MALTA

QORTI TA' L-APPELL

S.T.O. PRIM IMHALLEF
VINCENT DE GAETANO

ONOR. IMHALLEF
ANTON DEPASQUALE

ONOR. IMHALLEF
ALBERT J. MAGRI

Seduta tas-16 ta' Marzu, 2004

Appell Civili Numru. 1801/1998/1

Avv. Angelo Farrugia kif awtorizzat mis-socjetà ZAO (JSC) “VEKT”/Russia

vs

Kontrollur tad-Dwana

Il-Qorti:

Rat ir-rikors ipprezentat fil-Prim’ Awla tal-Qorti Civili illi permezz tieghu ir-rikorrent, fil-kwalità tieghu premessa, wara illi ppremetta illi fit-18 ta’ Awissu 1998 l-intimat hareg

Nota ta' Qbid numru 13/98 kontra s-socjetà Arma Trading Limited fuq numru ta' oggetti deskritti bhala *optic goods* proprjetà tar-rikorrent nomine (Dok. A); illi permezz tal-prezenti r-rikorrent nomine bhala konsengwenza ta' l-imsemmija nota ta' qbid qed jitlob il-helsien tal-oggetti maqbuda; illi l-ilment tar-rikorrent nomine jikkonsisti filli s-socjetà Arma Trading Limited rrizulta, u l-intimat huwa konxju ta' dan, hija wahda fittizja u l-persuna wara dina s-socjetà falza ta' nazzjonalità barranija kien investigat u deportat minn dawn il-gzejjer; illi ghalhekk l-oggetti maqbuda proprjetà tar-rikorrent nomine baqghu mizmuma mill-intimat a dannu tar-rikorrent nomine li baqa' ma rceva ebda hlas ghal konsenja tal-oggetti maqbuda, minghand is-socjetà Arma Trading Limited skond il-ftehim; illi l-fatti li minnhom jinqala' l-ilment huma illi f'Marzu 1997 kumpanija ZAO VEKT, fir-Russia, r-rikorrent nomine baghat lejn Malta permezz ta' titjira ta' Lufthansa erba (4) kaxxi b'total ta' piz ta' sitt mija u tmienja u sittin kilogramma (669 kgs) [recte: 668] konsistenti f'*optic goods* lil socjetà allegatament registrata Malta certu "Arma Trading Limited" ta' 12/13 Strait Street, Valletta; illi meta waslu l-oggetti fil-pussess tal-intimat irrizulta li s-socjetà "Arma Trading Limited" kienet wahda fittizja u l-bniedem li kien jidher wara din is-socjetà kien gie investigat u deportat minn dawn il-gzejjer; illi r-rikorrent nomine interpella lill-intimat u talab li jerga' jkun hemm *re-export* tal-oggetti in kwistjoni lura lejn ir-Russia sabiex l-oggetti jergghu jintbaghtu lis-sidien u cioè lis-socjetà ZAO VEKT; illi dina l-ahhar talba ma kienitx milqugha mill-intimat u sussegwentement harget in-nota ta' qbid aktar minn sena wara tat-talba tar-rikorrent nomine u zgur wara zewg rikorsi prezentati quddiem il-Prim' Awla tal-Qorti Civili; illi l-ilment tar-rikorrent nomine ghandu jigi milqugh u dana peress illi la darba l-oggetti qatt ma sar trasferiment tal-proprjetà taghhom, ghal diversi ragunijiet indikati li jistghu jigu trattati jekk ikun il-kaz waqt is-smigh ta' dana r-rikors, allura l-oggettti in kwistjoni huma esklussivament proprjetà tar-rikorrent nomine u ghalhekk ghandhom jigu mehlusa sabiex jergghu jintbaghtu lir-rikorrent nomine bhala *re-export* a karigu ta' l-istess socjetà; talab lill dik il-Qorti li *ai termini* tal-Art. 73 tal-Kap. 37 tal-Ligijiet ta' Malta, tintlaqa' t-talba sabiex l-oggetti maqbuda permess (*sic*) tan-nota ta'

qbid numru 13/1998 jigu mehlusa u dan taht dawk il-provvedimenti li jidrilha xierqa dik il-Qorti;

Rat il-listi tax-xhieda u tad-dokumenti relativi;

Rat ir-risposta ta’ l-intimat illi permezz taghha ssottometta:
Illi preliminarjament l-Avukat Generali ma giex notifikat *ai termini* tal-artiklu 181B(3) tal-Kap 12;

Illi l-oggetti in kwistjoni ma ddahhlux Malta b’mod regolari u skond il-ligi stante li l-merkanzija kienet dikjarata intenzjonalment bhala *optic goods* meta fil-fatt instab li kienet tikkonsisti f’apparat militari u ghalhekk jirrizulta li kien hemm dikjarazzjoni falza dwar il-merkanzija, li bhala tali, tirrendiha suggetta ghall-konfiska a bazi ta’ dikjarazzjoni falza *ai termini* tal-Kap 37;

Illi apparti minn dik id-dikjarazzjoni falza, is-socjetà li mpurtat il-merkanzija li kienet wahda fittizja, u anke dan, bhala tali, jirrendi l-imsemmija merkanzija soggetta ghall-konfiska a bazi ta’ dikjarazzjoni falza *ai termini* tal-Kap 37;

Illi jirrizulta ghalhekk li l-oggetti nzammu mill-intimat u nharget fuqhom nota ta’ qbid u dan b’mod regolari, u a bazi tal-Kap 37, u ghalhekk ir-rikorrent mhux gustifikat li jitlob ir-rilaxx jew *re-export* taghhom;

Illi ladarba qeghdin fl-ambitu ta’ socjetajiet fittizji, ir-rikorrent jehtieg igib prova tal-ezistenza o meno tas-socjetà Russa, u prova tal-persuna jew persuni li taw il-mandat lir-rikorrent, kif ukoll prova tal-awtenticità o meno tad-dokument li jawtorizza lir-rikorrent biex jagixxi ghan-nom tas-socjetà;
Illi sakemm l-intimat ihares id-drittijiet doganali tal-istat, hu irrilevanti ghalih kull relazzjoni kummercjali li seta’ kien hemm fuq l-oggetti, u ghalhekk il-kwistjoni tal-hlas tar-rikorrent, u l-kwistjoni ta’ min hu sid l-oggetti, hi kompletament aljena ghall-intimat, u hu m’ghandux jintalab jaghmel xi haga li hu barrani ghaliha;

Illi minghajr pregudizzju ghas-suespost, wiehed ghandu jassumi li s-socjetà rikorrenti kienet taf ma’ min kienet qed

taghmel in-negozju u kienet taf li jekk l-awtoritajiet Maltin ma jirrealizzawx li l-oggetti kienu konfiskabbli, jew li s-socjetà impurtatrici kienet fittizja, hi kienet ser tithallas ghal dan in-negozju;
Ghaldaqstant, issa li dan in-negozju tpogga fl-apert, is-socjetà rikorrenti ma tistax titlob innocentement ir-*re-export* tal-oggetti, qisha kienet kompletament fil-ghama dwar x'qed jigri;

Ghaldaqstant, ghal dawn ir-ragunijiet, l-intimat jitlob bir-rispett li din il-Qorti joghgobha tichad it-talba tar-rikorrent bl-ispejjez kontra tieghu;

Rat is-sentenza ta' l-erbatax (14) ta' Dicembru, 2000 illi permezz taghha l-Prim' Awla tal-Qorti Civili ddecidiet hekk:

"… filwaqt li tilqa' r-risposta tal-intimat, **tichad it-talba tar-rikorrenti** bhala infondata fil-fatt u fid-dritt, u dan stante li din il-Qorti hija sodisfatta illi l-konfiska tal-oggetti skond in-Nota ta' Qbid 13/1998 hija wahda valida u saret in konformità mal-ligi, u mad-drittijiet spettanti lill-intimat u ghalhekk qed tigi ikkonfermata ghall-finijiet u effetti kollha tal-ligi.
"Bl-ispejjez kollha kontra r-rikorrenti nomine";

u dana wara illi kkonsidrat hekk:

"**III.** **<u>KONSIDERAZZJONIJIET LEGALI U FATTWALI</u>**

"Illi r-rikorrenti nomine qieghed jaghmel il-prezenti azzjoni sabiex jitlob li l-affarijiet kolpiti bin-nota ta' Qbid 13/1998 jigu rilaxxati lilu u b'hekk ikunu jistghu jigu ri-esportati stante li dawn qatt ma thallas taghhom u ghalhekk ghadhom tieghu.

"Illi s-**subartikolu 5 ta' l-artikolu 6** ta' **l-Ordinanza dwar id-Dwana (Kap. 37)** jghid illi:

'*All goods falsely described either in the report or in the bill of lading shall be forfeited*.'

"Illi fl-**Ordinanza tad-Dwana (Kap. 37 tal-Ligijiet ta' Malta)** hemm diversi disposizzjonijiet li jipprovdu ghall-konfiska ta' l-affarijiet importati liema disposizzjonijiet huma wesghin hafna. Di fatti l-**artikolu 60** ta' l-imsemmija Ordinanza jghid *inter alia* illi:

'*f'kull kaz bhal dan, l-oggetti hawn fuq imsemmija ghandhom jigu kkonfiskati, flimkien ma' l-oggetti l-ohra kollha li jkunu jinsabu ppakkjati maghhom, jew li jkunu gew uzati biex jahbuhom*'.

"Il-punt ta' kontestazzjoni f'dawn il-proceduri hu jekk id-deskrizzjoni tal-oggetti importati taht it-testata '*Optic Goods*' hijiex sufficjenti jew jekk kelliex issir deskrizzjoni aktar dettaljata ta' l-istess affarijiet;

"Mill-**Kapitolu 337 tal-Ligijiet ta' Malta** u senjatament taht ic-**Chapter 90** ta' dan il-Kapitolu intestat '*Optical, Photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus, parts and accessories thereof*' jirrizulta illi taht il-*heading 90.05* hemm is-segwenti u cioè:- '*Binoculars, monoculars, other optical telescopes, and mountings therefor; other astronomical instruments and mountings therefor, but not including instruments for radio-astronomy*'.

"Illi huwa minnu li fost l-affarijiet kolpiti bin-nota ta' Qbid 13/1998 hemm ukoll diversi '*binoculars*', però jibqa' l-fatt illi maghhom hemm diversi affarijiet ohra fosthom *night vision goggles* u *telescope* li jitwahhal ma' *rifle*, kif jirrizulta mir-ritratti li gew mehuda waqt l-access li inzamm mill-Qorti, u li jinsabu indikati fir-ritratti A1/37, A2/37, A3/37, a5/37 *etc*, u fosthom hemm *riflescopes, night vision scopes, night super, nightscope*, VMO2P8 fil-kwantitajiet identifikati fin-nota ta' qbid a fol. 7 tal-process.

"Illi dan ic-**Chapter 90** fil-paragrafu numru 4 jghid illi '*Heading No. 90.05 does not apply to telescopic sights for fitting to arms, periscopic telescopes for fitting to submarines or tanks, or to telescopes for machines, appliances, instruments or apparatus of this Chapter or*

Section XVI; such telescopic sights and telescopes are to be classified in heading No. 90.13'.

"Illi ghalhekk it-tezi tal-Kontrollur tad-Dwana illi l-affarijiet dikjarati huma dikjarati b'mod hazin, hija ghalhekk korretta, u dan peress li l-oggetti hemm indikati, u partikolarment dawk indikati minn din il-Qorti fil-paragrafu precedenti ghal dan ma jistghux jikkwalifikaw bhala '*optic goods*' taht il-*heading* 90.05 proprio minhabba l-*proviso* jew l-ispjegazzjoni tal-istess *heading*. L-iskop tal-ligi u cioè li jkun hemm diversi affarijiet elenkati taht diversi kapijiet huwa sabiex dak li huwa dovut lill-Gvern ghall-erarju pubbliku jingabar. Hija haga facli li wiehed jiddikjara affarijiet taht klassifika generali izda imbaghad jigi klassifikat taht wahda aktar specifika u b'hekk jirrizulta illi l-Gvern ikollu jigbor aktar dazju.

"Oltre dan, miz-zewg *Airway Bills* esebiti a fol. 85 u 90 *et sequitur* tal-process rispettivament jirrizulta bl-aktar mod car illi taht it-testata deskrizzjoni tal-merkanzija hemm il-kelma '*binoculars*' bhala affarijiet li qed jigu importati. Dan jirrizulta li assulutament ma huwiex korrett statne li kif gie identifikat meta saret in-Nota ta' Qbid, u wkoll mill-istess access mizmum minn din il-Qorti, jidher car li ghalkemm fil-merkanzija *de quo* kien hemm numru ta' *binoculars*, in effetti hemm diversi oggetti ohra fuq deskritti, u indikati mal-istess Nota ta' Qbid, li juru palezament, anke ghal min mhux intiz f'dawn il-meterji, li certament tali oggetti ma jistghu qatt jigu deskritti bhala *binoculars*.

"Illi apparti dan ma hemmx dubju li l-persuna li tkun qed timporta l-merkanzija mill-esteru ghall-Malta ghandha l-obbligu li taghti deskrizzjoni tajba u dettaljata ta' l-affarijiet minnha importati u dan sabiex primarjament ma jkun hemm l-ebda kwistjoni li l-oggetti mhumiex dikjarati u sabiex kull ammont dovut ghall-erarju pubbliku jithallas. Jirrizulta mir-ritratti mehuda ta' l-affarijiet impurtati illi kien hemm diversi affarijiet ohra oltre l-'*binoculars*' (Vide Dok. A a fol. 266 tal-process), u ghalhekk certament li tali deskrizzjoni tal-oggetti li kellhom jigu importati hekk maghmula kien[et] skorretta. Illi din it-tendenza kompliet

tissussisti anke ghar-rigward taz-zewg *Transhipment Shipping Bills* datati 27 ta' Ottubru 1997, li gew ezebiti bhala Dok. BD5 a fol. 93 u 94 tal-process fejn jirrizulta li tali oggetti gew wkoll deskritti hazin bhala *binoculars*, meta huwa ovvju li parti sostanzjali tal-istess merkanzija ma hijiex hekk kif fil-fatt gie ezawrjenement (gie) indikat f'din l-istess sentenza.

"Illi ma hemmx dubju li ghal dan il-kaz, japplikaw l-**artikolu 60 u 61 tal-Kap 37** tal-Ligijiet ta' Malta, li jaghti poter lill-intimat sabiex jikkonfiska dawk l-oggetti li jkunu differenti minn dak li jkunu effettivament, u f'dan il-kaz jidher car li l-oggetti gew iddikjarati mod, meta fil-fatt kienu differenti minn dak dikjarat.

"Illi apparti dan jirrizulta wkoll li tali merkanzija kienet destinata ghall-Malta lis-socjetà *Arma Trading Limited*, kienet *offshore company* li giet registrata fl-1 ta' Frar 1993, li bidlet isimha ghall-*Ram Trading Company* fit-12 ta' Marzu 1993 liema socjetà giet *dissolved* fid-9 ta' Awissu 1995 *ai termini* tal-**artikolu 27 (10) (a) tal-Kap 330**, u in effetti kienet waqfet topera u ma setghatx tigi ravvivata. Illi dan ifisser li l-istess merkanzija waslet Malta ghall-destinatarju, li kienet socjetà fittizja u ghalhekk id-dettalji fuq l-istess dokumenti provduti mir-rikorrenti kienet ukoll zbaljata u fittizja ghall finijiet tal-**Kap 37 tal-Ligijiet ta' Malta**.

"Illi l-**artikolu 18 tal-Kapitolu 37 tal-Ligijiet ta' Malta** jipprovdi illi:-

'*If any person shall import or cause to be imported any package containing goods not corresponding with the entry thereof, or shall, directly or indirectly, import or cause to be imported or entered any package of goods as of one denomination which shall afterwards be discovered, either before or after delivery thereof, to contain other goods, or goods subject to a higher rate or other amount of duty than those of the denomination by which such package or the goods in such package were entered, such person shall be liable for every such offence to a fine (multa) equivalent to the aggregate of the*

amount of duty payable on the goods contained in such package and double the value of such goods, or to twenty-five liri, whichever is the greater, and such package and the goods therein shall be forfeited'.

"Illi ghalkemm mill-provi prodotti ghalhekk ma jirrizultax b'mod sodisfacenti ghal din il-Qorti illi l-affarijiet importati huma oggetti militari kif qed jallega l-Kontrollur tad-Dwana, anke ghaliex ma hemm xejn x'jipprova dan hlief id-deposizzjoni ta' persuni li *ex admissis* ma humiex esperti f'dan il-qasam, xorta wahda jirrizulta minn dak premess, li l-istess oggetti kienu dikjarati hazin, anke mill-istess rikorrenti, u dan kemm dwar in-natura u l-konsistenza taghhom, u kemm dwar id-destinatarju taghhom, u ghalhekk a bazi tal-premess, jidher li t-talbiet tar-rikorrenti ma ghandhomx jigu milqugha, stante li l-intimat agixxa pjenament fil-kuntest tad-drittijiet tieghu *ai termini* tal-**Kap 37**.

"Illi ghal dawk li huma sottomissjonijiet tar-rikorrenti, anke dwar il-proprjetà tal-istess oggetti, li in verità xejn ma tbiddel mill-fatti fuq esposti, u lanqas mill-konsegwenzi legali bbazati fuq l-istess fatti, huwa rilevanti li wiehed jirreferi wkoll ghal dak li jghid awtur Ingliz McFarlane fil-ktieb tieghu '**Customs and Excise, Law and Practice**' fejn jikkwota l-kaz '**De Keyser v British Railway Traffic and Electric Co. Ltd**' fejn inghad is-segwenti:-

'*a motor wagon which was seized by Customs on the ground that it was being used for the conveyance of goods liable to forfeiture. At the time the wagon was subject to a hire purchase agreement between the operators and British Railway Traffic. The officers of the respondent company were totally unaware of and free from complicity in the transaction which led to the seizure. However it was held in the Divisional Court that the Court was bound to condemn the vehicle, and that it had no discretion to decline to do so on the ground of hardship to an innocent owner. Lord Hewart observed '… this undoubtedly rigorous statute gives the claimant no opportunity of asking the Court to take into consideration mitigating circumstances …'. There is no opportunity for*

mercy with regard to a conveyance which has been forfeited. The only remedy available would be to institute an action against the persons who made use of such a vehicle in order to recover the damages of its loss'.

"Illi ghalhekk fid-dawl tal-premess, din il-Qorti thoss li t-talba tar-rikorrent nomine ma tistax tintlaqa' fil-konfront tal-intimat salv kull dritt spettanti lilu kontra l-persuna jew persuni li kienu involuti f'dan in-negozju *si et quatenus*."

Rat ir-rikors ta' appell tar-rikorrent nomine illi permess tieghu, ghar-ragunijiet hemm esposti, talab illi s-sentenza appellata tigi revokata, imhassra u annullata u filwaqt illi jigu michuda l-eccezzjonijiet tal-intimat appellat, jigu milqugha t-talbiet tar-rikorrent nomine;

Rat ir-risposta ta' l-intimat illi permezz taghha, ghar-ragunijiet hemm esposti, issottometta illi l-appell intavolat mis-socjetà rikorrenti ghandu jigi respint bl-ispejjez taz-zewg istanzi kontra tieghu (*sic*);

Trattat l-appell;

Ezaminat l-atti tal-kawza;

Ikkunsidrat:

Illi l-aggravji tar-rikorrent nomine kontra s-sentenza appellata huma tnejn (2), u cioè:

(1) Illi, fis-sentenza appellata, fi kliem ir-rikors ta' appell, "… sar apprezzament hazin tal-provi kif prodotti" ghaliex, "… l-Ewwel Qorti kkonfermat in-nota ta' qbid u cioè illi l-affarijiet kienu ta' natura militari u dana meta l-Qorti stess irrimarkat li ma ngiebet ebda prova li turi li dawn il *binoculars* kienu ta' natura jew konnessi ma' xi armi militari";

(2) Illi, kwantu ghall-konfiska ta' l-oggetti in kwistjoni minhabba l-fatt illi l-importatur ta' l-istess oggetti kien socjetà fittizja, l-appellant, dejjem fi kliem ir-rikors ta' appell, "… kien iffrodat u ingannat f'din il-kwistjoni kollha u

… ghalhekk ma ghandux ibghati huwa l-eghmil hazin u qarrieqi ta’ haddiehor aktar u aktar meta rrizulta bl-aktar mod car li s-socjetà [rikorrenti] Zao Vekt kienet *in buona fede*”;

Ikkunsidrat:

Illi dina l-Qorti sejra l-ewwel tikkonsidra t-tieni (2) aggravju ta’ l-appellant;

Tajjeb illi jigi puntwalizzat mill-ewwel illi, minn qari ta’ dak illi jinghad fir-rikors ta’ appell dwar it-tieni (2) aggravju, jirrizulta car illi l-appellant mhux qed jikkontesta illi l-fatt illi d-destinatarju ta’ l-oggetti in kwistjoni kien socjetà fittizja jirrendi l-oggetti konfiskabbli *ai termini* ta’ l-Ordinanza tad-Dwana, Kap. 37. L-aggravju ta’ l-appellant huwa illi l-oggetti ma kellhomx jigu konfiskati - u, konsegwentement, l-ewwel Qorti kellha tilqa’ t-talba tieghu - ghaliex huwa estraneju ghall-ingann ta’ l-importatur u agixxa *in bona fede*;

Illi dan l-aggravju mhux fondat kemm ghaliex dina l-Qorti taqbel ma’ dak illi jinghad fis-silta illi ccitat l-ewwel Qorti mill-ktieb ta’ McFarlane, *Customs and Excise, Law and Practice* - liema silta mhux mehtieg illi tigi hawn riprodotta - u kemm ghaliex dina l-Qorti mhix konvinta mill-*bona fede* tas-socjetà rikorrenti. Dan qed jinghad ghaliex, kif jista’ jigi dezunt mis-segwenti bran tax-xiehda in kontro-ezami tar-rapprezentant tas-socjetà rikorrenti, Sergei Ralnikov, ghalkemm kien facli ghall-istess socjetà illi tindaga dwar l-awtenticità u l-affidabilità tas-socjetà importatrici qabel ma spediet il-merkanzija, din l-indagni ghamlitha biss wara illi waslet il-merkanzija Malta u ghaliex baqghet ma rcevietx il-pagament relativ (fol. 64-65):
“*Dr. Peter Grech*:
As a firm did you make any enquiries about Arma Trading with some international credit rating company? …
Did you enquire about the credit worthiness of Arma Trading before shipping goods on open credit to it?
Xhud:
As I understood from the attention of my director to me, Mr. Guravlov, that period of time, he trusted him, on the

basis of the personal contacts. Then we asked the trade representation of Russian embassy, Mr. Petranka, about the credit of this firm. He answered us on phone that according to the special list on Maltese commercial list, Arma Trading Ltd was not registered.
…
Dr. Peter Grech:
So you checked later, after you sent the goods, not before.
Xhud:
Yes”(sottolinear ta’ dina l-Qorti);

Ikkunsidrat:

Illi, stabbilit illi l-konfiska ta’ l-oggetti in kwistjoni minhabba illi l-importatur kien socjetà fittizja hija valida, ma hemmx lok illi jigi trattat l-ewwel (1) aggravju ta’ l-appellant, ghaliex, anke kieku huwa fondat dan l-aggravju, it-talba tar-rikorrent nomine maghmula permezz tar-rikors promotur tal-kawza odjerna xorta wahda ma tistax tintlaqa’;

Ghal dawn il-motivi:

Tipprovdi dwar l-appell billi tichdu u billi tikkonferma s-sentenza appellata;

Tordna illi l-ispejjez ta’ din l-istanza jigu sopportati kollha mill-appellant.

< Sentenza Finali >

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