IL-QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI ISTRUTTORJA

(Fl-Att dwar l-Estradizzjoni msejha l-Qorti Rimandanti)

Magistrat Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

Il-Pulizija
(Spettur Mark Galea)
-vs-
Paul Attard

Illum, 6 ta' Gunju, 2019

Il-Qorti

Rat ir-rikors tal-estradand tal-4 ta' Gunju, 2019, fejn talab lil din l-Qorti -

(i) tordna lill-ufficjal prosekutur "sabiex immedjatament" jipprezenta nota deskritiva tac-cirkostanzi sal-4 ta' Gunju, 2019;

(ii) tordna lill-ufficjal prosekutur "sabiex immedjatament" jipprezenta kopja awtentikata tal-awtorizazzjoni mahruga mill-awtoritajiet Olandizi li permezz taghha l-awtoritajiet Taljani abburdaw il-bastiment Olandiz msemmi fil-mandat t'arrest ewropew (aktar il-quddiem imsejjah MAE);

(iii) tawtorizza l-produzzjoni bhala xhieda tal-Assistant Kummissarju Dennis Theuma u l-Avukat Giuseppe Cavallaro u dan dwar kwistjonijiet relatati mat-talba ghall-estradizzjoni in dezamina kif ukoll dwar il-Ligi Sussidjarja 276.05 u dwar ligijiet penali Taljani, u dan fis-seduta tal-5 ta' Gunju, 2019.

Semghet sottomissjonijiet ulterjuri da parti tal-partijiet fil-kors tas-seduta tal-5 ta' Gunju, 2019.

Semghet lill-estradand jecepixxi l-kwistjoni li l-MAE mhux wiehed mibghut in konformita` mad-***Decizjoni Kwadru tal-Kunsill tat-13 ta' Ġunju, 2002.***

Ghal speditezza tenut kont tan-natura ta' dawn il-proceduri, il-Qorti ser tghaddi biex tiddeciedi dwar il-kwistjonijiet sollevati permezz tar-rikors msemmi kif ukoll in segwitu tas-sottomissjonijiet orali li saru.

Ikkunsidrat,

Illi rigward l-ewwel talba, kienet din il-Qorti li fis-seduta tas-27 ta' Mejju, 2019, wara li ordnat li tingieb informazzjoni supplimentari ai termini tar-regolament 13A tal-Ordni dwar Pajjiżi Barranin Appuntati dwar l-Estradizzjoni (aktar il-quddiem imsejjah 'l-Ordni'), Avviz Legali 320 ta' l-2004 (Ligi Sussidjarja 276.05), akkordat lil Avukat Generali zmien sal-5 ta' Gunju, 2019, sabiex isir dak ordnat minnha. Fil-fatt b'nota tal-4 ta' Gunju, 2019, l-Avukat Generali pprezenta l-informazzjoni kif ordnat.

Ghalhekk il-Qorti qed tastjeni milli tiehu konjizzjoni ulterjuri ta' din l-ewwel talba.

Illi rigward it-tieni talba, il-Qorti tqis li fl-ewwel lok ghandu jigi sottolinejat l-irwol ferm limitat u cirkoskritt tal-Qorti Rimandanti.

Fid-decizjoni ***Il-Pulizija vs Stefan Predescu*** l-Qorti tal-Appell Kriminali ddecidiet:[1]

> Inoltre din il-Qorti ma taqbel bl-ebda mod illi t-terminu biex jigi pprezentat appell f'kazijiet ta' estradizzjoni huwa wiehed qasir wisq. Kull ma trid taghmel il-Qorti Rimandanti hu li **tara jezistux il-presupposti fattwali biex issir l-estradizzjoni**. ....
> [emfazi tal-Qorti]

L-istess Qorti fis-sentenza ***Il-Pulizija vs Angelo Fregapane,*** kaz li kuntrarjament ghall-proceduri odjerni u dawk fil-konfront ta' Predescu, kien jittratta estradizzjoni tradizzjonali u cioe` fejn baqa' r-rekwizit li jigi stabbilit kaz *prima facie* (u b'differenza ghall-proceduri fuq Mandat

[1] Per Onor. Imhallef David Scicluna; Deciza 9 ta' Jannar, 2012; Appell Kriminali Numru. 519/2011

t'Arrest Ewropew fejn **dan ir-rekwizit gie eliminat ghal kollox),** kkunsidrat:

> 14. Il-Qorti Rimandanti u, bħal f'dan il-każ, din il-Qorti (tal-Appell Kriminali) huma msejħa biex jiddeterminaw biss jekk jeżistux il-**presupposti legali u fattwali** li jintitolaw lill-awtorita`Eżekuttiva (il-Ministru responsabbli mill-Ġustizzja) li jibgħat lura l-Italja lill-imsemmi appellant.[2]
>
> [emfazi tal-Qorti]

Issir riferenza wkoll ghas-sentenza fl-ismijiet ***Il-Pulizija v. Antonio sive Anthony Satariano,*** ukoll procedura ta' estradizzjoni tradizzjonali:[3]

> Il-provi li ggib persuna mressqa quddiem il-Qorti rimandanti, ma ggibhomx ghal-difiza taghha. Effettivament din il-persuna ma tkunx akkuzata quddiem il-Qorti rimandanti, izda quddiem il-Qorti barranija. **Il-provi li ggib din il-persuna ma jkunux ghad-difiza taghha mill-akkuzi fil-Qorti rimandanti barranija, izda biex turi li l-Qorti rimandanti Maltija ma jkollhiex tkun sodisfatta li r-reat in kwistjoni jkun estradibbli** ....
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> Huwa pacifku fil-gurisprudenza li l-kriterju dwar is-sufficjenza tal-provi ghall-fini tad-decizzjoni mill-Qorti Rimandanti dwar jekk ghandhiex jew le tibghat lill-persuna ghallestradizzjoni, ghandu jkun identiku ghall-kriterju dwar is-sufficjenza tal-provi ghall-fini tad-decizzjoni mill-Qorti Istruttorja dwar jekk ikunx hemm jew le ragunijiet bizzejjed biex l-imputat jitqieghed taht att ta' akkuza.
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> Dan il-kriterju gie dezinjat f'dawn it-termini. F'kaz li l-Qorti issib li l-provi *prima facie* jindikaw il-probabbilta` ta' htija, jew anke jekk ikollha dubbju f'dan ir-rigward, hija ghandha tibghat lill-persuna ghallestradizzjoni. **Il-Qorti rimandanti ma ghandhiex tuzurpa l-funzjoni tal-gudikant: ma ghandhiex tikkonsidra l-preponderanza tal-provi;**
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> **Il-persuna mressqa quddiem il-Qorti Rimandanti ma tistax iggib provi** biex tattakka l-kredibbilita` tal-provi igjuba kontra taghha. Il-provi li tista ggib huma dawk li jistghu juru li l-provi migjuba kontriha, fl-assjem taghhom, ma jindikaw ebda kaz kontra taghha, li minnu jkollha tiddefendi ruhha.
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> Ghalhekk il-provi li tista' tipproduci l-persuna mressqa quddiem il-Qorti rimandanti, biex ikunu rilevanti ghall-procedura odjerna,ghandhom ikunu diretti ghall-fini imsemmi fil-paragrafu precedenti jew biex juru li r-reat dedott kontra taghha mhuwiex estradibbli.
>
> [emfazi tal-Qorti]

Ghalhekk fl-ambitu ta' proceduri dwar MAE – fejn lanqas ghad hemm htiega li jigi determinat kaz *prima facie* – il-Qorti Rimandanti ghandha kompitu limitat u definit. Fil-fatt din il-qorti hi msejjha unikament biex tiddeciedi jezistux il-presupposti legali sabiex MAE jintlaqa' u cioe` biex (f'kaz simili ghal dak in dezamina fejn il-MAE hu wiehed mahrug *"for the*

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[2] Per Onor. Imhallef David Scicluna; Deciza 16 ta' Jannar, 2013; Appell Kriminali Numru. 593/2012.

[3] Per Onor. Imhallef Victor Caruana Colombo; Deciza 16 ta' Gunju, 1997

purposes of conducting a criminal prosecution"[4]), tiddetermina zewg kwistjonijiet primarji: (a) jekk ir-reat li dwaru qed tintalab l-estradizzjoni hux wiehed estradibbli ai termini tar-regolament 12 tal-Ordni, u jekk fl-affermattiv tipprocedi sabiex (b) tiddetermina jekk jezistux *bars to extradition* ai termini tar-regolament 13 tal-Ordni.

Dan ifisser li l-Qorti Rimandanti ma ghandha l-ebda rwol tissindika l-operat tal-awtoritajiet rikjedenti li ppreceda il-hrug tal-MAE! Fl-istess sentenza appena kwotata filfatt kien intqal:

> ……Noti verbali u komunkazzjonijiet ohra bejn il-gvernijiet, li kkonducew ghall-hrug mill-Ministru ta' l-awtorita' ghall-procediment ta' l-estradizzjoni mhumiex sindikabbli mill-Qorti rimandanti. Il-funzjoni ta' dik il-Qorti tibda mill-hrug ta' l-awtorita' msemmija u ma tirrigwardax dak li kien sar qabel bejn il-gvernijiet, li huwa kollu irrilevanti ghall-dawn it-tipi ta' proceduri.

Multo magis mhux sindakabbli ghalhekk minn din il-qorti dak li sehh bejn awtoritajiet esteri, dawk Taljani u dawk Olandizi, li permezz tieghu skattaw l-investigazzjonijiet gewwa il-pajjiz rikjedent li sussegwentement wasslu ghall-hrug tal-MAE in dezamina!

Dak il-kompitu galadarba jinciedi fuq il-mertu, jispetta unikament u esklussivament lill-qrati esteri li huma vestiti b'poteri u funzjonijiet li din il-Qorti hi prekluza milli tuzurpa.

Ghaldaqstant it-tieni talba tal-estradand qed tigi michuda.

Illi dwar l-ahhar talba maghmula fir-rikors imsemmi u fuq skorta tal-gurisprudenza citata, mhemmx dubbju li l-estradand jista' jgib provi li permezz taghhom juri li r-reat dedott kontra tieghu **mhuwiex wiehed estradibbli**.

Madanakollu fir-rikors minn tieghu l-estradand qed jitlob il-produzzjoni tax-xhieda ndikati biex jixhdu *"fost affarijiet ohra, dwar kwistjonijiet relatati mat-talba ghall-estradizzjoni a tenur tal-ligi ta' Malta, inkluz il-Legislazzjoni Sussidjarja 276.05, kif ukoll dwar il-ligijiet penali Taljani."*.

Illi fl-ewwel lok jinghad li l-funzjoni ta' xhud hu dak li jixhed dwar fatti u mhux jaghti l-opinjoni jew fehmiet tieghu dwar interpretazzjoni ta' disposizzjonijiet ta' dritt penali esteru jew addiritura tal-ligijiet ta' pajjizna

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[4] **Dok.RM**

dwar il-Mandat t'Arrest Ewropew, liema strument kien l-ewwel tax-xorta tieghu fejn hu msejjes fuq il-kuncett ta' fiducja reciproka bejn awtoritajiet gudizzjarji ta' Stati Membri tal-Unjoni Ewropeja, l'hekk imsejjha *mutual recognition between judicial authorities*.

Ta' rilevanza hi l-**Opinion** ta' **Lord Scott of Foscote** fil-**Judgement (Appellate Committee), House of Lords,** ***Office of the King's Prosecutor, Brussels (Respondents) v. Armas:***[5]

> 50. Lord Hope has referred to the background to the European Council Framework Decision of 13 June 2002. The Framework Decision was intended to simplify the procedures for extradition of individuals from one Member State to another either for the purpose of being prosecuted for alleged criminal conduct or for the purpose of serving a sentence imposed after conviction. There were two particular features of the Framework Decision extradition scheme that, having regard to the issues raised by this appeal, deserve mention. First, in relation to offences falling within the so-called Framework List the requirement of double criminality was removed, that is to say, it would not be necessary to show that the conduct of the accused for which he was to be prosecuted in the requesting State, or which had constituted the offence of which he had been convicted in the requesting State, would have been criminal conduct for which he could have been prosecuted or convicted in this country.
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> 51. Secondly, the Framework Decision was intended to make it unnecessary, whether in relation to Framework List offences or any other offences, for the requesting State to have to show that the individual had a case to answer under the law of that State. The merits of the extradition request were to be taken on trust and not investigated by the Member State from which extradition was sought. Article 1(2) says that:
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>> "Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision."
>
> And recital (5) of the Framework Decision speaks of
>
>> "abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities."
>
> 52. The principle underlying these changes is that each Member State is expected to accord due respect and recognition to the judicial decisions of other Member States. Any enquiry by a Member State into the merits of a proposed prosecution in another Member State or into the soundness of a conviction in another Member State becomes, therefore, inappropriate and unwarranted. It would be inconsistent with the principle of mutual respect for and recognition of the judicial decisions in that Member State.
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> 53. Accordingly, the grounds on which a Member State can decline to execute a European arrest warrant issued by another Member State are very limited. Article 3 sets out grounds on which execution must be refused. Article 4 sets out grounds on which execution may be refused.

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[5] 17 November, 2005; SESSION 2005–06; [2005] UKHL 67; Hearing Date 12 October, 2005

None of these grounds enable the merits of the proposed prosecution or the soundness of the conviction or the effect of the sentence to be challenged. There is one qualification that should, perhaps, be mentioned. The execution of an arrest warrant can be refused if, broadly speaking, there is reason to believe that its execution could lead to breaches of the human rights of the person whose extradition is sought (see recitals (12) and (13)).

54. These features of the Framework Decision explain, I think, the inclusion in the 2003 Act of the requirement that if an arrest warrant is issued for the purpose of prosecuting the person named in the warrant, the arrest warrant must so state (see section 2(3)(b)). Extradition for the purpose of interrogation with a view to obtaining evidence for a prosecution, whether of the extradited individual or of anyone else, is not a legitimate purpose of an arrest warrant. **But the judicial authority in the requested State cannot inquire into the purpose of the extradition**. [emfazi tal-Qorti]

Issir riferenza ghas-sentenza ***Il-Pulizija vs Donatella Concas*** fejn il-Qorti Rimandanti ghamlet ezami *funditus* dwar l-istituzzjoni tal-Mandat t'Arrest Ewropew:[6]

Il-Qorti qieset sewwa il-preġudizzjali sollevata mid-Difiża kif ukoll is-sottomissjonijiet tal-partijiet, nonche d-dokumenti kollha eżibiti f'dawn l-atti. Din il-Qorti jidhrilha li l-iskop ewlieni u aħħari wara l-ħolqien tal-mandati t'arrest ewropej kien wieħed li jassikura speditezza u mill-anqas burokrazija fit-twettieq ta' deċiżjonijiet tal-Awtoritajiet Ġudizzjarji fit-territorju tal-Unjoni Ewropeja fir-rigward tar-ritorn ta' persuni rikjesti u li jkunu jinstabu fit-territorju Ewropew li għall-fini tal-koperazzjoni ġudizzjarja kellu jitqies bħala territorju uniku. **Dawn il-prinċipji huma msejsa fuq il-kunċett tal-fiduċja reċiproka li għandu jsaltan bejn l-Awtoritajiet Ġudizzjarji Ewropej u l-istati membri Ewropej li għażlu fis-sovranita tagħhom li jillimitaw l-istess sovranita u jagħtu spinta lil fiduċja reċiproka fl-Awtoritajiet Ġudizzjarji Reċiproċi**.

Il-komunikazzjonijiet bejn l-istess Awtoritajiet għandhom jitqiesu li jkunu qegħdin isiru fi ħdan din il-filosofija kif ukoll b'rispett lejn il-verita' proċesswali, b'responsabbilta' u dejjem *in buona fede*. U allaħares kien mod ieħor, għaliex altrimenti l-pilastru tal-fiduċja reċiproka li fuqu hija msejsa l-proċedura tal-eżekuzzjoni tal-MAE jikkrolla.

Il-proċedura tal-eżekuzzjoni tal-MAE mhix bħal proċeduri penali oħra. Għalhekk ikun żbaljat li jiġu adottati il-kriterji t'applikazzjoni u interpretazzjoni stretta li jikkaratterizzaw il-proċedura penali f'dan il-kamp bl-istess mod bħal ma jsir fi proċeduri penali fejn Qorti tkun trid tiddetermina r-responsabbilta' penali o meno ta' persuna imputata. Dan japplika wkoll għall-xi provi jridu jitresqu f'dawn il-proċeduri kif ukoll il-livell ta' suffiċjenza probatorja.

L-anqas ma huma applikabbli bl-istess mod ir-regoli tradizzjonali tal-estradizzjoni. Anzi din il-proċedura ġiet maqbula bejn l-Istati Membri tal-Unjoni Ewropeja speċifikament sabiex ma jkunx hemm l-istess kriterja applikabbli f'każijiet t'estradizzjoni bejniethom.

Dan huwa qasam li huwa divers u sa ċertu punt uniku għall-Unjoni Ewropeja. Għalkemm ċertu veduti tradizzjonalisti ċċensuraw din il-modalita tal-ħsieb, il-fatt jibqa' li **l-proċedura tal-eżekuzzjoni tal-mandat t'arrest ewropew teżalta għall-fini ta' koperazzjoni ġudizzjarja l-**

[6] Per Onor. Magistrat Aaron Bugeja; Deciza 14 ta' Novembru 2016

unifikazzjoni tat-territorju tal-pajjiżi tal-Unjoni Ewropeja ghall-fini ta' kooperazzjoni Gudizzjarja li aderew ruħhom għal din il-proċedura.

B'hekk l-istqarrijiet u d-dokumenti mibgħuta mill-Awtoritajiet Ġudizzjarji Ewropej fil-qafas ta' proċedura għall-eżekuzzjoni tal-MAE, u fl-ewwel lok il-MAE innifsu u d-dikjarazzjonijiet magħmula mill-Awtoritajiet Ġudizzjarji rispettivi għandhom piż u valenza qawwija f'dawn il-proċeduri.
[emfazi tal-Qorti]

Fis-sentenza ***Il-Pulizija vs Philip Mifsud*** gie kkunsidrat:[7]

Il-Qorti tixtieq taghmilha cara li hawnhekk si tratta ta' decizjoni dwar jekk l-imputat ghandux jigi mibghut l-Italja sabiex jghaddi proceduri penali hemmhekk. Dawn il-proceduri quddiem din il-Qorti ma jwaslux ghal dikjarazzjoni ta' kolpevolezza jew in-nuqqas taghha.

Barra minn hekk dawn huma proceduri partikolari hafna, sa certu punt *sui generis,* bazati fuq id-Deċizjoni Kwadru tal-Kunsill tat-13 ta' Ġunju, 2002 fuq il-mandat ta' arrest Ewropew u l-proċeduri ta' konsenja bejn Stati Membri magħmul f'Lussemburgu fit-13 ta' Ġunju, 2002, adottat konformement mat-Titolu VI tat-Trattat, li għandu l-pattijiet tiegħu stipulati fl-arranġament relattiv u pubblikati fil-Gazzetta tal-Gvern li ġġib id-data ta' l-1 ta' Ġunju, 2004, kif emendat bid-Deċiżjoni Qafas tal-Kunsill 2009/299/ĠAI tas-26 ta Frar, 2009 (aktar l-isfel maghruf bhala l-"Arrangament") intizi sabiex jithaffef il-procediment ta' treggiegh ta' persuni li jkunu fit-territorju tal-Unjoni Ewropeja u li jkunu allegatament ikkommettew reati kriminali f'xi pajjiz rikjedent. Dawn il-proceduri huma soggetti ghall-principju baziku imsemmi fl-Artikolu 1 tad-Decizjoni Kwadru li jippreskrivi l-principju ta' rikonoxximent reciproku t'atti gudizzjarji u l-fiducja reciproka li Awtoritajiet Gudizzjarji ghandhom ikollhom fi hdan din l-Unjoni.

Wiehed jifhem li dawn huma principji relattivament ricenti li ddahlu fl-ordinament guridiku Malti u Ewropew u ma kienux minghajr skossi u polemiki. Il-fatt hu li llum, l-Istat Malti ghazel li jkun parti minn din l-Unjoni u konsegwentement, ghazel, jew kellu jaghzel li jintroduci dan il-qafas regolatorju bhala parti mill-pakkett shih li din l-Unjoni timplika.

Naturalment dan ghandu l-konsegwenzi tieghu. Fosthom li r-regoli imsemmija fl-Ordni li huma bbazatati fuq l-Arrangament, jiddipartixxi wkoll minn certi principji ohra li kienu jezistu qabel fil-Kap 276 jew ahjar jigu introdotti certi proceduri sabiex il-konsenja ta' persuna minn Stat tal-Unjoni ghal iehor isir **b'mod aktar celeri, anqas burokratiku u aktar spedit.** Fi ftit kliem, fi hdan l-Unjoni Ewropeja, il-livell ta' zvilupp komuni fil-kamp tal-harsien tad-drittijiet tal-bniedem u l-izvilupp fil-ligi penali kemm sostantiva kif ukoll procedurali waslu sabiex l-istati membri ta' din l-Unjoni jafdaw aktar lil xulxin u lill-Awtoritajiet Gudizzjarji fi hdanhom.[8]

Dan ma jfissirx li l-Qrati Maltin ghandhom jaghlqu ghajnejhom ghal kollox u jsiru biss timbru ghal dak rikjest mill-Qrati Ewropej. Wara kollox ghalhekk hemm l-Ordni.

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[7] Per Onor. Magistrat Dr. Aaron Bugeja; Deciza nhar it-18 ta' Ottubru, 2013; Numru. 911/2013. Vide ukoll decizjonijiet moghtija mill-istess qorti fl-istess sens **Il-Pulizija vs. Michael Spiteri; Il-Pulizija vs Francis Xavier Galea**

[8] Ara d-diskors ta' Lord Hope of Craighead fil-kaz "Office of the King's Prosecutor, Brussels (Respondents) v. Armas" [2005] UKHL 67.

> Biss bla dubju, dan l-istess Ordni jiffacilita bil-kbir l-iter ghalbiex persuna f'Malta tkun tista tigi mibghuta f'pajjiz iehor tal-Unjoni, inter alia biex issegwi proceduri penali f'dak il-pajjiz.
> [emfazi tal-Qorti]

Jirrizulta ghalhekk li l-qafas legislattiv tal-MAE huwa bbazzat intjerament fuq il-**kunċett tal-fiduċja reċiproka** bejn awtoritajiet gudizjarji ta' stati membri, bil-ghan li talbiet ghall-estradizzjoni jigu decizi b'mod spedit abbazi tad-***Deċizjoni Kwadru tal-Kunsill tat-13 ta' Ġunju, 2002*** kif tramandata fl-ordinamet guridiku rispettiv tal-istati membri.

Dan ifisser li l-Qorti Rimandanti jonqsilha l-htiega li jigi lilha mfisser jew spjegat xi aspett ta' dritt penali tal-pajjiz rikjedent li ma ghandu xejn x'jaqsam mal-skop li fuqu gie msejjes il-MAE!

Fuq kollox l-qorti ghandha s-setgha li tiehu konjizzjoni hi ta' tali ligi estera (*judicial notice*) minghajr il-htiega ta' xhieda appozita biex jghidulha dak li tista' tiddetermina facilment hi stess.

Ghal dawn il-mottivi, din il-Qorti qed tichad anke din it-talba.

Imiss ghalhekk li tigi trattata l-eccezzjoni ssollevata mill-estradand fis-seduta tal-5 ta' Gunju, 2019, u cioe` li l-MAE mibghut mill-awtoritajiet rikjedenti esteri mhux wiehed konformi mal-Arrangament hekk kif jipprovdi r-Regolament 5A(1) ta' l-***Ordni dwar Pajjiżi Barranin Appuntati dwar l-Estradizzjoni*** (aktar il-quddiem imsejjah 'l-Ordni'), Avviz Legali 320 ta' l-2004 (Ligi Sussidjarja 276.05).

Wara li semghet lill-prosekuzzjoni tiddikjara li l-formola tal-MAE hi wahda konformi mal-Ordni,

Ikkunsidrat,

Ir-regolament 5A(1) tal-Ordni jipprovdi:

5A. (1) Il-formola, li hemm fl-Anness li jinsab ma' l-Arranġament, intiża biex tirriproduċi dettalji li jistipulaw l-informazzjoni meħtieġa bl-istess formola u li jkun fiha d-dikjarazzjoni msemmija fl-artikolu 5(4), għandha tikkostitwixxi mandat ta' arrest rilevanti għall-prosekuzzjoni għall-finijiet ta' dan l-ordni.

Fl-artiklu 8 tad-***Decizjoni Kwadru tal-Kunsill tat-13 ta' Ġunju, 2002 fuq il-mandat ta' arrest Ewropew u l-proċeduri ta' konsenja bejn Stati Membri magħmul f'Lussemburgu fit-13 ta' Ġunju, 2002,*** jinghad:

Article 8

Content and form of the European arrest warrant 1. The European arrest warrant shall contain the following information set out ***in accordance with the form contained in the Annex****:….*

Il-***Handbook on how to Issue and Execute a European Arrest Warrant (2017/C 335/01)*** mahrug f'Ottubru, 2017, mill-Kummissjoni Ewropeja u ppubilkat fil-Gurnal Uffucjali tal-Unjoni Ewropeja,[9] ghalkemm fih innifsu ma ghandu l-ebda *"binding effect"*, joffri tifsiriet u linji gwida abbazi ta' gurisprudenza tal-Qorti tal-Gustizzja.

Illi fis-sezzjoni 1.3 tieghu insibu:

1.3. The EAW form
The EAW is a judicial decision issued in the form laid down in an annex to the Framework Decision on EAW. The form is available in all official languages of the Union. Only **this form may be used** and it must not be altered. The intention of the Council was to create a working tool easily filled in by the issuing judicial authorities and recognised by the executing judicial authorities.

Use of the form avoids lengthy and expensive translations and facilitates the accessibility of the information. Since the form in principle constitutes the sole basis for the arrest and subsequent surrender of the requested person, it should be filled in with particular care in order to avoid unnecessary requests for supplementary information.

The form can be filled in either directly online by using the European Judicial Network (EJN) Compendium e-tool available on the EJN website, or in a word format form which can be

[9] **C335:** Dan il-manwal iqis l-esperjenza miksuba fl-aħħar 13-il sena mill-applikazzjoni tal-Mandat ta' Arrest Ewropew fl-Unjoni. L-għan ta' din ir-reviżjoni huwa li jiġi aġġornat il-manwal u jsir aktar komprensiv u faċli għall-utent. Biex tipprepara din l-aħħar verżjoni tal-manwal, il-Kummissjoni kkonsultat ma' diversi persuni kkonċernati u esperti, inklużi l-Eurojust, is- Segretarjat tan-Netwerk Ġudizzjarju Ewropew, u l-esperti governattivi u l-awtoritajiet ġudizzjarji tal-Istati Membri.
Dan il-manwal jinsab fuq l-Internet fil-paġna: https://e-justice.europa.eu fil-lingwi uffiċjali kollha tal-Unjoni.

downloaded from the Judicial Library section on the EJN website (https://www.ejn-crimjust.europa.eu).

Illi l-verzjonijiet tal-formoli tal-MAE li huma accessibli *online* fuq l-EJN website, huma precizament dawk li l-General Secretariat tal-Kunsill tal-Unjoni Ewropeja kkomunika lid-delegazzjonijiet rispettivi tal-Istati Membri sabiex jintuzaw ghall-hrug ta' MAE.

Fil-formola tal-verzjoni Taljana jinghad: *"Si allega per le delegazioni la versione consolidata del modello di mandato d'arresto europeo"*. Imbghad f'dik bil-verzjoni Ingliza *"Delegations find attached the consolidated version of the European arrest warrant form"*.

Fiz-zewg verzjonijiet msemmija, il-lista ta' *scheduled offences* hi wahda in pjena konformita` ma dik annessa mad-Decizjoni Kwadru, intestata *"Annex"*, u li ssir riferenza ghaliha fl-artiklu 2 taghha.

Issir riferenza ghad-decizjoni **Dabas (Appellant) v. High Court of Justice, Madrid (Respondent) (Criminal Appeal from Her Majesty's High Court of Justice):**[10]

> 39. In *Criminal proceedings against Pupino* (Case C-105/03) [2006] QB 83, 91, para 23, Mrs Advocate General Kokott said that the object of creating an ever closer union among the people of Europe to which article 1 EU refers will not be achieved unless the member states and institutions of the Union co-operate sincerely and in compliance with the law. She then explained how framework decisions must be given effect in accordance with article 34(2)(b) EU:
>
> "28. Framework decisions in Union law are also largely identical in their structure to directives in Community law. Under article 34(2)(b) EU, they are binding on the member states as to the result to be achieved but leave the choice of form and methods to the national authorities. Although direct effect is expressly excluded, at least the wording concerning their binding character as to the result to be achieved corresponds to that of the third paragraph of article 249 EC, on the basis of which - together with other reasons - the Court of Justice has developed the doctrine of the application of national law in conformity with Community directives.

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[10] Session 2006-07; **[2007] UKHL 6;** on appeal from: [2006] EWHC 971 (Admin); Judgement 28th February 2007: Appellate Committee Lord Bingham of Cornhill, Lord Hope of Craighead, Lord Scott of Foscote, Lord Brown of Eaton-under-Heywood, Lord Mance; https://publications.parliament.uk/pa/ld200607/ldjudgmt/jd070228/dabas-2.htm

36. In summary, it follows from article 34(2)(b) EU and from the principle of loyalty to the Union that every framework decision obliges national courts to bring their interpretation of national laws as far as possible into conformity with the wording and purpose of the framework decision, regardless of whether those laws were adopted before or after the framework decision, so as to achieve the result envisaged by the framework decision."

40. In its judgment in the *Pupino* case the Court of Justice said:

"34. The binding character of framework decisions, formulated in terms identical to those of the third paragraph of article 249EC, places on national authorities, and particularly national courts, an obligation to interpret national law in conformity with Community law.

42. It would be difficult for the Union to carry out its task effectively if the principle of loyal co-operation, requiring in particular that member states take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under European Union law, were not also binding in the area of police and judicial co-operation in criminal matters, which is moreover entirely based on co-operation between the member states and the institutions, as the Advocate-General has rightly pointed out in para 26 of her opinion.

43. In the light of all the above considerations, the court concludes that the principle of interpretation in conformity with Community law is binding in relation to framework decisions adopted in the context of Title VI of the Treaty on European Union. When applying national law, the national court that is called on to interpret it must do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues and thus comply with article 34(2)(b) EU."
[sottolinejar tal-Qorti]

Fil-kaz in dezamina izda, l-awtoritajiet rikjedenti esteri ghazlu, ghar-ragunijiet taghhom, jiddipartixxu minn dak dettat mid-Decizjoni Kwadru, u dan meta ai termini tal-legizlazzjoni Taljana li tramandat id-Decizjoni Kwadru fl-ordinament guridiku Taljan, hemm indikat specifikatament li meta qed issir talba ghall-MAE mill-awtoritajiet Taljani din ghandha issir billi tigi kompluta l-formola annessa mad-Decizjoni Kwadru.

Fil-fatt fl-artikolu 30 tal-***legge 22 aprile 2005, n.69,*** *contenente "Disposizioni per conformare il diritto interno alla decisione quadro 2002/584/GAI del Consiglio, del 13 giugno 2002, relativa al mandato d'arresto europeo e alle procedure di consegna tra Stati membri"*, jinghad:

ART. 30.
(Contenuto del mandato d'arresto europeo nella procedura attiva di consegna).

1. Il mandato d'arresto europeo contiene le informazioni seguenti, **nella presentazione stabilita nel modello di cui all'allegato annesso alla decisione quadro**:

Il-Qorti ma tistax ma tirrimarkax dwar diskrepanzi bejn dak li jipprovdi is-SIS Alert u l-Form A anness mieghu[11] u l-MAE. Filwaqt li fil-Form A *Place(s) of Offence(s)* hemm indikat *Catania and International Waters,* fil-MAE fejn hemm deskrizzjoni dwar fejn twettaq ir-reat li ghalih qed tintalab it-treggija jinghad *"in diversi Stati, tra cui Malta, Algeria ed Egitto"*.[12] Mill-informazzjoni supplimentari jirrizulta li Catania tissemma propju ghaliex wara li giet intercettata d-dghajsa in kwistjoni u sar il-*boarding* fuqha mill-awtoritajiet Taljani, din iddahhlet fil-port ta' Catania. Ma hemm l-ebda indikazzjoni li Catania kien il-lok fejn sar ir-reat kif gie indikat fil-A Form.

Ferm u ferm inkwetanti u turija cjara u manifesta ta' nuqqas ta' rispett lejn l-awtoritajiet Maltin u li fil-fehma tal-Qorti sar biss sabiex jizgwidaha, hu l-fatt li nhar il-5 ta' Gunju, 2019, intbaghat MAE li kien intiz jindirizza l-izbalji dwar l-artikoli originarjament citati li ghamlet riferenza ghalihom l-abbli difiza fis-seduta li nzammet aktar kmieni dak in-nhar. [13]

Izda minflok ma dan l-izball gie ndirizzat billi nhareg MAE gdid jidher li kull ma sar hu li giet sostwita l-pagna numru 3 li fuqha kienu jidru ndikati l-artikoli tal-ligi penali Taljana erronjament. Tant hu hekk li kif tixhed id-dokumentazzjoni prezentata u cioe` l-istess MAE,[14] dan thalla bl-istess data, dik tat-2 ta' Mejju, 2019. Fic-cirkostanzi l-Qorti ser tkun ferm kawta u mhux ser tikkumenta ulterjorment dwar kemm dan il-MAE <u>hekk kif emendat</u> gie effettivament *"Depozitato in Cancelleria",* tant li l-uniku timbru baqa' dak originali u cioe` li jindika d-data ta' meta gie depozitat il-MAE originali, fit-3 ta' Mejju, 2019, l-ghada li nhareg mill-Giudice per gli Indagini Preliminari.

Ghalhekk l-estradand ghandu ragun jilmenta mill-mod legger li bih l-awtoritajiet Taljani ghamlu t-talba taghhom lill-Istat Malti.

Din il-Qorti ghandha quddiema MAE mhux in konformita mad-dettami tad-Decizjoni Kwadru, mal-ligi Maltija u lanqas ma dik Taljana li lkoll jistabilixxu li l-MAE ghandu jkun dak anness mad-Decizjoni Kwadru

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[11] **Dok.MG4** a fol.16
[12] Fol.12
[13] **Dok. GC4**
[14] Ibid.

minghajr alterazzjonijiet jew modifiki. Galadarba dak mibghut mill-awtoritajiet Taljani il-bierah 5 ta' Gunju, 2019, ma jikkostitwix dokument ammissibbli tenut kont li ssubixxa alterazzjonijiet minn dak mahrug originarjament u ghalhekk qatt ma jista' jitqies bhala wiehed gdid tant li ghadu datat 2 ta' Mejju, 2019, il-Qorti giet prekluza milli tiehu konjizzjoni tieghu w ghalhekk trid tistrieh fuq dak mibghut originarjament[15] li hu difettuz kif gja mfisser mhux biss semplicement ghax gie mibdul l-ordni ta' reati skedati izda minhabba li l-artikoli tar-reati hemm citati jirreferu ghad-disposizzjonijiet tal-Codice Penale Taljan dwar p*ena per coloro che concorrono nel reato* (art.110); omicidio (art.575) u *altre circostanze aggravanti, ergastolo* (art.577) b'riferenza ghar-reat ta' omicidju.

Galadarba lahaq intbaghat il-MAE (fejn sahansitra rega' ntbghat il-bierah),[16] lanqas ma jista' jinghad li l-Qorti tista' tissokta b'dawn il-proceduri abbazi tal-allert taht l-Artikolu 26 tas-Sistema ta' Informazzjoni ta' Schengen. Fil-fatt ir-regolament 6A(2)(a) tal-Ordni jipprovdi:

> (2) F'dak il-każ, dan l-Ordni japplika bħallikieku –
>
> (*a*) dak l-allert kien mandat taħt it-Taqsima II maħruġ mill-awtorità, **sakemm** l-oriġinal jasal fil-forma proprja tiegħu kif imiss;

Il-Qorti hi tal-fehma li minkejja li l-awtoritajiet esteri nghataw ghal darba darbtnejn l-fakolta` jittrasmettu MAE konformi mad-dettami tad-Decizjoni Kwadru, dan baqa' ma sarx tant li fl-istess Allert giet riskontrata d-diskrepanza imsemmija dwar fejn allegatment twettaq ir-reat addebitat bih fl-Italja l-estradand.

Ghaldaqstant peress li l-MAE mibght mill-awtoritajiet Taljani mhuwiex konformi mal-ligi u mhux maghmul fil-form preskritt kif imfisser b'mod ampju aktar il-fuq, il-Qorti ma tistax tiehu konjizzjoni ulterjuri tal-istess u fid-dawl ta' dan qed tordna r-rilaxx tal-estradand mill-arrest minnufih.

Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

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[15] **Dok.MG3** u **Dok. RM**

[16] Ibid.

Magistrat