

Qorti tal-Magistrati (Malta)

Bhala Qorti ta' Gudikatura Kriminali

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

Ir-Repubblika ta' Malta

[Av Jennifer Polidano]

vs

-Omissis-

Kumpilazzjoni Numru: 658/2024

Illum, erbatax (14) ta' Lulju, 2025

Il-Qorti;

Rat l-akkuzi migjuba kontra **-Omissis-** detentur tal-karta tal-
identità bin-numru **-Omissis-** akkuzat talli gewwa **-Omissis-**,
Malta u/jew bnadi ohra fil-gzejjer Maltin, f'xi perjodu bejn Mejju

tas-sena elfejn u tnejn u ghoxrin (2022) u Mejju tas-sena elfejn u erbgħa u ghoxrin (2024), b'diversi atti magħmula minnu, ukoll jekk fi zminijiet differenti, u li jiksru l-istess dispozizzjoni tal-ligi, u li gew magħmula b'risoluzzjoni wahda:

1. Ippartecipa f'attivitajiet sesswali ma' persuna ta' taht is-sittax (16)–il sena ossia ma' –Omissis– imwiġda fis--Omissis–, u liema reat twettaq fuq persuna vulnerabbli skont it-tifsira tal-Artikolu 208AC (2) tal-Kapitolu 9 tal-Ligijiet ta' Malta stante li meta sehh ir-reat hija kienet persuna ta' taht il-hmistax (15)–il sena, liema reat sehh fuq il-persuna li kellu relazzjoni magħha kemm bil-hsieb li jizzewweg u kemm jekk le, u liema delitt sar fuq persuna oħra li jkollha jew li kellha tarbija komuni mal-hati;

Artikolu 18, Artikolu 204C (1), Artikolu 208AC (1b)(2a), Artikolu 202 (h)(iv) tal-Kapitolu 9 tal-Ligijiet ta' Malta;

2. U aktar talli fl-istess zmien, lok u cirkostanzi ripetutament b'għemil zieni, ikkorrompa persuna ta' taht is-sittax (16)–il sena ossia lil –Omissis– mwiġda fis--Omissis–;

Artikolu 18 u Artikolu 203 (1) tal-Kapitolu 9 tal-Ligijiet ta' Malta;

Il-Qorti giet gentilment mitluba sabiex barra milli tapplika l-piena skont il-ligi, tapplika wkoll il-provvedimenti tal-Artikoli 382, 382A, 383, 384 u 385 tal-Kapitolu 9 tal-Ligijiet ta' Malta, sabiex ttipprovi ghas-sigurtà tal-persuna hawn fuq imsemmija.

Il-Qorti giet gentilment mitluba wkoll sabiex f'kaz ta' htija barra milli tapplika l-piena skont il-Ligi tordna lill-hati jhallas l-ispejjez li ghandhom x' jaqsmu mal-hatra tal-esperti skont l-Artikolu 533 (1) tal-Kapitolu 9 tal-Ligijiet ta' Malta, kif ukoll tordna li s-sentenza tigi registrata ai termini tal-Artikolu 6 (2) tal-Kapitolu 518 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 wiehed u tletin (31) ta' Jannar, 2025 fejn fiha elenka l-Artikoli tal-Ligi li bihom jitlob li tinstab htija u cioè:-

1. Fl-artikolu 204C (1) tal-Kapitolu 9 tal-Ligijiet ta' Malta;
2. Fl-artikolu 15A, 18, 382, 382A, 383, 384, 385, 412C, 412D, 532A, 532B, 533 tal-Kapitolu 9 tal-Ligijiet ta' Malta;
3. Fl-artikolu 6 (2) tal-Kapitolu 518 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.

Rat li fis-seduta tal-ghaxra (10) ta' Gunju 2025 l-imputat irregistra ammissjoni u dan wara li gie mgharraf bil-konsegwenzi legali.

Rat l-atti kollha.

Ikkunsidrat

Illi l-Av Jennifer Polidano pprezentat certifikat tat-twelid tal-imputat, fedina penali tal-imputat, certifikat tat-twelid tal-parti civile, certifikat tat-twelid ta' wild il-parti civile kif ukoll tal-imputat, dikjarazzjoni ta' rinunzja għall-parir legali kif ukoll stqarrija tal-imputat.

Illi xehdet il-vittima minuri -Omissis- bis-sistema awdjoviziva u li kellha hmistax (15)-il sena meta sehh l-allegat reat. Tikkonferma li l-akkuzat huwa l-gharus taghha u li kienu ilhom f'relazzjoni għal dawn l-ahhar sentejn u nofs. Tikkonferma li kien l-akkuzat li taqqalha meta kellha inqas minn sittax (16)-il sena. Izzid tghid li hi u l-akkuzat ghadhom f'relazzjoni stante li ghadha thobbu. Tikkonferma wkoll li t-tarbija taghha (u cioè -Omissis-) huwa t-tifel tal-akkuzat u ghandu sitt (6) xhur. Tghid ukoll li ma tixtieqx tixhed fil-konfront tal-akkuzat stante li ghandha xewqa li tkompli tghix mieghu, hi kienet anke esprimiet dan il-hsieb meta giet mitkellma mill-Ispettur. Tkompli tixhed li hi u l-akkuzat ilhom jikkoabitaw minn Awwissu tas-sena 2023 u tispjega li hi tixtieq tkompli l-edukazzjoni skolastika taghha.

Illi xehdet -Omissis- li hija omm il-parte civile u tghid li bintha kienet tohrog mal-akkuzat u li llum il-gurnata din ir-relazzjoni ntemmet. Tixhed li din ir-relazzjoni ntemmet peress li kemm hi kif ukoll it-tifla taghha ma xtaqux li din ir-relazzjoni tkompli. Tispjega li kien hemm drabi li l-akkuzat u bintha kemm-il darba kellhom mumentu ta' dizgwid sal-punt li bintha stess kienet iccemplilha sabiex tigborha u kien ghalhekk li waslet f'punt li ma riditx tiehu dawn il-keded kollha. Izzid tghid li l-akkuzat u bintha kienu jiltaqghu waqt li suppost bintha tkun qiegħda tahdem fi zmien is-sajf. Tixhed li hi kienet qalet lill-Ispettur li l-akkuzat kien jattendi barbeques tal-familja stante li dak iz-zmien ir-relazzjoni kienet wahda tajba. Tkompli tispjega li hi temmen li bintha u l-akkuzat gabu tarbija sabiex jivvendikaw ruhhom minnha peress li hi kienet tipprova tikkonvinci lil bintha biex twaqqaf kollox minhabba d-differenza fl-età.

Inkontroezami tixhed li bintha kienet giet stuprata u kien hemm anke proceduri kriminali dwar dan. Tispjega li minkejja li kienet kuntenta li ser issir nanna, xorta wahda kienet inkwetata dwar bintha stante li l-akkuzat kien ferm ikbar minnha fl-età. Tikkonferma li bintha u l-akkuzat m'ghadhomx flimkien stante li

l-istess akkuzat refa' jdejh fuqha filwaqt li bintha regghet inqabdet tqila izda ma' ragel iehor.

Illi xehdet Adreana Grech ghan-nom u in rappresentanza ta-Child Protection Services. Ipprezentat referral immarkat bhala Dok. AG1 u tghid li tali referral giet finalizzata fis-sitta u ghoxrin (26) ta' Marzu 2024. Tixhed li f'Dicembru tas-sena 2023 ic-Child Protection Services irceviet informazzjoni mis-servizz ta' Benniena gewwa Mater Dei li kien hemm minuri ta' hmistax (15)-il sena bl-isem ta' -Omissis- li kienet inqabdet tqila minn certu -Omissis- ta' tlieta u ghoxrin (23) sena. Izzid tghid li mill-informazzjoni li rcevw setghu jikkonkludu li din ir-relazzjoni kienet wahda kunsenswali u li dan l-individwu kien habib tal-familja. Tikkonferma li l-minuri welldet fl-erbgha u ghoxrin (24) ta' Marzu tas-sena 2024 u li hi u twelled kienet saqsiet lil -Omissis- sabiex ibaxxi l-volum tal-cellulari. Dak il-hin -Omissis- kisser ic-cellulari u b'hekk intervjenew il-pulizija u s-servizz tal-vjolenza domestika.

Tkompli tixhed li c-Child Protection Services kienu kellmu lil omm il-vittma minuri u cioè -Omissis- li kkonfermat li -Omissis- kien taht l-effett tax-xorb alkoholiku. Hekk kif il-minuri thalliet titlaq

mill-isptar hi dahlet tghix ma' –Omissis– u kien ghalhekk li r-riskju gholu u dan iktar u iktar meta tqis li –Omissis– hija minuri. Minkejja dan kollu, l-omm –Omissis– xorta baqghet izzomm kuntatt ma' –Omissis– izda xorta wahda kien hemm inkwiet stante li l-istess –Omissis– ma kinitx qieghda tikkopera mac-Child Protection Services. Tikkonferma li hi qatt ma kellha kuntatt dirett ma' –Omissis– u lanqas ma' –Omissis–. Tghid ukoll li –Omissis– tinsab fuq waiting list min-naha ta-Child Protection Services u ma tafx li l-istess –Omissis– regghet inqabdet tqila.

Illi xehdet **l-Ispettur Dorianne Tabone** li tghid li f'Marzu tas-sena 2024 irceviet referral min-naha ta-Child Protection Services li kien rigward il-minuri –Omissis–. Kien gie indikat li din l-istess –Omissis– nqabdet tqila mill-akkuzat stante li meta l-minuri kienet qieghda twelled inqalghet argument bejnha u bejn l-akkuzat u ghalhekk intervjeniet is-sezzjoni tal-vjolenza domestika. Tikkonferma li l-minuri u l-akkuzat kellhom wild bl-isem ta' –Omissis– u li fit-tnejn (2) ta' Mejju 2024 kienet baghtet ghall-minuri u l-istess minuri mill-ewwel stqarret li ma xtaqitx tiehu passi kriminali kontra l-akkuzat minhabba l-fatt li ghandhom tarbija bejniethom u ghaliex kellhom relazzjoni tajba. Tixhed li

dakinhar il-minuri kienet giet tkellimha m'ommha li kkonfermat li bintha u l-akkuzat kienu ilhom jirrisjedu flimkien u li kienet taf bir-relazzjoni sesswali bejniethom. Izzid tghid li l-minuri nsistiet maghha li l-allegat argument fl-isptar kienet giet imkabbra mill-haddiema socjali u li fil-verità l-akkuzat kien jittrattaha sew. Kien ghalhekk li hi kellmet lill-akkuzat fit-tlieta (3) ta' Mejju 2024 fejn hu rrinunzja ghad-dritt tal-avukat u ghalhekk ta l-istqarrija tieghu fil-prezenza tas-Surgent 2041. Tkompli tixhed li l-akkuzat ikkopera maghha u kkonferma li kellu relazzjoni sesswali ma' -Omissis- u li t-tarbija li welldet l-istess -Omissis- hija tieghu. Kien ghalhekk li l-akkuzat gie infurmat li ser jinhargu l-akkuzi fil-konfront tieghu. Ipprezentat rapport immarkat bhala Dok. DT1 filwaqt li tikkonferma c-certifikat tat-twelid ta' -Omissis- u ta' -Omissis- a fol. 11 u 12, ir-rifjut tal-avukat a fol. 13 kif ukoll l-istqarrija tal-akkuzat a fol. 14.

Inkontroezami tghid li hi kienet digà taf min hi -Omissis- stante li kienet digà rceviet referral u dan kien zmien ilu. Tikkonferma li dan ir-referral l-iehor kien jirrigwardja abbuz sesswali li eventwalment ma kinux ittiehdu passi stante li l-verzjoni taghha ma kinitx giet ikkorroborata. Tispecifika li dan kien rigward allegat abbuz

sesswali da part tas-sieheb t'omm il-minuri u li dan allegatament sehh madwar tnax (12)-il sena ilu. Tikkonferma li hi ma regghetx kellmet lill-minuri wara li bdew il-proceduri odjerni.

Ikkunsidrat

Illi r-reat principali li bih huwa addebitat l-akkuzat huwa r-reat ta' partecipazzjoni f'attivitajiet sesswali ma' persuna taht l-età ta' sittax (16)-il sena kif ikkontemplat bl-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 mill-atti jirrizulta li l-imputat u l-vittma minuri ghandhom wild¹. Oltre minn hekk referenza qieghda ssir ghax-xhieda ta' -Omissis- li tikkonferma li r-relazzjoni ta' bejnha u bejn l-imputat saret bil-kunsens taghha.

¹ Certifikat tat-twelid ezebit a fol 24 tal-atti processwali

Illi di più, din il-Qorti ghandha f'idejha l-istqarrija a fol. 14 tal-atti processwali. Il-Qorti tinnota li l-imputat di fatti ammetta ghar-reati li bihom huwa akkuzat. Referenza qiegħda ssir a fol. 14 *et sequitur* tal-atti processwali:

M: Taf kemm ghandha zmien –Omissis–?

T: 15 u ser tghalaq 16 f'Awwissu.

M: Ahna gejna nfurmati minn Child Protection Services li f'din ir-relazzjoni kelkom wild bhalma diga` ghidiltna. Dan tieghek hux hekk?

T: Mhux hekk

...

M: Qabel kellimtek jien kont taf li ma jistax ikollok x'taqsam sesswalment ma persuni taht is-sittax-il sena?

T: Ija mhux xi haga ovvja

M: Allura ghaliex kellek x'taqsam ma' –Omissis–?

T: Sirna ninhabbu u kella l-kunsens ta' ommha għal din ir-relazzjoni."

Illi ghalhekk fl-istqarrija tieghu datata tlieta (3) ta' Mejju tas-sena 2024, l-imputat jammetti li kien ippartecipa f'attivitajiet sesswali ma' persuna taht l-età tas-sittax (16)-il sena u cioè ma' -Omissis-. 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 rrinunzja ghal tali dritt.

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 issegwenti:

“Din il-Qorti mhijiex ser tiddeciedi l-kwistjoni mill- aspekk 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, tal-ammissibilità tal-istqarrija u dan minhabba zviluppi li saru wara fejn is-suspettat ghandu dritt li jkollu avukat prezenti anke mill-bidu tal-investigazzjoni.

Illi jirrizulta li f'dan il-kaz l-imputat odjern inghata d-dritt li jikkonsulta ma' avukat ta' fiducja tieghu izda li hu rrinunzja ghal tali dritt (fol. 13 tal-atti processwali).

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 għall-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 għall-insenjament tal-*Grand Chamber* tal-Qorti Ewropea f'Beuze vs. Belgium (dec 9/11/2018 – 71409/10) fejn tenniet is-segwent:

“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 recenti 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 Mark Charles Kenneth Stephens vs. Malta (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 di più hu kien inghata d-dritt li jikkonsulta ma' avukat ta' fiducja tieghu izda hu rrifjuta dan id-dritt. Irrizulta wkoll illi l-imputat fl-istadju tal-istqarrija ammetta li kien ippartecipa f'attivitajiet sesswali ma' persuna taht l-età tas-sittax (16)-il sena apparti l-fatt li gie esebit certifikat tat-twelid ta' tarbija li juri li l-genituri biologici huma fil-fatt l-imputat u l-allegat vittma. Illi di più l-imputat nghata kull opportunità li jressaq id-difiza tieghu bl-akbar mod possibbli.

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

Illi tenut kont ta' dan kollu, din il-Qorti m'ghandhiex ghazla ghajr li ssib lill-imputat hati tat-tieni (2) akkuza kif dedotta kontrih.

Ikkunsidrat

Illi reat iehor li bih huwa addebitat l-akkuzat huwa r-reat ta' korruzzjoni ta' tfal taht is-sittax (16)-il sena kif ikkontemplat bl-Artikolu 203 (1) tal-Kapitolu 9 tal-Ligijiet ta' Malta li jghid hekk:

“Kull min, b' ghemil zieni, jikkorrompi persuna ta' taht is-sittax-il sena jehel, meta jinstab hati, il-piena ta' prigunerija minn erbgħa sa tmien snin.

Illi l-Qorti tosserva li xhud krucjali sabiex il-prosekuzzjoni tipprova l-akkuzi kontra l-imputat hija l-allegat vittma minuri u cioè -Omissis-. Fuq dan il-punt il-Qorti tagħmel referenza għax-xhieda tal-istess minuri fis-seduta datata sitta u ghoxrin (26) ta' Settembru tas-sena 2024 fejn inghad hekk a fol. 19 tal-atti processwali:

“Qorti: ... Inti ma' -Omissis- tixtieq tkompli, tixtieq tiegħ, x'inhil-dik tiegħek miegħu?

Xhud: Inkompli u.

Qorti: Tkompli u tghixu flimkien.

Xhud: Ezatt

Qorti: Mela inti ha naghmililek iktar forsi cara tista' tghidli lili isma' jien ma rridx nixhed fil-konfront ta' -Omissis- ghax -Omissis- u jiena ghad ghandna relazzjoni, ghandna tifel u ma nixtieqx illi nixhed kontrih.

Xhud: Ezatt, ma nixtieqx nixhed kontrih."

Illi fuq dan il-punt referenza qiegħda ssir għas-subartikolu 3 tal-Artikolu 203 tal-Kapitolu 9 tal-Ligijiet ta' Malta:

"Għad-delitt taht dan l-artikolu ma jittiehed ebda procediment jekk mhux bil-kwerela tal-parti offiza:

Izda meta l-parti offiza tirtira l-kwerela, il-Qorti tista' tiddeciedi u tordna l-kontinwazzjoni tal-procedimenti kontra l-allegat awtur, wara li tikkonsidra b'mod partikolari l-aħjar interessi tal-kwerelant, kull persuna ta' taht is-sittax (16)-il sena involuta, ukull terzi persuni rilevanti ohra, u għandha tivverbalizza dik ir-rikjesta u decizjoni biex jigu registrati fl-atti tal-kawza".

Illi gialadarba l-imputat u l-allegat vittma, ghalkemm m'ghadx hemm relazzjoni ezistenti bejniethom, izda li minn tali relazzjoni twieldet tarbija u stante illi din il-Qorti hija sodisfatta bil-fatt illi din ma kinitx relazzjoni sfurzata, lesta li taccetta din id-dikjarazzjoni.

Illi jinghad li l-Qorti mhix sejra tqis din l-akkuza bl-ghan li zzomm l-ahjar interess tat-tarbija. 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"² 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, 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."

² 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):
<https://nij.ojp.gov/topics/articles/hidden-consequences-impact-incarceration-dependent-children>

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 behaviour. But risk factors rarely present themselves across all children, and these behaviours 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”³ jikkonkludi hekk:

³ 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

“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 behaviours in middle childhood (7–11 years old), and finally, a higher presence of risk behaviours, 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 with the most evidence, especially in the three developmental stages analysed, 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!

Ghalhekk a rigward it-tieni (2) akkuza l-Qorti sejra tillibera lill-imputat stante d-dikjarazzjoni maghmula mill-vittma.

Ikkunsidrat

Illi referenza qiegħda ssir għall-proviso tal-Artikolu 6 (1)(a) tal-Kapitolu 518 tal-Ligijiet ta' Malta li tistipul hekk:

“Persuna tkun soggetta għall-htigiet ta' notifikazzjoni taht dan l-Att ghaz-zmien imsemmi fl-artikolu 7 (“perjodu ta' notifikazzjoni”) jekk dik il-persuna –

(a) tinstab hatja ta' reat skedat:

Izda l-Qorti tista', jekk jidhrilha li jkun hekk xieraq, tiddeciedi li ma tissoggettax persuna għall-htigiet ta' notifikazzjoni jekk, fl-opinjoni tal-Qorti, il-kaz ikun hekk jitlob⁴;"

Illi tali dispozizzjoni sejra tigi applikata tenut kont tal-fatti partikolari ta' dan il-kaz kif ukoll sabiex l-akkuzat ma jkollu ebda xkiel milli jaqdi l-obbligi tieghu fir-rigward il-minuri –Omissis–.

Decide

Għal dawn il-motivi wara li rat l-Artikolu 18, 31, 204C (1), 202 (h)(iv) u 208AC (1b)(2a) tal-Kapitolu 9 tal-Ligijiet ta' Malta ssib lill-imputat –Omissis– hati tal-ewwel (1) akkuza kif dedotta kontrih u tpoggih taht Ordni ta' Probation ai termini tal-Artikolu 7 tal-Kapitolu 446 tal-Ligijiet ta' Malta għal tliet (3) snin filwaqt li tilliberah mit-tieni (2) akkuza stante nuqqas ta' provi u liema ordni għandha tiffirma parti integrali ma' din is-sentenza.

⁴ Enfazi ta' din il-Qorti.

Finalment il-Qorti spjegat fi kliem semplici r-riperkussjonijiet jekk
din l-ordni ma tigix obduta.

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