MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta ta' l-20 ta' Mejju, 2015

Appell Civili Numru. 1/2015/1

Charles Fenech

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Pio Ghigo, Avukat Dr. Ingrid Zammit Young, Angelo Callus, Joseph Callus, Carmel Schembri, Michael Schembri, Caterina Busuttil, Scolastica Busuttil, Angela Busuttil, Curt Farrugia, Michelangelo Farrugia, Carmelo Zahra, Aber Francis Saviour, Aber Rita, Perit Leonard Zammit tat-2 ta' Jannar 2015 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar fis-16 ta' Dicembru 2014 mill-permess moghti lil Charles Fenech 'to relocate hardstone quarry (No. 9 and No. 2) from Hagar Qim to Wied Moqbol';

Rat ir-risposta tal-Awtorita li stranament issottomettiet li l-appell ghandu jigi michud u d-decizjoni konfermata meta quddiem it-Tribunal sostniet li l-applikazzjoni ma kellhiex tinghata risposta favorevoli;

Rat is-sentenza preliminari taghha tal-11 ta' Marzu 2015 u semghet lid-difensuri tal-partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

Illi fid-decizjoni tal-Bord tal-Appell b'sentenza tas-16 t'Ottubru 2009 gie kkunsidrat dan li gej:

"Wahda mir-ragunijiet ghar-rifjut hi li f'dak li hu propost m'hemmx mezzi bizzejjed biex jigi mitigat il-generazzjoni tat-trab. Hawnhekk il-Bord jaqbel ma' l-appellant li dan ma kellux ikun ostaklu ghall-hrug tal-permess minhabba li hemm mezzi teknici kif tigi ndirizzata; ghalkemm il-Bord jifhem ukoll li l-ebda mezz tekniku ma jista' jimmitiga l-problema ghal kollox.

Fil-'Mineral Subject Plan' hemm policies kontra l-holqien ta' barrier godda, izda din il-proposta mhix operazzjoni gdida izda ri-lokazzjoni. Barra minn hekk dan id-dokument, ghalkemm komplut, ma giex fis-sehh u ma ghandux jigi applikat f'dan il-kas. Mill-korrispondenza prezentata jidher car li l-appellant ghandu dritt rikonoxxut li jopera barriera minflok dik li kien jopera qabel. Il-punt hu, jekk skond il-policies attwali, din il-barriera tistax issir fuq dan is-sit partikolari.

Fil-fehma tal-Bord, il-policy SMZU02 li tissemma kemm mill-Awtorita' kif ukoll mill-appellant ma tapplikax direttament ghal dan il-kas ghax tirreferi biss ghal zona indikata fil-mappa ZU4 bhala Hard Stone quarries li dan is-sit ma jiffurmax parti minnha. Skond il-mappa ZU4, dan is-sit jifforma parti minn zona klassifikata bhala 'Agricultural Areas' fejn tapplika l-policy SMAG01 tal-Pjan Lokali. Din il-policy hi intitolata "Protection of Agricultural Land'' u tibda hekk :-

"MEPA will continue to protect Agricultural Land from all types of inappropriate development. Within Agricultural Areas, as indicated on the relevant Environmental Constraints Maps, only buildings structure and uses essential to the needs of

agriculture will be permitted.'' Ghalhekk dan l-uzu propost mhux kompatibbli ma' l-uzu stabbilit fil-Pjan Lokali ghal dan is-sit".

Illi l-Qorti ta' l-Appell – Kompetenza Inferjuri b'sentenza tat-28 t'Ottubru 2010, laqghet l-appell billi ddikjarat li l-Bord naqas li jaghti opportunita lill-partijiet sabiex jitrattaw il-policy SMAG 01 imsemmija fid-decizjoni tal-Bord tal-Appell. F'dan ir-rigward il-Qorti ghamlet dawn l-osservazzjonijiet:

"Illi dwar il-mertu tal-istess aggravju din il-Qorti thoss li f'dan il-kaz l-appellant ukoll ghandu ragun u dan peress li jidher mill-atti processwali li d-decizjoni inghatat mill-Bord ta' l-Appell dwar Ippjanar kompletament fuq "policy SMAGO1 tal-Pjan Lokali, liema policy hi intitolata "Protection of Agricultural Land" u jirrizulta li din il-policy per se la ssemmiet mill-Awtorita' intimata u lanqas mill-appellant fis-sottomissjonijiet tieghu fil-proceduri quddiem l-istess Bord, u ghalhekk jirrizulta li l-partijiet u in partikolari l-appellant kien sorpriz meta din issemmiet fid-decizjoni tal-Bord, u ghal din ir-raguni din il-Qorti thoss li l- appellant ghandu ghalhekk ragun jilmenta li ma inghatax l-opportunita' jressaq is-sottomissjonijiet tieghu f'dan ir-rigward.

Din ma hijiex semplici kwistjoni dwar lapplikazzjoni o meno tal-Pjan Lokali li sadanitant gie in vigore, izda l-punt li l-appellant ghandu dritt li jinghata l-opportunita' li jaghmel is-sottomissjonijiet tieghu dwar il-punti in kontestazzjoni, u dan iktar u iktar meta l-aggravji tieghu mid-decizjoni tal-Kummissjoni ghall-Kontroll ta' l-Izvilupp gew milqugha, u l-partijiet trattaw il-pjan lokali izda fuq il-binarju ta' Policy SMZU02, (kif il-Bord stess semgha fid-decizjoni tieghu), izda minflok il-Bord iddecieda l-kaz fuq Policy SMAG01 li fl-ebda mument ma giet msemmija minn xi parti waqt it-trattazzjoni tal-appell quddiem il-Bord, u wisq inqas ikkunsidrata u trattata mill-partijiet, tant li ma tissemmiex fis-sottomissjoni tal-partijiet citati fl-istess decizjoni tal-Bord, u lanqas hadd millpartijiet ma semma l-istess, inkluz fir- rapport tal-MEPA datat 2 ta' Ottubru 2007, u r-risposta tal-istess Awtorita' datata 13 ta' Marzu 2008, u minn naha l-ohra ssottomissjonijiet tal-appellant datati 12 ta' Frar 2008 u l-korrispondenza datata 3 ta' April 2008 (kollha formanti parti mill-atti processwali tal-appell quddiem il-Bord)."

Ikkunsidra ulterjorment :-

Illi l-kwistjoni principali li giet trattata f'dan il-process tal-apppell in segwitu d-decizjoni tal-Qorti tal-Appell tat-28 t'Ottubru 2010 tirrigwarda l-valur agrikolu tal-art fejn hemm propost il-barriera kif propost fl-applikazzjoni odjerna, fil-kuntest tal-policy SMAG 01 tal-pjan lokali (South Malta Local Plan).

Illi dan it-Tribunal qieghed jaqbel mal-osservazzjonijiet tal-Bord tal-Appell fid-decizjoni tas-16 t'Ottubru 2009, fejn gie kunsidrat il-fatt li din il-proposta ta' barriera hija mahsuba biex tiehu post barriera ohra li ma thallietx tkompli topera minhabba l-vicinanza ta' fdalijiet storici ta' valur gholi, u ghaldaqstant din il-proposta ghanda titqies bhala rilokazzjoni u mhux operat gdid ta' barriera kif qieghed jigi ndikat fit-tieni u t-tielet raguni ta' rifjut. F'dan il-kuntest il-provedimenti tal-'Mineral Subject Plan' inkluz policies kontra l-holqien ta' barrieri godda m'ghandhux japplika ghal kaz in ezami, anke ghal fatt li dan is-'Subject Plan' baqa' ma giex fis-sehh. Fir-rigward l-ewwel raguni ta' rifjut dwar l-generazzjoni tat-trab, dan m'ghandux ikun ostaklu ghall-hrug tal-permess minhabba li hemm mezzi teknici kif tigi ndirizzata, u dan it-Tribunla seta' jinnota ukoll li d-Direttorat tal-Ippjnar kien ukoll zied kundizzjonijiet ohra fi stadju ta' rikonsiderazzjoni sabiex jindirizza din il-kwistjoni kif xehed il-case officer Franco Pisani fit-30 ta' Novembru 2007.

Illi fir-rigward tal-kwistjoni pendenti, ossia' il-valur agrikolu tas-sit, l-appellant ressaq dawn l-argumenti skont is-sottomissjoni tal-20 ta' Mejju 2014 hekk kif gej:

"With reference to the above mentioned appeal, kindly note that the submissions of the appellant are being based on the outstanding issue following the sentence of the Court of Appeal, whereby the Appeal Tribunal was instructed to re-hear the said appeal on the basis that the only reason for refusal (site soil classification) was not debated during the appeal hearing, and thus this constituted an unfair hearing.

In the circumstances we state that our position on the other matters remains the same as in the previous sittings.

With reference to the soil classification and the agricultural value, it is pointed out that:-

The existing vegetation was extensively treaded in the EIA studies carried out, and MEPA had agreed that the existing vegetation could be uprooted (see conclusions of EIA and MEPA DPA report). The EIA also discussed ecological issues as well as the soil quality;

The intrinsic value of the soil has been adequately inspected by this Tribunal on site, wherein the said Tribunal could conform that the existing land is barely cultivable as most of the site consists of exposed rock, bird hides, and low lying soil deposits. It is a fact that the objector himself demonstrated to the Tribunal that only

one terrace was cultivable. In addition to the above, I am kindly enclosing a report by a soil expert confirming the poor quality of the soil areas.

Concluding, I am kindly requesting that this Tribunal after having studied the submissions in this appeal, and the submissions made in front of the previous Tribunals, grants the said permit.'';

Illi mal-istess sottomissjoni, l-appellant prezenta dikjarazzjoni minn espert tal-Agrikoltura, is-Sur Anthony Borg Dip. Agric. li taqra' hekk kif gej:

"B'riferenza ghar-rapport bid-data ta' 13 ta' Novembru 2012, illi jiena, hawn taht iffirmat, kont ghamilt rigward art fl-inhawi ta' Wied Moqbol fil-limiti taz-Zurrieq (kopja mehmuza - 'A'), u li fuqha is-Sur Charles Fenech ta' 19, 'Shared', Triq Philip de Vendome, Marsascala, ghandu applikazzjoni mal-M.E.P.A. ghal barriera, gejt inkarigat mis-sur Fenech sabiex naghmel rapport aktar dettaljat ta' dan ir -raba.

Jiena s-sottofirmat, ergajt mort fuq il-post fid-19 ta' Marzu 2014, u flimkien mas-sur Charles Fenech u hub Philip Fenech dort I-art in kwistjoni sabiex nezamina l-istat agrikolu taghha.

Kif imsemmi fl-ewwe1 rapport tieghi, I-art in kwistjoni, mmarkata bl-isfar fuq il-pjanta mehmuza ma' dan ir-rapport, hija principalment maqsuma ferba' hbula twal, mtarrga u jharrsu lejn il-Ivant. Il-habel ta' fuq ('I' fuq il-pjanta mehmuza), ghalkemm hemm harga blat ma' tulhu, kif imsemmi fl-ewwel rapport, rega instab li huwa mahrut, pero minghajr ucuh jikbru go fib, ghajr ghal ftit ful go rokna minnhom.

Il-kumplament kollu tar-raba huwa zdingat, miksi kollhu haxix hazin bhal tfief, xewk, lellux etc., dana fl-aqwa zmien tas-sena, meta, jekk ir-raba (baghli) ikun jinhadem, huwa iz-zmien li ssib il-prodotti agrikoli jikbru fih.

F'hafna inhawi ta'dan ir-raba, jidher li hemm il-blat fil-wicc. Din tista' tkun wahda mir-ragunijiet li dan ir-raba ma' jistaxjinhadem sew.

Mehmuza ma' dan ir-rapport hemm zewg ritratti ('Cl' & 'C2'), mehuda u sottomessi lili mis-sur Charles Fenech ili juru I-istat ta' dan ir-raba kif deskrit hawn fuq; fihom l-art zdingata hija evidenti hafna.

F'ritratt numru 1, wiehed jinnota ukoll l-osservazzjoni fl-ewwel rapport tieghi illi partijiet mill-art kienet tintuza ghal insib. F'dan ir-ritratt numru 1 jidhru zewg duri ghal insib tal-ghasafar u pilastri tal-kanen fuq il-hajt fejn in-nassaba idendlu l-gabjetti bl-ghasafar.

Ritratt numru 2 jikkonferma ukoll dak li nnutajt fl-ewwel rapport tieghi illi din l-art qeghda biswit barrier ezistenti.'';

Illi l-Awtorita' baqghet ferma fil-posizzjoni taghha u permezz tas-sottomissjoni prezentata fil-11 t'Awissu 2014, rrispondiet hekk kif gej:

"In view of the Court of Appeals' decision, the Authority would like to submit comments on Policy SMAG 01 of the South Malta Local Plan which was referred to by the Planning Appeals Board in their decision dated 16th October 2009.

The site at Wied Moqbol in Zurrieq is designated by the South Malta Local Plan (Map ZU 4) as an Agricultural Area as per Policy SMAG 01. The policy clearly states that "MEPA will continue to protect agricultural land from all types of inappropriate development. Within Agricultural Areas, as indicated on the relevant Environmental Constraints Maps, only buildings, structures and uses essential to the needs of agriculture will be permitted and then only if it can be demonstrated to the satisfaction of MEPA that they will not adversely affect water supplies, soil and landscape, and accord with all other policies within this Local Plan." The Authority notes that the proposal is totally not related to agriculture and hence the proposed activity is not acceptable since it is not compatible with the designation of the Local Plan.

Final Comments

The Authority therefore reiterates that it acknowledges and confirms the reasons for refusal issued on the 6th December 2005 are justified and still applicable on sound planning considerations which took into considerations all the relevant facts, planning policies, legislation and submissions and thus, respectfully requests the Environment and Planning Review Tribunal to confirm the decision taken by the Authority and to confirm the decision taken by the Authority and to refuse this appeal.'';

Illi s-Sur Pio Ghigo, bhala terza persuna nteressata u l-bidwi li fuqu ghandu registrata l-art agrikola fis-sit mertu ta' dan l-appell prezenta din is-sottomissjoni:

1. Pio Ghigo qed jaghmel din ir-risposta ghal dak sottomess fuq l-art in kwistjoni. L-art in kwistjoni apparti l-hamrija hemm iktar important numru ta' sigar tal-harrub li ghandhom iktar minn hamsin sena li gew ddikjarati mid-Dipartiment tal-Agrikoltura tal-iskop ta' konservazzjoni that ir-rural development plan 2007/2013. Dan ic-certifikat ta' registratzzjoni huwa fuq l-art in kwistjoni.

2. Ghalhekk m'hijiex kwistjoni biss tat-tip ta' hamrija u kemm hemm kultivazzjoni imma l-progett se jolqot direttament dawn is-sigar illi jekk it-Tribunal mar jara l-art certament rahom b'ghajnejh il-kwantita' ta' sigar tal-harrub li hemm.

3. Ghaldaqstant in vista ta' dan id-dokument illi qed jigi esebit it-talba tmur kontra r-rural development plan 2007/2013.''

Illi dan it-Tribunal ra ukoll l-oggezzjoni tad-Dipartiment tal-Izvilupp Rurali u l-Akkwakultura data 30 ta' Mejju 2013 li taqra' hekk kif gej:

"We refer to appeal no. 4/06 which is to be heard on 12 June 2013 whose applicant has appealed against the refusal for the issue of a development permit (PA 2700/00) for a hard-stone quarry on site at Wed Moqbol l/o Zurrieq.

After a complaint raised by one of the farmers on whose land the development is being proposed, officers from the Rural Development and Aquaculture Department with the Parliamentary Secretariat for Agriculture, Fisheries and Animal Rights have visited the site. Officers noted that with the exception of an adjacent quarry, site is pristine agricultural land of great aesthetic and environmental value on which grow a substantial number of large carob trees some of which are of millenarian age and other local tree species that warrant protection.

The Department would like to express its concern on the eventuality of the appeal being accepted. The Department is of the opinion that both the area and the trees should be preserved and that no other development leading to further land degradation is permitted.'';

Illi dan it-Tribunal seta' jinnota li l-proposta ghall-izvilupp ta' barriera sabiex jigi estratt materjal tal-gebla tal-qawwi, kienet suggetta ghall-preparazzjoni tal-Environment Impact Assessment (EIA, December 2003) fejn fost l-impatt li gie

kkunsidrat kien dak relatat mal-agrikolutura. Dwar il-valur agrikolu tas-sit in ezami gie kkunsidrat fil-paragrafu 2.7 tal-EIA, hekk kif gej:

“Most of the fields at the time of survey showed that they had been used to grow cereal crops, while only a few carried remnants of broad beans and vegetable marrows. The presence of dried weeds indicated that the fields were derelict. A number of fruit trees, almonds, figs, prickly pears and vines were found growing in a number of sites. The dominant trees were the carob trees and the eucalyptus and acacia trees. These are mainly associated with the trapping and hunting activity which occurs in the area, the trees being planted to lure birds. The numerous trapping strewn all over the area ns in abandoned fields also confirm such an activity.’’;

Dan fil-fatt gie ukoll kkonfermat minn dak li gie osservat mill-espert tal-Agrikoltura fir-rapport tieghu datat 20 ta’ Marzu 2014.

Illi dan it-Tribunal seta’ jinnota ukoll li l-oggezzjoni tal-Agrikoltura, kif ukoll tat-terza persuna interressata ma kinietx tindirizza l-valur agrikolu jew l-produttivita agrikola tal-art (li jirrizulta li hija wahda baxxa), imma t-telf ta’ sigar antiki tal-hurrub li jinsabu fis-sit inezami. F’dan ir-rigward l-EIA ukoll indirizza din il-kwistjoni, fejn numru ta’ sigar tal-harrub ser ikunu fil-fatt mizmuma, partikolarment dawk fuq in-naha tal-Punent tas-sit.

Illi mhux kuntestat il-fatt li l-ikbar impatt dwar dan l-izvilupp huwa marbut mal-aspett kulturali tas-sit, cioe’ it-telf ta’ dawk il-karaterristici li jsawwru l-pajsagg rurali, bhal hitan tas-sejjieh, bini rurali u sigar, kif ukoll tibdil fit-topografija tal-post. Dawn l-aspetti ftit li xejn jistghu jigu mitigati, fis-sens li la darba qed jigu mittifsa, l-impatt ser ikun dejjiemi. Dawn il-kwistjonijiet u l-estent tal-impatt tal-izvilupp gew indirizzati fl-EIA.

Minn naha l-ohra, l-impatt fuq l-agrikoltura, skont kif indikat fl-EIA, mhux ikkunsidrat bhala impatt dejjiemi, imma temporanju, u dan sakemm tibqa’ topera l-barriera u terga finalment tigi rijabilitata ghal-uzu agrikolu. Dan it-Tribunal jinnota ukoll li f’kuntest iktar wiesgha, l-izvilupp propost huwa marbut ukoll mar-rijabilitazzjoni tal-barriera ezistenti maghrufa bhala ta’ Hagar Qim fil-limiti tas-Siggiewi/Qrendi skont kif indikat ukoll fil-konkluzzjoni tal-EIA. F’dan ir-rigward, dan ser iwassal sabiex l-art agrikola li ser tigi mitlufa f’dan is-sit ser tigi miksuba f’barriera ohra tal-appellant li l-operat taghha kellu jigi mwaqqaf, u ghaldaqstant, effettivament, l-izvilupp mhux ser iwassal ghal nuqqas ta’ art ghall-agrikoltura.

> Ghal dawn il-motivi, u wara li kkunsidra l-fattispeci tal-kaz dan it-Tribunal qieghed jilqa' dan l-appell, ihassar ir-rifjut tal-permess ghall-izvilupp, jordna lis-Segretarju ta' l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar sabiex johrog il-permess skont il-pjanti u l-kundizzjonijiet elenkati fil-case officer report a fol 225 fl-inkartament tal-PA 2700/00, b'dan illi l-ammont dovut ghal garanziji bankarji ghadhom jigu mibdula fil-valur tal-munita' Ewro, fi zmien tletin gurnata tal-hrug ta' dawn il-garanziji bankarji.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal zbalja fil-ligi meta qies il-kwalita tal-art agrikola fid-determinazzjoni tieghu. Art tibqa' agrikola kemm jekk hi zdingata sakemm ma titnehhiex kull dehra ta' hamrija minnha. Il-ligi tal-ippjanar tipprotegi din l-art u taghti biss permess ghal tibdil ghal uzu li hu essenzjali ghal bzonnijiet agrikoli. Il-permess in kwistjoni hu ghal uzu ta' barriera u ghalhekk ma taqax fit-terminu ta' bzonn agrikolu;

2. It-Tribunal zbalja meta qal li l-pjan lokali fil-parti SMZU 02 mhux applikabbli ghal kaz peress illi hu manifest li l-policy tapplika ghal harstone quarries ezistenti u ebda estensjoni ghal quarries ohra ma hu permess;

3. Ir-regolament 504.16 (Avviz Legali 200/2011) jipprotegi s-sigar tal-harrub u ebda sigra tal-harrub li ghandha aktar minn 50 sena ma tista' titnehha, ghalkemm jippermetti li sigar tal-harub imhawla wara l-1998 jistghu jigu maqlugha. Dan mhux il-kaz f'din il-vertenza pero t-Tribunal xorta ippermetta dan;

4. L-appellant ser isofru b'sahhithom mill-hsara ambjentati li ser issehh bl-izvilupp. L-appellanti ghandhom dritt ta' protezzjni taht l-artikolu 8 tad-Drittijiet tal-Bniedem, fejn l-appellanti kienu gia residenti fil-vicinanzi tal-propost zvilupp u t-trabijiet li ser jigu generati ser ikunu ta' hsara;

5. Parti mill-art giet skedata level 3 bl-avviz fil-Gazzetta tal-Gvern 400/1996. Din il-kwistjoni tqajmet issa mill-appellanti pero hi ta' ordni pubbliku u tista' titqajjem f'kull hin.

Qabel xejn ghalkemm l-Awtorita tishaq illi l-aggravji kellhom isiru biss ghal dak li jirrigwarda l-policy SMAG 01 ghax kien dan il-punt li wassal ghar-revoka tad-decizjoni tat-Tribunal tas-16 ta' Ottubru 2002, din il-Qorti ma taqbilx ghax is-sentenza tal-Qorti tal-Appell tat-28 ta' Ottubru

2010, revokat id-decizjoni shiha u ghalhekk l-appell quddiem it-Tribunal rega’ infetah mill-gdid fuq l-aggravji kollha.

L-ewwel aggravju

Dan l-aggravju kien punt specifiku imqajjem mill-Awtorita fis-sottomissjoni taghha tal-11 ta’ Awwissu 2014. Kif kien gia innota t-Tribunal fid-decizjoni tieghu tas-16 ta’ Ottubru 2009 l-art fejn qed jigi propost l-izvilupp hu desinjat fis-South Malta Local Plan bhala zona agrikola skond il-policy SMAG 01. Il-policy hi cara fl-intendiment taghha cioe illi f’dawk is-siti hekk indikati ebda zvilupp ma jista’ jsir hlief dak relatat mal-agrikoltura u anki hemm, dan l-izvilupp irid ikun tali li ma jaffettwax il-karatteristici tas-sit cioe dak agrikolu. It-Tribunal sfortunatament flok applika l-policy kif inhu obbligat li jaghmel u semmai jirreferi ghal xi policy ohra li tista’ tigi addottata flimkien ma’ jew b’eccezzjoni cara ghal din il-policy, ghazel li jaghmel konsiderazzjonijiet fuq il-valur agrikolu prezenti tal-istess sit.

Il-Qorti ma taqbilx li t-Tribunal seta’ jaghmel dan ghax interpretazzjoni ta’ policy li hi fdata esklussivament f’idejn it-Tribunal tista’ issir meta l-policy taghti lok jew fakolta ghal tali interpretazzjoni. F’dan il-kaz il-policy SMAG 01, almenu ghal dak li jidher mill-atti u gie dibattut, ma jippermetti ebda interpretazzjoni arbitrarja tal-valur agrikolu ta’ sit. Jekk sit hu desinjat bhala agrikolu, hu biss il-pjan lokali li jista’ jnehhih minn tali desinjazzjoni, u mhux b’diskrezzjoni arbitarja tal-Awtorita jew it-Tribunal, li jifli jekk fil-fatt is-sit hux qed jigi utilizzat ghall-iskop agrikolu fil-pjenezza tieghu.

Il-Qorti tqis illi l-evalwazzjoni tat-Tribunal f’dan l-aspett kienet errata fil-ligi u ebda EIA ma jista’ jxejjen l-effetti sanciti ta’ policy jew pjan lokali. Ghalkemm it-Tribunal ikkunsidra kwistjonijiet ohra cioe illi fil-vicinanzi hemm barriera ohra, li l-applikant ma kienx qed japplika ghal barriera gdida izda biss rilokazzjoni u illi meta tieqaf topera l-barriera s-sit jigi ripristinat, dawn l-argument ma jistghux jintuzaw biex tigi injorata l-policy SMAG 01 jekk mhux b’applikazzjoni ta’ policy ohra rilevanti u li tinnewtralizza din il-policy.

Dan l-aggravju ghalhekk qed jigi milqugh u billi dan hu l-pern tad-decizjoni tat-Tribunal, id-decizjoni jisthoqqilha tigi revokata.

It-tieni aggravju

Dan l-aggravju mhux fondat peress illi l-policy SMAG 02 tapplika ghal ftuh ta' barrier godda mentri hawn si tratta ta' rilokazzjoni biss fejn l-applikant kellu per forza jirrilaxxja l-barriera li kien jokkupa u jinstab sit alternattiv fejn jista' jopera barrier simili dejjem jekk hemm sit adattat li ma jiksirx xi ligi, pjan jew policy.

It-tielet aggravju

Dan l-aggravju hu fondat pero ghar raguni li t-Tribunal ma ikkonsidrahx minn tali perspettiva izda biss minn dik prattika. It-Tribunal kellu l-obbligu li jara jekk l-Avviz Legali imsemmi kienx tassattiv jew kienx hemm eccezzjonijiet. Il-Qorti mhix ser tippronuncja ruhha fuqha peress illi l-partijiet ghandhom ikollhom l-opportunita li jittrattawh u jigi gudikat kif imiss mit-Tribunal peress li wkoll hu aggravju sostantiv fuq il-mertu apparti li hu aggravju legali fih innifsu.

Ir-raba aggravju

Dan l-aggravju hu biss tentattiv sabiex din il-Qorti terga tissindaka fatti li fuqhom it-Tribunal esprima ruhu dwarhom u ghalhekk dan mhux aggravju fuq punt ta' ligi u ma ghandux jigi kunsidrat mill-Qorti.

Il-hames aggravju

Dan l-aggravju qatt ma tqajjem quddiem it-Tribunal u ebda prova tal-allegazzjoni maghmula ma saret quddiem din il-Qorti. Semplici allegazzjoni fir-rikors tal-appell ma hix bizzejjed biex

din il-Qorti tikkonsidra l-kwistjoni, ghalkemm taqbel mal-appellanti li skedar hu ta' ordni pubbliku u jista jitqajjem ex officio mit-Tribunal innifsu.

Decide

Ghalhekk il-Qorti qed tilqa' l-appell ghar-ragunijiet moghtija u kwindi qed tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-16 ta' Dicembru 2014, u tirrinvija l-atti lura lit-Tribunal biex jerga' jisma' l-appell in linea ma' dak deciz. Spejjez ghall-Awtorita.

< Sentenza Finali >

--------------------------------TMIEM--------------------------------