



**QORTI TAL-MAGISTRATI (MALTA)  
BHALA QORTI TA' GUDIKATURA KRIMINALI  
MAGISTRAT DR. MARSE-ANN FARRUGIA LL.D.**

Illum it-Tnejn 9 ta' Novembru, 2015

**Il-Pulizija  
(Spettur Elton Taliana)  
vs.  
Omissis  
Mahmoud Elmejdi**

Il-Qorti,

Rat ic-citazzjoni – kif emendata b'digriet ta' din il-Qorti tal-5 ta' Awwissu 2015 - kontra:

Omissis;

u

Mahmoud Elmejdi ta' 24 sena, mwieled Tripoli nhar il-21 ta' Jannar, 1992 bin Andullativ u Houda Khalifa nee' Atbib u residenti 75, Flt 3, Triq it-Turisti, Bugibba, detentur tal-karta tal-ghazil 18916.

Akkuzati talli nhar l-04 t'Awwissu 2015 ghal habta ta' 1.15a.m. minn fuq ix-Xatt ta' San Gorg, San Giljan:

1. ikkommettew serq ta' diversi oggetti fosthom flus kontanti u dokumenti, liema serq ikun izjed minn mitejn u tnejn u tletin Euro u erbgha u disghin centezmu (232.94 Euros) izda mhux aktar minn elfejn tliet mija u disgha u ghoxrin euro u sebgha u tletin centezmu (2,329.37 Euros), liema serq huwa kkwalifikat bil-‘valur’ u bil-‘hin’, ghad-dannu ta' Paulina Cywinska.
2. Aktar talli Omissis wahdu kkommetta reat waqt li kien taht sentenza sospiza, liema sentenza inghatat mill-Qorti tal-Magistrati Maltin preseduta mill-Magistrat Dr. C. Galea nhar it-22 ta' Lulju, 2015 kontra omissis, liema sentenza saret definittiva u ma tistax tigi mibdula.

Il-Qorti hija mitluba li titratta lill-imputat Omissis bhala recediv ai termini ta' l-artikoli 49, 50 u 289 tal-Kapitolu 9 tal-Kodici Kriminali, meta huwa kien gie misjub hati u kkundannat ghall-reati, b'sentenzi ta' reati Maltin, liema sentenzi saru definittivi.

Semghet ix-xhieda, u rat l-atti u d-dokumenti kollha ipprezentati;

Rat illi l-imputat irregistra ammissjoni fis-seduta tas-7 t'Ottubru, 2015<sup>1</sup>.

Rat illi din il-Qorti wissiet lill-imputat bil-konsegwenzi serji tal-ammissjoni tieghu, u senjatament li l-piena massima ghall-imputazzjoni dedotta kontrih hija ta' tliet snin prigunerija effettiva, u wara li l-Qorti tat lill-imputat hin adegwat biex jikkonsulta mal-avukat difensur tieghu u jara jekk iridx jirrevedi l-posizzjoni tieghu, l-imputat rega' kkonferma l-ammissjoni tieghu.

Fl-istess seduta, il-Qorti laqghet it-talba tal-Ufficjal Prosekutur li jkun hemm is-separazzjoni tal-gudizzju fil-konfront tal-imputat Mahmoud Elmejdi.

Semghet lill-imputat bil-gurament, li ried jixhed ghal fini tal-piena;

Fl-istess seduta Dottor Jason Grima ghall-imputat Mahmoud Elmejdi iddikjara li m'ghandux aktar provi rigward il-piena.

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<sup>1</sup> Verbal a fol 46 tal-process

L-Ufficjal Prosekutur iddikjara li m'ghandux provi dwar il-piena.

Semghet it-trattazzjoni orali tal-partijiet dwar il-piena;

Ikkunsidrat:

Mill-provi migjuba u mill-ammissjoni tal-imputat stess, il-Qorti issibu hati tal-imputazzjoni dedotta kontra tieghu.

Rigward il-piena, il-Qorti hadet in konsiderazzjoni li din ma kienitx ammissjoni bikrija, stante li saret fir-raba' seduta, wara li l-Prosekuzzjoni kienet resqet tal-inqas nofs ix-xhieda mitluba fir-rinviju tal-Avukat Generali.

Huwa vera li l-imputat ghandu fedina penali nadifa go Malta, pero, skond ix-xhieda tieghu u l-istqarrija tieghu, hu gie Malta mil-Libja ghal gimgha circa tlett snin ilu, telaq ghal tlett snin l-Isvezja u rega' gie lura fl-1 ta' Gunju 2015, cioe prattikament xahar qabel ma gie kommess ir-reat in kwistjoni.

Inoltre ix-xhieda li ta l-imputat quddiem din il-Qorti lanqas hi konsistenti. L-imputat l-ewwel xehed li circa tlett snin ilu hargitlu visa ghal Malta u gie Malta ghal gimgha. Izda huwa telaq minn Malta u mar l-Isvezja, ghax hu kien suldat mal-Kurunell Omar Gaddafi, u r-ribelli kienu qatlu lil missieru u lil huh u sparaw u heddeu lilu. Hu qal li peress li hawn Malta kien hawn hafna Libjani beza' li xi hadd minnhom jaghrfu u jpattiehlu. Pero imbaghad ghal xi raguni li l-imputat ma jaghtix fix-xhieda tieghu, hu telaq mill-Isvezja u gie lura Malta f'Gunju ta' din is-sena u applika ghall-asylum.<sup>2</sup> Inoltre fl-istqarrija tieghu, l-imputat jghid li hu gie Malta biex jibqa' jghix Malta,<sup>3</sup> u donnu l-biza' tieghu mill-Libjani li hawn Malta – li se mai huwa notorju li f'dawn l-ahhar tlett snin zdienu - marritlu ghax ma semmihiex iktar fix-xhieda tieghu. Ghaldaqstant, il-Qorti ma tistax tati affidament lix-xhieda tal-imputat.

Fix-xhieda tieghu, l-imputat jghid, li hu seraq il-handbag, ghax kien fis-sakra. Apparti li ma hemm l-ebda prova ta' dan, kif issottometta l-abbli difensur tal-imputat fit-trattazzjoni orali

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<sup>2</sup> Ara xhieda tal-imputat a fol. 67-68 tal-process.

<sup>3</sup> Ara l-istqarrija tal-imputat ezebita bhala Dok ET8 a fol. 19 tal-process.

is-sokor, mhux skuza ghal min jikkometti reat, hlief f'dawk il-kazijiet estremi previzti milligi, u dan mhux wiehed minnhom.

Inoltre, l-imputat mhux xi adoloxxenti imma ghandu 24 sena, u inoltre *ex admissis*, ghamel zmien jahdem ta' suldat, ghalhekk din il-Qorti ma tistax tikkonsidra dan ir-reat bhala frott talbluha taz-zoghzija kif issottomettiet id-difiza.

Kif gie ritenut mill-Qorti tal-Appell Kriminali fis-sentenza **The Police v. Andrei Dragos Opincaru**, deciza fit-12 ta' Frar 2009: *“Secondly, the aim of a suspended sentence is to ensure that a particular offender is placed under the proverbial “sword of Damocles” to ensure that he does not relapse, at least during the operative period of a suspended sentence. In other words, during this period, the offender knows that he is being indirectly monitored and, with this knowledge, he might be more inclined to repent and reform, whereas with non resident offenders, who are likely to spirit themselves away from these Islands as soon as they have been awarded such a suspended sentence, there can be no monitoring whatsoever by the State organs to ensure that they become reformed and better citizens in the fresh pastures they may decide to venture to. As such, the Courts have to be very perspicacious when applying this measure with non residents as very often it can be interpreted as a “mere slap on the back” of the offender who will be all too pleased to have been let off so lightly by Maltese justice. Certainly the reformatory purpose of such measure is very doubtful and the deterrent effect of such sentencing would be minimal in such cases and might be even very counterproductive in the long run, especially where internationally organized crime is concerned.”*

Din il-Qorti m'ghandha l-ebda garanzija li l-imputat se jibqa' Malta, ghalkemm applika ghall-asylum. Fil-fatt huwa diga kien Malta darb'ohra u telaq lejn Isvezja.

Inoltre, kif sewwa irrelevant din il-Qorti, diversament preseduta,<sup>4</sup> fis-sentenza **The Police vs. Ommissis and Lucian Grecu**, deciza fit-28 ta' Gunju 2015: *“Theft of mobile phones and other personal belongings has become a phenomenon in the area of St. Julian's and Paceville, especially during very busy hours in clubs. Hundreds of people have been victims of such crimes. The message should be very clear to anybody found guilty of such crimes*

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<sup>4</sup> Per Magistrat Ian Farrugia.

*against innocent people who only intend to go out for a night of fun. And consequently, the punishment must be one which conveys such clear message.*”

Huwa vera li dan is-serq sehh minn fuq ix-xatt tal-bajja ta' San Gorg, f'San Giljan, pero l-istess konsiderazzjonijiet ta' dik il-Qorti japplikaw ghal kaz odjern.

Pero, fl-ikkalibrar tal-piena il-Qorti se tikkonsidra li mill-provi migbura jirrizulta li l-valur tal-oggetti misruqa jaqbez bi ftit l-ammont ta' €232.94, li huwa l-minimu sabiex is-serq ikun aggravat bil-valur. Ir-reat huwa aggravat ukoll bil-hin u konsegwentement il-piena ma tistghax tinghata fil-minimu taghha (Artikolu 280(1) tal-Kodici Kriminali).

Inoltre l-maggoranza tal-oggetti misruqa gew ritornati lill-vittma, ghalkemm dan gara ghax l-imputat gie maqbud *in flagrante* mill-pulizija, u ghalhekk huwa applikabbli l-Artikolu 337(2)(b) tal-Kodici Kriminali u l-piena ghandha titnaqqas b'zewg gradi.

## **Konkluzjoni**

Ghal dawn il-motivi, il-Qorti, wara li rat l-Artikoli 261(c) u (f), 267, 270, 279(a), 280(1), 20 u 337(2)(b) tal-Kapitolu 9 tal-Ligijiet ta' Malta, issib lill-imputat hati tal-imputazzjoni dedotta kontrih, u tikkundannah ghal piena ta' sitt (6) xhur prigunerija.

Il-Qorti tordna li kopja ta' din is-sentenza flimkien mal-atti ta' dawn il-proceduri jintbaghtu lill-Avukat Generali ai termini tal-Artikolu 392A tal-Kapitolu 9 tal-Ligijiet ta' Malta fit-terminu hemm stabbilit.

## **Magistrat**

## **Deputat Registratur**