QORTI TAL-MAĠISTRATI (MALTA)
BĦALA QORTI TA' ĠUDIKATURA KRIMINALI
MAĠISTRAT DR. SIMONE GRECH

Distrett Ħal Qormi

Każ Nru: 5346/2024

Pulizija
vs
Victor Deguara

Illum, 30 ta' Lulju, 2024

Il-Qorti;

Rat l-imputazzjoni imressqa kontra Victor Deguara ta' 38 sena, detentur tal-Karta tal-Identità Maltija bin-numru 187586M, li permezz tagħha ġie akkużat talli fl-10 ta' Frar, 2024, fid-09.00 ġewwa 86, Triq il-Kbira, Qormi:

> *"1) Ġibt ruhek b'tali mod li tajt fastidju lil Jessica Caruana, u b'mod li kont taf jew li missek kont taf li dak li ghamilt kien ta' fastidju ghal Jessica Caruana.*
> *Art. 251A(1) (a) (b) Kap. 9"*

Rat id-dokumenti:

Semgħet il-provi;

Rat l-Artikoli indikati;

Ikkunsidrat:

L-imputazzjoni odjerna tirrigwarda allegat fastidju fil-konfront ta' Jessica Caruana. Għaldaqstant, issir riferenza għas-sentenza fl-ismijiet, **Il-Pulizija vs Joseph Bajada**, deċiża mill-Qorti tal-Maġistrati (Għawdex) Bħala Qorti ta' Ġudikatura Kriminali, fit-2 ta' Mejju, 2013:

"Illi r-reat tal-fastidju u tal-harassement kif ikkontemplati fl-artikoli 251A u 251B gew introdotti ghall-ewwel darba fil-ligi penali Maltija bl-Att XX tas-sena 2005. Illi mill-gurisprudenza tal-qrati taghna jidher illi l-imgieba li tohloq il-fastidju trid tkun "a course of conduct" u mhux incident wiehed u izolat. Illi f'sentenza moghtija mill-Qorti ta' l-Appelli Kriminali fil-kawza fl-ismijiet Il-Pulizija vs James Demanuele deciza fis-26 ta' Novembru 2009 il-Qorti stqarret:

"L-artikolu 251A johloq ir-reat ta' persuna li ggib ruha b' mod li taghti fastidju lil persuna ohra u b' mod li tkun taf jew imissha tkun taf li dan ikun ta' fastidju ghal dik il-persuna. Il-ligi fis-sub-inciz (2) tkompli tiddisponi li persuna li tkun qed iggib ruha b' mod dubbjuz imissha tkun taf li dik l-imgieba tammonta ghal fastidju ta' persuna ohra jekk fil-qies ta' persuna ragjonevoli li jkollha l-istess informazzjoni, din kienet kieku tahseb li dik l-imgieba kienet tammonta ghal fastidju tal-persuna l-ohra. Fis-subinciz (3)(c) il-ligi tkompli tghid li persuna akkuzata b'reat taht dan l-artikolu tista' ggib prova li fic-cirkostanzi partikolari dik l-imgieba kienet wahda ragjonevoli. Fl-artikolu 251C hu provvdut li riferenzi ghall-ghoti ta' fastidju lil persuni jinkludi meta wiehed jaghti qata': ("alarming") jew idejjaq: ("causing ..distress") lill-persuna.

Illi t-terminu legali fastidju (bl-Ingliz "harassment") gie definit mill-Black's Law Dictionary - (7th. edit.) bhala :-

"Words, conduct or action (usu. Repeated or persistent) that being directed at a specific person, annoys, alarms or causes substantial emotional distress in that person and serves no legitimate purpose", dan l-element ta' ripetizzjoni jew persistenza ma jridx jigi konsidrat "in isolation" b'riferenza biss ghall-kaz mertu tal-kawza imma wkoll irid jitqies fl-isfond tar-retroxena u ta' l-agir precedenti tal-gudikabbli. Dan ghaliex kif gie ritenut minn din il-Qorti fl-Appell Kriminali : "Il-Pulizija vs. Alan Caruana Carabez" [21.6.07] :-

"…. f' kazijiet bhal dawn ir-retroxena ghal kull incident hija importanti biex il-Qorti tkun tista' tispigola l-incident izolat u accidentali minn agir abitwali ta' fastidju fuq periodu ta' zmien."

Pero', xorta wahda jkun irid jirrizulta mill-provi ghall-fini tal-parametri tal-akkuza nnifisha."

Issir riferenza wkoll għas-sentenza, **Il-Pulizija vs Francis Xavier Micallef**, deċiża mill-Qorti tal-Maġistrati (Għawdex) Bħala Qorti ta' Ġudikatura Kriminali, fis-17 ta' Frar, 2011:

"Illi l-imputat jinsab akkuzat ukoll bir-reat ta' l-hekk imsejjah "harassement" bil-vjolenza kif previst fl-artikolu 251B tal-Kapitolu 9. Illi f'sentenza moghtija mill-Qorti ta' l-Appell Kriminali fl-ismijiet il-Pulizija vs Raymond Parnis (per Prim'Imhallef Vincent DeGaetano 24/04/2009), il-Qorti tat definizzjoni ezawrjenti ta' dak li jikkostitwixxi ilharassement taht dina id-disposizzjoni tal-ligi. Il-Qorti ta' l-Appell fis-sentenza taghha fil-fatt tissottolinja l-fatt illi l-kelma "imgieba" fit-test tal-ligi timplika "a course of conduct" u mhux xi incident wiehed izolat. Il-Qorti tistqarr:

… illi dawn l-affarijiet kollha li sehhew fil-kuntest ta' incident wiehed – ma jistghu qatt jammontaw ghar-reat kontemplat fl-Artikolu 251B imsemmi. Dan ir-reat gie evidentement ispirat mill-Artikolu 4(1) tal-Protection from Harassment Act, 1997 tal-Ingilterra, liema artikolu jipprovdi testwalment hekk: "A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions." L-Artikolu 251B taghna – u hawn il-Qorti ser tuza t-test Ingliz proprju biex wiehed ikun jista' jara xxebh u fejn saru t-tibdiliet – jipprovdi, fis-subartikolu (1) tieghu, hekk: "A person whose course of conduct causes another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or any person mentioned in sub-article (1) of article 222 shall be guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions…" . Il-kliem "on each of those occasions" huma indikattivi li l-

att materjali ma jistax isehh f'okkazjoni wahda izda jrid ikun hemm ghall-anqas zewg okkazjonijiet – proprju kif jinghad fil-matrici Ingliza, "on at least two occasions". Ghal xi raguni – fil-fehma ta' din il-Qorti kompletament illogika – il-kliem "on at least two occasions thallew barra". Fi kliem l-edituri ta' Blackstone's Criminal Practice, 2008:

"How separate the two occasions must be remains to be seen. The nature of stalking, the activity which primarily created the need for the new offences, might mean that the occasions are likely to be on separate days, although it may be possible to differentiate activities on one day where they can be viewed as not being continuous. The further apart the incidents, the less likely it is that they will be regarded as a course of conduct…It was recognised, however that circumstances can be conceived 'where incidents, as far apart as a year, could constitute a course of conduct'. The type of incidents would be those intended to occur on an annual event such as a religious festival or a birthday…"

Din il-Qorti mhix ser tipprova taghti definizzjoni ezawrienti ta' x'jammonta ghal "course of conduct" ghall-fini tal-imsemmi Artikolu 251B(1) – u anqas ma hi ser tipprova telenka kazijiet, anke jekk biss bhala forma ta' ezempju, li jammontaw jew ma jammontawx ghal tali "imgieba", haga li trid tigi deciza minn kaz ghal kaz skond ic-cirkostanzi u bl-applikazzjoni ta' doza qawwija ta' saggezza min-naha tal-gudikant. Dak li qed jigi deciz f'din il-kawza hu biss li incident wiehed (u, per di piu`, ta' minuti) ma jammontax ghal "course of conduct" ghall-finijiet tal-Artikolu 251B(1). Inoltre huwa evidenti li l-vjolenza kontemplata fl-imsemmi artikolu hija dik li talvolta tista' tigi perpetrata fil-futur u mhux dik li effettivament tkun giet kommessa. Il-vjolenza effettivament kommessa tigi punita taht disposizzjonijiet ohra tal-ligi." (Vide wkoll is-sentenza mogħtija fit-13 ta' Marzu, 2020, minn din il-Qorti hekk kif diversament ippreseduta, fl-ismijiet, Il-Pulizija vs Robert Ciappara).

Fis-sentenza mogħtija mill-Qorti tal-Maġistrati (Għawdex) Bħala Qorti ta' Ġudikatura Kriminali, fis-17 ta' Settembru, 2013, fl-ismijiet, **Il-Pulizija (Spettur Frank Anthony Tabone) vs. Elizabeth Azzopardi**, intqal li:

Illi riferenza ghandha ssir ghad-decizjoni moghtija fil-21 ta' Frar 2012 mill-Qorti tal-Appell Kriminali fil-kawza fl-ismijiet Il-Pulizija vs. Mirko Giannetti, fejn il-Qorti ghamlet riferenza ghall-kawza deciza mill-istess Qorti (diversament preseduta) fis-27 ta' Frar 2009 fil-kawza fl-ismijiet Il-Pulizija vs. Massimo Tivisini:

"Fl-Appell Kriminali Il-Pulizija v. Massimo Tivisini deciz fis-27 ta Frar 2009, intqal dan rigward dan ir-reat:
"Illi ghalkemm, kif jissottometti l-appellant, it-terminu legali fastidju (bl-Ingliz 'Harassment') gie definit mill-Black's Law Dictionary - (7th. edit.) bhala:- "Words, conduct or action (usu. repeated or persistent) that being directed at a specific person, annoys, alarms or causes substantial emotional distress in that person and serves no legitimate purpose", dan l-element ta' ripetizzjoni jew persistenza ma jridx jigi konsidrat "in isolation" b'riferenza biss ghall-kaz mertu tal-kawza imma bil-fors li jrid jitqies fl-isfond tar-retroxena u tal-agir precedenti tal-gudikabbli. Dan ghaliex kif gie ritenut minn din il-Qorti fl-Appell Kriminali: Il-Pulizija vs. Alan Caruana Carabez [21.6.07]:- "...f'kazijiet bhal dawn ir-retroxena ghal kull incident hija importanti biex il-Qorti tkun tista' tispigola l-incident izolat u accidentali minn agir abitwali ta' fastidju fuq perjodu ta' zmien".

[...]

Illi r-reat tal-"fastidju" (fit-test Ingliz 'harassment') gie introdott ghall-ewwel darba fil-ligi penali Maltija bl-Att XX tas-sena 2005 w inkorporat fl-artikoli 251A, 251B, 251C u 251D tal-Kodici Kriminali. L-artikolu 251A johloq ir-reat ta' persuna li ggib ruhha b'mod li taghti fastidju lil persuna ohra u b'mod li tkun taf jew imissha tkun taf li dan ikun ta' fastidju ghal dik il-persuna. Dan hu r-reat dedott taht irraba' imputazzjoni. Il-ligi fis-sub-inciz (2) tkompli tiddisponi li persuna li tkun qed iggib ruhha b'mod dubjuz imissha tkun taf li dik l-imgieba tammonta ghal fastidju ta' persuna ohra jekk fil-qies ta' persuna ragjonevoli li jkollha l-istess informazzjoni, din kienet kieku tahseb li dik l-imgieba kienet tammonta ghal fastidju tal-persuna l-ohra.

Fis-subinciz (3)(c) il-ligi tkompli tghid li persuna akkuzata b'reat taht dan l-artikolu tista' ggib prova li fic-cirkostanzi partikolari dik l-imgieba kienet wahda ragjonevoli. Fl-artikolu 251C hu provdut li riferenzi ghall-

ghoti ta' fastidju lil persuni jinkludi meta wiehed jaghti qata' ('alarming') jew idejjaq ('causing...distress') lill-persuna. [...]

Illi apparti mid-dispozizzjoni kontenuta fl-artikolu 251C li tghid li riferenzi ghall-ghoti ta' fastidju lil persuni jinkludu meta wiehed jaghti qata' jew idejjaq lill-persuna. ('alarming the person or causing the person distress" fit-test Ingliz), il-ligi taghna ma taghti ebda definizzjoni ohra tat-terminu generiku fastidju jew 'harassment'. Issa filwaqt li n-nuqqas ta' definizzjoni specifika w dettaljata tar-reat in dizamina taghmilha possibbli ghall-gudikant li jqis bhala fastidju agir li jkun jiehu l-forma ta' diversi varjazzjonijiet tal-istess delitt, jista' mill-banda l-ohra johloq ukoll incertezzi flapplikazzjoni tal-ligi penali fir-rigward ta' dawn it- tip ta' reati li ta' sikwit jinbtu minn relazzjonijiet interpersonali komplikati u delikati".

Din il-Qorti zzid dan li gej. L-artikolu (251A tal-Kap 9) huwa msejjes fuq l-ewwel zewg artikoli tal-Protection of Harassment Act 1997 li jibda bil-kelmiet: 'A person must not pursue a course of conduct' li fil-ligi taghna hekk: 'Persuna li ggib ruhha'.

Skont l-Archbold: 'Two incidents can constitute a 'course of conduct' but the fewer the incidents and the greater their separation in time, the less likely it is that they should be described as 'a course of conduct'. (Lau v DPP (2000) 1 F.L.R. 799 DC).

In Pratt vs DPP, 165 J.P. 800 DC, it was said that the concern which the 1997 Act had been intended to meet was that persons should not be put in a state of alarm or distress by the behaviour of others; and that purpose had to be borne in mind when deciding whether to prosecute where there was only a small number of incidents relied upon. On the facts, it was held that two incidents, three months apart, in the first of which the defendant threw a beaker of water at his wife, and in the second of which he chased her round the house, swearing and repeatedly questioning her, were close to the line, but the conviction could be sustained where the incidents took place against a background of an undertaking having been given in civil proceedings by the defendant not to use or threaten violence against his wife, nor to harass or pester her.

Under section 1(2), the test is entirely objective; the reasonable man is not to be imbued with the peculiar characteristics of the offender, such as his mental illness;
and the test is section 1(30(c is even more clearly objective: R v Colohan".

Illi, skond gurisprudenza kostanti tal-Qrati taghna, sabiex jissussisti r-reat ta' fastidju irid ikun hemm kontinwita' jew ripetizzjoni ta' incident u mhux incident wiehed."

Il-liġi għalhekk titkellem dwar "imġieba", *a course of conduct.*

F'dan il-każ, jidher li l-imputazzjoni tagħmel referenza għal inċident, li allegatament seħħ fl-10 ta' Frar, 2024, fid-09.00 ġewwa 86, Triq il-Kbira, Qormi. Għaldaqstant, ġjaladarba l-imputazzjoni tirrigwarda inċident wieħed, li allegatament seħħ f'data, f'lok u f'ħin speċifiku, din l-imputazzjoni ma tistax tirriżulta, peress li jonqos l-element tal-*course of conduct,* li huwa element tant essenzjali f'din it-tip ta' imputazzjoni.

Decide

Għaldaqstant, din il-Qorti qed taqta' u tiddeċiedi din il-kawża, billi għar-raġunijiet hawn fuq esposti, tillibera lill-imputat minn kull kundanna u ħtija, stante nuqqas ta' provi u stante li ma ġiex ippruvat li kien hemm *course of conduct*, hekk kif tirrikjedi l-Artikoli 251 A (1).

Maġistrat Dr. Simone Grech

Janet Calleja
Deputat Reġistratur