Qorti tal-Magistrati (Malta)

Bhala Qorti ta' Gudikatura Kriminali

Magistrat Dr Josette Demicoli LL.D

Il-Pulizija

(Spettur Herman Mula)

Vs

Eros Pavia

Kaz Nru: 178/2016

Illum 18 ta' Settembru 2019

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra **Eros Pavia** detentur tal-karta tal-identita' Maltija numru 289097M:

Akkuzat talli f'dawn il-Gzejjer bejn il-31 ta' Dicembru 2015 u l-1 ta' Jannar 2016:

Ittraffikajt, bieghejt, qassamt jew offrejt li tittraffika, tbiegh jew tqassam medicina psikotropika u ristretta (ecstasy) minghajr awtorizzazzjoni specjali bil-miktub mis-Supretendent tas-Sahha Pubblika, bi ksur tad-disposizzjonijiet ta' l-Ordinanza dwar il-Professjoni Medika u l-Professjonijiet li ghandhom x'jaqsmu maghha, Kap 31 tal-

Ligijiet ta' Malta u r-Regolamenti dwar il-Kontroll tal-Medicini, Avviz Legali 22 tal-1985 kif emendati;

Il-Qorti hija wkoll mitluba li f'kaz ta' htija barra milli tapplika l-piena skont il-ligi tordna lill-imputat ihallas l-ispejjez li ghandhom x'jaqsmu mal-hatra tal-esperti skont l-artikolu 533 tal-Kap 9 tal-Ligijiet ta' Malta.

Rat l-ordni tal-Avukat Generali a tenur tal-artikolu 120A(2) tal-Kapitolu 31 tal-Ligijiet ta' Malta .

Semghet ix-xhieda.

Semghet is-sottomissjonijiet finali.

Rat l-atti u d-dokumenti kollha.

Kunsiderazzjonijiet

Illi l-imputat qieghed jigi imputat bi traffikar ta' medicina psikotropika u ristretta ossija ecstasy.

Illi qabel kollox billi d-difiza waqt it-trattazzjoni ssottmettiet li l-istqarrija ghandha tigi dikjarata inammissibbli, il-Qorti se titratta preliminarjament dan il-punt.

Inamissibilita' tal-Istqarrija

L-imputat irrilaxxja stqarrija fl-1 ta' Jannar 2016 fejn huwa kien inghata d-dritt sabiex jikkonsulta ma' avukat qabel l-interrogatorju izda ma kellux id-dritt li jkun assistit minn avukat waqt l-interrogatorju u dan billi dak iz-zmien il-ligi ma kienitx tippermettih.

Kif inhu maghruf kien hemm sensiela ta' sentenzi kemm mill-Qrati taghna u minn dik Ewropeja li trattaw il-kwistjoni ta' vjolazzjoni tad-dritt ta' smiegh xieraq l-ewwel

minhabba r-restrizzjoni sistemika tad-dritt tal-avukat anki qabel l-interrogatorju, u sussegwentement minhabba n-nuqqas tad-dritt li suspettat ikun assistit minn avukat waqt l-istqarrija.

Il-Qorti tirreferi ghas-sentenza fl-ismijiet **Il-Pulizija vs Thomas Pace**[1] fejn fiha saret rassenja ta' sentenzi bl-ahhar zviluppi b'mod dettaljat.

Tirreferi wkoll ghas-sentenza moghtija mill-Qorti tal-Appell Kriminali fl-ismijiet **Il-Pulizija vs Laurence Darmanin** fl-4 ta' Lulju 2019 fejn inghad:

Illi l-appellat jilqa' ghal dan l-argument ta'l-Avukat Generali billi jistieden lil Qorti tiskarta l-istqarrija minnu rilaxxjata lill-pulizija meta huwa gie interrogat lura fit-18 ta' Novembru 2009 billi ma kienx inghata il-jedd li jkun assistit minn avukat jew inkella li jiehu parir legali qabel ma gie interrogat. Issa din il-Qorti, kif ippresjeduta kellha diga' okkazjoni tesprimi ruhha fir-rigward u dan referribilment ghal dawk l-istqarrijiet rilaxxjati qabel Frar tas-sena 2010, billi l-ligi dak iz-zmien kienet tipprekludi lill-persuna arrestata milli tiehu parir legali qabel ma tigi interrogata bil-konsegwenza allura li kien hemm il-perikolu li tinkrimina ruhha ghaliex l-istqarrija kienet titqies bhala prova regina fil-proceduri penali li jigu istitwiti sussegwentement. Illi tali fehma kienet imsejsa fuq il-linja mehuda mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fil-kaz "Borg vs Malta" fejn sa dak iz-zmien d-decizjonijiet kienu kollha konsoni fil-konkluzjoni taghhom illi jkun hemm vjolazzjoni ta'l-artikolu 6(3)(c) tal-Konvenzjoni kull meta persuna arrestata u interrogata ma tkunx inghatat assistenza legali qabel ma tigi assoggettata ghall-interrogazzjoni fejn tista' tinkrimina ruhha u dan meta l-ligi tal-pajjiz kienet teskludi b'mod sistematiku tali jedd.

"60. The Court notes that it has found a number of violations of the provisions at issue, in different jurisdictions, arising from the fact that an applicant did not have legal assistance while in police custody because it was not possible under the law then in force (see, for example, Salduz, cited above, § 56; Navone and Others v. Monaco, 24 October 2013; Brusco v. France, October 2010; and Stojkovic v. France and Belgium, 27 October 2011). A systemic restriction of this kind, based on the relevant statutory provisions, was sufficient in itself

[1] Deciza mill-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali fis-26 ta' Gunju, 2019

for the Court to find a violation of Article 6 (see, for example, Dayanan v. Turkey, no. 7377/03 §§ 31-33, 13 October 2009; Yeşilkaya v. Turkey, no. 59780/00, 8 December 2009; and Fazli Kaya v. Turkey, no. 24820/05, 17 September 2013).

61. In respect of the present case, the Court observes that no reliance can be placed on the assertion that the applicant had been reminded of his right to remain silent (see Salduz, cited above, § 59); indeed, it is not disputed that the applicant did not waive the right to be assisted by a lawyer at that stage of the proceedings, a right which was not available in domestic law. In this connection, the Court notes that the Government have not contested that there existed a general ban in the domestic system on all accused persons seeking the assistance of a lawyer at the pre-trial stage (in the Maltese context, the stage before arraignment).

62. It follows that, also in the present case, the applicant was denied the right to legal assistance at the pre-trial stage as a result of a systemic restriction applicable to all accused persons. This already falls short of the requirements of Article 6 namely that the right to assistance of a lawyer at the initial stages of police interrogation may only be subject to restrictions if there are compelling reasons (see Salduz, cited above, §§ 52, 55 and 56).

63. There has accordingly been a violation of Article 6 § 3 (c) taken in conjunction with Article 6 § 1 of the Convention.”

Illi s-sentenza fl-ismijiet “ir-Repubblika ta’ Malta vs Rio Micallef et” deciza mil-Qorti tal-Appell Kriminali Superjuri traccat l-izvilupp gurisprudenjzali kemm lokali kif ukoll tal-Qorti Ewropeja f’din il-materja:

“7. Brevement rakkontata is-sitwazzjoni qabel l-2002, fil-kwistjoni tal-istqarrija fil-pre trial stage, persuna arrestata ma kellha ebda jedd ghall-xi forma ta’ assistenza legali sakemm iddum arrestata inkluz waqt l-interrogatorju. L-Att III tal-2002 imbaghad introduca fis-sistema legali taghna forma ta’ dritt ta’ assistenza legali billi ta il-jedd li persuna arrestata tkun intitolata titkellem wicc imm’wicc jew bit-telefon ma’ avukat jew prokuratur legali ghal mhux aktar minn siegha zmien ex artikolu 355 AT tal-Kap 9. Dan il-jedd ma dahalx fis-sistema legali taghna minghajr skossi ghaliex l-artikolu 355 AU imbaghad holoq id-dritt

tal-inferenza, igifieri, li f'kaz fejn l-arrestat ikun utilizza d-dritt li jikkonsulta mal-legali tieghu, ikun naqas milli jsemmi fatti li ragonevolment ikun mistenni li jsemmi, l-Qorti, allura fi stadju wara l-pre trial stage, "tista taghmel dawk l-inferenzi minn dan in-nuqqas bhala jidhru xierqa, liema inferenzi ma jistghux wahedhom jitqiesu bhala prova ta' htija izda jistghu jitqiesu bhala li jammontaw ghal korroborazzjoni ta' kull xhieda ta' htija tal-persuna akkuzata jew imputata". Dan kien ifisser illi ma tistghax issir tali inferenza f'dak il-kaz li l-persuna arrestata taghzel li ma taghmilx uzu mill-jedd ghall-assistenza legali. Mqabbla dawn il-provvedimenti mad-Direttiva numru 2013/48/EU tal-Parlament Ewropew u tal-Kunsill dwar id-dritt ghall-assistenza legali waqt l-arrest, kien hemm lok ghal-dibattitu dwar kemm il-provvedimenti tal-Kap 9 jirrispekkjaw d-dritt ghall-assistenza legali moghti lill-arrestat tenut kont ukoll illi dan id-dritt, kif ezistenti dakinhar taht il-ligi taghna, kien ristrett ghal siegha qabel l-interrogatorju u b'hekk kien jeskludi l-jedd tal-presenza tal-avukat waqt l-istess interrogatorju. F'dak l-istadju l-arrestat kien soggett ghal-mistoqsijiet diretti u suggestivi bir-risposti taghhom, anke jekk jghazel li ma jwegibx, bit-traskrizzjoni tieghu tkun eventwalment esebita fil-proceduri kontrih fejn ikun meqjus innocenti sakemm pruvat mod iehor. Tajjeb li jkun rilevat ukoll illi l-Att III tal-2002 ma dahalx fis-sehh qabel is-sena 2010;

8. Gara, izda, illi l-Att LI tal-2017 biddel l-Artikolu 355AT u l-Artikoliu 355 AU meta dahal fil-kodici id-dritt tal-assistenza legali kif postulat fid-Direttiva 2013/48 EU. Dawn l-emendi dahlu fis-sehh permezz tal-Avviz Legali 401/2016, igifieri ferm wara l-ghoti tal-ewwel sentenza. Tajjeb li jinghad ukoll illi bis-sahha tal-Avviz Legali 102/2017 maghmulha taht il-Kodici Kriminali, kienu introdotti fis-sistema legali taghna ir-Regolamenti dwar il-procedura waqt l-interogazzjoni ta' persuni suspettati u persuni akkuzati; [2]"

Illi sfortunatament din is-"saga" dwar l-ammissibilita' o meno bhala prova tal-istqarrija rilaxxjata mill-persuna akkuzata meta din ma tkunx giet assistita minn avukat ghadha ma ratx it-tmiem taghha, bil-qrati taghna issa rinfaccjati b'decizjonijiet godda mill-Qorti

[2] Repubblika ta' Malta vs Rio Micallef, David Tabone u Darren James Vella – Appell 14/2013/1 deċiża mill-Qorti tal-Appell Kriminali Superjuri, deċiża nhar it-3 ta' April 2019.

Ewropeja dwar id-Drittijiet tal-Bniedem li fil-fehma ta' din il-Qorti, imorru lura ghall-istatus quo ante d-decizjoni "Borg vs Malta". U ghalkemm f'din id-decizjoni kienet saret kritika lejn il-qrati Maltin u dan ghaliex d-decizjonijiet ma kenux qed jimxu kollha b'mod konformi, issa din l-istess Qorti wasslet hi stess biex qed timxi b'nuqqas ta' konformita l-aktar bid-decizjonijiet recenti li inghataw u cioe' Beuze vs Belgium (decizjoni Grand Chamber), Doyle vs Ireland (Court 5th Section) u dik li laqtet lil pajjizna "Farrugia vs Malta" deciza fl-04 ta' Gunju 2019 (Court 3rd Section) fejn il-Qorti strahet fuq il-konsiderazzjonijiet minnha maghmula fil-kawza "Beuze vs Belgium[3]" meta holqot test imsejjes fuq zewg binarji li l-qorti trid taghmel f'kull kaz ghalih meta qalet:

"97. In Beuze, drawing from its previous case-law the Court explained the aims pursued by the right of access to a lawyer (§§ 125-130) and elaborated on the content of the right of access to a lawyer reiterating, in particular, that suspects must be able to enter into contact with a lawyer from the time when they are taken into custody. It must therefore be possible for a suspect to consult with his or her lawyer prior to an interview or even where there is no interview and that suspects have the right for their lawyer to be physically present during their initial police interviews and whenever they are questioned in the subsequent pre-trial proceedings (§§ 133-134).

98. Prior to the recent Beuze judgment, in a number of cases, the Court found that systematic restrictions on the right of access to a lawyer had led, ab initio, to a violation of the Convention (see, in particular, Dayanan v. Turkey, no. 7377/03, § 33, 13 October 2009 and Boz v. Turkey, no. 2039/04, § 35, 9 February 2010). That same approach was followed by the Court in relation to the Maltese context in Borg (no. 37537/13, 12 January 2016).

99. Subsequently, being confronted with a certain divergence in the approach to be followed in cases dealing with the right of access to a lawyer, the Court had occasion to further examine the matter in Ibrahim and Others, Simeonovi and more recently in Beuze, all cited above, where the Court departed from the principle set out in the preceding paragraph. In Beuze, the most recent authority on the matter, the Grand Chamber gave prominence to the examination of the overall fairness approach and confirmed

[3] Deciza mill-Grand Chamber fid-09 ta' Novembru 2018

the applicability of a two stage test, namely whether there are compelling reasons to justify the restriction as well as the examination of the overall fairness and provided further clarification as to each of those stages and the relationship between them, as explained below.

i) Concept of compelling reasons

100. The criterion of "compelling reasons" is a stringent one: having regard to the fundamental nature and importance of early access to legal advice, in particular at the suspect's first police interview, restrictions on access to a lawyer are permitted only in exceptional circumstances, must be of a temporary nature and must be based on an individual assessment of the particular circumstances of the case. A finding of compelling reasons cannot stem from the mere existence of legislation precluding the presence of a lawyer. The fact that there is a general and mandatory restriction on the right of access to a lawyer, having a statutory basis, does not remove the need for the national authorities to ascertain, through an individual and case-specific assessment, whether there are any compelling reasons. Where a respondent Government have convincingly demonstrated the existence of an urgent need to avert serious adverse consequences for life, liberty or physical integrity in a given case, this can amount to a compelling reason to restrict access to legal advice for the purposes of Article 6 of the Convention (see Beuze, cited above, §§ 142-143).

(ii) The fairness of the proceedings as a whole and the relationship between the two stages of the test

101. Where there are no compelling reasons, the Court must apply very strict scrutiny to its fairness assessment. The absence of such reasons weighs heavily in the balance when assessing the overall fairness of the criminal proceedings and may tip the balance towards finding a violation. The onus will then be on the Government to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the criminal proceedings was not irretrievably prejudiced by the restriction on access to a lawyer (see Beuze, cited above, § 145).

102. The Court further emphasises that where access to a lawyer was delayed, and where the suspect was not notified of the right to legal assistance, the privilege against self-incrimination or the right to remain silent, it will be even more difficult for the Government to show that the proceedings as a whole were fair (ibid., § 146).

103. As the Court has already observed, subject to respect for the overall fairness of the proceedings, the conditions for the application of Article 6 §§ 1 and 3 (c) duringpolice custody and the pre-trial proceedings will depend on the specific nature of those two phases and on the circumstances of the case (ibid., § 149).

(iii) Relevant factors for the overall fairness assessment

104. When examining the proceedings as a whole in order to assess the impact of procedural failings at the pre-trial stage on the overall fairness of the criminal proceedings, the following non-exhaustive list of factors, drawn from the Court's case-law, should, where appropriate, be taken into account:

(a) whether the applicant was particularly vulnerable, for example by reason of age or mental capacity;

(b) the legal framework governing the pre-trial proceedings and the admissibility of evidence at trial, and whether it was complied with – where an exclusionary rule applied, it is particularly unlikely that the proceedings as a whole would be considered unfair;

(c) whether the applicant had the opportunity to challenge the authenticity of the evidence and oppose its use;

(d) the quality of the evidence and whether the circumstances in which it was obtained cast doubt on its reliability or accuracy, taking into account the degree and nature of any compulsion;

(e) where evidence was obtained unlawfully, the unlawfulness in question and, where it stems from a violation of another Convention Article, the nature of the violation found;

(f) in the case of a statement, the nature of the statement and whether it was promptly retracted or modified;

(g) the use to which the evidence was put, and in particular whether the evidence formed an integral or significant part of the probative evidence upon

which the conviction was based, and the strength of the other evidence in the case;

(h) whether the assessment of guilt was performed by professional judges or lay magistrates, or by lay jurors, and the content of any directions or guidance given to the latter;

(i) the weight of the public interest in the investigation and punishment of the particular offence in issue; and

(j) other relevant procedural safeguards afforded by domestic law and practice."

Illi din id-decizjoni waslet ghalhekk ghal ezami gdid li ghandu isir f'kull kaz ghalih sabiex titqies l-ammissibilita' o meno tal-istqarrija bhala prova in atti. Id-dissenting opinions ghal din id-decizjoni ta'l-Imhallfin Serghides u Pinto de Albuquerque jaghtu stampa tal-iter li hadu id-decizjonijiet tal-Qorti Ewropeja fuq dan il-punt u jikkritikaw din id-decizjoni billi fil-fehma taghhom tmur kontra il-principju tas-smigh xieraq kif imhaddan fil-Konvenzjoni:

I. Two approaches to the right to a lawyer

2. There are two basic Grand Chamber case-law approaches regarding the interpretation and application of Article 6 § 3 (c). The first approach (henceforth referred to as such) is that of John Murray v. the United Kingdom[1] and Salduz v. Turkey[2]. Under this approach, evaluation of the overall fairness of a trial (stage two) is required only when there were compelling reasons justifying the restriction on the right to a lawyer (stage one): "the question, in each case, has therefore been whether the restriction was justified and if so, whether in the light of the entirety of the proceedings it has not deprived the accused from a fair hearing"[3]. Hence, according to this approach, there should be no stage two if at stage one it is found that there were not compelling reasons for the restriction.

3. The second approach (henceforth referred to as such) is that of Ibrahim and Others v. the United Kingdom[4], Simeonovi v. Bulgaria[5] and Beuze v. Belgium[6].Pursuant to this approach, an evaluation of the overall fairness of the trial is always required, even if there were not compelling reasons which

justified the restriction. Hence, under this approach there is a compulsory two-stage test in every case.

Fil-fehma taghhom gjaldarba ma tezisti l-ebda raguni impellenti 'il ghala l-persuna suspettata tkun giet imcahhda mid-dritt ghall-assistenza legali, allura f'dak il-kaz tinsorgi awtomatikament il-lezjoni fit-termini tal-artikolu 6(3)(c) tal-Konvenzjoni minghajr il-htiega li l-Qorti tezamina l-proceduri penali fl-intier taghhom sabiex tqies jekk tkunx saret ingustizzja mal-persuna akkuzata. Ikomplu hekk jikkritikaw din id-decizjoni:

" The second approach interpreted the Article 6 § 3 (c) right in a manner contrary to its wording, object and purpose, and diminished its importance to the extent that its core is seriously, if not mortally, affected. Thus, we do not consider it an advancement or further realisation[10], but a retrogression of the relevant human right. Such a result could have been avoided if the Court had never lost sight of the principle of effectiveness in the interpretation and application of the right to a lawyer."

U jikkonkludu hekk wara li jezaminaw l-argumenti imressqa mil-maggoranza tal-Imhallfin li wasslu ghal konkluzjoni li ma kienx hemm ebda vjolazzjoni tal-artikolu 6 fil-kaz ta' Farrugia, li kien gie imcahhad mid-dritt ghall-assistenza legali qabel ma gie interrogat, gie illiberat mill-Ewwel Qorti izda misjub hati mill-Qorti ta'l-Appell fejn ghalkemm dik il-qorti strahet fuq evidenza ohra li kien hemm fl-atti, madanakollu qieset illi Farrugia ma kienx kredibbli fl-istqarrijiet minnu rilaxxjati sabiex b'hekk tat iktar piz lill-provi l-ohra li kien hemm kontrieh:

"This is a truly Kafkaesque case, in which an already acquitted defendant ultimately finds himself convicted on the basis of shaky testimony from one single prosecution witness and the appellate judges' doubts regarding the credibility of the defendant's replies to police questions concerning facts unrelated to the imputed offence. We were already persuaded that, under the first approach, his conviction should not stand. It is clear from the above analysis that all the arguments used by the majority in applying the second approach are unfounded. After concluding this analysis, we are further strengthened in our firm conviction that there has been a violation of Article 6

§§ 1 and 3 (c) of the Convention in the present case. Having found such a violation, we would obviously award the applicant a sum in respect of non-pecuniary damage."

Illi l-Qorti taqbel ma' din il-fehma ghaliex gjaldarba ma hemm ebda raguni impellenti li abbazi taghha l-persuna suspettata tkun giet mcahhda mill-jedd ghall-assistenza legali, anke jekk wahda minima, allura kwalunkwe dikjarazzjoni hekk rilaxxjata tpoggi lil dik il-persuna sussegwentement akkuzata fi zvantagg, meta dak dikjarat minnha fi stadju investigattiv, anke jekk mhux inkriminatorja, tingieb imbaghad bhala prova kontra tieghu/taghha fil-process penali tant ghalhekk illi jkun hemm lezjoni tad-dritt tieghu/taghha ghal smigh xieraq. Dan minghajr il-htiega li jigi ezaminat jekk tali stqarrija kenitx determinanti o meno fil-gudizzju finali u li allura jigu ezaminati "the overall fairness of the proceedings", it-tieni kriterju stabbilit fit-test gdid imfassal mill-Qorti Ewropeja. Il-Qorti tirrileva illi qed thaddan din il-fehma biss fir-rigward ta' dawk l-istqarrijiet rilaxxjati qabel Frar tas-sena 2010 u allura fiz-zmien meta kien hemm projbizzjoni assoluta ghal persuna suspettata li tikseb parir legali jew li tkun assistita minn avukat u allura meta ma kien hemm ebda raguni impellenti 'il ghala l-persuna suspettata kellha tigi imcahhda mill-assistenza legali.

Maghmula dawn il-konsiderazzjoni, ghalhekk u applikati ghal kaz in dizamina, il-Qorti tqies illi f'dan il-kaz ma kien hemm l-ebda raguni impellenti 'il ghala l-appellat kellu jigi imcahhad mill-jedd li jkollu l-assistenza legali qabel ma irrilaxxja l-istqarrija inkriminatorja tieghu. Dan ifisser illi tali stqarrija hija inammisibbli bhala prova ghaliex leziva tad-dritt tieghu ghal smigh xieraq iktar u iktar meta l-Avukat Generali, issa fi stadju ta' revizjoni, qed issejjes it-talba tieghu sabiex tigi revokata d-decizjoni liberatorja fuq dak minnu mistqarr fl-imsemmija stqarrija ghalkemm fiha qatt ma ammetta r-responsabbilita penali tieghu.

Fil-kaz odjern, l-imputat kien inghata d-dritt li jkellem avukat waqt l-interrogatorju tieghu izda mhux li jkollu avukat waqt ir-rilaxx tal-istqarrija tieghu. Huwa ghazel li ma jkellimx avukat qabel ma rrilaxxja l-istess stqarrija. Il-Prosekuzzjoni mhiex qeghda tistrieh biss fuq l-istqarrja rilaxxjata izda mill-istess stqarrija jirrizulta li l-imputat ghamel dikjarazzjonijiet inkriminanti li jekk jittiehdu in kunsiderazzjoni se jsahhu t-tezi tal-Prosekuzzjoni. Ma rrizultax li kien hemm xi raguni impellenti ghaliex huwa ma nghatax

id-dritt tal-avukat waqt l-istqarrija. Oltre' dan kif gie rilevat waqt it-trattazzjoni l-imputat kien ghadu kif ghalaq it-tmintax-il sena u kien l-ewwel darba li gie interrogat minn pulizija.

Fid-dawl ta' dawn is-sentenzi u anke tal-gurisprudenza tal-Qrati taghna u tal-Qorti Ewropea hemmhekk citati, il-Qorti jidhrilha illi m'ghandhiex tistrieh fuq l-istqarrija tal-imputat u ghalhekk qegħda tiddikjaraha bhala inammissibbli, kif qegħda tiskarta wkoll dik il-parti tax-xhieda tal-Ispettur li tagħmel referenza ghal tali stqarrija.

Ikkunsidrat

Illi mix-xhieda tal-**Ispettur Herman Mula**[4] jirrizulta li fil-lejl ta' bejn il-31 ta' Dicembru 2015 u l-1 ta' Jannar 2016, il-Pulizija fi hdan l-Iskwadra kontra d-Droga kienu qehdin fuq xoghol f'Paceville iwettqu *routine checks.* L-imputat twaqqaf quddiem Sky Club.

Wpc 284 Therese Vella xehdet[5] li fl-1 ta' Jannar 2016 ghall-habta tas-saghtejn neqsin ghaxra ta' filghodu, faccata ta' Sky Club innutat zewg guvintur fejn wiehed ta xi haga lil iehor f'idejh. Dawn il-persuni twaqqfu fejn irrizulta li kien l-imputat li ta pillola suspettata ecstasy lil certu Arlen Bellotti. Dawn gew arrestati u ttiehdu l-lock-up.

Wps 9 Abigail Fenech Pomroy xehdet[6] li 1 ta' Jannar 2016 ghall-habta tas-saghtejn neqsin ghaxra ta' filghodu, waqt li kienet ghaddejja flimkien ma' Wpc 284, minn gewwa Triq Dragonara, San Giljan ezatt quddiem Sky Club, raw persuna riesqa lejn persuna li kien bilqeghda u ghaddielu xi haga f'idejh. Dak il-hin waqqfu lil dawn iz-zewg persuni. Identifikaw ruhhom bhala Pulizija u ccekkjaw x'kellu f'idejh dak li kien bilqeghda u f'idejh kellu pillola ecstasy. Dak il-hin dawn il-persuni gew infurmati bid-drittijiet taghhom, infurmawhom li kienu taht arrest u zewg pulizija rgiel ghamlu t-tfittxija fuq iz-zewg persuni. Il-persuna li kienet bilwieqfa li tat xi haga f'idejn il-persuna l-ohra kien Eros Pavia, l-imputat, u l-persuna li kien qieghed bilqeghda kien jismu Arlen Bellotti. Minn hemmhekk ittiehdu gewwa d-depot.

[4] Seduta tal-14 ta' Novembru 2018
[5] Seduta tas-7 ta' Frar 2019
[6] Seduta tas-7 ta' Frar 2019

Arlen Bellotti xehed[7] li ttiehdu proceduri fil-konfront tieghu li kienu gew decizi. Huwa spjega li f'Lejliet l-Ewwel tas-Sena 2016 huwa u l-imputat, li huma hbieb minn mindu kienu tfal, hargu flimkien u x-xhud staqsih jekk kienx jimporta li jew imur huwa jew l-imputat biex imur jixtri l-ecstasy. Ghalhekk l-imputat *mar hu jixtri u taha lili imma.* Ighid ukoll li l-imputat xtara wahda ghalih ukoll. Huma kienu lis-Sky Club. Meta marru l-Pulizija fuqhom huwa tahom f'idejhom il-pillola li kellu huwa. In kontro-ezami huwa kkonferma li ta l-flus lill-imputat biex jixtrilu l-pillola.

L-imputat ghazel li ma jixhidx f'dawn il-proceduri.

Illi f'dawn il-proceduri l-pillola msemmija minn Arlen Bellotti ma gietx ezebita. Fit-trattazzjoni l-Ispettur Herman Mula qal li din giet distrutta mit-Tribunal fil-kaz kontra l-istess Bellotti.

Nuqqas ta' ezebizzjoni tal-allegata sustanza u konsegwentement ma saritx analizi fuq l-istess

Illi waqt it-trattazzjoni d-difiza sostniet li f'dan il-kaz kellu jinhatar espert biex jigi determinat il-pillola x'kienet, izda dan ma setax isir minhabba li l-pillola ma gietx ezebita nonostante li Arlen Bellotti lanqas biss ikkunsmaha. In sostenn tas-sottomissjoni taghha, l-abbli difensur irrefera ghas-sentenza fl-ismijiet **Il-Pulizija vs Emad Masoud** deciza mill-Qorti tal-Appell Kriminali[8] fejn il-Qorti kkonkludiet li:

Gialadarba ma saret l-ebda analizi tas-sustanza suspettata raza mehuda mill-pjanta tal-Cannabis u, stante li l-imputazzjonijiet mahruga fil-konfront tal-appellant jirrigwardaw il-bejgh jew it-traffikar kif ukoll il-pussess tar-raza mehuda mill-pjanta Cannabis jew xi preparazzjonijiet li jkollhom bhala bazi din ir-raza, din il-Qorti tikkonkludi li l-Prosekuzzjoni ma resqitx l-ahjar prova, ma lahqitx il-grad ta' minghajr dubju dettat mir-raguni u ghalhekk din il-Qorti ma tistax tikkonferma l-htija tal-imputazzjonijiet migjuba fil-konfront tal-appellant.

[7] Seduta tas-7 ta' Frar 2019
[8] Fis-16 ta' Mejju 2019

Biss pero' l-fattispecie ta' dak il-kaz huma differenti minn ta' dak odjern. Fil-kaz citat, id-droga kienet giet ezebita in atti u billi l-imputat kien irrilaxxja stqarrija l-Prosekuzzjoni strahet fuq l-istess, Madankollu l-Qorti tal-Appell Kriminali minhabba l-gurisprudenza kif evolviet iddikjarat l-istqarrija bhala ammissibbli. Il-Qorti qieset ukoll li minn provi ohra ma setghetx tasal ghall-konkluzjoni li f'dak il-kaz si trattava ta' raza tal-cannabis.

Fil-kaz odjern ix-xhud Arlen Bellotti xehed b'mod specifiku li huwa talab lill-imputat biex imur jixtrilu pillola ecstasy, li huwa l-istreet name tas-sustanza, u l-imputat mar biex jipprokuralu l-pillola bil-flus li tah l-istess Bellotti. Bellotti xehed li l-imputat xtara wahda ghalih ukoll. Instabet biss pillola fil-pussess tal-istess Bellotti. Huwa minnu li ma saritx il-prova xjentifika tas-sustanza izda hawn ma jridx jintesa wkoll dak li tipprovdi l-ligi nnifisha dwar id-definizzjoni ta' traffikar hekk kif sottolineat fis-sentenza fl-ismijiet **Il-Pulizija vs Luke John Mizzi**[9]**,**

Jinghad ukoll illi ghalkemm ma jirrizultax mix-xhieda tal-imputat u ta' Falzon, illi l-imputat lahaq prokura xi pilloli lill-istess Falzon qabel il-waqt tal-arrest tieghu, biss jirrizulta car, illi huwa kien offra li jaghmel dan, tant li kif inghad, huwa akkwista l-pilloli mhux biss ghalih, izda wkoll ghal Falzon. Fit-termini tal-Artikolu 120A(1B) tal-Kap. 31 tal-Ligijiet ta' Malta jghid hekk:

"*Ghall-finijiet ta' dan l-artikolu l-kelma "jittraffika" (bil-varjazzjonijiet grammatikali u bl-espressjonijiet imnisslin minnha) b'riferenza ghal traffikar f'medicina, tinkludi l-koltivazzjoni, l-importazzjoni f'dawk ic-cirkostanzi li l-Qorti tkun sodisfatta li dik l-importazzjoni ma kinietx ghall-uzu esklussiv tal-hati, il-manifattura, l-esportazzjoni, id-distribuzzjoni, il-produzzjoni, l-amministrazzjoni, il-provvista, <u>li wiehed joffri li jaghmel xi wiehed minn dawn l-atti</u>, u l-ghoti ta' informazzjoni intiza biex twassal ghax-xiri ta' tali medicina bi ksur tad-disposizzjonijiet ta' din l-Ordinanza.*" [sottolinear mizjud]

Dan ifisser illi d-definizzjoni ta' traffikar fl-Artikolu 120A(1B) tal-Kap. 31 tinkludi l-att ta' min joffri li jipprovdi d-droga. Ghalhekk bil-fatt <u>biss</u> illi l-imputat offra li jipprovdi l-pilloli ecstasy lil haddiehor, indipendentement minn dak li seta' gara jew ma garax wara dan u independentement ghalhekk minn kemm kellu success o meno f'dan ir-rigward, ghal

[9] Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali deciza fis-17 ta' April 2015

fini tal-ligi, huwa traffika d-droga ecstasy. Kif inghad fis-sentenza moghtija minn din il-Qorti kif diversament preseduta tat-12 ta' Ottubru 2001, fl-ismijiet ***Il-Pulizija vs Ronald Psaila****, liema sentenza giet ikkonfermata mill-Qorti tal-Appell Kriminali b'sentenza fl-istess ismijiet tat-8 ta' Jannar 2002 (Appell Nru. 187/2001):*

"*Minn din id-disposizzjoni tal-ligi johrog car li r-reat ta' Traffikar jikkonfigura anki jekk persuna* ***toffri*** *li taghmel wahda mill-azzjonijiet indikata f'dan l-Artikolu. Fit-test ingliz, il-kelma "joffri" hija trodotta bil-kelma "offer". Issa stante li ma hemmx fl-Ordinanza definizzjoni ta' din il-kelma, allura ghall-finijiet ta' interpretazzjoni, din ghandha tittiehed fis-sinifikat ordinarju taghha, u cioe` li, spontaneament jew fuq rikjesta, direttament jew indirettament,* ***persuna turi****, bil-fatt jew bil-kliem, id-disponibilita` taghha li taghmel wahda mill-azzjonijiet indikati.*

*In propositu huma interessanti l-osservazzjonijiet maghmula fil-Blackstone Criminal Practice 2001 – (11th Ed. B20.29) fuq l-interpretazzjoni tal-frasi "****Offering to Supply****" kontenuta fil-Misuse of Drugs Act 1971 s. 4. "****An offer may be made by words or conduct … Whether the accused intends to carry the offer into effect is irrelevant; the offence is complete upon the making of an offer to supply****" (vide kazistika indikata – pg. 776).*"

F'dan il-kaz l-imputat wera bic-car x'kienet l-intenzjoni tieghu ossija li jixtri pillola ecstasy u bhala stat ta' fatt hekk ghamel ghaliex xtraha u taha lil siehbu.

Ikkunsidrat Ulterjorment

Illi waqt it-trattazzjoni, l-ufficjal prosekutur iddikjara li l-kaz odjern jaqa' fid-definizzjoni ta' *trafficking by sharing.* Din il-Qorti jehtiegilha tiddetermina jekk filfatt dak dikjarat mill-ufficjal prosekutur huwiex korrett.

Illi l-Qorti tirreferi ghas-sentenza fl-ismijiet **Il-Pulizija vs Omissis**[10]

[10] Qorti tal-Appell deciza fid-19 ta' Novembru 2015

Illi l-kuncett ta' dritt li isawwar l-"iskuzanti" ghar-reat ta' traffikar jew kif inhu ahjar imsejjah it-trafficking by sharing, fejn allura hija prevista piena aktar miti minn dik tassattiva tal-prigunerija, giet introdotta fil-ligi taghna permezz ta'l-Att XVI tal-2006. Il-hsieb tal-legislatur mal-promulgazzjoni tal-emenda gie imfisser hekk:

"Sal-lum kull każ ta' traffikar – żgħir jew kbir, sharing u mhux sharing – kien jaqa' taħt il-kappa tat-traffikar u allura, malli l-każ tiegħek jaqa' taħt din il-kappa, awtomatikament kien ikollok piena karċerarja tassattiva ta' sitt xhur. Jiġifieri l-aħjar li tista' tmur huwa li teħel sitt xhur ħabs. .... għalmin qiegħed jaqsam ma' xi ħadd ammonti żgħar ta' droga. Xorta jitqies bħala traffikar b'mod ġenerali, pero' mhux bilfors li l-ħati jintbagħat il-ħabs. Għalhekk m'aħniex qed inneħħu l-piena karċerarja għax-sharing imma qed ngħidu li fil-każ ta' sharing mhux bilfors li jkun hemm piena karċerarja.

Din l-emenda qed nagħmluha b'tali mod li ma jkunx hemm xi ħadd li jipprova jużaha sabiex ma jmurx il-ħabs meta ħaqqu jmur il-ħabs. Qegħdin ukoll noħolqu lparametri u nagħtu d-diskrezzjoni lill-qorti. Qegħdin ngħidu li d-droga li kellu ma kenitx sabiex jagħmel il-flus biss minnha imma l-intenzjoni tiegħu hija dik li jikkonsmaha personalment jew ma' xi ħadd ieħor. Barra minn hekk l-akkużat jista' jikseb dan il-benefiċċju għal darba waħda biss, jiġifieri jekk wara li l-qorti ma tkunx bagħtitu l-ħabs fil-każ ta' sharing u dan jerġa' jikkommetti reat ieħor ta' sharing, ikollu jmur il-ħabs bilfors, bil-piena minima karċerarja ta' sitt xhur.[11]"

Dan ifisser illi l-legislatur kellu f'mohhu dawk il-persuni li jkunu fil-pussess tad-droga f'ammonti zghar u li ma ghandhomx l-intenzjoni jaghmlu qliegh minnha, izda biss li jikkonsmawha huma stess jew inkella li jikkonsmawha ma haddiehor. Dan ifisser allura illi f'dawn il-kazijiet biss it-traffikar, li allura jinkludi kull *provvista ta' sustanza illecita lil terzi, jista' igorr piena alternattiva ghal dik karcerarja. Illi din il-mitigazzjoni fil-piena hija estiza ukoll ghar-reat tal-pussess aggravat. Fil-fatt jekk wiehed ihares lejn id-dicitura tal-ligi fl-artikolu 120A(7) hemm ipprovdut testwalment illi:*

"Id-disposizzjonijiet tal-artikoli 21 u 28A tal-Kodiċi Kriminali u d-disposizzjonijiet tal-Att dwar il-Probation ma jkunux applikabbli dwar xi persuna misjuba ħatja ta' reat kif imsemmi fis-subartikolu (2)(a)(i) jew (b)(i): Kap. 446.

[11] Seduta parlamentari numru 388 tat-23 ta' Mejju 2006

Iżda meta, dwar xi reat imsemmi f'dan is-subartikolu, wara li jitqiesu ċċirkostanzi kollha tal-każ inkluż l-ammont u x-xorta tal-mediċina in kwistjoni, ix-xorta ta' persuna involuta, l-għadd u n-natura ta' kull kundanna li l-persuna kellha qabel, inklużi kundanni li dwarhom tkun saret ordni taħt l-Att dwar il-Probation, il-Qorti tkun tal-fehma li l-ħati kien bi ħsiebu jikkonsma l-mediċina f'dak l-istess post flimkien ma' oħrajn, il-Qorti tista' tiddeċiedi li ma tapplikax id-disposizzjonijiet ta' dan is-subartikolu:

Iżda wkoll il-ħati jista' jikseb benefiċċju għal darba waħda biss mid-disposizzjonijiet tal-proviso li jiġi minnufih qabel dan."

Illi mid-dicitura tal-ligi allura johrog l-element formali tar-reat u cioe' l-hsieb pre-ordinat maghmul mill-hati illi jikkonsma dik id-droga li ikollu fil-pussess tieghu fl-istess post u fl-istess hin ma' ohrajn, liema intenzjoni tohrog iktar cara mill-qari tat-test ingliz fejn jinghad illi "the offender intended to consume the drug on the spot with others." Dan certament ma jinkludiex dik is-sitwazzjoni allura fejn l-hati ikun akkwista id-droga bl-intenzjoni li ighaddieha lil terzi.

Issa l-appellanti ighid hekk fl-istqarrija tieghu rilaxxjata a tempo vergine u emmnuta mill-Ewwel Qorti u dan meta mistoqsi x'kien ser jaghmel bil-11-il pillola u nofs li instabu fuqu mill-pulizija:

"Dawk jiena kont ghadni kif mort nixtrihom ghalija u ghal shabi ghal street party li kien hemm Bugibba."

Dan ifisser illi l-appellanti kien a priori akkwista id-droga bl-intenzjoni li ighaddieha lil shabu. Fil-fatt ikompli ighid illi kienu shabu stess li indikawlu il-persuna minn ghand min kellu imur jixtrihom, izda ma xtaqx isemmi min kienu dawn shabu. Ighid fil-fatt illi huwa hallas ghalihom bi flusu u bil-flus li kien gabar minn ghand dawn shabu. Dan ghalhekk huwa kaz car u klassiku ta' persuna li qed tindahal biex tmur tixtri d-droga (f'dan il-kaz pilloli ecstasy) sabiex tipprovdieha lil terzi u mhux bhal fil-kaz indikat mil-legislatur ta' dik il-persuna li akkwistat d-droga li imbaghad taqsamha ma' terzi fl-istess post u fl-istess hin li kienet qed tikkonsmaha hi, bhal per ezempju dik il-persuna li ikollha xi joint u tiddeciedi taqsmu ma' haddiehor. Minn dak li ighid l-appellanti stess huwa gie inkarigat sabiex jakkwista id-droga ghal haddiehor, tant illi gie mghoddi il-flus minn ghand shabu sabiex huwa jakkwista il-pilloli ghalihom. Allura hawn temergi il-figura tal-mandant, li qed jigi mibghut minn haddiehor biex jakkwistalu id-droga. Illi huwa minnu illi dawk il-pilloli, hekk akkwistati u mghoddija lil shabu kienu ser jigu

ikkunsmati fil-party li attendew ghalih, izda ma jistax jinghad illi dan jikwadra ruhu fit-tifsira, anke dik komuni, moghtija lil kelma "sharing" li necessarjament timplika il-pussess ta' oggett f'idejn persuna li ma izzommhiex biss ghalih, izda jaqsamha ma' haddiehor. U allura minn hawnhekk tohrog l-interpretazzjoni moghtija mill-qrati taghna tal-kuncett tal-komunanza. Jekk persuna jakkwista oggett ghan-nom ta' terz, ma jistax jinghad li qieghed jaqsam dak li ghandu hu fil-pussess tieghu ma' dak it-terz. Illi huwa proprju dan li gie imfisser fid-decizjonijiet Il-Pulizija v. Russell Bugeja u Il-Pulizija v. Marco Galea, decizi it-tnejn fil-5 ta' Mejju 2008 u li ghalihom taghmel referenza l-Ewwel Qorti fi-decizjoni impunjata.

Illi huwa minnu illi il-qrati taghna jigu rinfaccjati spiss b'sitwazzjonijiet simili bhal dik li instab fiha l-appellanti, fejn grupp hbieb jinkarigaw lil wiehed minnhom sabiex jaghmel l-akkwist ghan-nom taghhom lkoll, u li tali persuna tispicca ikollha tiffaccja akkuzi dwar traffikar jew pussess aggravat. Izda ma jidhirx illi l-legislatur kellu f'mohhu dawn ic-cirkostanzi, li ghalkemm jimmeritaw l-attenzjoni tieghu, madanakollu ma jinkwadrawx rwiehom fid-dispost tal-ligi li jikkontempla 'l hekk imsejjah t-trafficking by sharing. Illi li kieku din il-Qorti kellha tabbraccja it-tezi prospettata mill-appellanti tkun qed tiftah il-bibien ghal abbuz serju fejn persuna intercettata b'ammont ta' droga jew sustanza illecita f'xi avveniment socjali tohrog bl-iskuza illi dawn hija akkwistathom bl-intenzjoni li taqsamhom ma' shabha, minghajr ma jingiebu provi ulterjuri sabiex tigi sostanzjata dina l-affermazzjoni.

Stabbiliti ghalhekk dawn il-principji ta' dritt u applikati ghall-fattispecje ta' dan il-kaz, din il-Qorti ma tara l-ebda motiv 'il ghala ghandha titbieghed mill-fehma milhuqa mill-Ewwel Qorti fid-decizjoni taghha.

Illi fil-kaz fl-ismijiet **Il-Pulizija vs Luke John Mizzi**[12]**,** Il-Qorti kienet qeghda tikkunsidra jekk ghall-kaz li kellha quddiemha setax japplika il-proviso ghall-Artikolu 120A(7) tal-Kap. 31 tal-Ligijiet ta' Malta:

Hawnhekk il-Qorti taghmel referenza ghas-sentenzi tal-Qorti tal-Appell Kriminali, li ghalihom ghamlet referenza wkoll id-difiza fis-sottomissjonijiet taghha, fl-ismijiet ***Il-Pulizija vs Marco Galea*** *u* ***Il-Pulizija vs Russell Bugeja****, it-tnejn decizi fil-5 ta' Mejju*

[12] Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali deciza fis-17 ta' April 2015

2008, fejn il-Qorti fliet bir-reqqa l-elementi ta' sharing kif ikkontemplat fil-proviso ghas-sub-artikolu (9) tal-Artikolu 22 tal-Kap. 101 tal-Ligijiet ta' Malta, liema disposizzjoni tal-ligi hija identika ghal dik tal-proviso ghall-Artikolu 120A(7) tal-Kap. 31 tal-Ligijiet ta' Malta. Dik il-Qorti qalet hekk:

"Is-subartikolu (9) in dizamina jipprovdi li ghar-reat, fost ohrajn, ta' bejgh jew traffikar ta' droga bi ksur tad- disposizzjonijiet ta' l-imsemmija Ordinanza ma jkunux applikabbli d-disposizzjonijiet ta' l-Artikoli 21 (inzul taht il-minimu) u 28A (sentenza ta' prigunerija sospiza) tal-Kodici Kriminali, kif ukoll lanqas ma jkunu applikabbli d-disposizzjonijiet tal-Att dwar il-Probation. Ir-rizultat ta' din il-projbizzjoni hi li fil-kaz ta' tali bejgh jew traffikar trid dejjem tigi applikata l-piena ta' prigunerija u ta' multa ghall-anqas fil-minimu taghhom – f'dan il-kaz, trattandosi ta' proceduri quddiem il-Qorti tal-Magistrati, il-minimu huwa ta' sitt xhur prigunerija u multa ta' Euro 465.87. L-ewwel proviso ghal dan is-subartikolu gie introdott … bl-Att XVI ta' l-2006, u jipprovdi hekk:

"Izda meta, dwar xi reat imsemmi f'dan is-subartikolu, wara li jitqiesu c-cirkostanzi kollha tal-kaz inkluz l-ammont u x-xorta tal-medicina in kwistjoni, ix-xorta ta' persuna involuta, l-ghadd u n-natura ta' kull kundanna li l-persuna kellha qabel, inkluzi kundanni li dwarhom tkun saret ordni taht l-Att dwar il-Probation, il-Qorti tkun tal-fehma li l-hati kien bi hsiebu jikkonsma l-medicina f'dak l-istess post flimkien ma' ohrajn, il-Qorti tista' tiddeciedi li ma tapplikax id-disposizzjonijiet ta' dan is-subartikolu…" *(sottolinear ta' din il-Qorti).*

Huwa evidenti mid-dicitura tal-ligi li, apparti konsiderazzjonijiet ohra li l-qorti ghandha tizen sew qabel ma tapplika dan l-ewwel proviso (fosthom l-ammont u x- xorta ta' medicina involuta, ecc), trid tkun tirrikorri wkoll sitwazzjoni partikolari fejn id-droga tkun ser tigi, jew tkun giet, ikkunsmata (i) fl-istess post u (ii) minn min ikun qed jipprovdiha flimkien ma' ghall-anqas persuna ohra. Il-kliem "flimkien" u "fl-istess post" jissottolineaw l-element ta' komunanza – dak li aktar popolarment jissejjah "sharing" – jigifieri li dak li jkollu id-droga intiza ghalih jiddeciedi li jaqsamha ma' haddiehor f'dak l-istess waqt li jkun qed jikkunsmaha huwa stess. Kif inhu risaput, fil-ligi taghna min joffri d-droga, li jkollu ghall-uzu tieghu, lil haddiehor – cioe` jaqsamha ma' haddiehor – ikun qieghed jipprovdi ("supply" fit-test ingliz) dik id-droga ghall-finijiet tad-definizzjoni ta' traffikar (Art. 22(1B)), u, per konsegwenza, ikun qed jitraffika dik id-droga. Dak li l-legislatur ried kien li meta jkollok kazijiet zghar u izolati ta' "sharing" – persuna jkollha

d-droga ghaliha u taqsamha ma' haddiehor – tkun tista' (izda mhux bilfors – ghalhekk iridu jitqiesu c-cirkostanzi kollha tal-kaz) tigi evitata, ghall-anqas ghall-ewwel darba, il-piena mandatorja ta' prigunerija b'effett immedjat."

Issa, fil-kaz in dizamina, kif inghad m'hemmx dubju illi l-pussess ta' dawn il-pilloli da parti tal-imputat kien wiehed aggravat, ghaliex kif jammetti huwa stess dawn ma kinux intizi biss ghall-uzu tieghu, izda wkoll ghall-uzu ta' Falzon. Fit-tieni lok, ghalkemm jidher illi l-pilloli in kwistjoni kienu ser jigu kkunsmati fl-istess post mill-imputat u minn Falzon, madankollu huwa nieqes wiehed mill-elementi ta' sharing kif spjegat fil-bran hawn fuq citat. L-imputat jghid car u tond fix-xhieda tieghu illi huwa xtara l-pilloli ecstasy mhux biss ghalih, izda wkoll ghal Falzon, ghalkemm l-intenzjoni jidher li kienet li l-pilloli jigu kkunsmati minnhom fl-istess post. Ma kienx ghalhekk il-kaz li l-imputat kien bi hsiebu jaqsam il-pilloli li kellu ghall-uzu tieghu jew li kienu intiza ghalih ma' Falzon, jew li offra mill-pilloli li kienu hekk intizi ghalih lil Falzon, ghaliex a priori huwa xtara l-pilloli mhux biss ghalih, izda wkoll ghal haddiehor u bl-intenzjoni li jipprovdi lil Falzon tal-inqas bil-pillola li kien xtara appozitament ghalih u skond l-istess imputat, anke izjed minn wahda li kieku Falzon ried izjed. Imbaghad ghalkemm Falzon kien ghadu ma hallsux ghal din il-pillola, l-imputat jghid illi Falzon kien ser ihallsu ghaliha jew li kienu jirrangaw bejniethom ghaliex kienu hbieb, u l-istess Falzon jikkonferma li huwa kien ser jixtriha minghand l-imputat u ghalhekk, l-imputat xtara l-pillola ghal Falzon bil-hsieb li jithallas minghandu. Fil-fehma tal-Qorti, dawn ic-cirkostanzi ma jammontawx ghal sharing kif ikkontemplat mil-ligi u konsegwentement m'huwiex applikabbli l-proviso ghall-Artikolu 120A(7) tal-Kap. 31 tal-Ligijiet ta' Malta."

Illi abbazi ta' tali insenjamenti l-Qorti tqis li ma tistax taqbel mal-ufficjal prosekutur li dan kien kaz ta' *trafficking by sharing* billi l-imputat wera l-intenzjoni tieghu x'kienet hekk kif spjegat aktar 'il fuq.

Piena

Illi din il-Qorti qeghda tiehu in kunsiderazzjoni n-natura tar-reat, il-fedina penali netta tal-imputat u l-fatt li m'ghandha l-ebda diskrezzjoni fil-Ligi hlief li tikkundanna lill-imputat ghal piena ta' prigunerija effettiva u multa.

Decide

Ghal dawn il-motivi din il-Qorti wara li rat l-artikoli l-artikoli 40A, 120A(1)(a) u 120A(2)(b)(i) tal-Kapitolu 31 tal-Ligijiet ta' Malta u l-Avviz Legali 22/1985 issib lill-imputat hati tal-imputazzjoni migjuba fil-konfront tieghu u tikkundannah ghal sitt (6) xhur prigunerija u ghall-hlas ta' multa ta' €500, li bl-applikazzjoni tal-artikolu 14(2) tal-Kapitolu 9 tal-Ligijiet ta' Malta, tista' tithallas mill-hati b'rati mensili u konsekuttivi ta' hamsa u sebghin ewro (€75), bl-ewwel pagament isir mill-ahhar ta' Ottubru 2019, b'dan illi jekk il-hati jonqos milli jhallas pagament wiehed, il-bilanc jigi dovut minnufih u jigi konvertit fi prigunerija skont il-ligi.

Dr Josette Demicoli
Magistrat