QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI

MAGISTRAT DR. JOSEPH MIFSUD
B.A. (LEG. & INT. REL.), B.A. (HONS.), M.A. (EUROPEAN), LL.D.

Il-Pulizija
(Spettur Darren Buhagiar)

vs

Graham Calleja

Ref. Taghna 5/2018
Illum 17 ta' April, 2018

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat **Graham Calleja** detentur tal-karta tal-identita' bin-numru 147983M billi huwa akkuzat talli fil-5 ta' Novembru 2015, bhala persuna illi mbarka jew zbarka minn go Malta naqas illi jaghti lill-Ufficjal Principali tal-Immigrazzjoni l-informazzjoni preskritta u dik l-informazzjoni l-ohra kif l-Ufficcjal Principali tal-Immigrazzjoni jidhirlu xierqa li jehtieg, u dan ai termini tal-Artikolu 28 tal-Kapitolu 217 tal-Ligijiet ta' Malta.

Il-fatti specie tal-kaz

Il-punt tat-tluq ghall-investigazzjonijiet kien fil-5 ta' Novembru 2015, meta Jasan Cassar, bhala *crew member* tal-opra tal-bahar MSAR 47201 mar jitlob *clearance* minghand il-pulizija tas-*Seaport*.

Dan il-*clearance* ntalab biex l-opra tal-bahar tkun tista' tohrog 'il barra iktar mill-ibhra territorjali Maltin.

Irrizulta li dan il-*clearance* ntalab wara li l-opra tal-bahar kienet diga ghamlet l-operazzjoni taghha barra mill-ibhra territorjali Maltin.

L-opra tal-bahar hija rregistrata fuq l-imputat Graham Calleja u ghalhekk kien il-persuna responsabbli li jara li din il-procedura ssehh skont il-ligi.

Il-Kuntistabbli 202 Jesmond Grech stazzjonat is-*Seaport* xehed f'dawn il-proceduri li kien xoghol dakinhar u li din il-procedura kif rikjesta mill-ligi ma gietx applikata.

L-imputat spjega lill-pulizija li ma talabx *clearance* bil-miktub minghand il-pulizija qabel *"….jien ma kelliex karti ghax l-intenzjoni ma kinitx li naqbez it-territorju Malti ghax ix-xoghol li kelli ma kienx se jaqbez it-territorju…'* u

stqarr ukoll *'… ghidltlu li naf li m'ghandix clearance u se nipprova nibghat lil xi hadd mill-art biex jaghmilli clearance hu…".*

L-akkuzi kontra l-imputat kienu pprezentati fir-Registru tal-Qorti nhar is-7 ta' Lulju 2017, sena u tmien xhur wara li kien irrapurtat il-kaz, liema kaz sar maghruf mill-pulizija ghaliex sar rapport min-naha ta' *crew member*.

Il-Qorti tifhem li l-pulizija jinsabu mghobbija bix-xoghol kif inhuma dawn il-Qrati izda wiehed jistenna li kazijiet bhal dawn ghandhom ikunu prezentati f'qasir zmien u mhux xhur wara u jekk jista' jkun meta kaz ma jkunx wiehed ta' agir qarrieqi u malinn, kontra s-sigurta` ta' pajjizna ghandu jkun rizolt amministrattivament.

KONSIDERAZZJONIJIET LEGALI

L-Artikolu 28 tal-Kap 217 jipprovdi hekk:

> *Kull persuna li tinzel l-art jew timbarka f'Malta ghandu jkollha passaport u ghandha taghti lill-Ufficjal Principali tal- Immigrazzjoni l-informazzjoni preskritta u dik l-informazzjoni l-ohra kif l-Ufficjal Principali ta' l-Immigrazzjoni jidhirlu xieraq li jehtieg.*

Il-Qorti qabel wasslet ghad-decizjoni taghha rat il-kazijiet kollha fl-ahhar ghoxrin sena li trattaw il-Qrati taghna dwar vjolazzjonijiet tal-Artikolu 28 tal-Kap 217. Sentenza partikolari tal-Qorti tal-Appell Kriminali li trattat dan l-Artikolu kien dik tal-Imhalef Vincent Degaetano fl-ismijiet

il-**Pulizija vs Godfrey Ciangura**[1] tal-10 ta' Gunju 2002 fejn dahlet dwar l-elementi li jridu jkunu sodisfatti biex tinstab htija.

Ma hemmx dubbju li l-essenza tar-reat kontemplat fl-Artikolu 28 tal-Kap. 217 hu, ghall-fini tal-kaz in dizamina, l-att ta' "imbarkar", liema espressjoni, skond l-Artikolu 2 tal-istess Kap. 217, tinkludi[2] "tluq b'kull mezz ta' trasport"[3].

L-imputat skont dak mistqarr minnu kien ghadu fit-territorju Malti qabel htieglu johrog aktar 'l barra biex jaghmel ix-xoghol li kellu jaghmel u ma kellux il-hsieb tieghu minghajr ma jkun b'ebda mod beda jaghmel hsara ghad-dritt tutelat bl-Artikolu 28 imsemmi, u cioe` d-dritt ta' l-Istat li jassigura li kull min jitlaq minn Malta jkollu passaport u li jaghti l-informazzjoni mehtiega lill-Ufficjal Principali ta' l-Immigrazzjoni[4].

Il-Qorti tifhem dak li sostniet il-Prosekuzzjoni "*li ma jistax ikun hemm sitwazzjonijiet fejn kulhadd jaghmel li jrid fuq il-bahar u ghax imbghad jigu pprezentati l-karti necessarji biex tintalab clearance wara li l-operazzjoni tkun diga saret, qisu xejn m'hu xejn ... li galadarba din il-procedura tant semplici fejn kellhom jimtlew xi karti u jigu pprezentati lill-Pulizija tas-Seaport bhala rapprezentanti tal-Uffiċjal Prinċipali ta' l-Immigrazzjoni, ma saritx, sar ksur tal-ligi.*"

[1] Appell Nru 42/2002
[2] Mhux "tfisser", u ghalhekk id-definizzjoni m'hix wahda ezawrienti.
[3] Fit-test Ingliz: "to embark" includes departure by any form of conveyance.
[4] "Di conformita` all'esposta [seconda] teoria di Carrara, e` stato deciso che atti preparatori sono quelli che possono conciliarsi anche coll'ipotesi che l'agente non intenda commettere il reato, o gli consentano l'adito al pentimento senza lesione del diritto preso di mira ove pure diretti al reato – come il procurarsi il torchio e le pietre litografiche e il trovare operai per la fabbricazione di carte false. Fu deciso non esservi tentativo di spedizione dolosa nella semplice predisposizione dei falsi biglietti allo scopo di usarne" – Majno, L., op. cit. para. 293, p. 177.

Id-Difiza spjegat li *"irriżulta li l-imputat għarraf lill-awtoritajiet kompetenti, inkluż l-Uffiċċjal Prinċipali ta' l-Immigrazzjoni, l-awtoritajiet doganali u kif ukoll l-awtoritajiet tal-port, bil-fatt li hu kien ħiereġ fuq biċċa xogħol barra l-ibħra territorjali, u l-istess awtoritajiet ikkonfermaw l-awtorizzazzjoni tagħhom lill-imputat, kif jirriżulta kemm mill-istqarrija meħuda lill-imputat a tempo vergine, mix-xiehda ta' l-imputat stess f'dawn il-proċeduri, kif ukoll mix-xiehda ta' Jason Cassar. Tajjeb li jingħad li l-imputat talab li jiġu prodotti bħala prova t-telefonati magħmula minnu dakinhar, iżda din il-prova ma kienetx possibbli li ssir għaliex il-kumpannija Melita plc ma żżommx telefonati għal aktar minn tnax-il xahar. Għalhekk din il-prova ma setgħetx issir għaliex, bl-akbar dovut rispett, il-prosekuzzjoni għażlet li tistitwixxi dawn il-proċeduri aktar minn sena wara li seħħ il-każ."*

Punt validu li qajmet id-Difiza huwa li *"Isegwi li dak li teħtieġ il-liġi huwa li l-persuna għandha tagħti lill-Uffiċċjal Prinċipali tal-Immigrazzjoni l-"informazzjoni preskritta" – il-liġi la tgħid jekk dik l-informazzjoni għandhiex tingħata qabel jew wara, u lanqas ma tgħid f'liema forma għandha tingħata dik l-informazzjoni, u ċioe' jekk hux bil-kitba jew bil-fomm. Barra minn hekk, il-liġi tgħid "informazzjoni preskritta" u mkien fl-istess Att ma hu spjegat jew imfisser liema hi l-informazzjoni preskritta."*

Il-punt li tqajjem dwar "xjentement" u hawn hemm wiehed tajjeb li jifhem id-differenza fejn tidhol ix-xjenza jew is-suspett tal-persuna akkuzata rigward l-ghemil tieghu. Id-differenza bejn dawn iz-zewg kuncetti huwa ovvju fis-sens illi filwaqt illi x-xjenza tista' tigi determinata b'mod oggettiv madanakollu is-suspett huwa iktar xi haga soggettiva u personali.

Fir-rapport dwar il-kaz **Taylor's Central Garages (Exeter) Limited v Roper**[5] Devlin J jaghti numru ta' osservazzjonijiet dwar it-tifsira tal-kelma xjentament "*knowingly*" u kif tkun stabilita' x-xjenza f'kaz kriminali:

> "*It seems to me to be very important in cases of this sort that lay justices, who are not necessarily very skilled in the handling of evidence and in the drawing of distinctions which the law requires to be drawn, should have explained to them by the prosecution, where the burden is on the prosecution, exactly what sort of knowledge the prosecution desires to be found. There are, I think, three degrees of knowledge which it may be relevant to consider in cases of this sort. The first is actual knowledge, and that the justices may infer from the nature of the act that was done, for no man can prove the state of another man's mind, and they may find it, of course, even if the defendant gives evidence to the contrary. They may say: 'We do not believe him. We think that was his state of mind.' They may feel that the evidence falls short of that, and, if they do, they have then to consider what might be described as knowledge of the second degree. They have then to consider whether what the defendant was doing was, as it has been called, shutting his eyes to an obvious means of knowledge. Various expressions have been used to describe that state of mind. I do not think it is necessary to describe it further, certainly not in cases of this type, than by the phrase that was used by Lord Hewart CJ, in a case under this section, Evans v Dell (1). What the Lord Chief Justice*

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

said was: 'The respondent deliberately refrained from making inquiries, the results of which he might not care to have.'

"The third sort of knowledge is what is generally known in law as constructive knowledge. It is what is encompassed by the words 'ought to have known' in the phrase 'knew or ought to have known.' It does not mean actual knowledge at all, it means that the defendant had in effect the means of knowledge. When, therefore, the case of the prosecution is that the defendant failed to make what they think were reasonable inquiries it is, I think, incumbent on the prosecutor to make it quite plain what they are alleging. There is a vast distinction between a state of mind which consists of deliberately refraining from making inquiries, the result of which the person does not care to have, and a state of mind which is merely neglecting to make such inquiries as a reasonable and prudent person would make. If that distinction is kept well in mind, I think justices will have less difficulty in determining what is the true position. The case of shutting the eyes is actual knowledge in the eyes of the law; the case of merely neglecting to make inquiries is not actual knowledge at all, but comes within the legal conception of constructive knowledge, which is not a conception which, generally speaking, has any place in the criminal law."[6]

Il-*Crown Prosecution Service* (CPS) jaghti din l-ispjega ta' "knowledge":

Implied knowledge for the summary offences includes actual subjective knowledge proven by evidence but it may also include wilful blindness. It is always open to a tribunal of fact to base a

[6] Ibid. pg 449

finding of knowledge on evidence that the defendant had deliberately shut his eyes to the obvious or refrained from inquiry because he suspected the truth but did not want to have his suspicion confirmed ***Westminster City Council v Croyalgrange Ltd*** *83 Cr. App. R.155*

In ***Flintshire CC v Reynolds*** *[2006] EWCH 195 (Admin) it was alleged that Mrs Reynolds had knowingly produced information she knew to be false in a material particular for the purpose of obtaining a benefit or other payment or advantage. Mrs Reynolds evidence was that she signed the form completed by her husband without reading it. It was held that constructive knowledge is not enough to demonstrate that something has been done knowingly in the context of a criminal statute (in this instance section 112 SSAA 1992).*

F'sentenza moghtija mill-Qorti ta'l-Appell fl-Ingilterra fl-ismijiet ***Regina vs Hilda Gondwe Da Silva*** il-kelma suspett inghatat is-segwenti tifsira:

"The word suspect means that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice."

KONKLUZZJONI

Stante li din hija Qorti ta' Gudikatura Kriminali hija marbuta bit-termini tal-imputazzjoni. Aktar minn hekk quddiemha huwa dmir tal-Prosekuzzjoni li tipprova l-kaz tagħha skont kif proferit fl-imputazzjoni kontestata sal-grad ta' konvinciment morali u sufficjenza probatorja lil

hinn minn kull dubju dettat mir-raguni. Mill-banda l-oħra jekk id-difiza tagħzel li tressaq xi provi jew sottomissjonijiet kif sar f'dan il-kaz, huwa bizzejjed għad-difiza li tikkonvinci lil Qorti bit-tezi tagħha fuq bazi ta' konvinciment morali li jistrieħ fuq bilanc ta' probabilita' u f'kaz li dan iseħħ, u l-Qorti ma tħossiex moralment konvinta li l-Prosekuzzjoni laħqet il-grad ta' prova rikjesta minnha, allura l-Qorti trid tillibera lill-imputat.

Illi skont l-Artikolu 638(2) tal-Kapitolu 9 tal-Ligijiet ta' Malta, f'kull kaz, ix-xhieda ta' xhud wiehed biss, jekk emmnut minn min ghandu jiggudika fuq il-fatt, hija bizzejjed biex taghmel prova shiha u kompluta minn kollox, daqs kemm kieku l-fatt gie pruvat minn zewg xhieda jew aktar.

DECIDE:

Ghal dawn il-motivi l-Qorti tiddikjara lill-imputat mhux hati tal-imputazzjoni kif dedotta fil-konfront tieghu u konsegwentement tilliberah mill-istess imputazzjoni.

_____

Dr. Joseph Mifsud
Magistrat