



MALTA

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

**MAGISTRAT DR.
CONSUELO-PILAR SCERRI HERRERA**

Seduta tat-23 ta' Frar, 2006

Numru. 66/2006

Il-Pulizija

Grech

Spettur Antonello

V

GODWIN CURMI

Il-Qorti;

Rat li l-imputat **GODWIN CURMI** bin Angelo u Lina nee Attard imwieled nhar t-tlieta w ghoxrin ta' Lulju 1972 u joqghod 'Winshami', Triq t-Tabib Anton Tabone, Rabat, Ghawdex, detentur tal-karta tal-identita numru 19872G, gie imressaq quddiemha akkuzat talli fil-hmistax ta' Dicembru 2005 u diversi drabi matul t-tlett xhur ta' qabel din d-data, voluntarjament kiser il-bon ordni jew il-kwiet tal-pubbliku b'mod iehor.

Rat l-atti kollha tal-kawza inkluz d-dokumenti kollha esibiti.

Semghet lix-xhieda prodotta mill-Prosekuzzjoni u cioe lil **PC 567 Teddy Bajada** jiddikjara li l-konjugi Curmi kienu rrapportaw li fil-hmistax ta' Dicembru 2005, li l-imputat ghandu kelb fir-residenza tieghu u li l-inbieh tal-kelb kien qed jikkawzathom inkonvenjent kbir. Ix-xhud zied jghid li hu kien kellem lil imputat u dan qallu li l-kelb jinbah biss meta jkun hemm xi hadd jhabbat mal-bieb u li bejn l-hamsa ta' filghaxija u t-tmienja ta' filghodu tal-ghada dan il-kelb jinzamm gewwa r-residenza tieghu. In segwitu l-imputat qallu wkoll li ma hemm hadd aktar mill-girien li jirrapportaw fuq dan il-kelb u li l-kwerelanti qed jirrapportaw dan il-kelb peress li bejnu u bejnhom hemm kwistjoni ta' natura civili pendenti.

Il-Qorti ezaminat l-okkorrenzi esibiti mill-istess Ufficjal tal-Pulizija PS 567 Teddy Bajada seduta stante nhar s-sittax ta' Frar 2006.

Semghet lil **Michael u Caroline konjugi Curmi** jixhdu u jikkonfermaw r-rapport taghhom li kienu ghamlu lil Pulizija Ezekuttiva nhar l-hmistax ta' Dicembru 2005 kif jirrizulta mill-okkorrenzi esibiti. Ikkonfermaw li l-inkonvenjent taghhom huwa kawzat mill-inbiegh tal-kelb tal-imputat.

Ikkunsidrat:

Illi l-Prosekuzzjoni qed tippretendi li jikkonkorru l-estremi tar-reat ta' ksur tal-bon ordni jew il-kwiet tal-pubbliku kontemplat fl-artikolu 338(dd) tal-Kap 9 tal-Ligijiet ta' Malta.

Din il-Qorti taghmel referenza ghal dak li rrilevat l-Qorti tal-Appell Kriminali f'diversi sentenzi fosthom **Il-Pulizija v Paul Busuttil** nhar *t-tlieta w ghoxrin ta' Gunju 1994*, **Il-Pulizija v Joseph Spiteri** deciza *nhar l-erbgha w ghoxrin ta' Mejju 1996*, u **Il-Pulizija v Pio Galea** deciza *nhar s-sbatax ta' Ottubru 1997*, li l-paragrafu "dd" tal-artikolu 338 tal-Kap 9 tal-Ligijiet ta' Malta, msemmi aktar 'l

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fuq, jikkontempla dak li fil-**Common Law** Ingliza, hu maghruf bhala *breach of the peace*.

Is-semplici nkonvenjent ikkagunat minn hsejjes jew storbju, anke jekk ikun hsejjes kbar w allura inkonvenjent kbir, ma jammontawx per se ghar-reat kontemplat fl-imsemmi paragrafu “dd” tal-artikolu 338 tal-Kap 9 tal-Ligijiet ta' Malta.

Kif gie deciz fis-sentenza moghtija mill-**Qorti tal-Appell Kriminali nhar t-tletin ta' Gunju, 1998** fl-ismijiet **Il-Pulizija v Andrea Galea u Pio Galea**:

“Biex ikun hemm dan r-reat kontravenzjonali, irid ikun hemm, bhala regola, ghemil volontarju, li minnu nnifsu jew minhabba c-cirkostanzi li fihom dak l-ghemil jsehh, inissel imqar minimu ta' nkwiet jew thassib f'mohh persuna (li ma tkunx l-akkuzat jew l-imputat) dwar l-inkolumita fizika tal-persuna jew dwar l-inkolumita ta' proprjeta kemm b'rizultat dirett ta' dak l-ghemil jew minhabba l-possibilita ta' reazzjoni ghal dak l-ghemil. Is-semplici fatt t'inkonvenjent ikkaguna minn hsejjes, ghalhekk ma jammontax ghal dan r-reat.”

Il-Qorti tosserva li ghal dak li jirrigwarda nkonvenjent kkagunat minn hsejjes, l-legislatur ipprova disposizzjonijiet specifici. hekk per ezempju, l-artikolu 338(m) tal-Kap 10 tal-Ligijiet ta' Malta, jimpunixxi “min bil-lejl jikser il-mistrieh tan-nies bi hsejjes jew ghajjat jew b'mod iehor”.

L-artikolu 41 tal-Kap 10 tal-Ligijiet ta' Malta, jirregola l-użu ta' strument tal-musika u strumenti ohra simili kemm fit-toroq kif wkoll fid-djar. Naturalment l-hsejjes kkaginati minn xi xoghol ta' natura kummercjali, jista jigi punit jekk jirrizulta li dak x-xoghol, kien qed isir bi ksur ta' xi kundizzjoni tal-licenzja jew licenzji li jkunu nhargu ghal dik l-attivita kummercjali.

Hekk, per ezempju, fis-sentenza moghtija mill-Qorti tal-Appell Kriminali nhar **t-tlieta w ghoxrin ta' Gunju 1994**, fl-ismijiet **Il-Pulizija v Paul Busuttil** gie deciz li tbaqqin tal-hitan ma jikkostitwix ksur tal-bon ordni kif kontemplat

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f'dan l-artikolu, ghaliex ma jikkostitwix *breach of the peace*, sens ta' alarm li jiser il-paci pubblika.

Fil-fatt din l-ekwiparazzjoni ta' dan r-reat mal-kuncett Ingiliz ta' *breach of the peace*, jirrisali ghal zmien **Sir Adrian Dingli** li proprju f'kawza deciza minnu **nhar l-ghaxra ta' Gunju, 1890** fl-ismijiet **Ispettore Raffaele Calleja v Paolo Bugeja et**, kien qal hekk:

"Che il buon ordine e la tranquillita' pubblica sta nella sicurezza, o nell' opinione ferma della sicurezza sociale, nel rispetto dei diritti e dei doveri, sia degli individui infaccia all' autorita pubblico sia degli individui stesso tra loro, e ogni atto che toglie o diminuisce la opinione della sicurezza pubblica o della sicurezza individuale e' violazzione dell'ordine pubblico indipendentemente dalla perpetrazione di altro reato." (Kolliz. Vol XII - p. 472, 475).

A skans ta' hafna ripetizzjoni din il-Qorti taghmel referenza ghal giurisprudenza migbura fl-artikolu ntitolat **Calleja v Balzan: Reflections of Public Order** publikat fil-Vol. X ta' **The Journal - D-Dritt** (University of Malta, Autumn 1983) pagna 13 et seq u specjalment pagni 28 sa 31. B'zieda ma dak li hemm f'dak l-artikolu wiehed jista jghid li r-reat *breach of the peace* fil-ligi Skocciza jirrikjedi wkoll certu element, imqar f'ammont zghir hafna, ta' allarm. Fi kliem **McCall Smith and Sheldon** fil-ktieb taghhom **Scots Criminal Law** (Edinburgh, Butterworths 1992):

"The essence of the offence is the causing of alarm in the minds of the lieges. This alarm has been variously defined by Courts. In Ferguson v Carnochan (1889) it was not necessarily to be "alarm' in the sense of the personal fear, but alarm lest if what is going on is allowed to continue it will lead to the breaking of the social peace." Alarm may now be too strong a term: in Macmillan v Normand (1989) the offence was committed when abusive language caused 'concern' on the part of policemen at whom it was directed."(p. 192).

Naturalment huwa kwazi mpossibbli li wiehed jiddelinja b'mod preciz l-parametri tar-reat ta' ksur volontarju tal-bon

ordni w il-kwiet tal-pubbliku. Kif jghid l-awtur Skocciz, **Gerald H. Gordon**, fit-test awtorevoli tieghu ***The Criminal Law of Scotland (Edinburgh, 1978)***:

"Whether or not any particular acts amount to such a disturbance is a question of fact depending on the circumstances of each case, and strictly speaking probably no case on breach of the peace can be regarded as an authority of general application."(p. 985, para 41-01)

W aktar 'l quddiem l-istess awtur jghid:

"... although it has been held not to be a breach of the peace merely to annoy someone. Such annoyance could amount to a criminal breach of the peace if the circumstances were such that it was calculated to lead to actual disturbance." (p. 986, para 41-04)

Il-Qorti hawnhekk tixtieq rippreciza a skans ta' ekwivici li l-kuncett ta' *breach of peace* kif abbraccjat fl-Iskozja, huwa aktar wiesa' minn kif gie nterpretat mill-qrati Inglizi. Fi kliem **Jones** u **Christie**, fil-ktieb taghhom ***Criminal Law (Edinburgh, Sweet & Maxwell, 1992)*** b'referenza ghal ligi Skocciza in materja:

"While the major part of the criminal law of Scotland could indeed be expressed in some facile, breach-of-the-peace-type phrase, such as 'doing things (or refraining from doing things) which cause, or could reasonably cause alarm or disturbance'", this would lead inevitably to complete uncertainty as to what exactly the law did prohibit. At present there is considerable uncertainty as to what breach of the peace itself properly covers; and it would thus be most unwelcome to extend that uncertainty by enlarging the scope of breach of the peace at the expense of other, fairly well defined offences. But this is, of course, something of a vicious circle. It is precisely because breach of the peace has become so ill-defined that it has proved possible for it to stray into fields occupied by other offences. The only way to halt this

process is for breach of the peace to be defined in a clearer and more limited fashion than is currently the case. Regrettably, however, there is little indication that this is likely to be so.” (p.295).

Il-kuncett Ingliz ta' *breach of the peace*, li kif jinghad il-Qrati taghna jidher li fil-massimu segwew, gie spjegat mill-**Professor ATH Smith** fil-ktieb tieghu **Offences against Public Order** (London, Sweet & Maxwell 1987) hekk:

“Because of the association between ‘peace’ and ‘quiet’ there is a natural tendency to suppose that a breach of the peace is ‘any behaviour that disturbed or tended to disturb the tranquillity of the citizenry’. But if any legal expression is a term of art, breach of the peace is one of them. Recently the Courts have refined the concept and established very clearly that it is allied to harm, actual or prospective, against persons or property. The leading modern authority is undoubtedly the decision of the Court of Appeal. In Howell ...Watkins L.J. said:

“...even in these days unless when affrays, riotous behaviour and other disturbances happen all too frequently, we cannot accept that there can be a breach of the peace unless there has been an act done or threatened to be done which either actually harms a person or in his presence his property, or is likely to cause such harm or which puts someone in fear of such harm being done.””(p. 182).

Minn dan kollu din il-Qorti tara li bhala regola, ikun hemm l-kontravvenzjoni kontemplata fl-artikolu 338(dd) tal-Kap 9 meta l-bon ordni jew kwiet pubbliku jigu miksura bl-ghemil ta' persuna fizika nnifisha.

Illi ghalhekk il-Qorti tiddikjara li mill-fatti migjuba mill-Prosekuzzjoni l-kontravvenzjoni in kwistjoni ma tirrizultax ppruvata u ghalhekk wara li rat l-artikoli 338(dd) tal-Kap 9 tal-Ligijiet ta' Malta, tiddikjara li ma ssibx lil imputat GODWIN CURMI hati tal-akkuza kif dedotta fil-konfront tieghu u tilliberah minnha.

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< Sentenza Finali >

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