



Fil-Qorti tal-Magistrati (Malta)
Bhala Qorti ta' Ġudikatura Kriminali

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

Kumpilazzjoni Nru. 143/2018

Il-Pulizija
(Spettur Anne Marie Xuereb)

-vs-

Mario Lia, detentur tal-Karta tal-Identita` numru 792160M

Illum: 27 ta' Jannar, 2020

Il-Qorti,

Rat l-akkużi miġjuba fil-konfront tal-imputat **Mario Lia** u cioe` talli:

Fix-xahar ta' Jannar, 2018, u fix-xhur u sena ta' qabel, f' dawn il-gzejjer, b' diversi atti magħmulin fi żminijiet different, iżda li jiksru l-istess dispożizzjoni tal-Liġi u li ġew magħmula b' riżoluzzjoni waħda:

1. Ikkorompa impjegat mal-Kumpanija Support Services Ltd., in konnessjoni mal-kariga jew impjeg tieghu, talab jew ircieva jew accetta ghalih jew ghal haddiehor xi rigal jew wegħda jew offerta ta' xi rigal fi flus jew f'utli iehor, jew ta' xi vantagg iehor li ghalihom Anthony Mercieca ma kellux jedd, u dan bi ksur tal-artikoli 115(1)(c), 120(1) u 121(3) tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta.

Il-Qorti giet gentilment mitluba sabiex fil-kaz ta' htija, tikkundanna lill-akkuzat ghal hlas ta' spejjez li jkollhom x'jaqsmu mal-hatra ta' esperti jew periti fil-proceduri hekk kif ikkontemplat fl-artikolu 533 tal-Kapitolu 9 tal-Ligijiet ta' Malta.

Rat in-nota tal-Avukat Generali permezz ta' liema bagħat lill-imputat biex jigi ggudikat minn din il-Qorti bhala Qorti ta' Gudikatura Kriminali kif mahsub fis-segwenti artikoli:¹

- a) Fl-Artikoli 18, 115(1)(c), 119, 120(1) u 121(1)(3) tal-Kapitolu 9 tal-Ligijiet ta' Malta;
- b) Fl-Artikoli 10(7), 18, 23, 23B, 31, 42, 43 u 533 tal-Kapitolu 9 tal-Ligijiet ta' Malta.

Rat li l-imputat m'ghandu l-ebda oggezzjoni biex il-kaz jigi hekk trattat.

Rat l-atti u d-dokumenti kollha.

Semghet it-trattazzjoni finali.

Il-Provi

Ikkunsidrat-

L-Ispettur Anne Marie Xuereb spjegat kif is-CEO ta' Mater Dei nfirmaha li rcieva rapport permezz ta' *email*² mingħand Holger Saliba li kien għadu kemm tilef lill-missieru li kien pazjent fl-Oncology Ward. Dan irrabja minhabba li kummissjonanti tal-funerali saru jafu bil-mewt ta' missieru qabel il-familjari tal-

¹ Fol.145

² Vide **Dok.AM** a fol. 28-30

mejjiet tant li lahqu marru kummissjonanti wara l-bieb tieghu qabel ma sar jaf hu stess bil-mewt ta' missieru.³ Kien anke rcieva telefonata u sab *business card* ta' kummissjonant partikolari fil-*letter box* tar-residenza tieghu. Sar kuntatt ma Holger Saliba li spjegalha li dawn kienu ta' Angelo Vella, il-persuma li kienu ser jinkarigawh bil-funeral, u ta' certu Mario Lia li sab il-*business card* tieghu fil-*letter box* u li konsegwentement l-ghada Lia cempillu sabiex jara kellux bzonn is-servizzji tieghu. Wara li ezaminat *records* ta' persuni li mietu mill-Oncology Ward bejn Novembru u Frar u l-hin tal-mwiet tagghom, gie osservat li zewg kummissjonanti rcevev telefonati minghand certu Anthony Mercieca, li jahdem gol-Palliative Ward fejn kien rikoverat missier Holger Saliba.

Tkompli "*Specifikament ghal rapport li kien ghamel pero' Holger Saliba, l-pazjent kien miet ghall-habta tat-tmienja ta' filghaxija, t-tmienja, d-disgha ta' filghaxija u mit-telefonati jidher illi kienu gew infurmanti z-zewg kummissjonanti b' dan il-mewt, li jidher car ukoll illi fl-ispreadsheet li tara l-Qorti, ahna hrigna l-outgoing u l-incoming ta' Anthony Mercieca, li huwa l-persuna, n-ners li, l-careworker li kien jahdem gol-palliative ward. Fejn jidher illi fit-tmienja neqsin kwart ta' filghaxija, kien informa lil Angelo Vella, l-ewwel kummissjonant u fit-tmienja u nofs kien informa lil Mario Lia. Hemm it-telefonati bejniethom. Nghid illi l-ewwel m' ghamilna, kellimna lil Anthony Mercieca, fejn Anthony Mercieca minn naha tieghu kien ammetta mmedjatament x' kien gara u ma' garax. Hu kien qalilna li z-zewg kummissjonanti huma t-tnejn minn Haz-Zabbar. Kien qalilna wkoll li huma kienu joqghodu vicin tieghu, kienu qalulu illi jekk ikun jaf b' xi haga jinfurmahom u mbghad jahsbu fih. Fil-fatt ghar rigward ta' Angelo Vella, hu ammetta li kien ghaddielu xi flus, ghax kien ghamel xi funerali, rigward Mario Lia, ma' kienx ghaddielu flus, ghall-fatt li minn dawk il-persuni li nfurmah, ma' kienx ghamel il-funeral tagghom. Jigifieri l-ftehim bejniethom kien li jekk*

³ Fol.22

ha jaghmluh il-funeral tal-persuni li jigu nfirmati bih, jahsbu fih. Jekk ma' jirnexxilhomx jehduh, ma' jtuh xejn."⁴.

L-ispettur spjegat li meta Lia gie interrogat minnha, ghall-ewwel innega kollox u spjega t-telefonati bejnu u Mercieca bhala telefonati li saru bejn zewgt ihbieb li kienu jcemplu lil xulxin ta' spiss.⁵ Izda aktar tard Lia kkonferma dak li kien stqarr Mercieca fejn spjega li ghalkemm ma kienux ghaddew flus, l-intendiment kien li jekk il-funeral isir ghandu hu kien ser jahseb f' Mercieca billi jixtrilu oggett li jkollu bzonn bhala ringrazzjament.⁶

L-ispettur ghaddiet biex tesebixxi *inter alia*, il-call profiles,⁷ il-lista ta' persuni li mietu gewwa l-Isptar Sir Anthony Mamo bejn Ottubru u Frar, 2018,⁸ u l-hin li fih mietu⁹. Lista ohra li fiha jidhru l-isem, il-hin tal-persuni li mietu, u l-hin tat-telefonati bejn Mercieca u l-imputat gie ukoll prezentata.¹⁰ Giet esebita lista ta' *incoming* u *outgoing calls* ta' Anthony Mercieca fil-jum li miet missier Holger Saliba.¹¹

Ivan Falzon, CEO tal-Isptar Mater Dei, ikkonferma l-*email* li rcieva minghand Holger Saliba.¹² L-istess *email* giet kkonfermata mill-mittent Saliba.¹³ **David Grima** kkonferma li kien ghadda lill-pulizija l-listi esebiti bhala **Dok.AM2** u **Dok.AM3**.

⁴ Fol.23-24

⁵ **Dok.LV** a fol.47 et seq.

⁶ Fol.24-25

⁷ **Dok.AM1** a fol.31

⁸ **Dok.AM2** a fol. 32-33

⁹ **Dok.AM3** a fol.34

¹⁰ **Dok.AM4** a fol. 35

¹¹ **Dok.AM5** a fol. 36-37

¹² Fol.86 b' riferenza ghal **Dok.AM** a fol.28-30

¹³ Fol.88

Emily Abela ikkonfermat l-informazzjoni li Melita plc ghaddiet lill-pulizija.¹⁴

Analizi ta' dawn il-listi turi li filwaqt li Carmelo Saliba miet fid-21:00hrs, Mercieca cempel lill-imputat f'20:38:44 u 21:12:46. Fl-istess jum li fih miet Saliba, mietet ukoll Carmela Williams fil-07:50hrs,¹⁵ fejn jidhru diversi telefonati li joriginaw mill-mobile ta' Mercieca lejn il-mobile ta' Mario Lia bejn il-10:27:58 hrs sa 12:32:30 kif ukoll fil-22:44:19.¹⁶

Fil-kors tal-interrogatorju tieghu, Lia jikkonferma li kien fir-residenza tal-mejjet Saliba tant li ra kummissjonant iehor hierieg mill-isqaq, izda ma ftakarx kif sar jaf li Saliba kien miet. Jikkonferma li kien jaf lil Mercieca, jaf li hu *nurse* Sir Anthony Mamo peress li kien Zabbari wkoll. Mercieca jaf li hu kummissjonant.¹⁷ Jistqarr li kien qal lil Mercieca li jekk ikun jaf b'xi xoghol jghidlu izda "*Le, qatt ma offretlu flus jiena, qatt 'offretlu flus*". Fil-bidu tal-isqarrija jinnega li qatt qal kliem lil Mercieca li kien ser jahseb fih jekk jghaddilu xi xoghol "*Le, qatt m'ghidtlu ta', qatt m'ghidtlu*"¹⁸ ghalkemm kien lest joffrielu birra. **Lia jammetti li Mercieca kien infurmah fuq bosta pazjenti li mietu "*U qatt ma rnexxieli niehu wiehed(1), dejjem sibt lill-iehor qabbli...ikun jaf qabel Toni*"**.¹⁹ Jinsisti li Toni biss kien jinfurmah u kien qallu li "*ma dak [Gulju] ma nahdimx*"²⁰. L-iktar li kien icempillu kien meta jmut xi hadd minn Haz-Zabbar u bil-kliem nahseb fik ried jghid li ried ifisser "*Forsi jkollu jigi bzonn xi haga hu u*

¹⁴ Fol.82 b'riferenza ghal **Dok.AM1** a fol.31. Vide ukoll **Dok.EA** a fol. 84

¹⁵ Vide **Dok.AM3** a fol. 34

¹⁶ Vide **Dok.AM5** a fol.36

¹⁷ Fol.50

¹⁸ Fol.51

¹⁹ Fol.51-52

²⁰ Fol.53

naghmilulu per ezempju b'nofs prezz....".²¹ Iktar il-quddiem jghid "Li kellhi f'mohhi per ezempju jigi bzonn xi haga u naqdih hux....naqdih ukoll hux bhala hbiberija...".²²

Stranament jghid li ma jafx kif jahdmu l-kummissjonanti ghalkemm kien ilu f'dan ix-xoghol tlett snin,²³ izda jammetti li talli mill-isptar kienu jcemplu xi kummissjonant biex jiehu ix-xoghol "*joffrulhom xi haga nahseb hux*".²⁴ Isib diffikulta' jispejga dwar x'hiex tkellem ma Mercieca dakinhar li miet Saliba.²⁵ Jammetti li qatt ma taha lil Toni xejn ghax qatt ma ha funeral "*Uzgur*"²⁶ izda dlonk jghid li ma jafx x'kien jigri li kieku ha funeral.

Lia jistqarr li kien cempel lil Toni Mercieca biex jinfurmah li ma kienx ha l-funeral ta' Saliba hu imma Gulju hadu "*Ghidtlu ma hadtux ta sibt lil dak hemm...heqq, ridt ninfurmah hux*"²⁷ izda ma jaghti l-ebda spjegazzjoni plawzibbli ghaliex kellu jinfurma lil Mercieca b'dan!! Jammetti li ha informazzjoni minghand Mercieca "*Informazzjoni hadt u sibt lil haddiehor qabli..[Toni] xogholu ghamlu*".²⁸ Indikazzjoni inekwivoka li f'ghajnejn l-imputat Mercieca zamm mal-patt milhuq meta infurmah bil-mewt ta' Saliba.

L-imputat ma jafx kif sar jaf bin-numru ta' Holger Saliba u anke f'din l-istanza jsib diffikulta` kbira biex jispjega kif sar jaf b'dan in-numru, "*Ma nafx ta*".²⁹ Wara hafna **jikkoncedi li kien Toni li ghaddielu n-numru ta' Holger u spicca jcempillu.**³⁰

²¹ Fol.55

²² Fol.56

²³ Fol.57

²⁴ Fol.57

²⁵ Fol.58-59

²⁶ Fol.59

²⁷ Fol.62

²⁸ Fol.63

²⁹ Fol.68-71

³⁰ Fol.72

Filwaqt li tul l-interrogazzjoni tieghu ma jichadx li qal il-kliem li kien 'ser jiehu hsieb' Toni Mercieca f'kaz li jiehu funeral, ghall-ewwel baqa' jzomm lura milli jispejga b'liema mod kien intenzjonat jiehu hsiebu! Ikompli "E, mhux hekk ghax kont taf lil xi hadd ghidtlu cempilli u nahseb fik...Ehe, nahseb fik mhux flus le".³¹

Sinifikattiv izda, li Lia jasal **jammetti li meta lil bniedem tghidlu li ser "tahseb fih", ifisser li wara tkun ser itieh rigal "Ezatt hux, mhux hekk, ezatt, mhux hekk, mhux hekk".³²** Tant li meta l-ispettur tistqasih *"Imma ahna qeghdin nghidu illi kont taghtih rigal li kieku il-funeral tiehdu int, tahdmu int"* Lia jwiegeb bla tlaqliq *"Mhux hekk hux"*, izda jghid li qatt ma ghaddielu rigali ghax kien jasal Gulju qablu *"Uzgur ghax dejjem sab informazzjoni aktar minni".³³*

Minn hawn ghalhekk fl-ahhar Lia jammetti li kien qal lil Mercieca d-diskors li kien ser jiehu hsiebu jekk jghaddilu xi xoghol.

Fil-fatt lejn l-ahhar tal-istqarrija tieghu jerga' **jikkoncedi li kien juza l-kliem li kien "ser jahseb"** f' min ikun ghaddielu xi bicca xoghol tant li meta mistoqsi mill-Ispettur Xuereb jekk fehemx li ma jistax ikollu kuntatt ma *nurses* u biex ma jghidilhomx aktar kliem fis-sens li ser jahseb fihom billi jtihom xi rigali, jwiegeb *"Le, fhimtu, fhimtu fhimtu, fhimtu, gifieri mhux se nuzah izjed dak il-kliem.....Zgur ma naghmilhiex, zgur ma naghmiliex [li ma jkunx l-ewwel persuna li familjari jaraw meta jitilfu xi qarib taghhom]"*. Jishaq li kien **iddispjacih** talli ghamel.³⁴

Minn dan l-interrogatorju **jirrizulta minghajr ombra ta' dubbju li meta kien tkellem ma Mercieca, Lia qallu li kien ser jahseb fih jekk, bl-informazzjoni**

³¹ Fol.66

³² Fol.67

³³ Fol.68

³⁴ Fol.74-75

li Mercieca kien ser itieh, kien ser jasal biex jigi inkarigat mill-funeral. Ghalkemm ma jammetix li kien ser ipatti dan il-gest billi jghaddi flejjes, johrog bic-cjar li kien lest ipattih b'rigali.

“L-Ispettur Anne Marie Xuereb : Gol-ward tieghu meta jkun xoghol, min ha jkun jaf l-ewwel ?

Mario Lia : Huwa hux, huwa.

L-Ispettur Anne Marie Xuereb : Toni ha jkun jaf l-ewwel.

Mario Lia : Kulhadd hux, il-crew jkun jaf hux,

L-Ispettur Anne Marie Xuereb : Imma Toni jekk ha jkun jaf, ha jkun il-persuna li ha jkun jaf l-ewwel ukoll.

Mario Lia : Uzgur, ma kulhadd.

L-Ispettur Anne Marie Xuereb : Ghalhekk ghidt lil Toni.

Mario Lia : E, mhux hekk ghax kont taf lil xi hadd ghidtlu cempilli u nahseb fik.

L-Ispettur Anne Marie Xuereb : Eqq.

Mario Lia : Ehe, nahseb, issa nahseb fik mhux flus le, mhux flus, mhux flus.

L-Ispettur Anne Marie Xuereb : Imma xorta ghadek ma spjegajtlx x'inhi din li tahseb fih, x'kellek go mohhok b'kif ha tahseb fih.

PC 724 Marco Pisani : Kien x'kienu xorta hazing ta' biex niftiehm u gifieri tghidilna flus u ma kienux flus xorta hazin.

Mario Lia : Le, naf.

PC 724 Marco Pisani : Ahna kull ma rridu spjegazzjoni biss, mhux ha tbiddel xejn, xorta hazin.

Mario Lia : Imma hemm hafna affarijiet hux, xorta hazin, naf imma . . .xorta hazin, jien naf dak il-hin tghidlu nahseb fik.

PC 724 Marco Pisani : Xtaqt nahseb fik xorta qed thidlu isma' ha naghtik rigal wara, ha naghtik xi haga wara gifieri l-istess.

Mario Lia : Ezatt hux, mhux hek, ezatt, mhux hekk, mhux hekk.

L-Ispettur Anne Marie Xuereb : Ehe, mhux hekk imma meta kont qed tghidlu qed nahseb fik, orrajt, flus ma kontx ha taghtih, ha taghtih xi rigal?

Mario Lia : Xi haga, xi haga taghtih hux speci, rigal hux, jien naf, xi haga hux, eqq. Jien naf. Jghidli isma' Ghandi bzonn arlogg per ezempju, heqq nixtrijulu hux.

L-Ispettur Anne Marie Xuereb : Tixtrijulu.

Mario Lia : E.

L-Ispettur Anne Marie Xuereb : Jekk tiehu l-funeral imma.

Mario Lia : Uzgur".³⁵

Tant kien hemm arrangament bejnu w Mercieca, li fl-istqarrija johrog bic-cjar li kien iqis dan il-ftehim bhala sinjal li dahhlu ghal bicca **xoghol** flimkien fejn Mercieca kien jahdem mieghu:

"L-Ispettur Anne Marie Xuereb : Ghax Toni kellimtu jiena u qalli, qalli Mario kien jghidli illi infurmani u jien nahseb fik, allura Toni giddieb ?

*Mario Lia : Le, mhux, nahseb fih speci, ghax hu li dan, darba lili kien qalli, qalli ma' Gulju ma nahdimx, ma' Gulju **ma nahdimx.***

L-Ispettur Anne Marie Xuereb : E . . .

Mario Lia : Ma' Gulju ma nahdimx jien ghax dak hekk u dak hekk, qalli jekk hekk x'jigifieri, lilu trid tisma' jghid fuqu, jghidli ma' dak ma nahdimx.

L-Ispettur Anne Marie Xuereb : E, imma lilek kien jghidu dan il-kliem.

Mario Lia : Uzgur.

L-Ispettur Anne Marie Xuereb : X'kien jghidlek ?

Mario Lia : Ma nafx x'kien jghidli jew ghalxiex, ghax kieku mhux ser noqghod nghidlek noqghod ntawwal.

L-Ispettur Anne Marie Xuereb : Orrajt, mela ma Gulju ma jahdimx.

Mario Lia : E . . .

³⁵ Fol.66-67

L-Ispettur Anne Marie Xuereb : Allura kien qed jahdem mieghek.

Mario Lia :³⁶Xi kultant icempilli, meta jmut minn Haz Zabbar speċjalment, minn Haz Zabbar “.

Joseph Saliba in rappreżentanza ta' Jobsplus esebixxa l-*employment history* tal-imputat li turi li ghandu tlett impjegi miftuhin fosthom ta' *self-employed undertaker* li beda fl-1/12/2015.³⁷

Holger Saliba spjega li ghamel ilment mal-Customer Care ta' Mater Dei minhabba li kien dispjacent li kummissjonanti Mario Lia u Angelo Vella saru jafu bil-mewt ta' misseru qablu. Missieru kien pazjent fil-*palliative ward* fl-Oncology Centre u miet fl-10 ta' Novembru, 2017.³⁸ Habib tieghu, Charles Gravina, kien waqqaf lil Angelo Vella milli jhabbatlu. Hekk kif kien fi triqtu lejn l-isptar, ra lil persuna jistaqsi ghal missieru u wara sar jaf minghand Vella li dak kien Lia,³⁹ ghalkemm hu ma setghax jghid li verament kien l-imputat.⁴⁰ Kif wasal lura d-dar sab *business card* ta' Mario Lia “*Impustatha d-dar. Jigifieri dakinhar stess filghaxija wara li nasal mill-Isptar, u mbghad l-ghada filghodu nircievi telefonata, ma' ddentifikax ruhu li hu Mario Lia, biex inkun qed nghid is-sewwa, pero' n-numru tat-telephone kien ezatt dak illi hemm fuq il-business card. Imma ma' nistax nghid li dak li cempilli huwa Mario Lia.*”. Madanakollu qabbel in-numru ta' min cempillu ma dak fuq il-*business card* ta' Lia. Hu nforma lil Lia li kien qabbad lil haddiehor bhala kummissjonant.⁴¹

³⁶ Fol.53-54

³⁷ Fol.78 et seq.

³⁸ Fol.89

³⁹ Fol.90

⁴⁰ Fol.91

⁴¹ Fol.92

Il-*business card* li giet esebita ghandha stampat fuqha “*Mario Lia Funeral Director...M:79304352*”.

Mill-informazzjoni mgħoddija minn Melita plc. – CD mmarkata **Dok.AM1**⁴² - jirrizulta li dan l-istess numru hu registrat fuq certu Mario Lia, residenti 46 Sqaq Lajri, Haz-Zabbar, detentur tal-karta tal-identita` numru 792160M. Dawn huma precizament il-konnotati tal-imputat.

Charles Gravina spjega li joqghod hdejn Holger. Kienu telqu minn hdejn missier Holger biex jistrieħu ffit. Ftit wara cempel hu Holger li nfirmah li misseru kien miet u hu mar biex jgħid lil Holger. Ra lil Gulio Vella, kummissjonant ihabbat il-bieb ta’ Holger u waqqfu peress li Holger ma kien għadu jaf b’xejn. Kif kienu sejr in lura l-isptar raw lill-imputat, li jafu bhala Mario u kummissjonant, fuq mutur li staqsa għal hu l-mejjet.⁴³

Angelo Vella xehed li kien cempillu certu Toni, *nurse* f’Sir Anthony Mamo, li nfirmah li miet certu Karmenu w tah l-indirizz tiegħu. Mar fit-triq izda ma habbatx għax Itaqa’ ma Charles Gravina li waqqfu.⁴⁴ Ftit wara twaqqaf minn iben il-mejjet biex jinkarigawh mill-funeral. Fid-daqqa u l-hin dahal fl-isqaq sal-bieb ta’ bin il-mejjet Mario Lia fuq il-mutur.⁴⁵ Stqarr li Toni Mercieca kien cempilu darbtejn w meta jieħu x-xogħol kien jagħtih bejn €50-€100.⁴⁶

Charlon Farrugia xehed li Anthony Mercieca kien impjegat ma’ Support Services Ltd. bhala *care worker* u xogħolu fl-ahhar zmien kien fis-Sir Anthony

⁴² Fol.31

⁴³ Fol.102-103

⁴⁴ Fol.112-114

⁴⁵ Fol.115

⁴⁶ Fol.116

Mamo Oncology Centre (SAMOC).⁴⁷ *Il-Contract of Employment* ta' Mercieca jipprovdi s-segwenti:

5. Confidentiality

5.1 Whilst recognizing the fiduciary obligations of strict confidentiality under the law in relation to the nature of the business conducted by the Employer, **the Employee shall not in any way disclose confidential information to any person concerning the identity, habits, physical, medical or mental condition of any person who at some point in time has received or is receiving treatment at any hospital or clinic of the Employer's client irrespective of the manner in which such information has become knowledgeable to the Employee.**

5.4 The Employee agrees that **he/she will maintain patient/client, management and company confidentiality at all times**, even in the event of the termination of his/her employment with the Employer for whatever reason.

Anthony Mercieca xehed li hu *carer* mal-Oncology Centre. Jaf numru ta' kummissjonanti li tressaq maghhom peress li jirrisjedu hdejh f'Haz-Zabbar. *"Miet patient hemmekk f'November xi haga hekk u cempilt lil Mario Lia.... U ghidtlu miet wiehed patient jiena.... Karmenu Saliba....imbaghad dak qalli ha nerga ncempillek, cempiltlu jien, qalli ha ncempillek u imbaghad jien nahseb fik Jigifieri flus ux ha nghid hekk.... ... U jigifieri qatt ma tani xejn, il-verita qed nghid Ix-xoghol ma hadux hu"*.⁴⁸ Mario Lia kien joqghod hdejh u kien cempillu peress li *"dejjem jghidli li jekk ikollok xi haga dan, ejja ghidli..... Jien cempiltlu ifhem, jien cempilt mill-mobile tieghi, ha nghid hekk, jien cempiltlu kien filghaxija, ezatt nghidlek, u qalli orrajt nafhom daww, qalli ta' Willie"*. Tah in-numru ta' iben il-mejjet kif ukoll l-indirizz li kien imnizzel fuq l-inkartament li kellhom l-isptar.⁴⁹ Isemmi kif l-imputat zmien ilu kien qallu *"jkun hemm xi haga jghidli...jekk xi hadd imut ghidli..... Qalli jekk ikollok xi patient ghidli halli nahseb fik bhal*

⁴⁷ Fol.128

⁴⁸ Fol.105-107

⁴⁹ Fol.107

ma ghidtlek Qalli xi tlett darbiet sew ifhem." Kien ilhom b'dan l-arrangement fuq xi sena: "Xhud : Ifhem, kont ilni fuq sena nghidlu hekk Qorti: Sena kontu ilkom ghaddejjin, tghidlu bihom jigifier Xhud: Iva".⁵⁰Dwar il-pazjent Saliba kien anke cempel lil Giulio Vella. ⁵¹ Mercieca jghid li "*Mario ma hasibx fija ha nghid hekk ghax ix-xoghol mhux hu hadu*".⁵²

Fil-kontro-ezami tieghu Mercieca ghalkemm **izomm ferm mal-fatt li l-imputat kien qallu li jekk jghaddilu x-xoghol hu kien ser jiehu hsiebu**, issib diffikulta` jiftakar il-kronologija ta' kif sehew l-affarijiet sabiex jintlahaq il-ftehim bejnu w Lia; u cioe` jekk sarx jaf lil Lia wara li dan xehitlu *business card* jew kien jafu diga' minn qabel. Madanakollu mhemmx dubbju li l-ftehim bejniethom intlahaq.

Mercieca jispjega li sar jaf lil Lia meta dan kien xehitlu *business card* tieghu fil-letter box, "*qalli jekk ikollok xi haga ghidli, imbaghad iltqajt mieghu jien, qalli jekk ikollok xi haga tax-xoghol ghidli, qalli u nahseb fik..... Qalli hawn dan zommu, jekk ikollok xi xoghol ghalija ghidli, ghidli qalli, hekk qalli lili..... qalli naghtik 80 euro... Weghdni flus lili dik hi.*"⁵³ Jghid li wara li sab il-*business card* ta' Lia cempillu, "*qalli inti x'taghamel? Ghidtlu jien carer, is-Samrock Centre, qalli jekk ikollok xi xoghol ghidli u nahseb fik, dik hi. Nahseb flus imma.... Qalli nahseb fik jien xi haga, flus jigifieri, mhux dik hi? Darba minnhom qalli naghtik 80...Jien fhimtu flus li jiehu hsiebi, qalli niehu hsiebek jiena...cert minnha, nahlef fuqha dik jiena.... Imma hu weghdni, iweghdek flus*".⁵⁴ Kien hu li qal lil Lia li kien *carer* izda ma qallux li qed jikser xi kuntratt ghaliex ma ntebahx li kien qed jikser il-ligi jew il-

⁵⁰ Fol.109

⁵¹ Fol.108-109

⁵² Fol.110

⁵³ Fol.151

⁵⁴ Fol.152

kuntratt.⁵⁵ Mercieca jtenni li Lia kien icempillu *“imma hu cempilli wkoll, kien iccempilli lili....Kien icempilli u jghidli jekk ikollok xi xoghol ghidli”*.⁵⁶Jammetti li kien jghaddi informazzjoni lil Vella u Lia biex jghinhom f’xogholhom.⁵⁷ Lil Lia ma kienx jghidlu li qed jghaddi xoghol lil Vella. Kien hu li cempel lil Lia dwar il-mewt ta’ Carmelo Saliba *“cempiltlu iva ghax hu dejjem kien jghidli cempilli jekk ikollok xi haga”*.⁵⁸ Mercieca jghid li lill-imputat hu qatt ma talbu flus jew xi haga ohra *“Le, le qatt, anzi hu weghdni li jaghtini jekk jiehu x-xoghol minn ghandi”*.⁵⁹ Kien ghalhekk li meta sab il-business card ta’ Lia zammu bit-tir li jekk ikollu xi pazjent li jmut icempillu.⁶⁰

Mercieca jixhed li kien wara li Lia sar jaf li kien carer li tefghalu l-business card⁶¹ izda jghid ukoll li lil Lia li kien jafu minn qabel tant li ltaqghu u tkellmu fit-triq: *“Le cempiltlu jiena imbaghad hu lili sar jafni, ghidtlu jien nahdem carer....wara xehitha.... Jien kont iltqajt mieghu Haz-Zabbar lil Mario.... Jien tefghali l-karta u ltqajt mieghu imbaghad”*.⁶² Mumententi wara jerga’ jtenni li sar jaf lil Lia wara li sab il-business card u cempillu.⁶³

Riprodott in kontro-ezami jispecifica li sar jaf lil Lia f’Haz-Zabbar *“Ilu sena hekk jigifieri ili nafu jiena sewwa lil dan.....ma tantx ilni nafu.”*.⁶⁴ Kien kellmu meta kien gharrfu bl-imwiet *“Kellimtu l-ewwel darba xhur....Meta mietu dawk li kellna.... kellimtu qabel jien imbaghad jerga, kellimtu..... Qabel kellimtu....Ghidtlu meta jkolli*

⁵⁵ Fol.153-154

⁵⁶ Fol.155

⁵⁷ Fol.156

⁵⁸ Fol.157

⁵⁹ Fol.158

⁶⁰ Fol.159

⁶¹ Fol.160

⁶² Fol.161

⁶³ Fol.162

⁶⁴ Fol.165-166

xi haga nghidlek jiena..... peress li nahdem l-isptar jigifieri".⁶⁵ Jikkjarifika dak li kien ilu jigu mistqosi u cioe` jekk kienx jaf lil Lia qabel ma sab il-*business card* tieghu jew wara. Jghid li kien sar jafu qabel ma rcieva l-card tant li kien gja` qallu li jahdem bhala *carer "meta ltqajt mieghu qalli imbaghad jekk tqabbadni x-xoghol jien nahseb fik... .. Qalli nahseb fik, qed tifhem, jien b'hekk bsart li ghalhekk."*⁶⁶ Itenni li kienu ltaqghu fil-misrah quddiem l-isptar St. James *"Qalli kif ikollok xi haga ghidli, ghidtlu orrajt jiena bqajt orrajt jien hekk..... Qalli meta jkollok xi haga imbaghad niehu hsiebek..... Niehu hsiebek jigifieri jghidli grazzi ma mortx ghas-sens ta' flus jiena, ma mortx ghas-sens ta' flus..... Qalli niehu hsiebek, qalli 80 euros, qalli naghtik 80 euros."*⁶⁷. Jinsisti li l-ewwel kien ircieva l-card u kien biss wara li ltaqa' ma Lia u sar il-ftehim fejn anke ssemmev it-€80.⁶⁸ Izid li hu qatt ma talab flus lil Lia u qatt ma ppretenda xejn minghandu.⁶⁹

Minn din ix-xhieda mhemmx dubbju li jirrizulta fatt importantissimu. Ghalkemm Mercieca ma ppretenda xejn minghand l-imputat talli jghaddilu informazzjoni li jkun sar jaf dwarha minhabba l-impjeg tieghu, l-imputat kien wegħdu li kien ser jahseb fih jekk jiehu xoghol b'konsegwenza tal-informazzjoni li kien ser jghaddilu Mercieca.

Il-Qorti ma ghandha l-ebda dubbju li Lia verament qal dak id-diskors, u cioe` li kien **ser jiehu hsieb** Mercieca talli dan jinfurmah b'xoghol potenzjali. Dan jammettieh Lia stess fl-istqarrija tieghu tant li jsemmi li b'dak il-kliem ried ifisser li kien lest jirregala lil Mercieca b'dak li jkollu bzonn bhal per ezempju arlogg. Hu propju dan wiehed mill-elementi rikjesti li jsawwru r-reat ravvizat bl-artikolu 121(3) tal-Kodici Kriminali – il-wegħda ta' xi vantagg lil Mercieca.

⁶⁵ Fol.167-169

⁶⁶ Fol.169

⁶⁷ Fol.170

⁶⁸ Fol.171-172

⁶⁹ Fol.173

Li kieku Lia ma kienx konxxju li Mercieca kien qed jiehu riskju jwassallu informazzjoni dwar pazjenti li kien inkarigat isservi, ma kellux ghalfejn jghidlu li kien ser jahseb fih u anke joffrilu flejjes, €80.

Konsiderazzjonijiet Legali

Wara li gew ikkunsidrati l-provi l-Qorti ser tghaddi biex tikkunsidra l-elementi legali rikjesti biex jissawwar ir-reat addebitat lill-imputat, fejn kif jirrizulta min-nota ta' rinviju ghall-gudizzju mibghuta mill-Avukat Generali, Lia qed jigi akkuzat bir-reat ta' korruzzjoni ossia, *active bribery*, kif ikkontemplat fl-artikolu 121(1)(3) tal-Kodici Kriminali, kif marbut mal-artikoli 115(a) u 120(1) tal-istess Kodici.

Issir riferenza ghas-sentenza **Il-Pulizija vs Anthony Cassar** fejn il-Qorti ghamlet ezami *funditus* propju tal-istess reat li jinsab imputat bih Mario Lia :⁷⁰

Illi min-nota tar-rinviju ghal gudizzju ta' l-Avukat Generali jirrizulta illi l-imputat qed tigi akkuzat bir-reat tal-korruzzjoni kif ikkontemplat fl-artikolu 121(1) tal-Kodici Kriminali, kif marbut ma' l-artikoli 115(a) u 120(1) tal-Kapitolu 9 tal-Ligijiet ta' Malta. Illi dana l-artikolu tal-ligi mal-promulgazzjoni tieghu fis-seklu dsatax kien jitkellem dwar il-korruzzjoni tal-gurati, izda mal-introduzzjoni tal-emendi fl-1974 dina id-disposizzjoni tal-ligi giet kompletament sostitwita sabiex inkludiet ukoll "kull korp imwaqqaf b'ligi li jkollu personalita guridika distinta" jew kull persuna impjegata ma' dak il-korp" sabiex b'hekk il-ligi setghet tkopri ukoll il-korruzzjoni fil-kumpaniji parastatali li bdew jitwaqqfu f'dak iz-zmien. Izda kien hemm riforma shiha ta' dina id-disposizzjoni tal-ligi bl-implementazzjoni f'Malta tal-*European Criminal Law Convention on Corruption*⁷¹ u dana permezz ta' l-Att III ta' l-2002. Permezz ta' dana l-Att, kien hemm l-introduzzjoni tal-korruzzjoni fis-settur privat u dana kif stabbilit fl-imsemmija Konvenzjoni. Illi fl-artikolu 7 taghha, l-Konvenzjoni titkellem dwar "**Active bribery in the private sector**" u tidisponi testwalment:

"Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally in the course of business activity, the promising,

⁷⁰ Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali; Deciza 29 ta' Settembru, 2010 per Onor. Magistrat Edwina Grima.

⁷¹ ETS No.173

offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties”.

Imbagħad fl-artikolu 8 l-istess Konvenzjoni titkellem dwar **“Passive bribery in the private sector”**:

“Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, in the course of business activity, the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties.”

Dawn iz-zewg artikoli għalhekk jistendur r-responsabbiltà kriminali għal korruzzjoni fis-settur privat ukoll. Illi fl-Explanatory Report għal din il-Konvenzjoni⁷² jingħad:

*“Criminalising private corruption appeared as a pioneering but necessary effort to avoid gaps in a comprehensive strategy to combat corruption. The reasons for introducing criminal law sanctions for corruption in the private sphere are manifold. First of all, because corruption in the private sphere undermines values like trust, confidence or loyalty, which are necessary for the maintenance and development of social and economic relations. **Even in the absence of a specific pecuniary damage** to the victim, private corruption causes damage to society as a whole. In general, it can be said that there is an increasing tendency towards limiting the differences between the rules applicable to the public and private sectors. This requires redesigning the rules that protect the interests of the private sector and govern its relations with its employees and the public at large. Secondly, criminalisation of private sector corruption was **necessary to ensure respect for fair competition**. Thirdly, it also has to do with the privatisation process. Over the years important public functions have been privatised (education, health, transport, telecommunication etc). The transfer of such public functions to the private sector, often related to a massive privatisation process, entails transfers of substantial budgetary allocations and of regulatory powers. It is therefore logical to protect the public from the damaging effects of corruption in businesses as well, particularly since the financial or other powers concentrated in the private sector, necessary for their new functions, are of great social importance. [emfazi ta’ din il-Qorti]*

Imbagħad ir-rapport iġġaddi sabiex jelenka d-differenzi li hemm bejn il-korruzzjoni ta’ l-uffiċjal pubbliku u l-korruzzjoni in dizamina meta jingħad:

In general, the comments made on active bribery of public officials (Article 2) apply mutatis mutandis here as well, in particular as regards the corrupt acts performed, the mental element and the briber. There are, nevertheless, several important differences between the provisions on public and private sector bribery. First of all, Article 7 restricts the scope of private bribery to the domain of “business activity”, thus deliberately excluding any non-profit oriented activities carried out by persons or organisations, e.g. by associations or other NGO’s. This choice was made to

⁷² <http://conventions.coe.int/treaty/en/Reports/Html/173.htm>

focus on the most vulnerable sector, i.e. the business sector. Of course, this may leave some gaps, which Governments may wish to fill: nothing would prevent a signatory State from implementing this provision without the restriction to "in the course of business activities". "Business activity" is to be interpreted in a broad sense: it means any kind of commercial activity, in particular trading in goods and delivering services, including services to the public (transport, telecommunication etc).

The second important difference concerns the scope of recipient persons in Article 7. This provision prohibits bribing any persons who "direct or work for, in any capacity, private sector entities". Again, this a sweeping notion to be interpreted broadly **as it covers the employer-employee relationship** but also other types of relationships such as partners, lawyer and client and others in which there is no contract of employment. Within private enterprises it should cover not only employees but also the management from the top to the bottom, including members of the board, but not the shareholders. It would also include persons who do not have the status of employee or do not work permanently for the company -for example consultants, commercial agents etc.- but can engage the responsibility of the company. "Private sector entities" refer to companies, enterprises, trusts and other entities, which are entirely or to a determining extent owned by private persons. This of course covers a whole range of entities, notably those engaged "in business activities". They can be corporations but also entities with no legal personality. For the purpose of this provision, the word "entity" should be understood as meaning also, in this context, an individual. Public entities fall therefore outside the scope of this provision.

The third important difference relates to the behaviour of the bribed person in the private sector. If, in the case of public officials, it was immaterial whether there had been a breach of his duties, given the general expectation of transparency, impartiality and loyalty in this regard, a breach of duty is required for private sector persons. (sottolinjar tal-Qorti) **Criminalisation of bribery in the private sector seeks to protect the trust, the confidence and the loyalty that are indispensable for private relationships to exist. Rights and obligations related to those relationships are governed by private law and, to a great extent, determined by contracts. The employee, the agent, the lawyer is expected to perform his functions in accordance with his contract, which will include, expressly or implicitly, a general obligation of loyalty towards his principal, a general obligation not to act to the detriment of his interests. Such an obligation can be laid down, for example, in codes of conduct that private companies are increasingly developing. The expression, "in breach of their duties" does not aim only at ensuring respect for specific contractual obligations but rather to guarantee that there will be no breach of the general duty of loyalty in relation to the principal's affairs or business.** The employee, partner, managing director who accepts a bribe to act or refrain from acting in a manner that is contrary to his principal's interest, will be betraying the trust placed upon him, the loyalty owed to his principal. This justifies the inclusion of private sector corruption as a criminal offence. The Convention, in Article 7, retained this philosophy and **requires the additional element of "breach of duty" in order to criminalise private sector corruption.** The notion of "breach of duty" can also be linked to that of "secrecy", that is the acceptance of the gift to the detriment of the employer or principal and without obtaining his authorisation or approval. **It is the secrecy of the benefit rather than the benefit itself that is the essence of the offence.** Such a secret behaviour threatens the interests of the private sector entity and makes it dangerous. [emfazi ta' din il-Qorti]

Illi ghalhekk l-emendi ghall-artikolu 121 tal-Kodici gew imfassla biex jinkludu fost affarijiet ohra dana it-tip ta' korruzzjoni. Il-Qorti issa ser tghaddi sabiex tezamina l-mod kif dawn iz-zewg disposizzjonijiet ta' dina l-Konvenzjoni gew implimentati o meno fil-ligi taghna. Illi l-Group of

States against Corruption tal-Unjoni Erwopeja, jew kif inhi ahjar maghrufa bhala GRECO ghamlet diversi studji dwar jekk dina l-Konvenzjoni gietx implimentata fil-ligi penali taghna. Illi fl-Evaluation report on Malta on Incrimination – Strasbourg 8 October 2009 (www.coe.int) inghad is-segwenti mill-GET (GRECO Evaluation Team):

“Active and passive bribery in the private sector are criminal offences under Maltese law. Article 121(3) CC, which renders the provisions relating to passive bribery of domestic public officials contained in Article 115 CC applicable also to passive bribery in the private sector under certain conditions, reads: “The provisions of this sub-title in relation to an officer or person referred to in article 112 or a public officer or servant referred to in article 115 shall also apply to and in relation to any employee or other person when directing or working in any capacity for or on behalf of a natural or legal person operating in the private sector who knowingly, in the course of his business activities, directly or through an intermediary and in breach of his duties, conducts himself in any manner provided for in those articles:

Provided that for the purposes of this subarticle the expression “breach of duty” includes any disloyal behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply within the business in question.”

Active bribery in the private sector is covered by the provisions contained in Article 120(1) CC, which makes reference to the provisions concerning active bribery applicable to the private sector according to the following: “In the cases referred to in articles 115, 116, 117 and 118 [...] or the person to whom any of the said articles applies in accordance with any provision under this Code or under any other law, as the case may be, shall be deemed to be an accomplice”.

Elements/concepts of the offence

“Persons who direct or work for, in any capacity, private sector entities

. The wording “...any employee or other person when directing or working in any capacity for or on behalf of a natural or legal person operating in the private sector...” are expressly provided in Article 121 (3) CC.

“In the course of business activity”; “...in breach of duties”

Both these elements are components of this offence: “In the course of business activity” is explicitly provided for in Article 121 (3) CC. The expression “breach of duty” is contained in the same Article and is furthermore explained in the second paragraph of Article 121(3) to include any disloyal behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply within the business in question. Moreover, Maltese law extends the scope of private sector bribery by also including persons working for other natural persons, i.e. the offence is not limited to corporate entities (such as companies).

Other elements

All other elements/concepts, including the penal sanctions, described under bribery of domestic public officials (above) are equally applicable in respect of this offence. Furthermore, Article 121D CC stipulates that where a person is found guilty of an offence relating to, inter alia, private sector bribery and such a person is the director, manager, secretary or other principal officer of a body corporate or has the power to represent, take decisions or bind the body corporate, and the offence was committed for the benefit of

that same body corporate, then such a person is deemed to be vested with the legal representation of that body corporate and is thus liable to an extensive fine (multa) of between EUR 1,165 and 1,164,687 approx.

The authorities informed the GET that there were no statistics or specific case law available in respect of this offence.”

Illi minghajr l-icken dubbju l-akkuza migjuba fil-konfront ta' l-imputat fil-kaz in dizamina jikkoncerna 'l hekk imsejjah “active bribery” kif sancit fil-Konvenzjoni. Illi l-Evaluation Report tal-GRECO kif indikat iktar 'il fuq iqies illi dina it-tip ta' korruzzjoni hija inkorporata fl-artikolu 120(1) tal-Kodici penali taghna li jirrendi bhala komplici l-persuni imsemmija fl-artikolu 121(1) u (3). Illi d-difiza tikkontendi illi dawn l-artikolu tal-ligi ma isemmux l-applikazzjoni ta' l-artikolu 120 li jikkoncerna dwar il-komplici. Il-Qorti, bid-dovut rispettu lejn l-abblu difensuri ta' l-imputat, ma tistax taqbel ma dina l-linja difenzjonali. Illi l-artikolu 120(1) gie fil-fatt emendat permezz ta' l-Att III ta' l-2004 sabiex jinkludi fih is-segwenti frazi:

“jew persuna li dwarha japplika xi artikolu minn daww imsemmija (u cioe' b'referenza ghall-artikoli 115, 116, 117 u 118), skond kull disposizzjoni ta' dan il-Kodici jew taht kull ligi ohra.”

Dina il-frazi ghalhekk introdotta fl-2004 tirrendi komplici il-persuna li tikkorrompi ... xi persuna li dwarha japplika l-artikolu 115 fost ohrajn. Illi ghalhekk kemm l-artikolu 121(1) kif ukoll is-sub-incipit 3 ta' l-istess artikolu li jikkoncerna dwar il-passive bribery fis-settur privat jaghmel referenza specifika ghall-artikolu 115 u ghalhekk il-persuna li tikkorrompi lil dana l-impjegat fis-settur privat ghandu jikkoncerna bhala komplici ai termini ta' l-artikolu 120(1) kif del resto jinghad fl-Evaluation Report tal-GET hawn fuq indikat.

Mill-provi akkwiziti gie ampjament ippruvat li Anthony Mercieca kien impjegat ma Support Services Ltd., bhala *carer* fis-Sir Anthony Mamo Oncology Centre (SAMOC) fl-Isptar Mater Dei.⁷³ Dan ifisser li jiffigura bhala persuna li ssir riferenza ghalha fis-subartikoli (1) u (3) tal-Artikolu 121 tal-Kodici Kriminali; “impjegat” li jahdem ma “korp iehor li jkollu personalita' guridika distinta” jew ghal “persuna guridika” rispettivament.

Irrizulta li kien intlahhaq il-ftehim mal-imputat talli hu, Mercieca, kien ser jghaddilu informazzjoni li ssir maghrufa lilu propju minhabba n-natura w fil-kors tal-impjegat tieghu u ta' dan, l-imputat kien wegħdu li jahseb fih. Ghalhekk il-wegħdiet li saru mill-imputat saru in konnessjoni mal-impjegat ta' Mercieca bhala carer. Irrizulta li kull meta Mercieca ghadda l-informazzjoni lill-imputat

⁷³ Xhieda ta' Charlon Farrugia a fol. 127 et seq.

hu kien qed jikser obbligi kontrattwali marbuta mal-impjeg tieghu u senjatament obbligi ta' kunfidenzjalita` li kienet tkopri informazzjoni dwar pazjenti li kienu qed jircevu trattament f'xi sptar li kien klijent tal-principal u cioe` Suppost Services Ltd.⁷⁴ Ittiehdu proceduri dwar dan l-agir kriminuz anke fil-konfront ta' Mercieca⁷⁵ fejn gie imputat lilu ir-reat ta' *passive bribery* (Artikolu 121(3) tal-Kodici Kriminali) kif ukoll ghal vjolazzjonijiet tal-*Att dwar il-Protezzjoni u l-Privatezza tad-Data*. Dan jirrizulta minn sentenza li qed jittiehed *judicial notice* taghha.⁷⁶

Dik il-Qorti mbghad ssoktat bil-konsiderazzjonijiet taghha dwar dak li jinhtieg jigi soddisfat sabiex ikun provat ir-reat ta' *active bribery*, ir-reat li l-imputat odjern jinsab addebitat bih.

Illi maghdud dana kollu ghalhekk jirrizulta illi l-elementi legali li isawru ir-reat ta' *active bribery* fis-settur privat u cioe' tal-persuna tal-komplici fir-reat tal-korruzzjoni huma is-segwenti:

1. Ir-reat irid ikun imwettaq b'mod intenzjonali fil-kors ta' attivita kummercjali.
2. Irid ikun hemm il-weghda, l-offerta jew l-ghotja, sew direttament kif ukoll indirettament ta' kwalunkwe tip ta' vantagg.
3. lil persuni indikati fl-artikoli 121(1) u 121(3). Illi l-emendi introdotti permezz ta'l-artikolu 28 tal-Att III ta'l-2002 ziedu il-kliem "jew xi korp iehor li jkollu personalita guridika distinta" fl-artikoli 121(1), kif ukoll gie introdott s-sub-incipiz 3 ta'l-istess artikolu. Ghaldaqstant ma hemmx dubbju illi l-iskop ta' dina l-emenda kienet li tinkludi l-korruzzjoni fis-settur privat permezz ta'l-artikolu 121(1) li jitratta fost ohrajn dwar l-persuna li jkolha l-funzjonijiet li jkollhom x'jaqsmu ma'l-amministrazzjoni ta' korp li ghandu personalita guridika distinta u cioe' kwalunkwe socjeta kummercjali, filwaqt li l-artikolu 121(3) imbaggad hija iktar wiesgha u tinkludi kull impjegat jew persuna ohra meta dawn ikunu qed imexxu jew ihadmu f'xi kapacita' ghal jew f'isem xi persuna naturali jew guridika li tkun qed tahdem fis-settur privat.
4. sabiex dik il-persuna taghmel jew tonqos milli tghamel xi haga u dana bi ksur tad-dmirijiet taghha. Illi kif inghad fir-rapport iktar 'il fuq indikat dana jinkludi kwalsiasi ksur tad-dmir tal-lejalta' lejn il-principal u ghalhekk **l-element tal-habi fl-accettazzjoni tar-rigal jew offerta minghajr ma tinkiseb minn qabel l-awtorizzazzjoni tal-principal hija ukoll inkluza f'dana l-element**. Inoltre kien id-dmir ta' Galea illi huwa jaghzel l-iktar offerta vantagguzja

⁷⁴ Vide Artiklu 5 tal-kuntratt ta' impjeg ta' Mercieca a fol132 et seq

⁷⁵ Fol.105

⁷⁶ Moghtija minn din il-Qorti kif preseduta nhar is-26 ta' Marzu, 2018

ghal kumpanija fejn kien qieghed jahdem, izda minflok jaghmel dan huwa kien jiddeciedi li jaghti dawn il-kuntratti lil persuna li kienet tagevolah personalment permezz tal-flus li kien idahhal f'butu.

Minn naha tieghu Mario Lia wieghed lil Mercieca, persuna indikata fl-artikolu 121(1)(3) tal-Kodici Kriminali, li jekk bl-informazzjoni li jkun ghaddielu dan tal-ahhar - u cioe` billi jinfurmah bil-mewt ta' pazjenti fis-sezzjoni li maghha (SAMOC) kien qed jizvolgi l-impjeg tieghu w jtieh dettalji tal-familjari tal-mejjet - hu kien ser jirnexxielu jigi ingaggat mill-imsemmija familjari biex jaghmel il-funeral, **hu kien ser jahseb fih billi kif jistqarr hu stess itieh rigal.** Meta l-ispettur tghidlu "*Imma ahna qeghdin nghidu illi kont taghtih rigal li kieku il-funeral tiehdu int, tahdmu int*" Lia rrisponda "*Mhux hekk hux*".⁷⁷

Mhemmx dubbju li Lia lahaq dan l-arrangement u wieghed lil Mercieca li kien ser jikkumpensah u jiehu hsiebu propju meta kien jaf li b'dan l-agir Mercieca kien qed jonqos mid-doveri tieghu bhala *carer*; xogholu kien li jiehu hsieb mill-pazjenti fdati lilu w mhux jipprofitta ruhu minn mewthom, li jsir konsapevoli taghha fl-andament ta' xogholu. Hu sinifikattiv li Lia ma sabx xi dirigenti tal-isptar jew tal-kumpanija li kien impjegat maghha Mercieca biex jidhol fi ftehim magghom, izda l-arrangement u l-weghda ghamilhom direttament ma Mercieca, *carer*.

Talli Mercieca kien ikun qed jonqos fl-obbligi w d-doveri tieghu versu l-principal tieghu, Support Services Ltd., li kienet qed tizvolgi attivita` kummercjali gewwa l-isptar Mater Dei, meta ftiehem mal-imputat li kien ser jghaddilu informazzjoni, l-imputat wieghdu li kien ser jiehu hsiebu hu. **Jiehu hsiebu talli effettivament Mercieca jkun qed ipoggieh f'posizzjoni vantaggata fuq kompetituri ohra fis-settur tal-kummissjonanti.**

⁷⁷ Fol.68

Dak li ghamel l-imputat kien biss forma ta' tixhim fil-kors tal-attivitá' kummercjali, dik ta' kummissjonant, gestita minnu.

Il-Professur Mamo fin-Noti tieghu jghid dan b' riferenza ghall-persuna t' ufficjal pubbliku:

The briber or corruptor is only an accomplice in as much as he instigates or strengthens the resolution of the public officer or employee by giving or offering rewards or promises. And as the crime is completed by the mere acceptance, on the part of the public servant, so also it must be considered in respect of the corrupter.⁷⁸

L-agir tal-imputat jinkwadra perfettament fil-kondotta deskritta mill-Prof. Mamo. Dan ifisser li l-element intenzjonali gie ppruvat ukoll.

Fid-dawl tal-gurispridenza enuncjata u tenut kont tar-rizultanzi processwali l-prosekuzzjoni rnexxielha tipprova l-kaz taghha.

In konsiderazzjoni tal-piena, il-Qorti kkunsidrat is-*Social Enquiry Report* pprezentat mill-Ufficjal tal-Probation **Dorian Cornelius** minn fejn jirrizulta li l-imputat ghaddej hajja ta' stabbilita` b'impjeg regolarizzat kif ukoll igawdi mis-*support* ta' familtu.⁷⁹ Filwaqt li l-imputat hu kandidat idoneju biex jaghmel servizz fil-kommunita`, gie osservat li dan ghandu jzomm kontroll fuq l-ammont ta' alcohol li jikkonsma.⁸⁰ Ittiehed konsiderazzjoni wkoll tal-fedina penali tal-imputat li turi li l-imputat certament mhux xi *first-time offender*, tan-natura tar-reat addebitat bih u tac-cirkostanzi kollha l-ohra tal-kaz u

⁷⁸ Notes on Criminal Law page.89

⁷⁹ Fol.183

⁸⁰ Fol.194

senjatament tal-fatt li jirrizulta mix-xhieda ta' Mercieca li l-agir kriminuz ma kienx xi wiehed mifruq fuq tul ta' zmien izda kien sporadiku.

Gie kkunsidrat li r-reat li dwaru qed tinstab htija hu punibbli b' piena massima ta' tmien snin prigunerija w ghalhekk din il-Qorti hi prekluzza milli tapplika xi sanzjoni skond l-*Att dwar il-Probation*, Kapitolu 466 tal-Ligijiet ta' Malta.

Ghal dawn il-mottivi, din il-Qorti wara li rat l-artikoli 17, 18, 31, 42, 43, 115(1)(c), 119, 120(1) u 121(1)(3) tal-Kodici Kriminali, Kapitolu IX ta' l-Ligijiet ta' Malta, issib lill-imputat hati tal-akkuza migjuba fil-konfront tieghu, u tikkundannah sena prigunerija li bl-applikazzjoni ta' l-artikolu 28A tal-Kapitolu IX ta' l-Ligijiet ta' Malta qeghda tigi sospiza ghal sena millum.

Il-Qorti spjegat lill-hati l-konsegwenzi jekk jikkommetti reat iehor waqt il-perjodu operattiv ta' din is-sentenza.

Tastjeni milli tiehu konjizzjoni tat-talba ghall-hlas tal-esperti billi ma jirrizultax li kien hemm tali hlas involut.

Finalment il-Qorti, wara li rat l-artikolu 119 tal-Kapitolu IX tal-Ligijiet ta' Malta, qed tordna ukoll fil-konfront ta' l-imputat l-**interdizzjoni generali perpetwa** u ghal dan il-ghan u ai termini tal-artikolu 10(7) tal-Kapitolu IX tal-Ligijiet ta' Malta,

Tordna li s-sentenza tigi notifikata lid-Direttur tal-Qorti Kriminali sabiex tigi pubblikata fil-Gazzetta tal-Gvern.

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