TRIBUNAL TA' REVIŻJONI AMMINISTRATTIVA

MAĠISTRAT DOTTOR SIMONE GRECH B.A., LL.D., MAG. JUR. (EUR LAW)

Każ Numru 10/2024 SG

John Vella; Virgilio sive Gino Vella; Loreto sive Laurie Vella; Anthony Vella; Mariosa Portelli; Martina Zerafa u Pawla Mercieca

Vs

Awtorità tal-Artijiet

Illum, 29 ta' Mejju 2025

It-Tribunal;

Ra r-rikors ta' John Vella et ippreżentat fl-4 ta' Diċembru 2024 li permezz tagħha ppremettew u talbu s-segwenti:

Illi l-esponenti kieneu talbu lil intimta Awtorita ta' l-Artijiet sabiex tirrikonoxxihom fil-kirja ta' Parti mir-Restaurant bl-isem Seaview Restaurant' Triq ix-Xatt, Ghajnsielem, Ghawdex inkluz kamra li hija mibnija fuq il-kamra tal-Lager, inkluz ukoll 1-arja tieghu - E 292340, minflok il-mejjet missierhom John Vella;

Illi permezz ta' ittra tat-22 ta' Frar 2024 (dok A) it-talba taghhom giet akkolta u huma gew hekk rikonoxxuti fil-kirja u hemm sar kuntratt bejn l-esponenti u l-Awtorita intimata u anke thallset il-kirja;

Illi dan ir-rikonoxximent sar wara saga li kien ila ghaddejja snin minhabba okkupazzjoni illegali minn huhom iehor li kien zamm il-process stallat;

Illi wara dan ir-rikonoxximent imsemmi l-esponenti gew vestiti bi drittijiet lokatizji skond il-ligi;

Illi kiesah u biered fis-26 ta' Novembru u fil-jiem ta' wara l-intimati ircevew ittra ohra bid-data tal-21 ta' Novembru 2024 (Dokument B) fejn l-Awtorita intimata infurmathom illi l-awtorita kieent qed tikrilhom pero tali kirja ma kelliex tinkludi l-arja ossia kamra ta' fuq fond mikri lil Lino Vella. Dan meta fid-decizjoni ta' qabel din it-kamra gia kienet giet inkluza fil-kirja favur l-esponenti fejn hija deskritta bhala ***'il-kamra li hija mibnija fuq il-kamra tal-Lager'***;

Illi l-Awtorita intimat ma tistax timxi b'dan il-mod fejn l-ewwel taghti dritt u jsir kuntratt u imbghad unilateralment tnaqqar minn dak id-dritt kif jidrilha hi. Id-dritt moghti minn l-Awtorit gie konsiderat bhala vested right, mill-mument li fih saret l-accettazzjoni minn l-esponenti u l-awtorita ma kellha l-ebda dritt b'decizjoni mehudha wehidha propabbilment fuq instigazzjoni ta' xi hadd tirrevoka dak id-dritt jew parti minnu;

l-Awtorita imxiet b'mod amministrattivament skorrett u illegali meta ghamlet dan;

Jigi notat bl-aktar mod stran illi fit-tieni decizjoni taghha (dik li qed tigi appellata presenzjalment) l-Awtorita l-anqas hasset il-bzonn li taghmel xi referenza ghad-decizjoni taghha tat-22 ta' Frar 2024;

Illi ghalhekk d-decizjoni tal-21 ta' Novembru 2024 hija wahda amministrattivament u legalment skorretta u ultra vires;

Illi minghajr pregudizzju ghas-suespost, anke fil-mertu tal-kaz apparti li ma jirrizultax kif saru l-konsiderazzjonijiet tal-bord liema konsiderazzjonijiet tal-Bord l-esponenti kellhom kull dritt li jkunu jafu id-decizjoni tal-Bord hi skorretta fil-mertu ghaleix il-kamra de quo hija haga wahda mal-bqija tal-fond mikri lil esponenti u l-kerej tat-Kamra ta'isfel Lino Vella l-anqas biss ghandu access ghaliha;

Ghaldaqstant l-esponenti filwaqt li jiddikjaraw illi qed ihossuhom aggravate bid-decizjoni tal-Awtorita ta' l_Artijiet tal-21 ta' Novembru 2024 u dan ghal lanjanzi fuq esposti qed iressqu dan l-umli appell ghal quddiem dan l-Onorabbli Tribunal fejn jitolbu lil is-stess tribunal sabeix previa ddikjarazzjoni illi d-decizjoni tal-21 ta' Novembru 2024 kieent wahda amministrattivament u legalment skorretta stante illi hi kontra l-ligi u ultra vires, jordna lil istes Awtorita sabiex tirrevedi l-istess decizjoni in lineja ma dak li jiddeciedi l-istess tribunal.

Ra r-risposta tal-Awtorità tal-Artijiet li fiha eċċeppiet is-segwenti:

1. *ILLI l-appell odjern jirrigwardja ittra tal-Awtorità datata 21 ta' Novembru 2024 indirizzata lil* ***John Vella (16162G), Virgilio sive Gino Vella (43056G), Loreto sive Laurie Vella (383651G), Anthony Vella (60254G), Mariosa Portelli (33153G), Martina Zerafa (13159G) u Pawla Mercieca*** *u li permezz taghha ġew avżati bis-segwenti:*

"…… b'referenza għal-ittra tagħkom datata 5 t'Ottubru 2021 u għad-diversi sentenzi tal-Qorti bir-referenza 43/2012JVC u 126/21BS.

Illi tenut kont id-diskrepanza li teżisti bejn iż-żewġ sentenzi, il-Bord tal-Gvernaturi evalwa iż-żewġ sentenzi u kif ukoll il-fatti tal-każ in kwistjoni. Fid-deċiżjoni tal-Bord, ġie sottomess illi fid-dawl tal-prinċipju legali fis-sens illi meta proprjetà tiġi mgħoddija lil xi ħadd, dan ikun jinkludi l-airspace sovrastanti l-istess proprjetà, sakemm ma jkunx hemm esklużjoni espressa tal-airspace, il-Bord iċċara illi l-airspace tal-fond bl-isem Po Passenger Veranda, Mġarr, Għajnsielem-Gozo, Malta (Z60583) hija nkluża fil-kirja tal-kamra li kienet saret a favur ta' Lino Vella.

Ai termini tal-Artikolu 57 tal-Att Dwar l-Awtorità tal-Artijiet, Kapitolu 563 tal-Liġijiet ta' Malta, kwalunkwe persuna li thossha aggravata minn xi deċiżjoni tal-Awtorità, bl-eċċezzjoni għal dawk il-każijiet li jaqgħu taħt il-kompetenza tal-Bord tal-Arbitraġġ dwar l-Artijiet, għandha d-dritt li tappella minn din id-deċiżjoni quddiem it-Tribunal ta' Reviżjoni Amministrattiva fi żmien għoxrin (20) ġurnata li jibdew jiddekorru mid-data tan-notifika tad-deċiżjoni tal-Awtorità tal-Artijiet.

2. *ILLI skont l-appellanti l-ittra fuq imsemmija nbagħtet 'kiesah u biered' u dan wara li fl-ittra preċedenti datata 24 ta' Frar 2024 huma kienu ġew rikonoxxuti fil-proprjeta' u li fl-ittra ta' rikonoxximent il-proprjeta' kienet ġiet deskritta bhala "Parti mir-Restaurant bl-isem "Seaview Restaurant" Triq ix-Xatt, Għajnsielem, Għawdex inkluż il-kamra li hija mibnija fuq il-kamra tal-Lager inkluz ukoll l-arja tiegħu – E292340;*

3. *ILLI skont l-appellanti l-Awtorita intimat ma tistax timxi b'dan il-mod fejn l-ewwel tagħti dritt u jsir kuntratt u imbgħad unilateralment tnaqqar minn dak id-dritt kif jidrilha hi. Id-dritt mogħti mill-Awtorita' ġie konsiderat bhala vested right, mill-mument li fih saret l-accettazzjoni mill-appellanti u l-awtorita ma kellha 1-ebda dritt b'deciżjoni mehudha wehidha probabbilment fuq instigazzjoni ta' xi hadd tirrevoka dak id-drittjew parti minnu;*

4. *ILLI allura skont l-appellanti l-Awtorita imxjet b'mod amministrattivament skorrett u illegali meta ghamlet dan u kif ukoll meta ma saritx referenza ghad-deciżjoni tal-istess Awtorita' tat-22 ta' Frar 2024 u li ghalhekk d-deciżjoni tal-21 ta' Novembru 2024 skont l-appellanti hija wahda amministrattivament u legalment skorretta u ultra vires;*

5. *ILLI l-appellanti jirrilevaw ukoll li fil-mertu tal-kaz apparti li ma jirrizultax kif saru l-konsiderazzjonijiet tal-bord liema konsiderazzjonijiet tal-Bord l-esponenti kellhom kull dritt li jkunu jafu id-deciżjoni tal-Bord hi skorretta fil-mertu ghaleix il-kamra de quo hija haga wahda mal-bqija tal-fond mikri lil esponenti u l-kerrej tat-kamra ta' isfel Lino Vella l-anqas biss ghandu access ghaliha;*

6. *ILLI ghaldaqstant l-appellanti filwaqt li ddikjaraw ruħhom aggravati bid-deċiżjoni tal-Awtorita ta' l-Artijiet tal-21 ta' Novembru 2024 resqu dan l-appell fejn talbu ddikjarazzjoni illi d-deċiżjoni tal-21 ta' Novembru 2024 kienet waħda amministrattivament u legalment skorretta stante illi hi kontra l-liġi u ultra vires, jordna lil istes Awtorita sabiex tirrevedi 1-istess deċiżjoni in lineja ma dak li jiddeċiedi l-istess tribunal;*

7. *ILLI dan huwa appell li ġie intavolat skont il-liġi u skont ukoll rappreżentazzjonijiet li jkun hemm inklużi f'kull korrispondenza li tiħaħat l-istess Awtorita' lil kull applikant sabiex jekk dak li jkun ihossu aggravat ikun jista' jintavola appell bħal dan odjern;*

8. *ILLI ab initio jiġi dikkjarat li dak li qed jingħad fl-appell odjern, partikolarment ċertu allegazzjonijiet, ma jreġġux għas-sempliċi raġuni li kif ingħad fl-appell stess, hemm saga bejn il-persuni konċernati li ilha għaddejja s-snin. Qed issir riferenza in partikolari għall-proċeduri ġudizzjarji fir-Rikors Ġuramentat numru :43/2012JVC u Rikors Ġuramentat numru: 126/21BS li huma bejn il-partijiet konċernati ad esklużjoni tal-Awtortia' appellata. U allura sa ċertu punt dawn huma res inter alios acta li fihom l-Awtorita' ma tidholx u ma għandhiex għalfejn tidħol sakemm l-eżitu ta' dawn il-proċeduri ma jaffettwax direttament lilha jew l-interessi tagħha – kif effettivament u eventwalment ġara;*

9. *ILLI allura mhux minnu li l-Awtorita' rriveđiet il-posizzjoni tagħha kiesaħ u bierd – imma kien process li sar, u li kellu jsir skont il-liġi, għaliex irriżultaw ċirkostanzi ġodda u differenti minn sentenzi pronunzjati mill-Qorti. Sentenzi li l-appellanti kienu ben konsapevoli tagħhom għaliex appuntu kienu parti fihom u nstigati minnhom stress;*

10. *ILLI meta sar ir-rikonoxximent – skont il-fatti magħrufa dak iż-żmien – fl-istess ittra ta' rikonoxximent l-Awtorita' TAVŻA li;*

    "L-Awtorità tal-Artijiet tirriserva d-dritt illi tirtira dan ir-rikonoxximent u tinfurmak bid-deċiżjoni tagħha, kemm-il darba jirriżulta, iżda mhux biss:

    1. sottomissjoni ta' informazzjoni/dikjarazzjoni falza jew inkorretta;

    2. drittijiet ta' terzi fuq l-istess proprjetà,

    3. każ ta' frodi, u/jew

    4. ikun hemm raġuni, illi toħroġ minn informazzjoni li ma kienetx evidenti sad-data ta' din l-ittra, li tista' twassal l-Awtorità għal-konklużjoni illi dan ir-rikonoxximent ma seta' qatt isir legalment."

11. *ILLI dan l-avviż kien ukoll kontenut fl-ittra li l-istess appellati rċevew fit-22 ta' Frar 2024 meta kien sar ir-rikonoxximent inizjalament;*

12. *ILLI allura sa mill-bidu nett, meta appuntu l-applikanti għal rikonoxximent jiġu nfurmati li ġew rikonoxxuti, jiġu avżati li ċ-ċirkostanzi jistgħu jinbiddlu. Dan fis-sens li r-rikonoxximent jista' jiġi rtirat (jew amendat skont il-każ) jekk jissusistu inter alia drittijiet ta' terzi fuq l-istess proprjeta' (punt 3);*

13. *ILLI din ir-riserva li ssir hija intiża proprju biex dak li jkun ikun avżat – u fil-każ odjern l-appellanti kienu jafu li hemm proċeduri ġudizzjarji pendenti li skont l-eżitu tagħhom setgħu jagħtu lok għall-tibdil jew saħansitra revoka tar-rikonoxximent li jkun sar;*

14. *ILLI effettivament fil-każ odjern u a bażi tas-sentenzi mogħtija l-Awtorita' rrikorriet għal dan il-mezz li tagħti hi stess u li tinforma lil kull applikant meta anke meta jsir ir-rikonoxximent u allura ma jistax jitqajjem l-argument ta' vested right għaliex dan huwa dejjem riservat;*

15. *ILLI allura mhux minnu li l-Awtorita' agixxiet ultra vires – għaliex dan id-dritt jiġi riservat sa mill-bidu nett u li l-awtorita' f'dan il-każ ipprevaliet ruħha minnu skont l-liġi = għaliex wara kollox l-Awtorita' tagixxu fil-kuntest tal-Kap 563 u 573 u l-liġijiet sussidjarji tagħhom li jippermettulha, anzi jobbligawha li tagixxi skont il-Liġi;*

16. *ILLI kwantu għall-proċess intern li sar mill-Awtorita' li wassal għad-deċizzjoni meħuda u kkomunikata lill-appellanti, dan kien eżerċizzju metikoluż u qed jiġu annessi l-case officer report bħala dok A kif ukoll id-deċizzjoni tal-Bord annessa bħala dok B;*

17. *ILLI minn dawn id-dokumenti jirriżulta li l-eżerċizzju kollu kien xprunat mid-deċizzjonijiet mogħtija mill-Qorti tal-Prim istanza kif ukoll dawk tal-Qorti ta' l-Appell. Id-decide tal-qrati hija ċara u allura l-Awtorita' trid tikkonforma ruħha magħha u mhux tmur kontra tagħha. U għalhekk ġiet riveduta l-posizzjoni tal-Awtorita' biex appuntu tirrifletti d-decide tal-qorti li l-Awtorita' għandha kull dover li tosserva u tobdi.*

18. *ILLI r-raġunijiet mogħtija fl-istess ittra tal-Awtorita' huma ċarissimi u ċioe: Illi tenut kont id-diskrepanza li teżisti bejn iż-żewġ sentenzi, il-Bord tal-Gvernaturi evalwa iż-żewġ sentenzi u kif ukoll il-fatti tal-każ in kwistjoni. Fid-deċiżjoni tal-Bord, ġie sottomess illi fid-dawl tal-prinċipju legali fis-sens illi meta proprjeta' tiġi mgħoddija lil xi ħadd, dan ikun jinkludi l-airspace sovrastanti l-istess proprjeta', sakemm ma jkunx hemm esklużjoni espressa tal-airspace, il-Bord iċċara illi l-airspace tal-fond bl-isem Po Passenger Veranda, Mgarr, Ghajnsielem-Gozo, Malta (Z60583) hija nkluża fil-kirja tal-kamra li kienet saret a favur ta' Lino Vella;*

19. *ILLI jiżdied jingħad li kuntrarju għal dak allegat mill-appellanti r-raġunijiet ġew debitament mogħtija – u li l-istess appellanti kienu ben*

konsapevoli tagħhom anki minn qabel ma rċevew l-ittra tal-21 ta' Novembru 2024 u dan il-għaliex is-sentenzi ingħataw qabel dik id-data;

20. *ILLI kif diga' ingħad f'diversi okkazzjonijiet tal-Awtorita' esponenti għandha l-obbligu li tamministra l-art pubblika bl-aħjar mod u li l-istess Awtorità intimata għandha l-obbligu li tieħu ħsieb il-proprjetà' pubblika bħala bonus pater familias. Dan l-obbligu huwa wkoll naxxenti mill-liġi proprju f'Artiklu 7 tal-Kap. 573 tal-Liġijiet ta' Malta u Artiklu 3 tal-Liġijiet ta' Malta;*

21. *ILLI għaldaqstant it-talbiet ta' l-appellanti għandhom jiġu miċħuda bl-ispejjeż kontra tagħhom.*

Ra d-dokumenti eżebiti;

Sema' x-xhieda prodotta;

Ra n-noti ta' sottomissjonijiet ippreżentati;

Ra l-atti kollha tal-kawża;

Ikkunsidra:

Dan it-Tribunal iqis li għandu fl-ewwel lok jagħmel kronoloġija brevi dwar dawk l-avvenimenti li huma relevanti għal dan il-każ odjern:

a. Intbagħtet ittra datata 5 ta' Ottubru 2021 lill-Awtorità tal-Artijiet għan-nom ta' John Vella, Virgilio sive Gino Vella, Loreto sive Laurie Vella, Anthony Vella, Mariosa Portelli, Martina Zerafa u Pawla Mercieca fejn intalab li fit-tenements Z60761, Z60120 u Z60810 dawn il-persuni kollha jiġu rikonoxxuti bħala inkwilini flok il-mejjet John Vella. F'dik l-ittra kienet saret referenza għas-sentenzi mogħtija fl-24 ta' Ġunju 2011 u dik mogħtija fis-17 ta' Marzu 2021 deċiża mill-Qorti tal-Appell bin-numru 43/2012;

b. Minn eżami tal-files eżebiti jirriżulta li fit-22 ta' Frar 2024, l-Awtorità tal-Artijiet bagħtet ittra lil John Vella, Virgilio sive Gino Vella, Loreto sive Laurie Vella, Anthony Vella, Mariosa Portelli, Martina Zerafa u Paula Mercieca fejn infurmahom li huma qed jiġu lkoll rikonoxxuti bħala l-inkwilini tal-fond 'parti mir-restaurant bl-isem 'Seaview Restaurant' Triq ix-Xatt Għajnsielem, Għawdex inkluż il-kamra li hija mibnija fuq il-kamra tal-Lager inkluż ukoll l-arja tiegħu — E292340';

c. Fid-19 ta' Ġunju 2024 l-Awtorità tal-Artijiet irċeviet ittra uffiċjali minn Lino Vella u Jason Vella (eżebita a fol 105 et seq) li fiha saret referenza għal sentenza mogħtija mill-Qorti tal-Appell fit-30 ta' Marzu 2022 fl-atti tal-mandat ta' żgumbrament numru 126/2021 fl-ismijiet John Vella et vs Lino Vella et;

d. Fit-22 ta' Ottubru 2024 sar case officer report li fih intqal is-segwenti bħala rakkomandazzjonijiet:

'*The issue we face is that the two judgements, 43/2012 JVC and 126/21/2BS appear to be conflicting. Judgement 43/2012 only refers to the room leased to Mr Lino Vella, while judgement 126/21/2 also includes the airspace above the same room.*
On the one hand, John Vella is requesting that the Authority proceed with evicting Lino Vella from the upstairs room. On the other hand, Lino Vella is questioning the basis on which the Authority recognised John Vella and others as having rights to the entire airspace, especially when judgement 126/21/2 clearly specifies that the room and airspace are excluded.
In light of these conflicting judgements, I am referring this case to the Board for a recommendation on how to proceed:

i. Either we file for termination of Mr Lino Vella's lease of the room above Il-Kamra tal-Lager (L/00734/1966);

ii. Amend the recognition to acknowledge Mr Lino Vella's rights to the airspace of tenement L/00734/1966 in accordance with judgement 126/21/2;

iii. Any other option the Board/CEO deems appropriate.'

e. Minn eżami tal-atti proċesswali, jirriżulta li f'board meeting bir-referenza numru 241112, dwar l-applikazzjoni ta' John Vella et L/0734/1966 — PO Passenger Veranda, Mġarr, Għajnsielem, Għawdex, ġie deċiż illi: '*Fid-dawl tal-prinċipju legali fis-sens illi meta proprjeta' tigi mghoddija lil xi hadd, dan ikun jinkludi l-airspace sovrastanti l-istess proprjeta' sakemm ma jkunx hemm eskluzjoni espresso tal-airspace, il-Bord qed jiccara illi l-airspace tal-fond L/0734/1966 hija nkluża fil-kirja tal-kamra li kienet saret a favur ta' Lino Vella.*'

f. Per konsegwenza, fil-21 ta' Novembru 2024, l-inkwilini kollha, u ċjoè John Vella, Virgilio sive Gino Vella, Loreto sive Laurie Vella, Anthony Vella, Mariosa Portelli, Martina Zerafa u Paula Mercieca rcivew ittra oħra b'mod individwali fejn ġew infurmati illi:

'*Illi tenut kont id-diskrepanza li teżisti bejn iż-żewġ sentenzi, il-Bord tal-Gvernaturi evalwa iż-żewġ sentenzi u kif ukoll il-fatti in kwistjoni. Fid-deċiżjoni tal-Bord, gie sottomess illi fid-dawl tal-prinċipju legali fis-sens illi meta proprjeta' tigi mghoddija lil xi hadd, dan ikun jinkludi l-airspace sovrastanti l-istess proprjeta, sakemm ma jkunx hemm eskluzjoni espressa tal-airspace, il-Bord iccara illi l-airspace tal-fond bl-isem Po Passenger Veranda, Mgarr, GHajnsielem Gozo, Malta (Z60583) hija nkluża fil-kirja tal-kamra li kienet saret a favur ta' Lino Vella.*'

g. Fl-4 ta' Diċembru 2024, gie pprezentat dan ir-rikors odjern.

Fin-nota ta' sottomissjonijiet tagħhom, ir-rikorrenti jisħqu li l-Awtorità tal-Artijiet ma tistax tneħħilhom kiesaħ u biered id-dritt li kienet diġà tathom mingħajr ma tiddiskuti magħhom, u mingħajr ma tieħu l-verżjoni tagħhom, u dan bi ksur tal-prinċipju audi alteram partem li kull awtorità amministrattiva hija marbuta bih. Skont ir-rikorrenti, l-Awtorità tal-Artijiet ma kellha qatt dritt li unilateralment tneħħi dritt li kienet tat lir-rikorrenti mingħajr ma tinfurmah x'kien qed jiġri minn wara dahru, u mingħajr ma tagħtih l-opportunità li jagħmel is-sottomissjonijiet tiegħu u tisimgħu. Ir-rikrorenti sostnew ukoll li huma kellhom id-dritt li jingħataw id-dettalji kollha ghalfejn l-awtorità intimata waslet għad-deċiżjoni li waslet, u mhux sempliċiment raġuni xotta li żgur ma tissodisfax id-dettami tal-liġi.

It-Tribunal huwa ben konxju mill-ġurisprudenza kkwotata mill-abbli legali tar-rikorrenti fin-nota ta' sottomissjonijiet tiegħu. Huwa infatti ser jgħaddi sabiex jiċċita mis-sentenza li wkoll saret referenza ghaliha mir-rikorrenti fin-nota ta' sottomissjonijiet taghhom, u ċjoè dik mogħtija minn dan it-Tribunal hekk kif diversament ippresedut fl-1 ta' Novembru 2022 Rikors Numru 34/2022 fl-ismijiet Kunsill Lokali tal-Gżira Vs L-Awtorità tal-Artijiet fejn intqal is-segwenti:

"*Permezz tal-ewwel u t-tieni aggravji l-Kunsill isostni illi l-Awtorita` ma mxietx mal-prinċipju tal-audi alteram partem biex waslet għad-deċiżjoni tagħha, u wkoll li ma tatx raġunijiet għad-deċiżjonijiet tagħha, u kwindi ma segwietx il-prinċipji tal-ġustizzja naturali.*

Illi l-materja dwar jekk il-prinċipji tal-ġustizzja naturali japplikawx fl-isfera tal-atti amministrattivi ġiet diskussa f'numru ta' sentenzi kemm tal-Qrati tagħna u kif ukoll dawk Ingliżi, u kif ukoll ġiet dibattuta minn diversi awturi legali, fosthom lokali.

Fl-istudju li sar minn Dr. Tonio Borg, intitolat Judial Review of Administrative Action in Malta insibu hekk:

Another application of the rules to entities which were not administrative tribunals occurred in the landmark judgment of Mary Grech v. Minister responsible for the Development of Infrastructure. A permit had been issued by the Planning Areas Permits Board (PAPB) to plaintiff under the condition that such permit could be withdrawn at any time. Subsequently such permit was withdrawn, without any notice or opportunity given to plaintiff to make representations. Even though a right of appeal from such decision of withdrawal existed to the minister, the court ruled that the loose fashion in which proceedings took place in the absence of plaintiff and without any reasons registered in the records, made such appeal futile, and therefore applying the principles of natural justice, quashed such withdrawal. It then made the substantive ruling that:

in matters where the rights of the individual were materially and substantially affected, as in cases where a building permit was withdrawn, it was a principle of

justice that the authority withdrawing the permit had first of all to hear the party concerned before the effecting of such withdrawal (emphasis added).

Consequently, the decision of withdrawal was quashed, but the court did not take any decision on the permit itself since the matter was referred to the board for a final decision after observing the rules of natural justice.

What is interesting is that for the first time the Court of Appeal announced the principle that the rules of natural justice apply each time a public officer or authority takes decisions in matters where the rights of the individual are materially and substantially affected. This pronouncement is important for in most cases dealing with natural justice, the issue had been that of reviewing decisions of administrative tribunals which patently had a judicial function. Here the principles were extended to cover any decision by a public officer or authority which deals with the rights of individuals in a material respect.

It-Tribunal jagħmel ukoll referenza għad-deċiżjoni fl-ismijiet Midi plc vs Awtorità Dwar it-Trasport ta' Malta et deċiża mill-Prim'Awla tal-Qorti Ċivili per Onor. Imħallef Toni Abela fis-16 ta' Novembru, 2017, fejn intqal hekk:

24. Għandu jingħad li, l-prinċipji tal-Ġustizzja Naturali ma humiex iddettati, esklużi jew modifikati minn id il-bniedem. Dawn huma minquxa fil-kuxjenza ta' dak li għandu mis-sewwa u ġust. Ebda leġislazzjoni ma tista' tidderoga mill-ħtieġa tagħhom fejn din il-ħtieġa tirriżulta.

25. Għalhekk, konstatat dan il-punt mhux dejjem jiswa l-argument ikkostruwit fuq massimi bħal "ubi lex voluit dixit" jew "lex specialis derogat lex generalis". L-osservanza u ħarsien tal-prinċipji tal-Ġustizzja Naturali ma humiex degorabbli jew u l-anqas ma jistgħu jkunu esklużi fejn oġġettivament għandhom jitħarsu. Stabbiliti dawn il-punti, il-Qorti ser tikkonsidra jekk f'dan il-każ , il-prinċipji msemmija ġewx osservati.

…

F'dan l-istadju, huwa valevoli li ssir referenza għal dak li josserva Evans De Smith`s f'Judicial Review of Administrative Action (4th Edition pg. 196):-

"Natural Justice generally requires that the persons liable to be directly affected by the proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed, so that they might be in a position : (a) to make representations on their own behalf ; or (b) to appear at a hearing or inquiry (if one is to be held) ; and (c) effectively to prepare their own case and to answer the case (if any) they have to meet … In a large majority of the reported cases where breach of the audi alteram partem rule has been alleged, no notice whatsoever of the action taken or proposed to be taken was given to the person claiming to be aggrieved, and failure to give him proper notice was tantamount to denial of an opportunity to be heard on that matter." (ara ukoll Sentenza tal-Qorti tal-Appell fl-ismijiet Paul Borg vs l-Awtorita` dwar it-Trasport Pubbliku tat-28 ta' Settembru 2012 u Rik. Nru. 1101/07TA Sentenza tal-Prim Awla Qorti Ċivili tal-Kompjant Imħallef Ray

Pace tas27 ta` Jannar 2011 fl-ismijiet Falzon vs Ministru għall-Affarijiet Rurali u l-Ambjent et)

39. Minn dan jemerġi, li skont De Smith, fiċ-ċirkostanzi fejn tassew ikun meħtieġ, l-avviż għandu jingħata lill-persuna mhux sempliċiment biex ikun mgħarraf, iżda biex ikollu l-opportunita` taħt forma jew oħra, jgħid tiegħu qabel u mhux wara li ssir il-ftira.

…

62. Il-fatt li liġi ma tipprovdix għal dan espressament, ma jeżonorax lill-Awtorita` milli tagħti l-minimu ta' smiegħ lill-persuna, meta ċ-ċirkostanzi hekk ikunu jiddettaw. Meta d-dritt ta' smiegħ ma jissemmiex espressament mil-liġi, l-Awtorita` ma tistax tiddeċiedi b'dinżinvoltura daqs li kieku l-prinċipji fuq imsemmija ma jesistux. Anzi, fejn il-liġi tibqa' siekta f'dan irrigward, bħal ma jagħmel artiklu 4(1) tar-Regolamenti, l-Awtorita` trid timxi b'aktar kawtela.

Dan għaliex il-piż tad-diskrezzjoni huwa itqal u aktar onoruż minn meta ssmiegħ ta' liema xorta jkun, tiddettah espressament il-liġi.

Dan it-Tribunal jagħmel referenza wkoll għas-sentenza fl-ismijiet CCD Limited vs Awtorita` Dwar it-Trasport ta` Malta u b`digriet tal-1 ta` Novembru, 2010, l-Awtorita` għat-Trasport f`Malta assumiet l-atti minflok l-Awtorita` Dwar it-Trasport ta` Malta deċiża fis-17 ta' Ġunju, 2013, mill-Prim'Awla tal-Qorti Ċivili per Onor. Imħallef Joseph Zammit McKeon fejn intqal hekk:

Huwa risaput li l-prinċipji tal-ġustizzja naturali huma dawk il-prinċipji minimi li għandhom ikunu osservati waqt proceduri anke ta` entita' amministrattiva illi għandha l-kompitu li tiddeċiedi dwar fatti li fuqhom imbagħad Qrati tal-Ġustizzja għandha s-setgħa li tieħu deċiżjonijiet li jaffettwaw id-drittijiet tal-persuna. Il-prinċipji tal-ġustizzja naturali huma audi alteram partem u nemo judex in causa propria. Fil-kawża "Board of Education v. Rice" (1911 – AC 179), Lord Loreburn afferma li l-applikazzjoni tal-prinċipji tal-ġustizzja naturali 'is a duty lying upon everyone who decides anything'.

Il-prinċipju audi alteram partem jirrikjedi li qabel ma tittieħed deċiżjoni amministrativa fil-konfront ta` persuna, din ta` l-aħħar mhux biss għandha tkun mgħarrfa, iżda għandha tingħata l-opportunita` li tgħid tagħha. Fuq kollox jingħata widen tassew għal dak li l-persuna konċernata għandha xi tgħid, u fl-istess waqt tingħata l-opportunita` li tiddefendi l-każ kif inhu xieraq.

Fis-sentenza Ingliża "Ridge v. Baldwin" (1964 – AC 40) 'the right to a fair hearing' kien iddikjarat bħala 'a rule of universal application'. F`dik is-sentenza, Lord Reid qal hekk –

before attempting to reach any decision they were bound to inform him of the grounds on which they proposed to act and give him a fair opportunity of being heard in his own defence'. U jkompli hekk – Accordingly, in my judgment, a local authority is under a duty, when dealing with entertainment licences, first, to inform the applicant

of the substance of any objection or of any representation in the nature of any objection … and secondly, to give him an opportunity to make representations in reply'.

Fis-sentenza "Borg vs l-Awtorita' dwar it-Trasport Pubbliku" deċiża fil-21 ta` Mejju, 2009, minn din il-Qorti diversament presjeduta (PA/JRM) [u konfermata mill-Qorti tal-Appell fit-28 ta` Settembru 2012] inghad hekk dwar il-prinċipji tal-ġustizzja naturali –

"Bil-kemm għandu jingħad li l-ħtieġa li t-tribunal jew awtoritajiet amministrattivi jħarsu b'mod skrupoluż it-thaddim ta' dawn il-prinċipji hija waħda li m'għandux hemm disposizzjoni espressa tal-liġi sabiex wieħed japplikaha. It-tħaris ta' dawn il-prinċipji fit-tmexxija tal-amministrazzjoni pubblika għandu jkun il-kejl minimu li jiggarantixxi t-trasparenza u s-siwi tal-għmil amministrattiv. Għall-kuntrarju in-nuqqas ta' tħaris ta' dawn il-prinċipji jwassal għall-irritwalita' tal-għmejjel hekk imwettqa u għat-thassir tagħhom."

Fil-paġ 196 ta` Evans De Smith's Judicial Review of Administrative Action (4th Edition) inghad hekk –

"Natural Justice generally requires that the persons liable to be directly affected by the proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed, so that they might be in a position : (a) to make representations on their own behalf ; or (b) to appear at a hearing or inquiry (if one is to be held) ; and (c) effectively to prepare their own case and to answer the case (if any) they have to meet … In a large majority of the reported cases where breach of the audi alteram partem rule has been alleged, no notice whatsoever of the action taken or proposed to be taken was given to the person claiming to be aggrieved, and failure to give him proper notice was tantamount to denial of an opportunity to be heard on that matter".

Dan il-bran kien ċitat fis-sentenza "Borg vs l-Awtorita` dwar it-Trasport Pubbliku" [op. cit.] u fis-sentenza ta` din il-Qorti [PA/RCP] tas-27 ta` Jannar 2011 fil-kawża "Falzon vs Ministru għall-Affarijiet Rurali u l'Ambjent et".

Fil-ktieb "Administrative Law" (H.W.R. Wade & C.F. Forsyth – 10th Edition – Pg 428) kien osservat illi a proper hearing must always include a "fair opportunity" to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view.

Fis-sentenza "A & J Ta' Miema Ltd vs Kummissarju tat-Taxxa fuq il-Valur Miżjud" deċiża minn din il-Qorti (Sede Kostituzzjonali) (PAK/TM) fl-14 ta' Ottubru, 2004 [u konfermata millQorti Kostituzzjonali] kien ippreċiżat li "ovvjament, il-prinċipju audi alteram partem, ma jfissirx li l-parti milquta trid bilfors tinstema', iżda li tingħata l-opportunita' tressaq il-każ tagħha."

Fil-każ "L'Alliance des Professeurs Catholiques de Montreal vs Labour Relations Board of Quebec" (1953) riportat f'The Application of the European Convention Human Rights – J.E.S. Fawcett – Pġa 148, inghad illi –

"The principle that no one should be condemned or deprived of his rights without being heard, and above all without having received notice that his rights would be at stake, is of universal equity. Nothing less would be necessary than an express declaration of the legislature to put aside this requirement, which applies to all courts and to all bodies called upon to render a decision that might have the effect of annulling a right possessed by an individual."

Fil-Garner's Administrative Law (8th Edition – B Jones and K Thompson - Butterworths –1996) jinghad hekk –

"An issue upon which the courts have failed always to express a consistent view is whether a successful audi alteram partem challenge requires that the court be satisfied that, had the applicant been given the full procedural protection to which he was entitled, the decision taken by the public authority might have been different in substance. Or, alternatively, is there such a thing as a "technical" breach of natural justice, in respect of which the court will grant a remedy in order to uphold procedural rights even though quite satisfied that the decision would have been the same even had the applicant been afforded a fair hearing. The difference between the two possible approaches is a fairly fundamental one, reflecting different ideas as to the aims of judicial review. Is the purpose of judicial review simply to "police" decisions which may be wrong or bad in substance because of procedural irregularities ; or is part of its purpose to prescribe standards of decision-making which it will enforce regardless of whether the end result, when the decision is properly taken, is likely to be different in substance.

In principle there may be some attraction in the idea that the courts should intervene to protect procedural rights without seeking to pre-judge whether the breach of natural justice was "technical" or "substantial". There are, indeed, statements in some of the cases which lend support to this idea. However, the preponderance of authority seems now to point to the other way. This is perhaps inevitable. In particular, the discretionary nature of the various judicial review remedies, and the natural unwillingness of courts to seem to be acting in vain, combine to deprive of such a remedy the litigant who is perceived to have no chance of eventual substantive success. To an extent the issue becomes purely linguistic. Should one say that a technical breach of natural justice has occurred but that in the exercise of discretion no remedy will be granted ? Or should one say that because no substantial prejudice appears to have occurred there has been no breach of natural justice ?"

Kien sostna Lord Bridge fil-kawża "Lloyd vs McMahon" tal-1987 ċitata f'paġna 35 talJudicial Review Handbook (1994) –

"the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates"

…

Illi permezz tat-tieni aggravju l-Kunsill jilmenta illi d-deċiżjoni appellata mhix motivata u dan imur kontra l-prinċipju ta' ġustizzja naturali tad-duty to give reasons. Min-naħa tagħha l-Awtorita' intimata saħqet illi d-deċiżjoni appellate kienet motivata u dan stante li ġiet ċitata klawsola 2 tal-kuntratt ta' kiri bejn l-partijiet.

Illi għal darb'oħra t-Tribunal isib li l-Kunsill għandu raġun f'dan l-aggravju. Illi filwaqt li kif ingħad hawn fuq, klawsola 2 tal-kuntratt bejn il-partijiet jagħmilha ċara illi l-Gvern jista' jxolji l-kirja jew parti mill-kirja jekk ikollu bżonn l-art in kwistjoni, dan ma jfissirx illi m'għandu ebda obbligu jagħti raġuni xierqa għal tali terminazzjoni.

It-Tribunal jagħmel referenza għal dak espost mill-awturi Wade & Forsyth filktieb Administrative Law, u li fil-fehma tat-Tribunal jgħodd ukoll għad-Dritt Amministrattiv nostrali, u ċioè: the principles of natural justice do not, as yet, include any general rule that reasons should be given for decisions.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.

…

Notwithstanding that there is no general rule requiring the giving of reasons, 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" and consequently has held that where, in the context of the case, it is unfair not to give reasons, they must be given.

…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"; 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.

…

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.

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 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 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 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 nonnational and the grant of he 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 dan it-Tribunal jagħmel referenza wkoll għas-sentenza Rita Vella vs Tabib Prinċipali tal-Gvern et deċiża mill-Prim'Awla tal-Qorti Ċivili per Onor. Imħallef Joseph R. Micallef u kif ikkonfermata mill-Qorti ta' l-Appell fis-26 ta' Jannar 2022:

Illi llum il-ġurnata huwa stabbilit li biex jitqies li awtorita' tkun qdiet il-funzjoni tagħha tajjeb, huwa mistenni illi dik l-awtorita' tgħid lill-persuna mhux biss x'kienu r-raġunijiet li wasslu għad-deċiżjoni li l-istess awtorita' tkun ħadet fil-

konfront tagħha, iżda wkoll li l-persuna tingħata l-opportunita' illi ssemma' leħenha, u f'każ fejn il-persuna ma tkunx taf x'inhuma rraġunijiet li wasslu lill-awtorita' toħroġ l-ordni fil-konfront tagħha, l-awtorita' għandha tagħti lil dik il-persuna l-opportunita' xierqa li tagħmel l-osservazzjonijiet tagħha;

Illi wara li t-Tribunal ħa dan kollu in konsiderazzjoni huwa tal-fehma illi lAwtorita` ma tatx raġunijiet suffiċjenti għad-deċiżjoni meħuda minnha. Illi kif ġie sottomessfit-trattazzjoni orali, u anke ġie ppruvat bil-minuti esebiti, il-Kunsill kien ġie rinfaċċjat b'rikjesta oħra għat-teħid ta' biċċa mill-ġnien għall-proġett ieħor apparti dak tal-pompa tal-petrol. Kwindi l-Kunsill kellu dritt ikun jaf irraġuni wara t-terminazzjoni ta' parti mill-kirja. Kwindi t-tieni aggravju qiegħed jiġi milqugħ."

Din is-sentenza ġiet ikkonfermata mill-Qorti tal-Appell (Sede Inferjuri) fis-26 ta' April, 2023 fejn intqal:

"37. L-Awtorità appellanta tikkontendi li t-Tribunal żbalja meta ddeċieda li hija kellha taderixxi mal-obbligu li tagħti raġuni għad-deċiżjonijiet tagħha. Qalet li hija m'għandha għalfejn tagħti l-ebda raġuni għad-deċiżjoni tagħha, għaliex hija qegħda tinvoka klawsola fi ftehim kuntrattwali li tippermettilha titlob it-terminazzjoni tal-kirja tal-art jew ta' parti minnha, kif fil-fatt għamlet. Għal darb'oħra l-appellanta saħqet li dak li ddeċieda t-Tribunal jammonta għal varjazzjoni tal-kundizzjonijiet tal-ftehim maqbul bejn il-partijiet, u għalhekksaħqet li t-Tribunal kien żbaljat anki f'din il-parti tad-deċiżjoni tiegħu.

38. Il-Qorti diġà spjegat li hemm prinċipji oġħla li kull awtorità pubblika għandha taħdem biex tilħaqhom, u dan sabiex jiġu mħarsa l-korrettezza u t-trasparenza fl-amministrazzjoni pubblika. Ewlenin fosthom hemm il-ħarsien tal-prinċipji ta' ġustizzja naturali u l-obbligu li jingħataw raġunijiet għad-deċiżjonijiet amministrattivi li jittieħdu. Il-Qorti diġà spjegat aktar 'il fuq li dan huwa l-minimu li awtorità pubblika għandha tassoġġetta ruħha għalih, u bil-ħarsien ta' dawn il-prinċipji l-awtorità appellanta mhuwiex jiġi mpost fuqha xi oneru akbar minn dak li hija responsabbli għalih meta ġiet fdata bl-amministrazzjoni tal-art pubblika f'pajjiżna. Kuntrarjament għal dak li qegħda tgħid bl-aggravji mressqa minnha, l-appellanta għandha tassigura li topera f'qafas ta' trasparenza massima, billi tassigura li meta jittieħdu deċiżjonijiet amministrattivi ta' ċerta portata, tagħti r-raġunijiet għad-deċiżjonijiet tagħha.

L-Awtorità appellanta m'għandha għalfejn tkun koperta bl-ebda klawsola li tesiġi li hija tkun trasparenti billi tipprovdi r-raġunijiet għad-deċiżjonijiet tagħha, għaliex hija mistennija li tagħmel dan f'kull ċirkostanza. In vista ta' dawn il-konsiderazzjonijiet, tqis li anki dan l-aggravju mhuwiex misthoqq, u tiċħdu.

Ir-raba' aggravju: l-appellanta ma kellha l-ebda obbligu tagħti raġuni għad-deċiżjoni tagħha

39. Permezz ta' dan ir-raba' aggravju tagħha, l-Awtorità appellanta qalet li tTribunal kien żbaljat meta kkonkluda li kien hemm 'deċiżjoni', u kompla

amplifika fuq dan l-iżball meta ddeċieda li hija kellha l-obbligu li tagħti raġunijiet għad-deċiżjoni tagħha, u sahqet li fil-każ odjern hija ma ħadet l-ebda deċiżjoni.

40. Il-Qorti diġà għamlet il-konsiderazzjonijiet tagħha kemm fir-rigward tad-deċiżjoni fl-att amministrattiv impunjat, kif ukoll dwar l-obbligi li għandha kull awtorità pubblika fil-konfront tal-pubbliku in ġenerali. Għaldaqstant ma thossx il-ħtieġa li tamplifika aktar dwar dan, u għalhekk tqis li anki dan l-aggravju mhuwiex ġustifikat, u tiċħdu."

Issir referenza fir-rigward għall-kunsiderazzjonijiet magħmula mill-Onorabbli Qorti tal-Appell (Sede Superjuri) fil-kawża fl-ismijiet Salvina magħrufa bħala Sylvia Bugeja vs. Albert Debono et (App. Nru. 1185/10MCH deċiż fis-27 ta' Settembru 2019) fejn ġie ddikjarat:

'Għandu jingħad mal-ewwel li, il-ħtiega li kull sentenza tal-Qrati tkun motivata, tirrifletti wieħed mill-prinċipji ewlenin tal-ġustizzja naturali, li jinkludi li meta tingħata deċiżjoni, tirriżulta r-raġuni l-għala tkun ingħatat deċiżjoni u mhux oħra.' L-istess Onorabbli Qorti kompliet telaħora dwar dan billi sostniet: 'Il-ħtiega ta' motivazzjoni xierqa f'sentenza tqieset dejjem bħala element kostituttiv ewlieni biex jiddetermina s-siwi ta' sentenza, għaliex dan mhux biss isejjes il-parti dispożittiva tagħha, imma jfisser lill-partijiet kif u għaliex il-Qorti tkun waslet għal dik id-deċiżjoni'.

Illi l-importanza ta' motivazzjoni xierqa — din id-darba f'kuntest ta' appell minn deċiżjoni mogħtija mit-Tribunal Industrijali — ġiet ikkunsidrata wkoll mill-Onorabbli Qorti tal-Appell (Sede Inferjuri) fl-appell fl-ismijiet Antoinette Farrugia vs. Optical (CCSG) Company Limited et (App. Nru. 16/2018AE deċiż fil-5 ta' Ottubru 2018) fejn b'referenza għal ġurisprudenza relattiva ġie ddikjarat:

'Issa ma jista' qatt ikun dubitat illi, kif pacifikament akkolt, il-motivazzjoni hi ta' essenza tal-ġudizzju in kwantu kull sentenza hi mistennija li tiddefinixxi kif jixraq id-drittijiet u obbligi civili tal-partijiet. L-oġħla Qorti ddeċediet dan il-punt billi rriteniet illi, "it-trasparenza fil-ġudikati li tagħti u ssaħħaħ l-awtorita` tagħhom tista' temergi biss minn motivazzjoni adegwata. Motivazzjoni li kellha tkun tali li fil-minimu kienet tissodisfa fuq kollox il-partijiet in kawża fuq il-korrettezza fattwali u ġuridika tar-raġunijiet li wasslu għad-deċiżjoni" (enfasi miżjuda)'. (Cit. minn Gordon Agius vs Avukat Ġenerali, QK 20 ta' Diċembru 2004)

Il-Qorti tal-Appell (Sede Inferjuri) esprimiet ruħha f'deċiżjoni mogħtija nhar it-12 ta' Jannar, 2004, fil-kawża fl-ismijiet "Max Zerafa vs Kummissjoni għall-Kontroll tal-Iżvilupp" fejn ingħad kif ġej:

"… Il-Bord tal-Appell dwar l-Ippjanar obbligat, bħal kull Qorti, li teżamina l-aggravji tal-appellanti jew is-sottomissjonijiet tal-parti, tindika dwarhom u tagħti d-deċiżjoni tagħha, għaliex fuq kollox dak huwa l-iskop li huwa tenut li deċiżjoni għandha tkun motivata, u dan ukoll sabiex mhux biss il-ġustizzja ssir iżda tidher

li qed issir. Dan huwa l-prinċipju li din il-Qorti dejjem imxiet bih u hekk hija obbligata li tagħmel, u bl-istess prinċipji huwa marbut l-istess Bord."

Fid-dawl ta' din il-ġurisprudenza, dan it-Tribunal fl-ewwel lok ma jqisx li l-Awtorità tal-Artijiet ma tatx raġunijiet għad-deċizjoni meħuda minnha. Fl-ittra tal-21 ta' Novembru 2024, kien hemm indikazzjoni ċara tar-raġuni għalfejn ittieħdet tali deċiżjoni. Minn dik l-ittra, ir-rikorrenti setgħu jifhmu għalfejn ittieħdet tali deċiżjoni, u għalhekk kienu f'pożizzjoni li jekk iħossuhom aggravati, jinterponu appell. Dan it-Tribunal jagħmilha ċara li għalkemm l-Awtorità intimata mhix korp ġudizzjarju jew kważi-ġudizzjarju, iżda korp regolatur fejn tidħol art pubblika, u għalkemm huwa awspikabbli li d-deċiżjonijiet ta' awtorità pubblika jkunu ċari, dan ma jfissirx illi jridu jkunu elaborati daqslikieku qiegħda tiġi pronunzjata xi sentenza ta' xi tribunal jew qorti. Madanakollu, għandhom jikkontjenu raġunijiet dwar għalfejn ittieħdet l-istess deċiżjoni, u mhux sempliċiment tiġi mniżżla d-deċiżjoni biss. Dana sabiex l-istess persuni involuti jitpoġġew f'pożizzjoni li jkunu jistgħu jippreżentaw appell li jindirizza r-raġunijiet li abbażi tagħhom tkun ittieħdet id-deċiżjoni, u mhux sempliċiment jippreżentaw appell fuq konġetturi dwar x'seta' kienu r-raġunijiet għalfejn ittieħdet tali deċiżjoni. Id-deċiżjoni f'dan il-każ, kienet tikkontejni r-raġuni wara tali deċiżjoni, u għalhekk ir-rikorrenti ma għandhomx raġun fl-allegazzjoni tagħhom li d-deċiżjoni mogħtija ma kinitx motivata u spjegata.

Dwar l-aggravvju l-ieħor, u ċjoè li r-rikorrenti kellhom jingħataw id-dritt li jiġu infurmati x'kien qed jigri u d-dritt li jagħmlu s-sottomissjonijiet tagħhom dwar dak li kien qed jiġri, dan it-Tribunal jaqbel *in toto* mal-ġurisprudenza fuq kwotata. Huwa minnu li ċ-ċirkostanzi ta' dan il-każ, huma kemxejn differenti u partikolari. Dan qed jingħadd peress li r-rikorrenti odjerni kienu ben konsapevoli b'dak li kienet qalet il-Qorti tal-Appell fis-sentenza tagħha tat-30 ta' Marzu 2022 fir-rikors numru 126/21/2BS. L-Awtorità tal-Artijiet ma kinitx parteċipi f'dik il-proċedura, u ħadd mir-rikorrenti odjerni, nonostante din is-sentenza, ma ħass il-bżonn li jinforma lill-istess Awtorità tal-Artijiet b'tali sentenza u l-kontenut tagħha. Dana fi stadju meta l-istess Awtorità kienet għadha ma ħaditx deċiżjoni dwar it-talba tar-rikorrenti biex jigu rikonoxxuti minflok missierhom, b'mod partikolari tramite talba li saret fl-ittra tagħhom tal-5 ta' Ottubru 2021.

L-Awtorità ġiet biss magħmula a konoxxenza ta' din is-sentenza tat-30 ta' Marzu 2022 permezz tal-ittra uffiċjali li bagħat Lino Vella u Jason Vella fid-19 ta' Ġunju 2024. Jirriżulta anke mix-xhieda mismugħa fil-kors ta' din il-kawza, li d-deċiżjoni li ttieħdet saret wara li l-Awtorità ġiet konsapevoli tas-sentenza tat-30 ta' Marzu 2022, sentenza li jerġa' jiġi ribadit (għal ragunijiet magħrufa minnhom biss), ir-rikorrenti naqsu li jinfurmaw lill-Awtorità intimata dwarha. It-Tribunal iqis li huwa minnu

wkoll li fl-istess deċiżjoni mibgħuta lir-rikorrenti datata 22 ta' Frar 2024 hemm imniżżel li l-Awtorità tal-Artijiet tirriżerva d-dritt li tirtira dan ir-rikonoxximent u tinfurmahom bid-deċiżjoni tagħhom kemm-il darba jirriżulta izda mhux biss: "*1. Sottomissjoni ta' informazzjoni/dikjarazzjoni falza jew inkorretta; 2. Drittijiet ta' terzi fuq l-istess proprjeta', 3. Kaz ta' frodi u/jew 4. Ikun hemm raguni, illi tohrog minn informazzjoni li ma kienetx evidenti sad-data ta' din l-ittra, li tista' twassal l-awtorita' ghal-konkluzzjoni illi dan ir-rikonoxximent ma seta' qatt isir legalment.*" Madanakollu, tali riserva ta' dritt ma tezonerax lill-Awtorita' intimata milli thares il-principju tal-audi alteram partem qabel ma tasal ghal rievalwazzjoni u decizjoni tagħha.

Dan it-Tribunal żamm f'moħħu wkoll il-fatt li mix-xhieda mogħtija jidher li kien hemm uħud mir-rikorrenti li kienu jżommu kuntatt mal-uffiċjal mill-Awtorita' tal-Artijiet li kien inkarigat mill-ipproċessar tat-talba tagħhom li jiġu rikonoxxuti. Iżda nonostante dan il-kuntatt, xorta waħda l-Awtorità intimata baqgħet ma ngħatatx informazzjoni dwar din is-sentenza tat-30 ta' Marzu 2022 mogħtija mill-Qorti tal-Appell.

Dan it-Tribunal jiddeplora l-fatt li l-Awtorità tal-Artijiet ma ġietx infurmata b'dak li kien ġie deċiż mill-Qorti tal-Appell fid-deċiżjonijiet ġudizzjarji li kienu pendent. Madanakollu, għalkemm jirriżulta ċar illi r-rikorrenti kienu ben konxji tas-sentenza tat-30 ta' Marzu 2022, quddiem dan it-Tribunal, il-kwistjoni hija oħra. Il-kwistjoni hija jekk l-Awtorità kellhiex tal-inqas tagħti opportunità lir-rikorrenti odjerni jagħmlu s-sottomissjonijiet tagħhom qabel ma terġa' tittieħed deċiżjoni oħra in segwitu għall-ittra uffiċjali tad-19 ta' Gunju 2024 mibgħuta minn Lino Vella u Jason Vella. Fil-fehma tat-Tribunal dan kellu jsir anke sabiex l-Awtorità tkun f'pożizzjoni aħjar li taqdi d-doveri legali tagħha. Kif qal dan it-Tribunal hekk kif diversament ippresedut f'sentenzi oħra fosthom dik fuq ċitata fl-ismijiet Kunsill Lokal Gzira vs L-Awtorità ta' l-Artijiet, dan ma jfissirx illi r-rikorrenti neċessarjament iridu jingħataw smigħ fiżiku, imma jistgħu isiru anke sottomissjonijiet bil-miktub. Imma tal-inqas, tenut kont, tal-materja in eżami, ir-rikorrenti kellhom dritt isemmu leħinhom mal-Awtorità, iktar u iktar meta l-istess Case Officer Dr Kimberley Galea fir-rakkomandazzjonijiet tagħha ddeskriviet is-sitwazzjoni bħala "*the issue we face is that the two judgements 43/2012JVC and 126/21/2BS appear to be conflicting……..in light of these conflicting judgements*". Illi għaldaqstant it-Tribunal iqis li l-Awtorità naqset milli thares il-prinċipju tal-audi alteram partem qabel ma waslet għad-deċiżjoni tagħha ravviżata fil-21 ta' Novembru 2024.

Dwar spejjeż, dan it-Tribunal sejjer jiddeċiedi li dawn jibqgħu mingħajr taxxa in vista tal-fatt li r-rikorrenti kienu konsapevoli tas-sentenza tat-30 ta' Marzu 2022, iżda naqsu li jinfurmaw lill-awtorità intimata dwarha.

DECIDE

Għar-raġunijiet hawn fuq esposti, dan l-Onorabbli Tribunal qed jilqa' t-talbiet kontenuti fir-rikors ta' John Vella et tal-4 ta' Diċembru 2024 filwaqt li jiċħad l-eċċezzjonijiet imressqa mill-Awtorità intimata fis-sens li qiegħed iħassar id-deċiżjoni tal-21 ta' Novembru 2024.

Fiċ-ċirkostanzi ta' dan il-każ, l-ispejjeż għandhom ikunu bla taxxa bejn il-partijiet.

(ft) Dr Simone Grech
Maġistrat

(ft) John Vella
D/Reġistratur

Vera Kopja

Għar-Reġistratur