



**FIL-QORTI TAL-MAĠISTRATI (MALTA)  
BĦALA QORTI TA' ĠUDIKATURA KRIMINALI**

**MAĠISTRAT NATASHA GALEA SCIBERRAS B.A., LL.D.**

**Kawza Nru: 239/2011**

**Il-Pulizija  
(Spettur Dennis Theuma)**

**vs**

**Gregory Carabott  
(ID 263689(M))**

**Illum: 30 ta' Mejju 2022**

Il-Qorti,

Wara li rat l-imputazzjonijiet miġjuba fil-konfront tal-imputat **Gregory Carabott** ta' 21 sena, iben Nazzareno u Gertrude nee` Ciangura, imwieled il-Pieta` nhar l-10 ta' Ġunju 1989, residenti Plot 95, Triq il-Port Ruman, Marsaxlokk, detentur tal-karta tal-identita` bin-numru 263689(M);

Akkużat talli f`dawn il-Gzejjer, nhar it-30 ta' Lulju 2010, u fix-xhur qabel din id-data:

- a) Ikkoltiva l-pjanta tal-cannabis bi ksur tal-Artikolu 8(c) tal-Kap 101 tal-Liġijiet ta' Malta;
- b) Kellu fil-pussess tiegħu l-pjanta cannabis kollha jew biċċa minnha, bi ksur tal-Artikolu 8(d) tal-Kap. 101 tal-Liġijiet ta' Malta.

Semgħet ix-xhieda, rat l-atti kollha tal-każ u d-dokumenti eżebiti, inkluż l-Ordni ta' l-Avukat Ġenerali bis-saħħa tas-sub-artikolu (2) tal-Artikolu 22 tal-Ordinanza dwar il-Mediċini Perikolużi (Kap. 101 tal-Liġijiet ta' Malta), sabiex din il-kawża tinstema' minn din il-Qorti bhala Qorti ta' Ġudikatura Kriminali;

Rat illi ċ-ċitazzjoni odjerna giet intavolata mill-Prosekuzzjoni fir-Registru ta' din il-Qorti fit-13 ta' Ġunju 2011;

Rat illi l-kawża giet appuntata għas-smiegħ għall-ewwel darba għal nhar it-22 ta' Ottubru 2013;

Rat illi din il-kawża giet assenjata lill-Maġistrat sedenti permezz tal-assenjazzjoni tad-doveri tat-30 ta' April 2014;

Rat ukoll illi wara differimenti mitluba kemm mill-Prosekuzzjoni, kif ukoll mid-difiża, il-kawża bdiet tinstema' nhar it-18 ta' Frar 2015, fejn l-imputat wiegħeb li mhux hati tal-imputazzjonijiet miġjuba kontra tiegħu;

Rat ukoll illi fl-istess seduta tat-18 ta' Frar 2015, il-Prosekuzzjoni ddikjarat illi l-imputat għandu jibbenefika mid-disposizzjonijiet tal-Artikolu 29 tal-Kap. 101 tal-Liġijiet ta' Malta fil-massimu tiegħu<sup>1</sup>;

Rat in-noti ta' sottomissjonijiet tal-partijiet<sup>2</sup>.

### **Ikkunsidrat:**

Illi f'dawn il-proċeduri, il-Prosekuzzjoni ressqet is-segweni xhieda u provi:

1. **L-Ispettur** (illum Assistent Kummissarju) **Dennis Theuma** xehed illi fuq skorta ta' mandat ta' tfittxija u arrest fil-konfront tal-imputat odjern, wara li ismu ssemma' f'investigazzjoni separata in konnessjoni ma' każ ieħor li eventwalment dwaru ma ttieħdu l-ebda passi fil-konfront tal-istess imputat, nhar it-30 ta' Lulju 2010 għall-ħabta tas-6.30 a.m., saret tfittxija fir-residenza tiegħu, fejn fil-kamra tas-sodda nstabu żewġ pjanti tal-*cannabis*. Ġew elevati wkoll xi numri ta' *mobile phones* u *SIM cards* u saret inkjesta, li fiha l-Maġistrat Dr. Gabriella Vella ħatret diversi esperti. Huwa jgħid illi l-imputat ikkopera bis-sħiħ mal-Pulizija tul l-investigazzjonijiet tagħha, tant illi ddikjara li l-istess imputat għandu jibbenefika mill-Artikolu 29 tal-Kap. 101 tal-Liġijiet ta' Malta fil-massimu tiegħu. L-imputat irrilaxxa stqarrija lill-Pulizija nhar il-31 ta' Lulju 2010 u dan wara li huwa ngħata s-

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<sup>1</sup> Ara a fol. 15 tal-proċess.

<sup>2</sup> Ara a fol. 156 u a fol. 158 tal-proċess.

solita twissija skont il-liġi, kif ukoll id-dritt li jottjeni parir legali qabel l-interrogatorju tiegħu, liema dritt huwa għażel li ma jeżerċitax<sup>3</sup>.

**In kontro-eżami** x-xhud jikkonferma illi l-*cannabis* li nstabet kienet intiza sabiex minnha l-imputat jagħmel il-*joints* għalih.<sup>4</sup>

2. **Oriana Deguara, Deputat Registratur**, esebiet il-proċess verbal in konnessjoni mal-każ odjern, redatt mill-Maġistrat Dr. Gabriella Vella, “*dwar sejba ta’ droga u apparat ta’ navigazzjoni satellitari in konsegwenza ta’ l-esekuzzjoni ta’ zewg mandati ta’ tfittxija mahrug minn din il-Qorti fil-konfront ta’ Gregory Carabott u Walter Mallo fit-30 ta’ Lulju 2010*”.<sup>5</sup>
3. **PC 213 Nikolai Borg** jixhed illi fit-30 ta’ Lulju 2010, flimkien ma’ zewg pulizija oħra mill-Iskwadra kontra d-Droga, għamlu tfittxija fir-residenza tal-imputat odjern ġewwa Marsaxlokk u dan fuq skorta ta’ mandat ta’ tfittxija fil-konfront tiegħu. Huwa jgħid illi fil-kamra tas-sodda nstabet pjanta suspettata *cannabis* ossia zewg pjanti f’*pot* waħda, waħda minnhom żgħira li kienet għadha tiela’. Muri r-ritratti formanti parti mir-relazzjoni ta’ PS 612 Theo Vella<sup>6</sup>, liema relazzjoni tinsab fil-proċess verbal fuq imsemmi<sup>7</sup>, huwa kkonferma li r-ritratt immarkat IO BOC 101 juri l-*pot* li sab PC 230 fil-kamra tas-sodda tal-imputat.<sup>8</sup>
4. **PC 230 George Michael Briffa** jixhed illi fit-30 ta’ Lulju 2010, saret tfittxija ġewwa r-residenza tal-imputat, fejn fil-kamra tas-sodda tiegħu, fil-ħoġor tat-tieqa, huwa sab *pot* li kien fiha zewg pjanti tal-*cannabis*. Din ġiet elevata u l-imputat ġie arrestat u meħud ġewwa l-Kwartieri Ġenerali tal-Pulizija. Ix-xhud jagħraf il-pjanti in kwistjoni fir-ritratti esebiti mar-relazzjoni ta’ PS 612 Theo Vella u li għalihom saret referenza iżjed ‘il fuq.<sup>9</sup>
5. **PS 465 Daniel Abela** maħtur mill-Maġistrat Inkwirenti fil-mori tal-inkjesta dwar il-każ bħala *Scene of Crime Officer*, ikkonferma r-relazzjoni tiegħu formanti parti mill-proċess verbal redatt mill-istess Maġistrat.<sup>10</sup>
6. **PS 612 Theo Vella** maħtur mill-Maġistrat Inkwirenti bħala *Scene of Crime Officer* fil-mori tal-inkjesta dwar l-istess każ, ikkonferma r-relazzjoni tiegħu formanti parti mill-proċess verbal fuq imsemmi. L-istess relazzjoni

<sup>3</sup> Ara d-dikjarazzjoni tar-rifjut għall-jedd tal-parir legali, a fol. 143 tal-proċess.

<sup>4</sup> Ara din ix-xhieda a fol. 16 sa 20 tal-proċess, ara wkoll ix-xhieda a fol. 124 sa 126 tal-proċess u a fol. 141 u 142 tal-proċess;

<sup>5</sup> Ara dan il-proċess verbal esebit a fol. 27 tal-proċess bħala Dok. OD.

<sup>6</sup> Ara dawn ir-ritratti a fol. 47 tal-proċess.

<sup>7</sup> Ara a fol. 43 tal-proċess.

<sup>8</sup> Ara din ix-xhieda a fol. 118 sa 120 tal-proċess.

<sup>9</sup> Ara din ix-xhieda a fol. 121 sa 123 tal-proċess.

<sup>10</sup> Din ir-relazzjoni mhijiex relevanti għall-każ odjern.

tinkludi ritratti tal-oġġetti elevati mill-pussess tal-imputat fil-jum in kwistjoni.<sup>11</sup>

7. **L-Ispizjar Mario Mifsud** ukoll mahtur fil-mori tal-inkjesta, ikkonferma r-relazzjoni tiegħu li tiffirma parti mill-proċess verbal fuq imsemmi. Mill-istess relazzjoni jirriżulta illi huwa ngħata *envelope* tal-Gvern ta' Malta li fuqu kien hemm il-kliem "*Maġ. Dr G. Vella, Soco PS 612, date 31/7/10, M'Xlokk, 2 cannabis plants, Sejba ta' zewg pjanti tal-cannabis gewwa ir-residenza ta' Gregory Carabott f'Marsaxlokk*". F'dan l-*envelope* kien hemm żewġ pjanti tal-*cannabis*.

L-istess espert ikkonkluda illi ż-żewġ pjanti li kien hemm fid-dokument fuq imsemmi, li l-piż totali tagħhom kien ta' 1.05 grammi (bla għeruf), kienu pjanti tal-*cannabis*. F'dawn il-pjanti nstabet is-sustanza *Tetrahydrocannabinol (THC)* u l-purita` għas-sustanza *THC* kienet ta' ċirka 6.1%. Il-pjanta tal-*cannabis* hija kkontrollata bil-liġi taht Taqsima III, Sezzjoni 8 tal-Kap. 101 tal-Liġijiet ta' Malta.

Jirriżulta wkoll mill-istess relazzjoni illi fuq il-weraq tal-pjanti gie determinat li kien hemm it-*trichomes* u illi l-weraq taż-żewġ pjanti kien fihom piż rispettiv ta' 0.74 grammi u 0.31 grammi.<sup>12</sup>

8. Xehed ukoll **Dr. Martin Bajada** inkarigat bhala espert fil-mori tal-inkjesta, *inter alia* sabiex jeżamina l-*mobile phones* u *sim cards* elevati waqt l-eżekuzzjoni tal-mandat ta' tfittxija fil-konfront tal-imputat odjern, li kkonferma r-relazzjoni tiegħu formanti parti mill-proċess verbal tal-inkjesta dwar il-każ.<sup>13</sup>
9. **Ex PC 1036 Jonathan Pace** xehed illi huwa kien xhud tal-istqarrija rilaxxjata mill-imputat.<sup>14</sup>

L-imputat **Gregory Carabott** għazel li jixhed f'dawn il-proċeduri. Huwa jgħid illi fit-30 ta' Lulju 2010, irritorna lura d-dar f'xi ħin bejn is-6:00 a.m. u s-7:00 a.m. u hemm sab il-pulizija għaddejjin bit-tfittxija. Spjega illi dak kien żmien il-kaċċa u u kien jorqod l-għalqa, iżda qabel imur għax-xogħol kien jgħaddi d-dar biex jittawwal lil ommu. Jgħid illi fil-kamra tas-sodda tiegħu, il-pulizija sabu pjanta żgħira, li hu stess kien żera f'bott. Jgħid hekk: "*Kelli bott u tfajt zewg zerrieghat go dan il-bott u telgħet pjanta zghira u daqshekk biss*".<sup>15</sup> Mistoqsi mill-avukat difensur tiegħu jekk kienx jaf x'kienet dik il-pjanta, huwa wieġeb illi

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<sup>11</sup>Ara din ix-xhieda a fol. 130 u 131 tal-proċess.

<sup>12</sup>Din ir-relazzjoni tinsab esebita a fol. 105 tal-proċess.

<sup>13</sup>Din ir-relazzjoni tinsab esebita a fol. 52 tal-proċess.

<sup>14</sup>Ara a fol. 139 u 140 tal-proċess.

<sup>15</sup>Ara a fol. 147 tal-proċess.

“*Jien il-pjanta kont naf li hi cannabis*”.<sup>16</sup> Iż-żerriegħa kien ġabha mill-ġhalf tal-ġhasafar u tefa’ f’it minnha ġo bott biex jara jekk tinbitx. Billi l-pjanta kienet illegali, ġiet elevata mill-pulizija. Jġhid illi huwa ġie mistoqsi jekk din kinitx tieġħu u illi huwa ammetta li kienet tieġħu. Jġhid ukoll illi din kienet pjanta waħda u li kienet f’bott tal-kunserva.

**In kontro-eżami** meta ġie ssuġġerit lilu illi l-pjanti tal-*cannabis* misjuba fil-pussess tieġħu kienu tnejn, huwa jġhid li ġħalih din kienet pjanta waħda ġol-istess landa, li huwa jaf li kienet illegali.<sup>17</sup>

### **Ikkunsidrat ukoll:**

Illi fil-każ odjern, l-imputat jinsab akkużat bir-reati ta’ kultivazzjoni tal-pjanta tal-*cannabis* u ta’ pussess tal-pjanta tal-*cannabis* ai termini tal-Artikoli 8(ċ) u 8(d) tal-Kap. 101 tal-Liġijiet ta’ Malta rispettivament. Mill-provi proċesswali m’hemmx dubju illi nhar it-30 ta’ Lulju 2010, l-imputat instab fil-pussess ta’ pjanti, li mir-relazzjoni tal-Ispiżjar Mario Mifsud, irriżulta li kienu pjanti tal-*cannabis*. Fix-xhieda tieġħu f’dawn il-proċeduri, l-imputat jammetti li fil-pussess tieġħu nstabet pjanta tal-*cannabis*, kif jammetti wkoll li kien hu li żera’ din il-pjanta.

Fil-waqt illi l-Prosekuzzjoni ssostni illi dak li nstab kienu fil-fatt żewġ pjanti tal-*cannabis* ġo qasrija waħda, mill-banda l-oħra l-imputat jġhid iżjed minn darba illi din kienet biss pjanta waħda żġħira.

Dwar dan, il-Qorti tinnotta illi r-relazzjoni tal-Ispiżjar Mario Mifsud hija ċara f’dan ir-rigward, stante illi tindika illi fil-fatt l-pjanti in kwistjoni kienu tnejn, b’piż rispettiv ta’ 0.74 grammi u 0.31 grammi.

F’dan ir-rigward, il-Qorti tirrileva wkoll illi din il-kwistjoni ossia jekk il-pjanti kinux waħda jew tnejn kienet tassumi relevanza akbar qabel l-emendi ntrodotti mil-legislatur permezz tal-Att IV tas-sena 2020, li daħal fis-seħħ fit-28 ta’ Frar 2020, u li permezz tieġħu ġie emendat l-Artikolu 22(1B) tal-Kap. 101 tal-Liġijiet ta’ Malta u ġie mħassar l-Artikolu 7 tal-Kap.537 tal-Liġijiet ta’ Malta.

Qabel dawn l-emendi, l-Artikolu 7 tal-Kap. 537 tal-Liġijiet ta’ Malta kien jġhid hekk:

Persuna li tinstab ġatja ta’ kultivazzjoni tal-pjanta tal-*kannabis* fi kwantita` żġħira li ma taqbiżx pjanta waħda, f’ċirkostanzi fejn il-Qorti tkun sodisfatta li tali kultivazzjoni kienet ġħall-użu personali

<sup>16</sup> Ara a fol. 147.

<sup>17</sup> Ara din ix-xhieda a fol. 146 sa 152 tal-proċess.

m'għandhiex tkun soġġetta għal terminu mandatorju ta' priġunerija u m'għandhiex tkun soġġetta għall-eskluzjoni tal-applikazzjoni ta' ordni ta' probation jew ta' sospensjoni ta' terminu ta' priġunerija previsti fil-ligijiet dwar id-droga. [sottolinear tal-Qorti]

Kif ingħad, dan l-artikolu illum gie mħassar u minflok, l-Artikolu 22(1B) tal-Kap. 101 tal-Ligijiet ta' Malta, li precedentement kien iqis il-koltivazzjoni f'kull każ bhala li taqa' fid-definizzjoni tal-kelma "jittraffika", bis-saħħa tal-emendi ntrodotti jgħid hekk:

(1B) Għall-finijiet ta' din l-Ordinanza l-kelma "jittraffika" (bil-varjazzjonijiet grammatikali u bl-espressjonijiet imnisslin minnha) b'riferenza għal traffikar f'medicina, tinkludi l-koltivazzjoni, f'dawk iċ-ċirkostanzi li l-Qorti tkun sodisfatta li tali koltivazzjoni ma kenitx għall-użu esklussiv tal-ħati, l-importazzjoni f'dawk iċ-ċirkostanzi li l-Qorti tkun sodisfatta li dik l-importazzjoni ma kinitx għall-użu esklussiv tal-ħati, il-manifattura, l-esportazzjoni, id-distribuzzjoni, il-produzzjoni, l-amministrazzjoni, il-provvista, li wiehed joffri li jagħmel xi wiehed minn dawn l-atti, u l-għoti ta' informazzjoni intiża biex twassal għax-xiri ta' tali medicina bi ksur ta' din l-Ordinanza:

Iżda fil-każ ta' koltivazzjoni jew importazzjoni f'dawk iċ-ċirkostanzi li l-Qorti tkun sodisfatta li dik il-koltivazzjoni jew importazzjoni kienet għall-użu esklussiv tal-ħati, id-dispożizzjonijiet tal-Att dwar il-Probation kif ukoll l-artikolu 21 tal-Kodiċi Kriminali ma jgħoddux.

Dan ifisser illi illum hija biss dik il-koltivazzjoni f'dawk iċ-ċirkostanzi li l-Qorti tkun sodisfatta li ma kinitx għall-użu esklussiv tal-ħati, illi taqa' fid-definizzjoni ta' traffikar f'medicina u li għaldaqstant tattira tassattivament il-piena ta' priġunerija effettiva. Permezz tal-emendi ntrodotti bl-Att IV tas-sena 2020, fil-każijiet fejn il-koltivazzjoni tkun għall-użu esklussiv tal-ħati, il-piena hija dik prevvista fl-Artikolu 22(2)(b)(ii) tal-Kap. 101 tal-Ligijiet ta' Malta, salv illi l-Qorti ma tistax tapplika id-dispożizzjonijiet tal-Att dwar il-Probation jew l-Artikolu 21 tal-Kodiċi Kriminali.

Madankollu riċentement, permezz tal-Att LXVI tas-sena 2021, li daħal fis-seħh nhar it-18 ta' Diċembru 2021, il-legislatur introduċa disposizzjonijiet godda fil-ligi illi għal darb'oħra emendaw il-Kapitolu 537 tal-Ligijiet ta' Malta, fost oħrajn, inkluż billi illum l-att tal-koltivazzjoni sa erba' pjanti tal-cannabis, f'ċertu ċirkostanzi, m'għadux jammonta għal reat. Hekk bis-saħħa ta' dawn l-emendi, l-Artikolu 7 tal-Kap. 537 illum jaqra hekk:

7. (1) Minkejja d-dispożizzjonijiet l-oħra ta' dan l-Att jew ta' kull ligi oħra, il-kultivazzjoni sa erba' pjanti tad-droga kannabis, u l-pussess ta' mhux aktar minn ħamsin gramma ta' kannabis niexfa, għall-użu personali, minn

persuna ta' 'l fuq minn tmintax (18)-il sena, fl-indirizz residenzjali li jidher fuq dokument ufficjali li juri l-indirizz ta' residenza, bhal karta ta' identita' jew dokument iehor ta' identita', mhuwiex reat, u l-persuna ma ghandhiex tkun soggetta li tinzamm f'kustodja taht arrest biss minhabba tali kultivazzjoni u pussess f'dak l-indirizz:

Izda:

(a) tali kultivazzjoni ma ghandhiex issehħ fi spazju vizibbli mill-pubbliku;

(b) il-Pulizija Eżekuttiva ghandha f'kull kaz taqbad il-kannabis niexfa li ssib fuq il-post biss jekk din tkun fl-eccess ta' hamsin gramma. Meta wara li ssir l-elevazzjoni tal-kannabis niexfa jirrizulta li ma jkunx hemm lok li jittieħdu proċeduri minhabba l-fatt illi l-ammont ta' kannabis elevat ikun fil-limiti ta' dak permess mil-ligi, il-Pulizija ghandha tgħaddi l-kannabis maqbuda lil dik l-aġenzija jew awtorita' pubblika oħra hekk kif il-Ministru responsabbli għall-ugwaljanza jista' b'ordni fil-Gazzetta jahtar għal dan il-għan sabiex din tinghata lura lil sidha taht dawk il-kondizzjonijiet illi dik l-aġenzija jew awtorita' tista' tiffissa. Ghandha tinzamm nota ta' dawn il-fatti:

Izda wkoll ma tkun tista' tittieħed ebda azzjoni kontra l-Pulizija jekk wara li l-kannabis maqbuda tintižen bi preċiżjoni jirrizulta illi din fil-fatt ma kinitx ta' kwantita' li teccedi l-hamsin gramma.

(2) Dan l-artikolu ma għandu bl-ebda mod jinftiehem li qieghed jawtorizza l-kultivazzjoni ta' aktar minn erba' pjanti tal-pjanta tal-kannabis u dan irrispettivament min-numru ta' residenti fl-istess indirizz residenzjali u irrispettivament mir-razza ta' tali pjanti.

(3) Għall-finijiet ta' dan l-artikolu u tal-artikolu 7A, "kannabis niexfa" tfisser il-fjoritura niexfa u weraq niexef tal-pjanta tal-kannabis.

Dan ifisser illi illum, l-att tal-kultivazzjoni sa erba' pjanti tal-kannabis m'għadux meqjus bhala reat kriminali sakemm jikkonkorru l-elementi li trid il-ligi fl-artikolu appena citat, inkluż illi tali kultivazzjoni tkun għall-użu personali tal-pussessur. Altrimenti jibqgħu japplikaw id-disposizzjonijiet tal-Artikolu 22(1B) tal-Kap. 101 tal-Ligijiet ta' Malta, fuq citat.

Issa fil-kaz odjern, kif ingħad iżjed 'il fuq, il-pjanti in kwistjoni kienu tnejn u ma ngabet l-ebda prova illi l-kultivazzjoni tagħhom da parti tal-imputat ma kinitx għall-użu esklussiv tiegħu. Anzi in kontro-eżami, fuq mistoqsija tal-avukat difensur, l-Ufficjal Prosekutur jikkonferma illi l-*cannabis* kienet intiża sabiex l-imputat ikun jista' jagħmel il-*joints* għalih. Fiċ-ċirkostanzi, tenut kont ukoll tal-qies tal-pjanti in kwistjoni, li kienu pjanti żgħar, li l-messaġġi fil-*mobile phone* tal-imputat kif rizzultanti mir-relazzjoni tal-espert Dr. Martin Bajada, ma

jindikawx li l-koltivazzjoni in kwistjoni kienet intiża għal spaċċ<sup>18</sup>, kif ukoll in oltre illi m'hemm xejn fl-atti li jista' jindika li tali koltivazzjoni ma kinitx għall-użu esklussiv tiegħu, evidenti wkoll fil-fehma tal-Qorti mill-fatt illi l-imputazzjoni (b) fil-konfront tal-istess imputat tikkontempla r-reat ta' pussess 'semplici' tal-pjanta *cannabis* kollha jew biċċa minnha u mhux ta' pussess aggravat tal-istess, il-Qorti tqis illi f'dan il-każ m'hemm xejn li juri li l-pjanti ma kinux intiżi għall-użu personali tal-istess imputat. Għaldaqstant, fil-fehma kkunsidrata ta' din il-Qorti, la darba l-pjanti in kwistjoni kienu tnejn, kienu jinsabu fir-residenza tal-imputat, kif xehdu l-Uffiċjali tal-Pulizija f'dan il-każ u stante wkoll illi dawn kienu jinsabu fil-kamra tas-sodda tiegħu, u għalhekk mhux fi spazju viżibbli mill-pubbliku, il-Qorti tqis illi għandu japplika fil-każ odjern l-Artikolu 7 tal-Kap. 537 tal-Ligijiet ta' Malta, kif introdott bl-Att LXVI tas-sena 2021, b'dan għalhekk illi l-imputat m'għandux jinstab ħati ta' att li illum fil-liġi tagħna, f'ċerti ċirkostanzi li jikkonkorru lkoll f'dan il-każ, m'għadux jikkostitwixxi reat.

F'dan ir-rigward, il-Qorti tirreferi għas-sentenza tal-Qorti tal-Appell Kriminali fl-ismijiet **Il-Pulizija vs Martin Cassano** tat-28 ta' Settembru 2017, u dan b'referenza għal ċirkostanzi simili fejn id-disposizzjoni tal-liġi li kienet tikkontempla r-reat li bih gie mixli l-appellant f'dak il-każ, kienet giet imħassra:

“Illi fir-rigward tat-tieni akkuza li hija imfassla fuq l-artikolu 97(f)(i) tal-Kapitolu 10 tal-Ligijiet ta' Malta, għandu jinghad illi din id-disposizzjoni tal-liġi giet imħassra permezz tar-regolament 42 ta' l-Avviz Legali 376 ta' l-2012. Illi allura ghalkemm l-att vjolatur kien jikkostitwixxi reat meta sehh, dan madanakollu ma baqax jigi hekk ikkunsidrat ftit xhur wara l-akkuza. Illi in linja mad-decizjonijiet mogħtija mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem il-qorti għalhekk hija tal-fehma illi fir-rigward tat-tieni akkuza ebda piena ma għandha tigi imposta fuq l-appellanti u l-Qorti għaldaqstant ser tghaddi biex tastjeni milli tiehu konjizzjoni ta' dina l-akkuza u tirrevoka konsegwentement is-sejbien ta' htija li wasslet għaliha l-Ewwel Qorti:

*“The Court notes that the obligation to apply, from among several criminal laws, the one whose provisions are the most favourable to the accused is a clarification of the rules on the succession of criminal laws, which is in accord with another essential element of Article 7, namely the foreseeability of penalties .... The Court .... affirms that Article 7 § 1 of the Convention guarantees not only the principle of non-retrospectiveness of more stringent criminal laws but also, and implicitly, the principle of retrospectiveness of the more lenient criminal law. That principle is embodied in the rule that where there are differences between the criminal law in force*

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<sup>18</sup> Fil-fatt mill-messaġġi in kwistjoni ma tirriżulta l-ebda informazzjoni li tista' tigi konnessa mal-imputazzjonijiet odjerni.



*at the time of the commission of the offence and subsequent criminal laws enacted before a final judgment is rendered, the courts must apply the law whose provisions are most favourable to the defendant.”<sup>19</sup>*

Illi l-Qorti Ewropeja komplet tirraferma din il-posizzjoni fid-decizjonijiet li segwew bhal *Öcalan v. Turkey* deciza fit-18 ta' Marzu, 2014 fejn gie ritenut:

*“The court notes that the principle of retrospectiveness of the more lenient criminal law, considered by the court in Scoppola (no. 2), as guaranteed by Article 7, is embodied in the rule that where there are differences between the criminal law in force at the time of the commission of the offence and subsequent criminal laws enacted before a final judgment is rendered, the courts must apply the law whose provisions are most favourable to the defendant.”<sup>20</sup>*

Sahansitra il-Professor Mamo fin-noti tieghu ghad-dritt penali kien tal-fehma illi:

*"In fact, in the hypothesis under discussion, though the liability was contracted while the former law was still in force, the prosecution and sentence would be carried on and pronounced after such law has been repealed. So that, if such law were to be applied to such prosecution and sentence, it would be given an effect beyond its legal limit of operation.*

*It is thus not by way of an equitable retrospective application of the new law but rather on the grounds that the operation of the old law cannot extend beyond its repeal (divieto di ultra-attivita`) that, in this hypothesis, the criminal proceedings cannot be maintained in respect of the act which, at the time of the trial, has ceased to constitute a criminal offence.”<sup>21</sup>*

Komplet tghid il-Qorti illi:

“B’hekk illum ghalkemm il-prosekuzzjoni tar-reat abrogat fil-mori tal-proceduri jista’ jitkompla u dan fid-dawl ta’ dak li jipprovdi l-Att dwar l-Interpretazzjoni, madanakollu l-istess qieghed jitqies illi huwa leziv tal-artikolu 7 tal-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem.”

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<sup>19</sup> Hawnhekk dik il-Qorti ghamlet referenza ghas-sentenza **Scoppola vs Italy**, App. No. 12049/03 – 17/09/2009 (Grand Chamber).

<sup>20</sup> Hawnhekk saret referenza wkoll ghal **Ruban vs Ukraine** – 12/07/2016 u **Koprivnikar vs Slovenia**.

<sup>21</sup> Informazzjoni miksuba minn artikolu minn The Times of Malta data 27 ta' Frar 2017 “The more lenient criminal law” miktub mill-Prof. Kevin Aquilina.

Fis-sentenza tal-Qorti tal-Appell Kriminali tat-13 ta' April 2021, fl-ismijiet **Il-Pulizija vs Hany Abdullatif Tawkif Elkhawiny**, għalkemm f'dak il-każ kien hemm tibdil fil-piena kkontemplata fil-liġi wara ż-żmien tar-reat u wara s-sentenza tal-ewwel Qorti u għalhekk mhux tibdil fil-liġi li wasslet sabiex att jew ommissjoni ma jibqax jikkostitwixxi reat, bħal fil-każ tal-lum, il-Qorti adottat l-istess posizzjoni tal-Qorti tal-Appell Kriminali fis-sentenza ta' **Cassano** fuq ċitata u qalet hekk dwar din il-materja:

“Il-punt huwa jekk u safejn Qorti ta' Ġustizzja Kriminali tista' tapplika l-piena l-anqas gravi fil-każ fejn il-piena marbuta ma reat fiż-żmien meta jkun seħħ reat tiġi mibdula matul iż-żmien li imputat ikun qiegħed jiġi mixli b'reat partikolari li l-piena tiegħu tiġi mibdula – b'piena anqas – fil-mori ta' dawk il-proċeduri.

21. Il-prinċipju legali imsemmi huwa dak li jitnissel mill-artikolu 27 tal-Kodiċi Kriminali u ċjoe illi : -

Jekk il-piena stabbilita mil-liġi li tkun isseħħ fiż-żmien tal-kawża u dik li kienet isseħħ fiż-żmien li sar ir-reat ma jkunux xorta waħda, għandha tingħata l-piena l-anqas gravi.<sup>22</sup>

22. Biss din il-kwistjoni legali mhix daqshekk sempliċi daqs kemm tidher. Għalkemm il-Kodiċi Kriminali huwa ċar fuq dan il-punt, jidher daqstant ċar li l-artikolu 27 tal-Kodiċi Kriminali baqa' mhux mittiefes u mimsus sa minn meta l-Kodiċi Kriminali kien ġie promulgat bil-Proklama numru 1 tal-10 ta' Marzu 1854 li promulga l-Ordni tal-Maesta' Tagħha r-Regina fil-Kunsill tat-30 ta' Jannar 1854. Dak iż-żmien l-artikolu 26 kien jaqra hekk :

Se la pena stabilita nel tempo del giudizio e quella che era fissata nel tempo del reato fossero diverse fra loro, sara' sempre applicata quella di qualita' meno grave.

23. Dan huwa prinċipju sempliċi daqskemm importanti f'dan il-każ. Huwa prinċipju li, qalb diversi kien jagħmel il-Kodiċi Kriminali Malti wiehed mill-aktar Kodiċijiet għall-avangwardja ta' zmienu.

24. Fil-fatt anke l-Professor Sir Anthony Mamo kien kiteb fuq dan is-sugġett fil-**Lectures in Criminal Law**<sup>23</sup> fejn waqt li jgħid li l-injoranza tal-liġi kriminali mhix skużanti għal min jiskriha, kif ukoll li l-liġi kriminali tapplika minn meta tiġi promulgata l-

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<sup>22</sup> Fit-test ingliz tal-Kodiċi Kriminali jingħad hekk:

27. If the punishment provided by the law in force at the time of the trial **is different** from that provided by the law in force at the time when the offence was committed, the less severe kind of punishment shall be awarded.

<sup>23</sup> First Year, 1965, edizzjoni riveduta fl-1986, f'pagna 30 fejn jitratta l-**Operation of Criminal Law, Limitations by Time**

quddiem u li ma għandhiex applikabbilita retroattiva, jgħid ukoll li pero:

An apparent exception to the rule that a penal law cannot have retrospective effect occurs where a new law enacted after the commission of the offence is less severe or more advantageous to the offender than the law in force at the time the offence was committed. This hypothesis is twofold:-

a) The law against which the offence was committed is subsequently repealed, so that the act is no longer criminal;

b) The law against which the offence was committed is subsequently amended or changed so that, though the act is still criminal, the punishment or the conditions of liability and prosecution are varied.

...

The ‘*communis opinio*’ among continental writers is that where the law in force at the time of the commission of the offence and the subsequent law are different, the offender should be dealt with according to the law which is more favourable to him. This means that if the law in force at the time of the trial is less favourable to the accused than the law in force at the time of the commission of the offence, it is the latter law that should be applied retrospectively to his prejudice (*sic*). If, on the contrary, the new law is more favourable to the accused than the law which was in force at the time the offence was committed, then it is the new law that should be applied; for, if the old law were to be applied, it would have, as to the excess of punishment or other aggravation, an effect beyond its limit of valid operation.

Section 28 of our Criminal Code provides that “if the punishment prescribed by the law in force at the time of the trial is different from that prescribed by the law in force at the time of the commission of the offence, the less severe of the two punishments (Old Italian text : “*pena di qualita’ meno grave*”) shall be applied.

...

The above-quoted provisions of our Criminal Code applies ‘*expressis verbis*’ where the difference is between the punishment as at the time of the commission of the offence and the punishment as at the time of the trial. This means that if, when the new law reducing the punishment comes into force, proceedings in respect of the offence have already been definitely concluded, such new law does not affect the sentence already awarded; saving, of course, even in this case, the Prerogative of Mercy. If, however, when the new law comes into operation an appeal from the sentence is still pending, then the accused is

entitled to the benefit of the less severe punishment (V. Crim. Appeal 'The Police vs. S. Chircop et' 13.XI. 1943; Roberti, op. cit. Vol II, 315). .....

In conclusion it needs hardly be said that the principles above set forth concerning the application of the more favourable law may be set aside by an express provision in the repealing or amending law. This is, in Malta, commonly done, especially in respect of enactments which operate for a short period of time and are at short intervals amended or repealed and re-enacted. In such cases the necessity is obvious of saving unprejudiced any liability or proceedings incurred or instituted under the law so amended or repealed.

In England, the general rule is, now, that the repeal of a Statute has no effect on pending proceedings. Prior to 1889, by the unqualified repeal of the Statute on which an indictment was framed, the proceedings fell to the ground and no judgement would be pronounced. A prisoner indicted for an offence against an Act which was repealed after the offence was committed, but before the prisoner was tried, could not be sentenced under the repealed Act. But as to Statutes passed since 1889, the Interpretation Act, 1889 (52 & 53 Vict. C. 63, s. 38, ss.2) provides that where an Act "repeals any other enactment, then unless the contrary intention appears, the repeal shall not..... (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or (e) affect any investigation, legal proceedings or remedy in respect of any such .....penalty, forfeiture or punishment as aforesaid", and that "any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed". Particular clauses to the like effect were common in prior Statutes. (Arch. "Pleading, Evidence and Practice in Criminal Cases", Ed. 1931, pp.89).

... in matters of procedure, the general rule is that the law to be applied is always that in force at the time of the trial, notwithstanding that at the time of the commission of the offence, the mode of proceeding may have been governed by a different law and irrespective of whether such former law was more, or less, favourable to the accused.

25. Fil-fatt, fiż-żmien meta inkitbu dawn in-Noti ta' Sir Anthony Mamo, Malta kien għad ma għandhiex l-Interpretation Act tagħha. Din il-Liġi fil-fatt giet promulgata aktar tard fl-4 ta' Frar 1975 bl-Att VII tal-1975. Fl-artikolu 12 jingħad hekk :

**12.(1) Meta xi Att mghoddi wara l-bidu fis-sehh ta' dan l-Atti hassar xi liġi ohra, kemm-il darba ma jidhirx hsieb kuntrarju, t-thassir m'ghandux –**

- (a) jerga' jgib fis-sehh xi haġa li ma tkunx fis-sehh jew li ma tkunx teżisti fiż-żmien li fih iseħħ it-thassir;
- (b) jolqot it-thaddim ta' xi liġi qabel ma kienet hekk imħassra jew xi haġa magħmula jew li thalliet issir taħt xi liġi hekk imħassra;
- (c) jolqot xi dritt, privileġġ jew responsabbiltà miksuba jew meħuda taħt xi leġislazzjoni hekk imħassra jew li ġejja minn xi leġislazzjoni bħal dik;
- (d) jolqot xi penali, konfiska jew piena li wiehed seta' jehel dwar xi reat li jkun sar kontra xi liġi hekk imħassra, jew xi responsabbiltà għal xi penali, konfiska jew piena bħal dawk;**
- (e) jolqot kull sħarriġ, proċedimenti legali, jew rimedju dwar xi dritt, privileġġ, obligazzjoni, responsabbiltà, penali, konfiska, jew piena kif intqal qabel, u kull sħarriġ, proċedimenti legali, jew rimedju bħal dawk jistgħu jinbdew, jitkomplew, jew jiġu nforzati, u kull penali, konfiska jew piena bħal dawk jistgħu jiġu mposti, bħallikieku l-Att li jħassar ma jkunx għadda.

26. Jiġifieri Skont din il-Liġi għalhekk meta jkun hemm bidla f'Liġi li tolqot anke l-piena li tkun preskritta għar-reat, il-Liġi li għandha tibqa' applikabbli hija dik fiż-żmien ta' meta jkun ġie mwettaq ir-reat. Dan ifisser li bis-saħħa tal-Att dwar l-Interpretazzjoni, Kapitolu 249 tal-Liġijiet ta' Malta, il-posizzjoni **ceteris paribus** ġiet simili għal dik fir-rigward tal-posizzjoni fl-Ingilterra u Wales wara l-1889."

Hawnhekk il-Qorti ċċitat is-sentenza tal-Prim'Awla tal-Qorti Ċivili (sede Kostituzzjonali) fl-ismijiet **Il-Pulizija vs Mark Anthony Brincat et** tal-4 ta' Lulju 2019, iżda kompliet hekk:

"28. Din il-Qorti jidhrilha li mill-banda l-oħra l-Att dwar l-Interpretazzjoni kien ġie promulgat f'Malta madwar tnaħ il-sena qabel ma Malta adottat l-Att dwar il-Konvenzjoni Ewropea fid-19 t'Awissu 1987, fejn allura l-artikolu 3 tiegħu jgħid li :

- 3.(1) Id-Drittijiet tal-Bniedem u Libertajiet Fundamentali għandhom isiru, u jkunu esegwibbli bħala, parti mil-Liġi ta' Malta.
- (2) Fejn ikun hemm xi liġi ordinarja li tkun inkonsistenti mad-Drittijiet tal-Bniedem u Libertajiet Fundamentali, l-imsemmija Drittijiet u Libertajiet Fundamentali għandhom jipprevalu, u dik il-liġi ordinarja għandha, safejn tkun inkonsistenti, tkun bla effett.

29. Fil-fatt, anke fil-pubblikazzjoni **Guide on Article 7 of the Convention** stampat mill-Qorti Ewropea għad-Drittijiet tal-Bniedem, fil-parti intitolata **No punishment without law: the principle that only the law can define a crime and prescribe a penalty** f'pagna 21 hemm il-parti jisimha **V. Principle of**

**retrospective application of more favourable criminal law fejn jingħad hekk : -**

55. Even though Article 7 § 1 of the Convention does not expressly mention the principle of the retroactivity of the lighter penalty (unlike Article 15 § 1 in fine of the United Nations Covenant on Civil and Political Rights and Article 9 of the American Convention on Human Rights), the Court held that Article 7 § 1 guarantees not only the principle of non-retroactivity of more stringent criminal laws but also, and implicitly, the principle of retrospectiveness of the more lenient criminal law. That principle is embodied in the rule that where there are differences between the criminal law in force at the time of the commission of the offence and subsequent criminal laws enacted before a final judgment is rendered, the courts must apply the law whose provisions are most favourable to the defendant (*Scoppola v. Italy* (no. 2) [GC], §§ 103-109, concerning a thirty-year prison sentence instead of a life sentence). The Court considered that “inflicting a heavier penalty for the sole reason that it was prescribed at the time of the commission of the offence would mean applying to the defendant’s detriment the rules governing the succession of criminal laws in time. In addition, it would amount to disregarding any legislative change favourable to the accused which might have come in before the conviction and continuing to impose penalties which the State – and the community it represents – now consider excessive” (*ibid.*, § 108). The Court noted that a consensus had gradually emerged in Europe and internationally around the view that application of a criminal law providing for a more lenient penalty, even one enacted after the commission of the offence, had become a fundamental principle of criminal law (*ibid.*, § 106).”

Imbagħad b’referenza għall-każ ta’ Cassano fuq citat, il-Qorti qalet illi essenzjalment f’dik is-sentenza l-Qorti tal-Appell Kriminali ħadet “*l-posizzjoni li essenzjalment jadotta l-Mamo qabel l-introduzzjoni tal-Att dwar l-Interpretazzjoni*” u komplet tgħid illi “*Din ukoll jirriżulta li hija l-posizzjoni abbracċjata mill-Professur Kevin Aquilina ...f’artikolu tiegħu miktub minnu fis-27 ta’ Frar 2017*”.

Fil-fatt fl-artikolu tiegħu ntitolat **The More Lenient Criminal Law**<sup>24</sup>, il-Professur Aquilina jgħid hekk:

“One of the controversies which have erupted recently in relation to the Media and Defamation Bill is whether the latter is human rights compliant in relation to Article 7 of the European Convention on

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<sup>24</sup> Times of Malta, 27 ta’ Frar 2017.

Human Rights (ECHR) whose marginal note reads “No punishment without law”.

...

The Bill contains a provision which will decriminalise criminal defamatory libel for the future but will retain extant proceedings even after the Bill becomes law. Clause 27(4) states that: “Any criminal proceedings instituted under the repealed Act prior to the coming into force of this Act and which, on the coming into force of this Act, are pending before any court shall continue to be heard and shall be determined by the courts in terms of the repealed Act but the court shall not in awarding any punishment for defamation impose any punishment of imprisonment.”

In other words, from the entry into force of the Bill it would not be possible for the police to institute criminal libel proceedings but, in so far as pending criminal libel proceedings are concerned, these proceedings are saved and can be continued and determined without any difficulty. The question which arises is whether this is lawful under Maltese law and whether it is human rights compliant.

In so far as Maltese law is concerned, the Interpretation Act, enacted in 1975 before Malta incorporated the ECHR into Maltese law through the European Convention Act, states quite clearly that it is possible to adopt the course proposed in the Bill. The Interpretation Act, in article 12, allows Parliament to repeal a criminal offence while saving the operation of that criminal law in relation to pending proceedings. So, to my mind, I see no inconsistency between clause 27(4) of the Bill and article 12 of the Interpretation Act. On the contrary they are in harmony with each other.

The next question which has to be asked is: are article 12 of the Interpretation Act and clause 27(4) of the Bill fully compliant with Article 7 of the ECHR? The answer is in the negative. The European Court of Human Rights (ECtHR) has enunciated in its case law what it refers to as the principle of retrospectiveness of the more lenient criminal law. It has explained this principle in the Grand Chamber’s decision of *Scoppola v. Italy* (No. 2) of September 17, 2009 as follows:

“In the light of the foregoing considerations, the court takes the view that it is necessary to depart from the case law established by the Commission in the case of *X v. Germany* and affirm that Article 7 § 1 of the Convention guarantees not only the principle of non-retrospectiveness of more stringent criminal laws but also, and implicitly, the principle of retrospectiveness of the more lenient criminal law.

“That principle is embodied in the rule that where there are differences between the criminal law in force at the time of the commission of the offence and subsequent criminal laws enacted before a final judgment is rendered, the courts must apply the law whose provisions are most favourable to the defendant...

“It follows that the applicant was given a heavier sentence than the one prescribed by the law which, of all the laws in force during the period between the commission of the offence and delivery of the final judgment, was most favourable to him... In the light of the foregoing, the court considers that the respondent State failed to discharge its obligation to grant the applicant the benefit of the provision prescribing a more lenient penalty which had come into force after the commission of the offence.”

This was not the only case where the ECtHR applied the principle of retrospectiveness of the more lenient criminal law. Other cases followed. Such is the case of *Öcalan v. Turkey (No 2)* of March 18, 2014 where it held that:

“The court notes that the principle of retrospectiveness of the more lenient criminal law, considered by the court in *Scoppola (no. 2)*, as guaranteed by Article 7, is embodied in the rule that where there are differences between the criminal law in force at the time of the commission of the offence and subsequent criminal laws enacted before a final judgment is rendered, the courts must apply the law whose provisions are most favourable to the defendant.”

In the *Öcalan* judgment, the court also referred to another case: “In its decision in the case of *Hummatov v. Azerbaijan* ([dec.], nos. 9852/03 and 13413/04, May 18, 2006), the court approved the parties’ shared opinion that a life sentence was not a harsher penalty than the death penalty.”

In *Ruban v. Ukraine* decided on July 12, 2016, the ECtHR held as follows: “Article 7 § 1 guarantees not only the principle of non-retrospectiveness of more stringent criminal laws but also, implicitly, the principle of retrospectiveness of the more lenient criminal law.”

In *Koprivnikar v. Slovenia*, Strasbourg explained these words as follows: “In other words, where there are differences between the criminal law in force at the time of the commission of an offence and subsequent criminal laws enacted before a final judgment is rendered, the courts must apply the law whose provisions are most favourable to the defendant (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 109, September 17, 2009).”



In its judgment in the case of *Gouarré Patte v. Andorra* the court extended the guarantees of Article 7 concerning the retrospectiveness of the more lenient criminal law to the possibility of retrospective revision of the final sentence if domestic law provided for such a possibility (see *Gouarré Patte v. Andorra*, no. 33427/10, §§ 33 to 36, January 12, 2016).

By applying the above case law to the Bill, the situation is that under the Bill no punishment will be meted out for criminal libel on its entry into force once this offence is being decriminalised but under the Press Act which will be repealed by the Bill, the punishment is that of a fine. Needless to say, the most lenient of both provisions is the one which imposes no punishment not the one which imposes a fine.

Therefore clause 27(4) of the Bill is not in conformity with Article 7 of the ECHR. On the contrary, it is in breach of human rights. Yet, as the Bill has not been enacted into law, there is still time for government to salvage this situation provided that it understands that there is a problem here which needs addressing.”

Fis-sentenza tagħha, imbagħad, il-Qorti tal-Appell Kriminali komplet hekk fil-każ ta’ **Elkhawiny**:

“34. Fil-fehma ta’ din il-Qorti, il-prinċipji li illum il-ġurnata għandhom japplikaw f’dan il-kamp huma dawk li huma wkoll riflessi aktar il-fuq, b’mod partikolari, fl-artikolu 27 tal-Kodiċi Kriminali – speċifikament applikabbli għall-kamp penali u li fih l-elementi tal-grazia e giustizia illum ċentinarji u li ma ġiex mibdul fil-kamp penali, u li jirrifletti l-posizzjoni li aktar minn mija u ħamsin sena wara l-promulgazzjoni tiegħu huwa rifless fl-iżvilupp tal-Liġi u tal-Ġurisprudenza fil-Qasam tad-Drittijiet tal-Bniedem evolviet b’mod li l-artikolu 49 tal-Karta tad-Drittijiet tal-Bniedem tal-Unjoni Ewropeja aktar il-fuq imsemmija ma jhallix ekwivoċi. **Jekk wara li twettaq ir-reat, il-liġi ttipprovi għal piena inqas, dik il-piena għandha tkun applikabbli.**”

Hawnhekk din il-Qorti tirreferi wkoll għas-sentenza tal-Qorti Kriminali fl-ismijiet **Il-Pulizija vs. Agostino Bugeja**<sup>25</sup> fejn kien gie ritenut b’referenza għall-Artikolu 27 tal-Kodiċi Kriminali, illi għalkemm dan l-artikolu jikkontempla biss il-każ fejn il-piena fiż-żmien tal-kawża tkun differenti mill-piena fiż-żmien tal-allegat reat u ma teżisti ebda dispożizzjoni espressa tal-liġi rigwardanti l-każ fejn, fiż-żmien tal-kawża, ir-reat ma jkunx għadu jeżisti, b’dana kollu *arguendo a fortiori* minn dan l-artikolu, hu ċar li l-akkużat għandu jinheles minn kull piena fl-aħħar ipotesi. Altrimenti, il-liġi tkun qed tikkontradiċi lilha nnifsha meta tagħti

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<sup>25</sup> Vol. XXIV, p. iv. p. 941

effett retroattiv lil-liġi li kull ma tagħmel tipprovdi għall-piena aktar ljevi w fl-istess ħin tiċhad dan l-effett retroattiv lil-liġi sussegwenti, li minflok tnaqqas il-piena, attwalment telimina l-piena kompletament.

Il-Qorti taqbel perfettament ma' dan ir-raġunament. Konsegwentement, fid-dawl ta' dawn il-prinċipji tqis illi ma tistax issib ħtija fl-imputat dwar fatt li llum m'għadux jikkostitwixxi reat.

Illi naturalment il-Qorti tqis illi dan għandu japplika wkoll mhux biss fir-rigward tal-imputazzjoni (a), iżda wkoll fir-rigward tar-reat ikkontemplat fl-imputazzjoni (b). Jirriżulta ċar mill-atti proċesswali, illi dan ir-reat gie addebitat lill-imputat fid-dawl tas-sejba tal-pjanti tal-*cannabis* ġewwa r-residenza tiegħu. Għaldaqstant, fid-dawl tas-suespost, lanqas ma jista' l-imputat jinstab ħati ta' din l-imputazzjoni.

## **Konkluzjoni**

Għal dawn il-motivi, il-Qorti qed tiddikjara l-proċediment fil-konfront tal-imputat **Gregory Carabott** bħala eżawrit.

Tordna r-rilaxx tal-*mobile phones* u *SIM cards* elevati mill-pussess tal-istess imputat favur tiegħu.<sup>26</sup>

Natasha Galea Sciberras  
Maġistrat

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<sup>26</sup> Ara r-ritratt ta' dawn il-*mobile phones* formanti parti mir-relazzjoni ta' PS 612 Theo Vella (a fol. 47 tal-proċess).