MALTA

QORTI KOSTITUZZJONALI

S.T.O. PRIM IMHALLEF

SILVIO CAMILLERI

ONOR. IMHALLEF

GIANNINO CARUANA DEMAJO

ONOR. IMHALLEF

NOEL CUSCHIERI

Seduta ta' l-24 ta' April, 2015

Appell Civili Numru. 17/2010/1

Joachim maghruf bhala Jack Galea

v.

L-Avukat Generali u l-Awtorita` ta' Malta dwar l-Ambjent u l-Ippjanar

Preliminari

1. Dan hu appell maghmul mir-rikorrent minn sentenza moghtija fis-27 ta' Novembru 2014 mill-Prim' Awla tal-Qorti Civili, fil-kompetenza kostituzzjonali taghha, li permezz taghha dik il-Qorti, wara li cahdet l-ewwel eccezzjoni tal-intimat Avukat Generali, laqghet l-ewwel eccezzjoni tal-Awtorita` ta' Malta dwar l-Ambjent u l-Ippjanar [l-Awtorita`] u lliberat lill-istess mill-osservanza tal-gudizzju, u wkoll, filwaqt li laqghet l-eccezzjonijiet l-ohra tal-Avukat Generali, cahdet it-talbiet tar-rikorrenti.

Il-Fatti

2. Fis-succint, il-fatti relevanti huma dawn. Fit-12 ta' Settembru 1985 u fit-22 ta' Jannar 1986 rispettivament il-*Planning Area Permits Board* [il-Bord] in segwitu ghal zewg applikazzjonijiet maghmula mir-rikorrent approva il-hrug ta' zewg permessi ghall-izvilup favur ir-rikorrenti fuq porzjon art fi Triq il-Gebla Tal-General f'San Lawrenz, Ghawdex. Fost il-kundizzjonijiet ghall-hrug ta' dawn il-permessi hemm li, qabel ma r-rikorrent jibda jibni, huwa kellu jikkomunika s-sit *de quo* l-public sewer jew alternattivament jinstalla *septic tank*. Il-permessi kellhom validita` ta' sena mid-data tal-hrug taghhom, izda setghu jigu irtirati *"at any time during its validity period without any compensation from Government being granted."*[1]

[1] Fol. 49.

3. In segwitu ghal hrug tal-permessi, ir-rikorrent hallas il-kontribuzzjonijiet tat-triq u tad-dranagg.

4. Eghluq is-sena l-permess skada, u, ghajr xoghol ta' thammil ma kien sar ebda xoghol fuq is-sit.[2]

5. Ir-rikorrent kien applika ghar-renova tal-istess permessi, izda, ghalkemm, skont minuti interni tal-Bord jirrizulta li fi stadju partikolari tal-ipprocessar ta' dawn l-applikazzjonijet, kien hemm approvazzjoni ghal tigdid ta' dawn il-permessi, fil-21 ta' Awwissu 1987 il-Bord iddecieda finalment li jirrifjuta li jgedded il-permessi, u b'ittra datata 17 ta' Novembru 1988 r-rikorrent gie informat b'dan ir-rifjut, kif ukoll bir-ragunijiet wara din id-decizjoni: wiehed *'because proposed site is objectionable'* u l-iehor *'on environmental grounds.'*

6. B'xi mod ir-rikorrent akkwista kopja tal-minuti mill-files governattiv relattivi ghall-permessi originali: kemm dak numru 2887/83, kif ukoll dak 2943/83[3]. Minn dawn id-dokumenti jirrizulta li, ghalkemm skont minuta 33 datata 13 ta' Frar 1987, u l-minuta 28 datata 31 ta' Dicembru 1986, l-applikazzjoni ghat-tigdid kienet fi stadju partikolari approvata internament, izda

[2] Ara Dep.rikorrent fol109 kawza 17/10. Di fatti l-perit tar-rikorrent kien talab ghall-permezz sabiex jibni cesspit permezz ta' ittra datata 16 ta' Frar 1987, u cioe` wara l-ikadenza tas-sena. Inoltre mill-minuta 68 [data mhux legibbli] izda sussegwenti ghall-minuti 67 datata 23 Frar 1990, jirrizulta li "site inspected today and it results that no works are taken in hand" [Cit.72/1993 Jack Grech v. Direttur Generali [supra] – Foll. 327 et seq.

[3] Foll. 23 et seq.

kif rrizulta minn minuti sussegwenti, l-applikazzjonijiet gew finalment rigettati,[4] u huwa b'dan ir-rifjut li r-rikorrent gie formalment informat.

7. Fl-ebda stadju ir-rikorrent ma gie informat li l-permess ghat-tigdid kien gie approvat. Din kienet haga interna li b'xi mod sar jaf biha. Huwa gie informat biss bir-rifjut tat-tigdid. Fix-xhieda tieghu r-rikorrent spjega li skont il-prassi ta'dak iz-zmien, l-applikant kien imur jigbor il-permess approvat mid-Dipartiment, izda f'dan il-kaz huwa ma ghamilx hekk u qaghad jistenna sakemm jigi formalment infurmat bid-decizjoni tal-Bord.[5]

8. Ir-rikorrent ma ressaq ebda appell minn dan ir-rifjut. Anzi sussegwentement u konsegwenzjali ghall-istess rifjut huwa talab ittra datata 31 ta' Mejju 1989 u ohra f'Jannar 1990 rifuzjoni tal-flus li kien hallas bhala kontribuzzjoni ghall-ghoti tal-linja u tal-livelli, liema rifuzjoni inghatat permezz ta' cheque li hu sarraf bla rizerva.

9. Ma jirrizultax li r-rikorrent issottometta xi applikazzjoni ghall-hrug tal-permessi lill-Awtorita` intimata.

10. Ir-rikorrent jallega li dan ir-rifjut kien jissarraf f'danni kbar ghalih, peress li ma setghax jizviluppa l-art li kien akkwista precedentement.

[4] Fol. 37 u Fol. 62.
[5] Dep. fol. 98 – 17/10.

11. Konsegwentement huwa beda proceduri quddiem il-qrati civili bazati fuq stharrig gudizzjarju ta' eghmil amministrattiv, izda b'ezitu negattiv ghalih. Appella mis-sentenza izda l-appell gie michud. Ghamel kawza ghar-ritrattazzjoni, izda anke din giet michuda. Ghalhekk huwa istitwixxi l-proceduri kostituzzjonali odjerni fejn qed jsostni ksur tad-dirttijiet tieghu fundamentali bazati fuq l-Artikoli 6 u 14, u l-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni Ewropeja ghad-Drittijiet tal-Bniedem [il-Konvenzjoni].

Is-Sentenza Appellata

"L-Awtorita` teccepixxi li mhijiex il-legittima kontradittur tar-rikorrent ghaliex mhijiex is-successur tal-PAPB.

"Fis-sentenza taghha tat-30 ta` April 1998 fil-kawza `**John Sammut vs Awtorita ta` l-Ippjanar**` il-Qorti Kostituzzjonali qalet hekk –

> *"`Il-Qorti ma tistax taccetta s-sottomissjoni ta` l-appellant illi l-intimata Awtorita ta` l-Ippjanar hija `effettivament successur tal-PAPB bid-drittijiet u bl-obbligi ta` l-istess`. L-appellant jittanta jiggustifika din il-proposizzjoni generika billi jargumenta li dan kien jidher li kien l-istat ta` dritt minn qari akkurat ta` l-artikolu 63 ta` l-Att 1 tal-1992 dwar l-Ippjanar ta` l-Izvilupp. Il-ligi pero dan ma tghidux u jekk kellu jigi argumentat b`interpretazzjoni ta` din id-disposizzjoni wiehed necessarjament kellu jasal ghall-konkluzjoni opposta ghal dik issugerita mill-appellant. Ma hemmx ghalfejn jinghad illi hawn si tratta ta` ezami u interpretazzjoni ta` disposizzjoni ta` ligi fiha nnifisha mnezza minn kull konsiderazzjoni ohra, inkluza dik ta` indoli kostituzzjonali. Interpretazzjoni li trid issegwi d-dicitura ta` l-artikolu u l-mens legis u mhux dak li wiehed jahseb li jaqbel jew li ghandu jkun jew li hu gust li jkun. Dan multo magis meta hawn si tratta ta` disposizzjoni li, in effetti tiddetermina u tiddelimita ukoll il-funzjonijiet u l-kompetenza ta` l-Awtorita u ta` l-entitajiet l-ohra mwaqqfa fil-ligi li jirregolaw l-izvilupp u safejn dawn jistghu jiehdu konjizzjoni ta` materji dwar fatti li sehhew <u>qabel</u> ma gie fis-sehh dak l-Att ;*
>
> *"L-artikolu 63 ta` l-Att I ta` l-1992 hu disposizzjoni transitorja li tipprovdi (1) ghar-revoka ta` legislazzjoni anterjuri li kienet sa dakinhar li dahal fis-sehh dak l-Att tirregola l-izvilupp f`Malta fosthom dawk il-ligijiet u regolamenti li kienu jipprovdu ghat-twaqqif u t-thaddim tal-Planning Appeals Permits Board u (2) ghall-kontinwita fir-regolament ta` dak li kien sar validament taht dik il-legislazzjoni antecendenti, pero fil-parametri precizi definiti f`din id-disposizzjoni ;*
>
> *"…*

> *"Ghandu jkun immedjatament ovvju minn qari ta` din id-diposizzjoni illi l-legislatur irid jipprovdi proprju kontra ta` dak li qed jigi ssugerit mill-appellant. Il-legislatur ried li f`materja ta` ippjanar u l-izvilupp ikun hemm linja netta ta` demarkazzjoni bejn dak li sehh qabel l-Att I tal-1992 u dak li kien se jigi wara li dak l-Att jigi fis-sehh. Ma riedx allura li l-Awtorita li kienet ser titwaqqaf b`dik il-ligi tkun s-successur tal-PAPB la fl-ezercizzju tal-funzjonijiet u poteri taghha u lanqas fid-drittijiet u l-obbligi taghha. In-natura tal-kostituzzjoni tal-Awtorita hi infatti ghal kollox differenti minn dik tal-PAPB. Filwaqt li dik tal-ahhar kienet ex lege meqjusa bhala d-delegat tal-Ministru responsabbli ghax-Xoghlijiet Pubblici u kienet tezercita l-funzjonijiet fdati f`idejh, l-Awtorita hi korp awtonomu u indipendenti kkostitwit bil-ligi li tiddetermina l-funzjonijiet li kellha tespleta, liema ligi kienet taghtiha l-poteri kollha biex tkun tista` tezercita tali funzjonijiet. Mill-banda l-ohra, li kieku l-Att 1 tal-1992 ried li din l-Awtorita tkun is-successur fid-drittijiet u l-obbligi tal-PAPB, dan kienet tghidu espressis. La ma tghidux, mhux lecitu li jigi dezunt bi process ta` interpretazzjoni. Implicitament il-ligi anzi teskludi tali process ghaliex tispecfika f`liema cirkostanzi u safejn kull haga maghmula taht il-ligijiet antecedenti b`dak l-Att irrevokati, kienu salvati u rregolati bil-ligi l-gdida. Il-PAPB gie b`dan l-Att abolit ghax kienet hekk abolita l-ligi li permezz taghha kien gie kkostitwit, u fin-nuqqas ta` disposizzjoni espressa li l-Awtorita kienet bil-ligi l-gdida tigi ddikjarata s-successur tieghu wara li gie abolit, mhux guridikament korrett li wiehed jattribwiha din il-vesti ghax dan ikun jimporta li l-Awtorita tkun qed tigi moghtija funzjonijiet, drittijiet u obbligi li l-ligi bl-ebda mod ma tikkonferieha`*

"Din id-direzzjoni gurisprudenzjali tghodd ghall-kaz tal-lum meta tqis li r-rikorrent qieghed jilmenta li kien il-PAPB li kiser il-jeddijiet fondamentali tieghu.

"**Il-Qorti qeghda <u>tilqa</u>` l-ewwel eccezzjoni tal-Awtorita` ntimata u tilliberaha mill-osservanza tal-gudizzju.**

"**Ikkunsidrat :**

"**VI. <u>L-ewwel eccezzjoni tal-Avukat Generali</u>**

"L-Avukat Generali jeccepixxi illi r-rikorrent jallega li garrab ksur ta` jeddijiet fondamentali li graw it-30 ta` April 1987. Ghalhekk il-Konvenzjoni ma tapplikax skont l-Art 7 tal-Kap 319.

"L-**<u>Art 7 tal-Kap 319</u>** jaqra hekk :-

> *"`Ebda ksur tal-Artikoli 2 sa 18 (inkluzi) tal-Konvenzjoni jew tal-Artikoli 1 sa 3 (inkluzi) tal-Ewwel Protokoll li jsir qabel it-30 ta` April 1987 jew tal-Artikoli 1 sa 4 (inkluzi) tar-Raba Protokoll, l-Artikoli 1 u 2 tas-Sitt Protokoll jew tal-Artikoli 1 sa 5 (inkluzi) tas-Seba Protokoll li jsir qabel l-1 ta` April 2002, ma ghandu jaghti lok ghal xi azzjoni taht l-artikolu 4.`*

"Fis-sentenza taghha tal-5 ta` April 2011 fil-kawza **<u>`Gera de Petri Testaferrata Bonici Ghaxaq vs Malta`</u>** l-ECHR qalet hekk :-

> *" 38. The Court observes that in the absence of an express limitation, the Maltese declaration of 30 April 1987 is retrospective and the Court is*

> *therefore competent to examine facts which occurred between 1967 the date of ratification and 1987 the date on which the State`s declaration under former Article 25 became effective (see Bezzina Wettinger and Others v. Malta, no. 15091/06, § 54, 8 April 2008). As to the antecedent period, even though the Convention was applicable to Maltese territory, this had its basis in the United Kingdom`s Convention obligations. The present complaint is directed against the Maltese Government. Thus, the Court can only take into consideration the period which has elapsed since the Convention entered into force in respect of Malta (1967) …"*

"Din id-direzzjoni gurisprudenzjali ghandha tghodd ghall-kaz tal-lum.

"**Ghalhekk il-Qorti qeghda <u>tichad</u> l-ewwel eccezzjoni tal-Avukat Generali.**

"**Ikkunsidrat:**

"**VII. <u>Il-mertu</u>**

"**1) <u>L-isfond</u>**

"Ir-rikorrent qieghed jilmenta li kien hemm vjolazzjoni tad-drittijiet tieghu meta l-permessi li kienu nghatawlu fit-22 ta` Jannar 1986 (198/86/2887/83) u fit-12 ta` Settembru 1985 (3171/85/2943/83) l-ewwel kienu mgedda f`Dicembru 1986 u fi Frar 1987, u in segwitu gew rifjutati fis-17 ta` Settembru 1988.

"Il-fatti li gab ir-rikorrent ghall-konsiderazzjoni ta` din il-Qorti kienu l-istess li kien gab a konjizzjoni tal-qrati ordinarji fil-procediment li kien istitwixxa ghal stharrig gudizzjarju ta` ghemil amministrattiv.

"Il-Qorti taghmel riferenza ghall-atti tal-kawza fl-ismijiet `**<u>Jack Galea vs Direttur Generali tax-Xoghlijiet et</u>**` (Citaz. Nru. 72/1993) li kienet deciza mill-Qorti tal-Appell fid-9 ta` Jannar 2009 u li din il-Qorti ordnat illi jigu allegati mal-atti ta` dan il-procediment wara talba mill-partijiet.

"Il-premessi li adopera fil-kawza prezentata quddiem il-qrati ordinarji kienu l-istess li r-rikorrent adopera sabiex iressaq l-ilmenti tieghu ghall-ksur tal-jeddijiet fondamentali tieghu fil-procediment tal-lum.

"Il-pern tal-istanza tar-rikorrent fil-procediment tal-lum hija l-insistenza tieghu li huwa kien inghata r-renova ghaliex ir-renova kienet giet approvata ; in segwitu l-approvazzjoni inbidlet f`rifjut ad insaputa tieghu u bla ma nghata l-opportunita` jghid tieghu.

"Din il-pretensjoni tar-rikorrent giet respinta in via definittiva u finali mill-Qorti ta` l-Appell anke wara procedura ta` ritrattazzjoni.

"Fil-konsiderazzjonijiet taghha, il-Qorti ta` l-Appell qalet hekk :-

> *"`Minn ezami tax-xhieda u d-dokumenti prodotti jidher illi l-imsemmija minuti jirriflettu effettivament il-process ta` deliberazzjoni illi l-Planning Area Permits Board (PAPB) ghadda minnu sakemm ha d-decizjoni*

finali tieghu u cioe` dik illi jirrifjuta illi johrog it-tigdid tal-permessi lill-appellant. Dan huwa rifless fil-fatt illi ghalkemm il-minuti 27, 28, 32 u 33 tal-permessi relattivi kienu juru li f`dak l-istadju l-Bord kien propens li jakkorda t-tigdid in kwistjoni, madanakollu l-Bord qatt ma kkomunika decizjoni favorevoli lill- appellant. Dana jfisser li kwalunkwe decizjoni li kienet ittiehdet bejn Dicembru 1986 u Frar 1987 ma kienetx wahda finali. Din il-Qorti hija tal-fehma illi li kieku d- decizjoni tal-Bord, dakinhar li tnizzlu dawn il-minuti, kienet wahda finali u vinkolanti, din necessarjament kienet tkun segwita b`komunikazzjoni ufficcjali li kienet tigi notifikata lill-appellant. Il-fatt li tali notifika ma gietx ordnata f`dak l- istess perjodu ma jfissirx li l-Bord kien qieghed jabbuza mill-poteri tieghu, kif jallega minghajr ma jipprova sodisfacentement, l-appellant. Invece din il-Qorti hija pjuttost tal-fehma illi dan sar ghal ragunijiet validi li kien qieghed jiddelibera fuqhom il-Planning Area Permits Board (PAPB). Dan l-operat sar kollu fil-parametri tal- poteri li kellu l-Planning Area Permits Board (PAPB).

…

"Fil-kaz odjern u fi kwalunkwe kaz din il-Qorti tikkondividi l-apprezzament tal-provi maghmul mill-ewwel Qorti u cioe` li matul l-iter deliberattiv tal-Planning Area Permits Board (PAPB) kien hemm biss konsiderzzjoni li l-permessi tal- bini in kwistjoni jistghu jiggeddu, pero` qatt ma ttiehdet decizjoni vinkolanti mill-Bord li l-istess permessi jigu mgedda. Ghall-kuntrarju, id-decizjoni vinkolanti li l-Bord ha kienet dik li t-talba ghat-tigdid tal-permessi tigi rifjutata. Ghalhekk, l-ewwel aggravju tal-appellant u cioe` li l-Bord kien effetivament iddecieda fuq ir-rinnovament tal- permessi, ma jistax jintlaqa`.

"…

"Minn dak li ntqal sa issa dwar l-ewwel aggravju tal- appellant jirrizulta li din il-Qorti hija sodisfatta li l-Bord qatt ma ha decizjoni vinkolanti ghat-tigdid tal-permessi tal-bini in kwistjoni. Id-decizjoni vinkolanti li ha kienet dik li t-talba ghat-tigdid tal-istess permessi tigi rifjutata. Ma rrizulta l- ebda abbuz ta` poter fl-operat tal-Bord, billi d-decizjonijiet li ttiehdu kienu fil-limiti tal-poteri moghtija bil-ligi lil dan il- Bord. Ghalhekk anke dan it-tieni aggravju tal-appellant m`hemmx lok li jintlaqa`.

"…

"Fil-kaz odjern, kif diga` intqal, il-permessi in kwistjoni kienu skadew u l-bini ma giex inizjat fil-perjodu ta` sena moghti ghall-validita` tal-istess permessi u dawn, fil-verita` qatt ma gew imgedda. Huwa skorrett l-appellant li jibqa` jinsisti li l-Bord approva b`mod definit it-tigdid tal-permessi. Il-Bord kellu s-setgha li jichad it-talba ghat- tigdid tal-permessi li l-perjodu tal-validita` taghhom kien skada. Fil-fehma tal-Qorti, kif kien kostitwit u regolat dan il-Bord partikolari dak iz-zmien, ma jidhirx li kien hemm il- htiega, kif sewwa rrimarkat l-ewwel Qorti, li jekk il-Bord ikun sejjer jiehu decizjoni li ma toghgobx lill-appellant, l-istess Bord kellu jisma` wkoll x`ghandu xi jghid l-appellant.

"16. Fid-dawl ta` dak li ghadu kif intqal ma jistax jinghad illi nkiser l-imsemmi principju tal-gustizzja naturali. Xoghol il-Bord ma kienx li jisma` l-applikanti bhallikieku kien hemm proceduri fil-kontradittorju, izda li jiddeciedi jekk jakkordax o meno applikazzjonijiet ghall-

permessi u tigdid ta` permessi tal-bini. F`dan ir-rigward din il-Qorti taqbel ma` l-osservazzjoni ta` l-ewwel Qorti li l-Bord ma kellux jiehu decizjoni dwar zewg posizzjonijiet antagonisti ghal xulxin fejn il-Bord kellu jisma` x`ghandha xi tghid kull parti qabel ma jiddeciedi. Ghaldaqstant, din il-Qorti tichad dan l-aggravju wkoll.

"17. Michud it-tielet aggravju, imiss li jigi ezaminat ir- raba` aggravju ta` l-appellant. Huwa qieghed jilmenta li r- ragunijiet li inghatawlu ghar-rifjut tat-tigdid tal-permessi ma kienux sufficjenti. L-appellant spjega li r-ragunijiet tar- rifjut kienu on environmental grounds u objectionable grounds. L-appellant jillanja li ma nghata l-ebda spjegazzjoni jew definizzjoni cara ta` x`kienu dawn ir- ragunijiet ta` rifjut.

"18. Anke dana l-aggravju mhux gustifikat. Jirrizulta li l- appellant mhux biss naqas li jikkontesta d-decizjoni tar-rifjut tat-tigdid tal-permessi bil-proceduri opportuni u fiz- zmien propizju, izda jirrizulta li l-appellant kien fehem tajjeb ghaliex il-permessi ma kienux gew imgedda u cioe` minhabba li l-planning policies applikabbli kienu tbiddlu bid-dekors taz-zmien. Tant hu hekk li hu talab li jinghata rifuzjoni tar-road alignment contribution li kien ghamel b`zewg ittri datati 31 ta` Mejju 1989 (ara fol. 327) u 25 ta` Jannar 1990 (ara fol. 328). Jirrizulta wkoll li l-appellant gie rifuz is-somma ta` Lm346.23,6 (ara fol. 329), fatt kkonfermat ukoll mill-affidavit ta` Joseph Farrugia a fol. 326. Huwa fatt pjuttost inspjegabbli kif l-appellant deherlu li kellu jressaq dan l-ilment aktar minn erba` snin wara li kien ihariglu r-rifjut.

"**2) <u>L-Art 6 tal-Konvenzjoni</u>**

"Ir-rikorrent jallega li kien hemm vjolazzjoni kontra tieghu tal-Art 6 abbazi ta` tliet konsiderazzjonijiet : i) ghaliex il-PAPB ma applikax il-procedura idonea u ma segwiex l-procedura li ssoltu kienet tigi adoperataa ; ii) ghaliex ma nghatax l-opportunita` li jaghmel s-sottomissjonijiet tieghu dwar r-ragunijiet li ngabu meta r-renova tal-permessi giet rifjutata ; u iii) ghaliex il-PAPB kontra kull prassi procedurali bidel id-decizjoni tieghu, wara li kien ghadda zmien irragonevoli, u cioe` bejn it-13 ta` Frar 1987 u l-11 ta` Settembru 1987, u effettivament ir-rikorrent gie notifikat bid-decizjoni fis-17 ta` Novembru 1988.

"Il-Qorti taghmel riferenza ghal kawza b`fattispece simili hafna ghal dawn tal-kawza tal-lum. Qeghda tirreferi ghall-kawza `**<u>Case of Lay Lay Company Limited v. Malta</u>**` li kienet deciza mill-ECHR fit-23 ta` Lulju 2013 u saret finali fit-23 ta` Ottubru 2013. Il-Qorti ma sabet l-ebda vjolazzjoni tal-Art 6. Qalet hekk :-

"***<u>The Court`s assessment</u>***

"***(a) <u>General principles</u>***

"55. Under Article 6 § 1 of the Convention it is necessary that decisions of administrative authorities which do not themselves satisfy the requirements of that Article should be subject to subsequent control by a judicial body (see Ortenberg v. Austria, cited above, § 31, and Crişan v. Romania, no. 42930/98, § 24, 27 May 2003). The right of access to a court is an inherent aspect of the safeguards enshrined in

Article 6. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court (see Markovic and Others v. Italy [GC], no. 1398/03, § 92, ECHR 2006-XIV). At the same time, the "right to a court" is not absolute; it is subject to limitations permitted by implication, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person`s access in such a way or to such an extent that the very essence of the right is impaired (see Edificaciones March Gallego S.A. v. Spain, 19 February 1998, § 34, Reports of Judgments and Decisions 1998-I, and De Geouffre de la Pradelle v. France, 16 December 1992, § 28, Series A no. 253-B).

"56. Rules governing the procedure and time-limits applicable to legal remedies are intended to ensure a proper administration of justice and compliance with, in particular, the principle of legal certainty (see, mutatis mutandis, Miragall Escolano and Others v. Spain, nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98, ECHR 2000-I). It is not for the Court to interpret procedural rules. Its role in cases such as the present is to determine whether the applicant was able to count on a coherent system that struck a fair balance between the authorities` interests and his own and, in particular, whether he was given a clear, practical and effective opportunity to challenge an administrative act that allegedly constituted a direct interference with his rights (see Geffre v. France (dec.), no. 51307/99, ECHR 2003-I (extracts)).

"***(b) <u>Application to the present case</u>***

"57. The Court observes that it has not been disputed that a decision on whether to issue or reject a building permit application was subject to an appeal before the PAB and a further appeal to the Court of Appeal. Thus Maltese law undoubtedly gave the applicant company the opportunity to challenge the decision refusing a permit application before a court. It therefore remains to be ascertained whether the relevant procedure, in particular in relation to the "decision" issued by the authorities, was such as to ensure that the right to a court was effective, as required by Article 6 of the Convention.

"58. The Court notes that, despite having been asked to do so, the Government have not submitted details of the legislation applicable at the relevant time to the decision-making process concerning the issuance or rejection of a building permit application. It is, however, clear from the submissions and legislation which the parties presented before the Court that at the relevant time such decisions fell within the competence of the DCC, and they had to be published as soon as practicable after the meeting at which they were taken. The decision could then be appealed against within thirty days from the date on which it was communicated to the person on whose application the decision was taken. It is possible that no further details about the decision-making procedure were enshrined in the legislation.

"The Court considers that, although decisions taken in accordance with an appropriate legislative framework ensure legal certainty and are recommendable,

the Court notes that no concrete evidence has been put forward showing that the decision-making process applied in the present case was not coherent and contrasted with that usually pertaining to such requests and the relevant decisions.

"59. Indeed, while it appears that the law provided for such a decision to be published, the Court notes that no information in this respect has been submitted by the parties. For the rest, the Court observes that while the law (see paragraph 42 above) stated that such decisions fell within the competence of the DCC, this did not preclude another entity from communicating the DCC`s decision on its behalf. Indeed section 13(7) of the 1992 Act provided for staff to service the DCC, and the October 1996 letter was sent by the manager of the DCU to whom the DCC Chairman had forwarded the request from the applicant company`s architect. It was sent on an official letterhead and it clearly indicated that the permit could not be issued, and the reasons for that decision. The Court observes that the letter contained sufficient reasons for the applicant company to be able to contest its substance. Moreover, the letter included the phrase "I trust that the above information is sufficient for your guidance", a clear indication on behalf of the authority that no further decision would be taken and that it was for the recipient to take any further steps deemed necessary.

"60. Lastly, the Court notes that while it is true that the "person on whose application the decision was taken" had to be notified of the decision, the letter was sent to the applicant`s architect in response to the latter`s request of May 1996 (see paragraph 22 above). It was therefore reasonable to conclude that given that the applicant`s architect had the authority to enquire about and solicit the issuance of a permit on behalf of her client (as clearly stated in the letter of 16 May 1996, despite the fact that it referred to A. as the client and not to the applicant company), the architect was also authorised to receive notification of a decision on the client`s behalf. In this connection the Court reiterates that Article 6 of the Convention does not provide for specific forms of service of documents. The question is whether an individual`s access to court has been denied in the circumstances of the case (see Hennings v. Germany, 16 December 1992, Series A no. 251-A, and Bogonos v. Russia (dec.), no. 68798/01, 5 February 2004).

"61. In these circumstances the Court sees no reason to depart from the view taken by the Constitutional Court that there was an administrative decision that the applicant could have challenged by judicial proceedings. In the present case, the letter at issue could not, at that stage, be perceived as anything less than a decision. Therefore the applicant company was given a clear, practical and effective opportunity to challenge the administrative act at issue. Also bearing in mind that it is incumbent on the interested party to display special diligence in the defence of his interests (see Muscat v. Malta, no. 24197/10, § 59, 17 July 2012), and that in the present case the applicant company could have at least enquired as to the scope of such a letter, the Court concludes that the applicant company had at its disposal an effective legal avenue which it failed to make use of. It follows, that the applicant company has not been denied effective access to court.

"62. Accordingly, there has not been a violation of Article 6 § 1 of the Convention.

"Fid-decizjoni taghha fil-kawza tentata mir-rikorrent ghal stharrig gudizzjarju ta` ghemil amministrattiv, il-Qorti tal-Appell sabet illi l-procedura wzata mill-PAPB ma kenitx irregolari, ir-renova tal-permessi qatt ma kienet harget, u ghalhekk ma kien hemm l-ebda necessita li r-rikorrent jaghmel s-sottomissjonijiet tieghu. Fis-sentenza taghha, il-Qorti ta` l-Appell irrilevat ukoll li ma kenitx procedura normali li l-applikanti jithallew jaghmlu s-sottomissjonijiet. Kienu l-partijiet stess inkluz ir-rikorrent li bbazaw il-provi taghhom fuq l-atti tal-kawza `**Jack Galea vs Direttur Generali tax-Xoghlijiet et`** (Citaz. Nru. 72/1993) tant li talbu li dawk l-atti jigu allegati ghall-fini tal-procediment tal-lum. Is-sentenza tal-Qorti tal-Appell, del resto bhall-atti l-ohra ta` dik il-kawza, tikkostitwixxi prova u ghalhekk din il-Qorti sejra taghti piz ghal dak li nghad fis-sentenza partikolarment fejn si tratta ta` accertament u apprezzament ta` provi. Abbazi tal-fatti accertati, mhuwiex accettabbli dak li qieghed jinghad mir-rikorrent illi l-PAPB halla zmien irragonevolment twil ighaddi qabel ma biddel id-decizjoni tieghu propju ghaliex irrizulta li l-PAPB ma kienx ha decizjoni dwar it-talba ghar-renova, u kwindi ma tezisti l-ebda kwistjoni ta` bdil ta` decizjoni.

"Dwar il-ksur allegat tal-Art 6 bil-fatt illi d-decizjoni nghatat fil-11 ta` Settembru 1987 u giet notifikata fis-17 ta` Novembru 1988, il-Qorti rat id-dokumenti li kienu esebiti quddiem il-Qorti tal-Magistrati (Ghawdex) [Gurisdizzjoni Superjuri]. Mill-atti jidher illi r-rikorrent kien ufficjalment notifikat illi l-permess nru 2887/83 kien rifjutat fis-17 ta` Novembru 1988 ; kuntrarjament ghal dak li xehed r-rikorrent, in-notifika lilu saret mhux lill-perit tieghu. Id-decizjoni ttiehdet fil-21 ta` Awissu 1987. Dwar il-permess nru 2943/83, anke f`dan il-kaz in-notifika saret lir-rikorrent, ghalkemm ma tirrizultax id-data tan-notifika. Id-decizjoni ttiehdet fil-11 ta` Settembru 1987.

"Ir-rikorrent qieghed jilmenta minn dewmien. Il-Qorti ma ssibx li kien hemm pregudizzju ghar-rikorrent fis-sens illi jappella mid-decizjoni, jew li jerga` japplika, ghaliex it-termini jiskattaw min-notifika mhux mid-data tad-decizjoni. Anke dawn l-aspetti tal-kwistjoni kienu trattati fis-sentenza tal-Qorti tal-Appell. Tajjeb li jinghad li r-rikorrent talab li jinghata lura l-kontribuzzjoni tat-triq li kien hallas. U dak il-hlas sar.

"Il-Qorti ma ssibx vjolazzjoni tal-Art 6 tal-Konvenzjoni.

"3) L-Art 1 Prot 1 tal-Konvenzjoni

"Ir-rikorrent jikkontendi illi ghax il-permessi ma gewx rinnovati kien menomat id-dritt tieghu li jgawdi l-proprjeta` tieghu. Isostni li l-Art 1 Prot 1 ghandu interpretazzjoni wiesa` u jghodd ghal possedimenti fis-sens wiesgha tal-kelma. Ighid li l-permess jikkwalifika bhala possediment u r-rifjut tat-tigdid bhala tehid forzuz.

"Dwar Art 1 Prot 1, l-ECHR fis-sentenza `**Case of Lay Lay Company Limited v. Malta**` (op. cit.) qalet hekk :–

"***(a) <u>General principles</u>***

"83. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property. The second rule, contained in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third rule, stated in the second paragraph, recognises that Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not distinct in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of property. They should therefore be construed in the light of the general principle enunciated in the first rule (see, for example, Bruncrona v. Finland, no. 41673/98, § 65, 16 November 2004). They must comply with the principle of lawfulness and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised (see, for example, Beyeler v. Italy [GC], no. 33202/96, §§ 108-14, ECHR 2000-I, and J.A. PYE (Oxford) Ltd v. the United Kingdom, no. 44302/02, § 42, 15 November 2005). The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see Brumărescu v. Romania [GC], no. 28342/95, § 78, ECHR 1999-VII). The Court also reiterates that in the area of land development and town planning, the Contracting States should enjoy a wide margin of appreciation in order to implement their town and country planning policies. Nevertheless, in the exercise of its power of review the Court must determine whether the requisite balance was maintained in a manner consonant with the applicant`s right of property (see Abdilla v. Malta (dec.), no 38244/03, 3 November 2005, and J. Lautier Company Limited v. Malta (dec.) no. 37448/06, 2 December 2008).

"***(b) <u>Application to the present case</u>***

"84. The Court notes that the complaint before it is limited to the refusal to issue a permit. Thus the impugned measure in this case must be considered as a control of the use of property (see paragraph 81 above), to be considered under the third rule, i.e. under the second paragraph of Article 1 of Protocol No. 1 (see Allan Jacobsson (no. 1), cited above, § 54). The Court must therefore consider whether the authorities` refusal to issue a building permit was a lawful measure "necessary to control the use of property in accordance with the general interest". The task of the Court in this context is to examine the lawfulness, purpose and proportionality of the decisions taken by the domestic authorities (see, for example, Borg, cited above).

"Il-Qorti tirreferi ghall-kawza "**<u>Borg v. Malta</u>**" li kienet trattata mill-Kummissjoni fit-18 ta` Ottobru 1995. Hemm inghad :-

"The Commission recalls that Article 1 of Protocol No. 1 (P1-1) guarantees in substance the right of property and comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property.

The second, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

"However, the three rules are not "distinct" in the sense of being unconnected: the second and the third rules are concerned with enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, as a recent authority, Eur. Court H.R., Air Canada judgment of 5 May 1995, Series A. no. 316, paras. 29, 30).

"The Commission considers that the refusal of a building permit, in the particular circumstances of the present case, may be regarded as an interference with the applicant`s right to peaceful enjoyment of his property as guaranteed by Article 1 of Protocol No. 1 (P1-1). The interference falls to be examined under the second paragraph of this provision as it did not involve "deprivation" of property, but was a measure to "control the use of property".

"Consequently, the Commission must consider whether the refusal of the authorities to issue a building permit was a lawful measure "necessary to control the use of property in accordance with the general interest". The task of the Convention organs in this context is to examine the lawfulness, purpose and proportionality of the decision taken by the domestic authorities (cf., for example, No. 12258/86, Dec. 9.5.88, D.R. 56, p. 215). According to the Convention organs` case law, as regards the choice of the detailed legal rules implementing a measure for the control of the use of property, the domestic legislature must have a wide margin of appreciation. In respect of the purpose of the measures, the Convention organs must respect the domestic legislature`s judgment as to what is in the general interest unless that judgment was manifestly without reasonable foundation (Eur. Court H.R., Mellacher and Others judgment of 19 December 1989, Series A no. 169, p. 26, para. 45).

"In the present case the Commission notes that the refusal of the applicant`s petition for a building permit was based on the relevant domestic legal provisions. Furthermore, the restrictions on the height of buildings were clearly a measure in pursuance of a general interest, namely the proper organisation of populated areas, and it is not for the Commission to decide whether other aims of general interest, such as the development of tourism, should have had priority.

"It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

"Fil-kaz tal-lum, irrizulta li l-permessi ma gewx rinnovati ghal `*environmental grounds*` u ghaliex `*proposed site is objectionable*`. Fid-decizjoni taghha l-Qorti tal-Appell kienet dahlet fil-fondatezza tar-ragunijiet ghala t-tigdid tal-permessi ma kienx sar. Irrizulta bhala fatt illi l-*planning policy* kienet inbidlet

fiz-zmien tat-tigdid. L-Istat ghandu l-jedd li jikkontrolla l-uzu tal-propjeta` fl-interess generali. Fil-kaz tal-lum, jirrizulta li l-bini propost mir-rikorrent kien se jsir barra miz-zona tal-izvilupp. Din il-Qorti hija tal-fehma illi r-ragunijiet ghala ma kienx hemm tigdid jinkwadraw ruhhom fid-dritt li ghandu l-Istat u ghalhekk ma kienx hemm ksur tal-Art 1 Prot 1 fejn jikkoncerna r-rikorrent.

"Il-Qorti ma ssibx vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni.

"**4) L-Art 14 tal-Konvenzjoni**

"Din id-disposizzjoni tiggarantixxi l-harsien minn diskriminazzjoni. Fil-kawza "**Zammit Maempel v. Malta**" li kienet deciza mill-ECHR fit-22 ta` Novembru 2011 u saret gudikat fl-4 ta` Gunju 2012 inghad hekk dwar l-Art 14 :-

"***1. General Principles***

"81. The Court reiterates that Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence, since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see Mintoff v. Malta, (dec.), no. 4566/07, 26 June 2007).

"82. In order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous or relevantly similar situations (see D.H. and Others v. the Czech Republic [GC], no. 57325/00, § 175, ECHR 2007, and Burden v. the United Kingdom [GC], no. 13378/05, § 60, ECHR 2008-). Such a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see Carson and Others v. the United Kingdom [GC], no. 42184/05, § 61, ECHR 2010-....). The Court also points out that the grounds on which those differences of treatment are based are relevant in the context of Article 14. Only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14 (see O`Donoghue and Others v. the United Kingdom, no. 34848/07, § 101, ECHR 2010-... (extracts).

"Fil-kaz tal-lum, ir-rikorrent jallega li fil-kaz partikolari tieghu kienet applikata procedura mhux idoneja u nsolita b`tali mod illi kien diskriminat meta mqabbel mac-cittadini ohra li kienu trattati diversament.

"Mill-atti fuq bazi ta` fatt ma tirrizulta l-ebda prova li kien hemm applikazzjonijiet ohra ta` terzi ghal tigdid ta` permessi simili ghal dawk tar-rikorrent fejn dawk l-applikazzjonijiet kienu milqugha u l-permessi mgedda. Fuq bazi ta` dritt, jinghad ukoll illi ghalkemm l-Art 14 huwa distint, mhuwiex applikabbli fejn il-fatti tal-kaz ma jaqghux fl-ambitu ta` vjolazzjonijiet ohra ta`

> jeddijiet ohra tutelati mill-Konvenzjoni. Ladarba fil-kaz tal-lum, il-Qorti ma sabitx li kien ksur ta` jeddijiet ohra fondamentali tar-rikorrent, l-Art 14 mhuwiex applikabbli.
>
> "Il-Qorti ma ssibx vjolazzjoni tal-Art. 14 tal-Konvenzjoni.

L-Appell

12. Ir-rikorrent isejjes l-appell tieghu fuq erba' aggravji: [1] li l-Awtorita` intimata hi legittimu kuntradittur f'dawn il-proceduri; [2] li l-ewwel qorti zbaljat meta, dwar l-allegat ksur tal-artikolu 6 tal-konvenzjoni, m'ghamlitx apprezzament tal-provi tal-fatti izda strahet fuq il-kontenut tas-sentenza moghtija mill-Qorti tal-Appell fil-kawza [nru.72/1993] **Jack Galea v. Direttur Generali tax-xoghlijiet et**[6]*;* [3] li fil-process tal-applikazzjoni ghar-renovar tal-permessi originali, il-PAPB ma kellux jerga' jezamina mill-gdid dawk il-fatturi li wasslu ghall-hrug tal-permessi originali; [4] l-ewwel Qorti naqset milli tikkonsidra idonejament il-fatti rizultanti mill-atti bir-rizultat li waslet ghal decizjoni hazina fuq il-mertu; [5] li, kuntrarjament ghall-konkluzjoni li waslet ghaliha l-ewwel Qorti, f'dan il-kaz jikkonfigura ksur fil-konfront tar-rikorrent tad-dritt fundamentali protett bl-Artikolu 14 tal-Konvenzjoni.

13. Ghaldaqstant ir-rikorrent qed jitlob li din il-Qorti tirriforma s-sentenza appellata billi, filwaqt li tikkonfermaha fejn cahdet l-ewwel eccezzjoni tal-intimat Avukat Generali, thassarha ghal bqija, u, minflok tichad l-eccezzjonijiet

[6] Deciza 9 ta' Jannar 2009.

l-ohra kollha tal-intimati u tilqa' t-talbiet tar-rikorrent, bl-ispejjez taz-zewg istanzi kontra l-intimati.

14. L-intimati f'risposti separati talbu li, ghar-ragunijiet hemm indikati, l-appell tar-rikorrent jigi michud bl-ispejjez taz-zewg istanzi kontra tieghu.

L-Aggravji

L-ewwel aggravju

15. Dan jirrigwardja dik il-parti tas-sentenza appellata fejn l-ewwel Qorti laqghet l-eccezzjoni tal-Awtorita` intimata u lliberatha mill-osservanza tal-gudizzju. Ir-rikorrent jikkontendi li l-Awtorita` ghandha *locus standi* f'dawn il-proceduri peress li, fil-kaz li din il-Qorti tilqa' t-talbiet tieghu u taghtih rimedju specifiku billi tordna l-hrug tar-renova tal-permessi, hija l-Awtorita` biss li llum tista' tohrog permess validu favur ir-rikorrent. Ikompli jsostni dan l-aggravju tieghu bl-osservazzjoni li fil-kawza fuq indikata quddiem l-Qorti tal-Appell, li kienet titratta l-istess premessi, l-Awtorita` ma gietx liberata mill-osservanza tal-gudizzju.

16. Fir-rigward din il-Qorti taghmel referenza ghas-sentenza ta' din il-Qorti fl-ismijiet **John Sammut v. Awtorita` tal-Ippjanar** citata mill-ewwel Qorti, fejn affermat l-principju li, ghar-ragunijiet indikati f'dik is-sentenza, l-Awtorita`

intimata ma tistax legalment titqies bhala successur tal-Bord [PAPB]. Ghalhekk, dak mitlub bhala l-ewwel rimedju mir-rikorrent, u cioe` li din il-Qorti tohrog tigdid tal-permessi originali ma jistax isehh fil-konfront tal-Awtorita` intimata ghax din ma tistax legalment tinjora l-*policies* attwalment vigenti llum, liema *policies* hija legalment obbligata li tapplika f'kull applikazzjoni li titressaq quddiemha.[7] Wara kollox ma hemmx dritt kostituzzjonali ghar-renova tal-permess f'cirkostanzi bhal dawk ta' dan il-kaz.

17. Ghalhekk, ladarba l-hrug tal-permess originali u l-ipprocessar tal-applikazzjoni ghat-tigdid kif ukoll id-decizjoni tar-rifjut saru fis-sena 1988 mill-Bord, u ghalhekk qabel ma' giet fis-sehh l-Awtorita`, din m'ghandhiex *locus standi* fil-proceduri odjerni. *Multo magis* fid-dawl tal-kunsiderazzjoni li mill-atti jirrizulta li ma tresseq ebda applikazzjoni mir-rikorrent lill-Awtorita`.

18. Ghaldaqstant dan l-aggravju huwa nfondat u qed jigi michud.

It-tieni aggravju

19. Dan l-aggravju huwa bazat fuq zewg premessi.

20. L-ewwel premessa hi fis-sens li fit-trattazzjoni tal-applikazzjoni ghar-renova il-PAPB ma kellux jerga' jezamina mill-gdid konsiderazzjonijiet li kien

[7] Art. 69 Kap. 504.

diga` sema' qabel ma nhargu l-permessi originali u li fuqhom kienet diga` ttiehdet decizjoni mill-istess Bord, izda l-ezami kellu jigi limitat biss ghad-determinazzjoni tal-ezistenza ta' xi nuqqas da parti tar-rikorrenti fis-sens ta' ksur ta' kundizzjonijiet tal-permessi originali. Jghid li:

> "Meta wiehed ikollu permess u japplika ghar-renova tieghu biex ma jhallihx jiskadi wiehed jistenna li ghandhom japplikaw ghal dak il-process ir-regoli li johorgu mill-kunidizzjonijet tat-tigdid u mhux regoli ohra, u ma jistax jinghad li kien hemm smigh xieraq fil-kaz tal-appellant jekk l-applikazzjonijiet ghat-tigdid tal-permessi tieghu tqisu fuq il-binarju ta' applikazzjoni gdid u gew kkunsidrati affarijiet estranei ghal dak il-process."

21. Fit-tieni parti ta' dan l-aggravju r-rikorrent jilmenta li "[d]-dewmien esagerat" fl-ipprocessar tal-applikazzjonijiet tieghu ghat-tigdid tal-permessi wkoll jammonta ghal vjolazzjoni tad-dritt ghal smiegh xieraq li jehtieg li jinghata fi zmien ragjonevoli. Jghid li fil-kaz tieghu, id-dewmien kien "assolutament fuori ordine" billi ma kienx normali li applikazzjoni ghat-tigdid ta' permess tiehu daqshekk fit-tul.

22. Rigward l-ewwel parti ta' dan l-aggravju, din il-Qorti tosserva li, l-pretensjoni tar-rikorrent li fid-determinazzjoni tal-applikazzjoni tat-tigdid tal-permess il-Bord ma setghax jiehu konsiderazzjonijiet godda li ma kienx ha konjizzjoni taghhom meta ddecieda li johrog il-permess originali, hija gratuwita. Mill-permessi stess jirrizulta li dawn kienu validi sa zmien sena, u eghluq dik is-sena il-validita` taghhom tiskadi b'mod li l-applikant ikollu jerga' japplika mill-gdid. Issa din il-Qorti tifhem li jekk matul il-validita` tal-permess ikun sar xoghol estensiv mill-applikant dan jista' ivvanta aspettattiva legittima li

l-permess kellu jiggedded, izda fil-kaz in dizamina r-rikorrent halla s-sena tal-permess tiskadi minghajr ma wettaq xoghol fuq is-sit, u allura *multo magis* li ma jistax jippretendi li l-permess ghat-tigdid jinghata lilu b'mod awtomatiku, anzi bid-dritt. Sa l-eghluq tal-permess lanqas kien ghadu applika ghac-cesspit[8] li kienet wahda mill-kundizzjonijiet tal-permess.

23. Issa huwa fatt notorju, partikolarment ghal min jahdem fis-settur tal-izvilupp tal-bini, li l-*policies* dwar l-ippjanar jinbiddlu maz-zmien, u ghalhekk fl-applikazzjoni ghat-tigdid tal-permessi l-Bord kien obbligat li jiehu in konsiderazzjoni dan il-fatt. Dan ifisser li jekk jirrizulta, kif fil-fatt irrizulta, li l-*policies* kienu ser jinbiddlu, il-Bord kellu d-dmir li fl-ipprocessar tal-applidazzjoni ghat-tigdid jiehu konjizzjoni ta' dawk il-*policies* il-godda. Dan huwa konformi ma dak ritenut fil-kawza **App.Inf. Natalino Debono v. L-Awtorita` ta' Malta dwar l-Ambjent u l-Ippjanar** deciz fil-25 ta' Frar 2010, fejn affermat il-principju li l-*policies* applikabbli huma dawk ezistenti fil-mument meta tigi <u>determinata</u> l-applikazzjoni.

24. Barra minnhekk, in kwantu ghall-ilment tieghu bazat fuq l-Artikolu 6 tal-Konvenzjoni li ladarba fl-ipprocessar tal-applikazzjonijiet ghat-tigdid kienu qed jigu kkonsidrati fatturi godda huwa kellu jinstema' mill-Bord qabel ma dan jasal ghal decizjoni, din il-Qorti taqbel ma' dak osservat mill-Qorti tal-Appell fil-kawza fuq citata, u cioe` li:

[8] Supra.

> "Xoghol il-Bord ma kienx li jisma' l-applikant bhallikieku kien hemm proceduri fil-kontratdittorju, izda li jiddeciedi jekk jakkordaxo meno applikazzjojiet ghall-permessi u tigdid ta' permessi tal-bini…..il-Bord ma kellux jiehu pozizzjoni decizjoni dwar zewg posizzjonijiet antagonisti ghal xulxinfejn il-Bord kellu jisma' x'ghandha xi tghid kull parti qabel ma jiddeciedi."

25. Rigward id-"dewmien esagerat" li jilmenta minnu r-rikorrent sabiex jigu processati l-applikazzjonijiet ghat-tigdid, din il-Qorti tosserva li, anke f'dan ir-rigward, m'ghandux ragun. L-ipprocessar tal-applikazzjonijiet li kien isir mill-Bord f'dak iz-zmien ma jistax jigi ekwiparat ma' xi process kwazi gudizzjarju, imma huwa process semplicement amministrattiv, u l-Bord mhux marbut ma xi limitu ta' zmien biex jasal ghal decizjoni.

26. Ghaldaqstant dan l-ilment bazat fuq id-dispost tal-Artikolu 6 tal-Konvenzjoni huwa infondat u qed jigi michud.

It-tielet aggravju

27. Fl-ewwel lok, ir-rikorrent jghid li l-ewwel konsiderazzjoni li kellha taghmel il-Qorti kienet li tezamina jekk ir-rifjut tat-tigdid tal-permess kienx necessarju *'to control the use of proprerty in accordance with the general interest.'* Issa f'dan il-kaz l-permessi diga` kienu nhargu u c-cirkostanzi baqghu l-istess anke fiz-zmien tar-renova, u allura wiehed ma jistax jikkonkludi li l-interess generali kien sejjer jirrikjedi c-cahda tal-permess meta anqas minn sena qabel l-applikazzjonti ghat-tigdid dak l-istess interess generali kien tqies

li hu kompatibbli mal-hrug tal-permess. F'dak iz-zmien ma kienx hemm oggezzjoni fuq bazi ambjentali, u fl-ipprocessar tal-applikazzjoni ghat-tigdid ma ngabet ebda raguni biex tiggustifika ghalfejn fil-frattemp sar 'necessarju' ir-rifjut tat-tigdid.

28. Fit-tieni lok, jghid li bil-fatt li kellu zewg permessi ghall-izvilupp, u l-fatt li, skont kif jirrizulta mill-minuti tas-seduti li saru quddiem il-PAPB, l-applikazzjoni ghat-tigdid kienet giet approvata mill-Bord "imma d-dokument ma harigx", ir-rikorrent sofra pregudizzju gravi b'dawn 'l-irregolaritajiet abbuzivi u gie mghobbi b'piz sproporzjonat meta wiehed iqis x'ittehidlu."

29. Ir-rikorrent qed jibbaza dan l-ilment tieghu fuq il-fatti deskritti minnu hekk:

> "Issa fil-kaz odjern jirrizulta car daqs il-kristall illi l-appellant kellu zewg permessi validi li gew quddiem il-PAPB ghal kunsiderazzjoni dwar it-tigdid taghhom u t-tigdid taghhom gie finalment APPROVAT tant illi l-minuti 33 tat-13 ta' Frar 1987 [rigward permess PB2887/83] turi l-firma tac-Chairman tal-PAPB u timbru ufficjali li jaqra APPROVED u l-istess rigward il-permess 2943/83 f'minuta 28 tal-31 ta' Dicembru 1986"
>
> "Din hi r-realta' cara u skjetta ta' dak li sehh. Dan hu certament kaz ta' 'procedural irregularity' enormi. L-appellant kellu approvazzjoni tat-tigdid tal-permessi u f'hakka t' ghajn din inbidlet f'rifjut minghajr ma hadd irrevoka l-approvazzjonijiet li kienu inghataw fil-31 ta' Dicembru 1986 u fit-13 ta' Frar 1987 rispettivament."

30. Fl-aggravju tieghu jkompli jispjega li, rizultat tar-rifjut, huwa gie privat minn permessi li l-valur taghhom fis-sena 2004 kien ta' aktar minn zewg miljun

Euro. Dan juri kif id-decizjoni tar-rifjut tefghet fuq ir-rikorrent piz eccessiv u sproporzjonat li jssarraf fi vjolazzjoni tad-drittijiet fundamentali tieghu. Jghid li dan huwa abbuz procedurali gravi u jissarraf f'xejn anqas mit-tehid tal-permess validu li kellu l-appellant u ghalhekk jammonta ghal lezjoni tad-drittijiet tieghu taht l-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni.

31. Fir-rigward ta' dan l-aggravju din il-Qorti tosserva li dan hu principalment bazat fuq il-pretensjoni li, ladarba kien hareg il-permess originali, allura l-Istat ghandu l-obbligu li jipprova li r-rifjut tat-tigdid kien necessarju biex jikkontrolla l-uzu tal-proprjeta` fl-interess generali. Ukoll ladarba fi stadju partikolari tal-ipprocessar tal-applikazzjonijiet ghat-tigdid ma kienx hemm oggezzjoni ghall-akkoljiment taghhom, allura r-rikorrent sofra pregudizzju meta finalment il-Bord iddecieda li jirrifjuta l-applikazzjonijiet.

32. Din il-Qorti tosserva li r-rikorrent qed jibbaza l-kaz tieghu fuq il-kontenut ta' minuti tad-dipartiment koncernat li hu ma kellux dritt jarahom, *multo magis* iqis bhala vinkolanti u jibni xi aspettattiva legittima fuqhom. Jigi ribadit li dawk il-minuti jirrapprezentaw parti biss minn *iter* shih ta' deliberazzjonijiet li kienu saru mill-Bord f'dan il-kaz, u li certament ma kienux vinkolanti. Ghalhekk mhux korrett ir-rikorrent meta jghid li l-applikazzjonijiet tieghu kienu gew approvati u meta jilmenta li dawn ma gewx revokati meta l-Bord iddecieda li jirrifjuta l-applikazzjonijiet: ma kienux vinkolanti ghax ma kienux jirrapprezentaw id-decizjoni finali tal-Bord; ma gietx revokata l-approvazzjoni,

ghax la darba il-kontenut tal-minuti relattivi ma kienx vinkolanti, ma kienx hemm x'jigi revokat.

33. Dwar it-tieni parti tal-aggravju fejn ir-rikorrent jakkuza lill-Bord bi proceduri irregolari meta wasal ghad-decizjoni li jirrifjuta t-tigdid meta l-applikazzjonijiet kienu diga` approvati kif jirrizulta mill-minuti tal-files relattivi. Hawnhekk din il-Qorti tirreferi ghas-sentenza precitata moghtija fil-konfront tar-rikorrent mill-Qorti tal-Appell, fejn dik il-Qorti osservat li:

> "L-appellant kien fehem tajjeb ghaliex il-permessi ma kienux gew mgedda u cioe` minhabba li l-planning *policies* applikabbli kienu tbiddlu bid-dekors taz-zmien. Tant hu hekk li hu talab li jinghata rifuzjoni tar-road alignment contribution li kien ghamel."

34. F'dan l-istadju huwa opportun li jigi rilevat li l-inkartament ta' dik il-kawza gie allegat mal-process tal-kawza odjern, b'mod li l-provi li nstemghu fil-proceduri civili gew jghoddu ghall-proceduri odjerni. Ghalhekk l-ewwel Qorti kellha ragun li fuq kwistjonijiet ta' fatt tistrih fuq dak li gie stabbilit gudizzjarjament fil-proceduri civili b'sentenza li ghaddiet in gudikat, *multo magis* tenut kont tal-konsiderazzjoni li fil-proceduri odjerna ma ngabux provi godda, ghajr li rega' xehed ir-rikorrent. Dik is-sentenza tikkostitwixxi ligi bejn il-partijiet u, fic-cirkostanzi tal-kaz, il-konkluzjonijiet ta' fatt raggjunti defenittivament fil-proceduri civili, jghoddu bejn il-partijiet anke f'dawn il-proceduri. Ghalhekk din il-Qorti ghandha tiehu bhala fatt stabbilit li kien hemm tibdil fil-*policies* li wasslet ghar-rifjut tat-tigdid. Inoltre, il-fatt li r-ragunijiet

moghtija fil-permessi kienu relatati mal-ambjent, huwa indikazzjoni qawwija li certament kien hemm bidla fil-*policies* mal-bidla li saret fil-Gvern fil-bidu tas-sena 1987. Fi kliem iehor, ghalkemm sena qabel ma kienx hemm oggezzjoni ghall-hrug tal-permessi ghall-izvilupp fuq is-sit in kwistjoni, wara l-bidla fil-Gvern kien hemm kambjament fil-*policies,* bir-rizultat li l-applikazzjonijiet tar-rikorrent ghat-tigdid tal-permessi ma baqghux konformi mal-*policies* il-godda. Dan wara kollox kien gie ikkonfermat bil-gurament minn Edwin Micallef ghan-nom tal-Awtorita` fejn fid-dikjarazzjoni guramentata jghid: "..li gara f'dan il-kaz kien li l-awtoritajiet koncernati minhabba tibdil fil-"policy" tal-awtoritajiet governattivi ma kienux geddew dawn il-permessi wara l-iskadenzi taghhom."[9]

35. Fid-dawl tal-premess l-allegazzjoni tar-rikorrent li fil-kaz tieghu kien hemm irregolaritajiet procedurali, u li r-rifjut kien wiehed arbitrarju m'hijiex sostnuta anzi hija kontradetta mill-provi stabbiliti.

36. Ghaldaqstant dan l-aggravju qed jitqies bhala infondat u qed jigi michud.

Ir-raba' u l-hames aggravji

[9] Cit. 72/93 fol. 28.

37. Dawn huma bazat fuq l-apprezzament tal-fatti maghmul mill-ewwel Qorti. Ir-rikorrent isostni li l-ewwel Qorti naqset milli tikkonsidra idonejament il-fatti rizultanti mill-atti bir-rizultat li waslet ghal decizjoni zbaljata fil-mertu.

38. Huwa jillanja mill-fatt li l-ewwel Qorti ma qiesitx il-kontenut tal-minuri fuq citati bhala decizjoni, izda semplicement minuti f'faxxikolu. Jghid li l-fatt li c-Chairman tal-Bord jiffirma u jitpogga timbru li jaqra 'APPROVED' hija prova cara l-Bord ikun iddiskuta l-applikazzjoni waqt laqgha tal-PAPB u ttiehdet decizjoni dwarha, u "galadarba fl-ewwel decizjoni hemm ukoll it-timbru "Approved" ma setghax il-Bord jaqbad u jibghat 'refusal' f'laqgha sussegwenti minghajr ma jkun hemm ir-revoka tal-approvazzjoni precedenti. Il-fatt li ma ntbaghtitx ittra lill-appellant li tinfurmah bl-approvazzjoni hija cara u titkellem wahedha, *ictu oculi*, jekk wiehed biss ihares lejn il-minuti."

39. Ir-rikorrent jssottometti wkoll li, ghalkemm l-ewwel Qorti "assumiet" li kien hemm bdil fil-*planning policies*, dan qatt ma gie ppurvat gudizzjarjament. Anzi dan il-fatt jinsab kontraddett mix-xhieda tal-Perit Raymond Agius inkarigat mir-rikorrenti. L-istess jinghad ghall-konsiderazzjoni maghmula mill-ewwel Qorti li l-bini kien ser jsir barra miz-zona tal-izvilupp. Jghid li ma tezisti ebda prova li s-sit kien f'zona ta' zvilupp. Inoltre, ir-raguni ghar-rifjut tat-tigdid ma kienitx li sehhet bidla fil-*policies* jew li l-bini kien ser isir barra miz-zona ta' zvilupp.

40. Fil-hames aggravju tieghu r-rikorrent jghid li l-ewwel Qorti kellha taghmel l-ezami indipendenti tal-provi kollha tal-kaz u mhux tistrih fuq l-apprezzament tal-provi maghmul fil-kawza fuq citata [nru. 72/1993] mill-Qorti tal-Appell, peress li l-mertu tal-proceduri odjerni huma differenti in kwantu huma bazati fuq lanjanzi konvenzjonali.

41. Fir-rigward, din il-Qorti taghmel referenza ghall-konsiderazzjonijiet maghmula dwar it-tielet aggravju u ghall-istress ragunijiet tikkonsidra dawn l-aggravji infondat u qed tichdu.

Is-sitt aggravju

42. Dan jirrigwardja l-lanjanza dwar il-ksur tad-dritt fundamentali protett bl-Artikolu 14 tal-Konvenzjoni. Ir-rikorrent qed jibbaza dan l-aggravju tieghu fuq zewg punti.

43. Fl-ewwel lok id-dewmien min-naha tal-PAPB minn meta gew approvati l-applikazzjonijiet ghat-tigdid, sakemm huwa gie notifikat bir-rifjut ma kienx ‘normali’. Li kieku l-ipprocessar tal-applikazzjonijiet ma hax daqshekk fit-tul, kieku l-ipprocessar tempestiv kien jirrizulta f’konferma tal-permess u mhux fir-rifjut. Jghid li, *dato non concesso* li kienu inbidlu l-*policies* mal-bdil fil-Gvern, wiehed ghandu jassumi li wara li ttiehdet decizjoni a bazi ta’ *policy*, din kellha

tigi komunikata b'mod spedjenti u mhux li jithalla jghaddi z-zmien biex jilhqu jinbidlu l-*policies* sakemm tigi notifikata d-decizjoni.

44. Fit-tieni lok, il-konsiderazzjoni fis-sentenza appellata tikkontjeni pronunzjament erroneju tal-ligi stante li sabiex tikkonfigura l-lezjoni kontemplata fl-Artikolu 14 m'huwiex necessarju li tinstab vjolazzjoni ta' dritt konvenzjonali sostantiv, izda huwa bizzejjed li dak l-artikolu jigi relatat ma' artikolu sostantiv, u f'dan is-sens l-Artikolu 14 huwa awtonomu. Fi kliem iehor, jista' jkun hemm kazijiet fejn il-Qorti ma ssibx li kien hemm vjolazzjoni tal-Artikolu sostantiv *per se* izda ssib li kien hemm vjolazzjoni tal-Artikolu 14 mehud konguntivament mal-artikolu sostantiv li tahtu ma sabet ebda volazzjoni meta kkonsidrat b'mod izolat.

45. Fir-rigward, din il-Qorti tosserva li r-rikorrent ghandu ragun dwar it-tieni parti tal-aggravju tieghu fis-sens li, ghalkemm l-Artikolu 14 tal-konvenzjoni huwa marbut ma' dritt konvenzjonali sostantiv, imma mhux mehtieg li tikkonfigura lezjoni ta' dak id-dritt.

46. Il-Qorti Ewropea fir-rigward ta' dan l-artikolu konvenzjonali osservat hekk:

> "32. Article 14 (Article 14) provides: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." The Court's case-law shows that, although Article 14 (Article 14) has no independent existence, it may play an important autonomous rôle by complementing the other normative provisions of the

> Convention and the Protocols: Article 14 (Article 14) safeguards individuals, placed in similar situations, from any discrimination in the enjoyment of the rights and freedoms set forth in those other provisions. A measure which, although in itself in conformity with the requirements of the Article of the Convention or the Protocols enshrining a given right or freedom, is of a discriminatory nature incompatible with Article 14 (Article 14) therefore violates those two Articles taken in conjunction. It is as though Article 14 (Article 14) formed an integral part of each of the provisions laying down rights and freedoms *(judgement of 23 July 1968 in the "Belgian Linguistic" case, Series A no. 6, pp. 33-34, para. 9; National Union of Belgian Police judgement of 27 October 1975, Series A no. 19, p. 19, para. 44)."*

47. Il-Qorti tosserva li mhux kull trattament divers iwassal ghal diskriminazzjoni skont l-Artikolu 14 imsemmi, izda biex tigi ravvizata tali diskriminazzjoni dak it-trattament divers irid ikun motivat minn wiehed mill-istatus elenkati [Ara Kaz **Kjeldsen, Busk Madsen u Pedersen v. Denmark, ECHR** 6 Dicembru 1976 § 56; Kaz **Carson u Ohrajn v. UK § 61, ECHR Grand Chamber**, 16 Marzu 2010; Q Kost **Enrietta Bianchi et v. Avukat Generali et**, 24 Gunju 2011; Q. Kos. **Edmond Espedito Mugliett v. Avukat Generali** 28 Settembru 2012].

48. Fil-kaz odjern, u cioe` il-motiv ghad-diskriminazzjoni. Di fatti ma gie indikat ebda mottiv ta' *status* kif rikjest sabiex ikun hemm vjolazzjoni tal-Artikolu 14 tal-Konvenzjoni. Ir-rikorrent ma indika ebda motiv formanti l-bazi tad-diskriminazzjoni, ghajr ghall-fatt li f'kazijiet ohra l-ipprocessar tal-applikazzjonijiet ghat-tigdid ma jiehdux daqshekk fit-tul.

49. Ghalhekk fic-cirkostanzi tal-kaz ma jistax legalment jitqies li tirrizulta vjolazzjoni tad-dritt fundamentali protett fl-artikolu *de quo*.

50. Ghaldaqstant dan l-aggravju huwa infondat u qed jigi michud.

Decide

Ghar-ragunijiet premessi tichad l-appell, u tikkonferma s-sentenza appellata, bl-ispejjez a kariku tar-rikorrenti.

< Sentenza Finali >

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