



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

**MAGISTRAT DR ELAINE MERCIECA LL.D**

**PULIZIJA  
(Spettur Trevor Micallef)**

**kontra**

**JOSEPH ZAMMIT  
(ID: 562179(M))**

**Kaz Nru.: 209/15**

**Illum, 4 ta' Ottubru 2022**

**Il-Qorti,**

Wara li rat l-imputazzjonijiet migjuba fil-konfront tal-imputat, **Joseph Zammit**, iben Eleno u Maria Goretti nee' Fsadni, imwieved fil-11 ta' Settembru 1979, residenti fi Tudor Crt., 10B, Triq Belvedere, Gzira u detentur tal-karta tal-identita' 562179(M) senjatament akkuzat talli f'dawn il-Gzejjer fil-5 ta' Awwissu 2015 ghall-habta tal-hamsa u nofs neqsin hamsa ta' wara nofsinhar, f' San Giljan:

1. Kellu fil-pussess tieghu d-droga herojina, specifikata fl-ewwel skeda tal-Ordinanza dwar il-Medicini Perikoluzi, Kap. 101 tal-Ligijiet ta' Malta, meta ma kienx fil-pussess ta' awtorizzazzjoni ghall-importazzjoni jew ghall-esportazzjoni mahrug mit-Tabib Principali tal-Gvern skond id-

dispozizzjonijiet 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 msemmija, u meta ma kienx b'xi mod iehor bil-licenzja mill-President ta' Malta li jkollu d-droga msemmija fil-pussess tieghu, u naqas li jipprova li d-droga msemmija giet fornuta lilu ghall-uzu tieghu skond ir-ricetta kif provdut fir-regolamenti msemmija, u dan bi ksur tar-Regoli tal-1939 dwar il-Kontroll Intern tad-Drogi Perikolu (G.N. 292/1939), kif sussegwentament emendati u bi ksur tal-Ordinanza dwar il-Medicini Perikolu, Kap. 101 tal-Ligijiet ta' Malta;

2. Akkuzat aktar talli fl-istess data, lok, hin, u cirkostanzi, kellu fil-pussess tieghu jew taht ir-responsabbilta' tieghu, vettura bil-mutur tal-ghamla *Ford*, numru ta' registrazzjoni AD53RHV, li ma gietx irregistrata mal-Awtorita', liema vettura hija rregistrata f'pajjiz iehor, u bhala persuna ta' nazzjonalita' Maltija u li tirrisjedi permanenti f'dan il-pajjiz, zamm minghajr ma rregistra l-istess vettura aktar minn tletin gurnata kalendarja konsekuttiva li bdew jghoddu mid-data tal-wasla tal-imsemmija vettura f'Malta minghajr ma vettura ma tkunx giet uzata fit-triq f'Malta matul l-ahhar tliet mija u hamsa u sittin gurnata qabel il-wasla taghha f'Malta (L.S. 368.02, Art. 3);
3. Akkuzat aktar talli fl-istess data, lok, hin, u cirkostanzi, bhala sid il-vettura tal-ghamla *Ford*, numru ta' registrazzjoni AD53RHV, ma applikax permezz tal-formola preskritta lill-Awtorita', liema formola kellha tigi ffirmata minnu jew minn agent awtorizzat li kellu jkun qed jagixxi f'ismu (L.S. 368.02, Art 13(4));
4. Akkuzat aktar talli fl-istess data, lok, hin, u cirkostanzi, saq vettura tal-ghamla *Ford*, numru ta' registrazzjoni AD53RHV, minghajr marka ta' registrazzjoni moghtija lilha taht ir-regolamenti li jinsabu f'L.S. 368.02, u li ghalhekk, l-istess vettura titqies bhala vettura mhux registrata (L.S. 368.02, Art. 30(5));
5. Akkuzat aktar talli fl-istess data, lok, hin, u cirkostanzi, saq vettura tal-ghamla *Ford*, numru ta' registrazzjoni AD53RHV, meta l-istess vettura kellha numru ta' identifikazzjoni xort'ohra minn dak moghti mill-pulizija jew mill-Awtorita' dwar vettura bil-mutur partikolari (Kap. 65, Art. 15(1A));
6. Akkuzat aktar talli ghamel reat li ghalih hemm piena ta' prigunerija waqt perjodu operattiv ta' sentenza sospiza moghtija mill-Magistrat Dr. Francesco Depasquale LL.D.;
7. Akkuzat aktar talli kiser Ordni tal-*Probation* li nghatat fl-20 ta' Mejju, 2015, mill-Magistrat Dr. J. Demicoli, LL.D.;
8. Il-Qorti kienet mitluba li tittratta mal-imputat bhala recidiv *ai termini* tal-Artikolu 49 u 50 tal-Kapitolu 9 tal-Kodici Kriminali, meta huwa kien gie misjub hati u kkundannat ghal reati, b'sentenzi ta' reati barra minn Malta, liema sentenzi saru definittivi.

Il-Qorti kienet ukoll gentilment mitluba sabiex f'kaz ta' htija tikkundanna lill-akkuzat għall-hlas ta' spejjez li jkollhom x'jaqsmu mal-hatra ta' esperti jew periti fil-proceduri, hekk kif ikkontemplat fl-Artikolu 533 tal-Kapitolu 9 tal-Ligijiet ta' Malta.

Rat l-Ordni tal-Avukat Ġenerali ai termini tas-sub-artikolu (2) tal-Artikolu 22 tal-Ordinanza dwar il-Mediċini Perikolużi (Kap. 101 tal-Ligijiet ta' Malta), datata l-24 ta' Awwissu 2015, sabiex din il-kawża tinstema' minn din il-Qorti bħala Qorti ta' Ġudikatura Kriminali<sup>1</sup>,

Rat id-digriet tal-assenjazzjoni ta' kawzi u doveri datat it-28 ta' Lulju 2021;

Rat li fl-udjenza tas-27 t'Ottubru 2021 l-partijiet ezentaw lil dina l-Qorti hekk kif preseduta mis-smigh mill-gdid tax-xhieda prodotti quddiem dina l-Qorti diversament preseduta;

Semghet u rat ix-xhieda;

Rat l-atti kollha tal-każ u d-dokumenti kollha ezebiti;

Semghet is-sottomissjonijiet tal-partijiet;

### **Ikkunsidrat**

Illi l-fatti mertu tal-kaz odjern jirrisalu lura għall-hamsa t' Awwissu tas-sena 2015, meta xi ufficjali tal-pulizija, waqt li kienu xogħol f' San Giljan, osservaw vettura tal-marka Ford Focus bin-pjanci ta' registrazzjoni barranin għaddejja wrong way minn Triq Elia Zammit. Il-pulizija waqqfu lil din il-vettura li kienet misjuqa mill-qua imputat Joseph Zammit. Fl-imsemmija vettura kien hemm zewg passigieri ohra. Il-pulizija għamlu tfittxija fl-imsemmija vettura fejn elevaw pakkett suspettat droga minn taht is-seat tax-xufier. Intalab ukoll jipprovdi polza t'assigurazzjoni tal-imsemmija vettura li skond ix-xhieda ta' PC1110 Fenech jidher li kienet valida mill-1 ta' Gunju 2016 sa 30 ta' Settembru 2015. L-imputat gie mehud gewwa l-għassa ta' San Giljan. Jirrizulta ukoll li saret tfittxija fir-residenza tal-istess imputat, liema tfittxija tat rizultat negattiv għal sustanzi illegali. Rapprezentant ta' Transport Malta ikkonfermat li vettura bin-numru ta' registrazzjoni AD53RHV ma jidhirx li hija rregistrata mal-Awtorita'.

### Kunsiderazzjonijiet dwar htija

In linea preliminari, jibda biex jinghad li l-imputat waqt l-investigazzjonijiet tal-pulizija rrillaxxa stqarrija. Din l-istqarrija giet mehuda nhar il-5 t' Awwissu 2015 għall-habta tas-sebgha u nofs ta' filghaxija u dana wara li l-qua imputat gie

---

<sup>1</sup> Ara fol. 14 tal-atti processwali.

mwissi bid-drittijiet tieghu inkluz bid-dritt t'access ghall-assistenza legali limitata ghal siegha qabel l-interrogatorju. L-imputat gie mwissi ukoll li jekk jezercita d-dritt tal-assistenza legali tapplika l-ligi ta' l-inferenza<sup>2</sup>. L-imputat irrifjuta dan id-dritt u in sostenn ta' dan iffirma dikjarazzjoni li giet ipprezentata u inserieta a fol. 11 tal-atti processwali. Fid-dawl tal-ligenti vigenti fis-sena 2015, l-imputat ma gie qatt mghoti d-dritt ghall-assistenza legali waqt l-istqarrija.

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 mill-istqarrija pprezentata jirrizulta li l-qua imputat gie offrut id-dritt ghall-assistenza legali qabel (mhux waqt) l-interrogazzjoni u dana dejjem skond ma kienet il-ligi vigenti dak iz-zmien. Isegwi ghalhekk li probabilment l-unika raguni l-ghaliex l-imputat ma kienx gie offrut id-dritt li jkun mghejjun minn avukat waqt l-interrogazzjoni kienet l-ghaliex il-ligi vigenti dak iz-zmien ma kinitx tippermettieha. Dak iz-zmien li fiha ttiehdet l-istqarrija odjerna il-ligi kienet tippermetti biss li l-imputat jkun jista' jikkonsulta ma avukat qabel ma tittiehed l-istqarrija sa massimu ta' siegha. Id-dritt tal-assistenza legali waqt l-istqarrija gie ntrodott fil-Kodici Kriminali permezz ta' l-Att LI fit-28 ta' Novembru 2016.

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-Belgiu** (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 ghalfejn ma tigieħ 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*

---

<sup>2</sup> Ara l-istqarrija a fol. 12 tal-atti processwali.

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<sup>3</sup> (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

---

<sup>3</sup> Emfazi ta’ dina l-Qorti

*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 odjern li jirrizulta huwa li l-qua imputat gie offrut id-dritt li jikkonsulta ma avukat qabel l-interrogatorju mill-pulizija izda ma kienx offrut id-dritt għall-assistenza legali waqt l-istqarrija. Minn qari tal-istess stqarrija kjarament jirrizulta li l-qua imputat inkrimina lulu nnifsu fir-rigward ta' numru ta' reati li gie imputat bihom. Ghaldaqstant dina l-Qorti, wara li hadet konjizzjoni tal-provi migbura u l-gurisprudenza ricenti relatata mal-valur probatorju li hija ghandha taghti l-istqarrija mehuda f'cirkostanzi simili għal dawk tal-kaz odjern, partikolarment il-

fatturi stabbiliti sabiex isir l-analizi tal-*overall fairness* tal-proceduri, ma thossx li jkun opportun li tistrieħ fuq l-istqarrija sabiex tistabillixi 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' tiegħu o meno għall-imputazzjonijiet dedotti fil-konfront tiegħu.

Illi stabbilit dan, il-Qorti ser tghaddi sabiex tevalwa l-bqija tal-provi mressqa mill-prosekuzzjoni bil-ghan li tistabilixxi r-responsabilita' tal-imputat fir-rigward tal-imputazzjonijiet dedotti fil-konfront tiegħu.

Permezz tal-ewwel imputazzjoni l-qua imputat gie akkuzat li kien fil-pussess tad-droga herojina. Mix-xhieda tal-ufficjali tal-pulizija jirrizulta li meta saret it-tfittxija fil-vettura li kienet misjuqa minn Zammit, taht is-seat tax-xufier instab pakkett suspettat droga. Fl-udjenza tas-27 t'Ottubru 2021, l-ufficjal prosekutur esebixxa l-allegata sustanza elevata mill-pussess tal-imputat fil-proceduri odjerni madanakollu l-prosekuzzjoni fl-ebda istanza ma ressqet talba sabiex l-imsemmija sustanza tigi analizzata bil-ghan li jigi stabbilit jekk din is-sustanza hijiex wahda skedata fit-termini tal-Kap. 101 tal-Ligijiet ta' Malta. Fin-nuqqas ta' din il-prova kruċjali, din il-Qorti ma tista qatt issib lil Zammit hati tal-ewwel imputazzjoni migjuba fil-konfront tiegħu.

Għal dak li jirrigwarda t-tieni imputazzjoni jibda biex jingħad li l-ufficjali li waqqfu lill-qua imputat waqt li kien qed isuq il-vettura tiegħu fl-ebda hin ma xehdu dwar in-numru ta' registrazzjoni tal-vettura in kwistjoni. Għaldaqstant mill-atti processwali ma jirrizultax li hemm pruvat ness bejn il-vettura u il-qua imputat. In oltre jingħad li sabiex jissussisti dan ir-reat il-prosekuzzjoni necessarjament riedet tressaq prova li l-imsemmija vettura kienet ilha f'Malta għall-iktar minn tlettin gurnata. Din il-prova bazika hija ukoll nieqsa. Konsegwentament l-imputat ser jigi illiberat anke minn din l-imputazzjoni.

Għall-istess ragunijiet imsemmija fil-paragrafu precedenti, kif ukoll galadarba ma tressqet l-ebda prova dwar jekk Transport Malta rcevewx applikazzjoni mingħand il-qua imputat fir-rigward tal-vettura hawn fuq imsemmija, Zammit lanqas ma jista' jinsab hati tat-tielet imputazzjoni dedotta fil-konfront tiegħu.

Ir-raba' u l-hames imputazzjoni migjuba fil-konfront tal-qua imputat lanqas ma jirrizultaw pruvati għar-ragunijiet hawn fuq imsemmija.

Is-sitt imputazzjoni (kkommetta reat waqt il-perjodu operattiv ta' sentenza sospiza), s-seba' imputazzjoni (ksur ta' ordni ta' probation) u t-tminn

imputazzjoni (recidiva) kollha jirrikjedu li l-qua imputat jinsab hati tal-akkuzi hawn fuq imsemmija (imputazzjonijiet Numru 1 sa 5) migjuba fil-konfront tieghu. Galadarba l-qua imputat ser jigi illiberat mill-ewwel hames imputazzjonijiet migjuba fil-konfront tieghu, lanqas ma jistghu jirrizultaw is-sitt, is-seba' u t-tminn imputazzjoni.

### **Decide**

Ghaldaqstant, ghal dawn il-mottivi, dina l-Qorti, qed issib lill-qua imputat, Joseph Zammit, mhux hati tal-imputazzjonijiet migjuba fil-konfront tieghu u konsegwentament qed tilliberah mill-istess.

MAGISTRAT DR. ELAINE MERCIECA BA. LL.D.

Christine Farrugia

Deputat Registratur