



MALTA

QORTI TA' L-APPELL KRIMINALI

**ONOR. IMHALLEF
JOSEPH GALEA DEBONO**

Seduta tad-19 ta' Ottubru, 2006

Appell Kriminali Numru. 227/2006

Il-Pulizija

Vs

Robert Galea

Il-Qorti,

Rat l-akkuza dedotta kontra l-appellant quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli fid-19 ta' Frar, 2006, għall-habta tas-02.00 hrs, fi Pjazza Qalb ta' Gesu, Spinola, u Triq San Gorg, San Giljan,

- 1) saq vettura nru. CHP-888 b'manjiera traskurata;**
- 2) saq l-imsemmija vettura b'manjiera perikoluza;**
- 3) saq l-imsemmija vettura b'giri aktar milli jmissu;**
- 4) saq jew ipprova jsuq jew kellu kontroll ta' vettura nru. CHP-888 fit-triq jew f'post pubbliku meta ma kienx f'kundizzjoni li jsuq minhabba xorb jew drogi;**

5) saq jew ipprova jsuq jew kellu kontroll tal-vettura nru. CHP-888 fit-triq jew f'post pubbliku wara li kkonsma tant alkohol li l-proporzjon tieghu tan-nifs, fid-demm jew fl-urina, kien izjed mill-limitu preskritt.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali tal-14 ta' Gunju, 2006, li biha, wara li rat l-Artikoli 15A, 15B tal-Kapitolu 65, l-Att nru. VI/1998, l-Artikolu 15(1)(a)(2), tal-Kapitolu 65, sabet lill-appellant hati tal-akkuzi kif dedotti w ikkundannatu ghal mitejn u hamsin lira Maltin (LM250) multa, kif ukoll skwalifikatu mill-licenzji kollha tas-sewqan tieghu ghal perjodu ta' sitt (6) xhur.

Rat ir-rikors tal-appellant minnu pprezentat fit-22 ta' Gunju, 2006, li bih talab li din il-Qorti joghghobha thassar, tannulla w tirrevoka s-sentenza appellata limitatament in kwantu gie misjub hati tal-ewwel tlett imputazzjonijiet.

Fliet l-atti kollha processwali.

Rat il-verbal tas-seduta tal-lum li bih l-Avukat Generali eccepixxa n-nullita' tar-rikors tal-appell stante li ma ntabitx ir-riforma tas-sentenza appellata u dan bi ksur ta' dak li jipprovdi l-artikolu 419 (c) tal-Kodici Kriminali.

Semghet it-trattazzjoni dwar l-istess pregudizzjali;

Ikkonsidrat;

Illi bhala fatt l-Ewwel Qorti sabet lill-appellant hati tal-hames akkuzi dedotti kontra tieghu w dan wara li l-appellant ma kkontestax ir-raba' akkuza. F'dan l-appell lanqas qed jigi kontestat is-sejbien ta' htija fuq il-hames imputazzjoni. B'dana kollu, fir-rikors tal-appell, minkejja li t-talba hija biex din il-Qorti thassar, tannulla w tirrevoka s-sentenza appellata limitatament in kwantu hu gie misjub hati tal-ewwel tlett imputazzjonijiet, ma ntabitx ir-riforma tas-sentenza pre-ordinatament ghat-talbiet biex il-parti tas-sentenza fejn huwa gie misjub hati ghax ma

kkontestax l-imputazzjoni jew ghax mhux qed jikkontesta ohra f'dan fl-istadju tal-appell, tigi konfermata w biex il-parti fejn, skondu, nstab hati hazin, tigi revokata.

Ikkonsidrat;

Illi hemm lista formidabbli ta' decizjonijiet ta' din il-Qorti diversament preseduta fejn dejjem giet dikjarata n-nullita' tal-appell - liema nullita' hija anki sollevabbli "ex officio" - meta talba kellha tkun dik ta' riforma jew varjazzjoni tas-sentenza izda, minnflok tintalab ir-revoka taghha, ghax dan igib bhala konsegwenza li ma jkunx gie osservat il-paragrafu (c) tas-subartikolu (1) tal-Artikolu 419 tal-Kodici Kriminali, b'mod ghalhekk li l-istess rikors tal-appell ikun null . (App. Krim. Pul. vs. Mario Camilleri" – [3.12.2001]; Il-Pulizija vs. Joe Borg [21.7.1995] u ohrajn).

Illi din il-Qorti diversament preseduta dahlet *funditus* f'din il-kwistjoni fl-appell kriminali "Il-Pulizija vs. Joseph Galea [30.6.1995] (Per V. De Gaetano J.) fejn gie ritenut li :-

"minn ezami tal-gurisprudenza rigward in-nullita' ta' appell, il-Qorti ta' l-Appell Kriminali waslet ghas-segwenti konkluzzjonijiet :-

(a) Bhala regola generali, l-artikolu 419 (1) , cioe' li r-rikors ghandu jkun fih it-talba ghat-thassir jew ghat-tibdil tas-sentenza , giet "*very strictly and rigidly interpreted*" - ("The Police vs. John Hill", Criminal Appeal, [23.9.1972]

(b) ghalkemm il-ligi titkellem dwar talba ghat-thassir jew ghal tibdil , fil-prassi ta' din il-Qorti dejjem gie accettat, fil-kazijiet li hekk jippermettu, li jkun hemm kemm talba ghat-thassir kif ukoll talba ghat-tibdil, **PURCHE' LI DIN IT-TALBA TKUN SUBORDINATA GHALL-EWWEL WAHDA** (emfasi ta' din il-Qorti). In fatti, anki jekk jintalab biss it-thassir, din il-Qorti tista'

flok thassar ghal kollox is-sentenza u konsegwentement tillibera lill-appellant jew issib hati lill-appellat - skond min ikun appella - tilqa' l-appell in parti u tbiddel is-sentenza , per ezempju limitatament ghall-piena inflitta fuq l-appellant . Mill-banda l-ohra , jekk is-sentenza appellata tkun in parti sabet hati lill-appellant u in parti illiberatu minn xi akkuzi jew imputazzjonijiet , gie dejjem ritenut li jekk flok talba ghat-tibdil issir talba ghat-thassir , ir-rikors ikun null. “ (emfasi ta' din il-Qorti), (“Pul.vs. Anthony Zammit” ([1.10.60], Vol. XLIV , iv. p.940); “Pul. vs. Richard Vincenti Kind” , App. Krim. [16.9.72]; “Pul. vs. Carmelo Agius” , App. Krim. [4.10.1972].

Illi sentenzi ohra li minnhom kienu jemergu dawn il-principji huma : “La Polizia vs. Ernesto Laiviera”, [18.10.1930] ; Vol. XXVII , iv. P.829; “La Polizia vs Carmelo Carabott et.” [8.11.1933], Vol. XXVIII, iv. P.205; Pulizija vs. Francis Saviour Zammit Cutajar , App.Krim. [23.1.1971]; Pulizija vs. Carmelo Farrugia et. App. Krim. [11.11.1976] ; Pulizija vs. Carmelo sive Lino Scicluna , App. Krim.[1.9.1977]; Pulizija vs. Victor Anthony Camilleri et , [26.4.1985]; Pulizija vs. Anthony Zammit [1.10.1960] Vol. XLIV , iv. P.940 ; Pulizija vs. Richard Vincenti Kind , App. Krim. [16.9.1972] ; Pulizija vs. Carmelo Agius App. Krim. [14.10.1972]; Pulizija vs. Emmanuel Bonnici , App. Krim. [5.10.1990]; Pulizija vs. Joseph Desira [18.3.1972] ; Pulizija vs. Crusifix Buttigieg , [18.3.1972]; u Pulizija vs. John Vella Chritien App. Krim. [6. 5. 1972] u Il-Pulizija vs. Jesmond Farrugia [13.2.2001].

Illi fid-dawl tal-gurisprudenza fuq citata, f'dan il-kaz fl-ewwel lok kellha tintalab ir-riforma tas-sentenza qabel ma l-appellant jghaddi biex jghid liema parti mis-sentenza trid tigi konfermata w liema parti trid tigi revokata. Dan ma sarx.

Illi fil-fehma ta' din il-Qorti din l-ommissjoni lanqas ma tistax tigi rettifikata b' semplici talba ghal-korrezzjoni, ghaliex - kif qalet il-Qorti Kostituzzjonali fis-sentenza taghha “**Emanuel Gauci vs. L-Avukat Generali**”

[26.5.2006] - fil-kaz tal-artikolu 419 in-nullita' hija espressa fil-ligi meta jkun hemm nieqsa l-fatti fil-qosor, ir-ragunijiet tal-appell jew it-talba ghat-thassir jew ghat-tibdil tas-sentenza tal-Qorti Inferjuri – rekwiziti dawn li huma kjarament mehtiega ghall-andament ordnat tal-proceduri fil-kaz li jkun, u li huma ghalhekk konducenti ghall-ahjar amministrazzjoni tal-gustizzja. Fil-fehma ta' din il-Qorti dak li jkun null *“ab initio”* ma jstax jigi sanat b' korrezzjoni.

Illi l-istess principju gie ribadit minn din il-Qorti diversament preseduta mill-Prim' Imhallef V.De Gaetano fis-sentenza *“Il-Pulizija vs. Lewis Muscat”* [31.8.2006] fejn intqal:-

“...article 419 of the Criminal Code provides, with regard to applications of appeal like the one under examination, that “...the application shall, under pain of nullity, contain (a) a brief statement of the facts, (b) the grounds of the appeal; and (c) a demand that the judgment of the inferior court be reversed or varied” (emphasis added). It is also true that this provision is a special provision, providing for the nullity of the judicial act, in the event of any omission mentioned, and to that extent it must be regarded as overriding the general provision contained in article 175 of the Code of Organisation and Civil Procedure (rendered applicable to acts filed before a Court of Criminal Justice by virtue of article 520(1)(c) of the Criminal Code), including sub-article (2) thereof which states: “Any court of appellate jurisdiction may also order or permit, at any time until judgment is delivered, the correction of any mistake in the application by which the appeal is entered or in the answer, including any mistake in the indication of the court which delivered the decision appealed from, in the name or character of the parties, or in the date of the judgment appealed from” (emphasis added). Clearly what is null by express provision of the law – article 419 of the Criminal Code – cannot be rectified by invoking article 175 of Chapter 12. Thus one cannot invoke article 175 when the “brief statement of the facts” are left out, or when the “grounds of the appeal” are omitted from the application of appeal, or when the

demand for reversal or variation is left out. Likewise, if the demand should have been for the variation of the judgment and instead the reversal of the judgment is requested – which amounts to the total absence of the appropriate demand – no correction can be effected under the said article 175. Similarly no new grounds of appeal may be added by invoking article 175, as this would clearly change the substance of the appeal and of the reply thereto on the merits (article 175(1)).”

Ghalhekk fil-kaz in ezami, ladarba l-appellant qed jitlob biss revoka ta' parti mis-sentenza appellata, huwa kellu fl-ewwel lok jitlob r-riforma tas-sentenza appellata mbaghad jispecifica x' irid li jigi konfermat mis-sentenza w x' irid jigi revokat.

Ghalhekk l-eccezzjoni tal-Avukat Generali tidher ben fondata.

Ghalhekk tiddikjara l-appell null u tastjeni milli tiehu konjizzjoni ulterjuri tieghu.

< Sentenza Finali >

-----TMIEM-----