Court of Magistrates (Malta)
As a Court of Criminal Judicature

Magistrate Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

The Police
(Insp. Sandro Gatt)
(Inspector Neville Aquilina)

-vs-

Peter Joseph Camilleri, holder of a Maltese Identity card bearing the number 51993(M)

Drugs/K/97/2001

Today the 1st of June, 2016,

The Court,

Having seen the charges brought against the accused Peter Joseph Camilleri:

1. On these islands, on the 4th of November, 1999, and the last three years had in his possession the drug heroin specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta when he was not of an import or an export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of parts 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs was supplied to him for his personal use, according to a medical prescription as provided in the said regulations, and this in reach of Regulations 8, of the Internal Control of Dangerous Drugs (G.N. 292/1939 as subsequently amended by the Dangerous Drugs Ordinance Chapter 101, of the Laws of Malta.

2. On these islands during the same period, supplied or distributed or offered to supply or distribute the drug heroin, specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101, of the Laws of Malta, to person/s or for the use of other person/s, without being licensed by the President of Malta, without being fully authorised by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) or by other authority given by the President of Malta, to supply this drug, and without being in possession of an import and export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of part 6, of the Ordinance and when he is not duly licensed or otherwise authorised to manufacture or supply the mentioned drug, when he was not duly licensed to distribute the mentioned drug, in pursuance of the provision of Regulation 4 of the Internal Control of Dangerous Drugs Regulations (G.N. 2921939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

3. On these islands on the 20th of April, 1996, and the three months prior to that date, had in his possession the resin obtained from the plant cannabis, or any other preparation of which such resin formed the base, in terms of Section 8 of the Chapter 101 of the Laws of Malta, which drug was found in circumstances denoting that it was not for his personal use.

4. On these islands on the 20th of April, 1996, and the last month had in his possession restricted and psychotropic medicine when he was not duly authorised according to Regulations 5(1), of Legal Notice 22 of 1985 as subsequently amended, and 40A and 210A, and the third Schedule of the Medical and Kindred Professions Ordinance, Chapter 31 of the Laws of Malta and article 16 of Act V of 1985 as amended.

The Court was requested to apply Section 533(1) of Chapter 8 of the Laws of Malta, as regards to the expenses incurred by the Court Appointed Experts.

Having seen all the acts and documents exhibited including the Order of the Attorney General in terms of Article 120A(2) of the Medical and Kindred Professions Ordinance, Chapter 31 of the Laws of Malta, and Article 22(2) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, for this case to be tried summarily by this Court.[1]

Having heard the witnesses and the oral submissions of the parties.

Having seen the acts of the proceedings.

Having considered:

The Court notes that forming part of the evidence against the accused is his statement released on the 4th November, 1999, when Maltese law as it then stood, did not make provision for legal assistance in the pre-trial stage, that is

[1] Fol.185

before interrogation. The same statment reveals that the accused made certain incriminating declarations before having first sought legal advice. This was due to the fact that as stated, no such right existed at the time under Maltese Law.Thus the Court can only declare such a statement as being inadmissible for the following reasons:

The Constitutional Court in its judgement of the 3rd May, 2016, in the proceedings in the names **Daniel Alexander Holmes vs Avukat Generali et** held:

"**Fic-cirkostanzi din il-Qorti hi tal-fehma li ma jkunx għaqli li tinsisti fuq l-interpretazzjoni tagħha, għalkemm ittenni li għadha tal-fehma illi hija interpretazzjoni sostenibbli u ta' buon sens.**
U ghalhekk wasslet ghad-decizjoni illi fid-dawl tal-gurisprudenza recenti koncernanti s-sitwazzjoni legali f'Malta qabel l-emendi li dahhlu fis-sehh fl-10 ta' Frar 2010:
"…. il-Qorti ssib li kien hemm ksur tal-Artikolu 6(1) tal-Konvenzjoni abbinat mal-Artikolu 6(3)(c) tal-istess Konvenzjoni fis-sens li ma nghatatx l-assistenza legali qabel jew waqt l-interrogazzjoni tal-appellant mill-pulizija."

Earlier the Court of Criminal Appeal (Inferior Jurisdiction) in **Il-Pulizija vs Joseph Camilleri**[2] provided a detailed examination of recent judgements by the European Court of Human Rights:
"Illi id-dritt ghal smiegh xieraq kif sancit fl-artikolu 6(1) u l-artikolu 6(3)(c) tal-Konvenzjoni Ewropeja gie estiz mill-gurisprudenza ewropeja mhux biss ghal jedd li ghalih hija intitolata l-persuna akkuzata matul il-proceduri penali fil-qorti izda ukoll ghal hekk imsejjah *pre-trial stage* u cioe' ghall-istadju meta persuna tkun giet arrestata u ser tigi interrogata. Dina l-fehma ghalhekk tfisser illi l-artikolu 6(3)(c) li jipprovdi dwar l-assientenza legali ghandu isib applikazzjoni anke fl-istadju ta'l-interrogazzjoni tal-persuna suspettata. Dana ghaliex huwa principju stabbilit fis-sistema penali taghna illi persuna ghandha titqies li hija innocenti sakemm ma tigix misjuba hatja minn qorti gudizzjarja. Kwindi hija ghandha dritt illi ma tinkriminax ruhha bl-ebda mod u dana sa mill-istadju inizjali ta'l-interrogazzjoni. Sabiex dana id-dritt jigi salvagwardjat ghalhekk kull persuna ghandha d-dritt li tikseb l-assistenza legali u dana sabiex tkun fl-ahjar pozizzjoni illi thejji id-difiza taghha. Dana huwa vitali billi fis-sistema penali taghna il-konfessjoni tal-persuna akkuzata hija prova ewlenija fil-process gudizzjarju istitwit kontra taghha.

Il-Qorti Kostituzzjonali, madanakollu kienet recentement ziedet linji gwida ohra ghal gudikant li ikollu f'idejh id-decizjoni dwar jekk ghandux jiehu kont ta' stqarrija tal-interrogat bhala prova in atti sabiex jasal ghal gudizzju tieghu. Gie deciz illi fuq kollox ghandu jittiehed kont tal-fattispecje ta' kull kaz fost ohrajn il-vulnerabbilita tal-persuna li tkun qed tigi interrogata (fosthom l-eta, il-precedenti penali) l-jedd li l-persuna interrogata kellha biex tibqa' siekta u ma twegibx ghal dawk il-mitoqsijiet li jistghu jinkriminawh, l-inattivita da parti ta'l-akkuzat milli jipprova jattakka l-validita ta'l-istqarrija tieghu mill-bidunett tal-proceduri, l-provi l-ohra li hemm fl-atti, fost ohrajn.

Illi f'decizjoni recenti[3] moghtija mill- Qorti Ewropeja Dwar id-Drittijiet tal-Bniedem gew affermati il-principji generali li ghandhom jigu sewgieti mill-qrati meta inghad:
"**Early access to a lawyer is one of the procedural safeguards to which the Court will have particular regard when examining whether a procedure has extinguished the very essence of the privilege against**

[2] Sitting of the 25.02.2016. Appeal No.405/2014. Hon. Mdme Justice Dr. Edwina Grima

[3] Mario Borg vs Malta 37537/13 12/01/2016

self-incrimination. These principles are particularly called for in the case of serious charges, for it is in the face of the heaviest penalties that respect for the right to a fair trial is to be ensured to the highest possible degree by democratic societies.

The Court reiterates that in order for the right to a fair trial to remain sufficiently "practical and effective" Article 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction. Denying the applicant access to a lawyer because this was provided for on a systematic basis by the relevant legal provisions already falls short of the requirements of Article 6."

Il-Qorti iddecidiet illi l-fatt wahdu illi l-ligi domestika ma kenitx tipprevedi d-dritt ghall-assistenza legali meta l-persuna suspettata kienet tinsab fil-kustodja tal-pulizija hija bizzejjed sabiex ikun hemm vjolazzjoni ta'l-artikolu 6:

"**60. The Court notes that it has found a number of violations of the provisions at issue, in different jurisdictions, arising from the fact that an applicant did not have legal assistance while in police custody because it was not possible under the law then in force (see, for example, *Salduz*, cited above, § 56; *Navone and Others v. Monaco,* 24 October 2013; *Brusco v. France*, October 2010; and *Stojkovic v. France and Belgium*, 27 October 2011). A systemic restriction of this kind, based on the relevant statutory provisions, was sufficient in itself for the Court to find a violation of Article 6 (see, for example, *Dayanan v. Turkey*, no. 7377/03 §§ 31-33, 13 October 2009; *Yeşilkaya v. Turkey*, no. 59780/00, 8 December 2009; and *Fazli Kaya v. Turkey*, no. 24820/05, 17 September 2013).**

61. In respect of the present case, the Court observes that no reliance can be placed on the assertion that the applicant had been reminded of his right to remain silent (see *Salduz*, cited above, § 59); indeed, it is not disputed that the applicant did not waive the right to be assisted by a lawyer at that stage of the proceedings, a right which was not available in domestic law. In this connection, the Court notes that the Government have not contested that there existed a general ban in the domestic system on all accused persons seeking the assistance of a lawyer at the pre-trial stage (in the Maltese context, the stage before arraignment).

62. It follows that, also in the present case, the applicant was denied the right to legal assistance at the pre-trial stage as a result of a systemic restriction applicable to all accused persons. This already falls short of the requirements of Article 6 namely that the right to assistance of a lawyer at the initial stages of police interrogation may only be subject to restrictions if there are compelling reasons (see *Salduz*, cited above, §§ 52, 55 and 56).

63. There has accordingly been a violation of Article 6 § 3 (c) taken in conjunction with Article 6 § 1 of the Convention."

Illi gie deciz illi l-qrati ma kellhomx jaghtu interpretazzjoni stretta tad-decizjoni Salduz vs Turkey kif sehh fil-kaz ta' Charles Steven Muscat fost ohrajn. L-Imhallef Pinto De Albuquerque[4] ighid hekk fl-opinjoni tieghu:

[4] Ara partly concurring and partly dissenting opinion of Judge Pinto De Albuquerque fid-decizjoni Mario Borg vs Malta

"the interpretation of *Salduz* by the Constitutional Court of Malta is in breach of the "constitutional instrument of European public order" and its "peremptory character". …. Be that as it may, in the light of the repetitive findings of violations of Article 6 § 3 (c) of the Convention by this Court, the Maltese Constitutional Court should correct its trajectory and return to its initial Convention-friendly interpretation of *Salduz*."

Imbaghad fil-kawza Aleksandr Vladimirovich Smirnov vs Ukraine (13.06.2014) gie deciz: **–**

"The Court reiterates the principles developed in its case-law, according to which the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, although not absolute, is one of the fundamental features of the notion of a fair trial. As a rule, access to a lawyer should be provided from the first time a suspect is questioned by the police, unless it can be demonstrated in the light of the particular circumstances of each case that there were compelling reasons to restrict this right (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, 27 November 2008). The right to mount a defence will in principle be irretrievably prejudiced when incriminating statements made during police questioning without access to a lawyer are used for a conviction (ibid.). While a defendant in criminal proceedings may, under various circumstances, waive his right to legal representation, such a waiver may not run counter to any important public interest, must be unequivocally established, and must be attended by minimum safeguards commensurate with the waiver's importance."

Maghdud dan allura jidher illi r-regola hi li l-Artikolu 6(1) abbinat ma'l-artikolu 6(3)(c) jitlob li jkun hemm dritt ta' avukat fl-istadju tal-investigazzjoni tal-pulizija, sakemm ma jigix ippruvat li hemm ragunijiet impellenti ghaliex dan id-dritt ghandu jigi ristrett. Illi allura meta l-ligi domestika teskludi dan il-jedd u dan b'mod sistematiku billi ma ikunx hemm disposizzjoni *ad hoc* li taghti dan il-jedd lil persuna arrestata, ikun hemm il-periklu li isehh lezjoni tad-dritt tal-persuna akkuzata ghal smiegh xieraq anke f'dawk il-kazijiet estremi fejn ma ikun hemm l-ebda dikjarazzjoni inkriminanti f'dawn l-istqarrijiet. Illi fil-kaz deciz quddiem il-Qorti Ewropeja dwar id-Drittijiet tal-Bniedem fl-ismijiet Navone vs Monaco, nstab li kien hemm lezjoni billi l-akkuzat ma kellux jedd ghall-assistenza ta'l-avukat matul l-interrogazzjoni similment billi l-ligi tal-pajjiz ma kenitx tippermettieha. (ara ukoll Yesilkaya vs Turkey – 59780/00 08/12/2009, Fazli Kaya vs Turkey – 24820/05 17/09/2015).

Dan il-jedd gie anke estiz fil-kaz fejn l-akkuzat kien gie moghti il-jeddijiet kollha vigenti skont il-ligi ta' pajjizu inkluz allura il-jedd tieghu ghas-silenzju u fil-fatt huwa kien ezercita dan il-jedd u ma wiegeb ghall-ebda mistoqsija lilu maghmula. Il-Qorti xortwahda sabet li kien hemm vjolazzjoni ta'l-artikolu 6(3)[5] u dan ghaliex ma kienx ikkonsulta ma avukat biex ifissirlu il-jeddijiet tieghu skont il-ligi dwar id-dritt tieghu ghas-silenzju u id-dritt li ma jinkriminax ruhu b'dan ghalhekk illi l-Qorti implikat illi t-twissija moghtija mill-ufficjali investigattiv ma hijiex bizzejjed.

"31. The Court is of the view that the fairness of criminal proceedings under Article 6 of the Convention requires that, as a rule, a suspect should be granted access to legal assistance from the moment he is taken into police custody or pre-trial detention.

32. In accordance with the generally recognised international norms, which the Court accepts and which form the framework for its case-law, an accused person is entitled, as soon as he or she is taken into custody, to be assisted by a lawyer, and not only while being questioned (for the relevant international legal materials see *Salduz*, cited above, §§ 37-44). Indeed, the fairness of proceedings requires that an accused be able to obtain the whole range of services specifically associated with legal assistance. In this regard, counsel has to be able to secure without restriction the fundamental aspects

[5] Dayanan vs Turkey – 7377/03 deciza 13/10/2009

of that person's defence: discussion of the case, organisation of the defence, collection of evidence favourable to the accused, preparation for questioning, support of an accused in distress and checking of the conditions of detention.

33. In the present case it is not disputed that the applicant did not have legal assistance while in police custody because it was not possible under the law then in force (see *Salduz*, cited above, §§ 27 and 28). A systematic restriction of this kind, on the basis of the relevant statutory provisions, is sufficient in itself for a violation of Article 6 to be found, notwithstanding the fact that the applicant remained silent when questioned in police custody." (sottolinjar tal-Qorti)

Fil-fatt fid-decizjoni Brusco vs Franza[6] gie deciz:

"La Cour constate également qu'il ne ressort ni du dossier ni des procès-verbaux des dépositions que le requérant ait été informé au début de son interrogatoire du droit de se taire, de ne pas répondre aux questions posées, ou encore de ne répondre qu'aux questions qu'il souhaitait. Elle relève en outre que le requérant n'a pu être assisté d'un avocat que vingt heures après le début de la garde à vue, délai prévu à l'article 63-4 du code de procédure pénale (paragraphe 28 ci-dessus). L'avocat n'a donc été en mesure ni de l'informer sur son droit à garder le silence et de ne pas s'auto-incriminer avant son premier interrogatoire ni de l'assister lors de cette déposition et lors de celles qui suivirent, comme l'exige l'article 6 de la Convention."

Illi allura hija fis-setgha ta' din il-Qorti u dan qabel ma jigi determinat il-process gudizzjarju kontra l-appellanti illi twarrab dik l-evidenza illi tmur kontra il-garanziji moghtija kemm fil-Kostituzzjoni kif ukoll il-Konvenzjoni ghal harsien tal-jedd ghal smiegh xieraq tal-persuna akkuzata. Fil-fatt dan il-jedd gie indikat fid-decizjoni tal-Qorti Ewropeja fil-kaz Dimech vs Malta[7] fejn f'dak il-kaz ghalkemm il-Qorti ma setatx tasal biex tistabbilixxi jekk kienx sehh lezjoni ta'l-artikolu 6 tal-Konvenzjoni billi l-proceduri penali kienu ghadhom ma intemmux, madanakollu sahhqet:

"…. it cannot be entirely excluded that the courts of criminal jurisdiction, before which the case is heard, hear the case in the same circumstances that would have existed had the right to legal-assistance during pre-trial stage not been disregarded, namely by expunging from the records the relevant statements. The Court notes that, if, because of the limitations of the applicable criminal procedural law, it is not possible given the stage reached in the pending proceedings, to expunge from the records the relevant statements (whether at the request of the applicant or by the courts of criminal jurisdiction of their own motion), it cannot be excluded that the legislature take action to ensure that a procedure is made available at the earliest opportunity for this purpose.""

Consequently and in adherence to the said judgements, the accused's statement is being disregarded with respect to its probative value as evidentiary material.

Inspector Gatt testified that from searches carried out on the accused's person a sachet of heroin was found whilst a search in his residence revealed drug-related

[6] 1466/07 – 14/10/2010 The Court also notes that it does not follow either the file or the minutes of evidence that the applicant had been informed at the beginning of his examination of the right to remain silent, not to respond to questions, or to not answer the questions he wanted. It further notes that the applicant had been assisted by a lawyer twenty hours after the start of the custody period provided for in Article 63-4 of the Code of Criminal Procedure (see paragraph 28 above) . The lawyer was therefore unable either to provide information on his right to remain silent and not to incriminate before his first interrogation or assist during the deposition and during those which followed, as required by Article 6 of the Convention

[7] 02/07/2015 – 34373/13

items.[8] This is confirmed by PS1052 Scerri, WPS102 Ruth Magro and PC138 Joseph Portelli who also confirms that the police had witnessed the accused handing something to an Ivan Abela for which he received a LM10 note[9].

Before Magistrate Dr Scerri Herrera Ivan Abela confirmed on oath that he had purchased drugs from the accused on 4-5 occasions. Claire Satariano could not confirm that she actually purchased drugs from the accused as an intermediary had been used. Michael Cassar also released a statement to the effect that he had gone to purchase heroin from the accused but after having passed the money to the accused, the latter simply took it as he maintained he was owed the money for a previous sale.

In his evidence before this Court, differently presided, Cassar retracts and does not confirm the veracity of the statement he had released and confirmed before the inquiring magistrate even though proceedings with regards to the same facts had been concluded, leading the Court to order that he be detained.[10] Upon being reproduced as a witness he decides to confirm only certain parts of the version initially given before the inquiring magistrate, denying he owed the accused any drug money. He insisted that on the day when he together with the accused were arrested, he had bought 0.5 grammes heroin from the accused for LM25.

Satariano in testifying fails to confirm that Cassar had phoned the accused and purchased drugs from him. She doesn't recall that Cassar had asked her to drive him to Bugibba (where he initially claimed he bought drugs from Camilleri). In fact the witness fails to corroborate Cassar's testimony and denies any knowledge of Cassar purchasing drugs from the accused: *"..I used to go with my boyfriend [Cassar]. He used to stop next to Peter and he used to talk to him, but I never saw drugs. I never saw him actually giving him drugs".*[11] Reproduced she reiterates *"…the truth was that I didn't see anything and that it is really the truth."* On being read the statement she admits that *"once I read it I thought that I might be mistaken"* adding that she never saw an exchange of drugs happening with the accused[12]

Of significance is what Satariano reveals about Cassar: *"Michael Cassar is not a person that I trust. He says so many things…I never trusted him, never…He lies so much for nothing….."*. She even introduces the possibility that although Cassar asked her for money to buy the drugs, he could have easily kept the money for himself. She denies having seen the accused selling drugs to other persons as well

[8] Fol.26 et seq
[9] Fol.107 & 125 et seq.
[10] Fol.48 et seq
[11] Fol.63
[12] Fol.74-75

as failing to confirm Cassar's version that he actually walked towards Camilleri's residence since she had no knowledge as to where he lived.[13]

The sachet seized from Abela, which was exhibited by Inspector Neville Aquilina as Dok.NA[14] (02 ATU 07), was analysed by the Court appointed expert Mario Mifsud and found to contain 0.134g heroin. A sachet containing brown powder found on the accused's person and marked as 02 ATU 01 was found to contain 0.113g heroin.[15]

Under cross-examination Abela is reluctant to identify the accused although he claims he paid LM10 for a sachet of heroin to Peter.[16] In turn Satariano declares that whatever she had testified regarding the selling of drugs by the accused was *"…only what I assumed not what I have seen".* She reiterates that Cassar was a habitual liar whilst confirming that she never saw Peter Camilleri handing any drugs to others.

A request for legal assistance sent to the competent judicial authorities of the United Kingdom, wherein questions to Michael Cassar were deemed indispensably necessary by the Court so as to enable his cross-examination, remained unexecuted given that Cassar refused to attend an interview and provide a voluntary statement. Moreover the foreign judicial authorities chose not to compel Cassar to testify before the British Courts in view of the fact that he could incriminate himself in the commission of an offence.

The accused chose to testify wherein he denied that he ever trafficked in any abusive substances. He indicated that Cassar could have fabricated such a story following a fall-out which they had after they started seeing two women who were sisters. The Court is here reminded of Satariano's testimony regarding Cassar's credibility.

On the basis of the evidence before it, the Court deems that only the first offence has been proven beyond reasonable doubt, namely the offence of simple possession of the drug heroin.

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[13] Fol.79
[14] Fol.102
[15] Fol.160
[16] Fol.218

In considering the punishment which is to meted out the Court primarily notes that the said offences date to seventeen years ago, at a time when the accused's criminal record was not particularly worrying. The only substance found was heroin amounting to 0.113 grammes. Hence it considers that in such circumstances the provisions of Chapter 537 of the Laws of Malta should find application.

In view of the above, the Court, after having seen Parts IV and VI and Articles 22(1)(a) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, Article 4(1) of the Drug Dependence (Treatment not Imprisonment) Act, Cap.537 of the Laws of Malta, and Regulation 9 of the Internal Control of Dangerous Drugs Rules, Government Notice 292 of 1939, (S.L.101.02), finds the accused guilty of the first charge brought against him and condemns him to a penalty of 125 Euro, whilst acquitting him from the remaining charges.

Finally, the Court orders the destruction of all drugs exhibited in this case under the direct supervision of the Registrar of Courts. The Registrar shall enter a minute in the records of this case reporting to this Court the destruction of said drugs.

Dr Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)
Magistrate