MALTA

QORTI TA' L-APPELL KRIMINALI

ONOR. IMHALLEF
JOSEPH GALEA DEBONO

Seduta tat-28 ta' Settembru, 2006

Appell Kriminali Numru. 207/2006

Il-Pulizija
(Spt. Romina Veneziani)

Vs
Joseph Gheiti
Jean Paul Gheiti
Justin Gheiti

Il-Qorti,

Rat l-akkuza dedotta kontra l-appellanti quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli fl-20 ta' Marzu, 2006, ghall-habta tal-10.15 hrs, gewwa x-Xatt, Sliema,
1) kisru volontarjament il-bon ordni jew il-kwiet tal-pubbliku;
2) ghamlu lil Dominic Psaila, ingurji jew theddid jew, jekk kienu provokati, ngurjaw b'mod li hargu barra mill-limiti tal-provokazzjoni;

3) hebbew ghal Dominic Psaila sabiex jingurjawh, idejjquh jew jaghmlulu hsara;
4) ikkagunaw feriti ta' natura hafifa fuq il-persuna ta' Dominic Psaila hekk kif iccertifika Dr. David Ellul tal-Isptar San Luqa.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali tat-23 ta' Mejju, 2006, li biha, wara li rat l-Artikoli 338(dd) 339(1)(d)(e) u 221 (1) tal-Kodici Kriminali, fil-konfront ta' Joseph Gheiti, ma sabitux hati tat-tieni u t-tielet akkuza migjuba kontra tieghu u ghalhekk illiberatu minnhom, sabitu hati tal-ewwel akkuza w tar-raba' akkuza w ikkundannatu ghal hlas ta' ammenda ta' hamsa w ghoxrin lira Maltin (LM25) fuq l-ewwel akkuza w ammenda ta' hamsa w ghoxrin lira Maltin (LM25) fuq ir-raba' akkuza.
Fil-konfront ta' Jean Paul Gheiti, sabitu hati tal-erba' akkuzi migjuba kontra tieghu w ikkundannatu ghal hlas ta' ammenda ta' hamsa w ghoxrin lira Maltin (LM25) fuq kull wahda mill-erba' akkuzi migjuba kontra tieghu (total LM100 ammenda).
Fil-konfront ta' Justin Gheiti, sabitu hati tal-erba akkuzi migjuba kontra tieghu w ikkundannatu ghal hlas ta' ammenda ta' hamsa w ghoxrin lira Maltin (LM25) fuq kull wahda mill-erba' akkuzi migjuba kontra tieghu (total LM100 ammenda).

Rat ir-rikors tal-appellanti minnhom pprezentat fit-2 ta' Gunju, 2006, li bih talbu lil din il-Qorti joghgobha li :
fil-konfront ta' Joseph Gheiti tikkonferma l-parti liberatorja tas-sentenza appellata w tiddikjara llil-appellant Joseph Gheiti mhux hati tat-tieni u t-tielet akkuza, filwaqt li tirrevoka, thassar u tannulla l-parti li biha sabet lil-appellant hati tal-ewwel u r-raba' akkuzi, tiddikjarah mhux hati taghhom u kwindi tilliberah minn kull imputazzjoni w piena.
fil-konfront ta' Jean Paul Gheiti, tirrevoka, thassar u tannulla l-istess sentenza w tiddikjarah mhux hati tal-akkuzi dedotti kontra tieghu w tilliberah minn kull imputazzjoni w piena, w
fil-konfront ta' Justin Gheiti, stante li huwa agixxa taht provokazzjoni qawwija w istantanja, l-istess Qorti tiskuzah

u tirrevoka, thassar u tannulla s-sentenza msemmija w tiddikjarah mhux hati tal-akkuzi dedotti kontra tieghu w kwindi tilliberah minn kull imputazzjoni w piena.

Fliet l-atti kollha processwali.

Rat il-verbal tas-seduta tal-lum li bih l-Avukat Generali eccepixxa n-nullita' tar-rikors tal-appell in kwantu jirrigwarda l-appellant Joseph Gheiti stante li ma ntalbitx 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 lill-appellant Joseph Gheiti hati tal-ewwel u tar-raba' akkuzi dedotti kontra tieghu izda ma sabitux hati tat-tieni w t-tielet akkuza u lliberatu minnhom.

B'dana kollu, fir-rikors tal-appell fir-rigward ta'dan l-appellant, ma ntalbitx ir-riforma tas-sentenza pre-ordinatament ghat-talbiet biex il-parti tas-sentenza fejn huwa gie liberat tigi konfermata w biex il-parti fejn instab hati tigi revokata.

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, fil-kaz tal-appellant Joseph Gheiti fl-ewwel lok kellha tintalab <u>ir-riforma</u> tas-sentenza qabel ma dan l-appellant jghaddi biex jghid 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, <u>under pain of nullity</u>, contain (a) a brief statement of the facts, (b) the grounds of the appeal; and (c) a <u>demand that the judgment of the inferior court be reversed or varied</u>"

(emphasis added). It is also true that this provision is a <u>special</u> 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 <u>general</u> 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-appellant Joseph Gheiti ma kienx gie misjub hati tal-akkuzi kollha dedotti kontra tieghu ghaliex ma nstabx hati w gie liberat mit-tieni u mit-tielet imputazzjoni, huwa kellu fl-ewwel lok jitlob <u>r-riforma</u> tas-sentenza appellata.

Ghalhekk tiddikjara l-appell ta' Joseph Gheiti null u tastjeni milli tiehu konjizzjoni ulterjuri tieghu. L-appelli taz-zewg appellanti l-ohra jiehdu l-kors normali taghhom.

< Sentenza Finali >

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