



TRIBUNAL TA' REVIZJONI AMMINISTRATTIVA

**MAĠISTRAT DR. SIMONE GRECH
B.A., LL.D., M. Jur. (Eur Law),
Dip. Trib. Eccles. Melit.**

Rikors Numru 9/2022 SG

Margerita u Brian Curmi

Vs

Awtorita' tal-Artijiet

Illum il-Ġimgħa, 19 ta' Mejju 2023

It-Tribunal,

Ra r-rikors ta' Margerita u Brian konjuġi Curmi ipprezentat fil-21 ta' Novembru 2022 li permezz tiegħu gie premess is-segwenti:-

"Illi l-appellanti tefgħu offerta għall-ghotja b'cens perpetwu rivedibbli ta' sit tale quale f' Ta' Xaman, Triq l-20 ta' Lulju, Sannat, Għawdex muri bl-abmar fuq pjanta P.D. 2022_0288 mabruġa skont Avviż mabruġ mill-Awtorita tal-Artijiet, precizament avviż numru disgħa u disgħin (99) tas-sitta u għoxrin (26) ta' Avissu tas-sena elfejn u tnejn u għoxrin (2022). L-offerta tagħhom ta' tmax -il elf mitejn u sebgha u tmenin evro (€ 12,287) kienet l-ogħla waħda mitfugħa. Kopja tal-offerta li giet sottomessa mill- appellanti qegħda tiġi hawn annessa u markata bhala Dokument A;

Illi permezz ta' ittra datata tletin (30) ta' Awissu tas-sena elfejn tnejn u ghoxrin (2022) (kopja annessa bhala Dokument B), l-esponenti kienu anke talbu lill-Awtorita tal-Artijiet li huma jigu moghtija d-dritt tal-ewwel rifjut u dan ghas-segventi ragunijiet:

i. Fl-ewwel lok l-art mertu ta' din l-offerta tigi adjacenti ghal propjeta tal- appellanta Margerita Curmi li fuqha hemm mibnija d-dar ta' residenza taghha minghajr numru ufficjali izda maghrufa bl-isem "Sogno", Triq l-20 ta' Lulju, Sannat, Għawdex. Dan kif muri ahjar fuq is-site plan annessa ma' din l-ittra. (Dokument C ma' dan ir-rikors). L-art tal-appellanta li fuqha hemm mibnija r- residenza taghha hija delineata bil-kulur blu u markata bl-ittra "X" fuq l-istess site plan markata bhala Dokument Cannessa mal-ittra. Minn ezami ta' din il- pjanta huwa car kif il-propjeta tal-appellanta għandha appogg estensiv ma' din l-art mertu ta' din l-offerta. L-appellanta kienet akkwistat din l-art mill-poter tal-genituri taghha bis-sabha ta' kuntratt ta' donazzjoni datat tnejn u ghoxrin (22) ta' Jannar 2003 publikat fl-atti tan-Nutar Enzo Dimech (Dokument D);

ii. Attwalment id-dar tar-residenza tal-appellanta fiha biss faccata ta' tlett (3) metri. Il-wisa tal-plot taghha ma jippermettilix li hija taghmel bieb li jwassal għad-dar ta' residenza taghha separat mill-bieb tal-garaxx. Infatti attwalment għandha biss bieb ta' garaxx li jservi ta' access kemm għall-vetturi u kif wkoll għar-residenza taghha. L-iskop huwa għalhekk li hija tifred iż-żewġ accessi b'mod li l-entrata għad-dar taghha tkun separata minn dik tal-garaxx u b'hekk tkun aktar sigura għaliha u għal uliedha;

iii. Fit-tielet lok din it-talba għas-sejba għall-offerti harġet wara li l-appellanta stess kienet talbet li tinbareġ tali offerta permezz tal-applikazzjoni GLA1/2021/1418 u din it-talba kienet giet favorevolment ikkunsidrata (Dokument E);

Illi b'deciżjoni komunikata lill-appellanti permezz ta' ittra datata thietta (3) ta' Novembru tas-sena elfejn tnejn u ghoxrin (2022) (Dokument F), l-Awtorita tal-Artijiet infurmat lill- appellanti li minkejja li l-offerta taghhom kienet l-oghla wahda misfugħa, f'laqgħa tal- Bord tal-Gvernaturi tal-Awtorita li saret fit-tmintax (18) ta' Ottubru tas-sena elfejn tnejn u ghoxrin (2022), gie deciż li jingħata d-dritt tal-ewwel rifjut (right of first refusal) lil- wiehed mill-offerenti skont il-kundizzjonijiet tal-offerta u dan l-offerent kien accetta li jgħolli l-offerta għal tnaħ -il elf mitejn u sebgha u tmenin ewro (€ 12,287);

Illi l-esponenti hassew ruhhom aggravati minn tali deciżjoni tat-tlieta (3) ta' Novembru 2022 u qegħdin jinterponu umli appell minnha quddiem dan it-Tribunal ta' Reviżjoni Amministrattiva à tenur tal-artikolu 57 tal-Att dwar l-Awtorita' tal-Artijiet (Kap 563 tal- Ligiġiet ta' Malta);

• Esposizzjoni tal-Fatti tal-Kaz

*L-appellanti issottomettew applikazzjoni mal-Awtorita' tal-Artijiet bir-riferenza numru GLA 1/2021/1418 sabiex tinbareġ sejba għall-offerti biex tingħata b'cens perpetwu porzjon art tal-kejl ta' cirka mija u tlettax -il metru kwadru (113m.k.) kif murija ahjar fuq il-pjanta hawn annessa u markata bhala **Dokument G**. L-Awtorita tal-Artijiet b'deciżjoni moghtija fit-tlieta u ghoxrin (23) ta' Gunju tas-sena elfejn wiehed u ghoxrin (2021) komunikata lill-appellanti permezz ta' email fit-*

tmienja (8) ta' Lulju tas-sena elfejn u wiebed u ghoxrin (2021) accettat it-talba li tinbareg tali sejba ghall-offerti. Tali sejba eventwalment inbarget fis-sitta u ghoxrin (26) ta' Anvissu 2022 u inbarget ghall-estensjoni ta' art tal-kejl ta' cirka tlett mija u sitta u tmenin metri kwadri (386m.k.) li kienet ferm akbar minn dak rikjesta mill-appellanti.

L-appellanti tefghu l-offerta taghhom ghat-tender li hareg fejn offrew il-prezz ta' tnax -il elf mitejn u sebgħa u tmenin ewro (€12,287). Permezz ta' decizjoni datata tlieta (3) ta' Novembru 2022 l-Awtorita tal-Artijiet irrikonoxxiet li l-offerta tal-appellanti kienet l-oghla wahda mitfugħa. Madanakollu l-istess Awtorita għal raġunijiet li ma ġewx svelati minnha iddecidiet li tagħti d-dritt tal-ewwel rifjut lill-offerent iebor li kien tefa' offerta aktar baxxa u li skont l-istess Awtorita tal-Artijiet, dan accetta li jgħolli l-offerta għal tnax -il elf mitejn u sebgħa u tmenin ewro (€ 12,287). L-appellanti wkoll talbu d-dritt tal-ewwel rifjut. Pero l-Awtorita tal-Artijiet ma tat l-ebda indikazzjoni għalfejn ippreferiet it-talba tal-ewwel rifjut tat-terz ad esklużjoni ta' dik tal-appellanti;

• **Aggravji**

Illi l-aggravji huma cari u manifesti u jikkonsistu fis-segwenti:

(a) *Illi fl-ewwel lok l-Awtorita tal-Artijiet naqset li tagħti raġunijiet għalfejn kellha tiffavorixxi l-offerta tat-terz minn dik tal-appellanti. Il-principji tal-ġustizzja naturali jstabilixxu b'mod car li awtorita pubblika li tiebu decizjoni trid tagħti raġunijiet għalfejn hija waslet għal dik id-decizjoni. Issir riferenza għas-sentenza fl-ismijiet Dr Alfred Sant nomine vs Kummissarju tat-Taxxa (Rikors NURMU 2/1980/1) datata erbgħa (4) ta' Marzu 1992 deciza mill-Qorti tal-Appell Superjuri fejn gie stabbilit l-obbligu ta' awtorita pubblika li hija tagħti r-raġunijiet għalfejn tkun waslet għad-decizjoni tagħha. Dan ma ġarax fil-każ odjern. Apparti minn bekk jigi senjalat wkoll li la darba l-appellanti wkoll kienu talbu d-dritt tal-ewwel rifjut, aktar u aktar kien hemm l-obbligu tal-Awtorita tal-Artijiet li tispecifika għalfejn iddecidiet li taccetta d-dritt tal-ewwel rifjut tat-terz ad esklużjoni tal-appellanti. B'hekk l-appellanti spicaw fl-agħma għalfejn l-offerta taghhom giet eskluża u accettata dik tat-terz;*

(b) *Mingħajr preġudizzju għall-premess, l-appellanti jemmnu li r-raġunijiet sabiex huma jingħataw id-dritt tal-ewwel rifjut kellhom jingħataw precedenza fuq kwalunkwe talba obra għad-dritt tal-ewwel rifjut. Ibda biex ir-raġunijiet li taw l-appellanti sabiex huma jingħataw id-dritt tal-ewwel rifjut (apparti l-fatt li l-art tal-appellanta Margerita Curmi tiġi adjacenti għal dik mertu tal-offerta li harget) kienu raġunijiet ta' akkomodazzjoni soċjali u cioe sabiex titkabbar id-dar tar-residenza taghhom peress li l-vetturi u l-persuni jaccedu mill-istess entratura. Tant hu bekk li fit-talba oriġinali sabiex tinbareg is-sejba għall-offerti, l-appellanti kienu indikaw id-daqs li huma kellhom bżonn sabiex ikollhom access komdu għar-residenza taghhom tenut kont li din hija art li tinsab esklussivament fiż-żona tal-iżvilupp u tinsab eżattament bejn żewġ siti li wiebed minnhom huwa ġia mibni (fil-fatt hemm id-dar tal-appellanti) u s-sit tan-naha l-obra huwa fil-process li jiġi żviluppat bekk kif approvat fl-applikazzjoni bir-riferenza numru PA 839/07. L-esponenti għalhekk jemmnu li tali ġustifikazzjoni soċjali kellha tingħata precedenza fuq kwalunkwe ġustifikazzjoni obra li setgħet titressaq. Infatti wahda mir-raġunijiet għalfejn l-esponenti talbu li tali art tinbareg bl-offerta kien propju għaliex li din l-art kienet ilha zdingata għal mill-anqas għal dawn l-aħbar seba' (7) snin u ma kien qed isir l-ebda użu minnha. In oltre anke fiż-żmien li jmur lura qabel dawn is-seba' snin il-parti ta' quddiem tal-għalqa gatt ma inbadmet. Dan kif sejjer jiġi anke pruvat fil-kors tas-smiegh ta' dan l-appell. Huwa car wkoll*

li tali offerta inbarġet bl-iskop li l-art tiġi żviluppata u mbux għall-skopijiet ta' agrikoltura għaliex kieku l-offerta kienet tinbareġ biex tingħata l-art bi qbiela. Tant hu bekk li d-drittijiet ta' qbiela li kien hemm fuq din l-art (għalkemm kif ġia ingħad din l-art ma kinitx qed tinhadem) ġew terminati skont kif tistabilixxi l-liġi, il-pussess tal-art reġa għadda f'idejn l-Awtorita appellata u d-deċiżjoni tat-terminazzjoni tal-qbiela ma ġietx appellata;

(c) Jekk l-Awtorita tal-Artijiet tat id-dritt tal-ewwel rifjut abbażi ta' dak li jstabilixxi l-artikolu 32 tal-Kap. 573, jiġi precizati li l-liġi ma timponi l-ebda obbligu tassattiv biex jekk offerent jkun wiehed mill-kategoriji hemm indikati huwa bil-fors irid jingħata tali dritt tal-ewwel rifjut. Infatti l-artikolu 32 jstabilixxi li: "Offerti għal trasferiment ta' art tal-Gvern jistgħu jkunu soġġetti għal dritt magħruf bħala dritt tal-ewwel rifjut." Il-legislatur juża l-keġma "jistgħu" u mbux "għandhom". Għalhekk l-Awtorita tal-Artijiet ma kinitx obbligata li bil-fors hija tikkoncedi d-dritt tal-ewwel rifjut lil xi persuna min dawk identifikati fl-artikolu 32. Dan aktar u aktar jekk mil-lat fattwali l-persuna li lilha ingħatat tali dritt ma kinitx fil-verita qegħda fizikament tokkupa jew tagħmel użu mill-art. In oltre l-istess artikolu 32 ma joffri l-ebda gradwazzjoni jew preferenza tar-raġunijiet hemm stabbiliti. Li kieku l-legislatur ried li l-ewwel raġuni indikata f'dak l-artikolu tkun preferuta fuq iż-żenġ raġunijiet l-obra, l-istess legislatur kien jstabilixxi dan. Dan abbażi tal-massima legali ubi lex volit dixit. Dan aktar u aktar huwa l-każ meta wiehed iġis li fit-termini tal-kundizzjonijiet għas-sejba għall-offerti l-Awtorita tal-Artijiet indikat li jista' jingħata tali dritt "għal kwalunkwe raġuni xierqa."

• Talba

Għaldaqstant, fid-dawl tal-premess, l-esponenti jitolbu bir-rispett lil dan it-Tribunal sabiex joghħbu jhassar u jirrevoka fl-interita' tagħha d-deċiżjoni tal-Awtorita' tal-Artijiet datata tlieta (3) ta' Novembru 2022 fejn iddecidiet li tagħti l-offerta għall-akkwist b'cens perpetwu rivedibbli tas-sit f' Ta' Xaman fi Triq l-20 ta' Lulju, Sannat, Għawdex muri fuq il-pjanta bir-riferenza. P.D.2022_0288 skont Arviż Numru 99 tas-sitta u għoxrin (26) ta' Avissu 2022 lil terzi u minflok jordna lill-Awtorita tal-Artijiet sabiex l-offerta tiġi aġġudikata lill-appellanti.

Bl-ispejjeż kontra l-Awtorita' appellata."

Ra r-risposta tal-Awtorità tal-Artijiet (iktar 'il quddiem "l-Awtorita'") ippreżentata fit-22 ta' Dicembru 2022 li permezz tagħha eċċepiet is-segwent:-

1. ILLI l-appell intavolat mir-rikorrenti huwa infondat fil-fatt u fid-dritt u għalhekk għandu jiġi michud bl-ispejjeż;
2. ILLI 1-aggravi interposti mill-appellanti huma essenzjalment marbuta mal-fatt li minkejja li huma kellhom id-dritt tal-ewwel rifjut, l-aġġudikazzjoni tal-offerta ingħatat u saret a favur ta' offerent ieħor;
3. ILLI 1-appellanti qed jippruwaw jargumentaw li peress li kienu huma li inizjalment għamlu t-talba lill-Awtorita' biex tinbareġ l-offerta u billi huma talbu għad-dritt tal-ewwel rifjut a bażi tat-talba li kienu għamlu inizjalment, l-aġġudikazzjoni kellha ssir favur tagħhom;

4. *ILLI meta qed nitkellmu fuq art pubblika, l-Awtorita' tal-Artijiet ghandha responsabilitajiet kbar u trid timxi skrupolożament mal-liġi, regoli u policies tagħha.*
5. *ILLI meta ssir talba minn kull applikant, kull talba jkollha r-rekwiżiti u kriterji tagħha u l-Awtorita' tavża minn qabel lill-applikant dwar il-proċedura in kwestjoni.*
6. *ILLI fil-każ odjern huwa minnu li kienu l-appellanti stess li applikaw mal- Awtorita' tal-Artijiet biex tinbareg l-offerta dwar is-sit fi Triq 20 ta' Lulju, Sannat, Ghawdex. Huwa minnu wkoll li l-applikazzjoni giet accettata u l- appellanti gew infurmati bid-deċiżjoni fejn l-Awtorita' ab initio kienet cara:*

'This notification is being sent to you for informative purposes only and in no way giving you any rights, privileges and special advantages during the tendering process apart from those which are contemplated in the respective laws'.
7. *ILLI allura bekk kif appena harget l-offerta, l-appellanti tpoġġew fl-istess posizzjoni ta' kwalsiasi offerent iehor tant li l-appellanti kellhom appuntu jifgħu l-offerta tagħhom;*
8. *ILLI l-appellanti għalhekk issottomettew l-offerta tagħhom u anki rrikorrew għall-fakulta' li tagħti l-Awtorita' fl-istess applikazzjoni biex l-offerent jitolb id-dritt tal-ewwel rifjut. Il-kliem użat fil-formula huwa dan:*

'Fil-każ li int qed titlob illi tiġi mogħti d- dritt tal-ewwel rifjut, inti għandek tagħmel din it-talba flimkien mas- sottomissjoni tiegħek marbuta ma' din is- sejba u tagħti r-raġunijiet għaliex qed issir din it-talba...''
9. *ILLI t-terminologija użata fil-formula hija li l-offerent għandu jagħmel talba' u din mhix applikazzjoni jiba nnifisha, imma jekk issir, tkun parti mill- applikazzjoni - li hija l-offerta.*
10. *ILLI nel frattemp meta jiġu sottomessi l-offerti flimkien mat-talbiet għall- ewwel rifjut, fl-għeluq il-perjodu tat-tfiġh tal-offerti jibda l-proċess tal- evalwazzjoni tal-offerti nfushom u li huwa proċess metikoluż hafna li wkoll huwa regolat bil-liġi u proċeduri interni.*
11. *ILLI f'dan il-każ, apparti l-offerti gew evalwati wkoll it-talbiet sottomessi dwar id-dritt tal-ewwel rifjut - li kienu iktar minn wahda kif ser jirriżulta matul it- trattażjoni tal-appell odjern;*
12. *ILLI kemm-il darba kien hemm iktar minn talba wahda għall-ewwel rifjut, l- Awtorita' ma timxix b'mod arbitrarju imma hemm il-liġi u l-policies tal- Awtorita' li appuntu jirregolaw il-proċedura tal-aġġudikazzjoni;*
13. *ILLI meta l-appellanti jinwokaw l-artikolu 32 tal-Kap 573 li huwa Att dwar l-Artijiet tal-Gvern, dan jgħid hekk:*

32. Offerti għal trasferiment ta' art tal- Gvern jistgħu jkunu soġġetti għal dritt magħruf bhala dritt tal-ewwel rifjut:

- (a) *liċ-ċenswalist jew lill-kerrej li jkun okkupa l-abbar dik l-art;*
- (b) *lill-pussessur li ghandu art li tmiss minn fuq, minn taht jew biswit art tal- Gvern; jew*
- (c) *lill-pussessur li qabel l-offerta ghat- trasferiment ikun gie m'acqalaq jew mitlub li jiċcaqlaq minn art tal-Gvern u jkun ghadu ma ngbatax post alternattiv.*
14. *ILLI Il-fatt li l-artikolu qed jinkudi l-kelma 'jistgħu', din il-kelma mhix marbuta mad-diskrezzjoni tal-Awtorita' imma mal-fatt li jista' jkun hemm dritt tal- ewwel rifjut u jista' ma jkunx hemm. Jekk jirriżulta li ikun hemm id-dritt għall- ewwel rifjut, il-liġi tindika min jista' jkollu dan id-dritt u wkoll f'liema ordni ta' preferenza.*
15. *ILLI għalhekk u bid-dovut rispettt l-interpretazzjoni mogħtija mill-appellanti hija totalment skoretta u l-intenzjoni tal-legislatur hija cara : jekk ikun hemm dritt tal-ewwel rifjut dan għandu jkun ibbażat fuq it-titoli indikati f-istess artikolu 32. Jiżdied jingħad li l-artikolu nnifsu u l-mod ta' kif inbuma indikati s-subartikoli huma cari dwar ir-ranking' jġifieri hemm tlett istanzi indikati imma huma indikati b'ordni jġifieri l-iktar dritt b'sabhtu huwa l-ewwel wiehed u l-inqas b'sabhtu huwa l-abbar wiehed. Il-liġi hija cara dwar il- preferenza mogħtija li mhix arbitrarja jew diskrezzjonali.*
16. *ILLI meta l-appellanti qed jikkontestaw id-dicitura tal-artikolu u jinvokaw il- massima ubi lex volit dixit, l-artikolu huwa carissimu u iwa qed jagħti elenku car dwar liema dritt huwa l-iktar b'sabhtu u allura preferut;*
17. *ILLI f'dan il-każ appuntu d-dritt ingħata lil min issodisfa l-artikolu 32 bl-iktar titolu b'sabhtu u dan kif ser jirriżulta matul it-trattazzjoni tal-appell;*
18. *ILLI din id-deċiżjoni hija wkoll ikkonfortata mill-policies tal-istess Awtorita' appellata.*
19. *ILLI jiżdied jingħad li dwar it-talba għall-ewwel rifjut ma hijiex applikazzjoni per se iżda hija talba li ssir flimkien ma' offerta u allura tali talba tiġi assorbita mal-offerta. It-talba għad-dritt tal-ewwel rifjut mhix l-offerta fiha nnifisha imma tiskatta meta jkun hemm iktar minn offerent wiehed u jkun hemm differenza fil-prezz mogħti b'dan li min ikollu dan id-dritt (u f'każ ta' iktar minn persuna wahda, dak li jkollu l-iktar dritt b'sabhtu wkont il-liġi) jġi nfurmat bl-ghola offerta u jekk ikun lest li jgħalli l-offerta daqs l-ghola wahda appuntu jġi agġudikat l-offerta hu - jġifieri jirbah l-offerta.*
20. *ILLI d-deċiżjoni li mbağħad tingħata mill-Awtorita' hija dik tal- agġudikazzjoni finali li giet finalment ikkomunikata lil kull offerent permezz tal-ittra markata Dok F annessa mar-rikors tal-appell. F'din l-ittra l-appellanti ingħataw id-dettalji meħtieġa u gew ukoll infurmati li l-offerta ingħatat lill- offerent iebor li kellu r-right of first refusal u bid-dritt tal-appell ai termini tal- artikolu 57 tal-Kap 563. Illi għalhekk id-deċiżjoni mogħtija hija legalment u formalment korretta u tissodisfa l-prinċipji kollha marbuta mal-ġustizzja naturali issa jekk l-appellanti ma qablux mad-deċiżjoni ma jfissirx li l- Awtorita' hadet deċiżjoni żbaljata, skoretta jew b'xi mod li tikser il-liġi u l- prinċipji appenna citati.*

Għaldaqstant u in vista tal-premess, l-Awtorita' appellata qed titlob lil dan l-Onorabbli Tribunal sabiex jichad l-appell u jikkonferma d-deċiżjoni mogħtija mill-istess Awtorita'.

Bl-ispejjeż kontra l-appellati."

Ra d-dokumenti kollha pprezentati;

Sema' x-xhieda;

Sema' t-trattazzjoni;

Ra l-atti kollha inkluż l-atti tal-mandat ta' inibizzjoni bin-numru 40/2022 allegat ma' dan il-proċess.

Ra li r-rikors thalla għal-lum għas-sentenza.

Ikkunsidra:

Illi l-konjuġi Curmi hassew rwiehhom aggravati b'deċiżjoni tal-Awtorita' kif kontenuta fittra datata 3 ta' Novembru 2022 li permezz tagħha ġew mgharrfa bis-segwenti, u cioè :

Nagħmel referenza għall-offerta' minnkom magħmula għall-ghotja b' cens perpetwu u revedibbli ta' sit tale quale f' Ta' Xaman, Triq l-20 ta' Lulju, Sannat, Ghawdex muri bl-abmar fuq pjanta P.D. 2022_0288, skont Avviż Nru 99 tas-26 ta' Awissu 2022. L-offerta tagħkom ta' tnax-il elf u mitejn u sebgha u tmenin ewro (EUR 12,287) fis-sena kienet l-ghola wahda mitfugha.

Ninfurmakom li f' laqgħa tal-Bord tal-Gvernaturi ta' din l-Awtorita' li saret nbar it-18 t' Ottubru 2022, gie deciż li jingħata d-dritt ta' l-ewwel rifjut (right of first refusal) lill-wiehed mill-offerenti, skont l-istess kundizzjonijiet tal-offerti. L-offerent accetta li jgħolli l-offerta għal EUR 12,287.

F' każ li għal xi raguni ma jersaqx biex jagħmel il-kuntratt, l-offerta teigbu tigi rifjutata u dan it-tender jiġi agġudikat lilkom.

Illi jirrizulta li l-konjuġi Curmi tefgħu offerta għall-ghotja b' cens perpetwu rivedibbli ta' sit tale quale f' Ta' Xaman, Triq l-20 ta' Lulju, Sannat Ghawdex mahruġa skont Avviż numru 99 tas-26 ta' Awwissu 2022. Irriżulta li l-offerta tagħhom kienet ta' €12,287 u kienet l-oghla wahda offruta. Irriżulta wkoll li l-konjuġi Curmi kienu anke talbu lill-awtorita' intimata li jiġu mogħtija d-dritt ta' l-ewwel rifjut.

Issa l-konjuġi Curmi fl-ewwel aggravvju tagħhom qed isostnu li l-Awtorita' ta' l-Artijiet naqset li tagħti raġunijiet għalfejn kellha tiffavorixxi l-offerta tat-terz minn dik tagħhom. Intqal li l-principji tal-gustizzja naturali jstabilixxu b' mod ċar li awtorita' pubblika li tiegħu deċiżjoni trid tagħti raġunijeit għalfejn hija waslet għal dik id-deċiżjoni. In oltre, il-konjuġi Curmi argumentaw li la darba huma wkoll kienu talbu d-dritt ta' l-ewwel rifjut aktar u

aktar kien hemm obbligu mill-Awtorita' initmata sabiex tispeċifika għalfejn iddeċidiet li taċċetta d-dritt tal-ewwel rifjut tat-terz ad esklużjoni tagħhom. Skont l-istess konjuġi Curmi, huma spiċċaw fl-agħma għalfejn l-offerta tagħhom giet eskluża u aċċettata dik tat-terz.

Skont l-Awtorita' intimata, d-deċiżjoni tal-aġġudikazzjoni finali li giet ikkommunikata lil konjuġi Curmi permezz tal-ittra tat-3 ta' Novembru 2022, tikkontjeni d-dettalji meħtieġa u permezz tagħha l-konjuġi Curmi ġew infurmati li l-offerta nġhatat lill-offerent ieħor li kellu r-right of first refusal u bid-dritt tal-appell ai termini tal-artikolu 57 tal-Kap 563. Gie argumentat li d-deċiżjoni mogħtija hija legalment u formalment korretta u tissodisfa l-prinċipji kollha marbuta mal-ġustizzja naturali.

Fir-rigward ta' dan l-ewwel aggravvju, dan it-Tribunal jaġħmel referenza għas-sentenza mogħtija minn dan it-Tribunal hekk kif diversament ippresedut fl-1 ta' Novembru 2022 Rikors Numru 34/2022 fl-ismijiet Kunsill Lokali tal-Gżira vs L-Awtorità tal-Artijiet fejn intqal is-segwenti:

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

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

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

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

in matters where the rights of the individual were materially and substantially affected, as in cases where a building permit was withdrawn, it was a principle of justice that the authority withdrawing the permit had first of all to hear the party concerned before the effecting of such withdrawal (emphasis added).

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

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

*It-Tribunal jagħmel ukoll referenza għad-deċiżjoni fl-ismijiet *Midi plc vs Awtorita` Dwar it-Trasport ta' Malta et deċiżja mill-Prim'Awla tal-Qorti Ċivili per Onor. Imballef Toni Abela fis-16 ta' Novembru, 2017, fejn intqal bekk:**

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

25. Għalbekk, konstatat dan il-punt mhux dejjem jiswa l-argument ikekostruwit fuq massimi bħal "ubi lex voluit dixit" jew "lex specialis derogat lex generalis". L-osservanza u harsien tal-prinċipji tal-Gustizzja Naturali ma humiex degorabbli jew u l-anqas ma jistgħu jkun esklużi fejn oġġettivament għandhom jitharsu. Stabbiliti dawn il-punti, il-Qorti ser tikkonsidra jekk f'dan il-każ, il-prinċipji msemmija ġenx osservati.

....

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

*"Natural Justice generally requires that the persons liable to be directly affected by the proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed, so that they might be in a position : (a) to make representations on their own behalf ; or (b) to appear at a hearing or inquiry (if one is to be held) ; and (c) effectively to prepare their own case and to answer the case (if any) they have to meet ... In a large majority of the reported cases where breach of the audi alteram partem rule has been alleged, no notice whatsoever of the action taken or proposed to be taken was given to the person claiming to be aggrieved, and failure to give him proper notice was tantamount to denial of an opportunity to be heard on that matter." (ara ukoll *Sentenza tal-Qorti tal-Appell fl-ismijiet Paul Borg vs l-Awtorita` dwar it-Trasport Pubbliku tat-28 ta' Settembru 2012 u Rik. Nru. 1101/07TA Sentenza tal-Prim Awla Qorti Ċivili tal-Kompjant Imballef Ray Pace tas-27 ta' Jannar 2011 fl-ismijiet Falzon vs Ministru għall-Affarijiet Rurali u l-Ambjent et)**

39. Minn dan jemergi, li skont De Smith, fi-cirkostanzi fejn tassew ikun meħtieġ, l-avviż għandu jingħata lill-persuna mhux sempliciment biex ikun mgħarraf, iżda biex ikollu l-opportunita` taht forma jew obra, jgħid tiegħu qabel u mhux wara li ssir il-ftira.

....

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

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

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

Huwa risaput li l-prinċipji tal-ġustizzja naturali huma dawk il-prinċipji minimi li għandhom ikunu osservati waqt proceduri anke ta` entita` amministrattiva illi għandha l-kompitu li tiddeciedi dwar fatti li fuqhom imbagħad Qrati tal-Ġustizzja għandha s-setgħa li tiebu decizjonijiet li jaffettwaw id-drittijiet tal-persuna. Il-prinċipji tal-ġustizzja naturali huma audi alteram partem u nemo iudex in causa propria.

Fil-kawża "Board of Education v. Rice" (1911 – AC 179), Lord Loreburn afferma li l-applikazzjoni tal-prinċipji tal-ġustizzja naturali 'is a duty lying upon everyone who decides anything'.

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

Fis-sentenza Inġliża "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 bekk –

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 bekk – 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" decizja fil-21 ta` Mejju, 2009, minn din il-Qorti diversament presjeduta (PA/JRM) [u konfermata mill-Qorti tal-Appell fit-28 ta` Settembru 2012] ingħad bekk dwar il-prinċipji tal-ġustizzja naturali –

"Bil-kemm għandu jingħad li l-btiegħa li t-tribunal jew awtoritajiet amministrattivi jbarsu b`mod skrupoluż it-thaddim ta' dawn il-prinċipji hija wahda li m`għandux hemm disposizzjoni espressa tal-liġi sabiex niehed japplikaha. It-tħaris ta' dawn il-prinċipji fit-tmexxija tal-amministrazzjoni pubblika għandu jkun il-kejl minimu li jggarantixxi t-trasparenza u s-sivi tal-egħmil amministrattiv. Għall-

kuntrarju in-nuqqas ta' tharis ta' dawn il-principji jwassal għall-irritwalita' tal-egħmejjel hekk imwettqa u għat-thassir tagħhom."

Fil-paġ 196 ta' Evans De Smith's Judicial Review of Administrative Action (4th Edition) ingħad 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-kawża "Falzon vs Ministru għall-Affarijiet Rurali u l-Ambjent et".

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

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

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

"An issue upon which the courts have failed always to express a consistent view is whether a successful audi alteram partem challenge requires that the court be satisfied that, had the applicant been given the full procedural protection to which he was entitled, the decision taken by the public authority might have been different in substance. Or, alternatively, is there such a thing as a "technical" breach of natural

justice, in respect of which the court will grant a remedy in order to uphold procedural rights even though quite satisfied that the decision would have been the same even had the applicant been afforded a fair hearing. The difference between the two possible approaches is a fairly fundamental one, reflecting different ideas as to the aims of judicial review. Is the purpose of judicial review simply to “police” decisions which may be wrong or bad in substance because of procedural irregularities; or is part of its purpose to prescribe standards of decision-making which it will enforce regardless of whether the end result, when the decision is properly taken, is likely to be different in substance.

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

Kien sostna Lord Bridge fil-kawża “Lloyd vs McMahon” tal-1987 citata f’paġna 35 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”

.....

Illi permezz tat-tieni aggravju l-Kunsill jilmenta illi d-deċiżjoni appellata mhix motivata u dan imur kontra l-prinċipju ta’ ġustizzja naturali tad-duty to give reasons. Min-naha tagħha l-Awtorità intimata sahqet illi d-deċiżjoni appellate kienet motivata u dan stante li ġiet citata klawnsola 2 tal-kuntratt ta’ kiri bejn l-partijiet.

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

It-Tribunal jagħmel referenza għal dak espost mill-avturi Wade & Forsyth filktieb Administrative Law, u li fil-fehma tat-Tribunal jgħodd ukoll għad-Drift Amministrattiv nostrali, u cioè: the principles of natural justice do not, as yet, include any general rule that reasons should be given for decisions. Nevertheless there is a strong case to be made for the giving of reasons as an essential element of administrative justice. The need for it has been sharply exposed by the expanding law of judicial review,

now that so many decisions are liable to be quashed or appealed against on grounds of improper purpose, irrelevant considerations and errors of law of various kinds. Unless the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is reviewable or not, and so he may be deprived of the protection of the law. A right to reasons is therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice. It is also a healthy discipline for all who exercise power over others. "No single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions.

...

Notwithstanding that there is no general rule requiring the giving of reasons, it is increasingly clear that there are many circumstances in which an administrative authority which fails to give reasons will be found to have acted unlawfully. The House of Lords has recognised "a perceptible trend towards an insistence on greater openness ... or transparency in the making of administrative decisions" and consequently has held that where, in the context of the case, it is unfair not to give reasons, they must be given.

...an important consideration underlying the extension of the duty to give reasons, referred to in many cases, is that in the absence of reasons the person affected may be unable to judge whether there has been "a justiciable flaw in the [decision making] process"; and thus whether an appeal, if available, should be instituted or an application for judicial review made. Since today there are few exercises of governmental power which are not subject to judicial review, it will be rare that a person affected by a decision – for which reasons were not given – will not be able to say that the absence of reasons has denied him effective recourse to judicial review. A general duty to give reasons is latent in this argument; and the courts seem willing to see sufficient weight given to it to enable such a duty to develop.

...

The time has now surely come for the court to acknowledge that there is a general rule that reasons should be given for decisions, based on the principle of fairness which permeates administrative law, subject only to specific exceptions to be identified as cases arise. Such a rule should not be unduly onerous, since reasons need never be more elaborate than the nature of the case admits, but the presumption should be in favour of giving reasons, rather than, as at present, in favour of withholding them.

F'dan il-kuntest it-Tribunal jagħmel referenza għal deċiżjoni tal-Qorti Suprema tar-Repubblika tal-Irlanda fil-każ fl-ismijiet Ghandi Nawaf Mallak vs The Minister For Justice, Equality and Law Reform deċiżja f'is-6 ta' Dicembru 2012, fejn gie rilevat is-segwenti:

40. The Minister refused to give any reason for refusing the application for a certificate of naturalisation in this case. The reports record many judicial statements to the effect that there is no general or universal rule of natural justice requiring the makers of administrative decisions to give their reasons. On the other hand, there is no shortage of cases in which decisions have been held to be defective for failure to give them. This is the problem here.

41. Before grappling with that issue, I would like to address two points which are at the forefront of the Minister's submissions and which have recurred in several of the High Court decisions including that in the present case, as grounds for dispensing with the need to give reasons. Firstly, it is said that, where a decision is to be made in the absolute discretion of the decision-maker, it follows necessarily, meaning that it is a simple corollary of that fact, that no reason need be given for it. Secondly, it is argued that the same result flows from the fact that the grant to a non-national of a certificate of naturalisation is a matter of benefit or privilege rather than of right.

42. Where the decision being made is one which depends on the exercise of the "absolute discretion," of the decision maker, according to the first argument, it follows automatically from the very language used that no reason need be given. As it was put by the learned High Court judge in the present case, "quite literally.....the Minister does not need to have or to give any reason for refusing an application for a certificate." But there is a difference between having a reason and disclosing it.

43. It cannot be correct to say that the "absolute discretion" conferred on the Minister necessarily implies or implies at all that he is not obliged to have a reason. That would be the very definition of an arbitrary power. Leaving aside entirely the question of the disclosure of reasons to an affected person, it seems to me axiomatic that the rule of law requires all decision-makers to act fairly and rationally, meaning that they must not make decisions without reasons. As Henchy J. put it, in a celebrated passage in his judgment in *State (Keegan) v Stardust Victims' Compensation Tribunal* [1986] I.R. 642 at page 658, "the necessarily implied constitutional limitation of jurisdiction in all decision-making which affects rights or duties requires, inter alia, that the decision-maker must not flagrantly reject or disregard fundamental reason or common sense in reaching his decision."

44. In similar vein but with slightly different emphasis, Walsh J., in his judgment in *East Donegal Co-operative Mart v Attorney General* [1970] I.R. 317 at 343-4 said of the powers conferred on a Minister, under consideration in that case, which were exercisable "at his discretion" or "as he shall think proper" or "if he so thinks fit" are powers which may be exercised only within the boundaries of the stated objects of the Act; they are powers which cast upon the Minister the duty of acting fairly and judicially in accordance with the principles of constitutional justice, and they do not give him an absolute or an unqualified or an arbitrary power to grant or refuse at his will."

45. The fact that a power is to be exercised in the "absolute discretion" of the decision-maker may well be relevant to the extent of the power of the court to review it. In that sense, it would appear potentially relevant principally to questions of the reasonableness of decisions. It could scarcely ever justify a decision-maker in exceeding the limits of his powers under the legislation, in particular, by taking account of a legally irrelevant consideration. It does not follow from the fact that a decision is made at the absolute discretion of the decision-maker, here the Minister, that he has no reason for making it, since that would be to permit him to exercise it arbitrarily or capriciously. Once it is accepted that there must be a reason for a decision, the characterisation of the Minister's discretion as absolute provides no justification for the suggestion that he is dispensed from observance of such requirements of the rules of natural and constitutional justice as would otherwise apply. In this connection I agree with the following remarks of Hogan J., regarding the provision under consideration in this case, in his judgment in *Hussain v. Minister for Justice* [2011] IEHC 171; "This description nevertheless cannot mean, for example, that the Minister is freed from the obligations of adherence to the rule of law, which is the very "cornerstone of

the Irish legal system”: *Maguire v. Ardagh* [2002] 1 I.R. 385 at 567, per Hardiman J. Nor can these words mean that the Minister is free to act in an autocratic and arbitrary fashion, since this would not only be inconsistent with the rule of law, but it would be at odds with the guarantee of democratic government contained in Article 5 of the Constitution.”

46. So far as the second issue is concerned, it can be accepted that the grant or refusal of a certificate of naturalisation is, at least in one sense, a matter of privilege rather than of right. The appellant is not a person who, by reason of birth in Ireland or by reference to his parentage is entitled, as a matter of right, to Irish citizenship. In the words of s. 14 of the Act, he is a nonnational and the grant of the status of citizen upon him is within the discretion of the State.

Costello J. said in *Pok Sun Shum v. Ireland*, cited above, regarding the applicant in that case, that it was relevant to bear in mind that “the Minister was conferring a benefit or privilege on the applicant...” That was undoubtedly a major reason for his conclusion that there was no obligation to give reasons. On the other hand, that learned judge was quite clear in stating that the applicant had a right to apply to the court for judicial review. Bearing in mind that the appellant is a non-national, it is instructive to recall the remarks of Keane C.J. concerning the rights of access to the courts of non-citizens, when delivering the opinion of this Court in the Matter of Article 26 of the Constitution and in the Matter of ss. 5 and 10 of the *Illegal Immigrants (Trafficking) Bill, 1999* [2000] 2 I.R. 360 at page 385: “It would be contrary to the very notion of a state founded on the rule of law, as this State is, and one in which, pursuant to Article 34 justice is administered in courts established by law, if all persons within this jurisdiction, including non-nationals, did not, in principle, have a constitutionally protected right of access to the courts to enforce their legal rights..... It may be that in certain circumstances a right of access to the courts of non-nationals may be subject to conditions or limitations which would not apply to citizens. However, where the State, or State authorities, make decisions which are legally binding on, and addressed directly to, a particular individual, within the jurisdiction, whether a citizen or non-national, such decisions must be taken in accordance with the law and the Constitution. It follows that the individual legally bound by such a decision must have access to the courts to challenge its validity.

Otherwise, the obligation on the State to act lawfully and constitutionally would be ineffective.”

47. The mere fact that a person in the position of the appellant is seeking access to a privilege does not affect the extent of his right to have his application considered in accordance with law or to apply to the courts for redress. The Act of 1956 establishes a legal procedure permitting non-nationals, subject to compliance with a number of conditions, to apply for certificates of naturalisation. The appellant enjoys the status of a refugee, because he has been so declared by the Minister. By virtue of s. 3 of the *Refugee Act 1996*, he enjoys a number of specific legal rights, including the right to reside in and travel to and from the State. Specifically, he has the right of “access to the courts in the like manner and to the like extent in all respects as an Irish citizen..” (s. 3(2)(v)). Relevantly, for the purposes of this case, he enjoys the legal right to apply for a certificate of naturalisation. Article 34 of the *Geneva Convention* (see par. 16 above) would appear to encourage contracting states to grant naturalisation to those to whom they have granted refugee status. It is not contested that the Minister is obliged, in processing such applications, to act in accordance with the law. The Minister accepts that, in principle, his decisions are open to review and, in certain circumstances, applications for review have been successful in the High Court. A

distinction has been made in some of the cases, so far as the power of review is concerned, between cases where the Minister finds that an applicant has failed to comply with one of the statutory conditions in s. 15(1) and what might be called his more general "absolute discretion."

Illi dan it-Tribunal jagħmel referenza wkoll għas-sentenza Rita Vella vs Tabib Principali tal-Gvern et deciżja mill-Prim'Awla tal-Qorti Ċivili per Onor. Imballef Joseph R. Micallef u kif ikkonfermata mill-Qorti ta' l-Appell fis-26 ta' Jannar 2022:

Illi llum il-ġurnata huwa stabbilit li biex jitqies li awtorita' tkun qdriet il-funzjoni tagħha tajjeb, huwa mistenni illi dik l-awtorita' tgħid lill-persuna mhux biss x'kienu r-raġunijiet li wasslu għad-deciżjoni li l-istess awtorita' tkun hadet fil-konfront tagħha, iżda wkoll li l-persuna tingħata l-opportunita' illi ssemma' lehenha, u f'każ fejn il-persuna ma tkunx taf x'inbura r-raġunijiet li wasslu lill-awtorita' tobroġ l-ordni fil-konfront tagħha, l-awtorita' għandha tagħti lil dik il-persuna l-opportunita' xierqa li tagħmel l-osservazzjonijiet tagħha;

Illi wara li t-Tribunal ha dan kollu in konsiderazzjoni huwa tal-fehma illi l-Awtorita' ma tatx raġunijiet suffiċjenti għad-deciżjoni mehuda minnha. Illi kif ġie sottomessfit-trattazzjoni orali, u anke ġie ppruvat bil-minuti esebiti, il-Kunsill kien ġie rinfaċċjat b'rikjesta obra għat-tehid ta' biċċa mill-ġnien għall-proġett iehor apparti dak tal-pompa tal-petrol. Kwindi l-Kunsill kellu dritt ikun jaf irraġuni wara t-terminazzjoni ta' parti mill-kirja. Kwindi t-tieni aggravju qiegħed jiġi milqugh."

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

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

38. Il-Qorti diġà spjegat li hemm prinċipji oghla li kull awtorità pubblika għandha tabdem biex tilbaqhom, u dan sabiex jiġu mharsa l-korrettezza u t-trasparenza fl-amministrazzjoni pubblika. Ewlenin fosthom hemm il-harsien tal-prinċipji ta' ġustizzja naturali u l-obbligu li jingħataw raġunijiet għad-deciżjonijiet amministrattivi li jittiehdu. Il-Qorti diġà spjegat aktar 'il fuq li dan huwa l-minimu li awtorità pubblika għandha tassogġetta ruħha għalih, u bil-harsien ta' dawn il-prinċipji l-awtorità appellanta mhux jigi mpost fuqha xi oneru akbar minn dak li hija responsabbli għalih meta giet f'data bl-amministrazzjoni tal-art pubblika fpajjiżna. Kuntrarjament għal dak li qegħda tgħid bl-aggravi mressqa minnha, l-appellanta għandha tassigura li topera f'qafas ta' trasparenza massima, billi tassigura li meta jittiehdu deciżjonijiet amministrattivi ta' certa portata, tagħti r-raġunijiet għad-deciżjonijiet tagħha.

L-Awtorità appellanta m'għandha għalfejn tkun koperta bl-ebda klawsola li tesigi li hija tkun trasparenti billi tipprovi r-raġunijiet għad-deciżjonijiet tagħha, għaliex hija mistennija li tagħmel dan

f'kull ċirkostanza. In vista ta' dawn il-konsiderazzjonijiet, tqis li anki dan l-aggravju mbuwiex misthoqq, u tiċbdu.

Ir-raba' aggravju: l-appellanta ma kellha l-ebda obbligu taghti raġuni ghad-deċiżjoni tagħha

39. Permezz ta' dan ir-raba' aggravju tagħha, l-Awtorità appellanta qalet li tTribunal kien żbaljat meta kkonkluda li kien hemm 'deċiżjoni', u kompli amplifika fuq dan l-iżball meta ddecieda li hija kellha l-obbligu li taghti raġunijiet ghad-deċiżjoni tagħha, u sahqet li fil-każ odjern hija ma hadet l-ebda deċiżjoni.

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

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

'Ghandu jinghad mal-enwiel li, il-htieġa li kull sentenza tal-Qorti tkun motivata, tirrifletti wiehed mill-principji ewlenin tal-gustizzja naturali, li jinkludi li meta tinghata deċiżjoni, tirriżulta r-raġuni l-għala tkun inghatat deċiżjoni u mhux obra.' L-istess Onorabbli Qorti kompliet telabora dwar dan billi sostniet: 'Il-htieġa ta' motivazzjoni xierqa f'sentenza tqieset dejjem bhala element kostituttiv ewlieni biex jiddetermina s-sivi ta' sentenza, għaliex dan mhux biss isejjes il-parti dispożittiva tagħha, imma jfisser lill-partijiet kif u għaliex il-Qorti tkun waslet għal dik id-deċiżjoni'.

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

'Issa ma jista' qatt ikun dubitat illi, kif pacifikament akkolt, il-motivazzjoni hi ta' essenza tal-gudizzju in kwantu kull sentenza hi mistennija li tiddefinixxi kif jixraq id-drittijiet u obbligi civili tal-partijiet. L-ogħla Qorti ddeciedet dan il-punt billi rriteniet illi, "it-trasparenza fil-gudikati li taghti u ssabbab l-awtorita` tagħhom tista' temerġi biss minn motivazzjoni adegwata. Motivazzjoni li kellha tkun tali li fil-minimu kienet tissodisfa fuq kollox il-partijiet in kawza fuq il-korrettezza fattwali u ġuridika tar-raġunijiet li wasslu ghad-deċiżjoni" (enfasi miżjudi)'. (Cit. minn Gordon Agius vs Avukat Generali, QK 20 ta' Dicembru 2004)

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

“... Il-Bord tal-Appell dwar l-Ippjanar obligat, bhal kull Qorti, li teżamina l-aggravji tal-appellanti jew is-sottomissjonijiet tal-parti, tindika dwarhom u tagħti d-deċiżjoni tagħha, għaliex fuq kolloxx dak huwa l-iskop li huwa tenut li deċiżjoni għandha tkun motivata, u dan ukoll sabiex mhux biss il-ġustizzja ssir iżda tidher li qed issir. Dan huwa l-prinċipju li din il-Qorti dejjem imxiet bih u hekk hija obligata li tagħmel, u bl-istess prinċipji huwa marbut l-istess Bord.”

Ikkunsidrat

Fil-każ odjern, dan it-Tribunal fela d-deċiżjoni tat-3 ta' Novembru 2022 eżebita bhala Dokument F mar-rikors promotur. Ma jirrizultax li f' din id-deċiżjoni hemm elenkati r-raġunijiet għalfejn ittiehdet din id-deċiżjoni. Fl-isfond tal-ġurisprudenza ampja fuq kwotata, dan it-Tribunal huwa tal-fehma li l-Awtorita' intimata ma tatx raġunijiet għad-deċiżjoni meħuda minnha. Ma kien hemm l-ebda indikazzjoni tar-raġunijiet għalfejn ittiehdet tali deċiżjoni.

F' dan l-istadju dan it-Tribunal jagħmel referenza għas-sentenza ta' l-10 ta' Meju 2021 Rikors Numru 97/2020 fl-ismijiet Kunsill Lokali tal-Għarb vs L-Awtorita' tal-Artijiet fejn giet ikkwotata deċiżjoni mogħtija minn dan it-Tribunal hekk kif diversament ippresedut fit-18 ta' Diċembru 2020 fl-ismijiet Salvatore Borg u martu Yvonne Borg vs L-Awtorita' tal-Artijiet li fiha kien gie miċhud aggravvju simili għal dak odjern. Dan it-Tribunal kien f' dik is-sentenza mogħtija fl-10 ta' Meju 2021 ċaħad aggravvju identiku. Madanakollu, f' dak il-każ partikolari, it-Tribunal wara li sostna li huwa mistenni li persuna li tirċievi deċiżjoni amministrattiva tkun tista' tifhem l-istess sabiex jekk tħossha aggravata tinterponi appell, kien ċaħad l-aggravvju stante li f'dak il-każ fid-deċiżjoni per se ma kienx hemm raġuni għal tali rifjut iżda sussegwentement u qabel ma gie ntavolat l-appell, il-kunsill lokali rikorrenti gie mogħti r-raġuni wara tali rifjut. Għalhekk, f' dak il-każ l-aggravvju kien gie miċhud, kuntrarjament kif ser jiġi deċiż f' dan il-każ odjern. Dan it-Tribunal jagħmilha ċara li għalkemm l-Awtorita' intimata mhix korp ġudizzjarju jew kwazi-ġudizzjarju, iżda korp regolatur fejn tidhol art pubblika u għalkemm huwa awspikabbli li d-deċiżjonijiet ta' awtorita' pubblika jkunu ċari, dan ma jfissirx illi jridu jkunu elaborati daqs li kieku qieghda tiġi pronunzjata xi sentenza ta' xi tribunal jew qorti. Madanakollu, għandhom jikkontjenu raġunijiet dwar għalfejn ittiehdet l-istess deċiżjoni u mhux semplicement tiġi mniżzla d-deċiżjoni biss. Dana sabiex l-istess persuni nvoluti jitpoġġew f' pożizzjoni li jkunu jistgħu jipprezentaw appell li jindirizza r-raġunijiet li abbażi tagħhom tkun ittiehdet id-deċiżjoni u mhux semplicement jipprezentaw appell fuq kongetturi dwar x' seta' kienu r-raġunijiet għalfejn ittiehdet tali deċiżjoni.

Għaldaqstant, dan it-Tribunal iqis li l-ewwel aggravvju mressaq huwa ġustifikat u sejra tilqgħu. Konsegwentement, ma tarax li għandha tidhol f' eżami dwar iż-żewġ aggravvji ohra mressqa mir-rikorrenti.

Finalment, dwar it-talba tar-rikorrenti li dan it-Tribunal għandu jordna lill-Awtorita' ta' l-Artijiet sabiex l-offerta tiġi agġudikata lill-konjuġi Curmi, dan it-Tribunal jagħmel referenza għal diversi deċiżjonijiet ta' dan l-istess Onorabbli Tribunal, hekk kif diversament ippresedut fosthom f' Anabel Falzon vs L-Awtorità tal-Artijiet tas-6 ta'

Novembru 2018, għe sottolinjat li: “*buwa m’ghandux il-poter li jisostitwixxi d-diskrezzjoni li l-legislatur feda f’idejn l-Awtorita` intimata bid-diskrezzjoni tiegħu*”.

It-Tribunal jirrileva illi l-kompetenza tiegħu hija biss waħda ta’ revizjoni u għalhekk ma jistax jilqa’ t-talbiet tar-rikorrenti fit-totalità tagħhom u cioè’ fil-parti fejn qed tintalab ordni li l-Awtorita’ ta’ l-Artijiet taggudika l-offerta lil konjuġi Curmi.

DECIDE

Għaldaqstant it-Tribunal, għar-raġunijiet hawn fuq premissi, qiegħed jilqa’ limitament l-ewwel aggravju tal-konjuġi Curmi fis-sens li t-Tribunal qiegħed jannulla d-deċiżjoni tal-Awtorita` intimata datata 3 ta’ Novembru 2022, annessa bhala Dokument F mar-rikors promutur, filwaqt li jiċhad l-eċċezzjonijiet tal-Awtorita` intimata sa fejn dawn huma kompatibbli ma’ dak hawn fuq deċiż.

Spejjeż a karigu tal-Awtorita` intimata.

(ft) Dr. Simone Grech
President tat-Tribunal ta’
Revizjoni Amministrattiva

(ft) Silvio Xerri
D/Registratur

Vera Kopja

Għar-Registratur

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