



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

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta ta' l-14 ta' Novembru, 2013

Appell Civili Numru. 186/2012

**Salvu Agius**

**vs**

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

**Il-Qorti,**

Rat ir-rikors ta' Salvu Agius tas-27 ta' Novembru 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-8 ta' Novembru 2012 kontra r-rifjut tal-applikazzjoni PA 3041/09 'to sanction egg store, store, gate and change of use of part of broiler unit covered by PA 5130/01 to a layers unit. To divide existing poultry form by separating layers from broilers. Construction of dividing walls. Construction of clamp for layers';

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

Kopja Informali ta' Sentenza

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

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

A. Il-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fit-3 ta' Frar 2011, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 3041/09 "Site at Triq tas-Salvatur, Xewkija – To sanction egg store, store, gate and change of use of part of broiler unit covered by PA 5130/01 to a layers unit. To divide existing poultry farm by separating layers from broilers. Construction of dividing walls. Construction of manure clamp for layers.

Iz-zewg ragunijiet ghar-rifjut kienu s-segwenti:

"1. The proposal cannot be considered further unless the following illegal development is first sanctioned or removed and this in terms of policy Circulars 2/96 and 2/98. The illegal development consists of broiler unit.

2. Applicant failed to meet the eligibility criteria since no evidence has been submitted to show applicant's status and experience in the farming sector. In this regard the proposal runs counter to section (1) of policy 2.3A of the Policy & Design Guidance - "Agriculture, Farm Diversification and Stables" (December 2007) which specifies that official statements from the Department of Agriculture and the Food and Veterinary Regulation Division are required to specify the applicant's experience in the sector, and the need for the proposed development. Thus there are no justified reasons for the need of this proposal and therefore it runs counter to the objectives of the same policy guidance and Structure Plan Policy AHF 5."

B. In-nota tal-Perit John Saliba ghall-Appellant, ipprezentata fis-17 ta' Frar 2011, senjatament il-punti segwenti:

"This illegal development consist of a broiler unit. I would like to point out that this broiler unit in question is not property of the applicant. Salvu Agius but lies with in that

part of the site which is the property of Emanuel Agius. Salvu Agius cannot demolish this broiler unit as this is not his property. It is also being stated that the applicant Salvu Agius has failed to meet the eligibility criteria since no evidence has been submitted to show the applicant's status and experience in the farming sector. I would like to point out that I have already submitted copies of the yearly Licence for Poultry Production – Licence No PLG 001 as issued by the Veterinary Regulation, Fisheries conservation and Control Division within the Ministry for resources and Rural Affairs certifying that Salvu Agius is authorised to rear 10,200 layers at his farm.”

Ma din in-nota giet annessa inter alia kopja ta' Licenzja ghaz-Zamma tat-Tjur, valida ghas-sena 2010, kif mahruga mit-Taqsima ta' Regolamenti Veterinarji, Konservazzjoni u Kontroll tas-Sajd fi hdan il-Ministeru ghar-Rizorsi u l-Affarijiet Rurali.

C. In-nota risponsiva ta' Jonathan Borg ghall-Awtorita', ipprezentata fl-4 t' April 2011, inter alia z-zewg punti segwenti:

“5.2.1 Reason for Refusal no.1 – Illegalities on site: This application was assessed and processed jointly with PA 7143/07, which application is requesting the sanctioning of the said broiler unit. The broiler unit proposed to be sanctioned in PA7143/07 is subject to conditions 5 and 6 of previous permit on site PA 5130/01. Condition 5 stipulated that within ten months of issue of permit, the broiler unit had to be demolished. Condition 6 imposed a bank guarantee of Lm 2,000 to ensure compliance with condition 5.

The site in this application forms in an integral part of the farm in PA7143/07 and therefore this illegality cannot in reality be detached from the whole setup as is being argued by the appellant. Furthermore the enforcement notice has been issued on the whole site including the appellant's, and no appeal from enforcement was ever lodged.

Therefore in view of the existing illegalities on the site as mentioned above, there should be no further consideration of the application as per Article 14 of LN 514/10.

5.2.2 Reason for Refusal no.2 – Justification for development: Section (1) of policy 2.3A of the Policy & Design Guidance - "Agriculture, Farm Diversification and Stables" (December 2007) specifies that official statements from the Department of Agriculture and the Food and Veterinary Regulation Division should be submitted, stating that:

- (a) the proposed development is directly related to an existing livestock farm managed by the applicant;
- (b) the applicant in experience livestock farmer;
- (c) the proposed development is essential for the effective operation of the farm unit and for the overall environmental improvement of the livestock farm operation.

Although the submitted drawings have been endorsed by the mentioned departments, no documentation from the said departments have been submitted regarding the need of this development.

Although the drawings have been endorsed by the Department of Agriculture and the Food and Veterinary Regulation Division, the division of existing farms is of concern since the direction of both of these departments is to consolidate the existing farms and not sub-divide them since the viability of farms is nowadays linked with the holding capacity of the farm. In this case, the existing farm complex as approved in PA 5130/01 is proposed to be divided. This negatively impinge on the effective operation of the existing farm and consequently on the viability of the farm operations.

In this regard, section (1)(c) of P&D guidance for Agriculture requires that the proposed development is essential for the effective operation of the farm unit and for the overall environmental improvement of the livestock

farm operation. Furthermore, the change of use of half of an existing broiler unit to a manure clamp is also reducing the overall output of the farm complex. The manure clamp approved in PA 5130/01 should have the required capacity for the whole farm complex, and hence the change of use of this broiler unit to a manure clamp does not appear to be justified. No further consultations with the mentioned departments have been carried out in view that this application is not favourably considered in terms of PA 2/96.”

D. Il-verbal tas-Seduta numru 26 mizmuma fl-14 t' April 2011, senjatament il-punt segwenti:

“[L-Awtorita' taghmel] referenza ghall-Artiklu 70, skeda 6 tal-Att X tal-2010 billi l-art hija skedata.”

E. In-nota tal-Avukat Dott. Joseph Grech ghall-Appellant, ipprezentata fl-4 ta' Mejju 2011, precizament il-punti segwenti:

“Minkejja li l-farm jirrizulta li fizikament huwa farm wiehed, fuq naha tal-farm jitkabbru tigieg tal-bajd filwaqt li fuq naha ohra tal-farm jitkabbru tigieg ghal-laham.

Dawn huma zewg processi ben distinti minn xulxin u di fatti filwaqt li l-applikant ghandu licenzja partikolari, l-parti tas-sit fejn jezistu l-illegalitajiet u li hija operata minn terzi tinutza' esklussivament ghal tkabbir ta' broilers tal-laham. Din l-attivita' tirrikjedi licenzja ohra liema licenzja l-applikant lanqas biss ghandu u di fatti l-applikant ma ghandux ebda interess fil-gestjoni tat-tkabbir tal-broilers ghas-simna.

Huwa ghalhekk li minkejja l-hrug ta' l-enforcement notice fuq is-sit kollu, l-applikant jista' biss jissanjona l-parti operata minnu u li fiha huwa ghandu interess. Di fatti, l-istess applikazzjoni qeghda specifikatament titlob illi fizikament tiddividi l-istess farm u huwa car li l-parti li fiha hemm l-illegalitajiet ma hijjex dik il-parti li fiha jopera l-applikant.”

Kopja Informali ta' Sentenza

Ma din in-nota giet annessa inter alia kopja ta' Licenzja ghaz-Zamma tat-Tjur, valida ghas-sena 2009, kif mahruga mit-Taqsima ta' Regolamenti Veterinarji, Konservazzjoni u Kontroll tas-Sajd fi hdan il-Ministeru ghar-Rizorsi u l-Affarijiet Rurali.

F. In-nota risponsiva tal-Avukat Dott. Anthony DeGaetano ghall-Awtorita', ipprezentata fit-23 ta' Mejju 2011, senjatament il-punti segwenti:

“Illi l-avviz li qatt ma gie ikkontestat inhareg kontra l-istess appellant Saviour Agius, kif ukoll kontra Emanuel Agius (vide doks TD1 u TD2 hawn annessi) stante l-istess farm kien wiehed u l-illegalitajiet li jinsabu ma jistghux illumjinquasmu that il-principju tal-ex policy 2/96 kif emendate bit-2/98 (illum Avviz legali 514 tal-2010), fejn wiehed xorta ma jistax jittenta jaghmel applikazzjoni fejn ikun hemm illegalitajiet f'post iehor fuq l-istess sit, anki jek ben distint illum, jekk l-applikant kien direttament jew indirettament involut fl-illegalitajiet (sub-artikolu (6) ) – illi haga mhux kontestata in vista tal-ECF 956/01;

Oltre dan l-istess verbal fis-seduta precedenti kienet taghmel referenza ghall-fatt li illum l-area hija skedata u ma jistax skont l-art. 70 w is-sit skeda tal-Kap. 504, jintalab l-issanzjonar (ta' min jinnota li din l-applikazzjoni hi biex jigi sanjonat diversi illegalitajiet tan-nofs mill-farm originali li fuqha qed issir l-applikazzjoni) u l-appellant ma ikkontestax l-istess u ma ghamilx sotomissjonijiet dwar dan w ghaldaqstant l-istess eccezzjoni ghandha wkoll tintlaqa”

Oltre, jinghad ukoll illi dan l-izvilupp huwa necessarju sabiex tigi operata l-farm. Ta' min jishaq illi daww il-farms li ma jkollhomx manure clamps (demmiela) sa Settembru ta' din is-sena, m'humiex ser jithallew joperaw iktar u dana peress li m'humiex ser ikunu konformi mar-regolamenti ta' l-EU.”

G. Il-verbal tas-Seduta numru 71 mizmuma fis-6 t' Ottubru 2011, precizament il-punt segwenti:

“[...] deher l-Avukat Dott. Joseph Grech għall-Appellant li ddikjara illi sa differiment li jmiss, jirregola ruħhu, billi għandu jneħhi l-illegalitajiet li hemm fuq is-sit li huma msemmija fl-ECF 956/01.”

H. Il-verbal tas-Seduta numru 24 mizmuma fil-15 ta' Marzu 2012, fejn in vista tal-verbal precedent u l-fatt li l-appellant naqas li jidher sabiex jinforma lit-Tribunal jekk kemm il-darba tneħhiex l-illegalita', l-appell gie diferit għal-decizjoni in difett ta' ostakolu.

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex razzett tat-tigieg li jinsab barra z-zona tal-izvilupp (ODZ) tax-Xewkija, jinqasam fi tnejn; parti wahda tibda' tintuza għat-trobbija tat-tigieg għal-bajd u l-ohra għat-tigieg għal-laham; jigu ssanati xi mhazen u jinqaleb l-uzu ta' broiler unit f' layer unit; kif ukoll u sabiex tinbena demmiela.

It-raguni tar-rifjut huma bbazati fuq l-argument li l-Appellant naqas li jiggustifika t-talba tieghu, in kwantu ma ssottomettiex prova cara mit-Taqsima ta' Regolamenti Veterinarji, Konservazzjoni u Kontroll tas-Sajd, li ilhu jopera għal-zmien twil f' dan il-qasam u raguni valida għaliex l-attivitá' kif mitluba, għandha tintlaqa' mill-Awtoritá'. In oltre, jirrizulta wkoll li fuq is-sit hemm xi illegalitajiet li mhux qed jigi ttentat is-sanar tagħhom.

L-aggravji tal-Appellant jistrieħu fuq il-premessa li l-qsim tar-razzett hu ntiz li jsir kemm fizikament – bil-bini ta' hajt; kif ukoll fir-rigward t' attivitá' – għax il-broiler u l-layer units ser ikunu operati minn zewg propjetarji distinti. Għalhekk, għalkemm jirrizulta li hemm xi illegalitajiet' fuq il-font, dawn jirrizultaw fuq il-parti l-ohra intiza għat-trobbija tat-tigieg għal-laham, u mhux fil-parti li ser izomm l-Appellant odjern, u li hi ntiza esklussivament għat-trobbija tat-tigieg għal-bajd.

Gew anke' sottomessi kopji ta' zewg Licenzja għaz-Zamma tat-Tjur, kif mahruġa mit-Taqsima ta' Regolamenti Veterinarji, Konservazzjoni u Kontroll tas-Sajd fi hdan il-

Ministeru ghar-Rizorsi u l-Affarijiet Rurali - izda dawn ikopru biss sentejn t'attivitá fil-qasam tat-trobbija tat-tigieg ghal-bajd, cjoe' esklussivament bejn is-sena 2009 u l-2010.

Prezentement, ir-razzett hu munit b' diversi permessi (inkluzi permessi ghal estensjonijiet u s-sanar, inter alia PA 3485/93 u PA 5130/01), ghat-trobbija tat-tigieg ghal-laham; izda dan kien intlaqat b' avviz biex tieqaf u ta' twettieq (ECF 956/01) li nhareg fil-11 ta' Settembru 2001 u li qatt ma' gie kkontestat. Minhabba dan, intilfet ukoll il-garanzija bankarja marbuta mal-permess PA 3485/93.

L-istess enforcement notice ECF 956/01 kienet taqra' kif gej:

“Ghandek zvilupp mhux skond il-pjanti approvati fil-permess PA 3485/93 datat 5 ta' Frar 1997 li jikkonsisti f' zieda ta' zewg layer units minghajr permess, f' varjazzjoni fl-gholi tal-boundary wall mibni bil-kantun u fil-landscaping li ma sarx kif approvat.”

F' nota ta' sottomissjonijiet tal-konsulenti tal-istess Appellant, ipprezentata fl-4 ta' Mejju 2011, gie ddikjarat kategorikament li hu jkabbar “it-tigieg tal-bajd filwaqt li fuq naha ohra tal-farm jitkabbru tigieg ghal-laham.” Tajjeb li jigi osservat pero' li l-illegalita' sollevata mill-Awtorita' tirrigwarda propju zewg layer units, cjoe' fejn jittkabbru t-tigieg ghal-bajd u mhux fejn isir it-tkabbir ta' broilers ghal-laham.

Fl-ahharnett, jigi rilevat ukoll li l-font in ezami jinsab gewwa art li illum hi skedata u ghalhekk tapplika is-sitt skeda tal-Artikolu 70 tal-Att X tal-2010.

Ezaminati fid-dettal is-sottomissjonijiet tal-partijiet, ikun inutili li wiehed jargumenta li wara' li jsir il-qsim tal-propjeta' l-illegalita' in kwistjoni ser tirrizulta fuq il-parti l-ohra - ghax dakinhar li giet sottomessa l-applikazzjoni de quo, is-sit kien ghadu jinqara' bhala propjeta' wahda u kien milqut b' enforcement notice. Ghalhekk l-Awtorita', imxiet sew meta dakinhar li harget ir-rifjut odjern,



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ikkunsidrat dawn iz-zewg kwistjonijiet partikolari. Ghaldaqstant, japplika wkoll ir-regolament 14 tal-Avviz Legali 514 tal-2010.

Il-partijiet ta' dan ir-regolament rilevanti ghal-kaz in ezami huma kif gej:

“(6) Meta partijiet ta' sit jew bini jkunu illegali, m'ghandux jigi rifjutat permess ghal zvilupp gdid x'imkien iehor fuq is-sit jew bini biss minhabba li jkun hemm illegalitajiet fuq is-sit jew bini bla hsara ghal dan kollu li gej:

b) l-ghoti ta' permess ghall-izvilupp gdid ma jcahhadx fizikament, jew ifixkel jew jaghmilha diffiċli li tittiehed xi azzjoni ta' infurzar, sew tnehhija sew ir-rettifika, kontra l-partijiet illegali; u

c) l-applikant m'ghandu ebda kontroll, sew direttament sew indirettament, fuq il-partijiet illegali jew l-applikant ma kienx involut direttament jew indirettament fl-izvilupp illegali.”

Jidher car li kemm il-darba jinqasam il-font, il-partijiet illegali li ser jirrizultaw fuq in-'nahha l-ohra' mhux ser jigu ssanati; meta fil-fatt il-font kollu (u indiviz) hu milqut b' enforcement notice li terga' tghid kienet giet notifikata lill-istess Appellant (u li ma gietx ikkontestata).

In oltre, jekk ghall-grazzja tal-argument jigu sorvolati l-punti li tressqu fil-kors tas-smiegh ta' dan l-appell; u cjoe' li din l-applikazzjoni ma' tittentax tissana l-irregolarita' u li din l-art illum tinsab skedata, ghal din ir-raguni biss it-talba odjerna ma tistax tigi milqugha.

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma ir-rifjut ghall-PA 3041/09 mahrug mill-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fit-3 ta' Frar 2011.

### **Ikkunsidrat**

L-aggravji tal-appellant huma s-segwenti:

1. L-appellant ma ghandux pussess tal-parti fejn jezistu illegalitajiet billi din il-parti hi okkupata minn huh u hemm kawza ghal qsim tar-razzett. In oltre huh qed jaghmel applikazzjoni separata biex jissana l-irregolaritajiet. Ghalhekk ir-rifjut ghal din ir-raguni hi interpretazzjoni hazina tal-ligi;
2. Ma jaghmilx sens li t-Tribunal jimponi fuq l-applikant obbligu li jissana irregolaritajiet imwettqa minn haddiehor fuq il-parti okkupata min haddiehor;
3. L-argument tat-Tribunal li l-art hi skedata ma jreggix billi l-art hi mibnija u l-applikant qed jitlob li ssir divizjoni fizika bejnu u hu.

### **L-ewwel u t-tieni aggravji**

Dawn l-aggravji ghandhom is-sembranza ta' punti ta' ligi izda ma huma punti ta' ligi xejn. Huma apprezzament ta' provi, liema apprezzament gia sar mit-Tribunal li kkunsidra l-aggravji identici ghal dawn in ezami, u applikazzjoni tal-ligijiet tal-ippjanar ghal fatti. Il-kwistjoni quddiem it-Tribunal kienet li s-sit kollu u indiviz kien kolpit b'enforcement notice ECF 956/01 mhux kontestat mill-appellant li gie notifikat bl-istess enforcement notice. It-Tribunal applika r-regolament 14 tal-Avviz Legali 514 tal-2010 senjatament is-subartikolu (6)(c) fejn zvilupp ma jistax jigi approvat jekk l-applikant ma jippruvax li fuq il-parti fejn hemm illegalitajiet hu ma ghandux kontroll dirett jew indirett jew l-applikant ma kienx involut direttament jew indirettament fl-izvilupp illegali. L-appellant ma ghmel ebda argument kontra dawn il-kwistjonijiet ta' natura legali fl-appell odjern izda rega' sahaq fuq kwistjoni ta' fatt li hemm kawza ghad-divizjoni tal-art bejn l-applikant u huh u illi l-illegalitajiet qeghdin fil-parti li jikkupa huh. Dawn l-asserzjonijiet fattwali bl-ebda mod li jikkontrobattu l-aspett legali tal-kwistjoni li hu l-bazi ta' ammissibilita ta' appell. In fatti l-appellant ma iccita ebda regolament jew policy jew ligi li ssostni l-kuntrarju ta' dak deciz mit-Tribunal.

Kwindi dawn l-aggravji ma fihom ebda mertu.

### **It-tielet aggravju**

## Kopja Informali ta' Sentenza

Dan l-aggravju wkoll ma fihx sustanza billi l-appellant ma jsostnih b'ebda argument legali ghaliex ma jreggix l-argument tat-Tribunal li ma tistax tissana irregolarita f'art skedata. Di fatti l-artikolu 70 u s-sitt skeda tal-Kap. 504 huma kategorici li ma jstax jintalab sanzjonar ta' illegalita f'art skedata. L-appellant naqas li jaghmel gustifikazzjoni f'aggravju mressaq minnu ghaliex dan mhux applikabbli ghal kaz tieghu. Hu inutili li l-applikant isostni li kull ma jrid hu li jiddividi l-art okkupata minnu minn dik ta' huh meta s-sit ghal finijiet ta' ligijiet ta' ippjanar hu wiehed u gie trattat bhala wiehed skond il-premessi mahruqa u enforcement notice li bih gie kolpit is-sit kollu u li gew innotifikati bih l-appellant u huh flimkien minghajr ma ghamlu ebda oppozizzjoni ghal dan.

Kwindi dan l-aggravju wkoll qed jigi michud.

### **Decide**

Il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Salvu Agius u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-8 ta' Novembru 2012. Bl-ispejjez kontra l-appellant.

### **< Sentenza Finali >**

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