



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

MAGISTRAT DR ELAINE MERCIECA LL.D

**PULIZIJA
(Spettur Nikolai Sant)**

Vs

**CLAUDIO MALLIA
(ID 0557681M)**

Kaz Nru.: 129/2016

Illum, 18 ta' Lulju 2022

Il-Qorti,

Wara li rat l-imputazzjonijiet miġjuba fil-konfront tal-imputat, **Claudio Mallia** ta' erbgha u tletin (34) il-sena iben Anthony u Rita nee' Cuschieri imwieved il-Pieta' nhar it-8 ta' Ottubru 1981 u joqghod Bieba A, Flat 7, Triq Sant' Orsla, Valletta u detentur tal-karta tal-identita' bin-numru 0557681(M), akkuzat talli fis-sena 2015 u fix-xhur ta' qabel gewwa dawn il-Gzejjer;

1. Kellu fil-pussess tieghu d-droga herojina specificata fl-ewwel skeda ta' l-Ordinanza dwar il-Medicini perikoluza Kap. 101 tal-Ligjiet ta' Matla meta ma kienx fil-pussess ta' awtorizzazzjoni ghal-importazzjoni jew ghall-esportazzjoni mahrug mit-Tabib Principali tal-Gvern skont id-

disposizzjonijiet tar-4 u s-6 Taqisma ta' l-Ordinanza u meta ma kienx bil-licenzja jew xort' ohra awtorizzat li jimmanifattura jew li jforni d-droga imsemmija u meta ma kienx b'xi mod iehor bil-licenzja mill-President ta' Malta li jkollu d-droga imsemmija fil-pussess tieghu u naqas li jipprova li d-droga imsemmija giet fornuta lilu ghall-uzu tieghu skont ir-ricetta kif provdut fir-regolamenti msemmija u dan bi ksur tar-regoli ta' l-1939 dwar il-kontroll intern tad-drogi perikolużi (G.N.292/1939) kif sussegwentement emmendati u bi ksur ta' l-Ordinanza dwar il-Medicini Perikolużi Kap. 101 tal-Ligijiet ta' Malta;

2. Ikkommetta reat waqt li kien that ordni ta' probation, moghtija mill-Qorti ta' Malta, preseduta mill-Magistrat Dr. A. Micallef Trigona L.D. nhar id-29 ta' Lulju 2015, liema sentenza saret definittiva u ma tistax tigi mibdula.
3. Sar recidiv b'sentenza moghtija mill-Qorti ta' Malta preseduta mill-Magistrat Dr. M. Farrugia LL.D. nhar il-15 ta' Gunju 2014 liema sentenza saret definittiva u ma tistax tigi mibdula.

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 Imhalled tat-28 ta' Lulju 2021

Ghal kull bon fini rat l-ezenzjoni tal-partijiet ghal-ismigh mill-gdid tax-xhieda mismugha minn dina l-Qorti diversament preseduta;

Semghet is-sottomissjonijiet tal-partijiet;

Ikkunsidrat:

Illi l-fatti tal-kaz odjern jirrisalu lura ghat-22 ta' Jannar 2016 meta l-pulizija rceviet informazzjoni kunfidenzjali li kien hemm persuna gewwa triq is-Serkin, il-Marsa, li setghet kienet qed titraffika d-droga. Il-Pulizija marru fuq il-post u nnotaw fl-imsemmija triq lill-qua imputat – Claudio Mallia. Minn tfittxija fuq il-persuna tieghu nstab mobile, cwievet u flus kontanti (Eur. 20). Tfittxija fil-vettura tieghu rrizultat fin-negattiv. Madanakollu fil-vicinanze ta' fejn kien hu, gewwa

hajt (bejn skip tal-hadid u bankina) nstabu diversi sustanzi allegatament illegali. Dawn l-oggetti gew elevati madanakollu ma gew qatt ipprezentati fil-proceduri odjerni. Mallia gie arrestat u mehud il-Kwartieri Generali tal-Pulizija. Hemmhekk huwa rrillaxxa stqarrija fejn iddikjara li kien ilu jabbuza mill-heroina minn mindu kellu erbatax-il sena u li kien ilu madwar ghaxar xhur ma jikkonsma l-heroina. A bazi ta' din id-dikjarazzjoni l-imputat gie akkuzat bl-imputazzjoni odjerna u cioe' pussess semplici l-herojina fis-sena 2015 u fix-xhur ta' qabel. Fl-interrogazzjoni huwa gie mistoqsi ukoll dwar l-oggetti elevati mill-hajt hekk kif hawn fuq imsemmi madanakollu l-qua imputat baqgha jinnega li dawk huma tieghu u fil-fatt il-prosekuzzjoni ma akkuzat lill-imputat bl-ebda akkuza f'dan ir-rigward.

Konsegwentament jirrizulta car li l-kaz kollu tal-prosekuzzjoni jistrieħ unikament fuq l-istqarrija rrillaxxata mill-qua imputat fl-istadju tal-investigazzjonijiet. L-imsemmija stqarrija giet irrillaxxata fit-23 ta' Jannar 2016. Qabel ma beda l-interrogatorju jirrizulta li l-imputat gie mghoti d-dritt ghas-silenzju kif ukoll id-dritt li jikkonsulta ma avukat jew prokuratur legali. L-imputat irrifjuta dan id-dritt li kien limitat biss għall-assistenza legali qabel l-istqarrija u in sostenn ta' dan iffirma dikjarazzjoni li giet esebita fl-atti processwali odjerni bhala dok. NS. L-imputat ghazel ukoll li jiffirma l-istqarrija rrillaxxata minnu, li giet esebita fl-atti processwali u immarkata bhala Dok. NS1.

Mill-istess stqarrija esebita (Dok. NS1) u mid-dikjarazzjoni għar-rifjut tal-parir legali (Dok. NS), u jirrizulta car li l-imputat ma kienx gie mghoti d-dritt tal-assistenza legali waqt l-istqarrija. Mill-atti processwali ma jirrizultax li kien hemm ragunijiet impellenti li jzommu lill-imputat li jkun hekk assistiet. Fil-fatt jirrizulta li l-qua imputat gie offrut id-dritt għall-assistenza legali qabel (mhux waqt) l-interrogazzjoni u dana dejjem skond il-ligi vigenti dak iz-zmien. Isegwi għalhekk li probabilment l-unika raguni l-għaliex l-imputat ma kienx mghoti l-possibilita' li jkun mghejjun minn avukat waqt l-interrogazzjoni kienet l-għaliex il-ligi vigenti dak iz-zmien ma kinitx tippermettieha. Dak iz-zmien li fiha ttieħdet l-istqarrija odjerna (Jannar 2016) il-ligi kienet tippermetti biss li l-imputat jkun jista' jikkonsulta ma avukat qabel ma tittieħed 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 lawyer² (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

² Emfazi ta' dina l-Qorti

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”.

Fil-kaz odjern li jirrizulta huwa li l-qua imputat gie offrut u ghazel li jikkonsultax ma avukat qabel l-interrogatorju mill-pulizija izda ma kienx offrut id-dritt ghall-assistenza legali waqt l-istqarrija. Minn qari tal-istess stqarrija kjarament jirrizulta li l-qua imputat inkrimina lilu nnifsu fir-rigward tal-imputazzjonijiet migjuba fil-konfront tieghu mill-prosekuzzjoni u li l-istqarrija hija l-unika prova tal-prosekuzzjoni fil-konfront tal-imputat. Ghaldaqstant dina l-Qorti, wara li hadet konjizzjoni tal-provi migjuba 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 interament fuq l-istqarrija sabiex tistabillixi r-reita o meno tal-imputat ghall-imputazzjonijiet odjerni. 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 ghall-imputazzjonijiet dedotti fil-konfront tieghu. Fin-nuqqas ta' l-imsemmija stqarrija, u galadarba kif gia nghad din kienet l-unika prova in sostenn tal-ewwel imputazzjoni, dina l-Qorti ma tista' qatt issib lill-imputat hati tal-istess ewwel imputazzjoni migjuba fil-konfront tieghu.

Galadarba, din l-Qorti ser tkun qed tillibera lill-imputat mill-ewwel imputazzjoni, lanqas ma jistghu jirrizultaw l-bqija tal-imputazzjonijiet dedotti fil-konfront tieghu. Dan l-ghaliex sabiex jissussistu dawn l-imputazzjonijiet rimanenti, huwa fl-ewwel lok mehtieg li l-Qorti issib htija fl-imputat ghal-ewwel imputazzjoni dedotta fil-konfront tieghu - li ghar-ragunijiet hawn fuq spjegati ma tistax issir.

Decide:

Ghal dawn il-mottivi, din il-Qorti qed issib lill-qua imputat, Claudio Mallia, mhux hati tal-imputazzjonijiet dedotti fil-konfront tieghu u konsegwentament qed tilliberah mill-istess.

MAGISTRAT DR. ELAINE MERCIECA BA. LL.D.

Christine Farrugia

Deputat Registratur