Qorti tal-Appell Kriminali

Onor. Imhallef Dr. Antonio Mizzi LL.D., Mag. Juris (Eu Law)

Appell Numru: 165/2014

Il-Pulizija

(Spettur Pierre Grech)

vs

Biern Farrugia

iben Diane, imwieled Pieta', fit-8 ta' Lulju, 1989, detentur tal-karta ta' l-identita' numru 306889(M)

Illum, 11 ta' April, 2017

Il-Qorti,

Rat l-akkuzi dedotti kontra l-appellant Biern Farrugia quddiem il-Qorti tal-Magistrati (Malta):

Talli f'dawn il-Gzejjer fil-1 ta' Jannar, 2008 u fil-granet ta' qabel din id-data:

a) Ittraffika, biegh, qassam jew offra li jittraffika, ibiegh jew iqassam medicina psikotropika u ristretta (ecstasy) minghajr awtorizazzjoni specjali bil-miktub mis-Supretendent tas-sahha Pubblika bi ksur tad-disposizzjonijiet tal-Ordinanza dwar il-Professjoni Medika u l-

Professjonijiet li ghandhom x'jaqsmu maghha, Kapitolu 31 tal-Ligijiet ta' Malta u r-Regolamenti dwar il-Kontroll tal-Medicini, Avviz Legali 22 ta' l-1985 kif emendati.

Talli f'dawn il-Gzejjer fl-1 ta' Jannar, 2008 u fit-tlett snin ta' qabel din id-data:

b) Kellu fil-pussess tieghu medicina psikotropika u ristretta (ecstasy) minghajr awtorizzazjoni specjali bil-miktub mis-Supretendent tas-Sahha Pubblika, bi ksur tad-disposizzjonijiet tal-Ordinanza dwar il-Professjoni Medika u l-Professjonijiet li ghandhom x'jaqsmu maghha Kapitolu 31 tal-Ligijiet ta' Malta u ir-Regolamenti dwar il-Kontroll tal-Medicini, Avviz Legali 22 ta' l-1985 kif emendati.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) tal-25 ta' Marzu, 2015 fejn il-Qorti wara li rat l-artikoli 40A, 120A(1)(a), 120A(1B), 120A(2)(b)(i) u (ii) u it-Tielet Skeda tal-Kapitolu 31 tal-Ligijiet ta' Malta, u r-regolamenti 3(1) tal-Avviz Legali 22 ta' l-1985, sabet lill-imputat hati tal-imputazzjonijiet migjuba kontra tieghu, u kkundannatu ghal sitt (6) xhur prigunerija effettiva, kif ukoll kkundannatu ghall-hlas ta' multa ta' elf u hames mitt Euro (€1,500.00), li bl-applikazzjoni tal-Artikolu 14(2) tal-Kapitolu 9 tal-Ligijiet ta' Malta tista' tithallas b'rati mensili u konsekuttivi ta' hamsin Euro (€50.00). L-ewwel pagament ghandu jsir mhux akar tard minn xahar mid-data li fiha l-hati jiskonta l-piena karcerarcja li qed tigi b'din is-sentenza erogata, u ghal dan il-fini r-Registratur ghandu jivverifika mal-awtoritajiet karcerarji din id-data. Pero' jekk il-hati jonqos li jhallas pagament wiehed, il-bilanc jigi dovut minnufih u jigi konvertit fi prigunerija bir-rata ta' gurnata habs ghal kull hamsa u tletin Euro (€35.00) dovut.

Rat ir-rikors tal-appellant Biern Farrugia pprezentat fis-7 ta' April, 2015 fejn talab li din il-Qorti joghgobha tilqa' dan l-appell billi **TIRRIFORMA** s-sentenza appellata, u filwaqt illi **<u>TIKKONFERMAHA</u>** f'dik il-parti fejn sabet lill-appellant hati tat-tieni imputazzjoni migjuba fil-konfront tieghu, **TIRREVOKAHA** fil-bqija tas-sentena, u **TIDDIKJARAH** mhux hati tal-ewwel imputazzjoni migjuba fil-konfront tieghu, u konsegwentement tilliberah minn kull htija jew piena; jew alternattivament **TIRRIFORMA** s-sentenza appellata billi **TVARJA** l-piena nflitta u tinfliggi **piena aktar ekwa u gusta** ghal kaz odjern.

Rat l-aggravji tal-appellant u cioe':-

Illi jigi rilevat illi l-appellant gie akkuzat quddiem il-Qorti tal-Magistrati bir-reat tat-traffikar tal-pillola *ecstacy* u l-pussess tal-pillola *ecstacy.* Illi l-appellant fis-seduta tat-tmienja u ghoxrin (28) t' Jannar, 2011, debitament assistit, irregistra ammissjoni ghat-tieni imputazzjoni migjuba fil-konfront tieghu u cioe' dik tal-pussess tal-pillola *ecstacy* fejn anke wara li gie moghti zmien mill-Qorti tal-Magistrati sabiex jikkonsidra l-posizzjoni tieghu, hu rega' kkonferma l-ammissjoni tieghu.

Izda l-appellant jirrileva illi fir-rigward tal-ewwel imputazzjoni migjuba fil-konfront tieghu u cioe' dik tat-traffikar tal-pillola *ecstacy* l-unika prova li ngabet mill-prosekuzzjoni huma z-zewg stqarrijiet moghtija mill-appellant. Ghalhekk l-imputazzjoni tat-traffikar tal-pillola *ecstacy* quddiem l-Ewwel Qorti giet msejsa esklussivament fuq iz-zewg stqarrijiet moghtija mill-appellant liema stqarrijiet inghataw mill-appellant minghajr ma kien moghti d-dritt li jkun assistit minn avukat tal-fiducja tieghu. Dan ifisser illi l-Qorti tal-Magistrati sabet htija esklussivament fuq dak li ntqal mill-appellant fl-istqarrijiet tieghu peress illi l-Prosekuzzjoni ma gabet l-ebda prova ohra biex tissostanzja l-akkuza tat-traffikar fil-konfront tal-appellant. Izda jigi rilevat illi z-zewg stqarrijiet moghtija mill-appellant minghajr ma kien moghti d-dritt li jkun assistit minn avukat tal-fiducja tieghu kellhom jigu skartati mill-Qorti tal-Magistrati stante li ttiehdu meta l-ligi Maltija kienet ghadha ma tippermettix li s-suspettat ikollu l-fakulta' illi jikkonsulta ma' avukat qabel l-interrogatorju u ghalhekk ittiehdu abuzivament.

Illi fil-fatt jigi rilevat illi l-Ligi fiz-zmien illi fih l-esponent gie arrestat u investigat ma kienetx tipprovdi ghad-dritt tal-assistenza legali lill-arrestat f'ebda hin tal-arrest, qabel jew matul l-interrogazzjoni kif ukoll ma kienetx tippermetti li l-persuna investigata access tal-*file* tal-Pulizija. Illi fil-fatt l-appellant irrilaxxa zewg stqarrijiet, liema stqarrijiet inghataw mill-appellant minghajr ma kellu assistenza legali peress illi l-ligi dak iz-zmien ma kienetx tipprovdi ghad-dritt tal-assistenza legali lill-arrestat f'ebda hin tal-arrest, qabel jew matul l-interrogazzjoni. Illi l-eskluzjoni totali ta' avukat tal-fiducja tal-appellant mill-istadju tal-investigazzjoni, partikolarment waqt it-tehid tal-istqarrija kien leziv ghad-drittijijet fundamentali tieghu ghall-smiegh xieraq u kienet ta' pregudizzju kbir ghall-appellant u fil-fatt dan jikkostitwixxi ksur tad-

dritt fundamentali tieghu ghal smiegh xieraq ai termini tal-artikolu 39 tal-Kostituzzjoni ta‘ Malta u l-artikolu 6 tal-Konvenzjoni Ewropea ghad-Drittijiet tal-Bniedem.

Illi d-dritt tal-assistenza legali ghall-persuni suspettati waqt l-investigazzjoni, bhala aspett tad-dritt fundamentali ghal smiegh xieraq ai termini tal-artikolu 39 tal Kostituzzjoni u l-artikolu 6 tal-Konvenzjoni Ewropea ghad-Drittijiet tal-Bniedem gie stabbilit permezz ta‘ gurisprudenza kopjuza u kostanti tal-Qorti Ewropea tad-drittijiet fundamentali tal-bniedem u anke mill-Qrati Maltin liema dritt gie ritenut illi jigi miksur anke jekk il-persuna suspettata u investigata tibqa‘ siekta tul il-kors kollu tal-arrest taghha.

Illi f'dan l-stadju ssir riferenza ghas-sentenza tal-Qorti Ewropea tad-Drittijiet tal-Bniedem fil-kaz **Salduz vs. Turkey (Grand Chamber)** deciz fis-sebgha u ghoxrin (27) ta' Novembru tas-sena elfejn u tmienja (2008) fejn intqal illi:

"[I]n order for the right to a fair trial to remain sufficiently "practical and effective" ..., Article 6 § 1 [of the Convention] requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6 ... The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction." (§ 55).

Illi inoltre fil-kaz **Dayanan v. Turkey** **(13.10.2009 (II))** il-Qorti Ewropea tad-Drittijiet tal-Bniedem irriteniet is-segwenti:

> "As it emerges from the generally recognized international norms, which the Court accepts and which complement its case-law, a suspect must be afforded assistance by a lawyer as soon as he has been deprived of his liberty, whether or not he is to undergo interrogations.

…

The principle of fair trial requires that a **suspect be afforded the vast range of interventions that are inherent to legal advice. In this respect, the discussion of the case, the organization of the defence, the search for favourable evidence, preparation for interrogations, support of the suspect in distress and control of the conditions of detention are essential elements of the defence which the lawyer must be free to perform.** (§ 32, private translation; emphasis added)

...

In the instant case it is not disputed that the applicant was not assisted by a lawyer when he was in custody, as such assistance was not allowed by the law in force at the relevant time. In itself, such a systematic restriction based on relevant statutory provisions warrants the conclusion that the requirements of Article 6 have not been met, irrespective of the fact that the applicant remained silent throughout his custody." (§ 33, non-official translation;)

Illi fis-sentenza **Plonka vs. Poland** gie ritenut illi:

'The Court further reiterates that although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of fair trial (Poitrimol v. France, 23 November 1993, § 34, Series A no. 277-A, and Demebukov v. Bulgaria, no. 68020/01, § 50, 28 February 2008).

*The Grand Chamber has recently stressed that in order for the right to a fair trial to remain sufficiently "practical and effective" Article 6 § 1 requires that, as a rule, **access to a lawyer should be provided as from the first interrogation of a suspect by the police,** unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction - whatever its justification - must not unduly prejudice the rights of the accused under Article 6. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a*

lawyer are used for a conviction (seeSalduz v. Turkey [GC], no. 36291/02, § 55, 27 November 2008).

In view of the circumstances the guarantee of fairness enshrined in Article 6 required that the applicant had the benefit of the assistance of a lawyer from the very first stage of police questioning. In this regard, it is not for the Court to speculate on what the applicant's reaction or her lawyer's advice would have been had she had access to a lawyer at the initial stage of the proceedings (see Salduz, cited above, § 58).

The Court considers that in the present case the applicant was undoubtedly directly affected by the lack of access to a lawyer during her questioning by the police. Neither the assistance provided subsequently by a lawyer or the adversarial nature of the ensuing proceedings could cure the defects which had occurred during the police custody.

The foregoing considerations are sufficient to enable the Court to conclude that there has been a breach of Article 6 § 1 of the Convention in conjunction with Article 6 § 3 (c). Having regard to this finding, the Government's preliminary objection must be rejected.

Illi l-mankanza tal-assistenza legali jippregudika sostanzjalment is-sitwazzjoni tal-akkuzat u dan kif spjegat mill-Qorti Ewropea tad-Drittijiet tal-Bniedem fil-kaz **Pavlenko vs. Russia** deciz fl-ewwel (1) ta' April tas-sena elfejn u ghaxra (2010):

"Thus, even though at the trial the applicant had an opportunity to challenge the evidence against him in adversial proceedings with the benefit of legal advice, the Court reiterates its foregoing findings concerning the legal assistance in the pre-trial proceedings, and concludes that the shortcomings in respect of the legal assistance at that stage seriously undermine the position of the defence at the trial."

Illi inoltre l-Qorti Ewropea tad-Drittijiet tal-Bniedem fis-sentenza **Pischalnikov v. Russia** deciza fl-erbgha u ghoxrin (24) ta' Settembru tas-sena elfejn u disgha (2009) spjegat fid-dettal il-funzjonijiet varji u teknici tal-avukat fl-istadju tal-investigazzjoni:

"Having been denied legal assistance, the applicant was unable to make the correct assessment of the consequences his decision to confess would have on the outcome of the criminal case … **In the absence of assistance by counsel, who could have provided legal advice and technical skills, the applicant could not make full and knowledgeable use of his rights afforded by the criminal procedural law.."**

Inoltre **f'Panovits vs. Cyprus** tal-11 ta' Dicembru, 2008 il-Qorti affermat li "as regards the applicant's complaints which concern the lack of legal consultation at the pre-trial stage of the proceedings, the Court observes that the concept of fairness enshrined in Article 6 requires that the accused be given the benefit of the assistance of a lawyer already at the initial stages of police interrogation. The lack of legal assistance during an applicant's interrogation would constitute a restriction of his defence rights in the absence of compelling reasons that do not prejudice the overall fairness of the proceedings."

Illi ghaldaqstant jirrizulta car u inekwivoku mill-gurisprudenza kopjuza u kostanti tal-Qorti Ewropea tad-Drittijiet tal-Bniedem illi tali ksur jissussisti awtomatikament mic-cahda tal-access tal-assistenza legali lill-persuna suspettata u dan indipendetament mic-cirkostanzi, karattru, antecedenti, vulnerabbilita' o meno, tal-persuna investigata (Salduz vs Turkey; Brusco vs. France, Panovits vs. Cyprus, Pischalnikov vs Russia, Dayanan vs Turkey, Plonka vs. Poland, Pavlenko vs. Russia). Illi di piu' l-vulnerabbilita tal-persuna interrogata taggrava ulterjorment tali ksur.

Dawn il-principji gew ribaditi f'sentenzi moghtija mill-Qorti Kostituzzjonali Maltija senjatament Il-Pulizija vs. Alvin Privitiera, Il-Pulizija vs. Mark Lombardi, Il-Pulizija vs. Esron Pullicino u anke ricentament fil-kawza fl-ismijiet **Anthony Taliana vs Il-Kummissarju tal-Pulizija u l-Avukat General deciza fis-sitta (6) ta' Frar tas-sena elfejn u hmistax (2015)** fejn il-Qorti

ghamlet accenn ghall-**vulnerabbilita** tal-esponent meta ttihditlu stqarrija minghajr ma kellu assistenza ta' avukat:

"illi l-attur kien persuna **vulnerabbli** meta ttehditlu l-istqarrija minghajr ma kellu l-ghajnuna ta' avukat u ghalhekk l-istqarrija ttiehdet bi ksur tal-jedd tieghu taht l-Artikolu 6 tal-Konvenzjoni."

...

"...min ghandu jiddeciedi fuq il-htija tal-attur ma ghandux jiehu qies ta' dak mistqarr bhala prova tal-kontenut taghha ghall-finijiet ta' htija *o meno* tal-attur izda jista' jiehu qies tieghu ghall-finijiet ta' kontroll u kredibilita' ta' xhieda."

...

"...meta tqis il-fatturi kollha din il-Qorti hija tal-fehma li l-fatt illi l-attur ma kienx minorenni ma jfisirx illi, ghax kellu ghoxrin jew wiehed u ghoxrin sena, kellu maturita bizzejjed biex ma jhossux intimidat fl-ambjent ta' interrogazzjoni, ...kien forsi jkun differenti li kieku kien xi delinkwent ' inkallit ` li wettaq reat premeditat u ghalhekk kien preparat ghall-interrogazzjoni u kif kellu jiffacjaha."

Fil-kaz odjern l-appellant fiz-zmien illi rrilaxxa l-istqarrija kellu biss tmintax (18) il-sena u dak iz-zmien kellu fedina penali netta ghal kollox u ghalhekk ma kienx midhla tal-pulizija u mal-manjiera ta' kif isiru l-interrogazzjonijiet peress li qatt ma kien gie arrestat jew interrogat mill-pulizija. Illi ghalhekk l-appellant ghandu jitqies bhala persuna vulnerabbli li seta' facilment ikun intimidat bil-presenza tal-pulizija, bl-arrest tieghu u bl-ambjent fejn sarlu l-interrogatorju u peress illi dak iz-zmien l-appellant ma setax jikkonsulta mal-avukat tal-ghazla tieghu lanqas ma seta' jigi spjegat lilu l-konsegwenzi ta' dak li qieghed ighid fejn kien jigi spjegat lilu b'mod car bid-drittijiet tieghu moghtija mill-ligi specjalment bid-dritt tieghu illi jista' ma jwegibx ghad-domandi li jkunu qed isirulu.

Ghaldaqstant il-fatt illi l-istqarrijiet tal-appellant gew ammessi fil-proceduri, liema stqarrijiet skont gurisprudenza kopjuza kemm Ewropea kif ukoll dik Maltija ittiehdu b'mod leziv u jiksru

d-dritt fundamentali ghal smiegh xieraq, ikkundizzjona b'mod negattiv il-konkors tal-proceduri quddiem l-Ewwel Qorti. Fi kliem iehor, l-istess stqarrijiet ikkundizzjonaw l-andament tal-proceduri quddiem l-Ewwel Qorti u konsegwentement is-sejbien ta' htija fil-konfront tal-appellant u ghaldaqstant ghandhom jigu skartati filwaqt li l-appellant jigi dikjarat mhux hati tal-ewwel imputazzjoni migjuba fil-konfront tieghu.

Illi mingajr pregudizzju ghal dak suespost l-appellant jilmenta li l-piena erogata minn l-ewwel Qorti u **cioe' dik ta' sitt xhur prigunerija effettiva u multa ta' elf u hames mitt ewro (€1500),** hija wahda sproporzjonata tenut kont tac-cirkostanzi.

L-appellant illum il-gurnata huwa zaghzugh ta' sitta u ghoxrin sena, li hlief ghal dan l-incident, ghandu fedina penali kompletament netta. F'dan is-sens, fl-umli fehma ta' l-esponent l-ewwel Qorti filwaqt illi sahqet fuq l-aspett retributtiv u deterrent tal-piena, ma tatx l-importanza misthoqqa lill-aspett riformattiv, u ghalhekk il-piena inflitta, kemm fil-kwalita taghha, u sussidjarjament u minghajr pregudizzju, fil-kwantita, ma tohloqx bilanc bejn l-aspett retributtiv u dak riformattiv, tant accenat u accettat, fil-kuncett ta' gustizzja kriminali fiz-zminijiet ta' llum.

Illi bosta drabi l-Qrati sahqu fuq il-bzonn ta' piena li ghandha tkun mezz riformattiv, a skapitu tal-mezz deterrent fil-piena. Fil-fatt, fis-sentenza **Il-Pulizija vs. Stephen Spiteri** moghtija mill-Qorti tal-Appell Kriminali fit-tnejn u ghoxrin (22) ta' Settembru tas-sena elfejn u tlieta (2003), il-Qorti qalet illi:

> "Konsiderata l-piena bhala mezz ta' riforma tal-imputat fl-interess tieghu u tas-socjeta', izjed u izjed din il-piena karceraja tidher inadatta. Infatti, permezz taghha, tifel ta' kondotta sa issa tajba, u li diga', bil-fatti, wera' soghba tar-reat li ghamel, ser jinxtehet ghal soggorn ma' nies li fil-maggjoranza taghhom huma delinkwenti recidivi multipli. B'hekk minflok jigi riformat, hemm il-possibilta' li huwa jiehu lezzjonijiet fid-delinkwenza ... tara li huwa opportun illi jnehhi l-impressjoni li l-iskop tal-ligi kriminali u tal-piena huwa biss illi jkun ta' deterrent biex jghallem lil dak li jkun illi 'crime does not pay'. Huwa certament kuncett illi

ghamel zmien u kien il-kuncett predominanti, pero' llum il-kuncett m'huwiex aktar ta' piena retributtiva, imma ta' sistema restorattiva, fejn anke jekk hu possibbli u safejn hu possibbli, u tenut kont anki tac-cirkostanzi kollha tal-kaz, kif ukoll tal-precedenti kriminali tal-imputat, isir tentattiv biex mhux biss issir rikonciljazzjoni bejn l-agent tad-delitt u il-vittma li tkun sofriet danni u anke sofferenzi ohrajn, imma anki li jkun hemm possibilita' li dak li jkun jigi nformat u jikkonvinci ruhu illi ghandu jsegwi t-triq it-tajba."

Illi inoltre l-appellant jaghmel referenza ghas-sentenza tal-5 ta' Mejju, 2008, fl-ismijiet **<u>Il-Pulizija vs Marco Galea</u>**, fejn il-Qorti tal-Appell Kriminali kellha quddiemha zaghzugh ta' erba' u ghoxrin sena, b'fedina penali netta, li hlief ghal okkazjoni wahda biss sitt snin qabel (li ghaliha tressaq quddiem il-Qorti) meta, f'mument ta' sbandament temporanju f'hajtu, huwa ssokkomba ghal talba li ghamlitlu habiba tieghu biex jixtrilha doza erojina. Il-Qorti tal-Appell irriteniet illi:

"Jidher ghalhekk li din il-Qorti ghandha quddiemha kaz eccezzjonali fejn, fil-fehma kunsidrata taghha, il-piena ta' sitt xhur prigunerija (erba' xhur jekk tnaqqas il-one-third remission for good conduct) x'aktarx igibu fix-xejn dak kollu li l-appellat irnexxielu jikseb sa issa, u dan bi hsara mhux biss ta' l-istess appellat izda wkoll tas-socjeta` li fiha l-appellat illum jinsab integrat pjenament bhala membru onest u biezel. Il-kaz meritu ta' din il-kawza kien jirrigwarda att wiehed u ta' darba ta' traffikar ta' ammont minimu (doza wahda) ta' erojina fic-cirkostanzi aktar 'l fuq imsemmija.

...

Kaz eccezzjonali jirrikjedi mizuri eccezzjonali. Kif inghad, din il-Qorti ghandha idejha marbuta kwantu ghall-piena. Pero` f'kaz eccezzjonali xejn ma jzomm lil din il-Qorti milli tirrakkomanda

l-uzu tal-prerogattiva tal-mahfra. Fil-fehma kunsidrata ta' din il-Qorti, l-appellat ghandu jservi biss gimgha prigunerija – b'hekk jigi saldat id-dejn li huwa ghandu mas-socjeta` fir-rigward ta' l-att ta' traffikar li huwa wettaq – u ghalhekk il-Qorti sejra llum stess tirrakkomanda lill-awtorita` kompetenti li, hlief ghall-imsemmija gimgha, il-kumplament tal-piena ta' prigunerija jinhafer."

Illi inoltre ssir referenza ghas-sentenza moghtija mill-Qorti tal-Appell Kriminali fl-ismijiet Il-Pulizija vs. Terry Graham, datata hamsa u ghoxrin (25) ta' Marzu tas-sena elfejn u erbatax (2014) fejn allavolja l-Qorti sabet htija tal-appellant ghall-akkuza ta' traffikar irriteniet:

> Illi l-fedina penali tal-appellant tindika li l-ahhar darba li hu gie misjub hati f'dawn il-Qrati kien fl-10 ta' Ottubru, 2005 fuq incident, dwar il-pussess ta' droga, li jmur lura ghall-20 ta' April, 2000. Ovvjament, hemm dan l-appell li jirrigwarda incident li gara fl-1 ta' Marzu, 2008. Ghalhekk, fuq medda ta' tmien snin dan hu t-tieni kaz li ghandu l-appellant. Illum, l-appellant qed jahdem bi profitt u mix-xhieda ta' l-imghallem tieghu johrog messagg pozittiv li dina l-Qorti ma tistax ma tiehdux in konsiderazzjoni. Jekk verament irridu r-riforma ta' bniedem li hu mahkuma mill-vizzju tad-droga t-triq li tghaddi mill-habs ma tizra ebda riforma fih. Irridu nkunu ta' idejat wiesghin u nghinu, f'dan il-kaz lill-appellant, biex dawn in-nies jistghu jiehdu posthom fis-socjeta' u ma jigux konsiderati bhala theddida lis-socjeta'. Dan li qed jinghad diga' ntqal minn din il-Qorti diversament presjeduta meta ndikat 'a window of opportunity'. L-appellant sabha fix-xoghol. Din il-Qorti tittama li l-fiducja li qed taghti lill-appellant jissarraf pozittivament.
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> Ghaldaqstant, ghal dawn ir-ragunijiet din il-Qorti tichad l-appell tal-appellant Terry Graham u tikkonferma s-sentenza appellata. Dwar il-piena, din il-Qorti thassar u tirrevoka l-piena erogata minn din il-Qorti fejn ikkundannat lill-appellant ghal piena ta' tmintax il-xahar prigunerija u multa ta' elf u mitt euro (€1,100) u minflok wara li rat l-

artikolu 7 tal-Kapitolu 446 tal-Ligijiet ta' Malta tordna l-hrug ta' Ordni ta' Probation ghal perjodu ta' tlett snin mil-lum.

Illi f'dan l-istadju ssir referenza wkoll ghas-sentenza fl-ismijiet Il-Pulizija vs. Geoffrey Azzopardi deciza mill-Qorti ta' l-Appell Kriminali fid-disgha u ghoxrin (29) ta' Jannar tas-sena elfejn u wiehed (2001), fejn l-Onorabbli Qorti ta' l-Appell Kriminali rreteniet illi:

> **it-trapass taz-zmien jista' jagevola lill-persuna akkuzata ghall-fini ta' piena meta huwa juri li tul dak iz-zmien hu jkun zamm lura mill-ksur serju tal-ligijiet u wera certu impenn biex jirriforma.**

Illi dan kollu qed jinghad ukoll in vista tal-fatt illi fil-Parlament ghadu kemm ghaddha l-Att Numru 1 tas-sena 2015 intitolat ATT biex Jipprovdi għat-Trattament ta' Persuni fil-pussess ta' kwantitajiet żgħar ta' droga projbita għall-użu personali u għal miżuri oħra għar-riabilitazzjoni ta' persuni dipendenti mid-droga liema att jiffoka fuq l-aspett riformattiv aktar milli dak retributtiv ta' kazijiet ta' persuni li jkunu abbuzaw u inqabdu bil-pussess tad-droga fejn l-att jikkontempla penali u multi u mhux prigunerija effettiva fil-kaz ta' traffikar ta' ammonti zghar ta' sustanzi illeciti.

Rat l-atti kollha tal-kawza.

Semghet it-trattazzjoni tal-partijiet.

Rat il-fedina penali aggornata tal-appellant ezebita mill-prosekuzjoni fuq ordni tal-Qorti.

Ikkunsidrat,

Illi l-uniku aggravju li ressaq l-appellant hu l-fatt li l-htija tieghu dwar l-ewwel akkuza jddur ma zewg stqarrijiet li hu rilaxxa lill-pulizija minghajr ma kien assistit minn avukat.

Illi dan il-punt gie deciz darba ghal dejjem mill-Qorti tal-Appell Kriminali fl-1 ta' Dicembru, 2016 fil-kawza fl-ismijiet: "The Republic of Malta v. Chukwudi Samuel Onyeabor" u l-effett ta' dik is-sentenza fuq dan il-kaz hu li z-zewg stqarrijiet ta' l-akkuzat ghandhom jigu sfilzati mill-atti tal-kawza. Ghalhekk, ma hemm xejn iktar x'inghad.

Ghaldaqstant, ghal din ir-raguni din il-Qorti tilqa l-appell ta' Biern Farrugia. Thassar u tirrevoka s-sentenza appellata dwar l-ewwel akkuza migjuba kontra tieghu u tillibera lill-appellant minn kull htija u piena. Dwar it-tieni akkuza. Tikkonferma s-sentenza appellata u minflok piena karcerarja tillibera lill-appellant taht il-provvedimenti tal-artikolu 22 tal-Kapitolu 46 tal-Ligijiet ta' Malta bil-kondizzjoni li ma jaghmilx reat iehor fi zmien tlett snin mil-lum.