



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

Magistrat Dr. Elaine Mercieca LL.D.

**Il-Pulizija
(Spettur Edmond Cuschieri)**

kontra

**DANIEL MICALLEF
ID: 318792(M)**

Kaz Numru: 63/18

Illum 14 ta' Lulju 2022

Il-Qorti

Rat l-imputazzjonijiet migjuba kontra l-imputat Daniel Micallef, ta' 25 sena, bin Alfred u Josette nee' Saliba, detnetur tal-karta tal-identita' bin-numru 318792(M), imwieled nhar l-1 ta' Lulju 1992, gewwa Haz-Zabbar u residenti fi 22, Triq Dawret il-Wied, Mosta, akkuzat talli fil-5 ta' Lulju 2013 ghall-habta tas-sebgha u nofs ta' filghaxija f'dawn il-Gzejjer:

1. Kellu fil-pussess tieghu il-pjanta Cannabis kollha jew bicca minnha bi ksur ta' l-Art. 8 (d) tal-Kap. 101 tal-Ligijiet ta' Malta, liema droga instabet f'tali cirkustanzi li juru li ma kinitx ghall-uzu esklussiv tieghu.
2. U aktar ukoll talli fl-istess data, lok u cirkostanzi kellu fil-pussess tieghu air-pistol tal-ghamla Gamo bin-numru ta' registrazzjoni 04/4c/038/442/06 minghajr licenzja tal-Kummissarju tal-Pulizija jew ta' xi awtorita' ohra kompetenti;

Rat u semghet ix-xhieda;

Rat id-dokumenti esebiti u l-atti processwali kollha ta' dan il-kaz.

Rat l-Ordni tal-Avukat Generali datata s-26 ta' Marzu tas-sena 2018, *ai termini* tas-subartikolu (2) tal-Artikolu 22 tal-Ordinanza dwar il-Medicini Perikoluzi (Kapitolu 101 tal-Ligjiet ta' Malta), li permezz tieghu ordna li l-imputat jitressaq quddiem din il-Qorti biex iwiegeb ghall-imputazzjonijiet migjuba kontra tieghu;

Rat illi fl-udjenza tad-29 t'April 2019, l-imputat irregistra ammissjoni in kwantu l-akkuza tal-pussess tal-pjanta cannabis pero dan biss in kwantu dan kien ghall-uzu personali tieghu, liema ammissjoni l-imputat rega kkonfermaha wara li l-Qorti taghtu zmien bizzejjed biex jahsibha u li kellu wkoll id-dritt li jirtiraha¹;

Rat illi fl-udjenza tal-15 ta' Frar 2021, id-difiza talbet lil din il-Qorti (diversament preseduta) tassumi l-funzjoni ta' Qorti dwar id-droga ai termini tal-artikolu 8(3) tal-Kap. 537 tal-Ligijiet ta' Malta. Din it-talba gie irtirata permezz ta' nota ntavolata nhar is-17 ta' Marzu 2022;

Rat illi din il-kawza giet assenjata lil din il-Qorti kif preseduta b'digriet datat it-28 ta' Lulju 2021 moghti mill-Prim'Imhallef Mark Chetcuti² u rat ukoll l-ezenzjoni tal-partijiet mis-smigh mill-gdid tal-provi gia mismugha minn din il-Qorti diversament ippreseduta³;

Ikkunsidrat

Il-fatti tal-kaz odjern jirrisalu lura ghall-5 ta' Lulju 2013 ghall-habta tas-sebgha ta' filghaxija meta l-pulizija giet infurmata permezz ta' informazzjoni anonima li fi Triq il-Wej direzzjoni lejn in-Naxxar kien hemm erbgha persuni go karozza bin-numru ta' registrazzjoni DAN 989 li kienu qed jagixxu b'mod suspettuz u li wiehed minnhom kellu arma tan-nar. Il-pulizija kkuntatjaw lis-sid tal-vettura li certu Alfred Micallef li min-naha tieghu nforma lill-pulizija li l-vettura tieghu kienet fil-pussess tal-ibnu – Daniel Micallef, il-qua imputat. Daniel Micallef mar minn jeddu l-ghassa tal-Pulizija tal-Mosta. Minn tfittxija li saret fil-vettura tieghu gie nnotat li taht is-seat tal-passigier fl-istess vettura kien hemm air pistol tal-ghamla Gamo bis-serial number 44C03844206 (Dok. EC) filwaqt li that is-seat ta' wara tal-istess vettura instabet 9 sachets kontenenti s-sustanza

¹ Fol. 29 tal-atti processwali.

² Fol. 58 tal-atti processwali.

³ Fol. 62 tal-atti processwali.

suspettata cannabis. Sussegwentament saret tfittxija fir-residenza tieghu (li huwa kien jirrisjedi fiha flimkien mal-familja tieghu) fejn fil-kamra tieghu nstabu 3 mobile phones, Eur.1,375 kif ukoll sustanza suspettat cannabis. Waqt il-kors tal-investigazzjonijiet l-imputat irrilaxxa ukoll stqarrija li giet ezebieta u mmarkata bhala Dok. EC4 u dana wara li rrifjuta d-dritt li jiehu parir legali qabel it-tehid tal-istess stqarrija (Dok. EC5). Fix-xhieda tieghu l-ispertur Cuschieri ikkonferma li wara li kien ghamel l-indagini tieghu fir-rigward tal-mobile phones, ma rrizulta xejn inkriminanti. Is-sustanza suspettata Cannabis li giet elevata mir-residenza, giet esebieta u analizzata mill-espert tal-Qorti mahtur ghal dan l-iskop. L-espert mahtur, l-ispizjar Godwin Sammut f'dan ir-rigward ikkonkluda:

“Illi fuq estratti mehdua mill-haxix ta’ lewn ahdar li hemm fid-dokument immarkat K/B/39/19 instabet is-sustanza Tetrahydrocannabinol (THC). Il-piz total tal-haxix kien ta’ 0.36 grammi. Il-purita’ ma setax issir minhabba li l-ammont tal-haxix kien ftit. Din is-sustanza tigi mill-pjanta tal-Kannabis u hija kkontrollata bil-ligi that Taqsima III Sezzjoni 8 tal-Kapitolu 101 tal-Ligijiet ta’ Malta.

Illi fuq estratti mehuda mis-sustanzi ta’ lewn kannella li hemm fid-dokument immarkat K/B/39/19 instabet is-sustanza Tetrahydrocannabinol (THC). Il-piz totali tas-sustanzi kien ta’ 5.16 grammi u l-purita’ tat-THC kienet ta’ circa 20%.”⁴

L-ispizjar Sammut ma jidhirx li rrellata dwar is-sustanza elevata mill-vettura u cioe’ d-disa’ sachets suspettati cannabis.

Illi l-istqarrija giet mehuda fis-6 ta’ Lulju 2013 wara li l-qua imputat gie infurmat bid-dritt tas-silenzju. Madanakollu mill-istess stqarrija jirrizulta li Micallef irrifjuta d-dritt li jiehu parir legali qabel ma jigi nterrogat. Mill-istess stqarrija ma jirrizultax li l-istess Micallef gie offrut id-dritt ghall-assistenza legali waqt l-interrogatorju. Mill-atti processwali ma jirrizultax li kien hemm ragunijiet impellenti li jzommu lill-imputat li jkun hekk assistiet. Fil-fatt mill-istqarrija pprezentata jirrizulta li l-qua imputat gie offrut id-dritt ghall-assistenza legali qabel (mhux waqt) l-interrogazzjoni u dana dejjem skond il-ligi vigenti dak iz-zmien. Isegwi ghalhekk li probabilment l-unika raguni l-ghaliex l-imputat ma kienx mgħoti l-possibilita’ li jkun mgħejjun 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 (Lulju 2013) il-ligi kienet tippermetti biss li l-imputat jkun jista’ jikkonsulta ma avukat qabel ma tittiehed l-istqarrija sa massimu ta’ siegħa. Id-dritt tal-assistenza legali waqt l-

⁴ Fol. 37 tal-atti processwali.

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 lawyer⁵ (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.....

⁵ Emfazi ta’ dina l-Qorti

“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. Dak iz-zmien il-qua imputat kellu biss l-eta' ta' wiehed u ghoxrin sena. Minn qari tal-istess stqarrija kjarament jirrizulta li l-qua imputat inkrimina lilu nnifsu mhux biss fir-rigward tas-sustanza misjuba fir-residenza tieghu izda ukoll ghal numru ta' reati ohra. Dan sar bi pregudizzju ghad-difiza tieghu fl-eventwali proceduri fil-konfront tieghu. Dan tant kien il-kaz li adirittura l-

imputazzjonijiet migjuba kontra l-qua imputat kwazi jistrieħu unikament fuq l-istqarrija tal-imputat.

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 dawġ 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. Isegwi għalhekk li għar-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' tiegħu o meno għall-imputazzjonijiet dedotti fil-konfront tiegħu.

Illi galadarba gie stabillit dan, dina l-Qorti ma tistax ma tosservax li fil-kaz odjern il-prosekuzzjoni għazlet li tistrieħ kwazi unikament fuq l-istqarrija rrillaxxata mill-qua imputa.

Jibda biex jingħad li fir-rigward tat-tieni imputazzjoni migjuba fil-konfront tal-qua imputat Daniel Micallef, u cioe' dik rigwardanti l-pussess t' *air-pistol* mingħajr id-debita licenzja tal-Kummissjarju tal-pulizija, il-pulizija ma ressqet l-ebda prova għajr l-istqarrija tal-imputat. Fil-fatt il-prosekuzzjoni lanqas ma ressqet prova dwar jekk l-arma in kwistjoni hijiex irregistrata u lanqas prova dwar jekk l-istess arma hijiex irregistrata f'isem il-qua imputat. Konsegwnetament u tenut kont dak iddikjarat iżjed qabel f'din is-sentenza rigward l-istqarrija, fuq nuqqas ta' provi dina l-Qorti ser tillibera lill-qua imputat minn din l-imputazzjoni.

Illi fir-rigward tal-ewwel imputazzjoni jingħad li l-unika xhieda li xehdu dwar ic-cirkostanzi li fihom instabet is-sustanza cannabis kienu l-ispettur Edmond Cuschieri, li mix-xhieda tiegħu u anke mill-okkorenza esebieta jirrizulta car li huwa ma kienx prezenti għat-tfittxijiet li saru, u PS 1350 Christian Xuereb. PS1350 Xuereb fix-xhieda tiegħu jagħmel referenza għall-kontenut tal-okkorenza u jikkonferma l-istess bil-gurament. Mill-istess okkorenza jirrizulta li s-surgent Xuereb kien prezenti fit-tfittxija li saret gol-vettura bin-numru ta' regisrazzjoni DAN 989. Mill-provi mressqa mill-prosekuzzjoni dwar din il-vettura, la jirrizulta fuq min hi rregistrata u wisq inqas min kien qed juzaha fil-jum u l-hin indikat fic-citazzjoni (f'kaz li wiehed jiskarta l-istqarrija). Konsegwentament ma hemm l-ebda prova li torbot lill-qua imputat mal-affarijiet elevati mill-vettura. Illi fir-rigward tas-sustanza u l-affarijiet elevati mir-residenza tal-qua imputat, mill-okkorenza ma jirrizultax car min kienu l-ufficjali li

ghamli l-istess tfittxija u dana bil-ghan li wiehed ikun jistgha jiddetermina l-valur probatorju li ghandu jinghata dak irrapurtat fl-okkorenza dwar l-imsemmija oggetti misjuba (inkluz ir-raza Cannabis) u c-cirkostanzi precizi li fihom instabu. Ghal kull bon fini jinghad ukoll li, ghalkemm fil-konkluzzjoni tieghu x-xjenzat Godwin Sammut ikkonkluda li identifika s-sustanza tar-raza cannabis, il-prosekuzzjoni fl-ebda hin ma akkuzat lill-qua imputat bir-reat ipotezat fl-artikolu 8(a) tal-Kap. 101 tal-Ligijiet ta' Malta.

Illi madanakollu, jibqa' l-fatt li l-imputat irregistra ammissjoni in kwantu l-akkuza tal-pussess tal-pjanta cannabis pero dan biss in kwantu dan kien ghall-uzu personali tieghu. Din l-ammissjoni l-imputat rega kkonfermaha wara li l-Qorti taghtu zmien bizzejjed biex jahsibha u li kellu wkoll id-dritt li jirtiraha. L-ammissjoni tal-imputat tirreferi ghal data u hin specifiku indikat fl-imputazzjoni migjuba fil-konfront tieghu. Konsegwentament, fid-dawl ta' din l-ammissjoni, gie stabbilit sal-grad rikjest mil-ligi, li l-qua imputat kien fil-pussess xjenti tal-pjanta cannabis fil-gurnata u hin indikat fl-ewwel imputazzjoni.

Stabbilit dan, dak li jonqos li jigi stabbilit huwa jekk il-pussess xjenti tal-pjanta Cannabis kienx wiehed ghall-uzu esklussiv tal-qua imputat jew xort'ohra. Ghalkemm huwa suspettuz li l-qua imputat kien fil-pussess ta' 9 sachets suspettati pjanta cannabis f'vettura, din il-Qorti hija sprovista minn prova dwar kemm kien jizen kull sachet u kif kienet imqassma l-istess sustanza. Huwa ukoll suspettuz li fir-residenza tal-imputat kien hemm ammont sostanzjali ta' flus kontanti. Madanakollu din l-Qorti hija ukoll sprovista minn xhieda diretta tal-ufficjal tal-pulizija li ghamel l-istess tfittxija. Tenut kont dan, dina l-Qorti ma tistax tasal ghal konkluzzjoni li sal-grad rikjest mil-ligi, l-imputat kien fil-pussess xjenti tal-pjanta Cannabis, f'cirkostanzi li juru li ma kinitx ghall-uzu personali tieghu. Konsegwentament, fuq ammissjoni, l-qua imputat ser jinsab hati tal-pussess tal-pjanta cannabis in kwantu dan kien unikament intiz ghall-uzu esklussiv tal-imputat.

Illi fid-dawl tal-konkluzzjoni msemmija fil-paragrafu precedenti ghal dan u galadarba mill-provi mressqa ma jirrizultax li s-sustanza tal-pjanta Cannabis misjuba ma tiskorriex l-ammont ta' 7 grammi. Din l-imputazzjoni ser tigi 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 wieħed raġonevolment jemmen li tali pussess huwa għall-użu personali ta' tali persuna, **ma għandux jikkostitwixxi reat**, u l-persuna ma għandhiex tinzamm f'kustodja taħt arrest minbarra fejnhemm suspett raġonevoli ta' traffikar jew tmexxija ta' droga kannabis*

Illi allura għalkemm l-att vjolatatur 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 mghoddi wara l-bidu fis-sehh ta' dan l-Atti ħassar xi liġi oħra, kemm-il darba ma jidhirx ħsieb kuntrarju, t-ħassir m'għandux –

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

(b) jolqot it-ħaddim ta' xi liġi qabel ma kienet hekk imħassra jew xi haġa magħmula jew li thalliet issir taħt xi liġi hekk imħassra;

(c) jolqot xi dritt, privileġġ jew responsabbiltà miksuba jew mehuda taħt xi leġislazzjoni hekk imħassra jew liġeja minn xi leġislazzjoni bħal dik;

(d) jolqot xi penali, konfiska jew piena li wieħed seta' jehel dwar xi reat li jkun sar kontra xi liġi 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, obligazzjoni, responsabbiltà, penali, konfiska, jew piena kif intqal qabel,

u kull sħarriġ, proċedimenti legali, jew rimedju bħal dawk jistgħujinbdew, jitkomplew, jew jigu nforzati, u kull penali, konfiska jew piena bħal dawk jistgħu jigu 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 mogħtija mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem ibbazati fuq l-artikolu 7 tal-Kovenzjoni Ewropeja dwar il-Drittijiet tal-Bniedem, il-Qorti hija tal-fehma illi illum ebda piena ma għandha 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 ingħatat, 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-attività) 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' jitkompla u dan fid-dawl ta' dak li jipprovdi l-Att dwar l-Interpretazzjoni, madanakollu l-istess qieghed jitqies illi huwa leżiv tal-artikolu 7 tal-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem. (enfazi ta' dina l-Qorti)

F'dawn ic-cirkostanzi dina l-Qorti ser tghaddi sabiex tiddikjara procediment ezawriet fil-konfront tal-ewwel imputazzjoni.

Decide:

Ghaldaqstant, ghal dawn il-mottivi u wara li rat l-artikoli 8(d), 15A u 22(2)(b)(ii) tal-Kap. 101 tal-Ligijiet ta' Malta, l-artikolu 4A tal-Kap. 537 tal-Ligijiet ta' Malta, dina l-Qorti fir-rigward tal-ewwel imputazzjoni, tenut kont li dan ir-reat gie abbrogat qeghda tastjeni milli tiehu iktar konjizzjoni tal-imsemmija imputazzjoni migjuba fil-konfront tal-qua imputat Daniel Micallef filwaqt li qed tillibera lill-istess Daniel Micallef mit-tieni imputazzjoni migjuba fil-konfront tieghu.

Dr. Elaine Mercieca
Magistrat

Ms. Christine Farrugia
Deputat Registratur