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

Magistrat Dr. Monica Vella LL.D., M.Jur

Seduta Mosta

Il-Pulizija
(Spettur Godwin Scerri)

Vs

George Bartolo

Illum, 25 ta' Novembru 2022

Il-Qorti,

Rat l-akkuza migjuba mill-Pulizija Ezekuttiva nhar it-12 ta' Awwissu 2021 kontra l-imputat:

"**George Bartolo**, detentur tal-karta ta' l-identita' bin-numru 0378157(M).

Akkuzat talli f'dawn il-Gzejjer u cioe' nhar il-31 ta' Mejju 2021 jew fix-xhur ta' qabel gewwa l-fond bl-isem 'St. Mary', Fi Triq il-Haddied, Mosta:

1. Minghajr il-hsieb li tisraq jew li taghmel il-hsara kontra l-ligi, izda biss biex tezercita jedd li tippretendi li ghandek, gieghelt bl-awtorita' tieghek innifsek, lil Joseph Sultana jhallas dejn, jew jesegwixxi obbligazzjoni, tkun li tkun, jew fixkilt lil Joseph Sultana fil-pussess ta' hwejgu, jew hattejt bini, jew b'xi mod iehor kontra l-ligi, indhalt fi hwejgu *(Art. 85 tal-Kap. 9 tal-ligijiet ta' Malta)*;"[1]

Rat l-atti kollha tal-kawza.

Semghet ix-xhieda.

Semghet is-sottomissjonijiet finali tal-Partijiet.

Rat u qieset id-dokumenti u l-provi kollha prodotti.

Rat illi l-kawza thalliet ghal-lum ghas-sentenza.

Ikkunsidrat:

Il-Fatti fil-Qosor

Illi fil-kaz in ezami l-kwerelant Goffredo Gauci Maistre jghid illi kellu l-pussess ta' garaxx, proprjeta tal-imputat u dan stante kuntratt ta' kera li kellu mal-imputat. Il-kwerelant, fl-imsemi garaxx, kien izomm hafna affarijiet fosthom il-vettura proprjeta tal-kwerelant l-iehor Joseph Sultana, li ggib in-numru EAA496. Illi jum fost l-ohrajn, Joseph Sultana gie kkuntatjat mill-Pulizija illi qalulu li l-vettura tieghu kienet tinsab fit-triq u biex inehhiha minn hemm. Sultana sab il-vann barra fit-

[1] A folio 1 tal-process.

triq, meta hu kien halliha fil-garaxx. Mhux biss izda l-vettura sabha minghajr cavetta, u minghajr il-battery, ir-radiator, il-cooler, il-fannijiet u l-bumper, li kienu kollha go fih meta il-vann kien fil-garaxx.

Il-Ligi u Gurisprudenza Applikabbli

Din l-offiza giet ikklassifikata mill-legislatur taht delitti kontra l-Amministrazzjoni tal-Gustizzja u Amministrazzjonijiet ohra. Il-**Professur Sir Anthony Mamo** fin-Notes on Criminal Law fit-tieni volum tieghu qies dawn l-offizi bhala s-segwenti:

'These crimes attack the State but indirectly, in as much as, without being actuated by motives hostile to the Government, they proceed from other causes, often of a private character and affect those social institutions on and by which the machinery of the Government rests and moves: those institutions, that is to say, which provide the means of guaranteeing to every member of the community the integrity of his rights and those benefits which derive from the state of civil society.'

Fi kliem il-gurista **Carrara** "La ragion fattasi e' il delitto di chiunque credendo di aver un diritto sopra cosa nell'altrui possesso, o sopra altro individuo lo esercita malgrado la opposizione vera o presunta di questo, pel fine di sostituire la sua forza privata all'autorita pubblica, senza per altro eccedere in violazioni speciali di altri diritti."

Bl-introduzzjoni ta' dan l-artikolu, l-ghan ahhari tal-legislatur kien li jipprotegi l-istatus quo kontra min jiehu l-ligi b'idejh, indipendentement minn jekk l-aggressur jew il-vittma jkollux dritt jew le. Huwa artikolu intiz biex jistabilixxi l-ordni pubbliku u biex ma jhallix lill-individwu privat jezercita setgha li fl-ahhar mill-ahhar tispetta lill-awtorita' pubblika. Huwa ghalhekk li l-istess artikolu

jinstab fil-parti tal-Kodici Kriminali relatata ma' delitti kontra l-Amministrazzjoni tal-Gustizzja u Amministrazzjonijiet Pubblici ohra.

Illi fil-kawza fl-ismijiet **Il-Pulizija Vs Godfrey Casha** deciza fit-12 ta' Marzu, 2019, mill-Qorti tal-Appell Kriminali (Onor. Imhallef Dr. Consuelo Scerri Herrera LL.D.), dik il-Qorti ghamlet referenza ghas-sentenza fl-ismijiet **Il-Pulizija vs Anthony Micallef**[2], fejn il-Qorti tal-Appell Kriminali kienet ikkummentat hekk fuq il-portata ta' dan l-artikolu: "Apparti li l-azzjoni kriminali u l-azzjoni ċivili jitmexxew indipendentement minn xulxin (Artikolu 6, Kap. 9), ir-reat ipotizzat fl-imputazzjoni huwa dak ta' delitt kontra l-amministrazzjoni tal-ġustizzja, u aktar preċiżament id-delitt ta' l-użu kontra l-liġi mill-privat tas-setgħat ta' l-awtorita` pubblika. L-Artikolu 85 tal-Kodiċi Kriminali hu intiż mhux biex jipproteġi l-proprjeta`, mobbli jew immobbli, ta' dak li jkun - għal tali protezzjoni hemm l-azzjoni ċivili - iżda biex jipprevjeni l-użurpazzjoni mill-privat tas-setgħat ta' l-awtorita` pubblika. Isegwi għalhekk li, indipendentement mill-protezzjoni mogħtija permezz ta' l-azzjoni jew azzjonijiet ċivili, jekk jirriżulta bħala fatt li kien hemm l-użurpazzjoni ravviżata fl-imsemmi Artikolu 85, il-Qrati ta' Ġustizzja Kriminali għandhom jaġixxu tempestivament biex jirristabilixxu l-ordni pubblika permezz tas-sanzjoni penali. Il-Qrati ta' Gustizzja Kriminali għandhom addirittura s-seta' li jiddeterminaw kwistjonijiet ċivili inċidentali għar-risoluzzjoni tal-vertenza penali."

Dik il-Qorti irriteniet illi "l-elementi tar-reat in dizamina gew magisterjalment migbura fid-definizzjoni analitika moghtija mill-

[2] Deciza 11 ta' Frar, 2013

Imhallef W. Harding fis-sentenza tal-Qorti ta' l-Appell: "**Il-Pulizija vs. Giuseppe Bonavia et**"[3] bhala:

"(1) att estern li jispolja lil xi hadd iehor minn haga li jkun qieghed igawdi, liema att ikun ezegwit kontra l-opposizzjoni, espressa jew presunta, ta' dan il-hadd iehor; Il-gurista Carrara li hafna drabi jigi citat bhala l-pedament awtorevoli ta' dawn l-erba' elementi ta' raġion fattasi jispjega dan l-element bhala "un atto esterno che spogli altri di un bene che gode ..." Ikompli jghid li "Chi e' nell' attuale godimento di un bene e continua a goderne a dispetto di chi non voglia, non delinque; perchè la legge protegge lo status quo, il quale non può variarsi tranne per consenso degl' interessati, o per decreto dell'autorità giudiciale."

(2) il-kredenza li l-att qieghed isir b'ezercizzju ta' dritt;

(3) il-koxjenza fl-agent li hu qieghed jaghmel 'di privato braccio' dak li jmissu jsir per mezz ta' l-awtorita' pubblika; jew, fi kliem il-Crivellari, "la persuasione di fare da se` cio` che dovrebbe farsi reclamando l'opera del Magistrato"[4]

(4) in-nuqqas ta' titolu li jirrendi l-fatt aktar gravi[5]. Gie ritenut illi : "Element importanti kostituttiv ta' dar-reat hu dak intenzjonali fis-sens li l-agir ta' dak li jkun irid ikun maghmul bil-hsieb li hu qed jezercita dritt li jahseb li ghandu ghad-distinzjoni mir-reati ta' serq jew danni volontarji fuq proprjeta' ta' haddiehor per ezempju . Ghalhekk hemm bzonn li issir indagni fuq il-movent li jkun wassal lill-persuna li ikkommettiet dar-reat biex taghmel dak li ghamlet. L-element materjali

[3] Deciza fl-14 ta' Ottubru 1944 u riportata f'Vol. XXXII.iv.768.
[4] Il Codice Penale per il Regno d'Italia Interpretato ecc., Torino, 1895, Vol. VI, pagna 749
[5] Ara, fost diversi sentenzi, **Il-Pulizija vs. Salvatore Farrugia**, Appell Kriminali 14 ta' Dicembru

invece jikkonsisti filli wiehed jippriva persuna ohra minn xi dritt fuq haga li ghandu id-dgawdija taghha."

Il-Qorti tal-Appell kompliet illi "Fuq kollox: Dawn l-elementi gew riportati f'sentenzi ohra fosthom **Il-Pulizija vs Emanuel Muscat et,** deciza fit-30 ta' Settembru 1996 mill-Qorti tal-Appell Kriminali: "L-Artikolu 85 huwa intiz biex dak li jkun ma jiehux il-ligi b'idejh, u ghalhekk l-iskop wara din id-disposizzjoni – bhad-disposizzjonijiet fil-kamp civili dwar l-actio spolii – huwa li tipprotegi l-istatus quo."

"L-element intenzjonali huwa importanti ferm ghaliex huwa dak li jikkwalifika dan ir-reat minn reati ohra. Fil-fatt hu ben risaput – u dan johrog anke mill-istess definizzjoni tar-reat in dizamina – li l-istess att materjali jista' jaghti lok ghar-reat ta' ragion fattasi jew ghal reati ohra (hsara volontarja, serq), u jekk ikunx hemm dan ir-reat ta' ragion fattasi jew xi reat iehor ikun jiddependi mill-intenzjoni tal-agent. Hu rrelevanti jekk din l-intenzjoni tikkwalifikax bhala intenzjoni specifika jew intenzjoni generika[6] . Fil-fatt fis-sentenzi fl-ismijiet **Il-Pulizija vs Eileen Said[7]** u **Il-Pulizija vs Vincent Cortis[8]**, il-Qorti tal-Appell Kriminali kompliet telabora li "element kostituttiv ta' dan ir-reat hu dak intenzjonali fis-sens li l-agir ta' dak li jkun irid ikun maghmul bil-hsieb li hu qed jezercita dritt li jahseb li ghandu ghad-distinzjoni mir-reati ta' serq jew danni volontarji fuq proprjeta' ta' haddiehor, per ezempju. Ghalhekk hemm bzonn li ssir indagini fuq il-movent li jkun wassal lill-persuna li kkommettiet dan ir-reat biex taghmel dak li ghamlet. L-element materjali invece jikkonsisti filli wiehed jippriva persuna ohra minn xi dritt fuq haga li ghandu it-tgawdija taghha."

[6] Ara f'dan is-sens is-sentenza **Il-Pulizija vs Mario Lungaro**, deciza mill-Qorti tal-Appell Kriminali fit-18 ta' Novembru 1996
[7] Deciza fis-19 ta' Gunju 2003
[8] Deciza fis-27 ta' Novembru 2008

Illi dawn il-principji gew abbraccjati wkoll sa ricentament mill-Qorti tal-Appell fil-kawza **The Police vs Deidre Nyasa Rolfe Hornloyd Strickland,**[9] (Onor. Imhallef Dr. Aaron Bugeja LL.D.) fejn dik il-Qorti rriteniet illi:

"In fact the elements of this crime were elaborated by Mr. Justice William Harding in the case **Il-Pulizija vs. Giuseppe Bonavia et** (App.Krim. 14.10.1944 , Vol.XXXII - IV , p.768) as well as other more recent judgments such as the one delivered by Mr. Justice Lawrence Quintano in **Il-Pulizija vs Anthony Zahra, on the 20th June 2014** as based on the views of Carrara. Thus the elements of ragion fattasi are :- a) att estern li jimpedixxi persuna oħra minn dritt li hija tgawdi, u li jkun sar bid-dissens espliċitu jew impliċitu ta' dik il-persuna; b) l-imputat irid jemmen li qed jaġixxi bi dritt; c) ix-xjenza tal-imputat li qed jieħu b'idejh dak li suppost jieħu tramite lproċess legali; d) li l-att ma jinkwadrax ruħu f'reat aktar gravi;

30.While this exposition of the elements of this crime reflects the writings of Carrara, Maltese Courts have also adopted the interpretation propounded by other authors who commented on the defunct Borbonic Code.

31.Thus they came to accept that the crime of ragion fattasi is not based on the mere disturbance of a right of possession over a thing – whatever form that right may take. In order for this crime to subsist, it must be proven, beyond a reasonable doubt, that the person allegedly falling victim of this crime (passive subject) had a form of right of possession over the thing in question.

[9] Deciza fl-10 ta' Dicembru 2020

32.Thus according to Maltese case law the detention on mere tolerance of a house by a spouse was held to be sufficient for a ragion fattasi conviction in case where the other spouse decided to change the lock of the front door (on the same day when a Court declared their marriage null and void). The Court held that the spouse who changed the lock disturbed the right of the other spouse who was holding the tenement on mere tolerance and therefore was guilty of ragion fattasi. The reasoning was that the spouse who changed the lock was, by his or her unilateral act, arbitrarily and abusively changing the status quo relating to the possession of the thing as prevailing between the parties at that moment in time. This status quo should not have been disturbed unilaterally by the active subject but should have only been changed by the competent judicial authorities following the appropriate legal action being instituted by the party feeling aggrieved due to the (continued) possession of the other spouse.

In the case **Il-Pulizija vs. Joseph Bongailas,** decided by the Court of Criminal Appeal on the 22nd October 2001 wherein it was stated that: Mela dan l-Artikolu 85 tal-Kodici Kriminali, bl-ewwel rekwizit tieghu, kjarament iqis bhal agir kriminali kull att ta' xi hadd li jfixkel lil xi haddiehor fil-pussess ta' xi haga li qed igawdi. L-imsemmi artikolu, ghalhekk, jittutela l-pussess tal-haga u mhux necessarjament ukoll il-propjeta' taghha. Il-kelma pussess, ghalhekk, tinkludi l-uzu jew dgawdija ta' dik il-haga.

33. In a nutshell the spouse who felt that the front door lock should be changed on the same day that their marriage was declared null, should have filed the appropriate Court action in order to be able to change the door lock after the Court would have declared that the other spouse had no further pretence to the property – given that he was occupying the house on mere tolerance. However that spouse did not take this lawful

course of action but proceeded to take the law in her own hands by changing the lock of the front door instead – thus excluding access to the house to the other spouse who – till that stage "enjoyed" the detention on mere tolerance of the said house.

34.The active subject therefore can be deemed to si e' fatto arbitariamente ragione and not simply si e' fatto ragione da se'.

35.According to a judgment delivered by the Italian Court of Cassation[10] the crime of ragion fattasi was not meant to punish chi si fa ragione da se' ma chi si fa arbitrariamente ragione[11]such that by his actions the active subject disturbs the prevailing status quo at that particular moment in time when the act leading to ragion fattasi is deemed to have been committed.

36.According to another jurist, Carmignani, who was commenting on the Law of the Duchy of Tuscany before the Unification of Italy, the element of disturbance of the possession of the passive subject must not be merely constructive, but the possession has to be actual; and the action committed by the active subject must lead to the disturbance of the status quo between the parties : - 879 Si hanno esempi di questo delitto, 1. Se un creditore riscuote con violenza dal suo debitore la somma dovutagli; 2. Se una cosa mobile od immobile creduta propria vien tolta violentemente a chi ne e' in attuale possesso; 3. Se un colono, finita la locazione, ricusa di lasciare il fondo;....[12]

[10] Sez. VI, sent. 11118 tat-22/11/1985 Mioli

[11] In this particular case the Court of Cassation held that no crime of ragion fattasi was committed the owner of the tenement changed the door locks of a group of offices thereby closing access to the tenants of these office who were previously intimated to use the premises according to the use agreed upon and who failed to adhere to these requests by the land lord.

[12] Elementi di Diritto Criminale, Giovanni Carmignani, Traduzione italiana sulla quinta edizione di Pisa del Profs. Caruana Dingli, Milano, 1863, fol 318

37. So this means that this Court must assess whether the parte civile had, at least, any basic element of possession to the object or right disturbed; to see whether this possession was actual; and whether the action of the active subject ended up disturbing the status quo between the parties relating to the possession of this thing or the right.

38.According to Arabia[13], the crime of ragion fattasi is not meant to sanction the disturbance of the possession of a thing by a person or a right per se; but rather it sanctions and penalises the fact that a private party – the active subject – engages in unilateral personal action enforcing his will on the thing or right in contestation, instead referring the matter to the competent to the public authority for the necessary remedies: Il che da una parte dimosta che il reato non ista' nella turbativa del possesso, ma nell'uso de' mezzi dell'autorita' pubblica. Ma perche' intervenga l'autorita' pubblica a porre in atto l'esercizio dell'altrui diritto, sono fuor di dubbio necessariamente due cose, a) che il diritto sia reale, b) che ne sia controverso l'esercizio.

39.Arabia here is focusing on the Borbonic Law of vie di fatto – which, as was seen above, was identical to the crime of ragion fattasi at Maltese Law. Therefore his understanding may also reflect the correct interpretation that ought to be given to Maltese Law.

40.Jurisprudence still debates the juridical objective behind this crime. The traditional current holds that this crime is based on the violation of the jurisdictional monopoly vested in the public authority which would be violated by the unilateral and arbitrary act of the private individual who, instead of referring the dispute or point of contention to the competent courts decides to take the matter in his hands and proceeds

[13] I Principi del Diritto Penale applicati al Codice delle Due Sicilie, Francesco Saverio Arabia, Vol 3, Napoli 1858, Parte III, Art. 164 a 173, pagina 45

to adopt a factual remedy himself instead. The other school of thought focuses on the fact that the passive subject in the crime of ragion fattasi is indeed the status quo reflected by the status of possession of rights at a given moment in time. This status quo refers to the situation where at a given moment in time a person exercises a right on a thing - even if that person's right is merely apparent. The action of the active party would then disturb that status quo relating to the possession of that thing or right even though this possession would be based on an apparentia iuris.[14]

41.Carrara also claims that "qui continuat non attentat".[15] In paragraph 2851 of his work quoted above, he adds that : - L'atto esterno deve privare altro contro sua voglia di un bene che gode. Chi e' nell'attuale godimento di un bene e continua a goderne a dispetto di chi non voglia non delinque; perche' la legge protegge lo stato quo, il quale non puo' variarsi tranne per consenso degl'interessati, o per decreto dell'autorita' giudiciale.

42.This is also reflected in more recent Italian jurisprudence which holds that : - Si e' conseguentemente precisato che ... autore del delitto puo' essere soltanto chi non si trova nel possesso della cosa, poiche solo in tal caso si puo' verficare quella turbativa nel godimento di fatto che costituisce uno degli elementi essenziali del reato (tra le piu' recenti, Cass. VI 13.11.81, Papa, G PEN 1982, II, 648; Cass. VI 7.5.85, Spallina', CP 1986, 1766; Cass. VI 26.3.85 Pirola, CP1986, 1935). In effetti, sopratutto dalla circostanza che il diritto deve essere si ricava come gli elementi sopra indicati descrivano innanzitutto come

[14] Ara Codice Penale, Tullio Padovani, Tomo I, IV Edizione, 2007, Giuffre Editore, paġna 2610 taħt ilvuċi "oggetto giuridico".
[15] Vide Programma, Vol. 5, pagina 488.

presupposto del reato l'esistenza di un conflitto di pretese, ovvero il requisito della contenziosita' del diritto.[16]

43.The element of a prior controversy between the parties relating to the exercise of rights was also deemed important under the Borbonic Code. Arabia questions : Ma che s'intende per dritto posto in controversia? Ogni dritto il cui esercizio e' chiaramente e solennemente controvertito, sia con un fatto giudiziale, sia con un fatto materiale, che l'altro avea dritto almeno apparente di fare. Si supponga p.e. che Tizio abbia conceduto a Caio la facolta' di passare pel suo fondo per certo tempo e con certe condizioni. Se essi venissero in controversia sull'esercizio di questa facolta', e Caio citasse Tizio innanzi al magistrato per farsi conservare nel diritto di passaggio, Tizio incorrerebbe nell'art. 168 se facesse qualche opera per cui il passaggio fosse turbato. Abbia o non abbia diritto, viola la legge facendo cio' si spetta all'autorita' pubblica gia' invocata. Per lo contrario, se prima che Caio adisca il magistrato, Tizio pone una siepe o un cancello o altro segno visibile, che chiaramente pone in controversia la facolta' di Caio, questi incorre nell'art. 168, se invece di adire il magistrato, rompa la siepe o il cancello e passi, abbia o non abbia diritto. Nel che notisi che il porre il cancello che fece Tizio puo' essere ingusto, e quindi una turbativa del possesso di Caio, ma egli non puo' essere astretto che con la sole azione civile, perche' quando pose il dette cancello, non dove' distruggere alcun segno visibile del possesso di Caio, onde e' presunta buona fede, non essendovi stata controversia di cui vi siano segni tali, che tolgano ogni dubbio sulla volonta' dell' altro di contraddirgli il possesso, onde si debba aver ricorso all'autorita'. Gli elementi dunque del reato dell'art. 168 sono a) uno de' datti materiali in esso descritti, e tassativamente nominati, cioe' costringere a pagare un debito, turbare il possesso ec. b) che cio' sia fatto per l'esercizio di un dritto messo in

[16] Codice Penale, Tullio Padovani, op. cit. a fol 2611 "soggetto attivo".

controversia e cosi' che sia richiesta l'opera dell'autorita' pubblica a deciderla, poco importando se questo dritto sia o non sia reale; solo che sia chiaramente controvertito.

44.As already mentioned, according to Maltese Case Law the elements of the crime of ragion fattasi are as follows : a) att estern li jimpedixxi persuna ohra minn dritt li hija tgawdi u li jkun sar bid-dissens esplicitu jew implicitu ta' dik il-persuna; b) l-imputat irid jemmen li qed jagixxi bi dritt; c)ix-xjenza tal-imputat li qed jiehu b'idejh dak li suppost jiehu tramite l-process legali; d) li l-att ma jinkwadrax ruhu f'reat aktar gravi; Inoltre, ir-reat ma jissustix meta l-att materjali jikkonsisti fir-ritenzjoni ta' pussess li dak li jkun gja kellu.[17]

45.Hence the fact that a person has a lawful title to a property does not bar an action of ragion fattasi against her. This crime may subsist also in the case where the disturbing act is carried out by the active subject in respect of a passive subject who has merely simple possession or even detention on mere tolerance of the property in question or who would have simply had some right of use on the property in question, which right would have been disturbed thanks to the action of the active subject.

46. In the appeal **Il-Pulizija vs. Joseph Bongailas**, decided on the 22nd October 2001 this Court, differently presided held as follows:- L-Artikolu 85 tal-Kodici Kriminali li jittratta dwar ir-ragion fattasi, blewwel rekwizit tieghu, kjarament iqis bhal agir kriminali kull att ta'

[17] See **Il-Pulizija vs. Anthony Zahra** decided by the Court of Criminal Appeal per Mr. Justice Lawrence Quintano on the 20th June 2014. See also **Il-Pulizija vs. Mario Bezzina** decided by the Court of Criminal Appeal per Mr. Justice David Scicluna on the 26th May 2004; **Il-Pulizija vs. Michael Lungaro** decided by the Court of Criminal Appeal per Mr. Justice Joseph Galea Debono on the 15th May 2002 as well as **Il-Pulizija vs. Eileen Said**, decided by the Court of Criminal Appeal per Mr. Justice Joseph Galea Debono on the 19th June 2002.

xi hadd li jfixkel lil xi haddiehor fil-pussess ta' xi haga li qed igawdi. L-imsemmi artikolu, ghalhekk, jittutela l-pussess tal-haga u mhux necessarjament ukoll il-propjeta' taghha. Il-kelma pussess, ghalhekk, tinkludi l-uzu jew dgawdija ta' dik il-haga....Li hu importanti, ai fini ta' l-Artikolu 85 tal-Kap. 9, dejjem riferibbilment ghall-ewwel element kostituttiv tieghu huwa jekk effettivament sa dik in-nhar li sar dan l-allegat att ta'spoll mill-appellant, kellhomx il-kwerelanti l-pussess, ossija l-uzu u/jew id-dgawdija tal-fond in kwistjoni.

47.In **Il-Pulizija vs. John Vassallo**[18], this Court, differently presided held that: Taht l-Artikolu 85 tal-Kodici Kriminali ma hemm ebda bzonn illi jigi ppruvat xi element ta' pussess aktar sostanzjali minn hekk. Id-dicitura ta' lartikolu hija cara u l-legislatur certament ried illi jigi evitat kull tfixkil, hu ta' liema natura hu, anki fis-semplici pussess. Tali pussess jinkludi wkoll kif gie ripetutament deciz minn din il-Qorti, anke s-semplici drittijiet normalment kompetenti lill-persuni koncernati.

48.In another judgment **Il-Pulizija vs. John Dimech**[19] it was held as follows: id-dispozizzjoni tal-ligi li tikkontempla r-reat ta’ raggion fattasi hija ntiza biex il-privat li jippretendi xi drittijiet ma jissostitwix l-azzjoni tieghu ghal dak tat-tribunal meta jista’ jirrikorri lejhom. Hi gusta jew le l-pretensjoni tieghu, hu ma jistax minn rajh jezercita dawk id-drittijiet li hu jippretendi li ghandu. Considers further:

49.That after analysing closely and attentively the testimony of the witnesses as well as the documents exhibited by them, and bearing in mind the legal principles mentioned above, this Court is of the opinion

[18] Presided by Mr. Justice Godwin Muscat Azzopardi on the 22nd March 1991
[19] Decided by the Criminal Court presided by Mr. Justice William Harding on the 24th June 1961

that the Court of Magistrates could legally and reasonably arrive at the conclusion that the appellant committed ragion fattasi – arbitrary exercise of a pretended right - in this case.

50.The Court of Magistrates based its findings on the version of facts as provided by Peter Paul Portelli on behalf of the Strickland Foundation and John Cachia. After making its due assessment and evaluation of the testimony of these witnesses, as well as the others that testified before it, that Court believed the evidence submitted by Portelli and Cachia to be more credible and reliable than that purported by the appellant.

51.The Court of Magistrates also had the opportunity to listen to this testimony viva voce, hence putting it in a far better position than this Court to assess the credibility and reliability of the testimony of all the witnesses in this case.

52.While the appellant felt aggrieved by the considerations of the Court of Magistrates in its judgment, this Court saw that that Court based its conclusions on the evidence tendered by John Cachia and Peter Paul Portelli. This is also coupled by the fact that the elements of the crime of ragion fattasi were satisfied in this case.

53.First of all there is no doubt that the appellant is pretending a right over the property at issue. She clearly considers the villa as her home and she claimed that she acted the way she did only to secure her home as well as her husband's and her rights in relation to the villa and surrounding and adjacent gardens according to the wills of the Honourable late Mabel Strickland. However this Court is a court of Criminal Justice and does not delve into any civil matters or civil rights that the appellant has or pretends to have over the said property. That

is clearly the subject matter of a different law suit before the competent Courts of Civil Jurisdiction. It is not up to this Court to establish whether the appellant is entitled to rights that she and her husband claim. What is however clear though is that she evidently believes that she is entitled to act in the way she is acting, according to her, in order to safeguard her privacy and that of the property in which she resides with her husband.

54.Secondly the fact that the passive subject in this case is John Cachia - and not the Strickland Foundation - does not invalidate the action taken. As seen above, the mere use and enjoyment even on mere tolerance was deemed to be sufficient legal title and basis for the crime of ragion fattasi to subsist, should that title, minimal as it may be, be disturbed by the actions of the active subject.

55.The rights of access enjoyed by John Cachia to the property rests on the specific delegation given to him by the representatives of the Strickland Foundation – which, according to the parties in this case, is the legal person in favour of whom this villa and its gardens were bequeathed by the Honourable late Mabel Strickland.

56.It is true that Cachia, personally, enjoys no proprietary rights to the tenements in question. However his rights of access to these tenements and the minimum detention that he may be enjoying on certain parts of these tenements, were conferred to him by the representatives of the lawful owner of these tenements – The Strickland Foundation. So much so that it is undisputed that Cachia possessed the keys to these properties in order for him to be able to perform his duties to the Strickland Foundation. Cachia was exercising his rights during his tenure of office with that Foundation and therefore in execution of the orders and the delegation given to him by the same. Cachia could not

be deprived by others in so doing unless a specific legal action to this effect was taken and a final court judgment or order was delivered in that fashion.

57.The evidence in this case left no doubt that John Cachia had access to all parts of the Villa and gardens as an employee of the Strickland Foundation, specifically deployed to take care of the gardening and maintanance works necessary.

58.When the appellant decided to change the padlock without providing a key to John Cachia and/or the Strickland Foundation she deprived him from the free exercise of the rights conferred upon him by the owner of the tenements, in order for him to conduct his duties towards the Strickland Foundation.

59.Thirdly, as has already been indicated, the appellant took matters into her own hands instead of taking lawful action, through the proper legal channels, to deprive Cachia from accessing property if she felt that his presence was disturbing. John Cachia managed to prove, on a balance of probabilities, that he had a lawful right of access to the villa and surrounding gardens granted to him by the Strickland Foundation and therefore he was not a squatter or an intruder. If the appellant felt aggrieved by this, her correct and lawful mode of action was to proceed through judicial channels against Cachia and the Strickland Foundation seeking a remedy that would exclude Cachia or any other person from the villa and surrounding gardens according to her propositions. This Court saw no evidence showing that the appellant proceeded in this direction.

60. Finally it is also clear that the appellant's behaviour was not tantamount to any other more serious offence.

61.Consequently, this Court is of the opinion that the judgment of the Court of Magistrates cannot be disturbed and its conclusions shall be reconfirmed by this Court. Decide Consequently, for the above-mentioned reasons, the Court rejects the appeal and confirms the judgment of the Court of Magistrates appealed from in its entirety."

Enuncjati dawn il-principji, din il-Qorti se tghaddi sabiex tevalwa l-kaz in ezami fid-dawl u l-applikabilita ta' l-istess.

Il-Provi

Il-Prosekuzzjoni ressqet bhala prova (1) ir-rapport[20] li sar mill-kwerelanti Goffredo Gauci Maistre u Joseph Sultana illi huma ghamlu mal-Pulizija hekk kif Sultana gie nfurmat mill-Pulizija li l-vettura tieghu EAA496 kienet tinsab fi stat ta' abbandun fi triq biswit id-Dog Section tal-Pulizija; (2) affidavit ta' PS 671 J. Vella li nvestiga l-kaz; (3) produciet bhala xhieda viva voce lil Dr. Godfrey Gauci Maistre li pprezenta imejl mibghut minnu lill-konsulent legali tal-imputat dwar il-kwistjoni li inqalghet bejnu u l-imputat rigward il-kirja tal-garaxx, Dok GGM. Ix-xhud ikkonferma wkoll l-iskrittura tal-kirja prodotta mid-difiza Dok GB. Il-Prosekuzzjoni produciet ukoll bhala xhud lill-kwerelant Joseph Sultana illi spjega illi hu kien halla l-vettura fil-garaxx li kien mikri ghand il-habib tieghu Dr. Godfrey Gauci Maistre u li meta kkomunika mieghu kkonfermalu illi huwa ma kienx nehhilu l-vann minn gol-garaxx. Fil-fatt imbaghad marru jaghmlu rapport l-Ghassa. Jispjega li hu kellu cavetta ghall-garaxx biex jidhol fih kull x'hin ikollu bzonn il-vann izda meta sab il-vann barra fit-triq il-garaxx kien maghluqa b'katnazz li la hu u lanqas Dr. Godfrey Gauci Maistre ma kellhom cavetta ghalih. Jghid ukoll illi l-vann sabu nieqes mill-

[20] A folio 2 tal-process.

affarijiet tieghu li kellu fih fosthom il-battery, ir-radiator, il-cooler, il-fannijiet u l-bumper u sabu wkoll bi hgiega mkissra. Jispjega li minnflok il-vann kien mimli b'affarijiet ohra li kien hemm fil-garaxx, li ma kinux tieghu fosthom cushions saqqijiet u tyres. Jghid li lil sid il-mahzen ma jafux izda kien ircieva telefonata ta' theddid, lehen maskili li qallu "Ara ma narakx lil hinn ghax nasal". Jispjega li minhabba li l-Pulizija riditu jnehhi l-vettura mit-triq, huwa kellu jqabbad tow truck biex jigbed il-vann u hadha f'post iehor peress li l-vann kien sabha minghajr cavetta u minghajr battery.

Id-Difiza ma tellghet l-ebda prova ghajr li pprezentat d-dokument GB waqt il-kontro-ezami ta' Dr. G. Gauci Maistre.

Ikkunsidrat:

Illi mix-xhieda prodotta mill-prosekuzzjoni u senjatament ix-xhieda moghtija mix-xhud Joseph Sultana kif ukoll ir-rapport maghmul mill-kwerelant Dr. Goffredo Gauci Maistre u l-istess Joseph Sultana jirrizulta li l-imputat kien kera l-imsemmi garaxx fejn kienet qed tinzamm il-vettura EAA496 lil Dr. Goffredo Gauci Maistre. Il-kuntratt ta' kera gie wkoll esebit. Konsegwentament l-istess Dr. Gauci Maistre qua inkwilin tal-imsemmi garaxx kellu l-pussess tal-garaxx u konsegwenti uzu tal-istess. Jirrizulta wkoll illi Sultana kien pogga l-imsemmija vettura fil-garaxx bil-kunsens ta' Dr. Gauci Maistre.

Jirrizulta wkoll illi meta Sultana gie kkuntattjat mill-Pulizija li kellu l-vettura abbandunata fit-triq u ordnat biex inehhiha minn hemm, u mar jaghmel il-verifiki tieghu, huwa sab il-vettura li kien halla fil-garaxx mitfugha barra fit-triq. X'hin ikkomunika ma' Dr. Gauci Maistre, dan sab li l-garaxx kien imsakkar b'katnazz u hu gie spussessat mit-

tgawdija u l-uzu tieghu li kien igawdi permezz tat-titlu ta' kera li kellu minn ghand is-sid George Bartolo, li huwa l-imputat.

Illi ma hemmx dubju illi jekk xi hadd kellu xi interess li jiehu lura l-pussess tal-garaxx, dan ma huwa hadd hlief l-imputat, sid il-garaxx. Illi huwa car ukoll illi l-imputat qua sid jippretendi li la darba l-kuntratt ta' kera skada huwa jista' jaqbad u jiehu lura l-garaxx, anke billi jimponi l-forza u jarmi barra fit-triq il-hwejjeg li l-inkwilin kien izomm fil-garaxx. B'tali azzjoni l-imputat ma ghamel xejn hlief ha l-ligi b'idejh bid-dritt illi jippretendi li ghandu.

Izda l-ligi hija cara: f'kazijiet bhal dawn fejn l-inkwilin ma johrogx mill-fond mikri meta l-perjodu tal-kera jkun skada, is-sid ma jistax jaqbad u jitfa' lill-inkwilin barra, izda ghandu juza r-rimedji legali provduti mil-ligi sabiex jizgombra lill-inkwilin.

Illi ghalhekk, l-imputat ma jistax u ma setax jitfa' l-vettura ta' Sultana barra fit-triq u lanqas ma jista' jbiddel ic-cavetta u jaghmel katnazz mal-bieb biex izomm lill-inkwilin barra mill-garaxx u konsegwentament jispussessah mit-tgawdija illi huwa kellu ta' l-istess, liema tgawdija kien ghaddihielu hu stess meta krielu l-garaxx.

Illi f'din il-kawza ghalhekk l-imputat qabad u ha l-ligi b'idejh u dan bi sfida lejn l-amministrazzjoni tal-gustizzja u dan ghaliex l-imputat sabiex jiehu lura l-garaxx kellu u ghandu juza r-rimedji legali provduti mil-ligi. Minnflok huwa għażel li jieħu "scoccatoia" u jaqta' fil-qasir u sabiex jiehu lura l-pussess tal-proprjeta tieghu, huwa tefa' l-imsemmija vettura barra fit-triq u ghamel katnazz mal-bieb tal-garaxx.

Ghal dawn ir-ragunijiet il-qorti tqis li l-akkuza fil-konfront tal-imputat giet ampjament u sodisfacentament pruvata.

Ikkunsidrat:

Illi huwa car, li f'dan il-kaz l-imputat ha l-ligi b'idejh biex jipprova iwassal lill-kwerelant Goffredo Gauci Maistre sabiex jizgombra mill-garaxx lilu mikri. Izda l-principju huwa li hadd m'ghandu jiehu l-ligi b'idejh sabiex jiehu xi dritt illi jippretendi li ghandu izda wiehed ghandu jezercita r-rimedji provduti mil-ligi sabiex isolvi s-sitwazzjoni.

Decide:

Ghal dawn ir-ragunijiet il-Qorti qed issib lill-imputat hati tal-akkuza migjuba kontra tieghu. U wara li rat l-Artiklu 85 tal-Kap.9 tal-Ligijiet ta' Malta, tqis li piena karcerarja mhiex idoneja f'dan il-kaz u konsegwentament qieghda (1) Tikkundanna lill-imputat ai termini tal-ewwel proviso tal-Artiklu 85 tal-Kap. 9 tal-Ligijiet ta' Malta ghall-hlas ta' multa ta' mitejn u hamsin Ewro (€250), kif ukoll (2) Tikkundanna lill-imputat sabiex immedjatament u minghajr ebda dewmien jirrimpjazza spejjez tieghu a favur tal-kwerelant Joseph Sultana ic-cavetta tal-vettura imsemmija, u l-battery, ir-radiator, il-cooler, il-fannijiet u l-bumper, li kienu kollha go fiha meta il-vettura kienet fil-garaxx.

Il-Qorti spjegat lill-imputat fi kliem car l-import ta' din is-sentenza u l-obbligi tieghu taht l-istess.

Magistrat Dr. Monica Vella LL.D., M. Jur.

Angelo Buttigieg
Deputat Registratur