kompetenza taghhom hi limitata biex tordna li tittiehed decizjoni jew biex thassar dik l-istess decizjoni, pero` ma jaslu qatt biex huma stess jiehdu d-decizjoni flok l-awtorita` kompetenti. Jekk ligi tvesti diskrezzjoni f'xi awtorita`, hija dik l-awtorita` li trid tuza dik id-diskrezzjoni u tiehu d-decizjoni ; jekk id-decizjoni li tittiehed tigi mhassra, il-kwistjoni tigi rimessa mill-gdid lill-awtorita` biex dik tiehu d-decizjoni taghha kif suppost u fit-terminu tal-kunsiderazzjonijiet kollha rilevanti …"*

"Ghalhekk l-ewwel zewg talbiet qeghdin jigu michuda.

"2) <u>It-talbiet l-ohra attrici</u>

"Billi l-ewwel zewg talbiet qeghdin jigu michuda, dan ghandu l-konsegwenza li t-tlieta talbiet l-ohra qeghdin jigu michuda wkoll.

"Ikkunsidrat :

"VII. <u>Il-kontrotalba</u>

> "Skond il-ftehim bejn il-partijiet, li sar a tenur tar-Regolamenti, kellha tkun fis-sehh garanzija ta` Lm10,000 favur l-Awtorita`. Wara s-sejba tal-ewwel ksur (*breach of contract*), l-Awtorita` thallset Lm5,000 mill-garanzija. Irrizulta li l-garanzija baqghet ridotta ghal Lm5,000 ghaliex CCD ma rristabbilhietx il-garanzija lura ghall-figura ta` Lm10,000 kif kien patwit u kif kien stabbilit fir-Regolamenti. Wara s-sejba tat-tieni ksur, l-Awtorita` thallset l-bilanc li kien ghad hemm fil-garanzija u cioe` Lm5000. Baqghet ghalhekk skoperta ghal Lm5000 billi fil-kaz tat-tieni ksur, il-penali stabbilita kienet ta` Lm10,000. Ghal din il-Qorti, il-kontrotalba hija ppruvata."

L-Appell

3. Is-socjeta` attrici appellat minn din is-sentenza b'rikors tat-8 ta' Lulju 2013, u l-aggravji taghha jistghu jigu sintetizzati hekk: [1] illi l-ewwel Qorti naqset milli taghmel apprezzament u tgharbel fil-fond il-provi mressqa u milli tapplika l-principji mill-gurisprudenza u mill-awturi ghall-fatti tal-kaz, [2] illi l-Advisory Board [il-Bord] mhuwiex indipendenti mill-Awtorita` konvenuta u barra minnhekk ma gewx segwiti r-regoli tal-gustizzja naturali u tal-*buon* amministrazzjoni; [3] illi mhux biss ma kienx hemm ghanijiet xierqa jew kunsiderazzjonijiet mhux rilevanti, izda kien hemm arbitrarjeta` u nuqqas ta' *reasonableness* fid-decizjoni tal-Awtorita` tat-22 ta' Dicembru 2005 u, [4] illi hija dejjem imxiet b'mod rigoruz mar-regolamenti stabbiliti halli jsiru t-testijiet tal-VRT u qatt ma kisret l-ebda parti tal-ftehim u ghalhekk ma ghandha thallas ebda somma lill-Awtorita` konvenuta.

4. Titlob ghalhekk lil din il-Qorti sabiex tvarja s-sentenza appellata billi tikkonfermaha f'dik il-parti fejn cahdet l-ewwel eccezzjoni tal-Awtorita` konvenuta, thassarha u tirrevokaha f'dik il-parti fejn laqghet l-eccezzjonijiet kollha tal-Awtorita`; tvarjaha billi tilqa` t-talbiet kollha tas-socjeta` attrici;

thassarha f'dik il-parti fejn laqghet l-ewwel u t-tieni domanda tal-kontro-talba tal-Awtorita` konvenuta, tichad l-istess kontro-talba u tikkundanna lill-Awtorita` konvenuta thallas l-ispejjez kollha.

5. B'risposta tal-appell datata 26 ta' Lulju 2013, l-Awtorita` konvenuta, ghar-ragunijiet hemmhekk premessi, titlob lil din il-Qorti sabiex tichad it-talbiet tas-socjeta` attrici u tikkonferma s-sentenza.

L-Aggravji

L-Ewwel Aggravju u t-Tieni Aggravju

6. Permezz tal-ewwel aggravju s-socjeta` attrici tilmenta illi l-ewwel Qorti injorat ghal kollox certu provi li jsostnu t-tezi taghha u li huma determinanti ghall-vertenza in dizamina. Tissottometti illi damet xahar u nofs bil-VRT *garage* maghluq sakemm irnexxilha timpjega VRT *tester* iehor, stante illi dak li kien hadmilha kien telaq f'Marzu 2004. Tghid ukoll illi, minkejja li hi dejjem osservat ir-regoli kollha tal-ftehim u dejjem avzat lill-Awtorita` meta kellha xi problema, ma sabet ebda appogg fir-rigward min-naha tal-Awtorita` konvenuta.

Xahar wara li kienet impjegat lil Adrian Stellini bhala *tester*, is-socjeta` attrici rceviet ittra mill-Awtorita` konvenuta sabiex tidher quddiem l-Advisory Bord rigwardanti l-vettura Austin registrata bin-numbru FAW-895 li kienet ghaddiet mit-test fil-21 ta' Gunju 2004. Tilmenta li, ghalkemm il-Bord allega li l-

windscreen kien imtebba' u ghalhekk skont il-Bord il-vettura ma kellhiex tghaddi mit-test, l-attrici ma kinitx inghatat l-opportunita` li tezamina l-*windscreen* peress li l-Bord kien diga` baghat lil sid il-vettura sabiex jirrangah. Ghalhekk is-socjeta` attrici tilmenta li hi ma kinitx fil-pozizzjoni li tikkontesta l-prova dwar il-*windscreen*.

7. Dwar dik l-istess vettura, is-socjeta` attrici tilmenta li l-Board l-ewwel irrakkomanda li jinghatalha *verbal warning*, imbaghad erba' xhur wara l-akkadut, giet rinfaccjata bl-allegazzjoni ta' ksur tal-ftehim bir-rizultat li ttiehed mill-garanzija bankarja l-ammont ta' hamest elef liri Maltin (Lm5,000) minhabba dan il-ksur.

8. Tilmenta wkoll li, fil-laqgha li saret fit-3 ta' Novembru 2004 quddiem il-Bord dwar vettura ohra registrata bin-numru IAZ- 449, lis-socjeta` attrici sarulha domandi dwar il-vettura DAL-027 li kellha *passed test* minn Adrian Stellini ftit tal-jiem qabel, b'dan illi ma setghux jippreparaw difiza tajba fir-rigward bir-rizultat li kien hemm nuqqas ta' *equality of arms*. Fir-rigward tal-vettura numru DAL-207 l-attrici tghid li t-*test* sar mit-*tester* taghha Adrian Stellini u ghaddiha *passed test* jigifieri kienet tajba ghat-triq.

9. Taghmel referenza wkoll ghall-mandat ta' inibizzjoni li hija ghamlet kontra l-Awtorita` konvenuta, fejn il-Qorti fid-9 ta' Dicembru 2004, kienet iddecidiet

billi astjeniet milli tqis it-talba inkwantu l-Awtorita` konvenuta kienet iddikjarat illi ma kinitx qed tishaq izjed fuq it-theddida li tirtiralha l-licenzja.

10. Is-socjeta` attrici tilmenta wkoll mill-fatt illi meta l-ewwel Qorti titkellem fuq rapporti dettaljati, din qeghdha titkellem fuq ir-rapporti li l-Bord ghadda lill-Awtorita` konvenuta u mhux lilha, u dan imur kontra l-principju tal-*audi alteram partem* u l-indipendenza tal-Bord. Hija ssostni illi persuna li jkollha tidher quddiem il-Bord ghandu jkollha pre-avviz tal-proceduri kontra taghha, inkluz l-akkuzi u l-konsegwenzi li johorgu mill-istess.

11. L-Awtorita` konvenuta tirribatti billi tghid illi l-ewwel Qorti gharblet il-provi u ghamlet apprezzament tajjeb taghhom. Hija tkompli tispjega hekk dak li fil-fatt sehh:

> “Jigi rilevat ukoll li fir-rigward taz-zewg istanzi koncernanti l-vetturi bin-numri ta' registrazzjoni FAW-895 u DAL-027 rispettivament, is-socjeta' appellanti giet debitament notifikata bil-Iaqghat li kienu ser jinzammu quddiem il-*VRT Advisory Board* u dana bil-ghan li s-socjeta' appellanti tinghata l-opportunita' tiddefendi l-posizzjoni taghha billi tispjega l-verzjoni taghha ta' kif sehhu dawn iz-zewg episodji u kif ukoll ittella' kwalunkwe xhieda li jidhirlha necessarju sabiex issahhah il-posizzjoni taghha, kif effettivament ghamlet peress illi fiz-zewg kazijiet xehed rappresentant taghha u kif ukoll tellghet lit-*tester* taghha Adrian Stellini biex jixhed. Kif jirrizulta mill-ittri datati 15 ta' Novembru 2004 (fo171 sa fo173) u tal-1 ta' Ottubru 2004 (fo174 sa fol 75) u cioe r-rakkomandazzjonijiet li l-VRT *Advisory Board* baghat lic-Chairman tal-Awtorita' appellata, dana l-VRT *Advisory Board* ma waqafx hemm fil-process ta' stharrig tieghu, ghax abbazi ta' dak mistqarr mis-socjeta' appellanti u x-xhieda migjuba minnha quddiemhu, il-Bord dehrlu li kellu jisma' terzi persuni, bhal per ezempju VRT Stations ohra involuti, is-sid ta' wiehed mill-vetturi ecc u dana bl-iskop li l-VRT *Advisory Board* ikollu stampa shiha u cara tal-fatti kollha tal-kaz qabel ma jkun jista' jaghti r-rakkomandazzjonijiet tieghu lill-Awtorita' appellata. Wara li l-VRT *Advisory Board* ta r-rakkomandazzjonijiet dettaljati tieghu lill-Awtorita' appellata, dina min-naha taghha hadet id-decizjoni finali (tenendo in conto wkoll il-kuntratt vigenti bejn il-partijiet datat 16 ta' April 2002 (diga' esebit bhala Dok. CCD1) liema kuntratt kien rifless ta' dak li kienet tghid is-Sitt Skeda tal-Motor Vehicles

> Roadworthiness Test Regulations, 1998) u ghaddiet biex tinforma lis-socjeta' appellanti permezz ta' zewg ittri dettaljati datati 22 ta' Ottubru 2004 u 20 ta' Dicembru 2004 rispettivament fejn tat motivazzjonijiet u ragunijiet cari li wassluha ghad-decizjonijiet li hadet u spjegat lis-socjeta' appellanti x'kienu l-konsegwenzi li kienet ser tissubixxi l-istess socjeta' appellanti minhabba n-nuqqasijiet serji ravvizati. Certament mhuwiex il-kaz li l-Awtorita' appellata naqqset kif ilmentat mis-socjeta' appellanti!"

12. L-Awtorita` konvenuta tkompli tispjega li dwar il-problema tas-socjeta` attrici sabiex ssib *tester* gdid tghid li dan kollu ma ghandu x'jaqsam xejn mal-mertu tal-kaz odjern. Dwar il-fatt li hija ma regghetx rat il-*windscreen* taghmel referenza ghal dak li qal Adrian Stellini, it-*tester* tas-socjeta` attrici, li ammetta li kien minnu li l-*windscreen* inkwistjoni kien *failing item*. Dwar il-vettura FAW895 tghid li minn imkien ma jirrizulta illi kienet inghatat xi *verbal warning*, u dwar il-vettura DAL027 tghid li ma ngabet ebda prova li s-socjeta` attrici ma nghatatx zmien biex tipprepara d-difiza taghha. Rigward din l-ahhar vettura tghid li din ma ghaddietx it-test fuq 14-il nuqqas u dan 4 sighat biss wara li kienet diga` giet ittestjatha mis-socjeta` attrici. Rigward il-mandat li ssemmi s-socjeta` attrici fir-rikors tal-appell taghha tghid li dan huwa prova gdida, u fi kwalunkwe kaz is-socjeta` attrici naqset milli tipprezenta l-atti kollha koncernanti l-imsemmi mandat. Dwar l-Advisory Bord tghid li dan ma kellu ebda obbligu li jghaddi r-rakkomandazzjonijiet lis-socjeta` attrici, izda kellha tkun l-Awtorita` illi tinformaha bid-decizjoni finali kif fil-fatt ghamlet.

13. Permezz tat-<u>tieni aggravju</u> s-socjeta` attrici tishaq illi l-Bord ma huwiex bord indipendenti mill-Awtorita` konvenuta, u li hija ma kellhiex *equality of arms* u ma kellhiex ic-cans li tara r-rapporti tal-Bord li nghataw biss lill-

Awtorita`. Tissottometti li l-Awtorita` li tinvestiga u dik li tiddeciedi huma haga wahda, u dan imur kontra l-Artikolu 469A(1)(a) u (b) (ii) tal-kodici fuq indikat.

14. Dwar il-komposizzjoni tal-Bord, is-socjeta` attrici tghid illi l-membri ma kienux indipendenti mill-Awtorita` u dan imur kontra l-principju tal-gustizzja naturali *nemo judex in causa propria.* Tghid li membru li ma ghandux indipendenza mill-partijiet x'aktarx li huwa parzjali favur dik il-parti. Tghid li l-provi mressqa jindikaw nuqqas ta' indipendenza u imparzjalita` tal-Awtorita` u konsegwentement kien hemm nuqqas u ksur tal-Artikolu 469A(1)(a) u (b)(ii).

15. L-Awtorita` twiegeb *inter alia* illi jirrizulta illi l-Bord kien kompost minn tliet persuni ndipendenti u imparzjali li wettqu stharrig awtonomu u r-rakkomandazzjonijiet gew iffirmati minnhom kollha. Inoltre s-socjeta` attrici nghatat l-opportunita` li tikkjarifika ruhha, izda l-evidenza li r-rizultat ma setghetx tigi nnegata.

Konsiderazzjonijiet tal-Qorti

16. Din il-Qorti tibda bl-osservazzjoni li kif jirrizulta car mis-sentenza appellata l-ewwel Qorti ghamlet sintezi tal-fatti li jirrizultaw mill-provi fejn hemm indikat b'mod car li [1] il-Bord mahtur mill-Awtorita` biex jaghmel l-investigazzjoni tieghu dwar iz-zewg kawzi meritu tal-kawza odjerna kien kompost minn tliet persuni independenti u li ma kellhomx rabta mal-istess Awtorita`, [2] li l-attrici kienet inghatat opportunita` adegwata sabiex tiddefendi

l-kaz taghha quddiem il-Bord u [3] kif ukoll jirrizulta mill-provi, is-socjeta` attrici fiz-zewg kazijiet inghatat ir-raguni ghaliex giet misjuba hatja li kisret il-kundizzjonijiet tal-kuntratt.

17. Dwar l-ewwel fattur, din il-Qorti tirrileva li kif jirrizulta mix-xhieda ta' Lino Abela[2] li, ghalkemm il-Bord kien inkarigat mill-Awtorita` biex jikkonduci l-investigazzjoni ta' dawn iz-zewg kazijiet, il-membri kienu indipendenti mill-Awtorita`. Ghalhekk hija fattwalment insostenibbli l-allegazzjoni tas-socjeta` attrici li l-Bord kien nieqes minn dik l-imparzjalita' rikjesta fi tribunal li jrid jeddeciedi xi haga. Jigi osservat ukoll li l-fatt li membri teknici tal-Awtorita` kienu prezenti waqt is-smiegh tal-kazijiet ma jimmilitax kontra din il-konkluzjoni u ma jdghajjifx l-imparzjalita` tal-Bord.

18. Dwar it-tieni fattur, din il-Qorti tosserva li mill-atti jirrizulta li l-attrici kellha opportunita` adegwata sabiex taghti l-verzjoni taghha. Dan jirrizulta car mill-verbali tal-udjenzi mizmuma quddiem il-Bord, li matulhom instemghu rapprezentanti tas-socjeta` u t-*tester* li kien jahdem fil-*garage* taghha, kif ukoll anke terzi persuni. Jirrizulta li l-Bord ghamel indagini profonda tal-fatti u ma qaghditx biss fuq dak rapportat lilu.[3]

19. B'mod aktar specifiku din il-Qorti taghmel is-segwenti osservazzjonijiet.

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[2] Fol.384
[3] Foll.71 - 85

20. Dwar l-ilment tas-socjeta` attrici, li hija kellha d-dritt li tara l-prova tal-*windscreen* u tikkontestaha u wkoll li tigi nfurmata jekk it-*tester* Adrian Stellini kienx naqas minn xogholu, issir referenza ghall-minuti tal-laqgha tal-Bord tal-4 ta' Awwissu 2004[4] fejn l-istess Adrian Stellini, it-*tester* tas-socjeta` attrici li wettaq il-VRT *test* fuq il-vettura ta spjegazzjoni li giet registrata hekk:

> "...he recalls that the attention of the owner of vehicle FAW895 was drawn to the fact that since the windscreen was unserviceable, the vehicle would fail the VRT test. They therefore phoned the person who they usually engage to change windscreens and he said he would be going. They decided that in the meantime they would carry on with the VRT test. Mr Stellini said that the person who had to go and change the windscreen did not turn up although each time they had called him he said he would be going. As the vehicle had otherwise passed the test and the windscreen was going to be changed, they issued a VRT pass certificate and gave it to the vehicle owner...omissis...it was agreed that he would return to change the windscreen. However, the vehicle owner did not return to change the windscreen and used the VRT pass certificate which he had been given."

21. Fic-cirkostanzi din il-Qorti ma tarax kif is-socjeta` attrici setghet giet pregudikata ghax allegatament ma ratx il-*windscreen*, meta l-addetti mal-istess socjeta` ammettew li l-vettura ma kellhiex tghaddi mit-test tal-VRT minhabba d-difett fil-*windscreen*. Ghaldaqstant dan l-ilment tas-socjeta` attrici huwa fattwalment insostenibbli, anzi jinsab kontradett mill-provi mressqa minnha.

22. Dwar it-tielet fattur, il-Qorti tosserva li l-allegazzjoni ta' arbitrarjeta` fid-decizjoni tal-Awtorita` hija gratuwita ghall-ahhar. Fiz-zewg ittri mibghuta lis-socjeta` attrici, kemm dik tat-22 ta' Ottubru 2004[5] kif ukoll dik intestata *"Avviz*

[4] Fol 76
[5] Fol.39

ta' Terminazzjoni ta' Awtorizzazzjoni" datata 20 ta' Dicembru 2004[6] l-Awtorita` tat ir-ragunijiet tad-decizjoni taghha. Fl-ewwel ittra, li tirrigwarda l-vettura FAW895 taghti d-dettalji tal-ksur ravvizat, u fit-tieni ittra li hija dettaljata hafna spjegat ghaliex l-Awtorita` hadet id-decizjoni li hadet. Zgur li ma kienx hemm arbitrarjeta` ghax, kif fuq gia rilevat, l-Awtorita` strahet fuq l-investigazzjoni maghmula minn Bord indipendenti u li fihom instemghu rapprezentanti jew addetti mas-socjeta` attrici. Ghalhekk dan l-ilment huwa gratuwitu u huwa kuntrastat bi provi dokumentali.

23. Rigward l-ilment illi l-Bord l-ewwel irrakkomanda *verbal warning*, izda erba' xhur wara hija giet rinfaccjata bi ksur tal-ftehim, jinghad illi dan il-*verbal warning* ma jirrizulta minn ebda dokumentazzjoni pprezentata fil-kors ta' dawn il-proceduri. Id-dokumenti kollha pprezentati in atti juru li l-Bord ha din il-kwistjoni bis-serjeta` u kkunsidraha bhala wahda gravi u rrakkomanda illi jittiehdu l-passi necessarji skont ir-Regolamenti.

24. Dwar l-ilment tas-socjeta` attrici illi ghalkemm fit-3 ta' Novembru 2004 Christopher Sammut bhala operatur taghha, kellu jitla` quddiem il-Board dwar il-vettura IAW449, huwa gie mistoqsi dwar vettura DAL027, jinghad illi lanqas din il-kontestazzjoni tas-socjeta` attrici ma hija sorretta b'xi tip ta' prova. Anzi fir-rigward jirrizulta li, filwaqt illi l-avviz sabiex huwa jidher quddiem il-Bord dwar il-vettura IAW449 kien ghat-3 ta' Novembru 2004[7], il-laqgha dwar il-

[6] Fol.40
7 Fol 126

vettura DAL027 sehhet fl-10 ta' Novembru 2004[8] u ghalhekk l-allegazzjoni tas-socjeta` attrici hija kontraddetta mid-dati in atti tal-laqghat relattivi.

25. Dwar il-Mandat ta' Inibizzjoni li hija ghamlet fil-konfront tal-Awtorita` konvenuta sabiex tinibiha milli tirtiralha l-licenzja, din il-Qorti hi tal-fehma li dan huwa rrelevanti ghall-finijiet ta’ dan l-appell.

26. Fir-rigward tal-ilment taghha illi ma giex segwit il-principju tal-*audi alteram partem* ghaliex l-Bord ghamel ir-rakkomandazzjonijiet dettaljati lill-Awtorita` konvenuta minghajr ma ghaddihom lis-socjeta` attrici, din il-Qorti tosserva li l-Bord kien inkarigat mill-Awtorita’ biex jinvestiga l-kaz u, *inter alia*, jisma’ lir-rapprezentanti tas-socjeta` attrici kif fil-fatt ghamel, u l-Awtorita` mxiet fuq ir-rizultanzi tal-Bord. Dan ifisser li l-Awtorita` hadet konjizzjoni ta’ dak kollu li ghamel u sema’ l-Bord, inkluz il-provi mressqa mis-socjeta` attrici u agixxa fuq dak prezentat lilu. Kien ikollha element ta’ validita` s-sottomissjoni tas-socjeta` attrici li kieku l-Bord wasal ghall-konkluzjoni li ma kienx hemm ksur u l-Awtorita` agixxiet kontra dik ir-rakkomandazzjoni u hadet il-passi li hadet.

27. Ghaldaqstant dawn l-aggravji mhumiex gustifikati u qed jigu michuda.

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8 Fol 80

It-Tielet u r-Raba' Aggravju

28. Permezz tat-<u>tielet aggravju</u> s-socjeta` attrici tilmenta mill-fatt illi kien hemm arbitrarjeta` lampanti fid-decizjoni tat-22 ta' Dicembru 2005, b'dan li l-Awtorita` vvjolat il-principju ta' proporzjonalita` inkwantu d-decizjonijiet li hadet kienu drastici fic-cirkostanzi. Tghid li b'rizultat ta' dan l-ghemil amministrattiv hija sofriet pressjoni finanzjarja, gie ddanneggjat l-isem taghha u sofriet danni.

29. Tissottometti wkoll illi jezisti l-element ta' delitt jew kwazi-delitt rikjest *ai termini* tal-Artikolu 469A(5) tal-Kap. 12 sabiex ikun hemm lok ghall-hlas tad-danni. Tissenjala li hi kienet kostretta taghlaq il-VRT Garage u li qed iggarrab hsarat kbar fil-kompjuters minhabba li ma setghetx topera b'konsegwenza tad-decizjoni tal-Awtorita` tal-20 ta' Dicembru 2004.

30. Issostni li ma kienx hemm trasparenza u ma kienx hemm l-element ta' *reasonableness* fid-decizjoni tal-Awtorita` konvenuta.

31. L-Awtorita` konvenuta twiegeb *inter alia* illi rrizulta mill-evidenza dokumentali kif ukoll mix-xhieda illi hija agixxiet bil-bona fidi, b'mod ragjonevoli u proporzjonali u, skont il-ligi u l-kuntratt vigenti bejn il-partijiet. Hija ma setghetx ma tiehux azzjoni kontra s-socjeta` attrici meta giet rinfaccjata bi ksur daqshekk gravi. Rigward id-danni ssostni illi ma agixxietx b'mala fidi jew b'mod irragjonevoli, filwaqt li min-naha taghha s-socjeta` attrici baqghet ma ppruvatx

l-element ta' delitt jew kwazi delitt u ghalhekk m’hemmx lok ghall-hlas ta’ danni.

32. Permezz tar-raba’ aggravju, is-socjeta` attrici tissottometti illi hija dejjem imxiet b'mod rigoruz mar-regolamenti stabbiliti biex isir it-test tal-VRT fuq il-vetturi. Hija qatt ma kissret ebda parti mill-ftehim u ghalhekk ma kellha thallas ebda ammont lill-Awtorita` konvenuta.

33. Tissottometti illi l-Awtorita` konvenuta kellha l-obbligu, anke abbazi tal-ftehim ta' bejniethom, illi tagixxi b'mod korrett u mhux b’mod abbuziv u arbitrarju u, anke jekk kien hemm xi nuqqas da parti taghha, fuq il-bazi tal-principju *inademplenti non est ademplendum,* hija ma setghetx tigi moghtija tort. Tikkwota gurisprudenza nostrana u Taljana fis-sottomissjoni taghha illi inkwantu l-Awtorita` ma onoratx l-obbligi taghha naxxenti mill-kuntratt, kienet hi l-ewwel li naqset mid-dmirijiet taghha u ghalhekk il-kontro-talba ma tistax tregi.

34. L-Awtorita` konvenuta tilqa’ ghal dan l-aggravju *inter alia* billi tissottometti illi mhuwiex minnu dak allegat fil-konfront taghha li hi kkonkludiet arbitrarjament illi s-socjeta` attrici kissret il-ligi u l-kuntratt ta' bejniethom. Anzi l-provi juru li sabiex waslet ghall-konkluzjonijiet taghha hija inkarigat l-Bord sabiex jinvestiga r-rapporti. Dwar il-kontro-talba tissottometti illi l-ligi u l-kuntratt ta' bejniethom jaghmluha cara x'inhuma l-obbligi tas-socjeta` attrici

meta jkun hemm ksur tal-kundizzjonijiet, u l-Awtorita` ippruvat sodisfacentement li s-socjeta` attrici kisret il-kuntratt u li hu bazat fuq ir-Regolamenti meta naqset milli tregga lura l-garanzija bankarja ghal ghaxart elef liri Maltin (Lm10,000).

Konsiderazzjonijiet tal-Qorti

35. In tema legali din il-Qorti tirribadixxi[9]:

> "Kif pero` tajjeb osservat l-ewwel Qorti, dan l-artikolu jaghti d-diskrezzjoni relattiva ("tista'") lill-Awtorita` u mhux lill-Qorti, u meta jkun kaz ta' diskrezzjoni amministrattiva, il-Qrati ordinarji ma jistghux jissostitwixxu d-diskrezzjoni taghhom ghal dik tal-Awtorita` kompetenti, imma jistghu, meta jintalab ir-rimedju ta' judicial review, jaraw li, fl-ewwel lok, tigi ezercitata dik id-diskrezzjoni, u, fit-tieni lok, li meta tigi ezercitata, id-decizjoni tkun wahda rite et recte (li, per ezempju, tkun decizjoni intra vires il-poteri taghha, li ma ttiehdetx bi ksur tal-principju ta' gustizzja naturali, u li ittiehdu in konsiderazzjoni l-fatturi kollha rilevanti u ma ttiehdux in konsiderazzjoni fatturi irrilevanti). Id-decizjoni, pero`, ma tehodhiex il-Qorti, izda din, f'kaz li jirrizultalha xi difett fid-decizjoni jew fil-mod li ttiehdet, thassar l-istess decizjoni u tibghat il-kaz lura lill-organu kompetenti biex dan jiehu d-decizjoni fil-parametri tal-ligi.
>
> "...omissis….
>
> "Kif osservat din il-Qorti fil-kawza *Borda v. Ellul Micallef noe. et*., deciza fid-29 ta' Mejju, 2009:
>
> "Illum hu car li l-Qorti (Civili) tista' tissindika l-operat ta' kwalsiasi tribunal amministrattiv jew organu iehor b'poteri gudizzjarji jew kwazi-gudizzjarji, l-ewwelnett biex tassigura li ma kienx hemm xi enuncjazzjoni hazina jew inkompleta ta' l-ipotesi tal-ligi, u dan minghajr ma tipprova b'xi mod tissostitwixxi d-diskrezzjoni taghha ghal dik tal-Bord, kif ukoll biex tassigura li l-organu kompetenti jkun, fil-fatt, wettaq id-dmirijiet tieghu, in konformita` mal-principji tal-gustizzja naturali u tad-dritt. (ara Farrugia v. Kummissjoni Elettorali, deciza minn din il-Qorti fit-18 ta' Ottubru, 1996). Fil-kawza Dingli v. Kontrollur tad-Dwana et., deciza minn din il-Qorti fis-27 ta' Marzu, 2009, intqal ukoll li kull decizjoni li tinghata trid tkun "reasonable", fis-sens li trid tkun bazata fuq kriterji oggettivi u mgharrfa."

[9] **Carmelo u Alison konjugi Farrugia et v. L-Awtorita` ta' Malta dwar l-Ambjent u l-Ippjanar et** deciza fis-27 ta' Novembru 2009

36. Hawnhekk is-socjeta` attrici ttenni li d-decizjoni tal-Awtorita` li tirtiralha l-licenzja kienet nieqsa mit-trasparenza, mill-proporzjonalita` u mill-element ta' *reasonableness*.

37. Sabiex isir stharrig dwar jekk decizjoni amministrattiva taqax fil-parametri ta' *reasonableness* issir referenza ghall-principji ben stabbiliti fil-gurisprudenza, li gew imwaqqfa minn Lord Greene M.R., l-hekk maghrufa 'Wednesbury reasonableness test', fejn inghad:

> "the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably.' Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority…
>
> "….omissis….
>
> "The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may be still possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in them."[10]

[10]**Associated Provincial Picture Houses v. Wednesbury Corporation** [1947] EWCA Civ 1, [1948] 1 K.B. 223, Court of Appeal (England and Wales)

38. Huwa car li l-*onus probandi* tal-allegazzjoni tan-nuqqas tar-ragjonevolezza jispetta lil minn jaghmilha, f'dan il-kaz is-socjeta` attrici. Din il-Qorti tosserva illi f'ebda punt fl-aggravju ma gie specifikat liema kienu l-allegati "konsiderazzjonijiet mhux relevanti" jew nuqqas ta' "ghanijiet xierqa" fid-decizjoni mehuda mill-Awtorita` konvenuta. Lanqas ma giet ippruvata l-*mala fede*. Dak li gie sodisfacentement ippruvat hu illi, wara sejba ta' zewg infrazzjonijiet tar-Regolamenti u tal-kuntratt iffirmat bejn il-partjiet u, wara process ta' investigazzjoni, fejn gew mismugha anke rapprezentanti tas-socjeta` attrici u l-impjegati taghha, l-Awtorita` konvenuta ddecidiet, kif kellha l-fakolta` li taghmel, abbazi tal-kuntratt vigenti bejn il-partijiet.[11]

39. Wahda mill-infrazzjonijiet, dik fuq il-vettura FAW895, giet ammessa mit-tester inkarigat mill-istess socjeta` attrici, filwaqt li inkwantu ghall-infrazzjoni fuq il-vettura DAL027, instabu 14-il difett fil-vettura erba' sighat biss wara illi l-vettura kienet ghaddiet it-test maghmul mis-socjeta` attrici. L-Awtorita` konvenuta dehrilha li s-socjeta` attrici ma rnexxiliex tipprovdi difiza adegwata u sodisfacjenti ghal dawn in-nuqqasijiet[12] u din il-Qorti ma tirravviza xejn irragjonevoli, impropriju jew sproporzjonat fid-decizjoni tal-Awtorita` illi tirtiralha l-licenzja.

40. Inkwantu ghall-ilment dwar il-proporzjonalita` din il-Qorti tosserva li l-ghan tal-ligi [ir-Regolamenti] u tal-kuntratt bazat fuqhom, huwa li l-istat jassigura li l-vetturi li jkunu fit-triq ikun *roadworthy* fl-interess tac-cittadini li juzaw kemm it-toroq u kif ukoll il-bankini f'Malta, b'hekk jitnaqqas drastikament ir-riskju ta' incidenti, anke fatali, kawzati minn vetturi li ma jkunux tajbin ghat-triq. Din il-Qorti ma tara xejn sproporzjonat bejn l-ghan tal-ligi u l-mizuri imposti mir-Regolamenti, liema mizuri fil-

[11] Fol 7
[12] Vide fost ohrajn xhieda ta' Brian Farrugia a fol 300 et seq u ta' Lino Abela a fol 316 et seq

kaz odjern kienu wkoll inkorporati f’kuntratt li s-socjeta` attrici volontarjament iffirmat mal-Awtorita`.

41. Fin-nuqqas ta’ tort da parti tal-Awtorita`, kwalsiasi danni li qed issofri l-istess socjeta` attrici b'konsegwenzi tad-decizjoni tal-Awtorita` konvenuta hija biss konsegwenza tal-agir irregolari taghha jew tal-impjegati taghha, u zgur ma tistax tinzamm responsabbli ghalihom l-Awtorita` konvenuta, wisq inqas tista’ tinstab responsabbli ghad-danni naxxenti minn delitt jew kwazi-delitt kif trid il-ligi.

42. B'zieda ma' dan jigi osservat li, kif tajjeb sollevat mill-Awtorita` konvenuta, hija ghandha l-funzjoni ta' regolatrici f'dan il-qasam u li kieku halliet dan il-ksur lampanti jibqa` ghaddej, kienet tkun qed tonqos mid-doveri statutorji taghha.

43. Rigward ir-raba’ aggravju, din il-Qorti taghmel referenza ghall-kunsiderazzjonijiet taghha fir-rigward tat-tielet aggravju, u tikkonferma li ma tirravviza ebda agir li jmur kontra l-principji ta' gustizzja naturali, u l-ebda inadempjenza tal-Awtorita` konvenuta mal-ftehim ta' bejn il-partijiet.[13] L-ewwel Qorti deherilha illi l-Awtorita` konvenuta ppruvat sodisfacentement illi s-socjeta` attrici naqset mill-obbligi taghha u marret kontra r-regolamenti dwar it-testijiet tal-VRT[14], u skont il-kuntratt ta' bejn il-partijiet hija kellha tregga` lura l-garanzija bankarja ghal ghaxart elef liri Maltin (Lm10,000), haga li hija baqghet ma ghamlitx.

44. Kif tajjeb osservat l-ewwel Qorti, skont il-ftehim bejn il-partijiet, li sar a tenur tar-Regolamenti, kellha tkun fis-sehh garanzija ta` ghaxart elef liri Maltin (Lm10,000)

[13] Ibid
[14] Fol 22

favur l-Awtorita`. Wara s-sejba tal-ewwel ksur, l-Awtorita` thallset hamest elef liri Maltin (Lm5,000) mill-garanzija, izda s-socjeta` attrici ma rristabbilietx il-garanzija lura ghall-figura ta` ghaxart elef liri Maltin (Lm10,000) kif kien ipprovdut fl-istess Regolamenti. Wara s-sejba tat-tieni ksur, l-Awtorita` thallset il-bilanc li kien ghad hemm u cioe` hamest elef liri Maltin (Lm5,000), izda billi fil-kaz tat-tieni ksur il-penali stabbilita kienet dik ta' ghaxart elef liri Maltin (Lm10,000), kien baqa` bilanc ta' hamest elef liri Maltin (Lm5000). Kienet ghalhekk korretta l-ewwel Qorti meta ddecidiet illi l-kontro-talba tal-Awtorita` konvenuta kienet gustifikata u kkundannat lis-socjeta` attrici thallas lill-Awtorita` konvenuta il-bilanc ta' hamest elef liri Maltin (Lm5,000), jew ahjar hdax-il elf, sitt mija, sitta u erbghin Euro sebgha u tmenin centezmu (€11,646.87).

45. Ghaldaqstant dawn iz-zewg aggravji mhumiex gustifikati u qed jigu michuda.

<u>Decide</u>

Ghal dawn il-motivi, l-Qorti qeghdha tichad l-appell tas-socjeta` attrici u tikkonferma s-sentenza appellata fl-intier taghha.

L-ispejjez taz-zewg istanzi jkunu a karigu tas-socjeta` attrici.

Silvio Camilleri Prim Imhallef	Giannino Caruana Demajo Imhallef	Noel Cuschieri Imhallef

Deputat Registratur
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