MALTA

QORTI CIVILI
PRIM' AWLA

ONOR. IMHALLEF
JOSEPH ZAMMIT MC KEON

Seduta tas-17 ta' Gunju, 2013

Citazzjoni Numru. 355/2005

CCD Limited (C-29169)

kontra

Awtorita` Dwar it-Trasport ta` Malta u b`digriet tal-1 ta` Novembru 2010 l-Awtorita` ghat-Trasport f`Malta assumiet l-atti minflok l-Awtorita` Dwar it-Trasport ta` Malta

Il-Qorti :

I. <u>Preliminari</u>

Rat **<u>ic-citazzjoni</u>** prezentata fit-<u>18 ta` April 2005</u> li taqra hekk –

Premess illi s-socjeta` attrici ffirmat ftehim datat sittax (16) ta` April 2002 (Dok CCD1) mal-Licensing & Testing Department (dak iz-zmien dipartiment governattiv) fejn hija bhala "Contracted Operator" gie awtorizzata halli taghmel "Motor Vehicle Roadworthiness Test" fuq vettura mis-sit bl-isem ta` "Cartech", fi Triq Loreto Cutajar, Zebbug.

U Premess illi s-socjeta` attrici kienet irceviet ittra datata 22 ta` Ottubru 2004 minghand l-Awtorita` konvenuta (ghalkemm erronjament mhux indirizzata lilha bhala "CCD Limited" izda lil "Christopher Sammut" u "Cartech Limited") fejn hija giet informata illi hija kisret il-ftehim hawn fuq indikat ghaliex skond l-Awtorita` konvenuta hija ma ottemperatx ruhha mal-"Motor Vehicles Roadworthiness Test Regulations 1998" billi jew ma ttestjatx vettura partikolari jew inkella ma aderitx ruhha mar-regolamenti meta hija kkonduciet tali test.

U Premess illi l-Awtorita` konvenuta gibdet s-somma ta` hamest elef lira maltin (Lm5,000) minn somma ta` ghaxart elef lira Maltin (Lm10,000) li kienet iddepositat is-socjeta` attrici l-bank sabiex ottjeniet tali licenzja.

U Premess illi sussegwentement regghet ingibdet is-somma ta` hamest elef lira Maltin (Lm5,000) u dana minghajr li l-Awtorita` konvenuta nformat jew kitbet lis-socjeta` attrici u dana ghal xi allegat ksur min-naha tas-socjeta` attrici.

U Premess illi mbaghad sussegwentement permezz ta` ittra datata 2 ta` Dicembru 2004 l-Awtorita` konvenuta informat lis-socjeta` arttrici illi hija rtirat is-somma ta` Lm5,000 hawn fuq indikata, kif ukoll itterminat formalment

il-kuntratt datat 16 ta` April 2002 u rtirat b`mod immedjat l-awtorizzazzjoni bin-numru LTD/41/02/2.

U Premess illi s-socjeta` attrici tirrileva illi hija dejjem imxiet b`mod rigoruz mar-regolamenti stabbiliti halli jsir dan it-test tal-VRT fuq il-vetturi.

U Premess illi ghalhekk is-socjeta` attrici qatt ma kisret l-ebda parti tal-ftehim hawn fuq imsemmi u ghalhekk ma kellha thallas l-ebda somma lill-Awtorita` konvenuta.

U Premess illi l-Awtorita` konvenuta amministrattivament naqset fil-konfront tas-socjeta` attrici f`dan ir-rigward billi d-decizjoni u/jew decizjonijiet mehuda minnha huma nieqsa minn motivazzjonijiet u ragunijiet car u ghalhekk tali decizjoni tmur kontra l-principju ormai stabbilit fid-dritt amministrattiv Ingliz 'the duty to give reasons' ai termini ta` l-Artikolu 469(b)(iii) tal-Kapitolu 12 tal-Ligijiet ta` Malta.

U Premess illi l-Awtorita` konvenuta hadet id-decizjoni jew decizjonijiet taghha fil-konfront tas-socjeta` attrici b`mod irragjonevoli u vvjolat il-principju tal-proporzjonalita` ghaliex tali decizjoni jew decizjonijiet huma certament wahda drastika fic-cirkostanzi.

U Premess illi dan l-agir da parti ta` l-Awtorita` konvenuta u d-decizjoni jew decizjonijiet mehuda minnha tefghet lill-istess socjeta` attrici taht pressjoni finanzjarja, kif ukoll iddanneggjat l-isem ta` l-istess socjeta` attrici u f`dan is-suq partikolari f`liema suq is-socjeta` attrici hadmet u ghamlet investiment qawwi halli takkwista certu 'goodwill' tant illi llum il-gurnata l-garage minn fejn is-socjeta` attrici kienet topera ghall-VRT illum inghalaq u dana minhabba l-agir da parti ta` l-Awtorita` konvenuta.

U Premess illi ghalhekk is-socjeta` attrici sofriet danni u dana a kawza ta` l-eghmil amministrattiv da parti ta` l-Awtorita` konvenuta hekk kif hawn fuq spjegat.

Tghid ghalhekk l-Awtorita` konvenuta ghalfejn m`ghandhiex dina l-Onorabbli Qorti :

1. Prevja kull dikjarazzjoni li hija thoss li hija necessarja u opportuna fic-cirkostanzi, tiddikjara illi l-ghemil amministrattiv hawn fuq spjegat imur kontra l-Artikolu 469A(1)(a) u (1)(b)(ii) u (iii) tal-Kapitolu 12 tal-Ligijiet ta` Malta ;

2. Tiddikjara illi tali ghemil amministrattiv huwa null, invalidu u bla effett ;

3. Konsegwentement tiddikjara li a kawza ta` tali ghemil amministrattiv li huwa null u bla effett is-socjeta` attrici sofriet danni ;

4. Tillikwida d-danni sofferti mis-socjeta` attrici ;

5. Tordna lill-Awtorita` konvenuta thallas lis-socjeta` attrici s-somma likwidata ai fini tar-raba` talba.

Bl-ispejjez kontra l-Awtorita` konvenuta u rappresentanti, diretturi u impjegati ta` l-Awtorita` konvenuta minn issa ngunti ghas-subizzjoni.

Rat id-dikjarazzjoni guramentata tas-socjeta` attrici, il-lista tax-xhieda ndikati minnha u l-elenku ta` dokumenti esebiti.

Rat in-**nota tal-eccezzjonijiet** tal-Awtorita` konvenuta prezentata fit-13 ta` Mejju 2005 li taqra hekk –

1. Illi preliminarjament, in-nullita` tal-ewwel talba stante illi din ma tirriflettix il-premessi, u dan peress illi filwaqt illi l-ewwel talba taghmel referenza ghall-Artiklu 469(A)(1)(a), liema artiklu jipprovdi li att amministrattiv jista` jinstab null, invalidu u minghajr effett "meta l-eghmil amministrattiv jikser il-Kostituzzjoni" imkien fil-premessi ma gie indikat liema provvediment tal-Kostituzzjoni gie miksur.

2. Illi fil-mertu u minghajr pregudizzju ghall-premess, it-talba tas-socjeta` attrici illi l-ghemil amministrattiv tal-Awtorita` eccipjenti jigi dikjarat null, invalidu u bla effett ai termini tal-artiklu 469A(1)(b)(ii) hija nfondata fil-fatt u fid-dritt stante illi dak li jitlob dan l-artiklu u cioe` illi "awtorita` pubblika tkun naqset milli naqset milli tosserva l-principji tal-gustizzja naturali jew il-htigijiet procedurali mandatorji fit-twettiq ta` l-eghmil amministrattiv jew fid-deliberazzjonijiet ta` qabel dwar dak l-eghmil" ma jissussistix fil-kaz odjern stante illi l-Awtorita` eccipjenti segwiet rigorozament il-htigijiet procedurali kollha rikjesti mir-Regolamenti dwar Testijiet biex Jiccertifikaw li Vetturi bil-Mulrur huma tajba ghat-triq (L.S. 65.15) tat smigh xieraq lis-socjeta` attrici. U spjegat il-motivazzjonijiet taghha u dan kif spjegat ahjar fid-dikjarazzjoni hawn annessa u kif ser jigi ippruvat fit-trattazzjoni tal-kawza.

3. Illi ukoll fil-mertu u minghajr pregudizzju ghas-suespost, it-talba tas-socjeta` attrici illi l-ghemil amministrattiv tal-Awtorita` eccipjenti jigi dikjarat null, invalidu u bla effett ai termini tal-Artiklu 469A(1)(b)(iii) hija wkoll infondata fil-fatt u fid-dritt stante illi dak li jitlob dan l-artiklu u cioe` illi "l-eghmil amministrattiv jikkostitwixxi abbuz tas-setgha ta` l-awtorita` pubblika billi dan isir ghal ghanijiet mhux xierqa jew jissejjes fuq konsiderazzjonijiet mhux rilevanti" ghal darb`ohra ma jirrizulta bl-ebda mod u

dan meta s-socjeta` attrici filwaqt illi ghogobha taghmel allegazzjoni hekk serja illi tattakka direttament il-buona fede ta` l-Awtorita` eccipjenti, bl-ebda mod ma sostniet l-istess allegazzjoni u lanqas biss ndikat f`hiex setghu jikkonsistu dawn l-ghanijiet mhux xierqa jew kunsiderazzjonijiet mhux rilevanti.

4. Illi inoltre u minghajr pregudizzju ghas-suespost f`dan il-kaz zgur li ma jezistux l-elementi ta` delitt jew kwazi delitt rikjesti ai termini ta` l-artikolu 469A(5) tal-Kap.12 biex ikun hemm lok ghal hlas ta` danni u inoltre l-Awtorita` zgur li ma agixxietx b`mala fede jew b`mod irragjonevoli u ghaldaqstant it-tielet, ir-raba` u l-hames talbiet attrici huma wkoll infondati fil-fatt u fid-dritt.

5. Illi inoltre u minghajr pregudizzju ghas-suespost l-Awtorita` eccepjenti tichad l-allegazzjonijiet kif dedotti fid-disa` premessa tac-citazzjoni odjerna ghaliex meta hija hadet mizuri hekk imsejha "drastici" mis-socjeta` attrici hija kienet qed timplimenta il-mizuri stipulati fir-Regolamenti bil-Ligi kif fil-fatt hija marbuta li taghmel bhala l-awtorita` pubblika regolatrici fis-settur.

6. Illi ghaldaqstant it-talbiet kollha atttrici ghandhom jigu michuda bl-ispejjez kontra l-istess socjeta` attrici.

7. Salvi eccezzjonijiet ulterjuri.

Rat id-dikjarazzjoni guramentata tal-Awtorita` konvenuta, il-lista tax-xhieda ndikati minnha u l-elenku ta` dokumenti esebiti.

Rat il-**kontrotalba** li taqra hekk –

Billi s-socjeta` attrici rikonvenuta saret operatur awtorizzat tal-VRT permezz tal-awtorizzazzjoni mahruga in segwitu tal-kuntratt datat 16 ta` April 2002 bejnha u l-Awtorita` konvenuta rikonvenjenti dak iz-zmien id-dipartiment ghall-Licenzjar u Testjar, kopja ta` liema kuntratt qed jigi hawn anness u mmarkat bhala Dok "ADT1".

Billi tali awtorizzazzjoni u kuntratt kienu suggett ghall-kundizzjonijiet u obbligi kollha illi johorgu mir-Regolament L.S. 65.15 u billi s-Sitt Skeda ta` l-istess regolamenti, fost affarijiet ohra, tistipula illi operatur awtorizzat ghandu jipprovdi garanzija bankarja ta` ghaxart elef Lira Maltin (Lm10,000) favur l-Awtorita` konvenuta rikonvenjenti u li jzomm l-istess valida u vigenti tul it-terminu ta` l-istess kuntratt sabiex jiggarantixxi l-obbligi tieghu taht il-kuntratt u r-regolamenti.

*Billi s-Sitt Skeda tar-Regolamenti L.S. 65.15 tistipula illi : "f`kull kaz, jekk* ***fl-opinjoni ta` l-Ufficjal Awtorizzat****, l-operatur jikser il-kuntratt, l-istess operatur ghandu jiddepozita l-ammont ta` Lm5,000 favur l-Ufficjal Awtorizzat, u jekk dan ma jsehhx, l-istess Ufficjal Awtorizzat jista` jiehu azzjoni biex jithallas mill-individwu.*

Billi s-socjeta` attrici rikonvenuta kisret il-kuntratt u r-Regolamenti L.S. 65.15 meta harget certifikat tal-VRT posittiv meta din ma kenitx konformi ma` dak li jitolbu l-istess regolamenti u ghalhekk l-Awtorita` konvenuta rikonvenjenti interpellat lis-socjeta` attrici rikonvenuta sabiex thallas il-penali ta` Lm5,000 u
dan kif jirrizulta mill-ittra hawn annessa u mmarkata bhala Dok "ADT2" izda din baqghet inadempjenti.

Billi l-Awtorita` konvenuta rikonvenjenti ghalhekk irtirat is-somma ta` Lm5,000 mill-garanzija bankarja ta` ghaxart elef lira Maltin surreferita u permezz ta` l-ittra datata 10 ta` Dicembru 2004 hawn annessa u mmarkata

bhala Dok "ADT3" interpellat lis-socjeta` attrici rikonvenuta sabiex tregga` l-garanzija bankarja ghal-livell originali taghha ta` Lm10,000 kif kienet marbuta illi taghmel skond ir-Regolamenti illi fis-sitt skeda jistipulaw illi "l-operatur ghandu mmedjatament jiddepozita s-somma sabiex il-garanzija titregga' lura daqs is-somma originali."

Billi s-socjeta` attrici rikonvenuta baqghet inadempjenti u sussegwentement ikkommettiet ksur iehor tar-Regolamenti L.S. 65.13 meta ghal darb`ohra harget certifikat tal-VRT posittiv lill-vettura illi ma kenitx konformi ma` dak li jitolbu r-regolamenti.

Billi s-Sitt Skeda tal-L.S. 65.15 tistipula illi : fil-kaz tat-tieni reat, l-operatur jitlef il-garanzija (Lm10,000) u l-Ufficjal Awtorizzat ghandu jitira l-licenzja relatata ma` l-istazzjon.

Billi meta sehh it-tieni reat, il-garanzija bankarja tas-socjeta` attrici rikonvenuta kienet ridotta ghal hamest elef lira Maltin (Lm5,000) ghar-raguni hawn fuq spjegata, l-Awtorita` konvenuta rikonvenjenti ma setghetx tirtira l-ammont kollu dovut skond ir-Regolamenti f`kaz tat-tieni reat, u cioe` ghaxart elef lira Maltin (Lm10,000) izda setghet tirtira biss l-ammont hekk ridott ta` hamest elef lira Maltin (Lm5,000).

Billi s-socjeta` attrici, ghalkemm interpellata sabiex thallas il-kumplament ta` l-ghaxart elef lira Maltin (Lm10,000) ossia hamest elef lira Maltin (Lm5,000) hija baqghet inadempjenti.

Ghaldaqstant tghid is-socjeta` attrici rikonvenuta ghaliex din l-Onorabbli Qorti m`ghandhiex –

1. Tiddikjara illi s-socjeta` attrici rikonvenuta kisret il-kuntratt u r-Regolamenti L.S. 65.15 meta naqset milli tregga` lura l-garanzija bankarja ghas-somma originali ta` Lm10,000 kif kienet marbuta illi taghmel skond ir-Regolamenti illi fis-sitt skeda jistipulaw illi "l-operatur ghandu immedjatament jiddepozita s-somma sabiex il-garanzija titregga` lura daqs is-somma originali."

2. Tikkundanna lis-socjeta` attrici rikonvenuta sabiex thallas lill-Awtorita` konvenuta rikonvenjenti s-somma ta` Lm5,000 rapprezentanti l-bilanc ta` l-ghaxart elef lira Maltin (Lm10,000) dovuti skond ir-Regolamenti fil-kaz tat-tieni reat.

Bl-ispejjez u bl-imghaxijiet legali kontra s-socjeta` attrici rikonvenuta li hija minn issa ngunta ghas-subizzjoni.

Rat id-dikjarazzjoni guramentata tal-Awtorita` rikonvenjenti, il-lista tax-xhieda ndikati minnha ghall-fini tal-kontrotalba u l-elenku ta` dokumenti esebiti.

Rat illi mill-atti jirrizulta (fol 57 u tergo ta` fol 57) li n-nota tal-eccezzjonijiet u l-kontrotalba kienu notifikati lill-Av. Edward Zammit Lewis.

Rat illi mill-atti ma jirrizultax illi kienet kontestata n-notifika tal-kontrotalba lill-Av. Edward Zammit Lewis.

Rat illi mill-atti ma jirrizultax illi l-kumpannija attrici pprezentat nota tal-eccezzjonijiet ghall-kontrotalba.

Rat it-traskrizzjoni tad-deposizzjoni ta` Mark Samut Tagliaferro fl-udjenzi tat-12 ta` Ottubru 2005 u tad-9 ta` Jannar 2006, u d-dokumenti li kienu esebiti mix-xhud (ara fol 62 sa fol 93 u fol 97 sa fol 104).

Rat in-nota tas-socjeta` attrici prezentata fil-11 ta` Novembru 2005 riferibbilment ghall-eccezzjoni preliminari (fol 94).

Rat il-verbal tal-udjenza tal-14 ta` Novembru 2005 (fol 85) fejn il-partijiet qablu li l-eccezzjoni preliminari tkun deciza mal-mertu.

Rat it-traskrizzjoni tad-deposizzjoni ta` Audrey Ghigo fl-udjenza tat-12 ta` Mejju 2006 (fol 111 u fol 112) u d-dokumenti illi kienu esebiti mix-xhud (fol 175 sa fol 180).

Rat l-affidavit ta` Christopher Sammut illi kien ipprezentat fit-12 ta` Mejju 2006 flimkien ma` serje ta` dokumenti (fol 113 sa fol 143).

Rat it-traskrizzjoni tad-deposizzjoni ta` Joseph Caruana fl-udjenza tal-4 ta` Ottubru 2006 (fol 185) u ta` Richard Farrugia fl-udjenza tas-6 ta` Novembru 2006 (fol 190 sa fol 194).

Rat l-affdavit ta` Adrian Stellini, ta` Carmel sive` Lino Brincau u Edward Farrugia li kienu prezentati fit-3 ta` Gunju 2008 (fol 218 sa fol 223).

Rat it-traskrizzjoni tad-deposizzjoni ta` Stephen Cachia fl-udjenza tal-10 ta` Novembru 2008 (fol 229).

Semghet ix-xiehda ta` Richard Farrugia fl-udjenza tas-6 ta` Ottubru 2009 u rat id-dokumenti li kienu esebiti f`dik l-udjenza (fol 240 sa fol 289).

Semghet ix-xiehda ta` Brian Farrugia fl-udjenza tal-1 ta` Marzu 2010 u rat id-dokumenti li kienu esebiti f`dik l-udjenza (fol 295 sa fol 313).

Semghet ix-xiehda ta` Lino Abela fl-udjenza tat-18 ta` Mejju 2010 (fol 316 sa fol 325).

Rat in-nota tal-kumpannija attrici tat-28 ta` Settembru 2010 (fol 326 u fol 327).

Rat id-digriet taghha tal-1 ta` Novembru 2010 (fol 329) fejn akkordat it-talba ghall-bdil tal-isem tal-Awtorita` konvenuta.

Semghet ix-xiehda ta` Lino Abela fl-udjenza tat-12 ta` Jannar 2011 u rat id-dokumenti li kienu esebiti f`dik l-udjenza (fol 333 sa fol 388).

Rat illi l-gbir tal-provi tal-partijiet inghalaq fl-udjenza tat-8 ta` Marzu 2011 (fol 389).

Rat in-nota ta` sottomissjonijiet tal-kumpannija attrici li kienet prezentata fis-17 ta` Awissu 2011 (fol 395 et seq).

Rat in-nota ta` sottomissjonijiet tal-konvenuta li kienet prezentata fil-21 ta` Novembru 2011 (fol 435 et seq).

Rat in-nota tal-kumpannija attrici a tenur tal-verbal tal-udjenza tal-21 ta` Novembru 2011 (fol 443 et seq).

Rat id-digriet taghha tad-9 ta` Frar 2012 (fol 444 et seq) fejn, ghar-ragunijiet hemm indikati, laqghet it-talba

tal-konvenuta kif dedotta fl-udjenza tal-21 ta` Novembru 2011 u ordnat l-isfilz tad-dokument CS1 a fol 428 sa fol 430.

Rat id-digriet taghha moghti fl-udjenza tad-9 ta` Frar 2012 fejn halliet il-kawza ghas-sentenza.

Rat l-atti tal-kawza.

Ikkunsidrat :

II. L-Art.469A tal-Kap.12

Il-kumpannija attrici ("**CCD**") qeghda tibbaza l-istanza taghha fuq l-Art.469A tal-Kap.12 li jaqra hekk –

(1) Hlief hekk kif provdut mod iehor bil-ligi, il-qrati tal-gustizzja ta' kompetenza civili ghandhom gurisdizzjoni biex jistharrgu l-validita ta' xi eghmil amministrattiv jew li jiddikjaraw dak l-eghmil null, invalidu jew minghajr effett fil-kazijiet li gejjin biss :

(a) meta l-eghmil amministrattiv jikser il-Kostituzzjoni ;

(b) meta l-eghmil amministrattiv ikun ultra vires ghal xi raguni minn dawn li gejjin :

(i) meta dak l-eghmil jitwettaq minn awtorita` pubblika li ma tkunx awtorizzata sabiex twettqu ; jew

(ii) meta l-awtorita` pubblika tkun naqset milli tosserva l-principji tal-gustizzja naturali jew htigiet procedurali mandatorji fit-twettiq ta' l-eghmil amministrattiv jew fid-deliberazzjonijiet ta' qabel dwar dak l-eghmil ; jew

(iii) meta l-eghmil amministrattiv jikkostitwixxi abbuz tas-setgha ta' l-awtorita` pubblika billi dan isir ghal ghanijiet mhux xierqa jew jissejjes fuq konsiderazzjonijiet mhux rilevanti ; jew

(iv) meta l-eghmil amministrattiv ikun imur mod iehor kontra l-ligi.

Dwar azzjoni ta` din ix-xorta, din il-Qorti (diversament presjeduta) **[PA/JRM**] qalet hekk fis-sentenza taghha tal-1 ta` Marzu 2004 fil-kawza "**Borg noe vs Gvernatur tal-Bank Centrali ta` Malta**" (li kienet konfermata mill-Qorti tal-Appell fid-9 ta` Marzu 2007) –

Illi llum huwa accettat li l-azzjoni ghal stharrig gudizzjarju msemmija fl-artikolu 469A tal-Kapitolu 12 tal-Ligijiet ta' Malta hija mahsuba biex taghti rimedju lill-individwu dwar l-imgieba tal-awtorita' pubblika fil-konfront tieghu. Is-setgha li tinghata mill-imsemmi artikolu lil Qorti fil-kompetenza taghha civili dwar ghemil amministrattiv hija jew (a) dik li tistharreg is-siwi ta' dak l-ghemil jew (b) li tiddikjarah ma jiswiex jew minghajr ebda effett. Dan tista' taghmlu meta l-ghemil jikser il-Kostituzzjoni jew meta jkun sar lil hinn mis-setgha ta' min wettqu (ultra vires). F'din l-ahhar ipotezi, dan l-eccess ta' setgha jista' jirrizulta meta l-att isir minn awtorita' pubblika li ma tkunx awtorizzata twettqu, jew meta dik l-awtorita', ghalkemm ikollha setgha twettaq dak l-ghemil, tkun naqset li thares il-principji ta` gustizzja naturali jew htiega procedurali li tabilfors trid thares qabel ma tasal ghal dak l-ghemil, jew jekk l-ghemil jikkostitwixxi abbuz tas-setgha ta' dik l-awtorita' billi jsir ghal xi ghan mhux xieraq jew fuq konsiderazzjoni irrilevanti, jew meta dak l-ghemil imur b'kull mod iehor li jkun kontra l-ligi. Bil-kelma "ghemil", il-ligi tifhem ukoll cahda jew rifjut ta' talba li ssir minn persuna lil xi awtorita' pubblika ;

Illi din l-impostazzjoni tal-azzjoni tabilfors tnissel il-htiega li l-Qorti tqis x'tip ta' stharrig ghandha taghmel skond il-ligi dwar l-ghemil tal-Bank imharrek. Tali ezercizzju huwa wiehed li jmiss l-aspetti sostantivi tal-

kawza prezenti. Illum il-gurnata, l-azzjoni ta' stharrig gudizzjarju ta' ghemil amministrattiv tinsab imfissra u delinejata espressament fis-sistema procedurali taghna u l-Qorti hija marbuta li timxi mal-parametri li l-ligi tipprovdi ghal din l-ghamla ta` stharrig, sakemm il-ligi nnifisha ma tipprovdix mod. Wahda minn dawn il-limitazzjonijiet hija li l-ilment imressaq jew ir-rimedju mitlub ma jkunx jista' jinkiseb mod iehor amministrattivament quddiem qorti jew tribunal iehor kif provdut mil-ligi. Fil-kaz li ghandha quddiemha l-Qorti, ma ntweriex li l-kumpannija attrici kellha rimedju iehor procedurali jew statutorju ghall-ilment taghha jekk mhux quddiem din il-Qorti u b'din l-ghamla ta' azzjoni ;

Illi mit-tifsira ta' "awtorita' pubblika" moghtija fl-artikolu 469A(2), johrog car li l-Bank imharrek huwa awtorita' kif hekk imfissra, u dan ukoll ghaliex huwa korp maghqud kostitwit permezz ta' ligi li ghandu funzjoni regolatrici pubblika u amministrattiva. Dawn l-elementi ma gew bl-ebda mod michuda mill-istess Bank u lanqas jidher li tqanqal xi dubju dwar jekk il-Bank huwiex il-kontradittur legittimu tal-azzjoni specjali mibdija kontra tieghu …

Fil-kawza tal-lum, dak li kien ighodd ghall-Bank Centrali ta` Malta jghodd ukoll *mutatis mutandis* ghall-Awtorita` konvenuta ("**l-Awtorita**`").

Fil-kaz tal-lum, CCD qeghda tikkontendi li l-eghmil amministrattiv tal-Awtorita` konvenuta fil-kwistjoni mertu ta` din il-kawza jikser **is-subincizi (1)(a), 1(b)(ii) u 1(b)(iii) tal-Kap 469A**.

Ikkunsidrat :

III. Ir-Regolamenti

Ghad-decizjonijiet li hadet fil-konfront ta` CCD, l-Awtorita` qeghda tistrieh ghal kollox fuq id-disposizzjonijiet tal-***Motor Vehicle Roadworthiness Test Regulations* (Regolamenti 65.15)** li kienu saru ghall-ewwel darba bis-sahha tal-Avviz Legali 126 tal-1998, li in segwitu kien emendat.

In partikolari, l-Awtorita` tirreferi ghas-Sitt Skeda li llum m`ghadhiex fis-sehh wara li kienet revokata bis-sahha tal-Avviz Legali 90 tal-2010. Id-disposizzjoni in kwistjoni u li kienet fis-sehh fiz-zmien taz-zewg kazi mertu tal-istanza tal-lum, l-ewwel parti tas-Sitt Skeda (ara fol 33) u taqra hekk –

Operaturi ta` l-istazzjonijiet ghandhom jiffirmaw kuntratt ma` l-ufficjal awtorizzat li fih jiftehmu li jaccettaw il-kondizzjonijiet imsemmija hawn taht, u jipprovdu jew :

(i) garanzija bankarja ta` Lm10,000 ghal kull stazzjon ; jew

(ii) garanzija bankarja kollettiva ta` mhux anqas minn Lm35,000 provduta konguntivament bejn l-istazzjonijiet kollha li jiddeciedu li jaghtu din il-garanzija,

u, f`kull kaz, jekk fl-opinjoni ta` l-ufficjali awtorizzat, l-operatur jikser il-kuntratt, l-istess operatur ghandu jiddepozita l-ammont ta` Lm5000 favur l-Ufficjal Awtorizzat, u jekk dan ma jsehhx, l-istess Ufficjal Awtorizzat jista` jiehu azzjoni biex jithallas mill-individwu jew garanzija kollettiva, skond il-kaz, u l-operatur ghandu immedjatament jiddepozita s-somma sabiex il-garanzija titregga` lura daqs is-somma originali ; fil-kaz tat-tieni reat, l-operatur jitlef il-garanzija (Lm10,000) u l-ufficjal awtorizzat ghandu jitrira l-licenzja relatata ma` l-istazzjon ...

Ikkunsidrat :

IV. L-ewwel eccezzjoni

Din l-eccezzjoni taqra hekk –

Illi preliminarjament, in-nullita` tal-ewwel talba stante illi din ma tirriflettix il-premessi, u dan peress illi filwaqt illi l-ewwel talba taghmel referenza ghall-Artiklu 469(A)(1)(a), liema artiklu jipprovdi li att amministrattiv jista` jinstab null, invalidu u minghajr effett "meta l-eghmil amministrattiv jikser il-Kostituzzjoni" imkien fil-premessi ma gie indikat liema provvediment tal-Kostituzzjoni gie miksur.

Wara l-verbal li sar fl-udjenza tat-12 ta` Ottubru 2005, CCD ipprezentat nota fil-11 ta` Novembru 2005 (fol 94A) fejn dwar l-Art 469(1)(a) li kien indikat fl-ewwel talba rrilevat illi *fl-istrutturi u l-bordijiet ta` l-Awtorita` konvenuta fejn ittiehdu d-decizjonijiet msemmija fic-citazzjoni hija ma nghatatx smigh xieraq ai termini ta` l-Artikolu 39 tal-Kostituzzjoni ta` Malta u dana meta gew iddeterminati d-drittijiet civili taghha mill-istess Awtorita` u dana b`riferenza ghat-totalita` tal-premessi fic-citazzjoni attrici.*

L-Art.156(1) tal-Kap.12 jipprovdi li c-citazzjoni (llum ir-rikors mahluf) ghandu jkun fiha :

(a) tifsir car u sewwa ta' l-oggetti u r-raguni tat-talba ; u
(b) it-talba jew talbiet

Din id-disposizzjoni tal-ligi nghatat fil-gurisprudenza interpretazzjoni wiesgha fis-sens li ma gietx adottata l-istrettezza li donnhom ifissru l-kliem tal-ligi. Hekk fis-sentenza **"Moore noe vs Falzon et"** (Prim'Awla tal-Qorti Civili – PA/AM – 15 ta' Dicembru 1995) kien deciz li –

U ghalhekk gie ritenut illi l-ligi ma tirrikjedix kliem partikolari ghal kif ghandha ssir ic-citazzjoni, bizzejjed jiftiehem xi jkun qieghed jitlob l-attur, b'mod li l-kawzali tista' tkun espressa lakonikament, u sahansitra tista' tkun

anke ridotta mid-domanda (Kolezz. XXXIV.I.501, XXIX.I.143 u XXXII.I.228).

Hekk ukoll inghad fis-sentenza tal-Qorti tal-Appell fil-kawza “**Bonnici vs Zammit noe**” deciza fl-20 ta` Jannar 1986 fejn it-tifsira tal-Art.156(1) kienet spjegata hekk –

Illi l-Artikolu 156(1) jipprovdi li l-oggett u r-raguni tat-talba gudizzjarja ghandhom ikunu mfissra car u sewwa fic-citazzjoni. Dan ma jfissirx pero’ li kwalunkwe nuqqas da parte ta’ l-attur ghandu mill-ewwel jigi mehud fis-sens li qed imur kontra d-dispost ta’ l-Art.155(1) [illum 156(1) tal-Kap.12] u ghalhekk igib mieghu n-nullita’ tac-citazzjoni. Infatti biex citazzjoni tigi mwaqqfa jrid ikun hemm raguni gravi, u fost kollox, ghandu jigi ezaminat jekk ic-citazzjoni tkunx defungenti jew zbaljata b’mod li l-konvenut ikun jista’ jigi pregudikat fid-difiza tieghu. Dan apparti li c-citazzjoni ghandha tigi ezaminata fit-totalita’ taghha u mhux spezzettata.

Fil-kawza “**Vella vs Cefai**” (Appell Civili – 4 ta` Novembru 1991 – Vol.LXXV.II.467) il-Qorti tal-Appell sostniet li meta f`citazzjoni tezisti vjolazzjoni tal-forma in kontravvenzjoni tal-Art.156(1)(a) ghax ma jkunx fiha tifsir car u sewwa tal-oggett u r-raguni tat-talba, l-eccezzjoni tan-nullita` tac-citazzjoni tista` tigi milqugha biss kemm-il darba dik il-vjolazzjoni tkun giebet lill-parti li titlob in-nullita` pregudizzju illi ma jistax jissewwa xort`ohra hlief billi l-att jigi annullat. Inoltre l-Qorti kompliet tafferma li f`dawn il-kazi huwa dejjem opportun li l-Qorti, kemm jista` jkun ghall-pratticita` u sabiex tigi evitata moltiplikazzjoni ta` kawzi u spejjez zejda, ghandha tkun iebsa meta tilqa` l-eccezzjoni tan-nullita` u kemm jista` jkun issalva atti gudizzjarji, u att ta` citazzjoni ghandu jigi mwaqqa` u annullat biss ghal ragunijiet gravi. In-nullita` ta` l-atti gudizzjarji hija sanzjoni estrema li l-ligi trid li tigi mposta biss meta n-nuqqas – formali jew sostanzjali – fl-att ma jistax assolutament jigi tollerat minghajr hsara ghal xi principju ta` gustizzja procedurali (ara wkoll :“**Fino vs Fabri noe**” – Qorti tal-Appell – 28 ta` Frar 1997 ; “**Ellul vs**

Coleiro" – Qorti tal-Appell – 24 ta` Jannar 1994 ; "**Guillaumier Industries Ltd vs Fava et**" – Prim`Awla tal-Qorti Civili – **PA/RCP** – 28 ta` Ottubru 1998 ; "**Attard noe vs Galea**" – Qorti tal-Appell – 12 ta` Mejju 1998 ; u "**Aquilina vs Cassar**" – Vol.LXXVI.IV.666).

Fis-sentenza ta` din il-Qorti (**PA/JRM**) tat-13 ta` Marzu 2003 fil-kawza "**K.B. Real Estate Limited vs Silvio Felice Limited**" jinghad hekk dwar l-element tal-kjarezza fl-att tac-citazzjoni –

... il-ligi ma tinsistix fuq formola preciza jew kliem partikolari, u sakemm it-talba tkun tista' tiftiehem, ma jimputax jekk il-kawzali tkunx imfissra b'mod xott jew sahansitra mifhuma jew implikata mit-talba nnfisha ...

... fejn ma jkunx hemm kontradizzjoni ghall-ahhar bejn il-premessi u t-talbiet jew bejn it-talbiet innfishom, il-Qrati ghandhom iqisu b'cirkospezzjoni eccezzjoni ta' nullita' ta' att gudizzjarju. Biex att ta' citazzjoni jghaddi mill-prova tal-validita' huwa bizzejjed li t-talba tkun mfassala b'mod tali li l-persuna mharrka tifhem l-intenzjoni ta' min harrikha u li tali tifsila ma tkunx ta' hsara ghall-imharrek li jiddefendi lilu nnifsu mit-talba tal-attur ...

... jekk id-difett fit-tfassila tal-att li bih tkun inbdiet il-kawza ma jgibx pregudizzju serju lill-parti mharrka, allura l-procedura tkun tista' tigi salvata basta dan ma jaffettwax is-sustanza tal-azzjoni jew l-eccezzjonijiet ...

Bl-applikazzjoni ta` dawn l-insenjamenti, din il-Qorti tghid illi fil-kaz tal-lum l-eccezzjoni tan-nullita` ma tistax tregi ghaliex ghalkemm il-pretensjoni ta` CCD illi ma nghatatx smigh xieraq ma kenitx inserita f`kawzali distinta u separata, tista` xorta tigi derivata mill-kumpless tal-kawzali l-ohra. Tant dan hu hekk illi fl-eccezzjonijiet taghha l-Awtorita` tikkontendi illi hija waslet ghad-decizjoni taghha wara li tat smigh lid-dirigenti ta` CCD. Li allura jfisser illi n-nuqqas ta` CCD li tressaq kawzali *ad hoc* dwar allegat nuqqas ta` smigh xieraq lesiv - skond hi – ghad-

drittijiet kostituzzjonali taghha ma gab l-ebda pregudizzju lill-Awtorita` ghaliex din gharfet twiegeb fil-pront ghal kwalsiasi allegazzjoni f`dak is-sens. **L-ewwel eccezzjoni qeghda tkun michuda**.

Ikkunsidrat :

V. Sintesi tal-provi

Fis-16 ta` April 2002 (Dok CCD1) sar ftehim bejn il-*Licensing and Testing Department* ("the Director") u CCD ("the Contracted Operator") fejn CCD kienet kontrattata biex taghti servizzi skond il-Motor Vehicles Roadworthiness Test Regulations 1998. Fost il-pattijiet tal-kuntratt, kien hemm il-patt bin-Nru 9 li jaqra hekk –

(1) The contracted operator agrees to abide by all the above mentioned conditions, and hereby submits a performance bond of ten thousand Maltese liri (Lm10,000) for each testing station.

(2) It is agreed between both parties that in the case of a first breach, half of the performance bond shall be automatically forfeited to the Director, and the Contracted Operator undertakes to immediately deposit the amount in order that the bond be equal to the original sum ; in the case of a second breach, the Contracted Operator will forfeit the performance bond and the Director shall withdraw the licence relating to the authorised testing station.

CCD kienet mixlija b`zewg *breaches* (f`dati differenti) tal-obbligi taghha skond ir-regolamenti in kwistjoni. Ix-xilja kienet is-segwitu ta` rapporti ta` inadempjenzi allegati fil-konfront ta` CCD li kienet topera minn VRT station bl-isem "CarTech" go Haz-Zebbug. L-istharrig ta` dak li fl-atti huma deskritti bhala *reati* sar mill-VRT Advisory Board. Dan il-Bord huwa mahtur mill-

Awtorita` biex jaghmel rakkomandazzjonijiet. L-ahhar decizjoni tkun tal-Awtorita`. Il-persuni appuntati fuq il-Bord (Av. Tonio Ellul, Carlo Cini u Charles Mifsud) huma ndipendenti mill-Awtorita`. Kienu esebiti (ghal aktar minn darba) l-atti kollha tal-proceduri kondotti mill-VRT Advisory Board. Il-Bord sab li r-*reati* fiz-zewg kazi kienu fondati.

Fost l-atti, kien hemm inkluzi l-minuti ta` laqghat tal-Bord fiz-zewg kazi. Fil-kaz tat-tnejn, instemghu, fost ohrajn, anke jekk separatament, min ghamel ir-rapporti, it-tester Adrian Stellini u Christopher Sammut bhala rapprezentant ta` CCD. Kulhadd inghata c-cans ighid tieghu.

Kienu prezentati zewg ittri rispettivament tal-15 ta` Novembru 2004 (fol 71 sa fol 73) u tal-1 ta` Ottubru 2004 (fol 74 sa fol 75) li l-Bord baghat lic-Chairman tal-Awtorita` konvenuta. Fiz-zewg ittri kienu esposti l-fatti. Kienet spjegata l-posizzjoni ta` Christopher Sammut u Adrian Stellini ghal CCD. Fil-kaz tat-tieni rapport, kienu spjegati l-kostatazzjonijiet li ghamel operatur iehor Paul Muscat waqt laqgha tal-Board. Tfisser ukoll l-istharrig li sar mit-teknici tal-Awtorita`. Wara li qies kollox, il-Bord wasal ghall-konkluzjoni fiz-zewg kazi illi *the arguments put forward by Mr Christopher Sammut and Mr Adrian Stellini were not sufficiently convincing as to why* (fil-kaz tat-tieni rapport) *the vehicle failed a VRT test on 14 counts only four hours after having passedf a VRT test at Cartech Limited's VRT station* waqt li fil-kaz tal-ewwel rapport *the owner of the vehicle in question had pass certificate when in fact the vehicle should have failed the test.* Fiz-zewg kazi, il-Board irrakkomanda *that the Authority takes the necessary action in respect of CarTech Ltd in accordance with the Motor Vehicle Roadworthiness Test Regulations.*

Fit-22 ta` Ottubru 2004, l-Awtorita` konvenuta kitbet lil Cartech Ltd (fol 39) fejn wara li ddikjarat illi *vehicle FAW 895 that was supposedly tested on the 21st June 20093 was a) either not actually tested or b) if it was, the test*

was not carried out according to the prescribed procedures, interpellatha biex thallas penali ta` Lm5000 fi zmien hmistax-il jum mid-data tal-ittra, b`dan illi jekk l-ammont jibqa` ma jithallasx, l-Awtorita` kienet sejra *to reject all the test certificates issued by your station with effect from the 15th November 2004.*

Fl-10 ta` Dicembru 2004, l-Awtorita` kitbet lil CCD (fol 56) fejn wara li gharrfitha li kienet hadet Lm5000 mill-garanzija, interpellatha biex terga` ggib il-garanzija ghall-figura ta` Lm10,000.

Fl-20 ta` Dicembru 2004, l-Awtorita` baghtet avviz lil CCD (fol 40) fejn wara li spjegat r-rizultat ta` l-istharrig, avzatha li l-kuntratt fuq riferit kien qieghed jigi formalment terminat skond il-patt Nru 10 kif ukoll illi *qeghda tigi wkoll irtirata l-garanzija bankarja illi bhalissa tammonta ghal Lm5000 u dan minghajr pregudizzju ghad-dritt ta` l-ADT illi tfittex lil CCD Ltd ghall-pagament ulterjuri ta` Lm5000 dovuti minnha f`penali u ghal kwalunkwe azzjoni ohra illi tista` tittiehed kontra l-istess skond il-ligi.* L-avviz huwa dettaljat. Hemm riferenza ghall-*breaches*, ghall-istharrig li sar mill-VRT Advisory Board, ghax-xiehda li sema` l-Bord u l-konkluzjonijiet.

Jidher illi fit-28 ta` Marzu 2005, CCD kitbet lill-Awtorita`. L-ittra pero` baqghet ma gietx esebita. Fid-19 ta` April 2005, l-Awtorita` wiegbet ghal dik l-ittra u wara li tat ir-ragunijiet taghha, u sostniet it-terminazzjoni tal-operazzjoni.

Apparti t-terminazzjoni tal-operazzjoni, is-sejba ta` htija fl-agir ta` CCD kellu l-konsegwenza illi relattivament ghall-ewwel kaz (Nru 5/2004), fid-9 ta` Dicembru 2004 l-Awtorita` thallset Lm5000 mill-garanzija ta` Lm10,000. Il-garanzija baqghet ridotta ghal Lm5000 u qatt ma kienet *reinstated* ghal Lm10,000. Konsegwenza tat-tieni kaz

(Nru 6/2004), l-Awtorita` thallset Lm5000 ohra fit-22 ta` Dicembru 2004.

Xehdet Audrey Ghigo mill-HSBC Bank Malta plc li kkonfermat illi wara t-tieni pagament ta` Lm5000, il-garanzija spiccat.

Wara d-decizjonijiet tal-Awtorita`, CCD ippresentat protest gudizzjarju (fol 129 sa 131). F`dak l-att, CCD ipprotestat mal-Awtorita` *ghall-mod kif hija amministrattivament hadet u waslet ghad-decizjoni taghha f`dan ir-rigward liema decizjoni bir-rispett kollu hija nieqas minn motivazzjonijiet u ragunijiet cari u ghalhekk tmur kontra l-principju ormai stabbilit fid-dritt amministrattiv Ingliz 'the duty to give reasons' ai termini tal-Art 469A(b)(iii) tal-Kap 12 tal-Ligijiet ta` Malta.* Ipprotestat ukoll illi *ghalkemm l-Awtorita` protestata ghandha certu diskrezzjoni moghtija lilha mil-ligi din ghandha tigi esercitata b`certu ragonevolezza liema ragonevolezza hija nieqas certament f`dan il-kaz.* Ilmentat ukoll li l-Awtorita` *vvjolat il-principju tal-proporzjonalita`.*

Fil-protest, in-nuqqas ta` smigh xieraq ma ssemma mkien.

Ikkunsidrat :

VI. <u>Risultanzi</u>

1) <u>L-ewwel u t-tieni talbiet attrici</u>

Il-kumpannija attrici qeghda titlob mill-qorti dikjarazzjoni ta` nullita`, invalidita` jew minghajr effett tal-ghemil amministrattiv tal-Awtorita` -

a) fl-ewwel lok ghax tghid illi jikser id-dritt taghha ghal smigh xieraq kif tutelat bl-Art 39 tal-Kostituzzjoni ta` Malta [Art 469A(1)(a)].

b) fit-tieni lok ghax tghid illi l-ghemil amministrattiv de quo kien *ultra vires* billi l-Awtorita` naqset milli tosserva l-principji tal-gustizzja naturali jew htigiet procedurali mandatorji fit-twettiq ta' dak l-eghmil amministrattiv jew fid-deliberazzjonijiet ta' qabel dwar dak l-eghmil [Art 469A(1)b)(ii)].

c) fit-tielet lok ghax tghid illi kien ukoll *ultra vires* ghax l-eghmil amministrattiv tal-Awtorita` kien jikkostitwixxi abbuz tas-setgha taghha billi sar ghal ghanijiet mhux xierqa jew jissejjes fuq konsiderazzjonijiet mhux rilevanti [Art 469(1)(b)(iii)].

Fid-Dritt Amministrattiv Malti, li huwa fondat fuq id-dritt Ingliz (ara "**<u>Cassar Desain vs Forbes noe</u>**" - Qorti ta` l-Appell - 7 ta` Jannar 1935 u "**<u>Lowell et vs Caruana et</u>**" – Prim`Awla tal-Qorti Civili - 14 ta` Awwissu 1972) kemm il-principju tal-*judicial review* kif ukoll il-principji tal-gustizzja naturali kienu ilhom jigu applikati ferm qabel il-Parlament Malti ghamel ligijiet *ad hoc* sabiex jirregola l-materja. Dan sehh ghaliex il-Qrati Maltin kienu affermaw illi fejn tkun tirrizulta *lacuna* fid-Dritt Pubbliku (u d-Dritt Amministrattiv huwa fergha tad-Dritt Pubbliku) ghandha tapplika l-Ligi Ingliza.

Skond l-Art 469A(1)(b), il-kumpannija attrici identifikat il-ksur tal-Kostituzzjoni ta` Malta fl-allegata lezjoni tad-dritt taghha ghal smigh xieraq. U kompliet twessa` l-pretensjoni taghha billi allegat ksur tal-principji tal-gustizzja naturali skond l-Art 469(1)(b)(ii).

Huwa risaput li l-principji tal-gustizzja naturali huma dawk il-principji **<u>minimi</u>** li ghandhom ikunu osservati waqt proceduri anke ta` entita' amministrattiva illi ghandha l-kompitu li tiddeciedi dwar fatti li fuqhom imbaghad

ghandha s-setgha li tiehu decizjonijiet li jaffettwaw id-drittijiet tal-persuna. Il-principji tal-gustizzja naturali huma *audi alteram partem* u *nemo judex in causa propria.* Fil-kawza "**Board of Education v. Rice"** (1911 – AC 179), Lord Loreburn afferma li l-applikazzjoni tal-principji tal-gustizzja naturali '*is a duty lying upon everyone who decides anything*'.

Il-principju *audi alteram partem* jirrikjedi li qabel ma tittiehed decizjoni amministrativa fil-konfront ta` persuna, din ta` l-ahhar mhux biss ghandha tkun mgharrfa, izda ghandha tinghata l-opportunita` li tghid taghha. Fuq kollox jinghata widen tassew ghal dak li l-persuna koncernata ghandha xi tghid, u fl-istess waqt tinghata l-opportunita` li tiddefendi l-kaz kif inhu xieraq.

Fis-sentenza Ingliza "**Ridge v. Baldwin"** (1964 – AC 40) 'the right to a fair hearing' kien iddikjarat bhala *'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**" deciza 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-principji tal-gustizzja naturali -

"Bil-kemm ghandu jinghad li l-htiega li t-tribunal jew awtoritajiet amministrattivi jharsu b'mod skrupoluz it-thaddim ta' dawn il-principji hija wahda li m'ghandux ikun

hemm disposizzjoni espressa tal-ligi sabiex wiehed japplikaha. It-tharis ta' dawn il-principji fit-tmexxija tal-amministrazzjoni pubblika ghandu jkun il-kejl minimu li jiggarantixxi t-trasparenza u s-siwi tal-eghmil amministrattiv. Ghall-kuntrarju in-nuqqas ta' tharis ta' dawn il-principji jwassal ghall-irritwalita' tal-eghmejjel hekk imwettqa u ghat-thassir taghhom."

Fil-pag 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 citat 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-kawza "**Falzon vs Ministru ghall-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 Mizjud"** deciza minn din il-Qorti (Sede Kostituzzjonali) (**PAK/TM**) fl-14 ta' Ottubru, 2004 [u konfermata mill-Qorti Kostituzzjonali] kien ipprecizat li "*ovvjament, il-principju audi alteram partem, ma jfissirx li l-parti milquta trid bilfors tinstema', izda li tinghata l-opportunita' tressaq il-kaz taghha*."

Fil-kaz "**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 – Pga 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-kawza “**<u>Lloyd vs McMahon</u>”** tal-1987 citata f`pagna 335 tal-*Judicial 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".

Il-premess ighodd kemm ghal fejn il-pretensjoni attrici tolqot l-Art 469A(1)(a) kif ukoll fejn tirrigwarda l-Art 469A(1)(b)(ii).

Fil-kaz tas-subinciz (ii), apparti l-principji tal-gustizzja naturali, id-disposizzjoni titkellem ukoll dwar *htigiet procedurali mandatorji fit-twettiq ta' l-eghmil amministrattiv.* Fis-sentenza tal-1985 tal-House of Lords fil-kawza '**Council of Civil Service Unions and Others v. Minister for the Civil Service**' inghad hekk minn Lord Diplock –

"I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

Qabel ma tghaddi biex tqis x`irrizulta mill-kumpless tal-provi dwar il-pretensjoni attrici skond l-Art 469A(1)(a) u l-Art 469(1)(b)(ii), din il-Qorti se tghaddi ghall-analizi tal-Art 469A(1)(b)(iii).

Fil-kuntest ta` din l-ahhar disposizzjoni, jidhol l-element ta` dak li huwa "ragonevoli" (*reasonableness*) u li ghandu jkun segwit mill-awtorita` pubblika meta tiddeciedi jew tezercita d-diskrezzjoni taghha.

<u>H.W.R Wade</u> (“**<u>Administrative Law</u>**”) jikkumenta hekk –

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

Ikompli hekk –

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

With the question whether a particular policy is wise or foolish the court is not concerned ; it can only interfere if to pursue it is beyond the powers of the authority. As Lord Halisham L.C. has said [in re W (An Infant) – 1971 – A.C. 682 at 700] two reasonable persons can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable.This is not therefore the standard of ‘the man on the Clapham omnibus’. It is the standard indicated by a true construction of the Act which distinguishes between what the statutory authority may or may not be authorised

to do. It distinguishes between proper use and improper abuse of power. It is often expressed by saying that the decision is unlawful if it is one to which no reasonable authority could have come."

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

"It is true that the discretion must be exercised reasonably. Now what does that mean ? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretion often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably.' Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the power of the authority. Warrington LJ in Short v Poole Corporation [1926] Ch 66 at 90, 91 gave the example of the red-haired teacher dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it may be described as being done in bad faith ; and, in fact, all these things run into one another."

Dwar *irrelevant considerations* Lord Esher MR fil-kawza **"R. vs St. Pancras Vestry"** (1890) qal hekk –

"*they must fairly consider the application and not take into account any reason for their decision which is not a legal one. If people who have to exercise a public duty by exercising their discretion take into account*

matters which the courts consider not to be proper for the exercise of their discretion, then in the eye of the law they have not exercised their discretion"

In linea ta` principju, il-ligi trid li fit-tmexxija tal-amministrazzjoni pubblika ghandu jkun hemm kejl minimu li jiggarantixxi t-trasparenza. Jekk l-eghmil jirrizulta li jkun irritwali jew addirittura kontra l-ligi, hemm ic-cittadin ikollu kull jirrikorri ghall-intervent tal-Qrati sabiex jistharrgu dak l-eghmil u, jekk ikun il-kaz, jiddikjaraw dak l-eghmil null, invalidu jew minghajr effett. Naturalment il-prova tispetta dejjem lil min jallega.

Fl-isfond tal-premess, u fuq l-iskorta tal-assjem tal-provi li ghalihom diga` ghamlet riferenza, din il-Qorti hija tal-fehma illi l-kumpannija attrici ma ppruvatx b`mod sodisfacjenti sal-grad rikjest mil-ligi la l-kawzali u lanqas it-talbiet taghha skond id-disposizzjonijiet li ccitat mill-Art 469A tal-Kap 12.

Fl-istadju tal-protest gudizzjarju, wara li ttiehdet kontriha d-decizjoni mill-Awtorita`, il-posizzjoni ta` CCD ma kienx il-ksur tal-Kostituzzjoni skond is-subinciz (1)(a). Il-protest gudizzjarju huwa car u inekwivoku. CCD marret ghas-subincizi tal-Art 469A li jittrattaw l-*ultra vires.*

Din il-Qorti m`ghandhiex prova illi fil-kaz tal-kumpannija attrici ma kienx hemm smigh xieraq jew lezjoni tal-principji tal-gustizzja naturali.

Kienu esebiti bhala prova l-atti tal-procedimenti quddiem il-VRT Advisory Board.

Ibda biex il-kumpanija attrici ma tistax tghid li fid-decizjoni li ttiehdet kien hemm kaz ta` *nemo judex in causa propria.* Irrizulta li l-Board huwa mahtur mill-

Awtorita` biex jaghmel rakkomandazzjonijiet fil-kwadru tas-setghat li l-Awtorita` ghandha skond il-ligi. Il-membri tal-Board huma pero` indipendenti mill-Awtorita` u ghamlu l-istharrig taghhom awtonomu.

L-assjem tal-provi juri li l-kumpannija attrici kienet taf bl-ilmenti li saru kontra l-operat taghha u fiz-zewg kazi nghatat l-opportunita` li tispjega l-posizzjoni taghha u tiddefendi ruhha. Mhux mehtieg li procediment bhal dak kondott quddiem il-Board ikun hekk formali li jsir jixbah dak li sehh quddiem tribunal gudizzjarju. Ghalkemm il-Board stabilixxa l-procedura tieghu, kollox tmexxa bi trasparenza. Il-Board sema` lil min ilmenta, sema` lil terzi, sema` wkoll lill-kumpannija attrici jew rapprezentanti taghha fiz-zewg kazi, ha decizjoni fuq il-fatti li kellu quddiemu, fisser id-decizjoni tieghu u ghamel rakkomandazzjoni lill-Awtorita` li mxiet skond ir-rakkomdazzjonijiet li kellha. L-Awtorita` ma waqfitx hemm izda meta baghtet l-avviz ta` terminazzjoni lill-kumpannija attrici fissret fid-dettall ir-ragunijiet ghala kienet ittiehdet dik id-decizjoni. Certament dan ma kienx kaz fejn l-Awtorita` naqset f`dan is-sens kif ilmentat il-kumpannija attrici.

Ma jistax jinghad illi l-Awtorita` mxiet b`mod irragonevoli meqjus il-fatt li d-decizjoni kienet il-frott ta` process ta` stharrig li kien kondott minn persuni indipendenti.

U fid-decizjoni li hadet l-Awtorita` applikat il-kuntratt bejn il-partijiet li kien rifless ta` dak li kienet tghid is-Sitt Skeda tar-Regolamenti.

Kull kaz ghandu l-fattispeci partikolari tieghu. Tghid mill-ewwel illi qieset il-fatti li rrizultaw fil-kawzi li kienu decizi mill-Qorti tal-Appell f`”**<u>Borg vs Awtorita` dwar it-Trasport Pubbliku</u>**” (op. cit.) u f`”**<u>Cassar vs Awtorita` dwar it-Trasport ta` Malta</u>**” (deciza fil-25 ta` Jannar

2013) u tghid illi l-fatti hemm – specjalment tat-tieni kaz – huma differenti minn dak tal-lum. Tal-lum huwa kaz fejn din il-Qorti ma tirriskontrax prova tal-lanjanzi li dwarhom ilmentat il-kumpannija attrici. Ix-xoghol tal-qorti mhuwiex li sservi ta` appell jew ta` revizjoni tad-decizjoni tal-Awtorita` izda li tqis jekk id-decizjoni li hadet l-Awtorita` kenitx taqa` fil-parametri tal-ligi.

Il-Qorti tal-Appell fis-sentenza taghha tal-11 ta` Mejju 2010 fil-kawza “**Fava pro et noe vs Supretendent tas-Sahha Pubblika noe et**” esprimiet il-hsieb taghha bl-aktar mod car –

F’kaz li l-qrati ordinarji jigu mitluba jistharrgu ghemil amministrattiv, il-kompetenza taghhom hi limitata biex tordna li tittiehed decizjoni jew biex thassar dik l-istess decizjoni, pero` ma jaslu qatt biex huma stess jiehdu d-decizjoni flok l-awtorita` kompetenti. Jekk ligi tvesti diskrezzjoni f’xi awtorita`, hija dik l-awtorita` li trid tuza dik id-diskrezzjoni u tiehu d-decizjoni ; jekk id-decizjoni li tittiehed tigi mhassra, il-kwistjoni tigi rimessa mill-gdid lill-awtorita` biex dik tiehu d-decizjoni taghha kif suppost u fit-terminu tal-kunsiderazzjonijiet kollha rilevanti …

Ghalhekk l-ewwel zewg talbiet qeghdin jigu michuda.

2) It-talbiet l-ohra attrici

Billi l-ewwel zewg talbiet qeghdin jigu michuda, dan ghandu l-konsegwenza li t-tlieta talbiet l-ohra qeghdin jigu michuda wkoll.

Ikkunsidrat :

VII. Il-kontrotalba

Skond il-ftehim bejn il-partijiet, li sar a tenur tar-Regolamenti, kellha tkun fis-sehh garanzija ta` Lm10,000 favur l-Awtorita`. Wara s-sejba tal-ewwel ksur (*breach of contract*), l-Awtorita` thallset Lm5,000 mill-garanzija. Irrizulta li l-garanzija baqghet ridotta ghal Lm5,000 ghaliex CCD ma rristabbilhietx il-garanzija lura ghall-figura ta` Lm10,000 kif kien patwit u kif kien stabbilit fir-Regolamenti. Wara s-sejba tat-tieni ksur, l-Awtorita` thallset l-bilanc li kien ghad hemm fil-garanzija u cioe` Lm5000. Baqghet ghalhekk skoperta ghal Lm5000 billi fil-kaz tat-tieni ksur, il-penali stabbilita kienet ta` Lm10,000. Ghal din il-Qorti, il-kontrotalba hija ppruvata.

<u>Decide</u>

Ghar-ragunijiet kollha premessi, din il-Qorti qeghda taqta` u tiddeciedi din il-kawza hekk –

Tichad l-ewwel eccezzjoni tal-Awtorita` konvenuta.

Tilqa` l-eccezzjonijiet l-ohra tal-Awtorita` konvenuta.

Tichad it-talbiet kollha tal-kumpannija attrici.

Tilqa` l-ewwel domanda tal-kontrotalba.

Tilqa` t-tieni domanda tal-kontrotalba u tikkundanna lill-kumpannija attrici biex thallas lill-Awtorita` konvenuta s-somma ta` hdax-il elf sitt mija sitta u erbghin Ewro sebgha u tmenin centezmu

(€11,646.87) ekwivalenti ghal hamest elef liri Maltin (Lm5,000) bl-imghax legali b`effett mit-13 ta` Mejju 2005.

Tikkundanna lill-kumpannija attrici sabiex thallas l-ispejjez kollha ta` din il-kawza.

< Sentenza Finali >

--------------------------------TMIEM--------------------------------