



QORTI TA' L-APPELL KRIMINALI

**ONOR. IMHALLEF
MICHAEL MALLIA**

Seduta tas-17 ta' Jannar, 2013

Appell Kriminali Numru. 510/2011

Appell Nru. 510/2011

**Il-Pulizija
Vs
James Barbara**

Illum 17 ta' Jannar, 2013

Il-Qorti,

Rat l-akkuza dedotta kontra l-appellat [detentur tal-karta tal-identita` numru 161571(M)] quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli fil-21 t'April 2010 ghall-hata tas-6.30 ta' filghaxija u fil-hin ta' qabel u fil-granet ta' qabel u wara go James Caterers Ltd., Tril-Velleran, Fgura u Mater Dei Hospital, Tal-Qroqq, l/o B'Kara

1. biegh, offra ghall-bejgh, espona jew irreklama ghall-bejgh, kellu fil-pussess tieghu ghall-bejgh, qassam bhala kumpens jew xort'ohra garr minn post ghall-iehor, ghall-konsum mill-bniedem ikel li ma jharisx il-htigijiet ta'

sigurta` tal-ikel billi hekk kontaminat, kemm permezz ta' xi materja estranja jew mod iehor u li b'hekk ma kienx ragonevoli li wiehed jistenna li jintuza ghall-konsum mill-bniedem f'dak l-istat;

2. naqas li jizgura li jigi identifikat kull stadju fl-attivitajiet tan-negozju tieghu sabiex tigi zgurata s-sigurezza tal-ikel u naqas li jizgura li jigu identifikati u implimentati proceduri ta' kontroll u sorveljanza effettivi f'dawk il-postijiet kritici ta' kontroll.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali tat-18 ta' Novembru, 2011, li biha lliberatu mill-akkuza kollha kif dedotti kontrih.

a) Rat ir-rikors tal-appellant Avukat Generali minnu pprezentat fis-7 ta' Dicembru, 2011, li bih talab li din il-Qorti joghgobha thassar u tirrevoka s-sentenza appellata, tiddikjara li ma sarx apprezzament xieraq tal-provi u l-ligi, u tiddeciedi l-mertu tal-kawza mill-gdid u ssib lill-appellat hati tal-akkuza migjuba kontrih u tordna l-konfiska tal-oggetti esebiti kif ukoll tordna r-rifuzzjoni tal-ispejjez kollha nkorsi mill-Awtorita` tas-Sahha.

Fliet l-atti kollha processwali.

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

Rat illi l-aggravju tal-appellant huwa s-segwenti w cioe':-

Illi l-Ewwel Onorabbli Qorti ghamlet apprezzament hazin tal-ligi u tal-fatti esebiti kif ukoll dwar it-test tal-ligi li jirrikjedi *reasonable precaution* u *due diligence*.

Illi l-Onorabbli Qorti stqarret fis-sentenza taghha "*Illi huwa veru illi f'kawzi bhal dawn hem mil-kuncett ta' 'strict liability' jigifieri tissussiti r-responsabbilita' guridika independentament mill-fatt tal-element mentali tal-imputat*".

Illi l-ewwel Qorti kienet korretta meta stqarret meta hawn si tratta ta' kaz ta' *strict liability*. Izda minkejja din id-

dikjarazzjoni naqqset kompletament milli twettaq dan fl-ezami tal-fatti u provi eseblti.

Illi il-principju ta' *strict liability* immur lura ghal bidu nett ta' din il-ligi. Illi "*Professor Leonard Leigh has described how the courts of the 1870s held that no mens rea was required to convict persons of selling adulterated food as unadulterated contrary to section 2(2) of the Food and Drugs Act 1872. A mens rea required, he says, 'would have rendered the provision ineffectual' and the principles of both strict and vicarious liability developed because without them enforcement would be difficult, if not impossible:*

*'If the master were permitted to escape because the fault was that of his servant, an easy excuse would have been created, and the master would not have been under the powerful incentive of liability to ensure enforcement of the legislation within the enterprise.'*¹

Illi l-Onorabbli rrikonoxxiet illi *f'dawn il-kazijiet trid tkun sodisfatta illi l-imputat ezercita diligenza adegwata tal-process tal-ippakkjar, dik li tissejjah 'due diligence'*. Illi jirrizulta b'mod car huwa li l-ewwel Qorti ma fehmitx u ma studjatx x'jifhem biha l-legislatur rigward *reasonable precaution* u *due diligence* fl-Att Dwar is-Sigurta' fl-lkel, Kapitolu 449 tal-Ligijiet ta' Malta.

Illi skond l-Att Dwar is-Sigurta ta' l-lkel, Kapitolu 449, l-appellat imputat kellu jiehu zewg mizuri essenzjali – li jiehu *reasonable precautions* u li jwettaq *due diligence*. Illi l-artikolu 41(1) tal-Kapitolu 449 jghid:

"41. (1) Bla hsara ghad-disposizzjonijiet tas-subartikolu (5), fi procedimenti ghal offiza kontra xi wahda mid-disposizzjonijiet ta' qabel ta' din it-Taqsima jew ta' xi regolamenti mahruga taht l-artikolu 10, persuna li tkun akkuzata tista' tiddefendi ruhha billi tipprova li tkun hadet il-prekawzjonijiet kollha ragonevoli u li tkun ezercitat id-

¹ Strict and Vicarious Liability: A Study in Administrative Criminal Law; Leonard Leigh; 1982; pages 16-19.

diligenza kollha xierqa biex tevita li jsir ir-reat minnha jew mill-persuna taht il-kontroll taghha.”

[enfazi ta' l-esponent]

Illi punt bazilari f'dan il-Kapitolu 449 huwa li meta l-appellat imputat jagħzel li jiddefendi ruħu *b'due diligence* hija r-responsabilita' tiegħu li jipprova tali *'due diligence'* u mhux il-prosekuzzjoni.

In oltre l-Qorti trid tkun konvinta bil-provi provduta u mhux jingħad li ***'ma kien hemm l-ebda xhud mid-dipartiment li kkritika s-sistema tal-imputat jew li propona li kellha xi ħaga ultrjuri fis-sistema.'***

Illi t-test tad-*due diligence* dejjem jaqa fuq l-appellat imput sabiex jippruvah hlief biss *“if the defendant can show the offence was committed due to an act or default of another person who was not under his control or to reliance on information supplied by such a person.”*² Illi f'dan il-kaz l-appellat imputat qatt ma ezonera ruħu billi gab prova li l-mankanza kienet frott ta' zball ta' haddiehor.

Illi dan jimxi id f'id mal-principju legali fl-Att Dwar l-Intpertazzjoni, Kapitolu 249 li jghid f'artikolu 13:

*Meta xi reat taht jew kontra xi disposizzjoni li tinsab f'xi Att, li jkun għadda sew qabel jew wara dan l-Att, isir minn korp jew għaqda ta' persuni, sew jekk tkun persuna guridika jew le, kull persuna li, fil-hin ta' l-eghmil tar-reat, kienet direttur, manager, segretarju jew ufficjal iehor simili tal-korp jew għaqda, jew kienet tidher li qed tagixxi f'dik il-kariga, tkun hatja ta' dak ir-reat kemm il-darba ma tippruvax li r-reat ikun sar mingħajr it-tagħrif taghha u li tkun ezercitat id-***diligenza kollha*** xierqa biex tevita l-eghmil tar-reat:*

Illi t-test ta' *reasonable precaution* għandu ssir permess ta' HACCP plan. Illi l-istess prosekuzzjoni ppruvat u

² Blackstone's Guide to the Food Safety Act 1990; G. Howells, R. Bradgate & M. Griffiths; Blackstones Press Limited; 1990; Page 50

spjegat lill-Onorabbli Qorti għal diversi nuqqasijiet fosthom li:

Skont L.N. 264/2002 *Hygiene of food Regulations* Reg. 7 (1)

(1) the proprietor of a food business shall ensure that any stage in the activities of his food business which is critical to ensure in food safety is identified and ensure that adequate safety procedures are identified, implemented, maintained and reviewed on the basis of a system of Hazard Analysis Critical Control Points (HACCP) that comprises the activities set out below:-

(a) the analysis of the potential food Hazards in a food business operation.

(b) The identification of the points in those operations where food hazards may occur

(c) The determination of those points that are critical to food safety - hereafter known as the critical points. (CCP)

(d) The identification and implementation of effective control and monitoring procedures at those critical points, and

(e) The periodical review of the analysis of food hazards, the critical control points and the control and monitoring procedures or wherever the food business operation change.

Illi f'dan il-kaz in kwistjoni kellu jkun hemm CCP speċifikament fuq kontroll għall-insetti – li għalkemm kienet indikata fuq item 11 – *Physical Hazards* ippreżentata fil-Qorti mill-imputat ma hemm l-ebda CCP dwarha, kif ukoll l-ebda kontroll, sorveljanza u dokumentazzjoni. L-unika sorveljanza hija camera li isservi iktar biex jiġu monitorjati l-ħaddiema milli biex jiġi kkontrollat il-platt (xhieda ta' James Barbara) dan peress li l-platt ikun miexi fuq il-conveyor belt u jkun diffiċili jekk mhux impossibbli li wieħed jara nsett go platt fuq monitor u s-sejjaħlu 'due diligence'.

Illi irrizulta wkoll li kien hemm nuqqas ta' *traceability* tal-ispinaċi - tant li l-uffiċċjali tad-Direttorat kellhom jieħdu kampjuni ta' tlett lots differenti biex jikkontrollaw il-lots kollha li seta kien ikkontaminat - lot wieħed ħareġ ikkontaminat b'insetti u saret 'Rapid Alert.' (Xhieda ta' Sandro Sammut)

Illi sabiex il-vot ta' *reasonable precautions* jilhaq l-ghan tieghu "*O'Keefe suggests that taking 'reasonable precautions' involves 'setting up a system to ensure that things will not go wrong: [and] 'due diligence' means 'seeing that the system works properly'. The defence as formulated in the Food Safety Act does not require a preliminary specific cause to be shown: the specific causes are subsumed within the general test. Whether the defence is made out is a question of fact. Lord Lane LCJ in *Garrett v Boots Chemists Ltd*, 16 July 1980 (unreported) said that 'what might be reasonable for a large retailer might not be reasonable for the village shop'. **Thus higher standards are to be expected from a large enterprise than from a small business.**"³*

[enfazi ta' l-esponent]

Illi din is-sistema ta' *reasonable precaution* timanisfeta ruha fis-sistema tal-HACCP li hija regolata mill-ligi.

Illi l-ewwel Qorti kellha l-ewwel u qabel kollox tagheml distinzjoni car bejn x'inhu ezatt *reasonable precaution* x'inhu ezatt *due diligence*.

Illi l-esperti Colin Manchester⁴ u David Fidler jispjegaw⁵:

"Reasonable precautions can be defined as the system that is designed to prevent the offence occurring. It delineates the steps to be taken before, during and after production to ensure that the product does not contravene

³ Blackstone's Guide to the Food Safety Act 1990; G. Howells, R. Bradgate & M. Griffiths; Blackstones Press Limited; 1990; Page 50

⁴ Knowledge, due diligence and strict liability in regulatory offences; Colin Manchester; Criminal Law Review; 2006.

⁵ The due diligence defence; David G Fidler; The New Law Journal; March 1998; Volume 148, Issue 6830

relevant laws. Reasonableness must be considered in the light of the particular circumstances, but is to be approached objectively. It is what the ordinary person would regard as reasonable not what the defendant regards as reasonable.

Due diligence can be defined as ensuring the proper operation of the system. What the courts require is documentary evidence that relevant procedures were being carried out on a particular occasion. This must include what action was taken in the event of faults being discovered. Relevant considerations in setting up due diligence will be:

- ***specific tasks allocated to specific personnel or posts;***
- ***all activities and results recorded; all corrective action recorded and verified;***
- ***supervisory checks for the above.***

So to use the defence successfully the defendant must prove four related points:

- ***that there was a system of controls;***
- ***which part of the system was relevant to the offence;***
- ***that this part of the system should have been adequate to prevent the offence;***
- ***that there is evidence to show that this part of the was working properly on the occasion on which the offence was committed.***

[enfazi ta' l-esponent]

Illi n-necessita li jigu esebiti dokumenti li juru li dak in-nhar tar-reat in kwistjoni kien qieghed issir dan l-ezercizzju kien emfazziat fil-kaz *Bib-by-Cheshire v Golden Wonder Ltd*⁶ fejn l-Qorti stqarret huma bis-sahha tad-dokumenti esebiti li jistghu jammontaw bhala difiza li dak in-nhar in kwistjoni s-sistema kienet qed tahdem b'mod korrett u li d-diligenza

⁶ 1972; 1 WLR 1487

kienet qed tidher li qeda issir u ma kientx semplicement hsibijiet f'manwal.

Illi n-necessita li z-zewg elementi jigu ppruvati individwalment bhala rekwizi separate gie emfazziat fil-kaz Rotheram MBC v Raysun UK Ltd⁷ il-Qorti stqarret li minkejja li gie ppruvat li saru r-rekwiziti tad-*due diligence* ma kientx ingabet prova sufficjenti tar-*reasonable precaution* u sabithom hatja.

Illi fil-kaz *Tesco v. Nattrass*⁸ il-Qorti sostniet li mhuix bizejjed li kumpanija tipprezent ruha 'to appear to have done all he can, to point to systems and precautions and the training of staff'⁹ imma rrid immur oltre dan bi provi specifici.

Illi jidher car li hawnhekk l-ewwel Qorti kellha l-ewwel u qabel kollox tara u tispezzjona precizament x'sistema kienet giet stabbilita mill-appellat imputat u jekk din is-sistema kienetx tilhaq il-vot ta' *reasonable precautions*'.

Illi jekk dan il-vot ta' '*reasonable precautions*' kien sodisfatt, l-ewwel Qorti kellha tara u tezamina jekk dak in-nhar tar-reat is-sistema kienetx implementata, kif kienet implementat u b'-mod krucjali u important ghal dan ir-reat jekk din is-sistema dak in-nhar tar-reat kienetx qeda tahdem mod tajjeb u kienx hem mil-procedura tad-*due diligence*.

Illi rrizulta li l-appellat imputat qatt ma pprezentat mod dokumentat sistema li turi x'prekawzzjonijiet ragjonevoli kien qed jiehu u b'mod krucjali qatt ma pprezenta prova dokumentat jew mod iehor li dak in-nhar tar-reat din is-sistema li hija rekwizita tad-*due diligence* kienet qed tahdem mod tajjeb.

⁷ 1988; The Times, April 24.

⁸ 1972; A.C. 153, 194

⁹ The Role of Criminal Law;

Illi bl-akbar rispett l-ewwel Qorti kompletament naqqset li taghraf u taghmel distinzjoni bejn dak li huwa *reasonable precautions* u dak li huwa *due diligence* f'dan il-qasam.

Illi kif jispjega l-espert David Fidler¹⁰, *due diligence* jirrikjedi *that the person using it must have taken 'all reasonable precautions and exercised all due diligence'.* *That is, two elements must be proved. They are distinct but related. The courts have said that reasonable precautions is setting up a system and due diligence is ensuring that the system is working as intended. It is not sufficient merely to have a system – it must be the right system for the circumstances. It is not sufficient for there to be a series of checks on the system – they must be effective checks. The evidence must demonstrate that the system was operating at the time the offence was committed, that the checking system was operating properly, and that the offence occurred despite these facts."*

Illi f'kaz renommat fil-qasam ta' *reasonable precaution* u *due diligence* Tesco Supermarkets Ltd v Natrass¹¹ Viscount Dilhorne stqarr:

"That [due diligence] could not be established merely by showing that a good system had been devised and a person thought to be competent put in charge of it. It would still be necessary to show due diligence on the part of the accused in seeing that the system was in fact operated and the person put in charge of it doing what he was supposed to do".

Illi in fatti huwa minhabba li z-zewg sistemi kienu neqsin li gara r-reat in kwistjoni!

Illi fejn jinvolvi s-sampling tal-prodotti t-test tad-*due diligence* irrid ikun ferm konsidervoli sabiex jisodissfa dan il-vot.

¹⁰ The due diligence defence; David G Fidler; The New Law Journal; March 1998; Volume 148, Issue 6830

¹¹ 1972, AC 153

Fil-kaz *P&M Supplies (Essex) Ltd v. Devon County Council* Watkins LJ¹² il-Qorti stqarret li l-vot tad-due diligence ma ntlahaqx u qalet li *“it was the defendeant’s task to produce evidence of the kind of standard to be adopted and that they had complied with it.”*

Illi kif tispjega l-espert Deborah Parry *“It is clear that where sampling of goods is concerned the defendany has to produce considerable evidence before the due diligence requirements are satisfied. Not only must a system of random sampling be undertaken, but evidence must be available to show that the selection and number of samples is appropriate for the type of business concerned..... Also any testing, be it in house or independent, must be up to the required standard.*

Illi ghalhekk ghal finijiet ta' l-intenzjoni tal-legislatur f'dan il-kaz m'huiex bizejjed li ix-xhud Graziella Attard, li ma esebit ebda kwalifiki bhala spettrici sanitarja, stqarret li hadet forma ta' kampjuni minghajr ma identifikat kif kienu jiffirma mill-HACCP plan u mizuri ta' due diligence ittiehdu.

Illi minkejja li l-oneru tal-prova kien fuq l-appellat imputat, fil-kaz in kwistjoni l-prosekuzzjoni ppruvat il-kaz taghha bix-xhieda ta' diversi nies li iddentifikaw u urew il-mankanza da parti ta' l-appellat imputat, fosthom:

- Joseph Darmanin Nursing Officer Mater Dei u Joseph Delicata officer In charge Support Services – li xhedu fuq insett li nstab go platt bl-ikel li kien ser jigi servut lill-pazjent tal-isptar Mater Dei liema preċedement dawn l-ikel kienu ppakkjati individwalment minn kumpanija tal-imputat James Barbara ossia James Caterers Ltd. u Malta Healthcare Caterers Ltd.

Illi mix-xhieda tan-nurse Delicata kien ċar li l-platt ikun pre-plated mill-kumpanija ndikata u wasal fil-ward bi spit cover (mgħotti) go *hot /cold cabinet*. Kien wara li kien sar

¹² Judicial Approaches to due diligence; Deborah L. Parry; Criminal Law Review; 1995

jaf bl-insett meta kien ser jillikwifika l-ikla għal pażjent għol-
kċina tal-ward.

Illi bl-akbar rispett lejn l-Onorabbli Qorti rigward l-allegat dubju, peress li l-insett ma kienx fl-enterita' tiegħu (ara r-risultat mogħti mill-laboratorju) fejn jirriżulta – ***An insect of approximately 15.0mm long with missing legs and damaged wings and brownish colouration was found on the spinach portion*** ikun diffiċilli li dan seta' tar minn go tieqa ta' l-isptar jew gie minn xi post ieħor għajr mill-proċess ta' l-appellat imputat. Illi dan l-insett instab mejjet mingħajr saqajn u mċappas mas-sustanzi tal-platt – jidher li kien improċessat.

Illi mhuix argument validu li jinghad li l-insett setgħet dahhlet mit-tieqa. Illi jekk dan huwa stat ta' fatt, li mhuix għaliex it-twieqi kienu kollha magħluqa, din kienet prova li kellu ggib l-appellat imputat.

- Joseph Micallef uffiċċjal tad-Direttorat Għas Saħħa Ambjentali li kien investiga l-każ u ħa il-kampjun tal-platt li intbgħat il-laboratorju (Evans Labs) għall-eżami neċessarju.

- Paul Spiteri uffiċċjal tad-Direttorat għas-Saħħa Amjentali li mar jagħmel l-ispezzjoni tal- kċina u l-proċess fil-kumpanija James Caterers Ltd. Illi bl-akbar rispett ix-xhud Paul Spiteri ma sostniex ix-xhieda b'ebda provi. Illi jagħmel referenza għal cameras u supervisors li apparentament jimmoniterjaw x'qed jigri. Illi ma gie esebit ebda *footage* jew *stills* ta' l-operat ta' dak in-nhar tar-reat in kwistjoni jew prova li kienu qed jiffunzjonaw. Illi wkoll ma ngabet ebda prova ta' dawn is-supervisors minn kienu, x'kwalifiki kellhom, kif kienu qed jopera s-sistema tad-*due diligence* dak in-nhar in kwistjoni.

-Graziella Attard u Mario Camilleri - uffiċċjali tad-Direttorat għas-Saħħa Ambjentali li kienu ħadu kamjuni ta' lots diversi tal-istess prodott minħabba li ma kienx identifikat il-lot in kwistjoni (traceability) – wara nstabu iktar boroż li kellhom insetti go fihom u saret Rapid Alert obligatorju fil-pajjiżi kollha tal-Unjoni Ewropeja. Illi

Graziella Attard ghalkemm tiprezenta lila nnifisha bhala analista, ma tipprezenta ebda prova ta' dan. Illi di piu mhuix l-anqas accettabli legalment li jinghad li kampjun wiehed minn hafna jammonta ghal-test ta' *due diligence*.

- Albert Gambin *Chief Scientific Officer Public Health Laboratory* – Xhied fuq l-analizi li ghamel, fuq il-platt ipprezentat, kif ukoll inghataw kopji tar-registrazzjoni relattiva tal-Food Safety Commission u ta' MFSA dwar il kumpaniji relattivi.

Illi bl-akbar rispett jinghad illi x-xhieda ta' l-appellat imputat ma tezentahx minn htija ghaliex l-imputat semplicement jghid li osserva l-ligi. Il-ligi hija cara u tirrikjedi li l-oneru tal-prova huwa fuq l-appellat imputat li jesebixxi **evidenza, dokumenti u fatti konkreta** li jippruvaw li waqt il-hin tar-reat ghamel dak kollu li huwa possibli bhala *due diligence* sabiex jigi evitat. Illi qatt ma gab prova ta' dawn il-camera, tat-tharrig 'kontinwu' kif jghid hu, u krucjalment. Illi x-xhieda kollha ta' l-appellat imputat hija kollha *speculative hearsay evidence*. Illi ma ngab ebda CCTV footage li juri li l-camera kienet hemm, kienet mixghula u tiffunzjona dak in-nhar. Certament illi kieku kienet tiffunzjona kien johrog bic-car il-manjiera kif il-haddiema kienu jahdmu. Illi l-anqas m'huwa accettabli ghal-Onorabbli Qorti li tistrieu fuq xhieda vaga li l-haddiema kienu jinghataw tahrig, meta ebda prova in sostenn ta' dak allegat ma ngieb ghal-konjizzjoni ta' l-Onorabbli Qorti. Huwa ferm facli li jsiru asserzzjonijiet bhal dawn izda stante li t-test tal-ligi tiddikjara b'mod car li huwa l-appellat hati li rrid iressaq dawn il-provi, f'dan il-kaz in kwistjoni m'hemm ebda provi ta' xejn li juri dan.

Illi milli fatti rrizulta car li dak in-nhar ta' l-incident ma kienx hemm twieqi miftuhin. Illi di piu l-ikel jasal ippakkjat lest gewwa l-isptar u gewwa l-isptar ikun hemm kontrolli kbar u indafa kontinwa minhabba l-punt bazilari li hawn si tratta ta' sptar fejn l-igene hija necessita assoluta sabiex il-pazjenti ma jigux infettati b'xi marda ohra u dan jimxi id f'id ma dak li jghid l-artikolu 12(2) ta' l-Att Dwar is-Sigurta ta' l-Ikel

Ghall-finijiet ta' dan l-artikolu, jigi determinat jekk ikel ikunx ta' hsara ghas-sahha billi jigi stmat mhux biss l-effett li dak l-ikel ikollu probabilmment fuq is-sahha ta' persuna li tikkunsmah, izda wkoll i l-probabilta li l-effet kumulattiv ta' ikel li sostanzjalment ikun ta' l-istess kompozizzjoni jkollu fuq is-sahha ta' bniedem li jikkunsmah f'kwantitajiet ordinarji.

Illi minn ezami tad-dokumenti esebiti jidher car li dak in-nhar tar-reat ma kien assolutament ebda *due diligence* dokumentata jew rekordjata kif titlob il-ligi. Illi d-dokument esebiti lanqas huma rekviziti skond il- HACCP plan izda forma ta' Standard Operating Point.

Illi l-ligi titlob HACCP plan ghaliex SOP hija kwalifika differenti u mhux CCP li tiffirma parti minn HACCP plan. Il-HACCP plan hija dik il-kwalifika ta' *reasonable precaution* illi hija l-bazi tad-*due diligence*.

Illi meta wiehed jifli dawn id-dokumenti tal-Standard Operating Point imkien ma jirriflettu procedura u prekwazzjoni rigward insetti. Illi jirrizulta car f'Dok CM1¹³ li minkejja li tidentifika tipi ta' *foreign bodies* minn imkien ma jigu identifikati l-insetti bhala *foreign body* u hemm mankanza assoluta ta' procedura fir-rigward li tikkonferma li *due diligence* lanqas setghet issir ghaliex lanqas kien hemm procedura ta' *reasonable precaution*.

Illi meta wiehed jezamina wkoll Dok CM3¹⁴ jara li hemm b'mod vag identifikat *preventive measures* fir-rigward ta' *pest control*. Illi jirrizulta li twieqi ghandhom jibqguh maqfulin u jekk huma miftuhin ghandu ikun hemm *fly-net*. Illi ghalhekk huwa l-obbligu ta' l-appellat imputat li ggib prova li dak in-nhar it-twieqi kienu maghluqin u jekk le li kien hemm *fly-screen*.

Illi Dok CM7¹⁵ jghidlek mod car li l-procedura trid tigi segwiti *for each delivery at the time of receiving*, liema prova qatt ma ngabet mill-appellat imputat. Illi jekk

¹³ Page 65-67 ta' l-atti processwali

¹⁴ Page 70 ta' l-atti processwali

¹⁵ Folio 86-87 ta' l-atti processwali

jirrizulta li sar hekk allura kellu johrog certifikat li l-prodott huwa “safe”.

Illi l-istess dkoument ikompli jghid li “*each item has to be checked... The rejection has to be recorded and document held for two years*”. Illi jirizulta car li minkejja dawn il-gwida fir-realta, fattwament dak in-nhar tar-reat qatt ma saru dawn is-spezzjonijiet jew ittiehdu proceduri li juru *due diligence*.

Illi l-istess dokument ikompli jghid:

“No raw material or ingredient should be accepted by the company if it is known to contain parasites, undesirable micro-organisms, pesticides, veterinary drugs or toxic, decomposed or extraneous substances which would not be reduced to an acceptable level by normal sorting and/or processing.”

Illi l-insett kien jinsab gewwa l-ikel u qatt ma seta tqiegħed hemmhekk, kemm minhabba hawnhekk qed nitkellmu fuq ambjent ta’ sptar, kemm minhabba ukoll li t-twieqi kienu magħluqin, kemm minhabba ebda haddiem ma kien identifikat b’inkjesta interna tal-kumpanija li saret b’mod malizjuż jew negligent u kemm anke għaliex meta tara l-insett tara li dan ma kienx shih imma mfarrak ma l-ikel stess.

Illi hawnhekk ma rridu qatt ninsew il-fatt li hawnhekk qedin nitkellmu fuq ambjent ta’ sptar u li l-ikel kien intiz għal-pazjenti li ikunu diga b’sahha dgħajjef u għalhekk l-attenzjoni kellha tkun assoluta sabiex ma tkomplix tpoggi hajjithom f’periklu iktar car.

Illi għalhekk huwa car li l-appellat imputat seta biss jigi liberat billi kieku gab difiza li tipprova li kien ha *reasonable precautions* permess ta’ HACCP u li dak in-nhar tar-reat kien qed iwettaq *id-due diligence* u jidokumenta r-rizultati ta’ din id-diligenza. Illi t-tnejn ma sarux u a bazi tal-provi skjacanti tal-prosekuzzjoni kellu jinstab hati.

Ikkunsidrat:

Illi l-appell huwa limitat għall-eccezzjoni preliminari sollevata mill-appellat dwar in-nullità tar-rikors appellanti billi fil-fehma tal-appellat in-nota pprezentata mill-Kummissarju tal-Pulizija saret tardivament u dan jaffettwa t-termini kollha sussegwenti.

L-artikolu 414(1) tal-Kap. 9 jippreskrivi terminu ta' erbat ijiem tax-xogħol sabiex tidhol in-nota tal-pulizija illi bihsiebu jappella mis-sentenza u sabiex il-Qorti tibghat l-atti lill-Avukat Generali, f'liema kaz imbagħad il-Qorti tal-Magistrati għandha tlett ijiem sabiex tibghat l-atti lill-ufficju tal-Avukat Generali.

F'dan il-kaz irrizulta illi s-sentenza nġatat il-Gimgha, tmintax (18) Novembru tal-elfejn u hdax (2011), f'liema kaz allura, jekk tneħhi s-Sibt u l-Hadd, it-terminu jagħlaq il-Hamis, erbgha u ghoxrin (24) ta' Novembru tal-elfejn u hdax (2011). Mill-atti tal-process irrizulta illi n-nota tal-Kummissarju tal-Pulizija dahlet 'il ghada, hamsa u ghoxrin (25) ta' Novembru tal-elfejn u hdax (2011), kwindi skont l-artikolu 414(1) tal-Kap. 9 fuq imsemmi, din in-nota dahlet tardivament. Tqum il-kwistjoni jekk dan in-nuqqas jaffettwax l-appell tal-Avukat Generali.

Ikkunsidrat:

Fil-kawza fl-ismijiet "Il-Pulizija versus Charles Spiteri" deciza fl-erbatax (14) ta' Marzu tal-elf disa' mija tlieta u tmenin (1983) intqal illi jekk il-Qorti tal-Magistrati tiehu aktar minn zmien previst sabiex tibghat l-atti lill-Avukat Generali dan tal-aħhar m'għandux ibagħti għan-nuqqasijiet ta' haddiehor. Fi kliem iehor it-termini imposti fuq il-pulizija u fuq il-Qorti mhumieħ responsabiltà tal-Avukat Generali. Però dik il-Qorti għamlet konsiderazzjoni ohra u waslet għall-konkluzjoni li hi pjenament kondiviza minn din il-Qorti – "Waqt illi t-terminu mogħti lill-Qorti li ppronuncjat is-sentenza biex titrasmetti l-atti ma jgibx in-nullità tal-appell jekk ma jigix osservat, għal kuntrarju, it-terminu mogħti lill-pulizija huwa termini fatali anki għall-appell tal-Avukat Generali."

Dan l-insenjament gie pjenament segwit minn din il-Qorti fis-sentenza taghha tal-ghaxra (10) ta' Dicembru tal-elf disa' mija u disghin (1990) fil-kawza fl-ismijiet "Il-Pulizija kontra Charles Micallef". Fil-kaz illi ghandha quddiemha din il-Qorti s-sitwazzjoni hija precizament l-istess fis-sens illi rrizulta illi n-nota tal-Kummissarju tal-Pulizija dahlet tardivament u kwindi dan ghandu konsegwenzi fatali ghall-appell tal-Avukat Generali.

Din il-Qorti ghalhekk jidhrilha illi l-eccezzjoni moghtija mill-appellat fil-verbal tal-hdax (11) ta' Ottubru tal-elfejn u tnax (2012) jisthoqq li tkun milhuqa.

Ghal dawn il-motivi l-Qorti taqta' u tiddeciedi illi tilqa' din l-eccezzjoni, tiddikjara n-nota prezentata mill-Kummissarju tal-Pulizija bhala tardiva u konsegwentement tiddikjara null l-appell tal-Avukat Generali.

< Sentenza Finali >

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