



QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI
MAGISTRAT DR ELAINE MERCIECA LL.D

PULIZIJA

(Spettur Johann J. Fenech)

kontra

CHARLOT CALLEJA

(I.D. No. 192782(M))

Kaz Nru.: 46/2011

Illum, 8 ta' Marzu 2022

Il-Qorti,

Wara li rat l-imputazzjonijiet migjuba fil-konfront tal-imputat, **Charlot Calleja** ta' 28-il sena, iben Emanuel u Margaret nee' Grima, imwieled il-Pieta' fit-30 ta' Marzu 1982, residenti gewwa 19, Triq il-Ponta, Isla u detentur tal-karta tal-identita' bin-numru 192782(M), permezz ta' liema gie akkuzat talli:

1. F'dawn il-Gzejjer, fl-24 ta' Novembru 2010 u matul ix-xhur ta' qabel, kellu fil-pussess tieghu id-droga eroina specifkata fl-ewwel skeda ta' l-Ordinanza dwar il-Medicini Perikoluzi, Kapitulu 101 tal-Ligijiet ta' Malta meta ma kienx fil-pussess ta' awtorizzazzjoni ghall-importazzjoni jew ghall-esportazzjoni mahrug mit-Tabib Principali tal-Gvern skond id-dispozizzjonijiet tar-4 u 6 Taqsima ta' l-Ordinanza u meta ma kienx bil-licenzja jew xort' ohra awtorizzat li jimmanifattura, jew iforni d-droga msemmija u meta ma kienx b'xi mod iehor bil-licenzja tal-President ta' Malta li jkollu d-droga msemmija fil-pussess tieghu u naqas li jipprova li d-droga msemmija giet fornuta lilu ghall-uzu tieghu skond ir-ricetta kif provdut fir-Regolamenti msemmija bi ksur tar-Regoli ta' l-1939 dwar il-Kontroll Intern tad-Drogi Perikoluzi (GN 292/1939) kif sussegwentament

emendati u dan bi ksur ta' l-Ordinanza dwar il-Medicini Perikolużi, Kap 101 tal-Ligijiet ta' Malta;

2. Il-Qorti kienet mitluba sabiex tittratta mal-imputat bhala wiehed li sar recediv b'diversi sentenzi tal-Qorti tal-Magistrati (Malta) kif ukoll talli kiser kundizzjoni imposta fuqu mill-Magistrat Dr. A. Vella LL.D. nhar is-17 ta' Gunju 2010;

Rat li l-Qorti giet ukoll mitluba sabiex f'każ ta' htija, barra milli tapplika l-piena skont il-ligi, tordna lill-imputat iħallas l-ispejjeż li għandhom x'jaqsmu mal-ħatra ta' l-esperti ai termini tal-Artikolu 533 tal-Kap. 9 tal-Ligijiet ta' Malta;

Rat ix-xhieda;

Rat l-atti kollha tal-każ u d-dokumenti esebiti, inkluż l-Ordni tal-Avukat Ġenerali ai termini tas-sub-artikolu (2) tal-Artikolu 22 tal-Ordinanza dwar il-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 Imhalled tat-28 ta' Lulju 2021²;

Qiset ukoll li fl-udjenza tal-14 ta' Frar 2022, id-difiza talbet għall-isfilz tal-istqarrija galadarba dina ttiehdet fi zmien fejn l-imputat ma kienx assistiet minn avukat ta' fiducja tieghu waqt it-tehid tal-istess stqarrija³;

Semgħet is-sottomissjonijiet tal-partijiet;

Ikkunsidrat

Illi in sostenn tal-imputazzjonijiet miġjuba kontra l-imputat, il-Prosekuzzjoni ressqet l-istqarrija rrillaxata mill-imputat lill-pulizija fl-24 ta' Novembru 2010, x-xhieda tal-ufficjal investigattiv is-Supratendent Johann J. Fenech u xhieda tal-ex Surgent 1086 Johann Micallef. Mill-provi mressqa mill-prosekuzzjoni jirrizulta li waqt li nhar l-24 ta' Novembru 2010 l-pulizija (PS1086 u PC213) kienu qed jagħmlu ronda fil-Marsa (fl-inhawi tal-*Park and Ride*) nnutaw vettura u go fiha persuna li kienet qed tagixxi b'mod suspettuz. Din il-vettura giet imwaqqfa u saret tfittxija fejn instab bicca foil b'xi sustanza ta' lewn kannella (suspettata eroina) flimkien ma pajp bil-foil. Ix-xufier li gie identifikat bhala l-qua imputat, gie arrestat u mehud gewwa id-Depot tal-Pulizija għal izjed investigazzjonijiet. Hemmhekk għall-habta tas-6.30pm ittiehditlu stqarrija fejn l-

¹ Fol. 6 tal-atti processwali.

² Fol. 64 tal-atti processwali.

³ Fol. 69 tal-atti processwali.

imputat ammetta li kellu relapse għall-vizzju tad-droga partikolarment għad-droga eroina xi sitt xhur qabel l-arrest tiegħu. Fil-fatt jispjega li beda jiehu pakkett ta' Eur. 10 darba kull hmistax jew kull meta jfettillu.

Is-sustanza misjuba fl-isfera ta' kontroll tal-qua imputat ma giet qatt ezebieta fil-proceduri odjerni u għaldaqstant lanqas biss giet analizzata.

Fl-udjenza tat-18 ta' Ottubru 2021 il-Prosekuzzjoni ddikjarat li qed taghlaq il-provi tagħha⁴ filwaqt li fl-udjenza tal-14 ta' Frar 2022 id-difiza ddikjarat li ma għandiex provi xi tressaq u għaldaqstant għalqet il-provi tagħha⁵.

Illi minkejja li skond ix-xhieda tal-ufficcjali tal-pulizija l-qua imputat allegatament inqabad *flagrante delicto* fil-pussess tad-droga (suspettata eroina), l-imsemmija sustanza li allegatament instabet fil-pussess tal-imputat ma giet qatt ipprezenta fil-proceduri odjerni u għaldaqstant lanqas ma giet qatt analizzata bil-ghan li jigi stabbiliet jekk is-sustanza kinitix effettivament sustanza illecita jew le. Stabbilit dan, l-unika prova mressqa mill-prosekuzzjoni in sostenn tal-ewwel imputazzjoni hija biss l-istqarrija rrillaxata mill-qua imputat fl-24 ta' Novembru 2010.

Illi jirrizulta li dina l-istqarrija mehuda fl-24 ta' Novembru 2010 ittiehdet skond il-ligi vigenti dak iz-zmien għaldaqstant jidher li dina l-istqarrija bhala prova ittiehdet skond dak li kien jistipula l-Kodici Kriminali dak iz-zmien. Mill-istqarrija jidher li l-imputat gie mwissi fil-prezenza ta' PC642 Joseph Camilleri li "*M'intix obbligat li titkellem sakemm ma tkunx tixtieq li titkellem, imma dak li tghid jista' jingieb bi prova*".⁶ Illi in oltre mill-korp tal-istqarrija jirrizulta ukoll li qabel beda l-interrogatorju l-imputat gie mgħoti d-dritt tal-assistenza legali, liema dritt il-qua imputat kien irrifjuta. Dikjarazzjoni ffirmata mill-qua imputat f'dan is-sens ma giet qatt ipprezentata fl-atti processwali odjerni. PC 642 Joseph Camilleri li jidher li kien xhud tal-volontarjeta' tal-istqarrija ma giet qatt prodott sabiex jixhed fil-proceduri odjerni u dana minkejja li mill-atti processwali ma jirrizultax li d-difiza ezentat lill-prosekuzzjoni mill-htiega ta' dan ix-xhud. Kif ingħad iktar 'il fuq f'din is-sentenza fl-udjenza tal-14 ta' Frar tas-sena 2022, id-difiza talbet lil din il-Qorti tordna l-isfilz tal-imsemmija stqarrija galadarba dina ttiehdet bi ksur tad-drittijiet tal-qua imputat galadarba l-istess imputat ma setghax ikun assistiet minn avukat jew prokuratur legali ta' fiducja tiegħu waqt it-tehid tal-istess stqarrija.

Mill-atti processwali ma jirrizultax li kien hemm ragunijiet validi li jzommu lill-imputat milli jkun assistiet permezz ta' avukat jew prokuratur legali waqt l-

⁴ Ara fol. 67 tal-atti processwali.

⁵ Ara fol. 69 tal-atti processwali.

⁶ Fol. 25 tal-atti processwali

interrogazzjoni. Fil-fatt mill-istqarrija nnifisha jirrizulta li l-qua imputat kien gie offrut il-possibilita' li jikkonsulta ma avukat qabel l-interrogatorju (izda mhux waqt). Isegwi ghalihekk li probabilmnt 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 (2010) il-ligi kienet tippermetti biss li l-imputat jkun jista' jikkonsulta ma avukat qabel ma tittiehed l-istqarrija sa massimu ta' siegħa.

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 lawyer⁷ (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

⁷ Emfazi ta’ dina l-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”.

Ghalkemm fil-kaz odjern jidher li l-qua imputat irrifjuta d-dritt ghall-assistenza legali qabel it-tehid tal-istqarrija dana ma jfissirx li l-qua imputat kien jirrifjuta d-dritt ghall-assistenza legali waqt l-interrogatorju kieku dan gie offrut lilu. Minghajr ma dina l-Qorti tidhol fi spekulazzjonijiet mhux mehtiega jrid jinghad li wiehed ma jistghax jekwipara d-dritt ta' assistenza legali qabel l-interrogatorju ghal ma dritt ta' assistenza legali waqt l-interrogatorju. Li kjarament jirrizulta huwa li waqt l-istqarrija l-qua imputat inkrimina lilu nnifsu sal-grad li a bazi biss tal-istess stqarrija l-prosekuzzjoni istitwiet il-proceduri odjerni fil-konfront tal-imputat. Fil-fatt jirrizulta kjarament li l-unika prova in sostenn tal-ewwel imputazzjoni hija l-istqarrija.

Ghaldaqstant dina l-Qorti, wara li hadet konjizzjoni tal-provi pprezentati 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 thossx li jkun opportun li tistrieħ fuq l-istqarrija sabiex tistabillixi r-reita o meno tal-imputat ghall-ewwel imputazzjoni dedotta fil-konfront tal-qua imputat. Dana

f'cirkostanzi fejn (a) l-istqarrija ttiehdet minghajr ma l-qua imputat kien legalment assistiet waqt l-interrogatorju; (b) l-istqarrija rrillaxata hija wahda inkriminanti; (c) il-prosekuzzjoni ma rressqet l-ebda prova ohra hlief l-istqarrija in sostenn tal-imputazzjonijiet odjerni u dana minkejja li skond ix-xhieda ta' ufficjali li kienu involuti fit-tfittxija l-qua imputat instab f'pussess ta' sustanza (suspettata eroina), liema sustanza ma giet qatt ezebieta fl-atti processwali odjerni u lanqas analizzata; (d) minkejja li ma kienx hemm ezenzjoni mid-difiza, x-xhud tal-volontarjeta' tal-istqarrija ma gie qatt prodott u (e) galadarba l-qua imputat qed jikkkontesta l-validita' tal-istess stqarrija.

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

Per konsegwenza, galadarba hekk kif inghad iktar 'il fuq f'din is-sentenza, ghajr l-istqarrija ma kien hemm l-ebda prova ohra li tista' tissustanzja l-ewwel imputazzjoni dedotta fil-konfront tal-imputat, dina l-Qorti ser tghaddi sabiex tillibera lill-imputat mill-istess.

Galadarba l-qua imputat ser jigi lliberat mill-ewwel imputazzjoni dedotta fil-konfront tieghu, lanqas ma hija ser tirrizulta pruvata t-tieni imputazzjoni li tirrigwarda r-recidiva u l-ksur ta' Ordni ta' Probation. Konsegwentament ser jigi lliberat minn dina l-imputazzjoni ukoll.

Decide

Ghal dawn il-mottivi dina l-Qorti qeghda tillibera lill-qua imputat, Charlot Calleja mill-imputazzjonijiet kollha dedotti fil-konfront tieghu.

Finalment, fir-rigward tat-talba tal-prosekuzzjoni sabiex l-imputat jigi ordnat ihallas l-ispejjez li ghandhom x'jaqsmu mal-hatra tal-esperti fit-termini tal-artikolu 533 tal-Kodici Kriminali, dina l-Qorti tiddikjara li ma hemmx lok ghal tali ordni galadarba f'dawn il-proceduri ma gewx mahtura esperti.

DR. ELAINE MERCIECA BA. LL.D.

Christine Farrugia

Deputat Registratur