



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

MAGISTRAT DR ELAINE MERECIECA LL.D

**PULIZIJA
(Spettur Spiridione Zammit)**

kontra

**TYRONE CRAIG DARK
(I.D. No. 211804(L))**

Kaz Nru.: 489/2011

Illum, 14 ta' Novembru 2022

Il-Qorti,

Wara li rat l-imputazzjonijiet migjuba fil-konfront tal-imputat, **Tyrone Craig Dark** ta' erbgħa u ghoxrin (24) sena bin Raymond u Alfred nee' Mercieca imwieled Awstralja fit-22 ta' Ottubru 1986 u joqghod fil-Facilita' Korrettiva ta' Kordin detentur tal-karta tal-identita' bin-numru 211804L, akkuzat talli fid-9 ta' Ottubru 2011 u xhur qabel waqt li kien fil-Facilita' Korrettiva ta' Kordin u f' dawn il-Gzejjer;

1. Kellu fil-pussess tieghu il-pilloli Rivotril (Clonazepam) u Mianserin lkoll specifikati fl-ewwel skeda tal-ordinanza dwar il-Medicini Perikoluzi Kap. 101 tal-Ligijiet ta' Malta, meta ma kienx fil-pussess ta' awtorizzazzjoni ghal importazzjoni jew esportazzjoni mahrug mit-Tabib Principali tal-Gvern skont id-disposizzjonijiet tar-4 u tas-6 taqsima tal-ordinanza u meta ma kienx bil-licenzja jew xort' ohra awtorizzat li jimmanifattura jew li jforni l-pilloli imsemmija u ma kienx b'xi mod iehor bil-licenzja mill-President ta' Malta li jkollu fil-pussess tieghu dawn il-pilloli u naqas li jipprova li l-pilloli imsemmija gew fornuti lilu ghal uzu tieghu skont ir-ricetta kif provdut fir-regolamenti imsemmija u dan bi ksur tar-regoli 1939 dwar il-Kontroll Interni tad-Drogi Perikoluzi (GN 292/1939) kif sussegwentement ammendati u bi ksur tal-Ordinanza Dwar il-Medicini Perikoluzi Kap 101 tal-Ligijiet ta' Malta liema pilloli kienu fil-pussess tieghu b'tali mod li ma kinux ghal uzu eskussiv tieghu.
2. Fl-istes cirkostanzi ikkommetta serq ta' pilloli psikotropici ghad-detriment tal-Gvern ta' Malta, liema serq hu aggravat bil-persuna.
3. B'hekk sar recidiv b'diversi sentenzi tal-Qorti liema sentenzi saru definittivi u ma jistghux jigu mibdula jew imhassra u dan ai termini 49 u 50 tal-Ligijiet ta' Malta;

Il-Qorti giet mitluba li f'kaz ta' sejbien ta' htija, tapplika l-provedimenti tal-Artikolu 33A tal-Kap. 9 Tal-Ligijiet ta' Malta.

Rat li l-Qorti giet ukoll mitluba sabiex f'kaz ta' htija, barra milli tapplika l-piena skont il-ligi, tordna lill-imputat ihallas l-ispejjez li ghandhom x'jaqsmu mal-hatra ta' l-esperti ai termini tal-Artikolu 533 tal-Kap. 9 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 Perikoluzi (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 2021 kif ukoll l-ezenzjoni tal-partijiet mis-smight mill-gdid tal-provi gia mismugha minn din il-Qorti diversament preseduta;

Qiset ukoll li fl-udjenza tal-25 ta' Mejju 2022, id-difiza talbet ghall-isfilz tal-istqarrija galadarba dina ttiehdet fi zmien fejn l-imputat ma kienx assistiet minn avukat ta' fiducja tieghu waqt it-tehid tal-istess stqarrija;

¹ Fol. 6 tal-atti processwali.

Rat il-verbal tal-udjenza tal-5 t'Ottubru 2022;

Semghet lill-prosekuzzjoni tiddikjara li qed tistrieħ fuq il-provi mressqa minnha;

Rat li minkejja t-terminu mgħoti lid-difiza għan-nota tas-sottomissjonijiet din baqghet ma gietx ipprezentata;

Ikkunsidrat

Illi l-fatti tal-kaz odjern jirrigwardjaw fatti li jirrisalu lura għad-9 t'Ottubru 2011, meta wara tfittxija li saret fic-cella li fiha kienu residenti l-qua imputat u persuna oħra instabu 6 pilloli Rivetrin, pillola Bolvidon u 7 pilloli oħra Serequil mohbija għewwa t-tabakk fuq xkaffa. Jidher li l-qua imputat kien jahdem għewwa l-MI Room li hija l-clinic għewwa l-Facilita' Korrettiva ta' Kordin. Fil-kors tal-investigazzjonijiet kondotti mill-pulizija, l-imputat irrillaxxa stqarrija fejn fl-istess stqarrija huwa ammetta li dawn il-pilloli kienu tiegħu u li kien hadhom minn għewwa l-MI Room waqt li kien qed jahdem fl-istess kamra. Mistoqsi qatt għaddiex dawn il-pilloli lil xi detenuti oħra huwa wiegeb fin-negattiv.

L-ufficjali li għamlu t-tfittxija fic-cella tal-imputat jikkonfermaw li l-imputat kien jahdem fl-MI Room għewwa l-Facilita' Korrettiva ta' Kordin. Jikkonfermaw ukoll li huwa kellu preskrizzjoni għall-valium. Jikkonferaw li kien hemm residenti iehor fl-istess cella, izda ma jiftakrux min kien. CO 127 Jason Farrugia jikkonferma li l-pilloli instabu go borza tat-tabakk fuq xkaffa. CO65 Kevin Turner jgħid li l-pilloli instabu go borza vojta tat-tabakk go cupboard.

Illi din il-Qorti ser tibda biex tindirizza l-kwistjoni tal-istqarrija u dan anke fid-dawl tat-talba tad-difiza li saret fl-udjenza tal-25 ta' Mejju 2022, permezz ta' liema din il-Qorti giet mitluba tiskarta l-istqarrija galadarba l-qua imputat ma kienx legalment assistiet waqt it-tehid tal-istqarrija. Din l-istqarrija giet mehuda fid-9 t'Ottubru 2011 fit-3.30 ta' wara nofsinhar mill-ispettur Spiridione Zammit fil-prezenza ta' PS85 C. Butters wara li l-imputat gie mwissi li ma huwiex obligat jittellem sakemm ma jkunx jixtieq jagħmel dan, imma dak li ser jgħid jistgħa jingieb bi prova. Din l-istqarrija ttehdet wara li l-imputat irrifjuta d-dritt li jikkonsulta ma avukat qabel it-tehid tal-istess. Madanakollu mill-atti processwali jirrizulta car li l-imputat ma giex offrut id-dritt tal-assistenza legali waqt it-tehid tal-istqarrija. Mill-atti processwali ma jirrizultax li kien hemm ragunijiet validi u impellenti li jzommu lill-imputat milli jkun assistiet permezz ta' avukat jew prokuratur legali waqt l-interrogazzjoni. Fil-fatt mill-istqarrija nnifisha jirrizulta li l-qua imputat kien gie offrut il-possibilita' li jikkonsulta ma avukat qabel l-interrogatorju (izda mhux waqt). Isegwi għalhekk li probabilmment l-unika raguni l-għaliex l-imputat ma kienx mgħejjun minn avukat waqt l-

interrogazzjoni kienet l-ghaliex il-ligi vigenti dak iz-zmien ma kinitx tippermettieha. Dak iz-zmien li fiha ttiġdhet l-istqarrija odjerna (2011) il-ligi kienet tippermetti biss li l-imputat jkun jista' jikkonsulta ma avukat qabel ma tittiehed l-istqarrija sa massimu ta' siegħa.

Illi l-guriprudenza lokali ricenti fir-rigward tal-assistenza legali waqt l-interrogatorju jidher li qed tistrieħ fuq l-insenjament mghoti fil-kaz **Beuze v il-Belġju** (App. Numru 71409/10) tad-9 ta' Novembru 2018, li kien jitratta ukoll sitwazzjoni fejn il-ligi domestika rilevanti ma kinitx tippermetti l-assistenza legali waqt l-interrogazzjoni u fejn ma kienx hemm ragunijiet impellenti għalfejn ma tiġiex offruta l-assistenza tal-avukat. F'dan il-pronunzjament intqal:

“120. The fairness of a criminal trial must be guaranteed in all circumstances. However, what constitutes a fair trial cannot be the subject of a single unvarying rule but must depend on the circumstances of the particular case (see Ibrahim and Others, ... § 250). The Court’s primary concern, in examining a complaint under Article 6 § 1, is to evaluate the overall fairness of the criminal proceedings”

121. As the Court has found on numerous occasions, compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings as a whole and not on the basis of an isolated consideration of one particular aspect or one particular incident, although it cannot be ruled out that a specific factor may be so decisive as to enable the fairness of the trial to be assessed at an earlier stage in the proceedings.”

... .. . “139. The stages of the analysis as set out in the Salduz judgment – first looking at whether or not there were compelling reasons to justify the restriction on the right of access to a lawyer, then examining the overall fairness of the proceedings – have been followed by Chambers of the Court in cases concerning either statutory restrictions of a general and mandatory nature, or restrictions stemming from case-specific decisions taken by the competent authorities.

“140. In a number of cases, which all concerned Turkey, the Court did not, however, address the question of compelling reasons, and neither did it examine the fairness of the proceedings, but found that systematic restrictions on the right of access to a lawyer had led, ab initio, to a violation of the Convention Nevertheless, in the majority of cases, the Court has opted for a less absolute approach and has conducted an examination of the overall fairness of the proceedings, sometimes in summary form ... and sometimes in greater detail ...

“141. Being confronted with a certain divergence in the approach to be followed, in Ibrahim and Others the Court consolidated the principle established by the Salduz judgment, thus confirming that the applicable test consisted of two stages and providing some clarification as to each of those stages and the relationship between them (see Ibrahim and Others, ... §§ 257 and 258-62).

“144. In Ibrahim and Others the Court also confirmed that the absence of compelling reasons did not lead in itself to a finding of a violation of Article 6. Whether or not

there are compelling reasons, it is necessary in each case to view the proceedings as a whole (see *Ibrahim and Others*, ... § 262). That latter point is of particular importance in the present case, since the applicant relied on a certain interpretation of the Court's case-law on the right of access to a lawyer ... to the effect that the statutory and systematic origin of a restriction on that right sufficed, in the absence of compelling reasons, for the requirements of Article 6 to have been breached. However, as can be seen from the *Ibrahim and Others* judgment, followed by the *Simeonovi* judgment, the Court rejected the argument of the applicants in those cases that *Salduz* had laid down an absolute rule of that nature. The Court has thus departed from the principle that was set out, in particular, in the *Dayanan* case and other judgments against Turkey.

“145. Where there are no compelling reasons, the Court must apply very strict scrutiny to its fairness assessment. The absence of such reasons weighs heavily in the balance when assessing the overall fairness of the criminal proceedings and may tip the balance towards finding a violation. The onus will then be on the Government to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the criminal proceedings was not irretrievably prejudiced by the restriction on access to a lawyer² (see *Ibrahim and Others*, ... § 265).....”

“147. Lastly, it must be pointed out that the principle of placing the overall fairness of the proceedings at the heart of the assessment is not limited to the right of access to a lawyer under Article 6 § 3 (c) but is 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;

² Emfazi ta' dina l-Qorti

“(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”.

Ghalkemm fil-kaz odjern jidher li l-qua imputat irrifjuta d-dritt ghall-assistenza legali qabel it-tehid tal-istqarrija dana ma jfissirx li l-qua imputat kien jirrifjuta d-dritt ghall-assistenza legali waqt l-interrogatorju kieku dan gie offrut lilu. Minghajr ma dina l-Qorti tidhol fi spekulazzjonijiet mhux mehtiega jrid jinghad li wiehed ma jistghax jekwipara d-dritt ta' assistenza legali qabel l-interrogatorju ghal ma dritt ta' assistenza legali waqt l-interrogatorju.

Permezz ta' diversi sentenzi ricenti mgħotija mill-Qrati lokali, saret referenza għas-sentenza hawn fuq citata u sabiex jigi assigurat li d-dritt għal smigh xieraq ma jigiex mittifes, il-Qrati skartaw l-istqarrija rrillaxata f'cirkostanzi bħal daww odjerni meta gew sabiex jikkunsidraw ir-responsabilita' tal-imputat li jkun³.

Fil-kaz in dezamina, mill-qari tal-istqarrija hawn fuq imsemmija jirrizulta li l-imputat inkrimina lilu nnifsu billi ha responsabilita' tas-sustanza misjuba fic-cella li huwa kien residenti fiha flimkien ma persuna oħra. Di piu' jinghad li l-prosekuzzjoni strahet unikament fuq din l-istqarrija minghajr ma pruvat tressaq provi oħra li jindikaw li s-sustanza misjuba kienet effettivament tal-imputat u

³ F'dan is-sens issir referenza għas-segwenti sentenzi (izda mhux biss) Morgan Onourah vs L-Avukat tal-Istat (Qorti Kostituzzjonali), 27 ta' Jannar 2021, Ir-Repubblika ta' Malta vs Kevin Gatt et (Qorti tal-Appell Kriminali (Superjuri), (27 ta' Ottubru 2021), kif ukoll Christopher Bartolo vs L-Avukat ta' l-Istat Qorti Kostituzzjonali, (26 ta' April 2022) u Ir-Repubblika ta' Malta vs Andrew Mangion (Qorti tal-Appell Kriminali (Superjuri), (4 ta' Mejju 2022).

mhux persuna ohra li kienet ukoll residenti fl-istess cella. Konsegwentament din il-Qorti ser tiskarta l-imsemmija stqarrija meta tigi biex tanalizza r-reita' tal-imputat fid-dawl tal-imputazzjonijiet migjuba fil-konfront tieghu u dan bil-ghan li jigi osservat l-overall fairness tal-proceduri.

Stabbilit dan fir-rigward tal-istqarrija u tenut kont tal-fatt li mill-provi mressqa jirrizulta li l-imputat kien residenti fl-istess cella ma prigunier iehor, il-prova determinanti fir-rigward tal-ewwel imputazzjoni kellha tkun fejn instabet is-sustanza fl-imsemmija cella. Madanakollu mix-xhieda mghotija mill-ufficjali li ghamlu tfittxija ma jirrizultax b'mod determinanti li s-sustanza instabet fl-isfera ta' kontroll jew altrimenti qalb il-propjeta' tal-imputat. Ghaldaqstant din il-Qorti ma hijiex tal-fehma li l-prosekuzzjoni rnexxielhom jippruvaw sal-grad rikjest mil-ligi l-ewwel imputazzjoni migjuba kontra l-qua imputat. It-tieni imputazzjoni tistrieħ unikament fuq dak li ddikjara l-imputat fl-istqarrija u ghaldaqstant fid-dawl ta' dak li nghad qabel f'din is-sentenza huwa ser jigi illiberat minn din l-imputazzjoni. Fir-rigward ta' dawn il-konkluzzjonijiet, it-tielet imputazzjoni li tirrigwarda l-addebitu tar-recediva ma tista' qatt tissussiti.

Decide:

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

MAGISTRAT DR. ELAINE MERECIECA BA. LL.D.

Christine Farrugia

Deputat Registratur