

**Qorti tal-Magistrati (Malta)**  
**Bhala Qorti ta' Gudikatura Kriminali**  
**Magistrat Dr Claire L. Stafrace Zammit B.A., LL.D.**

**Il-Pulizija**  
**(Spettur John Spiteri)**  
**(Spettur Kylie Borg)**

**vs**

**Carl Dimech**

**Kumpilazzjoni Numru: 271/21**

**Illum, id-dsatax (19) ta' Frar, 2024**

**Il-Qorti,**

Rat l-akkuzi migjuba kontra **Carl Dimech** detentur tal-karta tal-identità bin-numru 200196 M akkuzat talli f'dawn il-Gzejjer fix-xahar ta' Awwissu, 2019 u/jew fix-xhur ta' qabel b'diversi atti maghmulin minnu ukoll jekk fi

**zminijiet differenti u li jiksru l-istess dispozizzjoni tal-ligi, u li gew maghmula b'rizoluzzjoni wahda;**

**Ippartecipa f'attivitajiet sesswali ma' persuna ta' taht is-sittax-il sena u cioè ma' -Omissis- ID: -Omissis-**

*Art 204(C)(1) ta' Kap 9 tal-Ligijiet ta' Malta*

**Il-Qorti giet mitluba sabiex barra milli tapplika il-piena skond il-ligi, tapplika wkoll l-artikoli 383, 384 u 385 tal-Ligijiet ta' Malta ghas-sigurta' ta' l-allegata vittmi.**

**Il-Qorti giet mitluba li tohrog ordni ta' protezzjoni ai termini tal-artiklu 412(C) tal-Kap 9 tal-Ligijiet ta' Malta, kemm waqt il-mori tal-kawza kif ukoll f'kaz ta' htija ma' kull piena li l-Qorti jidrilha xierqa.**

**Il-Qorti giet mitluba li jekk jidrilha xieraq tordna ordni ta' trattament skond Art 412D ta' Kap 9 tal-Ligijiet ta' Malta.**

**Il-Qorti giet mitluba li f'kaz ta' htija minbarra li tinflingi l-pieni stabbiliti mill-Ligi, tordna lill-imsemmija persuna sabiex thallas l-ispejjez li ghandhom x'jaqsmu mal-hatra ta' l-esperti, jekk ikun il-kaz, kif provdut fl-Artikolu 533 tal-Kap 9 tal-Ligijiet ta' Malta.**

Rat l-atti u d-dokumenti kollha pprezentati;

Rat l-ezami tal-imputat li wiegeb hati tal-akkuzi kif dedotti kontrih u rega' kkonferma tali ammissjoni qabel mal-Qorti ppronunzjat is-sentenza fil-konfront tal-istess imputat;

Rat illi d-difiza talbet sabiex jithejja Pre Sentencing Report li tali talba giet milqughha minn din il-Qorti fis-seduta tal-5 ta' Dicembru 2022;

Semghet lill-ufficjal tal-Probation Odelsie Vella Bayliss li pprezentat ir-rapport taghha (Dok. OVB1) fejn din ikkonkludiet illi l-imputat Carl Dimech kien forniha informazzjoni skorretta u ma setghetx tikkonferma jekk dan sarx intenzjonalment jew minhabba ragunijiet ohra. Illi ezempju ta' dan kien li qallha li ma kellu l-ebda procedura pendenti kontrih izda minn informazzjoni mill-prosekuzzjoni stess dan kien juri li kellu procedura kriminali ohra ta' natura serja. Illi ghaldagstant l-ufficjal tal-Probation issuggeriet pjan ta' kura li jikkonsisti fis-segwenti:

*“L-informazzjoni kkumpilata ghall-fini ta' dan ir-rapport turi li l-imsemmi mhuwiex jifhem li dak li wettaq huwa illegali u allura hazin. Minkejja li*

*huwa ammetta ghal dan ir-reat, qed jinqos milli jerfa' responsabilita' kompleta ta' dak li ghamel. L-Ufficjal tal-Probation hi tal-opinjoni li jkun adekwat li Carl Dimech ikollu kuntatt ma' xi terapist/a jew psikologu/a biex ikun jista' jibbenefika minn ghajnuna u terapija professjonali bil-ghan li jkun jista' jahdem u jindirizza d-diffikultajiet jew nuqqasijiet li wassluh sabiex iwettaq ir-reat in kwistjoni. In vista tal-fatt li l-ikkoncernat jinsab fil-fazi inizjali tal-kuntatt tieghu ma' psikjatra, f'dan l-istadju, ikun importanti li dan il-kuntatt jinzamm u jkun wiehed konsistenti.*

### **Rakkomandazzjoni**

*Fid-dawl ta' din l-informazzjoni, l-Ufficjal tal-Probation temmen li jkun ghaqli li tirrakkomanda Ordni ta' Probation u Ordni ta' Trattament. Filwaqt li jigi zgurat li l-imsemmi qed jindirizza l-element tas-sahha mentali permezz tal-Ordni ta' Trattament. Permezz ta' Ordni ta' Probation minnaha l-ohra, tkun tista' ssir supervizjoni mill-Ufficjal tal-Probation b'mod partikolari minhabba li permezz tal-inkonsistenzi u informazzjoni*

*skorretta li giet moghtija minn Carl Dimech inniffsu, gie accennat il-fattur tal-inaffidabilita'.*

**Nota:** *Nhar il-21 ta' Frar 2023 sar kuntatt mal-psikjatra Dr. Rachel Buhagiar mas-sottoskritta fejn din infurmatha li fl-opinjoni taghha, qabel tghaddi ghas-sentenza, il-Qorti ghandha tahtar psikjatra indipendenti biex ikun jista' jwettaq assessjar formali fir-rigward tal-imputat. Mis-sessjoni li kellha mal-imputat, Dr. Buhagiar temmen li hemm il-possibilita' li Carl Dimech ghandu xi "learning disability" u "low IQ" u allura tara l-htiega li dan l-assessjar isir. Hija min-naha taghha ma tistax taghmel dan l-assessjar peress li tahdem fil-kamp kliniku. Sa dan l-istadju, Dr. Rachel Buhagiar se tibqa' ssegwi lill-insemmi ghall-fini ta' ansjeta'."*

Illi ghalhekk fuq suggeriment tal-ufficjal tal-Probation gew nominati lill-psikjatra Dr Rachel Taylor East u lill-psikologa Dr Veronica Ellul Federici sabiex jezaminaw lill-imputat li ikkonkludew is-segwenti:

*"1. It is our expert opinion that Mr Carl Dimech is a **vulnerable** man with mild **intellectual disability** as follows.*

2. *The results of the WAIS-III indicate that Mr. Dimech's cognitive ability features in the mild range of intellectual deficit, indicating a significantly subaverage general intellectual functioning. His performance is consistent with generalized impairment to both the verbal information processing and the non-verbal ones.*

3. *This means that Mr. Dimech does not have an age-appropriate level of mental reasoning and his sense of judgment and awareness of the consequences of his actions and demeanour do not present as per chronological age. In addition, Mr. Dimech's ability to understand abstract concepts, including moral concepts, is also limited. Moreover, it appears that Carl relies on his close family members, particularly on his mother and sister. He is also employed within a support program.*

4. *Mr. Dimech retains a basic understanding of the difference between right and wrong.*

5. *Mr. Dimech's background information reveals that he has been experiencing academic difficulties as a young child. Such cognitive deficits have an*

*onset during the developmental period before the age of 18.*

*6. Moreover, as a result his behaviour manifests itself as being emotionally immature, potentially with poor impulse regulation. Furthermore, his level of cognition makes him unable to expand on topics beyond a logical level, with the absence of any abstract thinking ability. As a result he requires constant guidance from his mother.*

*7. The learning disability itself does make him someone who is at a higher risk than the general population to act impulsively and against acceptable social norms. It does also, however, increase the risk of Carl being exploited by others, as happened when younger he was bullied at school. Furthermore, his learning disability may make it difficult for him to understand social constructs and the consequences for his behaviour.*

*8. It is our opinion that Mr. Carl Dimech **does not have any substance use disorders.***

***9. It is our opinion that Mr Carl Dimech does not have any ongoing acute mental disorder which requires medical treatment. He does however, have a predisposition for anxiety, with adjustment disorder in the past. He also reports symptoms of claustrophobia.”***

Illi f'dan il-kuntest qed issir referenza ghas-sentenza tal-Qorti tal-Appell Kriminali per Imhalled Edwina Grima fil-kawza bl-ismijiet **Il-Pulizija (Sp Louise Calleja) v. Omisses (dec 27/4/22)** fejn intqal is-segwent:

*“Dak li kellu jigi stabbilit kwindi fil-kaz taht il-lenti tal-Qorti huwa il-presenza jew l- assenza tal-kapacita' tal-awtur tar-reat li jiddistingwi bejn it-tajjeb u l-hazin fil-mument tal-kummissjoni tar-reat. Fil-fatt anke fil-kaz tal-ezenzjoni mahsuba fl-artikolu 33 tal- Kodici Kriminali, mhux kull stat ta' genn jwassal lil persuna akkuzata tibbenefika minnha, izda biss dak l-istat ta' genn fis-sens legali billi jrid necessarjament jigi ippruvat li l-akkuzat ma kienx jaf x'qed jaghmel u li dak li kien qed jaghmel kien hazin. U allura ghalkemm il-kapacita' mentali tal-appellat setghat kienet wahda afflitta*



*minn xi forma ta' dizabilita', dan ma jezentahx awtomatikament mir-reponsabbilta' penali sakemm ma jigix ppruvat li huwa ma kienx konxju tal-fatt illi dak li kien qed jaghmel, b'referenza ghall-agir inkriminatorju minnu kommess, u mhux fl-astratt, kien moralment zbaljat u kontra l-ligi. Illi huwa minnu li l-Ewwel Qorti kienet rinfaccjata b'persuna b'kapacita' intelletwali ta' tifel, u li ma kienx afflitt minn ebda mard mentali, fejn allura strettament jista' jkun li ma jaqa' taht ebda wahda mid-dizposizzjonijiet tal-ligi imhaddna fit-Titolu II tal-Ewwel Ktieb tal-Kodici Kriminali li jitkellem dwar "Il-Volonta' u l-Eta' tal-Hati".*

*Illi l-Professur Mamo fin-noti tieghu fil-fatt jitkellem dwar il-kuncett ta' dritt li jezisti fis- sistema kontinentali, izda mhux dik Maltija ta' l hekk imsejjah 'semi-responsibility' jew 'diminished responsibility':*

***"It is well known that there is no clear-cut line between the sane and the insane. The two grade***

*into each other as day passes into night, and between the two extremes are certain twilight conditions, not serious enough to render the victim irresponsible for crime not even to require his confinement as an insane person in a mental hospital, but nevertheless rendering him incapable of sound, calm judgment, especially under the conditions of stress at which crime may be resorted to.*

*These borderline types of mental unsoundness are sometime referred to as partial insanity, which term, in connection with the subject we are now discussing means a mental impairment which is not so complete as to render its victim wholly irresponsible for his criminal acts.*

*Now it has been sometimes argued that these border line cases of mental unsoundness, though not sufficient to come within the total exemption from criminal responsibility, should nevertheless serve as an extenuation of responsibility and reduce the punishment. These*

***individuals, it is said, may not be incapable of understanding the wrongfulness of their acts or of controlling their impulses, but they are less capable of doing so than normal persons, and the law should make allowance for this deficiency by punishing them less harshly than normal offenders.***

*Illi ghalkemm il-medicina psikjatrika illum ghamlet avvanzi kbar miz-zmien li kien qed jikteb il-kompjant Professur Mamo, madanakollu ma saret ebda bidla fil-ligi sabiex jigi ntrodott dan il-kuncett ta' diminished responsibility applikabbli ghal dawk il-persuni adulti, li ghalkemm ma humiex afflitti minn ebda mard mentali, madanakollu ibatu minn kundizzjonijiet ohra li jistghu jaffettwawlhom il-kapacita mentali taghhom f'ghajnejn il-ligi. Zgur, madanakollu, illi l-artikoli 35 u 37 tal-Kodici Kriminali ma jistghux jigu rezi applikabbli meta l-persuna akkuzata hija adulta u mhux tal-eta' indikata fl-imsemmija disposizzjonijiet tal-ligi."*

Illi tenut kont dan kollu l-Qorti taqbel mar-rakkomandazzjonijiet tal-ufficjal tal-Probation fis-sens li bhala piena wara l-ammissjoni tieghu, jinghata piena li ma tkunx wahda karcerarja izda piena li minnha jkun jista' jiehu trattament effettiv bi gwida kontinwa u ghalhekk gialadarba r-reat addebitat lill-imputat igib piena sa ghaxar (10) snin prigunerija ser tkun qed tigi applikata d-dispozizzjoni tal-Artikolu 7 tal-Kapitolu 446 tal-Ligijiet ta' Malta li tghid is-segwenti:

“Izda meta fil-fehma tal-Qorti jkunu jezistu ċirkostanzi, li ghandhom jigu dikjarati b'mod car fl-ordni, li jkunu jimmeritaw li l-hati jitqieghed taht Ordni ta' Probation fil-kaz ta' reat li minbarra xi zjieda fil-piena minhabba fit-tkomplija tar-reat jew xi dikjarazzjoni ta' htija precedenti, ikun punibbli bi prigunerija ghal zmien li jeccedi seba' snin izda mhux ghaxar snin, il-Qorti tista' taghmel Ordni ta' Probation.”

Illi dan il-kaz huwa kaz klassiku tal-applikabilita' ta' dan il-proviso.

Għal dawn il-motivi u wara li rat l-Artikolu 204(C)(1) tal-Kapitolu 9 tal-Ligijiet ta' Malta qed issib lill-imputat Carl Dimech hati tal-akkuza kif dedotta kontrih u tpoggih taht Ordni ta' Probation taht l-Artikolu 7 tal-Kapitolu 446 għal zmien tliet (3) snin li fl-istess perjodu dan għandu jigi segwit minn Ordni ta' Trattament taht l-Artikolu 412D tal-Kapitolu 9 tal-Ligijiet ta' Malta sabiex jigu segwiti r-rakkomandazzjonijiet fir-rapport tal-Ufficjal tal-Probation u liema ordnijiet għandhom jiformaw parti integrali minn din is-sentenza.

Finalment, spjegat fi kliem semplici lill-imputat ir-riperkussjonijiet jekk dawn l-ordnijiet ma jigux obduti.

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**Ft./Dr Claire L. Stafrace Zammit B.A., LL.D.**  
**Magistrat**

**Benamina Mifsud**  
**Deputat Registratur**