



**MALTA**  
**TRIBUNAL TA' REVIZJONI AMMINISTRATTIVA**  
**MAGISTRAT DR. CHARMAINE GALEA**

**24 ta' Lulju 2020**

**Rikors Numru 112/2019**

**Valentina Bonnici**

**Vs**

**L-Awtorita` tal-Artijiet**

**It-Tribunal,**

Ra r-rikors ta' **Valentina Bonnici** pprezentat fis-7 ta' Novembru 2019 li permezz tieghu ppremettiet is-segwenti:-

*“Illi r-“Request for proposed tables and chairs on pavement and on proposed temporary platform at Shop at Triq Manuel De Vilhena c/w Triq ir-Rebha, Gzira” imressqa lill-Awtorita' intimata mill-esponenti appellanti, giet michuda mill-istess Awtorita' intimata appellata skont ittra datata 28 ta' Ottubru, 2018 kopja ta' liema ittra qiegħda tigi hawn unita u mmarkata bhala Dokument A.*

*Illi r-raguni ghala t-talba mressqa mill-esponenti rikorrenti appellanti giet michuda hija li t-talba tmur kontra il-“figure 5B” u “Policy P8” tal-“Outdoor Catering Areas on Public Open Space (OCA) Policy”.*

*Illi r-rikorrenti appellanti hasset ruhha aggravata bl-imsemmija decizjoni tal-Awtorita' appellata u għalhekk qiegħda tagħzel li tirreferi din l-istess decizjoni tal-Awtorita' tal-Artijiet appellata għas-smigh, konsiderazzjoni, revizjoni u decizjoni ta' dan ir-rispettabbli Tribunal ta' Revizjoni Amministrattiva.*

*Illi l-aggravji huma s-segwenti:*

a. Ir-ragunijiet ghar-rifjut tat-talba huma inadegwati u ma jispjegawx il-vera raguni li ghalha skaturixxa r-rifjut. L-inadegwatezza tar-ragunijiet ghar-rifjut hija ta' pregudizzju serju lill-applikant li ma jkollux mezz car, dirett u limpida sabiex jikkuntrasta dak ir-rifjut b'riferenza ghar-raguni tal-istess rifjut. F'sitwazzjoni tali l-applikant u dan it-Tribunal jistghu biss jispekulaw x'kienet ir-raguni vera u dominanti ghal dan ir-rifjut. Minn din is-sitwazzjoni fejn ir-ragunijiet ghar-rifjut ma humiex cari temergi sitwazzjoni fejn it-Tribunal moghni bil-poter ta' revizjoni tad-decizjoni amministrattiva ma jistax jiddetermina jekk il-poter decizjonali tal-korp amministrattiv giex validament u legittimament ezercitat u jekk allura ttiehdux konsiderazzjonijiet irrilevanti;

b. Oltre dan u minghajr pregudizzju ghall-ewwel aggravju, hemm diversi attivitajiet kummercjali simili ghall-attivitajiet tal-appellanti esponenti kemm fil-vicinanze mmedjati tal-attivitajiet tal-esponenti appellanti u kemm f'zoni bl-istess karatteristici li nghataw permess sabiex ipoggu mwejjed u siggijiet fuq il-bankina u sabiex ipoggu wkoll mwejjed u siggijiet fuq pedana mqieghda fit-triq u ghalhekk ir-rifjut tat-talba esponenti appellanti hija wahda diskriminatorja. Huwa principju fundamentali u konstituzzjonalment rikonoxxut u li japplika ghal u ghandu jirregola kull Awtorita' amministrattiva moghnija b'poteri decizjonali li f'kull decizjoni li tinghata ghandha tigi evitata u eskluza kull forma ta' diskriminazzjoni jew trattament diskriminatorju.

Ghaldaqstant l-esponenti appellanti in vista tas-suespost, filwaqt li tiriserva d-dritt li tressaq provi u argumenti sabiex tissostanzja l-aggravji taghha, umilment titlob lil dan ir-rispettabbli Tribunal sabiex jiddeciedi li d-decizjoni tar-rifjut hija decizjoni invalida u nulla a bazi u in funzjoni tal-ewwel aggravju u subordinatament f'kaz li l-ewwel aggravju ma jigix akkolt li jiddeciedi li r-rifjut daparti tal-Awtorita' appellata (l-Awtorita' tal-Artijiet) kien wiehed diskriminatorju u ghalhekk it-talba promossa mill-esponenti appellanti u fuq deskritta u kontenuta fl-applikazzjoni taghha GLA128/2019/0094 ghandha tigi akkolta.”

Ra r-risposta **tal-Awtorita' tal-Artijiet** ipprezentata fit-25 ta' Novembru 2019 li permezz taghha eccepjet is-segwentijiet:-

“Illi l-Awtorita' esponenti rceviet l-Appell tal-Appellanti Valentina Bonnici. L-Awtorita' ma taqbilx mal-kontenut tar-Rikors tal-Appell hekk kif imressaq u per konsegwenza qieghda tinterponi din l-umli Risposta taghha;

Illi din il-kawza u l-appell jitrattaw decizjoni li ha l-Bord tal-Gvernaturi tal-Awtorita' tal-Artijiet in konnessjoni ma' talba mressqa mill-appellant sabiex tpoggi mwejjed u siggijiet fuq platform fi Triq Manuel de Vilhena kantuniera ma' Triq ir-Rebha Gzira;

*Illi tajjeb li jinghad illi ghalkemm l-Awtorita' hija vestita b'diskrezzjoni wiesgha fit-tehid tad-decizjonijiet taghha, jidher car li f'dan il-kaz id-decizjoni ttiehdet skont il-Ligi u skont il-policies ezistenti u li gew iccitati fid-decizjoni tal-Awtorita';*

*Fil-kuntest jidhol l-element ta' dak li huwa "ragonevoli" ('reasonableness') in linea ta' konsiderazzjoni ta' dritt u li ghandu jkun segwit minn awtorita' pubblika meta tiddeciedi jew tezercita d-diskrezzjoni taghha.*

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

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

*Ikompli hekk –*

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

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

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

*“It is true that the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretion often use the word ‘unreasonable’ in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider.*

*Minn hawn johrog car illi l-Awtorita’ Appellata applikat id-diskrezzjoni taghha fil-parametri tar-ragjonevolezza u ghall-konsiderazzjonijiet li huma rilevanti ghall-kaz li kellha quddiema. Tant huwa hekk li l-Awtorita’ rreferiet anke ghall-policies applikabbi;*

*Isewgi mis-suespost, bhala konkluzjoni ghalhekk, li l-Awtorita’ Intimata fl-ewwel lok applikat il-ligi u fit-tieni lok agixxiet skont principji amministrattivi u ssodisfatt il-principju generali amministrattiv tar-ragjonevolezza ghad-decizjoni taghha [Vide zewg sentenzi fl-ismijiet ‘CCD Limited v. Awtorita’ Dwar it-Trasport ta’ Malta’ tal-Prim’ tal-PAQC datata 17/6/2013 u tal-Qorti tal-Appell datata 18/7/2017]. L-Awtorita’ kellha diskrezzjoni li hija ezercitat fil-limiti tar-ragjonevolezza u per konsegwenza dan it-Tribunal ghandu jkun soddisfatt li l-Awtorita’ intimata mxiet legalment korrett.”*

Sema’ x-xhieda;

Ra d-dokumenti kollha pprezentati;

Ra n-noti ta’ sottomissjonijiet;

Ra li r-rikors thalla ghal-lum ghas-sentenza.

### **Ikkunsidra:**

Illi r-rikorrenti hassitha aggravata b’decizjoni tal-Awtorita` intimata datata 28 ta’ Ottubru 2019 li permezz taghha t-talba ghal *“request for proposed tables and chairs on pavement and on proposed temporary platform at Shop at Triq Manuel De Vilhena c/w Triq ir-Rebha, Gzira”* giet rifjutata in vista li l-istess talba tmur kontra *Figure 5B u Policy P8 tal- Policy, Guidance and Standards for Outdoor Catering Areas on Public Open Spaces* (iktar ‘il quddiem “OCA Policy”).

**L-Inginier Joseph Bajada** xehed illi huwa sieheb fin-negozju mar-rikorrenti f'hanut li qieghed kantuniera fi Triq ir-Rebha, Gzira. Jispjega li huma qeghdin jitolbu spazju ta' parkegg ta' vettura u li kienu lesti li jirrimpjazzaw it-telfien tal-istess parkegg billi jawtorizzaw li jsir parkegg quddiem garage li ghandhom adjacenti ghall-hanut in kwistjoni. Ix-xhud esebixxa diversi ritratti ta' mwejjed u siggijiet impoggija fuq bankini madwar Malta u Ghawdex.

**Ikkunsidra:**

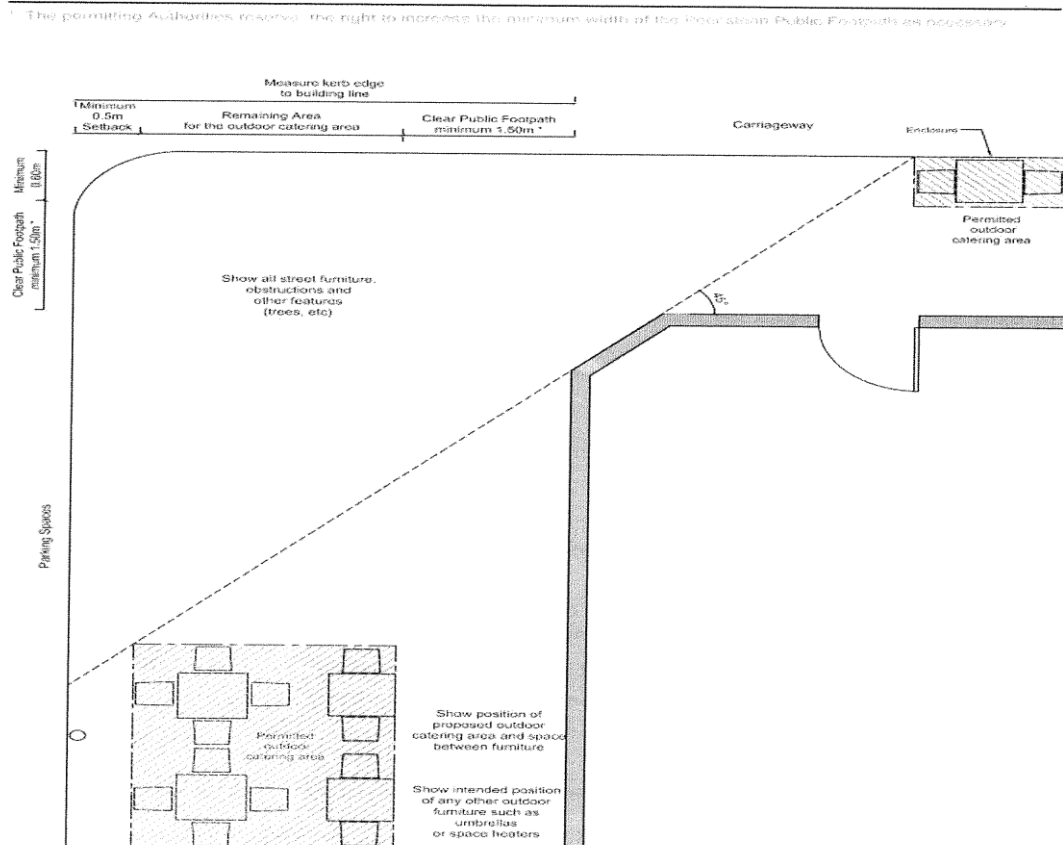
Illi l-ewwel aggravju tar-rikorrenti huwa fis-sens illi r-ragunijiet tar-rifjut mhumiex adegwati u ma jispjegawx il-vera raguni tar-rifjut. Dan qieghed jigi sottomess ghaliex l-Awtorita` intimata ccitat biss *policy* u *figure* mill-OCA Policy minghajr xejn elaborazzjoni dwar l-istess u kif is-sitwazzjoni tar-rikorrenti kienet proprju qieghda in kunflitt mal-istess *policy* u *figure* citati.

Illi ghal ahjar intendiment tal-istess, it-Tribunal se jiccita l-imsemmija *policy* u *figre* hawn taht, u *cioe`*:

*Figure 5b* tal-OCA Policy hija s-segweni:

Policy, Guidance and Standards for Outdoor Catering Areas on Public Open Spaces

**Figure 5b: Setbacks from street intersections**



Din il-figura hija relatata ma' *Standard S3* li tghid is-segwent:

***“S3 Setbacks for Outdoor Catering Areas***

*a) Required setback from edge of pedestrian public footpath*

*When the applicant proposes an Outdoor Catering Area directly adjacent to a carriageway, a minimum distance of 0.5 metres shall be left clear of any outdoor furniture from the edge of the pedestrian public footpath, where the Outdoor Catering Area is adjacent to a parking space.*

*In the case of Outdoor Catering Areas adjacent to a carriageway where parking is not possible, an enclosure as per Policy P22 of this document shall be provided.*

*b) Required setbacks from street intersections*

*Clear unobstructed sightlines across footpaths at street intersections shall be imposed as per Figure 6, to cater for visibility requirements at junctions. Existing traffic flows shall be taken into consideration in the determination of the required sightlines.”*

Min-naha l-ohra il-*Policy P8* tghid is-segwent:-

***“P8 Outdoor Catering Area adjacent to parking spaces***

*In the case where the Outdoor Catering Area is directly adjacent to parking spaces, the permitting Authorities may consider requests for extending the Outdoor Catering Area over parking spaces. However, each case shall be assessed on its own merits and the extension over the parking space shall consist of an easily removable, reversible/demountable timber platform.”*

Illi t-Tribunal jaqbel mas-sottomissjoni mressqa mid-difensur tar-rikorrenti illi l-ghoti ta' ragunijiet ghal decizjoni ta' awtorita` pubblika hija fundamentali ghal amministrazzjoni tajba. Id-dibattitu jqum x'forma ghandhom jiehdu l-imsemmija decizionijiet jew kemm ghandhom jidhlu fid-dettall biex ic-cittadin jifhem ir-raguni tar-rifjut.

Kif wiehed jista' japprezza, ir-raguni tar-rifjut odjern ticcita biss *policy* u *figure* ta' dokument (OCA Policy) li huwa facilment traccabbli minn tfittixja fuq l-*internet* anke jekk stranament dan ma jinsabx elenkat ma' *guidelines and policies* ohra fuq il-*website* tal-Awtorita` nnifisha. It-Tribunal huwa tal-opinjoni li *siccome`* l-Awtorita` intimata f'numru ta' kazijiet ticcita l-OCA Policy ikun ghaqli li din tigi inkluza fuq is-sit elettroniku taghha.<sup>1</sup> Illi it-Tribunal jifhem li

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<sup>1</sup> Dawn huma l-guidelines and policies elenkati fis-sit elettroniku tal-Awtorita` intimata u cioe`:

***“List of Guidelines and Policies***

- [Property Valuation](#)
- [Freedom of Information](#)
- [Guidelines for Bicycle/Pedelec Sharing System](#)
- [Planning Control Applications Committee](#)

mal-ewwel daqqa t'ghajn tali decizjoni tista' tkun inkomprensibbli ghal min jircievi d-decizjoni, *pero`* jqis ukoll illi bi tfittxija semplici ghandu jsib dawn il-*guidelines* li abbazi taghhom l-Awtorita` intimata harget ir-rifjut, anke jekk it-Tribunal jinnota illi "Figure 5B" ma tezistix fl-imsemmija Policy izda tezisti "Figure 5b" u presumibilment l-Awtorita` qieghda taghmel referenza ghal din tal-ahhar. Illi ghalhekk, filwaqt li t-Tribunal ma jsibx illi l-Awtorita` intimata naqset milli tippovdi l-bazi tar-rifjut taghha, huwa desiderabbli li d-decizjoni tkun iktar elaborata biex dak li jkun, mad-daqqa t'ghajn, jirrikonoxxi il-bazi ta' tali rifjut. Kwindi t-Tribunal ma jsibx illi l-Awtorita` intimata naqset mill-obbligu taghha li tinforma b'mod adegwat lill-applikanta bil-bazi tar-rifjut, b'dana *pero`* li l-istess Awtorita` ghandha tiehu in konsiderazzjoni dak li ntqal hawn fuq.

Illi *pero`* hemm punt iehor li jrid jigi indirizzat u dan huwa jekk il-kwotazzjoni biss tal-OCA Policy huwix bizzejjed biex jissodisfa d-doveri ta' awtorita` pubblika meta tigi biex taghti ragunijiet ghad-decizjoni taghha. Ir-rikorrenti tirrileva illi *siccome`* ma nghatat l-ebda spjegazzjoni elaborata ghar-rifjut, hija giet imcahnda milli tiskopri jew tindividwa kienx hemm xi konsiderazzjoni zbaljata, irrilevanti jew irragjonevoli. Illi t-Tribunal jirrileva illi dan il-*forum* gie appozitament mahluq sabiex fih jigu riveduti decizjonijiet amministrattivi u jekk jinsab li dawn ittiehdu irragjonevolment jew hadu in konsiderazzjoni xi fatt zbaljat jew irrelevanti, l-istess decizjonijiet jigu revokati. Illi da parti taghha r-rikorrenti ingungiet lill-Kap Ezekuttiv tal-Awtorita` intimata biex jixhed f'dawn il-proceduri. Madankollu fid-data tas-seduta meta kellu jixhed l-istess Kap Ezekuttiv,<sup>2</sup> xehdet PL Marija Sara Vella in rappresentanza tal-istess Awtorita`, li *pero`* ma kienet taf xejn dwar ir-ragunijiet tar-rifjut, ghajr ovvjament dak li kien hemm miktub fid-decizjoni appellata. Min-naha taghha l-Awtorita` intimata pproduciat lil Karl Borg, *manager* fi hdan l-Awtorita` intimata, fejn stqarr illi applikazzjonijiet simili fejn ikun se jintilef parkegg qeghdin jigu rifjutati da parti tal-istess Awtorita`. L-istess xhud stqarr illi t-talba tar-rikorrenti giet rifjutata minhabba "*policy P8 fuq parking spaces u li l-platform m'hijiex ha tkun tista' tingala', ha tkun dejjem hemmhekk.*" *Pero`* huwa stqarr li ma kienx konsapevoli illi r-rikorrent kienet offriet spazju ta' parkegg iehor biex jaghmel tajjeb ghal dak li kien se jintilef. It-Tribunal josserva illi r-rapprezentant tal-Awtorita` intimata interpreta d-decizjoni appellata ghaliex ma kienx hu li ha d-decizjoni u lanqas kien involut fiha. Fil-fehma tat-Tribunal, l-iktar persuna idonea li setghet taghti informazzjoni dwar x'wassalha biex tasal ghall-konkluzzjoni li t-talba tmur kontra Policy P8 u Figure 5b kienet certament l-ufficjal tal-Awtorita` intimata Antonia Farrugia u dan ghaliex kienet l-istess persuna li tat ir-

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- [Privacy Notice](#)
  - [Procedure for the Determination of Development Applications for Billboards and Advertisements](#)
  - [Standard Conditions For Urban and Commercial Leases Positioned](#)

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<sup>2</sup> 24 ta' Jannar 2020

rakkomandazzjonijiet taghha lill-Kap Ezekuttiv tal-Awtorita` intimata dwar it-talba in kwisjtoni.<sup>3</sup> Allura hija certament l-imsemmija persuna li setghet taghti stampa cara ta' x'kunsiderazzjonijiet hadet. Dan ifisser illi l-Awtorita` intimata naqset milli tressaq l-ahjar prova biex tikkonvinci lil dan it-Tribunal li fil-fatt id-decizjoni li hadet kienet imsejsa fuq kunsiderazzjonijiet ragjonevoli. Fid-dawl ta' dan dan it-Tribunal ihoss li r-rikorrenti ghandha ragun thossha aggravata b'nuqqas ta' spjegjazzjoni adegwata dwar id-decizjoni appellata, u dan mhux biss fil-korp tad-decizjoni *per se* izda wkoll quddiem dan it-Tribunal.

Illi dan it-Tribunal, fin-nuqqas ta' spjegazzjoni ezawrjenti mill-ufficjal koncernat dwar ir-ragunijiet tad-decizjoni mehuda, ma jistghax jindividwa sal-grad li trid il-ligi abbazi ta' liema konsiderazzjonijiet l-Awtorita` intimata harget ir-rifjut taghha. Ghaldaqstant se jkun qieghed jannulla d-decizjoni appellata b'dan li mhux se jinoltra ruhu fil-mertu sabiex ma jippregudikax lill-partijiet.

Ghalhekk, filwaqt li dan it-Tribunal se jkun qieghed jannulla d-decizjoni appellata, jaghmilha cara illi b'din is-sentenza huwa bl-ebda mod ma ezamina l-mertu tat-talba tar-rikorrenti, u dan sabiex ihalli impregudikata kwalunkwe decizjoni li tista' terga' tittiehed mill-Awtorita` intimata dwar l-istess talba.

## **DECIDE**

Ghaldaqstant, fit-termini tar-ragunijiet hawn fuq premissi **biss**, it-Tribunal qieghed jilqa' l-appell tar-rikorrenti u jannulla d-decizjoni tal-Awtorita` intimata.

Bl-ispejjez a karigu tal-Awtorita` intimata.

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**Dr. Charmaine Galea**  
**President tat-Tribunal ta' Revizjoni Amministrattiva**

**Diane Gatt**  
**Deputat Registratur**

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<sup>3</sup> Ara *Application Report* a fol.23 u 24