



**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

vs

Anthony Pace

Kumpilazzjoni numru 19/2017

Illum 3 ta' April, 2017

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat **Anthony Pace** detentur tal-karta tal-identita' bin-numru 437267 (M) billi huwa akkuzat talli nhar is-7 ta' Mejju, 2016 ghall habta tat-tmienja u nofs ta' filghodu gewwa Vjal il-Haddiem, Rabat:

1. B'nuqqas ta' hsieb, bi traskuragni, jew b'nuqqas ta' hila fl-arti jew professjoni tieghu, jew b'nuqqas ta' tharis ta' regolamenti, waqt li kien qed isuq jew kellu taht il-kontroll tieghu vettura bil-mutur tal-ghamla Toyota bin-numru ta' registrazzjoni GBO-282, ikkaguna l-mewt ta' Vincenzo Giordmaina, u dan bi ksur ta' l-Artikolu 225 (1) tal-Kap. 9 tal-Ligijiet ta' Malta;
2. Talli fl-istess data, lok, hin u cirkostanzi saq l-imsemmija vettura tal-ghamla Fiat Fiorino bin-numru ta' registrazzjoni GBO-282 b'manjiera a) traskurata, b) bla kont u c) perikoluza.; bi ksur tal-Artiklu 15(1)(a)(2)(3) tal-Kap 65;

Il-Qorti giet mitluba illi tiskwalifika lil Anthony Pace milli jkollu jew milli jikseb ebda licenzja tas-sewqan ghal dak it-tul ta' zmien li jidrilha xieraq.

Il-Qorti giet ukoll mitluba 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.

Semghet il-provi.

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

Semghet, waqt is-seduta tallum, lill-imputat jammetti l-imputazzjonijiet kollha migjuba kontra tieghu u semghetu jikkonferma l-ammissjoni tieghu anke wara li l-Qorti taghtu zmien jikkunsidra l-pozizzjoni tieghu u kkonsulta mal-avukat ta' fiducja tieghu Dr. Stefano Filletti.

Semghet sottomissjonijiet tal-Prosekutur Eliott Magro u l-avukat difensur Dr. Stefano Filletti fejn kien hemm qbil dwar il-parametri li kellha timxi maghhom il-Qorti anke in vista ta' dak li rrizulta mill-esperti fl-inkjesta dwar il-kaz.

KONSIDERAZZJONIJIET LEGALI DWAR L-AKKUZI

(i) Il-Kuncett ta' Negligenza

Fid-dottrina u l-gurisprudenza kontinentali jezistu zewg teoriji partikolari dwar il-kuncett ta' negligenza: it-tejorija hekk imsejha oggettiva u dik suggettiva. It-test ghat-tejorija oggettiva mhux

wiehed li hu immirat biex jistabilixxi jekk il-persuna ipprevedietx jew setghetx tipprevedi dak l-incident fil-*fatti specie* partikolari tal-kaz izda jekk l-agir ta' dik il-persuna jaqax taht l-obbligu ragjonevoli ta' attenzjoni li kull persuna fis-socjeta` hija prezunta li ghandu jkollha f'cirkostanza partikolari. Min-naha l-oħra t-tejorija suggettiva tenfasizza li wiehed jista' jtkellem fuq agir negligenti jekk ikun hemm nuqqas f'li wiehed ikun *alert* jew *vigilanti* bil-limitazzjonijiet tieghu personali f'dak il-kaz partikolari.

Il-Kodici Kriminali taghna fl-artikoli 225,¹ 226² u 328³ jtkellem fuq "*nuqqas ta' hsieb, traskuragni, nuqqas ta' hila fl-arti jew professjoni tieghu*

¹ Artikolu 225: "*Kull min, b'nuqqas ta' hsieb, bi traskuragni, jew b'nuqqas ta' hila fl-arti jew professjoni tieghu, jew b'nuqqas ta' tharis ta' regolamenti, jikkaguna l-mewt ta' xi hadd, jehel, meta jinsab hati, il-piena ta' prigunerija ghal zmien mhux izjed minn erba' snin jew multa mhux izjed minn hdax-il elf sitt mija u sitta u erbgħin euro u sebgha u tmenin centezmu (11,646.87)."*

² L-Artikolu 226 jirreferi għall-offizi li ma jwasslux għall-mewt izda jarrekaw biss hsara gravi jew hafifa fuq il-persuna ta' l-individwu: "*Jekk minhabba l-fatti imsemmijin fl-aħhar artikolu qabel dan issir offiza fuq il-persuna, l-akkuzat, meta jinsab hati, jehel - (a) jekk l-offiza tkun gravi u ggib il-konsegwenzi msemmijin fl-artikolu 218, il-piena ta' prigunerija ghal zmien mhux izjed minn sena jew multa mhux izjed minn erbat elf sitt mija u tmienja u hamsin ewro u hamsa u sebghin ewro centezmi (€4658.75); (b) jekk l-offiza tkun gravi mingħajr il-konsegwenzi msemmijin fl-artikolu 218, il-piena ta' prigunerija ghal zmien mhux izjed minn sitt xhur jew multa mhux izjed minn elfejn tliet mija u disgha u ghoxrin ewro u sebgha u tletin ewro centezmi (€2329.37); (c) jekk l-offiza tkun hafifa, il-pieni stabbiliti għall-kontravvenzjonijiet. (2) Fil-kazijiet imsemmijin fis-subartikolu (1)(c), il-procediment jista' jittiehed biss fuq kwerela tal-parti offiza.*

³ L-artikolu 328 jaqra: "*Kull min, b'nuqqas ta' hsieb, bi traskuragni jew b'nuqqas ta' hila fl-arti jew professjoni tieghu, jew b'nuqqas ta' tharis ta' regolamenti, jikkaguna hruq, jew jagħmel xi hsara jew ihassar jew jgharraq xi haga, kif imsemmi f'dan is-sub-titolu, jehel, meta jinsab hati - (a) jekk minhabba f'hekk tigr l-mewt ta' persuna, il-piena stabbilita fl-artikolu 225; (b) jekk minhabba f'hekk xi hadd ibati offiza gravi fuq il-persuna, li tkun iggib il-konsegwenzi msemmijin fl-artikolu 218, il-piena ta' prigunerija ghal zmien mhux izjed minn sitt xhur jew multa mhux izjed minn elfejn tliet mija u disgha u ghoxrin euro u sebgha u tletin centezmu (2,329.37); (c) jekk minhabba f'hekk xi hadd ibati offiza gravi mingħajr il-konsegwenzi hawn fuq imsemmija, il-piena ta' prigunerija ghal zmien mhux izjed minn tliet xhur jew multa mhux izjed minn elf mija u erbgħa u sittin euro u disgha u sittin centezmu (1,164.69); (d) f'kull kaz iehor, il-piena ta' prigunerija ghal mhux izjed minn tliet*

u nuqqas ta' tharis ta' regolamenti". Ma tezisti l-ebda spjegazzjoni tat-termini "*nuqqas ta' hsieb u traskuragni*"; madanakollu dawn generalment huma mehudin li jfissru bhala nuqqas ta' attenzjoni u ta' tehid ta' prekawzjonijiet li kienu mistennija f'cirkostanzi partikolari. Fir-rigward tat-termini "*nuqqas ta' hila fl-arti u professjoni tieghu*" u "*nuqqas ta' tharis ta' regolamenti*", l-implikazzjoni ta' dawn il-frazzjonijiet huma pjuttost cari u ma jhallu lok tal-ebda interpretazzjoni. Sakemm l-agir negligenti ma jinkwadrix ruhu taht xi wahda mill-parametri stabbiliti minn dawn l-artikoli tal-ligi, persuna ma tkunx tista` tigi misjuba hatja ta' negligenza ghal dak li ghandu x'jaqsam mal-azzjoni kriminali. Inoltre tali agir negligenti jrid ikun per forza wassal sabiex giet arrekata hsara lill-persuna jew inkella xi proprjeta`. Dan ghaliex fl-artikoli 225, 226 u l-artikolu 328, il-hsara lill-persuna jew lill-proprjeta` hija indikata bhala wahda mill-elementi kostituttivi tar-reat.

Il-Kodici taghna huwa bbazat fuq il-Kodici Taljan tal-1889. Fil-kummentarju tad-disposizzjonijiet relattivi ghal negligenza ta' dan il-Kodici, awturi Taljani dejjem qiesu li ghandu jigi applikat it-test suggettiv.⁴ Jekk wiehed iqis it-termini wzati fil-ligi taghna u cioe` "*nuqqas ta' hsieb u traskuragni*", wiehed jista' jinnota li dawn huma termini li qeghdin jirreferu direttament ghall-attitudni soggettiva ta' min ikun hati tar-reat. Huwa necessarju ghalhekk li wiehed jindika

xhur jew il-multa jew il-pieni tal-kontravvenzjonijiet: Izda fil-kazijiet imsemmijin fil-paragrafu (d), hlief meta l-hsara tkun kagunata fi proprjeta` pubblika, jistghu jittiehdu procedimenti biss bil-kwerela tal-parti offiza."

⁴ Ara Impallomeni, Vol III, pg 1662

jekk ic-cirkostanzi partikolari tal-kaz kinux jippermettu lill-persuna involuta li tintebah bil-konsegwenzi tal-agir taghha.

Il-parti operattiva u essenzjali tal-akkuza li giet dedotta fil-konfront tal-imputat hija li kkaguna l-mewt ta' Vincenzo Giordmaina fis-7 ta' Mejju, 2016 fit-tmienja u nofs ta' filghodu (8.30 am) gewwa Vjal il-Haddiem, Rabat, Malta *"b'nuqqas ta' hsieb, bi traskuragni, jew b'nuqqas ta' hila fl-arti jew professjoni tieghu, jew b'nuqqas ta' regolamenti"*. Il-gurista Sir Anthony Mamo, fin-Noti tieghu, jispjega illi ghalkemm il-frazzjiet *"nuqqas ta' hsieb"* u *"traskuragni"* m'humiex moghtija definizzjoni mil-ligi pero jkompli jghid li *"it is clear that by them the law means generally the absence of such care and precautions as it was the duty of the defendant to take in the circumstances"*⁵.

Il-Professor Mamo jkompli jsostni li, *"the essence of negligence is made to consist in the "possibility of foreseeing" the event which has not been foreseen"*⁶. Sabiex jenforza t-tezi tieghu, Mamo jaghmel referenza ghat-taghlim ta' Francesco Carrara, u jikkwotah kif segwenti - *"Il non aver previsto la conseguenza offensiva sconfinata la colpa dal dolo. Il non averla potuto prevedere, sconfinata il caso dalla colpa"*⁷.

Antolisei, fil-ktieb tieghu *Manuale di Diritto Penale (Parte Generale)*, jaghmel ukoll referenza ghal Carrara, u jghid hekk:

"Secondo la dottrina tradizionale che vanta origini antichissime e in questi ultimo tempi torna a prevalere, la colpa consiste nella prevedibilita' del risultato non voluto. Scrisse il Carrara:

⁵ *Lectures in Criminal Law, Vol 1, pg 69*

⁶ *ibid, pg 67 (sottolinear fit-test originali)*

⁷ *ibid, pg 68 (sottolinear fit-test originali)*

La colpa si definisce la volontaria omissione di diligenza nel calcolare le conseguenze possibili e prevedibili del proprio fatto. Dicesi conseguenza prevedibile, perche' l'essenza della colpa sta nella prevedibilita'".⁸

Din hija t-tezi li dejjem giet accettata mill-Qrati taghna. Fis-sentenza tal-Qorti tal-Appell Kriminali fl-ismijiet *Il-Pulizija vs Richard Grech*⁹ gie deciz li jekk il-prudenza tikkonsisti billi persuna taghmel dak li hu ragonevolment mistenni minnha sabiex tipprevjeni l-konsegwenzi dannuzi ta' ghemilha, l-imprudenza tikkonsisti billi wiehed jaghmel avventatament dawk l-affarijiet li hu messu ppreveda li setghu jikkagunaw hsara. It-traskuragni, mill-banda l-ohra, timplika certa non-kuranza, certu abbandun kemm intellettiv kif ukoll materjali. Fiz-zewg kazijiet, pero', il-hsara tkun prevedibbli, ghalkemm mhux prevista: kieku kienet ukoll prevista, wiehed ikun qieghed fil-kamp doluz b'applikazzjoni tad-dottrina tal-intenzjoni pozittiva indiretta.

Fl-istess sentenza gie ritenut dak li kien diga ntqal fis-sentenza *Il-Pulizija vs Perit Louis Portelli*¹⁰, fejn saret ukoll, fost l-ohrajn, referenza ghal Giorgi:

"Hu mehtieg ghall-kostituzzjoni tar-reat involontarju skond l-art. 239 [illum 225] tal-Kodici Penali illi tirrikorri kondotta volontarja negligenti – konsistenti generikament f'nuqqas ta' hsieb ("imprudenza"), traskuragni ("negligenza"), jew nuqqas ta' hila ("imperizia") fl-arti jew professjoni jew konsistenti

⁸ Antolisei, *Manuale di Diritto Penale (Parte Generale)* (Giuffre', 1997, 14 ed) 364

⁹ *Pulizija vs Richard Grech* (Appell Kriminali, 21/03/1996, De Gaetano)

¹⁰ *Pulizija vs Perit Louis Portelli* (Qorti Kriminali, 04/02/1961, Kollez XLV.iv.870, Flores)

specifikatament f'nuqqas ta' tharis tar-regolamenti – li tkun segwita b'ness ta' kawzalita' minn event dannuz involontarju.

Ghandu jigi premiss illi, ghall-accertament tal-htija minhabba f'kondotta negligenti, ghandu jsir il-konfront tal-kondotta effettivament adoperata ma' dik ta' persuna li s-sapjenza rumana identifikat mal-“bonus pater familias”, dik il-kondotta, cioe, illi fil-kaz konkret kienet tigi wzata minn persuna ta' intelligenza, diligenza u sensibilita' normali: kriterju li filwaqt li jservi ta' gwida oggettiva ghall-gudikant, ihallih fl-istess hin liberu li jivvaluta d-diligenza tal-kaz konkret. “La diligenza del buon padre di famiglia costituisce un criterio abbastanza indeterminato per lasciare al giudice gran liberta' di valutazione.” (Giorgi, Teoria delle Obbligazioni, II, 27, p. 46)”

Fis-sentenza moghtija mill-Qorti tal-Appell Kriminali fil-11 t'Ottubru 2012 fl-ismijiet : **Il-Pulizija v Peter Stroud**¹¹ il-Qorti ccitat dak illi qal **Archbold fil-Criminal Pleading, Evidence and Practice:**

“Where death results in consequence of a negligent act, it would seem that, to create criminal responsibility, the degree of negligence must be so gross as to amount to recklessness. . . Probably, of all the epithets that can be applied “reckless” most nearly covers the case ... but whatever epithet be used, and whether an epithet be used or not, in order to establish criminal responsibility, the facts must be such that . . . the negligence of

¹¹ Appell Kriminali Numru. 225/2011 deciz mill-Imhalled Michael Mallia

the prisoner went beyond a matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the state and conduct deserving punishment..."

Il-Qorti tirrileva li dak applikabbli fil-ligi Civili r-res ipsa loquitur (Il-fatti jittkellmu wehidhom) m'ghandiex applikazzjoni diretta fil-Ligi Kriminali izda kif intqal fil-kaz **Wilkinsons** f'para 5.52:

"the fact that res ipsa loquitur has no application to criminal law does not mean that the prosecution have to negative every possible explanation of a defendant before he can be convicted of careless driving where the facts at the scene of an accident are such that, in the absence of any explanation by the defendant, a court can have no alternative but to convict".

Kif tajjeb gie osservat fil-kawza **Giuseppa Debono -vs- Philip Camilleri et**, Appell Civili, 23 ta' Frar 1962:

"Hu obligu li kull driver jirregola s-sewqan skont il-kondizzjonijiet u c-cirkostanzi, bhal ma huwa l-hin ta' billejl, il-vizwali ostakolata bid-dlam u bix-xita, l-piz tal-vejikolu, l-istat tal-art, u rapporti ohra kontingenti; u hu anke dmir ta' driver li jzomm dik li komunement tissejjah 'a reasonable careful look-out' liema dmir igib mieghu li d-driver jara dak li jkun ragjonevolment vizibbli".

Illi huwa principju ben stabbilit li sewwieq ghandu l-obbligu li jzomm l-hekk imsejjah “*proper look out*”. Gie ritenut li:

*Hu dover ta’ driver to see what is in plain view... u li min ma jarax dak li ragonevolment ghandu jara jfisser li ma kienx qed izomm a proper lookout... Keeping a proper lookout means more than looking straight ahead – it includes awareness of what is happening in one’s immediate vicinity. A motorist should have a view of the whole road from side to side and, in the case of a road passing through a built up area, of the pavements on the side of the road as well.*¹²

Illi l-istess Qorti tal-Appell Kriminali rriteniet ukoll li

... biex nuqqas ta’ proper look out iwassal ghal responsabbilta’ penali l-Qorti trid tkun sodisfatta illi kieku ma kienx ghal dak in-nuqqas dik il-hsara x’aktarx kienet tigi evitata jew x’aktarx li ma kinitx issehh f’dak il-grad li effettivamente sehh...¹³

Illi dwar velocita’ m’hemmx dubju li *speed* jista’ jkun ecessiv anke jekk ma jiskorrix il-limiti regolamentari ghal dik il-lokalita’ izda jiskorri dawk dedatti mill-prudenza u mill-fatturi ambjentali tal-mument.¹⁴

Fil-kaz *R v L* [2011] Toulson LJ sostna:

"..it is ultimately for the jury to decide whether, considering all the evidence, they are sure that the defendant should fairly be

¹² **Pulizija vs Roderick Debattista**: Appell Kriminali deciz 26 ta’Mejju 2004

¹³ **Pulizija vs Joseph Grech**: deciza 6 ta’ Gunju 2003

¹⁴ **Pulizija vs Haden Vella** op cit

regarded as having brought about the death of the victim by his careless driving. That is a question of fact for them. As in so many areas, this part of the criminal law depends on the collective good sense and fairness of the jury."

Fil-kaz R v Hughes [2013] UKSC 56 intqal li:

"some act or omission in the control of the car, which involves some element of fault, whether amounting to careless or inconsiderate driving or not, and which contributes in some more than minimal way to the death of an individual."

Jekk tirrizulta xi negligenza kontributorja, din in-negligenza kontributorja ghandha tittiehed in kunsiderazzjoni biss fil-kalibrar tal-piena li ghandha tigi erogata.

Illi f' dan is-sens jikkommenta anke l-Antolisei:

Nell'ipotesi che con la colpa del soggetto attivo del reato concorra la colpa della persona offesa, da alcuni si parla di compensazione delle colpe, nel senso che la colpa dell'uno verrebbe annullata dalla colpa dell'altro. Così non si dovrebbe punire l'automobilista, se l'investimento sia dovuta anche alla colpa della vittima. Cio non puo' ammettersi, perche il principio della compensazione delle colpe, se vale nell'ambito del diritto privato, non ha diritto di cittadinanza nel campo penale. Qui la punizione e' reclamata da un interesse pubblico, quindi, dell'eventuale colpa della vittima il giudice terra' conto solo entro

*i limiti dei suoi poteri discrezionali per l'applicazione concreta della pena*¹⁵

Il-Qorti waqt li qiegħda tiddeciedi trid izzomm f'mohħha l-mistoqsija jekk l-agir tal-imputat kienx il-fattur li wassal għal dan l-incident stradali. Huwa jrid iwiegeb għal dan l-agir tiegħu indipendentement minn dak li seta' għamel haddieħor. Sabiex il-fattur kontributorju tat-terz jinnewtralizza r-responsabbilta' tal-imputat, dan il-fattur irid ikun dak li **unikament u esklussivament** iwassal għall-incident stradali. Fil-kamp penali, in-negligenza kontributorja ma teħlisx lis-sewwieq jekk ma tkunx il-kawza unika tas-sinistru akkadut.

L-Archbold fil-parti fejn jitkellem dwar **Causing Death by Careless, or Inconsiderate Driving**¹⁶ jgħid li:

The elements of this offence that the prosecution must prove are that:

- – *the defendant was the driver;*
- – *the vehicle was being driven;*
- – *the vehicle was a mechanically propelled vehicle;*
- – *the vehicle was being driven on a road or other public place;*
- – *the vehicle was being driven without due care and attention; or*
- – *the vehicle was being driven without reasonable consideration for other persons using the road or place;*

¹⁵ Ref **Manuale di Diritto Penale Parte Generale** 1989 Giuffrè pagna 332

¹⁶ Archbold Magistrates' Courts Criminal Practice 2017 pg. 1261 para 17-41

- – *the death of another person is caused by that driving.*

(ii) L-Artikolu 15(1)(a) tal-Kap. 65 – Sewqan bla kont, traskurat u perikoluz

L-artikolu 15(1)(a) tal-Kap. 65 jistabilixxi li:

“Kull min - (a) isuaq vettura bil-mutur jew vettura oħra mingħajr liċenza tas-sewqan jew vettura bil-mutur jew vettura oħra li ma jkollhiex liċenza, jew isuaqha b’nuqqas ta’ kont, bi traskuraġni, jew b’mod perikoluż, iżda ma tkun meħtieġa ebda liċenza dwar bicycle; jew (b) iġieghel, iħalli jew jippermetti li l-vettura bil-mutur jew vettura oħra tiegħu tinsaq minn persuna li ma jkollhiex il-liċenza meħtieġa biex issuaq vettura bil-mutur jew vettura oħra, ikun ħati ta’ reat u jeħel, meta jinsab hekk ħati, il-piena tal-multa ta’ mhux iżjed minn mitejn u tnejn u tletin euro u erbgħa u disgħin centezmu.”

Il-legislatur ma jagħtix definizzjoni ta’ x’jikkostitwixxi sewqan bla kont, traskurat jew perikoluz. Allura jispetta lill-gudikant li jagħti l-interpretazzjoni tiegħu u jagħmel tajjeb għal dan in-nuqqas tal-legislatur.

Ta’ ghajnuna f’ dan ir-rigward hija s-sentenza fl-ismijiet **Il-Pulizija vs Alfred Mifsud** tas-6 ta’ Mejju 1997 (Riportata f’Volum LXXXI.iv.57) deciza mill-Qorti tal-Appell Kriminali.

Il-Qorti kienet irriteriet li:

“Sewqan traskurat (negligent driving) hu kwalsiasi forma ta’ sewqan li jiddipartixxi minn, jew li ma jilhaqx il-livell ta’ sewqan mistenni minn sewwieq ragonevoli, prudenti, kompetenti u ta’ esperjenza. Bhala regola, il-ksur tar-regolamenti tat-traffiku kif ukoll in-non-osservanza tad-disposizzjonijiet tal-Highway Code li jincidu fuq il-mod jew il-kwalita’ ta’ sewqan ta’ dak li jkun, jammonta wkoll ghal sewqan traskurat.

Sewqan bla kont hu deskritt fis-subartikolu (2) tal-imsemmi artikolu 15 bhala sewqan ‘bi traskuragni kbira’. Din it-tieni ipotesi, jigifieri ta’ sewqan bla kont, tikkontempla s-sitwazzjoni fejn il-grad ta’ traskuragni tkun kbira u tinkludi l-kazijiet fejn wiehed deliberatament jiehu riskji fis-sewqan li m’ghandux jiehu minhabba l-probabbilita’ ta’ hsara li tista’ tirrizulta lil terzi, kif ukoll kazijiet fejn wiehed ikun indifferenti ghal tali riskji.

Sewqan perikoluz (dangerous driving) jirrikjedi li fil-kaz partikolari s-sewqan kien ta’ perikolu ghal terzi jew ghall-proprjeta’ taghhom. Biex wiehed jiddeciedi jekk kienx hemm dana l-perikolu, wiehed irid jara c-cirkostanzi kollha tal-kaz, inkluzi l-hin u l-lokalita’ ta’ l-incident u l-presenza o meno ta’ traffiku iehor jew ta’ nies ghaddejjin bir-rigel. Naturalment, sewqan f’kaz partikolari jista’ jaqa’ taht tnejn jew aktar minn dawn it-tliet forom ta’ sewqan, f’liema kaz japplikaw id-disposizzjonijiet tal-ligi u d-dottrina in materja ta’ konkors ta’ reati. Ghall-finijiet ta’ piena l-legislatur pogga s-sewqan bla kont u s-sewqan perikoluz fl-istess keffa. Ir-reat ta’ sewqan traskurat

*hu kompriz u involut f'dak ta' sewqan bla kont u f'dak ta' sewqan perikoluz (ara **The Police vs Charlotte Chamberlain**, Appell Kriminali, 21/5/96)".*

Il-kwistjoni jekk sewqan jistax jigi klassifikat bhala negligenti, bla kont jew perikoluz hija kwistjoni purament ta' "degree".

Fis-sentenza **Il-Pulizija vs Mario Gellel**, deciza fid-19 ta' Frar 2004 intqal li:

*"...kif gie ritenut minn din il-Qorti diversament preseduta, jekk sewqan hux (i) negligenti, jew (ii) bla kont jew (iii) perikoluz hi kwistjoni ta' 'degree' (App. **Krim. Pul. Vs Charles Bartolo**, 14.3.59, **Pol. vs Wilson** [Vol. XXXIX iv. 1018] u **Pul. vs Alfred Vella** [Vol. XLIV, p. 933]) u kif jidhru wara xulxin huma fl-iskala tas-serjeta' taghhom (App. **Krim. Pul. vs Hardingham**, 19.10.1963)."*

*Gie wkoll ritenut li biex jintegra ruhu r-reat ta' sewqan perikoluz, hemm bzonn ta' certu grad ta' 'recklessness' (App. **Krim. Pul. vs Charles Farrugia** [Vol. XXXIX iv.9 78]). 'Recklessness' giet definita bhala 'wilfully shutting one's eye' (App. **Krim. Pul. vs Joseph Aquilina**, 20.4.1963). Invece sewqan negligenti jew traskurat ifisser nuqqas ta' prudenza ordinarja li wiehed ghandu jadopera biex jevita s-sinistri stradali (App. **Krim. Pul. vs Antonio Spiteri** [Vol. XLIV iv. 892])".*

Illi l-Qorti tal-Appell fil-kawza fl-ismijiet : **Jesmond Bonello vs Giulio Baldacchino**, deciza fil-15 ta' Jannar 1997 qalet illi:

“.... f'materja ta' determinazzjoni ta' responsabbilta' ghall-incident awtomobilistiku l-Qorti ghandha dejjem tiggudika a bazi ta' dak li jirrizultalha li kienet il-kawza prossima w immedjata tieghu u tapplika ghalih ir-regoli li s-sewwieqa kienu obbligati josservaw u jobdu. F'materja ta' sewqan huma r-regolamenti u t-tharis u l-ksur taghhom li jaddebitaw ir-responsabbilita' u mhux l-ekwita' u gudizzju approssimattiv. Huma dawn ir-regolamenti li ghandhom jigu rigidament applikati. Dan biex jigi assigurat l-ordni, fir-rispett ta' l-istess regolamenti, li wahdu jista' jipprevjoni l-incidenti.” (ara wkoll il-kawza : **Amadeo Mea vs Carmelo Vella** (Appell Civili, 24 ta' Jannar 1966).

Il-Qorti tal-Magistrati (Malta) Gudikatura Kriminali kif preseduta fis-sentenza taghha : **Pulizija vs Clayton James Fenech**, deciza fit-23 ta' Mejju 2016 (Kaz. Nru. 1041/2011) qalet:

“f'materja ta' incidenti stradali il-provi indizzjarji, hafna drabi jista' jkunu siewja ferm, u xi drabi jistghu anki jkunu siewja ferm aktar minn dawok okulari li, kultant jistghu ikunu biss soggettivi u kultant, u x'aktarx iwa milli le, ikunu kuluriti b'dak li jissejjah 'esprit de voiture'. U mbaghad fejn ma jkunx hemm xhieda okulari li jistghu jiddeskrivu jew jispjegaw dak li gara, dawn il-provi indizzjarji, jistghu facilment u minghajr bzonn ta' hafna tigbid, jaghtu stampa cara tad-dinamika tal-incident. S'intendi, bhal kull prova indiretta ohra, jridu jkunu tali li jwasslu ghal konkluzzjoni univoka u li biha l-gudikant ikun

moralment konvint lill hinn minn kull dubju dettat mir-raguni mill-htija jew responsabbilta' kriminali tal-imputat jew akkuzat ... hu dover tal-Qorti li tara jekk mill-assjem tal-provi cirkostanzjali jirrizultax b'mod li jkun sodisfatt il-konvinciment morali tal-gudikant sal-grad rikjest fil-process penali tirrizultax htija ta' sewqan hazin."

Il-Qorti tal-Appell Kriminali b'mod partikolari l-wirt li hallielna dwar materji ta' traffiku l-Imhallel Joe Galea Debono u dan minhabba l-esperjenza twila li kellu bhala espert tat-traffiku qabel ma ssejjah biex iservi fil-Gudikatura huma gwida ghall-Qorti meta tkun qieghda tiddelibera dwar kazijiet bhal dan in ezami. L-Imhallel Galea Debono fil-kaz **il-Pulizija vs Luke Falzon**¹⁷ deciz fis-18 ta' Ottubru 2007 jelenka numru ta' decizjonijiet u t-tagħlim tagħhom:

Fil-kaz "**Il-Pulizija vs. Giuseppe Galdes**" ([3.5.1953] Kollez. Vol. XXXVII iv. p.1108) gie ritenut li:- *"sabiex ikun hemm il-perikolu hemm bzonn li jkun hemm xi haga aktar mis-semplici vjolazzjoni ta' normi regolamentari, imma ma hemmx bzonn li l-manuovra tikkonkretizza ruha f'konsegwenzi dizastruzi. Il-ligi in tema ta' sewqan perikoluz tikkuntenta ruha bil-perikolu potenzjali u ma tridx il-perikolu tradott fir-realta'."*

Fl-appell kriminali "**Il-Pulizija vs. Claudia Camilleri**" [15.11.1996.] intqal li "il-fatti - inkluzi l-provi indizjarji - "*circumstantial evidence*" jistghu jkunu tali li l-gudikant ihossu moralment konvint li jista' jigbed certi konkluzzjonijiet minn dawk il-fatti ...dak li fid-dottrina

¹⁷ Appell Kriminali Nru 287/07

Ingliza jissejhu “*presumptions of fact*”. These are all inferences which may be drawn by the tribunal of fact.”

Speed jista' jigi dedott mit-tul tal-*brake marks* (App. Krim. "Il-Pulizija vs. A.I.C. Mortimer" Vol. XL. iv. p.1282).

Stopping the carnage, caring for the victims

L-organizzazzjoni fir-Renju Unit **Brake - the road safety charity**¹⁸ ghaddejja b'kampanja bl-ghan “*stopping the carnage, caring for the victims*”. Biex twettaq l-ghan taghha ghaddejja b'kampanja ta' edukazzjoni ghall-pubbliku.

Road safety affects everyone. It affects whether people can go to the park or walk to school, elderly people can get to the shops, people can take up cycling to get to work or get fit, and families feel safe to get around their neighbourhoods.

For some people, it changes everything. Road crashes and casualties end lives too soon, rip families apart, leave communities reeling in shock and victims feeling alone and without hope.

Il-Qorti thoss li ghandha tikkwota dak li tghallem din l-organizzazzjoni li tibbaza l-argumenti fuq studji ufficjali varji dwar it-temi li jistghu jghinu fl-analizi li qeghda ssir biex il-Qorti tasal ghad-decizjoni taghha f'dan il-kaz.

Speed, speed limits and stopping distances

¹⁸ www.brake.org.uk

Speed is a critical factor in all road crashes and casualties. Driving is unpredictable and if something unexpected happens on the road ahead – such as a child stepping out from between parked cars – it is a driver’s speed that will determine whether they can stop in time, and if they can’t stop, how hard they will hit.

Hence reducing and managing traffic speeds is crucial to road safety. It has been estimated that for every 1mph reduction in average speeds, crash rates fall by an average of 5%¹⁹. Breaking the speed limit or travelling too fast for conditions is recorded (by police at crash scenes) as a contributory factor in more than one in four (27%) fatal crashes in the UK²⁰. This is arguably a gross underestimate, because whether or not a vehicle is judged to have been speeding or going too fast for conditions, the fact it was involved in a collision means it was going too fast to have stopped in time. In this way, speed is always a contributory factor, albeit often in combination with other causes: no one was ever killed by a stationary vehicle.

Research has found that British drivers who speed are nearly twice as likely to have been involved in a road crash²¹. Similarly, Dutch research found drivers with one speeding violation annually are twice as likely to crash as

¹⁹ Speed, Speed Limits and Accidents, Transport Research Laboratory, 1994

²⁰ [Reported Road Casualties Great Britain 2014](#), Department for Transport, 2015, table RAS50001

²¹ The Speeding Driver: Who, How and Why? Scottish Executive, 2003

those with none, and this increases further for drivers who commit repeated speed violations²².

Stopping distances

Stopping distances include the distance travelled while the driver notices a hazard and applies the brakes (thinking distance), and while the vehicle comes to a full stop from its initial speed (braking distance). Typical stopping distances for cars are shown below²³.

Typical Stopping Distances



The distances above are based on a reaction time of 0.67 seconds, which assumes the driver is alert, concentrating and not impaired. Driving when tired, distracted or impaired significantly increases reaction times, so the thinking distances above should be regarded as minimums.

²² [Crash involvement of motor vehicles in relationship to the number and severity of traffic offenses](#), SWOV, 2013

²³ Source: [Department for Transport](#), 2007

The braking distance depends on how fast the vehicle was travelling before the brakes were applied, and is proportional to the square of the initial speed. That means even small increases in speed mean significantly longer braking distances. Braking distances are much longer for larger and heavier vehicles, and in wet or icy conditions, so again these figures are a minimum.

Technology such as anti-lock brakes and stability control are designed to enable greater control over the vehicle, not shorten stopping distances. There may be a very small reduction in braking distance with modern technology, but not enough to significantly affect your overall stopping distance²⁴. Whatever technology a vehicle has, the basic fact remains that the faster you drive, the longer your stopping distance, and therefore the less chance you have of stopping in time in an emergency.

Impact speed

Driving faster not only lessens drivers' chances of being able to stop in time to avoid hitting someone or something. It also means if they can't stop in time, they will hit with greater impact. The greater the impact, the greater the chances of causing serious injury or death.

A vehicle travelling at 20mph (32km/h) would stop in time to avoid a child running out three car-lengths in front. The

²⁴ [FAQs: Anti-Lock Braking System](#), AAA Foundation for Traffic Safety, 2005

same vehicle travelling at 25mph (40km/h) would not be able to stop in time, and would hit the child at 18mph (29km/h). This is roughly the same impact as a child falling from an upstairs window. The greater the impact speed, the greater the chance of death. A pedestrian hit at 30mph has a very significant one in five chance of being killed. This rises significantly to a one in three chance if they are hit at 35 mph²⁵.

Is-Safe Drive Directory²⁶ tal-Awstralja jaghti taghrif dwar *stopping distance* ghal sewwieq ta' vettura fejn dan jiddependi fuq erba' fatturi "*Human Perception Time, Human Reaction Time, Vehicle Reaction Times u Vehicle Braking Capability*":

The human perception time; is how long the driver takes to see the hazard, and the brain realize it is a hazard requiring an immediate reaction. This perception time can be as long as $\frac{1}{4}$ to $\frac{1}{2}$ a second.

Once the brain realizes danger, the human reaction time is how long the body takes to move the foot from accelerator to brake pedal. Again this reaction time can vary from $\frac{1}{4}$ - $\frac{3}{4}$ of a second.

These first 2 components of stopping distance are human factors and as such can be effected by tiredness, alcohol, fatigue and concentration levels. A perception and reaction

²⁵ [Impact Speed and a Pedestrian's Risk of Severe Injury or Death](#), AAA Foundation for Traffic Safety, 2011

²⁶ www.sdt.com.au

time of 3 or 4 seconds is possible. 4 seconds at 100 km/hr means the car travels 110 metres before the brakes are applied.

Once the brake pedal is applied there is the vehicles reaction time which depends on the brake pedal free-play, hydraulic properties of the brake fluid and working order of the braking system.

This is why the tailgating car usually cannot stop, when the brake light came on in the car in front, this driver had already completed the perception, human and vehicle reaction periods. The following driver was perhaps 1 second too late in applying the brakes. At 100km/hr the car required 28 metres further to stop.

The last factor that determines the total stopping distance is the cars braking capability which depends on factors such as;

- the type of braking system,
- brake pad material,
- brake alignment,
- tyre pressures,
- tyre tread and grip,
- vehicle weight,
- suspension system,

- the co-efficient of friction of the road surface,
- wind speed,
- slope of road,
- surface smoothness
- the braking technique applied by the driver.

KONSIDERAZZJONIJIET LEGALI DWAR IL-PIENA

Illi in linea generali jibda biex jinghad li:

l-piena m'ghandiex isservi bhala xi forma ta' vendikazzjoni tas-socjeta` fil-konfront tal-hati. Il-piena ghandha diversi skopijiet. Wiehed minnhom huwa sabiex jigi ripristinat it-tessut socjali li jkun gie mcarrat bil-ghemil kriminali ta' dak li jkun. Taht dan l-aspett jassumu importanza, fost affarijiet ohra, kemm ir-rizarciment tad-dannu da parti tal-hati kif ukoll ir-riforma tal-istess hati. Skop iehor tal-piena huwa dak li tigi protetta s-socjeta`. Dan l-iskop jitwettaq kemm billi fil-kaz ta' persuni li b'ghemilhom juru li huma ta' minaccja ghas-socjeta` dawn jinzammu inkarcerati u ghalhekk barra mic-cirkolazzjoni, kif ukoll billi, fil-kaz ta' reati gravi, is-sentenza tibghat messagg car li jservi ta' deterrent generali. Il-Qrati ta' gustizzja kriminali dejjem iridu jippruvaw isibu l-bilanc gust bejn dawn u diversi skopijiet ohra tal-piena.²⁷

²⁷ Ref Ir-Republika ta' Malta vs Rene sive Nazzareno Micallef: Appell Kriminali deciz 28.11.2006.

Illi c-cirkostanzi ta' kull kaz huma partikolari ghal dak il-kaz u normalment ivarjaw radikalment mic-cirkostanzi ta' kull kaz iehor. Huwa impossibbli ghal-legislatur li jipprevedi dawn ic-cirkostanzi kollha u, a priori, jistabilixxi (ghal kull reat) piena specifika ghal kull sensiela ta' cirkostanzi differenti li fihom jista' jitwettaq dak l-istess reat.

Illi huwa propju ghalhekk illi ghal kull reat il-Ligi ma tistipulax piena fissa imma tistipula minimu u massimu; jispetta lill-Qorti biex fid-diskrezzjoni taghha, u entro dawk il-parametri, teroga dik il-piena permezz ta' liema, skont ic-cirkostanzi ta' kull kaz, tipprova ssib dak il-bilanc gust bejn d-diversi skopijiet li ghandhom jintlahqu.

Illi dwar il-varji modi kif il-Qorti tista' titratta ma' persuna misjuba hatja ta' xi reat u x'evalwazzjoni ghandha ssir biex jigi stabbilit liema minn dawn il-modi jservi l-aktar lill-gustizzja, kellha l-opportunita tippronunzja ruhha l-Qorti ta' l-Appell Kriminali. Fis-sentenza mghotija fil-kawza **Il-Pulizija vs Maurice Agius**²⁸ dik il-Qorti qalet hekk:

Huwa car...., li l-ewwel haga li qorti trid tiddecidi hi jekk il-kaz jimmeritax piena ta' prigunerija, b'mod li jigu eskluzi (jekk kienu talvolta applikabbli u mhux aprioristikament eskluzi mill-ligi stess) mizuri bhal ordinijiet maghmula taht l-Att dwar il-Probation jew multa. Jekk jigi stabbilit, tenut kont tac-cirkostanzi kollha, li l-kaz kien jimmerita prigunerija, il-gudikant irid jghaddi ghat-tieni stadju, u cioe` biex jiddetermina t-tul ta' tali

²⁸ Deciza fit-13 ta' Novembru 2009.

prigunerija. Hawn ukoll il-gudikant ma jridx joqghod ihares lejn is-subartikolu (1) tal-Artikolu 28A u jipprova jara kif ibaxxi l-piena biex igibha ma teccedix is-sentejn. Il-piena ta' prigunerija trid tkun dik il-piena li oggettivament taghmel ghall-kaz, indipendentement minn jekk tkunx tista' tigi sospiza o meno. Huwa biss jekk il-piena hekk oggettivament stabbilita ma tkunx ta' aktar minn sentejn prigunerija li l-gudikant jghaddi ghat-tielet stadju, u cioe`biex jikkonsidra jekk ghandux jissospendi o meno tali piena (ghal periodu ta' mhux anqas minn sena u mhux izjed minn erba' snin). Huwa evidenti li l-ewwel haga li trid issir f'dana t-tielet istadju hi li wiehed jara jekk hemmx xi ostakolu statutorju ghal tali sospensjoni; jekk ma hemmx tali ostakoli, allura, u allura biss, tqum il-kwistjoni ta' jekk il-piena ta' prigunerija ghandhiex tigi sospiza u, jekk jkun jidhrilha li l-kaz ikun wiehed li fih sentenza ta' prigunerija ghandha tigi sospiza, x'ghandu jkun il-periodu operattiv taghha (cioe` ghal kemm zmien tibqa' hekk sospiza fuq ras il-hati).

Il-Qorti tirreferi ghal dak dikjarat mill-*Archbold Magistrates' Courts Criminal Practice 2017*:

Sentencing can range from a relatively complex task to a relatively straightforward one. At its most difficult, it is a complex balance in which conflicting goals have to be addressed.

Section 142²⁹ of the 2003 Act requires every court to have regard to five specified purposes – punishment, reduction of crime,

²⁹ Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing –

*reform and rehabilitation, protection of the public and the making of reparation to those affected by the offence.*³⁰

Kif qal Lord Justice Lawton fil-kawza **R v. Sargeant**³¹:

“Society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass. The courts do not have to reflect public opinion. On the other hand they must not disregard it. Perhaps the main duty of the court is to lead public opinion.”

L-Archbold meta jitkellem dwar il-linji gwida dwar sentenzi marbuta ma' incidenti tat-traffiku li jwasslu ghall-imwiet jikkwota mid-dibattitu tal-House of Lords fejn intqal:

“... it will mean that the families of those killed by careless drivers feel that the law is adequate to deal with the circumstances and that the justice system is on their side so that if, in all the circumstances, a court feels that custody is appropriate, it will be available. Of course, there will be

-
- (a)the punishment of offenders,
 - (b)the reduction of crime (including its reduction by deterrence),
 - (c)the reform and rehabilitation of offenders,
 - (d)the protection of the public, and
 - (e)the making of reparation by offenders to persons affected by their offences.

³⁰ Archbold Magistrates' Courts Criminal Practice 2017 pg. 1628: 22-1

³¹ (1974) 60 Cr.App. R. 74.

instances – probably the majority – where custody is not considered to be the most appropriate penalty.”³²

Fil-kaz Il-Pulizija vs. Alfonso Abela, deciza mill-Qorti tal-Appell³³
fl-10 ta’ Marzu 2005 intqal:

“din il-Qorti fl-ewwel lok ma tarax li s-sentenza ta’ prigunerija sospiza hija mizura opportuna w indikata fil-kaz ta’ offizi involontarji f’incidenti tat-traffiku, ghaliex l-ghan ta’ tali mizura jew sanzjoni, fil-fehma ta’ din il-Qorti, hu li, fil-waqt li tati opportunita’ ohra lill-kriminal qabel ma tibghatu l-habs, proprju li zzomm lill-kriminal milli jerga’ jaqa’ u jikkommetti xi tip ta’ delitt bhas-serq, drogi , frodi li hu jkun abitwat fih u mhux biex ma jergax jahbat b’karozza jew itajjar li xi hadd involontarjament , esperjenza li oovjament hadd zgur ma jkun ihobb jew jixtieq li jerga’ jirripeti.

Inoltre il-Qorti thoss li l-piena karcerarja hija indubbjament wahda sproorzjonata meta si tratta ta’ incident stradali involontarju fejn ma jirrikorru l-estremi tas-sewqan bla kont jew dawk tas-sewqan perikoluz. Din il-Qorti thoss li f’kaz ta’ sewqan traskurat jew f’ kaz ta’ ksur tar-regolamenti tat-traffiku piena pekunjarja hija ferm aktar addattata w xierqa.”

Din il-Qorti se telenka numru ta’ decizjonijiet li nghataw mill-Qrati taghna fejn jidhlu incidenti tat-traffiku b’konsegwenzi serji:

³² Sentencing Guidelines Council para 17-45

³³ Appell Kriminali Nru. 253/04 deciz mill-Imhalled Joe Galea Debono

Il-Pulizija vs Kevin Ellul, deciza mill-Qorti tal-Appell fis-6 ta' Frar 2013 – il-Qorti tal-Magistrati imponiet sentenza sospiza, u nonostante li l-Avukat Generali kien ukoll intavola appell, il-Qorti ikkonfermat sentenza sospiza *“ghalhekk din il-Qorti ma tara l-ebda raguni sabiex toarja n-natura tal-piena li l-ewwel Qorti kienet iddecidiet li tinfliggi”*³⁴.

Il-Pulizija vs Alexander Portelli, deciza mill-Qorti tal-Appell Kriminali nhar is-26 ta' Frar 2001 – l-imputat gie kkundannat multa ta' elf lira Maltin (Lm1,000) u l-imhalef sedenti fis-sentenza ghamel kumment fis-sens li fid-dawl tac-cirkostanzi tal-kaz in kwistjoni *“l-ewwel Qorti kienet ukoll korretta meta ma mponietx piena karcerarja.”*

Il-Pulizija vs David Rigglesford, deciza mill-Qorti tal-Appell nhar il-31 ta' Mejju 2005³⁵ – il-Qorti bidlet piena ta' sentenza sospiza ghal multa *“in cases of involuntary bodily harm or homicide, the awarding of suspended prison sentences – particularly to foreigners who like appellant live away from these Islands – is not the best and most suited punishment in the circumstances, as such suspended sentences are mainly intended to ensure the rehabilitation of the offender and to deter him from relapsing – a very unlikely event in case of involuntary offences and accidents - this Court feels that this ground of appeal should be upheld and that the sentence of imprisonment – albeit suspended for two years – should be altered to a pecuniary punishment.”*

³⁴ Appell Kriminali Numru. 406/2010 deciz mill-Imhalef David Scicluna

³⁵ Criminal Appeal Number. 6/2007 decided by Hon. Mr. Justice Joe Galea Debono

Il-Pulizija vs Roderick Cauchi, deciza mill-Qorti tal-Magistrati nhar l-1 ta' Awwissu 2008 - il-Qorti imponiet piena karcerarja ta' sena sospiza ghal tlett snin.

Il-Pulizija vs Geoffrey Fenech, deciza mill-Qorti tal-Magistrati nhar l-10 ta' Novembru 2009 - il-Qorti imponiet 20 xahar prigunerija sospiza ghal tlett snin.

Il-Pulizija vs Charlo Farrugia, deciza mill-Qorti tal-Magistrati nhar is-27 ta' Marzu 2009 - il-Qorti imponiet multa ta' Euro 2,500.

Il-Pulizija vs Joseph Schembri deciza mill-Qorti tal-Magistrati (Ghawdex) fil-5 ta' April 2016 il-Qorti imponiet multa ta' Euro 4,000.

Il-Pulizija vs Paul Camilleri deciza mill-Qorti tal-Magistrati (Ghawdex) fit-30 ta' Gunju 2016 l-hati kien ikkundannat sentejn habs sospizi ghal erba' snin u Euro 3,000 multa.

Il-Pulizija vs Paul Borg deciza mill-Qorti tal-Magistrati (Ghawdex) fit-8 ta' Novembru 2016 l-hati kien ikkundannat Euro 4,000 multa u 250 siegha xoghol fil-komunita'.

Il-Pulizija vs Clive Tanti decizja mill-Qorti tal-Magistrati (Malta) fil-15 ta' Dicembru 2016 l-hati kien ikkundannat Euro 5,000 multa u Ordni ta' Servizz fil-Komunita` ta' erba' mija u tmenin (480) siegha.

Din il-Qorti tinnota illi m'hemm xejn x'juri illi l-imputat hu xi minaccja ghas-socjeta`, l-anqas li hemm bzonn ta' xi tip ta' riforma fil-karattru tieghu jew li hu xi persuna ta' kondotta vjolenti. Huwa ragel tal-familja, mid-dar ghax-xoghol, mix-xoghol ghad-dar u

jipprova jzomm familja maghquda. L-incident kien wiehed sfortunat hafna li halla impatt qawwi fuqu ghaliex qatt ma basar li se jghaddi minn kaz bhal dan. Huwa jisghobbih tal-akkadut u skuza ruhu waqt is-smiegh tallum ghall-konsegwenzi li soffrew il-graba tal-vittma.

Il-kondotta tieghu hija wahda netta.

Fis-sentenza **Ir-Repubblika ta' Malta v. Rene` sive Nazzareno Micallef**, intqal li wiehed mill-iskopijiet tal-piena hu li fil-kaz ta' reati gravi "is-sentenza tibghat messagg car li jservi ta' deterrent generali."

Fil-fatt il-messagg li jrid jintbaghat f'kazijiet bhal dak in ezami hu li l-hajja mhijiex irhisa u li t-tehid ta' hajja anke involontarjament ghandu jitqies bhala xi haga serja u gravi.

Il-Qorti hija tal-fehma li ghandha tikkunsidra **piena alternattiva ghal dik ta' rigunerija effettiva.**

DECIDE:

Ghal dawn il-motivi, il-Qorti wara li rat l-Artikolu 255(1) tal-Kap. 9 u Artikolu 15(1)(a)(2)(3) tal-Kap 65 tal-Ligijiet ta' Malta, issib lill-imputat Anthony Pace hati tal-imputazzjonijiet addebitati fil-konfront tieghu izda fejn jidhol sewqan il-Qorti qieghda ssibu hati biss ta' sewqan traskurat u tikkundannah sentejn prigunerija pero` ai termini ta' l-artikolu 28A tal-Kap. 9 tal-Ligijiet ta' Malta din il-piena m'ghandiex tibda ssehh hlief

jekk, matul il-perijodu ta' tliet (3) snin millum, l-imsemmi Anthony Pace jikkommetti reat iehor li ghalih hemm il-piena ta' prigunerija u multa komplessiva ta' erbat'elef ewro (€4,000) u tiskwalifikah milli jkollu jew jottjeni licenzja tas-sewqan ghal-perjodu ta' sitt (6) xhur millum.

Il-Qorti spjegat lill-hati bi kliem car l-import ta' din is-sentenza u qaltlu x'inhuma l-konsegwenzi jekk huwa jaghmel reat fi zmien operattiv ta' din id-decizjoni.

Stante illi l-imputat ammetta u instab hati tal-imputazzjonijiet migjuba kontrih, il-Qorti tilqa' t-talba tal-Prosekuzzjoni ai termini tal-Artikolu 533 tal-Kap. 9 tal-Ligijiet ta' Malta ghall-hlas tal-esperti mahtura f'dawn il-proceduri u tikkundanna lil Anthony Pace biex ihallas elfejn, hames mija u tnejn u erbghin ewro u erbatax -il centezmu (€2,542.14).

Dr. Joseph Mifsud
Magistrat