



**MALTA**

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

**MAGISTRAT  
DR. CHARMAINE GALEA**

**Illum 7 ta' Ottubru 2019**

**Kumpilazzjoni Numru 364/2010**

**Il-Pulizija  
(Spettur Pierguido Saliba)**

**vs**

**Sandro (Alexander) Cassano  
(ID: 9667M)**

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra Sandro (Alexander) Cassano detentur tal-karta tal-identita` numru 9667M fejn gie akkuzat talli b`diversi atti maghmulin fi zminijiet differenti b`rizoluzzjoni wahda u cioe` bejn is-sena 2008 sas-sena 2010:

1. Kellu fil pussess tieghu karta tal-identita` jew kien fil-pussess ta` karta tal-identita` Nru 633030M ta` persuna ohra u cioe` ta` Maria Violet Cassano u naqas li jikkonsenja l-istess karta tal-identita` lill-awtorita` awtorizzata jew lid-detentur tal-istess karta tal-identita`;

2. U aktar talli matul l-istess perjodu ta` zmien imsemmi hawn fuq bil-hsieb li jqarraq jew jikser l-istess dispozizzjonijiet jew jaghmel xi dikjarazzjoni falza jew bil-hsieb li jaghti xi taghrif falz jew jipproduci dokument falz zamm fil- pussess tieghu l-imsemmija karta tal-identita imsemmija fl-ewwel akkuza;

3. U aktar talli gewwa il-Floriana u diversi postijiet ohra fil- gzejjer ta` Malta nhar is-6 ta` Jannar 2009 u fi zminijiet ta` qabel iffalsifika att awtentiku u publiku, jew skrittura Kummercjali (u cioe` log book ta` vettura CAT408)

b'falsifikazzjoni jew b'tibdil fl-iskrittura jew fil-firem, billi holoq pattijiet disposizzjonijiet jew obbligi foloz jew helsien falz minn obbligi jew billi dahhal dawn il-pattijiet disposizzjonijiet jew obbligi jew helsien minn obbligi f'dawk l-atti jew skritturi wara li jkunu gew iffirmati, inkella billi zied, jew biddel klawsoli, dikjarazzjonijiet jew fatti illi dawk l-atti jew skritturi kellhom ikollhom fihom jew kellhom jippruvaw;

4. U aktar talli fl-istess dati lok u taht l-istess cirkostanzi xjentement ghamel uzu minn att, kitba jew skrittura falza u/jew ta dikjarazzjoni falza u ghamel uzu mill-istess skrittura imsemmija fl-akkuza ta' qabel;

Rat illi din il-kawza giet deciza in prim'istanza fit-22 ta' Jannar 2018, minn liema sentenza sar appell mill-imputat;

Rat is-sentenza tal-Qorti ta' l-Appell datata 25 ta' Ottubru 2019, liema sentenza annullat is-sentenza tal-Ewwel Qorti u rrinvijat l-atti lil din il-Qorti sabiex il-kawza tigi trattata u deciza mill-gdid skont il-ligi;

Rat illi l-partijiet ezentaw lil din il-Qorti milli terga' tisma' x-xhieda gia` prodotti u li terga' tircievi d-dokumenti diga' esebiti u qablu li l-istess dokumenti jiffurmaw parti mill-atti ta' din il-kawza.

Rat l-atti u d-dokumenti;

Rat in-Nota tal-Avukat Generali datata l-ewwel jum (1) ta' Settembru elfejn u ghaxra (2010) li permezz taghha ta l-kunsens tieghu sabiex din il-Qorti tittratta u tiddeciedi din il-kawza bi procedura sommarja ai termini tas-segwenti artikoli u cioe`:

1. Artikoli 18 tal-Kap. 9 u Artikoli 12 u 14(1) tal-Kapitolu 258 tal-Ligijiet ta' Malta;
2. Artikoli 18 tal-Kap. 9 u l-Artikolu 14(2) tal-Kapitolu 258 tal-Ligijiet ta' Malta;
3. Artikoli 18, 183 tal-Kap. 9 tal-Ligijiet ta' Malta;
4. Artikoli 18, 184, 185, 186, 187 u 188 tal-Kap. 9 tal-Ligijiet ta' Malta;
5. Artikoli 17, 31 u 533 tal-Kap. 9 tal-Ligijiet ta' Malta.

Rat ukoll illi l-imputat ma kellux oggezzjoni sabiex din il-Qorti tiddeciedi din il-kawza;

Rat is-sottomissjonijiet tal-partijiet;

## Ikkunsidrat:

Illi l-imputat qieghed jigi akkuzat illi wettaq numru ta' reati konnessi mar-radd lura tal-Karta ta' l-Identita' ta' ommu Maria Violet Cassano u ma ffalsifikar tal-firma taghha fuq *log book* biex tinbiegh il-vettura bin-numru ta' registrazzjoni CAT 046 tal-ghamla Renault 19. Illi dawn l-imputazzjonijiet hargu wara investigazzjoni ta' rapport ta' Martin Cassano u ohtu Bernardette Gatt, hut l-imputat, bejn liema ahwa jidher li hemm kwistjonijiet oltre dawk odjerni.

Illi fil-kors tal-investigazzjoni ttiehdu kemm stqarrijiet tal-imputat u kif ukoll stqarrija tal-persuna li xtara l-vettura hawn fuq imsemmija, certu Yassin Ahmed.

Il-Qorti tirrileva illi d-dritt tal-assistenza legali qabel l-interrogazzjoni gie introdott permezz ta' Att III tal-2002 pero` dahal fis-sehh fl-10 ta' Frar 2010 permezz ta' Avviz Legali 25 tal-2010. Madankollu d-dritt ta' assistenza legali waqt l-interrogazzjoni dahal fis-sehh biss fl-2016.

Il-gurisprudenza fuq dan il-punt zviluppat mas-snin. Fil-kawza *The Police vs Mark Lombardi* (Qorti Kostituzzjonali 5 ta' April 2013) intqal li stante li l-istqarrija tal-imputat, mehuda fl-assenza ta' avukat tal-fiducja tieghu, ma kinitx determinanti biex tinstab htija, allura ma kienx hemm lok li jigi dikjarat li kien hemm vjolazzjoni ghad-dritt ta' smigh xieraq u dan apparti kwistjonijiet ohra ta' allegazzjoni ta' ksur ta' dritt fundamentali wara li kawza tghaddi in gudikat. Madankollu l-ahhar giurisprudenza nostrana, u cioe`, *Ir-Repubblika ta' Malta vs Rio Micallef et* (Qorti ta' l-Appell Kriminali 3 ta' April 2019) sahqet illi uzu tal-istqarrija mehuda minghajr assistenza ikun jikkostitwixxi ksur tal-jedd ghal smigh xieraq.

Illi l-ahhar zviluppi fil-gurisprudenza tal-Qorti Ewropeja tad-Drittijiet tal-Bniedem (*Case of Farrugia vs. Malta* tal-4 ta' Gunju 2019), xellfet xi ftit dan l-insenjament billi qalet li jridu jittiehdu in kunsiderazzjoni cirkostanzi ohra bhal perezempju l-eta` tal-persuna arrestata u l-vulnerabilita` taghha. F'din id-decizjoni intqal hekk: ***“In conclusion, while very strict scrutiny must be applied where there are no compelling reasons to justify the restriction on the right of access to a lawyer, the Court, in the specific circumstances of the case, finds that having taken into account the combination of various above-mentioned factors, despite the lack of procedural safeguards relevant to the instant case, the overall fairness of the criminal proceedings was not irretrievably prejudiced by the restriction on access to a lawyer. There has therefore been no violation of Article 6 §§ 1 and 3 (c) of the Convention.”***

Pero` nteressanti hija d-*dissenting opinion*, fid-decizjoni hawn fuq citata, tal-Imhallfin Georgios A. Serghides u Paulo Pinto De Albuquerque li saħqu illi:

***“10. In any event, we are of the view that the right to a lawyer at the pre-trial stage does not hinge, in any way or form, on the state of vulnerability of the defendant. Nothing in the Convention makes the Article 6 § 3 (c) right dependent on such vulnerability. Such an abusive and restrictive interpretation of that right contradicts its essence. Every defendant, vulnerable or not, has a right, at the pre-trial stage, to a lawyer who will advise him or her on the defence strategy to be followed.***

***11. Secondly, the majority state that “The applicant did not allege, either before the domestic courts or before [the Court], that the Police had exerted any pressure on him, nor that the evidence obtained had been in violation of another Convention provision”<sup>1</sup>***

***12. We disagree with this argument. The fact that a defendant has not been pressured by the police does not limit his or her right to a lawyer. Legal assistance in a criminal procedure is indispensable not only to counter pressure by the police or any other evidence obtained in violation of the Convention, but to define a strategy for the defence and adapt it to every incident throughout the entire proceedings. The police are expected to act lawfully, regardless of the manner in which a defendant presents his or her defence, with or without the benefit of legal assistance. The one has simply nothing to do with the other. Lawful conduct by the police is not a valuable argument on which to restrict the exercise of a Convention right by the defence. Ultimately, this argument by the majority reflects a very restrictive conception of the role of the lawyer in criminal procedure.***

***13. Thirdly, the majority state that “in the present case, the applicant was informed repeatedly in a sufficiently explicit manner of his right to remain silent and the privilege against self-incrimination”<sup>2</sup>***

***14. Again, we cannot accept this argument. The right to remain silent is not interchangeable with the right to a lawyer. These are two very different rights. Legal assistance at the pre-trial stage of a criminal procedure is essential to inform the defendant of the advantages and disadvantages, from the perspective of the defence strategy, of speaking out or remaining silent. In other words, the right to a lawyer is instrumental in effective protection of the right to remain silent (and of the privilege against self-incrimination).***

***15. In short, the fact that the applicant was informed of his right to remain silent if he so desired and the fact that the applicant did not claim that any pressure was exerted on him have nothing to do with his procedural right under Article 6 § 3 (c) of the Convention to have access to a lawyer. Those facts are***

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<sup>1</sup> § 111 of the present judgment

<sup>2</sup> 16 § 112 of the present judgment

***irrelevant for the purpose of curing the breach of this right. In our view, it is a fundamental mistake at stage two not to take seriously into account the finding of stage one, especially when the test applied should be a very strict scrutiny.<sup>3</sup> Otherwise, what is the point of having two stages!?”***

Illi din il-Qorti ttendi taqbel mad-*dissenting opinion* hawn fuq citata u ghalhekk qieghda tiskarta l-istqarrijiet tal-imputat u ta' Yassin Ahmed.

Ghalhekk issa l-Qorti se tezamina l-imputazzjonijiet kif dedotti u jekk dawn gewx ippruvati mill-Prosekuzzjoni sal-grad li trid il-ligi. Illi l-Qorti se tezamina l-ewwel il-kwistjoni tal-allegat falsifikazzjoni tal-firma ta' Maria Violet Cassano fuq il-*log book*.

Illi fil-kors ta' dawn il-proceduri xehdu l-kwerelanti u kif ukoll l-imputat. Giet ukoll nominata esperta tal-kalligrafija sabiex tivverifka jekk il-firma fuq il-*log book* in ezami kinitx ta' Maria Victoria Cassano u jekk setghax kien l-imputat li ghamel il-firma t'ommu fuq l-istess *log book*. L-imputat, fix-xhieda tieghu, ikkonferma illi kienet proprju ommu li ffirmat il-*log book* in kwistjoni wara li halliet f'idejh biex jiddisponi mill-vettura in kwisjtoni. Jirrizulta wkoll illi l-imputat kellu prokura generali favur tieghu da parti ta' ommu. Kwindi d-difiza tissottometti illi kieku ried seta' uza din il-prokura ghat-trasferiment, pero` ghazel li tkun proprju ommu li tiffirma l-*log book*.

Illi l-esperta Dr. Juliana Scerri Ferrante ikkonkludiet li l-firma fuq il-*log book* ma kinitx il-firma normali ta' Maria Violet Cassano. L-istess esperta kienet ukoll tal-opinjoni illi l-istess firma aktarx ma kinitx lanqas tal-imputat. Id-difiza tissottometti illi peress li omm l-imputat kienet mara avvanzata fl-eta` u tbat minn xi kundizzjonijiet medici, seta' jaghti l-kaz li l-firma kienet tvarja xi ffit minn dik normali taghha.

Illi madankollu, din il-Qorti ma tistghax tiskarta l-opinjoni ta' esperta jekk ma jkollhiex ragunijiet serji ghala taghmel dan.

Jirrizulta illi l-*log book* in kwistjoni tiehed ghand l-Awtorita` ghat-Trasport f'Malta f'Jannar 2009. Mill-atti jirrizulta illi l-firma ta' fuq il-*log book* giet imqabbla ma' dik fuq numru ta' dokumenti ohra, fosthom zewg testmenti maghmula f'April 2008 u iehor tal-14 ta' Mejju 2009. Ghalhekk fl-opinjoni ta' din il-Qorti, meta l-esperta ghamlet komparazzjoni hija kellha firem ohra li maghom setghet tikkompara li kienu *presso poco* tal-istess perjodu. Illi wara li l-Qorti rat ir-ragunijiet li abbazi taghhom waslet ghall-konkluzzjoni taghha l-espert tal-kalligrafija, m'ghandha l-ebda raguni ghala tiskarta tali konkluzzjonijiet.

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<sup>3</sup> § 108 of the present judgment

Illi l-Qorti tosserva illi l-imputat kien xhud meta saret il-“firma ta’ ommu” u ladarba gie stabbilit illi din il-firma saret minn terzi, huwa ovvju li huwa kien konsapevoli li din kienet qieghda tigi falsifikata. Kwindi jsegwi illi gie rez fix-xejn dak li proprju trid tittutela l-ligi, u cioe` li min joqghod xhud ta’ firma ikun fil-fatt ra lill-persuna koncernata tiffirma fuq id-dokument. Il-Qorti ghalhekk tikkonkludi wkoll illi l-imputat mhux biss ghamel dikjarazzjoni falza, izda wkoll illi ghamel uzu mill-istess dokument li kellu fuqu firma falza meta huwa pprezentah lill-Awtorita` ghat-Trasport f’Malta. Kwindi t-tielet u r-raba’ imputazzjoni gew ippruvati skont il-ligi.

Illi l-artikoli citati mill-Avukat Generali fir-rigward tat-tielet u tar-raba’ imputazzjoni huma artikolu 183 sa 188 tal-Kodici Kriminali. Kwindi, in vista ta’ dak li nghad hawn fuq jirrizultaw ir-reati kontemplati f’artikolu 184, 185 (2), 186 u 188 tal-Kodici Kriminali.

Illi fir-rigward tal-ewwel u tat-tieni imputazzjoni, skont l-artikoli mahruga mill-Avukat Generali, qieghed jigi ipotizzat reat ai termini tal-artikoli 12, 14(1) u (2) tal-Kapitolu 258 tal-Ligjiet ta’ Malta<sup>4</sup>. Illi artikolu 12 kien jiddisponi illi hadd m’ghandu jaghmel uzu minn Karta ta’ l-Identita` ta’ haddiehor u li jekk tigi fil-pussess tieghu irid jikkonsenjaha minnufih jew lid-detentur taghha jew lill-ufficjal awtorizzat. Mentri artikolu 14 jiddisponi dwar il-piena, *inter alia*, ghal reat mwettqa taht l-istess Kapitolu.

Illi mill-provi mressqa jirrizulta illi fid-9 ta’ Settembru 2009 kien sar rapport mill-kwerelant Martin Cassano illi l-Karta ta’ l-Identita` ta’ ommu kienet ilha xi sentejn mitlufa. L-imputat jispjega li din kienet instabet taht *doiler* wara li ommu giet nieqsa u kien sabha ftit qabel gie interrogat mill-Pulizija. Jirrizulta wkoll illi malli din intalbet mill-Pulizija huwa kkonsenjaha lill-istess Pulizija.

Illi mill-provi jirrizulta illi omm l-imputat u l-imputat kienu joqoghdu fl-istess residenza. Il-fatt li l-Karta ta’ l-Identita` instabet fid-dar tieghu ma jfissirx illi huwa zammha ghandu ghal xi skop izda din instabet wara l-mewt t’ommu fil-fond fejn din kienet tghix. Mill-provi prodotti, il-Qorti ma tista’ tirraviza l-ebda *mens rea* fl-imputat dwar dawn ir-reati.

Dwar il-piena ghat-tielet u r-raba’ imputazzjoni il-Qorti tosserva illi l-iktar piena gholja twassal sa erba’ snin prigunerija. Illi l-Qorti ha tiehu in konsiderazzjoni l-fatti kollha tal-kaz u tqis li fic-cirkostanzi piena ta’ prigunerija ghandha tkun wahda sospiza.

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<sup>4</sup> Illum il-gurnata dawn l-artikoli gew emendati u rinumerati u jinsabu f’artikolu 22 u 24 tal-Kapitolu 258 tal-Ligjiet ta’ Malta.

## **Decide**

Ghaldaqstant, il-Qorti, wara li rat artikoli 17 (h), 184, 185 (2), 186 u 188 tal-Kodici Kriminali, tiddikjara lill-imputat **Sandro (Alexander) Cassano** hati tattielet u tar-raba' imputazzjoni u tikkundannah ghal erbatax (14)-il xahar prigunerija li ai termini tal-artikolu 28A tal-Kodici Kriminali qed jigu sospizi ghal zmien sentejn (2) mil-lum filwaqt li tilliberah mill-ewwel u mit-tieni imputazzjoni stante li ma gewx ippruvati skont il-ligi.

Il-Qorti spjegat lill-imputat fi kliem ordinarju ai termini tal-artikolu 28A (4) tal-Kapitolu 9 tal-Ligijiet ta' Malta l-import ta' din is-sentenza u x'jigri jekk jikkommetti reat iehor punibbli bi prigunerija fi zmien sentejn (2).

**Dr. Charmaine Galea**  
**Magistrat**

Diane Gatt  
Deputat Registratur