



MALTA

**QORTI TA' L-APPELL KRIMINALI**

**ONOR. IMHALLEF**

**MICHAEL MALLIA**

Seduta tat-2 ta' Ottubru, 2014

Appell Kriminali Numru. 95/2011

Appell Nru: 95/2011

Il-Pulizija

[Supretendent Paul Vassallo

Spettur Louise Calleja

Spettur Therese Sciberras]

Vs

Sabrina Bonnett

Illum 2 ta' Ottubru, 2014,

Il-Qorti,

Rat l-akkuza migjuba kontra l-appellata Sabrina Bonnett, quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli :

Fit-18 ta' Novembru 2006, u fil-gimghat ta' qabel, f'dawn il-Gzejjer, zammet jew ezercitat jew kellha sehem ma' ohrajn fl-ezercizzju ta' burdell jew ta' dar, hanut jew

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lokal iehor jew ta' xi parti minnhom li huma ffrekwentati jew maghduda bhala li hija ffrekwentata ghal skop ta' prostituzzjoni jew ghal skopijiet ohra immorali bi ksur tal-Artikoli (1) (3) tal-Kap. 63 tal-Ligijiet ta' Malta.

Fl-istess dati, lok, hinijiet u cirkostanzi offendiet il-pudur jew il-morali, b'ghemil li sar f'lok pubbliku, jew f'lok espost ghall-pubbliku bi ksur tal-Art. 209 tal-Kap. 9 tal-Ligijiet ta' Malta.

Fl-istess dati, lok, hinijiet u cirkostanzi f'lok iehor pubbliku, nezghet gharwiena jew ma kinitx liebsa xieraq bi ksur tal-Art. 338 (q) tal-Kodici Kriminali.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali tal-11 ta' Frar, 2011, fejn il-Qorti iddikjarat lill-imputata mhux hatja tal-akkuzi migjuba fil-konfront taghha u konsegwentement illiberatha mill-istess akkuzi.

Rat ir-rikors tal-appell ta l-Avukat Generali pprezentat fir-registru ta' din il-Qorti nhar it-28 ta' Frar, 2011 li bih talab lil din il-Qorti thassar u tirrevoka s-sentenza imsemmija u minflok issib lill-appellata hatja ta' l-akkuzi kif dedotti kontra taghha u tinfliggi l-piena skond il-ligi.

Fliet l-atti kollha processwali.

Rat il-fedina penali aggornata tal-appellata, esebita mill-prosekuzzjoni fuq ordni tal-Qorti.

Rat l-aggravji tal-Avukat Generali li huma is-segwent:

Illi fis-17 ta' Frar, 2011 l-esponent ircieva l-atti tal-kawza u hassu aggravat bihom inkwantu l-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali ghamlet applikazzjoni u interpretazzjoni zbaljata tal-ligi a bazi ta' l-artikolu 413(1)(c) tal-Kap 9.

Illi l-esponent umilment jghid li l-Ewwel Qorti fis-sentenza ghamlet apprezzament zbaljat skond il-ligi ta' x' jikkostitwixxi prostituzzjoni u atti mmorali.

Illi l-esponent jghamel referenza ghal xi kazistika u guriprudenza barranija ta' x'inhuma l-elementi fil-ligi ta' 'Prostituzzjoni', 'Prostituta' u 'Atti mmorali'. Fil-fatt 'the essence of prostitution is the making of an offer of sexual services for reward, and that is immaterial that the person making the offer does not intend to perform them and does not do so'. 'Prostitution does not necessarily involve that the woman offers full sexual intercourse. A person who, for example masturbates clients, falls within the definition. Nor is prostitution confined to the case where the person offers his or her body passively. The breath of this definition brings proprietors of massage

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parlours where sexual indecencies are practiced, and escort agencies where such practices are encouraged within the section.'

Illi Prostituta 'includes a woman who offers her body commonly for acts of lewdness for payment although there is no act or offer of an act of ordinary sexual intercourse'. Iktar minn hekk 'prostitution is proved if it be shown that a woman offers her body commonly for lewdness for payment in return'. Il-kelma prostitute tirrelata ma' 'someone who is prepared for reward to engage in act of lewdness with all and sundry or with anyone who may hire her for that purpose'. Iktar minn hekk 'it is not necessary that she should have submitted to acts of lewdness in a passive way. Active acts of indecency by the woman herself will fall within this section.' L-esponent jirreferi wkoll ghas-sentenza O'Carroll vs United Kingdom (2005), fejn l-ECHR iddecidiet li 'one cannot use absolute rigidity in the framing of laws on what constitutes indencency and that this is traditionally given a transient definition that could be considered vague but that this is not a breach of Article 7 of the European Convention on Human Rights'.

Illi fil-kaz in dizamina ma hemm l-ebda dubju li t-tfajliet instabu mill-Pulizija jaghmlu pole u lap dancing mal-klijenti rgjel kif stqarru l-appellati stess fl-istqarrijiet esebiti. Ma hemm l-ebda dubju ukoll li Sabrina Bonett kienet taghmel dan it-tip ta' xoghol ukoll ghax dan spjegatu hija stess meta giet mitkellma mill-Pulizija. L-appellata qalet car u tond li kienet tahdem fl-AO Platinum bhala lap u pole dancer.

Fir-rapport bl-isem 'Profitable Exploits Lap Dancing in the UK' huwa spjegat illi lap dancing jirreferi ghall kull tip ta' zfin erotiku bhal zfin fuq imwejjed jew ma arbli. Ir-rapport jghid li lap dancing jista` jkun ukoll 'couch dancing and tailing with the dancer standing over a coustomer set on a couch hanging her breasts over him. The US version of lap dancing requires the woman to straddle the man's lap and rub against him. A variation involves the woman dancing between the customer's legs whilst sliding down in the chair so that her tights are rubbing the customer's genitals as she moves.'

Fl-istess rapport pole dancing hu deskritt bhala 'a cabaret performance in the main club area and is the element most commonly used in TV and film representation'.

Ta min jghid li dan it-tip ta' zfin mhux sempliciment jammonta ghall att libidinuz u zieni, imma dan it-tip ta' zfin ma hu xejn hlief 'an exhibition of wares' accessibbli ghal lap dancing u daqstant iehor huwa smiulazzjoni ta' attivita` sesswali u l-att sesswali nnifsu kif fil-fatt hu lap dancing.

Pole dancing essenzjalment hija zifna minn mara madwar lasta, u timita movimenti li mill-ewwel huma identifikati ma l-att taz-zwieg. Dan it-tip ta' zfin minnu nnifsu

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jammonta ghal ghemil zieni jew serje ta' ghemil zieni maghmulin bl-istess intenzjoni u fl-istess hin, generalment waqt xi kanzunetta, twila kemm hi twila l-kanzunetta.

Illi Francesco Carfora fid-Digesto Italiano jghid illi 'atti di libidine debbono ritenersi tutti quei contatti e quelle manovre, che possono eccitare I sensi, anche se non giungono allo sfogo completo della libidine'. Minn dan johrog car li atti ta' libidine huma dawk l-atti kollha 'diretti ad eccitare la propria concupiscenza verso piaceri carnali turpi per se stessi o per le circostanze in cui si cerca di provarli, ovvero diretti a soddisfare siffatta concupiscenza'. 'The duration of these acts is immaterial for the notion of a lewd act'.

Illi gie sostnut li 'lewd and immoral activity has been considered to take place where the predominant object and natural effect upon the observers - patrons of one portion of the performance was erotic excitation.'

Huwa propju hawnhekk fejn il-Qorti naqset li taghmel distinzjonijiet bazici li jwasslu ghal interpretazzjoni tajba tal-ligi. 'There is a difference between dancing and gyrating. There is a difference between dancing and mimicking sexual acts on stage. There is a difference too when a singer wears beachwear or underwear on stage even when the song being performed is not about the beach, swimming or, well, underwear. And a bra and panties are still either a bikini or underwear no matter how much glitter you sew into them.'

Illi inoltre skond il-ligi l-istabbiliment inkwistjoni kienu qed jintuzaw bhal briedel u bhala stabbilimenti ghal skopijiet ta' prostituzzjoni. Ghar-rigward l-interpretazzjoni liegali ta' prostituzzjoni, dan diga gie spjegat aktar il-fuq u gie spjegat bl-aktar mod car illi skond il-ligi, u mhux skond il-percezzjonijiet, kienet qed titwettaq attivita ta' prostituzzjoni gewwa l-istabbiliment in kwistjoni. Allura dawn l-istabbilimenti in kwistjoni, skond il-ligi, jikkwalifikaw bhala 'burdell' u/jew bhala 'stabbilimenti ghal skopijiet ta' prostituzzjoni'. Fil-fatt gie ritenut illi 'whether premises constitute a brothel is a question of fact and degree: they are not precluded from being a brothel just by the fact, on any one day, only one prostitute is present. Where there is a joint use of premises by a team of women for the purposes of prostitution, the premises constitute a brothel'.

Illi 'it is not necessary (to prove) that there should be evidence of any indecency or disorderly conduct being perceptible from the exterior of the house.' Sabiex l-istabbiliment jigi konsidrat bhala burdell.

Illi 'a brothel is defined as a place where people are permitted to resort for any purpose of unlawful sexual intercourse. It is not necessary that full sexual intercourse be offered there nor is it necessary that payment for such services be

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made. A brothel may be a house, or a room, or a set of rooms kept for the purposes of prostitution.'

Illi l-Ewwel Qorti zbaljat fl-analizi tal-ligi u l-fatti ghax ma hemm l-ebda dubbju li l-appellata hadet sehem f'atti mmorali f'dan l-istabbiliment u dan ghal skopijiet ta' prostituzzjoni.

Illi l-esponent bir-rispett kollu jissottometti li:

- a. Il-lap dance, pole dance u strip jammonta ghal att libidinuz quddiem il-ligi.
- b. Kull persuna li tikkommetti l-ghemil zieni li jikkonsisti fil-lap dancing u pole dancing hija kkonsiderata bhal prostituta quddiem il-ligi.
- c. L-istabbilimenti kollha, fejn il-prostituti, jaghmlu l-ghemil zieni ta' lap dancing, pole dancing u strip tease huma briedel quddiem il-ligi.
- d. Kull min jassocja ruhu, zamm, mexxa, jippermetti jew ikollu x'jaqsam ma' burdell ghandu jinstab hati tal-ksur tal-ligi.

Ikkunsidrat,

Din il-kawza hija rizultat ta' perkwizzjoni illi ghamlet il-pulizija fit-tmintax (18) ta' Novembru tal-elfejn u sitta (2006) gewwa l-fond bl-isem "AO Platium" f'San Giljan fejn hemmhekk kien hemm diversi tfajliet ta' nazzjonalitajiet varji lebsin mill-inqas illi kienu qed jixorbu jew jizfnu pole dancing jew lap dancing fl-intern ta' dan l-istabiliment frekwentat l-aktar mill-irgiel. Fid-dressing room ta' dan l-istabiliment, li ma kienx accessibbli ghall-pubbliku, kien hemm l-appellata Brincat li kienet liebsa l-hwejjeg kif jidhru fir-ritratti numru 16 u 17 esebiti mal-atti. Ghalhekk il-pulizija ressqu lill-appellata bir-reati kontemplati bl-artikolu 8 tal-Kap 63 kif ukoll bir-reat kontemplat fl-artikolu 209 tal-Kodici Kriminali u bil-kontravvenzjoni kontemplata fl-artikolu 338(q) tal-Kodici Kriminali.

B'sentenza moghtija fil-hdax (11) ta' Frar tal-elfejn u hdax (2011) (fol 184) il-Qorti tal-Magistrati ma sabitx lill-appellata hatja tal-imputazzjonijiet migjuba kontra taghha u ordnat li tkun liberata.

L-Avukat Generali hassu aggravat minn din is-sentenza u minnha interpona appell peress illi deherlu illi l-ewwel Qorti ghamlet espozizzjoni hazina tal-ligi u tat interpretazzjoni skorretta tal-fatti principalment ghad-definizzjoni tal-prostituzzjoni, burdell, u ilbies mhux xieraq illi ghamlet l-ewwel Qorti.

Ikkunsidrat:

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Jinghad mill-bidunett illi din il-Qorti taqbel perfettament mal-konkluzjoni milhuqa mill-ewwel Qorti illi l-ewwel zewg akkuzi assolutament ma jirrizultawx mill-provi migjuba mill-Prosekuzzjoni. L-unika haga li irrizulta kien biss illi l-appellata kienet wahda mit-tfajliet illi kienu fid-dressing rooms u li gew fotografati mill-pulizija illi ghamlu l-perkizzjoni.

Ghalhekk jifdal biss it-tielet akkuza u cioé illi l-appellata esponiet ruha fil-pubbliku jew gharwiena jew inkella b' ilbiex mhux xieraq.

Ikkunsidrat:

Rigward din l-akkuzi imkien ma irrizulta illi l-appellata kienet f'xi hin gharwiena f' post pubbliku jew accessibbli ghall-pubbliku. Kif già inghad l-unika haga li irrizulta illi kienet go dressing room liebsa bikini top u panty u dublett qasir. Il-Qorti tirrileva l-ewwelnett illi imkien ma irrizulta illi dawn id-dressing rooms huma accessibbli ghall-pubbliku. Fihom instabu tfajliet illi jahdmu fil-lokal u hadd aktar. Il-kwistjoni ta' ilbies mhux xieraq hija wahda soggettiva illi tiddependi hafna mill-make-up psikologiku ta' dak li jkun. Fuq dan is-suggett il-Qorti taghmel riferenza ghas-sentenza moghtija llum fl-ismijiet "Il-Pulizija versus Donald Camilleri" (Appell numru 451/2012) u "Il-Pulizija versus Duncan Fenech et" (Appelli numru 47 u 67/2011) ghal espozizzjoni aktar profonda tat-tifsira ta' "ilbies mhux xieraq." Fi kwalunkwe kaz kif jidhru fir-ritratti esebiti a fol 133, ritratti numru 16 u 17, din il-Qorti taqbel mal-konkluzjoni illi waslet ghaliha l-ewwel Qorti u cioé "... il-Qorti ma jidhrilhiex li l-ilbies illi kienet liebsa l-imputata kif riportat fir-ritratti msemija jista' jitqies bhala mhux xieraq ...". Ghalhekk il-Qorti jidhrilha illi l-ewwel Qorti fuq il-provi li kellha quddiemha setghet legalment u ragjonevolment tasal ghall-konkluzjoni illi waslet ghaliha u mhux il-kaz illi din il-konkluzjoni tigi disturbata.

Ghal dawn il-motivi l-Qorti taqta' u tiddeciedi illi tichad l-appell u tikkonferma s-sentenza appellata.

## < Sentenza Finali >

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