MALTA

QORTI CIVILI

PRIM' AWLA

(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF

JOSEPH ZAMMIT MC KEON

Seduta tas-27 ta' Novembru, 2014

Rikors Numru. 17/2010

Joachim maghruf bhala Jack Galea

kontra

L-Avukat Generali

u

l-Awtorita` ta` Malta dwar l-Ambjent u l-Ippjanar

Il-Qorti :

I. Preliminari

Rat ir-rikors prezentat fid-19 ta` Frar 2010 li jaqra hekk –

Illi r-rikorrent huwa l-proprjetarju ta` porzjon art fi Triq il-Gebla tal-General, ossia Fungus Rock Street, San Lawrenz, Ghawdex, bil-kejl ta` tmint itmiem, pari ghal tmint elef, disa` mija u tnejn u disghin metri kwadri (8,992 m.k.), li tmiss min-Nofsinhar in parti mat-triq u in parti ma` beni tal-ahwa Grima, mil-Lvant ma` beni tal-Knisja u mill-Punent ma` beni tal-Gvern ;

Illi huwa kien applika u sussegwentement kien inghata permess mill-Planning Area Permits Bord, sabiex jibni villel u garaxx ghall-karozzi privati fuq din l-art, skond il-permessi datati tnejn u ghoxrin ta` Jannar tal-elf disa` mija u sitta u tmenin (22.1.1986) (Numru tal-files 198/86/2887/83) u iehor tat-tnax ta` Settembru tal-elf disa` mija u hamsa u tmenin (12.IX.1985) (Numru tal-permess 3171/85/2943/83) ;

Illi fid-dsatax ta` Settembru tal-elf disa` mija u sitta u tmenin (19.IX.1986) l-esponenti debitament hallas l-alignment contribution fl-ammont ta` tlett mija u sitta u erbghin Lira Maltija, tlieta u ghoxrin centezmu u sitt millezmi (Lm 346.23.60) (Ricevuta numru G324483) u fil-fatt inghata mill-awtoritajiet tal-Public Works, il-linja u l-livell fuq il-post u wara nghatat il-Building Declaration.

Illi dawn il-permessi kienu sussegwentement gew rinovati mill-istess Bord fi Frar tal-elf disa` mija u sebgha u tmenin (1987) u Dicembru tas-sena elf disa` mija u sitta u tmenin (1986) rispettivament ;

Illi l-esponenti qatt ma rcieva avviz ta` tigdid ta` dawn il-permessi, nonostante l-approvazzjoni tal-istess rinnovazzjoni mill-Planning Area Permits Board, f`Board Meetings ta` Dicembru tal-elf disa sitta u tmenin (1986) u Frar tal-elf disa` mija u sebgha u tmenin. Skond il-prassi normali, wara l-approvazzjoni tal-permessi u/jew rinnovament taghhom, l-applikant jircievi l-permess relattiv jew rinnovazzjoni, partikolarment wara li jkun gie accertat li r-road contribution tkun gia` thallset mill-applikant ;

Illi minkejja l-approvazzjoni mill-imsemmi, l-esponenti baqa` ma rceviex l-avviz ta` rinnovazzjoni, u dan bi ksur tal-obbligi inerenti ghall-funzjonijiet tal-konvenuti ;

Illi dan l-agir abbuziv, illegali u negligenti rrizulta f`danni kbar ghall-esponenti billi sussegwentement, u wara li nbidlet l-amministrazzjoni u maghha l-policies, l-esponenti rcieva avviz ta` rifjut fis-sbatax ta` Novembru tal-elf disa` mija u tmienja u tmenin (17.XI.1988). Id-dewmien bla bzonn u ngustifikat tal-konvenuti li jibghatu lill-esponenti l-avviz ta` rinnovazzjoni, jikkostitwixxi htija gravi da parti taghhom li tintitola lill-attur ghar-rizarciment tad-danni sofferti ;

Illi l-funzjonijiet allura moghtija lill-Planning Area Permits Board illum gew bil-ligi vestiti fl-Awtorita` ta` Malta dwar l-Ambjent u l-Ippjanar ;

Illi in vista ta` dan l-agir li fil-fehma tal-esponent kien abbusiv l-esponent ipprova jesercita kawza ta` stharrig gudizzjarju bhala r-rimedju ordinarju ghalih disponibbli skond il-ligi ; illi dan ghamlu bil-presentata fil-qrati tac-citazzjoni numru 72/96 fl-ismijiet `Jack Galea v Direttur Generali tax-Xoghlijiet et` fejn talab lill-Qorti : "1. Tiddikjara illi l-agir tal-konvenuti jew ta` min minnhom, li minkejja l-approvazzjoni mill-Planning Area Permits Board, irrifjutaw li jinnotifikawh bl-estensjoni tal-permess fuq imsemmi, kien illegali u abbuziv u bi ksur tal-jeddijiet tieghu ; 2. Konsegwentement, tiddikjara lill-konvenut jew min minnhom, responsabbli ghad-danni kollha sofferti mill-attur ; 3. Tillikwida dawn id-danni ; 4. Tikkundanna lill-konvenuti jew min minnhom

sabiex ihallsu lill-attur l-ammont hekk likwidat ; 5. Inoltre, taghti dawk ir-rimedji l-ohra kollha opportuni, inkluz billi tordna lill-konvenuti sabiex jipprocedu ghar-renova tal-permessi s`issa ngustament rifjutati. Bl-ispejjez."

Illi dina l-kawza ntentata mir-rikorrent giet definittivament deciza mill-Qorti tal-Appell fid-9 ta` Jannar 2009, b`liema t-talbiet tieghu gew kollha michuda, u wara li ntenta ritrattazzjoni anke din ir-ritrattazzjoni giet michuda bis-sentenza tal-5 ta` Ottubru 2009, u dan kollox bl-ispejjez kontra tieghu ;

Illi bhala provi huwa jixtieq jaghmel riferenza ghall-inkartament u d-dokumenti kollha gia` minnu esebiti fil-fuq imsemmija kawzi ;

Illi huwa ghalhekk esawrixxa kull rimedju ordinarju disponibbli ghalih imma jirritjeni li bl-agir fuq deskritt gew lesi d-drittijiet fondamentali tieghu ta` proprjeta`, ta` smigh xieraq u li ma jigix diskriminat fit-tgawdija tad-drittijiet fondamentali tieghu ; illi l-esponent jissottometti bir-rispett li l-proceduri quddiem l-awtoritajiet kompetenti ghall-otteniment tal-permess tieghu ghall-izvilupp kien jikkostitwixxu decizjoni dwar id-drittijiet civili tieghu u ghalhekk l-awtoritajiet kienu marbutin li jaghtu smigh xieraq fi zmien ragonevoli. F`dan l-awtoritajiet naqsu lamentevolment ghaliex jidher evidenti mill-inkartament kollu li la tawh smigh xieraq u lanqas agew fi zmien ragonevoli. F`dan l-awtoritajiet naqsu lamentevolment ghaliex jidher evidenti mill-inkartament kollu li la tawh smigh xieraq u lanqas agixxew fi zmien ragonevoli. Infatti jidher evidenti li ddeciedew li kellu johrog il-permess u wara li hadu din id-decizjoni minghajr l-ebda informazzjoni lir-rikorrent baqghu ma hargux dak il-permess meta huma kienu gia` hadu decizjonijiet fir-rigward li dak il-permess kellu johrog ; dan ghamluh billi hallew lir-rikorrent kompletament fil-ghama ma tawh l-ebda informazzjoni, injora kull dritt lilu spettanti u finalment hadu decizjoni li l-permess ma kellux johrog tant li l-istess qorti rinfaccjat b`dawn il-proceduri waslet li ddecidiet li r-rikorrent ma kellux permess meta jidher b`aktar mod car mill-inkartament esebit fl-atti tal-kawzi fuq imsemmija li l-awtoritajiet kienu hadu decizjoni li l-permess kellu jigi mahrug u mgedded imma mbaghad baqghu ma ghamlu xejn ; f`dan ir-rigward huwa sinjifikanti hafna l-ittra mahruga mid-dipartiment koncernat fil-11 ta` Mejju 1987 fejn il-perit tar-rikorrent gie ufficjalment informat li x-xoghol isir fil-fond ghal-liema r-rikorrent kien applika; dan juri bic-car li decizjoni kienet ittiehdet li l-permess kellu jinhareg ;

Illi ghalhekk huwa evidenti li kien hemm nuqqas ta` smigh xieraq anzi ma kien hemm l-ebda smigh u l-awtoritajiet hadu zmien twil u rragonevoli biex jaslu ghad-decizjonijiet taghhom ;

Illi inoltre billi r-rikorrent kien fil-pussess ta` permess ta` bini li kellu jgedded in-negazzjoni tat-tigdid ta` dan il-permess kienet tammonta ghat-tehid tal-proprjeta` tar-rikorrent minghajr ebda kumpens u b`mod, specjalment in vista tad-decizjonijiet sussegwenti tal-istess awtorita` dwar it-tigdid, li giet vjolat fir-rispett tieghu d-dritt tieghu ghall-proprjeta` kif protetta mill-artikolu 1 tal-ewwel protokoll ;

Inoltre kien hemm ukoll diskriminazzjoni projbita ghaliex huwa fl-ordini naturali tal-affarijiet li meta jittiehdu decizjonijiet dawn jigu komunikati u l-permessi jinhargu u fil-kaz tal-esponent ma nghatat l-ebda raguni ghaliex huwa gie trattat differentement minn diversi kazijiet ohrajn rigwardanti hrug ta` permessi ghall-bini. Ghalhekk jirrizulta li huwa gie diskriminat sija f`dak li jirrigwarda t-tgawdija da parti tieghu tal-proprjeta` tieghu sija f`dak li jirrigwarda l-hrug tal-permess ;

Illi bhala rizultat ta` dan kollu l-esponent sofra danni ingenti konsistenti fit-telf tal-izvilupp u telf ta` qligh li huwa kien ser jaghmel mill-istess zvilupp liema danni jigu ppruvati fil-kors tas-smigh tal-kawza ;

Ghaldaqstant l-esponent jitlob bir-rispett li dina l-Onorabbli Qorti joghgobha tiddeciedi li bl-agir fuq imsemmi l-awtoritajiet kompetenti vvjolaw id-drittijiet fondamentali tar-rikorrent kif protetti bil-fuq imsemmija artikoli tal-Konvenzjoni Ewropea tad-Drittijet Fondamentali tal-Bniedem u cioe` l-artikoli 6, 14 u l-artikolu 1 tal-Ewwel Protokoll ta` dik il-konvenzjoni u taghtih ghalhekk kull rimedju xieraq u opportun biex tigi rimedjata dina l-vjolazzjoni, u fost hwejjeg ohra imma mhux esklussivament : 1. ordni biex jinhareg lilu t-tigdid tal-permess ghall-izvilupp fuq imsemmi, u 2. likwidazzjoni u hlas ta` danni minnu sofferti minhabba l-agir fuq imsemmi.

Bl-ispejjez u b`ingunzjoni tal-intimati ghas-subizzjoni.

Rat ir-risposta ta` l-Avukat Generali prezentata fit-8 ta` Marzu 2010 li taqra hekk –

1. Illi fl-ewwel lok l-ilment tar-rikorrent huwa bbazat essenzjalment fuq zewg allegati approvazzjonijiet ghal tigdid ta` permessi. Dawn l-allegati approvazzjonijiet sehhew, dejjem skond ir-rikorrent, f`Dicembru 1986 u Frar 1987 b`decizjoni tal-Planning Area Permits Board (PAPB) li dak iz-zmien kien l-awtorita` kompetenti fil-materja. Ir-rikorrent jallega li l-awtoritajiet m`agixxewx biex iwettqu dawn id-decizjonijiet, li skond hu suppost li gew ikkomunikati lilu fi zmien ragjonevoli, prezumibbilment fi zmien massimu ta` xahar minn meta inghataw.

Izda l-esponent qieghed jeccepixxi illi l-fatti principali li fuqhom ir-rikorrent qed jibbaza l-pretizi drittijiet tieghu sehhew kollha fi zmien li jigi qabel April 1987, id-data meta saret applikabbli ghall-iStat Malti l-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem. Ghalhekk, ai termini ta` l-artikolu 7 tal-Kap. 319, din il-Qorti ma tistax tiehu konjizzjoni ta` l-ilmenti tar-rikorrent.

2. Illi inoltre u bla pregudizzju ghas-suespost, dan ir-rikors huwa tentattiv ta` appell mhux biss minn appell precedenti izda sahansitra minn ritrattazzjoni wara dak l-appell, kif facilment tista` tizvela perlustrazzjoni anke hafifa ta` l-atti li jirreferi ghalihom l-istess rikorrent. Ghaldaqstant ghandu jigi michud minn din l-Onorabbli Qorti.

L-esponent jirritjeni li l-ksur tad-drittijiet tieghu li qed jallega r-rikorrent jezisti biss fl-immaginazzjoni tieghu u ghal kollox fittizju. Il-veru problema li ghandu r-rikorrent hija li r-rimedji ordinarji li huwa ezawrixxa sal-qigh nett gustament ma tawhx dak li kien qed jippretendi. Ghalhekk issa qieghed jiffabbrika allegazzjoni ta` ksur tad-drittijiet tieghu sabiex ikompli jikkontesta dak li rritjenew il-Qrati kollha li deher quddiemhom dwar il-kaz in ezami, u li issa ghadda definittivament in gudikat.

Konsegwentement, a bazi anke ta` dan il-fatt, ir-rikors odjern ghandu jigi michud, stante li kif gie ritenut mill-qrati taghna kemm civili kif ukoll ta` gurisdizzjoni kostituzzjonali, meta rikors ikun jidher illi jkun intiz biex jerga` jakkwista appell iehor jew ritrattazzjoni ohra ta` sentenza li ghaddiet in gudikat, il-Qorti f`gurisdizzjoni kostituzzjonali ma tistax u m`ghandhiex tinvestiga l-mod kif il-qrati precedenti jkunu waslu ghal tali konkluzjoni, sakemm ma jidhirx b`mod lampanti u indiskutibbli illi jkun sar zball fid-decizjonijiet kollha li jkunu inghataw dwar il-kaz u li jkunu qed jigu attakkati. Dan l-approcc huwa spirat ukoll mill-gurisprudenza stabbilita tal-Qorti Ewropea li thaddan id-duttrini maghrufa bhala l-"quatrieme instance" doctine` u d-duttrina tal-`margin of appreciation`.

3. Illi inoltre u bla pregudizzju ghas-suespost, l-artikolu 6 ma japplikax ghall-kaz in ezami stante li sabiex jinstab ksur ta` dan l-artikolu mill-awtoritajiet f`kazijiet bhal dak odjern jinhtieg illi r-rikorrent ma jkunx jista` jattakka d-decizjoni, f`dan il-kaz tal-Bord ta` l-Appell, quddiem xi tribunal li jhares id-disposizzjonijiet ta` l-artikolu 6. F`dan il-kaz ir-rikorrent kellu din il-possibilta` u ghamel uzu minnha billi fetah kawza amministrattiva fil-Qorti tal-Magistrati ta` Ghawdex (Sede Superjuri) u sahansitra baqa` sejjer sa ritrattazzjoni. Allura l-artikolu 6 ma giex lez f`dan il-kaz billi l-awtoritajiet ma kellhom ebda obbligu taht il-Konvenzjoni li jhallu lir-rikorrent jikkonverti bord ta` decizjoni bhalma kien il-PAPB fi tribunal avversarjali meta kien hemm rimedju adegwat quddiem il-qrati tal-pajjiz.

4. Illi inoltre u bla pregudizzju ghas-suespost, galadarba ma kien hemm ebda tehid ta` proprjeta`, ir-rikorrent ma jistax jilmenta minn ksur ta` l-Artikolu 1 ta` l-Ewwel Protokol. Dan stante li permessi ghall-bini skaduti u irrinovabbli ma jistghu jaghtu ebda lok ghal ilment dwar tehid ta` proprjeta`.

5. Illi inoltre u bla pregudizzju ghas-suespost, stante li l-esponent qed jikkontendi illi ma kienx hemm ksur ta` l-artikoli l-ohrajn tal-Konvenzjoni allegatament lezi fil-konfront tar-rikorrent, lanqas tista` tissussisti xi lanjanza dwar diskriminazzjoni taht l-artikolu 14 tal-Konvenzjoni. Barra minn hekk, jekk kellu xi lmenti dwar diskriminazzjoni r-rikorrent kien messu jressaq il-provi relattivi tul il-proceduri kollha li sehhew s`issa fil-qrati ta` gurisdizzjoni civili. Izda huwa qatt ma ressaq xi prova definita u konvincenti dwar diskriminazzjoni. Ghal din ir-raguni wkoll, ghalhekk, l-esponent jissottometti li din l-Onorabbli Qorti ghandha tirrespingi dan l-ilment.

6. Illi in oltre u assolutament bla pregudizzju ghas-suespost, in kwantu qed jippretendi u jimplika apertament li din il-Qorti ghandha tinjora kull policy u ligi intiza ghall-irregolar ta` l-ippjanar u l-harsien ta` l-ambjent u taghti permess lir-rikorrent jibni fejn kien u ghadu sa llum illegali li jibni, l-ewwel talba tar-rikorrent hija spregjevoli u inakkoljabbli, u se mai, dikjarazzjoni ta` lezjoni tad-drittijiet ta` l-esponent ghandha tkun sufficjenti f`kazijiet ta` din ix-xorta.

7. Illi in oltre u dejjem bla pregudizzju ghas-suespost, ghar-rigward tat-tieni talba tar-rikorrent, kif qed jigi infraespost, ir-rikorrent ma sofra ebda danni li jistghu jigu attribwiti ghal xi htija ta` l-awtoritajiet, u meta ghazel li japplika ghal permess ta` hsara ambjentali bhal dak in kwistjoni (konsistenti fil-bini ta` djar u garages) li prattikament kien ser jissarraf fi sfregju ghall-ambjent tal-madwar, ir-rikorrent kien jaf li kien qed jiehu riskju qawwi. Dan apparti l-moralita` dubbjuza ta` din it-tip ta` applikazzjoni. Ghaldaqstant, lanqas it-tieni talba m`ghandha tintlaqa`.

IL-FATTI

L-esponent jixtieq jaghmel enfasi fuq l-aspett tal-fatti ghax fil-verita` dan ir-rikors fl-essenza tieghu huwa bbazat biss fuq interpretazzjoni hazina tal-fatti ta` dan il-kaz. Ghalhekk l-esponent ma jaqbel xejn ma` hafna mill-fatti esposti fir-rikors odjern.

L-esponent jidhirlu li ghall-ahjar edifikazzjoni ta` din l-Onorabbli Qorti, jaqbel li jispjega punt punt fejn il-fatti msemmija mir-rikorrent huma skorretti :

i) lir-rikorrent kienu nhargulu zewg permessi tal-bini mill-Planning Area Permits Board (PAPB) fit-12 ta` Settembru 1985 u fit-22 ta` Jannar 1986 rispettivament, bil-kundizzjoni espressa li : "The PAPB permit is valid for one calendar year from date of issue". Il-permessi in kwistjoni, li jgibu n-numri ta` riferenza 2943/83 u 2887/83, li r-rikorrent qed jghid li ggeddewlu fi Frar 1986 u Dicembru 1987, fil-verita` QATT ma gew imgedda. Fil-fatt huwa sempliciment ghalhekk li r-rikorrent qatt ma rcieva avviz ta` tigdid ta` imqar wiehed minn dawn il-permessi ;

ii) *il-permessi tar-rikorrent kienu skadew minhabba li r-rikorrent ma kienx beda jibni fis-sena zmien illi kellu. Apparti ragunijiet ohrajn li seta` kien hemm ghall-inattivita` tar-rikorrent, li wasslet ghall-iskadenza tal-permessi, huwa zgur li r-rikorrent kien naqas li josserva kundizzjoni ohra applikabbli ghall-hrug tal-permessi tieghu, jigifieri li : "The public sewer is to be extended up to applicant`s site or the applicant installs a septic tank at his own expense before any building works are to be taken in hand. The Building Inspectors have instructions not to inspect and approve the Damp Proof Course unless the above is adhered to".*

Kif innutat il-Qorti ta` l-Appell fis-sentenza tas-6 ta` Ottubru 2009 :

"Jidher li l-attur ma bediex jibni matul is-sena li l-imsemmija permessi kienu in vigore. Jirrizulta wkoll (ara fol. 505) mill-minuta 31 datata 20 ta` Awwissu 1987 li l-Perit Godwin Cassar kien gie nformat verbalment mill-appellant li l-bini sa dak it-tant kien ghadu ma nbediex.

Jirrizulta li fis-16 ta` Frar 1987 (cioe` aktar minn sena minn meta kienu hargu l-permessi tal-PAPB) il-perit tal-attur applika mad-Dipartiment tas-Sahha biex jinghata permess li jibni cesspit, liema permess inghatalu fl-24 ta` Awissu 1987 (ara fol. 17)."

Ghaldaqstant, il-kagun li skadew il-permessi kien tar-rikorrent stess ;

iii) *il-PAPB QATT ma approva xi wiehed minn dawn il-permessi ; dawn kienu ghadhom taht diskussjoni u kien jonqos input tekniku qabel ma tittiehed id-decizjoni finali dwar jekk ghandhomx jigu mgedda jew le ;*

iv) *ir-rikorrent ghadu jinsisti li jibqa` fl-izball u jghid li gew approvati, u dan a bazi ta` minuta fil-kopja tal-PAPB file tieghu, liema file huwa akkwista b`mod certament irregolari bil-ghajnuna ta` xi impjegat civili, u qaghad imbaghad jipprova jistad fih ghal kwalunkwe kontenut li jista` jaghti ftit kredibilita` lill-pretensjoni tieghu ;*

v) *dik il-minuta, kif jirrizulta mill-atti, kienet biss wahda f`sensiela ta` minuti miktuba waqt li l-process ta` evalwazzjoni ta` l-applikazzjoni ghat-tigdid kien ghadu qed jizvolgi, u kienet parti mill-process ta` preparazzjoni min-naha tat-teknici tad-Dipartiment li kull file kien jghaddi minnu qabel ma jmur ufficjalment quddiem il-PAPB ghad-decizjoni finali ;*

vi) *fil-fatt kien ghad jonqos aktar input mis-sezzjoni teknika tal-Bord, li dak iz-zmien kienu responsabbli ghaliha l-Perit Vince Cassar (aktar tard Direttur ta` l-Ippjanar) u t-tim tieghu. Dan l-input eventwalment kien fis-sens li billi kienu nbidlu l-policies tal-MEPA il-permessi ta` l-attur ma kinux aktar vijabbli ghax kienu nkompatibbli mal-harsien ta` l-ambjent. Dan ukoll jirrizulta mill-atti tal-kawzi precedenti ;*

Ghalhekk l-approvazzjoni li r-rikorrent jghid li kien inghata kienet biss approvazzjoni parzjali u informali espressa gewwa minuta bhala parti minn `work in progress` gewwa file amministrattiv intern, u dan minn sezzjoni wahda tal-Bord. Il-PAPB `as a whole` qatt ma ta l-approvazzjoni tieghu ghax finalment sab li l-permess kien inkompatibbli mal-policies ta` l-ippjanar u ambjent vigenti f`dak iz-zmien. Izda r-rikorrent qabad u silet minuta wahda mill-kopja tal-file indebitament approprjata minnu, li kienet tindika biss opinjoni espressa minn sezzjoni tal-bord, u ssokta jinsisti li din kienet approvazzjoni totali, agri kompletament illogiku u anke qarrieq fl-opinjoni ta` l-esponent ;

vii) *fil-21 ta` Awissu 1987 il-kaz kien tressaq ufficcjalment quddiem il-PAPB, u **dakinhar** il-Bord iddecieda li jirrifjuta li jgedded il-permessi tal-bini. L-appellant gie nformat ufficcjalment b`dan ir-rifjut permezz ta` ittra datata 17 ta` Novembru 1988 (ara fol. 458) ;*

viii) *ghar-rigward tal-hlas tal-contribution` li kien gie mitlub minghand ir-rikorrent, sussegwentement intbaghtu cekk bhala rifuzjoni ta` l-ammont imhallas minnu stante li ma kinux iggeddulu l-permessi. Ta` min josserva li r-rikorrent, kien, fil-fatt, sarraf dan ic-cekk bla ebda riservi ;*

ix) *ghalhekk, galadarba l-`avviz ta` `rinnovazzjoni` pretiz mill-attur kien jokkostitwixxi pretensjoni bla bazi u wahda li huwa stess kien irrinunzja ghaliha meta sarraf ic-cekk tal-kontribuzzjonijiet, l-awtoritajiet ma setghux kienu hatja ta` dewmien fl-ipprocessar tar-rinnovazzjoni inezistenti tal-permessi tar-rikorrent ;*

x) *mhux minnu u ma setax ikun illi b`ittra tal-11 ta` Mejju 1987 il-Perit tar-rikorrent gie nfurmat illi kienu nhargu l-permessi. Sa fejn jaf ir-rikorrent, li sehh f`Mejju 1987 kien li r-rikorrent inghata clearance min-naha tal-contributions section biss, ghax kien hallas l-alignment contribution (li sussegwentement kien accetta rifjuzjoni taghha) ;*

xi) *l-ipprocessar tal-permessi u t-tigdid taghhom kien isir skond ma kienet tipprovdi l-ligi tal-bini u ippjanar ta` dak iz-zmien, u ma kienx ikun hemm xi procedura avversarjali li tinhtieg konsultazzjoni u smigh ta` l-applikanti. Kieku dak li qed jghid ir-rikorrent huwa korrett kieku kull decizjoni li tittiehed minn entita` pubblika tkun trid tigi deciza wara sessjonijiet ta` smigh ta` l-applikanti. F`dan il-kaz l-awtoritajiet kienu diga` talbu minghand l-applikant rikorrent l-informazzjoni kollha mehtiega, u ghalhekk kjarament ma kienx hemm htiega ta` aktar `input` minghandu. Dan billi d-decizjoni li kellha tittiehed kienet wahda fuq bazi purament teknika ta` `planning policy` u ma kienet tirrikjedi ebda konsultazzjoni ulterjuri.*

xii) *l-awtoritajiet ma hadu l-ebda proprjeta` tar-rikorrent. Kwalunkwe permess huwa biss validu sakemm jiskadi, u sakemm jigu osservati l-kundizzjonijiet annessi mieghu, u f`gheluq sena mill-hrug taghhom il-permessi tar-rikorrent kienu skadew. Kien biss fil-poter ta` l-awtoritajiet li jergghu jirrinovawhom o meno. Ghalhekk, huwa rrizorju li wiehed jippretendi li permessi ghall-bini skaduti ghandhom jaghtu lok ghal xi tip ta` ilment dwar tehid ta` proprjeta`.*

xiii) *konsegwentement ma hemm ebda lok ghall-hlas ta` xi danni lir-rikorrent, stante li l-inabilita` tar-rikorrent li jizviluppa l-art tieghu kienet gustifikata skond il-policies ta` l-ippjanar applikabbli, li ma baqghux jippermettu li jsiru sfregji tat-tip li l-binja tar-rikorrent kienet ser tikkawza lill-ambjent Ghawdxi. Fil-fatt, l-izvilupp propost, li kien jikkonsisti fi djar u garages fit-triq fuq imsemmija, ma kienx zvilupp zghir. Il-hsara li kienet issir lill-ambjent kieku r-rikorrent thalla jgedded il-permessi tieghu kienet tkun konsiderevoli, u fil-fatt meta nharget l-ittra ta` rifjut tal-PAPB din inharget `for environmental reasons`.*

Ghaldaqstant, bis-sostenn tar-ragunijiet kollha suespost, l-esponent jitlob bir-rispett li din l-Onorabbli Qorti joghgobha tirrespingi r-rikors ordjern bl-ispejjez kontra r-rikorrent.

Rat ir-risposta guramentata li l-Awtorita` ntimata pprezentat fis-16 ta` Marzu 2010 li taqra hekk –

1) Illi preliminarjament, l-Awtorita` esponenti m`hijiex il-legittimu kontradittur ghat-talbiet tar-rikorrenti ;

2) Illi minghajr pregudizzju ghas-suespost, l-istess talbiet tar-rikorrenti huma daqstant iehor infondati fil-fatt u fid-dritt stante illi :-

a. L-awtoritajiet kompetenti li kienu dak iz-zmien jirregolaw il-hrug tal-permessi ghall-izvilupp kienu approvaw permess originali ghall-izvilupp propost mir-rikorrenti, liema permess kellu terminu ta` validita`, u liema terminu skada ;

b. Illi ma kien jezisti l-ebda obbligu sabiex tali permess jigi fil-fatt imgedded, stante illi kieku kien jezisti tali obbligu, it-terminu ta` validita` tal-permess jigi ma jaghmilx sens ;

c. Illi r-rifjut tat-tigdid inghata ghar-ragunijiet legittimi u a bazi tac-cirkostanzi kollha tal-kaz ;

d. Illi fil-mument li r-rikorrent gie mgharraf illi l-permess tieghu ma kienx se jigi mgedded, ir-rikorrent ma kellu l-ebda permess validu fil-pussess tieghu stante li dan kien skada ferm qabel, u ghaldaqstant, ir-rikorrent bl-ebda mod ma jista` jghid illi kellu xi possediment jew proprjeta` li giet imnehhija lilu b`mod ingust ;

e. Illi fil-valutazzjoni ghat-talba tat-tigdid ta` tali permess, l-Awtoritajiet koncernati kienu uzaw l-istess procedura li a bazi taghha huma kienu kkunsidraw it-talba ghall-permess originali tar-rikorrent, liema procedura kienet dik skond il-Ligi vigenti ta` dak iz-zmien, u r-rikorrent qatt ma lmenta mill-proceduri uzati mill-istess Awtoritajiet meta huwa kien ghamel it-talba u nghata l-permess de quo ;

f. Illi di piu, meta r-rikorrent ma giex lilu mgedded il-permess ta` l-izvilupp, inghata rifjuzjoni tal-kontribuzzjonijiet illi huwa kien hallas, u konsegwentement accetta u akwiexxa ghal tali decizjoni.

3) Illi di piu, it-talbiet tar-rikorrenti huma insostenibbli stante illi bl-ebda mod ma tista` tigi ordnata l-Awtorita` esponenti sabiex hija tohrog permess illi hija qatt ma pprocessat jew kellha talba dwaru quddiemha ;

4) Salvi eccezzjonijiet ulterjuri.

Rat il-lista tax-xhieda ndikati mill-Awtorita` ntimata.

Rat id-digriet taghha moghti fl-udjenza tal-25 ta` Marzu 2010 fejn laqghet it-talba tal-partijiet ghall-allegazzjoni tal-atti tal-kawza fl-ismijiet `*Jack Galea vs Direttur tax-Xogholijiet et*` (Citaz. Nru. 72/1993).

Rat l-atti tal-process allegat.

Rat ix-xiehda bl-affidavit tar-rikorrent u d-dokumenti li kienu annessi.

Semghet ix-xiehda in kontroezami tar-rikorrent.

Rat in-noti ta` osservazzjonijiet tar-rikorrent u tal-Avukat Generali.

Semghet is-sottomissjonijiet tal-ahhar fl-udjenza tat-12 ta` Lulju 2011.

Rat id-digriet taghha moghti fl-udjenza tat-12 ta` Lulju 2011 fejn halliet il-kawza ghas-sentenza.

Rat in-nota ta` osservazzjonijiet li l-Awtorita` ntimata kienet awtorizzata tipprezenta skond digriet taghha moghti fl-udjenza tat-12 ta` Lulju 2011.

Rat l-atti l-ohra tal-kawza.

Ikkunsidrat :

II. <u>Ix-xiehda tar-rikorrent</u>

<u>Ir-rikorrent</u> xehed illi huwa l-proprjetarju ta` porzjon art fi Triq il-Gebla tal-General, San Lawrenz, Ghawdex. Ighid li fl-1983 kien applika mal-PAPB sabiex jizviluppa l-art. Hargu zewg permessi ghall-bini : permess nru PB 3171/85/2943 tat-12 ta` Settembru 1985 : `*to erect villa and garage for private cars*` ; u permess nru PB 198/86/2887/83 tat-22 ta` Jannar 1986 : `*to erect dwellings and garages for private cars*`. In segwitu hallas l-*alignment contribution* fl-ammont ta` Lm 346.23,6. Wara li sar dan il-hlas, inghata l-linja u l-livelli. In segwitu harget il-*Building Declaration*. Il-permessi kellhom terminu ta` validita limitat. Ghalhekk applika ghat-tigdid taghhom. Fil-fatt in-rinnov tal-permessi kien approvat kif jirrizulta mill-files tal-PAPB.

Kompla jixhed illi wara l-approvazzjoni, huwa ma kienx gie notifikat formalment biha, u ghalhekk minhabba in-nuqqas ta` notifika, safa l-vittma ta` makkinazzjonijiet u manipulazzjonijiet li graw wara li t-tigdid tal-permessi kien approvat. Infatti wara li kien approvat it-tigdid, il-Perit Godwin Cassar ghamel rakkomondazzjoni sabiex il-permessi ma jinhargux. Fir-rakkomandazzjoni nkiteb ukoll li r-rikorrent kien informa verbalment lill-Perit Cassar li x-xogholijiet ma kienux ghadhom bdew. Dan huwa kontradett minn notament precedenti fejn hemm miktub illi : `*works on excavation have been taken in in hand.*` Ir-rifjut ghall-permess kien fondat unikament fuq din r-rakkomandazzjoni bla ma kien hemm process ta` konsultazzjoni intern fil-PAPB. Ghalhekk minhabba l-fatt li huwa ma kienx infurmat b`dak li kien qed jigri, ir-rikorrent jikkontendi li kien imcahhad minn kwalsiasi opportunita` illi jirribatti r-rakkomandazzjoni. Huwa kien infurmat biss illi l-applikazzjoni kienet giet ikkunsidrata izda l-permess ma kienx se jinhareg `*on environmental grounds*` u ghaliex `*the proposed site is objectionable*`.

Jistqarr illi l-perit tieghu Perit Raymond Aquilina kien gie nfurmat b`mod ufficjali b`ittra tal-11 ta` Mejju 1987 illi seta` jkompli x-xoghol tal-bini in vista tal-approvazzjoni tat-tigdid taz-zewg permessi.

Fil-**<u>kontroezami</u>,** wara **li** kien issuggerit lilu li fil-fatt ma kien hemm l-ebda approvazzjoni da parti tal-PAPB, ir-rikorrent wiegeb illi kien hemm l-approvazzjoni tal-Ministru ta` dak iz-zmien li kien il-kap tal-PAPB ; hu kien kollox. Isostni li dak li ghamel il-Perit Godwin Cassar li kien ic-Chairman tal-PAPB kien *ultra vires* ghaliex minghajr konsultazzjoni u approvazzjoni mill-Ministru tieghu li kien Lorry Sant, il-Perit Cassar ma setax imur kontra l-kap tieghu. Il-Perit Cassar kien iddelegat mill-Ministru u kellu jaghmel dak li jghidlu l-Ministru. Ighid li ma kienx notifikat bir-renova minhabba abbuz ta` poter. Ma ma riedx imur jigbor il-permess personalment. Mistoqsi jekk kienx ha lura l-flus li kien hallas ghal Drainage u Road Alignment, ir-rikorrent wiegeb li l-flus kienu gew rifuzi wara tlett snin.

Ir-rikorrent kien stqarr illi l-art in kwistjoni kienet tikkwalifika ghall-izvilupp taht il-Building Development Act 1983. Mistoqsi x`tip ta` xogholijiet kien lahaq ghamel, ir-rikorrent fisser illi huwa kien nehha l-hamrija u l-hitan tas-sejjieh, u gab il-gebel biex jibdew il-pedamenti ; izda tqattiegh tal-blat ma kienx ghadu sar. Dan ix-xoghol sar bejn Frar u April tal-1986. Mistoqsi ghaliex dam ghaxar xhur sabiex jibda jibni meta l-permess kien jiskadi fil-ewwel gimgha tal-1987, ir-rikorrent qal illi huwa ma kienx kompla ghaliex kellu jistenna l- permess mis-Sanita` qabel seta` jkompli jibni. Il-

permess ghall-fossa hareg ghal habta ta` Novembru 1986. Ikkonferma li huwa ghamel kawza fejn ikkontesta l-procedura tal-PAPB, dak li ghamel l-Perit Godwin Cassar u dak li ghamel s-Segretarju tal-Bord.

Ikkunsidrat :

III. <u>Sottomissjonijiet bil-miktub</u>

a) <u>Ir-rikorrent</u>

Dwar l-eccezzjoni tal-Awtorita` ntimata illi mhijiex l-legittima kontradittur tieghu, ir-rikorrent isostni li l-eccezzjoni ghandha tkun respinta ghaliex hija l-MEPA li trid twiegeb ghall-agir tal-PAPB. Jirreferi ghas-sentenza li tat il-Qorti tal-Appell fil-5 ta` Ottubru 2001 fil-kawza `**<u>Frankie Refalo noe vs Jason Azzopardi et`.</u>**

Dwar l-eccezzjoni tal-Avukat Generali illi l-procediment tal-lum ma setax jigi tentat billi l-fatti lamentati mir-rikorrent imorru lura ghal qabel April 1987, ir-rikorrent jikkontendi illi din l-eccezzjoni ghandha tkun michuda wkoll fl-ewwel lok ghaliex il-Konvenzjoni kienet ilha li ffirmata mill-Istat Malti mill-1966 u ghalhekk il-harsien tal-jeddijiet fondamentali tutelati mill-Konvenzjoni kien jorbot sa minn dak iz-zmien ; u fit-tieni lok ghaliex l-artikoli sostantivi tal-Konvenzjoni jikkorrispondu mal-artikoli tal-Kostituzzjoni u kwindi meta jigi nvokat l-Art 6 jew 14 tal-Konvenzjoni, jew l-Art 1 Prot 1 tal-Konvenzjoni jkun qed jinvoka l-Art 39, 45 u 37 tal-Kostituzzjoni. Skond ir-rikorrent, il-Konvenzjoni tapplika ghall-kaz tal-lum ghaliex il-fatti lamentati baqghu ghaddejjin sal-1988.

Dwar l-eccezzjoni tal-Avukat Generali li l-procediment tal-lum kien tentattiv ta` appell tat-tielet grad, ir-rikorrent sostna illi mhux hekk huwa l-kaz, ghaliex ghalkemm

il-mertu taz-zewg procediment kien jittratta l-istess permessi, il-kawzali kienu radikalment differenti. Il-kawza nru 72/1993 kienet indirizzata lejn stharrig gudizzjarju ta` ghemil amministrattiv, fejn saret talba ghal likwidazzjoni tad-danni ; filwaqt li dan il-procediment huwa dwar ksur ta` drittijiet fundamentali.

Dwar l-eccezzjoni tal-Avukat Generali li l-Art 6 tal-Konvenzjoni ma kienx applikabbli, ir-rikorrent jissottometti illi hija zbaljata l-interpretazzjoni li jaghti l-Avukat Generali ta` din id-disposizzjoni ghaliex din tipprotegi kemm id-dritt li ta` access ghal Qorti, kif ukoll id-dritt ghal smigh xieraq. Ir-rikorrent jirreferi ghas-sentenzi ta` tal-ECHR ta` **Golder** (23 ta` Frar 1975) u ta` **Le Compte, Van Leuven & Meyer** (23 ta` Gunju 1981). Ghalhekk l-Art 6 japplika kemm ghal procedimenti quddiem il-PAPB, kif ukoll ghal kwalsiasi procedura ohra sussegwenti. Ir-rikorrent jiccita lill-awturi **Van Dijk u Van Hoof** (`*Theory and Practice of the European Convention on Human Rights*`) u s-sentenza tal-ECHR ta` **De Cubber** (26 ta` Ottobru 1984) u ta` **Allan Jacobsson vs Sweden (1)** – 25 ta` Ottubru 1989 u **(2)** - 19 ta` Frar 1998. Billi l-interess tal-attur huwa pekunjarju wkoll, l-Art 6 ighodd ukoll (ECHR - **Editions Periscope vs France -** 26 ta` Marzu 1992).

Ir-rikorrent jallega li kien hemm vjolazzjoni tal-Art 6 ghaliex kien hemm nuqqas ta` smiegh xieraq meta l-PAPB ma applikax il-procedura idonea u ma segwiex l-procedura li soltu kienet tigi adoperata. Hekk gara fil-kaz tal-lum ghaliex wara li l-PAPB approva t-tigdid tal-permessi, l-istess PAPB ghal ragunijiet li r-rikorrent sejjah `misterjuzi` rega` fetah il-kaz u bidel l-approvazzjoni ghal rifjut. Ir-rikorrent jirreferi ghax-xiehda ta` Mark Cini fil-kors ta` tal-kawza nru 72/1993, u ghax-xiehda ta` Raymond Agius li kien l-perit inkarikat mix-xogholijiet. Minbarra dan, meta l-Bord ddecieda li kellhom jiggeddu l-permessi, ir-rikorrent kellu jigi notifikat bid-decizjoni mill-aktar fis ghaliex fi kwistjoni ta` zvilupp u bini, iz-zmien huwa fattur determinanti ghall-izviluppatur. Ghalhekk bin-nuqqas ta` notifika kien vjolat id-dritt fondamentali tar-rikorrent li jkun jaf x`sar dwar id-drittijiet civili tieghu.

Ir-rikorrent jikkontendi li kien hemm nuqqas ta` smiegh ukoll ghaliex ma kienx inghata l-opportunita li jaghmel is-sottomissjonijiet tieghu dwar ir-ragunijiet li ngabu meta r-renova tal-permessi giet rifjutata. Il-Bord ta decizjoni ta` rifjut fuq bazi gdida minghajr ma mmotiva d-decizjoni tieghu u minghajr ma ccita l-ebda *policy* li setghet kienet applikabbli.

Ir-rikorrent isostni li kien hemm ukoll nuqqas ta` smigh xieraq ghaliex il-Bord kontra kull pass prassi pproceda biex ibiddel d-decizjoni tieghu stess, wara li kien ghadda zmien twil wisq u cioe` mit-13 ta` Frar 1987 sal-11 ta` Settembru 1987. Inoltre wara li l-Bord iddecieda kontra t-tigdid fil-11 ta` Settembru 1987, huwa kien effettivament notifikat bid-decizjoni fis-17 ta` Novembru 1988.

Ir-rikorrent jissottometti li garrab menomazzjoni tad-dritt tieghu li jgawdi l-proprjeta` tieghu propju ghaliex il-permessi ma gewx imgedda. Huwa stabbilit fil-gurisprudenza tal-ECHR li l-Art 1 Prot 1 ghandu interpretazzjoni wiesa` u japplika ghal possedimenti fis-sens wiesgha tal-kelma. Issir riferenza ghad- decizjoni ta` **__`Van Marle and Others vs The Netherlands`__** tas-26 ta` Gunju 1986. Skond ir-rikorrent anke l-permess nnifsu kien jikkostitwixxi proprjeta`, tu meta r-renova giet rifjutata, dak ir-rifjut kien jammonta ghal tehid forzuz u ingustifikat. Jekk kien hemm xi skop pubbliku biex ma jkunx hemm tigdid, il-piz li spicca igorr ir-rikorrent kien sproporzjonat. Ir-rikorrent ighid illi ma kienx kompensat ghat-tehid *de facto* li garrab.

Dwar l-applikabilita` tal-Art 14 tal-Konvenzjoni, ir-rikorrent jirrileva li ghalkemm l-Avukat Generali jghid li dan mhuwiex applikabbli ghaliex ma kienx hemmn ksur tal-Konvenzjoni, dak li qed jinghad mill-avukat Generali mhuwiex korrett. Huwa stabbilit mill-ECHR illi anke jekk ma tirrizultax vjolazzjoni tad-disposizzjoni sostantiva, jista` jkun hemm vjolazzjoni tal-istess artikolu sostantiv meta abbinat mal-Art 14. Ir-rikorrent jirreferi ghal **__`Rasmussen vs Denmark`__** tat-28 ta` Novembru 1984.

Dwar il-vjolazzjoni tad-dritt li ma jkunx diskriminat, skond ir-rikorrent, il-posizzjoni hija cara, ghaliex il-fatt illi fil-kaz tieghu giet applikata procedura mhux idoneja u insolita jwassal ghall-konkuzjoni ta` diskriminazzjoni.

Dwar l-eccezzjonijiet l-ohra tal-Avukat Generali, ir-rikorrent jissottometti illi mhuwiex minnu li meta huwa applika ghar-renova tal-permessi, it-terminu tal-validita` tal-permess originali kien lahaq skada. Infatti l-permess hareg fit-22 ta` Jannar 1986 filwaqt li r-renova harget fil-11 ta` Dicembru 1986. Lanqas huwa minnu li ma kienx

hemm obbligu li permess jiggedded billi ghalkemm il-process tar-renova kellu jkun purament formali, dan spicca biex kien process ta` revizjoni tal-permess originali. Dwar dak li qalet l-Awtorita li r-rifjut kien ghal ragunijiet legittimi, dan ma giex ippruvat.

Finalment dwar ir-rimedji, in partikolari l-kumpens, ir-rikorrent irrefera ghall-kawza nru 72/1993 ; hemm il-Perit Raymond Agius ikkalkula illi kieku r-renova kienet debitament notifikata, ir-rikorrent seta` jkompli bix-xogholijiet u jibni erbgha fondi jiswew Lm 160,000 kull wiehed. Dan huwa valur fl-2004 u allura l-prezz illum awmenta. Inoltre r-rikorrent gab il-prova li kull *residential unit* kien jiswa bejn Lm 200,000 u Lm 250,000.

b) <u>L-Avukat Generali</u>

Dwar l-inapplikabilita tal-Konvenzjoni, l-Avukat Generali jirrileva illi dak li huwa rilevanti huwa l-mument meta r-rikorrent jippretendi li kellu l-permess imgedda. Il-posizzjoni ufficjali baqghet konsistenti fis-sens illi qatt ma kien approvazzjoni ta` tigdid. Id-decizjoni krucjali ttiehdet fi Frar 1987, u ghalhekk il-Konvenzjoni mhijiex applikabbli ghall-kaz tal-lum.

Dwar l-eccezzjoni li l-procediment huwa fir-realta` *un terzo grado di appello,* l-Avukat Generali jirrileva li r-rikorrent qieghed jerga` jirriproponi quddiem qorti ta` gurisdizzjoni kostituzzjonali dak li l-qrati ordinarji diga` ddecidew finalment.

Dwar l-allegata vjolazzjoni tal-Art 6, l-Avukat Generali jirrileva illi ma kien hemm l-ebda lezjoni ghaliex ir-rikorrent kellu smigh xieraq. Saret riferenza ghas-sentenza tal-ECHR **`<u>De Cubber vs Belgium</u>` (**21 ta` Ottobru 1984) fejn ghalkemm il-Qorti qalet li ma kellux ikun hemm interpretazzjoni restrittiva tal-Art 6, fl-istess waqt l-ECHR ma kenitx qeghda tippromwovi l-interpretazzjoni wiesa` li r-rikorrent qieghed jaghti ghall-Art 6. Fil-kaz in ezami, id-dettami tal-Art 6 kienu rispettati ghaliex il-PAPB segwa l-procedura solita tieghu. Mark Cini mill-MEPA qal ghaliex il-permess ma kienx rinnovat ; kien biss parti mill-process illi r-rikorrent ihallas l-kontribuzzjonijiet, u jibda

l-bini, izda wara kellu jkun hemm l-approvazzjoni teknika mill-Bord immexxi mill-Perit Godwin Cassar. Mil-lat amministrattiv, il-fatt l-applikazzjoni kienet rifjutata `*on environmental grounds*` kif ukoll ghaliex `*proposed site is objectionable*` ma kenitx xi eccezzjoni.

Il-fatt li r-rikorrent ma kienx notifikat formalment li l-applikazzjonijiet tieghu kienu milqugha, izda kien notifikat bir-rifjut tal-applikazzjoni, hija l-akbar prova li ma kien hemm l-ebda renova tal-permessi. Ghalkemm ir-rikorrent jghid li ma nghatax id-dritt li jaghmel is-sottomissjonijiet tieghu, huwa maghruf li l-procedura quddiem il-PAPB ma kenitx tinvolvi li dan isir. Kien il-Bord li kien jigbor l-informazzjoni u mbaghad jaghti d-decizjoni tieghu li setghet tigi appellata jew impunjata quddiem il-qrati. Huwa wkoll zbaljat dak li jissottometti r-rikorrent li ladarba kien ottjena l-permessi, it-tigdid kien biss formalita`. Kull applikazzjoni ghal renova kienet titqies mill-Bord daqs li kieku kienet applikazzjoni gdida. Il-*policies* tal-ippjanar kienu nbidlu wara li skada l-permess de quo, u propju ghaliex gara hekk illi l-applikazzjoni tat-tigdid giet rifjutata.

Lanqas ma kienx hemm dewmien quddiem il-PAPB li seta` jiskatta ksur tal-Art 6. Saret riferenza ghal **Jacobs & White** - *European Convention on Human Rights*.

Dwar l-allegat ksur tal-Art 1 Prot 1, l-Avukat Generali jikkontendi li dan huwa nfondat. Ma rrizultax li kien hemm interferenza da parti tal-Gvern fil-proprjeta tar-rikorrent. Kien ir-rikorrent li halla li permessi jiskadu ghaliex ma kienx beda x-xoghol kif kien obbligat illi jaghmel. Inoltre l-permessi ma kienux imgedda mhux minhabba skop pubbliku izda frott ta` decizjoni amministrattiva, li ghalkemm ittiehdet fl-interess pubbliku, ma ghandhiex sembjanza ta` esproprju jew tehid forzuz.

Dwar l-ilment tad-diskriminazzjoni, l-Avukat Generali jikkontendi li apparti li ma ngabet l-ebda prova konvincenti li turi kif kull applikant kien jigi trattat mill-PAPB, mhuwiex ippruvat il-mottiv tad-diskriminazzjoni. Ma kien hemm l-ebda obbligu li permess skadut jiggedded. Anzi fil-kaz tal-lum irrizulta li l-permessi hargu bil-kundizzjoni li setghu jigu ritirati minghajr l-ebda dritt ta` kumpens. Fiz-zmien tar-rifjut ma kenitx il-prattika tal-PAPB illi jaghti ragunijiet dettaljati ghad-decizjonijiet ; fl-

istess waqt il-policies kienu verifikabbli. Mhux biss ir-rikorrent ma appellax id-decizjoni tal-PAPB izda lanqas ivverifika l-policies.

c) <u>L-Awtorita` ntimata</u>

L-Awtorita` tirrileva li r-rikorrent ghamel intepretazzjoni hazina tal-fatti. Il-fatti huma li lir-rikorrent inhargu zewg permessi mill-PAPB : wiehed fit-12 ta` Settembru 1985 ; u l-iehor fit-22 ta` Jannar 1986. Dawn il-permessi kienu validi ghal sena. Dawn il-permessi qatt ma kienu imgedda. Ghalhekk ir-rikorrent qatt ma rcieva avviz ta` tigdid. Iz-zewg permessi skadew ghaliex r-rikorrent ma kienx beda jibni fiz-zmien moghti lilu. Inoltre naqas li josserva kundizzjonijiet ohra tal-permess bhall-fossa. Dan kollu kien issenjalat mill-Qorti tal-Appell fis-sentenza taghha tas-6 ta` Ottobru 2009.

Tkompli tissottometti illi r-rikorrent jibbaza l-lanjanzi tieghu fuq minuta fil-kopja tal-file tal-PAPB. Dik il-minuta kienet biss wahda minn sensiela li ssir waqt l-process ta` evalwazzjoni. Kien ghad jonqos il-parir tas-sezzjoni teknika, li taghha kien responsabbli l-Perit Vince Cassar. Eventwalment billi l-polices kienu nbidlu, il-permessi tar-rikorrent ma kienux aktar vijabbli ghaliex kienu nkompatibbli mal-esigenzi tal-harsien tal-ambjent.

Jinghad mill-Awtorita` ntimata illi l-`approvazzjoni` li jirreferi ghaliha r-rikorrent kienet biss wahda parzjali u informali espressa gewwa minuta fil-file amministrattiv minn sezzjoni wahda tal-Bord. Kien fil-21 ta` Awissu 1987 li l-kaz tressaq ufficjalment quddiem il-PAPB u kien dakinhar li l-Bord irrifjuta li jgedded l-permessi tar-rikorrent. Ir-rikorrent kien imbaghad infurmat ufficjalment b`ittra tas-17 ta` Novembru 1988. Fiz-zmien in kwistjoni, ma kienx mehtieg li jkun hemm konsultazzjoni jew smiegh tal-applikant.

L-Awtorita` ntimata tkompli tirrimarka li fil-kaz tal-lum ma sar l-ebda tehid ta` proprjeta` tar-rikorrent.

Izzid tafferma l-Awtorita` ntimata li kull permess huwa validu sakemm jiskadi u sakemm jigu osservati l-kundizzjonijiet tal-istess permess. Konsegwentement fil-kaz tal-lum ma hemmx lok ghal ebda danni.

Dwar l-eccezzjoni tal-illegittimita` tal-persuna, l-Awtorita` taghmel riferenza ghas-sentenzi li jghidu li l-MEPA mhijiex is-successur tal-PAPB :– `**Annunziato Mifsud vs Direttur tat-Toroq et**` deciza mill-Prim Awla tal-Qorti Civili fil-14 ta` Novembru 1997 ; **`John Sammut vs l-Awtorita ta` l-Ippjanar`** deciza mill-Qorti Kostituzzjonali fis-27 ta` Frar 2003 ; `**Anthony Cassar vs Awtorita tal-Ippjanar`** deciza mit-Tribunal ghall-Investigazzjoni ta` l-Ingustizzji fid-29 ta` Marzu 2001 ; u `**Joe Carmel Camilleri vs Awtorita ta` l-Ippjanar`** deciza mit-Tribunal ghall-Investigazzjoni ta` l-Ingustizzji fl-4 ta` Marzu 2004.

Finalment tirrileva illi l-Awtorita` qatt ma tista` tinstab responsabbli ghal hlas tad-danni u lanqas ma tista` tigi ordnata sabiex tohrog xi permess ghal izvilupp stante illi quddiemha qatt ma kien hemm u lanqas hemm talba ghall-hrug ta` permessi. Il-hrug tal-permessi issa huwa regolat bil-Kap 504 tal-Ligijiet ta` Malta. Billi l-Awtorita mhijiex is-successur tal-PAPB, tista` tohrog permessi biss wara li tkun segwita l-procedura stabbilita bil-Kap 504.

Ikkunsidrat :

IV. Sottomissjonijiet bil-fomm

a) Ir-rikorrent

Skond ir-rikorrent, l-Avukat Generali ma kienx korrett meta nkwadra l-fatti. Dwar li qal l-Avukat Generali li l-permess qatt ma kien gie approvat, ir-rikorrent jirrileva li minn ezami tal-permess 2887/1983, fil-minuta 32 tad-19 ta` Jannar 1987, jinghad : `*objection of renewal of permit*` ; fil-laqgha tal-11 ta` Frar 1987 jinghad : `*permit read may be renewed*` ; u fit-13 ta` Frar 1987, taht il-firma tac-Chairman, hemm miktub : `*approved*`. L-istess ighodd ghall-permess nru 2943. Il-fatt li ma saritx notifika huwa abbuz.

Skond ir-rikorrent, mhuwiex minnu li l-permess kien lahaq skada meta saret l-applikazzjoni ghat-tigdid, ghaliex l-applikazzjoni ghar-renova saret qabel ghaddiet is-sena. Ir-ragunijiet il-godda ghaliex r-renova kienet rifjutata ma jirrizultaw imkien ; lanqas ma jirrizulta mkien li kien hemm bdil fil-policies. Il-prova li r-renova kienet approvata tirrizulta ukoll mill-ittra tal-11 ta` Mejju 1987 li ntbaghtet lill-perit. L-ittra ma kenitx tirrigwarda l-fossa izda l-permess. Inoltre ghalkemm l-approvazzjoni saret minn Joseph Cassar li kien Chairman tal-Bord, ir-rifjut kien iffirmat minn Godwin Cassar li kien biss membru tal-Bord.

b) <u>L-Avukat Generali</u>

Il-fatti esposti fil-procediment odjern kienu l-istess ghal dawk li tressqu quddiem il-qrati ordinarji. Li kieku hareg il-permess, ir-rikorrent kien certament jircievi ittra li tavzah li l-permess kien qed jigi rinnovat. Billi ma kienx hemm tigdid, ir-rikorrent ma rcieva xejn.

Ikkunsidrat :

V. <u>L-ewwel eccezzjoni tal-Awtorita` ntimata</u>

L-Awtorita` teccepixxi li mhijiex il-legittima kontradittur tar-rikorrent ghaliex mhijiex is-successur tal-PAPB.

Fis-sentenza taghha tat-30 ta` April 1998 fil-kawza `**John Sammut vs Awtorita ta` l-Ippjanar**` il-Qorti Kostituzzjonali qalet hekk –

`Il-Qorti ma tistax taccetta s-sottomissjoni ta` l-appellant illi l-intimata Awtorita ta` l-Ippjanar hija `effettivament successur tal-PAPB bid-drittijiet u bl-obbligi ta` l-istess`. L-appellant jittanta jiggustifika din il-proposizzjoni generika billi jargumenta li dan kien jidher li kien l-istat ta` dritt minn qari akkurat ta` l-artikolu 63 ta` l-Att 1 tal-1992 dwar l-Ippjanar ta` l-Izvilupp. Il-ligi pero dan ma tghidux u jekk kellu jigi argumentat b`interpretazzjoni ta` din id-disposizzjoni wiehed necessarjament kellu jasal ghall-konkluzjoni opposta ghal dik issugerita mill-appellant. Ma hemmx ghalfejn jinghad illi hawn si tratta ta` ezami u interpretazzjoni ta` disposizzjoni ta` ligi fiha nnifisha mnezza minn kull konsiderazzjoni ohra, inkluza dik ta` indoli kostituzzjonali. Interpretazzjoni li trid issegwi d-dicitura ta` l-artikolu u l-mens legis u mhux dak li wiehed jahseb li jaqbel jew li ghandu jkun jew li hu gust li jkun. Dan multo magis meta hawn si tratta ta` disposizzjoni li, in effetti tiddetermina u tiddelimita ukoll il-funzjonijiet u l-kompetenza ta` l-Awtorita u ta` l-entitajiet l-ohra mwaqqfa fil-ligi li jirregolaw l-izvilupp u safejn dawn jistghu jiehdu konjizzjoni ta` materji dwar fatti li sehhew ***qabel*** *ma gie fis-sehh dak l-Att ;*

L-artikolu 63 ta` l-Att I ta` l-1992 hu disposizzjoni transitorja li tipprovdi (1) ghar-revoka ta` legislazzjoni anterjuri li kienet sa dakinhar li dahal fis-sehh dak l-Att tirregola l-izvilupp f`Malta fosthom dawk il-ligijiet u regolamenti li kienu jipprovdu ghat-twaqqif u t-thaddim tal-Planning Appeals Permits Board u (2) ghall-kontinwita fir-regolament ta` dak li kien sar validament taht dik il-legislazzjoni antecendenti, pero fil-parametri precizi definiti f`din id-disposizzjoni ;

…

Ghandu jkun immedjatament ovvju minn qari ta` din id-diposizzjoni illi l-legislatur irid jipprovdi proprju kontra ta` dak li qed jigi ssugerit mill-appellant. Il-legislatur ried li f`materja ta` ippjanar u l-izvilupp ikun hemm linja netta ta` demarkazzjoni bejn dak li sehh qabel l-Att I tal-1992 u dak li kien se jigi wara li dak l-Att jigi fis-sehh. Ma riedx allura li l-Awtorita li kienet ser titwaqqaf b`dik il-ligi tkun s-successur tal-PAPB la fl-ezercizzju tal-funzjonijiet u poteri taghha u lanqas fid-drittijiet u l-obbligi taghha. In-natura tal-kostituzzjoni tal-Awtorita hi infatti ghal kollox differenti minn dik tal-PAPB. Filwaqt li dik tal-ahhar kienet ex lege meqjusa bhala d-

delegat tal-Ministru responsabbli ghax-Xogholijiet Pubblici u kienet tezercita l-funzjonijiet fdati f`idejh, l-Awtorita hi korp awtonomu u indipendenti kkostitwit bil-ligi li tiddetermina l-funzjonijiet li kellha tespleta, liema ligi kienet taghtiha l-poteri kollha biex tkun tista` tezercita tali funzjonijiet. Mill-banda l-ohra, li kieku l-Att 1 tal-1992 ried li din l-Awtorita tkun is-successur fid-drittijiet u l-obbligi tal-PAPB, dan kienet tghidu espressis. La ma tghidux, mhux lecitu li jigi dezunt bi process ta` interpretazzjoni. Implicitament il-ligi anzi teskludi tali process ghaliex tispecfika f`liema cirkostanzi u safejn kull haga maghmula taht il-ligijiet antecedenti b`dak l-Att irrevokati, kienu salvati u rregolati bil-ligi l-gdida. Il-PAPB gie b`dan l-Att abolit ghax kienet hekk abolita l-ligi li permezz taghha kien gie kkostitwit, u fin-nuqqas ta` disposizzjoni espressa li l-Awtorita kienet bil-ligi l-gdida tigi ddikjarata s-successur tieghu wara li gie abolit, mhux guridikament korrett li wiehed jattribwiha din il-vesti ghax dan ikun jimporta li l-Awtorita tkun qed tigi moghtija funzjonijiet, drittijiet u obbligi li l-ligi bl-ebda mod ma tikkonferieha`

Din id-direzzjoni gurisprudenzjali tghodd ghall-kaz tal-lum meta tqis li r-rikorrent qieghed jilmenta li kien il-PAPB li kiser il-jeddijiet fondamentali tieghu.

Il-Qorti qeghda <u>tilqa</u>` l-ewwel eccezzjoni tal-Awtorita` ntimata u tilliberaha mill-osservanza tal-gudizzju.

Ikkunsidrat :

VI. <u>L-ewwel eccezzjoni tal-Avukat Generali</u>

L-Avukat Generali jeccepixxi illi r-rikorrent jallega li garrab ksur ta` jeddijiet fondamentali li graw it-30 ta` April 1987. Ghalhekk il-Konvenzjoni ma tapplikax skond l-Art 7 tal-Kap 319.

L-**<u>Art 7 tal-Kap 319</u>** jaqra hekk :-

`Ebda ksur tal-Artikoli 2 sa 18 (inkluzi) tal-Konvenzjoni jew tal-Artikoli 1 sa 3 (inkluzi) tal-Ewwel Protokoll li jsir qabel it-30 ta` April 1987 jew tal-Artikoli 1 sa 4 (inkluzi) tar-Raba Protokoll, l-Artikoli 1 u 2 tas-Sitt Protokoll jew tal-Artikoli 1 sa 5 (inkluzi) tas-Seba Protokoll li jsir qabel l-1 ta` April 2002, ma ghandu jaghti lok ghal xi azzjoni taht l-artikolu 4.`

Fis-sentenza taghha tal-5 ta` April 2011 fil-kawza **`<u>Gera de Petri</u> <u>Testaferrata Bonici Ghaxaq vs Malta</u>`** l-ECHR qalet hekk :-

" 38. The Court observes that in the absence of an express limitation, the Maltese declaration of 30 April 1987 is retrospective and the Court is therefore competent to examine facts which occurred between 1967 the date of ratification and 1987 the date on which the State`s declaration under former Article 25 became effective (see Bezzina Wettinger and Others v. Malta, no. 15091/06, § 54, 8 April 2008). As to the antecedent period, even though the Convention was applicable to Maltese territory, this had its basis in the United Kingdom`s Convention obligations. The present complaint is directed against the Maltese Government. Thus, the Court can only take into consideration the period which has elapsed since the Convention entered into force in respect of Malta (1967) ..."

Din id-direzzjoni gurisprudenzjali ghandha tghodd ghall-kaz tal-lum.

Ghalhekk il-Qorti qeghda <u>tichad</u> l-ewwel eccezzjoni tal-Avukat Generali.

Ikkunsidrat :

VII. <u>Il-mertu</u>

1) <u>L-isfond</u>

Ir-rikorrent qieghed jilmenta li kien hemm vjolazzjoni tad-drittijiet tieghu meta l-permessi li kienu nghatawlu fit-22 ta` Jannar 1986 (198/86/2887/83) u fit-12 ta` Settembru 1985 (3171/85/2943/83) l-ewwel kienu mgedda f`Dicembru 1986 u fi Frar 1987, u in segwitu gew rifjutati fis-17 ta` Settembru 1988.

Il-fatti li gab ir-rikorrent ghall-konsiderazzjoni ta` din il-Qorti kienu l-istess li kien gab a konjizzjoni tal-qrati ordinarji fil-procediment li kien istitwixxa ghal stharrig gudizzjarju ta` ghemil amministrattiv.

Il-Qorti taghmel riferenza ghall-atti tal-kawza fl-ismijiet **<u>`Jack Galea vs Direttur Generali tax-Xogholijiet et`</u>** (Citaz. Nru. 72/1993) li kienet deciza mill-Qorti tal-Appell fid-9 ta` Jannar 2009 u li din il-Qorti ordnat illi jigu allegati mal-atti ta` dan il-procediment wara talba mill-partijiet.

Il-premessi li adopera fil-kawza prezentata quddiem il-qrati ordinarji kienu l-istess li r-rikorrent adopera sabiex iressaq l-ilmenti tieghu ghall-ksur tal-jeddijiet fondamentali tieghu fil-procediment tal-lum.

Il-pern tal-istanza tar-rikorrent fil-procediment tal-lum hija l-insistenza tieghu li huwa kien inghata r-renova ghaliex ir-renova kienet giet approvata ; in segwitu l-approvazzjoni inbidlet f`rifjut ad insaputa tieghu u bla ma nghata l-opportunita` jghid tieghu.

Din il-pretensjoni tar-rikorrent giet respinta in via definittiva u finali mill-Qorti ta` l-Appell anke wara procedura ta` ritrattazzjoni.

Fil-konsiderazzjonijiet taghha, il-Qorti ta` l-Appell qalet hekk :-

`Minn ezami tax-xhieda u d-dokumenti prodotti jidher illi l-imsemmija minuti jirriflettu effettivament il-process ta` deliberazzjoni illi l-Planning Area Permits Board (PAPB) ghadda minnu sakemm ha d-decizjoni finali tieghu u cioe` dik illi jirrifjuta illi johrog it-tigdid tal-permessi lill-appellant. Dan huwa rifless fil-fatt illi ghalkemm il-minuti 27, 28, 32 u 33 tal-permessi relattivi kienu juru li f`dak l-istadju l-Bord kien propens li jakkorda t-tigdid in kwistjoni, madanakollu l-Bord qatt ma kkomunika decizjoni favorevoli lill- appellant. Dana jfisser li kwalunkwe decizjoni li kienet ittiehdet bejn Dicembru 1986 u Frar 1987 ma kienetx wahda finali. Din il-Qorti hija tal-fehma illi li kieku d- decizjoni tal-Bord, dakinhar li tnizzlu dawn il-minuti, kienet wahda finali u vinkolanti, din necessarjament kienet tkun segwita b`komunikazzjoni ufficcjali li kienet tigi notifikata lill-appellant. Il-fatt li tali notifika ma gietx ordnata f`dak l- istess perjodu ma jfissirx li l-Bord kien qieghed jabbuza mill-poteri tieghu, kif jallega minghajr ma jipprova sodisfacentement, l-appellant. Invece din il-Qorti hija pjuttost tal-fehma illi dan sar ghal ragunijiet validi li kien qieghed jiddelibera fuqhom il-Planning Area Permits Board (PAPB). Dan l-operat sar kollu fil-parametri tal- poteri li kellu l-Planning Area Permits Board (PAPB).

…

Fil-kaz odjern u fi kwalunkwe kaz din il-Qorti tikkondividi l- apprezzament tal-provi maghmul mill-ewwel Qorti u cioe` li matul l-iter deliberattiv tal-Planning Area Permits Board (PAPB) kien hemm biss konsiderzzjoni li l-permessi tal- bini in kwistjoni jistghu jiggeddu, pero` qatt ma ttiehdet decizjoni vinkolanti mill-Bord li l-istess permessi jigu mgedda. Ghall-kuntrarju, id-decizjoni vinkolanti li l-Bord ha kienet dik li t-talba ghat-tigdid tal-permessi tigi rifjutata. Ghalhekk, l-ewwel aggravju tal-appellant u cioe` li l-Bord kien effetivament iddecieda fuq ir-rinnovament tal- permessi, ma jistax jintlaqa`.

…

Minn dak li ntqal sa issa dwar l-ewwel aggravju tal- appellant jirrizulta li din il-Qorti hija sodisfatta li l-Bord qatt ma ha decizjoni vinkolanti ghat-tigdid tal-permessi tal-bini in kwistjoni. Id-decizjoni vinkolanti li ha kienet dik li t-talba ghat-tigdid tal-istess permessi tigi rifjutata. Ma rrizulta l- ebda abbuz ta` poter fl-operat tal-Bord, billi d-decizjonijiet li ttiehdu kienu fil-limiti tal-poteri moghtija bil-ligi lil dan il- Bord.

Ghalhekk anke dan it-tieni aggravju tal-appellant m`hemmx lok li jintlaqa`.

…

Fil-kaz odjern, kif diga` intqal, il-permessi in kwistjoni kienu skadew u l-bini ma giex inizjat fil-perjodu ta` sena moghti ghall-validita` tal-istess permessi u dawn, fil-verita` qatt ma gew imgedda. Huwa skorrett l-appellant li jibqa` jinsisti li l-Bord approva b`mod definit it-tigdid tal- permessi. Il-Bord kellu s-setgha li jichad it-talba ghat- tigdid tal-permessi li l-perjodu tal-validita` taghhom kien skada. Fil-fehma tal-Qorti, kif kien kostitwit u regolat dan il-Bord partikolari dak iz-zmien, ma jidhirx li kien hemm il- htiega, kif sewwa rrimarkat l-ewwel Qorti, li jekk il-Bord ikun sejjer jiehu decizjoni li ma toghgobx lill-appellant, l- istess Bord kellu jisma` wkoll x`ghandu xi jghid l-appellant.

16. Fid-dawl ta` dak li ghadu kif intqal ma jistax jinghad illi nkiser l-imsemmi principju tal-gustizzja naturali. Xoghol il-Bord ma kienx li jisma` l-applikanti bhallikieku kien hemm proceduri fil-kontradittorju, izda li jiddeciedi jekk jakkordax o meno applikazzjonijiet ghall-permessi u tigdid ta` permessi tal-bini. F`dan ir-rigward din il-Qorti taqbel ma` l-osservazzjoni ta` l-ewwel Qorti li l-Bord ma kellux jiehu decizjoni dwar zewg posizzjonijiet antagonisti ghal xulxin fejn il-Bord kellu jisma` x`ghandha xi tghid kull parti qabel ma jiddeciedi. Ghaldaqstant, din il-Qorti tichad dan l-aggravju wkoll.

17. Michud it-tielet aggravju, imiss li jigi ezaminat ir- raba` aggravju ta` l-appellant. Huwa qieghed jilmenta li r- ragunijiet li inghatawlu ghar-rifjut tat-tigdid tal-permessi ma kienux sufficjenti. L-appellant spjega li r-ragunijiet tar- rifjut kienu on environmental grounds u objectionable grounds. L-appellant jillanja li ma nghata l-ebda spjegazzjoni jew definizzjoni cara ta` x`kienu dawn ir- ragunijiet ta` rifjut.

18. Anke dana l-aggravju mhux gustifikat. Jirrizulta li l- appellant mhux biss naqas li jikkontesta d-decizjoni tar-rifjut tat-tigdid tal-permessi bil-proceduri opportuni u fiz- zmien propizju, izda jirrizulta li l-appellant kien fehem tajjeb ghaliex il-permessi ma kienux gew imgedda u cioe` minhabba li l-planning policies applikabbli kienu tbiddlu bid-dekors taz-zmien. Tant hu hekk li hu talab li jinghata rifuzjoni tar-road alignment contribution li kien ghamel b`zewg ittri datati 31 ta` Mejju 1989 (ara fol. 327) u 25 ta` Jannar 1990 (ara fol. 328). Jirrizulta wkoll li l-appellant gie rifuz is-somma ta` Lm346.23,6 (ara fol. 329), fatt kkonfermat ukoll mill-affidavit ta` Joseph Farrugia a fol. 326. Huwa fatt pjuttost inspjegabbli kif l-appellant deherlu li kellu jressaq dan l-ilment aktar minn erba` snin wara li kien ihariglu r-rifjut.

2) <u>L-Art 6 tal-Konvenzjoni</u>

Ir-rikorrent jallega li kien hemm vjolazzjoni kontra tieghu tal-Art 6 abbazi ta` tliet konsiderazzjonijiet : i) ghaliex il-PAPB ma applikax il-procedura idonea u ma segwiex l-procedura li ssoltu kienet tigi adoperataa ; ii) ghaliex ma nghatax l-opportunita` li jaghmel s-sottomissjonijiet tieghu dwar r-ragunijiet li ngabu meta r-renova tal-permessi giet rifjutata ; u iii) ghaliex il-PAPB kontra kull prassi procedurali bidel id-decizjoni tieghu, wara li kien ghadda zmien irragonevoli, u cioe` bejn it-13 ta` Frar 1987 u l-11 ta` Settembru 1987, u effettivament ir-rikorrent gie notifikat bid-decizjoni fis-17 ta` Novembru 1988.

Il-Qorti taghmel riferenza ghal kawza b`fattispece simili hafna ghal dawn tal-kawza tal-lum. Qeghda tirreferi ghall-kawza `**<u>Case of Lay Lay Company</u> <u>Limited v. Malta</u>**` li kienet deciza mill-ECHR fit-23 ta` Lulju 2013 u saret finali fit-23 ta` Ottubru 2013. Il-Qorti ma sabet l-ebda vjolazzjoni tal-Art 6. Qalet hekk :-

<u>The Court`s assessment</u>

(a) <u>General principles</u>

55. Under Article 6 § 1 of the Convention it is necessary that decisions of administrative authorities which do not themselves satisfy the requirements of that Article should be subject to subsequent control by a judicial body (see Ortenberg v. Austria, cited above, § 31, and Crişan v. Romania, no. 42930/98, § 24, 27 May 2003). The right of access to a court is an inherent aspect of the safeguards enshrined in Article 6. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court (see Markovic and Others v. Italy [GC], no. 1398/03, § 92, ECHR 2006-XIV). At the same time, the "right to a court" is not absolute; it is subject to limitations permitted by implication, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person`s access in such a way or to such an extent that the very essence of the right is impaired (see Edificaciones March Gallego S.A. v. Spain, 19 February 1998, § 34, Reports of Judgments and Decisions 1998-I, and De Geouffre de la Pradelle v. France, 16 December 1992, § 28, Series A no. 253-B).

56. Rules governing the procedure and time-limits applicable to legal remedies are intended to ensure a proper administration of justice and compliance with, in particular, the principle of legal certainty (see, mutatis mutandis, Miragall Escolano and Others v. Spain, nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98, ECHR 2000-I). It is not for the Court to interpret procedural rules. Its role in cases such as the present is to determine whether the applicant was able to count on a

coherent system that struck a fair balance between the authorities` interests and his own and, in particular, whether he was given a clear, practical and effective opportunity to challenge an administrative act that allegedly constituted a direct interference with his rights (see Geffre v. France (dec.), no. 51307/99, ECHR 2003-I (extracts)).

(b) Application to the present case

57. The Court observes that it has not been disputed that a decision on whether to issue or reject a building permit application was subject to an appeal before the PAB and a further appeal to the Court of Appeal. Thus Maltese law undoubtedly gave the applicant company the opportunity to challenge the decision refusing a permit application before a court. It therefore remains to be ascertained whether the relevant procedure, in particular in relation to the "decision" issued by the authorities, was such as to ensure that the right to a court was effective, as required by Article 6 of the Convention.

58. The Court notes that, despite having been asked to do so, the Government have not submitted details of the legislation applicable at the relevant time to the decision-making process concerning the issuance or rejection of a building permit application. It is, however, clear from the submissions and legislation which the parties presented before the Court that at the relevant time such decisions fell within the competence of the DCC, and they had to be published as soon as practicable after the meeting at which they were taken. The decision could then be appealed against within thirty days from the date on which it was communicated to the person on whose application the decision was taken. It is possible that no further details about the decision-making procedure were enshrined in the legislation.

The Court considers that, although decisions taken in accordance with an appropriate legislative framework ensure legal certainty and are recommendable, the Court notes that no concrete evidence has been put forward showing that the decision-making process applied in the present case was not coherent and contrasted with that usually pertaining to such requests and the relevant decisions.

59. Indeed, while it appears that the law provided for such a decision to be published, the Court notes that no information in this respect has been submitted by the parties. For the rest, the Court observes that while the law (see paragraph 42 above) stated that such decisions fell within the competence of the DCC, this did not preclude another entity from communicating the DCC`s decision on its behalf. Indeed section 13(7) of the 1992 Act provided for staff to service the DCC, and the October 1996 letter was sent by the manager of the DCU to whom the DCC Chairman had forwarded the request from the applicant company`s architect. It was sent on an official letterhead and it clearly indicated that the permit could not be issued, and the reasons for that decision. The Court observes that the letter contained sufficient reasons for the applicant company to be able to contest its substance. Moreover, the letter included the phrase "I trust that the

above information is sufficient for your guidance", a clear indication on behalf of the authority that no further decision would be taken and that it was for the recipient to take any further steps deemed necessary.

60. Lastly, the Court notes that while it is true that the "person on whose application the decision was taken" had to be notified of the decision, the letter was sent to the applicant`s architect in response to the latter`s request of May 1996 (see paragraph 22 above). It was therefore reasonable to conclude that given that the applicant`s architect had the authority to enquire about and solicit the issuance of a permit on behalf of her client (as clearly stated in the letter of 16 May 1996, despite the fact that it referred to A. as the client and not to the applicant company), the architect was also authorised to receive notification of a decision on the client`s behalf. In this connection the Court reiterates that Article 6 of the Convention does not provide for specific forms of service of documents. The question is whether an individual`s access to court has been denied in the circumstances of the case (see Hennings v. Germany, 16 December 1992, Series A no. 251-A, and Bogonos v. Russia (dec.), no. 68798/01, 5 February 2004).

61. In these circumstances the Court sees no reason to depart from the view taken by the Constitutional Court that there was an administrative decision that the applicant could have challenged by judicial proceedings. In the present case, the letter at issue could not, at that stage, be perceived as anything less than a decision. Therefore the applicant company was given a clear, practical and effective opportunity to challenge the administrative act at issue. Also bearing in mind that it is incumbent on the interested party to display special diligence in the defence of his interests (see Muscat v. Malta, no. 24197/10, § 59, 17 July 2012), and that in the present case the applicant company could have at least enquired as to the scope of such a letter, the Court concludes that the applicant company had at its disposal an effective legal avenue which it failed to make use of. It follows, that the applicant company has not been denied effective access to court.

62. Accordingly, there has not been a violation of Article 6 § 1 of the Convention.

Fid-decizjoni taghha fil-kawza tentata mir-rikorrent ghal stharrig gudizzjarju ta` ghemil amministrattiv, il-Qorti tal-Appell sabet illi l-procedura wzata mill-PAPB ma kenitx irregolari, ir-renova tal-permessi qatt ma kienet harget, u ghalhekk ma kien hemm l-ebda necessita li r-rikorrent jaghmel s-sottomissjonijiet tieghu. Fis-sentenza taghha, il-Qorti ta` l-Appell irrilevat ukoll li ma kenitx procedura normali li l-applikanti jithallew jaghmlu s-sottomissjonijiet. Kienu l-partijiet stess inkluz ir-rikorrent li bbazaw il-provi taghhom fuq l-atti tal-kawza **`Jack Galea vs Direttur Generali tax-Xogholijiet et`** (Citaz. Nru. 72/1993) tant li talbu li dawk l-atti jigu allegati ghall-fini tal-procediment tal-lum. Is-sentenza tal-Qorti tal-Appell, del resto bhall-atti l-ohra ta` dik il-kawza, tikkostitwixxi prova u ghalhekk din il-Qorti sejra taghti piz ghal dak li

nghad fis-sentenza partikolarment fejn si tratta ta` accertament u apprezzament ta` provi. Abbazi tal-fatti accertati, mhuwiex accettabbli dak li qieghed jinghad mir-rikorrent illi l-PAPB halla zmien irragonevolment twil ighaddi qabel ma biddel id-decizjoni tieghu propju ghaliex irrizulta li l-PAPB ma kienx ha decizjoni dwar it-talba ghar-renova, u kwindi ma tezisti l-ebda kwistjoni ta` bdil ta` decizjoni.

Dwar il-ksur allegat tal-Art 6 bil-fatt illi d-decizjoni nghatat fil-11 ta` Settembru 1987 u giet notifikata fis-17 ta` Novembru 1988, il-Qorti rat id-dokumenti li kienu esebiti quddiem il-Qorti tal-Magistrati (Ghawdex) [Gurisdizzjoni Superjuri]. Mill-atti jidher illi r-rikorrent kien ufficjalment notifikat illi l-permess nru 2887/83 kien rifjutat fis-17 ta` Novembru 1988 ; kuntrarjament ghal dak li xehed r-rikorrent, in-notifika lilu saret mhux lill-perit tieghu. Id-decizjoni ttiehdet fil-21 ta` Awissu 1987. Dwar il-permess nru 2943/83, anke f`dan il-kaz in-notifika saret lir-rikorrent, ghalkemm ma tirrizultax id-data tan-notifika. Id-decizjoni ttiehdet fil-11 ta` Settembru 1987.

Ir-rikorrent qieghed jilmenta minn dewmien. Il-Qorti ma ssibx li kien hemm pregudizzju ghar-rikorrent fis-sens illi jappella mid-decizjoni, jew li jerga` japplika, ghaliex it-termini jiskattaw min-notifika mhux mid-data tad-decizjoni. Anke dawn l-aspetti tal-kwistjoni kienu trattati fis-sentenza tal-Qorti tal-Appell. Tajjeb li jinghad li r-rikorrent talab li jinghata lura l-kontribuzzjoni tat-triq li kien hallas. U dak il-hlas sar.

Il-Qorti ma ssibx vjolazzjoni tal-Art 6 tal-Konvenzjoni.

3) <u>L-Art 1 Prot 1 tal-Konvenzjoni</u>

Ir-rikorrent jikkontendi illi ghax il-permessi ma gewx rinnovati kien menomat id-dritt tieghu li jgawdi l-proprjeta` tieghu. Isostni li l-Art 1 Prot 1 ghandu interpretazzjoni wiesa` u jghodd ghal possedimenti fis-sens wiesgha tal-kelma. Ighid li l-permess jikkwalifika bhala possediment u r-rifjut tat-tigdid bhala tehid forzuz.

Dwar Art 1 Prot 1, l-ECHR fis-sentenza `**Case of Lay Lay Company Limited v. Malta**` (op. cit.) qalet hekk :–

(a) General principles

83. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property. The second rule, contained in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third rule, stated in the second paragraph, recognises that Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not distinct in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of property. They should therefore be construed in the light of the general principle enunciated in the first rule (see, for example, Bruncrona v. Finland, no. 41673/98, § 65, 16 November 2004). They must comply with the principle of lawfulness and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised (see, for example, Beyeler v. Italy [GC], no. 33202/96, §§ 108-14, ECHR 2000-I, and J.A. PYE (Oxford) Ltd v. the United Kingdom, no. 44302/02, § 42, 15 November 2005). The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see Brumărescu v. Romania [GC], no. 28342/95, § 78, ECHR 1999-VII). The Court also reiterates that in the area of land development and town planning, the Contracting States should enjoy a wide margin of appreciation in order to implement their town and country planning policies. Nevertheless, in the exercise of its power of review the Court must determine whether the requisite balance was maintained in a manner consonant with the applicant`s right of property (see Abdilla v. Malta (dec.), no 38244/03, 3 November 2005, and J. Lautier Company Limited v. Malta (dec.) no. 37448/06, 2 December 2008).

(b) Application to the present case

84. The Court notes that the complaint before it is limited to the refusal to issue a permit. Thus the impugned measure in this case must be considered as a control of the use of property (see paragraph 81 above), to be considered under the third rule, i.e. under the second paragraph of Article 1 of Protocol No. 1 (see Allan Jacobsson (no. 1), cited above, § 54). The Court must therefore consider whether the authorities` refusal to issue a building permit was a lawful measure "necessary to control the use of property in accordance with the general interest". The task of the Court in this context is to examine the lawfulness, purpose and proportionality of the decisions taken by the domestic authorities (see, for example, Borg, cited above).

Il-Qorti tirreferi ghall-kawza "**Borg v. Malta**" li kienet trattata mill-Kummissjoni fit-18 ta` Ottobru 1995. Hemm inghad :-

The Commission recalls that Article 1 of Protocol No. 1 (P1-1) guarantees in substance the right of property and comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

However, the three rules are not "distinct" in the sense of being unconnected: the second and the third rules are concerned with enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, as a recent authority, Eur. Court H.R., Air Canada judgment of 5 May 1995, Series A. no. 316, paras. 29, 30).

The Commission considers that the refusal of a building permit, in the particular circumstances of the present case, may be regarded as an interference with the applicant`s right to peaceful enjoyment of his property as guaranteed by Article 1 of Protocol No. 1 (P1-1). The interference falls to be examined under the second paragraph of this provision as it did not involve "deprivation" of property, but was a measure to "control the use of property".

Consequently, the Commission must consider whether the refusal of the authorities to issue a building permit was a lawful measure "necessary to control the use of property in accordance with the general interest". The task of the Convention organs in this context is to examine the lawfulness, purpose and proportionality of the decision taken by the domestic authorities (cf., for example, No. 12258/86, Dec. 9.5.88, D.R. 56, p. 215). According to the Convention organs` case law, as regards the choice of the detailed legal rules implementing a measure for the control of the use of property, the domestic legislature must have a wide margin of appreciation. In respect of the purpose of the measures, the Convention organs must respect the domestic legislature`s judgment as to what is in the general interest unless that judgment was manifestly without reasonable foundation (Eur. Court H.R., Mellacher and Others judgment of 19 December 1989, Series A no. 169, p. 26, para. 45).

In the present case the Commission notes that the refusal of the applicant`s

petition for a building permit was based on the relevant domestic legal provisions. Furthermore, the restrictions on the height of buildings were clearly a measure in pursuance of a general interest, namely the proper organisation of populated areas, and it is not for the Commission to decide whether other aims of general interest, such as the development of tourism, should have had priority.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Fil-kaz tal-lum, irrizulta li l-permessi ma gewx rinnovati ghal `*environmental grounds*` u ghaliex `*proposed site is objectionable*`. Fid-decizjoni taghha l-Qorti tal-Appell kienet dahlet fil-fondatezza tar-ragunijiet ghala t-tigdid tal-permessi ma kienx sar. Irrizulta bhala fatt illi l-*planning policy* kienet inbidlet fiz-zmien tat-tigdid. L-Istat ghandu l-jedd li jikkontrolla l-uzu tal-propjeta` fl-interess generali. Fil-kaz tal-lum, jirrizulta li l-bini propost mir-rikorrent kien se jsir barra miz-zona tal-izvilupp. Din il-Qorti hija tal-fehma illi r-ragunijiet ghala ma kienx hemm tigdid jinkwadraw ruhhom fid-dritt li ghandu l-Istat u ghalhekk ma kienx hemm ksur tal-Art 1 Prot 1 fejn jikkoncerna r-rikorrent.

Il-Qorti ma ssibx vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni.

4) <u>L-Art 14 tal-Konvenzjoni</u>

Din id-disposizzjoni tiggarantixxi l-harsien minn diskriminazzjoni. Fil-kawza "**<u>Zammit Maempel v. Malta</u>**" li kienet deciza mill-ECHR fit-22 ta` Novembru 2011 u saret gudikat fl-4 ta` Gunju 2012 inghad hekk dwar l-Art 14 :-

1. <u>General Principles</u>

81. The Court reiterates that Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence, since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those

provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see Mintoff v. Malta, (dec.), no. 4566/07, 26 June 2007).

82. In order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous or relevantly similar situations (see D.H. and Others v. the Czech Republic [GC], no. 57325/00, § 175, ECHR 2007, and Burden v. the United Kingdom [GC], no. 13378/05, § 60, ECHR 2008-). Such a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see Carson and Others v. the United Kingdom [GC], no. 42184/05, § 61, ECHR 2010-....). The Court also points out that the grounds on which those differences of treatment are based are relevant in the context of Article 14. Only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14 (see O`Donoghue and Others v. the United Kingdom, no. 34848/07, § 101, ECHR 2010-... (extracts).

Fil-kaz tal-lum, ir-rikorrent jallega li fil-kaz partikolari tieghu kienet applikata procedura mhux idoneja u nsolita b`tali mod illi kien diskriminat meta mqabbel mac-cittadini ohra li kienu trattati diversament.

Mill-atti fuq bazi ta` fatt ma tirrizulta l-ebda prova li kien hemm applikazzjonijiet ohra ta` terzi ghal tigdid ta` permessi simili ghal dawk tar-rikorrent fejn dawk l-applikazzjonijiet kienu milqugha u l-permessi mgedda. Fuq bazi ta` dritt, jinghad ukoll illi ghalkemm l-Art 14 huwa distint, mhuwiex applikabbli fejn il-fatti tal-kaz ma jaqghux fl-ambitu ta` vjolazzjonijiet ohra ta` jeddijiet ohra tutelati mill-Konvenzjoni. Ladarba fil-kaz tal-lum, il-Qorti ma sabitx li kien ksur ta` jeddijiet ohra fondamentali tar-rikorrent, l-Art 14 mhuwiex applikabbli.

Il-Qorti ma ssibx vjolazzjoni tal-Art 14 tal-Konvenzjoni.

Decide

Ghar-ragunijiet kollha premessi, il-Qorti qeghda taqta` u tiddeciedi din il-kawza billi :-

Tilqa` l-ewwel eccezzjoni tal-intimata Awtorita` ta` Malta dwar l-Ambjent u l-Ippjanar u ghalhekk tillibera lill-istess intimata mill-osservanza tal-gudizzju.

Tichad l-ewwel eccezzjoni tal-intimat Avukat Generali.

Tilqa` l-eccezzjonijiet l-ohra tal-Avukat Generali.

Tichad it-talbiet kollha tar-rikorrent.

Tordna lir-rikorrent sabiex ihallas l-ispejjez kollha ta` din il-kawza.

< Sentenza Finali >

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