



Qorti tal-Appell Kriminali  
Onor. Imhalled Dr. Edwina Grima LL.D.

Appell Nru: 242 / 2013

Il-Pulizja  
Spettur James Grech

Vs

Juanita Fenech

Illum is-27 ta' Frar 2019

Il-Qorti,

Rat l-akkuzi dedotti kontra l-imputata Juanita Fenech, detentrici tal-karta tal-identita` Maltija bin-numru 148761(M) akkuzata quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli Fl-14 ta' Jannar, 2011 u f' dati ohra f' dawn il-Gzejjer:

- a. Bil-hsieb li ttellef jew tnaqqas il-gieh ta' Mario Fenech u / jew tal-kumpanija Percius Car Hire Limited, wegghethom bil-kliem, b' gesti, b' kitba, b' disinji jew b' xi mod iehor bi ksur tal-Artikolu 252 tal-Kap. 9 tal-Ligijiet ta' Malta.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali, tad-9 ta' Mejju, 2013, fejn il-Qorti wara li fil-kawza 'de quo' a bazi tad-dokument esebit u mhux kontestat irrizulta li giet cirkolata fost terzi ohra, sabet lill-imputata hatja. Rat l-artikolu 152(1)(3) tal-Kap. 9 tal-Ligijiet ta' Malta u ikkundannat lill-imputata ghal multa ta' mitejn ewro (€200).

Rat ir-rikors tal-appell tal-appellanti Juanita Fenech, pprezentat fir-registru ta' din il-Qorti fil-21 ta' Mejju, 2013, fejn talbet lil din l-Onorabbli Qorti joghghobha thassar u tirrevoka s-sentenza appellata u tilliberaha minn kull imputazzjoni, htija u piena.

Rat l-atti u d-dokumenti kollha.

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

Rat illi l-aggravji tal-appellanti huma cari u manifesti u jikkonsistu fis-segwenti:

1. Illi l-azzjoni penali taht l-Art. 252 tal-Kodici Kriminali (Kap. 9) ma tistax tirnexxi peress li skond id-dispozizzjonijiet tal-Art. 256 (1) tal-Kap. 9. "*fil-kazijiet ta' ingurja li ssir bil-mezz tal-istampa, ighoddu, d-disposizzjonijiet tal-Att dwar l-Istampa*";
2. Illi fi kwalunkwe kaz ma tistax tinghata ingurja permezz ta' atti gudizzjarji;
3. Illi l-prosekuzzjoni naqset milli ggib l-ahjar prova meta lanqas iproduciat almenu kopja legali tal-att gudizzjajju li a bazi tieghu akkuzat lill-esponenti u giebet biss fotokopja. Lanqas ma saret prova ta' min kien l-awtur ta' tali att;
4. Illi fi kwalunkwe kaz is-socjeta' Percius Car Hire Limited qua persuna morali m' ghandha ebda gieh filwaqt li ma ngiebet ebda prova fir-rigward tal-allegat reat in kwantu jmiss il-gieh ta' Mario Fenech:

Ikkunsidrat:

Illi mill-provi akkwiziti in atti jirrizulta li l-appellanti f'att gudizzjarju konsistenti f'nota responsiva bil-kitba taghha stess, ipprezentata fl-atti tal-kawza Percius Car Hire Co. Ltd. vs Philip Attard pendenti quddiem it-Tribunal ghal Talbiet Zghar ghaddiet rimarki dispregattivi ndirizzati principlament fil-konfront ta' Mario Fenech ghan-nom tas-socjeta' Percius Car Hire, li inserta wkoll l-ex ragel tal-appellanti. Il-parti leza Mario Fenech flimkien mas-socjeta' minnu rapprezentata hassewhom ingurjati b'din il-ktiba u ghalhekk gew istitwiti proceduri penali kontra l-appellanti

akkuzata bir-reat mahsub fl-artikolu 252 tal-Kapitolu 9 tal-Ligijiet ta' Malta, ta' liema akkuza l-appellanti giet misjuba hatja mill-Ewwel Qorti.

Ikkunsidrat:

Illi minn żmien l-ghoti tas-sentenza appellata, gie promulgat l-Att XI tas-sena 2018, permezz ta' liema ligi gdida dwar il-Midja u il-Malfama, l-artikolu 252 tal-Kodiċi Kriminali li jikkostitwixxi l-bażi legali tal-akkuza miġjuba kontra l-appellanti gie abrogat<sup>1</sup>. Illi allura ghalkemm l-att vjolatur kien jikkostitwixxi reat meta seh, dan madanakollu ma ghadux jigi hekk ikkunsidrat illum il-gurnata.

Illi in linja mad-decizjonijiet moghtija mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem ibbazati fuq l-artikolu 7 tal-Kovenzjoni Ewropeja dwar il-Drittijiet tal-Bniedem, il-Qorti hija tal-fehma illi illum ebda piena ma ghandha tigi imposta fuq l-appellanti u l-Qorti bilfors trid tastjeni milli tiehu konjizzjoni ta' dina l-akkuza:

**"The Court notes that the obligation to apply, from among several criminal laws, the one whose provisions are the most favourable to the accused is a clarification of the rules on the succession of criminal laws, which is in accord with another essential element of Article 7, namely the foreseeability of penalties .... The Court .... affirms that Article 7 § 1 of the Convention guarantees not only the principle of non-retrospectiveness of more stringent criminal laws but also, and implicitly, the principle of retrospectiveness of the more lenient criminal law. That principle is embodied in the rule that where there are differences between the criminal law in force at the time of the commission of the offence and subsequent criminal laws enacted before a final judgment is rendered, the courts must apply the law whose provisions are most favourable to the defendant."**<sup>2</sup>

Din il-posizzjoni giet riaffermata permezz tas-sentenza tal-Qorti Ewropeja fl-ismijiet Öcalan v. Turkey deciza fit-18 ta' Marzu, 2014.<sup>3</sup>

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<sup>1</sup> Ara artikolu 25(e) tal-Att XI tal-2018

<sup>2</sup> Scoppola vs Italy App.No.12049/03 – 17/09/2009 (Grand Chamber)

<sup>3</sup> *The court notes that the principle of retrospectiveness of the more lenient criminal law, considered by the court in Scoppola (no. 2), as guaranteed by Article 7, is embodied in the rule that where there are differences between the criminal law in force at the time of the commission of the offence and subsequent criminal laws enacted before a final judgment is rendered, the courts must apply the law whose provisions are most favourable to the defendant.* Ara ukoll Ruban vs Ukraine – 12/07/2016 u Koprivnikar vs Slovenia.

Illi l-Professor Sir Anthony Mamo jidher li kien tal-fehma ukoll li f'sitwazzjonijiet bħal dawn il-proċeduri jew l-effett provenjenti minnhom permezz tas-sentenza li tkun ingħatat, għandhom jieqfu.

*"In fact, in the hypothesis under discussion, though the liability was contracted while the former law was still in force, the prosecution and sentence would be carried on and pronounced after such law has been repealed. So that, if such law were to be applied to such prosecution and sentence, it would be given an effect beyond its legal limit of operation. It is thus not by way of an equitable retrospective application of the new law but rather on the grounds that the operation of the old law cannot extend beyond its repeal (divieto di ultra-attivita') that, in this hypothesis, the criminal proceedings cannot be maintained in respect of the act which, at the time of the trial, has ceased to constitute a criminal offence.*

B'hekk illum għalkemm il-prosekuzzjoni tar-reat abrogat fil-mori tal-proċeduri jista' jitkompli u dan fid-dawl ta' dak li jipprovdi l-Att dwar l-Interpretazzjoni, madanakollu l-istess qieghed jitqies illi huwa leżiv tal-artikolu 7 tal-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem.

Għal dawn il-motivi il-Qorti taqta' u tiddeciedi billi tirrevoka is-sentenza appellata u billi r-reat li dwaru l-appellanti giet akkuzata illum gie abrogat, tastjeni milli tiehu iktar konjizzjoni tal-akkuza migjuba kontra taghha.

(ft) Imhallef

Vera Kopja

Joyce Agius

Deputat Registratur