



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

**MAGISTRAT DR. ELAINE MERCIECA B.A., LL.D.**

**Illum, is-17 ta' Mejju 2022**

**IL-PULIZIJA**

**VS**

**ANTONELLA VELLA**

**(I.D. 405784(M))**

**Il-Qorti;**

Rat l-imputazzjonijiet migjuba fil-konfront ta' **Antonella Vella** ta' 28 sena, bint Angelo u Josephine nee' Vella, imwielda il-Pieta nhar is-16 ta' Awwissu 184, residenti gewwa flat 7, Bini tal-Gvern, Triq l-14 ta' Dicembru 1945, Fgura, detentrici tal-karta tal-identita' bin-numru 405784(M), senjatament akkuzata talli nhar it-30 ta' Dicembru 2012 u fil-granet precedenti, gewwa triq Gan'Anton Tanti, Hal Tarxien u f'dawn il-gzejjer b'diversi atti maghmulin fi zminijiet differenti kisret l-istess disposizzjonijiet tal-ligi, b'risoluzzjoni wahda:

1. Kellu fil-pussess taghha id-droga kokaina specificata fl-ewwel skeda tal-Ordinanza Dwar il-Medicini Perikoluza, Kap. 101 tal-Ligijiet ta' Malta meta ma kontx fil-pussess ta' awtorizzazzjoni ghall-importazzjoni jew ghall-esportazzjoni mahrug mit-Tabib Principali tal-Gvern skond id-dispozizzjonijiet tar-4 u s-6 Taqsima tal-Ordinanza u meta ma kienx bil-licenzja jew xort'ohra awtorizzat li jimmanifattura jew li jforni d-droga msemija u meta ma kienx mod iehor bil-licenzja mill-President ta' Malta, li jkollu d-droga msemija fil-pussess tieghu u naqas li jipprova li d-droga msemija giet fornuta lilu ghall-uzu tieghu skond ir-ricetta kif provdut fir-regolamenti msemija u dan bi ksur tar-regoli tal-1939 dwar il-kontroll intern tad-drogi perikoluza (GN292/1939) kif sussegwentament emendati

u bi ksur tal-Ordinanza dwar il-Medicni Perikolużi, Kap. 101 tal-Ligijiet ta' Malta;

2. Talli nhar it-30 ta' Dicembru 2012 ghal habta tal-kwarta ta' waranofsinhar 12.15pm, gewwa Hal Tarxien u f'dawn il-Gzejjer saqet vettura bin-numru ta' registrazzjoni bin-numru DBH687 tal-ghamla Volvo ta' lewn abjad meta ma kienx f'kundizzjoni li jsuq minhabba xorb jew drogi;
3. Talli fl-sitess hin, lok, u cirkostanzi saqet vettura minghajr l-imsemmsija vettura minghajr ma kellha licenzja biex tkun tista tinstaq fit-triq u ma kinitx koperta b'polza tal-assigurazzjoni.

Rat u semghet ix-xhieda;

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

Rat id-digriet tal-assenjazzjonijiet ta' kawzi u doveri tal-Prim Imhallef tat-28 ta' Lulju 2021 u l-ezenzjoni tal-partijiet mis-smigh mill-gdid tal-provi gia mismugha minn dina l-Qorti diversament preseduta.

Semghet is-sottomissjonijiet tal-partijiet;

## **Ikkunsidrat**

### **i. Fatti tal-Kaz**

Illi l-fatti tal-kaz odjern jirrisalu lura ghat-30 ta' Dicembru 2012 ghall-habta tal-kwarta ta' wara nofsinhar, il-pulizija (PS100 u PC772), waqt li kienu ghaddejjin minn Triq Gan'Anton Tanti gewwa Hat-Tarxien nnotaw vettura (bin-numru ta' registrazzjoni DBH687) bi tlett zghazagh reqdin fiha. Wara li habtulhom mal-ghiega diversi drabi, qam is-sewwieq fl-istess vettura, Carl Ciantar, u haregt mill-karozza. L-pulizija osservawh li beda jkarkar fi kliemu. Fil-karozza kien hemm zewgt zghazagh ohra ta' sess femminili u cioe' l-qua imputat kif ukoll Katia Zahra li ghal bidu baqghu reqdin. Wara li ppruvaw iqajjmuhom fejn qamet Antonella Vella u Zahra warajha. Minn tfittxija fl-imsemmija vettura rrizulta li kien hemm wires ta' CCTV imqattghin that is-seat, number plates ta' vetturi ohrajn fil-bagoll, u l-licenzja tal-vettura ma kinitx tikkorrispondi mal-vettura. Nstabu ukoll xi oggetti relatati mal-uzu tad-droga bhal pipa.

### **ii. Kunsiderazzjonijiet dwar htija:**

Illi fl-ewwel lok dina l-Qorti ser tanalizza l-valur probatorju tal-istqarrija rrillaxxata mill-qua imputata lill-pulizija Din l-istqarrija giet irrillaxxata fil-31 ta' Dicembru 2012 lill-ispettur Jurgen Vella fil-prezenza ta' WPC 65 Inguanez.

Mill-atti processwali jirrizulta li qabel it-tehid tal-imsemmija stqarrija mill-pulizija, l-imputata irrifjutat d-dritt li tkellem u tikkonsulta ma avukat jew prokuratur legali tal-ghazla taghha sa massimu ta' siegha qabel l-interrogazzjoni. In sostenn ta' dan giet ipprezentata dikjarazzjoni (Dok. JV1) iffirmata mill-imputata fil-prezenza ta' diversi xhieda. L-ispettur Vella kkonferma l-volontarjeta' tal-imsemmija dikjarazzjoni. Din l-istqarrija jidher li ttiehdet skond il-ligi vigenti ta' dak iz-zmien u cioe fis-sena 2012 u kjarament jirrizulta li l-qua imputata ma gietx offruta id-dritt li tkun assistita minn avukat jew prokuratur legali tal-fiducja taghha waqt it-tehid tal-istqarrija u dana galadarba l-ligi vigenti dak iz-zmien dan ma kinitx tippermettith. Dina l-Qorti ma hijiex sejra tispekula x'kienet taghmel l-imputata kieku giet offruta dan il-jedd. Hu stat ta' fatt li ma gietx offruta dan id-dritt u dana ghaliex il-ligi dak iz-zmien ma kinitx tippermetti li l-qua imputata tkun asistita minn avukat waqt l-interrogatorju. Ghal kull bon fini jinghad ukoll li mill-atti processwali ma jirrizultax li kien hemm ragunijiet impellenti li jzommu lill-imputata milli tkun assistita permezz ta' avukat jew prokuratur legali waqt l-interrogazzjoni tant li hija fil-fatt giet offruta id-dritt li tikkonsulta ma avukat qabel it-tehid tal-istqarrija.

Illi l-guriprudenza lokali ricenti fir-rigward tal-assistenza legali waqt l-interrogatorju jidher li qed tistrieħ fuq l-insenjament mghoti fil-kaz **Phillipe Beuze v il-Belgju** (App. Numru 71409/10) tad-9 ta' Novembru 2018, li kien jitratta ukoll sitwazzjoni fejn il-ligi domestika rilevanti ma kinitx tippermetti l-assistenza legali waqt l-interrogazzjoni u fejn ma kienx hemm ragunijiet impellenti ghalfejn ma tigiex offruta l-assistenza tal-avukat. F'dan il-pronunzjament il-Qorti adottat il-kriterju tal-*overall fairness of the proceedings* sabiex tistharreg jekk sehhitx o meno lezjoni tad-dritt ghal smiegh xieraq u ddikjarat li l-Qorti ghandha dejjem tistharreg ic-cirkostanzi partikolari tal-kaz, tenut kont ta' numru ta' kriterji, mhux ezawrjenti, elenkati fid-decijjoni taghha.

*“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 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<sup>1</sup> (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

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<sup>1</sup> Emfazi ta’ dina l-Qorti

*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 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;*

*“(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”.*

Minn qari tal-istqarrija rillaxxata mill-qua imputata jirrizulta li l-istess imputata inkriminat lilha nnifsha fir-rigward tal-imputazzjonijiet dedotti fil-konfront taghha. Illi indubbjament id-dikjarazzjonijiet li ghamlet fl-istqarrija taghha ippregudikaw id-difiza taghha. Jirrizulta ukoll li l-istqarrija hija l-unika prova konkretta fil-konfront.

Ghaldaqstant dina l-Qorti, wara li hadet konjizzjoni tal-provi migbura u l-gurisprudenza relatata mal-valur probatorju li hija ghandha taghti l-istqarrija,

mehuda f' cirkostanzi simili ghal dawk tal-kaz odjern, partikolarment il-fatturi stabbiliti sabiex isir l-analizi tal-*overall fairness* tal-proceduri, ma hijiex tal-fehma li jkun opportun li tistrieħ fuq l-istqarrija, sabiex tistabillixi r-reita o meno tal-imputata għall-imputazzjonijiet odjerni u għaldaqstant ser tghaddi sabiex tiskarta l-istess.

Illi stabbilit dan, fin-nuqqas tal-imsemmija stqarrija, dina l-Qorti hija tal-fehma li l-ewwel imputazzjoni dedotta fil-konfront tal-qua imputata ma gietx pruvata sal-grad rikjest mill-ligi galadarba ma hemm l-ebda prova fl-atti processwali dwar ir-raguni l-għaliex il-qua imputata kienet mitlufa minn sensieha. Lanqas ma jirrizulta li hemm prova li l-qua imputata kienet effettivament uzat mis-sustanza kokaina.

Illi għal dak li jirrigwarda t-tieni u t-tielet imputazzjoni dedotta fil-konfront tal-qua imputata jirrizulta ukoll li galadarba giet eskluza l-istqarrija, mill-atti processwali ma jirrizultax li tezisti prova li l-qua imputata kienet effettivament qed isuk il-vettura. Kuntrarjament għal dan, mix-xhieda tal-ufficjali li sabuħom fl-imsemmija vettura, jirrizulta li kien Carl Ciantar li kien fuq is-seat tax-xufier u mhux il-qua imputata. Għaldaqstant dina l-Qorti ser tghaddi sabiex tillibera lill-qua imputata minn dawn iz-zewgt imputazzjonijiet.

## **Decide**

Għal dawn il-motivi dina l-Qorti qegħda tiddikjara lill-imputata Antonella Vella mhux hatja tal-imputazzjonijiet kollha dedotti fil-konfront tagħha u konsegwentament qed tilliberaha mill-istess.

**MAGISTRAT DR. ELAINE MERCIECA B.A., LL.D.**

Christine Farrugia

**Deputat Registratur**