



**Court of Magistrates (Malta)  
As A Court of Criminal Judicature**

**Magistrate Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)**

**St. Julian's District Sitting**

**The Police**

**-vs-**

**Audrey Clementine Sandrine Jahier, holder of Identity Card number  
0251320A**

*Case No. 7867/24*

Today the 9<sup>th</sup> July, 2024

The Court

Having seen that the defendant **Audrey Clementine Sandrine Jahier** was arraigned before this court for having:

Between the 15<sup>th</sup> and 19<sup>th</sup> of September 2023 at Flat 2, Esmeralda Court, Birkirkara Road, St. Julian's:

Without intent to steal or to cause any wrongful damage, but only in the exercise of a pretended right, of her own authority, compelled another person to pay a debt or to fulfil any obligation whatsoever, or disturbed the possession of anything enjoyed by another person, or demolished buildings, or diverted or took possession of any water-course, or in any other manner unlawfully interfered with the property of another person.

Having heard witnesses.

Having seen all the acts and documents exhibited.

Having heard the prosecution and defence counsel make their final submissions.

Considers,

The defendant had rented out an apartment from Daniela Mifsud who testified at length as to how she was not being giving access to her apartment by the defendant.

Whilst the Court sympathizes with Ms. Mifsud's predicament, the defendant is being accused of having contravened the provisions of Article 85 of the Criminal Code.

The Court of Criminal Appeal examined the legal requirements which need to be satisfied for such an accusation to be proved successfully. In its judgement **Il-Pulizija vs Denise Caruana** it held:<sup>1</sup>

“..... kwistjonijiet dwar titolu ma jistghux ikollhom effett sabiex tigi stabbilita jew eskluza ir-reita'. Dan ghaliex dak li trid tindaga il-Qorti huwa jekk kienx jezisti stat ta' fatt li gie mibdul unilateralmment minn parti wahda tant illi l-vittma ta' dan ir-reat tigi ipprivata mill-uzu jew tgawdija ta' l-oggett li kien fil-pussess taghha qabel dak l-att spoljattiv.....

Illi l-elementi tar-reat in dizamina gew migbura mill-Ewwel Qorti fid-decizjoni taghha, liema esposizzjoni tad-dritt hija dettaljata tant illi din il-Qorti ma ghandha ghalfejn izzid xejn iktar fir-rigward. Jigi osservat biss illi:

**“Din il-Qorti tibda biex tghid li r-reat kontemplat fl-Artikolu 85 tal-Kodici Kriminali ma hux intiz biex jissostitwixxi l-azzjonijiet rivendikatorji jew xort'ohra li bihom dak li jkun jikseb ir-rikonoxximent tad-drittijiet tieghu fi jew fuq proprjeta', mobbli jew immobbli.**

**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 spoli – huwa li tipprotegi l-*istatus quo*.<sup>2</sup>....**

“Ghall-finijiet tar-reat ta' ragon fattasi 'il-pussess materjali, jew detenzjoni, hu sufficienti ghall-avverament tal-ipotesi tal-ligi' (ara appell kriminali **Il-Pulizija vs George Zahra**, 16 ta' Lulju 1958 – Vol. XLII.iv.1453). Min ikollu oggett misluf lilu ghat-tgawdija tieghu ghandu l-pussess

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<sup>1</sup> Dec. 30.11.2016 per Onor. Imhalled Dr. Edwina Grima

<sup>2</sup> **Il-Pulizija vs Jane Scicluna** – App.Inf.

materjali ta' dak l-oggett. Taht l-artikolu 85 tal-Kodici Kriminali ma hemm ebda bzonn li jigi ippruvat xi element ta' pussess aktar sostanzjali minn hekk.<sup>3</sup>[emfazi tal-Qorti]

Then in the judgement **II-Pulizija vs Eileen Said** the same Court differently presided made the following observations:<sup>4</sup>

Illi l-appellanti instabet hatja tar-reat ta' "ragion fattasi" jew dak li jissejjah "the exercise of a pretended right". Illi din l-azzjoni bazata fuq l-Artikolu 85 tal-Kap.9 tal-Ligijiet ta' Malta hija speci ta' zona grigja bejn il-kamp civili u dak kriminali, tant li Sir Andrew Jameson meta kien qed jigi abbozzat il-Kodici Penali Malti kien osserva fir-Rapport tieghu fir-rigward li :-

"It is doubtful whether acts of this kind would not be better left to the operation of the ordinary civil remedies by way of interdict or claim for damages....." (Ara Prof. Sir Anthony Mamo - Notes on Criminal Law" (Parti Speciali) Vol. II)

Illi l-elementi tar-reat in dizamina gew magisterjalment migbura fid-definizzjoni analitika moghtija mill-Imhalled W. Harding fis-sentenza ta' din il-Qorti fil-kawza " **II-Pulizija vs. Giuseppe Bonavia et.** " (App.Krim. 14.10.1944, Vol.XXXII - IV, p.768) u dawn jinkludu :-

- 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 .

Illi kif dejjem gie ritenut element importanti kostitutiv 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 invece jikkonsisti filli wiehed jippriva persuna ohra minn xi dritt fuq haga li ghandu id-dgawdija taghha.

Ir-reat ma jissussistix meta l-att materjali jikkonsisti fir-retenzjoni ta' pussess li dak li jkun gja ikollu. Hemm bzonn li jkun hemm att pozittiv li **jippriva lit-terz, jew ifixklu fil-pussess** tal-haga ghax kif jghid il-CARRARA (Prog. Parte Speciale Vol.5 para. 2850 :-

"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 degli interessati o per decreto della autorita' giudiziale . [emfazi tal-Qorti]

In another judgement delivered by the Court of Magistrates (Malta) in **II-Pulizija vs Emanuel Abela**, the Court considered that:<sup>5</sup>

<sup>3</sup> Appell Kriminali **il-Pulizija vs Mario Bezzina** dec 26/05/2004

<sup>4</sup> Onor. Imhalled Dr Joseph Galea Debono; Dec.19.06.2002; App. Nru.37/2002 JGD.

<sup>5</sup> 13.10.2014 per Onor. Magistrat Dr. Neville Camilleri; Kump. Nru 866/2011

Fil-kawza fl-ismijiet **Il-Pulizija vs. Georgina Gauci**, deciza fis-7 ta' Jannar 1998, il-Qorti tal-Appell Kriminali (Sede Inferjuri) qalet hekk:

“[F]il-ligi taghna r-reat ta' ragon fattasi mhux meqjus bhala delitt kontra l-proprjeta' izda bhala delitt kontra l-amministrazzjoni tal-gustizzja u amministrazzjonijiet pubblici ohra”.

Illi l-Qorti tinnota li huwa ormai stabbilit li l-elementi kostitutivi tar-reat ta' ragon fattasi, huma erbgha, u cioe:

“(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;

(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 permezz ta' l-awtorita' pubblika (jew, fi kliem il-Crivellari, Il Codice Penale per il Regno d'Italia Interpretato ecc., Torino, 1895, Vol. VI, pagna 749, 'la persuasione di fare da se' cio' che dovrebbe farsi reclamando l'opera del Magistrato'); u

(4) in-nuqqas ta' titolu li jirrendi l-fatt aktar gravi (ara, fost diversi sentenzi, **Il-Pulizija vs. Salvatore Farrugia**, Appell Kriminali 14 ta' Dicembru, 1957, Vol. XLI.iv.1506; **Il-Pulizija vs. Carmel sive Charles Farrugia**, Appell Kriminali 17 ta' Frar, 1995; **Il-Pulizija vs. Carmelo Ciantar**, 18 ta' Settembru, 1996; ara wkoll **Falzon, G.**, Annotazioni alle Leggi Criminali (Malta), 1872, p. 123).

Hu risaput - u dan, del resto, johrog mill-istess definizzjoni tar-reat in dizamina - li l-istess att materjali jista' jaghti lok ghar-reat ta' ragon fattasi jew ghal reat iehor (hsara volontarja, serq), u jekk ikunx hemm dana r-reat ta' ragon fattasi jew xi reat iehor ikun jiddependi mill-intenzjoni tal-agent. Hu rrelevanti jekk dina l-intenzjoni tikkwalifikax bhala intenzjoni specifika jew intenzjoni generika”.<sup>6</sup>

Ovvjament huwa sufficjenti li jikkonkorru l-ewwel tliet elementi. Ghall-finijiet tar-reat ta' ragon fattasi huwa bizzejjed xi forma ta' pussess.

Thus jurisprudence is consistent in guiding a Court of law to determine that this crime subsists only if the complainant had some form of possession of which she was deprived by the defendant or hindered in continuing to enjoy that possession.

The facts of this case clearly show that at the time, whilst ownership of the apartment vested with Ms Mifsud, it was the defendant who was in possession of the apartment.

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<sup>6</sup> Appell Kriminali **Il-Pulizija vs. Mario Lungaro**, 18 ta' Novembru, 1996.

For these reasons the Court is acquitting the defendant from the charge brought against her.

**Dr. Donatella M. Frendo Dimech**  
**Magistrate**