MALTA

QORTI TA' L-APPELL KRIMINALI

ONOR. IMHALLEF
JOSEPH GALEA DEBONO

Seduta tat-28 ta' Settembru, 2006

Appell Kriminali Numru. 203/2006

Il-Pulizija

Vs
John Fenech
Paul Agius

Il-Qorti,

Rat l-akkuza dedotta kontra l-appellanti quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli :
1) fil-kapacita' taghhom ta' diretturi tal-kummpanija Selitier Ltd u Pamson Ltd rispettivament, nhar is-16 ta' Marzu, 2005 u fix-xhur ta' qabel, matul il-gurnata naqsu milli jharsu s-sahha w sigurta' tal-impjegati, kif ukoll tal-persuni kollha li jistghu jigu affettwati bix-xoghol, li jkun qed issir u dan billi naqsu milli jiehdu l-passi necessarji kollha sabiex jigi evitat dannu fiziku, korriment jew mewt fuq il-post tax-xoghol u naqsu

milli jiehdu l-mizuri necessarji kollha sabiex ir-riskju jigi ridotti kemm huwa ragonevolment prattiku, fejn wegga' gravi impjegat u cioe' Gilbert Micallef minn Sta. Venera u dan ai termini ta' l-artikolu 6(1) u (2) tal-Att 27/2000 (Kap. 424);
2) fl-istess zminijiet, lok, hin u cirkostanzi, bhala persuni li jhaddmu, naqsu li jipprovdu dik l-informazzjoni, dak it-taghlim, dak it-tahrig u dik is-supervizjoni li huwa mehtieg biex tigi zgurata s-sahha w is-sigurta' fuq il-post tax-xoghol, ai termini tal-artikolu 6(3) tal-att 27/2000 (Kap. 424);
3) fil-kapacitajiet taghhom ta' diretturi tal-imsemmija kumpaniji, naqsu mili jgharrfu lill-Awtorita' ghas-Sahha w Sigurta' fuq il-Post tax-Xoghol dwar incident gravi li sehh fis-16 ta' Marzu, 2005 fejn wegga mpjegat u cioe' Gilbert Micallef u dan ai termini tal-artikolu 51 tal-A.L. 52/86.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali tat-22 ta' Mejju, 2006, li biha, wara li rat l-Artikolu 6(1) u (2) u (3) tal-Att 27/2000 (Kap. 424), kif ukoll l-Artikolu 51 tal-A.L. 52/1986, sabet lill-imsemmija appellanti hatja tal-ewwel u t-tielet akkuza migjuba kontrihom u kkundannathom ghal hlas ta' multa fl-ammont ta' sitt mitt lira Maltin (LM600), izda ma sabithomx hatja tat-tieni akkuza migjuba kontrihom u ghaldaqstant illiberathom minnha.

Rat ir-rikors tal-appellanti minnhom ipprezentat fl-1 ta' Gunju, 2006, li bih interponew appell mis-sentenza appellata billi filwaqt li qed tigi mitluba tikkonferma fejn l-appellanti gew liberati, qed issir talba sabiex dan l-appell jigi accettat billi thassar, tannulla w tirrevoka s-sentenza appellata fejn l-appellanti gew misjubin hatja w tilliberhom minn kull htija jew piena. Alternattivament, jekk din il-Qorti jidhrilha li ghandu jkun hemm piena, qed tigi mitluba bir-rispett, tirriforma s-sentenza fis-sens li tigi mposta piena iktar ekwa ghall-kaz odjern (Sic).

Fliet l-atti kollha processwali.

Rat il-verbal tas-seduta tal-lum li bih l-Avukat Generali eccepixxa n-nullita’ tar-rikors tal-appell stante li ma intalbitx ir-riforma tas-sentenza appellata u dan bi ksur ta’ dak li jipprovdi l-artikolu 419(c) tal-Kodici Kriminali.

Semghet it-trattazzjoni dwar l-istess pregudizzjali;

Ikkonsidrat;

Illi bhala fatt l-Ewwel Qorti sabet liz-zewg appellanti hatja tal-ewwel u tat-tielet akkuzi dedotti kontra taghhom izda ma sabithomx hatja tat-tieni akkuza u lliberathom minnha.

B’dana kollu, fir-rikors tal-appell ma ntalbitx ir-riforma tas-sentenza pre-ordinatament ghat-talbiet biex il-parti tas-sentenza fejn huma gew liberati tigi konfermata w biex il-parti fejn instabu hatja tigi revokata. Ir-riforma ntalbet biss ghar-rigward tal-piena erogata, f’ kaz li l-appell fuq il-htija ma jigix milqugh.

Ikkonsidrat;

Illi hemm lista formidabbli ta’ decizjonijiet ta’ din il-Qorti diversament preseduta fejn dejjem giet dikjarata n-nullita’ tal-appell - liema nullita’ hija anki sollevabbli “ex officio” **- meta talba kellha tkun dik ta’ riforma jew varjazzjoni tas-sentenza izda, minnflok tintalab ir-revoka taghha, ghax dan igib bhala konsegwenza li ma jkunx gie osservat il-paragrafu (c) tas-subartikolu (1) tal-Artikolu 419 tal-Kodici Kriminali, b’mod ghalhekk li l-istess rikors tal-appell ikun null . (App. Krim.** Pul. vs. Mario Camilleri” **– [3.12.2001];** Il-Pulizija vs. Joe Borg **[21.7.1995] u ohrajn).**

Illi din il-Qorti diversament preseduta dahlet *funditus* f’din il-kwistjoni fl-appell kriminali “Il-Pulizija vs. Joseph Galea **[30.6.1995] (Per V. De Gaetano J.) fejn gie ritenut li :-**

"minn ezami tal-gurisprudenza rigward in-nullita' ta' appell, il-Qorti ta' l-Appell Kriminali waslet ghas-segwenti konkluzzjonijiet :-

(a) Bhala regola generali, l-artikolu 419 (1) , cioe' li r-rikors ghandu jkun fih it-talba ghat-thassir jew **ghat-tibdil tas-sentenza , giet "*very strictly and rigidly interpreted*" - ("**The Police vs. John Hill"**, Criminal Appeal, [23.9.1972]**

(b) ghalkemm il-ligi titkellem dwar talba ghat-thassir jew ghal tibdil , fil-prassi ta' din il-Qorti dejjem gie accettat, fil-kazijiet li hekk jippermettu, li jkun hemm kemm talba ghat-thassir kif ukoll talba ghat-tibdil, PURCHE' LI DIN IT-TALBA TKUN SUBORDINATA GHALL-EWWEL WAHDA (emfasi ta' din il-Qorti). In fatti, anki jekk jintalab biss it-thassir, din il-Qorti tista' flok thassar ghal kollox is-sentenza u konsegwentement tillibera lill-appellant jew issib hati lill-appellat - skond min ikun appella - tilqa' l-appell in parti u tbiddel is-sentenza , per ezempju limitatament ghall-piena inflitta fuq l-appellant . Mill-banda l-ohra , jekk is-sentenza appellata tkun in parti sabet hati lill-appellant u in parti illiberatu minn xi akkuzi jew imputazzjonijiet , gie dejjem ritenut li jekk flok talba ghat-tibdil issir talba ghat-thassir , ir-rikors ikun null. **" (emfasi ta' din il-Qorti), ("**Pul.vs. Anthony Zammit" **([1.10.60], Vol. XLIV , iv. p.940); "**Pul. vs. Richard Vincenti Kind" **, App. Krim. [16.9.72]; "**Pul. vs. Carmelo Agius" **, App. Krim. [4.10.1972].**

Illi sentenzi ohra li minnhom kienu jemergu dawn il-principji huma : "La Polizia vs. Ernesto Laiviera**", [18.10.1930] ; Vol. XXVII , iv. P.829; "**La Polizia vs Carmelo Carabott et**." [8.11.1933], Vol. XXVIII, iv. P.205;** Pulizija vs. Francis Saviour Zammit Cutajar **, App.Krim. [23.1.1971];** Pulizija vs. Carmelo Farrugia et. **App. Krim. [11.11.1976] ;** Pulizija vs. Carmelo sive Lino Scicluna **, App. Krim.[1.9.1977];** Pulizija vs. Victor Anthony Camilleri et **,[26.4.1985]**; Pulizija vs. Anthony Zammit **[1.10.1960] Vol. XLIV , iv. P.940** ; Pulizija vs. Richard Vincenti Kind , **App. Krim. [16.9.1972] ;** Pulizija vs.

Carmelo Agius **App. Krim. [14.10.1972];** Pulizija vs. Emmanuel Bonnici **, App. Krim. [5.10.1990];** Pulizija vs. Joseph Desira **[18.3.1972]** ; Pulizija vs. Crusifix Buttigieg **, [18.3.1972]; u** Pulizija vs. John Vella Chritien **App. Krim. [6. 5. 1972] u** Il-Pulizija vs. Jesmond Farrugia **[13.2.2001].**

Illi fid-dawl tal-gurisprudenza fuq citata, f'dan il-kaz fl-ewwel lok kellha tintalab ir-riforma tas-sentenza qabel ma l-appellanti jghaddu biex jghidu liema parti mis-sentenza trid tigi konfermata w liema parti trid tigi revokata. Dan ma sarx.

Illi fil-fehma ta' din il-Qorti din l-ommissjoni ma tistax tigi rettifikata b' semplici talba ghal-korrezzjoni, ghaliex - kif qalet il-Qorti Kostituzzjonali fis-sentenza taghha **"Emanuel Gauci vs. L-Avukat Generali"** [26.5.2006] - fil-kaz tal-artikolu 419 in-nullita' hija espressa fil-ligi meta jkun hemm nieqsa l-fatti fil-qosor, ir-ragunijiet tal-appell jew it-talba ghat-thassir jew ghat-tibdil tas-sentenza tal-Qorti Inferjuri – rekwiziti dawn li huma kjarament mehtiega ghall-andament ordnat tal-proceduri fil-kaz li jkun, u li huma ghalhekk konducenti ghall-ahjar amministrazzjoni tal-gustizzja. Fil-fehma ta' din il-Qorti dak li jkun null *"ab initio"* ma jistax jigi sanat b' korrezzjoni.

Illi l-istess principju gie ribadit minn din il-Qorti diversament preseduta mill-Prim' Imhallef V.De Gaetano fis-sentenza "Il-Pulizija vs. Lewis Muscat" **[31.8.2006] fejn intqal:-**
"….article 419 of the Criminal Code provides, with regard to applications of appeal like the one under examination, that "…the application shall, under pain of nullity, contain (a) a brief statement of the facts, (b) the grounds of the appeal; and (c) a demand that the judgment of the inferior court be reversed or varied" (emphasis added). It is also true that this provision is a special provision, providing for the nullity of the judicial act, in the event of any omission mentioned, and to that extent it must be regarded as overriding the general provision contained in article 175 of the Code of Organisation and Civil Procedure (rendered

applicable to acts filed before a Court of Criminal Justice by virtue of article 520(1)(c) of the Criminal Code), including sub-article (2) thereof which states: "Any court of appellate jurisdiction may also order or permit, at any time until judgment is delivered, the correction of any mistake in the application by which the appeal is entered or in the answer, including any mistake in the indication of the court which delivered the decision appealed from, in the name or character of the parties, <u>or in the date of the judgment appealed from</u>" (emphasis added). Clearly what is null by express provision of the law – article 419 of the Criminal Code – cannot be rectified by invoking article 175 of Chapter 12. Thus one cannot invoke article 175 when the "brief statement of the facts" are left out, or when the "grounds of the appeal" are omitted from the application of appeal, or when the demand for reversal or variation is left out. Likewise, if the demand should have been for the variation of the judgment and instead the reversal of the judgment is requested – which amounts to the total absence of the <u>appropriate</u> demand – no correction can be effected under the said article 175. Similarly no <u>new</u> grounds of appeal may be added by invoking article 175, as this would clearly change the substance of the appeal and of the reply thereto on the merits (article 175(1))."

Ghalhekk fil-kaz in ezami, ladarba l-appellanti ma kienux gew misjuba hatja tal-akkuzi kollha dedotti kontra taghhom ghaliex ma nstabux hatja w gew liberati mit-tieni imputazzjoni, huma kellhom fl-ewwel lok jitolbu <u>r-riforma</u> tas-sentenza appellata fejn si tratta tal-htija, fir-rikors in dizamina. Il-fatti li alternattivament talbu r-riforma biss in kwantu jirrigwarda l-piena, fil-fehma ta' din il-Qorti ma jsalvax ir-rikors mill-irritwalita' msemmija. (Ara App. Krim. "Il-Pulizija vs. Paolo Miguel da Costa Osario" **[10.3.2005])**

Ghalhekk tiddikjara l-appell null u tastjeni milli tiehu konjizzjoni ulterjuri tieghu.

< Sentenza Finali >

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