



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tal-11 ta' Frar, 2015

Appell Civili Numru. 51/2014

Francis Tabone

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Francis Tabone tat-13 ta' Awwissu 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-24 ta' Lulju 2014 dwar PA 944/10 'to sanction deposit of soil on agricultural land';

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Rat ir-risposta tal-Awtorita li ssottomettiet li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

Rat l-atti kollha u semghet lid-difensuri tal-partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

B'applikazzjoni pprezentata fid-9 ta' Marzu 2010, Full Development Permission PA 944/10, l-appellant, fir-Raba' maghruf bhala s-Saqwi, Triq l-Isqawi, Munxar, Ghawdex talab:

“To sanction deposit of soil on agricultural land”.

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

“1. The site is located within a Special Area of Conservation of International Importance. The proposed development is not necessary to the management of the Special Area of Conservation, nor does it seek to improve the Special Area of Conservation. The proposal would adversely affect the integrity of the Special Area of Conservation and therefore conflicts with Article 19.1 of Legal Notice 311 of 2006.

2. The site is located in a Level 3 Area of Ecological Value where further human intervention, particularly in the form proposed, is not desirable. The proposal would therefore adversely affect the area, hinder its protection, and run counter to Structure Plan Policy RCO12, and Gozo and Comino Local Plan Policy GZ-RLCN-1.

3. The site is located within a Category A Valley system and the proposed development does not fall into one of those categories of development permitted in this type of location. The proposal therefore runs counter to Structure Plan Policy RCO29 and Gozo and Comino Local Plan Policy GZ-RLCN-2.

4. The proposed development would alter a water catchment area and so does not comply with Structure Plan Policy RCO28, which provides for the protection of important water catchment areas.

5. Structure Plan Policy RCO4 provides that, particularly within Rural Conservation Areas, areas of scenic value will be protected and enhanced. The area in which the site is located is designated as an Area of High Landscape Value. The proposal would detract from this, and so it would conflict with Structure Plan Policy RCO4.

6. Gozo and Comino Local Plan Policy GZ-RLCN-1 sets out that “apart from the normal restrictions on development in rural areas, there shall be a strong presumption against the creation of new built structures (including cultivation and animal husbandry related structures) in AHLs”. The site is located within an Area of High Landscape Sensitivity (AHLs) and the proposal, thus, conflicts with this policy.

7. Structure Plan Policy RCO8 sets out that in Rural Conservation Areas, individual cultivators will be required to illustrate to the Authority how any planned agricultural development will not harm the ecological, archaeological, and scenic value of the Area. The proposal creates a negative visual impact on surrounding areas and therefore the proposal conflicts with Policy 2.7 of the Policy Guidance Agriculture, Farm Diversification and Stables (2007) and Structure Plan Policy RCO8.

8. The site is located within a Strategic Open Space Gap where MEPA promotes maintaining and enhancing attractive landscapes; nature conservation; and improved presentation of important habitats. The proposal directly conflicts with these aims, and thus conflicts with Gozo and Comino Local Plan Policy GZ-SETL-2.

9. The proposed development conflicts with Structure Plan Policy SET11 and Gozo and Comino Local Plan Policy GZ-LMDZ-1, which do 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.

10. There is no justification for the development of this site as required by Structure Plan Policy SET12.

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11. Gozo and Comino Local Plan Policy GZ-RECR-3 encourages the upgrading of walkways identified as Circular Walking Routes. The visual impact caused by the proposed development is not in the interests of the recreational potential of the area, and thus conflicts with such policy.

12. The proposal runs counter to Circular PA 2/96 which states that "when existing building development on a site is wholly or partly illegal the DCC will not consider a development permit application relating to new development on that site, unless the development is regularised". The current application is not seeking to sanction all the illegal development which includes the formalisation of part of the area through the use of paving and provision of seating, and the alteration/construction of a rubble wall not in accordance with the provisions of Legal Notice 160 of 1997."

FI-appell tieghu, l-perit Emanuel Vella ghall-appellant ssottometta kif gej:

"We are in receipt of a refusal by the Development Control Commission, dated 2nd March 2011, and received on the 12th March 2011, regarding the above application. We fail to subscribe to the reasons given justifying the said decision and have accordingly decided to lodge an appeal there from. The grounds for this appeal are outlined by the EPD in section 4.6 of the DPA report. These are:

1. The site encroaches on the valley bed/watercourse. As can be seen from the drawings and photos submitted with my DPA report dated 23rd September 2010, the deposit of soil was deposited on the field adjoining the watercourse.
2. The site lies within a scheduled Level 3 Buffer Zone. The site consists of agriculture land as confirmed by the Agriculture Department in document 19 in file
3. The visual impact of the intervention adversely affect the scenic value of the site which is an AHLV. The scenic value of the area has not been affected by the deposit of this soil. The use of the site as an agricultural field has not been changed and no structures have been erected.
4. The site is located within Special Area of Conservation of International Importance. As stated above, the use of the site for agricultural purposes has been retained and the topography of the site is smaller to its original state.
5. Works have been finalised including the planting of olive trees. The part of the site where the trees have been planted has been taken over by the Local Council who in turn converted this site into an Olive Garden. This can be verified from the certificate issued by the Local Council dated 21st June 2010 attached with my letter dated 22nd June 2010. Therefore, applicant is not responsible for these works. It is to be noted that the site is land owned by the Government. The works carried out by

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the Local Council consists of the planting of trees, flagstone paving, seating in the form of benches on concrete platforms and enclosing of the site with a rubble wall. As stated above, applicant had no control over this illegal development, because this Government owned site has been taken over by the Local Council. Hence, the provisions of Circular PA 2/96 do not apply.

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

L-Awtorita' fir-rapport taghha kkummentat kif gej:

“5.0 COMMENTS ON APPELLANT’S ARGUMENTS & REFUSAL NOTICE

5.1 The appellant is justifying this appeal on the grounds of comments outlined by the Environmental Planning Directorate (Doc 19 in PA File) as follows:

i. The site encroaches onto the valley bed/watercourse. As can be seen from the drawings and photos submitted with comments to DPA Report (dated 23rd September, 2010), the deposit of soil was placed on the field adjoining the watercourse.

ii. The site lies within a Scheduled Level 3 Buffer Zone. The site consists of agriculture land as confirmed by the Agricultural Department.

iii. The visual impact of the intervention adversely affect the scenic value of the site which is an AHLV. The scenic value of the area has not been affected by the deposit of this soil The use of the site as an agricultural field has not been changed and no structures have been erected.

iv. The site is located within a Special Area of Conservation of International Importance. As stated above, the use of the site for agricultural purposes has been retained and the topography of the site is smaller to its original state.

v. Works have been finalised, including the planting of olive trees. The part of the site where the trees have been planted has been taken over by the Local Council who in turn converted this site into an Olive Garden. This can be verified from the certificate issued by the Local Council dated 21st June, 2010(Doc 24A in PA File). Therefore, the appellant is not responsible for these works. It is to be noted that the site is land owned by the Government. The works carried out by the Local Council consists of the planting of trees, flagstone paving, seating in the form of benches on concrete platforms and enclosing of the site with a rubble wall. As stated above, the appellant had no control over this illegal development, because this Government

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owned site has been taken by Local Council. Hence, PA Circular 2/96 does not apply to the development.

5.2 The Directorate has the following comments to make:

5.2.1 Preliminary Plea

On a preliminary point, the Authority respectfully asserts that this Tribunal cannot hear and decide on the merits of this appeal because the proposed development is to sanction illegal development in a scheduled area (GN 1082/09 – Cultural Landscape/Archaeology). 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.

5.2.2 Illegal Development

Enforcement Notice ECF 1531/96 clearly indicates that the original infringement on site consisted of a larger area than that indicated in Site Plan Doc 1B. The original area subject to Enforcement Notice included the part which is now being administered (and illegally converted into a recreational area) by the Local Council. Appellant is arguing that the requested development should not be subject to the works carried out by Local Council, however the provisions of Regulation 14 of L.N. 514 of 2010 still apply since the appellant had control over the illegal dumping carried out on site.

The Authority is respectfully bringing to attention of the Tribunal that an identical application to the proposed development was refused by DCC Board in PA 2593/08 (12th January, 2010); and such decision was not contested by the same applicant.

In addition to this, the arguments raised at Appeals Stage are identical to the comments made to DPA Report in letter dated 23rd September, 2010 (Doc 34 in PA File).

5.2.3 Proposed Sanctioning vis-à-vis Site Designation

The appellant is arguing that the development will not affect the designation of the site since no structures are proposed, and that deposition of soil does not impact the scenic value of the area. However, the site in concern encroaches onto the valley bed/watercourse of Wied is-Saqwi in accordance with Map 13.2 of the Gozo and Comino Local Plan, and therefore the sanctioning of deposition of soil is not

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acceptable in line with policies GZ-RLCN-1 and GZ-RLCM-2. The site is also designated as a Special Area of Conservation of International Importance as per Map 14.15-E of the Local Plan, and therefore the site fails to regard the regulation on Flora, Fauna and Natural Habitats (2006) Article 19 (1) of L.N. 311/06.

Furthermore, due to the designation of the site as an Area of High Landscape Sensitivity and Category A Valley (G.N 776/08 & GCLP respectively), the development also runs counter to Structure Plan policies RCO 4, RCO 8, RCO 12, RCO 28 & RCO 29 since the development would change the site characteristics, visual composition and topography.

Finally, since the site is also earmarked as a Strategic Open Space Gap outside the development zone between settlements, the development also runs counter to Local Plan policy GZ-SETL-2 which promotes the maintaining and enhancement of such areas with an improved presentation of landscapes and their habitats.

5.2.4 Land Reclamation

Policy 2.7 of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007) regulates development relating to the conversion of non-agricultural land or reclamation of abandoned/derelict agricultural land. In accordance with Part 2 of this policy, such development is not permissible where the land affected is of ecological, scientific, landscape, cultural and/or archaeological value.”

B'nota pprezentata fid-9 ta' Lulju 2012, il-Perit Emanuel Vella ghall-appellant issottometta kif gej:

“The following are our submissions with regard to the above appeal.

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

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

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It has been reported in the press (Malta Today) as follows:

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

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

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

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

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

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

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

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

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Needless to say the above is but a Press Report and in this regard it is our opinion that the relative MEPA Board ruling should be brought officially to the attention of this Tribunal.”

Ikkunsidra ulterjorment:

L-Appellant qed jipproponi li jissanzjona d-depozitu ta' hamrija fuq art agrikola fil-Munxar, Ghawdex. L-applikazzjoni giet michuda ghal diversi ragunijiet kollha relatati mas-sensitivita' partikolari tas-sit; li hu Special Area of Conservation of International Importance, Level 3 Area of Ecological Value, Category A Valley System, Strategic Open Gap, u ghalhekk l-proposta hi in kontravvenzjoni tal-Policies indikati fir-rifjut.

L-appellant bl-applikazzjoni PA 2593/08 kien ipprezenta applikazzjoni simili – sanzjonar ta' depoziutu ta' hamrija fuq art agrikola, li giet michuda mid-DCC fit-12 ta' Jannar 2010. Fuq is-sit harget Enforcement Notice ECF 1531/96 “bdil ta' uzu tal-art billi qed titfa' materjal minghajr permess.”

L-applikazzjoni prezenti, identika ghal dik precedenti giet ipprezentata fid-9 ta' Marzu 2010, xahrejn wara li giet michuda l-applikazzjoni precedenti.

Fir-rapport taghha l-Awtoirta' ghamlet referenza ghas-segenti Policies:

Mill-Pjan ta' Struttura (1990) l-Policies BEN 17; RCO 2; RCO 4; RCO 8; RCO 12; RCO 28; RCO 29; SET 11; SET 12.

Il-Paragrafu 15.39 mill-Explanatory Memorandum.

Mill-Gozo and Comino Local Plan (2006) l-Policies GZ-SET2-2; GZ-RECR-3; GZ-AGRI-1; GZ-RLCN-1; u GZ-RLCN-2;

Mill-Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007) l-Policies segwenti:

Policy 1.3A – Rural Character and Landscape.

Policy 1.3C Valleys, Policy 1.3D- Protection of Landscape Features; 1.3H - Protected Areas; 1.3I – Special Areas of Conservation and Special Protected Areas, 1.3K Protection of Agricultural Land; 2.7 Land Reclamation u r-Regolament 14 tal-Avviz Legali 514 ta' l-2010.

L-Area giet skedata bl-Avviz tal-Gvern 1082/09 – Cultural Landscape/Archaeology.

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Fl-ahhar sottomissjoni tieghu, l-Perit ta' l-Appellant iddikajra li gie rapportat fil-Gazzetti li l-Policy ddikjarata tal-Awtorita' hi fis-sens li l-Artikolu 70 tal-Att X tal-2010 Kap. 504 ma japplikax ghall-applikazzjonijiet li saru qaebl l-1 ta' Jannar 2011; din l-applikazzjoni giet ipprezentata fid-9 ta' Marzu 2010.

Ghalkemm hu veru li f'xi zmien kien hemm il-bsieb li tigi introdotta din l-emenda, li kienet giet ppubblikata fil-fatt din qatt ma giet formalment promulgata, u ghalhekk ma hemm l-ebda derroga, jew xi dispozizzjoni transitorja li dan l-Artikolu m'ghandux japplika ghal dawk l-applikazzjonijiet li gew pprezentati qabel l-1 ta' Jannar 2011.

Dan it-Tribunal kellu l-okkazzjoni li jiddeciedi diversi appelli fejn giet sollevata mill-Awtorita' din l-ecezzjoni; fost dawn il-kazijiet hemm dak deciz fit-30 ta' Jannar 2014, Appell Numru 624/11 fl-ismijiet "Carmelo Psaila vs Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar".

F'dawn l-kazijiet jinhtieg li jsiru zewg konsiderazzjonijeit cjoe', liema ligi hi applikabbli, jekk hiex dik vigenti meta tigi pprezentata l-applikazzjoni, jew invece dik in vigore meta tigi determinata l-applikazzjoni, u jekk hemmx xi derroga, jew dispozizzjoni transitorja dwar l-applikabilita' tal-Artikolu 70 u s-Sitt Skeda annessa mal-Att X ta' l-2010, Kap. 504.

Dwar l-ewwel konsiderazzjoni, fis-sentenza citata supra intqal hekk:

"Dwar liema ligi hi applikabbli, cioe' jekk hi 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.

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 fl-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 :-

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"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-art giet skedata fl-2009 – Avviz tal-Gvern 1082/09.

"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 depozitu ta' hamrija fuq art agrikola, 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.

L-Artikoli 14 u 15 tal-Kap. 356 li jirreferu ghall-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 ghas-sentenza qabel il-31 ta' Dicembru 2010, kellhom jigu decizi mill-Bord tal-Appell tal-Ippjanar, cioe' skond il-Kap. 356 u mhux mit-Tribunal ta' Revizjoni tal-Ambjnet u l-Ippjanar skond il-Kap. 504. Skond l-istess Avviz Legali, l-appelli l-ohra kollha kellhom jigu decizi minn dan it-Tribunal."

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Fic-cirkostanzi ghalhekk is-sottomissjoni tal-appellant li billi l-izvilupp sar qabel Jannar 2011, l-Artikolu 70 tal-Kap. 504 mhux applikabbli mhix korretta, billi l-ligi dan ma tawtorizzax.

It-Tribunal, ghalhekk qed jiddisponi minn dan l-Appell billi jichad l-istess, jikkonferma r-rifjut tat-2 ta' Marzu 2011 ghall-applikazzjoni PA 944/10, u jilqa' l-eccezzjoni preliminari tal-Awtorita' 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 ta' l-2010, Kap. 504.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. Ir-raguni ta' rifjut cioe nuqqas ta' possibilita ta' sanzjonar fi proprjeta skedata ma nghatatx bhala raguni ta' rifjut mill-Awtorita izda tqajmet biss fil-mori tal-appell. L-applikabilita tal-artikolu 70 tal-Kap. 504 dahal fis-sehh wara li giet deciza l-applikazzjoni u fil-mori tal-appell u kwindi l-ligi mhix applikabbli ghal kaz ghax ma hemmx retroattivita;
2. Parti mir-raguni ta' rifjut cioe li l-izvilupp sar barra z-zona ta' zvilupp qabel Jannar 2011 ma kinitx raguni ta' rifjut fid-decizjoni tal-Awtorita u l-appellant sab din ir-raguni fl-istadju tal-appell meta t-Tribunal ma setax jezamina ragunijiet ta' rifjut li ma jirrizultawx mill-atti u dan jikkostitwixxi ksur tal-ligi ta' gustizzja naturali.

L-ewwel aggravju

Il-Qorti tqis dan l-aggravju bhala mhux fondat fil-ligi. Fl-ewwel lok hu pacifiku fil-gurisprudenza kostanti ta' din il-Qorti kif preseduta o meno u anki meta appelli kienu jinstemghu mill-Qorti tal-Appell Superjuri, illi japplikaw il-ligijiet, pjanijiet u policies ezistenti fil-mument tad-decizjoni finali. Dan ghaliex fl-ewwel lok talba ghal zvilupp jew sanzjoni ma hi xejn ghajr talba jew xewqa li wiehed jizviluppa l-art tieghu pero tenut kont tal-ligijiet, pjanijiet u policies ezistenti fil-mument li tittiehed decizjoni finali peress illi tali ligijiet huma ta' natura fluttwanti u jirrispekkjaw il-bzonnijiet strutturali u ambjentali tal-pajjiz fl-interess generali tas-socjeta kollha fi zmien partikolari skond kif jirrikjedu c-cirkostanzi. L-applikant ghalhekk ma

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jakkwista ebda dritt meta jressaq applikazzjoni ghal zvilupp izda xewqa jew ghazla li tiddependi mill-ligijiet li jistghu jkunu ezistenti meta finalment tittiehed id-decizjoni. Ma hemm ebda pregudizzju arrekat lil applikant jekk jargumenta li ma ghandux certezza meta issir applikazzjoni jew li l-aspettativa tieghu tista' tigi mxejna bi dhul ta' ligijiet jew policies ohra. Fl-ewwel lok il-ligi tal-ippjanar hi sui generis u intiza biex isir l-ahjar uzu ta' zvilupp fl-interess generali tas-socjeta f'mumentu partikolari li ghandu jipprevali fuq l-interess unitarju. In oltre kif bidla fi pjan jew policy tista' teffettwa negattivament applikant, bl-istess mod tista' tibbenefikah biex jakkwista dak u anki aktar milli ried jekk ikun hemm possibilita ta' zieda ta' zvilupp. Hu importanti li jkun hemm uniformita ta' applikazzjoni tal-ligijiet ta' ippjanar ta' pajjiz fil-mument li tinghata d-decizjoni, u ghalhekk din mhix kwistjoni aktar ta' retroattivita ta' ligijiet peress illi l-ligi applikabbli hi dik fil-mument tad-decizjoni. Ara f'dan is-sens u f'aktar dettall is-sentenza **Angolina Buttigieg vs l-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar** senjatament dak li qalet il-Qorti fir-rigward tal-ewwel u t-tieni aggravji f'dik il-kawza u qed taghmilhom taghha anki f'dan l-appell.

Maghdud dan, il-fatt li r-raguni unika ta' rifjut tal-applikazzjoni mit-Tribunal ibbazata fuq l-eccezzjoni illi ebda sanzjoni ma tista' issir fuq art skedata, li giet maghmula fil-mori tal-appell, ma hix irregolari, anzi hi obligatorja u mandatorja li titqajjem mill-istess Tribunal billi tali artikoli hu minnu innifsu ta' ordni pubbliku. Kien ikun differenti l-kaz li kieku l-appellant gie rinfaccjat bid-decizjoni bla mal-kwistjoni tkun tqajmet fil-mori ghax b'hekk l-appellant ma jkunx inghata d-dritt li jirrispondi. Dan ma sehix f'dan il-kaz u anqas tqajmet kwistjoni simili mill-appellant quddiem it-Tribunal. Anzi jidher palesi illi l-appellant ma oggezzjonax li tqajmet il-kwistjoni izda issottometta biss illi l-Awtorita ma kinitx ser tinforza dan l-artikolu tal-ligi ghal zviluppi li dwarhom saret applikazzjoni qabel l-1 ta' Jannar 2011. Dan l-argument ma fih ebda sahha ghaliex dak li jidher li gie rappurtat fil-media, kif sottomess, ma jikkostitwix ebda ligi jew emenda fil-ligi li tista' issir biss b'emenda appozita. Anki jekk saret xi cirkolari interna jew direttiva ta' ufficjal gholi fil-MEPA dwar kif kellha tigi interpretata l-ligi, din tikkostitwixxi biss opinjoni moghtija mill-Awtorita lil membri tal-Awtorita u bl-ebda mod ma tista' torbot lit-Tribunal jew il-Qorti li huma marbuta kif del resto hi marbuta l-Awtorita li tapplika l-ligijiet kif maghmula u jekk issiru eccezzjonijiet mill-Awtorita dawn ma jistghux ibiddu l-portata tal-ligi ghalkemm jistghu jikkrejaw sitwazzjonijiet ta' ingustizzja bejn applikanti jekk jigu trattati b'mod differenti. Dan pero mhux l-iskop ta' dan l-appell. Ghalhekk kienet korretta l-konkluzjoni tat-Tribunal fuq din il-kwistjoni.

Kopja Informali ta' Sentenza

Hu pacifiku ghalhekk illi l-appellant bl-ebda mod ma qieghed joggezzjona jew jichad li l-izvilupp li qed jitlob sanzjoni tieghu ma hux skedat jew li ghalih ma japplikax l-artikolu 70 abbinat mas-Sitt Skeda tal-Kap. 504. Kwindi hi l-fehma tal-Qorti li ladarba t-talba kienet ghal sanzjonar (li jikkomporta illegalita), liema sanzjonar kien gie rifjutat mill-Awtorita fuq ragunijiet ta' ippjanar qabel tressqet l-eccezzjoni tal-artikolu 70 fil-mori tal-appell, u f'art skedata, sanzjonar ma jistax isehh, u dan l-izvilupp ma jaqax taht wiehed mill-eccezzjonijiet kontra l-applikazzjoni tal-artikolu 70 u s-Sitt Skeda tal-Kap. 504, it-Tribunal kellu b'mod mandatorju jakkolji l-eccezzjoni.

Kwindi dan l-aggravju qed jigi michud.

It-tieni aggravju

Dan l-aggravju ma fihx mis-sewwa ghaliex it-Tribunal fl-ewwel lok iddecieda l-appell biss fuq il-fatt illi hu projbit kull sanzjonar f-sit skedat sic et simpliciter, u d-data ta' Jannar 2011 saret referenza ghaliha biex jigi kunsidrat is-sottomissjoni tal-appellant dwar dak li deher fil-gazzetti fuq l-applikabilita tal-artikolu 70 tal-Kap. 504 ghal applikazzjonijiet ta' qabel Jannar 2011. It-Tribunal ukoll irrefera ghall-1 ta' Jannar 2011 f'cirkostanzi ohra mhux bhala punt ta' dritt jew xi konsiderazzjoni li kellha issir ai fini tad-determinazzjoni tal-appell izda biss biex jistabilixxi illi l-artikolu 70 dahal fis-sehh fl-1 ta' Jannar 2011 u illi t-Tribunal kellu l-gurisdizzjoni jiddeciedi dan l-appell skond il-ligi a bazi tal-avvizi legali minnu imsemmija liema konsiderazzjoni ma impingiet bl-ebda mod fuq il-mertu tal-aggravju tal-appell.

Decide

Ghal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Francis Tabone u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-ippjanar tal-24 ta' Lulju 2014, bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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