



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tas-26 ta' Gunju, 2014

Appell Civili Numru. 7/2014

Emanuel Agius

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Emanuel Agius tas-17 ta' Frar 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Jannar 2014 rigward PA 7143/07 'sanzjoni ta' broiler unit';

Kopja Informali ta' Sentenza

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:

B'applikazzjoni tat-22 ta' Novembru 2007, Full Development Permission PA 7143/07, l-appellant f'sit fi Triq tas-Salvatur Xewkija, ippropona:

"To sanction a broiler unit"

L-applikazzjoni giet michuda b'rifjut tat-2 ta' Frar 2011 ghar-ragunijiet segwenti:

"1. The proposed sanctioning of broiler unit hinder the mitigation measures approved in previous permit PA 5130/01. Thus the development runs counter to policy 1.3A in Policy & Design Guidance for "Agriculture, Farm Diversification and Stables" which specifies that the proposed development which would have an unacceptable adverse impact on the surroundings will not be permitted.

The proposal also runs counter to Structure Plan policy AHF 5 specifies that buildings essential to agriculture will be permitted provided that they blend with the rural landscape through the use of random rubble, or be hidden from views.

2. The site in question lies partly within the buffer zone (level 3 AEI) of Wied ta' Mgarr ix-Xini and is also scheduled as a Level 1 Site of Scientific Importance due to its geological features.

The proposed sanctioning of broiler unit, which results in an increase in the farm capacity, runs counter to section (4) of policy 2.3A (M.E.P.A. Policy and Design Guidance on Agriculture, Farm Diversification and Stables) which accepts the upgrading of existing operational farms but does not accept development resulting in the increase in number of livestock units."

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FI-appell tieghu, I-Perit Emanuel Vella ghall-appellant ssottometta s-segwenti:

“We are in receipt of a refusal by the Environment & Planning Development, dated 2nd February 2011 and received on the 5th February 2011, regarding the above application. We fail to subscribe to the reasons given justifying the said decision and have accordingly decided to lodge an appeal there from. The grounds for this appeal are the following:

The present farm consists of an operational broiler and layers farm, which is operated by applicant and his brother Salvu. This farm is covered by various planning permissions. The broiler unit to be sanctioned is located within the boundary wall surrounding the farm. This boundary wall is covered by a development permission.

The brothers no longer wish to operate this farm together and so they have decided to divide this farm. As proof of this division of the farm, I have submitted a copy of the konvenju, signed between the two brothers and the Inland Revenue Division certificate, with my DPA report dated 22nd July 2010, showing that this konvenju has been registered. Since the existing farm is to be divided between applicant and his brother, Salvu, applicant needs this broiler unit to keep his quota of 21,519 broilers. Therefore, no increase in the broiler capacity will result, due to this division of the farm. This has been confirmed by the Department of Veterinary Services.

The Heritage Protection Unit stated that the site was already heavily committed to development in view of the existing layers, broilers and manure clamp. Furthermore, the broiler is located in the part of the site which falls outside the archaeology constraint and it is thus unlikely that any new archaeology was damaged in the process. There is no objection to the sanctioning of the broilers. Since the broilers unit lies within the boundaries of an established and operational farm, it will not have any adverse impact on the surroundings.

The Malta Resources Authority found no objection to the sanctioning of the broiler unit either, subject to certain conditions.

The Department of Agriculture has recommended the approval of this development, since plans are in line with COGAP and applicant is an experienced broiler breeder.

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For the above reasons and for such additional reasons as may be raised during the ensuing procedures our client respectfully requests the EPRT to uphold the application in question and order the issuing of the relative permit.”

Fir-rapport taghha l-Awtorita' kkummentat kif gej:-

"5.1 The appellant is presenting the following grounds for appeal:

- The existing farm is covered by several planning permits, and the broiler unit subject to sanctioning is located within the approved boundary wall.
- The existing farm is to be divided between two brothers (subject to PA 3041/09). However the broiler capacity of the farm will not increase due to the division of farm; i.e. the appellant requires this permit to maintain the quota he was granted by the Department of Agriculture.

5.2 The Directorate has the following comments to make:

5.2.1 This application is requesting to sanction an additional Broiler Unit (unit G) constructed within the boundaries of an established and operational broiler farm. The broiler farm has been established by the approval of permits PAPB 3377/88 and PA 5130/01. In permit PA 5130/01, the farm boundary walls were established, and the additional broiler unit has been constructed within the confinements of this wall.

However, the broiler unit being applied for sanctioning in this application is subject to condition 5 of previous permit PA 5130/01, which stipulates that within ten months all structures NOT shown on approved drawing PA5130/01/151C shall be demolished. Thus the broiler unit being applied for sanctioning in this application should have been demolished by the 25 August 2008. Furthermore, condition 6 of the same permit imposed a bank guarantee of Lm 2,000 to ensure compliance with condition 5. Hence, it is clear that the approval of PA 5130/01 was subject to the implementation of these works.

In this respect, the application has been submitted in order to regularise this broiler unit and hence is requesting the waiving of condition 5 of permit PA 5130/01.

5.2.2 Eligibility of Building for Animal Breeding

Policy 2.3A of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables stipulates that:

where the existing livestock farm unit is already operating within a scheduled, listed, designated or protected

- Area of Ecological Importance or Site of Scientific Importance (Level 3 / Level 4), or
- Area or Site of Archaeological Importance, or
- Area of High Landscape Value,

and the site of the proposed development is not of ecological, scientific, landscape, cultural or archaeological value per se, the Authority may grant permission for the upgrading of the existing farm, provided that:

- the proposed development would not have an adverse impact on the scheduled, listed, designated or protected natural, cultural and/or landscape features and their setting, in accordance with the general policies in this document; and
- the applicant submits official statements from the Department of Agriculture and the Food and Veterinary Regulation Division stating, to the satisfaction of MEPA, that the proposed upgrading is essential to meet official standards on waste management, hygiene and/or animal welfare and the proposal will not result in an increase in the total number of livestock units on the farm at any one time; The site in question lies partly within the buffer zone (level 3 AEI) of Wied ta' Mgarr ix-Xini and is also scheduled as a Level 1 Site of Scientific Importance due to its geological features.

The broiler unit under consideration is not aimed at upgrading the farm, but at increasing the capacity of the farm. Hence the proposed sanctioning is not in line with the criteria 4 of this policy which permits only the development of farms aimed at upgrading the farm to meet official standards on waste management, hygiene and/or animal welfare and does NOT permit proposals that will result in an increase in the total number of livestock units.

The appellant is maintaining that the sanctioning of the broiler unit will not increase the quota allotted to him on site by the Department of the Agriculture. The Authority agrees with this statement but notes that the quota granted by the Department of Agriculture is based on a structure/broiler unit that is not covered by permit and therefore illegal. This means that granting this permit will increase the capacity permitted on site by way of PA5130/01.

5.2.3 Visual Aspect and Landscaping

As previously mentioned, this application is requesting to sanction an additional Broiler Unit (unit G) constructed within the boundaries of an established and operational broiler farm. The broiler unit being applied for sanctioning has a footprint of 430 sqm and consists of a slanted roof top constructed in corrugate steel sheeting. The apex of the roof measures 4 metres from the floor level, and these sides measure 2.6 metres.

The main concern is the close proximity of the broiler unit to the Mgarr ix-Xini valley ridge. It is again noted that condition 5 of permit PA5130/01 imposed the demolition of the building and the consequent restoration of the area. As per minute 121 in PA 5130/01, DCC had indicated that the area occupied by broiler unit E is restored. The appellant had accepted this request.

The proposed sanctioning of the broiler unit thus runs counter to policy 1.3A of the Policy & Design Guidance for Agriculture, Farm Diversification and Stables (2007) which specifies that the proposed development which would have an unacceptable adverse impact on the surroundings will not be permitted. The proposal also runs counter to Structure Plan policy AHF 5 which specifies that buildings essential to agriculture will be permitted provided that they blend with the rural landscape through the use of random rubble, or be hidden from views. Similarly the proposal runs counter to Structure Plan policies RCO 2 and RCO 4 due to the creation of negative visual impact in the ODZ."

In vista tal-eccezzjoni tal-Awtorita' li ma jistax jsir sanctioning fuq art skedata, registrata fil-verbal tas-seduta tal-14 ta' April 2011, l-Perit Emanuel Vella ghall-appellant, b'nota pprezentata fil-21 ta' Frar 2012 ssottometta s-segwenti:

"The following are our submissions with regard to the above appeal. In the first place, the appellant is reproducing the grounds for appeal as follows:

The Authority is asserting that this Tribunal cannot hear and decide on the merits of this appeal because the proposed development is to sanction illegal development in a scheduled area. It is quoting Article 70 (1) and Schedule 6 (2) of Act X of 2010 (Environment and Development Planning Act) which states that no development may be regularised in scheduled property.

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Appellant humbly submits to this Tribunal the following with regards to this assertion by the Authority:

a) Article 70 (1) and Schedule 6 (2) of Act X of 2010 makes reference to "An application to regularise a development in a scheduled property" This property, i.e. the broiler unit, is not shown on Map 14.13-E of the Gozo and Comino Local Plan. Hence the broiler unit is not scheduled. It is the area which is scheduled.

b) As a matter of fact, neither the site of the existing third party farm nor the site itself on the northern side of applicant's farm are scheduled. This farm is shown on Map 14.15-E.

c) Article 70 (1) and Schedule 6(1) of Act X of 2010 states that an application to regularise an increase in the approved footprint or increase in the approved volume of a registered livestock farm and carried out before May 2008 and which falls outside areas designated for development may be considered and granted. Applicant's farm is a registered livestock farm. This broiler unit has been built prior in 2001, i.e. well before 2008.

d) Without prejudice to the above, MEPA failed to identify this existing farm complex when the scheduling of this area was carried out, because otherwise this farm would not have been scheduled similar to the third party farm abutting appellant's farm on the northern side.

e) This farm complex started operating by virtue of permission PAPB3377/88, i.e. it well before 1992 and before the scheduling of the area took place.

Further points are as follows:

i. As previously stated in points (d) and (e) above the appellant has a valid permit on site. In other words the area has been accepted as an area for the activity of a broiler farm by means of PAPB 3377/88. Thus the USE of the area for a broiler farm is a statement of FACT covered by appropriate permits.

ii. The applicant's intention is to increase the use of the area for broiler farm.

iii. It is a given FACT that it would be better for the relative area to have an increase in use than to have a different area to be used as a broiler farm. The locality is far from habitation and as such is appropriate for use as a broiler farm due to its locality.

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iv. Any application for a new broiler farm in any locality would fail a number of OOZ tests which, it is our opinion do not apply to the locality in question.

v. Although it is true that the application is for sanctioning, it is, we believe, necessary for the Board to look at the relative application in its totality - in other words the application is sanction a use within an area that has been in general already been given the green light for use as a broiler farm.

vi. This has created, in our opinion, an element of vested right in favour of the application - regarded as always as a whole.

vii. Furthermore it has been reported in the press as follows (Malta Today):

In December, the Malta Environment and Planning Authority board has ruled that illegalities in scheduled zones - including Natura 2000 sites – and scheduled monuments can still be sanctioned, if the applications were presented before January 2011.

The Environment and Development Planning Act, which came in force in 2011, rules out the sanctioning of illegalities in scheduled zones mentioned in Section 6 of the Environment and Planning Act.

Before the law was approved, MEPA could approve any illegal development, irrespective of whether it was located in a scheduled site or not.

This means that MEPA will not accept any applications to sanction illegalities in scheduled sites presented after 1 January 2011, it will still process applications presented before that date.

In a meeting held in December, the MEPA board gave its "interpretation" of the law after being faced with an application to sanction illegalities in a scheduled zone presented before 2011, a MEPA spokesperson confirmed.

According to the spokesperson the MEPA Board confirmed the "interpretation" that Schedule 6 which regulates the issue of sanctioning in ODZ, scheduling properties and scheduled areas could not be applied retroactively but only applies for applications submitted after 2011.

While MEPA can still refuse these applications if these are deemed to conflict with other policies and laws, MEPA will not automatically exclude them.

But the law as it stands does not make any reference to the January 2011 cut-off date and simply states that MEPA cannot sanction illegalities in scheduled zones.”

L-Awtorita' rrispondiet bis-second statement, fejn kkummentat kif gej:

"1.2.1 Re: Scheduling of the area

The Authority finds the argument that it is the area which is scheduled and not the broiler unit rather poor. Of course it is the area that is scheduled and not the broiler unit, but that broiler unit is within a scheduled area and should abide to the policies that regulate such designated land.

The appellant also makes another poor argument when stating that the farm was established prior to the scheduling and thus the Authority should have taken this into account. Apart from the fact that no appeal by the appellant against the scheduling ever took place, the scheduling took place originally in 2001, before the first application to sanction illegalities was approved (in 2007).

The scheduling was confirmed after a laborious study of the area which took into consideration the existing legitimate development in the area and found that this does not detract from the value of the area. However, obviously, illegal development does not form part of the equation since by definition this should not even exist. Therefore whilst the original development was deemed to have a limited impact on the area, further development is clearly not acceptable especially when this was made clear in the conditions of permit PA5130/01.

The site in question is protected as the buffer zone of a Level 3, Area of Ecological Importance of Wied ta' Mgarr ix-Xini and as an Area of High Landscape Value of Ta' Cenc Coastal/Rural Landscape. Moreover, the area is scheduled as a Level 3, Area of Ecological Importance, Mgarr ix-Xini Valley sides. In this regard, the existing broiler unit runs counter to criteria 3 of policy 2.3A of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables.

1.2.2 Relation of the application vis-à-vis PA5130/01

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This application is requesting to sanction an additional broiler unit (labeled as Unit G on plans) constructed within the boundaries of an established and operational broiler farm. However, the broiler unit being applied for sanctioning in this application is subject to condition 5 of previous permit PA5130/01, which stipulates that within ten months all structures NOT shown on approved drawing PA5130/01/151C shall be demolished. Thus the broiler unit being applied for sanctioning in this application should have been demolished by 25th August, 2008.

Having a permit for a farm on site does not entitle the appellant to construct any ancillary facility he deems fit as the appellant seems to imply. Furthermore, condition 6 of the same permit imposed a bank guarantee of Lm 2,000 to ensure compliance with condition 5. Hence, it is clear that the approval of PA 5130/01 was subject to the removal of this particular broiler unit. Not removing this broiler unit would in effect invalidate the reasons for granted PA5130/01 which was based on the mitigation of the impacts upon the visually and environmentally sensitive area.

The broiler unit under consideration is not aimed at upgrading the farm, but at increasing the capacity of the farm. Hence the proposed sanctioning is not in line with the criteria 4 of policy 2.3A, which permits only the development of farms aimed at upgrading the farm to meet official standards on waste management, hygiene and/or animal welfare and does NOT permit proposals that will result in an increase in the total number of livestock units in scheduled areas."

Ikkunsidra ulterjorment:

L-appellant qed jitlob li jigi sanzjonat broiler unit; li jinsab fi Triq tas-Salvatur, Xewkija, barra z-zona tal-Izvilupp. Is-sit jinsab, in parti fil-buffer zone (level 3AE1) ta' Wied ta' Mgarr ix-Xini, u hu skedat bhala Level 1, Site of Scientific Importance, minhabba l-prezenza ta' karatteristici geologici.

Ir-razzett ghat-trobbija tat-tigieg hu kopert b'diversi permessi, u s-sit jinsab aktar minn 600m mill-konfini tal-izvilupp tax-Xewkija.

Ir-razzett jinsab fuq parti gholja mill-Vallata' ta' Wied ta' Mgarr ix-Xini, li hu skedat billi hu sit ta' Importanza Xjentifika.

Hargu s-segwenti permessi fuq is-sit:

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PAPB 376/93/3377/88

Permess li hareg fil-21 ta' Jannar 1993 ghall-kostruzzjoni ta' razzett, fodder store, slaughter room, freezer room u ufficcju.

PA 3485/93

Gew approvati xi ziediet; b'mod li l-izvilupp approvat kien ta' "two layer units, a fodder store and an underground water reservoir".

Harget Enforcement Notice ECF 956/01 billi saru ziediet mhux awtorizzati

PA 5130/01

Permess tal-25 ta' Ottubru 2007 "To sanction two additional broiler units and re-location of existing three broiler units."

Il-kondizzjoni 5 fl-istess permess 'inter alia' tghid: "Within ten (10) monthss from the date of this permit notice, all structures, not shown on approved drawing PA 5130/01/151C shall be demolished."

Il-kondizzjoni 6 timponi garanzija bankarja ta' €4,658.75 – propju biex tigi assikurata l-adesjoni mal-kundizzjoni numru 5.

L-Awtorita' fir-rapport taghha ghamlet referenza ghal diversi Policies, partikolarment:

BEN 1, BEN 5, SET 11, SET 12, AHF 5, AHF 9, RCO 2, RCO 4 u RCO 32 tal-Pjan ta' Struttura;

I-Policy G2-UTIL-7 tal-Gozo and Comino Local Plan (2006)

Policy 1.3A; 2.3A tal-Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007).

Kif korrettement irrilevat l-Awtorita' fir-rapport taghha; l-broiler unit, mertu ta' din l-applikazzjoni, li qed jintalab li jigi snazjonat, kien s-suggett tal-kondizzjoni numru 5 tal-Permess precedenti PA 5130/01.

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Kif intqal supra dak l-permess kien suggett ghal kondizzjoni li dan il-broiler unit kellu jitnehha fi zmien 10 xhur, cjoe sal-25 ta' Awwissu 2008; billi dan ma kienx jidher fil-pjanta approvata PA 5130/01/151C.

In oltre, giet imposta kondizzjoni addizzjonali, kondizzjoni numru 6, konsistenti f'garanzija bankarja fl-ammont ta' (Lm2000) €4658.75, propju biex tigi assikurata l-ottemperanza tal-kondizzjoni precedenti.

Bl-applikazzjoni prezenti ghalhekk l-appellant qed effettivament jitlob r-revoka ta' dawn iz-zewg kondizzjonijiet fil-permess precedenti, proposta li ma tistax tigi accettata billi l-permess precedenti kien soggett ghal diversi kondizzjonijiet, fosthom dawk numri 5 u 6.

Kif ukoll korrettement irrilevat l-Awtorita' l-proposta' mhix wahda ta' 'upgrading' tal-operat tar-razzett tat-trobbija tat-tigieg, izda hi wahda ta' zieda fil-produzzjoni. Din hi in kontravvenzjoni tal-Policy 2.3A tal-Policy and Design Guidance on Agriculture, Farm Diversification and Stables, li f'certi cirkostanzi partikolari tippermetti upgrading; izda ma tippermettix ziediet fil-produzzjoni tal-flieles.

Billi s-sit partikolari hu wiehed sensitiv u skedat, l-iskala tal-izvilupp hi ukoll in kontravvenzjoni tal-Policy 1.3A tal-Policy and Design Guidance for Agriculture, Farm Diversification and Stables (2007) billi l-izvilupp ghandu impatt negattiv f'din iz-zona partikolarment sensitiva u ghalhekk in kontravvenzjoni wkoll tal-Policies AHF 5, RCO 2 u RCO 4 tal-Pjan ta' Struttura.

Ezaminata fid-dettal l-proposta tal-appellant, l-motivazzjonijiet tar-rifjut u l-aggravji tal-appell fil-kuntest tal-Policies tal-lppjanar rilevanti, l-appell ma jimmeritax konsiderazzjoni favorevoli.

It-Tribunal ghalhekk qed jiddisponi minn dan l-appell billi jichad l-istess, u jikkonferma r-rifjut tat-2 ta' Frar 2011 ghall-applikazzjoni PA 7143/07

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

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1. In-nuqqas tat-Tribunal li jissospendi l-prolazzjoni tad-decizjoni billi skond l-Avviz Legali 158/2013 l-Awtorita inghatat il-vires li tissospendi iprocessar ta' applikazzjoni li tista' tigi impattata b'xi policy li jkun thabbar qed tigi emendata. F'dan il-kaz il-policy li tirrigwarda din l-applikazzjoni ser tigi emendata u ghalkemm it-Tribunal intalab li jissospendi l-kontinwazzjoni tal-appell, din it-talba giet michuda. F'okkazzjonijiet ohra pero, talbiet simili gew milqugha mit-Tribunal. L-appellant kellu jigi trattat bl-istess mod bhal haddiehor speċjalment meta tibdil fil-policy seta jimpatta d-decizjoni odjerna;

2. It-Tribunal zbalja meta qal li l-appell ma setghax jintlaqa' ghax l-applikazzjoni keinet intiza biex tvarja kundizzjoni kontenuta f'permess precedenti. Dan ma jsibx sostenn legali u ghalhekk it-Tribunal inkorra zball ta' ligi.

L-ewwel aggravju

Ghalkemm din il-Qorti tissimpatizza mal-appellant jekk it-Tribunal f'okkazzjonijiet issospenda l-prolazzjoni ta' decizjoni f'kazijiet simili ghal dan cioe fejn ikun thabbar li sar tibdel fil-policy, pero kif inghad fid-decizjoni ta' din il-Qorti kif kompsota fuq din il-materja, l-Avviz Legali 158/2013 rabat lil Awtorita biss b'tali dispozizzjoni izda halla liberu lit-Tribunal li jiddeciedi hu jekk ghandux jilqa' jew le talba ghal sospensjoni minhabba xi tibdil li fil-futur ser isir fil-policy mertu tal-vertenza. La darba il-ligi mhix tassattiva, it-Tribunal kellu kull dritt juza d-diskrezzjoni li thallielu cioe li jiddeciedi l-vertenza a bazi tal-policies vigenti fil-mument li l-vertenza tithalla ghad-decizjoni. Sakemm ma ghandux rabta mod iehor, it-Tribunal ghandu hu juza d-diskrezzjoni tieghu sabiex jiddeciedi jilqghax jew jirrifjutax talba ghal sospensjoni ta' prolazzjoni ta' decizjoni. Il-Qorti tirreferi ghad-decizjoni fl-appell **Jason Mifsud vs L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar** deciza fis-26 ta' Marzu 2014 fejn intqal hekk:

L-artikolu 9(2) tal-Avviz Legali 514/2010 kif emendat ighid kif gej:

(b) Kull meta is-Segretarju Parlamentari jikkommunika lill-Awtorita li policy partikolari qed tigi riveduta, il-perit u l-applikant ta' kwalunkwe applikazzjoni, li fl-opinjoni tal-Awtorita, tista' tigi milquta b'tali policy, ghandhom jigu notifikati bir-revizjoni pendenti ta' tali policy.

(c) L-Awtorita ghandha tissospendi applikazzjoni kif provdut fil-paragrafu (d) ta' dan is-subregolament, fuq talba ta' perit jew applikant li jigu notifikati fit-termini tal-paragrafu (b) ta' dan is-subregolament, wara li l-perit jew l-applikant jircievu r-rapport imsemmi fis-subregolament (4) tar-regolament 8.

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(d) Is-sospensjoni imsemmija fil-paragrafu (c) ta' dan is-subregolament ghandha tibqa' fis-sehh sakemm il-policy li qed tigi riveduta tidhol fis-sehh jew sakemm il-perit jew l-applikant jirtiraw it-talba ghas-sospensjoni. Tali sospensjoni f'kull kaz m'ghandiex tigi estiz ghal perijodu ta' aktar minn sena kalendarja.

Hu car illi din l-emenda tirreferi ghal fazi meta l-applikazzjoni ghadha mhux deciza u hi intiza specifikament ghal fazi meta l-applikazzjoni ghadha pendenti quddiem l-Awtorita. Imkien f'din l-emenda ma jidher li t-Tribunal ta' Revizjoni hu marbut b'din l-emenda. Mhux minnu, kif argumentat, li t-Tribunal hu estensjoni tal-Awtorita. It-Tribunal jirrevedi decizjonijiet tal-Awtorita u hu indipendenti u awtonomu mill-Awtorita b'funzjonijiet differenti minn dawk tal-Awtorita tant li l-istess Awtorita ghandha dritt tappella quddiem it-Tribunal. Mill-mument tad-decizjoni taghha l-Awtorita hi soggetta ghal decizjoni tat-Tribunal jekk isir appell mid-decizjoni taghha. Hu minnu illi t-Tribunal hu marbut mal-policies fil-mument li jkun ser jaghti d-decizjoni pero sakemm il-policies fil-mument tad-decizjoni huma riflessi fl-istess decizjoni ma hemm xejn li jostakola lit-Tribunal li jiddeciedi appell. Hu kontro sens li kwistjoni deciza izda soggetta ghal appell tigi sospiza ghax l-Awtorita tkun giet infurmata li qed tigi kunsidrata bdil ta' policy. Dan ma jbidel xejn mill-fatt li decizjoni tkun gia ttiehdet li tkun soggetta ghal appell fuq il-kwistjonijiet hemm decizi. Ma jfissirx li t-Tribunal ma ghandux diskrezzjoni jissospendi ghal zmien ragonevoli milli jaghti decizjoni pero tali diskrezzjoni fil-fehma tal-Qorti ma ghandhiex tigi uzata jekk mhux f'kaz eccezzjonali ghax l-obbligu primarju tat-Tribunal bhal Qorti hu li jiddeciedi appelli minn decizjonijiet fuq il-ligijiet applikabbli fiz-zmien tas-smigh tal-appell u b'mod tali li ma jiddelungax. Bl-istess argument xejn ma josta lil appellant li jirrinunzja ghal appell jekk jidhirlu li meta jekk qatt jinbidlu l-policies jew jigu riveduti, ser ikollu aktar cans ghal ezitu favorevoli minn applikazzjoni maghmula specifikament regolata minn policy riveduta jew mibdula.

Hi kwistjoni differenti jekk l-appellant qed jilmenta minn xi forma ta' diskriminazzjoni bejn kaz u iehor meta ntabab is-sospensjoni, pero din hi kwistjoni li trid tingieb quddiem il-forum kompetenti u mhux din il-Qorti li mhix fil-mansjoni taghha tiddeciedi kwistjonijiet simili.

Ghalhekk dan l-aggravju qed jigi michud.

It-tieni aggravju

Dan l-aggravju wkoll ma ghandux mis-sewwa ghax ma jirrispekkjax il-gudikat tat-Tribunal. It-Tribunal f'dan il-kaz ma qalx illi kundizzjoni f'permess precedenti ma tistax tigi mibdula izda li

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kondizzjoni ossia ordni li kienet sine qua non ghal hrug tal-permess fl-approved drawing PA 5130/0/151C cioe t-tnehhija tal-broiler unit li ma jidhrux fl-approved drawing ma gietx ottemperata. Din ma tistax tigi mibdula b'semplici sanzjoni billi si tratta ta' ordni ta' tnehhija t' illegalita li permezz taghha seta' jinhareg permess. Kien ikun differenti l-kaz kieku qed jintalab sanzjoni ta' illegalita mhix koperta b'permess pero hawn si tratta ta' vjolazzjoni sfaccata ta' kondizzjoni primarja tal-permess cioe ordni ta' tnehhija li qed jintalab tigi eliminata b'semplici applikazzjoni sanatorja. Allura wiehed jistaqsi x'kienet ir-raguni ghal hrug tal-permess b'dik l-ordni li biha intrabat l-appellant li jottempera ruhu maghha.

Apparti dan kollu hu skorrett l-appellant li din kienet il-bazi tad-decizjoni billi qari tad-decizjoni turi illi t-Tribunal ikkunsidra n-natura tal-izvilupp mhix bhala wahda ta' upgrading izda ta' zieda fil-produzzjoni kontra dak li jipprovi l-policy 2.3A tal-policy and Design Guidance on Agriculture, Farm Diversification and Stables, u l-impatt negattiv li jista' jigi krejat bl-izvilupp f'sit sensitiv u skedat u ghalhekk in kontravenzjoni ta' policies AHF 5, RCO 2 u RCO 4 tal-pjan ta' struttura.

Decide

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

Bl-ispejjez kontra l-appellant.

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