



**QORTI TAL-MAGISTRATI (MALTA)
BĦALA QORTI TA' ĠUDIKATURA KRIMINALI
MAGISTRAT DR. SIMONE GRECH B.A., LL.D., MAG. JUR. (EU LAW)**

DISTRETT QORMI

Każ Nru. 5957/22

**Il-Pulizija
Vs
Keithien Borg**

Illum, 14 ta' Marzu 2024

Il-Qorti;

Rat l-imputazzjonijiet imressqa kontra Keithien Borg ta' 26 sena, detentur tal-karta tal-identità Maltija bin-numru 530795M, li permezz tagħhom gie akkużat talli:

"...nhar 18/07/2022 fil-hinijiet ta bejn 19:14hrs u 19:20hrs Gewwa l-Ghassa ta Hal Qormi, Triq il-Kbira, Hal Qormi

1) inġurjajt, jew heddidt lil PC1329, PC1532 u PC2173, persuni inkarigati skont il-liġi minn servizz pubbliku, waqt li kienu qed jagħmlu jew minħabba li kienu qed jagħlu dan is-servizz, jew bil-hsieb li tbezzgħhom jew li tinfluwixxi fuqhom kontra l-liġi waqt l-eżekuzzjoni ta' dak is-servizz.

2) Volontarjament ksirt il-bon ordni jew il-paċi pubblika b'għajjat u storbju."

Rat id-dokumenti ezebiti;

Semgħet il-provi prodotti;

Semgħet trattazzjoni;

Rat li din il-kawża għet differita għas-sentenza;

Ikkunsidrat:

Dwar l-ewwel imputazzjoni, din il-Qorti tagħmel referenza għall-artikolu 95 tal-Kap 9 tal-Liġijiet ta' Malta, li għet studjat minn din il-Qorti hekk kif diversament ippreseduta, fis-sentenza tas-27 ta' Frar, 2013, fl-ismijiet, **Il-Pulizija (Spettur Kevin J. Farrugia) Vs Renald Briffa**, fejn intqal:

“Illi l-artikolu 95 jikkonferma dwar l-ingurja jew theddid fil-konfront ta' l-ufficjal pubbliku. Illi għalhekk l-element materjal ta' dana ir-reat huwa l-ingurja jew it-theddid. Dawn jistgħu jiehdu kemm il-forma verbali kif ukoll miktuba, gesti jew tpingija li huma intenzjonati biex i-naqqsu il-għet u ir-reputazzjoni tal-persuna lejn min huma diretti.

Illi l-vittima ta' dana ir-reat jista' ikun biss l-ufficjal pubbliku u l-ingurja jew it-theddida trid issir jew (1) filwaqt illi ikun qed jagħmel servizz pubbliku (2) jew inkella minhabba li ikun għamel dana is-servizz pubbliku, (3) jew bil-ħsieb li ibezgħu jew jinfluwixxi fuqu kontra l-ligi fl-esekuzzjoni ta' dak is-servizz.

Illi l-awturi jagħmlu distinzjoni bejn il-mottiv wara l-ingurja jew it-theddid fl-ewwel istanza u dana il-mottiv fit-tieni u it-tielet istanza imsemmija fil-ligi. Dana billi meta l-oltragg isir fil-mument illi l-ufficjal pubbliku ikun qiegħed jagħti is-servizz ma huwiex necessarju illi l-ingurja jew it-theddida tkun marbuta mal-funzjoni illi huwa ikun qiegħed jeżercita.

L-awturi Cheveau et Helie, li isemmi il-Professur Mamo fin-notamenti tiegħu, iġhidu:

“Quando l’oltraggio si verifica nel corso delle funzioni, il-motivo che lo determina e’ indifferente; la legge vede soltanto il turbamento, l’ingiuria fatta all’esercizio delle funzioni, l’insulto che degrada la loro dignita’; avesse pure quest’ingiuria una causa determinante estranea alle funzioni, il turbamento all’esercizio di esse sussisterebbe sempre.”

Kuntrarjament fiz-zewg istanzi l-ohra irid ikun jigi ippruvat nexus bejn l oltragg u il-qadi tal-funzjoni pubblika. Illi finalment ir-reat irid necessarjament jigi kommess fil-konfront ta’ ufficjal pubbliku jew ta’ persuna inkarigat skond il-ligi minn servizz pubbliku.”

Il-Qorti tal-Appell Kriminali fis-sentenza, The Police Vs Elena Anatolievna Camilleri, deciza fit-30 ta’ Mejju, 2019, spjegat li:

“In this case the four officers all stated and it is to be noted that none of them were cross examined even for clarity’s sake that the appellant had gone to the Naxxar police station to report her ex husband for not having returned their daughter to her even. But whilst she was there she seemed not to want to understand what the procedure is and instead starting howling words of disrespect to the police officers whilst in the police station trying to take down her report .

For this crime to subsist it is imperative that the prosecution proves that the accused/ appellant “reviled, or threatened, or cause a bodily harm to the police officers charged with a public duty, while in the act of discharging their duty or because of them having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty,”

It appears that the appellant was angry and told the police to ‘fuck off ‘ and that they have the pistols and the authority to get her daughter back. But at no point in time did she threaten them or cause bodily harm. If one

where to see the definition of the word 'revile' this means reprehend, reprobate. attack, blame, blast, criticize. Thus the words uttered by the appellant were not such as to amount to vilification of public officer whilst discharging his duty."

Il-Qorti qieset il-provi kollha prodotti quddiemha fid-dawl tal-insenjamenti fuq kwotati.

Kellha wkoll l-opportunità li tara l-filmati li ġew meħuda mill-*body cam* ta' Ufficjal tal-Pulizija li kien preżenti.

Minn dak li rat u semgħet il-Qorti, jidher biċ-ċar li meta daħlu fl-Għassa, Keithien Borg u Louiseanne Borg, entrambi kienu rrabbjati peress li kienu qed jippretendu li jingħataw ġustifikazzjoni dwar kif vettura ġiet ittowjata, meta skonthom, ħadd ma kien ċemplilhom qabel sabiex jitlobhom biex ineħħu l-vettura, u lanqas ma kien hemm tabelli fit-triq jindikaw li ma setgħux jithallew vetturi fit-triq. Din il-Qorti tiddeplora bl-ikbar qawwa li persuna tidhol f'Għassa tal-Pulizija u tibda tgħolli lehinha, għalkemm tifhem li persuna tkun urtata u rrabbjata, meta f'daqqa waħda ma ssibx il-vettura tagħha fejn tkun ipparkjata. Izda din il-Qorti ma tistax ma tinnotax, li minflok ma' dawn il-persuni ġew ikkalmati minn tliet Uffiċjali tal-Pulizija, l-istess tliet Uffiċjali tal-Pulizija rrispondew mhux b'ton kalm, biex b'hekk forsi l-incident ma kienx ikompli jeskala b'iktar vuċijiet irrabbjati, izda rrispondew b'ton li jikkompetti fit-tonalità u fl-attitudni, mal-vuċijiet ta' Keithien Borg u Louiseanne Borg. B'dana bl-ebda mod ma qiegħda din il-Qorti, tiġġustfika l-atteggjament ta' Keithien Borg u Louiseanne Borg, li verament daħlu b'mod storbjuz, jgħajtu fl-Għassa. Madanakollu, meta din il-Qorti semgħet u rat il-filmati, ma setgħet tidentifika l-ebda kliem ingurjuż jew ta' theddid versu l-Uffiċjali tal-Pulizija. Id-diskors kien fis-sens li qam battibekk, li ġialadarba jkun hemm tabelli u nħareġ avviz fil-Gazzetta tal-Gvern li ma jistax isir ipparkjar fit-triq indikata, il-Pulizija ma għandux obbligu li joqgħodu jċemplu lis-sidien tal-vetturi li jkunu thallew ipparkjati. Qam ukoll battibekk dwar ir-raġuni għalfejn l-

informazzjoni dwar il-vettura kellha tingieb mid-Depot, u mhux mill-Għassa ta' Ħal Qormi, għaladarba kienu uffiċjali minn dik l-Għassa li ttowjaw il-vettura.

Huwa minnu li lejn l-aħħar tal-ewwel filmat, jidher Keithien Borg jippunta subgħajh hu u ħiereg u jgħid xi kliem, iżda kif jidher mid-diskors li qal wieħed mill-Uffiċjali, dan il-kliem ma nftiehemx x'kien, tant li l-istess Uffiċjal tal-Pulizija baqa' ħiereg wara Keithien Borg u Louiseanne Borg, biex jara eżatt xi kliem intqal, iżda ma laħaqhomx. Għalhekk, din il-Qorti ma għandhiex provi li ntqal kliem ingurjuż jew ta' theddid. Din il-Qorti qieset ukoll l-aħħar parti tal-film, meta reġa' daħal Keithien Borg iktar kalm u skuża ruħu, filwaqt li ċaħad li kien hedded lil xi Pulizija, kif ukoll qieset il-kumment xejn xieraq, li l-Uffiċjal tal-Pulizija lissen malli ħareg 'il barra Keithien Borg.

Fl-isfond ta' dan kollu, ma tqisx li ġew ippruvati l-estremi tal-Artikolu 95(1) tal-Kap 9 tal-Liġijiet ta' Malta. Tqis iżda, li kif spjegat il-Qorti tal-Appell Kriminali fis-sentenza, **The Police Vs Elena Anatolievna Camilleri**, deċiża fit-30 ta' Mejju, 2019, dan l-Artikolu 95 tal-Kap 9 tal-Liġijiet ta' Malta jinkorpora fih, il-kontravvenzjoni indikata fl-Artikolu 338(ee) tal-Kap 9 tal-Liġijiet ta' Malta:

“However, incorporated in this offence is the contravention as found in article 338(ee) of the Criminal Code which provides the following:

“disobeys the lawful orders of any authority or of any person entrusted with a public service, or hinders or obstructs such person in the exercise of his duties, or otherwise unduly interferes with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any other manner whatsoever, unless such disobedience or interference falls under any other provision of this Code or of any other law; disobeys the lawful orders of any authority or of any person entrusted with a public service, or hinders or obstructs such person in the exercise of his duties, or otherwise unduly interferes with the

exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any other manner whatsoever, unless such disobedience or interference falls under any other provision of this Code or of any other law”;

The words uttered by the appellant were such so as to interfere with the exercise of the duties of the public officers when she said to them that ‘ they have the pistols and the authority to get back her daughter”. These words are tantamount to an interference in their carrying out of their duties and thus this contravention which is incorporated in the offence of vilification of a public officer results to the satisfaction of the court. These words were directed to the police and not to her husband as claimed by appellant and were directed as to prevent the police officers from doing what they are lawfully enjoined or allowed to do. It is evident that she was not happy with the approach taken by the police and not even by the advice given to her by them and thus tried to interfere in their work by telling them that due to the pistols they carry they could get back her daughter and thus suggested that they act on her report without following the procedure at law by first ascertaining that she truly had the care and custody of the minor daughter. Something they could not confirm since the appellant did not furnish them with a copy of the decree given by the Family Court.

The Court does thus is upholding the appeal of the appellant and is reforming the judgement given in that it is revoking that part of the judgment wherein it declared the appellant guilty of the charge of vilification of a public officer and condemned her to the payment of a multa of eight hundred euro (€800) and instead finds her guilty of the contravention of hindering and obstructing a police officer in the exercise of his functions and condemns her to the payment of fifty six euros (€56).”

Fil-każ odjern, irrizulta li Keithien Borg u Louiseanne Borg intalbu kemm-il darba, biex ma jgħollux lehinhom u jikkalmaw, iżda entrambi naqsu milli jagħmlu dan.

Ġialadarba ingħatat ordni mill-Uffiċjal tal-Pulizija biex ibaxxu leħinhom u jikkalmaw, iżda dawn għazlu li ma jobdux, din il-Qorti tqis li din il-kontravvenzjoni rriżultat ampjament ippruvata.

Għalhekk, din il-Qorti sejra ssib ħtija f' Keithien Borg ta' din il-kontravvenzjoni, iżda mhux taħt l-Artikolu 95 tal-Kap 9.

Dwar it-tieni imputazzjoni, u cioè li volontarjament kiser il-bon ordni jew il-paċi pubblika b'għajjat u storbju, l-Art. 338(dd) tal-Kap. 9 tal-Ligijiet ta' Malta jiddisponi kif ġej:

*“338. Huwa ħati ta' kontravvenzjoni kontra l-ordni pubbliku, kull min –
(dd) b'xi mod ieħor mhux imsemmi band'ohra f'dan il- Kodiċi,
jikser volontarjament il-bon-ordni jew il-kwiet tal-pubbliku”.*

Il-Qorti tagħmel referenza għas-sentenza fl-ismijiet, '**Il-Pulizija vs Rocco D'Alessandro**', deciża mill-Qorti tal-Appell Kriminali fl-20 ta' Mejju, 2013, fejn intqal:

'Minħabba li l-ewwel imputazzjoni hija kusr volontarju tal- bon-ordni jew tal-paċi pubblika, il-Qorti qed tirreferi għas- sentenza 'Il-Pulizija versus Michael Camilleri et' tas-27 ta' Frar 2008 tal-Qorti tal-Appell Kriminali kif preseduta mill- Imhalled Dr.David Scicluna. F'dik is-sentenza nsibu dan li ġej dwar in-natura ta' din il-kontravvenzjoni.

'Issa, kif ġie spjegat fl-Appell Kriminali fl-ismijiet 'Il-Pulizija v. Paul Busuttil' deciz fit-23 ta' Gunju 1994:

“Skond guriprudenza kostanti tal-Qrati tagħna, dan ir-reat jgħovera ruħu meta jkun hemm dak li fil-common law Inglizà kien jissejjah 'a breach of the peace'. Din l- ekwiparazzjoni ta' dana r-reat mal-kuncett Ingliz ta' 'a breach

of the peace' tirrisali għal zmien Sir Adriano Dingli li proprju f'kawza deciza minnu fl-10 ta' Gunju, 1890, fl- ismijiet 'Ispettore Raffaele Calleja v. Paolo Bugeja et.,' kien qal hekk:

'Che il buon ordine e la tranquillita` pubblica sta nella sicurezza, o nella opinione ferma della sicurezza sociale, - nel rispetto dei diritti e dei doveri sia degli individui in faccia all'autorita` pubblica, sia degli individui stessi fra loro, e ogni atto che toglie o diminuisce la opinione della sicurezza pubblica, o della sicurezza individuale, e` violazione dell'ordine pubblico, indipendentemente dalla perpetrazione di altro reato'(Kollez. Vol. XII, p. 472, 475).1 Vol. LXXVIII.v.277.

A skans ta' hafna repetizzjoni, din il-Qorti tagħmel referenza għall- ġurisprudenza miġbura fl-artikolu intitolat 'Calleja v. Balzan: Reflections on Public Order' publikat fil-Vol. X ta' The Law Journal - Id-Dritt (University of Malta, Autumn 1983) pagna 13 et seq., u speċjalment pagni 28 sa 31. B'zieda ma' dak li hemm f'dak l-artikolu wiehed jista' jgħid li r-reat ta' 'breach of the peace' fil-ligi Skoċċiza jirrikjedi wkoll ċertu element, imqar f'ammont zgħir hafna, ta' allarm. Fi kliem McCall Smith u Sheldon, fil-ktieb tagħhom. 'Scots Criminal Law', Edinburgh, Butterworths, 1992):

'The essence of the offence is the causing of alarm in the minds of the lieges. This alarm has been variously defined by courts. In Ferguson v. Carnochan (1889) it was said not necessarily to be 'alarm in the sense of personal fear, but alarm lest if what is going on is allowed to continue it will lead to the breaking of the social peace'. Alarm may now be too strong a term: in Macmillan v. Normand (1989) the offence was committed when abusive language caused 'concern' on the part of policemen at whom it was directed' (p.192).

Naturalment huwa kwazi impossibbli li wiehed jiddeċiedi aprioristikament x'jammonta jew x'ma jammontax f'kull kaz għar-reat ta' ksur volontarju tal-bon ordni u l-kwiet tal- pubbliku.

Kif jghid awtur iehor Skoćiz, Gerald H. Gordon, fit-test awtorevoli tieghu 'The Criminal Law of Scotland' (Edinburgh, 1978):

'Whether or not any particular acts amount to such a disturbance is a question of fact depending on the circumstances of each case, and strictly speaking probably no case on breach of the peace can be regarded as an authority of general application' (p.985, para. 41- 01).

U aktar 'il quddiem l-istess awtur jghid: ' . Although it has been held not to be a breach of the peace merely to annoy someone, such annoyance could amount to a criminal breach of the peace if the circumstances were such that it was calculated to lead to actual disturbance' (p. 986, para. 41-01).

Fl-Appell Kriminali fl-ismijiet Il-Pulizija v. Joseph Spiteri deciz fl-24 ta' Mejju 1996, din il-Qorti diversament presjeduta ziedet tghid hekk:

"Il-Qorti hawnhekk tixtieq tippreciza a skans ta' ekwivoçi li l-kuncett ta' 'breach of the peace' kif abbraccjat fl-Iskozja huwa aktar wiesa' minn kif gie interpretat mill-qradi Inglizi. Fi kliem Jones u Christie fil-ktieb taghhom 'Criminal Law' (Edinburgh, Sweet & Maxwell, 1992), b'referenza ghal-ligi Skoćiza in materja:

'While the major part of the criminal law of Scotland could indeed be expressed in some facile, breach-of the-peace- type phrase, such as 'doing things (or refraining from doing things) which cause, or could reasonably cause alarm or disturbance', this would lead inevitably to complete uncertainty as to what exactly the law did prohibit. At present there is considerable uncertainty as to what breach of the peace itself properly covers; and it would thus be most unwelcome to extend that uncertainty by enlarging the scope of breach of the peace at the expense of other, fairly well defined offences. But this is, of course, something of a vicious circle. It is precisely because breach of the peace has become so ill-defined that it has proved possible for it to stray into fields occupied by other offences. The only way to halt this process is for breach of the peace to be defined in a clearer and more limited fashion than is currently the

case. Regrettably, however, there is little indication that this is likely to be so' (p. 295).

Il-kuncett Ingliz ta' 'breach of the peace' li, kif ingħad, il- Qrati tagħna jidher li fil-massima segwew, gie spjegat mill- Professur A.T.H. Smith fil-ktieb tiegħu 'Offences Against Public Order' (London, Sweet & Maxwell, 1987) hekk:

'Because of the association between 'peace' and 'quiet', there is a natural tendency to suppose that a breach of the peace is 'any behaviour that disturbed or tended to disturb the tranquillity of the citizenry'. But if any legal expression is a term of art, breach of the peace is one of them. Recently the courts have refined the concept, and established very clearly that it is allied to harm, actual or prospective, against persons or property. The leading modern authority is undoubtedly the decision of the Court of Appeal in Howell . Watkins L.J. said:

*' . Even in these days when affrays, riotous behaviour and other disturbances happen all too frequently, we cannot accept that there can be a breach of the peace unless there has been an act done or threatened to be done which either actually harms a person, or in his presence his property, or is likely to cause such harm, or which puts someone in fear of such harm being done' (p.182).
Minn dana kollu din il-Qorti tara li, bħala regola, ikun hemm il-kontravvenzjoni kontemplata fil-paragrafu (dd) ta' l-art. 338 tal-Kap. 9 meta jkun hemm għemil volontarju li minnu nnifsu jew minħabba c-cirkostanzi li fihom dak l- għemil iseħħ inissel imqar minimu ta' inkwiet jew thassib f'moħħ persuna (li ma tkunx l-akkuzat jew imputat) dwar l-inkolumita` fizika ta' persuna jew dwar l-inkolumita` ta' proprjeta`, kemm b'rizultat dirett ta' dak l-għemil jew minħabba l-possibilita` ta' reazzjoni għal dak l-għemil. Naturalment dawn ic-cirkostanzi jridu jkun tali li oggèttivament inisslu l-imsemmi nkwiet jew thassib.'*

Il-Qorti kkwotat minn din is-sentenza 'in extenso' għaliex l- ispjegazzjoni mogħtija tista' tgħin biex il-Prosekuzzjoni tkun tista' tiddeċiedi aħjar meta għandha tagħti din l-imputazzjoni u meta le.

Minn dan il-kaz jirrizulta li l-principju li Qorti għandha ssegwi biex tara jekk kienx hemm ksur tal-ordni pubbliku huwa jekk mill-atti jirrizultax xi għemil volontarju li minnu nnifsu jnissel xi minimu ta' inkwriet jew tħassib f'moħħ persuna dwar l-inkolumita' fiżika ta' persuna jew proprjeta'.

Mill-provi prodotti, din il-Qorti tqis li din l-imputazzjoni giet ampjament ippruvata. Dana partikolarment minn dak li rat u semgħet mill-filmata eżebit, kif ukoll mill-affidavits tal-Uffiċjali tal-Pulizija nvoluti. Il-Qorti hija sodisfatta mill-provi miġjuba, li kien hemm ksur tal-ordni pubbliku da parti tal-imputat, li bl-għemil volontarju tiegħu, nissel inkwriet jew tħassib f'moħħ terzi persuni preżenti, dwar l-inkolumità fiżika ta' persuna jew proprjeta.

Decide

Għaldaqstant din il-Qorti, wara li rat l-Artikolu 95 tal-Kap 9, ma ssibx lill-imputat ħati taħt dan l-Artikolu, iżda minflok issibu ħati tar-reat minuri, kompriz u nvolut fir-reat lilu imputat, u cioè dak ravvizat fl-Artikolu 338(ee) tal-Kap 9 tal-Liġijiet ta' Malta, kif ukoll wara li rat l-Artikolu 338(dd) tal-Kap 9 tal-Liġijiet ta' Malta, issibu ħati tat-tieni imputazzjoni, u per konsegwenza, tikkundannah għal ħlas ta' ammenda komplessiva ta' tmienja u ħamsin Ewro (€58).

Inoltre, il-Qorti, b'applikazzjoni tal-Artikolu 383 tal-Kapitolu 9 tal-Liġijiet ta' Malta, torbot lill-ħati b'garanzija personali ta' elf Ewro (€1000) għal żmien sena mil-lum, sabiex iżomm il-kwriet u l-bon ordni, u bl-ebda mod ma jkellim jew jimmoleda lil PC 1329, PC1532 u PC2173.

Magistrat Dr. Simone Grech

Janet Calleja
Deputat Registratur