



QORTI TA' L-APPELL KRIMINALI

**ONOR. IMHALLEF
JOSEPH GALEA DEBONO**

Seduta tat-2 ta' Novembru, 2006

Appell Kriminali Numru. 299/2006

**Il-Pulizija
(Spt. Denise Mula)**

Vs
Anthony Zammit

Il-Qorti,

Rat l-akkuza dedotta kontra l-appellant quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali, talli fil-21 ta' Settembru, 2001 u fis-snin ta' qabel, f'dawn il-Gzejjer, b'diversi atti maghmulin fiz-zminijiet differenti w li jiksru l-istess dispozizzjoni tal-ligi, u jkun gew maghmula b'rizoluzzjoni wahda, bhala sid tal-vetturi nru. C 3684, CAS-648, D 3748, DAH-106, DAL-981, GAM-364, IAB-054, JAC-468, JAN-493, K 2798, LAI-635, N 2049 u R 4615 :

1) naqas li jara li jkollhom dejjem u f'kull zmien licenzja mahruqa mill-Kummissarju tal-Pulizija jew

mill-Awtorita' dwar it-Trasport ta' Malta (licenzji tal-vetturi mhux imgedda);

2) kif ukoll ghamel uzu u jew zamm jew ippermetta l-uzu tal-imsemmija vetturi minghajr ma kienu koperti b'polza tas-sigurta' dwar ir-riskji tat-terzi persuni;

3) bhala l-persuna li accetta li jixtri jew ibiegh, skrappja jew b'xi mod iehor iddispona mill-imsemmija vetturi, naqas li jaghti avviz bil-miktub fiz-zmien sebat ijiem lill-Kummissarju tal-Pulizija jew lill-Awtorita' Dwar it-Trasport ta' Malta dwar il-bidla tas-sid jew twellija tal-imsemmija vetturi.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali tat-13 ta' Settembru, 2006, li biha, wara li rat l-Artikolu 321 tal-Kap. 10, l-Artikolu 3(1) tal-Kap. 104, l-Artikolu 18 tal-Kap. 9 tal-Ligijiet ta' Malta w l-MVR 18(4), 26, sabet lill-appellanti hati tal-akkuzi kollha kif dedotti kontra tieghu w ikkundannatu ghal hlas ta' multa komplessiva ta' mitejn u hamsin lira Maltin (LM250) u oltre dan ordnat l-iskwalifika tal-licenzja tal-appellant ghal perjodu ta' sena. Obbligat lill-appellant jottempera ruhu mal-ligi li jaghmel it-transfers fuq il-vetturi ndikati fic-citazzjoni u dan fi zmien xahrejn taht penali ta' hames liri Maltin (LM5) fin-nuqqas.

Rat ir-rikors tal-appellant minnu pprezentat fis-26 ta' Settembru, 2006, li bih talab li s-sentenza appellata "tigi riformata billi tigi kkonfermata f'dik il-parti fejn l-appellant gie lliberat minn l-akkuzi ta' kontra tieghu w thassaraha w tirrevoka kwantu ghal daww l-akkuzi fejn instabet htija" (Sic!).

Fliet l-atti kollha processwali.

Rat illi l-Qorti "*ex officio*", kif ghandha d-dritt li taghmel, irrilevat li fit-talba fl-ahhar paragrafu tar-rikors ma saritx talba ghar-revoka tas-sentenza kif riedet isir "*ad validitatem*" skond l-Artikolu 419 (c) tal-Kodici Kriminali, f' dan il-kaz.

Semghet it-trattazzjoni dwar l-istess pregudizzjali;

Ikkonsidrat;

Illi bhala fatt l-Ewwel Qorti sabet lill-appellant hati tal-akkuzi kollha kif dedotti kontra tieghu. B'dana kollu, fir-rikors tal-appell, it-talba hija biex s-sentenza appellata "*tigi riformata billi tigi konfermata f' dak il-parti fejn l-esponent gie lliberat minn l-akkuzi ta' kontra tieghu u thassarha u tirrevoka kwantu ghal dawk l-akkuzi fejn instabet htija.*" Dan meta l-appellant ma kien gie liberat minn ebda akkuza izda nstab hati tal-akkuzi kollha.

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-segweni 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** (enfasi 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 eżempju limitatament ghall-piena inflitta fuq l-appellant . Mill-banda l-oħra , 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. “ **(enfasi 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 oħra 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 Chretien App. Krim. [6. 5. 1972] u Il-Pulizija vs. Jesmond Farrugia [13.2.2001].

Illil-istess nullita' ssehh meta minnflok ir-revoka tintalab ir-riforma , kif gara f' dan il-kaz.

Illi fid-dawl tal-gurisprudenza fuq citata, f'dan il-kaz ladarba l-appellant kien instab hati tal-akkuzi kollha w irid li jigi liberat minnhom kollha, ma kienx il-kaz li tintalab ir-riforma imma kellha ovvjament tintalab ir-revoka tas-sentenza. Dan ma sarx.

Illi fil-fehma ta' din il-Qorti din l-ommissjoni lanqas ma tista' tigi rettifikata b' semplici talba ghal xi korrezzjoni, kif issottometta l-abbli difensur Dr. Anglu Farrugia, 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 jistax 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 ir-riforma flok ir-revoka hawn “*the total absence of the appropriate demand.*”

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

< Sentenza Finali >

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