FIL-QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI ISTRUTTORJA

MAGISTRAT DR MARSE-ANN FARRUGIA LL.D.

Seduta ta' nhar it-Tnejn, 26 t'April 2021

Il-Pulizija

vs

Amadeos Cachia

DIGRIET

Il-Qorti,

Rat ir-rikors tal-imputat tat-23 ta' April 2021 fejn, ghar-ragunijiet fih premessi, talab lil din il-Qorti terzercita il-poteri moghtija lilha bl-Artikolu 517 tal-Kodici Kriminali u tordna id-divjet tal-pubblikazzjoni ta' dawn il-proceduri jew liema partijiet jidhrilha xierqa, u dan taht dawk il-kundizzjonijiet li jidhrilha xierqa u opportuni.

Rat ir-risposta tal-Prosekuzzjoni ipprezentata seduta stante fis-seduta tal-lum, fejn oggezzjonat ghat-talba,

Semghet it-trattazzjoni tal-partijiet.

Ikkunsidrat:

L-Artikolu 517 tal-Kodici Kriminali jippreskrivi hekk:

"(1) Kull qorti ta' ġustizzja kriminali tista', b'ordni iffirmat mir-reġistratur u mwaħħal fil-bieb tal-edifizzju li fih il-qorti toqgħod, tipprojbixxi l-pubblikazzjoni, sa ma l-kawża tispiċċa, ta' kitba, stampata jew le, dwar ir-reat li fuqu tkun miexja l-kawża, jew dwar il-persuna tal-imputat jew akkużat; u kull min jikser dak l-ordni, talli jiksru biss, isir ħati ta' disprezz lejn l-awtorità tal-qorti ... ..."

Fir-rikors tieghu, l-imputat jibda biex jissottometti *"illi l-artikolu 517 tal-Kap 9 tal-Ligijiet ta' Malta, jaghti lil Qorti, poteri mill-aktar wiesgha, sabiex tipprojbixxi l-publikazzjoni ta' kwalsiasi tip ta' informazzjoni u li l-istess Artikolu ghaldaqstant jaghti diskrezzjoni mill-aktar wiesgha jekk mhux assoluta lil Qorti, u dan minghajr ebda limitazzjonijiet"*

Din il-Qorti ma taqbel xejn ma' din is-sottomissjoni. Huwa vera li l-Artikolu 517 jaghti diskrezzjoni wiesgha lil din il-Qorti, pero certament din il-Qorti m'ghandix diskrezzjoni assoluta u minghajr ebda limitazzjoni. Din il-Qorti hija obbligata li tibbilancja dan il-poter li tipprojbixxi l-pubblikazzjoni ta' kwalsiasi tip ta' informazzjoni mad-dritt u d-dover tal-media f'socjeta demokratika, li tinforma lill-pubbliku b'dak li jkun qed jigri fi proceduri gudizzjarji, u dan in konformita mal-Artikolu 10 tal-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem li tifforma parti mill-ordinament guridiku Malti. (Kap.319 tal-Ligijiet ta' Malta)

Fil-kaz **Bedat vs Switzerland** deciz fid-29 ta' Marzu 2016, il-Grand Chamber tal-Qorti Ewropea irriteniet hekk:

"51. In particular, it is inconceivable that there should be no prior or contemporaneous discussion of the subject matter of trials, be it in specialised journals, in the general press or amongst the public at large. Not only do the media have the task of imparting such information and ideas; the public also has a right to receive them. However, consideration must be given to everyone's right to a fair hearing as secured under Article 6 § 1 of the Convention, which, in criminal matters, includes the right to an impartial tribunal (see Tourancheau and July, cited above, § 66) and the right to the presumption of innocence (ibid., § 68). As the Court has already emphasised on several occasions (ibid., § 66; see also Worm v. Austria, 29 August 1997, § 50, Reports 1997-V; Campos Dâmaso, cited above, § 31; Pinto Coelho v. Portugal,

no. 28439/08, § 33, 28 June 2011; and Ageyevy v. Russia, no. 7075/10, §§ 224-25, 18 April 2013):

"This must be borne in mind by journalists when commenting on pending criminal proceedings since the limits of permissible comment may not extend to statements which are likely to prejudice, whether intentionally or not, the chances of a person receiving a fair trial or to undermine the confidence of the public in the role of the courts in the administration of criminal justice."

Skond il-kazistika kostanti tal-Qorti ta' Strasbourg, kull restrizzjoni tad-dritt tal-espressjoni trid tkun *"necessary in a democratic society"* u l-kelma *"necessary"* tfisser li l-eccezzjonijiet ghal dan id-dritt iridu jkunu interpretati b'mod ristrettiv u meta jkun hemm *"a pressing social need"*. Inoltre r-restrizzjoni trid tkun proporzjonata mal-ghan legittimu li jrid jigi milqugh.

L-imputat mhux qed jitlob li s-smiegh ta' dawn il-proceduri isir bil-maghluq, imma qed jitlob li din il-Qorti tordna divjet tal-pubblikazzjoni ta' dawn il-proceduri jekk mhux *in toto* ghall-inqas *in parte*. Fir-rikors tieghu, l-imputat ta hames ragunijiet ghalfejn qed jaghmel din it-talba.

Din il-Qorti se tikkonsidra dawn ir-ragunijiet anke fid-dawl tar-**Reporting Restrictions Guide**[1] mahrug mill-Judicial College tal-Ingilterra, li jelenka l-principji u l-fatti li ghandhom jittiehdu in konsiderazzjoni mill-Qorti meta jkun hemm talba ghal xi restrizzjonijiet ta' pubblikazzjoni ta' proceduri gudizzjarji. Dan il-Guide gie addottat ukoll mill-Media Lawyers' Association, the Society of Editors u the News Media Association. Il-Qorti se taghmel riferenza ghal dan ir-**Reporting Restrictions Guide** kemm ghaliex il-ligi procedurali kriminali taghna ghandha s-sors taghha fil-ligi Ingliza, kif ukoll ghax dan il-Guide jiehu in konsiderazzjoni d-drittijiet fundamentali protetti taht il-Konvenzjoni Ewropea.

Huwa relevanti li dan ir-**Reporting Restrictions Guide** jibda billi jghid hekk:

"The general rule is that the administration of justice must be done in public, the public and the media have a right to attend all court hearings and the media is able to report those

[1] **Reporting Restrictions in the Criminal Courts April 2015 (Revised May 2016)** (tinyurl.com//lluexdb)

proceedings fully and contemporaneously. The public has the right to know what takes place in the criminal courts and the media in court acts as the eyes and ears of the public, enabling it to follow court proceedings and to be better informed about criminal justice issues.

The open justice principle is reflected in rule 6.2 of the Criminal Procedure Rules 2015, which requires the court, when exercising its powers in relation to reporting and access restrictions, and when furthering the overriding objective, to have regard to the importance of dealing with criminal cases in public and allowing a public hearing to be reported to the public.

The open justice principle is central to the rule of law. Open justice helps to ensure that trials are properly conducted. It puts pressure on witnesses to tell the truth. It can result in new witnesses coming forward. It provides public scrutiny of the trial process, maintains the public's confidence in the administration of justice and makes inaccurate and uninformed comment about proceedings less likely. Open court proceedings and the publicity given to criminal trials are vital to the deterrent purpose behind criminal justice. Any departure from the open justice principle must be necessary in order to be justified.

… …

As public authorities under the Human Rights Act, courts must act compatibly with Convention rights, including the right to freedom of expression under Article 10 ECHR and the right to a public hearing under Article 6 ECHR. While Article 10 and Article 6 are both qualified rights and permit of exceptions. In some cases, the right to privacy under Article 8 may be engaged and need to be weighed in the balance. However, any restriction on the public's right to attend court proceedings and the media's ability to report them must fulfil a legitimate aim under these provisions and be necessary, proportionate and convincingly established. It is for the party seeking to derogate from the principle of open justice to produce clear and cogent evidence in support of the derogation."[2]

Il-ligi Ingliza tirregola b'mod estensiv u dettaljat meta Qorti tista tohrog ordna ta' restrizzjoni ta' pubblikazzjoni – haga li sfortunatament l-legislatur Malti m'ghamilx. L-hekk imsejjah "open justice principle" jew il-principju ta' gustizzja bil-miftuh tant hu meqjus essenzjali fl-

[2] **Reporting Restrictions Guide** pagna 7.

Ingilterra, li qabel tohrog ordna ta' restrizzjoni ta' pubblikazzjoni, Qorti Ingliza hija obbligata li tisma' wkoll is-sottomissjoniet tal-midja.

Fid-dawl ta' dawn il-principji, din il-Qorti sejra issa tikkunsidra ir-ragunijiet li a bazi taghhom l-imputat qieghed jitlob il-projbizzjoni tal-pubblikazzjoni ta' dawn il-proceduri.

Il-Presunzjoni tal-Innocenza u l-Hsara irreparabbli ta' dawn il-proceduri

Fl-ewwel lok, l-imputat jissottometti li huwa qieghed jaghmel din it-talba, in vista tal-prezunzjoni tal-innocenza tieghu, u wkoll li tista ssir hsara irreperabbli, anke mill-aspett professjonali tieghu, anke jekk eventwalment ma tinstabx htija fir-reati kollha, jew f'uhud minnhom.

Ghalkemm l-imputat huwa avukat, din il-Qorti ma tistax tifhem ghalfejn fil-kaz tieghu hemm bzonn li tittiehed l-mizura drastika li tigi projbita l-pubblikazzjoni ta' dawn il-proceduri, sabiex jigi salvagwardjat dan id-dritt fundamentali tieghu tal-presunzjoni tal-innocenza.

Fil-kaz **Pullicino vs Malta** deciz fil-15 ta' Gunju 2000, il-Qorti Ewropea irriteniet hekk:

"The Court observes that there is general recognition of the fact that the courts cannot operate in a vacuum. Whilst the courts are the forum for the determination of a person's guilt or innocence on a criminal charge, this does not mean that there can be no prior or contemporaneous discussion of the subject matter of criminal trials elsewhere, be it in specialised journals, in the general press or amongst the public at large.

Provided that it does not overstep the bounds imposed in the interests of the proper administration of justice, reporting, including comment, on court proceedings contributes to their publicity and is thus perfectly consonant with the requirement under Article 6 § 1 of the Convention that hearings be public. Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them. This is all the more so where a public figure is involved, such as in the present case.

However, public figures like the applicant are entitled to the enjoyment of the guarantees of a fair trial set out in Article 6, which in criminal proceedings include the right to an impartial tribunal, on the same basis as every other person. This must be borne in mind by journalists when commenting on pending criminal proceedings since the limits of permissible comment may not extend to statements which are likely to prejudice, whether intentionally or not, the chances of a person receiving a fair trial or to undermine the confidence of the public in the role of the courts in the administration of criminal justice (see the Worm v. Austria judgment of 29 August 1997, Reports 1997-V, pp. 1552-51, § 50).

… … The applicant highlights several instances of negative reports in the press which he maintains caused irreparable harm to his defence. The Court notes that the domestic courts were attentive to the possible risks caused to the fairness of the trial by prejudicial comment in the media and took steps to ensure that a balance was struck between press freedom and the applicant's right to a fair trial. Contempt proceedings were in fact brought against editors. Although the applicant seeks to minimise the value of the direction which the trial judge gave to the jury, the direction must nevertheless be considered a safeguard against the possible intrusion of extraneous and biased reporting into the jury's own assessment of the issues raised by the trial."

Dan l-insenjament japplika perfettament ghall-kaz odjern. F'kaz li jingieb ghall-attenzjoni ta' din il-Qorti, rapportagg li jeccedi l-limiti li ghandhom jigu rispettati fl-interess tal-amministrazzjoni tal-gustizzja, din il-Qorti ma ghandha l-ebda ezitazzjoni tghid, li lesta li tiehu l-mizuri necessarji skond il-ligi, kontra kull min jeccedi tali limiti. Pero, din il-Qorti ma tistax tipprezumi li l-midja se teccedi dawn il-parametri, u taghmel dak li jissejjah *"pre-censorship"* billi tipprojbixxi l-pubblikazzjoni ta' dawn il-proceduri.

L-imputat jghid ukoll li dawn il-proceduri jistghu jarrekawlu hsara irreparabbli fil-hajja professjonali tieghu, anke jekk eventwalment jigi liberat mill-imputazzjonijiet dedotti kontra tieghu. Ma hemmx dubbju li proceduri kriminali jistghu jarrekaw hsara irreparabbli fil-hajja lavorattiva ta' kull imputat, ikun xi jkun ix-xoghol tieghu. Pero, kif sewwa irrelevat il-prosekuzzjoni fit-trattazzjoni orali, professjonisti ma jgawdu l-ebda privilegg li l-kawzi taghhom jinstemghu bil-maghluq jew b'ordni ta' divjet tal-pubblikazzjoni tal-proceduri.

Fit-trattazzjoni orali, d-difiza issottomettiet ukoll li dawn il-proceduri jistghu ikollhom rifless negattiv f'ghajnejn il-pubbliku anke fuq id-ditta legali li maghha l-imputat kien jahdem. Il-Qorti ma teskludix li dan jista' jkun minnu, pero dan japplika ghal kwalunkwe imputat li jitressaq il-Qorti, u l-proceduri kriminali kontrieh jistghu ikollhom rifless negattiv f'ghajnejn il-pubbliku mhux biss mal-principal li mieghu l-impjegat kien jahdem imma anke fuq il-familja tal-istess imputat, anke jekk dawn ikunu totalment estranei ghal fatti li taw lok ghall-imputazzjonijiet kontra dak l-imputat.

Ir-**Reporting Restrictions Guide** jghid hekk fir-rigward tas-setgha tal-Qorti li tordna id-divjet tal-pubblikazzjoni ta' isem l-imputat:

"Consistent with the requirement to protect the open justice principle and freedom of expression, courts should only make an order under s.11 where the nature or circumstances of the proceedings are such that hearing all evidence in open court would frustrate or render impractical the administration of justice. It follows that a defendant in a criminal trial must be named save in rare circumstances. It is not appropriate therefore to invoke the s.11 power to withhold matters for the benefit of a defendant's feelings or comfort or to prevent financial damage or damage to reputation resulting from proceedings concerning a person's business. Nor can the power be invoked to prevent identification and embarrassment of the defendant's children, because of the defendant's public profile."

Din il-Qorti, diversament preseduta, diga cahdet it-talba tal-imputat li ismu ma jigix ippubblikat fis-seduta tal-11 ta' April 2021. Huwa ovvju li l-imputat ma rnexxilux jidhol mill-bieb, u issa qed jipprova jidhol mit-tieqa. Id-dannu li potenzjalment jista' jsir ghar-reputazzjoni ta' imputat jew ghax-xoghol tieghu m'hux raguni bizzejjed biex jiggustifika li ismu ma jigix pubblikat, u wisq inqas hija raguni bizzejjed biex din il-Qorti tiehu l-mizura drastika li tipprojbixxi l-pubblikazzjoni ta' dawn il-proceduri. L-istess ragunament japplika ghad-dannu li potenzjalment tista' issofri d-ditta legali li maghha kien jahdem l-imputat.

Biza' ghas-sigurta personali tal-Imputat

Fit-tieni lok, l-imputat jissottometti li tenut kont tal-persuni li mistennija jixhdu, u l-qasam li fih kien jipprattika hu, u cioe il-qasam tal-ligi kriminali, jista jkun hemm issue dwar is-sigurta

personali u l-inkolumita fizika tieghu, stante li si tratta anke ta' persuni detenuti fil-Facilita Korrettiva ta' Kordin.

Din il-Qorti ma tistax ma tikkummentax li ghalkemm gustament l-imputat irid li l-presunzjoni tal-innocenza tieghu tigi salvagwardata, ma tantx qed juri rispett lejn il-presunzjoni tal-innocenza tal-persuni detenuti fil-Facilita Korrettiva ta' Kordin, u li hu qed jassumi li se jixhdu f'dawn il-proceduri.

Ir-**Reporting Restrictions Guide** jghid hekk fir-rigward:
"Where the ground for seeking a s.11 order is that the identification of a witness or a defendant will expose that person to a real and immediate risk to his life engaging the state's duty to protect life under Article 2 ECHR, the court will consider whether the fear is objectively well-founded. In practical terms, the applicant will have to provide clear and cogent evidence to show that publication of his name will create or materially increase a risk of death or serious injury."[3]

Fl-opinjoni tal-Qorti, ghalkemm din il-linjagwida tinghad fil-kuntest ta' talba ghal divjet ta' pubblikazzjoni ta' isem xhud jew imputat, l-istess linjagwida ghandha tapplika ghal divjet ta' pubblikazzjoni tal-proceduri.

Din il-Qorti ma tistax tifhem il-logika ta' din is-sottomissjoni u x'beneficcju se jakkwista l-imputat jekk ikun hemm id-divjet ta' pubblikazzjoni ta' dawn il-proceduri. Il-persuni li se jixhdu, anke jekk kif qed jghid l-imputat jinsabu detenuti fil-Facilita Korrettiva ta' Kordin, se jixhdu fil-prezenza tal-imputat u jekk huma l-parte leza, ghandhom anke dritt jitolbu lil din il-Qorti jikkostitwixxu ruhhom bhala parte offiza f'dawn il-proceduri. Ghalhekk, indipendentement minn jekk dawn il-proceduri jigux pubblikati fil-midja jew le, dawn ix-xhieda li allegatament gew ippregudikati bl-agir tal-imputat, xorta se jkunu konsapevoli jekk mhux diga huma, konsapevoli ta' dak li qed jigi allegat li ghamel l-imputat.

Fi kwalunkwe kaz, l-istess imputat jghid li *"jista' jkun hemm issue"* u fil-fatt ma allegax li rcieva xi theddid jew xi provi ohra konkreti li jnisslu biza, la minn dawn il-persuni li qed jippresumi li se jixhdu, u lanqas minghand terzi. Ghalhekk din hija biss biza' ipotetika.

[3] **Reporting Restrictions Guide** fol. 26.

Certament li din il-Qorti ma tistax tipprezumi li allegata vittma fi proceduri kriminali sejra tpattiha lill-imputat billi tikkagunalu vjolenza fizika jew addirittura mewt. Il-fatt li l-imputat kien jipprattika fil-qasam tal-ligi kriminali ma jzid l-ebda fattur ta’ biza ghas-sigurta u l-inkolumita fizika tieghu.

Pubblikazzjoni ta’ Informazzjoni Sensittiva

Fit-tielet lok, l-imputat jissottometti li m’huwiex fl-interess tal-amministrazzjoni tal-gustizzja li tigi pubblikata informazzjoni sensittiva dwar kif digrieti tal-Qorti jintbghatu b'e-mail minghajr l-ebda security features, gieli f’format ta' word document jew parti minn l-e-mail stess, stante li dan jista mhux biss johloq kwistjonijiet ta' sigurta dwar dawn il-komunikazzionijiet b'mod generali, u ghalhekk tista tigi wkoll imminata, il-fiducja tal-pubbliku fl-istituzzjonijiet gudizzjarji.

Il-mod ta’ kif isiru komunikazzjonijiet ta’ digrieti tal-Qorti mhix sigriet nazzjonali u certament lanqas hi kwistjoni ta’ sigurta nazzjonali, li jekk tigi pubblikata se tistultifika l-amministrazzjoni tal-gustizzja. Jekk ghal grazzja tal-argument biss – hemm allegazzjoni ta’ xi nuqqasijiet dwar il-mod kif digrieti tal-Qorti jigu komunikati lil terzi – din hija raguni iktar impellanti ghalfejn dawn il-proceduri ghandhom jigu pubblikati, u dan sabiex ma jinxehet l-ebda dubbju jew spekulazzjoni frivola dwar il-mod ta’ kif joperaw l-istituzzjonijiet gudizzjarji. Jekk eventwalment jirrizulta – ghal grazzja tal-argument biss – li kien hemm xi nuqqasijiet fil-mod ta’ kif isiru dawn il-komunikazzjonijiet – dawn in-nuqqasijiet ghandhom jigu indirizzati mill-amministrazzjoni tal-Qorti. Huwa biss bit-trasparenza tal-proceduri kriminali – specjalment meta dawn jikkoncernaw il-*modus operandi taghha* - li l-amministrazzjoni tal-Qorti tista’ zzomm il-fiducja tal-pubbliku.

Pregudizzju lil kawzi pendenti ta’ xhieda

Fir-raba lok, l-imputat jissottometti li possibilment jistghu jixhdu persuni dwar kawzi li ghandhom pendenti u li l-pubblikazzjoni ta' tali informazzjoni tista tippregudika l-istess kazijiet pendenti u li huwa ma jixtieq jippregudika l-kaz ta' hadd.

Frankament, din il-Qorti ma tistax tifhem ghalfejn l-imputat qed jippreokkupa ruhu dwar kwistjonijiet ipotetici li se mai jistghu ikunu problema ta' terzi u mhux tieghu. Mit-trattazzjoni orali jirrizulta li dawn il-persuni ghandhom proceduri kriminali, u jista' jkun ukoll kostituzzjonali, pendenti fil-konfront taghhom, u fit-trattazzjoni orali hadd mill-paritijiet ma qal li dawn il-proceduri qed jinzammu bil-maghluq jew hemm xi projbizzjoni tal-pubblikazzjoni taghhom. Ghalhekk, din il-Qorti ma tistax tifhem xi pregudizzju dawn il-persuni jista' jkollhom jekk ix-xhieda taghhom f'dawn il-proceduri tigi pubblikata.

Fi kwalunkwe kaz, fl-eventwalita li xhud igib ragunijiet konvincenti lil din il-Qorti li jekk ix-xhieda tieghu f'dawn il-proceduri tigi ippubblikata, se tigi ippregudikata xi kawza tieghu li ghadu pendenti, din il-Qorti tiehu l-provvedimenti necessarji skond ic-cirkostanzi tal-kaz partikolari ta' dak ix-xhud, u skond dak li tippermetti l-ligi. Il-Qorti taghmilha cara li f'tali eventwalita, dan ma jfissirx necessarjament ordni ta' divjet ta' pubblikazzjoni. Pero certament mhux il-kaz li din il-Qorti tadotta il-mizura estrema ta' divjet assolut tal-pubblikazzjoni minn issa, ghal li jista' jkun tavverixxi ruhha tali possibilita.

Terzi Persuni li m'ghandhomx konnessjoni mal-imputazzjonijiet

Fil-hames lok, l-imputat jissottometti illi jistghu anke jissemmew terzi persuni li m'ghandhom assolutament l-ebda konnessjoni mal-atti konnessi mal-akkuzi u mhux fl-interess tal-ahjar amministrazzjoni tal-gustizzja li tali informazzjoni tigi pubblikata.

Ghal darb'ohra l-imputat qed jippreokkupa ruhu fuq kwistjonijiet ipotetici li semmai jistghu ikunu l-problema ta' terzi u mhux tieghu. Li fi proceduri kriminali jissemmew terzi persuni li ma jkollhomx x'jaqsmu mal-imputazzjonijiet hija xi haga ta' kuljum fil-qrati. Dawn il-persuni ma jsofru l-ebda pregudizzju, appuntu ghax ma jkollhomx x'jaqsmu mal-imputazzjonijiet.

Jekk f'din is-sottomissjoni, l-imputat qed jaghmel riferenza ghad-ditta legali li maghha huwa kien jahdem, din il-Qorti tirreferi ghal dak li diga qalet iktar il-fuq fir-rigward.

Fid-dawl tal-kunsiderazzjonijiet fuq esposti, il-Qorti ma tarax kif it-talba tal-imputat tista' tigi milqughha, stante li ma jirrizultax li hemm *"a pressing social need"* li jinhareg ordni ghal divjet tal-pubblikazzjoni ta' dawn il-proceduri.

Konkluzjoni

Ghal dawn ir-ragunijiet, il-Qorti tichad it-talba tal-imputat fir-rikors tieghu tat-23 ta' April 2021, fit-totalita taghha.

Magistrat

Doreen Pickard
Deputat Registratur