



QORTI TA' L-APPELL KRIMINALI

**ONOR. IMHALLEF
DAVID SCICLUNA**

Seduta tat-22 ta' Marzu, 2005

Appell Kriminali Numru. 262/2004

Il-Pulizija

v.

Charles sive Carmelo Aquilina

Il-Qorti,

Rat l-imputazzjonijiet migjuba mill-Pulizija Ezekuttiva kontra Charles sive Carmelo Aquilina talli f'dawn il-Gzejjer, nhar it-12 ta' Settembru 2002, ghall-habta tas-saghtejn neqsin kwart ta' filghodu, gewwa Triq San Gorg, San Giljan, u/jew fil-vicinanzi, flimkien ma' persuni ohra mhux maghrufa:

- 1) Minghajr il-hsieb li joqtol jew iqieghed il-hajja fil-periklu car, ikkaguna feriti ta' natura gravi fil-gisem ta' Marcin Marek Czyzewski;
- 2) Ikkaguna feriti hfief fuq il-persuni ta' Marek Mazurek u Krzystof Mazurek;

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- 3) Ha parti attiva f'gemgha ta' ghaxra min-nies jew aktar, migburin bil-hsieb li jaghmlu reat;
- 4) Volontarjament kiser il-bon ordni jew il-kwiet pubbliku, bl-ghajjat u bil-glied;
- 5) Bil-lejl kiser il-mistrieħ tan-nies, bi hsejjes jew ghajjat, jew b'mod iehor;

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali tal-10 ta' Novembru 2004 li permezz tagħha dik il-Qorti sabet lill-imsemmi Charles sive Carmelo Aquilina hati biss tat-tieni imputazzjoni u dan fil-konfront ta' Kristov Mazurek biss filwaqt li ma sabitux hati ta' l-imputazzjonijiet l-oħra dedotti kontra tieghu u minnhom lliberatu, u kkundannatu għall-hlas ta' multa ta' mitt liri Maltin (Lm100);

Rat ir-rikors ta' appell tal-Avukat Generali pprezentat fis-26 ta' Novembru 2004 li permezz tieghu talab li din il-Qorti tirriforma s-sentenza appellata billi tikkonfermaha f'dik il-parti fejn sabet lil Charles sive Carmelo Aquilina hati tat-tieni imputazzjoni limitatament għall-offiza fuq il-persuna ta' Kristov Mazurek u fejn illiberatu mill-ewwel imputazzjoni, mit-tieni imputazzjoni limitatament għall-offiza fuq il-persuna ta' Marek Mazurek, mit-tielet imputazzjoni u mill-hames imputazzjoni u tirrevokaha f'dik il-parti fejn illiberatu mir-raba' imputazzjoni, u minflok issibu hati wkoll ta' din ir-raba' imputazzjoni u tinfliggi l-piena skond il-ligi;

Rat l-atti kollha tal-kawza;

Semghet it-trattazzjoni tad-difensuri tal-partijiet;

Ikkunsidrat:

L-aggravju ta' l-appellant Avukat Generali jikkonsisti filli l-ewwel Qorti għamlet enuncjazzjoni zbaljata jew inkompleta ta' l-ipotesi tal-ligi meta assumiet li l-kontravvenzjoni kontemplata fl-artikolu 338(dd) tal-Kodici Kriminali hija eskluza meta tigi kommissa f'post fejn ma hemmx kwiet u hemda.

Fis-sentenza appellata l-ewwel Qorti osservat dwar ir-raba' imputazzjoni, cioe` dik fejn l-appellat gie akkuzat li volontarjament kiser il-bon ordni jew il-kwiet tal-pubbliku bl-ghajjat u bil-glied, li "dan zgur ma jirrizultax ghaliex fis-saghtejn u nofs tas-sajf, f'Paceville proprju fil-parti l-aktar popolari, zgur li ma hemmx kwiet u hemda u ghalhekk zgur li ma kkawza ebda disturb lill-pubbliku".

L-appellant isostni li skond giurisprudenza kostanti ta' din il-Qorti, ikun hemm il-kontravvenzjoni kontemplata fil-paragrafu (dd) ta' l-artikolu 338 tal-Kodici Kriminali meta jkun hemm ghemil volontarju li minnu nnifsu jew minhabba c-cirkostanzi li fihom dak l-ghemil isehh inissel imqar minimu ta' inkwiet jew thassib f'mohh persuna (li ma tkunx l-akkuzat jew l-imputat) dwar l-inkolumita` fizika ta' persuna jew dwar l-inkolumita` ta' proprjeta`, kemm b'rizultat dirett ta' dak l-ghemil jew minhabba l-possibilita` ta' reazzjoni ghal dak l-ghemil; naturalment dawn ic-cirkostanzi jridu jkunu tali li oggettivament inisslu l-imsemmi inkwiet jew thassib.

Din il-Qorti m'ghandha l-ebda dubju li l-appellant ghandu ragun u anke d-difensur ta' l-appellat accetta, waqt it-trattazzjoni orali, li bhala punt ta' dritt l-aggravju mqajjem mill-Avukat Generali ghandu jigi milqugh. Bizejjed issir referenza ghal dak li qalet din il-Qorti diversament presjeduta fl-Appell Kriminali fl-ismijiet **Il-Pulizija v. Paul Busuttil** deciz fit-23 ta' Gunju 1994¹:

"Skond giurisprudenza kostanti tal-Qrati taghna, dan ir-reat javvera ruhhu meta jkun hemm dak li fil-*common law* Ingliza kien jissejjah '*a breach of the peace*'. Din l-ekwiparazzjoni ta' dana r-reat mal-kuncett Ingliz ta' '*a breach of the peace*'" tirisali ghal zmien Siur Adriano Dingli li proprju f'kawza deciza minnu fl-10 ta' Gunju, 1890, fl-ismijiet Ispettore Raffaele Calleja v. Paolo Bugeja et., kien qal hekk:

'Che il buon ordine e la tranquillita` pubblica sta nella sicurezza, o nella opinione ferma della sicurezza

¹ Vol. LXXVIII.v.277.

***sociale, - nel rispetto dei diritti e dei doveri sia degli individui in faccia all'autorita` pubblica, sia degli individui stessi fra loro, e ogni atto che toglie o diminuisce la opinione della sicurezza pubblica, o della sicurezza individuale, e` violazione dell'ordine pubblico, indipendentemente dalla perpetrazione di altro reato'* (Kollez. Vol. XII, p. 472, 475).**

A skans ta' hafna repetizzjoni, din il-Qorti taghmel referenza ghall-gurisprudenza migbura fl-artikolu intitolat '*Calleja v. Balzan: Reflections on Public Order*' publikat fil-Vol. X ta' *The Law Journal - Id-Dritt (University of Malta, Autumn 1983)* pagna 13 et seq., u speċjalment pagni 28 sa 31. B'zieda ma' dak li hemm f'dak l-artikolu wiehed jista' jghid li r-reat ta' '*breach of the peace*' fil-ligi Skocciza jirrikjedi ukoll certu element, imqar f'ammont zghir hafna, ta' allarm. Fi kliem McCall Smith u Sheldon, fil-ktieb taghhom '*Scots Criminal Law*' (Edinburgh, Butterworths, 1992):

'The essence of the offence is the causing of alarm in the minds of the lieges. This alarm has been variously defined by courts. In Ferguson v. Carnochan (1889) it was said not necessarily to be 'alarm in the sense of personal fear, but alarm lest if what is going on is allowed to continue it will lead to the breaking of the social peace'. Alarm may now be too strong a term: in Macmillan v. Normand (1989) the offence was committed when abusive language caused 'concern' on the part of policemen at whom it was directed' (p. 192).

Naturalment huwa kwazi impossibbli li wiehed jiddeciedi aprioristikament x'jammonta jew x'ma jammontax f'kull kaz ghar-reat ta' ksur volontarju tal-bon ordni u l-kwiet tal-pubbliku. Kif jghid awtur iehor Skocciz, Gerald H. Gordon, fit-test awtorevoli tieghu '*The Criminal Law of Scotland*' (Edinburgh, 1978):

'Whether or not any particular acts amount to such a disturbance is a question of fact depending on the circumstances of each case, and strictly speaking probably no case on breach of the peace can be

regarded as an authority of general application' (p. 985, para. 41-01).

U aktar 'il quddiem l-istess awtur jghid:

'... Although it has been held not to be a breach of the peace merely to annoy someone, such annoyance could amount to a criminal breach of the peace if the circumstances were such that it was calculated to lead to actual disturbance' (p. 986, para. 41-01)."

Fl-Appell Kriminali fl-ismijiet **Il-Pulizija v. Joseph Spiteri** deciz fl-24 ta' Mejju 1996, din il-Qorti diversament presjeduta ziedet tghid hekk:

"Il-Qorti hawnhekk tixtieq tippreciza a skans ta' ekwivoci li l-kuncett ta' 'breach of the peace' kif abbraccjat fl-lskozja huwa aktar wiesa' minn kif gie interpretat mill-qrati Inglizi. Fi kliem Jones u Christie fil-ktieb taghhom 'Criminal Law' (Edinburgh, Sweet & Maxwell, 1992), b'referenza ghal-ligi Skocciza in materja:

'While the major part of the criminal law of Scotland could indeed be expressed in some facile, breach-of-the-peace-type phrase, such as 'doing things (or refraining from doing things) which cause, or could reasonably cause alarm or disturbance', this would lead inevitably to complete uncertainty as to what exactly the law did prohibit. At present there is considerable uncertainty as to what breach of the peace itself properly covers; and it would thus be most unwelcome to extend that uncertainty by enlarging the scope of breach of the peace at the expense of other, fairly well defined offences. But this is, of course, something of a vicious circle. It is precisely because breach of the peace has become so ill-defined that it has proved possible for it to stray into fields occupied by other offences. The only way to halt this process is for breach of the peace to be defined in a clearer and more limited fashion than is

currently the case. Regrettably, however, there is little indication that this is likely to be so' (p. 295).

Il-kuncett Ingliz ta' 'breach of the peace' li, kif inghad, il-Qrati taghna jidher li fil-massima segwew, gie spjegat mill-Professor A.T.H. Smith fil-ktieb tieghu 'Offences Against Public Order' (London, Sweet & Maxwell, 1987) hekk:

'Because of the association between 'peace' and 'quiet', there is a natural tendency to suppose that a breach of the peace is 'any behaviour that disturbed or tended to disturb the tranquillity of the citizenry'. But if any legal expression is a term of art, breach of the peace is one of them. Recently the courts have refined the concept, and established very clearly that it is allied to arm, actual or prospective, against persons or property. The leading modern authority is undoubtedly the decision of the Court of Appeal in Howell Watkins L.J. said: '.... Even in these days when affrays, riotous behaviour and other disturbances happen all too frequently, we cannot accept that there can be a breach of the peace unless there has been an act done or threatened to be done which either actually harms a person, or in his presence his property, or is likely to cause such harm, or which puts someone in fear of such harm being done' (p.182).

Minn dana kollu din il-Qorti tara li, bhala regola, ikun hemm il-kontravvenzjoni kontemplata fil-paragrafu (dd) ta' l-art. 338 tal-Kap. 9 meta jkun hemm ghemil volontarju li minnu nnifsu jew minhabba c-cirkostanzi li fihom dak l-ghemil isehh inissel imqar minimu ta' inkwiet jew thassib f'mohh persuna (li ma tkunx l-akkuzat jew imputat) dwar l-inkolumita` fizika ta' persuna jew dwar l-inkolumita` ta' proprjeta`, kemm b'rizultat dirett ta' dak l-ghemil jew minhabba l-possibilita` ta' reazzjoni ghal dak l-ghemil. Naturalment dawn ic-cirkostanzi jridu jkun tali li oggettivament inisslu l-imsemmi inkwiet jew thassib."

Kopja Informali ta' Sentenza

Fil-kaz in dizamina, il-fatt li l-incident li wassal għall-proceduri kontra l-appellat gara f'Paceville f'hin fejn ma jkunx hemm "kwiet u hemda", ma jfissirx għalhekk, kif irriteriet l-ewwel Qorti, li ma seta' jkun hemm ebda disturb lill-pubbliku. Għall-kuntrarju, aktar ma kien hemm nies aktar seta' jnfirex l-inkwiet jew thassib f'mohh dawk il-persuni. U f'dan il-kaz insibu li nqalghet glieda li fiha kienu involuti diversi nies - wiehed mix-xhieda (Marek Mazurek) isemmi bejn hmistax u ghoxrin.

Għaldaqstant l-aggravju ta' l-Avukat Generali qieghed jigi milqugh.

Għal dawn il-motivi:

Tiddeciedi billi tilqa' l-appell ta' l-Avukat Generali u, filwaqt li tikkonferma s-sentenza appellata in kwantu sabet lill-appellat hati tat-tieni imputazzjoni limitatament għall-offiza fuq il-persuna ta' Kristov Mazurek u in kwantu ma sabitx lill-appellat hati ta' l-ewwel imputazzjoni, tat-tieni imputazzjoni limitatament għall-offiza fuq il-persuna ta' Marek Mazurek, tat-tielet imputazzjoni u tal-hames imputazzjoni u lliberatu minnhom, tirrevokaha in kwantu ma sabitx lill-appellat hati tar-raba' imputazzjoni u minflok tiddikjarah hati wkoll ta' dik ir-raba' imputazzjoni, izda, wara li rat il-paragrafi (f) u (h) ta' l-artikolu 17 tal-Kap. 9 u l-piena applikabbli għar-reati li dwarhom l-appellat instab hati, tikkonferma s-sentenza appellata in kwantu kkundannat lill-appellat għall-hlas ta' multa ta' mitt liri Maltin (Lm100).

< Sentenza Finali >

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