

Tribunal ta' Revizjoni tal-Appell u l-Ippjanar

Appell minn Hrug ta' Penali Amministrattiva bin-Numru IF 0757 / 19 Fai termini tal-artikolu 81 tal-Kap 549 u l-Kap 551 tal-Ligijiet ta' Malta

ENVIRONMENT AND PLANNING  
REVIEW TRIBUNAL Fish and Fish Limited (C14268)



Appell ta' Fish and Fish Limited (C14268)

Tesponi bir-rispett

Illi fis-sitta (6) t'Awissu tas-sena 2019 inhareg avviz bl-intenzjoni li tigi imposta multa amministrattiva li saret effettiva f'termini tal-ligi permezz tal-Avviz dwar il-Hrug ta' Penali Amministrattiva (IF 00757/19 Nru. ta' Riferenza tal-Multa: SO0407) hawn annessa bhala Dokument A;

Illi l-esponenti appellanti gew notifikati b'dan l-avviz permezz ta' ittra datata tnejn u ghoxrin (22) ta' Mejju tas-sena elfejn u ghoxrin (2020);

Illi l-appellanti hass ruhu aggravat b'dan l-Avviz liema penali amministrattiva ta' €1,000 giet imposta fuqha mill-istess Awtorita appellata minhabba is-segwenti ragunijiet u ai termini **tas-sub artikolu 81 (5) tal-Kap 549 u l-Kap 551 tal-Ligijiet ta' Malta** qiegħed ghaldastant tuzgha dawn il-proceduri biex tipprezenta dan l-appell minnha:

*"On 26 July, 2019 during an inspection carried out between 09:00 hrs – 10:30 hrs circa at Fish & Fish Limited tuna fish farm located at the South East Aquaculture Zone, ERA officers observed the washing of jumbo bags taking place in the sea in breach of condition 2.5.5 of EP 0032 / 19, which states that: Bags used to transport baitfish shall not be cleaned / rinsed in the sea following feeding but shall be taken back to land base / quay for reused or disposal. Cleaning shall not be carried out at the quay unless proper containment of effluent is in place."*

Flimkien ma' dawn is-sottomissionijiet qed jigu ukoll annessi l-ircevuta tal-hlas tad-dritt tal-appell (Dokument B);

Is-Socjeta' appellanti tissotometti għal konsiderazzjoni ta' dan it-Tribunal dan li gej:

1. Illi l-procedura specjali ai termini tal-Artikolu 80 tal-Kap 549 tal-Ligijiet ta' Malta u l-multa amministrativa ai termini tal-Artikolu 81 tal-istess Kap jitolbu li jrid ikun hemm il-ksur ta' xi dispozizzjoni, direttiva, decizjoni, ordni jew kundizzjoni da parti tal-appellanti, liema ksur għandu jirrizulta li ma kienx il-kaz;
2. Illi f'kull kaz l-impozizzjoni ta' multa tista' ssir jekk u meta id-dispozizzjoni, direttiva, decizjoni, ordni jew kundizzjoni tinkiser u f'dan il-kaz l-Awtorita' jehtieg li tressaq il-provi dwar dan;
3. Illi ghall-kuntrarju għandu fil-fatt jirrizulta li l-esponenti hadet il-mizuri kollha preventivi ragjonevolment mehtiega fic-cirkostanzi u qieghda twettaq xogħolijiet kostanti biex tassigura ruħha li tkun kompletament konformi mal-ligi u l-permessi ambjentali. F'dan ir-rigward għandu jingħad li dak in-nhar li saret l-ispezzjoni mill-ufficjali tal-awtorita' appellata thejja rapport li qed jigi anness bhala Dokument C fejn gie nnuttat dan li:

*The latter vessel 'San Pietro' was carrying out feeding operations and at the time of the inspection, officers noted the vessel lifting of a large quantity of empty jumbo bags from the sea and placing them on the vessel deck (photo 1). Feeding was taking place within boomed cages.*

4. Illi minn din l-osservazzjoni li għamlet l-awtorita appellata għandu jirrizulta li waqt il-hin tal-ispezzjoni, l-appellanti kienu qed jitimghu il-hut, b'dan allura li l-ksur li qed jigi addebitat lilhom huwa assolutament infondat u bla bazi;
5. Illi l-process li bih jintemgħa l-hut jirrikjedi sengħa / procedura partikolari, kif gie osservat mill-istess socjeta lill-awtorita appellata wara li rceviet is-site inspection report permezz ta' korrispondenza elettroniku li qed tigi mmarkata bhala Dokument D

*Report dated 25/07/19 @ SEAZ site*

*The San Pietro is in the process of supplying feed to the feeding cages. Please that feed is supplied in 4,6 or 8 bags at a time. Our employees have instruction to refrain from washing bags in the sea.*

6. Illi inoltre nhar it-8 t'Awissu, 2019 l-istess socjeta' regħġet kitbet lill-Awtorita appellata sabiex tispjega fiex jikkonsisti dan il-process, liema korrispondenza elettronika qegħda tigi mmarkata bhala Dokument E.

*Our appeal is made on the facts below:*

1. *The vessel San Pietro was actually in the process of transferring feed to the cages as noted in this report. Photo 1 shows the vessel San Pietro in the process of transferring feed from the jumbo bags into the feeding cages and not washing empty bags in the water. Photo 1 is showing only 4 bags in the process of being lifted aboard after just having their contents emptied into the feeder (the structure in which feed is placed for eventual supply to the fish). Please note that at time up to 8 bags are transferred to the feeder at once.*

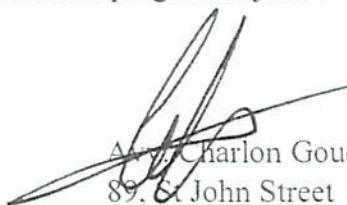
2. *The feeder is generally placed in the centre of the cage and only moved to the side of the cage when feed is being transferred into the feeder. I draw attention to the fact that the photo shows the feeder being just below the empty bags being lifted and tied to the side of the cage to this effect. This confirm that the vessel is in the process of placing feed in the feeder rather than washing bags as being alleged in the report.*

Għaldaqstant is-socjeta' appellanti qed jitkolbu li l-files li ssir referenza għalihom jigu vverifikati mit-Tribunal u dan billi l-Awtorita' għandha tigi mitluba sabiex tippreżenta l-files imsemmija minnha lit-Tribunal, u in segwitu ta' dan l-istess it-Tribunal għandu filwaqt li jilqa l-appell intavolat jordna li l-Avviz fuq imsemmi jigi revokat fil-konfront tal-appellanti u dana taht, u minghajr pregudizzju għal kull decizjoni jew provediment iehor li jogħgbu jiehu dan it-Tribunal.

Ai termini tas-sub artikolu **81 (5) tal-Kap 549** l-istess appellant qed jitkolbu s-sospensjoni ta' kull provedimenti ohra li l-istess appellati jisghu jieħdu ai termini tal-istess sub artiklu sa mal-kaz jigi deciz.

Salv kull provediment li dan it-Tribunal jidir lu xieraq li għandu jieħu.

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Illi waqt is-smigh l-esponenti ser tressaq is-segwenti xhiedha:

- (i) Konsulenti tal-Awtorita' kif ukoll ufficjali tal-istess sabiex jixħdu fuq il-fatti tal-kaz;
- (ii) Is-Sur Massimo Fannara, sabiex jixħed dwar il-fatti tal-kaz;
- (iii) MS. Ruth Ciarlo sabiex tidher dwar il-fatti tal-kaz u l-korrispondenza li ghaddiet bejnha u s-socjeta' appellanti;
- (iv) Haddiema tas-Socjeta' appellanti sabiex jixħdu dwar il-fatti tal-kaz;
- (v) Dr Saviour Caruana sabiex jixħdu dwar il-fatti tal-kaz;
- (vi) Il-Kaptan tad-dgħajsa San Pietro is-Sur David Grech

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