MALTA
TRIBUNAL TA' REVIŻJONI AMMINISTRATTIVA
MAĠISTRAT DR. CHARMAINE GALEA

Illum 11 ta' Settembru 2023

Rikors Numru 33/23

Joseph Spiteri Duca

Vs

Awtorita` tal-Artijiet

It-Tribunal,

Ra r-rikors ta' **Joseph Spiteri Duca** ippreżentat fid-9 ta' Marzu 2023, li permezz tiegħu ppremetta u talab is-segwenti:-

Illi l-Awtorità intimata ħarġet tender għall-għoti b'ċens perpetwu tal-fond 318/319, Triq Manwel Dimech, Sliema.

Illi l-avviż relattiv ġie pubblikat fil-ħarġa tal-Gazzetta tal-Gvern tat-30 ta' Awissu 2022 (Dok. 'A') u kien jaqra' testwalment hekk:

"Għotja b'ċens perpetwu rivedibbli ta' fond tale quale f'Nru. 318 u Nru. 319, Triq Manuel Dimech, Tas-Sliema, kif muri bl-aħmar u bid-dettall fuq il-pjanta P.D.2021_0423. Min jirbaħ l-offerta għandu ċans sabiex jifdi dan iċ-ċens matul l-ewwel ħmistax-il (15) sena wara reviżjoni skont ir-rata tal-inflazzjoni kif hemm spjegat bid-dettall fuq il-kundizzjonijiet taċ-ċens. L-offerti għandhom ikunu akkumpanjati b'bid-bond għall-ammont ta' €45,297 kif stipulat fil-kundizzjonijiet tal-offerta. Offerti anqas mill-ammont ta' ħmistax-il elf u mija u disgħa u disgħin ewro (€15,199) fis-sena ma jiġux ikkunsidrati. Din l-offerta tista' tkun suġġetta għal dritt magħruf bħala dritt tal-ewwel rifjut skont artikolu Nru. 32 tal-Kapitolu Nru. 573 tal-Liġijiet ta' Malta. Irid isir ħlas ta' €50 għad-dokumenti tal-offerta."

Illi l-esponenti issottometta offerta għall-ħlas ta' ċens annwu u perpetwu fl-ammont ta' €17,022, liema offerta kienet l-aħjar waħda minn fost it-tliet offerti sottomessi (Dok. 'B').

Illi l-esponenti rċieva ittra datata 14 ta' Frar 2023 (Dok. 'Ċ') li permezz tagħha ġie informat li f'laqgħa tal-Bord tal-Gvernaturi tal-Awtorità intima li saret fil-31 ta' Jannar 2023, "ġie deċiż li jingħata d-dritt tal-ewwel rifjut (right of first refusal) lill-offerent ieħor, skont l-istess kondizzjonijiet tal-offerti."

Illi d-dritt tal-ewwel rifjut fil-kuntest ta' offerti għal trasferiment ta' art tal-Gvern ta' Malta huwa regolat mill-Artikolu 32 tal-Att dwar Artijiet tal-Gvern u japplika biss fil-każ ta' waħda minn tliet ċirkostanzi speċifiċi:

(a) *liċ-ċenswalist jew lill-kerrej li jkun okkupa l-aħħar dik l-art;*

(b) *lill-pussessur li għandu art li tmiss minn fuq, minn taħt jew biswit art tal-Gvern; jew*

(c) *lill-pussessur li qabel l-offerta għat-trasferiment ikun ġie mċaqlaq jew mitlub li jiċċaqlaq minn art tal-Gvern u jkun għadu ma ngħatax post alternattiv.*

Illi d-deċiżjoni tal-Awtorità intimata ma tispeċifikax ai termini ta' liema ċirkostanza ingħata d-dritt tal-ewwel rifjut, ma tispeċifikax liema offerent ingħata tali fakultà u ma tispeċifikax jekk ingħatatx evidenza ta' dritt ai termini tal-preċitat Artikolu 32 u f'xiex kienet tikkonsisti tali evidenza.

Illi in oltre id-deċiżjoni tal-Awtorità intimata hija għal kollox nieqsa minn kwalsijasi motivazzjoni li għab-bażi tagħha ittieħdet.

Illi huwa prinċipju paċifikament akkolt li d-deċiżjonijiet ta' entitajiet amministrattivi għandhom ikunu ben motivati u l-konsiderazzjonijiet relattivi għandhom ikunu dettaljati.

Illi n-nuqqas assolut tad-deċiżjoni attakkata li tindika l-motivazzjonijiet li fuqhom hija bażata jirrendi l-istess deċiżjoni irrita, nulla u illegali.

Għaldaqstant, għar-raġunijiet premessi l-esponenti jitlob bir-rispett lil dan l-Onorabbli Tribunal sabiex, prevja li jingħataw id-dikjarazzjonijiet u l-provvedimenti opportuni:

1. *Jiddikjara li d-deċiżjoni attakkata permezz ta' liema ġie deċiż li jingħata d-dritt tal-ewwel rifjut (right of first refusal) lil offerent ieħor hija irrita, nulla u illegali in kwantu hija għal kollox nieqsa minn kwalsijasi motivazzjoni.*

2. *Konsegwentement iħassar l-imsemmija deċiżjoni tal-Awtorità intimata u/jew jagħti kull rimedju ulterjuri opportun sabiex id-drittijiet tal-esponenti jiġu tutelati.*

Ra r-risposta **tal-Awtorità tal-Artijiet** ippreżentata fl-24 ta' Marzu 2023, li permezz tagħha eċċepiet is-segwenti:-

"Illi l-Awtorita' esponenti ġiet notifikata bir-rikors fl-ismijiet suċitati nhar l-għaxra (10) ta' Marzu elfejn tlieta u għoxrin (2023) u ġiet mogħtija għoxrin ġurnata ċans biex tirrispondi skont il-liġi;

2. Illi l-Awtorita' esponenti ħarġet sejħa għall-offerti għal għotja ta' ċens perpetwu rivedibli ta' fond tale quale f'Nru. 318 u Nru. 319, Triq Manuel Dimech, Tas-Sliema, kif muri bl-aħmar u bid-dettall fuq il-pjanta P.D.2021_0423. Din is-sejħa nħarġet bħala Avviż Nru. 97 u li kienet datata s-sitta u għoxrin (26) t'Awwissu elfejn tnejn u għoxrin (2022);

3. Illi wara din is-sejħa, u wara li ġew evalwati l-offerti sottomessi, l-esponenti innotifikat ir-rikorrenti li 'f'laqgħa tal-Bord tal-Gvernaturi ta' din l-Awtorita' li saret nhar it-31 ta' Jannar 2023, ġie deċiż li jingħata d-dritt tal-ewwel rifjut (right of first refusal) lill-offerent ieħor, skont l-istess kundizzjonijiet tal-offerti.'

4. Illi r-rikorrenti ħass ruħu aggravat u interpona dan l-appell;

5. Illi l-Awtorita' tal-Appella tirrileva dawn is-segwenti punti b'risposta għall-Appell:

i. Illi t-talba tal-appellant għandha tiġi miċħuda stante li d-deċiżjoni meħuda mill-Awtorita' hija waħda ġusta fil-forma u fis-sustanza liema deċiżjoni ġiet meħuda wara li ġew ikkunsidrati numru ta' fatturi relevanti;
ii. Illi l-esponenti tissenjala li r-raġuni ta' rifjut hija waħda ben motivata u li tilħaq il-prassi ġudizzjarja tad- 'duty to give reasons' kif meħtieġ. Illi r-raġuni mogħtija hija ċara fid-diċitura, fl-intenzjoni u l-kunsiderazzjonijiet tal-Awtorita sabiex waslet għar-rifjut tagħha u dan għaliex sejset id-deċiżjoni tagħha fuq il-bażi li jingħata d-dritt tal-ewwel rifjut lill-offerent ieħor;
iii. Illi jiġi rilevat li ma kien hemm l-ebda nuqqas ta' informazzjoni kif qed jallega l-appellant. Oltre dan, l-appellant dejjem kellu l-possibilta' li jitlob għal-aktar informazzjoni, u li iżda madankollu għadhu sa issa stess ma għamel l-ebda talba f' dan is-sens. Dan qiegħed jiġi senjalat anke in vista ta' deċiżjonijiet ta' dan l-Onorabbli Tribunal f'dan ir-rigward;
iv. Illi fid-dokument għas-sejħa għall-offerti kif ukoll fil-kundizzjonijiet tat-tender, ġie stipulat illi din l-offerta tista' tkun suġġetta għal dritt magħruf bħala dritt tal-ewwel rifjut skont artikolu Nru. 32 tal-Kapitolu Nru. 573 tal-Liġijiet ta' Malta;
v. Illi filfatt l-Awtorita' tal-Artijiet aġixxiet skont il-liġi u policies viġenti tal-istess Awtorita', liema liġi u policies jiġu applikati bl-istess mod fil-konfront ta' kulħadd meta hija tat id-dritt tal-ewwel rifjut lill-offerent ieħor;
vi. Illi jingħad ukoll li l-Awtorita' tal-Artijiet aġixxiet ukoll skont id-diskrezzjoni mogħtija lilha bil-liġi ai termini tal-Artikolu 7(2)(ċ) tal- Kapitlu 563 tal-Liġijiet ta' Malta li tamministra bl-akbar mod assolut, sabiex isir l-aħjar użu tal-art kollha tal-Gvern ta' Malta;
vii. Illi għalhekk, kif ser jiġi pruvat u kif ġja su-indikat, id-deċiżjoni tal-esponenti kienet waħda raġjonevoli u skont il-liġi. Deċiżjoni li ittieħdet wara li saru l-konsiderazzjonijiet kollha neċessarji abbażi tal-informazzjoni kollha fil-pusess tal-istess esponenti.

Ghaldaqstant in vista tas-suespost it-talbiet tar-rikorrenti għandhom jiġu miċħuda fl-interita' tagħhom.

Ra d-dokumenti kollha ppreżentati;

Sema' x-xhieda;

Ra n-Noti ta' Sottomissjonijiet tal-partijiet;

Ra li r-rikors tħalla għal-lum għal sentenza.

Ikkunsidra:

Illi r-rikorrent ħassu aggravat b'deċiżjoni tal-Awtorita` intimata kif kontenuta f'ittra datata 14 ta' Frar 2023 li permezz tagħha ġie nfurmat li wara l-offerta tiegħu għas-sejħa għall-offerti għall-għoti b'ċens tal-fond Numru 318 u 319, Triq Manuel Dimech, Tas-Sliema, ġie deċiż illi d-dritt tal-ewwel rifjut jingħata lil offerent ieħor, skont il-kundizzjonijiet tal-offerti.

Fir-rikors promutur, ir-rikorrent jisħaq illi hemm iktar minn raġuni waħda stipulata fil-liġi għala l-Awtorita` intimata tista' tikkunsidra li tagħti d-dritt tal-ewwel rifjut lil xi offerent wara sejħa għall-offerti. Huwa jargumenta li bil-mod kif ġiet komunikata lilu d-deċiżjoni tal-Bord tal-Gvernaturi li d-dritt tal-ewwel rifjut jingħata lil offerent ieħor, ma ġiex speċifikat taħt liema ċirkostanza dan id-dritt ingħata. In oltre jikkontendi li l-istess deċiżjoni hija nieqsa minn kwalsiasi motivazzjoni tar-raġuni li ttieħdet.

Illi min-naħa l-oħra l-Awtorita` intimata tikkontendi li d-deċiżjoni appellata hija waħda ġusta fil-forma u fis-sustanza u li hija waħda ben motivata. Stqarret ukoll illi r-rikorrent dejjem seta' jitlob għal iktar informazzjoni iżda ma għamel ebda talba f'dan is-sens.

Ronald Psaila, uffiċjal tal-Awtorita` intimata, ta r-raġunijiet għala t-terz offerent ingħata d-dritt tal-ewwel rifjut. Madanakollu dak li xehed dwaru Psaila ma hux rifless bl-ebda mod fid-deċiżjoni appellata u kien biss f'dawn il-proċeduri li r-rikorrent ġie a konoxxenza tar-raġuni li abbażi tagħha l-Bord tal-Gvernaturi ħa d-deċiżjoni appellata.

Ikkunsidra:

Illi kif inhu risaput, id-dmir li entita` pubblika tagħti raġunijiet għad-deċiżjonijiet tagħha huwa wieħed fundamentali biex il-persuna li fil-konfront tagħha tittieħed deċiżjoni tkun tista' tifhimha b'mod ċar u wkoll, jekk tħossha aggravata, tkun tista' tappella minnha.

It-Tribunal jagħmel referenza għal dak espost mill-awturi Wade & Forsyth fil-ktieb **Administrative Law**, u li fil-fehma tat-Tribunal jgħodd ukoll għad-Dritt Amministrattiv nostrali, u ċioe`, "*the principles of natural justice do not, as yet, include any general rule that reasons should be given for decisions.*[1] *Nevertheless there is a strong case to be made for the giving of reasons as an essential element of administrative justice. The need for it has been sharply exposed by the expanding law of judicial review, now that so many decisions are liable to be quashed or appealed against on grounds of improper purpose, irrelevant considerations and errors of law of various kinds. Unless the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is reviewable or not, and so he may be deprived of the protection of the law. A right to reasons is therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice. It is also a healthy discipline for all who exercise power over others. "No single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions.*[2]

…

Notwithstanding that there is no general rule requiring the giving of reasons,[3] *it is increasingly clear that there are many circumstances in which an administrative authority which fails to give reasons will be found to have acted unlawfully. The House of Lords has recognised "a perceptible trend towards an insistence on greater openness … or transparency in the making of administrative decisions"*[4] *and consequently has held that where, in the context of the case, it is unfair not to give reasons, they must be given.*[5]

…an important consideration underlying the extension of the duty to give reasons, referred to in many cases, is that in the absence of reasons the person affected may be unable to judge whether there has been "a justiciable flaw in the [decision making] process";[6] *and thus whether an appeal, if available, should be instituted or an application for judicial review made. Since today there are few exercises of governmental power which are not subject to judicial review, it will be rare that a person affected by a decision – for which reasons were not given – will not be able to say that the absence of reasons has denied him effective recourse to judicial review. A general duty to give reasons is latent in this*

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[1] *R.v. Home Secretary ex p. Doody [1994] 1 AC 531 at 564E (`the law does not at present recognise a general duty to give reasons for administrative decisions' (emphasis added). No general duty has developed since ex p. Doody: R.v. Minister of Defence ex p. Murray [1998] COD 134.*

[2] *Administration under Law (a JUSTICE booklet), 23.*

[3] *The suggestion, in R. v. Lambeth LBC ex p. Walters [1994] 26 HLR 170, that there was such a duty has been disapproved twice by the Court of Appeal (R. v. Kensington and Chelsea Royal LBC ex p. Grillo (1996) 28 HLR 94 and R. v. Home Secretary ex p. Duggan [1994] 3 All ER 277). Judges, but not magistrates, are under a general duty to give reasons. Flannery v. Halifax Estate Agencies Ltd [2000) 1 WLR 377 at 381.*

[4] *Ex p. Doody (above)*

[5] *Moreover, the authority seeking not to give reasons must show that that procedure is not unfair: ex p. Doody at 561A*

[6] *Ex p. Institute of Dental Surgery at 256 approved in ex p. Matson at 776 and ex p. Murray at 136. And in ex p. Doody (above) Lord Mustill said (at 565) `To mount an effective attack on the decision…[the person affected] has [in the absence of reasons] virtually no means of ascertaijing whether…the decision-making process has gone astray`. See also R. v. Inland Revenue Commissioners ex p. Coombe & Co. (1989) 2 Admn. LR 1 (order quashed since Court cannot perform its review function in absence of reasons).*

argument; and the courts seem willing to see sufficient weight given to it to enable such a duty to develop.[7]

…

The time has now surely come for the court to acknowledge that there is a general rule that reasons should be given for decisions, based on the principle of fairness which permeates administrative law, subject only to specific exceptions to be identified as cases arise. Such a rule should not be unduly onerous, since reasons need never be more elaborate than the nature of the case admits, but the presumption should be in favour of giving reasons, rather than, as at present, in favour of withholding them.[8]

F'dan il-kuntest it-Tribunal jagħmel referenza għal deċiżjoni tal-Qorti Suprema tar-Repubblika tal-Irlanda fil-każ fl-ismijiet **Għandi Nawaf Mallak vs The Minister For Justice, Equality and Law Reform** deċiża fis-6 ta' Diċembru 2012, fejn ġie rilevat is-segwenti:

40. The Minister refused to give any reason for refusing the application for a certificate of naturalisation in this case. The reports record many judicial statements to the effect that there is no general or universal rule of natural justice requiring the makers of administrative decisions to give their reasons. On the other hand, there is no shortage of cases in which decisions have been held to be defective for failure to give them. This is the problem here.

41. Before grappling with that issue, I would like to address two points which are at the forefront of the Minister's submissions and which have recurred in several of the High Court decisions including that in the present case, as grounds for dispensing with the need to give reasons. Firstly, it is said that, where a decision is to be made in the absolute discretion of the decision-maker, it follows necessarily, meaning that it is a simple corollary of that fact, that no reason need be given for it. Secondly, it is argued that the same result flows from the fact that the grant to a non-national of a certificate of naturalisation is a matter of benefit or privilege rather than of right.

42. Where the decision being made is one which depends on the exercise of the "absolute discretion," of the decision maker, according to the first argument, it follows automatically from the very language used that no reason need be given. As it was put by the learned High Court judge in the present case, "quite literally……the Minister does not need to have or to give any reason for refusing an application for a certificate." But there is a difference between having a reason and disclosing it.

43. It cannot be correct to say that the "absolute discretion" conferred on the Minister necessarily implies or implies at all that he is not obliged to have a reason. That would be the very definition of an arbitrary power. Leaving aside entirely the question of the6 disclosure of reasons to an affected person, it seems to me axiomatic that the rule of law requires all decision-makers to act fairly and rationally, meaning that they must not make decisions without reasons. As Henchy J. put it, in a celebrated passage in his judgment in

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[7] *Significantly, Lord Neill, for long a proponent of a general statutory duty to give reasons, now favours continued judicial development (in `Duty to Give Reasons` in Forsyth and Hare (eds.), The Glden Metwand and the Crooked Cord (1998) , 183)*

[8] Administrative Law, H.W.R. Wade & C.F. Forsyth, 10th Edition, pg. 436 sa' 439

State (Keegan) v Stardust Victims' Compensation Tribunal [1986] I.R. 642 at page 658, "the necessarily implied constitutional limitation of jurisdiction in all decision-making which affects rights or duties requires, inter alia, that the decision-maker must not flagrantly reject or disregard fundamental reason or common sense in reaching his decision."

44. In similar vein but with slightly different emphasis, Walsh J., in his judgment in East Donegal Co-operative Mart v Attorney General [1970] I.R. 317 at 343-4 said of the powers conferred on a Minister, under consideration in that case, which were exercisable "at his discretion" or "as he shall think proper" or "if he so thinks fit" are powers which may be exercised only within the boundaries of the stated objects of the Act; they are powers which cast upon the Minister the duty of acting fairly and judicially in accordance with the principles of constitutional justice, and they do not give him an absolute or an unqualified or an arbitrary power to grant or refuse at his will."

45. The fact that a power is to be exercised in the "absolute discretion" of the decision-maker may well be relevant to the extent of the power of the court to review it. In that sense, it would appear potentially relevant principally to questions of the reasonableness of decisions. It could scarcely ever justify a decision-maker in exceeding the limits of his powers under the legislation, in particular, by taking account of a legally irrelevant consideration. It does not follow from the fact that a decision is made at the absolute discretion of the decision-maker, here the Minister, that he has no reason for making it, since that would be to permit him to exercise it arbitrarily or capriciously. Once it is accepted that there must be a reason for a decision, the characterisation of the Minister's discretion as absolute provides no justification for the suggestion that he is dispensed from observance of such requirements of the rules of natural and constitutional justice as would otherwise apply. In this connection I agree with the following remarks of of Hogan J., regarding the provision under consideration in this case, in his judgment in Hussain v. Minister for Justice [2011] IEHC 171; "This description nevertheless cannot mean, for example, that the Minister is freed from the obligations of adherence to the rule of law, which is the very "cornerstone of the Irish legal system": Maguire v. Ardagh [2002] 1 I.R. 385 at 567, per Hardiman J. Nor can these words mean that the Minister is free to act in an autocratic and arbitrary fashion, since this would not only be inconsistent with the rule of law, but it would be at odds with the guarantee of democratic government contained in Article 5 of the Constitution."

46. So far as the second issue is concerned, it can be accepted that the grant or refusal of a certificate of naturalisation is, at least in one sense, a matter of privilege rather than of right. The appellant is not a person who, by reason of birth in Ireland or by reference to his parentage is entitled, as a matter of right, to Irish citizenship. In the words of s. 14 of the Act, he is a non-national and the grant of the status of citizen upon him is within the discretion of the State. Costello J. said in Pok Sun Shum v. Ireland, cited above, regarding the applicant in that case, that it was relevant to bear in mind that "the Minister was conferring a benefit or privilege on the applicant…" That was undoubtedly a major reason for his conclusion that there was no obligation to give reasons. On the other hand, that learned judge was quite clear in stating that the applicant had a right to apply to the court for judicial review. Bearing in mind that the appellant is a non-national, it is instructive to recall the remarks of Keane C.J. concerning the rights of access to the courts of non-citizens, when delivering the opinion of this Court In the Matter of Article 26 of the Constitution and in the Matter of ss. 5 and 10 of the Illegal Immigrants (Trafficking) Bill,

1999 [2000] 2 I.R. 360 at page 385: "It would be contrary to the very notion of a state founded on the rule of law, as this State is, and one in which, pursuant to Article 34 justice is administered in courts established by law, if all persons within this jurisdiction, including non-nationals, did not, in principle, have a constitutionally protected right of access to the courts to enforce their legal rights…… It may be that in certain circumstances a right of access to the courts of non-nationals may be subject to conditions or limitations which would not apply to citizens. However, where the State, or State authorities, make decisions which are legally binding on, and addressed directly to, a particular individual, within the jurisdiction, whether a citizen or non-national, such decisions must be taken in accordance with the law and the Constitution. It follows that the individual legally bound by such a decision must have access to the courts to challenge its validity. Otherwise the obligation on the State to act lawfully and constitutionally would be ineffective."

47. The mere fact that a person in the position of the appellant is seeking access to a privilege does not affect the extent of his right to have his application considered in accordance with law or to apply to the courts for redress. The Act of 1956 establishes a legal procedure permitting non-nationals, subject to compliance with a number of conditions, to apply for certificates of naturalisation. The appellant enjoys the status of a refugee, because he has been so declared by the Minister. By virtue of s. 3 of the Refugee Act 1996, he enjoys a number of specific legal rights, including the right to reside in and travel to and from the State. Specifically, he has the right of "access to the courts in the like manner and to the like extent in all respects as an Irish citizen.." (s. 3(2)(v)). Relevantly, for the purposes of this case, he enjoys the legal right to apply for a certificate of naturalisation. Article 34 of the Geneva Convention (see par. 16 above) would appear to encourage contracting states to grant naturalisation to those to whom the have granted refugee status. It is not contested that the Minister is obliged, in processing such applications, to act in accordance with the law. The Minister accepts that, in principle, his decisions are open to review and, in certain circumstances, applications for review have been successful in the High Court. A distinction has been made in some of the cases, so far as the power of review is concerned, between cases where the Minister finds that an applicant has failed to comply with one of the statutory conditions in s. 15(1) and what might be called his more general "absolute discretion."

Illi fil-każ odjern, is-sejħa għall-offerti kienet suġġetta għad-dritt magħruf bħala d-dritt tal-ewwel rifjut skont artikolu 32 tal-Kapitolu 573 tal-Liġijiet ta' Malta. Illi dan l-artikolu jgħid is-segwenti, u ċioe`:

32. Offerti għal trasferiment ta' art tal-Gvern jistgħu jkunu soġġetti għal dritt magħruf bħala dritt tal-ewwel rifjut:

(a) liċ-ċenswalist jew lill-kerrej li jkun okkupa l-aħħar dik l-art;
(b) lill-pussessur li għandu art li tmiss minn fuq, minn taħt jew biswit art tal-Gvern; jew
(ċ) lill-pussessur li qabel l-offerta għat-trasferiment ikun ġie mċaqlaq jew mitlub li jiċċaqlaq minn art tal-Gvern u jkun għadu ma ngħatax post alternattiv.

Illi għalhekk ir-raġunijiet li abbażi tagħhom l-Awtorita` tagħti d-dritt tal-ewwel rifjut lil offerent u mhux lil ieħor huma varji. Di piu` it-Tribunal huwa konxju li l-Awtorita` intimata għandha *policy* miktuba fejn jidħol l-istess dritt meta jkun hemm iktar minn offerent wieħed li jkollu art tmiss mal-art li tkun ħarġet fis-sejħa għall-offerti. Illi kwindi, wara li t-Tribunal ħa dan kollu in konsiderazzjoni huwa tal-fehma illi l-Awtorita` ma tatx raġunijiet suffiċjenti għala r-rikorrent ma ngħatax id-dritt tal-ewwel rifjut wara li dan ingħata lil terz. Illi meta rċieva d-deċiżjoni appellata r-rikorrent baqa' fid-dlam dwar ir-raġuni wara tali deċiżjoni u għalhekk ma setax jintavola appell fuq il-mertu tad-deċiżjoni iżda seta' biss jattakka l-istess deċiżjoni minn aspett proċedurali.

Illi t-Tribunal jirrileva illi fil-mori ta' dawn il-proċeduri, l-Awtorita` intimata tefgħet dawl dwar ir-raġunijiet li wassluha għad-deċiżjoni tagħha. Pero` dan it-tagħrif f'dan l-istadju mhux biżżejjed biex isewwi n-nuqqas li kien hemm fid-deċiżjoni appellata. Dawn ir-raġunijiet riedu jingħataw fil-qafas tad-deċiżjoni sabiex ir-rikorrent jitpoġġa mill-ewwel f'posizzjoni li jikkontestaha fuq il-mertu tagħha.

Għaldaqstant it-Tribunal huwa tal-fehma illi l-appell tar-rikorrent għandu jiġi milqugħ.

DECIDE

It-Tribunal għar-raġunijiet hawn fuq espressi, qiegħed jilqa' l-appell tar-rikorrent u jiċħad l-eċċezzjonijiet tal-Awtorita` intimata u għaldaqstant qiegħed iħassar id-deċiżjoni komunikata lir-rikorrent permezz tal-ittra datata 14 ta' Frar 2023 sabiex l-Awtorita` intimata terġa' tibgħat l-istess deċiżjoni bir-raġunijiet kollha neċessarji għala d-dritt tal-ewwel rifjut ingħata lit-terz.

Spejjeż a karigu tal-Awtorita` intimata.

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Dr. Charmaine Galea
President tat-Tribunal ta' Reviżjoni Amministrattiva

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Antonella Cassar
Deputat Reġistratur