



FIL-QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI

MAGISTRAT DR. ELAINE MERCIECA BA. LL.D.

Kaz Nru; 263/10:

IL-PULIZIJA

(Spettur Victor Aquilina)

kontra

SEAN GRECH

(ID 81790(M))

Illum, 20 ta' Gunju 2022

Il-Qorti,

Rat l-akkuzi migjuba fil-konfront ta' **Sean Grech** ta' ghoxrin (20) sena, iben Joseph u Antonia xebba Stivala, imwieled il-Pieta nhar it-3 ta' Frar 1990 u residenti 94, Triq Matty Grima Bormla u detentur tal-karta ta' l-identita' bin-numru 81790(M), akkuzat talli f'dawn il-Gzejjer fit-3 ta' Marzu 2010 u fl-erba' xhur ta' qabel:

- a) Forna jew ipprokura jew offra li jforni jew li jipprokura d-droga erojina, specifikata fl-ewwel skeda tal-ordinanza dwar il-Medicini Perikoluzi Kap. 101 tal-Ligijiet ta' Malta, lill-persuna/i jew ghall-persuna/i minghajr ma kellu licenzja mill-President ta' Malta u minghajr ma kien awtorizzat bir-regoli tal-1939 ghall-Kontroll Intern tad-Drogi Perikoluzi (G.N. 292/1939) jew minn xi awtorita' moghtija mill-President ta' Malta li jforni d-droga imsemmija minghajr ma kien fil-pussess ta' awtorizzazzjoni ghall-importazzjoni jew ghall-esportazzjoni mahrug mit-tabib Principali tal-Gvern, skont id-disposizzjonijiet tas-6 taqsima tal-Ordinanza msemmija u minghajr ma kellu licenzja jew xort' ohra awtorizzat li

jimmanifattura jew jforni d-droga msemija u minghajr ma kellu licenzja li jipprokura l-istess droga, u dan bi ksur tar-regolament 4 tar-regoli tal-1939 għall-Kontroll Intern tad-Drogi Perikolużi (G.N. 292/1939) kif sussegwentement ammendati u bi ksur tal-Ordinanza Dwar il-Medicini Perikolużi Kap. 101 tal-Ligijiet ta' Malta;

Aktar f'dawn il-Gzejjer fit-3 ta' Marzu u fis-sena u nofs ta' qabel;

- b) Kellu fil-pussess tiegħu d-droga Eroina speċifikata fl-ewwel skeda tal-Ordinanza dwar il-Medicini Perikolużi tal-kapitolu 101 al-Ligijie ta' Malta meta ma kienx fil-pussess t'awtorizzazzjoni għal-importazzjoni jew għall-esportazzjoni mahrug mit-Tabib Principali tal-Gvern skont id-disposizzjonijiet tar-4 u 6 Taqsima tal-Ordinanza u meta ma kienx bil-licenzja jew xort'ohra awtorizzat li jimmanifattura jew li jforni d-droga msemija u meta ma kienx b'xi mod iehor bil-Licenzja mill-President ta' Malta li jkollu d-droga imsemija fil-pussess tiegħu u naqas li jipprova li d-droga imsemija giet fornuta lilu għall-uzu tiegħu skont ir-ricetta kif provdut fir-regolamenti msemija u dan bi ksur tar-regolamenti tal-1939 dwar il-kontroll intern tad-drogi perikolużi (GN. 292/1939) kif sussegwentement emendati u bi ksur tal-Ordinanza dwar il-Medicini Perikolużi Kap. 101 tal-Ligijiet ta' Malta;
- c) Kellu fil-pussess tiegħu ir-raza mehudha mill-pjanta Cannabis jew xi preparazzjonijiet li jkollhom bhala bazi din ir-raza u dan bi ksur tal-artikolu 8(a) tal-Kap.101 tal-Ligijiet ta' Malta.

Rat u semgħet ix-xhieda;

Rat id-dokumenti eżebiet iinkluz l-ordni tal-Avukat Generali tat-12 ta' Lulju 2010¹ fejn ordna li bis-saħha tas-subartikolu (2) tal-Artikolu 22 tal-Ordinanza dwar il-Medicini Perikolużi (Kap. 101) l-imputat odjern jitressaq quddiem din il-Qorti biex iwiegħeb għall-akkuzi kontra tiegħu għal ksur tal-provvedimenti tal-istess Ordinanza;

Rat li l-Prosekuzzjoni għalqet il-provi tagħha fl-udjenza tas-26 t'Ottubru 2015;

Rat li fl-udjenza tat-3 ta' Frar 2016 l-imputat talab lil din il-Qorti tassumi l-funzjoni ta' Qorti dwar id-droga u dan fit-termini tal-artikolu 8 tal-Kap. 537 tal-Ligijiet ta' Malta. Din it-talba giet irtirata mill-istess imputat fl-udjenza tal-15 ta' Gunju 2022;

Rat id-Digriet tal-Assenjazzjonijiet ta' Kawzi u Doveri tal-Prim' Imhalled tat-28 ta' Lulju 2021 permezz ta' liema l-kaz in dezamina gie assenjat lil din il-Qorti hekk kif preseduta;

¹ Fol. 2 tal-atti processwali

Semgħet is-sottomissjonijiet tal-partijiet;

Ikkunsidrat:

Illi mill-provi mressqa mill-prosekuzzjoni jirrizulta li fit-3 ta' Marzu 2010 saret tfittxija fuq il-qua imputat Sean Grech². Minn din it-tfittxija li saret gewwa r-residenza tiegħu fil-fond 94, Triq Matty Grima, Bormla, l-pulizija sabu u elevaw diversi oggetti relatati mat-tehid u l-abbuz tad-droga kif ukoll 0.01 gramma sustanza kannella (dak il-hin suspettata raza tal-Cannabis), xi pilloli u sustanzi oħra (mhux identifikati). L-imputat gie arrestat u mehud fil-kwartieri generali tal-pulizija għal izjed investigazzjonijiet fejn hemmhekk ittehditlu stqarrija wara li huwa rrifjuta d-dritt għall-assistenza legali li dak iz-zmien kien limitat għal siegħa qabel it-tehid tal-istqarrija.

Illi fl-udjenza tal-15 ta' Gunju 2022, l-imputat talab li din il-Qorti tiskarta l-istqarrija rrillaxxata minnu fi stadju investigattiv galadarba l-istqarrija ttiehdet mingħajr ma l-imputat kien assistit legalment waqt l-istess stqarrija u lanqas ma gie offrut dan id-dritt in vista tal-ligi vigenti dak iz-zmien. F'dan ir-rigward jingħad li l-istqarrija ttiehdet fl-4 ta' Marzu 2010 skond il-ligi vigenti ta' dak iz-zmien.

Il-ligi vigenti f' Marzu 2010 kienet tipprovdi li l-imputat jingħata d-dritt għall-assistenza legali għal siegħa qabel l-interrogatorju biss. Dan id-dritt jirrizulta li gie offrut l-imputat izda gie rrifjutat (hekk kif l-imputat kellu kull dritt li jagħmel). Madanakollu irid jingħad li d-dritt ristrett għall-assistenza legali qabel it-tehid tal-istqarrija ma jistgħa qatt jigi ekwiparat mad-dritt għall-assistenza legali waqt l-istqarrija. Dan l-aħhar dritt gie ntrodott fil-Kodici Kriminali permezz ta' l-Att LI fit-28 ta' Novembru 2016.

Mill-atti processwali ma jirrizultax li kien hemm ragunijiet tajba li jzommu lill-imputat milli jkun assistiet permezz ta' avukat jew prokuratur legali waqt l-interrogazzjoni. Fil-fatt, hekk kif ingħad iktar 'il fuq, mill-istqarrija pprezentata jirrizulta li l-qua imputat gie offrut id-dritt għall-assistenza legali qabel (mhux waqt) l-interrogazzjoni. Isegwi għalhekk li probabilment l-unika raguni l-għaliex l-imputat ma giex offrut u ma kienx mghejjun minn avukat waqt l-interrogazzjoni kienet l-għaliex il-ligi vigenti dak iz-zmien ma kinitx tippermettieha.

Illi l-guriprudenza lokali ricenti fir-rigward tal-assistenza legali waqt l-interrogatorju jidher li qed tistrieħ fuq l-insenjament mghoti fil-kaz **Beuze v il-Belġju** (App. Numru 71409/10) tad-9 ta' Novembru 2018, li kien jitratta ukoll

² In ezekuzzjoni ta' mandate t'arrest u tfittxija mahrug fil-konfront tiegħu minn dak iz-zmien il-Magistrat Dr. Consuelo Scerri Herrera.

sitwazzjoni fejn il-ligi domestika rilevanti ma kinitx tippermetti l-assistenza legali waqt l-interrogazzjoni u fejn ma kienx hemm ragunijiet impellenti ghalfejn ma tigiex offruta l-assistenza tal-avukat. F'dan il-pronunzjament intqal:

“120. The fairness of a criminal trial must be guaranteed in all circumstances. However, what constitutes a fair trial cannot be the subject of a single unvarying rule but must depend on the circumstances of the particular case (see Ibrahim and Others, ... § 250). The Court’s primary concern, in examining a complaint under Article 6 § 1, is to evaluate the overall fairness of the criminal proceedings”

121. As the Court has found on numerous occasions, compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings as a whole and not on the basis of an isolated consideration of one particular aspect or one particular incident, although it cannot be ruled out that a specific factor may be so decisive as to enable the fairness of the trial to be assessed at an earlier stage in the proceedings.”

... .. *“139. The stages of the analysis as set out in the Salduz judgment – first looking at whether or not there were compelling reasons to justify the restriction on the right of access to a lawyer, then examining the overall fairness of the proceedings – have been followed by Chambers of the Court in cases concerning either statutory restrictions of a general and mandatory nature, or restrictions stemming from case-specific decisions taken by the competent authorities.*

“140. In a number of cases, which all concerned Turkey, the Court did not, however, address the question of compelling reasons, and neither did it examine the fairness of the proceedings, but found that systematic restrictions on the right of access to a lawyer had led, ab initio, to a violation of the Convention Nevertheless, in the majority of cases, the Court has opted for a less absolute approach and has conducted an examination of the overall fairness of the proceedings, sometimes in summary form ... and sometimes in greater detail ...

“141. Being confronted with a certain divergence in the approach to be followed, in Ibrahim and Others the Court consolidated the principle established by the Salduz judgment, thus confirming that the applicable test consisted of two stages and providing some clarification as to each of those stages and the relationship between them (see Ibrahim and Others, ... §§ 257 and 258-62).

“144. In Ibrahim and Others the Court also confirmed that the absence of compelling reasons did not lead in itself to a finding of a violation of Article 6. Whether or not there are compelling reasons, it is necessary in each case to view the proceedings as a whole (see Ibrahim and Others, ... § 262). That latter point is of particular importance in the present case, since the applicant relied on a certain interpretation of the Court’s case-law on the right of access to a lawyer ... to the effect that the statutory and systematic origin of a restriction on that right sufficed, in the absence of compelling reasons, for the requirements of Article 6 to have been breached. However, as can be seen from the Ibrahim and Others judgment, followed by the Simeonovi judgment, the Court rejected the argument of the applicants in those cases that Salduz had laid down an absolute rule of that nature. The Court has thus departed from the principle that was set out, in particular, in the Dayanan case and other judgments against Turkey.

“145. Where there are no compelling reasons, the Court must apply very strict scrutiny to its fairness assessment. The absence of such reasons weighs heavily in the balance when assessing the overall fairness of the criminal proceedings and may tip the balance towards finding a violation. The onus will then be on the Government to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the criminal proceedings was not irretrievably prejudiced by the restriction on access to a lawyer” (see Ibrahim and Others, ... § 265).....

³ Emfazi ta’ dina l-Qorti

“147. Lastly, it must be pointed out that the principle of placing the overall fairness of the proceedings at the heart of the assessment is not limited to the right of access to a lawyer under Article 6 § 3 (c) but is inherent in the broader case-law on defence rights enshrined in Article 6 § 1 of the Convention

“148. That emphasis, moreover, is consistent with the role of the Court, which is not to adjudicate in the abstract or to harmonise the various legal systems, but to establish safeguards to ensure that the proceedings followed in each case comply with the requirements of a fair trial, having regard to the specific circumstances of each accused.....

“150. When examining the proceedings as a whole in order to assess the impact of procedural failings at the pre-trial stage on the overall fairness of the criminal proceedings, the following non-exhaustive list of factors, drawn from the Court’s case-law, should, where appropriate, be taken into account (see Ibrahim and Others, ... § 274, and Simeonovi, ... § 120):

“(a) whether the applicant was particularly vulnerable, for example by reason of age or mental capacity;

“(b) the legal framework governing the pre-trial proceedings and the admissibility of evidence at trial, and whether it was complied with – where an exclusionary rule applied, it is particularly unlikely that the proceedings as a whole would be considered unfair;

“(c) whether the applicant had the opportunity to challenge the authenticity of the evidence and oppose its use;

“(d) the quality of the evidence and whether the circumstances in which it was obtained cast doubt on its reliability or accuracy, taking into account the degree and nature of any compulsion;

“(e) where evidence was obtained unlawfully, the unlawfulness in question and, where it stems from a violation of another Convention Article, the nature of the violation found;

“(f) in the case of a statement, the nature of the statement and whether it was promptly retracted or modified;

“(g) the use to which the evidence was put, and in particular whether the evidence formed an integral or significant part of the probative evidence upon which the conviction was based, and the strength of the other evidence in the case;

“(h) whether the assessment of guilt was performed by professional judges or lay magistrates, or by lay jurors, and the content of any directions or guidance given to the latter; “

(i) the weight of the public interest in the investigation and punishment of the particular offence in issue; and

“(j) other relevant procedural safeguards afforded by domestic law and practice”.

Fil-kaz in dezamina jirrizulta li dak iz-zmien li fih ittiehdet l-istqarrija Grech kellu biss l-eta' ta' ghoxrin sena. Il-fedina penali tieghu kienet netta. L-istqarrija ttiehdet wara li huwa nstab fil-pussess ta' allegata sustanza illecita fir-residenza tieghu. Minn qari tal-istess stqarrija kjarament jirrizulta li l-qua imputat inkrimina lili nnifsu tant li l-imputazzjonijiet kollha migjuba fil-konfront tieghu jistrieħu unikament fuq l-istqarrija rrillaxxata mill-imputat.

Ghaldaqstant dina l-Qorti, wara li hadet konjizzjoni tal-provi migbura u l-gurisprudenza relatata mal-valur probatorju li hija ghandha taghti l-istqarrija mehuda f'cirkostanzi simili ghal dawk tal-kaz odjern, partikolarment il-fatturi stabbiliti sabiex isir l-analizi tal-*overall fairness* tal-proceduri, ma thossx li jkun

opportun li tistrieh unikament u interament fuq l-istqarrija sabiex tistabillixxi r-reita o meno tal-imputat għall-imputazzjonijiet odjerni.

Isegwi għalhekk li għar-ragunijiet suesposti u fid-dawl tal-principju tal-*overall fairness*, dina l-Qorti ma hijiex ser tikkunsidra l-istqarrija rrillaxxata mill-imputat meta tigi sabiex tikkunsidra ir-reita' tieghu o meno għall-imputazzjonijiet dedotti fil-konfront tieghu.

Stabbilit dan, jinghad li din il-Qorti hija kompletament sprovvista minn provi ohra in sostenn tal-imputazzjonijiet odjerni. Ghalkemm mix-xhieda prodotta jirrizulta li l-pulizija elevat diversi sustanzi u oggetti mill-pussess tal-imputat (b'uhud minn dawn l-oggetti jigu deskritti mill-istess xhieda bhala li huma relatati mal-abbuz tad-droga), dawn ma gewx la ezebiet u wisq inqas analizzati fil-proceduri odjerni. B'hekk fuq nuqqas ta' provi dina l-Qorti ser tghaddi sabiex tillibera lill-imputat mill-imputazzjonijiet kollha dedotti fil-konfront tieghu.

Decide:

Għal dawn il-mottivi, din il-Qorti, qed issib lill-qua imputat, Sean Grech mhux hati tal-imputazzjonijiet kollha dedotti fil-konfront tieghu u konsegwentament qed tilliberah mill-istess.

MAGISTRAT DR. ELAINE MERCIECA BA. LL.D.

Christine Farrugia

Deputat Registratur