



**QORTI TAL-MAGISTRATI  
(GHAWDEX) BHALA QORTI TA' GUDIKATURA  
KRIMINALI**

**MAGISTRAT DR.  
EDWINA GRIMA**

Seduta tat-18 ta' Marzu, 2010

Numru. 78/2008

**Il-Pulizija  
(Spettur Josric Mifsud)**

**Vs**

Peter Paul Vella ta' 46 sena, iben Peter Paul u Adelina imwiela Debono, imwieled Rabat, Ghawdex fis-16 ta' Mejju 1962 residenti 74, Triq ta' Grunju, Nadur, Ghawdex u detentur tal-karta ta' l-identita' numru 26862(G)

**Il-Qorti,**

Rat l-imputazzjoni kontra l-hawn fuq imsemmi Peter Paul Vella li gie akkuzat talli nhar il-15 ta' Dicembru 2008 u fis-snin ta' qabel gewwa dawn il-Gzejjer, bhala cittadin jew residenti permanenti ta' Malta, sew jekk f'Malta jew barra minn Malta kiseb jew kellu fil-pussess tieghu ritratti, film, *video recording* jew xbieha elettronika indicenti ta' persuni

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taht l-eta' u anke meta dik il-persuna taht l-eta' ma tkunx ghalqet id-disa' snin u dana ai termini ta'l-artiklu 208A (1B) (3) tal-Kapitlu 9 tal-Ligijiet ta' Malta.

Rat id-dokumenti esebiti.

Semghet il-provi.

Rat l-artikoli tal-ligi mibghuta mill-Avukat Generali tat-18 ta' Frar 2009.

Semghet illi l-imputat ma kellux oggezzjoni illi dana il-kaz jigi trattat u deciz bil-procedura sommarja.

Rat l-atti kollha tall-kawza.

Ikkunsidrat :

Illi l-imputat jinsab akkuzat bir-reat ikkontemplat fl-artikolu 208A (1B) tal-Kapitlu 9 tal-Ligijiet ta' Malta. Mill-investigazzjonijiet maghmula mill-pulizija irrizulta illi l-imputat kellu fil-pussess tieghu xbihat ta' pornografija li jinvolvu tfal minorenni u dana fuq il-computers li kellu fil-pussess tieghu. Ghalkemm instab xi materjal iehor fuq DVDs u videos madanakollu mill-provi akkwisti jirrizulta illi dan il-materjal pornografiku ma kienx jinvolvi xi minuri.

Illi l-artikolu 208A (1B) jikkwalifika bhala reat il-pussess jew l-akkwist ta' ritratt indidenti, filmat, *video recording* jew xbieha elettronika indidenti li tinvolvi minuri. Madanakollu il-ligi ma taghti l-ebda definizzjoni ta' dak li jikostitwixxi imagini "indidenti". Illi l-qrati taghna dejjem strahu fuq il-klassifika li tistabilixxi 'l hekk ismejha COPINE taxonomy. Dina l-klassifika tinsab riprodotta fir-rapport maghmul mill-PS 266 Stefan Decelis mic-Cyber Crime Unit tal-pulizija a folio 143 tal-process. Illi dina l-lista giet maghmula minn Taylor and Quayle u dana bhala linja gwida ghac-Centru maghruf bhala Combating Paedophile Information Networks In Europe. Jinghad illi dina l-lista thares lejn dina t-tip ta' pornografija iktar minn aspekk psikologiku milli

mill-aspett kriminali u ghalhekk hija iktar wiesgha minn dak illi ghandu jigi ikkunsidrat fil-kamp penali.

Illi l-abbli difensur tal-imputat fin-nota ta' sottomissjonijiet impressqa minnha gustament taghmel referenza ghall-pariri moghtija mill-Uk Sentencing Advisory Board lill-Qorti tal-Appell fl-Ingilterra u dana ghar-rigward ta' definizzjoni li ghandha tinghata ghal *child pornography* u dana billi saru aggestamenti fil-klassifika maghmula permezz tal-COPINE taxonomy. Jinghad fil-parir taghom:

*"It is fundamental to our proposal that sentencing for these offences should reflect the harm suffered by children who are abused and exploited by the production and distribution of indecent photographs. An offender sentenced for possession of child pornography should be treated as being in some degree complicit in the original abuse which was involved in the making of the images. Sentences for possession should also reflect the continuing damage done to the victim or victims, through copying and dissemination of the pornographic images. Those who make or distribute the images bear a more direct responsibility for their eventual use, as well as for encouraging further production.*

lkomplu:

*"Revulsion at these offences is natural. It is all the more important, however, that sentencing follows a rational structure. In our advice to the Court of Appeal we identify two primary factors which should determine the seriousness of an individual offence:  
the nature of the indecent material (from images depicting nudity or erotic posing to those involving gross assault of children by adults, sadism or bestiality), and  
the extent of the offender's involvement with the material (ranging from possession for the offender's personal use to the original production of the images or widescale commercial distribution).*

*The advice published on 15 August 2002, expressed the view that sentencing in child pornography offences should reflect the harm suffered by the children abused and exploited by the pornographer. It proposed that sentencing should be based on a modified version of the COPINE taxonomy:*

Level	Description	COPINE typology
1.	Images depicting nudity or erotic posing, with no sexual activity	2. Nudist (naked or semi-naked in legitimate settings / sources) 3. Erotica (surreptitious photographs showing underwear / nakedness) 4. Posing (deliberate posing suggesting sexual content) 5. Erotic posing (deliberate sexual or provocative poses) 6. Explicit erotic posing (emphasis on genital area)
2.	Sexual activity between	7. Explicit sexual activity not involving an

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	children, or solo masturbation by a child	adult
3.	Non-penetrative sexual activity between adult(s) and child(ren)	8. Assault (sexual assault involving adult)
4.	Penetrative sexual activity between child(ren) and adult(s)	9. Gross assault (penetrative assault involving adult)
5.	Sadism or bestiality	10. Sadistic / bestiality (sexual images involving pain or animal)

Madanakollu l-Qorti tal-Appell f'Novembru 2002 fil-kawza *R vs Oliver and Others* ghalkemm addotat il-parir tas-*Sentencing Advisory Panel* u l-klassifika minnha maghmula iddikjarat illi xbihat pornografici ghandhom jigu ikklassifikati bil-mod segwenti:

- (i) images depicting erotic posing with no sexual activity;
- (ii) sexual activity between children, or solo masturbation by a child;
- (iii) non-penetrative sexual activity between adults and children;
- (iv) penetrative sexual activity between children and adults, and

(v) sadism or bestiality.

Illi maghmula dawn il-konsiderazzonijiet, il-Qorti ser tghaddi sabiex tikkonsidra jekk abbazi ta' dana kollu jistax jinstab htija fil-konfront tal-imputat. Illi qabel xejn jinghad illi ma hemmx dubbju illi l-materjal li gie elevat mill-pulizija instab fil-pussess tal-imputat. Kif jirrizulta mill-istqarrija stess rilaxxjata mill-imputat lill-pulizija jirrizulta illi fir-residenza tieghu huwa jghix wahdu, ma jidhirx illi hemm xi nies ohra li jiffrekwentaw dana l-post jew inkella li kellhom access ghall-computers tal-imputat.<sup>1</sup> Ma jidhirx ghalhekk li seta kien hemm xi nies ohra involuti fil-kummissjoni ta' dana r-reat. Jidher illi l-imputat kien ilu jibni "il-kollezzjoni" tieghu ghal dawn l-ahhar ghoxrin sena. Hafna mill-materjal huwa kien inizzlu minn fuq l-Internet u xi affarijiet ohra akkwistahom meta huwa kien isiefer. Ighid illi huwa kien isib dana l-materjal f'zewg web-sites principali kif indikati fl-istess stqarrija tieghu, ghalkemm mhux eskluż li dawna s-siti jistghu jaghtu access ghal xi siti ohra.

Illi fit-tieni lok irrizulta wkoll ippruvat illi xi materjal li nstab kien jinvolvi tfal 'il fuq minn disa' snin. Dana jirrizulta fl-ewwel lok mill-istqarrija rilaxxjata mill-imputat stess li jammetti illi kellu fil-pussess tieghu xbihat ta' tfal jippuzaw b'xi ilbies tal-ghawm u anke nofshom imlibbsin. Fix-xhieda kemm ta' PS1464 Michael Portelli kif ukoll ta' PC42 Paul Said, jirrizulta wkoll illi kien hemm xbihat ta' tfal bejn it-tmienja u il-hdax il-sena whud minnhom anke involuti f'attivitajiet lesbici.<sup>2</sup> Fl-ahharnett mix-xhieda ta' PS 266 Stefan Decelis jirrizulta minghajr l-icken dubbju illi x-xbihat li gew misjuba fil-hard disks kienu jinvolvu tfal minuri 'il fuq minn disa' snin<sup>3</sup>. L-imsemmi xhud li huwa espert fil-qasam tac-Cyber Crime fil-fatt isostni illi jekk ikun hemm dubbju dwar xi xbieha dana d-dubbju dejjem imur favur il-persuna li tkun qed tigi investigata. Illi abbazi ta' dana kollu, il-Qorti ghalhekk ma ghandha l-ebda dubbju illi x-xbihat li nstabu jinvolvu minuri 'il fuq minn disa' snin kif stqarr l-istess surgent Decelis.

<sup>1</sup> Ara stqarrija Dokument FT3 a fol.38 et. Seq.

<sup>2</sup> Ara xhieda ta' PS 1464 a fol 23 u 24 u ta' PC42 Paul Said

<sup>3</sup> Ara xhieda a fol.49 et seq u 149 et.seq.

Illi fl-ahharnett dwar l-indicenza o meno tax-xbihat illi nstabu ghandu jinghad is-segwenti. Illi mir-rapport esebit bhala Dokument SD irrizulta illi mill-hard drive immarkat bhala PC02HD01 instabu mhux inqas minn 691 file. Illi abbazi tal-klassifika tal-COPINE ir-rapport indika illi dana l-materjal kien maqsum billi instabu:

- Level 2 – Nudist - 15-il file
- Level 4 – Posing – ghaxar files
- Level 5 – Erotic posing – 529 file
- Level 6 – Explicit erotic posing – 57 file
- Level 7 – Explicit sexual activity - disa' files
- Level 8 – Assault- tmien files
- Level 9 – Gross Assault - 62 file
- Level 10 – Sadistic/Bestiality - file wiehed.

Illi imbaghad fil-hard drive immarkat PC02HD03 fejn instabu 139 files, li minnhom jinghad illi 80 gew ikklassifikati bil-klassifika COPINE u l-ohrajn cioe: “fifty nine images are computer generated and contain representations of children involved in sexual activity”. It-tmenin file gew ikklassifikati bil-mod segwenti:

- Level 1 – Indicative – zewg files
- Level 2 – Nudist – erba files
- Level 4 – Posing – zewg files
- Level 5 – Erotic posing – 52 files
- Level 6 – Explicit erotic posing – sitt files
- Level 7 – Explicit sexual activity – erba files
- Level 9 – Gross assault – ghaxar files

Illi minn dana kollu ghalhekk ma hemm l-ebda dubbju illi l-imputat kellu fil-pussess tieghu materjal pornografiku li jinvolvi minuri u dana mhux biss ai finijiet ta' dak stabbiliti mill klassifika tal-COPINE, izda wkoll abbazi tal-klassifika li strahet fuqha il-Qorti tal-Appell fl-Ingilterra fis-sentenza taghha ta' R vs Oliver et. Dana qed jinghad ghaliex fil-pussess tal-imputat instab materjal mhux biss ta' tfal jippuzaw nofshom imlibbsin kif jistqarr huwa fl-istqarrija rilaxxjata minnu, izda instab materjal iehor fejn jidhru tfal minuri li sahsitra huma involuti f'attivitajiet sesswali.

Dana kollu jwassal ghal konkluzjoni illi allura anke dawk ix-xbihat li nstabu fil-pussess tal-imputat fejn jidhru tfal qed jippuzaw biss, kienu fil-pussess tal-imputat fil-kuntest tal-pornografija u xejn iktar. Dana qed jinghad fid-dawl tal-fatt illi fil-pussess tal-imputat instab materjal pornografiku ta' minuri li fil-kamp penali jista' jwassal biss ghal sejbien ta' htija.

Illi meta l-Qorti tigi biex tqis l-aggravju indikat fis-sub-inciz 3 tal-artikolu 208 (1B), ghalkemm jirrizulta illi l-imputat huwa impjegat bhala ghalliem, madanakollu ma jirrizultax illi fix-xbihat misjuba fil-pussess tieghu kien hemm xi xbiha ta' tfal li kienu fil-kustodja tieghu u ta' tfal li huma taht id-disa' snin. Ghaldaqstant dana l-aggravju ma giex ippruvat.

Illi meta tigi biex tikkunsidra l-piena li ghandha tigi inflitta l-Qorti thoss illi dak li esprima s-Sentencing Advisory Board fl-Ingilterra jirrifletti bl-iktar mod car il-hsieb ta' dina l-Qorti ghar-rigward ta' dana r-reat:

*“Possession of child pornography is not (as some have argued) a victimless offence. Every indecent photograph or pseudo-photograph of a child is, with limited exceptions, **an image of a child being abused or exploited**. Easy access to the Internet, and other developments in computer technology, have undoubtedly made these offences more prevalent. No-one knows exactly how many offences are committed, although it is clear that those that come to court are only the tip of the iceberg.”*

Illi l-Qorti ma tistax tinjora l-fatt madankollu illi l-imputat ghandu fedina penali nadifa u ghalhekk huwa ghandu jinghata l-opportunita' ifittex sabiex johrog minn dina l-problema.

Ghaldaqstant il-Qorti, wara li rat l-artikolu 208A (1B) tal-Kapitolu 9 tal-Ligijiet ta' Malta ssib lill-imputat hati tal-akkuza migjuba fil-konfront tieghu, madanakollu minghajr l-aggravju taht is-sub-inciz numru 3, u tikkundannah ghal perijodu ta' sitt xhur prigunerija, li fid-dawl tal-



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konsiderazzjonijiet hawn fuq maghmula u b'applikazzjoni tal-artikolu 28A tal-Kapitolu 9 tal-Ligijiet ta' Malta dana il-perijodu ta' prigunerija qed jigi sospiz ghal zmien tlett snin mil-lum.

Il-Qorti twissi lil hati bil-konsegwenzi skond il-ligi jekk huwa jikkometti reat iehor matul il-perijodu operattiv ta' dina s-sentenza.

**< Sentenza Finali >**

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