



MALTA

**QORTI TA' L-APPELL**

**ONOR. IMHALLEF**

**MARK CHETCUTI**

Seduta tas-26 ta' Gunju, 2014

Appell Civili Numru. 17/2014

**Francis Bugeja**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Francis Bugeja tat-28 ta' Marzu 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-13 ta' Marzu 2014 dwar PA 1517/02 'sanctioning of extension to existing quarry' fejn l-appell qed isir minn kundizzjoni 29 fejn 'the applicant shall contribute the sum of €45,500 to the Qawra/Dwejra Heritage Park as a plannign gain towards the proposed embellishment project for the Qawra/Dwejra Heritage site';

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Rat ir-risposta tal-Awtorita li ssottomettiet 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 tghid hekk:

It-Tribunal ikkunsidra :-

Dan huwa appell minn kundizzjoni numru 29 fil-permess PA 1517/02, "To sanction extension to existing quarry SG2 Tal-Ponta", liema kundizzjoni tghid – "The applicant shall contribute the sum of Euro 45,500 (Forty Five thousand and Five hundred Euros) to the Qawra/Dwejra Heritage Park as a planning gain towards the proposed embellishment project for the Qawra/Dwejra Heritage Site".

Fl-appell ipprezentat mill-Avukat Dr. John L. Gauci ghan-nom tal-appellant, Francis Bugeja, huwa jispjega r-ragunijiet li ghalihom qed jaghmel dan l-appell:

"Appell ta' Francis Bugeja (detentur tal-karta tal-identita bin-numru 0015946G), filwaqt illi jaghmel referenza ghall-kundizzjoni specifika aktar 'il quddiem u li tahtha nhareg il-permess P A 01517/02, hekk kif notifikat permezz ta' ittra fis-7 ta' Lulju 2009 (Ref P A 01517/02), kif ukoll jaghmel referenza ghad-decizjoni ghat-Talba ta' Rikonsiderazzjoni hekk kif deciza fis-26 ta' Novembru 2009, jesponi bir-rispett:

1. ILLI l-appellant kien issottometta applikazzjoni bin-nurnru PA 01517/02 sabiex jissanzjona estensjoni ta' barriera ezistenti mmarkata bin-numru SG2 u maghrufa bhala Tal-Ponta;

2. ILLI nhar is-7 ta' Lulju 2009, l-appellant kien gie nfurmat illi l-applikazzjoni minnu sottomessa kienet giet ikkunsidrata bhala accettabbli pero bl-impozizzjoni tal-kundizzjoni ta' pagament ta' 'planning gain' fil-valur ta' hamsa u erbghin elf u hames mitt Ewro (€ 45,500), a favur tal-Qawra/Dwejra Heritage Park Area filwaqt mitlub illi jaghmel garanzija bankarja ta' ghaxart elef Ewro (€10,000);

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3. ILLI l-appellant hassu aggravat bl-impozizzjoni tat-tieni kundizzjoni elenkata fl-ittra tas-7 ta' Lulju stante illi m'hijiex ragonevoli, huwa kien issottometta talba ghal Rikonsiderazzjoni illi giet ricevuta mill-Awtorita fis-c ta' Awwissu 2009, sabiex il-kundizzjonijiet imposti b'pagament ta' 'planning gain' a favur tal-QawralDwejra Heritage Park Area jigu riveduti;

4. ILLI d-Direttorat dwar l-Ippjanar ghamel ir-rapprezentazzjoni tieghu fl-20 ta' Novembru 2009; illi t-talba ghal rikonsiderazzjoni ta' l-appellant ghandha tigi rifjutata peress illi l-'planning gain' taht Artiklu 40 tal-Att Dwar l-Ippjanar ta' l-Izvilupp (Kap. 356 tal-Ligijiet ta' Malta), hija rregolata mill-Ministru b' konsultazzjoni mal-Awtorita, kif ukoll minhabba l-fatt illi l-'planning gain' giet imposta biex jigu riabilitati Wied il-Pisklu u Wied il-Kbir, u li dan hu konformi ma' kif titlob l-legislazzjoni prezenti u ghaldaqstant il-kundizzjoni originali giet ikkonfermata f'kazijiet simili de quo;

5. ILLI gie deciz fis-26 ta' Novembru 2009 li t-talba ghal rikonsiderazzjoni ma kinitx accettabbli mill-Bord tal-MEPA;

6. ILLI l-appellant baqa' jhossu aggravat bl-impozizzjoni tat-tieni kundizzjoni elenkata fl-ittra tas-7 ta' Lulju 2009, stante illi jhoss li m'hijiex ragonevoli;

Ghaldaqstant, l-appellant qieghed jinterponi dan l-Appell, filwaqt illi jesponi bir-rispett:

1. ILLI skond il-minuti tal-laqgha tas-26 ta' Novembru 2009, il-Bord tal-MEPA gie mitlub jirrikonsidra il-'planning gain' imposta fil-kaz odjem, ghaliex rnhux car kif ir-rapport tal-case officer jindika illi ghandu jigi impost 'planning gain' ta' €15 kull metru kwadru, u kif l-Awtorita waslet biex tiddeciedi illi l-impozizzjoni ta' €10 kull metru kwadru bhala 'planning gain' ghandha tigi imposta fil-kaz odjern;

2. ILLI fid-decizjoni moghtija ghat-talba ta' rikonsiderazzjoni, l-istess Bord tal-MEPA ma semma l-ebda Regolamenti jew Policies fuq liema impozizzjoni ta' €45,500 bhala 'planning gain' hija ggustifikata;

3. ILLI fm-nuqqas ta' dawn il-premessi suesposti, jidher bl-aktar mod car illi m'hemm l-ebda Guideline uljew Regolament fis-sehh illi juru kif l-imsemmija 'planning gain' ghandha tigi kalkolata mill- Awtorita;

4. ILLI fm-nuqqas ta' dawn ir-regolamenti f dan ir-rigward, wiehed ma jistax ma jirrifere ghal kazijiet simili de quo sabiex ikun jista' jinforrna ruhu dwar kif decizjonijiet simili qed jittiehdu

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mill-Awtorita, u fuq kollox, l-arnmont ta' 'planning gain' illi l-Awtorita tordna jhallas lil kull min jaghmel applikazzjoni simili;

5. ILLI allura, precizament minhabba dan in-nuqqas ta' regolamentazzjoni, qed issir referenza ghal kazijiet simili de quo, fejn fil-hrug ta' perrnessi tal-izvilupp ta' barrier ohra fareas kontigwi mal-barriera tal-appellant, l-ebda 'planning gain' ma giet imposta bhala planning gain rateali, izda giet imposta 'planning gain' fissa ta' hamest elef Lira Maltija (Lm5000);

6. ILLI fil-kazijiet surriferiti, l-areas sanzjonati minn din il-'planning gain' fissa, huma akbar mill-area ta' l-appellant, u ghal din ir-raguni, il-'planning gain' imposta fuq l-appellant ghandha tkun ta' wahda anqas minn Lm5000;

7. ILLI terga ssir referenza ghall-permess bin-numru PA 00564/01 fejn il-kundizzjoni numru erbatax (14) tieghu taqra hekk: "The applicant shall contribute the sum of €11,646.87 (Lm 5000) to the Dwejra Steering Committee towards the proposed embellishment project for the Dwejra World Heritage Site". F'dan il-kaz, l-appellant intalab illi jissottometti garanzija bankarja ta' € 232.94 (Lm100);

8. ILLI inoltre, terga' ssir referenza wkoll ghall-permess bin-numru PA 00208/94 fejn il-kundizzjoni numru t1ettax (13) tghid illi: "Prior to the issue of the permit, the applicant shall contribute the sum of £11,646.87 (Lm5000) to the Dwejra Steering Committee towards the proposed embellishment project for the Dwejra World Heritage Site". L-appellant intalab jissottometti garanzija bankarja ta' €6990 ghall-installazzjoni ta' weighbridge temporanja;

9. ILLI dawn iz-zewg perrnessi hargu ghal zewg barrieri illi huma qrib hafna dik odjerna u li huma akbar fid-daqs minn dik ta' l-appellant;

10. ILLI jekk wiehed jikkonsidra l-permess tal-izvilupp tal-barriera PA 2567/98 illi hija l-eqreb wahda ghal dik de quo u li tinsab fil-parti tat-Tramuntana tal-Heritage Park, l-appellant ukoll kien applika sabiex jissanzjona skavar illegali u sabiex jestendi l-barriera ezistenti. F'dak il-kaz, il-MEPA nponies planning contribution ta' €11,646.87 (Lm5000) ghal estensjoni ta' 13,711 metri kwadri, illi tigi aktar minn tliet (3) darbiet akbar l-estensjoni tal-barriera mertu ta' dan l-appell;

11. ILLI ghar-ragunijiet surriferiti, l-appellant tal-kaz odjem moss illi l-imposizzjoni ta' €45,500 bhala 'planning gain' a favur tal-Qawra! Dwejra Heritage Park, hija wahda irrangonevoli kif ukoll diskriminatorja, peress illi l-impozizzjoni tal-'planning gain' f'kawzi ohra illi jittrattaw

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areas hafna akbar minn dik sottomessa mill-appellant, u jinstabu f aereas kontigwi mal-barriera ta' l-appellant, kienet tammonta biss ghal ta' €11,646.87 (Lm5000), u mhux ta' €45,500 kif impost fuq il-barriera de quo;

12. ILLI jidher car li mill-minuti tal-laqgha illi xi membri tal-Bord tal-MEPA talbu sabiex jingiebu aktar dettalji dwar dawn il-precedenti, hekk kif imsemmijja fil-premessi suesposti, peress illi in-nuqqas ta' tariff stabbiliti mill-Ministeru joholqu cirkustanzi diskriminatorji fl-impozizzjoni tal-'planning gains':

"Mr. Roderick Galdes asked for more details on the precedents cited.

Mr. Joe Vella asked also for the date of the precedents.

The chairman redirected the members that precedent had never been cited in his tenure of MEPA Board decisions and the precedent in this case would be misleading.

Mr. Galdes said that the tariffs should be established by the Minister since this was discriminatory. He said that rates should be established.";

13. ILLI l-argument migjub mic-Chairman tal-Bord tal-MEPA waqt is-smiegh ghat-talba ta' rikonsiderazzjoni tas-26 ta' Novembru 2009 li n-nuqqas ta' regolamentazzjoni m'ghandux iwaqqaf lill-Bord milli jimponi 'planning gain', kif jidher mill-minuti:

"The chairman said that the whole planning process was discriminatory and this was a fact not only in Malta but all over the world. He said that guidelines on maxima and minima would be helpful but this does not mean that the Planning Gain should be levied. He said that this is a reconsideration and the members have only to consider if the tariff requested was sufficient for the environmental impact";

huwa wiehed infondat, irrelevanti u li ma jregix peress illi l-applikant talab biss illi tigi riveduta l-'planning gain' imposta fuqu in linea ma' kazijiet simili u kontigwi ghal dik tieghu, u bl-ebda mod ma kien qieghed jitlob illi jigi ezentat milli jhallas 'planning gain';

14. ILLI kif jidher b'mod mill-aktar car fl-istess paragrafu mill-minuti tal-laqgha fil-premessa suesposta, ic-Chairman tal-Bord tal-MEPA jidher illi qieghed jirrikonoxxi l-fatt illi s-sitwazzjoni li fiha qieghed l-appellant hija wahda diskriminatorja;

15. Illi apparti dan kollu jinghad ukoll, kif jidher fil-minuti ta' l-istess smiegh, illi l-membri tal-Bord ghandhorn janalizzaw fid-decizjoni taghom jekk l-impozizzjoni tal-'planning gain' hijiex sufficjenti ghall-impatt ambjentali;

16. ILLI ghalkemm l-appellant ghandu d-dubbi tieghu fuq kemm l-istess tariffa giet applikata f'progetti ohra, hekk kif jidher fil-minuti tal-laqgha:

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"Mr. Charles Bonnici said that the same tariff had been applied to other projects ", jekk allura dan huwa minnu, jikkonferma l-fatt illi kawzi precedenti inghataw importanza, u l-principju tal-precedent gie wzat mill-istess Bord tal-MEPA, principju illi ma thallix jintuza mill-appellant fil-kaz de quo;

17. ILLI allura fm-nuqqas ta' regolamentazzjoni fuq dan l-aspett, wiehed jistaqsi kif tista' ssir din l-evalwazzjoni minghajr ma' jittiehu kawzi ohra simili in konsiderazzjoni;

18. ILLI kif jidher mill-minuti ta' l-istess laqgħa, il-Bord tal-MEPA saħansitra ta parir lill-appellant sabiex jirrikorri għal appell jekk id-decizjoni mehuda fuq it-talba għal rikonsiderazzjoni m'hijjex accettabbli għalih:

"All Mr. Bonnici wanted to clarify was that the same rate applied here has been applied on other applications and the Chairman reminded the applicant that if the decision of the Board was not acceptable to the applicant, (he) has other means to safeguard his interests."

Għaldaqstant, fid-dawl tal-premessi suesposti, l-appellant umilment jitlob lil dan il-Bord ta' l-Appell:

1. Jiddikajra illi kundizzjoni numru 29 fil-permess Jiddikkjara illi kundizzjoni numru 29 fil-permess imposta fuq l-appellant għal Applikazzjoni Numru PA 1517/02 li timponi hlas ta' hamsa u erbghin elfu hames mitt Ewro (€45,500) bħala Planning Obligation a favur tal-Qawra /Dwejra Heritage Park Area, kkonfermata wara t- Talba Għar-Rikonsiderazzjoni, deciza fis- 26 ta' Novembru 2009, bħala decizjoni ultra vires u diskriminatorja in kwantu li konxjament u irragjonevolment, gew injorati precedenti ta' kazijiet ta' zvilupp simili, precizament fl-istess zona;

2. Jirrevedi, jirrikunsidra u jirrifonna l-impozizzjoni ta' 'planning gain' ta' hamsa u erbghin elf u hames mitt Ewro (€45,500) a favur tal-Qawra/Dwejra Heritage Park Area;

3. Jordna konsegwentament r-rifuzjoni in toto jew in parte tas-somma għa mhallsa mill-appellant under protest"

Ra n-nota tal-Awtorita' prezentata seduta stante, fit-12 ta' Marzu 2010 minn Lorinda Vella, (u nota tal-Avukat Dr. Anthony De Gaetano) partikolarment il-kummenti tad-Direttorat fejn irribatta :-

### “4.0 COMMENTS ON APPEAL

#### 4.1 Preliminary Plea

On a preliminary point, the applicant has already accepted the imposition of the monetary Planning Gain as a condition of acquiring development permission. This is being said, as the planning gain has been settled by the applicant, and this contestation is applicable even if the appellant's payment was made under protest. The Authority considers that no appeal against the planning gain may be made on this basis and this is in line with the Court of Appeal decision of Wayne Chetcuti (albeit on a different issue, but on the same procedural point), which was also followed by this Board in the appeal of Tyrone Galea vs. MEPA of 15th June 2007.

#### 4.2 Merits of Appeal

Without prejudice to the Authority's preliminary plea presented in the previous paragraph, the Authority shall still enter into the merits of the appeal that has been presented by the applicant.

In his appeal, rather than contesting the imposition of a planning gain towards the embellishment project for the Qawra/Dwejra Heritage Site, the appellant is contesting the monetary amount of €45,500 imposed through this condition. The appellant indicates that a sum of Lm5000 would be more appropriate as a planning gain in relation to the area of quarry extension hereby being permitted.

The appellant justifies his claim on the grounds that the Authority has not adopted any official guidelines on the calculation of planning gains, and due to the lack of this the same yardstick measures adopted in other cases should be applied to this application. The appellant claims that a Lm5000 planning gain was imposed for quarry extensions permitted in PA 0564/01, PA 0208/94 & PA 2567/98, which quarry extensions the appellant states are located within vicinity of the site and were much larger in area than that applied for in this application.

On these contestations, the Authority contends that under the provisions of Section 40 of the Development Planning Act, the Authority may determine the amount or extent of planning gain that may be suitable, according to the case that is being considered. The impact

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created by different types and extents of development would have a considerable weight on the scale of the obligation that is determined as appropriate as a requisite for approving development permission.

In the case subject to appeal, the same arguments of discrimination were brought to the attention of the MEPA Board by the applicant, whereby the permits of other quarries within vicinity were also cited. On this, it is important to point out that the appellant fails to mention that the MEPA has already conceded to a reduced monetary amount to be imposed as a planning gain. In fact, the Planning Directorate had recommended that a rate of €15 per square metre is applied to calculate the planning gain, and yet the MEPA Board decided that this should be reduce to a rate of €10 per square meter.

However, the appellant still does not agree with the imposed amount, and claims that the amount equivalent to Lm5,000 would be more suitable, which would be more synonymous to the monetary contribution imposed on quarry permits issued within vicinity of the site. On this issue, the Authority points out that the planning gain is aimed at ensuring that the quarry site is suitably restored after it is exhausted, in line with the Gozo Local Plan and the Qawra/Dwejra Heritage Park Action Plan which are both policies that are in force. The rehabilitation of the area does not only include the need to restore the quarry extension site, but to also to appropriately restore and embellish the existing quarry. Hence, the planning gain was calculated in proportion to the total quarry size, which in the case of this application and those cited by the appellant in vicinity, are as follows:

PA 1517/02 – Quarry SG2 – Total Area: 38,276m<sup>2</sup>

(Quarry subject to appeal)

PA 0564/01 - Quarry SG9 – Total Area: 22,035m<sup>2</sup>

PA 0208/94 - Quarry SG3 – Total Area: 28,887m<sup>2</sup>

PA 2567/98 - Quarry SG6 – Total Area: 16,713m<sup>2</sup>

As can be clearly noted the quarry site subject to appeal is by far larger than the other quarry sites cited by the appellant. Hence, the imposition of a larger monetary sum is justified on sound planning grounds.



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As a point of clarification it is also important to point out that in the case of PA 0208/94, a planning gain of Lm10,000 was in fact imposed by MEPA and not Lm5,000 as claimed by the appellant. This confirms that MEPA's imposition of a planning gain varies according to the particular circumstances of each quarry development.

Moreover, the particular circumstance of this site also merited a higher monetary contribution than that imposed on the quarry extensions cited by the appellant. The Authority has considered in each case the particular constraints of each site, in terms of the site location, size, quality, quantity, protection of ecological, archaeological, geological, geomorphologic features and species of Scientific Importance, and the method of reclamation and landscaping. Hence, the imposition of a monetary contribution varies according to the specific environmental qualities of each site.

In the case of the cited applications only one valley system would be affected by the development and eventual rehabilitation of the exhausted quarry. In the case subject to appeal two valley systems would be affected, being Wied il-Pisklu and Wied il-Kbir valleys, and hence the environmental impacts of this approved quarry operation would be greater. This further justifies the imposition of a larger monetary contribution for this application.

## 5.0 CONCLUDING REMARKS

5.1 As outlined in the previous section, the Authority is presenting two claims for this appeal, being that:

1. Preliminarily, this appeal should be dismissed on the grounds that the applicant has already affected the full payment of the monetary contribution as a planning gain as required by Condition 29 of the permit, and hence renounce his right of appeal from this condition; and

2. On the merits, the size of the existing quarry and the environmental constraints affecting this site have merited that a sum of €45,500 is imposed as a planning gain, and this is in compliance with the provisions of Section 40 of the Development Planning Act.

5.2 In view of the arguments hereby presented, the Malta Environment & Planning Authority respectfully requests the Planning Appeals Board to confirm the decision of the Malta Environment & Planning Authority, whereby the permit is retained as issued."

Fin-nota responsiva ipprezentata minn Dr. John L. Gauci u Dr Rachel Azzopardi, fl-4 ta' April, 2012 huma jghidu s-segwenti:

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"Illi waqt is-seduta tas-6 ta' Marzu 2012, l-appellanti inghata l-fakulta' li jipprezenta nota ta' referenzi, u f'dan il-kuntest qieghed umilment jissottometti s-segwenti nota ta' referenzi gnall-attenzjoni ghaqlija ta' dan l-Onorabbli Tribunal;

1. Fin-nota ta' sottomissjonijiet taghha tat-8 ta' Marzu 2010, l-Awtorita' qajjmet eccezzjoni preliminari li permezz taghha tghid li l-appell ma kellux isir u dan ghalix il-planning gain giet imhallsa, anke jekk under protest. Rigward dan l-argument, l-Awtorita' taghmel referenza ghad-decizjonijiet ta' Wayne Chetcuti vs. L-Awtorita' tal-Ippjanar (6.10.2000, Qorti tal-Appell) u Tyrone Galea vs. L-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar (15.06.2007, Bord ta' l-Appelli dwar l-Ippjanar).

Dwar dan, l-appellant jghid li hemm diversi sentenzi li huma iktar ricenti minn dawk kwotati mill-Awtorita', li juru hsieb differenti. Fl-ewwel lok, qed issir referenza ghall-kaz Anthony Bugeja u Victor Vonbrockdorff vs. L-Awtorita' ta' Malta Dwar L-Ambjent u l-Ippjanar (10.12.2008, Qorti ta' l-Appell), fejn applikazzjoni giet approvata mill-Awtorita' bl-imposizzjoni tal-hlas ta' hames mitt Liri Maltin (Lm 500) fl-Urban Improvement Fund (UIF). L-applikanti kienu hallsu dan l-ammont under protest u nterponew appell mill-imposizzjoni tal-hlas fil-UIF wara li nhareg il-permess. Il-Bord tal-Appell dwar l-Ippjanar iddecieda billi filwaqt li laqa' l-appell minkejja l-hlas tal-UIF, iddecieda l-mer tu tal-appell billi rrevoka l-kundizzjoni li kienet timponi l-hlas tal-UIF u ordna li l-Awtorita' tirrifondi l-ammont imhallas mill-appellanti. Il-Qorti tal-Appell f'dak il-kaz qalet li:

" ... dan il-hlas sar pero' bla pregudizzju gnad-dritt ta' appell spettanti lill-isiess applikanti u dan b'mod mill-iktar car u espress, fis-sens li l-istess applikanti gnamluha cara li minkejja li huma kienu ser ihallsu l-istess ammont indikat bil-permess huma ma riedu bl-ebda mod jirrinunzjaw ghad-dritt ta' appellli kellhom."

Il-Qorti rreferiet ukoll ghas-sentenza Kevin Muscat et vs. Il-Kummissjoni ghall-Kontroll tal-Izvilupp u l-Awtorita' ta' l-Ippjanar (A.c. 15.07.2002) fejn inghad li "huwa principiu assodat fil-gurisprudenza tal-Qrati iaghna li r-rinunzja tad-drittijiet iridu jirriultaw b'mod car u b'mod univoku. Ghalhekk il-gudikunt irid ikun kawt hafna qabel ma jasal ghall-konkluzjoni li xi persuna ddekadiet minn xi dritt taghha."

Fit-tieni lok, l-appellant jirreferi ghas-sentenza Anne Marie Carabott vs. L-Awtorita' ta' Malta Dwar l-Ambjent u l-Ippjanar (1.06.2009, Qorti ta' l-Appell), fejn giet approvata applikazzjoni mill-Awtorita', li mponiet fost affarijiet ohra l-hlas ta' ammont sabiex tigi konstruwita footway, kif ukoll garanzija bankarja sabiex taghmel tajjeb ghal xi hsarat lil xi sigar vicin is-sit. L-applikanti nterponew appell dwar dawn l-imposizzjonijiet wara li hallsu l-ammont u ssottomettew il-garanzija bankarja u nhareg il-permess.

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Fil-kaz ta' Anne Marie Carabott, bhal ma huwa l-kaz fil-kawza odjema, il-hlas sar sabiex johrog il-permess minghajr dewmien. L-applikanti kienet ilha tistenna l-hrug tal-permess u ma kellhiex altemattiva ohra hlief li tara' kif taghmel biex tottempera ruhha mar-rikjesti tal-Awtorita' u tibda l-progett peress li d-dewmien kien qed jirrekalha dannu finanzjarju kbir.

Il-Qorti f'dak il-kaz qalet:

"Illi fil-kaz odjern jirriulta li l-kundizzjoni 9(b) hija kontribuzzjoni gnall-ispejjez ghall-bini ta' passagg mentri l-kundizzjoni 15(k) hija garanzija bankarja sabiex jigi acceriat li jigu osservati li ma jkunx hemm "direct and/or indirect adverse affects to any tree within the maquis assemblage contiguous to the area of the development" u allura kundizzjonijiet tal-istess permess stess, u allura ma jirrizultax li b'xi mod id-dritt ta' appell da parte tal-applikanta ghal tali kundizzjonijiet gie rinunzjat bil-hlas ta' l-istess garanziji u dan ghaliex dawn saru proprju sabiex ikun jista' johrog il-permess u jibda l-bini juq l-istess zvilupp ... " (Enfasi mizjud)

Fit-tielet lok, l-appellant jirreferi ghal zewg sentenzi ohra moghtija mill-Bord tal-Appelli dwar l-Ippjanar wara d-decizjoni ta' Tyrone Galea. L-ewwel wahda hija Paul Camilleri fisem Micallef & Zammit vs. L-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar (26.10.2007). Dan kien appell minn decizjoni ta' l-Awtorita' li timponi fuq l-appellant "planning gain" ta' Lm 3,000. Din thallset "under protest, subject to the outcome of whether there are justified legal and technical grounds ... "

Il-Bord ghamel tieghu il-hsieb fil-kaz precedenti Veronica Zammit Tabona vs. l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar (20.07.2007), fejn il-Bord kien qal:

"Illi meta l-hlas isir "under protest", allura l-hsieb tal-payee kien car - ossia illi kien qed ihallas minghajr pregudizzju gnad-drittijiet iiegitu - anke li jappella;

Illi jekk tintlaqa' l-eccezzjoni preliminari ta' l-Awtorita' allura jkun ifisser illi l-appellani ikun qed jiccahhad mid-dritt tieghu ta' appell juq il-mertu - ossia jekk l-Awtorita' kienitx korretta li timponi tali hlas;

Illi dan ikun ifisser illi d-decizjoni ta' l-Awtorita' ma tkunx sindakabli mill-Bard ta' l-Appell u l-applikant ikollu d-dritt tad-doppio ezame mcahhad";

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2. Il-kuncett li ma jkunx hemm abdikazzjoni ta' dritt meta wiehed tempestivament jipprotesta ghall-pagament gie milqugh fil-gurisprudenza nostrana anke fil-kuntest ta' tisirif ta' cekk fit-termini "in full and final settlement". F'sentenzi bhal Michele Tabone et vs. Emmanuele Sammut noe (10.10.1950, PA), [ohann Schembri pro et noe vs. Charlot Mifsud pro et noe (19.10.2005, Qorti ta' I-Appell (Sede Inferjuri)) u Peter Attard vs. Lawrence Fino et (28.03.2008, Qorti ta' I-Appell (Sede Inferjuri)), gie ritenut li meta kreditur jaccetta u jsarraff cekk mibghut lilu fit-termini "in full and final settlement", dan ma jwasslux sabiex jitlef id-dritt ghal kwalunkwe ammont li jkun ghadu dovut lilu, gjaladarba jkun ghamel protesta inekwivokabbli u f'waqtha.

3. Fl-ahhar, l-appellant jirrileva li kif jidher fil-minuti tal-laqgħa tas-26 ta' Novembru 2009 dwar it-talba għal rikonsiderazzjoni, il-Bord tal-MEPA stess kien ta' parir lill-appellant sabiex jirrikorri għal appell jekk id-decizjoni mehuda fuq it-talba għal rikonsiderazzjoni ma kienitx accettabbli għalih:

" ... and the Chairman reminded the applicant that if the decision of the Board was not acceptable to the applicant, has other remedies to safeguard his interests."

Għaldaqstant, in vista tas-suespost, jigi umilment sottomess li d-dritt ta' appell mill-impozizzjoni ta' €45,500 bhala "planning obligation" bl-ebda mod ma gie rinunzjat.

Tant għandu x'jissottometti l-appellant għas-savju gudizzju ta' dan it-Tribunal."

Fl-ittra, "To Whom It May Concern" , minn Adrian Mallia għal ADi Associates, li kienet giet annessa man-nota responsiva ipprezentata minn Dr. John L. Gauci u Dr Rachel Azzopardi, fl-4 ta' April, 2012 huwa jghid s-segwent:

"Adi Associates Environmental Consultants Ltd was appointed to undertake an update of the Environmental Impact Assessment (EIA) for the proposed extension of quarry SG2 at Tal-Ponta, l/o San Lawrenz, Gozo. The consultants who undertook the EIA were all approved by MEPA and the Environmental Planning Statement (EPS) update certified by MEPA as having been carried out in accordance with the terms of reference.

The EPS followed the issues identified by MEPA during the scoping exercise, namely:

- (i) waste management
- (ii) ecology

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(iii) air quality

(iv) landscape and visual impacts

Since this was an EIA update, the impacts to be considered were to be restricted to those from the proposed extension subject of development permit application PA 01517/02.

In the EPS, for each predicted impact, an assessment has been made as to whether it would be of major or minor significance, or insignificant. The criteria for judging significance are identified in each topic chapter of the EPS and these were agreed with MEPA prior to the commencement of the assessment through Method Statements submitted for MEPA's acceptance.

Where appropriate, mitigation measures were proposed to mitigate the environmental impacts identified. These are included in the individual topic chapters and summarised in Chapter 8 of the EPS. In summary, the development proposal was judged to have insignificant impacts in respect of ecology, air quality and visual amenity although recommendations for best practice in quarrying and site management to improve the environmental performance of the site were recommended. No residual impacts were identified in this case since all impacts identified can be adequately mitigated.

In so far as the impacts of the quarry extension have been judged to be insignificant following mitigation, the Scheme will not unduly affect the status of Dwejra as a potential World Heritage Site or the Special Area of Conservation, provided a well-designed and stable restoration scheme is implemented. The latter was outside the scope of the EPS Update; however, this restoration plan was subsequently prepared and submitted in support of application PA 01517/02. The Restoration Plan has been approved by MEPA and is currently awaiting a decision on an application to erect a crusher and a decision on an environment permit application - both still being processed by MEPA.

Permezz tat-tieni rapport tal-Awtorita' prezentata, fl-24 ta' Awwissu, 2012 minn Jonathan Borg, huwa jghid is-segwenti:

"1. The appellant in his comments submitted on 4th April, 2012 argued mainly that (i) the paying of the planning gain under protest does not limit their right to appeal from the decision and (ii) the updated EIA which was accepted by MEPA showed that the impacts from the quarry extension are minimal.

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2. The Authority has already commented on the appellant's arguments in its initial report to the Tribunal and during the Appeal's hearings. However it would like to clarify that:

- the Planning Directorate had recommended a rate of €15 per square metre while the MEPA Board decided to lower this rate to €10 per square metre. The rate of €1.16 per square metre as recommended by the Architect is not acceptable as the reasoning behind the planning obligation imposed was to rehabilitate Wied il-Pisklu and Wied il-Kbir valley system to the same original topography in accordance with the planning and environmental legislation, defined as a World Heritage National Park.

- the MEPA Board took its decision in full cognizance of the updated EIA. Indeed given that the updated EIA considered that the resultant environmental impacts are not overly severe and can be mitigated, the MEPA Board decided in favour of the application. However a planning gain was still in order given that the requested quarry extension was still going to create an impact especially when in this case two valley systems would be affected - Wied il-Pisklu and Wied il-Kbir valleys - and hence the environmental impacts of this approved quarry operation would be greater."

Ikkunsidra ulterjorment:-

Dan huwa appell kontra l-kundizzjoni numru 29 li harget fil-permess PA 1517/02 li tobbliga lill-appellant biex ihallas somma to €45,500 bhala planning gain.

"The applicant shall contribute the sum of Euro 45,500 (Forty Five thousand and Five hundred Euros) to the Qawra/Dwejra Heritage Park as a planning gain towards the proposed embellishment project for the Qawra/Dwejra Heritage Site"

Il-permess PA 1517/02 hareg ghas-sanzjonar ta'estensjoni ta' barriera f' Tal-Ponta, San Lawrenz, Ghawdex. Din l-estensjoni tkopri 4,550 metru kwadru. Is-sit in ezami huwa ODZ, ikklassifikat bhala Rural Conservation Area u jaqa' gewwa l-konfini tal-propost Dwejra Heritage Park.

In sintesi, l-appellant fl-appell tieghu kontra l-imposizzjoni ta' din il-kundizzjoni qed

jghid is-segwenti:

- Id decizjoni li saret fl-istadju ta' reconsideration fis-26 ta' Novembru, 2009 kienet ultra vires u diskriminatorja peress li l-Awtorita', fid-decizjoni taghha, ma' ikkunsidratx li precedenti li sehhu f'kazi simili fil-vicinanze tas-sit in ezami u li ccita l-appellant;

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- L-ammont ta' planning gain impost mill-Awtorita' ma' giex ikkalkolat b'sistema cara, eqwa u trasparenti;
- Fil-kas ta' tliet applikazzjonijiet f' barrieri vicin dik in ezami u cioe PA 564/01, PA 208/94 u PA 2567/98 giet imposta planning gain ta' Lm5,000 f' kull kas.
- L-Awtorita' ghandha tirrifondi is-somma kollha li kien hallas l-appellant bhala planning gain, jew parti minnha; u
- L-appellant kien hallas il-planning gain 'under protest'.

Fin-nota taghha l-Awtorita' tibda biex taghmel eccezzjoni preliminari fis-sens li:

- Il hrug tal-permess kien marbut mal-obbligu li l-appellant kellu li qabel ma' johrog il-permess kellha tithallas is-somma kollha dovuta bhala planning gain;
- L-appellant hallas is-somma kollha. Dan ifisser li l-appellant accetta din il-kundizzjoni u ghalhekk hareg il-permess;
- Peress li din kienet kundizzjoni vinkolanti tal-permess issa l-appellant ma' jistax jittenta jiehu lura l-ammont li hallas minghajr ma' tigi effettwata il-validita' ta' dan il-permess; u
- Id-decizjoni tal-Qorti tal-Appell, Tyrone Galea vs MEPA tal-15 ta' Gunju, 2007, tikkonferma dan.

Fil-mertu l-Awtorita' rrispondiet ukoll ghal dak li qal l-appellant billi, in sintesi qalet li gej:

- L-appellant mhux qed jikkontesta il-princpju li ghandu jithallas planning gain imma l-ammont;
- Skond artiklu 40 tal att , l-Awtorita' tista timponi dak l-ammont li jidrilha li hu applikabbli ghall-kull kas;
- Ic-cirkostanzi teknici u ambjentali ta' kull kas huma differenti u ghalhekk l-ammont impost huwa differenti ghal kull kas. Per eżempju, din il-barriera, barra li hija hafna ikbar mill-barrieri iccitati mill-appellant, tohloq impatti fuq zewg sistemi ta' widien;
- Fir-rigward tal-permessi li ccita l-appellant biex jargumenta li l-Awtorita' wzat standards differenti biex ikkalkolat l-ammonti li kellhom jithallsu bhala planning gain, fil-kas tal-applikazzjoni PA 208/94 li ghandha area totali ta' madwar 75% ta' dik in ezami, il-planning gain impost kien ta' Lm10,000. L-Awtorita' tkompli tispjega li f' kull kas iccitati kien involut wied wiehed u mhux tnejn bhal f'dal-kas;
- L-Awtorita' diga naqset l-ammont li kienet talbet originarjament minn Euro 15 kull metru kwadru ghal Euro 10 kull metru kwadru.

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Dan it-Tribunal jaqbel mal-Awtorita' li la l-appellant hallas il-planning gain u b'rizultat ha l-permess, dan effettivament iffisser li accetta il-kundizzjonijiet kollha li kien hemm fil-permess. Kieku kullhadd jaddotta it-tattika li jibbenefika mill-permess li ttieh l- Awtorita' u fl-istess hin jikkuntesta ghal snin shah xi kundizzjoni li jkun fih il-permess bl-intenzjoni li forsi jirnexxielu johrog minnu kieku jkun hawn kaos shih.

Applikant iffaccjat b'din is-sitwazzjoni cioe l-ghoti ta' permess kondizzjonat ghall-hlas, ghandu zewg alternattivi. Jew li joggezzjona ghall-kundizzjoni u jibqa jinsisti li din m'ghandiex tigi imposta b'dan illi jekk ikollu rifjut ikollu il-fakulta li jappella mill-istess rifjut. L-alternattiva l-ohra, dik li f'dan il-kas ghazel l-appellant, hi li jaccetta l-kundizzjoni biex johrog il-permess u wara jappella mill-kundizzjoni ta' hlas imposta fil-permess. Ghalkemm din l-ahhar alternattiva hija possibli ftit tista tkun ta' success ghar-raguni li l-permess kien ikkundizzjonat ghal dik il-kundizzjoni u una volta accettata dik il-kundizzjoni mill appellant dan ma' jistax ibiddel il-pozizzjoni tieghu diametrikament wara li hareg tali permess billi jikkuntesta l-impozzjoni tal-istess kundizzjoni . Dan apparti l-konsiderazzjoni importanti li jekk f'dan it-tip ta' permess ser ikun hemm hafna appelli simili din tohloq instabilita' fis-sistema tal-ippjanar li hija haga li ghandha tigi evitata. F'dawn ic-cirkustanzi ghalhekk anki ghal dik li hi konsistenza, jekk l-applikant joggezzjona minn kundizzjoni imposta mill-Awtorita' dana ghandu jaghmlu minn meta' jsir jaf bl-impozzizzjoni taghha u jibqa jzomm din it-tezi sakemm tigi deciza din il-kundizzjoni u jekk hemm bzonn jappella.

Dwar il-mertu jidher car li hemm qbil bejn il-partijiet li l-Aworita' kellha d-dritt u l-obbligu li timponi planning gain skond Section 40 tad-Developmet Planning Act.

Huwa ovvju ghal kullhadd li kull barriera ghandha ic-cirkostanzi partikolari taghha u li dawn jiddeterminaw it-tip u l-kobor tal-impatti li tohloq madwarha. Ghalhekk ma' tistax tghid li l-ispiza biex tirriabilita' kull barriera ghandha tkun l-istess. Minn-naha l-ohra t-Tribunal jaqbel mal-applikant li ma' jidhirx li tezisti xi formula ezatta jew xi process iehor biex jigi kkalkulat il-planning gain f' kull kas. L-anqas ma' hu car jekk, per ezempju il-cost tal-landscaping tas-sit ghandhux johrog mis-somma li tithallas bhala planning gain jew jekk l-appellant hux marbut li jaghmel dan bhala parti mill-izvilupp. L-anqas ma' jirrizulta x' areas ghandhom jigu koperti mill-processi ta' riabilitazzjoni. Minn-naha l-ohra l-Awtorita', fl-ewwel rapport taghha, spjegat li f' wiehed mill-kazi li jsemmi l-appellant ( PA 208/94 ) li hija barriera li tokkupa 75% tal-area tas-sit in ezami, l-Awtorita' kienet imponiet planning gain ta' LM10,000 u mhux Lm5, 000 kif allega l-appellant. L-Awtorita' ghamlet ukoll l-argument li waqt li fil-kazi li jsemmi l-appellant valley system wiehed biss qed jigi affettwat, f' dan il-kas hemm fin-nofs zewg valley systems. Fin-nota risposiva tieghu l-appellant ma' qal xejn biex jirribatti dan.

Jekk jittiehed kont ta' dawn il-konsiderazzjonijiet, u fl-assenza ta' xi formula specifika, it-Tribunal huwa tal-fehma li f' dan il-kas il-planning gain imponut huwa ragonevoli u dan spezialment meta wiehed jikkunsidra li l-Board tal-Awtorita' diga naqqas is-somma li trid tithallas b' terz.



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It-Tribunal ghalhekk f'dawn ic-cirkostanzi, waqt li huwa tal-fehma li ghandha tigi zviluppata formula cara ta' kif ghandu jigi kkalkolat il-planning gain f' kull kas, jaqbel mal-analizi li ghamlet l-Awtorita' biex tiddetermina kemm ghandu jkun l-ammont ta' planning gain li ghandu jithallas f' dan il-kas.

Ghal dawn ir-ragunijiet dan it-Tribunal qieghed jichad dan l-appell u jikkonferma il kundizzjoni numru 29 fil-permess PA 1517/02, "To sanction extension to existing quarry SG2 Tal-Ponta" li tghid:

"The applicant shall contribute the sum of Euro 45,500 (Forty Five thousand and Five hundred Euros) to the Qawra/Dwejra Heritage Park as a planning gain towards the proposed embellishment project for the Qawra/Dwejra Heritage Site".

### Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. Il-kundizzjoni appellata numru 29 hi decizjoni soggettiva u ultra vires li tohloq diskriminazzjoni fil-konfront tal-appellant;
2. Il-hlas ta' din is-somma li sar under protest ma tista' qatt twassal ghal accettazzjoni tacita ta' dan l-ammont dikjarat dovut mill-Awtorita;
3. L-appellant ma nghatax kull opportunita sabiex iwassal l-ilment tieghu b'mod ahhari quddiem it-Tribunal u b'hekk ma kellux smigh xieraq.

Il-Qorti ma tistax titratta dawn l-aggravji fl-ordni li saru ghas-semplici raguni illi t-tieni aggravju jekk mhux fondat fil-ligi igib fix-xejn dan l-appell billi jekk jitqies li l-hlas ifisser accettazzjoni tal-kondizzjoni marbuta mal-hrug tal-permess u konsegwanti rinunzja implicita tal-appell mill-hrug tal-permess dan l-appell ma jista' jkollu ebda rizultat pozittiv ghall-appellant, huma x'inhuma l-aggravji.

### It-tieni aggravju

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F'dan il-kaz inhareg il-permess biex jigi sanzjonat thabbir illegali ta' barriera ezistenti u l-Awtorita ikkonsentrat ghal tali tkabbir bil-kondizzjoni li fil-fehma tal-Qorti kienet bene qua non ghal hrug tal-permess, li jithallas planning gain ai termini tal-artikolu 40 tal-Kap. 356 kif kien fl-2009. Il-Qorti tqis illi l-planning gain kienet kondizzjoni predominanti u principali ghal hrug tal-permess biex jaghmel tajjeb, kif qalet l-Awtorita:

at ensuring that the quarry site is suitably restored after it is exhausted, in line with the Gozo Local Plan and the Qawra/Dwejra Heritage Park Action Plan which are both policies that are in force. The rehabilitation of the area does not only include the need to restore the quarry extension site but to also to appropriately restore and embellish the existing quarry

L-appellant ghamel talba ghal rikonsiderazzjoni tal-ammont impost bhala planning gain li fil-fehma tieghu kien eccessiv mehud in konsiderazzjoni decizjonijiet ohra ta' planning gain maghmula mill-Awtorita li pero giet rigettata.

In segwitu l-appellant dehrlu li ghandu jaccetta l-hrug tal-permess billi jhallas il-planning gain 'under protest' u jappella quddiem it-Tribunal fuq il-planning gain.

Din il-Qorti gia kellha okkazzjoni li tittratta kwistjoni simili u ma ssib xejn differenti f'dan l-appell li jimmerita konsiderazzjoni differenti. Il-Qorti tirreferi ghall-appell **Anton Camilleri u L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar** (App 86/12) fejn jinghad hekk:

Din il-Qorti tirrelewa illi ghandhom jigi applikati l-artikolu rilevanti tal-Kap. 356 li kienu jirregolaw il-materja fiz-zmien li sar l-appell. Tirreferi ghas-sentenza **Wayne Chetcuti noe vs Kummissjoni ghal Kontroll tal-Izvilupp** (App Civ 06/10/2000) u **Emanuela Psaila vs Kummissjoni ghal Kontrol tal-Izvilupp** (App Civ 30/03/2006). Fl-ewwel kawza t-talba kienet ghal sanzjonar ta' zvilupp u flok giet imposta planning gain giet imposta garanzija bankarja. Fit-tieni kawza t-talba kienet ghal zvilupp u l-Awtorita imponiet commuted parking fee li pero sakemm tigi ffissata giet imposta garanzija bankarja. Fiz-zewg kawzi saru l-garanziji.

Fiz-zewg kawzi, kif argumenta wkoll it-Tribunal f'din il-kwistjoni, intqal illi la darba l-kundizzjoni kienet ir-raguni li fuqha inhareg il-permess, l-applikant ma jistax jottempera ruhu 'bla pregudizzju' ghal dik il-kundizzjoni sabiex jinhareg il-permess u mbaghad fl-istess nifs jappella mill-kundizzjoni biss. It-Tribunal bhal Qorti fil-kawzi

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citati argumenta illi la darba accettata l-kundizzjoni implicitament gie accettat il-hrug tal-permess bil-kundizzjoni u ma jistax imur lura minnha billi jappella biss fuq il-kundizzjoni wara li jkun inhareg il-permess bl-ottemperanza mal-kundizzjoni. Skond is-sentenza ta' Wayne Chetcuti l-principju regolatur hu 'selecta una via non datum recursus ad alteram' (ara pagna 12 ta' dik is-sentenza).

L-artikolu 40(1) ighid illi l-Awtorita ghandha dritt biex meta tigi biex taghti permess ghall-izvilupp timponi obligazzjoni fuq l-applikant li skond is-subinciz (b) jista' jikkonsisti f'illi jaghmel xi pagament (kif inhu dan il-kaz) li jigi inkluz f'permess ghall-izvilupp. L-artikolu 40(4) imbaghad jaghti d-dritt lil applikant li jappella mill-obbligazzjoni imposta.

Qari ta' dan l-artikolu juri illi ghalkemm l-applikant ghandu dritt li jappella minn obligazzjoni dwar l-ippjanar ma jfissirx b'daqshekk illi jista' jottjeni l-hrug tal-permess billi jottempera ruhu mal-obbligazzjoni bla pregudizzju. Il-kelma bla pregudizzju f'din ic-cirkostanza ma tfisser xejn ghaliex mhix fid-diskrezzjoni tal-applikant li jaghzel li jaccetta l-hrug tal-permess minghajr pregudizzju ghal dak li jidhirlu mhix kondizzjoni idonea ghal hrug tal-istess permess. Il-hrug tal-permess hu marbut mal-kundizzjonijiet imposti ghal hrug tieghu. L-artikolu 40(1) infatti juza' l-kliem 'meta (l-Awtorita – kliem tal-Qorti) tigi biex taghti permess ghall-izvilupp taghzel li timponi fuq l-applikant ... obligazzjoni'. L-obbligazzjoni u l-permess huma interkonnessi fejn wahda tiddependi mill-oħra u mhix fl-ghazla tal-applikant li jaghzel li jissepara l-hrug tal-permess mill-obbligazzjoni kif jidher li pprova jaghmel f'dan il-kaz.

Hi l-fehma tal-Qorti illi l-appellant qua applikant kellu ghazla quddiemu b'applikazzjoni diretta tal-artikolu 40 cioe li jaghzel li jappella mill-kundizzjoni imposta permezz tal-artikolu 40 bhala kundizzjoni ghal hrug tal-permess gabel ma jipoggi lillu nnifsu fil-pozizzjoni li bl-agir tieghu stess rrinunzja ghad-dritt ta' appell billi jottempera ruhu mal-kondizzjoni u awtomatikament accetta l-hrug tal-permess favorih, kif fil-fatt gara.

Il-Qorti tqis li bil-hlas tal-obbligazzjoni tal-ippjanar u l-konsegwenti hrug tal-permess hu abdika mid-dritt tieghu li jappella mill-kundizzjonijiet li fuqha nhareg il-permess. It-triq tieghu kienet li jappella mill-kundizzjoni tal-hlas ta' obligazzjoni ta' ippjanar imposta mill-Awtorita u f'kaz ta' rifjut ta' appell jibqa' miftuh lillu li jaccetta li jottempera ruhu mal-obbligazzjoni u jakkwista l-permess jew li ma jinghatax il-permess billi ma jaccettax l-obbligazzjoni. Zgur pero li ma kienx dritt tieghu li jiddeciedi hu unilateralment li jaccetta l-hrug tal-permess u jappella biss mill-kundizzjoni tal-obbligazzjoni ta' ippjanar qishom distinti u awtonomi minn xulxin.

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Il-Qorti tqis illi bl-akkoljiment ta' din l-eccezzjoni preliminari maghmula mill-Awtorita, it-Tribunal messu waqaf hemm u ma dahalx fil-mertu billi l-appell ma kienx ammissibbli billi l-appellant bl-agir tieghu abdika mid-dritt tal-appell minhabba l-irrikoncjabilita bejn l-agir tal-accettazzjoni tal-permess u hlas tal-planning gian avolja bil-cavcat 'under protest', meta il-hlas tal-planning gain ma kienx jikkostitwixxi kondizzjoni ancillari bla ebda dipendenza diretta fuq il-hrug tal-permess bhal ma tkun impozizzjoni ta' garanzija ghat-twettieq ta' certi obbligi jew kondizzjonijiet imposti fil-permess. Minflok dahal fil-mertu fejn ma kellux jidhol u ta lok ghal aggravju quddiem din il-Qorti fuq l-istess mertu.

Din il-Qorti tqis illi la darba din il-Qorti qed tabbraccja t-tezi illi l-appell ta' Francis Bugeja kien insostenibbli ghar-ragunijiet fuq moghtija, ma ghandhiex u ma tistax tidhol f'aggravju li jolqtu l-mertu tal-vertenza.

### **Decide**

Ghalhekk il-Qorti ghar-ragunijiet fuq maghmula qed tichad l-appell ta' Francis Bugeja u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-13 ta' Marzu 2014 in linea ma' dak deciz minn din il-Qorti, bl-ispejjez kontra l-appellant.

## **< Sentenza Finali >**

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