QORTI TAL-APPELL

(KOMPETENZA INFERJURI)

ONOR. IMHALLEF MARK CHETCUTI LL.D.

Illum il-Hamis 16 ta' Mejju, 2019

Numru 2

Appell Nru. 7/2019

Din l-Art Helwa

vs

L-Awtorita tal-Ippjanar

Il-Qorti,

Rat ir-rikors tal-appell tal-Awtorita tal-Ippjanar tal-4 ta' Marzu 2019 mid-decizjoni tat-Tribunal tal-Appelli dwar l-Informazzjoni u l-Protezzjoni tad-Data tat-12 ta' Frar 2019;

Rat ir-risposta ta' Din L-Art Helwa li ssottomettiet illi d-decizjoni tat-Tribunal hi tajba u l-appell ghandu jigi michud;

Rat l-atti kollha u semghet lid-difensuri tal-partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:
Dwar l-ewwel agravju cioe li:

Li l-ewwel raguni tar-rifjut moghtija mill-Awtorita ma kienetx motivata mil-Kummissarju u ghalhekk tali decizjoni hija nieqsa minn motivazzjoni sobrija bi ksur lampanti tal-principji tal-gustizzja naturali fosthom dak tas-smiegh xieraq. Li l-Kummissarju kellu talba quddiemu ai temini tal-artikoli 30(1), 29, 30 u 36(3) (a) tal-Freedom of Information Act u l-Aarhus Convention u fid-decizjoni tieghu xejn minn dan ma semma l-Kummissarju.

Kif gie konstata fil-gurisprudenza taghha dak li huwa mehtieg huwa li l-partijiet ikunu f'pozizzjoni li jaghrfu r-raguni li waslet biex it-talbiet /eccezzjonijiet/l-aggravji taghhom ikunu qed jigu akkolti jew respinti. (vide Prim Awla sede Kostituzzjonali per Imh felice John Tanti vs Avukat Generali 17.6.2014).

Dan it-Tribunal jissolleva wkoll li li "The requirement of fairness covers the proceedings as a whole and not only those in oral hearing. The question of whether a person has had a fair hearing is thus approached by looking at the whole proceedings although a particular incident may have a decisive effect" (article 6 of the European Convention on human rights – The right to a fair Trial ta' Andrew Grotrian.

Mill-atti jirrizulta li l-Kummissarju mexa kif obbligat li jimxi skond il-ligi cioe li baghat ghal veduti tal-Awtorita u l-Awtorita rrispondiet lil Kummissarju fl-ittra taghha tad-19 ta' Marzu 2018 u anke talab laqgha mal-Awtorita appellanti.

Li l-Kummissarju fid-decizjoni tieghu tas-16 ta' Mejju 2018 l-Kummissarju isemmi r-ragunijiet li taghtu l-Awtorita f'para 8 tad-decizjoni ghar-rifjut taghha u ghalhekk ma jistghax jinghad li l-Kummissarju ma semmiex x'kienu dawn ir-ragunijiet tal-Awtorita appellata.

Li l-konkluzjoni tal-Kummissarju f'para 18 tal-istess decizjoni hija bazata fuq dak li gie sottomess lilu miz-zewg partijiet u dan kif imsemmija fl-istess decizjoni tieghu u mhux talli hija motivata izda talli l-Kummissarju jikkonkludi u jispjega ghaliex l-Awtorita ma kellhiex ragun.

Ghaldaqstant dan l-agravju qed jigi michud.

Dwar it-tieni agravju:
It-tieni agravju huwa l-Kummissarju ghamel applikazzjoni u interpretazzjoni ghal kollox zbaljata tal-artikolu 5(3)(b) tal-Freedom of Information Act u dana stante li l-ligi tal-Ippjanar ma ssemmix li anke l-laqghat tal-Kunsill Ezekuttiv meta qed jikkonsidra proposta ta' skedar dawn ghandhom isiru fil-pubbliku u ghalhekk anke l-minuti ta' dawn il-laqghat huma wkoll jibqghu interni u l-izvelaw taghhom huwa ezentat that l-artikoli 5(3)(b) u l-artikolu 36(1) tal-Freedom of Information Act .

Illi dan it-Tribunal jaghmel distinzjoni bejn il-minuti f'dan il-kaz ta' tlett laqghat ordnati mil-Kummissarju u l-evaluation reports.

Illi skond l-Kap 496 tal-Ligijiet ta' Malta l-artiklu 35 (2) jaghmilha cara li : "A document may be withheld in accordance with the provisions of this Part only if it contains matter in relation which the public interest that is served by non-disclosure outweighs the public interest in disclosure.

L-artiklu 36 tal-istess Kap jaghmilha cara li:
36(1) subject to article 35 and to subarticles (2) and (3) hereof, a document is an exempt document if its disclosure under this Act would disclose matter in the nature of, or relating to, opinions, advice or recommendations obtained, prepared or recorded or consultations or deliberation that has taken place in the court of or for the purpose of the deliberative processes involved in the functions of the Government or another public authority.
(2) subarticle (1) shall not apply to a document by reason only of purely factual information contained in the document.
(3) subarticle (1) shall not apply to:
(a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts whether employed by a public authority or not including reports expressing the opinions of such experts on scientific or technical matters; or
(b) the record of or a final statement of the reasons for a final decision given in the exercise of a power or of an adjudicative function.
(4) in subarticle (3) the term "scientific or technical expert" shall be construed as excluding senior managers in public authorities.

L-artikolu 2 tal-istess Kap jiddefinixxi 'exempt document' bhala a document which is not subject to disclosure under this Act in accordance with Parts V and VI.

Din l-Art Helwa qed titlob assessment reports by various conservation architects liema rapporti l-Awtorita pprezentathom quddiem il-Prim Awla tal-Qorti Civili izda xorta ghadha tikkontendi li tali dokumenti huma dokumenti li l-Awtorita hija ezentata milli taghti access ghalihom u tikwota l-artikolu 5(3)(b) tal-Kap 496 li jghid: This Act shall not apply to documents in so far as such documents contain information the disclosure of which is prohibited by other law. Skond l-Awtorita appellant la l-ligi tal-ipjanar ma ssemmiex li l-laqghet tal-Kunsill Ezekuttiv meta jikkonsidra proposta ta' skedar ghandhom isiru fil-pubbliku, dan jirrendi l-process wiehed intern u ghalhekk kull ma jigi diskuss u kull minuta registrata fl-istess process huwa minuta u diskussjoni interna li l-izvelar taghhom hu ezentat taht l-artikolu 5(3) u 36(1) tal-Kap 496 tal-ligijiet ta' Malta.

Illi dan it-Tribunal ghalhekk filwaqt li jaghti ragun lill-Awtorita meta tghid li hija ma ghandhiex taghmel accessibbli l-minuti ta' dawn il-laqghat, ma jaqbilx izda mal-argument tal-Awtorita appellant r-rapporti li saru minn dawn il-conservation architects huma dokument ezentat a fini tal-Kap 496. Tali rapporti jekk wiehed jara l-artikolu 36 kkwotat hawn fuq, ma jaqghux taht it-tifsira ta' exempt documents stante li dawn huma reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts whether employed by a public authority or not including reports expressing the opinions of such experts on scientific or technical matters; art 36(3)(a) tal-istess Kap 496.

Kif gie ritentut fil-kaz Case T-264/04 WWF European Policy Programme v Council (2007) ECR II-911 at para 76: "The concept of a document must be distinguished from that of information. The public's right of access to the documents of the institutions covers only documents and not information in the wider meaning of the word and does not imply a duty on the part of the institutions to reply to any request for information from an individual."

Ghaldaqstant dan it-Tribunal ma jikkunsidrax il-minuti tal-laqgha bhala document mhux ezenti stante li ma jaqghax taht it-tifsira ta' document pubbliku u ghalhekk qed jilqa' parti mill-appell tal-Awtorita.

U fil-kaz T-121/05 Borax Europe Ltd v Commission (2009) II-27 (sum Pub) (Order of 11 March 2009) paras 68 and 70: "While the Community legislature has provided for a specific exception to the right of public access to the documents of the Community institutions as regards legal advice, it has not done the same for other advice in particular scientific advice, such as that expressed in the recordings at issue… It follows that scientific opinions obtained by an institution for the purpose of the preparation of legislation must, as a rule, be disclosed, even if they might give rise to controversy or deter those who expressed them from making their contribution to the decision-making process of that institution. " (sottolinear ta' dan it-Tribunal).

Illi l-Awtorita tal-Ippjanar hija awtorita pubblika u accessibbli ghal publiku u kif gie ritenut fil-kaz Case C-506-08 P Sweden v Commission 21 July (2011) l-nyr "openness in this regard that contributes to conferring greater legitimacy on the institutions in the eyes of European citizens and increasing their confidence in them by allowing divergences between various points of view to be only debated. It is in fact rather a lack of information and debate which is capable of giving rise to doubt in the minds of citizens not only as regards the lawfulness of an isolated act but also as regards the legitimacy of the decision-making process as a whole. "

Bl-accessibilita tar-rapporti li saru hija l-fehma ta' dan it-Tribunal li tali rapporti jaqghu taht it-tifsira ta' dokumenti pubbliku li huwa fl-interess pubbliku li l-pubbliku jkollu access ghalih tenut kont li l-materja ta' konservazzjoni hija materja ta' interess pubbliku.

Ghaldaqstant ghar-ragunijiet premessi dan it-Tribunal jaqta u jiddeciedi billi :
(a) Jilqa' in parte l-Appell tal-Awtorita tal-Ippjanar fir-rigward id-decizjoni tal-Kummissarju tas-16 ta' Mejju 2018 rigward il-minuti tal-ahhar tlett laqghat u
(b) jichad l-Appell tal-Awtorita tal-Ippjanar ghar-rigward l-access tar-rapporti li saru mill-esperti mqabbda minn l-istess Awtorita fir-rigward ta' Villa St Ignatius Scicluna Street San Giljan u
(c) qed jikkonferma dik il-parti tad-decizjoni tal-Kummissarju ghall-Informazzjoni u Protezzjoni tad-Data tas-16 ta' mejju 2018 li fiha cahad it-talba ta' Din l-Art Helwa ghal letter of engagement of the various conservation architects engaged by the authority to prepare the assessment reports u laqa' t-talba ghal assessment reports mitluba u jirrevokaha kwantu ghad-decizjoni tieghu li jordna lill Awtorita tipprovdi kopja tal-minuti tat-tlett laqghet li saru mill-Kunsill Ezekuttiv tal-istess Awtorita.

Ikkunsidrat

L-aggravju tal-appellant jirrigwarda dik il-parti tad-decizjoni fejn it-Tribunal ordna li l-Awtorita kellha taghti access lil kontroparti ghar-rapporti tal-esperti tal-Awtorita biex wassluh ghad-decizjoni tieghu rigward ir-rifjut tal-iskedar ta' Villa St Ignatius, Scicluna Street, San Giljan;

Il-kwistjoni fil-fehma tal-Qorti hi wahda dwar punt legali li jirrizulta mill-istess decizjoni tat-Tribunal.

Il-Qorti trid tirreferi f'dan il-kaz primarjament ghall-Att li fuqu hi mibnija d-decizjoni tat-Tribunal. Ghalhekk il-Qorti ma tistax taqbel mal-Awtorita li ghandha tmur lejn dak li jipprovdi l-artikolu 81 tal-Kap. 504. Dan l-artikolu ghandu bla dubju r-rilevanza tieghu fejn jidhol it-thaddim ta' ordni ta' skedar jew it-tnehhija tieghu pero l-kwistjoni quddiem din il-Qorti hi jekk persuna tistax titlob rapporti teknici mill-Awtorita li setghu wasluha ma tiskedax sit. Din hi kwistjoni differenti bla ebda pregudizzju ghar-regoli sostanzjali jew procedurali li jinsabu fil-Kap. 504 illum Kap. 552. L-Att dwar il-Liberta tal-Informazzjoni hi ligi intiza biex tipprovdi b'mod ampju izda b'restrizzjonijiet cari fl-istess ligi, sens ta' trasparenza u kontabilita fid-decizjonijiet , ordnijiet jew direttivi fl-amministrazzjoni pubblika li wara kollox qeghda hemm ghas-servizz tas-socjeta. Maghdud dan fil-fehma tal-Qorti r-risposta ghal kwezit maghmul hi wahda li trid tigi mistharrga mill-Kap. 496. L-Att dwar il-Liberta tal-Informazzjoni (Kap. 496) fl-artikolu 3 jaghti lil kull persuna eligibbli dritt ta' access ghal dokumenti mizmuma minn awtoritajiet pubblici salv il-varji eccezzjonijiet specifikati mill-ligi. Bla dubju l-Awtorita tal-Ippjanar hi awtorita pubblika mwaqqfa mill-ligi. Ghalkemm il-ligi titkellem dwar persuna eligibbli li ghandha jkollha dritt ghall-informazzjoni l-artikolu 2 meta jiddefinixxi 'persuna eligibbli' isemmi persuni residenti f'Malta ghal perjodu ta' hames snin jew cittadini Maltin jew stat membru tal-Unjoni Ewropea jew terzi pajjizi li maghhom hemm trattat li persuni jigu trattati bl-istess mod bhal cittadini tal-Unjoni Ewropea. Dan l-artikolu jidher prima facie ristrett ghal persuni fizici u f'dan is-sens jidher interpretatu l-Qorti fil-kawza **Environmental Landscapes Consortium Limited vs Il-Kummissarju ghall-Informazzjoni u l-Protezzjoni tad-Data et** (PA 24/05/2018). In oltre skont l-artikolu 6(2) l-applikant ossia l-persuna eligibbli ma ghandhiex bzonn tiggustifika t-talba taghha jew taghti raguni ghaliha. Hu minnu li l-artikolu 20 jsemmi d-dritt ghal dikjarazzjoni tal-konkluzzjonijiet dwar materja ta' fatt, referenza ghal informazzjoni li fuqha ibbazati l-konkluzjonijiet u ragunijiet tad-decizjoni wara decizjoni ta' Awtorita in konnessjoni ma persuna eligibbli inkluz persuna eligibbli li qed tagixxi f'isem korp guridiku. Pero l-istess artikolu jghid li dan l-

artikolu hu soggett ghad-dispozizzjonijiet tat-Taqsima V u VI cioe d-dokumenti ezentati u eccezzjoniiet ghaliha.

Dan iwassal lil Qorti biex tqis il-kwistjoni sollevata mill-Qorti fil-mori ta’ dawn il-proceduri, cioe jekk Din l-Art Helwa hiex persuna eligibbli skont il-ligi. Il-Qorti wara li semghet lil partijiet tqis illi Din l-Art Helwa qua organizzazzjoni non governattiva ma taqax fid-definizzjoni ta’ persuni eligibbli kif donnu ried il-legislatur u ghalhekk l-Awtorita ghandha ragun ghalkemm mhux ghar-ragunijiet indikati minnha fl-appell.

Decide

Il-Qorti ghalhekk qed tilqa’ l-appell tal-Awtorita ghalkemm il-kwistjoni hi wahda akkademika billi quddiem it-Tribunal gie dikjarat li Din l-Art Helwa inghatat access ghar-rapporti teknici u tirrevoka d-decizjoni tat-Tribunal tal-Appelli dwar l-Informazzjoni u l-Protezzjoni tad-Data tat-12 ta’ Frar 2019 u tqis li Din l-Art Helwa mhix persuna eligibbli kif irid il-Kap. 496 biex titlob id-dokumenti rikjesti minnha. Spejjez jibqghu bla taxxa.

Onor. Mark Chetcuti LL.D.
Imhallef

Anne Xuereb
Deputat Registratur