



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

MAGISTRAT DR ELAINE MERCIECA LL.D

**PULIZIJA
(Spettur Justine Grech)**

kontra

CHRISTABEL AZZOPARDI

Kaz Nru.: 174/2016

Illum, 24 ta' Mejju 2022

Il-Qorti,

Wara li rat l-imputazzjonijiet migjuba fil-konfront tal-imputata, **Christabel Azzopardi**, bint Jason u Moira *nee'* Abela, mwiolda tal-Pieta', nhar l-4 ta' Jannar, 1995, residenti gewwa 29, *Flat 3*, Triq San Mikiel, Bormla, u detentrici tal-karta tal-identita' bin-numru 25495M, senjatament akkuzata talli;

F'dawn il-gzejjer, fis-17 ta' Novembru, 2014, u fis-sena ta' qabel din id-data;

1. Kellha fil-pussess taghha d-droga kokajina specifikata fl-ewwel skeda tal-Ordinanza dwar il-Medicini Perikoluza, Kap. 101 tal-Ligijiet ta' Malta meta ma kinitx 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 kinitx bil-licenzja jew xort'ohra awtorizzata li timmanifattura, jew li tforni d-droga msemija u meta ma kinitx b'xi mod iehor bil-licenzja mill-President ta' Malta li jkollha d-droga msemija fil-pussess taghha u naqset li tipprova li d-droga msemija giet fornuta lilha ghall-uzu taghha skond ir-ricetta kif provdut fir-regolamenti msemija u dan bi ksur tar-Regoli tal-1939 dwar il-Kontroll Intern tad-Drogi Perikolu (G.N. 292/1939) kif sussegwentament emmendati u bi ksur tal-Ordinanza dwar il-Medicini Perikolu, Kap. 101 tal-Ligijiet ta' Malta;

2. Kellha fil-pussess taghha d-droga herojina specificata fl-ewwel skeda tal-Ordinanza dwar il-Medicini Perikolu, Kap. 101 tal-Ligijiet ta' Malta meta ma kinitx 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 kinitx bil-licenzja jew xort'ohra awtorizzata li timmanifattura, jew li tforni d-droga msemija u meta ma kinitx b'xi mod iehor bil-licenzja mill-President ta' Malta li jkollha d-droga msemija fil-pussess taghha u naqset li tipprova li d-droga msemija giet fornuta lilha ghall-uzu taghha skond ir-ricetta kif provdut fir-regolamenti msemija u dan bi ksur tar-Regoli tal-1939 dwar il-Kontroll Intern tad-Drogi Perikolu (G.N. 292/1939) kif sussegwentament emmendati u bi ksur tal-Ordinanza dwar il-Medicini Perikolu, Kap. 101 tal-Ligijiet ta' Malta;
3. Talli kkommetiet reat waqt li kienet taht ordni ta' *probation*, moghtija mill-Qorti ta' Malta, ppreseduta mill-Magistrat Dr. N. Galea Sciberras LL.D., nhar it-3 ta' Gunju, 2014, liema sentenza saret definittiva u ma tistax tigi mibdula.

Semgħet 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 Medicini Perikolu (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 datat it-28 ta' Lulju 2021 kif ukoll l-ezenzjoni tal-partijiet mgħotija lil dina l-Qorti fl-udjenza tal-10 ta' Novembru 2021 mis-smigh mill-gdid tal-provi ġia mismugħa minn dina l-Qorti diversament ppreseduta;

Rat il-verbal tal-udjenza tat-30 t'April 2019, fejn gie ddikjarat li dina l-Qorti (diversament ppreseduta) kienet ġia trattat mal-qua imputata għal ksur tal-Ordni

ta' Probation b'sentenza tad-19 ta' Jannar 2018. F'dan is-sens giet ipprezentata sentenza mmakata bhala Dok. CA¹;

Semghet is-sottomissjonijiet tal-partijiet fir-rigward tal-piena;

Ikkunsidrat

i. Fatti tal-kaz:

Illi l-fatti tal-kaz jirrisalu lura ghal Marzu tas-sena 2014, meta l-Pulizija rceviet rapport mill-isptar Mater Dei li l-qua imputata kienet qed tigi rekoverata fl-istess sptar u dana in segwietu ghall-overdose ta' sustanzi illegali. F'Novembru tas-sena 2014, l-Pulizija giet infurmata li l-qua imputata kienet regghet dahlet l-isptar u kienet qed tigi rekoverata ghall darba ohra minn overdose ta' sustanzi illeciti. Illi Azzopardi rrillaxxat zewgt stqarrijiet lill-pulizija wahda fit-12 ta' Novembru 2014 u l-ohra fis-16 ta' Frar 2015. Illi qabel ma rrillaxxat l-istess zewgt stqarrijiet il-qua imputata irrifjutata d-dritt tal-assistenza legali qabel l-istqarrija. Fl-ewwel stqarrija l-qua imputata ammettiet mal-pulizija li hija kienet dahlet l-isptar b'hass hazin madanakollu ma tat l-ebda dettalji ohra ghaliex iddikjarat li ma tiftakarx x'gara ezatt. Fl-istess stqarrija hija kienet ammettiet li qabel kienet tuza l-kokajina. Illi fir-rigward tal-istqarrija mehuda fi Frar tas-sena 2015 hija tikkonferma li kien hassa hazin wara li hija uzat is-sustanza eroina.

ii. Kunsiderazzjonijiet dwar htija:

Illi fl-ewwel lok dina l-Qorti ser tanalizza l-valur probatorju tal-istqarrijiet rrillaxxati mill-qua imputata lill-pulizija fit-12 ta' Novembru 2014 u fis-16 ta' Frar 2015.

Mill-atti processwali jirrizulta li qabel it-tehid tal-imsemmija stqarrijiet mill-pulizija, fiz-zewgt okkazzjonijiet 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, fir-rigward tal-istqarrija mehuda fis-16 ta' Frar 2015 giet ipprezentata dikjarazzjoni (Dok. JG²) iffirmata mill-imputata fil-prezenza ta' diversi xhieda. Id-dikjarazzjoni fir-rigward tal-ewwel stqarrija ma gietx ipprezentata mill-prosekuzzjoni. Il-volontarjeta tal-imsemmija dikjarazzjonijiet u stqarrijiet ma gew qatt ikkontestati mid-difiza u xehdu numru ta' xhieda f'dan ir-rigward. Dawn iz-zewgt stqarrijiet jidher li ttiehdu skond il-ligi vigenti ta' dak iz-zmien u cioe fis-sena 2014 u 2015 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-istqarrijiet u dana

¹ Fol. 16 tal-atti processwali.

² Fol. 41 tal-atti processwali

galadarba l-ligi vigenti dak iz-zmien dan ma kinitx tippermettj. 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 assistjeta 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 assistjeta 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 mgħoti fil-kaz **Phillipe Beuze v il-Belgiu** (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 għalfejn ma tigiex offruta l-assistenza tal-avukat. F'dan il-pronunzjament il-Qorti adottat il-kriterju tal-*overall fairness of the proceedings* sabiex tistħarreg jekk seħhitx o meno leżjoni tad-dritt għal smiegh xieraq u ddikjarat li l-Qorti għandha dejjem tistħarreg 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.”

... .. “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 lawyer³ (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):

³ Emfazi ta’ dina l-Qorti

“(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-istqarrijiet rillaxxati 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-istqarrijiet taghha ippregudikaw id-difiza taghha. Jirrizulta ukoll li l-istqarrija hija l-unika prova konkretta fil-konfront taghha ghal dak li jirrigwarda l-ewwel u t-tieni imputazzjoni dedotti fil-konfront taghha galadarba l-prosekuzzjoni qatt ma ressqet prova medika u diretta ta' x'wassal li l-imputata tigi rikoverata gewwa l-isptar Mater Dei fiz-zewgt okkazzjonijiet in kwistjoni.

Ghaldaqstant dina l-Qorti, wara li hadet konjizzjoni tal-provi migbura u l-gurisprudenza relatata mal-valur probatorju li hija ghandha taghti l-istqarrijiet, 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-imsemmija stqarrijiet, sabiex tistabillixi r-

reita o meno tal-imputata ghall-imputazzjonijiet odjerni u ghaldaqstant ser tghaddi sabiex tiskarta l-istess.

Illi stabbilit dan, fin-nuqqas tal-imsemmija stqarrija, dina l-Qorti hija tal-fehma li l-ewwel u t-tieni imputazzjoni dedotta fil-konfront tal-qua imputata ma gewx ippruvati sal-grad rikjest mill-ligi galadarba, hekk kif inghad izjed 'il fuq, ma hemm l-ebda prova fl-atti processwali dwar ir-raguni l-ghaliex il-qua imputata kienet giet rikoverata l-isptar fiz-zewgt okkazzjonijiet mertu tal-kaz odjern.

Illi ghal dak li jirrigwarda t-tielet imputazzjoni dedotta fil-konfront tal-qua imputata, jinghad illi galadarba ma hijiex ser tinstab htija fir-rigward tal-ewwel zewgt imputazzjonijiet dedotti kontra Azzopardi, konsegwentament lanqas ma tista tirrizulta htija fuq din it-tielet imputazzjoni. Jinghad ukoll li mill-provi mressqa fl-atti processwali odjerni kjarament jirrizulta li l-imputata kienet gia giet trattata b'sentenza ta' dina l-Qorti (diversament preseduta) datata 19 ta' Jannar 2018 fir-rigward tal-Ordni mghotija ai termini tas-sentenza datata 3 ta' Gunju 2014.

Decide

Ghal dawn il-mottivi dina l-Qorti qeghda tiddikjara lill-imputata Christabel Azzopardi mhux hatja tal-imputazzjonijiet kollha dedotti fil-konfront taghha u konsegwentament qed tilliberaha mill-istess.

MAGISTRAT DR. ELAINE MERCIECA BA. LL.D.

Christine Farrugia

Deputat Registratur