



MALTA

**QORTI TA' L-APPELL**

**ONOR. IMHALLEF**

**MARK CHETCUTI**

Seduta tal-11 ta' Frar, 2015

Appell Civili Numru. 42/2014

**Dr. Carmel Chircop**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Dr. Carmel Chircop tal-5 ta' Awwissu 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-24 ta' Lulju 2014 mir-rifjut ta' PA 5178/07 'sanction construction of a garage and change of use to gardening and agricultural shop';

## 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 fit-13 ta' Awwissu 2007, Full Development Permission PA 5178/07, l-appellant f'sit Xifer Gardening Centre, Xifer il-Kief, limiti ta' Mgarr (Malta) talab:

“To sanction the construction of a garage and change of use to gardening and agricultural shop.”

L-applikazzjoni giet michuda fit-22 ta' Gunju 2010; saret talba ghal reconsideration, izda d-decizjoni originali giet ikkonfermata b'rifjut tal-15 ta' Settembru 2011 ghar-ragunijeit segwenti:

“1. The site lies outside the limits for development defined in the North West Local Plan and so it is located in an area which should remain undeveloped and open. The proposed development would run counter to this scheme and would represent unacceptable urban development in the countryside.

2. The proposed development conflicts with Structure Plan Policy SET 11, which does not permit urban development outside existing and committed built-up areas. The development does not fall into a category of non urban development which may be permitted outside existing or committed built-up areas in accordance with Paragraph 7.6 of the Structure Plan. The proposed development also therefore runs counter to policy BEN 5.

3. The proposal does not fall within one of the categories of development, namely structures or facilities essential to agricultural, ecological or scenic interests, which may be permitted in Rural Conservation Areas where they meet the principles and

## Kopja Informali ta' Sentenza

criteria set out in Structure Plan policy RCO 4. The proposal is not essential to, nor does it enhance agricultural, ecological, or scenic interests.

4. There is no justification for the development of this site as required by Structure Plan policy SET 12. It is apparent that there are no reasons from a planning point of view why the proposed development can not be located in an area designated for development or in an existing built up area.

5. The site lies in a Rural Conservation Area (as designated by the Structure Plan and indicated on the Key Diagram). The proposal does not comply with Structure Plan policy RCO 2 which clearly states that no form of urban development will be permitted within Rural Conservation Areas.

6. The proposed development has a direct access on to a distributor road and it will generate additional vehicle movements and on-street parking. It would give rise to potential traffic hazards and adversely affect the free and safe flow of traffic on the distributor road. The proposal therefore runs counter to Development Control Policy and Design Guidance 2000 policy 4.3."

Fl-Appell tagħha, l-Avukat Dottor Tanya Sciberras Camilleri għall-appellant issottomettiet s-segwenti:

"I write on behalf of Dr Carmel Chircop of 10, Main Street, B'Kara, with reference to the decision of the Commission dated 15th September 2011 after a request for full development permission, regarding the site at Xifer Gardening Centre, Xifer il-Kief Limiti Ta' Mgarr (Malta), and which refers to the following proposed development:

"To sanction the construction of a garage and change of use to gardening and agricultural shop,"

The proposed development was turned down by the Environment & Planning Commission, on the following grounds: - ragunijiet ga rrapportati supra;

[...]

## Kopja Informali ta' Sentenza

My client feels aggrieved by the said decision and is hereby appealing for the following reasons:

Our client feels aggrieved by the decision and is hereby appealing on the following grounds:

The proposal is not only to sanction a garage situated in the limits of Mgarr, Malta, but also to change its use to a gardening and agricultural shop, thereby serving the needs of the arable farmers who till the land in the vicinity of the property in question. Contrary to what is being stated by the Authority in the decision, the use is essential to the needs of the farmers and it is therefore necessary that the property is sited in this stretch of road in order to provide them with a service.

It must be pointed out that our client's site is being treated differently to other sites in the vicinity and indeed, on the very same road and it seems that the same policies quoted by the Authority in its decision were totally disregarded in other cases, giving rise to a clear case of discrimination with regards to my client.

### Gardening and agricultural shop

The proposed change of use is related to horticulture and applicant intends to provide a service on this stretch of road, mainly to arable farmers who tend their fields in the vicinity. Such a use can definitely be classified as a "legitimate use in the non-urban scene" and therefore the proposal is in line with policy BEN 5 of the Structure Plan.

It must also be stated that the garage is situated in front of a residence and that there are the remains of a farmhouse next to the site.

My client wishes to make reference to the following examples of similar shops where a permit was granted even though these were sited in agricultural areas, similar to the one in question:

PA 5801/94	This relates to a permit granted for the setting up of a garden centre known by the name "Iardinland" which is situated and has direct access to Ghajn Tuffieha Road,
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## Kopja Informali ta' Sentenza

	San Pawl il-Bahar.
PA0705/06	This relates to "Sherries" Garden Centre at "Ta' Campra", Triq Burmarrad, San Pawl il-Bahar. In terms of this permit the following development was approved: "To sanction existing structures of nursery that vary from approved permits, including retail on site and replacement of old greenhouse. Installation of new greenhouses for growing of plants and vegetables. Propose a new development in excavated area (Garden Centre). This garden centre is situated on a busy stretch of Triq Burmarrad, so much so that a speed camera has been put up to deter motorists from speeding. This notwithstanding, a permit was granted.

It is submitted that not only is my client being treated differently with regard to similar shops situated outside the development zone, but on the same stretch of road and in the immediate vicinity, a number of permits have been granted over the years, the most glaring one being the recent grant of a petrol station having access onto the same road and similarly situated ODZ. These are the following:

PA 4192/03	Grant of permit for four greenhouses, a water reservoir and an agricultural store
PA 3920/98	Outline permit for petrol station
PA 0667/08	A full development permit sited on a much larger site than that covered by the outline permit PA 3920/98 was granted for the petrol station and other amenities not covered in the outline permit, including a yard and basement workshop and a showroom. The development approved is the following; "To relocate existing petrol station in Mgarr Square, service garage at Sir Harry Luke Street, and open storage yard behind Mgarr playing field and erect basement workshop/garage, signage and showroom for sale of agricultural implements"
PA 5413/95	
PA 675/95,	
PA 57/95,	
PA1397/97,	

## Kopja Informali ta' Sentenza

PA6739/06	These are various permits granted over the years for the construction of San Andrea School, Imselliet
PA 1705/89	
PA4842/93	
PA5547/94	These are various permits granted over the years for the construction of San Anton School, Imselliet
PA 1661/05	To construct swimming pool and sanctioning of garden store 56, Imgarr Road, Imgarr. This is a permit for a small showroom having access to Imgarr Road, close to the site in question.

My client submits that these permits on the same road as the site in question or in the vicinity create a commitment which should be applied in his favour. All the permits above-quoted were granted on site which are outside the development zones, whilst some of the permits front the same road. However, it would seem that the policies quoted in the refusal of my client's proposal were totally ignored by MEPA and/or the EPC in its assessment of the other developments whereas they were considered applicable in his case. This application of the established principle of *cerimus paribus* should result in the overturning of the decision of the EPC and the grant of the permit.

In the circumstances, the Tribunal is requested to overturn the decision of the Commission and to issue the relative permit as requested.”

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

“Proposal

1. This full development application seeks to sanction an illegally built garage and change its use to a gardening and agricultural shop.

Site History

2. Site is located within the outside development zone of Mgarr, Malta, and is also covered by enforcement action as per ECF 215/02 which states:

## Kopja Informali ta' Sentenza

“Ghandek zvilupp li jikkonsisti minn bini ta’ garaxx, u l’uzu ta’ l-istess sit bhala garaxx ta’ mekkanik, u dan kollu minghajr permess.

3. A previous application on site, namely PA 1804/02, for the sanctioning of garage and change of use into light industry mechanic was turned down by the DCC and dismissed by the Planning Appeals Board (PAB 242/03 RR). Moreover, it is important to note that the Planning Appeals Board in its decision stated:-

“Kif gie korrettement sottomess mill-Awtorita' s-sanzjonar tal-imsemmi garage ikun in kontravvenzjoni ta' diversi Policies, fosthom Policy SET 11, u 12, u RCO 2 li kollha jipprojbixxu kull forma ta' zvilupp fil-kampanja. Il-garaxx in kwistjoni mhux essenzjali ghall-uzu agrikolu u ghalhekk ihalli impatt negattiv fuq l-ambjent rurali cirkostanti. Id-daqs u s-sura tal-garaxx huwa partikolarment oggezzjonabbli, billi dan hu garaxx tipikament industrijali, li certament mhux f'postu f'area li hi konsidrata bhala wahda ta' High Landscape Value. Dan qed jinghad b'referenza partikolari ghall-Policy RCO 4.”

### Preliminary Plea

4. The Malta Environment and Planning Authority respectfully asserts that this Tribunal cannot hear and decide on the merits of this appeal in view that the proposed development is to sanction illegal development situated within a scheduled area as follows:-

#### Heritage Scheduling

Area of High Landscape Value of the Victoria Lines as per GN 85/01

#### Site located within Scheduled Property

5. Article 70 (1) and Schedule 6 (2) of Act X of 2010 (Environment and Development Planning Act) unequivocally state that no development may be regularised in scheduled property.

### Further Considerations

## Kopja Informali ta' Sentenza

6. In his appeal, the appellant submitted that he is being treated differently and that various other permits were granted along the same stretch of road as the site under this appeal or in the immediate vicinity.

7. He also added that all permits quoted in his appeal submission were granted outside the development zone and thus this constitutes a commitment which should be applied in his favour.

8. The Environment and Planning Review Tribunal may wish to note that the Authority has noted all permits quoted in the appellant's appeal and submits that all mentioned sites do not fall within a Scheduled Area, on the contrary to the appeal under consideration.

### Conclusions and Reservations

9. Consequently, in view of what has been stated above, the appeal as presented should be dismissed as per reasons for refusal dated 15 September 2011.

10. Without prejudice to the above, the Malta Environment and Planning Authority reserves its right to reply on the merits of the appeal, if it would become necessary, after the decision taken by this Tribunal on the above preliminary point."

Fir-risposta taghha l-Avukat Dottor Tanya Sciberras Camilleri ghall-appellant, iddikajrat s-segwent:

#### "Site History

The note makes mention of the fact that a previous application (PA 1804/02) was turned down. However it must be pointed out that the previous application which was not filed by my client, requested the change of use to that of light industry mechanic, which has nothing to do with the current application.

#### Preliminary Plea

## Kopja Informali ta' Sentenza

In its report, the Authority has raised a preliminary plea and has stated that the Tribunal cannot hear and decide on the merits of the appeal in view that the proposed development is to sanction illegal development situated within a scheduled area.

In reply to this plea, it is submitted in the first instance that this plea was not raised by the Authority as a reason for the refusal of the application and indeed, does not form part of the decision of the EPC from which this appeal was filed. Therefore, this plea should be disregarded by the Tribunal since the Authority failed to raise it in its recommendation for refusal and cannot now raise it at this late stage, since it is deemed to have renounced to this plea when it was raised earlier.

Without prejudice to the above, client submits that, in any event, the development was carried out well before May 2008 and therefore, it does not fall within those types of development listed in the Sixth Schedule which cannot be sanctioned since the Schedule bars the sanctioning of development carried out in a designated area after May 2008, but in this case, the development was carried out years before on site, which is situated in the buffer zone of an Area of High Landscape Value. Suffice it to state that enforcement action was taken way back in 2002 and, in any event, it must be pointed out that the enforcement action is still subject to appeal proceedings before the Court of Appeal.

Therefore this preliminary plea cannot be raised at this stage and, in any event, is unfounded, as explained earlier in this note.

### Further Considerations

Turning to the other considerations raised by the Authority in its reply client comments as follows:

The Authority states that the permits quoted in the request for appeal are not situated in a scheduled area and are therefore not applicable. It is submitted that this issue is also being raised at this late stage and that none of the six reasons for refusal mentioned the issue of a scheduled area but the policies quoted all refer to rural conservation policies and policies referring to development outside the development zone. This is the reason for the quotation of the issued permits in similar circumstances and the Authority has not disputed any of them.

## Kopja Informali ta' Sentenza

In any event, it is pertinent to point out that the development in question is situated in a Buffer Area/Area of High Landscape Value and not on the Victoria Lines themselves. This does not imply that all development in such a zone should be prohibited but each is to be decided on its own merits.

Since filing the appeal, another permit was issued in the vicinity of the site in question – PA 4297/10 which was approved on 21st October 2011. This permit was issued for the reconstruction of a fireworks factory. In its approval the EPC recommended the imposition of a fine if the application sanctioned any illegalities. In fact, in approving the development, the EPC imposed the following:

Fine is applicable if this application is approved and is sanctioning illegalities on site.

Therefore, at this stage, one queries the issue of the permit if any illegalities were sanctioned thereby and whether such development could be sanctioned in terms of Article 70 of Chapter 504, since the site is outside the development zone. The presentation of PA 4297/10 is also hereby being requested for my client's perusal.

I trust the application will be sanctioned, since it can be justified according to current policies.”

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

“The Authority has noted all the arguments as presented in the last submissions and states that:

The Authority disagrees that its initial preliminary plea re the applicability of Article 70 in view that the site is within a scheduled area as per Government Notice 85/01 is not relevant to this case since the Authority, as well as the Tribunal is requested by law to consider ALL factors which are relevant to each case being assessed and decided upon. It is then in the Tribunal's remit to decide upon each issue as raised by both parties and would eventually decide which were relevant and which were not. Hence, in addition to the Authority first statement the Authority is including the additional technical arguments below. Additionally, Art 70 para 2 makes no difference as to when the illegal development had taken place. On the contrary,

## Kopja Informali ta' Sentenza

para 1 and para 3 clearly define those development after May 2008 but para 2 includes all development, irrespective of when it was carried out illegally, and which now cannot be sanctioned if it is located within a scheduled area or building.

The proposal is seeking to sanction the construction of a garage (previously attempted to be sanctioned in PA 1804/02 but was even rejected by the Planning Appeals Board in PAB 242/03 RR in decision dated 1st April 2005) and a new proposed use of a class 4 shop (gardening). By virtue of a class 4 shop in such ODZ and scheduled area, appellants have not cited any particular policies which could have permitted / sanctioned such a shop in ODZ. On the contrary, the PDG – Agriculture, Farm Diversification and Stables, December 2007, in all of its policies, ie new farm dwellings, new stores for agricultural purposes, new stables, etc, there is always a proviso that no new development is actually permissible in scheduled / protected and similar protected area since if all normal development would have been permitted in ALL ODZ areas, there would not be any need for their formal protection status. So, being located in such a scheduled area through a Government Notice, its sanctioning is totally logical and legal and hence, the reasons which cite Structure Plan Policy SET 11 and SET 12 as well as the NWLP ODZ designation is fully relevant and justified. Structure Plan Policies RCO 2 and RCO 4 are also fully relevant since both strive to protect such rural area from urban development including any class 4 shop which could easily be located in more appropriate designated areas.

As to the cited permit PA 4297/10, this permit granted Internal alterations and additions in 153, Triq L-Oratorju, Cospicua (Bormla), Malta.

In this regard, the Authority reiterates that in line with its previous reports, this request for appeal is not justified by the relevant planning policies and states that the Board's decision was warranted and hence respectfully requests the Tribunal to dismiss this request for appeal".

B'nota tal-1 ta' Marzu 2012, ipprezentata fit-8 ta' Marzu 2012, l-konsulent legali tal-appellant iddikjarat li skond Policy Interna tal-MEPA, l-Artikolu 7 u Skeda 6 tal-Att X ta' l-2010 ma kellux japplika ghal applikazzjonijiet ipprezentati qabel l-1 ta' Jannar 2011, kif kkonfermat fis-seduta tal-20 ta' Marzu 2012 li ghalkemm kien sar Avviz Legali f'dan is-sens, dan baqa' qatt ma gie formalment promulgat f'ligi.

B'nota tat-23 ta' Frar 2012, ipprezentata wkoll fit-8 ta' Marzu 2012, il-konsulent legali tal-appellant ikkjarifikat li l-permess minnha precedentement citat tal-fireworks factory PA 4297/10 kellu jaqra PA 4797/10.

## Kopja Informali ta' Sentenza

Ikkunsidra ulterjorment dwar l-eccezzjoni preliminari:

L-Appellant qed jipproponi li jissanzjona garage mibni illegalment (bla permess) u change of use ghal gardening u agricultural shop; l-garage jinsab f'Xifer il-Kief, limiti tal-Mgarr (Malta).

Billi l-garage nbena bla permess s-sit hu milqut b'enforcement notice ECF 215/02. B'applikazzjoni precedenti PA 1804/02 saret talba wkoll ghall-sanctioning tal-imsemmi garage li giet michuda; r-rifjut ikkonferma b'decizjoni tal-Bord ta' l-Appell dwar l-Ippjanar PAB 242/03 RR.

L-area hi skedata permezz ta' Government Notice 85/01 bhala Area of High Landscape Value of the Victoria Lines.

Dan it-Tribunal kellu l-opportunita' li jittratta diversi appelli simili fosthom dak fl-ismijiet 'Carmelo Psaila vs. l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar' deciz fit-30 ta' Jannar 2014, AppellNumru 624/11.

F'dawn il-kazijiet invarjabilment jinhtieg li jigu kkunsidrati s-segwenti:

1. Liema ligi hi applikabbli, cjoé jekk hiji dik meta' saret l-applikazzjoni, jew in vece, dik in vigore meta tigi deciza l-applikazzjoni; u

2. Jekk il-ligi tipprovdi espressament, cjoé jekk hemmx xi dispozizzjonijiet transitorji dwar l-applikabilita' tal-imsemmi Artikolu 70 u skeda sitta annessa mal-Att X ta' l-2010, Kap. 504.

Fis-sentenza già citata', dwar liema ligi hi applikabbli dan it-Tribunal kien ddikjara s-segwenti:

“Dwar liema ligi hi applikabbli, cioé jekk hix dik ta' meta saret l-applikazzjoni jew dik meta tigi finalment deciza l-applikazzjoni, l-Awtorita' ghamlet referenza ghal zewg decizjonijiet tal-Qorti tal-Appell li stabbilew il-principju li l-ligi applikabbli hi dik vigenti meta tigi deciza l-applikazzjoni.

## Kopja Informali ta' Sentenza

Dan gie stabbilit b'sentenza fl-ismijiet 'Angelo Farrugia vs Chairman tal-Awtorita' tal-Ippjanar' deciza mill-Qorti tal-Appell fl-24 ta' April 1996 u dik f'ismijiet 'Emanuel Mifsud vs il-Kummissjoni ghall-Kontroll tal-Izvilupp' deciza mill-Qorti tal-Appell fil-31 ta' Mejju 1996. Dan gie kkonfermat b'sentenzi aktar ricenti tal-Qorti tal-Appell Inferjuri fosthom 'Stella Buttigieg vs Joseph Cordina vs MEPA deciza fid-29 ta' Jannar 2009 RCP A.I.C. li ccitat sentenza precedenti tal-istess Qorti fl-ismijiet 'Philip Micallef vs MEPA deciza fis-26 ta' April 2007 fejn intqal is-segwenti :-

“Illi fil-fatt huwa principju legali kkonfermat guridizzjarjament li l-istess Bord u l-Awtorita' huma tenuti li japplikaw l-ligi li tezisti waqt li tkun qed tigi determinata l-applikazzjoni u dan s'intendi japplika ukoll meta l-kas ikun quddiem il-Bord”.

Fil-kas in ezami rrizulta li l-area giet skedata fl-2001, Avviz tal-Gvern 85/01.

L-Artikolu 70(1) tal-Kap. 504 jitratta dwar 'Supplimentary Provisions regarding permissions and licences. Minn dan l-Artiklu huma eskluzi pero' l-kazijiet elenkati fis-sitt Skeda annessa mal-Att – fosthom dik numru 2 – applikazzjoni biex jigi regolarizzat zvilupp fi propjeta' skedata.

L-applikazzjoni prezenti qed titlob li jigi sanzjonat garage li nbena s-sena 2002 (l-enforcement notice ECF 215/02), f'area li illum hi skedata.

Skond dan l-Artikolu ghalhekk il-proposta prezenti ma tistax tigi awtorizzata.

L-Artikolu 97 (1) tal-Kap. 504 jawtorizza lill-Ministru li jistabilixxi data permezz ta' avviz fil-gazzetta tal-Gvern meta jigu revokati l-Att dwar l-Ippjanar tal-Izvilupp Kap. 356 u l-Att dwar il-Harsien tal-Ambjent, Kap. 435.

Dawn id-dati gew stabiliti bl-Avviz Legali 512 tal-2010 u l-Avviz Legali 513 tal-2010 rispettivament.

Bl-Avviz Legali 511 tal-2010 – Avviz ta' Bidu fis-sehh, giet stabbilita d-data tal-31 ta' Dicembru 2010 bhala d-data meta d-disposizzjoni ta' diversi Artikoli tal-Kap. 504 fosthom l-Artikolu 70 u s-sitt Skeda, dahlu fis-sehh.

## Kopja Informali ta' Sentenza

L-Artikoli 14 u 15 tal-Kap. 356 li jirreferu għall-komposizzjoni u funzjonijiet tal-Bord tal-Appell dwar l-Ippjanar ma gewx revokati bl-Avviz Legali 512 tal-2001 billi skond l-Avviz Legali 27 tal-2011 –Planning Appeals Board and Environment and Planning Review Tribunal (Transitory Provisions) Regulations 2011 dawk l-appelli li kienu gew differiti għas-sentenza qabel il-31 ta' Dicembru 2010, kellhom jigu decizi mill-Bord tal-Appell tal-Ippjanar, cioè' skond il-Kap. 356 u mhux mit-Tribunal ta' Revizjoni tal-Ambjenti u l-Ippjanar skond il-Kap. 504. Skond l-istess Avviz Legali, l-appelli l-oħra kollha kellhom jigu decizi minn dan it-Tribunal.

Fic-cirkostanzi għalhekk is-sottomissjoni tal-appellant, li billi l-izvilupp sar qabel ma giet skedata l-area, u billi l-applikazzjoni saret fit-13 ta' Awwissu 2007, cjoé qabel l-1 ta' Jannar 2011, l-Artikolu 70 u s-sitt skeda annessa mal-Att X ta' l-2010, Kap. 504 ma japplikawx għall-kaz, mhux korretta, billi l-ligi dan ma tawtorizzax.

It-Tribunal, għalhekk qed jiddisponi minn dan l-appell billi jichad l-istess, jikkonferma r-rifjut tal-15 ta' Settembru 2011 għall-applikazzjoni PA 5178/07, u jilqa' l-eccezzjoni preliminari tal-Awtorità li l-proposta ta' sanzjonar ta' zvilupp illegali f'area skedata, hi in kontravvenzjoni tal-Artikolu 70 u s-sitt skeda annessa mal-Att X tal-2010, Kap. 504.

### Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. Id-decizjoni hi nulla għax it-Tribunal ikkonferma d-decizjoni tar-rifjut bhala dik fil-15 ta' Settembru 2011 mentri r-rifjut tal-applikazzjoni saret fit-13 ta' Lulju 2011. Id-data li tissemma mit-Tribunal hi dik tal-avviz tad-decizjoni mibghuta lil applikant dwar ir-ragunijiet tar-rifjut;
2. Id-decizjoni hi nulla għax it-Tribunal ha konjizzjoni tal-appell PAB 242/03 PA 1804/02 John Vella vs L-Awtorità ta' Malta dwar l-Ambjent u l-Ippjanar dwar l-istess sit li gie rifjutat fl-1 ta' April 2005 meta membru fuq it-Tribunal fl-appell odjern kien ic-chairman fuq it-Tribunal l-iehor. Dan immur kontra d-dispost tal-artikolu 40(2) tal-Kap. 504;
3. It-Tribunal ma hax konjizzjoni ta' zewg risposti fuq l-eccezzjoni tal-Awtorità dwar l-applikabilità tal-artikolu 70 u s-Sitt Skeda tal-Kap. 504 u minflok tratta punt li qatt ma tqajjem. Dan iwassal għal nuqqas ta' konsiderazzjoni ta' aggravji legali.

### L-ewwel aggravju

Dan l-aggravju hu wiehed meritat. It-Tribunal cahad appell minn decizjoni datata 15 ta' Settembru 2011. Testwalment jikkonferma r-rifjut tal-15 ta' Settembru 2011. Harsa lejn l-atti pero jirrizulta illi d-decizjoni tal-Awtorita inghatat fit-22 ta' Gunju 2010 u billi intalbet rikonsiderazzjoni l-istess decizjoni giet rikonfermata wara rifjut tar-rikonsiderazzjoni fit-13 ta' Lulju 2011. Il-Qorti ma taqbilx mal-appellant illi d-data tad-decizjoni kellha tkun 13 ta' Lulju 2011 izda kellha tkun dik tat-22 ta' Gunju 2010 billi fl-istadju ta' rikonsiderazzjoni quddiem il-Bord tal-MEPA giet rikonfermata d-decizjoni originali. Kienet tkun differenti li kieku fir-rikonsiderazzjoni sar xi tibdil mid-decizjoni originali ghax allura kienet tkun tapplika dik id-data bhala d-data tad-decizjoni quddiem il-Bord tal-MEPA. Id-data kwotata mit-Tribunal hi d-data li fiha intbaghet l-ittra ta' rifjut mir-rikonsiderazzjoni lil applikant. Din pero mhix id-data tad-decizjoni u ebda decizjoni ma nghatat f'dik id-data, ergo d-decizjoni tat-Tribunal qed taghti effett ghal decizjoni inezistenti u kwindi inezegwibbli. Hu minnu illi l-appellant ghandu dritt ta' appell pero l-portata tal-avviz tad-decizjoni jinsab fl-artikolu 40(2) sabiex l-applikant ikollu f'idejh id-decizjoni formali tal-Awtorita u mindu jigi notifikat biha jiskatta t-terminu tal-appell quddiem it-Tribunal. Pero d-data tal-avviz jew notifika bl-ebda mod ma jissostitwixxi d-data tad-decizjoni.

Jista jinghad li din l-eccezzjoni ittendi ghal formalistiku izda d-dati ezatti ta' decizjonijiet ikkowitzati kif imiss irendu cert u perfett il-procedura ta' aggudikazzjoni li minnhom jiskattaw kull terminu legali li jinsorgi mill-istess dati. Id-data ikkwotata mit-Tribunal hi wahda inezistenti ghal finijiet tad-data meta inghatat id-decizjoni tal-Bord tal-Awtorita (ara fl-istess sens App 51/2011 **George Attard vs L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar**).

Ghalhekk il-Qorti kostretta tiddikjara nulla d-decizjoni tat-Tribunal u tirrinvoja l-atti lura biex jerga' jinstema l-appell b'dan li fl-istess waqt it-Tribunal hu mistieden jiehu konjizzjoni tal-aggravji l-ohra imressqa f'dan l-appell u jikkonsidrahom jekk jidhirlu necessarju.

### Decide

## Kopja Informali ta' Sentenza

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell ta' Dr. Carmel Chircop, tannulla d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-24 ta' Lulju 2014, u tirrinviija l-atti lura lit-Tribunal biex jerga' jiddeciedi l-appell in linea ma' dak deciz. Spejjez fic-cirkostanzi jibqghu bla taxxa.

### < Sentenza Finali >

-----TMIEM-----