

Kopja Informali ta' Sentenza



**QORTI CIVILI
PRIM' AWLA
(GURISDIZZJONI KOSTITUZZJONALI)**

**ONOR. IMHALLEF
TONIO MALLIA**

Seduta tad-19 ta' Ottubru, 2007

Rikors Numru. 38/2007

Lawrence Gatt

vs

L-Onorevoli Prim Ministru u l-Avukat Generali

Il-Qorti:

Rat ir-rikors ipprezentat fit-12 ta' Gunju, 2007, li in forza tieghu, ir-rikorrenti, wara li ppremetta illi:

Il-Qorti Kriminali bid-digriet taghha tat-28 ta' Lulju ikkundannat lil esponent elfejn gurnata (2,000) habs u dan fit-terminu tal-artikolu 586 tal-Kap. 9 peress li ma hallasx l-Lm10,000 ghaxar t'elef lira Maltin garanzija personali.

In effetti ir-rikorrent kien tilef il-liberta provisorja peress li kiser wahda mill-kundizzjonijiet imposti fl-ghotja tal-istess peress li instab barra wara il-hin. In segwitu l-istess rikorrent essendo li huwa finanzjarjament indigenti ma kienx f' pozizzjoni li jhallas is-somma indikata.

Ir-rikorrent ihoss illi d-digriet tal-Qorti Kriminali tat-28 ta` Lulju, 2006 kif ukoll l-Artikolu 586 tal-Kap. 9 tal-Ligijiet ta` Malta jillidulu d-drittijiet fundamentali tieghu kif sanciti fl-Artikolu 36 tal-Kostituzzjoni ta` Malta u fl-Artikolu 3 tal-Konvenzjoni Ewropeja ghall-protezzjoni tad-drittijiet tal-bniedem u tal-libertajiet fundamentali u dan ghas-segwenti ragunijiet.

Is-sub-artikolu 1 tal-586 tal-Kodici Kriminali jghid is-segwenti:

Kull min jigi arrestat minhabba li ma jkunx hallas is-somma li ghalha jkun obbliga ruhu, ghandu jinzamm f`detenzjoni ghal zmien ta` mhux aktar minn gurnata ghal kull hames liri ta` dik is-somma, sew jekk dik il-persuna tkun l-imputat jew l-akkuzat sew jekk tkun il-plegg.

A differenza ta` l-Artikolu 11 tal-Kodici Kriminali, illi timponi konversjoni minn multa ghall-prigunerija, l-Artikolu 586 tal-istess Kodici ma jiffissax massimu ta` zmien illi wiehed jista` jittiehed f`prigunieri jekk ma ihallasx il-multa fuqu imposta. Fil-fatt l-esponent jikkontendi illi Artikolu 586 jikkostitwixxi ksur ta` l-Artikolu 3 tal-Konvenzjoni Ewropeja, u cioe` l-probizzjoni tat-tortura u trattament jew piena degradaneti jew inumana.

Fil-kaz ta` Tyrer vs United Kingdom (deciza 25 ta` April, 1978), il-Qorti Ewropea qalet illi, *'The Court notes first of all that a person may be humiliated by the mere fact of being criminally convicted. However, what is relevant for the purposes of Article 3 (art. 3) is that he should be humiliated not simply by his conviction but by the execution of the punishment which is imposed on him. In fact, in most if not all cases this may be one of the effects of judicial punishment, involving as it does unwilling subjection to the demands of the penal system. However,*

as the Court pointed out in its judgment of 18 January 1978 in the case of Ireland v. the United Kingdom, the prohibition contained in Article 3 of the Convention is absolute; no provision is made for exceptions and, under Article 15(2) there can be no derogation from Article 3 (art. 3). It would be absurd to hold that judicial punishment generally, by reason of its usual and perhaps almost inevitable element of humiliation, is “degrading” within the meaning of Article 3 (art. 3). Some further criterion must be read into the text. Indeed, Article 3 (art. 3), by expressly prohibiting “inhuman” and “degrading” punishment, implies that there is a distinction between such punishment and punishment in general. In the Court’s view, in order for a punishment to be “degrading” and in breach of Article 3 (art. 3), the humiliation or debasement involved must attain a particular level and must in any event be other than that usual element of humiliation referred to in the preceding subparagraph. The assessment is, in the nature of things, relative: it depends on all the circumstances of the case and, in particular, on the nature and context of the punishment itself and the manner and method of its execution’.

L-esponent jghid illi fic-cirkostanzi tal-kawza odjerna l-misuri ta` l-Artikolu 586 tal-Kodici Kriminali minhabba n-natura u l-kuntest taghhom jipprovdu ghall-piena li hija eccessiva u mhix proporzjonata ghar-reat kommess. L-esponent isostni illi wiehed mis-sisien tal-Konvenzjoni Ewropeja hija illi tipprotegi l-individwi mill-inflizzjoni ta` piena eccessivi u mhux proporzjonati ghar-reat kommess.

Talab lill-intimat jghid ghaliex din l-Onorabbli Qorti m`ghandhiex:

1. tiddikjara li l-Artikolu 586 tal-Kodici Kriminali imur kontra mad-drittijiet fundamentali tar-rikorrent kif sanciti fl-Artikolu 36 tal-Kostituzzjoni ta` Malta u fl-Artikolu 3 tal-Konvenzjoni Ewropeja u similmnt id-digriet tal-Onorabbli Qorti Kriminali tat-28 ta` Lulju, 2006 fejn l-esponent gie ikkundannat elfejn (2,000) gurnata habs.

2. thassar u tirrevoka id-digriet tal-Qorti Kriminali tat-28 ta' Lulju, 2006 fuq imsemmi.

3. taghti dawk il-provedimenti opportuni u xierqa sabiex l-esponent jinghata rimedju effettiv fic-cirkostanzi.

Rat ir-risposta ipprezentata mill-intimati li in forza taghha eccepew illi:

L-lanzanza tar-rikorrent ma taqa` taht ebda wahda mit-tipi ta` trattament li ghalihom jirreferi l-artikolu 3 tal-Konvenzjoni Ewropeja jew l-artikolu 36 tal-Kostituzzjoni ta` Malta. Fi kliem iehor, la tikkostitwixxi tortura u lanqas "*inhuman or degrading treatment or punishment*".

Ir-rikorrent jiccita l-kaz ta` **Tyrer vs UK**. F` dan il-kaz, fejn il-kastig involut gie meqjus mill-Qorti Ewropeja bhala li ma kienx inuman izda biss degradanti, il-fatti li wasslu ghall-iment minn Tyrer kienu sostanzjalment differenti minn dawk tal-kaz odjern. Tyrer kien gie msawwat b`qasba ta` l-injam fuq il-warrani. Ghalhekk, dak li gie osservat in konnessjoni ma` dak il-kaz ma japplikax ghall-kaz prezenti.

Il-kazijiet ta` trattament inuman li tqajmu quddiem il-Qorti, bi gradi varji ta` success, kienu jinkludu swat, uzu ta` tekniki psikologici ta` interrogazzjoni, kundizzjonijiet hziena ta` detenzjoni (i.e. '*overcrowding*', facilitajiet ta` '*heating*', sanitarji, ta` l-irqad u ta` kura inadegwati), '*solitary confinement*'. Rigward '*piena inumana*', il-kaz ewlieni li gie quddiem il-Qorti Ewropeja kien dak fuq imsemmi ta` Tyrer. Rigward '*trattament degradanti*' u '*kastig degradanti*', ta` l-ewwel gie definit mill-Qorti bhala trattament that '*grossly humiliates*', u gie definit mill-Qorti Ewropeja proprju f` **Tyrer vs UK** liema definizzjoni hija ikkwotata mir-rikorrent lejn l-ahhar tat-tieni paragrafu tat-tieni pagna tar-risposta attrici. Ma jidhirx li s-sitwazzjoni tar-rikorrent hija xi wahda ta` '*umiljazzjoni enormi*' jew li b`xi mod tersaq vicin il-livelli ta` umiljazzjoni previsti mill-artikolu 3.

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Ta` min jirrileva wkoll li fil-kaz tar-rikorrent huwa gie inkarcerat talli kiser il-ligi u ghalhekk m`huwiex jinghata xi trattament li huwa aghar minn dak previst mil-ligi kriminali. Kif tajjeb intqal fil-kaz ta` **Ramirez Sanchez vs France** ta` l-4 ta` Lulju, 2006.

“In order for a punishment or treatment associated with it to be “inhuman” or “degrading”, the suffering or humiliation involved must in any event, go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment ... In that connection, the Court notes that measures depriving a person of his liberty may often involve such an element”.

Ghaldaqstant, l-esponent jitlob bir-rispett li din l-Onorabli Qorti joghgobha tirrespingi r-rikors odjern bl-ispejjez kontra r-rikorrent.

Rat l-atti kollha tal-kawza u d-dokumenti ezebiti;

Rat in-nota tal-osservazzjonijiet tar-rikorrenti;

Rat li l-kawza tinsab differita ghal lum ghas-sentenza;

Ikkunsidrat;

Illi f`dan il-kaz ir-rikorrent jinsab akkuzat b`reat ta` natura kriminali. Hu kien tressaq quddiem il-Qorti b`kompetenza kriminali taht arrest, u wara li talab li jinghata l-liberta` provizorja, il-Qorti accettat taht diversi kundizzjonijiet, fosthom li ma jallontanax ruhu barra mid-dar tieghu f`certi hinijiet stabbiliti. Hu intrabat li jonora l-kondizzjonijiet imposti b`garanzija personali ta` Lm10,000. Jidher li r-rikorrent, f`hin minnhom, instab barra mid-dar tieghu wara l-hin impost. Hu tressaq quddiem il-Qorti tal-Magistrati akkuzat li kiser wahda mill-kundizzjonijiet tal-liberta` provvizorja imposta fuqu mill-Qorti. Ir-rikorrent instab hati u l-Qorti ordnat il-hlas ta` Lm10,000 li kienet inghatat bhala garanzija. Peress li r-rikorrent, allegatament, ma kellux biex ihallas din is-somma, u, fil-fatt, dan ma hallashiex, is-somma giet konvertita f`2,000 jum habs,

skond it-terminu tal-artikolu 586(1) tal-Kodici Kriminali, li jiddisponi illi:

“Kull min jigi arrestat minhabba li ma jkunx hallas is-somma li ghalha jkun obbliga ruhu, ghandu jinzamm f`detenzjoni ghal zmien ta` mhux aktar minn gurnata ghal kull hames liri ta` dik is-somma, sew jekk dik il-persuna tkun l-imputat jew l-akkuzat sew jekk tkun il-plegg”.

L-ordni mahruqa mill-Qorti li applikat dan l-artikolu inghata fis-28 ta` Lulju, 2006.

Ir-rikorrent jallega li din il-piena hi esagerata u twassal ghal tortura jew trattament inuman u degradanti bi ksur tal-artikolu 36 tal-Kostituzzjoni u l-artikolu 3 tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem.

Issa, ma hemmx dubbju li skond il-Kodici Kriminali, sia meta si tratta ta` delitt kontra s-sigurta` tal-Gvern jew delitt li jgib mieghu l-piena ta` prigunerija ghal ghomru u sia meta si tratta ta` kwalsiasi reat iehor, il-Qorti ta` Gustizzja Kriminali li tkun hija obbligata li tassigura li, jekk takkorda l-helsien mill-arrest, ma jkunx hemm il-perikoli ravvizati fl-paragrafi (a) sa (e) tas-subartikolu (1) tal-Artikolu 575 tal-Kap. 9. Dawn il-perikoli huma li l-akkuzat jew imputat (a) *“jonqos li jidher ghall-ordni ta` l-awtorita` msemmija fl-obbligazzjoni tal-garanzija”*, (b) *“jinheba jew jitlaq minn Malta”*, (c) *“ma josservax xi kundizzjoni li l-Qorti jkun jidhrilha xieraq li timponi fl-obbligazzjoni tal-garanzija”*, (d) *“jinterferixxi jew jipprova jinterferixxi max-xhieda jew b`xi mod iehor jintralcja jew jipprova jintralcja l-kors tal-gustizzja fir-rigward tieghu jew xi persuna ohra”*, u (e) *“jikkommetti xi reat iehor”*. Huwa proprju ghalhekk li Qorti ta` Gustizzja Kriminali tista`, meta takkorda l-helsien mill-arrest, timponi kundizzjonijiet ohra oltre l-garanzija (fil-forma ta` plegg tajjeb li jobbliga ruhu bil-miktub ghas-somma stabbilita, jew fil-forma tad-depozitu ta` dik is-somma jew depozeru ta` rahan li jiswa daqsha, jew fil-forma tal-obbligazzjoni personali tal-imputat – Art. 577) li l-imputat jew akkuzat jidher ghal kull att tal-process fiz-zmien u fil-post li jigu ordnati lillu.

Ir-rikorrent, b`dawn il-proceduri, mhux qed jilmenta mill-kondizzjonijiet fuqu imposti meta nghata l-liberta` provisorja. Fuq kollox, kif osservat l-Onorabbli Qorti Kostituzzjonali fil-kawza “Aquilina et vs Avukat Generali”, deciza fl-1 ta` Gunju, 2007, *“Ghalkemm huwa minnu li dana l-Artikolu (artikolu 5(3) tal-Konvenzjoni) meta jirreferi ghal helsien waqt pendenza ta` proceduri, jghid “Il-helsien jista` jkun taht kondizzjoni ta` garanzija biex [l-arrestat jew detenut] jidher ghall-proceduri”, dana ma jfissirx li huma biss dawn il-kondizzjonijiet, cioe` dawh intizi biex jassiguraw li l-imputat jew akkuzat jidher ghall-proceduri, li jistghu jigu imposti. Dan hu evidenti anke mill-istess giurisprudenza tal-Qorti Ewropea. In fatti, fost ir-relevant and sufficient grounds li dik il-Qorti accettat bhala li jistghu jiggustifikaw li persuna akkuzata b`reat tibqa` arrestata, ghall-anqas ghal certu zmien, bla ma tinghata bail hemm is-segwenti: (i) the seriousness of the alleged offences and the strength of suspicion; (ii) protection of public order; (iii) risk of pressure on witnesses or collusion with co-accused; (iv) risk of repetition of offences; u (v) danger of absconding. Meta jkun hemm xi wahda minn dawn ic-cirkostanzi li jiggustifikaw, anke jekk biss ghal certu zmien, ir-rifjut tal-ghoti tal-helsien mill-arrest, jekk dak il-perikolu jew riskju jkun jista` jigi mxejjen jew ghall-anqas minimizzat b`xi kundizzjoni (li allura ma tkunx kundizzjoni li tassigura biss id-dehra tal-akkuzat jew imputat) imposta mal-ghoti tal-helsien, tali helsien ghandu jinghata b`dik il-konkluzjoni, u dan proprju in omagg ghall-principju tal-liberta` tal-persuna. Li wiehed jargumenta bil-kontra – kif qed jaghmlu l-appellanti – ikun ifisser li fejn Qorti tista` taghti l-helsien taht kundizzjoni jew kundizzjonijiet bhal dawn, hija ma taghtix il-helsien ghax il-kundizzjoni ma tkunx wahda bix dak li jkun “jidher ghall-proceduri”.*

Ir-rikorrenti lanqas ma ilmenta mill-quantum tal-garanzija personali li talbiet il-Qorti. Din il-Qorti thoss li dan hu importanti ghall-fini ta` din il-kawza. Ir-rikorrenti mhux biss baqa` sokkombenti meta giet imposta l-garanzija, izda lanqas f`dawn il-proceduri ma ressaq ilment fis-sens li t-tqieghed ta` kundizzjoni li huwa mhux f`qaghda li jwettaq

igiblu fix-xejn il-jedd tieghu li jinheles mill-arrest u jhallilu jedd biss teoretiku u mhux effettiv, kif sancit bl-artikoli 5 u 6 tal-Konvenzjoni Ewropea. Meta r-rikorrent iffirma u effettivament ta` dik il-garanzija, u pogga lilu nnifsu f`sitwazzjoni fejn accetta li jhallas is-somma mitluba mill-Qorti f`kaz li jikser xi kundizzjoni imposta fuqu u minnu accettata. La darba hu accetta dik l-obbligazzjoni, huwa gie li accetta wkoll il-konsegwenzi f`kaz li ma jonorax dik l-obbligazzjoni, u ma jistax issa jissottometti li dawk il-konsegwenzi huma eccessivi.

Ir-rikorrent kien ben konxju tas-sitwazzjoni tieghu. Kien jaf bil-kundizzjonijiet ghall-helsien mill-arrest, accetthom u obbliga ruhu li jwettaqhom. Hu accetta wkoll li jaghti garanzija personali ta` Lm10,000 bhala plegg li kien se jonora dawk il-kundizzjonijiet. Avvolja kien konxju tas-sitwazzjoni finanzjarja tieghu (kif kull bniedem normali hu meqjus li hu), xorta accetta li jaghti garanzija personali ghal dik is-somma, u ma jidhirx li qatt ilmenta li hu, f`kaz li tavvera ruha il-kondizzjoni, ma jkunx f`pozizzjoni li jhallas dik is-somma. La darba wkoll hu prezunt li kulhadd jaf il-ligi, kien jaf ukoll x`jigri jekk jikser xi kundizzjoni imposta fuqu u ma jhallasx il-garanzija. Ciononostante, hu ipproceda li jikser kundizzjoni u li ma jhallasx is-somma ta` Lm10,000. Wara li, b`ghajnejh miftuhin, accetta li jaghti l-garanzija ghas-somma mitluba ma jistax issa jilmenta li s-somma tant kienet kbira li waslet ghal piena eccessiva u proporzjonata ghar-reat kommess.

Il-fatt li l-artikolu 586 tal-Kodici Kriminali ma jiffissax massimu ta` zmien illi wiehed jista` jitqieghed f`prigunerija jekk ma jhallasx il-garanzija, mhux ksur ta` xi jedd tieghu, peress li z-zmien ta` habs hu relattat ma u marbut mas-somma tal-garanzija. Meta tigi iffissata s-somma tal-garanzija, jigi determinat wkoll iz-zmien ta` habs li wiehed ikollu jaghmel f`kaz ta` ordni ghal hlas tas-somma tal-garanzija. L-ammont tal-garanzija fi kliem iehor, jiffissa l-massimu ta` prigunerija li wiehed ikollu jiskorri jekk ma jhallasx il-garanzija, u dan il-massimu ikun maghruf mill-ewwel u hekk kif tigi iffissata s-somma tal-garanzija. Nonostante din il-konsapevolezza, ir-rikorrent accetta li joqghod ghal dawk il-kundizzjonijiet.

Ovvjament, dan ma jfissirx li r-rikorrent ghandu jigi ittorturat jew soggett ghal trattament inuman, imma biex jirrizulta dan irid jirrizulta xi haga oltre t-tehid tal-liberta` ghas-zmien indikat fil-ligi, u accettat mir-rikorrent. Kif jinghad fil-ktieb ta` van Dijk u van Hoof, "*Theory and Practice of the European Convention on Human Rights*" (3rd Edit, pagna 312).

"In the Strasbourg case-law the national authorities are allowed a wide margin of appreciation as to the system of sanctions. Thus, the Commission has taken the position that 'the Convention does not provide as such any general right to call into question the length of a sentence imposed by a competent court'. Only under exceptional circumstances may a particular sentence raise an issue under Article 3. The mere fact 'that an offence is punished more severely in one country than in another does not suffice to establish that the punishment is inhuman or degrading'. Thus, for instance, although the death penalty has de facto been abolished in Western Europe the Court, having regard to Article 2, which expressly permits it, has not been prepared to accept that this penalty should now be considered as an inhuman and degrading punishment within the meaning of Article 3".

Kienet il-Qorti li determinat iz-zmien ta` prigunerija, u dan meta iffissat l-ammont tal-garanzija, ammont li, kif intwera, ir-rikorrent ma ikkontestax bhala li tefa` fuqu piz tant kbir li twassal ghat-telfien tieghu tal-jedd li jinghata l-helsien mill-arrest.

Barra minn dan, din il-Qorti tara li, f`kull kaz, ma jezistux l-estremi tad-dritt invokat mir-rikorrent. Definizzjoni tat-terminologija uzata fl-artikolu 3 tal-Konvenzjoni Ewropea fuq id-Drittijiet tal-Bniedem, kien inghata mill-Kummissjoni Ewropea fl-hekk imsejha Greek Case. Fir-rapport taghhom ippubblikat fil-5 ta' Novembru, 1969, jinghad a *propozitu*:

"The notion of inhuman covers at least such treatment as deliberately causes severe suffering, mental or physical,

which, in the particular situation, is unjustifiable. The word "torture" is often used to describe inhuman treatment, which has a purpose, such as the obtaining of information or confession, or the infliction of punishment, and is generally an aggravated form of inhuman treatment. Treatment or punishment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his will or conscience".

Din id-definizzjoni giet konfermata mill-istess Kummissjoni fir-rapport taghha ppubblikat fil-25 ta' Jannar, 1976, fil-kaz "Ireland vs United Kingdom". F'dan ir-rapport intqal ukoll illi:

"Ill treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim".

F'dan il-kuntest, l-awturi van Dijk u van Hoof, fil-ktieb *"Theory and Practice of the European Convention on Human Rights"* (3rd Edit pag. 313) jaghmlu analizi ta' kawza ohra, l-East African Asians Case (irrapportata mill-Kummissjoni fl-14 ta' Dicembru, 1973). Jinghad hekk mill-awturi fil-kuntest ta' dan il-kaz:

"It is clear that the answer to the question whether Article 3 has been violated, although depending on all the circumstances of the case, including such factors as the mental effects on the person concerned, is not entirely dependent on the latter's subjective appreciations and feelings. In the East African Asians Case the Commission did not accept the "subjective" definition that the treatment of a person is degrading in the sense of Article 3 "if it lowers him in rank, position, reputation or character, whether in his own eyes or in the eyes of other people", and argued that – given the general purpose of this provision to prevent interferences with the dignity of man of a particularly serious nature – "an action which lowers a

person in rank, position, reputation or character can only be regarded as “degrading treatment” in the sense of Article 3 where it reaches a certain level of severity”.

Dan l-element ta' gravita' jinsab ribadit ukoll mill-awturi Jacobs & White, fil-ktieb “European Convention on Human Rights” (3rd Edit. pag. 65) meta jghidu:

“The defining feature of degrading treatment is the element of humiliation or debasement; the threshold of severity would appear to require that the humiliation is gross”.

Il-htiega li din l-umiljazzjoni tkun wahda gravi giet enuncjata wkoll mill-Qrati taghna, partikolarment fil-kawza “Galea vs Segretarju tad-Djar”, deciza mill-Onorabli Qorti Kostituzzjonali fl-20 ta' Lulju, 1977; f'din il-kawza ntqal ukoll li trattament degredanti jehtieg ukoll li jwassal ghal vjolazzjoni serja ghad-dinjita' tal-bniedem. Dawn il-principji ta' intensita' jew severita' gew ribaditi mill-istess Onorabli Qorti Kostituzzjonali fil-kawza “Fenech vs Kummissarju tal-Pulizija”, minnha deciza fl-20 ta' Frar, 1979, u fil-kawza “Wilch vs Seg. Parlamentari ghad-Djar et”, deciza minn din il-Qorti fil-11 ta' Ottubru, 1989. Fil-fatt, jekk wiehed janalizza l-gurisprudenza lokali fejn sabet kaz ta' trattament degredanti, jinduna li l-kazijiet iridu jkunu ta' certu serjeta' u gravita'. Hekk, per ezempju, instabu kazi ta' trattament degredanti fejn sid ta' dar jitkecca mill-istess dar li jkun qed jokkupa, bis-sahha ta' ordni ta' rekwizzjoni, sabiex jigi akkomodat xi hadd iehor (“Antonio Pace vs Seg. Djar et”, deciza mill-Onorabli Qorti Kostituzzjonali fis-17 ta' Ottubru, 1988, u “Lucrezia Borg vs Seg. Djar et”, deciza minn din il-Qorti fit-2 ta' Settembru, 1986), jew fejn persuna tigi nterrogata fid-Depot tal-Pulizija minghajr ma tkun infurmata bl-akkuza kontriha jew b'metodi li gew deskritti bhala inumani jew degradanti (“Tonio Vella vs Bonello”, deciza minn din il-Qorti fil-5 ta' Dicembru, 1986, u “Jimmy Vella et vs Bonello”, deciza wkoll minn din il-Qorti fit-3 ta' April, 1997) jew meta mpjegat gie kostrett jiffirma dikjarazzjoni li meta ma marx ghax-xoghol f'gurnata wahda f'Gunju tal-1982, kien qed jipperikola l-istabbilita' u d-demokrazija f'pajjizna

(“Joseph Vassallo Gatt vs Cassar noe”, deciza minn din il-Qorti fid-19 ta' Marzu, 1987).

Dak li sehh f'dan il-kaz, lanqas remotament ma jista' jwassal ghal grad ta' severita' li jridu kemm il-Qrati Maltin, kif ukoll il-Qorti Ewropea tad-Drittijiet tal-Bniedem. Li wiehed jqatta zmien gol-habs mhux xi haga sabiha, izda hi sanzjoni legittima ghal min jikkometti reat. Hu normali li dak li jkun ihoss ruhu umiljat u jsofri xi tbatija, pero`, meta Qorti issib persuna hati ta` reat, dan ir-reat ikun sehh bil-volonta` tieghu. Is-somma mitluba mill-Qorti bhala garanzija tirrifletti l-gravita` u s-serjeta tal-kaz li bih jinsab akkuzat, u ghalkemm kien jinhtieg li r-rikorrent, forsi, jinzamm taht arrest, il-Qorti tal-Magistrati ikkoncedietlu l-helsien, taht certi kundizzjonijiet li r-rikorrent accetta u obbliga ruhu li jwettaq. Il-konsegwenza ta` ksur ta` kundizzjoni kienet prevedibbli, u mehud in konsiderazzjoni il-gravita` tal-akkuzi migjuba kontra r-rikorrenti, la l-kundizzjonijiet imposti (u dan qed jinghad avolja r-rikorrent mhux qed jattakka l-validita` ta` dawk il-kundizzjonijiet), u lanqas il-konsegwenzi legali f'kaz ta` ksur ta` dawk il-kundizzjonijiet, ma jistghu jitqiesu eccessivi. Ma hemm xejn *“degrading”* fiz-zmien li r-rikorrent irid iqatta` gewwa l-Facilita` Korrettiva ta` Kordin.

Fil-kawza “Hurtado vs Switzerland”, il-Kummissjoni tal-Qorti Ewropea ghad-Drittijiet tal-Bniedem, fir-rapport taghha ppubblikat fit-8 ta' Lulju, 1993, osservat hekk, f'paragrafu 67:

“The Commission reiterates that treatment is considered “degrading” when it is such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance”.

Il-Qorti Ewropea ghad-Drittijiet tal-Bniedem, fil-kaz “Abdulaziz et vs United Kingdom”, deciza fit-28 ta' Mejju, 1985, kienet qalet li ma kien hemm xejn degredanti mill-fatt li l-applikanti, li kienu legalment u regolarment residenti fl-Ingilterra, ma setghux jinsistu li jkunu akkumpanjati f'dak il-pajjiz min zwiieghom: *“... the*

difference of treatment complained of”, qalet il-Qorti Ewropea, “*did not denote any contempt or lack of respect for the personality of the applicants and that it was not designed to, and did not, humiliate or debase*”.

F`dan il-kaz, kollox kien idur mal-fissazzjoni tas-somma tal-garanzija, u mhux mal-artikolu 586(1) tal-Kodici Kriminali, ghax hu tal-ewwel li jiddetermina iz-zmien ta` prigionerija taht l-artikolu indikat. Mhix il-konverzjoni li tista` tohloq kumpless ta` inferjorita` jew biza u qtugh il-qalb ghal persuna milquta, izda hi determinazzjoni tal-garanzija li, jekk tkun sproporzjonata ghar-reat li bih il-persuna tkun akkuzzata jew jekk tkun il-boghod mill-mezzi finanzjarji disponibbli ghalih, tista` twassal ghac-cahda lir-rikorrent mid-dritt tieghu ghall-helsien mill-arrest, b`mod li d-detenzjoni kontinwa tieghu tkun tista` titqies inumana u mhux f`lokha (ara dak li osservat *obiter* din il-Qorti fil-kawza “Karfus vs Kummissarju tal-Pulizija et”, deciza fis-27 ta` April, 2006). F`dan il-kaz, id-determinazzjoni tas-somma tal-garanzija ma gietx kontestata u anzi giet accettata u, ghal xi zmien, uzufruwita mir-rikorrent.

Ghaldaqstant, ghar-ragunijiet premissi, tiddisponi mit-talbiet tar-rikorrent billi tichad l-istess bl-ispejjez kontra tieghu.

< Sentenza Finali >

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