QORTI CIVILI PRIM`AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON

Illum it-Tlieta 31 ta` Jannar 2017

Kawza Nru. 2
Rikors Nru. 68/14 JZM

Francis Portelli (KI 986249M) ;
Anthony Cassar (KI 45750M)

kontra

L-Onorevoli Speaker
tal-Kamra tad-Deputati ;

Ic-Chairperson tal-Kumitat
Permanenti dwar il-Kontijiet
Pubblici

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

Il-Qorti :

I. Preliminari

Rat ir-rikors prezentat fit-22 ta` Settembru 2014 li jaqra hekk :–

Illi fil-21 ta` Frar, 2013, l-esponenti tressqu quddiem il-Qorti tal-Magistrati (Malta) bhala qorti istruttorja akkuzati b`komplicita` fir-reati kontemplati fl-artikoli 115, 124 u 125 tal-Kap 9 tal-Ligijiet ta` Malta kif ukoll bir-reat kontemplat fl-artikolu 3(1) tal-Kap 373 tal-Ligijiet ta` Malta (kopja ta` l-imputazzjonijiet qed tigi annessa u mmarkata bhala Dok PC1).

Illi f`dik l-istess gurnata l-esponenti nghataw il-helsien mill-arrest taht diversi kundizzjonijiet fosthom li ma jikkommettux delitt iehor ta` natura volontarja (kopji tal-kundizzjonijiet qed jigu annessi u mmarkati bhala Dok PC2 u PC3).

Illi l-imsemmija istruttorja ghadha llum pendenti peress li l-prosekuzzjoni ghadha fl-istadju tal-gbir tal-provi.

Illi permezz ta` ittra tal-Kumitat Permanenti dwar il-Kontijiet Pubblici datata 25 ta` Frar, 2014, l-esponent Anthony Cassar intalab jaghti x-xiehda tieghu fit-12 ta` Marzu, 2014 dwar rapport ta` l-Awditur Generali intitolat "An Analysis of the Effectiveness of Enemalta Corporation`s Fuel Procurement" datat Lulju, 2013. L-esponent gie wkoll mitlub igib mieghu xi dokumenti li ghandu disponibbli li huma relatati mal-kaz (kopja ta` l-ittra qed tigi annessa u mmarkata bhala Dok PC4).

Illi ma` din l-ittra giet mibghuta kopja tal-"Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives" (kopja tal-Guide annessa u mmarkata bhala Dok PC5).

Illi b`ittra tas-7 ta` Marzu, 2014, l-esponent, tramite l-avukat sottoskritt, informa lic-Chairperson tal-Kumitat li kien ser jinvoka d-dritt tieghu tas-silenzju u ghamel referenza ghall-proceduri kostituzzjonali pendenti fuq punt simili minn Frank Sammut (kopja ta` l-ittra annessa u mmarkata bhala Dok PC6).

Illi waqt is-seduta tat-12 ta` Marzu, 2014, wara li l-avukat sottoskritt elabora fuq ir-ragunijiet ghall-invokazzjoni tad-dritt tas-silenzju ta` l-esponent, il-Kumitat gab a konjizzjoni tieghu Ruling ta` l-Onorevoli Speaker tal-Kamra tad-Deputati tat-3 ta` Frar, 2014 dwar

eccezzjoni simili mqajjma minn Tancred Tabone (kopja tal-Ruling anness u mmarkat bhala Dok PC7). L-esponent gie informat li dak ir-Ruling kellu jigi rispettat indipendentement minn proceduri ta` natura kostituzzjonali li setghu gew istitwiti minn terzi persuni.

Illi permezz ta` ittra tal-Kumitat Permanenti dwar il-Kontijiet Pubblici datata 19 ta` Mejju, 2014, l-esponent Francis Portelli intalab jaghti x-xiehda tieghu fit-3 ta` Gunju, 2014 dwar l-istess rapport ta` l-Awditur Generali ntitolat "An Analysis of the Effectiveness of Enemalta Corporation`s Fuel Procurement" datat Lulju, 2013. L-esponent gie wkoll mitlub igib mieghu xi dokumenti li ghandu disponibbli li huma relatati mal-kaz (kopja ta` l-ittra qed tigi annessa u mmarkata bhala Dok PC8).

Illi b`ittra tat-23 ta` Mejju, 2014, l-esponent Francis Portelli, tramite l-avukat sottoskritt, informa lic-Chairperson tal-Kumitat li l-posizzjoni tieghu kienet identika ghal dik ta` l-esponent Cassar fis-sens li kien ser jinvoka d-dritt tieghu tas-silenzju u li tali dritt kellu necessarjament, in vista ta` l-andament tas-seduta tat-12 ta` Marzu, 2014, jigi salvagwardat minn Qorti ta` gurisdizzjoni Kostituzzjonali (kopja ta` l-ittra annessa u mmarkata bhala Dok PC9).

Illi b`ittra tal-5 ta` Gunju, 2014, l-esponenti, tramite l-avukat ta` fiducja taghhom, talbu lill-Kumitat Permanenti dwar il-Kontijiet Pubblici jiccara jekk ir-Ruling immarkat bhala Dok PC7, in kwantu moghti fil-konfront ta` terza persuna, kienx japplika wkoll ghalihom (kopja ta` l-ittra annessa u mmarkata bhala Dok PC10).

Illi l-avukat sottoskritt attenda ghas-seduta ta` l-1 ta` Lulju, 2014 fejn il-punt sollevat fl-ittra tal-5 ta` Gunju, 2014 gie diskuss. Infatti fl-ahhar ta` dik il-laqgha gie deciz li r-Ruling immarkat bhala Dok PC7 kellu japplika mutatis mutandis ghall-esponenti Francis Portelli u Anthony Cassar (kopja tal-minuti annessi u mmarkati bhala Dok PC11).

1. Ksur tad-dritt taghhom ta` smigh xieraq sancit mill-Artikolu 6 tal-Konvenzjoni Ewropea kif ukoll mill-Artikolu 39 tal-Kostituzzjoni ta` Malta

Illi skond ir-Ruling ta` l-Onorevoli Speaker tal-Kamra tad-Deputati tat-3 ta` Frar, 2014, xhud ghandu jidher quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubblici u ghandu jwiegeb id-domandi li jsirulu minn kull membru ta` dan il-Kumitat u, f`kaz ta` domanda li tista` tinkriminah huwa ghandu jitlob li jigi ezentat milli jwiegeb dik id-domanda. U f`kaz li

jkun hemm oggezzjoni minn xi membru fis-sens li jekk dik id-domanda tigi mwiegba ma tkunx inkriminanti fil-konfront tax-xhud, il-Kumitat ghandu allura jitlob direzzjoni mis-Sedja biex taghti d-direzzjoni taghha dwar jekk dik id-domanda ghandhiex tigi mwiegba jew le.

Illi filwaqt li f`dan ir-Ruling saret ampja referenza ghall-ktieb Parliamentary Practice ta` l-Erskine May (24th ed.), jirrizulta mill-istess Ruling li fir-rigward tax-xhieda li jidhru quddiem il-Kumitat dwar il-Kontijiet Pubblici, kellhom japplikaw il-"Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives, Parliament of Malta". Skond l-introduzzjoni ta` dawn il-linji gwida, liema introduzzjoni giet ukoll citata verbatim fir-Ruling :-

> *"... the underlying principle must be that all protection afforded to witnesses under 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."*

Illi jinghad bl-akbar rispett li l-konkluzjonijiet raggunti fir-Ruling jindirizzaw, a bazi ta` dak li tghid il-ligi, il-posizzjoni ta` xhud li ma jkunx ghaddej proceduri kriminali u mhux dik ta` xhud li jkun ghaddej proceduri kriminali bhalma huma l-esponenti Francis Portelli u Anthony Cassar.

Illi, infatti, il-modalita` maghzula mill-Onorevoli Speaker hija bl-akbar rispett riflessjoni ta` l-anomalija fir-Ruling partikolarment fejn jinghad li f`kaz li tqum kwistjoni dwar jekk ir-risposta ta` domanda tistax tkun inkriminanti fil-konfront tax-xhud, il-Kumitat ghandu allura jitlob direzzjoni mis-Sedja biex taghti d-direzzjoni taghha dwar jekk dik id-domanda ghandhiex tigi mwiegba jew le. A parti mill-fatt li d-dritt sagrosant tas-silenzju ta` persuna suspettata jew addirittura imputata huwa dritt li jipprexxindi minn kwalsiasi regola emanenti minn ligi ordinarja, qed jigi sottomess li is-Sedja ma hijiex edotta la mill-kontenut ta` l-atti ta` l-istruttorja li qed issir fil-konfront ta` l-esponent (vide artikolu 518 tal-Kodici Kriminali) u wisq anqas mill-eventwali linji ta` difiza ta` l-istess esponenti. Huwa f`dan is-sens li l-esponenti jissottomettu li r-Ruling huwa anomalu in kwantu is-Sedja ma tista` qatt tkun f`posizzjoni li tiddeciedi jekk twegiba ghal domanda tistax tinkrimina lill-esponenti jew le.

Illi Harris, O`Boyle & Warbrick, fil-ktieb taghhom Law of the European Convention on Human Rights (Second Edition), jghidu hekk :-

"The right to a fair hearing includes freedom from self-incrimination in criminal cases. In one sense, this is an unexpected reading of Article 6(1), in that when Council of Europe member states added to the rights of the accused in the Seventh Protocol to the Convention, they considered including freedom from self-incrimination but decided not to do so. Nonetheless, the Court`s subsequent jurisprudence under Article 6 fills an obvious and unfortunate gap. As the Court stated in Saunders v UK, `the right to silence and the right not to incriminate oneself are generally recognized international standards which lie at the heart of the notion of a fair procedure under Article 6`." (p 259)

Illi fl-istadju ta` l-iskambju ta` korrispondenza li eventwalment wassal ghar-Ruling tat-3 ta` Frar, 2014, kienet effettivament saret referenza ghas-sentenza tal-Qorti ta` Strasbourg fl-ismijiet "Saunders v UK". Infatti f`dan ir-Ruling gie deciz li il-"Kumitat dwar il-Kontijiet Pubblici ma jistax jitqies bhala tribunal li jkun suggett ta` dak li wiehed jistenna minn kull procedura gudizzjarja kif hija indikata fl-interpretazzjoni tal-artikolu 6…" u li "il-kaz ta` Saunders … ma japplikax ghall-Kumitat dwar il-Kontijiet Pubblici".

Illi indipendentement minn kwistjonijiet dwar il-korrettezza legali o meno ta` din id-decizjoni, l-esponenti qieghdin jissottomettu li d-dritt taghhom ghal smigh xieraq li ser jigi lez bl-eventwali xiehda quddiem il-Kumitat dwar il-Kontijiet Pubblici huwa s-smigh quddiem il-qrati ta` gurisdizzjoni kriminali fil-proceduri fl-ismijiet "Il-Pulizija v Francis Portelli u Anthony Cassar".

Illi qed jigi ghalhekk sottomess li kemm il-"Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives" kif ukoll ir-Ruling ta` l-Onorevoli Speaker tal-Kamra tad-Deputati tat-3 ta` Frar, 2014 huma lezivi tad-dritt taghhom ta` smigh xieraq sancit mill-Artikolu 6 tal-Konvenzjoni Ewropea kif ukoll mill-Artikolu 39 tal-Kostituzzjoni ta` Malta.

2. Ksur tad-dritt taghhom tal-liberta` personali sancit mill-Artikolu 5 tal-Konvenzjoni Ewropea kif ukoll mill-Artikolu 34 tal-Kostituzzjoni ta` Malta.

Illi r-Regola 4 tal-"Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives" tiddisponi hekk :-

"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 (Powers and Privileges) Ordinance (CAP 113)."

Illi wahda mill-pieni prospettati fis-subartikolu (5) ta` l-artikolu 11 ta` l-Ordinanza dwar il-Privileggi u s-Setghat tal-Kamra tad-Deputati (Kap 113 tal-Ligijiet ta` Malta) ghal "nuqqas ta` qima" ("contempt") hija dik ta` "prigunerija ghal zmien mhux izjed minn sitt xhur".

Illi l-esponenti, in vista tal-proceduri kriminali fil-konfront taghhom, qieghdin jipprevalixxu ruhhom mid-dritt tas-silenzju, dritt, kif inghad iktar `l fuq, sancit mill-gurisprudenza ta` Strasbourg. Ghalhekk l-esponenti jistghu potenzjalment, fl-eventwalita` li jinsistu li jipprotegu d-dritt taghhom ghal smigh xieraq, jigu puniti b`piena ta` prigunerija effettiva.

Illi, a parti minn hekk, fil-21 ta` Frar, 2013, l-esponenti inghataw il-helsien mill-arrest mill-Qorti tal-Magistrati (Malta) bhala qorti istruttorja taht diversi kundizzjonijiet fosthom dik indikata bin-numru 4 li ma jikkommettux delitt iehor ta` natura volontarja waqt li jkunu mehlusa mill-arrest.

Illi ghalhekk l-esponenti mhux biss huma potenzjalment esposti ghall-piena ta` prigunerija minhabba dak li jiddisponi is-subartikolu (5) ta` l-artikolu 11 ta` l-Ordinanza msemmija, izda addirittura esposti li jitilfu l-helsien mill-arrest taghhom minhabba ksur tal-kundizzjoni indikata.

Illi qed jigi ghalhekk ukoll sottomess li kemm il-"Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives" kif ukoll ir-Ruling ta` l-Onorevoli Speaker tal-Kamra tad-Deputati tat-3 ta` Frar, 2014 huma lezivi tad-dritt taghhom tal-liberta` personali sancit mill-Artikolu 5 tal-Konvenzjoni Ewropea kif ukoll mill-Artikolu 34 tal-Kostituzzjoni ta` Malta.

Ghaldaqstant l-esponenti, ghar-ragunijiet premessi, jitolbu lil din l-Onorabbli Qorti sabiex :-

1) Tiddikjara li l-"Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives" jikser id-dritt taghhom ghal smigh xieraq kif sancit mill-Artikolu 6 tal-Konvenzjoni Ewropea mill-Artikolu 39 tal-Kostituzzjoni ta` Malta in kwantu jobbligahom jirrispondu ghal mistoqsijiet mill-membri tal-Kumitat dwar il-Kontijiet Pubblici li jistghu jiksrulhom d-dritt ta` smigh xieraq ;

2) Tiddikjara li r-Ruling ta` l-Onorevoli Speaker tal-Kamra tad-Deputati tat-3 ta` Frar, 2014, rez applikabbli ghall-esponenti permezz tad-decizjoni mehuda fil-laqgha tal-Kumitat dwar il-Kontijiet Pubblici ta` l-1 ta` Lulju, 2014, jikser id-dritt taghhom ghal smigh xieraq kif sancit mill-Artikolu 6 tal-Konvenzjoni Ewropea mill-Artikolu 39 tal-Kostituzzjoni ta` Malta in kwantu jobbligohom jirrispondu ghal mistoqsijiet mill-membri tal-Kumitat dwar il-Kontijiet Pubblici li jistghu jiksrulhom d-dritt ta` smigh xieraq ;

3) Tiddikjara li l-"Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives" jikser id-dritt taghhom tal-liberta` personali sancit mill-Artikolu 5 tal-Konvenzjoni Ewropea kif ukoll mill-Artikolu 34 tal-Kostituzzjoni ta` Malta in kwantu jesponihom potenzjalment ghat-telf tal-liberta` personali taghhom fl-eventwalita` li jinsistu li jipprotegi d-dritt taghhom ghal smigh xieraq ;

4) Tiddikjara li r-Ruling ta` l-Onorevoli Speaker tal-Kamra tad-Deputati tat-3 ta` Frar, 2014, rez applikabbli ghall-esponenti permezz tad-decizjoni mehuda fil-laqgha tal-Kumitat dwar il-Kontijiet Pubblici ta` l-1 ta` Lulju, 2014, jikser id-dritt taghhom tal-liberta` personali sancit mill-Artikolu 5 tal-Konvenzjoni Ewropea kif ukoll mill-Artikolu 34 tal-Kostituzzjoni ta` Malta in kwantu jesponihom potenzjalment ghat-telf tal-liberta` personali taghhom fl-eventwalita` li jinsistu li jipprotegi d-dritt taghhom ghal smigh xieraq ;

5) Taghti d-direttivi kollha sabiex jigu sanciti d-drittijiet fondamentali u kostituzzjonali ta` l-esponenti kif protetti mill-istess Kostituzzjoni u Konvenzjoni.

Bl-ispejjez kontra l-intimati li minn issa huma ngunti ghas-subizzjoni.

Rat id-dokumenti li pprezentaw ir-rikorrenti mar-rikors promotur.

Rat ir-risposta li l-intimati flimkien ipprezentaw fl-10 ta` Ottubru 2014. Din_ taqra hekk :–

1. Illi fl-ewwel lok in-notifika tar-rikors hija nulla billi kontra d-disposttiv ta` ordni pubbliku kontenut f`l-artikolu 65(3) tal-Kostituzzjoni li trid li l-atti ta`din il-Qorti ma jigux notifikati lill-Kamra u dan huwa privilegg tal-kamra ; din ir-risposta ma ghandhiex tiftiehem bhala li l-intimati qieghedin jaghtu ruhhom b`notifikati b`dak ir-rikors billi l-impossibilita` ta` notifika hija biss rifless tan-nuqqas ta`gurisdizzjoni ta` dina l-Onorabbli Qorti li qieghed tigi eccepita f`din ir-risposta ;

2. Illi fit-tieni 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 insindikabbilli tal-Kamra u kull indhil f`dik il-procedura tammonta ghall-ksur tal-privileggi tal-Kamra ;

3. Illi inoltre l-Onorevoli Speaker tal-Kamra tad-Deputati u l-Onorevoli Chairperson tal-Kumitat Permanenti dwar il-Kontijiet Pubblici in kwantu mharrkin in rappresentanza tal-Kamra tad-Deputati ma ghandhomx dik ir-rappresentanza u huma malament imharrkin ghaliex il-Kamra tad-Deputati ma ghandhiex locus standi fil-Qorti ;

4. Illi ghalhekk il-procedura hija evidentement monka u nkompleta ghaliex jonqos legittimu kontradittur fil-gudizzju billi l-intimati certament ma humiex legittimi kontradittur 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 vjolati. Il-Kumitat in kwistjoni huwa mghoti 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 minn huwa mehtieg biex il-kumitat jista` jasal ghall-konkluzjonijiet tieghu lil kull minn 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 tixhiedx fejn bir-risposta taghha tkun tista` tinkrimina ruhha. Ma hemm l-ebda hsieb li ebda

persuna tiggieghel 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 jhoss 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 tittihidx bil-ghaqal skond il-ligi u fil-pjen rispett tad-drittijiet tax-xhud.

6. Illi fir-rigward tal-fatti elenkati fir-rikors l-esponenti jirrilevaw illi ma hemm l-ebda kontestazzjoni dwar il-fatti elenkati fil-paragrafi wiehed sa hdax tar-rikors.

7. Illi dwar il-fatti elenkati fil-paragrafi taht punt numru wiehed u taht l-intestatura `Ksur tad-dritt taghhom ta` smigh xieraq sancit mill-Artikolu 6 tal-Konvenzjoni Ewropea kif ukoll mill-Artikolu 39 tal-Kostituzzjoni ta` Malta`, l-esponenti jirrilevaw is-segwenti :-

a. Fl-ewwel lok 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 hiex li tikkonduci investigazzjoni biex tigi uzata fil-proceduri kriminali; il-mansjoni tal-kumitat hija limitata ghas-sorveljanza tal-kontijiet pubblici u tas-sanita` 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 ntiza 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 precisament li dina ma taqax biex tigi sindikata minn dina l-Onorabbli Qorti.

b. L-esponenti bl-ebda mod ma qieghdin jinnegaw l-applikazzjoni u l-importanza tal-hekk imsejjah dritt tas-silenzju intiz sabiex jipprotegi mill-individwu milli jinkrimina ruhu. Madanakollu wiehed irid necessarjament jezamina l-kuntest li fih jkun qieghed jigi invokat tali dritt. Intant wiehed jinnota illi l-intepretazzjoni li tat il-Qorti Ewropea tad-Drittijiet tal-Bniedem lil dan id-dritt fis-sentenza deciziva taghha fl-ismijiet Saunders vs UK, u referenza ghall-liema hemm ukoll fir-Ruling tal-iSpeaker tat-3 ta` Frar, 2014 jillimita l-applikazzjoni tal-privilegg ghall-ammissjoni ta` evidenza f`kuntest ta` proceduri kriminali u ma jestendix ghal procedura ta` natura purament amministrattiva.

c. Huwa ghalhekk krucjali ghall-proceduri odjerni li wiehed izomm f`mohhu l-fatt illi n-natura tal-proceduri quddiem il-Kumitat bl-ebda ma jistghu jigu konsidrati bhala proceduri kriminali u bl-ebda mod

ma huma ntizi sabiex iservu bhala gbir ta` provi mill-prosekuzzjoni. Jirrizulta bl-aktar mod car fil-fatt illi l-proceduri quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubblici mhux talli mhumiex ta` natura kriminali izda lanqas biss huma ta` natura gudizzjarja. Ghaldaqstant ladarba l-proceduri huma amministrattivi, jidher illi m`hemmx lok illi wiehed jargumenta illi qieghed jigi vjolat id-dritt tieghu ghal smiegh xieraq a bazi ta` allegazzjoni illi d-dritt tieghu ghas-silenzju gie lez.

d. Fil-fatt jinghad illi dawk il-proceduri kriminali ma jinteressawx lill-iSpeaker u l-procedura quddiem il-Kumitat ma hijiex relatata ma` dawk il-proceduri kriminali u ma hija bl-ebda mod intiza sabiex tigbor evidenza biex tintuza fil-proceduri kriminali imma hija xi haga kompletament indipendenti minnhom.

e. Fil-proceduri quddiem il-Kumitat, ghalkemm ix-xhud huwa obbligat jirrispondi l-mistoqsijiet mqieghda lilu, huwa mhux obbligat jirrispondi fejn huwa jista`jinkrimina ruhu u dan skond l-istess Ruling in kwistjoni, ghallhekk ma hemm l-ebda ksur ta`ebda dritt fondamentali. Il-fatt illi x-xhud jigi msejjah sabiex jidher quddiem il-kumitat minnu nnifsu ma jivvjola l-ebda dritt, huwa l-fatt li persuna tigi mgieghla li twiegeb ghal mistoqsijiet li jinkriminawha li potenzjalment jista` jinghad illi jivvjola dritt. Ghaldaqstant ladarba l-procedura tal-Kumitat hekk kif stabbilita mir-Ruling in kwistjoni tipprovdi lix-xhud il-possibilita` illi jigi ezentit milli jwiegeb dawk il-mistoqsijiet linjistghu jinkriminawh ghalhekk jidher bic-car illi d-drittijiet tax-xhud huma protetti.

f. Fi kwalunkwe kaz jidher illi l-argumenti tar-rikorrenti huma kollha argumenti ta` konvenjenza; certament lis-Speaker jista` jara li d-dritt fondamentali ta` xhud sa fejn jikkoncerna d-decizjonijiet li jiehu huwa ma jinkisirx, lis-Speaker ma hux qieghed jghid li d-drittijiet fondamentali tal-individwu ma japplikawx, anzi il-linji gwida minnhu mahluqa huma ntizi precisament biex dawk id-drittijiet fondamentali ma jigux mittifsa.

8. Illi dwar il-fatti elenkati fil-paragrafi taht punt numru tnejn u taht l-intestatura `Ksur tad-dritt taghhom tal-liberta` personali sancit mill-Artikolu 5 tal-Konvenzjoni Ewropea kif ukoll mill-Artikolu 34 tal-Kostituzzjoni ta` Malta`, l-esponenti qieghdin jirrilevaw is-segwenti:

a. L-allegazzjoni illi r-Regola 4 tal-Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives b`xi mod tivvjola d-dritt tal-liberta` personali tar-rikorrenti qieghda tigi kontestata fl-intier taghha.

b. Ir-rikorrenti fir-rikors taghhom qieghdin jallegaw illi l-fatt illi wahda mill-pieni ghall-"nuqqas ta`qima" (contempt) provduta taht l-

Ordinanza dwar il-Privileggi u s-Setghat tal-Kamra tad-Deputati (Kap 113), ossija il-piena emergenti ms-subartikolu 5 tal-artikolu 11 li tipprovdi l-possibilita` ta`prigunerija effettivament tivvjola d-dritt tal-liberta`personali tar-rikorrenti. L-istess rikorrenti jipprovaw izewgu din l-allegazzjoni fiergha mal-fatt illi r-rikorrenti jinsabu mehlusa mill-arrest mill-Qorti tal-Magistrati (Malta) bhala qorti istruttorja taht diversi kondizzjonijiet inkluz li ma jikkommettux delitt iehor ta`natura volontarja.

c. Fl-ewwel lok, jigi osservat illi din is-sitwazzjoni illi temergi f`dan il-kaz hija wahda analoga ghal sitwazzjoni fejn persuna li tkun giet mehlusa mill-arrest taht kondizzjonijiet specifici legalment elenkati mill-Qrati taghna tigi, waqt dak il-perjodu ta` helsien, imharrka sabiex taghti x-xhieda taghha quddiem il-Qrati. Certament ma jistax wiehed jikkonkludi illi l-fatt li Qorti tordna l-arrest ta` xhud li minkejja li jkun gie imharrek sabiex jidher quddiemha jonqos milli jaghmel dan, ma tikkonsistix fi vjolazzjoni tad-dritt tal-liberta` personali tal-persuna.

d. Fi kwalsijasi kaz il-potenzjal tal-piena ta` prigunerija taht l-Ordinanza surrefrita jirrizulta biss f`kaz illi x-xhud in kwistjoni jonqos milli jidher quddiem il-Kumitat. Kif aktar `il fuq spjegat, ir-Ruling tal-ispeaker jipprovdi l-possibilita` illi filwaqt li x-xhud jattendi kif rikjest mill-Kumitat huwa ghandu l-possibilita` illi jaghzel li ma jwegibx mistoqsijiet li r-risposta taghhom tista` tinkriminah huwa ghalhekk evidenti illi ladarba m`hemmx riskju li l-individwu jinkrimina ruhu x-xhud ghandu jidher quddiem il-Kumitat kif mitlub u b`hekk jevita illi jikkommetti nuqqas ta` qima kontra l-istess.

e. Il-poteri li bihom il-Kamra hija moghnija permezz tal-Ordinanza dwar il-Privileggi u s-Setghet tal-Kamra tad-Deputati, li certament huma applikabbli ghall-Kumitat huma essenzjali ghall-funzjoni tad-demokrazija z-zamma tal-ordni pubbliku b` mod o sabiex il-Kamra tkun tista` taqdi l-funzjonijiet taghha.

9. Ghalhekk it-talbiet tar-rikorrenti huma nfondati fil-fatt u fid-dritt u huma f`kull kaz prematur u biss frott ta`spekulazzjoni u intant ghandhom jigu michuda fl-intier taghhom, bl-ispejjez kontra l-istess rikorrenti.

Rat il-verbal tal-udjenza tas-16 ta` Ottubru 2014 fejn idderigiet lill-partijiet sabiex jittrattaw l-ewwel erba` eccezzjonijiet.

Rat id-digriet li tat fl-udjenza tas-17 ta` Novembru 2014 fejn halliet il-kawza ghas-sentenza dwar l-ewwel erba` eccezzjonijiet.

Rat id-digriet illi tat fit-13 ta` Jannar 2015 fejn issospendiet il-prolazzjoni tas-sentenza dwar it-tielet u r-raba` eccezzjonijiet u halliet il-kawza ghas-sentenza dwar l-ewwel u t-tieni eccezzjonijiet.

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

Rat illi wara li l-intimati ressqu appell minn din id-decizjoni, il-Qorti Kostituzzjonali tat sentenza fil-15 ta` Dicembru 2015 fejn ikkonfermat is-sentenza appellata, spejjez ghall-intimati, u halliet il-kawza ghall-kontinwazzjoni quddiem 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 Speaker tal-Kamra tad-Deputati huwa legittimu kontradittur tar-rikorrenti ; iddikjarat illi l-intimat Onorevoli Speaker tal-Kamra tad-Deputati hekk kif imharrek in rapprezentanza tal-Kamra tad-Deputati mhuwiex il-legittimu kontradittur tar-rikorrenti stante li m`ghandux ir-rapprezentanza tal-Kamra tad-Deputati ; iddikjarat illi l-intimat Chairperson tal-Kumitat Permanenti dwar il-Kontijiet Pubblici huwa legittimu kontradittur tar-rikorrenti ; iddikjarat illi l-intimat Chairperson tal-Kumitat Permanenti dwar il-Kontijiet Pubblici hekk kif imharrek in rapprezentanza tal-istess Kumitat mhuwiex il-legittimu kontradittur tar-rikorrenti stante li m`ghandux ir-rapprezentanza tal-istess Kumitat ; l-ispejjez ta` dik id-decizjoni kellhom jibqghu rizervati ghall-gudizzju finali ; u ordnat il-prosegwiment tal-kawza.

Rat illi minn hemm `il quddiem kien trattat il-mertu. In kwantu jirrigwarda provi, il-partijiet iddikjaraw illi kienu qeghdin joqghodu 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. <u>Provi</u>

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. <u>Sottomissjonijiet</u>

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

a) <u>Ir-rikorrenti</u>

Isostnu illi dwar il-fatti tal-kaz ma hemmx kontestazzjoni.

Dwar ir-*ruling* tal-Onor. Speaker li huwa l-mertu tal-istanza tal-lum, ir-rikorrenti jinsistu li ghandha ssir distinzjoni netta u legali bejn il-jedd tas-silenzju li ghandha persuna li tkun akkuzata u l-jedd ta` persuna li tkun investigata jew ta` xhud li ma twegibx ghal domandi li risposti ghalihom jistghu jinkriminaw lil dik il-persuna. Ghalkemm simili, iz-zewg drittijiet huma legalment distinti minn xulxin.

Il-*guidelines* in kwistjoni huma rifless tal-posizzjoni rigward id-dritt ta` *non self incrimination.* Dak id-dritt ighodd fil-kaz ta` persuna li tkun qeghda tigi nvestigata jew ghall-kaz ta` xhud. Il-kaz tal-lum huwa divers ghaliex hawn si tratta ta` persuna akkuzata li ghandha d-dritt tas-silenzju, liema dritt jiskatta mhux biss quddiem il-qorti fejn il-persuna tkun akkuzata izda kullimkien.

Jissottometti illi r-*ruling* jindirizza s-sitwazzjoni ta` xhud u mhux ta` akkuzat. Xhud ghandu d-dritt li ma jinkriminax ruhu. Gara pero` illi r-*ruling* gie nterpetrat, oltre l-kontenut tieghu, u ghal din ir-raguni qieghed jigi mpunjat. Quddiem il-Kumitat tal-Kamra, dak mistenni mir-rikorrenti m`ghandhiex titqies bhala xiehda ordinarja, propju ghaliex ir-rikorrenti huma akkuzati dwar l-istess fatti quddiem qorti ta` gurisdizzjoni kriminali.

Ghalhekk kemm ir-ruling kif ukoll il-guidelines huma lesivi ghall-jedd tar-rikorrenti ghal smigh xieraq. Fil-kaz ta` **<u>Saunders vs UK</u>** deciz

mill-ECHR, inghad illi d-dritt tas-silenzju huwa mhares bl-Art 6 tal-Konvenzjoni.

L-istess principji jghodd ghal-lezjoni tal-Art 5 tal-Konvenzjoni.

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-rikorrenti qeghdin jilmentaw minn ksur tal-jeddijiet fondamentali taghhom ghal smigh xieraq u ghal-liberta` personali hekk kif tutelati bil-Kostituzzjoni u bil-Konvenzjoni.

Billi ma kienx indikat fir-rikors promotur fejn preciz kien l-ilment fid-disposizzjonijiet citati mir-rikorrenti, il-Qorti sejra tirriproduci l-erba` disposizzjonijiet b`mod shih.

a) Smigh xieraq

i) L-Art 39 tal-Kostituzzjoni

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 ohra gudikanti mwaqqfa b`ligi ghad-decizjoni dwar l-ezistenza jew l-estensjoni ta` drittijiet jew obbligi civili ghandha tkun indipendenti u imparzjali; u meta l-proceduri ghal decizjoni bhal dik huma mibdija minn xi persunaquddiem qorti jew awtorità ohra gudikanti bhal dik, il-kaz ghandu jigi moghti smigh xieraq gheluq zmien ragonevoli.

(3) Hlief bil-ftehim tal-partijiet kollha, il-proceduri kollha ta` kull qorti u l-proceduri dwar id-decizjoni tal-ezistenza jew l-estensjoni tad-drittijiet jew obbligi civili ta` persuna quddiem xi awtorità gudikanti ohra, maghdud il-pronunzjament tad-decizjoni tal-qorti jew awtorità ohra, ghandhom jinzammu fil-pubbliku.

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

(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.

b) <u>Liberta` personali</u>

i) <u>L-Art 34 tal-Kostituzzjoni</u>

Id-disposizzjoni taqra hekk :-

(1) Hadd ma ghandu jigi pprivat mil-libertà personali tieghu hlief kif jista` jkun awtorizzat b`ligi fil-kazijiet li gejjin, jigifieri -

(a) bhala konsegwenza tal-inkapacità tieghu li jwiegeb ghal akkuza kriminali;

(b) fl-esekuzzjoni tas-sentenza jew ordni ta` qorti, sew Malta sew band`ohra dwar reat kriminali li tieghu ikun gie misjub hati;

(c) fl-esekuzzjoni tal-ordni ta` qorti li tikkundannah ghal disprezz lejn dik il-qorti jew lejn qorti jew tribunal iehor jew fl-esekuzzjoni tal-ordni tal-Kamra tad-Deputati li tikkundannah ghal disprezz lejha stess jew lejn il-membri taghha jew ghal ksur ta` privilegg;

(d) fl-esekuzzjoni tal-ordni ta` qorti maghmul biex jizgura twettiq ta` xi obbligu impost lilu b`ligi;

(e) sabiex jingieb quddiem qorti fl-esekuzzjoni tal-ordni ta` qorti jew quddiem il-Kamra tad-Deputati fl-esekuzzjoni tal-ordni ta` dik il-Kamra;

(f) fuq suspett ragonevoli li huwa jkun ikkommetta, jew ikun sejjer jikkommetti, reat kriminali;

(g) fil-kaz ta` persuna li ma tkunx ghalqet l-età ta` tmintax-il sena, ghall-iskop tal-edukazzjoni u gid taghha;

(h) sabiex jigi evitat it-tixrid ta` marda infettiva jew kontagguza;

(i) fil-kaz ta` persuna li tkun, jew tkun ragonevolment suspetta li tkun, ta` mohh marid, moghtija ghan-narkotici jew xorb, jew vagabonda, ghall-iskop tal-kura jew trattament taghha jew protezzjoni tal-komunità;

jew

(j) sabiex jigi evitat id-dhul illegittimu ta` dik il-persuna f`Malta, jew sabiex tigi effettwata l-espulsjoni, l-estradizzjoni jew it-tnehhija legittima ohra ta` dik il-persuna minn Malta jew it-tehid ta` proceduri dwar hekk jew sabiex tigi mrazzna dik il-persuna waqt li tkun qed tigi mghoddija minn Malta fil-kors tal-estradizzjoni jew tnehhija taghha bhala prigunier misjub hati minn pajjiz ghal iehor.

(2) Kull min ikun arrestat jew detenut ghandu jigi nformat, fil-hin tal-arrest jew detenzjoni tieghu, f`ilsien li huwa jifhem, bir-ragunijiet tal-arrest jew detenzjoni tieghu:

Izda jekk interpretu jkun mehtieg u ma jkunx disponibbli malajr jew jekk ikun xort`ohra imprattikabbli li jigu mharsa d-disposizzjonijiet ta` dan is-subartikolu fil-hin tal-arrest jew detenzjoni tieghu, dawn id-disposizzjonijiet ghandhom jigu mharsa kemm jista` jkun malajr.

(3) Kull min jigi arrestat jew detenut -

(a) sabiex jingieb quddiem qorti fl-esekuzzjoni tal-ordni ta` qorti;

jew

(b) fuq suspett ragonevoli li jkun ikkommetta, jew li jkun sejjer jikkommetti, reat kriminali, u li ma jigix mehlus, ghandu jingieb quddiem qorti mhux aktar tard minn tmienja u erbghin siegha wara; u jekk xi hadd arrestat jew detenut f`xi kaz bhal dak li huwa msemmi fil-paragrafu (b) ta` dan is-subartikolu ma jigix iggudikat fi zmien ragonevoli, f`dak il-kaz, bla hsara ghal kull proceduri ohra li jistghu jingiebu kontra tieghu, huwa ghandu jigi mehlus jew bla kondizzjoni jew b`kondizzjonijiet ragonevoli, maghduda b`mod partikolari dawk il-kondizzjonijiet li jkunu mehtiega ragonevolment biex jigi zgurat li huwa jidher f`data aktar tard ghall-kawza jew ghall-proceduri preliminari ghall-kawza.

(4) Kull min ikun arrestat jew detenut illegalment minn xi persuna ohra jkollu dritt ghal kumpens ghal hekk minn dik il-persuna.

(5) Ebda haga li hemm fi jew li tkun maghmula bl-awtorità ta` xi ligi ma ghandha titqies li tkun inkonsistenti ma` jew bi ksur ta` dan l-artikolu safejn il-ligi in kwistjoni tawtorizza t-tehid matul dak il-perijodu ta` emergenza pubblika skont ma hu msemmi fil-paragrafu (a) jew (c) tas-subartikolu (2) tal-artikolu 47 ta` din il-Kostituzzjoni ta` mizuri li jkunu ragonevolment gustifikabbli sabiex tigi affrontata s-sitwazzjoni li tezisti matul dak il-perijodu ta` emergenza pubblika.

(6) Jekk xi hadd li jkun detenut legalment bis-sahha biss ta` ligi bhal dik imsemmija fis-subartikolu li jahbat l-ahhar qabel dan hekk jitlob f`xi zmien matul il-perijodu ta` dik id-detenzjoni mhux qabel sitt xhur wara li jkun ghamel l-ahhar talba bhal dik matul dak il-perijodu, il-kaz tieghu jigi rivedut minn tribunal indipendenti u imparzjali mwaqqaf b`ligi u maghmul minn persuna jew persuni li kull wahda minnhom ikollha jew kellha kariga gudizzjarja jew tkun kwalifikata biex tigi mahtura ghal kariga bhal dik f`Malta.

(7) Wara xi revizjoni minn tribunal skont is-subartikolu li jahbat l-ahhar qabel dan tal-kaz ta` xi persuna detenuta, it-tribunal jista` jaghmel rakkomandazzjonijiet dwar il-htiega jew espedjenza tat-tkomplija tad-detenzjoni taghha lill-awtorità li minnha kienet giet ordnata izda izda. kemm-il darba ma jkunx provdut xort`ohra b`ligi, dik l-awtorità ma tkunx obbligata tagixxi skont xi rakkomandazzjonijiet bhal dawk.

ii) <u>L-Art 5 tal-Konvenzjoni</u>

Id-disposizzjoni taqra hekk :-

Kulhadd ghandu d-dritt ghal-libertà u ghas-sigurtà tal-persuna.

Hadd ma ghandu jigi ipprivat mil-libertà tieghu hlief fil-kazijiet li gejjin u skont il-procedura preskritta bil-ligi :-

(a) id-detenzjoni skond il-ligi ta` persuna wara li tinsab hatja minn qorti kompetenti ;

(b) l-arrest jew id-detenzjoni skond il-ligi ta` persuna ghal nuqqas ta` tharis ta` skond il-ligi ta` qorti jew sabiex jigi sabiex jigi zgurat it-twettiq ta` xi obbligu preskritt mil-ligi ;

(c) l-arrest jew detenzjoni skond il-ligi ta` persuna effettwata sabiex tigi migjuba quddiem l-awtorità legali kompetenti fuq suspett ragonevoli li tkun ikommettiet reat jew meta jkun meqjus ragonevolment mehtieg biex jigi evitat li tikkommetti reat jew li tahrab wara li tkun ghamlet reat;

(d) id-detenzjoni ta` minuri b`ordni skond il-ligi ghall-iskop ta` sorveljanza edukattiva jew id-detenzjoni tieghu skond il-ligi sabiex jigi migjub quddiem l-awtorità legali kompetenti;

(e) id-detenzjoni skond il-ligi ta` persuni biex jigi evitat it-tixrid ta` mard infettiv, ta` persuni mhux f`sensihom, addetti ghall-alkohol jew ghad-drogi jew vagabondi;

(f) l-arrest jew id-detenzjoni skond il-ligi ta` persuna biex jigi evitat li tidhol minghajr awtorità fil-pajjiz jew ta` persuna li kontra taghha tkun qed issir kawza ghad-deportazzjoni jew ghall-estradizzjoni.

(2) Kull min ikun arrestat ghandu jigi nfurmat minnufih, f`lingwa li jifhem, dwar ir-ragunijiet ta` l-arrest tieghu u dwar kull akkuza kontra tieghu.

(3) Kull min ikun arrestat jew detenut skond id-disposizzjonijiet tal-paragrafu (1) (c) ta` dan l-Artikolu ghandu jingieb minnufih quddiem imhallef jew funzjonarju iehor awtorizzat b`ligi biex jezercita setgha gudizzjarja u jkollu dritt ghal proceduri fi zmien ragonevoli jew ghal helsien waqt pendenza tal-proceduri. Il-helsien jista` jkun tahtt kundizzjoni ta` garanziji biex jidherghall-proceduri.

(4) Kull min ikun ipprivat mil-libertà tieghu b`arrest jew detenzjoni jkollu dritt li jaghmel proceduri biex il-legalità tad-detenzjoni tieghu tigi deciza malajr minn qorti u l-libertà tieghu u tigi ordnata jekk id-detenzjoni ma tkunx skond il-ligi.

(5) Kull min ikun vittma ta` arrest jew detenzjoni bi ksur tad-disposizzjonijiet ta` dan l-Artikolu jkollu dritt esegwibbli ghal kumpens.

V. <u>Gurisprudenza</u>

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) The privilege against self-incrimination

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>

Fil-21 ta` Frar 2013, ir-rikorrenti tressqu quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti Istruttorja, akkuzati b`komplicita ta` reati skont l-Art 115, 124 u 125 tal-Kap 9, u l-Art 3(1) tal-Kap 373.

Sena wara – intalbu b`ittra mill-Kumitat Permanenti dwar il-Kontijiet Pubblici sabiex jaghtu x-xiehda taghhom u sabiex jiehdu maghhom xi dokumenti.

Ix-xiehda kellha tkun dwar l-istess fatti li dwarhom kienu qeghdin akkuzati quddiem il-Qorti Istruttorja u cioe` dwar ir-rapport tal-Awditur Generali bl-isem : *An Analysis of the Effectiveness of Enemalta Corporation`s Fuel Procurement.*

Permezz tal-avukat taghhom, ir-rikorrenti avzaw lic-Chairperson tal-Kumitat Permanenti dwar il-Kontijiet Pubblici li huma kienu ser jinvokaw d-dritt taghhom tas-silenzju.

Fl-ewwel seduta quddiem l-Kumitat Permanenti dwar il-Kontijiet Pubblici, il-Kumitat ghamel referenza ghal Ruling tal-Onorevoli Speaker tal-Kamra tad-Deputati tat-3 ta` Frar 2014 u nforma lir-rikorrenti li dak ir-Ruling kellu jigi rispettat indipendentement minn proceduri ta` natura kostituzzjonali.

B`ittra mibghuta lill-Kumitat, ir-rikorrenti talbu jekk dak ir-Ruling, in kwantu pronunzjat fil-konfront ta` terz, kienx applikabbli ghalihom ukoll.

Waqt seduta tal-11 ta` Lulju 2014, il-Kumitat iddecieda li dak ir-Ruling kellu japplika anke fil-konfront tar-rikorrenti.

Wara dik l-udjenza, ir-rikorrenti – precizament fit-22 ta` Settembru 2014 – mexxew bil-procediment tal-lum.

VII. Konsiderazzjonijiet ta` l-Qorti

i) Id-dritt ghal smigh xieraq

Tajjeb jinghad illi meta r-rikorrenti rcevew l-ittra sabiex jidhru 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-rikorrenti m`humiex xhieda kwalunkwe izda xhieda li huma akkuzati u li ghaddejjin proceduri kriminali li jittrattaw l-istess mertu tal-istharrig 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-rikorrenti ghandhom il-jedd li jinvokaw id-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-rikorrenti ddikjaraw illi ma riedx jixhed quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubblici, billi huma akkuzati fi proceduri kriminali pendenti, u allura ghandhom il-jedd ghas-silenzju, kienu rinfaccjati bir-Ruling tal-Ispeaker, fejn kienu sejrin jigu sfurzati illi jixhdu.

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-rikorrenti 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 taghhom illi jixhdu ir-rikorrenti seta` jigu rappurtati 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-rikorrenti.

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-rikorrenti, li ghaliex huma akkuzati quddiem qorti kriminali b`reati relatati ma` fatti li jkunu qeghdin jigu nvestigati mill-Kumitat Permanenti dwar il-Kontijiet Pubblici ghandhom il-jedd ghas-silenzju, il-linji gwida kif dedotti huma lesivi ghad-dritt tar-rikorrenti ghal smigh xieraq propju ghaliex ma jaghtux kont tal-jedd ghas-silenzju li ghandhom ir-rikorrenti bhala akkuzati.

ii) **<u>Id-dritt ghal-liberta` personali</u>**

Fis-sentenza li tat fil-21 ta` April 2016 fil-kawza "**<u>Angelo Miraglia vs Id-Direttur Responsabbli ghas-Sajd</u>**" din il-Qorti (**<u>PA/JRM</u>**) qalet hekk :-

Illi ta` min jghid li jedd tal-liberta` tal-persuna huwa wiehed mill-aktar fundamentali u f`dan ir-rigward jinghad illi "the overall purpose of Article 5 is to ensure that no one should be dispossessed of his liberty in an `arbitrary fashion`. The essence of Article 5 is that, although the right to liberty is not an absolute one, a person must be detained only on a basis of law and that the law relied upon must be consistent with recognised European standards. Article 5 also safeguards the individual against the illegal deprivation of liberty contrary to Article 5 by requiring that a person in detention be provided with a remedy or remedies by which he can challenge the legality of his detention and obtain compensation if it not lawful" [*Harris, O`Boyle & Warbrick - Law of the European Convention on Human Rights (1995) pag 97*]

Illi dan ifisser li persuna tista` tinżamm b`arrest jekk kemm-il darba jikkonkorru wahda jew iżjed miċ-ċirkostanzi li l-liġi domestika jew il-Konvenzjoni nnifisha jistabilixxu bhala raġunijiet tajba u serji biex il-principju tal-liberta jkun sagrifikat biz-zamma jew detenzjoni.

Illi b`"arrest" ghall-finijiet tal-artikolu 5, wiehed ma jifhimx biss u tabilfors iż-żamma ta` persuna f`faċilita` korrettiva jew habs. Kemm hu hekk, l- istess artikolu 5(1) jahseb ghal suriet ohrajn ta` żamma ta` persuni f`istituzzjonijiet u taht ċirkostanzi li mhux tabilfors ghandhom x`jaqsmu ma` twettiq ta` reati jew proċedimenti kriminali, iżda li jġibu l-effett li persuna bhal dik tittehdilha l-liberta` taghha li tmur fejn trid, ghal kollox jew f`biċċa;

Illi b`mod partikolari, l-artikolu 5(1)(ċ) jipprovdi li "Kulhadd ghandu d-dritt ghal-liberta` u ghas-sigurta` tal-persuna. Hadd ma ghandu jiġi ipprivat mil-liberta` tieghu hlief fil-każijiet li ġejjin u skond il-proċedura preskritta mil-liġi: ... (ċ) l-arrest jew detenzjoni skond il-liġi ta` persuna effettwata sabiex tiġi migjuba quddiem l-awtorita` legali kompetenti fuq suspett raġonevoli li tkun ikkommettiet reat jew meta jkun

meqjus raġonevolment mehtieġ biex jiġi evitat li tikkommetti reat jew li tahrab wara li tkun ghamlet reat";

Illi l-każijiet mahsuba fl-artikolu 5(1) tal-Konvenzjoni, hlief ghall-ewwel ċirkostanza, kollha japplikaw f`kuntest fejn ma jkunx ghad hemm kundanna definittiva u fejn ir-raġunijiet mahsuba ghaċ-ċahda tal-liberta` tal-persuna huma kollha "kawtelatorji" ghal xi ghan jew iehor marbut mal-ordni pubbliku. Ghalhekk inghad li dawk iċ-ċirkostanzi ghandhom jinghataw tifsira ristretta ghall-ahhar u m`ghandhom bl-ebda mod jitwessghu b`tigbid jew b`analoġija, ghaliex ilkoll jimmilitaw kontra l-prinċipju li l-bniedem huwa meqjus konvenzjonali ewlieni li l-helsien tal-bniedem huwa prijorita`;

Illi, min-naha l-ohra, l-artikolu 34 tal-Kostituzzjoni, fil-parti rilevanti tieghu, jipprovdi li:

"(1) Hadd ma ghandu jiġi pprivat mil-liberta` personali tieghu hlief kif jista` jkun awtorizzat b`liġi fil-każijiet li ġejjin: ....

"(d) fuq suspett raġonevoli li huwa jkun ikkommetta, jew ikun sejjer jikkommetti, reat kriminali; ...";

Illi ż-żewġ testi, kemm dak tal-artikolu 34 tal-Kostituzzjoni u kemm dak tal-artikolu 5 tal-Konvenzjoni (li ghandhom xebh kbir bejniethom) jishqu dwar il-legalita` tal-arrest jew żamma, ukoll f`dawk iċ-ċirkostanzi tassativi li jitqiesu bhala l-eċċezzjoni ghar-regola. Din il-legalita` hija marbuta mal-eżistenza ta` dispożizzjoni fil-liġi li tippermetti arrest jew żamma bhal dik. Ghalhekk, fil-fehma ta` din il-Qorti, l-ewwel kriterju li ghandu jiġi soddisfatt hu dak li jkun hemm dispożizzjoni espressa tal-liġi li tkopri sitwazzjoni bhal dik;"

Il-lezjoni lamentata mir-rikorrenti ghad-dritt tal-liberta` personali taghhom tirrizulta fit-tielet u fir-raba` talbiet.

Il-Qorti terga` tirreferi ghall-konsiderazzjonijiet taghha dwar il-ksur tal-jedd ghal smigh xieraq (op. cit.).

L-istess konsiderazzjonijiet li ghamlet hemm meta sabet vjolazzjoni tal-jedd ghal smigh xieraq ighoddu wkoll ghall-vjolazzjoni lamentata ghall-jedd tal-liberta` personali.

Ghalhekk ladarba rrizulta li kien hemm ksur tal-jedd ghal smigh xieraq ghar-ragunijiet fuq esposti, l-eccezzjonijiet ghall-applikazzjoni tad-dritt ghal-liberta` personali m`ghandhomx ighoddu ghall-kaz tal-lum.

Ladarba r-Ruling u l-*Guide* kif fuq inghad jiksru l-jedd ghas-silenzju tar-rikorrenti, eventwali procediment kontra taghhom ghal nuqqas ta` qima (*contempt*) u li jista` jwassal ghal prigunerija skont il-Kap 113 iwassal ghal ksur tal-jedd ghal-liberta` personali taghhom ghaliex procediment ta` dak ix-xorta u f`dawk ic-cirkostanzi ma jkunx jaqa` fost l-eccezzjonijiet tassattivi kontemplati mil-ligi.

VIII. <u>Rimedju</u>

Accertati l-lezjonijiet, 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-rikorrenti 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-rikorrenti, 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 u t-tielet talbiet safejn il-*Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives, Parliament of Malta* jolqot il-kaz tar-rikorrenti.

Tilqa` t-tieni u r-raba` talbiet.

Tipprovdi dwar il-hames 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