



Qorti tal-Appell Kriminali
Onor. Imhallef Dr. Edwina Grima LL.D.

Appell Nru: 472 / 2016

Il-Pulizja
Spettur Paul Vassallo
Vs
Christian Grech

Illum 27 ta' April, 2017,

Il-Qorti,

Rat l-akkuzi dedotti kontra l-appellant Christian Grech detentur tal-karta tal-identita Maltija bin-numru 615281 M, akkuzat quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli:

F' dawn il-Gzejjer, fil-5 ta' Mejju 2007 u fix-xhur ta' qabel, b' diversi atti ukoll jekk maghmulin fi zminijiet differenti izda li kisru l-istess dispozizzjoni tal-ligi, u li gew maghmula b' rizzoluzzjoni wahda;

1. Ghamel att ta' money laundering billi:

- a) Ikkonverta jew ittrasferixxa proprjeta' meta kien jaf li dik il-proprjeta' kienet direttament jew indirettament inkisbet, jew mirrikavat ta' attivita kriminali jew rninn att ta' partecipazzjoni f' attivita' kriminali, ghall-iskop ta' jew skopijiet ta' habi jew wiri haga b' ohra ta' l-origini tal-proprjeta' jew ta' ghoti ta' ghajnuna lil xi persuna jew persuni nvoluti jew koncernati f' attivita' kriminali;

- b) Heba jew wera haga b' ohra tal-veni xorta, provenjenza, lok, dispozizzjoni, moviment ta' jeddijiet rigward, fi jew fuq proprjeta', meta dan kien jaf li dik il-proprjeta' kienet inkisbet direttament jew indirettament minn attivita' kriminali jew minn atti jew atti ta' partecipazzjoni f' attivita' kriminali;
- c) Akkwista proprjeta' meta kien jaf li l-istess proprjeta' kienet inkisbet jew originat direttament jew indirettament minn attivita' kriminali jew minn atti jew atti ta' partecipazzjoni f' attivita' kriminali;
- d) Bir-ritensjoni minghajr skuza ragonevoli ta' proprjeta' meta kien jaf li l-istess proprjeta' kienet inkisbet jew originat direttament jew indirettament minn attivita' kriminali jew minn atti jew atti ta' partecipazzjoni f' attivita' kriminali;
- e) Ittenta li jaghrnel l-hwejjeg jew attivitajiet illegali fuq imsemmija;
- f) Agixxa bhala komplici fit-tifsir ta' l-artikolu 42 tal-Kodici Kriminali rigward xi wahda rnill-hwejjeg jew attivitajiet definiti fis-sub-paragrafi (a), (b), (c), (d) u (e) ta' hawn fuq;

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

Il-Qorti giet gentilment mitbuba, li tipprobixxi lill-akkuzat Christian Grech milli jiftrasferixxi, jaghti b' rahan jew xort' ohra jiddisponi minn xi proprjeta' mobbli jew immobbli, ai termini tal-artikolu 5 (1) (b) tat-Att kontra l-Money Laundering, Kap 373 tal-Ligijiet ta' Malta.

Il-Qorti giet gentilment mitluba ukoll, sabiex tinnomina espert sabiex jaghmel inventarju tal-proprjeta' kollha skond kif deskritta fl-artiklu 2 tat-Kap 373 tal-Ligijiet ta' Malta li jappartjenu lill-imsemmi Christian Grech.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali, tas-6 t' Ottubru, 2016, fejn il-Qorti wara li rat l-Artikolu 18 tal-Kap. 9 tal-Ligijiet ta' Malta kif ukoll l-Artikolu 3 tal-Kap. 373 tal-Ligijiet ta' Malta l-Qorti sabet lill-imputat Christian Grech hati tal-imputazzjonijiet kollha migjuba fil-konfronti tieghu kif minnu ammessi u ikkundannatu tlett (3) snin prigunerija u multa ta' tnejn u tletin elf Ewro (€32,000).

Rat ir-rikors tal-appell tal-appellant Christian Grech, pprezentat fir-registru ta' din il-Qorti fit-18 ta' Ottubru, 2016, fejn talab lil din l-Onorabbli Qorti joghgobha tirrifirma s-sentenza appellata billi tikkonferma dik il-parti fejn hu gie misjub hati tal-imputazzjonijiet kollha migjuba kontra tieghu, fil-waqt li thassar dik il-parti fejn huwa gie kkundannat tlett (3) snin prigunerija u multa ta' tnejn u tletin elf Ewro (€32,000) u minflok tinfliggi piena aktar gusta u ekwa ghall-kaz.

Rat l-atti u d-dokumenti kollha.

Rat il-fedina penali aggornata tal-appellat esebita mill- prosekuzzjoni fuq ordni tal-Qorti.

Rat illi l-aggravju huwa car u manifest u jikkonsisti fis-segwenti:

Illi l-piena erogata mill-Ewwel Qorti kienet wahda eccessiva u li ma' taghmilx tajjeb ghall-fatti u cirkostanzi partikolari sottostanti ghal dan il-kaz liema fatti u cirkostanzi kienu tali illi jimmillitaw favur l-imposizzjoni ta' piena ferm aktar miti minn dik fil-fatt imposta.

Illi fl-umli fehma tal-esponent u bl-akbar dovut rispett lejn l-Ewwel Qorti piena aktar miti zgur li kienet dik applikabbli li kieku l-Ewwel Qorti ikkunsidrat l-argumentazzjonijiet mressqa mid-difiza fil-kors tas-sottomissjonijiet finali maghmula quddiemha izda sfortunatament kif inhu ben evidenti minn qari tas-sentenza appellata dawk is-sottomissjonijiet ma'

jsibu ebda riskontru fl-istess gudizzju, fatt dan illi minnu nnifsu jaghti x' jithern li lanqas biss gew ikkunsidrati mill-Ewwel Qorti.

Illi in sostenn ma' dan l-ilment f' dan l-istadju l-esponent qieghed jissenjala s-segweni bhala l-kunsiderazzjonijiet illi kienu jiggustifikaw l-imposizzjoni ta' piena altenattiva u ferma aktar miti filwaqt li jirriserva li jimplifika ulterjurment fil-kors tat-trattazzjoni orali ta' dan l-appell:

- Il-gabra ta' giurisprudenza li giet kwotata mill-esponent fil-kors tas-sottmissjonijiet finali tieghu [u li kopja ta' liema giet ezebita in atti] liema giurisprudenza kienet turi li f' cirkostanzi ferm aktar gravi u serji l-piena erogata kienet wahda ferm aktar ridotta;
- Il-fatt illi l-ammont totali ta' flus trasferiti f' dan il-kaz kien ta' circa €31,000 u li dawn gew trasferiti fuq mhedda ta' oltre hames [5] snin li allura jfisser illi bhala medja gew trasferiti biss circa €5,000 kull sena tal-attivita. Dan il-fatt wahdu gja juri li l-attivita kriminuza f' dan il-kaz kienet wahda ferm zghira kuntrarajament ghal dak ritenut mill-Ewwel Qorti meta qalet li l-ammonti trasferiti kienu ammonti 'konsiderevoli'.
- Il-fatt illi mill-atti jirrizulta illi l-involviment tal-esponent kien wiehed zghir billi tabilhaqq huwa kien jibghat il-flus barra u mhux izzom il-qliegħ ghalih;
- Il-fatt illi bil-ligi applikabbli għall-kaz tieghu l-esponent setgha inghata piena ta' multa biss peress illi l-piena ta' prigunerija ma' kienetx mandatorja f' dan il-kaz;
- Il-fatt illi separatament li proceduri ohra l-esponent qieghed jaffacja akkuzi relatati mal-attivita ta' ghajxien mill-qliegħ tal-prostituzzjoni li allegatament kien ir-reat sottostanti għar-reati odjerni u

konsegwentment ghalhekk l-esponent potenzjalment qed jaffacja l-imposizzjoni ta' piena ulterjuri in konnessjoni mal-istess cirkostanzi;

- Il-fatt illi presenzjalment l-esponent diga qed jiskonta circa 20 sena prigunerija in konnessjoni ma' gudikati moghtija fil-konfront tieghu fi proceduri separati u ghalhekk konsegwentment l-imposizzjoni ta' 3 snin prigunerija ulterjuri f' dan il-kaz mhux biss ser ikunu inutilment zejda izda ser jistultiffikaw kull skop reali tal-piena billi ser isservi biss biex ixkekkel kull possibilta' ta' riforma tal-esponent filwaqt li is-socjeta in generali ma' tkun hadet xejn lura sabiex jigi ripristinat it-tessut socjali li setgha gie zventrat bl-azzjonijiet tal-esponent. Huwa ghalhekk illi l-esponent umilment jemmen illi bil-piena moghtija fil-konfront tieghu huwa kullhadd li ser issofri xi pregudizzju u zgur li mhux ser tkun saret gustizzja skond il-veru haqq.

Ikkunsidrat,

Illi l-uniku lanjanza li l-appellanti iqanqal kontra d-decizjoni impunjata hija marbuta mal-piena erogata mill-Ewwel Qorti billi fil-fehma tieghu din kienet wahda sproporzjonata mal-gravita tar-reat u dan meta huwa wehel terminu ta' tlett snin prigunerija u multa ta' €32000. Dan iktar u iktar meta wiehed iqies, fil-fehma ta'l-appellanti illi l-ammont ta' hasil ta' flus allegat kien ta' €31000.

Illi l-piena mahsuba fil-ligi ghar-reat tal-hasil tal-flus gie emendat f'ewg okkazzjonijiet, l-ewwel darba permezz ta'l-Att XXXI tal-2007 u t-tieni darba bl-Att VIII tal-2015. Illi allura l-piena applikabbli fil-konfront ta'l-appellanti hija dik li kienet vigenti fiz-zmien li sehh ir-reat u cioe' dik il-piena applikabbli mal-promulgazzjoni tal-Att kontra l-*Money Laundering*, billi l-Att XXXI ta'l-2007 dahal fis-sehh fil-31 ta' Dicembru 2007 u r-reat addebitat lill-appellanti gie kommess f'Mejju ta' dik is-sena. Illi allura fiz-zmien li sehh ir-reat il-piena applikabbli kienet dik mahsuba fl-artikolu 3 ta' dak iz-zmien li kien jipprovdi piena minghajr minimu izda ta' multa sa miljun lira Maltin jew prigunerija li ma jeccediex l-erbatax-il sena jew dik il-multa u prigunerija flimkien, biex b'hekk kull persuna akkuata bir-reat tal-hasil ta' flus kien ikun prosegwibbli dejjem quddiem il-Qorti Kriminali. Il-Qorti

madanakollu fl-ikkalibrar tal-piena ma tistax ma tqiesx illi illum meta ir-reat jkun prosegwibbli quddiem il-Qorti tal-Magistrati ir-reat igorr piena fil-minimu tieghu ta' sitt xhur prigunerija jew multa ta' mhux anqas minn €20000 jew il-prigunerija u il-multa flimkien, kif kienet *del resto* bl-emendi li dahhlu fis-sehh fl-ahhar ta'1-2007.

Issa kif inghad l-appellanti wehel kemm prigunerija kif ukoll multa ghal dan ir-reat. Iqies illi l-Ewwel Qorti ma haditx kont tas-sottomissjonijiet minnu maghmula rigwardanti il-piena u cioe:

1. L-ammont ta' flus trasferiti kien ta' €31000 fuq medda ta' hames snin biex b'hekk l-attivita kriminuza kienet wahda zghira ta' €5000 fis-sena.
2. l-involvement ta' l-appellanti kien wiehed minimu.
3. l-appellanti seta' inghata il-piena tal-multa biss.
4. l-appellanti qieghed jiffaccja proceduri separati in konnessjoni mal-attivita kriminali sottostanti.
5. l-appellanti diga' qieghed jiskonta piena ta' ghoxrin sena habs b'sentenza ohra mhux relatat ma' dan il-kaz u kwindi tlett snin ohra ta' prigunerija ser jkunu zejda u jistultifikaw l-iskop tal-imposizzjoni tal-piena u tar-riforma tal-hati.
6. hemm disparita fil-piena ma' sentenzi ohra marbuta mar-reat tal-hasil tal-flus fejn il-piena kienet ferm anqas.

Illi it-taghlim gurisprudenzjali jiggwida lill-qorti ta' revizjoni sabiex bhala regola ma tirrorpazzax il-piena moghtija mill-ewwel Qorti b'dik li kieku hija – cioe` din il-Qorti – kienet taghti f'dawk ic-cirkostanzi kemm-il darba ma jkunx jirrizulta li l-piena moghtija mill-ewwel Qorti kienet b'xi mod "*wrong in principle*" jew "*manifestly excessive*".

"...The principle nulla poena sine lege does not mean or imply that a Court of Criminal Justice has to go into any particular detail as to the nature and quantum of the punishment meted out, or, where the Court

has a wide margin of discretion with various degrees and latitudes of punishment, that it has to spell out in mathematical or other form, the logical process leading to the quantum of punishment. This is also the position in English Law. As stated in Blackstone's Criminal Practice 2004:

“Save where the statutory provisions mentioned below apply, there is no obligation on the judge to explain the reasons for his sentence. However, the Court of Appeal has encouraged the giving of reasons, and has indicated that that should certainly be done if the sentence might seem unduly severe in the absence of explanation...It has been held that failure by the sentencing court to give reasons when required to do so does not invalidate the sentence...although the failure may no doubt be taken into account by the appellate court should the offender appeal. Where the sentencer does give reasons and what he says indicates an error of principle in the way he approached his task, the Court of Appeal sometimes reduces the sentence even though the penalty was not in itself excessive. Similarly a failure by the judge to state expressly that he is taking into account any guilty plea, although contrary to [statutory provision], does not oblige the Court of Appeal to interfere with what is otherwise an appropriate sentence...”

As is stated in Blackstone's Criminal Practice 2004 (supra):

“The phrase ‘wrong in principle or manifestly excessive’ has traditionally been accepted as encapsulating the Court of Appeal's general approach. It conveys the idea that the Court of Appeal will not interfere merely because the Crown Court sentence is above that which their lordships as individuals would have imposed. The appellant must be able to show that the way he was dealt with was outside the broad range of penalties or other dispositions appropriate to the case. In more recent cases too numerous to mention, the Court of Appeal has used (either additionally or alternatively to ‘wrong in principle’) words

to the effect that the sentence was ‘excessive’ or ‘manifestly excessive’. This does not, however, cast any doubt on Channell J’s dictum that a sentence will not be reduced merely because it was on the severe side – an appeal will succeed only if the sentence was excessive in the sense of being outside the appropriate range for the offence and offender in question, as opposed to being merely more than the Court of Appeal itself would have passed.”

This is also the position that has been consistently taken by this Court, both in its superior as well as in its inferior jurisdiction.¹”

Illi l-appellanti b’mod ewlieni, jilmenta minn disparita fil-piena meta inqabbla ma’ sentenzi ohra li inghataw fil-konfront ta’ terzi misjuba hatja ta’l-istess reat bhal dak addebitat lill-appellanti. Din il-Qorti tqies qabel xejn illi huwa xi ffit jew wisq odjuz illi qorti ta’ revizjoni tvarja il-piena erogata meta din tkun wahda gusta u fil-parametri u dan ghaliex hemm xi disparita ma’ xi sentenza ohra simili. Dan ghaliex ic-cirkostanzi ta’ kull kaz huma differenti. Lanqas meta ikun hemm zewg ko-akkuzati misjuba hatja ta’l-istess reati ma jinhass illi ghandu ikun hemm revizjoni fejn hemm disparita fil-piena, ahseb u ara meta si tratta ta’ kawzi kompletament estranji ghal xulxin bhal fil-kaz in dizamina. Dak li ghandha tara l-qorti hija jekk l-piena inflitta ghalkemm fil-parametri tal-ligi kenitx eccessiva u ingusta fic-cirkostanzi tal-kaz.

Illi l-Blackstone ighid hekk fir-rigward: (*Blackstone's Criminal Practice*, 2001 (para. D22.47 a fol. 1650)

“A marked difference in the sentences given to joint offenders is sometimes used as a ground of appeal by the offender receiving the heavier sentence. The approach of the Court of Appeal to such appeals has not been entirely consistent. The dominant line of authority is represented by Stroud (1977) 65 Cr App R 150. In his judgment in that case, Scarman LJ stated that disparity can never in itself be a sufficient ground of appeal - the question for the Court

¹ The Republic of Malta vs v. Kandemir Meryem Nilgum and Kucuk Melek tal-25 ta’ Awissu 2005

of Appeal is simply whether the sentence received by the appellant was wrong in principle or manifestly excessive. If it was not, the appeal should be dismissed, even though a co-offender was, in the Court of Appeal's view, treated with undue leniency. To reduce the heavier sentence would simply result in two rather than one, over-lenient penalties. As his lordship put it, 'The appellant's proposition is that where you have one wrong sentence and one right sentence, this court should produce two wrong sentences. That is a submission which this court cannot accept'. Other similar decisions include Brown [1975] Crim LR 177, Hair [1978] Crim LR 698 and Weekes (1980) 74 Cr App R 161.... However, despite the above line of authority, cases continue to occur in which the Court of Appeal seems to regard disparity as at least a factor in whether or not to allow an appeal (see, for example, Wood (1983) 5 Cr App R (S) 381). The true position may be that, if the appealed sentence was clearly in the right band, disparity with a co-offender's sentence will be disregarded and any appeal dismissed, but where a sentence was, on any view, somewhat severe, the fact that a co-offender was more leniently dealt with may tip the scales and result in a reduction.

Illi ibda biex f'dan il-kaz l-appellanti irregistra ammissjoni ghall-akkuzi addebitati lilu u dan wara li inhareg il-kontro-ordni mill-Avukat Generali ghalkemm kienet giet mahruga l-Att ta'l-Akkuza fil-konfront tieghu. B'hekk l-appellanti seta' jigi ipprocessat mill-Qorti tal-Magistrati u ghalhekk assoggettat ghal piena ferm inqas minn dik li kien jircevi li kieku hu kien gie ipprocessat quddiem il-Qorti Kriminali. Illi ghalhekk il-piena ta' tlett snin prigunerija, meta wiehed iqies illi giet irregistrata ammissjoni mill-appellanti u dan wara li inhareg il-kontro-ordni mill-Avukat Generali ma kenitx wahda certament fil-minimu taghha meta din giet ukoll abbinata ma' multa ta' €31000. Illi ghalhekk din il-Qorti ma tarax illi kienu jezistu daww ic-cirkostanzi fil-ligi li kienu jimmeritaw l-imposizzjoni kemm tal-prigunerija kif ukoll tal-multa meta fil-maggior parti tal-kazijiet li jikkoncernaw akkuzi dwar hasil tal-flus l-piena tkun wahda mit-tnejn u mhux abbinati flimkien. Illi din il-Qorti, madanakollu, ma tistax taqbel mal-fehma ta'l-appellanti li jirraguna illi gjaldarba huwa diga qieghed jiskonta l-piena ta' ghoxrin sena

priginerija, allura piena restrittiva tal-liberta ma twassalx ghal retribuzzjoni lejn is-socjeta. Illi kull persuna ghandha twiegeb ghall-eghmil kriminuz taghha sew jekk b'piena pekunjarja sew jekk b'piena restrittiva tal-liberta kif ukoll jekk ic-cirkostanzi hekk jimmeritaw piena li timmira lejn ir-riforma taghha. F'dan il-kaz din il-Qorti ma tarax illi hemm xi cirkostanzi li jistghu jwasslulha tinfliggi piena bhal din ta'l-ahhar u cioe' wahda li ghandha fil-hsieb taghha ir-riforma tal-hati u dan tenut kont illi l-appellanti huwa prezentement inkarcerat ghal perijodu twil ta' zmien u allura huwa ghandu ifittex ir-riforma tieghu fil-habs stess fejn juza dan il-perijodu ta' zmien b'mod pozittiv bl-opportunitajiet kollha li jinghataw fil-Facilita Korrettiva ta' Kordin lid-detenuiti taghha ghal min jaghzel li juzufruwixxi ruhu minnhom. Izda il-Qorti kif inghad ma tarax illi hemm necessaita' tal-piena pekunjarja ukoll tenut kont tal-fatt illi l-appellanti ikun diga' wiegeb ghal-eghmil kriminuz tieghu bl-inkarcerazzjoni fit-tul tieghu.

Ghal dawn il-motivi l-appell qed jigi milqugh, ghalhekk il-Qorti filwaqt li tikkonferma d-decizzjoni appellata fejn din sabet lill-appellanti hati tar-reati lilu addebitati, izda tirriforma il-piena inflitta billi minflok dik ta' tlett snin prigunerija u multa ta' €32000, tikkundannah biss ghal piena karcerarja ta' tlett snin u b'hekk thassar il-multa inflitta.

Edwina Grima

Imhallef