



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tas-26 ta' Gunju, 2014

Appell Civili Numru. 10/2014

Victor Fenech

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Victor Fenech tad-19 ta' Frar 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Jannar 2014 minn PA 6608/05 'to sanction existing disused building (formerly used as poultry farm) and to establish use to operate rabbitry';

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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:

Ikkunsidra:

A. Il-Kummissjoni ghall-Kontroll ta' l-Izvilupp fis-6 ta' Marzu 2009, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 6608/05 – Site at Triq inzul ix-Xemx, Dahar it-Twil, Siggiewi: To sanction existing disused building (formerly used as poultry farm) and to establish use to operate rabbitry.

Iz-zewg ragunijiet ghar-rifjut huma s-segwent:

“1. The proposed development is located within a Class A archaeological site where no development is to be allowed according to Structure Plan policy ARC 2, and it would have an adverse impact on an important archaeological site or area. It would conflict with Structure Plan policy ARC 2 and ARC 3 which provides that such areas or sites should be safeguarded and preserved.

2. The proposal runs counter to Circular PA 2/96 which states that ‘when existing building development on a site is wholly or partly illegal the DCC will not consider a development permit application relating to new development on that site, unless the development is regularised’. The illegal development includes the use of existing buildings for residential purposes, and a reservoir is used as a pool.”

B. In-nota tal-Perit Etienne Magri ghall-Appellant, ipprezentata fis-6 t' April 2009, senjatament il-punti segwenti:

“This application refers to the sanctioning of an existing building which is mainly dilapidated and unused. Our aim is to regularise this pre-1992 development which was extended by the client's forefather without seeking permission of the responsible authorities. Furthermore, as indicated in our proposed drawings we are trying to establish a use to this irrational development.

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This application is not proposing a new development as implied in the reason for refusal, but is proposing a use for this existing building. One can understand that a new proposal would mean that new land would be disturbed, which is an archaeologically sensitive area is not considered favourably. However our proposal is suggesting a re-use to a building which has been sitting idly in the landscape for the past twenty years. This As regards to the use, this is deemed acceptable in terms of Veterinary Department, Department of Agriculture and the Malta Resources Authority. We have complied with all the requirements mentioned by the above mentioned departments as is indicated in our plan, and commented in the application's DPAR. Furthermore this use is a use which should fall outside a residential area and is an acceptable one within an agricultural area.

The first ground of refusal is based on SP policy ARC 2 on the basis that the proposed development would have an adverse impact of an important archaeological site. The existing structures pre-date the enactment of the Structure Plan and could not, hence, be adversely affected by the introduction of the Structure Plan. Given that the site is already disturbed and the constructions forming the subject matter of this sanctioning pre-date the introduction of the Structure Plan, the refusal on the basis of policy ARC 2 cannot be upheld.

The second ground of refusal is based on Circular PA 2/96. The application in question relates to the sanctioning of existing structures. Evidently, PA2/96 is inapplicable to applications to sanction an illegal.”

C. In-nota responsiva ta' Mario Scicluna ghall-Awtorita', ipprezentata fis-6 ta' Mejju 2009, inter alia l-punti segwenti:

“5.1.2 However, the Authority disagrees with this statement on various accounts. As an initial issue the Authority states that since no permits were traced to justify any of the existing structures, the proposed development cannot ignore any present policy / constraint when assessing the proposed sanctioning. If this was the case, any existing illegal development would have bypassed the legal system wherein the legitimate assessment would have included any legal constraint such as scheduling and would have thus be approved in breach of valid policies / constraints at the time of the decision. This scenario would inevitably favour further illegal development and would lead to others who, knowing that present constraints would not grant certain permits, would first carry out the desired works illegally and then, argue that since the works are already in place, then, present constraints such as scheduling should not be considered. This is surely in breach of the Structure Plan and legal considerations of present approved policies / constraints especially those relating to Local Plans and Scheduling of this particular area.

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5.1.3 In this particular case, since this particular area has been scheduled for its ecological and archaeological features, any pending requests in such areas have to inevitably abide with the area's constraint. Additionally, PDG – Agriculture, Farm Diversification and Stables, December 2007 constantly states that no such development could be approved in those areas where its scheduling prohibits further development. In fact this policy states that:

'Policy 2.3C: New or Relocated Livestock Farms

The proposal is not located within:

(a) A scheduled, listed, designated or protected area or site of ecological, scientific, cultural, archaeological or landscape value;'

The above clearly states that applications relating to livestock farms (including rabbitry) are not permitted in areas where these are officially scheduled in order to safeguard their ecological, scientific, cultural, and archaeological or landscape value. This constraint is equally applicable in requests for development wherein applicants had conducted construction works illegally (and hence without any form of monitoring or any bank guarantees to control the development itself).

5.1.4 As regards to reason for refusal No.2 which relates to PA Circular 2/96, the DPA clearly states that:

'Following a site inspection on 11 July 2007, it is questionable whether the site in question is being used for agricultural purposes, since it is apparent that parts of the site are being used for residential purposes, as manifested through the existing pool (red 48) which is marked as a reservoir on the submitted plans. Furthermore, only one of the existing buildings (indicated as a quarantine area) is being used for the rearing of rabbits, no other farming activities were evident on site. A number of the existing buildings were not opened during the site inspection. This application cannot thus be favourably considered since the current use of parts of the site and the swimming pool are illegal, where planning circular 2/96, states that DCC will not consider an application should there be existing illegalities on site.'

Hence, in view that the submitted plans do not fully show all the 'existing uses' and 'proposed uses' in conventional colors as well as the clear delineation between those structures and uses to be sanctioned in their totally as well as those to be used for the rearing of rabbits, this application is in fact not showing all the existing development and hence, PA Circular 2/96 apply. Photos of a site inspection (Photos 345 – 354 in file) also revealed other structures (not shown in plans) used as stables as well as a tented structure adjacent to the existing 'dwelling' which overlooks a swimming pool furnished with the relative accessories / decorations which all entail non-agricultural use of the existing buildings.

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5.1.5 As regards to the cited applications by appellant, the Authority has noted their contents and notes that:

PA 306/06 – Refused. To demolish existing garage and erect semi-basement garages, 15 apartments and 1 penthouse. Site at Mgarr

PA 6238/03 – Granted. To construct an underground reservoir and agricultural store above. Site at Siggiewi

This development consists of (as per condition 4) The proposed store shall not exceed 15 sqm in area and 9 courses in height and shall be used for storage of agricultural implements only. Additionally, condition No. 3 states that This condition for archaeological monitoring is subject to a bank guarantee to the value of Lm 550 (five hundred and fifty Malta Liri). The bank guarantee shall only be released after compliance with this condition and a written clearance from the Integrated Heritage Management Team (of Environment Protection Directorate) and/or the Superintendent of Cultural Heritage. If the conditions for archaeological monitoring contained in this permission are not adhered to, the bank guarantee shall be forfeited. This was imposed to ensure adequate monitoring during works of this small room which is necessary in relation to applicant's holdings.

PA 6401/02 – Granted. To construct agricultural store. Site is at Ta' Sabbat, limits of Dingli

This particular site is not scheduled for its archeological features. The development consists of an agricultural store with an external footprint of 14m². However at the time of this assessment (January 2003) , the DPA had included Structure Plan Explanatory Memorandum may, within Level 4 AEI, consider "small to medium scale physical development provided no suitable alternatives exist, subject to an environmental impact study".

PA 1081/08 – Refused. To construct a three floor apartment block above existing ground floor garages. The site consists of an existing ground floor garage, which is located within the limits of development boundary in a predominantly residential area in St Paul's Bay.

5.1.6 In view of the above information, the authority states that none of the cited case had granted such an extensive development in an area which is scheduled for both its Ecology (Level 4) and its Archeology (Grade A) but rather consisted in developments which were either much smaller in size (15 sq.m.) or located in totally

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different land designations. Hence, the Authority disagrees that 'similar' permits were in fact issued in the vicinity and which had 'similar' planning considerations.”

D. In-nota ta' sottomissjonijiet tal-Perit Etienne Magri ghall-Appellant, ipprezentata fil-11 ta' Marzu 2010. Ma din in-nota gew annessi zewg pjanti kif ukoll sensiela ta' tnax-il ritratt li juru s-sitwazzjoni prezenti fuq is-sit.

E. In-nota tal-Avukat Dott. Anthony DeGaetano ghall-Awtorita', ipprezentata fit-18 ta' Frar 2011, precizament il-punti segwenti:

“Illi in vista li dan l-appell mir-rifjut ta' sanzjonar illum gie taht il-Kapitolu 504 tal-Ligijiet ta' Malta, l-istess talbiet ghal sanzjonar ma jistghux illum iktar jigu ikkunsidrati u dan stante li mhux permissibbli illum iktar li wiehed jissanzjona zvilupp illegali fi propjeta' skedata u dan a terminu tal-artikolu 70 u skeda numru 6 tal-istess Att X tal-2010 (Kap. 504).”

F. Il-verbal tas-Seduta numru 57, mizmuma fis-26 ta' Lulju 2011, precizament il-punt segwenti:

“Dr Degaetano b'referenza ghan-nota pprezenta llum, barra min dak minnu dikjarat fin-nota tat-18 ta' Frar 2011 jiddikjara illi l-permessi citati mill-appellant, a differenza tal-kaz prezenti, ma kienux milquta bic-Cirkulari 2/96.”

G. In-nota ta' sottomissjonijiet tal-Perit Etienne Magri ghall-Appellant, ipprezentata seduta stante fis-26 ta' Lulju 2011. Ma din in-nota gew annessi site plan li tindika numru ta' permessi allegatament simili li hargu fiz-zona, cjoe'; PA 2374/08 u PA 6238/03, PA 6589/03 u PA 1081/98, PA 5516/07, u PA 2818/07.

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex f' sit li jinsab f' rural conservation area barra z-zona tal-izvilupp (ODZ) fil-limiti tas-Siggiewi, jigi ssanat l-uzu ta' binja li precedentement kienet tintuza ghat-trobbija tat-tiegieg, sabiex minflok jitrabbew il-fniek.

Is-sit hu klassifikat bhala Class A – archaeological site u desinjat bhala Level 4 – area of ecological importance.

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Precedentment is-sit intlaqat minn avviz biex tiegaf u ta' twettieq ECF 415/05 li jaqra hekk:

“Ghandek zvilupp li jikkonsisti minn bini ta' garaxxijiet u diversi kmamar, strutturi ohra msaqqfa bil-pjanci, giebja u vaska kif ukoll twahhil ta' xatba u dan kollu minghajr permess.”

Ir-raguni ghar-rifjut jistghu jigu rissunti kif gej:

- Zona sensitiva

Peress li hawn si tratta minn sit ta' valur inter alia arkejologiku, ma jista' jsir l-ebda tip ta' zvilupp in linja mal-policies ARC 2 u ARC 3 tal-Pjan ta' Struttura li ghandhom bhala ghan il-harsien ta' zoni bhal dawn.

- Zvilupp illegali

Prezentement hemm zvilupp illegali fuq is-sit li mhux qed jigi ttentat is-sanar tieghu. It-talba hi ghalhekk in kontravenzjoni tac-cirkolari PA 2 tal-1996.

L-aggravji ta'-Appellant jistrieu fuq il-fatt li l-bini in ezami gja' kien jezisti qabel is-sena 1992 – u ferm qabel ma daha fis-sehh il-Pjan ta' Struttura - izda kien gie estiz minghajr permess. Illum dan jinsab f' stat dilapidat u l-iskop ta' din l-applikazzjoni hi propju sabiex dan l-izvilupp irrazzjonali jigi regolarizzat. Jissokta l-argument tieghu sabiex jispjega li peress li l-izvilupp mitlub ma jistax jigi akkomodat gewwa zoni residenzjali, l-unika post fejn jista' jsir hu propju fil-kampanja – kif fil-fatt qed jintalab. Oltre minn dan, ghalkemm iz-zona hi wahda sensitiva ghall-arkejologija, it-talba hi sabiex bini abbandunat jista' jigi riutilizzat, u fil-fatt, gja' hawwel ammont ta' sigar sabiex itaffi id-dehra tal-bini.

Gew citati wkoll numru ta' permessi allegatament simili ghal dan odjern u li nhargu f'Class A – archaeological sites, cjoe'; PA 2374/08 u PA 6238/03, PA 6589/03 u PA 1081/98, PA 5516/07, PA 2818/07, PA 306/06, u PA 6401/02.

L-Awtorita' zammet ferm l-oggezzjoni taghha ghat-talba u rilevat li fuq is-sit in ezami, il-maggor parti tal-bini sar qabel is-sena 1988 - u li wara s-sena 1994, inbnew l-imsemmija garaxxijiet minghajr permess. Ghalhekk, l-argument tal-appellant li hawn si tratta minn bini antik ma jreggix. In oltre, apparti l-policies citati fir-rifjut, l-Awtorita' ticcita wkoll il-policy 2.3C – new or relocated livestock farms tal-Policy and Design Guidance - Agriculture, Farm Diversification and Stables tal-2007, sabiex tispjega li rziezet bhal dawn mhumiex permessi gewwa zoni skedati u/jew protetti.

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Fl-ahharnett jigi rilevat li minn site inspection li hejjiet l-Awtorita' f' Lulju 2007, partijiet mill-bini kienu qed jintuzaw ghal skop residenzjali u li fil-fatt il-giebja indikata fil-pjanti bhala reservoir, kienet qed tintuza bhala swimming pool. Kien hemm ukoll xi stallel taz-zwiemel li ma kienux jidhru fil-pjanti sottomessi. Jidher ukoll li ma jirrizultax li qatt kienu jinzammu xi fniek gewwa z-zona indikata fil-pjanti in ezami bhala kwarantina, kif ukoll li bosta kmamar tal-kumpless baqghu imsakkrin waqt li kienet qed ssir is-site inspection. Ghalhekk f' ic-cirkostanzi japplikaw ic-cirkolari PA 2 tal-1996 u PA 2 tal-1998.

Barra minn hekk, ghar-rigward tal-permessi citati mill-Appellant bhala kazistika, l-Awtorita' tiddikjara li dawn kienu jew approvati fuq art mhux skedtata u/jew protetta, inkella kienu ta' qisien zghir hafna (madwar hmistax-il metru kwadri). It-talba odjerna hi ghall bini b' firxa ta' 240 metri kwadri, zewgt igwiebi li jkopru madwar 87 metri kwadri u 225 metri kwadri ohra ta' pavimentar.

Ghal kull buon fine, jigi rilevat li mill-applikazzjonijiet citati bhala precedent; PA 2374/08 kienet giet michuda (dismissed), PA 6238/03 tirrigwarda giebja u mahzen agrikolu, PA 6589/03 kienet talba ghall-gnien u revoka ta' kundizzjoni fil-permess precedenti (PA 1081/98) ghall bini ta' mahzen agrikolu u serrer, PA 5516/07 ukoll kienet ghal bini ta' serrer, PA 2818/07 tirrigwarda it-twaqqiegh ta' bini antik u l-kostruzzjoni ta' residenza u pixxina, PA 306/06 kient talba ghall-bini t' appartamenti u semi-basement garage, u f' PA 6401/02 intalab mahzen agrikolu.

L-ebda wiehed mill-kazijiet citati ma kien jirrigwarda s-sanar ta' rabbitry (meta fl-istess zmien, uhud mill-istess kmamar qed jintuzaw bhala stallel u giebja bhala pixxina). Anzi, mill-kazistika citata, l-Appellant bhal donnhu jaghti x' jifhem li huwa indeciz ghar-rigward ta' l-attivita' li jixtieq jiggestizzi fuq il-font tieghu; ghax daqqa jqabbell l-uzu ta' rabbitry ma dak ta' gonna, mhazen agrikoli u serrer, u xi drabi ma residenzi b' swimming pools, sahansitra appartamenti. Dan hu agir oggezzjonabbli ferm u li jirrazzenta l-imposizzjoni tas-sanzjoni fit-termini tal-Artikolu 14 tat-tieni skeda ghall-Artikolu 41 tal-Att X ta' l-2010 (Kap. 504).

Ezaminati fid-dettal is-sottomissjonijiet tal-partijiet, johrog car li prevja li titnehha l-illegalita'— inter alia l-uzu ta' natura residenzjali, etc. - din it-talba ma tistax tigi milqugha. Dan kollu qed jinghad a parte l-fatt li s-sit illum huwa skedat u di konsegwenza tapplika s-sitt skeda tal-Artikolu 70 tal-Att X tal-2010 (Kap. 504).

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-polices tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi

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minn dan l-appell billi jichad l-istess u jikkonferma ir-rifjut għall-PA 6608/05 kif ikkonfermat mill-Kummissjoni għall-Kontroll ta' l-Izvilupp, fis-6 ta' Marzu 2009.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li jikkonsidra li s-sit inbena qabel l-1992 u kien jintuza bhala poultry farm. Kwindi kienet applikabbli għalih bhala binja legittima l-Policy and Design Guidance for Agriculture, Farm Diversification and Stables tal-2007. Minflok it-Tribunal qies il-binja illegali u giet applikata c-cirkolari 2/96, peress illi qal li l-uzu tal-binja kien wiehed residenzjali u l-giebjja kienet uzata bhala pixxina, minghajr ma spjega kif wasal għall-allegat uzu residenzjali u minghajr ma kkonsidra li l-giebjja kienet qed tintuza temporanjament bhala pixxina pendenti l-ezitu tal-applikazzjoni. L-istess applikant ammetta li s-sit ma kienx jintuza għal skopijiet ta' trobbija ta' animali.
2. It-Tribunal erronjament qal li l-applikazzjoni kienet kolpita mis-Sitt skeda tal-Kap. 504 meta l-applikazzjoni saret fl-2005, qabel ma ddahlet is-Sitt Skeda cioe fl-2009. Il-provvedimenti tas-Sitt Skeda ma jistghux jigu applikati b'mod retroattiv.

L-ewwel aggravju

L-appellant jissottometti illi t-Tribunal naqas li jikkonsidra li s-sit inbena qabel l-1992. Dan mhux minnu tant li t-Tribunal ikkonsidra l-argument tal-appellant li s-sit inbena qabel l-1992 u kkonsidra l-argument tal-Awtorita li l-provi dokumentarji juru illi l-maggor parti tal-bini sar qabel l-1988 u li wara l-1994 inbnew il-garages bla permess. It-Tribunal qies il-bini bhala illegali għax mhux kopert b'permess. Hu minnu illi t-Tribunal ma spjegax fid-dettal għaliex accetta l-verzjoni tal-Awtorita milli dik tal-appellant pero l-Qorti tqis illi dak li implicitament irrikonoxxa t-Tribunal hu illi skond il-prova tal-Awtorita li minnha ittiehdet is-silta rilevanti fid-decizjoni tat-Tribunal mhix kontradetta mill-appellant, illi mis-survey sheet tal-1968 fil-process u aerial photo ma kienx hemm binjiet hlief forsi wahda. Il-binjiet l-oħra saru wara u għalhekk il-htiega ta' permess tal-Awtoritajiet kompetenti fis-sena 1968 il-quddiem sakemm fl-1992 saret responsabbli l-Awtorita tal-Ippjanar la darba giet stabbilita l-illegalita, it-Tribunal għazel li japplika c-cirkolari PA 2/96 li tgħid "when existing building development on a site is

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wholly or partly illegal the DCC will not consider a development permit application relating to new development on that site, unless the development is regularised". It-Tribunal qies il-fatti wara tali konsiderazzjoni, liema apprezzament tagħhom mhux sindakabbli mill-Qorti sakemm ma jkunx sar zball grossolan fil-kostatazzjoni tal-fatt innifsu u kien hu l-vern tad-decizjoni. F'dan il-kaz it-Tribunal ma zbaljax il-fatti izda dehrlu li għandu jaccetta l-fatti kif prezentati mill-Awtorita cioè li r-ritratti, site inspection, uzu tas-sit u l-fatt li uħud mill-kmamar baqghu imsakkrin għall-ispezzjoni kienu indikattivi li dan ma kienx jikkostitwixxi riabilitazzjoni ta' poultry farm għal wieħed tat-trobbija tal-fniek cioè għall-uzu agrikolu skond il-policy tal-2007 izda uzu divers tas-sit minn dak li seta' kien originarjament l-uzu għalih. It-Tribunal wasal għal apprezzament tal-fatti prezentati billi ikkonkluda li l-uzu ta' certi kmamar adebiti għal skop residenzjali u giebja uzata bhala pixxina ma kienux konducenti mat-talba kif magħmula tenut kont tal-illegalitajiet li ma kellhomx permess ikopruhom. Fil-fatt din il-Qorti tqis li din l-applikazzjoni ma hi xejn aktar hlief tigbid tal-policies biex dak li hu illegali u ma hux sanabbli jinstablu skop biex ma jigix mnehhi.

Għalhekk dan l-aggravju qed jigi michud.

It-tieni aggravju

L-appellanti jissottometti illi t-Tribunal zbalja meta qal li l-applikazzjoni kienet kolpita negattivament bis-Sitt Skeda tal-Kap. 504 billi l-applikazzjoni sanatorja ddahlet fl-2005 mentri is-Sitt Skeda ma dahlitx in vigore qabel l-2009.

L-appellant ipprezenta wkoll dokument mill-website tal-Awtorita dwar 'frequently asked questions' fejn f'wahda mir-risposti tal-Awtorita hi li l-applikazzjonijiet li dahlu wara l-1 ta' Jannar 2011 (cioe d-data tad-dhul fis-sehh tas-Sitt Skeda) huma kolpiti bis-Sitt Skeda.

Din il-Qorti tqis li din ir-risposta hi wahda semplicistika għall-aħhar u apparti li hi biss opinjoni tal-Awtorita ma tiehux in konsiderazzjoni x'tip ta' applikazzjoni qed isiru referenza għalihom.

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Il-parti rilevanti tas-Sitt Skeda fl-artikolu 70 tghid li ma jistax jinhareg permess biex jigi regolarizzat zvilupp fi proprjeta skedata. Is-sit hu klassifikat bhala class A – archaeological site u desinjat bhala level 4 – area of ecological importance. Ma hemmx disputa li dan is-sit ghandu jitqies bhala skedat ai termini tal-artikolu 81(1) tal-Kap. 504, tant li l-aggravju hu biss limitat ghar-retroattivita o meno tal-istess provvedimenti tas-Sitt Skeda.

Il-Qorti tqis illi din mhix kwistjoni ta' retroattivita ta' ligi ghal zvilupp jew permess gia ezistenti izda sanzjoni ta' zvilupp illegali f'mument meta tali illegalita illum hi kolpita b'nuqqas ta' fakolta ta' sanzjoni. Dak li hu illegali jibqa' illegali b'mod kontinwat u duratur sal-mument tad-decizjoni fuq it-talba promossa fejn allura japplikaw il-ligijiet vigenti fil-mument ta' tali decizjoni. Jekk fil-mument tad-decizjoni s-sit ma jistax jigi sanzjonat mill-illegalita stante n-natura ta' importanza tieghu, allura ma ghandux ikun hemm ebda eccezzjoni. Wara kollox il-ligijiet tal-ippjanar isiru fl-interess tas-socjeta u tal-ambjent li nghixu fih. L-illegalita tmur kontra dan l-interess komunitarju. Il-fatt li t-talba ghas-sanzjonar saret fl-2005 ma jbidel xejn mill-illegalita kommissa u ezistenti u kontinwata fil-mument tal-applikazzjoni u tipperdura sal-mument tad-decizjoni fejn tali illegalita tista' tigi sanzjonata biss jekk il-ligijiet ta' ippjanar jippermettuh. Fil-mument tad-decizjoni, tali sanzjonar ma kienx permess. Il-Qorti tirreferi ghall-insenjament tal-Qrati taghna fost ohrajn **Jack M. A. Olin et vs Anthony Sant Portanier noe** (App Inf 06/10/2010) fost ohrajn fejn intqal hekk:

Huwa utli li jibda biex jigi osservat illi, kif deciz, “meta gudikant jew interpretu jigi biex japplika l-ligi ghall-kaz prattiku, l-ewwel tfittxija u indagni li ghandha ssir minnhom hija dik li jaraw liema ligi ghandha tigi applikata; u din in-necessita tidher aktar cara speċjalment meta ligi gdida tigi attivata u maghmula effikaci dwar materja li qabel jew ma tkunx regolata, jew li tkun regolata mil-ligi anterjuri. Dan aktar u aktar johrog car meta jigi kunsidrat fejn il-materja in diskussjoni tkun tirrigwarda fattijiet kompju, jew li kellhom il-bidu u l-inkomincjament taghhom taht l-imperu tal-ligi antika jew anterjuri li tkun irregolathom u jipprotraw ruhhom, f'din l-ahhar ipotesi (mhux fl-ewwel wahda tal-fatt kompju), taht il-ligi l-gdida”. (“**Chev. Antonio Cassar Torreggiani nomine -vs- Nutar Dr. Vincenzo Gatt nomine**”, Appell Civili, 12 ta' Mejju, 1950);

Din il-predetta decizjoni tkompli tillustra fuq l-insenjament ta' awturi kontinentali illi f'tema ta' dritt transitorju ghandhom jigu rigwardati fost ohrajn dawn il-principji:-

- i. li l-attijiet jew it-trasferimenti huma regolati mil-ligi li tahtha jkunu gew kompju;
- ii. li l-attijiet mibdija taht il-ligi l-antika u li jestendu ruhhom taht il-gdida, ghandhom jigu regolati minn din ta' l-ahhar;

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iii. li meta jkun jezisti veru u proprju dritt kwezit kompjut taht il-ligi antecedenti, dak id-dritt ghandu effikacja fih innifsu li jirrezisti ghall-applikazzjoni

Ghalhekk f'dan il-kaz, il-kwistjoni taqa' taht it-tieni principju enuncjat f'din is-sentenza u ghalhekk is-Sitt Skeda tapplika ghal dan il-kaz.

Kwindi dan l-aggravju qed jigi michud.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Victor Fenech u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Jannar 2014.

Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

-----TMIEM-----