



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tat-22 ta' Jannar, 2014

Appell Civili Numru. 54/2013

Martin Baron

vs

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u
l-kjamat in kawza Mario Farrugia f'isem il-Fondazzjoni
Wirt Artna**

Il-Qorti,

Rat ir-rikors tal-appell ta' Martin Baron tad-19 ta' Awwissu 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Lulju 2013 mill-permess akkordat PA1237/12 'restoration and re-instatement of original saluting battery entrance including demolition of existing restaurant and reconstruction of Master Gunner's Quarters';

Kopja Informali ta' Sentenza

Rat ir-risposta tal-Awtorita u tal-Fondazzjoni Wirt Artna li sostnew li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

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

Rat id-decizjoni tat-Tribunal li fil-kunsiderazzjonijiet tieghu qal hekk:

Ikkunsidra:

A. Il-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fit-30 ta' Novembru 2012, approvat l-applikazzjoni ghall-permess tal-izvilupp PA 1237/12 – Saluting Battery, Battery Street, Belt Valletta: Restoration and reinstatement of original saluting battery entrance including demolition of existing restaurant and reconstruction of Master Gunner's Quarters.

B. In-nota tal-Perit Robert Musumeci ghall-Appellant, ipprezentata fl-4 ta' Jannar 2013, inter alia l-punti segwenti:

“Illi kif gie indikat fil-permess, is-sit mertu ta' dan l-appell si tratta ta' bini li huwa skedat in toto bhala Grade 1 – Monument fil-World Heritage List tal-UNESCO. Konsegwentement, kwalsijasi prospett ta' zvilupp irid jirrispetta d-dispozizzjonijiet tal-policy UCO 7 tal-Pjan Strutturali.

Issa fil-kaz ta' l-intevent propost (li jinvolvi rikostruzzjoni ta' binja u mhux addirittura restawr ta'struttura ezistenti), jirrizulta li l-izvilupp jikkostitwixxi “change of the external or internal appearance” u dan allura bi ksur ghal dak li jiddisponi l-policy UCO 7 tal-Pjan Strutturali sucitat. Molto piu', lanqas ma jista' jinghad li l-iskop ta' l-interventi huwa intimament marbut mas-‘scientific restoration and rehabilitation’, jew addirittura ‘for reasons of keeping the building in active use’, siccome, s-sit in ezami diga huwa rijabilitat u jista' jabqa' jintuza minghajr il-bzonn ta' interventi ulterjuri. Kwindi huwa car u manifest li d-decizjoni mertu ta' dan l-appellittiehdet bi ksur ta' l-Artikolu 69 tal-Kap 504 tal-Ligijiet ta' Malta, u dan peress li “(a) fir-rigward ta' applikazzjoni ghal permess ta' zvilupp” il-

MEPA hi tenuta, bil-ligi, tapplika 'il-pjanijiet' (f'dan il-kaz, il-Pjan Strutturali).

L-izvilupp ukoll imur kontra dawn il-policies tal-pjan ta' struttura 1990, u tal-kontroll ta' l-izvilupp fil-UCA 1994.

1. BEN 2: disinn urban tajjed

2. UCO 6 u UCO 13 fejn monument ta' importanza storika cjoe is-sur, minflok ser jigi ippreservat ser jigi mgharraq vizivament, l-access ghat-tul kollu tiegħu, u tal-veduta minnu, eskluzi permezz ta' struttura permanenti, u ser jigi imperikolat strutturalment bit-tpoggija ta' struttura tal-gebel tqila fuqu. L-Kiosk prezenti ma tmissx mas-sur u nzammet il-bogħod seww minnu.

3. UCO 10 u RCO 4: L-istruttura ser mhux biss tgharraq il-veduta u li 'skyline' tas-swar fuq fejn ser tinbena, izda ser tghatti il-vista tas-sur tal-barakka ta' fuq, mill-inhawi tal-madwar, tal-kottonerra faccata u mill-bahar tal-port il-kbir. L-istruttura ser tgharraq il-vista tas-swar ukoll meta wiehed ihareslejha mill-gallerija u mill-bqija tla-genb bi-mini tal-gnien tal-barrakka ta' fuq li jagħti għal fuqha. Bhal ma jaf kulhadd dna il-gnien huwa il-mekka ewlenija tat-turisti f'Malta mhux biss bhala 'Gnien' izda minhabba il-veduti li joffri. L-istruttura hija 'accretion' kif stabbilixxa l-CHAC qabel ma l-applikant kellu access għal da nil-kumitat, u hija kompletament inkongruwa mal-profil baxx tas-sur, fejn madwar il-port il-kbir, strutturi bhal dawn qegħdin appuntu jigu demoliti u s-swar originali pristinati. Inkluz strutturi ezatt that dan is-sit, cjoe, St. Anthony Bastion, skond il-permess mahrug għal PA 3038/07.

Fil-permess PA 3038/07 li x-xogħol fuqu għaddej, u saħansitra wasal qrib seww tas-sit ta' l-applikazzjoni, hemm ukoll inkluz ir-restawr tas-swarta' San Pietru u San Pawl, fejn is-swar qegħdin jigu ippristinati minn kull 'accretion' Kif jista' jkollok permess gdid (PA 1237/12) direttament oppost għal iehor validu fejn f'wiehed iridu jitnehhew l-istrutturi u accerations ezistenti u fl-iehor iridu jinbnew mill-gdid, biss ftit metri il-bogħod minn xulxin? Terga is-swar tal-belt huma monument wiehed.

Fid-DPA Report il-case officer, meta rrefera ghall-oggezzjoni li tirrileva li l-izvilupp imur kontra l-policies GH03 u GH03, kull ma kellu xi jghid huwa 'no comments'. Fil-fatt juza l-kliem 'no comments' ghal mhux inqas minn hdax il-darba f'dan ir-rapport. Dan hu inaccettabbli, bhal ma hu inaccettabbli li jiddikajra fis-seduta tal-Bord li approva din l-applikazzjoni, li 'ghalkemm vera ser tinbena replica ezatta ta' l-original, meta fil-fatt parti sostanzjali mill-istruttura, cjo'e' erbat-ikmamar ser jithallew barra. Interjament tnehew hitan divizorji u l-istruttura ppjanata ma ghandha x'taqsam xejn ma' l-original. Kif tista alluramqarr tissejjah 'replika'? Qal ukoll li mhux ser taffettwa il-veduta tas-swar, meta din ovvjament tghatti parti sostanzjali mis-swar ta' warajha, barra li tinnega il-veduta mis-sur fejn ser titpogga.

Fl-applikazzjoni tissemma wkoll il-kelma 'originali' meta dak li ser isir huwa biss li tinbena replica kompeltament gdida. 'Replika' li sahsitra lanqas hekk ma tista' tissejjah ghax hija kompletament differenti kemm esternament, kif ukoll internament li u kif ukoll fl-uzu taghha. Allura li gie approvat huwa binja kompletament gdida fuq sit Grad 1.

Il-Case Officer, waqt is-seduta tal-1 ta' Novembru 2012, quddiem il-Bord iccita sahsitra b'mod oppost il-Venice charter Artikolu 9, fejn huwa appuntu dan l-artikolu li jghid li fil-kazi fejn ma hemm l-ebda traccja ta' li kien hemm qabel ma jistax jerga jinbena dak li kien hemm qabel, ghaliex ma jezisti l-ebda 'vested right'. Tant hu hekk li s-Sur Roderick Galdes, membru tal-Bord iddikjara fis-seduta li 'jekk nirrekrejha mill-gdid meta din ntilfet inhoss li nkun qed nagixxi kontra il-Venice Charter.'

Fil-laqgħa tal-1/11/1912 ic-Cermen tal-Bord qal u nikkwotah kelma b'kelma: 'dak huwa dak li l-bord irid jiddeciedi, jekk il-binja ghandhiex tigi mibnija jew le, fuq il-pedamenti li skond ir-ricerka li saret ghadhom hemmhekk.' Dan fil-fatt ma jirrizultax ghax minkejja dak li kien stqarr l-applikant fis-seduta, ma saret l-ebda ricerka fuq il-post li turi xi pedamenti. Is-sit għadu intatt bic-ciangatura u ma hemm l-ebda traccja ta' xi pedamenti tla-

bnja li ghaliha hemm l-applikazzjoni. Il-Bord ghaldaqstant gie zgwidat b'din id-dikjarazzjoni zbaljata.

L-applikant ukoll ghamel diversi claims quddiem il-Bord, fuq li storja li bena madwar is-Saluting Battery, sabiex jonfoh l-importanza taghha, inkluz li l-master gunner kien jirregola l-hin ghal Malta kollha, minghajr ma gab l-icken evidenza storika ta' dan. Di piu', irid jigi osservat li l-istess Awtorita', tramite PA 0005/04, diga kienet oggezzjonat bil-qawwa sabiex tigi stallata struttura ta' natura temporanja fl-istess sit, liema decizjoni kienet del resto ikkonfermata fi stadju ta' Appell, fejn inter alia kien sostnut li kwalsijasi struttura gdida f'dan is-sit hija 'certament censurabbli' u dan peress li l-Grand Harbour Local Plan jesigi li dan is-sit ghandu jibqa' miftuh ('open space'). Fil-fatt, f'dan il-kaz, il-Bord ta' l-Appell kien ikkummenta hekk kif gej, u dan anke wara li fost l-ohrajn, l-sitess applikanti (Fondazzjoni Wirt Artna) kienu dak inhar ironikament oggezzjonaw bil-qawwa li jsir xi forma ta' zvilupp f'dna is-sit:

"...Is-sit 'de quo jiffirma parti mis-Saluting Battery li tinsab f'livell aktar baxx mill-Barrakka ta' Fuq. Skond il-Grand Harbour Local Plan - hi deskritta bhala 'area of open space' – cjoe li ghandha tippreserva l-karattru ta' spazju miftuh. Is-swar u l-fortifikazzjoni tal-Port huma konsiderati bhala Monument Nazzjonali fil-Grand Harbour Local Plan, u skond il-Policy GM 04 ma ghandu jigi awtorizat l-beda zvilupp li b'xi mod inaqqas mill-importanza taghhom. Indubbjament, il-proposta prezenti tikkostittwixxi impatt vizwali negattiv, f'sit prominenti li skond il-policies ghandu jigi kkunsidrat bhala Monument Nazzjonali. Gew registrati oggezzjonijiet validissimi tal-Valletta and Floriana Rehabilitation Committee (VRC), il-Heritage Advisory Committee (HAC); u l-Fondazzjoni Wirt Artna. L-oggezzjonijiet ta' dawk l-entitajiet huma vertament validi u jikkonfermaw l-korrettezza tal-motivazzjonijiet tar-rifjut..." (Baron Martin kontra l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar PAB 90/05 RR. PA 0005/03).

Il-CHAC fil-bidu kien kontra il-progett, izda imbaghad erba xhur wara biddel il-fehma. Ghalkemm li wiehed jibdel il-fehma huwa forsi permissibbli, daqstant huwa 'unheard of'

li l-CHAC ikollu laqgħa ma l-applikant. Illi in oltre, l-appellant jissottolineja li huwa ma ingħatax id-debita opportunita' li jissottometti l-kunsiderazzjonijiet tiegħu quddiem ic-CHAC, bħalma jidher li del resto gara fil-kaz ta' l-applikant. In oltre, l-appellant ma ingħatax kopja tad-dokumentazzjoni li issottometta l-applikant permezz ta' liema huwa irnexxielu jkkonvinci lill-istess CHAC ibiddu l-pozizzjoni originali tagħhom fil-kors tal-process, u dan bi ksur tal-principju bazilari tal-audi alteram partem.

Terga' il-CHAC fil-laqgħa 741 bid-data 17/09/12 li biha biddel id-decizjoni tiegħu iddikjara li r-rikostruzzjoni tal-Gunner's Quarters għandha issir fuq il-pedamenti originali mingħajr ma l-faccata tigi rtirata mill-linja tas-sur. Il-pjanta li gew approvati ma jurux li l-istruttura ser tinbena kif talab ic-CHAC, cjoe fuq is-sur, kif tidher li suppost kienet mir-ritratti li l-applikant 'ikklemja' li kienet il-Master Gunners quarters. Ukoll saħansitra ma tezistei l-ebda tracca ta' xi pedamenti originali tal-Masters Gunners Quarters fis-sit. Di piu' jirrizulta mill-file li l-Valletta Rehabilitation Committee lanqas biss gew konsultati bħlama jgri solitament f'applikazzjonijiet simili fil-Belt Valletta; inkluz fil-kaz li jirrigwarda l-istess sit, u hawn fuq imsemmi (PA 0005/04) meta esprimew ruhom kontra li jsir dan l-izvilupp.

In fine l-appellant jissottometti li gie nfurmat li l-applikant issottometta pjanti godda diversi drabi saħansitra jumejn biss qabel iltaqa' l-Bord tal-MEPA, u dan anke jekk fid-DPA hemm indikat li ma jistghux jigu intavolati pjanti godda fl-imsemmi perjodu. Di piu' irid jingħad li t-tibdil fil-pjanti fil-kors tal-process jikkostitwixxi bdil materjali ai fini ta' l-AL 514 ta' l-2010, siccome tali tibdil jammonta għal 'bidla sostanzjali fil-apparenza esterna jew fid-disinn' u kwindi tali tibdil qatt ma setgħa jigi akkordat fil-process, dan it-tibdil tal-pjanti sar mhux inqas minn tlett darbiet f'dawn id-dati:

11/06/2012

31/08/2012

30/10/2012 (jumejn biss qabel is-seduta tal-Bord tal-MEPA.)

Kopja Informali ta' Sentenza

It-tibdil kien wiehed materjali, fejn kif ammess mill-case officer innifsu fis-seduta tal-1/11/2012, tnaqqsu in-numru ta' twieqi minn sitta ghal erba kif fil-fatt kienu fl-istruttura originali. It-Tlett darbiet li inbiddu l-pjanti saru kollha iktar tard minn 4 gimghat mid-data ta' l-applikazzjoni, cjoé it-22/02/2012.

Dawn l-argumenti ta' hawn fuq dejjem qeghdin isiru biss fuq il-premessa li kien minnu, li kif stqarr l-applikant, xi darba kien hemm dik l-imsejha 'Master Gunner's Quarters' fis-sit imsemmi fl-applikazzjoni.

Izda l-fatti juru mod iehor.

L-applikant sostna li l-Master Gunner's Quarters kienu fuq is-sit u kulhadd qaghad fuq il-kelma tieghu, minghajr ma ghamel ir-ricerka mehtiega. Qieghed nehmez l-argumenti li saru fir-rikors lil-appellant ghamel taht Artikolu 77, tal-Planning and Development Act, u argumenti ohra, li huma validi ukoll ghal dan l-appell. Ghalhiex naturalment jekk l-istruttura ma kienitx sitata f'Battery Street, il-permess mahrug li hemmhekk tinbena irid jigi ovvjament immedjatament irrevokat.

(ara: Arguments challenging claim that the Master Gunner's Quarters Structure was sited at the site in application PA 1237/12. Including attachments)."

Ma din in-nota gew annessi inter alia, kopji ta' pjanti antiki u ritratti tal-post in ezami kif ukoll dokument titolat: "Arguments challenging claim that the Master Gunner's Quarters Structure was sited at the site in application PA 1237/12 including attachments."

C. In-nota responsiva ta' Darren Fava ghall-Awtorita', ipprezentata waqt is-Seduta numru 10 mizmuma fid-19 ta' Frar 2013, inter alia l-punti segwenti:

"5.2.1 Principle of Appeal

In comments submitted, the appellant is arguing that the site is an open space free from structures and that the Authority should not have permitted the construction of a

new structure just underneath the Upper Barrakka Gardens since the area is scheduled as a Grade 1 Monument (G.N. 276/08) and part of the Area of High Landscape Value (G.N. 133/01).

In spite of this comment the position of the appellant against the proposal is also somewhat contradictory since he is both stating that the appellant failed to provide documentary or other evidence proving that a structure was ever present whereas on the other hand arguing that the proposed structure is not an exact replica of the original. This is evident from the request for revocation of permit under Article 77 of Act X of 2010 submitted by Mr. Martin Baron but subsequently refused by MEPA Board.

The appellant himself is insisting that he had previously requested the construction of a demountable tented structure to facilitate use of the legal kiosk in winter months (PA 5/04) however this application was refused by DCC, Reconsideration and Appeals Board (PAB 90/05) on the argument that the area was to be retained as an 'open space'.

Final comments by the appellant remarked that counter to standard procedure, changes in plans were made repeatedly during the processing stages at times where the submissions of fresh plans were not normally acceptable. The Authority will be assessing each argument raised by the appellant in this report; and will clarify to the Tribunal why the decision taken by the EPC Board in November 2012 was correct.

5.2.2 Principle of Development

The Saluting Battery currently caters for a good number of visitors who watch the daily firing of the noon-day gun, take guided tours or attend social and corporate events. The reconstruction of the Master Gunner's Quarters will serve to provide much needed roofed space for visitor services. Currently there are no adequate visitor facilities and this new building would accommodate site administration, sanitary facilities, a small workshop for the

on-going maintenance of the saluting guns and ample museum exhibition space in relation to the Battery.

The original building formed an integral part of the saluting battery complex during the colonial period since it was the quarters of the Master Gunner who manned the battery. The structure was built in the 1860s, following the removal of the side armament and as part of the new layout of the Battery. It was demolished by enemy action during the Second World War and was partially reconstructed in the 1950s to be used as Admiralty Police accommodation, however was completely demolished in the 1960s, when the site was decommissioned as a military site.

The re-construction of the Master Gunner's Quarters and the entrance point which will control access to the site are based upon original plans and drawings. The internal layout is being altered from that previously used as it is planned to accommodate today's needs of the building. Reference is made to Article 9 of the Venice Charter which states that:

The process of restoration is a highly specialized operation. Its aim is to preserve and reveal the aesthetic and historic value of the monument and is based on respect for original material and authentic documents. It must stop at the point where conjecture begins, and in this case moreover any extra work which is indispensable must be distinct from the architectural composition and must bear a contemporary stamp. The restoration in any case must be preceded and followed by an archaeological and historical study of the monument.

The proposed works are considered to be in line with the above-mentioned charter.

5.2.3 Planning Policies

Part of the development proposed in this application sought reconstruction of the Master Gunner's Quarters. In arguments for appeal the appellant is indicating that the proposed development cannot be considered acceptable under Structure Plan policy UCO 7 since it would result in

changing the external appearance of a building of outstanding architectural or historical interest. Notwithstanding this, the Authority wishes to bring to the attention of the Tribunal that the same policy further stipulates that particular interventions which seek the scientific restoration and rehabilitation of Grade 1 Buildings or Structures will be permitted.

Given the nature of the development it is clear that the proposal in concern falls within the parameters by which this policy allows. The reconstruction of the Master Gunner's Quarters must be considered holistically as part of the restoration and reinstatement of the original saluting battery, and not as the singular development within a Grade 1 Building comparative to the example raised by the appellant in his case vs MEPA (PA 5/04) to construct a demountable tented structure.

Furthermore, the development is in line with GHLP policy GH03 which states that MEPA will support initiatives to restore the fortifications, clear unauthorised and/or uncomplimentary uses and maintain the fortifications in a suitable setting. Reuse of the bastions for activities which respect and are complementary to their historical setting will be encouraged. It must also be noted that both the Superintendence of Cultural Heritage and the CHAC both agreed that the development is not objectionable since it is in the interest of the Local Plan that the restoration, reuse and appropriate presentation of these fortifications be used as a boost to tourism and play a vital part in appreciation of national heritage.

5.2.4 Other Matters raised by Appellant

In comments made the appellant is insinuating that the Authority went outside the normal remits during the processing stages of this application by allowing fresh plans to be repeatedly presented for approval of permit. This statement is misleading since the dates quoted by the appellant include plans submitted during pre-screening stages (22nd February, 2012). In fact, the next set of plans submitted to the Authority were done so in June 2012 within the four weeks from validation as

stipulated by L.N. 514/10. Other plans referenced by the appellant in August and October 2012 were only involved explanatory plans or alterations which were within the remit of the Legal Notice. No revisions or amendments were made to the original plans and therefore the accusations raised are not valid.

Ma din in-nota gew annessi kopji ta' zewg memoranda interni tal-Awtorita' li kienu ntbaghtu tramite il-Cultural Heritage Advisory Committee, fid-19 ta' Dicembru 2012 u s-17 ta' Jannar 2013.

D. In-nota ta' sottomissjonijiet tal-Avukati Dott. Ian Spiteri Bailey u Dott.ssa Victoria Cuschieri ghall-Applikant, ipprezentata waqt is-Seduta numru 10 mizmuma fid-19 ta' Frar 2013, precizament il-punti segwenti:

“Structure Plan Policy UCO 7.

In the appeal application submitted to this Tribunal, the Third Party Appellant primarily claims that the proposal under PA 1237/12 contradicts the provisions of the above-mentioned Structure Plan Policy.

The said Third Party Appellant thereby argues that according to the said policy, no alterations are permitted 'which impair the setting or change the external or internal appearance' of a Grade 1 building (defined according to the terms of the same policy as a building of 'outstanding architectural or historical interest'). The attention of this Tribunal must necessarily be drawn in this regard precisely to that further stipulated by this same policy as cited by the Appellant, namely that particular interventions which seek to scientifically restore and rehabilitate Grade 1 buildings or structures of such integral cultural value will be permitted. It must necessarily hereby be stated that, despite the contrary statements made by the Third Party Appellant in this respect, a mere cursory glance at the proposal currently under consideration clearly illustrates the fact that the nature of the development proposed under PA/1237/12 falls precisely within the ambit of the parameters established by the policy above-cited. The

Applicant seeks by virtue of the present application, to rehabilitate the Saluting Battery in order to restore this to its historic state whereby it was utilized as an integral part of the military machine. Part of this project will also entail reconstruction of the Master Gunner's Quarters which constitutes a fundamental component of the said Saluting Battery.

It is humbly submitted that the above-mentioned development ought to be perceived as one entire project which shall not - contrary to that claimed by the Third Party Appellant - entail any breach of Structure Plan Policy UCO 7. The said project shall rather rehabilitate and restore the historic appearance of the bastion and the Upper Barracca, thereby adding cultural, architectural and historical value to this site of fundamental importance. It is further observed that in granting its approval for the proposed restoration and re-construction, the Authority has evidently considered and applied the policy above indicated, thereby rendering entirely unfounded the claim put forward by the Appellant to the effect that the decision taken by said Authority constituted a breach of the provisions of Article 69 (Chapter 504 of the Laws of Malta).

Other Structure Plan Policies

The Third Party Appellant further declares that the development approved by the Authority under PA/1237/12 also contradicts various other policies contained within the Structure Plan. In the appeal application submitted to this Tribunal the said Appellant makes reference to policies BEN 2, UCO 6, UCO 13, UCO 10 and RCO 4.

It must preliminarily be noted in this regard that Policy RCO 4 is applicable to Rural Conservation Areas. The said policy is therefore evidently inapplicable with regard to the present application, and has clearly been cited entirely out of context.

The UCO Policies above-indicated all seek the conservation and preservation of buildings of architectural or historical interest. According to Policy UCO 6 this is in

fact deemed to be the 'basic objective' within such Urban Conservation Areas. The Appellant claims that the proposal under PA/1237/12 shall lead to the ruin of a monument of fundamental importance - namely the Bastions which shall be structurally impaired due to the proposed construction of the Master Gunner's Quarters. The said Appellant further declares that the construction of the structure here indicated shall cause visual impairment of the view of the Bastions from several different aspects. "It is thereby stated by the Appellant that the structure in question 'hija sempliciment dar mghobbija fuq parti mis-sur, fejn madwar il-port il-kbir, strutturi bhal dawn qeghdin appuntu jigu demoliti u l-iswar originali pristinati."

It must necessarily be reiterated in view of the various declarations made by the Appellant as above-cited, that the rationale behind the project proposed under PA/1237/12 is precisely the restoration of this particular part of the Bastions to its historic state. The Appellant himself notes with approval the various efforts which are currently underway in order to restore this unique monument to its former state. It is humbly submitted that the proposal currently under consideration seeks precisely to achieve the same aim. It is further brought to the attention of this Tribunal, that within this particular context the claim to the effect that the proposal contradicts the above-cited UCO policies is wholly incomprehensible. How can the proposed project be deemed to fall outside the parameters therein established, when the aim of the said project correlates precisely with the rationale behind this entire section of the Structure Plan?

The Third Party Appellant also makes reference in this regard to PA/3038/07 which concerns the restoration of the Bastions of St. Peter and St. Paul, whereby the said Bastions are being freed from all accretions. The said Appellant questions, 'kif jista' jkollok permess gdid (PA/1237/12) direttament oppost ghal iehor validu fejn t'wiehed iridu jitnehhew l-istrutturi u accretions ezistenti u fl-iehor iridu jinbnew mill-gdid, biss ffit metri il-boghod minn xulxin?' It must necessarily be noted in this regard

that the Appellant is evidently mistaken in his consideration of the Master Gunner's Quarters as an accretion.

This particular building is in fact an integral historical component of the site and the surrounding fortifications. It is respectfully submitted that the reconstruction of a historically fundamental component of the Bastions in question certainly cannot be opposed by reference to the removal of various accretions currently present upon the Bastions in order to restore this monument to its former state.

The attention of this Tribunal is further drawn towards the fact that the reference made by the Appellant to PA/5/04 - whereby the Authority had refused the granting of permission for a temporary structure upon the same site - is also superfluous in the context of the particular nature of the present proposal. The application herein indicated was made by Mr. Martin Baron himself and entailed, 'installation of demountable tented structure, to operating kiosk facility'. One certainly need not comment further in this regard, other than to state that no doubt may subsist as to the intrinsic divergence between the accretion proposed under PA/5/04 and the project which the Applicant seeks to carry out.

The Appellant further argues that reconstruction does not qualify as restoration. This assertion is entirely erroneous and is furthermore factually incorrect. In truth reconstruction is one of the various elements which constitute the restoration practice. Reference may hereby be made to various examples of the implementation of such practice in other countries.¹

¹ The city of Frankfurt known as one of Germany's prettiest Gothic town centres which was destroyed in Allied bombing raid in 1944-45 is now being partially rebuilt (<http://www.thelocal.de/society/20120217-40761.html>). A total of 35 new buildings are planned for the area between the cathedral and The Rbmer (Frankfurt's town hall and one of its most important architectural landmarks). At least eight of these will be exact replicas of the historic buildings destroyed in the Second World War while 15 will be a mix of old and new. Similarly in these last 20 years, Dubrovnik experienced substantial reconstruction of its historical walled town which suffered particular damage during the Balkan conflicts. In Warsaw and Gdansk, several buildings were reconstructed based on documentary records, replicating the external townscapes but with modern interiors (Sultan Barakat, Post war reconstruction and the recovery of cultural heritage: critical lessons from the last 15 years, Cultural Heritage in Post War Recovery, ed. Nicholas Stanley-Price, ICCROM, 2007). The science of restoration and reconstruction is in ongoing evolution. The recent blossoming of reconstruction activities has been provoked by deep changes within culture itself, as well as by the significant political metamorphoses of the late 20th century. Other known reconstruction examples are the Liceo in Barcelona, La Fenice in Venice, and Drammen in Norway. Even more significant is the unprecedented bold reproduction of Shakespeare's Globe Theatre in London which was never seen in the 20th century as it was

A further observation must also necessarily be made with regard to the alleged visual and structural impairment to be caused by the construction proposed under PA/1237/12. It is hereby submitted that the Third Party Appellant is once again factually incorrect in stating that the proposal will visually impair the view of the harbour from the bastion. This is simply untrue - the existing scene from the Bastion terrace will in no manner be reduced and the area will be open for the general public to enjoy. There will be no barrier (physical or otherwise) prohibiting people from entering this part of the site during normal opening hours of the battery. It is further noted in this regard that the proposed structure entails a re-construction - based upon the wealth of documentation which exists in this regard - of a structure which had existed upon the Bastions for several years without inflicting any damage of a structural nature or otherwise. It is humbly submitted that in this context the claim made by the Third Party Appellant - which may be perceived as nothing short of absurd - certainly ought in no manner to constitute a valid justification or basis for the overturning of the permission granted by the Authority.

In view of all of the above, it is thereby respectfully observed that the claims put forward by the Third Party Appellant in terms of contradiction or breach of the various Structure Plan Policies above-indicated are entirely unfounded and ought to be disregarded by this Tribunal.

The Venice Charter and The Historical Context of PA/1237/12

destroyed following a Parliamentary edict in the 17th century (Natalia Dushina, *Historic reconstruction: prospects for heritage preservation or metamorphoses of theory*, *Conserving the Authentic – Essays in honour of Jukka Jokilhetto*, (eds) Nicholas Stanley-Price and Joseph King, ICCROM, 2009)

Nicholas Stanley-Price, a well known international expert in restoration (Director General of ICCROM 2000-2005) argues that a number of reasons exist to justify, the reconstruction of buildings that are known primarily from excavated or historical evidence (Nicholas Stanley-Price, *The Reconstruction of Ruins: Principles and Practice*, Conservation: Principles, Dilemmas and Uncomfortable Truths, (eds) Alison Richmond and Alison Bracker. Elsevier, 2009). These include - National symbolic values; Continuing function or re-use; Education and research. Stanley-Price argues that the reconstruction of one or more buildings is to be considered only if the values (including the landscape value) of a site will be better appreciated than if the buildings are left in a ruined state (the ruin as a source of inspiration or as a memorial which is not the case in this circumstance). He also established that the surviving evidence for the former building must be fully documented in such a way that this record is always available in the future (a scientific and ethical obligation to record for posterity)."

In the appeal application presented before this Tribunal, the Third Party Appellant claims that the proposed reconstruction of the Master Gunner's Quarters upon the particular site in question shall breach The Venice Charter for the Conservation and Restoration of Monuments and Sites (Article 9) which seeks in the context of restoration, 'to preserve and reveal the aesthetic and historic value of the monument and is based on respect for original material and authentic documents'. It is humbly submitted that the proposed project under PA/1237/12 seeks precisely to fulfil this particular goal.

It is further respectfully observed that the Appellant seems to have failed to make reference to other relevant documentation in this regard, including the UNESCO Operational Guidelines for the Implementation of the World Heritage Convention which addresses the question of reconstruction of buildings - 'In relation to authenticity, the reconstruction of archaeological remains, historic buildings or districts, is deemed justifiable only in exceptional circumstances'. According to the said Guidelines, reconstruction is to be permitted where there is complete and detailed documentation in relation to a particular project - a scenario which subsists with regard to the present application.

Reference must hereby necessarily be made in this regard to the documentation annexed to the appeal application and marked as Dok. RM2, wherein it is alleged that the original Master Gunner's Quarters was not even situated upon the site subject to PA/1237/12. The Third Party Appellant declares on the other hand - amongst the submissions made by virtue of the said application - that 'l-istruttura ppjanata ma ghandha x'taqsam xejn mal originali'. It is pertinent to highlight at this juncture, the glaring contradiction contained within the arguments herein indicated as put forward by the Appellant. On one hand the Appellant declares that the Master Gunner's Quarters was not existent upon the site in question. On the other, the said Appellant claims that the proposal is not a faithful reconstruction of the original building present

on such site. It would therefore seem that in his attempts to oppose the project proposed under PA/1237/12 the Appellant is seeking to substantiate his position based upon two arguments which are categorically opposed.

In the appeal application submitted before this Tribunal, the Appellant cites a particular statement made by the MEPA Board Chairman to the effect that, 'dak huwa dak li it-bord irid jiddeciedi, jekk il-binja ghandhiex tigi mibnija Jew le, fuq il pedamenti li skond ir-ricerka li saret ghadhom hemmhekk', whilst claiming that the said Board was misled by the Applicant with respect to the presence or otherwise of the foundations of the original structure. It must necessarily be brought to the attention of this Tribunal that such claims are simply an attempt to misquote the arguments brought before the MEPA Board by the Applicant Foundation which has always maintained that the foundations are existent underneath the current surface, and this due to the fact that the photographs showing the destruction of the building and subsequent removal of debris reveal that the foundations were still on site.

In view of the above, it is once again reiterated that the claims put forward by the Appellant in an attempt to justify overturning of the decision to grant approval for the project proposed under PA/1237/12 are unfounded and unjustified.

Reference must hereby necessarily be made to the unfounded allegations made by the Third Party Appellant with regard to the position adopted by the CHAC in relation to the proposed development. The appellant seeks to raise doubts with respect to the fact that the CHAC overturned its original recommendation to refuse endorsement of the project after meeting with members of the Applicant Foundation. The said Appellant also alleges that it is unheard of for the CHAC to meet with applicants, and furthermore that this same opportunity was not equally granted to him.

It is hereby noted that during the sitting held before the MEPA Board, the Chairman clearly explained that it is the normal practice for the CHAC to meet with applicants in order to grant them the opportunity to further explain their proposal - '6138. [oo.] Chairman said that CHAC is another entity which MEPA consults during the processing of the development applications and that MEPA does not regulate CHAC proceedings. Chairman confirmed that meetings between the consultees and the applicant are a normal practice. [... r In this particular case the Applicant requested a meeting with the CHAC in order to explain the proposal in detail. It must necessarily be observed that the said Applicant never registered any objection with regard to the submission of comments by the Appellant in this context. It would nevertheless seem that (as results from the Planning Application File) no such request was ever made by the said Appellant. This being the case therefore, the complaint submitted before the Tribunal in this regard is entirely incomprehensible.

The Third Party Appellant has also claimed to have suffered prejudice due to the fact that he was not provided with a copy of the documentation submitted to the CHAC by the Applicant, and furthermore declares that a breach of the principle of natural justice *audi alteram partem* has occurred in his regard. It must necessarily be noted in this respect that any documentation provided by the Applicant to the Authority is available in the Planning Application file – this documentation has therein been made public granting the Appellant sufficient opportunity for review. It is therefore observed that the claim by the said Appellant to the effect that a breach of the principles of natural justice has been committed in his regard is unfounded both in fact and at law, and this as clearly illustrated by the fact that he has been given every opportunity according to applicable planning law to defend his position with regard to the present application.

It is thereby humbly submitted that the arguments submitted by the Third Party Appellant in relation to the above issues are baseless and unfounded, and thereby

certainly ought not to serve as a valid justification for the upholding of such appeal by this Tribunal.

Procedural Issues

The final complaint put before this Tribunal by the Third Party Appellant concerns matters of a procedural nature, whereby it is alleged that the submission of amended plans in relation to PA/1237/12 was made in breach of the provisions of Subsidiary Legislation 514/2010.

It is respectfully submitted that such claims as above-indicated are incorrect, factually erroneous and intended solely to mislead and misguide this Tribunal. The Appellant declares that three sets of amended plans were submitted by the Applicant on the 11th June 2012, the 31st August 2012 and the 30th October 2012 respectively, and this after submission of the application on the 22nd February 2012.

In actual fact, as the Appellant himself is indeed fully aware, the application for the screening process was submitted on the 22nd February 2012 whilst the full development permission application was submitted on the 10th May 2012 and validated on the 16th May 2012. It is necessary that the following clarifications be made in this regard:

- Drawings dated 10th June 2012

It is important to highlight that the drawings herein indicated were submitted within four weeks of the date upon which the application was validated, thus placing such submissions well within the parameters established by Article 5 of Subsidiary Legislation 514/2010. It must further necessarily be observed that this revised set of drawing is the **ONLY** one out of the three above-indicated which deals with any noteworthy revision of the proposal namely the reduction in the number of windows overlooking the bastion from six to four.

Reference is hereby made to the stipulations contained within the above indicated Legal Notice which provides a definition of the concept of 'material change'. It is respectfully submitted in this regard that contrary to that

claimed by the Third Party Appellant, the above-mentioned reduction of windows cannot be considered a 'material change' in terms of the said Subsidiary Legislation, due to the fact that such amendment evidently may not be deemed to constitute, 'a substantial change in the external appearance or design' .

Particular reference must further be made in this regard to the statement made by the Appellant to the effect that - 'it-tibdil kien wiehed Materjali, fejn kif ammess mill-case officer innifsu fis-seduta tal-1/11/12 tnaqqsu in-numru ta' twieqi minn sitta ghal erbgha'. This is manifestly incorrect and is diametrically opposed to what was actually stated by the Case Officer, and this as reflected in the official minutes of the MEPA Board sitting - '6139. Mr Kurt Farrugia for the Planning Directorate, confirming that reference was being made to the latest submitted drawings, informed the Board that the changes consisted in the reduction in number of windows to reflect the drawings of the original building. This did not constitute a 'material change'. Mr. Farrugia added that the latest drawings show the removal of waterproofing membrane to retain only a 'deffun' layer, but there was no change in the number of chimneys.' [emphasis added].

- Drawings dated the 29th August 2012

The second set of plans submitted to the Authority contains an explanatory block-plan indicating the structures existent in the vicinity of the site in question, and any possible impacts upon such structures in terms of the proposal under PA/1237/12. No revision or amendment was thereby made to the approved plans in this respect.

- Drawings dated the 30th October 2012

This third plan submitted to the Authority was presented after the Planning Directorate requested that an alteration be made in order to have replacement of the waterproofing membrane on the roof with 'deffun'. Reference is hereby made to the provisions of Article 5(2) of Subsidiary Legislation 514/2010 which clearly stipulates 'changes in the application, drawings or documents which do not constitute a material change may be made at the

request of the Authority at any time during the processing of the application within the time frames given by the Authority'.

The request above-indicated as made by the Authority itself was referred to during the MEPA Board Sitting - '6123. The architect was directed to submit revised drawings. The roofing method was indicated in the submitted amendment. It was noted that the topmost layer of the proposed roof will be in traditional 'deffun'. The architect also submitted photomontages showing how the proposed building will be seen from the Upper Barrakka Gardens, from across the harbour, and from Triq il-Batterija' - and also results from Paragraph 3.3 of the DPAR, 'following internal discussions, the architect directed to submit revised drawings. The following (doe. 121A) showing the roofing method in the part section were submitted. It was noted that the topmost layer of the proposed roof will be in traditional 'deffun'."

It is clear in view of all of the above, that the procedure leading to the approval of development permission application PA/1237/12 was in no manner vitiated by procedural default and was carried out regularly, according to the provisions of all applicable legislation. The arguments made to the contrary by the Third Party Appellant in this regard, whilst being evidently solely intended to cast needless doubt over the proceedings in question, are therefore completely without basis."

E. Il-verbal tas-Seduta numru 10, mizmuma fid-19 ta' Frar 2013, senjatament il-punti segwenti:

"Dr. Toni Abela jaghmel referenza ghal talba li saret mill-appellant ai termini tal-Artikolu 77 tal-Att dwar l-Ippjanar tal-Kap. 504 liema talba giet intavolata precedentement ghal dan l-appell li permezz taghha l-appellant f'dawk il-proceduri qieghed jitlob illi l-permess mahrug jigi revokat peress illi inhareg fuq informazzjoni li hija misleading ai termini ta' dak l-Artikolu. Ghalhekk qed jitlob lit-Tribunal joghgbu jissoprasjedi sakemm ikun hemm ezitu fil-proceduri gia imsemmija.

Kopja Informali ta' Sentenza

Dr. De Gaetano jopponi ghat-talba billi d-decizjoni ghandha tittiehed minn entita' differenti u z-zewg processi jistghu jimxu parallel tant hu hekk li jista' jsir appell mid-decizjoni eventwali tal-MEPA Board.

Ghall-Awtorita' deher ukoll Rene Attard li ddikjara li d-decizjoni mill-MEPA Board ghandha tigi kkonfermata nhar il-Hamis li gej billi diga' hemm decizjoni tal-Executive Committee.

[...]

Dr. De Gaetano prezenta zewg memoranda tal-HPU bhala zieda mar-rapport gia prezentat dwar il-kwistjoni tas-sit originali."

F. In-nota ta' sottomissjonijiet tal-Perit Robert Musumeci ghall-Appellant, ipprezentata fis-26 ta' Marzu 2013, inter alia l-punti segwenti:

"1.1 Il-punti imsemmija fir-rikors ta' dan l-appell ma gewx ilkoll trattati, la mill-applikant, u wisq anqas mill-Awtorita'. F'dan l-istadju, l-appell allura jissottometti dan li gej:

1.2 Is-sit mertu ta' dan l-appell si tratta ta' bini li huwa skedat in toto bhala Grade 1 - Monument fil-World Heritage List tal-UNESCO. Konsegwentement, kwalsiasi prospett ta' zvilupp irid jinkwadra fid-disposizzjonijiet tal-policy UCO7 tal-Pjan Strutturali li appuntu tipprovdi li kwalsiasi intervent "which impair the setting or change the external or internal appearance, including anything contained within the curtilage of the building, will not be allowed." Imkien l-Awtorita' jew l-applikant ma jirribattu dqak li ntqal mill-appellant u cioe' li l-intervent propost (li jinvolvi rikostruzzjoni ta' binja u mhux addirittura restawr ta' struttura ezistenti) se jikkostitwixxi "change of the external or internal appearance" ta bini skedat u dan allura bi vjolazzjoni ghal dak li jiddisponi il-policy UCO7 tal-Pjan Strutturali, fejn di konsegwenza hemm ksur l- Artikolu 69 tal- Kap 504 tal-Ligijiet ta' Malta, u dan peress li l- Awtorita kienet "(a) fir-rigward ta' applikazzjoni ghal Permess ta' zvilupp" il tenuta, bil- ligi, tapplika "il-pjanijiet"(f'dan il-kaz,

il-Pjan Strutturali) li certament jiehu soppravent fuq kwalsijasi policy ohra;

1.3 Minghajr pregudizzju ghas-suespost in oltre dak li inghad gja fir-rikors promotur, irid jigi enfasizzat li d-decizjoni li permezz taghha l-applikant inghata dan il-permess sabiex jikkostruwixxi l- "master's gunner's quarters" kienet primarjament ibbazata fuq il-premessa li l-istruttura li ghad trid tinbena se tigi rikostrowita fis-sit originali. Appropositu, kemm il- case officer kif ukoll l-applikant enfasizzaw dan il- punt diversi drabi waqt it-trattazzjoni quddiem il-Bord dak in- nhar tad-decizjoni. Minn ricerka li ikkonduca il-appellant jirrizulta kjarament li kuntrarjament ghal dak li inghad mill-applikant (u addirittura ikkonferma l-case officer), il- "master's gunner's quarters" kienu sitwiti f' lok aktar 'l isfel cioe ma genb St Anthony Bastions, u mhux allura fis-sit muri fil- pjanti li issa gew approvati, u dan kif del resto qed jintwera kjarament permezz tad-dokumenti gia annessi ma l-appell.

1.4 In oltre', l-appellant qed jissottometti li l-applikant ipprezenta dokument (mappa) li skont hu giet alterata u qed jallega li allura din hi falza. Di fatti, l-applikant sahnasitra talab lill-pulizija jinvestigaw dwar dan il- kaz;

1.5 In fine, l-appellanti isostni li in ogni modo, l-istruttura originali qatt ma setghet giet kostrowita fis-sit indikat mill-applikant fl-applikazzjoni, stante li ir-ritratti ta' l-istruttura li pprovda l-applikant juruha mibnija fuq il-tarf tas-sur li bhal dejjem ikun elevat mill-art, u f'dan il-kaz huwa elevat b'xi nofs metru mentre il-pjanti (elevations) li ipprezenta l-applikant stess bhala prova ta' l-istruttura originali juru struttura livell ma l-art. Kuntrarjament, ir-ritratti ta l-istruttura fis-sit veriter taghha pprezentati mill-appellant juruha fil-livell ta l-art, ezatt bhal fil-pjanta;

1.6 L-applikant jirrileva in oltre li l-erba' gimghat li warajhom skond il-ligi tal-ippjanar u l-izvilupp ma jistghux isiru tibdil fil-pjanti , tiddekorri mid-data tal-publikazzjoni tal-applikazzjoni. Dan ma hux minnu ghaliex l-ewwel pjanti jigu sottomessi mal-applikazzjoni innifisha, cioe it

22/2/2012 u hija minn din id-data it-"time frame" ta' erbgha gimghat jidekkorri. Ghaldqstant it tibdil materjali li sar fil-pjanti nhar il-11/6/2012 jikser il-provvedimenti tal-ligi (AL 514/2010) u jirrendi l-applikazzjoni inaccettabbli."

Ma din in-nota giet annessa risposta tal-Appellant fejn inter alia jigi rappurtat is-segwenti:

"Re appeal 00006113 PA01237112

Reply to applicant's memo to the Appeals Tribunal dated 19th February 2013

Regarding Structure Plan Policy uca 07, it is false to claim that any restoration of a building is involved in this application, for there is simply no remaining trace of the structure whatsoever, provided it ever existed there in the first place, especially seeing that the applicant has supplied no evidence placing it on the site. There is also not only external divergences from the original, but also internal ones which are only permitted by the plan "in exceptional circumstances where this is paramount for reasons of keeping the building in active use" There can be no claim to present active for the building does not even exist!

The Saluting Battery is being portrayed by the applicant as some grand complex when in actual fact it was merely a small fenced-off section of a garden open to the public. This battery now exists and has no need of further "rehabilitation". But in the applicant's vision this small section of the lower tier of the Upper Barakka garden has mushroomed to take over the entire garden, and then beyond, even further out in the environs to engulf the site in question and deny its present unhindered and free access to the public. The applicant has not provided one shred of proof showing that the saluting battery ever stretched beyond its fenced off section, as shown in several photographs and documents provided by the appellant in his article 77 recourse, which documents also form an essential part of this appeal. Neither has any proof whatsoever been shown placing the structure in the site applied for, whereas on the other hand the third party objector has given ample, verifiable proof that it was situated elsewhere. Nor was the Saluting Battery ever "an integral part of the military machine" claimed by the

applicant. It's use was as it names proves, merely ceremonial and infrequent.

The claim to "restoration to historic state" is unfounded for there is no historic proof that the structure was in the location claimed. It is ludicrous for an application to be made to restore the bastions, when a current permit exists restore these same bastions i.e PA 03038/07 (Restoration of Valletta Fortifications.) Had the Master Gunner's Quarters really existed on the site, it would have been an integral part of the Restoration of the Fortifications applied for back in 2007! Indeed the restoration of the fortifications in the harbour area has elsewhere unequivocally resulted in the removal of existing accretions on the bastions, such as the naval depot at Kalkara, and structures at St. Angelo and St. Antony bastions, right under the site in question.

The refusal by Mepa of the temporary demountable structure was based on the facts that the area was and should still be an area of open space, and there should be no obstruction to the views of the bastion, whose visual integrity must be safeguarded. The applicant's structure qualifies for the same reason for refusal, even more because it is a solid permanent structure.

The applicant's mention of structures in Europe which were rebuilt from scratch refers to the original structures not to 20th century accretions on 16th century monuments as is involved here. The St Peter and Paul bastions were military fortifications that were not built to have ANYONE'S three-bedroomed house built upon them. One does not rebuild the accretion, (especially if it wasn't even there in the first place).

[...]

Regarding the applicants "Venice Charter" comments, and his quoting of the Unesco operational guidelines, specifically where a reconstruction of historic buildings "permitted where there is complete and detailed documentation in relation to a particular project", contrary

to the applicant's claim, this is certainly NOT the case for there is no documentation whatsoever proving the location was sited as claimed by the applicant, and ample proof locating it elsewhere.

Regarding the accusation of contradiction in the appellant's words "l-istruttura ma ghandha x'taqsam xejn mal-originali", there is absolutely no contradiction for the appellant does not say that it was ever on the site, "l-originali" referring simply to the structure as shown in the plan, wherever it was built. And it is undeniable that the proposed structure is at gross variance with the one in the original plan. The applicant seeks to build an inexact replica of a demolished structure and build it in the wrong place to boot!

Regarding the comments by the MEPA board Chairman to the board, the appellant re-iterates that there has been no research whatsoever done to prove the foundations were ever there or otherwise. He challenges the claim by the applicant that they are "beneath the surface" when there isn't even any trace on the original 16th Century bastions on top of which this structure was supposed to have been built! The misleading photograph showing the destruction of the building simply shows a heap of stones that used to be the slum buildings on the site of which ample proof was supplied by the appellant, not least a DOI Slum Clearance plan that is located in the MEPA library itself! On the contrary, foundations which match the structure are still extant in the site, off St Anthony bastion, claimed by the appellant to be the true location where the structure was built.

[...]

The report also admits that it says that "the digital versions of the documents were defective". This is not the first time that defective images have been involved in this murky case. Furthermore in reference to the complete disregard of historical remains when a drainage trench was dug next to the bastions and a pipe passed through a buried structure the Unesco report (which incidentally has

not been attached in full) recommends an archaeological survey to be carried out before works commence. It also states that it is not clear what damage would be done to the 16th Century fortifications with such a structure being built upon them.

The Superintendent of Cultural Heritage made no investigation of the claims of the siting of the structure, but simply took the applicant's word for it. In the same way that he did not stop the same applicant from continuing digging of a drainage trench right next to the bastions, even using heavy plant machinery, despite the discovery of a buried arched structure and the immediate report filed by the appellant.

With regard to the comments on the CHAC's reversal of the decision. The Appellant was not informed of the applicant's meeting with the CHAC after their initial decision, so how could he register any rebuttal to their submission? The CHAC met with the applicant but did not meet with the Appellant. It is re-iterated that the CHAC never gave the reasons why their initial decision was reversed.

Regarding the screening period the application had a tracking number also before (14617920) This was where the screening was made. During the MEPA board meeting of the 11/11/2012 the case officer never stated that any of the changes in drawings were within the time-frame, he only stated that they were not substantial. It is unequivocal that the 4 week legal limit imposed on the changing of drawings runs from the presentation of the initial drawings at the date of application, ie 22/2/2012. So the self-admitted material change alone of the 11/6/2012 breaks the provision of LN514/2010 and invalidates the application.

Furthermore the CHAC decision change is dated 17/09/12 and requires specifically the shifting of the structure from the original application to a new position onto the bastion and in line with them. This is a material change and requires a further change of drawings.

[...]

A small workshop for the maintenance of the guns is ludicrous, for the cannons do not fit in the small rooms planned for them, even if there was any need for them to be removed from their position to be maintained in the first place.

And now we are told that the site was used as Admiralty Police Accommodation. What happened to the Master Gunner? Was the Saluting Battery no longer an integral part of the war machine?

The project is wholly based on Amusement Park Resort conjecture, for not a single historic document regarding the structure, and its claimed importance has been put forward by the applicant, short of a transcription of Fondazzjoni Wirt Atnas own web page.

[...]

Finally and importantly the document by the post Recommendation team ignores completely the issue of the true location of the Master Gunner's quarters, and the undeniable fact that it could have been perched on top of the bastions without steps leading up to it! Not to mention that no military architect would ever close off a stretch of important bastion to build three-bedroomed accommodation for a single ceremonial officer."

G. In-nota second statement ta' Darren Fava ghall-Awtorita', ipprezentata waqt is-Seduta numru 34 mizmuma fil-21 ta' Meju 2013, precizament iz-zewg punti segwenti:

"1.2.1 Overview of Comments made by Appellant

In comments made by the appellant at Second Statement, discussion once again surrounds whether the proposed development involves a physical change to the external/internal appearance of the original Master Gunners Quarters; whether or not the development is to be situated on the original site and whether the

development could have been approved in light of the current planning policies and legislations.

In response to these argumentations the Authority retains the comments made in para. 5.2.1 – 5.2.3 of the initial report.

1.2.2 Other Comments

The appellant is also making comments to reiterate his belief that the Authority went outside the normal remits during the processing stages of this application by allowing fresh plans to be repeatedly presented for approval of permit. As explained in detail in para. 5.2.4 of the initial report, this statement is misleading and the accusations raised are not valid since the adequate time frames allowed were in accordance with the stipulated time frames as per L.N. 514/10.”

H. Il-verbal tas-Seduta numru 34 mizmuma fil-21 ta' Mejju 2013, senjatament il-punt segwenti:

“Il-partijiet qed jigu awtorizzati jipprezentaw l-original komplut tal-pjanta 140a li jidher li tinsab fl-arkivji tal-Works Division.”

J. In-nota ta' sottomissjonijiet tal-Avukati Dott. Ian Spiteri Bailey u Dott.ssa Victoria Cuschieri ghall-Applikant, ipprezentata fit-13 ta' Gunju 2013, precizament il-punti segwenti:

“Illi fl-ewwel lok issir referenza ghall-allegazzjoni maghmula mill-Appellant fir-risposta tieghu fis-sens illi 'l-punti msemmija fir-rikors ta' dan l-appell ma gewx ilkoll ittretteti, u fejn ikompli jsostni l-istess Appellant illi l-applikazzjoni odjerna tikkuntradixxi l-provvedimenti tal-Policy UCO 07 tal-Pjan Strutturali.

Ghandu necessarjament jigi osservat illi l-allegazzjoni suriferita fir-rigward tal-Policy fuq citata, tikkostitwixxi propju l-ewwel punt illi gie trattat mill-Applikant fin-nota ta' sottomissjonijiet minnu precedentement imressqa quddiem dan it-Tribunal. Jinghad biss f'dan ir-rigward - a

skans ta' ripetizzjoni inutili - illi bl-ebda mod ma huwa qieghed jigi kkontestat dak stipulat fil-Policy in kwistjoni.

Ghandu jigi nnutat pero' - u dan kif diga' osserva l-Applikant fin-nota hawn indikata - illi l-progett odjern jinkwadra ruhu propju fl-ambitu tal-eccezzjoni illi tirrizulta mill-istess Policy illi jiccita l-Appellant innifsu, u cioe' illi kwalsiasi interventi fuq Grade 1 Buildings ghandhom ikunu diretti lejn 'scientific restoration and rehabilitation'. Ghaldaqstant, a kuntrarju ta' dak alleqat mill-Appellant, jigi sottomess bir-rispett illi ma hemm assolutament l-ebda ksur kemm tal-Policy UCO 07 u wisq anqas tal-Artikolu 69 tal-Kap. 504 tal-Ligijiet ta' Malta.

Hekk ukoll ghandu jigi osservat illi l-Appellant isostni illi l-intervent propost mill-Applikant 'jinvolvi rikostruzzjoni ta' binja u mhux addirittura restawr ta' struttura ezistemi. Jinghad bid-dovut rispett illi din id-dikjarazzjoni ukoll diga' giet ittrattata u kontradetta mill-Applikant fin-nota minnu mressqa quddiem dan it-Tribunal. L-Applikant hawn imsemmi diga' pprovda spjegazzjoni dettaljata dwar fiex tikkonsisti l-prassi stabbilita f'dan ir-rigward - u cioe' illi r-rikostruzzjoni hija (u filfatt f'diversi okkazonijiet hekk giet meqjusa) wahda mill-elementi formanti parti mill-prassi tar-ristorazzjoni. Diga' gie nnutat illi l-asserzjoni hawn maghmula mill-Appellant hija wahda erroneja illi tmur kontra l-prassi stabbilita.

Jigi osservat in vista tas-suespost illi l-Appellant - minflok ma ressaq quddiem dan it-Tribunal xi argumenti godda sabiex jissostanzja l-posizzjoni minnu adottata in kwantu l-provvedimenti tal-Policy UCO 07 fuq citata - sempliciment isostni illi huwa ghandu ragun u jerga' jtenni l-istess argumenti invalidi u ngustifikati illi diga' saru fir-rikors tal-appell, u li diga' ghalhekk giet ipprezentata risposta sostanzjata fir-rigward taghhom.

Illi fit-tieni lok fir-risposta tieghu l-Appellant jerga' jqajjem il-kwistjoni dwar il-posizzjoni tas-sit originali, u jikkontendi illi din ma tikkorrispondix mal-posizzjoni tas-sit tal-applikazzjoni PA/1237/12. L-Appellant isostni illi skond ricerka minnu maghmula (u pprezentata quddiem dan it-Tribunal) il-bini tal-Master Gunner's Quarters kien sitwat

aktar 'l isfel mis-sit indikat fil-pjanti relatati mal-applikazzjoni odjerna.

Jinghad illi dan il-punt partikolari gie kkunsidrat fid-dettall mill-Awtorita' kemm qabel ma nhareg il-permess hawn appellat u kif ukoll wara illi sar l-appell min-naha tal-Appellant (illi permezz ta' dokument RM2 anness mar-rikors tal-appell ressaq l-argumenti tieghu f'dan ir-rigward). Issir hawnhekk referenza ghad-dokumenti rispettivament datati d-19 ta' Dicembru 2012 (Fol, 168 tal-process tal-MEPA) u s-17 ta' Jannar 2013 (Fol, 175 tal-istess proces), fejn jidher b'mod mill-aktar car illi l-punti kollha illi qajjem l-Appellant fir-rigward ta' din il-kwistjoni partikolari gew ittrattati wiehed wiehed u debitament ribattuti.

Ikun inutili illi jigu reiterati l-argumenti kollha hemm kontenuti in kwantu illi dawn diga' jiformaw parti mid-dokumentazzjoni relatata mal-appell odjern. Jinghad biss illi jirrizulta b'mod mill-aktar car illi s-sit illi l-Appellant isostni jikkostitwixxi s-sit originali tal-Master Gunner's Quarters, fil-verita' huwa s-sit fejn jinsab mibni l-guardroom illi sservi ghal Fort Lascaris. Jigi osservat illi wara illi sar dan l-ezercizzju dettaljat u kkunsidrat, l-Awtorita' wasslet ghall-konkluzjoni illi '[there is] no doubt that the Saluting Battery Master Gunner's Quarters existed on the site where it is proposed and approved in PN1237112', u kif ukoll illi '[there is] no doubt that the submissions in the application and their interpretation were correct and in fact provided sufficient information about the details and location of the Saluting Battery Master Gunner's Quarters'.

Jigi umilment sottomess illi wara analizi tad-dokumentazzjoni kollha mressqa mill-partijiet rispettivi fl-appell odjern ma jista' jissussisti l-ebda dubju dwar il-fatt illi l-allegazzjonijiet maghmula f'dan ir-rigward mill-Appellant huma zbaljati, erroneji u nfondati u sahsitra ntizi biss sabiex ippoggu l-bsaten fir-roti tal-progett propost.

Illi fit-tielet lok l-Appellant jerga' jsostni illi sar xi tibdil fil-pjanti relatati mal-applikazzjoni odjerna oltre t-termini stipulat fil-LN514/2010. Jinghad fdan ir-rigward illi filwaqt illi mhix ser tigi reiterata s-segwenza tal-fatti illi jinsabu ben dettaljati fin-nota ta' sottomissjonijiet precedentement imressqa mill-Applikant, huwa ghal kollox zbaljat l-Appellant meta dan isostni illi t-terminu ta' erba' gimghat kif stipulat fl-Artikolu 5 tal-LN514/2010 jibda' jiddekorri mid-data tal-publikazzjoni tal-applikazzjoni (u cioe' fdan il-kaz fit-22 ta' Frar 2012). Jigi sotto mess bir-rispett illi - hekk kif diga' nnota l-Applikant u kif ukoll gie osservat mill-Awtorita' nnifisha – din l-asserzjoni maghmula mill-Appellant tmur ghal kollox kontra dak stipulat b'mod car fil-ligi citata minnu stess, u cioe' l-Artikolu 5 tal-LN514/2010 illi jipprovdi illi t-terminu in kwistjoni jibda jiddekorri mid-data illi fiha l-istess applikazzjoni tigi validata (f'dan il-kaz mis-16 ta' Mejju 2012). It-tibdiliet illi saru fil-pjanti relatati mal- applikazzjoni odjerna - u hekk kif spjegat fid-dettall fis-sottomissjonijiet precedentement imressqa mill-Applikant - huma ghal kollox validi u saru dejjem skond il-provvedimenti tal-ligi u fejn applikabbli entro t-termini stabbiliti mill-istess.

Illi fir-raba u fl-ahhar lok jigi reiterat illi l-progett odjern ser isir bil-barka tal-UNESCO, u kif ukoll bl-ghajnuna ta' fondi mill-Unjoni Ewropeja. Issir ukoll referenza f'dan ir-rigward ghal dak illi kkunsidrat il-Prim Awla tal-Qorti Civili fl-ambitu tal-Mandat ta' Inibizzjoni fl-ismijiet Martin Baron et vs. Il-Kummissarju tal-Artijiet² u cioe', illi 'il-post fejn jinsab l-istabbiliment tar-rikorrenti jaghmel parti minn ambjenti li dwarhom il-Fundazzjoni Wirt Artna talbet u kisbet fondi biex jitwettaq progett (li jgib l-isem ta' Project REVIVE) ta' restawr u holqien ta' 'park militeri' ghal ghanjiet storici u turistici, Jigi umilment rikonoxxut illi dan kollu kien ikun ghal kollox irrelevanti fil-kaz illi l-istess progett kien jikkostitwixxi xi ksur ta' xi regoli applikabbli taht il-ligijiet tal-lppjanar. Jinghad pero' illi mill-provi kollha illi tressgu guddiem dan it-Tribunal. u s-sottomissjonijiet kollha illi saru sahansitra miz-zewg partijiet fl-appell odjern. jirrizulta b'mod mill-aktar car illi dan ma huwiex il-kaz.”

² Rikors Nru. 385/12 JRM – deciz 30 ta' Marzu 2012

K. In-nota ulterjuri tal-Appellant, ipprezentata fil-21 ta' Gunju 2013, inter alia l-punti segwenti.

“Two differences come clearly to mind between the copy on file at MEPA and the Copy at project House:

1. The doorway to the garden that hosts the saluting battery cannon array is coloured black in the former and brown in the latter.

2. The Plan presented to MEPA with MEPA's small red font referencing text is of thin paper and slightly transparent so much so that a plan beneath can be made out. The plan copy at Project house is o normal opaque paper. This is nothing short of further hanky-panky.

The plan is clearly tampered with, i.e. overwritten. I attach a list of reasons for this conclusion. The various points are numbered on a copy for easy reference.

[...]

Since the Plan is obviously tampered with, and the memorandum refers specifically to the overwritten sketches and titles, the grounds for using it as any form of proof for any claim are vitiated and null. On the contrary, the very fact that it was all that could be presented, gives grounds for serious suspicion as to the veracity of the claims of the applicant. The wanton destruction of the original integrity of our fortifications through the re-building of a non-sensical, non existing structure needs a far heavier weight of proof than a shoddily tampered plan.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell minn terzi jirrigwarda permess sabiex f' sit maghruf bhala s-Saluting Battery li jinsab taht il-Barrakka ta' Fuq fil-Belt Valletta, jitnehha kjosk li prezentement jintuza bhala open-air café' u minflok, tigi riabilitata l-entratura tal-istess Saluting Battery u jigu rikostruwiti l-Master Gunner's Quarters.

Bl-Avviz tal-Gvern 133 tal-2001, il-Belt Valletta giet skedata bhala area of high landscape value (harbour fortifications) kif ukoll urban conservation area. Skond l-Avviz tal-Gvern 276 tal-2008, il-gnien tal-Barrakka hu skedat bhala Grade 1 monument.

Precedentement kien inhareg permess (PA 3913/98) f' isem l-Appellant odjern sabiex jinbidel l-uzu tas-sit minn open site ghal open-air café'. Il-permess kien jinkludi l-bini ta' kjosk tal-injam kif ukoll it-tqeghid ta' umbrellel, imwejjed u siggijiet. Sussegwentement gew intavolati wkoll zewg applikazzjonijiet separati (DN 775/03 u PA 5/04) sabiex jitpoggew tined li pero' kienu gew rifjutati.

L-aggravji ta'l-Appellant jistghu jigu riassunti kif gej:

- L-izvilupp ma jsegwix il-principji stabbiliti ta' scientific restoration u rehabilitation:

It-talba odjerna hi in kontravvenzjoni tal-policy UCO 7 tal-Pjan ta' Struttura peress li jirrigwarda r-rikostruzzjoni u mhux restawr ta' struttura ezistenti. In oltre, l-izvilupp ser jincidi sew kemm fuq id-dehra (setting, external appearance) kif ukoll l-iskyline tas-swar - strutturi skedati bhala Grade 1 monument kif ukoll UNESCO World Heritage Site. Hawnhekk si tratta minn gnien frekwentat minn hafna vizitaturi u l-istruttura proposta ser isservi biss t'ostakolu ghall-veduti tas-sur mill-Port il-Kbir. Di konsegwenza it-talba hi wkoll in kontravvenzjoni tal-policies BEN 2, UCO 6, UCO 13, UCO 10 u RCO 4 tal-istess Pjan ta' Struttura ghax mhux biss ser titpogga struttura 'tqila' tal-gebel fuq sur skedat izda li din ser tkun tappogga l-istess monument. Mill-banda l-ohra, il-kjosk li hemm prezentement huwa wiehed lightweight u mghandux appogg mas-sur.

- Din l-istruttura ser tirrizulta f' accretion b' hsara ghas-swar:

Illum, strutturi bhal din in ezami li ghandhom jezistu qedin bil-mod il-mod jitnehhew ghax fil-kuntest tal-preservazzjoni huma kkunsidrati bhala accretions – cjoe' zdidiet li saru fl-imghoddi izda li illum jistghu jigu kkunsidrati superfluwi u ta' min inehhihom sabiex il-bini

jista' jigi ppreservat u jinqara ahjar. Fil-fatt l-Awtorita' harget diversi permessi sabiex strutturi bhal dawn jitnehhew. Ezempju ta' dan huwa l-permess PA 3038/07 li propju hareg ezattament taht is-sit odjern. Is-swar ghandhom jinqraw bhala monument wiehed u bl-istess spirtu li accretions qedin jitnehhew bil-permess citat, mgħandomx jigu permessi accretions godda hawnhekk.

- Il-proposta hi vjolazzjoni tal-Artikolu 9 tal-Karta ta' Venezia:

Peress li ma jirrizultax li saru l-ebda studji sabiex jinsabu s-sisien originali, il-proposta hi in kontravvenzjoni tal-ispirtu ta' rikostruzzjoni kif stabbilit permezz tal-Karta ta' Venezia; ghax ma ngiebet l-ebda evidenza storika. L-Appellant jirrileva li sahansitra l-istess Applikanti kienu oggezzjonaw għat-tqeghid tal-istruttura temporanja li bhalissa hemm fuq is-sit (PA 5/04), izda din kienet giet approvata fil-fazi t' appell. Illum pero' qed jigi accettat li mhux talli spazju pubbliku mgħandux jibqa open space talli ser tinbena struttura fissa fuq il-post. Fil-kaz odjern, anke l-Cultural Heritage Advisory Committee (CHAC) fi hdan l-Awtorita', kienet oggezzjonat għal-proposta izda imbghad wara li iltaqgħet mal-Aplikant, biddlet fehmitha.

- L-istruttura originali intilfet. Hawn si tratta minn semplici replika:

L-Appellant jidikjara wkoll li l-binja kif proposta ma tixbah xejn dik originali, la bhala dehra, kif ukoll mill-fatt li certi hitan divisorji mhumie x ser jergghu jinbnew kif kienu. In oltre, il-binja l-gdida ser tinghatala uzu li mgħandu xejn x' jaqsam ma dak originali. Għalhekk, it-talba hi wkoll f' kunflitt mal-policy GH 03 tal-Pjan Lokali.

- Bdil sostanzjali fil-proposta:

Fil-fazi tal-ipprocessar tal-applikazzjoni, il-pjanti inbiddu kemm il-darba – sahansitra jumejn qabel ma' ltaqa l-Bord tal-Awtorita, u dan kontra kull regola ghax id-DPA report kien lest. Huwa principju ben stabbilit li wara li ssir il-pubblikazzjoni tieghu, ma jistghux jigu intavolati pjanti godda. Dan l-agir jikkostitwixxi biddla sostanzjali fid-disinn tal-proposta, in kontravvenzjoni ta' dak li jipprovdi l-Avviz Legali 514 tal-2010.

- Il-Master Gunner's Quarters kienu lokalizzati band' ohra: Skond l-Appellant, il-premessa li hawn si tratta mill-post fejn il-Master Gunner kien jghix (u li xogħlu inter alia kien li jirregola l-hin tal-Gzejjer Maltin), hi purament fabbrikazzjoni tal-Applikant, ghax ma hemm l-ebda evidenza li tissostanzja dan.

Kemm l-Awtorita' kif ukoll l-Applikant zammew ferm il-posizzjoni tagħhom u qabel xejn rilewaw li l-argument tal-Appellant, li ma ngiebet l-ebda prova (p.ez evidenza jew tracci tas-sisien) li l-Master Gunner's Quarters kienu mibnijja propju fuq is-sit in ezami, huwa kkontradett bl-argument l-iehor li juza l-istess Appellant sabiex jispjega li fil-fatt il-Master Gunner's Quarters kienu mibnijja band' ohra. Jispjegaw li daqstant kontradittorju hu l-argument tal-istess Appellant meta jghid li dan is-sit għandu jibqa open space ghax gja' il-permess li huwa jgawdi minnu (PA 3913/98) kien propju sabiex l-istess open space jinqaliblu l-uzu. Fil-fatt, jigi rilevat li l-permess PA 3913/98 kien jaqra kif gej:

“To change use of an open site to be used as an open air cafe with tables and chairs. Application includes a timber kiosk and to set-up sun umbrellas over tables.”

Zgur, li kemm il-darba dan il-permess issarra, għandu jsegwi li illum is-sit m' għadux jista jigi kkunsidrat bhala open site – anke jekk il-Pjan Lokali jitlob li jkun open space.

Tajjeb li jigi osservat ukoll li l-Awtorita' ggjustifikat il-hrug ta' dan il-permess minhabba l-fatt li s-Saluting Battery tattira hafna visitaturi, u li prezentement m'hemmx il-facilitajiet necessarji sabiex dan is-sit ikun jista' jigi amministrat b' mod aktar efficjenti. L-istruttura li qed tigi approvata fil-fatt ser isservi ta' visitor facility (li apparti l-ispazju muzejali, jinkludi wkoll facilitajiet amministrattivi, sanitarji, workshop, etc.)

Għar-rigward tal-agggravji mressqa mill-Appellant kif riassunti supra, l-Awtorita' u l-Applikant irrispondew kif gej:

- L-izvilupp hu in linja mal-Pjan ta' Struttura u l-principji stabbiliti tar-restawr:

Skond l-Applikant, il-policy UCO 7 tal-Pjan ta' Struttura qed tigi rispettata peress li t-talba tieghu hi “to rehabilitate the Saluting Battery in order to restore this to its historic state whereby it was utilized as an integral part of the military machine.”

- L-izvilupp kif approvat ma jista qatt jigi kkunsidrat bhala accretion:

L-Applikant iddikjara li r-rikostruzzjoni ta' din il-binja “is in fact an integral historic component of the site and the surrounding fortifications.” Skond l-Awtorita', ir-restwar tas-swar huwa ezercijju olistiku u il-kaz in ezami ma jistax jinqara bhala intervent a se stante, izda bhala parti mir-rigenerazzjoni tal-istess fortifikazzjonijiet. L-istess ma jistax jinghad ghal-permess li l-Appellant prezentement igawdi minnu sabiex izomm kjosk fis-sit de quo, ghax l-attivita' li jiggstixxi hi eccezzjoni - la hi strettmanet marbuta mar-restawr tas-swar u wisq inqas peress li titratta minn intervent u tip ta' uzu izolat. Wisq aktar inkompatibbli u izolata mill-pjan ta' rigenerazzjoni tas-swar kienet it-talba tieghu sabiex jithalla jpoggi tinda f' dan is-sit. Zgur li tali struttura – ghalkemm demountable – kienet ser tincidi sew fuq il-veduti s-sur wisq iktar mill-istruttura li illum qed jargumenta b' tant vemenza kontriha.

- Il-proposta hi in linja mal-Artikolu 9 tal-Karta ta' Venezia: Jista' jinghad ghalhekk li jekk kemm il-darba is-CHAC biddlet fehmitha ghar-rigward tal-proposta odjerna, l-istess bhal donnhu qed jaghmel l-Appellant; ghax wara li kiseb permess sabiex l-open space jinqaliblu l-uzu ghal open-air café - sahansitra kien anke ulterjorment talab li jqieghed tinda (temporanja) - illum qed jinsisti li dan l-istess spazju ghandu jibqa open space u li l-proposta sejra tgharraq il-veduti tas-sur.

- Il-proposta qatt ma nbiddlet fis-sustanza:

L-Appellant jistqarr li l-unici modifiki li saru fil-fazi tal-iprocessar tal-applikazzjoni kienu jirrigwardaw dettalji, bhal per ezempju; bejt tad-deffun minflok bil-membrane, u

bidla fin-numru ta' cmieni u twieqi sabiex id-disinn ikun konformi mal-pjanti fl-arkivji. Il-pjanti li gew allegatament intavolati wara li ghalaq it-terminu tar-replika ghad-DPA report, kienu per eżempju, block plan spjegattiva. L-ispirtu tal-proposta dejjem baqa' l-istess. In oltre, l-Awtorita' iddikjarat li hi ma tirregolax il-proceduri tas-CHAC, izda madankollu l-Appellant kellu kull dritt (u inghatatlu kull opportunita') li jara l-file inkluz id-dokumenti li kienu gew sottomessi minn zmien ghal zmien, izda li hu qatt ma kien oggezzjona ghalihom.

- Il-Master Gunner's Quarters kienu inbnew fis-sit de quo: L-Applikant jikkonferma li hemm diversi ritratti antiki ta' zmien il-gwerra li juru l-binja mgarrfa u s-sisien esposti. In oltre jiddikjara li l-binja li qed jirreferi ghaliha l-Appellant u li skond hu tinsab ftit aktar l-isfel fuq is-sur hi semplici guardroom li sservi Forti Lascaris (Lascaris Counterguard).

Ezaminati fid-dettal is-sottomissjonijiet tal-partijiet jigi osservat li z-zewg kwistjonijiet principali li fuqhom jistrieħu l-argumenti kollha li tressqu fil-kors tas-smiegh ta' dan l-appell huma kif gej:

1. Jekk l-imsemmija Master Gunner's Quarters kienux verament jinsabu fis-sit in ezami; u kemm il-darba dan jigi ppruvat fl-affermattiv,

2. Jekk il-proposta odjerna hi gjustifikata minn aspett ta' restawr tal-bini per se kif ukoll mill-aspett tal-preservazzjoni tas-swar in generali.

Ghar-rigward tal-ewwel kwistjoni:

Jigi rilevat li l-aktar dokument dettaljat sottomess mill-partijiet fil-konfront ta' kif kienu jidhru l-Master Gunner's Quarters, hi l-pjanta b' it-timbru tal-"Museums Department, Valletta, Malta" u ndikata bhala "Drg no. VAL/23". Jezistu pjanti ohra - bhal dik li giet sottomessa kemm mill-Appellant kif ukoll l-Applikant fl-ahhar sottomissjonijiet tagħhom - izda dik ser tigi trattata aktar il-quddiem.

Fil-konfront tal-pjanta immarkata VAL/23, jigi nutat li din ghandha bhala titolu "Record Plan Master Gunners Quarters" u isfel fuq ix-xellug, "Measured and drawn by ...". Ghalhekk jista' b' kunfidenza jigi kkonfermat li din mhix semplici proposta li setghet jew ma setghetx inbniet kif tpingiet, izda hi survey dettaljat ta' dak li fil-fatt kien jezisti fuq is-sit f' tali data.

In oltre, jigi nutat ukoll li din il-pjanta ghandha fil-"Ground Plan" parti immarkata bl-ahmar, li pero' ma tidhirx la fuq il-"Front Elevation" u lanqas fir-"Roof Plan". L-unika spjegazzjoni li tista' tinghata ghal din l-anomalija hu l-fatt li sa ffit decenni ilu, il-prassi kienet li modifiki jew proposti godda fuq bini pubblici kien jsiru direttament fuq il-pjanta originali. Dan qed jinghad in vista tal-fatt li l-Appellant rimarka bosta drabi li whud mill-kopji tal-pjanti antiki sottomessi mill-Applikant, jidhru li huma manomessi. Din mhix xi irregolarita' jew abbuz, jew addirittura tentattiv sabiex tigi ffalsifikata pjanta izda semplicement stat ta' fatt li ghal-raguni ta' praticita', tahziz jew annotamenti kienu jsiru direttament fuq il-pjanti originali - liema dawn jkunu.

(Dan ifisser li l-pjanta l-ohra antika kif sucitata, indikata fil-process tal-applikazzjoni bhala minuted drawing 140a u bit-titolu "Plan of proposed Saluting Battery at Lascaris Valletta Malta", hi semplici proposta u li mhux bilfors tirrifletti dak li seta' nbena. Terga tghid, il-pjanta tirreferi ghal-proposta ghal pjattaforma li kienet qed tigi kkunsidrata li ssir 'fuq' il-Lascaris Counterguard u li l-"Master Gunner's Quarters" u l-"Guard Room" kif indikati huma biss intizi sabiex wiehed jista' jorjenta ruhhu mal-proposta tal-"Gun Platform". Tajjeb li jigi osservat li l-unika parti tal-pjanta li fiha dettalji hi propju l-"Gun Platform" u xejn izjed. Madankollu jekk hemm xi dubbju li l-"Master Gunner's Quarters" indikati hawnhekk huma dawk li qed jigu kkunsidrati llum, kemm il-proporzjon tal-kmamar kif ukoll it-tqasima intern taghom jirrispekkjaw perfettament il-pjanta VAL/23 sucitata. Terga tghid, jekk kemm il-darba min hazzez din il-pjanta ma ndikax il-bibien - ghax huma dettal irrelevanti - madankollu pogga l-aperturi interni u l-fireplace fil-post it-tajjeb.)

Mill-pjanta VAL/23, jigi nutat ukoll li l-faccata li thares fuq is-sur, kif tidher kemm fil-“Ground Plan” kif ukoll minn gewwa fis-“Section AB”, ghandha erba' t-itwieqi. Li kieku wiehed ihares lejn il-faccata 'minn barra', it-tlett twieqi minn nahha tax-xellug huma ekwidistanti minn xulxin, metri l-ahhar tieqa hi ferm iktar vicina it-tielet tieqa. Meta dan il-fatt jigi pparagunat mal-parti mmarkata bl-ahmar u l-kliem “Windows match plan exactly” fir-ritratt tal-bastiment HMS Ivanhoe mehud fl-1938 - sottomess mill-Appellant u timbrat bin-numru 14052 fil-file tal-applikazzjoni – jigi nutat li l-bini f' dak ir-ritratt ghandu t-tlett twieqi fuq il-lemin ekwidistanti minn xulxin u l-ewwel zewg twieqi fuq ix-xellug huma ferm aktar il-boghod minn xulxin. Dan huwa ezempju wiehed li allura mhux minnha t-tezi tal-Appellant li l-Master Gunner's Quarters jirreferi ghal-struttura li nbriet ferm aktar l-isfel mis-sit in ezami.

In oltre, il-bini li hemm fil-pjanta VAL/23 jidher li tela' ma xifer ta' barra tas-swar jew addirittura tqattghet parti mill-'opramorta' tas-swar biex inbena. Meta wiehed jikkonfronta l-“Ground Plan” mas-“Section CD” u l-“Front Elevation”, minn nahha tas-Saluting Battery, jidher cint verament baxx. Dan il-fatt jispjega l-punt li qajjem l-Appellant ghalfejn kif jidher mir-ritratti antiki, il-bini bhal donnu jidher elevat mhux livell mal-art kif qed tigi proposta mill-Applikant. Din mhix anomalija u ma hemm xejn li jaghti x' jinftiehem li l-bini ma nbeniex fuq art catta izda li l-'opramorta' kienet (almenu f' din il-parti u minn nahha tas-Saluting Battery tant baxxa li l-bini jidher elevat.

In oltre, is-“Section AB” turi dizlivell zghir bejn geww l-font u t-triq adjacenti. Dan l-ahhar fatt jikkonferma l-premess, cjoe' li s-sit in ezami huwa l-post fejn inbnew il-Master Gunner's Quarters.

Ghar-rigward tat-tieni kwistjoni:

Il-policy GH 3 tal-Pjan Lokali citata mill-Appellant ma teskludix il-fatt li l-Awtorita' ghandha tinkuraggixxi tip ta' uzi li huma kumpatibbli mar-rigenerazzjoni tas-swar, u twissi li “reuse and appropriate presentation would also give a major boost to tourism, one of the key objectives for the Plan area.”

Madankollu wiehed jifhem li kwalsiasi proposta ta' rigenerazzjoni jew reuse, addirittura rikostruzzjoni ghandha tigi kkunsidrata b' sensitivita'. Hawnhekk issir riferenza ghall-Karta ta' Venezja citata b' mod ezawrenti mill-partijiet, b' mod partikolari is-segwenti:

“Article 5 The conservation of monuments is always facilitated by making use of them for some socially useful purpose. Such use is therefore desirable but it must not change the lay-out or decoration of the building. It is within these limits only that modifications demanded by a change of function should be envisaged and may be permitted.

Article 9. The process of restoration is a highly specialized operation. Its aim is to preserve and reveal the aesthetic and historic value of the monument and is based on respect for original material and authentic documents. It must stop at the point where conjecture begins, and in this case moreover any extra work which is indispensable must be distinct from the architectural composition and must bear a contemporary stamp. The restoration in any case must be preceded and followed by an archaeological and historical study of the monument.

Article 11. The valid contributions of all periods to the building of a monument must be respected, since unity of style is not the aim of a restoration. When a building includes the superimposed work of different periods, the revealing of the underlying state can only be justified in exceptional circumstances and when what is removed is of little interest and the material which is brought to light is of great historical, archaeological or aesthetic value, and its state of preservation good enough to justify the action. Evaluation of the importance of the elements involved and the decision as to what may be destroyed cannot rest solely on the individual in charge of the work.

Article 12. Replacements of missing parts must integrate harmoniously with the whole, but at the same time must

be distinguishable from the original so that restoration does not falsify the artistic or historic evidence.

Article 16. In all works of preservation, restoration or excavation, there should always be precise documentation in the form of analytical and critical reports, illustrated with drawings and photographs. Every stage of the work of clearing, consolidation, rearrangement and integration, as well as technical and formal features identified during the course of the work, should be included. This record should be placed in the archives of a public institution and made available to research workers. It is recommended that the report should be published.”

Ir-raguni ghalfejn monumenti huma restawrati huwa sabiex ikollhom tip ta' uzu li minnu tista' tibbenefika s-socjeta'. Ghalhekk mghandux ikunu previsti tipi ta' uzi li ma' jirrispettawx il-bini storiku. Wisq inqas mghandhomx isiru modifiki kapriccuzi. Dan qed jinghad in vista tal-fatt li jidher li originarjament il-proposta ma kienitx sabiex il-bini tal-Master Gunner's Quarters jinbena kif indikat fil-pjanta VAL/23 sucitata izda pressappoco, xi haga bhala. F' cirkostanzi sensittivi bhal dawn, dan mghandux jigi permess. Ghalhekk kemm il-darba qeda tintalab rikostruzzjoni ta' binja allura din ghandha jew tinbena kif kienet u fejn kienet – punto e basta – inkella ma tinbeniex. Kemm il-darba rikostruzzjoni ma tirrispekkjax l-istruttura originali (jew intortament ghax ma jkunx hemm bizzzejjed infomazzjoni u allura wiehed jibda jivvinta, jew inkella ghax kapriccozament terga tinbena' diversament) allura tkun qed tigi attwata gidba jew falsifikazzjoni in kontravvenzjoni tal-Artikolu 9 tal-Karta ta' Venezja.

Fil-kaz in ezami, l-unika raguni ghalfejn huwa permessibbli li ssir rikostruzzjoni hi propju ghal skopijiet ta' presentazzjoni u interpretazzjoni tas-Saluting Battery - cjo' ghall-skopijiet informattivi u edukattivi – sabiex vistaturi jifhmu kif kienet tahdem is-Saluting Battery. Altru minn hekk, ma hemm l-ebda skop ghalha, anzi mhix gjustifikata. Izda anke kemm il-darba terga tibena kif kienet skond il-pjanta VAL/23, wiehed irid jifhem li di

konsegwenza qed jikkunsidra jew jippreferi biss perjodu storiku partikolari u jiskarta dak kollu li gie qabel jew wara. Monumenti mhumiex time capsules.

Tajjeb li jigi nutat li kif rilevati minn bosta dokumenti li pprezenta l-Appellant, terga tghid inbnew hafna izjed accretions ulterjuri f' dan il-post. Dan hu kkonfermat minn per ezempju l-pjanti li turi l-“War Damage” datata fl-24 t' April 1944 fejn l-Appellant zbaljatament irrefera ghas-sit in ezami bhala civilian housing.

Fl-ahharnett irid jinghad li l-konsiderazzjonijiet li saru mit-Tribunal f' din id decizjoni huma kunsiderazzjonijiet srettament teknici. L-Appellant ma pproduca l-ebda prova fil-kors tas-smiegh ta' dan l-appell tat-titolu li ghandu ghal dan is-sit. Mhux kontestat li dan jiggstixxi negozju fuq certa skala u ghalhekk huwa ovvju illi ghandu interess kunsidervoli mill-aspett finanzjarju. Il-permessi jinghataw minghajr pregjudizzju ghad-drittijiet ta' terzi. Dan japplika partikolarment fil-kaz in ezami, billi ma saru l-ebda sottomissjoni; la mill-partijiet u lanqas mid-Dipartiment tal-Artijiet dwar it-titolu tal-Appellant. Id-drittijiet talvolta rizultanti tal-Appellant jibqu impregjudikati.

In vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, dan il-Tribunal qed jiddisponi minn dan l-appell billi jilqa l-istess limitament, pero' peress li fil-principju il-proposta hi gjustifikata, jordna ir-riforma tal-permess PA 1237/12 li kien favur l-Applikant sabiex jigi sodisfatt dak li qed jigi deciz supra, u jordna lill-Applikant sabiex fi zmien tletin (30) gurnata jipprezenta pjanti u dokumenti riveduti li jirriflettu s-segwenti tlett kundizzjonijiet:

- Il-principju ta' com' era dov' era:

L-izvilupp irid jirrispekkja perfettament dak li jidher fil-pjanta VAL/23. Kemm minn barra kif ukoll fuq gewwa, l-Master Gunner's Quarters iridu jirriflettu din il-kunfigurazzjoni – inkluz is-siting tal-bini li mill-pjanti sottomessi fl-applikazzjoni jidher li mhux korrett ghall-ahhar. Ghalhekk, ir-rikostruwit irid tkun fidila wkoll fid-dettalji inkluzi l-finishes kollha. Dawn iridu jkunu skond is-

sengha, u saħansitra c-cmieni u l-hitan divizorji iridu jergghu jinbnew kif kienu.

• Il-kwistjoni tal-awtenticità:

In oltre mhux permess li l-ispazju jintuza b' 'spirtu' differenti minn kif indikat fil-pjanta VAL/23. Dan qed jinghad fis-sens li kemm il-darba qeda tigi koncessa li ssir rikostruzzjoni ta' binja sabiex is-Saluting Battery tingara ahjar u b' mod aktar komplet, zgur li per eżempju l-spazju għal-maintenance workshop ser jikkonfondi l-vistaturi. Bl-istess mod, lanqas m' huma f'posthom it-toilets fejn gew indikati fil-pjanta tal-proposta (fil-fatt, fil-pjanta VAL/23 huma fuq barra). Għalhekk kemm il-darba jsir 'muzew', it-tghammir fuq gewwa tal-bini irid ikun jixbah il-mod kif kien jghix il-Master Gunner, bhallikieku parti integra mir-reanactment tas-Saluting Battery. Li kieku l-Master Gunner's Quarters qatt ma ggarrfu, allura change of use seta' jkun gjustifikat, pero' peress li llum m' għandhomx jeżistu, allura l-unika cirkostanzi li tiggustifika rikostruzzjoni hi li jerghu jigu adebiti skond kif kienu fiz-zmien li qed jigi riprodotti.

• Informazzjoni għall-pubbliku:

Għandu jkun hemm indikat b' mod distint u li faċilment jingara', id-data ta' meta tlestiet ir-rikostruzzjoni tal-binja (per eżempju imnaqqxa fuq il-blata ta' bieb minnhom). In oltre, fuq is-sit trid titpogga f' post prominenti, tabella b'informazzjoni fuq kif svolga dan il-progett, inkluz l-interpretazzjoni tal-binja per se kif ukoll sabiex vizitaturi jistghu inter alia jifhmu li din mhix binja originali.

Wara li l-Awtorità tkun soddisfatta li l-pjanti sottomessi jirrispekkjaw dawn il-kundizzjonijiet, għandha f' zmien ragjonevoli tibghathom għall-approvazzjoni tat-Tribunal, b' dana li wara li tircevihom lura bl-approvazzjoni, toħrog f' zmien tletin (30) gurnata il-permess mitlub mill-Applikant ai termini tal-Artikolu 41(14) tal-Att X tal-2010 (Kap. 504), biz-zieda tal-kundizzjonijiet normalment imposti f' permessi simili, kif ukoll bl-imposizzjoni ta' garanzija bankarja.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li jsegwi r-regoli tal-Kapitolu 12 meta cahad it-talba tal-appellant li jisma' xhieda bhala prova ta' fatti li ried itella' l-appellant u dan bi vjolazzjoni li t-Tribunal jkollu quddiemu l-aqwa prova producibbli. In oltre t-Tribunal naqas li jippermetti li tigi stabbilita l-ahjar prova dwar jekk il-kostruzzjoni in kwistjoni kinitx verament tezisti u jekk tezisti kif kienet u fejn kienet mibnija. Dan in-nuqqas tat-Tribunal li jsegwi r-regoli tal-procedura dwar il-provi jrendi d-decizjoni zbaljata ghax mhux bazata fuq fatti accertati izda approssimativi;
2. Bla pregudizzju ghal dak sottomess, jekk ma tintlaqax l-ewwel aggravju t-Tribunal bhala Tribunal Amministrattiv naqas li jsegwi d-dispost tal-artikolu 3 tal-Kap. 490;
3. It-Tribunal zbalja fil-ligi meta applika ghal din l-applikazzjoni l-istess grad ta' prova li tigi applikata ghal zvilupp li mhux grade 1 kif inhu dan is-sit u fejn f'dan il-kaz qed jintalab rikostruzzjoni. In oltre t-Tribunal kellu l-obbligu li jfittex l-ahjar prova u mhux jistrieħ fuq provi approssimattivi;
4. It-Tribunal mar kontra u izjed milli tippermetti l-ligi meta ordna mhux korrezzjoni tal-pjanti approvati mill-Awtorita izda li jigu sottomessi pjanti godda li skond l-artikolu 41 tal-Kap. 504 ma jistghux jigu sindakati jew verifikati mill-appellant b'mod li l-appellant ma ghandux kontroll fuq dak li jirrizulta. Dan mhux l-ispirtu tal-artikolu 41(14) tal-Kap. 504 li jippermetti li t-Tribunal 'in any manner changes' li ma jfissirx li t-Tribunal jiskarta l-pjanti approvati b'ohrajn godda. L-enfasi tal-ligi hi fuq tibdil materjali mhux sostituzzjoni ta' pjanti b'ohra;
5. It-Tribunal naqas li jikkunsidra t-talba tal-appellant ghal sospensjoni taht l-artikolu 41(3) tal-Kap. 504.

L-ewwel aggravju

Dan l-aggravju biex jinqara bhala appell fuq punt ta' ligi deciz mit-Tribunal ma jstax jttieħed fil-perspettiva ta' apprezzament tal-provi da parti tat-Tribunal li fuqhom din il-Qorti ma ghandhiex poter tissindaka hliel f'kazijiet eccezzjonali ta' manifesta ingustizzja jew zball grossolan

Kopja Informali ta' Sentenza

ta' fatt liema fatt kien dak li ddetermina d-decizjoni tat-Tribunal.

L-appellant qed isostni li t-Tribunal ivvjola l-ligi tal-procedura kif stabbilita fil-Kap. 12 applikabbli wkoll ghat-Tribunal meta naqas li jippermetti produzzjoni ta' xhieda u naqas li jhalli li tigi prodotta l-ahjar prova jew li jfittex li tigi prodotta l-ahjar prova sabiex tigi determinata l-vertenza.

Dak li ghalhekk ghandha tissindaka l-Qorti hu cirkoskritt fl-evalwazzjoni dwar il-poter tat-Tribunal u jekk it-Tribunal naqas li jsegwi principji bazici dwar il-produzzjoni, tmexxija u grad ta' apprezzament tal-provi.

L-artikolu 41 tal-Kap. 504 jistipula hekk:

(11) Bla ħsara għal dak hawn qabel imsemmi u għall-artikolu 74, l-appell lit-Tribunal u t-tmexxija tat-Tribunal għandhom isiru skont ir-regoli li hemm fit-Tieni Skeda li tinsab ma' dan l-Att, u fin-nuqqas ta' regoli bħal dawk fuq kull ħaġa, it-Tribunal jista' jirregola l-proċedura tiegħu nnifsu.

IT-TIENI SKEDA

Artikolu 41

Proċedimenti quddiem it-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar u l-appelli li jsiru minnhom.

4. It-Tribunal għandu jkollu s-setgħa li jħarrek xhieda u li jagħti l-gurament lil kull min jidher quddiemu.

9. Bla ħsara għad-dispożizzjonijiet preċedenti u dawk ta' dan l-Att, it-Tribunal jista' jirregola l-proċeduri tiegħu nnifsu.

Issir referenza wkoll għal regolamenti 2 u 3 tat-Tieni Skeda li jghidu hekk:

2. L-appellant jista' jidher quddiem it-Tribunal jew personalment jew permezz ta' agent fil-gurnata u ħin iffissati għas-smiġħ u jagħmel is-sottomissjonijiet tiegħu u jipproduċi dawk il-provi li t-Tribunal jippermetti:

3. It-Tribunal għandu jagħti lill-Awtorità l-opportunità li tagħmel sottomissjonijiet biex tiġġustifika d-decizjonijiet tagħha u li ġġib dawk il-provi li t-Tribunal jidhirlu meħtieġa.

Dan hu Tribunal Amministrattiv b'poteri quasi gudizzjarji. Il-ligi specjali applikabbli għalih tpoġġilu poteri specifici cioè li jirregola hu l-proceduri quddiemu sakemm mhux specifickati mod iehor fl-istess ligi. Għandu l-jedd li fil-konfront tal-appellant thallih li jressaq il-provi li t-Tribunal jippermetti u fil-konfront tal-Awtorita, ggib il-provi li t-Tribunal jidhirlu meħtieġa.

Hu minnu illi l-ligi tagħti poteri cari u ampji lit-Tribunal meta tigi biex tikkonsidra xi provi jtellghu. Irid jittiehed in konsiderazzjoni wkoll illi hafna mill-provi jkunu ġia gew mismugħa mill-Awtorita qabel id-decizjoni tagħha u illi ma hemmx il-formalita li hemm fil-proceduri civili dwar elenku ta' xhieda u dokumenti li għandhom jew jistghu jigu indikati fil-fazi inizjali għal hrug ta' permess.

Magħdud dan kollu u nonostante dak li tghid il-ligi specjali, il-principji bazici ta' smigh xieraq jinkludi li l-partijiet jinstemghu u jingħataw l-opportunita li jressqu dawk il-provi li jidhrilhom necessarji biex isostni l-argumenti tagħhom. Dan ma għandux jitqies bhala carte blanche għal partijiet li ma jkun hemm ebda kontroll fuq dak producibbli. Hawn il-Kapitolu 504 jagħti l-poter lit-Tribunal li jippermetti jew jichad produzzjoni ta' prova. Tali dritt ma jistax jigi applikat b'mod abusiv jew bla raguni. It-Tribunal hu obligat jisma' l-partijiet dwar ir-raguni għal talba ta produzzjoni ta' xhieda jew dokumenti u jiddeciedi dwarha b'mod li jagħti ragunijiet għaliex qed tigi milqugħa jew michuda talba. F'dan is-sens l-applikabilita o meno tal-Kapitolu 12 dwar il-provi għandu rilevanza biss in kwantu d-dritt tal-partijiet li jinstemghu ma jigix mfixkel. Pero hi fid-diskrezzjoni tat-Tribunal li jippermetti jew jirrifjuta produzzjoni ta' prova kemm-il darba jagħti ragunijiet għal tali decizjoni.

In kwantu għal 'best evidence rule' allegat mill-appellant, it-Tribunal bhala awtorita quasi gudizzjarja ta' revizjoni ma

ghandhux ifittex hu li jsib jew ifittex provi billi dan imur oltre l-kompitu u kompetenza tieghu izda ghandu, fuq il-provi prodotti quddiem l-Awtorita u dawk prodotti quddiemu bil-permess tieghu jikkunsidra, jgharbel u jiddeciedi jekk il-provi prodotti iwasslux lit-Tribunal ghal decizjoni matura, kunsidrata u spjegata. Trid issir distinzjoni netta bejn decizjoni tat-Tribunal li hi nieqsa minn konsiderazzjoni matura fuq il-provi migjuba li waslitu ghal decizjoni u decizjoni bbazata fuq apprezzament tal-fatti u valutazzjoni konkreta tal-provi prodtti u li maghha ma jaqbilx l-appellant. Hu biss fl-ewwel kaz li l-appellant jista' jkollu dritt jilmenta izda mhux fit-tieni kaz.

Harsa lejn dan l-aggravju fil-prattika l-appellant jilmenta li t-Tribunal cahadlu ripetutamente talbiet biex jinstemghu xhieda u jinstema' l-istess appellant biex jigu stabbiliti certi fatti.

Il-Qorti rat bir-reqqa l-process tat-Tribunal u jidher li gew rifjutati zewg talbiet ghal produzzjoni ta' xhieda, l-ewwel wahda tikkoncerna t-talba ghal produzzjoni ta' xhieda tal-PPCD u soprassessjoni ta' dan l-appell billi kienu qed isiru proceduri separati dwar 'misleading information' li wassal ghal hrug tal-permess (ara fol. 156 u 157 tal-process) u li dwaru saru sottomissjonijiet quddiem it-Tribunal fid-19 ta' Frar 2013 (fol. 153 tal-process). Il-kwistjoni rigward is-soprasessjoni giet deciza mit-Tribunal f'dik is-seduta u dik rigward il-produzzjoni tax-xhieda kellha tigi deciza in camera kif fil-fatt giet deciza fl-1 ta' April 2013 billi t-Tribunal qies ix-xhieda irrelevanti ghal vertenza. Il-vertenza giet differita ghal 21 ta' Mejju 2013 ghal kontinwazzjoni.

Jidher li fil-15 ta' Marzu 2013 l-appellant ghamel rikors biex jipproduci l-Ispettur Daniel Zammit in konnessjoni mal-allegazzjoni ta' 'misleading information' konsistenti f'falsifikazzjoni ta' pjanti. Il-partijiet inghataw l-opportunita li jirrispondu u t-talba giet michuda b'digriet tat-Tribunal tas-7 ta' Mejju 2013 ghax l-allegazzjoni tal-appellant kienet wahda generika. Fil-15 ta' Mejju 2013, l-appellant rega' pprezenta rikors simili dwar ir-rilevanza ta' dan ix-xhud. Il-kwistjoni giet trattata quddiem it-Tribunal fis-seduta tal-21

ta' Mejju 2013 u l-vertenza thalliet ghad-decizjoni fuq il-mertu ghat-30 ta' Lulju 2013.

Fis-16 ta' Lulju 2013 sar rikors iehor mill-appellant biex it-Tribunal jistabilixxi fil-fatt x'ezista fuq is-sit mertu tal-applikazzjoni u talab lit-Tribunal li jordna li jingiebu provi quddiemu dwar x'kien jezisti u fil-fatt il-binja allegata mill-applikant qattx kienet hemm jew le. Fis-17 ta' Lulju 2013 l-appellant ressaq rikors iehor biex iressaq sottomissjonijiet ulterjuri. It-Tribunal ordna notifika lil partijiet l-ohra li rrispondew ghal dawn it-talbiet. It-Tribunal irrispinga t-talbiet b'digriet tal-24 ta' Lulju 2013 fejn hu addotta l-oppozizzjoni tal-applikant fir-risposta tieghu bhala gustifikazzjoni ghac-cahda tat-talbiet tal-appellant.

Harsa lejn dan il-perkors twil li wassal ghad-decizjoni fit-30 ta' Lulju 2013, il-Qorti ma tistax tara kif l-appellant jista' jkun gustifikat fl-ilment tieghu. Dak li ghandha tara l-Qorti mhux jekk ic-cahdiet li saru kienux gustifikati jew le izda jekk l-appellant inghatax l-opportunita li jressaq l-ilmenti u t-talbiet u jekk kienx fil-poter tat-Tribunal li jichadhom u inghatax raguni ghac-cahda. Dan jinghad b'referenza ghax-xhieda li l-appellant talab li jipproduci. L-atti juru illi l-appellant gie michud li jtella' xhieda tal-PPCD ghax it-Tribunal dehrlu li kienu irrelevanti ghall-iskop tal-hrug o meno tal-permess u in kwantu ghal l-ispettur tal-pulizija t-Tribunal cahadha in primis wara risposti tal-partijiet pero meta t-talba regghet saret quddiem it-Tribunal dan il-punt gie trattat pero ma ittiehdet ebda decizjoni mit-Tribunal dwarha ghalkemm jidher mill-verbal lit-Tribunal tal-21 ta' Mejju 2003, ir-rilevanza ta' dan ix-xhud kienet fi proceduri li kienu qed jitmexxew biex jitwaqqa l-permess minhabba informazzjoni zbaljata mentri dan kien appell minn decizjoni dwar ippjanar tal-izvilupp tas-sit li mod jew iehor ma kinitx ser tippregudika l-proceduri l-ohra ta' twaqqiegh tal-permess. Anki f'kaz ta' ezitu negattiv f'dan l-appell, xorta l-proceduri dwar ir-revoka tal-permess kienu japplikaw direttament u jannullaw l-ezitu ta' dan l-appell. Kien ikun ahjar li kieku t-Tribunal rega' dikjaratament cahad it-talba tal-appellant ghal produzzjoni tax-xhud izda l-ewwel cahda kienet gia turi l-fehma tat-Tribunal u in ogni kaz hadd mill-partijiet ma insista aktar fuq dan il-punt tant

li l-istess appellant f'zewg rikorsi sussegwenti ma regax qajjem il-kwistjoni.

Jidher illi in kwantu ghal 'best evidence rule', l-appellant, quddiem it-Tribunal jaghti l-impressjoni li t-Tribunal, wara li nstemghu l-provi kollha u saru diversi sottomissjonijiet bil-miktub mill-partijiet u l-vertenza thalliet ghas-sentenza, kellu jerga' jiftah il-proceduri mill-gdid biex jaccerta certi fatti fuq l-istrutturi fis-sit. Dan mhux il-kompitu tat-Tribunal. It-Tribunal obligat jistrieħ fuq l-atti quddiemu u prodotti mill-partijiet. Dan wara kollox hu l-iskop ta' appell. Hu minnu li jekk it-Tribunal jixtieq jissenjala xi kwistjoni mhux imqajma ghandu jissenjalah lil partijiet biex ikollhom l-opportunita jikkontrollaw din il-kwistjoni izda mhux li t-Tribunal isir parti u jibda jgib il-provi hu. Jekk l-appellant ghandu jiftiehem li xtaq itella' provi ohra rigward l-istruttura fuq is-sit, il-Qorti tqis illi l-obbligu tat-Tribunal kien li jisma' l-ilment mhux necessarjament li jakkordah. Il-Qorti tqis illi l-partijiet kellhom opportunitajiet ampji biex iressqu l-provi u sottomissjonijiet fuq dak deciz mill-Awtorita u fl-ebda hin ma gie negat id-dritt lil appellant jaghti l-fehmiet tieghu. Pero kien fid-diskrezzjoni tat-Tribunal li darba konkluzi l-provi kollha, jithallewx jingiebu provi ohra jew sottomissjonijiet ohra ffit jiem qabel l-ghoti tas-sentenza meta l-appellant ghamel diversi sottomissjonijiet fil-mertu, ma ngieb xejn gdid qabel li sar ir-rikors biex titressaq sottomissjoni ulterjuri u in kwantu ghal produzzjoni ta' provi ohra, l-appellant lanqas biss jaccenna l-iskop u l-entita tal-prova li xtaq iresssaq.

Il-Qorti tqis illi l-appellant inghata kull opportunita li jressaq il-provi tieghu u jaghmel is-sottomissjonijiet tieghu kif kellhom il-partijiet l-ohra u illi t-Tribunal iddecieda l-mertu wara apprezzament tal-provi prodotti.

L-appellant isostni illi l-provi li fuqhom strah it-Tribunal ma kienx l-ahjar prova skond il-ligi izda provi approssimattivi u ghalhekk t-Tribunal naqas li jsegwi l-ligi tal-procedura. Dan hu aspett fattwali li strettament ma jimmeritax li jigi kunsidrat billi l-appellant libbes l-aggravju somiljanza ta' punt ta' ligi. Il-Qorti rat id-decizjoni tat-Tribunal u qieset illi t-Tribunal uza d-diskrezzjoni tieghu biex iqis il-provi

prodotti, jiskarta dak li mhux attendibbli u jsostni dak li dehrlu kien attendibbli wara li qies ic-cirkostanzi kollha. Dan mhux sindikabbli mill-Qorti. L-appellant isostni li t-Tribunal kien hu stess indeciz jekk qattx ezistitx l-istruttura li jsemmi l-applikant u jekk ezistiet fejn kienet sitwata fis-sit. La darba t-Tribunal kien indeciz fuq il-fatt ma setghax jikkonkludi billi ma ngibitx il-prova rikjesta skond il-ligi. Din l-indecizjoni fil-fehma tal-Qorti ma tohrogx mid-decizjoni kif allegat. It-Tribunal ikkunsidra din il-kwistjoni separatament u fid-dettal u fil-kompetenza teknika li hu munit biha t-Tribunal wasal ghal konkluzzjoni li pjanta wahda specifika Org. No. VAL/23 kienet turi l-ezistenza tal-'Master's Gunner's Quarter'. It-Tribunal ukoll indirizza l-ilment tal-appellant dwar modifika li jidher fuq il-pjanta u kkonkluda dejjem bl-ghajnuna tal-esperti teknici fuq l-istess Tribunal illi din kienet prassi f'dokumenti antiki li ma tfissirx li pjanta giet falsifikata semplicement ghax emendata fuq l-original. F'analizi dettaljata tal-provi t-Tribunal wasal ghal konkluzjoni dwar l-awtenticita taghhom u jekk mill-provi setghax jasal ghal konkluzjoni kif trid il-ligi. Dan hu preciz xoghol it-Tribunal cioe li juza' sew id-diskrezzjoni afdana lilu li jissindaka sew il-fatt tenut kont tal-aggravji u jasal ghal konkluzjoni tieghu u l-Qorti tqis l-ilment tal-appellant li ma rravizax l-ahjar prova hu biss argument biex isostni li ma jaqbilx mal-konkluzjoni tat-Tribunal u xejn aktar.

Ghalhekk dan l-aggravju qed jigi michud.

It-tieni aggravju

Dan l-aggravju gia gie trattat indirettament fl-ewwel aggravju. L-appellant isostni li t-Tribunal naqas li jsegwi d-dispost tal-artikolu 3 tal-Kap. 490. Jidher li l-appellant qed jibbaza ruhu fuq is-subartikolu (a) u c) li jghidu hekk:

(a) tribunal amministrattiv għandu jirrispetta d-dritt tal-partijiet li jingħataw smiegħ xieraq, inklużi l-principji tal-gustizzja naturali, jgħifieri:

(i) nemo judex in causa sua, u

(ii) audi et alteram partem;

(b) it-terminu li tribunal amministrattiv ikollu biex jieħu d-decizjoni tiegħu għandu jkun wieħed raġonevoli skond ic-

ċirkostanzi ta' kull każ. Id-deċiżjoni għandha tingħata kemm jista' jkun malajr u għal dan il-għan it-Tribunal għandu jagħti deċiżjoni waħda dwar il-kwistjonijiet kollha involuti fil-kawża kemm jekk ikunu ta' natura preliminari, proċedurali jew sostantiva;

Kif inghad fl-ewwel aggravju, l-appellant inghata ampja opportunita jinstema', iressaq sottomissjonijiet bil-fomm u miktub f'diversi okkazzjonijiet. Ma jfissirx b'daqshekk illi l-appellant ghandu dritt li jibqa' jtella' l-provi ad infinitum jew li tqis cahda li tressaq xhud bhala ksur ta' dritt ta' smigh xieraq. Kif gia intqal mill-Qorti fl-ewwel aggravju, it-Tribunal qies it-talbiet u esprima l-gudizzju tieghu. Li hu importanti mhux kemm kien soggettivament fir-ragun jew le li jichad it-talbiet tal-appellant izda jekk l-appellant thallieq iressaq it-talbiet tieghu u jinstema' mit-Tribunal u wara dan inghatax raguni ghaliex it-talbiet tieghu kienu qed jigu michuda. Dan jidher li sar u kwindi l-appellant ma jistax jilmenta aktar.

Dan l-aggravju wkoll qed jigi michud.

It-tielet aggravju

Dan l-aggravju ma fihx fundament legali, ghaliex kif gia intqal it-Tribunal ikkunstata mhux biss il-valur storiku tas-sit u z-zona li fih kien qed jigi kunsidrat l-izvilupp izda sahanitra ordna fid-deċiżjoni tieghu li jsiru pjanti taht l-approvazzjoni tieghu sabieq jigi accertat illi r-rikostruzzjoni ser tkun l-aktar fidila ghal dik pre-ezistenti u illi l-pubbliku u t-turist ikun mgharraf li l-binja hi rikostruzzjoni fidila ta' dak li kien ezistenti. Hu mexa fuq dak li kkunsidra kienet prova li seta' jistrieq fuqha mill-pjanta minnu msemija u ritratt li jikkonfermaw l-ezistenza u l-libifikazzjoni tal-'quarters' fil-kumpless. Il-Qorti tqis illi f'kull każ it-Tribunal irid jikkonsidra zvilupp mill-lenti ta' dak permissibbli u f'dan il-każ ma jirrizultax illi t-Tribunal mar oltre l-poteri tieghu in konnessjoni ma' dan l-aggravju kif propost mill-appellant billi ma gie sottomess ebda policy jew artikolu tal-ligi li t-Tribunal kien jivjetah li jiddeciedi kif fil-fatt iddecieda. Dan qed jinghad bla pregudizzju għall-aggravju specifiku dwar

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il-pjanti godda ordnati mit-Tribunal li hu aggravju li ser jigi trattat wara dan.

Ghalhekk dan l-aggravju wkoll qed jigi michud.

Ir-raba aggravju

F'dan l-aggravju l-appellant jissottometti illi t-Tribunal mar oltre l-parametri tal-ligi meta ordna li jigu sottomessi pjanti godda li f'dan l-istadju ma jistghux jigu sindakati mill-appellant.

Il-Qorti tirreferi ghall-artikolu 41(14)) fejn it-Tribunal ghandu l-poter li fost affarijiet ohra 'ibiddel b'kull mod iehor id-decizjoni tal-Awtorita'. In kwantu ghal tibdil ta' pjanti l-Qorti tirreferi ghal regolament 5 tat-Tieni Skeda tal-Kap. 504 li jghid:

It-Tribunal għandu jkollu s-setgħa li jikkonferma, iħassar jew ibiddel decizjoni li kontra tagħha jkun sar appell u jagħti dawk l-ordnijiet li jidhrula xierqa. Izda it-Tribunal jista' jitlob l-appellant jipprezenta dokumenti u pjanti godda, f'liema każ it-Tribunal għandu jagħti r-raġunijiet għal dik it-talba izda s-sustanza tal-kwistjoni kif giet ipprezentata quddiem l-Awtorità m'għandhiex tinbidel.

Il-kliem tal-ligi hu car. It-tibdil ta' pjanti hu permess basta li s-sustanza tal-kwistjoni tibqa' l-istess. Jidher li l-pjanti li t-Tribunal ordna tibdil tagħhom ma messewx is-sustanza cioe riabilitazzjoni tas-saluting battery u rikostruzzjoni tal-Master Gunner's Quarters izda t-Tribunal anzi kien aktar konformi mal-ispirtu tal-ligi u f'dan il-kaz l-importanza u s-sensittivita storika tas-sit billi ordna li l-pjanti iridu jirriflettu perfettament dak ezistenti fil-pjanta li fuqha t-Tribunal strah ghall-approvazzjoni tal-permess, f'dak li kien il-post ezatt fejn kienu jezistu l-Quarters u l-mod kif kienet mibnija. Aktar minn hekk it-Tribunal ordna li l-pubbliku jkun mgharraf li l-binja kienet rikostruzzjoni fidila u mhux semplicement restawr u riabilitazzjoni ta' binja. Il-Qorti tqis illi t-Tribunal ma ordna xejn li jmur kontra l-kelma u l-ispirtu tal-ligi u segwa skrupolozament id-dettami tal-ligi f'dan ir-rigward.

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Ghalhekk dan l-aggravju qed jigi michud.

Il-hames aggravju

Dan l-aggravju wkoll ma jisthoqqlux jigi milqugh. L-appellant isostni li t-Tribunal naqas li jqis it-talba tieghu sottomessa mar-rikors promotur bazat fuq l-artikolu 41(3). Dan mhux minnu kif jirrizulta mill-verbal tat-Tribunal tad-19 ta' Frar 2013. In oltre bhala fatt ma jirrizultax illi inghata bidu ghall-izvilupp sakemm gie deciz l-appell. In oltre l-Qorti tirreferi ghal proviso tal-artikolu 41(4) illi kull ordni ta' sospensjoni tigi meqjusa li ghaddiet ipso iure wara tlett xhur mindu tkun inghatat tali ordni. Il-Qorti tqis li dan l-aggravju hu frivolu billi la fil-ligi u anqas fil-fatt ma gie vjolat xi dritt tal-appellant fuq din il-kwistjoni.

Decide

Ghalhekk il-Qorti qed tichad l-appell ta' Martin Baron u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Lulju 2013. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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