



FIL-QORTI TAL-MAGISTRATI (MALTA)

BHALA QORTI TA' GUDIKATURA KRIMINALI

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

Illum, it-8 ta' Frar 2022

IL-PULIZIJA

VS

STEVE VASSALLO

(I.D. 13592(G))

Il-Qorti;

Rat l-imputazzjonijiet migjuba fil-konfront ta' **Steve Vassallo**, iben Mario u Carol *nee'* Borg, mwieled ir-Rabat, Ghawdex, nhar il-11 ta' April, 1992, residenti gewwa *Claire Court, Flat 3*, Triq tal-Qroqq, l-Imsida, u detentur tal-karta tal-identita' bin-numru 13592G, senjatament akkuzat talli;

Bejn Frar, 2012, u Marzu, 2012, f'hinijiet differenti:

1. Assocja ruhu ma' xi persuna jew persuni ohra f'dawn il-gzejjer jew barra minn dawn il-gzejjer sabiex jimporta, jbiegh jew jittraffika f'dawn il-gzejjer, medicina (*Cannabis grass*), bi ksur tad-dispozizzjonijiet tal-Ordinanza dwar il-Medicini Perikoluza, Kap. 101 tal-Ligijiet ta' Malta, jew ippromwova, kkostitwixxa, organizza, jew iffinanzja tali assocjazzjoni;
2. Importa jew gieghel li tigi mportata, jew ghamel xi haga sabiex tigi mportata medicina perikoluza (*Cannabis grass*) f'Malta, bi ksur tad-dispozizzjonijiet tal-Ordinanza dwar il-Medicini Perikoluza, Kap. 101 tal-Ligijiet ta' Malta;

Aktar talli f'dawn il-gzejjer bejn Jannar, 2012, u Marzu, 2012, f'hinijiet differenti;

3. Biegh jew xort'ohra ttraffika l-pjanta *Cannabis*, kollha jew bicca minnha, u dan bi ksur tal-Art. 8(e) tal-Ordinanza dwar il-Medicini Perikolużi, Kap. 101 tal-Ligijiet ta' Malta;
4. Kellu fil-pussess tieghu l-pjanta *Cannabis*, kollha jew bicca minnha, bi ksur tal-Art. 8(d) tal-Kap. 101 tal-Ligijiet ta' Malta;
5. Kellu fil-pussess tieghu r-raza mehuda mill-pjanta *Cannabis* jew xi preparazzjonijiet li jkollhom bhala bazi din ir-raza, bi ksur tal-Art. 8(a) tal-Kap. 101 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 Imhallef tat-28 ta' Lulju 2021²;

Rat l-ezenzjoni tal-partijiet ghal-ismigh mill-gdid tax-xhieda mismugha viva-voce minn dina l-Qorti diversament preseduta³;

Semghet is-sottomissjonijiet tal-partijiet;

Ikkunsidrat

Illi in sostenn tal-imputazzjonijiet miġjuba kontra l-imputat, il-Prosekuzzjoni ressqet is-segwenti xhieda u provi:

Xehed l-ispettur **Malcolm Bondin** li xehed dwar l-interieta tal-investigazzjoni u x'wassal ghall-arrest ta' Steve Vassallo. Fit-testimonjanza tieghu huwa ghamel referenza ghall-Proces Verbal rigward ix-xhieda guramentata ta' Alexander Hickey u ta' Stefan Francis Mintoff. Ta' min jinota li x-xhieda guramentata ta' Mintoff ma giet qatt ezebieta fl-atti processwali odjerni. Huwa jispjega li l-investigazzjoni kienet bdiet fil-konfront ta' Patrick Fountain u Gary Falzon⁴, li sussegwentament bl-assistenza taghhom il-pulizija waslu ghal diversi nies ohra fosthom il-qua imputat. Jiddikjara ukoll li fis-17 ta' April 2012 kien inhareg mandat t'arrest u tfittxija fil-konfront tal-qua imputat. Mit-tfittxija li saret fir-

¹ Fol. 4 tal-atti processwali.

² Fol. 87-88 tal-atti processwali.

³ Fol. 90 tal-atti processwali.

⁴ Zewgt persuni li ukoll ma gewx prodotti bhala xhieda fil-proceduri odjerni.

residenza tieghu nstabu diversi oggetti relatati mad-droga fosthom mizien, boroz vojta, envelope u xi tabakk. Huwa jispjega li Steve Vassallo kien gie mghoti d-dritt li jikkonsulta ma avukat qabel l-interrogazzjoni, liema dritt huwa kien irrifjuta⁵. Sussegwentament fl-istqarrija tieghu l-imputat spjega lill-pulizija li huwa kien kellu problema ta' droga kif ukoll spjega x'kien l-irwol tieghu fl-allegat attivita' kriminali.

Apparti x-xhieda tal-ispettur investigattiv (li fil-maggior parti tikkostitwixxi detto del detto) tressqu s-segwenti provi principali:

1. Proces Verbal rigwardanti x-xhieda guramentata mghotija minn Alexander Hickey;
2. L-ufficjali tal-pulizija li xehdu dwar l-ezekuzzjoni tal-mandat t'arrest u tfittxija mahrug fil-konfront tal-qua imputat Steve Vassallo;
3. L-istqarrija rrillaxata minn Steve Vassallo waqt l-investigazzjonijiet tal-pulizija;

1. Xhieda guramentata ta' Alexander Hickey mehuda a tenur tal-artikolu 30A tal-Kap. 101 tal-Ligijiet ta' Malta⁶:

Alexander Hickey gie mharrek diversi drabi mill-prosekuzzjoni sabiex jixhed fil-proceduri odjerni madanakollu, Hickey ghazel dejjem li ma jixhedx galadarba huwa kellu proceduri pendenti fil-konfront tieghu.

Ghaldaqstant, fin-nuqqas tax-xhieda viva voce t'Alexander Hickey fil-proceduri odjerni, wiehed irid necessarjament jiddetermina x'piz jista' jaghti lix-xhieda guramentata tieghu mehuda a tenur tal-artikolu 30A tal-Kap. 101 tal-Ligijiet ta' Malta.

L-imsemmi artikolu jistipula:

Minkejja d-dispożizzjonijiet tal-artikolu 661 tal-Kodiċi Kriminali, meta persuna tkun involuta f'xi reat kontra din l-Ordinanza, kull dikjarazzjoni magħmula minn dik il-persuna u li tiġi konfermata bil-gurament quddiem maġistrat, u kull xiehda mogħtija minn dik il-persuna quddiem xi qorti tista' tingieb bi prova kontra kull persuna oħra akkużata b'reat kontra l-imsemmija Ordinanza, kemm-il darba jinsab li dik id-dikjarazzjoni jew xiehda tkun saret jew ingħatat volontarjament, u ma gietx imgiegħla jew mehuda b'theddid jew b'biza, jew b'wegħdiet jew bi twebbil ta'vantaggi.

L-artikolu 661 tal-Kodiċi Kriminali jistipula:

⁵ Ara d-dikjarazzjoni a fol. 43 tal-atti processwali odjerni.

⁶ Dok. OD a fol. 11 tal-atti processwali odjerni.

Konfessjoni ma tagħmilx prova hlief kontra min jagħmilha, u mhix ta' preġudizzju għal ebda persuna ohra.

Għaldaqstant isegwi li minkejja r-regola ta' konfessjoni fejn l-istess konfessjoni ma tagħmilx prova hlief kontra min jagħmilha u ma tista qatt sservi ta' pergudizzju għall-persuna ohra, galadarba l-istqarrija tkun guramentata quddiem Magistrat jew tinghata f'Qorti, l-kontenut tagħha xorta jista' jingieb bhala prova.

Madanakollu, il-pożizzjoni ta' ko-akkużat hija regolata bl-artikolu 636(b) tal-Kap 9. Dan dejjem gie interpretat li, a contrario sensu, jekk ko-akkużat ma jkunx twiegħed jew inghata impunita', allura dan ma jistax jixhed qabel il-proċeduri kontrih ikunu ntemmu.

Minhabba li l-artikolu 30A ma jispeċifikax l-artikolu 636(b) tal-Kap 9 ukoll bhala esklużzjoni (flimkien ma l-artikolu 661), isegwi li tali stqarrija guramentata ma tistax tigi kkunsidrata bhala prova fil-konfront tal-qua imputat sakemm il-proċeduri kontra Alexander Hickey ma jkunux intemmu. Xi haga li ghada ma saritx sallum il-gurnata. Fil-fatt il-proċeduri kontra Alexander Hickey għadhom pendenti.

Irid jinghad li f'din l-istanza lanqas ma gew osservati d-dittami tal-artikolu 646(1) tal-Kodici Kriminali li jstipula 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 għal din ir-regola huma s-segweni (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 ta' Alexander Hickey ma taqgħa fl-ebda wahda minn dawn l-eccezzjonijiet. Isegwi għalhekk li minkejja x-xhieda guramentata ta' Alexander Hickey ipprezentata in atti kien necessarju li l-prosekuzzjoni tressaq sabiex jixhed viva voce fil-Qorti lil Alexander Hickey fejn huwa jkun sottomess għall-kontro-ezami tad-difiza. Dan ma sarx. Għaldaqstant fil-fehma ta' dina l-Qorti hija ma tistax tistrieħ fuq il-kontenut tal-istqarrija guramentata ta' Alexander Hickey ai fini ta' reita o meno tal-qua imputat fir-rigward tal-imputazzjonijiet dedotti fil-konfront tiegħu.

2. L-ufficjali tal-pulizija li xehdu dwar l-ezekuzzjoni tal-mandat t'arrest u tfittxija mahrug fil-konfront tal-qua imputat Steve Vassallo:

PS 279 Kevin Gauci u WPC297 Rhian Bartolo Spiteri xehdu li huma marru biex jezegwixxu l-mandat ta' arrest u tfittxija fil-konfront ta' Steve Vassallo fis-16 t'April 2012. Spjegaw li minn tfittxija fir-residenza Claire Court, Flat 3, Triq tal-

Qroqq, Msida fejn hemmhekk sabu diversi oggetti relatati mal-abbuz tad-droga. Fost dawn l-affarijiet instabu roaches; 3 sealing bags li kien fihom tracci, mizien digitali iswed, kif ukoll pakett tabakk Domingo li kien fih xi trab suspettat cannabis. Instab ukoll envelope international parcel li kellu miktub Amazon.it fuqu, apple laptop u pakkett tar-rizla b'bicciet neqsin.

Il-mizien; il-boroz tal-plastic trasparenti vojta; joint; il-pakkett tat-tabakk u l-envelopes li kien fihom xi karti gew analizzati mill-ispizjar Godwin Sammut (espert mahtur mill-Qorti ghal dan l-iskop). Fil-konkluzzjoni tieghu Sammut ddikjara li *“fuq estratti mehuda mill-joint u mit-tabakk ma nstabetx droga”*.⁷

Per konsegwenza Steve Vassallo ma nstabx li kien fil-pussess ta' l-ebda sustanza llecita mit-tfittxija li saret.

3. L-istqarrija rrillaxata minn Steve Vassallo

Illi jirrizulta li l-imputat irrilaxxa stqarrija lill-pulizija fis-17 ta' April 2012⁸. Illi qabel l-imsemmija stqarrija l-imputat irrifjuta d-dritt li jkellem u jikkonsulta ma avukat jew prokuratur legali tal-ghazla tieghu sa massimu ta' siegha qabel l-interrogazzjoni. In sostenn ta' giet ipprezentata dikjarazzjoni (Dok. MB1) iffirmata mill-imputat fil-prezenza ta' diversi xhieda. Dawn ix-xhieda gew ezentati milli jixhdu fil-proceduri odjerni mid-difiza. Dawn l-istqarrijiet jidher li ttiehdu skond il-ligi vigenti ta' dak iz-zmien u cioe fis-sena 2012, ghaldaqstant jidher li din l-istqarrija bhala prova hija *prima facie* ammissibli. Madanakollu kjarament jirrizulta li l-qua imputat ma giex offrut id-dritt li jkun assistit minn avukat jew prokuratur legali tal-fiducja tieghu waqt it-tehid tal-istqarrija u dana galadarba l-ligi vigenti dak iz-zmien dan ma kinitx tippermettih. Dina l-Qorti ma hijiex sejra tispekula x'kien jaghmel l-imputat kieku gie offrut dan il-jedd. Hu stat ta' fatt li ma giex offrut dan id-dritt u dana ghaliex il-ligi dak iz-zmien ma kinitx tippermetti li l-qua imputat ikun asistiet minn avukat waqt l-interrogatorju. Fil-fatt mill-atti processwali ma jirrizultax li kien hemm ragunijiet impellenti li jzommu lill-imputat milli jkun assistiet permezz ta' avukat jew prokuratur legali waqt l-interrogazzjoni tant li huwa fil-fatt gie offrut id-dritt li jikkonsulta ma avukat qabel.

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-Belgiu** (App. Numru 71409/10) tad-9 ta' Novembru 2018, li kien jitratta ukoll sitwazzjoni fejn il-ligi domestika rilevanti ma kinitx tippermetti l-assistenza

⁷ Ara fol. 61 tal-atti processwali.

⁸ Ara fol. 44 tal-atti processwali.

legali waqt l-interrogazzjoni u fejn ma kienx hemm ragunijiet impellenti ghalfejn 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 lawyer⁹ (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 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”.

Id-difiza fil-proceduri odjerni qed tattakka l-ammissibilita' tal-istqarrija fid-dawl tal-fatt li l-qua imputat ma kienx assistiet minn avukat waqt l-istess. Mill-istqarrija jirrizulta li l-qua imputat inkrimina lilu nnifsu fir-rigward tal-imputazzjonijiet kollha dedotti fil-konfront tieghu. Di piu', anke fid-dawl ta' dak

⁹ Enfazi ta' dina l-Qorti

li nġhad qabel f'din is-sentenza, jirrizulta ukoll li l-istqarrija hija l-unika prova fil-konfront tal-qua imputat fir-rigward tal-imsemmija imputazzjonijiet.

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 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-istqarrija sabiex tistabillixi r-reita o meno tal-imputat għal l-imputazzjonijiet odjerni. Dana meta fir-rigward tal-istess imputazzjonijiet dina l-Qorti hija sprovista minn provi oħra decizivi hekk kif ġia spjegat.

Illi fid-dawl ta' dak kollu li nġhad f'din is-sentenza, galadarba gew skartati x-xhieda guramentata ta' Alexander Hickery u l-istqarrija tal-qua imputat għar-ragunijiet hawn fuq imsemmija, ma jibqa assolutament l-ebda prova in sostenn tal-imputazzjonijiet dedotti fil-konfront tal-qua imputat. Dana iktar u iktar fid-dawl tal-konkluzzjonijiet tal-ispizjar Godwin Sammut fir-rigward tal-oggetti elevati mir-residenza tal-qua imputat.

Decide

Għaldaqstant, għal dawn il-mottivi, dina l-Qorti wara li rat l-artikoli rilevanti tal-ligi senjatament l-artikolu 8(a), (d) u (e) u s-subartikoli 22(1)(a), (f); 22(2)(b)(i) u (ii) tal-Kap. 101 tal-Ligijiet ta' Malta, qegħda **tillibera** lil qua imputat **Steve Vassallo** mill-imputazzjonijiet kollha dedotti fil-konfront tiegħu.

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

Christine Farrugia

Deputat Registratur