



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

MAGISTRAT DR. ELAINE MERCIECA B.A., LL.D.

Illum, 24 ta' Mejju 2022

Il-Pulizija

(Spettur Herman Mula)

vs

ZACK CACHIA

Il-Qorti;

Rat l-imputazzjonijiet migjuba fil-konfront ta' **Zack Cachia**, ta' ghoxrin (20) sena, iben Martin u Joan Evans *nee'* Agius, imwieled il-Pieta', nhar it-12 ta' Settembru, 1992, residenti gewwa 29, Triq il-Madonna tal-Bon Kunsill, iz-Zejtun, u detentur tal-karta tal-identita' bin-numru 440992M, senjatament akkuzat talli;

F'dawn il-gzejjer, nhar is-26 ta' Mejju, 2013;

1. Kellu fil-pussess tieghu medicina psikotropika u ristretta (*ecstasy*) minghajr awtorizzazzjoni speċjali bil-miktub mis-Supretendent tas-Sahha Pubblika, bi ksur tad-dispozizzjonijiet tal-Ordinanza dwar il-Professjoni Medika u l-Professjonijiet li Ghandhom x'Jaqsmu Maghha, Kap. 31 tal-Ligijiet ta' Malta u r-Regolamenti dwar il-Kontroll tal-Medicini, Avviz Legali 22 tal-1985 kif emendati, liema medicina nstabet f'tali cirkostanzi li juru li ma kinitx ghall-uzu esklussiv tieghu;

2. Ikkommetta dawn ir-reati fi, jew gewwa distanza ta' mitt metru mill-parametru ta' skola, *club*, jew xi post simili fejn normalment jiltaqghu z-zghazagh bi ksur tal-Artikolu 22 (2) tal-Kap. 101 tal-Ligijiet ta' Malta;

U akkuzat inoltre talli f'dawn il-gzejjer, nhar is-26 ta' Mejju, 2013, u fis-sentejn ta' qabel din id-data;

3. Kellu fil-pussess tieghu d-droga kokajina specificata fl-ewwel skeda tal-Ordinanza dwar il-Medicini Perikolużi, Kap. 101 tal-Ligijiet ta' Malta, meta ma kienx fil-pussess ta' awtorizzazzjoni għall-importazzjoni jew għall-esportazzjoni mahrug mit-Tabib Principali tal-Gvern skond id-dispozzjonijiet tar-4 u s-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 msemija fil-pussess tieghu u naqas li jipprova li d-droga msemija giet fornuta lilu għall-uzu tieghu skond ir-ricetta kif provdut fir-regolamenti msemija u dan bi ksur tar-Regoli tal-1939 dwar il-Kontroll Intern tad-Drogi Perikolużi (G.N. 292/1939) kif sussegwentament emendati u bi ksur tal-Ordinanza dwar il-Medicini Perikolużi, Kap. 101 tal-Ligijiet ta' Malta.

Il-Qorti mitluba sabiex barra milli tapplika l-piena skond il-ligi, tordna lill-imputat ihallas l-ispejjez li għandhom x'jaqsmu mal-hatra tal-esperti skond l-Artikolu 533 tal-Kap. 9 tal-Ligijiet ta' Malta.

Rat li fl-udjenza tat-2 ta' Lulju 2018¹ l-prosekuzzjoni irtirat it-tieni imputazzjoni dedotta fil-konfront ta' Zack Cachia u cioe' dik l-imputazzjoni li tirrigwarda l-aggravju tad-distanza. Għaldaqstant dina l-Qorti ser tastjeni milli tiehu konjizzjoni ulterjuri ta' dina l-imputazzjoni.

Rat u semgħet ix-xhieda;

Rat l-atti kollha tal-każ u d-dokumenti esebiti, inkluż l-Ordinijiet tal-Avukat Ġenerali ai termini tas-sub-artikolu (2) tal-Artikolu 22 tal-Ordinanza dwar il-Medicini Perikolużi (Kap. 101 tal-Ligijiet ta' Malta) kif ukoll ai termini tas-subartikolu 120A(2) tal-Ordinanza dwar il-Professjoni Medika u il-Professjonijiet li għanxhom x'jaqsmu magħha (Kap. 31 tal-Ligijiet ta' Malta), sabiex din il-kawża tinstema' minn din il-Qorti bħala Qorti ta' Ġudikatura Kriminali²,

¹ Fol. 152 tal-atti processwali

² Fol. 7 u 8 tal-atti processwali.

Rat id-digriet tal-assenjazzjonijiet ta' kawzi u doveri tal-Prim Imhallef tat-28 ta' Lulju 2021³ kif ukoll l-ezenzjoni tal-partijiet mis-smigh mill-gdid tal-provi gia mismugha minn dina l-Qorti diversament preseduta⁴.

Semghet is-sottomissjonijiet tal-partijiet;

Ikkunsidrat:

Illi l-fatti tal-kaz odjern jirrisalu lura ghas-26 ta' Mejju 2013 meta l-qua imputat gie mwaqqaf mill-pulizija fuq barra tal-party 'Love Sexy' organizzat gewwa l-Gharmier. Dak il-hin, il-qua imputat kien ma persuna ohra. Minn tfittxija li saret fuq il-persuna tal-imputat odjern il-pulizija sabu tnejn u tletin (32) pillola suspettati ecstasy u hames (5) sachets trab abjad suspettat kokaina. Cachia gie mehud fil-Kwartieri Generali tal-Pulizija ghall-izjed investigazzjoni fejn hemmhekk irrillaxxa stqarrija, liema stqarrija, skond ix-xhieda tal-ispettur huwa ghazel li jigguramenta. Madanakollu l-imsemmija xhieda guramentata tal-qua imputat ma giet qatt ipprezentata fl-atti processwali odjerni.

Is-sustanza elevata minn fuq il-persuna tal-qua imputat giet ipprezentata fl-atti processwali odjerni (immarkata bhala HM1) madanakollu l-prosekuzzjoni qatt ma ghamlet talba sabiex l-istess sustanza tigi analizata bil-ghan li jigi determinat x'kienet. Ghaldaqstant dina l-Qorti hija sprovista minn kwalunkwe prova dwar in-natura tas-sustanzi elevati minghand il-qua imputat mill-pulizija.

Illi hekk kif inghad iktar 'il fuq, fil-kors tal-investigazzjonijiet tal-pulizija in-konnesjoni mal-kaz odjern il-qua imputat irrillaxxa stqarrija lill-pulizija nhar is-26 ta' Mejju 2013, liema stqarrija giet ipprezentata fl-atti processwali odjerni⁵. Fl-udjenzi tad-9 ta' Lulju 2019 u 5 t'April 2022, l-imputat talab lil dina l-Qorti tordna l-isfilz tal-istess stqarrija galadarba huwa ma nghatax id-dritt li jkun legalment assistiet waqt it-tehid tal-istqarrija mill-pulizija.

Ghaldaqstant dina l-Qorti ser tanalizza l-valur probatorju tal-istqarrija rrillaxxata mill-qua imputat lill-pulizija. Mill-atti processwali jirrizulta li qabel it-tehid tal-imsemmija stqarrija mill-pulizija, l-imputat irrifjuta d-dritt li jkellem u jikkonsulta ma avukat jew prokuratur legali tal-ghazla tieghu sa massimu ta' siegha qabel l-interrogazzjoni. In sostenn ta' dan giet ipprezentata dikjarazzjoni

³ Fol. 244 tal-atti processwali.

⁴ Fol. 250 tal-atti processwali.

⁵ Fol. 5 tal-atti processwali.

(Dok. HM2) iffirmata mill-imputat fil-prezenza ta' diversi xhieda. PS923 Pier Guido Saliba kkonferma l-volontarjeta' tal-imsemmija dikjarazzjoni. Din l-istqarrija jidher li ttiehdet skond il-ligi vigenti ta' dak iz-zmien u cioe fis-sena 2013 u kjarament jirrizulta li l-qua imputat ma giex offrut id-dritt li jkun assistit minn avukat jew prokuratur legali tal-fiducja tieghu waqt it-tehid tal-istqarrija u dana galadarba l-ligi vigenti dak iz-zmien dan ma kinitx tippermettith. Dina l-Qorti ma hijiex sejra tispekula x'kien jaghmel l-imputat kieku gie offrut dan il-jedd. Hu stat ta' fatt li ma giex offrut dan id-dritt u dana ghaliex il-ligi dak iz-zmien ma kinitx tippermetti li l-qua imputat ikun assistiet minn avukat waqt l-interrogatorju. Ghal kull bon fini jinghad ukoll li mill-atti processwali ma jirrizultax li kien hemm ragunijiet impellenti li jzommu lill-imputat milli jkun assistiet permezz ta' avukat jew prokuratur legali waqt l-interrogazzjoni tant li huwa fil-fatt gie offrut id-dritt li jikkonsulta ma avukat qabel it-tehid tal-istqarrija.

Illi l-guriprudenza lokali ricenti fir-rigward tal-assistenza legali waqt l-interrogatorju jidher li qed tistrieħ fuq l-insenjament mgħoti fil-kaz **Phillipe Beuze v il-Belgju** (App. Numru 71409/10) tad-9 ta' Novembru 2018, li kien jitratta ukoll sitwazzjoni fejn il-ligi domestika rilevanti ma kinitx tippermetti l-assistenza legali waqt l-interrogazzjoni u fejn ma kienx hemm ragunijiet impellenti għalfejn ma tigiex offruta l-assistenza tal-avukat. F'dan il-pronunzjament il-Qorti adottat il-kriterju tal-*overall fairness of the proceedings* sabiex tistħarreg jekk seħhitx o meno leżjoni tad-dritt għal smiegh xieraq u ddikjarat li l-Qorti għandha dejjem tistħarreg iċ-ċirkostanzi partikolari tal-każ, tenut kont ta' numru ta' kriterji, mhux eżawrjenti, elenkati fid-deċiżjoni tagħha.

“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 lawyer⁶ (see *Ibrahim and Others*, ... § 265).....

“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

⁶ Emfazi ta’ dina l-Qorti

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”.

Minn qari tal-istqarrija rillaxxata mill-qua imputat jirrizulta li l-istess imputat inkrimina lilu nnifsu fir-rigward tal-imputazzjonijiet dedotti fil-konfront tieghu. Illi indubbjament id-dikjarazzjonijiet li ghamel fl-istqarrija tieghu ippregudikaw id-difiza tieghu. Jirrizulta ukoll li l-istqarrija hija l-unika prova konkretta fil-konfront tieghu u dana fin-nuqqas ta' provi ohra mill-prosekuzzjoni.

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 hijiex tal-fehma li jkun opportun li tistrieħ fuq l-istqarrija, sabiex tistabillixi r-reita o meno

tal-imputat għall-imputazzjonijiet odjerni u għaldaqstant ser tghaddi sabiex tiskarta l-istess.

Illi stabbilit dan dina l-Qorti ser tanalizza l-bqija tal-provi mressqa mill-prosekuzzjoni sabiex jigi determinat jekk jirrizultawx pruvati l-ewwel u t-tielet imputazzjoni dedotti fil-konfront ta' Zack Cachia. Illi mill-provi prodotti jirrizulta car li l-imputat instab fil-pussess ta' hamsa u tletin pillola kif ukoll ta' hames sachets b'sustanza bajdanija. Madanakollu, hekk kif intqal izjed 'il fuq f'din is-sentenza, l-imsemmija sustanzi għalkemm gew ipprezentati ma gew qatt analizzati. Il-prosekuzzjoni ma ressqet l-ebda talba f'dan is-sens. Għaldaqstant dina l-Qorti hija kompletament sprovista minn kwalunkwe prova dwar in-natura illecita o meno tas-sustanzi elevati u ezebieti.

Għaldaqstant, f'dawn ic-cirkostanzi u cioe' fin-nuqqas ta' prova dwar in-natura tas-sustanza elevata mill-pussess tal-imputat u galadarba għar-ragunijiet hawn fuq indikati l-istqarrija rrillaxata mill-imputat ser tigi skartata mill-kunsiderazzjonijiet ta' dina l-Qorti dwar ir-reita o meno tal-imputat, l-ewwel u t-tielet imputazzjoni dedotti fil-konfront ta' Cachia ma gewx ippruvati sal-grad rikjest mill-ligi. Konsegwentament dina l-Qorti ser tghaddi sabiex tillibera lill-istess imputat mill-imputazzjonijiet kollha dedotti fil-konfront tieghu.

Decide:

Għal dawn il-mottivi, dina l-Qorti qed issib lill-qua imputat Zack Cachia mhux hati tal-imputazzjonijiet dedotti fil-konfront tieghu u konsegwentament qed tilliberah mill-istess.

MAGISTRAT DR. ELAINE MERCIECA B.A., LL.D.

Christine Farrugia

Deputat Registratur