Qorti tal-Appell Kriminali

Onor. Imhallef Consuelo Scerri Herrera, LL.D., Dip Matr., (Can)

Appell Numru: 74 / 2014

Il-Pulizija

vs

Christopher Aquilina

Illum, 26 ta' Settembru, 2019

Il-Qorti,

Rat l-akkuzi dedotti kontra l-appellant Christopher Aquilina, iben Andrew, imwieled Pieta' , fit-8 ta' Ottubru, 1976, detentur tal-karta ta' l-identita' numru 521376 (M), akkuzat quddiem il-Qorti tal-Magistrati (Malta):

Talli ghan-nom u in rapprezentanza tas-socjeta Perfect Finishings Limited u/jew bhala persuna registrata mal-Kummissarju tat-Taxxa dwar il-Valur Mizjud skond l-Att ta' l-1998 dwar Taxxa fuq il-Valur Mizjud (Att Nru.XXIII ta' l-1998) u regolamenti maghmula bis-sahha ta' l-istess Att, naqas sal-hmistax il-jum tat-tieni xahar li jigi wara l-ahhar jum li fih intemmu z-zminijet ta' taxxa relattivi li jibghat lill-Kummissarju tat-Taxxa fuq il-Valur Mizjud (4) id-denunzji, flimkien mal-hlas dovut, li saru dovuti fil-perjodi li ntemmu fit-30 ta' Settembru 2010 sat 30 ta' Gunju 2011 dan bi ksur tal-artikoli 27, 66 u 76(c) ta' l-Att Nru. XXIII ta' l-1998.

Il-Qorti, giet mitluba li f'kaz ta' htija minbarra li tinfliggi l-piena skond il-Ligi tordna lill-imputat jikkonforma ruhu mal-ligi fiz-zmien bizzejjed sabiex jaghmel dan, liema zmien m' ghandux jeccedi tlett xhur, taht multa ta' mhux inqas minn €5 u mhux iktar minn €20 ghal kull jum li dak in-nuqqas ikompli wara li jghaddi l-imsemmi zmien moghti mill-Qorti.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) tal-20 ta' Frar, 2014 fejn il-Qorti wara li rat l-artikoli 27, 66, 76(c)(d) u 82 tal-Kapitolu 406 tal-Ligijiet ta' Malta, sabet lill-imputat hati ta' l-imputazzjoni migjuba kontra tieghu u kkundannatu multa ta' tmien mitt mitt Euro (€800.00).

Peress li t-talba ghall-impozizzjoni ta' terminu u multa addizzjonali giet irtirata l-Qorti astjeniet milli tiehu konjizzjoni ulterjuri taghha.

Rat ir-rikors tal-appellant Christopher Aquilina minnu pprezentat fit-28 ta' Frar, 2014 fejn talab lil din il-Qorti joghgobha tilqa dan l-appell u tirrevoka s-sentenza appellata billi tiddikkjarah mhux hati u tilliberah skond il-ligi. Alternattivament u minghajr pregudizzju, f'kaz li dan l-appell ma jintlaqax, joghgobha thassarha fil-parti tal-piena billi minflok tigi mposta piena jew sanzjoni ohra li tkun aktar ekwa ghac-cirkostanzi tal-kaz.

Rat l-aggravji tal-appellant u cioe' :-

Illi fl-ewwel lok u bir-rispett l-esponent umilment jirrileva illi s-sejbien tal-htija tieghu mill-ewwel Onorabbli Qorti, hija wahda *'unsafe and unsatisfactory'* .

Illi l-esponent huwa ta' l-umili fehema illi in linea generali r-rizultanzi processwali huma nieqsa mill-piz ta' prova tali, rikjesta fil-kamp penali, li twassal sal-grad tac-certezza morali. Ma ngabitx prova sufficjenti li l-esponent kien direttur jew addirittura direttur tas-socjeta' imsemmija, responsabbli skond l-imputazzjoni kif migjuba.

Lanqas ingabet prova sufficcjenti li in effetti l-formuli imsemmija ma gewx ipprezentati skont kif gie allegat.

Sussidjarjament u minghajr pregudizzju, f' kaz u f' kaz biss li jigi dikjarat li saret il-prova li l-esponent kien direttur, jigi sottomess bir-rispett li r-rizultanzi processwali juru sufficjentement li in effetti kienu ttiehdu l-prekawzjonijiet mehtiega sabiex is-socjeta' msemmija tottempora ruhha mal-ligi. Din bhala konsegwenza ggib maghha n-nuqqas ta' rabta legali/penali bejn l-operat tal-esponent u l-allegazzjoni tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud kif migjuba fl-imputazzjoni.

Ghalhekk jigi sottorness bir-rispett li l-esponent, a bazi tar-rizultanzi processwali, m' ghandux jinstab hati tal-imputazzjoni kif dedotta u minnha ghandu jigi liberat skont il-ligi.

Illi minghajr pregudizzju ghall-permess, u kif ser jigi sottomess wagt it-trattazzjoni ta' dan l-umili appell, l-esponent umilment jemmen illi fil-kaz odjern jezistu fatturi li jimmilitaw favur temperament fil-piena nflitta mill-ewwel Onorabbli Qorti:

Rat l-atti kollha tal-kawza.

Semghet it-trattazzjoni tal-partijiet.

Rat il-fedina penali aggornata tal-appellant ezebita mill-prosekuzjoni fuq ordni tal-Qorti.

Ikkunsidrat,

Fis-seduta tal-ghoxrin (20) ta' Frar tas-sena elfejn u erbatax (2014) xehdet **Connie Azzopardi** quddiem l-Ewwel Qorti li pprezentat *letter to prosecute*, registration form u estratt mill-MFSA, liema dokumenti gew immarkati bhala Dok CA1 sa CA3. Gie vverbalizzat li rtirat it-talba ghall-impozizzjoni ta' terminu u multa addizzjonali. Din ix-xhieda mhijiex traskritta fl-atti.

Skont l-istess verbal tal-ghoxrin (20) ta' Frar tas-sena elfejn u erbatax (2014) l-imputat ezenta lil prosekuzzjoni mill-konferma tal-gurament ta' Dok CA3.

Quddiem l-Ewwel Qorti xehed ukoll l-**imputat** izda x-xhieda tieghu ma hijiex trasktritta fl-atti.

Quddiem din il-Qorti diversament preseduta fis-seduta tat-tieni (2) ta' Marzu tas-sena elfejn u sittax (2016) gie vverbalizzat li deher Paul Scicluna ghal VAT li informa li informa lil Qorti li l-appellant hallas dak kollu dovut fit-tlettax (13) ta' Lulju tas-sena elfejn u hmistax (2015) u ma ghandu ebda pendenzi mad-Dipartiment.

Fl-istess seduta xehed **Paul Scicluna** li qal li l-kariga tieghu hija ta' Spettur mill-Ufficju tad-Dipartiment tal-VAT. Huwa gie muri ircevuta mahruga mid-Dipartiment tal-Inland Revenue dwar Perfect Finishings Limited fejn qal li '*nista nikkonferma li s-Sur Aquilina bbenefika mis-skema ta' ...... u fil-fatt hallas is-somma ta' seven five, six, seven point forty two (7567..42) bhala hlas ghas-saldu tal-pendenzi li kellu mad-Dipartiment.*'

Mistoqsi jekk f'dawk il-pretensjonijeit huwiex capital jew jekk hemm imghaxijiet u multi qal li huma l-ammonti ta' VAT dikkjarata '*Plus ghoxrin fil-mija (20%) tal-penali u nteressi mposti fuqu skond in-nuqqasijiet li kellu, da Dicembru tal-elfejn u tlettax (12/2013).*'

F'din is-seduta gietipprezentata ricevuta ghall-ammont ta' sebat'elef, hames mija u sebgha u sittin ewro u tnejn u erbghin centezmu (€7,567.42). Gew ipprezentati ukoll dokumenti rigwardanti '*Request for Remission of Interest and Administrative Penalties*'. flimkien ma acknowledgment. Giet ipprezentata ukoll kopja ta' ittra datata l-hamsa u ghoxrin (25) ta' Mejju tas-sena elfejn u hmistax (2015) intitolata '*Appell biex jigu mahfura multi u interessi fuq Perfect Finishings Ltd Vat Reg No 1946-8909*'.

Fl-erbgha (4) ta' Gunju tas-sena elfejn u dsatax (2019) quddiem din il-Qorti xehed **Paul Scicluna** li kkonferma li a fol 7[1] tal-process jghid li hemm ta' Saliba kollega tieghu dwar l-istess akkuza, a fol 10 hemm registration form ta' Perfect Finishing

[1] Din il-Qorti qieghda tifhem li l-fol number huwa 9 mhux 7.

Limited fejn id-Direttur huwa Christopher Aquilina. Ikkonferma li kien hemm ftehim bejn Perfect Finshing Limited u d-Dipartiment, saru hlasijiet u l-pendenzi llum kwazi jonqsu inqas minn tlett'elef ewro (€3000). Ma gabx informazzjoni dwar meta sar il-ftehim. Jghid li kien hemm hlasijiet. Mistoqsi '*Meta tgħidilna li l-ħlasijiet li baqa' huma inqas minn tlett t'elef, kemm kienu meta bdew?*' wiegeb '*Mela kien hemm l-ewwel denunzja għaxar t'elef mija u erbatax, wieħed u għoxrin elf tmin mija sebgħa u tmenin, kienu sostanzjali.*'

In kontro-ezami qal li l-multi amminsitrattivi jigu mposti b'mod awtomatiku u kull meta jkun hemm denunzja sottomessa attentivament. Mistoqsi kemm ikunu dawn il-multi wiegeb li bl-Att tal-2013 l-multi amministrattivi gew ikkepjati sa massimu ta' mitejn u hamsin (250) ghal kull denunzja partikolari. Il-multi amministrattiva dejjem ha tkun ikkepjata sa mitejn u hamsin (250) kull tlett xhur u kkonferma li jigifieri elf ewro (€1000) fis-sena jekk ikollok erba' (4) returns ghax denunzja kull tlett (3) xhur tintbaghat. Is-Sur Aquilina gie soġġett ghal ħames (5) multi amministrattivi li jammontaw ghal elf mitejn u hamsin (1250). Mistoqsi jekk jirrizultalux jekk gewx imhallsa wiegeb li '*Iva, iva filfatt il-bilanċ ta' llum huwa anqas minn tlett t'elef Ewro*'.

In ri-ezami mistoqsi jekk il-ftehim tas-Sur Scicluna tinkorporax fiha xi multa wkoll wiegeb li '*Iva fl-2016 ġiet imnedija skema ta' remissjoni fejn kull tax payer ser jibbenifika minn riduzzjoni ta' tmenin fil-mija penali mposti fuq l-individwu partikolari jigifieri s-Sur Aquilina jekk applika jibbenifika minn tmenin fil-mija jiġifieri l-ammont jonqos b'eighty percent u jħallas id-differenza.*' Spjega li d-Dipartiment neghda skema fl-elfejn u sittax (2016) li kull minn kellu mpost fuqu penali amminisrattivi u nteressi setgha jaghzel biex jibbenefika minn skema ta' remissjoni u setgha jiffranka sa tmenin fil-mija mill-penali u nteressi mposti fuqu. Mistoqsi jekk ibbenifikax minnha wiegeb li ma jkunx jaf imma jekk qed jghid l-Avukat li bbenifika minnha iva.

Fis-seduta tal-erbgha (4) ta' Gunju tas-sena elfejn u dsatax (2019) Dr Michael Sciriha ghall-appellant sostna li l-appellant ma ghandux ibati li jigi ppenalizzat darbtejn

b'multa amministrattiva kif ukoll b'multa penali li giet imposta mill-Qorti tal-Magistrati.

Fis-seduta tat-tlieta u ghoxrin (23) ta' Lulju tas-sena elfejn u dsatax (2019) rega xehed **Paul Scicluna** li xehed li Chris Aquilina kien ghamel arrangament mad-Dipartiment, kien ha skema u kien hallas it-total taghha. Ikkonferma li hallas u kkonferma li kien ghamel ftehim maghhom. Mistoqsi jekk meta wiehed ihallas u jaghmel ftehim ikun qed ihallas anke xi parti minn xi multa wiegeb li iva jkun ibbenifika minn parti mill-penali amministrattivi u jkun hallas it-taxxa dovuta flimkien mal-parti dovuta tal-penali amministrattivi wkoll. Mistoqsi jekk dawn thallsux fil-mori ta' dan l-appell wiegeb li le, thallsu qabel.

Mistoqsi in kontro-ezami dwar kemm kienu dawn il-multi amministrattivi wiegeb li hu hallas l-ammont ta' sebat'elef, hames mija u tmienja u sittin ewro u tnejn u erbghin centezmu (€7568.42) fis-sebgha (7) ta' Lulju tas-sena elfejn u hmistax (2015) u franka tmienja fil-mija (8%) tal-piena u imghaxijiet involuti fuqu. Mistoqsi kemm tkun il-multa amministrattiva normalment imposta f'kaz li persuna ma tkunx hallset it-taxxa dovuta wiegeb li l-massimu huwa ta' mitejn u hamsin ewro (€250) u l-interessi skond it-tardivita. Jghid li huma ikkeppjati l-multi amministrattivi u kkonferma li l-massimu li tista' tehel fuq kull denunzja huwa ta' mitejn u hamsin (250). Kull denunzja tiddahhal kull tlett (3) xhur. Jghid li jkollok awment fl-interessi, skond l-ammont dovut, l-ammont ser jawmenta.

Ikkunsidrat;

Illi l-aggravju tal-appellant jikkonsisti f'li s-sejbien tal-htija tieghu mill-Ewwel Qorti hija wahda '*unsafe and unsatisfactory*'. Jissottometti li r-rizultanzi processwali huma nieqsa mill-piz ta' prova tali, rikjesta fil-kamp penali, li twassal sal-grad tac-certezza morali. Ma ngabitx prova sufficjenti li l-appellant kien direttur jew addirittura direttur tas-socjeta' imsemmija, responsabbli skond l-imputazzjoni kif migjuba.

Din il-Qorti sejra tibda' biex tikkunsidra din l-ewwel lanjanza imqajma mill-appellant. L-imputazzjoni hija mahruga fil-konfront ta' Christopher Aquilina ghan-nom u in rapprezentanza ta' Perfect Finishings Limited '*u/jew bhala persuna registrata mal-Kummissarju tat-Taxxa fuq il-Valur Mizjud*'. Ghalkemm ix-xhieda ta' Connie Azzopardi ma hijiex traskritta jirrizulta li din ix-xhud ipprezentat 'Letter to Prosecute' fejn il-Kummissarju tal-Pulizija intalab sabiex jipprocedi kriminalment kontra Christopher Aquilina '*ghan-nom u in rappresentanza ta' PERFECT FINISHINGS LIMITED u / jew bhala persuna registrata mal-Kummissarju tat-Taxxa fuq il-Valur Mizjud...*' A fol 10 et sequitur giet ipprezentata applikazzjoni ghar-registrazzjoni mad-Dipartiment tat-Taxxa Fuq il-Valur Mizjud bhala CA2 f'isem Perfect Finishings Limited iffirmata minn Christopher Aquilina bin-numru tal-karta tal-identita' 521367(M) fil-kariga ta' Direttur. Din hija datata l-ghaxra (10) ta' Settembru tas-sena elfejn u disgha (2009). Gie ipprezentat ukoll estratt mis-sit elettronika tal-MFSA dwar il-kumpanija Perfect Finishings Limited fejn Christopher Aquilina huwa imnizzel bhala Direttur u bhala l-persuna li ghandha r-rapprezentanza legali u gudizzjarja. Jirrizulta ukoll mill-verbal tas-seduta ta' quddiem l-Ewwel Qorti tal-ghoxrin (20) ta' Frar tas-sena elfejn u erbatax (2014) li '*L-imputat qed jezenta lill-Prosekuzzjoni mill-konferma tal-gurament ta' Dok CA3*'. Dan id-dokument huwa estratt mis-sit elettroniku tal-MFSA li fih id-dettalji tal-kumpanija in kwistjoni.

Ghalhekk stante li jirrizulta li r-registrazzjoni mad-Dipartiment tal-VAT hija f'isem il-kumpannija u l-imputat huwa l-firmatarju ta' dik il-formola ta' registrazzjoni fil-kwalita' tieghu ta' Direttur u stante li jirrizulta ukoll li mill-estratt tas-sit elettroniki tal-MFSA li ghandu d-data d-dsatax (19) ta' April tas-sena elfejn u tnax (2012) jirrizulta li l-appellant huwa mnizzel bhala Direttur, din il-Qorti ma ssibx raguni ghala ma ghandhiex tqis li gie sufficjentement pruvat li l-appellant kien id-Direttur tal-kumpanija Perfect Finishings Limited ghal perjodi li ntemmu fit-tletin (30) ta' Settembru tas-sena elfejn u ghaxra (2010) sat-tletin (30) ta' Gunju tas-sena elfejn u hdax (2011) u cioe' fid-dati mertu tal-imputazzjoni. L-appellant ma ressaq l-ebda prova lanqas fuq bazi ta' probabilita' li fiz-zmien tal-imputazzjoni huwa ma kienx id-Direttur ta' din il-kumpanija. Ghalhekk din il-parti tal-aggravju qieghda tigi respinta.

Ikkunsidrat;

L-appellant jissottometti ukoll li lanqas ingabet prova sufficjenti li in effetti l-formuli imsemmija ma gewx ipprezentati skond kif gie allegat. Fil-kamp penali hija l-prosekuzzjoni li trid tipprova l-kaz taghha u l-imputat ma ghandu ghalfejn jipprova xejn. Izda meta si tratta ta' akkuza li ma gewx ipprezentati d-denunzji u lanqas il-hlas, jinkombi fuq l-imputat sabiex igib prova kuntrarja ghal dan u cioe' iressaq prova li d-denunzji gew ipprezentati fil-hin u li l-hlas sar. Dak li jirrizulta mill-atti huwa li fit-tnejn (2) ta' Marzu tas-sena elfejn u sittax (2016) quddiem din il-Qorti diversament preseduta, Paul Scicluna ghal VAT '*informa lil Qorti illi l-appellant hallas dak kollu dovut fit-13 ta' Lulju, 2015 u m'ghandu ebda pendenzi mad-dipartiment.*' Giet ipprezentata kopja ta' ircevuta a fol 37 fl-ammont ta' sebat'elef, hames mija u sebgha u sittin ewro u tnejn u erbghin centezmu (€7,567.42). Fix-xhieda tieghu Paul Scicluna kkonferma li dan kien hlas ghas-saldu tal-pendenzi li kien hemm mad-Dipartiment.

Huwa spjega li kienu l-ammonti ta' VAT ddikjarati '*Plus ghoxrin fil-mija (20%) tal-penali u nteressi mposti fuqu skond in-nuqasijiet li kellu, da Dicembru tal-elfejn u tlettax (12/2013).*' Meta Paul Scicluan xehed quddiem din il-Qorti kif preseduta fl-erbgha (4) ta' Gunju tas-sena elfejn u dsatax (2019) xehed li hlasijiet saru u llum hemm pendenzi li kwazi jonqsu inqas minn tlett 'elef ewro (€3,000). Fit-tlieta u ghoxrin (23) ta' Lulju tas-sena elfejn u dsatax (2019) Paul Scicluna rega xehed fejn qal li l-ammont ta' sebat'elef, hames mija, sebgha u sittin ewro u tnejn u erbghin centezmu (€7,567.42) thallas fis-seba' ta' Lulju tas-sena elfejn u hmistax (2015). L-ircevuta esebita a fol 37 hija datata t-tlettax (13) ta' Lulju tas-sena elfejn u hmistax (2015). Ghalkemm l-imputat kien xehed quddiem l-Ewwel Qorti, din ix-xhieda ma hijiex traskritta u huwa ma regax xehed quddiem din il-Qorti. Ghalhekk gie ppruvat li l-pendenzi ma kienux thallsu qabel ma gew intavolati l-proceduri u din il-Qorti fehmet li l-ammont gie saldat fil-mori ta' dan l-appell.

L-appellant jissottometti ukoll li f'kaz biss li jigi dikjarat li saret il-prova li l-appellant kien direttur, ir-rizultanzi processwali juru sufficjentement li in effetti kienu ttiehdu

l-prekawzjonijiet mehtiega sabiex is-socjeta' tottempora ruhha mal-ligi. Din skont l-apellant ggib maghha n-nuqqas ta' rabta legali/penali bejn l-operat tal-appellant u l-allegazzjoni tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud kif migjuba fl-imputazzjoni.

Illi ghal din il-Qorti ma jirrizultax xi jrid ifisser l-appellant meta jghid li ittiehdu l-prekawzjonijiet mehtiega sabiex is-socjeta' tottempora ruhha mal-ligi. Kif gia inghad l-ammont ta' sebat'elef, hames mija u sebgha u sittin ewro u tnejn u erbghin centezmu (€7.567.42) sar f'Lulju tas-sena elfejn u hmistax (2015) u ghalhekk fil-mori tal-appell. Jirrizulta li l-perjodi mertu tal-imputazzjoni huwa l-perjodi li ntemmu fit-tletin (30) ta' Settembru tas-sena elfejn u ghaxra (2010) sat-tletin (30) ta' Gunju tas-sena elfejn u hdax (2011). Skont l-ittra datata l-hamsa u ghoxrin (25) ta' Mejju tas-sena elfejn u hmistax (2015) li tinstab a fol 41 indirizzata lid-Direttur tal-VAT u ffirmata mill-akkuzat intitolata '*Appell biex jigu mahrufa multi u interessi fuq Perfect Finishings Ltd Vat Reg No 1946-8909*' hemm imnizel li kien sar ftehim f'Settembru tal-elfejn u hdax (2011) mad-Dipartiment tal-VAT dwar kif ha jithallas il-bilanc. Hemm imnizzel li l-bilanc kien ta' disgha u erbghin elf, seba' mija u erbghin ewro u tmienja u hamsin centezmu (€49,740.58) u li sad-data tal-ittra skont dak imnizzel f'din l-ittra kien thallas l-ammont ta' tlieta u erbghin elf u hames mitt ewro (€43,500). Il-*letter to prosecute* hija datata s-sebgha u ghoxrin (27) ta' April tas-sena elfejn u tnax (2012) filwaqt li c-citazzjoni inharget fid-disgha u ghoxrin (29) ta' Jannar tas-sena elfejn u tlettax (2013) skont ma jirrizulta mit-timbru tal-Adminsitrative Law Enforcement, bl-ewwel seduta kienet skedata ghal wiehed u ghoxrin (21) ta' Marzu tas-sena elfejn u tlettax (2013). Jirrizulta li l-ftehim bejn l-appellant u d-Dipartment tal-VAT ma giexipprezentat. L-Ewwel Qorti fis-sentenza appellata qieset li '*mill-provi prodotti jirrizulta li l-imputat issa prezenta d-denunzji relattivi pero bi hlas parzjali tat-taxxa dovuta.*' Jekk l-appellant qieghed jallega li d-denunzji u l-hlas sar fil-hin, kien jinkombi fuq l-appellant li fuq bazi ta' probabilita' jipprova li dan sar qabel ma nharget ic-citazzjoni. Dan ma giex pruvat mill-appellant. Ghalkemm fl-ittra li tinsab a fol 41 hemm informazzjoni dwar diffikultajiet finanzjarji li kellha l-kumpannija in kwistjoni, ma jirrizultax li d-denunzji u l-hlas relatat mad-denunzji in kwistjoni dahlu fil-hin.

Ghalhekk l-Ewwel Qorti kienet korretta li ssib htija.

Ikkunsidrat;

Illi l-appellant appella ukoll mill-piena inflitta mill-Ewwel Qorti. L-appellant gie kkundannat ihallas multa ta' tmien mitt Ewro (€800). Il-Qorti astjeniet milli tiehu konjizzjoni tat-talba ghall-impozizzjoni ta' terminu u multa addizzjonali stante li din kienet giet irtirata.

L-artikolu 81 tal-Kapitolu 406 tal-Ligijiet ta' Malta jipprovdi li:

'*Kull persuna li tikser jew tonqos li tħares xi waħda mid-dispożizzjonijiet ta' dan l-Att jew xi regolamenti magħmula bis-saħħa tiegħu tkun ħatja ta' reat u meta tinstab ħatja teħel, kemm-il darba ir-reat ma jkunx suġġett għal piena ogħla taħt xi dispożizzjoni oħra ta' dan l-Att jew ta' xi liġi oħra, multa ta' mhux inqas minn mitejn u ħamsin euro (€250) u mhux iżjed minn elf u mitejn euro (€1,200), jew priġunerija għal żmien ta' mhux iżjed minn tlett xhur, jew dik il-multa u priġunerija flimkien.*'

Ghalhekk l-imposizzjoni ta' multa ta' tmien mitt ewro (€800) hija fil-parametri li tipprovdi l-ligi. Wara li xehed Paul Scicluna fis-seduta tal-erbgha (4) ta' Gunju tas-sena elfejn u disgha (2009) gie vverbalizzat li '*Dr Michael Sciirha ghall-appellant isostni illi l-appellant ma ghandux ibati illi jigi ppenalizat darbtejn b'multa amministrattiva kif ukoll b'multa penali li giet imposta mill-Qorti tal-Magistrati.*' Paul Scicluna fis-seduta tat-tlieta u ghoxrin (23) ta' Lulju tas-sena elfejn u dsatax (2019) xehed li l-appellant franka tmenin fil-mija (80%) tal-penali amministrattivi u interessi nvokati fuqu. Il-multa amminsitrattiva hija massimu ta' mitejn u hamsin ewro (€250) kif ukoll l-interessi skond it-tardivita. Ikkonferma li l-multi amministrattivi huma capped jigifieri multa amministrattiva ma tistax tkun aktar minn mitejn u hamsin ewro (€250) li huwa l-massimu li tista' tehel fuq kull denunzja li tiddahhal kull tlett (3) xhur. Xehed li jkun hemm awment fl-interessi skont l-ammont dovut. Ghalhekk jirrizulta mix-xhieda ta' Paul Scicluna li l-appellant hallas multi amministrattivi. Mix-xhieda ta' Paul Scicluna ta' nhar l-erbgha (4) ta' Gunju tas-sena elfejn u dsatax (2019) jirrizulta li l-appellant gie soggett ghal hames (5) multi amministrattivi li jammontaw

ghal elf, mitejn u hamsin (1250). Gialadarba l-perjodu mertu tal-imputazzjoni huma dawk dovuti ghal perjodi li ntemmu fit-tletin (30) ta' Settembru tas-sena elfejn u ghaxra (2010) sat-tletin (30) ta' Gunju tas-sena elfejn u hdax (2011), huwa ma setghax jigi assoggettat ghal multi amministrattivi li jaccedu mitejn u hamsin ewro (250) kull tlett (3) xhur jigifieri ghal kull denunzja. Ghalhekk l-ammont li indika Paul Scicluna bhala l-ammont ta' multi amministrattivi li l-appellant gie soggett ghalihom jindika perjodu akbar minn dak mertu tal-imputazzjoni.

Ghalhekk dak li din il-Qorti trid tiddetermina huwa jekk tistax din il-Qorti tikkonferma l-ordni tal-Ewwel Qorti li timponi multa penali ta' tmien mitt ewro (€800) meta l-appellant hallas multi amministrattivi imposti mid-Dipartiment tal-VAT. Dan ghandu jsir billi jigi determinat jekk l-imposizzjoni ta' multi amministrattivi jammontawx ghal 'criminal penalty', li jkun ifisser li l-imputat ikun gie soggett ghal piena darbtejn dwar l-istess fatt.

Fis-sentenza fl-ismijiet '**<u>Routsalainen vs Finland</u>**'[2] il-Qorti Ewropea tad-Drittijiet tal-Bniedem ikkunsidrat li:

'43. The Court's established case-law sets out three criteria, commonly known as the "Engel criteria" (see Engel and Others v. the Netherlands, 8 June 1976, Series A no. 22), to be considered in determining whether or not there was a "criminal charge". The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence and the third is the degree of severity of the penalty that the person concerned risks incurring. The second and third criteria are alternative and not necessarily cumulative. It is enough that the offence in question is by its nature to be regarded as criminal or that the offence renders the person liable to a penalty which by its nature and degree of severity belongs in the general criminal sphere (see Ezeh and Connors v. the United Kingdom [GC], nos. <u>39665/98</u> and <u>40086/98</u>, § 86, ECHR 2003-X). The relative lack of seriousness of the penalty cannot divest an offence of its inherently criminal character (see Öztürk v. Germany, judgment of 21 February 1984, Series A no. 73, § 54, and Lutz v. Germany, judgment of 25 August 1987, Series A no. 123, § 55). This does not exclude a cumulative approach where separate analysis of each criterion does not make it possible to

[2] Deciza fis-16 ta' Gunju, 2009 u reza finali fis-16 ta' Settembru, 2009 (Applikazzjoni numru: 13079/03)

reach a clear conclusion as to the existence of a criminal charge (see, as recent authorities, Jussila v. Finland [GC], no. 73053/01, §§ 30-31, ECHR 2006-..., and Ezeh and Connors, cited above, § 82-86).'

Fost numru ta' kunsiderazzjoni, fis-sentenza fl-ismijiet **'A and B v. Norway'**[3] gie kkunsidrat li:

'105. In Zolotukhin (cited above), in order to determine whether the proceedings in question could be regarded as "criminal" in the context of Article 4 of Protocol No. 7, the Court applied the three Engel criteria previously developed for the purposes of Article 6 of the Convention: (1) "the legal classification of the offence under national law", (2) "the very nature of the offence" and (3) the degree of severity of the penalty that the person concerned risks incurring – the second and third criteria being alternative, not necessarily cumulative, whilst a cumulative approach was not excluded. The Zolotukhin judgment did not, as it could have done, mirror the line of reasoning followed in a string of previous cases (see, for example, Storbråten, cited above), involving a non-exhaustive ("such as") and wider range of factors, with no indication of their weight or whether they were alternative or cumulative. The Governments of France and Norway are now inviting the Court to use the opportunity of the present judgment to affirm that it is the latter, broader test which should apply (see paragraphs 66-68 and 90-91).

106. A number of arguments going in the direction of such an interpretive approach do exist, in particular that Article 4 of Protocol No. 7 was apparently intended by its drafters for criminal proceedings in the strict sense and that – unlike Article 6, but like Article 7 – it is a non-derogable right under Article 15. Whilst Article 6 is limited to embodying fair-hearing guarantees for criminal proceedings, the prohibition of double jeopardy in Article 4 of Protocol No. 7 has certain implications – potentially wide ones – for the manner of applying domestic law on criminal and administrative penalties across a vast range of activities. The latter Article involves a more detailed assessment of the substantive criminal law, in that there is a need to establish whether the respective offences concerned the same conduct (idem). These differences, the lack of consensus among the domestic systems of the Contracting States and the variable willingness of States to be bound by the Protocol and the wide margin of

[3] Deciza mill-Qorti Ewropea tad-Drittijiet tal-Bniedem fil-15 ta' Novembru, 2016 (Applikazzjonijiet numri 24130/11 u 29758/11)

appreciation to be enjoyed by the States in deciding on their penal systems and policies generally (see Nykänen, cited above, § 48; and, mutatis mutandis, Achour v. France [GC], no. 67335/01, § 44, ECHR 2006-IV) are well capable of justifying a broader range of applicability criteria, in particular with a stronger national-law component, as used for Article 7 and previously used (before Zolotukhin), for Article 4 of Protocol No. 7, and hence a narrower scope of application, than is the case under Article 6.

107. However, whilst it is true, as has been pointed out, that the Zolotukhin judgment was not explicit on the matter, the Court must be taken to have made a deliberate choice in that judgment to opt for the Engel criteria as the model test for determining whether the proceedings concerned were "criminal" for the purposes of Article 4 of Protocol No. 7. It does not seem justified for the Court to depart from that analysis in the present case, as there are indeed weighty considerations that militate in favour of such a choice. The ne bis in idem principle is mainly concerned with due process, which is the object of Article 6, and is less concerned with the substance of the criminal law than Article 7. The Court finds it more appropriate, for the consistency of interpretation of the Convention taken as a whole, for the applicability of the principle to be governed by the same, more precise criteria as in Engel. That said, as already acknowledged above, once the ne bis in idem principle has been found to be applicable, there is an evident need for a calibrated approach in regard to the manner in which the principle is applied to proceedings combining administrative and criminal penalties.'

Fis-sentenza fl-ismijiet **'Bendenoun v. France'**[4] dwar dak li jikkostitwixxi '*criminal charge*' gie kkunsidrat li:

'44. The applicant and the Commission were agreed in considering that Article 6 para. 1 (art. 6-1) was applicable in the instant case.

45. The Government maintained the opposite. In their submission, the proceedings in issue did not relate to a "criminal charge" as the tax surcharges imposed on Mr Bendenoun bore all the hallmarks of an administrative penalty within the meaning of the Court's case-law (see the Engel and Others v. the Netherlands judgment of 8 June 1976 and the Öztürk v. Germany judgment of 21 February 1984, Series A nos. 22 and 73).

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[4] Deciza mill-Qorti Ewropea tad-Drittijiet tal-Bniedem fl-24 ta' France, 1994 (Applikazzjoni numru: 12547/86)

This observation applied, firstly, to the classification in French law. The General Tax Code classed the increases in question with the "tax penalties" and not with the "criminal penalties" (see paragraphs 33 and 34 above). The same was true of the nature of the offence. The conduct of which the applicant stood accused was defined as "deception" ("manoeuvres frauduleuses") and not as "evasion" ("soustraction frauduleuse"); the Conseil d'État regarded the former offence as a tax offence and the latter as a criminal offence. The nature and degree of severity of the penalty were not such as to suggest a different conclusion. The surcharges were imposed by the Revenue, under the supervision of the administrative courts, and not by a criminal court; they were calculated on the basis of the supplementary tax assessment and were therefore directly proportional to the tax originally evaded; they were not an alternative to a custodial penalty and never entailed any loss of rights; they remained payable by the heirs in the event of the taxpayer's death; and they were not covered by the rules on reoffending, aiding and abetting, consecutive and concurrent sentences or the making of entries in the criminal records.

46. As regards the general aspects of the French system of tax surcharges where the taxpayer has not acted in good faith, the Court considers that, having regard to the large number of offences of the kind referred to in Article 1729 para. 1 of the General Tax Code (see paragraph 34 above), Contracting States must be free to empower the Revenue to prosecute and punish them, even if the surcharges imposed as a penalty are large ones. Such a system is not incompatible with Article 6 (art. 6) of the Convention so long as the taxpayer can bring any such decision affecting him before a court that affords the safeguards of that provision.

47. In the instant case the Court does not underestimate the importance of several of the points raised by the Government. In the light of its case- law, and in particular of the previously cited Öztürk judgment, it notes, however, that four factors point in the opposite direction.

In the first place, the offences with which Mr Bendenoun was charged came under Article 1729 para. 1 of the General Tax Code (see paragraph 34 above). That provision covers all citizens in their capacity as taxpayers, and not a given group with a particular status. It lays down certain requirements, to which it attaches penalties in the event of non-compliance.

Secondly, the tax surcharges are intended not as pecuniary compensation for damage but essentially as a punishment to deter reoffending.

Thirdly, they are imposed under a general rule, whose purpose is both deterrent and punitive.

Lastly, in the instant case the surcharges were very substantial, amounting to FRF 422,534 in respect of Mr Bendenoun personally and FRF 570,398 in respect of his company (see paragraph 13 above); and if he failed to pay, he was liable to be committed to prison by the criminal courts (see paragraph 35 above).

Having weighed the various aspects of the case, the Court notes the predominance of those which have a criminal connotation. None of them is decisive on its own, but taken together and cumulatively they made the "charge" in issue a "criminal" one within the meaning of Article 6 para. 1 (art. 6-1), which was therefore applicable.'

Fis-sentenza fl-ismijiet '**Bjarni Ármannsson v. Iceland'**[5] gie kkunsidrat li:

'*40. In comparable cases involving the imposition of tax surcharges, the Court has held, on the basis of the "Engel criteria" (that is, the legal classification under domestic law, the nature of the offence and the degree of severity of the penalty – see Engel and Others v. the Netherlands, 8June1976, Series A no. 22)., that the proceedings in question were "criminal" in nature, not only for the purpose of Article 6 of the Convention but also for the purpose of Article 4 of Protocol No. 7 to the Convention (see A and B v. Norway, cited above, §§ 107, 136 and 138, and Johannesson and others v. Iceland, cited above, § 43).*

41. Noting that the parties did not dispute this, the Court concludes that both sets of proceedings in the present case concerned a "criminal" offence within the autonomous meaning of Article 4 of Protocol No. 7.'

Fis-setenza fl-ismijiet' **'Jóhannesson and others v. Iceland'**[6] gie deciz li:

'*55. Having regard to the above circumstances, in particular the limited overlap in time and the largely independent collection and assessment of evidence, the Court cannot find that there was a sufficiently close connection in substance and in time between the tax proceedings and the criminal proceedings in the case for them to be compatible with the bis criterion in Article 4 of Protocol No. 7.*

[5] Deciza mill-Qorti Ewropea tad-Drittijiet tal-Bniedem fis-16 ta' April, 2019 (Applikazzjoni numru: 72098/14)
[6] Deciza mill-Qorti Ewropea tad-Drittijiet tal-Bniedem fit-18 ta' Mejju, 2017 u reza finali fit-18 ta' Awwissu, 2017 (Applikazzjoni numru: 22007/11)

56. Consequently, the applicants suffered disproportionate prejudice as a result of having been tried and punished for the same or substantially the same conduct by different authorities in two different proceedings which lacked the required connection.

For these reasons, there has been a violation of Article 4 of Protocol No. 7 to the Convention.'

Fis-sentenza fl-ismijiet **'David Mifsud v. L-Onorevoli Prim Ministru, L-Avukat Generali, Il-Kummissarju tat-Taxxa fuq il-Valur Mizjud, Il-Kummissarju tal-Pulizija'**[7] gie kkunsidrat li:

'74. Imiss issa li jigi ezaminat jekk giex vjolat id-dritt fundamentali tal- attur, li ma jigix sentenzjat jew kastigat darbtejn ghall-istess fatti, bit- tehid ta' proceduri penali kontra tieghu meta kienu diga` imposti fuqu multi amministrattivi minn naha tal-Kummissarju.'

Fost numru ta' kunsiderazzjonijiet, gie kkunsidrat li:

'78. F'dan l-istadju huwa opportun li jigi ezaminat il-quantum ta' dawn il-multi amministrattivi imposti fuq l-attur. Fir-risposta taghhom ghar- rikors tal-appell il-konvenuti jissenjalaw li "l-late payment penalty tigi kkalkulata bir-rata ta' 1% fix-xahar. Madankollu, il-proviso tal-artikolu 28[1] tal-Kap. 406 li ddahhal fl-1 ta' Jannar 200 jipprovdi li f'kull kaz il- late payment penalty hija capped ghal 250". Din il-Qorti tosserva fir- rigward li, ghalkemm huwa minnu li permezz tal-Att II tas-sena 2004[8] l- Artikolu 38 [1] kien gie emendat inter alia bl-introduzzjoni tal-proviso li ghaliha jirreferu l-konvenuti, din il-bidla fil-ligi, li skont l-istess Att kellha tigi fis-sehh fl-1 ta' Jannar 2010[9], ma tista' tkun ta' ebda konfort ghat- tezi tal-konvenuti, ghaliex meta dahlet fis-sehh l-imsemmija proviso s- sentenzi tal-Qorti tal-Magistrati kienu diga` inghataw u l-effett legali taghhom fuq l-attur kien diga` vigenti.

79. Mill-provi jirrizulta li l-multi amministrattivi li l-attur kien qed jigi mitlub li jhallas mill-Kummissarju kienu jammontaw ghal sommom sostanzjali ta' flus: mid-dokument VAT2[10] jirrizultaw mitluba l-ammonti ta' €16,205 bhala Late Return Penalty u ta'

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[7] Deciza mill-Qorti Kostituzzjonali fl-24 ta' Gunju, 2016 (Rikors Numru: 24/10 JZM)

[8] Art.43. (Din ir-referenza tinsab fin-nota ta' qiegh il-pagna enumerata tletin (30) fis-sentenza citata)

[9] Att.II – art.36 [1][b]. (Din ir-referenza tinsab fin-nota ta' qiegh il-pagna enumerata wiehed u tletin (31) fis-sentenza citata)

[10] Fol. 199. ((Din ir-referenza tinsab fin-nota ta' qiegh il-pagna enumerata tnejn u tletin (32) fis-sentenza citata)

€18,507.64 bhala Short Payment Penalty u, ladarba ghan-nuqqas tal-attur kienu qed jigu imposti multi amministrattivi li sat-30 ta' Mejju 2012 kienu lahqu l-ammont komplessiv ta' €39,728.64[11] *allura l-proceduri gudizzjarji mehuda kontra*

tieghu kienu vjolattivi tal-principju fuq citat ghar-ragunijiet fuq spjegati[12].

80. Dan ifisser illi l-annullament mill-ewwel Qorti tal-proceduri penali u tal-konsegwenti pieni hemmhekk imposti, kellhom jinkludu wkoll dawk li il-proceduri penali wasslu ghas-sentenza tas-7 ta' Frar 2002 tenut kont tal-fatt li anke f'dak iz-zmien il-multi amministrattivi kienu diga` gew imposti u baqghu jizdiedu progressivament.

81. Inoltre, il-fatt li l-pendenza tal-hlas ta' dawn il-multi amministrattivi giet eventwalment rizolta fit-30 ta' Mejju 2012 meta l-attur ibbenefika mill-iskema ta' amnestija mahruga fis-sena 2012 bil-hlas da parti tieghu tal-ammont ta' €8,151.68, ma jimmilitax kontra l-konsiderazzjonijiet premessi ghax sa dak iz-zmien huwa kien ghad kellu pendenti mhux biss il-multi amministrattivi fl-ammont komplessiv fuq indikat, izda wkoll il-pieni li kien wehel mill-Qorti tal-Magistati, liema pieni kienu diga` gew inflitti meta ddahhal il-provizo[13] *fl-Artikolu 38[1] tal-Kap.406, liema emenda kienet dahlet fis-sehh fl-1 ta' Jannar 2010.*[14]

82. Ghaldaqstant, tenut kont li bl-applikazzjoni tal-Artikolu 38[3] tal- Kap. 406 [vigenti qabel l-emendi li gew fis-sehh fl-1 ta' Jannar 2010], l- attur, minhabba n-nuqqas tieghu li jipprezenta d-denunzji relattivi skont l-istess Kap., kien soggett ghal multi amministrattivi sostanzjali li jikkwalifikaw bhala ta' natura penali u fl-istess hin tressqu proceduri kriminali kontra tieghu li wasslu ghall-kundanni fil-konfront tieghu mill- Qorti tal-Magistrati, ghall-istess nuqqas, il-hames aggravju mhuwiex gustifikat u qed jigi michud.'

Fis-sentenza fl-ismijiet **'Anthony P. Farrugia v. L-Onorevoli Prim Ministru, L-Avukat Generali, Il-Kummissarju tat-Taxxa fuq il-Valur Mizjud, Il-Kummissarju tal-Pulizija'**[15] gie kkunsidrat li:

[11] Supra. (Din ir-referenza tinsab fin-nota ta' qiegh il-pagna enumerata tlieta u tletin (33) fis-sentenza citata)
[12] Paragrafu 70-79 (Din ir-referenza tinsab fin-nota ta' qiegh il-pagna enumerata erbgha u tletin (34) fis-sentenza citata)
[13] Att II Art.43. (Din ir-referenza tinsab fin-nota ta' qiegh il-pagna enumerata hamsa u tletin (35) fis-sentenza citata)
[14] Ibid. Art. 36[1][b]. (Din ir-referenza tinsab fin-nota ta' qiegh il-pagna enumerata sitta u tletin (36) fis-sentenza citata)
[15] Deciza mill-Qorti Kostituzzjonali fit-8 ta' Mejju, 2017 (Rikors numru 8/11 JRM)

'28. Dan iwassal ghall-konkluzjoni li, ladarba ghan-nuqqas tal-attur kienu qed jigu imposti multi amministrattivi li jikkwalifikaw bhala ta' natura penali allura l-proceduri kriminali gudizzjarji fuq l-istess nuqqasijiet mehuda kontra tieghu kienu vjolattivi tal-principju protett bl- artikolu konvenzjonali fuq citat. Din il-Qorti tirribadixxi li l-Artikolu 83(3) tal-Kap 406 tal-Ligijiet ta' Malta[16] *huwa inkonsistenti mal-Artikolu 4 tas- Seba' Protokoll tal-Konvenzjoni, in kwantu dak is-subinciz jipprospetta proprju sitwazzjoni bhal dik odjerna fejn persuna, oltre l-impozizzjoni ta' multa amministrattiva sostanzjali, tigi sottoposta wkoll ghal proceduri penali quddiem il-Qorti tal-Magistrati dwar l-istess nuqqas.'*

L-istess Qorti kkunsidrat li:

'31. Rigward l-osservazzjoni maghmula mill-ewwel Qorti li l-multi maghrufa bhala short payment penalties ma jistghux jitqiesu bhala "piena jew kastig kriminali" imma huma biss mizuri ta' deterrent ga ladarba huma jistghu jthassru ghal kollox jew jinhafru jekk it-taxpayer jottempera ruhu mal-ligi, din il-Qorti tosserva li dan ma jipprivahomx mill-karattru punittiv taghhom. Wara kollox anke l-multi imposti mill-Qorti tal- Magistrati [Malta] jistghu jinhafru, mhux biss mill-President ta' Malta izda anke mill-istess Qorti tal-Magistrati skont it-termini tal-Artikolu 76 tal-Kap 406.[17]'

Il-Qorti f'dik is-sentenza ddecidiet ukoll li:

'60. Ghalhekk, tenut kont tal-fatt li dawn il-multi kif komputati huma vjolattivi tal-prinicpju

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16 Dan jipprovdi: "(3) Il-bidu ta' proċedimenti jew l-impożizzjoni ta' piena għal xi reat taħt din it-Taqsima ma għandhomx jeħilsu lil xi persuna minn prosekuzzjoni taħt xi liġi oħra jew mill-obbligu ta' ħlas ta' xi taxxa jew penali amministrattiva li għandha jew li jista' jkollha taħt dan l-Att u l-bidu ta' proċedimenti jew l-impożizzjoni ta' xi piena għal xi reat taħt xi liġi oħra jew il-ħlas ta' xi taxxa jew penali amministrattiva taħt dan l-Att ma għandhomx jeħilsu lil xi persuna minn xi prosekuzzjoni jew piena taħt din it-Taqsima". (Din ir-referenza tinsab fin-nota ta' qiegh il-pagna enumerata sebgha u disghin (97) fis-sentenza citata)

17 19.Dan l-artikolu fil-parti relevanti tieghu jaqra hekk: " izda persuna li taghmel ir-reat tista', sa zmien tletin gurnata mid-data tad-decizjoni finali, taghmel rikors lill-Qorti li sabitha hatja, u titlob mahfra shiha jew parzjali tal-penali imposta that dan l-artiklu. Il-Qorti tista' tikkoncedi mahfra shiha jew parzjali ta' din il-penali kemm il-darba l-prosekuzzjoni, bi qbil bil-miktub mal- Kummissarju li ghandu jkun maghmul ma' kull risposta ghal tali rikors taqbel ma'dan ir-rikors. Kull rikors bhal dan ghandu jigi notifikat lill-prosekuzzjoni li ghandha tirrispondi fi zmien hmistax-il gurnata xoghol meta tigi notifikata". (Din ir-referenza tinsab fin-nota ta' qiegh il-pagna li ghandha taqra' tmienja u disghin (98) ghalkemm taqra '19' fis-sentenza citata))

tal-proporzjonalita` fl-ambitu tal-Artikolu 1 tal- Ewwel Protokoll tal-Konvenzjoni peress li jaffettwaw kwazi l-proprjeta` kollha tal-attur, partikolarment dawk relattivi ghall-imsemmija kumpannija din il-Qorti tikkonsidra li f'dan il-kaz ir-rimedju ghandu jkun dak li ghall-perijodu li jestendi mill-1 ta' Jannar 1999 sal-1 ta' Jannar 2009 il-multi amministrattivi kemm fir-rigward tad-dhul tieghu mill- professjoni kif ukoll fir-rigward tal-kumpanniji tieghu ghandhom jigu ridotti ghar-rati vigenti mill-1 ta' Jannar 2009 ' il quddiem.'''

Il-Qorti ordnat ukoll:

'*66. Din il-Qorti, filwaqt li taghmel referenza ghall-konsiderazzjonijiet taghha fir-raba' aggravju tal-intimat, tirribadixxi li rigward il-vjolazzjoni tad-dritt fundamentali tal-attur protett bir-raba' artikolu tas-Seba' Protokoll tal-konvenzjoni, ir-rimedju ewlieni ghandu jkun dak tar- restitutio in integrum, jigifieri li l-attur jitpogga fl-istess pozizzjoni li hu kien fiha qabel ma nghataw is-sentenza mill-Qorti tal-Magristrati [Malta] u dan isir billi jithassru s-sentenzi kollha moghtija minn dik il-Qorti u li huma indikati fil-process odjern, kif ukoll jigu mhassra d-digrieti ta' dik il- Qorti rigwardanti l-konverzjoni tal-multi penali f'piena ta' prigunerija.*

67. Rigward il-vjolazzjoni tal-Artikolu 1 tal-Ewwel Protokoll kif ga fuq indikat, ir-rimedju opportun ghandu jkun dak tar-riduzzjoni tal-multi u l- imghaxijiet kif fuq ga spjegat.'

Skont ma jirrizulta fis-sentenza fl-ismijiet **'Il-Pulizija Spettur Ramon Mercieca Vs. Francesca Ciantar'**[18] l-appellanta f'parti minn aggravju kienet issottomettiet li:

'*Illi fl-ewwel lok, ir-rikorrenti giet ikkastigata iktar minn darba ghal istess allegat 'nuqqas' u cioe meta b'mod awtomatiku is-sistema tal-VAT timponi imghaxx punittiv, jigu imposti multi amministrattivi, hekk kif ma jidhlux id-denunzji jew jidhlu minghajr il-hlas dovut, kif ukoll multi kriminali imposti mill-Qorti tal-Magistrati (Malta) bis-sentenza tat-18 ta' Ottubru, 2012;*

Illi konsegwentement is-sentenza tal-Qorti tal-Magistrati (Malta) tat-18 ta' Ottubru, 2012 tikkostitwixxi ksur tal-principju ne bis in idem;'

Il-Qorti tal-Appell Kriminali kkunsidrat li:

'*Din il-Qorti ma jidhrilhiex illi f'dawn ic-cirkostanzi japplika l-kaz ta' "double jeopardy"*

[18] Deciza mill-Qorti tal-Appell Kriminali fid-19 ta' Gunju, 2014 (Numru: 492/2014)

aktar u aktar meta rrizulta illi l-impozizzjonijiet ta' imghaxijiet punittivi mhumiex awtomatici. Xehedet però f'din il-kawza Connie Azzopardi in rapprezentanza tal-Kummissarju fejn dina qalet illi ghal dak li jirrigwarda s-socjetà Francesca Gambina and Company Limited id-denunzji dahlu izda minghajr hlas, li ghad-dipartiment, qisu ma dahal xejn. Però kien hemm perjodu fejn lanqas id- denunzji ma dahlu...'

Din il-Qorti taghmel referenza ghas-sentenza fl-ismijiet '**Il-Pulizija vs Daniel Farrugia'**[19] fejn gie kkunsidrat:

'Illi minn din ix-xhieda johrog illi l-multa amministrattiva li ghandu ihallas l-appellanti minhabba n-nuqqas li jottempera ruhu mal-ligijiet fiskali hija dik ta' mhux aktar minn 250 ewro ghal kull denunzja li naqas milli jissottometti lid-Dipartiment. Illi l-hsieb tal-legislatur meta saret l-emenda ghall-artikolu 38 tal-Kapitolu 406 permezz ta'l-Att II ta'l-2009 kien fil-fatt sabiex jitnehha l-iskop punittiv wara il-multa amministrattiv li sa dak in-nhar kienet qed tigi ekwiperata mal-piena kriminali billi l-multa kienet tkun gholja. L-artikolu 38 jaqra hekk illum wara l-emenda:

"Izda meta t-taxxa pagabbli tkun inqas minn mitejn u hamsin euro (€250), dik il-penali amministrattiva ma ghandhiex teccedi l-ekwivalenti tat-taxxa pagabbli ghall-eqreb euro jew hamsin euro (€50), liema ammont ikun l-akbar, u ma ghandhiex teccedi l-mitejn u]amsin euro(€250) f'kull kaz iehor."

Din l-emenda dahhlet fis-sehh wara il-pronunzjament kostituzzjonali fl-ismijiet Anthony Farrugia vs Onor. Prim'Ministru et.

Illi in segwitu ghal tali pronunzjament u wara li giet emendata il-ligi li tirregola it-taxxa fuq il-valur mizjud kien hemm diversi sentenzi ohra li itrattaw dan il-punt fosthom David Mifsud vs Onor. Prim'Ministru u Robert Ciantar vs Onor Prim'Ministru fost ohrajn. Illi f'dawn id-decizjonijiet u dan in linja mal-pronunzjamenti gudizzjarji kemm mill-Qorti Ewropeja dwar id-Drittijiet tal-Bniedem kif ukoll mill-Qorti Ewropeja tal-Gustizzja il-Qorti stqarret is-segwenti:

".... il-punti krucjali li ghandhom jigu ezaminati sabiex jigi determinat jekk il-proceduri kriminali mehuda fil-konfront tar-rikorrent humiex lezivi tad-dritt tieghu kontemplat fl-artikolu fuq citat huma, [a] jekk il-multi amministrattivi humiex ta' certu entità li jikkwalifikaw bhala ta' natura penali imposti bl-iskop punittiv sabiex jservu bhala deterrent

[19] Deciza mill-Qorti tal-Appell Kriminali fit-30 ta' Novembru, 2017 (Appell Numru: 162/2017)

u, [b] jekk dawk il-multi kienux diga' gew impost fuq ir-rikorrent u kienux ghadhom pendent meta ttiehdu l-proceduri kriminali kontra tieghu."

Illi allura it-taxpayer ikun qed jigi issentenzjat ghat-tieni darba biss meta l-multa amministrattiva tkun tant gholja illi hija ekwivalenti ghal multa taht id-dritt penali. Huwa hawnhekk biss allura illi:

'229. … … … administrative sanctions may, for the purposes of the application of the Convention, be qualified as criminal sanctions [see paragraph 61 above]. Further, in its Åklagaren v. Hans Åkerberg Fransson judgment, on the subject of value-added tax, the ECJ stated that, under the ne bis in idem principle, <u>a State can only impose a double penalty [fiscal and criminal] in respect of the same facts if the first penalty is not criminal in nature</u>" – Grande Stevens vs Italy.

Dan ifisser illi sabiex ikun hemm il-vjolazzjoni infraskritta il-multa amministrattiva trid tkun f'ammont sostanzjali tant illi tigi tixbah "a criminal penalty" biex b'hekk allura t-tehid ta' proceduri penali mill-gdid wara l-imposizzjoni tal-multa amministrattiva tkun in vjolazzjoni ta'l-artikolu 4(1) tas-Seba Protokol fejn allura il-persuna tkun qed tigi issentenzjata darbtejn ghall-istess nuqqas.

Illi f'dan is-sens allura lanqas ma jista' jkun hemm vjolazzjoni ta'l-artikolu 6 billi ma kienx hemm lezjoni ghad-dritt tas-smigh xieraq meta l-appellanti inghata l-opportunita li jiddefendi ruhu ghall-azzjoni penali mehuda kontra tieghu u fuq kollox ghalkemm kien hemm l-imposizzjoni ta' multi amministrattivi dawn kienu baxxi u ma jistghu qatt jkunu ekwiperati ma xi imposizzjoni ta' multa penali b'mod arbitrarju mill-Kummissarju meta t-taxpayer ma kellux il-jedd jiddefendi ruhu ghalihom. Lanqas ma jista' jinghad illi l-imposizzjoni tal-multa amministrattiva tmur kontra il-prinicpju tal-proporzjonalita billi kif inghad illum dik il-multa applikabbli fil-konfront tal-appellanti giet "capped" ghall-ammont ta' 250 ewro u hija baxxa.'

Din il-Qorti taqbel mal-kunsiderazzjonijiet maghmulha mill-Qorti tal-Appell Kriminali fis-sentenza appena citata. Jirrizulta li l-perjodu mertu tal-proceduri odjerni jirrigwarda denunzji u hlas dovuti fil-perjodi li ntemmu fit-tletin (30) ta' Settembru tas-sena elfejn u ghaxra (2010) sat-tletin (30) ta' Gunju tas-sena elfejn u hdax (2011) ghalhekk l-emenda maghmulha lill-artikolu 38(2) tal-Kapitolu 406 tal-Ligijiet ta' Malta kienet diga dahlet fis-sehh u ghalhekk il-multa amministrattiva ma

setghetx tkun aktar minn mitejn u hamsin ewro (250) ghal kull denunzja nieqsa. Fil-fehma ta' din il-Qorti l-fatt li l-ammont ta' multa amministrattiva huwa 'capped', liema ammont ma jistax jaqbez dak ta' mitejn u hamsin ewro (250) ghal kull denunzja nieqsa ifisser l l-ammont ta' multa amministrattiva ma tistax fil-fehma tal-Qorti tigi kkunsidrata bhala '*criminal penalty*' u ghalhekk ma jistax jinghad li l-appellant gie 'sentenzjat' darbtejn ghall-istess fatt. Ghalhekk ma hemmx sitwazzjoni ta' *double jeopardy* fil-kaz in kwistjoni u ghalhekk l-Ewwel Qorti kienet korretta fl-imposizzjoni ta' multa ta' tmien mitt ewro (€800).

Ghaldaqstant, din il-Qorti taqta' u tiddeciedi billi tichad l-appell u tikkonferma s-sentenza appellata.

(ft) Consuelo Scerri Herrera

Imhallef

VERA KOPJA

Franklin Calleja

Deputat Registratur