



## **QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta ta' I-20 ta' Gunju, 2013

Appell Civili Numru. 16/2012

**John Dalli**

**vs**

**L-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar**

**II-Qorti,**

Rat ir-rikors tal-appell ta' John Dalli tat-22 ta' Frar 2012 kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-7 ta' Frar 2012 fejn gie konfermat l-iskadar taz-zona maghrufa bhala 'l-Magħluq ta' Marsaxlokk' li sehh fid-19 ta' Dicembru 2006 permess ta' Avviz tal-Gvern 1069 tal-2006;

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

Rat l-atti kollha u semghet id-difensuri tal-partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

A. L-Awtorita ta' Malta dwar I-Ambjent u I-Ippjanar fil-25 t'April 2007, ikkonfermat I-iskedar taz-zona maghrufa bhala 'I-Magħluq ta' Marsaxlokk', permezz tal-Avviz ta' I-Gvern 1069 tal-2006, kif ippublikat fil-Gazzetta ta' I-Gvern tad-19 ta' Dicembru 2006.

B. In-nota tal-Perit Edward Bencini ghall-Appellant, ipprezentata fit-28 ta' Mejju 2007, senjatament il-punti seguenti:

"3.2 comments CO105, CO107, CM201 and CM141 [raised during the Public Consultation process] ... are of particular relevance [since they refer to] ... the need for an adequate buffer to protect 'il-Ballut ecological zone'.

The subsequently approved final MBLP [Marsaxlokk Bay Local Plan] and the 2002 Draft Development Brief both provided for an adequate buffer zone to the salt marsh, defined in the latest document at a width of 10 metre strip along the eastern and southern flanks of the Hunters' Tower site.

3.3 The draft brief for the Inner Harbour Opportunity Area ... is as yet pending final approval.

Throughout the MEPA Board discussions, there was never any doubt raised as to the necessity to increase the buffer zone from a 10 metre strip at the southern and eastern flanks of the site to the entire 4115 sq.m (excluding the Tower itself). Such a decision would be contrary to all the documents, approved or otherwise, prepared by MEPA relative to the Hunters' Tower site

4.1. We therefore respectfully propose that the Planning Appeals Board directs MEPA to reconsider the proposed 'Scheduling of Property' at 'Il-Magħluq I/o Marsaxlokk' as shown on Map 1 ... of the GG, and revise the boundary of the buffer zone of Map 1 ... to that shown in Map 4 of the Inner Harbours Development Brief prepared by MEPA itself in July 2001 ...

The rest of the Hunter's Tower site will remain part of the Inner Harbour Opportunity Area."

C. In-nota tal-Avukat Dott. Simon Tortell, ipprezentata fl-14 t'Awwissu 2008, precizament il-punti seguenti:

"Sec. 23 of the Development Planning Act ... provides that the term 'subsidiary plans' includes 'subject plans, local plans, action plans, and development briefs', and as a consequence any review of the approved Marsaxlokk Bay Local Plan which purported to propose 'that any land be excluded from a Temporary Provisions Scheme Boundary or a development boundary as indicated in a local plan', required publication in terms of law.

Such publication was not effected, and as a consequence client submits that the purported exclusion of the land in question from the Marsaxlokk Bay

Local Plan is null and void, and the said land should continue to be considered an 'Opportunity Area' for development.

As a consequence, the reason given by MEPA in its letter to appellant dated 25th April, 2007, that the land in question is 'officially located Outside Development' in order to justify the decision to Schedule the said land, cannot be entertained and should be disregarded."

D. Il-verbal tas-Seduta numru 2 tal-Bord ta' l-Appell dwar l-Ippjanar, mizmuma fit-22 ta' Jannar 2010, precizament il-punt seguenti:

"[L-Avukat Dott. Anthony] DeGaetano jivverbalizza illi, t-talbiet ta' differment li kieni ilhom isiru, kieni minhabba waqt li kienu tlestew u kkummissjonaw summer survey, kellhom jistennew li tidhol ix-Xitwa biex jaghmlu winter survey. L-Awtorita tosserva illi, minn dakinar li kellhom jaghmlu winter survey, illum dhalna fit-tielet Xitwa u dan ir-rapport għadu mhux lest."

Jigi rilevat illi sa dakinar, l-Appellant permezz tal-konsulenti tieghu, kien diga talab ben seba' diferimenti.

E. Il-verbal tas-Seduta sussegwenti, numru 9 tal-Bord ta' l-Appell dwar l-Ippjanar, mizmuma fis-7 ta' Mejju 2010, precizament il-punt segwenti:

"Id-difensur ta' l-appellant jiddikjara illi, s-surveys ma sarux u mhux ser isiru u jiddikjaraw in oltre illi, m'ghandhomx aktar provi xi jressqu."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda appell mill-iskedar ta' zona maghrufa bhala l-Magħluq ta' Marsaxlokk. Permezz tal-policies RCO 1, RCO 10, RCO 11 u RCO 12, iz-zona giet skedata bhala outside development zone, Special Area of Conservation of International Importance.

Is-sit mertu tal-appell de quo fil-fatt jinsab fiz-zona li sservi ta' Level 3 - buffer zone ghall-art li permezz tal-istess skedar, hi ndikata bhala Level 1 - Area of Ecological Importance u Site of Scientific Importance.

L-aggravji tal-Appellant kontra l-iskedar jistriehu fug sensiela ta' sottomissionijiet li kienu tressqu waqt il-fazi tal-konsultazzjoni pubblika tal-Pjan Lokali għal-Bajja ta' Marsaxlokk, b'mod partikolari il-kummenti CO105, CO107, CM201 u CM141 li ttrattaw il-bzonn li titwaqqaf zona ta' lqugh (buffer zone) ta' madwar ghax metri, lejn il-İvant u nofsinhar tas-sit mertu tal-appell de quo, sabiex tigi protetta l-arja ekologika tal-ballut li tinsab fil-lokalita.

Jigi rilevat li l-Awtorita, għar-rigward tal-konsultazzjoni pubblika, innutat li kwalsiasi zvilupp fl-opportunity area għandu jkollu bhala mira, l-harsien u l-protezzjoni tas-salt marsh.

Madankollu, l-Appellant jispjega li l-art li fuqha ssorgi l-istess Hunters' Tower ma kellieq tigi nklusa f'din il-buffer zone; anke peress li restrizzjoni bhal din ser tolqot b'mod hazin kwalsiasi zvilupp ulterjuri fuq din il-proprietà.

Jargumenta li din il-bicca art, qatt ma kellha tigi esklusa rniz-zona tal-izvilupp (tal-Pjan Lokali), u di konsegwenza, ghanda titqies bhala opportunity area.

Fil-fatt, l-Appellant jallega li l-Awtorita ma kellha l-ebda poter legali tiddeciedi li teskludi din il-bicca art mill-Pjan Lokali. Dan sar sabiex l-Awtorita tkun tista' tiskedha l-art minghajr ma tagħmel konsultazzjoni pubblika ulterjuri.

In oltre, fil-mori tal-appell, l-istess Appellant inkariga ruħħu li jhejj i-riljev jew perizja tal-area sabiex ihejj s-sottomissjonijiet tieghu in sostenn tal-argumenti mqajjma minnha; li l-area m'għandha l-ebda kwalita li tagħmilha denja tas-skedar għal bqijs taz-zona.

Jidher pero, li ghalkemm sar xi tip ta' summer survey, qatt ma tlesta l-winter survey u li din kienet it-tielet xitwa li tali perizja qatt ma gietx konkluza. In oltre, irird jigi nutat li l-ebda survey qatt ma gie pprezentat għal kunsiderazzjoni ta' dan it-Tribunal.

Kif rilevat file GF 71/2006, l-arja mertu tal-appell de quo kienet sa minn dejjem iddesinjata bhala special area of conservation. Il-fatt li d-Draft Development Brief ma kienx jispecifika dan, hu irrilevanti; ghax-abbozz m'għandu l-ebda legittimazzjoni jew rabta legali. L-art in ezami giet skedata permezz tal-Avviz tal-Gvern numru 1069 u l-Appellant kelli kull dritt li jappella dan l-iskedar fuq merti xjentifici u ta' ppjanar - kif fil-fatt qed jittenta jagħmel.

Madankollu, id-dokument indikat bhala Scheduling Reconsiderations, tal-Integrated Heritage Management Team (Resources Management Unit, Environment Protection Directorate) fi hdan l-Awtorita (blue 25 fil-file GF 71/2006) jghid is-segwenti:

"3.1.1 No scientific reasons have been put forward for the reconsideration of the scheduling of il-Mahluq ta' Marsaxlokk. The requests for reconsideration are more related to the constraints that the scheduling would represent with regards to proposed developments (which, given their location, would be assessed in terms of

relevant Structure Plan Policies that are applicable Outside Development Zone).

Dwar dan, tiprovo di I-policy RCO 12(3) tal-Pjan ta' Struttura meta tghid:

"Level 3 zones will include areas where control is necessary to preserve the habitats/species/features in adjacent sites."

Fil-fatt, jigi rilevat li I-Appellant kellyu bizzejjed zmien sabiex jipprezenta I-kaz tieghu abbazi ta' argumenti xjentifikasi (kemm fil-fazi ta' rikonsiderazzjoni kif ukoll waqt dan I-appell) izda anke meta nghata I-opportunita sabiex jaghmel dan - sahansitra talab aktar zmien sabiex jaghmel 'I-ahhar parti' tal-istudju lilu koncess - naqas illi jaghmel tali sottomissjonijiet. Mhux biss, talli li fl-ahhar addirittura rrinunzja ghalihom. Dan hu agir oggezzjonabbli ferm u kwazi vessatorju, u li jirazzenta I-imposizzjoni tas-sanzjoni fit-termini tal-Artikolu 14 tat-tieni skeda tal-Att X ta' I-2010, Kap. 504.

Għalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq magħmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi minn dan I-appell billi jichad I-istess u jikkonferma I-iskedar taz-zona magħrufa bhala 'I-Magħluq ta' Marsaxlokk', mahrug mill-Awtorita ta' Malta dwar I-Ambjent u I-ippjanar, permezz tal-Avviz ta' I-Gvern 1069 tal-2006, u kif ippublikat fil-Gazzetta ta' I-Gvern tad-19 ta' Dicembru 2006.

## Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal ma tax kont jekk id-decizjoni tal-Awtorita li tiskeda I-art kollha kinitx ragonevoli meta ddipartiet mid-Draft Development Brief li kienet esigiet biss buffer zone bejn is-salt marsh u I-proprjeta tal-appellant u minflok tefaghha fuq I-appellant li kellyu jiprova I-kuntrarju;
2. It-Tribunal ma indagax ghafnejn I-Awtorita ddipartiet mid-development brief li fin-nuqqas li turi li wzat id-

diskrezzjoni moghtija lilha b-mod ragonevoli jaghti lok ghall-arbitriju u irresponsabilita.

Dawn huma punti ta' ligi li jimmeritaw konsiderazzjoni.

### **L-ewwel aggravju**

Din il-Qorti ma taqbilx illi t-Tribunal ma kkonsidrax għalfejn I-Awtorita skedat z-zona kollha fl-2006 milli mxiet fuq Draft Development Brief tal-2002. It-Tribunal jirreferi fil-fatt li z-zona giet skedata ghax fost affarrijiet ohra I-art hi outside development zone u hi identifikata bhala Special Area of Conservation of International Importance u s-sit jinsab fiz-zona li sservi ta' level 3 - buffer zone għall-art li permezz tal-istess skedar hi indikata bhala level 1 - Area of Ecological Importance u Site of Scientific Importance. It-Tribunal zied ukoll illi I-fatt li d-Draft Development Plan ma specifikax dan kien irrelevanti fi-sens li draft ma għandux rabta legali. In oltre I-istess Tribunal spjega level 3 zones 'will include areas where control is necessary to preserve the habitats/species/features in adjacent sites'.

Kwindi irrispettivament minn dak li kellu jipprova I-appellant, ma jistax jingħad li t-Tribunal naqas li jikkunsidra r-ragunijiet wara I-iskedar u I-Qorti tqis illi fi kwistjonijiet dwar planning ma għandhiex tissindaka I-operat ta' dawk esperti fil-materja sakemm ma jirrizultax xi abbuż jew ingustizzja lampanti li mhix il-kaz f'din I-istanza.

La darba t-Tribunal dehrlu li I-iskedar kien gustifikat bil-policies ezistenti, kien jispetta lil appellant li jipprova I-kuntrarju. Anki fuq din il-kwistjoni t-Tribunal ikkonsidra li I-appellant talab reconsideration tal-iskedar u I-kummenti ta' dipartiment fi hdan I-Awtorita li ma ngibux ragunijiet xjentifici għalfejn kellha ssir rikonsiderazzjoni oltre I-fatt li dan kien ser jikkreja rbit għal zvillupp. It-Tribunal ukoll innota li nonostante diversi okkazzjonijiet fejn I-appellant ingħata I-opportunita jagħti ragunijiet teknici u xjentifici għalfejn I-iskedar kellu jiġi mneħħi u jiġi addottat buffer zone mas-sit tal-appellant dan baqa' ma gab ebda prova.

Kwindi l-aggravju tal-appellant mhux gustifikat.

## **It-tieni aggravju**

Dan l-aggravju hu kwazi ripetizzjoni tal-ewwel aggravju. Ir-ragunijiet tal-Awtorita li tiskeda z-zona kienu bbażati fuq policies li t-Tribunal hass li kienu gustifikati u għalhekk id-diskrezzjoni tal-Awtorita giet uzata b'mod legittimu. L-appellant ma gab ebda prova kuntrarja hlief li ma qabilx mal-iskedar. Il-Qorti fliet l-atti u fil-fatt kemm it-Tribunal u aktar minn hekk l-Awtorita f'ittra mibghuta lil perit tal-appellant fil-25 ta' April 2007 (fol. 60) tal-process inkwadrat b'mod dettaljat ir-ragunijiet li wasluha tiskeda l-art fl-2006.

Kwindi anki dan l-aggravju qed jigi michud.

## **Decide**

Għalhekk il-Qorti tiddeciedi billi tichad l-appell ta' John Dalli u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-7 ta' Frar 2012. Bi-ispejjez kontra l-appellant.

**< Sentenza Finali >**

-----TMIEM-----