



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

**Magistrat Dr. Donatella Frendo Dimech LL.D., Mag. Jur. (Int. Law)**

**Il-Pulizija  
(Spettur Bernard Charles Spiteri)**

**vs.**

**Joseph Cini, iben Victor u Rita xebba Mangion, imwieled nhar il-21 ta' Settembru, 1976 , fir-Rabat, Ghawdex, residenti f' Arzella, Triq il-Kaccaturi, Zebbug, Ghawdex, u detentur tal-karta tal-identita' bin-numru 25776(G)**

*Numru: 208/2018*

Illum, 27 ta' Novembru, 2019

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat **Joseph Cini**, u cioe` talli:

Matul il-granet ta' bejn l-24 u t-28 ta' Marzu, 2017, gewwa z-Zebbug, Ghawdex u/jew f' dawn il-gzejjer:

1. Waqt stagun maghluq ghat-tehid tal-ghasafar ha jew ipprova jiehu xi ghasfur bi ksur ta' Regolament 18(1)(c) ta' L.S.594.42;
2. U aktar talli fl-istess data, hin, lok u cirkustanzi ha jew ipprova jiehu xi ghasfur li huwa protett taht ir-Regolament dwar il-Konservazzjoni tal-Ghasafar Selvaggi (L.S.549.42) mhux skont dawn ir-regolamenti u mhux

skont il-kondizzjonijiet ta' kull licenzja moghtija bi ksur tar-Regolamenti 4(1)(a) ta' L.S. 549.42;

3. U aktar talli fl-istess data, hin, lok u cirkustanzi ha jew ipprova jiehu xi ghasfur billi uza xbieki bi ksur ta' Regolament (7)(1)(e) tal-L.S 549.42;
4. Akkuzat ukoll talli ma żarmax u ma neħhiex l-imnasab, inkluz xbieki u lasti minn fuq il-post tal-insib immedjatament meta għalaq l-istaġun tal-insib fil-Ħarifa tal-2016 bi ksur ta' Kundizzjoni 8 tal-Liċenzja Speċjali għall-Insib għall-għasafar tal-għana fil-Ħarifa tal-2016 hekk kif mitlub minn Regolament 7(h) ta' LS 549.93;

Il-Qorti giet mitluba li bis-sahha ta' regolament 27 tal-L.S 549.42 barra li taghti l-piena skont il-ligi, tordna l-konfiska tal-corpus delicti u s-sospensjoni ta' kull licenzja jew permess mahruga taht ir-Regolamenti dwar il-Konsevazzjoni tal-Ghasafar Selvaggi u taht it-Taqsima XV tal-Kodici tal-Ligijiet tal-Pulizija, għall-perijodu applikabli;

Semghet ix-xhieda.

Rat l-artikoli.

Rat l-atti u d-dokumenti kollha.

Semghet it-trattazzjoni.

Ikkunsidrat

**Leigh Assinders** beda biex kkonferma rapport minnu magħmul esebit in atti.<sup>1</sup> Spjega kif kien ma Olivia Masi u Maryanne Leenders *“On the twenty-fourth (24<sup>th</sup>) of March we were checking the ... .. for illegal finch trapping and we came across an active site with a man trapping who was all in camouflage clothing trying to conceal his face with a type of scarf across his, across the lower part of his face and sunglasses. We could see live finches in traps as a decoy and you could hear finch callers calling. We observed for some time, a location, but we were not sure whether we had been seen or not and eventually we thought it was safer to leave the area with some footage of this man trapping. We also returned on the twenty-sixth (26<sup>th</sup>) and again myself and another team member watched from a vantage point and could see that the trapping site was*

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<sup>1</sup> Fol.7-12. Xhieda a fol.57

active. There was the similar looking man wearing the same type of clothes on the twenty-fourth (24<sup>th</sup>) of March except he had a slightly different camouflage jacket on but he had the same build and look of the man, it was the same. We spotted a Maruti Gypsy vehicle on the twenty-fourth (24<sup>th</sup>) and the same vehicle was in a similar location on the twenty-sixth (26<sup>th</sup>) and it was suspicious because it would have given quite a good access to the trapping site where this lone vehicle was parked. The man stayed in the hide and close to the hide all of the time we observed and we watched for some time but again decided to leave it at that on that particular day. On the twenty-eighth (28<sup>th</sup>) March we returned as a team and from a vantage point we saw the same man as on the twenty-sixth (26<sup>th</sup>). He didn't have face coverings on this time and we saw him leaving the trapping site and walking up the hill. He was carrying a big backpack. I went round to where the Maruti Gypsy had been parked. It was there again and I saw the man arrive, quickly put his backpack in the vehicle and he took off his hat, jacket and he got in the vehicle and drove off. A few minutes later the other members of the team saw the same vehicle driving away out of the area. The man was probably around twenty-five to thirty-five, very well built. He had bright green camouflage cap on, camouflage jacket, he was wearing sunglasses, he had a dark t-shirt with two stripes on its arms and a logo on the front. He had some facial hair and a short beard at that time. .... There were clearly visible caged finch birds and there were illegal finch callers playing as well. It was possible to see the nets on the ground which would have been illegal because there was no finch trapping allowed at that time"<sup>2</sup>. Assinders identifika lill-imputat bhala l-persuna li xehed dwarha.

**Marianne Leenders** wkoll ikkonfermat r-rapport maghmul flimkien ma Assinders u li jinsab in atti.<sup>3</sup> Spjegat kif wara li fl-24 ta' Marzu, 2017 team mill-organizazzjoni CABS li tieghu kienet tiffirma parti, *innutaw trapping site*. Irritornat fuq il-post, "Down Zebbug towards the salt pans" ma xi kollegi ohra fis-26 ta' Marzu, 2017.<sup>4</sup> "We went on the same track that the first team went so at that point I just saw a man bending forward..... He was immediately he was trying to hide and then we tried to find different advantage point to see him, so we went up to the village, filmed him from there, he was still there but his face was covered. He was wearing sunglasses but also a very very distinct bright green cap. So we didn't see him anymore and there was a Maruti Gypsy on the old football pitch parked but we couldn't link him to that car so we decided to leave because if he had called the police it would have taken them a while, he could run

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<sup>2</sup> Fol.58-59

<sup>3</sup> Fol.62

<sup>4</sup> Fol.60-61

in all kinds of different areas so we decided that we wanted to link him to that car. So we went away and came back on the twenty-eight (28<sup>th</sup>) and on the twenty-eight (28<sup>th</sup>) around five o'clock in the afternoon (~ 5.00 p.m.) while we were still driving I was sitting at the back of the car while we were still driving I saw a man coming exactly from that trapping site and hide but now without any face cover so I filmed through the window and we tried to find out how he was walking and he went into that Maruti Gypsy where he took off his coat and his hat and he had a black t-shirt that has white stripes and that is all that I saw...."<sup>5</sup>

Ix-xhud **identifikat lill-imputat** bhala l-persuna li kien fuq it-trapping site. Tghid li gharrfitu anke qabel ma dahlet fl-awla waqt li kienet qed tistenna biex tixhed.<sup>6</sup> In kontro-ezami xehdet li kienet ilha tosserva lil dan ir-ragel "I was looking at him for quite a while because he had to walk up from the salt pans down and had to come up on a track and then he disappears, he comes up again, and disappears and comes up again. ....I was on the site on the twenty-sixth (26<sup>th</sup>) and on that site I didn't really couldn't see it from above because we tried to find that advantage point in Zebbug but from there **you couldn't see his nets or his birds but he was constantly walking up and down and bending down and went into the hide and then at a certain point he disappeared because of the vegetation.**" Dettal important hu li l-ilbies tal-persuna li kien mghammad fuq il-post fejn kien qed isir l-insib fis-26 ta' Marzu u l-persuna li rat fit-28 ta' Marzu, **kien libes l-istess hwejjeg: "he was wearing the same clothes. Exactly the same clothes"** izda din id-darba wiccu kien vizibbli.<sup>7</sup>

Ir-rapport maghmul minn dawn iz-zewg xhieda jirrigwarda dati bejn l-24 u s-26 ta' Marzu, 2017. Fl-24 ta' Marzu, 2017 Assinders kien innota "The site had nets, caged finch decoys and the trapper was on site. At 12.57pm the man was senn moving the clap nets of the trapping site ...Near the old football pitch a Maruti Gypsy was seen parked (ABJ079)...On 26<sup>th</sup> march 2017 at 3.08pm ...a man wearing the same clothes as seen on the 24<sup>th</sup> march ....was seen moving in the trapping site and going into the hide and staying there. The same Maruti Gypsy as 24<sup>th</sup> was parked in the same place. .... On 28<sup>th</sup> March 2017....at around 5pm a man wearing the exact same clothes as 26<sup>th</sup> was seen without face coverings leaving from the area of the trapping site walking uphill slowly. His face was visible....."<sup>8</sup>

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<sup>5</sup> Fol.61

<sup>6</sup> Fol.62

<sup>7</sup> Fol.63

<sup>8</sup> Fol.11

Fl-affidavit minn tieghu **PS698 Shaun Tabone** jiddikjara li wara li l-Pulizija rceviet rapport mingahnd il-*Committee Against Bird Slaughter (CABS)*, gie inkarigat jagħmel investigazzjonijiet ulterjuri. Is-sid tal-vettura ABJ079 ingib l-ghassa w irrilaxxa stqarrija.<sup>9</sup>

Fl-istqarrija rrilaxxata minnu l-imputat ma wiegeb għall-ebda domanda li saritlu.<sup>10</sup>

**Saviour Farrugia** in rappreżentanza ta' Transport Malta xehed li l-vettura Maruti Gypsy bin-numru ABJ079 kienet ilha registrata fuq l-imputat sa mill-2005.<sup>11</sup>

**Emanuel Muscat** in rappreżentanza tal-Wild Bird Regulation Unit xehed li għalkemm l-imputat kellu licenzja tal-insib valida, l-insib f' Marzu, 2017 ma kienx permissibbli.<sup>12</sup>

Ir-raba imputazzjoni tirrigwarda ksur tar-regolament 7(h) tar-*Regolamenti dwar Qafas Biex tigi Permess Deroga li Tiftah l-Istagun fil-Harifa Għall-Insib tal-Ghasafar tal-Ghana, L.S. 549.93*, li jipprovdi:

7. Kull licenzja għall-insib għall-ghasafar tal-ghana fil-Harifa mahruġa skont id-dispożizzjonijiet ta' dawn ir-regolamenti għandha: .....

(h) tispeċifika li l-imnasab għandhom jithallew skargati u kompletament ċatti mal-art fil-hinijiet kollha li fihom ma jkunx permess l-insib, u meta jagħlaq l-istagun tal-insib fil-Harifa jizzarmaw u jitneħhew minn fuq il-post:

lżda meta x-xbieki jkunu skargati u mpoġġija kompletament ċatti mal-art, il-persuna bil-licenzja għandu jieħu dawk il-miżuri kollha biex jaċċerta ruħu li ma jista' jkun hemm l-ebda speċi li aċċidentalment tinqabad fix-xbieki meta ma jkunux attivi;

Mhemmx dubbju li ma ttiehdet l-ebda azzjoni simili mill-imputat.

Fuq dawn ir-rizultanzi skjaccanti l-Qorti issib li l-prosekuzzjoni ppruvat il-kaz tagħha sal-grad rikjest mill-ligi. Għalkemm kien ikun ferm propizju li kieku l-ixbieki u apparat li nstab fuq is-sit gie elevat jew minn tal-inqas

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<sup>9</sup> Fol.5

<sup>10</sup> Fol.13-14

<sup>11</sup> Fol.65 et seq.

<sup>12</sup> Fol.69 et seq.

iffotografat u esebiti in atti, din il-Qorti ma tistax tiskarta dak mistqarr mix-xhieda okulari.

Fir-rigward tal-ewwel u tat-tieni imputazzjoni japplika l-principju tal-konkors formali ta' reati, fejn fil-kaz in dezamina l-piena ghaz-zewg imputazzjonijiet hi l-istess wahda kif ravvizata bir-regolament 27(2)(a) appena citat.

It-tielet u r-raba imputazzjoni servew bhala mezz ai fini ghall-ewwel zewgt imputazzjonijiet.

Ghal dawn il-mottivi, wara li rat l-artikoli 17 u 31 tal-*Kodici Kriminali*, ir-Regolamenti 4(1)(a), 7(1)(e), 18(1)(c) u 27 tar-*Regolamenti dwar il-Konservazzjoni ta' l-Ghasafar Selvaggi (L.S.549.42)*, ir-regolamenti 7(h), 9 u 10 tar-*Regolamenti dwar Qafas Biex tigi Permissa Deroga li Tiftah l-Istagn fil-Harifa Ghall-Insib tal-Ghasafar tal-Ghana, (L.S.549.42)*,<sup>13</sup> issib lill-imputat hati tal-akkuzi migjuba fil-konfront tieghu, tikkundannah ghal **multa ta' elfejn ewro (€2,000)**.

Ai termini tar-regolament 27(2)(b) tar-*Regolamenti dwar il-Konservazzjoni ta' l-Ghasafar Selvaggi (L.S.549.42)*, il-Qorti qed torda s-**suspensjoni** ta' kull licenza jew permess mahruga f'isem l-imputat, mahruga taht dawn ir-regolamenti u taht it-Taqsima XV tal-Kodici tal-Ligijiet tal-Pulizija ghal zmien **erba (4) snin** millum.

Ghalkemm il-prosekuzzjoni qed titlob il-konfiska tal-*corpus delicti*, l-istrumentalitajiet li bih twettqu ir-reati li dwarhom qed tinstab htija baqghu ma gewx esebiti, mqarr formalment, u ghaldaqstant il-Qorti giet prekluzza milli tordna l-konfiska tal-*corpus delicti*.

**Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)**  
**Magistrat**

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<sup>13</sup> Fis-sehh fiz-zmien li fih twettaq ir-reat.