Fil-Qorti tal-Magistrati (Malta)

Bhala Qorti ta' Gudikatura Kriminali

Magistrat Dr. Nadine Lia

B.A; LL.M (Kent); LL.D, Barrister at Law (England & Wales)

Kaz numru: 205/2020

Il-Pulizija

(Supretendent Priscilla Caruana Lee)

vs.

Jean Paul Azzopardi

Illum 30 ta' Novembru 2021

Il Qorti:

Rat li tressaq taht arrest Jean Paul Azzopardi ta' 26 sena, iben Jason u Georgina nee Farrugia, imwieled Pieta fit-23 ta' Lulju 1993, residenti gewwa Fl2, Fuq San Pawl, Bormla u detentur tal-karta tal-identita numru 345193M.

U nakkuzah talli fil-31 ta' Mejju 2020 u fil-gimgha ta' qabel gewwa l-Belt Valletta u f'dawn il-Gzejjer:

1. bl-imgieba tieghu, ikkaguna lil Caze Grixti, persuna li kienet is-siehba tieghu, il-biza' li se tintuża vjolenza kontriha jew kontra l-proprjetà taghha jew kontra l-persuna jew il-proprjetà ta' xi ħadd mill-axxendenti u aħwa subien jew bniet, meta jmissu kien jaf li l-imgieba tieghu kienet ser tikkaguna biza' u dan bi ksur tal-artikolu 251B u l-Artikolu 251H (a)(b) tal-Kapitolu 9 tal-Ligijiet ta' Malta;

2. bl-imgieba tieghu, gab ruhu b'tali mod li ta' fastidju lil Caze Grixti, persuna li kienet is-siehba tieghu, b'mod li kien jaf jew li missu kien jaf li dan ikun ta' fastidju ghal Caze Grixti u dan bi ksur tal-artikolu 251A(1)(a)(b) u l-Artikolu 251H (a)(b) tal-Kodici Kriminali, Kap 9 tal-ligijiet ta' Malta;

3. insulenta, hedded bil-mewt jew ingurja bi kliem jew b'mod iehor lil Caze Grixti, u dan ai termini tal-artikolu 339(1)(e) tal-Kodici Kriminali, Kap 9 tal-ligijiet ta' Malta;

4. permezz ta' xi network jew apparat ta' komunikazzjoni elettronika, hedded li jaghmel xi reat jew bil-hsieb li jiehu xi flus jew xi haga ohra jew biex jaghmel xi gwadan, jew bil-hsieb li jgieghel lil Caze Grixti taghmel jew tonqos milli taghmel xi haga, jew hedded li jakkuza jew li jaghmel ilment kontra taghha, jew biex immalafama lil Caze Grixti, jew xi persuni ohra jew ghamel uzu iehor mhux xieraq bih u dan bi ksur tal-Artikolu 49(a)(b)(c) Kap.399 tal-Ligijiet ta' Malta.

Il-Qorti hi mitluba li f' kaz ta' htija titratta ma' l-imputat li huwa recediv ai termini tal-artiklu 49 tal-Kapitolu 9 tal-Ligijiet ta' Malta dan wara diversi sentenzi li saru definittivi.

Il-Qorti hija mitluba li tohrog ordni ta′ protezzjoni ai termini ta′ l-Artikolu 412C fejn tiprojbixxi lill-imputat milli javvicina lil Caze Grixti u r-residenza taghha kif ukoll il-postijiet li t-tali persuna tiffrekwenta.

Il-Qorti hija mitluba ukoll flimkien ma hrug ta′ ordni ta′ protezjoni tohrog ordni ta′ trattament li jkun mehtieg fil-konfront ta′ l-akkuzat Jean Paul Azzopardi u dan ai termini 412D tal-Kap 9 tal-ligijiet ta′ Malta.

Il-Qorti hija ġentilment mitluba wkoll sabiex f′każ ta′ sejbien ta′ ħtija tikkundanna lill-akkużata għal ħlas ta′ spejjes li jkollhom x′jaqsmu mal-ħatra ta′ esperti jew periti fil-proċeduri hekk kif ikkontemplat fl-Artikolu 533 tal-Kapitlu 9 tal-Liġijiet ta′ Malta.

Rat li matul l-ezami tal-imputat fl-udjenza tat-3 ta′ Gunju 2020, ai termini ta′ l-artikolu 392(1) tal-Kodici Kriminali, l-imputat tenna li ma kienx hati ta′ l-imputazzjonijiet migjuba kontra tieghu.[1]

Rat il-kunsens ta′ l-Avukat Generali sabiex l-imputat jigi trattat bi procedura sommarja.[2]

Rat illi l-prosekuzzjoni ghalqet il-provi taghha nhar it-2 ta′ Ottubru 2020.[3]

Rat illi d-difiza ghalqet il-provi taghha nhar is-26 ta′ Mejju 2021.[4]

Rat it-traskrizzjonijiet tax-xhieda u hadet konjizzjoni tas-sottomissjonijiet li saru quddiem il-Qorti kif diversament preseduta qabel din il-kawza giet assenjata lil din il-Qorti kif preseduta;

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[1] Folio 7 ta′ l-atti processwali
[2] Dok E, Folio 23 ta′ l-atti processwali
[3] Folio 79 ta′ l-atti processwali
[4] Folio 100 ta′ l-atti processwali

Rat id-dokumenti kollha pprezentati, hadet konjizzjoni tax-xhieda prodotti, kif ukoll ix-xhieda ta' l-imputat li nghatat b'mod volontarju, fliet l-atti kollha tal-kawza;

Semgħet lill-partijiet jittrattaw finalment fl-udjenza ta' l-10 ta' Gunju 2021

Rat illi l-kawza kienet thalliet ghall-lum ghas-sentenza.

Ikkunsidrat

Fatti fil-qosor

Illi dan il-kaz irrizulta meta ddahhal rapport lill-pulizija mill-allegata vittma Caze Grixti li hija kienet qed tigi mhedda mill-gharus taghha, l-imputat, wara li kienet talbitu sabiex ma jibqax jghix fl-appartament taghha.

Ikkunsidrat

Xhieda

Il-Qorti ser taghmel riferenza ghax-xiehda li nstemghet viva voce u ghad-dokumenti saljenti li gew prezentati tul il-mori tal-proceduri odjerni.

Fis-seduta tal-31 ta' Lulju 2020 xehdet il-parte civile **Caze Grixti**. B'referenza ghall-incident in kwistjoni, hija stqarret li kien argument zghir rigward telefonata u messaggi u hija kienet marret tirrapporta l-Ghassa fis-sahna tal-mument. Spjegat li minn dak iz-zmien, l-affarijiet kienu trangaw. Hija ghandha tifla mal-imputat li dak iz-zmien kellha tmien snin, u fil-fatt esprimiet ix-xewqa li tkompli bir-relazzjoni mal-imputat u jghixu flimkien bhala familja. Il-parte civile irrinunzjat ghal dak kollu li huwa rinunzjabbli fil-konfront tal-imputat.

Fl-istess seduta xehed **PS 507 Rhys Cassar** li spjega li fil-31 ta' Mejju 2020 kien dahal rapport l-Ghassa tal-Belt minghand Kaze Grixti fejn din stqarret li kienet qed tigi mhedda mill-gharus taghha Jean Paul Azzopardi. Grixti spjegat ukoll li nhar l-24 ta' Mejju 2020 ghall-habta tal-23:00hrs, hija kella argument ma Azzopardi minhabba li kien qed juza l-karozza taghha u kienet qed tahseb li kien qed jiffrekwenta xi tfajla ohra. Dakinhar kien illetikaw u ftehmu li hu kellu jitlaq jghix ghal rasu. Fil-31 ta' Mejju rega' hareg wahdu u kellhom argument bil-*mobile* permezz tal-Whatsapp, fejn allegatament Azzopardi beda jhedded lill-parte civile. Il-Pulizija informat lill-Agenzija Appogg bir-rapport fejn irrizulta li kien hemm riskju gholi. Ghal dan il-ghan, l-Ispettur Caruana Lee talbet li Azzopardi jingieb l-Ghassa sabiex tkellmu.

Fis-seduta tas-27 t'Awwissu 2020 xehed **Ryan Grima**, ufficjal tal-Agenzija Appogg li spjega li b'referenza ghad-dokument ezebit a Fol 20 – 27 tal-process, dan huwa *risk assessment* li sar mix-xhud flimkien mal-kollega Rachel Farrugia. In kontro-ezami spjega li r-risk assessment isir skont kriterji pre-stabbiliti skont il-Konvenzjoni ta' Istanbul u jsir abbiazi ta' sett ta' domandi. Ikkonferma li huwa kien tkellem mal-parte civile Caze Grixti.

Fl-istess seduta xehdet ukoll **Rachel Farrugia**, ufficjal tal-Agenzija Appogg, li kkorroborat dak li xehed ix-xhud precedenti. Spjegat li l-imputat kien tela' high risk (14-il punt) u li din kienet l-ewwel darba li kienet kellmet lill-parte civile Caze Grixti.

Fl-istess seduta xehdet **l-Ispettur Priscilla Caruana Lee**, stazzjonata fl-Ghassa tal-Belt Valletta, li spjegat li fil-31 ta' Mejju 2020 giet informata mill-Ghassa taI-Belt illi kienet marret Caze Grixti, taghmel rapport, kontra l-eks sieheb taghha, Jean Paul Azzopardi. Il-Pulizija informat lill-Agenzija Appogg u kien irrizulta li l-kaz kien wiehed ta' riskju gholi. Ix-xhud kienet tablet il-hrug ta' mandat t'arrest li gie milqugh. Meta x-xhud kellmet lill-parte civile, kien

irrizulta li l-messaggi li kien fihom l-allegat theddid kienu gew imhassra mill-imputat u allura ma kienux qed jidhru fil-konversazzjoni tal-Whatsapp. L-imputat kien ta stqarrija mal-Ispettur Jeffrey Scicluna fejn kien ammetta li baghat il-messaggi in kwistjoni.

Fis-seduta tat-2 t'Ottubru 2020 xehdet **WPC 1 Janice Xuereb** li kkonfermat ir-rapport dwar l-incident odjern u li hija kienet irrispondiet ghar-rapport billi marret fl-indirizz 188, Blk G, Fl 2, Triq Sant' Orsola, il-Belt Valletta u kellmet lill-parte civile Caze Grixti. Hija kienet semghat il-Whatsapp *voice recordings* in kwistjoni fejn fihom l-imputat jinstema' jghid kliem bhal "ha nigi naghtik xebgha" u "nifqaghlek il-kaxxa ta' sidrek". Minn dak il-punt, giet involuta l-Agenzija Appogg u kien sar *risk assessment*.

Fis-seduta tal-5 ta' Novembru 2020 xehdet **Maria Dolores Fenech**, Assistant Registratur tal-Qrati Kriminali, li ezebet vera kopja ta' zewg sentenzi moghtija fil-konfront tal-imputat.

Fl-istess seduta xehdet **Charmaine Zammit** in rapprezentanza ta' Vodafone Malta Limited. Hija kkonfermat li n-numru 99161666 huwa registrat fuq Caze Grixti filwaqt li n-numru 99741700 huwa registrat fuq Jean Paul Azzopardi.

Fis-seduta tas-26 ta' Mejju 2021 xehdet l-ufficjal tal-*probation* **Odelsie Vella Bayliss** li halfet u pprezentat is-social inquiry report li jinsab ezebit a Fol 104 – 123. Hija spjegat li l-imputat ikkoopera waqt l-intervisti li saru u ma kienx jidher li kellu vizzji. Fil-fatt it-test tal-awrina li kien ser kien irrizulta negattiv ghal sustanzi illeciti. Ix-xhud issuggerit li jkun hemm *follow-up* tal-imputat fejn jidhol *anger management*.

Ikkunsidrat

Principji Legali

L-artikolu 251A(1)(a)(b) jghid:

251A. (1) Persuna li:

(a) iġġib ruħha b'mod li tagħti fastidju lil persuna oħra; jew

(b) iġġib ruħha b'mod li tkun taf jew ikun imissha tkun tafli dan ikun ta' fastidju għal dik il-persuna; jew

L-artikolu 251B jghid:

(1) Persuna li l-imġieba tagħha tikkaġuna lil ħaddieħor jibża' li se tintuża vjolenza kontrih jew kontra l-proprjetà tiegħu jew kontra l-persuna jew il-proprjetà ta' xi ħadd mill-axxendenti,dixxendenti, aħwa subien jew bniet jew xi persuna msemmija fl-artikolu 222(1) tkun ħatja ta' reat jekk hija tkun taf jew imisshatkun taf li l-imġieba tagħha se tikkaġuna lil xi ħadd ieħor hekk jibża' kull darba minn dawk l-okkażjonijiet, u tista' teħel il-piena ta' priġunerija għal żmien minn sena sa sentejn jew multa ta' mhux inqas minn sitt elef u ħames mitt euro (€6,500) u mhux iżjed minn ħmistax-il elf euro (€15,000), jew dik il-multa u priġunerijaflimkien.

(2) Għall-finijiet ta' dan l-artikolu, il-persuna li l-imġieba tagħha tkun waħda dubjuża jmissha tkun taf li tkun se tikkaġunabiża' f'ħaddieħor li ser tintuża vjolenza kontrih f'xi okkażjoni jekkpersuna raġonevoli li jkollha l-istess informazzjoni kieku taħseb lidik l-imġieba tkun ser tikkaġuna biża' fil-persuna l-oħra f'dik l-okkażjoni.

(3) Persuna akkużata b'reat taħt dan l-artikolu tista' ġġib prova li:

(a) l-imġieba tagħha kienet adottata fiċ-ċirkostanzimsemmija fl-artikolu 251A(3)(a) jew

(b); jew(b) l-imġieba adottata kienet waħda raġonevoli għall-ħarsien tagħha nnifisha jew ta' ħaddieħor jew għall-ħarsien tal-proprjetà tagħha jew ta' ħaddieħor.

Fir-rigward dak li jipprovdi dawn l-artikoli, il-Qorti taghmel referenza ghal-kaz **Il-Pulizija vs Raymond Parnis** fejn gie ritenut:

Dan kollu – u cioe` dawn l-affarijiet kollha li sehhew fil-kuntest ta' incident wiehed – ma jistghu qatt jammontaw ghar-reat kontemplat fl-Artikolu 251B imsemmi. Dan ir-reat gie evidentement ispirat mill-Artikolu 4(1) tal-Protection from Harassment Act, 1997 tal-Ingilterra, liema artikolu jipprovdi testwalment hekk: "A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions." L-Artikolu 251B taghna – u hawn il-Qorti ser tuza t-test Ingliz proprju biex wiehed ikun jista' jara x-xebh u fejn saru t-tibdiliet – jipprovdi, fis-subartikolu (1) tieghu, hekk: "A person whose course of conduct causes another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or any person mentioned in sub-article (1) of article 222 shall be guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions…" (sottolinear ta' din il-Qorti). Il-kliem "on each of those occasions" huma indikattivi li l-att materjali ma jistax isehh f'okkazjoni wahda izda jrid ikun hemm ghall-anqas zewg okkazjonijiet – proprju kif jinghad fil-matrici Ingliza, "on at least two occasions". Ghal xi raguni – fil-fehma ta' din il-Qorti kompletament illogika – il-kliem "on at least two occasions thallew barra". Fi kliem l-edituri ta' Blackstone's Criminal Practice, 2008:

> *'How separate the two occasions must be remains to be seen. The nature of stalking, the activity which primarily created the need for the new offences,*

might mean that the occasions are likely to be on separate days, although it may be possible to differentiate activities on one day where they can be viewed as not being continuous. The further apart the incidents, the less likely it is that they will be regarded as a course of conduct…It was recognised, however that circumstances can be conceived 'where incidents, as far apart as a year, could constitute a course of conduct'. The type of incidents would be those intended to occur on an annual event such as a religious festival or a birthday…'

Skond **Blackstone Criminal Practice**:

D's conduct must cause the complainant to fear that violence will be used against him; it is not sufficient for it to frighten the complainant as to what might happen (Henley (2000) Crim LR 582; Caurti v DPP (2002) Crim LR 131). It is always a question of act (Caurti and R (Simon Howard) v DPP (2001) EWHC Admin 17) and, whilst it can sometimes be inferred from the evidence, there should, if possible, be direct evidence from the complainant (R vs DPP (2001) Crim LR 396; Cuarti)....the prosecution must prove that the conduct in question was targeted at an individual, that it was calculated to produce the consequences described in s 7 of the Act (alarming the person or causing the person distress) and that it was both oppressive and unreasonable (see Haque at (70)-(73))'[5]

Skond **Archbold 2021**[6]

The Protection from Harassment Act 1997 describes itself as an Act "to make provision for protecting persons from harassment and similar conduct". It was passed for the purpose of dealing with the phenomenon of "stalking" (as to which, see now ss.2A and 4A, below). There is, however, no attempt at a definition of

[5] Blackstone Criminal Practice, 2015, Oxford, Section B2.186, p. 297
[6] Archbold Criminal Pleading, Evidence and Practice 2021, 19-337, Folio 2311

harassment, although s.7(2) provides that references to harassing a person include alarming the person or causing the person distress.

L-istess awturi jaghmlu referenza ghal-kaz **Tuppen v Microsoft Corporation Ltd, The Times, 15 November 2000, QBD ,** fejn inghad:

"Douglas Brown J held that there being no definition of "harassment" in the Act, it was legitimate to have recourse to the proceedings in Parliament as an aid to construction because of the wide potential and far-reaching meaning that might be attributed to the word. Such reference made clear that the behaviour sought to be controlled was conduct such as stalking, anti-social behaviour by neighbours and racial harassment. Furthermore, the conduct of oppressive litigation could not amount to harassment within the Act. However, in ***Iqbal v Dean Manson Solicitors*** *(§ 19-354), it was held that the manner in which proceedings were defended was capable of amounting to harassment.*

Jaghmlu wkoll referenza ghal-kaz ***Thomas v News Group Newspapers Ltd [2001] EWCA Civ 1233; The Times, 25 July 2001*** fejn gie ritenut[7]

"it was held that the Act is concerned with conduct targeted at an individual, which was calculated to produce alarm or distress and which was oppressive and unreasonable. A series of articles in a newspaper was capable of amounting to such conduct where they were calculated to incite racial hatred.

In ***Crawford v Jenkins [2014] EWCA Civ 1035; [2016] Q.B. 231*** *, it was held that one consequence of the witness immunity rule was that allegations of crime could not be relied on as being part of a course of conduct amounting to harassment, even where they were made maliciously and were known to be false. It should be noted, however, that the Supreme Court, whilst refusing permission to appeal on other grounds,*

[7] Ibid 19-337a, Folio 2311-2312

conceded that it was arguable that the reasoning of the Court of Appeal was erroneous.

In ***Ferguson v British Gas Trading Ltd [2009] EWCA Civ 46; [2010] 1 W.L.R. 785 ,*** *the defendant had sent the claimant, their former customer, numerous bills and letters threatening to cut off her gas supply, to start legal proceedings and to report her to credit rating agencies. The court, whilst accepting that a course of conduct must be grave before the offence or tort of harassment could be made out, said it was strongly arguable that the impugned conduct was on the wrong side of the line as being "oppressive and unacceptable" (* ***Majrowski v Guy's and St Thomas's NHS Trust*** *, above, per Lord Nicholls (at [30])).*

In ***Dowson v Northumbria Police [2010] EWHC 2612 (QB)*** *, it was held (after an extensive review of the authorities) that for conduct to constitute harassment within the Act it must be objectively judged as oppressive and unacceptable. What is oppressive and unacceptable may depend on the social or working context in which the conduct occurs; and a line is to be drawn between conduct which is unattractive and unreasonable, and conduct which amounts to "torment" of the victim or is "of an order which would sustain criminal liability". See also* ***Hilson v CPS; McCarthy v CPS [2019] EWHC 1110 (Admin).***

Ghar-rigward ghal dak li jista jigi kkunsidrat bhala x'ghandu ikun il *course of conduct* huwa ritenut illi:

"Whilst two incidents can constitute a "course of conduct" (s.7(3)), the fewer the incidents and the greater their separation in time, the less likely it is that they could be described as a "course of conduct": ***Lau v DPP [2000] 1 F.L.R. 799; [2000] Crim. L.R. 580*** *.*

*In **Jones v DPP [2010] EWHC 523 (Admin); [2011] 1 W.L.R. 833, QBD** (Ouseley J), it was held that:*

*(a) there is no requirement that each individual act forming part of a course of conduct must be of sufficient gravity to be a crime in itself (considering **Majrowski v Guy's and St Thomas's NHS Trust , § 19-337);** nevertheless, the fewer the incidents, the more serious each is likely to have to be for the course of conduct to amount to harassment;*
(b) findings of fact relating to conduct which has not expressly been particularised in the charge should not be taken into account;
(c) the facts of a separately charged offence (in the instant case, a racially-aggravated public order offence), whether they lead to a conviction or not, are capable of forming part of the course of conduct; however, where the specific facts relative to a separate charge have led to a conviction, and where it is that conviction which makes all the difference between a course of conduct falling short of harassment and amounting to harassment, it would be oppressive and unfair for those facts in effect to lead to two convictions; and
(d) in any event, if the facts of a separately charged offence are to be relied on, that should be made clear at the outset, so that any issues of fairness or duplicity can be dealt with.

*In **Kelly v DPP [2002] EWHC 1428 (Admin); [2003] Crim. L.R. 45** (Burton J), the making of three telephone calls within five minutes of each other was held to be capable of constituting a "course of conduct" for the purposes of this Act, since it involved conduct on "at least two occasions"; and the fact that the recipient heard them all on the same occasion (when she accessed her voicemail) was irrelevant to this issue. **Kelly** and **Pratt v DPP** , § 19-340, were considered in **Buckley and Smith v DPP [2008] EWHC 136 (Admin); [2008] A.C.D. 39, DC** where it was held that a series of four closely related incidents on the same day were sufficiently distinct, at least as to two of them, to amount to a course of conduct.*

Where an individual is consistently abusive to someone who approaches or makes contact with himself, this can still amount to a course of conduct in relation to that person even though it is that person who has chosen to approach or make contact with the abuser: ***James v DPP [2009] EWHC 2925 (Admin); [2010] Crim.L.R. 580, DC*** *(defendant had abused his social services care manager when the latter had, on three separate occasions over a short period, returned his telephone calls, the defendant knowing that his care manager was obliged to return the calls). "*[8]

Ikkunsidrat

Provi mressqin

Il-prosekuzzjoni esebiet komunikazzjoni li saret bejn l-imputat u l-vittma tramite l-*Whatsapp Chat*.[9]

Illi dawn il-*whatsapp chats* jidhru li saru minn persuna bil-laqam 'Sufu' u fihom jinstabu kummenti bhal

"u nifgakk jekk di darva defes pulizija

ta ragel et nedlek nifgakk

ax titkesahhh meta tkun lbodddd"

Il-prosekuzzjoni ressqet ukoll *risk assessment*[10] maghmula mill-Agenzija Appogg li saret dak in-nhar il-31 ta' Mejju 2020 fuq Caze Grixti. Dawn gew sussegwentement ikkonfermati mill-istess rapprezentati ta' l-agenzija Appogg, Ryan Grima u Rachel Farrugia.[11] Li permezz ta' dan il-*assessment* irrizulta li kien inqala incident fil-jum tar-reat fejn sar theddid mill-imputat

[8] Archbold Criminal Pleadings, Evidence and Practice 2021, 19-353, Folio 2319-2320
[9] Folio 12-13 ta' l-atti processwali
[10] Dok F, Folio 24-38 ta' l-atti processwali
[11] Folio 64-71 ta' l-atti processwali

ghall-Caze Grixti. Bhala element ta' riskju lill-vittma, irrizulta li kienet erbatax (14) u b'hekk *high risk* ghall-vjolenza domestika.

Il-prosekuzzjoni ressqet ukoll prova dwar fuq min in-numri tal-mobiles huma registrati. F'dan ir-rigward xhedet rapprezentat ta' Vodafone Malta Limited li kkonfermat li n-numri 99161666 huwa ta' Caze Grixti u li n-numru 99741700 huwa ta' l-imputat.[12] Illi dawn in-numri tal-mobajls jaqblu ma' l-istess numri indikati fuq l-okkorenza tal-pulizija bir-referenza NPS 1/A/1476/2020.[13]

Ikkunsidrat

Stqarrija

Mil-provi prodotti jirrizulta li l-istqarrija[14] ta' l-imputat ittiehdet nhar it-2 ta Gunju 2020, u cioe jumejn wara l-incident gewwa l-Ghassa tal-Pulizija, il-Belt, Valletta, fl-ufficju ta' l-Ispettur Jeffrey Scicluna, fil-prezenza ta' PC 170 Edmund Galea u dan wara li kien inghata is-soliti twissija ta' xiex gie investigat u wara li nghatalu d-drittijiet kollha tieghu dwar il-jedd li jikonsulta ma' avukat tal-fiducja tieghu qabel issirlu xi interrogazzjoni.

Illi wara li l-imputat inghata il-jedd li qabel ma ssirilu xi interrogazzjoni jithalla, kemm jista' jkun malajr, jitkellem privatament ma' avukat jew prokuratur legali, wicc imb'wicc jew bit-telefon ghal mhux aktar minn siegha zmien, jew fil-prezenza tal-avukat waqt l-interrogazzjoni innifisha, ezercita dan id-dritt u ghamel kuntatt ma' l-avukat Dr. Roberto Montalto.

Illi fl-istqarrija l-imputat Jean Paul Azzopardi ghazel li jiffirma l-istqarrija tieghu fuq kull pagna u iwiegeb ghall-mistoqsijiet li sarulu. Illi mill-istqarrija jirrizulta li l-imputat ammetta li ghamel theddid lil Caze Grixti.

"M. Tghidli x'gara ezatt?

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[12] Dok CZ1, Folio 90-91 ta' l-atti processwali
[13] Dok A, Folio 8-11 ta' l-atti processwali
[14] Dok D Folio 21-22 ta' l-atti processwali

T. Argumentajna u tlaqt 'il barra mid-dar taghha jien, imbaghad f'sahna ta' moment ghidtli 'ghax nigi u nifqaghlek wiccek' bil-whatspp.

M. Naqblu li inti ghidtilha wkoll il-kliem 'ha nigi u naghtik xeba' kif ukoll 'nifqaghlek il-kaxxa ta' sidrek?

T. Iva."

Ikkunsidrat

Il-verzjoni tal-vittma

Illi nhar il-31 ta' Lulju 2020 waqt udjenza ta' din il-kawza, il-vittma Caze Grixti ghazlet li ma tixhidx u minnflok informat il-Qorti illi qieghda tirrinunzja ghall-kwerela li hija gia ghamlet u ghall-azzjoni kriminali fil-konfront tal-imputat safejn tali azzjoni hija rinunzjabbli stante li qed tahfer lill-imputat.[15]

Illi l-artikolu 339(2) tal-Kodici Kriminali jghid:

l-każijiet imsemmijin fis-subartikolu (1)(d), (e), (l) u (o), ma tittieħed ebda proċedura jekk mhux bil-kwerela tal-parti.

Ghaldaqstant it-tielet reat huwa estint bir-rinunzja tal-parte civile.

Il-vittma spjegat lill-Qorti:

"Kellna argument zghir bejnietna bhal kull koppja ohra. Emm illum nitkellmu ghax hfirtlu. Speci ma kienx hemm swat. Just kemm illitikajna fuq il-mobajl emm u jiena kont sahna ta' mument u mortlu l-Ghassa ghax ma ridtux ovvjament imma irrangajna."[16]

Caze Grixti esprimiet li x-xewqa taghha hi:

[15] Folio 52 ta' l-atti processwali
[16] Folio 53 ta' l-atti processwali

"Jien nixtieq inkompli bir-relazzjoni u nergghu noqghodu bhala familja bit-tifla."[17]

Filwaqt li l-vittma ghazlet li ma taghtix ix-xhieda taghha lill-Qorti, ghazlet li tippartecipa fil-*social inquiry report* li gie mhejji fuq talba tad-difiza.[18]

Hawnhekk Caze Grixti spjegat lill-ufficjal tal-probation li kienet f'relazzjoni ma' l-imputat u *"li din mhijiex l-ewwel darba li kienet vittma tal-imsemmi u li kien hemm drabi fejn anke refa' jdejh fuqha……Caze Grixti ttenni li kemm-il darba pruvat tirranga s-sitwazzjoni ta' bejniethom, madankollu mal-icken argument jerga' lura ghac-cirku ta' vjolenza u theddid. Hija tispjega li Jean Paul Azzopardi ghandu problema ta' rabja u problemi ta' kilbiet sesswali li ma jhalluhx jirraguna bhan-nies."*.

Ikkunsidrat

Illi fin-nuqqas tax-xhieda tal-parte civile Caze Grixti, il-kumplament tax-xhieda huma kollha pulizija li rrakontaw dak li qaltilhom Caze Grixti u b'hekk jikkonstata *hearsay evidence.*[19]

Madankollu, jirrizulta b'mod car li meta l-imputat ta l-istqarrija tieghu ammetta l-involviment u l-partecipazzjoni tieghu fil-messaggi li baghat lil Caze Grixti.

Illi skond l-artikolu 658 tal-Kodici Kriminali:

"Kull ħaġa li imputat jew akkużat jistqarr, kemm bil-miktub,b'mezzi awdjoviżwali jew b'mezzi oħra, tista' tittieħed bi prova kontra jew favur min, skont kif ikun il-każ, ikun stqarrha, kemm-il darba jinsab li din il-konfessjoni ġiet magħmula minnu volontarjament u ma ġietx imġiegħla jew meħuda b'theddid jew b'biża', jew b'wegħdiet jew bi twebbil ta' vantaġġi."

Illi fil-gurisprudenza nostrana konsiderando l-ammissjoni fl-istqarrija din ghandha titqies ukoll bhala l-prova regina hekk kif gie ritenut fil-kaz **Il-**

[17] Folio 55 ta' l-atti processwali
[18] Folio 106 ta' l-atti processwali
[19] Vide xhieda ta' WPC1 Janice Xuereb, PS 507 Rhys Cassar, Spettur Priscilla Caruana Lee

Pulizija (Spettur Kevin Farrugia) vs Robert Busuttil, Matthew Borg u Jody Giordano[20] fejn intqal:

Illi fil-kamp penali dejjem gie ritenut li l-konfessjoni – popolarment maghrufa bhala l-istqarrija ta' l-imputat jew l-akkuzat – hija l-prova regina li tista' tressaq il-prosekuzzjoni biex tipprova l-htija tal-persuna akkuzata, dment li din tkun saret volontarjament u ma gietx imgieghla, jew mehuda b'theddid, jew b'biza', jew b'weghdiet jew twebbil ta' vantaggi (artikolu 658 tal-Kodici Kriminali).[21]

Fil-kaz **Ir-Repubblika ta' Malta vs John Grima**[22] gie ritenut:

Dan ghaliex gie meqjus illi kwalunkwe dikjarazzjoni li l-persuna suspettata setghet hekk ghamlet hija lesiva tad-dritt taghha ghal smigh xieraq ghaliex il-konfessjoni titqies bhala prova regina fil-process penali.[23]

Il-Qorti taghmel referenza ghal-kaz **Il-Pulizija vs Robert Attard**[24] fejn gie ritenuto:

"Illi l-aggravju bazat fuq il-fatt li ma nstabet ebda droga ghand l-appellant ma jannjentax id-dikjarazzjoni tal-appellant li ma gietx retratta minnu lanqas fix-xhieda tieghu li hu kien jixtri r-raza tal-cannabis ghalih kif ukoll ghal haddiehor, sija pure fix-xhieda tieghu emfasizza kemm felah li dan kien jaghmlu biex ipejjpuha flimkien. Din id-dikjarazzjoni tieghu, ladarba giet maghmula volontarjament tikkostitwixxi l-prova regina w ma hemmx ghalfejn tkun akkompanjata minn xi prova ohra bhal ma hi s-sejbien fiziku tad-droga fil-pussess tieghu".

Din il-Qorti tqis li m'ghandha ebda raguni sabiex tiskarta l-istqarrija tenut kont tal-fatt li ttiehdet skont il-ligi in vigore ta' dak iz-zmien, kif ukoll tal-llum u li saret b'mod volontarju minghajr ma l-imputat gie imgieghel, mhedded, imbezza, mwieghed jew mwebbel b'xi vantagg. Tqis ukoll li qatt ma saru xi

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[20] Qorti tal-Magistrati (Malta), Magistrat Dr. Edwina Grima, Kaz 413/2010, Deciza 23 ta' April 2013
[21] Folio 3 tas-sentenza
[22] Qorti ta' l-Appell Kriminali; Att ta' Akkuza 36/2010; 3 ta' Ottubru 2018
[23] Folio 11 tas-sentenza
[24] Qorti tal-Appell Kriminali, 26 ta' Marzu 2009

korrezzjonijiet jew verifiki fuq din l-istqarrija minn naha ta' l-imputat u li d-difiza ta' l-imputat bl-ebda mod ma kkontestat il-validita' jew legalita' ta' l-istess stqarrija. Ghaldaqstant din il-Qorti tqis l-istqarrija bhala prova valida.

Id-difiza min-naha taghha tikkontendi li l-istqarrija mhijiex bizzejjed sabiex twassal ghal grad rikjest mill-ligi u dan stante li l-mistoqsijiet li sarulu kienu generici u mit-twegibiet ma jirrizultax li kien hemm *course of conduct* ghal dak li jikoncerna l-ewwel u t-tieni imputazzjonijiet dedotti kontra l-imputat.

Mir-risposti provduti ta' l-imputat, jaghmel referenza ghal dak li gara nhar il-31 ta' Mejju 2020 u mhux incidenti fi granet ohra. Meta l-ghada mar il-post ta' Caze Grixti biex jirritornalha c-cwievet ma jammettiex ghal xi komportament iehor min-naha tieghu. A skans ta' ripetizzjoni tal-kazistika u principji legali msemmija aktar 'il fuq f'din is-sentenza ma jirrizultax li sehh xi *course of conduct* u minn dak li jemergi mill-istqarrija biss jirrizulta li nhar il-31 ta' Mejju 2020, f'incident wiehed f'dak il-jum bat certu messaggi ta' theddid lil Caze Grixti.

Kif diga intqal aktar il-fuq, Caze Grixti ghazlet li tirrinunzja ghal dak li huwa rinunzjabbli u ma tatx ix-xhieda taghha u ghaldaqstant il-prosekuzzjoni kienet nieqsa milli tressaq ix-xhud principali sabiex jipprova l-kaz taghha. Wiehed mit-testijiet principali ta' l-artikolu 251B tal-Kodici Kriminali huwa li jigi ppruvat li gie ikkagunat *il-biza.* Il-Qorti tqis li din il-prova tista' tigi kkunsidrata li sehhet mix-xhieda diretta tal-vittma u mhux minn kwalunkwe xhieda ohra li nghatat *detto del detto.* F'kull kaz, kif inhu risaput, anke fir-rigward tal-artikolu 251B jehtieg li jkun hemm *course of conduct*, liema element, kif gja' nghad, ma jirrizultax.

Il-Qorti ghalhekk, wara li gharblet il-provi kollha imressqa, tqis li mill-assjem tal-provi kif migbura u mressqa quddiemha l-prosekuzzjoni rnexxilha tipprova il-kaz taghha sal-grad rikjest f'proceduri penali biss fir-rigward tat-

tielet u tar-raba' imputazzjoni imressqa kontra l-imputat, izda sejra tghaddi sabiex issibu hati biss tar-raba' imputazzjoni stante li t-tielet imputazzjoni titqies wahda rinunzjabbli, haga li l-parte civile ghamlet. Il-Qorti tqis li l-prosekuzzjoni ma rnexxilhiex tipprova l-kaz taghha fir-rigward ta' l-ewwel u t-tieni imputazzjoni[25].

Ikkunsidrat

L-addebitu tar-recidiva

Il-prosekuzzjoni talbet lill-Qorti sabiex f'kaz ta' htija titratta ma' l-imputat li huwa recidiv ai termini tal-artikolu 49 tal-Kapitolu 9 tal-Ligijiet ta' Malta u dan wara diversi sentenzi li saru definittivi.

F'dawn ir-rigward l-ufficjal prosekutur ezebit zewg sentenzi[26] li gew ikkonfermati mill-Assistent Registratur tal-Qrati Kriminali li kienu multi u li filwaqt li wahda minnhom thallset, f'ohra ghad hemm ammont pendenti[27] u f'dan ir-rigward esebit zewg dokumenti in sostenn ta' dan.[28]

Illi fuq bazi preliminari fir-rigward ta' dawn is-sentenzi, l- Qorti tara li l-konnotati tal-imputat jaqblu ma dawk ta' l-imputazzjonjijiet kif ukoll mal-fedina penali. Ghaldaqstant filwaqt li mill-atti processwali ma jirrizultax li kien hemm ezenzjoni ta' l-ufficjal prosekuturi rispettivi milli jikkonfermaw s-sentenza, u ma tressqux mill-prosekuzzjoni biex jikkonfermawhom, ma dan kollu l-Qorti xorta tqis is-sentenzi in kwistjoni bhala validi in vista tal-fatt li l-konotati jaqblu ma dawk ta' l-imputat.

Id-difiza ttenni fis-sottomissjonijiet taghha illi ma hemmx prova li dawn is-sentenzi ma gewx appellati.

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[25] It-tielet imputazzjoni hija estinta bir-rinunzja tal-parte civile/
[26] Dok PCLX1 u PCLX2, Folio 74-78 ta' l-atti processwali
[27] Folio 85 ta' l-atti processwali
[28] Dok DF1-DF3, Folio 87-93 ta' l-atti processwali

Madankollu fix-xhieda ta' Maria Dolores Fenech jirrizulta li wahda mil-multi li kien wehel l-imputat kien thallset fl-intier taghha[29] u ghaldaqstant din is-sentenza giet skontata.[30]

Ghar-rigward il-multa l-ohra jirrizulta mill-istess dokument esebit mix-xhud Maria Dolores Fenech li l-imputat qieghed ihallas l-multa b'rati mensili kull xhar u li fadal bilanc ta' tlett mija u ghoxrin Euro (€320).

Ghaldaqstant din il-Qorti tqis li l-addebitu tar-recidiva skond l-artikolu 49 gie ppruvat sal-grad rikjest mill-ligi.

Ikkunsidrat

Piena

Illi ghal-finijiet ta' piena li ghandha tigi erogata mill-Qorti, il-Qorti qieset, b'zieda mac-cirkostanzi kollha tal-kaz is-segwenti fatturi:

- Il-fedina penali ta' l-imputat
- L-imputat wera rimors u dispjacir ta' dak li ghamel mill-bidu nett hekk kif jirrizulta fl-istqarrija tieghu.

  "Jien ddispjacut fuq li gara u mhux minn qalbi li ghidtilha hekk. Kienet sahna tal-mument. Jien lilha nhobbha u ghandi tifla minnha u ma hi tifla bilghaqal u dejjem kienet hem ghalija."[31]

- Id-difiza talbet li jigi mhejji *social inquiry report*. Illi minn dan ir-rapport[32] jirrizulta li din mhijiex l-ewwel darba li Caze Grixti ghamlet rapport lill-pulizija u li fil-fehma tal-ispettur il-vittma tibza mill-aggressur u ghalhekk tibqa tahfirlu. Jirrizulta li l-imputat kellu trobbija

[29] Folio 85 ta' l-atti processwali
[30] Vide Dok DF2, Folio 92 ta' l-atti processwali
[31] Folio 22 ta' l-atti processwali
[32] Dok VB1, Folio 104-123 ta' l-atti processwali

difficli u li spicca gie mrobbi parti minnha gewwa Dar San Guzepp u familjari ohra wara li gie abundant wara l-qtil ta' missieru. Illum il-gurnata ghandu problemi ta' *anger management* u diffikultajiet sabiex jikkonrtollha l-imgieba tieghu. Minn naha l-ohra dejjem wera responsabilita bhala missier lejn bintu u m'ghandux vizzju tad-droga ghalkemm jabuza mill-isteriods.

- Fis-sottomissjonijiet finali taghha, il-prosekuzzjoni tenniet li l-iktar aspett li ghandu jigi indirizzat bhala piena huwa n-necessita li l-imputat jindirizza l-problemi personali tieghu.

Tenut ma dan kollu jirrizulta bic-car li l-imputat ghandu bzonn jindirizza l-impulsivita u l-imgieba tieghu sabiex jitghallem jikontrolla l—imgieba u l-emozzjonijiet tieghu u li piena karcerarja mhux necesarjament thalli l-frott mistenni specjalment fid-dawl ta' dak sottomess, inkluz da parti tal-*parte civile*, u cioe' li kwalunkwe piena karcerarja tista' sservi ta' ghawg anke ghal bint l-imputat ta' ghaxar snin, li ghaliha jhallas manteniment.

Decide

Ghaldaqstant il-Qorti wara li rat l-artikoli 251A(1)(a)(b), 251B, 251H(a)(b), 339(1)(e), 49, 412C, 412D, u 533 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta u fl-artikolu 49(a)(b)(c) tal-Kapitolu 399 tal-Ligijiet ta' Malta issib lil Jean Paul Azzopardi **mhux hati ta' l-ewwel u tat-tieni imputazzjoni** u tilliberah minn kull htija u piena dwarhom, filwaqt li tiddikjara **t-tielet reat bhala estint u ssibu hati tar-raba imputazzjonijiet inkluz l-addebitu tar-recidiva** u tikkundannah multa kumplessiva ta' mitejn Euro (€200).

In vista tax-xhieda ta' Caze Grixti il-Qorti tqis li ma jezistux ragunijiet bizejjed sabiex jinhareg Ordni ta' Tratament kontra l-hati a favur Caze Grixti u ghaldaqstant il-Qorti tichad din it-talba.

Inoltre peress li l-Qorti tqis li f'dan il-każ hemm lok li jiġi maħruġ ordni ta' trattament fil-konfront tal-imputat u li permezz tiegħu huwa jkun jista' jiġi mgħejjun jegħleb diffikutajiet li huwa jidher għaddej minnhom minħabba problemi ta' rabja u kontroll ta' l-imgieba, il-Qorti wara li rat l-Artikolu 412D tal-Kodiċi Kriminali qegħdet lill-ħati taħt ordni ta' trattament għal perjodu ta' sena millum u dan skont il-kondizzjonijiet li jinsabu fid-digriet anness ma din is-sentenza u li jagħmel parti integrali minnha. Il-Qorti tiddikjara li għamlet din l-ordni ta' trattament wara li hija spjegat lil ħati bi kliem ċar u li jinftiehem il-konsegwenzi li jitnisslu minn ordni ta' trattament kif ukoll ir-responsabblita tiegħu naxxenti mill-istess kif ukoll il-konsegwenzi li jitnisslu f'każ li huwa ma joqgħodx għallkondizzjonijiet imsemmija fl-ordni ta' trattament.

In vista tal-fatt li ma gewx mahtura esperti f'dan il-kaz, din il-Qorti tastjeni milli tiehu konjizzjoni ulterjuri tat-talba tal-prosekuzzjoni sabiex tordna lill-imputat ihallas l-ispejjez li ghandhom x'jaqsmu mal-hatra ta' l-esperti skond l-artikolu 533 tal-Kapitolu 9 tal-Ligijiet ta' Malta.

Moghtija illum nhar it-30 ta' Novembru 2021 fil-Qrati tal-Gustizzja, Valletta

Dr. Nadine Lia

Magistrat

Lorianne Spiteri

Deputat Registratur