



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

**MAGISTRAT DR.
EDWINA GRIMA**

Seduta tad-29 ta' Settembru, 2010

Numru. 698/2008

**Il-Pulizija
(Spettur Angelo Gafa)**

vs

**Anthony Cassar ta' 61 sena bin George u Josephine
nee' Farrugia Bugeja, imwieled Paola fil-25 ta'
Dicembru 1949, residenti f'Marandelle, Triq ix-Xintill,
Tarxien, detentur tal-karta ta'l-identita numru
45750(M)**

Il-Qorti,

Rat l-imputazzjoni migjuba kontra l-imputat Anthony Cassar li permezz taghha huwa gie akkuzat talli f'dawn il-Gzejjer, fix-xahar ta' Gunju 2007 u fix-xhur ta'qabel, b'diversi atti maghmulin fi zminijiet differenti li jiksru l-istess disposizzjonijiet tal-ligi u li gew maghmula b'risoluzzjoni wahda, ikkorrompa lil Ronald Galea, General Manager ta' CMA-CGM Agencies Worldwide

Kopja Informali ta' Sentenza

(Malta) Limited, u dana billi tah xi rigal jew weghda jew offerta ta' xi rigal fi flus jew f'utili iehor, jew ta' xi vantagg iehor, li ghalihom Ronald Galea ma kellux jedd, u dana sabiex Ronald Galea jaghmel dak li kien fid-dmir tieghu li jaghmel.

Rat id-dokumenti esebiti.

Semghet il-provi.

Rat n-nota ta' rinviiju ta'l-Avukat Generali tas-26 ta' Jannar 2009.

Semghet illi l-imputat ma kellux oggezzjoni illi dana il-kaz jigi trattat u deciz bil-procedura sommarja minn din il-Qorti.

Semghet trattazzjoni.

Ikkunsidrat,

Illi dwar l-fatti li sawwru dana l-kaz hemm qbil bejn il-partijiet. Mill-provi akkwiziti irrizulta illi l-imputat Anthony Cassar huwa kemm azzjonista kif ukoll Chairman tas-Socjeta Cassar Ship Repair Limited u is-Socjeta Cassar Enterprises Limited. L-iskop tan-negozju huwa proprju li jipprovdi fost affarijiet ohra is-servizz ta' tiswija ta' vapuri. Jirrizulta illi s-socjeta CMA CGM Agencies Worldwide (Malta) Limited hija klijenta tas-socjeta gestita mill-imputat li kien joffri allura is-servizz ta' tiswija ta' vapuri li jaslu Malta mgħobbija b'containers, appartenenti lis-socjeta CMA CGM. Illi fiz-zmien indikat fl-akkuza jidher illi l-persuna li kienet tmexxi dina l-kumpanija hawn Malta kien certu Ronald Galea. Assistent tieghu kien John Portelli li fil-kawza jirrapprezenta s-socjeta parti leza. Jidher illi peress illi s-Socjeta Cassar Ship repair kellha bhala kompetitur tagħha is-socjeta Bezzina Ship Repair, f'xi zmien dana Ronald Galea (li del resto qabel ma ha it-tmexxija tal-kumpanija f'idejh kien jokkupa l-kariga ta' Operations Manager) beda jiltob tip ta' *commission* jew kif isejjhilha l-imputat "gratuity" ta' 5% fuq it-total ta'kull invoice. Jidher illi Anthony Cassar ma sab l-ebda

problema biex jaghtih dina l-commission u fil-fatt inharrgu diversi cekkijiet f'isem Ronald Galea personalment. L-imputat isostni illi huwa qatt ma kien jaf illi s-socjeta CMA CGM ma kenitx taf b'dan il-gratuity payment ghax ghalih Ronald Galea kien jirrapprezenta lil CMA CGM f'Malta. Inoltre isostni kemm fl-istqarrija tieghu kif ukoll meta jixhed quddiem il-Qorti illi dana it-tip ta' hlas hija prassi normali fil-gestjoni normali ta' kwalunkwe attivita kummercjali. Cassar jammetti li b'kollox huwa kien ghadda s-somma ta' Lm7870 lil Ronald Galea u dana kolha permezz ta' cekkijiet li huma esebiti fl-atti tal-kawza.¹ Dawn il-flus Ronald Galea utilizzahom ghall-uzu personali tieghu billi xtara yacht minghand is-socjeta SunDream Limited. Jirrizulta ukoll illi l-imputat kien ghadda self personali lil Ronald Galea fl-ammont ta' Lm20000. Illi dana is-self inghata minghajr imghaxijiet u minghajr terminu ghal hlas. Meta jixhed Ronald Galea jghid illi la jaf kemm hallas minnu dana is-self u lanqas jaf kemm ghad fadallu jaghtih.²

Illi min-nota tar-rinviju ghal gudizzju ta'l-Avukat Generali jirrizulta illi l-imputat qed tigi akkuzat bir-reat tal-korruzzjoni kif ikkontemplat fl-artikolu 121(1) tal-Kodici Kriminali, kif marbut ma'l-artikoli 115(a) u 120(1) tal-Kapitolu 9 tal-Ligijiet ta' Malta. Illi dana l-artikolu tal-ligi mal-promulgazzjoni tieghu fis-seklu dsatax kien jitkellem dwar il-korruzzjoni tal-gurati, izda mal-introduzzjoni tal-emendi fl-1974 dina id-disposizzjoni tal-ligi giet kompletament sostitwita sabiex inkludiet ukoll "kull korp imwaqqaf b'ligi li jkollu personalita guridika distinta" jew kull persuna impjegata ma' dak il-korp" sabiex b'hekk il-ligi setghet tkopri wkoll il-korruzzjoni fil-kumpaniji parastatali li bdew jitwaqqfu f'dak iz-zmien. Izda kien hemm riforma shiha ta' dina id-disposizzjoni tal-ligi bl-implementazzjoni f'Malta tal-*European Criminal Law Convention on Corruption*³ u dana permezz ta'l-Att III ta'l-2002. Permezz ta' dana l-Att, kien hemm l-introduzzjoni tal-korruzzjoni fis-settur privat u dana kif stabbilit fl-imsemmija Konvenzjoni. Illi fl-artikolu 7 taghha, l-Konvenzjoni titkellem dwar

¹ Dokumenti AG 4 u AG5

² Ara xhieda Ronald Galea a fol.89

³ ETS No.173

“Active bribery in the private sector” u tiddisponi testwalment:

“Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally in the course of business activity, the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties”.

Imbaghad fl-artikolu 8 l-istess Konvenzjoni titkellem dwar **“Passive bribery in the private sector”**:

“Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, in the course of business activity, the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties.”

Dawn iz-zewg artikoli ghalhekk jestendu r-responsabbilta' kriminali ghal korruzzjoni fis-settur privat ukoll. Illi fl-Explanatory Report ghal dina l-Konvenzjoni⁴ jinghad:

“Criminalising private corruption appeared as a pioneering but necessary effort to avoid gaps in a comprehensive strategy to combat corruption. The reasons for introducing criminal law sanctions for corruption in the private sphere are manifold. First of all, because corruption in the private sphere undermines values like trust, confidence or loyalty, which are necessary for the maintenance and

⁴ <http://conventions.coe.int/treaty/en/Reports/Html/173.htm>

development of social and economic relations. Even in the absence of a specific pecuniary damage to the victim, private corruption causes damage to society as a whole. In general, it can be said that there is an increasing tendency towards limiting the differences between the rules applicable to the public and private sectors. This requires redesigning the rules that protect the interests of the private sector and govern its relations with its employees and the public at large. Secondly, criminalisation of private sector corruption was necessary to ensure respect for fair competition. Thirdly, it also has to do with the privatisation process. Over the years important public functions have been privatised (education, health, transport, telecommunication etc). The transfer of such public functions to the private sector, often related to a massive privatisation process, entails transfers of substantial budgetary allocations and of regulatory powers. It is therefore logical to protect the public from the damaging effects of corruption in businesses as well, particularly since the financial or other powers concentrated in the private sector, necessary for their new functions, are of great social importance”.

Imbagħad ir-rapport jghaddi sabiex jelenka d-differenzi li hemm bejn il-korruzzjoni ta'l-ufficjal pubbliku u l-korruzzjoni in dizamina meta jinġhad:

In general, the comments made on active bribery of public officials (Article 2) apply mutatis mutandis here as well, in particular as regards the corrupt acts performed, the mental element and the briber. There are, nevertheless, several important differences between the provisions on public and private sector bribery. First of all, Article 7 restricts the scope of private bribery to the domain of "business activity", thus deliberately excluding any non-profit oriented activities carried out by persons or organisations, e.g. by associations or other NGO's. This choice was made to focus on the most vulnerable sector, i.e. the business sector. Of course, this may leave some

gaps, which Governments may wish to fill: nothing would prevent a signatory State from implementing this provision without the restriction to "in the course of business activities". "Business activity" is to be interpreted in a broad sense: it means any kind of commercial activity, in particular trading in goods and delivering services, including services to the public (transport, telecommunication etc).

The second important difference concerns the scope of recipient persons in Article 7. This provision prohibits bribing any persons who "direct or work for, in any capacity, private sector entities". Again, this a sweeping notion to be interpreted broadly as it covers the employer-employee relationship but also other types of relationships such as partners, lawyer and client and others in which there is no contract of employment. Within private enterprises it should cover not only employees but also the management from the top to the bottom, including members of the board, but not the shareholders. It would also include persons who do not have the status of employee or do not work permanently for the company -for example consultants, commercial agents etc.- but can engage the responsibility of the company. "Private sector entities" refer to companies, enterprises, trusts and other entities, which are entirely or to a determining extent owned by private persons. This of course covers a whole range of entities, notably those engaged "in business activities". They can be corporations but also entities with no legal personality. For the purpose of this provision, the word "entity" should be understood as meaning also, in this context, an individual. Public entities fall therefore outside the scope of this provision.

The third important difference relates to the behaviour of the bribed person in the private sector. If, in the case of public officials, it was immaterial whether there had been a breach of his duties, given the general expectation of transparency, impartiality and loyalty in this regard, a breach of duty is required for

private sector persons. (sottolinjar tal-Qorti) Criminalisation of bribery in the private sector seeks to protect the trust, the confidence and the loyalty that are indispensable for private relationships to exist. Rights and obligations related to those relationships are governed by private law and, to a great extent, determined by contracts. The employee, the agent, the lawyer is expected to perform his functions in accordance with his contract, which will include, expressly or implicitly, a general obligation of loyalty towards his principal, a general obligation not to act to the detriment of his interests. Such an obligation can be laid down, for example, in codes of conduct that private companies are increasingly developing. The expression, "in breach of their duties" does not aim only at ensuring respect for specific contractual obligations but rather to guarantee that there will be no breach of the general duty of loyalty in relation to the principal's affairs or business. The employee, partner, managing director who accepts a bribe to act or refrain from acting in a manner that is contrary to his principal's interest, will be betraying the trust placed upon him, the loyalty owed to his principal. This justifies the inclusion of private sector corruption as a criminal offence. The Convention, in Article 7, retained this philosophy and requires the additional element of "breach of duty" in order to criminalise private sector corruption. The notion of "breach of duty" can also be linked to that of "secrecy", that is the acceptance of the gift to the detriment of the employer or principal and without obtaining his authorisation or approval. It is the secrecy of the benefit rather than the benefit itself that is the essence of the offence. Such a secret behaviour threatens the interests of the private sector entity and makes it dangerous".

Illi ghalhekk l-emendi ghall-artikolu 121 tal-Kodici gew imfassla biex jinkludu fost affarijiet ohra dana it-tip ta' korruzzjoni. Il-Qorti issa ser tghaddi sabiex tezamina l-mod kif dawn iz-zewg disposizzjonijiet ta' dina l-Konvenzjoni gew implimentati o meno fil-ligi taghna. Illi l-

Group of States against Corruption tal-Unjoni Erwopeja, jew kif inhi ahjar maghrufa bhala GRECO ghamlet diversi studji dwar jekk dina l-Konvenzjoni gietx implimentata fil-ligi penali taghna. Illi fl-Evaluation report on Malta on Incrimination – Strasbourg 8 October 2009 (www.coe.int) inghad is-segwenti mill-GET (GRECO Evaluation Team):

“Active and passive bribery in the private sector are criminal offences under Maltese law. Article 121(3) CC, which renders the provisions relating to passive bribery of domestic public officials contained in Article 115 CC applicable also to passive bribery in the private sector under certain conditions, reads: “The provisions of this sub-title in relation to an officer or person referred to in article 112 or a public officer or servant referred to in article 115 shall also apply to and in relation to any employee or other person when directing or working in any capacity for or on behalf of a natural or legal person operating in the private sector who knowingly, in the course of his business activities, directly or through an intermediary and in breach of his duties, conducts himself in any manner provided for in those articles:

Provided that for the purposes of this subarticle the expression "breach of duty" includes any disloyal behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply within the business in question.”

Active bribery in the private sector is covered by the provisions contained in Article 120(1) CC, which makes reference to the provisions concerning active bribery applicable to the private sector according to the following: “In the cases referred to in articles 115, 116, 117 and 118 [...] or the person to whom any of the said articles applies in accordance with any provision under this Code or under any other law, as the case may be, shall be deemed to be an accomplice”.

Elements/concepts of the offence

“Persons who direct or work for, in any capacity, private sector entities

. The wording “...any employee or other person when directing or working in any capacity for or on behalf of a natural or legal person operating in the private sector...” are expressly provided in Article 121 (3) CC.

“In the course of business activity”; “...in breach of duties”

Both these elements are components of this offence: “In the course of business activity” is explicitly provided for in Article 121 (3) CC. The expression “breach of duty” is contained in the same Article and is furthermore explained in the second paragraph of Article 121(3) to include any disloyal behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply within the business in question. Moreover, Maltese law extends the scope of private sector bribery by also including persons working for other natural persons, i.e. the offence is not limited to corporate entities (such as companies).

Other elements

All other elements/concepts, including the penal sanctions, described under bribery of domestic public officials (above) are equally applicable in respect of this offence. Furthermore, Article 121D CC stipulates that where a person is found guilty of an offence relating to, inter alia, private sector bribery and such a person is the director, manager, secretary or other principal officer of a body corporate or has the power to represent, take decisions or bind the body corporate, and the offence was committed for the benefit of that same body corporate, then such a person is deemed to be vested with the legal representation of that body corporate and is thus

liable to an extensive fine (multa) of between EUR 1,165 and 1,164,687 approx.

The authorities informed the GET that there were no statistics or specific case law available in respect of this offence.

Illi minghajr l-icken dubbju l-akkuza migjuba fil-konfront ta' l-imputat fil-kaz in dizamina jikkoncerna 'l hekk imsejjah "active bribery" kif sancit fil-Konvenzjoni. Illi l-Evaluation Report tal-GRECO kif indikat iktar 'il fuq iqis illi dina it-tip ta' korruzzjoni hija inkorporata fl-artikolu 120(1) tal-Kodici penali taghna li jirrendi bhala komplici l-persuni imsemmija fl-artikolu 121(1) u (3). Illi d-difiza tikkontendi illi dawn l-artikolu tal-ligi ma isemmux l-applikazzjoni ta' l-artikolu 120 li jitkellem dwar il-komplici. Il-Qorti, bid-dovut rispettt lejn l-abbli difensuri ta' l-imputat, ma tistax taqbel ma dina l-linja difenzjonali. Illi l-artikolu 120(1) gie fil-fatt emendat permezz ta' l-Att III ta' l-2004 sabiex jinkludi fih is-segweni frazi:

"jew persuna li dwarha japplika xi artikolu minn dawk imsemmija (u cioe' b'referenza ghall-artikoli 115, 116, 117 u 118), skond kull disposizzjoni ta' dan il-Kodici jew taht kull ligi ohra."

Dina il-frazi ghalhekk introdotta fl-2004 tirrendi komplici il-persuna li tikkorrompi ... xi persuna li dwarha japplika l-artikolu 115 fost ohrajn. Illi ghalhekk kemm l-artikolu 121(1) kif ukoll is-sub-inciz 3 ta' l-istess artikolu li jitkellmu dar il-*passive bribery* fis-settur privat jaghmel referenza specifika ghall-artikolu 115 u ghalhekk il-persuna li tikkorrompi lil dana l-impjegat fis-settur privat ghandu jitqies bhala komplici ai termini ta' l-artikolu 120(1) kif del resto jinghad fl-Evaluation Report tal-GET hawn fuq indikat.

Ikkunsidrat,

Illi jidher mill-provi akwiziti illi ma hemmx kontestazzjoni illi Ronald Galea kien il-persuna li kellu it-tmexxija f'idejh

hawn Malta tas-socjeta CMA CGM u kwindi certament jiffigura bhala il-persuna imsemmija fl-artikolu 121(1) u (3). Kif ma hemmx dubbju lanqas, u dana johrog minn ammissjoni tieghu stess meta jixhed, illi huwa kien qieghed jircievi rigal konsistenti fi flus li ma kienux dovuti. Jirrizulta illi Ronald Galea kien qieghed jithallas 5% commission jew gratuity payment mill-imputat direttament sabiex huwa jghaddi l-kuntratti tax-xoghol appartenenti lis-socjeta CMA CGM lis-socjeta immexxija mill-imputat. Ghalhekk dana l-hlas kien qieghed isir in konnessjoni mal-kariga okkupata minnu fl-istess socjeta. Illi ma hemmx dubbju lanqas illi Ronald Galea kien qieghed jircievi dawn il-flus bi ksur tad-dmirijiet tieghu bhala General Manager tal-kumpanija hawn Malta. Dawn il-flus huwa juzahom sabiex jakkwista yacht ghalih personalment. Fil-fatt ittiehdu anki proceduri kriminali fil-konfront ta' dana Galea u dana fuq akkuzi ta' misapproprjazzjoni tal-flus tal-kumpanija.

Illi maghdud dana kollu ghalhekk jirrizulta illi l-elementi legali li j sawru ir-reat ta' *active bribery* fis-settur privat u cioe' tal-persuna tal-komplici fir-reat tal-korruzzjoni huma is-segwenti:

1. Ir-reat irid ikun imwettaq b'mod intenzjonali fil-kors ta' attivita kummercjali.
2. Irid ikun hemm il-weghda, l-offerta jew l-ghotja, sew direttament kif ukoll indirettament ta' kwalunkwe tip ta' vantagg.
3. Il-persuni indikati fl-artikoli 121(1) u 121(3). Illi l-emendi introdotti permezz ta' l-artikolu 28 tal-Att III ta' l-2002 ziedu il-kliem "jew xi korp iehor li jkollu personalita guridika distinta" fl-artikoli 121(1), kif ukoll gie introdott s-sub-inciz 3 ta' l-istess artikolu. Ghaldagstant ma hemmx dubbju illi l-iskop ta' dina l-emenda kienet li tinkludi l-korruzzjoni fis-settur privat permezz ta' l-artikolu 121(1) li jitratta fost ohrajn dwar l-persuna li jkolha l-funzjonijiet li jkollhom x'jaqsmu ma' l-amministrazzjoni ta' korp li ghandu personalita guridika distinta u cioe' kwalunkwe socjeta

kummercjali, filwaqt li l-artikolu 121(3) imbaghad hija iktar wiesgha u tinkludi kull impjegat jew persuna oħra meta dawn ikunu qed imexxu jew ihadmu f'xi kapacita' għal jew f'isem xi persuna naturali jew guridika li tkun qed taħdem fis-settur privat.

4. sabiex dik il-persuna tagħmel jew tonqos milli tghamel xi haga u dana bi ksur tad-dmirijiet tagħha. Illi kif inghad fir-rapport iktar 'il fuq indikat dana jinkludi kwalsiasi ksur tad-dmir tal-lejalta' lejn il-principal u għalhekk l-element tal-habi fl-accettazzjoni tar-rigal jew offerta minghajr ma tinkiseb minn qabel l-awtorizzazzjoni tal-principal hija ukoll inkluzi f'dana l-element. Inltre kien id-dmir ta' Galea illi huwa jagħzel l-iktar offerta vantagguzja għal kumpanija fejn kien qieghed jahdem, izda minflok jagħmel dan huwa kien jiddeciedi li jagħti dawn il-kuntratti lil persuna li kienet tagevolah personalment permezz tal-flus li kien idahhal f'butu.

Illi mill-provi akkwiziti ma hemmx dubbju illi it-tieni u it-tielet elementi kif hawn fuq indikati gew ippruvati billi ma hemmx dubju illi saret l-ghotja tar-rigal fil-kors ta' attivita' kummercjali u illi dan sar lil Ronald Galea li kellu il-kariga ta' General Manager mas-socjeta CMA CGM. Il-Qorti madanakollu trid tezamina l-element intenzjonali fis-sens illi trid tistabilixxi jekk l-imputat kellux l-intenzjoni li ixahham lil Galea sabiex ighaddielu il-kuntratti tax-xogħol.

Illi l-imputat isostni illi huwa ma kienx jaf illi Ronald Galea kien qieghed jiehu dawn il-flus għad insaputa tas-socjeta li magħha huwa kien impjegat. Jghid illi għalih Ronald Galea kien il-bniedem li kien jirrapprezenta is-socjeta CMA CGM hawn Malta u li għalhekk kwlaunke ftehim li huwa kien jilhaq ma' dana Galea għalih kien ifisser illi kien qed jiftiehem mas-socjeta. Illi l-Qorti mill-ewwel tistqarr illi hija ma temminix lill-imputat u dana għas-segwenti ragunijiet li jirrizultaw mill-provi.

1. Ic-cekkijiet tal-“commission” kienu jinharrgu f'isem Ronald Galea personalment u ma kenux jinharrgu f'isem il-kumpanija. Dana jikkuntrasta mal-fatt illi l-kontijiet u l-invoices dejjem kienu jinharrgu f'isem is-socjeta CMA

CGM. Fil-fatt Ronald Galea bil-pagamenti mgħoddija lilu jakkwista yacht għalih personali.

2. Jidher illi dina l-prattika bdiet isehh meta dahhlet socjeta ohra kompetitur mal-Cassar Ship Repair u cioe' is-socjeta Bezzina Ship Repair.

3. Ma jidhirx illi kienet tinhareg jew tigi mitluba xi tip ta' ricevuta kemm fiskali kif ukoll xort'ohra għal dana il-pagament li kien qed isir lil Ronald Galea. Illi għalkemm l-imputat iressaq bhala xhud lil Alphonse Saliba, il-company secretary li fix-xhieda tieghu isostni illi dina kienet xi prassi normali, madanakollu ma jipproduci l-ebda dokument li jindika illi fil-fatt dan kien hekk. La jigu prodotti il-kotba tal-kumpanija ta' l-imputat sabiex huwa jipprova illi l-flus kienu qed jinchargu mill-kotba tal-kumpanija u wisq anqas igib prova ta' xi ricevuta li huma kienu jircevu għal dana il-hlas li kien qed isir.

4. Is-self li inghata minn Anthony Cassar lil Ronald Galea personalment fl-ammont ta' Lm20000⁵. Dana juri illi kien hemm relazzjoni iktar personali bejn l-imputat u dana Galea tant illi l-istess Galea hass li seta' jasal għal ftehim ta' self ma' klijent tal-kumpanija fejn kien impjegat. Anke t-termini ta' dana il-ftehim huma dubbjuzi. Jidher illi l-imputat ma kellux problema biex isellef ammont kbir ta' flus lil Galea u dana minghajr ma jigu mifthiema imghaxijiet u lanqas jigi iffissat terminu għal hlas lura ta' l-ammont misluf. Di piu' fix-xhieda tieghu Galea jistqarr illi lanqas biss jaf kemm hallas lura minn dana l-ammont u lanqas jaf kemm għad fadallu jaghti lill-imputat. Illi għalhekk m'hemmx dubbju illi dawn il-flus inghataw mill-imputat lil Galea, sabiex dana ta' l-ahhar jagevolah fl-ghoti tax-xoghol.

Dana kollu jwassal lil dina l-Qorti għal konvizzjoni morali illi l-imputat kien qiegħed ihallas dina l-"gratuity" lil Galea personalment u dan ad insaputa tas-socjeta CMA CGM u dana sabiex l-istess Galea, li kellu s-setgha jiddeciedi fuq l-ghoti ta' kuntratti tal-kumpanija, ighaddi l-kuntratti tax-

⁵ Dokument JP5

xoghol lill-imputat u s-socjeta gestita minnu u mhux lill-kompetitur tieghu. Dana ma hu xejn hlief tixhim li kien qed isir mill-imputat fil-kors ta'l-attivitá kummercjali immexxija minnu. Illi kif ighid tajjeb il-Professor Mamo (ovvjament hawnhekk b'referenza ghal persuna ta'l-ufficjal pubbliku): "The briber or corruptor is only an accomplice in as much as he instigates or strengthens the resolution of the public officer or employee by giving or offering rewards or promises." (sottolinjar tal-Qorti). Huwa precisament dan illi l-imputat kien qed jaghmel. Illi ghalhekk anke l-element intenzjonali gie ippruvat.

Illi meta tigi biex tqies il-piena li ghandha tigi inflitta, l-Qorti ser tiehu in konsiderazzjoni diversi fatturi f'dana il-kaz. Illi l-ligi in materja dwar il-korruzzjoni fis-settur privat hija kuncett relattivament gdid fid-dritt penali ta' pajjizna. Kuncett li gie introdott essenzjalment b'konsegwenza tas-shubija ta' pajjizna fl-Unjoni Ewropeja. Illi ma hemmx dubbju, kif isostni l-imputat stess, illi dina l-prassi fl-attivitá kummercjali ta'pajjizna issehh, bi ftit kummercjanti forsi huma a konoxxenza ta' dak li tipprovdi il-ligi in materja. Dina mhijiex skuza madanakollu, peress illi skond id-dritt penali taghna dana it-tip ta' agir, b'effett mis-sena 2002, huwa ikkunsidrat bhala reat kriminali. Illi apparti dana kollu mill-atti jirrizulta illi l-imputat ghandu fedina penali kwazi nadifa. Inoltre jidher illi fil-mori ta' dina l-kawza intlahaq ftehim mal-parti leza u cioe' mas-socjeta CMA CGM tant illi fil-verbal tas-seduta tat-22 ta' Marzu 2010, l-istess parti leza iddikjarat illi ma kellhiex iktar interess f'dawn il-proceduri. Illi ghalhekk ma hemmx dubbju illi piena karcerarja f'dawn ic-cirkostanzi certament ma hijiex idonja u ghalhekk l-Qorti ser tghaddi biex tapplika fil-konfront ta'l-imputat id-disposizzjonijiet tal-Kapitolu 446 tal-Ligijiet ta' Malta.

Ghaldaqstant il-Qorti wara li rat l-artikoli 18, 120(1), 115(a) u 121(1), issib lill-imputat hati ta'l-akkuza migjuba fil-konfront tieghu, izda fid-dawl tal-konsiderazzjonijiet hawn fuq maghmula u b'applikazzjoni ta'l-artikolu 22 tal-Kapitolu 446 tal-Ligijiet ta' Malta, l-Qorti qed tillibera lill-imputat bil-

Kopja Informali ta' Sentenza

kundizzjoni illi huwa ma jikkommettiex reat iehor fi zmien
sena mil-lum.

Il-Qorti twissi lil hati bil-konsegwenzi skond il-ligi jekk
huwa jikkommetti reat iehor matul dana il-perijodu ta' liberta'
kundizzjonata.

< Sentenza Finali >

-----TMIEM-----