



## **QORTI TA' L-APPELL KRIMINALI**

**ONOR. IMHALLEF  
DAVID SCICLUNA**

Seduta tas-27 ta' Frar, 2008

Appell Kriminali Numru. 93/2007

**Il - Pulizija**

**v.**

**Michael Camilleri  
Jennifer Camilleri  
... omissis ...**

Il-Qorti,

Rat l-imputazzjoni migjuba mill-Pulizija Ezekuttiva kontra Michael Camilleri u Jennifer Camilleri talli fil-11 ta' Jannar 2006 ghall-habta tat-3.45 p.m. u fix-xhur ta' qabel fl-Msida kisru volontarjament il-bon ordni jew il-kwiet tal-pubbliku.

Il-Qorti giet mitluba sabiex, jekk taghti xi piena, tordnalhom it-tnehhija ta' kull disordni jew inkonvenjent li bih ikun sar ir-reat jew, skond ic-cirkostanzi, li jikkonformaw ruhhom mal-ligi fi zmien bizzejjed ghal dak

## Kopja Informali ta' Sentenza

il-ghan, izda f'ebda kaz iktar minn tliet xhur mid-data tas-sentenza, li jigi stabbilit mill-Qorti, u jekk min jaghmel ir-reat jonqos li jhares xi ordni bhal dak fiz-zmien hekk stabbilit, hu jkun hati ta' reat u jehel, meta jinstab hati, *ammenda* ghal kull gurnata li matulha jkompli n-nuqqas wara li jghaddi l-imsemmi zmien;

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali ta' l-1 ta' Marzu 2007 li permezz taghha dik il-Qorti sabet lill-imsemmijin Michael Camilleri u Jennifer Camilleri hatja ta' l-imputazzjoni dedotta kontra taghhom u, wara li rat l-artikoli 338(dd) tal-Kap. 9 tal-Ligijiet ta' Malta, ikkundannathom *ammenda* ta' Lm25 u, wara li rat l-artikolu 377(3) ta' l-istess Kap. 9, ordnat sabiex inehhu l-inkonvenjent billi jnehhu l-pjanu minn mal-hajt ta' l-appogg mid-dar tal-kwerelanti Schembri u li minn dakinhar tas-sentenza 'il quddiem l-imsemmi pjanu ghandu jindaqq biss bejn l-4.00 p.m. u s-6.00 p.m. u l-10.00 a.m. sa 12.00 p.m.;

Rat ir-rikors ta' appell ta' l-imsemmijin Michael Camilleri u Jennifer Camilleri ipprezentat fit-12 ta' Marzu 2007 li permezz tieghu talbu li din il-Qorti (1) tirrevoka, thassar u tannulla s-sentenza appellata in kwantu sabithom hatja u kkundannathom ihallsu *ammenda* ta' Lm25, u (2) tirrevoka, thassar u tannulla s-sentenza appellata in kwantu ordnat illi l-imsemmi pjanu ghandu jindaqq biss bejn l-4.00 p.m. u s-6.00 p.m. u l-10.00 a.m. sa 12.00 p.m. u dan bi ksur tad-dritt kostituzzjonali taghha illi tgawdi hwejjigha b'mod l-aktar ampju;

Rat l-atti kollha tal-kawza;

Semghet il-provi;

Semghet it-trattazzjoni tad-difensuri tal-partijiet;

Ikkunsidrat:

L-aggravji ta' l-appellanti huma fil-qosor is-segwenti: (1) Ma ngabitx prova li d-daqq tal-pjanu kien qiegħed jikser il-bon ordni u l-kwiet tal-pubbliku; meta sar access minn

Vincent Ciliberti, id-*decibel meter* ma rregistra l-ebda awment ta' hoss; (2) Subordinament, l-ordni imposta dwar hinijiet li fihom seta' jindaqq il-pjanu huwa llogiku u eccessiv.

Dan il-kaz jirrigwarda ilment tal-konjugi Tonio u Geraldine Schembri, li joqoghdu hajt ma' hajt ma' l-appellanti, dwar id-daqq regolari ta' pjanu minn bint l-appellanti Erica. Stranament Erica Camilleri ma gietx akkuzata u minflok giet akkuzata ohtha ohra (Marquita – ara sentenza liberatorja ta' l-24 ta' Ottubru 2007) u gew akkuzati wkoll l-appellanti. L-imputazzjoni migjuba kontra l-appellanti, u li dwarha nstabu hatja, hi dik ta' ksur ta' bon ordni jew kwiet tal-pubbliku skond l-artikolu 338(dd) tal-Kodici Kriminali. Dak li din il-Qorti trid tiddetermina fl-ewwel lok huwa jekk id-daqq tal-pjanu jikkostitwixxix ksur ta' bon ordni jew kwiet tal-pubbliku skond l-imsemmija disposizzjoni tal-ligi.

Issa, kif gie spjegat fl-Appell Kriminali fl-ismijiet **II-Pulizija v. Paul Busuttil** deciz fit-23 ta' Gunju 1994<sup>1</sup>:

**“Skond giurisprudenza kostanti tal-Qrati taghna, dan ir-reat javvera ruhhu meta jkun hemm dak li fil-*common law* Ingliza kien jissejjah ‘a breach of the peace’. Din l-ekwiparazzjoni ta' dana r-reat mal-kuncett Ingliz ta' ‘a breach of the peace’ tirisali ghal zmien Sir Adriano Dingli li proprju f'kawza deciza minnu fl-10 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 nella opinione ferma della sicurezza sociale, - nel rispetto dei diritti e dei doveri sia degli individui in faccia all'autorita` pubblica, sia degli individui stessi fra loro, e ogni atto che toglie o diminuisce la opinione della sicurezza pubblica, o della sicurezza individuale, e` violazione dell'ordine pubblico, indipendentemente dalla perpetrazione di altro reato’***(Kollez. Vol. XII, p. 472, 475).

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<sup>1</sup> Vol. LXXVIII.v.277.

A skans ta' hafna repetizzjoni, din il-Qorti taghmel referenza ghall-gurisprudenza migbura fl-artikolu intitolat '*Calleja v. Balzan: Reflections on Public Order*' publikat fil-Vol. X ta' *The Law Journal - Id-Dritt (University of Malta, Autumn 1983)* pagna 13 et seq., u speċjalment pagni 28 sa 31. B'zieda ma' dak li hemm f'dak l-artikolu wiehed jista' jghid li r-reat ta' '*breach of the peace*' fil-ligi Skocciza jirrikjedi ukoll certu element, imqar f'ammont zghir hafna, ta' allarm. Fi kliem McCall Smith u 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 said not necessarily to be 'alarm in the sense of 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 impossibbli li wiehed jiddeciedi aprioristikament x'jammonta jew x'ma jammontax f'kull kaz ghar-reat ta' ksur volontarju tal-bon ordni u l-kwiet tal-pubbliku. Kif jghid awtur iehor 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).*

U aktar 'il 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. 41-01).**

Fl-Appell Kriminali fl-ismijiet **Il-Pulizija v. Joseph Spiteri** deciz fl-24 ta' Mejju 1996, din il-Qorti diversament presjeduta ziedet tghid hekk:

**"Il-Qorti hawnhekk tixtieq tippreciza a skans ta' ekwivoci li l-kuncett ta' '*breach of the peace*' kif abbraccjat fl-lskozja huwa aktar wiesa' minn kif gie interpretat 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 inghad, il-Qrati taghna jidher li fil-massima segwew, gie spjegat mill-Professor A.T.H. 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 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 dana kollu din il-Qorti tara li, bhala regola, ikun hemm il-kontravvenzjoni kontemplata fil-paragrafu (dd) ta' l-art. 338 tal-Kap. 9 meta jkun hemm ghemil volontarju li minnu nnifsu jew minhabba c-cirkostanzi li fihom dak l-ghemil isehh inissel imqar minimu ta' inkwiet jew thassib f'mohh persuna (li ma tkunx l-akkuzat jew imputat) dwar l-inkolumita` fizika ta' 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. Naturalment dawn ic-cirkostanzi jridu jkun tali li oggettivament inisslu l-imsemmi inkwiet jew thassib.”<sup>2</sup>**

Fid-dawl ta' dan kollu, ghemil fih innifsu innocenti u perfettament legittimu, bhalma hu d-daqq ta' pjanu, ma jistax oggettivament inissel tali inkwiet jew thassib. Jista' jammomta ghal inkonvenjent u, possibilment, anke

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<sup>2</sup> Ara wkoll Appelli Kriminali: **Il-Pulizija v. Alfred Pisani**, 5 ta' Mejju 1995; **Il-Pulizija v. Pio Galea**, 17 ta' Ottubru 1997; **Il-Pulizija v. Andrea Galea et**, 30 ta' Gunju 1998

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inkonvenjent serju, izda tali inkonvenjent mhuwiex kolpit bl-artikolu 338(dd) in dizamina. Ghal dak li huwa inkonvenjent kagunat minn hsejjes, il-ligi taghna tipprovdi disposizzjonijiet ohra. Hekk, per ezempju, l-artikolu 338(m) tal-Kap. 9 jippunixxi lil min "bil-lejl, jikser il-mistrieh tan-nies bi hsejjes jew ghajjat, jew b'mod iehor". U l-artikolu 41 tal-Kap. 10 – li, pero`, l-appellanti ma gewx akkuzati bi ksur tieghu – jirregola l-uzu ta' strument tal-muzika u strumenti ohra simili kemm fit-toroq kif ukoll fid-djar.

Konsegwentement l-appell jimmerita li jigi milqugh.

Ghal dawn il-motivi:

Tiddeciedi billi tilqa' l-appell ta' Michael u Jennifer Camilleri, tirrevoka s-sentenza appellata wkoll in kwantu tirreferi ghall-imsemmijin Michael u Jennifer Camilleri, u minflok tiddikjarahom mhux hatja u tilliberahom minn kull imputazzjoni, piena u ordni taht l-artikolu 377(3) tal-Kap. 9 tal-Ligijet ta' Malta. Fl-istess hin, fl-interess tal-bwon vicinat, din il-Qorti ma tistax ma tirrakkomandax l-uzu ta' prudenza.

**< Sentenza Finali >**

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