

QORTI TA' L-APPELL KRIMINALI

IMHALLEF

ONOR. PATRICK VELLA, B.A., LL.D., M. JUR. (EUR LAW)

Seduta Nru X
Appell Nru: 255/1999

Il-Pulizija (Spettur Domenic Micallef)

Vs

AARON PAVIA,
MARVIC PEREGIN,
DAVID VELLA, u
- omissis -

Illum, 26 ta' Jannar, 2001.

Il-Qorti :

Rat l-akkuzi dedotti kontra AARON PAVIA, MARVIC PEREGIN, u DAVID VELLA, kif originarjament gew addebtitati lihom bil-lingwa Ingliza stante li allura kien hemm ko-akkuzat iehor magghom li ma kienx jaf u jifhem bil-lingwa Maltija u ghalhekk kemm l-akkuzi kif ukoll il-proceduri quddiem il-Qorti ta' Prima Istanza saru bil-lingwa Ingliza, liema akkuzi, u limitatament ghalihom biss, dawn qed jigu riprodotti hawnhekk fil-verzjoni originali taghhom bl-Ingliz, izda l-bqija tas-sentenza ser tkun bil-lingwa Maltija, u dan in segwitu ghall-verbal li sar quddiem din il-Qorti fid-9 ta' Dicembru, 1999. Dawn l-akkuzi jghidu hekk:

“ Charged with having in these Islands of Malta during the night of the 25th and the 26th February, 1998 :

1. Committed theft from the “Mind Your Head Supermarket” situated in Triq ir-Ramel, St. Paul's Bay, which theft is aggravated by violence, means, time, place and amount, and this to the detriment of Charles Naja;
2. Knowingly received or purchased property/money which had been stolen, misapplied, or obtained by means of an offence, and knowingly took part in any manner whatsoever in the sale or disposal of same;
3. Without a lawful order from the competent authorities, and saving the cases where the law authorises private individuals to apprehend offenders, detained or confined Charles Naja against his will;
4. Kept in possession and carried firearms without the required licence issued by the Commissioner of Police;

5. Came in possession of firearms and failed to notify immediately the Commissioner of Police;
6. At the time of committing any crime of theft, had on their person any firearm, arms proper, imitation of firearm or imitation of arms proper.”

DAVID VELLA wahdu gie akkuzat ukoll talli :

1. “ Having in these Islands of Malta during the night of the 13th and the 14th February, 1998, committed theft of motor cycle number FAH-605, make Kawasaki, which theft is aggravated by means, time, amount and nature of the thing stolen, and this to the detriment of Etienne Turner;
2. Having in these Islands during the night of the 13th and 14th February, 1998, knowingly received or purchased property which had been stolen, misapplied or obtained by means of an offence, and knowingly took part in any manner whatsoever in the sale or disposal of same;
3. Having breached a Probation Order imposed on him by the Court of Magistrates.”

MARVIC PEREGIN wahdu gie akkuzat ukoll talli :

“ Being a relapser”.

AARON PAVIA wahdu gie akkuzat ukoll talli :

“Having breached a Probation Order imposed on him by the Courts of Magistrates”.

MARVIC PEREGIN u DAVID VELLA wahedhom gew akkuzati ukoll talli:

“Having in these Islands of Malta during the night of the 16th and 17th February, 1998, committed theft of a Kawasaki motor cycle bearing registration number FAB-214, which theft is aggravated by means, time, amount and nature of the thing stolen, and this to the detriment of James Schembri”.

DAVID VELLA wahdu gie akkuzat ukoll talli :

“Having in these Islands of Malta during the night of the 16th and 17th February, 1998, knowingly received or purchased property which is a Kawasaki motor cycle bearing registration number FAB-214, which had been stolen, misapplied or obtained by means of an offence and knowingly took part in any manner whatsoever in the sale or disposal of same.”

Rat is-sentenza moghtija mill-Qorti tal-Magistrati (Malta) bhala Qorti ta'Gudikatura Kriminali fit-18 ta'Ottubru, 1999, li biha (**A**) ma sabetx lill-**Aaron Pavia** hati ta' l-akkuzi tar-reat ta' ricettazzjoni u li kiser il-provvedimenti ta'Probation Order mposta fuqu, u, ghalhekk, illiberatu minn dawn l-akkuzi, filwaqt li sabitu hati fuq il-bqija ta' l-akkuzi addebitati lilu, u kkundannatu ghall-tlett (3) snin ta'prigunerija, bit-tnaqqis taz-zmien li hu kien mizмум taht arrest preventiv in konnessjoni ma' dawn il-proceduri, (**B**) ma sabetx lill-**David Vella** hati ta' l-akkuza ta'ricettazzjoni kemm ghal dak li jirrigwarda il-“Mind Your Head Supermarket” u il-motorcycle number FAM-605, kif ukoll ta' l-akkuza ta' l-arrest illegali ta'Charles Naja, u, ghalhekk, illiberatu minn dawn it-tlett akkuzi, filwaqt li sabitu hati fuq il-bqija ta' l-akkuzi addebitati lilu, u kkundannatu fuqhom ghall-tlett snin u nofs (3 ½) prigunerija mill-liema zmien ghandu jitnaqqas il-perijodu li hu kien taht arrest preventiv in konnessjoni ma' dawn il-proceduri, u (**C**) ma sabetx lill-Marvic Peregin hati tar-reat ta'ricettazzjoni kemm ghal dak li jirrigwarda il-“Mind Your Head Supermarket” u kemm ghal dak li jirrigwarda l-motorcycle FAM-605, u, ghalhekk, illiberatu minn dawn l-akkuzi, filwaqt li sabitu hati fuq il-bqija ta' l-akkuzi addebitati lilu, u fuqhom kkundannatu ghall-tlett snin u nofs (3½) prigunerija bit-tnaqqis ta' kull zmien li kien mizмум taht arrest preventiv in konnessjoni ma' dawn il-proceduri.

Rat ir-rikors t'appell ta'**Marvic Peregin** datat 27 ta'Ottubru, 1999, li bih talab li din il-Qorti tikkonferma s-sentenza appellata fil-parti liberatorja taghha, filwaqt li tirrevokaha fil-bqija fejn instab hati mill-ewwel Qorti, dan billi tiddikjarah u ssibu mhux hati ta' dawn l-akkuzi, u tilliberah minn kull akkuza u piena,u, alternativament, jekk din il-Qorti tikkonferma s-sentenza appellata fil-meritu, tirriforma l-piena inflitta mill-ewwel Qorti billi tissostitwiha b'wahda mhux karcerarja.

Rat ir-rikors ta' appell ta'**David Vella** datat 28 ta'Ottubru, 1999, li bih talab li din il-Qorti tirriforma s-sentenza appellata billi tikkonfermaha fil-parti liberatorja taghha, u tirrevokaha fil-parti fejn gie misjub hati, biex b'hekk hu jigi liberat minn kull akkuza dedotta kontrih.

Rat ir-rikors ta'appell ta'**Aaron Pavia** datat ukoll 28 ta'Ottubru, 1999, li bih talab li din il-Qorti tirriforma s-sentenza appellata billi filwaqt li tikkonfermaha fil-parti liberatorja taghha, kif ukoll fil-parti fejn gie misjub hati, tvarjaha fil-parti tal-piena mposta mill-ewwel Qorti billi tissostitwiha b'ohra aktar gusta u adegwata ghall-kaz.

Rat l-aggravji ta' l-appellanti kollha.

Rat il-provi li tressqu, id-dokumenti esebiti w l-atti processwali.

Semghet it-trattazzjoni tal-partijiet.

Rat ir-rapporti tal-Probation Officer Marietta Lanzon fil-konfront tat-tlett appellanti individwalment, prezentati minnha waqt ix-xhieda taghha quddiem din il-Qorti fis-seduta ta' l-24 ta'Novembru, 2000, u li kienet giet nominata minn din il-Qorti bid-digriet taghha tat-28 ta'Frar, 2000, sabiex wara li tikseb, dwar kull appellant, it-taghrif kollu necessarju w rilevanti li jista' jkun

ta'ghajnuna ghal din il-Qorti fid-determinazzjoni tal-mod kif ghandha titratta ma' kull wiehed mit-tlett appellanti, tipprezenta dak li jissejjah " A Pre-Sentencing Social Inquiry Report ".

IKKUNSIDRAT :

Preliminarjament, ghalkemm l-appellanti David Vella w Marvic Peregin qedin jappellaw ukoll minn dik il-parti tas-sentenza ta' l-ewwel Qorti fejn biha gew dikjarati w misjuba hatja, effettivament, waqt it-trattazzjoni ta' l-appell taghhom, huma llimitawh ghal dik li hija l-piena biss, bhal ma ghamel, fir-rikors ta' l-appell tieghu l-appellant l-iehor Aaron Pavia. Hu propju ghalhekk li fuq talba ta' l-istess tlett appellanti, mhux opposta minn naha ta' l-Avukat Generali, din il-Qorti kienet innominat lill-fuq imsemmija Probation Officer ghall-iskop indikat.

Fil-qosor, l-appellanti jikkontendu li l-ewwel Qorti kienet wisq harxa meta infliggiet fuq kull wiehed minnhom piena karcerarja li tvarja bejn it-tlett (3) snin u t-tlett snin u nofs (3 ½). Skond huma, l-ewwel Qorti ma qiesetx il-fatt li l-appellanti, allura imputati, kienu ghadhom ta' eta' hafna zghira, appena ghoxrin sena w anke anqas, ma kellhom xi fedina penali hazina, u li ghalhekk kien jisthoqqilhom piena li mhiex karcerarja.

Wara li din il-Qorti semghet, fl-udjenza ta' l-24 ta' Novembru, 2000, lill-Probation Officer Marietta Lanzon, u anke rat ir-rapporti taghha, kif intqal, hi tal-fehma li t-tlett appellanti jisthoqqilhom li jinghataw l-opportunita' li jbiddu hajjithom, jekk addirittura ma ghamlux hekk diga; ghaliex deher car hafna waqt is-smigh ta' dan l-appell li huma kienu gja' tghallmu l-lezzjoni taghhom.

F'cirkostanzi bhal dawn, din il-Qorti hi preparata li tiehu r-riskju li tpoggi lit-tlett appellanti taht supervizjoni ta' *Ufficjal tal-Probation*. Naturalment, l-appellanti qed jigu mwissija li jekk xi hadd minnhom jikser il-kundizzjonijiet li timponi l-Qorti, jew jikkommetti xi reat, ikun xi jkun, waqt il-perijodu tal-*probation*, m'ghandhux wara jippretendi li jerga' jsib il-klemenza tal-Qorti.

Ghal motivi premissi, din il-Qorti qed tilqa' l-appell tat-tlett appellanti, fis-sens li filwaqt li qed tikkonferma s-sentenza appellata fil-meritu, cioe' kemm fil-parti liberatorja kif ukoll fil-parti fejn ddikjarat u sabet lill-appellanti hatja, qedha thassar u tirrevoka s-sentenza appellata f'dik il-parti biss tal-piena fejn imponiet piena karcerarja fuq it-tlett appellanti, u, minflok dik il-piena, tghamel fil-konfront ta' kull wiehed mit-tlett appellanti *Ordni ta' Probation* li qed jigi anness ma' din is-sentenza w tpoggihom tahtu (u dan wara li l-Qorti ghamlet ukoll dak mehtieg skond is-subartikolu {5} ta' l-Artikolu 5 tal-Kapitolu 152), kif ukoll qed tapplika d-dispost ta' l-Artikolu 11 ta' l-istess Kap. 152 fil-konfront ta' kull wiehed mit-tlett appellanti, dan kif ser jigi ordnat hawn taht, u cioe':

- a. Tordna lill-**MARVIC PEREGIN** ihallas lill-Charles Naja s-somma ta' Lm175, u lill-James Schembri s-somma ta' Lm200, dan in linea ta'kumpens dovut lilhom minn dan l-appellant kif kalkolat minn din il-Qorti;

- b. Tordna lill-**AARON PAVIA** jhallas lill-Charles Naja s-somma ta' Lm175, in linea ta'kumpens dovut lilu minn dan l-appellant kif kalkolat minn din il-Qorti; u
- c. Tordna lill-**DAVID VELLA** jhallas lill-Charles Naja s-somma ta'Lm140, lill-Etienne Turner is-somma ta'Lm120, u lill-James Schembri s-somma ta'Lm200, ukoll in linea ta'kumpens dovut lilhom minn dan l-appellant u kif kalkolat minn din il-Qorti.

Tordna li l-hlas ta' dawn l-ammonti lill-persuni msemmija ghandu jsir mill-appellanti fi zmien xahar mil-lum, salv kull provvediment iehor li l-Qorti jidhrilha li jkun opportun f'kaz ta'nuqqas ta'pagament kif ordnat.

Tikkonferma l-bqija tas-sentenza appellata.

(ft) Aldo Testone
Deputat Registratur

QORTI TA' L-APPELL KRIMINALI

IMHALLEF

ONOR. PATRICK VELLA, B.A., LL.D., M. JURIS (EUR. LAW)

ORDNI TA' PROBATION ----- ARTIKOLU 5 (KAP. 152)

Illum, 26 ta' Jannar, 2001.

Il-Qorti :

Billi **Aaron Pavia, Marvic Peregin u David Vella** (hawn taht imsemmija "probationers") gew misjuba hatja kif indikat fis-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali tat-18 ta' Ottubru, 1999, fl-ismijiet "Il-Pulizija –vs- John Woods, Aaron Pavia, Marvic Peregin, u David Vella", kif modifikata b'sentenza moghtija llum stess minn din il-Qorti fl-ismijiet "Il-Pulizija –vs- Aaron Pavia, Marvic Peregin, David Vella –omissis-", Appell numru 255/1999 ;

Wara li kkunsidrat li jkun xieraq li jsir dan l-*Ordni ta' Probation* ;

U wara li fessret bi kliem car l-effetti ta' dana l-*Ordni ta' Probation* lil kull wiehed mit-tlett probationers, inkluzi l-htigijiet mizjuda skond is-subartikolu (2) ta' l-Artikolu 5 tal-Kap. 152, u nnutat li l-istess tlett probationers werew li jridu jharsu l-htigijiet ta' din l-istess Ordni ;

TORDNA li l-imsemmija tlett probationers ikunu taht is-sorveljanza ta' l-**Ufficjal tal-Probation Marietta Lanzon** ghal zmien ta' tlett snin mil-lum taht dawn il-htigijiet :

1. Illi matul dan il-perijodu ta'probation, it-tlett probationers ghandhom jgibu ruhhom tajjeb, jghaddu hajja ta' bzulija, u joqghodu ghad-direttivi kollha ta' l-Ufficjal tal-Probation fuq imsemmija, inkluzi kull direttivi li hi thoss li jkunu necessarji sabiex ma jiffrekwentawx certi postijiet u/jew certi nies;
2. Illi l-probationers ghandhom jzommu ruhhom kontinwament f'kuntatt ma' l-Ufficjal tal-Probation skond id-direttivi li din tghatihom minn zmien ghall-iehor, u, partikolarment, huma ghandhom, jekk l-Ufficjal tal-Probation tkun trid hekk, jircievu zjarat ta' din l-Ufficjal tal-Probation fir-djar taghhom;
3. Illi l-probationers, jew min minnhom, ghandhom minnufih jgharrfu lill-Ufficjal tal-Probation b'kull tibdil tar-residenza u/jew xoghol taghhom;
4. Illi t-tlett probationers, jew min minnhom jekk ikun il-kaz, jattendu/jattendi kwalsiasi kors ta'riabilitazzjoni mill-problema tad-droga li l-imsemmija Ufficjal tal-Probation tindika;
5. Illi l-probationers jidhru quddiem din il-Qorti flimkien ma' l-Ufficjal tal-Probation kull erba' xhur, fid-data w hin li jigu komunikati lilhom mill-istess Ufficjal tal-Probation, bl-iskop li l-Qorti jkiollha rapport dwar l-andament u ta' l-imgieba ta' kull wiehed mill-probationers;

TORDNA li kopja ta' dan l-Ordni ta'Probation jigi minnufih kunsenjat lill-kull wiehed mit-tlett probationers kif ukoll lill-Ufficjal tal-Probation Marietta Lanzon, skond is-subartikolu (6) ta'l-Artikolu 5 tal-Kap. 152.