



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

Magistrat Dr. Monica Vella LL.D., M.Jur

Kumpilazzjoni 241/2013

Il-Pulizija
(Spettur Rennie Stivala)

vs

Christian Demanuele

Sentenza dwar l-eccezzjoni tal-iSpeciality Rule

Illum, 17 ta' Marzu 2021,

Il-Qorti;

Rat l-imputazzjoni migjuba kontra:

“Christian Demanuele, detentur tal-karta ta' l-identita' Maltija
bin-numru 66176M.

Billi inti personalment u/jew fil-kapacita' tieghek ta' impjegat jew
ta' ufficjal principali jew ta' rapprezentant ta' kumpanija CS Motor

Sports Ltd, akkuzat talli matul is-snin 2010, 2011 u 2012, f'dawn il-gzejjer, b'diversi atti maghmulin fi zminijiet differenti, izda li jiksru l-istess dispozizzjoni tal-Ligi u li gew maghmula b'risoluzzjoni wahda

1. Approprijajt ruhek, billi dawwart bi profitt ghalik jew ghal persuna ohra, mis-somma ta' aktar minn elfejn tlett mija u disgha u ghoxrin Euro u sebgha u tletin centezmu (€2329.37), liema somma giet fdata jew ikkunsinnata lilek taht titolu illi jgib mieghu l-obbligu tar-radd tal-haga jew li jsir uzu minnha specifikat u dan ghad-detriment ta' Ashley Dayle Farrell minn (Eastern Caribbean) St. Kitts & Nevis, liema somma giet fdata lilek minhabba l-professjoni, industrija, kummerc, amministrazzjoni, kariga jew servizz tieghek jew minhabba depozitu necessarju;
2. Talli, fl-istess dati, lokalitajiet u cirkostanzi, b'mezzi kontra l-ligi jew billi ghamilt uzu ta' ismijiet foloz, jew ta' kwalifiki foloz, jew billi inqdejt b'qerq iehor, ingann, jew billi wrejt haga b'ohra sabiex iggieghel jitwemmen l-ezistenza ta' intraprizi foloz, jew ta' hila jew setgha fuq haddiehor jew ta' krediti immaginarji, jew sabiex tqanqal tama jew biza' dwar xi grajja kimerika, ghamilt qligh b'qerq ta' aktar minn elfejn, tlett mija u disghin u ghoxrin ewro u sebgha u tletin centezmu (€2329.37) ghad-detriment ta' Ashley Dayle Farrell minn (Eastern Caribbean) St. Kitts & Nevis;

Il-Qorti giet ukoll gentilment mitluba sabiex f'kaz ta' htija tikkundanna lill-akkuzat ghall-hlas ta' spejjez li jkollhom x'jaqsmu mal-hatra ta' esperti jew periti fil-proceduri hekk kif ikkontemplat fl-Artikolu 533 tal-Kapitlu 9 tal-Ligijiet ta' Malta."

Rat l-atti tal-kawza in partikolari l-kopja tal-Mandat t'Arrest Ewropew (minn issa 'l quddiem referut EAW)¹, li giet esebita mid-Difiza fis-seduta tat-23 ta' Jannar 2019.

Rat in-nota ta' sottomissjonijiet tad-Difiza tal-21 ta' Dicembru 2020.

Rat in-nota ta' sottomissjonijiet tal-Prosekuzzjoni tal-20 ta' Jannar 2021.

Rat illi l-kawza thalliet ghal-lum ghas-sentenza dwar l-eccezzjoni mressqa mid-Difiza fis-seduta tal-10 ta' Ottubru 2018.

Ikkunsidrat:

L-Eccezzjoni dwar ir-Rule of Speciality

L-eccezzjoni mressqa mill-imputat taqra hekk²:

“Dr. Mark Busuttil ghall-imputat jirrileva illi dawn il-proceduri ma jistghux jibdew u jitkomplew stante li l-imputat kien gie Malta bil-European Arrest Warrant bil-kundizzjonijiet hemm indikati u l-proceduri li qeghdin jittiehdu fil-konfront tieghu huma indipendenti minn dawn il-proceduri u limitati ghal dawk quddiem din l-istess Qorti diversament preseduta. F'dan ir-rigward dawn il-proceduri attwali ma jistghux jittiehdu u ma jistax ikollhom bidu minhabba din il-limitazzjoni legali.”

¹ Dok CD1 a folio 40 tal-process, seduta tal-10 t'Ottubru 2018.

² A folio 37 tal-process.

Il-Prosekuzzjoni, fl-istess seduta stiednet lid-Difiza sabiex tipprezenta kopja tad-digriet relattiv ghall-imsemmi EAW, sabiex il-Prosekuzzjoni tirregola ruhha.

Fis-seduta tat-23 ta' Jannar 2019, id-Difiza esebiet kopja tal-applikazzjoni ghall-hrug tal-EAW, immarkata CD1 a folio 40 tal-process. Is-sentenza relattiva ghall-istess, fejn it-talba tal-awtorita' gudizzjarja ta' Malta giet milqugha u taht liema kundizzjonijiet giet milqugha, qatt ma giet prezentata fil-lingwa Maltija.

Illi din ghalhekk hija l-unika prova li giet prezentata lill-Qorti in sostenn ta' din l-eccezzjoni u li l-Qorti ghandha tiskrutinizza sabiex tiddeciedi dwar din l-eccezzjoni mressqa mill-imputat.

L-Elementi li Jikkostitwixxu r-Reati addebitati lill-Imputat

Illi l-imputat gie akkuzat bl-akkuzi 'l fuq riprodotti u cioe':

(1) talli matul is-snin 2010, 2011 u 2012 b'diversi atti maghmulin fi zminijiet differenti izda li jiksru l-istess disposizzjoni tal-Ligi u li gew maghmula b'rizoluzzjoni wahda u dan bi ksur ta' l-Artikoli 18, 293, 294, 308, 309 u 310 tal-Kap. 9 tal-Ligijiet ta' Malta u dan ghad-dannu ta' Ashley Dayle Farrell; u

(2) Talli, fl-istess dati, lokalitajiet u cirkostanzi, b' mezzi kontra l-ligi jew billi ghamilt uzu ta' ismijiet foloz, jew ta' kwalifiki foloz, jew billi inqdejt b'qerq iehor, ingann, jew billi wrejt haga b'ohra sabiex iggieghel jitwemmen l-ezistenza ta' intraprizi foloz, jew ta' hila jew setgha fuq haddiehor jew ta' krediti

immaginarji, jew sabiex tqanqal tama jew biza' dwar xi grajja kimerika, ghamilt qligh b'qerq ta' aktar minn elfejn, tlett mija u disghin u ghoxrin ewro u sebgħa u tletin centezmu (€2329.37) għad-detriment ta' Ashley Dayle Farrell.

Illi għalhekk din il-Qorti trid tgharbel ir-reati kif indikati fl-EAW sabiex tara jekk dawn l-akkuzi migjuba kontra l-imputat humiex kontenuti fl-EAW li permezz tiegħu l-imputat ingab Malta jew le. U dan stante li l-imputat ma giex hawn Malta volontarjament, izda ikkontesta wkoll l-istess EAW u jissottometti li ngab Malta wara decizjoni tal-Qorti fir-Repubblika Ceka.

Il-Ligi u Principji Applikabbli

Illi l-Qrati tagħna ġia kellhom okkazzjonijiet illi jeżaminaw il-principju tal-ispeciality rule. Il-Qorti hawn tagħmel referenza għall-kawza (1) Qorti tal-**Appell Kriminali** Onor. Imħallef Consuelo Scerri Herrera, Appell Nru: 138 / 2019 **Il-Pulizja vs Antonio Ricci** deciza fil-21 ta' Mejju, 2019, (2) Qorti tal-**Appell Kriminali** Onor. Imħallef Aaron M. Bugeja, Appell Nru:180/2019 **The Police vs MORE Christopher Guest** deciza fit-23 ta' Lulju 2019, (3) Qorti tal-**Appell Kriminali** Onor. Imħallef Aaron M. Bugeja, Appell Nru:69/2020 **The Police vs. Loiai ALJELDA** deciza fis-07 ta' Lulju 2020 u (4) **Qorti Kostituzzjonali** Onor. S.T.O. Prim Imħallef Mark Chetcuti, Onor. Imħallef Giannino Caruana Demajo u Onor. Imħallef Anthony Ellul, Rikors numru 67/19 GM **Patrick Spiteri v. L-Avukat Ġenerali, il-Kummissarju tal-Pulizija u r-Registratur Qrati Ċivili u Tribunali** deciza fl-20 ta' Lulju 2020.

Illi f'dan ir-rigward din il-Qorti taghmel referenza ukoll ghas-sentenza tal-**Qorti Ewropeja** fil-kaz numru: **C-388/08, Leymann and Pustovarov**, deciz fl-1 ta' Dicembru 2008. Ghal dan il-ghan il-Qorti qieghda tirriproduci fil-qosor il-fatti tal-kaz kif ukoll id-domandi specifici li saru mill-Qorti Finlandiza li rreferiet lill-Qorti Ewropeja:

*“**Facts.** Leymann and Pustovarov were wanted for illegal import of drugs into Finland. The Finnish authorities sent EAWs that indicated that Leymann and Pustovarov were suspected of committing a serious drug trafficking offence which related to a large quantity of amphetamines. Leymann and Pustovarov were surrendered to the Finnish authorities on the basis of those EAWs and were remanded in custody. Later, the indictment against Leymann and Pustovarov stated that the serious drug trafficking offence concerned not amphetamines but hashish. Leymann and Pustovarov were both convicted and sentenced to imprisonment. They both appealed and argued that they had been convicted for an offence other than that for which they had been surrendered, contrary to the ‘speciality rule’.*

The Finnish Supreme Court referred a number of questions on the exact scope of the speciality rule to the CJEU:

Main questions. *How must the expression ‘offence other than for which the person was surrendered’ (hereinafter ‘other offence’) of Article 27(2) EAW FD be interpreted and when is consent in accordance with Article 27(4) EAW FD required?*

Does a modification of the description of the offence – which concerns only the kind of narcotics in question – fall within the classification of ‘other offence’ and thus require consent from the executing authority?

How must the exception to the speciality rule in Article 27(3)(c) EAW FD be interpreted, taking into account the consent procedure laid down in Article 27(4) EAW FD? →

The CJEU’s reply:

To establish whether the offence under consideration is an ‘other offence’ within the meaning of Article 27(2) EAW FD, it must be ascertained whether the constituent elements of the offence, according to the legal description given by the issuing Member State, are those in respect of which the person was surrendered and whether there is a sufficient correspondence between the information given in the arrest warrant and that contained in the later procedural document.

Modifications concerning the time or place of the offence are allowed, insofar as they derive from evidence gathered in the course of the proceedings conducted in the issuing Member State concerning the conduct described in the arrest warrant, do not alter the nature of the offence and do not lead to grounds for non-execution under Articles 3 and 4 EAW FD.

In circumstances such as those in the main proceedings, a modification of the description of the offence concerning the kind of narcotics concerned is not, of itself, to define an offence

other than that for which the person was surrendered within the meaning of Article 27(2) EAW FD.

*The exception in Article 27(3)(c) EAW FD must be interpreted as meaning that, where there is an offence other than that for which the person was surrendered, consent must be requested, in accordance with Article 27(4) EAW FD, and obtained if a penalty or a measure involving the deprivation of liberty is to be executed. **The person surrendered can be prosecuted and sentenced for such an offence before that consent has been obtained, provided that no measure restricting liberty is applied during the prosecution or when judgment is given for that offence**³.*

The exception in Article 27(3)(c) does not, however, preclude a measure restricting liberty from being imposed on the person surrendered before consent has been obtained where that restriction is lawful on the basis of other charges which appear in the EAW.

The CJEU's main arguments follow.

The expression 'other offence' requires a comparison between the description of the offence in the EAW and in the later procedural document to assess whether (paras 55 and 57):

- A. *the constituent elements of the offence, according to the legal description given by the issuing Member State, are those for which the person was surrendered;*

³ Emfasi tal-Qorti

- B. *there is a sufficient correspondence between the information given in the EAW and that contained in the later procedural document.*
- C. *The speciality rule does not require consent for every modification of the description of the offence (paras 56 and 57): consent for every modification would go beyond what is implied by the speciality rule and interfere with the objective of speeding up and simplifying judicial cooperation as pursued by the EAW FD;*
- D. *modifications concerning the time or place of the offence are allowed if they: (i) derive from evidence gathered in the course of the proceedings conducted in the issuing Member State concerning the conduct described in the EAW; (ii) do not alter the nature of the offence; (iii) do not lead to grounds for non-execution under Articles 3 and 4 EAW FD.*
- E. *A modification of the description of the offence concerning the kind of narcotics is not, of itself, to define an ‘other offence’ (paras 61–63):*
- F. *the indictment relates to the importation of hashish whereas the EAW refers to the importation of amphetamines;*
- G. *the offence is still punishable by imprisonment for a maximum period of at least 3 years;*
- H. *the offence comes under the category ‘illegal trafficking in narcotic drugs’ of Article 2(2) EAW FD.*

Għaldaqstant il-principji applikabbli għall-ispeciality rule u l-eccezzjoni relattiva kif imhaddna mill-Qorti Ewropeja gew kjarament stabbiliti f’din ir-referenza u huma s-segwenți:

The exception in Article 27(3)(c) EAW FD must be interpreted as meaning that (paras 73–76): (i) when there is an ‘other

offence’, consent must, in principle, be requested and obtained if a penalty or a measure involving the deprivation of liberty is to be executed; (ii) a measure restricting liberty can be imposed on the person before consent has been obtained if the restriction is lawful on the basis of other charges which appear in the EAW; (iii) the person can be prosecuted and sentenced for the ‘other offence’ before consent has been obtained, provided that no measure restricting liberty is applied during the prosecution or when the judgment is given for that offence; (iv) if, after judgment has been given, the person is sentenced to a penalty or a measure restricting liberty, consent is required to enable that penalty to be executed.

Il-Kaz in Ezami

Illi bl-applikazzjoni ta’ dawn il-principji għall-kaz in ezami, din il-Qorti trid tara (1) Jekk l-akkuzi migjuba f’din il-kawza kontra l-imputat jaqghux taht l-istess Artiklu tal-Ligi li a bazi tieghu gie esegwit fil-konfront tieghu l-EAW li permezz tieghu l-imputat ingab hawn Malta.

1. Illi taht il-paragrafu bit-titlu “Offences” fil-pagna 3⁴ tal-imsemmi Mandat hemm innizzel hekk: “Offence of Fraud (Articles 308, 310 (1) (a) of the Criminal Code, Chap. 9 of the Laws of Malta), and Offence of forgery in public acts (Article 183 of the Criminal Code, Chap. 9 of the Laws of Malta), and Offence of having knowingly made use of forged acts/documents (Article 184 of the Criminal Code, Chap. 9, Laws of Malta”.

⁴ A folio 42 tal-process

Illi taht il-paragrafu bit-titlu “Legal Classification of the Offence(s) and the applicable statutory provision/code” tnizzel hekk:

“Offence of Fraud (Articles 308, 310 (1) (a) of the Criminal Code, Chap. 9 of the Laws of Malta), and Offence of forgery in public acts (Article 183 of the Criminal Code, Chap. 9 of the Laws of Malta), and Offence of having knowingly made use of forged acts/documents (Article 184 of the Criminal Code, Chap. 9, Laws of Malta”.

Illi l-akkuzi fil-konfront tal-imputat fil-kawza in ezami jaqghu taht l-Artikli 308 u 310 tal-Kapitlu 9. U ghalhekk l-element illi l-Mandat ta' Arrest Ewropew irid jirreferi ghall-istess akkuza u taht l-istess Artiklu tal-Ligi huwa sodisfatt.

2. Illi l-element l-iehor huwa iz-zmien li matulu allegatament gie kommess ir-reat addebitat lill-imputat bi ksur tal-imsemmija ligi.

Illi f'dan ir-rigward taht il-paragrafu “.... of the circumstances in which the offence/s was (were) committed, including the time, place and degree of.....in the offence (s) by the requested person:” tnizzel hekk:

“.....years 2010, 2011, 2012 and 2013 in Malta and elsewhere....”.

Illi l-akkuzi fil-konfront tal-imputat fil-kawza in ezami jaqraw hekk “..... matul is-snin 2010, 2011 u 2012, f’dawn il-Gzejjer”. Illi ghalhekk l-element illi l-Mandat ta’ Arrest Ewropew irid jirreferi ghall-istess perjodu taz-zmien huwa ukoll sodisfatt.

3. Illi l-piena li tista’ tigi mposta fuq l-imputat ghalhekk hija wkoll l-istess piena bhal dik li taht ir-reati indikati fil-EAW.
4. Il-fatt li fil-kaz in ezami l-allegat reat sar fil-konfront ta’ persuna li ma hiex indikata fil-EAW, ma jfissirx illi r-reat huwa reat differenti.
5. Illi konsegwentament, in linja mal-principji abbraccjati mill-Qorti Ewropeja, dan ifisser illi l-Prosekuzzjoni tista’ tuza l-istess Mandat sabiex tipprosekwixxi lill-imputat ghall-istess tip ta’ reati, li allegatament saru fl-istess perjodu ta’ zmien anke jekk dawn jikkoncernaw lill-persuni ohra, stante illi l-allegat reat u l-perjodu ta’ zmien huma l-istess bhal daww fil-EAW.

Decide:

Ghaldaqstant, il-Qorti, wara li qieset ic-cirkostanzi kollha tal-kaz, u in linja mal-imsemmija principji legali, ai termini tal-Framework Decision Numru: 2002/584/JHA: “Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States”, u in partikolari tal-Artikli 26 u 27 ta’ l-istess, qeghda tichad din l-eccezzjoni tal-imputat u tiddikjara li l-imputat ghandu jghaddi

proceduri ghar-reati lilu addebitati f'dawn il-proceduri u dan a bazi tal-istess EAW li permezz tieghu huwa ngab Malta.

(ft)Magistrat Dr. Monica Vella LL.D, M. Jur.

(ft) Angelo Buttigieg
Deputat Registratur