



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

**Magistrat Dr. Monica Vella LL.D., M.Jur**

**Seduta Rabat**

**Il-Pulizija**

**(Spettur Roderick Attard)**

**vs**

**Jesmond Seguna**

**Illum: 3 ta' Frar 2023;**

Il-Qorti,

Rat l-akkuza prezentata mill-Pulizija Ezekuttiva nhar l-20 ta' Ottubru  
2020 kontra:

**“Jesmond Seguna ID: 439766M**

**Akkuzat talli** nhar id-19 ta' April 2020 jew fil-granet ta' qabel  
gewwa Tal-Virtu l/o Rabat Malta

Minghajr il-hsieb li tisraq jew li tagheml hsara kontra il-ligi, izda  
biss biex tezercita jedd li tippretendi li ghandek, gieghelt bl-

awtorita' tieghek innifsek, lil xi hadd ihallas dejn, jew jese gwixxi obligazzjoni tkun li tkun, jew fixkilt lil Carmel Azzopardi, Michael Azzopardi, Edward Degaetano, Joseph Ebejer, Anthony Ebejer, Aloysius Debono, Mark Anthony Ciangura, Francis Borg fil-pussess ta' hwejjighom b' xi mod iehor kontra il-ligi jew indhalt fi hwejjeg haddiehor.

Il-Qorti giet mitluba biex, f'kaz ta' htija, tapplika d-disposizzjonijiet tal-artikolu 377(5) tal-Kapitolu 9 sabiex tassigura li l-persuna li batiet l-ispoll titqiegħed għal kollox fl-istat ta' qabel ma batiet l-ispoll.

Il-Qorti giet gentilment mitluba li f'kaz ta' htija barra milli tagħti il-piena stabbilita skond il-ligi, tordna lil imputat ihallas l-ispejjez li għandhom x'jaqsmu mal-hatra tal-esperti skond l-artikolu 533 tal-Kap 9 tal-Ligijiet ta' Malta.”

Rat ix-xhieda u d-dokumenti eżebiti.

Rat ir-relazzjoni tal-perit tekniku il-Perit Valerio Schembri appuntat minn din il-Qorti, kif diversament ippreseduta biex 'jisma' ix-xhieda u jagħmel il-kostatazzjonijiet kollha rilevanti sabiex jigi accertat jekk l-imputazzjoni kif migjuba tirrizultax<sup>1</sup>.

Semgħet it-trattazzjoni għan-nom tal-partijiet<sup>2</sup>.

Rat u qieset id-dokumenti u provi kollha prodotti.

Rat illi l-kawza thalliet għal-lum għas-sentenza.

---

<sup>1</sup> A folio 5 tal-process

<sup>2</sup> A folio 122 et seq tal-process

## **Ikkunsidrat:**

### **Il-Fatti fil-Qosor**

Dan il-kaz jirrigwarda allegazzjoni mill-*parte civile*, ossija Carmel Azzopardi, Michael Azzopardi, Edward Degaetano, Joseph Ebejer, Anthony Ebejer, Aloysius Debono, Mark Anthony Ciangura, Francis Borg, fejn isostnu li l-imputat Jesmond Seguna kien waqqafhom milli jidhlu fl-ghelieqi taghhom li jinsabu f'‘Tal-Virtu’ ir-Rabat Malta. Michael Azzopardi, li mar jirrapporta l-kaz lill-pulizija ezekuttiva ma’ Francis Borg. Huma sostnew illi huma kellhom access minn passagg ghal gol-ghelieqi taghhom izda xi granet qabel id-19 ta’ April tas-sena 2020 l-imputat pogga katnazz fuq il-kanna/hadida/pipe li kien hemm u ma tahomx kopja tac-cavetta. Azzopardi jsostni li l-passagg maghluq minn Seguna kien pubbliku u mhux privat u pproduca xi dokumenti lill-pulizija biex isostni l-argument tieghu. L-imputat issejjah mill-pulizija biex jigi interrogat izda hu la ffirmat dikjarazzjoni ta’ rifjut ghall-assistenza minn avukat u lanqas wiegeb ghall-mistoqsijiet li sarulu.

### **Il-Provi**

Xehed **PS 1222 Karl Vella Cassia** permezz ta’ affidavit fejn stqarr li Michael Azzopardi mar jirrapporta il-kaz lill-pulizija ezekuttiva ma’ Francis Borg nhar id-19 ta’ April 2020 ghall-habta tat-13.25hrs u sostna li dan l-allegat spoll gara **xi granet qabel id-19 ta’ April tas-sena 2020 meta l-imputat Jesmond Seguna biddel il-katnazz** u ma tahomx kopja tac-cavetta. Azzopardi beda jsostni li l-passagg maghluq minn Seguna kien pubbliku u mhux privat u pproduca xi dokumenti lill-pulizija biex isostni l-argument tieghu. **Azzopardi u Borg**

ghaddew ukoll lista ta' individwi ohra li gew affettwati ukoll b'dan l-agir ta' l-imputat. L-imputat issejjah mill-pulizija biex jigi interrogat u hu la ffirmat dikjarazzjoni ta' rifjut tal-avukat u lanqas wiegeb għall-mistoqsijiet li sarulu. Fil-fatt il-pulizija hargu l-akkuzi kif dedotti.

Xehed **Francis Borg** waqt is-seduta tal-20 ta' Ottubru 2020 fejn jghid li ilu jghaddi mill-ghalqa tal-imputat għal zmien twil u li missieru kien irabbi l-majjali go kamra. Isostni li huma kellhom dritt jghaddu minn hemm u dan id-dritt għaddiehulhom is-sid li kien hemm qabel. Isostni li huma kienu jghaddu bi dritt u mhux ghax is-sid kellu pjacir ihallihom jghaddu. **Hu jghid li qabel id-19 ta' April 2020 kienu jghollu l-hadida u jidhlu u din is-sistema ilha bejn 7 u 8 snin.** Hu jghid li l-imputat cempillu u qallu li ma jistax jibqa' jidhol billi jghollu l-hadida. Jghid li hu ma hallihx jagħmel hajt tal-kantun ghax riedu tas-sejjieh. Ix-xhud jghid li għamel, l-imputat, il-hadida u wweldjaha. B'hekk il-hadida ma tistax tintrefa'. Jghid malli sar hekk huwa ma jistax jidhol biex jahrat. Jghid li barra l-passagg fejn hemm il-hadida iwweldjata hemm passagg zghir iehor minn fejn jghaddi, pero' l-ingenji tieghu ma jghaddux minn hemm.<sup>3</sup>

Xehed **il-Perit Valerio Schembri** waqt is-seduta tat-2 ta' Frar 2021 fejn spjega li l-allegazzjoni hija li l-imputat biddel il-katnazz tax-xatba bil-pipe u ma tax ic-cavetta lill-kwerelanti<sup>4</sup>. Il-perit tekniku jghid li mhux kontestat mill-imputat li hu biddel ic-cavetta tax-xatba u lanqas ma hu kontestat min-naha tieghu li l-kwerelanti kienu ilhom jghaddu minn hemm għal diversi snin. Jaqbel li hemm passagg iehor imma jikkonferma meta kien kontro-ezaminat mid-difiza li l-ingenji kbar ma jghaddux. Jghid ukoll li dan il-passagg għall-ghalqa ta' Michael Azzopardi huwa mbarrat bil-hajt tas-sejjieh. Jghid li l-kwerelant

---

<sup>3</sup> A folio 6-9 tal-process

<sup>4</sup> A folio 12 tal-process

Azzopardi jmiss parti ma' dan il-passagg. Jerga' jsostni li l-imputat kien jaf li l-kwerelanti kienu ilhom zmien twil juzaw il-passagg fejn hemm ix-xatba, ossija pipe tal-hadid. Ix-xhud ezebixxa r-rapport tieghu li gie immarkat Dok VS.<sup>5</sup>

Xehed **Michael Azzopardi** waqt is-seduta tal-10 ta' Novembru 2020 jghid li huwa ilu jghaddi mill-passagg li ttehidlu l-access ghalih mal-hamsin sena. Jghid ukoll li l-hadida li hemm il-kwistjoni fuqha kienet saret xi ghaxar snin ilu mill-imputat u kien tahom ic-cavetta. Pero' wara tlett snin nehha kollox u l-access kien tramite l-istess fetha bil-kanna in kwistjoni pero' minghajr katnazz. Jghid li f'Awwissu 2019 sar katnazz u l-imputat tah cavetta u kien jaccedi ghal hwejjgu minghajr xkiel billi jiftah il-katnazz bic-cavetta li kien tah l-imputat. **Jghid li f'April 2020 l-imputat biddel ic-cavetta u ma setax jidhol aktar.** Izid jghid:

*'Jiena kont hierieg bil-vann u rajt lill-imputat fejn il-hadida u kif hrigt rajtu jibdel il-katnazz. Nghid li rritornajt u ppruvajt ic-cavetta li soltu nuza u ma qabltx'. Nghid li jiena x' hin indunajt x' kien ghamel cempiltu u staqsejtu x' gara. Nghid li qalli li issa jekk irridu naccedu minn ta' Frankie Borg.....minn April 2020 sa llum ma nistax naccedi...'.<sup>6</sup>*

Meta gie kontro-ezaminat ix-xhud fis-seduta tas-17 ta' Novembru 2020 barra li kkonferma dak li kien gia xehed fuqu sostna li l-passagg l-iehor tghaddi biss bir-rigel u mhux bl-ingenji.

---

<sup>5</sup> A folio 16 tal-process

<sup>6</sup> A folio 31 tal-process

Xehed **Charles Azzopardi** waqt is-seduta tas-17 ta' Novembru 2020.<sup>7</sup> Hu kkonferma li jahdem ir-raba' fl-akwati tal-Virtu', ir-Rabat. Jghid li sa fejn jaf hu l-access inghalaq fl-20 ta' April 2020. Isostni li l-imputat ghamel xi zmien ma jersaqx l'hemm u li l-katnazz ta' qablu kien tnehha u kellhom access liberu. F'Awwissu 2019 l-imputat beda jiffrekwenta l-akkwati. Jghid li hu gie mwissi minnu quddiem huh biex ma jghaddix minn fejn hemm il-kanna u hu kien qallu li dan hu impossibbli ghax ma hemmx passagg iehor minn fejn tghaddi bil-mutur. Jghid li pero' tramite oht il-mara ta' l-imputat lilhom tahom cavetta pero' lill-ohrajn ma tahlhomx. Jghid li l-ohrajn wara Awwissu 2019 ma rahomx 'l hemm aktar u r-raba' taghhom baqghu mhux mahduma. **Jghid li fl-20 ta' Awwissu 2020 rawh jibdel il-katnazz u x'hin marru jergghu jiccekkjaw indunaw li c-cavetta li kellhom ma taqbilx.**

Xehed **Anthony Ebejer**. Jghid li huwa u huh jahdmu ir-raba li huwa mqabbel lil certu Frankie. Din ir-raba tinsab f'tal-Virtu'. Hu jikkonferma li minn Ottubru 2019 hu ma hadimhiex. Jghid li ma marx 'l hemm minhabba ragunijiet ta' sahha pero' hu jmur jittawwal b'mod regolari fil-fatt hu kien jghaddi minn fejn hemm il-kanna ghax l-access kien liberu. **Jghid li f'xi gurnata bejn Marzu u April 2019 sab il-gate maghluqa u kien jaccedi bic-cavetta li kien hemm taht il-gebbla. Jghid li fil-bidu tas-sajf 2019 kien rega' mar u c-cavetta taht il-gebbla ma sabhiex.** Isostni li kien iltaqa' ma' Charles u Michael Azzopardi fejn spjegawlu x'kien gara. Izid jghid li darba, x'aktarx f'Mejju 2020 kien iltaqa' b'kumbinazzjoni mal-imputat u kien qallu fuq ic-cavetta u kkonfermalu li jekk ikun irid jidhol mill-passagg li kien maghluq kellu jfittxu u jdahhlu. L-arrangement il-gdid kien li jaghtih ic-cavetta temporanjament u wara jaghtihielu lura.<sup>8</sup>

---

<sup>7</sup> A folio 33 tal-process

<sup>8</sup> A folio 34 tal-process

Xehed **Joseph Ebejer** fejn ikkonferma li hu minn dejjem uza l-access li hemm kwistjoni fuqu. Jikkonferma li jistghu jghaddu bir-rigel mill-passagg l-iehor pero' bil-mohriet u bil-vettura jghaddu mill-passagg li nghalaq mill-imputat<sup>9</sup>. Jikkonkludi billi jghid li f'dawn l-ahhar seba' snin ix-xatba ma kinitx maghluqa.

Xehed **Louis Debono** fejn jikkonferma li r-raba' li ghandu f'Tal-Virtu ilu jahdimha mill-1992. Jghid li hu qatt ma juza l-passagg li hemm il-kwistjoni fuqu u kien infurmat minn qrabatu li jekk ikollu bzonn jghaddi minn hemm imur ghand il-kunjatu tal-imputat u dan jaghtih ic-cavetta jew l-access.<sup>10</sup>

Xehed l-imputat **Jesmond Seguna** fejn ikkonferma li hu mizzewweg lit-tifla ta' Joseph Schembri u li tgharrasha fl-1989 u zzewwigha fl-1993. Jghid li r-raba' hija imqabbla lill-kunjatu u li meta kien gharus kien diga' beda jahdimha.<sup>11</sup> Jghid li x-xatba hija forma ta' kontroll ghax fil-passat kien hemm min missilhom il-bhejjem. Hu minn dejjem hekk jafha u l-katnazz minn dejjem kien hemm. Jiftakar li fl-1989 diga' kien hemm il-katnazz u li dan inbidel kemm-il darba. **Jispjega li c-cavetta kienet ghandhom u kienu jitolbuhom ta' Azzopardi u jaghtuhom. Izid jghid li 'ic-cavetta kienu jaghtuhom pero' kienu jaghmlu ohra aktarx kopja li kienu jitfghuha taht il-gebla kif xehdu uhud mix-xhieda tal-lum'**. Waqt il-kontro-ezami filwaqt illi jikkonferma dal li qalu Azzopardi li ma tahhomx ic-cavetta l-gdida, jghid li dan ghamilha ghax ma ghandux ghalfejn jaghtihom. Izid jghid li hu ma kienx jaf li ghandhom ic-cavetta u kienu jahbuha taht il-gebla u jghid li kienu ghamlu hekk ghaliex fdawhohom. Jghid li d-

---

<sup>9</sup> A folio 35 tal-process

<sup>10</sup> A folio 35 tal-process

<sup>11</sup> A folio 36 u 39 tal-process

decizjoni dwar ic-cavetta haduha il-familjari kollha. Jikkonferma waqt ir-ri-ezami li lil ta' Azzopardi rahom deklin.

Xehdet mart l-imputat, **Maria Seguna** wara li giet imwissiha skont il-ligi. Tghid li l-ghelieqi huma imqabbla lilhom u dejjem uzawha. Hija dejjem tafha bil-katnazz. Kif inhi. Tghid li hija u l-imputat kienu ilhom imorru hemm mill-1989 u qabel kienet tmur ma' missierha. Tixhed fuq dak li qalilha missierha u tishaq li kien jghidilha li meta jitolbuha jekk ghandi pjacir ntihielhom biex jghaddu<sup>12</sup>.

Xehed **Mark Anthony Ciangura**. Jghid li huwa wiret tlett itmien u nofs raba' minn ghand ommu f'Tal-Virtu', r-Rabat. Jghid li bir-rigel jghaddi mis-sqaq dejjem filwaqt li bl-ingenji mill-passagg li gie bblukkat. Jghid li dan tal-ahhar huwa bblukkat b'pipe u katnazz pero' kellhom cavetta li jahbuha taht gebla. Jghid li sabuha msakkra mis-sena zgur 2020. Jghid li fil-fatt gieli kien hemm pipe minghajr katnazz u kien hemm zmien fejn il-pipe kellu katnazz pero' kellhom cavetta. Jiddikjara li l-imputat qallu li meta ried jghaddi icempillu u jiftahlu pero' minn meta ghamel hekk ma dahalx darba u qatt ma staqsieh biex jidhol. Izid jghid li xi tlett xhur qabel kien qallu biex jiftahlu x-xatba ghax kien tiela' bit-tractor pero' peress li kien qed jidlam huwa qallu li ma riedx.<sup>13</sup>

Xehed **Edward Degaetano** li ikkonferma li ghandu xi raba' u din hija circa tomna u nofs. Jghid li dan l-ahhar l-aktar li jghaddi kien mis-sqaq tar-rigel u li propja l-ghalqa hija imqabbla lill-kunjata. Jghid li l-isqaq minn fejn jghaddi kien inghalaq ghax xi hadd tefa' torba fuq it-trejqa. Fuq ix-xatba ma kien jaf xejn u lilu ma taghmillux differenza minhabba it-torba li ma jafx min tefaghha.

---

<sup>12</sup> A folio 36 tal-process

<sup>13</sup> A folio 39 tal-process



Xehed **Joseph Schembri** waqt is-seduta tad-19 ta' Novembru 2020 fejn jikkonferma li r-raba' f'Tal-Virtu taha lit-tfal pero' jispjega li l-art ilha ghandu hamsa u sittin sena. Jispjega li l-passagg mertu tal-kawza ghamlu hu u kienu jghaddu ghax ihallihom hu. Il-passagg ilu tal-anqas erbghin sena. Isostni li anki il-kanna ghamel hu biex in-nies ma joqghodux ghaddejjin. Jispjega li Azzopardi kienu jitolbuh ic-cavetta u kien jaghtihelhom u meta kien ghamel il-katnazz kellu cavetta hu biss. Kien jaghtiha lil Michael Azzopardi u imbaghad jaghtihelu lura. Din ic-cavetta kien jaghtiha buona grazzja tieghu u li qatt ma awtorizza lil hadd jaghmel kopja tac-cavetta pero' **sar jaf li ghandhom kopja tac-cavetta xi ghaxar snin ilu u li ma hax azzjoni fuq hekk**. Hu jghid li xi sitt snin ilu kien ghadda kollox lit-tfal. Isostni li qatt ma ghalaq ghajnejh ghall-fatt li ghandhom ic-cavetta u jista' jkun li dan il-fatt ilu anqas minn ghaxar snin. Jaghlaq biex jghid li llum il-gurnata ma jistax imur l-ghalqa ghax juza l-wheelchair. Kontro ezaminat jikkonferma li kemm ix-xatba kif ukoll il-katnazz ghamilhom hu u hu dejjem kellu c-cavetta.<sup>14</sup>

Xehdet **Maria Seguna**, mart l-appellant waqt is-seduta tat-22 ta' Dicembru 2020.<sup>15</sup> Hija giet imwissija li ghandha dritt li ma tixhidx kontra zewgha. Tghid li Azzopardi kien talabha darba permess u hija kienet tatulu. Kien talaba permess darb' ohra u hija dehrilha li ma kellix taghtihulu. Tghid li r-raba' ta' Azzopardi huwa zghir u ma jinhadimx b'ingenji kbar. Tghid li biex tidhol ghal Azzopardi ma hemmx fethiet kbar u fl-aerial photos tal-1967 juri li l-access ma jasalx sa Azzopardi. Tghid li x-xoghol ta' Infrastructure Malta qabdu u ghamluh minn rajhom u huma waslu xi 60cm wara x-xatba. Tghid li

---

<sup>14</sup> A folio 52 u 53 tal-process

<sup>15</sup> A folio 58 tal-process

meta rat hekk qabdet lill-imputat biex jiwweldja l-kanna u hu hekk ghamel. Tghid li l-katnazz dejjem kien hemm.

Kontro-ezaminata tghid li t-trejqa sar-razzett ghamluha l-familjari taghha u li kienet diga' mizzewgha meta saret. Kienet tasal sa l-ewwel harruba bejn wiehed u iehor pero' meta sar il-kumplament ma tafx tghid. Kienet taf bil-kwistjoni tal-enforcement pero' l-ewwel darba ma xehditx dwar dan. Tghid li l-passagg iwassal sa l-ewwel ghalqa li fil-fatt tintuza bhala shooting range. Tghid li x-shooting range imiss ma' l-ghalqa taghha u tal-ohrajn. Tghid li meta hadet l-ghalqa f'idejha kien hemm ix-xatba bil-katnazz pero' x-xatba ma kinitx iwweldjata. Maz-zmien skopriet li kienu qed jghollu l-hadida fejn ma kienx iwweldjat u jidhlu u allura qabdet lill-imputat, zewgha, biex jaghmel il-welding. **Hi tghid li skopriet li jidhlu b'dan il-mod f'Lulju 2020.** Issostni li qalulha li kienet art tal-Gvern u li hija qatt ma cahditu u taf li l-art hija bi qbiela. Il-qbiela hija minn ghand il-Gvern. Il-passagg huwa parti mill-qbiela li hija thallas. Tghid li l-ingenji kbar jistghu jidhlu ukoll mill-passagg l-iehor. **Tghid li fis-sajf 2019 hija kellha terga' tbiddel il-katnazz ghax skopriet li kienet qed tinheba cavetta taht gebla. Tiftakar li kellha argument mal-gharusa tat-tifel ta' Michael Azzopardi u dak in-nhar qabdet lir-ragel ibiddel il-katnazz u hu hekk ghamel.**<sup>16</sup>

Xehed in kontro ezami il-Perit Valerio Schembri li sostna li x-xatba saret biex tinnega d-dhul u li kien hemm raba' li tinhadem u ohra li ma tinhadimx. Jikkonferma li kien hemm passagg iehor pero' dan seta' jintuza biss bir-rigel. Hadd mill-partijiet ma indikalu t-tielet passagg pero'. Jghid b'mohriet tat-toys zghir hafna jghaddi pero' l-passagg bir-rigel hu idjaq mill-iehor li huwa kontestat. Jghid li l-passagg bir-rigel fih zewg piedi u nofs l-aktar. Jikkonferma li mohriet zghir jghaddi.

---

<sup>16</sup> A folio 60 tal-process

Izid li hemm diversi għelieqi fl-istess kontrada pero' ma setax jiftakar min imiss ma' min.

## **Il-Ligi u Gurisprudenza Applikabbli**

Din l-offiza giet ikklassifikata mil-legislatur taht delitti kontra l-Amministrazzjoni tal-Gustizzja u Amministrazzjonijiet ohra. Il-**Professor Sir Anthony Mamo** fin-Notes on Criminal Law fit-tieni volum tieghu qies dawn l-offizi bhala s-segwent:

‘These crimes attack the State but indirectly, in as much as, without being actuated by motives hostile to the Government, they proceed from other causes, often of a private character and affect those social institutions on and by which the machinery of the Government rests and moves: those institutions, that is to say, which provide the means of guaranteeing to every member of the community the integrity of his rights and those benefits which derive from the state of civil society.’

Fi kliem il-gurista **Carrara** “La ragion fattasi e’ il delitto di chiunque credendo di aver un diritto sopra cosa nell’altrui possesso, o sopra altro individuo lo esercita malgrado la opposizione vera o presunta di questo, pel fine di sostituire la sua forza privata all’autorita pubblica, senza per altro eccedere in violazioni speciali di altri diritti.”

Bl-introduzzjoni ta’ dan l-artikolu, l-ghan ahhari tal-legislatur kien li jipprotegi l-istatus quo kontra min jiehu l-ligi b’idejh, indipendentement minn jekk l-aggressur jew il-vittma jkollux dritt jew le. Huwa artikolu intiz biex jistabilixxi l-ordni pubbliku u biex ma jhallix lill-individwu privat jezercita setgha li fl-ahhar mill-ahhar

tispetta lill-awtorita' pubblika. Huwa ghalhekk li l-istess artikolu jinstab fil-parti tal-Kodici Kriminali relatata ma' delitti kontra l-Amministrazzjoni tal-Gustizzja u Amministrazzjonijiet Pubblici ohra.

Illi fil-kawza fl-ismijiet **Il-Pulizija Vs Godfrey Casha** deciza fit-12 ta' Marzu, 2019, mill-Qorti tal-Appell Kriminali (Onor. Imhallef Dr. Consuelo Scerri Herrera LL.D.), dik il-Qorti ghamlet referenza ghas-sentenza fl-ismijiet **Il-Pulizija vs Anthony Micallef**<sup>17</sup>, fejn il-Qorti tal-Appell Kriminali kienet ikkummentat hekk fuq il-portata ta' dan l-artikolu: "Apparti li l-azzjoni kriminali u l-azzjoni ċivili jitmexxew indipendentement minn xulxin (Artikolu 6, Kap. 9), ir-reat ipotizzat fl-imputazzjoni huwa dak ta' delitt kontra l-amministrazzjoni tal-gustizzja, u aktar preċiżament id-delitt ta' l-użu kontra l-liġi mill-privat tas-setgħat ta' l-awtorita` pubblika. L-Artikolu 85 tal-Kodici Kriminali hu intiż mhux biex jiproteġi l-proprjeta`, mobbli jew immobbli, ta' dak li jkun - għal tali protezzjoni hemm l-azzjoni ċivili - iżda biex jipprevjeni l-użurpazzjoni mill-privat tas-setgħat ta' l-awtorita` pubblika. Isegwi għalhekk li, indipendentement mill-protezzjoni mogħtija permezz ta' l-azzjoni jew azzjonijiet ċivili, jekk jirriżulta bħala fatt li kien hemm l-użurpazzjoni ravvizata fl-imsemmi Artikolu 85, il-Qrati ta' Gustizzja Kriminali għandhom jaġixxu tempestivament biex jirristabilixxu l-ordni pubblika permezz tas-sanzjoni penali. Il-Qrati ta' Gustizzja Kriminali għandhom addirittura s-seta' li jiddeterminaw kwistjonijiet ċivili inċidentali għar-risoluzzjoni tal-vertenza penali."

Dik il-Qorti irriteniet illi "l-elementi tar-reat in dizamina gew magisterjalment migbura fid-definizzjoni analitika mogħtija mill-

---

<sup>17</sup> Deciza 11 ta' Frar, 2013

Imhalled W. Harding fis-sentenza tal-Qorti ta' l-Appell: “**Il-Pulizija vs. Giuseppe Bonavia et**”<sup>18</sup> bhala:

“(1) att estern li jispolja lil xi hadd iehor minn haga li jkun qiegħed igawdi, liema att ikun ezegwit kontra l-opposizzjoni, espressa jew presunta, ta' dan il-hadd iehor; Il-gurista Carrara li hafna drabi jigi citat bhala l-pedament awtorevoli ta' dawn l-erba' elementi ta' ragion fattasi jispjega dan l-element bhala “un atto esterno che spogli altri di un bene che gode ...” Ikompli jghid li “Chi e' nell' attuale godimento di un bene e continua a goderne a dispetto di chi non voglia, non delinque; perchè la legge protegge lo status quo, il quale non può variarsi tranne per consenso degl' interessati, o per decreto dell' autorità giudiciale.”

(2) il-kredenza li l-att qiegħed isir b'ezercizzju ta' dritt;

(3) il-koxjenza fl-agent li hu qiegħed jagħmel ‘di privato braccio’ dak li jmissu jsir per mezz ta' l-awtorita' pubblika; jew, fi kliem il-Crivellari, “la persuasione di fare da se' cio' che dovrebbe farsi reclamando l'opera del Magistrato”<sup>19</sup>

(4) in-nuqqas ta' titolu li jirrendi l-fatt aktar gravi<sup>20</sup>. Gie ritenut illi : “Element importanti kostituttiv ta' dar-reat hu dak intenzjonali fis-sens li l-agir ta' dak li jkun irid ikun magħmul bil-hsieb li hu qed jezercita dritt li jahseb li għandu għad-distinzjoni mir-reati ta' serq jew danni volontarji fuq proprjeta' ta' haddiehor per ezempju . Għalhekk hemm bzonn li issir indagni fuq il-movent li jkun wassal lill-persuna li ikkommettiet dar-reat biex tagħmel dak li għamlet. L-element materjali

---

<sup>18</sup> Deciza fl-14 ta' Ottubru 1944 u riportata f'Vol. XXXII.iv.768.

<sup>19</sup> Il Codice Penale per il Regno d'Italia Interpretato ecc., Torino, 1895, Vol. VI, pagna 749

<sup>20</sup> Ara, fost diversi sentenzi, **Il-Pulizija vs. Salvatore Farrugia**, Appell Kriminali 14 ta' Dicembru

invece jikkonsisti filli wiehed jippriva persuna ohra minn xi dritt fuq haga li ghandu id-dgawdija taghha.”

Il-Qorti tal-Appell kompliet illi “Fuq kollox: Dawn l-elementi gew riportati f’sentenzi ohra fosthom **Il-Pulizija vs Emanuel Muscat et**, deciza fit-30 ta’ Settembru 1996 mill-Qorti tal-Appell Kriminali: “L-Artikolu 85 huwa intiz biex dak li jkun ma jiehux il-ligi b’idejh, u ghalhekk l-iskop wara din id-disposizzjoni – bhad-disposizzjonijiet fil-kamp civili dwar l-actio spoli – huwa li tipprotegi l-istatus quo.”

“L-element intenzjonali huwa importanti ferm ghaliex huwa dak li jikkwalifika dan ir-reat minn reati ohra. Fil-fatt hu ben risaput – u dan johrog anke mill-istess definizzjoni tar-reat in dizamina – li l-istess att materjali jista’ jaghti lok ghar-reat ta’ ragion fattasi jew ghal reati ohra (hsara volontarja, serq), u jekk ikunx hemm dan ir-reat ta’ ragion fattasi jew xi reat iehor ikun jiddependi mill-intenzjoni tal-agent. Hu rrelevanti jekk din l-intenzjoni tikkwalifikax bhala intenzjoni specifika jew intenzjoni generika<sup>21</sup>. Fil-fatt fis-sentenzi fl-ismijiet **Il-Pulizija vs Eileen Said**<sup>22</sup> u **Il-Pulizija vs Vincent Cortis**<sup>23</sup>, il-Qorti tal-Appell Kriminali kompliet telabora li “element kostituttiv ta’ dan ir-reat hu dak intenzjonali fis-sens li l-agir ta’ dak li jkun irid ikun maghmul bil-hsieb li hu qed jezercita dritt li jahseb li ghandu ghad-distinzjoni mir-reati ta’ serq jew danni volontarji fuq proprjeta’ ta’ haddiehor, per ezempju. Ghalhekk hemm bzonn li ssir indagini fuq il-movent li jkun wassal lill-persuna li kkommettiet dan ir-reat biex taghmel dak li ghamlet. L-element materjali invece jikkonsisti filli wiehed jippriva persuna ohra minn xi dritt fuq haga li ghandu it-tgawdija taghha.”

---

<sup>21</sup> Ara f’dan is-sens is-sentenza **Il-Pulizija vs Mario Lungaro**, deciza mill-Qorti tal-Appell Kriminali fit-18 ta’ Novembru 1996

<sup>22</sup> Deciza fis-19 ta’ Gunju 2003

<sup>23</sup> Deciza fis-27 ta’ Novembru 2008

Illi dawn il-principji gew abbraccjati wkoll sa ricentament mill-Qorti tal-Appell fil-kawza **The Police vs Deidre Nyasa Rolfe Hornloyd Strickland**,<sup>24</sup> (Onor. Imhalled Dr. Aaron Bugeja LL.D.) fejn dik il-Qorti rriteniet illi:

“In fact the elements of this crime were elaborated by Mr. Justice William Harding in the case **Il-Pulizija vs. Giuseppe Bonavia et** (App.Krim. 14.10.1944 , Vol.XXXII - IV , p.768) as well as other more recent judgments such as the one delivered by Mr. Justice Lawrence Quintano in **Il-Pulizija vs Anthony Zahra, on the 20th June 2014** as based on the views of Carrara. Thus the elements of ragon fattasi are :- a) att estern li jimpedixxi persuna oħra minn dritt li hija tgawdi, u li jkun sar bid-dissens esplicitu jew implicitu ta’ dik il-persuna; b) l-imputat irid jemmen li qed jaġixxi bi dritt; c) ix-xjenza tal-imputat li qed jieħu b’idejh dak li suppost jieħu tramite lproċess legali; d) li l-att ma jinkwadrax ruħu f’reat aktar gravi;

30. While this exposition of the elements of this crime reflects the writings of Carrara, Maltese Courts have also adopted the interpretation propounded by other authors who commented on the defunct Borbonic Code.

31. Thus they came to accept that the crime of ragon fattasi is not based on the mere disturbance of a right of possession over a thing – whatever form that right may take. In order for this crime to subsist, it must be proven, beyond a reasonable doubt, that the person allegedly falling victim of this crime (passive subject) had a form of right of possession over the thing in question.

---

<sup>24</sup> Deciza fl-10 ta’ Dicembru 2020

32. Thus according to Maltese case law the detention on mere tolerance of a house by a spouse was held to be sufficient for a *ragion fattasi* conviction in case where the other spouse decided to change the lock of the front door (on the same day when a Court declared their marriage null and void). The Court held that the spouse who changed the lock disturbed the right of the other spouse who was holding the tenement on mere tolerance and therefore was guilty of *ragion fattasi*. The reasoning was that the spouse who changed the lock was, by his or her unilateral act, arbitrarily and abusively changing the status quo relating to the possession of the thing as prevailing between the parties at that moment in time. This status quo should not have been disturbed unilaterally by the active subject but should have only been changed by the competent judicial authorities following the appropriate legal action being instituted by the party feeling aggrieved due to the (continued) possession of the other spouse.

In the case **Il-Pulizija vs. Joseph Bongailas**, decided by the Court of Criminal Appeal on the 22nd October 2001 wherein it was stated that: *Mela dan l-Artikolu 85 tal-Kodici Kriminali, bl-ewwel rekwizit tieghu, kjarament iqis bhal agir kriminali kull att ta' xi hadd li jfixkel lil xi haddiehor fil-pussess ta' xi haga li qed igawdi. L-imsemmi artikolu, ghalhekk, jittutela l-pussess tal-haga u mhux necessarjament ukoll il-propjeta' taghha. Il-kelma pussess, ghalhekk, tinkludi l-uzu jew dgawdija ta' dik il-haga.*

33. In a nutshell the spouse who felt that the front door lock should be changed on the same day that their marriage was declared null, should have filed the appropriate Court action in order to be able to change the door lock after the Court would have declared that the other spouse had no further pretence to the



property – given that he was occupying the house on mere tolerance. However, that spouse did not take this lawful course of action but proceeded to take the law in her own hands by changing the lock of the front door instead – thus excluding access to the house to the other spouse who – till that stage “enjoyed” the detention on mere tolerance of the said house.

34. The active subject therefore can be deemed to *si e' fatto arbitrariamente ragione* and not simply *si e' fatto ragione da se'*.

35. According to a judgment delivered by the Italian Court of Cassation<sup>25</sup> the crime of *ragion fattasi* was not meant to punish *chi si fa ragione da se'* ma *chi si fa arbitrariamente ragione*<sup>26</sup> such that by his actions the active subject disturbs the prevailing status quo at that particular moment in time when the act leading to *ragion fattasi* is deemed to have been committed.

36. According to another jurist, Carmignani, who was commenting on the Law of the Duchy of Tuscany before the Unification of Italy, the element of disturbance of the possession of the passive subject must not be merely constructive, but the possession has to be actual; and the action committed by the active subject must lead to the disturbance of the status quo between the parties : - 879 *Si hanno esempi di questo delitto, 1. Se un creditore riscuote con violenza dal suo debitore la somma dovutagli; 2. Se una cosa mobile od immobile creduta propria*

---

<sup>25</sup> Sez. VI, sent. 11118 tat-22/11/1985 Mioli

<sup>26</sup> In this particular case the Court of Cassation held that no crime of *ragion fattasi* was committed the owner of the tenement changed the door locks of a group of offices thereby closing access to the tenants of these office who were previously intimated to use the premises according to the use agreed upon and who failed to adhere to these requests by the land lord.

vien tolta violentemente a chi ne e' in attuale possesso; 3. Se un colono, finita la locazione, ricusa di lasciare il fondo;....<sup>27</sup>

37. So this means that this Court must assess whether the parte civile had, at least, any basic element of possession to the object or right disturbed; to see whether this possession was actual; and whether the action of the active subject ended up disturbing the status quo between the parties relating to the possession of this thing or the right.

38. According to Arabia<sup>28</sup>, the crime of *ragion fattasi* is not meant to sanction the disturbance of the possession of a thing by a person or a right per se; but rather it sanctions and penalises the fact that a private party – the active subject – engages in unilateral personal action enforcing his will on the thing or right in contestation, instead referring the matter to the competent to the public authority for the necessary remedies: Il che da una parte dimosta che il reato non ista' nella turbativa del possesso, ma nell'uso de' mezzi dell'autorita' pubblica. Ma perche' intervenga l'autorita' pubblica a porre in atto l'esercizio dell'altrui diritto, sono fuor di dubbio necessariamente due cose, a) che il diritto sia reale, b) che ne sia controverso l'esercizio.

39. Arabia here is focusing on the Borbonic Law of *vie di fatto* – which, as was seen above, was identical to the crime of *ragion fattasi* at Maltese Law. Therefore, his understanding may also reflect the correct interpretation that ought to be given to Maltese Law.

---

<sup>27</sup> Elementi di Diritto Criminale, Giovanni Carmignani, Traduzione italiana sulla quinta edizione di Pisa del Profs. Caruana Dingli, Milano, 1863, fol 318

<sup>28</sup> I Principi del Diritto Penale applicati al Codice delle Due Sicilie, Francesco Saverio Arabia, Vol 3, Napoli 1858, Parte III, Art. 164 a 173, pagina 45

40. Jurisprudence still debates the juridical objective behind this crime. The traditional current holds that this crime is based on the violation of the jurisdictional monopoly vested in the public authority which would be violated by the unilateral and arbitrary act of the private individual who, instead of referring the dispute or point of contention to the competent courts decides to take the matter in his hands and proceeds to adopt a factual remedy himself instead. The other school of thought focuses on the fact that the passive subject in the crime of *ragion fattasi* is indeed the status quo reflected by the status of possession of rights at a given moment in time. This status quo refers to the situation where at a given moment in time a person exercises a right on a thing - even if that person's right is merely apparent. The action of the active party would then disturb that status quo relating to the possession of that thing or right even though this possession would be based on an *apparentia iuris*.<sup>29</sup>

41. Carrara also claims that “*qui continuat non attentat*”.<sup>30</sup> In paragraph 2851 of his work quoted above, he adds that: - *L'atto esterno deve privare altro contro sua voglia di un bene che gode. Chi e' nell'attuale godimento di un bene e continua a goderne a dispetto di chi non voglia non delinque; perche' la legge protegge lo stato quo, il quale non puo' variarsi tranne per consenso degl'interessati, o per decreto dell'autorita' giudiciale.*

42. This is also reflected in more recent Italian jurisprudence which holds that: - *Si e' conseguentemente precisato che ... autore*

---

<sup>29</sup> Ara Codice Penale, Tullio Padovani, Tomo I, IV Edizione, 2007, Giuffre Editore, pagina 2610 taht ilvuçi “oggetto giuridico”.

<sup>30</sup> Vide Programma, Vol. 5, pagina 488.

del delitto puo' essere soltanto chi non si trova nel possesso della cosa, poiche solo in tal caso si puo' verificare quella turbativa nel godimento di fatto che costituisce uno degli elementi essenziali del reato (tra le piu' recenti, Cass. VI 13.11.81, Papa, G PEN 1982, II, 648; Cass. VI 7.5.85, Spallina', CP 1986, 1766; Cass. VI 26.3.85 Pirola, CP1986, 1935). In effetti, soprattutto dalla circostanza che il diritto deve essere si ricava come gli elementi sopra indicati descrivano innanzitutto come presupposto del reato l'esistenza di un conflitto di pretese, ovvero il requisito della contenziosita' del diritto.<sup>31</sup>

43. The element of a prior controversy between the parties relating to the exercise of rights was also deemed important under the Borbonic Code. Arabia questions: Ma che s'intende per dritto posto in controversia? Ogni dritto il cui esercizio e' chiaramente e solennemente controvertito, sia con un fatto giudiziale, sia con un fatto materiale, che l'altro avea dritto almeno apparente di fare. Si supponga p.e. che Tizio abbia concesso a Caio la facolta' di passare pel suo fondo per certo tempo e con certe condizioni. Se essi venissero in controversia sull'esercizio di questa facolta', e Caio citasse Tizio innanzi al magistrato per farsi conservare nel diritto di passaggio, Tizio incorrerebbe nell'art. 168 se facesse qualche opera per cui il passaggio fosse turbato. Abbia o non abbia diritto, viola la legge facendo cio' si spetta all'autorita' pubblica gia' invocata. Per lo contrario, se prima che Caio adisca il magistrato, Tizio pone una siepe o un cancello o altro segno visibile, che chiaramente pone in controversia la facolta' di Caio, questi incorre nell'art. 168, se invece di adire il magistrato, rompa la siepe o il cancello e passi, abbia o non abbia diritto. Nel che notisi che il porre il cancello che fece Tizio puo' essere ingusto,

---

<sup>31</sup> Codice Penale, Tullio Padovani, op. cit. a fol 2611 "soggetto attivo".

e quindi una turbativa del possesso di Caio, ma egli non può essere astretto che con la sole azione civile, perché quando pose il dette cancello, non deve distruggere alcun segno visibile del possesso di Caio, onde è presunta buona fede, non essendovi stata controversia di cui vi siano segni tali, che tolgano ogni dubbio sulla volontà dell'altro di contraddirgli il possesso, onde si debba aver ricorso all'autorità'. Gli elementi dunque del reato dell'art. 168 sono a) uno de' datti materiali in esso descritti, e tassativamente nominati, cioè costringere a pagare un debito, turbare il possesso ec. b) che ciò sia fatto per l'esercizio di un diritto messo in controversia e così che sia richiesta l'opera dell'autorità pubblica a deciderla, poco importando se questo diritto sia o non sia reale; solo che sia chiaramente controvertito.

44. As already mentioned, according to Maltese Case Law the elements of the crime of *ragion fattasi* are as follows : a) att estern li jimpedixxi persuna ohra minn dritt li hija tgawdi u li jkun sar bid-dissens esplicitu jew implicitu ta' dik il-persuna; b) l-imputat irid jemmen li qed jagixxi bi dritt; c) ix-xjenza tal-imputat li qed jiehu b'idejh dak li suppost jiehu tramite l-process legali; d) li l-att ma jinkwadrax ruhu f'reat aktar gravi; Inoltre, ir-reat ma jissustix meta l-att materjali jikkonsisti fir-ritenzjoni ta' pussess li dak li jkun gja kellu.<sup>32</sup>

45. Hence the fact that a person has a lawful title to a property does not bar an action of *ragion fattasi* against her. This crime

---

<sup>32</sup> See **Il-Pulizija vs. Anthony Zahra** decided by the Court of Criminal Appeal per Mr. Justice Lawrence Quintano on the 20th June 2014. See also **Il-Pulizija vs. Mario Bezzina** decided by the Court of Criminal Appeal per Mr. Justice David Scicluna on the 26th May 2004; **Il-Pulizija vs. Michael Lungaro** decided by the Court of Criminal Appeal per Mr. Justice Joseph Galea Debono on the 15th May 2002 as well as **Il-Pulizija vs. Eileen Said**, decided by the Court of Criminal Appeal per Mr. Justice Joseph Galea Debono on the 19th June 2002.

may subsist also in the case where the disturbing act is carried out by the active subject in respect of a passive subject who has merely simple possession or even detention on mere tolerance of the property in question or who would have simply had some right of use on the property in question, which right would have been disturbed thanks to the action of the active subject.

46. In the appeal **Il-Pulizija vs. Joseph Bongailas**, decided on the 22nd October 2001 this Court, differently presided held as follows:- L-Artikolu 85 tal-Kodici Kriminali li jittratta dwar ir-ragion fattasi, bl-ewwel rekwizit tieghu, kjarament iqis bhal agir kriminali kull att ta' xi hadd li jfixkel lil xi haddiehor fil-pussess ta' xi haga li qed igawdi. L-imsemmi artikolu, ghalhekk, jittutela l-pussess tal-haga u mhux necessarjament ukoll il-propjeta' taghha. Il-kelma pussess, ghalhekk, tinkludi l-uzu jew dgawdija ta' dik il-haga.... Li hu importanti, ai fini ta' l-Artikolu 85 tal-Kap. 9, dejjem riferibbilment ghall-ewwel element kostituttiv tieghu huwa jekk effettivament sa dik in-nhar li sar dan l-allegat att ta'spoll mill-appellant, kellhomx il-kwerelanti l-pussess, ossija l-uzu u/jew id-dgawdija tal-fond in kwistjoni.

47. In **Il-Pulizija vs. John Vassallo**<sup>33</sup>, this Court, differently presided held that: Taht l-Artikolu 85 tal-Kodici Kriminali ma hemm ebda bzonni illi jigi ppruvat xi element ta' pussess aktar sostanzjali minn hekk. Id-dicitura ta' l-artikolu hija cara u l-legislatur certament ried illi jigi evitat kull tfixkil, hu ta' liema natura hu, anki fis-semplici pussess. Tali pussess jinkludi wkoll kif gie ripetutament deciz minn din il-Qorti, anke s-semplici drittijiet normalment kompetenti lill-persuni koncernati.

---

<sup>33</sup> Presided by Mr. Justice Godwin Muscat Azzopardi on the 22nd March 1991

48. In another judgment **Il-Pulizija vs. John Dimech**<sup>34</sup> it was held as follows: id-dispozizzjoni tal-ligi li tikkontempla r-reat ta' raggion fattasi hija ntiza biex il-privat li jippretendi xi drittijiet ma jissostitwix l-azzjoni tieghu ghal dak tat-tribunal meta jista' jirrikorri lejhom. Hi gusta jew le l-pretensjoni tieghu, hu ma jistax minn rajh jezercita dawk id-drittijiet li hu jippretendi li ghandu. Considers further:

49. That after analysing closely and attentively the testimony of the witnesses as well as the documents exhibited by them, and bearing in mind the legal principles mentioned above, this Court is of the opinion that the Court of Magistrates could legally and reasonably arrive at the conclusion that the appellant committed raggion fattasi – arbitrary exercise of a pretended right - in this case.

50. The Court of Magistrates based its findings on the version of facts as provided by Peter Paul Portelli on behalf of the Strickland Foundation and John Cachia. After making its due assessment and evaluation of the testimony of these witnesses, as well as the others that testified before it, that Court believed the evidence submitted by Portelli and Cachia to be more credible and reliable than that purported by the appellant.

51. The Court of Magistrates also had the opportunity to listen to this testimony viva voce, hence putting it in a far better position than this Court to assess the credibility and reliability of the testimony of all the witnesses in this case.

---

<sup>34</sup> Decided by the Criminal Court presided by Mr. Justice William Harding on the 24th June 1961

52. While the appellant felt aggrieved by the considerations of the Court of Magistrates in its judgment, this Court saw that that Court based its conclusions on the evidence tendered by John Cachia and Peter Paul Portelli. This is also coupled by the fact that the elements of the crime of ragon fattasi were satisfied in this case.

53. First of all there is no doubt that the appellant is pretending a right over the property at issue. She clearly considers the villa as her home and she claimed that she acted the way she did only to secure her home as well as her husband's and her rights in relation to the villa and surrounding and adjacent gardens according to the wills of the Honourable late Mabel Strickland. However, this Court is a court of Criminal Justice and does not delve into any civil matters or civil rights that the appellant has or pretends to have over the said property. That is clearly the subject matter of a different law suit before the competent Courts of Civil Jurisdiction. It is not up to this Court to establish whether the appellant is entitled to rights that she and her husband claim. What is however clear though is that she evidently believes that she is entitled to act in the way she is acting, according to her, in order to safeguard her privacy and that of the property in which she resides with her husband.

54. Secondly the fact that the passive subject in this case is John Cachia - and not the Strickland Foundation - does not invalidate the action taken. As seen above, the mere use and enjoyment even on mere tolerance was deemed to be sufficient legal title and basis for the crime of ragon fattasi to subsist, should that title, minimal as it may be, be disturbed by the actions of the active subject.



55. The rights of access enjoyed by John Cachia to the property rests on the specific delegation given to him by the representatives of the Strickland Foundation – which, according to the parties in this case, is the legal person in favour of whom this villa and its gardens were bequeathed by the Honourable late Mabel Strickland.

56. It is true that Cachia, personally, enjoys no proprietary rights to the tenements in question. However, his rights of access to these tenements and the minimum detention that he may be enjoying on certain parts of these tenements, were conferred to him by the representatives of the lawful owner of these tenements – The Strickland Foundation. So much so that it is undisputed that Cachia possessed the keys to these properties in order for him to be able to perform his duties to the Strickland Foundation. Cachia was exercising his rights during his tenure of office with that Foundation and therefore in execution of the orders and the delegation given to him by the same. Cachia could not be deprived by others in so doing unless a specific legal action to this effect was taken and a final court judgment or order was delivered in that fashion.

57. The evidence in this case left no doubt that John Cachia had access to all parts of the Villa and gardens as an employee of the Strickland Foundation, specifically deployed to take care of the gardening and maintenance works necessary.

58. When the appellant decided to change the padlock without providing a key to John Cachia and/or the Strickland Foundation she deprived him from the free exercise of the rights conferred

upon him by the owner of the tenements, in order for him to conduct his duties towards the Strickland Foundation.

59. Thirdly, as has already been indicated, the appellant took matters into her own hands instead of taking lawful action, through the proper legal channels, to deprive Cachia from accessing property if she felt that his presence was disturbing. John Cachia managed to prove, on a balance of probabilities, that he had a lawful right of access to the villa and surrounding gardens granted to him by the Strickland Foundation and therefore he was not a squatter or an intruder. If the appellant felt aggrieved by this, her correct and lawful mode of action was to proceed through judicial channels against Cachia and the Strickland Foundation seeking a remedy that would exclude Cachia or any other person from the villa and surrounding gardens according to her propositions. This Court saw no evidence showing that the appellant proceeded in this direction.

60. Finally it is also clear that the appellant's behaviour was not tantamount to any other more serious offence.

61. Consequently, this Court is of the opinion that the judgment of the Court of Magistrates cannot be disturbed and its conclusions shall be reconfirmed by this Court. Decide Consequently, for the above-mentioned reasons, the Court rejects the appeal and confirms the judgment of the Court of Magistrates appealed from in its entirety.”

Enuncjati dawn il-principji, din il-Qorti se tghaddi sabiex tevalwa l-kaz in ezami fid-dawl u l-applikabilita' ta' l-istess.

## Ikkunsidrat:

Din il-vertenza tirrigwarda passagg bejn ghelieqi li hemm f'Tal-Virtu' ir-Rabat Malta li milli jidher kien hemm xi zmien minn liema l-kwerelanti kienu jidhlu minnu ghall-ghelieqi taghhom liberament u f'xi zmien fl-2020 dan il-passagg allegatament inghalaq permezz ta' katnazz jew tibdil ta' katnazz mill-imputat. Li dan il-katnazz inbidel u saret cavetta gdida ma hux qed jigi ikkontestat lanqas mid-difiza.

F'dan l-isfond l-ewwel linja ta' difiza tal-imputat hija li l-akkuza ma gietx ippruvata ladarba ma giex ippruvat li r-ragion fattasi, ovveru it-tibdil tal-katnazz u c-cavetta mill-imputat sehh fid-19 ta' April 2020 jew fil-granet ta' qabel.<sup>35</sup> Minghajr dubbju l-att ta' ragion fattasi jrid jinkwadra b'mod preciz jew li sar fid-19 ta' April 2020 jew xi gimgha qabel din id-data kif inghad fis-sentenza **II-Pulizija vs Carmel Polidano** tal-Qorti tal-Appell Kriminali (App. Nru. 312/13DS) per Onorevoli Imhalled David Scicluna<sup>36</sup>. Allura dak li l-prosekuzzjoni trid tipprova lil hinn minn kull dubbju ragjonevoli hu jekk ir-reat de quo sarx f'dik id-data jew fil-gimgha ta' qabel dik id-data preciza li giet indikata fl-avviz tad-dehra jew l-*avviso di comparire*.<sup>37</sup>

Illi huwa vera wkoll li l-iskop tal-avviz ta' dehra huwa li wiehed ikun jaf b'hiex inhu akkuzat u li jkollu b'hekk opportunita' li jhejji d-difiza xierqa meta jkun imsejjah biex jidher quddiem il-Qorti. Fil-fatt fil-kawza **II-Pulizija vs Ganni Deguara** (App. Nru. 83/2013) deciz mill-

---

<sup>35</sup> **II-Qorti tixtieq tissottolineja li meta l-avukati jigu jitrattaw quddiemha hu mistenni minnhom li jikkwotaw sentenzi bl-okkju shih taghhom u mhux isemmu biss sentenzi fil-generalita' taghhom.**

<sup>36</sup> Ara ukoll **II-Pulizija vs Carmel Polidano** (App. Nru. 338/13DS) per Onor. Imhalled David Scicluna deciz fid-9 ta' Novembru 2017.

<sup>37</sup> Ara ukoll il-**Pulizija vs Katerina D' Amato** et. (App. Nru. 123/2008) deciz mill-Qorti tal-Appell Kriminali per Onor. Imhalled David Scicluna fil-5 ta' Novembru 2008 kif ukoll **II-Pulizija vs Luciano Mirabitor** (App. Nru. 229/2018) mill-Qorti tal-Appell Kriminali per Onr. Imhalled Consuelo Scerri Herrera fis-16 ta' Mejju 2019.

Qorti tal-Appell Kriminali per Onr. Imhalled Lawrence Quintano intqal is-segwenti:

*‘Ghalhekk, jekk ‘il-fatt ta’ l-akkuzza’ ikun gew redatti b’ tali mod li l-imputat ma jkunx jaf b’hiex qed jigi verament akkuzat, sia ghal dawk li huma fatti u sia ghal dik il-ligi, huwa jista’ jew igib din il-lanjanza a konjizzjoni tal-qorti sabiex il-qorti tordna lill-prosekuzzjoni tkun aktar cara jew, wara li l-Prosekuzzjoni tkun ghalqet il-kaz taghha- u allura l-imputat ikun certament jaf x’inhuma l-fatti li jkun qed jigu imputati- jitlob differiment biex ikun jista’ jipprepara d-difiza tieghu.’<sup>38</sup>*

Allura l-ewwel u qabel kollox din il-Qorti trid tara jekk dan l-argument migjub mid-difiza ghandux mis-sewwa. Huwa vera li l-prosekuzzjoni naqset milli wara dawn is-snin kollha tesebixxi r-rapport tal-Pulizija fuq dan il-kaz pero’ huwa wkoll minnu li fl-atti hemm id-dikjarazzjoni mhux kontestata bil-gurament tas-surgent PS 1222 Karl Vella Cassia li qal li **fid-19 ta’ April 2020** kienu marru ghandu Michael Azzopardi u Francis Borg u dan tal-ewwel qallu:

*‘Michael kompla jistqarr li dan l-access twaqqaf xi granet qabel fejn l-akkuzat biddel il-katnazz u ma taghhomx kopja tac-cavetta.’<sup>39</sup>*

Meta xehed quddiem din il-Qorti, kif diversament ippreseduta **fl-20 ta’ Ottubru 2020, jigifieri ftit xhur biss wara r-rapport**, imbaghad Francis Borg, il-persuna l-ohra li irrikorriet ghand il-pulizija qal is-segwenti:

---

<sup>38</sup> Pagna 5.

<sup>39</sup> A folio 3 tal-process. **L-affidavit sar ferm vicin id-data tar-rapport ossija 6 ta’ Mejju 2020 skond it-timbru tal-Ispettur Stacy Attard.**

*Dr. Joe Giglio: Issa jekk joghgbok f'April ta' din is-sena, dsatax (19) ta' April ta' din is-sena... Sa din is-sena biex kontu tghaddu kif kontu taghmlu?*

*Ix-xhud: Konna ghadna nidhlu. Imbaghad cempluli u qaluli....*

*Dr. Joe Giglio: U meta kontu tidhlu kif kontu tidhlu Sur Borg? Kif kontu tidhlu?*

*Ix-xhud: Nghollu l-hadida u nidhlu<sup>40</sup>.*

Hu wkoll vera li meta xehed quddiem il-Perit Schembri Michael Azzopardi jsemmi biss ix-xahar ta' April 2020 u ma kienx preciz fid-data tieghu pero' dan ma jdghajjifx l-argument per se tal-prosekuzzjoni kif lanqas ma jdghajjef l-argument li huh Charles fix-xhieda tieghu jghid li d-data kienet fl-ghoxrin ta' April. Dan ghall-fatt semplici ghax milli jidher Charles Azzopardi ma kienx la ma' huh u lanqas ma' Francis Borg meta mar jaghmel ir-rapport lill-pulizija. Fil-fatt hemm divergenza bejn dak li jghidu l-ahwa Azzopardi fis-sens li wiehed jghid li kien wahdu meta ra lill-imputat ibiddel il-katnazz filwaqt li Charles Azzopardi jghid li kien ma' huh.<sup>41</sup>

**Ghaldaqstant, il-Qorti thoss li mill-assjem tal-provi hi konvinta li l-incident sehh jew fid-19 ta' April 2019 jew f' xi ftit jiem qabel din id-data u ma thossx li l-argument tad-difiza huwa tajjeb fuq din l-**

---

<sup>40</sup> A folio 7 tal-process.

<sup>41</sup> Ara a folio 31 u a folio 33 tal-process. **L-ahwa Azzopardi xehdu quddiem il-Perit Schembri fis-17 ta' Novembru 2020.**

eccezzjoni taghha li dak li hemm ppruvat fl-atti ma jinkwadrax ruhu fl-*avviso di comparire*<sup>42</sup>.

### **Ikkunsidrat:**

Fuq il-materja ta' *ragion fattasi* tal-ligi, ossija l-artikolu 85 tal-Kap 9 tal-Ligijiet ta' Malta l-Kodici Kriminali jghid is-segwenti:

### **FUQ L-UŻU KONTRA L-LIĠI MILL-PRIVAT TAS- SETGHAT TAL-AWTORITÀ PUBBLIKA.**

**85.(1) Kull min, bla ħsieb li jisraq jew li jagħmel hsara kontra l-liġi, iżda biss biex jeżerċita jedd li jippretendi li għandu, iġieghel, bl-awtorità tiegħu nnifsu, lil xi hadd iħallas dejn, jew jesegwixxi obligazzjoni, tkun li tkun, jew ifixkel lil xi hadd fil-pussess ta' hwejġu, jew iħott bini, jew jikser il-mixi tal-ilma jew jiehu l-ilma għalih, jew b'xi mod iehor, kontra l-liġi, jindahal fi hwejjeġ haddiehor, jehel, meta jinsab hati, il-piena ta' prigunerija minn xahar sa tliet xhur:**

**Iżda, il-qorti tista', fid-diskrezzjoni taghha, minflok il-piena hawn fuq imsemmija, taghti l-piena tal-multa:**

**Iżda wkoll l-akkużat jista' jiddefendi ruħu billi jaghti prova li tali azzjoni kienet magħmula bhala miżura temporanja meħtieġa mill-bżonn attwali tad-difiża legittima ta' wiehed innifsu jew ta' haddiehor:**

---

<sup>42</sup> Ara ukoll **Il-Pulizija (Spettur Roderick Agius) vs Aaron Mizzi** (App. Nru. 116/2022) deciza fis-26 ta' Mejju 2022 per Onr. Imhalled Consuelo Scerri Herrera.

Iżda f'kazijiet ta' żgumbramenti arbitrarji jew sfurzati ta'okkupant mill-proprjetà li huwa jokkupa bħala r-residenza primarja tiegħu, inkluż kwalunkwe dhul mhux permess fil-proprjetà, it-tnehhija ta' għamara, apparat domestiku jew affarijiet personali mill-proprjetà, jew is-sospensjoni jew interruzzjoni ta' servizzi tad-dawl utal-ilma, b'kull mod, inkluża l-istallazzjoni ta' apparati li jippermettu lis-sid jissospendi l-provvista diretta tas-servizzi tad-dawl u tal-ilma lill-proprjetà, il-multa ma għandhiex tkun inqas minn elf u hames mitteuro (€1,500) u mhux aktar minn erbat elef euro (€4,000).

(2) Id-dispożizzjonijiet tal-artikolu 377(5) japplikaw f'kull każ ta' sejbien ta' htija taht is-subartikolu (1) u meta l-għemil tal-hati jkun irrizulta filli persuna ohra tbatì spoll il-qorti għandha tapplika d-dispożizzjonijiet ta' dak is-subartikolu sabiex tassigura li l-persuna li batiet l-ispoll titqiegħed għal kollox fl-istat ta' qabel ma batiet l-ispoll.

#### **Ikkunsidrat:**

Fil-kawza il-**Pulizija vs Salvatore Farrugia** deciza mill-Qorti tal-Appell Kriminali nhar l-14 ta' Dicembru 1957 mill-mibki Onorevoli Imhalled William Harding inghad:

*'L-elementi kostitutiv tar-reat ta' ezercizzju arbitrarju ta' pretensjonijiet (ragio fattasi) huma erbgħa u cjoe'*

- 1. Att estern li jispolja lil haddiehor minn haga li jkun qiegħed igawdi u li jkun ezegwa kontra l-oppozizzjoni espressa jew prezunta, ta' xi hadd iehor;*
- 2. Il-kredenza li l-att qiegħed isir b' ezercizzju ta' dritt;*

3. *Il-koxjenza fl-agent li hu qieghed jaghmel 'di private braccio' dak li jmissu jsir per mezz tal-awtorita' pubblika;*
4. *Nuqqas ta' titolu, li jirrendi il-fatt aktar gravi.'*

Ikompli jghid il-Harding fl-istess sentenza:

*'Ir-rekwiziti tieghu ma jmorru aktar l-hemm minn dawk fuq indikati; pero' hu fatt li min jaghmel att li bih ikun qieghed jiehu l-ligi f' idejh, b' daqshekk ikun qieghed juzurpa f' sens generali funzjoni li tmiss biss lill-awtorita' gudizzjarja.'*

### **Ikkunsidrat:**

Id-difiza tittenta taghmel argument li l-kwerelanti, jew x'uhud minnhom, ghandhom access minn passagg jew passaggi ohra. Il-Qorti taghmilha bic-car li din mhix argumentazzjoni valida ghar-rigward tarreat *de quo*.<sup>43</sup> Anki jekk, ghall-grazzja tal-argument biss dan kien vera u li l-passagg li hemm kontestazzjoni fuqu hu daqs u joffri l-istess opportunitajiet ta' passagg bhal dak kontestat xorta wahda jista' jissussisti r-reat taht l-artikolu 85 tal-Ligijiet ta' Malta.

Illi minn dak li jirrizulta ukoll mill-atti, u dan mhux biss mix-xhieda ta' xi uhud mill-kwerelanti, jirrizulta li dan il-passagg bix-xatba kien accessibbli ghall-kwerelanti ghal diversi snin. **Haten l-imputat stess jghid li hu kien ilu jaf li l-kwerelanti ghandhom kopja tac-cavetta ghal diversi snin u qatt ma ha passi.** Dan ifisser li l-imputat, li f'dawn l-ahhar snin kienu gew trasferiti fuq martu l-ghelieqi f'tal-Virtu', habta u sabta ma setax minghajr l-ebda awtorizzazzjoni ta' hadd ibiddel dak l-istat ta' fatt. **Min kellu dritt jghaddi minn dak il-passagg, bl-**

---

<sup>43</sup> Ara f' dan is-sens Il-Pulizija vs Anthony Gauci et. Deciza fid-19 ta' April 1958 per Onr. Imhalled W. Harding.



azzjoni tal-imputat gie imcahhad milli jkompli jaghmel dan b'mod liberu kif kienu jaghmlu ghal diversi snin u lanqas ma hija difiza tajba ghalih li hu offriehom, tal-anqas lil xi uhud minnhom, li meta jkollhom bzonn jiftehmu mieghu u jhallihom juzaw dan il-passagg li milli jidher hu tant bzonnjuz ghal xi uhud minnhom biex jahdmu r-raba' mqabbla lilhom<sup>44</sup>. Huwa b'hekk effettivament ha f'idejh il-ligi u anki meta kellmuh il-pulizija ma reggax l-affarijiet kif kienu qabel jekk verament haseb li ma kienx jaf li qed jikser il-ligi, b'hekk effettivament fixkel lil haddiehor fil-pussess ta' xi haga li kien qed igawdi<sup>45</sup>. Invece, kompla jwebbes rasu u jivvjola nd-drittijiet akkwiziti minn terzi minghajr ordni tal-Qorti kompetenti. Hu irrelevanti jekk dik l-intenzjoni li kellu l-imputat tikkwalifikax bhala intenzjoni specifika jew generika ai fini tar-reat ta' *ragion fattasi*.<sup>46</sup>

Ghaldaqstant, il-Qorti thoss li l-prosekuzzjoni irnexxielha tipprova l-kaz taghha skond il-ligi.

### **Decide:**

Ghal dawn ir-ragunijiet il-Qorti, wara li rat l-Artikoli 17, 31 u 85 tal-Kapitolu 9 tal-Ligijiet ta' Malta, qed issib lill-imputat **hati** tal-akkuza migjuba kontra tieghu u wara li qieset ic-cirkostanzi kollha tal-kaz, tqis li piena karcerarja mhix idoneja f'dan il-kaz u konsegwentament qieghda (1) Tikkundanna lill-hati ai termini tal-proviso tal-Artiklu 85 tal-Kapitolu 9 tal-Ligijiet ta' Malta ghall-hlas ta' multa ta' hames mitt Ewro (€500), u (2) Ai termini tal-Artiklu 377(3) tal-Kapitolu 9 tal-Ligijiet ta' Malta, Tordna lill-imputat sabiex fi zmien erbgħa u ghoxrin

---

<sup>44</sup> Ara ukoll **Il-Pulizija vs Consiglio Abela** (App. Nru. 249/2020) deciz mill-Qorti tal-Appell Kriminali per Onr. Imhalled Aaron M. Bugeja nhar id-29 ta' April 2021.

<sup>45</sup> Ara **Il-Pulizija vs Jane D' Alfonso** (App. Nru. 30/2014) deciz mill-Qorti tal-Appell Kriminali per Onr. Imhalled Edwina Grima nhar l-20 ta' Marzu 2019.

<sup>46</sup> Ara f' dan is-sens **Il-Pulizija vs Kisinchand Mohnani** (App. Nru. 121/2017) deciz mill-Qorti tal-Appell Kriminali fit-30 ta' Ottubru 2019 per Onr. Imhalled Edwina Grima.

siegha minn meta din is-sentenza tigi res judicata jaghti kopja tac-cavetta tal-katnazz lill-partijiet civili kollha u jhalli l-imsemmi passagg miftuh u liberu ghall-imsemmija partijiet civili u ma jostakolax l-access liberu li huma dejjem kellhom ghall-imsemmija ghelieqi u dan taht penali ta' hames Ewro (€5) kuljum fin-nuqqas; u (3) In oltre, ai termini tal-Artiklu 377 (5) tal-Kapitolu 9 tal-Ligijiet ta' Malta, Tordna lill-hati jirripristina l-imsemmija kanna ossija hadida ossija pajp ossija xatba li taghti l-access ghall-imsemmi passagg u dan sabiex ipoggi lill-partijiet civili fl-istat ta' fatt li kienu qabel huwa ikkommetta l-imsemmi att ta' ragon fattasi; u (4) Finalment, ai termini tal-Artikolu 533 tal-Kapitolu 9 tal-Ligijiet ta' Malta, Tikkundanna lill-hati jhallas l-ispejjez peritali li jammontaw ghal tmien mija u seba' Ewro u wiehed u tletin centezmu (€807.31) fi zmien **xahar** minn meta din is-sentenza ssir res judicata.<sup>47</sup>

Il-Qorti spjegat lill-imputat fi kliem car l-obbligi tieghu taht din is-sentenza.

*(ft) Magistrat Dr. Monica Vella LL.D, M. Jur.*

(ft) Angelo Buttigieg

Deputat Registratur

---

<sup>47</sup> A folio 24 tal-process