



QORTI TAL-APPELL

(KOMPETENZA INFERJURI)

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

S.T.O. PRIM IMHALLEF MARK CHETCUTI

Illum L-Erbgha, 30 ta' April, 2025

Numru 4

Appell Nru. 57/2024

Moviment Graffiti

vs

**L-Awtorita' tal-Ippjanar u
I-kjamat in kawza Vincent Bonnici
ghan-nom u in rapprezentanza ta' Bonnici Stores**

Il-Qorti,

Rat ir-rikors tal-appell ta' Moviment Graffiti tat-23 ta' Ottubru 2024 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-3 ta' Ottubru 2024 li biha laqa' limitatament l-appell tal-appellant filwaqt li ikkonferma l-hrug tal-permess PA2335/07 'relocation of kerbside pump (KPRS 79) and construction of ancillary office and servicing garage, car wash and landscaping', f'Burmarrad;

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

Rat ir-risposta tal-applikant li wkoll issottometta 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 safejn rilevanti ghall-appell tghid hekk:

Ikkunsidra:

It-Tieni Aggravju

Illi f'dan l-aggravju l-appellanti jallegaw li l-Bord tal-Ippjanar deliberatament injora u ta' interpretazzjoni zbaljata tad-dispozzjonijiet tal-*Fuel Station Policy* tal-2015, bl-aggravju jinkludi 4 partijiet distinti.

L-ewwel parti tal-aggravju

Illi f'din il-parti tal-aggravju huwa ndikat li s-sit in kwistjoni ma jikkwalifikax ghal tali zvilupp kif indikat fil-paragrafi 3.2 u 4.1, u lanqas ma jikkwalifika taht paragrafu 4.2 minhabba li l-izvilupp ser ikun ta' detriment ambjentali kif ccertifikat mill-ERA u anke kif rikonoxxut fl-EIA, u li l-valur agrikolu tas-sit gie ccertifikat mill-Kumitat Konsultattiv dwar l-Agricoltura (AAC), l-Awtorita ghall-Ambjent u r-Rizorsi (ERA) u anke fl-*Environmental Protection Statement* (EPS).

Illi fl-evalwazzjoni tal-Awtorita gie ndikat is-segweni fir-rigward tal-ghazla tas-sit in mertu:

"An assessment of the proposal has been carried out in line with the 'Fuel Service Stations Policy'. Section 4 sets out the criteria for the assessment of relocated fuel stations (indicated in italics), which are followed by the Planning Directorate's comments:

In line with the spirit of Structure Plan policy SET12 the proposal should be justified on technical and/or planning grounds that there is no other feasible or suitable location within the areas identified as appropriate for an RFS by this policy. If qualifying through the published thresholds, an Environmental Impact Assessment (EIA conforming to the Terms of Reference as issued and approved by MEPA) may also be required in order to identify and address significant effects that the proposal may have on the surrounding environment.

It is evident that the site selected for development does not lie within any of the areas identified as best suited to accommodate a fuel station. As such throughout the assessment of this development application Architect was requested to indicate that there is no feasible or suitable location within the area identified as to locate a fuel station. To this end a site justification study was carried out. Architect was informed that preference should first be given to sites qualifying under parts (a) to (f) of paragraph 3.2, then to sites qualifying under part (g) of paragraph 3.2, and then to sites qualifying under paragraph 4.1.

The only designated Industrial Area within the identified catchment area is Ta' Alla w Ommu on the north-western edge of Naxxar. However, this area is access from local roads and which are at a distance from the Distributor Road Network. The SME Site of Mosta is also accessed via local access roads. The Site Selection Report also makes reference to the nearby Areas of Containment within the established catchment area and other sites designated for Open storage. However, the report concludes that there are no such site available which could adequately be utilized for the proposed relocated fuel station.

The study also refers to potentially suitable sites which are listed for non-residential development or a planning designation / existing use which does not contemplate a Social and Community facility or function. The search identified one site in the vicinity of the Mosta SME Site and Area of Containment, and fronting the Distributor route Triq id-Difiza Ċivili, on which there is a large factory that appears to be vacant however, there are some potential constraints, particularly since The Armed Forces of Malta (AFM) Ammunition and Explosives Depot is located approximately 260 m (plan distance) to the north of the site, at the closest point.

The site justification study also refers to a sizeable parcel of land adjacent to the Mosta Area of Containment fronting on Triq id-Difiza Civili, which could potentially be a suitable location for a fuel service station, also taking account of traffic flows. However, this site is in close proximity to a junction and is also relatively close to the Armed Forces of Malta (AFM) Ammunition and Explosives Depot.” [Skont il-case officer report a fol 100A fl-inkartament tal-PA2335/07]

Illi mis-suespost jirrizulta li l-Awtorita tirrikonoxxi li s-sit odjern ma' huwiex wiehed mit-tip ta' siti preferibbli hekk kif imnizzel fil-paragrafu 4.1 tal-Policy li taghmel referenza ghaccirkostanzi mnizzla fil-paragrafi 3.2(a) sa' 3.2g, u konsegwentament talbet li tigi pprovduta gustifikazzjoni studjata li jirrizulta li gie pprovdut a fol 76a, u li abbazi tieghu is-sit odjern gie meqjus acceptabli ghal dan it-tip ta' zvilupp. Illi fl-imsemmija gustifikazzjoni studjata a fol 76a gie konkluz hekk kif segwenti:

“77. The SPED National Spatial Framework advocates a sequential approach to development, where development should be guided to those sites considered best suited to that particular form of development. The Fuel Service Stations Policy identifies areas which are considered to be best suited to accommodate relocated Fuel service stations (in paragraph 3.2 (a) to (f)) as well as other sites (in paragraph 3.2 (g) and paragraph 4.1) to be considered sequentially where such sites are unavailable.

78. The Scheme Site does not lie within any of the areas identified as potentially suitable to accommodate a relocated fuel service station under paragraphs 3.2 or 4.1 of the Policy. Nevertheless, the Scheme Site appears to be acceptable in respect of the locational and environmental criteria outlined in paragraph 4.3 and sections 5.0 and 6.0 of the Policy.

79. Notwithstanding this, the study has identified two sites within the defined catchment area which are potentially suitable as a location for a relocated fuel service station, and which qualify under paragraph 3.2 of the Policy. These are a vacant factory site in the vicinity of the Mosta SME Site and Mosta Area of Containment, and an undeveloped site adjacent to the Mosta Area of Containment. However, both these sites may prove to be unsuitable because of their proximity to the AFM Ammunitions and Explosives Depot and to a large roundabout, which may potentially disqualify them having regard to paragraph 4.3 b) part (viii) and paragraph 6.1 of the Policy, respectively.

80. Assuming the permit issued under PA 01514/16 becomes executable, it is highlighted that the Scheme Site lies approximately 1.2 km (driving distance) from the newly granted fuel service station to the north of the settlement of Burmarrad, more than the 500 metres required by paragraph 5.4 of the Policy.”

Illi mis-suespost jirrizulta li permezz tal-gustifikazzjoni studjata a fol 76a gie konkluz li s-sit odjern jikkwalifika ghal tali zvilupp abbazi tal-paragrafu 4.2 li jipprovdi hekk kif segwenti:

“However where a case can be made to consider sites other than indicated in para 4.1 above, this may be favourably considered especially in instances where the community would benefit from the relocation of an EPFS due to one of the reasons cited in para 2.2 and where the site proposed for relocation does not give rise to unacceptable adverse environmental concerns. In such instances the applicant would also be required to enter into an agreement with MEPA and MRA on conditions to remove and decommission the EPFS. This decommissioning requirement would also be applicable to the instances of permitted non-agricultural use and disused quarries mentioned in para 4.1 above. See also para 5.5.

Illi din il-policy ad hoc imbaghad tesigi li f'kaz ta' zvilupp taht il-paragrafu 4.2 ikunu applikabli l-kriterji t'eligibiltà elenkati fil-paragrafu 4.3, b'din tibda billi tesigi *“For RFSs located on sites described under para 4.2 the following additional criteria shall apply:...”* Illi l-appellanti jikkontestataw il-konkluzzjoni li l-izvilupp odjern jikkwalifika taht il-paragrafu 4.2, b'dawn jargumentaw li s-sit ghandu valur agrikolu u li l-izvilupp ser ikun ta' detriment ambjentali.

Illi ghal dak li ghandu x'jaqsam ma' l-impatti ambjentali, it-Tribunal josserva li fil-kors talapplikazzjoni odjerna l-ERA esprimiet il-pozizzjoni taghha permezz tal-ittra a fol 80a datata 12 t'Ottubru 2018, fejn gie ndikat is-segwenti:

“ERAs recommendation and representation on the said development proposal are being lodged in its capacity as an external consultees and an interested party in accordance with the Development

Planning Act and the Development Planning (Procedure for Applications and their Determination Regulations, 2016 (Legal Notice 162 of 2016).

PA 02335/07 is a planning application for the relocation of kerbside pump and construction of ancillary office and servicing garage, car wash and landscaping at, Triq Burmarrad, Burmarrad, San Pawl il-Baħar, Malta. The proposal will consist of a fuel service station (including autogas dispensing and electric car charging), a car wash and drying area, a garage for vehicle maintenance and testing, commercial premises selling car consumables and other items, an ancillary office and staff facilities, and a store used for items relating to the garage.

The proposed development is not simply a relocation to a safer location, but is a major expansion ODZ with rather extravagant land take and hard landscaping. In this regard, it was suggested that downscaling of the proposed development should be sought, as was also stated in Doc. PA 02335/07/28 and reiterated in Doc. PA 02335/07/60.

The proposal in caption has been assessed by ERA and processed among others in the form of an Environmental Protection Statement (EPS). Such EPS was requested by ERA following detailed EIA screening in line with Schedule IB of the EIA Regulations, 2007 (S.L. 549.46). In this instance, the summary of the EIA process is being attached to this correspondence.

ERA considers that most of the impacts raised by the EPS per se are either of limited significance (e.g. impacts on hydrogeology and dust on agricultural land) or can be addressed through adoption of appropriate operation practices (e.g. accidental spills). On the other hand, more permanent impacts relating to uptake of undeveloped agricultural land (approximately 3,770 m²), generation of waste (approximately 4,500 m³) and landscape character & visual amenity, which were already foreseen prior to the EIA, cannot be effectively mitigated.

ERAs consistent position has been that there is no valid justification for the further loss of undeveloped land outside the development zone boundary, along with the associated environmental impacts to accommodate such use. There is also significant concern regarding the cumulative environmental impact caused by the numerous ad hoc proposals for petrol stations currently being proposed on ODZ land. As originally pointed out, the EPS for this proposal has left this strategic-level environmental concern unresolved. This is also relevant in light that, according to the hierarchy set out in the 'Fuel Service Stations Policy' Section 3.0, uncommitted sites should be the least favourably considered. In this regard, ERA is still of the opinion that this ad hoc proposal is objectionable from an environmental point of view.

Should the proposal be considered further, notwithstanding ERA's objection, mitigation measures need to be duly incorporated into the development consent mechanism, included as an approved document in the development permit."

Illi mis-suespost jirrizulta li l-ERA esprimiet oggezzjoni għall-proposta odjerna kemm minhabba t-tehhied t'art barra mill-konfini taz-zona tal-izvilupp u impatti ambjentali kumulattivi, kif ukoll minhabba impatt residwi identifikati fl-EPS li ma' jistawx jigu mitigati b'mod adegwat, b'dawn tal-ahhar huma identifikati li jikkonsistu minn tehhied t'art agrikola circa 3,770 metru kwadru (m.k.), generazzjoni ta' skart circa 4,500 metru kubu (m.kb), u impatti vizwali.

It-Tribunal josserva li l-pozizzjoni tal-ERA dwar l-impatti residwi hija riflessjoni talkonkluzzjoni tal-istess ERA fir-rapport tagħha dwar l-EPS li huwa wkoll inkluz fl-inkartament tal-applikazzjoni odjerna a fol 81a, fejn fil-parti 5 gie ndikat is-segwenti:

"The EIA Report has predicted a number of potential impacts on the environment as a result of the proposed development. Whilst mitigation measures to minimize these impacts have been proposed, it still identifies significant residual impacts that are likely to be present after all mitigation measures have been exhausted, namely:

- The proposal will take up approximately 3,770 m² of undeveloped agricultural land located outside development zone (ODZ) (major adverse residual impact).*
- Generation of approximately 4,500 m³ of excavated waste (major adverse residual impact).*
- The introduction of the development and its massing will lead to moderate to major adverse impacts (viewpoints 3 and 5) on the visual amenity and major residual impacts (predominantly agricultural land) on the landscape amenity of the area.*

- Residual impacts associated with quality of ground water and surface water run-off are considered to be of minor adverse significance.
- The impacts from dust deposition during construction are considered to be of minor adverse significance given the temporary nature of the impact and the duration of the excavation phase.
- The residual impacts associated with accidental spills on the surrounding agricultural land are also envisaged to be of minor adverse impact significance.”

Illi l-konkluzzjoni tal-ERA supra-citata dwar ir-rapport tal-EPS giet riflessa fil-parti 4.8.3 talevalwazzjoni tal-Awtorita tal-Ippjanar a fol 100a, bl-Awtorita tkompli billi tindika s-segwenti:

“The Planning Directorate notes that the above impacts can potentially be mitigated through regulatory procedures of the Environmental Permitting mechanism and the Construction Management Plan.

In addition to the above comments by ERA, the Agriculture Advisory Committee stated that the site lies within an area where the predominant land use is agriculture, cultivated with irrigated horticulture crops. The fields in the area have the potential to sustain two to three crops per year, generating annual potential earnings of up to €11,000 per tumolo. The field in question is large circa 2.5 tumoli and is directly accessible from the main road. Despite the fact that the site is not designated for Agricultural Value in the North West Local Plan, the Committee considers the site as being Good Agricultural Land.

As regards land take-up and loss of agricultural land, the Planning Directorate notes that this development application is being considered under section 4 of the Fuel Service Stations Policy’ which states that a case can be made to consider sites other than indicated in para. 4.1 especially in instance where the community would benefit from the relocation of an existing fuel station and where the site proposed for relocation does not give rise to unacceptable adverse environmental concerns. Moreover, Architect was requested to revise the proposal as to limit the take up of land to minimum area possible and without compromising the operation of the service station (refer to comparative site layout plans in document 87B). Initially the fuel station footprint was proposing an area of 3770sqm which eventually had been reduced to 2440sqm and reached the final proposed footprint of 1680sqm.” [enfasi mizjuda mit-Tribunal]

Illi mis-suespost jirrizulta li l-oggezzjoni u thassib espress fir-risposta tal-ERA gie mehud in konsiderazzjoni tant li mhux biss gie mnaqqas l-impront tal-fuel station proposta, izda gie ndikat ukoll li ser ikun hemm mizuri ta’ mitigazzjoni li jinkludu il-permessi ambjentali kif ukoll Construction Management Plan (CMP). It-Tribunal b’mod specifiku josserva li c-CMP giet imposta bhala reserved matter taht il-kundizzjoni numru 2 fin-notifikat tal-permess verżjoni mhux eżegwibli li tinsab a fol 178a, u hija l-fehma ta’ dan it-Tribunal li dan ic-CMP ghandu jinkludi mizuri li gew indikati fl-EPS verifikat mill-ERA li fieh stess gie ddikjarat li ser ikun hemm mizuri sabex jittaffew l-impatti li jirrizultaw minn skavar, hekk kif segwenti:

“33. Waste generated during construction of the Scheme will primarily consist of excavation waste, the majority of which will be soil and rock. Approximately 32% of the soil will be reused on site; the remainder will be reused off-site, in a location as directed by the Director of Agriculture.

34.The geology survey undertaken as part of the EPS identifies the rock as being LowerGlobigerina Limestone and Lower Coralline Limestone, moderately weak to moderate in strength. Neither rock type is considered suitable for reuse as building stone. However, there is the potential for the excavated Lower Globigerina Limestone to be used as screed, or as an aggregate in mass concrete; the underlying Lower Coralline Limestone could potentially be crushed and used as concrete aggregate.

35.Smaller quantities of wastes generated during construction (concrete brick and timberoff-cuts and metal cut-offs) will be transferred to licensed sites for disposal / recycling, as appropriate.”

Illi dwar il-permessi ambjentali li ghalijhom saret referenza fl-evalwazzjoni tal-Awtorita permezz tal-case officer report a fol 100a, jirrizulta li n-notifikat tal-permess a fol 178a ma’ tinkludi ebda obbligu f’dan ir-rigward, u dan lanqas ma’ gie mnizzel bhala wiehed millobblii fl-ittra tal-Post Decision Requirements a fol 174a mahruġa fl-istess gurnata tannotifikat tal-permess mhux eżegwibli. Dan wkoll

huwa nuqqas li ma' jistax jigi skartat stante li l-approvazzjoni ta' dan il-permess saret anke fuq din il-premessa, b'tali obbligu gie anke affermat mill-gdida mill-ERA a fol 252a, u b'hekk huwa rekwizit u obbligu necessarju li mehtieg jigi rifless fil-permess tal-izvilupp.

Illi fil-fehma meqjusa tat-Tribunal, lardarba jsiru l-korrezzjonijiet huwa supra specifika, itthassib dwar impatti ambjentali espress mill-ERA jkun qed jigi indirizzati b'mod aktar adekwat u fil-parametri stabbiliti fil-paragrafi 4.2 u 4.3 tal-Fuel Station Policy tal-2015 sabiex ma' jkunx hemm impatti ambjentali mhux accettabbli.

Illi t-tieni kwistjoni hija dik li tirrigwarda t-tehid ta' art agrikola, bl-appellanti jaghmlu referenza specifika ghall-paragrafu 4.3(b) tal-Fuel Station Policy tal-2015 li fiha huwa specifikat:

"The proposal should not be located on:

[...]

i) Good quality agricultural land as thus certified by the Department of Agriculture"

Illi l-pozizzjoni tal-AAC li ghaliha jaghmlu referenza l-appellanti tinsab f'dok a fol 86a, u din il-pozizzjoni giet riflessa fil-parti 4.7 tal-case officer report a fol 100a u taqra hekk kif segwenti:

"Policy 1.2D - The Committee objects in principle against the construction of nonagricultural development which is not permitted by the Rural Policy and Design Guidance 2014.

Notwithstanding the above, the Committee assessed the site in terms of the requirements of the Fuel Service Station Policy on the basis of section 3.2 "Assessment of Agriculture Quality" in the Land Cover and Agriculture Survey Report at minute 84.

The report at minute 84 considers the soil type, depth, field size and accessibility factors which give an indication of the inherent quality of the agricultural land and its productive potential, while the factor of land use and crops gives an indication of the economic potential of the agricultural land which is influenced by the farmers' choice of crop.

The Committee notes that the predominant soil landscape type is valley fill and the soil types are Regolsols and Cambisols with soil depth ranging between 50 and 75cm. The site lies within an area where the predominant land use is agriculture, cultivated with irrigated horticulture crops. Based on the applicant's report the fields in the area have the potential to sustain two to three crops per year, generating annual potential earnings of up to €11,000 per tumolo. The field in question is large circa 2.5 tumoli and directly accessible from the main road.

In view of the above, the Committee considers the site as being Good Agricultural Land."

Illi l-pozizzjoni u konsiderazzjonijiet tal-AAC citati hawn supra huma msejjsa fuq iddispozzjonijiet tal-Policy 1.2D tal-RPDG 2014 u l-istudju dwar il-valur agrikolu li gie pprezentat a fol 84a, u b'mod ewlieni gie ndikat li l-AAC hija fil-principju opposta ghal dan l-izvilupp stante li dan mhux ta' natura agrikola, u li s-sit in kwistjoni jikkonsisti f'art agrikola ta' kwalita tajba.

Illi fl-istudju dwar il-valur agrikolu a fol 84a, fil-parti 4.1 gie identifikat li *"The Area of Influence (AoI) lies within the San Pawl il-Bahar local council, encompassing the localities of Tal-Basal, Ta' Nemli, and Wied Sardin (Figure 1), extending just southeast of the village of Burmarrad, bordering Triq Burmarrad on both sides (Figure 2). [...] According to a national soil survey (MAL SIS, 2004; Sammut, 2006), the **organic content of the soil in this area is known to be low**, between 1-2% (Figure 6). Moreover, the concentration of heavy metals such as lead, copper and zinc in soil was found by MAL SIS (2004) and Sammut (2006) to be below the threshold for these soil contaminants in this part of Malta (Figure 7). This has not been quantified however for this study."* [enfasi mizjuda mit-Tribunal]

Illi fil-parti 4.3 tal-istess studju gie identifikat li l-maggor parti tal-art agrikola fi hdan l-AoI tintuza ghal tkabbir ta' prodotti ortikulturali li jammonta ta' 89.1% tal-art agrikola li tikkonsisti minn raba saqwi, b'dan huwa muri fit-tabella 2 u figura 11. Illi l-figuri 11 u 12 juri wkoll li l-maggor parti tas-sit odjern jikkonsisti minn art agrikola mhux mahduma (*Fallow field*), u li l-istess raba' hija baghli u mhux saqwi kif inhuma hafna mill-ghelieqi flinhawi. Dwar is-sit odjern gie ndikat b'mod specifiku hekk kif segwenti:

“The proposed site itself was the only plot of fallow agricultural land, and according to aerial photos available at Google Earth, has been left fallow for at least ten years since the application for this project was submitted. (Figure 12). Nevertheless a small part of the southern portion of the site has been cultivated fairly recently, and is under irrigation (it is evident in the aerial photo in Figure 2 and in the maps in Figure 11 and Figure 12). There are eight Punica granatum (Pomegranate) trees located on the southern boundary of the site, as well as six Opuntia ficus-indica (Prickly Pear) trees and one Ficus carica (Fig) tree.”

Illi fil-parti 5 tal-istudju li tirrigwarda l-kwalita u l-valur tal-art agrikola, jibda billi jigi ndikat li *“The surveyed area is made up of three sections; the fields in the Tal-Basal area, east of Triq Burmarrad, the fields in the Ta' Nemli area, north of l-Isqaq ta' Campra, and the fields below Wied Sardin.”*, u skont il-figura 16, is-sit odjern jiffirma parti miz-zona ta' Wied Sardin li dwara jigi ndikat is-segwenti: *“This section of agricultural land is of **medium agricultural value**. The fields are medium to large, with half of them having high boundary walls, and the rest were low-built walls. In both cases, the rubble walls were in a relatively good state of repair. Water was evidently available through the presence of irrigation pipes found throughout the area. On the other hand, of all the three regions, this is the one with the least accessibility. Some of the inner fields are accessible through a third or fourth field. Crops grown here included irrigated vegetable crops like cabbages (Figure 17), and rain-fed crops like potatoes and broad beans. Whilst the fields can grow two to three crops per year, generating annual potential earnings of up to €11,000 per tumolo (for strawberries), evidence taken in late summer of 2017, and time-series aerial photography available on Google Earth, suggests that the land is not intensively used, and at best produces one to two crops per year. This is most likely due to the use of a well-planned crop rotation using different crops, **dropping gross potential income to up to €3,000 per annum** (Table 4), and the use of some of the land here as hobby farms. Moreover, the land is known to have a **low agricultural organic component** (Figure 6), reducing the agricultural potential of the land, despite the availability of water. The presence of hobby farms is evident from the presence of high walls which were most probably raised for privacy in the last few decades, and the cultivation practices which indicate a non-intensive use of the agricultural land.”* [enfasi mizjuda mitTribunal]

Illi ghaldaqstant jirrizulta li filwaqt li fir-risposta tal-AAC a fol 86a gie identifika li l-valur agrikolu tas-sit odjern huwa wiehed ta' kwalita tajba, mill-istudju a fol 84a (li ghalieh l-AAC jaghmel referenza) jirrizulta li dak li gie konkluz huwa li s-sit odjern jiffirma parti miz-zona ta' Wied Sardin li hija identifikata li hija b'valur agrikolu medju, u li s-sit odjern huwa filmaggor parti raba' baghli mhux mahdum. Dan b'kuntrast ghaz-zewg zoni l-ohra identifikati fl-istess rapport, fejn fil-kaz taz-zona 'Ta' Nemli' gie ndikat li *“agricultural land was found to be of **moderate to high agricultural value**”*, u fil-kaz taz-zona 'Tal-Basal' gie ndikat li *“This section of agricultural land, was found to be the largest and most productive of all the three agricultural regions, and has the **highest earning potential**”* [enfasi mizjuda mitTribunal]. Illi ghalhekk isegwi li l-konkluzzjoni tal-AAC dwar il-valur agrikolu hija wahda diversa minn dak li gie konkluz fl-imsemmi studju a fol 84a. It-Tribunal josserva wkoll li filwaqt li l-AAC waslet ghal konkluzzjoni diversa, l-istess AAC ghamel sommarju selettiv ta' dak li gie ndikat fl-istudju ghaliex filwaqt li dan indika li *“Based on the applicant's report the fields in the area have the potential to sustain two to three crops per year, **generating annual potential earnings of up to €11,000 per tumolo**.”*, fl-istudju gie ndikat li *“This is most likely due to the use of a well-planned crop rotation using different crops, **dropping gross potential income to up to €3,000 per annum** (Table 4), and the use of some of the land here as hobby farms.”* [enfasi mizjuda]

Illi dwar il-valur agrikolu tas-sit odjern huwa rilevanti wkoll dak li gie studjat fir-rapport talEPS, bl-appellanti qed jaghmlu referenza specifika ghal paragrafu 6.33 tal-ewwel volum talEPS li fieh gie ndikat hek kif segwenti:

“As mentioned, the majority of the Scheme Site is fallow land, and has been for some time. However, the southernmost part of the site has been cultivated relatively recently, and is irrigated, and the whole of the Scheme Site could potentially be cultivated. Furthermore, the agricultural survey

identifies the land at Wied Sardin, including the Scheme Site, as being of medium agricultural value. Having regard to the assessment criteria, where the Scheme will result in the permanent loss of agricultural land, it is considered that the Scheme will have a major negative impact."

Illi l-appellanti qed jaghmlu enfasi fuq l-ahhar parti ta' dan il-paragrafu fejn gie identifikat li t-telf ta' hamrija huwa *"major negative impact"*, izda fil-fehma tat-Tribunal l-appellanti qed ikunu ferm selettivi, dan ghalieq fl-istess paragrafu huwa identifikat li l-valur agrikolu tas-sit odjern huwa *"medium agricultural value"*. It-Tribunal jippuntwalizza wkoll li l-kwistjoni in mertu mhijiex li t-tnehhija ta' hamrija hija jew m'hijiex ta' mpatt, izda jekk is-sit odjern jikkonsistix minn *"Good agricultural land"* kif specifikat fil-paragrafu 4.3(b)(i), u mill-EPS dan ukoll ma' jirrizultax li dan huwa l-kaz. Fil-fatt fin-Non Technical Summary tal-EPS ghal darb'ohra gie ndikat li *"the agricultural survey identifies the land as being of medium agricultural value"* [Paragrafu 46 fin-Non Technical Summary tal-EPS] [enfasi mizjuda], u fir-rapport segwenti tal-ERA dwar l-EPS li fil-parti 4.2 gie ndikat *"The proposal will result in the direct loss of around 3,770m2 of agricultural land, which is considered to be of medium agricultural quality. Within the exception of a small portion on the southern perimeter, the site is largely fallow."* [enfasi mizjuda]

Illi ghaldaqstant jirrizulta li fl-istudji kollha li saru, u fl-istess verifiki tal-ERA, il-valur agrikolu tas-sit gie identifikat bhala wiehed medju, u mhux ta' kwalita tajba kif gie idenfitikat fir-risposta tal-AAC a fol 86a. It-Tribunal josserva wkoll li filwaqt li l-opinjoni esperta tal-AAC ghandha piz mhux zghir ghal dak li ghandhu x'jaqsam ma' pariri dwar issettur agrikolu, tali opinjoni ma' ghandix tinjora dak li gie identifikat fi studji kkummissjonati sakemm ma' jirrizultax li tali studji ma' sarux b'mod adegwat. Illi fil-kaz odjern ma' jirrizulta xejn minn dan ghalieq l-AAC ma' qajjmet ebda thassib fuq il-kontenut tal-istudju pprezentat a fol 84a u b'hekk il-konkluzzjoni taghha dwar il-valur agrikolu tas-sit odjern mhijiex wahda sostnuta. Illi oltre minn hekk, l-appellanti jistriehe biss fuq dak li ntqal fir-risposta ta'AAC a fol 86a, u jonqsu milli jiehd u in konsiderazzjoni l-imsemmija studji jew jipprezentaw xi provi li b'xi mod ixejnu dak li gie ndikat f'dawn l-istudji li saru.

Illi kif gie diskuss hawn supra, f'dawn l-istudji li saru fil-kaz odjern kollha qiesu li s-sit odjern fil-maggor parti tieghu jikkonsisti minn raba' baghli li mhux mahdum u li huwa b'valur agrikolu medju, b'hekk isegwi li ma hemm l-ebda ksur ta' paragrafu 4.3(b) ta' din il-parti tal-policy.

It-Tribunal finalment josserva li l-ahhar parti ta' dan l-ewwel paragrafu tal-aggravju jigi ndikat ukoll li l-Bord tal-Ippjanar ghazel li jinjora l-wording specifiku tal-policy, b'mod ewlieni paragrafu 4.2(b)(i) tal-Policy. It-Tribunal jippuntwalizza li dan il-paragrafu ma' jezistix fil-Fuel Station Policy tal-2015, u huwa mifhum li l-intendiment tal-appellanti kien indirizzat lejn paragrafu 4.3(b)(i) li jitkellem fuq il-valur ta' art agrikola u li gie diskuss hawn supra.

Ghal dawn il-motivi, it-Tribunal qed jilqa b'mod limitat dan l-ewwel parti tal-aggravju billi huwa necessarju li l-kundizzjoni numru 2 rigwardanti l-obbligu tal-CMP tinkludi dawk il-mizuri li gew indikati fl-EPS sabieq jittaffew l-impatti tal-skavar, u li tigi mizjuda kundizzjoni li timpani obbligu ghal permessi ambjentali mitluba mill-ERA.

It-Tieni parti tal-aggravju

Illi hawnhekk qed jigi ndikat li l-izvilupp approvat jaqbez l-impront ta' 3,000 metru kwadru (m.k.) specifikat f'paragrafu 4.2 tal-Fuel Station Policy tal-2015.

It-Tribunal jibda billi josserva li l-metragg ta' 3,000 mhux imnizzel fil-paragrafu 4.2 citata mill-appellanti, izda fil-paragrafu 4.3(f) li ghalieq jaghmel referenza l-para. 4.2, b'dan li jesigi *"The site shall have a footprint not exceeding three thousand (3,000) sqm."*

Illi kif gie osservat fl-ewwel parti ta' dan l-aggravju, filwaqt li l-impront fiziku tal-fuel station approvata jammonta ghal circa 1,680 m.k. [Skont il-case officer report a fol 100a fl-inkartament tal-PA2335/07], is-sit odjern li fuq gie approvat dan l-izvilupp huwa b'kejl ta' circa 3,770 m.k.. Illi l-proposta finalment approvata tinkludi skema estensiva ta' landscaping mad-dawra tal-izvilupp propju tal-fuel station, u t-Tribunal huwa tal-fehma li din iz-zona ta' landscaping hija parti integrali mill-izvilupp hawn approvat. It-Tribunal huwa tal-fehma li kien ragjonevoli min-naha tal-Awtorita li tiddecidi li torbot lill-applikant li jimplimenta tali skema estensiva fuq is-sit kollu, u mhux tillimita l-iskema sal-metragg ta' 3,000 m.k., u dan jinghad ghalieq li kieku jsir hekk, ir-rizultat ahhari ikun kontro produttiv u mhux fl-ahjar interessi

tal-ippjanar. Oltre minn hekk, it-Tribunal ma' jistax jonqos milli josserva li fil-prezentazzjoni tal-applikazzjoni odjerna, l-applikant kien fil-fatt obbligat li jindika l-estent kollu tas-sit li jappartjenti lilu, u dan hekk kif tesigi c-Cirkolari tal-Ippjanar 4 tal-2016 li *inter-alia* titlob is-segwenti dwar kif ghandu jigi ndikat is-sit:

"(C) The full extent of the application site (including all land necessary to carry out the proposed development) must be outlined in red. All other land in the area owned by the applicant must be clearly and correctly shown on the site plan, outlined in blue."

Ghal dawn il-motivi, it-Tribunal jichad din il-parti tal-aggravju.

It-Tielet parti tal-Aggravju

Illi l-appellanti qed jindikaw li s-sit jinsab pozizzjonat f'zona li hija suxxettibbli ghal gharghar, u li dan huwa dan bi ksur ta' paragrafu 4.3b tal-Fuel Station Policy tal-2015. Illi f'dan il-paragrafu huwa *inter-alia* specificat:

"The proposal should not be located on:

[...] vii) A designated Area Prone to Flooding;"

Illi b'sostent ghal din il-parti tal-aggravju, l-appellanti jaghmlu referenza ghal dak li gie ndikat fl-oggezzjoni pprezentata mill-ghaqda non-governattiva *Birdlife Malta* li tinsab a fol 75a u 75b, madankollu jirrizulta li tali asserzjoni ma' giet sostnuta b'ebda provi korraborattivi, filwaqt li fl-evalwazzjoni tal-Awtorita gie ndikat is-segwenti:

"The site justification exercise had concluded that the site:

[...]

Whether or not the site lies within a designated area prone to flooding has not been qualified by the relevant authorities;" [Skont il-case officer report a fol 100a fl-inkartament tal-PA2335/07]

Illi oltre minn hekk, mill-istudju tal-EPS li jinkludi studju fuq l-idrologija [Pagna 109 tal-Volum 1 tal-EPS], ma' jirrizultax li ssit gie identifikat li jinsab f'zona suxxettibbli ghal gharghar. Illi kif gie osservat aktar kmieni, l-istudju tal-EPS gie anke verifikat mill-ERA, u l-appellanti ma' pprezentaw ebda provi li b'xi mod ixejnu dak li gie ndikat f'dan l-istudju. Ghal dawn ir-ragunijiet, it-Tribunal huwa talfehma li dan il-parti tal-aggravju m'huwiex sostnut u konsegwentament qed jigi michud.

Ir-Raba parti tal-aggravju

Illi dan il-parti tal-aggravju huwa ndirizzat lejn il-hanut Klassi 4b, bl-appellanti jargumentaw li dawn huwa bi ksur ta' paragrafu 7.8 li jispecifica li *policies* ohra jibqaw applikabbli.

Illi l-imsemmi paragrafu 7.8 tal-Fuel Station Policy tal-2015 testwalment jispecifica hekk kif segwenti:

"7.8 Other general planning policy provisions shall remain applicable to fuel stations."

Illi madankollu it-Tribunal josserva li paragrafu 4.4 tal-istess Fuel Station Policy tal-2015 tipprovdi hekk kif segwenti:

"The number of nozzles in a RFS which is deemed to qualify under the provisions of para 4.2 will not exceed an overall of 24 nozzles and some of these nozzles should be preferably allocated for alternative fuels. This number is based on EPFSs which have a higher overall number of nozzles. The nature of the RFS will be mainly guided by the provisions of Sections 5 to 9 below. There will also be no constraint on ancillary facilities subject to visual, transport, amenity and environmental considerations being taken into account."

Illi mis-suespost jirrizulta li din il-policy *ad hoc* tipprovdi li jkun hemm zvilupp ta' facilitajiet ancillari ma' l-izvilup tal-fuel station, bil-limitu specificat ghal tali facilitajiet huwa soggett li jittiehdu in konsiderazzjoni aspetti varji. It-Tribunal josserva wkoll li din il-policy ma tinkludix definizzjoni ta' f'hiex jikkonsistu facilitajiet ancillari, u fil-kaz odjern il-facilitajiet ancillari jikkonsistu f'binja wahda b'kejl ta' circa 178 m.k. li tinkorpora hanut, ufficju, garaxx, mahzen, W.C.s, control room u staff room, kif ukoll car wash fuq in-naha retrostanti ta' din il-binja. Illi l-hanut li qed jigi kkontestat mill-appellanti ghandu kejl ta' circa 73 m.k., u specificament fir-rigward ta' dan il-hanut gie imposta mill-Awtorita il-kundizzjoni numru 15 li taqra hekk kif segwenti:

"The approved shop shall be put to any Class 4B Retail use as defined in the Development Planning (Use Classes) Order 2014, excluding greengrocer, minimarket, butcher, or fishmonger. The Class 4B Retail use approved in this development permission shall be ancillary to the overall use of the fuel station and use shall not be segregated." [Skont in-notifikat tal-permess a fol 178a fl-inkartament tal-PA2335/07]

Illi fil-fehma tat-Tribunal, il-hanut Klassi 4b inkluz fl-izvilupp odjern huwa wiehed ancillari mal-użu ewlieni tal-fuel station, b'dan jinghad kemm *in vista* tal-kundizzjoni imposta fil-permess kif ukoll *in vista* li d-daqs tiegħu huwa wiehed li b'mod car juri li tali żvilupp huwa ancillari, integrali u kumplementari mal-izvilupp fuel station, u mhux żvilupp kummerċjali separat. Għal dawn il-motivi, it-Tribunal jichad din il-parti tal-aggravju.

Konkluzzjoni tat-Tieni Aggravju

Għal dawn il-motivi, it-Tribunal qed jilqa b'mod limitat dan l-aggravju billi jordna li l-kundizzjoni numru 2 rigwardanti l-obbligu tal-CMP tinkludi dawk il-mizuri li gew indikati f'IEPS sabiex jittaffew l-impatti tal-skavar, u li tigi mizjuda kundizzjoni li timpani obbligu għal permessi ambjentali mitluba mill-ERA.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. Ir-rilokazzjoni tal-fuel station ma taqa' taht l-ebda wahda mis-siti permissibbli skont para 3.2(a) sa (g) tal-Fuel Service Stations Policy 2015 kif jispecifika paragrafu 4.1 li jitkellem fuq rilokazzjoni ta' pompi. B'zieda paragrafu 4.1 jghid li permess jista' jinghata f'ODZ fi pjan sussidjarju kommess għal użi mhux agrikoli skont permess ta' żvilupp, u barrieri mhux użati. Ghalkemm paragrafu 4.2 jaghti lok għal konsiderazzjoni ta' rilokazzjoni ta' pompi f'siti ohra mhux elenkati f'paragrafu 4.1, dan jista' jsir basta li l-komunita tibbenefika minn wahda mir-ragunijiet citati f'paragrafu 2.2 u fejn is-sit ma jaghtix lok għal 'unacceptable adverse environmental concerns'. L-appellanti jghidu li s-sit hi art agrikola u l-impatt tat-tnehhija ta' din l-art hu wiehed magguri u irriversibbli. L-artikolu 4.3(b) jipprojbixxi rilokazzjoni fuq siti dikjarati bhala art agrikola tajba kif certifikat mid-Dipartiment tal-Agrikoltura. Il-kumitat konsultattiv iccertifika l-art bhala tali;
2. Id-decizjoni tat-Tribunal rigward x'jikkwalifika bhala facilitajiet ancillari hi zbalja ta' meta ma qies sew paragrafu 7.8 tal-policy li tghid li policies ohra f'dan ir-rigward jibqgħu applikabbli. Il-pjan lokali NWLP ma jippermettix hwienet klassi 4b f'ODZ li qed jaffettwa art agrikola kif sehh f'dan il-kaz.
3. It-Tribunal għamel decizjoni zbaljata rigward l-oġġettiv 1.27 tal-iSPED li hu kontra t-tehid ta' art f'ODZ u favur il-preservazzjoni ta' art agrikola għar-ragunijiet imsemmija fl-istess oġġettiv. L-appellant biex isostni dan l-argument jirreferi għal Oġġettiv Tematiku 1.10, 7.6, 7.7, Oġġettiv Rurali 1.1, 3.3;

4. It-Tribunal injora fid-decizjoni tieghu r-rapprezentazzjonijiet li saru, l-oggezzjoni ghall-izvilupp da parti tal-ERA u l-AAL u dan kontra dak li jrid artikolu 72(2)(b), (d), (e) u (f) tal-Kap. 552;

L-ewwel aggravju

Hu pacifiku illi din l-applikazzjoni ghandha tigi kunsidrata skont dak li trid il-Fuel Stations Policy 2015. Rilevanti ghalhekk ghall-ezami u determinazzjoni tal-aggravju dak li tghid il-policy fir-rigward ta' rilokazzjoni ta' pompa tal-petrol.

Il-paragrafu 4.1 jghid hekk:

Relocated Fuels Stations (RFS) may be sited on the same potential candidate sites indicated in para 3.2 (a) to (g), together with sites lying outside areas designated for development in a subsidiary plan legitimately committed for non-agricultural uses through planning permission and disused quarries. There will be no constraint on the overall number of nozzles or ancillary facilities where the RFS is relocated to one of these sites subject to visual, transport, amenity and environmental considerations being taken into account and to other relevant planning, environmental, transportation, civil protection, amenity or resource protection constraints. Unless already directed by existing planning policy, the height of the resulting structure above the surrounding terrain would be determined on a case by case basis but special attention should be given to sites which are distant from designated Development Zones so that the resulting structures do not contrast with or dominate the surrounding rural landscape.

Dan il-paragrafu jirreferi ghal paragrafi 3.2(a) sa (g) li jsemmi s-siti idoneji ghal tali zvilupp u jghid hekk:

In terms of Objective in para 1.2a, current and emergent planning policy indicates a number of designated areas which are potentially considered to be suitable to accommodate fuel stations without creating adverse incompatibilities. These include:

- a) Designated Industrial Areas
- b) Small and Medium Enterprise Sites
- c) Areas of Containment
- d) Open Storage sites as identified in the Open Storage policy
- e) Other areas designated for development in a subsidiary plan for:
 - (i) non-residential development; or
 - (ii) planning designation or existing uses which do not contemplate a Social and Community facility or function; and where in both cases MRA, CPD and TM deem it would be safe to locate a fuel station.
- f) Sites already occupied by fuel stations
- g) Sites opposite to, or adjacent to designated industrial areas, as well as sites opposite or adjacent to Areas of Containment

On such sites, facilities which complement fuel stations in terms of economic sustainability of the fuel stations would be encouraged Subject to other relevant planning, environmental, transportation, civil protection, amenity or resource protection constraints. Unless already directed by existing planning policy, the height of the resulting structure above the surrounding terrain would be determined on a case by case basis but special attention should be given to sites which are distant from designated Development Zones so that the resulting structures do not contrast with or dominate the surrounding rural landscape.

Fuel stations located on sites described under 3.2(f) which existed prior to the coming into force of this policy and are located opposite to, or adjacent to designated industrial areas and Areas of Containment, or outside any of the other appropriate locations listed under this paragraph, shall have a footprint not exceeding that of the already physically committed area on the site itself or three thousand (3,000) sqm whichever is the larger; and the height of any built structures shall not exceed that of the already existing structures already on site as at the date of coming into force of this policy, or 7 metres, whichever is the higher.

Fuel stations located on sites described under 3.2(g) shall have a footprint not exceeding three thousand (3,000) sqm and the height of any built structures shall in no case be higher than 7m.

Additionally other locations within the Development Zone or other areas designated for Urban Development, may also be considered as long as these conform to spirit of Structure Plan Policy BEN 1 - i.e. provided that MRA deems that they will not have a deleterious impact on existing or planned adjacent uses and provided that MRA deems that the facilities conform to all the relevant National and International Standards for Petroleum Dispensing Station requirements and that adequate distances are kept from existing or planned development. However sites designated as Residential Areas or Residential Priority Areas should not qualify for such consideration. Save for the potential candidate sites indicated in para 3.2 (c) to (g), NUFS's will not be allowed Outside the Development Zone.

Jidher ukoll mhux kontestat li dan l-izvilupp la jaqa' f'wiehed mill-incizi fuq imsemmija u anqas jikkwalifika taht iz-zewg ipotesi l-ohra msemmija fil-paragrafi 4.1, cioe siti fl-ODZ li huma 'designated for development in a subsidiary plan legitimately committed for non-agricultural cases through planning permission or disused quarries'. Dwar dan it-Tribunal jaqbel.

Mandankollu t-Tribunal sab li s-sit jista' jigi zviluppat f'pompa b'facilitajiet ancillari u dan minhabba dak li jghidu policy 4.2 u 4.3 tal-Fuel Stations Policy 2015. Il-Qorti tqis li dawn il-policies li ser jigu riprodotti iridu jinqaraw flimkien. Dawn jghidu hekk:

4.2 However where a case can be made to consider sites other than indicated in para 4.1 above, this may be favourably considered especially in instances where the community would benefit from the relocation of an

EPFS due to one of the reasons cited in para 2.2 and where the site proposed for relocation does not give rise to unacceptable adverse environmental concerns. In such instances the applicant would also be required to enter into an agreement with MEPA and MRA on conditions to remove and decommission the EPFS. Thus decommissioning requirement would also be applicable to the Instances of permitted non-agricultural use and disused quarries mentioned in para 4.1 above. See also para 5.5.

4.3 For RFSs located on sites described under para 4.2 the following additional criteria shall apply:

a) In line with the spirit of Structure Plan policy SET12 the proposal should be justified on technical and/or planning grounds that there is no other feasible or suitable location within the areas identified as appropriate for an RFS by this policy. If qualifying through the published thresholds, an Environmental Impact Assessment (EIA conforming to the Terms of Reference as issued and approved by MEPA) may also be required in order to identify and address significant effects that the proposal may have on the surrounding environment; and

b) The proposal should not be located on:

i) Good quality agricultural land as thus certified by the Department of Agriculture; or

ii) Areas of High Landscape Sensitivity as indicated in the respective Subsidiary Plans; or

iii) Special Areas of Conservation (SAC's) / Special Protection Areas (SPA's); or

iv) A site within 50m from a listed or scheduled site. In cases where a scheduled buffer zone is included, the distance shall be measured from the edge of the buffer zone and shall be reduced to 20m; or

v) Garrigue or maquis; or

vi) A designated watercourse/valley-system; or

vii) A designated Area Prone to Flooding; or

viii) A site whose perimeter lies within the distance stipulated by law from a fireworks factory complex; or

ix) A site lying on an escarpment, ridge edge or a comparatively steep slope; or

x) A site whose boundaries are closer than 15m or more than 500m from the nearest Development Zone boundary; and

c) The proposal should not negatively impinge on areas protected for their scenic value or buildings or structures which, in the opinion of MEPA constitute 'landmark buildings' and whose context deserves protection from visual intrusion; and

d) The developer is to ensure that measures are taken to discourage further expansion of the urban development, namely by creating landscaped buffer strips within the fuel station site to minimize the visual impact. Future expansion of fuel stations should not be considered to be automatic with the granting of the initial permit and care should be taken to address further incursion into ODZ land; and

e) The developer is to demonstrate how infrastructural services to the fuel station (i.e. water, electricity, drainage and communication services) will be achieved without being detrimental to the environment. Details of any required services, including cess pits, oil water separators, vents, underground storage tanks and reservoirs, are to be submitted with the application together with relevant endorsement by the relevant regulator agencies

f) The site shall have a footprint not exceeding three thousand (3,000) sqm.

Qari ta' dawn il-paragrafi jaghtu certu element ta' diskrezzjoni biex jitqies jekk sit hux accettabbli għall-izvilupp għalkemm mhux elenkat bhala wiehed mis-siti li fihom hu permess rilokazzjoni ta' pompa skont paragrafu 4.1. Madankollu paragrafu 4.3 jimponi certu kriterji li jridu jigu osservati għall-applikazzjoni tal-paragrafu 4.2. Fil-fatt il-ftuh ta' paragrafu 4.3 jghid 'For RFS's located on sites described under para. 4.2 the following additional criteria shall (sottolinear tal-Qorti) apply. Fil-paragrafu 4.3(b) jghid kategorikament u bis-sollotlinear fl-istess paragrafu 'The proposal should not be located in: i) Good quality agricultural land as thus certified by the Department of Agriculture'.

Huwa hawn li l-Awtorita u t-Tribunal għamli zball ta' ligi li gabu fix-xejn dak li trid il-policy. It-Tribunal għamel analizi ta' rapport dwar il-valur agrikolu ma' dak li ikkonsidra l-Agricultural Advisory Board fi hdan il-MEPA. Hu minnu illi fl-istudju dwar il-valur agrikolu tas-sit jinghad li hu 'medium agricultural value'. Mandankollu jibqa' fatt li kemm l-ERA u l-AAL it-tnejn qiesu li l-valur agrikolu għandu jitqies tajjeb u l-izvilupp ma kienx konformi mal-policy. Il-kumitat konsultattiv tal-agrikoltura kien car li l-art hi wahda agrikola f'zona predominanti ta' artijiet agrikoli irrigati kapaci tipproduci prodott għal aktar minn darba fis-sena. Il-konkluzjoni tal-Bord hi li l-art hi art agrikola tajba.

L-osservazzjonijiet tat-Tribunal fejn saret distinzjoni kemm tista' tipproduci prodott l-art fis-sena jew jekk parti mis-sit jew partijiet miz-zona humiex uzati għal skopijiet agrikoli imma bhala delizju u mhux mezz ewlieni ta' ghixien huma irrelevanti għall-iskop ta' dak li trid il-policy. Daqstant iehor ma fihx rilevanza li parti mill-art ma kinitx qed tigi mizrugħa. It-Tribunal stess ikkonferma li waqfet tigi kultivata għax saret l-applikazzjoni ta' zvilupp. Madankollu dak li jibqa' biss rilevanti mill-ghajnejn tal-ligi hu

jekk l-art hix wahda tajba għall-finijiet agrikoli. X'potenzjal ekonomiku għandha hi irrelevanti daqs hemm hu irrelevanti jekk hux mezz ewlieni ta' għixien jew hix qed tintuza għall-iskop intiz jew hix art agrikola b'potenzjal medju jew għoli. It-Tribunal ma kellux jidhol f'dawn il-kwistjonijiet komparattivi. It-Tribunal applika hazin il-kliem tal-policy dwar it-tifsira ta' art agrikola tajba. Ma hemmx gradi ta' tajjeb kif sahaq jiggustifika l-izvilupp it-Tribunal billi l-policy għa qed tagħmel eccezzjoni għall-izvilupp liema eccezzjoni trid tinqara ristrettivament mhux tinfetah għal interpretazzjoni soggettiva. Jibqa' kwistjoni li kellha tigi indirizzata cioe li l-policy tesigi dikjarazzjoni tad-Dipartiment tal-Agrikoltura li l-art hi wahda agrikola tajba fis-sens hawn fuq meqjus. Kull ma hemm fil-process hu dikjarazzjoni ta' nuqqas ta' oggezzjoni tad-Dipartiment tal-Agrikoltura datata 11 ta' Ottubru 2007. Din id-dikjarazzjoni ma tirrispondix il-kwezit tal-policy. Għalhekk il-Qorti ser tilqa' l-aggravju fis-sens li l-atti jergghu jintbagħtu quddiem it-Tribunal biex tigi mitluba d-dikjarazzjoni tad-Dipartiment tal-Agrikoltura u t-Tribunal jerga' jikkonsidra l-appell mill-gdid. Fic-cirkostanzi l-Qorti ma tqis li hu opportun f'dan l-istadju li jigu kunsidrati l-aggravji l-oħra.

Decide

Għal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi billi tilqa' safejn kompatibbli ma' dak deciz l-ewwel agravju tal-appell ta' Moviment Graffiti, u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-3 ta' Ottubru 2024, filwaqt li tibghat lura l-atti lit-Tribunal biex jerga' jikkonsidra tali agravju mill-gdid u jagħti decizjoni dwaru. Jibqghu impregudikati l-aggravji l-oħra mhux decizi. Spejjez għall-appellati in solidum. L-appell qed jigi differit sine die appuntabbli fi zmien tlett xhur mid-decizjoni tat-Tribunal.

Mark Chetcuti

Prim Imhallef

Anne Xuereb

Deputat Registratur