MALTA

QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI

MAGISTRAT DR.
LAURENCE QUINTANO

Seduta tas-17 ta' Ottubru, 2008

Numru 5/2008

Il-Pulizija

Versus

Francis Saliba

Il-Qorti

Rat l-imputazzjoni kontra Francis Saliba ta’ 44 sena bin Joseph u Pacifica nee Vassallo mwieled u joqgħod ‘Vicky’ Britannia Street Mosta.

Akkużat talli f’dawn il-Gżejjer f’dawn l-aħħar xhur naqas li jikkonforma ruħu mas-sentenza mogħtija lilu mill-Qorti Kriminali ta’ l-Appell fl-24 t’Awissu 1977 fejn instab ħati skond l-akkuża u kien imwaħħal Lm50 (€116.47) multa u mogħti xahrejn żmien biex jikkonforma ruħu mal-liġi taħt penali ta’ Lm25 (€59.40) jum fin-nuqqas.

Il-Qorti ntalbet li tikkundanna lill-imsemmi Francis Saliba jħallas is-somma ta’ Lm2450 (€5708) bħala penali mill-25 t’Ottubru 1997 sat-30 ta’ Jannar 1978 salva l-penali għan-nuqqas ulterjuri.

Rat is-sentenza ta’ l-24 t’Awissu 1977, fejn peress li l-imputat irrinunzja għall-appell, il-Qorti ta’ l-Appell Kriminali ma ħaditx aktar konjizzjoni ta’ l-appell dwar is-sejbien ta’ ħtija, piena u penali u rriformat is-sentenza biss billi biddlet it-terminu konċess lill-imputat.

Rat il-verbal li fih kienet infurmata mill-Avukat Difensur li kienu qed isiru applikazzjonijiet biex il-pożizzjoni tkun regolarizzata.

Rat il-verbal tat-23 t’April 2007 u semgħet lill-Assistant Reġistratur li kien ikkonferma li s-sentenza ta’ l-24 t’Awissu 1977 kienet ingħatat mill-Qorti ta’ l-Appell Kriminali.

Semgħet lil Anthony Baldacchino jixhed li r-ritratt li kien qed jirpreżenta kien jgħodd għall-każi tal-boathouses kollha biex juru f’liema stat kienu sa xahar u nofs qabel is-27 ta’ Ġunju 2006

Isegwi li sa din id-data l-bini kien għadu mhxu konformi mas s-entenza msemmija aktar ‘il fuq.

Semgħet ix-xhieda ta’ Anthony Baldacchino li kkonferma li kien ħareġ il-permess PA 05818/2004 fuq Francis Saliba. (Ara Dok.PAB kif ukoll id-depożizzjoni ta’ Anthony Baldacchino tat-23 t’April, 2007).
Ikkonsidrat

Illi s-sanazzjoni tal-bini ma jfissirx li ma kinitx inksiret l-ordni tal-Qorti mogħtija fis-sentenza ta’ l-24 t’Awwissu 1977.

Rat il-Full Development Permission /01 bid-data tat-1 ta’ Marzu 2007 li fih kien sanzjonat il-bini ta’ 16 Triq tax-Xtut San Pawl il-Baħar.

Il-permess li nħareġ jgħid hekk:

‘The permission is subject to a planning gain to the value of Lm1000 (one thousand Malta Liri (€2330) towards MEPA’s Environmental Initiatives Partnership Programme. The funds raised from the planning gain shall be used to fund environmental improvements in the locality of the site.’.

Semgħet it-trattazzjoni tal-partijiet b’mod partikolari fuq l-insistenza tad-difiża li diġa’ tħallas il-Planning Gain li d-difiża tqis bħala multa amministrattiva u li għalhekk m’għandhiex titħallas multa oħra minħabba l-prinċipju ta’ ‘ne bis in idem’.

Iżda l-Prosekuzzjoni ssottomettiet li

(a) il-Bank Guarantee illum qed ikun impost across the board u mhux għal dawn il-każi biss;

(b) La l-applikazzjoni hija sanatorja, dan ifisser li hemm xi ħaġa li mhux sewwa ;

(ċ) li l-imputat m’għaddiex proċeduri darbtejn;

(d) li l-Mepa ma aġixxietx taħt l-artikolu 58 tal-Kap 356;

(e) Mingħajr l-impożizzjoni tal-Planning Gain ma setax jinħareġ il-permess;

(f) Li l-miżura li ħadet il-Mepa hija waħda purament amminstrattiva.

Ikkonsidrat

Li l-ewwelnett minkejja li ċ-ċitazzjoni tablet li jibqgħu jitħallsu penali għall-perjodu oltre it-30 ta’ Jannar 1978, dan fuq skorta ta’ sentenza mogħtija mill-Qorti ta’ l-Appell Kriminali ma jistax isir għaliex għal dan il-perjodu jinħtieġ li ssir ċitazzjoni oħra.

Li bla dubju ta’ xejn il-pożizzjoni ta’ l-imputat ma kenitx regolari u dan joħroġ mis-sentenza hawn fuq ċitata kif ukoll mill-istess applikazzjoni biex ikun sanat il-permess.

Li l-pożizzjoni legali dwar in-ne bis in idem kif toħroġ mill-każistika tal-Qorti tal-Appell Kriminali hija s-segwenti:

(a) Meta fatt jivvola aktar minn provvediment wieħed tal-Liġi

Illi jista’ jiġri li l-istess fatt jista’ jivvjola aktar minn provvediment wieħed tal-liġi u għalhekk jista’ joħloq diversi raġunijiet għall-inkriminazzjoni. X’inhu fatt kien spjegat fil-każ ‘Rex versus Rosaria Portelli’ fil-każ deċiż fit-23 ta’ Frar, 1904 (Vol.XIX.P.IV p1). Il-Qorti kienet qalet hekk:

‘La legge intende il fatto principale in quanto meritevole di pena, o come altri si espresse non intende semplicemente il fatto storico o naturale nei suoi diversi momenti ma il fatto giuridco nel suo complesso,’

Dwar dan il-Professur Mamo fin-Noti tiegħu dawar il-Proċedura (paġina 45) jgħid hekk:

‘ In any such case if the agent is tried for any one of the several violations of the law arising out of that fact, be it even the least serious, and a judgement is given, it shall not be lawful to subject the agent to another trial for the more serious violations.
This principle, first expressly affirmed in ‘Rex versus Rosaria Portelli’ has now become settled law.’

Fil-fatt fit-2 ta’ Diċembru, 1939, l-Imħallef Harding fil-każ ‘Camilleri versus Cilia’
Kien qal li huwa prinċipju stabbilit fil-ġurisprudenza tagħna li meta mill-istess fatt, mibni fuq l-istess intenzjoni, jinkisru żewġ drittijiet jew aktar, m’hemmx pluralita’ ta’ offiżi iżda offiża waħda bil-vjolazzjoni li jkunu iżgħar jkunu assorbiti fil-vjolazzjoni l-aktar serja. U jekk persuna tkun iġġudikata għal waħda mill-vjolazzjonijiet u jkun meħlus jew jinsab

ħati, is-sentenza iżżomm kull prosekuzzjoni ġdida li tista' ssir għal kull vjolazzjoni oħra, ukoll jekk il-vjolazzjoni li jkun tressaq fuqha l-ewwel darba tkun l-anqas waħda serja.

Id-difiża għamlet referenza wkoll għall-każ 'Rex versus Agatha Mifsud et' tal-15 ta' Ġunju, 1918 (VolXXIII. Part I p.1077), każ li huwa kkwotat ukoll mill-Professur Mamo f'paġina 44 ta' l-istess Noti ċitati. Il-Qorti kienet qalet hekk:

'L'eccezione sollevata dagli accusati ed accolta dalla Corte si fonda sul motivo che I fatti esposti nell'odierno atto di accusa per corruzione di minorenni sono quelli stessi che furono addotti in un precedente giudizio per adulertio pel quale furono processati e liberati.' Lejn it-tmiem tas-sentenza l-Qorti ikkwotat b'approvazzjoni dak li qalet il-High Court Ingliża f'Regina versus Miles' u qalet hekk:

'No doubt it seems a little startling that a conviction for a common assault should afford an answer to a subsequent indictment for that same assault, upon conclusive evidence that it was accompanied by an intent to murder; but reason and good sense point out that, even at the risk of occasional miscarriages of justice when once a criminal charge has been adjudicated upon by a Court having jurisdiction, that adjucative ought to be final…….'

(b) Mill-każistika tal-Qorti Kostituzzjonali.

F'dan il-kamp żewġ deċiżjonijiet tal-Qorti Kostituzzjonali huma relevanti:

(i) Il-Pulizija (Spettur Angelo Caurana) versus Anthony Zammit, John Woods u Ahmed Esawi Mohamed Fakri ta' l-10 ta' Jannar 2005; u

(ii) Il-Pulizija (Spettur Jesmond Borg) versus Kevin Gatt tal-15 t'April, 2008

Fl-ewwel waħda l-Qorti Kostituzzjonali kienet sabet possibilita' ta' ksur tal-prinċipju 'ne bis in idem' minħabba li l-imputati kienu diġa' tilfu r-remission mill-perjodu ta' priġunerija tagħhom u allura, jekk jgħaddu proċeduri oħra quddiem il-Qorti, kien ikun qed jinkiser il-prinċipju msemmi. F'din id-deċiżjoni l-Qorti Kostituzzjonali kienet iffokat fuq il-kwistjoni jekk il-proċeduri li l-imputati kienu għaddew quddiem l-Awtoritajiet fil-Faċilita' Korrettiva ta' Kordin kinux proċeduri kriminali jew le. Il-Qorti ddeċidiet li dawn kienu proċeduri kriminali u qieset 'il-loss of remission' bħala piena kriminali.

Fil-kawża 'Il-Pulizija versus Kevin Gatt' il-Qorti Kostituzzjonali eżaminat jekk il-Kummissarju tal-Pulizija, wara li jkun ressaq persuna fuq ksur tal-kundizzjonijiet tal-liberta' proviżżorja u dan kien punit, setax jibda proċediment ieħor billi jitlob espressament għat-telfien tal-liberta' provviżorja għaliex fl-ewwel rikors kien għamel talba waħda. Il-Qorti Kostituzzjonali wkoll sabet li t-tieni proċedura tikser il-prinċipju ta' 'ne bis in idem'.[1]

(ċ) Mill-Każistika tal-Qorti Ewropea Dwar id-Drittijiet tal-Bniedem

Mid-deċiżjonijiet tal-Qorti Ewropea dwar id-Drittijiet tal-Bniedem il-Qorti qed tirreferi għal dawn id-deċiżjonijiet:

Ponsetti and Chesnel versus France – Deċiżjoni ta' l-14 ta' Settembru 1999 fejn rikors li kien jallega ksur tal-priċinċipju tan-ne bis in idem għaliex kien hemm sanzjonijiet amministrattivi kif ukoll kriminali minħabba li r-

[1] Barra dawn iż-żewġ deċiżjonijiet, il-problema kienet mistħarrġa mill-Prim'Awla tal-Qorti Ċivili f'sentneza mogħtija fl-10 ta' Mejju 1990 mill-Imħallef il-Professur Victor Borg Costanzi fl-ismijiet 'John Gauci versus Kummissarju tat-Taxxi Interni et' fejn il-Qorti kienet qalet hekk:

'Id-dritt taħt l-artikolu 39(9) tal-Kostituzzjoni jista' jinkiser biss jekk wara lit kun ingħatat sentenza penali li fiha jkun ġie dikjarat li l-akkużat diġa' għadda porċeduri kriminali għal dak l-istess reat quddiem Qorti kompetenti, huwa jerġa' jiġi espost għal proċeduri kriminali oħra dwar dak l-istess reat li għalih ikun ġa' ġie misjub ħati jew li minnu jkun ġie liberat.

L-eċċezzjoni ta' nebis in idem għandha tiġi mistħarrġa u deċiża mill-Qorti li quddiemha jinġieb l-akkużat u wara, jekk ikun il-każ, il-Qorti ta' l-Appell Kriminali.

rikorrent ma kienx mela d-dikjarazzjonijiet tat-taxxa **kien dikjarat mhux ammissibbli**.

Isaksen versus Norway – fejn kien hemm kundanna minħabba frodi tat-taxxa kif ukoll impożizzjoni tat-tax surcharge **kien dikjarat mhux ammissibbli**. (Deċiżjoni tat-2 t'Ottubru 2003)

Nilsson versus Sweden – Deċiżjoni tat-13 ta' Diċembru 2005 fejn instab li kien hemm konnessjoni qawwija bejn il-kundanna tar-rikorrent minħabba offiżi tat-traffiku u s-sospensjoni tal-liċenżja tas-sewqan għal tmintax-il xahar u **għalhekk ir-rikors kien dikjarat mhux ammissibbli.**

Storbraten versus Norway (12277/04) u Mjelde versus Norway (11143/04) fejn kien hemm kundanna kriminali għall-offiżi dwar falliment wara li kienu nħarġu ordinijiet li bihom ir-rikorrenti kien skwalifikati milli jifformaw il-kumpaniji jew li jkunu diretturi u għalhekk ir-rikorrenti allegaw ksur ta' dan il-prinċipju. **Dan il-każ kien ukoll dikjarat inammissibbli.**

U fl-aħħar il-każ 'Franz Fischer versus Austria' fejn jinħtieġ li jingħataw aktar dettalji. Il-Qorti qed tipproduċi l-aktar siltiet importanti:

'THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. On 6 June 1996, the applicant, whilst driving under the influence of drink, knocked down a cyclist who was fatally injured. After hitting the cyclist, the applicant drove off without stopping to give assistance and only gave himself up to the police later that night.

8. On 13 December 1996, the St. Pölten District Administrative Authority (*Bezirkshauptmannschaft*), finding the applicant guilty of a number of road traffic offences, ordered him to pay a fine of 22,010 Austrian schillings (ATS) with twenty days' imprisonment in default. This sentence included a fine of ATS 9,000 with nine days' imprisonment in default imposed for driving under

the influence of drink, contrary to sections 5 (1) and 99 (1)(a) of the Road Traffic Act 1960 (*Straßenverkehrsordnung*).

9. On 18 March 1997 the St. Pölten Regional Court (*Landesgericht*) convicted the applicant under Article 81 § 2 of the Criminal Code (*Strafgesetzbuch*) of causing death by negligence "after allowing himself ... to become intoxicated ... through the consumption of alcohol, but not to an extent which exclude[d] his responsibility ...", and sentenced him to six months' imprisonment.

Omissis

ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL NO. 7 TO THE CONVENTION

20. The applicant alleged a violation of Article 4 of Protocol No. 7 which, so far as relevant provides as follows:

"1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State."

The applicant contended that he was punished twice for driving under the influence of drink, first by the District Administrative Authority under sections 5 (1) and 99 (1)(a) of the Road Traffic Act and, secondly, by the Regional Court, which found that the special circumstance of section 81 § 2 of the Criminal Code applied. In the applicant's view, the conviction by the criminal courts in its entirety, or at least the fact that the conviction was not limited to Article 80 of the Criminal Code, but also extended to Article 81 § 2, infringed Article 4 of Protocol No. 7. The applicant maintained that the present case was not comparable to the Oliveira v. Switzerland case (judgment of 30 July 1998, *Reports of Judgments and Decisions* 1998-V) as in that case the criminal courts had

quashed the fine imposed by the police magistrate and stated that, if the fine had already been paid, it was to be deducted from the second fine. However, in his case two sentences were actually imposed.

Omissis

22. The Court recalls that the aim of Article 4 of Protocol No. 7 is to prohibit the repetition of criminal proceedings that have been concluded by a final decision (see the Gradinger judgment cited above, p. 65, § 53).

23. As the Government pointed out, the Court's approach in the Gradinger and Oliveira judgments in order to determine whether the respective applicants were tried or punished again "for an offence for which [they had] already been finally acquitted or convicted" appears somewhat contradictory. The Court recalls that in each case two sets of proceedings arose out of one traffic accident. In the Gradinger case, the applicant was first convicted by the criminal courts for causing death by negligence, but acquitted of the special element under Article 81 § 2 of "allowing himself to become intoxicated", where there was an irrebuttable presumption of intoxication with a blood alcohol level of 0.8 grams per litre. He was then convicted by the administrative authorities of driving "a vehicle under the influence of drink" contrary to sections 5 (1) and 99 (1)(a) of the Road Traffic Act, where the influence of drink is deemed present with a blood alcohol level of 0.8 grams per litre.

In the Oliveira case, the applicant was first convicted by the police magistrate for failing to control her vehicle as she had not adapted her speed to the road conditions. Subsequently, she was convicted by the criminal courts of causing physical injury by negligence.

24. In the Gradinger case the Court, while emphasising that the offences at issue differed in nature and aim, found a violation of Article 4 of Protocol No. 7 as both decisions were based on the same conduct (ibid., §§ 54-55). In the Oliveira case it found no violation of this provision,

considering that it presented a typical example of a single act constituting various offences (*concours idéal d'infractions*) which did not infringe Article 4 of Protocol No. 7, since that provision only prohibited people being tried twice for the same offence (see the Oliveira judgment, previously cited, p. 1998, § 26).

25. The Court observes that the wording of Article 4 of Protocol No. 7 does not refer to "the same offence" but rather to trial and punishment "again" for an offence for which the applicant has already been finally acquitted or convicted. Thus, while it is true that the mere fact that a single act constitutes more than one offence is not contrary to this Article, the Court must not limit itself to finding that an applicant was, on the basis of one act, tried or punished for nominally different offences. The Court, like the Austrian Constitutional Court, notes that there are cases where one act, at first sight, appears to constitute more than one offence, whereas a closer examination shows that only one offence should be prosecuted because it encompasses all the wrongs contained in the others (see paragraph 14 above). An obvious example would be an act which constitutes two offences, one of which contains precisely the same elements as the other plus an additional one. There may be other cases where the offences only slightly overlap. Thus, where different offences based on one act are prosecuted consecutively, one after the final decision of the other, the Court has to examine whether or not such offences have the same essential elements.

26. This view is supported by the decision in the case of *Ponsetti and Chesnel v. France* (nos. 36855/97 and 41731/98 ECHR 1999-VI, [14.9.99]), relating to separate convictions for two tax offences arising out of the failure to submit a tax declaration, where the respondent Government also argued that this was an example of one act constituting more than one offence. Nevertheless, the Court examined whether the offences in question differed in their essential elements.

27. It can also be argued that this is what distinguishes the Gradinger case from the Oliveira case. In the Gradinger case the essential elements of the administrative offence of drunken driving did not differ from those constituting the special circumstances of Article 81 § 2 of the Criminal Code, namely driving a vehicle while having a blood alcohol level of 0.8 grams per litre or more. However, there was no such obvious overlap of the essential elements of the offences at issue in the Oliveira case.

28. In the present case, the applicant was first convicted by the administrative authority for drunken driving under sections 5 (1) and 99 (1)(a) of the Road Traffic Act. In subsequent criminal proceedings he was convicted of causing death by negligence with the special element under Article 81 § 2 of the Criminal Code of “allowing himself to become intoxicated”. The Court notes that there are two differences between the Gradinger case and the present: the proceedings were conducted in reverse order and there was no inconsistency between the factual assessment of the administrative authority and the criminal courts, as both found that the applicant had a blood alcohol level above 0.8 grams per litre.

29. However, the Court considers that these differences are not decisive. As said above, the question whether or not the *non bis in idem* principle is violated concerns the relationship between the two offences at issue and can, therefore, not depend on the order in which the respective proceedings are conducted. As regards the fact that Mr Gradinger was acquitted of the special element under Article 81 § 2 of the Criminal Code but convicted of drunken driving, whereas the present applicant was convicted of both offences, the Court repeats that Article 4 of Protocol No. 7 is not confined to the right not to be punished twice but extends to the right not to be tried twice. What is decisive in the present case is that, on the basis of one act, the applicant was tried and punished twice, since the administrative offence of drunken driving under sections 5 (1) and 99 (1)(a) of the Road Traffic Act, and the special circumstances under Article 81 § 2 of the

Criminal Code, as interpreted by the courts, do not differ in their essential elements.

30. The Court is not convinced by the Government's argument that the case was resolved due to the reduction of the applicant's prison term by one month, being equivalent to the fine paid in the administrative proceedings. The reduction of the prison term by virtue of the Federal President's prerogative of pardons cannot alter the above finding that the applicant was tried twice for essentially the same offence, and the fact that both his convictions stand.

The Court therefore rejects the Government's preliminary objection based on the same argument.

31. Finally, the Court observes that, in a case like the present, the Contracting State remains free to regulate which of the two offences shall be prosecuted. It further notes that the legal situation in Austria has changed following the Constitutional Court's judgment of 5 December 1996, so that nowadays the administrative offence of drunken driving under sections 5 (1) and 99 (1)(a) of the Road Traffic Act will not be pursued if the facts also reveal the special elements of the offence under Article 81 § 2 of the Criminal Code.

However, at the material time, the applicant was tried and punished for both offences containing the same essential elements.

32. There has, thus, been a violation of Article 4 of Protocol No. 7.'

Ikkonsidrat

Li ħafna mill-każistika kemm ta' Malta kif ukoll ta' barra aktar iddur dwar proċeduri doppji jew jekk 'il-piena' jew kastig mogħti kienx ta' natura kriminali. Xi deċiżjonijiet tal-Qorti Ewropea Dwar id-Drittijiet tal-Bniedem kienu saħansitra kkritikati għax dehru kontradittorji. (Dwar dan ara; John A.E.Vervaele fl-Utrecht Law Review Volum 1

Issue Number 2 (December) 2005 http://www.utrechtlawreview.org/page102).

Il-Qorti rreferiet fit-tul għaliex dan kien każ ta' piena amministrattiva għax kienet mogħtija minn St.Polten District Administrative Authority kif ukoll piena kriminali għax kienet mogħtija mis-St.Polten Regional Court.

Il-Qorti tara differenza netta bejn dejn id-deċiżjoni u l-każ odjern fejn wieħed la jista' jgħid li l-imputat għadda minn xi forma ta' proċeduri ġudizzjarji quddiem il-Mepa u lanqas jista' wieħed jgħid li kien jista' jinkorri xi piena serja karċerarja jew pekunjarja. Il-Mepa ma kinitx qed taġixxi taħt l-artikolu 58 tal-Kap 356 u li kieku l-imputat m' għamilx l-applikazzjoni biex il-bini mtella' mhux skond il-liġi jiġi sanat ma kienx qed jistenna li l-Mepa, bħala enti amministrattiva, kienet ser tagħmel xi ħaġa.

L-imputat ħallas il-'planning gain' minn jeddu u mhux ikun sfurzat. Il-liġi kriminali minnha nnifisha bil-fors iġġorr xi forma ta' sanzjoni kif dejjem kien tenut fil-filosofija tad-dritt. Il-Qorti ma tistax tqis bħal piena dak li wieħed iħallas għax irid biex ikun jista' jżomm il-bini kif ittella'. Din kienet għażla ta' l-imputat filwaqt li fil-każistika eżaminata ħadd mir-rikorrenti ma kellu din ix-xelta. Huwa sinifikanti wkoll li mhux bil-fors li kull pass li tieħu enti amministrattiva jista' joħloq is-sitwazzjoni tal-prinċipju eżaminat. Dan jidher sew mill-każistika tal-Qorti Ewropea dwar id-Drittijiet tal-Bniedem.

Għalhekk il-Qorti qed tqis li l-imputat la għadda xi proċeduri quddiem il-Mepa. Il-Planning Gain mhix piena penali. Isegwi lidawn il-proċeduri bl-ebda mod ma jammontaw għall-ksur tal-prinċipju ne bis in idem kif sanċit bl-artikolu 527 tal-Kap 9. Ara wkoll l-ewwel footnote u r-riferenza għall-kawża fl-ismijiet 'John Gauci versus Kummissarju tat-Taxxi Interni et'.[2]

[2] Barra din id-deċiżjoni hemm ukoll dawk mogħtija mill-Qorti ta' l-Appell Kriminali :
(i) 23 ta' Mejju 1993: Il-Pulizija versus Eugenio Said fejn intqal li meta tingħata l-eċċezzjoni ta' ne bis in idem l-ewwel ħaġa li għandha ssir hi li tiħi infilzata fil-proċess kopja legali tas-sentenza li fuqha qed tiġi bbażata dik l-eċċezzjoni u għandu jirriżulta

Il-Qorti kkonsidrat ukoll is-sentenza ppreżentata mid-Difiża (Dok MF)(document li kellu jgħodd għad-diversi kawżi dwar bini fl-istess nħawi) fl-ismijiet 'Il-Pulizija (Spettur Joseph Agius) versus Joseph Galea' tat-23 t'Ottubru 2006 mogħtija mill-Qorti tal-Maġistrati (Malta) Bħala Qorti ta' Ġudikatura Kriminali kif diversament preseduta. Id-Difiża ppreżentat din is-sentenza minħabba li fiha tidher din il-frażi:

'Illi inoltre ebda uffiċjal tal-Pulizija ma identifika lill-imputat'.

Din il-Qorti kif preseduta diġa' indigat din it-tip ta' sottomissjoni u ma qablitx magħha stante li f'każi ta' nuqqas ta' konformita' ma sentenza li ordna it-twaqqigħ ta' bini ebda forma ta' identifikazzjoni m'hija neċessarja għaliex hawn mhux każ ta' reċidiva.

L-istess punt tqajjem quddiem il-Qorti ta' l-Appell Kriminali. Dan kien irtirat mid-difiża, iżda l-Qorti ta' l-Appell Kriminali xorta kkonsidratu u qalet li din is-sottomissjoni mhix aċċettabbli f'dawn it-tip ta' każi.

Konklużjoni

Il-Qorti, wara li rat l-artikolu 63(2)(i)(ii) ta' l-Att I ta' l-1992, l-artikolu 17(3) tal-Kap 10 kif kien fiż-żmien fil-perjodu indikat fiċ-ċitazzjoni – jiġifieri sat-30 ta' Jannar 1978, issib lill-imputat ħati li naqas li jikkonforma ruħu mas-sentenza ta' l-24 t'Awwissu 1997 u għalhekk qed tikkundannah iħallas is-somma ta' Lm2450 (€5708) bħala penali mill-25 t'Ottubru 1977 sat-20 ta' Jannar 1978 biss u mhux oltre.[3]

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mill-korp tas-sentenza l-apprezzament ta' l-Ewwel Qorti biex waslet għall-konklużjoni li takkolji dik l-eċċezzjoni.

(ii) 1 ta' Lulju 1994: L-Imħallef Dr.Vincent de Geatano 'Il-Pulizija vs Sandro Psaila' fejn intqal li sentenza in parte mogħtija fl-istess proċess a rigward ta' akkuża waħda jew aktar, li biha l-azzjoni kriminali dwar l-akkuża jew dawk l-akkużi tiġi dikjarata preskritta ma ġġibx bħala konsegwenza l-ostakolu kkontemplat fl-artikolu 527.

[3] Ara wkoll Saliba versus Malta fejn il-Qorti ta' l-Appell Kriminali kienet laqgħet l-eċċezzjoni ta' ne bis in idem iżda xorta ordnat lill-imputat iwaqqa' l-bini in kwistjoni. Il-

MAĠISTRAT

< Sentenza Finali >

----------TMIEM----------

Qorti Ewropea dwar id-Drittijiet tal-Bniedem stħarrġet dan il-każ mill-punto da vista ta’ l-Ewwel Artikolu ta’ l-Ewwel Protokoll- id-Dritt għall-Propjeta’ u ma sebat ebda vjolazzjoni.