MALTA

QORTI TA' L-APPELL KRIMINALI

ONOR. IMHALLEF
JOSEPH GALEA DEBONO

Seduta tas-26 ta' Marzu, 2009

Appell Kriminali Numru. 389/2008

Il-Pulizija
(Spt. A. Gafa')
Vs
Leonard Cachia

Il-Qorti,

Rat l-akkuza dedotta kontra l-appellant quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli f'dawn il-Gzejjer, f'diversi xhur fis-sena 2006 u fis-snin ta' qabel, b'diversi atti maghmulin fi zminijiet differenti li jiksru l-istess disposizzjoni tal-Ligi w li gew maghmula b'rizoluzzjoni wahda, kkorrompa lil Patrick Spiteri, Supratendent tal-Pulizija Esekuttiva;

Fl-istess perjodu, lok u cirkostanzi, wieghed, ta jew offra, sew b'mod dirett jew indirett, xi vantagg mhux xieraq lil Patrick Spiteri, Supratendent tal-Pulizija Esekuttiva, li asserixxa jew ikkonferma li kien kapaci jaghmel xi influwenza mhux xierqa fuq il-mod kif jiddeciedu ufficjali

tal-Pulizija, sabiex gieghel lil Patrick Spiteri jezercita' dik l-influwenza;

Fl-istess perjodu, lok u cirkostanzi, ghamel lottu klandestin jew gabar il-flus tal-gugati fuqu jew b'xi mod ghin jew hajjar f'daqshekk;

Fl-istess perjodu, lok u cirkostanzi, ghamilha ta' ricevitur ta' gugati tal-lottu meta ma kienx awtorizzat ghal daqshekk mill-Ministru responsabbli ghall-Finanzi;

Fl-istess perjodu, lok u cirkostanzi, biegh jew offra ghall-bejgh biljetti tal-lottu pubbliku minn postijiet mhux licenzjati ghal dan il-ghan.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali tal-15 ta' Dicembru, 2008, li biha, wara li rat l-artikoli 17(h), 18, 43, 115(c), 120 tal-Kapitolu 9 tal-Ligijiet ta' Malta w l-artikoli 12(2), 13 u 14(1)(2) tal-Kapitolu 70 tal-Ligijiet ta' Malta, filwaqt li lliberat lill-appellant mit-tieni akkuza migjuba fil-konfront tieghu, sabitu hati tal-kumplament ta' l-akkuzi w ikkundannatu ghal perjodu ta' tmintax-il xahar prigunerija, kif ukoll ghall-hlas ta' multa ta' elfejn u hames mitt Euro (€2500).

Rat ir-rikors tal-appellant minnu pprezentat fl-24 ta' Dicembru, 2008, li bih talab li din il-Qorti joghgobha tirriforma s-sentenza appellata billi tikkonferma l-parti fejn illiberat lill-appellant mit-tieni akkuza fil-konfront tieghu, w thassar u tirrevoka l-parti tas-sentenza fejn sabitu hati ta' l-ewwel, it-tielet, ir-raba' w il-hames akkuza w, fin-nuqqas, fir-rigward tal-piena, tirriforma s-sentenza billi tapplika sentenza ta' habs sospiza w mhux wahda ta' prigunerija effettiva.

Fliet l-atti kollha processwali.

Rat il-fedina penali aggornata tal-appellant esebita mill-prosekuzzjoni fuq ordni tal-Qorti.

Rat il-verbal registrat fl-udjenza tad-29 ta' Jannar, 2009, li bih Dr. Angelo Farrugia, ghall-appellant irtira l-aggravji

kollha hlief is-sitt aggravju dwar il-piena w iddikjara li l-appellant ma kienx qed jikkontesta l-piena pekunjarja li nghatat fuq l-akkuzi ghal-lottu.

Rat li dan is-sitt aggravju dwar il-piena jikkonsisti, fil-qosor, fis-segwenti w cioe' li stante l-fedina penali netta tieghu w il-fatt li hu fl-ebda mument ma kien ghamel xi avvanzi mas-Supratendent Patrick Spiteri, imma kien Gejtu Zerafa li holoq dan l-inkwiet kollu ghall-appellant u ghall-familja tieghu, l-appellant ma kellux jinghata sentenza ta' habs effettiva izda, fic-cirkostanzi, kellu jinghata piena ta' sentenza sospiza skond l-artikolu 28A tal-Kodici Kriminali.

Rat il-verbal tad-29 ta' Jannar, 2009, li bih l-Ispettur Angelo Gafa kkonferma li l-appellant irid jitressaq bhala xhud tal-prosekuzzjoni fil-kaz tal-ex-Supratendent Spiteri.

Rat li l-istess Spettur Gafa' kellu jindika b' nota sa mhux aktar tard mill-15 ta' Frar, 2009, il-pieni li nghataw fejn, dwar l-istess kaz, kien hemm akkuza simili ghall-ewwel imputazzjoni;

Semghet it-trattazzjoni;

Rat in-Nota konguntiva tal-Kummissarju tal-Pulizija w tal-Avukat Generali tal-11 ta' Frar, 2009, fejn ukoll annettew maghha kopja tas-sentenza tal-Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali fil-kawza fl-**ismijiet "Il-Pulizija vs. Alfred Galea"** deciza fis-16 t' Ottubru, 2007, li s' issa hija l-unika kawza ohra li giet definitivament deciza fir-rigward ta' dawn l-incidenti ta' korruzzjoni fejn kien involut l-ex-Supratendent Spiteri.

Ikkonsidrat;

Illi dan l-appell issa gie limitat ghall-piena biss u partikolarment ghall-piena ta' tmintax (18) il-xahar prigunerija, billi l-piena tal-multa, li ovvjament giet erogata ghat-tielet, ir-raba w l-hames imputazzjonijiet li jaqghu taht l-Ordinanza dwar il-Lottu Pubbliku, (Kap. 70 tal-Ligijiet ta' Malta), mhux qed tigi kontestata.

Illi ghar-rigward tal-aggravju dwar il-piena, mhux normali li din il-Qorti tal-Appell li tvarja d-diskrezjoni tal-Ewwel Qorti jekk il-piena erogata tkun tirrientra fil-parametri tal-ligi w ma tkunx manifestament eccessiva. Kif gie ritenut fl-Appell Kriminali (Superjuri) : "**Ir-Repubblika ta' Malta vs. Carmen Butler"** [26.2.2009]:-

"Il-Qorti tal-Appell Kriminali, bhala regola, ma tiddisturbax il-piena erogata mill-Ewwel Qorti, sakemm dik il-piena ma tkunx manifestament sproporzjonata jew sakemm ma jirrizultax li l-Ewwel Qorti tkun naqset milli taghti importanza lil xi aspett partikolari tal-kaz (u anki, possibilment, lil xi cirkostanza sussegwenti ghas-sentenza tal-Ewwel Qorti) li jkun jincidi b' mod partikolari fuq il-piena, S' intendi, 'sentencing is an art rather than a science' u wiehed ma jistax jippretendi xi precizjoni matematika jew identita' perfetta fit-tqabbil tal-fatti ta' kaz ma iehor, jew ta' piena erogata f' kaz ma dik erogata f' kaz iehor." (Ara wkoll **"Ir-Repubblika ta' Malta vs. Bernard sive Benny Attard"** [20.3.2009] App. Krim. Superjuri)".

Illi l-piena ghar-reat kontinwat ta' korruzzjoni ta' ufficjal pubbliku skond l-artikoli 115 u 120 (1) mizjuda b' zewg gradi skond l-artikolu 18 tal-Kodici Kriminali hija dik ta' prigunerija minn tlettax il-xahar sa tnax il-sena meta jkun applikabbli is-sub-inciz (c) tal-artikolu 115, u s-sub-inciz (1) tal-artikolu 120, kif hu f' dal-kaz. Ghalhekk ma hemmx dubju li l-piena karcerarja erogata taqa' sew entro l-parametri tal-ligi w hi ferm aktar vicin il-minimum milli lejn il-piena massima.

Illi mhux korrett l-appellant meta jghid li ghandu fedina penali netta. Ghalkemm id-disa' kundanni li hu ssubixxa kienu kollha konnessi mal-gestjoni tal-hanut tieghu, bhal nuqqas ta' twahhil ta' tabelli li juru l-prezzijiet, li ngombra l-bankina w li biegh bi prezz oghola minn dak iffissat u li dan hu l-ewwel reat serju li qed jinstab hati tieghu, pero' fl-istess hin hu reat serju w kontinwat fuq firxa ta' snin.

Illi ghar-rigward tal-aggravju li akkuzati ohra, processati in konnessjoni mal-korruzzjoni tal-ex-Supratendent Patrick

Spiteri, gew moghtija pieni inqas minn dak tal-appellant jigi rilevat li mit-tlitt persuni l-ohra li gew hekk akkuzati bl-istess reati taht l-artikoli 115 u 120, il-kawza ta' wiehed minnhom biss u cioe' dik ta' **Alfred Galea,** giet deciza ghax it-tnejn l-ohra ghandhom pendenti. F' dik il-kawza, Galea nstab hati fuq ammissjoni w l-Qorti meta sabitu hati w ikkundannatu ghall-piena ta' sena prigunerija sospiza ghal erba snin, hadet in konsiderazzjoni diversi fatturi. Fost dawn kien hemm l-eta' avvanzata ta' Galea, il-valur minimu ta' tixhim (LM25), l-ammissjoni bikrija w il-ko-operazzjoni shiha li Galea kien ta lill-Pulizija.

Fin-Nota konguntiva taghhom, l-Avukat Generali w il-Kummissarju tal-Pulizija, ziedu jghidu li fil-kaz ta' Galea kien hemm biss kaz ta' okkazzjoni wahda ta' korruzzjoni w li dawn il-LM25 kienu thallsu lill-ex-Supratendent Spiteri bhala ringrazzjament talli Spiteri kien ghenu f' kawza kriminali ukoll ta' loghob tal-lottu klandestin li Galea kellu ma' ufficjal iehor tal-Pulizija. Invece, f' dan il-kaz, l-appellant kien xahham lis-Supratendent Spiteri fuq medda twila ta' zmien u cioe' erba' snin fejn ghall-ewwel sentejn u nofs hu kien hallsu LM50 fix-xahar u wara LM25 fix-xahar u dan biex is-Supratendent Spiteri ma jibghatx Pulizija jispezzjonaw in-negozju tal-appellant u hu jkun hekk jista' jkompli bl-organizzazzjoni tal-loghob illecitu tieghu klandestin.

Ikkonsidrat;

Illi kif gja gie citatat aktar il-fuq f' din is-sentenza :-

'sentencing is an art rather than a science' u wiehed ma jistax jippretendi xi precizjoni matematika jew identita' perfetta fit-tqabbil tal-fatti ta' kaz ma iehor, jew ta' piena erogata f' kaz ma dik erogata f' kaz iehor."

Illi ghar-rigward tal-paraguni ma sentenzi ohra moghtija fi processi differenti, fejn ovvjament il-fatti speciji ma jkunu qatt l-istess, din il-Qorti taghmel referenza ghall-insenjament tal-Qorti tal-Appell Kriminali (kolleggjali) fis-sentenzi taghha fil-kawzi “**Ir-Repubblika ta’ Malta vs. Omissis u Brian Godfrey Bartolo”** [14.11.2002] u **“The**

Republic of Malta vs. Omissis and Perry Ingomar Toornstra" [12.6.2003], fejn fiz-zewg kazijiet gew citati b'approvazzjoni brani mill-**BLACKSTONE'S CRIMINAL PRACTICE** u minn **ARCHBOLD , "Criminal Pleading , Evidence and Practice"**, li jezaminaw x' jghidu l-Qrati Inglizi f' sitwazzjonijiet simili, biex wiehed jislet certi linji ta' gwida.

Hekk fil-**BLACKSTONE'S** 2001, (para. D22.47 p.1650) jinghid :-

"A marked difference in the sentences given to joint offenders is sometimes used as a ground of appeal by the offender receiving the heavier sentence. The approach of the Court of Appeal to such appeals has not been entirely consistent. The dominant line of authority is represented by *Stroud* (1977) 65 Cr App R 150. In his judgement in that case, Scarman LJ stated that disparity can never in itself be a sufficient ground of appeal – the question for the Court of Appeal is simply whether the sentence received by the appellant was wrong in principle or manifestly excessive . If it was not the appeal should be dismissed, even though a co-offender was, in the Court of Appeal' s view treated with undue leniency. To reduce the heavier sentence would simply result in two rather than one, over-lenient penalties. As his Lordship put it, 'The Appellant's proposition is that where you have one wrong sentence and one right sentence, this Court should produce two wrong sentences. That is a submission which this Court cannot accept.' Other similar decisions include *Brown* [1975] Crim LR 177, *Hair* [1978] Crim LR 698 and *Weekes* [1980] 74 Crim App R 161….. However, despite the above line of authority, cases continue to occur in which the Court of Appeal seems to regard disparity as at least a factor in whether or not to allow an appeal (see, for example, *Wood* (1983) 5 Cr App R (S) 381). The true position may be that, if the appealed sentence was clearly in the right band, disparity with a co-offender's sentence will be disregarded and any appeal dismissed, but where a sentence was, on any view, somewhat severe, the fact that a co-offender was more leniently dealt with may tip the scales and result in a reduction.

Most cases of disparity arise out of co-offenders being sentenced by different judges on different occasions. Where however, co-offenders are dealt with together by the same judge, the court may be more willing to allow an appeal on the basis of disparity. The question then is whether the offender sentenced more heavily has been left with ‘an understandable and burning sense of grievance’ (*Dickenson* [1977] Crim LR 303). If he has, the Court of Appeal will at least consider reducing his sentence. Even so, the prime question remains one of whether the appealed sentence was in itself too severe. Thus in *NOOY* (1982) 4 Cr App R (S) 308, appeals against terms of 18 months and nine months imposed on N and S at the same time as their almost equally culpable co-offenders received three months were dismissed. Lawton LJ said :
"There is authority for saying that if a disparity of sentence is such that appellants have a grievance, that is a factor to be taken into account. Undoubtedly, it is a factor to be taken into account, but the important factor for the court to consider is whether the sentences which were in fact passed were the right sentences.”

ARCHBOLD (2001 para. 5-174,p.571 jikkumenta hekk :-
“Where an offender has received a sentence which is not open to criticism when considered in isolation, but which is significantly more severe than has been imposed on his accomplice, and there is no reason for the differentiation, the Court of Appeal may reduce the sentence, but only if the disparity is serious. The current formulation of the test has been stated in the form of the question: “would right-thinking members of the public, with full knowledge of the relevant facts and circumstances, learning of this sentence consider that something had one wrong with the administration of justice ?” (per Lawton LJ in R. v Fawcett , 5 Cr. App. R. (S) 158 C.A.). The Court will not make comparisons with sentences passed in the Crown Courts in cases unconnected with that of the appellant (see R. v. Large, 3 Cr. App. R. (S) 80 , C.A.) <u>There is some authority for the view that disparity will be entertained as a ground of appeal only in relation to sentences passed on different offenders on the same occasion :</u> see R. v.

Stroud , 65 Cr. App. R. 150 C.A. It appears to have been ignored in more recent decisions, such as in R. v. Wood … Fawcett, ante and Broadbridge , ante. The present position seems to be that the court will entertain submissions based on disparity of sentences between offenders involved in the same case, irrespective of whether they were sentenced on the same occasion or by the same judge, so long as the test stated in Fawcett is satisfied." (sottolinear ta' din il-Qorti).

F' dan il-kaz l-unika sentenza li l-appellant jista' jipprova jelicita xi paragun maghha ma kienetx inghatat fl-istess process u lanqas mill-istess gudikant u lanqas ma nghatat fl-istess jum w din il-Qorti ma tarax li tista' taghmel paraguni ma sentenza moghtija fuq fattispecji ghal kollox differenti, kif espost fin-Nota tal-Avukat Generali w tal-Pulizija fuq imsemmija. Kif gja gie appropozitu citat aktar il quddiem f' din is-sentenza.

Inoltre din il-Qorti tara li r-reat ta' korruzzjoni ta' ufficjali pubblici hu wiehed ferm serju li jimmina l-fiducja tac-cittadini onesti fl-amministrazzjoni w meta, kif inhu f' dan il-kaz, il-korruzzjoni tkun ta' ufficjali tal-Pulizija, biex huma ma japplikawx il-ligijiet tal-pajjiz fil-konfront tal-korruttur, dan ir-reat jassumi gravita' aktar serja ghax jimmina il-percezzjoni tal-istess gustizzja da parti tac-cittadin onest. Kif qalet gustament l-Ewwel Qorti fis-sentenza appellata:-

"……illi membri fil-Korp tal-Pulizija li jaccettaw kwalunkwe tip ta' korruzzjoni ghandhom jigu kundannati bis-shih, madankollu, dawk in-nies illi jaslu sabiex jikkorrompu dawn l-ufficjali pubblici ghandhom jigu kundannati bl-istess mod u dan sabiex hadd ma jazzarda jahseb illi jista' jaghmel dan sabiex ikun jista' jikser il-ligi minghajr ebda xkiel!"

u aktar 'l isfel fl-istess sentenza l-Ewwel Qorti tkompli tghid:-

"Il-Korp tal-Pulizija ghandu jkun il-gwardjan tas-socjeta' u ghandu jkun fih nies ta' integrita' morali soda u nies ta' kuragg u ta' ezempju. Ic-cittadin

ghandu jhares lejn il-Korp tal-Pulizija sabiex isib l-appogg kollu mehtieg meta huwa jkun il-vittma ta' xi reat. Ghalhekk m' ghandu qatt ikun hemm nies fis-socjeta' li jazzardaw jahsbu li permezz tal-flus huma jistghu b' xi mod jixtru bil-flus il-poter li l-Istat jaghti lill-Pulizija Ezekuttiva u dan bil-ghan li jaharbu mid-dettami tal-ligi li qeghdha hemm biex tara illi l-ordni tirrenja fis-socjeta'. Dawn it-tip ta' reati ghandhom jigu kundannati bis-shih …F' dawn ic-cirkostanzi il-Qorti ma tistax hlief tikkundanna lill-imputat ghal piena karcerarja effettiva"

Din il-Qorti ma tistax tesprimi b' mod ahjar il-hsieb tal-Ewwel Qorti w qed taddottah u taghmlu taghha. Hu minnu li f' dawn l-ahhar snin dar-reat donnu gie zvalutat u f' socjeta' fejn xejn mhu xejn, ta' sikwiet jinghataw pieni leggeri ghalih jew provvedimenti bhal dawk taht l-artikolu 28A jew taht il-Kap. 446, pero' wasal iz-zmien li l-Qrati ta' gurisdizzjoni kriminali f' kull livell jergghu jibdew iharsu lejn dawn it-tip ta' reati bis-serjeta' li timmerithom.

Umbaghad, ghar-rigward tas-sottomissjoni li l-appellant mistenni jkun xhud fil-process kontra Spiteri, wara kollox, ma hemm ebda garanzija li jekk l-appellant jigi moghti sentenza ta' prigunerija sospiza kif qed jitlob, ser jixhed il-verita' fil-process kontra l-ex-Supratendent Patrick Spiteri, specjalment jekk jerga' jirrepeti l-versjoni guramentata li ta quddiem l-Ewwel Qorti w li l-istess Qorti ccensurat u skartat bhala invenzjoni ta' ***"storja ghal kollox inverosimili sabiex jiskolpa ruhu".***

Il-fatt li imputat jista' fil-futur jigi imsejjah biex jixhed kontra ko-awtur, komplici jew xi persuna li tkun involuta fl-istess reat m'ghandux necessarjament iwassal ghal xi immunita', hlief fil-kazijiet espressament imsemmija fil-ligi, e.g. l-proklama tal-President. L-aktar li wiehed jista' forsi jikkoncedi hu li jekk eventwalment jixhed il-verita' jista' jkun jimmeritah xi forma ta' temperament billi l-piena ma tinghatax fil-massmu taghha. (Ara: **"Ir-Repubblika ta' Malta vs. Bernard sive Benny Attard"** fuq citata w **"Ir-Repubblika ta' Malta vs. Domenic Bonnici)".** F' dan il-kaz il-piena karcerarja ta' tmintax il-xahar prigunerija hija

ferm u ferm inqas mill-piena massima possibbli ta' tnax il-sena prigunerija.

Ghalhekk ma tarax li hemm raguni biex tiddisturba d-diskrezjoni tal-Ewwel Qorti fl-erogazzjoni tal-piena li hi manifestament ferm eqreb lejn il-minimu ta' sena milli lejn il-massimu ta' tnax il-sena.

Ghal dawn il-motivi din il-Qorti qed tichad l-appell u tikkonferma s-sentenza appellata.

< Sentenza Finali >

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