



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

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

Illum, is-17 ta' Mejju 2022

IL-PULIZIJA

VS

WAYNE CAMILLERI

(I.D. 314092(M))

Il-Qorti;

Rat l-imputazzjonijiet migjuba fil-konfront ta' **Wayne Camilleri** ta' 23 sena, iben Carmel u Josephine nee' Mallia, imwieled Pieta', nhar it-28 ta' Gunju 1992, residenti Blokk C, Flat 4, Triq l-Alfier De Medran, Tarxien, detentur tal-karta tal-identita' bin-numru 314092(M), senjatament akkuzat talli nhar il-15 t'Awwissu 2015 u fil-granet ta' qabel gewwa dawn il-gzejjer:

1. Kellu fil-pussess tieghu id-droga erojina specifikata fl-ewwel skeda tal-Ordinanza Dwar il-Medicini Perikoluzi, Kap. 101 tal-Ligijiet ta' Malta meta ma kontx 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 kienx bil-licenzja jew xort'ohra awtorizzat li jimmanifattura jew li jforni d-droga msemija u meta ma kienx mod iehor bil-licenzja mill-President ta' Malta, li jkollu d-droga msemija fil-pussess tieghu u naqas li jipprova li d-droga msemija giet fornuta lilu ghall-uzu tieghu skond ir-ricetta kif provdut fir-regolamenti msemija u dan bi ksur tar-regoli tal-1939 dwar il-kontroll intern tad-drogi perikoluzi (GN292/1939) kif sussegwentament emendati u bi ksur tal-Ordinanza dwar il-Medicini Perikoluzi, Kap. 101 tal-Ligijiet ta' Malta;

2. Talli kkommetta reat waqt perjoduoperattiv ta' sentenza sospiza, moghtija mill-Qorti ta' Malta, preseduta mill-Magistrat Dr. A. Vella nhar is-17 ta' Lulju 2013;
3. Talli kkommetta reat waqt li kien qieghed taht ordni ta' probation, moghtija mill-Qorti ta' Malta, preseduta mill-Magistrat Dr. A. Micallef Trigona, nhar is-6 ta' Novembru 2013 u nhar it-28 ta' Jannar 2015;

Rat u semghet 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-Mediċini Perikolużi (Kap. 101 tal-Liġijiet 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;

Semghet is-sottomissjonijiet tal-partijiet;

Ikkunsidrat

i. Fatti tal-Kaz

Illi l-fatti tal-kaz odjern jirrisalu lura għall-15 t' Awwissu tas-sena 2015, meta hu l-imputat, Dylan Camilleri, mar l-ghassa tal-pulizija fejn għamel rapport li fil-flat tagħhom (fejn kien hemm prezenti anke tfal) kien hemm sustanzi li aktarx kienu drogi. PS15 Butters U PC663 Scriha marru jagħmlu tfittxija fl-imsemmi fond fejn sabu numru ta' membri tal-familja kif ukoll lill-qua imputat fejn beda jagixxi b'mod konfuz. Minn tfittxija fil-gwardarobba tal-kamra tieghu nstabet siringa li dehret uzata. Minn tfittxija fil-kamra tal-banju nstab pakkett sigaretti li hekk kif induna li kienu ser jingabru l-qua imputat għaffgu u remieh. Minn analizi tal-istess pakkett irrizulta li kien kontenenti pakkett bi trab kannella. Dawn l-oggetti gew kollha elevati u mghoddija lill-ispettur Ciantar.

ii. Kunsiderazzjonijiet dwar htija:

Illi fl-ewwel lok dina l-Qorti ser tanalizza l-valur probatorju tal-istqarrija rrillaxxata mill-qua imputat lill-pulizija u dana anke fid-dawl tat-talba tad-difiza fl-udjenza tad-29 ta' Marzu 2022, permezz ta' liema ntab l-isfilz tal-istqarrija galadarba l-qua imputat ma kienx legalment assistiet waqt it-tehid tal-istess stqarrija. Din l-istqarrija giet irrillaxxata fis-16 t' Awwissu 2015 mill-ispetturi Herman Mula u Paula Ciantar.

¹ Fol. 13 tal-atti processwali.

Mill-atti processwali jirrizulta li qabel it-tehid tal-imsemmija stqarrija mill-pulizija, 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' dan giet ipprezentata dikjarazzjoni (Dok. PC2) iffirmata mill-imputat fil-prezenza ta' diversi xhieda. L-ispetturi Ciantar u Mula kkonfermaw l-volontarjeta' tal-imsemmija dikjarazzjoni. Din l-istqarrija jidher li ttiehdet skond il-ligi vigenti ta' dak iz-zmien u cioe fis-sena 2015 u 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 tippermettith. 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. Ghal kull bon fini jinghad ukoll li 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 it-tehid tal-istqarrija.

Illi l-guriprudenza lokali ricenti fir-rigward tal-assistenza legali waqt l-interrogatorju jidher li qed tistrieħ fuq l-insenjament mghoti 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 rilevanti ma kinitx tippermetti l-assistenza legali waqt l-interrogazzjoni u fejn ma kienx hemm ragunijiet impellenti ghalfejn ma tigiex offruta l-assistenza tal-avukat. F'dan il-pronunzjament il-Qorti adottat il-kriterju tal-*overall fairness of the proceedings* sabiex tistharreg jekk sehhitx o meno lezjoni tad-dritt ghal smiegh xieraq u ddikjarat li l-Qorti ghandha dejjem tistharreg ic-cirkostanzi partikolari tal-kaz, tenut kont ta' numru ta' kriterji, mhux ezawrjenti, elenkati fid-decijjoni taghha.

“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 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

² Emfazi ta’ dina l-Qorti

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”.

Minn qari tal-istqarrija rrillaxxata mill-qua imputat jirrizulta li l-istess imputat inkrimina lilu nnifsu fir-rigward tal-imputazzjonijiet dedotti fil-konfront tieghu. Illi indubbjament id-dikjarazzjonijiet li ghamel fl-istqarrija tieghu ippregudikaw id-difiza tieghu. Jirrizulta ukoll li l-istqarrija hija l-unika prova konkretta fil-konfront tieghu galadarba waqt it-tfittxija kien hemm diversi persuni fil-fond fejn saret it-tfittxija mill-pulizija u ghaldaqstant l-unika prova li kienet tikkrea ness

bejn l-oggetti elevati u l-qua imputat kienet propju l-istqarrija tieghu u dana fin-nuqqas ta' provi ohra mill-prosekuzzjoni.

Ghaldaqstant dina l-Qorti, wara li hadet konjizzjoni tal-provi migbura 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 hijiex tal-fehma li jkun opportun li tistrieħ fuq l-istqarrija, sabiex tistabillixi r-reita o meno tal-imputat għall-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 imputazzjoni dedotta fil-konfront tal-qua imputat ma gietx pruvata sal-grad rikjest mill-ligi galadarba fl-ewwel lok ma tressqitx il-prova tan-ness bejn l-allegati sustanzi illeciti mal-imputat u fit-tieni lok ma tressqitx il-prova li s-sustanzi elevati kienu illeciti fit-termini tal-ligi.

Illi galadarba dina l-Qorti ma hijiex ser issib htija fl-ewwel imputazzjoni, konsegwentament, lanqas ma ser jirrizultaw it-tieni u t-tielet imputazzjoni dedotti fil-konfront tal-qua imputat. Dana l-ghaliex biex tali imputazzjonijiet ikunu jistghu jissussitu l-imputat irid necessarjament jinsab hati li kkommetta l-ewwel imputazzjoni.

Decide

Ghal dawn il-mottivi dina l-Qorti qeghda tiddikjara lill-imputat Wayne Camilleri mhux hati tal-imputazzjonijiet kollha dedotti fil-konfront tieghu u konsegwentament qed tilliberah mill-istess.

Tordna d-distruzzjoni tad-droga u l-affarijiet relatati mal-uzu tad-droga esebiti, hekk kif din is-sentenza tghaddi in gudikat u dan taht il-harsien tar-Registratur li ghandu jirredigi process-verbal li jiddokumenta l-procedura tad-distruzzjoni, liema dokument ghandu jigi nserit fl-atti ta' din il-kawza mhux aktar tard minn hmistax-il jum minn tali distruzzjoni.

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

Christine Farrugia

Deputat Registratur

