



Fil-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar l-Erbgha sittax (16) ta' Novembru 2016

Libell Nru 2/15

Edgar Bonnici Cachia

vs

Daphne Anne Caruana Galizia
(ID 450664M)

Il-Qorti,

Rat l-akkuzi migjuba kontra l-kwerelata Daphne Caruana Galizia permezz ta' tahrika privata minn Edgar Bonnici Cachia fl-20 ta' Novembru 2014 (fol 15), fejn l-istess Daphne Caruana Galizia giet akkuzata:

Talli, fit 30 ta' Awissu 2011 u fil-granet ta' wara, f'dawn il-Gzejjer Maltin, b'diversi atti maghmulin minnek li jiksru l-istess disposizzjoni tal-ligi u li gew maghmulha b'risoluzzjoni wahda, permezz ta' sit/pagna ta' l-internet www.daphnecaruanagalizia.com, permezz ta' artikolu elettroniku intitolat "*The Labour Party – a hitman for a candidate*", attribwiet lill-kwerelanti fatti determinanti bi skop illi jofferndu l-unur w il-fama tieghu u jesponuh ghar-redikolu.

Rat illi, quddiem dina l-Qorti diversament ppresjeduta, xehdu Roderick James Agius u Gaetano Degabriele fit 28 ta' Frar 2014.

Rat illi fit 13 ta' Marzu 2015, il-partijiet qablu illi l-proceduri odjerni kellhom jinstemghu minn dina l-Qorti kif komposta, stante illi kienet qieghda tisma zewgt kawzi ohra b'meritu simili.

Rat illi fis-seduta tas-17 ta' Gunju 2015 il-Qorti awtorizzat lill-kwerelant sabiex jressaq ix-xhieda tieghu u dokumentazzjoni in sostenn ta' dak minnu rikjest, liema xhieda u dokumentazzjoni qatt ma giet prodotta fil-proceduri odjerni.

Rat ix-xhieda ta' **James Farrugia**, Direttur tal-Protocol fi hdan il-Ministeru tal-Affarjiet Barranin, moghtija fit 13 ta' Jannar 2016 fejn l-istess Farrugia esebixxa, animo ritirandi, file

ta' l-istess Ministeru tal-Affarjiet Barranin in konnessjoni mal-kaz tal-kwerelant gewwa l-Egittu, minn liema file il-Qorti esportat dawk id-dokumentazzjoni rilevanti ghal kaz u rritornat il-file lura lill-Ministeru tal-Affarjiet Barranin.

Rat il-korrispondenza rilevanti riprodotta mill-file fuq imsemmi, li kienu s-segwenti:

Ittra indirizzata lill- 'Security Courts' datata 4 ta' April 1985 intitolata 'Egyption Security Police vs Tony Gill, Godfree Shiner, Romeo Schembri u Edgar Bonnici Cachia' li fiha jinghad is-segwenti:

"I present with respect the following:

- 1. That the police arrested me on the 23rd October 1984, when I arrived in the Cairo Airport and up to now did not take actions against me in courts or make a decision (sic) about the case, for the alledged case of the former Libyan Prime Minister El Bakush*
- 2. That the courts give to the Security reasonable time to put the case for hearing*
- 3. That if the Security did not put the case for hearing, the Security given the reason to the Honorable Court*
- 4. That if the Security did not put the case for hearing, or did not given the reason to the court, I asked to the court with respect to declare the case closed.*

Presented with respect

Edgar Bonnici Cachia"

Ittra indirizzata lill-'Security Courts' datata 25 ta' April 1985 intitolata 'Egyption Security Police vs Tony Gill, Godfree Shiner, Romeo Schembri u Edgar Bonnici Cachia' li fiha jinghad is-segwenti:

"I present with respect the following:

- 1. That the security police arrested me on the 23rd October 1984, when I arrived in Cairo Airport and up to now did not take actions against me in courts or make a decision about the case for the alledged case of the former Libyan Prime Minister El Bakush.*
- 2. That the (six) 6 months since my arrest stipulated by the Egyptian Law are elapsed but the Minister of Interior have the right to extend the (six) 6 months for some reasons.*
- 3. I asked to the Courts with respect to give reasonable time to the Minister of Interior General Ahmen Rushdi to give the Courts the reason why I am still arrested.*
- 4. I would like to inform to the Courts that the statement that the Security Police puting in front of the world is all misleading and because of this statement and the period of my arrest, I suffered considerable damages and I will be suffer more damages in my private life and also in my business. Because of my arrest, I was deprived of my family. I ask to the Courts with respect to take all this facts in consideration.*

5. *At the end, I asked the Courts with respect, to make a decision about my arrest and about the validity of my arrest when the Minister of Interior answer this protest.*

Presented with respect

Edgar Bonnici Cachia”

Ittra indirizzata lill Mr Angelo Fenech datat 7 ta' Jannar 1985, li tghid is-segwenti:

“Dear Angelo,

I send you this telex first of all to inform you that I am in good health.

The British Council visit me and Romeo every week and help us a lot. I know that we have an Ambassador for Egypt (residing in Malta) I don't know why the Ambassador or any other Maltese didn't visit us.

We need the Malta Ambassador visiting us and if possible try to send us the Malta Gazette from the 23rd October. Can you try to arrange something for us.

Don't believe what the international gazettes say about us. We are victims of a Maltese mad person. I don't mention the name of this person lie on us now, but when I come every one knows the name of this person.

Please show this letter to all my friends, especially to my friends in the GWU and tell my friends to write me letters c/o British Council, British Embassy, Cairo, Egypt.

Best Regards

Edgar Bonnici Cachia.”

Il-kwerelant ikkonferma illi dawn ta' t-tlett ittri kienu minnu miktuba waqt illi huwa kien qiegħed l-Egittu.

Rat artikolu ppubblikat fil-gazzetta Ingliza the Sunday Times fit 2 ta' Dicembru 1984 fejn isir referenza għal Statement mahrug mill-Gvern Libjan u mghoddi lill-gazzetta, liema artikolu jgħid, fost affarijiet ohra:

“To this end, the statement said, “the revolutionaru movement in Libya planned to recruit a killing squad which sympathised with Egypt”. The man recruited to organise the plot was Edgar Bonnici Cachia, a one-time Labour party candidate for the Maltese parliament and now in jail in Cairo. According to Qaja, the Libyans were aware at the time that “Edgar co-operates with the CIA and the Israeli intelligence service.”

Rat ukoll '**Protocol of Handing Over Accused Persons**' datat 2 ta' Mejju 1985, iffirmit bejn il-Gvern Egizzjan u il-Gvern Malti li jipprovdi, fost affarijiet ohra, *“in accordance with the good relations that exist between the Government of the Republic of Malta and on the basis*

of reciprocity, for the basis of handing over the following accused persons Mr Edgar Bonnici CACHIA”.

Semghet ix-xhieda ta’ **Edgar Bonnici Cachia** in rigward ta’ dina d-dokumentazzjoni esebita formanti parti minn file akbar ppresnetat animo ritirandi mill-Ministeri tal-Affarjiet Barranin.

Rat sensiela ta’ artikoli esebiti mill-intimata in rigward l-attent ta’ qtil ta’ l-ahhar Prim Ministru Libyan, Abdul Hamid Bakkush qabel li l-Kurunell Gaddafi ha il-poter gewwa l-Libya minghand ir-Re Idris, liema artikoli deheru fil-gazzetta **The New York Times** tas-17 ta’ Novembru 1984, tat 18 ta’ Novembru 1984 u tas 7 ta’ Frar 1985 fejn anke jissemma l-kwerelant Edgar Bonnici Cachia bhala wiehed mill-persuni illi kienu gew mibghuta mill-Gvern Libyan sabiex joqtlu lill Bakkush.

Semghet it-trattazzjoni ta’ l-abbli difensuri tal-partijiet illi saret fit 28 ta’ Settembru 2016, wara liema data il-kawza thalliet ghas-sentenza ghallum.

Ikkunsidrat

Il-Qorti tosserva illi, dwar il-meritu tal-kawza odjerna, dina l-Qorti gia ghamlet l-osservazzjonjiet in extenso taghha fil-kawza kriminali 1/15 FDP fl-ismijiet “**Edgar Bonnici Cachia vs Daphne Caruana Galizia**” illi qieghda tigi deciza kontestwalment mal-kawza odjerna.

Il-Qorti, madanakollu, ma tistax ma tosservax illi, fil-kawza odjerna, il-Qorti la giet pprodvuta bl-artikolu illi minnu jilmenta l-kwerelant u wisq anqas ma inghatat il-kwerela maghmulha mill-kwerelant stess, li lanqas ma giet ikkonfermata bil-gurament.

Il Qorti taghmel referenza ghall-Artikolu 31 tal-Kap 248 illi tistabilixxi illi:

“L-azzjoni kriminali ghal-kull reat that l-artikolu 11 u 21 jistghu jinbdew biss bi kwerela tal-parti offiza.”

L-artikolu 537 tal-Kap 9 tal-Ligijet ta’ Malta, reza applikabbli ghall-kwereli ukoll permezz ta’ l-Artikolu 539, jipprovdi illi denunzi u kwereli jistghu isiru kemm verbalment kif ukoll bil-miktub. L-istess Artikolu 537, madanakollu, jipprovdi illi meta denunza ssir bil-fomm “*hija ghandha, klief fil-kazijiet li ma jkunux iridu dewmien, titnizzel bil-miktub minnufih u ghandha tigi iffirmata mid-denunzjant.*”

Il-Qorti tosserva illi fil-proceduri odjerni, ghalkemm il-Qorti fliet fir-reqqa id-dokumentazzjoni kollha ppresentata mill-prosekuzzjoni u l-kwerelant, imkien ma jirrizulta illi kien hemm ippresentat il-kwerela ta’ Edgar Bonnici Cachia, li huwa l-bazi illi fuqha il-prosekuzzjoni ghandha tmexxi il-kaz.

Jirrizulta ampjament ippruvat illi fil-kawza odjerna, dana ma huwiex kaz illi dwaru il-Pulizija setghet tipprocedi ‘ex officio’ minghajr il-htiega ta’ kwerela, izda hija azzjoni illi tista tigi mibdija biss wara kwerela.

La darba tali kwerela ma tirrizultax fl-atti, tali proceduri huma ghalhekk monki u ghalhekk dana jimmilita favur l-akkuzata.

Konkluzjoni

Il-Qorti;

Wara illi rat il-provi kollha prodotti u ghamlet l-osservazzjonjiet fuq indikati.

Tillibera lill-akkuzata mill-akkuzi kollha migjuba kontra taghha fuq nuqqas ta' provi.

Magistrat Francesco Depasquale

Marisa Bugeja
Deputat Registratur