



**QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta ta' l-20 ta' Gunju, 2013

Appell Civili Numru. 141/2012

**Anthony Bajjada**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell tal-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar tal-20 ta' Awwissu 2012 wara d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-31 ta' Lulju 2012 fejn laqa' b'kundizzjonijiet l-applikazzjoni ta' Anthony Bajjada PA 1243/07;

Rat ir-risposta tal-appellat Anthony Bajjada li sottometta illi l-appell ghandu jigi rigettat;

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

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Rat id-decizjoni tat-Tribunal li tghid hekk:  
Ikkunsidra:

B'applikazzjoni tat-22 ta' Frar 2007 - Full Development Permission – PA/01243/07 fejn l-appellant, f'Site at Triq il-Bullara, Xaghra, talab:

"Additions and alterations to existing room to create dwelling."

Illi permezz ta' rifjut tat-12 ta' Gunju 2008 l-Kummissjoni Għall-Kontroll Tal-Izvilupp cahdet it-talba għall-hrug tal-permess relattiv għar-raguni segwenti:

"Development of this site is in conflict with Gozo and Comino Local Plan (2006), which approved the area as an enclave within development boundary, and therefore the proposed development runs counter to Policy GZ-WHIT-1 of the Local Plan."

Illi l-Perit Saviour Micallef ressaq l-aggravji tal-appellant inter alia kif gej:

"1) The site is already committed with the existing building with only a 3m gap not yet built. This gap is moreover bounded on both sides with existing buildings.

2) The building height and zoning is clearly already established in the local plan. The alignment has also been established when the buildings in front of site were recently built up after approval by MEPA - vide attached block plan with PA references. Hence all planning parameters are already established.

3) The scope of policy GZ WHIT 1 as explained in the local plan is to achieve a comprehensive planning solution for areas of land (enclaves) which are not yet developed. There is surely no scope to apply this policy to areas which are already developed.

4. Hence this policy cannot be applied to this site as this is already developed and the yet undeveloped 3m gap is

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already surrounded by existing legal buildings. All aforementioned planning parameters are already established and the development of the site as proposed is in line with these parameters. There is no scope for a PC application to establish the aforementioned parameters, as these are already established."

Illi permezz ta' rapport l-Awtorita ressqet il-kummenti taghha inter alia kif gej:

#### "DIRECTORATE 'S COMMENTS ON GROUNDS OF APPEAL

##### Principle of Development

The Gozo and Comino Local Plan - in Map 14.12-A - designates the site and its surroundings as an Enclave within Development Zone. Such zones are regulated by Policy GZ-WHIT-1 which states that:

"The Enclaves within a Development Zone (former white areas) indicated on MAPS 14.2-A to 14.15-A (where applicable) are being zoned for residential development. These areas shall be developed in a comprehensive manner, following a layout plan which shall be submitted for approval, jointly by the respective owner/s. Furthermore the following criteria apply:

- a) The proposals shall not cause unacceptable adverse effects (from a planning point of view) on adjacent third parties or on the nearby transport routes or amenities.
- b) After the layout of each comprehensive area is approved by MEPA, the infrastructure requirements (street formation, utility extension and ducting) for the relevant area have to be in place prior to commencement of any ground preparation or building works related to residential development".

The policy is pragmatic and leaves no room for interpretation. Until such time that all land owners submit a layout plan for the area, for approval, no applications in

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such enclaves may be entertained. The proposed development is in clear conflict with Gozo and Comino Local Plan Policy GZ-WHIT-1."

Illi responsivament, l-perit Saviour Micallef ssottometta inter alia kif gej:

"This is an application for the additions to an existing legal structure. The site is already committed with the existing building. The yet unbuilt part of site consists of a small strip with a frontage of circa 3m sandwiched between the existing building on one side and a cluster of houses on the other side.

This is clearly seen on the block plan submitted with the appeal as well as on the photos submitted to MEPA with the application.

Site is not only committed with the existing building but has a frontage on an existing alley, the alignment of which has already been established by MEPA when the buildings in front were developed. Moreover the height and residential zoning is already approved in the local plan.

Application was refused on the bases of Local Plan policy GZ-WHIT-1

This policy states:

A number of areas in Gozo within development zones currently do not have any specific zoning and are thus termed "white areas". The range of sizes of white areas varies considerably from a few hundred square metres to a few hectares. Development has taken place in some of the white areas to the extent that future layouts are determined by the existing commitments. In this local plan, these areas are being zoned for residential development. The internal comprehensive layout of these areas shall be determined jointly (by the relevant land owners) through a joint application to MEPA. To facilitate the process of consultation, proposals for the layouts for

each "white area" should be forwarded for consideration to MEPA where these will be determined according to the principles of good planning practice.

GZ-WHIT-1: The Enclaves within a Development Zone (former white areas) indicated on MAPS 14.2-A to 14.15-A (where applicable) are being zoned for residential development. These areas shall be developed in a comprehensive manner, following a layout plan which shall be submitted for approval, jointly by the respective owner/s. Furthermore the following criteria apply:

- a) The proposals shall not cause unacceptable adverse effects (from a planning point of view) on adjacent third parties or on the nearby transport routes or amenities.
- b) After the layout of each comprehensive area is approved by MEPA, the infrastructure requirements (street formation, utility extension and ducting) for the relevant area have to be in place prior to commencement of any ground preparation or building works related to residential development.

Hence it is clear that the policy refers to the "internal comprehensive layout of these areas" and not to such a small site which is already committed with development. The proposed additions surely will not affect the internal comprehensive layout plan of the enclave and hence proposal is not contrary to the scope of policy GZ- WHIT-1.

Indeed the enclave includes a cluster of existing houses. Does the policy prohibit alterations and additions to these houses? Rightfully the answer is no as in fact MEPA already approved alterations and additions for a site within the same enclave in PA 7654/06. [test bil-pinna ma jinqarax]

Our application consists also of additions and alterations on a committed site, with the alignment and building height/zoning already established. As in PA 7654/06, our proposal is likewise acceptable.

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For these reasons, the Appeals Board is respectfully requested to overturn the DCC's decision and issue the permit"

Illi permezz tat-Tieni Statement taghha l-Awtorita kkummentat ulterjorment inter alia kif gej:

"Reference is made to Planning Appeals Board hearing held on 3rd December 2008 wherein MEPA was requested to confirm whether an official alignment has already been established for the alley through which the site gains access, in view that properties on the opposite side of the alley have been recently developed.

The Land Survey Unit (Gozo) stated - minute 68 in file PA1243/07 - that "there is no official alignment along the alley and alignment for building in front of applicant's site has never been set out".

The properties along the opposite side of the alley, from the site, are covered by permissions PA2120102 (later amended through PA6149/04), PA0089/03 and PA7495/03 (later amended through PA2583/05). All permissions were issued in the period April 2003 to October 2005, prior to the coming into force of the Gozo and Comino Local Plan in July 2006.

The Local Plan now designates the site within an Enclave within Development Zone, and therefore the current application cannot be entertained until a layout for the whole enclave is approved through a comprehensive application as required by Local Plan Policy GZ-WHIT-1.

As regards applications PA0017/03, and PA3091/04 (later amended through PA7654/06) indicated on the block plan submitted by architect with the appeal - copy at document 59E in file PA 1243/07 - these permissions relate to sites larger than indicated on same block plan. The sites extend up to the public road further south from the alley under consideration. Permissions PA0017/03 and PA3091/04, were also issued prior to the coming into force of the Local Plan whilst permission PA7654/06

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(issued following the coming into force of the Local Plan) related to the part of the site falling outside the Enclave within Development Zone.

As for the reasons mentioned above, the Malta Environment & Planning Authority respectfully requests the Planning Appeals Board to confirm the decision of the DCC and to refuse this appeal."

Illi fl-access mizmum fl-24 ta' Gunju 2009 il-Bord innota li s-sit jinsab f'tarf ta' sqaq u li l-binja hija mibnija wiesgha ta' madwar zewg qasab u fond ta' 35 pied. Il-fond huwa mdawwar fuq il-lemin tieghu b'bini ta' sular kif ukoll fuq ix-xellug tieghu. Fuq wara hemm wkoll binja ta' sular. Faccata tieghu wkoll hemm bini ta' sular. Il-bini li hemm faccata tas-sit in kwistjoni huwa kollu bini li nbena' qabel ma hareg il-Pjan Lokali.

Illi fl-access tal-14 ta' Gunju 2011 l-appellant indika lit-Tribunal li l-kamra ezistenti tinsab prattikament f'tarf ta' passagg fejn fuq in-naha l-ohra l-area hija kollha zviluppata ghal residenti. Fil-prezent il-kamra hija wzata bhal speci ta' workshop u l-appellant qed jipproponi li din il-kamra ikabbara ftit fuq il-genb taghha fuq ix-xellug u fuq wara biex jikkonvertiha f'residenza.

Tkkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba ghall-zieda u alterazzjoni ghal kamra ezistenti biex tigi kkreatta residenza;

Is-sit mertu ta' dan l-appell jinsab gewwa l-limiti tal-izvilupp, f'area li hija mmarkata bhala "Enclave within Development Zone" fi Triq il-Bullara, Xaghra;

Din l-applikazzjoni giet dismissed peress li s-sit fejn qed jigi propost l-izvilupp jaqa gewwa "Enclave within Development Zone" u ghalhekk mhuwiex kompatibbli mal-pjan lokali ta' Ghawdex u Kemmuna (2006) u li l-izvilupp in ezami imur kontra l-policy GZ-WHIT-1 tal-pjan lokali;

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L-argumenti li tqajmu mill-partijiet fil-kors tas-smiegh ta' dan l-appell jistghu jigu migburin fil-qosor kif gej:

L-appellant jissottometti li:

- Is-sit huwa gja kommess bil-binja ezistenti tant li mis-sit kollu bicca ta' 3m wiesa' biss mhux zviluppata;
- Il-bicca li mhix zviluppata taqa bejn bini ezistenti;
- L-gholi u z-zoning huma diga stabbiliti fil-pjan lokali;
- Il-building alignment gie stabbilit meta l-bini quddiem is-sit gie zviluppata u approvat mill-Awtorita; u
- Il-policy GZ-WHIT-1 ma tapplikax ghal zoni gja zviluppata,

L-Awtorita tissottometti li i-policy hija cara u li l-izvilupp propost mhuwix kompatibbli mal-pjan lokali ta' Ghawdex u Kemmuna (2006) peress li dan imur kontra i-policy GZ-WHIT-1 tal-pjan lokali.

Mill-applikazzjonijiet u permessi li jiccita l-appellant l-Awtorita tispjega li dawn hargu fil-perjodu ta' bejn April 2003 u Ottubru 2005, jigifieri qabel ma' dahal dis-sehh il-pjan lokali.

Il-punt centrali f'dan il-kaz hu li l-Awtorita qed tapplika i-policy GZ-WHIT-1 tal-Gozo and Comino Local Plan li tghid b'mod l-izjed car li l-areas li qabel kienu white areas u immarkati fuq il-mappet MAPS 14.2-A sa 14.15-A ghandhom jigu ippjanati b'mod holistiku u ghalhekk dan jimplika li kull min ghandu xi bicca art jew bini f'dawn l-areas ma' jistax jizviluppa is-sit tieghu qabel ma jsir dan il-pjan holistiku li jinkorpora l-area kollha.

Waqt li l-ideja li-dawn l-areas jigu zviluppata b' mod holistiku hija tajba fuq il-karta, fir-realta ma' tidhirx li hija xi haga fattibbli in the short to medium term peress li difficli wiehed jifhem kif is-sidien kollha li ghandhom propjetajiet f' dawn l-areas jistghu jigu flimkien u jaqblu fuq kif dan jista' jsir ghall-beneficcju ta' kullhadd. Dan izjed u izjed meta wiehed jikkunsidra li numru minn dawn is-sidien hargilhom permess ghar-residenza taghhom recentment (pero qabel ma dahal fis-sehh il-pjan lokali).



Ma jirrizulta ebda mudell jew strategija jew indikazzjonijiet ohra fil-plans u policies tal-Awtorita ta' kif pjani ta' dan it-tip jistghu jigu implimentati u gestiti fil-prattika.

Hawnhekk irid jinghad ghalhekk li l-appellant ghandu ragun li jinsisti bl-applikazzjoni tieghu ghaliex il-kriterji ta' fuq kif jista jsir dak li qed titlob din il-policy b' mod Prattiku mhux cari ghas-sidien. Dawn id-dubji jikbru meta l-Awtorita tafferma li recentment hargu numru ta' permessi f'din iz-zona ghaliex huwa ovvju li ser ikun difficli li xi sid li ghadu kemm bena id-dar tieghu issa jintaleb biex jaccetta li jidhol f'arrangement mal-girien biex isir pjan ghar-redevelopment tal-area kollha li jista jinvolvi wkoll id-dar tieghu. Biex isir dak li qed tghid il-policy hemm bzonn tal-kooperazzjoni f'dan is-sens tas-sidien kollha!

Minn naha l-ohra, fil-fehma kunsidrata ta' dan it-Tribunal, jista jkun perikoluz hafna jekk tigi accettata din il-proposta, jew kwalunkwe proposta ohra f'dawn l-areas, ghaliex b'hekk ikunu qed jigu ippregudikati l-idejat wara din il-policy li wara kollox jsostnu uhud mill-oggettivi fundamentali fil-Pjan ta' Struttura. Barra minn hekk mhux fil-gurisdizzjoni ta' dan it-Tribunal li jbidel jew inehhi xi pjan jew policy tal-ippjanar.

Jekk l-appellant jew ma jaqbilx ma' din il-policy jew inkella ma' jemminx li din hija fattibbli, huwa ghandu jibda l-process biex jew permezz ta' PC Application jew billi jitlob biex isir Local Plan Review jibda l-process biex din tinbidel.

Li jista jaghmel dan it-Tribunal biex itaffi xi ftit din il-problema li hija serja hafna ghal-dawk is-sidien li inziertaw ghandhom propjetajiet gewwa dawn l-areas huwa li jaccetta li jinhareg permess temporanju fis-sens li tali permess ikun validu ghal perjodu li ghandu jkun l-inqas miz-zmien mehtieg biex ikun lest il-comprehensive plan li tipprevedi i-policy jew minn perjodu fiss, per eżempju ta' 10 snin. Jekk il-pjan komprensiv previst mill-policy ma jkunx lest sakemm jghaddi dan il-perjodu jew jekk ikun hemm xi tibdil f'din il-policy allura l-applikant jkun jista

japplika biex jiggdedd il-permess ghal perjodu iehor. It-tul ta' tali perjodu ghandu jkun dak determinat mill-Awtorita. Il-permess ghandu ukoll jinkludi kundizzjoni li l-applikant jaqbel li ghal fini tan-negozjati eventwali fil-kors tal-preparazzjoni tal-pjan komprensiv, il-permess li qed jinghata b'din id-decizjoni ma' johloq ebda commitment jew dritt li jista' jinciedi fuq in-negozjati,

Minn naha taghha, peress li l-oggettiv principali ta' kullhadd ghal dawn l-areas urbani ghandu jkun li dawn ghandhom jigu ippjanati ahjar fl-interess publiku, l-Awtorita ghandha taghmel dak kollu possibbli biex, fi zmien qasir, tizviluppa kriteri cari, fattibbli u sostenibbli ta' kif jista' verament isir dan il-'comprehensive planning'.

In konkluzjoni, kif jidher mill-fatti li hargu fil-kors tas-smiegħ ta' dan l-appell, billi jirrizulta li l-proposta tal-izvilupp, ikkondizzjonata b' mod tali li l-permess ikun temporanju u applikabbli biss ghal dak il-perjodu sakemm jigi finalizzat il-pjan komprensiv previst mill-pjan lokali tista tkun konformi ma l-oggettivi tal-iStructure Plan u l-pjanijiet u policies l-ohra li johorgu minnu, dan l-appell ghandu jigi milquh limitatament.

It-Tribunal ghalhekk in vista tal-kunsiderazzjonijiet hawn fuq maghmula, qieghed jilqa' dan l-appell limitatament u jhassar ir-rifjut tal-applikazzjoni, PA/01243/07, "Additions and alterations to existing room to create dwelling.", u jordna li l-Awtorita ghandha, sa 30 gumata mill-lum, tohrog il-permess mitlub mill-appellant b'dana li l-izvilupp jigi approvat bil-kundizzjonijiet normalment imposti f'applikazzjoniet simili u f'dan il-kaz partikolari billi jittiehed kont ukoll tal-kundizzjonijiet specjali li ghandhom jigu ppreparati mill-Awtorita biex jintlahqu l-ghanijiet specifiki hawn fuq. Wara li l-Awtorita tkun sodisfatta b'dawn il-pjanti ghandha tibghathom għall-approvazzjoni finali ta' dan it-Tribunal.

### **Ikkunsidrat**

L-aggravji mressqa mill-Awtorita kontra din id-decizjoni huma s-segwenti cioe:

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1. Applikazzjoni hazina tal-ligi fejn it-Tribunal irrikonoxxa l-portata tal-Gozo and Comino Local Policy GZ-WHIT-1 pero ghazel li ma japplikahix kontra dik li jstipula l-artikolu 41(13) u 69 tal-Kap. 504;
2. It-Tribunal agixxa ultra vires il-policy tieghu meta ddiportixxa minn dak li tghid il-policy u ppronunzja ruhu bid-decizjoni li ha in konnessjoni ma' din l-applikazzjoni.

Il-Qorti tirribadixxi l-principju li tahtom isiru appelli quddiemha. Din il-Qorti ma taghmilx revizjoni tal-fatti li tressqu quddiem it-Tribunal jew is-semplici applikazzjoni tal-ligi ghall-fatti, izda biss meta punt ta' ligi jigi mqajjem u diskuss quddiem it-Tribunal (ara **Emanuel Mifsud vs Awtorita tal-Ippjanar**, App 31/05/1996). Hu minnu pero illi Tribunal ghandu qua enti quasi gudizjarja jhares il-principji tal-gustizzja naturali u jaghti r-ragunijiet tieghu ghall-akkoljiment jew rifjut ta' appell quddiemha, ghalkemm kif ighidu l-awturi **Beatson and Matthews** (Administrative Law, Cases and Materials, Oxford Press) 'The distinction between errors of law and of fact can be very fine'.

Ghalkemm it-Tribunal tal-Appelli ghandu certa diskrezzjoni li jinterpreta l-ligijiet, pjanijiet u policies li japplikaw ghal kull kaz skond il-fattispecie tieghu, dan ma jfissirx illi jista' jinjora dak li hu car u ma jhalliex lok ghal interpretazzjoni. Jista' jkun li ma jaqbilx magghom u li ma jaghtux rimedju xieraq ghal kull sitwazzjoni pero mhux komputu tat-Tribunal li jinterpreta dak li hu car jew jinjora li japplika dak li hu di rigore li ghandu jigi applikat qua ligijiet, pjanijiet u policies. B'dankollu l-Qorti tirrikonoxxi li jkun hemm sitwazzjonijiet fejn kwistjoni tkun suxxettibbli ghal varji interpretazzjonijiet u din il-Qorti ma ghandhiex tindahal fuq id-diskrezzjoni tat-Tribunal jekk ghall-fatti in ezami jaghzel li jaghti l-interpretazzjoni l-aktar gusta u kompatibbli ma' dak li irid il-legislatur, dejjem sakemm dik id-diskrezzjoni tidher li tezisti minn ezami tal-ligi, pjanijiet u policies u li giet uzata b'mod ekwu u gust.

F'dan il-kaz jidher car illi l-Local Plan Policy GZ-WHIT-1 ma thallix lok ghal xi interpretazzjoni, tant li l-istess Tribunal ighid b'mod skjett:

Il-punt centrali f'dan il-kaz hu li l-Awtorita qed tapplika il-policy GZ-WHIT-1 tal-Gozo and Comino Local Plan li tghid b'mod l-izjed car li l-areas li qabel kienu white areas u immarkati fuq il-mappew MAPS 14.2-A sa 14.15-A ghandhom jigu ippjanati b'mod holistiku u ghalhekk dan jimplika li kull min ghandu xi bicca art jew bini f'dawn l-areas ma' jistax jizviluppa is-sit tieghu qabel ma jsir dan il-pjan holistiku li jinkorpora l-area kollha.

Il-Qorti ma taqbilx mal-appellat li l-policy mhix cara. Il-policy hi cara hafna. Dak li jhalli pero miftuh hu l-kwistjoni ta' pratticita fejn ma hemm ebda terminu biex is-sidien rispettivi tas-siti jipponu flimkien pjan ta' zvilupp u x'jigri fin-nuqqas. Dawn il-kwistjonijiet mhix indirizzati mill-policy pero b'daqshekk ma jfissirx li t-Tribunal ghandu d-diskrezzjoni li jinjora tali policy fil-parti relevanti taghha ghall-applikazzjoni in kwistjoni.

It-Tribunal li qies dawn l-incertezzi fl-esekuzzjoni ta' din il-policy u li tista' taghti lok ghal ingustizzji bhall-applikant li jrid jizviluppa l-art tieghu kif jispjega l-istess Tribunal, ghogbu jiddipartixxi mill-policy billi wasal ghall-ghoti tal-permess provvizorju li ma ssibu mkien fl-istess policy u meta l-istess Tribunal ighid hekk:

Minn naha l-ohra, fil-fehma kunsidrata ta' dan it-Tribunal, jista' jkun perikoluz hafna jekk tigi accettata din il-proposta, jew kwalunkwe proposta ohra f'dawn l-areas, ghaliex b'hekk ikunu qed jigu ippregudikati l-idejat wara din il-policy li wara kollox jsostnu uhud mill-oggettivi fundamentali fil-Pjan ta' Struttura. Barra minn hekk mhux fil-gurisdizzjoni ta' dan it-Tribunal li jbiddel jew inehhi xi pjan jew policy tal-ippjanar.

Jekk l-appellant jew ma jaqbilx ma' din il-policy jew inkella ma' jemminx li din hija fattibbli, huwa ghandu jibda l-process biex jew permezz ta' PC Application jew billi jitlob biex isir Local Plan Review jibda l-process biex din tinbidel.

Il-Qorti hi tal-fehma illi la darba l-applikazzjoni, fil-fehma tat-Tribunal, fuq il-fatti li kellu quddiemu, kienet wahda li ghaliha kellha tapplika l-policy in kwistjoni ippekka meta

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injora li japplikaha kontra dak li jghid l-artikolu 69 tal-Kap. 504 cioe li ghandu japplika l-pjanijiet u policies vigenti fil-mument tad-decizjoni u hareg b'rimedju li ma ssibux fil-ligi u fl-opinjoni tal-Qorti ma tistax tigi mposta bl-approvazzjoni tal-applikazzjoni.

Kwindi hi l-opinjoni tal-Qorti illi t-Tribunal applika hazin l-policy GZ-WHIT-1 kontra l-kliem espress tal-istess policy u inoltre mar oltre l-poteri tieghu meta ta' rimedju li ma jirrizultax mill-istess policy jew min xi ligi jew pjan jew policy ohra rilevanti. Ghalhekk fic-cirkostanzi t-Tribunal kien marbut, bir-riservi gustament msemija minnu fuq il-pratticita tal-policy, li jikkonferma r-rifjut tal-applikazzjoni PA 1243/07.

### **Decide**

Ghalhekk din il-Qorti qed tilqa' l-appell tal-Awtorita ta' Malta ghall-Ambjent u l-Ippjanar u konsegwentement thassar u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-31 ta' Lulju 2012. L-ispejjez jibqghu bla taxxa fic-cirkostanzi. Il-Qorti qed tirrorvija l-atti lura quddiem it-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar biex l-appell jigi deciz skond il-ligi.

**< Sentenza Finali >**

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