Qorti tal-Magistrati (Malta)

Bhala Qorti ta' Gudikatura Kriminali

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

Il-Pulizija

[Spettur Joseph Busuttil]
[Spettur Dorianne Tabone]

vs

-Omissis-

Kumpilazzjoni Numru: 441/2020

Illum, erbgha u ghoxrin (24) ta' Marzu, 2025

Il-Qorti;

Rat l-akkuzi migjuba kontra **-Omissis-** detentur tal-karta tal-identità bin-numru -Omissis- akkuzat talli matul is-sena 2020 u ix-xhur ta' qabel, gewwa dawn il-Gzejjer

1. **Ippartecipa f'attivitajiet sesswali ma' persuna taht l-età u cioè -Omissis- mwielda fis--Omissis-;**
   Art 204C (1) ta' Kap 9 tal-Ligijiet ta' Malta

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

Rat l-ezami tal-imputat fil-prezentata fejn huwa wiegeb mhux hati tal-akkuzi kif dedotti kontrih;

Rat il-Fedina Penali tal-imputat;

Rat in-nota tal-Avukat Generali datata hamsa (5) ta' Lulju, 2024 fejn fiha elenka l-Artikoli tal-Ligi li bihom jitlob li tinstab htija u cioè:-

1. Fl-artikoli 204C (1) tal-Kapitolu 9 tal-Ligijiet ta' Malta;
2. Fl-artikoli 382A, 383, 384, 385, 386, 412C u 412D tal-Kapitolu 9 tal-Ligijiet ta' Malta

3. Fl-artikoli 17, 31, 532A, 532B u 533 tal-Kapitolu 9 tal-Ligijiet ta' Malta;

Rat illi wara li l-Artikoli gew moqrija l-imputat ma kellu l-ebda oggezzjoni li din il-Qorti tittratta u tiddeciedi dawn il-proceduri b'mod sommarju.

Semghet it-trattazzjoni tal-partijiet.

<u>Ikkunsidrat</u>

Illi xehdet il-parte civile **<u>-Omissis-</u>** li kellha hmistax (15)-il sena meta sehh l-allegat reat. Tixhed li llum il-gurnata hi ghandha tmintax (18)-il sena u li kienet ghamlet rapport fil-konfront tal-akkuzat rigward vjolenza domestika. Tghid li hi ghandha zewgt (2) itfal u ma tafx min hu l-missier taghhom. Izzid tghid li kien hemm perjodu qabel ma kellha sittax (16)-il sena li kienet tiltaqa' mal-akkuzat. Tghid li dak iz-zmien kienet thawwad u meta kellha l-ewwel wild kellha hmistax (15)-il sena.

Illi xehdet <u>Dr Katya Vasallo</u> li giet inkarigata minn din il-Qorti sabiex taghmel traskrizzjoni tal-istqarrija tal-akkuzat. Tali traskrizzjoni giet ipprezentata u mmarkata bhala Dok. KV1.

Illi xehed <u>Christopher Farrugia</u> li kien effettwa test tad-DNA fuq zewg (2) minuri (cioè -Omissis- u -Omissis-) kif ukoll fuq l-akkuzat u l-parte civile. Jghid li tali test ikkonkluda li l-akkuzat -Omissis- huwa l-missier bijologiku taz-zewg (2) minuri. Tali rizultati gew redatti f'rapporti mmarkati bhala Dok. CF1.

<u>Ikkunsidrat</u>

Illi jinghad li dan il-kaz jistrieh fuq il-kredibilità tal-parte civile -Omissis- kif ikkorroborata mal-provi l-ohra mressqa mill-Prosekuzzjoni.

Illi l-imputat -Omissis- qed jigi akkuzat taht l-Artikolu 204C (1) tal-Kapitolu 9 tal-Ligijiet ta' Malta li jghid hekk:

> *"Kull min jippartecipa f'attivitajiet sesswali ma' persuna ta' taht is-sittax-il sena jehel, meta jinstab hati, il-piena ta' prigunerija minn hames snin sa ghaxar snin".*

Illi f'dan il-kaz m'hemmx dubju li l-att sesswali bejn l-imputat -Omissis- u l-vittma -Omissis- sehh u dan stante t-twelid tal-minuri -Omissis-. Maghdud ma' dan jekk kien hemm xi dubju rigward l-identità tal-missier bijologiku, dan l-istess dubju gie skartat tramite r-rapport a fol. 68 tal-atti processwali fejn gie konkluz hekk:

> *"A comparison of the DNA profiles of -Omissis- and -Omissis-, composed of the DNA markers listed in the technical data, shown below, supports the hypothesis that -Omissis- is the biological father of -Omissis-. It is 53,119,442,517 times more likely that -Omissis- is the true biological father of -Omissis-, than another unrelated man from the same population.*
>
> *...*
>
> *This result provides extremely strong support in favour of paternity."*

Illi jidher mic-certifikat tat-twelid (Dok. JB1) esebit fl-atti l-imputat kellu hamsa u ghoxrin (25) sena mentri mic-certifikat tat-twelid

(Dok. JB2) il-vittma -Omissis- kellha hmistax (15)-il sena meta sehh l-allegat reat. Illi ghalhekk bejn l-imputat u -Omissis- kien hemm differenza ta' ghaxar (10) snin.

Illi din il-Qorti jidhrilha li seta' kien hemm possibbilità ta' relazzjoni bejn il-partijiet. Dan qieghed jinghad stante li l-partijiet kellhom zewgt (2) itfal u mill-kliem ta' -Omissis- stess, l-istess partijiet kienu johorgu flimkien. Maghdud ma' dan kollu hemm ukoll dak li hemm kontenenti fl-istqarrija tal-akkuzat u cioè li l-partijiet kienu ppjanaw ghal hajja b'tarbija. L-applikazzjoni o meno tal-istqarrija sejra tigi indirizzata iktar tard f'din is-sentenza.

Illi minkejja dan kollu l-Qorti xorta wahda mhix ser tapplika dak li jipprovdi l-Artikolu 204C (3) tal-Kodici Kriminali u cioè:

> *"Meta l-ghemil ikun kunsenswali bejn il-pari, li jkunu qrib fl-età u fil-livell ta' zvilupp u sa fejn l-atti ma jkunux jinvolvu abbuz fiziku u, jew psikologiku, il-piena ghandha titnaqqas bi grad jew zewg gradi."*

Illi dan qieghed jinghad stante l-fatt li hemm differenza ta' ghaxar (10) snin bejn il-partijiet u kwindi ma jistax jinghad illi d-differenza ta' età bejn iz-zewg partijiet kienet wahda fil-qrib. Tali distakk zgur ma jaqax fil-parametri ta' dak li hemm miktub fl-artikolu sucitat. Dan anke meta wiehed iqis il-kazistika kostanti ta' din il-Qorti li tikkonferma li d-distakk fl-età bejn il-partijiet ghandu jkun dak ta' circa hames (5) snin.

Ikkunsidrat

Illi fl-istqarrija tieghu l-imputat jammetti li kkommetta atti ta' natura sesswali mal-vittma. Illi jirrizulta wkoll illi din l-istqarrija ttiehdet minghajr minacci jew theddid u wara li nghata d-dritt li jikkonsulta ma' avukat ta' fiducja tieghu, huwa ma rrinunzjax ghal tali dritt tant li kien kellem lill-avukat tal-fiducja tieghu.

Illi dejjem gie ritenut mill-Qrati taghna illi l-istqarrija hija kkunsidrata bhala prova regina, jekk mehuda kif suppost fosthom fil-kawza **Charles Steven Muscat vs Avukat Generali** (dec

11/4/2011 u 12/4/2011) fejn il-Qorti tal-Appell iddecidiet is-segwenti:

"Din il-Qorti mhijiex ser tiddeciedi l-kwistjoni mill- aspett kostituzzjonali izda sejra taghmel is-segwenti osservazzjonijiet. Fil-kaz in ezami, l-appellata kienet mgharrfa bil-jedd taghha li tibqa' siekta u ma twegibx ghall-mistoqsijiet li jsirulha mill-ufficjal investigatur. Ma jirrizultax li kellha esperjenzi ohrajn ta' interrogazzjonijiet mill-Pulizija qabel dan, izda l-ghazla li twiegeb jew ma twegibx setghet taghmilha bla konsegwenzi ta' xejn u ghalhekk tali ghazla ghamlitha b'liberta' shiha. ... Gialdarba d-difiza ma kenitx qed tikkontesta l-volontarjeta ta'l-istqarrija, huwa kontrosens illi tippretendi illi l-istqarrija tigi skartata fuq il-bazi unika li l-appellata ma kellhiex assistenza legali. L-istqarrija jew saret b'mod volontarju jew le. U hawn tali volontarjeta ma gietx messa in diskussjoni. Konsegwentement in vista tal-fatt li ma hemm l-ebda kontestazzjoni dwar il-volontarjeta ta'listqarrija ta'l- appellata, f'dan il-kaz tali stqarrija hi prova valida u ammissibbli."

Illi di più, din il-Qorti thoss li ghandha tidhol fil-kwistjoni; ghalkemm qatt ma giet sollevata mid-difiza; li l-istqarrija tal-imputat (ghalkemm ittiehdet b'mod volontarju u minghajr minacci u bil-kawteli kollha vigenti dak iz-zmien); tal-ammissibilita' tal-istqarrija u dan minhabba zviluppi li saru wara fejn is-suspettat ghandu dritt li jkollu avukat prezenti mill-bidu tal-investigazzjoni.

Illi jirrizulta li f'dan il-kaz l-imputat odjern inghata d-dritt li jikkonsulta ma' avukat ta' fiducja tieghu u fil-fatt inqeda b'tali dritt.

Illi l-Qrati taghna kif ukoll dawk tal-Unjoni Ewropea mhux dejjem kienu konkordanti fuq dan il-punt. Waqt li kollha jaqblu illi stqarrija minghajr l-ebda wahda mill-kawteli prezenti tirrizulta ghall-inammissibilità tal-istqarrija mhux tal-istess parir meta d-dritt tal-avukat inghata izda mhux tal-prezenza tal-avukat waqt l-istqarrija.

Illi f'dan ir-rigward issir riferenza ghall-insenjament tal-*Grand Chamber* tal-Qorti Ewropea f'**<u>Beuze vs. Belgium</u>** (dec 9/11/2018 - 71409/10) fejn tenniet is-segwenti:

"In the light of the nature of the privilege against self-incrimination and the right to remain silent, the Court considers that in principle there can be no justification for a failure to notify a suspect of these rights. Where a suspect has not, however, been so notified, the Court must examine whether, notwithstanding this failure, the proceedings as a whole were fair. Immediate access to a lawyer able to provide information about procedural rights is likely to prevent unfairness arising from the absence of any official notification of these rights. However, where access to a lawyer is delayed, the need for the investigative authorities to notify the suspect of his right to a lawyer, his right to remain silent and the privilege against self-incrimination takes on particular importance (see Ibrahim and Others, cited above, § 273, and case-law cited therein).'"

Illi f'dan il-kuntest referenza ssir ukoll ghal kaz iehor bl-ismijiet **Farrugia vs. Malta** (dec 4/6/2019 - 63041/13) fejn il-Qorti Ewropea dwar id-Drittijiet tal-Bniedem segwiet l-insenjament tal-*Grand Chamber* f'Beuze. Fil-kaz **Farrugia v. Malta**, il-Qorti Ewropea

kellha l-opportunità li tezamina s-sistema Maltija fejn sabet li s-sistema nostrana tissodisfa t-test tal-*overall fairness*.

Ghalhekk, l-enfasi tal-Qorti Ewropea hija diretta lejn l-overall fairness of the proceedings u din giet imfissra illi:

> *"'While very strict scrutiny must be applied where there are no compelling reasons to justify the restriction on the right of access to a lawyer, the Court, in the specific circumstances of the case, finds that having taken into account the combination of the various above-mentioned factors, despite the lack of procedural safeguards relevant to the instant case, the overall fairness of the criminal proceedings was not irretrievably prejudiced by the restriction on access to a lawyer.'"*

Decizjoni tal-Qorti Ewropea aktar ricenti minn ta' Farrugia u li ghal darb'ohra tanalizza s-sistema li kienet vigenti qabel dahal id-dritt ta' assistenza legali fil-kuntest ta' interrogazzjoni fil-ligi nostrana hija dik bl-ismijiet <u>Mark Charles Kenneth Stephens vs. Malta</u> (dec 14/1/ 2020). F'din l-ahhar sentenza gie ritenut hekk:

"'However the Court notes that the non-observance of one of the minimum rights guaranteed by Article 6 § 3 will not lead to an automatic violation of that provision (see, for example and by implication, Ibrahim and Others v. the United Kingdom [GC], nos. 50541/08 and 3 others, 13 September 2016, and Schatschaschwili v. Germany [GC], no. 9154/10, ECHR 2015). The fairness of a criminal trial must be guaranteed in all circumstances. However, what constitutes a fair trial cannot be the subject of a single unvarying rule but must depend on the circumstances of the particular case. The Court' s primary concern, in examining a complaint under Article 6 § 1, is to evaluate the overall fairness of the criminal proceedings (see, among many other authorities, Beuze v. Belgium, [GC], no. 71409/10, §§ 120, 9 November 2018 and the case-law cited therein.

...

Particularly relevant to the present case, the Court observes that in the recent Beuze judgment, the Grand Chamber departed from the approach taken in previous

cases that systematic restrictions on the right of access to a lawyer led, ab initio, to a violation of the Convention (see, in particular, Dayanan v. Turkey, no. 7377/03, § 33, 13 October 2009, Boz v. Turkey, no. 2039/04, § 35, 9 February 2010, and Borg, cited above, § 62). In Beuze, the Grand Chamber gave prominence to the examination of the overall fairness approach and confirmed the applicability of a two stage test, namely whether there are compelling reasons to justify the restriction as well as the examination of the overall fairness and provided further clarification as to each of those stages and the relationship between them.' "

Illi ghalhekk jidher car illi f'dan il-kaz, jekk wiehed kellu jhares lejn il-fedina penali tal-imputat, johrog bic-car li huwa kien ben midhla tas-sistema gudizzjarja u investigattiva.

Illi ghalhekk din il-Qorti thoss li l-*overall fairness* rikjest mis-sentenzi citati hawn fuq gie rispettat fit-totalità tieghu. Illi ghalhekk tqis li l-istqarrija moghtija f'din l-investigazzjoni ghandha tkun ammissibbli bhala prova.

Illi fl-istqarrija tieghu a fol. 54 l-akkuzat car u tond jghid li kellu zewgt (2) itfal mal-vittma minuri u li kien beda jiltaqa' mal-istess vittma minuri meta kien ghad kellha erbatax (14)-il sena. Di più hu stess jghid li kien jaf il-konsegwenzi x'ser ikunu meta ddecieda biex jidhol f'relazzjoni intima mal-vittma minuri.

Illi ghalhekk stante dak kollu li ntqal hawn fuq din il-Qorti sejra ssib htija fuq l-akkuza kif dedotta kontra l-akkuzat.

<u>**Ikkunsidrat**</u>

Illi ghar-rigward il-piena l-Qorti ssostni u kwazi dejjem addottat it-teorija li l-gustizzja fil-kamp kriminali ghandha tkun wahda riformattiva ghall-akkuzat. Din it-teorija giet anke ppronunzjata fis-sentenza tal-Qorti tal-Appell Kriminali fl-ismijiet ***Il-Pulizija vs Francis Bonnici*** deciza fil-25 ta' Marzu tas-sena 1975:

> *"Din il-Qorti, minghajr bl-ebda mod ma tinsa l-htigijiet tar-ripressjoni tad-delinkwenza u tad-dixxiplina, temmen fil-probation u hi tal-fehma li f' Malta, bhal pajjizi ohra,*

hemm bzonn ta' izjed u mhux inqas probation u tawspika ... li dan is-servizz pregjevoli ... jigi amplifikat b' gusta mizura specjalment ghal dawk iz-zghazagh li ma kellhomx il-vantaggi li l-ohrajn kellhom fil-hajja."

Illi l-istess inghad fis-sentenza moghtija minn din il-Qorti kif diversement presjeduta fl-ismijiet ***Il-Pulizija vs George Zammit*** deciza fl-4 ta' Frar tas-sena 1985:

"Kif inhu ben risaput, ghalkemm is-socjeta` tirrikjedi xi tip ta' sodisfazzjon tar-reat li jkun wettaq l-individwu, bniedem li jkun qatta' perjodu sostanzjali ta' inkarcerazzjoni mhux lakemm titfghu lura fis-socjeta` biex ifendi ghal rasu: jinhtiglu diversi mezzi ta' ghajnuna, u mhux lanqas "guidance", sabiex tigi facilitate r-reintegrazzjoni tieghu fis-socjeta` u tigi assigurata r-riabilitazzjoni tieghu; ghalhekk l-importanza ta' sistema organizzat u koordinat ta' "after care"."

Illi din il-Qorti taghmel referenza ghas-sentenza moghtija mill-Qorti tal-Appell Kriminali fl-ismijiet ***Il-Pulizija vs Dean Micallef*** deciza fil-11 ta' Lulju 2024 fejn inghad hekk:

> *"Illi din il-Qorti taghmel riferenza ghas-sentenza moghtija fit-12 ta' Dicembru 2022 fl-ismijiet Il-Pulizija vs. Nazzareno Caruana (Numru 45/2020) fejn din il-Qorti diversament preseduta qalet hekk:*
>
> > *"Din il-gurisprudenza ormai ben kristallizzata u accettata in linea ta' principju fil-gurisprudenza taghna, tghallimna illi l-Onorabbli Qorti ta' l-Appell ghandha tbiddel u tvarja l-piena inflitta minn l-Ewwel Onorabbli Qorti, fil-kazijiet fejn dik il-piena ma tkunx pjenament imsejsa fuq dispozizzjonijiet tal-ligi. Dan il-principju kien gie ukoll kristallizzat fis-sentenza fil-kaz Il-Pulizija vs. Joseph Attard moghtija [...] fis-26 ta' Jannar 2001, fejn il-Qorti qalet li:*

> *"Il-Qorti tal-Appell harament tbiddel il-piena li tkun imponiet l-Ewwel Qorti. Dan taghmlu biss meta jkun manifestament evidenti li dik il-Qorti tkun imponiet xi piena mhux kontemplata mil-ligi ghar-reat in ezami, jew tkun xi piena harxa wisq jew sproporzjonata ghal dak li jkun ghamel il-hati, jew tkun xi piena mhux fil-parametri tal-ligi.""*

Illi jkun opportun li jigi nnutat li l-piena ma ghandhiex l-iskop ta' tpattija minn naha tas-socjeta' kontra min iwettaq ir-reat izda ghandha l-iskop li teduka u tirriforma lill-hatja ta' reati halli dawn jkunu jistghu jergghu jigu reintegrati fis-socjeta' u b'hekk ikunu ta' kontribut ghas-socjeta'. B'hekk il-Qorti trid tiehu in konsiderazzjoni wkoll l-element retributtiv u l-element preventiv. F'dan ir-rigward din il-Qorti taghmel riferenza ghas-sentenza moghtija fl-20 ta' Dicembru 2022 fl-ismijiet Il-Pulizija vs. Clifford Gatt Baldacchino (Numru 243/2019) fejn dwar il-principju tal-piena din il-Qorti diversament preseduta qalet hekk:

"12. [...] Dan peress li l-gustifikazzjoni tal-imposizzjoni tal-piena fl-ezercizzju tad-Dritt Penali modern hija pernjata fuq tliet principji kardinali u tiffoka fuq tliet effetti principali, jigifieri l-effett:

(a) Retributtiv;

(b) Preventiv; u

(c) Riedukattiv jew rijabilitattiv tal-piena.

13. L-aspett retributtiv tal-piena huwa, skont il-gurista Francesco Carnelutti, dak li jservi biex jirristabbilixxi moralment is-sitwazzjoni għal kif kienet qabel ma sehhet il-hsara bil-kommissjoni tar-reat. Il-hati jrid jaghmel tajjeb ghall-azzjoni vjolattiva tad-dritt penali kommessa minnu u li tkun kisret il-paci u trankwillita' socjali.

14. L-aspett preventiv tal-piena huwa dak li jrid jassigura li l-piena tkun strument li bih, grazzi ghal biza' li s-sanzjoni li tkun tista' tinghata tohloq f'mohh il-persuni, b'mod li dak li jkun jerga' jahsibha darbtejn qabel ma jikkommetti reat. Fi

kliem ieħor, minhabba l-biza' li tehel il-piena, persuna tigi mgieghla tixtarr sew il-konsegwenzi t'eghmilha qabel ma twettaq l-att kriminuz.

15. L-effett preventiv ghalhekk huwa duplici: wiehed ta' natura generali u l-iehor ta' natura specjali. L-effett preventiv generali huwa dak li bis-sahha tal-ligi penali li tistabbilixxi l-piena, l-kollettivita' tigi kemm jista' jkun mizmuma milli tikkommetti reati minhabba l-biza' li tinkorri fil-piena jekk tinstab hatja. Aktar ma' dik il-piena tigi applikata fil-prattika, aktar dak l-effett preventiv generali jkun lahaq il-mira tieghu. L-aspett preventiv specjali huwa dak li japplika ghall-hati innifsu, li jkun esperjenza fuqu personali l-effetti tal-piena, b'mod li darb'ohra jerga' jahsibha sew qabel ma jaghzel li jikser il-ligi. Jekk il-kollettivita' titlef din il-biza' mill-piena minhabba li l-ligi penali tibda titnaqqar fil-kwalita' jew kwantita' tal-piena jew inkella minhabba li l-pieni ma jigux applikati bir-rigorosita' dovuta ghall-fattispecie tal-kaz, allura ma jkun hemm xejn li jgieghel lill-kollettivita' milli tiddezisti

ghax jekk tiddelinkwi minghajr konsegwenza jew b'konsegwenza zghira, isir konvenjenti ghall-kollettivita' li tiddelinkwi. Dan iwassal ghal proliferazzjoni ta' delinkwenza b'konsegwenzi nefasti ghall-interessi tal-istess kollettivita'. Il-kollettivita' allura tehtieg li l-piena jkollha aspett preventiv li jkun effettiv u effikaci mehtieg ghall-ezistenza pacifika tal-istess kollettivita'. Altrimenti, il-kollass.

16. Finalment hemm l-aspett riedukattiv u rijabilitattiv tal-piena, li tikkoncentra mhux daqstant fuq l-aspett tal-htija specifika tal-hati u li ghaliha tkun immirata l-azzjoni repressiva tal-piena, daqskemm fuq l-aspett ta' trattament terapewtiku individwali, immirat lejn ir-rijabilitazzjoni tal-hati. Dan l-aspett rijabilitattiv huwa krucjali ghall-kollettivita' in kwantu jghin lill-hati jghaddi minn process ta' riforma tieghu innifsu biex jghinu jinqata' mir-ragunijiet u l-kundizzjonijiet li jkunu wasluh biex jiddelinkwi, billi jaghraf iqum fuq saqajh, billi jibni hajtu mill-gdid u ma jibqax aktar

ta' theddida ghas-socjeta' bhal meta kien fil-mument meta jkun iddelinkwa."

…

Illi mehud in konsiderazzjoni dak kollu li nghad hawn fuq, din il-Qorti ma tantx ghandha aktar xi tghid ghajr li l-piena hekk kif erogata mill-Ewwel Qorti taqa' sewwasew fil-parametri tal-piena ghall-imputazzjonijiet li taghhom l-appellant instab hati. Il-Qorti zzid tghid li l-piena mposta mill-Ewwel Qorti fuq l-appellant kienet wahda legalment u ragonevolment valida, mhux "manifestly excessive" u tirrispekja l-imputazzjonijiet li taghhom huwa nstab hati. Il-Qorti hija tal-fehma li ma tezisti l-ebda raguni li tista' twassalha sabiex titbieghed mid-diskrezzjoni ezercitata mill-Ewwel Qorti fil-kalibrazzjoni tal-piena minnha maghmula, liema piena ghalhekk ghandha tibqa' invarjata."

Illi din il-Qorti sejra taghmel taghha r-ragunament ta' din is-sentenza. Illi ghalhekk hija fl-umli fehma ta' din il-Qorti li piena

karcerarja effettiva mhix idonea sabiex issehh il-gustizzja tenut kont tas-sitwazzjoni tal-akkuzat.

Illi l-Qorti ghandha quddiema sitwazzjoni fejn l-akkuzat huwa missier ta' zewgt (2) itfal. Kien evidenti mill-fatti li kien hemm zmien li l-partijiet kienu qeghdin jahsbu ghal hajja flimkien tant li wara l-ewwel (1) wild kellhom iehor. Din il-Qorti hija tal-opinjoni li piena karcerarja taghmel iktar hsara milli gid ghat-tfal kif ukoll ghall-vittma minuri li jkollha bzonn l-appogg biex trabbi lit-tfal statne li tidher li hija l-primary caregiver.

Illi referenza qieghda ssir ghal artikolu ppubblikat min-National Institute of Justice tal-Istati Uniti bl-isem "Hidden Consequences: The Impact of Incarceration on Dependent Children"[1] fejn jinghad hekk:

> *"Children whose parents are involved in the criminal justice system, in particular, face a host of challenges and difficulties: psychological strain, antisocial behavior, suspension or expulsion from school, economic hardship,*

[1] Eric Martin, "Hidden Consequences: The Impact of Incarceration on Dependent Children," March 1, 2017, nij.ojp.gov: https://nij.ojp.gov/topics/articles/hidden-consequences-impact-incarceration-dependent-children

and criminal activity. It is difficult to predict how a child will fare when a parent is intermittently or continually incarcerated, and research findings on these children's risk factors are mixed.

However, research suggests that the strength or weakness of the parent-child bond and the quality of the child and family's social support system play significant roles in the child's ability to overcome challenges and succeed in life.

...

There is particular concern that a parent's imprisonment will lead to a cycle of intergenerational criminal behavior. But risk factors rarely present themselves across all children, and these behaviors are difficult to understand or predict. One study, for example, found that children of incarcerated mothers had much higher rates of incarceration — and even earlier and more frequent arrests — than children of incarcerated fathers.

...

Research on depression and aggression among children of incarcerated parents has been mixed and highly differentiated by gender, age, race, and family situation. One study, for example, found that African-American children and children who have both a mother and a father incarcerated exhibited significant increases in depression.

Another study found that, for the most part, parental incarceration was not associated with a change in childhood aggression — but the findings were decidedly mixed. Twenty percent of sampled children did see an increase in aggression; boys who tended to be aggressive before a parent's incarceration were most at risk for a trajectory of increased aggression. Interestingly, there were some decreases in aggression: About 8 percent of the children saw a return to a stable home upon parental incarceration if their father had lived in the home prior to incarceration and had drug and alcohol issues."

Illi studju li sar bl-isem "Parental Incarceration, Development, and Well-Being: A Developmental Systematic Review"[2] jikkonkludi hekk:

"This work contributes to previous reviews in this field by offering a developmental view of the effects of parental incarceration and the moderating and mediating variables. In this sense, greater evidence of the association between parental incarceration and poorer physical health and cognitive skills and academic performance in early childhood (0-6 years old) has been found, with a higher presence of externalizing and internalizing symptoms and early delinquent behaviors in middle childhood (7-11 years old), and finally, a higher presence of risk behaviors, externalizing symptoms, and lower cognitive skills and academic performance in adolescence (12-18). Additionally, middle childhood presents a greater number of studies in which the association between parental incarceration and different outcomes is significant. Finally, being a male child appears as the moderating risk factor

[2] Herreros-Fraile, Alicia et al. "Parental Incarceration, Development, and Well-Being: A Developmental Systematic Review." *International journal of environmental research and public health* vol. 20,4 3143. 10 Feb. 2023, doi:10.3390/ijerph20043143

with the most evidence, especially in the three developmental stages analyzed, although with a greater presence in middle childhood, while the mental health of the primary caregiver and the quality of their relationship with the child are the main mediating variables that appear both in middle childhood and adolescence."

Illi huwa car li tfal li ghandhom genitur inkarcerat jaffaccjaw diversi zvantaggi fil-hajja taghhom u fi zmien pjuttost krucjali ghall-izvilupp taghhom tenut kont aktar f'dan il-kaz meta fil-fatt missierhom ikun gie kkarcerat ghax gabhom fid-dinja!

Illi ghalhekk din il-Qorti tqis li tenut kont tal-fatti tal-kaz odjern, maghdud ma' dak li jtennu l-istudji sucitati, ghandu jigi applikat l-Artikolu 21 tal-Kodici Kriminali.

<u>Decide</u>

Ghal dawn il-motivi u wara li rat l-Artikolu 17, 21, 31 u 204C (1) tal-Kapitolu 9 tal-Ligijiet ta' Malta qed issib lill-imputat **-Omissis-** hati tal-akkuza kif dedotta kontrih u tikkundannah ghal sentejn (2)

prigunerija li qed jigu sospizi ghal tliet (3) snin u dan bl-applikazzjoni tal-Artikolu 28A tal-Kapitolu 9 tal-Ligijiet ta' Malta.

Il-Qorti spjegat lil -Omissis- bi kliem car ir-responsabbilità tieghu taht l-Artikolu 28B jekk huwa jikkommetti matul il-perjodu operattiv reat li ghalih hemm piena ta' prigunerija.

In oltre', bl-applikazzjoni tal-Artikolu 533 tal-Kapitolu 9 tal-Ligijiet ta' Malta, il-Qorti tordna lill-imputat **-Omissis-** ihallas l-ammont ta' seba' ewro u disgha u tletin centezmu (€7.39) rapprezentanti parti mill-ispejjez peritali naxxenti minn din il-kawza.

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

Benjamina Mifsud
Deputat Registratur