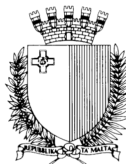

FIL-QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI

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

Illum, 31 ta' Mejju 2022

Kaz Nru: 251/14

Il-Pulizija

(Spettur Gabriel Micallef)

vs

CEDRIC ZAMMIT

Il-Qorti;

Rat l-imputazzjonijiet migjuba fil-konfront ta' **Cedric Zammit**, ta' dsatax-il sena, bin Arthur u Irene nee' Scicluna, imwieled gewwa Haz-Zabbar fl-14 ta' Frar 1994 u li jirrisjedi fil-fond 176, Warda Mistika, Triq San Tumas, Fgura, detentur tal-karta tal-identita' Maltija bin-numru 106294(M), senjatament akkuzat talli fl-14 t'Ottubru 2013 fil-Fgura u/jew fi bnadi ohra gewwa dawn il-gzejjer u/jew fil-jiem u x-xhur ta' qabel:

1. Kellu fil-pussess tieghu medicina psikotropika u ristretta (ecstasy) minghajr awtorizazzjoni specjali bil-miktub mis-Supritendent tas-Sahha Pubblika, bi ksur tad-disposizzjonijiet ta' l-Ordinanza dwar il-Professjoni Medika u l-Professjonijiet li ghandhom x'jaqsmu maghha, Kap. 31 tal-Ligijiet ta' Maltau r-Regolamenti dwar il-kontroll tal-Medicini, Avviz Legali 22 tal-1985 kif emendati;
2. Traffika, biegh, qassam jew offra li jittraffika, jbiegh jew iqassam id-droga ristretta u psikotropika (*ecstasy*), minghajr awtorizazzjoni specjali bil-miktub mis-Supretendent tas-Sahha Pubblika, bi ksur tad-disposizzjonijiet ta' l-Ordinanza dwar il-Professjoni Medika u l-

Professjonjiet li ghandhom x'jaqsmu maghha, Kap. 31 tal-Ligijiet ta' Malta u r-Regolamenti dwar il-Kontroll tal-Medicini, Avviz Legali 22 tal-1985 kif emendati;

3. kellu fil-pussess tieghu l-pjanta Cannabis kollja jew bicca minnha bi ksur ta' l-artikolu 8 (d) tal-Kap. 101 tal-Ligijiet ta' Malta.

Rat u semghet ix-xhieda;

Rat l-atti kollha tal-każ u d-dokumenti esebiti, inkluż l-Ordnijiet tal-Avukat Ġenerali ai termini tas-sub-artikolu (2) tal-Artikolu 22 tal-Ordinanza dwar il-Mediċini Perikolużi (Kap. 101 tal-Liġijiet ta' Malta) kif ukoll ai termini tas-subartikolu 120A(2) tal-Ordinanza dwar il-Professjoni Medika u il-Professjonijiet li ghanxhom x'jaqsmu maghha (Kap. 31 tal-Ligijiet ta' Malta), sabiex din il-kawża tinstema' minn din il-Qorti bħala Qorti ta' Ġudikatura Kriminali[1],

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

Semghet is-sottomissjonijiet tal-partijiet;

Ikkunsidrat:

Illi l-fatti tal-kaz odjern jirrisalu lura ghal Settembru u Ottubru tas-sena 2013. Illi fid-9 ta' Settembru 2013 Jean Marc Dalli ta xhieda guramentata quddiem il-Magistrat Inkwerenti fejn ikkonferma bil-gurament li xi ecstasy li nstabet fil-pussess tieghu kien gabhom minghand Cedric Zammit mill-Fgura maghruf bhala il-lahmi bil-prezz ta' Eur. 10 il-pillola. Huwa kkonferma ukoll li Zammit ma kienx biegh lilu biss. Jghid ukoll li persuna ohra bl-isem ta' Dweight kienet talbitu jixtrilu 6 pilloli ecstasy minghand il-qua imputat. Dalli jikkonferma li huwa kien xtrara l-imsemmija pilloli ghal Dweight minghand Zammit ghall-prezz ta' Eur. 60. Dalli jghid ukoll li huwa qatt ma ra lil Zammit ibiegh id-droga lil terzi persuni. Sussegwentament, fl-14 t'Ottubru 2013, l-pulizija (PS518, PC243 u PC1500) ghamlu tfittxija fir-residenza tal-qua imputat, Cedric Zammit, gewwa 176, Warda Mistika, Triq San Tumas, Fgura. F'din it-tfittxija l-pulizija identifikaw hames (5) lubretti; rolling paper (kemm twal kif ukoll qosra); u zewg nofsijiet ta' sigaretti wiehed tal-Pall Mall u l-iehor tar-Rothmans. Dawn l-oggetti gew elevati ghall-izjed investigazzjonijiet. L-istess gew ipprezentati fl-atti processwali odjerni

[1] Fol. 4 u 5 tal-atti processwali.

bhala Dok. GM2[2] u analizati mill-ispizjar Godwin Sammut (li gie nkarigat bhala espert minn din il-Qorti fuq talba tal-Prosekuzzjoni[3]) li kkonkluda: "*Illi fl-estratti mehuda miz-zewg nofsijiet ta' sigaretti li hemm fid-dokument 019_16_01 ma' nstabetx droga*."[4]

Illi fil-kors tal-investigazzjonijiet mill-pulizija, l-qua imputat irrilaxxa zewgt stqarrijiet – wahda fl-14 t'Ottubru 2013 (Dok. GM1[5]) u l-ohra fit-28 t'Ottubru 2013 (Dok. GM2[6]). Illi fl-ewwel stqarrija l-qua imputat kien irrifjuta d-dritt tal-assistenza legali qabel l-istqarrija filwaqt li qabel it-tieni stqarrija huwa kien ikkonsulta ma' avukat ta' fiducja tieghu. Madanakollu jirrizulta li fiz-zewgt istanzi l-qua imputat ma giex offrut id-dritt ghall-assistenza legali waqt it-tehid tal-istess stqarrijiet u dana fid-dawl tal-ligi vigenti dak iz-zmien li kienet tippermetti biss l-assistenza legali qabel it-tehid tal-istqarrija.

Illi l-guriprudenza lokali ricenti fir-rigward tal-assistenza legali waqt l-interrogatorju qed tistrieh 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 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. F'dan il-pronunzjament il-Qorti adottat il-kriterju tal-*overall fairness of the proceedings* sabiex tistħarreġ jekk seħħitx o meno leżjoni tad-dritt għal smiegħ xieraq u ddikjarat li l-Qorti għandha dejjem tistħarreġ iċ-ċirkostanzi partikolari tal-każ, tenut kont ta' numru ta' kriterji, mhux eżawrjenti, elenkati fid-deċiżjoni tagħha.

> *"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. ... ... "*

[2] Fol. 6 tal-atti processwali.
[3] Fol. 26 tal-atti processwali.
[4] Fol. 43 tal-atti processwali.
[5] Fol. 20 tal-atti processwali.
[6] Fol. 29 tal-atti processwlai.

... ... "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[7] (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

[7] Emfazi ta' dina l-Qorti

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 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".

Fis-sentenza mghotija mill-Qorti tal-Appell (sede Superjuri) fl-ismijiet **ir-Repubblika ta' Malta vs. Kevin Sammut** (16 ta' Frar 2022), saret referenza ghas-sentenza hawn fuq citata ta' Bueze vs. Belgium u ddikjarat:

> *"12. Illi f'dan il-kwadru ta' fatti, huwa indubitat illi l-istqarrija pre-trial magħmula mill-appellat, kif sussegwentement minnu ġġuramentata, hija prova determinanti f'dan il-proċess penali u dan għaliex din hija inkriminatorja. L-appellat fil-mument li kien arrestat jidher li kien ferm vulnerabbli, għalkemm kif tajjeb stqarret l-Ewwel Qorti kien raġel matur ta' tmienja u għoxrin sena. Kien konfuż, u anzjuż. …*
>
> *13. Illi dan kollu seħħ, kif ingħad, u kif anke stqarret l-Ewwel Qorti fis3-sentenza appellata, meta l-appellat ma kellu ebda dritt li jiddefendi ruħu permezz ta' xi forma ta' assistenza legali, bit-twissija li tingħata tkun dik vigenti skont il-liġi f'dak iż-żmien, u injar mill-konsegwenzi tal-mod kif kien qiegħed iwieġeb għal mistoqsijiet li kienu qed isirulu, seta' inkrimina ruħu u dan mingħajr ma kellu dik id-difiża adegwata. Dan jista' jisarraf f'preġudizzju irrimedjabbli għall-appellat għalkemm fl-Istruttorja kien debitament assistit kif ukoll fl-istadju taċ-ċelebrazzjoni tal-ġuri huwa ser ikun assistit minn avukat u ser ikollu l-opportunita' iressaq id-difiża tiegħu. Illi allura, għalkemm l-istqarrija tad-09 ta' Settembru 2009 kienet rilaxxata skont il-liġi viġenti f'dak iż-żmien, madanakollu huwa indubitat illi din il-prova li ittieħdet meta l-appellat ma kellux il-jedd li jiddefendi ruħu, hija prova determinanti tant illi, bil-mod kif l-appellat wieġeb għal mistqosijiet li sarulu huwa seta' inkrimina ruħu irrevokabbilment u dan bi preġudizzju serju għarretta amministrazzjoni tal-ġustizzja. Dan ifisser illi għalkemm għad irid ikun iċċelebrat il-ġuri, madanakollu huwa bil-wisq evidenti f'dan l-istadju talproċeduri, meta il-Qorti hija mogħnija bil-provi kkumpilati, illi l-prova li l-Prosekuzzjoni qed tfittex li tagħmel permezz tal-istqarrija rilaxxata millappellat lil pulizija, u ftit tal-ħin wara ġġuramentata quddiem l-Inkwirenti, tista' tkun vvizzjata minħabba il-fatt illi l-appellat ma setax jiddefendi ruħu kif xieraq f'mument meta huwa kien vulnerabbli, u ma kienx assistit, kif indikat iktar 'il fuq, u għalhekk din il-prova għandha tiġi imwarrba. F'dan ilkaż, il-Qorti hija tal-fehma illi n-nuqqasijiet minnha ravviżati ma jistgħu blebda mod ikunu sanati anke jekk l-Imħallef togat neċessarjament irid iwissi lil ġurati fl-indirizz finali tiegħu b'dawn l-imsemmija nuqqasijiet, li x'aktarx ser jivvizjaw l-istqarrija magħmula mill-appellat miksuba mingħajr ma kellu ebda difiża, sabiex b'hekk ikun ferm riskjuż li huma jistrieħu fuqha meta jiġu biex jagħmlu il-ġudizzju aħħari tagħhom. Dan minħabba l-fatt li meta din ilQorti twieżen il-valur probatorju ta' din l-istqarrija meta komparat malpregudizzju irrimedjabbli li ser ibati l-appellat f'każ li l-istess tkun ammess, huwa indubitat illi il-preġudizzju rekat jiżboq il-valur probatorju tagħha."*

Minn qari tal-istqarrijiet tal-qua imputat jirrizulta li l-istess imputat inkrimina lilu nnifsu fir-rigward tal-maggor parti tal-imputazzjonijiet

dedotti fil-konfront tieghu. Kjarament jirrizulta ukoll li l-qua imputat kien ghad kellu biss dsatax-il sena u li dak iz-zmien kien ghad kellu fedina penali netta. Illi indubbjament id-dikjarazzjonijiet li ghamel fl-istqarrijiet tieghu ppregudikaw id-difiza tieghu.

Ghaldaqstant dina l-Qorti, wara li hadet konjizzjoni tal-provi migbura u l-gurisprudenza ricenti 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 tistrieh fuq l-istqarrijiet tal-qua imputat, sabiex tistabillixi r-reita o meno tal-imputat ghall-imputazzjonijiet odjerni u ghaldaqstant ser tghaddi sabiex tiskarta l-istess stqarrijiet.

Illi hekk kif inghad izjed 'il fuq f'din is-sentenza, fil-proceduri odjerni l-prosekuzzjoni ezebiet xhieda guramentata ta' **Jean Marc Dalli** ai termini tas-subartikolu 24A(12) u (13) tal-Kap. 101 tal-Ligijiet ta' Malta. Dan ix-xhud ma gie qatt prodott mill-prosekuzzjoni sabiex jiddeponi *viva voce* fil-prezenza tal-imputat. Konsegwentament l-imputat qatt ma kellu d-dritt li jaghmel il-kontro-ezami ta' dawn l-istess xhud.

Stabbiliti dawn il-fatti, dina l-Qorti trid tevalwa l-piz tal-prova li ghandha tinghata lix-xhieda guramentata tal-persuna hawn fuq imsemmija mehuda ai termini tal-artikolu 24A(12) u (13) tal-Kap. 101 tal-Ligijiet ta' Malta. F'dan ir-rigward issir referenza ghas-sentenza tal-Qorti tal-Appell (Sede Inferjuri) mghotija fis-26 ta' Mejju 2003 fl-ismijiet **<u>il-Pulizija vs. Pierre Gravina</u>**, fejn gie ddikjarat:

> *"Issa, huwa principju generali li "...ix-xhieda ghandhom dejjem jigu ezaminati fil-Qorti u viva voce" (Artikolu 646(1), Kap. 9). Ghal din ir-regola, pero`, hemm certi eccezzjonijiet li jipprovdi ghalihom l-istess Artikolu 646 fissubartikoli li jigu wara s-subartikolu (1). Hemm ukoll l-eccezzjoni tad-deposizzjoni mehuda in segwitu ghall-hrug ta' ittri rogatorja li bil-procedura traccjata fl-Artikolu 399 tal-Kodici Kriminali, procedura li giet ritenuta applikabbli anke ghal kawzi sommarji (ara* ***Il-Pulizija v. Angelo Grima*** *App. Krim. 18 ta' Ottubru, 1952), u li fil-prattika giet ukoll applikata mill-Qorti Kriminali f'xi kazijiet wara l-hrug tal-att ta' akkuza. U hemm l-eccezzjoni ta' meta xhud jinstema' f'daru minhabba mard jew xjuhija (Art. 647, Kap. 9). Jigi osservat li anke fil-kaz ta' xiehda permezz ta' rogatorji u ta' xhieda li jinstemghu f'darhom, l-imputat jew akkuzat ghandu dejjem il-jedd li jkun presenti waqt is-smigh tax-xhud jew li jahtar rappresentant tieghu ghal waqt tali smigh – Art. 647(3) u 399(2). L-ewwel sentenza tal-Artikolu 30A tal-Kap. 101 taghmilha cara li dak l-Artikolu qed jipprovdi ukoll eccezzjoni, <u>pero` mhux eccezzjoni ghar-regola kontenuta fl-Artikolu 646(1) tal-Kodici</u>*

<u>Kriminali izda ghar-regola kontenuta fl-Artikolu 661 ta' l-istess Kodici.</u> Minn dan isegwi, li anke meta l-prosekuzzjoni tkun trid taghmel uzu minn dikjarazzjoni guramentata mehuda skond l-imsemmi Artikolu 30A, ir-regola ghandha tkun li minn ikun ghamel dik l-istqarrija ghandu jingieb fil-qorti biex l-imputat jew akkuzat ikun jista' jikkontroezaminah dawrha. S'intendi, dan ma jfissirx li jekk ix-xhud, meta jigi ezaminat jew kontro-ezaminat, ibiddel jew jirritratta minn dak li jkun qal fid-dikjarazzjoni guramentata, allura dik id-dikjarazzjoni (jew il-parti mibdula jew ritrattata) ma tkunx aktar tista' tittiehed bhala prova kontra l-akkuzat; il-gudikant jista' xorta wahda, wara li jkun sema' lix-xhud, jasal ghall-konkluzzjoni li il-verita` hija dik kontenuta fl-istqarrija guramenetata u mhux dak li jkun iddepona fil-qorti x-xhud. Ifisser biss li, bhala regola, min ikun ghamel tali stqarrija guramentata ghandu jingieb il-qorti ghall-fini ta' kontroll da parti tal-akkuzat jew imputat. F'dan is-sens ukoll esprimiet ruhha l-Qorti Ewropea fil-kawza ***Kostovski v. Netherlands*** *(20 ta' Novembru, 1989) meta qalet li d-dritt ta' akkuzat li jikkonfronta xhud migjub kontra tieghu*

> ***does not mean, however, that in order to be used as evidence statements of witnesses should always be made at a public hearing in court: to use as evidence such statements obtained at the pre-trial stage is not in itself inconsistent with paragraphs (3)(d) and (1) of Article 6, provided the rights of the defence have been respected. As a rule, these rights require that an accused should be given an adequate and proper opportunity to challenge and question a witness against him, either at the time the witness was making his statement or at some later stage in the proceedings*** *((1990) 12 E.H.R.R.434, para. 41)."*

L-istess principju gie pronunzjat fis-sentenza tal-Qorti Kriminali tat-8 ta' April 2010, fl-ismijiet Ir-**<u>Repubblika ta' Malta vs Matthew-John Migneco</u>**:

"S'intendi, dana l-Artikolu 30A tal-Kap. 101 irid dejjem jinqara fid-dawl tad-disposizzjonijiet ġenerali tal-Kodiċi Kriminali (eċċetwat l-Artikolu 661 tal-istess Kodici, li għalih l-Artikolu 30A jagħmel deroga espressa). Issa, l-Artikolu 549(4) (u ma jistax ikun hemm dubju li l-intervent ta' Maġistrat taħt is-subartikoli (12) u (13) tal-Art. 24A tal-Kap. 101 hija forma ta' inkjesta dwar l-in genere b'modalitajiet kemm xejn differenti meħtieġa għall-finijiet tal-istess Kap. 101) u 646(2) tal-Kap. 9 huma ċari fil-portata tagħhom: id-deposizzjoni regolarment mogħtija fl-inkjesta dwar l-in genere … tista' tingieb bhala prova, u mhux sempliċiment għall-finijiet ta' kontroll, <u>basta, pero`, li x-xhud jinġieb ukoll fil-qorti biex jiġi eżaminat viva voce</u> … ħlief jekk ix-xhud ikun mejjet, ikun barra minn Malta jew ma jkunx jista' jinstab… (ara l-proviso tas-subartikolu (2) tal-imsemmi Artikolu 646)." (sottolinear ta' din il-Qorti).

Fis-sentenza tal-Qorti Kriminali tas-6 ta' Lulju 2016, fl-ismijiet **<u>Ir-Repubblika ta' Malta vs Charles Paul Muscat</u>**, b'referenza għall-Artikolu

30A tal-Kap. 101 u l-Artikolu 661 tal-Kap. 9 u wara li gew ikkonfermati l-principji stabbiliti permezz tas-sentenzi hawn fuq imsemmija, ingħad hekk:

> *"Izda jekk f'dak l-istadju* (guri) *huma jiddikjaraw li ser jaghzlu li ma jixhdux biex ma jinkrimnawx irwiehom fil-process penali li jkun ghadu pendenti fil-konfront taghhom, imbaghad f'dak l-istadju il-gurati ghandhom jigu ggwidati meta jigu biex jiznu il-valur probatorju tal-istqarrijiet guramentati u dan ghaliex "The right to a fair administration of justice holds so prominent a place in a democratic society that it cannot be sacrificed to expediency."*
>
> *Dan ghaliex kif gie deciz fil-kaz* ***Luca v Italy*** *[(2003) 36 EHRR 46], inghad mill-Qorti Ewropeja dwar id-Drittijiet tal-Bniedem:-*
>
> > *"As the court has stated on a number of occasions . . . it may prove necessary in certain circumstances to refer to depositions made during the investigative stage (in particular where the witness refuses to repeat his deposition in public owing to fears for his safety, a not infrequent occurrence in trials concerning Mafia-type organisations). If the defendant has been given an adequate and proper opportunity to challenge the depositions, either when made or at a later stage, their admission in evidence will not in itself contravene Article 6.1 and 3(d). The corollary of that, however, is that where the conviction is both solely or to a decisive degree based on depositions that had been made by a person whom the accused has had no opportunity to examine or to have examined, whether during the investigation or at the trial, the rights of the defence are restricted to an extent that is incompatible with the guarantees provided by Article 6."*
>
> *Dan ifisser allura illi hemm erba' kriterji li jridu jigu ikkunsidrati:*
>
> *1. Illi x-xhieda bhala regola trid tinghata viva voce fil-Qorti fejn l-akkuzat ikollu kull opportunita' li jikkontrolla dak li jghid ix-xhud.*
>
> *2. Il-fatt illi x-xhieda ma jixhdux madanakollu ma ghandux iwassal ghall-inammissibilita` tal-istqarrija minnhom rilaxxata fl-istadju tal-investigazzjonijiet jew fil-pre-trial stage u dan ghaliex irid jittiehed in konsiderazzjoni l-fatturi kollha tal-kaz, bhal perezempju fil-kaz meta xhud ma jistax jingieb jixhed ghax ikun miet.*
>
> *3. L-affidabbilita ta' dik l-istqarrija u tax-xhud li jkun irrilaxxjaha.*
>
> *4. Finalment jekk dik ix-xhieda guramentata wahedha hijiex l-unika prova inkriminanti u deciziva fil-konfront tal-persuna akkuzata."*

Stabbiliti dawn il-principji, fl-ewwel lok jinghad li fil-kaz in dezamina ma gewx osservati d-dittami tal-artikolu 646(1) tal-Kodici Kriminali li jistipula li:

> *(1) Bla ħsara tad-dispożizzjonijiet li ġejjin ta' dan l-artikolu, ix-xhieda għandhom dejjem jiġu eżaminati fil-qorti u vivavoce.*

L-unika eccezzjonijiet ghal din ir-regola huma s-segwenti (a) meta jitqiesu ċ-ċirkostanzi tal-każ, huwa evidenti lill-Qorti li xhieda viva voce tista' tikkawża ħsara psikoloġika lix-xhud u (b) jekk ix-xhud ikun mejjet, (c) ikun barra minn Malta jew (d) ma jkunx jista' jinsab. Ic-cirkostanzi tal-persuna hawn fuq

imsemmija ma jaqghu fl-ebda wahda minn dawn l-eccezzjonijiet. Jinghad ukoll illi minn ezami tax-xhieda guramentata mghotija jirrizulta li ghalkemm f'istanzi jissemma l-qua imputat ma jinghatawx bizzejjed dettalji sabiex wiehed ikun jistgha jikkumbaca dak li nghad fix-xhieda guramentata mal-parametri ta' zmien relevanti ghall-imputazzjonijiet odjerni. Di piu' l-imsemmija persuna affaccja proceduri kriminali in konnessjoni ma fatti mertu ukoll tal-proceduri odjerni u ghaldaqstant huwa impellenti li din il-Qorti tizen tajjeb l-imsemmija xhieda qabel ma taghzel li tistrieh fuqha ai fini ta' sejbien ta' htija jew altrimenti. Ghaldaqstant f'dawn ic-cirkostanzi din il-Qorti ma hijiex tal-fehma li jkun *safe and satisfactory* li hija tistrieh fuq ix-xhieda guramentata tal-persuna hawn fuq imsemmija meta l-imsemmija xhud ma xehdux *viva voce* fil-prezenza tal-imputat hekk kif rikjest mil-ligi b'tali mod li l-istess imputat ikun jista' jikkontrolla u jaghmel il-kontro-ezami tal-istess xhieda u per konsegwenza ser tiskarta l-istess ai fini ta' kunsiderazzjonijiet dwar ir-reita o meno tal-imputat fir-rigward tal-imputazzjonijiet odjerni.

Illi stabbilit dawn il-punti preliminari kif ukoll tenut kont li l-affarijiet elevati mir-residenza tal-qua imputat ma nstabux li kienu kontenenti sustanzi illeciti, dina l-Qorti hija kompletament sprovista minn kwalunkwa prova in sostenn tal-imputazzjonijiet dedotti fil-konfront ta' Cedric Zammit. Ghalkemm huwa minnu li fid-dawl tat-talba tal-imputat ai termini tal-artikolu 8 tal-Kap. 537 tal-Ligijiet ta' Malta tressqu xhieda mid-difiza sabiex jixhdu dwar id-dipendenza tal-qua imputat fuq sustanzi illeciti fiz-zmien relevanti tal-imputazzjonijiet odjerni – Dr. Roberta Holland u Dr. Edward Curmi. Din l-Qorti ma hiex tal-fehma li semplici dikjarazzjoni mill-professjonisti, li ghal xi zmien segwew lill-imputat, li l-qua imputat kien dipendenti fuq 'l-ecstasy' fi zmien ta' reati odjerni ghandha wahedha tkun prova bizzejjed li twassal sal-grad ta' lil hinn minn kull dubbju dettat mir-raguni li l-qua imputat huwa hati tal-imputazzjonijiet hekk kif dedotti fil-konfront tieghu u dana specjalment meta l-qua imputat originarjament ma giex akkuzat b'pussess semplici tal-ecstasy.

Ghaldaqstant fid-dawl tar-ragunijiet suesposti dina l-Qorti ma hijiex tal-fehma li l-imputazzjonijiet dedotti mill-Prosekuzzjoni gew sodisfacentament ppruvati sal-grad rikjest mil-ligi u ghaldaqstant ser tghaddi sabiex tillibera lill-qua imputat mill-imputazzjonijiet kollha dedotti fil-konfront tieghu.

Decide:

Ghal dawn il-mottivi, dina l-Qorti qed issib lill-qua imputat Cedric Zammit mhux hati tal-imputazzjonijiet dedotti fil-konfront tieghu u konsegwentament qed tilliberah mill-istess.

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

Christine Farrugia

Deputat Registratur