



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

MAGISTRAT DR ELAINE MERECIECA LL.D

**PULIZIJA
(Spettur Pierre Grech)**

kontra

**BRAYDON PACE
(I.D. No. 238297(M))**

Kaz Nru.: 230/15

Illum, 4 ta' Mejju 2022

Il-Qorti,

Rat l-imputazzjonijiet migjuba fil-konfront ta' Braydon Pace, iben Brian u Natalie Micallef, imwield il-Pieta', nhar is-17 ta' Gunju, 1997, residenti gewwa Ent E, *Flat 4*, Triq Guze' Ellul Mercer, l-Imnsida, u detentur tal-karta tal-identita' bin-numru 238297(M), senjatament akkuzat talli f'dawn il-gzejjer, fid-29 ta' Marzu, 2014, u fix-xhur ta' qabel;

1. Biegh jew xort'ohra ttraffika l-pjanta *Cannabis*, kollha jew bicca minnha, u dan bi ksur tal-Art. 8(e) tal-Ordinanza dwar il-Medicini Perikolużi, Kap. 101 tal-Ligijiet ta' Malta;
2. Kellu fil-pussess tieghu l-pjanta *Cannabis*, kollha jew bicca minnha, bi ksur tal-Art. 8(d) tal-Kap. 101 tal-Ligijiet ta' Malta;

Il-Qorti kienet mitluba sabiex fil-kaz ta' htija, barra milli tapplika l-piena skond il-Ligi, tordna lill-imputat ihallas l-ispejjez li ghandhom x'jaqsmu mal-hatra tal-esperti skond l-Artikolu 533 tal-Kap. 9 tal-Ligijiet ta' Malta.

Rat 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-Medicini Perikolużi (Kap. 101 tal-Ligijiet ta' Malta), sabiex din il-kawża tinstema' minn din il-Qorti bhala Qorti ta' Ġudikatura Kriminali¹,

Rat id-digriet tal-assenjazzjonijiet ta' kawzi u doveri tal-Prim Imhallef tat-28 ta' Lulju 2021²;

Rat l-ezenzjoni tal-partijiet ghal-ismigh mill-gdid tax-xhieda mismugha minn dina l-Qorti diversament preseduta³;

Semghet is-sottomissjonijiet tal-partijiet;

Ikkunsidrat

Illi in sostenn tal-imputazzjonijiet miġjuba kontra l-imputat, il-Prosekuzzjoni ressqet is-segwent i xhieda u provi: (1) **I-ispettur Frank Anthony Tabone**⁴ li ezebixxa l-istqarrija rrillaxata mill-qua imputat Braydon Pace (Dok. FT2)⁵ u d-dikjarazzjoni tal-istess imputat permezz ta' liema rrifjuta d-dritt ghall-assistenza legali qabel it-tehid tal-istqarrija (Dok. FT1)⁶; (2) **PS 1044 Gordon Calleja** li kkonferma l-volontarjeta' tal-istqarrija rrillaxata mill-imputat immarkata bhala FT2⁷; (3) **PC899 Jean Paul Vella** li spjega li fid-29 ta' Marzu 2014 ghall-habta ta' 12.45am kien qieghed fuq ronda flimkien ma PC971. Fi triq Sqaq Brincat, Gharghur lemhu vettura pparkjata bin-numru ta' registrazzjoni CBH126 tal-ghamla Opel Corsa b'erbgha persuni fiha li gew osservati jahbu xi affarijiet. Minn

¹ Ara fol. 4 tal-atti processwali.

² Fol. 68 tal-atti processwali.

³ Fol. 71 tal-atti processwali.

⁴ Fol. 10 tal-atti processwali;

⁵ Fol. 12 tal-atti processwali;

⁶ Fol. 16 tal-atti processwali;

⁷ Fol. 17 tal-atti processwali;

tfittxija fuq il-persuni fl-imsemmija vettura rrizulta li kienet wahda negattiva ghal tnejn minnhom, filwaqt li fil-kartiera tal-passigiera Jessica Tabone instab pakkett zghir kontenenti zewg *seeds*. Tabone minn jeddha tat lill-pulizija *crusher* u pakkett iehor zghir b'sustanza hadranija go fiha. Taht fejn kien bilqieghda l-qua imputat Braydon Pace (*fuq is-seat*) instab ukoll pakkett b'sustanza hadranija. Ix-xhud spjega ukoll li huma gew arrestati u mehuda gewwa l-Kwartieri Generali tal-Pulizija. Jikkonferma li s-sustanzi elevati gew mghoddija lid-Drug Squad madanakollu ma jiftakarx l-ufficjal tal-pulizija min kien; (4) **L-ispettur Jonathan Cassar** li ezebixxa bhala 'Dok. JC' s-sustanza suspettata cannabis grass b'piz ta' circa 0.5grammi. Spjega ukoll li l-istess ezebiet jikkontjeni pakkett lubretti, pakkett tabakk u sachet bl-ucuh fuqu u borza sewda li nstabu fil-kamra tal-qua imputat wara tfittxija fir-residenza tieghu; (5) **L-ex Spettur Pierre Grech** (l-ufficjal investigattiv fil-kaz odjern) xehed li fid-29 ta' Marzu 2014 kien investiga lill-qua imputat li dak iz-zmien kellu sittax-il sena. Spjega li kien hadlu l-istqarrija fil-prezenza ta' ohtu, Casey Ann Pace, wara li assigura li kienet magorenni. Huwa kkonferma l-istqarrija mehuda (Dok. FT2) u kkonferma ukoll id-droga ezebieta (Dok JC); (6) **PS1311 Gregory Pizzuto** li kkonferma bil-gurament il-volontarjeta' tad-dikjarazzjoni ezebieta bhala Dok. FT1 u cioe' d-dikjarazzjoni rigwardanti r-rifjut ghall-assistenza legali; (7) **PC971 Glenn Scicluna** li kkonferma li fid-29 ta' Marzu 2014 kien ronda gewwa Triq Sqaq I. Brincat gewwa l-Gharghur flimkien mal-kollega tieghu PC899 Vella meta osservaw vettura tal-ghamla Opel Corsa b'erba' persuni go fiha. Minn tfittxija li saret PC899 sab taht il-passiggier Braydon Pace pakkett suspettat Cannabis grass u fl-ahhar net xehed ukoll (8) **Prof. Emanuel Sinagra** li kkonkluda s-segwenti:

Illi fuq estratt mehud mil-haxix ahdar li hemm fid-dokument JC u li kien immarkat SB/244/2014 instabet is-sustanza Tetrahydrocannabinol (THC). Il-piz tal-haxix ahdar kien ta' 0.98 grammi u l-purita kienet ta' circa 6.5%. Din is-sustanza tigi mill-pjanta tal-Kannabis u hija kkontrollata bil-ligi taht Taqsima III Sezzjoni 8 tal-Kapitolu 101 tal-Ligijiet ta' Malta.⁸

Illi l-imputat ghazel li ma jressaq l-ebda prova. Madanakollu fl-udjenza tas-26 ta' Jannar 2022, l-abbli avukati difensuri talbu ghall-isfilz tal-istqarrija tal-qua imputat mehuda fi stadju tal-investigazzjoni fid-dawl tal-fatt li huwa ma nghatax id-dritt li jkun legalment assistiet waqt l-interrogazzjoni. Di piu' d-difiza sahqet li apparti li l-ewwel imputazzjoni tistrieħ unikament fuq l-istqarrija, l-qua imputat kien minuri fiz-zmien tat-tehid tal-istqarrija u ttiehdet fil-prezenza ta' ohtu li

⁸ Fol. 61 tal-atti processwali.

kienet għada kif għalqet it-tmintax-il sena hija stess⁹. In sostenn ta' dan l-imputat ipprezenta ukoll rikors¹⁰.

Fil-qosor, il-proceduri odjerni jirrelataw fatti li jirrisalu lura għad-29 ta' Marzu 2014 għall-habta ta' 12.45am meta l-pulizija għamlu tfittxija f'vettura li kien fiha erbgha zaghzagħ, fosthom il-qua imputat Braydon Pace li dak iz-zmien kien minuri. Taht Braydon Pace il-pulizija sabu sustanza hadranija suspettata droga tal-Cannabis u għaldaqstant gie arrestat. Saret tfittxija fir-residenza fejn instabu oggetti relatati mal-uzu ta' droga. Tul l-investigazzjoni tal-pulizija l-qua imputat irrillaxxa stqarrija fejn il-qua imputat ammetta mal-pulizija li għali xi xtara d-droga għal xi hbieb tiegħu.

Illi primarjament dina l-Qorti ser tindirizza l-ammissibilita' u l-validita' o meno tal-istqarrija rrillaxata mill-imputat fi stadju tal-investigazzjonijiet. Mill-atti jirrizulta li l-imputat irrillaxxa l-imsemmija stqarrija fid-29 ta' Marzu 2014 skond il-ligi vigenti dak iz-zmien għaldaqstant *prima facie* jidher li dina l-istqarrija bhala prova hija wahda ammissibli f'dawn il-proceduri penali. Fil-fatt mill-istqarrija jidher li l-imputat gie mwissi "*fil-prezenza ta' PS1044 G. Calleja u Casy Ann Pace li m'intix obligat li titkellem sakemm ma tkunx tixtieq li titkellem, imma dak li tghid jista' jingieb bi prova*"¹¹. Fil-bidu tal-imsemmija stqarrija l-qua imputat wiegeb li fehem tajjeb din it-twissija. Kkonferma ukoll li nġhata d-dritt li jiehu parir legali u huwa għazel li ma jkellimx avukat. Sussegwentament huwa għazel li jiffirma l-istess stqarrija. In sostenn ta' dan il-qua imputat iffirma ukoll dikjarazzjoni fejn ikkonferma li huwa rrinunzja li jezercita d-dritt li jikkonsulta privatament ma avukat jew prokuratur legali qabel l-interrogatorju¹². Dan ma huwiex qed jigi kkontestat mid-difiza. Il-prosekuzzjoni ressqet ukoll sabiex jixhdu x-xhieda dwar il-volontarjeta' tal-istqarrija u l-imsemmija dikjarazzjoni għar-rifjut tal-assistenza legali (hekk kif ingħad iżjed 'il fuq).

Madanakollu tibqa l-kwistjoni li l-qua imputat ma giex offrut id-dritt għall-assistenza legali waqt l-istqarrija u jekk dan jistgħax possibilment iwassal sabiex jigi lez id-dritt tas-smiġħ xieraq tal-imputat.

Mill-atti processwali ma jirrizultax li kien hemm ragunijiet ġustifikabbli li jzommu lill-imputat milli jkun assistiet permezz ta' avukat jew prokuratur legali waqt l-interrogazzjoni. Fil-fatt mill-istqarrija u d-dikjarazzjoni pprezentata jirrizulta li l-qua imputat gie offrut id-dritt għall-assistenza legali qabel (mhux waqt) l-interrogazzjoni u dana dejjem skond ma kienet il-ligi vigenti dak iz-

⁹ Fol. 72 tal-atti processwali.

¹⁰ Fol. 73 tal-atti processwali.

¹¹ Fol. 12 tal-atti processwali, Dok. FT2

¹² Fol. 16 tal-atti processwali, Dok. FT1.

zmien. Isegwi ghalhekk li probabilment l-unika raguni l-ghaliex l-imputat ma kienx mghejjun minn avukat waqt l-interrogazzjoni kienet l-ghaliex il-ligi vigenti dak iz-zmien ma kinitx tippermettieha. Dak iz-zmien li fiha ttiehdet l-istqarrija odjerna (Marzu 2014) il-ligi kienet tippermetti biss li l-imputat jkun jista' jikkonsulta ma avukat qabel ma tittiehdet l-istqarrija sa massimu ta' siegħa. Id-dritt tal-assistenza legali waqt l-istqarrija gie ntrodott fil-Kodici Kriminali permezz ta' l-Att LI fit-28 ta' Novembru 2016.

Illi l-guriprudenza lokali ricenti fir-rigward tal-assistenza legali waqt l-interrogatorju jidher li qed tistrieħ fuq l-insenjament mghoti fil-kaz **Beuze v il-Belġju** (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 għalfejn ma tigiex offruta l-assistenza tal-avukat. F'dan il-pronunzjament intqal:

“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 lawyer¹³ (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 an exclusionary rule

¹³ Emfazi ta’ dina I-Qorti

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”.

Fil-kaz odjern li jirrizulta huwa li l-qua imputat irrifjuta l-assistenza legali qabel it-tehid tal-istqarrija u ma kienx offrut id-dritt għall-assistenza legali waqt l-istqarrija. L-istqarrija tal-imputat ittiehdet fi sfond fejn huwa kien minorenni u għaldaqstant meqjus bhala persuni vulnerabbli li setgħa facilment kien impressjonat bl-arrest u bl-interrogazzjoni tal-pulizija. Huwa minnu li l-istess stqarrija ttiehdet fil-prezenza t'oht il-qua imputat li għalkemm kienet magorenni kellha biss l-eta' ta' tmintax-il sena li kienet għada kemm għalqithom ftit xhur qabel. Jirrizulta ukoll mill-istess stqarrija il-qua imputat inkrimina lilu nnifsu tant li l-imsemmija stqarrija hija l-unika prova fir-rigward tal-ewwel imputazzjoni.

Għaldaqstant dina l-Qorti, wara li hadet konjizzjoni tal-provi migbura u l-gurisprudenza relatata mal-valur probatorju li hija għandha tagħti l-istqarrija mehuda f'cirkostanzi simili għal dawk tal-kaz odjern, partikolarment il-fatturi stabbiliti sabiex isir l-analizi tal-*overall fairness* tal-proceduri, ma thossx li jkun opportun li tistrieħ interament fuq l-istqarrija sabiex tistabillixi r-reita o meno tal-imputat għall-imputazzjonijiet odjerni. Dan anke fic-cirkostanzi imsemmija fil-paragrafu precedenti.

Isegwi ghalhekk li ghar-ragunijiet suesposti u fid-dawl tal-principju tal-*overall fairness*, dina l-Qorti ma hijiex ser tikkunsidra l-istqarrija rrillaxxata mill-imputat meta tigi sabiex tikkunsidra ir-reita' tieghu o meno għall-imputazzjonijiet dedotti fil-konfront tieghu.

Illi stabbilit dan, hekk kif inghad iktar 'il fuq, ma giet impressqa l-ebda prova ohra bil-ghan li l-ewwel imputazzjoni tigi pruvata sal-grad rikjest mil-ligi. Għaldaqstant dina l-Qorti tqis l-istess imputazzjoni bhala wahda infondata.

Illi t-tieni imputazzjoni tirrigwarda l-pussess semplici tal-pjanta Cannabis jew bicca minnha fl-ammont ta' 0.98 grammi u cioe' f'ċirkostanzi li jwasslu li wiehed raġonevolment jemmen li tali pussess huwa għall-użu personali tieghu stess. Din l-imputazzjoni giet milquta bl-emendi introdotti f'Dicembru tas-sena 2021 senjatament permezz tal-Att LXVI tas-sena 2021. Bis-sahha ta' dawn l-emendi l-artikolu 4A tal-Kap. 537 jistipula:

(1) Minkejja d-dispożizzjonijiet ta' kull ligi ohra, il-pussess minn persuna ta' 'l fuq minn tmintax (18)-il sena tad-droga kannabis f'ammont ta' mhux iktar minn seba' grammi, f'ċirkostanzi li jwasslu li wiehed raġonevolment jemmen li tali pussess huwa għall-użu personali ta' tali persuna, ma għandux jikkostitwixxi reat, u l-persuna ma għandhiex tinzamm f'kustodja taht arrest minbarra fejnhemm suspett raġonevoli ta' traffikar jew tmexxija ta' droga kannabis

Illi allura għalkemm l-att vjolatur kien jikkostitwixxi reat meta sehh, dan madanakollu ma għadux jigi hekk ikkunsidrat illum il-gurnata.

Illi l-artikolu 12 tal-Kap. 249 tal-Ligijiet ta' Malta jistipula:

(1) Meta xi Att mgħoddi wara l-bidu fis-sehħ ta' dan l-Atti ħassar xi ligi ohra, kemm-il darba ma jidhirx ħsieb kuntrarju, t-thassir m'għandux –

(a) jerga' jgib fis-sehħ xi haġa li ma tkunx fis-sehħ jew lima tkunx teżisti fiż-żmien li fih iseħħ it-thassir;

(b) jolqot it-thaddim ta' xi ligi qabel ma kienet hekk imħassra jew xi haġa magħmula jew li thalliet issir taht xi ligi hekk imħassra;

(ċ) jolqot xi dritt, privileġġ jew responsabbiltà miksuba jew meħuda taht xi leġislazzjoni hekk imħassra jew liġejja minn xi leġislazzjoni bħal dik;

(d) jolqot xi penali, konfiska jew piena li wiehed seta' jehel dwar xi reat li jkun sar kontra xi ligi 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, obbligazzjoni, responsabbiltà, penali, konfiska, jew piena kif intqal qabel, u kull sħarriġ, proċedimenti legali, jew rimedju bħal dawk jistgħujinbdew, jitkomplew, jew jiġu nforzati, u kull penali, konfiska jew piena bħal dawk jistgħu jiġu mposti, bħallikieku l-Att li jħassar majkunx għadda.

Madanakollu ssir referenza għas-sentenza mghotija mill-Qorti tal-Appell Kriminali fl-ismijiet il-**Pulizija vs. Juanita Fenech** nhar is-27 ta' Frar 2019 fejn gie ddikjarat:

“Illi in linja mad-decizjonijiet moghtija mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem ibbazati fuq l-artikolu 7 tal-Konvenzjoni Ewropeja dwar il-Drittijiet tal-Bniedem, il-Qorti hija tal-fehma illi illum ebda piena ma ghandha tigi imposta fuq l-appellanti u l-Qorti bilfors trid tastjeni milli tiehu konjizzjoni ta’ dina l-akkuza:

“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 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.”

Din il-posizzjoni giet riaffermata permezz tas-sentenza tal-Qorti Ewropeja fl-ismijiet Öcalan v. Turkey deciza fit-18 ta’ Marzu, 2014.

Illi l-Professur Sir Anthony Mamo jidher li kien tal-fehma ukoll li f’sitwazzjonijiet bħal dawn il-proċeduri jew l-effett provenjenti minnhom permezz tas-sentenza li tkun inghatat, għandhom jieqfu.

“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”.

B’hekk illum għalkemm il-prosekuzzjoni tar-reat abrogat fil-mori tal-proċeduri jista’ jitkompli u dan fid-dawl ta’ dak li jipprovdi l-Att dwar l-Interpretazzjoni, madanakollu l-istess qiegħed jitgħies illi huwa leżiv tal-artikolu 7 tal-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem. (emfazi ta’ dina l-Qorti)

Fid-dawl ta’ dan l-insenjament dina l-Qorti ser tghaddi sabiex tiddikjara procediment estint fil-konfront tat-tieni imputazzjoni.

Decide

Għal dawn il-mottivi, dina l-Qorti, **qiegħda tiddikjara lill-imputat Braydon Pace mhux hati tal-ewwel imputazzjoni u konsegwentament qiegħda**

tilliberah mill-istess filwaqt li fid-dawl tal-emendi introdotti permezz tal-artikolu 4A tal-Kap. 537 tal-Ligijiet ta' Malta qed tastjenti milli tiehu konjizzjoni ulterjuri tat-tieni imputazzjoni dedotta fil-konfront tieghu.

Finalment, il-Qorti tordna d-distruzzjoni tad-droga esebieta hekk kif din is-sentenza tghaddi in gudikat, u dan taht il-harsien tar-Registratur li ghandu jirredigi proces 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 BA. LL.D.

Christine Farrugia
Deputat Registratur.