



MALTA

**QORTI TA' L-APPELL**

**ONOR. IMHALLEF**

**MARK CHETCUTI**

Seduta ta' l-14 ta' Jannar, 2015

Appell Civili Numru. 32/2014

**Paul u Joseph Tabone**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Paul Tabone u Joseph Tabone tal-20 ta' Gunju 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-12 ta' Gunju 2014 kontra r-rifjut ta' PA 5793/05 'to sanction extension of rooms to old room and cave. Use of premises for storing salt and keeping waterpumps, tools and containers for salt';

## 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 pprezentata fl-20 ta' Settembru 2005, Full Development Permission PA 5793/05, l-appellanti fis-Salt Store Rooms, Delimara, Marsaxlokk, talbu:

"To sanction extension of rooms to old room and cave. Use of premises for storing salt and keeping water pumps, tools and containers for salt".

L-applikazzjoni giet michuda b'rifjut tal-25 ta' Settembru 2006. Saret reconsideration u d-decizjoni originali giet kkonfermata b'rifjut tal-5 ta' Gunju 2007, ghar-ragunijiet segwenti:

"1. The development proposed for sanctioning is not considered as justified development outside the development zone. The development and the existing cladding are urban in character, casting doubts on the actual purpose of the development. The rooms are also of considerable dimensions since area proposed for sanctioning totals to 56 square metres when compared to the pre-1968 existing 24 square metres. The development runs therefore counter to Structure Plan policies AHF 5 and RCO 2.

2. The development proposed for sanctioning limits the public access to the coastline, due to the structure's close proximity to the foreshore. The development runs therefore also counter to Structure Plan policy CZM 3, which promotes public access to the coastline.

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3. The site is located in a scheduled Area of Ecological Value and within an area designated by the Marsaxlokk Bay Local Plan as a National Park with the intention of safeguarding the ecological and aesthetical value of the site and the whole area. The proposal would adversely affect the area, hinder its protection, and run counter to the rural conservation and ecological objectives of the Structure Plan and of Policy MD01 of the Marsaxlokk Bay Local Plan.

4. The site is located within an Area of High Landscape Value. Structure Plan policy RCO 4 provides that, within Rural Conservation Areas and especially within designated Areas of High Landscape Value, areas of scenic value will be protected and enhanced. The existing development on site would have a considerable visual impact on the area, due to the cluttering of the area with unsightly structures. The development would therefore detract from the scenic value of the area, conflicting with Structure Plan policy RCO 4.”

Fl-appell tieghu, l-perit Ronald Muscat Azzopardi għall-appellant issottometta kif gejj:

“I would like to appeal against the refusal of the application PA 5793/05 which was the sanctioning of extension of rooms to old room and cave, use of premises for storing salt and keeping water pumps, tools and containers for salt at Delimara, M'Xlokk. The applicants are Mr. Joseph and Mr. Paul Tabone.

These rooms are on the edge of a saltpan holding area shared between three brothers.

There was an old room and a cave in the soft rock. These were noted on the 1968 Survey Sheet, as well as two or three small huts for storing salt. These were also noted on the old Survey Sheets.

The proposal is to sanction two rooms as an extension to the original room and small cave. These rooms are used for the storage of pumps, hoses and jerry cans, buckets, spades and other stone working tools. These are used for the maintenance and upgrading of the old salt pans and for the collecting and storage of the dry salt.

One of the rooms facing the sea has an exposed sea wall clad in hard local pebbles and this serves as a protection against the sea waves. This wall is also angled to

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deflect the waves. There are also two 4 course high sea walls to buffer the buildings from the sea.

The rooms are tucked in under a drop in the natural rock formation and can only be seen from within the bay as the roofs of the rooms are over 2.5 metres below the surrounding fields.

It must be noted that ECF 00659/05 covers this site

This is a request to sanction these two rooms that are essential to the working of these salt pans. This is a dying trade that has to be encouraged as not to fold down in the face of stiff competition from overseas suppliers that can deliver crushed rock salt at cheaper prices.

Please note that:

- The land is owned by the applicants and is not government land.
- The rooms in question have been used for the storage of salt for many years and their father used to work at the saltpans with their grandfather over 40 years ago.
- There is no official document to prove the working of the salt-pans, but these pans have been on site before the 1950s.
- The rooms are needed:
  - For the storage of the salt in piles and in sacks. The salt is stored on site until there is sufficient volume to take it for packaging.
  - For keeping tools and equipment. These consist of a variety of shovels, pick hammers and chisels for widening/opening trenches for dirt run-off water, maintaining and re-building breached parts of the perimeter wall of the pans.
  - For storing hosepipes and a number of water pumps to replenish the salt water and for the pumping upwards of the rich saline solution.
  - These pumps are all mechanical and diesel/petrol powered as there are no electrical services on site.
- In summer the owners often sleep overnight to be able to make the most of this relatively short period of calm and hot weather. Heavy storms wash off or

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contaminate the drying salt. A strong storm can easily cause a fifteen-day setback in the salt production.

- The rooms are not large and are barely adequate for the need of the salt producers.

- The salt and tools are transported to the site by pick-up vans and access to the site is through the narrow stony farm track off Delimara Road. The vans park in the nearby field at the end of the track. This is third party property. Materials, tools and salt are hand carried down to the rooms using the existing narrow footpaths or down a temporary ladder that links the rooms to the overlying fields.

It must be taken into consideration that the rooms are used continuously in summer in the afternoons and early mornings and periodically in winter for maintaining the salt-pans and to carry out repairs from storm damage.

The rooms have no public utility services. There is a small old well that collects storm water for general cleaning purposes. Bottled drinking water is transported to the site when needed.

We are enclosing a plan of the applicant's property. This is shared with his brother Mr. Alfred Tabone.

There are no specific paths linking the rooms to the salt-pans. The rooms have a small, leveled area near them. The owners walk along the rocks to the salt-pans that are at a level of less than a metre below the level of the rooms.

This is a genuine case of one of bona fide salt-pan workers who are trying to keep an old trade going on in the face of stiff competition from imported, cheaper salt that is distributed through organized sales outlets.

The applicants need assistance in their work to avoid the risk of abandoning the salt-pans as these are unprofitable. We hope that the Planning Appeals Board consider this situation on all the facts mentioned with respect to the salt pan industry.”

L-Awtorita' fir-rapport taghha kkummentat s-segweni:

## "5.0 COMMENTS ON APPELLANT'S ARGUMENTS & REFUSAL NOTICE

5.1 The reasons for refusal related to this proposed development address three main issues, being:

- The justified need for the proposed development;
- Access to the Coast; and
- The ecological and scenic value of the site and its surroundings.

These three issues shall be discussed within the following sub-sections, with particular reference to the appellant's grounds for appeal.

### 5.2 Justification for Proposed Additional Storage

The appellant indicates that the proposed store is required to store equipment related to salt panning operations and salt produce obtained from the surrounding salt pans. The appellant further states that the sanctioning of these stores should be considered as justified to help support a dying trade, as local salt production is in stiff competition against imported, cheaper salt that is distributed through organized sales outlets.

Notwithstanding this, the appellant's are already accommodated with storage space for these salt operations in the existing room and cave, which amount to a total floor space area of 24m<sup>2</sup>. The Authority considers that this is sufficient storage space for rearing the salt pans, especially when considering that the appellant also indicates that the tools, equipment and salt produce 'are transported to the site by pick-up vans' (page 3 of appeal). This statement casts serious doubts on whether the proposed stores are actually required for salt and tool storage as claimed in this application.

The appellant has not even identified the extent and area of salt pans reared by the applicants to establish whether the existing 24m<sup>2</sup> storage space is sufficient. The proposed additional 56m<sup>2</sup> storage space is not considered to be justified on sound planning grounds, and accepting such development in an ad hoc manner would only encourage the establishment of further such urban development along coastal areas. Accepting this proposal would run counter to Structure Plan policies SET 11 & 12, which seek to prohibit the dispersal of urban development within rural areas.

### 5.3 Access to the Coast

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The proposed additional rooms protrude further towards the coastal shore, leaving minimal access along the coast. Structure Plan policy CZM 3 specifically states that public access around the coastline immediately adjacent to the sea shall be made accessible by all. This policy further states that action should be taken against illegal development and encroachments along the shore, to secure that no form of impediment is present restricting public access.

Securing public access along the shore is of significant importance in this case, as the site is located within a designated National Park. The designation of this area as such is aimed at increasing the public's enjoyment within this area, and hence a National Park strategy for this area would definitely include within its objectives the provision of free access along the coast. Hence, accepting the sanctioning of the proposed development would conflict with Structure Plan policy CZM 3, and also undermine the areas designation as a National Park. In effect, the proposal conflicts with M'Xlokk Bay LP Policy MD 01 which prohibits uses that would be harmful and that would have conflicting impacts on such National Parks.

### 5.4 Site Sensitivity

The proposed store is located within a highly sensitive area affected by several levels of protection, including:

1. A Level 2 Area of Ecological Importance for coastal cliffs between Marsaxlokk and Marsascalea (G.N. 400/96);
2. An Area of Ecological Importance/Site of Scientific Importance due to the presence of coastal cliffs from id-Dahla ta' San Tumas till is-Sarc (G.N. 400/96); and
3. A National Country Park Area.

The site is located within a Level 2 AEI, where paragraph 15.38 of the SP Explanatory Memorandum states that:

3. Human intervention is to be strictly controlled;
4. Physical development is to be limited to the maintenance of already existing structures and construction of minor amenities designated to enhance the educational and recreational use of the area; and
5. Traditional activities (eg. Agriculture) can continue, unless in conflict with other policies, but no new land is to be diverted to these uses except for the suitable re-establishment of abandoned fields for agriculture.

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The provisions of this paragraph clearly identify the unsuitability of the proposed additional stores within this Level 2 AEI. Although existing traditional activities, such as salt pan rearing, may continue, this policy prohibits the construction of additional facilities to those already existing. Furthermore, where the construction of minor amenities is permitted, these are limited only for uses which are of educational and recreational use, unlike the salt stores applied for in this application.

Furthermore, the site's location along the coast sets the site within an area of high visual vulnerability and of high landscape value. The cladding of one of the proposed rooms with pebbles is considered to negatively impact on the visual integrity of this coastal area, and hence the proposed design treatment is considered to conflict with SP Policy RCO 4."

B'nota pprezentata fit-23 ta' Settembru 2011, l-Perit tal-appellant ipprezenta l-Profit and Loss Account mix-xoghol fis-Salt Pans mill-appellanti ghas-snin 2005 sa 2010.

B'nota tat-12 ta' Marzu 2012, l-konsulent legali tal-appellanti, ghamel referenza ghad-dokumenti pprezentati dwar id-dhul u l-hrug minn din l-attivita'; li x-xoghol hu ta' natura stagjoni, billi jista' jsir biss fix-xhur tas-sajf; li din l-attivita' jisthoqilha kull ghajnuna u assistenza anke finanzjarja, li l-kmamar ilhom jezistu snin twal u billi bil-maltemp issirilhom il-hsara l-appellanti dejjem hadu hsieb jaghmlu l-manutenzjoni, u f'xi drabi ri-konstruzzjoni taghhom.

L-Awtorita' fis-second statement taghha kkummentat kif gej:

"The Authority has the following comments in reply to the appellants' latest submission (received on the 16th March 2012):

- The appellants are stating that these stores are required because salt collecting is a seasonal industry. However the appellants fail to justify how the fact that the industry is seasonal results in the need of requiring such storage space; i.e. what is the link between the seasonality of the industry and the need for storage?
- The applications regard the sanctioning of extensions carried out to existing legal stores. This means that the appellants are already in possession of a number of legally constructed stores and therefore by refusing these applications the Authority is not jeopardising their industry since they are already in possession of the necessary infrastructure to carry out their work.



On the other hand, further extensions are not justified especially since the industry carried out on site is very small as it transpires from the accounts of these last years, with each succeeding year reporting reduced turnover.

- Contrary to what the appellant has stated, the Authority is not against the periodical maintenance of these rooms. However the applications are not for the maintenance of these rooms but to sanction their illegal extensions - i.e. new development."

Fir-risposta tieghu, l-perit Ronald Muscat Azzopardi ghall-appellanti ddikjara s-segwenti:

- Salt collecting is a seasonal industry since the majority of the salt is collected during the three summer months. Since a lot of salt is collected and this is usually in large quantities, the applicants need storage space to store the salt after collection.
- Salt cannot be stored outside but has to be kept dry and stored inside since salt is a hygrophobic material and deteriorates if not stored inside.
- The salt is not sold immediately and not sold at one go. This is stored for a period of time before it is sold and it is sold in parcels. Unfortunately since this is a dying trade its turnover is not so high. However it does not mean that the storage is not required.
- Storage is also required for the tools, pumps, pipes, shovels and much more equipment required for maintenance and collection.
- We hope that this justification is enough to explain the link between the seasonality of the industry and the need for storage.
- We are sanctioning the extensions since the existing legal structures did not provide enough storage space, hence the illegal construction; since these were required urgently and hence, their sanctioning.
- If they do not have enough space for storage then yes the Authority will be jeopardising their industry.
- Reduced turnover was reported each succeeding year because as already mentioned this is a dying trade, which is a current issue in Malta; as also seen from the salt pans at is-Salini in St. Paul's Bay where the EU is funding a project to help increase this trade and raise awareness.
- Therefore the extensions are required because although this trade is dying with reduced turnover each year, it does not mean that the applicants have stopped

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collecting and storing salt. They keep on going each year and hence the storage is still required, no matter what.

- In our last report we never stated that the Authority is against the maintenance of the salt pans however without the size of the existing structures including the ones to be sanctioned it is impossible for the applicants to store:

- the amount of salt collected,
- maintain the salt pans without enough room for storing tools,
- and without enough room for the applicants to rest.

- The applicants sincerely request to retain and sanction these rooms so they can continue to work in this old industry to keep it alive.

Previous reports contain enough information to justify the reasons of these applications and we hope that the Authority can better understand this situation following our comments and overturn this decision.”

Ikkunsidra ulterjorment:

L-Appellanti qed jipproponu li jigu sanzjonati estensjonijiet għall-kamra antika u għar li jintuzaw bħala mhazen għal melh. Dawn għandhom area ta' 24m<sup>2</sup>, mentri l-area okkupata mill-izvilupp addizzjonali hi ta' circa 56m<sup>2</sup>.

Billi fuq is-sit sar zvilupp bla permess, harget l-Enforcement Notice ECF 649/05; b'din l-applikazzjoni l-appellanti qed jittentaw jissanzjonaw l-izvilupp illegali.

Dan il-kaz hu simili għall-appell numru 178/07, PA 5792/05, Alfred Tabone vs MEPA, li wkoll hu kaz ta' sanctioning ta' estensjonijiet li saru għal store fejn jinhazen il-melh.

Is-sit jinsab barra z-zona ta' l-izvilupp ta' Marsaxlokk f'area disinjata bħala 'Delimara National Park'.

Bl-Avviz tal-Gvern 400/96 s-sit gie ufficjalment rikonoxxjut bħala Level 2 Area of Ecological Importance; Area of Scientific Importance.

L-Awtorita' fir-rapport tagħha għamlet referenza għas-segwenti Policies:

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Mill-Pjan ta' Struttura (1990) I-Policies SET 11, SET 12, RCO 2 u RCO 4.

Mill-Marsaxlokk Bay Local Plan Approved Draft 1995 I-Policies MEO1 u MD01.

L-oggezzjonijiet ta' l-Awtorita' ghal din il-proposta ta' 'sanctioning' huma principalment s-segwenti:

1. Jekk hemmx gustifikazzjoni ghall-izvilupp li tieghu qed jintalab sanzjonar.
2. L-access ghall-kosta.
3. Il-valur ekologiku u xeniku tas-sit.

L-appellanti qed jikkontendu li jinhtiegu dan l-ispazju addizzjonali biex jkunu jistghu jahznu l-ingenji u l-ghodda li juzaw fl-industrija tal-produzzjonital-melh; attivita' li jixraq li tigi protetta u ippriservata.

Dwar l-ispazju disponnibbli ghall-appellanti biex jahznu l-melh u l-accessorji li jintuzaw f'dan ix-xoghol, jirrizulta li diga ghandhom area ta' 24m<sup>2</sup> ghal dan l-uzu specifiku.

'Ex admissis' ddikjaraw li l-ghodda u l-ingejnji jingarru bil-vans ghal fuq is-sit.

Din ic-cirkostanza effettivament tfisser li m'hemmx l-htiega ta' aktar spazju bhala storage space. Izda anke jekk kien hemm xi dubbju dwar dan, r-ritratti annessi mal-applikazzjoni ma jhallu l-ebda dubbju li l-isturturi li l-appellanti qed jitolbu li jigu 'sanctioned' huma zvilupp urban, b'karatterisitici evidenti ta' residenza, fosthom twieqi, madum disinjat, tarag u cladding tal-hitan bil-gagazza.

Ir-ritratti jikkonfermaw li l-estensjonijiet li saru illegalment, f'sit sensitiv hafna, m'humiex esetnsjoni ta' store izda zvilupp urban f'area protetta, barra z-zona tal-izvilupp.

Wahda mill-konsegwenzi tal-izvilup hi li l-access pubbliku ghal kosta gie ridott; dan hu in kontravvenzjoni tal-Policy C2M3 tal-Pjan ta' Struttura.

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F'din il-lokalita' partikolari, din il-Policy ghandha applikazzjoni aktar rigoruza billi z-zona hi disinjata bhala 'National Park'. Il-proposta hi ghalhekk in kontravvenzjoni wkoll tal-Policy MD01 tal-Marsascale Bay Local Plan; li ma tippermettix uzu li jista' jkun ta' hsara ghan-National Park.

Oggezjoni legittima ohra ghal proposta hi s-sensittivita' partikolari tas-sit. B'avviz tal-Gvern 2000/96 is-sit gie ufficjalment rikonoxxjut bhala area ta' Importanza Ekologika, sit ta' Importanza Xjentifika, u National Country Park Area.

Skond il-paragrafu 15.38 tal-Structure Plan Explanatory Memorandum, interventi umani huma strettament kontrollati; u l-izvilupp accettabbli hu dak konness mal-manutenzjoni ta' dak ezistenti. Fil-waqt li l-attivita' tal-produzzjoni tradizzjonali tal-melħ, ghandha tigi ppreservata u protetta, ma jistghux jizdiedu kostruzzjonijiet addizzjonali għall-facilitajiet ga ezistenti.

In oltre, billi l-izvilupp ghandu impatt negattiv f'area tal-kosta, l-proposta hi in kontravvenzjoni tal-Policy RCO 4 tal-Pjan ta' Struttura.

Ezaminati fid-dettal, l-motivazzjonijiet tar-rifjut u l-aggravji tal-appellant fil-kuntest tal-Policies tal-Ippjanar rilevanti, l-appell ma jimmeritax konsiderazzjoni favorevoli, billi l-proposta hi in kontravvenzjoni tal-Policies citati fir-rifjut, u billi rrizulta mill-istess ritratti annessi mal-applikazzjoni, li l-istrutturi ezistenti m'humiex estensjoni ta' store għall-melħ, izda zvilupp urban f'area sensitiva, barra z-zona ta' l-izvilupp, li mhux permissibbli.

It-Tribunal ghalhekk qed jiddisponi minn dan l-Appell billi jichad l-istess u jikkonferma r-rifjut tal-5 ta' Gunju 2007 għall-applikazzjoni PA 5793/05.

## Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. Il-konsiderazzjonijiet li waslu għad-decizjoni ta' rifjut da parti tat-Tribunal huma skorretti fattwalment u legalment. Il-konsiderazzjoni dwar il-gustifikazzjoni għal estensjoni rikjesta hi wahda soggettiva peress illi ma ttiehidx in konsiderazzjoni c-cokon tal-ispazju disponibbli u l-

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fatt li l-appellanti jridux igorru l-ghodda u l-ingenji kull darba bil-vans. L-istess jinghad għall-osservazzjoni li l-estensjoni għandha elementi ta' żvilupp urban meta ma hemmx l-elementi għal dan. Mhux minnu anqas li l-estensjoni irriduciet l-access għal kosta mill-pubbliku, tant li l-ahhar estensjoni saret fis-snin tmenin. Ghalkemm iz-zona titqies sensitiva l-familja tal-appellanti ilha teżercita s-sengha tal-produzzjoni ta' melh fl-inhawi għal 80 sena;

2. Is-sit jinsab kkommess għal għbir tal-melħ mill-anqas għal 80 sena u għalhekk l-estensjoni qua miljorament għal tali produzzjoni u għbir għandha tinghata;

3. L-appellanti għandhom dritt vestit li jitolbu sanzjonar tal-estensjoni biex jissoktaw fl-attività tagħhom.

### **L-ewwel u t-tieni aggravji**

L-ewwel aggravju ma hu xejn hlief ripetizzjoni ta' argumenti u aggravji mressqa quddiem it-Tribunal u li jirrigwardaw mhux xi punt ta' ligi izda kwistjonijiet fattwali li gew indirizzati mit-Tribunal u michuda. Kontrarjament għal dak sottomess mill-appellant jirrizulta illi l-estensjoni rikjesta hi ta' aktar minn darbtejn dik ezistenti f'xenarju fejn skond ma rrizulta lit-Tribunal din l-estensjoni hi adebita mhux bhala store izda aktar bhala fond urban, fosthom twieqi, madum iddisinjat, tarag u cladding tal-hitan bil-gagazza. It-Tribunal qies illi z-zona hi wahda protetta billi z-zona hi desinjata bhala national park u hi ufficjalment rikonoxxuta bhala zona ta' importanza ekologika u sit ta' importanza xjentifika. Skond l-istruktura plan Explanatory Memorandum paragrafu 15.38, interventi umani huma strettament kontrollati u l-izvilupp accettabbli hu dak konness ma manutenzjoni biss. L-izvilupp propost mill-appellanti qed jikser dan kollu, apparti l-accessibilita ridotta għal kosta bl-istess konstruzzjoni. It-Tribunal qies li l-fatt li l-appellanti qed igibu l-attrezzi għall-attività tagħhom bil-vans, dan ma hux qed ixekkel l-attività tagħhom.

Dan l-aggravju għalhekk anki fattwalment gie mistharreg mit-Tribunal u instab mhux gustifikat apparti l-gustifikazzjoni kontra l-izvilupp illegali mill-punto di vista tal-policies rilevanti.

### **It-tieni aggravju**

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Dan l-aggravju ma fihx mertu. Il-fatt li s-sit hu kommess ghal produzzjoni tal-melħ bi struttura ta' 24 metru kwadru ma jfissirx li estensjonijiet ulterjuri jstghu jsiru impunement. Il-commitment jirreferi biss ghal attivita bl-istrutturi kif kienet qabel l-illegalitajiet li qed jitolbu jigu sanzjonati.

### **It-tielet aggravju**

Dan l-aggravju wkoll hu bla mertu. Ma jistax ikollok dritt vestit ta' illegalita li qed tintalab tigi sanzjonata u ghalhekk l-argument ma jreggix.

### **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Paul Tabone u Joseph Tabone u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-12 ta' Gunju 2014. Bl-ispejjez kontra l-appellanti.

## **< Sentenza Finali >**

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