QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI

MAGISTRAT DR. JOSEPH MIFSUD
B.A. (LEG. & INT. REL.), B.A. (HONS.), M.A. (EUROPEAN), LL.D.

Il-Pulizija
(Spettur Antonovich Muscat)

vs

Omissis
Sharon Camilleri

Kumpilazzjoni numru 524/2012

Illum 13 ta' Lulju, 2016

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat **Omissis** u l-imputata **Sharon Camilleri** detentrici tal-karta tal-identita' bin-numru 310969 (M) billi huwa akkuzat talli talli f' dawn l-ahhar snin, f'dawn il-Gzejjer, b'diversi atti maghmulin fi zminijiet differenti, izda li jiksru l-istess dispozizzjoni tal-Ligi u li gew maghmula b'rizoluzzjoni wahda:

1. Ghamlu atti ta' money laundering billi :-

i) Ikkonvertew jew trasferew propjeta` meta kienu jafu jew jissuspettaw li dik il-propjeta` kienet direttament jew indirettament inkisbet, jew mir-rikavat ta', attivita` kriminali jew minn att ta' partecipazzjoni f' attivita kriminali, ghall-iskop ta' jew skopijiet ta' habi jew wiri haga b' ohra ta' l-origini tal-propjeta jew ta' ghoti ta' ghajnuna lil xi persuna jew persuni involuti jew koncernati f' attivita kriminali;

ii) Hbew jew wrew haga b'ohra tal-veri xorta, provenjenza, lok, dispozizzjoni, moviment ta' jeddijiet rigward, fi jew fuq propjeta`, meta kienu jafu jew  jissuspettaw li dik il-propjeta` kienet inkisbet direttament jew indirettament minn attivita` kriminali jew minn att jew atti ta' partecipazzjoni f' attivita kriminali;

iii) Akkwistaw, ippussesaw jew uzaw propjeta' meta kienu jafu jew jissuspettaw li l-istess propjeta' kienet inkisbet jew originat direttament jew indirettament minn attivita kriminali jew minn att jew atti ta' partecipazzjoni f' attivita kriminali;

iv) Bir-ritensjoni minghajr skuza ragonevoli ta' propjeta' meta kienu jafu jew jissuspettaw li l-istess propjeta' kienet inkisbet jew originat direttament jew indirettament minn attivita kriminali jew minn att jew atti ta' partecipazzjoni f' attivita kriminali;

v) Ittentaw jaghmlu l-hwejjeg jew attivitajiet illegali fuq imsemmija;

vi) Agixxew bhala komplici fit-tifsir ta' l-Artikolu 42 tal-Kodici Kriminali rigward xi wahda mill-hwejjeg jew attivitajiet definiti fis-sub-paragrafi (i), (ii), (iii), (iv) u (v) ta' hawn fuq;

Ai termini tal-Artikolu 3 tal-Att kontra l-Money Laundering, Kap. 373, u l-artikolu 18 tal-Kap.9, Ligijiet ta' Malta.

Il-Qorti giet gentilment mitluba sabiex tapplika mutatis mutandis id-disposizzjonijiet ta' l-Artikolu 5 ta' l-Att kontra l-Money Laundering, Kapitolu 373 tal-Ligijiet ta' Malta, hekk kif ikkontemplat fl-Artikolu 23A (2) tal-Kapitlu 9 tal-Ligijiet ta' Malta.

Il-Qorti giet gentilment mitluba sabiex fil-kaz ta' htija, barra li tinfliggi il-pieni stabbiliti mil-Ligi, tordna wkoll il-konfiska ta' l-oggetti kollha esebiti.

Il-Qorti giet ukoll gentilment mitluba sabiex f'kaz ta' htija tikkundanna lill-akkuzat/i ghal hlas ta' spejjes li jkollhom x'jaqsmu mal-hatra ta' esperti jew

periti fil-proceduri hekk kif ikkontemplat fl-Artikolu 533 tal-Kapitlu 9 tal-Ligijiet ta' Malta.

Illi din il-kawza giet assenjata lil din il-Qorti kif preseduta b'digriet datat 30 ta' Gunju 2015 moghti mis-Sinjurija Tieghu l-Prim'Imhallef.

Rat in-Nota ta' Rinviju ghall-Gudizzju tal-Avukat Generali datata 3 ta' Gunju, 2013 (esebita a fol. 1202 tal-process) sabiex il-kawza tigi trattata bi procedura sommarja.

Rat il-provi.

Rat l-atti kollha ta' dan il-procediment u d-dokumenti esebiti.

Rat is-sottomissjonijiet finali bil-kitba maghmula mill-prosekuzzjoni u d-difiza.

IL-FATTI SPECIE TAL-KAZ

Matul ix-xhur ta' Marzu u April 2012, il-pulizija kienet qed tinvestiga l-omicidju ta' Kevin Gatt, detentur ta' karta tal-identita Maltija bin-numru 139980M, li gara gewwa Triq Guzeppi Lanzon, Marsascala fil-15 ta' Marzu 2012. Dan l-omicidju allegatament sar mill-imputat, illum mejjet[1], Giuseppe Cutajar, detentur ta' karta ta' l-identita Maltija bin-numru 257366M, liema persuna kienet maghrufa mal-pulizija fl-ambjent tar-reati ta' serq u *hold-ups,* izda li sa dak iz-zmien il-pulizija kien ghada qatt ma irnexxilha tressqu il-Qorti b'dawn l-akkuzi.

[1] Certifikat tal-mewt esebit a fol. 1189 tal-process

L-investigazzjonijiet tal-pulizija rigward Giuseppe Cutajar wrew li huwa ma kienx registrat li qed jahdem sa mis-sena 2003, izda fl-istess hin kellu tlett karozzi registrati f'ismu: *BMW 320, Mitsubishi Colt* u *Mitsubishi Pajero*. Irrizulta wkoll illi dak iz-zmien Cutajar kellu zewgt itfal, tifla ta' sentejn u ohra ta' erba' xhur, minn relazzjoni li kellu mal-imputata Sharon Camilleri, apparti tfal ohra minn relazzjoni ohra u zwieg precedenti.

Il-pulizija kienet irceviet informazzjoni kunfidenzjali li l-mejjet Giuseppe Cutajar kien qed jaghmel uzu minn *safety deposit box* mall-*Bank of Valletta, plc* u li din is-*safety deposit box* kienet f'isem l-imputata Sharon Camilleri.

Il-prosekuzzjoni tghid li fl-20 ta' Marzu 2012, hamest ijiem wara l-omicidju ta' Kevin Gatt, l-imputata marret fil-fergha tal-Bank of Valletta, Marsascala, u talbet biex tiftah is-*safety deposit box* f'isimha. Hija u hierga mill-istess bank, hija tablet lil wiehed mill-kaxxiera sabiex jghodd somma fi flus kontanti, liema somma kienet tammonta ghal Euro13,500.

Il-prosekuzzjoni tghid li kien minhabba dawn ic-cirkustanzi illi l-pulizija hasset il-htiega li taghmel din l-investigazzjoni rigward riciklagg ta' flus u li ghalhekk ghamlet talba lill-Qorti Kriminali, tramite l-Ufficju ta' l-Avukat Generali, ghall-hrug ta' Ordni ta' Investigazzjoni u Ffrizar (*investigation and attachment order*) f'isem Giuseppe Cutajar u l-imputata, liema ordni kien datat 23 ta' Marzu 2012 u kien mahrug mill-Qorti Kriminali, Imhallef David Scicluna, ai termini tal-Kap 373 tal-Ligijiet ta' Malta.

Illi, minn dan l-Ordni ta' Investigazzjoni u Ffrizar irrizulta is-segwenti:

- **Bank of Valletta, plc** – Giuseppe Cutajar kellu 3 kontijiet bankarji, filwaqt li Sharon Cutajar ghandha 2 kontijiet bankarji u 2 *safety deposit boxes* f'isimha, wahda minnhom mhux attiva sa mis-sena 1999.
- **HSBC Bank (Malta), plc** - Giuseppe Cutajar kellu 3 kontijiet bankarji, filwaqt li Sharon Cutajar ghandha kont bankarju wiehed.
- **Departiment tat-Taxxi Interni** – Giuseppe Cutajar u Sharon Camilleri kien ilhom ma jiddikjaraw dhul sa mis-sena 2004.
- **Dipartiment tas-Sigurta Socjali** – Giuseppe Cutajar kien jircievi Eur111.74 fil-gimgha, filwaqt li Sharon Camilleri tircievi Eur179.48 fil-gimgha.
- **Korporazzjoni ta' l-Impjieg u Tahrig** – Giuseppe Cutajar ma kienx registrat li qieghed jahdem mis-sena 2003, filwaqt li Sharon Camilleri ma hijiex registrata li tahdem mis-sena 1998.
- **Transport Malta** – Giuseppe Cutajar kellu tlett vetturi registrati f'ismu, fosthom BMW 320 u anke daghjsa zghira bin-numru ta' registrazzjoni S03322. Sharon Camilleri ghandha bicca tal-bahar (l-prosekuzzjoni tiddiskriviha bhala *yacht*) ta' 26 pied bl-isem Twinkle I[2], bin-numru ta' registrazzjoni 05551, registrat f'isimha.

Il-pulizija kompliet bl-istharrig taghha billi talbet lill-Qorti tal-Magistrati bhala Qorti Inkwirenti, Magt. Dr. M. Hayman, LL.D., sabiex is-*safety deposit box* f'isem Sharon Camilleri li tinsab fil-*Bank of Valletta, p.l.c.* f'Marsascala, tinfetah u jsir elenku u jigi anke fotografat il-kontenut, liema ezercizzju sar fit-13 t'April 2012, fil-presenza ta' espert tal-Qorti u l-imputata.

[2] Inxtrat Euro 13,500, f'Ottubru 2009.

Fis-*safety deposit box* irrizulta li kien hemm tmiena u ghoxrin elf u tmenin ewro (€82,080), kif ukoll ammont ta' gojjelli. B'ordni tal-istess Qorti Inkwirenti, dawn il-gojjelli kienu ttiehdu l-Monte Di Pieta sabiex saret evalwazzjoni taghhom, u wara regghu ittiehdu lura fis-*safety deposit box* f'Marsascala.

Fil-15 ta' Mejju 2012, Giuseppe Cutajar u l-imputata kienu gew interrogati fejn dawn ghazlu li ma jwiegbu ghall-ebda domanda li ghamlitilhom il-pulizija u it-tnejn li huma irrifjutaw li jghamlu uzu mid-dritt ghall-parir legali.

Fis-16 ta' Mejju 2012, id-defunt Giuseppe Cutajar flimkien mal-imputata tressqu il-Qorti b'arrest, akkuzati bir-reat ta' *money laundering* (Artikolu 3, Kap. 373).

Xhieda

Fil-kawza taw ix-xiehda taghhom wiehed u ghoxrin (21) xhud inkluz l-imputata. Din il-Qorti kellha l-opportunita' tisma' biss lix-xhud tad-difiza Frances Camilleri ghaliex ix-xiehda 'l ohra nstemghu minn Qorti diversament preseduta.

Spettur Antonovich Muscat – fol 40 sa fol 42, **Patricia Hili** – fol 55 sa fol 56, **Manfred Galea** – fol 78 sa fol 79, **Reuben Cini** – fol 99 sa fol 100, **Anthony Galea** – fol 106 sa fol 108, **Steven Cachia** – fol 124 sa fol 115, **Robert Vassallo** – fol 140, **George Cremona** – fol 144 sa fol 145, **Brenda Vella** – fol 150, **Dr. John Seychell Navarro** – fol 251 sa fol 252, **Christine Saliba** – fol 253 sa fol 255, **PS225 Joseph Filletti** – fol 256 sa fol 258, **Charmaine Dimech** – fol 414 sa fol 415, **Audrey Ghigo** – fol 416 sa fol

417, **Romwald Attard** – fol 423 sa fol 424**, Dr. John Seychell** – fol 1160 sa fol 1161, **Spettur Keith Arnaud** – fol 1206 sa fol 1208, **Manfred Galea** – fol 1257 sa fol 1261, **Sharon Camilleri** – fol 1268 sa fol 1311, **Doris Falzon** – fol 1341 sa fol 1345, **Frances Camilleri** – fol 1356 sa fol 1389.

Apprezzament tal-provi fl-assjem

Il-Qorti tissottolinea li huwa ben risaput li l-apprezzament tal-provi ghandu jsir mhux biss b'mod spezzettat u individwali izda l-provi ghandhom jigu analizzati flimkien fl-assjem taghhom sabiex wiehed jara x'inferenzi jew interpretazzjoni ragjonevoli u legali jista' jaghti lil dawk il-provi hekk interpretati. Ma tistax tinstab htija jew nuqqas ta' htija semplicement fuq analizi individwali jew separata tal-provi. Dawn ghandhom jigu kkunsidrati kemm individwalment kif ukoll komplessivament. Dan hu appuntu l-ezercizzju li sejra taghmel din il- Qorti, u cioe' li tezamina bir-reqqa kollha l-provi prodotti f'dan il-kaz.

Illi ghalhekk m'hemmx dubju li kollox jiddependi fuq il-kredibilita` tax-xhieda u dan billi bhala Gudikant, il-Qorti sejra taghti qies l-imgieba, il-kondotta u l-karattru tax-xhieda, tal-fatt jekk ix-xhieda ghandiex mis- sewwa jew hix kostanti, u ta' fatturi ohra tax-xhieda u jekk ix-xhieda hix imsahha minn xhieda ohra, u tac-cirkostanzi kollha tal-kaz, u dan ai termini tal-Artikolu 637 tal-Kap 9 tal-Ligijiet ta' Malta.

Din il-Qorti m'hijiex f'pozizzjoni vantaggjuza bhal Qrati ohra meta tigi biex taghmel apprezzament tax-xhieda, u dan ghaliex hija ma ghexitx il-process kollu tul medda ta' zmien u ghalhekk ma semghetx ix-xhieda kollha jixhdu *viva voce* quddiemha, u ghalhekk mhix f'pozizzjoni li

tezamina l-imgieba u l-komportament taghhom, stante li ma kinitx hi stess li kkonstatat x'interess seta' kellu xi xhud fid-data li xehed u jekk dak li qal kellux mis-sewwa jew le.

Huwa principju baziku pprattikat mill-Qrati taghna fil-procediment kriminali, li biex l-akkuzat jigi ddikjarat hati, l-akkuzi dedotti, ghandhom jigu ppruvati oltre kull dubju ragjonevoli, cioe' oltre kull dubju dettat mir-raguni.

Hawnhekk il-Qorti taghmel referenza ghal sentenza moghtija mill-Qorti tal-Appell Kriminali nhar s-sebgha (7) ta' Settembru, 1994 fl-ismijiet '**Il-Pulizija v Philip Zammit et**' u tghid pero' li mhux kull l-icken dubju huwa bizzejjed sabiex l-imputat jigi ddikjarat liberat, hemm bzonn li '*dubbju jkun dak dettat mir-raguni.*'

Il-Qorti se tara jekk il-fattispecie tal-kaz jammontawx ghar-reat addebitat lill-imputata.

KONSIDERAZZJONIJIET LEGALI[3]

Artikolu 3 tal-Kap 373 l-Att dwar il-Money Laundering jipprovdi li:

> *"ghamel atti ta' money laundering billi :-*
> *a) ikkonverta jew trasfera propjeta` meta kien jaf li dik il-propjeta` kienet direttament jew indirettament inkisbet, jew mir-rikavat ta', attivita` kriminali jew minn att ta' partecipazzjoni f' attivita kriminali, ghall-iskop ta' jew skopijiet ta' habi jew wiri haga b' ohra ta' l-origini tal-propjeta jew ta' ghoti ta' ghajnuna lil xi persuna jew persuni involuti jew koncernati f' attivita kriminali;*

[3] Din il-Qorti taghmel referenza ghad-decizjoni tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali, Il-**Pulizija (Spettur Angelo Gafa) vs Carlos Frias Mateo** deciza mill-Magistrat Edwina Grima fil-5 ta' Awwissu, 2011 fejn tat esposizzjoni legali fonda fejn jidhol ir-reat tal-*Money Laundering*.

b) *heba jew wera haga b'ohra tal-veri xorta, provenjenza, lok, dispozizzjoni, moviment ta' jeddijiet rigward, fi jew fuq propjeta`, meta kien jaf li dik il-propjeta` kienet inkisbet direttament jew indirettament minn attivita` kriminali jew minn att jew atti ta' partecipazzjoni f' attivita kriminali;*
c) *akkwista propjeta' meta kien jaf li l-istess propjeta' kienet inkisbet jew originat direttament jew indirettament minn attivita kriminali jew minn att jew atti ta' partecipazzjoni f' attivita kriminali;*
d) *bir-ritensjoni minghajr skuza ragonevoli ta' propjeta' meta kien jaf li l-istess propjeta' kienet inkisbet jew originat direttament jew indirettament minn attivita kriminali jew minn att jew atti ta' partecipazzjoni f' attivita kriminali;*
e) *ittenta jaghmel l-hwejjeg jew attivitajiet illegali fuq imsemmija*
f) *aġixxa bħala kompliċi fit-tifsir tal-artikolu 42 tal-Kodiċi Kriminali rigward xi waħda mill-ħwejjeġ jew attivitajiet definiti fis-sub-paragrafi (a), (b), (c), (d) u (e) ta' hawn fuq."*

Ir-reat ta' *Money Laundering* huwa wiehed mir-reati l-aktar difficli u delikati biex jigu nvestigati. It-teknika u s-sofistikazzjoni tal-mod kif il-flus jigu girati u jinhbew mill-provenjenza llecita taghhom jaghmluha kwazi mpossibli illi l-investigaturi jsibu tracca tal-provinjeza tal-flus.

Kien ghalhekk illi f'dawn ic-cirkostanzi l-ligi tal-**Money Laundering** Kap 373 ipoggi l-onoru fuq dak li jkun illi huwa jipprova ghas-sodisfazzjon tal-Qorti l-provenjenza lecita tal-flus illi jkunu nstabu fuqu. Dan il-bdil ta' l-onoru tal-provi mhijiex wahda kapriccjuza u kif qalet il-Qorti fil-kawza "**Ir-Repubbblika ta' Malta vs John Vella**[4]" "*din hi ligi strordinarja li tintroduci kuncetti radikali fis-sistema nostrana u li tirrikjedi applikazzjoni fl-akktar skruplu u attenzjoni biex ma tigix reza xi sturment ta' ngustizzja, aktar reminixxenti taz-zminijiet ta' l-inkwizizzjoni minn dak ta' l-era' moderna tad-drittijiet tal-bniedem. . . .".*

[4] Qorti Kriminali 29 ta' Novembru 1999

Illi fil-prosekuzzjoni tar-reat tal-hasil tal-flus jew kif inhu ahjar maghruf il-*money laundering*, irid jigi ippruvat indubbjament u b'mod inekwivoku in-ness bejn ir-reat sottostanti (*the predicate offence*) u cioe' wiehed mir-reati ikkontemplati fl-Ewwel jew it-Tieni Skeda annessi ma'l-Att, u ir-reat in dizamina. Di fatti fil-kawza fl-ismijiet Ir-**Repubblika ta' Malta vs John Vella**[5] il-Qorti stqarret illi "...hu impellanti u necessarju illi jigi deskritt b'mod inekwivoku n-ness bejn l-attivita kriminali sottostanti u l- allegat *money laundering*."

Madankollu l-artikolu 2(2a) tal- Kapitolu 373 jiddisponi testwalment:

> ***" Persuna tista' tinstab hatja tad-delitt ta' money laundering taht dana l-Att, anke fin-nuqqas ta' sentenza ta' qorti li tistabilixxi htija fir-rigward ta'l- attivita' kriminali sottostanti, liema attivita' kriminali tista' tigi stabbilita minn prova cirkostanzjali jew prova ohra, minghajr il-htiega li l-prosekuzzjoni tipprova li kien hemm sentenza ta' kundanna ghall- offiza sottostanti."***

Dana jfisser illi ghalkemm l-attivita kriminali sottostanti ma tigix ippruvata, madanakollu jekk il-prosekuzzjoni jirnexxielha tipprova illi s-sors tal-flus gej minn dik l-attivita kriminali allura ir-reat ikun gie ippruvat, u ma ikunx hemm il-htiega ta' prova rigward xi sentenza ta' kundanna in konnessjoni mar-reat sottostanti.

Id-Dipartiment tat-Tezor tal-Istati Uniti tal-Amerika jiddeskrievi r-reat b'dan il-mod:

> *Money laundering is the process of making illegally-gained proceeds (i.e. "dirty money") appear legal (i.e. "clean").*

[5] Ibid.

> *Typically, it involves three steps: placement, layering and integration. First, the illegitimate funds are furtively introduced into the legitimate financial system. Then, the money is moved around to create confusion, sometimes by wiring or transferring through numerous accounts. Finally, it is integrated into the financial system through additional transactions until the "dirty money" appears "clean"*[6].

Illi l-process tal-hasil ta' flus jinvolvi diversi stadji. L-awturi jikkunsidraw dawn l-istadji bhala tlieta ewlenien li jissejjhu "*placement, layering u integration*."[7] L-ewwel stadju, hekk imsejjah "*placement*" isehh meta il-flus jigu imnehhija mill-post fejn gew akkwistati illegalment. Ghalhekk l-att li permezz tieghu l-persuna suspettata tipprova tohrog il-flus mill-pajjiz fejn originaw huwa l-ewwel stadju fil-process tal-hasil tal-flus. Wara dana, fit-tieni stadju imbaghad il-flus jiehdu xejra ohra jew jinhbew u dana sabiex isir aktar difficli illi wiehed jirrintracca l-istess, bhal per ezempju meta jigu ikkreati kontijiet bankarji f'isem xi korporazzjoni u il-flus jitpoggew f'dawn il-kontijiet. Fl-ahhar process imbaghad il-flus jigu integrati fis-sistema ekonomika sabiex b'hekk jitqiesu minn issa 'l quddiem li huma legali.

L-Att kontra l-*Money Laundering* sar parti mil-ligi taghna fit-23 ta' Settembru 1994. Wara dana kien hemm diversi emendi fil-ligi, bl-emendi ewelenin jigu fis-sehh bl-Att XXXI tal-2007 u l-Att VI tal-2010. Dawna l-emendi huma sinifikanti fis-sens illi filwaqt illi qabel l-2007 l-persuna suspettata trid ikollha ix-xjenza illi l-flus jew proprjeta tkun gejja minn attivita kriminali, wara l-2007 huwa bizzejjed illi l-persuna suspettata ikollu is-suspett ta' tali provenjenza kriminuza sabiex tkun tista' tinstab htija. Inoltre ai fini ta' prosekuzzjoni tar-reat l-emenda li dahhlet fis-sehh fl-2010

[6] "*History of Anti-Money Laundering Laws*". United States Department of the Treasury. 30 June 2015

[7] It-tezi li hejja Clint Tabone ***Prosecuting the Offence of Money Laundering in the Maltese Criminal Courts*** (Mejju 2011) taghti harsa fil-fond dwar dawn l-ingredjenti ghar-reat tal-Money Laundering.

ghal-artikolu 2(2a) tal-Att, il-prosekuzjoni mhux biss ma tenhtigiliex tipprova illi kien hemm il-kundanna ghar-reat sottostanti illi lanqas jinhtiegilha tipprova bil-preciz liema hija l-attivita kriminali sottostanti.

Mela l-ewwel haga illi l-prosekuzjoni jinhtiegilha tipprova f'dana it-tip ta' reat huwa ix-xjenza jew is-suspett tal-persuna akkuzata rigward il-provenjenza tal-flus. Dana jikkostitwixxi il-*mens rea* ta' dana ir-reat. Id-differenza bejn dawn iz-zewg kuncetti huwa ovvju fis-sens illi filwaqt illi x-xjenza tista' tigi determinata b'mod oggettiv madanakollu is-suspett huwa iktar xi haga soggettiva u personali.

Fir-rapport dwar il-kaz **Taylor's Central Garages (Exeter) Limited v Roper**[8] Devlin J jaghti numru ta' osservazzjonijiet dwar it-tifsira tal-kelma xjentament "*knowingly*" u kif tkun stabilita' x-xjenza f'kaz kriminali:

> *"It seems to me to be very important in cases of this sort that lay justices, who are not necessarily very skilled in the handling of evidence and in the drawing of distinctions which the law requires to be drawn, should have explained to them by the prosecution, where the burden is on the prosecution, exactly what sort of knowledge the prosecution desires to be found. There are, I think, three degrees of knowledge which it may be relevant to consider in cases of this sort. The first is actual knowledge, and that the justices may infer from the nature of the act that was done, for no man can prove the state of another man's mind, and they may find it, of course, even if the defendant gives evidence to the contrary. They may say: 'We do not believe him. We think that was his state of mind.' They may feel that the evidence falls short of that, and, if they do, they*

[8] Local Government Review Reports volume 115, page 445

have then to consider what might be described as knowledge of the second degree. They have then to consider whether what the defendant was doing was, as it has been called, shutting his eyes to an obvious means of knowledge. Various expressions have been used to describe that state of mind. I do not think it is necessary to describe it further, certainly not in cases of this type, than by the phrase that was used by Lord Hewart CJ, in a case under this section, Evans v Dell (1). What the Lord Chief Justice said was: 'The respondent deliberately refrained from making inquiries, the results of which he might not care to have.'

"The third sort of knowledge is what is generally known in law as constructive knowledge. It is what is encompassed by the words 'ought to have known' in the phrase 'knew or ought to have known.' It does not mean actual knowledge at all, it means that the defendant had in effect the means of knowledge. When, therefore, the case of the prosecution is that the defendant failed to make what they think were reasonable inquiries it is, I think, incumbent on the prosecutor to make it quite plain what they are alleging. There is a vast distinction between a state of mind which consists of deliberately refraining from making inquiries, the result of which the person does not care to have, and a state of mind which is merely neglecting to make such inquiries as a reasonable and prudent person would make. If that distinction is kept well in mind, I think justices will have less difficulty in determining what is the true position. The case of shutting the eyes is actual knowledge in the eyes of the law; the case of merely neglecting to make inquiries is not actual knowledge at

all, but comes within the legal conception of constructive knowledge, which is not a conception which, generally speaking, has any place in the criminal law."[9]

Il-*Crown Prosecution Service* (CPS) jaghti din l-ispjega ta' "knowledge":

> *Implied knowledge for the summary offences includes actual subjective knowledge proven by evidence but it may also include wilful blindness. It is always open to a tribunal of fact to base a finding of knowledge on evidence that the defendant had deliberately shut his eyes to the obvious or refrained from inquiry because he suspected the truth but did not want to have his suspicion confirmed* ***Westminster City Council v Croyalgrange Ltd*** *83 Cr. App. R.155*
>
> *In* ***Flintshire CC v Reynolds*** *[2006] EWCH 195 (Admin) it was alleged that Mrs Reynolds had knowingly produced information she knew to be false in a material particular for the purpose of obtaining a benefit or other payment or advantage. Mrs Reynolds evidence was that she signed the form completed by her husband without reading it. It was held that constructive knowledge is not enough to demonstrate that something has been done knowingly in the context of a criminal statute (in this instance section 112 SSAA 1992).*

F'sentenza moghtija mill-Qorti ta'l-Appell fl-Ingilterra fl-ismijiet ***Regina vs Hilda Gondwe Da Silva*** il-kelma suspett inghatat is-segwenti tifsira:

> "***The word suspect means that the defendant must think that there is a possibility, which is more than fanciful, that the***

[9] Ibid. pg 449

***relevant facts exist. A vague feeling of unease would not suffice.*”**

Sfortunatament il-ligi taghna ma taghti l-ebda definizzjoni ta’ dak li jammonta ghal suspett u ghalhekk jekk il-prosekuzjoni jirnexxielha tipprova anke illi l-imputat kellu xi suspett illi l-flus ghandhom provenjenza kriminuza allura dina hija sufficjenti. Jispetta mbaghad lill-imputat iressaq provi bil-kuntrarju sabiex jikkonvinci lill-Gudikant bl-innocenza tieghu.

Fil-fatt fir-reat tal-hasil tal-flus il-piz tal-prova tinkombi mhux biss fuq il-prosekuzjoni illi tipprova il-htija tal- imputat, izda jispetta anke lill-imputat iressaq il-provi in sostenn tal-innocenza tieghu. Wiehed jistaqsi allura x’inhu il-piz tal-prova li jinhtigielha tressaq il-prosekuzzjoni f’dana ir-reat. Huwa bizzejjed illi l-prosekuzjoni tipprova illi nstabu ammonti sostanzjali ta’ flus fil-pussess tal-imputat minghajr mal-imputat jaghti spjegazzjoni valida dwar l-origini tal-istess jew hemm bzonn illi l-prosekuzzjoni tipprova x’kien il-*predicate offence?* Illi dana il-fatt kien suggett ta’ diversi sentenzi moghtija mill-Qorti Ewropeja dwar id-Drittijiet tal-Bniedem u dana minhabba l-fatt illi l-piz tal-prova qed tintefa fuq il-persuna akkuzata, iktar u iktar fid-dawl tal-fatt illi l-akkuzat ma jigiex mwissi meta ikun qed jigi interrogat illi hemm dana l-piz jinkombi fuqu u li allura irid joqghod attent aktar meta jaghti t-twegibiet tieghu fid-dawl tal-fatt illi l-istqarrija hija prova imbaghad fil-process penali li jinbeda kontra tieghu.

Dana johrog mill-artikolu 3(3) ta’l-Att li jaghmel referenza ghall-artikolu 22(1C)(b) tal-Kapitolu 101 tal-Ligijiet ta’ Malta li jiddisponi testwalment:

Fi procedimenti ghal reat taht il-paragrafu (a) ta’ dana is-subartikolu, meta l-prosekuzjoni ggib prova li l- imputat jew akkuzat ma jkun ta l-ebda spjegazzjoni li turi li dawk il-flus,

proprjeta jew rikavat ma kenux flus, proprjeta, jew rikavat kif deskritti fl-imsemmi paragrafu, l-oneru li jipprova l-provenjenza lecita ta' dawk il-flus, proprjeta jew rikavat tkun tinkombi fuq il- persuna imputata jew akkuzata.

Illi f'sentenza moghtija mill-Qorti tal-Prim'Awla (sede Kostituzzjonali) f'kawza fl-ismijiet **Mario u Pierre Camilleri vs Avukat Generali** deciza fil-15 ta' Novembru 2010 inghad:

Il-Prosekuzzjoni ghandha l-obbligu li tipprova l- ezistenza ta' xi reat - "*any criminal offence*" *ai termini* tat-Tieni Skeda ta' l-Att kontra *Money Laundering*, u dan fuq bazi ta' "prova cirkostanzjali jew prova ohra". Fil-kaz in dizamina dan ir-reat hu precizament dak ta' traffikar ta' droga u kongura. Dan iwassal ghal li l- Prosekuzzjoni ma kellha ebda htiega li ggib sentenza ta' htija fil-konfront tar-rikorrenti in konnessjoni mat- traffikar tad-droga jew kongura ghal dan l-iskop.

Il-Qorti tinnota li f'Kap 319 fit-Tieni Skeda annessa mieghu li tinkludi d-Dikjarazzjonijiet u r-Rizervi tal-Gvern Malti, illi meta accetta li jirratifika l-Konvenzjoni Ewropeja tad-Drittijiet tal-Bniedem l-istess Gvern impona riserva fis-sens illi:

"The Government of Malta declares that it interprets paragraph 2 of Article 6 of the Convention in the sense that it does not preclude any particular law from imposing upon any person charged under such law the burden of proving particular facts."

L-istess kwalifika tinsab fil-paragrafu 5 ta' l-artikolu 39 tal- Kostituzzjoni li jghid hekk:

> ***"(5) Kull min jigi akkuzat b'reat kriminali ghandu jigi meqjus li jkun innocenti sakemm jigi pruvat jew ikun wiegeb li huwa hati:***
>
> ***Izda ebda haga li hemm fi jew maghmula skond l-awtorità ta' xi ligi ma titqies li tkun inkonsistenti ma' jew bi ksur ta' dan is-subartikolu safejn dik il-ligi timponi fuq xi persuna akkuzata kif intqal qabel il-piz tal-prova ta' fatti partikolari."***

L-artikolu 6.2 jezigi li l-Prosekuzzjoni ggorr l-oneru li tkun hi li finalment trid tikkonvinci lill-Qorti jekk sehhx reat u jekk il-persuna akkuzata kinitx hatja ta' tali reat. Zgur li dan ma jwassalx ghall-fatt li l-imputat ikun qieghed jigi meqjus hati *ab initio*. Dejjem jibqa' l-obbligu tal-prosekuzzjoni li tipprova fatti konnessi mar-reat ta' *money laundering*. Il-Prosekuzzjoni trid dejjem tipprova ghas-sodisfazzjon tal-Qorti aspetti ohra bhal ma huma kondotta refrattarja tal-imputat jew li kien konness f'cirku ta' traffikar tad-droga. Jinkombi dejjem fuq il-Prosekuzzjoni li tipprova li s-sitwazzjoni finanzjarja tal-imputati ma kienetx kompatibbli mal-ammont ta' flejjes li kellhom fil-pussess taghhhom. Huwa biss wara li jsir l-ezami mill-Gudikant dwar ir-ragonevolezza o meno tal-provenjenza tal-flus li in segwitu tkun tista' topera din il-prezunzjoni. Hawnhekk ta' min iqis fattur ferm importanti. Hija Qorti li suppost dejjem ghandha l-indipendenza tal-agir taghha li trid tiddecidi. Mhux qed nitkellmu dwar xi hadd mill-Ezekuttiv. Ghalhekk huwa necessarju biex tinstab htija li jkun hemm iz-zewg fatturi. Ghandu jkun hemm agir suspettuz segwit bi tranzazzjonijiet ta' flus f'ammonti li setghu jitqiesu eccessivi. U dan irid jigi konstatat mill-Qorti.

Skont Jacobs [The European Convention on Human Rights] il-presunzjoni tal-innocenza u t-tqeghid tal-oneru tal-prova fuq il-prosekuzzjoni m'humiex l-istess haga. Ukoll gieli l-oneru tal-prova jaqa' fuq l-akkuzat:

> **"*What the principle of presumption of innocence requires here is just that the Court should not be predisposed to find the accused guilty and second that it should at all times give the accused the benefit of the doubt 'in dubio pro reo'.*"**

Din il-Qorti kif preseduta trid pero` taghmilha cara li l-qlib tal-oneru tal-prova hija l-eccezzjoni u mhux ir-regola. Dan hu limitat ghall-kazijiet biss fejn huwa logiku li sta ghall-imputat li jaghmel il-provi hu minhabba li l-prosekuzzjoni ma jista' qatt ikollha dawk il-provi.

Il-Qorti ikkonkludiet illi l-obbligu tal-imputat illi jaghti spjegazzjoni ragjonevoli tal-provenjenza tal-flus huwa obbligu li ghandu fil-konfront tal-Gudikant u mhux fil-konfront tal-prosekuzjoni. U ghalhekk stqarret illi " tqis il-presunzjoni hija *rebuttable and is not in itself unreasonable,* u ... illi x-*shifting* tal-*burden of proof* huwa wiehed legali u jhalli l-*fair balance* rikjest ghall-iskopijiet ta' guri."

Imbaghad fis-sentenza fl-ismijiet **Andrew Ellul Sullivan et vs Il-Kummissarju tal-Pulizija u l-Avukat Generali**, deciza mill-Prim'Awla (Sede Kostituzzjonali) fit-8 ta' Lulju 2004 inghad:

> **"..."Illi kif imfisser f'sentenzi ewlenin moghtija mill- Qorti Ewropeja, il-prezunzjoni tal-innocenza tfisser li l- piz tal-prova jaqa' generalment fuq il-prosekuzzjoni. Madanakollu, dan ma jfissirx li f'kull kaz il-piz tal- prova jrid ikun biss fuq il-prosekuzzjoni. L-artikoli imsemmija m'humiex kontra li xi ligi tistipula ghal prezunzjonijiet ta' fatt jew ta'**

dritt li jahdmu kontra l- persuna mixlija. Izda huwa mistenni li l-Istat jillimita

tali prezunzjonijiet b'mod ragonevoli li jiehu qies tas- siwi ta' dak li l-kaz jinvolvi u tal-jeddijiet tad-difiza xierqa."

Din il-Qorti thoss li ghandha tirreferi ghall-gwida li jaghti l-*Crown Prosecution Service (CPS)* dwar defenizzjonijiet li jghinu lil wiehed jifhem meta jkun qieghed jiddeciedi kazijiet marbuta ma' *money laundering* u l-linja gwida li ghandhom jimxu maghha l-Prosekuturi meta jiddeciedu li jressqu akkuzi ta' hasil ta' flus fil-konfront ta' imputat jew imputata*:*

Criminal property

Under the Proceeds of Crime Act, the Crown has to prove that the laundered proceeds are **"criminal property"**, as defined in S.340 of the Proceeds of Crime Act: that is to say that the property constitutes a person's ***benefit*** from ***criminal conduct***.

Criminal conduct

"Criminal conduct" is all conduct which constitutes an offence in any part of the United Kingdom (which means that an "all crimes" approach is adopted in respect of predicate crimes committed in the UK).

Offences which were committed abroad are relevant predicate crimes if laundering acts are committed within our jurisdiction where the predicate offence committed abroad (from which proceeds were generated) would also constitute an offence in any part of the United Kingdom if it occurred here (S.340 (2) b) (Archbold 2006 33-29).

It is immaterial whether the criminal conduct occurred prior to the Act becoming law so long as the laundering act takes place post commencement.

Proving that property is "criminal property"

To prove that property is "criminal property" (i.e. the proceeds of crime) the prosecutor must show the property:

- Constitutes benefit from criminal conduct or that it represents such a benefit (in whole or part and whether directly or indirectly) and;
- The alleged offender **knows or suspects** that it constitutes or represents such a benefit [section 340(3)].

The property which may comprise the benefit from criminal conduct is widely defined (see S.340 [9] and [10]) to include:

- Money;
- All forms of property or real estate;
- Things in action and other intangible or incorporeal property.

Property is obtained by a person if he obtains an interest in it.

Because of the definition of criminal property, there is **no distinction** between the proceeds of the defendant's **own crimes** and of **crimes committed by others** (see S.340 [4]). Thus laundering one's own proceeds is just as much money laundering, as similar activities performed by someone else,

notably professional launderers on behalf of the authors of the predicate or underlying offences.

Own proceeds laundering applies to all 3 principal money laundering offences.

Proving that proceeds are the benefit from criminal conduct in money laundering prosecutions (proving the predicate offence).

Proving that proceeds are the benefit of **"criminal conduct"** will usually be done by circumstantial evidence.

Where money laundering offences are proceeded with on the same indictment as the underlying crimes, the underlying criminal conduct will be proved as part of the proceedings to the requisite standard. Where the money laundering proceedings are "standalone", there are two ways of proving criminal property, firstly by proving the type of offending that gave rise to the criminal property and secondly by relying upon circumstantial evidence (***R v Anwoir*** *[2008] EWCA Crim 1354).*

It is **not** necessary in "stand alone" money laundering prosecutions to wait for a conviction in relation to the "criminal conduct" (i.e. the underlying or predicate offences giving rise to the criminal property).

Prosecutors are **not** required to prove that the property in question is the benefit of a **particular** or a **specific** act of criminal conduct, as such an interpretation would restrict the operation of the legislation. The prosecution need to be in a

position, as a minimum, to be able to produce sufficient circumstantial evidence or other evidence from which inferences can be drawn to the required criminal standard that the property in question has a criminal origin.

Typically evidence of the criminal origin of proceeds may be provided in money laundering proceedings by:

- Accomplice evidence;
- Circumstantial evidence and/or other evidence;
- Forensic evidence (e.g. contamination of cash with drugs) from which inferences can be drawn that money came from drug trafficking;
- Evidence of complex audit trails, from which an accountancy expert may be able to conclude that the complexity of the transactions indicate that the property was the proceeds of crime. (Archbold 2006 10-66). While this was not a money laundering prosecution, by analogy, it would seem permissible for a witness to give expert evidence that the facts lead him to the conclusion that the property was the proceeds of crime);
- Evidence of the unlikelihood of the property being of legitimate origin - Where the prosecution proves D has no legitimate explanation for possessing the property in question a jury may be willing to draw an inference that it is proceeds of crime;
- Criminals often attempt to launder proceeds through a cash intensive business. Where the cash flows appear too large or the profit margins too high this may be capable of giving rise to expert evidence that the business will usually give rise to a

> particular level of profit and the profits are clearly excessive which together with other available evidence can be sufficient to prove the underlying criminality. See ***R. v. Boam*** *1998 Cr. Law Bulletin.*

Fil-**Blackstone's Criminal Practice 2014** dwar id-definizzjoni ta' "*criminal property*" u xi trid tipprova l-prosekuzzjoni jghid:

> *"Criminal property must be proved to represent, in whole or in part, a person's benefit from actual criminal conduct. Unfounded suspicion as to its derivation does not suffice (**Montila** [2005] 1 All ER 113 at [41]). Section 340 contains no reference to any need to particularise the class of crime from which the property is derived (**Craig** [2007] EWCA Crim 2913).....But in Prosecution Appeal (No. 11 of 2007); **NW** [2008] EWCA Crim 2, the Court held that the class or type of crime involved must indeed be identified, as in civil proceedings for recovery under part 5 of the Act. A claim for civil recoevery cannot be sustained solely on the basis that a respondent has no identifiable income to warrant his lifestyle: the applicant must first establish a good arguable case that a certain kind of unlawful conduct occurred and then a good arguable case that property was obtained through that kind of unlawful conduct (**R (Director of the Assets Recovery Agency) v Green** [2005] EWHC 3168 (Admin); **Direcotr of the Assets Recovery Agency v Szepietowski** [2007] EWCA Civ 766; **Director of Assets Recovery Agency v Olupitan** [2008] EWCA Civ 104)."*

Il-Qorti taghmel referenza ghall-Artiklu 2(2)(a) u l-Artiklu 3(3) tal-Kap 373 tal-Ligijiet ta' Malta fid-dawl ta' dak li jipprovdi l-Artiklu 21(1c)(b) tal-Kap 101 tal-Ligijiet ta' Malta jistipulaw li l-Avukat Generali jista' jakkuza persuna bir-

reat ta' "money laundering" minghajr ma jkollu xi Sentenza b'referenza ghal xi offiza precedenti. Ma dan kollu jibqa` l-fatt illi l-Avukat Generali (Prosekuzzjoni) ghandu jipprova n-ness bejn il-flus jew il-propjeta u l-attivita kriminali li tkun generat dawk il-flus.

Il-Qrati taghna f'kazijiet ta' flejjes misjuba jesigu li l-ewwel il-prosekuzzjoni trid tipprova ness, imqar sal-grad tal-*prima facie* li tali flejjes misjuba huwa provenjenti minn reat kriminali, imbaghad, jekk il-prosekuzzjoni tipprova tali ness, jinqaleb l-oneru tal-prova izda mhux qabel. Una volta imbaghad jinqaleb l-oneru, sta ghall-akkuzat li jipprova li tali flejjes gew minn attività legali u dan ghandu jaghmlu sal-livell tal-probabli.

Dwar il-livell ta' prova li jinkombi fuq l-Avukat Generali, l-Qorti taghmel referenza ghall- kawza "Il-**Pulizija vs Paul Borg**" deciza mill-Qorti ta' l-Appell Kriminali fis-sitta (6) ta' Ottubru ta' l-2003, fejn intqal:

> *"Minn ezami w qari akkurat ta' din id-dispozizzjoni din il-Qorti thoss li una volta li l-prosekuzzjoni tiddeciedi litipprocedi skond l-Ordinanza (Kap.101) u mhux taht id-dispozizzjonijiettal- Kap. 373, ossia l-Att tal-1994 kontraMoney Laundering , fejn l-attivita' kriminali sottostanti tista'tkun varja w tirriferi ghall-ksur ta' diversi ligijiet kif indikatfit-tieni skeda tal-istess Att,* ***irid al menu jigi "prima facie" pruvat li l-akkuzat ikun qed jagixxi bi hsieb li jahbi jew jikkonverti flus jew ir-rikavat ta' flus u jkun jaf jew ikollu s-suspett li dawk il-flus ikunu miksuba bhala rizultat ta' ksur ta' xi dispozizzjoni tal-Ordinanza (Kap.101) u dana qabel ma tiskatta l-inversjoni tal-oneru tal-prova fuq l-akkuzat kontenuta fil-paragrafu (b) appena fuq riprodott.***[10]

[10] Sottolinear tal-esponenti.

Inkella jigri, kif tajjeb ipprospettat id-difiza, li kull min jinstab fil-pussess ta' flus , proprjeta' jew rikavat u ma jaghtix spjegazzjoni tal-provenjenza lecita tieghu , jista' jigiprocessat skond il-Kap. 101, meta fil-fatt qatt ma kellu l-icken konnessjoni mad-drogi jew medicini perikoluzi f'hajtu .Setgha din li tista' tati lok ghall-abbuz mis-sistema legali minn prosekuzzjoni malintenzjonata jew traskuratafl-investigazzjoni taghha."

.....

"Ghalhekk din il-Qorti fid-dawl ta' dak li qalet il-Qorti kollegjali tal-Appell Kriminali fuq riportat, thoss li ladarba ma saret ebda prova valida , lanqas "prima facie", li b'xi mod torbot l-agir tal-appellant ma xi attivita' kriminali sottostanti konnessa ma jew kontemplata fil-Kap.101 , ma ghandix tiskatta d-dispozizzjoni tas-sub-inciz (b) li tinverti l-oneru tal-prova fuq l-appellant dwar il-provenjenza tal-flus li nqabad bihom l-appellant. <u>Ried l-ewwel jigi stabilit xi ness al menu "prima facie" li juri li meta l-appellant kien qed jesporta l-flus inkrimati minn Malta kellu l-hsieb li jahbi jew jikkonverti flus li jkun jaf jew li jkollu suspett li dawk il-flus kienu miksuba direttament jew indirettament bhala rizultat ta' xi reat kontemplat fil-Kap.101</u>."

Il-Qorti taghmel referenza ghad-decizjoni tal-Qorti tal-Appell Kriminali tad-19 ta' Jannar, 2012 Il-**Pulizija (Spt. Angelo Gafa`) Vs Carlos Frias Mateo**[11]**:**

F'din il-kawza, l-appellat qed jigi akkuzat bil-ksur ta' provvedimenti tal-Kap 373 tal-Ligijiet ta' Malta izda dan il- Kap jaghmel referenza wkoll ghall-Artiklu 21(1c)(b) tal- Kap 101 tal-Ligijiet ta' Malta li wkoll jitfa' l-piz li juri l-origini lecita tal-flus, propjeta jew rikavat fuq

[11] Appell Kriminali Numru. 356/2011 deciz mill-Imhallef Michael Mallia

il-persuna akkuzata. Ghalhekk, dan il-livell ta' prova "prima facie" japplika kemm ghall-persuna li tkun akkuzata b'money laundering taht il-Kap 101 kif ukoll taht il-Kap 373. Issa, peress illi l- Artiklu 2(2)(a) ta' l-istess Att jezimi mir-responsabilta' l- prosekuzzjoni illi tipprova xi htija precidenti in konnessjoni ma xi attivita` kriminali, kull ma ghandha tipprova l- prosekuzzjoni huwa illi l-flus illi nstabu fil-pussess tal- persuna li kienux konformi ma l-istil ta' hajja tal-persuna, liema prova tkun tista' tigi stabbilita anke minn provi indizzjarji. Dana jfisser illi l-prosekuzzjoni m'ghandix tipprova lill-Qorti l-origini tal-flus, lanqas jekk il-flus kienu llegali. Kull ma trid tippruva huwa fuq grad ta' "prima facie" illi ma hemm l-ebda spjegazzjoni logika u plawsibbli dwar l-origini ta' dawk il-flus. Darba ssir din il-prova fil-grad imsemmi, jkun imiss lill-akkuzat sabiex juri illi l-origini tal- flus ma kienx illegali.

Id-definizzjoni tal-kelma "proprjeta`" fl- artikolu 2 tal-Kap. 373 tal-Liġijiet ta' Malta (Att Kontra *Money Laundering*) hi din:

*"'**proprjetà**' tfisser proprjetà u attiv ta' kull xorta, natura u deskrizzjoni, sew mobbli sew immobbli, sew korporali sew inkorporali, sew tanġibbli sew mhux tanġibbli, dokumenti legali jew strumenti legali li jkunu prova ta' titolu, jew interess f'dik il-proprjetà jew dak l-attiv u, bla ħsara għall-ġeneralità ta' dak li ntqal qabel, tinkludi –*

(a) kull flus, kemm jekk l-istess flus ikunu jew ma jkunux valuta legali f'Malta, bills, titoli, bonds, dokumenti negozjabbli jew kull dokument li jista' jkun negozjabbli inkluż dokument li jitħallas lill-portatur jew imdawwar biex jitħallas lill-portatur kemm jekk espressi f'euro jew f'xi flus oħra barranin;

(b) flus kontanti jew depożiti jew kontijiet ta' flus ma' xi bank, istituzzjoni ta' kreditu jew istituzzjoni oħra kif jista' jiġi preskritt li jmexxu jew ikunu mexxew il-kummerċ tagħhom f'Malta".

Ikkunsidrat:

F'dan l-istadju jkun opportun illi jigi kwalifikat il-prova "prima facie" u fiex din tikkonsisti.

Hu ben saput illi l-Qrati generalment jirrikonoxxu erba' tipi ta' prova, dak li huwa possibli, l-probabbli, minghar dubju dettat mir-raguni u c-certezza. Izda l-prova "prima facie" hija wzata mill-Magistrat Inkwirenti meta jirredici l-Process Verbal u l-Magistrat Istruttur fl-gheluq tal-Kumpilazzjoni. Fl-opinjoni tal-Qorti din hija livell ta' prova illi tidhol bejn il- possibli u l-probabbli.

L-awtur **Blackstone** (At D 6.21) jghid fost affarijiet ohra, *"Thus, the standard of proof the prosecution are now required to satisfy at committal proceedings is very low, lower than that resting on a plaintiff in civil proceedings. It is commonly expressed as establishing a prima facie case or a case to answer.*" Il-probabbli huwa l-livell uzat f'proceduri civili. Ghalhekk skond dan l-awtur "prima facie" huwa anqas minn hekk u jista' jigi definit bhala "a case to answer", haga li ghandha tigi nvestigata aktar fil-fond.

Fil-kuntest tal-provi illi l-proskuzzjoni gabet f'dan il-kaz, intlahaq dan il-livell ta' "prima facie"? Kien hemm "*a case to answer*"?

Meta l-imputata tressqet quddiem il-Qorti hija kienet obbligata illi tipprova illi l-flus li kienu fil-pussess taghha kienu legittimi u dana wara illi l-prosekuzjoni tressaq il-provi taghha dwar in-ness bejn l-attivita kriminali sottostanti u l-imputata u l-provi cirkostanzjali kollha dwar il-provenjenza illecita tal-flus u l-konnessjonijiet li l-imputata seta kellha ma'l-attivita kriminali sottostanti.

Illi kif inghad fis-sentenza hawn fuq iccitata l-**Pulizija vs John Vella**:

> **"Mhux kull akkwist, mhux kull konverzjoni ta' trasferiment ta' proprjeta', mhux kull habi jew wiri ta' prorpjeta' necessarjament jammonta ghall-money laundering, <u>anki jekk l-akkuzat ikun kriminal inkallit</u>. (sottolinjar tal-Qorti). Din hi ligi straordinarja li tintroduci kuncetti radikali fis-sistema nostrana w li tirrikjedi applikazzjoni bl-akbar skruplu w attenzjoni biex ma tigix reza fi strument ta' ingustizzja, iktar reminixxenti taz-zmenijiet tal-inkwizizzjoni minn dawk tal-era moderna tad-drittijiet tal-bniedem."**

DECIDE

Kwindi dina l-Qorti ma tistax tasal ghall-konkluzjoni b'certezza illi l-flus li instabu fil-pussess tal-imputata kienu ir-rikavat ta' attivita' kriminali. Illi dina hija biss ipotesi u m'hemm l-ebda certezza. L-imputata setghet kisbet dawna l-flus minn xi sors legittimu u dana ghaliex ma hemmx provi fl-atti biex jistabbilixxi xi ness ma' xi haga.

Huwa minnu illi l-imputata kellha relazzjoni ma' persuna li kien hemm dell ikrah fuqu. Hija ghandha fedina penali li ma turi l-ebda htija dwar serq bil-vjolenza jew xi akkuzi fuq traffikar ta' droga. Izda wiehed jistaqsi jekk fil-kamp penali humiex bizzejjed il-fatt li kellha relazzjoni ma' persuna b'dell fuqu sabiex jigi stabbilit ness bejn l-attivita' kriminali u il-flus, xi gojjelli, karozza u dghajsa li instabu fil-pussess ta' l-imputata.

Illi l-imputata taghti spjegazzjoni dwar il-provenjenza tal- flus. Qudddiem il-Qorti kif kienet obbligata l-imputata ipprovat **<u>sa certu punt</u>** il-provenjenza

legittima tal-flus. **Il-Qorti mhix ta' subajha f'halqa u ghandha dubji serji dwar il-provenjenza tal-flus. Il-Qorti mhix konvinta dwar l-istorja li provdiet id-difiza dwar l-irgiel li kellha relazzjoni maghhom l-imputata u l-eluf li tawha tul ir-relazzjonijiet li kellha.**

Id-difiza fin-nota ta' sottomissjonijiet tghid li l-imputata:

> *"kellha x-xorti li l-rgiel li harget maghhom kollha kienu jitrattawha tajjeb hafna u qatt ma hallewha nieqsa minn xejn. Spjegat kif certu John Saliba kien anke xtralha post (u esebiet dokumenti in sostenn tal-istess), filwaqt li Kevin Falzon xtralha dak kollu li kien hemm bzonn ghall-appartament taghha f'Marsaskala fejn eventwalment marru jghixu flimkien . Kellha imbaghad irgiel ohra li maghhom hija gawdiet mod iehor meta dawn xtrawlha gojjelli kostuzi. Parti mill-gojjellerija li l-esponenti gew moghtija lilha b'rigal tidher ukoll mill-ircevuti li esebiet hi stess ta' dawk ir-rigali minn irgiel li kienet tohrog maghhom matul is-snin . Dawn l-ircevuti juru li r-rigali li kienet taqla' l-esponenti ma kienux irhas. Dik kienet l-esperjenza pozittiva taghha ta' dating ma' rgiel".*
>
> *[...]*
>
> *Fl-ahhar mill-ahhar, l-esponenti kienet imdorrija tkun imfissda u trattata tajjeb mill-irgiel li harget maghhom.*

Il-Qorti trid tiddeciedi fuq il-provi li ghandha quddiemha u skont x'tipprovdi l-ligi u mhux skont il-principji ta' etika morali u stil ta' hajja ta' din il-Qorti, li ma taqbel xejn mad-difiza li wiehed juri rispett lejn it-tfajla jew mart xi hadd b'kemm wiehed jaghtiha flus, gojjelli, propjeta' u hwejjeg ohra. Jekk relazzjoni tinbena fuq dawn, il-persuna tkun qieghda tibni fuq ir-ramel u mhux fuq is-sod, kif jidher li gralha l-imputata.

L-imputat spjegat li l-bqija tal-flejjes kienu ta' ommha u hija kienet biss qieghda zzommomlha u dan wara li kif isseparat ommha, l-imputata tghid li baqghet iktar marbuta ma' ommha, filwaqt li ohtha 'l ohra baqghet izjed 'close' ma' missierha li sahansitra xtralha r-residenza taghha. L-omm quddiem din il-Qorti spjegat fid-dettal x'wassal biex hija talbet lil bintha zzommilha din is-somma.

Imma hawnhekk qeghdin f'kamp kriminali u d-dubju jmur favur l-imputata. Il-prosekuzzjoni kellha tipprova n-ness bejn attivita kriminali u l-imputata, haga li bir-rispett kollu lejn l-abbli prosekuzzjoni ma saritx f'dana il-kaz

Illi ghaldaqstant abbazi ta' dawn il-mottivi l-Qorti hija tal-fehma illi l-prosekuzzjoni ma irnexxiliex tipprova sal-grad rikjest mil-ligi l-kaz taghha u ghalhekk qeghda tillibera lill-imputata mill-akkuza migjuba kontra taghha.

DECIDE:

Ghal dawn il-motivi l-Qorti tiddikjara lill-imputata mhix hatja tal-imputazzjoni migjuba fil-konfront taghha u konsegwentement tilliberaha mill-istess imputazzjoniji.

Dr. Joseph Mifsud
Magistrat