

Kopja Informali ta' Sentenza



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tat-3 ta' Dicembru, 2013

Appell Civili Numru. 152/2012

Naxxar Local Council

VS

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u
l-kjamat in kawza Patrick Vella ghan-nom u
in rapprezentanza ta' Leisure and Theme Park**

Il-Qorti,

Rat ir-rikors tal-appell ta' Leisure and Theme Park Limited tal-15 ta' Ottubru 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Settembru 2012 rigward applikazzjoni PA 3459/03 'to carry out additions and alterations to existing facilities of leisure park including change of use from swimming pool to dolphin pool and construction of lazy river run and wave pool with sunbathing beach';

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Rat ir-risposti tal-appellati li ssottomettew li d-decizjoni tat-Tribunal kellha tigi konfermata u l-appell michud;

Rat l-atti kollha;

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

B'applikazzjoni, Full Development Permission – PA 03459/03 fejn l-appellant, f'Splash and Fun park, Triq is-Salini, Bahar ic-Caghaq, talab:

“ To carry out additions and alterations to existing facilities of leisure park including change of use from swimming pool to dolphin pool and construction of lazy river run and wave pool with sunbathing beach”

Paul Gatt ressaq l-aggravji segwenti:

“The grounds for appeal relate to:

Condition 9. "The noise generated by the development should be controlled and not of an excessive nature, which would result in a nuisance to the amenity of the nearby residential area. Hence, the measures identified by the noise report (approved document PA3459/03/94A) shall be respected at all times, and noise levels on site shall not exceed 85dB(A)."

The grounds for appeal are that Condition 9 is flawed and is not able to be implemented because the noise level of 85dB(A) must be clearly defined. The current undefined level could refer to one of 6 common environmental noise descriptors:

a) L10 - average maximum sound level that is equalled or exceeded for 10 percent of the total measurement time (used for potential intrusive noise that is of short-duration such as to measure traffic-related noise);

b) L90 or L95 - Average minimum sound level that is equalled or exceeded for 90/95 percent of the total measurement time (i.e .. the background noise level);

c) Lmax - The maximum sound level that is just equalled and not exceeded during the measurement time (used for the assessment of potential intrusive noise, particularly short-duration noise, or when night time sleep is of concern);

d) Leq - The time-average sound level where the A-weighted sound pressure level of a continuous steady sound that would have the same mean square sound pressure as a subject whose level varies with time;

e) Ldn - Leq over a 24 hour period after the addition of 10 decibels to sound levels between the hours of 22:00 to 07:00, (used for the assessment of aircraft noise);

f) Lpeak - The peak sound level, the ratio of the square of the maximum instantaneous sound' pressure to the square of the reference sound, (used for the assessment of impulsive sound).

Specific protocols are prescribed in the British Standards for establishing each of these descriptors.

Having regard to the close proximity of noise sensitive uses (residential dwellings), the 40 and the Leq descriptors are of particular relevance. In the event that the noise level in Condition 9 (85dB(A)) is deemed to be a background noise level (L90) or the averaged (Leq) noise level measured at the boundary of the site nearest the closest residential area, noise levels at the nearest residential area use would be many times the background sound levels currently experienced when the Splash and Fun Park is not operating, resulting in impacts of major significance that would affect the well-being of the inhabitants and would severely degrade the amenity of the area.

Remedy sought

That Condition 9 is redrafted to ensure that noise levels emanating from the site do not result in background and LAeq (1 hour) noise levels at the boundary of the nearest residential area higher than their current levels day and night.”

L-Perit Anthony Anthony Fenech Vella ghall-applikant ressaq il-kummenti tieghu kif gej:

“In response to that submitted by Mr. Kevin Morris on his behalf and on that of the Naxxar Local Council, please find hereunder our response which is divided in two, the first part dealing with Planning issues and the second part which was prepared by our sound Consultant, Mr Chris Calleja, dealing with the technical issues regarding noise,

It is however, also important to clear the air regarding the method of response used by Mr Morris as it is puts all the issues in one pot and presents important information either in an incomplete manner or not in the correct context which can be rather misleading and it is therefore necessary to channel the arguments back on the track.

First of all, by treating the two appeals together and putting them in one basket, there is the possibility that either could be effected by the comments directed towards a particular aspect of the other and this is not acceptable seeing that each involves heavy investments. A case in point would be, for example, the issue of the tented area approved in PA 3467/05 and which is not incorporated in PA 3459/03.

This difference also reflects on the only common denominator between the 2 permits, the issue of Sound pollution, as that generated under a tent need not necessarily be the same as that from the activities approved in PA 3459/03., ie a wavepool.

THE NOISE ISSUE

Which brings us to the first comment by Mr Morris when he states, or rather qualifies that condition No 9 in PA 3459/03, that noise levels should not exceed 85DBA, is erroneous:

May I remind the Tribunal that this condition was 'no rabbit pulled out of a hat' by the Board but was inherited from that established as Condition 3 in PA 2205/98 [Copy attached) for 'the operation of a gokart track' after it had been specifically approved by the then Planning Appeals Board in its decision of the 28th September 1999, after it had given the matter due consideration as clearly indicated in its concluding paragraph of that decision:

Mr Morris, on behalf on the Appellants, then passes on to accuse the Applicants of time delaying tactics to avoid the conclusion of these Appeals. This cannot be more distant from the truth as the Applicant has every interest to get to that esult, but through serious and professional methods.

When one considers that the whole basis of the Appellants claims are a handful of readings with no organised pattern to create a correct statistical background for assessment, when these are confuted by at least a dozen reports drawn up by Court Experts following reports by the Appellants to the Police and supported reports drawn up by the Police called on site in tens of others, when an offer by the Applicants to finance a monitoring report to be drawn up by a local expert TOTALLY under THEIR terms and conditions was never taken up, and when even a report which the Naxxar Local Council had drawn up by an Engineer they commissioned has never seen the light of the day, how can the Applicant be expected to embark on the engagement of foreign expertise, independently on the quality of their merits. The Appellants were free and had every right and possibility to do so, and they did not.

And, did it have to take 4 ½ years from the presentation of what Mr Morris is referring to as an offer, to prepare and present a final proposal?

The Applicants have, on the other hand, always contended and moved towards a full evaluation of what is happening exactly on site, not an evaluation, so as to be able to explore ways and means of mitigating whatever above the normal situations may occur or be expected to occur.

For this purpose, and within a year, we have not relied on an odd assortment of one time readings with no supporting information as to time, surrounding ambience at the time, activities being monitored, the presence or otherwise of normal levels of background noise (which have been proven to be of immense relativity), but have commissioned a valid Sound Engineer, Mr Chris Calleja, to monitor activity during the HIGH season when the park is in full swing so as to prepare a serious proposal for seeking solutions. This was why the report was delayed slightly more than a year.

We have declared and sustain that want to invest correctly in any measures that can be scientifically controlled and monitored in the respect of maintaining good neighbourliness. Mr Calleja's remarks and conclusions are included or attached either in this response and in his report.

TENTED STRUCTURE

Here, once again, Mr Morris is mixing issues , that of the allowable uses on site as established in Policy NA05 with those of the erection of the tent itself.

PA 3467/05, approved a tented structure for uses ancillary to the activity of the park. This cannot incorrectly be taken to imply that any activity that is carried out in it is, per force, unacceptable in terms of that Policy as it qualifies as INDOOR and, hence, NON OUTDOOR!!!!!!!!!!!!!!

The description of the uses submitted by the undersigned in our response of the 29/9/11 is written in clear English and refers to the facility for providing a cover and shelter to those activities normally carried outside in good weather or, else, for the provision of a shade against

strong sunshine as is normal practice in hot climates like ours. If one had to stretch Mr Norris's arguments to ridiculous limits, could we ask whether any sunbather who decides to open an umbrella suddenly changes from an outdoor to an indoor activity?

In the world of sport and leisure indoor activities, as opposed to outdoor activities, do not rely on tented structures but on solid, permanent ones where the ambient is normally also under control; this difference is evident in ice skating or hockey but is also so in cycling, athletics and in all gymnasia.

If one had to take Mr Morris's arguments ad litteram, it is legitimate to ask what would be the use of having a tent therefore be then? a useless structure lying around, just simply occupying space?

We contend that the tent, being as per its own definition, a temporary structure, is simply a cover over those activities which would normally be carried out in the park, so much so that the erection of a specialised tent for a particular purpose, like that of a Circus as we have recently hosted, would require coverage by an appropriate DNO, also due to the fact that the location of our site is on a coastal zone.

Once we are on the issue of tented structures, we are also amazed that Mr Morris, being an expert in the field, could issue a generic, off the hip, statement like that in para No 1 of page 3 of his response whereby he contends that "the fabric walls of the tent do not attenuate sound !!!

While agreeing that they would not contain the sound, then it is legitimate to ask in generic language why would, then, all the places of entertainment 'keep their tents up', especially those within PRIORITY RESIDENTIAL as the ones cited, ie Villa Arrigo & Villa Bologna, not to add on Villa Madama and Villa Promontorio,? (vide pics of tents as applied for in permits and as seen on Google Earth). They are simply, like us, governed by Police permits controlling the time limit for the playing of music so as to

contain disturbance within those periods covered by law, but otherwise carry on with their activity in a regular way.

Or is it perhaps because they define them as 'Marque' or Awning in the planning application, that they do not fall under the sort of scrutiny expected from ours What would be the use of a tented structure be then, except for a useless structure lying around occupying valuable space?

TECHNICAL ISSUES

Please refer to the response drawn up by Chris Calleja and annexed

CONCLUSION

Finally, I refer to the concluding paragraph whereby the Appellants request the full withdrawal of these two permits. This is totally inadmissible as, once again, I cannot but remind the Tribunal that, unless the Appellant has proven, beyond any reasonable doubt, that the approved activities in each and every permit, as examined separately, do fall within the scopes both of the Local Plan Policies but also of the Contractual conditions of the lease of the land 'To operate a Leisure & Theme park', the Tribunal has to confirm those approvals.

If, on the other hand, the issue is simply one regarding a particular condition, ie, that of noise control, we contend that the Tribunal has to respect the decision, judiciously taken previously by the Planning Appeals Board in PAB 662/98, and use it as a parameter for its ruling. We have, on our part, carried out the necessary in-depth, scientifically correct studies and not relied on assumptions or emotive reactions to conclude a proposal which we are convinced is reasonable attainable and well within the scope of that first decision”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda third party appeal kontra l-approvazzjoni tal-permess PA 3459/03. Skond l-

appellant, Condition 9 f' dan il-permess hija difettuza (flawed) u dan peress li din il-kundizzjoni ma' tistax tigi implimentata stante li ma' tispecificax b' mod tekniku u skond standards internazzjonali kif ghandu jitkejjel in-noise level [85dB(A)] imsemmi fil-kundizzjoni.

Fl-appell tieghu l-appellant isemmi sitt-metodi (environmental noise descriptors) li jistghu jintuzaw biex jitkejjel in-noise level (L10, L90, Lmax, Leq, [Ldn – Leq], Lpeak) u jikkontendi li fic-cirkostazi tal-izvilupp in ezami u d-distanza ta' l-egreb residenzi minn dan l-izvilupp, ghandhom jintuzaw il-metodi L90 u Leq biex jitkejjel l-istorbju li jaghmel dan l-izvilupp. L-appellant jikkontendi li skond hu kieku kellu jitkejjel in-noise level b'dawn iz-zewg metodi jirrizulta li l-background noise ghall-egreb residenti, meta jkun qed jopera l-impjant, jirrizulta li jkun hafna drabi izjed minn meta l-impjant ma' jkunx qed jopera. Dawn il-livelli ta' background noise joholqu impatt negattiv fuq is-sahha tar-residenti.

Ghaldaqstant l-appellant qed jitlob li Condition 9 ghandha tigi mibdulha biex tizgura li l-background noise u l-Leq, 1 hour noise level, fil-vicinanze tal-egreb residenzi ma' jaqbzux il-livelli ta' storbju li jkunu jezistu meta l-impjant ma' jkunx qed jopera.

Fis-sottomissjoni tat-3 ta' Marzu, 2006 l-appellant jipprezenta sett ta' rizultati ta' zewg surveys li kienu saru f' Gunju u Ottubru tas-sena 2005 biex isir confront bejn in-noise level meta jkun qed jopera l-impjant ghal meta dan ma' jkunx qed jopera. L-appellant jispjega li fl-assenza ta' guidance u standards locali huwa kien qed jirreferi ghal British Standards u Planning Guidance li jintuzaw fir-Renju Unit. L-appellant jikkonkludi li jekk jigu applikati il-BS 4142, BS 5228 u l-PPG 24 fl-interpretazzjoni tar-readings migbura fiz-zewg surveys, l-environmental impact tat-tibdil fil-background noise li jirrizulta jkun ta' 'major significance' u johloq impatt negattiv konsiderevoli fuq ir-residenti tal-vicinanze.

Huwa jikkonkludi billi jissuggerixxi test alternattiv ghal-Condition 9 tal-permess biex, skond l-appellant, din il-

forma gdida ta' din il-kundizzjoni tizgura li l-kejl tal-effetti tal-impjant fuq ir-residenzi tal-vicinanze tkun tista titkejjel sew fl-interess taz-zewg nahat.

F' ittra li l-appellant baghat lill-applikant fit-8 ta' Mejju, 2006, huwa jispjega lill-applikant li teknikament Condition 9 tmur kontra l-interessi tieghu ukoll ghaliex skond kif inhi miktuba Condition 9 mhux permissibbli li l-impjant johloq lanqas l-icken hoss ghaliex it-treshold ta' 85dB(A) mhux kwalifikat. Huwa jissuggerixxi way forward ibbazzata fuq is-sottomissjoni tieghu lill-Awtorita' tat-3 ta' Marzu, 2006 u jipproponi li din il-metodologija ghandha tigi vverifikata mill-IEMA li hija korp ta' environmental practitioners ibbazata fir-Renju Unit.

F' sottomissjoni ulterjuri tal-15 ta' Ottubru, 2010 l-appellant baghat rendikont, skond hu, tal-appell, l-istorja ta' kif origina t-test prezenti ta' Condition 9 u kif kienu i procedew l-affarijiet sa' dak iz-zmien.

F' sottomissjoni tat-18 ta' Settembru, 2011 l-applikant jirrispondi ghal dan l-appell permezz ta' covering letter iffirmata mill-perit Fenech Vella u rapport anness ma' din l-ittra miktub minn Christian Calleja.

Fl-ittra tieghu il-perit Fenech Vella jghid li fis-noise surveys l-issottometta l-appellant ma' kienux saru bizzejjed readings u ghalhekk huma kienu qed jipprezentaw rapport izjed fil-fond.

Ir-rapport ta' Christian Calleja jispjega b' mod tekniku kif l-applikant jara l-issue tan-noise level tal-impjant u x'qed jaghmel biex din il-problema tissolva. Huwa janalizza fid-dettal is-sottomissjonijiet tal-appellant u waqt li jispjega li ma' jidhirlux li l-appellant huwa teknikament korrett f' kollox huwa jaqbel li Condition 9 hija 'flawed'. In fatti f' pagna 5 huwa jghid :

"The appeal puts into discussion the so termed Condition 9 within approved PA 3459/03, whereby noise levels on site should not exceed 85dBA,with no reference to what the source could be or the noise descriptor to which it

should be connected. It is duly flawed but not only for some of the reasons portrayed but also that no consideration was given to the implications such a sentence could have; firstly in relation to the general environment, secondly in misleading both the complainants and the park's management. A far more reasonable argument would have been the sources inside the park could be of a high noise level as much as the park's management would have liked to be, as long as a set of parameters to not compromise the surrounding noise environment. As it is written at present one could take advantage and measure 85dBA as LA90 at the edge of the site, bringing the levels inside the 'residential' area well into 11dBA range. Such abuse was never the aim of the park's management and better guidance issued to developers into taking well into consideration the area of development".

F'pagna 15, fil-konkluzjoni tar-rapport tieghu huwa jghid li gej:

"The appellants are putting forward the Condition 9 within approved PA 3459/03, be replaced by the terms put forward in the documents so titled "Noise from pubs and clubs Phase 1". Although this method for consideration is agreeable, certain assumptions are being taken lightly and the following should be pointed out:

- The noise level changes mentioned for the hours 07:00 to 23:00 are corrected for façade reflection.
- The unweighted leq in the 63 Hz Octave band for the hours 23:00 to 07:00 is inside a living room and not as presented in the appeal in inverted commas.
- Who will be really deciding on the audibility within any noise sensitive premises during the night time?
- The measurement interval is of 5 minutes but the measurement period should be of? What will be the statistics for choosing which 5 minute period, a sliding time window or fixed windows?

It is not the intention of the park's management to create such nuisance at such hours, but if conditions are to be

set, they are to be agreeable and en-clair to both parties, so as not to have further problems in future.

From the work carried out in the past summer months to mitigate what could have been nuisance occurrences in the past, and the positive feedback received from the neighboring residences, the Parks' management remains committed so as not to disturb the local community, with ongoing work to remove any possible complaints in the area. The cooperation of the neighbors is sought to keep the works ongoing to alleviate any possible nuisance occurring".

Ta' min jinnota li dan l-appell huwa kontra it-test ta' kundizzjoni li ppreparat l-Awtorita' fil-permess PA 3459/03 jigifieri l-appell kien jindirizza direttament lill-Awtorita' izjed milli l-applikant. B' dana kollu l-Awtorita' hadet sentejn biex tirreagixxi fuq dan l-appell u meta ghamlet dan kien b' mod superficjali u kwazi irrelevant.

It-Tribunal jinnota li dan l-appell ilu jinstema' ghal madwar 7 snin u fih saru mhux inqas minn 26 seduta. F' dan izmien kollu l-Awtorita' ghamlet zewg sottomissjonijiet biss; wahda fil-5 ta' Settembru 2007 u ohra li giet ipprezentata fid-29 ta' Frar, 2012 u din ta' l-ahhar ma' kienitx tirreferi specifiquement ghal meritu tal-appell in ezami.

Meta wiehed jirrifletti ftit fuq dan il-kas wiehed jikkonkludi mill-ewwel li kull min ghandu formazzjoni teknika bazika, u mhux necessarjament espert ta' kif jitkejlu n-noise levels, kellu jirrealizza mill-ittra originali li baghat l-appellant biex jaghmel dan l-appell, li l-Condition 9 kienet deficiente u li kienet tmur kontra l-interessi kemm tal-appellant u kif ukoll tal-applikant. Dan imbaghad johrog izjed car meta wiehed jaqra is-sottomissjonijiet li ghamlu kemm l-appellant u kif ukoll l-applikant.

L-appellant kien il-parti li kellu l-anqas x' jitlef minn kif inkitbet il-Condition 9 ghaliex kieku kella tigi applikata ad litteram din il-kundizzjoni kieku l-applikant ma' kienx ikun jista jopera l-impjant tieghu peress li kwazi kull hoss itella 85dB(A) jekk jitkejjel mill-vicin bizzatej. L-applikant jista

jkun li anticipa li, bhal ma' jigri f' hafna kazi bhal dawn, kundizzjonijiet ta' dan it-tip kwazi qatt ma' jigu enforzati u ghalhekk kien bizzejjed li l-permess ikollu kundizzjoni li timpresjona ghal jargon li bih inkitbet avolja fil-fatt teknikament ma' taghmilx sens. Fil-fehma kunsidrata ta' dan it-Tribunal l-Awtorita' ghandha dejjem tkun certa li dak li qed timponi permezz ta' kundizzjonijiet fil-permessi li tohrog tkun f' pozizzjoni li verament issegwihom.

Kif johrog mill-premess kemm l-appellant u kif ukoll l-applikant jaqblu li din il-kundizzjoni hija deficienti. In fatti, fil-fehma kunsidrata ta' dan it-Tribunal, dan l-appell kien imissu gie deciz hafna izjed qabel, jekk mhux wara l-ewwel seduta, peress li l-mertu huwa car daqs il-kristall. Minflok ma sar dan, inhlew izjed minn 7 snin b'seduti u argumenti inutili meta is-soluzzjoni kienet wahda cara. Meta kien jidher car li din il-kundizzjoni hija monka, l-Awtorita' kien imissa mill-ewwel irtirat din il-kundizzjoni u, anke bl-ghajjnuna ta' esperti fil-materja, ppreparat wahda li tkun teknikament sostenibbli.

It-Tribunal ghalhekk qed jiddisponi minn dan l-appell billi jilqa l-istess u jordna lill-Awtorita' biex tirtira immedjatament il-Condition 9 tal-permess PA 3459/03 u fi zmien tliet xhur tipprepara kundizzjoni gdida li tkun idonea ghac-cirkostanzi in ezami u li tkun teknikament sostenibbli. F' dan il-process l-Awtorita' ghandha tiehu in konsiderazzjoni dak kollu li qalu kemm l-appellant u kemm l-applikant fis-sottomissjonijiet taghhom.

Ikkunsidrat

L-aggravji tal-appellant huma s-segweni:

1. It-Tribunal seta' hass li kien korrett jordna l-irtirar ta' kondizzjoni 9 fil-permess approvat imma ma setghax jipprefigi terminu li jmur kontra l-applikazzjoni PA 2022/04 li hi master plan fuq is-sit kollu liema applikazzjoni ghadha pendenti. In oltre f'din l-applikazzjoni pendenti ipprefigga terminu ta' tlett xhur biex l-Awtorita tirrevedi l-kundizzjoni 9 mentri fuq permess PA 3467/03 deciz flimkien ma' din l-applikazzjoni ipprefigga terminu ta' xahar biex tigi riveduta l-istess kundizzjoni, li titratta l-

istess sit. B'zieda ma' dan fl-applikazzjoni PA 3467/03 ikkundizzjona l-hrug tal-permess ghal sena u f'kaz li l-master plan mal-Awtorita ma jigix konkluz u l-applikant ma jottemperax ruhu, l-applikant irid jirriprestina s-sit ghal kif kien qabel l-applikazzjoni. L-appellant jikkonkludi li kieku d-decizzjoni tat-Tribunal kienet identika fiz-zewg permessi fis-sens li r-riforma ta' kundizzjoni 9 kellha ssir fi zmien tlett xhur u ma kien hemm zieda ta' kundizzjoni b'terminu ta' validita tal-permess PA 3467/03 ma kienx ikun kostrett jappella. Dan jikkostitwixxi inkosistenza ta' decizzjoni fuq sit wiehed utilizzat bhala theme park;

2. La darba t-Tribunal kellu tlett appelli (tnejn identici fuq PA 3459/03 u dak fuq PA 3467/03) dwar l-istess sit li jittrattaw aspetti diversi ta' theme park messu applika l-istess kejl u kundizzjonijiet ghat-tnejn li huma b'mod li if inghad fl-ewwel aggravju gew applikati mizuri differenti u vvjola id-duttrina ta' trattament ugwali, aktar u aktar meta l-applikazzjoni fuq pjan holistiku ghall-izvilupp kollu tat-theme park ghadha pendenti.

L-ewwel u t-tieni aggravji

Dan l-aggravju, aktar milli jindirizza din l-applikazzjoni jindirizza applikazzjoni PA 3467/03 li pprefiggiet terminu differenti biex l-Awtorita tindirizza b'mod aktar dettaljat kundizzjoni 9 tal-permess wara li tikkunsidra sew s-sottomissjonijiet tal-partijiet involuti, u dan apparti li fl-applikazzjoni PA 3467/03 iddahhlu kundizzjonijiet fid-decizzjoni tat-Tribunal li jistghu jimminaw il-premessi in kwistjoni.

Din il-Qorti tirrileva illi l-applikazzjoni 3467/03 titratta zvilupp differenti ghalkemm fuq l-istess sit u ghalkemm ghandu jittiehed kont ta' dak li jigi deciz f'applikazzjonijiet ohra relatati mal-istess sit ma jfissirx b'daqshekk li awtomatikament dak li hu applikabbli ghal wahda japplika ghal ohra.

Maghdud dan l-istess appellant jiddikjara illi li kieku mhux ghall-impostazzjoni tat-terminu f'kundizzjoni 9 fl-appell fuq permess PA 3467/03 cioe appell 151/2003 deciz illum ukoll, ma kienx jappella mid-decizzjoni odjerna.

Din il-Qorti tqis illi din id-dikjarazzjoni hi bizzejjed ghal Qorti biex tasal ghal konkluzzjoni illi l-appellant cioe l-applikant u l-appellati huma kuntenti bid-decizjoni u kull argument iehor ghandu jithalla biex jigi dibattut fl-appell concernati PA 3467/03 li dwaru hemm il-veru lanjanza tal-appellant. Fil-fatt harsa lejn l-appell u r-risposti li saru quddiem it-Tribunal kien jirrigwarda esklussivament in-natura fqira u fjakka kif giet impostata l-kundizzjoni 9 minghajr ma nghatat ebda sustanza u ghalhekk it-Tribunal baghat lura l-permess lil Awtorita biex terga tipproponi kundizzjoni konkreta rigward il-livelli tal-hoss accettabbli wara li tikkunsidra s-sottomissjonijiet dettaljati tal-partijiet. It-Tribunal impona terminu ta' tlett xhur biex dan isir u hadd mill-partijiet ma jidher li hu kontra.

Ghalhekk il-Qorti tqis li dan l-appell ma fih ebda fundament hlief li l-permess u d-decizjoni tat-Tribunal qed jintuza bhala argument biex jikkontrobatti d-decizjoni fl-applikazzjoni PA 3467/03 ukoll qed jigi decizi illum. F'dan l-appell l-aggravju ulterjuri ta' cerimus paribus ma fih ebda relevanza in kwantu dik li ntqal aktar il-fuq.

Decide

Ghalhekk il-Qorti qed tichad l-appell, u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tad-29 ta' Settembru 2013. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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