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

Omissis

Illum 2 ta' Settembru, 2017

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat **Omissis** detentur tal-passaport Ingliz bin-numru 522876676 billi huwa akkuzat talli nhar l-1 ta' Settembru, 2017, ghall-habta ta' l-ghaxra u kwart ta' filghaxija (22.15) gewwa l-Istadjum Nazzjonali sitwat gewwa Ta' Qali limiti ta' H'Attard:-

1. Minghajr ma kien awtorizzat qabez ic-cint jew il-barriera li jdawwar il-pitch u dhalt fil-post fejn kien qed isir il-loghob; L.S. 10.33 Reg. (5)
2. Talli fl-istess data, lok, hin u cirkostanzi gab ruhu b'mod li tista' tinkiser il-bon-ordni; L.S. 10.33 Reg. (6)
3. U aktar talli fl-istess data, lok hin u cirkostanzi gab ruhu b'mod abbuziv, L.S. 10.33 (Reg. 7).

Il-Qorti giet ukoll mitluba li f'kaz ta' htija, minbarra li tinfliggi l-piena stabbilita' skond il-ligi, tordna illi l-imputat ma jattendix fi grounds ta' sports ghall-dak il-perjodu ta' zmien li din l-Onorabbli Qorti jidrilha xieraq.

Semghet l-ammissjoni ta' l-imputat akkumpanjat minn ommu kif registrata fl-atti fis-seduta tallum ghall-imputazzjonijiet migjuba fil-konfront tieghu.

Illi din il-Qorti osservat dak li jiddisponi l-Artikolu 453 (1) tal-Kap. 9 tal-Ligijiet ta' Malta, u cioe' wara li l-imputat wiegeb li huwa hati, din il-Qorti wissietu b'mod l-aktar solenni fuq il-konsegwenzi legali ta' dik it-twegiba tieghu u tatu zmien xieraq sabiex jekk irid jerga' lura minnha u kien biss wara li staqsietu t-tieni darba li l-Qorti ghaddiet sabiex taghti kaz din l-ammissjoni tieghu.

Semghet s-sottomissjonijiet finali mill-Prosekuzzjoni u d-difiza in kwantu jirrigwarda l-piena.

Illi ghalhekk fuq l-ammissjoni volontarja u inkondizzjonata tal-istess imputat, il-Qorti tiddikjara li m'ghandiex triq ohra salv li ssib lill-imputat hati ta' l-imputazzjonijiet migjuba kontra tieghu.

Il-fatti specie tal-kaz

Dan il-kaz sehh fl-1 ta' Settembru, 2017 ghall-habta ta' l-ghaxra u kwart ta' filghaxija (22.15) gewwa l-Istadium Nazzjonali gewwa Ta' Qali limiti ta' H'Attard waqt il-loghba ta' kwalifikazzjoni ghat-Tazza tad-Dinja 2018 bejn Malta u l-Ingilterra fejn l-imputat ta' sittax-il sena qabez il-barriera li ddawwar il-pitch u dahal fil-post fejn kienet qed issir il-loghba.

Kif ghandha titratta l-Qorti ma' minuri

Il-Qorti qabel tghaddi biex taghti s-sentenza taha se tara l-Archbold[1] x'jghid fejn jidhlu l-minuri jew kif inhu maghruf il-*young offender*:

> A court sentencing a young offender must be aware of obligations under a range of international conventions which emphasise the importance of avoiding "criminalisation" of young people whilst ensuring that they are held responsible for their actions and, where possible, take part in repairing the damage that they have caused. This includes recognition of the damage caused to the victims and understanding by the young person that the deed was not acceptable. Within a system that provides for both the acknowledgement of guilt and sanction which rehabilitate, the intention is to establish responsibility and, at the same time, to promote re-integration rather than to impose retribution.

[1] Magistrates' Courts Criminal Practice 2016, **Sentencing in the Youth Court**, pg. 1867 et. Seq.

A court sentencing a person under the age of 18 is obliged to have regard to the principal aim of the youth justice system (to prevent offending by children and young persons) and to the welfare of the offender. As the principal aim of the youth justice system is the prevention of offending by children and young people, the emphasis should be on approaches that seem most likely to be effective with young people.

Young people are unlikely to have the same experience and capacity as an adult to realise the effect of their actions on other people or to appreciate the pain and distress caused and because a young person is likely to be less able to resist temptation, especially where peer pressure is exerted.

It is also important to consider whether the young offender lacks the maturity fully to appreciate the consequences of his conduct and the extent to which the offender has been acting on an impulsive basis and the offender's conduct has been affected by inexperience, emotional volatility or negative influences.

In most cases a young person is likely to benefit from being given greater opportunity to learn from mistakes without undue penalisation or stigma, especially as a court sanction might have a significant effect on the prospects and opportunities of the young person, and, therefore, on the likelihood of effective integration into society.

L-eta' tal-protagonist

Dakinhar tal-inċident, l-imputat kellu sittax-il sena. Il-Qorti se tiehu dan il-fattur fil-kunsiderazzjoni taghha.

Artikolu 37[2] tal-Kodici Kriminali jipprovdi li:

> ***37.*** *(1) Il-minuri ta' taħt is-sittax-il sena jkun ukoll ezenti minn responsabbilità kriminali għal kull att jew nuqqas magħmul mingħajr ħazen.*
>
> *(2) Fejn l-att jew nuqqas magħmul minn minuri minn erbatax-il sena sa sittax-il sena jsir b'ħazen u* ***fil-kaz ta' minuri minn sittax-il sena sa tmintax-il sena, il-piena applikabbli għal reat għandha titnaqqas bi grad jew tnejn*** *…* (enfazi tal-Qorti)

Il-Qorti rat dak li jghid is-*Sentencing Council*[3] fejn jaghti linja gwida fejn jidhol issentenzjar ta' minuri u zghazagh:

> *1 When sentencing children or young people (those aged under 18 at the date of the finding of guilt) a court must have regard to:*
>
> - *the principal aim of the youth justice system (to prevent offending by children and young people); and*
> - *the welfare of the child or young person.*

[2] Att III.2014.4.

[3] **ARCHBOLD,** MAGISTRATES' COURTS CRIMINAL PRACTICE 2018, *Pg. 1971 et. seq.*

1.2 While the seriousness of the offence will be the starting point, the approach to sentencing should be individualistic and focused on the child or young person, as opposed to offence focused. For a child or young person the sentence should focus on rehabilitation where possible. A court should also consider the effect the sentence is likely to have on the child or young person (both positive and negative) as well as any underlying factors contributing to the offending behaviour.

1.3 Domestic and international laws dictate that a custodial sentence should always be a measure of last resort for children and young people and statute provides that a custodial sentence may only be imposed when the offence is so serious that no other sanction is appropriate (see section six for more information on custodial sentences).

1.4 It is important to avoid "criminalising" children and young people unnecessarily; the primary purpose of the youth justice system is to encourage children and young people to take responsibility for their own actions and promote re-integration into society rather than to punish. Restorative justice disposals may be of particular value for children and young people as they can encourage them to take responsibility for their actions and understand the impact their offence may have had on others.

1.5 It is important to bear in mind any factors that may diminish the culpability of a child or young person. Children and young people are not fully developed and they have not attained full maturity. As such, this can impact on their decision making and risk taking behaviour. It is important to consider the extent to which the child or young person has been acting impulsively and whether their conduct has been affected

by inexperience, emotional volatility or negative influences. They may not fully appreciate the effect their actions can have on other people and may not be capable of fully understanding the distress and pain they cause to the victims of their crimes. Children and young people are also likely to be susceptible to peer pressure and other external influences and changes taking place during adolescence can lead to experimentation, resulting in criminal behaviour. When considering a child or young person's age their emotional and developmental age is of at least equal importance to their chronological age (if not greater).

1.6 For these reasons, children and young people are likely to benefit from being given an opportunity to address their behaviour and may be receptive to changing their conduct. They should, if possible, be given the opportunity to learn from their mistakes without undue penalisation or stigma, especially as a court sanction might have a significant effect on the prospects and opportunities of the child or young person and hinder their re-integration into society.

1.7 Offending by a child or young person is often a phase which passes fairly rapidly and so the sentence should not result in the alienation of the child or young person from society if that can be avoided.

1.8 The impact of punishment is likely to be felt more heavily by a child or young person in comparison to an adult as any sentence will seem longer due to their young age. In addition penal interventions may interfere with a child or young person's education and this should be considered by a court at sentencing.

1.9 Any restriction on liberty must be commensurate with the seriousness of the offence. In considering the seriousness of any offence,

the court must consider the child or young person's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused.

L-Imhallef Harper J. fil-kaz **R (A Child) v. Whitty** (1993) 66 A Crim. R. 462, isostni:

"*No civilised society, says Professor Colin Howard in his book entitled* ***Criminal Law*** *(4th ed., 1982) p. 343, 'regards children as accountable for their actions to the same extent as adults.*"

"*The wisdom of protecting children against the full rigour of the criminal law is beyond argument. The difficulty lies in determining when and under what circumstances that protection should be removed.*"

Erle J. fil-kaz **Reg. v. Smith** (1845) 1 Cox C.C. 260 qal li:

"*... a guilty knowledge that he was doing wrong - must be proved by the evidence, and cannot be presumed from the mere commission of the act. You are to determine from a review of the evidence whether it is satisfactorily proved that at the time he fired the rick (if you should be of opinion he did fire it) he had a guilty knowledge that he was committing a crime.*"

Professor Glanville Williams, Q.C. f'[1954] Crim. L.R. 493[4] jghallem li:

"... the 'common sense' view of moral responsibility and retributive punishment is still widely maintained in respect of the sane adult who commits a crime. Yet in respect of children it is just as generally abandoned. No one whose opinion is worth considering now believes that a child who does wrong ought as a matter of moral necessity to expiate his wrong by suffering. Punishment may sometimes be the best treatment, but if so it is because this is the only way in which the particular child can be made to see the error of his ways. . . In this climate of opinion the 'knowledge of wrong' test no longer makes sense.

… Thus at the present day the 'knowledge of wrong' test stands in the way not of punishment, but of educational treatment. It saves the child not from prison, transportation, or the gallows, but from the probation officer, the foster-parent, or the approved school. The paradoxical result is that, the more warped the child's moral standards, the safer he is from the correctional treatment of the criminal law. "

"It is perhaps just possible to argue that the test should now be regarded as even legally obsolete. The test was designed to restrict the punishment of children and should not be used where no question of punishment arises. This argument has to face the difficulty that the test traditionally protects the child from conviction, whereas the choice between punishment and other treatment is only made after conviction."

[4] *Criminal Law, The General Part,* 2nd ed. pp. 495-496

Il-Professur Glanville Williams ikompli jispjega li:

> "*As a matter of policy it is highly desirable that a child who has committed what, for an adult, would be a crime, should be put to answer, even if he is afterwards acquitted on the ground that he did not know his act to be wrong. This desirable result can be reached by drawing a distinction between the burden of proof (or persuasive burden) and the burden of introducing evidence (evidential burden). The burden of proving the child's knowledge of wrong is on the prosecution, but this only means that, when all the evidence is in, the prosecution must fail if the court is not satisfied beyond reasonable doubt of the child's guilt. The fact that the persuasive burden is on the prosecution does not control the burden of introducing evidence on particular issues, for the law may place an evidential burden on the accused even when the persuasive burden is on the prosecution.*"[5]

Lord Lowry f'**C v DPP** at 38C:

> *"A long uncontradicted line of authority makes two propositions clear. The first is that the prosecution must prove that the child defendant did the act charged and that in doing that act he knew that it was a wrong act as distinct from an act of mere naughtiness or childish mischief. The criminal standard of proof applies. What is required has variously been expressed, as in Blackstone, 'strong and clear beyond all doubt or contradiction', or in Rex v Gorrie (1919) 83 JP 136, 'very clear and complete evidence' or in B v R (1958) 44 Cr App R1 at 3 per Lord Parker CJ, 'It has often been put this way, that*

[5] Ibid p. 498

... "guilty knowledge must be proved and the evidence to that effect must be clear and beyond all possibility of doubt' ".

Il-Qorti rat ukoll dak li tipprovdi l-ligi Ingliza[6] f'kaz simili:

It is an offence for a person at a designated football match to go onto the playing area, or any area adjacent to the playing area to which spectators are not generally admitted, without lawful authority or lawful excuse (which shall be for him to prove).

Il-Ligi Maltija ntrodotta fl-1979 tipprovdi li:

No person except the officials, the persons taking part in the game or games, and those authorised either by the authority or association under the auspices of which the game or games are being held or by the ground management, shall trespass beyond the fence or barrier surrounding the pitch and enter the field of play.

Dwar is-sanzjoni ghal min jikser dan il-provediment il-ligi tipprovdi:

***9.** (1) Any person who commits an offence against these regulations shall be liable, on conviction, to a fine (multa) of not less than fifty-eight euros and twenty-three cents (58.23) but not exceeding one thousand and one hundred and sixty-four euros and sixty-nine cents (1,164.69).*

(2) Where any person has been found guilty of an offence against these regulations, the court may, in addition to the punishment herein

[6] Football (Offences) Act 1991, ss.2–4

mentioned, prohibit such offender from attending at any sports ground for a period not exceeding one year.

Ikkunsidrat;

Il-Qorti rat li l-imputat ghandu fedina penali netta, ghandu sittax-il sena u huwa student.

Il-Qorti wissietu dwar l-ghemil li wettaq u fissritlu l-gravita' tal-azzjoni tieghu.

Din il-Qorti dwar piena tirrileva u dan b'referenza ghas-sentenza moghtija mill-Qorti tal-Appelli Kriminali fl-ismijiet Ir-**Repubblika ta' Malta v. Rene` sive Nazzareno Micallef** moghtija fit-28 ta' Novembru 2006:

"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 mportanza, 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."

DECIDE:

Il-Qorti wara li rat Reg 5, 6 , 7 u 9 tal-Legislazzjoni Sussidjarja 10.33 ssib lill-imputat hati tal-imputazzjonijiet kontra tieghu.

Dwar l-ewwel imputazzjoni l-Qorti timmultah multa ta' mitejn ewro (€200). Dwar it-tieni u t-tielet imputazzjoni b'applikazzjoni tal-Artikolu 22 tal-Kapitolu 446 tal-Ligijiet ta' Malta, il-Qorti qed tillibera lill-imputat bil-kundizzjoni li ma jikkommettiex reat iehor fi zmien sena millum.

Il-Qorti torna ukoll li l-hati ma jattendix fi grounds ta' sports f'Malta ghal perjodu ta' sena millum.

Finalment l-Qorti tordna d-divjet ta' pubblikazzjoni ta' isem Omissis fi kwalunkwe mezz ta' komunikazzjoni u dan ghaliex huwa minuri.

____

Dr. Joseph Mifsud
Magistrat