



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

MAGISTRAT DR ELAINE MERCIECA LL.D

**PULIZIJA
(Spettur Trevor Micallef)**

kontra

**Munir Mohamed Ali Gammudi
(Passaport Libjan Nru. 8/8824/2012)**

Kaz Nru.: 338/14

Illum, 15 ta' Dicembru 2021

Il-Qorti,

Wara li rat l-imputazzjonijiet miġjuba fil-konfront tal-imputat, **Munir Mohamed Ali Gammudi**, ta' 40 sena, iben Mohamed u Khayrija nee` Treki, imwieled gewwa Tripoli, Libja nhar il-21 ta' Frar 1981, residenti gewwa 4, St. Catherine Flat, Triq Ball, San Giljan u detentur tal-passaport Libjan bin-numru 8/8824/2021, permezz ta' liema gie akkuzat talli gewwa San Giljan u/jew f'dawn il-Gzejjer, fl-4 ta' Awwissu 2014 ghal xi l-erbgha ta' filghodu:

- a) Kellu fil-pussess tieghu l-pjanta Cannabis kollha jew bicca minnha bi ksur ta' l-artikolu 8(d) tal-Kap. 101 tal-Ligijiet ta' Malta, liema droga instabet f'tali cirkostanzi li juru li ma kinitx ghall-uzu esklussiv tieghu;
- b) Talli ikkommetta dawn ir-reati fi, jew gewwa distanza ta' mitt metru mill-parametru ta' skola, club jew xi post simili fejn normalment jiltaqghu z-zghazagh bi ksur tal-artikolu 22(2) tal-Kap. 101 tal-Ligijiet ta' Malta;
- c) Ma obdiex ordnijiet legittimi ta' l-awtorita jew ta' min ikun inkarigat minn servizz pubbliku, jew ma hallihomx jew fixkilhom waqt li kien ghamlu id-dmirijiet taghhom;
- d) F'lok pubbliku jew miftuh ghall-pubbliku, kien fi stat ta' sakra.

Semghet ix-xhieda,

Rat l-atti kollha tal-każ u d-dokumenti esebiti, inkluż l-Ordni tal-Avukat Ġenerali ai termini tas-sub-artikolu (2) tal-Artikolu 22 tal-Ordinanza dwar il-Mediċini Perikolużi (Kap. 101 tal-Ligijiet ta' Malta), sabiex din il-kawża tinstema' minn din il-Qorti bħala Qorti ta' Ġudikatura Kriminali,

Rat id-digriet tal-assenjazzjonijiet ta' kawzi u doveri tal-Prim Imhalled tat-28 ta' Lulju 2021¹;

Rat l-ezenzjoni tal-partijiet ghal-ismigh mill-gdid tax-xhieda mismugha viva-voce minn dina l-Qorti diversament preseduta²;

Semghet is-sottomissjonijiet tal-partijiet;

Ikkunsidrat

Illi in sostenn tal-imputazzjonijiet miġjuba kontra l-imputat, il-Prosekuzzjoni ressqet is-segwenti xhieda u provi:

PC1111 Braden Borg iddikjara bil-gurament illi nhar l-4 ta' Awwissu 2014 kien qieghed xoghol gewwa Paceville ma PS887. Huwa spjega li waqt li kienu niezlin minn Triq San Gorg, Paceville u wasslu vicin l-area ta' Baystreet (Triq Santu Wistin) huma lemhu lill-qua imputat b'xi pakkett f'idu kontenenti xi haga u dana waqt li beda juri l-istess pakkett lil terza persuna filwaqt li instemgha mill-pulizija jghidlu "*ha take this*". Borg semgha ukoll lit-terza persuna avvicinata mill-qua imputat twiegbu "*I do not take this shit*". PC1111 spjega li mmedjatament wara, qabduh minn idejh u kif saqsewh dik x'inhil huwa ramieha minn idejh. PS 887

¹ Fol. 91 tal-atti processwali.

² Fol. 93 tal-atti processwali.

gabar il-pakkett li l-qua imputat remgha mal-art filwaqt li PC1111 hareg il-manetti sabiex jipprocedi ghall-arrest. F'dak il-mument l-imputat imbotta lil PC1111 u harab. PC1111 ikkonferma li l-pakkett li l-qua imputat remgha mal-art gie effettivament migbur minn PS887. PC1111 gera wara l-imputat u x'hin waslu vicin l-EF Beach Club l-imputat beda jitkellem b'lingwa gharbija u beda jxejjer il-ponn. F'dak il-mument PC1111 jikkonferma li uza l-pepper spray fuq l-istess imputat. Sussegwentament l-imputat qabez il-bahar. Wara tfittxija fl-inhawi l-qua imputat instab mistohbi f'sigra.

PS65 Noel Said xehed illi ghall-habta tal-erbgha ta' filghodu tal-4 ta' Awwissu 2014 intalab l-assistenza minn PC1111 Braden Borg. Hu u PS240 marru fil-vicinanze tal-EF Beach Club sabiex jassistu lil PC1111. Huwa kkonferma li sabu lill-imputat mohbi fil-frieghi. Saret tfittxija fuq il-persuna tieghu, kkonferma li kien ghasra u li tfittxija rrizultat fin-negattiv tant li ma sabu assolutament xejn fuqu lanqas dokumenti. Minn hemm l-imputat gie skortat fl-ghassa ta' San Giljan.

Xehed ukoll **PC1045 Noel Carabott** dwar il-volontarjeta' tal-istqarrija li ttiehdet nhar l-4 ta' Awwissu 2014 fis-siegha u nofs ta' wara nofsinhar u dana wara li l-imputat kkonsulta qabel l-istqarrija ma avukat. Ghalkem il-ligi vigenti dak iz-zmien ma kinitx tippermetti lill-avukat ikun prezenti tul l-istqarrija, minn qari ta' l-istess stqarrija jirrizulta li l-imputat nnega kollox u ma hemm xejn fl-istqarrija li jistgħa jinkrimina lill-qua imputat.

PS887 Stefan Mercieca xehed li fl-4 ta' Awwissu 2014 għall-habta tal-erbgha ta' filghodu huwa u PC1111 Borg kienu qed jagħmlu patrol gewwa St. Rita Steps gewwa Paceville. Kif niezlu gewwa Triq Santu Wistin, hekk kif kienu ser jaqsmu għal gewwa Baystreet fuq tarag iehor raw lill-qua imputat javvicina guvni iehor u beda jghidlu "*buy this, buy this*" waqt li f'idejh kellu pakkett zghir. L-imputat hares lura u kif ra l-pulizija remgha l-pakkett. Is-Surgent Mercieca kkonferma li huwa gabar il-pakkett minn mal-art u beda jitkellem mat-terza persuna li kienet ta' nazzjonalita' Svediza. Huwa spjega ukoll li hekk kif PC1111 kien ha jimmanetjah l-imputat harab minn fuq il-post lejn id-direzzjoni ta' pjazza San Gorg. PC1111 gera wara l-imputat. PS887 ha l-oggett li kien eleva l-ghassa tal-pulizija gewwa San Giljan. PS887 spjega li huwa ma hax id-dettalji tat-terza persuna Svediza galadarba dan ma kellu x'jaqsam xejn (skond hu) tant li PC1111 kienu semghu jghid li ma jridx jixtri l-imsemmija sustanza.

L-Ispettur Trevor Micallef xehed dwar x'wassal għall-arrest tal-imputat kif ukoll dwar it-tehid tal-istqarrija.

Ix-xjenzat Godwin Sammut li gie mahtur minn dina l-Qorti (hekk kif diversament preseduta) sabiex janalizza s-sustanza ezebieta (dokument immarkat

TM5) ikkonkluda li “fuq estratt mehuda mill-haxix ta’ lewn ahdar li hemm fid-dokument 093_16_01 instabet is-sustanza Tetrahydrocannabinol. Il-piz total tal-haxix kien ta’ 0.17grammi. Din is-sustanza tigi mill-pjanta Kannabis u hija kkontrollata bil-ligi taht Taqsima III Sezzjoni 8 tal-Kapitolu 101 tal-Ligijiet ta’ Malta.”³

Illi fl-udjenza tal-1 ta’ Dicembru 2021 d-difiza ddikjarat li m’ghandiex provi x’tipproduci f’dan il-kaz u li kienet ser tghaddi ghas-sottomissjonijiet finali.

Ikkunsidrat ulterjorament:

i. Stqarrija:

Illi fl-ewwel lok dina l-Qorti ser tikkunsidra l-valur probatorju li ghandha tinghata lill-istqarrija rrillaxata mill-imputata waqt l-investigazzjoni relatata mal-proceduri odjerni. Il-Qorti thoss li dan l-ezercizzju ghandu necessarjament isir bhala parti mill-evalwazzjoni ta’ kull prova pprezentata fl-atti processwali u dana irrispettivament minn jekk l-imputat ikunx talab ghall-isfilz jew altrimenti tal-istess.

Illi jirrizulta li dina l-istqarrija ttiehdet nhar l-4 ta’ Awwissu 2014 skond il-ligi vigenti dak iz-zmien u dana wara li l-imputat ikkonsulta privatament ma avukat qabel it-tehid tal-istqarrija. Dina l-Qorti ikkunsidrat l-istqarrija fid-dawl tal-gurisprudenza lokali u anke Ewropeja partikolarment is-sentenza **Beuze v il-Belgju** (App. Numru 71409/10) tad-9 ta’ Novembru 2018⁴, li kien jitratta ukoll

³ Fol. 62 tal-atti processwali.

⁴ Fejn ntqal:

“120. The fairness of a criminal trial must be guaranteed in all circumstances. However, what constitutes a fair trial cannot be the subject of a single unvarying rule but must depend on the circumstances of the particular case (see Ibrahim and Others, ... § 250). The Court’s primary concern, in examining a complaint under Article 6 § 1, is to evaluate the overall fairness of the criminal proceedings “

121. As the Court has found on numerous occasions, compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings as a whole and not on the basis of an isolated consideration of one particular aspect or one particular incident, although it cannot be ruled out that a specific factor may be so decisive as to enable the fairness of the trial to be assessed at an earlier stage in the proceedings. “

... .. “139. The stages of the analysis as set out in the Salduz judgment – first looking at whether or not there were compelling reasons to justify the restriction on the right of access to a lawyer, then examining the overall fairness of the proceedings – have been followed by Chambers of the Court in cases concerning either statutory restrictions of a general and mandatory nature, or restrictions stemming from case-specific decisions taken by the competent authorities.

“140. In a number of cases, which all concerned Turkey, the Court did not, however, address the question of compelling reasons, and neither did it examine the fairness of the proceedings, but found that systematic restrictions on the right of access to a lawyer had led, *ab initio*, to a violation of the Convention Nevertheless, in the majority of cases, the Court has opted for a less absolute approach and has conducted an examination of the overall fairness of the proceedings, sometimes in summary form ... and sometimes in greater detail ...

“141. Being confronted with a certain divergence in the approach to be followed, in *Ibrahim and Others* the Court consolidated the principle established by the *Salduz* judgment, thus confirming that the applicable test consisted of two stages and providing some clarification as to each of those *Rik. Kost. 38/18 11* stages and the relationship between them (see *Ibrahim and Others*, ... §§ 257 and 258-62).

“144. In *Ibrahim and Others* the Court also confirmed that the absence of compelling reasons did not lead in itself to a finding of a violation of Article 6. Whether or not there are compelling reasons, it is necessary in each case to view the proceedings as a whole (see *Ibrahim and Others*, ... § 262). That latter point is of particular importance in the present case, since the applicant relied on a certain interpretation of the Court’s case-law on the right of access to a lawyer ... to the effect that the statutory and systematic origin of a restriction on that right sufficed, in the absence of compelling reasons, for the requirements of Article 6 to have been breached. However, as can be seen from the *Ibrahim and Others* judgment, followed by the *Simeonovi* judgment, the Court rejected the argument of the applicants in those cases that *Salduz* had laid down an absolute rule of that nature. The Court has thus departed from the principle that was set out, in particular, in the *Dayanan* case and other judgments against Turkey. “145. Where there are no compelling reasons, the Court must apply very strict scrutiny to its fairness assessment. The absence of such reasons weighs heavily in the balance when assessing the overall fairness of the criminal proceedings and may tip the balance towards finding a violation. The onus will then be on the Government to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the criminal proceedings was not irretrievably prejudiced by the restriction on access to a lawyer (see *Ibrahim and Others*, ... § 265)..... “147. Lastly, it must be pointed out that the principle of placing the overall fairness of the proceedings at the heart of the assessment is not limited to the right of access to a lawyer under Article 6 § 3 (c) but is inherent in the broader case-law on defence rights enshrined in Article 6 § 1 of the Convention

“148. That emphasis, moreover, is consistent with the role of the Court, which is not to adjudicate in the abstract or to harmonise the various legal systems, but to establish safeguards to ensure that the proceedings followed in each case comply with the requirements of a fair trial, having regard to the specific circumstances of each accused..... “150. When examining the proceedings as a whole in order to assess the impact of procedural failings at the pre-trial stage on the overall fairness of the criminal proceedings, the following non-exhaustive list of factors, drawn from the Court’s case-law, should, where appropriate, be taken into account (see *Ibrahim and Others*, ... § 274, and *Simeonovi*, ... § 120):

“(a) whether the applicant was particularly vulnerable, for example by reason of age or mental capacity;

“(b) the legal framework governing the pre-trial proceedings and the admissibility of evidence at trial, and whether it was complied with – where *Rik. Kost. 38/18 12* an exclusionary rule applied, it is particularly unlikely that the proceedings as a whole would be considered unfair;

“(c) whether the applicant had the opportunity to challenge the authenticity of the evidence and oppose its use;

“(d) the quality of the evidence and whether the circumstances in which it was obtained cast doubt on its reliability or accuracy, taking into account the degree and nature of any compulsion;

sitwazzjoni fejn il-ligi domestika relevanti ma kinitx tippermetti l-assistenza legali waqt l-interrogazzjoni u fejn ma kienx hemm ragunijiet impellenti ghalfejn ma tigiex offruta l-assistenza tal-avukat. Minn qari tal-istqarrija (ezebieta a fol. 8 et seq tal-atti processwali) kjarament jirrizulta li l-imputat fil-maggor parti ta' dina l-istqarrija huwa bl-ebda mod ma inkrimina lillu nnifsu anzi nnega l-allegazzjonijiet kollha li kienu qed isiru fil-konfront tieghu salv ghal jekk huwa kienx fis-sakra fil-lejl in kwistjoni. Ghal dina l-ahhar domanda huwa wiegeb fil-pozittiv. Dina l-Qorti analizzat fid-dettal ix-xhieda mgħotija mill-ufficjali tal-pulizija li waqqfuh u arrestawh u hadd minn dawn ix-xhieda ma jalludi ghal fatt li l-imputat kien jidher fis-sakra. Ghaldaqstant l-imsemmija dikjarazzjoni hija l-unika prova li tissostanzja r-raba imputazzjoni dedotta fil-konfront tal-qua imputat. F'dawn ic-cirkostanzi fejn dak iddikjarat mill-qua imputat fl-istqarrija meta l-imputat ma kienx assistit minn avukat tal-fiducja tieghu waqt it-tehid tal-istqarrija (fit-termini tal-ligi vigenti dak iz-zmien) tikkostitwixxi l-unika prova fir-rigward tar-raba' imputazzjoni u anke tenut kont li hadd mill-ufficjali tal-pulizija ma xehed dwar cirkostanzi li setghu jagħtu lil wiehed jifhem li l-qua imputat kien fis-sakra dina l-Qorti ma thossx li jkun safe and satisfactory li tistrieħ biss fuq l-istqarrija sabiex tikkunsidra r-reita o meno tal-imputat għall-imputazzjonijiet dedotti fil-konfront tieghu (partikolarment ir-raba' imputazzjoni). Ghaldaqstant dina l-Qorti ma hijiex ser tkun qed tikkunsidra dina l-istqarrija fil-kunsiderazzjoni tagħha dwar jekk l-imputat huwiex hati jew le tal-imputazzjonijiet dedotti fil-konfront tieghu.

ii. Imputazzjonijiet:

Illi permezz tal-imputazzjonijiet odjerni l-*qua* imputat jinsab akkuzat bi pussess aggravat ta' pjanta Cannabis u dana f'distanza ta' mitt metru mill-parametru ta' skola, club jew xi post simili fejn normalment jiltaqghu z-zghazagh; li ma obdiex

“(e) where evidence was obtained unlawfully, the unlawfulness in question and, where it stems from a violation of another Convention Article, the nature of the violation found;

“(f) in the case of a statement, the nature of the statement and whether it was promptly retracted or modified;

“(g) the use to which the evidence was put, and in particular whether the evidence formed an integral or significant part of the probative evidence upon which the conviction was based, and the strength of the other evidence in the case;

“(h) whether the assessment of guilt was performed by professional judges or lay magistrates, or by lay jurors, and the content of any directions or guidance given to the latter; “

(i) the weight of the public interest in the investigation and punishment of the particular offence in issue; and

“(j) other relevant procedural safeguards afforded by domestic law and practice”.

l-ordnijiet legittimi ta' l-awtorita' jew ta' min ikun inkarigat minn servizz pubbliku jew ma hallijhomx jew fixkilhom waqt li kienu ghamlu d-dmirijiet taghhom u tali f'lok pubbliku jew miftuh ghall-pubbliku kien fi stat ta' sakra;

Illi ghal dak li jirrigwardja l-ewwel imputazzjoni tal-pussess aggravat tal-pjanta Cannabis (kollha jew bicca minnha), dina l-Qorti gharblet ix-xhieda mghotija minn PC 1111 Borg u PS887 Mercieca li t-tnejn ikkonfermaw li l-qua imputat gie osservat joffri pakkett lil terza persuna. It-tnejn li huma kkonfermaw li hekk kif l-imputat rahom huwa remgha l-imsemmi pakkett mal-art u li hekk kif kienu ha jarrestawh huwa harab minn fuq il-post. PS887 ikkonferma li huwa kien pront u gabar il-pakkett minn mal-art wara li ra lill-imputat jarmieh. Dan il-pakkett gie pprezentat fl-atti processwali odjerni u analizzat mix-xjenzat Godwin Sammut li kien mahtur minn dina l-Qorti ghal dan l-iskop. L-ispizjar Sammut ikkonferma minn estratti mehuda mill-imsemmi pakkett instabet is-sustanza Tetrahydrocannabinol fl-ammont totali ta' 0.17grammi. Ghaldaqstant f'dawn ic-cirkostanzi, fejn zewgt ufficjali tal-pulizija osservawh fil-pussess ta' sustanza waqt li kien qed joffri l-istess sustanza (li wara rrizultat li kienet Cannabis) lil terza persuna, dina l-Qorti hija tal-fehma li l-prosekuzzjoni rnexxielha tipprova sal-grad rikjest mill-ligi l-ewwel imputazzjoni dedotta fil-konfront tal-imputat u cioe' li huwa kien fil-pussess ta' pjanta tal-Cannabis f'cirkostanzi li juru li ma kinitx ghall-uzu esklussiv tieghu.

Illi t-tieni imputazzjoni giet dedotta in konnessjoni mal-ewwel imputazzjoni bhala aggravju, f'sens li l-qua imputat instab f'pussess aggravat tal-Cannabis fi jew gewwa distanza ta' mitt metru mill-parametru ta' skola, club jew xi post simili fejn normalment jiltaqghu z-zghazagh. Illi mill-atti processwali ma jirrizultax li l-prosekuzzjoni gabet l-ebda prova sabiex tipprova dawn l-aggravju. La ressqet xhieda f'dan is-sens u lanqas ma talbet ghall-hatra ta' espert (perit) sabiex jikkonstata d-distanza tal-mitt metru. Dana minkejja li d-difiza u/jew l-imputat fl-ebda hin ma ezentaw lill-prosekuzzjoni mill-provi li jistghu jissostanzjaw dan l-aggravju. Ghaldaqstant f'dawn ic-cirkostanzi l-prosekuzzjoni naqset milli tipprova sal-grad rikjest mill-ligi dina l-imputazzjoni u ghaldaqstant dina l-Qorti ser tghaddi sabiex tillibera lill-imputat odjern mill-istess.

It-tielet imputazzjoni tirrigwarda cirkostanzi fejn l-imputat allegatament ma obdiex l-ordnijiet legittimi ta' l-awtorita' jew ta' min ikun inkarigat minn servizz pubbliku, jew ma hallijhomx jew fixkilhom waqt li kien ghamlu d-dmirijiet taghhom. Din il-Qorti gharblet ix-xhieda mghotija mill-ufficcjali tal-pulizija u dan in konnessjoni ma dina l-imputazzjoni. Hadd mill-ufficcjali tal-pulizija ma jispjega li xi hadd minnhom ta' ordni li l-imputat irrifjuta li jobdi. Madanakollu mix-xhieda ta' PC1111 Borg u PS887 jirrizulta kjarament li hekk kif PC1111

kien ha jghaddi għall-arrest ta' l-imputat odjern, dan ta' l-ahhar imbotta lil Borg u harab minn fuq il-post bil-pulizija tibqa tigri warajh. Dan l-agir fil-fehma ta' din il-Qorti kien kjament intiz sabiex ifixkel lil pulizija, ufficjali nkarigati minn servizz pubbliku, u ma jhallihomx u/jew ifixkilhom mill-qadi ta' dmirijiethom. Għaldaqstant għal dawn ir-ragunijiet, din il-Qorti hija tal-fehma li l-prosekuzzjoni rnexxielha tipprova dina l-imputazzjoni sal-grad rikjest mill-ligi.

Fir-rigward ir-raba' imputazzjoni li tirrigwarda l-fatt li l-imputat allegatament kien f' post pubbliku fi stat ta' sokor, dina l-Qorti tosserva li hekk kif inghad iktar 'il fuq hadd mill-ufficjali tal-pulizija fix-xhieda taghhom ma qallu li huma osservaw lill-imputat li kien fi stat ta' sokor. L-unika prova in sostenn ta' dina l-imputazzjoni hija l-istqarrija ta' l-imputat li ttiehdet minghajr ma l-imputat gie offrut li jkun assistiet minn avukat jew prokuratur legali waqt it-tehid tal-istqarrija u dana skond il-ligi vigenti dak iz-zmien. Għar-ragunijiet imsemmija iktar 'il fuq f'din is-sentenza, dina l-Qorti, tenut kont tal-asjem tal-provi ma thossx li jkun safe and satisfactory li tistrieħ unikament fuq l-imsemmija stqarrija sabiex tistabilixxi r-reita' o meno ta' dina l-imputazzjoni. Għaldaqstant f'dawn ic-cirkostanzi dina l-Qorti ma thossx li dina l-imputazzjoni giet ippruvata sufficientament.

iii. Piena:

Illi ai fini ta' piena dina l-Qorti ser tiehu in konsiderazzjoni n-natura u c-cirkostanzi tal-imputazzjonijiet li taghhom l-imputat qed jinstab hati; l-fedina penali aggornata tal-imputat; u l-ammont ta' sustanza llecita nvoluta fil-kaz odjerni.

Decide

Għaldaqstant, dina l-Qorti, wara li rat l-Artikoli 8(d), 22(1)(a), 22(2)(b)(i) tal-Kap. 101 tal-Ligijiet ta' Malta, għar-ragunijiet hawn fuq imsemmija qeghda tillibera lil qua imputat Munir Mohammed Ali Gammudi mit-tieni u r-raba' imputazzjoni dedotti fil-konfront tieghu filwaqt li qed issibu hati tal-ewwel u t-tielet imputazzjoni dedotti fil-konfront tiegh u konsegwentament qed tikkundana lill-imputat għal seba' xhur prigunerija effettiva flimkien ma' multa ta' hames mitt Ewro (Eur. 500).

A tenur tal-artikolu 533 tal-Kodici Kriminali dina l-Qorti qeghda tordna lill-imputat Munir Mohamed Ali Gammudi sabiex ihallas l-ispejjez fl-ammont ta' Eur. 147.50 konnessi mal-hatra ta' l-esperti fil-proceduri odjerni.

Finalment, il-Qorti tordna d-distruzzjoni tad-droga li tinsab ezebieta bhala Dok. TM5, hekk kif din is-sentenza tghaddi in gudikat, u dan taht il-harsien tar-Registratur li għandu jirredigi process-verbal li jiddokumenta l-procedura tad-

distruzzjoni, liema dokument ghandu jigi nserit fl-atti ta' din il-kawza mhux aktar tard minn hmistax-il jum minn tali distruzzjoni.

MAGISTRAT DR. ELAINE MERCIECA LL.D.

Christine Farrugia

Deputat Registratur