



**QORTI TAL-MAGISTRATI (GHAWDEX)
BHĀLA QORTI TA' ġUDIKATURA KRIMINALI**

**Magistrat Dr. Jean Paul Grech B.A., LL.D
M.Juris (Int. Law), Adv. Trib. Eccl. Melit**

SENTENZA

Mogħtija illum it-Tnejn, erbgħha u għoxrin (24) ta' Frar 2025

Kawża Nru 31/2024

**Ir-Repubblika ta' Malta
(Spettur Keith Xerri)
(Dr Tilden Tabone)**

Vs

Omisses

Il-Qorti,

Rat l-akkuži miġjuba kontra **Omisses**, talli b'diversi atti magħmulin minnu, ukoll jekk fi żminijiet differenti, liema atti jiksru l-istess dispożizzjonijiet tal-ligi u ġew magħmula b'rīżoluzzjoni waħda, nhar l-għaxra (10) ta' Diċembru tas-sena elfejn u tlieta u għoxrin (2023) u/jew

fil-ġranet ta' qabel, ġewwa għalqa (Serrer tax- Xewkija) fi Triq il-Pitkalija, Xewkija, Għawdex:

(1) ikkommetta serq ta' vettura u/jew oġġetti oħra, liema serq huwa kkwalifikat bix-xorta tal-ħaġa misruqa u bil-valur, liema valur tal-ħaġa misruqa huwa iżjed minn elfejn tliet mijha u disgħa u għoxrin ewro u sebgħha u tletin centezmu (€2,329.37) u dan għad-detriment ta' Michael Hili u/jew persuni u/jew entitajiet oħra;

(2) fl-istess data, lok, ħin u čirkostanzi volontarjament ġassar, jew għamel ħsara jew għarraq ħwejjeg ħaddieħor mobbli jew immobbli liema ammont ta' ħsara tiskorri l-elfejn u ħames mitt euro (€2,500) għad-detriment ta' Michael Hili u/jew persuni u/jew entitajiet oħra;

talli wkoll nhar l-għaxra (10) ta' Dicembru tas-sena elfejn u tlieta u għoxrin (2023) u/jew fil-ġranet ta' qabel, ġewwa Sqaq li jagħmel ma' Triq Hamsin, Xewkija, Għawdex:

(3) ikkommetta serq ta' vettura u/jew oġġetti oħra, liema serq huwa kkwalifikat bix-xorta tal-ħaġa misruqa u bil-valur, liema valur tal-ħaġa misruqa huwa iżjed minn elfejn tliet mijha u disgħa u għoxrin ewro u sebgħha u tletin centezmu (€2,329.37) u dan għad-detriment ta' Pauline Hili u/jew persuni u/jew entitajiet oħra;

(4) fl-istess data, lok, ī hin u ċirkostanzi volontarjament ħassar, jew għamel ī hsara jew għarraq ħwejjeg ħaddieħor mobbli jew immobbli liema ammont ta' ī hsara tiskorri l-elfejn u ħames mitt euro (€2,500) għad-detriment ta' Pauline Hili u/jew persuni u/jew entitajiet oħra.

F'każ ta' ħtija, barra milli tapplika l-piena skont il-liġi, il-Qorti ġiet ġentilment mitluba sabiex tħaddem kontra l-ħati d-dispożizzjoni tal-artikolu 15A tal-Kodiċi Kriminali, u dan minbarra li tinfliggxi l-piena jew pieni li tistabbilixxi l-liġi.

F'każ ta' ħtija, barra milli tapplika l-piena skont il-liġi, il-Qorti ġiet ġentilment mitluba sabiex tħaddem kontra l-ħati d-dispożizzjonijiet tal-Artikolu 532B u/jew tal-Artikolu 533 tal-Kodiċi Kriminali, u dan minbarra li tinfliggxi l-piena jew pieni li tistabbilixxi l-liġi.

F'każ ta' ħtija, barra milli tapplika l-piena skont il-liġi, il-Qorti ġiet ġentilment mitluba sabiex tapplika l-Artikoli 382, 383, 384, u 385 tal-Kodiċi Kriminali għas-sigurtà tal-partijiet leżi.

Rat li waqt l-ewwel seduta tal-kawża u ciee dik tat-tletin (30) ta' Ottubru 2024, id-difiża eċċepiet li fil-mument tal-allegat atti li qiegħdin jiġu addebitati lill-imputat, huwa kien fi stat ta' ġenn a tenur tal-artikolu 33(a) tal-Kap. 9 tal-Ligijiet ta' Malta;

Rat li waqt dik l-istess seduta, id-difīża talbet il-ħatra ta' espert Psikjatriku sabiex jiġi determinat jekk fid-data li għaliha jirreferu l-allegati reati, l-imputat kellux il-kapaċita *di intendere e di volere*;

Rat li l-Prosekuzzjoni ma oġgezzjonatx għal tali talba;

Rat id-digriet tagħha mogħti dakħinhar stess *seduta stante* fejn il-Qorti ħatret lill-Professur Anton Grech sabiex jiddetermina jekk fid-data tal-imputazzjonijiet u čioe fl-ġħaxra (10) ta' Dicembru 2023 l-imputat kienx fi stat ta' ġenn ai termini tal-artikolu 33 tal-Kapitolu 9 tal-Liġijiet ta' Malta bil-konsegwenza li l-istess imputat ma kellux il-kapaċita *di intendere e di volere*;

Rat li l-Professur Anton Grech ippreżenta u ħalef ir-rapport tiegħu fis-seduta tal-ġħaxra (10) ta' Dicembru 2024;

Semgħet lill-expert jagħti x-xhieda tiegħu bil-ġurament fl-istess seduta;

Semgħet is-sottomissjonijiet tal-partijiet fl-istess seduta tal-ġħaxra (10) ta' Dicembru 2024;

Rat l-atti kollha ta' dan il-proċediment;

Ikkunsidrat;

Din is-sentenza sejra tindirizza biss l-eċċejżzjoni sollevata mid-difiża a tenur tal-artikolu 33(a) tal-Kap. 9 u čioe jekk dakinar tal-għaxra (10) ta' Diċembru 2023 – id-data tal-akkuži mertu ta' dawn il-proċeduri – l-imputat kienx fi stat ta' ġenn u li per konsegwenza għalhekk huwa eżenti mir-responsabbilita kriminali.

Spiegazzjoni dettaljata tal-artikolu 33(a) tal-Kap. 9 tagħtiha l-Qorti Kriminali fis-sentenza fl-ismijiet **Ir-Repubblika ta' Malta vs David Norbert Schembri**¹:

“Kif inhu risaput, l-espressjoni “stat ta’ genn” fil-paragrafu (a) ta’ l-Artikolu 33 tal-Kodici Kriminali għandha sinjifikat legali li mhux necessarjament jattalja ruhu ma’ dak li fil-medicina jew fil-psikjatrija jitqies bhala “genn”. Kif jispiegaw l-awturi Jones u Christie fil-ktieb tagħhom Criminal Law : “It is important to emphasise at the outset that insanity is a purely legal concept. It is not a clinical term derived from psychiatry or psychology. Insanity is not synonymous with any medical conception of mental disorder.’

“Fi kliem iehor, persuna tista’ tkun marida mentalment fil-mument li tkun għamlet l-att ta’

¹ Deċiżja 25 ta’ Settembru 2008.

komissjoni jew ommissjoni li jammonta ghall-element materjali tar-reat, izda dan ma jfissirx necessarjament li dik il-persuna kienet fi “stat ta’ genn” ghall-finijiet ta’ l-imsemmi Artikolu 33(a), cioe` tali li tkun ezenti minn responsabbilta` kriminali. Biex ikun hemm l-istat ta’ genn li jezenta mir-responsabbilta` kriminali jrid jirrizulta (imqar fuq bazi ta’ probabilita`, meta d-demenza tkun giet eccemita mill-akkuzat jew imputat u allura l-piz ikun fuqu biex jipprova l-fatt li l-akkuzat jew imputat kien qed ibati minn marda tal-mohh li minhabba fiha, fil-mument ta’l-att ta’ komissjoni jew ommissjoni, huwa kien priv (i) jew mill-kapacita` li jifhem in-natura u l-kwalita` ta’ dak l-att li qed jaghmel, jew (ii) mill-kapacita` li jifhem li dak li qed jaghmel hu hazin, jew (iii) mill-kapacita` li jaghzel jekk jaghmilx jew le dak l-att. Marda tal-mohh – disease of the mind bl-Ingliz – mhux necesarjament tkun patologija lokalizzata fil-mohh – in the brain. Kif jispjega Lord Diplock fil-kaz ta’ Sullivan [1984] AC 156, u b’referenza ghall-M’Naghten Rules – regoli, li wiehed m’ghandux jinsa, jirreferu biss ghall-kapacita` di intendere, mentri l-ligi tagħna tikkunsidra wkoll jekk kienx hemm il-kapacita` di volere: –

“The nomenclature adopted by the medical profession may change from time to time...But the meaning of the expression ‘disease of the mind’ as the cause of ‘a defect of reason’ remains unchanged for the purpose of the application of the M’Naghten rules...‘mind’ in the M’Naghten rules is used in the ordinary sense of the mental faculties of reason, memory and understanding. If the effect of a disease is to impair these faculties so severely as to have either of the consequences referred to in the latter part of the rules, it matters not whether the aetiology of the impairment is organic, as in epilepsy, or functional, or whether the impairment itself is permanent or is transient and intermittent, provided that it subsisted at the time of commission of the act.’

“U kif spjegat aktar fi Blackstone’s Criminal Practice 2008:

“It can also be seen that to a large extent, whether something is a disease of the mind depends on the consequences it produces – impairment of the faculties of reason, memory and understanding.

The disease certainly need not be one primarily located in the brain if it produces the relevant consequences there. Thus arteriosclerosis (hardening of the arteries) causing temporary loss of consciousness is a disease of the mind for these purposes even though it is of physical rather than mental origin...However not every cause of an impairment of these mental faculties is a disease of the mind. A disease is something internal to the accused and so: 'A malfunctioning of the mind of transitory effect caused by the application to the body of some external factor such as violence, drugs, including anaesthetics, alcohol and hypnotic influences cannot fairly be said to be due to disease'(per Lawton LJ in Quick QB 910 at p. 922, emphasis added).'

"L-istess jista' jinghad fil-kaz ta' dipendenza, anke wahda qawwija, fuq drogi – tali dipendenza fiha nnifisha ma tammontax ghal marda tal-mohh ghall-finijiet ta' l-Artikolu 33(a) imsemmi.

"Biex din il-Qorti tikkonkludi fuq dan l-aspett ser tikkwota minn dak li wiehed isib fl-appunti tal-Professur Sir Anthony Mamo:

“The question [of insanity], when it arises, is one offact: it has, that is to say, to be decided whether the defendant had a mental disease and, if so, whether it was of such a character and degree as to take away the capacity to know the nature of his act or to help doing it.”²

Sabiex irredieġa r-rapport tiegħu, l-espert psikjatriku nominat minn din il-Qorti għamel mhux biss intervista lill-imputat iżda wkoll tkellem mal-Psikjatra kuranti tiegħu kif wkoll ra n-noti fil-file mediku relattiv tal-imputat.

Mill-intervista li l-espert għamel mal-Psikjatra kuranti tal-imputat, Profs Grech jirrileva s-segwenti:

“Dr Fenech said that when he had seen Mr Farrugia a few days after the incident of the theft of the car, he thought that there was the possibility that Mr Farrugia had suffered from a dissociative state. A couple of months later, Mr Farrugia developed full-blown psychosis. And in hindsight, there is the possibility that when he stole the car, he was in what is called the “prodromal state of schizophrenia.”³

² Vide also Il-Pulizija vs Mairo Said decided on the 28th April 2011.

³ Fol. 13 tal-proċess.

Ben Koprowski fl-artikolu tiegħu intitolat *What to know about prodromal schizophrenia* jiispjega s-segwenti rigward din il-kundizzjoni:

"Prodromal schizophrenia is a period of change before the onset of schizophrenia. People with prodromal schizophrenia show changes from their previous behaviours and experiences. These changes are typically subtle. An individual generally does not yet show the full symptoms of schizophrenia.

People with prodromal schizophrenia may experience symptoms that come on slowly. These symptoms typically change and develop over time.

People may experience gradual changes in their thinking, mood, and functioning in social situations before they experience symptoms of psychosis.

Although they may differ from person to person, symptoms generally include:

- *depression*
- *interrupted or disturbed sleep*
- *trouble concentrating*
- *a lack of motivation to complete tasks, called avolition*
- *social isolation*

People in the later stages of prodromal schizophrenia may experience mild and weakened psychotic experiences, also called attenuated psychotic experiences. These experiences may be an indication a person may develop symptoms of psychosis soon.

These attenuated psychotic experiences can vary from person to person and may include:

- **Referential thinking:** *This is a belief that ordinary events and the behavior of others have hidden meanings that relate to them.*
- **Magical thinking:** *This is a belief that a person's thoughts, feelings, or actions affect:*
 - *someone else's behavior*
 - *the outcome of situations*
- **Difficulties with reality testing:** *This is a person's ability to tell the difference between their inner world and reality.*
- **Poorly formed hallucinatory experiences:** *These include experiences such as:*
 - *mumbled voices*
 - *short visual hallucinations*

Other experiences may include:

- *erratic behavior*
- *anxiety*
- *withdrawal*

Many people in the prodromal phase of schizophrenia may experience neurocognitive deficits. These are problems with:

- *memory*
- *attention*
- *learning*
- *executive functioning, or how a person plans, remembers, and completes tasks*

These deficits may fall between those of people without schizophrenia and those with. They may also predict who is at greater risk of developing schizophrenia.”⁴

L-espert tal-Qorti innota wkoll kif ftit wara l-allegati reati, l-imputat kien idaħħal l-Isptar. Dan waqt li kien huwa kien taħt il-kustodja tal-Pulizija. L-espert jikkummenta li dan kien neċessarju: “**due to erratic behaviour that made communication very difficult.** *Observations noted that he appeared withdrawn and nearly tearful. He reported that for about 8 months he was experiencing low energy and engaging in bed seeking behaviour, along with difficulties in concentration. He was diagnosed with either Acute Stress Reaction or Major Depressive Disorder and started on antidepressant medication before being discharged on December 18 2023.”⁵*

⁴ Ara artiklu fil-website: <https://www.medicalnewstoday.com/articles/prodromal-schizophrenia>

⁵ Fol. 14 tal-proċess.

Fil-konklużjonijiet tiegħu l-espert imbagħad jistqarr li:

"Since I had not examined him on 10 December 2023 I cannot comment with absolute certainty on his mental state then, but considering that:

a. few days after the said incident he was admitted to The Short Stay Ward of the Gozo General Hospital with Affective Symptoms, and

b. In April 2024 he developed Schizophrenia,

most probably in 10 December 2023 he was suffering from a Prodrome of Schizophrenia. Symptoms at this stage of condition can be vague and not clear cut.

Thus there is thus a great possibility that due to this condition, in 10 December 2023 he was not mentally capable to understand his actions and what where their consequences."⁶

Fix-xhieda imbagħad li ta quddiem din il-Qorti, l-espert kompla jelabora s-segwenti:

⁶ Ibid, Fol. 14 u 15.

“Fl-għaxra ta’ Dicembru two thousand twenty-three (2023), ta’ meta ġara l-każ. Hadd ma rah, jiġifieri ma sibtx assessment tiegħu dakinhar. Pero kien daħal l-Isptar ftit ġranet wara u kien għaddej, kien jidher li mhux fi stat mentali normali, għalkemm ma kienx psikotiku. Pero ftit xhur wara daħal Mount Carmel imbagħad ingħab Għawdex marid bil-kundizzjoni ta’ schizophrenia. **Jiġifieri l-probabilita kbira u kbira ħafna hija li f’dak l-istadju, fl-ġħaxra (10) ta’ Dicembru two thousand and twenty-three (2023) kien għaddej dak li jqħidulu prodrome, il-kundizzjoni ta’ schizophrenia mhux illum għandek, l-ġħada tuqm u toħroġlok bħalma hi infencion, imma tgħaddi minn ftit xhur jgħidulha prodrome fejn ma jkunx ċar li hemm il-kundizzjoni, imma dak li jkun ma jkunx fi stat normali, u l-probabilita kbira hu meta wettaq dak ir-reat kien għaddej minn dak l-istat. Ma jkunx jifhem x’qed jaġħmel u x’konsegwenzi jista’ jkollu. Infatti l-imġieba ta’ kif għamel l-affarijet kollox hekk jindika, li dan kien, ha nuża kelma, erratic, f’li għamel, mhux li pjana, għamel affarijet li ma issegwihomx bil-loġika. . . pero probabilita kbira li hu kien fi stat li m’għandux kontroll fuqu innifsu, ma jistax jippjana, etc.”⁷ (Enfażi tal-Qorti).**

Il-Professur Grech irrimarka wkoll fuq domanda tal-Uffiċjal Prosekuratur kif mill-file mediku irriżulta kif sa minn eta żgħira l-imputat kien juri li għandu problemi psikjatriċi. Infatti kienu rawh ic-Child Guidance Clinic u meta kien għad kellu sbatax (17) -il sena kien anke ġie rikoverat l-Isptar minħabba overdose. L-imputat wkoll ma ftakar xejn mill-akkadut.

⁷ Fol. 10 tal-proċess.

Fid-dawl ta' dak kollu rilevat, il-Qorti ma tara l-ebda raġuni għalfejn m'għandhiex tabbraċċja l-konklużjoni tal-espert nominat minnha u tqis li fil-mument tal-kommissjoni tal-allegati reati l-imputat assolutament ma kellux il-*capacita di intendere e di volere*. Dan riżultat tal-marda tal-ischizophrenia li ġia kienet bdiet turi s-sintomi tagħha. Għalhekk din il-Qorti tqis li l-imputat ma jistax jitqies li huwa kriminalment responsabbi għall-akkadut.

- **Decide**

Għaldaqstant għal dawn il-motivi, il-Qorti wara li rat l-artikolu 33(a) tal-Kap. 9 tal-Liġijiet ta' Malta kif wkoll l-artikoli 36 u 37 tal-Kap. 525 tal-Liġijiet ta' Malta, qed tilqa' l-eċċeżzjoni sollevata mid-difiża fis-seduta tat-tletin (30) ta' Ottubru 2024 u qiegħda tiddikjara li l-imputat huwa eżenti mir-responsabbilita kriminali stante li dakinhar li ġew imwettqa l-allegati reati l-imputat kien fi stat ta' ġenn.

Stante li mill-atti, senjatament mir-rapport tal-espert psikjatriku nominat minn din il-Qorti, jirriżulta li attwalment l-imputat qed jattendi regolarmen bħala *outpatient* fis-*psychiatric outpatients clinic* tal-Isptar Ĝenerali ta' Għawdex fejn hemmhekk qed jiġi segwit minn psikjatra u *occupational therapist* u jidher li s-sitwazzjoni hija taħt kontroll, il-Qorti mhux sejra tagħmel ordni sabiex l-imputat jinżamm fl-Isptar Monte Carmeli a tenur tal-artikolu 623(1) tal-Kap. 9.

Madanakollu wara li rat l-artikolu 16(1) tal-Kap. 525, il-Qorti qiegħda tordna li din is-sentenza tiġi notifikata lill-Kummissarju għall-Promozzjoni tad-Drittjet ta' Persuni b'Diżordni Mentali sabiex jara li jinħareg Ordni ta' Kura fil-Kommunita fit-termini tal-artikolu 16(4) tal-istess Kap. 525 tal-Ligijiet ta' Malta. Dan bl-iskop li l-imputat jkompli jingħata l-għajnejha kollha neċċesarja kif wkoll jiġi assikurat li huwa qed jieħu l-kura kollha li jippreskrivulu t-tobba u l-konsulenti li qegħdin isegwuh.

Finalment il-Qorti tordna li fi żmien sitt (6) ijiem tax-xogħol l-Avukat Ĝenerali jingħata aċċess għal kopja skenjata tal-atti, flimkien ma' aċċess għal kopja skenjata ta' din is-sentenza li iddeċidiet l-eċċeżżjoni sollevata mid-difiża a tenur tal-artikolu 33(a) tal-Kap. 9.

(ft.) Dr. Jean Paul Grech

Maġistrat

(ft.) Diane Farrugia

Deputat Reġistratur

Vera Kopja

Għar-Reġistratur