



QORTI TAL-APPELL

(KOMPETENZA INFERJURI)

(TRIBUNAL TA' REVIZJONI TAL-AMBJENT U L-IPPJANAR)

ONOR. IMHALLEF MARK CHETCUTI LL.D.

Illum l-Erbgha, 12 ta' Frar, 2020

Numru 2

Appell Nru. 44/2019

**Ghaqdiet non-Governattivi: Bicycle Advocacy Group; Din l-Art Helwa;
Flimkien ghal Ambjent Ahjar; Friends of the Earth Malta;
Ramblers' Association of Malta; Green House; Moviment Graffiti;
Malta Youth in Agriculture Foundation; u Ralph Cassar,
Malcolm Vella Haber, Edward Mallia, Stephen Pace,
Cristino Antonio Scerri, Adrian Mallia, u John Camilleri**

vs

**L-Awtorita tal-Ippjanar
(gia l-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar)
u l-kjamati in kawza Infrastructure Malta u
l-Awtorita ghal-Ambjent u r-Rizorsi**

Il-Qorti,

Rat ir-rikors tal-appell tat-terzi oggezzjonanti Bicycle Advocacy Group, Din l-Art Helwa, Flimkien ghal Ambjent Ahjar, Friends of the Earth Malta, Ramblers' Association of Malta, Green House, Moviment Graffiti, Malta Youth in Agriculture Foundation, u Ralph Cassar, Edward Mallia, Stephen Pace, Cristino Antonio Scerri, Adrian Mallia, u John Camilleri tas-26 ta' Novembru 2019 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-7 ta' Novembru 2019 li approvat l-izvilupp PA 9890/17 'proposed junction upgrading and road widening to existing roads and construction of nre schemed roads', maghrufa ahjar bhala l-progetti ta' central link;

Rat ir-risposta tal-Awtorita tal-Ippjanar li ssottomettiet li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

Rat ir-risposta tal-Infrastructure Malta li ssottomettiet li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

Rat ir-risposta tal-Awtorita ghall-Ambjent u r-Rizorsi li ssottomettiet li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

Illi l-aggravji huma s-segwenti:

1. Evalwazzjoni ta' alternattivi fil-process tal-EIA mhux adegwat;
2. Decizjoni bbazata fuq dokumentazzjoni li mhux accessibbli ghall-pubbliku u ghalhekk mhux suggett ghall-iskrutinju xieraq;
3. Informazzjoni u dettalji qarrieqa fl-applikazzjoni ta' zvilupp;
4. Kunflitt ta' interess tal-konsultanti u persuni li kkontribwixxu fil-process tal-EIA;
5. Nuqqas ta' osservanza tal-iStrategic Plan for Environment and Development (SPED)
6. Nuqqas ta' osservanza tan-National Transport Master Plan 2025 u tan-National Strategy for Transport 2050;
7. Nuqqas ta' osservanza tal-Pjanijiet Lokali, linji gwida u regolamenti tal-Ippjanar;
8. Ksur tal-linja gwida dwar l-izvilupp rurali;
9. Nuqqas ta' osservanza tal-National Agriculture Policy u tan-National Biodiversity Strategy and Action Plan (2012-2020);
10. Nuqqas ta' osservanza tal-Artikolu 52 tal-Kap. 552;
11. Ksur tal-Artikolu 72 tal-Kap. 552;
12. Decizjoni tal-Bord tal-Ippjanar mhux motivata jew sostanzjata;
13. Nuqqas ta' osservanza tal-ligijiet u policies rigward it-tharis tal-patrimonju kulturali;
14. Decizjoni tal-Bord tal-Ippjanar ibbazata fuq rapport u rakkomandazzjonijiet li m'għandhomx integrità xjentifika, veritiera, koerenza, konkrettezza, trasparenza, imparzjalità, kompleta u effikaci;
15. Nuqqas ta' konsultazzjoni minn kumitati u entitajiet fil-process tal-applikazzjoni'
16. Nuqqas osservanza ta' linji gwidi u regolamenti, rigward sigurta tat-toroq.

Aggravju numru 1:

Dan l-aggravju huwa dirett lejn il-process tal-valutazzjoni tal-impatti ambjentali (EIA), billi qed jigu sollevati zewg kwistjonijiet hekk kif gej:

1. Ksur tal-ligi sussidjarja 549.46 li tirregola l-process tal-EIA tenut nuqqas ta' stharrig dwar ghazliet alternattivi skont id-dispost tar-regolamenti 13 u 18, kif dan gie ukoll ordnat mill-ERA fit-termini ta' riferiment (TORS).

Illi dan in-nuqqas ta' evalwazzjoni ta' alternattivi qed jigi attribwit ghal tlett fatturi:

a. li t-tenders ghall-konstruzzjoni tat-toroq gja gew maghluqa qabel ma beda l-istudji ambjentali fuq il-progett inkwistjoni, u ghaldaqstant qed jigi sostnut li ma kien hemm ebda ghazla hlief ghall-progett li gie approvat mertu ta' dan l-appell. Skont lappellanti dan wassal ukoll biex l-Awtorita' tal-Ippjanar ma kelliex ghazla hlief li tapprova l-permess tal-izvilupp, filwaqt li rrenda l-process kollu inutli gjaladarba l-progett kien gja de facto approvat, u ghaldaqstant jirrizulta f'nuqqas serju ta' trasparenza u konsultazzjoni fil-process ta' evalwazzjoni.

b. Illi l-progett in mertu kien gja evalwat u ndikat bhala l-ahjar opzjoni fil-'cost benefit analysis' (CBA) gja kkummissjonat mill-permit holder bhala parti mill-applikazzjoni ghal fondi tal-Ewropa. Tali CBA li jissema fl-EIA ma kienx accessibli ghallpubbliku;

c. Fl-ezami tal-evalwazzjoni ta' alternattivi fid-dokument tal-EIA ma kien hemm ebda referenza ghal teknologiji alternattivi skont it-TORS mahruga mill-ERA bhala parti mill-ezami ta' alternattivi li kellhom jigu evalwati.

Illi l-Awtorita' tal-Ippjanar, il-permit holder u l-Awtorita' dwar l-Ambjent u r-Rizosi (ERA) (iktar 'l quddiem fid-decizjoni ser ikunu referuti bhala l-appellati), rribattew din l-ewwel parti tal-aggravju u saħqu fuq dan li gej:

i. Illi l-istharrig dwar l-alternattivi gie kunsidrat fid-dettal fir-rapport tal-EIA skont id-dispost tar-regolamenti tal-ligi sussidjara 549.46, u t-termini tat-TORS.

ii. Illi tali studju gie evalwat mill-Awtorita' kompetenti ossia l-ERA li kienet, li jinkludi diversi xenarji jew proposti alternattivi li jinkludi kemm 'do-nothing' sa alternattivi li jipprovdu livelli differenti ta' internventi infrastrutturali, inkluz dik mahsuba filpjan lokali.

iii. Illi l-progett huwa mahsub fl-Istrategija Nazzjonali ghat-Trasport 2050 kif ukoll fit-Transport Master Plan 2025 li kienu suggett ghall-Stima Ambjentali Strategika (SEA) fejn gie ukoll ezaminati diversi xenarji ta' alternattivi ta' nterventi fuq livell strategiku u nazzjonali;

iv. Illi l-izvilupp in mertu kien mahsub fil-Pjan Lokali, kif ukoll bhala parti mit-Trasport Master Plan fejn huwa mahsub sabiex jigi eliminat bottleneck kif ukoll 'functional conflict' bejn 'high traffic flows and urban activity at Notary Zarb Street and Mdina Road'.

Illi dan it-Tribunal ra' l-ligi sussidjara numru 549.46 fejn fir-rigward l-istharrig dwar l-ghazliet alternattivi skont id-dispost tar-regolamenti 13, jipprovdi dan li gej:

"Kull fejn ikun rilevanti, il-progetti li jaqghu fl-ambitu ta' dawn ir-regolamenti għandhom jehtiegu stħarriġ inizjali li jkun dettaljat biżżejjed u raġjonevolment eżawrjenti tal-alternattivi li jistgħu jkunu xierqa, abbażi tal-merti tekniċi, tal-fattibbiltà u tal-implikazzjonijiet u impatti ambjentali tagħhom, sabiex jkunsempifikat u ottimizzat ilproċess tal-valutazzjoni sussegwenti."

Rigward ir-rapport tal-EIA, ir-regolament 18 jipprovdi dan li gej:

"18.(1) Ir-rapport tal-VIA għandu jkopri r-rekwiżiti kollha stabbiliti fit-termini ta' riferiment mahruga millAwtorità, u għandu jinkludi tal-anqas:

[...]

(e) deskrizzjoni tal-alternattivi raġjonevoli li ġew studjati, li huma rilevanti għall-proġett u għall-karatteristiċi speċifiċi tiegħu, u indikazzjoni tar-raġunijiet ewlenin għall-għażla li tkun saret, wara li jitqiesu l-effetti tal-proġett fuq l-ambjent”;

U l-iSkeda IV dwar l-informazzjoni ghar-Rapport tal-EIA, tipprovdi dan li ġej:

“[...]

3. Deskrizzjoni tal-alternattivi raġjonevoli li ġew studjati mill-iżviluppatur (interalia, f'termini ta' disinn tal-proġett, teknoloġija, post, daqs u skala), u spjegazzjoni tar-raġunijiet ewlenin għal għażla li saret, inklużi l-effetti tal-proġett fuq l-ambjent imqabbla mal-effetti ambjentali tal-alternattivi l-oħra kkunsidrati, l-'għażla żero' (jiġifieri xxenarju li fih ma jsir ebda żvilupp) ukoll għandha titqies b'mod xieraq.”

Fil-parti rigward 'Assessment of Alternative' tat-TOR mahruġa mill-ERA qed jiġi mitlub hekk [PA 09890/17 Terms of Reference for the Preparation of an Environment Impact Assessment (October 2018)]:

“An outline of the main alternatives studied and an indication of the main reasons for this choice, taking into account the relevant environmental effects and their prevention (or optimisation) at source. The following alternatives need to be duly considered, as relevant to the development itself (or to one or more phases thereof) and its requirements and constraints:

2.1 Alternative sites

2.2 Alternative technologies

2.3 Alternative layouts (including building heights, where relevant)

2.4 Downscaling of the project, or elimination of project components

2.5 Zero option (do-nothing scenario) - i.e. an assessment of the way the site would develop in the absence of the proposed project.

[Note: The zero option should be considered in sufficient detail as a plausible scenario in the EIA, wherever relevant, and not discarded upfront without proper discussion of its implications.]

2.6 Hybrids/combinations of the above The findings of the assessment of alternatives should be summarised in a table format for ease of comparison.”

Illi b'mod sommarju, l-alternattivi prezentat fid-dokument tal-EIA, kienu s-segweni [Environment & Resources Authority (ERA) Summary of EIA Process: Mejju 2019]:

“Scenario 1 assumes junction improvements and bypass lanes to allow traffic to flow freely between Mrieħel and Rabat and includes the re-routing of traffic from Attard to Żebbuġ using the existing road network.

Scenario 2 involves the restructuring of junctions, the inclusion of bypass lanes to enable traffic to flow freely between Mrieħel and Rabat and the construction of a new road, the Attard Bypass, to re-route traffic from Attard to Żebbuġ. The Attard Bypass lies adjacent to Triq Oliver Agius, Triq Ferdinandu Inglott and Triq Tumas Chetcuti and consists of two unidirectional lanes allowing cars to travel in a westward direction.

Scenario 3 includes three main components: (i) the restructuring of junctions and the inclusion of bypass lanes to enable traffic to flow freely between Mrieħel and Rabat; (ii) the re-routing of traffic from Attard to Żebbuġ using the existing road network; and (iii) the upgrading of the junction between Triq L-Imdina and the Mrieħel Bypass to a multi-level junction including the construction of a new bi-directional flyover bypass connecting Attard and Mrieħel.

Scenario 4 also includes three components. Similar to Scenario 3, it includes the restructuring of the junctions and the inclusion of bypasses to enable free flowing traffic between Mrieħel and Rabat. This scenario also includes the upgrading of the junction between Triq L-Imdina and the Mrieħel to a multilevel junction including the construction of a new bi-directional flyover bypass connecting Attard and Mrieħel. Instead of using the existing roads to direct traffic from Attard to Żebbuġ, this scenario includes the construction of a new road, the Attard Bypass.

Scenario 5 includes the construction of a tunnel to link Mrieħel to Attard. The tunnel extends from the junction between Triq L-Imdina and the Mrieħel Bypass to the junction between Triq L-Imdina and Triq Tumas Chetcuti.

The results of the traffic, cost-benefit and multi-criteria analyses show that the preferred option was Scenario 2 and is therefore the selected Scenario to be considered. Scenario 2 maintains relatively high mean speeds and short travel times throughout the entire assessment time span period. In addition, Scenario 2 also offers one of the cheaper alternatives in terms of initial investment and annual maintenance costs because it does not include the construction of any major infrastructure. Although the multi-criteria analysis predicted that all of the proposed scenarios are predicted to adversely affect the consumption of resources, the significance of the impact for Scenario 2 is classed as minor, whereas it is classed as moderate for the other Scenarios. The “do-nothing” scenario was disregarded as the traffic studies showed that the road network will reach full capacity and become gridlocked by 2028 if no interventions are carried out.

Another option was recommended by members of the public, referred to as the ‘4x1’ Option, but unlike the provision of the Central Malta Local Plan (CMLP, 2006), the project would be located some 200m southwards from the residential streets (Triq Tumas Chetcuti, Triq Fedinandu Inglott and Triq Oliver Agius). The EIA Report dismissed this option for detailed consideration given that it encourages further urban sprawl.”

Konsiderazzjonijiet:

Illi l-bzonn ta' stharrig tal-alternattivi huwa stabbilit fir-regolamenti dwar il-valutazzjoni ambjentali, kif traspost mid-direttiva tal-Unjoni Ewropeja 2011/92/EU, kif amendata bid-direttiva numru 2014/52/EU, fejn l-Artikolu 5 jipprovdi hekk:

“1. Where an environmental impact assessment is required, the developer shall prepare and submit an environmental impact assessment report. The information to be provided by the developer shall include at least:

[...]

(d) a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment.”

Rigward il-htiega li jigu kunsidrati alternattivi fl-EIA, il-Kummissjoni Ewropeja tipprovdi din il-gwida [Guidance on the Preparation of the Environment Impact Assessment Report. Page: 55 (https://ec.europa.eu/environment/eia/pdf/eia_guidance_EIA-report_final.pdf):

- The EIA Directive requires Developers to describe the reasonable Alternatives that have been identified and studied and to compare their environmental impacts against the Project option chosen. This is an important aspect of the EIA Report and

one that often challenges practitioners and Developers. Alternatives have to be 'reasonable', meaning that feasible Project options meet the Project's objectives. ·

- The 2014 amendments to the Directive now require the EIA Report to include a description of the reasonable Alternatives (as opposed to an 'outline') studied by the developer who holds the pen. They also suggest types of Alternatives, such as Project design, technology, location, size, and scale. ·
- The approach to identifying Alternatives is highly Project-specific. Some Alternatives are overarching and may be identified in plans and programmes (e.g. transport plans or regional development programmes) or by the Competent Authority at the EIA Scoping stage. Others might concern the technical design and are identified by the Developer. In cases, EIA practitioners may identify Alternatives and propose them to the Developer. The process of identifying and assessing Alternatives is iterative and requires some flexibility and good communication between all parties. ·
- Consultation with the public is usually very important both for identifying and assessing Alternatives. A clear presentation of Alternatives, and how they have been assessed, also lends transparency to the process and can improve public acceptance and support for Projects. ·
- The environmental assessment of Alternatives should be targeted and focused on the comparison of impacts between several options and presented as such in the EIA Report.

Illi ghahekk l-alternattivi mistharga jridu jissodisfaw zewg kriterji cari, bil-ghan li l-ghazliet huma fattibbli u jilhqu l-ghanijiet tal-Proġett:

- (1) ragenovoli meta mqabbel mal-proġett li qed jigi valutat għall-impatt ambjentali;
- (2) rilevanti għall-proġett u għall-karatteristiċi speċifiċi tiegħu;

Fil-kaz odjern, il-proġett jirrigwradja l-ugrading ta' Triq il-Belt, Triq iz-Zaghfran, Triq in-Nutar Zarb u Triq l-Imdina fillokalitajiet ta' Hat Attard u Hal Balzan, fejn dan jinvolve twessiegh ta' toroq, junctions u toroq godda, kif ukoll bdil fiddirezzjoni ta' traffiku bil-hsieb ewlieni li johrog mill-obbligu tat-TEN-T network ossia "Removal of bottleneck and functional conflict between high traffic flows and urban activity at Notary Zarb Street and Mdina Road [Nodes WA8-west of WA10], Attard" [Proġett numru 12 ta' TEN-T network skont ir-Regulaiton (EU) 1315/2013 kif indikat f'Tabella numru 1, Pagni 134-135 fin-National Transport Master Plan 2025]

Fil-kaz odjern, dan it-Tribunal jinnota li l-proġett inezami kien wiehed specifiku bhala parti mill-pjan ta' TEN-T network, bi pjan strategiku [National Transport Strategy 2050] u master plan [National Transport Strategy 2050] ta' trasport fuq livell nazzjonali għa approvat u fis-sehh.

Dan gie spjegat minn David Sutton [Xhieda mehuda fis-seduta tat-22 ta' Novembru 2019], CO fi hdan it-Transport Malta, hekk kif gej:

"What I like to do is take you through the legal aspects of the Ten-T network, if you bear with me a lot is said in the paper, in the media, and I think it is important that I set out the legal obligations which are imposed on Malta as an EU member state. So basically the Ten-T network is a concept, is a European Concept, and its related to a policy, related to developments of the Ten-T transport network. The ... operation since 1996 where Malta joined the EU in 2004 it came automatically applicable. The idea is to provide a robust European Transport network to provide good circulation between services and citizens within the EU. Now today up to 2013/2014, the policy

was not particularly successful, and the reason for this is that there's a fright mental approach, developments of Ten-T networks in different countries, different members states, but no co-ease of approach , I am speaking at a EU level, and so it led to what the European Commission refers to a patchwork of transport, rather than a network of transport, remember this is a network, it is widely important for all the EU member states, within an international network. At the time, a few years ago, and the European Commission had carried out a study and states, merely related to transport congestion, which I think we have all heard, we had the debate locally, transport congestion, and its externalities are costing the economy a lot of money, so if you're stuck in traffic, it's not only the delay to traffic, but it is also what they call the external economic impact; impacts on greenhouse gases, impacts on air quality, impacts on noise pollution, impacts on accidents. It is estimated in 2012/2013 that across to the EU, this was costing the European Union economy the equivalent of 5% of the GDP of all the EU 28 members. So this will rise to the development of a new regulation, which went through in 2013, became effective towards the start of 2014, which looks at the holistic re-integrated development of the Trans-European Transport Network. For further references, this is regulation 1315 of 2013, which is quite ... is important because it helps identify the objectives at an EU level, and as an EU Member State, Malta needs to conform to these objectives. Now basically in the recyle on the preamble to the regulation, there's an important statement which may help guide the discussions on the central link project, what is stated, and this is applicable to all the EU members states, if I can quote from it is that growth and traffic has resulted in increased congestion in international transport, in order to ensure international mobility of passengers and goods, the capacity of the transEuropean transport network and the use of this capacity should be optimised and where necessary expanded by removing infrastructure bottlenecks and bridging missing links, within and between EU member states. This is a quotation from the recital of EU regulation 1315 of 2013. It's the recital, it's a preamble. This gives the policy context. This is recital number 3. Also in the regulations, the regulations brought about a change in the Ten-T network, every member state changed its network in 1996, to a more extensive network, I think it is something that's... in the case of Malta, I have printed out what our network is, and perhaps I'll explain what our legal obligations are.

So this is a network in the Transport Master Plan and the network comprises two components, the first component is of the highest strategic value at an EU level, this provides a dark line here, which in the case of the road network, it's the road network from Marsaxlokk Freeport to the Airport, Capital City of Valletta and the port of Valletta. This links all of Malta's core Ten-T transport infrastructure, Transport Infrastructure, so, the port of Marsaxlokk is a core Ten-T port, the port of Valletta is a core Ten-T port and the Airport is also a core point. This is a highest strategic value at an EU level and this is where the European Commission is focusing attention to have this completed by a certain date. The supporting network has been finalised which basically, connectivity from regions such as Gozo, such as the West and the South into Malta's Ten-T network for international connectivity, the idea was to connect the flow of goods, the flow of people at an international level. Now the regulation specifies two very distinct dates for completion. Malta and all of the EU Member states are required to complete the Ten-T network by the year.... the core network, the network, the airport and the sea port by 2030, which is not too far away. It is specified in the regulation frame work, every country has to comply with this. It also has to complete the comprehensive network, which needs to be finalised

and this needs to be completed at a later date, it also have very important provability of goods and people and the... they might take for this is the year 2050. So Malta and all the EU Member states are required to produce plans, submit it to the European Commission showing this is where we're at with the implementation of Ten-T network ... call it comprehensive and what our funds are for the future. So in this case what we highlighted here, is not so visible on the official regulation, are the sections that are completed, so the sections in green are those sections of Ten-T that Malta has completed, the sections in red are the sections which are not completed, and the sections in blue are the sections that are either in an advanced stage of planning or they are currently being implemented. This plan, this update was prepared in August/September, at the start of the visit of the European Commissioner, who was the Commissioner responsible for Transport and this was presented to her as Malta's updates on the Ten-T.

[...]

Mistoqsija: You made reference to the core and comprehensive network and you said that there were two different timelines for the enhancement of the core and the comprehensive. Can you expand further on this aspect?

Twegiba: As I explained that the core network is of the highest strategic value at an EU level. It's got our international ports Marsaxlokk, Valletta, it's got our international airport, and it's got the road connectivity between the ports and the airport and the capital city. So this was defined, this resulted with lots of discussions with the European Commission and negotiations and this was agreed to ... the commission and the Maltese Government to be our key network. Traffic bottlenecks and missing links are required to be completed by 2030, the comprehensive network is the supporting road network is to provide the vital regional connectivity to the international components to the airport; to the sea port; to the capital city and this needs to be completed by the year 2050. As you can see but there is still a lot of work to do, Malta is not alone, most of the countries have quite a big number of gaps in the core comprehensive network...

[...]

Mistoqsija: Can you explain whether the whole of the Central Link Project falls within the comprehensive network..?

Twegiba: Yes it does, if I can just explain this part of the map. This is from the Santa Venera tunnels this is Imriehel bypass, this is the MFSA, this is the road around the Attard Farm Supplies, this is the Ta'Qali sanctuary and it leads up to the section where there is the Buqana and Burmarrad, so this section here is the Central Link Project.

Mistoqsija tat-Tribunal: The whole stretch is part of the TEN-T?

Twegiba: Yes it is all part of the Ten-T comprehensive. The Ten-T comprehensive network cannot just stop somewhere and not start again, it's a continuous network that provides connectivity, the idea is that if you look at all of these they need a final destination so they are connected without gaps through the rest of the network.

Mistoqsija tal-Avukat Bonello: So you confirm that the whole central link project is part of the Ten-T network?

Twegiba: Yes.

Mistoqsija: Including the note the section between WA10 and NA15?

Twegiba: NA15 is the roundabout at the bottom of Saqqajja and WA 10, the Central Link Project covers up to WA 10. It's on the comprehensive network

Mistoqsija: So you are saying that the WA10 and NA15 are included in the comprehensive Ten-T network?

Twegiba: Yes. I don't know which ... WA10 is, but it is this section here, this is the section between the MFSA to the Saqqajja hill roundabout."

L-alternattivi identifikati mill-applikant gew bbazati fuq studji rigward 'traffic analysis', 'cost benefit analysis' u 'multi-criteria analysis' [EIA: Coordinated Assessment: Paragrafu 3.0, Pagna 66]. Illi hawnhekk l-applikant qed jispjega li l-alternattivi evalwati ma gewx maghzula b'mod suggettiv jew supeficcjali, izda gew identifikati wara studju – li mhux studju jew valutazzjoni ambjentali – li seta wassal ghal-fattibilita tal-progett.

Dan kien propju l-ghan tal-CBA li l-appellanti qed jishqu li ma kienx accessibbli ghalihom, izda dan it-Tribunal jinnota li tali rapport mhux parti mill-valutazzjoni ambjentali, izda huwa parti mill-analizi preliminari li waslet lill-applikant jiddeciedi dwar l-ahjar ghazla ta' progett fattibbli. F'dan l-istadju jrid jigi sottolinjat li permezz tal-CBA gie ezaminat diversi xenarji u possibilitajiet ghallprogett, u li wasslu ghall-alternattiva mertu tal-valutazzjoni ambjentali u finalment ghal-permess ta' zvilupp odjern, b'dan illi tali alternattiva giet kunsidrata a bazi ta' zewg xenarji meqjusa flimkien. Illi f'dan id-dawl li l-ghazliet li finalment gew identifakti bhala alternattivi fattibbli gew evalwati ukoll ghall-impatt ambjentali fir-rapport tal-EIA meta mqabbel mal-progett maghzul millapplikant.

Hawn wiehed irid jifhem li l-process tal-EIA mhux intiz li jezammina alternattivi li ghandu jwassal ghall-valutazzjoni ambjentali, izda skont id-dispost tar-regolamenti li jirregalaw tali process, jehtieg li l-applikant, ossia l-izviluppatur, jipprovdi l-ispjegazzjoni necessarja li waslet ghall-progett maghzul.

Madankollu, irid jigi sottolinjat li fl-ahhar mill-ahhar l-ghazla tal-progett tibqa fuq l-izviluppatur – filwaqt li l-process talvalutazzjoni ambjentali qed iwassal ghal-mitigazzjoni, miljorament jew tibdil fil-progett, ghalkemm finalment mill-att ta' ppjanar mhux necessarjament jista jwassal ghal hrug awtomiktu tal-permess ta' zvilupp, fejn a bazi ta' konsiderazzjoni ohra materjali jista jigi ukoll michud tali permess ta' zvilupp.

Illi ghalhekk isegwi li ma hemm ebda rilevanza jew rabta' bejn il-fatt li l-izviluppatur jkun gja hareg tenders ghall-progett, u lprocess tal-izvilupp kif finalment deciz mill-Bord tal-Ippjanar, kif qed jigi allegat f'dan l-aggravju. Huwa fatt li kull rapport ghalvalutazzjoni ambjentali huwa relatat u ndirizzat lejn progett tal-ghazla tal-applikant – u dan wara li kien hemm process ta' studju mill-istess applikant jew zviluppatur dwar diversi alternattivi ta' progetti b'xenarji u interventi differenti, inkluz dak li ma jsir ebda intervent u li b'mod objettiv gew skartati ghall-ghazla tal-progett li

jigi valutat għall-impatt ambjentali u finalment mressaq għallapprovazzjoni tal-permess ta' żvilupp.

Illi anke fid-diversi stadji ta' konsultazzjoni, b'mod partikolari fi stadju meta gie pubblikat ir-rapport tal-EIA, l-applikant ezamina l-alternattivi proposti minn persuni nteressati, għalkemm ma gewx kunsidrati ulterjorment u dan tenut li ma kienux fattibbli għall-progett [EIA: Coordinated Assessment: Paragrafu 3.5; Pagna 72, u osservazzjonijiet ta' dan it-Tribunal fir-rigward ta' tali proposta alternattivi fil-parti numru 3, fl-aggravju numru 7-13].

F'dan ir-rigward dan l-aggravju rigward nuqqas ta' trasparenza fil-konsiderazzjoni ta' alternattivi mhux fis-sewwa u qed jigi michud.

1. Nuqqas fl-istharrig ta' alternattivi imur kontra Konvenzjoni ta' Aarhus dwar l-Access għall-informazzjoni, konsultazzjoni pubblika u access għall-gustizzja fil-qasam ambjentali, kif traspost fil-ligi sussidjarja 549.39, kif ukoll ksur tal-Artikolu 33(2) (c)(iv) tal-Kap 552

Illi f'dan il-kaz, l-appellanti qed jishqu li skont il-ligi sussidjarja 549.39 li gabu fis-sehh id-disposizzjonijiet tal-Konvenzjoni fil-ligi nostrana, jipprovdu b'mod car li nformazzjoni dwar l-ambjent tinkludi "analizi u assunzjonijiet dwar cost-benefit u dawk ohra ekonomici" u għalhekk il-fatt li c-CBA li a bazi tieghu gie magħzul il-progett in mertu ma kienx accesebbli għall-pubbliku, filwaqt li ma kien hemm ebda mod kif il-pubbliku jippartecipa fl-istadju bikri tal-progett.

Illi n sosten ta' dan gew kwotati kazijiet tal- Economic Commission for Europe fi hdan l-Economic and Social Council tan-Nazzjonijiet Uniti kontra l-pajjizi tal-Armenja, Litwanja u Slovakia fejn gie osservat nuqqasjiet fil-ligi ta' dawn iz-zewg pajjizi rispettivi b'dan illi ma kienx hemm konsultazzjoni pubblika effettiva qabel il-hrug ta' permess jew licenzja [<https://www.unece.org/env/pp/cc/com.htm1>].

Illi l-appellati rribatew u saħqu fuq dan li gej:

- a. Illi fil-process tal-EIA kien hemm zewg instanzi ta' konsultazzjoni mal-pubbliku, kemm fl-istadju ta' scoping' fejn gie cirkulat il-PDS – li kien għa jinkludi l-alternattivi skont kif analizzati fil-CBA – kif ukoll meta gie kkompilet ir-rapport tal-EIA;
- b. Illi l-appellanti ma ppartecipawx fl-ewwel stadju ta' konsultazzjoni, meta numru ta' eNGOS gew infurmati b'mod dirett biddokument tal-PDS;
- c. Illi r-referenza għal-kazijiet tal-Armenja, Litwanja u Slovakia ma humiex similjanti għal kaz odjern tenut li fil-kazijiet kwotati jirrigwardjaw nuqqas ta' partecipazzjoni tenut permessi u licenzi għa mahruġa mill-Awtoritajiet.

Illi din it-tieni parti tal-aggravju nezami hija marbuta mal-ewwel parti għa kkunsidrat aktar 'il fuq, fejn l-ilment dwar nuqqas ta' evalwazzjoni ta' alternattivi ma giex sostnut. Illi l-ilment principali jirrigwardja n-nuqqas ta' access għall-informazzjoni dwar l-alternattivi ndikati fir-rapport tal-EIA, li gew ezaminati ai bazi ta' CBS, u studji ohra bħal traffic analysis.

Illi dan it-Tribunal għa osserva li fil-process tal-EIA l-applikant għandu jipprovdi analizi ta' alternattivi li huma ragenevoli u fattibbli għall-progett, u kif dan wassal għall-għażla ta' alternattiva mertu tal-EIA, minn alternattivi li gew analizzati.

Illi r-referenza ghar-rokomandazzjonijiet tal-Economic Commission for Europe fir-rikors promotur ma japplikawx ghal kaz odjern. Huwa car illi f'dawn il-kazijiet kien gie osservat ksur tal-Konvenzjoni tenut nuqqas ta' konsultazzjoni qabel il-hrug ta' permess ta' zvilupp jew licenzja. Fil-kaz odjern ma tresqet ebda prova li fil-process tal-EIA jew tal-process tal-applikazzjoni ta' zvilupp kien hemm xi nuqqas mill-Awtoritajiet kompetenti li b'xi mod impedixxu jew illimitaw l-konsultazzjoni pubblika.

Ta' minn izied illi l-PDS, bhala l-ewwel stadju tal-process qabel il-hrug tat-TORs li ghandu jwassal ghall-EIA, gie publikat ghall-konsultazzjoni u provdut b'mod dirett lil numru ta' eNGOs, kif konfermat fix-xhieda ta' Kevin Mercieca, Deputy Director fi hdan l-ERA [Xhieda mehuda fl-24 t'Ottubru 2019] izda ma kien hemm ebda reazzjoni jew oggezzjoni minn xi eNGO jew persuni nteressati appellanti skont kif indikat mill-ERA [Vide para 2.1 u tabella 6.1 fid-dokument "Summary of EIA Process" (ERA, Mejju 2019). Il-PDS kien ukoll suggett ghall-konsultazzjoni pubblika bejn il-perjodu tal-31 t'Awwissu 208 u 30 ta' Settembru 2018]. Tali, PDS kien gja jinkludi l-analizi tal-alternattivi ai bazi ta' traffic anlysis u CBS, u ghalhekk huwa car li l-applikant gja kien qed jindika s-sors tal-istudji preliminari bhala sors sekondarju. Illi ghalhekk huwa evidenti ukoll li kull persuna, inkluz numru kbir ta' eNGOs [Lista provduta mix-xhud Kevin Mercieca, dokument KM1] kellhom access shih ghal PDS u kellhom kull opportunita li jitolbu access ghall-informazzjoni fil-process bikri tal-EIA ghal-kemm irrizulta li ma kien hemm talba ta' access ghall-informazzjoni fi stadju ta' konsultazzjoni jew meta gie preparat l-EIA report.

Dan it-Tribunal seta' jinnota li numru kbir ta' rapresetazzjonijiet, inkluz minn eNGOs gew prezenatati fil-process tal-applikazzjoni ta' zvilupp fl-istess perjodu, meta kien hemm l-ewwel konsultazzjoni fi stadju ta' scoping tal-EIA, ossia f'Settembru 2018, izda dan ma jnaqqas xejn mill-fatt preokkupanti ta' nuqqas ta' raprezentazzjonijiet, b'mod partikolari minn eNGOs fil-process tal-EIA.

Illi dan it-Tribunal josserva li filwaqt issa fi stadju ta' appell, l-appellanti qeghdin jinvokaw Konvenzjonijiet u Direttivi favur konsultazzjoni pubblika wiesgha fil-valutazzjoni ta' mpatt ambjentali, izda meta tali konsultazzjonijiet kienu fil-fatt miftuha, anke fi stadju daqshekk bikri ta' 'scoping,' l-appellanti - u hawn b'referenza partikolari ghall-eNGOs li kellhom access shih u dirett ghad-dokumentazzjoni - naqsu li jippartecipaw jew li jiskrutinaw kif inhu mehtieg ai fini ta' partecipazzjoni attiva fil-process tal-EIA.

Illi l-linja gwida tal-Kummissjoni Ewropeja ghar-rigward il-preparazzjoni ta' EIA reports

[https://ec.europa.eu/environment/eia/pdf/EIA_guidance_EIA_report_final.pdf], tipprovdi dan li gej fil-kaz ta' konsultazzjoni wiesgha mal-'pubbliku koncernat':

"the public concerned (Article 6(2), 6(3), 6(4) of the EIA Directive): The public and the public concerned must have access to any information gathered during the preparation of the EIA Report, the reactions of the Competent Authority/Authorities at the time the information is made available, and any other relevant information which may arise later. The public concerned must be given early and effective opportunities to participate, and be able to provide their comments and opinions. Exactly how this is done is up to Member States to decide, although the EIA Directive does set out several provisions, including mandating what information should be available to the public. This information includes the EIA Report itself."

Illi ghalhekk fil-kaz odjern, qabel wiehed jibda jezamina l-ilmenti dwar nuqqas ta' konsultazzjoni xierqa, nuqqas ta' access ghallinformazzjoni u nuqqas ta' smiegh xieraq fil-process tal-EIA, ghandu jigi ezaminat l-ewwel jekk l-Awtorita' kompetenti pprovdietx il-possibilita' u l-opportunita ta' konsultazzjoni, u access ghal dokumentazzjoni tal-process tal-EIA. Huwa evidenti mill-process tal-EIA u d-dokumentazzjoni u provi provduti fil-process ta' dan l-appell, illi l-Awtorita' kompetenti, f'dan il-kaz l-ERA, pprovdiet access wiesa' ghad-dokumentazzjoni tal-EIA, u ghalhekk ma hemm ebda bazi, issa fi stadju ta' appell, ghallilment li l-ERA naqset fl-obbligi li johorgu mid-dispost tar-regolamenti tal-EIA.

Illi l-aggravju huwa principalment marbut man-nuqqas ta' accessibilita' tal-dokument tal-CBA, li dan it-Tribunal gja osserva li dan ma kienx parti mill-valutazzjoni ambjentali tal-progett, izda studju li kkommissjoni l-applikant sabiex janalizza b'mod oggettiv alternattivi ghal-progett li gew deskritti u analizati ghall-impatt ambjentali meta mqabbla mal-progett maghzul fir-rapport tal-EIA. Kull persuna nteressata kellha kull access ghar-rapporti tal-EIA, inkluz dak inizjali, ossia l-PDS, u li kien hemm ukoll konsultazzjoni bikrija li kellha l-ghan li tqanqal daww il-persuni nteressati kontra l-progett qabel il-hrug tat-TORs, u li l-appellanti naqsu li jippartecipaw.

Illi fis-sottomissjonijiet finali [Seduta tat-30 t'Ottubru 2019], l-appellanti ghamlu riferenza ghas-sentenza moghtija mill-Onor. Qorti tal-Appell fil-kawza deciza fid-19 ta' Ottubru, 2016 fl-ismijiet 10/2016 Dott. Karol Aquilina u Nicholas Baldacchino noe vs L-Awtorita' ta' Malta ghallAmbjent u l-Ippjanar et . Fost l-aggravji mressqa quddiem il-Qorti tal-Appell kien hemm, fost ohrajn, l-aggravju illi l-Awtorita' naqset illi taghmel disponibbli dokumenti jew informazzjoni rilevanti ghal kaz u naqas li jara li l-partijiet l-ohra jkollhom access ghal dawn id-dokumenti.

Dwar dan l-aggravju, li gie milqugh mill-Onor. Qorti tal-Appell, il-Qorti qalet hekk: "Din kienet il-pern tal-kwistjoni quddiem it-Tribunal li naqas jindirizza fid-decizjoni tieghu u ghalhekk dan laggravju qed jigi milqugh mhux ghax qed jigi deciz minn din il-Qorti illi l-Kunsill Lokali ghandu ragun filmertu tal-kwistjoni izda ghax it-Tribunal naqas li jindirizza sew l-aggravju tal-Kunsill Lokali kif fil-fatt fehmu u indirizzawh il-partijiet fl-appell quddiem din il-Qorti. Fil-fatt l-appellanti fis-sottomissjonijiet taghhom jirreferu ghall-artikolu 20(10) tal-Avviz Legali 114/2007 li jindika li fl-abbozz tal-EIA ghandu jkun hemm 'a reasoned choice among alternatives' u l-artikolu 21(5) li jittellem dwar konsultazzjoni pubblika jghid li l-kummenti dwar EIA ghandhom ikunu specifici u diretti dwar il-mertu ta' siti alternattivi u jsostnu li dan ma jistax isehh jekk il-pubbliku ma ghandux diskrezzjoni. Il-Qorti ma tqis li ghandha tiddeciedi l-ilment hi peress illi tkun qed ixxejjen id-dritt tad-doppio esame u ghaliex ukoll it-Tribunal ghandu l-obbligu li jqis b'mod dettaljat il-kwistjoni legali u teknika li tohrog minn tali lment."

Ghalhekk ir-riferenza ghal din is-sentenza hija, bir-rispett kollu, ta' ebda ghajnuna ghat-tezi tal-appellanti billi dak li ddecidiet l-Onor. Qorti tal-Appell ma kienx li l-appellanti kellhom ragun izda li t-Tribunal kien naqas li jindirizza dan l-aggravju.

Illi r-riferenza tal-Artikolu 33 tal-Kap 552, b'mod partikolari s-sub-paragrafju (2)(c) huwa barra l-kuntest, b'dan illi ma hemm ebda prova li tindika li l-Awtorita' tal-Ippjanar zammet jew ostakolat informazzjoni milli tkun accessibli ghall-pubbliku fil-fajl

talapplikazzjoni in mertu. Tali artikolu qed jassigura access għall-informazzjoni għal parti tal-fajl li jirrigwardja informazzjoni kif indikati fil-paragrafi (i) sa (iv) tal-Artikolu sucitat – izda dan huwa biss relatat ma nformazzjoni li qed tinzamm mill-Awtorita' talppjanar – li f'dan il-kaz kull referenza tal-CBS kien limitat għal dak li gie indikat fir-rapport tal-EIA, inkluz tal-PDS, li certament ma hemmx kontestazzjoni li tali dokumenti ma kienux accessibli.

F'dan ir-rigward, in-nuqqas ta' osservanza tal-Konvenzjoni Aarhus u ksur tar-regolament għall-access ta' informazzjoni ambjentali mhux fis-sewwa, u għalhekk l-aggravju qed jigi michud.

Aggravji numru 2 u 14 meqjusa flimkien:

Dawn l-aggravji huma diretti lejn in-nuqqas ta' access ta' dokumenti li fuqhom gie bbazat ir-rapport tal-EIA u d-decizjoni tal-Bord tal-Ippjanar, kif ukoll nuqqasijiet fl-istess EIA, b'dan illi gew imressqa tali lmenti:

1. Nuqqas ta' access għad-dokumenti tal-CBA u li dawn ma kienux accessibbli għall-ERA jew Planning Baord;
2. Verzjonijiet differenti tar-rapport tal-EIA
3. Metodologija għall-istudju dwar il-kwalita' tal-arja mhux skont it-TOR;
4. Omissjoni ta' 'queuing times' mill-istudju tal-kwalita' tal-arja;
5. Nuqqasijiet fl-istudju dwar l-impatt fuq is-sahha;
6. Valutazzjoni dwar l-impatt socjali kif ukoll l-impatt fuq il-patrimonju kulturali mhux inkluz.

Illi l-appellati rribattew hekk kif gej:

- a. Illi l-permit holder pprezenta kull rapport għad-disposizzjoni tal-Awtoritajiet kif mitlub;
- b. Illi l-process tal-EIA gie segwit skont ir-regolamenti applikabbli u kull dokument gie pubblikat għall-iskrutinju pubbliku, b'perjodi specifici għall-konsultazzjoni pubblika;
- c. Illi l-istudji mahruga mil-CBA huma meqjusa biss bħala punt ta' referenza għall-istudji necessarji għall-impatt ambjentali kif stipulat fit-TOR. Illi kull studju relatat mall-impatt ambjentali kien wiehed accssibli u pubblikat għall-iskrutinju pubbliku;
- d. Illi l-ewwel draft tal-EIA report gie pubblikat għall-iskrutinju pubbliku fis-17 ta' Jannar 2019, u l-ERA zammet komunikazzjoni kontinwa mal-koordinatur tal-EIA bħala parti mill-obbligu bħala Awtorita' regolatorja bil-ghan li lkummenti tal-pubbliku u entitajiet koncernati jigu kunsidrati qabel il-pubblikazzjoni tar-rapport finali;
- e. L-iskop tat-TORs huwa li jiggwida l-kontenut tar-rapport tal-EIA, u l-ERA tesercita flessibilita' dment li jkun hemm ragunijiet li jkunu maqbula mal-koordinatur. Madankollu, l-istudji tal-Kwalita' tal-Arja u l-impatt fuq is-sahha jsegwi l-linji gwida mahruga mill-ERA fit-TOR;
- f. Illi l-impatt fuq il-patrimonju kultrurali gie fil-fatt kunsidrat fil-process tal-EIA, kif ukoll huwa suggett għall-kondizzjonijiet specifici fil-permess ta' zvilupp.

Illi l-bazi ta' dawn l-aggravji huwa relatat mal-ewwel aggravju fejn qed jigi sostnut li l-CBA kellu jkun accessibbli għall-iskrutinju pubbliku. Illi dan it-Tribunal għa kkonkluda li tali dokument wassal lill-applikant sabiex ezamina diversi xenarji fattabbli għallprogett in mertu, u li wasslu għall-alternattiva mertu tal-valutazzjoni ambjentali u finalment għal-permess ta' zvilupp odjern. Għaldaqstant, ai fini ta' din il-parti tal-aggravji, u a skans ta' repetizzjoni, għandha ssir referenza għall-osservazzjonijiet ta' għa magħmula minn dan it-Tribuanl fir- rigward l-allegat nuqqas ta' access għall-

informazzjoni, bi ksur tal-Konvenzjoni Aarhus u tarregolament għall-access ta' informazzjoni ambjentali fl-ewwel aggravju.

Madankollu, f'dawn l-aggravji, l-appellanti permezz ta' provi konsistenti minn rapporti teknici ta' Prof. Maria Attard [Datat 19 t'Awwissu 2019, u prezentat fis-seduta tat-22 ta' Ottubru 2019 rigward 'Transport Policy Framework', 'Projected Traffic Growth' u Sostenibilita tal-Progett], is-Sur Bjorn Bonello [Prezentat flimkien max-xhieda tieghu mehuda fis-seduta tat-22 t'Ottubru 2019, dwar 'Transport Planning Related Matters'], Dr Alfred Baldacchino [Rapport datat 15 t'Awwissu 2019, u prezentat fis-seduta tat-22 ta' Novembru 2019 dwar 'Negative impacts on biodiversity'], Prof. Christian Scerri [Appellant li pprezenta dan ir-rapport waqt l-access mizmum fuq is-sit fit-18 t'Ottubru 2019, dwar 'potential health impacts of the project', Dr Edward A. Mallia [Rapport datat Settembru 2019, u prezentat fis-seduta tal-15 t'Ottubru 2019, dwar l-impatt fuq l-arja], Reno Saliba [Rapport prezentat fis-seduta tat-8 t'Ottubru 2019 u ri-prodott fis-seduta tal-15 t'Ottubru 2019, rigward taghrif, restawr u rapport dwar il-Kappella ta' San Pawl u l-inhawi tal-madwar, b'rabta mal-progett Central Link], Reuben Grima [Affidavit datat 3 ta' Settembru 2019 u prezentat fis-seduta tat-8 t'Ottubru 2019 rigward l-impatt il-wirt kulturali taz-zona maghruf 'taht ir-Rahal' f'Hat Attard] u Malcolm Borg [Rapport prezentat fis-seduta tat-22 ta' Novembru 2019 dwar l-impatt fuq l-agrikoltura] qed iressqu osservazzjonijiet u kummenti fuq id-diversi rapporti teknici tal-EIA rispettivament.

B'mod partikolari gie allegat xi diskrepanzi kif ukoll mistoqsijiet dwar il-veritacita tal-informazzjoni li giet analizzata fil-CBA li potenzjalment kellha impatt fuq l-analizi tal-impatt fuq il-kwalita' tal-arja fl-EIA [Rapport ta' Dr George Peplow datat 7 ta' Mejju 2019].

Illi Bjorn Bonello osserva dan li gej:

1. "Baseline Traffic Flows [Pagna 19 sa 23 fir-rapport prezentat fid-seduta tat-22 t'Ottubru 2019]

The proposal seems to be based on sets of empirical data. We are aware that fluctuations in daily traffic flow, and have allowed for such, particularly since the time limitation we have had, which restricted our ability to not survey multiple days. While it is not the scope of this report to demean, but to try to interpret such information, we have to highlight a number of issues that are unclear.

The supporting documentation, claims that:

"Overall (AM + PM peaks), 191,675 vehicles were surveyed, most of which 93.49% on average (-179,000 units), were light vehicles, while the remaining 6.5% (12,500 units) were heavy vehicles."

The figure is misleading given that it seems to be the sum of the all traffic flows recorded at each of the 16 junctions surveyed. In this corridor, vehicles move along the East – West axis and vice versa, with most of the same vehicles moving through two or more junctions. Summing up all the traffic recorded at the junctions, has in fact grossly overestimated the traffic flows through this corridor in effect this double counting the same vehicles for at least 12 times.

[...]

Table 1 clearly shows that while the total vehicles recorded at both junctions in the two reports compare well to each other, and well within the fluctuations of daily traffic patterns, Junction 7 (Vjal De Paule) share an average 8,900 vehicles between them, as they feed into each other for both AM and PM peaks. Consequently, given this

relationship between these particular junctions, the total traffic at these junctions would be an estimated 13,370 vehicles at the AM peak period (3hrs) and 11,090 vehicles at the PM peak, in contrast to the 20,670 vehicles and 20,710 vehicles for the AM and PM periods, respectively, reported in the applicant's documentation. Such an overestimation, in excess of 16,000 vehicles combined may have had a significant impact on the figures used for other studies, such as Air Quality studies and others.

This is true for all other junctions considered. In addition, as mentioned earlier roughly 33.4% traffic move from one extremity to the other of the length of road considered. Using our peak hour estimates, and multiplying them by three to get an optimistic figure for a 3hr peak period for both AM and PM, seems to suggest that a combined average of about 11,200 vehicles pass through the studied junctions (both directions), in contrast to 191,680 vehicles, reported in the applicant's report. We maintain, that adding each traffic flow of each junction together as done in the report supporting the CENTRAL LINK proposal, does not consider that most of the junctions have a relationship with each other and other junctions along the corridor. The overestimation has led to a much-inflated baseline which has had an impact on the modelling matrices used, junction modelling, other aspects and other supporting documentation which is based on these baseline figures.

In terms of vehicles making up the fleet while, cars made up to 93% of the fleet and Light Goods Vehicles (LGVs) 4%, only 3% where Heavy Goods Vehicles (HGVs) during peak times. The highest percentage of Heavy Goods Vehicles recorded 6.6% was in the direction of Valletta at Junction 2 (near the Attard Industrial Estate and Triq Tumas Chetcuti, which is both an approach road to a quarry and links to Triq Haz-Zebbug. An overestimation of Heavy Goods Vehicles (HGVs) may also impinge on other studies such as, the modelling matrices and the Air Quality Study, in terms of emissions.

There is no evidence to suggest, unlike what is stated in the applicant's supporting documentation that "during the PM simulation the congestion level is so high that the speed reduction does not completely disappear at the end of the analysed time span. This latter phenomenon suggest that the reserve capacity of the network during the PM rush hours is approaching zero." Having used overestimated baseline figures, this impinges on simulations, which after exceeding certain thresholds, start to give exponentially high figures that are not reflective of the 'real' scenarios. The phenomenon described by the applicant's supporting documentation, most likely results from the peak spreading at the PM peak. It is suggested that to measure reserve capacity the simulation is not used and instead, software packages for junction analysis are used that have been long established as industry standard Right-Hand Drive countries. This will definitely give a better and far more accurate assessment of the situation, both for existing and proposed junctions, some of which are being loaded excessively."

2. "Baselines impinging on other studies [Ibid. Pagni 29-31]:

What is particularly important is perhaps how the overestimated data impinged on the Air Quality Report.

The author of the report states (para 5, pp 2) in the report dated May 2019 there is "a gross reduction in vehicle velocities for the years 2A26 and 2030. It is logical to state that a vehicle moving with a start-stop motion at lower gears due to stalled, queued traffic... Standard dispersion models would consider these factors and convert them into increased levels of the pollutants due to higher pollutant mass emissions along a

particular road. Queuing vehicles generate much higher fuel combustion products than moving vehicles due to the stop-start situation of the vehicle. Consequently, assumptions were made in the dispersion models to account for the increased pollutant levels of stalled traffic as compared to the less polluting moving traffic." The report also assumes a 1.5% traffic increase up to 2030. The report suggests (para 3.2.1 pp. 5) that the CBA reports very low traffic flows for 2030 due to the traffic congestion projected for these years (vehicle flows in AADT refer to the number of vehicles per day) the traffic counts dwindled to nil at some count points, that is: stalled traffic = no traffic movement at all, hence AADT = 0, and includes a series of tables (1A-1C pp32-34) that show extraordinary low speeds for the current scenario. We would like to point out that these assumptions confirm that, based on our findings and traffic surveys they are erroneous and should be corrected, in order to give a true picture of the existing situation, onto which all other assumptions are based.

As indicated earlier, the queues in 2030 are exaggerated and gridlock will not occur, given the nature and context of the site. The road is part of the arterial road network and to be gridlocked, the whole network will have to be compromised.

Secondly, given the sheer number of cars passing through this stretch of road, as indicated by historic 24hr counts for the years 2000-2005, the hourly traffic remains fairly constant but peak periods spread wider over more hours, as motorists plan their journey to beat congestion. The constant 1.57% annual increase in traffic is unrealistic, given that in the meantime, one would expect, more improvements to the road network and more importantly better management of carriageway space, better public transport and initiatives to curb private car and single occupancy use.

Annual Average Daily Traffic (AADT), can never be 0, as indicated in the Air Quality report, as the busiest AM and PM peak hours and AM and PM peak periods (6hrs) only represent, 14% and 39% of MDT, respectively. This means that for the rest of the day traffic flows with relative ease through this transport corridor. Even considering the worst-case scenario, AADT can never be considered as 0, this would assume that for a whole 12 months, for the whole 365 days, no vehicles would have passed through the road, or that they have been blocked, and probably abandoned along the street.

Unlike the peak traffic flows which seem to be overestimated, the flow speeds in the tables indicated (1a-1c), are too low, as indicated previously, outside the peak hours, average speeds are 38.4km/hr (highest 52km/hr - lowest 30km/hr). During the peak, depending on the flow direction the average speeds are 26km/hr, with AM peak towards Valletta being 16km/hr, while the contra-flow is 31km/hr. For the PM peak the flow towards Rabat is 23km/hr and the one towards Valletta 33km/hr. The distinct tidal movement exhibited along this corridor, particularly in the morning peak hours, is such that the average speeds considered are too low and this as the Air Quality report states will result in elevated emissions.

The combination between overestimated traffic flows, double entries of flows and exceedingly low speeds for the current scenario, will inevitably result in very high emissions."

Illi l-Prof. Attard ikkonkludiet dan li gej [Pagni 16 u 17 fir-rapport tas-19 t'Awwissu 2019, prezentat fis-seduta tat-22 t'Ottubru 2019]:

1. "There is no justification, provided by Government, for the prioritization of the Central Link project over other, more critical links in Malta's road network, as identified in the National transport Masterplan for the development of the TEN-T

network. There is also no justification to the widening of the road section between nodes WA10 and NA15 which are not part of the TEN-T network.

2. The design of the scheme and the evaluation of its impact rely on projected traffic growth in the area. This report has shown that the projected traffic envisaged during the operational phase of the project are highly conservative due to the exclusion of well-documented phenomenon of generated traffic diverted and induced demand). The use of facts from the National Transport Masterplan do not support the justification provided since the estimated traffic growth of 5-6% over 10 years is incorrectly attributed to the Central Link road sections and the car ownership rates are heavily underestimated when recent trends are analysed for rising rates of motorization.

3. On the other hand, the claim that the road section will come to complete gridlock (unrealistic low vehicle speeds estimated for 2A26 and 2030 without the project) is unfounded since congested roads also influence travel behaviour, in that they deflect and reduce car trips. This report therefore concludes that there is no proper justification for the projected figures.

4. The traffic projections are also the basis for the air quality impact study. Malta will already miss its 2020 climate change targets primarily because of its inability to reduce transport emissions. Low urban air quality has also been reported with the well-documented consequences on public health. The air quality study does not provide enough confidence and reassurances that the proposed Central Link Project will indeed reduce, rather than increase transport related pollution in the area, and overall for the islands.

5. Finally, the report draws attention to the negative impacts of the project which have received little to no attention, despite their significant contributions to sustainability, sustainable mobility, social equality and public health objectives. Further studies are required to ensure these impacts are properly quantified and coated for a well-evidenced decision making process."

L-applikant irribatta, billi spjega dan li gej [Sottomissjoni prezentata fis-seduta tat-28 t'Ottubru 2019]:

1. Rigward it-traffic growth rate [Ibid. Pagni 1-2]:

"As already stated, in agreement with the client, a growth rate equal to 1% per year was used in the analysis. This rate takes into account the growth rate estimated in the NTMP (National Transport Masterplan) for the TEN-T network (5%-6% in ten years, that is 0.6%/year) and the growth trend forecast in the same document for the rate of motorization of the private car (0.12%/year) and can be considered a precautionary value.

The estimate of the growth rate of traffic flows is a complex matter especially if it refers to wide time intervals since the variation of the boundary conditions can substantially change the forecasts and their reliability.

For this reason, since a reference strategic document is available at national level, it was considered appropriate to refer to what is indicated in it, in order to maintain consistency between the forecasts made at national level and the study in question.

Assigning to the road network in question the growth rate estimated in the NTMP for the central section of the TEN-T network has been considered a reasonable choice given it is part of the TEN-T network and can be assimilated by function and characteristics to it. No specific study of the road could have led to a more specific growth rate than the one used.

Furthermore, it is very important to note that the same growth rate was used for the simulation of all alternative scenarios. Therefore, in terms of comparison between the scenarios and the choice between them, the adopted value of the growth rate ensures the consistency of the comparison between the performances of the scenarios.

In any case, as a result of the fact that forecasts of demand growth are, by their nature, susceptible to unforeseeable changes over time, the growth rate was considered as a sensible variable and included in the risk analysis. In addition to the basic scenario, two additional scenarios have been considered: a minimum scenario, with a growth rate of 1.0% / year for the first 10 years and 0.5% / year for the following 15 years, and a maximum scenario, with a growth rate of 2% / year. The maximum scenario, in particular, has allowed to take into account elements that can influence the phenomenon under study, such as additional or diverted traffic.

Both scenarios were successful in the risk analysis.

It can therefore be said that the study has considered all the possible variations to which the growth of traffic may be subjected in an unexpected way at the time of the study."

2. Rigward l-projezzjoni ta' gridlock [Ibid. Pagna 3]:

Prof. Maria Attard Report pg. 7, report 1: "It is therefore also unrealistic to project a complete gridlock of any road section...[...]"

A similar notion was implied in Mr.Bjorn Bonello Report pg.28: "The Do- Nothing scenario, is clearly not desirable to all parties and stakeholders, however, one cannot agree with the gridlock scenario predicted ... [...]"

It is true, considering in an actual situation most of the drivers would deviate before reaching such a critical congestion level.

However, it is paramount to consider the objective of the analysis which was to compare the design alternatives and with the do-nothing option and evaluate, against the expected traffic growth and determine which option provides the best performance.

Furthermore, it would be very misleading to rely on the possibility that a driver is to change the route and avoid the area of study while comparing the alternatives. This would provide a situation where a scenario has a speed of XX km/h and is able to bear the expected traffic, and a do-nothing scenario which spreads half of the traffic over alternative routes along local roads and residential areas but according to the aforementioned reasoning maintains a similar speed. Should we say that the two scenarios have similar performance? No. because one can bear all the expected traffic and the other cannot.

Consequently, for the sake of comparison, not considering diversions is much more accurate than relying on it.

3. Konsiderazzjoni ta' traffic counts prezentati fil-CBA, b'referenza għall-osservazzjoni ta' Bjorn Bonello rigward 'overestimation of the baseline' [Ibid. Pagna]:

"The quote from the CBA report was included for a general descriptive purpose and no such number was inputted directly in the model. There was no overestimation nor double counting. Instead, the demand analysis produced two matrices (cars and HV) that concern the whole study area and not one single junction at a time. Each vehicle in the matrices run from their origin to their destination through all the junctions along their path. Buses were not modelled as matrices, but as proper public transport

services with their specific routes, schedules and stops, this guarantees much more accuracy in their representation.

As explained earlier beyond buses, two matrices have been considered: "cars" and "not-cars" (i.e. LGV+HV). The "not-cars" rate is ~9% in the AM peak and ~4% in the PM peak. The counterpart consultant mentions 4% LGV and 3% HV that is 7% "non-cars". This is in accordance with the conducted surveys. If there have been changes in the "non-cars" percentage in the latest 3 years, or if the surveys have simply been done on a different period this doesn't show that our analysis is less valid (in absolute terms nor compared to that of the counterpart). In any case, whatever the number the comparison between scenarios is still valid anyway, given the % was kept the same for each scenario.

The counterpart consultant brought up a drastic misinterpretation of numbers when comparing the figures presented in Figure 15 (pg.19) to the total number of vehicles [n] presented in Tabela 5 & 6 (pg. 39) of the Cost-Benefit Analysis [...]

The figure presented in Figure 15 indicate the total number of vehicles which made use of the junctions respectively over 3-hour period. On the other hand, the values presented in Table 5 & 6 respectively are produced on the basis of the OD (Origin-Destination) Matrix, where in relation to the projected number of trips from a specific origin to a destination the vehicle travel along the available path passing through a number of junction along the way. This implies that for a path including two junctions, the same vehicles are counted twice. Consequently, the number in subject gives a synthetic picture of the vehicular load on the study area, but it is meaningless in terms of trip analysis. This is further explained in the subsequent section 'OD Matrix'. Conversely, in the same report compiled by Mr. Bjorn Bonello implies that "[...] these travel times are consistent with the applicant's baseline conclusion" (pg. 25), which is confusing given that applicant's consultant overestimated the demand. Thus, how was it possible to obtain similar results that are consistent with applicant's consultant surveys (that have been used to validate the model) and consistent with the counterpart's surveys?

It is obvious that the delay is not equivalent in all the intersections. The mentioned performance is averaged for all the vehicles that run through the study area (whatever their origin and whatever the destination) and then highlighted a few local criticalities.

Finally, it was clear that the counterpart consultant is not knowledgeable on microsimulation modelling and how it is carried out, which produced a number of misleading notions, misinterpretation of data and multiple accusations on the invalidity of the report. A methodological approach to the study is presented in the subsequent section to have a clearer explanation on the use of a microsimulation models and interpretation of data."

Illi rigward il-prijorita tal-progett fil-kuntest tat-Transport Master Plan, David Sutton spjega hekk:

"We went through parts of this exercise with the Transport Master plan, was not only to list the 29 sections but also to screen them and eventually to try to objectively prioritise in the rotation of projects now I have been here long enough to know that certain projects you question why is that a top priority, that's as it went for endorsement by European Commission it had to be backed up by objective analysis, so the first thing we try to do, as I explained in chapter 3 of this, of the Transport Master plan, is we needed to try and screen the applications, the objectives of Ten-T policies is to remove traffic bottlenecks, so we looked at where the main traffic

bottlenecks where in Malta and Gozo. In this case five main bottlenecks were identified and the section road from MFSA to Saqqaja Hill was a bottle neck. Its carry a lot of traffic, there was a significant delay on the section of road and also another criteria because the aim of the Ten-T network is to provide multi-modality, not just for provision of cars but also for buses, and one of the criteria that we actually looked at was the number of bus passengers that passed through that link, now this has several bus services in both directions, amounting to, during morning peak hours, 13 buses an hour, and when you look at the number of people that go on those the buses traffic congestion in this location effect 500 in one direction, 350 in the other one hour. So this was a high priority from the outset because it addressed the problem of bus delay, the buses were delayed in traffic along the section of road, for example where there is the traffic island, you've got the Attard Farm Supplies on one side and you've got Notary Zarb street on the other, there's basically a bottleneck where two lanes are reduced to one lane. That has the effect of reducing traffic, the speed of traffic, including buses down to one and a half kilometres an hour, and when you compare that to cities elsewhere it is very, very slow. So this is, obviously a traffic bottleneck, I don't think anyone can contest it, it is a traffic bottleneck. It is something where there are serious problems resulting from the geometric designs of the current road network."

Dwar is-sostenibijta' tal-progett fil-kuntest tal-obiettivi tat-Transport Master Plan, David Sutton elabora hekk kif gej:

"Let me just explain, so the Transport Master Plan has three operational objectives relating to upgrading of the Ten-T network, the road network, the seaport network and the airport network. It also has somewhere in the region of 27 operational objectives in a 100 measures which are aimed at sustainability, achieving sustainable mobility in the network. So with all transport plans you need to have a balance between sustainable mobility measures and infrastructure measures. This is done at an EU level, it's done outside of the EU, but a good transport planner, looked into infrastructure requirements would also be mindful of sustainability requirements and the plan itself is based on three areas, it's a German concept but sustainability would be brought about through these hundred measures by avoiding travel. So a lot of measures say how can we avoid travel upon single occupancy vehicle? In Malta during the morning peak the average car occupancy is 1.2 people. Drive during the morning peak and look out through the windows and you will see mostly drivers and this is progressive, when we compare that to other countries, other cities, you know, people carrying more passengers, so how can we address that, carpooling, car sharing, priority parking for carpooling and sharers, these sort of measures, the second sustainability mobility approach is to get people out of private cars and there are a way of measures aiming at transferring people from their private cars into public transport cycling and walking.

These measures don't receive the same sort of publicity as the road measures unfortunately in the last two years we have seen a 23% increase, in the public transport, we have seen ferry patronage go up from 1 million people per year to 1.5 million people per year. A service introduced a few months ago of car sharing has seen an automatic membership subscriptions of 8 thousand people; six thousand people are now making use I need to make this a point, because the focus of this is sustainability... six thousand school children are now making use of free school transport, which was not available, public transport was increased because a number of measures has been introduced, including budgetary measures which aim

to provide free public transport, free public transport to the elderly and these are all measures that complement the development of the Ten-T network and this is the focus of the Ten-T. This Master plan has development of the Ten-T network, in a multi order way, the ... sustainable mobility measures in getting to make our transport more environmentally friendly and less carbon based, de-carbonise transport and we try to identify and prioritise the measures containing both.

Mistoqsija: You mention these very good sustainability measures, taken at a strategic level, now with regards to the specific road and area section covered by the Central Link Project, which non-infrastructure solutions did you implement and assess.

Twegiba: I have occurred to look at other plans over the last few days, I have not been involved in the designs, instantly I can see is an improvement in the bicycle infrastructure, people complain what bicycle infrastructure exists at the moment? There are segregated bicycle tracks along that, and there are safe crossing spaces for the bicycles alleviating the congestion and reducing the amount of delay on the road, would improve those 13 buses an hour in each direction, improve their reliability and punctuality, pedestrian crossing, I was involved in the '90s in the design of the crossings, the speed camera and ... there is a problem with the amount of traffic and the pedestrian interaction. The upgrade of the pedestrian facilities is a very important part of the project, and last and not least in the last four years there has been 53 injury accidents along this section of road and the designs many of these were involving interaction with pedestrians, or bad design issues leading to car accidents. So these three measures are multi-mobile measures. It's not just the case, in the old days I was involved so, mia culpa, we just used to build a road and consider the road traffic, it's an integrated multimobile approach, later been taken into consideration, pedestrian facilities have been taken into consideration, and the speed of buses has been taken into consideration, so those three measures will undoubtedly see a performance, an improvement of safety to road users and improvement of performance of the public bus service.

Mistoqsija: You mention the cycling lanes etc., which are included in the present application as approved. I am referring to which non-infrastructure measures were contemplated at concept and design stage? Whether noninfrastructure solutions were envisaged and studied.

Twegiba: Many of the non-infrastructure measures, that are mentioned, are not just based on a stretch of road; they are based on a national level. So if you are introducing a system of car sharing, ultimately the aim is to reduce the number of cars on the road, increase the occupancy of vehicles that applies on a national level obviously car sharers using this stretch of road will benefit; they will benefit from the flow traffic of that and they will also benefit from the availability of alternative motor transport.

Kif il-progett inezami huwa mahsub bhala parti minn katina ta' mizuri ghal trasport alternattiv, David Sutton spjega hekk:

"Mistoqsija: So going back to the project, much of it is based on increasing road capacity, isn't that a recipe for increasing more?"

Twegiba: Depends how you look at the use demand. Use demand, as we used to build the roads, in the '90 s with no accompanying measures, it can be used to an increase in car dependency, but when looked at in the context of the Transport Master Plan, we've got over a hundred measures in getting people out of their cars, looking into an alternative motor transport, and measures, policies, regulatory changes aimed at encouraging sustainable mobility then you need to look past approach. Infrastructure and sustainable mobility measures, all transport plans are based on these two ingredients.

Mistoqsija: I refer to this presentation of 2017, particularly to page 19, where you provide this ... and you explained how the predict and provide model leads to a cycle of traffic congestion and you show a picture where you ... investment is being provided of the Santa Venera tunnels and then in the there is total congestion. I am referring to page 19 of the document. Isn't this recipe being replicated in the central link?

Twegiba: This, by means of back ground, I was one of the consultants who worked on the Structure Plan back in 1989, and this was the approach that was adapted to new highway construction, this was planned in 1989, the Santa Venera link, absolutely no consideration was given to cycling, walking, public transport and obviously when you just invest in highway infrastructure it has the effect of.. you know let's use the car, if you go back to page 18, which shows the approach that we actually adopted, so what we were saying is that we were saying in the past we have made the mistake of simply predicting how many cars will use the road network and then increasing the capacity just the road cars with no accompanying sustainable mobility measures. In the 80's/90's there was no concept of measures within the same plan to improve sustainable mobility, the approach that we had adopted in the Transport Master Plan, very clearly spelt out here, is sustainable mobility balanced approach, this is perfectly in line with the EU requirements, first of all developing the TenT infrastructure, as a multi-mobile infrastructure. So the first time incorporating cycle lanes, footpaths, safe crossing exists, provision for public transport, and we're looking at improving people, so when you've got a bus service that carries 800 people on a section such as a central link, it makes a lot of sense to increase the capacity, because those 800 people using the buses will arrive on time. The main fault with the bus service at the moment, if you do any vaux pop is the reliability and punctuality of the bus service; buses are late because they are stuck in traffic. The plan also talks about bus corridors, these are sections of heavy bus usage, corridors, there are in Malta, where priority measures and traffic signals for example would be considered to facilitate the flow of buses to ensure they keep to the schedules better. If a bus sticks to its schedule better then more people would use it. If somebody is waiting for a bus and it's stuck-up in traffic, and it's half an hour late, people would say I'll use my car next time, I don't mind being stuck in a jam in my car, so this is a philosophy and this is explaining where we were wrong in the 80's and 90's, I informed the designer very well where we went wrong.

Mistoqsija: So basically there will be suggestion if the sustainable measures are successful?

Twegiba: And so far they've been very successful."

Illi minn naha tal-ERA, permezz tax-Xhieda tas-Sur Kevin Mercieca, Deputy Director fi hdan l-ERA, gie spjegat is-segwenti firrigward tal-istudju dwar l-kwalita' tal-arja:

“Mistoqsija : Ovvjament wiehed mill-issues li gie studjat, hija triq din, allura l-issues ta' trasport, issues ta' kwalita' tal-arja ecc. Meta intom tassessjaw l-impatt illi l-progett partikolari, senjatement progett ta' dan it-tip, l-impatt li jkollu fuq il-kwalita' tal-arja, intom minn fejn tibdew bhala bazi?

Risposta : Bazikament il-process ta' kif tigi studjata l-impatt fuq il-kwalita' tal-arja, hija li jinbena mudell, mudell tas-sitwazzjoni prezenti, qed nitkellmu fuq mudell li jkun fih l-input tat-traffiku ecc u l-layout u t-toroq, imbaghad nipprogettaw ghal zmien ta' meta jibda jopera l-progett normalment ghal hames snin wara u gieli ghal ghaxar snin wara. Ovvjament iktar ma tipprogettah il-quddiem fil-futur, inqas ikollok reliability fuq l-projections tieghek. Pero ahna qabel, meta nibnu lewwel mudell ghas-sitwazzjoni prezenti, inqabbdu lill-applikant ukoll, li sakemm ma jkunx hemm x'imkien fejn ikun hemm data ezistenti, bhal per eżempju ikun hemm station taghna stess, pero fejn ma jkunx hemm, ahna nitolbu lill-applikant jaghmel minimu ta' sitt gimghat real time monitoring fl-area biex ahna niehdu base line area biex dik il-base line ahna nqabbluha mal-mudell li jkun bena sabiex naccertaw ruhna illi l-mudell ikun beda minn sitwazzjoni li hija realistica.

Mistoqsija : Meta qed tghid tintalab 'real data', in relation fuq il-kwalita' tal-arja?

Risposta : Biex inkun car, real time monitoring tal-PN10 u tal-NO2.

Mistoqsija : U dan isir skond linji gwida li tohorgu intom ?

Risposta : Dan isir skond l-istess standards illi nuzaw ahna bhala Awtorita' biex nirrapurtaw lill-EU.

Mistoqsija : Inti jirrizultalek f'dan il-kas sarx dan l-ezercizzju?

Risposta : Iva sar vicin it-tarf tat-Triq Nutar Zarb. Qrib l-ispeed camera.

Mistoqsija : U l-findings ta' dawn l-istudji, kienu available ghall-Awtorita' le ?

Risposta : Huma available pubblikament fl-istudju koll.

Ri-ezami :-

Mistoqsija tal-Avukat Claire Bonello :

Rigward l-istudju fuq l-air quality. Inti ghidt illi b'mod generali l-ERA ma ticcertifikax l-EIA. Ghaliex?

Risposta: Il-Ligi ma titlobx. L-EIA huwa dokument li ultimately qed jippreparah konsulent indipendenti. L-ERA taccerta ruhha illi bhala owner tal-process, illi l-process ikun sar b'mod komplut u skond il-Ligi kif suppost pero ultimately ma taghtix xi timbru ghax jista' jkun li jista' jinghalaq EIA li ma jkunx totalment sudisfacenti ghall-ERA imma mbaghad x'hin tigi biex tiehu d-decizjoni taghha l-ERA tghid isma', jiena ma' dik il-parti tal-EIA ma qbiltx biex tigi biex taghmel il-dan taghha jigifieri f'dak is-sens ma jkunx certifikat. U qed nghid hekk ghax fil-passat, il-legislazzjoni passata kienet titlob li jkun hemm speci ta' certifikat jigifieri l-Awtorita' hadet ownership tieghu - issa dan huwa approved mill-Awtorita'. Dan illum taccerta ruhha, kif titlob il-Ligi, taccerta ruhha illi l-EIA process kien sar kif suppost u skond il-Ligi.

Mistoqsija: Meta tghid li jkun sar skond il-Ligi, liema Ligi jew regolamenti ?

Risposta: L-EIA regulations.”

Konsiderazzjonijiet:

Dan it-Tribunal jinnota li fit-TOR qed jintalab li ghandu jigi nkluz ‘an overview of the expected traffic changes when the project is FULLY operational’ [Vide pagina 20 tat-TOR], li minn ezami tad-dokumenti tal-EIA qed jigi ndikat bic-car li l-projected air pollution qed tigi meqjusa fuq il-projected traffic flow mqassam fuq diversi snin – liema nformazzjoni giet mehuda minn studju tal-CBA, li ma kienx jikkoncerna l-impatt fuq l-arja, izda pprovda studju xjentifiku fuq il-projezzjoni ta’ traffiku. Dan tal-ahhar huwa studju bazilari xjentifu u tekniku verifikat u accettat fuq kollox minn Awtorita’ kompetenti, ossia Awtorita’ ta’ Trasport.

Illi dan it-Tribunal seta jinnota ukoll li filwaqt li huwa minnu li fl-istudji ta’ traffic flow mehuda mil-CBA ma kienx jinkludi ‘queuing times and distances’, l-istudju tekniku fuq l-impatt tal-kwalita’ tal-arja xorta haseb li jinkludi ‘assumptions were made in the dispersion models to account for the increased pollutant levels of stalled traffic as compared to less polluting moving traffic’ u ghalhekk ma jistax jigi nvokat xi ommissjoni jew difett fl-istudju meta l-istess analizi haseb ghal tali nuqqas fil-base line studies li gew mehuda fl-analizi tal-impatt fuq il-kwalita tal-arja.

Illi Dr George Peplow, fil-kjarifika li ghamel [Rapport prezentat fit-28 t'Ottubru 2019] spjega li metodu li jista jintuza ghal dispersion models (ta’ emmissjonijiet fl-arja) huwa dak ibbazat fuq traffic data li tinkludi ‘queuing times and queuing lengths’ jew kif sar fil-kaz ojdern, gie bbazata fuq AADT [Annual Average Daily Traffic] u velocity data. Fil-kaz tal-ahhar ‘additional factors to include tyre wear and the re-dispersion of the road particulate matter were included in this report’, u dan bhala risposta tal-osservazzjonijiet ta’ Dr. Eward A Mallia [Sezzjoni 7, f’pagna 5 tar-rapport prezentat fis-seduta tal-15 t'Ottubru 2019], fejn irrimarka li ma hemmx konkluzzjoni cara mill-ERA dwar il-kumment taghhom dwar zieda tal-emmissjonijiet minn ‘abrasion and resuspension’ tal-vetturi, b’dan illi zieda ta’ karożzi u average speeds f’Central Link mhux ser iwassal ghal miljorament flemmissjonijiet kif qed jigi progettat.

Minn naha l-oħra Dr Peplow, innota ukoll li “the real quantitative measurements of PM10 (measured by consultant’s standard measurements) and NO2 (measured through ERA’s measurements), compared to the results for PM10 and NO2, complied to ERA’s comparability results. This means that the dispersion models results were statistically equivalent.’, b’dan illi osserva ukoll li “the quantitative measurements showed an already high level of PM10’s, 55ug/m3 which is higher than the EC limit.”

L-aggravju erbatax (14) isegwi dwar l-ilment li r-rapport tal-EIA kien nieqes minn kontroll ta’ kwalita’ kif jesigi s-sub-regolament 18(4) tal-ligi sussidjarja 549.46. Illi f’dan l-aggravju sar referenza ghal diversi stanzi dwar allegat nuqqas jew ommissjoni filvalutazzjoni ambjentali, fosthom dwar l-traffic projections (inkluz l-AADT); impatt kumulattiv minn zvilupp approvat u ppjanat; nuqqas ta’ studju fuq is-sahha u epidemologija; u oħrajn.

Illi l-ERA qed tirribati tali allegazzjoni tenut illi r-rapporti huma maghmulin minn konsulenti esperti fil-qasam rispettiv taghhom, liema rapporti gew ukoll skrutinati mill-

ufficjali tal-Awtorita'. F'dan ir-rigward, Kevin Mercieca [Xhieda mehuda fl-24 ta' Ottubru 2019] spjega dan li gej:

“Mistoqsija : Issa, hargu t-terms of reference, l-EIA li gie sottomess, kien jonora daww it-terms of reference li intom tkunu hritu ?

Risposta : B'mod generali, iva. Pero biex niccara punt, ahna fl-ebda punt bhal Awtorita' ma niccertifikaw l-EIA illum, bil-Ligi prezenti kif inhi, pero b'mod generali l-EIA iva ghax kieku ma naslux għall-istadju finali li nipprezentawh quddiem ilpubbliku. Kieku naghmlu queries ohrajn u fil-fatt f'kull EIA, f'kull process li jkun hemm, ahna naghmlu various stages ta' queries u toing and froing biex ahna naslu għal kjarifici kollha li jkollna bzonn.

Mistoqsija : U dan il-process sar ?

Risposta : Iva dan il-process sar bhal kazijiet l-ohrajn kollha.”

Illi dan it-Tribunal jinnota li l-allegat nuqqas ta' osservanza procedurali, jew allegat nuqqasijiet jew ommissjonijiet fil-process tal-EIA ikun jista' jigi sostnut f'kaz ta' incidenza materjali fl-ezitu tal-konkluzzjoni tal-EIA u fid-determinazzjoni finali tal-progett [Vide decizjoni tal-ECJ C-72/12, Altrip, paragrafi 52 sa 54; Rulings of the Court of Justice of the European Union (2017), pagna 63], b'dan illi “il-grad ta' serjeta' tad-difett invokat u li jivverifikaw, b'mod partikolari, għal dan il-għan, jekk dan chaħħadx lillpubbliku kkoncernat minn garanzija prevista b'mod konformi mal-għanijiet tad-Direttiva 85/337, li tippermettilu aċċess għall-informazzjoni u jkun awtorizzat illi jippartecipa fil-proċess ta' teħid ta' decizjoni” [ECJ C-72/12 Altrip].

Fil-kaz odjern, fid-dawl tad-direzzjoni tal-CJEU fid-decizjoni sucitata, dan it-Tribunal, għandu jikkunsidra “without in any way making the burden of proof fall on the applicant, but by relying, where appropriate, on the evidence provided by the developer or the competent authorities and, more generally, on the case-file documents submitted to that court or body, that the contested decision would not have been different without the procedural defect invoked by that applicant. In the making of that assessment, it is for the court of law or body concerned to take into account, inter alia, the seriousness of the defect invoked and to ascertain, in particular, whether that defect has deprived the public concerned of one of the guarantees introduced with a view to allowing that public to have access to information and to be empowered to participate in decision-making in accordance with the objectives of Directive 85/337. (C-72/12, Altrip, paragraphs 52-54, C-137/14, Commission v Germany, paragraphs 59-60)” [EU (2017): Rulings of the Court of Justice of the European Union].

Fil-kaz odjern, minn ezami tal-provi u dokumenti li l-Awtorita' kompetenti pprezentat u ppublikat, ma hemm ebda ndikazzjoni ta' ommissjoni jew difett procedurali li b'xi mod caħdet lill-pubbliku kkoncernat access għall-informazzjoni jew milli jippartecipa filprocess ta' teħid ta' decizjoni.

Ta' min izied illi l-ilmenti huma diretti lejn kwistjonijiet teknici fir-rigward kif giet analizzata informazzjoni bazilari fejn l-esperti talpartijiet mhux qed jaqblu bejniethom kif indikat fid-diversi xhieda u dokumenti eżebiti fil-process ta' dan l-appell, u referuti hawn fuq f'din id-decizjoni. Madankollu, minn dak li seta' jeżamina dan it-Tribunal ma jirrizultax li hemm xi diskrepanzi sinifikanti jew dijametrikament opposti rigward il-

konkluzzjonijiet tal-EIA, ossia fir-rapport finali, fejn gie stabbilit il-livell ta' mpatt fuq id-diversi aspetti tal-ambjent taz-zona milquta bhala konsegwenza tal-izvilupp in mertu. Illi ghalhekk ma jirrizultax mill-provi provduti li limpatt analizat fl-EIA kif gie skrutinat u finalizat ghas-sodisfazzjon tal-Awtorita' kompetenti, huwa erroneju jew infondat b'tali mod li jrendi l-istess process null.

Illi rigward is-Social Impact Assement, huwa fatt li dan mhux parti mill-process tal-EIA inezami kif konfermat mix-xhieda ta' Kevin Mercieca, u ghalhekk mhux korrett li tinvoka xi difett fil-process tal-EIA, ghalkemm bhala principju, l-impatt ambjentali necessarjament jinkorpora l-impatt fuq il-bniedem. Illi fl-analizi dwar l-impatt fuq il-popoluzzjoni bhala konsegwenza tal-impatt ambjentali tal-progett sar ukoll referenza ghal findings tal-SIA ta' Dr Marvin Formosa (2018). Madankollu huwa evidenti li SIA gie kkomissjonat mill-applikanti ghalkemm ma kien hemm ebda rekwezit ghal tali studju, lanqas fi process ta' ppjanar. Illi ghalhekk, l-osservazzjonijiet maghmula fir-rigward tal-CBA, ghandhom japplikaw mutatis mutandis fir-rigward tas-SIA.

Ghal dawn il-motivi, l-aggravji dwar nuqqas ta' access ghall-informazzjoni, informazzjoni mhux korretta jew dubjuza fl-EIA, nuqqas ta' osservanza ta' TORs u sktutinju tal-istudji teknici tal-EIA, mhux fis-sewwa u qed jigu michuda.

Aggravji numru 3 u 4 meqjusa flimkien:

Illi fit-tielet (3) aggravju qed jigi ndikat diskrepanzi bejn dak dikjarat fid-dokument tal-applikazzjoni, ossia fil-formala inizjali tal-applikazzjoni fejn gie notat li l-progett ser jokkupa art ta' 19,407 metru kwadru [Vide document a fol 1v fl-inkartament tal-applikazzjoni PA 9890/17], mentri fil-case officer report gie ndikat tehid ta' art agrikola sabiex jigi akkomodat il-progett li jammontaw ghal 48,466 metri kwadri, b'dan illi qed jigi sostnut li dan iwassal ghal dikjarazzjoni hazina fl-applikazzjoni li jrendi ukoll ksur ta' dritt ta' access ghall-informazzjoni xierqa, u ta' gustizzja naturali.

Minn ezami tal-inkartament tal-applikazzjoni de quo, dan it-Tribunal seta jinnota li wara l-prezentazzjoni tal-applikazzjoni fis-17 ta' Settembru 2017, kien hemm diversi bidliet fil-proposta ta' zvilupp, li kienet ukoll tinkludi zieda tal-art sabiex jigi akkomodat lizvilupp kif finalmnet gie approvat [L-applikazzjoni giet pubblikata fil-25 ta' Lulju 2018 u fit-30 ta' Jannar 2019]. Illi ghalhekk il-case officer report huwa bbazat fuq pjanti ferm differenti mill-pjanti u lapplikazzjoni li kienet originarjament prezentata.

F'dan ir-rigward l-allegazzjoni ta' dikjarazzjoni qarrieqa fid-dokument tal-applikazzjoni jirrigwardja l-proposta u l-pjanti sottomessi mal-applikazzjoni kif originarjament prezentata u ghaldaqstant l-allegazzjoni migjuba hija wahda fierha u bla bazi.

L-ilment dwar nuqqas ta' access ghall-informazzjoni jew konsultazzjoni xierqa ukoll mhux fis-sewwa u dan tenut kont tal-fatt li kull tibdil fil-pjanti kien suggett ghal-notifikazzjoni tal-konsulenti (interni u esterni) kif ukoll lill-pubbliku nteressat, filwaqt li konsultazzjoni kienet saret ukoll kemm fi stadju bikri u mal-preparazzjoni tar-rapport tal-EIA, li certament jinkludi ukoll studji u dettalji tal-progett in mertu.

Illi f'dan l-aggravju hemm ukoll allegazzjoni ta' informazzjoni qarrieqa f'dikjarazzjoni tal-Perit Robert Zerafa [Ibid. Vide dokument a fol 1600a] dwar ilprekawzzjonijiet li ser jittiehdu f'xoghol biswit l-Akwadott ta' Wigncourt. Madankollu dan it-Tribunal ma jista jara ebda element ta' informazzjoni qarrieqa, u dan tenut li din hija dikjarazzjoni fir-

rigward ta' xoghol li ghandu jsir meta johrog il-permess ta' zvilupp, u jibdew ix-xogholijiet ta' kostruzzjoni.

Illi r-rakomandazzjoni tal-Sovrintendza dwar il-Patrimonju Kulturali tal-20 ta' Gunju 2019 [Vide dokument a fol 1604a] kienet ibbazata fuq il-works method statement a fol 1584a u kjarifikazzjoni a fol 1597o fl-inkartament tal-applikazzjoni de quo mill-Perit Zerafa fejn gie ccarat li firrigward tal-Akwadott ta' Wignacourt ix-xogholijiet "described in the works method statement refer to minimal interventions to reinstate the footpath along Wignacourt and maintain the existing buffer width between the Wignacourt Aqueduct and carriageway". Madankollu, s-Sovrintendenza xorta qed timponi monitoragg tal-arkaeologija bhala parti mill-kondizzjonijiet tal-permess u dan sabiex jizdiedu l-kontroll u salvagwardji necessarij ghall-protezzjoni tal-wirt kulturali.

Illi fi-raba' (4) aggravju qed jigi allegat kunflitt ta' interess mill-kunsulenti li hadmu fl-EIA bi ksur tal-regolament 17(3) tal-ligi sussidjara 549.46, u dan ghar-raguni li l-awturti tal-CBA, ossia Crowdnet Ltd, ma ghamletx id-dikjrazzjoni necessarija skont illigi, ghar-raguni, skont l-appellanti, illi l-CBA kien il-bazi tal-gustifikazzjoni tal-progett u l-istudju tal-kwalita' tal-arja fil-process tal-EIA.

Illi dan it-Tribunal gja ezawrixxa l-aggravji fir-rigward il-CBA fil-kuntest tal-EIA aktar 'il fuq f'din id-decizjoni. F'dan ir-rigward l-ERA kienet cara li r-regolament 17 tal-ligi sussidjarja huwa applikabbli biss fir-rigward ta' konsulenti li qed jippreparaw l-istudji necessarij kif stabbilit fit-TORs. Huwa car li l-CBA mhux studju li jaghmel parti mir-rapport tal-EIA, ghalkemm mhux ezkluz li sors sekondarju ta' informazzjoni, jew inforamzzjoni bazilari gja stabbilita jigu applikati fl-istudji tal-EIA bhal fil-kaz talinformazzjoni u studji bazilari li kienu gja disponibbli ghall-konsultaneti mil-CBA u kull studju iehor li l-konsultanti setghu hassew ilhtiega li jikkonsultaw ai fini tal-istharrig u studju fil-kamp xjentifiku rispettiv taghhom.

Ghalhekk dan l-aggravju mhux fis-sewwa u bla bazi u konsegwentament qed jigi michud.

Aggravji numru 5 u 6 meqjusa flimkien:

Illi f'dan l-aggravji qed jigi allegat nuqqas ta' harsien tal-obiettivi tal-iSPED, kif ukoll nuqqas ta' aderenza man-National Transport Master Plan (TMP) 2025 u man-National Transport Strategy (NTS) 2050.

Illi l-appellanti qed jesigu li l-izvilupp odjern injora diversi obiettivi tal-iSPED, b'dan illi gie skartat ghal kollox il-principju generali ta' 'sequential approach' addottat fl-iSPED fejn b'mod generali qed jinghata priorita l-protezzjoni taz-zona rurali, ghal mod kif gew ukoll injorati obiettivi strategici mahsuba li jipprotegu r-rizorsi tal-ilma, li jippromwovu zero carbon modes of transport, tnaqqis fil-greenhouse emissions, u tharis tal-patrimonju kulturali, agrikolu, biodiversita u hydromorphological processes.

Illi kemm l-Awtorita' u l-permit holder sostnew li dan l-aggravju ma giex sostnut ghax mhux bizzejjed li l-appellanti jelenkaw numru ta' oggettivi tal-iSPED minghajr ma jigi sostnut kif tali obiettivi qed jigu miksura bl-izvilupp odjern.

Illi l-permit holder spejga kif l-iSPED jidentifika l-fattur ta' kongestjoni fit-traffiku, kif ukoll traffiku qawwi fit-toroq bhala sors principali ta' tniggiz tal-arja. Ghalhekk gie

sostnut li l-ghan ewlieni tal-progett ta' Central Link huwa propju sabiex jitnaqqas il-kongestjoni tat-traffiku fil-qalba taz-zona urbana ta' Hat Attard, billi jigu eliminati bottlenecks fl-istess zona u konsegwentament jitnaqqas il-hin ta' stennija b'velocita akbar tat-traffiku miz-zona urbana, b'dan illi gie muri bi studji kemm fl-EIA u fl-Istrategija Nazzjonali tat-Transport 2050. Hawn ukoll, il-permit holder indikat numru ta' objettivi tal-iSPED li skont huwa qed jiggwidaw lizvilupp odjern.

Illi fil-fehma ta' dan it-Tribunal, in-numru ta' objettivi tal-iSPED mhumix xi forma ta' shopping list li wiehed jista' jimmarka jew jelimina skont l-ezigenza tal-progett mahsub. Ic-cirkolari 02/15 tipprovdi gwida dwar l-applikabilita' tal-iSPED fejn gie spjegat li l-165 policies strategici tal-iSPED jistghu jigi maqsuma f'erba' kategoriji hekk kif gej [Vide pagna 3 ta-Cirkolari tal-Awtorita tal-Ippjanar 02/15: Strategic Plan for Environment and Development (SPED)]:

- “Policies providing location guidance for development
- Policies requiring further action in subsidiary plans and policies
- Policies necessitating inter-agency collaboration
- Policies setting out Development Control guidance”

Illi l-iSPED huwa 'dokument strategiku' li ghandu jipprovdi daww l-ghanijiet dwar l-izvilupp sostenibbli u l-uzu tal-art u l-bahar [Vide Artikolu 44(1) tal-Kap 552]] u ghaldaqstant qed jipprovdi planning framework bhala l-bazi ghal preparazzjoni ta' plans and policies skont kif identifikat fil-varji objettivi tematici kif ukoll objettivi specifici. Illi dan johrog mill-principji generali li fuqhom gie bbazat n-National Spatial Framework kif migbura f'paragrafu 3.1 billi qed jigi adottat sequential approach fl-uzu tal-art, b'dan illi l-izvilupp skont diversi objettivi qed jigi gwidad hekk kif gej, b'tal-ewwel jiehu precedenza:

1. re-use of existing developed land and buildings (through change of use);
2. re-development of existing development land and buildings; u
3. where no other feasible alternatives exist, to the use of vacant land.

Illi tali sequential approach fil-Kapitolu 3 tal-iSPED jirrigwardjaw il-bazi fuq liema l-Gvern ta' Malta ser ikun qed ifassal 'policies, plans and programmes' bhal ma gja gie adottat fi tfassil tan-National Spatial Framework (NSF) kif identifikat f'diversi objettivi strategici, kemm daww tematici kif ukoll spazzjali. Fil-fatt fl-istess Kapitolu qed jigi spjegat li l-NSF “sets the framework on which all areas of the Maltese Islands will achieve their potential for sustainable development and takes forward the Vision of the SPED” u li tali framework jinkludi diversi 'national and sectoral Government policy documents' fuq liema gie bbazat il-kompilazzjoni tal-NSF u l-hsieb generali tieghu huwa li jiggwida policies, pjannijiet and programmi fuq skala nazzjonali sabiex jintlahaq is-sostenibilita' tal-uzu tar-rizorsi tal-art kif ukoll tal-bahar.

Illi minn naha l-ohra l-istess Kapitolu 3 tal-iSPED jipprovdi eccezzjoni f'kaz ta' progetti ta' mportanza nazzjonali bhal fil-kaz odjern, fejn il-Gvern jista' 'after balancing economic, social and environmental priorities, including non-compliance with specific provisions of this Plan, conclude that the positive aspects of these projects outweigh the negatives and decide in their favour. When such cases arise, Government will provide a reasoned decision detailing the issues it has taken into account and how it arrived at its final conclusion.”

Madankollu, l-progett ta' Central Link mertu ta' dan l-appell ma jistax jitqies bhala progett isolat bi hsieb li jinjora kemm l-impatt ambjentali, kif ukoll dak socio-ekonomiku. Dan qiegħed jingħad fl-isfond li l-izvilupp odjern ta' natura infrastrutturali mhux biss huwa governat bl-iSPED, izda ukoll bi pjanijiet specifici ossia l-istrategija u l-vizjoni tat-trasport f'Malta, kif imfassal skont it-Transport Master Plan 2025 (TMP) u n-National Transport Strategy 2050 (NTS), li kienu ukoll suggetti għall-Strategic Environment Assessment (SEA). Tali pjanijiet huma ukoll mfassala fl-isfond tal-iSPED kif spjegat f'pagna 55 tal-TMP u f'paragrafu 1.4.1 tal-NTS fejn f'dan tal-aħħar gie ndikat is-segwenti:

"The SPED identifies four key thematic issues which emerged from a synthesis of the National Reform Programme, the Vision 2015, and the National Environment Policy, as well as consultations with Ministries and Government entities and the Structure Plan Review process. These themes are: SocioEconomic Development; Environment; Climate Change and Travel Patterns [Kif migbura fi 12-il Thematic Objectives tal-iSPED].

The national spatial framework outlined in the SPED addresses the issues identified through a set of Strategic Objectives which include a set a Thematic Objectives that permeate these four themes as well as a set of Spatial Objectives for Urban, Rural, and Coastal Zone and Marine Areas and Gozo. An exercise was carried out as part of the analysis of strategic national documents whereby, for each objective identified in the SPED, the role which the National Transport Strategy could play in supporting each objective was identified."

Annex II tal-istess dokument jipprezenta analizi kif l-NTS qiegħed jindirizza l-oġġetti u l-istrategija tal-iSPED skont dawn l-erba' temi strategici identifikati fit-Thematic Objectives tal-iSPED.

Illi għalhekk dan il-progett infrastrutturali jrid jigi kunsidrat fid-dawl ta' wieħed mill-istrategija ewlenija tal-iSPED dwar 'travel patterns' fejn li jinkludu tlett Thematic Objectives ossia TO10 sa TO12, b'dan illi fin-natura tagħhom jirrikjedu element ta' inter-agency collaboration, li f'dan il-kaz tal-oġġetti huma issa ukoll mfassal fi programm strategiku specificament għat-Trasport ta' Malta kif għa msemmi supra. Kemm l-iSPED kif ukoll l-NTS u l-TMP għandhom bhala oġġett ewleni l-implimentazzjoni tat-TEN-T core u comprehensive network [TO10.2 tal-iSPED; Strategic Goal para. 05.1 tal-NTS; u Paragrafu 2.27 tal-TMP], li jinkludi din il-parti tan-network fil-lokallita' ta' Hat-Attard [Mizura numru 12 f'pagna 258 tat-TMP] kif spjega s-Sur Davin Sutton fix-xhieda tiegħu [Mehuda fis-seduta tat-22 ta' Ottubru 2019] kif għa ndikat aktar 'il fuq f'din id-decizjoni.

Illi għalhekk mhux bizzejjed li jigi enunzjat l-iSPED fir-rigward l-izvilupp odjern mingħajr ma wieħed jikkunsidra l-implimentazzjoni tal-NTS u l-MTP li l-istess SPED jahseb sabiex isostni u jimplimenta.

Fil-kaz odjern, skont l-aggravju numru 6, l-appellanti qed jishqu li l-progett mertu ta' dan l-appell huwa identifikat bhala parti hekk identifikata bhala 'comprehensive' fit-TEN-T Network, u mhux hekk imsejjeh 'core' li huwa ta' priorita' fl-izvilupp tat-TEN-T Network, b'dan tal-aħħar irid jigi kempet tas-sena 2030, filwaqt li l-'comprehensive' sas-sena 2050. Skont l-appellanti mhux lestent kollu tal-progett in mertu huwa identifikat għall-upgrading. Gie ukoll sostnut li l-progett ma jilhaqx il-oġġett tal-

master plan li huwa ntiz li johloq trasport sostenibbli b'dan illi mhux necessarju infrastruttura li zzied il-kapacita tal-karozzi bhala soluzzjoni ahharijja tal-kongestjoni.

Il-Prof. Maria Attard [Pagna 4 tar-rapport prezentata fis-seduta tat-22 ta' Ottubru 2019 bhala prova tal-appellanti] innotat dan li gej:

"In this stage of analysis, part of the Central Link project linked to the TEN-T Comprehensive Network (junction WA7 – proposed MFSA roundabout and section WA8-WA10 – Nutar Zarb Street and Mdina Road) are listed at 7th place and 9th place respectively (9th and 11th when one considers the competed and committed projects of Kappara and Addolorata). The remaining section between QA10 and NA15 which is part of the Central Link project is not even identified for upgrade in the NTMP.

The NTMP therefor does NOT shortlist this project as a priority for the masterplan operational period 2015- 2025. And it does not carry out any individual appraisal of either Projects 8 or 12 to assess their impact on the external impacts of traffic (congestion, cost of accidents and environmental externalities)."

Kif ukoll:

"The promoters of the Central Link Project have not investigated other transport options or considered other traffic calming, traffic restraint and public transport priority measures for the area that could potentially eliminate the need for increased road capacity for cars within close proximity of a residential area, as is being proposed in the Central Link Project. The effect of severance on the community, the increased traffic speed (outside peak hours), the increase in noise and air pollution must be assessed against other, more sustainable transport options before constructing new road infrastructure.

This is also in line with the objectives and principles of the 2050 National Transport Strategy (Transport Malta 2016b) and the 2025 National Transport Masterplan (Transport Malta, 2016a)."

Illi dwar l-implimentazzjoni tat-TEN-T Network u kif dan il-progett qed jikkonforma mal-iStrategiija u l-Master Plan tat-Trasport xhed is-Sur Davin Sutton, CO Transport Malta hekk kif gej:

"So your second question was why we have a Transport Master Plan. Now, first and foremost from a national point of view, the only holistic transport plan that we've ever had is the structure plan of 1989/1990, and this contained a number of provisions related to land use, also land use, transport planning, transport projects, and this planning itself the lifespan was till 2010, so naturally it's expired and we really have nothing to replace it with. The other side is that the European Commission requires us to undertake a holistic exercise ourselves, as part of the European programming period, which is related to the cohesion policy and also the regional policy. The European commission programs its plans and budgets according to a seven year period. It's in the case of cohesion policy and regional policy; it's called the operational program so we are covered at the moment by an operational program this is from 2014 to 2020. Now before, we just needed to list projects not come up with any scientific information saying we have to do this, this and this, and the Commission would say ok... some questions with some things, but there was generally no caution, this time around, because of the bad experience they had with countries, not Malta, but other countries, Romania, Bulgaria, Poland and other countries which received lots amounts of funds and they didn't disperse them TenT

projects, they wanted member countries to commit themselves to a program of action, to develop and implement a Ten-T project which has not been completed. So in this case we had what was called an ... conditionality. So Malta and the current operational programming period received, or identified to receive a 140/150 million Euro, to spend on transport, and the two priority accesses and it was not allowed to spend one cent of that, until we have what is called a comprehensive transport plan in place. Now the Commission has set standards for this plan, which applied in another EU regulation, Regulation 1303 of 2013, more or less at the same time, where Malta will require to prepare a comprehensive plan that met these criteria, Malta and all other countries that were eligible to cohesion funds and funds under the ERDF so if you look at the objectives, the objective behind this plan, was to promote sustainable mobility and removing bottlenecks in key network infrastructures. It goes on to explain these key network infrastructures are primarily the Ten-T transport networks. It also sets a number of conditions for example the need to ... the funds under this operational programming period will go to three main areas, in transport so if you look at the 2014 to 2020 operational program which is a Maltese produced document, approved by the commission, our funding, the EU funding that comes for Malta, as part of the operational program the cohesion fund and ERDF, but let me expand on these three main areas. Firstly development of the Ten-T, this is a very important aspect, secondly developing and improving an environmentally friendly transport and thirdly in the development of low carbon assistance. They are also required to go through all the projects ... thoroughly projects and we categorise and we prioritise, and we prioritise in an objective way, and this was done through the Transport Master Plan. Now the Transport Master Plan which I am going to explain in more detail, this was a document that is required to be prepared in order to release funds which had been allocated to Malta. Without this document we will not receive the 150million Euros identified in the operational program for using EU funds on Transport projects."

Is-Sur David Sutton, spjega b'mod car kif tali progett huwa parti minn katina ta' toroq li Malta ghandha obbligu li twettaq sa snin 2030 u 2050, u kif tali progett qed jilhaq l-objettivi tal-iStrategija Nazzjonali u l-Master Plan ta' Trasport f'dak li ghandu x'jaqsam ma aktar efficjenza, modilita, u titjeb fit-trasport pubbliku.

Illi l-priorita ta' tali progett, ghalkemm jaghmel parti mill-'comprehensive node' ta' TEN-T gie spjegat hekk kif gej:

"Mistoqsija: Transport Malta was the original applicant, in this application. So why was the need felt to address this section of the comprehensive TEN-T network?"

Twegiba: We went through parts of this exercise with the Transport Master plan, was not only to list the 29 sections but also to screen them and eventually to try to objectively prioritise in the rotation of projects now I have been here long enough to know that certain projects you question why is that a top priority, that's as it went for endorsement by European Commission it had to be backed up by objective analysis, so the first thing we try to do, as I explained in chapter 3 of this, of the Transport Master plan, is we needed to try and screen the applications, the objectives of Ten-T policies is to remove traffic bottlenecks, so we looked at where the main traffic bottlenecks where in Malta and Gozo. In this case five main bottlenecks were identified and the section road from MFSA to Saqqaja Hill was a bottle neck. Its carry a lot of traffic, there was a significant delay on the section of road and also another

criteria because the aim of the Ten-T network is to provide multi-modality, not just for provision of cars but also for buses, and one of the criteria that we actually looked at was the number of bus passengers that passed through that link, now this has several bus services in both directions, amounting to, during morning peak hours, 13 buses an hour, and when you look at the number of people that go on those the buses traffic congestion in this location effect 500 in one direction, 350 in the other one hour. So this was a high priority from the outset because it addressed the problem of bus delay, the buses were delayed in traffic along the section of road, for example where there is the traffic island, you've got the Attard Farm Supplies on one side and you've got Notary Zarb street on the other, there's basically a bottleneck where two lanes are reduced to one lane. That has the effect of reducing traffic, the speed of traffic, including buses down to one and a half kilometres an hour, and when you compare that to cities elsewhere it is very, very slow. So this is, obviously a traffic bottleneck, I don't think anyone can contest it, it is a traffic bottleneck. It is something where there are serious problems resulting from the geometric designs of the current road network.

Mistoqsija: So you were studying how to reduce or eliminate bottlenecks and reduce traffic congestion. Did you assess other non-infrastructure solutions?

Twegiba: Let me just explain, so the Transport Master Plan has three operational objectives relating to upgrading of the Ten-T network, the road network, the seaport network and the airport network. It also has somewhere in the region of 27 operational objectives in a 100 measures which are aimed at sustainability, achieving sustainable mobility in the network. So with all transport plans you need to have a balance between sustainable mobility measures and infrastructure measures. This is done at an EU level, it's done outside of the EU, but a good transport planner, looked into infrastructure requirements would also be mindful of sustainability requirements and the plan itself is based on three areas, it's a German concept but sustainability would be brought about through these hundred measures by avoiding travel. So a lot of measures say how can we avoid travel upon single occupancy vehicle? In Malta during the morning peak the average car occupancy is 1.2 people. Drive during the morning peak and look out through the windows and you will see mostly drivers and this is progressive, when we compare that to other countries, other cities, you know, people carrying more passengers, so how can we address that, carpooling, car sharing, priority parking for carpooling and sharers, these sort of measures, the second sustainability mobility approach is to get people out of private cars and there are a way of measures aiming at transferring people from their private cars into public transport cycling and walking.

These measures don't receive the same sort of publicity as the road measures unfortunately in the last two years we have seen a 23% increase, in the public transport, we have seen ferry patronage go up from 1 million people per year to 1.5 million people per year. A service introduced a few months ago of car sharing has seen an automatic membership subscriptions of 8 thousand people; six thousand people are now making use I need to make this a point, because the focus of this is sustainability... six thousand school children are now making use of free school transport, which was not available, public transport was increased because a number of measures has been introduced, including budgetary measures which aim to provide free public transport, free public transport to the elderly and these are all measures that complement the development of the Ten-T network and this is the

focus of the Ten-T. This Master plan has development of the Ten-T network, in a multi order way, the ... sustainable mobility measures in getting to make our transport more environmentally friendly and less carbon based, de-carbonise transport and we try to identify and prioritise the measures containing both.

Illi ghalhekk, dan it-Tribunal ai bazi ta' dak li qed jigi ndikat hawn supra, huwa tal-fehma li l-gustifikazzjoni tal-progett bhala parti minn TEN-T Network gie kjarifikat u ghalhekk l-aggravji f'dan ir-rigward qed jigu michduda.

Aggravji numru 7 u 13 meqjusa flimkien:

L-aggravju seba' (7), li jkopri 22 pagna tar-rikors promotur, huwa dirett lejn policies ta' ppjanar fil-Pjan Lokali tac-Centru ta' Malta, kif ukoll f'dak tal-Majjistral, u mqassam f'seba' sezzjonijiet hekk kif gej:

1. Ksur tal-Policy AT10 rigward il-bypass ta' Hat Attard;
2. Ksur ta' Policy CG34 rigward Strategic Bus Corridors;
3. Ksur ta' Policies CG09 u CG 18 rigward zvilupp gewwa zona ta' konservazzjoni urbana u green area rispettivament;
4. Ksur ta' policies CG24 u NWAG1 rigward zoni ODZ u zoni ta' valur agrikolu;
5. Policies CG22, 28, 29 u NWCO9 rigward restrizzjoni ta' zvilupp f'zoni ambjentalment sensitivi li ma gewx meqjusa;
6. Policy NWCO11 rigward Stratgic Open Gap li ma gitx kunsidrata;
7. Policy NWLA2 rigward zona ta' valur xenografiku gholi li ma giet injorata;

1. Policies AT10 u CG34 tal-Pjan Lokali tac-Centru ta' Malta

Illi l-appellanti qed jishqu li l-implimentazzjoni tal-by-pass ta' Hat Attard kif indentifikata fil-mappa ATM2 u Policy AT10, mhux mandatorja, b'dan illi l-policy tipprovdi li 'other transport options may be investigated by the ADT', filwaqt li tesigi li 'prior to the possible construction of the by-pass, MEPA will support the introduction of traffic management and control measures, particularly in the vicinity of the Triq Valletta and Triq Haz-Zebbug junctions.'

Skont l-appellanti, il-Pjan Lokali mhux qieghed jimponi unikament l-introdjazzjoni ta' tali by-pass bhala parti mis-soluzzjoni ta' traffiku fiz-zona. Minn naha l-oħra, f'kaz li kellha tigi kunsidrata l-by-pass skont il-Policy fil-Pjan Lokali, il-provizjonijiet numru 1 sa 4 tal-policy kellhom jigu applikati. Dawn jinkludu principlament mizuri biex jitnaqqas through traffic mill-lokalita' ta' Hat Attard bi prijorita ghal trasport pubbliku, filwaqt li jigi miljorat l-ambjent u accessibilita ghar-residenti. Illi l-appellanti qed jilmentaw ukoll dwar nuqqas ta' aderenza mal-Policy CG34 intiza li timmiljora s-servizz ta' trasport pubbliku permezz ta' 'Strategic Bus Corridors' u ntroduzzjoni ta' selective bus detections fir-rota bejn ta' Hal Balzan u Hat Attard. Illi skont l-appellanti, filwaqt li l-progett haseb sabiex jelimina l-bottlenecks, b'traffiku aktar veloci, dan wassal sabiex l-accessibilita fiz-zona residenzjali kif ukoll access ghat-trasport pubbliku naqas, b'dan illi ser jitnaqqsu b'mod sinifikanti pedestrian crossings (9 minn 14) u bus stops (11 minn 18).

Illi dan it-Tribunal jinnota li minn meta gie fis-sehh il-Pjan Lokali fl-Lulju 2006, ghaddew 15-il sena fejn il-proposta ta' tali by-pass – u hawn ghandu jigi emfassizzat li din hija proposta fi pjan lokali, baqghet ma gitx fis-sehh. Mhux kontestat li f'dan il-perjodu l-Awtoritajiet tat-Trasport hadu mizuri diversi dwar il-kontrol tat-traffiku sabiex jigi ndirizzat kongestjoni, u sigurta fit-toroq, kemm b'mod partikolari b'kontroll ta'

traffic lights u speed cameras fit-triq inkwstjoni kif ukoll mizuri fuq livell nazzjonali, sabiex kemm huwa possibbli jitnaqqas id-dipendenza fuq il-karozza privata, u jissahhah is-servizz ta' servizz pubbliku fost l-ohrajn.

Ta' minn izied illi kif gja msemmis supra, f'dan il-perjodu Malta dahlet f'obbligu li timplimenta t-TEN-T Network, b'dan illi din ittriq giet identifikata bhala parti mill-comprehensive network, filwaqt li gew fis-sehh l-Istrategija Nazzjonali ta' Trasport u t-Transport Master Plan. Illi minn dak li spjega Davin Sutton [Xhieda mehuda fit-22 t'Ottubru 2019], gie kunsidrat ukoll l-estent ta' kongestjoni ta' traffiku, fejn nhass ilhtiega li tigi ndirizzata l-kwistjoni ta' 'bottleneck and functional conflict between high traffic flows and urban activity at Notary Zarb Street and Mdina road' skont l-objettiv tat-TEN-T identifikat fil-Master Plan, fejn is-sitwazzjoni kienet tali li kellhom jitiehdu mizura b'mod aktar prioritarju minn dak mahsub.

Illi ghalhekk, fil-kaz odjern, il-proposta ta' by-pass ma hiex aktar limitata ghal dak li jipprovdi l-Pjan Lokali, b'mod partikolari mappa ATM2 u Policy AT10, izda ukoll fil-kuntest tal-obbligi ta' Malta fir-rigward it-TEN-T Network, u l-Istrategija u Master Plan tat-Trasport li huma ukoll kunsidrati bhala parti mill-objettiv fl-iSPED, b'mod partikoarli fl-objettiv TO10.2 fejn jindika 'safeguarding the implementation of the TEN-T core and comprehensive networks' u dan bhala parti minn strategija ta' integrated transport framework li issa huwa ukoll policy nazzjonali skont l-Istrategija u l-Master Plan ta' Trasport. Din hija ukoll l-osservazzjoni ta' Profs. Attard fil-paragrafu 1.2 tar-rapport tad-19 t'Awissu 2019 prezentat mill-appellanti.

Illi fil-kaz odjern, il-proposta fil-pjan lokali kienet wahda mill-alternattivi konsidrati, li kienet tinkludi ftuh ta' triq gdida bidirectional, bil-hsieb li telimina through traffic minn toroq ezistenti fil-lokalita' ta' Hat Attard. Madankollu, kien biss parti mittriq ezistenti li giet down-graded (l-ahhar parti ta' Triq l-Imdina, u Triq Haz-Zebbug fil-qalba ta' Hat-Attard), b'dan illi parti millinfrastruttura ezistenti giet mizmuma u mibdula ghal uni-directional throughfare (Triq iz-Zaghfran u Triq in-Nutar Zarb), b'zieda ta' triq gdida ghat-traffiku li sejjer fid-direzzjoni tar-Rabat. Dan gie kunsidrat bhala alternattiva flok li jigi provdut by-pass kompleta li necessarjment kienet tinvolvi ferm aktar art barra z-zona tal-izvilupp u tehid ta' art agrikola – ilment tal-appellanti li qed jigi ukoll indirizzat lejn dan l-izvilupp odjern f'aggravji ulterjuri. Illi fil-kaz odjern gew immiljorati t-toroq ezistenti, inkluz tnehhija ta' diversi junctions, b'dan illi kien biss necessarju li tigi ntrodotta triq ta' zewg karreggjati paralleli mat-toroq ezistent jew dawk progettati, ossia Triq Tumas Chethuti, Triq Ferdinandu Inglott u Triq Oliver Aguis fin-Nofsinhar tal-lokalita' ta' Hat-Attard.

Illi l-efficjenza fit-toroq, bit-tnehhija ta' bottlenecks u kongestjoni, ghandha ukoll titqies bhala mizura li ser ittejjeb is-servizz ta' servizz pubbliku fiz-zona. Illi fir-rapport tal-EIA gie notat tnaqqis ta' numru ta' bus stops fi triq inkwisjoni u li qed jigi konsidrat bhala 'moderate significant' kif korrettament senjalat mill-appellanti izda dan qed jigi mitigat ghal fatt li "the current public transport suffers significant delays due to traffic congestion. In light of the envisaged ease of traffic flow with the proposed development, accessibility to the surrounding areas by means of public transport is expected to improve" [Part 6.12.3 tal-EIA coordinated assessment]. Dan gie ukoll spjegat minn David Sutton hekk kif gej:

"We went through parts of this exercise with the Transport Master plan, was not only to list the 29 sections but also to screen them and eventually to try to objectively

prioritise in the rotation of projects now I have been here long enough to know that certain projects you question why is that a top priority, that's as it went for endorsement by European Commission it had to be backed up by objective analysis, so the first thing we try to do, as I explained in chapter 3 of this, of the Transport Master plan, is we needed to try and screen the applications, the objectives of Ten-T policies is to remove traffic bottlenecks, so we looked at where the main traffic bottlenecks were in Malta and Gozo. In this case five main bottlenecks were identified and the section road from MFSA to Saqqaja Hill was a bottle neck. Its carry a lot of traffic, there was a significant delay on the section of road and also another criteria because the aim of the Ten-T network is to provide multi-modality, not just for provision of cars but also for buses, and one of the criteria that we actually looked at was the number of bus passengers that passed through that link, now this has several bus services in both directions, amounting to, during morning peak hours, 13 buses an hour, and when you look at the number of people that go on those the buses traffic congestion in this location effect 500 in one direction, 350 in the other one hour. So this was a high priority from the outset because it addressed the problem of bus delay, the buses were delayed in traffic along the section of road, for example where there is the traffic island, you've got the Attard Farm Supplies on one side and you've got Notary Zarb street on the other, there's basically a bottleneck where two lanes are reduced to one lane. That has the effect of reducing traffic, the speed of traffic, including buses down to one and a half kilometres an hour, and when you compare that to cities elsewhere it is very, very slow. So this is, obviously a traffic bottleneck, I don't think anyone can contest it, it is a traffic bottleneck. It is something where there are serious problems resulting from the geometric designs of the current road network.

Meta gie mistoqsi dwar bus priority measures wiegeb hekk:

"When you increase the capacity on a bus route, a major bus route, undoubtedly it will improve the speed of buses. The speed of buses will undoubtedly increase from 1.5km/hour to something around the national average which is about 14km/hour.

Mistoqsija: Bus priority measures in this area were not specifically...

Twegiba: This design question, you will have to ask the designers, but the latest plans include an increase of capacity which will benefit the bus service."

Illi certament filwaqt li l-accessibilita' ta' trasport pubbliku ghandha tinghata mportanza, tali konsiderazzjoni mhux strettament wahda ta' ppjanar ta' zvilupp, izda tirrigwardja strategiji u policies rigward it-trasport, u fil-kaz odjern l-Awtorita' kompetenti, ossia Transport Malta tista minn zmien ghal zmien tqies jew tikkunsidra bdil f'dak li ghandu x'jaqsam ma rotott ta' trasport pubbliku, bus-stops u anke passaggi pedonali li dejjem jista' jigi attwat f'toroq ezistenti minghajr il-htiega ta' permess ta' zvilupp, meta jkun hemm il-htiega skont il-kaz u l-esigenza tas-servizz.

2. Policies CG 09 u CG 18 tal-Pjan Lokali tac-Centru ta' Malta

Illi Policy CG18 tirrigwardja l-protezzjoni ta' green areas fil-pjan lokali kif indikati fil-mapep rispettivi. Fil-kaz ta' Hat Attard, lappellanti ghamlu referenza ghal-parti ta' green area biswit l-isptar Monte Carmeli, li bi twessiegh ta' triq ser jintilef madwar 600 metru kwadru ta' din il-parti tal-green area.

Ili Policy CG18 tesigi li ma jistax jintilef tali art dedikata ghal protezzjoni ta' spazzju miftuh ghal zvilupp minghajr ma jigi kompensat b'erja simili ta' public open space jew sports area fiz-zona tal-izvilupp.

Illi minn ezami tal-pjanti approvati [Pjanta a fol 1594g u pjanta no. 4 a fol 1609A fl-inkartament tal-PA 9890/17], u mir-ritratti mill-ajru tas-sena 2016 [Geoserver.pa.org.mt] dan it-Tribunal seta' jinnota li fil-fatt parti sostanzjali talgreen area indikati ghal progett tat-triq huwa gja mittiehed b'toroq ezistenti u bus-stop, bhala parti minn upgrading ta' triq li sar fil-passat, u ghaldaqstant ma jirrizultax li l-izvilupp ser jaffettwa xi green area kif indikat fil-pjan lokali.

Madankollu, minn ezami tal-pjanti approvati dan it-Tribunal seta' jinnota kif korrettament indikat mill-permit holder, li f'partijiet ta' toroq ezistenti f'tarf it-Triq l-Imdina, u Triq Haz-Zebbug biswit Triq in-Nutar Zarb u Triq iz-Zaghfran, ser jinbidlu minn art asfaltata ghal zoni pedonali u miftuha li kompleksivament ser ikopru erja ta' madwar 600 metru bi thawwil ta' numru ta' sigar kif indikat fid-dokument tal-ERA 1609A bhala parti mill-permess tal-izvilupp. Ghaldaqstant tali rekwizit tal-Policy CG18 fil-fatt qieghed jigi osservat.

Illi rigward il-Policy CG 09 tirrigwardja zoni ta' Koservazzjoni Urbana. Illi din il-parti tal-aggrajvu ghandha tigi kunsidrata ukoll fid-dawl tal-aggravju numru tlettax (13) li huwa dirett lejn l-impatt fuq il-patrimonju kulturali, b'mod partikolarli fir-rigward ilkonsultazzjoni tas-Sovrintendenza tal-Patrimonju Kulturali u l-kondizzjoni numru 2 tal-permess odjern.

L-ilment tal-appellanti huwa dirett lejn strutturi ezistenti biswit il-Kapella tan-Nawfraggu ta' San Pawl li jinsabu f' tarf iz-zona ta' Konservazzjoni Urbana. Illi madankollu, kif indikaw tajjeb l-appellanti, tali strutturi huma suggett ta' konsultazzjoni mas-Sovrintendenza tal-Patrimonju Kulturali li esprima riservi dwar it-twaqqiegh taghhom, u fil-fatt huma suggett ghall-kondizzjonijiet specifika fil-permess ta' zvilupp ossia kundizzjoni numru 2, fejn tali strutturi huma ndikati bhala 'Structure H' li l-istess kondizzjonijiet tesigi l-izmantellar (dismantling) skont works method statement li jrid jigi approvat qabel kull intervent fuq tali strutturi.

Illi fil-fhema ta' dan it-Tribunal, filwaqt li jinnota li tali strutturi ghandhom valur fir-rigward ta' arkitettura vernakolari, ma ngabet ebda prova dwar l-importanza storika jew arkittionika eccezzjonali li jisthoqilhom preservazzjoni. Dwar dan l-istrutturi, is-Sovrintendenza nnota dan li gej [Ibid. Dokument a fol 1604a]:

"A significant cluster of three vernacular properties identified as H and located in the vicinity of the historic chapel of St Paul Shipwrecked. One of these properties has undergone extensive internal changes, but two of the properties are of evident antiquity, having slab ceilings borne on kileb. These older properties are also attached to a traditional walled orchard. These properties have a degree of cultural heritage value and the Superintendence is favourable to their preservation in situ" [Ibid. paragrafu 3].

Imbaghad zied jghid dan li gej:

"The Superintendence notes that the structures identified as H and J form part of a significant cluster of historical buildings around the chapel and at the interface with the valley. The Superintendence here expresses its concern not only at the proposed

demolition of historic structures but also at the total redefinition of a cultural landscape. The Superintendenza strongly urges that the proposed road should be rerouted to preserve the legibility of this area. If this proves futile, historical structures alternatively should be relocated within the immediate environs” [Ibid. paragrafu 5].

Illi fil-kaz odjern, kellu jigi mwiezen l-importanza tal-progett infrastrutturali fil-kuntest tal-kontinwita tat-toroq li qed jigi progettati, u l-valur intrinsiku tal-istrutturi inezami. Is-Sovrintendenza esprima thassib dwar it-twaqqiegh ta' tali strutturi, izda f'kaz li mhux possibbli li l-progett jigi amendat, ikkonkluda li tali “historical structures alternatively should be relocated within the immediate environs.” Dan fil-fatt huwa l-mertu tal-kondizzjoni numru 2 u dan it-Tribunal huwa tal-fehma li fil-kaz odjern, ilkwistjoni dwar l-importanza tal-bini fil-kuntest ta' din il-parti ta' Hat Attard giet kunsidrata fid-dettal, b'dan illi filwaqt li gie permess l-izmantellar sabiex jaghmel tajieb ghall-progett tat-triq, tali strutturi qed jigu preservati ghar-rikostruzzjoni f'post adegwat u maqbul mas-Sovrintendenza.

Illi fil-kaz odjern, l-appellanti mhux qed jaqblu li fl-ahhar konsultazzjoni tas-Sovrintendenza hemm direzzjoni cara li gie accettat it-twaqqiegh tal-istrutturi ndikati ghal valur storiku jew arkittoniku taghhom.

Madankollu, minn ezami tal-korrispondenza tas-Sovrintendenza tal-20 ta' Gunju 2019 (a fol 1604a fl-inkartament talapplikazzjoni odjerna) ftit halli lok ghall-interpretazzjoni. Illi huwa evidenti li l-progett kif approvat ma giex modifikat sabiex ikun possibbli l-preservazzjoni ta' tali strutturi, u ghaldaqstant huwa pjuttost evidenti li fid-decizjoni finali tal-Awtorita' tal-lppjanar gie permess it-tnehhija ta' tali strutturi sabiex ikun possibbli l-passagg tat-triq. Dan fis-sens li d-disinn tat-triq kif finalment gie approvat ha precedenza fuq l-protezzjoni in situ ta' tali strutturi. Dak li thalla in gudi kat huwa ir-rikostruzzjoni ta' tali strutturi fejn ser jigi attwat, b'dan illi skont il-kondizzjoni numru 2, l-izmantellar huwa suggett ghall-method statement, filwaqt ir-rikostruzzjoni huwa suggett ghall-applikazzjoni ta' zvilupp separata. Mhux eskluż, skont l-istess kondizzjoni li tali strutturi jithallew in-situ f'kaz li dan jkun possibbli jew jekk jigi evitat l-izmantellar tal-istess strutturi.

F'dan ir-rigward, dan it-Tribunal ma qed jara ebda lok ta' mis-informazzjoni jew interpretazzjoni tad-direzzjoni tas-Sovrintendenza li b'xi mod zgwiđa il-Bord tal-lppjanar fid-decizjoni finali tieghu kif qed jigi allegat, u ghalhekk tali aggravji, inkluz dak numru tlettax (13) qed jigu michuda.

3. Policies li jirrigwardjaw ODZ u zoni ta' mportanza ghall-ambjent u agrikoltura, zoni ta' valur xenografju u ndikati bhala open space gaps kemm fil-lokalita' ta' Hat Attard u ta' Qali.

Illi dan it-Tribunal gja nnota aktar 'il fuq li l-kwisjoni tat-triq mhux biss huwa limitat ghal dak li qed jipproponi l-Pjan Lokali, izda huwa progett magguri u ta' mportanza strategika fid-dawl tat-TEN-T netwok u l-Istrategija u Master Plan tat-Trasport.

Huwa evidenti tenut l-estent tal-progett li ser ikun hemm impatt kemm fuq art agrikola, sigar u art barra l-konfini tal-izvilupp. Illi listess by-pass mahsuba fil-pjan lokali kienet progettata li tghaddi barra l-konfini tal-izvilupp, f'art li maggor parti hija ta' valur agrikolu. F'din il-parti tal-progett, ossia mill-junction fil-vicinanze tac-cimiterju

ta' Hat Attard sal-junction f'Wied Incita, l-wesa' ta' triq gdida gie ridott billi issa kien biss necessarju triq ghal-uni-directional traffic. Minn naha l-ohra, fil-komplament talprogett, b'mod partikali fid-direzzjoni tal-Punent mill-junction ta' Wied Incita sar-roundabout tas-Saqqajja l-progett qed jahseb ghall-upgrading ta' toroq ezistenti, billi gie mahsub li t-toroq jakkomodaw erba' karreggjati inkluz zoni pedonali u bicycle lane flok zewg karreggjati ezistenti.

Illi hawnhekk it-Tribunal jista jinnota element ta' kontrodittorjita fl-aggravji tal-appellanti, meta fuq in-naha l-wahda qed jesigu li lizvilupp ser ikollu mpatt fuq iz-zona barra l-izvilupp, u fuq art agrikola u ta' valur xenografiku, meta minn naha l-ohra, alternattiva ta' triq kif mressqa minn uhud mill-appellanti bhala parti mill-konsultazzjoni pubblika fil-process tal-EIA [Kopja tal-proposta tat-triq prezentata fis-seduta tat-28 t'Ottubru 2019], kienet triq aktar distanti miz-zona urbana – u dan bil-hsieb validu sabiex jitnaqqas l-impatt ta' by-pass fuq iz-zona residenzjali - izda kien necessarjament ihalli mpatt sinifikanti fuq iz-zona rurali tal-madwar (Wied is-Sewda). Din tal-ahhar kienet ir-raguni li l-ERA qablet malkoordinatur tal-EIA li ma tikkunsidrax tali alternattiva.

Illi rigward l-open-space gap li l-Pjan Lokali qed jesigi bejn il-lokalita' ta Hat Attard u Ta' Qali kif identifikata fil-Policy NWCO 11 tal-Pjan Lokali, tali zona hija ukoll regolata bl-Action Plan Ta' Qali, fejn Mappa numru 6 tal-istess pjan jinkida 'retention of strategic open space gap between settlements; retention of agriculture use.' Fuq l-istess naha tat-triq fid-direzzjoni tal-Punent, iz-zona ta' din il-parti ta' Ta' Qali hija ukoll identifikata bhala parti minn zona ta' Valur Xenografiku.

Illi hija l-fehma ta' dan it-Tribunal, li l-progett inezami, tenut li dan limitat ghall-upgrading ta' triq miftuha ma qieghed inaqqas xejn mill-objettiv ta' tali policy li jzomm spazzji miftuha bejn settlements. L-impatt tal-uzu agrikolu gja gie kunsidrat hawn supra, u ser jigi estiz ukoll fl-aggravju numru 9, ghalkemm kif gja notat l-izvilupp irid jigi meqjus fil-kuntest tal-progett innifsu ta' upgrading ta' triq li gja tinsab f'zona rurali u agrikola.

Illi rigward il-parti li hija ndikata ghal-valur xenografiku fil-parti tal-punent tal-progett, l-appellanti qed jilmentaw dwar l-impatt fuq il-valur xenografiku ta' din il-parti ta' triq li twassal ghall-Imdina li hija pjuttost sinonima ma sigar protetti li qed jaghtu identita lizzona b'mod partikolari, u li skont l-appellanti dawn is-sigar "along Triq l-Imdina leading up ta' Kappella tal-Vitorja where the vast majority of the existing mature, many protected , trees will be felled is essential to the distinct visual character of the AHLV".

Minn ezami tal-inkartament tal-PA 9890/17, b'mod partikolari pjanti a fol 1595a u 1595b, fejn qed jigi indikat qtugh jew tnehhija ta' sigar fil-parti estrema tal-progett fid-direzzjoni tal-Punent, ma hemm ebda ndikazzjoni ta' tnehhija ta' sigar, li maggor parti huwa sigar protetti taz-Znuber (Pinus Halepensis ndikat bin-numru 17 fil-pjanti rispettivi), ghajr ghal zewg (2) sigriet fil-vicinanze tal-Kappella tal-Vitorja, li timmarka l-estremata taz-zona ta' AHLV fid-direzzjoni tal-Lvant. F'dan ir-rigward ma jirrizultax qlugh ta' sigar kif allegat f'din iz-zona ta' AHLV, filwaqt li l-karatteristika u l-esperjenza tat-triq bejn sigar taz-Znuber f'din il-parti tat-triq ser tigi protetta ghat-traffiku fid-direzzjoni tar-Rabat u l-Imdina.

Fir-rigward l-allegat deficienzji fir-rapport tal-EIA, b'mod partikolari fir-rigward l-impatt fuq iz-zona ta' AHLV, dan it-Tribunal jinnota minn ezami tal-inkartament tal-applikazzjoni odjerna u tad-dokumentazzjoni tal-EIA, illi ma jirrizultax li l-ezami tal-impatt fuq iz-zona rurali minn fejn Triq l-Imdina taghmel parti gie traskurat jew ma giex meqjus relevanti għall-progett. Tajjeb jigi mfessazzit li kien hemm bdil fil-pjanti fil-process tal-applikazzjoni fejn is-sigar indikati mill-appellanti li qed jipprovdut identita lizzona, parti mill-AHLV, gew integrati fil-progett tat-triq flok gew meqruda jew disturbati għall-kollox.

Illi dan l-aggravju qed jigi konkluz bin-nuqqas tal-case officer report li jindirizza l-policies tal-Pjan Lokali, filwaqt li jinjora Policies CG29, NWCO09 u CG34 tal-Pjan Lokali. L-ewwel tnejn jirrigwardjaw l-protezzjoni taz-zoni idrologici mportanti fil-Pjan Lokali ta' Centru ta' Malta u l-Pjan Lokali tal-Majjistral rispettivament, filwaqt li t-tielet policy tirrigwardja 'bus corridors' fil-Pjan Lokali ta-Centru ta' Malta. Madankollu, tali policies gew misthargha fil-process tal-EIA – fil-kaz tal-impatt fuq iz-zoni idrologici kien bizzzejje il-policy tal-CG29 [Pagna 83 tal-EIA Coordinated Assessment u t-Technical Report "Geo-Environmental Resources – Hydrology"] fejn gie ezaminat ukoll il-mappa tal-buffer zone around groundwater safeguarding areas, filwaqt li l-Hydrology report jikkunsidra zona ampja li testendi kemm fiz-zewg Pjanijiet Lokali. Rigward CG34, ossia ilbus corridors, gja gie notat aktar 'il fuq f'din id-decizjoni kif it-trasport pubbliku fi kunsidrat fid-dawl tat-Transport Master Plan kif spjegat fil-pagni 80 u 81 tal-EIA Coordinated Assessment. Illi f'dan ir-rigward, jigi notat li l-case officer report jaghmel referenza ampja għall-EIA, li certament kwistjonijiet koperti b'tali policies gew trattati fid-dettal fil-valutazzjoni ambjentali.

Illi għahekk dawn l-aggravji qed jigu michuda.

Aggravji numru 8, 9 u 15 meqjusa flimkien:

Fit-tmien (8) aggravju qed jitressaq l-ilment ta' ksur tal-linja gwida dwar l-izvilupp rurali.

Illi fil-kaz odjern, l-Awtorita' tal-Ippjanar saħqet illi l-linja gwida tipprovdut eccezzjoni f'kaz ta' zvilupp ta' nteress nazzjonali – u f'dan il-kaz huwa parti minn pjan nazzjonali skont obbligu ta' TEN-T network – fejn propju l-ewwel policy tal-istess linja gwida ossia Policy 1.2A tipprovd b'mod car li "Any project of national interest arising from National Government Policies which departs from the policies formulated in this document shall be assessed on its own merits subject to consultation with the Departments/Authorities/Committees concerned."

Huwa minnu li parti mill-izvilupp qed jittiehed art agrikola, u qed jestendi f'art barra l-konfini tal-izvilupp. Minn naha l-ohra, parti sostanzjali tal-estent tat-toroq mertu tal-permess odjern gja jinsabu barra l-konfini tal-izvilupp, u f'dan il-kaz hemm il-htiega – u dan huwa sostnut kemm mill-obbligu ta' TEN-T Network, kif ukoll mill-konsiderazzjonijiet u oggettivi tal-Master Plan ta' Trasport bl-intiza li jigi eliminat kongesjoni u bottleneck precizament fit-TEN-T fejn tali toroq qed jigu estizi u modifikati.

Fil-kaz odjern ma kienx hemm htiega ta' osservanza tal-linja gwida dwar l-izvilupp rurali tenut li l-progett huwa tali johrog minn pjan tal-Gvern fil-kuntest tal-Master Plan u l-obbligi ta' TEN-T, u dikjarat progett ta' sinifikat strategiku, b'interess nazzjonali,

ghalkemm irid jinghad li l-istess permess ghadda minn skrutinju u valutazzjoni ambjentali ampja skont il-ligi.

Illi fil-mori ta' dan l-appell gie rilevati li fil-process tal-applikazzjoni ma kienx hemm konsultazzjoni mal-Kumitat Konsultattiv dwar l-Agricoltura, kif johog mix-xhieda tal-case officer [Perit Francesca Gatt mehuda fis-seduta tal-15 ta' Ottubru 2019]:

“Mistoqsija: Fil-case officer report, dokument 1624a, ghamilt referenza ghal policy CG24, protection of areas of agricultural value, dan skont il-valur tal-art rurali. Ma sibtx referenza ghal konsultazzjoni mal-Agriculture Advisory Committee. Tista' tghaddilna kopja tal-consultation reply tal-Kumitat?

Twegiba: Consultation mal-Agriculture Advisory Committee ma sarx. Ma sarx ghaliex l-AAC huma l-entita' li tigi konsultata with respect to farm dwellings, green houses, farms, livestock farms, etc., and the Rural Policy and Design Guidance 2014. Policy 1.2a states that all National Projects these will be assessed on their own merits subject to departments, committees, etc. Pero l-AAC ma jigux ikkonsultati f'affarijiet apparti l-agrikoltura tipo farm dwellings etc.

Mistoqsija: So, mill-Awtorita' tal-Ippjanar, ma kien hemm l-ebda rikjesta ghall-konsultazzjoni fuq art agrikola li tinkludi l-progett.

Twegiba: Le.” Illi l-Kumitat ta' Konsulenza dwar l-Agricoltura huwa mwaqqaf bis-sahha tal-Artikolu 66 tal-Kap. 552, b'dan illi l-funzjoni tal-Kumitat hija s-segweni [Artikolu 66](4) tal-Kap 552]:

“(4) Tkun il-funzjoni tal-Kumitat ta' Konsulenza dwar l-Agricoltura li jaghti pariri professjonali u esperti lill-Bord tal-Ippjanar fuq applikazzjonijiet għall-izvilupp relatati mal-agrikoltura u żvilupp ieħor 'il barra miżżona ta' żvilupp. Il-Kumitat għandu jevalwa proposti ta' żvilupp u jiddikjara jekk l-intervent propost hux ser jibbenefika jew itellef żvilupp sostenibbli agrikolu, ta' biedja jew rurali, u jaghti raġunijiet dettaljati dwar listess. Il-Kumitat għandu, fejn iħoss il-ħtieġa, jissuġġerixxi metodi kif proposta għal żvilupp tista' titqies bħala aċċettabbli f'relazżjoni ma' żvilupp sostenibbli agrikolu, ta' biedja jew rurali. Il-Kumitat ta' Konsulenza dwar l-Agricoltura għandu wkoll jiġbor informazzjoni dwar applikazzjonijiet għall-izvilupp relatati mal-agrikoltura.”

Illi filwaqt li l-linja gwida dwar l-izvilupp rurali tipprovdi diversi policies rigward żvilupp specifiku fejn huwa mehtieg konsultazzjoni mal-Kumitat ta' Konsulenza dwar l-Agricoltura, madankollu, il-ligi ma tobbligax l-Awtorita' tal-Ippjanar sabiex tikkonsulta kull żvilupp propost barra l-konfini tal-izvilupp. Ta' min izied, illi konsultazzjoni kienet saret mad-Dipartiment tal-Agricoltura, filwaqt li l-impatt fuq l-agrikoltura kien mertu tal-valutazzjoni ambjentali, fejn gie registrat impatt sinifikanti u inevitabili bhala konsegwenza diretta ta' bini ta' triq gdida, u modifikazzjoni ta' toroq ezistenti li jinsabu f'zona rurali.

Illi fid-disa' (9) aggravju, l-appellanti qed isostnu li l-izvilupp in mertu ser jirrizulta f'tehid ta' madwar 48 tomna art agrikola [Dan johrog mir-rapport ta' Malcolm Borg, espert tal-appellanti skont, prezentat fis-seduta tat-22 ta' Novembru 2019. Illi l-figura fir-rikors promotur tal-appell, l-appellanti qed jindikaw il-figura ta' 48,466 metri kwadri li certament hija wahda erroneja, b'dan illi f'partijiet ohra tar-rikors tal-appell gie kwotati 48,466 metri kwadri], b'dan illi dan imur kontra objettivi tal-National Agricultural Policy li qed tippromwovi l-izvilupp rurali, protezzjoni tal-art agrikola u

lekosistema, kif ukoll kontra l-oġġettivi tan-National Biodiversity Strategy and Action Plan (2012-2020), ntiz li jipprotegi rizorsi bhal hamrija u l-ilma.

Illi n sosten ta' dan l-aggravju gew prezentati zewg rapporti, rigward l-impatt fuq art agrikola ta' Malcolm Borg u l-impatt fuq il-Biodiversita ta' Dr Alfred Baldacchino [Prezentati fis-seduta tat-22 ta' Novembru 2019].

Illi mhux kontestat mill-konkluzzjoni tal-EIA li l-izvilupp ser ihalli impatt sinifikanti fuq l-agrikoltura, kif ukoll fuq l-ekologija, tenut tehid ta' art agrikola u qlugh ta' sigar bhala konsegwenza ta' upgrading ta' toroq li jirrikjedi twessiegh u kostruzzjoni ta' toroq godda.

Illi huwa minnu li 48 tomna ta' art agrikola huwa ammont sostanzjali, izda kull impatt jrid jigi kunsidrat ukoll fil-kuntest li l-art milquta bl-izvilupp hija mifruxa ma tul il-progett kollu, fejn ser jirrizulta tehid ta' art minn ftit metri ma tul il-maggor parti tal-ghelieqi fi Triq l-Imdina, ghal madwar 15-il metri ma tul it-toroq mal-konfini tan-Nosfinhar ta' Hat Attard (Oliver Aguis, Ferdinand Inglott u Tumas Chetchuti), u anke madwar 30 metru fiz-zewg estremi ta' Triq il-Belt Valletta, tenut upgrading ta' zewg junctions magguri.

L-aggravju qed jigi biss limitat ghall-impatt globali tal-izvilupp fuq l-agrikoltura u l-biodiverista, izda dan it-Tribunal ma qed jara ebda raguni valida mill-provi provduti meta mwiezen minn dak li gie ezaminat fid-dettal fil-process tal-EIA, li l-impatt fuq lagrikoltura u l-biodiversita huwa tali u sinifikanti li a priori jew b'mod defenittiv kellu jwassal ghal waqfien tal-progett.

Ghalhekk, kont ta' dawn il-konsiderazzjonijiet, l-aggravji 8 u 9 qed jigu michuda.

Illi fl-aggravju numru hmistax (15), barra l-ilment dwar nuqqas ta' konsultazzjoni mal-AAC, kif gja kkunsidrat hawn supra, tressaq ukoll l-ilment dwar in-nuqqas ta' konsultazzjoni xierqa minn naha tad-Desing Advisory Committee li prezentaw il-kummenti taghhom fi stadju bikri tal-applikazzjoni u ma resqu ebda kummenti ulterjuri fuq il-progett kif gie amendat fi stadju aktar 'l quddiem fil-process tal-applikazzjoni. Tali lment gie ukoll indirizzat lejn l-Environmental Health Diretoate li naqas li jikkumenta fil-process tal-applikazzjoni.

Tali aggravju huwa kwistjoni ta' fatt izda ma giex indikat kif tali nuqqas ta' risposta minn dawn il-Kumitat jew entita tista twassal għac-cahda tal-permess ta' zvilupp. Ghalhekk tali aggravju mhux qed jigi kunsidrat ulterjorment.

Illi fil-mori ta' dan l-appell, gie ukoll rilevati li fil-process tal-applikazzjoni ma kienx hemm ebda konsultazzjoni ma Transport Planning Unit fi hdan id-Direttorat tal-Ippjanar kif ikkonferma l-Perit Lucien Stafrace, Unit Manager ta' Transport Planning Unit, fix-xhieda tieghu tal-15 ta' Ottubru 2019. Fix-xhieda gie ukoll zvelat li fuq parti zghira tal-progett fi Triq l-Imdina qed jesporgi fuq il-linja ta' bini (precizament il-linja ta' front garden li qed jaffettwa xi tlett villel) fejn qed jigi propost service road [Konfermat b'dokumenti LS1 u LS2 prezentati fis-seduta sussegwenti tas-17 ta' Ottubru 2019].

Fl-ewwel lok dan it-Tribunal jinnota li t-Transport Planning Unit huwa dipartiment fi hdan id-Direttorat tal-Ippjanar, u ghalhekk filwaqt li bhala tali huwa parti mill-istess

Direttorat li ressaq il-proposta ghad-determinazzjoni tal-Bord tal-Ippjanar, il-process fi hdan id-Direttorat huwa ntern u fid-diskrezzjoni tad-Direttur tal-Ippjanar kif dan imexxi l-process tal-applikazzjoni fi hdan iddipartimenti tieghu.

Madankollu, tenut din id-diskrepanza dwar il-linja tal-front garden, l-permit holder ikkonferma li ser tigi prezentata minor amendment sabiex tigi revizionata din il-parti zghira ta' triq, fejn effettivament ser jigi eliminat il-proposta ta' estensjoni ta' service road u tigi rispettata l-linja ufficcjali tal-front garden ma triq ezistenti. Tali amenda fil-fatt gie prezentata ghal konsiderazzjoni tal-Awtorita' tal-Ippjanar.

Minn naha l-ohra, kull permess ta' zvilupp johrog bil-kondizzjoni li l-izvilupp irid isegwi l-official alignment skont kif indikat fil-kondizzjoni numru 9g tal-permess odjern. Illi ghalhekk tali ilment huwa gja mahsub fil-permess innifsu, u gjaladarba gie rilevati f'dan l-istadju li parti mit-triq, ossia estensjoni ta' service road, kienet ser tesporgi 'il gewwa mill-linja tal-front garden, l-permit holder kien propens li jikkoregi tali diskrepanza stante li kien volta obligat li jaghmel dan fil-fazi ta' kostruzzjoni skont il-kondizzjoni tal-permess ta' zvilupp. F'dan ir-rigward ma hemmx lok ta' konsiderazzjonijiet ulterjuri ta' tali ilment.

Aggravju numru 10:

F'dan l-aggravju, l-appellanti qed jorbtu l-bazi tad-decizjoni tal-Bord tal-Ippjanar mad-dokument tal-CBA, u kif tali decizjoni qed tinjora l-ordni ta' precedenza ta' pjannijiet u policies skont l-artikolu 52 tal-Kap 552.

Dwar il-CBA dan it-Tribunal gja ezawrixxa l-kwistjoni aktar 'il fuq f'din id-decizjoni. Li wiehed jasal ghal-konkluzzjoni li ddecizjoni tal-Bord tal-Ippjanar kienet wahda bbazata principalment fuq id-dokument tal-CBA hija insostenibbli kemm fil-fatt u fi dritt. Id-decizjoni tirrigwardja progett jew zvilupp specifiku li kien suggett ghal-valutazzjoni dwar l-impatt ambjentali u l-Bord tal-Ippjanar kellu jezamina bhala materja ta' konsiderazzjoni flimkien ma konsiderazzjonijiet ohra skont id-dispost tal-Artikol 72 tal-Kap 552.

Illi r-referenza tal-ordni ta' precedenza tal-pjannijiet u policies skont l-Artikolu 52 tal-Kap 552 hija ukoll bla bazi u bla relevanza ghal-aggravju n ezami, u ma hemmx lok ghal konsiderazzjoni ulterjuri.

Aggravji numru 11 u 12 meqjusa flimkien:

Dawn l-aggravji jirrigwardjaw l-ilmenti tal-appellanti fir-rigward ta'

(i) nuqqas ta' pjannijiet u policies u numru sostanzjali ta' raprezentazzjonijiet minn terzi persuni nteressati bi ksur tal-Artikolu 72 (2) tal-Kap 552;

(ii) nuqqas ta' osservanza tal-Kap 552 u l-Konvenzjoni ta' Aarhus billi gie sostnut li l-Bord tal-Ippjanar naqas li jiggustifika ddecizjoni ghal hrug tal-permess, billi kien hemmx ukoll nuqqas ta' pjannar, studji u skrutinju ta' mizuri mitiganti, li jilledi fuq id-dritt ta' smiegh xieraq skont id-dispost tal-Artikolu 33(2) tal-Kap 552; Illi fil-fehma kunsidrata ta' dan it-Tribunal, dawn l-aggravji huma bla bazi, tenut illi minn ezami tal-process tal-applikazzjoni de quo u fil-mument tad-decizjoni, ma hemmx ebda ndikazzjoni jew prova li l-Awtorita' tal-Ippjanar naqset mid-doveri li tikkunsidra loggezjonijiet mressqa jew li ma sostnietx b'ragunijiet ta' ppjanar id-decizjoni favur il-hrug tal-permess. L-inkartament tal-applikazzjoni jindika bic-car process kontinwu ta' konsultazzjoni, filwaqt il-konsiderazzjonijiet favur il-hrug tal-permess kienu prezentati

mic-Chairperson Ezekuttiv tramite l-case officer report li gew milqugha bid-decizjoni tal-Bord tal-Ippjanar.

Illi l-argument tal-appellanti li gjaladarba hemm numru ta' oggezzjonijiet kontra l-izvilupp dan ghandu jwassal ghal direzzjoni unika ta' rjifut ma jsibx sosten fl-Artikolu 72 tal-Kap 552. Illi kull proposta tal-izvilupp li titressaq quddiem l-Awtorita' tal-Ippjanar tigi deciza skont il-Ligi mill-Bord tal-Ippjanar jew l-Kummissjoni tal-Ippjanar skont il-kaz, u mhux mill-konsulenti esterni (li ghandhom rwol konsultattiv fid-development application process) jew minn terzi persuni nterressati. Jista' jkun li ebda konsulent estern ma jkollu oggezzjoni ghall-proposta tal-izvilupp li titressaq quddiem l-Awtorita' tal-Ippjanar, jew ma jkun hemm ebda rapresentazzjoni ta' terzi persuni; dan ma jfissirx li l-istess proposta ma tistax tkun wahda oggezzjonabbli mill-lat ta' planning; ma jfissirx li l-istess proposta ma tistax tkun wahda li tmur manifestament kontra l-policies u r-regoli tal-ippjanar applikabbli.

Illi l-bazi tal-aggravju jirrigwardja d-dokument tal-CBA. Madankollu, din hija kontestazzjoni ewlenija u kostanti fir-rikors promotur ta' dan l-appell, u dan it-Tribunal gja kkunsidrat aktar 'il fuq f'din id-decizjoni, b'mod partikolari fit-tieni parti tal-ewwel aggravju, u a skans ta' repetizzjoni ghandha ssir referenza ghal tali osservazzjonijiet fl-ewwel aggravju.

Ghaldaqstant dan l-aggravju ma jistax jigi akkolt tenut li d-decizjoni mehuda mill-Bord tal-Ippjanar kienet fil-limiti tad-dispost tal-Artikolo 33(2) u Artikolu 72(2) tal-Kap 552.

Aggravju numru 16

F'dan l-aggravju l-appellanti qed jilmentaw dwar nuqqas fid-disinn tal-izvilupp kif approvat li ma jabsibx ghas-sahha u sigurta ta' ciklisti u jew persuni li jaghmlu uzu mit-triq bil-mixi (pedestrians), filwaqt li gie nrorat direttivi tal-Unjoni Ewropeja, b'mod partikolari Direttiva 2008/96/EC fejn hija ukoll fi stadju ta' revizjoni ntiza li tassigura harsien ghal pedestrians u ciklisti b'diversi mizuri fl-immaniggjar ta' toroq.

Kemm l-Awtorita' u l-permit holder irrabettew tali aggravju billi gie sostnew li dan il-progett jaghmel parti minn programm ta' titjeb u bini mill-gdid ta' toroq magguri maghruf bhala TEN-T skont l-istrategija nazzjonali ta' Trasport 2050 u t-Transport Master Plan 2025, bl-iskop li jintroduci infrastruttura li jakkomoda trasport alternattiv bhal l-uzu ta' roti u miljorament fir-rotat pedonali fost l-ohrajn.

Il-permit holder zied ukoll illi bhala parti mit-TEN-T Network, l-izvilupp odjern huwa ukoll suggett ghall-road safety audit skont l-istess Direttiva 2008/96/EC, skont id-dispost tal-regolamenti tal-2018 dwar torog godda u xoghlijiet f'toroq [LS 499.57].

Illi n sosten ta' dan l-aggravju saret referenza ghas-sottomissjoni ta' Bicycle Advocacy Group li kienet saret fi stadju ta' applikazzjoni qabel id-determinazzjoni mill-Bord tal-Ippjanar [Rapport a fol 1648b fl-inkartament tal-applikazzjoni PA 9890/17, u prezentat fis-seduta tal-24 ta' Ottubru 2019] fejn gie senjalat 'danger spots' fil-progett u qed jesigu li revizjoni tal-istess progett sabiex jizgura sigurta ghall-pedestrians u ciklisti. Minn ezami tal-pjanti fil-permess odjern, wiehed jinnota sostanzjali ta' bicycle lanes mal-medda tat-triq li qed tigi ugraded, kif ukoll zoni pedonali ghall-access ghal bus stops u diversi pedestrian crossings. Din l-infrastruttura hija suggett ghall-safety audit kif qed tesigi l-Awtorita' tat-Trasprot skont

irregolamenti tal-2018 dwar toroq godda u xogholijiet f'toroq, u kriterji li johorgu mill-istess direttiva 2008/96/EC. Dan ikkonfermah David Sutton kemm fix-xhieda tieghu kif ukoll fin-nota addizzjonali prezentata permezz tal-posta elettronika fi 30 ta' Ottubru 2019, fejn spjega l-process wasal fit-tieni stadju minn awditjar konsistenti minn erba' fazijiet.

F'dan ir-rigward, irid jigi notat li f'termini ta' ppjanar dak li qed jigi ezaminat huwa l-impatt tal-izvilupp fuq l-uzu tal-art, fejn ghaldaqstant jehtieg il-permess ta' zvilupp, u li dan it-Tribunal qed jigi mitlub jirrevdi, izda hija l-Awtorita' ta' Trasport bilkompetenza necessarja li tezamina u ticcertifika s-sigurta tat-toroq, mhux biss ghall-vetturi, izda ghal ukoll minn qed jaghmel uzu minn tali toroq, inkluz ciklisti u pedestrians, u ghaldaqstant ir-revizzjoni ta' tali ezercizzju li huwa l-bazi ta' dan l-aggravju, jmur lil 'hin mill-kompetenza ta' dan it-Tribunal.

Decide:

Ghal dawn il-motivi, u wara li kkunsidra l-fattispeci kollha ta' dan l-appell, dan it-Tribunal qieghed jichda l-appell, u jikkonferma l-permess tal-izvilupp PA 9890/17.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. Id-decizjoni tat-Tribunal tiskarta u tinjora l-provizjonijiet tal-pjan lokali. Il-pjan lokali jipprovdi biss ghal possibilita ta' bypass limitat ghaz-zona adjacenti z-zona urbana ta' Attard biex jonqos it-traffiku ghaddej miz-zona residenzjali. Ma jipprovdi ghal toroq godda jew ta' wessiegħ ta' toroq fejn l-MFSA sa H'Attard jew maz-zona ta' Wied Incita sar-roundabout tas-Saqajja (tul Triq Mdina). Fejn prezentement hemm art agrikola ser tittiehed biex jizdiedu zewg karreggjati. In oltre tul Triq Mdina lejn il-punent taz-zona urbana ta' H'Attard u madwar il-junction li taghti ghal Triq il-Linja huma protetti bil-policy CG22 bhala sit ta' importanza ekologika. Il-policy tghid li 'unacceptable development includes conflicting agricultural development and reclamation, roads and public utility services'. Il-progett ser jiehu 50,308 metru kwadru ta' art ODZ u kieku gie segwit il-pjan lokali kienu jintuzaw biss 35,368 metru kwadru. It-Tribunal qies li l-proposta mhix aktar limitata ghal pjan lokali izda japplika l-obbligu li tigi implimentata t-Ten-T Network. Ghalkemm ikkwota b'mod selettiv l-espert tal-appellanti, l-istess espert Prof. Maria Attard qalet li l-progett mhux bazat fuq studju attendibbli, assunzjonijiet esagerati u mhux l-izvilupp kollu hu inkluz fil-parti tat-Ten-T Network li ghandha tigi mgedda u estiza. It-Tribunal injora li ma gewx introdotti mizuri ta' priorita ghal karożzi tal-linja ghax qies li din hi kwistjoni ta' Transport Malta mhux wahda ta' ippjanar. L-iSPED innifsu invece jghid li t-trasport

pubbliku ghandu jigi priorizzat biex ma jkun hemm il-bzonn ta' toroq godda. F'dan is-sens saret referenza ghal Oggettiv Tematiku 3, 9.9, 10 u 11;

2. L-appellant jilmentaw illi d-decizjoni tiskarta l-oggettivi tal-pjan strategiku tal-izvilupp. Huma jsostnu li mhux minnu li gie applikat il-mekkanizmu indikat fil-Kapitolu 3 tal-iSPED fejn il-Gvern jista' jizvija minn certu provvizjonijiet tal-iSPED ghax il-progett hu wiehed ta' importanza nazzjonali. Dan il-mekkanizmu jiskatta fejn il-Gvern wiezen prioritajiet ekonomici, socjali u ambjentali inkluz in-nuqqas ta' aderenza mal-iSPED. Il-Gvern irid jipprovdi decizjoni ragonata bid-dettalji tal-aspetti mehuda in konsiderazzjoni izda dan ma sarx. It-Tribunal jghid li l-progett ta' 'central link' irid jigi kunsidrat fid-dawl ta' wiehed mill-istrategiji ewlenin tal-iSPED dwar travel patterns fejn jinkludu tlett Thematic Objectives ossia TO10 sa TO12. Fil-fehma tal-appellanti dan imur kontra c-cirkolari 2/15 dwar l-applikazzjoni tal-iSPED li jghid li l-iSPED irid jinqara fit-totalita tieghu b'ebda wahda mill-policies ma titqies aqwa minn ohrajn. L-Oggettiv Tematiku 10.1 jghid li jrid ikun hemm bidla ta' enfasi lil hinn mill-kostruzzjoni ta' toroq godda ghal integrazzjoni ahjar ta' mizuri li jaghtu priorita ghat-trasport pubbliku fuq toroq uzati b'mod aktar ghaqli. Jigi enfasizzat li parti kbira tal-izvilupp mhux indikat ghaz-zvilupp (ara pjanta 2B) u hu elenkat bhala zoni rurali u areas of landscape jew high landscape protection u ghalhekk imur kontra dak li jrid Oggettiv Rurali 2.4. In oltre l-istima strategika ambjentali li saret fuq l-iSPED jirrikonoxxi li l-impatti specifici tat-TEN-T Network iridu jigu evalwati fi process separat billi mhux car x'inhum l-estent tal-izvilupp propost. Ghalhekk it-Tribunal zbalja meta ipprova jiggustifika l-progrett blli qal li l-iSPED ghandu jsostni u jimplimenta l-pjan strategiku ghat-trasport 2025 u l-istrategija nazzjonali ghat-Trasport 2050. L-iSPED ma jipprovdiex carte blanche biex zviluppatur johrog oltre l-konfini geografici tal-iSPED u pjanijiet u policies ohrajn;

3. Id-decizjoni tat-Tribunal mhix motivata minn ligijiet, pjanijiet u policies jew precedenti u hemm nuqqas ta' ottemperanza man-National Transport Strategy Plan 2025 u National Transport Strategy 2050. It-Tribunal strah kwazi esklussivament fuq ix-xieha ta' David Sutton li ipprovda spjegazzjoni generika fuq it-Ten-T Network u kif ghandu jithares ir-regolament 1315/2013. L-appellanti jsostnu li ghandu jkun hemm harsien tar-regolament izda fl-isfond tal-pjan strategiku ghat-Trasport 2025 u l-istrategija nazzjonali ghat-trasport 2050. Il-pjan strategiku nazzjonali ghat-trasport 2025 lanqas jinkludi l-parti kbira tal-progett minn Attard sar-roundabout tas-Saqajja

jew imnizzla fil-lista inkluza fil-Masterplan. L-istess Masterplan ma jsemmi l-ebda parti mill-progett ta' central link bhala prioritá u ghalhekk lanqas hi evalwata fil-Masterplan. Apparti hekk infrastruttura gdida skont il-Masterplan tesigi evalwazzjoni tal-alternattivi u inkluzjoni ta' fatturi ambjentali fl-istudju dwar il-fattibilità tal-progett li ma saritx f'dan il-kaz u b'hekk ma hemm ebda studju dwar l-effetti negattivi li jista' jkollu l-progett;

4. Il-progett imur kontra l-RPDG2014 billi t-tehid ta' kwazi 50,000 metru kwadru ta' art agrikola tmur kontra policy 1.2D (konservazzjoni tal-hamrija), policy 1.2F (protezzjoni ta' speci protetti u habitat), policy 1.2G (protetti bhala mahduma il-meddijiet ta' art inkluz fil-progett), policy 1.2H (protezzjoni tal-karattru xeniku u valur ekologiku taz-zona), policy 1.2I (protezzjoni ta' moghdijiet fil-kampanja). It-Tribunal iggustifika l-ksur ta' dawn il-policies ghax skont policy 1.2A progetti nazzjonali jistghu jiddevjaw mill-RPDG2014 u ghandhom jigu evalwati fuq il-mertu taghhom. Dan hu zbaljat fil-fehma tal-appellanti ghax skont policy 1.2 'general policies' ghandhom jinqraw flimkien mal-policies l-oħra kollha, u mhux jigu eskluzi, bl-iskuza li l-progett jitqies biss bhala progett ta' interess nazzjonali minghajr ma jinghata ebda raguni dettaljata b'ragunijiet legali u teknici. Il-policy RPDG policy 1.2A tghid li kull progett ta' interess nazzjonali ghandu jigi evalwat fuq il-mertu tieghu u soggett ghal konsultazzjonijiet ma awtoritajiet u kumitati koncernati pero f'dan il-kaz hemm nuqqas lampanti ta' konsultazzjoni. Il-case officer ammetta li l-kumitat tal-konsulenza dwar l-agrikoltura ma gietx konsultata avolja artikolu 66 tal-Kap. 552 jghid li dan il-kumitat ghandu jaghti pariri professjonjali u esperti fuq zviluppi ODZ. Bi ksur tal-policy 1.2A tal-RPDG14 ma kienx hemm konsultazzjoni ma esperti sabiex isir traffic impact assessment skont cirkolari PA 1.15 li tqis skont paragrafu 2.1 li r-risposta ghal problemi ta' traffiku ghandhom jigu kunsidrati b'access ghal trasport aktar wiesa u accettabbli minghajr il-bzonn ta' tkabbir ta' toroq. Izid li proposta magguri ta' zvilupp bhala wahda barra z-zona ta' zvilupp skont paragrafu 3.1 normalment tehtieg b'mod awtomatiku transport impact assessment. Skont ix-xieħda tal-Perit Lucien Stafrace mit-Transport Planning Unit fi hdan l-Awtorita li fiha sezzjoni dwar l-impatt tat-traffiku xehed li s-soltu tikkomunika u tikkonsulta ma' Trasport Malta fuq dan l-aspett pero ma gewx konsultati dwar dan l-izvilupp. It-Tribunal erronjament qies li t-Transport Planning Unit hu entita interna fid-direttorat u ghalhekk hi fdata f'idejn id-diskrezzjoni tad-Direttur kif imexxi id-dipartiment tieghu. Mhux hekk biss izda t-Tribunal zbalja

meta qal li l-progettazzjoni ta' traffic flows giet verifikata u accettata mill-Awtorita tat-Transport meta dan ma jirrizultax. Kull ma jirrizulta hu studju ta' CBA (cost benefit analysis) maghmula minn Crowdnet Limited li jilbes il-kappell ta' perit tal-izviluppaturi;

5. Id-decizjoni tat-Tribunal mhix konformi mal-policy nazzjonali dwar l-agrikoltura li tippromuovi l-izvilupp rurali u protezzjoni ta' art agrikola u l-ekosistema, kif ukoll kontra l-oġġettivi tan-National Biodiversity Strategy and Action Plan 2012-2020. Gew prezentati zewg rapport esperti a rigward izda t-Tribunal naqas li jiggustifika l-ksur taghhom u qal biss li mill-provi prodotti mwiezen ma' dak ezaminat fid-dettall fil-process tal-EIA l-impatt fuq l-agrikoltura u l-biodiversita mhix tali li a priori jwassal ghal waqfien tal-progett;

6. It-Tribunal zbalja meta qies li kien hemm accettazzjoni ghat-tibdil ta' kondizzjoni 2 tal-permess li kienet tipprovdi ghal applikazzjonijiet separati ghal kull intervent fuq certu binjiet jew strutturi ta' valur arekitettoniku u storiku fir-rahall zghir maghruf 'Taht ir-Rahal', inkluz l-izmantellar, hazna u rikostruzzjoni taghhom u ritenzjoni ta' binjiet ohrajn u tibdil tal-iskema PA 9890/17. Din l-accettazzjoni stqarrha l-inginier Azzopardi CEO ta' Infrastructure Malta u a bazi ta' hekk it-Tribunal elimina l-htiega tal-hazna ta' 21 strutturi identifikati u minflok ser jigu mwaqqghin. L-unika zewg strutturi identifikati huma zewg greenhouses. It-Tribunal skarta l-aggravju u l-prezunzjoni favur il-preservazzjoni ta' binjiet f'UCA kif mehtieg f'policy P5 tad-DC2015. It-Tribunal qies li ma ngeiebet ebda prova li l-istrutturi ghandhom valur storiku jew arkitettoniku eccezzjonali li jisthoqqilhom preservazzjoni. Dan hu fattwalment zbaljat ghax gie prezentat rapport tal-arkeologiku storiku Dr Reuben Grima dwarhom, kif ukoll rapport tal-istoriku Reno Saliba;

7. L-appellanti issottomettew quddiem it-Tribunal li li skont ir-regolament tal-EIA S.L. 549.26 kellu jkun hemm evalwazzjoni mandatorja ta' alternattivi fuq il-mertu tekniku, fattibilita u implikazzjonijiet ambjentali u li tali valutazzjoni ta' siti alternattivi jkunu accessibbli u soggetti ghal konsultazzjoni pubblici. L-alternattivi gew imsemmijin fil-cost benefit analysis ta' Crowdnet Limited minghajr dan qatt ma kien accessibbli ghall-appellanti jew il-pubbliku jew il-Bord tant li kopja inghatat lilhom wara talba taht il-Kapitolu 496 tal-Ligijiet ta' Malta wara d-decizjoni tal-Bord. Dan ic-CBA ma jaghmilx referenza ghal alternattivi non infrastrutturali jew evalwazzjoni ambjentali tal-alternattivi kif mehtieg fit-terms of reference tal-Environmental Impact Assessment

(EIA). Ic-CBA kien lest qabel il-konsultazzjoni pubblika u t-tenders ghal kostruzzjoni tas-central link inhargu u ngħalqu qabel ma inbdiet il-konsultazzjoni pubblika. Dan juri illi l-ghazla u tip ta' proġett kien gie deciz qabel mal-pubbliku seta' jagħti l-kontribut tiegħu għal evalwar effettiv ta' alternattivi. L-artikolu 33 tal-Kap. 552 jagħmilha tassattiva għal accessibilita ta' informazzjoni pertinenti għal applikazzjoni pero t-Tribunal ma qies bħala irregolari n-nuqqas ta' accessibilita tal-cost benefit analysis, l-evalwar ta' alternattivi, metodologija tal-istudju rigward il-kwalita tal-arja, social impact assessment u rapport dwar is-sahha;

8. It-Tribunal caħad l-aggravju dwar il-konflitt car ta' interess u nuqqas ta' dikjarazzjoni ta' interess tad-diretturi u shareholders ta' Crowdnet Limited, il-periti William u Odette Lewis. Jirrizulta illi Crowdnet Limited għamlet cost benefit analysis permezz ta' direct order mahrug mill-applikant. Għamlu t-traffic counts li hu l-bazi għall-istudju dwar il-kwalita tal-arja kif ukoll studju ta' xi alternattivi infrastrutturali fis-CBA. Il-gustifikazzjoni tal-proġett kienet tinsab fil-konkluzjoni ta' Crowdent illi ser ikun hemm gridlock ta' traffiku fi zmien għaxar snin. L-istess periti għamlu xogħol ta' disinn tal-proġett u survey tas-sigar tal-proġett. Il-perit Odette Lewis bħala direttur mal-Awtorita tal-Artijiet iffirmat l-ordni ta' esproprijazzjoni tal-artijiet meħtieġa għal proġett. L-appellanti jsostnu illi l-periti Lewis bħala ufficjali ta' Crowdnet Limited huma kontributuri għall-EIA għax is-CBA hu l-bazi tal-informazzjoni għall-EIA u l-konkluzjoni tal-gridlock kienet centrali għal hrug tal-permess. It-termini tar-referenza tal-EIA kienu jesigu li għandu jsir skont l-iskeda 1 tal-EIA Regulations 2017. Hemm mizjud li 'The required components of the EIA are: iv. a declaration of conformity with regards to the identification of consultants and contributors and conflict of interest in accordance with subregulation 17(3) of the EIA Regulations'. L-appellanti jsostnu li dan gie injorat mill-applikant u l-kontributur ma jistax jitqies li hu espert imparzjali biex jagħti gudizzju fuq il-proġett tiegħu stess li minnu ibbenefika direttament. Il-procedura fejn l-applikant u n-nies mqabbda minnu jiggudikaw fuq il-mertu tal-proposti tagħhom stess hi irregolari u tqajjem dubju fuq l-integrita tal-konkluzjonijiet raggunti;

9. It-Tribunal bħad-Direttorat tal-Ippjanar, l-Awtorita tal-Ippjanar, l-Awtorita tar-Rizorsi u l-Bord tal-Ippjanar qies bħala fattur inkontrovers li ser ikun hemm gridlock totali sal-2028 meta zewg esperti tat-traffiku cioe Prof Maria Attard u Bjorn Bonello qalu li tali xenarju ma kienx realistiku. L-istess rapprezentanti ta' Crowdnet jammettu li f'sitwazzjoni attwali, hafna mis-sewwieqa jiddevjaw qabel jaslu għal livell kritiku ta'

kongestjoni tat-traffiku. Ghalhekk hu car li s-suppozizzjoni fattwali principali li fuqha mexa t-Tribunal biex wasal ghad-decizjoni tieghu kienet zbaljata;

10. It-Tribunal naqas milli jikkonsidra li ma sarx road safety audit skont Avviz Legali 34/2011 min nies indipendenti fil-fazi bikrija tad-disinn kif imposta minn Trasport Malta. Lanqas ma ngatat importanza ghal fatt li ma sarx studju kif il-progett kien ha jkollu impatt fuq is-sahha kif mehtieg f'pagna 13 tal-EIA terms of reference 4.4 u in oltre s-social impact assessment mehtieg skont l-istess terms of reference ma kienx accessibbli ghal pubbliku u l-Bord tal-Ippjanar;

11. L-appellanti jsostnu li kien hemm ksur tas-smigh xieraq meta t-Tribunal cahad rikors taghhom biex jitella' jixhed l-applikant fuq aspetti pertinenti ghal kaz inkluz it-tender for professional services in connection with the supervision and works certification for the central link u tender for the construction of central link. It-Tribunal cahad it-talba ghax qies li fir-rikors ma ngatatx raguni li l-aspetti msemija kienu jirrigwardaw materja ta' ambjent u ippjanar. L-appellanti jsostnu li dan il-digriet ma kellu ebda bazi fil-ligi meta jitqies li fir-rikors tal-appell, l-appellanti indikaw lil Infrastructure Malta, Ingenier Azzopardi u Perit Robert Zerafa bhala xhieda. In oltre t-Tribunal cahad talba tal-appellanti li jtella' xhud iehor dikjarat cioe rappresentant tad-Dipartiment tal-Kuntratti. B'zieda ma' dan it-Tribunal ma obbligax lil David Sutton ta' Transport Malta jipproduci terms of reference ta' certu direct orders relatati ma studju fuq din l-applikazzjoni. Dan kollu sehh bi ksur tal-artikolu 9 tal-Kap. 551 u l-principju ta' audi atheram partem.

L-appellanti jzidu li waqt l-access ic-Chairman tat-Tribunal ghadda kumment dispregjattiv fil-konfront ta' wiehed mill-appellati meta fisser li t-tifel tieghu spiss jigi mehud l-isptar ghax ibati bl-asthma. Il-kumment kien fis-sens li ma ghandhomx jintuzaw it-tfal bhala argument f'dawn ic-cirkostanzi. Bil-kumment tac-Chairman intwera pregudizzju verso l-appellanti maghqud mal-atteggjament ostili bid-digriet tac-cahda tas-smigh ta' xhieda dikjarati. Dan iwassal ghal nuqqas ta' imparzjalita u integrita. Fil-kors tal-appell l-appellanti gabu diversi provi inkluz fuq is-sahha. L-applikant ma gab ebda prova fuq l-impatt tal-progett fuq is-sahha u ghalkemm l-ERA talbet evalwazzjoni tal-impatt tal-izvilupp fuq is-sahha tan-nies li jghixu jew izuru z-zona kif ukoll konsiderazzjonijiet socio economici u ambjentali pero mbaghad ma insistietx aktar fuqu u fil-fatt ma sarx.

L-ewwel aggravju

Din il-Qorti qieset u qrat fid-dettall il-process u l-atti li waslu quddiem din il-Qorti. Jibda biex jinghad li kwazi f'kull parti tal-argumentazzjoni li saret mill-partijiet, l-Awtorita u anki t-Tribunal fid-decizjoni tieghu hemm element wiehed li dejjem kien punt ta' kontroversja cioe l-korrelazzjoni jew possibli konflitt bejn it-Trans Europe Transport Network Policy maghruf bhala TEN-T Network li Malta bhala membru tal-Unjoni Ewropeja obligat ruhha li timplimenta b'mod awtomatiku bl-introduzzjoni ta' EU Regulation 1315/2013 u l-varji pjanijiet u policies lokali li jista' mhux dejjem ikunu mahsuba kompatibbli jew in linea ma mizuri necessarij biex jigi implimentat servizz essenzjali ta' toroq magguri u mhumieq, ghal accessibilita ahjar ta' servizzi u passiggieri fi u bejn stati membru sal-2050.

Hu indubitat illi dan l-izvilupp hu kunsidrat bhala wiehed magguri u mehtieg fl-interess nazzjonali tant li l-Kabinet tal-Ministri ghadda rizoluzzjoni li dan il-progett ikopri zvilupp ta' sinifikat strategiku. Ghalkemm dan ma ghandux ifisser skartar ta' kull pjan jew policy biex jigi attwat l-izvilupp pero ma jistax ma jittiehidx in konsiderazzjoni illi minhabba l-kobor limitat ta' pajjizna, zviluppi kemm f'toroq godda, twessiegh jew kambjamenti ta' direzzjonijiet u modalita ta' traffiku ser iggib maghha certu mizuri li jimpingu fuq l-ambjent u l-abitat x'aktarx b'mod negattiv. Ghalhekk progetti simili jridu bil-fors jsiru b'enfasi li jintlahaq il-bilanc rikjest bejn dak mehtieg li jsir b'inqas impatt ambjentali u socjali. Il-Qorti ma tistax ma tenfasizzax illi bhal kull permess ta' zvilupp izda b'aktar sensittivita fi progetti simili fl-ewwel lok kull permess ghandu jsegwi u jobdi skruporozament il-kundizzjonijiet tal-permess u fit-tieni lok l-awtoritajiet kompetenti konnessi mal-progett kemm bhala regolatur jew bil-kompitu ta' sorveljanza ghandhom l-obbligu li jzommu vigilanza stretta waqt kull fazi tal-progett. In oltre hu l-obbligu ta' kull parti interessata inkluz l-istess zviluppatur li f'dan il-kaz ghandu funzjoni pubblika mhux privata illi fejn hu possibbli u fattibbli kull mizura li tista' titiehed biex jigi salvagwardat l-ambjent naturali, il-patrimonju kulturali u arkeologiku u l-inqas effett negattiv possibbli fuq il-bniedem u z-zona li jghix fiha ghandhom dejjem jiehdur prioritara anki jekk dan ifisser xi kambjament li jistghu jirrizultaw waqt l-implimentazzjoni ta' kull progett magguri bhalma hu dak li jaffettwa l-infrastruttura tal-pajjiz.

Il-Qorti tesprimi dizappunt li l-progett inghata bidu fis-sehh qabel id-decizjoni ta' din il-Qorti qisu c-cahda tal-appell interpost kien gia xi fatt kompjut, assunzjoni li ghalkemm zbaljata izda ragonevoli meta tqis dak li hareg mill-fatti pubblici fuq il-media u li ma taghmilx gieh lil applikant u tista' titfa' percezzjoni ta' dubju fuq l-indipendenza u imparzjalita tal-Qorti jew pressjoni fuq l-operat ta' din il-Qorti. Din il-Qorti tassikura lil partijiet li din is-sentenza inghatat bil-konvinzjoni u fil-parametri stretti legali li biha kienet marbuta l-Qorti u li kienet timmerita l-vertenza, bla ebda cirkostanza estraneja li setghet tinfluixxi lil Qorti mod iehor. Del resto l-partijiet kienu ben konsapevoli illi l-Qorti mhix ser iddewwem il-kwistjoni milli tigi deciza u ghalhekk l-ghagla ghat-tnehdija fis-sehh tal-progett ma awgurax tajjeb biex ma tigix mittiefsa d-delikatezza u sensittiva rikjesta minn awtorita pubblika f'sitwazzjonijiet simili.

Il-Qorti mill-bidu nett tippuntwalizza illi l-kompitu ta' din il-Qorti hu limitat u specifiku li jitratta punti ta' ligi li jew ma gewx decizi jew li gew decizi hazin fl-isfond tal-fatti u ligijiet, pjanijiet u policies applikabbli. Mhux il-kompitu tal-Qorti li tidhol fil-mertu tal-izvilupp innifsu mill-lat tekniku jew fattibilita tieghu. Lanqas hu kompitu ta' din il-Qorti li tissostitwixxi d-diskrezzjoni tal-Bord tal-Awtorita u/jew it-Tribunal li taghti l-fehma taghha fuq aspetti tal-progett li jmorru lil hinn minn determinazzjoni ta' punt ta' ligi li jirrizulta minn dak li hemm fl-atti.

Maghdud dan, l-ewwel aggravju tal-appellanti jistrieħ hafna fuq in-nuqqas tat-Tribunal li skarta u/jew injora l-pjanijiet lokali fejn jidhol twessiegh ta' toroq jew toroq godda, teħid ta' art agrikola u nuqqas ta' mizuri għal prioritá għal karożzi tal-linja skont l-iSPED. Dan ma hux minnu. Il-Qorti terga' taghmilha cara li l-kompetenza ta' din il-Qorti ma tistendix billi tevalwa l-aspetti fattwali u teknici tal-progett. Din hi l-mansjoni tal-Awtorita jew il-Bord tal-Awtorita u t-Tribunal ta' Revizjoni. Il-Qorti tintrometti ruhha biss jekk hemm kwistjoni ta' punt ta' ligi li johrog minn dawn il-fatti riziultanti li qed jigi sottomess għal kunisderazzjoni ta' din il-Qorti. Ma jistax jingħad li dan l-aggravju mressaq jirrigwarda purament punt ta' ligi izda jekk it-TEN-T policy u l-policies domestici rilevanti gewx osservati. Jekk jirrizulta li hemm xi nuqqas ta' aderanza jrid jigi deciz jekk tali nuqqas kienx jidhol fil-limiti tar-ragonevolezza,

permissibilita u proporzjonalita tad-diskrezzjoni afdara lil Awtorita u/jew it-Tribunal fil-konsiderazzjonijiet fattwali u teknici.

Ma jistax jinghad kif qed jallegaw l-appellanti li t-Tribunal skarta l-pjanijiet u policies jew li t-Tribunal kien selettiv meta evalwa u ikkunsidra l-varji argumentazzjonijiet tal-partijiet. L-aggravju (ara b'ezempju aggravji 7 u 13 kif trattati fid-decizjoni tat-Tribunal) hu wiehed spjegat u dettaljat b'ragunijiet bazati kemm mill-aspett legali u teknici. Wiehed jista' ma jaqbilx mal-konkluzjoni pero dan ma jfissirx li l-kwistjoni ma gietx trattata. Ifisser biss li l-appellanti ma qablux mad-decizjoni mehuda. It-Tribunal mhux marbut li jqis kull studju wiehed wiehed u jsemmi kollox basta jidher illi kellu fehma studjata ta' dak li kienu qed isostnu l-partijiet u dan jirrizulta b'mod car minn qari tal-konsiderazzjonijiet kif imfisser u spjegati. Fil-qosor it-Tribunal wasal ghal konkluzjoni li l-istat attwali tat-traffiku llum minn certu zoni bhall-izvilupp mitlub fi-zona ta' Attard hu tali illi l-pjan lokali tal-2006 ma hux qed jindirizza sew u b'mod effettiv il-bzonnijiet tal-pajjiz tenut kont l-implimentazzjoni obbligatorja tat-TEN-T network kif ukoll l-istrategija nazzjonali u t-Transport Master Plan li huma wkoll objettivi fost hafna ohrajn tal-iSPED, b'mod partikolari objettiv TO10.2 li jitlob is-salvagwardja u l-implimentazzjoni tat-TEN-T core and comprehensive networks. Din il-medda ta' triq li fuqha qed jintalab l-izvilupp hi meqjusa bhala parti mill-comprehensive network. Il-Qorti mhux ser tidhol f'kull policy partikolari msemija ghax l-aggravju jqis li l-policies ma gewx trattati jew gew injorati mit-Tribunal. Qari tal-aggravji 7 u 13 kif kunsidrati mit-Tribunal juru l-kuntrarju u kienu msejsa fuq ragunijiet teknici fondati u spjegati. Hu minnu illi l-estenzjoni tal-progett specjalment dak li jestendi lejn l-inhawi tas-Saqqajja ma jidhrux fl-appendici tar-regolament bhala pjanti li dwarhom it-TEN-T policy tirrikjedi azzjoni. Mill-banda l-ohra wiehed irid iqis illi r-regolament ma jistax jigi interpretat b'tali mod ristrettiv illi jekk tinhass il-htiega li ghall-ahjar attwazzjoni tal-izvilupp il-progett kellu jigi estiz biex ma jinholqux problemi f'partijiet ohra vicin l-istess zvilupp, dawn ghandhom jittiehdu mizuri ghalihom ghall-ahjar beneficcju tal-progett. Hu minnu li ser tittiehed art agrikola iktar milli kien jittiehed kieku jsir biss parti mill-pjan ta' twessiegh ta' toroq u li policy CG22 tqis li tehid ta' art agrikola mhix accettabbli ghal uzu ta' toroq. Pero kif sostna l-istess Tribunal, fil-maggor parti tal-progett gia jezitu toroq u dak li qed isir hu twessiegh u amplifikar biex jigi attwat l-izvilupp li l-istess Tribunal qiesu essenzjali. Il-Qorti ma tistax ma tiehux in

konsiderazzjoni li fiz-zona ta' Attard il-progett ser jiehu inqas art agrikola milli mahsub fil-pjan lokali tal-2006 li f'parti minnu kien jitlob it-tehid ta' sit biex issir triq b'erba' karreggjati mentri fl-izvilupp ser jintuzaw zewg karreggjati gia ezistenti minn erba' li jehtieg bhala parti mill-attwar tal-izvilupp. Il-kwistjoni relatata mat-trasport pubbliku ser tigi trattata f'aggravji ohra aktar il-quddiem pero ma jistax jinghad li ma ittehditx in konsiderazzjoni mit-Tribunal fejn ghalkemm qies li accessibilta ghat-trasport pubbliku mhix strettament wahda ta' ippjanar pero l-Awtorita ghat-Trasport tista' f'kull zmien tikkunsidra kull bdil necessarju li ghandu x'jaqsam ma' rotot tat-trasport pubbliku u dak konness mieghu fl-ambitu tal-izvilupp ezistenti skont l-esigenzi tal-mument minghajr ebda bzonn ta' applikazzjoni ta' zvilupp. Ghalhekk dan l-aggravju kif maghmul qed jigi michud.

It-tieni, it-tielet u l-hames aggravji

Dawn l-aggravji ma humiex sostnuti minn xi nuqqas ta' punt ta' ligi mhux kunsidrat, jew kunsidrat hazin mill-aspett legali mit-Tribunal. Hemm nuqqas ta' qbil bejn l-appellanti u l-applikant dwar kif ghandu jigi interpretat l-iSPED meta jitqies li hu pian tekniku aktar millli legali u x'isehh meta jkun hemm tbeghid minn xi objettiv iehor indikat mill-iSPED jew il-pjan lokali. L-appellanti jsostnu li t-Tribunal skarta l-oggettivi tal-pjan strategiku jew kien selettiv u ma qies in-nuqqas ta' raguni spjegata fejn jirrigwarda l-eccezzjoni fejn zvilupp ta' importanza nazzjonali jista' jizvija minn uhud mill-objettivi. Kuntrarjament ghal dak sosnut mill-appellanti t-Tribunal dahal fid-dettal f'kull parti tal-aggravju mressaq mill-appellanti b'mod spjegat inkluz l-principji li jirregolaw l-iSPED fosthom l-implimentazzjoni tat-TEN-T core and comprehensive networks (Thematic Objective 10.2) u l-objettivi li jirrigwardaw it-traffiku kif inhu dan il-kaz fejn iridu jittiehu in konsiderazzjoni n-National Transport Strategy u n-National Transport Masterplan. Kienet il-fehma tat-Tribunal mill-lat tekniku tal-progett u l-importanza tieghu ghat-trasport in generali illi tenut kont ta' dak li jrid l-iSPED u senjatament l-eccezzjoni ta' aderenza assidwa ghal xi pianijiet lokali jew policies ohra f'kaz ta' progetti nazzjonali ta' importanza u strategija nazzjonali dwar it-trasport, l-aggravju tal-appellanti fejn jolqtu nuqqas ta' aderenza ma' xi objettiv iehor tal-iSPED jew pian lokali jew policy ohra, il-bilanc kien ixaqleb lejn l-attwazzjoni tieghu. Din il-Qorti ma ssibx li tali konsiderazzjonijiet ghandhom jigi mittiefsa mill-Qorti meta ebda punt ta' ligi ma jista' jinghad li gie applikat hazin. Il-Qorti tqis li l-

iSPED jiehu in konsiderazzjoni bhala objettivi t-TEN-T Network u l-istrategija u masterplan tat-trasport u fejn hemm diversi pjanijiet u policies li huma konfliggenti l-artikolu 52 tal-Kap. 552 jaghti ordni ta' precedenza cioe fejn strategija spazjali jipprevali fuq pjan dwar suggett u dan tal-ahhar jipprevali fuq pjan lokali eccetra. Hu dak li ikkonsidra fl-ahhar mill-ahhar it-Tribunal meta gie biex jevalwa l-progett mid-diversi aspetti ta' pjanijiet u policies rilevanti. Il-Qorti zzid kif sostniet fl-aggravju precedenti illi l-fatt li t-Tribunal hass li ghandu jaghti aktar importanza lejn ix-xiehda teknika ta' parti milli ta' ohra ma taghti lok ghal ebda nuqqas izda biss li t-Tribunal dehrlu fid-diskrezzjoni afdara lilu meghjun min esperti teknici li jaghti aktar piz lil xhud milli lil iehor fl-evalwazzjoni ta' punti teknici marbuta u l-korrelazzjoni tal-ammont pjuttost konsiderevoli ta' diversi objettivi, pjanijiet u policies marbuta mal-izvilupp. Il-Qorti tirreferi ghal pagni 128 et seq. tad-decizzjoni tat-Tribunal a skans ta' repetizzjoni dwar l-objettivi sekwenzjali tal-iSPED u dak li jintqal fil-Kap. 3 tal-iSPED dwar l-eccezzjoni fejn jidhlu progetti ta' importanza nazzjonali. Strategija tal-iSPED hi 'travel patterns' u l-progett in kwistjoni ghalhekk kellu jigi analizzat minn dan l-aspett ukoll, in linea mat-TEN-T network policy u n-National Transport Strategy.

Wara kollox it-Tribunal ikkonsidra dak li ntqal mill-esperti tal-appellanti pero qies mill-punto di vista ta' ippjanar li jsostni t-tezi li dan il-progett hu parti minn katina ta' toroq li Malta obbligata twettaq bejn l-2030 u 2050 biex taghti aktar efficjenza, modalita u tijieb fit-trasport pubbliku bhala parti minn integrated transport framework. Ghalkemm xi partijiet mill-izvilupp kif indikat mill-appellanti mhux parti mill-prioritajiet fit-Transport Master Plan jew dak li jipprovdi r-regolament 1315/2013 pero kif ikkonferma t-Tribunal mix-xiehda ta' David Sutton il-Kapitolu 3 tat-Transport Plan hu intiz biex jattwa it-TEN-T network l-aktar fl-eliminazzjoni ta' bottle necks. Il-partijiet fejn ser jigu mnehhija tali bottle necks huma inkluzi fl-izvilupp mehud fl-intier tieghu. It-Tribunal osserva li gew proposti diversi alternattivi mill-izviluppatur imma kienet din il-proposta li l-aktar kienet ser tnaqqas mill-piz tal-kongestjoni tat-traffiku u fl-istess hin minhabba f'hekk ser isservi bhala mezz mhux biss ghal nuqqas ta' tniggiz fl-arja izda wkoll nuqqas ta' kongestjoni. Il-karozzi tal-linja kienu ser jiffrankaw fuq zmien ta' tragitti ghax it-traffiku ikun aktar movimentat. Dawn il-konsiderazzjonijiet ma humiex tali li jikkostitwixxu punt ta' ligi li ma giex dibattut jew nieqes minn apprezzament tal-pjanijiet u policies fl-isfond shih tal-materja komplessa u primarjament b'indoli teknici

kif inhi din. Il-Qorti f'dan il-kuntest ma tifhimx is-sottomissjoni tal-appellanti li t-Tribunal naqas li jimmotiva l-zvilupp b'ligijiet, pjanijiet u policies meta t-Tribunal f'diversi aggravji kunsidrati minnu dejjem sostna li dan il-progett ta' importanza nazzjonali jsib il-pedament tieghu mill-TEN-T network u r-regolament 1315/2013, l-iSPED innifsu u n-National Transport Strategy. Ma jistax ma jinghadx mill-Qorti illi dan l-izvilupp hu wkoll soggett ghal skrutinju strett mill-Unjoni Ewropea minhabba l-ghoti ta' fondi.

Il-Qorti tqis li dak li kien qed jigi evalwat mit-Tribunal fil-maggor parti tal-aggravji inkluz dak ta' nuqqas ta' aderenza mal-obiettivi tan-National Biodiversity Strategy and Action Plan 2012-2020 kienet dwar il-bilanc li kellu jigi milqugh bejn il-progett ta' fejda nazzjonali tenut kont tat-TEN-T network u l-istrategiji nazzjonali ghat-trasport paragunat ma' impatt li dan kien ser ikollu fuq l-ambjent in generali. It-Tribunal jikkonstata li progett simili ser jimpatta l-agrikoltura u l-ekologija pero qies li tali impatt ser ikun mifrux fuq medda kbira mhux koncentrat fuq parti wahda u jkopri wesghat bejn hames metri f'certi bnadi sa hmistax-il metru fi bnadi ohra. Ghalhekk kienet il-fehma esperta teknika (u mhux legali) tat-Tribunal li l-impatt ma kienx tali li jwaqqaf milli l-progett isehh.

Ghalhekk dawn l-aggravji qed jigu michuda.

Ir-raba' aggravju

Dan l-aggravju jkompli mal-aggravji precedenti. Dan l-aggravju bhall-ohrajn ta' qablu ingiebu quddiem it-Tribunal wara d-decizjoni tal-Bord tal-Awtorita u ma jistax jnghad kif qed jigi sottomess f'dan l-appell illi t-Tribunal ma qies l-aggravju tal-appellanti. It-Tribunal qies illi kull progett ta' interess nazzjonali skont policy 1.2A tal-Rural and Design Policy Guidance 2014 jista' jiddevja mill-policies fl-istess RPDG u jrid jigi evalwat fuq il-mertu tieghu soggett ghal konsultazzjoni mad-dipartimenti jew entitajiet koncernati. L-appellanti jqisu illi nonostante din il-policy xorta kull general policy trid tingara flimkien mal-policies l-ohra kollha. Dan mhux ghal kollox korrett. Il-policy 1.2A hi blanket policy li taghti l-fakulta li progett nazzjonali ma jkunx marbut u mxekkel b'mod mandatarju mal-policies l-ohra u jista' jiddipartixxi minnhom.

Il-konkluzzjoni cara pero hi li tali proġett ta' importanza nazzjonali jrid jigi mgharbul fuq il-mertu tiegħu cioe anki jekk qed imur kontra policies ohra specifikament li jkun soġġett għal konsultazzjoni mal-awtoritajiet/dipartimenti/kumitati koncernati. Dawn l-awtoritajiet, dipartimenti jew kumitati mhux specifikati ghax ikun jiddependi mit-tip ta' proġett. L-appellanti jishqu fuq it-tehid zejjed ta' art agrikola u t-Tribunal, wara li ezamina l-veduti tal-partijiet, iggustifika l-proposta ta' żvilupp billi qies li hafna mit-toroq mertu tal-izvilupp fihom ġia jinsabu barra z-zona ta' żvilupp u meta tqis it-tul tat-toroq fejn ser isir l-izvilupp mal-ammont ta' art agrikola li ser titiehed hemm proporzjon ta' kejl li jvarja bejn hames u hmistax-il metru ta' art agrikola mehuda fit-tul tas-sistema ta' traffiku proposta. Rigward l-allegat nuqqas ta' osservanza ta' konsultazzjoni mal-kumitat tal-konsulenza dwar l-agrikultura t-Tribunal qies ix-xieħda tal-case officer li tali konsultazzjoni hi necessarja fuq art agrikola li pero ma tikkostitwix l-ghan ta' dan il-proġett nazzjonali, għalkemm qies li gie konsultat dwar l-impatt fuq l-agrikultura mill-aspett tal-valutazzjoni ambjentali li per forza kien ser ikollu elementi ta' impatt negattiv biz-zieda ta' toroq f'zona rurali, għalkemm kif intqal mit-Tribunal dan hu mitigat billi t-teheid ta' art ikun proporzjonat fl-isfond tat-tul tal-izvilupp u l-beneficċju ta' nuqqas ta' tniggis ta' arja kagunat mill-kongestjoni ta' traffiku. Għalhekk ikkonkluda li dan l-impatt ma kienx tali li għandu jintilef il-beneficċju kollettiv li ser jinholq bil-proġett. In kwantu għan-nuqqas ta' konsultazzjoni ma' esperti biex isir traffic impact assessment u nuqqas ta' konsultazzjoni ma' Transport Malta, it-Tribunal innota li t-Transport Planning Unit hu dipartiment fi hdan id-direttorat tal-ippjanar u billi l-process fi hdan id-direttorat hu wiehed intern hu fid-diskrezzjoni tad-Direttur tal-Ippjanar kif imexxi l-process tal-applikazzjoni fid-dipartiment tiegħu. In oltre t-Trbunal ha in konsiderazzjoni fid-dettall ix-xieħda ta' David Sutton f'isem Transport Malta fejn din tal-aħħar, apparti li kienet l-applikant originali tal-izvilupp kienet ukoll favur il-proġett għal beneficċji tiegħu. Din il-Qorti ma ssibx li t-Tribunal wera xi nuqqas fl-applikazzjoni tal-ligi li jimmerita censura. Fil-kaz tat-traffic impact assessment imsemmi f'dan l-aggravju, il-Qorti tqis li mhux minnu li t-Tribunal qal li l-proġettazzjoni tat-traffic flow giet verifikata u accettata mill-Awtorita tal-Ippjanar. Kullma qal it-Tribunal hu illi l-projected traffic flow fuq diversi snin gie meħud mil-cost benefit analysis prodott bħala dokument mill-applikant liema studju kif magħmul hu wiehed bazilari u accettat (qua studju xjentifiku - kliem tal-Qorti) mill-Awtorita tal-Ippjanar. Hi l-metodologija li hi accettata mill-Awtorita tat-Trasport mhux

il-konkluzjoni tal-istudju kif jallegaw l-appellanti. Di piu t-Tribunal ukoll ikkonsidra li l-applikant ukoll ghamel analizi ta' hames alternattivi ohra flok l-izvilupp propost li fil-fehma tieghu ma kienux ser isolvu l-problemi ezistenti u futuri li qed jigi krejat bit-traffiku li hemm illum u li ser ikompli jizdied. B'zieda ma' dan it-Tribunal ghamel dikjarazzjoni cara li anki jekk ghal grazzja tal-argument kien hemm xi nuqqas procedurali dan ma kellu ebda incidenza materjali fuq id-determinazzjoni finali tal-progett. Din il-Qorti ma tistax tintrometti ruhha fuq konkluzzjonijiet li huma aktar fin-natura teknika milli legali tal-izvilupp. Pero taqbel mat-Tribunal illi qies l-element tal-proporzjonalita meta wizen li nuqqasijiet procedurali li ma jincedux fuq il-mertu sostantiv tal-process ma ghandux ixerjen is-sustanza tal-izvilupp propost. Ghalhekk anki dan l-aggravju qed jigi michud.

Is-sitt aggravju

Dan l-aggravju ma fih ebda mertu. L-appellanti qed isostnu li t-Tribunal fehem hazin il-kondizzjoni 2 tal-permess fis-sens li ma hemm ebda htiega ta' preservazzjoni ta' strutturi li gew meqjusa ta' valur li ghandhom jigu preservati hlief ghal xi zewg green houses li kellhom jigu preservati. It-Tribunal f'pagni 138 u 139 tad-decizjoni kien ferm car illi l-istrutturi indikati bhala C, G, H, J u O kellhom jigu zmantellati minhabba t-triq li kienet progettata pero mhux distrutti u r-rikostruzzjoni taghhom kellu jsir permezz ta' applikazzjoni separata sakemm ma jkunx possibbli li jibqghu jinzammu fis-sit fejn allura l-permess ta' zvilupp kellu jigi emendat. Ebda diskrepanza ma hi miftehma mid-decizjoni tat-Tribunal jew il-klawsola 2 tal-permess. Ghalhekk l-aggravju qed jigi michud.

Is-seba' aggravju

Dan l-aggravju kien soggett ghal konsiderazzjonijiet fit-tul mit-Tribunal. L-appellanti jsostnu illi l-EIA jesigi evalwazzjoni mandatorja ta' alternattivi. Dawn issemew biss fil-cost benefit analysis (CBA) maghmul minn Corwdnet Limited bla ma kien accessibbli ghal pubbliku jew il-Bord tal-Awtorita. Di piu c-CBA ma jaghmel ebda referenza ghall-alternattivi sew infrastrutturali jew studju dwar l-impatt tal-arja, fuq is-sahha u dik socjali u kien lest qabel il-konsultazzjoni pubblika. L-ghazla ghalhekk kienet saret qabel kull konsultazzjoni pubblika tant li t-tenders kienu gia inhargu u

inghalqu. L-appellanti fi ftit kliem qed isostnu nuqqas ta' trasparenza u smigh xieraq ghal kull min kien interessat li jaghti l-fehma teighu fuq il-progett.

Din il-Qorti ma ssibx li dan l-ilment ghandu mis-sewwa. It-Tribunal qies illi l-legislazzjoni sussidjarja 549.46 (regolament 13) jipprovdi li progetti li jaqghu taht dawn ir-regolamenti (bhal dan in kwistjoni) jesigu stharrig inizjali u ragonevolment ezawrjenti tal-alternattivi biex ikun simplifikat il-process u valutazzjoni sussegwenti u kif hemm fir-regolament 18 indikazzjoni tar-ragunijiet ewlenin ghal ghazla li tkun saret mill-applikant. It-Tribunal ghamel ukoll referenza ghat-terms of reference tal-EIA mahruga mill-ERA meta ikkonsidra l-ilment specifiku rigward is-CBA u qal li dan ma hux dokument rikjest mill-EIA izda hu dokument kommissjonat mill-applikant (f'dan il-kaz uzat ukoll bhala sors ghall-otteniment ta' fondi Ewropej) bhala analizi preliminari biex b'mod oggettiv, wara li jigu kunsidrati alternattivi ghal progett li gew deskritti u analizzati jkollu bazi ghall-ghazla meta mqabbla mal-progetti alternattivi ohra msemija. L-EIA mhux intiz li jezamina alternattivi izda hu intiz biex l-izviluppatur jipprovdi spjegazzjoni ghalix wasal biex jinghazel il-progett. F'dan il-kaz jirrizulta illi l-izviluppatur ghazel hames xenarji biex wasal jaghzel dan il-progett in kwistjoni mertu tal-EIA. L-alternattivi mistharrga jridu jissodisfaw zewg kriterji bil-ghan li l-ghazliet huma fattibbli u jilhqu l-ghanijiet tal-progett u cioe li huma ragonevoli meta imqabbla mal-progett li qed jigi valutat ghall-impatt ambjentali u rilevanti ghal progett u l-karatteristici specifici tieghu. Ghalhekk hu korrett it-Tribunal li f'dan l-istadju jekk kienx lest o meno c-CBA qabel l-applikazzjoni jew li saru l-hrug o meno tat-tenders fl-istadju tal-EIA mhix rilevanti ghax il-progett hu soggett dejjem ghall-iskrutinju tal-Bord tal-Awtorita meta jigi finalizzat l-EIA u hi d-decizjoni tal-Bord li tiddetermina l-izvilupp hux permissibli jew le. Jekk il-Bord jiddeciedi li jichad l-applikazzjoni t-tenders jisfghu bla effett. L-alternattivi kienu jidhru fil-Project Description Statement (PDS) maghmul mill-applikant bhala l-ewwel pass qabel il-hrug tat-terms of reference li jwassal ghal EIA. Dan il-PDS kien gia jinkludi s-CBA u traffic analysis bhala sors ta' studju preliminari u sors sekondarju imma jibqa' l-fatt li ma kienx dokument rikjest mill-EIA. Il-fatt li issir referenza ghalih jew dokumenti ohra mhux mandatorji bhala parti mill-EIA ma jirrendux id-dokument bhala wiehed mehtieg mill-EIA (terms of reference).

Il-process tal-EIA fih zewg stadji ta' konsultazzjoni mal-pubbliku cioe dak inizjali cioe ta' 'scoping' fejn jigi cirkulat l-PDS u dan qabel it-terms of reference li jwassal ghal EIA (li hu l-kompitu tal-ERA li tissorveljah u tanalizzah) li kif intqal f'dan il-kaz jkun gia jinkludi referenza ghal alternattivi skont kif analizzati fis-CBA u traffic analysis. L-appellanti NGO's jirrizulta li lanqas ippartecipaw fl-ewwel stadju ghalkemm notifikati u anqas talbu xi access ghal informazzjoni ghalkemm ghamlu rapprezentazzjonijiet mal-applikazzjoni tal-izvilupp li saret fl-istess zmien pero ma ippartecipawx fl-iscoping f'Settembru 2018. Tali informazzjoni skont il-fehma tat-Tribunal kienet disponibbli ghal min iridha u n-nuqqas tal-appellanti ma jistax jigi gustifikat f'appell. Huma wkoll kellhom l-opportunita li jippartecipaw fil-konsultazzjoni pubblika wara l-hrug tar-rapport tal-EIA u inghataw kopja tal-istess EIA fejn ukoll hemm ir-referenza ghal CBA f'dokument separat. Dan id-dokument kif qal it-Tribunal ma ghandux l-iskop li jevalwa aspetti u impatti ambjentali izda hu specifiku ghall-iskop tal-ghazla tal-progett propost mill-applikant.

Ghalhekk l-aggravju kif maghmul qed jigi michud billi ma kienx hemm nuqqasijiet sostanzjali fil-process li wassal ghall-EIA u l-process sussegwenti tal-EIA innifsu.

It-tmien aggravju

Dan l-aggravju ma fihx mis-sewwa. Is-socjeta Crowdnet Limited ossia l-periti Lewis ma kienux kontributori ghall-EIA ghax ic-CBA redatt mill-istess socjeta mhux studju li jaghmel parti mir-rapport tal-EIA ghalkemm hu sors sekondarju ta' informazzjoni mitluba mill-izviluppatur bhala raguni ghall-ghazla tal-progett mertu tal-applikazzjoni tal-ippjanar. It-terms of reference tal-EIA mahruga mill-ERA jesigi biss li studji li mhux parti mill-EIA ghandhom jigu sottomessi ghal rashom pero jekk ikun hemm cross referencing bejn tali studji u l-EIA dan ghandu jigi indikat b'mod car u limitat biex il-qarrej ikun jaf li aspett partikolari gie trattat b'mod separat u parallel. Ic-CBA, kif issostni l-ERA u din il-Qorti taqbel maghha ma fihx impatt dirett fuq l-aspetti tal-ambjent milqut bl-izvilupp. Hu l-koordinatur tal-EIA li jaghmel referenza ghalihom fil-konsiderazzjonijiet tieghu minghajr il-bzonn li dawn id-dokumenti jiformaw parti mill-EIA. In kwantu ghal allegat konflitt ta' interess fl-ewwel lok dan il-kuncett ghandu strettament jigi indirizzat f'kazijiet fejn min qed jiggudika ghandu interess fl-istess materja gudikata (nemo iudex in causa propria). Dan mhux il-kaz fis-sitwazzjoni prezenti. In kwantu ghas-sottomissjoni li l-periti Lewis (Crowdnet Limited) ma

ghamlux id-dikjarazzjoni necessarja skont ma jesigi l-EIA, dan ukoll jirrizulta ingustifikat ghax skont ir-regola 17(3) tal-Subsidiary Legislation 549.46 huma biss il-konsulenti tal-EIA (cioe konsulenti imparzjali u indipendenti) li jridu jiffirmaw dikjarazzjoni dwar konflitt ta' interess. Crowdnet Limited ma kinitx konsulent fuq l-EIA ghax il-cost benefit analysis (CBA) ma kienx parti mill-bzonnijiet rikjesti fit-terms of reference tal-EIA. Il-Qorti izzid li dwar is-sottomissjoni tal-appellanti li l-periti Lewis, diretturi u azzjonjisti ta' Crowdnet Limited ibbenefikaw mill-progett maghzul ma jekkwivalix ghal konflitt ta' interess. Dan jinghad ghax f'dan il-kaz id-ditta Crowdnet Limited tqabbdet mill-applikant u jekk l-applikant ghazel li jaghti xi mansjonijiet ohra lill-istess socjeta dan sehh fir-relazzjoni ta' zviluppatur mal-appaltatur ta' xoghlijiet. L-appellanti ma jsostnu bl-ebda mod l-inferenza li tohrog mill-aggravju illi Crowdnet Limited ghazlet l-opzjoni li minnha intalab il-permess ta' zvilupp biex l-istess socjeta jew xi wiehed mid-diretturi jinghata xoghol addizzjonali oltre r-rapport minnha mitlub. In kwantu ghal fatt li l-perit l-ohra fis-socjeta hi wkoll membru fil-Bord tal-Awtorita tal-Artijiet meta saret esproprijazzjoni ta' xi artijiet mertu tal-izvilupp, dan ukoll fil-fehma tal-Qorti ma jikkostitwix nuqqas ta' trasparenza billi l-Awtorita hi afdata bil-mansjoni li fil-kaz ta' skop pubbliku kif inhu dan il-progett tigi esproprijata art jew proprjeta. Dan hu soggett ovvjament ghal kumpens gust tal-proprjeta skont il-ligi u fi kwalunkwe kaz, kwalunkwe esproprijazzjoni tista' tigi riveduta skont il-ligi kemm jekk ma tkunx saret ghal skop pubbliku u anki jekk ghal grazzja tal-argument, il-permess tal-ippjanar ma jkunx inghata. Ma' dan jizdied li dawn l-ahhar partijiet tal-aggravju lanqas biss jimpingu fuq il-mertu o meno tal-izvilupp billi mhux qed jigi attakkat l-izvilupp jew min qed jiggudikah.

Ghalhekk l-aggravju qed jigi michud.

Id-disa' aggravju

Dan l-aggravju lanqas jirrigwarda punt ta' ligi izda punt ta' fatt li fuqu t-Tribunal ghamel l-apprezzament tieghu. In oltre s-suppozizzjoni allegatament zbaljata imsemmija mill-istess appellanti dwar is-sitwazzjoni li s-sewwieqa jsibu toroq alternattivi qabel ma jkun hemm kongestjoni totali ta' traffiku ittiehdet barra mill-kuntest ta' dak li qalu r-rapprezentanti ta' Crowdnet Limited. Dan il-kumment ma sarx biex jitqies bla bazi l-izvilupp izda biss li sewwieq rinfaccjat b'sitwazzjoni fejn it-

traffiku ma jistax jiccaqlaq jipprova jsib toroq alternattivi skont ma jippermettu c-cirkostanzi. Dan ma jnaqqas xejn mill-bzonn tal-progett.

L-ghaxar aggravju

Dan l-aggravju wkoll ma jisthoqqx li jigi milqugh. It-Tribunal qies il-kwistjoni tar-road safety audit li ghandu jsir minn Transport Malta skont Direttiva 2008/96EC u r-regolamenti tal-2018 dwar toroq godda u xoghlijiet f'toroq li kien jinvolvi erba' stadji, tnejn minnhom kienu gia konkluzi. Zied ukoll li mhux il-kompitu tat-Tribunal li jezamina u jiccertifika s-sigurta tat-toroq ghax din hi mansjoni afdana lil Awtorita tat-Trasport, izda l-kompitu ta' ezami ta' zvilupp mill-Awtorita hu li jigi ezaminat l-impatt tal-zvilupp fuq l-uzu tal-art. Ghalhekk ma jistax jinghad kif allegat li t-Tribunal naqas li jikkonsidra li ma sarx road safety report.

In kwantu ghall-studju dwar l-impatt fuq is-sahha li skont l-appellanti ma sarx, jirrizulta, kif sottomess mill-ERA li dan gie indirizzat f'sezzjoni 6.15 tal-EIA. L-Environment Health Directorate gie konsultat mill-ERA kemm fl-iscoping stage u fir-review tal-EIA fiz-zewg stadji ta' konsultazzjoni mal-pubbliku. L-EHD ipprovdiet kummenti u rakkomandazzjonijiet. Dawn kienu accessibbli ghal pubbliku fl-EIA Annex 1 'Summary of EIA process – May 2019'. B'referenza ghas-social impact assessment li hu mehtieg skont it-terms of refrence tal-EIA, ma ngiebet ebda prova dwar din il-kundizzjoni mandatorja mill-appellanti quddiem it-Tribunal. It-Tribunal invece qal dan ma jiformax parti mill-EIA ghalkemm ikkumenta li l-impatt ambjentali jinkorpora impatt fuq il-bniedem. It-Tribunal qies li Social Impact Assessment sar mill-applikant xorta wahda kif jidher mix-xiehda ta' Dr Marvin Formosa.

Il-hdax-il aggravju

Dan l-aggravju hu maqsum f'partijiet. Rigward ic-cahda tat-Tribunal li ma jismax xhud ma jistax jitqies bhala ksur tas-smigh xieraq ghax hu fil-poter tat-Tribunal li jqis talba ghal smigh ta' xhud, basta jaghti raguni u titqies fondata legalment ghat-talba li issir. F'dan il-kaz it-Tribunal cahad li jittella' jixhed id-Direttur tal-Kuntratti fis-17 ta' Ottubru 2019 billi qies li l-fatti li seta' jixhed dwarhom ma kienux fil-kompetenza tat-Tribunal rigward kwistjonijiet ta' ippjanar u ambjent. Din ir-raguni hi bizzejjed fil-fehma ta' din il-Qorti biex tissodisfa l-element tal-parti li tinghata raguni fondata fil-ligi ghaliex prova

ma tithalliex tinstema. In kwantu ghat-talba biex jixhed rapprezentant tal-applikant li gie michud b'digriet tat-23 ta' Ottubru 2019, jidher ukoll li t-Tribunal qies li mhix rilevanti ghal fini tal-ligi tal-ippjanar. Fi kwanunkwe kaz din il-kwistjoni tressqet biss bhala aggravju dwar id-dritt ghal smigh xieraq li ma giex mittiefes fil-fehma tal-Qorti u mhux bhala appell minn digriet kontra l-mertu tal-istess digriet. In kwantu ghall-allegat kumment tac-Chairman tat-Tribunal, waqt l-access, tapplika l-massima quod non est in actis non est in mundo. Ma jirrizulta ebda prova ta' dak allegat u anqas ma sar verbal dwar dan fl-access.

Ghalhekk l-aggravju qed jigi michud fit-totalita tieghu.

Decide

Ghal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi billi tichad l-appell tal-appellanti u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-7 ta' Novembru 2019. Spejjez ghall-appellanti.

Onor. Mark Chetcuti LL.D.

Imhallef

Anne Xuereb

Deputat Registratur