QORTI CIVILI PRIM`AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON

Illum it-Tlieta 31 ta` Jannar 2017

Kawza Nru. 1
Rikors Nru. 13/14 JZM

Frank Sammut (KI 39351M)

kontra

(1) L-Onorevoli Speaker tal-Kamra tad-Deputati Dr. Angelo Farrugia ;

(2) Ic-Chairperson tal-Kumitat tal-Kontijiet Pubblici l-Onorevoli Dr. Jason Azzopardi ;

ilkoll fil-kwalita` taghhom premessa u in rapprezentanza tal-istess Kamra tad-Deputati u tal-istess Kumitat rispettivament

Il-Qorti :

A. Preliminari

Rat ir-rikors prezentat fis-17 ta` Frar 2014 li jaqra hekk :–

1. Illi fit-23 ta` Jannar 2014, ir-rikorrent gie mgharraf li l-Kumitat tal-Kontijiet Pubblici ordna li huwa jaghti x-xhieda tieghu dwar ir-rapport tal-Awditur Generali intitolat "An Analysis of the Effectiveness of Enemalta Corporation`s Fuel Procurement" fil-5 ta` Frar 2014, u dana sabiex jirrispondi ghall-mistoqsijiet li jistghu jsirulu in konnessjoni mal-imsemmi rapport. Gie mitlub ukoll sabiex jiehu mieghu xi dokumenti li ghandu disponibbli f`idejh u li huma relatati mal-kaz. Kopja ta` din l-ittra hija annessa ma` dan ir-rikors u mmarkata ***Dok FS1****.*

2. Illi mal-istess ittra, giet annessa kopja tal-"Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives, Parliament of Malta" mahruga f`Ottubru 2011, li jistipulaw inter alia fil-paragrafi numerati 4 u 5 l-konsegwenzi tan-nuqqas ta` apparenza ta` persuna li tkun giet imharrka sabiex tixhed quddiem il-Kumitat. Kopja ta` dawn il-linji gwidi hija annessa u mmarkata ***Dok FS2****.*

3. Illi r-rikorrent kien tressaq quddiem l-Onorabbli Qorti tal-Magistrati bhala Qorti Struttorja akkuzat, fost akkuzi ohra, b`korruzzjoni u hasil ta` flus, liema proceduri ghadhom pendenti quddiem l-istess Onorabbli Qorti presjeduta mill-Magistrat Antonio Vella u jinstabu differiti ghat-13 ta` Marzu 2014.

4. Illi r-rikorrent deher quddiem il-Kumitat tal-Kontijiet Pubblici nhar il-5 ta` Frar 2014, kif debitament ingunt, fejn spjega permezz tal-Avukat tal-fiducja tieghu li huwa ma seta` ma jirrispondix ghall-ebda mistoqsija stante li huwa kien gie akkuzat b`reati li kienu potenzjalment konnessi mal-investigazzjoni li kienet qieghda tigi kondotta mill-istess Kumitat u ghal din ir-raguni, kien qieghed jipprevalixxi ruhu mid-dritt tas-silenzju.

5. Illi l-intimat Chairman tal-Kumitat gibed l-attenzjoni tar-rikorrent ghar-ruling tal-Onorevoli Speaker intimat fl-10 ta` Dicembru 2013 dwar xhieda quddiem l-istess Kumitat, kopja ta` liema ruling hija annessa u mmarkata ***Dok FS3****, li essenzjalment jistipula li minkejja li persuna akkuzata ghandu d-dritt li ma jwegibx domandi li jistghu jinkriminawh, fl-ahhar mill-ahhar il-membri tal-Kumitat tal-Kontijiet Pubblici ghandhom id-dritt li jaghmlu kull mistoqsija li jridu u f`kaz li jkun hemm oggezzjoni minn xi membru dwar jekk xi mistoqsija partikolari tkunx inkriminanti fil-konfront tax-xhud, tkun ruling tal-iSpeaker li tiddeterminna jekk ix-xhud ghandux iwiegeb ghal dik il-mistoqsija jew le.*

6. Illi fl-umli opinjoni tar-rikorrent, ir-ruling tal-iSpeaker intimat tal-10 ta` Dicembru 2013 suriferit ma japplikax ghall-kaz odjern u,

fi kwalunkwe kaz, ir-ruling jikser id-drittijiet fondamentali tieghu, senjatament id-dritt ta` smigh xieraq kif sancit, inter alia, mill-Artikolu 39 tal-Kostituzzjoni ta` Malta u l-Artikolu 6 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem, liema konvenzjoni giet trasposta fil-Ligijiet ta` Malta permezz tal-Att dwar il-Konvenzjoni Ewropea, Kap. 319 tal-Ligijiet ta` Malta, u dan in vista tal-fatt li r-rikorrent qua xhud quddiem il-Kumitat tal-Kontijiet Pubblici prezentament jinstab akkuzat b`reati konnessi mal-investigazzjoni li qieghed jikkonduci l-istess Kumitat tal-Kontijiet Pubblici u li dwaru l-istess Kumitat irid isaqsi mistoqsijiet lir-rikorrent.

7. Illi l-obbligu li xhud jirrispondi ghal kull mistoqsija maghmula lilu, ukoll skond kif spjegat fil-linji gwida fuq imsemmija (Dok FS2 suriferit u anness), senjatament fil-paragrafu numru 16, li tistipula li "subject to guideline 19 below, if a witness, personally, or through his/her legal counsel, objects to a question asked by an individual Committee member, he/she is obliged to reply unless any one member requests that the issue of admissibility be referred to the Speaker for his/her decision which decision shall bind the Committee," jikser id-dritt fondamentali tieghu ta` smigh xieraq kif protetti, inter alia, mill-Artikolu 39 tal-Kostituzzjoni ta` Malta u l-Artikolu 6 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem.

8. Illi l-iSpeaker tal-Kamra tad-Deputati intimat certament mhux au courant mal-atti processwali kriminali pendenti fil-konfront tar-rikorrent, multo magis mal-linja difensjonali tar-rikorrent, u dak li ghall-iSpeaker intimat jista` jidher innokwu jista` jkun krucjali ghat-tezi difensjonali mhaddna mill-istess rikorrent akkuzat.

9. Illi inoltre, l-ebda ruling tal-iSpeaker ma tista` tipprovdi l-garanziji necessarji sabiex jigi garantit li d-dritt ta` smigh xieraq tar-rikorrent mhux ser jigi mittiefes.

10. Illi kif inhu risaput f`Malta, is-supremazija tal-Parlament hija soggetta u limitata biss ghall-limiti mposti mill-Kostituzzjoni u l-Kostituzzjoni ma torbotx biss liz-zewg ferghat l-ohra tal-iStat, ossia l-Ezekuttiv u l-Gudikatura, izda torbot ukoll u bl-istess mod lill-Parlament, li wkoll ma jistax imur oltre l-limiti mposti mill-Kostituzzjoni.

11. Illi l-Parlament jaghmel il-Ligijiet biss bis-sahha tal-Kostituzzjoni u jekk dik l-istess Kostituzzjoni titfarrak bin-naqriet, eventwalment titlef l-awtorità suprema u ahharija li suppost tgawdi.

12. Illi ghal dawn il-fini ghalhekk kellha tigi istitwita l-odjerna procedura fejn qieghda umilment tintalab dikjarazzjoni minn din l-Onorabbli Qorti li, lil `hinn minn kull ruling li ta jew li jista` jaghti l-iSpeaker tal-Kamra tad-Deputati, il-Kostituzzjoni ta` Malta tipprevali fuq kull ruling u konsegwentement, xhud ingunt sabiex jixhed quddiem il-Kumitat tal-Kontijiet Pubblici jista` jipprevalixxi ruhu mid-dritt li ma jirrispondix mistoqsijiet li jistghu jilledulu d-dritt ta` smigh xieraq in vista tal-ezistenza ta` proceduri kriminali dwar l-istess materja.

Ghaldaqstant ir-rikorrent, ghar-ragunijiet fuq premessi, umilment jitlob lil din l-Onorabbli Qorti joghgobha :-

1. Tiddikjara li r-ruling moghti mill-Onorevoli Speaker tal-Kamra tad-Deputati intimat fl-10 ta` Dicembru 2013 jikser id-dritt fondamentali tar-rikorrent ghal smigh xieraq kif sancit, inter alia, mill-Artikolu 39 tal-Kostituzzjoni ta` Malta u l-Artikolu 6 tal-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem, in kwantu jobbligawh jirrispondi ghal mistoqsijiet lilu imressqa mill-membri tal-Kumitat tal-Kontijiet Pubblici li jistghu jiksrulu d-dritt ta` smigh xieraq.

2. Tiddikjara li l-linji gwida ghax-xhieda mahruga mill-Kumitat tal-Kontijiet Pubblici ta` Ottubru 2011 jiksru dritt fondamentali tar-rikorrent ghal smigh xieraq kif sancit, inter alia, mill-Artikolu 39 tal-Kostituzzjoni ta` Malta u l-Artikolu 6 tal-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem, in kwantu jobbligawh jirrispondi ghal mistoqsijiet lilu imressqa mill-membri tal-Kumitat tal-Kontijiet Pubblici li jistghu jiksrulu d-dritt ta` smigh xieraq.

3. Konsegwentement, tiddikjara bhala nulla u bla effett fil-konfront tar-rikorrent ir-ruling moghtija mill-Onorevoli Speaker tal-Kamra tad-Deputati tal-Parlament ta` Malta tal-10 ta` Dicembru 2013.

Bl-ispejjez kontra l-intimati li huma minn issa ingunti in subizzjoni.

Rat il-lista tax-xhieda ndikati mir-rikorrent.

Rat ukoll id-dokumenti li kienu prezentati mar-rikors promotur.

Rat ir-risposta li pprezentaw l-intimati flimkien fil-5 ta` Marzu 2014 u li taqra hekk :–

1. Illi fl-ewwel lok id-decizjonijiet tal-iSpeaker ma humiex sindikabbili mill-Qorti u lanqas huma sindikabbili mill-Qorti l-linji gwida minnu maghmula u certament u bl-akbar rispett dina l-Onorabbli Qorti ma ghandha l-ebda gurisdizzjoni li tiddikjara xi decizjoni tal-iSpeaker bhala nulla jew invalida ghaliex ir-regolament tal-procedura tal-Kamra hija fil-gurisdizzjoni insindikabbili tal-Kamra u kull indhil f`dik il-procedura tammonta ghal ksur tal-privileggi tal-Kamra ;

2. Illi inoltre l-Onorevoli Speaker tal-Kamra tad-Deputati, Dr Angelo Farrugia, u l-Onorevoli Dr Jason Azzopardi inkwantu mharrkin in rapprezentanza tal-Kamra tad-Deputati ma ghandhomx dik ir-rapprezentanza u huma malament imharrkin ghaliex il-Kamra tad-Deputati ma ghandhiex locus standi fil-Qorti ;

3. Illi inoltre l-Onorevoli Dr Jason Azzopardi ma huwiex ic-Chairperson tal-Kumitat tal-Kontijiet Pubblici imma jippresjedi l-Kumitat biss fil-proceduri dwar ir-rapport tal-Awditur fuq l-Enemalta minhabba li c-Chairperson tal-istess Kumitat seta` kellu konflitt ;

4. Illi ghalhekk il-procedura hija evidentement monka u inkompleta ghaliex jonqos legittimu kontradittur fil-gudizzju billi l-intimati certament ma humiex legittimi kontraditturi f`dan il-gudizzju ;

5. Illi l-Kamra tad-Deputati u l-kumitati taghha bl-ebda mod bl-agir taghhom ma vvjolaw xi dritt fondamentali tar-rikorrent u lanqas huwa mahsub jew hemm il-biza` li d-drittijiet fondamentali tar-rikorrent jigu vvjolati. Il-Kumitat in kwistjoni huwa moghti l-mansjoni li fl-interess pubbliku jaghmel stharrig f`dak li jirrigwarda l-kontijiet pubblici ta` Malta u naturalment f`dan l-istharrig huwa ghandu d-dritt li jisma` lil kull min huwa mehtieg biex il-Kumitat jista` jasal ghall-konkluzjonijiet tieghu lil kull min il-Kumitat jidhirlu li jista` jaghtih informazzjoni siewja. Dan, il-Kumitat jaghmlu fl-interess pubbliku nazzjonali u certament ma huwiex l-interess pubbliku li persuna li tista` taghti informazzjoni ma tittellax tixhed. Naturalment dan isir fir-rispett tad-drittijiet kollha ta` dik il-persuna, inkluz id-dritt, del resto rikonoxxut anke mill-istess Speaker u mill-Kumitat, li persuna ma tixhidx fejn bir-risposta taghha tkun tista` tinkrimina ruhha. Ma hemm l-ebda hsieb li xi persuna tigi mgieghla tirrispondi domandi li jistghu jinkriminawha imma naturalment jibqa` dejjem l-obbligu ta` persuna li taghti l-informazzjoni mitluba f`affarijiet fejn hija ma tistax tigi inkriminata. Huwa dejjem dritt tax-xhud, rikonoxxut anke fil-linji gwida, li jekk ihoss li risposta tista` tinkriminah, iqajjem il-kwistjoni tal-privilegg tieghu li ma jixhidx fejn jista` jinkrimina ruhu ; ma hemm l-ebda hsieb li jekk isir hekk dan ma

jinghatax il-piz mehtieg u li d-decizjoni dwar dan ma tittehidx bil-ghaqal skont il-ligi u fil-pjen rispett tad-drittijiet tax-xhud.

6. Fir-rigward tal-fatti elenkati fir-rikors l-esponenti jirrilevaw is-segwenti :-

7. Ma hemm l-ebda kontestazzjoni dwar il-fatti elenkati fil-paragrafi wiehed sa erbgha tar-rikors. Dwar il-fatt fil-paragrafu numru erbgha jigi ccarat li l-proceduri kriminali kondotti quddiem il-Qorti tal-Magistrati huma proceduri distinti u separati minn dak li qieghed jigri fil-Kumitat ; u l-mansjoni tal-Kumitat ma hix li tikkonduci investigazzjoni biex tigi uzata fil-proceduri kriminali ; il-mansjoni tal-Kumitat hija limitata ghas-sorveljanza tal-kontijiet pubblici u tas-sanità tal-istess kontijiet. L-ghan ta` dawk il-proceduri ma huwiex il-kondotta ta` proceduri kriminali u lanqas ma hija l-informazzjoni migbura mill-Kumitat intiza biex tintuza fi proceduri kriminali, imma hija intiza biex tintuza mill-Kamra fil-kors ta` dibattiti taghha u fil-kors ta` dak li taghmel fir-rigward tal-kontijiet pubblici. Din hija mansjoni tal-Kamra ta` importanza fondamentali ghat-tmexxija tal-pajjiz u ghaz-zamma tad-demokrazija. Huwa ghalhekk precizament li dina ma taqax biex tigi sindikata minn dina l-Onorabbli Qorti.

8. Dwar dak li jinghad fil-paragrafu hamsa huwa minnu dak li jinghad imma in realtà kienet espressament id-decizjoni tal-iSpeaker u tal-Kumitat li x-xhud ma jkunx obbligat iwiegeb domandi fejn bir-risposta tieghu huwa jista` jinkrimina ruhu ; dan ma jistax jigi determinat qabel ma d-domanda ssir u x-xhud iqajjem il-kwistjoni li bir-risposta huwa jkun jista` jinkrimina ruhu, haga li certament l-awtoritajiet jiehdu in konsiderazzjoni meta l-punt iqum. Del resto din hija l-istess pozizzjoni li tista` tavvera ruhha jekk ix-xhud jigi mghajjat biex jixhed quddiem il-Qrati ta` Malta ;

9. Dwar dak li jinghad fil-paragrafu sitta dan huwa assolutament mhux il-kaz ; ir-ruling tal-iSpeaker bl-ebda mod ma jikser id-drittijiet fondamentali tar-rikorrent u bl-ebda mod ma jikser id-dritt tar-rikorrent ghal smigh xieraq ; ir-rikorrent ma huwa qieghed jissubixxi l-ebda process gudizzjarju quddiem il-Kumitat ; naturalment hija l-mansjoni tal-Qorti fil-proceduri kriminali pendenti quddiemha li tara li jigi assigurat ghax-xhud smigh xieraq ; bir-rispett kollu x`domandi jixtieq il-kumitat ipoggi lix-xhud, hawn rikorrent, hija mera spekulazzjoni ladarba sa issa l-ebda domanda ghadha ma saret ;

10. Dwar dak li jinghad fil-paragrafu sebgha ghalkemm ix-xhud huwa obbligat jirrispondi mhux obbligat jirrispondi fejn huwa jista` jinkrimina ruhu u ghalhekk ma hemm l-ebda ksur ta` ebda dritt fondamentali.

11. Dwar il-fatt fit-tmien paragrafu dan huwa minnu, dawk il-proceduri kriminali ma jinteressawx direttament lill-iSpeaker u l-procedura tal-Kumitat ma hijiex relatata ma` dawk il-proceduri kriminali imma hija xi haga kompletament indipendenti minnhom.

12. Illi dwar dak li jinghad fil-paragrafi sussegwenti dawn huma kollha argumenti ta` konvenjenza ; certament l-iSpeaker jista` jara li d-dritt fondamentali ta` xhud sa fejn jikkoncerna d-decizjonijiet li jiehu huwa ma jinkisirx, l-iSpeaker ma hux qieghed jghid li d-drittijiet fondamentali tal-individwu ma japplikawx, anzi l-linji gwida minnu mahluqa huma intizi precizament biex dawk id-drittijiet fondamentali ma jigux mittiefsa.

Ghalhekk it-talbiet tar-rikorrent huma kompletament infondati fil-fatt u fid-dritt u huma f`kull kaz prematuri u biss frott ta` spekulazzjoni.

Rat id-digriet li tat fl-udjenza tad-29 ta` Mejju 2014 fejn halliet il-kawza ghas-sentenza dwar l-ewwel eccezzjoni.

Rat is-sentenza li tat fil-15 ta` Jannar 2015 fejn cahdet l-ewwel eccezzjoni - spejjez ghall-intimati - u fejn ordnat il-prosegwiment tal-kawza.

Rat li ghalkemm l-intimati ressqu appell minn din id-decizjoni, il-Qorti Kostituzzjonali tat sentenza fil-15 ta` Dicembru 2015 fejn ikkonfermat is-sentenza appellata – bl-ispejjez ghall-intimati - u halliet il-kawza ghall-kontinwazzjoni sabiex tkun deciza minn din il-Qorti.

Rat is-sentenza li tat fis-26 ta` Mejju 2016 dwar l-eccezzjonijiet preliminari l-ohra fejn iddikjarat illi l-intimat Onorevoli Dr Angelo Farrugia bhala Speaker tal-Kamra tad-Deputati mhuwiex il-legitimu kontradittur tar-rikorrent stante li m`ghandux ir-rapprezentanza tal-Kamra tad-Deputati ; fejn iddikjarat illi l-intimat Onorevoli Dr Jason Azzopardi bhala Chairperson tal-Kumitat Permanenti dwar il-Kontijiet Pubblici

huwa legittimu kontradittur tar-rikorrent ; fejn iddikjarat illi l-intimat Onorevoli Dr Jason Azzopardi bhala Chairperson tal-Kumitat Permanenti dwar il-Kontijiet Pubblici hekk kif imharrek in rapprezentanza tal-istess Kumitat mhuwiex il-legittimu kontradittur tar-rikorrent stante li m`ghandux ir-rapprezentanza tal-istess Kumitat ; fejn ipprovdiet illi l-ispejjez tad-decizjoni kellhom jibqghu rizervati ghall-gudizzju finali ; u fejn ordnat il-prosegwiment tal-kawza.

Rat illi minn hemm `il quddiem kien trattat il-mertu. In kwantu jirrigwarda provi, il-partijiet qaghdu fuq id-dokumenti formanti parti mill-atti.

Semghet is-sottomissjonijiet tal-ahhar bil-fomm li ghamlu d-difensuri fl-udjenza tal-11 ta` Ottubru 2016.

Rat id-digriet illi tat fl-istess udjenza fejn halliet il-kawza ghas-sentenza ghal-lum.

Rat l-atti l-ohra tal-kawza.

II. Provi

Il-provi tal-partijiet huma kostitwiti mid-dokumenti li jaghmlu parti mill-atti ta` din il-kawza. Il-Qorti sejra tirreferi ghall-atti `l quddiem.

III. Sottomissjonijiet

Fil-kaz tal-lum, il-partijiet ghazlu li jaghmlu sottomissjonijiet tal-ahhar bil-fomm.

a) Ir-rikorrent

Jissottometti li meta rcieva minghand l-Kumitat Permanenti dwar il-Kontijiet Pubblici sabiex jixhed, ircieva wkoll il-linji gwida. Jirreferi in partikolari ghall-artikoli 16 u 19 ta` dawn il-linji gwida.

Skont il-linji gwida jekk issir domanda lix-xhud u dan jirrifjuta li jirrispondi ghax b`dan li jghid jista` jinkrimina ruhu, jekk l-ebda membru tal-Kumitat ma jirreferi d-domanda lill-Ispeaker tal-Kamra, allura x-xhud jista` jigi misjub hati ta` disprezz u jittiehdu l-passi necessarji fil-konfront tieghu.

F`dan il-kaz dak li gara huwa li d-decizjoni finali kienet fl-idejn tal-l-Ispeaker tal-Kamra jekk x-xhud ghandux jirrispondi jew le. Ir-rikorrent informa lil Kumitat li kien ser jiftah proceduri kostituzzjonali u l-Kumitat ghalhekk iddecieda li jistenna l-ezitu ta` dawn il-proceduri.

Ikompli jissottometti li Ruling li l-Ispeaker ta fir-rigward ta` terzi kien maghmul applikabbli ghar-rikorrent ukoll.

Ir-rikorrent jilmenta illi d-decizjoni finali kienet fl-idejn ta` l-Ispeaker tal-Kamra, meta l-Ispeaker m`ghandux f`idejh il-fatti kollha sabiex jiddeciedi.

Huwa ghalhekk illi ladarba hemm l-Artikolu 19 tal-linji gwida, id-dritt ta` silenzju tax-xhud ghandu jigi rispettat u jekk dan ma jigrix, hemm vjolazzjoni tal-jedd ghal smigh xieraq.

Isostni illi fil-linji gwida mhuwiex regolat dak li ghandu jigri meta jigi nvokat l-Artikolu 19.

Skont ir-rikorrent, il-linji gwida jilledu d-drittijiet fundamentali tieghu ghaliex anke jekk wiehed jipprova jargumenta li hemm protezzjoni, din mhijiex bizzejjed.

b) <u>L-intimati</u>

Isostnu li ghandha ssir distinzjoni bejn proceduri parlamentari u proceduri gudizzjarji. Tal-ewwel m`ghandhomx fini penali billi m`ghandhomx l-iskop li jsibu htija izda huma ntizi biex il-pubbliku jkun edott b`dak li jkun qed jigri fil-pajjiz.

Dwar l-allegata lezjoni minhabba inkriminazzjoni, jissottomettu illi fil-linji gwida u fil-mod kif agixxa l-Onor Speaker, ma kienx hemm lezjoni tad-dritt tar-rikorrent li ma jinkriminax ruhu. Jispetta lil xhud li meta

jigi mistoqsi, jiddikjara li ma jistax jirrispondi ghaliex jista` jinkrimina ruhu. Malli x-xhud jaghmel hekk, jiskatta l-obbligu tal-Onor Speaker u tal-Kumitat li jaraw jekk ghandhomx jinsistu ghal risposta. Fil-kaz tal-lum, saret assunzjoni da parti tar-rikorrenti li kien ser ikun hemm insistenza da parti tal-Kumitat sabiex jirrispondi ghad-domanda ghalkemm kien invoka d-dritt tas-silenzju. Skont il-linji gwida, l-obbligu ta` persuna li tixhed huwa kjarament soggett minghajr limitazzjonijiet ghad-dritt li ma jinkriminax ruhu.

Skont l-intimati, id-dritt tas-silenzju huwa dritt sussidjarju tad-dritt li wiehed ma jinkriminax ruhu, ghaliex sabiex jigi nvokat d-dritt tas-silenzju, l-ewwel ghandu jigi nvokat d-dritt li b`dak li ser jinghad wiehed jista` jinkrimina ruhu. Fil-kaz tal-lum, ir-rikorrenti qeghdin jirrifjutaw illi jaghmlu hekk ; li kieku r-rikorrenti qalu li bir-risposta taghhom setghu jinkriminaw ruhhom, allura l-Kumitat kien jieqaf mill-mistoqsijiet. Ghalhekk l-intimati jikkontendu illi r-rikorrenti ma jistghux ighidu li mhux ser jirrispondu ghaliex ghandhom dritt tas-silenzju, minghajr qabel ma jghidu li mhux sejrin jirrispondu ghaliex jistghu jinkriminaw ruhhom.

Ghall-intimati l-problema qamet propju ghaliex ir-rikorrenti rrifjutaw li jghidu jekk iridux jixhdu ghaliex setghu jinkriminaw ruhhom.

IV. <u>Dritt</u>

Ir-rikorrent qieghed jilmenta minn ksur tal-jedd fondamentali tieghu ghal smigh xieraq hekk kif tutelat bil-Kostituzzjoni u bil-Konvenzjoni.

Billi ma kienx indikat fir-rikors promotur fejn <u>preciz</u> kien l-ilment fid-disposizzjonijiet citati mir-rikorrent, il-Qorti sejra tirriproduci z-zewg disposizzjonijiet b`mod shih.

i) <u>L-Art 39 tal-Kostituzzjoni</u>

Id-disposizzjoni taqra hekk :–

(1) Kull meta xi hadd ikun akkuzat b`reat kriminali huwa ghandu, kemm-il darba l-akkuza ma tigix irtirata, jigi moghti smigh xieraq gheluq zmien ragonevoli minn qorti indipendenti uimparzjali mwaqqfa b`ligi.

(2) Kull qorti jew awtorità oħra ġudikanti mwaqqfa b`liġi għad-deċiżjoni dwar l-eżistenza jew l-estensjoni ta` drittijiet jew obbligi ċivili għandha tkun indipendenti u imparzjali; u meta l-proċeduri għal deċiżjoni bħal dik huma mibdija minn xi persunaquddiem qorti jew awtorità oħra ġudikanti bħal dik, il-każ għandu jiġi mogħti smigħ xieraq għeluq żmien raġonevoli.

(3) Ħlief bil-ftehim tal-partijiet kollha, il-proċeduri kollha ta` kull qorti u l-proċeduri dwar id-deċiżjoni tal-eżistenza jew l-estensjoni tad-drittijiet jew obbligi ċivili ta` persuna quddiem xi awtorità ġudikanti oħra, magħdud il-pronunzjament tad-deċiżjoni tal-qorti jew awtorità oħra, għandhom jinżammu fil-pubbliku.

(4) Ebda ħaġa fis-subartikolu (3) ta` dan l-artikolu ma għandha timpedixxi lil xi qorti jew xi awtorità bħalma hija msemmija f`dak is-subartikolu milli teskludi mill-proċeduri persuni li ma jkunux il-partijiet tal-proceduri u r-rapprezentanti legali tagħhom

(a) fi proceduri quddiem qorti ta` gurisdizzjoni volontarja u proceduri ohra li, fil-prattika tal-Qrati f`Malta jigu, jew huma tal-istess xorta bhal dawk li jigu, decizi in camera ;

(b) fi proceduri skont xi ligi dwar it-taxxa fuq l-income; jew(c) safejn il-qorti jew awtorità ohra –

(i) tista` tqis mehtieg jew espedjenti f`cirkostanzi li fihom il-pubblicità tista` tippregudika l-interessital-gustizzja ; jew

(ii) jista` jkollha setgha jew tkun mehtiega b`ligi li taghmel hekk fl-interess tad-difiza, sigurtà pubblika, ordni pubbliku, moralità jew decenza pubblika, il-gid ta` persuni taht l-età ta` tmintax-il sena jew il-protezzjoni tal-hajja privata ta` persuni li jkollhom x`jaqsmu mal-proceduri.

(5) Kull min jigi akkuzat b`reat kriminali ghandu jigi meqjus li jkun innocenti sakemm jigi pruvat jew ikun wiegeb li huwa hati:Izda ebda haga li hemm fi jew maghmula skont l-awtorità ta` xi ligi ma titqies li tkun inkonsistenti ma` jew bi ksur ta` dan is-subartikolu safejn dik il-ligi timponi fuq xi persuna akkuzata kif intqal qabel il-piz tal-prova ta` fatti partikolari.

(6) Kull min ikun akkuzat b`reat kriminali –

(a) ghandu jigi nformat bil-miktub, b`ilsien li huwa jifhem u bid-dettalji, dwar ix-xorta tar-reat li bih ikun akkuzat ;

b) ghandu jigi moghti zmien u facilitajiet xierqa ghall-preparazzjoni tad-difiza tieghu ;

c) ghandu jithalla jiddefendi ruhu personalment jew permezta` rapprezentant legali u min ma jkunx jista` jhallas ghal rapprezentanza legali hekk kif tkun mehtiega ragonevolment mic-cirkostanzi tal-kaz tieghu jkollu dritt li jkollu dik ir-rapprezentanza bi spejjez pubblici ;

(d) ghandu jigi moghti facilitajiet biex jezamina personalment jew permezz tar-rapprezentant legali tieghu x-xhieda msejha mill-prosekuzzjoni quddiem kull qorti u li jikseb l-attendenza ta` xhieda suggett ghall-hlas tal-ispejjez ragonevoli taghhom, u jaghmel l-ezami tax-xhieda li jkunu ser jixhdu ghalih quddiem il-qorti bl-istess kondizzjonijiet bhal dawk li jghoddu ghal xhieda msejha mill-prosekuzzjoni; u

(e) ghandu jithalla li jkollu bla hlas l-ghajnuna ta` interpretu jekk ma jkunx jista` jifhem l-ilsien uzat fil-proceduri dwar l-akkuza, u hlief bil-kunsens tieghu stess il-proceduri ma jistghux jinzammu fl-assenza tieghu hlief jekk huwa jgib ruhu hekk li jaghmel it-tkomplija tal-proceduri fil-prezenza tieghu imprattikabbli u l-qorti tkun ordnat li jigi mwarrab u li l-proceduri jitkomplew fl-assenza tieghu.

(7) Meta xi hadd jghaddi proceduri dwar reat kriminali, il-persuna akkuzata jew xi persuna awtorizzata minnha ghal hekk ghandha, jekk hekk tehtieg u bi hlas ta` dak id-dritt ragonevoli li jista` jkun preskritt b`ligi, tigi moghtija fi zmien ragonevoli wara s-sentenza kopja ghall-uzu tal-persuna akkuzata ta` kull inkartament tal-proceduri maghmula minn jew ghan-nom tal-qorti.

(8) Hadd ma ghandu jitqies li jkun hati ta` reat kriminali minhabba f`xi att jew omissjoni li, fil-hin meta jkun sar, ma jkunx jikkostitwixxi reat bhal dak, u ebda piena ma ghandha tigi mposta ghal xi reat kriminali li tkun aktar severa fi grad jew xorta mill-oghla piena li setghet tigi mposta ghal dak ir-reat fiz-zmien meta jkun gie maghmul.

(9) Ebda persuna li turi li tkun ghaddiet proceduri quddiem xi qorti kompetenti ghal reat kriminali u jew tkun giet misjuba hatja jew liberata ma ghandha terga` tghaddi proceduri ghal dak ir-reat jew ghal xi reat kriminali iehor li ghalih setghat tigi misjuba hatja fil-proceduri ghal dak ir-reat hlief wara ordni ta` qorti superjuri moghti matul il-kors ta` appell jew proceduri ta` revizjoni dwar id-dikjarazzjoni ta` htija jew liberazzjoni; u ebda persuna ma ghandha tghaddi proceduri ghal reat kriminali jekk turi li tkun hadet il-mahfra ghal dak ir-reat :

Izda ebda haga f`xi ligi ma ghandha titqies li tkun inkonsistenti ma` jew bi ksur ta` dan is-subartikolu minhabba biss li tawtorizza xi qorti li taghmel proceduri kontra membru ta` korp dixxiplinat ghal reat kriminali nonostanti kull proceduri u dikjarazzjoni ta` htija jew liberazzjoni ta` dak il-membru skont il-ligi dixxiplinarja ta` dak il-korp, imma hekk illi kull qorti li tkun hekk tiggudika dak il-membru u li hekk issibu hati ghandha meta tikkundannah ghal xi piena tiehu kont ta` kull piena moghtija lilu skont dik il-ligi dixxiplinarja.

(10) Ebda persuna li tghaddi proceduri ghal reat kriminali ma ghandha tkun obbligata li tixhed fil-proceduri kontra taghha.

(11) F`dan l-artikolu "rapprezentant legali" tfisser persuna intitolata li tezercita f`Malta bhala avukat jew, hlief dwar procedure quddiem qorti fejn prokuratur legali ma ghandux dritt ta` smigh.

ii) <u>L-Art 6 tal-Konvenzjoni</u>

Id-disposizzjoni taqra hekk :-

1. Fid-determinazzjoni tad-drittijiet ċivili u tal-obbligi tieghu jew ta` xi akkuża kriminali kontra tieghu, kulhadd huwa ntitolat ghal smigh imparzjali u pubbliku żmien raġonevoli minn tribunal indipendenti u imparzjali mwaqqaf b`liġi. Is- sentenza ghandha tinghata pubblikament iżda l-istampa u l-pubbliku jistghu jiġu esklużi mill-proċeduri kollha jew minn parti minnhom -interess tal-morali, tal-ordni pubbliku jew tas-sigurta` nazzjonali f`soċjeta` demokratika, meta l-interessi tal-minuri jew il-protezzjoni tal-hajja privata tal-partijiet hekk tehtieġ, jew safejn ikun rigorożament mehtieġ l-fehma tal-qorti f`ċirkostanzi speċjali meta l-pubbliċita` tista` tippreġudika l-interessi tal-ġustizzja.

2. Kull min ikun akkużat b`reat kriminali ghandu jiġi meqjus li jkun innoċenti sakemm ma jiġix pruvat hati skont il-liġi.

3. Kull min ikun akkużat b`reat kriminali ghandu d-drittijiet minimi li ġejjin :

(a) li jkun infurmat minnu, b`lingwa li jifhem u d-dettal, dwar in-natura u r-raġuni tal-akkuża kontra tieghu ;

(b) li jkollu żmien u faċilitajiet xierqa ghall-preparazzjoni tad-di ża tieghu ;

(c) li jiddefendi ruhu persunalment jew permezz ta` assistenza legali maghżula minnu stess jew, jekk ma jkollux mezzi biżżejjed li jhallas

l-assistenza legali, din ghandha tinghata lilu b`xejn meta l-interessi tal-ġustizzja jehtieġu hekk ;

(d) li jeżamina jew li jara li jiġu eżaminati xhieda kontra tieghu u li jottjeni l-attendenza u l-eżami ta` xhieda favur tieghu taht l-istess kundizzjonijiet bhax-xhieda kontra tieghu ;

(e) li jkollu assistenza b`xejn ta` interpretu jekk ma jkunx jifhem jew jitkellem il-lingwa użata l-qorti.

V. **Gurisprudenza**

Fis-sentenza li tat fit-12 ta` Frar 2016 fil-kawza `**Richard Cuschieri vs Avukat Generali**`, il-Qorti Kostituzzjonali qalet hekk :-

19. Jibda biex jigi senjalat li in tema legali u fuq livell Ewropew, id-dritt ghal smigh xieraq kontemplat fl-Artikolu 6 tal-Konvenzjoni Ewropea ma jinkludix espressament id-dritt li persuna ma tinkriminax ruhha jew id-dritt ghas-silenzju, izda dawn id-drittijiet korollari gew identifikati u meqjusa mill-gurisprudenza tal-Qorti Ewropea bhala li jaqghu taht il- kappa tal-Artikolu 6.

…

22. Din il-Qorti sejra tibda billi taghmel is-segwenti osservazzjonijiet ta` natura guridika tal-vertenza in dizamina b`referenza ghall-kazistika barranija u dik Eworpeja.

*23. Ta` siwi hija l-osservazzjoni maghmula mill-Qorti Suprema tal-Istati Uniti fil-kaz **US v. Holt** dwar dak li hu ammissibbli fil-gbir tal-provi taht-il-Hames Emenda ghal-Kostituzzjoni tal-Istati Uniti illi toffri protezzjoni lil persuna milli tigi sfurzata tixhed kontriha stess waqt proceduri kriminali. Gie osservat pero` li il-protezzjoni ma tghoddx ghal provi dwar il-karatteristici fizici tal-akkuzat. F`dik is-sentenza, il-Qorti Suprema spjegat :*

` … the prohibition of compelling a man in a criminal court to be witness against himself is a prohibition of the use of physical or moral compulsion to extort communications from him, not an exclusion of his body as evidence when it may be material.`

24. Dan ifisser li provi bhal ma huma impronti digitali, ritratti, qisien tal-gisem, kampjuni tal-iskrittura u kampjuni tal-vuci jew tad-demm ma jaqghux taht il-kappa tal-Hames Emenda. Kampjun tal-

iskrittura jew tal- vuci li ma jkollu ebda kontenut inkriminanti hija karatteristika fizika li ma taqax taht il-protezzjoni tal-imsemmija emenda.

…

*28. Gurisprudenza recenti tal-Qorti Ewropea wkoll tadotta hsieb simili hafna ghal dak tal-Qorti Suprema Amerikana f`dak li jirrigwarda l-kompatibilita` ta` tehid ta` kampjuni mal-Artikolu 6 tal-Konvenzjoni. Rigward l-interpretazzjoni tar-rikorrent dwar id-dritt ta `persuna akkuzata li tibqa` siekta, issir referenza partikolari ghas-sentenza **O`Halloran and Francis v. UK**, li permezz taghha l-Qorti Ewropea enuncjat il-principju li d-drittijiet li johorgu mill-Artikolu 6 u, senjatament ghall-kaz odjern, id-dritt li wiehed jibqa` sieket u l-privilegg li persuna ma tigix imgieghla tinkrimina ruhha ma humiex assoluti. F`dak il-kaz gie osservat li :*

`While the Court`s case-law has rarely implied that the right to a fair trial under Article 6 is an unqualified right, the Court`s actual approach – at least under the heading of the right to silence – is more qualified, usually requiring a test to establish whether or not the essence of the right was infringed upon. Under this essence of the right analysis, what constitutes a fair trial cannot be the subject of a single unvarying rule but depends to a certain extent on the circumstances of the particular case. As a result, at times it involves a sui generis proportionality test, especially in relation to minor offences, to justify a finding of no violation of Article 6 (O`Halloran and Francis).

This essence of the right test employs three main criteria to establish whether the coercion or oppression of the will of the accused is permissible under Article 6 : a) nature and degree of compulsion used to obtain the evidence; b) weight of the public interest in the investigation and punishment of the offence at issue; c) existence of any relevant safeguards in the procedure, and the use to which any material so obtained is put (Jalloh,§117).

A certain degree of physical compulsion may be allowed by Article 6 to extract material, or "real" evidence, where that evidence has existence independent of the will of the accused – such as breath, urine, finger, voice, hair, tissue samples for DNA purposes – but not to extract a confession or documentary evidence nor to extract material evidence by sufficiently serious intrusion into the physical autonomy of the accused (Jalloh, §§103-123) …`

29. F`analizi dwar il-gurisprudenza Ewropea fir-rigward l-attrici Karen Reid tikkummenta hekk: `…. The right not to incriminate oneself does not generally extend to the use in criminal proceedings of material which may be obtained from the accused under compulsory powers but which has an existence independent of the will of the suspect [eg.

documents or material produced by the normal functioning of the body such as breath, blood, hair, tissue or voice samples]. Where obtaining the material goes beyond the mere passive endurance of a minor interference with bodily integrity, a problem may arise as in Jalloh v Germany where an emetic was forcibly administered to induce the regurgitation of swallowed drugs ..`

Fid-decizjoni li tat l-ECHR fit-13 ta` Settembru 2016 fil-kaz ta` **`Ibrahim and Others vs The United Kingdom`** inghad hekk :-

(b) General approach to Article 6 in its criminal aspect

250. The right to a fair trial under Article 6 § 1 is an unqualified right. However, what constitutes a fair trial cannot be the subject of a single unvarying rule but must depend on the circumstances of the particular case (see O`Halloran and Francis v. the United Kingdom [GC], nos. 15809/02 and 25624/02, § 53, ECHR 2007-III). The Court`s primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings (see, among many other authorities, Taxquet v. Belgium [GC], no. 926/05, § 84, ECHR 2010; and Schatschaschwili v. Germany [GC], no. 9154/10, § 101, ECHR 2015).

251. Compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings as a whole and not on the basis of an isolated consideration of one particular aspect or one particular incident, although it cannot be excluded that a specific factor may be so decisive as to enable the fairness of the trial to be assessed at an earlier stage in the proceedings (see Can v. Austria, no. 9300/81, Commission`s report of 12 July 1984, § 48, Series A no. 96). In evaluating the overall fairness of the proceedings, the Court will take into account, if appropriate, the minimum rights listed in Article 6 § 3, which exemplify the requirements of a fair trial in respect of typical procedural situations which arise in criminal cases. They can be viewed, therefore, as specific aspects of the concept of a fair trial in criminal proceedings in Article 6 § 1 (see, for example, Salduz, cited above, § 50; Gäfgen v. Germany [GC], no. 22978/05, § 169, ECHR 2010; Dvorski, cited above, § 76; and Schatschaschwili, cited above, § 100). However, those minimum rights are not aims in themselves: their intrinsic aim is always to contribute to ensuring the fairness of the criminal proceedings as a whole (see Can, cited above, § 48; Mayzit v. Russia, no. 63378/00, § 77, 20 January 2005, and Seleznev v. Russia, no. 15591/03, § 67, 26 June 2008).

252. The general requirements of fairness contained in Article 6 apply to all criminal proceedings, irrespective of the type of offence in issue. There can be no question of watering down fair trial rights for the sole reason that the individuals in question are suspected of involvement in terrorism. In these challenging times, the Court considers that it is of the

utmost importance that the Contracting Parties demonstrate their commitment to human rights and the rule of law by ensuring respect for, inter alia, the minimum guarantees of Article 6 of the Convention. Nevertheless, when determining whether the proceedings as a whole have been fair the weight of the public interest in the investigation and punishment of the particular offence in issue may be taken into consideration (see Jalloh v. Germany [GC], no. 54810/00, § 97, ECHR 2006.IX). Moreover, Article 6 should not be applied in such a manner as to put disproportionate difficulties in the way of the police authorities in taking effective measures to counter terrorism or other serious crimes in discharge of their duty under Articles 2, 3 and 5 § 1 of the Convention to protect the right to life and the right to bodily security of members of the public (see, mutatis mutandis, Sher and Others v. the United Kingdom, no. 5201/11, § 149, ECHR 2015 (extracts)). However, public interest concerns cannot justify measures which extinguish the very essence of an applicant`s defence rights (see Jalloh, cited above, § 97; Bykov v. Russia [GC], no. 4378/02, § 93, 10 March 2009; and Aleksandr Zaichenko v. Russia, no. 39660/02, § 39, 18 February 2010)

…

(e) <u>The privilege against self-incrimination</u>

266. The right not to incriminate oneself is primarily concerned with respecting the will of an accused person to remain silent and presupposes that the prosecution in a criminal case seek to prove their case without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused (see Saunders v. the United Kingdom, 17 December 1996, §§ 68-69, Reports 1996VI; Jalloh, cited above, §§ 100 and 102; and Bykov, cited above, § 92). The right to remain silent under police questioning and the privilege against self-incrimination are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6. Their rationale lies, inter alia, in the protection of the accused against improper compulsion by the authorities, thereby contributing to the avoidance of miscarriages of justice and to the fulfilment of the aims of Article 6 (see John Murray, cited above, § 45; Jalloh, cited above, § 100; and Bykov, cited above, § 92).

267. It is important to recognise that the privilege against self-incrimination does not protect against the making of an incriminating statement per se but, as noted above, against the obtaining of evidence by coercion or oppression. It is the existence of compulsion that gives rise to concerns as to whether the privilege against self-incrimination has been respected. For this reason, the Court must first consider the nature and degree of compulsion used to obtain the evidence (see Heaney and McGuinness v. Ireland, no. 34720/97, §§ 54-55, ECHR 2000-XII; O`Halloran and Francis, cited above, § 55; and Bykov, cited above, § 92). The Court, through its case-law, has identified at least three kinds of

situations which give rise to concerns as to improper compulsion in breach of Article 6. The first is where a suspect is obliged to testify under threat of sanctions and either testifies in consequence (see, for example, Saunders, cited above; and Brusco v. France, no. 1466/07, 14 October 2010) or is sanctioned for refusing to testify (see, for example, Heaney and McGuinness, cited above; and Weh v. Austria, no. 38544/97, 8 April 2004). The second is where physical or psychological pressure, often in the form of treatment which breaches Article 3 of the Convention, is applied to obtain real evidence or statements (see, for example, Jalloh, Magee and Gäfgen, all cited above). The third is where the authorities use subterfuge to elicit information that they were unable to obtain during questioning (see Allan v. the United Kingdom, no. 48539/99, ECHR 2002.IX).

268. Testimony obtained under compulsion which appears on its face to be of a non-incriminating nature, such as exculpatory remarks or mere information on questions of fact, may be deployed in criminal proceedings in support of the prosecution case, for example to contradict or cast doubt upon other statements of the accused or evidence given by him during the trial, or to otherwise undermine his credibility. The privilege against self-incrimination cannot therefore reasonably be confined to statements which are directly incriminating (see Saunders, cited above, § 69).

269. However, the right not to incriminate oneself is not absolute (see Heaney and McGuinness, cited above, § 47; Weh, cited above, § 46; and O`Halloran and Francis, cited above, § 53). The degree of compulsion applied will be incompatible with Article 6 where it destroys the very essence of the privilege against self-incrimination (see John Murray, cited above, § 49). But not all direct compulsion will destroy the very essence of the privilege against self-incrimination and thus lead to a violation of Article 6 (see O`Halloran and Francis, cited above, § 53). What is crucial in this context is the use to which evidence obtained under compulsion is put in the course of the criminal trial (see Saunders, cited above, § 71).

VI. <u>Fatti</u>

Ir-rikorrent tressaq quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti Istruttorja, akkuzat b`reati. Il-procediment kriminali kontra tieghu ghadu pendenti.

B`ittra tat-23 ta` Jannar 2014, ir-rikorrent intalab jidher quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubblici sabiex jaghti x-xiehda tieghu u sabiex jiehu mieghu xi dokumenti.

Ix-xiehda kellha tkun dwar l-istess fatti li dwarhom kien qieghed akkuzat quddiem il-Qorti Istruttorja u cioe dwar ir-rapport tal-Awditur Generali - *An Analysis of the Effectiveness of Enemalta Corporation`s Fuel Procurement.*

Ir-rikorrent deher quddiem dan il-Kumitat Permanenti dwar il-Kontijiet Pubblici fil-5 ta` Frar 2014, fejn tramite l-avukat tieghu spjega li ma setax jirrispondi ghal ebda domanda u li ghalhekk kien qed jinvoka d-dritt tieghu tas-silenzju. Fil-laqgha c-Chairman tal-Kumitat ghamel referenza ghal Ruling tal-Onorevoli Speaker tal-10 ta` Dicembru 2013, u iddecieda li dak ir-ruling kellu japplika anke fil-konfront tar-rikorrent.

Fis-17 ta` Frar 2014 – mexxa bil-procediment tal-lum.

VII. Konsiderazzjonijiet ta` l-Qorti

Tajjeb jinghad illi meta r-rikorrent ircieva l-ittra sabiex jidher quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubblici, mal-ittra kien anness *Guide for witnesses appearing before the Public Accounts Committee of the House of Representatives, Parliament of Malta.*

Il-*Guide* jistabilixxi certa principji saljenti :-

Clearly, the underlying principle must be that all protection afforded to witnesses unde the Criminal Code CAP 9, the Code of Organisation and Civil Procedure CAP 12 and the Civil Code CAP 16, including protection from incrimination shall be applicable to witnesses appearing before the Public Accounts Committee.

*A person who, having been duly served with a copy of the warrant as prescribed in article 3 above, fails, **without lawful excuse**, to appear before the Committee, or having appeared before the Committee refuses to be sworn or, subject to **guideline 19** below, to answer questions shall be guilty of contempt of the House and shall be liable to the penalties prescribed in article 11 of the House of Representatives Ordinance (Cap 113).*

…

*14. Witnesses must answer all questions put by the Committee, subject to the protection granted to witnesses under the Laws of Malta, and in particular, without prejudice to **guideline 19**.*

…

*16. A witness who, subject to **guideline 19** below, refuses to answer questions may be reported to the House.*

…

19. No witness is to be compelled to answer a question which might incriminate him/her.

Ghal din il-Qorti huwa evidenti li fil-*Guide for witnesses appearing before the Public Accounts Committee of the House of Representatives, Parliament of Malta* id-deposizzjoni ta` xhieda hija soggetta ghall-Art 19.

Issa fir-ruling li ta l-Speaker fis-seduta tat-3 ta` Frar 2014, inghad hekk in konkluzjoni :–

… jiddeciedi li x-xhud Tancred Tabone ghandu jidher quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubblici u ghandu jwiegeb id-domandi li jsirulu minn kull membru ta` dan l-Kumitat, inkluz l-istess Chairman interim, u f`kaz ta` domanda li tista` tinkriminah huwa ghandu jitlob li jigi ezentat milli jwiegeb dik d-domanda. U f`kaz li jkun hemm oggezzjoni minn xi membru fis-sens li jekk dik d-domanda tigi mwiegba ma tkunx inkriminanti fil-konfront tal-istess xhud Tancred Tabone, il-Kumitat ghandu allura jitlob direzzjoni mis-Sedja biex taghti decizjoni taghha dwar jekk dik d-domanda li x-xhud ipprefera li ma jwegibx ghax tista` tinkriminah, ghandhiex tigi mwiegba jew le.

Fir-ruling kien citat l-Art 16 ta` l-istess *Guide.*

L-Art 16 huwa soggett ghal Art 19.

Fis-sostanza dan ifisser illi xhud ma jistax jigi sfurzat jirrispondi domanda li tista` tinkriminah.

Dan huwa punt krucjali.

Ir-rikorrent mhuwiex xhud kwalunkwe izda xhud li huwa akkuzat fi proceduri kriminali li jittrattaw l-istess mertu tal-

isharrig li qed isir mill-Kumitat Permanenti dwar il-Kontijiet Pubblici.

Tajjeb jinghad illi akkuzat ghandu dritt ghas-silenzju waqt illi xhud li ma jkunx akkuzat ghandu l-jedd illi ma jwegibx ghal domandi li jistghu jinkriminawh.

Quddiem il-Kumitat Permanenti dwar Kontijiet Pubblici, ir-rikorrent ghandu l-jedd li jinvoka d-dritt ghas-silenzju.

Id-dritt ghas-silenzju jissupera l-Art 16 u anke l-Art 19 ghaliex dawn iz-zewg disposizzjonijiet ighoddu biss fil-kaz ta` persuni li jkunu gew mitluba jixhdu izda li ma jkunux akkuzati fi proceduri kriminali li jkunu ghadhom pendenti.

Ghalhekk is-sitwazzjoni regolata fl-Art 16 hija diversa ghaliex hemm persuna tkun qeghda **toggezzjona** ghad-domanda izda mhux ghaliex id-domanda tista` tinkriminah, ghaliex jidhol l-Art 19, izda ghal ragunijiet ohra. F`dak il-kaz **biss** ghandha tintalab id-direzzjoni tal-Ispeaker.

Hemm tlett sitwazzjonijiet li jistghu jigu identifikati bhala lezivi ghall-jeddijiet fondamentali tar-rikorrent :-

L-ewwel sitwazzjoni hija meta akkuzat ikun sfurzat jixhed u jkun minaccjat b`sanzjonijiet fin-nuqqas. Jekk jixhed, jista` jkun qed igorr konsegwenzi sfavorevoli ghalih.

It-tieni sitwazzjoni hija meta jkun hemm pressjoni fizika jew psikologika sabiex jinghataw fatti jew stqarriji.

It-tielet sitwazzjoni hija meta jsir uzu minn sotterfugi jew stratagemmi sabiex tinkiseb informazzjoni li ma setghetx tinkiseb waqt l-interrogazzjoni.

Fil-kaz tal-lum, irrizulta li ghalkemm ir-rikorrent iddikjara illi ma riedx jixhed quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubblici, billi huwa akkuzat fi proceduri kriminali pendenti, u allura ghandu l-jedd ghas-silenzju, kien rinfaccjat bir-Ruling tal-Ispeaker, fejn kien ser jigi sfurzat illi jixhed.

Din il-Qorti tghid illi, rinfaccjat b`sitwazzjoni ta` dik ix-xorta, il-Kumitat Permanenti dwar il-Kontijiet Pubblici ma kellux jirreferi ghar-Ruling li ta l-Speaker fil-konfront ta` terzi, billi dak ir-Ruling ma kienx qieghed jissalvagwarda d-dritt tar-rikorrent ghas-silenzju.

Skont l-Art 16, *a witness, who subject to guideline 19 below, refuses to answer questions may be reported to the House.*

Tajjeb jinghad illi fir-Ruling ma kienx imsemmi l-Art 19.

Ghalhekk bir-rifjut tieghu illi jixhed ir-rikorrent seta` jigi rappurtat lill-Kamra tad-Deputati.

Fl-Art 4 tal-linji gwida :–

A person who, having been duly served with a copy of the warrant as prescribed in article 3 above, fails, without lawful excuse, to appear before the Committee, or having appeared before the Committee refuses to be sworn or, subject to guideline 19 below, to answer questions shall be guilty of contempt of the House and shall be liable to the penalties prescribed in article 11 of the House of Representatives Ordinance.

L-Art 11 tal-Kap 13 (Ordinanza dwar l-Privileggi u s-Setghat tal-Kamra tad-Deputati) ighid :–

(5) Bla hsara ghal kull piena oghla li tista tkun mahsuba skont d-disposizzjonijiet ta` xi ligi ohra, kull min jikkommetti xi wiehed mir-reati msemmija fis-subartikolu (4) jkun hati ta` reat kontra dan l-Att u jehel meta jinsab hati, il-piena ta` twiddiba, jew ta` prigunerija ghal zmien mhux izjed minn sitt xhur jew multa ta` mhux izjed minn elf, mija u erbhga u sittin euro u disgha u sittin centezmu (1,164.69), jew ghal dik il-multa u prigunerija flimkien.

Tenut kont tal-fatt illi dan kollu jidhol fl-ewwel sitwazzjoni li tissemma kemm fil-gurisprudenza tal-qrati taghna izda wkoll fil-gurisprudenza tal-ECHR, u stante wkoll kif intqal qabel li fir-Ruling li nghata mill-Ispeaker, l-ordni tal-Ispeaker ma kienx soggett ghad-dritt ta` silenzju, din il-Qorti tqis illi r-Ruling tal-Ispeaker li nghata fit-3 ta` Frar 2014 huwa leziv ghall-jedd ta` smigh xieraq tar-rikorrent.

Ghal dak li ghandu x`jaqsam mal-linji gwida, ghalkemm kull disposizzjoni sostanzjali fejn si tratta ta` xhieda hija soggetta ghall-Art 19, din il-Qorti tghid illi fis-sitwazzjoni tar-rikorrent, li ghaliex huwa akkuzat quddiem qorti kriminali b`reati relatati ma` fatti li jkunu qeghdin jigu nvestigati mill-Kumitat Permanenti dwar il-Kontijiet Pubblici ghandu l-jedd ghas-silenzju, il-linji gwida kif dedotti huma lesivi ghad-dritt tar-rikorrent ghal smigh xieraq propju ghaliex ma jaghtux kont tal-jedd ghas-silenzju li ghandu r-rikorrent bhala akkuzat.

VIII. <u>Rimedju</u>

Accertata l-lezjoni, il-Qorti sejra tordna li r-Ruling tal-Ispeaker tal-Kamra tad-Deputati tat-3 ta` Frar 2014, u kull fejn il-linji gwida jirreferu ghax-xiehda ta` persuni, m`ghandhomx ikunu applikabbli fil-konfront tar-rikorrent fil-kors tal-proceduri de quo li qeghdin jigu kondotti mill-Kumitat Permanenti dwar il-Kontijiet Pubblici.

<u>Decide</u>

Ghar-ragunijiet kollha premessi, il-Qorti qeghda tipprovdi dwar it-talbiet tar-rikorrent, u dwar l-eccezzjonijiet tal-intimati li baqghu mhux decizi bis-sentenzi precedenti ghal din tal-lum, billi qeghda taqta` u tiddeciedi hekk :-

Tilqa` l-ewwel talba.

Tilqa` t-tieni talba safejn il-*Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives, Parliament of Malta* jolqot il-kaz tar-rikorrent.

Tipprovdi dwar it-tielet talba billi tiddikjara illi r-Ruling tal-Onorevoli Speaker tal-Kamra tad-Deputati tat-3 ta` Frar 2014, u l-*Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives, Parliament of Malta* safejn dan jirrigwarda x-xiehda ta` persuni, ma ghandhomx ikunu applikabbli fil-konfront tar-rikorrenti waqt il-proceduri pendenti quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubblici dwar ir-rapport tal-Awditur Generali bl-isem : `*An Analysis of the Effectiveness of Enemalta Corporation`s Fuel Procurement*`.

Bl-applikazzjoni tal-Art 223(3) tal-Kap 12 tal-Ligijiet ta` Malta, tordna li kull parti tbati l-ispejjez taghha, relattivi ghad-decizjoni tal-lum u ghad-decizjoni parzjali li tat fis-26 ta` Mejju 2016.

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur