MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tat-13 ta' Marzu, 2024

Appell Inferjuri Numru 33/2023 LM

Joseph Spiteri Duca (K.I. nru. 142586M)
('l-appellant')

vs.

L-Awtorità tal-Artijiet
('l-appellata')

Il-Qorti,

<u>Preliminari</u>

1. Dan huwa appell magħmul mir-rikorrent **Joseph Spiteri Duca (K.I. nru. 142586M)**, [minn issa 'l quddiem 'l-appellant'], mis-sentenza mogħtija mit-Tribunal ta' Reviżjoni Amministrattiva [minn issa 'l quddiem 'it-Tribunal'], fil-11 ta' Settembru, 2023, li permezz tagħha t-Tribunal laqa' l-appell tar-rikorrent u ċaħad l-eċċezzjonijiet tal-intimata Awtorità tal-Artijiet [hawnhekk 'l-appellata'],

u għalhekk ħassar id-deċiżjoni tal-intimata kkomunikata lir-rikorrent permezz tal-ittra ta' 14 ta' Frar, 2023, sabiex l-intimata terġa' tibgħat l-istess deċiżjoni bir-raġunijiet kollha neċessarji għala d-dritt tal-ewwel rifjut ingħata lil terz.

Fatti

2. Permezz tar-rikors li ressaq quddiem it-Tribunal, ir-rikorrent spjega li l-Awtorità intimata ħarġet sejħa għall-offerti għall-għoti b'ċens perpetwu tal-fond 318/319, Triq Manwel Dimech, Tas-Sliema [minn issa 'il-fond']. Ir-rikorrent spjega li l-avviż relattiv ġie ppubblikat fil-ħarġa tal-Gazzetta tal-Gvern tat-30 t'Awwissu, 2022, liema avviż kien jgħid li min jirbaħ l-offerta kien ser jingħata ċ-ċans li jifdi ċ-ċens matul l-ewwel ħmistax (15)-il sena wara li ssir reviżjoni skont ir-rata tal-inflazzjoni, u li l-offerti għandhom ikunu akkumpanjati b'*bid-bond* għall-ammont ta' ħamsa u erbgħin elf, mitejn u sebgħa u disgħin Euro (€45,297). Is-sejħa kienet tgħid li offerti inqas mill-ammont ta' ħmistax-il elf, mija u disgħa u disgħin Euro (€15,199) fis-sena ma jiġux ikkunsidrati, u li din l-offerta tista' tkun suġġetta għad-dritt tal-ewwel rifjut skont l-artikolu 32 tal-Kap. 573 tal-Liġijiet ta' Malta. Ir-rikorrent spjega li huwa ssottometta l-offerta tiegħu fl-ammont ta' sbatax-il elf u tnejn u għoxrin Euro (€17,022) fis-sena bħala ċens annwu u perpetwu, iżda fl-14 ta' Frar, 2023 huwa rċieva ittra li permezz tagħha ġie infurmat li l-Bord tal-Gvernaturi tal-Awtorità tal-Artijiet, f'laqgħa li saret fil-31 ta' Jannar, 2023, iddeċieda li d-dritt tal-ewwel rifjut għandu jingħata lil offerent ieħor. Ir-rikorrent qal li fil-kuntest ta' sejħiet għall-offerti għal trasferiment ta' art tal-Gvern, l-artikolu 32 tal-Kap. 573 jispeċifika li d-dritt tal-ewwel rifjut jista' jingħata biss fi tliet ċirkostanzi speċifiċi, jiġifieri (i) liċ-

ċenswalist jew kerrej li jkun diġà jokkupa l-art; (ii) lill-pussessur li għandu art li tmiss minn fuq, minn taħt jew li hija biswit l-art tal-Gvern; jew (iii) 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. Ir-rikorrent qal li d-deċiżjoni tal-intimata ma tispeċifikax liema offerent ingħata d-dritt tal-ewwel rifjut, u ma tispeċifikax jekk ingħatax id-dritt *ai termini* tal-artikolu 32 tal-Kap. 573, u ma tispeċifikax jekk ingħatatx evidenza ta' dritt *ai termini* tal-preċitat artikolu 32, u f'xiex kienet tikkonsisti tali evidenza. Qal li d-deċiżjoni tal-intimata hija nieqsa għal kollox minn kull motivazzjoni li abbażi tagħha ttieħdet, u dan minkejja li huwa magħruf li d-deċiżjonijiet ta' entitajiet amministrattivi għandhom ikunu ben motivati u l-konsiderazzjonijiet relattivi għandhom ikunu ddettaljati. Permezz tat-talbiet tiegħu, ir-rikorrent talab lit-Tribunal jiddikjara li d-deċiżjoni tal-Bord tal-Gvernaturi tal-Awtorità tal-Artijiet li permezz tagħha ġie deċiż li d-dritt tal-ewwel rifjut għandu jingħata lil offerent ieħor, hija irrita, nulla u illegali, in kwantu hija nieqsa minn kull motivazzjoni, kif ukoll sabiex l-intimata tħassar l-imsemmija deċiżjoni u/jew tagħti kull rimedju opportun sabiex id-drittijiet tar-rikorrent jiġu tutelati.

3. L-intimata Awtorità tal-Artijiet wieġbet li hija kienet ħarġet sejħa għall-offerti għall-għoti b'titolu ta' ċens perpetwu rivedibbli tal-fond numru 318 u 319, Triq Manuel Dimech, Tas-Sliema, kif muri fuq il-pjanta annessa mal-avviż. Qalet li s-sejħa nħarġet bħala l-Avviż 97, u kienet datata s-26 t'Awwissu, 2022. Qalet ukoll li wara li ħarġet din is-sejħa, saret l-evalwazzjoni tal-offerti sottomessi, u wara l-laqgħa tal-Bord tal-Gvernaturi tal-31 ta' Jannar, 2023, ir-rikorrent ġie infurmat li d-dritt tal-ewwel rifjut kien ser jingħata lil offerent

ieħor. L-Awtorità tal-Artijiet eċċepiet li d-deċiżjoni tagħha hija waħda ġusta u ttieħdet wara li ġew ikkonsidrati għadd fatturi rilevanti. Qalet li r-raġuni tar-rifjut hija ben motivata u tissodisfa l-prassi ġudizzjarja tad-*duty to give reasons,* u r-raġuni mogħtija hija ċara fid-diċitura, fl-intenzjoni u fil-konsiderazzjonijiet tal-Awtorità sabiex waslet għar-rifjut tagħha, u dan għaliex id-deċiżjoni hija msejsa fuq il-bażi li jingħata d-dritt tal-ewwel rifjut lil offerent ieħor. Qalet li fil-każ in eżami ma hemm ebda nuqqas ta' informazzjoni kif jallega r-rikorrent, u fi kwalunkwe każ ir-rikorrent kellu ċ-ċans li jitlob għal aktar informazzjoni, iżda huwa m'għamel l-ebda talba f'dan is-sens. Qalet li fid-dokument tas-sejħa għall-offerti u fil-kundizzjonijiet tal-istess sejħa, ġie stipulat li l-offerta tista' tkun suġġetta għal dritt tal-ewwel rifjut skont l-artikolu 32 tal-Kap. 573 tal-Liġijiet ta' Malta, u dan skont il-liġi u l-*policies* viġenti li jiġu applikati bl-istess mod ma' kulħadd. L-intimata qalet ukoll li hija mxiet skont id-diskrezzjoni mogħtija lilha bil-liġi *ai termini* tal-artikolu 7(2)(ċ) tal-Kap. 563 tal-Liġijiet ta' Malta, li tamministra bl-aktar mod assolut u sabiex isir l-aħjar użu tal-art kollha tal-Gvern ta' Malta. Finalment, l-Awtorità intimata qalet li din id-deċiżjoni tagħha ttieħdet abbażi tal-informazzjoni kollha li kellha fil-pussess tagħha.

Is-Sentenza Appellata

4. Permezz tad-deċiżjoni mogħtija fil-11 ta' Settembru, 2023, it-Tribunal iddeċieda din il-vertenza billi laqa' l-appell tar-rikorrent u ċaħad l-eċċezzjonijiet tal-Awtorità intimata, u għalhekk ħassar id-deċiżjoni kkomunikata lir-rikorrent permezz tal-ittra tal-14 ta' Frar, 2023, sabiex l-Awtorità tal-Artijiet terġa' tibgħat

l-istress deċiżjoni bir-raġunijiet kollha neċessarji għaliex id-dritt tal-ewwel rifjut ingħata lil terz, u dan wara li għamel is-segwenti konsiderazzjonijiet:

> *"**Ikkunsidra:***
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> *Illi r-rikorrent ħassu aggravat b'deċiżjoni tal-Awtorità intimata kif kontenuta f'ittra datata 14 ta' Frar, 2023 li permezz tagħha ġie infurmat 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.*
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> *Fir-rikors promutur, ir-rikorrent jisħaq illi hemm iktar minn raġuni waħda stipulata fil-liġi għala l-Awtorità 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.*
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> *Illi min-naħa l-oħra l-Awtorità 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.*
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> *Ronald Psaila, uffiċjal tal-Awtorità 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.*
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> ***Ikkunsidra:***
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> *Illi kif inhu risaput, id-dmir li entità 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.*
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> *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. (fn. 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). 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. *(fn. 2 Administration under Law (a JUSTICE booklet), 23).*

…

Notwithstanding that there is no general rule requiring the giving of reasons, (*fn. 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 (3000) 1 WLR 377 at 381).* 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" (*fn. 4 ex p. Doody (above)),* and consequently has held that where, in the context of the case, it is unfair not to give reasons, they must be given. (*fn. 5 Moreover, the authority seeking not to give reasons must show that the procedure is not unfair: ex p. Doody at 561A)*

… 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"; (fn. 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 ascertaining whether … the decision-making process

has gone astray." See also R. v. Inland Revenue Commissioners ex p. Coombe & Co. (1989) 2 Adm. LR 1 (order quashed since Court cannot perform its review function in absence of reasons.) 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 argument; and the courts seem willing to see sufficient weight given to it to enable such a duty to develop. (*fn. 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))*

…

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." *(fn. 8 Administrative Law, H.W.R. Wade & C.F. Forsyth, 10th Edition, pg. 436 sa 439)*

F'dan il-kuntest it-Tribunal jagħmel referenza għal deċiżjoni tal-Qorti Suprema tar-Repubblika tal-Irlanda fil-każ fl-ismijiet ***Ghandi 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 or 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 the 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 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 flagranty 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 into account of a legally irrelevant consideration. It does not follow from that 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 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 of 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 the 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-nationality may be subject to conditions or limitations which would not apply to citizens. However, where the State, or the 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 they 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-Kap. 573 tal-Liġijiet ta' Malta. Illi dan l-artikolu jgħid is-segwenti, u ċioe:

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

(a) Liċ-ċenswalist jew lill-kerrej li jkun jokkupa 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-Awtorità tagħti d-dritt tal-ewwel rifjut lil offerent u mhux lil ieħor huma varji. Di più t-Tribunal huwa konxju li l-Awtorità intimata għandha policy miktuba fejn jidħol l-istess dritt meta jkun hemm aktar 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-Awtorità 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 jistax 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-Awtorità intimata tefgħet dawl dwar ir-raġunijiet li wassluha għad-deċiżjoni tagħha. Però 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'pożizzjoni 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-Awtorità intimata u għaldaqstant iħassar id-deċiżjoni komunikata lir-rikorrent permezz tal-ittra datata 14 ta' Frar, 2023 sabiex l-Awtorità intimata terġa' tibgħat l-istess deċiżjoni bir-raġunijiet kollha neċessarji għala d-dritt tal-ewwel rifjut ingħata lit-terz.

Spejjeż a karigu tal-Awtorità intimata."

L-Appell

5. Ir-rikorrent appella minn din is-sentenza tat-Tribunal permezz ta' rikors tal-appell intavolat fit-28 ta' Settembru, 2023, fejn talab lil din il-Qorti tikkonferma s-sentenza appellata safejn din ħassret id-deċiżjoni komunikata mill-Awtorità tal-Artijiet lir-rikorrent bl-ittra tal-14 ta' Frar, 2023; u tvarja s-sentenza appellata billi fil-parti tad-*decide* li tipprovdi li *'l-Awtorità intimata għandha terġa' tibgħat l-istess deċiżjoni bir-raġunijiet kollha neċessarji għala d-*

dritt tal-ewwel rifjut ingħata lit-terz', u minflok tordna li ttieħed deċiżjoni mill-ġdid li tkun motivata li għandha tiġi kkomunikata lir-rikorrent bil-motivazzjonijiet relattivi.

6. L-appellant qal li minkejja li t-Tribunal laqa' l-appell tiegħu, huwa xorta waħda ħassu aggravat bis-sentenza appellata għaliex fil-fehma tiegħu din hija affetta minn kontradizzjoni ġuridika u legali. Spjega li t-Tribunal, fl-istess waqt li ħassar id-deċiżjoni tal-intimata hawnhekk l-appellata, ordnalha wkoll terġa' tibgħat l-istess deċiżjoni bir-raġunijiet kollha neċessarji għalfejn id-dritt tal-ewwel rifjut ingħata lit-terz. L-appellant qal li t-Tribunal qatt ma seta' jordna t-tħassir tad-deċiżjoni tal-Awtorità tal-Artijiet, u fl-istess ħin jordna li l-istess deċiżjoni tingħata mill-ġdid bir-raġunijiet għalfejn id-dritt tal-ewwel rifjut ingħata lit-terz. Qal li *quod nullum est, nullum producit effectum,* u għalhekk deċiżjoni li ġiet imħassra, ma setgħet qatt tiġi ravvivata b'ordni li l-istess deċiżjoni tingħata mill-ġdid bir-raġunijiet relattivi. Qal ukoll li bil-mod kif iddeċieda t-Tribunal, huwa ssostitwixxa d-diskrezzjoni tiegħu għal dik tal-Awtorità tal-Artijiet, billi wara li ħassar l-istess deċiżjoni tagħha, taha ordni sabiex tieħu deċiżjoni mill-ġdid, iżda fl-istess nifs rabatha dwar kif għandha tieħu din id-deċiżjoni. Qal li t-Tribunal ma kellux jipprova jissostitwixxi d-diskrezzjoni tal-Awtorità ma' dik tiegħu, fis-sens li ma kellux jorbot idejn l-Awtorità dwar kif għandha tittieħed it-tieni deċiżjoni. Qal ukoll li t-teħid tad-deċiżjoni mill-ġdid jista' jwassal għal eżitu differenti, u t-Tribunal ma kellux jipprova jorbot idejn l-awtorità amministrattiva billi jiddettalha kif għandu jingħata d-dritt tal-ewwel rifjut.

Ir-Risposta tal-Appell

7. L-appellata fir-risposta tagħha qalet li dak li qiegħed jattakka l-appellant huwa l-fatt li d-deċiżjoni tagħha ma kinitx motivata, u fl-ebda waqt ma attakka l-mertu tal-istess deċiżjoni. Qalet ukoll li ladarba l-mertu tad-deċiżjoni qatt ma ġie attakkat, dak li kellu jagħmel it-Tribunal kien li jikkonferma jekk id-deċiżjoni kkomunikata kellhiex motivazzjoni ċara. Qalet ukoll li għalhekk ma kien hemm xejn xi jxekkel lit-Tribunal milli jordna lill-Awtorità tal-Artijiet tibgħat l-istess deċiżjoni bir-raġunijiet kollha neċessarji dwar għaliex id-dritt tal-ewwel rifjut ingħata lil terzi. Qalet li dan bl-ebda mod ma jissostitwixxi d-diskrezzjoni għal dik tal-Awtorità tal-Artijiet, għaliex it-Tribunal ma ħax id-deċiżjoni hu, iżda ordna lill-intimata, hawnhekk l-appellata, tibgħat id-deċiżjoni bil-motivazzjonijiet kollha in linea mat-talbiet tal-appellant. In vista ta' dan kollu, l-appellata qalet li l-appell tal-appellant għandu jiġi miċħud bl-ispejjeż.

Konsiderazzjonijiet ta' din il-Qorti

8. Din il-Qorti ser tgħaddi sabiex tikkunsidra l-aggravju mressqa mill-appellant fl-appell tiegħu, u dan fid-dawl tal-konsiderazzjonijiet magħmulin mill-Ewwel Qorti fis-sentenza appellata u tas-sottomissjonijiet ppreżentati mill-appellata. Ir-rikorrent jinsisti li s-sentenza appellata hija kontradittorja, fis-sens illi t-Tribunal l-ewwel iddikjara li d-deċiżjoni tal-Bord tal-Gvernaturi tal-Awtorità tal-appellata kontenuta fl-ittra tal-14 ta' Frar, 2023hija nulla, imma imbagħad għadda biex jordna lill-appellata tibgħat l-istess deċiżjoni li kien għadu kif iddikjara nulla, din id-darba bil-motivazzjonijiet neċessarji. Dan sabiex din id-

deċiżjoni tkun tikkonforma mal-obbligu li għandha l-Awtorità appellata bħala awtorità pubblika, li tagħti r-raġunijiet għad-deċiżjoni tagħha.

9. Il-Qorti tqis li hawnhekk l-appellant għandu raġun. It-Tribunal annulla d-deċiżjoni tal-intimata wara li kkonsidra li din hija nieqsa mir-raġunijiet u l-motivazzjonijiet neċessarji. Iżda fl-istess waqt it-Tribunal ordna lill-Awtorità tal-Artijiet terġa' tibgħat l-istess deċiżjoni, din id-darba bil-motivazzjonijiet dwar għalfejn id-dritt tal-ewwel rifjut kien ingħata lil terzi. Ladarba ġie deċiż li d-deċiżjoni kkomunikata lill-appellant bl-ittra tal-14 ta' Frar, 2023 hija nulla, u kif argumenta sew l-appellant, skont il-massima legali *quod nullum est, nullum producit effectum*, it-Tribunal ma setax jordna lill-appellata terġa' tibgħat l-istess deċiżjoni bir-raġunijiet kollha neċessarji għala d-dritt tal-ewwel rifjut ingħata lit-terz. Il-Qorti taqbel ukoll li meta t-Tribunal ordna lill-appellata tibgħat l-istess deċiżjoni bil-motivazzjoni, dan kien qiegħed jorbtilha jdejha u jwaqqafha milli b'xi mod tvarja d-deċiżjoni, b'tali mod li jista' jiġi argumentat li t-Tribunal qiegħed jissostitwixxi d-diskrezzjoni tal-appellata ma' dik tiegħu.

10. Għaldaqstant, u in vista ta' dawn il-konsiderazzjonijiet, il-Qorti tqis li l-aggravju tal-appellant huwa ġustifikat, u sejra tilqgħu.

<u>Decide</u>

Għar-raġunijiet premessi, din il-Qorti taqta' u tiddeċiedi dwar dan l-appell billi tilqgħu, tiddikjara li d-deċiżjoni tal-appellata Awtorità tal-Artijiet tal-14 ta' Frar, 2023 hija nulla, u tordna lill-istess Awtorità tieħu deċiżjoni mill-ġdid li

tkun motivata u li għandha tiġi kkomunikata lir-rikorrent bil-motivazzjonijiet relattivi.

L-ispejjeż taż-żewġ istanzi għandhom ikunu a karigu tal-appellata.

Moqrija.

Onor. Dr Lawrence Mintoff LL.D.
Imħallef

Rosemarie Calleja
Deputat Reġistratur