



## **Qorti tal-Appell Kriminali**

**Onor. Imhalledf Consuelo Scerri Herrera, LL.D., Dip Matr., (Can), Ph. D.**

**Appell Nru: 2 / 2022**

**Il-Pulizija**

**(Spettur Bernard Charles Spiteri)**

**vs.**

**Edgar Ellul**

**Edmond Camilleri**

**Stephen Borg**

**Elton Cauchi**

**Anthony Caruana**

**Charles Caruana**

**Trevor Vella**

Illum 20 ta' Settembru, 2022

Il-Qorti,

Rat l-akkuzi dedotti kontra Edgar Ellul, detentur tal-Karta tal-Identita' Numru 812055 M, Edmond Camilleri, detentur tal-Karta tal-Identita' Numru 249070 M, Stephen Borg, detentur tal-Karta tal-Identita' Numru 344278 M, Elton Cauchi, detentur tal-Karta tal-Identita' Numru 515478 M, Anthony Caruana, detentur tal-Karta tal-Identita' Numru 299666 M, Charles Caruana, detentur tal-Karta tal-Identita' Numru 51377 M, Trevor Vella, detentur tal-Karta tal-Identita' Numru 412175 M, akkuzati quddiem il-Qorti tal-Magistrati (Malta) talli:

Nhar il-21 ta' Gunju, 2018 ghal habta tad-11.15p.m. waqt li kienu fit-Triq Guze D' Amato, Xewkija, kantuniera ma' Triq San Bert, Xewkija, u/jew fil-vicinanzi :

1. Harqu loghob tan-nar u cioe' stoppini ta' dijametru akbar minn centimetru u dan bi ksur tal-Tieni Skeda B(d) tal-L.S. 33.03.
2. U aktar talli fil-istess data, hin, lok u cirkostanzi b' nuqqas ta' hsieb, jew bi traskuragni jew b' nuqqas ta' hila [sic] jew professjoni taghhom, jew b' nuqqas ta' tharis ta' regolamenti tat-traffiku, ikkagunaw offiza ta' natura gravi fuq il-persuni [ta] Nigel Apap skond ma ccertifika Dr. J.K. Soler, M.D. Reg. No.2418.

Il-Qorti giet gentilment tigi mitluba sabiex tissospendi kull licenzja tan-nar tal-imputat fil-kors ta' dawn il-proceduri u dan skond l-Artikolu 26 B tal-Kap. 33 tal-Ligijiet ta' Malta;

Il-Qorti giet gentilment tigi mitluba wkoll sabiex f' kaz ta' htija tirrevoka l-licenzja jew licenzji tan-nar mahrugin skont din l-Ordinanza dwar l-Esplozivi u kif ukoll il-qorti ghandha b' zieda ma' kull piena ohra, fis-sentenza ghandha tapplika l-Artikolu 45 A (1) (a) jew 45 A (1) (b) tal-Kap. 33 tal-Ligijiet ta' Malta kif inhu l-kaz.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali, ta' nhar is-17 ta' Meju, 2022, fejn il-Qorti filwaqt li ddikjarat l-azzjoni mressqa fir-rigward tat-tieni imputazzjoni bhala wahda preskritta w kwindi hija estinta, lliberat mill-ewwel imputazzjoni lil Edgar Ellul, Elton Cauchi, Charles Caruana, Anthony Caruana u Trevor Vella, u wara li rat ir-regolament 14 (b) w it-Tieni Skeda fil-Partita B (d) tar-Regolamenti dwar il-Kontroll ta' Xoghlijiet tan-

Nar u Esplozivi ohra u l-artikoli 22, 29 u 31 tal-Ordinanza dwar l-Esplozivi, Kapitolu 33 tal-Ligijiet ta' Malta, sabet lill-imputati Stephen Borg u Edmond Camilleri hatja tal-ewwel imputazzjoni u kkundannathom hmistax il-elf ewro (€15,000) kull wiehed.

Rat l-atti u d-dokumenti kollha.

Rat il-fedina penali aggornata tal-appellanti esebita mill-prosekuzzjoni fuq ordni tal-Qorti.

Rat ir-rikors tal-appellanti Stephen Borg u Edmond Camilleri minnu pprezentat fis-26 ta' Mejju, 2022, fejn talab lil din il-Qorti tirriforma s-sentenza appellata u dana billi:

1. Tikkonfermaha in kwantu ddikjarat l-azzjoni mressqa fir-rigward tat-tieni (2) imputazzjoni bhala wahda preskritta w kwindi estinta u b' hekk ma sabithomx hatja taghha, u;
2. Fid-dawl tal-ewwel zewg (2) aggravji, *ossia* tal-aggravji ' A' u ' B' ta' dan l-umli appell, thassarha u tirrevokaha in kwantu sabithom hatja tal-ewwel (1) imputazzjoni u minflok tilliberahom minnha, jew;
3. B' mod sussidjarju u strettament minghajr pregudizzju ghat-talbiet precedenti *ossia* ghat-talbiet ' 1' u ' 2' u l-korrispondenti aggravji ' A' u ' B' , tvarja l-piena erogata b' piena iktar ekwa u gusta u dana fid-dawl tal-aggravju ' C' .

Rat illi l-appellanti hassew ruhhom aggravati bis-sentenza moghtija fil-konfront taghhom u b' hekk qieghdin jinterponu dan l-umli appell quddiem dina l-Onorabbli Qorti.

Illi ghal ragunijiet ovvjji, dan l-appell ma jikkoncernax dik l-imputazzjoni li l-appellanti gew liberati minnha *ossia* t-tieni (2) imputazzjoni.

Rat lli l-aggravji huma cari u manifesti u jikkonsistu fis-segwenti:

A. **Ic-Chinese Cakes u l-Istoppini qua prodotti piroteknici distintivi**

Ma hemmx dubbju li in kwantu l-ewwel (1) imputazzjoni migjuba kontra l-appellanti, l-Ewwel Onorabbli Qorti sejsset il-gudizzju taghha fuq dak konstatat fir-relazzjoni<sup>1</sup> tal-espert tekniku 86660 Staff Sergaent Patrick Vella f' dik il-parti fejn huwa tenna li fost ix-xoghol tan-nar armat fuq l-*iscaffolding* fil-jum *de quo* ma kienx hemm biss *Chinese Cakes* izda wkoll stoppini li jeccedu c-centimetru (1cm).

L-istess espert tekniku f' paragrafi 24<sup>2</sup> u 34<sup>3</sup> tar-relazzjoni tieghu jispjega x' inhi id-differenza bejn stoppini u *Chinese Cakes* u jishaqq testwalment hekk:

*“24. Fir-rigward tal-istoppini l-mekkanizmu ta' kif jahdmu huwa identiku ghal dak spjegat qabel u cioe' tac-Chinese Cakes. L-uniku differenza tal-istoppini hija li dawn jigu sparati individwalment peress li kull tubu ikun separat minn iehor*

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<sup>1</sup> Folio 10 *et seq* tal-atti tal-inkjesta dwar l-*in genere*.

<sup>2</sup> Folio 23 tal-atti tal-inkjesta dwar l-*in genere*.

<sup>3</sup> Folio 26 tal-atti tal-inkjesta dwar l-*in genere*.

u mhux ikkomunikati ma' xulxin kif [inhu l-kaz] fir-rigward tac-Chinese Cakes" [sottolinejar tal-appellanti].

"34. illi fir-rigward tax-xogholijiet tan-nar ta' mhux aktar minn tliet centimetri (3cm) permessibli li jinharqu, l-ligi ssemmi biss ic-Chinese Cakes. In oltre l-esponenti jirrileva illi t-terminu 'stoppini' li tirreferi ghalih biss il-ligi Maltija, ma jistghux jeccedu dijametru ta' centimetru (1cm).

Madanakollu l-esponenti jirrileva li kif gia spjegat aktar qabel fil-paragrafi 23 u 24 rispettivament, l-mekkanizmu ta' kif jahdmu u l-effetti finali ta' dawn iz-zewg prodotti piroteknici cioe' l-istoppini u *Chinese Cakes* huma simili ta' xulxin. **Kif ga spjegat aktar qabel, l-unika differenza bejniethom hija li c-Chinese Cakes jikkonsistu minn serje ta' kanen li jkunu kkomunikati ma' xulxin permezz ta' micca li tkun ghaddejja minn go kull kanna rispettiva li taghmel parti mic-Chinese Cake mentri l-istoppini jiffunzjonaw u jinharqu individwalment.**

L-esponenti huwa tal-opinjoni li dawn tal-ahhar cioe' l-istoppini huma meqjusa aktar siguri mic-*Chinese Cakes*, meta wiehed jikkonsidra il-mod kif jiffunzjonaw. Fir-rigward tal-istoppini, f' kaz illi jinqala xi haga mhux pjanata waqt il-hruq tax-xogholijiet tan-nar – kif filfatt gara f' dan il-kaz – l-operatur li jkun qiegħed jahraq l-imsemmi xogħol tan-nar b' mod remot, għandu cans li jwaqqaf il-kumplement tal-istoppini milli jinharqu peress li dawn jiffunzjonaw individwalment. Minn naha l-oħra mhux l-

istess japplika ghac-*Chinese Cakes* peress li dawn jikkonsistu minn serje ta' kanen li jkunu kkomunikati ma' xulxin permezz ta' micca u ghaldaqstant f' kaz li l-micca msemija tilhaq tigi mqabba, huwa impossibbli li wiehed jitfiha." [sottolinejar tal-appellanti].

Filwaqt li huwa minnu li dakinhar tal-akkadut, *ossia* nhar il-21 ta Gunju 2018, il-ligi, **dak iz-zmien**, kienet tipprojbixxi l-hruq ta' stoppini b' dijametru li jeccedi centimetru (1cm), **l-appellanti jishqu li ebda' wahda mill-kanen armata fuq l-iscaffolding nhar il-21 ta' Gunju 2018 ma kienet stoppin u dana billi l-prodott minnhom uzat kien fil-fatt *Chinese Cake***.

Jidher li l-espert tekniku 86660 Staff Sergaent Patrick Vella identifika u kklassifika dawg il-kanen jew tubi li kienu jeccedu c-centimetru (1cm) izda mhux it-tliet centimetri (3cm) bhala stoppini u mhux bhala *Chinese Cakes* unikament ghaliex kienu mifruxa fuq l-iscaffolding b' mod individwali u ma kienux jiformaw parti minn serje ta' kanen kkomunikati ma' xulxin permezz ta' micca - li kif spjegat huwa l-fattur uniku distintiv ta' dawn iz-zewg prodotti.

L-appellanti izda' jikkontendu, b' kull rispet, li l-espert 86660 Staff Sergaent Patrick Vella hawnhekk kien skorrett.

Ma jfissirx b' mod awtomatiku li ghax kanna tkun qeghda mifruxa u pozizzjonata b' mod solitu u individwali li dik l-istess kanna hija stoppin. *Di fatti*, dak li ghamlu l-appellanti f' dan il-kaz kien li firdu u individwaw uhud mil-kanen formanti parti mis-sett tac-*Chinese Cakes* u ramawhom

separatament u individwalment fuq *l-iscaffolding*. Dan sar mill-appellanti ghal zewg ragunijiet:

1. Sabiex l-ispettaklu pirotekniku jkun varjat, bi stili differenti ta' hruq, u;
2. Sabiex il-wirja tan-nar tkun wahda iktar sigura u dana billi, kif spjegat mill-espert tekniku 86660 Staff Sergaent Patrick Vella stess, kanna mahruqa individwalment tista' tigi kkontrollata ferm ahjar minn sett ta' kannen konnessi ma' xulxin u mahruqin f' daqqa.

Il-Legislazzjoni Sussidjarja 33.03 tal-Ligijiet ta' Malta imkien ma tirregola l-modalita' ta' kif ghandhom jinharqu *Chinese Cakes* u kwindi l-istess ligi imkien ma tistipula li l-kannen formanti parti minn kaxxa ta' *Chinese Cakes* ma jistghux jigu separati u individwati!

Propju hekk ghamlu l-appellanti fil-kaz odjern.

B' kull rispettt, l-appellanti jikkontendu li sempliciment ghaliex kanna tigi mifruda mill-bqija tas-sett ta-*Chinese Cake* ma jkunx ifisser li mill-mument tal-firda, dik l-istess kanna awtomatikament tittrasforma ruhha ghall-stoppin u ma tibqax *Chinese Cake*!

Daqstant iehor wiehed ma ghandux jidentifika kanna tan-nar bhala stoppin purament ghaliex l-istess kanna tkun mifruxa fuq *scaffolding* b' mod individwali. Jekk isir hekk (kif jidher li sar f' dan il-kaz) wiehed ikun qiegħed biss jassumi u assunzjonijiet u kongetturi ma ghandhom ebda' valur probatorju fil-kamp penali.

Din l-argumentazzjoni saħansitra issib konfort mir-relazzjoni ta' 86660 Staff Sergaent Patrick Vella stess fejn f' paragrafu 30<sup>4</sup> huwa tenna hekk:

*"30. Illi x-xogħol tan-nar inkwistjoni huwa kollu kemm hu manifatturat barra minn Malta u mhux lokalment."*

Kull min huwa intiz, dilettant jew midhla ta' nar pirotekniku ser jghidlek li, filwaqt li stoppini huma ferm simili għal *Chinese Cakes*, stoppini huma **manifatturati lokalment**. Minn naha l-oħra, *Chinese Cakes*, komunement magħrufa lokalment bħala ' *kaxxi tac-cinizi*' huma manifatturati barra u kwindi jinxtraw minn barra.

Dan xi jfisser? Proprju jfisser li gialadarba skont l-espert tekniku 86660 Staff Sergaent Patrick Vella n-nar kollu mifruż fuq l-*iscaffolding* de quo kien manifatturat barra minn Malta, mela allura ma kien hemm ebda' stoppin u kull kanna kienet *Chinese Cake* għal fini u l-effetti kollha tal-ligi.

Stante għalhekk li l-kanen ta' *Chinese Cakes*, anke fiz-zmien tal-akkadut de quo, seta' jkollhom dijametru sa massimu ta' tliet centimetri (3cm), ir-reita o menu giet nnewtralizzata tenut kont il-fatt li l-ikbar qies ta' kannen li nstabu fuq l-*iscaffolding* kienu ta' 2.8cm dijametru u dan kif konstatat mill-espert tekniku 86660 Staff Sergaent Patrick Vella f' paragrafu 32<sup>5</sup> tar-relazzjoni tiegħu:

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<sup>4</sup> Folio 25 tal-atti tal-inkjesta dwar l-*in genere*.

<sup>5</sup> Folio 25 tal-atti tal-inkjesta dwar l-*in genere*.



“... Fil-fatt l-akbar qies ta' kanen li nstabu ghandhom dijametru ta' 28.08mm li huwa ekwivalenti ghal 2.8cm; Ritratt PV14 jixhed dan.”

F' dan l-isfond pero' filwaqt li ghar-ragunijiet su espost l-appellanti jemmnu li ma kellhomx legalment jinstabu hatja tal-ewwel (1) imputazzjoni, ma jistghux ma jikkumentawx ukoll fuq l-assurdita u l-farsita' tal-posizzjoni legali kif vigenti fiz-zmien tal-akkadut *ossia* f' Gunju tas-sena 2018 fejn il-Legislazzjoni Sussidjarja 33.03 tal-Ligijiet ta' Malta kienet dak iz-zmien tesigi li stoppini ma jistghux jeccedu dijametru ta' centimtru (1cm) filwaqt li *Chinese Cakes* setghu ikunu ta' dijametru li ma jeccedix tliet centimetri (3cm).

Ir-raguni ma tridx forza u l-logika tissugerixxi li jekk stoppin huwa prodott li jinharaq b' mod izjed sigur meta kkumparat ma' *Chinese Cake* (kif anke suggerit u rimarkat mill-espert tekniku 86660 Staff Sergaent Patrick Vella), ma hemmx il-htiega l-kanna tieghu tkun irraq!

Anzi jekk xejn u ghal grazzja tal-argument biss, tenut kont il-fatt li *Chinese Cakes* huma potenzjalment izjed “*perikoluzi*”, kien ikun izjed ghaqli u jaghmel sens li l-ligi tiffissa dijametru irraq ghal kanen formanti parti minn *Chinese Cakes* u mhux bil-kontra.

Kien filfatt il-Legislatur stess li ntebah b' din l-anomalija, tant li permezz ta' emenda fil-ligi ntrodotta bl-Avviz Legali 264 tal-2019, il-posizzjoni giet regolarizzata u illum il-gurnata kemm *Chinese Cakes* u kif ukoll stoppini jistghu ikunu ta' dijametru li ma jeccedix tliet (3) centimetri. Testwalent, il-Partita B(d) tat-Tieni Skeda tal-Legislazzjoni Sussidjarja 33.03 tal-Ligijiet ta' Malta illum testwalment tiddisponi hekk:

*“(d) Stoppini, Chinese Cakes u xoghlijiet tan-nar simili, bil-kundizzjoni li jkunu ta’ dijamteru ta’ mhux izjed minn 3 centimetri. Dawn ghandhom jinharqu minn distanza ta’ mhux anqas minn erba’ metri ‘ l gewwa mill-faccata.”.* [sottolinejar tal-appellanti]

Dan ikun effettivament ifisser, kif ser jigi spjegat ahjar u f’ izjed dettal fl-aggravju li jmiss, li anke kieku in pessima ipotesi u ghal grazzja tal-argument biss huwa minnu li fost ix-xoghol tan-nar li kien ser jinharq nhar il-21 ta’ Gunju 2018 kien hemm l-istoppini, ebda’ wahda mill-kannen ma kienet teccedi 2.8cm dijamteru u kwindi kollox kien perfettament in linea mal-ligi kif attwalment vigenti *ossia* kif emendata bl-Avviz Legali 264 tal-2019.

B. Dwar l-applikabbilita’ u l-osservanza tal-massima legali *nullum crimen sine lege*

Dan l-aggravju qieghed jingieb il-quddiem minghajr pregudizzju ghal dak ta’ qablu.

Fis-sentenza appellata, l-Ewwel Onorabbli Qorti ghamlet elenku ta’ kif zvilupat u tbiddlet tul il-medda ta’ zmien it-Tieni Skeda fil-Partita B(d) tal-Legislazzjoni Sussidjarja 33.03 tal-Ligijiet ta’ Malta u sahhqet testwalment hekk:

*“L-ewwel imputazzjoni hi dik kontemplata bir-regolament 14(b) tar-Regolamenti dwar il-Kontroll ta’ Xoghlijiet tan-Nar u*

*Esplozivi ohra, Ligi Sussidjarja 33.03, li fi zmien li sehh ir-reat kien jaqra:*

*14. Hadd ma jista' jahraq xoghlijiet tan-nar minn xi post kemmil darba -..... (b) fil-hruq ta' xoghlijiet tan-nar minn post approvat, jissodisfa d-dispozizzjonijiet stabbiliti fl-Ewwel u fit-Tieni Skedi;*

It-Tieni Skeda fil-Partita B(d) taghha bl-Avviz Legali 243 tal-1998 kienet taqra hekk:

*Stoppini ta' mhux izjed minn centimetru dijametru li jinharqu minn distanza ta' mhux anqas minn erba metri ' l gewwa mill-faccata.*

Bl-Avviz Legali 205 tal-2014 giet emendata It-Tieni Skeda. Il-paragrafu numru 16 ta' dan l-Avviz Legali pprovda:

*(a) il-paragrafu (d) tas-Sezzjoni B taghha, minnufih wara l-kelma "dijametru" ghandhom jizdedu l-kliem "kif ukoll il-prodott maghruf bhala Chinese Cake, bil-kundizzjoni li tali Chinese Cake jkun ta' dijametru ta' mhux izjed minn 3 centimetri"*

Kien biss bl-Avviz Legali 264 tal-2019 li nsibu d-dispozizzjoni li ghadha applikabbli illum u dan wara li l-paragrafu 3 ta' dan l-Avviz Legali issostitwixxa il-partita B(d):

3. *Il-partita B(d) tat-Tieni Skeda tar-regolamenti principali ghandha tigi sostitwita b' dan li gej; "(d) Stoppini, Chinese Cakes u xoghlijiet tan-nar simili, bil-kundizzjoni li jkunu ta' dijametru ta' mhux izjed minn 3 centimetri. Dawn ghandhom jinharqu minn distanza ta' mhux anqas minn erba' metri ' l gewwa mill-faccata."*

Kwindi, kienet l-Ewwel Onorabbli Qorti stess li rrikonoxiet li l-qafas legislattiv attwalment vigenti, in kwantu kannen tan-nar ta' mhux aktar minn tliet centimetri (3cm) permessibbli li jinharqu, m' ghadhiex issemmi biss *Chinese Cakes* (kif kien il-kaz fiz-zmien tal-akkadut de quo) izda tinkludi wkoll stoppini.

Din il-biddla fil-ligi **dahhlet fis-sehh fit-8 ta' Ottubru 2019** permezz tal-introduzzjoni tal-Avviz Legali 264 tal-2019 u kwindi ferm qabel l-Ewwel Onorabbli ipprolatat is-sentenza appellata.

Kif gia rimarkat fl-aggravju ' A' ta' dan l-appell, l-ikbar qies ta' kannen li nstabu fuq l-*iscaffolding* de quo kienu ta' 2.8cm dijametru u dan kif konstatat mill-espert tekniku 86660 Staff Sergaent Patrick Vella f' paragrafu 32<sup>6</sup> tar-relazzjoni tieghu:

*"... Fil-fatt l-akbar qies ta' kanen li nstabu ghandhom dijametru ta' 28.08mm li huwa ekwivalenti ghal 2.8cm; Ritratt PV14 jixhed dan."*

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<sup>6</sup> Folio 25 tal-atti tal-inkjesta dwar l-*in genere*.

B' hekk, strettament minghajr pregudizzju ghal dak kollu imqanqal fl-aggravju ' A' , anke kieku ghall-grazzja tal-argument u ghall-grazzja tal-argument biss wiehed jasal jikkoncedi li nhar il-21 ta' Gunju 2018 ma kienux ser jinharqu biss *Chinese Cakes* izda wkoll stoppini, tali stoppini xorta' wahda ma kienux jeccedu d-dijamtru ta' tliet (3) centimetri u kwindi kull forma ta' reita giet intierament nnewtralizzata b' effett mit-8 ta' Ottubru 2019 - u cioe' bl-emenda introdotta bl-Avviz Legali 264 tal-2019.

B' danakollu, ghal raguni li l-appellanti ghadhom ma jistagh jifhmu, **l-Ewwel Onorabbli Qorti dehrilha li ghandha tapplika, ghad-detriment u sfavorevolment ghall-appellanti, il-Partita B(d) tat-Tieni Skeda tal-Ligi Sussidjarja 33.03 kif vigenti f' Gunju tas-sena 2018 minflok l-istess disposizzjoni tal-ligi kif emendata bl-Avviz Legali 264 tal-2019 u dana in ommagg tal-principju tad-dritt: *nullum crimen sine lege* li jhaddan fih principju sussidjarju iehor u cioe' li ghandu jigi applikat a favur il-persuna mixlija b' reat dak il-qafas legislattiv l-izjed faverovali ghalih.**

Dawn il-principji ta' dritt jinkwadraw rwiehhom fid-dettami tal-artikolu 39(8) tal-Kostituzzjoni ta' Malta u l-artikolu 7 tal-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem.

*Se mai*, in linea mal-principju tad-dritt li ghandha tigi applikata a favur l-akkuzat l-iktar ligi faveroveli ghalih, l-Ewwel Onorabbli Qorti kienet tkun gustifikata li tapplika d-dettami tal-ligi kif vigenti fiz-zmien tal-akkadut *ossia* f' Gunju tas-sena 2018 **biss** kieku l-emenda sussegwenti kellha l-effett li tisfavorixxi u mhux li tagevola l-posizzjoni tal-appellanti!

Kienet tkun ukoll gustifikata l-Ewwel Onorabbli Qorti li tapplika d-dettami tal-ligi kif vigenti fiz-zmien tal-akkadut kieku l-*emending Legal Notice*, ossia l-Avviz Legali 264 tal-2019 u/jew l-Att Principali, ossia l-Kap. 33 tal-Ligijiet ta' Malta kienu jinkorporaw fihom disposizzjoni transitorja li espressament timpedixxi l-effett retroattiv ta' tibdiliet u emendi fil-ligi – kif *del resto* komunement isir meta l-Legislatur ikollu l-intenzjoni li jsehhdan.

Din hija prassi rikonnexuta anke sahansitra fit-tagħlim tal-**Professor Mammo**, fejn fin-noti tieghu dwar id-Dritt Penali kien sahaq hekk:

*“.... the principles above set forth concerning the application of the more favourable law may be set aside by an express provision in the repealing or amending law. This is, In Malta, commonly done, especially in respect of enactments which operate for a short period at a time and are at short intervals amended or repealed and re-enacted. In such cases the necessity is obvious of saving unprejudiced any liability or proceedings incurred or instituted under the law so amended or repealed.”*  
[sottolinejar tal-appellanti].

Fil-kaz in disamina, **tali disposizzjoni transitorja hija inezistenti**, u b'hekk l-appellanti umilment jissottomettu li l-Ewwel Onorabbli Qorti kienet kompletament skorretta fejn iddecidiet li tiskarta l-applikabbilita' tal-Avviz Legali 264 tal-2019 u dana billi huwa car li din ma kinitx l-intenzjoni tal-Legislatur.

Dina l-posizzjoni issib konfort u hija msahha mhux biss mill-gurisprudenza tal-Qorti Ewropeja dwar id-Drittijiet tal-Bniedem izda wkoll mit-tagħlim ta' guristi awtorevoli.

*Di fatti*, fl-ewwel lok, ser issir referenza għat-tagħlim tal-gurista **Professur Sir Anthony Mamo**, fejn fin-noti tiegħu dwar id-Dritt Penali jishaqq hekk:

*“In fact, an apparent exception to the rule that a penal law cannot have a retrospective effect occurs when a new law enacted after the commission of the offence is less severe or more advantageous to the offender than the law in force at the time the offence was committed.*

*The hypothesis is twofold:*

8. the law against which the offence was committed is subsequently repealed so the act is no longer criminal;

9. the law against which the offence was committed is subsequently amended or changed so that, though the act is still criminal, the punishment or conditions of liability and prosecution are varied .” [sottolinejar tal-appellanti].

Il-**Professur Mamo** jkompli billi jgħid hekk:

*“The ‘ communis opinio’ among continental writers is that where the law in force at the time of the commission of the offence and the subsequent law are different, the offender should be dealt with according to the law which is more favourable to him. This means*

*that if the law in force at the time of the trial is less favourable to the accused than the law in force at the time of the commission of the offence, it is the latter law that should be applied retrospectively to his prejudice (Sic!). If, on the contrary, the new law is more favourable to the accused than the law which was in force at the time the offence was committed, then it is the new law that should be applied, for, if the old law were to be applied, it would have, as to the excess of punishment or other aggravation, an effect beyond its limit of valid operation.*" [sottolinejar tal-appellanti].

Huwa minnu li minn qari tal-artikolu 27 tal-Kap. 9 tal-Ligijiet ta' Malta, jidher l-massima legali ' *nullum crime sine lege*' testendi biss ghal tibdil u emendi fil-piena, biss pero' l-**Professur Mamo** stess fin-noti tieghu jikkoncedi li dina d-disposizzjoni tal-ligi ghandha effetti iktar wiesgha minn hekk. Huwa jaghmel referenza ghal sentenza moghtija mill-Qorti Kriminali fl-ismijiet ' **The Police v. Agostino Bugeja**' (Vol. XXIV, p. iv. p.941), u jispjega illi:

*"although the said section contemplates only the case in which the punishment provided by the law in force at the time of the trial is different from that provided by the law at the time of the commission of the offence, and no express provision exists concerning the case in which, at the time of the trial, the act complained of has ceased to be an offence, nevertheless arguing "a fortiori" from this section, it is clear that the accused should go free from all punishment in the latter case. Otherwise the law would be contradicting itself by giving retroactive effect only to a law which establishes a lighter*



*punishment and at the same time negating this retroactive effect to a subsequent law, which, rather than diminishes, actually eliminates the punishment.*

Tant huwa hekk li l-Kostituzzjoni ta' Malta, fl-artikolu 39(8), a kuntrarju tal-Kodici Kriminali, ma tillimitax l-applikabbilita' tal-massima legali ' *nullum crimen sine lege'* ghal tibdil fil-pieni biss izda testendi tali applikabbilita' anke ghal xenarji ta' tibdil li direttament jolqtu r-reita' ta' att ta' kommissjoni jew omissjoni:

*"(8) Hadd ma ghandu jitqies li jkun hati ta' reat kriminali minhabba f' xi att jew omissjoni li, fil-hin meta jkun sar, ma jkunx jikkostitwixxi reat bhal dak, u ebda piena ma ghandha tigi mposta ghal xi reat kriminali li tkun aktar severa fi grad jew xorta mill- oghla piena li setghet tigi mposta ghal dak ir-reat fiz-zmien meta jkun gie maghmul."* [sottolinejar tal-appellant].

Bl-istess mod, l-artikolu 7(1) tal-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem wkoll ma jllimitax l-osservanza ta' dan il-principju fundamentali ghal sitwazzjonijiet ta' tibdil fil-piena biss:

*"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."* [sottolinejar tal-appellanti]

Fil-fatt, anke fil-pubblikazzjoni *Guide on Article 7 of the Convention* stampat mill-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, fil-parti intitolata **No punishment without law: the principle that only the law can define a crime and prescribe a penalty** hemm il-parti jisimha **V. Principle of retrospective application of more favourable criminal law** fejn jinghad hekk :-

*“57. Even though Article 7 § 1 of the Convention does not expressly mention the principle of the retroactivity of the lighter penalty (unlike Article 15 § 1 in fine of the United Nations Covenant on Civil and Political Rights and Article 9 of the American Convention on Human Rights), the Court held that Article 7 § 1 guarantees not only the principle of non-retroactivity 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 (Scoppola v. Italy (no. 2) [GC], §§ 103-109, concerning a thirty-year prison sentence instead of a life sentence). The Court considered that “inflicting a heavier penalty for the sole reason that it was prescribed at the time of the commission of the offence would mean applying to the defendant’s detriment the rules governing the succession of criminal laws in time. In addition, it would amount to disregarding any legislative change favourable to the accused which might have come in before the conviction and continuing*

to impose penalties which the State – and the community it represents – now consider excessive” (ibid., § 108). The Court noted that a consensus had gradually emerged in Europe and internationally around the view that application of a criminal law providing for a more lenient penalty, even one enacted after the commission of the offence, had become a fundamental principle of criminal law (ibid., § 106). Furthermore, the Court has found that the principle of the retrospective application of the more lenient criminal law applies not only to the applicable penalty but also in the context of an amendment relating to the definition of the offence (Parmak and Bakir v. Turkey, § 64; Advisory opinion concerning the use of the “blanket reference” or “legislation by reference” technique in the definition of an offence and the standards of comparison between the criminal law in force at the time of the commission of the offence and the amended criminal law, [GC], § 82). [sottolinejar tal-appellanti]

Issir ukoll referenza ghas-sentenza tal-Grand Chamber tal-Qorti ta’ Strasburgu fl-ismijiet ‘ **Scoppola v. Italja**’ <sup>7</sup> ta’ nhar is-17 ta’ Settembru 2009, fejn inghad hekk:

*“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*

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<sup>7</sup> App. No.12049/03

*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*" [sottolinejar tal-esponenti]

Mill-lat nostran, issir referenza ghas-sentenza moghtija mill-Qorti tal-Appell Kriminali<sup>8</sup> nhar it-28 ta' Settembru 2017 fl-ismijiet ' **Il-Pulizija v. Martin Cassano**' fejn gie ritenut hekk:

*"Illi fir-rigward tat-tieni akkuza li hija imfassla fuq l-artikolu 97(f)(i) tal-Kapitolu 10 tal-Ligijiet ta' Malta, ghandu jinghad illi din id-disposizzjoni tal-ligi giet imhassra permezz tar-regolament 42 tal-Avviz Legali 376 tal-2012. Illi allura ghalkemm l-att vjolatur kien jikkostitwixxi reat meta sehh, dan madanakollu ma baqax jigi hekk ikkunsidrat ftit xhur wara l-akkuza. Illi in linja mad-decizjonijiet moghtija mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem il-qorti ghalhekk hija tal-fehma illi fir-rigward tat-tieni akkuza ebda piena ma ghandha tigi imposta fuq l-appellanti u l-Qorti ghaldagstant ser tghaddi biex tastjeni milli tiehu konjizzjoni ta' dina l-akkuza u tirrevoka*

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<sup>8</sup> per Onor. Imhalled Edwina Grima.

*konegwentement is-sejbien ta' htija li wasslet ghalha l-Ewwel Qorti* [sottolinejar tal-appellanti].

Finalment, ikun ukoll denju li ssir referenza wkoll ghal dak mghallem mill-Professor Kevin Aquilina fl-artikolu minnu miktub nhar is-27 ta' Frar 2017<sup>9</sup> fejn gie ritenut illi:

*“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...”*

Aktarx iva milli le, il-Prosekuzzjoni sejra tirribadixxi ghall-dan l-aggravju billi tinvoka l-artikolu 12(1)(d) tal-Att dwar l-Interpretazzjoni, Kap. 249 tal-Ligijiet ta' Malta li jishaqq li ligi migjuba fis-sehh wara l-introduzzjoni tal-Kap. 249 li jkollha l-effett li **thassar** xi ligi ohra, tali **thassir** ma ghandux jimpingi fuq il-piena li setghet tigi mposta b' dik l-istess ligi “mhassra”:

*“12. (1) Meta xi Att mghoddi wara l-bidu fis-sehh ta' dan l-Att ihassar xi ligi ohra, kemm-il darba ma jidhirx hsieb kuntrarju, t-thassir m' ghandux:*

*(d) jolqot xi penali, konfiska jew piena li wiehed seta' jehel dwar xi reat li jkun sar kontra xi ligi hekk imhassra, jew xi responsabbiltà ghal xi penali, konfiska jew piena bhal dawok”*

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<sup>9</sup> The More Lenient Criminal Law, The Times, 27 ta' Frar 2017.

B' danakollu, dina l-argumentazzjoni hija insostenibbli u ma tregix stante li fil-kaz odjern, l-Avviz Legali 264 tal-2019 ma kellux l-effett li jhassar xi ligi ohra izda sempliciment li jemenda disposizzjoni ta' ligi. *Di piu*, kienet wara kollox dina l-Onorabbli Qorti stess kif diverament preseduta<sup>10</sup> li sahqet li l-Att dwar l-Interpretazzjoni ma ghandux isib applikazzjoni fejn l-interpretazzjoni tieghu huwa sfaccjatament leziv tal-artikolu 7 tal-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem:

*“B' hekk illum ghalkemm il-prosekuzzjoni tar-reat abrogat fil-mori tal-proceduri jista' jitkompla u dan fid-dawl ta' dak li jipprovd i l-Att dwar l-Interpretazzjoni, kif gustament jissottometti l-Avukat Generali fir-rigward tal-artikolu 18A, madanakollu l-istess qieghed jitqies illi huwa leziv tal-artikolu 7 tal-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem.*

*Illi allura din il-Qorti illum fid-dawl tal-pronunzjamenti maghmula mill-Qorti dwar id-Drittijiet tal-Bniedem ma tistax taqbad u tghaddas rasha billi tara biss dak li tipprovd i l-Att dwar l-Interpretazzjoni u tieqaf hemm ghaliex altrimenti tali interpretazzjoni tkun leziva tal-artikolu 7 tal-Konvenzjoni. Illi illum din il-Qorti hija fid-dmir tapplika dik il-piena li hija l-iktar favorevoli ghall-appellat.*”

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<sup>10</sup> per Onor. Imhalled Edwina Grima fis-sentenza fl-ismijiet 'Il-Pulizija v. Gordon Spiteri', moghtija nhar is-26 ta' Ottubru 2017.

Kwindi, tenut kont tal-premess kollu, l-appellanti bis-shih jemmnu li bl-applikazzjoni tal-principju tad-dritt: *nullum crimen sine lege*, li jhaddan fih principju sussidjarju li ghandha tigi applikata a favur l-akkuzat dik il-ligi l-izjed faverovali ghalih, huma ma setghu qatt u bl-ebda mod legalment jinstabu hatja tal-ewwel (1) imputazzjoni dedotta kontra tagghom u dana stante li l-introduzzjoni tal-Avviz Legali 264 tal-2019 elimina u nnewtralizza kull forma ta' reita.

### C. Dwar il-Piena Erogata

Dan l-aggravju qieghed jingieb il-quddiem minghajr pregudizzju ghall-aggravji precedenti u ghandu jigi kkunsidrat biss fl-eventwalita' li dina l-Onorabbli Qorti tiskarta l-istess aggravji.

#### C.1. L-Element ta' Proporzjonalita' bejn ir-Reat u l-Piena Nflitta

Jigi *in primis* mfakkar li l-uniku raguni ghaliex l-appellanti gew misjuba hatja u kkundannati mill-Ewwel Onorabbli Qorti ghall-multa fermament oneruza ta' €15,000 kull wiehed kien ghaliex **allegatament** intuzaw kannen b' dijametru harira ehxen minn dak permessibbli bil-ligi. Xejn iktar u xejn izjed.

L-appellanti ma jistghux f' dan l-isfond ma jistaqsux, il-piena ta' multa fl-ammont ta' €15,000 kull wiehed kienet wahda proporzjonata ghal nuqqas daqstant ckejken?

Filwaqt li l-appellanti huma konsapevoli li a tenur tal-artikolu 29 tal-Kap. 33 tal-Ligijiet ta' Malta, il-piena fuqhom imposta, fil-forma pekunjarja taghha, hija l-minimu kontemplata fil-ligi, b' danakollu ma kien hemm

xejn x' jorbot idejn l-Ewwel Onorabbli Qorti, kieku dehrilha denju u xieraq, li timponi sanzjoni alternattiva taht il-Kap. 446 tal-Ligijiet ta' Malta, fosthom li a tenur tal-artikolu 11 tordna li jsir xoghol komunitarju jew alternattivament tqieghed lill-appellanti taht ordni ta' *probation* a tenur tal-artikolu 7.

L-appellanti, bhal kull persuni ohra tas-socjeta' , ghandhom d-dmirijiet kif ukoll id-drittijiet fundamentali taghhom li ghandhom jigu dejjem salvagwardjati, anke jekk *dato ma non concesso* huma hatja.

Ghaldaqstant, l-appellanti m' ghandhomx ikunu soggetti ghal piena harxa u sproporzjonata. F' cirkostanzi fejn huwa jigu soggettati ghal piena sproporzjonata, jkun hemm lezjoni tad-drittijiet taghhom.

L-Artikolu 49(3) tal-Karta tad-Drittijiet Fundamentali tal-Unjoni Ewropea jistipula illi: '*Is-severità tal-piena m' ghandhiex tkun sproporzjonata ghar-reat.*'

Di piu, l-artikolu 52 tal-istess dokument ikompli jispjega li:

*"Kull limitazzjoni fl-ezercizzju tad-drittijiet u tal-libertajiet rikonoxxuti minn din il-Karta ghandha tkun prevista mil-ligi u ghandha tirrispetta l-essenza ta' dawk id-drittijiet u l-libertajiet. Bla hsara ghall-principju ta' proporzjonalità, jistghu jsiru limitazzjonijiet f' dawk il-kazijiet biss fejn ikun mehtieg u fejn genwinament jintlahqu l-objettivi ta' interess generali rikonoxxuti mill-Unjoni jew il-htiegà li jigu protetti d-drittijiet u l-libertajiet ta' ohrajn."*



L-istess **Linji Gwida tal-Kunsill Ewropew** jelenkaw, fl-**artikolu 52**, erba' elementi:

1. Il-limitazzjoni trid tohrog mil-ligi;
2. Tirrispetta l-essenza tad-drittijiet u tal-libertajiet;
3. Jissodisfa l-interess generali jew jipprotegi d-drittijiet u libertajiet ta' ohrajn;
4. Tkun suggett ghal principju tal-proporzjonalita`.

Sabiex wiehed jistabilixxi jekk piena tosservax il-principju tal-proporzjonalita' jezistu diversi ezamijiet. Fil-fatt, **il-Linja Gwida tal-Kunsill Ewropew tal-Kompatibilita ta' Drittijiet Fundamentali** jispjega li *"the proportionality principle requires the measure to have a direct and logical link with the purpose of achieving the objective pursued"*.

Issa, ghalkemm il-kalibrar tal-piena jaqa' taht il-kompetenza tal-Istati Membri tal-Unjoni Ewropea, madanakollu tali piena xorta' wahda jehtieg li tkun wahda proporzjonata. Dan johrog bic-car fil-kaz: **Ute Reindl, ipprezentat minn MPREIS Warentvertriebs GmbH v. Bezirkshauptmannschaft Innsbruck**, deciza nhar it-13 ta' Novembru 2014, fejn il-Qorti tal-Gustizzja tal-Unjoni Ewropea sostniet hekk:

*"According to settled case-law, whilst the choice of penalties remains within their discretion, Member States must ensure that infringements of EU law are penalised under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive. In the present case, the measures*

*imposing penalties permitted under the national legislation at issue in the main proceedings must not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by that legislation..."*

Fil-fatt, hekk kif jghid tajjeb l-awtur **Profs. Dr. Albin Eser** fil-kitba ntitolata '**Human Rights Guarantees for Criminal Law and Procedure in the EU-Charter of Fundamental Rights**' :

*"On the judicial level the penalty must not be disproportionate to the offence. At this level both the objective severity of the wrong and the individual severity of blame-worthiness have a particular meaning. In every single case it has to be examined whether the imposition of a criminal sanction is required in order to reach the general purpose of punishment and whether the importance of the objects of legal protection are in a proportionate relation to restrictions on the rights of the person concerned."*

Fil-kaz odjern, apparti kull konsiderazzjoni ta' proporzjonalita' , l-appellanti jemmnu wkoll li jekk kellha tigi kominata piena, tali piena kellha tirrispekja l-element ta' necessita' u b' hekk kellha tkun wahda miti u *de minimis*.

Dan qieghed jinghad fl-isfond tal-fatt li l-appellanti prattikament qattaw hajjithom jimmanifutturaw, jahdmu u jaharqu l-loghob tan-nar u dejjem ippraktikaw il-mestier taghhom bi prudenza u diligenza.

Dan ma humiex jghiduh biss l-appellanti, izda xhieda ta' dan hija r-relazzjoni ta' tal-espert tekniku 86660 Staff Sergaent Patrick Vella, fejn l-istess espert tekniku tenna illi:

1. L-appellanti kienu licenzjati sabiex jahdmu u jaharqu loghob tan-nar<sup>11</sup>;
2. Ix-xoghol tan-nar in kwistjoni kellu l-permessi kollha necessarji mahruqa mill-Pulizija sabiex ikun jista' jinharq<sup>12</sup>;
3. L-appellanti, *qua* persuni inkarigati mill-hruq tax-xoghol tan-nar hadu certu prekawzjoni billi assiguraw li hadd ma jghaddi minn fuq il-bankina fi Triq Guze' Amato li fiha hemm l-access ghall-ghalqa minn fejn kellu jinharq in-nar<sup>13</sup>

Illi l-appellanti umilment jitolbu illi ai fini ta' piena, dawn il-fatturi kollha jitpoggew fil-perspettiva shiha tas-sitwazzjoni u jekk il-htija taghhom tigi kkonfermata minn dina l-Onorabbli Qorti, l-istess appellanti umilment jemmnu li tali piena ghandha tkun wahda de *minimis* u cioe' wahda mahsuba taht il-Kap. 446 tal-Ligijiet ta' Malta.

## **Ikkunsidrat,**

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<sup>11</sup> Paragrafu 27 - folio 24 tal-atti tal-inkjesta dwar l-*in genere*.

<sup>12</sup> Paragrafu 40 - folio 29 tal-atti tal-inkjesta dwar l-*in genere*.

<sup>13</sup> Paragrafu 35 - folio 27 tal-atti tal-inkjesta dwar l-*in genere*.

Din il-Qorti sejra tghaddi sabiex tevalwa **l-ewwel aggravju** tal-appellanti u cioe' dik dwar ic-*Chinese Cakes* u l-Istoppini u li dawn huma prodotti piroteknici distintivi. A skans ta'hafna repitizzjoni, jidher illi l-appellanti f'dan ir-rigward qed jargumentaw illi dakinhar tal-incident, bhala xoghol tan-nar armat fuq l-*iscaffolding* kien hemm biss *Chinese Cakes* u mhux stoppini wkoll. Ghaldaqstant, l-appellanti qed jissottomettu illi ma jaqblux mal-espert tekniku 86660 Staff Sergeant Patrick Vella fejn dan qal li kien hemm kemm *Chinese Cakes*, kif ukoll stoppini. Minghajr telf ta' zmien, din il-Qorti tghid illi l-Qorti mhux marbuta taqbel mal-konkluzjonijiet t'esperti mahtura mill-Qorti u ghalhekk taghmel referenza ghas-sentenza **Il-Pulizija vs John Pierre Farrugia**<sup>14</sup> fejn gie ritenut is-segwenti:

*'Illi l-ewwel Qorti l-istess ma kellhiex tisfilza l-konkluzjonijiet milhuqa mill-espert. Fil-fatt, fil-korp tas-sentenza jidher car li l-ewwel Qorti ma qablitx mal-konkluzjonijiet milhuqa mill-espert indipendentement mill-fatt li parti mill-konkluzjonijiet gew sfilzati. L-ewwel Qorti hi kompletament hielsa li taqbel ma jew ma taqbilx mal-konkluzjonijiet tal-esperti li hi tahtar. Ghal dan l-ewwel Qorti tat ragunijiet validi ghaliex waslet ghal konkluzjonijiet taghha.*

Madankollu, f'dan il-kaz, din il-Qorti ma tarax li hemm raguni ghalxiex m'ghandiex tistrieħ fuq ir-rapport hekk kif kompilat mill-espert tekniku 86660 Staff Sergeant Patrick Vella. Fir-rapport dettaljat tieghu l-espert sucitat spjega id-differenza bejn ic-*Chinese Cakes* u l-Istoppini u kif dawn, minkejja distinti, huma simili ghal xulxin. Minkejja li hu accena illi x-xoghol tan-nar kien kollu xoghol mahdum barra, din il-Qorti ma ghandha xejn fl-atti li juri li l-istoppini jigu

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<sup>14</sup> Deciza mill-Qorti tal-Appell Kriminali nhar il-25 ta' Ottubru, 2017.

manifatturati lokalment biss. Din il-Qorti ghalhekk ma tistax tistrieħ fuq dan il-fatt imressaq mill-appellanti fl-ewwel aggravju tar-rikors t' appell tagħhom. Għaldaqstant din il-Qorti temmen fil-kapacita' tal-espert u ma tara l-ebda raguni għalxiex m'għandiex tistrieħ fuq il-konkluzjonijiet tiegħu riflessi fir-rapport li jinsab a fol. 10 et seq tal-atti processwali. Għal dawn ir-ragunijiet din il-Qorti qedgħa tichad l-ewwel aggravju, u cioe' dak immarkat bl-ittra 'A', tal-appellanti.

**It-tieni aggravju** tal-appellanti jirrigwardja l-applikabbilita' u l-osservanza tal-massima legali *nullum crimen sine lege*. Illi l-Ewwel Qorti ikkonfermat illi dakinhar tal-allegat incident u cioe' l-21 ta' Gunju, 2018, il-ligi kienet tippermetti illi stoppini ma jkunux iktar minn centimetru dijametru, madanakollu permezz tal-Avviz Legali 264 tal-2019, meta l-appellanti qas biss kienu għadhom gew imressqa l-Qorti, il-ligi giet taqra illi'Stoppini, *Chinese Cakes* u xogħlijiet tan-nar simili setgħu jkunu ta' dijametru ta' mhux izjed minn tlett (3) centimetri.<sup>15</sup> Ix-xogħol tan-nar li kien hemm nhar l-21 ta' Gunju, 2018 ma kienx jeccedi it-tnejn punt tmienja centimetri (2.8cm) fid-dijametru.

Hawn hekk din il-Qorti thoss il-bzonn illi tiftah dwar il-principju ta' non-retroattivita' espress fil-massima legali *nullum crimen sine lege, nulla poena sine lege*. Dan il-principju jassigura li l-ebda persuna ma tigi penalizzata għal att li ma jkunx jikonstitwixxi reat fil-mument li jigi mwettaq. Sahansitra, Artikolu 39(8) tal-Kostituzzjoni ta' Malta jistipula is-segwenti:

*'Hadd ma għandu jitqies li jkun hati ta' reat criminal iminħabba f'xi att jew omissjoni li, fil-hin meta jkun sar, ma jkunx jikkostitwixxi reat bħal dak, u ebda piena ma għandha tigi mpostagħal xi reat kriminali li tkun aktar severa fi grad jew xorta*

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<sup>15</sup> Ligi Sussidjarja 33.03, it-tieni skeda, partita B(d).

*mill- oghla piena li setghet tigi mposta għal dak ir-reat fiż-żmien metajkun gie magħmul.'*

Dan il-massima legali sucitat ma jigarantixxix biss illi persuna ma tigix penalizzata għal att illi meta gie kommess ma kienx reat izda wkoll, persuna ma ghandiex tigi suggetta għal penali iktar gholja meta reat li ghalih tkun giet akkuzata sussegwentament tizdiedlu l-piena. Di piu' **Artikolu 27** tal-Kodici Kriminali jipprovdi dan li gej:

*27. Jekk il-piena stabbilita mil-liġi li tkun isseħħ fiż-żmien tal-kawża u dik li kienet isseħħ fiż-żmien li sar ir-reat ma jkunux xorta waħda, għandha tingħata l-piena l-anqas gravi.*

Dan l-Artikolu gie anke ccitat mill-**Professur Anthony Mamo** fejn fin-noti tieghu "**NOTES ON CRIMINAL LAW**" fejn dan anke elabora fuq il-principju ta' non-retroattivita':

*"In fact, an apparent exception to the rule that a penal law cannot have a retrospective effect occurs when a new law enacted after the commission of the offence is less severe or more advantageous to the offender than the law in force at the time the offence was committed.*

*"The hypothesis is twofold:*

*8. the law against which the offence was committed is subsequently repealed so the act is no longer criminal;*

*9. the law against which the offence was committed is subsequently amended or changed so that, though the act*

***is still criminal, the punishment or conditions of liability and prosecution are varied.***

A. *The principle accepted in continental doctrine and practice, which we follow in this matter, is that, if the law on which the charge is framed is repealed without any qualification while the proceedings are still pending, such proceedings fall to the ground and no sentence against the accused can be pronounced. If before the man is tried the legislature cancels the criminal character of the act with which he stands charged, there is no longer any justification for inflicting punishment upon him. The action of the State, in repealing the former law which prohibited the act, clearly shows that the public peace and order and the public welfare are no longer endangered or harmed by such type of act and that, therefore, the State has no longer any interest in repressing it, and, consequently, no right to punish it.*

*Older writers took the view that this principle constitutes an exception to the rule that penal laws should be exclusively prospective. Their doctrine was that the repealing law is given retrospective application to the matter of inquiry arising under the repealed law, by way of an indulgence to the accused. But modern writers do not accept this explanation, and contend that the principle in question has a true juridical foundation. Their argument is that, rather than an exception to the rule of non-retroactivity with regard to the new law, the said principle is an affirmation with regard to the former law, of the other rule that a law cannot operate after its repeal. 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.*

**Prof. Mammo jkompli jghid illi:-**

*“The ‘communis opinio’ among continental writers is that where the law in force at the time of the commission of the offence and the subsequent law are different, the offender should be dealt with according to the law which is more favourable to him. This means that if the law in force at the time of the trial is less favourable to the accused than the law in force at the time of the commission of the offence, it is the latter law that should be applied retrospectively to his prejudice (Sic!). If, on the contrary, the new law is more favourable to the accused than the law which was in force at the time the offence was committed, then it is the new law that should be applied, for, if the old law were to be applied, it would have, as to the excess of punishment or other aggravation, an effect beyond its limit of valid operation.*



Section 28<sup>16</sup> of our Criminal Code provides that “ if the punishment prescribed by the law in force at the time of the trial is different from that prescribed by the law in force at the time of the commission of the offence, the less severe of the two punishments (Old Italian Text: "pena di qualita' meno grave") shall be applied.

.....

The above-quoted provision of our Criminal Code applies 'expressis verbis' where the difference is between the punishment as at the time of the commission of the offence and the punishment as at the time of the trial. This means that if, when the new law reducing the punishment comes into force, proceedings in respect of the offence have already been definitely concluded, such new law does not affect the sentence already awarded: saving, of course, even in this case, the Prerogative of Mercy. If, however, when the new law comes into operation an appeal from the sentence is still pending, then the accused is entitled to the benefit of the less severe punishment (V. Crim. Appeal '**The Police vs. S. Chircop et'**', 13-XI. 1943; Roberti, op. cit. Vol. II, 8 315).

An interesting judgement explaining the true meaning and effect of the said Section 28 of our Criminal Code was delivered by His Majesty's Criminal Court in its Appellate Jurisdiction in the case '**The Police vs. Agostino Bugeja'** (Vol. XXIV, P. IV, p. 941). It was there held that, although the said section contemplates only the case in which the punishment provided by the law in force at

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<sup>16</sup> Presently Article 27 of the Criminal Code.

*the time of the trial is different from that provided by the law at the time of the commission of the offence, and no express provision exists concerning the case in which, at the time of the trial, the act complained of has ceased to be an offence, nevertheless 'arguendo a fortiori' from the section, it is clear that the accused should go free from all punishment in the latter case (as we have already seen). Sir M.A. Refalo C.J. said: "L'interpretazione del principio sanzionato col detto articolo 28 delle nostre Leggi Criminali, che cioè', quando vi ha differenza fra la legge penale anteriore e la nuova, un'azione commessa prima dell'attuazione della legge nuova ma sottoposta a giudizio posteriormente, deve essere giudicata con quella fra le due leggi che nel confronto apparisco piu' mite, non deve intendersi letteralmente ristretta al solo caso in cui la legge posteriore commini una pena meno grave, ma di logica, e di giustizia deve intendersi anche al caso in cui la legge posteriore dichiara che il fatto punibile sotto la antica legge non costituisce piu' reato: di logica, perche' maggior mitezza può dirsi non solo per riguardo a quella legge che commini una pena minore, ma eziandio per riguardo a quella che non commini alcuna; di giustizia, perche' la legge non puo' contraddire se stessa per dare efficacia retroattiva alla legge posteriore solo quando questa stabilisce una pena meno grave e negare poi tale efficacia retroattiva alla legge posteriore la quale, piu' che diminuire, elimina qualsiasi pena".*

Di piu f' pagna 34 et seq tan-noti tieghju, il-Professur Mamo qal hekk ukoll:

*"...the principles above set forth concerning the application of the more favourable law may be set aside by an express provision*

*in the repealing or amending law. This is, In Malta, commonly done, especially in respect of enactments which operate for a short period at a time and are at short intervals amended or repealed and reenacted. In such cases the necessity is obvious of saving unprejudiced any liability or proceedings incurred or instituted under the law so amended or repealed.*

*In England, the general rule is, now, that the repeal of a statute has no effect on pending proceedings. Prior to 1889, by the unqualified repeal of the Statute on which an indictment was framed, the proceedings fell to the ground and no judgement could be pronounced. A prisoner indicted for an offence against an Act which was repealed after the offence was committed, but before the prisoner was tried, could not be sentenced under the repealed Act. But as to Statutes passed since 1889, the Interpretation Act, 1889 (52 & 53 Viet. C. 63, S. 38, Ss. 2) provides that where an Act "repeals any other enactment, then unless the contrary intention appears, the repeal shall not .... (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or (e) affect any investigation, legal proceeding or remedy in respect of any such .....penalty, forfeiture or punishment as aforesaid", and that "any such investigation, legal proceeding or remedy may be instituted", continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed". Particular clauses to the like effect were common in prior statutes. (Arch. 'Pleading,*

*Evidence and Practice in Criminal Cases", Sd. 1931, PP. 8-9).'*

Illum il-gurnata fil-ligi taghna u dan saħansitra sa mis-sena 1975, insibu klawzola simili għal dik suċitata fl-Att dwar l-Interpretazzjoni u cioe' Kap. 249 tal-Ligijiet ta' Malta. L-Artikoli 12 (1)(d) u (e) ta' din il-ligi jipprovdu s-segwent:

*'12.(1) Meta xi Att mghoddi wara l-bidu fis-seħħ ta' dan l-Att iħassar xi ligi oħra, kemm-il darba ma jidhirx ħsieb kuntrarju, t-ħassir m'ghandux –*

*(d) jolqot xi penali, konfiska jew piena li wieħed seta' jehel dwar xi reat li jkun sar kontra xi ligi hekk imħassra, jew xi responsabbiltà għal xi penali, konfiska jew piena bħal dawk;*

*(e) jolqot kull stħarriġ, proċedimenti legali, jew rimedjudwar xi dritt, privileġġ, obligazzjoni, responsabbiltà, penali, konfiska, jew piena kif intqal qabel, u kull stħarriġ, proċedimenti legali, jew rimedju bħal dawk jistgħujinbdew, jitkomplew, jew jiġu nforzati, u kull penali, konfiska jew piena bħal dawk jistgħu jiġu mposti, bħallikieku l-Att li jħassar majkunx għadda.'*

Oltre minn dak citat *supra*, **Artikolu 9 tal-Kap. 249** tal-Ligijiet ta' Malta jistipula s-segwent:

*'9. Kull ligi magħmula wara l-bidu fis-seħħ ta' dan l-Att bis-saħħa ta' setgħa mogħtija b'xi Att mghoddi qabel jew wara l-bidu fis-seħħ ta' dan l-Att tista', kemm-il darba ma jkunx jidher ħsieb*

*kuntrarju fl-Att li jagħti dik is-setgħa, **tkun retroattiva** għal kull data li ma tkunx qabel il-bidu fis-seħħ ta' dak l-Att jew, meta dispożizzjonijiet differenti tiegħu jkunu jibdedw isehħu f'dati differenti, li ma tkunx qabel il-bidu fis-seħħ tad-dispożizzjoni li bis-saħħa tagħha ssir il-liġi sussidjarja:*

*Iżda ebda persuna ma teħel xi piena dwar xi haġa li tkun saret jew li naqset milli ssir qabel il-bidu fis-seħħ tal-liġi sussidjarja.'*

Hawnhekk il-Qorti tagħmel referenza għas-sentenza fl-ismijiet **The Police vs Edward Joseph O'Connor**<sup>17</sup> fejn f' dan ir-rigward gie ritenut hekk:

*'Be that semantic distinction as it may, this Court is of the opinion that the solution to this problem lies in Section 9 above quoted, which says that subsidiary legislation "**MAY BE MADE TO OPERATE RETROSPECTIVELY**" ("**tista tkun retroattiva**" in the Maltese text) unless the contrary intention appears in the Act conferring that power. Now in this Court's view, the use of the words : "**MAY BE MADE** " and "**TISTA' TKUN**" clearly imply that such a law is not necessarily retroactive automatically but may be made to be so . The only limitation to such a faculty is that no person shall be made liable to a punishment for an act which when it was done was not so punishable. **Obviously for such subsidiary legislation to be retroactive therefore it would have to be expressly stated in the new law and that this cannot be assumed to happen automatically in all cases of subsidiary legislation supplanting a former law.** Now whereas in Chapter 233 there*

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<sup>17</sup> Deciza mill-Qorti tal-Appell Kriminali nhar is-17 ta' Novembru, 2003.

*appears no declared contrary intention to enable subsidiary legislation to be made retroactive and hence this is legally possible under the Interpretation Act, for any amendment of any order or regulation issued under Chapter 233 to be retroactive, it would have to be expressly stated that this is to be the case . A close examination of Legal Notice 419 of 2002 (and for all that matters of L.N. 278 of 2000 which preceeded it) reveals no such declaration to make the wider exemption being invoked by O' Connor retroactive however. Indeed, Article 1 (2) of both Legal Notices respectively expressly states :-*

*"THIS ORDER SHALL COME INTO EFFECT ON THE 1 ST JANUARY , 2003". And*

*"THIS ORDER SHALL COME INTO EFFECT ON THE 1st. JANUARY , 2001"*

*and no mention of any retroactive effect is made therein. Hence one cannot assume that the intention of the legislator was to make the wider exemption retroactive. Therefore once no contrary intention appears from L.N. 419 itself to make the change retroactive, it does not affect the liability, punishment and forfeiture incurred or to be incurred for any breach of the law as it stood prior to such change according to section 12 (1) (d) and (e).'*

**L-Avviz Legali 264 tal-2019** fl-ewwel Artikolu tieghu jistipula hekk:

*'It-titolu ta' dawn ir-Regolamenti huwa r-Regolamenti tal-2019 li jemendaw Ir-Regolamenti dwar il-Kontroll ta' Xoghlijiet tan-Nar u Esplozivi ohra u għandhom jinqraw u jinftiehm u haġa waħdamar-Regolamenti dwar il-Kontroll ta' Xoghlijiet tan-Nar*

*u Esplozivoħra hawn iżjed 'il quddiem imsejħa bħala "ir-regolamenti principali".'*

Minn imkien ma jirrizulta illi l-intenzjoni tal-legislatur kienet illi tali emendi, li permezz tagħhom l-ewwel reat li bih jinsabu akkuzati l-appellanti ma baqghax jezisti, stante li d-dijametru tal-istoppini gie estiz minn centimetru għal tlett centimetri, kellu jkollu effett retroattiv. Għalhekk din il-Qorti ma tistax tassumi li tali emendi kellhom ikollhom effett retroattiv. Il-Qorti ma tistax timla l-vojt li jkun hemm fil-ligi - *Ubi lex voluit dixit, ubi noluit tacuit*.

Din il-Qorti f'dan il-punt sejra tghaddi sabiex tagħmel referenza għal zewg appelli decizi mill-Qorti tal-Appell Kriminali (Sede Inferjuri) u li l-appellanti għamlu referenza għalihom fir-rikors tal-appell tagħhom. Fis-sentenzi fl-ismijiet **Il-Pulizija vs. Martin Cassano**<sup>18</sup> u **Il-Pulizija vs Gordon Spiteri**<sup>19</sup> ssir referenza għall-Artikolu 7 tal-Konvenzjoni Ewropeja tad-Drittijiet tal-Bniedem li jistipula s-segwenti:

*'1. Hadd ma għandu jitqies li jkun ħati ta' reat kriminali minħabba f'xi att jew ommissjoni li ma kinux jikkostitwixxu reat kriminali skont liġi nazzjonali jew internazzjonali fil-ħin meta jkunu saru. Lanqas ma għandha tingħata piena akbar minn dik li kienet applikabbli fiż-żmien meta r-reat kriminali jkun sar.*

*2. Dan l-Artikolu ma għandux jippreġudika l-proċeduri u l-applikazzjoni tal-piena ta' xi persuna għal xi att jew ommissjoni li, fiż-żmien meta jkunu saru, kienu kriminali skont il-prinċipji generali tal-liġi rikonoxxuti min-nazzjonijiet ċivilizzati.'*

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<sup>18</sup> Deciza mill-Qorti tal-Appell Kriminali nhar it-28 ta' Settembru, 2017.

<sup>19</sup> Deciza mill-Qorti tal-appell Kriminali nhar is-26 t' Ottubru, 2017.

Fl-istess sentenzi jinghad illi ghalkemm l-prosekuzzjoni tar-reat abrogat jista' jitkompla f'dawl ta' dak li jipprovdi l-Att dwar l-Interpretazzjoni dan qieghed jitqies illi huwa leziv tal-Artikolu 7 tal-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem. Din il-Qorti tkompli sabiex tispjega u sabiex ma jkunx hemm dubbju f'dan ir-rigward, illi l-Artikolu 7(2) sucitat m'ghandux ikollu applikazzjoni generali u dan kien gie mfassal sabiex jitkomplew prosekuzzjonijiet konnessi ma *war crimes*. Fil- '*Guide on Article 7 of the Convention – No punishment without law*'<sup>20</sup> sahanitra gie ritenut is-segwenti:

*'62. It transpires from the travaux préparatoires to the Convention that Article 7 § 1 can be considered to contain the general rule of non-retroactivity and that Article 7 § 2 is only a contextual clarification of the liability limb of that rule, included so as to ensure that there was no doubt about the validity of prosecutions after the Second World War in respect of the crimes committed during that war (Kononov v. Latvia [GC], § 186; Maktouf and Damjanović v. Bosnia and Herzegovina [GC], § 72). This makes it clear that the authors of the Convention did not intend to allow for a general exception to the non-retroactivity rule. In fact, the Court has pointed out in several cases that the two paragraphs of Article 7 are interlinked and are to be interpreted in a concordant manner (Tess v. Latvia (dec.); Kononov v. Latvia [GC], § 186)*'

**Din il-Qorti tenfasizza illi hija Qorti Kriminali u ghaldaqtant m'ghandiex kompetenza tiddeciedi jew tippronuncia ruha dwar jekk l-Artikolu 12 tal-Att dwar l-Interpretazzjoni hux leziv tal-Artikolu 7 tal-Konvenzjoni Ewropeja**

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<sup>20</sup> [https://www.echr.coe.int/Documents/Guide\\_Art\\_7\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_7_ENG.pdf), p. 22



dwar id-Drittijiet tal-Bniedem o meno. Dan stante l-fatt illi hija sta għall-Qrati Kostituzzjonali li jiddeciedu dwar dan u mhux għal din il-Qorti. Għaldaqstant, għar-ragunijiet kollha pprovduti *supra*, din il-Qorti qed għa wkoll tichad it-tieni aggravju tal-appellanti u cioe' dak immarkat bl-ittra 'B'.

It-tielet aggravju mressaq mill-appellanti u cioe' dak immarkat bl-ittra 'C' jirrigwardja l-piena erogata u dan għax fil-fhema tagħhom m'hemmx proporzjonalita' bejn ir-reat li huma jinsabu akkuzati bih u l-piena nflitta. L-Ewwel Qorti, wara li sabet lill-appellanti hatja tal-ewwel akkuza migjuba kontribom, immultathom himistax-il elf euro (€15,000) kull wiehed.

Id-disturb permissibbli ta' piena inflitta mill-Ewwel Qorti huwa gustifikat biss meta din ma tkunx fil-parametri tal-ligi jew tkun sproporzjonata u manifestement eccessiva fic-cirkostanzi. Hawn hekk issir referenza għas-sentenza ricenti fl-ismijiet Il-Pulizija vs Luca Crocenzi<sup>21</sup> fejn f'dan ir-rigward gie ritenut is-segwenti:

*'Din il-ġurisprudenza ormai ben kristallizzata u aċċettata in linea ta' principju fil-ġurisprudenza tagħna, tgħallimna illi l-Onorabbli Qorti ta' l-Appell għandha tbiddel u toarja l-piena inflitta minn l-Ewwel Onorabbli Qorti, fil-każijiet fejn dik il-piena ma tkunx pjenament imsejsa fuq dispozizzjonijiet tal-ligi. Dan il-principju kien gie ukoll kristallizat fis-sentenza fil-każ il-Pulizija vs. Joseph Attard mogħtija mill-Onorabbli Qorti ta' l-Appell Kriminali presjeduta mill-Imħallef Patrick Vella fis-26 ta' Jannar 2001, fejn il-Qorti qalet li:*

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<sup>21</sup> Deciza mill-Qorti tal-Appell Kriminali nhar it-2 ta' Gunju, 2022.

*“Il-Qorti tal-Appell rarament tbiddel il-piena li tkun imponiet lewwel Qorti. Dan taghmlu biss meta jkun manifestament evidenti li dik il-Qorti tkun imponiet xi piena mhux kontemplata mill-ligi ghar-reat in ezami, jew tkun xi piena harxa wisq jew sproporzjonata ghal dak li jkun ghamel il-hati, jew tkun xi piena mhux fil-parametri tal-ligi.”*

L-Artikolu 29 tal-Kap. 33 tal-Ligijiet ta’ Malta jistipula s-segwent:

*29. (1) Kull min, kontra d-disposizzjonijiet tat-Taqsima I ta’ din l-Ordinanza, iżomm fid-dar tiegħu jew f’post ieħor, jaħdem, ibiġh jew joffri għal bejgħ, jew jikkunsinna lill-persuni mhux awtorizzati, poroli tal-isparar jew xi waħda mis-sustanzi l-oħra msemmijin fl-artikolu 6, jehel, meta jinsab hati, il-piena tal-priġunerija għal żmien ta’ bejn sitt xhur u sentejn jew multa ta’ mhux anqas minn ħmistax-il elf euro (€15,000) u mhux iżjed minn ħamsin elf euro (€50,000), jew għal dik il-priġunerija u multa flimkien.*

Ghaldaqstant jistgħa jinghad illi l-piena mposta mill-Ewwel Qorti fuq l-appellanti kienet wahda li taqa’ fil-parametri tal-ligi. Madankollu, din il-Qorti, meta hadet in konsiderazzjoni ic-cirkostanzi kollha li jsawwru dan il-kaz, ma jidhrilix illi l-piena hekk mposta fuq l-appellanti mill-Ewwel Qorti kienet wahda idoneja. Ghal din ir-raguni din il-Qorti sejra tghaddi sabiex tghilqa’ l-ahhar aggravju mressaq mill-appellanti u cioe’ dak immarkat bl-ittra ‘C’ u ghalhekk sejra tirriforma l-piena mposta mill-Ewwel Qorti.

Ghal dawn il-motivi, din il-Qorti qeghda tichad l-ewwel zewg aggravji tal-appellanti u cioe’ dawk indikati bl-ittri ‘A’ u ‘B’ rispettivament. Tilqa’ it-tielet aggravju mressaq mill-appellanti, dan billi thassar u tirrevoka l-multa ta’

hmistax-il elf euro (€15,000) li giet imposta fuqhom mill-Ewwel Qorti u minflok wara li rat l-Artikolu 11 tal-Kapitolu 446 tal-Ligijiet ta' Malta, tqeghdhom taht Ordni ta' Servizz fil-Komunita bil-kundizzjoni li jaghmlu xoghol bla hlas ghal sittin (60) siegha kull wiehed f'dak il-post u b'dawk l-arrangamenti li jsiru mid-Direttur tas-Servizzi tal-Probation u Parole u taht is-segweni kundizzjonijiet:

1. Li matul il-perjodu ta' servizz fil-komunita', l-appellanti ghandhom jgibu ruhhom tajjeb, joqghodu ghad-direttivi kollha tal-ufficjal ghas-Servizz fil-Komunita', jirraportaw lil u jzommu dak il-kuntatt regolari u mitlub mill-Ufficjal ghas-Servizz fil-Komunita' mahtur lilu u jwettaq l-istruzzjonijiet kollha mahruqa lilu skont il-htiega tal-kaz u s-sitwazzjoni.
2. Li l-appellanti jibqghu f'kuntatt mal-ufficjal sorveljanti skont dawk li-struzzjonijiet li jstghu minn zmien ghal zmien jinghataw mill-imsemmi ufficjal, u li javzaw lill-imsemmi ufficjal b'kull tibdil fl-indirizzi taghhom;
3. Li jircievu viziti mill-ufficjal sorveljanti gewwa r-residenza taghhom jew f'kull post iehor li jiffrekwenta skont id-direttivi tal-istess ufficjal sorveljanti;
4. L-Ufficjal ghas-Servizz fil-Komunita' mahtur ghal dan l-iskop ghandu jirraporta bil-miktub lil din il-Qorti bil-progress tal-appellanti kull sitt xhur;

A tenur tal-Artikolu 11(4) tal-Kapitolu 446 tal-Ligijiet ta' Malta, l-Qorti tiddikjara wkoll li qabel ma emanat tali ordni, hija kienet fissret lill-appellanti bi kliem car u li jinftiehem, l-effetti tal-ordni ta' servizz fil-komunita kif ukoll tal-kondizzjonijiet kollha elenkati fid-digriet anness ma' din is-sentenza u li f'kaz li jonqsu milli jikkonformaw ruhom ma' dawk l-ordnijiet u dawk il-kondizzjonijiet u/jew f'kaz li jaghmel reat iehor huwa, jista jinghata sentenza ghar-reati li taghhom instab hati b'din is-sentenza, nonche l-konsegwenzi li jstghu jigu sofferti f'kaz ta' nuqqas t'adezjoni mat-termini tal-ordni hawn fuq imsemmi.

Ai termini tal-Artikolu 11(5) tal-Kapitolu 446 tal-Ligijiet ta' Malta, il-Qorti tordna li kopja ta' din is-sentenza u tal-Ordni ta' Servizz fil-komunita bid-digrieti ta' llum stess ghandhom jigu trasmessi minnufih lid-Direttur tas-Servizzi ta' Probation u Parole, lill-Ufficjal Sorveljanti assenjat lill-hati kif ukoll lill-awtoritajiet responsabbli mis-sorveljanza tat-twertieq tal-ordni hawn fuq imsemmi.

Di piu, din il-Qorti b'applikazzjoni ta' l-Artikolu 533 tal-Kodici Kriminali, qeghda tordna lill-appellanti jhallsu l-ammont ta' €835.21 kull wiehed rapprezentanti nofs tal-ispejjez peritali.

(ft) Consuelo-Pilar Scerri Herrera

Imhalled

**Vera kopja**

Nadia Ciappara

Deputat Registratur



### **Qorti tal-Appell Kriminali**

ORDNI TA' SERVIZZ FIL-KOMUNITA' (MAGHMUL SKONT L-ARTIKOLU  
11 TAL-KAPITOLU 446 TALLIGIJET TA' MALTA)

**Onor. Imhalled Consuelo Scerri Herrera, LL.D., Dip Matr., (Can), Ph. D.**

Illum: 20 ta' Settembru, 2022

**Il-Pulizija**

**vs.**

**Edgar Ellul**  
**Edmond Camilleri**  
**Stephen Borg**  
**Elton Cauchi**  
**Anthony Caruana**  
**Charles Caruana**  
**Trevor Vella**

Il-Qorti,

Wara li kkunsidrat li jkun xieraq li jsir dan l-Ordni ta' Servizz fil-Komunita' u billi b'sentenza mogħtija llum, fl-ismijiet fuq premissi, Edmund Camilleri, KI 249070M ġie misjub ħati kif imfisser fl-istess sentenza u ġie mpogħi taħt Ordni ta' Servizz fil-Komunita' ai termini tal-Artikoli 11 tal-Kapitolu 446 tal-Liġijiet ta' Malta.

Wara li fissret lill-ħati bi kliem ċar l-effett ta' din l-Ordni ta' Servizz fil-Komunita' (inklużi l-kundizzjonijiet addizzjonali speċifikati hawn taħt skont l-Artikoli 11 tal-Kapitolu 446 tal-Liġijiet ta' Malta) u illi jekk jonqos li jħares din l-Ordni jew jagħmel xi reat ieħor sakemm dan l-Ordni jibqa' fis-seħħ ikun jista' jiġi kkundannat għar-reat li għalih qed jiġi magħmul din l-Ordni, u illi l-ħati wera' li jrid iħares il-kundizzjonijiet ta' din l-Ordni ta' Servizz fil-Komunita';

Għalhekk, tordna li l-ħati Edmund Camilleri, KI 249070M ta' jagħti sittin siegħa (60) xogħol/servizz fil-komunita' li jiġi assenjat lilu mid-Direttur tas-Servizzi tal-Probation u Parole liema xogħol/servizz għandu jsir taħt is-sorveljanza ta' Uffiċċjal għas-Servizz fil-Komunita' taħt dawn il-kundizzjonijiet:

1. Li matul il-perjodu ta' servizz fil-komunita', il-hati ghandu jgib ruhu tajjeb, joqghod ghad-direttivi kollha tal-ufficjal ghas-Servizz fil-Komunita', jirraporta lil u jzomm dak il-kuntatt regolari u mitlub mill-Ufficjal ghas-Servizz fil-Komunita' mahtur lilu u jwettaq l-istruzzjonijiet kollha mahruqa lilu skont il-htiega tal-każ u s-sitwazzjoni.
2. Li matul il-perjodu ta' servizz fil-komunita', il-hati ghandu jirraporta lill-awtoritajiet rilevanti minn zmien ghal zmien skont l-istruzzjonijiet mahruqa lilu mill-Ufficjal ghas-Servizz fil-Komunita';
3. Li jwettaq b'mod soddisfacenti dawk is-sieghat kollha ta' xoghol siewi fil-Komunita' f'dawk il-hinijiet u ghal tul ta' dak iz-zmien kif speçifikat aktar 'il fuq;
4. L-Ufficjal ghas-Servizz fil-Komunita' mahtur ghal dan l-iskop ghandu jirraporta bil-miktub lil din il-Qorti bil-progress tal-hati kull sitt xhur;
5. Il-hati ghandu javza immedjatament lill-Ufficjal ghas-Servizz fil-Komunita' b'kull bdil li talvolta jagħmel fl-indirizz residenzjali tiegħu jew impjeg, kemm temporanju kif ukoll permanenti lill-Ufficjal ghas-Servizz fil-Komunita';
6. Li ghandu jzomm ruhu f'kuntatt mal-ufficjal ghas-Servizz fil-Komunita' skont id-direttivi li jagħtih minn zmien għall-iehor l-istess Ufficjal ghas-Servizz fil-Komunita'; u partikolarment li huwa ghandu, jekk l-Ufficjal ghas-Servizz fil-Komunita' ikun hekk irid, jirçievi żjarat tal-istess Ufficjal ghas-Servizz fil-Komunita';

7. Il-hati għandu jiffirma l-formola ta' ftehim ta' xogħol ta' servizz fil-komunita';

TORDNA li kopja ta' din l-Ordni tingħata lil hati u lid-Direttur inkarigat mill-Uffiċċju tal-Probation Services u Parole ai termini tal-Artikolu 11(5) tal-Kapitolu 446 tal-Liġijiet ta' Malta.

F'każ li dawn il-kundizzjonijiet ma jiġux segwiti, issir denunzja, mill-Uffiċċjal għas-Servizz fil-Komunita' quddiem il-Qorti kompetenti.

Edmund Camilleri (K.I. 249070M)

Nadia Ciappara  
Deputat Registratur

Consuelo-Pilar Scerri Herrera  
Imhalled



## **Qorti tal-Appell Kriminali**

ORDNI TA' SERVIZZ FIL-KOMUNITA' (MAGHMUL SKONT L-ARTIKOLU  
11 TAL-KAPITOLU 446 TALLIĠIJET TA' MALTA)

**Onor. Imhalledf Consuelo Scerri Herrera, LL.D., Dip Matr., (Can), Ph. D.**

Illum: 20 ta' Settembru, 2022

**Il-Pulizija**

**vs.**

**Edgar Ellul**

**Edmond Camilleri**

**Stephen Borg**

**Elton Cauchi**

**Anthony Caruana**

**Charles Caruana**

**Trevor Vella**

Il-Qorti,

Wara li kkunsidrat li jkun xieraq li jsir dan l-Ordni ta' Servizz fil-Komunita' u billi b' sentenza moghtija illum, fl-ismijiet fuq premissi, Stephen Borg, KI 344278M ġie misjub hati kif imfisser fl-istess sentenza u ġie mpogġi taht Ordni ta' Servizz fil-Komunita' ai termini tal-Artikoli 11 tal-Kapitolu 446 tal-Liġijiet ta' Malta.



Wara li fissret lill-hati bi kliem ċar l-effett ta' din l-Ordni ta' Servizz fil-Komunita' (inklużi l-kundizzjonijiet addizzjonali speċifikati hawn taħt skont l-Artikoli 11 tal-Kapitolu 446 tal-Liġijiet ta' Malta) u illi jekk jonqos li jħares din l-Ordni jew jagħmel xi reat ieħor sakemm dan l-Ordni jibqa' fis-seħħ ikun jista' jiġi kkundannat għar-reat li għalih qed jiġi magħmul din l-Ordni, u illi l-hati wera' li jrid iħares il-kundizzjonijiet ta' din l-Ordni ta' Servizz fil-Komunita';

Għalhekk, tordna li l-hati Stephen Borg, KI 344278M ta' jagħti sittin siegħa (60) xogħol/servizz fil-komunita' li jiġi assenjat lilu mid-Direttur tas-Servizzi tal-Probation u Parole liema xogħol/servizz għandu jsir taħt is-sorveljanza ta' Uffiċċjal għas-Servizz fil-Komunita' taħt dawn il-kundizzjonijiet:

1. Li matul il-perjodu ta' servizz fil-komunita', il-hati għandu jgħib ruħu tajjeb, joqgħod għad-direttivi kollha tal-uffiċjal għas-Servizz fil-Komunita', jirraporta lil u jzomm dak il-kuntatt regolari u mitlub mill-Uffiċċjal għas-Servizz fil-Komunita' maħtur lilu u jwettaq l-istruzzjonijiet kollha maħruġa lilu skont il-htieġa tal-każ u s-sitwazzjoni.
2. Li matul il-perjodu ta' servizz fil-komunita', il-hati għandu jirraporta lill-awtoritajiet rilevanti minn żmien għal żmien skont l-istruzzjonijiet maħruġa lilu mill-Uffiċċjal għas-Servizz fil-Komunita';
3. Li jwettaq b'mod soddisfaċenti dawk is-siegħat kollha ta' xogħol siewi fil-Komunita' f'dawk il-hinijiet u għal tul ta' dak iż-żmien kif speċifikat aktar 'il fuq;
4. L-Uffiċċjal għas-Servizz fil-Komunita' maħtur għal dan l-iskop għandu jirraporta bil-miktub lil din il-Qorti bil-progress tal-hati kull sitt xhur;

5. Il-hati għandu javża immedjatement lill-Uffiċċjal għas-Servizz fil-Komunita' b'kull bdil li talvolta jagħmel fl-indirizz residenzjali tiegħu jew impjeg, kemm temporanju kif ukoll permanenti lill-Uffiċċjal għas-Servizz fil-Komunita';
6. Li għandu jzomm ruħu f'kuntatt mal-uffiċjal għas-Servizz fil-Komunita' skont id-direttivi li jagħtih minn żmien għall-iehor l-istess Uffiċċjal għas-Servizz fil-Komunita'; u partikolarment li huwa għandu, jekk l-Uffiċċjal għas-Servizz fil-Komunita' ikun hekk irid, jirċievi żjarat tal-istess Uffiċċjal għas-Servizz fil-Komunita';
7. Il-hati għandu jiffirma l-formola ta' ftehim ta' xogħol ta' servizz fil-komunita';

TORDNA li kopja ta' din l-Ordni tingħata lil hati u lid-Direttur inkarigat mill-Uffiċċju talProbation Services u Parole ai termini tal-Artikolu 11(5) tal-Kapitolu 446 tal-Liġijiet ta' Malta.

F'każ li dawn il-kundizzjonijiet ma jiġux segwiti, issir denunzja, mill-Uffiċċjal għas-Servizz fil-Komunita' quddiem il-Qorti kompetenti.

Stephen Borg (K.I. 344278M)

Nadia Ciappara

Deputat Registratur

Consuelo-Pilar Scerri Herrera

Imhalled