



QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI
Magistrat Dr. Monica Vella LL.D., M. Jur.

Kumpilazzjoni Nru. 494/2020

Il-Pulizija
(Spettur Trevor Micallef)

vs

Adam Ahmed Mohamed

Illum, 02 ta' Lulju, 2025

Il-Qorti;

Rat l-akkuzi migjuba kontra:

Adam Ahmed Mohamed, iben Ahmed u Aisha nee' Dabuk, imwieled is-Sudan nhar l-1 ta' Jannar 1984, indirizz China House, 7, Hal Far, Birzebbguia u detentur tal-karta ta' l-identita' numru 41198A,

Akkuzat talli f'dawn il-Gzejjer fis-16 ta' Awwissu 2020 ghal habta tad-disgha u nofs ta' filghaxija (09:30pm) fil-vicinanze ta' China Town, Hal Far, limiti ta' Birzebbguia u'jew fil-vicinanze:

1. Minghajr il-hsieb li toqtol jew li tqiegħed il-hajja fil-periklu car, ikkagunajt feriti ta' natura gravi fil-gisem ta' Tchoumi Debosque;
2. Nakkuzah aktar talli fl-istess data, lok, hin u ċirkostanzi volontarjament ksirt il-bon ordni jew il-kwieta pubbliku, bl-ghajjat u bil-glied;
3. Akkuzat aktar talli rrenda ruhu reċidiv minn sentenzi tal-Qorti taht l-Artikolu 49 liema senteni saru definitivi u ma jistax jiġu mibdula.

Il-Qorti giet ġentilment mitluba illi f'kaz ta' htija tipprovdi għal garanzija ta' Tchoumi Debosque skond Artikolu 383 tal-Kap 9 tal-Kodici Kriminali.¹

Rat li l-imputat wiegeb mhux hati tal-akkuza fis-seduta tat-8 ta' Jannar 2021.²

Rat ukoll tal-fedina penali tal-imputat prezentata in atti mill-prosekuzzjoni³.

Rat in-nota tal-Artikoli mahruga mill-Avukat Generali nhar is-sittax (16) ta' Awwissu tas-sena elfejn u wiehed u ghoxrin (2021)⁴, li tahtom tista' tinsab htija fl-akkuzat.

¹ Folio 1 tal-process

² Folio 14 tal-process.

³ Folio 2 tal-process.

⁴ Folio 95 tal-process.

Rat ukoll l-istqarrija tal-imputat fejn ma oggezzjonax u ta l-kunsens tieghu biex jigi iggudikat minn din il-Qorti fis-seduta tat-28 ta' Settembru 2021⁵.

Rat l-atti kollha tal-kaz.

Semghet ix-xhieda.

Rat u qieset il-provi u dokumenti kollha prodotti.

Rat illi l-prosekuzzjoni irrimettiet ruhha ghall-atti⁶.

Semghet is-sottmissjonijiet finali tad-difiza⁷.

Rat illi l-kawza thalliet ghal-lum ghas-sentenza.

Ikkunsidrat:

Il-Fatti fil-Qosor.

Dan il-kaz jirrigwarda allegatament aggressjoni minn naha tal-imputat fuq il-vittma Debosque Tchoumi bin-numru tal-pulizija 20A-064 . Il-vittma tghid li nhar is-16 ta' Awwissu 2020 ghal habta tad-21.30 hrs mar go hanut u wara li xtara flixxun sid il-hanut imbuttah u ikkawzalu xi griehi. Hu telaq mill-hanut u wara mar l-isptar. Haseb li kien ser jghaddilu kollox pero' dan ma sehhx u allura fit-13 ta' Settembru 2020 mar jaghmel rapport l-ghassa ta' Birzebbugia. Dr. Carlo Refalo iccertifika lil vittma li kellu griehi gravi. Il-vittma mar mal-pulizija l-hanut u gharaf lill-imputat bhala l-persuna li aggredietu.

L-imputat inghata d-drittijiet tieghu skond il-ligi u qal li vera li l-vittma u siehbu kienu gol-hanut tieghu pero' l-allegat vittma kien allegatament fis-sakra. Stqarr li hu kien ser jaghlaq il-hanut u imbuttah b'rizultat li

⁵ Folio 276 tal-process.

⁶ Folio MHUX NUMERAT tal-process.

⁷ Folio MHUX NUMERAT tal-process.

huma kienu waqghu t-tlieta li huma. L-imputat qal li lil Debosque spiss kien jarah imma rah bil-gibs xi gimgha wara.⁸

Ikkunsidrat:

Provi

Xehed l-allura **Spettur Trevor Micallef**, illum assistant kummissarju nhar it-8 ta' Jannar 2021 fejn qal li hu gie infurmat bl-incident nhar it-13 ta' Settembru 2020 li l-vittma beda jallega li gie aggreddat nhar is-16 ta' Awwissu 2020 fic-China House B'Bugia u li minn investigazzjoni li saret kien jirrizulta li l-imputat aggreddaxxa lill-vittma. Jghid li hu ha stqarrija lill-imputat u li ipprezenta a folio 7 tal-process. F'din l-istqarrija l-imputata qal is-segwenti:

‘Dawn kienu tnejn, hu u siehbu, kienu fis-sakra hafna, dan ghamel rapport kontra tieghi, kien aggressiv hafna, waqt lil-mejda li kellha xi flus gol-kexxun, jiena bdejt immexxihom lejn il-bieb u waqajna fit-triq, anki jiena waqajt kont, qamu, riedu jhebbu ghalija, kien hemm shabi Sudanizi u gew qabzu ghalija, waqafthom ghax ma ridtx glied, u wara xeba ghajjat telqu ‘l hemm.’

Hu cahad li hebb ghall-vittma.⁹

Xehed **Dr. Carlo Refalo** nhar it-22 ta' Jannar 2021 fejn qal li ezamina lill-vittma nhar l-20 ta' Awwissu 2020. Qal li kellu ksur u kellu jigi operat. Konsegwentament il-griehi kienu gravi.¹⁰

⁸ Folio 4 u 5 tal-process.

⁹ Folio 8 tal-process. **Ic-certifikat mediku a Folio 6 tal-process huwa datat 20 ta' Awwissu 2020 u it-tabib jghid li l-vittma giet ezaminata fil- 21 ta' Awwissu 2020. Dan ic-certifikat jghid li l-pazjent gie admitted ghal “orthopidic care”.**

¹⁰ Folio 24 tal-process.

Xehed **Tchoumi Debosque** nhar it-22 ta' Jannar 2021 u jghid li ilu tlett (3) xhur li ghamel ir-rapport pero' d-data ma jiftakarhiex ezatt. Jghid li mar il-hanut tas-Sudaniz biex jixtri Coca drink, ghazlu u mar ghand il-propjetarju.¹¹ Jghid li peres li kellu l-ghatx beda jixrob mill-flixkun. L-propjetarju beda jghidlu li kien fis-sakra pero' ma kienx. Jghid li dak il-hin hareg minn wara il-counter u kien hemm tlett (3) targiet. Jghid li hu imbuttah, gerrbu 'l isfel u hu wegga' jdejh. Wegga' sebghu ta' idu x-xellugija u wegga' irkoptu. Fil-fatt sebghu ta' idu x-xellugija kissru u kellu jaghmel operazzjoni. Beda jakkuzah li hu immigrant minghajr dokumenti. Jghid li mar lura fejn kien joqghod u mar jaghmel ir-rapport xi jumejn wara.

*Jghid li hu ma jiftakarx ix-xahar tal-incident, la d-data u lanqas il-hin. Jghid li ma marx l-isptar immedjatament imma mar tlett (3) jew erbat'ijiem (4) ijiem wara. Jghid li fir-raba' jum hareg mill-isptar. Jichad li mar xahar wara jaghmel ir-rapport.*¹²

Kontro-ezami jghid li hu mar il-hanut u lill-imputat ma jafux izda kull meta raw lil xulxin dejjem qalu bongu lil xulxin.¹³ Jghid li malli wasal fetah il-fridge u hareg flixkun Coca u ma holoq l-ebda problema u mar direttament biex ihallsu. Hu kien akkumpanjat minn habib tieghu mill-Kamerun. Jghid li sid il-hanut beda jghidlu li kien fis-sakra. Meta wasal fil-hanut kien bil-ghatx. Jinsisti li l-imputat imbuttah u waqa' u wegga' sebghu ta' idu ix-xellugija.

¹¹ Folio 27 tal-process.

¹² Folio 29 tal-process.

¹³ Folio 30 tal-process.

Qal li huwa mar jaghamel ir-rapport tard lill-pulizija ghax haseb li l-haga mhux serja. Qal li mar l-infermerija tal-kamp u tawh xi panadols. Ma jahsibx li ghamel ir-rapport tieghu xahar wara.

Ri-ezaminat jghid li l-Kameruniz li kien mieghu gie mieghu fuq id-dghajsa u kien hemm Kameruniz iehor li mar l-ghassa meta ghamel ir-rapport.¹⁴

Rega' xehed Tchoumi Debosque nhar it-3 ta' Marzu 2021 jghid li l-x-rays gabhom minn Mater Dei.¹⁵ Jippreciza li gabhom mill-polikinika ta' Rahal il-Gdid. Jghid li baghtulu l-xray fuq il-mobile tieghu. Jghid li sakemm kien qed jixhed ma kienx qed ihossu ahjar.¹⁶

Xehed **Lobe Bonnachi** nhar it-3 ta' Marzu 2021 li jghid li lill-vittma ilu jafu minn meta kienu l-Libja u waslu Malta flimkien.¹⁷ Jghid dik il-lejla kien ma' siehbu il-vittma odjerna. **Ma jiftakarx id-data, la x-xahar u lanqas il-hin.**¹⁸ **Jghid li l-hanut ma ghandux isem u l-incident gara wara s-sebgha ta' fil-ghaxija (19.00) meta kienu Hal-Far.** Jghid li siehbu dahal fil-hanut u hu kien vicin barra. Jghid li hu xtara l-laham u siehbu Coca Cola. Hu beda jisma' l-ghajjat bejn sid il-hanut u siehbu. Bdew jargumentaw bl-Gharbi. Jghid li kien fuq il-juice li fetah l-argument. Hu dahal fil-hanut u staqsa x'gara. Sid il-hanut qalli li mhux problema tieghi u qalli biex nohrog il-barra. Mess lil siehbu u hu qallu li tah il-flus ghall-juice. Ha il-juice mill-fridge. Sid il-hanut tefa' l-juice 'l barra. Siehbu u sid il-hanut bdew jghajtu u hu ipprova jikkalmahom.

¹⁴ Folio 33 tal-process.

¹⁵ Folio 41 tal-process.

¹⁶ Folio 44 tal-process.

¹⁷ Folio 47 tal-process.

¹⁸ Folio 48 tal-process.

Sid il-hanut beda jimbotta lil siehbu. Sid il-hanut tah il-flus lura pero' il-jiuce waddbu barra. Jghid li siehbu waqa' huwa u jigi imbuttat minn sid il-hanut. L-ewwel li waqa' kien gol-hanut. Jghid li kienu vicin il-kamp militari. Kif ghadda kollox marru gol-kamp. Jghid li hu l-hin kollu ma' siehbu. Jghid li ma ra xejn dak il-hin imma wara ra. Jghid li l-istess lejl sebgħu li kien miksuri beda jintefah. Jahseb kien tax-xellug. Jghid li l-ewwel darba mar wahdu l-isptar. Meta l-vittma gie lura mill-isptar mar għand sid il-hanut u hu kien miegħu. Marru għand sid il-hanut biex juruh ir-rizultat tal-griehi li sofra. Jghid li dan kien wara ftit granet. Hu ma marx ma' siehbu għand il-pulizija. Il-vittma mar ma' xi hadd iehor,

Kontro-ezaminat jghid li hu ma' sid il-hanut jitkellem bl-Gharbi. Dakinhar tal-incident kellmu kemm bl-Ingliz kif ukoll bl-Gharbi.¹⁹ Fil-bidu kien barra u meta sema' l-ghajjat dahal gewwa. Jaqbel li tal-hanut beda jghid lil siehbu biex johrog 'l barra u dan aktar minn darba. Ma jaqbilx li direttament ma harigx. Jghid li hu ma jixrob birra. Hu jixrob juice u halib. Meta jixrob, jixrob whiskey. Jghid li siehbu jixrob l-istess. Jixorbu l-Marsa. Jghid li dakinhar ma marrux il-Marsa. Siehbu ma marx il-Marsa. Jghid li huma l-hin kollu flimkien u jorqdu vicin. Jghid li huma it-tnejn jahdmu. Jghid li ma iddiskutiex l-incident ma' siehbu qabel ma tela' l-Qorti.

Xehed **Dr. Mario Scerri** nhar it-23 ta' Gunju 2021 u jghid li ezamina lill-vittma nhar id-9 ta' Marzu 2021. Hu hejja r-rapport mediku esebit a folio 75 tal-process.

Jghid li minn noti klinici l-vittma huwa **Feumba Tohoumi (dan l-isem mhux l-istess wiehed tal-akkuza li jaqra Tchoumi Debosque)**.²⁰ Fuq ir-rapport ma hemmx id-dokument ta' identifikazzjoni tas-suggett.

¹⁹ Folio 56 tal-process.

²⁰ Folio 77 tal-process.

Jghid ukoll li l-pazjent iddahhal l-isptar fit-**23 ta' Awwissu 2021**.²¹ Imbagħad fil-konkluzjonijiet tieghu Dr. Scerri f'punt wiehed tal-konkluzjonijiet tieghu jghid li s-suggett iddahhal l-isptar nhar id- **29 ta' Awwissu 2020**.²²

Xehed **Angelo Buttigieg** li ipprezenta sentenza fl-ismijiet Il-Pulizija vs Adam Ahmed Mohamed.²³ Jidher li l-multa thallset fl-1 ta' April 2021.²⁴

Xehed **Dr. Carlo Refalo** in kontro-ezami nhar it-22 ta' Frar 2023 fejn ikkonferma x-xhieda tieghu precedenti. Jikkonferma li fuq ic-certifikat nizzel dak li fil-fatt qallu l-vittma.²⁵ Ma jistax jghid kif saret il-ferita. Jghid li l-ksur kien ikrah u kellu bzonn jiddahhal l-isptar.

Ikkunsidrat:

L-Artikoli tali-ligi li jirrigwardaw din il-vertenza u li huma citati fir-rinviju tal-Avukat Generali huma s-segwenti:

Sub-titolu II

FUQ L-OFFIŻI VOLONTARJI FUQ IL-PERSUNA

214. Kull min, mingħajr il-ħsieb li joqtol jew li jqiegħed il-ħajja ta' haddieħor f'periklu ċar, jikkaguna ħsara fil-ġisem jew fis-saħħa ta'

²¹ Folio 79 tal-process.

²² Folio 86 tal-process. Spiza Ewro 293 – Folio 88 tal-process.

²³ Folio 91 tal-process. L-isem tal-imputat mhux akkumpanjat b' xi numru ufficjali ta' identifikazzjoni fuq is-sentenza ghalkemm tidher li mill-fedina penali huwa l-imputat fuq bazi ta' probabilita'.

²⁴ Folio 90 tal-process.

²⁵ Folio 104 tal-process.

persuna oħra, jew iġibilha dizordni f'moħħha, ikun ħati ta'offiża fuq il-persuna.

215. L-offiża fuq il-persuna tista' tkun gravi jew ħafifa.

217. L-offiża gravi hija punibbli bil-prigunerija minn sentejn sa għaxar snin jekk tiġi magħmula b'arma regolari, inkella bi strument li jaqta' jew iniggeż, inkella b'xi sustanza jew likwidu li jesplodi jew jahraq jew li hu korrożiv.

218. (1) L-offiża gravi hija punibbli bil-prigunerija minn hamsa sa għaxar snin

(a) jekk tikkaguna debbulizza permanenti fis-saħħa jew fil-funzjoni ta' xi parti tal-ġisem, jew iġġib difett permanenti f'parti tal-għamla tal-ġisem, jew, marda permanenti tal-moħħ;

(b) jekk iġġib sfregġu gravi u permanenti fil-wieċ, fil-għonq jew f'wahda mill-idejn tal-offiż;

(c) jekk, meta ssir fuq mara tqila, iġġibilha l-abortion.

(2) Id-debbulizza fis-saħħa jew fil-funzjoni ta' parti tal-ġisem, u l-marda tal-moħħ, l-isfregġu gravi jew id-difett jitqiesu permanenti wkoll jekk x'aktarx ikunu hekk.

Ikunsidrat:

Id-difiza targument principarjament li x-xhieda tal-parti leza kif ukoll ta' Lobe Bonnachi ghandha tigi skartata **'u dan fid-dawl tal-fatt li d-difiza ma tistax tezercita d-dritt tal-kontro ezami u b' hekk titlob li din ix-xhieda jew tigi estromessa mill-atti jew il-Qorti ma tiehux konjizzjoni tal-istess xhieda.'**²⁶

²⁶ Folio 119 tal-process.

Din il-Qorti kif preseduta diga recentement kellha opportunita' li tesprimi ruha f'materja simili ghalkemm il-kwistjoni ma kinitx ezattament taqa' fil-parametri tat-talba tad-difiza kif mirquma f'dawn il-proceduri. Il-Qorti taghmel ghalhekk biss referenza in parti ta' dak kwotat fid-digriet taghha tat-13 ta' Novembru 2024 fil-kawza Il-Pulizija (Spettur Nicholas Vella u Spettur Brian Camilleri) vs Anthony Muscat et.:

'Il-Konvenzjoni Ewropeja ghad-Drittijiet tal-Bniedem L-Artiklu 6 jipprovdi:– The Court's task with regard to a complaint under article 6 is to examine whether the proceedings, taken as a whole, were fair and complied with the specific safeguards stipulated by the Convention. Dwar l-ezami li jista' jsir lix-xhud il-Konvenzjoni Ewropeja tipprovdi hekk: 4. Examination of witnesses (Article 6 § 3 (d) of the Convention) "3. Everyone charged with a criminal offence has the following minimum rights: (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;" Ara per eżempju li dan gie irrapurtat fis-sentenza David Marinelli vs Avukat Generali et (Appell Civili Nru. 5/2008/1) deciza mill-Qorti Kostituzzjonali nhar id-29 ta' Mejju 2009 per. S.T.O. Prim Imhallef Vincent De Gaetano flimkien mal-Onorevoli Imhallef Joseph D. Camilleri u l-Onorevoli Imhallef Joseph A. Filletti, pg. 18 tas sentenza.

Autonomous meaning of the term "witness" under the Convention (Page 93- Guide on Article 6 of the ECHR- Right to a fair trial- criminal limb; published on the 31st August 2022) 495. The term "witness" has an autonomous meaning in the Convention system, regardless of classifications under national law (Damir Sibgatullin v. Russia, 2012, § 45; S.N. v. Sweden, 2002, § 45). Where a deposition may serve to a material degree as the basis for a conviction, it constitutes evidence for the prosecution to which the guarantees provided by Article 6 § 1 and 3

(d) of the Convention apply (Kaste and Mathisen v. Norway, 2006, § 53; Lucà v. Italy, 2001, § 41).

Right to examine witnesses i. General principles 498. Given that the admissibility of evidence is a matter for regulation by national law and the national courts, the Court's only concern under Articles 6 § 1 and 3 (d) of the Convention is to examine whether the proceedings have been conducted fairly (Al-Khawaja and Tahery v. the United Kingdom [GC], 2011, § 118). 500. Pursuant to Article 6 § 3 (d), before an accused can be convicted, all evidence against him must normally be produced in his presence at a public hearing with a view to adversarial argument.

Exceptions to this Right to a fair trial (criminal limb) (European Court of Human Rights 99/130 Last update: 31.08.2022) principle are possible but must not infringe upon the rights of the defence, which, as a rule, require that the accused should be given an adequate and proper opportunity to challenge and question a witness against him, either when that witness makes his statement or at a later stage of proceedings (Al-Khawaja and Tahery v. the United Kingdom [GC], 2011, § 118; Hümmer v. Germany, 2012, § 38; Lucà v. Italy, 2001, § 39; Solakov v. the former Yugoslav Republic of Macedonia, 2001, § 57). These principles particularly hold true when using witness statements obtained during police inquiry and judicial investigation at a hearing (Schatschaschwili v. Germany [GC], 2015, §§ 104-105).²¹

Counter-balancing factors.

Dawn il-principji jidher li huma applikabbli meta xhud huwa assenti u dan sabiex l-imputat jinghata smiegh xieraq fil-proceduri.

518. The extent of the counterbalancing factors necessary in order for a trial to be considered fair would depend on the weight of the evidence of

the absent witness. The more important that evidence, the more weight the counterbalancing factors would have to carry in order for the proceedings as a whole to be considered fair. These counterbalancing factors must permit a fair and proper assessment of the reliability of that evidence (ibid., § 116 and 125).

519. In *Schatschaschwili v. Germany* [GC] (2015, §§ 126-131, with further references) the Court identified certain elements that may be relevant in this context:

- *Whether the domestic courts approached the untested evidence of an absent witness with caution, having regard to the fact that such evidence carries less weight, and whether they provided detailed reasoning as to why they considered that evidence to be reliable, while having regard also to the other evidence available (Przydział v. Poland, 2016, § 53; Daştan v. Turkey, 2017, § 31).*
- *Any directions given to the jury by the trial judge regarding the absent witnesses' evidence is another important consideration (Simon Price v. the United Kingdom, 2016, § 130);*
- *Existence of a video recording of the absent witness's questioning at the investigation stage;*
- *Availability at trial of corroborative evidence supporting the untested witness statement, such as statements made at trial by persons to whom the absent witness reported the events immediately after their occurrence; further factual evidence, forensic evidence and expert reports; similarity in the description of events by other witnesses, in particular if such witnesses are cross-examined at trial;*

- *The possibility for the defence to put its own questions to the witness indirectly, for instance in writing, in the course of the trial, or, where appropriate, in the pre-trial stage of the proceedings (Paić v. Croatia, 2016, § 47). However, pre-trial confrontations conducted before an investigator who did not meet the requirements of independence and impartiality, who had the largely discretionary power to block questions and in which the applicants were unrepresented, are not a substitute for the examination of witnesses in open court (Chernika v. Ukraine, 2020, § 45);*

- *Possibility for the applicant or defence counsel to question the witness during the investigation stage. These pre-trial hearings are an important procedural safeguard which can compensate for the handicap faced by the defence on account of absence of a witness from the trial (Palchik v. Ukraine, 2017, § 50). Moreover, the Court has accepted that in exceptional circumstances there may be reasons for hearing evidence from a witness in the absence of the person against whom the statement is to be made on the condition that his lawyer was present during the questioning (Šmajgl v. Slovenia, 2016, § 63). However, there may nevertheless be circumstances where the defence counsel's involvement alone may not suffice to uphold the rights of the defence and the absence of a direct confrontation between a witness and the accused might entail a real handicap for the latter. Whether an applicant's direct confrontation with the witness against him or her was needed, is a matter to be determined on the facts of each case on the basis of the Court's criteria for the assessment of the overall fairness of the proceedings under Article 6 § 3 (d) (Fikret Karahan v. Turkey, 2021, §§ 39-40);*

- *The defendant must be afforded the opportunity to give his or her own version of the events and to cast doubt on the credibility of the absent witness. However, this cannot, of itself, be regarded a sufficient counterbalancing factor to compensate for the handicap under which the defence laboured (Palchik v. Ukraine, 2017, § 48). Moreover, domestic courts must provide sufficient reasoning when dismissing the arguments put forward by the defence (Prăjină v. Romania, 2014, § 58). In this connection, the Court has not been ready to accept a purely formal examination of the deficiencies in the questioning of witnesses by the domestic higher courts when their reasoning could be seen as seeking to validate the flawed procedure rather than providing the applicant with any counterbalancing factors to compensate for the handicaps under which the defence laboured in the face of its inability to examine a witness (Al Alo v. Slovakia, 2022, § 65). Also, in some instances, an effective possibility to cast doubt on the credibility of the absent witness evidence may depend on the availability to the defence of all the material in the file related to the events to which the witness' statement relates (Yakuba v. Ukraine, 2019, §§ 49-51).*

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iii. Other restrictions on the right to examine witnesses

521. The above principles related to absent witnesses are accordingly applicable to other instances in which a defendant was not in a position to challenge the probity and credibility of witness evidence, including its truthfulness and reliability, by having the witnesses orally examined in his or her presence, either at the time the witness was making the statement or at some later stage of the proceedings, or where the witnesses do appear before the trial court but procedural irregularities prevent the applicant from examining them (Chernika v. Ukraine, 2020,

§ 46).
.....

524. However, when a witness makes a statement at the pre-trial stage of the proceedings and then retracts it or claims to have no longer any recollection of facts when cross-examined at the trial, the principles related to absent witnesses will not necessarily apply. In other words, a change of attitude on the part of a witness does not of itself give rise to a need for compensatory measures. Indeed, the Court has refused to hold in the abstract that evidence given by a witness in open court and on oath should always be relied on in preference to other statements made by the same witness in the course of criminal proceedings, not even when the two are in conflict. In such a situation, the Court will seek to determine whether the proceedings as a whole, including the way in which evidence was taken, were fair (*Vidgen v. the Netherlands (dec.)*, 2019, §§ 38-41; see also *Makeyan and Others v. Armenia*, 2019, §§ 40-48). Moreover, in such instances, other procedural guarantees may be of importance such as, for instance, the principle of equality of arms between the prosecution and the defence in examining a witness who has retracted his or her statement that was of a decisive importance for the applicant's conviction (*Bonder v. Ukraine*, 2019, §§ 79-81).'

Illi fil-kaz odjern id-difiza kellha l-opportunita' li taghmel ezami lill-parte leza u lil dik il-persuna li kienet maghha waqt l-incident kif johrog ampjament mill-atti processwali.²⁷ Fil-fatt l-avukati difensuri ghalkemm vera irriservaw li jaghmlu domandi ulterjuri ezaminaw lix-xhieda b'

²⁷ Biss biss Tchoumi Debosque xhed fit-22 ta' Jannar 2021, imbaghad rega' xhed diversi gimghat wara ossija fit-3 ta' Marzu 2021. Jigifieri id-difiza barra dak li diga' intqal kellha kull opportunita' li tistidja il-process u issaqsieh id-domandi ulterjuri kieku riedet fit-tieni opportunita' li kellha. Issa li l-parte civile ma jistax jinstab ma tistax jigi titlob lill-din il-Qorti biex tisfilza dak li xhed dwaru, inkluz id-domandi li saru mill-istess difiza nhar it-22 ta' Jannar 2021!

mod ampju. Il-parte leza biss biss giet prodotta xejn anqas minn darbtejn u allura altru milli xi dritt ta' smiegh xieraq tas-suspettat gie lez f'dawn il-proceduri. Minn naha l-ohra Lobe Bonnachi xehed fit-tul u b' mod dettaljat nhar it-3 ta' Marzu 2021 u ukoll sarlu kontro-ezami dettaljat ghalkemm fl-ahhar gie riservat. Il-Qorti thoss li anki hawnhekk kien hemm zmien tajjeb fejn d-difiza kellha opportunita' li taghmel id-domandi taghha, gharblet lix-xhud fuq l-ezami u minn dak il-lat jidher li x-xhud baqa' konsistenti mal-verzjoni tieghu.

Il-Qorti rat is-sentenza **Il- Pulizija vs Omissis u Gilbert Galea** deciza minn din il-Qorti diversament preseduta nhar is-27 ta' Lulju 2020²⁸ ikkwotata mill-abbli avukat difensur fejn il-parte civile ma deherx ghal diversi drabi ghal kontro-ezami.²⁹ Dik il-Qorti dehrilha li ghandha tisfilza x-xhieda ta' Elton Saliba.³⁰

Din il-Qorti tfakkar li kull kaz ghandu il-fatti specie tieghu u il-Qrati taghna lanqas huma marbutin bid-dottrina tal-precedent. Barra minn dan fil-kaz odjern jidher li wara hafna snin li inbdiet din il-kawza, l-prosekuzzjoni kellha diffikulta' titracca lill-parte civile u lil Lobe Bonnachi, zewg persuni mhux ta' nazzjonalita' Maltija u li jirrizulta li kienu jirrisjedu fil-Hal-Far Open Centre, xi haga li kienet maghrufa ukoll mid-difiza. Allura l-istess difiza setghet u kellha ragonevolment tipprevedi d-diffikulta' li hija stess seta' jkollha jekk ma tiehux l-opportunitajiet li kellha quddiemha fiz-zewg okkazzjonijiet li l-parte civile ddepona quddiem il-Qorti kif inghad aktar 'il fuq. Ladarba hija stess ma kinitx daqshekk spedjenti u ma komplietx l-kontro-ezamijiet li kif inghad kienu

²⁸ Magistrat Dr. Joseph Mifsud – Seduta Distrett tal-Belt Valletta.

²⁹ Ara pagna 14 tas-sentenza.

³⁰ Pagna 17 tas-sentenza.

pjuttost ezawrjenti ma tistax ttippretendi li din il-Qorti issa tiskarta ix-xhieda ta' Debosque u Bonnachi, xhieda fejn hemm ukoll risposti ghad-domandi li d-difiza stess ghamlet b'mod mirqum!

Il-Qorti tqis ghalhekk li fic-cirkostanzi partikolari ta' dan il-kaz ma ghandhiex tilqa' t-talba tad-difiza kif rikjesta fil-verbal hawn fuq citat u b'hekk qed tichadha *in toto*.

Ikkunsidrat:

Il-Qorti tqis li l-incident sehh kif intqal mill-parte civile Tchoumi Debosque u kif korraborat minn Lobe Bonnachi, ossija li kien l-imputat li imbutta lill-vittma ghax dehrlu li kien fis-sakra u kawza tal-waqa' Debosque wegga' sebghu tax-xellug.

Ikkunsidrat:

Il-Qorti issa se tghaddi biex tezamina il-provi fid-dawl pero' ta' kif ic-citazzjoni giet redatta. Il-prosekuzzjoni ghazlet li t'akkuza lill-imputat b'data, lok u hin specifiku. Kif inhu ben risaput il-provi jridu jinkwadraw fil-parametri tac-citazzjoni biex l-azzjoni tirnexxi³¹ u l-provi iridu jikkonvincu lill-Qorti lil hinn minn kull dubbju dettat mir-raguni.³²

Il-Qorti taghmel dawn is-segweni osservazzjonijiet **ghax ghandha dubbju kemm l-incident sehh fis-16 ta' Settembru 2020 u mhux xi guranata qabel jew wara u dan ghaliex:**

³¹ **Il-Pulizija vs George Zahra** deciza fis-6 ta' Jannar 2003 mill-Qorti tal-Appell Kriminali per S.T.O. Prim Imhallef Vincent DeGaetano. **Il-Pulizija vs Jefrin Grech** (App. Nru. 297/21) deciz mill-Qorti tal-Appell per Onorevoli Imhallef Aaron M. Bugeja.

³² **Il-Pulizija vs Omissis** (App. Nru. 51/2003) deciz mill-Qorti tal-Appell Kriminali per Onorevoli Imhallef Joseph Galea Debono.

1. Il-vittma fix-xhieda tieghu qatt ma jsemmi d-data tas-16 ta' Awwissu 2020. Il-vittma ma tghidx viva voce meta kienet id-data jew tal-anqas ix-xahar tal-incident. Tghid biss li marret taghmel ir-rapport lill-pulizija xi granet wara. Dan mhux korraborat mir-rapport tal-pulizija u lanqas mid-deposizzjoni tas-Sur Trevor Micallef, l-ufficjal investigattiv li jghid li hu gie infurmat fit-13 ta' Settembru 2020³³, ossija dak in-nhar stess li l-vittma marret taghmel ir-rapport. Dan huwa kwazi xahar wara l-allegat incident u zgur MHUX xi granet wara;
2. Lobe Bonnachi li ukoll kien fuq il-post, fix-xhieda tieghu jghid li d-data u x-xahar tal-incident ma jiftakrux. Jghid li hu ma marx mal-parte civile l-ghassa pero' jikkonferma li wara l-incident ma marrux jaghmlu rapport l-ghassa u anki hu jaghti hjiel li r-rapport sar xi granet wara meta siehbu hareg mill-isptar;
3. Dr. Carlo Refalo kif jinghad jghid li ezaminah fil-21 ta' Awwissu 2020 u gie ammess l-isptar ghall-kura ortopedika. Wiehed jifhem li dahal l-isptar biex jigi operat ghalkemm dokumenti dwar l-operazzjoni ma hemmx fl-atti u lanqas hemm xi dokumenti li juri li huwa ha xi kura wara l-intervent mediku;
4. Dr. Mario Scerri, inkarigat minn din il-Qorti biex jezamina lill-parte civile, barra il-fatt li fir-rapport tieghu jghid li ezamina lil

³³ Data tal-NPS report 5/J/1951/2020 a Folio 3 'report date' jghid 13/09/2020. L-istess hemm imnizzel fil-parti 'action taken. Irid jinghad ukoll li mill-qari tar-rapport mhux car jekk l-investigazzjoni bdietx u spicatx fit- 13 ta' Settembru 2020 jew bdiet xi data qabel din u tkomplet u giet konkluzja fit-13 ta' Settembru 2020. Minn qari akkurat tal-parti dispozittiva tar-rapport jaghti x'jifhem li l-investigazzjoni saret f'aktar minn guranata wahda. Imma s-supposizzjonijiet ma jaghmlux prova u din il-prova kellha tohrog mill-provi tal-prosekuzzjoni. Li hu zgur huwa li l-istqarrija mill-allura Spettur Trevor Micallef tas-suspettat ittiehdet fid-19 ta' Settembru 2020 (Folio 7 tal-process).

certa *Feumba Tohoumi- u dan ma jaqbilx mal-isem tal-parte civile*, Scerri jghid li dan iddahhal l-isptar fit-23 ta' Awwissu 2021.³⁴ Fil-konkluzjonijiet tieghu, biex dan ma jkunx bizzejjed, jikkontradixxi lilu innifsu u jghid li l-ezaminat ddahhal l-isptar fid-29 ta' Awwissu 2020, data li hija in kunflitt ma' dak mistqarr u dokumentat minn Dr. Refalo.

Il-Qorti maghdud dan kollu MHIX sodisfatta li l-incident sehh fid-data indikata fic-citazzjoni ghax hemm wisq dubji dwar dan. Dubbji, li minghajr dubbju ta' xejn ghandhom jimmilitaw favur l-imputat. Il-provi tal-prosekuzzjoni fuq dan il-punt ma humiex konsistenti u koerenti³⁵ u ghaldaqstant ma jilhqux il-grad ta' prova li trid il-ligi fil-kamp kriminali.

Ikkunsidrat:

Illi fir-rigward tat-tieni akkuza il-Qorti tqis illi din ma tirrizultax mill-provi in atti stante illi kwlunkwe diskors li sar, jirrizulta li sar fil-hanut u bl-ebda mod ma jirrizulta li giet miksura l-paci u kwiet pubblika b'xi ghajjat u glied.

Ikkunsidrat:

Illi fir-rigward tal-akkuza tar-recidiva, la darba l-akkuza numru wiehed (1) u tnejn (2) ma jirrizultawx allura l-imputat ma jistax jigi dikjarat recidiv u konsegwentament din l-akkuza ukoll ma tirrizultax.

³⁴ Data u sena ma taqbilx.

³⁵ **Il-Pulizija vs Andre Abela** (Appell Nru. 51/2017) deciz mill-Qorti tal-Appell Kriminali per Onorevoli Imhallel Aaron Bugeja. **Ara ukoll in-nuqqas ta' konvinzjoni mill-ispettur prosekutur a Folio 29 fejn sahansitra l-ispettur Micallef qal li l-parte civile qed jigdeb u l-Qorti wissietu li kien xhud tieghu u stednit u biex jara jekk iridx jiddikjarah bhala xhud ostili.**

Decide:

Ghaldaqstant, ghal dawn ir-ragunijiet, il-Qorti wara li rat l-Artikoli 214, 215, 216(1)(a)(ii)(iii), 216(1)(b), 218(2), 219, 221(2), 222A(2), 222A(3)(a)(b), 338(dd), 341, 49, 50, 17, 31, 382A, 383, 384, 385, 386, 387, 412C, 412D u 533 tal-Kap 9 tal-Ligijiet ta' Malta issib lill-imputat **ADAM AHMED MOHAMED MHUX HATI** tal-akkuzi migjuba kontra tieghu u qed tilliberah minn kull htija u piena fir-rigward tal-istess.

Il-Qorti spjegat din is-sentenza lill-imputat fi kliem car.

Il-Qorti tordna li l-partijiet jinghataw kopja ta' din is-sentenza immedjatament u li kopja ta' din is-sentenza titpogga fuq is-sistema digitali tal-Agenzija ghas-Servizzi tal-Qrati minnufih.

Moghtija illum 02 ta' Lulju 2025, fil-bini tal-Qorti, Malta.

Dr. Monica Vella LL.D., M. Jur.

Magistrat

Annalise Mifsud

Deputat Registratur.