MALTA

QORTI TA' L-APPELL KRIMINALI

ONOR. IMHALLEF
JOSEPH GALEA DEBONO

Seduta ta' l-24 ta' Settembru, 2009

Appell Kriminali Numru. 187/2009

Il-Pulizija
(Spt. Paul Vassallo)
Vs
Emmanuel Bajada

Il-Qorti,

Rat l-akkuza dedotta kontra l-appellant/appellat quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti Istruttorja talli f'dawn il- Gzejjer, fit- 13 ta' Mejju 2005 u fix- xhur ta' qabel, b'diversi atti, wkoll jekk maghmulin fi zminijiet differenti izda li jiksru l- istess dispozizzjoni tal- Ligi, u li gew maghmula b'rizoluzzjoni wahda;

Ghamel atti ta' money laundering billi:

1) ikkonverta jew ittrasferixxa propjeta' meta kien jaf li dik il-propjeta' kienet direttament jew indirettament inkisbet, jew mir-rikavat ta' attivita' kriminali, ghall- iskop ta' jew skopijiet ta' habi jew wiri haga b'ohra ta' l-

origini tal- propjeta’ jew ta’ ghoti ta’ ghajnuna lil xi persuna jew persuni involuti jew koncernati f’attivita kriminali;

2) heba jew wera haga b’ohra tal-veri xorta, provenjenza, lok, dispozizzjoni, moviment ta’ jeddijiet rigward, fi jew fuq propjeta’ meta dan kien jaf li dik il- propjeta’ kienet inkisbet direttament jew indirettament minn attivita’ kriminali jew minn att jew atti ta’ partecipazzjoni f’attivita’ kriminali;

3) akkwista propjeta’ meta kien jaf li l-istess propjeta’ kienet inkisbet jew originat direttament jew indirettament minn attivita’ kriminali jew minn att jew atti ta’ partecipazzjoni f’attivita’ kriminali;

4) bir-ritensjoni minghajr skuza ragonevoli ta’ propjeta’ meta kien jaf li l- istess propjeta’ kienet inkisbet jew originat direttament jew indirettament minn attivita’ kriminali jew minn att jew atti ta’ partecipazzjoni f’attivita kriminali;

5) ittenta jaghmel il-hwejjeg jew attivitajiet illegali fuq imsemmija;

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta’ Gudikatura Kriminali tal-21 ta’ Mejju, 2009, li biha, wara li rat l-artikolu 3 tal-Att kontra l-Money Laundering tal-Kapitolu 373 u l-artikolu 18 tal-Kapitolu 9 tal-Ligijiet ta’ Malta, fuq ammissjoni, sabet lill-appellant hati w ikkundannatu terminu ta’ prigunerija ta’ sentejn sospizi ghal erba’ snin, ai termini tal-artikolu 28A tal-Kap. 9 tal-Ligijiet ta’ Malta. Ikkundannatu wkoll ghal multa ta’ hamsin elf Euro (€50,000.00).
Il-Qorti spjegat il-portata tas-sentenza lill-appellant.

Rat ir-rikors tal-appellant minnu pprezentat fid-29 ta’ Mejju, 2009, li bih talab li din il-Qorti joghgobha tirriforma s-sentenza appellata billi tikkonfermaha fil-parti fejn sabet lill-appellant hati w fil-parti fejn ikkundannatu ghal terminu ta’ prigunerija ta’ sentejn sospizi ghal erba’ snin, u tirriformaha fil-parti tas-sentenza fejn ikkundannatu ghal

multa ta' €50,000.00 u minflok tinfliggi piena aktar idoneja w li tirrispekkja l-kaz in ezami.

Rat ir-rikors tal-appellant Avukat Generali minnu pprezentat fl-4 ta' Gunju, 2009, li bih talab li din il-Qorti joghgobha tirriforma s-sentenza appellata fis-sens illi tikkonfermaha f'dik il-parti tas-sentenza fejn sabet lill-appellat hati ta' l-akkuzi migjuba kontrih u kkundannatu ghal multa ta' hamsin elf Euro (€50,000.00), u tirrevokaha f'dik il-parti fejn ikkundannat lill-appellat ghal piena ta' prigunerija ta' sentejn sospizi ghal erba' snin u minflok tinfliggi piena karcerarja skond il-ligi w tordna wkoll il-konfiska favur il-Gvern ta' Malta tal-oggetti kollha li dwarhom sar ir-reat u l-konfiska favur il-Gvern ta' Malta ta' kull flejjes jew propjeta' mobbli w immobbli ohra tal-hati.

Fliet l-atti kollha processwali.

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

Rat illi l-aggravji tal-appellant, fil-qosor, huma s-segwenti w cioe':-
Illi l-piena fil-forma ta' multa ta' Ewro 50,000 inflitta fuq l-appellant hija wahda eccessiva w sproporzjonata. Illi dak li rrikonoxxiet l-Ewwel Qorti w cioe' l-ammissjoni bikrija w il-ko-operazzjoni totali mal-Pulizija li wasslet ghal proceduri kriminali kontra terzi, ma hux rifless fil-piena. Sabiex tasal ghall-piena l-Qorti ghadha tikkonsidra l-valur tal-flus mahsula w meta tqabbel il-multa inflitta ma' dik inflitta fil-kawza **"Ir-Repubblika ta' Malta vs. Butler et."** [15.2.2008], jidher bic-car li l-piena inflitta mhix proporzjonata mar-reat. F' dal kaz l-flus mahsula mill-appellat kienu Ewro 4,192.87c mentri fil-kaz ta' Butler kienu Ewro 55,904.96c u hemm inghatat multa ferm inqas ta' Ewro 5679.34c meta fiz-zewg kazijiet inghatat l-istess piena karcerarja sospiza. L-appellant kien intitolat *"to more than the usual discount"* stante l-ammissjoni bikrija w l-informazzjoni li ta. Ghalhekk hemm lok ghal riduzzjoni fil-piena.

Rat illi l-aggravji tal-appellant Avukat Generali, fil-qosor, huma s-segwenti w cioe' :

Li l-Ewwel Qorti naqset kompletament milli taghmel apprezzament tal-ligi dwar ir-riciklagg ta' flus mahsula w milli tezamina l-elementi tar-reat fid-dawl tal-provi sabiex tkun tista' taghti piena adegwata fuq il-mertu tal-kaz kif ukoll ma applikatx procedura adegwata sabiex tkun tista' tiddetermina l-elementi tar-reat fid-dawl tal-piena. L-Ewwel Qorti strahet fuq sentenza ta' l-appell li kienet ibbazata fuq ir-riciklagg tal-flus ghalkemm il-fatti speci ta' dan il-kaz li serrhet fuqu kienu assolutament differenti w m'ghandhom x' jaqsam xejn bhala ezempju ta' piena xierqa. Lanqas indunat li dan kien appell kriminali superjuri fejn sar ezami legali w akkademiku tal-artikolu 500 (2) tal-Kodici Kriminali dwar xi tfisser "piena **imtaffija hafna"** (**unduly lenient**) u jekk is-sentenza moghtija mill-Qorti Kriminali fil-kaz ta' **Butler** kienetx piena imtaffija hafna. Skond l-artikolu 498(5) dan l-artikolu ma japplikax ghal sentenzi tal-Qorti tal-Magistrati. Illi l-Qorti tal-Appell Kriminali fil-kaz ta' **Butler** kienet ukoll iddikjarat li s-sentenza ***"kienet wahda miti"*** u l-Ewwel Qorti f' dan il-kaz imissha hadet dan in konsiderazzjoni. Terga', fil-kaz ta' **Butler,** il-gurati quddiem il-Qorti Kriminali kienu talbu l-klemenza ghax inhass li **Carmen Butler** kienet vittma ta' sitwazzjoni familjari difficli. Inoltre fis-sentenza tal-Qorti Kriminali kien hemm numru ta' konsiderazzjonijiet ohra li ma japplikawx ghall-kaz odjern. Ghalhekk L-Ewwel Qorti ma setghetx tistirieh fuqhom biex taghmel paragun ghall-piena ma dan il-kaz, fejn ir-reat addirittura jsib l-origini tieghu minn att kriminuz iehor ta' prostituzzjoni w tmexxija ta' burdell.

L-Avukat Generali ssottometta ukoll li f' dan il-kaz l-appellat kien ghamel ammissjoni bikrija ghax inqabad ***"red handed".*** Il-ko-operazzjoni li ta l-appellat ma kienetx tirrigwarda l-kaz tar-riciklagg ta' flus imma dwar kaz iehor dwar prostituzzjoni. Fil-kawza **"Ir-Repubblika ta' Malta vs. Maria Abela"** [29.3.2007] il-Qorti Kriminali, ghalkemm ukoll kien hemm ammissjoni, tat piena karcerarja. Il-fatt li l-appellat kellu proceduri ohra pendenti dwar prostituzzjoni ma kellux jimpedixxi lill-Ewwel Qorti milli tati piena korretta f' dan il-kaz. Di fatti l-artikolu 2 (b) tal-Kap.373 jiddisponi li

persuna tista' tinstab hatja separatament kemm ta' delitt ta' *money laundering* taht dak l-Att kif ukoll ta' l-attivita' kriminali sottostanti li minnha nkisbet il-proprjeta' jew ir-rikavat li fir-rigward tieghu ikun qed jigi akkuzat ta' *money laundering.* Illi kien hemm ukoll kazijiet ohra citati fir-rikors tal-appell fejn l-Ewwel Qorti, anki fuq ammissjoni, erogat piena karcerarja.

Illi it-tieni aggravju tal-appellant Avukat Generali hu li l-Ewwel Qorti naqset milli tordna l-konfiska favur il-Gvern ta' Malta ta' l-oggetti kollha li dwarhom sar ir-reat u l-konfiska ta' kull flejjes jew proprjeta' mobbli w immobbli ohra tal-hati skond ma jipprovdi l-artikolu 3(5)(a)(b)(c) tal-kapitolu 373 tal-Ligijiet ta' Malta.

Semghet it-trattazzjoni;

Ikkonsidrat;

Illi peress li z-zewg appelli jirrigwardaw il-piena erogata mill-Ewwel Qorti jigi ribadut li din il-Qorti, bhala qorti ta' revizjoni, normalment ma tiddisturbax id-diskrezzjoni ezercitata mill-Ewwel Qorti fl-applikazzjoni tal-piena, sakemm dik il-piena ma tkunx tezorbita mill-parametri tal-ligi jew ma tkunx manifestament wahda esagerata. (Ara. "**Ir-Repubblika ta' Malta vs. David Vella**" [14.6.1999] , "**Ir-Repubblika ta' Malta vs. Eleno sive Lino Bezzina**" [24.4.2003] u ohrajn.) Illi kif kellha okkazzjoni tghid din il-Qorti, dan il-principju japplika ugwalment kemm f' appelli li jsiru mill-persuna misjuba hatja, kif ukoll f' appelli intavolati mill-Avukat Generali.

Illi l-appellant Bajada jemfasizza l-fatt tal-ammissjoni bikrija fir-rikors tal-appell tieghu.

Issa din il-Qorti diversament preseduta fl-Appell Kriminali : "Il-**Pulizija vs. Emmanuel Testa"** [17.7.2002] kienet ghamlet referenza ghall-gurisprudenza in materia w qalet li:-

*"..kif gie ritenut (minn din il-Qorti kollegjalment komposta) fis-sentenza "**Ir-Repubblika ta' Malta vs. Mario***

Camilleri" *(5 ta' Lulju, 2002) l-ammissjoni bikrija mhux bil-fors jew dejjem, jew b' xi forma ta' dritt jew awtomatikament, tissarraf f' riduzzjoni fil-piena. Ir-regoli generali li ghandhom jiggwidaw lill-qrati meta jkun hemm ammissjoni gew imfissra mill-Qorti Kriminali fis-sentenza preliminari taghha tal-24 ta' Frar, 1997 , fl-ismijiet* ***"Ir-Repubbblika ta' Malta" vs. Nicholas Azzopardi",*** *u dana b'riferenza ghall-prassi tal-Qrati Inglizi. F'dik is-sentenza kienet saret riferenza ghall-BLACKSTONE'S CRIMINAL PRACTICE (Blackstone Press Limited). Din il-Qorti ser tirriproduci l-bran rilevanti mill-edizzjoni tal-2001 ta' dan il-manwal, u dana peress li hija taqbel mall-principji espressi f'dana l-bran u qed taghmlu taghha:*

"although this principle [that the length of a prison sentence is normally reduced in the light of a plea of guilty] is very well established , the extent of the appropriate 'discount' has never been fixed. In BUFFERY (1992) 14 Cr. App. R. (S) 511 Lord Taylor CJ indicated that "something in the order of one-third would very often be an appropriate discount ", but much depends on the facts of the case and the timeliness of the plea. In determining the extent of the discount, the court may have regard to the strength of the case against the offender. An offender who voluntarily surrenders to the police and admits a crime which could not otherwise be proved may be entitled to more than the usual discount (Hoult (1990) 12 Cr. App. R. (S) 180; Claydon (1993) Cr. App. R. (S) 526) and so may an offender who, as well as pleading guilty himself, has given evidence against a co-accused (Wood (1997) 1 Cr. App. R. (S) 347) and/ or given significant help to the authorities (Guy (1992) 2 Cr. App. R. (S) 24) . Where an offender has been caught red-handed and a guilty plea is inevitable, any discount may be reduced or lost (Morris (1998) 10 Cr. App. R. (S) 216; Landy (1995) 16 Cr. App. R. (S) 908). Occasionally the discount may be refused or reduced for other reasons, such as where the accused has delayed his plea in an attempt to secure a tactical advantage (Hollington (1985) 82 Cr. App. R 281; Okee (1998) 2 Cr. App. R. (S) 199 . Similarly, some or all of the discount may be lost where the offender pleads guilty but adduces a version of the

fact at odds with that put forward by the prosecution, requiring the court to conduct an inquiry into the facts (Williams (1990) 12 Cr. App. R (S) 415. The leading case in this area is COSTEN (1989) 11 Cr. App. R. (S) 182, where the Court of Appeal confirmed that the discount might be lost in any of the following circumstances: (i) where the protection of the public made it necessary that a long sentence, possibly the maximum sentence , be passed; (ii) cases of 'tactical plea' , where the offender delayed his plea until the final moment in a case where he could not hope to put up much of a defence , and (iii) where the offender had been caught red-handed and a plea of guilty was practically certain . It was also established in COSTEN that the discount may be reduced where the accused pleads guilty to specimen counts ."
F' dan il-kaz il-Prosekuzzjoni tirrileva li ladarba l-appellant Bajada kien inqabad *"red handed",* ma kellux jibbenefika minn tali riduzzjoni.

Illi l-appellant Bajada kif ukoll l-Avukat Generali jibbazaw parti mill-argumentazzjoni taghhom fuq il-paragun ma pieni li nghataw f' kazijiet ohra fejn instabet htija taht il-Kap.373. Din il-Qorti taghmel riferenza 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.) 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 : 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."

Kif irriteniet il-Qorti tal-Appell Kriminali (Kolleggjali) fil-kawza **"Ir-Repubblika ta' Malta vs. Ali Aibrahim Algaoud"** [20.5.2004] fejn l-appellant ukoll kien qed

jaghmel riferenza ghal proceduri li ma kienux konnessi mall-proceduri istitwiti kontra tieghu, l-Qorti qalet li:-
"*Fil-waqt li….. taqbel li ghandu jkun hemm proporzjonalita' u relativita' fil-pieni f' kazijiet analogi, fil-fatt kull kaz ghandu l-fattispecji tieghu.*" ghax kif gie ritenut f' "**R. v. Large",** 3 Cr. App. R. (S) 80 C.A.) : "**The Court will not make comparisons with sentences passed in the Crown Courts in cases unconnected with that of the appellant**." (ara ukoll f' dan is-sens **"Il-Pulizija vs. Salvatore Debono"** [24.6.2004] **"Il-Pulizija vs. Aaron Cassar"** [28.10.2004] u ohrajn).

Issa fil-kaz in ezami proprjament non si tratta ta' disparita' fil-piena bejn zewg ko-akkuzati fl-istess process, imma paraguni ma sentenzi ohra moghtija minn Qrati sahansitra ta' kompetenza differenti dwar kazijiet li m' ghandhom x' jaqsmu xejn ma xulxin kemm fl-entita' w l-valur tal-flus riciklati kif ukoll mac-cirkostanzi li fihom gew riciklati. Ghalhekk kull argument li sija l-appellant Bajada kif ukoll l-appellant Avukat Generali ressqu bazat fuq dawn il-paraguni ftit li xejn ireggi.

Jidher car li f' dan il-kaz l-Ewwel Qorti, ghalkemm ma hassitx li kellha tapplika piena karcerarja effettiva, w applikat il-provvedimenti tal-artikolu 28A tal-Kodici Kriminali, mill-banda l-ohra kkargat il-piena pekunjarja, li setghet taghti alternattivament ghall-piena karcerarja jew flimkien maghha. Fil-parametri vastissimi li taghtiha l-ligi, dan setghet taghmlu legalment u din il-Qorti ma tara li hemm ebda raguni impellenti ghaliex ghandha tvarja tali diskrezzjoni.

Ghalhekk tara li l-aggravji tal-appellant Bajada huma infondati u ghalhekk qed jigu respinti.

Ikkonsidrat;

Il-Qorti issa ser tittratta l-appell tal-Avukat Generali. Jibda' biex jinghad li l-konsiderazzjonijiet fuq maghmula japplikaw ugwalment ghall-appell tal-Avukat Generali.

Illi huwa minnu li bl-emendi ghall-Kodici Kriminali li gew introdotti bl-Att III tas-sena 2002, u partikolarment bl-introduzzjoni tal-art. 413 (1) (c), l-Avukat Generali nghata dritt t' appell b' mod generali fil-kazijiet kollha li ma jaqghux taht dawk kontemplati fis-sub sub-inciz (b) tal-artikolu 413(1) u dan ovvjament jinkludi appell dwar il-piena, pero', fil-fehma ta' din il-Qorti, ikun alkwantu odjuz li l-Avukat Generali, b' mod selettiv, jirrikorri lil din il-Qorti biex jiddisturba d-diskrezzjoni tal-Ewwel Qorti w jitlob piena aktar harxa.

F' dan il-kaz il-piena decizament hija entro l-parametri tal-ligi. Di fatti , meta l-Avukat Generali jiddeciedi li l-persuna akkuzata tigi processata quddiem il-Qorti tal-Magistrati bhala Qorti ta' Gudikatura Kriminali – kif ghamel f' dan il-kaz bl-Ordni tat-2 t' April, 2009 (fol. 626), il-piena erogabbli hija dik ta' prigunerija ta' mhux inqas minn sitt xhur izda mhux izjed minn disa' snin <u>jew</u> multa ta' mhux inqas minn ewro 2329.33 izda mhux izjed minn ewro 116,468.67c <u>jew</u> dik il-prigunerija w multa flimkien. Pero' kif kienet il-ligi meta gie kommess ir-reat w anki meta l-appellat gie akkuzat quddiem il-Qorti tal-Magistrati, l-artikolu 3 (1) tal-Kap.373 , ghalkemm kien jipprovdi ghal-piena massima ta' prigunerija jew pekunjarja oghola minn dik illum erogabbli bl-emendi li saru fil-mori tal-process, lanqas biss kien jippreskrivi piena minima karcerarja jew pekunjarja. Ghalhekk, strettament lanqas ma ghandhom japplikaw il-pieni minimi issa introdotti ghax dawn jaggravaw il-pozizzjoni tal-appellat. Ghalhekk, gjaladarba hu possibbli li tinghata piena karcerarja li ma taqbizx is-sentejn, u addirittura tista' sahansitra tkun ta' jum wiehed ta' prigunerija, f' dan il-kaz kien decizament possibbli ghall-Ewwel Qorti li tapplika l-provvedimenti kontenuti fl-artikolu 28A tal-Kodici Kriminali kif fil-fatt ghamlet.

Ghalhekk mhux il-kaz li l-Ewwel Qorti applikat xi piena jew provvediment li ma setghatx tapplika skond il-ligi.

Il-kwistjoni ghalhekk tibqa' wahda soggettiva ta' revizjoni tad-diskrezzjoni tal-Ewwel Qorti w xejn aktar.

Jekk il-legislatur irid jirrestringi l-uzu, uzu zejjed, jew forsi ukoll abbuz minn dawn il-provvedimenti minnu introdotti fl-ahhar snin, ghandu mezzi ohra kif jirrimedja s-sitwazzjoni w dana billi jemenda l-ligijiet b’ mod li l-applikazzjoni ta’ dawn it-tip ta’ provvedimenti mill-Qrati tigi cirkoskritta w ma tithalliex fid-diskrezzjoni tal-Qrati individwali, ghax dan jista’ jservi biex jaghti lok ghall-applikazzjoni ta’ gustizzja priva minn kull xorta ta’ uniformita’ w certezza u li tiddependi biss mill-fehma soggettiva tal-gudikant individwali. Fejn il-legislatur ried li jaghmel dan (eg. fil-kaz ta’ traffikar ta’ droga) diga’ ghamlu billi eskluda l-applikazzjoni tad-dispozizzjonijiet tal-art. 28A tal-Kap. 9 u dawk tal-Kap. 446.

Li jrid u hemm bzonn isir *“de lege condenda”* hu li l-ligi tirrestringi l-paramentri vastissimi tal-pieni applikabbli fil-Kodici Kriminali w fid-diversi ligijiet specjali li jgibu maghhom sanzjoni penali ghall-parametri aktar specifici w identifikabbli, li tigi ristretta l-applikazzjoni tad-dispozizzjonijiet tal-art. 28A et seq. tal-Kodici Kriminali w tal-Kap.446 u fl-ahhar, izda mhux l-inqas, li tigi formulata “*sentencing policy*” li tkun tirrispondi ghaz-zieda fil-kriminalita’ w l-aspetti godda li qed tiehu fiz-zminijiet tal-lum.

Sakemm dan isir, jekk isir, din il-Qorti, bhala linja generali, thoss li ghandha tezercita’ l-poteri taghha ta’ revizjoni tal-pieni erogati mill-Ewwel Qorti, fuq appelli tal-prosekuzzjoni min decizjonijiet tal-Qrati tal-Magistrati, aktar fil-kazijiet fejn ikun hemm applikazzjoni hazina tal-ligi, bhal fil-kaz fejn ikunu nghataw pieni inqas minn dawk minimi specifikati fil-ligi meta ma jkunux jikkonkorru l-elementi necessarji ghall-applikazzjoni tal-artikolu 21 tal-Kodici Kriminali, milli f’ kazijiet tal-applikazzjoni tad-diskrezzjoni entro l-parametri tal-ligi, kif inhu f’ dal-kaz.

Ghalhekk l-Ewwel aggravju tal-Avukat Generali qed jigi respint.

Ghar-rigward tat-tieni aggravju dan jidher li hu bazat fuq l-artikolu 3(5)(a)(b)(c) tal-kapitolu 373 tal-Ligijiet ta’ Malta. Anki hawn kif kienet il-ligi fiz-zmien tal-kommissjoni tar-

reat u anki meta l-appellat gie akkuzat quddiem il-Qorti tal-Magistrati, s-subartikolu (5) ma kellux is-sub-sub-incizi (a) (b) u (c), u kien jiddisponi li :-

"il-Qorti ghandha , b' zieda ma kull piena li ghaliha tista' tigi kundannata persuna misjuba hatja ta' reat ta' money laundering….tordna t-tehid favur il-Gvern tar-rikavat jew ta' dik il-proprjeta' li l-valur taghha ikun jikkorrispondi ghall-valur ta' dak ir-rikavat ….u kull proprjeta' li tappartjeni lil, jew li tkun fil-pussess jew taht il-kontroll ta' xi persuna misjuba hatja kif imsemmi qabel…..sakemm ma jigix pruvat il-kuntrarju, titqies li tkun inkisbet mir-reat ta' money laundering u tkun soggetta ghall-konfiska jew tehid mill-Qorti."

Ghalhekk l-Ewwel Qorti, meta fuq ammissjoni sabet htija tar-reat dedott, suppost li ordnat kemm it-tehid u konfiska tar-rikavat tar-reat ta' *money laundering,* li f' dan il-kaz kien jammonta ghas-somma ta' LM1,800, ossia Ewro 4,192.87c, kif ukoll ta' kull proprjeta' li tappartjeni lil jew li qeghdha fil-pussess tal-appellat, salv umbaghad id-dritt tal-appellat li jipprocedi b' rikors quddiem il-Qorti Civili, Prim' Awla ghal dikjarazzjoni li dik il-proprjeta' mobbli jew immobbli hekk konfiskata ma kienetx rikavat jew profit gej minn reat taht l-artikolu 3 tal-Kap.373, jew hi b' xi mod involuta fir-reat ta' *money laundering* u li lanqas ma hi proprjeta' akkwistata, direttament jew indirettament minn xi profitti jew rikavat simili w dan skond ma jipprovdi l-artikolu 7.

Ghalhekk dan l-aggravju qed jigi milqugh fis-sens kif fuq intqal.

Ghal dawn il-motivi din il-Qorti qed tichad l-appell tal-appellant Emmanuel Bajada kif ukoll qed tilqa' l-appell tal-Avukat Generali limitatament billi tirriforma s-sentenza appellata billi oltre l-piena ta' sentenza ta' sentejn prigunerija sospiza ghal erba' snin w l-multa ta' Ewro 50,000, tordna l-konfiska favur il-Gvern ta' Malta ta' l-oggetti kollha li dwarhom sar ir-reat u l-konfiska ta' l-ammont ta' erbat elef, mija w tnejn u disghin Ewro u seba' w tmenin centezmu (E4,192.87c) rapprezentanti r-rikavat

tar-reat ta’ *money laundering* kif ukoll kull proprjeta’ mobbli w immobbli ohra li tappartjeni lill-appellat jew li hija fil-pussess jew that il-kontroll tieghu skond ma jipprovdi l-artikolu 3(5) tal-kapitolu 373 tal-Ligijiet ta’ Malta w salv kull dritt tal-appellat biex jagixxi skond l-artikolu 7 tal-istess Kap.373, w tikkonferma s-sentenza appellata fil-kumplament.

< Sentenza Finali >

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