MALTA

QORTI TA' L-APPELL KRIMINALI

ONOR. IMHALLEF
LAWRENCE QUINTANO

Seduta tad-19 ta' Settembru, 2011

Appell Kriminali Numru. 477/2010

Il-Pulizija

Vs

Vincent Spiteri
Jason John Desira
Aaron Charles Zahra
Shawn Tabone

Il-Qorti

Rat il-verbal tas-7 ta’ Marzu, 2011 li fih l-Avukat Dr Joe Brincat issottometta li għall-imputat Tabone huwa kien qanqal kwistjoni kostituzzjonali fir-rikors tal-appell tiegħu. Huwa allega ksur tal-liberta’ tal-espressjoni (Artikolu 10) u ksur tal-liberta’ tal-assoċjazzjoni (artikolu 11) tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem u l-artikoli korrispondenti fil-Kostituzzjoni.

L-Avukati l-oħra kollha li qed jippatroċinaw lill-imputati l-oħra assoċjaw ruħhom mas-sottomissjonijiet li qed għamel Dr.Joe Brincat dwar l-istess artikoli u drittijiet.

Il-Prosekuzzjoni opponiet.

Il-partijiet ingħataw żmien biex jippreżentaw noti dwar il-kwistjoni u n-noti ta' sottomissjonijiet kienu ppreżentati fil-25 t'April 2011 (fol 331) mill-appellanti u mill-Avukat Ġenerali fis-6 ta' Mejju 2011 (fol 336).

Ikkonsidrat

Illi din il-kwistjoni tqanqlet fl-isfond ta' erba' appelli minn deċiżjoni tal-Ewwel Onorabbli Qorti dwar ġrajjeit li seħħew fis-16 ta' Lulju 2008 u fl-14 ta' Lulju 2008 fil-konfront ta' Jason John Desria dwar l-imputazzjonijiet numru 7, 8, 9, u 10. Filpkonfront ta' Shaun Tabone kien hemm żewġ imputazzjonijiet oħra dwar ir-reċidiva u dwar li r-reati saru fi żmien meta kienet operativa sentenza sospiża.

Ħadd mill-imputati ma nstab ħati tar-raba' imputazzjoni.

It-tliet imputazzjonijiet li nstab ħati tagħhom kull appellant huma: sekwesrtu ta' persuna; li ngħaqdu flikmien biex iwerwru; sehem attiv f'ġemgħa ta' għaxra min-nies. Jason John Desira nstab ħati wkoll li għamel ħsara fi ħwejjeġ ħadd ieħor u li arresta lil Kenneth Debono.

L-argument ewlieni tal-appelalnti huwa li l-azzjoni tal-Pulizija tmur kontra l-artikolu 11 u 10 tal-Konvenzjoni Ewropea dwar id-dirttijeit tal-Bniedem u l-artikoli korrispondenti tal-Kostituzzjoni.

L-Avukat Ġenerali wieġeb li l-appellanti ħadd ma tellifhom id-dritt tal-assoċjazzjoni iżda kienu huma li wettqu atti waqt id-dimostrazzjoni li huma reati skont il-Liġijiet tagħna.

Il-Qorti kkonsidrat il-każijiet li għalihom saret referenza kemm mill-appellanti kif ukoll mill-Avukat Ġenerali u imbagħad il-Qorti żiedet wieħed hi.

Fil-qosor dawn huma s-sentenzi. L-ewwel tliet sentenzi saret referenza għalihom mill-appellanti.

L-Ewwel Sentenza.

‘18.12.2007

CHAMBER JUDGMENT
NURETTIN ALDEMIR AND OTHERS v. TURKEY

The European Court of Human Rights has today notified in writing its Chamber judgment1 in the case of Nurettin Aldemir and Others v. Turkey (application nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02)).

The Court held, by five votes to two, that there had been a violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights. (The judgment is available only in English.)

1. Principal facts

The applicants are eight Turkish nationals who live in Ankara and Istanbul: Nurettin Aldemir, Arzu Doğan, Şehrinaz Artar, Ömer Buzludağ, Sami Evren, Ali Rıza Özer, Tacettin Yağdıran and Elif Akgül.

The applicants are members of “EĞİTİM-SEN” (The Education Workers’ Trade Union), which is a member of “KESK” (Kamu Emekçileri Sendikaları Konfederasyonu – The Confederation of Public Employees' Trade Unions). **They all took part in trade union rallies which were broken up by the authorities.**

In 2001 “KESK” decided to organise meetings in Ankara to protest against a draft bill on trade unions under

discussion in Parliament, on the ground that it failed to meet international standards. However, the chosen meeting place (in Kızılay) was not in an authorised area (according to the relevant circular, issued under the Law on Meetings and Demonstration Marches (Law no. 2911).

On 7 and 25 June 2001 the applicants took part in rallies in Kızılay. On both occasions, while the president of "KESK" was making a statement to the press, police officers warned demonstrators that their action was illegal and that they had to disperse. The demonstrators blocked the main street of the Kızılay district (Atatürk Avenue) and attempted to march towards the Prime Minister's Office. The police officers then intervened and used truncheons, sticks and tear gas to disperse the crowds. Some of the demonstrators attacked the security forces using pavement stones and sticks, injuring seven police officers and destroying a police vehicle. The applicants were also wounded during the incidents.

On 7 June 2001 a doctor noted that Şehrinaz Artar had a 2x2 cm bruise on his left eyebrow and Ömer Buzludağ had a 3cm abrasion on his right eyebrow. Nurettin Aldemir, Sami Evren and Ali Rıza Özer did not submit any medical evidence. On 25 June 2001 doctors found that: Arzu Doğan had a bruise on her lip, a grazed left wrist and abrasions on her right wrist and arm (she was declared unfit for work for one day); Tacettin Yağdıran had a sutured injury on his head and a haematoma under the injury (he was declared unfit for work for seven days); and Elif Akgül had abrasions on his shoulder and back, and a 2x2 haematoma on his right frontal lobe (he was declared unfit for work for five days).

The applicants filed a complaint against various officials and the police officers involved in the incidents.

On 26 June 2001 27 demonstrators, including Arzu Doğan and Sami Evren, were charged with violating the Law on Meetings and Demonstration Marches.

On 9 October 2001 the Ministry of the Interior, relying on Article 4 of Law no. 4483, decided not to take any action against the officials and officers accused. The Ministry considered that the force used by the police was lawful and justified in the circumstances and that the officers had been under an obligation to disperse the demonstrators who had organised an illegal meeting.

On 14 November 2001 Ankara Criminal Court acquitted Arzu Doğan and Sami Evren, as well as other demonstrators. The court decided that the demonstrators had a right to hold unarmed and peaceful meetings and demonstrations without prior permission.

On 29 January 2002 the Ankara Public Prosecutor issued a decision of non-prosecution concerning the applicants' complaints.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 12 April 2002.

Judgment was given by a Chamber of seven judges.

3. Summary of the judgment.

Complaints

The applicants relied, in particular, on Article 11 (freedom of assembly and association) of the Convention.

Decision of the Court

Article 11

The Court noted that the applicants took part in demonstrations to draw public attention to and secure the withdrawal of a draft bill on trade unions which, they believed, contravened international standards**. However, their meetings were forcibly ended by the police on the ground that the location chosen was**

unauthorised. Although two applicants were acquitted and no proceedings were brought against the others, the interference in the meetings and the force used by the police to disperse the participants, as well as the subsequent prosecution, could have discouraged the applicants from taking part in similar meetings.

The Court therefore considered that the applicants were negatively affected by the police intervention and that there had been an interference with their right to freedom of peaceful assembly. That interference was prescribed by law (Law no. 2911) and pursued the legitimate aims of preventing disorder and protecting public safety.

As to whether the interference was “necessary in a democratic society”, the authorities had a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens. States also had to refrain from applying unreasonable indirect restrictions upon that right and those principles were also applicable to demonstrations and processions organised in public areas.

The Court observed that there was no evidence to suggest that the two groups in question initially presented a serious danger to public order. Nevertheless, it was likely that they would have caused some disruption in a particularly busy square in central Ankara. The rallies were initially peaceful. However, the authorities' intervened swiftly with considerable force in order to disperse them, thereby causing tensions to rise, followed by clashes. Where demonstrators did not engage in acts of violence, it was important for the public authorities to show a certain degree of tolerance towards peaceful gatherings. The Court therefore considered that the forceful intervention of the police officers was disproportionate and was not necessary for the prevention of disorder, in violation of Article 11.’

It-tieni Deċiżjoni

3.5.2007

CHAMBER JUDGMENT
BĄCZKOWSKI AND OTHERS v. POLAND

The European Court of Human Rights has today notified in writing its Chamber judgment1 in the case of Bączkowski and Others v. Poland (application no. 1543/06).

The Court held unanimously that there had been:

· a violation of Article 11 (freedom of association and assembly) of the European Convention on Human Rights;

· a violation of Article 13 (right to an effective remedy) of the Convention; and

· a violation of Article 14 (prohibition of discrimination).

The applicants made no claim under Article 41 (just satisfaction). (The judgment is available only in English.)

1. Principal facts

The applicants are the Foundation for Equality (Fundacja Równości) and five of its members, namely Tomasz Bączkowski, Robert Biedroń, Krzysztof Kliszczyński, Inga Kostrzewa and Tomasz Szypuła, also members of non-governmental organisations who campaign on behalf of persons of homosexual orientation.

In the context of a campaign called Equality Days organised from 10 to 12 June 2005 by the Foundation, the applicants wished to organise a march to take place in the streets of Warsaw. The march was aimed at bringing public attention to discrimination against minorities, women and the disabled. The applicants also intended to hold rallies on 12 June in seven different squares in Warsaw some of which were intended to protest about discrimination against various minorities and others about discrimination against women.

The applicants submitted their request for permission to organise the march on 12 May 2005 and the rallies on 3 June 2005.

On 20 May 2005 the “Gazeta Wyborcza”, a national newspaper, published an interview with the Mayor of Warsaw who, in reply to questions about the applicants’ pending request to hold a demonstration, said that he would ban it in all circumstances and that, in his view, “propaganda about homosexuality is not tantamount to exercising one’s freedom of assembly”.

On 3 June 2005 a representative of the Mayor of Warsaw refused permission for the march. The reason for that decision was based on the organisers' failure to submit a “traffic organisation plan” in accordance with Article 65 (a) of the Road Traffic Act. The applicants alleged that they had never been requested to submit such a document.

On 9 June 2005 the Mayor gave decisions banning the rallies organised by Mr Bączkowski, Mr Biedroń, Mr Kliszczyński, Ms Kostrzewa and Mr Szypuła. In his decision the Mayor relied on the argument that, under the provisions of the Assemblies Act of 1990, rallies had to be organised away from roads used for road traffic given that more stringent requirements applied when using roads so as to avoid disturbance. Permission was also refused on the ground that there had been a number of other requests to organise rallies with opposing ideas and intentions and that it could have resulted in clashes between the demonstrators.

On the same day the rallies concerning discrimination against women were given permission to take place. Permission was also granted to various other demonstrations with such themes as: “Against propaganda for partnerships”; “Christians who respect God's and nature's laws are citizens of the first rank” and “Against adoption of children by homosexual couples”.

Despite the decision of 3 June the march did take place on 11 June 2005. It was attended by approximately 3,000 people and was protected by the police. The rallies with permission to take place were held on the same day.

On 17 June and 22 August 2005 the appellate authorities quashed the decisions of 3 and 9 June on the ground that they had been poorly justified and in breach of the applicable laws. Those decisions of 17 June and 22 August 2005 were pronounced after the dates on which the applicants had planned to hold the demonstrations. The proceedings, henceforth devoid of purpose, were therefore discontinued.

On 18 January 2006 the Constitutional Court examined a request submitted to it by the Ombudsman to determine the compatibility with the Constituiton of certain provisions of the Road Traffic Act. It gave a judgment in which it found that the provisions of the Road Traffic Act as applied in the applicants' case had been incompatible with constitutional guarantees of freedom of assembly.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 16 December 2005 and declared admissible on 5 December 2006.

Judgment was given by a Chamber of seven judges.

3. Summary of the judgment.

Complaints

The applicants complained that their right to peaceful assembly had been breached by the way in which the domestic authorities had applied relevant domestic law to their case. They also complained that they had not had at their disposal any procedure which would have allowed them to obtain a final decision before the date of the planned demonstrations. They further alleged that they had been treated in a discriminatory manner in that they

had been refused permission to organise certain demonstrations whereas other organisers had obtained permission. They relied on Article 11 and Articles 13 and 14 in conjunction with Article 11.

Decision of the Court

Article 11

The Court reiterated that it attached particular importance to pluralism, tolerance and broadmindedness. Pluralism was also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interaction of people and groups with varied identities was essential for achieving social cohesion. It was only natural that, where a civil society functioned in a healthy manner, the participation of citizens in the democratic process was to a large extent achieved through belonging to associations in which they might integrate with each other and pursue common objectives collectively. The positive obligation of a State to secure genuine and effective respect for freedom of association and assembly was of particular importance to those with unpopular views or belonging to minorities, because they were more vulnerable to victimisation.

The Court acknowledged that the demonstrations had eventually been held on the planned dates. However, the applicants had taken a risk given the official ban in force at that time. The Court observed that that could have discouraged the applicants and others from having participated in the demonstrations on the ground that, not having been given official authorisation, no official protection could be ensured by the authorities against potentially hostile demonstrators.

That situation could not have been rectified either by legal remedies available to the applicants since the relevant decisions had been given after the date on which the demonstrations had been held.

Therefore, the Court found that there had been an interference with the applicants' rights as guaranteed under Article 11. Furthermore, given the decisions of 17 June and 22 August whereby the first-instance decisions had been quashed, that interference had not been "prescribed by law".

That conclusion could only be reinforced by the Constitutional Court's judgment of 18 January 2006.

The Court therefore concluded that there had been a violation of Article 11.

It-Tielet Deċiżjoni

5.12.2006

CHAMBER JUDGMENT
OYA ATAMAN v. TURKEY

The European Court of Human Rights has today notified in writing its Chamber judgment1 in the case of Oya Ataman v. Turkey (application no. 74552/01).

The Court held unanimously that there had been

· no violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights;

· a violation of Article 11 (freedom of assembly and association).

The Court considered that the finding of a violation of the Convention constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant and awarded her 1,000 euros for costs and expenses. (The judgment is available only in French.)

1. Principal facts

The applicant, Oya Ataman, is a 36-year-old Turkish national who lives in Istanbul. She is a lawyer and president of the Istanbul Human Rights Association.

In April 2000 the applicant organised a demonstration in Sultanahmet Square in Istanbul, in the form of a march followed by a statement to the press, to protest against plans for “F-type” prisons.

At about midday the police asked the group of 40-50 people, who were demonstrating by waving placards, to break up. As the demonstrators refused to obey them, the police dispersed the group using a kind of tear gas known as “pepper spray”. They arrested 39 demonstrators, including the applicant, who was released after an identity check.

The applicant lodged a criminal complaint against the head of the Istanbul security police and the police officers concerned, alleging that she had been ill-treated through the use of pepper spray, unlawfully arrested and prevented from making the public statement scheduled for the end of the demonstration. The public prosecutor's office discontinued the proceedings and its ruling was upheld by the Assize Court on 25 September 2000.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 15 March 2001.

Judgment was given by a Chamber of 7 judges.:

3. Summary of the judgment

Complaints

Relying on Articles 3 and 11, the applicant complained that tear gas had been used to disperse the demonstrators and that her rights to freedom of

expression and freedom of association had been infringed.

Decision of the Court

Article 3

Omissis

Article 11

The Court noted that there had been an interference with the applicant's freedom of assembly. The interference had been prescribed by the Assemblies and Marches Act (Law no. 2911) and had pursued the legitimate aims of preventing disorder and preserving the rights of others and the right to move freely in public without restriction.

The Court observed that the demonstration had been unlawful, and this was not disputed by the applicant. However, an unlawful situation could not justify an infringement of freedom of assembly.

It appeared from the evidence before the Court that the group of demonstrators had been informed a number of times that the march was illegal and would disturb public order at a busy time of day, and that they had been ordered to disperse. The applicant and other demonstrators had not complied with the security forces' orders and had attempted to force their way through. **However, there was no evidence to suggest that the group of demonstrators had represented any danger to public order, apart from possibly disrupting traffic. There had been at most fifty people, who had wished to draw public attention to a** topical issue. The rally had begun at about midday and had ended with the group's arrest within half an hour. The Court was particularly struck by the authorities' impatience in seeking to end the demonstration, which had been organised under the authority of the Human Rights Association.

In the Court's view, where demonstrators did not engage in acts of violence it was important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by the Convention was not to be deprived of all substance.

In those circumstances, the Court considered that the police's forceful intervention had been disproportionate and had not been necessary for the prevention of disorder within the meaning of the Convention. It therefore held that there had been a violation of Article 11.

Ir-raba' deċiżjoni – il-każ magħżul mill-Qorti

08.12.2009

Chamber judgment

Aguilera Jiménez and Others v. Spain (applications nos. 28389/06, 28955/06, 28957/06, 28959/06, 28961/06 and 28964/06)

DISMISSAL OF TRADE UNIONISTS FOR AN OFFENSIVE AND HUMILIATING PUBLICATION WAS NOT CONTRARY TO THEIR FREEDOM OF EXPRESSION

No violation of Article 10 (freedom of expression)

of the European Convention on Human Rights.

Principal facts

The applicants, José Antonio Aguilera Jiménez, Juan Manuel Palomo Sánchez, Francisco Antonio Fernández Olmo, Agustín Alvarez Lecegui, Francisco Beltrán Lafulla and Francisco José María Blanco Balbas, are Spanish nationals who live in Barcelona (Spain). They worked as delivery men for a company against which they had

instituted several sets of proceedings before the labour courts. In 2001 they set up a trade union to defend their interests and those of other delivery staff, and joined the union’s management structure. The cover of an information bulletin published by the trade union in April 2002 showed a caricature of the director of human resources, seated behind a table, under which was drawn an individual on his hands and knees with his back to the viewer, and A. and B., who were looking at the scene and awaiting their turn to satisfy the director; the dialogue balloons were sufficiently explicit. Inside the bulletin, two articles, worded in crude and vulgar terms, criticised the fact that those two individuals had testified in favour of the company P. during proceedings brought by the applicants against it. The bulletin was distributed among the company’s employees and pinned up on the trade union's notice board, located inside the company's premises.

On 3 June 2002 the company dismissed the applicants for serious misconduct. They challenged that decision before the courts. On 8 November 2002 Barcelona labour no. 17 dismissed their complaints, considering that their dismissal had had a genuine and serious basis, in that the drawing and articles that had prompted the measure were offensive, tarnished the honour and dignity of the individuals in question and exceeded the limits of freedom of expression. On 7 May 2003 the Catalonia Higher Court of Justice upheld that decision in respect of four of the applicants. The dismissal of Mr Aguilera Jiménez and Mr Beltrán Lafulla was, however, held to be unlawful, in the absence of evidence that they had been directly involved in the disputed actions, and the company was ordered to reinstate them or pay compensation. An appeal on points of law by the applicants was dismissed by the Supreme Court on 11 March 2004. Their amparo appeal was declared inadmissible by the Constitutional Court on 11 January 2006. That court held, in particular, that freedom of expression did not protect vexatious, offensive or ignominious statements that were irrelevant for the expression of opinions or information.

Complaints, procedure and composition of the Court

The applicants alleged that their dismissal, based on the content of the information bulletin in question, had infringed their freedom of expression (Article 10) and that the real reason for their dismissal had been their trade-union activities, in violation of their right to freedom of assembly and association (Article 11).

Judgment was given by a Chamber of seven judges.

Decision of the Court

Only the applications from those applicants who had not been successful before the Spanish courts were admissible and examined on the merits.

The dismissal of these applicants, endorsed by the judicial authorities, represented an interference with their right to freedom of expression; it was provided for by Spanish law and pursued the legitimate aim of protection of the reputation or rights of others. In order for such interference to be acceptable under Article 10, it had also to be “necessary in a democratic society”.

In this connection, the Court noted that a trade union which did not have the possibility of expressing its ideas freely would be deprived of its content and purpose. It reiterated, however, that freedom of debate was undoubtedly not absolute in nature, that freedom of expression as set out in Article 10 carried with it duties and responsibilities and that a Contracting State could subject it to restrictions or sanctions. In the present case, the Spanish courts had analysed in detail the events complained of, and had concluded that, on account of their seriousness and tone, the drawing and articles amounted to personal attacks that were offensive, intemperate, gratuitous and in no way necessary for the legitimate defence of the applicants’ interests; the latter had exceeded the acceptable limits of the rights of criticism. In so finding, the courts had weighed up the competing interests under national law and their decisions could not be considered unreasonable or arbitrary.

The Court concluded, by six votes to one, that the authorities had not exceeded their discretion to penalise the applicants and that there had been no violation of Article 10.

In the light of its finding under Article 10 and in the absence of evidence indicating that the applicants' dismissal had been an act of reprisal by their employer for their trade-union activities, the Court was of the opinion that no separate question arose under Article 11.

Judge Power expressed a dissenting opinion, the text of which is annexed to the judgment.

Il-Ħames Deċiżjoni - Il-Każ li sar referenza għalih mill-Avukat Ġenerali.

5.3.2009

CHAMBER JUDGMENT
BARRACO v. FRANCE

The European Court of Human Rights has today notified in writing its Chamber judgment1 in the case of Barraco v. France (application no. 31684/05). (The judgment is available only in French.)

The Court held unanimously that there had been no violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights in connection with the applicant's conviction for obstructing the public highway.

1. Principal facts

The applicant, Alain Barraco, is a French national who was born in 1957 and lives in Montchal (France).

Mr Barraco, a lorry driver, was one of seventeen motorists who participated on 25 November 2002 in a traffic-slowing operation organised as part of a national day of protest by a joint trade-union committee representing hauliers.

Starting at 6 a.m. they drove at about 10 k.p.h. along the A46 motorway, forming a rolling barricade across several lanes to slow down the traffic behind. Later that morning the police arrested Mr Barraco and two other drivers for completely obstructing the public highway by stopping their cars.

In November 2003 the Lyons Court of first instance held that the defendants bore no criminal responsibility, finding that the traffic had not been blocked but impeded in a manner that remained acceptable and did not call into question the principle of free movement on the public highway.

In May 2004 the Lyons Court of Appeal set aside that judgment, finding that the drivers had committed the offence of obstructing traffic on the public highway by deliberately placing their cars across the motorway for that purpose. It decided that the offence in question could not be justified by the right to strike or to demonstrate. The Court of Appeal sentenced each of the accused to a suspended term of three months’ imprisonment together with a fine of 1,500 euros.

In a judgment of 8 March 2005 the Court of Cassation dismissed an appeal on points of law lodged by the applicant and one of his co-accused.

2. Procedure and composition of the Court

Judgment was given by a Chamber of seven judges.

3. Summary of the judgment

Complaints

Relying in particular on Article 11 (freedom of assembly and association), Mr Barraco complained that his conviction for obstructing the public highway in the context of a demonstration was incompatible with his freedom of assembly and association.

Decision of the Court

Article 11

The Court observed that the public authorities' interference with Mr Barraco's right to freedom of peaceful assembly, which included freedom to demonstrate, pursued the legitimate aims of preventing disorder and protecting the rights and freedoms of others.

The Court acknowledged that any demonstration in a public place could cause some disruption and considered that a certain tolerance was required of the authorities in such circumstances. It moreover reiterated the finding that a person could not be penalised for taking part in a demonstration that had not been prohibited so long as that person had not committed any reprehensible act.

The Court noted that, even though there had been no formal declaration of the demonstration beforehand, the authorities had been aware of it and had not stopped it going ahead; they had also had the opportunity to take measures for the protection of safety and public order.

Nevertheless, the Court observed that the complete blockage of motorway traffic, several times, had gone beyond the disruption inherent in any demonstration and that the three demonstrators had been arrested only after a number of warnings about stopping vehicles on the motorway. The Court considered that Mr Barraco had thus been able, for several hours, to exercise his right to freedom of peaceful assembly and that the authorities had displayed the requisite tolerance.

The Court accordingly held that there had been no violation of Article 11; Mr Barraco's conviction and

sentence had not been disproportionate considering the balance to be struck between the prevention of disorder and the demonstrators' interest in choosing that form of action.'

Konsiderazzjonijiet tal-Qorti.

Il-Qorti rriproduċiet dawn is-sommarji ta' dawn il-ħames deċiżjonijiet li qed jidhru hawn fuq sabiex wieħed jista' jqabbel il-fatti tal-każ li l-Qorti għandha quddiemha llum u l-fatti li dehru fil-każi li saret referenza għalihom mill-partijeit jew mill-Qorti stess.

X'joħroġ mid-deċiżjonijiet li ċċitaw l-appellanti.

Mill-ewwel wieħed joħroġ dan li ġej. Id-dimostranti kienu qed jipprotestsw fuq liġi li fil-ġfehma tagħhom kienet tikser id-drittijiet tat-trade unions. Kienu l-awtoritajiet li kissruha u għamlu ferew lil xi dimostranti. Id-dimostranti kienu biss qed jeżerċitaw id-dritt tagħhom.

Mit-tieni wieħed jirriżulta li kien is-sindku li ċaħad li jsiru d-dimostrazzjoni wara li kien wera li kien kontra s-suġġett li dwaru l-organizzaturi riedu jiddimostraw.

Mit-tielet wieħed jirriżulta li l-miżuri li ttieħdu kontra d-dimostranti kienu 'out of proportion. Dan għaliex, kif qalet il-Qorti stess:

However, there was no evidence to suggest that the group of demonstrators had represented any danger to public order, apart from possibly disrupting traffic. There had been at most fifty people.

X'joħroġ mill-każ li ċċitat il-Qorti

Il-Qorti qed tirreferi għas-sommarju t'hawn fuq iżda jkun aħajr jekk wieħed jaqra s-sentenza oriġinali biex wieħed

jinduna ta’ x’espressjonijiet intużaw minn dawn ir-rikorrenti Sapnjoil, Dawn ir-rikorrenti Sapnjoil ssottomettew li kienu tkeċċew mill-post tax-xogħol wara li kienu aħrġu pubblikazzjoni naqra qawwija dwar ir-relazzjonijiet bejn id-diretturi tal-kumpanija u l-impjegati. Dan mar konta d-dritt tal-espressjoni. Iżda ssottomettew ukoll li r-raġuni vera għala tkeċċew kien minħabba l-attivita’ trade unjonijstika tagħhom. Il-Qorti ddeċidiet li l-awtoritajiet ma kinux marru ‘l hemm mid-diskrezzjoni li għandhom meta ppenalizaw lir-rikorrenti Spanjoli u ma kinux ksiru d-dritt tal-liberta’ tal-espressjoni.

Dan il-każ juri li d-drittijiet għandhom il-limitazzjoni jew il-kwalifiki tagħhom ukoll.

X’joħroġ mill-każ ċitat mill-Avukat Ġenerali.

Ir-rikorrent kien ikkundannat talli ostakola l-highway. Kien wieħed minn 17-il kamjonsitga li ħa sehem f’operazzjoni li kellha twaqqaf l-ispid tat-traffiku bħal parti mill-jum t’a protesta minn kumitat tat-trade unions li kienu qed jirrapreżentaw il-hauliers. Il-Qorti ma sabet ebda vjolazzjoni tal-artikolu 11 għaliex l-imblukkar tat-traffiku kien mar ‘l hemm minn kull ‘disruption’ li ġġib magħha dimostrazzjoni. Wara kollox huwa kein eżerċita d-dritt tiegħu ta’ assoċjazzjoni għal ħin biżżejjed.

Konklużjonijiet tal-Qorti

Wara analiżi ta’ din il-każistika u tqabbil mal-fatti ta’ dawn il-każi mal-fatti tal-każ li għandha quddiemha l-Qorti, il-konklużjoni hija li jeżistu parametri ta’ kif jitħaddem id-dritt tal-espressjoni u tal-assoċjazzjoni kemm taħt il-Konvenzjoni Ewropea kif ukoll taħt il-Kostituzzjoni Maltija. Skont il-każistika ċċitata minn kull parti jew mill-Qorti, ma jirriżultax li kien hemm xi każ li kien b’xi mod jixbah il-każ li qiegħed quddiem din il-Qorti u li fih instab xi vjolazzjoni tad-dritt tal-assoċjazzjoni jew tal-espressjoni. Il-każijiet fejn instabu vjolazzjoni kienu biss dawk fejn l-awtoritajiet fixklu dan id-dritt.

Hawn il-Qorti trid tiddeċiedi biss jekk l-appellanti għandhomx ‘an arguable case’ li jistgħu iqajmu quddiem il-Prim’Awla tal-Qorti Ċivili.

Wara li l-Qorti rat iċ-ċitazzjoni ppreżentata u in- Noti dettaljati tal-partijiet, il-Qorti ma tarax li l-appellanti għandhom ‘an arguable case’ li għandu jitressaq quddiem il-Prim’Awla tal-Qorti Ċivili. Għalhekk qed tqis il-lanjanza bħala waħda frivola u vessatorja.

< Sentenza In Parte >

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