



QORTI TA' L-APPELL KRIMINALI

**ONOR. IMHALLEF
LAWRENCE QUINTANO**

Seduta tal-11 ta' Frar, 2013

Appell Kriminali Numru. 269/2011

**Il-Pulizija
(Spt. Angelo Gafa`)
Vs
Anthony Cassar**

Il-Qorti,

Rat l-akkuza dedotta kontra l-appellant detentur tal-karta tal-identita` numru 45750(M), quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli f'dawn il-Gzejjer, fix-xahar ta' Gunju 2007 u fix-xhur ta' qabel, b'diversi atti maghmulin fi zminijiet differenti li jiksru l-istess disposizzjoni tal-Ligi u li gew maghmula b'rizoluzzjoni wahda, kkorrompa lil Ronald Galea, General Manager ta' CMA-CGM Agencies Worldwide (Malta) Limited, u dan billi ta xi rigal jew weghda jew offerta ta' xi rigal fi flus jew f'utli iehor, jew ta' xi vantagg iehor, li ghalihom Ronald Galea ma kellux jedd, u dan sabiex Ronald Galea jaghmel dak li kien fid-dmir tieghu li jaghmel.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali tat-8 ta' Gunju, 2011, li biha wara li rat l-artikoli 18, 120(1), 115(a) u 121(1) sabet lill-appellant hati ta' l-akkuza migjuba fil-konfront tieghu, izda fid-dawl tal-konsiderazzjonijiet hawn fuq maghmula u b'applikazzjoni ta' l-artikolu 22 tal-Kapitolu 446 tal-Ligijiet ta' Malta, l-Qorti lliberat lill-appellant bil-kundizzjoni illi huwa ma jikkommettiex reat iehor fi zmien sena.

Il-Qorti wissiet lill-appellant bil-konsegwenzi skond il-ligi jekk huwa jikkommetti reat iehor matul dana il-perjodu ta' liberta` kundizzjonata.

Rat ir-rikors tal-appellant minnu pprezentat fl-20 ta' Gunju, 2011, li bih talab li din il-Qorti joghghobha tirrevoka s-sentenza appellata u tillibera lill-appellant minn kull htija u piena.

Fliet l-atti kollha processwali.

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

Rat illi l-aggravji tal-appellant jikkonsistu fis-segwenti:-

1. Illi jekk wiehed jaccetta li l-Explanatory Report tal-“European Criminal Law Conention on Corruption” ghandu xi forza ta' ligi hawn Malta kif jidher li ghamlet il-Qorti tal-Magistrati, jinghad bl-akbar rispettt li l-kriterji wzati f'dak ir-rapport huma tali li jezonera kompletament lill-appellant mir-reita` penali fir-rigward ta' l-imputazzjoni specifika migjuba kontrih.
2. Illi l-Qorti tal-Magistrati lanqas ma hi korretta meta tghid li l-“active bribery” fis-settur privat jikkostitwixxi reat fil-ligi Maltija.
3. Illi minghajr pregudizzju ghall-aggravji precedenti, il-Qorti tal-Magistrati ghamlet apprezzament zbaljat tal-provi.

Semgħet it-trattazzjoni tal-abbli Prosekutur u tal-abbli difensur.

Ikkonsidrat

Il-fatti f'dan il-kaz huma elenkati fis-sentenza mogħtija mill-Qorti tal-Maġistrati (Malta) Bħala Qorti ta' Ġudikatura Kriminali fit-8 ta' Ġunju 2011 u l-Qorti qed tirreferi għalihom fis-silta li tidher hawn taħt.

'Illi dwar l-fatti li sawru dana l-kaz hemm qbil bejn il-partijiet. Mill-provi akkwiziti irrizulta illi l-imputat Anthony Cassar huwa kemm azzjonista kif ukoll Chairman tas-Socjeta' Cassar Ship Repair Limited u is-Socjeta Cassar Enterprises Limited. L-iskop tan-negozju huwa proprju li jipprovdi fost affarijiet oħra is-servizz ta' tiswija ta' vapuri. Jirrizulta illi s-socjeta CMA CGM Agencies Worldwide (Malta) Limited hija klijenta tas-socjeta gestita mill-imputat li kien joffri allura is-servizz ta' tiswija ta' vapuri li jaslu Malta mgħobbija b'containers, appartanenti lis-socjeta' CMA CGM. Illi fiż-żmien indikat fl-akkuża jidher illi l-persuna li kienet tmexxi dina l-kumpanija hawn Malta kien certu Ronald Galea. Assistent tiegħu kien John Portelli li fil-kawza jirrappreżenta s-socjeta' parti leza. Jidher illi peress illi s-Socjeta' Cassar Ship repair kellha bħala kompetitur tagħha is-socjeta' Bezzina Ship Repair, f'xi zmien dana Ronald Galea (li del resto qabel ma ha t-tmexxija tal-kumpanija f'idejh kien jokkupa l-kariga ta' Operations Manager) beda jiltob tip ta' commission jew kif isejnhilha l-imputat "gratuity" ta' 5% fuq it-total ta' kull invoice. Jidher illi Anthony Cassar ma sab l-ebda problema biex jagħtih dina l-commission u fil-fatt inħarġu diversi cekkijiet f'isem Ronald Galea personalment. L-imputat isostni illi huwa qatt ma kien jaf illi s-socjeta' CMA CGM ma kenitx taf b'dan il-gratuity payment għax għalih Ronald Galea kien jirrappreżenta lil CMA CGM f'Malta. Inoltre isostni kemm fl-istqarrija tiegħu kif ukoll meta jixhed quddiem il-Qorti illi dana it-tip ta' hlas hija prassi normali fil-gestjoni normali ta' kwalunkwe attivita' kummercjali. Cassar jammetti li b'kollox huwa kien għadda s-somma ta' Lm7870 lil Ronald Galea u dana kolha permezz ta' cekkijiet li huma esebiti fl-atti tal-kawza. Dawn il-flus Ronald Galea utilizzahom għall-użu personali tiegħu billi xtara yacht mingħand is-socjeta Sun Dream Limited.

Jirrizulta wkoll illi l-imputat kien għadda self personali lil Ronald Galea fl-ammont ta' Lm20000. Illi dana is-self inghata mingħajr imgħaxijiet u mingħajr terminu għal flus. Meta jixhed Ronald Galea jgħid illi la jaf kemm ħallas minnu dana is-self u lanqas jaf kemm għad fadallu jagħtih.'

Din il-Qorti qrat ix-xhieda kollha u rat id-dokumenti b'mod speċjali l-istqarrija magħmula mill-appellant a fol 61 u li huwa kkonferma meta tela' jixhed. Minnha jirrizulta b'mod ċar li Ronald Galea, il-general manager tal-kumpanija CMA-CGM kien wera x-xewqa li jinghata xi tip ta' gratitudine għal xogħol li kien ser jgħaddilhom. Hekk kien ġara u l-appellant ma kien għamel xejn b'ħabi. Effettivament indika li huwa kien ta ammonti ta' LM465, L180, Lm1640 u Lm5213 li nħargu kollha favur Ronald Galea f'forma ta' 5% gratitudine għal xogħol li kien għadda lilhom. Huwa kien qal ukoll li kienet ħaġa normali li jinghataw dawn il-'gratitudes'. Għalihom Ronald Galea kien is-CMA-CGM Malta.

Meta xehed Ronald Galea nnifsu dan ikkonferma li kien general manager tas-soċjeta' CMACGM (fol 81) u li l-appellant kien tah diversi ċekkijiet għal xogħolijiet li kienu għas-soċjeta' CMACGM. Huwa kien beda jirċievi dawn il-gratitudes f'it wara li kien sar General Manager. Huwa kien jirċievi wkoll commissions minn kumpanija oħra. Dwar is-self li kien sar mill-appellant lilu, din kienet ħaġa personali.

Min-naħa l-oħra Nikol Chetcuti tas-soċjeta' Sun Dream Limited, xehed (a fol 90) li l-invoice 10191 kien jirrappreżenta l-bejgħ ta' Bavaria Sport 29 Cabin Cruiser a favur ta' Ronald Galea (ID 274072(M)) Il-pagamenti dejjem kienu jsiru minn Ronald Galea personalment.

Għad-difiża xehdu kemm l-appellant (fol 150 -151) kif ukoll Alphonse Saliba (fol 152 et). L-appellant ikkonferma l-istqarrija u qal li ma setax jifhem x'għamel ħażin f'idn il-kawża.

Min-naħa l-oħra s-sur Alphonse Saliba xehed li huwa company secretary tas-soċjeta' Cassar Ship Repair. Huwa qal li l-kumpanija kienet issewwi l-vapurti tas-CMA CGM. Għalihom Ronald Galea kien CMA in Malta. Huwa kien jitlobhom quotations għal tiswijiet ta' vapuri u meta dawn kienu jintlaqgħu huma kienu jagħmlu t-tiswijiet. Wara lki jsir ix-xogħol toroġ invoice dettaljata. Imbagħad il-freeport ittieħed mis-CMA. Ix-xhud qal li kienu sabu diversi ċekkijiet li kienu ngħataw lil Ronald Galea bħala gratitude. Huma kienu jwegħdu dejjem xi ħaġa taħt forma ta' gratitude lil min iġibihom l-katar xogħol. Il-gratitude titħallas out of pocket. (fol 163) għax jekk iżżid il-quotation ma tiħux ix-xogħol. Il-gratitudes kienu jitħallsu b'ċekkijiet f'isem Ronald Galea. Is-CMA bdew jgħidu li kienu huma li qed iħallsu l-gratitude għax kienet qed tiżdied mal-invoice. Fil-kontro-eżami x-xhud ikkonferma li l-flus kienu jingħataw lil Ronald Galea u l-ammont kien jammonta għal 5%.

Is-sentenza 'Il-Pulizija versus Ronald Galea tat-3 ta' Lulju 2008.

Rat ukoll is-sentenza li rrefera għaliha l-appellant fil-footnote. F'din iċ-ċitazzjoni, Ronald Galea, fost akkużi oħra, kien akkużat li:

'8. Kif ukoll talli f'dawn il- Gzejjer, fix- xahar ta' Gunju 2007 u fix- xhur ta' qabel, b'diversi atti magħmulin fi zminjiet differenti li jiskru l- istess dispozizzjoni tal- Ligi u li gew magħmula b'risoluzzjoni waħda, fil- kapacita' tiegħu ta' General Manager ta' CMA-CGM Agencies Worldwide (Malta) Limited, in konnessjoni mal- kariga jew impjeg tiegħu, talab jew irċieva, jew aċċetta għalih jew għal ħaddiehor xi rigal jew wegħda jew offerta ta' xi rigal fi flus jew f'utli iehor, jew ta' xi vantaġġ ieħor, li għalihom hu ma kellux jedd, u dan sabiex hu jagħmel dak li kien fid-dmir tiegħu li jagħmel.'

Huwa ammetta l-akkużi kollha kontrih u kien ikkundannat piena ta' sentejn prigunerija sospiżi għal erba' snin.

Punti ta' Liġi.

L-Avukat Ġenerali indika dawn l-artikoli (a fol 94 tal-proċess): 18, 120(1), 115(a) u 121(1). Il-Qorti qegħda tirroproduċi dawn l-artikoli għall-ħeffa tal-konsultazzjoni.

Korruzzjoni.

115. Kull uffiċjal jew impjegat pubbliku li, in konnessjoni mal-kariga jew impieg tiegħu, jitlob, jirċievi jew jaċċetta għalih jew għal ħaddieħor xi rigal jew wegħda jew offerta ta' xi rigal fi flus jew f'utli ieħor, jew ta' xi vantaġġ ieħor, li għalihom huwa ma jkollux jedd, jeħel, meta jinsab ħati -

(a) jekk l-iskop tal-ħlas, tal-wegħda jew tal-offerta, ikun sabiex l-uffiċjal jew impjegat jagħmel dak li hu fid-dmir tiegħu li jagħmel, il-piena ta' prigunerija minn sitt xhur sa tliet snin;

120. (1) Fil-każijiet imsemmija fl-artikoli 115, 116, 117 u 118, il-persuna li tikkorrompi uffiċjal jew impjegat pubbliku jew membru tal-Kamra tad-Deputati **jew persuna li dwarha japplika xi artikolu minn dawk imsemmija skont kull disposizzjoni taħt dan il-Kodiċi jew taħt kull liġi oħra, skont il-każ, titqies li hija kompliċi.**

121. (1) Id-disposizzjonijiet ta' dan is-sub-titolu jgħoddu għal u dwar kull persuna li tkun mogħtija jew li jkollha funzjonijiet li jkollhom x'jaqsmu mal-amministrazzjoni ta' korp imwaqqaf b'liġi jew xi korp ieħor li jkollu personalita' ġuridika distinta, jew li tkun impjegata ma' dak il-korp, kif igħoddu għal jew dwar uffiċjal jew persuna msemmija fl-artikolu 112 jew uffiċjal jew impjegat pubbliku msemmi fl-artikolu 115.

Omissis

(3) Id-disposizzjonijiet ta'dan is-sub-titolu dwar xi uffiċjal jew persuna msemmija fl-artikolu 112 jew xi uffiċjal jew impjegat pubbliku msemmija fl-artikolu 115 għandhom ikunu wkoll

japplikaw għal u dwar kull impjegat jew persuna oħra meta dawn ikunu qed imexxu jew jaħdmu f'xi kapaċita' għal jew f'isem xi persuna naturali jew ġuridika li tkun qed taħdem fis-settur privat li xjentement, matul l-attivitajiet kummerċjali tagħha, sew b'mod dirett sew permezz ta' xi intermedjarju u bi ksur tad- dmirijiet tagħha, ġgħib ruħha b'xi mod minn dawk li hemm provdut dwarhom f'dawk l-artikoli:

Iżda għall-finijiet ta' dan is-subartikolu l-frażi "ksur ta' dmirijiet' tinkludi kull imġiba mhux leali li tikkostitwixxi ksur ta' xi dmir statutorju, jew, skont il-każ, ksur tar-regolamenti jew struzzjonijiet professjonali, li jkunu japplikaw fi ħdan il-kummerċ inkwistjoni.'

L-artikoli rilevanti mill-ETS Numur 172 tal-Kunsill tal-Ewropa li għandhom x'jaqsmu ma' korruzzjoni ta' persuni li jaħdmu f'attivitajiet kummerċjali privati.

Article 7 – Active bribery in the private sector

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally in the course of business activity, the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties.

Article 8 – Passive bribery in the private sector

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed

intentionally, in the course of business activity, the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties.

X'jgħid l-Explanatory Memorandum tal-ETS 173 dwar dawn l-artikoli u l-Artikolu 3 tat-Trattat.

Il-Qorti qed tirriproduċi fid-dettall il-kummentarju dwar l-artikoli rilevanti għal riflessjoni aktar ċara dwar il-kontenut tagħhom.

Article 3 – Passive bribery of domestic public officials

40. Article 3 defines passive bribery of public officials. As this offence is closely linked with active bribery, some comments made thereon, e.g. in respect of the mental element and the undue advantage apply accordingly here as well. The "perpetrator" in Article 3 can only be a public official, in the meaning of Article 1. The material elements of his act include requesting or receiving an undue advantage or accepting the offer or the promise thereof.

41. "Requesting" may for example refer to a unilateral act whereby the public official lets another person know, explicitly or implicitly, that he will have to "pay" to have some official act done or abstained from. It is immaterial whether the request was actually acted upon, the request itself being the core of the offence. Likewise, it does not matter whether the public official requested the undue advantage for himself or for anyone else.

42. "Receiving" may for example mean the actual taking the benefit, whether by the public official himself or by someone else (spouse, colleague, organisation, political party, etc) for himself or for someone else. The latter case supposes at least some kind of acceptance by the public official. Again, intermediaries can be involved: the fact that an intermediary is involved, which would extend the scope

of passive bribery to include indirect action by the official, necessarily entails identifying the criminal nature of the official's conduct, irrespective of the good or bad faith of the intermediary involved.

43. If there is a unilateral request or a corrupt pact, it is essential that the act or the omission of acting by the public official takes place after the request or the pact, whereas it is immaterial in such a case at what point in time the undue advantage is actually received. Thus, it is not a criminal offence under the Convention to receive a benefit after the act has been performed by the public official, without prior offer, request or acceptance. Moreover, the word "receipt" means keeping the advantage or gift at least for some time so that the official who, having not requested it, immediately returns the gift to the sender would not be committing an offence under Article 3. This provision is not applicable either to benefits unrelated to a specific subsequent act in the exercise of the public official's duties.

Article 7 – Active bribery in the private sector

52. This Article extends criminal responsibility for bribery to the private sector. Corruption in the private sector has, over the last century, been dealt with by civil (e.g. competition), or labour laws or general criminal law provisions. Criminalising private corruption appeared as a pioneering but necessary effort to avoid gaps in a comprehensive strategy to combat corruption. The reasons for introducing criminal law sanctions for corruption in the private sphere are manifold. First of all, because corruption in the private sphere undermines values like trust, confidence or loyalty, which are necessary for the maintenance and development of social and economic relations. Even in the absence of a specific pecuniary damage to the victim, private corruption causes damage to society as a whole. In general, it can be said that there is an increasing tendency towards limiting the differences between the rules applicable to the public and private sectors. This requires redesigning the rules that protect the interests of the private sector and govern its

relations with its employees and the public at large. Secondly, criminalisation of private sector corruption was necessary to ensure respect for fair competition. Thirdly, it also has to do with the privatisation process. Over the years important public functions have been privatised (education, health, transport, telecommunication etc). The transfer of such public functions to the private sector, often related to a massive privatisation process, entails transfers of substantial budgetary allocations and of regulatory powers. It is therefore logical to protect the public from the damaging effects of corruption in businesses as well, particularly since the financial or other powers concentrated in the private sector, necessary for their new functions, are of great social importance.

53. In general, the comments made on active bribery of public officials (Article 2) apply *mutatis mutandis* here as well, in particular as regards the corrupt acts performed, the mental element and the briber. There are, nevertheless, several important differences between the provisions on public and private sector bribery. First of all, Article 7 restricts the scope of private bribery to the domain of "business activity", thus deliberately excluding any non-profit oriented activities carried out by persons or organisations, e.g. by associations or other NGO's. This choice was made to focus on the most vulnerable sector, i.e. the business sector. Of course, this may leave some gaps, which Governments may wish to fill: nothing would prevent a signatory State from implementing this provision without the restriction to "in the course of business activities". "Business activity" is to be interpreted in a broad sense: it means any kind of commercial activity, in particular trading in goods and delivering services, including services to the public (transport, telecommunication etc).

24. The second important difference concerns the scope of recipient persons in Article 7. This provision prohibits bribing any persons who "direct or work for, in any capacity, private sector entities". Again, this a sweeping notion to be interpreted broadly as it covers the employer-employee relationship but also other types of relationships

such as partners, lawyer and client and others in which there is no contract of employment. Within private enterprises it should cover not only employees but also the management from the top to the bottom, including members of the board, but not the shareholders. It would also include persons who do not have the status of employee or do not work permanently for the company - for example consultants, commercial agents etc.- but can engage the responsibility of the company. "Private sector entities" refer to companies, enterprises, trusts and other entities, which are entirely or to a determining extent owned by private persons. This of course covers a whole range of entities, notably those engaged "in business activities". They can be corporations but also entities with no legal personality. For the purpose of this provision, the word "entity" should be understood as meaning also, in this context, an individual. Public entities fall therefore outside the scope of this provision.

55. The third important difference relates to the behaviour of the bribed person in the private sector. If, in the case of public officials, it was immaterial whether there had been a breach of his duties, given the general expectation of transparency, impartiality and loyalty in this regard, a breach of duty is required for private sector persons. Criminalisation of bribery in the private sector seeks to protect the trust, the confidence and the loyalty that are indispensable for private relationships to exist. Rights and obligations related to those relationships are governed by private law and, to a great extent, determined by contracts. The employee, the agent, the lawyer is expected to perform his functions in accordance with his contract, which will include, expressly or implicitly, a general obligation of loyalty towards his principal, a general obligation not to act to the detriment of his interests. Such an obligation can be laid down, for example, in codes of conduct that private companies are increasingly developing. The expression, "in breach of their duties" does not aim only at ensuring respect for specific contractual obligations but rather to guarantee that there will be no breach of the general duty of loyalty in relation to the principal's affairs

or business. The employee, partner, managing director who accepts a bribe to act or refrain from acting in a manner that is contrary to his principal's interest, will be betraying the trust placed upon him, the loyalty owed to his principal. This justifies the inclusion of private sector corruption as a criminal offence. **The Convention, in Article 7, retained this philosophy and requires the additional element of "breach of duty" in order to criminalise private sector corruption. The notion of "breach of duty" can also be linked to that of "secrecy", that is the acceptance of the gift to the detriment of the employer or principal and without obtaining his authorisation or approval. It is the secrecy of the benefit rather than the benefit itself that is the essence of the offence. Such a secret behaviour threatens the interests of the private sector entity and makes it dangerous.**

Article 8 – Passive bribery in the private sector

56. The comments made on passive bribery of domestic public officials (Article 3) apply accordingly here as far as the corrupt acts and the mental element are concerned. So do the comments on active bribery in the private sector (Article 7), as far as the specific context, the persons involved and the extra-condition of "breach of duty" are concerned. The mirror-principle, already referred to in the context of public sector bribery, is also applicable here.'

Konsiderazzjonijiet tal-Qorti

Il-Liġi Maltija ma tħaddanx il-Monist Theory f'dak li għandu x'jaqsam mal-effett tal-Liġi Internazzjonali fil-Liġi tal-pajjiż iżda issegwi d-dualist theory. Dan ifisser li ebda trattat internazzjonali ma jkollu forza f'Malta jekk ma jkollux l-approvazzjoni tal-Parlament. (Ara l-Att V tal-1983). Ir-regolamenti, id-direttivi jew id-deċiżjonijiet tal-Unjoni Ewropea ma jaqgħux taħt dan l-Att.

Issa meta l-Legislatur ta' pajjiż jittransponi Trattat Internazzjonali fil-Liġi tiegħu, dak li huwa importanti hu li

jibdel f'Liġi dawk l-obbligi minimi li jkun jitlob it-trattat għalkemm m'hemm xejn xi jzommu li jmur aktar 'il bogħod minn hekk.

Permezz tal-artikolu 121(1) tal-Kap 9, il-Legislatur estenda n-nozzjoni ta' korruzzjoni għal dawk kollha li jkollhom x'jaqsmu mal-amministrazzjoni ta' korp imwaqqaf b'liġi jew xi korp ieħor li jkollu personalita' ġuridika distinta jew li tkun impjegata ma' dak il-korp. Barra dan huwa applika l-artikolu 115 fl-intier tiegħu u ma qagħadx jiddistingwi bejn (a)(b)u (ċ).

Is-subinċiż (3) tal-artikolu 121 jkompli jsaħħaħ dan għax japplika l-artikolu 115 'għal u dwar kull impjegat jew persuna oħra meta dawn ikunu qed imexxu jew jaħdmu f'xi kapaċita' għal jew f'isem xi persuna naturali jew ġuridika lit kun qed taħdem fis-settur privat li xjentement, matul l-attivitajiet kummerċjali tagħha, ġgħib ruħha b'xi mod minn dawk li hemm provdut dwarh f'dawk l-artikoli (112 u 115). Għal darb'oħra l-legislatur japplika l-artikolu 115 fl-intier tiegħu.

Taħt dan is-subinċiż hemm xi tfigħer il-frazi 'ksur ta' dmirijiet'. (Ara aktar 'il fuq a skans ta' repitizzjoni).

Permezz tal-artikolu 120(1) in-nozzjoni ta' kompliċi kienet estiża għal dawk il-persuni li jaħdmu fil-privat għaliex it-tieni parti tas-sentenza tirreferi għal 'persuna li dwarha japplika xi artikolu minn dawk imsemmija skont kull dispozizzjoni taħt dan il-Kodiċi jew taħt kull liġi oħra.' Għaladarba l-artikolu msemmi (115) kien estiż għal dawk li jkunu jaħdmu mal-privat, isegwi li n-nozzjoni ta' 'kompliċi' ġiet ukoll estiża għall-każi ta' fejn persuna xxaħħam persuna lit kun taħdem fil-privat biex taqla' xi favur.

Mela permezz ta' dawn l-estensjonijiet, Ronald Galea, li kien General Manager tas-soċjeta' imsemmija, jaqa' taħt dan l-artikolu. (Fil-fatt huwa ammetta din l-akkuża li kienet fiċ-ċitazzjoni kontrih). Bl-istess mod jekk ikun hemm provi li xi ħadd għaddielu l-flus sabiex jieħu xi xogħol u kellu l-intenzjoni għal dan il-għan, allura jkun jista' jitqies bħala l-kompliċi.

Fil-fehma tal-Qorti l-legislatur ittranspona l-obbligi tat-trattat tal-Kunsill tal-Ewropa b'mod li wiehed jista' jifhem il-Ligi sew.

L-aggravji

L-ewwel aggravju.

L-appellant jissottometti li għandu jirriżulta l-breach of duty. Il-Qorti ma qed tara ebda kontradizzjoni bejn li wiehed jaċċetta l-gratitude 'sabiex jagħmel dak li hu fid-dlir li jagħmel u li wiehed ikun qed jikser id-dmirijiet tiegħu.'

Effettivament Ronald Galea **kellu d-dmir** li jieħu ħsieb iqabbad lil xi ħadd li jista' jagħmel is-tiswijiet meħtieġa. Izda Ronald Galea kien marbut ukoll bid-dmir li jagħmel dan **mingħajr** ma jistenna ebda ħlas. Jekk wiehed jirraġuna mod ieħor ikun prattikament qed jimmina l-għan tal-Legislatur li jikkontrolla l-korruzzjoni f'azjendi privati. Ronald Galea kien qed jagħmel dak li kien fid-dmir tiegħu li jagħmel izda fl-istess ħin li qed jagħmel dan kien qed idaħħal flus għalih li ma kienx intitolat għalihom u għalhekk kien qed jikser dmiru lejn il-kumpanija li tagħha kien general manager. Kien fid-dmir ta' Ronald Galea jieħu ħsieb li jsewwi għand min jagħmel offerta l-aktar vantaġġjuża lill-kumpanija u mhux jgħaddi x-xogħol lil min jagħtih il-'gratitudes'.. Fl-ittra ta' tkeċċija tiegħu, il-punt numru 2 huwa propju dan:

'The Company has also discovered that various subcontractors of the Company appear to have directly paid for your benefit various sums of money as part of the purchase price of a yacht which you purchased in your name from Sundream Limited/Mecca Enterprises limited which behaviour is clearly unethical, irregular, out of order and in breach of your duties to the Company.'¹

L-appellant jisħaq fuq il-kliem li jidhru fl-Explanatory Report 'a breach of duty is required for private persons.'

¹ Fol 102.

Huwa tassew li fil-każ tal-uffiċjal pubbliku huwa biżżejjed li jirċievi l-flus imqar jekk prattikament ma jkun kiser ebda dmir biex huwa jinsab ħati. Fil-każ ta' manager jew ħaddiem fl-azjenda privata jrid ikun jirriżulta li l-breach of duty seħħ. U f'dan il-każ il-breach of duty seħħ għaleix Ronald Galea kien qed jippretendi flus (anzi talab) biex huwa jagħti x-xogħol lill-kumpanija tal-appellant.

Għalhekk il-fatt li fir-rinviju (kif ukoll fiċ-ċitazzjoni) hemm limitazzjoni għall-artikolu 115(a) tal-Kap 9 bl-ebda mod jwassal għal-liberazzjoni tal-appellant. Għalhekk il-Qorti qed tiċċad dan l-ewwel aggrvju.

It-tieni aggravju

L-appellant jissottometti li l-artikolu 121(1) ma japplikax għalih. Bir-rispett kollu, japplika għalih l-artikolu 120(1). Il-Qorti tagħmel referenza għal dak li ntqal aktar 'il fuq dwar it-tieni parti tas-sentenza li tidher f'dan l-artikolu li, fil-fehma tal-Qorti, ma tħalli ebda dubju li taħt dawn il-kliem qed tiġbor lil kulħadd – kull persuna li taħdem fil-privat f'attivitá kummerċjali. Il-kompliċi fil-privat ma ġiex eskuż iżda huwa **kjarament** inkluz.

Għalhekk il-Qorti qed tiċċad dan it-tieni aggravju tal-appellant.

It-tielet aggravju

Dan l-aggravju huwa dwar l-apprezzament tal-provi. Is-sottomissjoni prinċipali tal-appellant hija li kien xehed u kkonferma l-istqarrija. Il-Qorti tqis li fl-istqarrija stess l-appellant ammetta li kien għadda flus bħala 'gratitude' u li din haġa li ssir normalment fil-kors tal-business. Issa l-fatt li l-appellant espona ruħu għall-kontro-eżami u li dan ma sarx, ma jfissirx li l-Ewwel Onorabbli Qorti ma setgħetx tiġbed il-konklużjonijiet tagħha. Il-konferma tal-istqarrija minn fuq il-pedana tax-xhieda ma teżonerahx mill-ħtija. L-appellant jaf li qed joħroġ cheques f'isem Ronald Galea u mhux f'isem il-kumpanija. Kien jaf li qed jikkompeti ma' ħadd ieħor – għax kien meta daħal ħadd ieħor fis-suq li bdew iseħħu dawn il-ħlasijiet. Ukoll jekk għall-appellant is-soċjeta' CMA CGM kienet sinonima ma' Ronald Galea

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huwa żgur kien konsapevoli li qed isiru pagamenti sabiex Ronald Galea jagħżel is-soċjeta' tal-appellant biex isewwi. Jista' jkun li ma kienx jaf li skont il-Liġi dawn ma setgħux isiru malli l-Liġi daħlet fis-seħħ iżda dan ma jfissirx li jista' jiġi illiberat minn kull ħtija. Il-Qorti ma qed tarx xejn x'tiċċensura fir-raġunijiet li tat l-Ewwel Qorti f'pagna 10 u 11. inkluża r-raġuni li qieset il-Qorti dwar is-self bla imgħax u li seta' jitħallas meta ried Ronald Galea.

Għalhekk il-Qorti qed tiċċad dan it-tielet aggravju.

Konkluzjoni

l-Qorti għalhekk qed tiċċad l-aggravji kollha tal-appellant u qed tikkonferma s-sentenza mogħtija fit-8 ta' Ġunju 2011 fl-ismijiet premissi.

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