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 Raymond Aquilina)

vs

Christiaan Alexander Van Dalen

Kumpilazzjoni numru 916/2015

Illum 30 ta' Marzu, 2017

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat **Christiaan Alexander Van Dalen** detentur tal-karta tal-identita' bin-numru 0113787 (A) billi huwa akkuzat talli f'Novembru 2015 u fix-xhur u snin ta' qabel, f'dawn il-Gzejjer, b'diversi atti maghmulin fi zminijiet differienti li jiksru l-istess disposizzjonijiet tal-Ligi li gew maghmula b'risoluzzjoni wahda,

1. Ghamel atti ta' money laundering billi:-

a. Ikkonverta jew trasferixxa propjeta' meta kien jaf jew jissuspetta 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 tal-origini tal-propjeta jew ta' ghoti ta' ghajnuna lil xi persuna jew persuni involuti jew koncernati f'attivita kriminali;

b. Heba jew wera haga b'ohra tal-veri xorta, provenjenza, lok, dispozizzjoni, moviment ta' jeddijiet rigward, fi jew fuq propjeta', meta kien jaf jew jissuspetta 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 jew jissuspetta 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 jew jissuspetta li l-istess propjeta' kienet inkisbet jew originat direttament jew indirettament minn attivita kriminali jew minn att jew atti ta' partecipazzjoi f'attivita kriminali;
e. Ittenta jaghmel il-hwejjeg jew attivitajiet illegali fuq imsemmija;
f. Agixxa bhala komplici fit-tifsir tal-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 tal-Ligijiet ta' Malta.

2. Talli b'mezz kontra ligi jew billi ghamel uzu ta' ismijiet foloz jew ta' kwalifiki foloz, jew billi nqeda b'qerq iehor, ingann jew billi wera haga b'ohra sabiex igieghel titwemmen l-ezistenza ta' intraprizi foloz, jew ta' hila, seta' fuq haddiehor, jew ta' krediti maginarji, jew sabiex qanqal tama jew biza dwar grajja kimerika,

ghamel qligh ta' aktar minn hamest elef Ewro (5,000.00) ghad-dannu ta' Betsson Services Ltd. (C44114);

3. Talli minghajr awtorizzazzjoni uza computer jew xi taghmir jew apparat iehor biex jidhol b'xi data, software jew dokumentazzjoni ta' appogg li jinzammu f'dak il-computer jew f'xi computer iehor, jew uza, ikkopja jew immodifika kull data, software jew dokumentazzjoni ta' appogg bhal dawk;
4. Talli minghajr awtorizzazzjoni ghamel output ta' xi data, software jew dokumentazzjoni ta' appogg mill-computer li kienu qeghdin jinzammu fih, sew billi dawn ittellghu bi xbieha jew b'kull mod iehor li kien;
5. Talli minghajr awtorizzazzjoni ipprevjena jew ostakola d-dhul ghal xi data, software jew dokumentazzjoni ta' appogg;
6. Talli minghajr awtorizzazzjoni ipprevjena jew ostakola l-funzjonament jew tthaddim ta' xi sistema ta' computer, software jew l-integrita jew affidabilita' ta' xi data.
7. Talli minghajr awtorizzazzjoni ha pussess ta' xi data, software jew dokumentazzjoni ta' appogg jew ghamel uzu minnhom.

Il-Qorti giet gentilment mitluba sabiex tapplika id-disposizzjonijiet tal-Artikolu 5 tal-Att kontra l-Money Laundering, Kapitolu 373 tal-Ligijiet ta' Malta, kif ukoll l-Artikolu 23A tal-Kapitolu 9 tal-Ligijiet ta' Malta u, f'kaz ta' htija, tapplika wkoll il-provvediment tal-Artikolu 23B tal-Kap. 9 tal-Ligijiet ta' Malta.

Il-Qorti giet gentilment mitluba sabiex tapplika id-disposizzjonijiet tal-Artikoli 24 tal-Att dwar il-Probation ghar-rigward tas-setgha li ghandha l-Qorti li tordna lill-hati jhallas id-danni ghandhom ukoll matatis

mutandis japplikaw kull meta jigri li persuna tinghata sentenza wara li tkun instabet hatja ta' delitt kif ikkontemplat fl-Artikolu 532A tal-Kap. 9 tal-Ligijiet ta' Malta.

Il-Qorti giet finalment mitluba sabiex f'kaz ta' htija tikkundanna lill-akkuzat ghall-hlas ta' spejjez li jkollhom x'jaqsmu mal-hatra ta' esperti jew periti fil-proceduri hekk kif ikkontemplat fl-Artikolu 533 tal-Kap. 9 tal-Ligijiet ta' Malta.

Rat in-Nota ta' Rinviju ghall-Gudizzju tal-Avukat Generali datata 29 ta' Marzu, 2017 (esebita a fol. 1047 tal-process) fejn huwa dehrlu li tista' tinstab htija (jew htijiet) fil-konfronti tal-imputat taht dak li hemm mahsub:

- **a.** Fl-artikoli 18, 308, 309 u 310(1)(a) tal-Kapitolu 9 tal-Ligijiet ta' Malta;
- **b.** Fl-artikoli 18, 337B u 337C(1)(a)(b)(d)(e)(f) tal-Kapitolu 9 tal-Ligijiet ta' Malta;
- **c.** Fl-artikoli 17, 18, 23, 23A, 23B, 31, 532A, 532B u 533 tal-Kapitolu 9 tal-Ligijiet ta' Malta;
- **d.** Fl-artikolu 5 tal-Kapitolu 373 tal-Ligijiet ta' Malta;
- **e.** Fl-artikolu 24 tal-Kapitolu 446 tal-Ligijiet ta' Malta;

Semghet ix-xhieda, rat l-atti kollha tal-kaz u d-dokumenti ezebiti.

KONSIDERAZZJONIJIET LEGALI[1]

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;

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.

[1] 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*.

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-Repubblika ta' Malta vs John Vella**[2]" "*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. . . .*".

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**[3] 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-***

[2] Qorti Kriminali 29 ta' Novembru 1999
[3] Ibid.

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"). 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"*[4].

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*."[5] 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

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

[5] 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.

tal-flus. Wara dana, fit-tieni stadju imbaghad il-flus jiehdu xejra ohra jew jinhbew u dana sabiex isir aktar diffícli 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 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**[6] 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 Hewart CJ, in a case under this section, Evans v Dell (1). What the Lord Chief Justice*

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

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."[7]

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

[7] Ibid. pg 449

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 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.

Ikkunsidrat:

Rat ir-rikors kongunt tad-29 ta' Marzu 2017 tal-Avukat Generali u tal-imputat Christiaan Alexander Van Dalen ai termini tal-Artikolu 392A(5) tal-Kapitolu 9 tal-Ligijiet ta' Malta, fejn iz-zewg rikorrenti konguntivament, filwaqt li ddikjaraw li qeghdin jaqblu fit-termini tal-artikolu 392A(5) tal-Kodici Kriminali, talbu lill-Qorti illi fl-eventwalita' li jkun hemm ammissjoni da parti tal-akkuzat Christiaan Alexander Van Dalen ghall-imputazzjonijiet kif dedotti fil-konfront tieghu, il-piena ghandha tkun wahda ta' prigunerija effettiva ghal perjodu ta' sitt (6) snin u multa ta' hmistax-il elf ewro (€15,000) u dan oltre kwalsiasi sanzjoni u/jew konsegwenza ohra tassativa ghad-dikjarazzjoni ta' sejbien ta' htija ai termini tal-Kapitolu 9 u tal-Kapitolu 373 tal-Ligijiet ta' Malta, inkluz il-konfiska ta' kwalunkwe flejjes u tal-propjeta' mobbli u mmobbli appatenenti lill-istess akkuzat.

Rat illi fis-seduta tallum 30 ta' Marzu 2017, din il-Qorti ddikjarat illi hija sodisfatta illi jkun legittimu li hi timponi s-sanzjonijiet mitluba fir-rikors, f'kaz li jkun hemm ammissjoni da parti tal-imputat.

Fl-istess seduta, din il-Qorti spjegat lill-imputat bi kliem car xi jkunu l-konsegwenzi tat-talba fir-rikors tieghu u tal-Avukat Generali fuq imsemmi.

Sussegwentement fl-istess seduta, l-imputat irregistra ammissjoni tieghu ghall-imputazzjonijiet migjuba kontrih.

Ikkunsidrat:

Illi mill-provi migjuba u mill-ammissjoni tal-imputat stess, il-Qorti issib lill-imputat hati tal-imputazzjonijiet migjuba fil-konfront tieghu.

Il-Qorti tiddikjara li din is-sentenza qieghda tigi hekk moghtija fuq talba tal-partijiet ai termini tal-Artikolu 392A(5) tal-Kapitolu 9 tal-Ligijiet ta' Malta.

Ghal dawn il-motivi, il-Qorti, wara li rat l-Artikoli 18, 308, 309, 310(1)(a), 337C(a)(b)(d)(e)(f), 532A u 533 tal-Kapitolu 9 u Artikoli 3 u 5 tal-Kap 373 tal-Ligijiet ta' Malta, issib lill-imputat hati tal-imputazzjonijiet dedotti kontrih u tikkundannah, il-piena ta' prigunerija effettiva ghal perjodu ta' sitt (6) snin u multa ta' hmistax-il elf ewro (€15,000).

Bl-applikazzjoni tal-Artikoli 23 u 23A tal-Kapitolu 9 u Artikolu 3 tal-Kapitolu 373 tal-Ligijiet ta' Malta, tordna l-konfiska ta' kwalunkwe flejjes u tal-propjeta' mobbli u mmobbli appartenenti lill-imputat kif ukoll il-vettura BMW bin-numru tar-registrazzjoni MSD014 ezebita formalment fis-seduta ta' nhar it-30 ta' Novembru 2015 a favur il-Gvern ta' Malta. Il-Qorti tirrakomanda li din il-vettura tghaddi ghand il-pulizija biex tintuza mill-Anti Money Laundering Unit fl-istess Korp tal-Pulizija.

Il-Qorti tordna wkoll wara li rat l-Artikolu 533 tal-Kapitolu 9 tal-Ligijiet ta' Malta, sabiex l-imputat ihallas is-somma ta' tliet elef, tliet mija u

tmintax-il Euro u sebgha u sittin centezmu (€3,318.67) bhala spejjez peritali[8] rigwardanti dawn il-proceduri.

Inoltre, bl-applikazzjoni tal-Artikolu 24 tal-Kap. 446 tordna lill-hati jhallas id-danni lill-kumpanija Betsson Services Ltd.

Dr. Joseph Mifsud

Magistrat

[8] Registratur tal-Qorti €1,545.92 (fol 320 et seq.) ; Dr. Martin Bajada €566.40 (fol 835 et seq.) ; Dr. Martin Bajada €708 (fol 919 et seq.) ; Emanuel Felice €498.35 (fol 965 et seq.)