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

Magistrat Dr. Joseph Mifsud B.A. (Legal & Int. Rel.), B.A. (Hons), M.A. (European), LL.D.

Il-Pulizija
(Spettur Yvonne Farrugia)

vs.

Peter Paul Mercieca
Adeodato Spiteri

Numru: 71/2015

Illum 27 ta' Ottubru 2016

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputati **Peter Paul Mercieca,** ta' sitta u erbghin (46) sena, iben Edgar u Carmela nee' Grima, imwieled in-Nadur, Ghawdex fit-23 ta' April 1969 u li joqghod f'Coral, Triq it-Tigrija, Nadur, Ghawdex u detentur tal-karta tal-identita' Maltija bin-numru 12769G u **Adeodato Spiteri**, ta' disgha u erbghin (49) sena, bin Salvatore u Lucy nee' Buttigieg, imwieled Victoria, Ghawdex fl-14 ta' Gunju 1966 u li joqghod f'37, Triq it-Tin, Sannat, Ghawdex u detentur tal-karta tal-identita' Maltija bin-numru 20066G, akkuzati talli billi huma bhala ufficcjali jew impjegati pubblici f'dawn il-Gzejjer, fil-perjodu ta' bejn

Dicembru 2008 u Marzu 2009, b'diversi atti magħmulin fi żminijiet differenti, iżda li jiksru l-istess dispozizzjonijiet tal-liġi u li ġew magħmula b'riżoluzzjoni waħda:

1. B'mezzi kontra l-ligi jew billi ghamlu uzu ta' ismijiet foloz, jew ta' kwalifiki foloz, jew billi inqdew b'qerq iehor, ingann, jew billi urew haga b'ohra sabiex igieghlu titwemmen l-ezistenza ta' intraprizi foloz, jew ta' hila jew setgha fuq haddiehor jew ta' krediti immaginarji, jew sabiex iqanqlu tama jew biza' dwar xi grajja kimerika, ghamlu qligh ta' aktar minn hames mitt ewro (€500) izda mhux aktar minn hamest elef ewro (€5,000), ghad-dannu tal-Gvern ta' Malta;

2. Ghamlu qligh iehor b`qerq mhux imsemmi fl-Artikolu 308 tal-Kapitolu 9 tal-Ligijiet ta' Malta, ta' aktar minn hames mitt ewro (€500) izda mhux aktar minn hamest elef ewro (€5,000), ghad-dannu tal-Gvern ta' Malta;

3. B'abbuz tal-kariga jew impjieg taghhom, iffalsifikaw cedula, polza, ordni, jew dokumenti ohra, illi meta jigu prezentati wiehed jista' jircievi bihom hlas, jew jiehu l-konsinna ta' oggetti, jew jigbor depozitu jew rahan minn ufficcju pubbliku, jew minn bank jew stabbiliment pubbliku iehor imwaqqaf jew maghruf b'xi att pubbliku tal-Gvern;

4. Xjentement ghamlu uzu minn wahda mill-karti imsemmijin fl-Artikolu 167 tal-Kapitolu 9, Ligijiet ta' Malta;

5. Bhala ufficcjali jew impjegati pubblici, meta kitbu atti li jidhlu fid-dmirijiet tal-kariga taghhom, biddlu bil-qerq is-sustanza jew ic-cirkostanzi taghhom, sew billi nizzlu pattijiet diversi minn dawk li jkunu gew iddettati jew maghmula mill-partijiet, kemm billi ddikjaraw bhala veri fatti foloz, jew bhala fatti maghrufa dawk li ma jkunux;

6. Xjentement ghamlu uzu minn att, kitba jew skrittura falza imsemmija fl-Artikolu 180 tal-Kapitolu 9, Ligijiet ta' Malta;

7. Bhal ufficcjali jew impjegati pubblici illi, minhabba l-kariga jew l-impjieg taghhom, huma fid-dmir li jaghmlu jew jaghtu

dikjarazzjoni jew certifikat, ghamlu jew taw dikjarazzjoni falza jew certifikat falz;

8. Xjentement ghamlu uzu minn wiehed mid-dokumenti imsemmijin fl-Artikolu 185 tal-Kapitolu 9, Ligijiet ta' Malta;

9. Sabiex jiksbu xi vantagg jew beneficcju ghalihom infushom jew ghal haddiehor, f'xi dokument mahsub ghal xi awtorita' pubblika, xjentement ghamlu dikjarazzjoni jew stqarrija falza, jew taw taghrif falz;.

10. Ghamlu falsifikazzjoni ohra jew xjentement ghamlu uzu minn xi dokument iehor falsifikat, mhux imsemmija fl-Artikoli tat-Titolu V tal-Kapitolu 9 tal-Ligijiet ta' Malta.

Il-Qorti giet gentilment mitluba sabiex f'kaz ta' htija, izzid il-piena tal-interdizzjoni generali perpetwa skont l-Artikolu 190 tal-Kapitolu 9 tal-Ligijiet ta' Malta;

Il-Qorti giet ukoll gentilment mitluba sabiex f'kaz ta' htija tikkundanna lill-akkuzat/i ghall-hlas ta' spejjez li jkollhom x'jaqsmu mal-hatra ta' esperti jew periti fil-proceduri hekk kif ikkontemplat fl-Artikoli 532A, 532B u 533 tal-Kapitlu 9 tal-Ligijiet ta' Malta;

Rat in-nota tal-Avukat Generali (*a fol.* 156 u 157) datata 31 ta' Mejju 2016 li permezz taghha baghat lill-imputati Peter Paul Mercieca u Adeodato Spiteri biex jigu ggudikati minn din il-Qorti bhala Qorti ta' Gudikatura Kriminali kif mahsub taht:

(1) Fl-Artikoli 18, 308, 310(1)(b)[1] tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
(2) Fl-Artikoli 18, 309, 310(1)(b)[2] tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
(3) Fl-Artikoli 18, 167(1), u 168(1) tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
(4) Fl-Artikoli 18, u 169 tal-Kodici Kriminali , Kapitolu 9 tal-Ligijiet ta' Malta;
(5) Fl-Artikoli 18, 180 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;

(6) Fl-Artikoli 18, u 184 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
(7) Fl-Artikoli 18, u 185(1) tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
(8) Fl-Artikoli 18, u 186 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
(9) Fl-Artikoli 18, u 188 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
(10) Fl-Artikoli 18, u 189 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
(11) Fl-Artikolu 190 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
(12) Fl-Artikolu 17, 31, 141, 532A, 532B, u 533 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;

Rat illi, waqt l-udjenza tat-13 ta' Settembru 2016 (*a fol.* 210 u 211), gew moqrija l-Artikoli mibghuta mill-Avukat Generali fil-31 ta' Mejju 2016, u f'liema seduta l-imputati ddikjaraw li ma kellhomx oggezzjoni li l-kaz taghhom jigi trattat u deciz minn din il-Qorti bi procedura sommarja.

Rat illi fis-seduta tat-13 ta' Settembru 2016 il-Qorti ordnat lill-Prosekuzzjoni u lid-Difiza sabiex jipprezentaw is-sottomissjonijiet taghhom bil-miktub.

Rat l-atti kollha ta' dan il-procediment u d-dokumenti esebiti inkluz is-sottomissjonijiet bil-kitba tal-Prosekuzzjoni u tad-Difiza.

IL-*FATTI SPECIE* TAL-KAZ

Dan il-kaz beda jkun investigat wara ittra anonima li ntbaghtet lill-Ministeru tal-Intern u lill-Media[1] f'Dicembru 2013 dwar allegat kaz li

[1] Il-Qorti waqt dawn il-proceduri gibdet l-attenzjoni tal-media prezenti li kellhom jirrapurtaw dak li johrog f'dawn il-proceduri u mhux jaghmlu barbuljata billi jhalltu ftit paragrafi minn dak li jinstema' f'dawn il-proceduri u l-kumplament jehduh mill-ittra anonima li skattat l-investigazzjoni dwar dan il-kaz.

jmur lura ghal Dicembru 2008 u Jannar 2009. L-ammont ta' hlas allegat zejjed lil imputat Adeodato Spiteri kien ta' **<u>€1136.62</u>**

Il-Kap tad-Dipartiment tal-Protezzjoni Civili **<u>John Rizzo</u>**[2] spjega li:

"f'Diċembru, lejlet il-Milied ta' din is-sena kont irċevejt informazzjoni, ittra[3] li kienet anonima jekk mhux sejjer żball, li kienet ġiet mgħoddija lili mill-Ministeru biex ninvestiga. Bażikament l-informazzjoni kienet tmur lura għat-two thousand and eight (2008) jekk mhux sejjer żball fejn titkellem fuq wieħed mill-istation officers li kien jaħdem mad-dipartiment tagħna, is-Sur Peter Paul Mercieca, kif ukoll fuq il-leading Adeodato Spiteri. Bażikament l-informazzjoni kienet tgħid li ttieħed xi leave ta' tlett xhur, lejn l-Awstralja biex imur għas-safar, mingħajr ma ġie imniżżel bħala leave."

Waqt dawn il-proceduri hareg li bejn id-9 ta' Diċembru 2008 u 18 ta' Jannar 2009, l-imputat Adeodato Spiteri, illi jokkupa il-kariga ta' Leading Assistant Rescue Officer fi ħdan l-Istazzjon tal-Protezzjoni Ċivili f'Għawdex, kien siefer għal btala fl-Awstralja , f'liema perjodu Spiteri kien xorta tniżżel fir-roster li huwa rraporta għax-xogħol fl-iStazzjon t'Għawdex.

L-imputat Peter Paul Mercieca kien jokkupa l-kariga ta' Station Officer fi ħdan l-Istazzjon tal-Protezzjoni Ċivili f'Għawdex u kien is-superjur dirett ta' Adeodato Spiteri, u l-uniku uffiċċjal responsabbli għall-amministrazzjoni tal-kumplament tal-uffiċċjali tal-Protezzjoni Ċivili l-

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[2] *A fol.* 38
[3] Din l-ittra ma kinetx esebita f'dan il-process

oħra stazzjonati f'Għawdex. Huwa kien jirraporta dirett lid-Direttur, li fil-perjodu kkonċernat kien Peter Cordina.

Il-Prosekuzzjoni ssostni li għalkemm Spiteri mar l-Awstralja, dan ma kienx applika għal *vacation leave*, iżda kien biss informa bil-fomm lil iStation Officer Mercieca, u dan tal-aħħar meta għamel ir-roster niżżlu xogħol anke meta kien jaf li Spiteri kien assenti minn Malta.

Ix-xhud **Gillian Carbone**[4] xehdet li fir-rekords tal-Protezzjoni Ċivili ma kien hemm ebda talba ta' Adeodato Spiteri ta' *vacation leave* għal btala lejn l-Awstralja u dan skont il-*Vacation Leave Records* għas-snin 2008 u 2009 u spjegat li mhux il-ġranet kollha meta Spiteri kien imissu xogħol u kien assenti minn Malta, tnaqqsu mis-sigħat intitolati bħala vacation leave.

Ir-rosters in kwistjoni gew esebiti mix-xhud **Joseph Scerri**[5] u huma ffirmati u ttimbrati mill-Uffiċjal responsabbli, l-iStation Officer Peter Paul Mercieca , u mgħoddija lill-uffiċċju nkarigat mill-pagi sabiex isir il-ħlas lill-ħaddiem. L-istess xhud spjega dwar l-eżerċizzju li huwa għamel sabiex wasal għat-total ta' rimunerazzjoni dovuti lil Adeodato Spiteri (skont ir-rosters ippreżentati lil ufficcju tas-salarji) għall-Hdud u festi tax-xhur ta' Diċembru 2008 u Jannar 2009, u tal-gwadann ta' ġranet oħra mhux imniżżla bħala vacation leave meta Spiteri kien jinsab fl-Awstralja. Skont ir-rata tal-paga li kellu Spiteri f'dak il-perjodu, l-ammont ta' sigħat tal-Ħdud, festi u s-sigħat oħra mhux maħduma

[4] *a fol.* 43
[5] *a fol.* 131, 143 u 144

b'kollox jammontaw għal elf mija u sitta u tletin ewro u tnejn u sittin centezmu (**€1136.62**).

Ix-xhud **<u>Charles Mercieca[6]</u>** spjega li fil-*Control Room* kienu jircievu telefonata mill-*Istation Officer* biex jigu nfurmati min kien effettivament prezenti fl-Istation. Jikkonferma wkoll li din l-informazzjoni kienet titnizzel fuq *blackboard* u wara tithassar.

Il-Qorti fehmet mill-provi prodotti li d-difiza qeghda ssostni li l-granet li fihom l-imputat Adeodato Spiteri kien imnizzel bhala xoghol waqt li kien l-Awstralja kienu granet li hadem fix-xhur ta' qabel bhala *change of duties* ma' kollegi tieghu.

F'dawn il-proceduri l-aktar mix-xhieda ta' Patrick Murgo, Peter Cordina, Peter Paul Mercieca u Carmel Mercieca hareg li kien hemm din is-sistema informali ghall-ahhar ta' *change of duties* tant li l-Awditur Generali gibed l-attenzjoni ghal dan u s-sistema trangat meta fl-2010 id-Direttur ta' dak iz-zmien Patrick Murgo hareg *standing order* li rregolat ic-*change of duties*, u li b'hekk dahlet il-procedura li jkun hemm talba bil-miktub lid-Direttur u wara li jkun hemm l-approvazzjoni tieghu, dan it-tibdil irid jitnizzel fl-attendenza, li turi dawk il-membri li jkunu fuq il-lok tax-xoghol.

Qabel ic-*change of duties* ma kinux jigu riflessi fuq ir-roster tal-gurnata ghaliex tali bdil kien johloq problema mas-sezzjoni tas-salarji meta kienu jinhadmu l-pagi.

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[6] *A fol.* 227

Il-Prosekuzzjoni fin-nota ta' sottomissjonijiet taghha ma tispjegax kif ix-xiehda li nstemghu u l-provi li tressqu huma ingredjenti biex l-imputati jinstabu hatja tal-akkuzi migjuba kontrihom izda ssostni li:

Illi l-irwol ta' l-Istation Officer Mercieca kien propju dan, li apparti li jara li għandu l-istazzjon b'uffiċċjali biżżejjed biex ikun jista' jimmanniġġja s-sejħiet u emerġenzi oħra li jistgħu jinqalgħu, kellu ukoll l-irwol importanti li jara li l-uffiċċjali qed jagħmlu xogħolhom sewwa u li effettivament huma qed jirraportaw għax-xogħol;

Illi Mercieca jgħid li hu qatt ma żamm rekord ta' liema change of duties kienu qed isiru, u allura fic-cirkostanzi dan ma jigix sempliciment nuqqas ta' responsabbilta', izda huwa l-abbuz kriminuz tas-sistema li kienet difettuza, li huwa fatt maghruf u li allura hu seta' fil-kariga tieghu jimmanuvra kif ried u xtaq hu;

Illi mill-provi prodotti jirriżulta ben ċar li l-intenzjoni tal-imputati hija wahda malizzjuza, specjalment meta wiehed iqis bir-reqqa l-agir taz-zewg ufficcjali, fil-kariga taghhom, mhux b'mod individwali izda fiċ-ċirkostanzi kollha li jirrizultaw minn dan il-process rigward il-fatt partikolari.

Il-Qorti taghmel referenza ghal dak li xehed il-Kap tad-Dipartiment tal-Protezzjoni Civili **<u>Peter Cordina</u>** li kien inkarigat minn dan id-Dipartiment fiz-zmien investigat. Huwa xehed f'zewg okkazzjonijiet[7]:

[7] *A fol.* 126 *et seq.* u *a fol.* 162 *et seq.*

''Prosekuzzjoni: Issa ghar-rigward tac-'change of duties' x'taf tghidilna?

Xhud: Change of duties konna nippermettuha bhalma konna nippermettu illi jsir time off in lieu eccetra eccetra. U kien jiehu hsieb kollox l-Istation Officer. Dan ma japplikax biss ghal Ghawdex imma japplika wkoll ghall-istazzjonijiet ta' Malta wkoll.

Prosekuzzjoni: Issa jigifieri kienet permessa c-change of duties. Pero l-procedura, liema procedura kienet addottata dak iz-zmien?

Xhud: Sa fejn naf jien kien jintalab lill-Istation Officer dak iz-zminijiet jekk qed niftakar sew illi jsir change of duties. Imbaghad hu jiehu hsieb illi jzomm records ta' min dahal xoghol u min dahal floku biex ikunu jistghu jissostitwixxu lil xulxin later on.

Prosekuzzjoni: Jigifieri bhala records fejn kienu jinzammu?

Xhud: Kienu jinzammu fl-istazzjon.

Prosekuzzjoni: U f'dan il-kaz allura min kien izomm ir-records?

Xhud: L-Istation Officer.

Prosekuzzjoni: Xejn aktar ghalissa Sur Magistrat.

Avukat Dottor Joseph Giglio: Ara hux qed nithem tajjeb Sur Cordina, illi ghar-rigward il-procedura illi kienet tigi ad operata, dan il-kaz imur lura ghas-sena elfejn u tmienja (2008), nifhem tajjeb illi jista' jkun illi ma intix one hundred per cent sure minn certa dettalji. Per ezempju saqsewk domanda fuq records. Jekk jien nissugerilek illi r-records illi kienu jinzammu fuq ic-change of duties kienu effettivament dak illi int ghadek kif spjegajt illi hija li jinfurmaw lill-Control Room min dahal xoghol f'dik il-gurnata partikolari.

Xhud: Iva"

[…]

"Xhud: Sa fejn naf jien, sa fejn naf jien, halli nkun ghidt kollox ghax inkella bil-gurament tieghi, sa fejn naf jien dejjem l-affarijiet hadmu tajjeb ghax kemm Peter u kemm in-nies tieghu hawnhekk kienu jaghmlu xoghol efficjenti. Jigifieri ma kelli l-ebda dubbji fihom.Issa kif inqala' dan il-kwistjoni ghandi perpless sal-lum."

[…]

"Ix-Xhud: Ara, il-procedura hija wahda: il-leave u t-time off in lieu kien jigi irrekordjat u approvat bil-procedura normali. Change of duties normalment dak iz-zminijiet ma kienx hemm l-ebda prassi fuqha; sempliciment tnejn jiftehmu bejniethom illi jinbidlu x-xoghol,

Pero l-control room taghna kienet tigi infurmata li hemm persuna flok ohra dak il-hinijiet.''

Il-Kap tad-Dipartiment **Patrick Murgo**[8] xehed li dahhal mizuri godda wara li ngibdet l-attenzjoni mill-Awditur Generali, u dan anke permezz ta' *standing order*:

''Prosekuzzjoni: Sewwa. Jigifieri dan qed tghid inti ghaliex ghamiltha u x'gara wara. Issa, qabel ghidtilna li ma kienx qed jinzammu records. Kif wasalt ghaliha din?

Ix-xhud: Mela, ha nghidlek, ehe, u din li xtaqt nispjega. Mela, peress li n-nies taghna kienu jahdmu twenty four (24) in, forty eight (48) out, dak iz-zmien ma kienx hemm sistema li tista' tahdem il-pagi tan-nies u kien ikun jinqala' hafna tahwid. Min kien jahdem 24 in, 48 out, kien jahdem average ta' fifty four (54) hours per week meta tahdem u taghmel is-cycle kollu tax-shift. Issa peress li n-nies kienu jahdmu u ovvjament il conditions taghhom kienu forty six (46) hours over and above il-forty six hours ried jitnizzel bhala overtime. Ir-rassenji kienu jidhru min huma dawk in-nies li huma assigned for duty, jigifieri mela jiena, perezempju, Patrick Murgo naf li rrid nahdem illum, ghada u pitghada nkun off duty, imbaghad nidhol tlett ijiem ohra. Kieku din ir-rassenja konna nhawduha u niktbu min ghandu jidhol change of duty u min m'ghandux, kien jigri li s-sistema li kellna dak iz-zmien tal-komputazzjoni tas-salarji kienet tithawwad,ma kinitx kapaci li tiehu in consideration dan it-tibdil li

[8] *A fol.* 75 *et seq.*

jsir bejn in-nies. Ghaldaqstant kien deciz u kienet naturali li r-''roaster'' tibqa' kif inhi, ir-''roaster'' tibqa' kif inhi, allura nibqa' nidher jiena perezempju li suppost qed nahdem illum jien bhala Patrick Murgo, mentri fil-fatt ikollok impjegat iehor qed jaghmel ix-xoghol tieghi. U dak ma kien jidher imkien. Issa, dak ir-record li effettivament, jien naf, il-persuna l-ohra qed jibdilni, ma kien hemm imkien. Ghaldaqstant hrigt dik l-istanding order li jkollna ghall-inqas record tal-persuna lil min bidel lil min biex ahna at the end of the day anke jekk naraw historically u nkunu rridu niccekkjaw xi haga nkunu nafu li hadmu one, two, three, four, five. Effettivament ghall-fini tal-paga jkunu qeghdin jidhru n-nies li qed jidhru fir-''roaster''. Imma mbaghad ikollna records li nghidu, isma', hemm dik il-persuna li kienet qed tahdem dakinhar flok ta' dik il-persuna.

Prosekuzzjoni: Fil-fatt gejt ghad-domanda li kont se naghmillek. Jigifieri qabel ma hareg dan l-istanding order u nbiddlu l-proceduri, kien hemm system in place fejn jigi irrekordjat min suppost hemm duty ta' kuljum?

Ix-xhud: Min suppost hemm duty? Le. Li kien hemm ir-rassenja. Jigifieri kien hemm l-attendance sheet bazikament li tghid perezempju –

Prosekuzzjoni: Il-control room kienu jzommu records?

Ix-xhud: Il-control room jidhirli li kienu jinzammu records pero kienu jithassru mal-ewwel. Ma jidhirlix li kienu jinzammu records

min hu qed jibdel lil min and what not. Pero mbaghad at a later stage sar illi jrid jitnizzel kollox bazikament fil-control room."

RAPPORT TAL-AWDITUR GENERALI DWAR NUQQASIJIET

Il-Qorti se telenka dak li sab l-Awditur Generali fl-**Annual Audit Report Public Accounts 2010**[9] dwar nuqqasijiet dwar l-operat tad-Dipartiment tal-Protezzjoni Civili li jispjegaw u jizvelaw prassi li kienu qeghdin jintuzaw fl-operazzjoni tal-Dipartiment li jaghtu sfond tajjeb biex il-Qorti tifhem aktar u tasal ghall-konkluzzjonijiet taghha dwar dan il-kaz:

<u>Lack of Reference and Training</u>

The two Principals in charge of Salaries verbally stated to NAO that they were not given an appropriate handover and training. The only points of reference on their appointment were documents and workings of previous salary payments, generally not supported by any explanations. Therefore, many procedures are carried out automatically and certain practices are not backed up by official regulations and legislation.

[…]

<u>Deficiencies in Updated of Records</u>

Sick Leave

On two different instances, Sick Leave (SL) records were not accordingly updated, risking salaries not being adjusted in case officers exceed their full pay entitlement.

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[9] *A fol*. 83 immarkat bhala Dok PM 1

Vacation Leave

In another case, VL records were not accordingly updated. Officers may thus risk exceeding the number of hours/days to which they are entitled.

Time Off in Lieu

In one instance, Time Off in Lieu (TOIL) availed of was not deducted from the respective records even though the officer was marked as TOIL on the roster. In another two separate cases, TOIL records were erroneously deducted by an additional 2.5 and 1.5 hours respectively.

Incorrect Overtime Payments

Overtime hours were still paid in instances when overtime was not worked, either due to the officer being on SL, or the officer availing himself of TOIL or the officer paid for extra duty overtime during his normal shift.

Unofficial Replacement of Duty amongst Officers

In cases of unofficial replacement of duty arranged between the officers themselves, it was noted that VL taken is not deducted accordingly with the risk that officers may avail of VL without it being recorded. It was also noted that officers may prefer to informally replace duty on particular days (mainly Sundays and Day/Overtime shifts) in order to be paid for overtime hours. This created a situation whereby in actual fact, the officer concerned ended up working two consecutive shifts, amounting to 48 hours which give rise to health and safety considerations. Another point worth noting is that for the year under

review, the Salaries Section was not informed of any replacement of duties.

L-Awditur Generali fir-rapport tieghu jaghmel numru ta' rakkomandazzjonijiet biex jitjieb l-operat:

Unofficial Replacement of Duty amongst Officers

In cases of unofficial replacement of duties it is being recommended that VL is deducted accordingly and monitoring and controls should be strengthened. Working hours can be reasonably reduced by splitting the burden between two different officers. Also, documents should be provided to the Salaries Section making it possible to keep track of any replacements.

Inconsistent Vacation Leave Application Forms

Upon the introduction of a network system in all stations, one may consider the possibility of applying for VL and approving it electronically. This would reduce administrative paper work as well as ensure that records are automatically updated. Otherwise, a personal leave card is to be created and stored in alphabetical order.

Personal Record Sheets not Updated

Personal record sheets are expected to be updated at all times.

[…]

Recording Attendance

CPD is recommended to introduce electronic attendance verification devices in all the stations and locations so as to increase control over

the actual hours worked. It also helps to eliminate manual data entry and simplify salary calculations.

Id-Dipartiment wiegeb[10] dwar kif se jirrimedja ghan-nuqqasijiet li sab l-Awditur Generali dwar l-operat tad-Dipartiment fit-22 Settembru 2011.

Lack of Segregation of Duties regarding Authorisation of Rosters and Vacation Leave Application Forms

A standard operational procedure is going to be adopted within two weeks time so that the Station Officers in charge of the relevant stations/sections endorse the rosters. Vacation leave records are already being endorsed by the relevant SOs.

[…]

Deficiencies in Updated of Records

Action has been taken by this end to ensure that these records are appropriately updated. Time management plans have been introduced to ensure that the employee who should be updating these records will have adequate time to perform these tasks. It should be highlighted that this action had influenced the running of other processes related to the accounts section of the Department due to the limited human resources available.

All discrepancies listed in the report have been addressed by the Salaries Section. No time off in lieu is deducted between 21.30 and

[10] A fol. 89 immarkat bhala Dok PM 2

0.00 hrs as this time is considered as overtime for the purposes of salary computation within CPD.

Incorrect Overtime Payments

The discrepancies listed in this section have been addressed by this end. Discrepancies related to status of duty of employees within the CPD can only be controlled through the introduction of an appropriate time and attendance system where only one system will be used for the input of worked hours by each employee.

Preparations have already taken place within this Department to facilitate the introduction of time and attendance verification systems within the different fire stations.

Change of Duty amongst Officers

As already indicated during a meeting held with the auditors and this end, change of duty is allowed within this Department so as to eliminate the risk of remission of response capabilities arising from sick leave and other forms of absenteeism. Notwithstanding this fact, measures were put into place to ensure that persons may apply for a change of duty only in exceptional cases. A system which is endorsed by the relevant SO and approved by the Director was also put into practice to ensure that changes are controlled.

Although the recommendations listed in the Report vis-à-vis the employment of two officers instead of one to perform change of duty may be feasible for a large scale organization, the same may not apply for an organization like the Civil Protection Department which holds a limited workforce. It is already very difficult for the Department to

find officers available to keep up with the constant increase of extra duties. Assigning extra persons for other duties would mean that a work life balance for these employees would practically diminish considerably.

Identification of Officers

Prior to the audit exercise which was carried out in relation to the Report, the Department had already taken steps to include the full name and surname of employees instead of their initials. Adjustments are currently taking place so that the ID card of each individual is included as per suggestion.

Inconsistent Vacation Leave Application Forms

As already indicated above, measures have been taken to ensure that all vacation leave records are updated. The Department will also look into a system of automating the vacation leave records, however, the Department also welcomes the introduction of a valid Time and Attendance system which would otherwise address this issue altogether with the other forms of absenteeism.

Personal Record Sheets not Updated

During the previous administration of the section the personal record sheets of most employees were never updated. The two officers at salaries section have found this backlog, together with other pending issues and have been trying to sort them out ever since they took over this office. This activity is on-going and is expected to last a year to fully complete the updating process. Contact with Treasury

Department have already been made to obtain the necessary information for this updating process.

Wahda mill-mizuri li hadet l-amministrazzjoni tad-Dipartiment tal-Protezzjoni Civili kienet li harget **standing order No. 10/2010**[11] nhar it-23 ta' Awwissu 2010 biex tindirizza dak li qal l-Awditur Generali fir-rapport annwali tieghu dwar il-Bdil ta' Duty. L-Ordni iffirmata mid-Direttur ta' dak iz-zmien Patrick Murgo tghid:

Il-membri kollha tad-Dipartiment tal-Protezzjoni Civili huma avzati li qabel ma jsir bdil fil-gurnata tax-xoghol (change of duty) bejn zewg membri, ghandha timtela l-formola (Subject Form) rispettiva u tinghadda lid-Direttur tad-Dipartiment ghall-approvazzjoni, bir-rakomandazzjoni tal-ufficjal nkarigat mis-sezzjoni (i.e. Manager jew Station Officer).

Nixtieq nigbed l-attenzjoni li l-formola tal-attendenza ghandha turi dawk il-membri li jkunu fuq il-lok tax-xoghol. Ghaldaqstant, l-ufficjali nkarigati mix-xift ghandhom jizguraw li f'kazi ta' bdil fil-gurnata tax-xoghol, il-persuna li tkun qed tissostitwixxi lil dak il-membru li normalment jahdem f'dak ix-xift partikulari, tkun imnizzla li qed tahdem dik il-gurnata rispettiva.

[11] *A fol.* 61 immarkata bhal Dok GC 5

KONSIDERAZZJONIJIET LEGALI GENERALI

<u>Livell ta' prova</u>

Huwa principju baziku prattikat mill-Qrati taghna fil-procediment kriminali, li sabiex l-akkuzat jigi misjub hati l-akkuzi migjuba fil-konfront tieghu dawn ghandhom jigu pruvati oltre kull dubju dettat mir-raguni.

F'dan ir-rigward issir referenza ghas-sentenza moghtija mill-**Qorti tal-Appell Kriminali fil-5 ta' Dicembru 1997** fil-kawza fl-ismijiet **Il-Pulizija vs Peter Ebejer**, fejn il-Qorti fakkret li l-grad ta' prova li trid tilhaq il-Prosekuzzjoni hu dak il-grad li ma jhalli ebda dubju dettat mir-raguni u mhux xi grad ta' prova li ma jhalli ebda ombra ta' dubju. Id-dubji ombra ma jistghux jitqiesu bhala dubji dettati mir-raguni. Fi kliem iehor, dak li l-gudikant irid jasal ghalih hu, li wara li jqis ic-cirkostanzi u l-provi kollha, u b'applikazzjoni tal-buon sens tieghu, ikun moralment konvint minn dak il-fatt li trid tipprova l-Prosekuzzjoni. Fil-fatt dik il-Qorti ccitat l-ispjegazzjoni moghtija minn **Lord Denning** fil-kaz ***Miller v Minister of Pension*** - 1974 - ALL Er 372 tal-espressjoni 'proof beyond a reasonable doubt.'

> *"Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of*

course it is possible but not in the least probable', the case is proved beyond reasonable doubt, but nothing shall of that will suffice."

Fil-kawza fl-ismijiet **Il-Pulizija vs Graham Charles Ducker** (Qorti tal-Appell Kriminali - deciza fid-19 ta' Mejju, 1997) gie ritenut illi:

"it is true that conflicting evidence per se does not necessarily mean that whoever has to judge may not come to a conclusion of guilt. Whoever has to judge may, after consideration of all circumstances of the case, dismiss one version and accept as true the opposing one."

Din il-Qorti taghmel ukoll referenza ghas-sentenza moghtija mill-***Qorti tal-Appell Kriminali fid-9 ta' Settembru 2002*** fil-kawza fl-ismijiet **Il-Pulizija v Martin Mark Ciappara** fejn spjegat x'jigri meta gudikant ikun rinfaccjat b'verzjonijiet konfliggenti u cioe' jistghu jigru zewg affarijiet u cioe' jew il-gudikant ikun tal-fehma li l-kaz tal-Prosekuzzjoni ma jkunx gie sodisfacentement ippruvat, u allura l-Qorti ghandha tillibera, jew jekk ikun moralment konvint li l-verzjoni korretta hija wahda u mhux l-ohra, jimxi fuq dik il-verzjoni li jaccetta u jekk dik il-verzjoni tkun timporta l-htija tal-imputat jew akkuzat, allura jiddikjara tali htija u jghaddi ghall-piena jew ghal xi provediment iehor.

<u>**Apprezzament tal-provi fl-assjem**</u>

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.

Huwa principju baziku pprattikat mill-Qrati taghna fil-procediment kriminali, li biex l-akkuzati jigu ddikjarati hatja, 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 is-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 '*dubju jkun dak dettat mir-raguni.*'

Il-Qorti se tara jekk il-*fattispecie* tal-kaz jammontawx ghar-reati addebitati lill-imputati.

F'dan il-kaz xehdu ghoxrin (20) xhud kif gej:

L-Ispettur Yvonne Farrugia (*a fol.* 14 *et seq.*), John Rizzo (*a fol.* 38 *et seq.*), Gillian Carbone (*a fol.* 42 *et seq.*), Marcel Tabone (*a fol.* 64), Patrick Murgo (*a fol.* 75 *et seq.*), Mireille Mifsud (*a fol.* 94 *et seq.*), Emanuel Psaila (*a fol.* 106 *et seq.*), is-Sur Peter Cordina (*a fol.* 126 *et seq.*), Joseph Scerri (*a fol.* 131 *et seq.*), is-Sur Peter Cordina (*a fol.* 162 *et seq.*), George Scicluna (*a fol.* 166 *et seq.*), John Grima (*a fol.* 180 *et seq.*), Joseph Portelli (*a fol.* 182 *et seq.*), Frank Portelli (*a fol.* 191 *et seq.*), Christopher Buttigieg (*a fol.* 194 *et seq.*), Jeffrey Muscat (*a fol.* 212 *et seq.*), James Newel (*a fol.* 215 *et seq.*), l-imputat Peter Paul Mercieca (*a fol.* 223), l-imputat Adeodato Spiteri (*a fol.* 224 *et seq.*), Carmel Mercieca (*a fol.* 227 *et seq.*).

KONSIDERAZZJONIJIET LEGALI DWAR L-AKKUZI

L-imputati jinsabu akkuzati li bhala uffiċċjali jew impjegati pubbliċi bejn Diċembru 2008 u Marzu 2009, ikkommettew frodi b'egħmil qarrieqi bi ksur tal-Artikoli 308, 309 u 310(1)(b) tal-Kap. 9, li kkommettew falsifikazzjoni ta' dokumenti minn uffiċċjali pubbliċi u l-użu tagħhom bi ksur tal-Artikoli 167(1), 168(1) u 169 tal-Kap. 9, li biddlu b'qerq f'atti magħmul minn uffiċċjal pubbliku u li xjentement għamlu użu minn dokumenti foloz bi ksur tal-Artikoli 180 u 184 tal-Kap. 9, li għamlu dikjarazzjoni jew ċertifikati foloz u talli xjentement għamlu użu minn tali dikjarazzjoni jew ċertifikati foloz bi ksur tal-Artikoli 185(1), 186 tal-Kap. 9, li għamlu dikjarazzjoni falza jew tagħrif falz lil awtorita' pubblika ai termini tal-Artikoli 188 tal-Kap. 9, kif ukoll akkużati

b'Artikolu 189 li jiġbor l-atti ta' falsifikazzjoni ġenerali mhux imsemmija fl-artikoli tat-Titolu V tal-Kap. 9 tal-Liġijiet ta' Malta.

Il-prosekuzzjoni ssottomettiet li l-akkuzi bin-numri tlieta (3) u hamsa (5) huma alternattivi għal xulxin, kif ukoll l-akkużi bin-numri sebgha (7), disgha (9) u ghaxra (10).

Illi dwar il-Ligi, l-imputati jinsabu akkuzati kemm bir-reat tal-falsifikazzjoni kif ukoll tal-frodi.

<u>Fuq il-Falsifikazzjoni</u>

Illi ghar-rigward tar-reat tal-falsifikazjoni, il-ligi taghna tikkontempla diversi forom ta' falz f'dokumenti pubblici u skritturi privati. Ai finijiet tad-dottrina in tema ta' falsita, ikun hemm dokument kull fejn hemm kitba, attribwibbli ghal persuna identifikabbli, liema kitba tkun tikkontjeni esposizzjoni ta' talba jew dikjarazzjoni ta' volunta.

S'intendi, b'kitba wiehed ma jifhimx biss is-sinjali alfabetici izda tinkludi dawk numerici, stenografati u anke kriptografici, basta li dik il-kitba tesprimi hsieb li jkun jiftiehem minn kulhadd jew minn certu numru ta' nies.

Il-kitba f'dan s-sens tista ssir kemm bil-id, kif wkoll b'mezzi mekkanici, b'mezzi indellibbli jew li jista jithassar, u fuq kwalsiasi mezz li jista' jiehu imqar temporanjament il-messagg - karta, parcmina, injam, gebel, hadid, plastic etc… [vide **Il-Pulizija v Paul Galea** deciza mill-Qorti tal-Appelli

Kriminali nhar is-sbatax ta' Ottubru, 1997, liema decizjoni se ssir referenza ghaliha aktar 'l isfel.

Fil-fatt il-ligi taghna taghmel anke distinzjoni bejn il-falz ideologiku u l-falz materjali. Kif gie ritenut f'diversi sentenzi moghtija mill-qrati taghna fosthom f'sentenza moghtija mill-Qorti ta'l-Appell Kriminali fl-ismijiet Il-**Pulizija vs Paul Galea** deciza 17 ta' Ottubru 1997:

> *"Id-differenza bejn il-falz materjali u l-falz ideologiku hi spjegata mill-awturi b'dan il-mod: filwaqt li fil-kaz tal-falz ideologiku d-dokument ikun iffalsifikat biss fis-sustanza u cioe' fil-kontenut tieghu, ikun hemm falsita materjali meta d-dokument ikun wiehed mhux genwin, mentri il-falz ideologiku, ghalkemm id-dokument ikun genwin "non e' veridico, perche colui che lo ha formato gli fa dire cose contrarie al vero". Ghall-finijiet tad-dottrina in tema ta' falsita' jkun hemm dokument kull fejn hemm kitba, attribwibbli ghal persuna identifikabbli, liema kitba tkun tikkontjeni esposizzjoni ta' fatti jew ta' volonta. S'intendi b'kitba wiehed ma jifhimx biss is-sinjali alfabetici, izda tinkludi dawk numerici, stenografici u anke kriptografici, basta li dik il-kitba tesprimi hsieb li jkun jiftiehem minn kulhadd jew minn certu numru ta' nies. Il-kitba f'dan is-sens tista' issir kemm bl-id, kif ukoll b'mezzi mekkanici, b'mezz indelibbli jew li jista' jithassar u fuq kwalsiasi mezz li jista' jiehu imqar temporanjament il-messagg …".*

Meta wiehed jara r-rosters li gewipprezentati lid-Dipartiment tas-Salarji ai fini ta' falsifikazzjoni materjali dawn ma jistghux jitqiesu bhala dokument li gie ffalsikat fl-essenza tieghu kif trid il-ligi u dan ghaliex id-

dokumenti li gew pprezentati lid-dipartiment tas-salarji ma jistax jitqiesu li huma xi dokumenti mhux originali u jew iffabrikati.

Il-prosekuzzjoni ma ressqitx provi li jindikaw li dawn id-dokumenti mhumiex originali jew inkella li kienu ffabrikati fl-essenza taghhom. Ix-xhieda mressqa kkonfermaw li dawn kienu d-dokumenti li kellhom jigu pprezentanti u li fuqhom jinhadmu l-pagi.

F'dan il-kaz meta wiehed jirreferi ghall-falz ideologiku ma jistax jinghad li r-rosters kienu jaghtu informazzjoni qarrierqa fis-sens li *non e veridico perche colui che lo ho formato gli fi dire cose contrario al vero*.

Fid-decizjoni tal-Qorti tal-Appell Kriminali fl-ismijiet **Il-Pulizija vs Karl (Carmel) Azzopardi**, deciza fl-1 ta' Novembru, 2013 intqal li:

> *"Skont l-artikolu 188 tal-Kap 9, m'hemmx ghalfejn id-dokument ikun falz. Skont dan l-artikolu huwa bizzejjed li wiehed jipprezenta dokument li jkollu taghrif qarrieqi. Jigifieri, hawn m'hemmx bzonn li jinholoq dokument falz (ex novo) jew li dokument genwin (bhal, per ezempju xi certifikat tat-twelid) ikollu xi dettalji mibdulin. Xejn minn dan kollu. F'dan il-kaz huwa t-taghrif li kien fih id-dokument li kien falz".*

Il-Qorti ma tarax li dan gara fil-kaz odjern ghaliex kif irrizulta t-taghrif mghoti lid-dipartiment tas-salarji ma kienx wiehed mhux veritier jew falz izda kien hemm nieqes minnhom ic-*change of duties,* li ma kinux jitnizzlu.

L-artikolu 167 tal-Kap 9 tal-Ligijiet ta' Malta jipprovdi bhala reat kull min jiffalsifika xi dokument kif deskritt fl-istess artikolu.

Skont Sir Anthony Mamo, kif imfisser fl-appunti tieghu u msemmija fis-sentenza moghtija mill-Qorti tal-Appell Kriminali nhar s-16 ta' Marzu 1999 fil-kawza fl-ismijiet **Il-Pulizija v Alfred Sant et**:

> *"Our criminal code … like the models on which it was originally framed, does not give a general definition of forgery, only in respect of certain of the crimes of forgery of public and private writings, it specifies the special ways in which the particular crimes may be committed… In two ways … may in general a forgery be committed, either by making in whole or in part a false document [counterfeiting] or by altering a genuine document."*

Id-Difiza sostniet fin-nota ta' sottomissjonijiet taghha:

> *"li ghalkemm ir-reat ta' natura ideoligika li l-imputati qed jigu akkuzati bih ma jaghmel ebda referenza ghat-tip ta' intenzjoni rikjesta ghall-ezistenza tieghu dan ma jfissirx li d-dolus mhux neccssarju kif jinghad mill-Qorti tal-Magistrati fis-sentenza fl-ismijiet **Il-Pulizija vs Tonio (Antonio) sive Tony Debono**, deciza fit-22 ta' Marzu, 1999.*
>
> *Il-Professur Mamo fin-noti tieghu jghid li ai fini ta' dan ir-reat "an intention merely to deceive, that is to represent as genuine a document*

which is known to be false, is sufficient" madanakollu Carrara jzid u jghid li mhux bizzejjed li dak li ghamel il-falsifikazzjoni kellu l-intenzjoni li jiffalsifika, pero' li kien jaf li dik il-falsifikazzjoni kienet kontra l-ligi u l-potenzjalita' setghet tikkaguna pregudizzju.

F'dan il-kaz it-tibdil bejn il-haddiema li ma kienx jigi nnutat u imnizzel fir-rosters la tista' ssejjahlu li huwa xi forma ta' taghrif qarrieqi wisq anqas falsifikazzjoni kontra l-ligi."

L-artikolu 169 tal-Kap 9 tal-Ligijiet ta' Malta jipprovdi bhala reat kull min xjentement aghmel uzu minn dokument falz kif imsemmi fl-artikoli 165, 167 u 168 tal-Kap 9 tal-Ligijiet ta' Malta.

Ma hemmx dubbju ghalhekk li ghall-ezistenza ta' dan r-reat, jinhtieg li l-prosekuzzjoni tipprova li l-imputati ghamlu uzu minn dokument kif imsemmi f'din d-disposizzjoni tal-ligi <u>xjentement</u>.

L-imputati qed jigu akkuzati li **<u>xjentament ghamlu uzu</u>** (enfasi tal-Qorti) minn dawn id-dokumenti u ghalhekk mhux bizzejjed li l-Prosekuzzjoni tipprova li l-imputati ghamlu l-uzu minn dawn id-dokumenti izda li ghamlu hekk intenzjonalment.

Il-ligi hawnhekk tuza il-kelma 'xjentement'.

Ix-xjenza f'kaz kriminali

Fir-rapport dwar il-kaz **Taylor's Central Garages (Exeter) Limited v Roper**[12] 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 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*

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

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."[13]

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

[13] Ibid. pg 449

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).*

Ghalhekk mhux bizzejjed li l-Prosekuzzjoni tipprova li dawn id-dokumenti gew ipprezentati lid-dipartiment tas-Salarji imma trid ukoll tipprova wkoll li l-imputati pprezentaw dokumenti meta kienu jaf li kienu foloz.

Il-prosekuzzjoni kellha tipprova illi fil-mument li saret dik id-dikjarazzjoni l-imputati kienu jafu li dik id-dikjarazzjoni li qed issir hija falza u fit-tieni lok illi minhabba f'dik il-falsita huma hadu xi vantagg.

F'dawn il-proceduri ma ngabet l-ebda prova ammissibbli skont il-ligi li turi illi r-rosters ipprezentati lid-Dipartiment tas-Salarji kienu jew gew iffalsifikati fl-intier taghhom inkella ffalsifikati biss fis-sustanza b'mod intenzjonat.

Il-Qorti thoss li l-imputati m'ghandhomx jinstabu hatja la tal-falsita materjali wisq anqas ideologika. Deciz dan, allura lanqas ma jista' jirrizulta r-reat tal-frodi b'eghmil qarrieqi ikkontemplat fl-Artikolu 308.

L-element formali huwa totalment nieqes u l-imputati agixxew fuq prassi approvata u accettata minn kulhadd inkluz is-superjuri taghhom, kemm qabel il-perijodu inkriminat kif ukoll wara.

Fuq il-Frodi

L-imputati qed jigu akkuzati wkoll bit-truffa u l-frode innominate. Huma qed jigu akkuzati wkoll li r-reat kien wiehed kontinwat.

Illi ghar-rigward tal-akkuza tal-frodi jew truffa ai termini tal-artikolu 308 tal-Kodici Kriminali u tal-frodi innominat ai termini ta'l-artikolu 309, fil-ligi taghna sabiex ikun hemm il-kommissjoni ta' dawn ir-reati jrid ikun gie perpetrat mill-agent xi forma ta' ngann jew qerq, liema ingann jew qerq ikun wassal lill-vittma sabiex taghmel jew tonqos milli taghmel xi haga li iggibilha telf patrimonjali bil-konsegwenti qligh ghall-agent. Dan it-telf hafna drabi jkun jikkonsisti filli l-vittma, proprju ghax tkun giet ingannata volontarjament taghti xi haga lill-agent. Jekk l-ingann jew qerq ikun jikkonsisti f'raggiri jew artifizi – dak li fid-dottrina jissejjah il-mise en scene – ikun hemm it-truffa; jekk le, ikun hemm ir-reat minuri ta' frodi innominata (jew lukru frawdolent innominat) – (ara sentenza Il-**Pulizija vs Anthony Francis Willoughby** deciza Appelli Kriminali 12/02/1999).

Illi abbazi ta' Artiklu 308 tal-Kapitlu 9 tal-Ligijiet ta' Malta, sabiex jissussisti r-reat ta' frodi jew truffa, gie ritenut kostantament fil-gurisprudenza u fis-sentenzi tal-qrati illi jridu jinkonkorru diversi elementi. Ibda biex irid ikun hemm ness bejn is-suggett attiv u s-suggett passiv tar-reat u cioe' bejn min qieghed jikkommetti r-reat u l-vittma. Hemm imbaghad l-element materjali ta' dana r-reat u cioe' l-uzu ta' ingann jew raggieri, 'l hekk imsejha *mise en scene,* li jwasslu lill-vittma sabiex issofri t-telf patrimonjali. Finalment huwa necessarju li jkun hemm l-element formali tar-reat konsistenti fid-dolo jew fl-intenzjoni tat-truffatur jew frodatur li jinganna u dana sabiex jikseb profitt jew vantagg ghalih innifsu. Jekk xi wiehed jew iktar minn dawn l-elementi huma nieqsa, allura r-reat tat-truffa ma jistax isehh.

Fis-sentenza Qorti tal-Appelli Kriminali (sede inferjuri) deciza fit-22 ta' Frar 1993, fl-ismijiet Il-**Pulizija vs Charles Zarb**, il-Qorti ghamlet esposizzjoni ferm preciza, studjata u dettaljata ghar-rigward tal-elementi ta' dana r-reat.

Dwar l-element formali l-Qorti qalet li:

> *"Kwantu jirrigwarda l-element formali, cjoe' kwantu jirrigwarda d-dolo ta' dan ir-reat ta' truffa, jingħad illi jrid ikun hemm qabel xejn l-intenzjoni tal-frodatur li jipprokura b'ingann il-konsenja tal-flus jew oġġett li jkun bi profitt inġust tiegħu. L-inġustizzja tal-profitt toħroġ mill-artikolu 308 tal-Kodiċi Kriminali fejn il-kliem "bi ħsara ta' ħaddieħor" ma jħallux dubbju dwar dan. Jiġifieri biex ikun hemm l-*

element intenzjonali tar-reat ta' truffa, hemm bżonn li s-suġġett attiv tar-reat fil-mument tal-konsumazzjoni tiegħu jkun konxju ta' l-inġustizzja tal-profitt u b'dan il-mod il-leġittima produttivita' tal-profitt hija bizzejjed biex teskludi d-dolo."

Dwar l-element materjali l-Qorti fl-istess decizjoni qalet li r-raggiri jew artifizzji (messa in xena) jridu jkunu manuvri "*ta' natura li jimpressjonaw bniedem ta' prudenza ... li jridu jkunu frawdolenti u li hu necessarju li jkunu impjegati biex jipperswadu bl-assistenza ta' fatti li qajmu sentimenti kif hemm indikat fil-lig*i".

Fil-kaz fl-ismijiet il-**Pulizija vs. Anthony Bezzina**[14] deciz fit-22 ta' Settembru 2016 il-Qorti tal-Appell Kriminali ppreseduta mill-Imhallef Edwina Grima ghamlet esposizzjoni shiha dwar it-tema in kwistjoni:

> Issa sabiex jissussisti r-reat tal-frodi jew truffa gie ritenut kostantement fil-gurisprudenza u fis-sentenzi tal-qrati taghna illi iridu jinkonkorru diversi elementi. Ibda biex irid ikun hemm ness bejn is-suggett attiv u s-suggett passiv tar-reat u cioe' bejn minn qieghed jikkometti r-reat u l-vittma. Hemm imbaghad l-element materjali ta' dana ir-reat u cioe' l-uzu ta' ingann jew raggieri li jwasslu lill-vittma sabiex isofri it-telf patrimonjali. Finalment huwa necessarju li jkun hemm l-element formali tar-reat konsistenti fid-dolo jew fl-intenzjoni tat-truffatur jew frodatur li jinganna u dana sabiex jikseb profitt jew vantagg

[14] Appell Nru. 256/2015

ghalih innifsu. Jekk xi wiehed jew iktar minn dawn l-elementi huma nieqsa, allura ir-reat tat-truffa ma jistax jisussisti.

> ***"Id-delitt tat-truffa huwa l-iprem fost il-kwalitajiet ta' serq inproprji u hu dak li fl-iskola u fil-legislazzjoni Rumana kien maghruf bhala steljolat u li jikkorrispondi ezattament ghat-truffa tal-Codice Sardo, ghal frodi tal-Kodici Toskan, ghal Engano jew Estafa fil-kodici Spanjol, ghal Bulra f'dak Portugiz, u ghal Esroquerie fil-Kodici Francis ... Id-disposizzjonijiet tal-Kodici taghna li jikkontemplaw ir-reat ta' truffa kienu gew mehuda minn Sir Adriano Dingli mill-paragrafu 5 tal-artikolu 430 tal-Kodici delle Due Sicilie li hu identiku hlief ghal xi kelmiet insinjifikanti ghal Kodici Franciz (artikolu 405) avolja dan, il-Kodici delle Due Sicile, it-truffa kien sejhilha Frodi .....".***

…. Hu necessarju biex ikun hemm ir-reat ta' truffa, li l-manuvri jridu jkunu ta' natura li jimpressjonaw bniedem ta' prudenza u sagacja ordinarja, li jridu jkunu frawdolenti u li hu necessarju li jkunu impjegati biex jipperswadu bl-assistenza ta' fatti li qajmu sentimenti kif hemm indikat fil-ligi.[15]"

Dwar l-element formali tar-reati ta' truffa l-Imhallef Guze Flores kellu dan xi ighid:

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[15] 22 ta' Frar 1993, App Krim Il-Pulizija vs Charles Zarb

> *"….Kwantu jirrigwarda l-element formali, cioe' kwantu jirrigwarda d-dolo ta' dan ir-reat ta' truffa, jinghad illi jrid ikun hemm qabel xejn l-intenzjoni tal-frodatur li jipprokura b'ingann il-konsenja tal-flus jew oggett li jkun fi profit ingust tieghu. L-ingustizzja tal-profitt tohrog mill-artikolu 308 tal-Kodici Kriminali fejn il-kliem "bi hsara ta' haddiehor" ma jhallux dubju dwar dan. Jigifieri biex ikun hemm l-element intenzjonali tar-reat ta' truffa, hemm bzonn li s-suggett attiv tar-reat fil-mument tal-konsumazzjoni tieghu jkun konxju tal-ingustizzja tal-profitt u b'dan il-mod il-legittima produttivita tal-profitt hija bizzejjed biex teskludi d-dolo."*

Illi f'sentenza moghtija mill-Corte di Cassazione Penale gie deciz illi element ewlieni fir-reat tal-frodi huwa ***"l'elemento del'danno patrimoniale"***. Biex imbaghad jissusti dana t-tip ta' reat huwa necessarju illi jezistu ***"I tre momenti di cui si compone il reato e' cioe' la produzione dell'artificio, nella successive induzione in errore e nella conseguenziale produzione dell'ingiusto profitto per l'agente." (Cassazione penale sez.II 3 ottobre 2006 n.34179)***

"L'agente ... deve volere non solo la sua azione, ma anche l'inganno della vittima, come conseguenza dell'azione stessa, la disposizione patrimoniale, come conseguenza dell'inganno e,

infine, la realizzazione di quel profitto che costituisce l'ultima fase del processo esecutivo del delitto. Naturalmente occorre che la volonta sia accompagnata dalla consapevolezza del carattere frodatorio del mezzo usato, dell'ingiustizzia del profitto avuto in mira e del danno che ne deriva all'ingannato[16]."

Illi l-artikolu 309 tal-Kapitolu 9, imbaghad jikkontempla r-reat minuri tal-frodi innominat. Illi ghar-rigward ta' dana r-reat, ghalkemm l-element tar-"raggiri" jew l-"artifizji", huwa nieqes u allura anke gidba semplici hija bizzejjed ghall-kummissjoni ta' dana r-reat, izda dana jrid bilfors iwassal sabiex il-vittma u cioe' is-suggett passiv ta' dana r-reat isofri xi telf patrimonjali. Illi kif gie deciz fis-sentenza Il-**Pulizija vs Carmela German** (Appelli Kriminali Inferjuri 30/12/2004):

> ***"Kwantu ghal kwistjoni jekk il-gidba semplici – a differenza tal-artifizji u raggiri – tistax tammonta ossia twassal ghar-reat ta' frodi innominata, ir-risposta hija certament fl-affermattiv, basta li tali gidba tkun effettivament tammonta ghal qerq, cioe' intiza jew preordinata sabiex il-persuna l-ohra (il-vittma) taghmel jew tonqos milli taghmel xi haga li ggibilha telf patrimonjali bil-konsegwenti arrikkiment ghal min jghid dik il-gidba u basta,***

[16] Francesco Antolisei, ikkwotat f'sentenza ohra moghtija mill-Qorti ta'l-Appelli Kriminali (Il-**Pulizija vs Patrick Spiteri** deciza 22/10/2004)

s'intendi li tkun effettivament waslet ghal dana it-telf min-naha u arrikkiment min-naha l-ohra."

Affermati dawn il-principji gurisprudenzjali u legali ghandu jirrizulta illi huwa necessarju illi jigi ippruvat l-element tal-ingann fil-frodatur u dan fil-mument illi huwa jkun qieghed jaghmel il-maniggi tieghu sabiex jinganna lill-vittma.

Meta wiehed japplika dan it-taghlim ghal dan il-kaz fejn jidhol l-element materjali dan ma jirrizultax stante li ma kienx hemm la ingann wisq anqas raggiri jew artifizzji.

F'dawn il-proceduri imkien ma gie kkonfermat li gie operat xi apparat estern li sahhah il-kredibbilita tas-sitwazzjoni ffabrikata mill-imputati sabiex jirraggira lill-vittma f'dan il-kaz il-Gvern Malti ghajr li l-imputati mxew mal-procedura li kienet addotta sakemm ingibdet l-attenzjoni lid-Dipartiment tal-Protezzjoni Civili mill-Awditur Generali.

F'dawn il-proceduri la rrizulta l-ingann wisq anqas il-qerq min-naha tas-suġġett attiv biex jaghmlu l-qliegh a spejjez tas-suġġett passiv (Gvern ta' Malta).

KONKLUZZJONIJIET:

1. Il-fatti f'dan il-kaz jikkoncernaw il-fatt li l-imputat Adeodato Spiteri kien siefer ghal btala fl-Awstralja izda xorta tnizzel li rraporta ghax-xoghol u rcieva l-paga.

2. Il-provi tal-Prosekuzzjoni kienu diretti sabiex jippruvaw dana l-istat ta' fatt.

3. L-*attendance sheets* li kienu jintbaghtu lis-Sezzjoni tas-Salarji ma kinux jirriflettu c-*change of duties* u dana ghaliex tali *change of duties* kien johloq problema mas-sezzjoni tas-salarji meta kienu jinhadmu l-pagi.

4. Din is-sistema tac-*change of duties* kienet issir sabiex jigu zgurat li kull shift ikollu l-*work compliment* minimu li jirrikjedi.

5. Permezz ta' din is-sistema fejn ic-*change of duties* ma kinux jigu riflessi fir-roster li kienet tintbaghat mill-imputat Peter Paul Mercieca lis-sezzjoni tas-salarji tad-Dipartiment tal-Protezzjoni Civili.

6. Ma jirrizultax li din il-prassi holoqha l-imputat Peter Paul Mercieca izda kienet *working practice* li kienet ilha fis-sehh u li kienet issir bil-kunsens tas-superjuri tieghu.

7. Waqt dawn il-proceduri z-zewg imputati Mercieca u Spiteri telghu jikkonfermaw il-kontenut tal-istqarrija taghhom bil-gurament izda ebda domanda ma saritilhom f'dan ir-rigward.

8. L-imputat Peter Paul Mercieca lanqas kien kontro-ezaminat.

9. Kien fl-2010 meta nharget *standing order* minn Patrick Murgo li l-prassi nbidlet u dan wara li l-Awditur Generali gibed l-attenzjoni dwar il-fatt li c-*change of duties* ma kinux ikunu mnizzla fuq il-formola tal-attendenza.

10. Din l-*istanding order* iggib id-data tat-23 ta' Awwissu 2010, jigifieri sena u tmien xhur wara d-data tal-perijodu inkriminat.

11. Din l-*istanding order* titkellem wahedha u tikkonferma li fil-perijodu inkriminat ma kienx isir kif l-*istanding order* qed tesigi li jsir mit-23 ta' Awwissu 2010 'il quddiem.

12. Ir-rapport tal-Awditur, **Annual Audit Report Public Accounts 2010** kien gibed l-attenzjoni ghal tali stat ta' fatt taht l-intestatura **Unofficial Replacement of Duties amongst Officers**.

13. Ir-risposta tad-Dipartiment datata 22 ta' Settembru 2011 turi li kien biss f'dawn ix-xhur ta' qabel li bdew jiddahlu mizuri biex dawn ic-*change of duties* ikunu regolati billi tintalab awtorizzazzjoni bil-miktub u jkunu *recorded* bil-kitba u mhux bil-fomm jew fuq *black board* u wara ma jinzamm record ta' xejn (konfermat bix-xiehda ta' Charles Mercieca a fol. 227).

14. Is-sistema li kienet ilha fis-sehh ma kinitx ideali mill-att amministrattiv. U huwa sewwa li jkollok l-Awditur Generali li jigbed l-attenzjoni ghal nuqqasijiet bhal dawn li wara jkunu rimedjati.

15. L-id mohbija wara l-ittra anonima li skattat dan il-kaz ma kitbitx l-ittra biex jitrangaw il-proceduri li kienu jintuzaw, kieku din l-ittra kellha tinkiteb fl-2009 u mhux erba' snin wara meta l-procedura kienet irrangata fuq rakkomandazzjoni tal-Awditur Generali. Min kiteb l-ittra anonima baqa' mohbi/mohbija ried/riedet j/taghmel vendetta <u>personali</u> fejn b'id wahda jallega/tallega mal-awtoritajiet u min-naha l-ohra jorkestra/torkestra kampanja ta' thaggir fil-*media*, u flok laqat/laqtet persuna wahda laqat/laqtet tnejn. Min kiteb l-ittra ried jaghmel hsara personali u mhux li jara li l-Gvern ma jmurx minn taht bi prassi li kienu jintuzaw snin ilu u li ilhom li trangaw.

16. Il-Qorti ssostni li investigazzjoni aktar profonda kienet twassal f'sitwazzjoni fejn l-imputati ma kienx ikollhom ghalfejn jghaddu mill-martirju ta' proceduri penali. L-aktar, l-aktar jekk jirrizulta li kien hemm xi hlas zejjed ta' **elf mija u sitta u tletin ewro u tnejn u sittin centezmu** (€1136.62) dawn kellhom ikunu rkuprati b'mezzi amministrattivi.

17. Il-Prim Imhallef Emeritus Vincent Degaetano fis-sentenza **Pulizija v. Maurice Agius** jikkwota lil Lord Justice Lawton fil-kawza **R v. Sargeant**[17] dwar kif il-Qrati taghna m'ghandhomx jingarru mal-kurrent:

> *"Society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts*

[17] R v. Sargeant (1974) 60 Cr. App. R. 74

can show this is by the sentences they pass. The courts do not have to reflect public opinion. On the other hand they must disregard it. ***Perhaps the main duty of the court is to lead public opinion*** (enfasi ta' din il-Qorti).

U hadd m'ghandu jistenna lil din il-Qorti li tkun ATM (*automated banking machine*) li tghafsilha l-buttuna u taghtik id-decizjoni li trid. Din il-Qorti filwaqt li tibbaza d-decizjonijiet taghha fuq dak li tipprovdi l-ligi, tiddeciedi fuq il-provi migjuba fil-process u jekk tinstab htija tara li timxi mal-parametri dwar il-pieni li tipprovdi l-ligi. Tara wkoll li tuza l-ghodod kollha li jipprovdilha l-legislatur biex persuna kemm jista' jkun tinghata direzzjoni f'hajjitha.

DECIDE:

Illi ghalhekk, fid-dawl ta' dawn il-provi **l-Qorti** wara li rat l-artikoli tal-ligi partikolarment l-artikolu 167(1), 168(1), 169, 180, 184, 185(1), 186, 188, 189, 308, 309 u 310(1)(b) tal-Kap 9 tal-Ligijiet ta' Malta, **tiddikjara li ma ssibx lil imputati Peter Paul Mercieca u Adeodato Spiteri hatja tal-akkuzi kif addebitati fil-konfront taghhom u tilliberahom minn kull imputazzjoni u htija.**

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Dr. Joseph Mifsud
Magistrat