Qorti tal-Magistrati (Malta)
Bhala Qorti ta' Gudikatura Kriminali

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

Illum: 14 ta' Gunju, 2017

Il-Pulizija
(Spettur Anne Marie Xuereb)

-vs-

Brian Buttigieg, detentur tal-Karta tal-Identita` numru 312274(M)

Joanne Cutajar, detentrici tal-Karta tal-Identita` numru 472383(M)

Kumpilazzjoni Nru. 417/2013

Il-Qorti,

Rat l-akkużi miġjuba fil-konfront tal-imputati Brian Buttigieg u Joanne Cutajar u cioe` talli:

Ghamlu atti ta' *money laundering* billi :-

i) ikkonvertew jew ittrasferew propjeta` meta kienu jafu jew issuspettaw li dik il-propjeta` kienet direttament jew indirettament inkisbet, jew mir-rikavat ta', attivita` kriminali jew minn att ta' partecipazzjoni f' attivita kriminali, ghall-iskop ta' jew skopijiet ta' habi jew wiri haga b' ohra ta' l-origini tal-propjeta` jew ta' ghoti ta' ghajnuna lil xi persuna jew persuni involuti jew koncernati f' attivita` kriminali;

ii) hbew jew wrew haga b'ohra tal-veri xorta, provenjenza, lok, dispozizzjoni, moviment ta' jeddijiet rigward, fi jew fuq propjeta`, meta kienu jafu jew issuspettew li dik il-propjeta` kienet inkisbet direttament jew

indirettament minn attivita` kriminali jew minn att jew atti ta' partecipazzjoni f' attivita` kriminali;

iii) akkwistaw, ippussesaw jew uzaw propjeta` meta kienu jafu jew issuspettaw li l-istess propjeta` kienet inkisbet jew originat direttament jew indirettament minn attivita` kriminali jew minn att jew atti ta' partecipazzjoni f' attivita` kriminali;

iv) bir-ritensjoni minghajr skuza ragonevoli ta' propjeta` meta kienu jafu jew issuspettaw li l-istess propjeta` kienet inkisbet jew originat direttament jew indirettament minn attivita` kriminali jew minn att jew atti ta' partecipazzjoni f' attivita` kriminali;

v) ittentaw jaghmlu l-hwejjeg jew attivitajiet illegali fuq imsemmija;

vi) agixxew bhala komplici fit-tifsir ta' l-Artikolu 42 tal-Kodici Kriminali rigward xi wahda mill-hwejjeg jew attivitajiet definiti fis-sub-paragrafi (i), (ii), (iii), (iv) u (v) ta' hawn fuq;

Lil Brian Buttigieg wahdu:

2. U aktar talli fl-istess zmien u cirkostanzi approprija ruhhu billi dawwar bi profit ghalih jew ghal persuna/i ohra, minn haga ta' haddiehor li tkun giet fdata jew ikkunsinnata lilu taht titolu illi jgib mieghu l-obbligu tar-radd tal-haga jew li jsir uzu minnha specifikat u dan ghad-dannu tal-***Kumpanija Farsons Group Food Chain Restaurant,*** u l-istess haga giet fdata lilu minhabba l-professjoni, industrija, kummerc, kariga, jew servizz tieghu;

3. U aktar talli fl-istess zmien u cirkostanzi b'mezzi kontra l-ligi jew billi ghamel uzu ta' ismijiet foloz, jew ta' kwalifiki foloz, jew billi inqeda b'qerq iehor, ingann, jew billi wera haga b'ohra sabiex igieghel titwemmen l-ezistenza ta' intraprizi foloz, jew ta' hila jew setgha fuq haddiehor jew ta' krediti immaginarji, jew sabiex iqanqal tama jew biza' dwar xi grajja kimerika, ghamel qligh b'qerq ta' aktar minn elfejn, tliet mija u disgha u ghoxrin Euro u sebgha u tletin centezmu (€2,329.37), ghad-dannu tal-***Kumpanija Farsons Group Food Chain Restaurant;***

4. U aktar talli bi hsara ta' haddiehor u cioe tal-***Kumpanija Farsons Group Food Chain Restaurant*** ghamel qliegh iehor b`qerq, mhux msemmi fl-artikolu 308 tal-Kapitolu 9 tal-Ligijiet ta' Malta;

5. U aktar talli fl-istess zmien u cirkostanzi ikkometta serq, minn ġewwa l-fond KFC Gzira, li sar għad-detriment ta' l-amministraturi ta' l-istess fond u/jew persuni oħra, liema serq huwa kkwalifikat bil-valur li jeccedi s-somma ta' elfejn tliet mija u disgħa u għoxrin euro u sebgħa u tlettin centeżmu (€2,329.37), bil-persuna, u bil-hin;

> Il-Qorti gie mitluba sabiex tapplika *mutatis mutandis* id-disposizzjonijiet ta' l-Artikolu 5 ta' l-Att kontra l-Money Laundering, Kapitolu 373 tal-Ligijiet ta' Malta, hekk kif ikkontemplat fl-Artikolu 23A (2) tal-Kapitlu 9 tal-Ligijiet ta' Malta.
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> Il-Qorti giet ukoll mitluba sabiex fil-kaz ta' htija, barra li tinfliggi il-pieni stabbiliti mil-Ligi, tordna wkoll il-konfiska ta' l-oggetti kollha esebiti.
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> Il-Qorti giet mitluba sabiex f'kaz ta' htija tikkundanna lill-akkuzati ghal hlas ta' spejjez li jkollhom x'jaqsmu mal-hatra ta' esperti jew periti fil-proceduri hekk kif ikkontemplat fl-Artikolu 533 tal-Kapitlu 9 tal-Ligijiet ta' Malta.

Rat l-Ordni tat-3 ta' Lulju, 2016,[1] moghti mill-Avukat Generali ai termini tas-subartikolu (2A)(b)(c) tal-Artikolu 3 tal-*Att kontra l-Money Laundering*, Kapitolu 373 tal-Ligijiet ta' Malta, sabiex dana il-kaz jigi trattat u deciz quddiem dina l-Qorti bhala Qorti ta' Gudikatura Kriminali.

Rat in-nota ta' l-Avukat Generali permezz ta' liema baghat lill-imputat Brian Buttigieg wahdu sabiex jigi gudikat minn din il-Qorti bhala Qorti ta' Gudikatura Kriminali.[2]

Rat li l-imputati ma kellhomx oggezzjoni li l-kaz jigi trattat bi procedura sommarja.

Rat id-dokumenti esebiti.

Semghet il-provi.

Semghet it-trattazjoni.

Ikkunsidrat-

Illi **John Bonello Ghio,** general manager ta' Food Chain Limited, il-parte leza, xehed kif kien ircieva telefonata anonima fejn gie infurmat li kemm il-darba kien mar il-KFC Gzira u l-imputat ma kienx itieh ricevuta ghalkemm ikun ha l-flus minghandu. Meta raw x'kien qed jigri fuq is-CCTV u d-dokumenti fuq il-computer deher cjar li l-akkuzat kien qed ibiegh ix-xoghol u ma jaghtix ricevuta.[3] Ikompli li l-imputat *"Kien qieghed juza s-sistema b'zewg modi ...... Li kien qed jaghmel meta kien jiftah is-sistema tal-cash register minghajr ma tbiegh xejn taghmel rikordju li kemm il-kexxun infetah jigifieri fuq gurnata wahda gibt kampjun mieghi hawnhekk, fuq gurnata fetah il-kexxun erbgha u ghoxrin darba u fuq CCTV jidher li ghandi record hawnhekk ukoll fl-istess hin kien qieghed jiehu l-cash minghand il-klijenti u jitfahom fil-kexxun. Haga ohra li kien qieghed jaghmel ukoll kienet li meta l-klijenti jordnaw iktar minn haga wahda u ma jkunx jista jahdem l-ammont tat-total kemm hu l-cash register kien qieghed juzah bhala calculator, idahhal l-affarijiet li kienu qed jordnaw il-klijenti ..... Ikun hemm running total li lil*

[1] Fol.297
[2] Fol.298
[3] Fol.19-20

klijent jghidlu forty five Euros sixty five cents, jiehu l-flus u jikkancellhom. ***Issa s-sistema taghna l-impjegati taghna ma jafux li ahna nzommu record ta kull transazzjoni, audit trail ta kollox li jsir,*** *jigifieri f'din il-gurnata partikolari jien hrigt, ghandi kopja ghall-kulhadd, hrigt is-summary ta x'gara jigifieri ha mitejn u erbgha u sebghin Euro b'din is-sistema li kien qieghed juza l-cash register bhala calculator, plus over and above fetah il-kexxun erbgha u ghoxrin darba jigifieri din tkun klijent gie, ha item wiehed, ikun jaf li dak l-item huwa five Euros u jaqbad u jghidlu five Euros ma kellux bzonn calculator. U f'din il-gurnata ghandi summary kif ukoll l-ircevuti kollha li hareg li ghamel tajjeb ghal dan is-summary li ghandi hawnhekk......****f'Gunju tat-2011 dahhalna din is-sistema jigifieri minn dik id-data l'quddiem nista b'certezza nghid l-ammont kemm ittiehed kuljum.......F'Gunju 2011 sa meta tterminajnieh li kien f'Settembru 2012."****.*[4]

Bonello Ghio ipprezenta 'workings' li juru li tul iz-zmien fejn kien hemm is-sistema li semma' b'kollox l-imputat kien ha <u>€63,548 fejn kull xahar kien jiehu madwar €4,200</u>.[5] Ikompli li ma dawn kien hemm ukoll flejjes li tiehdu sa minn Mejju, 2009, mill-KFC MIA li ghalhekk <u>b'kollox l-ammont lahaq il-€160,000</u>. Dwar ammonti li ttiehdu minn Joanne Cutajar ix-xhud jghid li dawn lahhqu il-€12,629. <u>Ghalhekk bejniethom hadu madwar €173,000</u>.[6] Ix-xhud spjega li kien biss wara li raw ic-*cctv* u hargu r-rapporti tal-cash register li fehmu x'kien qed jigri. Flimkien ma l-franchise manager (Nathalie Xuereb Saydon) u l-HR Manager (Antoinette Caruana) ta' Food Chain Limited, ddecidew li jinzlu KFC Gzira li kien ilu miftuh bejn saghtejn u nofs jew tlett sighat, u raw lill-imputat fuq il-cash. Ordanwlu jigbed report u johrog il-cash biex issir *reconciliation*. **Dan laqahhom billi qalilhom li kien jaf ghaliex marru**. Kienu sabu diskrepanza ta' €175 – fi tlett sighat. Meta kellmu lill-imputat **qalilhom li membri tal-familja tieghu kienu jafu x'kien qed isehh**.[7] Bonello Ghio izid li B<u>rian Buttigieg ikkowopera u kien hemm qbil li jiffirma dikjarazzjoni</u>[8] dwar dak li kien qed jintqal u li qed jigi maqbul bejniethom. Buttigieg kien <u>talabhom biex qabel ma jmorru ghand il-Pulizija jaghtuh cans biex jilhqu jergghu jitkellmu</u>. Hekk gara izda meta rega' kellimhom fil-presenza tal-avukat tieghu, offra ammont li kien wisq baxx minn dak li kienu ikkalkulaw kien dovut lilhom u ghalhekk gie deciz li jmorru ghand il-Pulizija sabiex anke jaghmlu ezempju ghall-impjegati l-ohra.[9]

Ix-xhud spjega li peress li Buttigeg kien manager kellhu access ghall-iktar transazzjonijiet minn crew normali kif ukoll ghall-*functions* li s-sistema kienet tippermittilek. Qal li **ghalkemm bhala manager ma kienx mistenni minnu li joqghod fuq il-cash, ghajr ghall-meta jinqabdu b'hafna klijenti, hu kien jibghat il-kaxxiera fil-kcina u joqghod hu fuq il-cash u hekk**

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[4] Fol.20-21
[5] Fol.22
[6] Fol.24
[7] Ibid
[8] Dok.AMX5 – fol.94.
[9] Fol.25

seta' jkompli bl-agir tieghu.[10] *"[H]u kellu access li ezempju crew member normali ma jistax jiftah kexxun, biex jiftah kexxun irid jaghjat lil manager tieghu jghidlu iswajpjali l-card tal-manager biex ituni autorisation biex niftah il-kexxun. Jigifieri Brian kellu dan il-facilita, biex tikkancella mbaghad iddahhal ordni u terga tikkancella lines crew normali jrid jaghjat il-manager, dawn huma affarijiet standard biex innaqqsu l-abbuz bazikament, Brian ovvjament kellu dan l-access u r-responsabbilta li avdajnieh bih kien qed juzah biex juza s-sistema kontrina biex ikun jista jimmanipula s-sistema bazikament."*[11] Izid *"meta l-crew ikunu fuq il-cash, l-crew member jidhol fl-ufficcju u jirrikoncilja l-cash mal-manager tieghu jigifieri meta jqabblu l-flus fil-kexxun ma dak li hemm fil-kexxun tnejn minn nies jaghmluha, l-crew member u l-manager, fil-kaz ta Brian ma kienx hemm manager fuqu ghax hu kien il-manager jigifieri kellu the leasure li jkun jista jghodd il-flus u d-diferenza kemm kien ikun kuljum kien jitfahhom fil-but."*[12]

Bonello Ghio ikkonferma li biex ordni tithassar jew tinfetah il-cash kull manager kien juza card tieghu; ghalhekk kull darba li ntuzat dik il-cash kienet twassal ghal firma elettronika li tindika kjarament minn ikun uzaha biex jaghmel *check-in* u *check-out*. Il-managers kellhom l-card personalizzata kif ukoll abbinata ma PIN number individwali.[13] Kien kategoriku *"Il-policy tal-kumpannija hija cara li la jistghu igorru flus fuqhom, la jistghu ipartu cards .... pero mmur lura ghac-CCTV u m'huwiex il-kas ghax kull meta nfetah il-kexxun rajna u huwa car hafna li l-flus ittiehed minghand il-klijent u ntefghu gol-kexxun*"; spjega li din il-policy tinsab miktuba fl-'employee handbook' li kull impjegat jircevi malli jibda l-impjieg tieghu.[14] Jerga' jikkonferma li fil-policy miktuba li tigi mgharrfa lill-impjegati fejn hemm miktub li bhala kaxxiera lanqas ma jistghu jinghataw/jintuzaw cards ta' impjegati/kaxxiera ohra.[15]

Dwar id-dikjarazzjoni ffirmata mill-imputat[16] li Bonello Ghio jiddeskriviha bhala jghid hekk *"dawn huma minuti ta xi ntqal dak il-hin u ktibnieh. Kieku tlaqna minn hemm minghajr din ma jkolli xejn jigifieri* ***iddiskutejnieha, qbilna li ghidna npogguh fuq karta, linka fuq karta biex ikun qieghed dokumentat, kollha ffirmajnieh, qrajnieh bil-moghod ma kienx hemm very amicable kien, ftehmna u ktibna dak li ftehma wkoll li ntuh cans sa Monday, Monday gie mal-avukat tieghu****, kien hemm meetings wara dakinhar, li kien hemm proposals ta xiex setgha joffri biex ma nigux hawnhekk bazikament."* **Qabel ikkonferma li lil Buttigieg *"saqsejnieh jekk jaqbel mal-punti kollha, qal iva u qal nixtieq niffirmaha kif inhi*[17]*...*** *Mbaghad Monday gie mal-avukat Cilia dak iz-zmien kien jekk niftakar sew, gie jkellimna kien hemm biex nghid hekk negotiations, <u>reggha quddiem l-avukat ammetta li dan kien ghaddej...</u>. Hu kien qed joffri jaghti l-*

[10] Ibid.
[11] Fol.26
[12] Ibid
[13] Fol.27
[14] Fol.30
[15] Fol.31
[16] Dok. AMX5 a fol.94
[17] Fol.32

ammonti lura, l-ammonti l-ewwel kien ftit, mbaghad telgha, telgha ftit iktar, mbaghad telgha daqxejn mhux hazin, pero ahna fid-dover taghna kemm ghall–ligi kif ukoll biex nuru ezempju mal-istaff kollu, nimpjegaw xi hames mitt ruh, biex naghmlu ezempju mal-istaff kollu taghna ma stajniex naccettaw dawn l-affarijiet, ma qbilniex mal-ammont li kien qed joffri, le, hu ma kienx qieghed jaqbel ma dan l-ammont pero l-fatti huma li huma, u qbilna li ahna ha mmorru mmexxu ghand il-pulizija, u ghamilna hekk." [18]

Fl-ahhar tax-xhieda tieghu kkonferma li l-kumpanija ghamlet investigazzjoni dettaljata hafna fuq kulhadd inkluz il-managers, izda ma rrizulta xejn aktar. Jikkonkludi hekk *"meta tkellimna ma Brian dakinhar ma hargitx ta Joanne pero li* ***qalilna biss kienet li Joanne kienet taf x'qed jigri,*** *pero mill-investigazzjoni biex inwiegbek iva actually sibna kaz iehor li kien ta Joanne Cutajar l'bqija ma sibna assolutament xejn u nassigurak li kieku sibna affarijiet hekk konna niehdu l-istess steps."*[19] Dwar il-konsapevolezza ta' Cutajar, Bonello Ghio qal li meta gew biex jaghmlu d-dikjarazzjoni ma Buttigieg ***"qalilna hu saqsejnieh kemm ilha ghadejja din il-bicca u qalilna tlettin xhar zgur, ghidnielu l-mara inti kif ha tghidilha, qalilna l-mara ga taf kollox il-familja jafu kollox x'qed jigri,."***.[20]

Fid-dikjarazzjoni mmarkata bhala 'Dok. AMX5', maqbul bejn l-imputat u Food Chain Limited, jinghad cjar u tond li hu kien ilu jopera kondotta frawdolenti ghall-**iktar minn 30 xahar** *"During this period I failed to issue fiscal receipts for food and beverage ordered and issued to customers and pocketed the cash through a no sale transaction. I did this in full awareness that this went against company policy and legal requirements...I have asked the said management for a 48 hour period to consider my situation and provide a report to management with respect to the extent of this fraudulent behaviour."*[21]

Illi xehdet **Antoinette Caruana** Human Resources Manager fi hdan il-Farsons Group li spjegat kif il-General Manager Bonello Ghio, kien infurmaha li kien ircieva rapport li l-imputat ma kienx qed jaqdi dmiru kif suppost. Raw is-CCTV footage *"ghal diversi drabi fil-passat li stajna naraw sew kemm mill-footage u kif ukoll mis-sistema tat-transactions kien m'huwiex qed johrog fiscal receipts u lanqas kien qed jipprocessa l-ordnijiet kif suppost. Jaghti l-ikel, jircievi l-flus u ma jkunx qed jipprocessa. Dhalna wkoll mbaghad fis-sistema 'live' ta dak il-hin, inzerta li Brian Buttigieg ukoll kien xoghol, dhalna u stajna naraw fuq is-sistema bil-footage ukoll, u rajnieh ukoll jerga jaghmel dik quddiem ghajnejna, iddecidejna li kellna bizzejjed informazzjoni."*[22] Tispjega dak li kien qed jaghmel l-imputat: *"Li kien qed jaghmel ovvjament kien hemm il-klijenti quddiemu, jordnaw, jiehu l-flus, jiftah il-cash till, pero meta jipprocessa l-ordni ma tkunx ipprocessata kollha ikun hemm no sale, hu bhala manager kellu dritt orrajt li jaghmel din in-no sale*

[18] Fol.33
[19] Fol.34
[20] Fol.32
[21] Fol.94
[22] Fol.144

allura l-ordni jew ma kinitx tidher kienet tigi kkancellata okay biex hu allura l-flus ma jkunux jidhru hemmhekk u kienet qed tigri anki quddiemna tinfetah il-cash till ghal iktar minn darba u anki fil-passat f'dawn il-granet li kienu gew irrapurtati lilna minn barra, kienet tidher certa li s-sistema ovvjament ma kinitx qed tigi kondotta kif suppost.".[23]

Ix-xhud tkompli li marru fil-KFC Gzira fejn l-imputat meta mitlub jghodd il-flus qal *"l-kliem tieghu preciz ghax ktibthom u bqajt niftakarhom dejjem kienu **'naf ghalfejn gejtu'**, ir-ragel kien baqa kalm hafna,...Kien jidher ukoll dak il-hin sibna l-cash till kienet diga qeda over b'175 Euros more or less, about 175 Euros, u dan waqt li kien xoghol biss filghodu ta xi tliet sighat xoghol.".* Minn hemmhekk telghu fuq fejn **Caruana baqghet impressjonata kif baqa' kalm, bla rimors u kien qisu qed jistenna li dik il-gurnata** li fiha ser jinqabad.[24] Tghid cjar u tond *"li ma nhoss li kien hemm l-ebda duress jew li kien hemm xi attakk b'xi mod anzi l-affarijiet kienu bl-ikbar kalma u bl-ebda pressure fuqu, ddecidejna dak il-hin stess li nippreparaw karta, fejn hu ammetta li kien ilu jaghmel din ghal iktar minn tletin xhar, u anki ovvjament ghidnielu li din ha twassal zgur ukoll li jitkecca mix-xoghol u setgha wkoll ikun hemm investigazzjonijiet kriminali. Kienu jidhru li l-ammonti huma kbar diga minn dak il-hin.".*[25]

Caruana tkompli tispjega dak li sehh wara *"bqajna jien u hu fl-ufficcju, u ghidtlu jekk ghandux xi affarijiet li forsi jrid jghid lili biex anki nevitaw iktar diskussjonijiet jew anki li ndahhlu l-pulizija, **reggha ammetta li kienu hemm l-affarijiet**, ghidtlu hemm nies ohra involuti, qalli li ma kienx hemm hekk,[26] li ma kienx hemm hekk iktar nies u **qalli biex kif konna diga ktibna f'dik l-ittra biex naghtu ftit cans u jerga jigi jkellimna,** u hekk ghamilna, l-ghada cemplilna, gie wkoll ix-xoghol mal-avukat li kellu dak iz-zmien li kien Dr Chris Cilia, waqt li kien hemmhekk Dr Chris Cilia, **Dr Chris Cilia u hu ammettew li kienu graw dawn l-affarijiet,**"[27]* Buttigieg kien l-ewwel offra €15,000, imbaghad offra €25,000 izda peress li l-ammont li skond huma kien ittiehed mill-imputat kien ferm ikbar, kien gie deciz li kellhom jitkellmu mal-pulizija. Komplew bl-investigazzjonijiet biex jaraw minn aktar seta' kien involut f'agir simili u spikkat Joanne Cutajar, izda mhux bl-istess frekwenza u rrizulta li l-ammonti kienu ferm izghar. Izzid li minn meta twaqqaf Buttigieg, is-*sales* zdiedu ghal iktar minn €5,000 fix-xahar. Ikkonfermat li managers ma kellhomx ghalfejn ikunu fuq il-cash sakemm mhux meta verament kien hemm il-bzonn.[28]

Caruana ikkonfermat id-dikjarazzjoni[29] li saret bi qbil mal-imputat *"Dan id-dokument huwa dokument li ppreparajt jien stess wara diskussjoni kemm ma*

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[23] Ibid.
[24] Fol.145
[25] Ibid.
[26] Kemm fl-istqarrija lill-Pulizija kif ukoll quddiem il-Qorti, l-imputat qal li hu beda jaghmel dan kollu wara li kien induna b'haddiehor jaghmel l-istess. L-isem ta' din/dawn il-persuna/i baqaw ma gewx zvelati minnu.
[27] Fol.145-146
[28] Fol.148
[29] Fol.94

Brian Buttigieg u anki l-kollegi tieghi l-ohra tax-xoghol, li ppreparajna flimkien wara li konna tkellimna mieghu fuq mbaghad nzilna isfel fl-ufficcju zghir fejn ktibt din, iddiskutejnieha flimkien, qrajtielu diversi drabi, ghidtlu x'inhuma l-implikazzjonijiet taghha, kien kalm, ma nhossx li kien taht xi duress jew pressure, kollha kemm ahna ovvjament tkun xi ftit emottiva imma iktar bil-kaz kif kien qed jizvolgi more or less xejn iktar minn din. Din ippreparajnieha iffirmajnieha kollha kemm ahna mbaghad filfatt tajnieh ic-cans li l-ghada jerga jigi u jitkellem u gie l-ghada mal-avukat tieghu." In kontro-ezami tikkonferma li **Buttigieg kien qalilhom li l-flus kien hadhom biex ihallas id-dar, kif anke ammettiet Cutajar mal-Pulizija fl-istqarrija taghha**.[30]

Illi **Natahlie Xuereb Saydon**, franchise manager ta' Food Chain Limited, kkonfermat id-dikjarazzjoni li giet maqbula mal-imputat.[31] Din spjegat kif fit-telefonata li rcevew giet deskritta l-uniformi tal-persuna rrapurtata lilhom u hemm hekk indunaw li kien xi manager ghaliex managers kellhom uniformi differenti minn dik tal-istaff normali. Tkompli *"X'hin rajna hekk iccekjajna ezatt fuq ic-CCTV il-hin ezatt fi x'hin qalilna li mar dan il-customer, u deher car li l-manager ha l-ordni, inhareg l-ikel pero l-ircevuta ma nghatatx. Dak il-hin rajna x'kien qed jigri wkoll dak il-hin fejn il-manager kien xoghol u rajna li dak il-hin ukoll kien hemm transazzjonijiet differenti fejn l-ircevuta ma hargitx. X'hin rajna hekk infurmajna l-HR Manager tal-kumpannija..... saqsejt lil Brian biex jaqla l-cash registers kemm tieghu u kemm ta persuna ohra li kienet xoghol dak il-hin, u* ***x'hin bdejt insaqsi xi domandi fuq xi discount partikolari hu qalli 'naf ghaliex qeghdin hawn'. X'hin saqsejtu ghaliex qeghdin hawn hu qalli 'minhabba t-transactions li m'humiex recordjati'...... Mbaghad x'hin tkellimna ma Brian hu ammetta li ghal certu zmien kienet ilha ghadejja din is-sitwazzjoni, fejn certu transactions ma kinux qeghdin jigu rrecordjati u hu kien qieghed jiehu l-flus huwa stess."***[32]

Issemmi li meta ghamlu l-verifiki rrizulta li Joanne Cutajar kienet ghamlet xi transazzjonijiet bil-mod li kien qed jaghmilhom Buttigieg. Il-Qorti osservat izda li Cutajar giet akkuzata biss b'riciklagg.

Xuereb Saydon spjegat kif saru dawn il-verifiki: *"is-sistema tirraporta kull transaction, barra minn hekk kull min ikun qieghed jahdem fuq cash register ghandu card li ovvjament fuq kull transaction li jaghmel jidher taht ismu. X'hin bdejna naraw, ahna bdejna nfittxu zewg affarijiet, li wahda minnhom hija error correction, li bazikament din issir meta inti ddahhal ordni pero li ma tghaddix as a sale, u l-haga l-ohra li bdejna nfittxu huwa no sale transactions, li din tista tigri biex inti tista tiftah il-cash register minghajr ma tghaddi transaction, jien naf jigi xi hadd per ezempju biex isarraf jew xi haga hekk, u meta bdejna naraw u bdejna nqabblu on average xi jkun hemm, l-ammont spikka hafna."*. Joanne kellha card li biha setghet tiftah il-cash imma tindikha bhala *'no sale'*.[33]

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[30] Fol.16
[31] Dok. AMX5 a fol.94
[32] Fol.159
[33] Fol.160-161

Ix-xhud kompliet tikkonferma dak li xehdet Antoinette Caruana u cioe` li meta ltaqaw ma Buttigieg, wara li Caruana qaltlu li kien ser jigi sospiz mix-xoghol, talbitu jiddokumentaw fil-meeting x'kien intqal, liema dokument kontenenti id-dikjarazzjoni tieghu, sar fil-presenza taghha.[34]

Illi **Stephen Campbell**, operations support manager, wara li kkonferma dak li xehdu dwaru Bonello Ghio, Caruana u Xuereb Saydon, ta spjegazzjoni dwar l-*operating system* mhaddma fil-hwienet tal-KFC: *"is-sistema tal-Micros tuza sistema ta pin number, il-crew jigu assenjati numru kwalsiasi mentri l-manager jigi assenjat b'card biex in-numru ma jkunux jafuh, ovvjament biex ma jkunx hemm frodi u jibqa sigur. Is-sistema giet installata l-ewwel fil-KFC li ghandna tal-Airport u wara giet installata fir-restaurant tal-Gzira fejn kien jahdem l-ahhar. .... hija l-istess sistema [li giet installata fl-2009], l-iktar l-iktar ikun hemm xi avvanzi pero s-sistema tal-cards ma nbidlitx. Il-crew jippunchjaw b'numru u l-manager ikollu card..... Il-manager minn dejjem kellhom card..... Is-sistema tahdem bi privileggi. Il-crew normali ikollhom privilegg ta zero, mill-manager il'fuq ikollhom privilegg ta one, two jew three. Biex taghmel taghti discount jew biex taghlaq ordni b'xejn jew biex thassar xi haga ghandek bzonn privilegg ta iktar minn zero, li jkun one jew two, normalment ikun bil-card tal-manager."* Ikompli li Buttigieg kellhu privilegg ta one u cioe` *"Setgha jaghti sa 100% discount, jista jikkancella ordni mis-sistema jivvojdjaha, I mean, l-affarijiet li jkollhom bzonn waqt l-operat.... Bhala policy tal-kumpannija l-card trid tingarr fuq il-manager. Kull fejn tintuza l-card dejjem thalli audit trail ta kull fejn tkun assenjata, jigifieri f'dan il-kaz il-card ta Brian jekk intuzat mhux minn Brian imma minn xi hadd iehor xorta jidher Brian ghaliha l-card..... Is-sistema waqt li tkun qed tahdem certu affarijiet li ma jistax jaghmel il-crew member titlalek pop-up fejn titolbok autorization tal-manager. Dak il-hin il-manager il-card trid tigi swajpjata biex is-sistema tohrog l-awtorizazzjoni."*[35]

In kontro-ezami jikkonferma li l-card tinhareg fuq isem il-manager u ma jigux krejati cards ohra li m'humiex fuq il-managers. Fiz-zmien oggett ta' dawn il-proceduri kienu biss il-managers li kellhom card.[36] Mis-sajf 2013 bdiet tintuza sistema gdida fejn kienu nhargu cards lill-ohrajn izda sal-2012 **managers biss kellhom card**. Spjega dak li jigri meta xi crew jiehu zball *"is-sistema thallik tikkoregi zbalji per ezempju jekk tkun ippunchjajt ha nsemmi pepsi tkun trid taghmlu kinnie tista thassru u terga tippunchjah. Jekk inti ghalaqta bhala ordni jigifieri giet rekordjata u harget ricevuta mbaghad navza lil manager biex jaghmel l-emendi, ikollu bzonn il-card tal-manager biex jaghmel l-emendi....[biex tigi kkancellata ix-xirja shiha].....Hemm bzonn il-card tal-manager. Tigi kancellata sa certu limitu li ma tirrekordjax is-sales huma fis-sistema dejjem jibqghu nista nsib kollox jigifieri hemm is-sale li giet positive mbaghad ikun hemm wahda kontriha transaction ohra li hija negative."*[37] L-impjegati ghalhekk dejjem kellhom jirrikorru ghand il-

[34] Fol.161
[35] Fol.182-184
[36] Fol.185
[37] Fol.186

manager jekk ikun sar xi zball.[38] Dwar is-sistema tal-KFC Gzira jghid li din tibqa zzomm ir-records; ghandha *audit trail* li jigi mizmum kuljum, mizmum go sistema ta files u dawn jibqghu jinzammu.[39]

Fil-fatt anke l-espert Axiaq jikkonferma li permezz ta' dan l-*audit trail* hu seta' jaghmel il-kalkoli tieghu u jasal ghall-figura li wasal ghaliha fl-ahhar perjodu tal-impjieg tal-imputat fil-hanut tal-Gzira.[40]

Mistoqsi in ri-ezami kif transazzjoni maghmula minn persuna setghet tingharraf minn transazzjoni ta' persuna differenti, galadarba crew ma kellhomx card, jghid li: *"Ghalkemm ma kienx hemm card xorta kellhom numru, pin li jintuza biex jaccessa s-sistema li m'huwiex fuq card, jigifieri tista tikkrejah fis-sistema. Biex inti tkun tista tiehu order pero trid tissodisfa zewg kriterji, wiehed li tkun qieghed fuq l-arlogg, on the clock qed tithallas qed jigu rrekordjati s-sieghat tieghek li ghandek hemm, u li tkun assenjata ma cash, li fl'istess hin jekk inti per ezempju mort break il-cash jinghalaq, jekk inti per ezempju biex tohrog il-barra jinghalaq, jekk inti trid tallarga mis-sistema tista taghlaq is-sistema mbaghad trid terga ddahhal in-numru biex tidhol, jigifieri s-security features kollha qeghdin hemmhekk u ovvjament jissodisfaw il-kriterji kollha tal-VAT bhala sistema li hija fiscali."* Dwar dawn ir-regolamenti izid: *"il-kumpannija ghandha tliet policies, ghandha wiehed ta cashiera, ghandha wiehed ta supervisor jiehu hsieb u ghandha wiehed ta manager. Fuq kull policy dejjem tirreferi li jekk inti tallarga mill-cash trid taghlaq il-cash, jekk inti mintix prezenti hadd ma jista juzalek il-cash lanqas manager ma jista jaccessahulek, jigifieri bhala policies kollha qeghdin fil-post anki l-manager jaf li l-card tieghu irid izommha dejjem fuqu u kull fejn tintuza qed jidhol[41]... l-pin number ma kienx jigi sharejat no no.... Meta jigi cashjat il-kexxun ha jidher l-isem u jrid jiffirma l-impjegat, li hu kien qieghed juza dak il-kexxun, jekk induna din il-persuna li jista jkun li xi hadd qed jabbuza bil-pin number tieghu jista jintalab li n-numru jinbidel u jinbidel in-numru."*

Ikompli li ghalkemm kienu nbiddlu s-sistemi, *"safety features li meta inti tahdem tuza numru dejjem bagghu u qabel kien hemm flok card kienet cavetta, jigifieri l-manager irid juza cavetta ghax kienet ghadha jigifieri trid iddahhal cavetta u trid tiffittja mal-lock ovvjament biex tkun tista taccessa s-safety features.... L-Airport dejjem intuzat is-sistema li konna qeghdin insemmu qabel, din is-sistema nahseb kienet ghadha sas-Sajf tat-2010 kienet ghadha in place... [42].... Kienet il-Gzira mill-perjodu, ghamlet forsi jien naf fil-passat ghamlet four years qabel ma dahlet is-sistema tal-Micros."* F'dak iz-zmien taht is-sistema l-antika kien ikun il-manager li kien *on duty* li jinzamm risponsabbli.[43]

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[38] Fol.187

[39] Fol.189

[40] *"In fatti it-tielet perjodu kien l-uniku perjodu fejn wiehed seta' jhossu komdu fuq il figuri prezentati" (fol.7 tar-relazzjoni tieghu);* u *"huwa f'dan il-perjodu li kellhi l-iktar informazzjoni u statistika fuq xhiex nibbaza il-kalkolazzjonijiet tieghi" (fol.4 tal-istess relazzjoni)*

[41] Fol.190

[42] Fol.191

[43] Fol.192

Illi **Christina Rodgers** xehdet li kienet tahdem mal-KFC l-Malta International Airport bejn Lulju u Novembru, 2009, fejn kienet qed tircevi tahrig bhala manager u kienet qed tahdem taht Buttigieg. F'dak iz-zmien kienet anke tahdem fuq il-cash li kienet tkun risponsabbli taghha.[44] Tat rendikont ta' dak li kien isehh qabel ma tibda tahdem fuq il-cash *"the duty manager would give me the till, I would have to check what is the ammount of money before I start working, then I was allowed to enter the cash and serve the clients,.... the duty manager responsible for the hours who would activate the cash for me, I wasn't allowed to do it by myself."*. Tikkonferma li d-duty manager kien jibqa' maghha tul iz-zmien li kienet qed tahdem.[45] Tkompli li **f'kaz ta zball fuq l-oggett li jkun inxtara setghet tirrangaha hi** izda jekk l-ammont ikun differenti kien hemm il-htiega li jissejjah il-manager li permezz tal-card li kien juza kien jirranga l-izball.[46]

In kontro-ezami tikkonferma li card hi ma kellhiex imma kienet tuza dik tad-duty manager ghax il-cash kienet tinfetah biha *"I'm definite about it that the card that would open the till itself the responsibility was on the duty manager."*[47] Din il-card tal-manager kien ikollha tintuza ghal kwalunkwe kaxxier li ikun ghamel zball u jkollu jirrikorri ghand il-manager sabiex jirrangah. Meta hi uzat il-card sabiex tirranga zball ta' haddiehor bhala parti mit-tahrig taghha, dan kienet taghmlu taht is-supervizzjoni tal-manager. Managers kien hemm tlieta li kienet qed tiehu it-tahrig maghhom inkluz l-imputat.[48] Ma ftakritx li qatt rat lill-imputat jiftah il-cash.[49]

Illi **Dakota Cassar** xehdet kif kienet hadet tahrig mal-KFC MIA minghand Brian Buttigieg kif ukoll minghand shift leader.[50] Tghid li Buttigieg ma kienx ikun fuq il-cash[51] u meta kien ikun sar xi zball kienu jinfurmaw il-manager li kellhu ghax kien hu biss li kellhu l-card li kienet tipperemetti li jitranga l-izball.[52] Tispjega *"It-Training kien ikun assenjat fuqu l-cash imma ahna konna niehdu hsieb.... Konna mmorru, ituna l-cash, ituna l-float u nissenjaw fuq il-Kompjuter ...[is-sign-in kien issir] Bil-card tal-Manager, konna ndahlu l-cash gol-Kompjuter"*[53] izda ma tiftkarx kif kien isir is-sign in. Tkompli *"Konna mmorru fl-ufficju tal-Managers, ituna l-float u mbaghad ahna nillogjaw fuq il-Kompjuter.... Bl-id card number taghna jekk mhux sejra zball, as in kien ikun hemm indahlu l-id card u nissenjaw ezempju jigi fuq ismi. U mbaghad biex nohorgu l-float kien ikollna bzonn il-card tal-Manager u naghmlu sign out u tohrog il-bill it-twil biex niftehmu"*. F'kaz ta' zball fl-ordni kienu jinfurmaw il-manager biex tigi *voided* l-order ghax hu biss kellhu l-card.[54] Cassar tichad li crew kien juza cashes ta' crew member iehor *"ghax imbaghad fl-ahhar tax-*

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[44] Fol.259-260
[45] Fol.260
[46] Fol.262
[47] Fol.263
[48] Fol.266
[49] Fol.267
[50] Fol.396
[51] Fol.390
[52] Fol.397
[53] Fol.400
[54] Fol.401

shift as in kullhadd kien ikollu l-cash tieghu ghax imbaghad jekk jigi under nohorgu l-flus ahna jigifieri kullhadd kien izomm il-float tieghu".[55]

Illi **Therese Grech** xehdet li kienet tahdem f'KFC Gzira ghal 17 il-sena. Is-sistema tal-FASPAX li kienet tithaddem qabel ma kientix timmarka fuq min ikun fetah il-cash, kif saret wara ghalkemm ma ftakritx meta sar it-tibdil *"Ahna ma kellniex card kif ghandna llum illum kulhadd ghandu card tieghu. Qabel ma kellniex"*[56] Izid li kienu anke jbiddlu l-cashes u jahdmu fuq dik il-cash li tkun vojta, prattika li ghada issir sallum, *"ghandna zewg cashes u jekk ikun hemm hafna nies jew jekk xi hadd imur toilet jew xi hadd imur break, xi hadd iehor juza lilu mhux ha naghlquh..... fuq min ikun miftuh tibqa' tahdem issa, imma qabel ma konniex Jekk ikompli xi hadd iehor fuq tieghi ha jidher li jiena xorta."* Jekk kienu jigu *under* meta kienet issir *reconciliation*, kien ihallas il-kaxxier. [57] Ix-xhud tkompli li jekk ma jkunx ghadu nghalaq il-kont l-kaxxier kien ikun jista' jhassar l-ordni u jibda mill-gdid.[58] Tikkonferma li qabel il-cashes kienu jinfethu bic-cwievet.

Illi **Lourdes Kitcher** xehdet li kienet tahdem il-KFC Gzira fejn, meta kien hemm is-sistema tal-FASFAX, l-cashes ma kienux ikunu personalizzati mal-individwu u filfatt cash kien jintuza minn hafna idejn *"Fuq is-sistema l'antika le konna nifthu cash u konna noqghodu fuqu imma mbaghad ezempju jekk immur break kienu jiehdu orders fuq tieghi ezempju.... per ezempju kien hemm xi hadd jekk inkunu uzajnieh it-tnejn heqq jekk nigi xi five Euro under ghall-argument imbaghad dak li jkun uzali l-cash jaqsamhom mieghi."*[59] Tixhed li bis-sistema l-gdida din giet personalizzata *"Bis-sistema l'gdida l-manager hux jew ahna, jekk il-manager ma jkunx presenti dak il-hin jew ikun qed jiehu xi telefone jew xi order nitolbuh il-card u min ikun jaf jaghmilha jaghmilha hu.... M'ghandniex card ohra le".*[60] Tikkonferma li anke fil-prezent il-cashes jintuzaw minn kaxxiera differenti avolja tkun infethet fuq kaxxier partikolari.[61] Fil-passat kienet anke tintuza l-card tal-manager mill-kaxxier innifsu biex jigi rrangat zball *"jew insejjhu l-manager orrajt jew inkella jekk ikun qed jiehu xi telefone kif qed nghidlek jew ikun it-toilet jew xi haga ehe min jaf jirrangah jirranga hu.....* [Qorti: Dejjem bil-card tal-manager.] *...Iva. Biex tirranga xi haga iva dejjem bil-card."*[62]

Illi **Gayle Grech** tikkonferma li *"Jekk ma nkunx ghadni hadt il-payment u tkun ghadha miftuha kemm naqbad u nhassar jiena imma jekk inkun hadt diga' l-flus ikolli nghajat lil manager biex jigi hu u jirrangaha....kien juza l-card"*[63] Tiddikjara ukoll li kien hemm okkazzjonijiet fejn anke l-kaxxiera uzaw il-card tal-manager li kien jibqa' risponsabbli taghha.[64] L-istess xehdet

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[55] Fol.401
[56] Fol.409
[57] Fol.410
[58] Fol.411
[59] Fol.415-416
[60] Fol.417
[61] Ibid.
[62] Fol.418
[63] Fol.421-422
[64] Fol.422

Samantha Chetcuti li stqarret li kienet ilha tahdem fl-istabbiliment mill-2011 meta is-sistema kienet dik tal-MICROS. Tghid li ma kellhiex card *"card personali le, tal-manager biss kien hemm card. Ma kellniex card, biex nippunchjaw u konna dan bl-ID card. Konna nippunchjaw l-ID card number imma ma kellniex cards."*[65] **Caroline Bezzina** ukoll tat konferma ta dan *"Jekk ikun hemm zball jekk inkun ghadni m'ghalaqtx il-kont gieli nhassruha ahna u gieli ezempju jekk il-kont ikun maghluq nghajtu lil manager u gieli anki ghamilnieha ahna wkoll".*[66] Ix-xhud tiftkar tahdem biz-zewg sistemi fejn id-differenza saljenti kienet li *"L'antika kemm konna ndahhlu l-ID card number biss ma konniex nifthuh bil-card, issa bil-card."* u kemm il-darba il-kont kien inghalaq kien jibqa' l-bzonn tal-card tal-manager.[67] Bezzina tikkonferma li l-kaxxiera kienu jidhlu fuq cash registers li jkunu infethu minn kaxxier iehor.[68]

Illi **Sera Hussein** xehdet li mill-2009 bdiet tahdem fil-KFC fl-MIA fejn biex jibdew joperaw il-cash kien ikollhom jinserixxu l-identity card number taghhom. Wara izda bdew juzaw card *"Jekk il-kont ikun ghadu miftuh just naqbad u naghmlu cancel. Jekk il-kont ikun diga' hareg l-ircevuta kien jigi l-manager u jaghmlilna void, u nergghu nibdew il-kont."* Tghid li kien biss ghal ftit zmien li hadmet mal-imputat u li t-tahrig taghha sar minn *"crew kien jghallimni stess. Crew iehor li kien trained qabli jigifieri ma jistax il-manager ma kienx joqghod mieghi u jurini l-cash, crew member fil-kaz tieghi."*[69] **Marilisa Darmanin** u **Liuana Spiteri** ukoll kkonfermaw li kien hemm okkazzjonijiet fejn il-manager kien ihalli li l-card tieghu tintuza minn kaxxier meta kien ikun hemm il-bzonn li jittranga zball f'ordni li tkun inghalqet.[70]

Illi l-kompjant espert **Ralph Axiaq** gustament osserva li *"kien hemm bahar jaqsam bejn iz-zewg figuri. Ovvjament peress illi l-claim kienet fuq perjodu ta' zmien, xtaqt nara backup ta' dokumenti."*[71] Ghalhekk sabiex jaqdi l-inkarigu tieghu sar *audit* fuq is-sistema mhaddma mill-KFC u fuq l-impjegati li kien hemm jahdmu. Wara li ffamiljarizza ruhu fuq is-sistemi li kienu joperaw fiz-zmienijiet li jsemmi fir-rapport tieghu u wara li ezamina d-dokumentazzjoni relattiva, wasal ghac-cifra indikata ta' **€108,656** fil-konfront ta' Buttigieg u dik ta' €6,889 bhala l-ammont approprijat minn Cutajar ghalkemm din giet akkuzata biss bir-reat ta' riciklagg.

Mhemmx dubbju li l-mod adoperat mill-espert sabiex jikkonstata l-ammont tar-rikavat kien wiehed maghmul skrupolozament kif jixhed ir-rapport li jispjega f'dettal il-konstatazzjonijiet tieghu kif ukoll il-metodologija li uza sabiex wasal ghac-cifri li jissemmew minnu.[72] Jghid dan *"tlabt fotokpji tal process u bdejt nirrevedi il bazi tas-somma mitluba mill-parte' civile u in partikolari xtaqt nara u nifhem is-sistema ta' kontabilita li jimpjegaw gewwa l-*

[65] Fol.425
[66] Fol.427
[67] Fol.428
[68] Fol.429
[69] Fol.432
[70] Fol.433 et seq u 436 et seq.
[71] Fol.231
[72] Vide rapport Dok AM9 a fol. 221A et seq.

istabbiliment tal KFC fil Gzira id-ditta Food Chain Limited. Is-sistema tal Modular Integrated Cash Register Operating Systems "MICROS" li tifforma parti mill-Oracle Group li timpjega il KFC hija maghrufa mad-dinja kollha u fiha hafna ghodda li jaghtu l'opportunita ta verifika ta transazzjonijiet "Audit Trails" u statistika ohra "Management reports" li jistghu ikunu ta' assistenza lill-Management meta jaghmlu rivezjoni ta' attivita u proceduri interni "internal controls" ta I-istess stabbiliment. Pero' jien ma xtaqtx noqghod fuq li ntqal fil process....". Biex jaghmel il-kalkoli hu qasam iz-zmien in kwistjoni fi tlett perjodi ghalkemm jirrizulta li fit-tielet perjodu d-data ta' tmiem l-impjieg kienet dik tal-14 ta' Settembru 2012 u mhux fl-2014 kif indikat jew dik tal-2013 kif jixhed meta mgharraf bl-izball.[73] Dan jirrizulta ampjament minn Dok. AMX5.[74] Madanakollu l-kalkoli tieghu certament inhaddmu fuq 14 il-xahar u mhux oltre (cioe` Gunju 2011 sa Settembru 2012), peress li fir-rapport tieghu jaghmel riferenza ghal *"l-ewwel erba xhur"* u sussegwentement *"it-tnax il-xahar ta wara"*. Jinghad ukoll li kif jikkonferma kienu anke gew mghoddija l-workings mill-kumpanija,[75] esebiti wkoll in atti, fejn jirrizulta li Buttigieg temm l-impjieg f'Settembru 2012.[76] Kien fuq dawn id-dokumenti li l-espert bbaza l-hidma u l-konkluzzjonijiet tieghu.

L-espert zied li ma kienx hemm il-htiega li jikkomunika mal-imputati, peress mill-workings li pprovdew Farsons, li anke spjegaw iz-zewg sistemi diversi li kienu mhaddma minnhom (MICROS u FASPAX), *"stajt nara t-trend u pattern tal-affarijiet kif kienu qeghdin jizvolgu, u ma hassnix li kelli ghalfejn insaqsihom. Is-sistema spjegawhieli sew Farsons attwalment kien hemm zewg sistemi, u no ma kellix ghalfejn."*[77] Iktar minn hekk kien anke rricerka dwar l-istess sistemi. Jispjega li beda l-ezaminazzjoni tieghu bit tielet perjodu ghax kien f'dan il perjodu li kellu l-iktar informazzjoni u statistika fuq xiex seta' jibbaza il-kalkoli tieghu. *"F'dan il perjodu il kumpanija Food Chain Limited kienet qieghda tuza is-sistema tal-MICROS li minnha kienu qieghdin johorgu zewg rapporti kuljum (DAILY CONSOLIDATED SYSTEMS SALES DETAIL) ta rikonciljazzjoni ta' bejgh, vat, skonti, persentaggi ta tahlita ta'bejgh, kif thallsu il flus, kemm hux kontanti jew credit card, u kemm il darba thassret ordni fuq is sistema. Is-sistema ukoll* ***tipprovdi il facilita ta uzu ta kalkulatur li min qieghed juzgha ma jafx li qieghda tigi registrata fl-"audit trail". Jigifieri ti jista johrog rapport li juri kif inhadem kont li umbat ma giex registrat****. Is Sistema ukoll taghti facilita ta "No Sale" meta il kexxun jinfetah minghajr gie registrat bejgh ta xi prodott. Din il facilita jista jaghmilha manager biss u jekk xi membru ta staff ghandu bzonn jiftah il kexxun tal-cash register meta ma biegh xejn irid jitlob manager biex jiftah bil card tieghu."*[78]

L-espert jispjega li dwar dan it-tielet perjodu *"Meta ikkwantifikajt dawn l-ERROR CORRECTS u NO SALES wasalt ghal cifra ta Euro 63,548 maqsuma*

[73] Fol.239
[74] Fol.94
[75] AMX2 fol.48 et seq
[76] Fol.48
[77] Fol.233
[78] Fol.4 tar-relazzjoni tieghu

bejn Euro 47,297 ERROR CORRECTS u Euro 16,251 "NO SALE". Ic-cifra ta NO SALE hija bazata fuq Euro 3 kull transazzjoni. Din hija cifra moderata meta il bejgh medju ta kull transazzjoni registrata hija ta madwar Euro 10. Is-Sistema tipprovdi wkoll li tohrog rendikont kuljum ta kull min uza is sistema ta cash register. Biex jien inkun nista nasal ghal somma f'dan il perjodu saqsejt ghal "DAILY CONSOLIDATED SYSTEMS SALES DETAIL" ta bosta granet u anki ta granet konsekkutivi biex inkun nista nosserva kif 'cashiers" u "managers" ohrajn jahdmu. Irrizultali li meta flejt dawn il kampjuni, jigifieri 31 gurnata b'medja ta tmien impjegati kuljum osservajt li l-managers l-ohra bil kemm kien ikollhom ERROR CORRECTS u meta kien hemm certi kazi li I percentwal qabez in normal sibt li l-Manager kienet fethet xi cash ta FOH Member (FRONT OF HOUSE MEMBER) ghaliex din tkun insieta d-dar jew inkella ghal xi "training /price changes". Il-percentwal ta ERROR CORRECTS tal-managers irrizultali li kien ta 5.75% tal bejgh meta ta BB kien ta ***74.8% ghal I-istess perjodu.*** *Meta osservajt in-numru ta NO SALES ta managers u staff irrizultali li l-medja ta NO SALES kienet prattikament ta zero u in partkolari il managers li ftit li xejn ma kellhom.* ***Ghal daqs tant hija cara li in NO SALES kienu attwalment SALES mhux registrati u hija l-opinjoni tieghi li r-rata ta Euro 3 medja li qeghdin jitolbu l Food Chain Limited hija konservattiva hafna u ghal hekk jirrizulta li t-total ta dan il perjodu fir-rigward ta BB ghandu jkun ta Euro 59,896****."*[79]

Dwar Joanne Cutajar l-espert sab li *"meta JC ma kienitx tahdem fl-istess shift ta BB il-medja ta ERROR CORRECTS kienet ta 16.8%. Din inhadmet ezatt fuq 15 il gurnata fejn irregistrat bejgh ta Euro 6,885 u ERROR CORRECTS ta Euro 1,159. Meta hadmet fl-istess shifts ta BB it medja kienet ta* ***26.5%*** *u anki in NO SALES li fil verita huma baxxi kienu I-iktar fix-shifts li hadmet ma BB. Ghal daqs tant hija cara li in* ***NO SALES kienu attwalment SALES mhux registrati u hija l-opinjoni tieghi li r-rata ta Euro 3 medja li qeghdin jitolbu l Food Chain Limited hija konservattiva u ghat hekk jirrizulta li t-total ta dan il perjodu fir rigward ta JC ghandu jkun ta Euro 6,889."***[80]

Illi rigward il-perjodu bejn il-25 ta Mejju, 2009, u l-20 ta Jannar, 2010, meta l-imputat kien qiegħed jaħdem gewwa l-KFC fl-MIA, fejn is-sistema tal MICROS ta' dak iz-zmien ma kienitx sofistikata bhal dik mhaddma fl-2011, giet kalkolata is-somma ta' **€15,997.76** li tirraprezenta transazzjonijiet mhux registrati. Dwar il-perjodu tal-24 ta' Jannar, 2010, u l-21 ta' Gunju, 2011, jirraporta li fil-KFC Gzira kienet qed tithaddem is-sistema FASFAX, programm li l-espert jiddeskrivieh bhala antikwat peress li dan jipprovdi informazzjoni limitata bl-uniku mezz ta ezaminazzjoni ikun dak li jigu ezaminati il-CLEAR ALLS ta' kull gurnata.

Fix-xhieda tieghu jikkonferma li salespersons *"ma jkollhomx card biex jifthu l-cash huma m'ghandhomx il-code biex jifthu l-kexxun ta' xejn meta jippunchjaw biss u jenterjaw s-sale."* u jekk hemm diversi kaxxiera li jkollhom bzonn jinfetah il-cash minghajr sale f'jum partikolari, iridu

[79] Fol.4-5 tar-relazzjoni tieghu
[80] Fol.6 tar-relazzjoni tieghu

jirreferu ghal manager li jkun xoghol dak inhar u ghalhekk jibqa' jimmarka fuqu.[81] Dan isib korroborazzjoni fix-xhieda tad-diversi kaxxiera li lkoll qabblu dwar dan. L-istess issib korroborazzjoni dak kkonstatat fir-rapport tieghu li *"Manager mhux suppost juza it Cash register ghaliex dak mhuwiex ix xoghol tieghu. Huwa suppost juza il Cash Register biss meta jínqala hafna xoghol jew ikun hemm xi staff nieqes."*[82] Dan jixhduh kemm Dakota Cassar u Christine Rodgers[83] li jikkonfermaw li qatt ma raw lill-imputat fuq il-cash,[84] kif ukoll Bonello Ghio, Caruana, Campbell u Xuereb Saydon.

Axiaq kkonstata li "*l-manager qieghed hemm to manage, jigifieri jifthilhom il-cashes, jicekkja li kollox ghaddej sew, jikkowordina x-xoghol etc, ix-xoghol ta' manager, pero meta jinqabdu short jew ikollhom hafna xoghol manager jista' jiftah cash register u jopera bhala cashier bil-poteri kollha ta' manager ukoll jigifieri."*[85] Izid li beda janalizza it-trend ta' managers ohra biex jara jekk kienx baqa' l-istess *pattern* wara li ntemm l-impjieg ta' Buttigieg. Kien min din l-analizi li harget id-diskrepanza li tissemma' fir-rapport tieghu. L-istess espert kkonferma li Farsons kienu nfurmawh li kien hemm zmienijiet meta Buttigieg kien ikollu mieghu *trainee staff* li seta' ukoll kien fattur li kkontribwixxa ghal certu errors riskontrati.[86] Fil-fatt fl-audit li ghamel ha konsiderazzjoni tal-fattur li kien hemm trainee staff u li dawn gieli hadu zbalji izda jispecifika li **dawn l-izbalji kienu jiddistingwu rwiehom** *"jiena nfatti rrimarkajt fuq xi staff li kellhom l-istess tip ta' errors pero tinduna li jkunu ghadhom jibdew jahdmu mbaghad jonqsulhom, u trainee managers ukoll probabilment iva ssemmew."*[87]; izid li l-management kien infurmah li **bhala parti mit-training kienu jsiru sales li wara jigu kkancellati.**[88] Fl-ahhar tax-xhieda tieghu jghid hekk dwar l-inkarigu li espleta: *"nghidulha analytical review fil-linja taghna jigifieri jkollna trends, ikollna patterns li generalment nippruvaw napprossimaw x'setgha gara, pero ovvjament ma nistax nghid jien le, ma nistax nghid.... [dak li sehh ghal perjodu li ma kienx hemm filmati tieghu.]".*[89]

Illi l-ispettur investigattiv **Anne Marie Xuereb** xehdet li l-Pulizija rcevew kwerela minghand Farsons dwar misappropprijazzjoni ta' fondi mill-imputat fejn dawn spjegawlha dak li sehh wara telefonata li rcevew dwar l-istess imputat. Meta kellmet lil dawn l-ufficjali dawn spjegaw kif tahdem is-sistema - *"is-sistema komputerizzata tal-cash u tal-orders fejn qaluli li Buttigieg kien qed juzaha bhala calculator. Is-sistema ttik cans illi ddahhal l-order, tissumjaha u terga tiddeleteja kollox pero l-order tkun ghaddiet sew fil-kcina u ghalhekk l-ikel li jkun ordnat johrog. Qaluli wkoll li s-sistema kif kienet tahdem hadd mill-impjegati ma kien jafha* ***allura lanqas Buttigieg***

[81] Fol.235
[82]Fol.4 tar-relazzjoni tieghu
[83] Fol. 267
[84] Fol.390
[85] Fol.237-238
[86] Fol.241-242
[87] Fol.242
[88] Fol.243
[89] Fol.245

***ma kien jaf illi once li gew imputtjati l-affarijiet u inti qed tiddeletejahom xorta jibqghu hemmhekk fis-sistema**.”*

Illi minn investigazzjonijiet li saru mal-banek, rrizulta li fiz-zmien meta Joanne ma kienitx qed tahdem kienet qed taghmel *cash deposits* kbar fil-kont taghha. Mid-dokumentazzjoni esebita[90] hemm diversi pagamenti ta' salarju taghha li kien ta' €500 circa. Aktar il-quddiem meta tixhed tispjega li kienet tahdem *part-time* tlett darbiet fil-gimgha. L-imputati kienu gew mitkellma wara li Joanne weldet f'Ottubru w rrilaxxaw stqarrija. Fil-bidu Cutajar qalet li l-cash kien provenjenti mill-ex ragel taghha, Vulkan Sinop, li meta mitkellem mill-pulizija dan cahad li ghadda xi cash deposits.[91] Minn naha tieghu Buttigieg stqarr li meta ffirma d-dokument dan ghamlu meta ma kienx ghadu qrah u li sar fl-assenza tieghu – verzjoni inverosimili u fatt kontradett minn diversi xhieda inkluz mill-fatt li jiem wara rega' mar mal-avukat Cilia u minn imkien ma jirrizulta li ghamel xi allegazzjoni simili bejn l-14 ta' Settembru 2012 u Dicembru 2012 meta ttiehdet l-istqarrija tieghu! Jinghad ukoll li meta jixhed quddiem il-Qorti jaghti verzjoni differenti *"dak id-dokument kitbitu Antoinette, qaluli biex naqrah, ghazilt biex ma naqrahx jiena tajjeb. Dak il-hin kont mgerfex, kont bezghan, kont imfixkel. Ghazilt li ma naqrahx pero' hija Antoinette kienet qaltli, qaltli jekk tiffirmah qaltli ha nghinuk zgur. U jiena qbadt u ffirmajtu."*[92]

Illi l-Ispettur Xuereb esebiet l-istqarrijiet tal-imputati. Joanne Cutajar kienet stqarret li kienet tahdem ma l-kumpanija Farsons bejn Frar, 2010, u April, 2012, meta waqfet tahdem peress li harget tqila. Hi spjegat kif bdiet tohrog ma Brian f'Lulju, 2010. Brian, li kien il-manager taghha meta kienet tahdem ma KFC Gzira,[93] kien qalilha **kif hu kien qed jaghmel il-flus billi *"jaghmel orders fuq l-iscreen u minflok imur ghat-total kien jaghmel delete u jhassar l-ordni pero lill-klijent kien jitolbu l-ammont xorta. Brian kien jitfa l-flus fil-cash u fl-ahhar tal-gurnata jiehu d-differenza."*** Tkompli izda li ghalkemm Brian kien staqsieha biex juza l-cash li kienet tkun qed tahdem fuqu u hi kienet thallieh, *"ma kontx naf li qed igerfex fil-cash tieghi"*.[94] Gieli kien jitlobha biex jiftah il-cash taghha halli jsarraf u hi kienet tafdah peress li kien il-partner taghha. Issoktat tispjega kif wara xi zmien Brian kien itiha ammonti ta' €1,000, gieli ta' €500 cash, u jghidilha tiddepozithom fil-kont taghha. Tichad li kien hemm xi ftehim ma Brian. Xehdet li kien hemm drabi meta haddiehor kien juza l-cash li kienet tkun fuqha hi u dan kien dovut li hi ma kellhiex card sabiex taghmel il-*logout* biha. Iktar minn hekk, ma kien hemm hadd mill-management li kien jinforza il-htiega li qabel ma impjegat ma jallontana ruhu mill-cash, kellhu jaghmel *logout*. Cutajar tghid li ma kienitx taf kif Brian kien johrog il-flus mill-istabbiliment, b'liema flus tghid *"Hafna minnhom imlejna d-dar bihom."*[95]

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[90] Dok. AMX10 fol 284
[91] Fol.281
[92] Fol.340
[93] Fol.16
[94] Fol.15 tergo
[95] Fol.16

Brian Buttigieg kien stqarr mal-Ispettur investigattiv li kien ilu jahdem ma Farsons Group mill-2003 u spicca f'Settembru, 2012. Kien beda KFC Airport imbaghad mar KFC Gzira. **Hu ma nnegax li kien jiehu flejjes ta' bejgh u ma jikkaxjahomx; dak li ma qabilx mieghu kienet is-somma ta' flejjes (res furtiva) li kien ha**. Jikkonferma li kien ghamel dan wara li ra lil haddiehor jaghmel l-istess ghalkemm ma xtaqx jikxef min.[96] ***"...Bdejt nuza s-sistema bhala calculator u minflok naghfas it-total kont nghafas void u l-flus kont nitfahhom xorta fil-cash, lill-klijent ma kontx intieh ricevuta u fl-ahhar tal-gurnata kont niehu z-zejjed li kont naghmel....*** *kien hemm cash register vicin il-hajt u dejjem kont nuza lilha...Kif kont nispicca kont nghodd il-cash jiena u z-zejjed kont nehodhom. Jiena kont ngorrhom fil-but tieghi."*[97] Fil-fatt stills mahruga mill-espert Farrugia Sacco juru lil Buttigieg fuq cashes li kienu vicin il-hajt.[98]

Din l-ispjegazzjoni tal-*modus operandi* tieghu, Brian Buttigieg kien gja ta lid-dirigenti ta' Food Chain Limited tlett xhur qabel meta ghamel id-dikjarazzjoni ffirmata minnu fl-14 ta' Settembru, 2012. Fl-istqarrija tieghu mal-ispettur hu kkonferma li kien iffirma tali dikjarazzjoni izda qal li ma kienx qraha qabel - xi haga li d-dirigenti u b'mod partikolari Caruana jinneggaw tant li jaghidu li l-kontenut kien gie diskuss u maqbul qabel ma tnizzlet bil-miktub.

L-imputat kien anke stqarr mal-ispettur li mill-flejjes **kien gemma 10% ghall-post u kien jaghti flus ohra lil Joanne biex tiddepozithom fil-kont taghha** pero` dawn ma kienux kollha gejjien mill-KFC ghax kien hemm minnhom flus li kien ghamilhom mix-xoghol *part-time*. Hu jistqarr li kien lest ihallas €12,000 ghalkemm jikkalkula li ma kienx ha izjed minn €20,000. Jichad li Joanne kienet ukoll qed tiehu xi flejjes u *"Lil Joanne ma kontx nuriha li kont qed naghmel hekk. Il-cash taghha kont nghalqu jien fl-ahhar tal-gurnata u ghalhekk ma kienitx tinduna b'dak li kont qieghed naghmel bil-cash taghha."*[99] Jikkonferma li l-loan kienet il-problema li kellhom u kien jghaddi l-flus lil Joanne biex hi taghmel id-deposits. Jghid li l-cashes kienu jintuzaw minn nies differenti fejn min kien ikun ghamel *login* fuqha ma jibqax l-uniku persuna li jkun uzaha.[100]

In kontro-ezami d-difiza saqsiet lill-Ispettur Xuereb ghadd ta' domandi sabiex jigi determinat jekk mill-investigazzjoni kondotta minnha, l-ispettur wasslietx ghall-konkluzjoni li Cutajar kienet taf b'dak li kien qed jaghmel Buttigieg, jew li saret taf dan wara li kienet spiccat tahdem mal-KFC. L-ispettur wiegbet li mir-risposti moghtija minn Cutajar[101] hija kkonkludiet li

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[96] Fol.17 tergo.
[97] Ibid.
[98] Fol.132 et seq; **Dr. Stephen Farrugia Sacco** kien pprezenta r-relazzjoni tieghu li fiha esebixxa diversi stills li nhargu minn fuq is-CCTV esebit (fol.122) Il-partijiet qabblu li ma hemmx kwistjonijiet dwar l-awtencita` tas-CD li fuqha gie registrat il-*footage (fol.152).*
[99] Fol.18 tergo.
[100] Ibid.
[101] Fol.15 tergo

din kienet taf b'dan anke meta kienet ghada impjegata mal-KFC.[102] Il-Qorti taqbel li hekk fil-fatt hu ghaliex meta nhar l-14 ta' Settembru, 2012, saret surprise inspection fuqu mill-management, l-imputat qal quddiem l-ufficjali li l-familja kienet taf b'dak li kien qed jaghmel! Dan gie kkonfermat mid-diversi ufficjali ta' Food Chain Limited.

L-imputat **Brian Buttigieg** ghazel li jixhed. Dan spjega kif beda jahdem mill-2003 ma KFC bhala Duty Manager fejn xogholu kien anke jikkonsisti f'tahrig u selection ta' impjegati godda. Fil-bidu tal-impjieg tieghu ma KFC Gzira s-sistema operata kienet dik tal FASFAX fejn biex tibda topera l-cash register kull ma kellhu jsir kien li tiddawwar cavetta u tinghafas buttuna minghajr ma jigi registrat l-isem tal-operatur.[103] Kien hemm 4 cash registers u meta fl-2009 kif kien ser jinfetah stabbiliment fl-MIA, ghazel imur jahdem hemm fejn kien jaghti tahrig lill-istaff fl-istabbiliment tal-Gzira. Kien jifthilhom il-cash u t-tahrig kien isir fuq il-cash.[104] Meta mbgahad marru l-MIA bdew jahdmu fuq sistema kompletament differenti ghal dak li kellu x'jaqsam ma kif isir l-inputting tal-ordnijiet. Ikompli jispejga li ghalkemm kien mar l-MIA baqa' jaghti tahrig lill-istaff il-Gzira. Is-sistema l-gdida, tal-MICROS bdiet tithaddem fl-MIA *"kont nghaddi card tal-Manager u cards kien hemm 4 biss ta' Managers ghax konna 4 biss Managers. Kont taqbad il-card tal-Manager, tiswajpjaha, iddahhal id number tal-crew li jkun ha jahdem fuqu u jigi registrat fuqu".*[105] Jghid li kienu jkunu 4 crew fuq 4 cashes u dawn qatt ma kellhom card u meta kien issir xi zball kien jigi nfurmat il-manager u wara li jghaddi l-card tieghu ikun jista' jirranga dak l-izball. Gewwa l-MIA hu kien qed jaghmel xoghol amministrattiv u qatt ma serva fuq cash.[106] Ghamlu kwazi xahar u nofs sakemm indrat is-sistema l-gdida *"is-sistema ma kinitx ezatt mill-ewwel tahdem mija fil-mija. Dana kienet sistema illi kienet giet b' lingwa Germaniza ukoll niftakar. Certu imputting l-istess minghand, minn naha ta' Stephen Campbell niftakar illi kien jikkoregi l-hin kollu, kien ikun naqra nghidilhom jiena zbalji, jew ma jitlalekx il-prezz tajjeb, jew ma titlalekx item tajjeb. U dawn il-hin kollu ridna noqghodu nivvojdjawhom ahna bil-card tieghi tal-Manager…. kull meta tiswajpja iva, kull meta kont qieghed niswajpjaw jiena l-card tieghi dawn il-voids u clear all u l-affarijiet kienu qeghdin jidhru fuqi."*[107]

F'Jannar, 2011, rritorna KFC Gzira fejn jiddikjara *"Naf li qieghed quddiem Gurament u zgur li minn KFC MIA qatt ma hadt xejn jiena."*[108] Fil-Gzira ghall-bidu baqghet is-sistema FASFAX izda wara nqalbet ghal dik tal-MICROS. Kien baqa' jiftah il-cash fuqu u minn qed jitharreg kien jahdem fuq dik il-cash partikolari.[109] Peress li dawn it-trainees kienu jaghmlu 'role play' l-ordnijiet kienu jidhru bhala 'void' u 'clear all' fuq ismhu.[110] **Fuq domanda**

[102] Fol.312-213
[103] Fol.320
[104] Fol.322
[105] Fol.324
[106] Fol.323
[107] Fol.327
[108] Fol.328
[109] Fol.330
[110] Fol.331

tal-Qorti jikkonferma li madanakollu qatt ma dehrlu li kellu jilmenta mal-management dwar dan il-fatt.[111] Ikompli li meta s-sistema nqalbet fuq il-MICROS, it-transazzjonijiet tal-istaff ukoll kienu jibqaw jidhru fuq ismu ghaliex kien hu li jiftah il-cash biex joperaw minnu.

Anke **quddiem il-Qorti l-imputat jikkonferma li hu kien mill-ewwel ammetta r-responsabilita` tieghu mal-management** *"Qalghuli, qaluli biex naqla l-cash tieghi u naghmel ir-reading tal-ahhar. Sa dan it-tant haduni gol-ufficju…. huma qaluli illi prattikament kienu jafu x' kont qed naghmel**, jiena ghazilt li ammettejt mal-ewwel tajjeb**."* Jispjega f'hiex kien jikkonsisti l-agir tieghu ***"Kont qed naghmel l-irregolarizzazzjonijiet jigifieri kont qieghed nimputtja certu orders u ma kontx qed naghti rcevuta… Jiena kont naghmilha ghas-Sajf 2011…Sa kemm indunaw fl-14 ta' Settembru** [2012]"*[112] Izid li kien ra lil haddiehor jaghmel l-istess gewwa l-KFC fil-Gzira. Peress li Joanne kienet harget tqila u kienu ghamlu konvenju ghall-habta ta' Frar 2011, hu kien ta' bidu ghall-kondotta kriminuza tieghu. Ghaldaqstant fix-xhieda tieghu quddiem il-Qorti, kif *del resto* kien gja kien ghamel fl-istqarrija tieghu f'Dicembru, 2012, **l-imputat rega' kkonferma dak li kien stqarr mal-management li sussegwentement gie ddokumentat nhar l-14 ta' Settembru, 2012 fid-dokument mmarkat AMX5**!

Dwar l-involviment ta' Joanne issostni li din ma kienet taf b'xejn *"Le prattikament kont nirrowndja certu figura u kont naghtihom lil Joanne <u>pero' qatt m' ghidtilha minn fejn gejjin</u>…. pero' nghidlek id-dritt jiena kont ghidtilha, peress li jiena ma kontx daqshekk kapaci nfaddal u hekk kont qed nghaddilha flusi biex lilha. Pero' qatt m' ghidtilha minn fejn gejjin u mhux gejjin."*[113]

In kontro-ezami jikkonferma li bis-sistema tal-MICROS kienet tigi 'swiped' il-card u kull crew kien jinserixxi l-identity card number tieghu.[114] Skond l-imputat meta dak il-crew jiehu zball l-manager kien juza l-card tieghu u l-void kien jidher fuqu *"jidher il-cash number imma fuq ismi jigi rrekordjat…[l-id kienet tintuza] Biex jigi rregistrat il-cash, biex niehdu sales minn dawn l-affarijiet…. jidher fuq liema cash min kien qed juzah imma bhala voids u clear alls jidher il-Manager."*[115] Jikkonferma li qatt ma semma' xejn dwar 'voids' li kienu qed jidhru fuqu meta gie mitkellem mill-management.[116] <u>Isib diffikulta` jispjega dan in-nuqqas</u> mhux biss meta gie mitkellem mill-management izda anke fil-kors tal-istqarrija li ittiehditlu.[117] L-imputat ikkonferma li kellhu paga ta' €1,200 fix-xahar. Jispejga li kien biegh il-mutur f'April, 2011, meta kien l-ewwel inghata €3,000 u sussegwentement €1,000 fix-xahar.[118] Ghalkemm fix-xhieda jipprova jattribwixxi l-flus li kien

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[111] Ibid.
[112] Fol.334
[113] Fol.337-338
[114] Fol.341
[115] Fol.342
[116] Fol.343
[117] Fol.344
[118] Fol.348

qed jiddepozita bhala dak li jkun baqa' minn *withdrawals* li kien ghamel precedentement mill-paga, meta kkonfrontat mill-prosekuzzjoni dwar il-fatt li ma jirrizulatwx withdrawals izda depoziti biss, ma joffri ebda spjegazzjoni ghal dan.[119] Jghid li ma saret ebda ricevuta fuq dan il-bejgh filwaqt li jghid li meta gie interrogat ma hassx li kellhu jsemmi il-bejgh ta' dan il-mutur.[120]

L-imputat jikkonferma li kien liberu ma jiffirmax id-dikjarazzjoni msemmija izda *"Kien hemm Antoinette dak il-hin qaltli Brian qaltli isma' minni qaltli iffirmaha qaltli ha nghinuk. U dak il-hin iffirmajtha".*[121]

Ikompli jinsisti li Joanne ma kienet taf b'xejn dwar il-provvenjenza llecita tal-flejjes li kien jghaddilha *"Ma kinitx issaqsini, ma kinitx issaqsini u jien qatt m' ghidtilha".*[122] Lejn l-ahhar tax-xhieda tieghu jikkonferma li fl-MIA kienet tithaddem is-sistema tal-MICROS, kif ukoll li t-trainers l-ohra kollha kellhom access ghal card izda ma nstabet ebda diskrepanza dwarhom.[123] Jghid li kien idawwar mat-€800 mix-xoghol *part time* bhala *upholsterer* liema xoghol kien jaghmlu mid-dar t'ommu. **Ma ngabet ebda prova dwar dan ix-xoghol, la xi klijent u lanqas xi ricevuta biex tissostanzja dak li jghid l-imputat.** Dan jassumi rilevanza meta tigi konsiderata d-disposizzjoni tal-artikolu 3(3) tal-Att dwar il-money laundering li tirrendi applikabbli l-artikolu 22(1C)(b) tal-Kapitolu 101, Ligijiet ta' Malta:

> (*b*) Fi proċedimenti għal reat taħt il-paragrafu (*a*), meta l-prosekuzzjoni ġġib prova li l-imputat jew akkużat ma jkun ta ebda spjegazzjoni raġonevoli li turi li dawk il-flus, proprjetà jew rikavat ma kenux flus, proprjetà jew rikavat kif deskritti fl-imsemmi paragrafu, l-oneru li jipprova l-provenjenza leċita ta' dawk il-flus, proprjetà jew rikavat tkun tinkombi fuq il-persuna imputata jew akkużata.

In ri-ezami jghid li hu nforma lil Joanne b'dak li kien qed jaghmel meta nqala' l-kaz f' Settembru, izda dan hu kontradett minn Bonello Ghio, Caruana u Xuereb Saydon li jghidu cjar u tond li malli marru fil-hanut tal-KFC Gzira fl-14 ta' Settembru, 2012, Buttigieg qalilhom li familtu kienet taf b'ghemilu filwaqt li lil Bonello Ghio ***"li qalilna biss kienet li Joanne kienet taf x'qed jigri"***[124] u ***"qalilna l-mara ga taf kollox il-familja jafu kollox x'qed jigri,."***.[125] Anke Joanne Cutajar tikkonferma dan meta fl-istqarrija minn taghha tghid li ftit wara li bdiet tohrog mal-imputat (Lulju, 2010) ***"darba minnhom konna qed nitkellmu u brian kien qalli li kien qieghed jaghmel xi flus***".[126]

Kieku kien minnu li kien biss meta nqabbad f' Settembru, 2012, kif iridu jgieghlu jitwemmen l-imputati, ghax anke Cutajar tixhed l-istess – kieku din

[119] Fol.349
[120] Fol.350
[121] Fol.351
[122] Fol.352
[123] Fol.354
[124] Fol.34
[125] Fol.32
[126] Fol.15 tergo

ma kienitx tuza l-frazi *"darba minnhom"* izda kienet issemmi d-data ta' meta ntemmlu l-impjieg, tlett xhur qabel!!

Illi ma hemmx dubbju li l-verzjoni tal-imputat fiha bosta inkonsistenzi u kontradizzjonijiet ohra. Jipprova jattribwixxi in-numru ta' transazzjonijiet li rrizultaw bhala li gew *voided* ghal zbalji li kienu jsiru mit-trainees: *"meta dawn it-trainees ikunu qed jitrejnjaw u ghidtilna jkun hemm l-izbalji u jigu voids fuq hemm komplili ghax dika mportanti ghalina. Xi jsir minnhom dawn il-voids? Xhud: Prattikament kienu jidhru bhala kollha voids u clear alls l-orders....Fuqi".*[127]

Izda dan ma jaghmilx sens ghaliex certament l-ebda manager ma kien ser jindirizza u jikkoregi zball billi jippermetti li dan jirrifletti hazin fuqu. Kif jammetti hu qatt ma ra l-bzonn li jissoleva l-fatt mal-*management.*[128]

Punt iehor hu l-fatt li bhala manager kellhu l-kompitu jissorvelja t-tahrig u l-operat tal-istaff *"U prattikament kellna nergghu noqghod maghhom"*[129]*; "l-hin kollu maghhom u noqghod maghhom u nikkoregi l-affarijiet kollha"*[130] u *"Daka kien jigi jghid lilna l-Managers u ahna konna niswajpjaw il-card taghna u stajna nirrangaw u nikkoregu l-order prattikament...."*[131] Li tikkoregi ma jfissirx li tassumi responsabilita` ghall-ghemil haddiehor fejn, jekk ghandu jigi emnut l-imputat, kienu jsiru tant zbalji mill-istaff li kien jissorvelja li dawn kieku lahqu l-eluf ta' Ewro! Xi training u x'sorveljar kien dan allura?!

Rilevanti wkoll hu li filwaqt li l-operat kriminuz ta' Buttigieg kien wiehed mifrux fuq medda ta' zmien, it-tahrig kien jinghata minn zmien ghal zmien izda mhux b'daqshekk frekwenza, anzi: *"Ara matul is-sena kont naghmel ghal tliet darbiet qabel ma jigi s-Sajf ghal habta ta' Marzu kont naqbad indahhal in-nies, naghmel l-interviews tan-nies minhabba s-Sajf...... Ghal wara s-Sajf l-istess l-istudenti jergghu jispiccaw ghax jergghu jmorru l-iSkola"*[132] Ghalhekk zgur li kieku dawn l-izbalji kienu qed issiru biss waqt it-training tal-crew, dawn kienu jkunu koncentrati fuq perjodu partikolari u mhux oltre` kif fil-fatt ikkonstata l-espert Ralph Axiaq.

Dak li jixhed l-imputat ukoll ma jaghmilx sens ghaliex kif jixhdu diversi kaxxiera, dment li l-kont kien ikun ghadu miftuh, kien il-kaxxier stess li seta' jirranga xi zball li jkun ittiehed. Kien jigi mghajjat il-manager meta l-kont kien ikun inghalaq u minhabba xi bqija li ngahatat hazin. Possibli allura li dawn l-izbalji kollha saru meta inghalqu l-kontijiet? Possibli li hu biss kellhu l-isfortuna li jispicca b'tant zbalji maghmulha minn nies that is-supervizjoni tieghu (certament xi haga li ma tirriflettix tajjeb fuq it-tip ta' tahrig li suppost kien qed jaghti!)?

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[127] Fol.331
[128] Fol.331
[129] Fol.322
[130] Fol.324
[131] Fol.326
[132] Fol.329-330

Dan kollu l-Qorti tqis li hu inverosimili u dak li jixhed Buttigieg dwar ir-raguni ghall-ammonti esagerati ta' 'voids, 'no sale' u 'clear all' ma ghandux mis-sewwa izda hu tentattiv fjakk sabiex jimpingi fuq l-ammont tar-rikavat illecitu li rnexxielu jaghmel. Hu ghalhekk li fl-istqarrija tieghu filwaqt li jammetti l-agir kriminuz ma joffri ebda informazzjoni dwar il-perjodu li tulu wettaq tali agir![133] L-atti jixhdu li hu qatt ma nnega l-ghemil doluz tieghu izda kien biss dwar l-ammont tar-rikavat pretiz mill-parte leza li ma kienx hemm qbil!

Dwar id-dokument iffirmat minnhu jghid li hu kien gie 'mhedded' fis-sens li kellhu jhallas lura dak li kien ha lill-kumpanija permezz ta' proceduri legali;[134] "*dak id-dokument kitbitu Antoinette, qaluli biex naqrah, ghazilt biex ma naqrahx jiena tajjeb. Dak il-hin kont mgerfex, kont bezghan, kont imfixkel. Ghazilt li ma naqrahx pero' hija Antoinette kienet qaltli, qaltli jekk tiffirmah qaltli ha nghinuk zgur. U jiena qbadt u ffirmajtu. U wara nghidlek id-dritt dak ir-rapport kien hemm li wara jiena kont ghidtilhom,* ***kienet saqsietni kemm ilni naghmilha u ghidtilha madwar sena.*** *Jiena bdiet tghidli mhux vera, mhux vera u bdiet tghajjat din. Bdiet tghidli anke affarijiet ohra fuq it-tifla li ha jkolli jigifieri kont fi stat dak il-hin vera bezghan.* Jikkonferma li ma giex sfurzat jiffirmah u li kif rega' qara d-dokument intebbah li kien hemm miktub li kien ilu jiehu ghal 30 xahar; kien f'dak il-hin li rrejalizza x'kien iffirma.[135]

Illi anke hawn l-imputat mhux qed ikun veritjier. Ma jirrizulta minn imkien li talab sabiex fejn jinghad li kien ilu jaghmel dan l-agir ghal 30 xahar tigi korreguta, lanqas wara li kien rega' mar ikellimhom mal-avukat tieghu. Wara kollox jigi sottolinejat ukoll il-fatt li Buttigieg kien ilu impjegat mal KFC sa mill-2003.[136] Ghalhekk x'gieghel lill-kumpanija tiddeciedi li kien ilu jaghmel dan l-agir 30 xahar jekk mhux ghax hekk intqal lilhom minnu stess meta kien lest jikkowopera maghhom u jaghmel l-imsemmija dikjarazzjoni kif lkoll xehdu? Issa jekk Buttigieg jixhed li beda jiehu flejjes minn Frar, 2011 (*"Fi Frar ghal habta ta' Frar 2011 tajjeb"[137])*, sa Settembru, 2012, ghaddew 19 il-xahar. Ghalhekk kif irid jigi emnut li kien ilu biss sena (kif jallega li qal lil Caruana)[138] u kien minhabba f'hekk li oggezzjoni ghad-dikjarazzjoni?? Terga issir l-osservazzjoni maghmula aktar il-fuq li dan hu tentattiv min-naha tal-imputat li jimitiga l-ammont minnu mehud billi jaghti x'jifhem li ghamel hekk f'perjodu ferm iqsar minn dak ammess minnu ms-superjuri tieghu.

Illi ghalkemm il-Qorti strahhet fuq l-istqarrija rrilaxxata minn Buttigieg mal-Pulizija f'Dicembru, 2012, u fuq ix-xhieda tieghu quddiemha, ma jistax ma ssirx riferenza ghad-dikjarazzjoni maghmula minn Buttigieg nhar l-14 ta'

[133] Fol.18
[134] Fol.339
[135] Fol.341
[136] Fol.319
[137] Fol.337
[138] Vide aktar l-fuq, fol.341

Settembru, 2012. Tali dikjarazzjoni tammonta ghal dik maghrufa bhala '*extra judicial confession'* li tigi spjegata kif gej mill-Profs. Anthony J. Mamo:[139]

"Extrajudicial Confessions are those were the defendant either expressly confesses his guilt or makes admission of facts from which his guilt may be implied, under any circumsatnces other than those described in respect of judicial confessions. They may be in writing or oral.

So that a confession may be received in evidence against the person who made it the law (sec.654) requires that it shall appear that such confession was made voluntarily and was not extorted or obtained by means of threats or intimidation, or of any promise or suggestion of favour. There is no presumption in law that a confession not free and voluntary is false; it is excluded on the ground that improper threats or promises may influence an accused or suspected person to say what is not true, and teherfore a confession made in such circumstances cannot be safely acted upon.

It is obviously right that a person knowing his guilt should, if he so wishes, confess at the earliest opportunity, and there is no reason why he should be discouraged from so doing. But the law requires that the confession shall have been made voluntarily and, in the practice of our courts, the prosecution must give affirmative 'prima facie' evidence that it was so made. The law says 'voluntarily' and not 'spontaneously'……"[140]

L-artikolu 658 tal-Kodici Kriminali jipprovdi:

658. Kull ħaġa li imputat jew akkużat jistqarr, kemm bil-miktub, b'mezzi awdjoviżwali jew b'mezzi oħra, tista' tittieħed bi prova kontra jew favur min, skont kif ikun il-każ, ikun stqarrha, kemm-il darba jinsab li din il-konfessjoni giet maghmula minnu volontarjament u ma ġietx imġiegħla jew meħuda b'theddid jew b'biża', jew b'wegħdiet jew bi twebbil ta' vantaġġi.

Mamo ikompli-
"A free and voluntary confession of guilt by a defendant in other cases, if it is direct and positive, and is duly made and satisfactorily proved and believed, is sufficient to warrant a conviction, without any corroborative evidence.[141]

Wills (Circumstantial Evidence 6th edition p.118) writes: "Of the credit and effect due to s confessional statement the jury are the sole judges: they maust consider the whole confession, together with all the other evidence of the case, and if it is inconsistent, improbable or incredible, or is contradicted or discredited by other emakes for or against the prisoner".[142]vidence, or is the emanation of a weak or excited mind, they may exercise their discretion in rejecting it, either wholly or in part, whether the rejected part."

Illi ma jezisti ebda element simili li jimmilita kontra l-ammisibilita` tad-dikjarazzjoni maghmula volontarjament minn Buttigieg nhar l-14 ta' Settembru, 2012.

Illi mhemmx dubbju li meta gie mitkellem mid-dirigenti ta' Food Chain Limited, Buttigieg ghamel dikjarazzjoni minghajr ma kien inghata il-fakulta`

[139] Notes on Criminal Procedure.
[140] P.100
[141] P.105
[142] Ibid.

li jkellem avukat tal-fiducja tieghu. Ghalhekk x'valur probatorju ghandu jinghata li din id-dikjarzzjoni?

Issir riferenza ghas-sentenza fuq eccezzjoni preliminari fuq l-Att t'Akkuza fl-ismijiet **Ir-Repubblika ta' Malta vs Rio Micallef et**:[143]

Illi din il-Qorti, kif ippresjeduta, kellha diga okkazzjoni tesprimi ruhha fuq dan il-punt ta' dritt fejn allura fid-dawl tal-linja gwida moghtija mill-Qorti Ewropeja dwar id-Drittijiet tal-Bniedem kienet tal-fehma illi tali stqarrijiet rilaxxjati mill-persuna akkuzata minghajr ma din kellha l-okkazzjoni li tikseb l-assistenza minn ghand l-avukat tal-fiducja taghha ma kellhiex valur probatorju billi jkun ferm perikoluz ghal Qorti li tistrieh fuqha sabiex issib xi htija fil-persuna akkuzata li tkun inkriminat ruhha minghajr ma kellha difiza adegwata u allura ikun hemm ir-riskju ta' lezjoni tad-dritt taghha ghal smiegh xieraq[144].

Illi din kienet ukoll il-fehma tal-Qorti ta'l-Appell Kriminali (sede Superjuri):

"While the statement in question of the accused has not been shown to be in violation of the conditions for the admissibility of an accused's statement as laid down in article 658 of the Criminal Code, nevertheless, for the reasons stated above, the denial of the right to legal assistance at the pre-trial stage as a result of a systemic restriction applicable to all accused persons must today be held to be in violation of the conditions for the admissibility of an accused's statement[145]."

Illum il-legislatur irregola din il-kwistjoni darba ghal dejjem, ukoll sabiex jigi in linja mal-ligi komunitarja fir-rigward, u dan meta bl-Att LI tal-2016 sehhet it-traspozizzjoni tad-Direttiva 2013/48/UE tal-Parlament Ewropew u tal-Kunsill tat-22 ta'Ottubru 2013 dwar id-dritt tal-aċċess għal avukat fi proċeduri kriminali u fi proċeduri tal-mandat ta' arrest Ewropew, u dwar id-dritt li terza persuna tkun infurmata dwar it-tiċħid ta' libertà u li persuna tikkomunika ma' terzi persuni u mal-awtoritajiet konsulari waqt li tkun imċaħħda mil-libertà, ippubblikata fil-Ġurnal Uffiċjali tal-Unjoni Ewropea fis-6 ta' Novembru 2013 (L 294/l).

Illi ghalhekk l-ligi kif illum emendata tirrifletti din is-salvagwardja u ukoll hija in linja mad-dritt ewropew kif inghad. Illi ghalhekk il-Qorti ma tistax tinjora mhux biss principju ormai stabbilit mill-Qorti Ewropeja dwar id-Drittijiet tal-Bniedem illi id-dritt ghal smiegh xieraq kif sancit fl-artikolu 6(1) u l-artikolu 6(3)(c) tal-Konvenzjoni Ewropeja ghandu japplika mhux biss tul l-*iter* tal-proceduri penali fil-qorti, izda ukoll ghal hekk imsejjah ***pre-trial stage* u cioe' ghall-istadju meta persuna tkun giet arrestata u ser tigi interrogata**, izda trid tara illi timxi in konformita tal-ligi mhux biss ewropeja izda ukoll lokali li illum tirregola din il-materja. [emfazi tal-Qorti]

……..Issa xi ighidu dawn id-decizjoni recenti[146] moghtija mill-Qorti Ewropeja Dwar id-Drittijiet tal-Bniedem?

"Early access to a lawyer is one of the procedural safeguards to which the Court will have particular regard when examining whether a procedure has extinguished the very essence of the privilege against self-incrimination. These principles are particularly called for in the case of serious charges, for it is in the face of the heaviest penalties that respect for the right to a fair trial is to be ensured to the highest possible degree by democratic societies.

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143 Moghtija 24.04.2017; Att t'Akkuza Nru 14/2013 per Onor. Imhallef Dr Edwina Grima.
144 Ara **Il-Pulizija vs Joseph Camilleri** – 25/02/2016;
145 **The Republic of Malta vs Chukwudi Samuel Onyeabor** deciza 1/12/2016
146 **Mario Borg vs Malta** 37537/13 12/01/2016

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

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

Esposti kwindi dawn il-linji gwida gurisprudenzjali u id-dritt illum vigenti fir-rigward li issa jinsab konformi mad-dritt komunitarju kif inghad, din il-Qorti ghalhekk hija tal-fehma illi kwalunkwe dikjarazzjoni li setghu ghamlu l-akkuzati u kull stqarrija rilaxxjata minnhom lill-pulizija mill-mument ta'l-arrest taghhom hija lesiva tad-dritt fondamentali taghhom jekk dawn inghataw minghajr ma huma kellhom assistenza legali. Illi l-Qorti ma tistax taghmel distinzjoni bejn l-akkuzati ghaliex xi uhud minnhom setghu ma ressqux formalment eccezzjoni rigward kull dikjarazzjoni li ghamlu lill-pulizija ghaliex gjaldarba din il-Qorti issib li jista jkun hemm vjolazzjoni ghad-dritt tas-smigh xieraq dan jezisti ergo omnes u ma huwiex partikolari ghal xi akkuzat minnhom biss. Mhux biss izda it-tifsira moghtija mill-ligi vigenti illum tal-frazi 'proceduri kriminali' tinkludi 'l-investigazzjonijiet tal-pulizija', li allura ifisser illi dan il-mument jiskatta hekk kif jitniehdu dawn l-investigazzjonijiet li certament allura ifisser mal-mument ta'l-arrest. (ara artikoolu 534A Kodici Kriminali). Kwindi hekk kif gew arrestati l-akkuzati li f'dak il-mument kienu ghadhom biss suspettati huma kellhom jinghataw it-twissija, kif del resto jidher li gew moghtija, izda din kienet dik it-twissija li kienet tinghata skont il-ligi vigenti dak iz-zmien li allura ma kenitx tikkomprendi il-jedd ghal parir u assistenza legali. Fil-fatt il-Qorti Ewropeja dwar id-Drittijiet tal-Bniedem testendi it-tifsira ta' "criminal charge" mill-mument illi persuna tkun ser tigi affetwata minn xi att investigattiv tal-pulizija.(ara Alexander Zaichenko vs Russia – 18/02/2010):

"***The Court reiterates that in criminal matters, Article 6 of the Convention comes into play as soon as the peson is"charged"; this may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when the preliminary investigations were opened. 'Charge' for the purposes of article 6(1) may be defined as the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence" a definition that also corresponds to the test whether the situation of the person has been substantially affected."***

Dan ghaliex l-istadju tal-investigazzjonijiet fil-gurisprudenza ewropeja jassumi importanza fl-ambitu tal-proceduri penali billi is-smigh xieraq tal-persuna li qed tiffaccja dawn il-proceduri jista jigi mittiefes minn kwalunkwe att investigattiv jekk il-persuna investigata ma tkunx giet moghtija il-jeddijiet skont il-Konvenzjoni, b'mod partikolari allura il-jedd ghall-assistenza legali li ghandu jigi applikat mill-bidunett. Fil-fatt fid-decizjoni Dayanan hawn fuq iccitata l-jedd ghall-assistenza legali ghandu jitwieled mal-mument ta'l-arrest irrispettivament minn kwalunkwe interrogazzjoni.

Illi tenut kont tal-fatt li d-dikjarazzjoni maghmula minn Buttigieg ma saritx lill-Pulizija jew xi awtorita` ohra u li fil-mument li din saret Buttigieg ma kienx taht arrest jew f'kustodja u ghalhekk ferm qabel ma skatta il-*pre-trial stage*, dik id-dikjarazzjoni hi wahda ammissibli.

Illi l-imputata **Joanne Cutajar** ukoll ghazlet li tixhed u spjegat kif bdiet tahdem gimgha ta' tlett ijiem bhala part-timer f'Marzu, 2010, mal-KFC Gzira fi zmien meta Brian kien il-manager taghha.[147] F'Lulju, 2010, bdew johorgu flimkien. Tispjega li *"gieli kien jghaddili xi flus, kemm cash u anke kien jiddepozitahom fil-Bank jigifieri fil-kont tieghi….Ghax ma kienx kapaci li jgemma' kif kien jghidli hu jigifieri* ***kien itihom lili biex ingemmahomlu ghax konna behsiebna li nixtru post biex ikollna l-flus ghal loan ghad-deposit****…. Gieli cash u gieli kien jaghmilhomli deposit, jaghmilli transfer minn naha tieghu ghal kont tieghi".*[148] Tghid li saret taf x'kien qed jaghmel Brian f'Settembru, 2012, meta kien rritorna d-dar ghal xi 2pm meta issoltu kien jasal xi 5.30pm u qalilha x'kien gara.[149]

Ghalkemm fl-istqarrija taghha, rrilaxxata 3 xhur wara li kien twaqqaf mix-xoghol Buttigieg, hi qalet differenti[150] tghid dan *"le jiena ma kontx naf bihom dawk l-affarijiet".*[151]

Ghaliex taghti verzjoni differenti l-imputata? Terga issir riferenza ghal fatt li meta tat id-dikjarazzjoni taghha tlett xhur wara li ntemm l-impjieg ta' Buttigieg (Dicembru, 2012), ma semmietx li saret taf bl-gheemil tieghu tlett xhur qabel, dakinhar stess li gie mwaqqaf mix-xoghol tieghu (settembru, 2012). Li hu cert li gurnata bhal din mhux faccli tintnesa ghaliex anke 4 snin wara meta xehdet quddiem il-Qorti baqghet tiftakar il-hin ta' meta Brian rritorna id-dar u qalilha li kien safa' mkecci! Fl-istqarrija l-ewwel tghid ***"bdejna nohorgu flimkien f'Lulju 2010. Wara xi xhur flimkien, Brian kien qalli li kien qed jaghmel xi flus…"***[152]

Tkompli tixhed li kienu hadu *loan* ta' €105,000[153] fit-2 ta' Settembru, 2011, li tithallas €495 fix-xahar.[154] Il-Qorti tinnota li l-loan ittiehdet fis-17 ta' Frar, 2012, fejn sal-ahhar ta' Settembru 2012, meta twaqqaf mix-xoghol Buttigieg

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[147] Fol.361
[148] Fol.362-363
[149] Fol.363
[150] Fol.15 tergo
[151] Fol.364
[152] Fol.15 tergo
[153] Dok. JC u JC1; fol. 381 et seq. u 389 et seq.
[154] Fol.365

kienu nqataw biss circa €800.[155]Dwar l-istqarrija taghha tghid li kienet qratha *"fuq fuq"* u il-parti fejn tghid li kienet saret taf xhur wara li bdiet tohrog ma Brian dwar x'kien qed jaghmel, ma tantx ghogbitha. Isostni li kien meta tkecca' mix-xoghol li saret taf bl-agir kriminuz tieghu.[156] F'hin minnhom tghid li kien ghalhekk li ma ffirmatx l-istqarrija izda sekondi wara tghid li ma ma taghtx kaz x'kien hemm miktub u ndunat meta marret id-dar.[157]

Il-Qorti ma ghandha l-ebda dubbju li fl-istqarrija taghha Cutajar tat rendikont dettaljat ta' dak li kien qed jaghmel Brian Buttigieg meta spjegat l-operat tieghu, operat li **fi kliemha saret taf dwaru kif fil-fatt stqarret, ftit xhur wara li bdiet tohrog mieghu**. Kif gja inghad kien Brian Buttigieg stess li nforma lid-dirigenti tal-KFC li l-familja u cioe' Joanne (vide deposizzjoni ta' Bonello Ghio fejn[158]) kienet mgharrfa b'dak li kien qed jaghmel. Ma hemm ebda dubbju li kieku Cutajar riedet tbiddel xi haga mill-verzjoni taghha ma kienitx tistenna li jghaddu 4 snin sabiex taghmel dan. Il-Qorti tqis li x-xhieda taghha ma ghandhiex mis-sewwa u dan jirrizulta car ghaliex fuq domanda tal-Qorti terga' tikkonferma li bdiet tiffrekwenta lil Buttigieg f'Lulju, 2010,[159] hekk kif stqarret f'Dicembru, 2012 meta tat verzjoni differenti li fil-fehma tal-Qorti hi l-verzjoni li ghandha tinghata l-kredibilita` misthoqqa ghaliex ghandha mis-sewwa.

In kontro-ezami tikkonferma li wara li ghamlet l-istqarrija kienet qalet lill-pulizija li kellha xi flejjes li kienu gew mit-twellija ta' hanut li kellha mal-ex ragel taghha. Dawn kienu ta' madwar xi €6,000 fejn kienet iddepozitat xi €5,000 minnhom. Kkonfermat li ghalkemm kienet qalet li l-ex ragel taghha kien qed itiha cash rrizulta li dan ma kienx minnu.[160] L-imputata ma setghetx tispjega b'mod kredibbli ghaliex meta interrogata kienet semmiet bosta affarijiet izda mhux li Buttigieg kien ghaddielha flus gejjin mill-part-time tieghu u mill-bejgh ta' mutur u r-raguni li tat ghal dan in-nuqqas kien li *"Dak iz-zmien, dak il-hin ma nafx kif thossok".[161]* Insistiet li qatt ma kienet taf x'kienet il-provvenjenza tal-flus izda kkonfermat li meta ghamlet l-istqarrija la kienet imbezza u lanqas sarulha xi weghdiet ta' xi vantagg. Ikkonfermat li bil-flus li kien qed igib Brian kienu imlew id-dar.[162] Japplika anke hawn dak li inghad dwar l-implikazzjonijiet tal-Artikolu 3(3) tal-Kapitolu 373 tal-Ligijiet ta' Malta.

Illi dwar l-ewwel imputazzjoni addebitata lill-imputati issir riferenza ghad-decizjoni fl-ismijiet **The Police vs Omissis and Vladimir Omar Fernandez**

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[155] Fol.389
[156] Fol.369
[157] Fol.368
[158] Fol.34 - *"qalilna biss kienet li Joanne kienet taf x'qed jigri,"* u fol.32 *"qalilna l-mara ga taf kollox il-familja jafu kollox x'qed jigri,."*.
[159] Fol.369
[160] Fol.374
[161] Fol.374
[162] Fol.380

Delgado.[163] F'din id-decizjoni l-Qorti ghamlet analizi *funditus* dwar ir-rekwiziti legali tar-reat ta' riciklagg, jew kif inhu ahjar maghruf dak ta' *money laundering* previst bl-artikolu 3 tal-Kapitolu 373 tal-Ligijiet ta' Malta fejn l-attivita` tal-akkuzat trid tiffigura f'wahda jew izjed mic-cirkostanzi deskritti fil-paragrafi (i) sa (vi) tal-artikolu 2 tal-istess Kapitolu:

Our Money Laundering Act, though a copious piece of legislation, does not give us a concise definition of the crime under issue. It does pronounce a number of instances which would constitute this crime, its attempt or complicity.

Reference is made to Archbold 2012 where one finds that this offence is described and defined as:

"The explanatory notes to the PCA (Proceeds of Crime Act 2002) define money laundering as "the process by which the proceeds of crime are converted into assets which appear to have legitimate origins, so that they can be retained permanently or recycled into further criminal enterprises."
(Archbold : Criminal Pleading, Evidence and Practice, 2012, page 2475).

The Law Society Anti-Money Laundering Practice Notes October 2013 (Supporting Solicitors) defines this crime as follows:
"Money laundering is generally defined as the process by which the proceeds of crime, and the true ownership of those proceeds, are changed so that the proceeds appear to come from a legitimate source. Under POCA the definition is broader and more subtle. Money laundering can arise from small profits and savings from relatively minor crimes, such as regulatory breaches, minor tax evasions or benefit fraud. A deliberate attempt to obscure the ownership of illegitimate funds is not necessary."

Adds:
"There are three acknowledged phases to money laundering placement, layering and integration. However, the broader definition of money laundering offences in POCA includes even passive possession of criminal property as money laundering." (page 9)

In examining this offence, our Courts have also established that the three elements – placement, layering and integration, are not per se *sine qua non* elements necessary for the crime to exist, establishing that these stages were but a general description of the crime in question, for better understanding of the lay person sitting in a Trial by Jury. The Criminal Court reiterated further that thus the Prosecution need not, according to Law, prove the intention in each and one of these stages.

This short summary reflects the main points raised by the Court of Appeal in the judgment **"Police (Insp Angelo Gafa') vs Carlos Frias Mateo",** dated 19th January, 2012, wherein the Court is here cited to have said this:

"Kif ben qalet tajjeb l-Ewwel Qorti diversi awturi jaqsmu l-process tal-hasil ta' flus fit-tlett stadji imsejha "placement", "layering" u "integration". Dawn l-istadji gew imfissra b'mod konciz mill-Qorti tal-Magistrati. Pero` mill-bidunett ta' min jipprecisa, li dawn l-istadji huma biss deskrizzjoni generali tal-process tal-hasil tal-flus. Hija skola ta' taghlim li nholqot sabiex gurija tkun f'posizzjoni aktar felici sabiex tifhem l-intricci u l-kumplikazzjonijiet li jinvolvu dawn it-tip ta' reati. Ghalhekk il-qasma tal-process tal-hasil ta' flus f'dawn it-tlett stadji hija wahda generali u bl-ebda mod dogmatika. Fil-fatt awturi ohrajn jikkritikaw din il-klassifikazzjoni minhabba li tissemplifika wisq is-sitwazzjoni u f'hafna kazijiet ma hiex riflessjoni

[163] Court of Magistrates (Malta) As a Court of Criminal Judicature, per Hon. Magistrate Dr Miriam Hayman; 29 th April, 2015, Crim. Proc. No. 457/2013.

veritjiera ta' dak li realment ikun qed jigri. Ghalhekk dawn l-istadji ghandhom jittiehdu biss bhala punto di partenza u bhala deskrizzjoni generali tal-process tal-"money laundering" b'mod flessibbli tant li ma hux rikjest li l-prosekuzzjoni trid tipprova l-intenzjoni f'kull wiehed u wahda minn dawn l-istadji. Dan qieghed jinghad fid-dawl ta'd-definizzjoni ta' "money laundering" li nsibu fit-tieni artikolu tal-Kap. 373 kif ukoll ir-reati kkontemplati fl-artikolu 327, 328 u 329 tal-Att tal-Parlament Ingliz "Proceeds of Crime Act 2002" fejn analizi taghhom ma tirrikjediex li l-prosekuzzjoni tipprova li l-imputat kellu l-intenzjoni li jikkommetti "placement", "layering" u "intergration" bil-propjeta`."

Furthermore, as justly pointed out by Defence Counsel in the note of submissions, our Courts have advised caution in dealing and assessing this case, as well explained in another judgment handed down by the Criminal Court in the case **"Republic of Malta vs John Vella"** decided on the 9th November, 2007:

"L-Avukat Generali jista' jakkuza persuna bir-reat ta' money laundering minghajr ma jkollu sentenza ta' kundanna ta' dak li jkun qed jigi allegat li huwa l-attivita' kriminali sottostanti. Certament pero, ikun x'ikun il-kaz, jekk l-Avukat Generali jiddeciedi li jakkuza lil xi hadd b'money laudering irid jindika n-ness bejn l-attivita' kriminali sottostanti partikolari li jkun qed jallega. Mhux kull akkwist, mhux kull konverzjoni ta' trasferiment ta' proprjeta', mhux kull habi jew wiri ta' proprjeta' necessarjament jammonta ghal money laundering.

Din hi Ligi straordinarja li tintroduci kuncett radikali fis-sistema nostrana u li tirrikjedi applikazzjoni bl-akbar skuplu u attenzjoni biex ma tigix reza fi strument ta' ingustizzja, iktar reminixxenti taz-zminijiet tal-inkluzjoni minn dawk tal-era moderna tad-drittijiet tal-bniedem."

Further considers, that as said our Law does not give a comprehensive definition of this crime, opting instead to delineate various instances which would constitute the crime of Money Laundering or its attempt or complicity. Section 2(1)(i) of the said Chapter defines the crime of money laundering as being constituted in any one or more of the instances as reflected in the charge sheet.

Whilst the actus reus of this crime should present no problems to comprehend, it is immediately obvious that the mental formal elements involved range from the actual knowledge that the proceeds laundered had a criminal provenance, to even the suspicion thereof. The Law as amended uses the words "knowing" or "suspecting". [(Section 2(1)(i)]. The element of knowledge should present no difficulties to proof in a Court of Law, knowledge is what it is. It clearly means that one has a good understanding, knowhow, command, and comprehension of a situation. The term suspicion on the other hand can present and lend itself to a myriad of difficulties and is deserving of more exploration.

Guidance is here sought by reference to Money Laundering Offences: The Law Society, Chapter 5, 2013, October Practice Notes. This extract refers to the P.O.C.A. It can help us understand the mental elements necessary under our Legislation. To keep in mind is that our Chapter 373 speaks only of knowledge and suspicion, whereas the POCA speaks of three elements including that of "reasonable grounds for suspicion", this within the limitations hereunder outlined:

"5.3 Mental elements
The mental elements which are relevant to offences under Part 7 of POCA are:
• knowledge
• suspicion
• reasonable grounds for suspicion
These are the three mental elements in the actual offences, although the third one only applies to offences relating to the regulated sector. There is also the element of belief on reasonable grounds in

the foreign conduct defence to the money laundering offences. A person will have a defence to a principal offence if they know or believe on reasonable grounds that the criminal conduct involved was exempt overseas criminal conduct.

For the principal offences of money laundering the prosecution must prove that the property involved is criminal property. This means that the prosecution must prove that the property was obtained through criminal conduct and that, at the time of the alleged offence, you knew or suspected that it was.

For the failure to disclose offences, where you are acting in the regulated sector, you must disclose if you have knowledge, suspicion or reasonable grounds for suspicion; while if you are not in the regulated sector you will only need to consider making a disclosure if you have actual, subjective knowledge or suspicion.

These terms for the mental elements in the offences are not terms of art; they are not defined within P.O.C.A and should be given their everyday meaning. However, case law has provided some guidance on how they should be interpreted.

5.3.1 Knowledge
Knowledge means actual knowledge. There is some suggestion that wilfully shutting one's eyes to the truth may amount to knowledge. However, the current general approach from the criminal courts is that nothing less than actual knowledge will suffice.

5.3.2 Suspicion
The term 'suspects' is one which the court has historically avoided defining; however because of its importance in English criminal law, some general guidance has been given.

In the case of Da Silva [1996] EWCA Crim 1654, which was prosecuted under the previous money laundering legislation, Longmore LJ stated:

'It seems to us that the essential element in the word 'suspect' and its affiliates, in this context, is that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice.'

There is no requirement for the suspicion to be clear or firmly grounded on specific facts, but there must be a degree of satisfaction, not necessarily amounting to belief, but at least extending beyond speculation.

The test for whether you hold a suspicion is a subjective one. If you think a transaction is suspicious, you are not expected to know the exact nature of the criminal offence or that particular funds were definitely those arising from the crime. You may have noticed something unusual or unexpected and after making enquiries, the facts do not seem normal or make commercial sense. You do not have to have evidence that money laundering is taking place to have suspicion."
(P.O.C.A Proceeds of Crime Act 2002 (U.K).

This therefore is the level that the Prosecution must reach to prove the mental element of this crime, knowledge or suspicion as here explained, beyond reasonable doubt, on the part of the offender of the illegal provenance of the proceeds.

It is obviously only after an acute examination of all the facts of the case presented to the Court, that one of these elements can be proved. Obviously knowledge transcends any suspicion.

The proof of the underlying offence is regulated by Article 2(2)(a) of Chapter 373 that reads:
"A person may be convicted of a money laundering offence under this Act even in the absence of a judicial finding of guilt in respect of the underlying criminal activity, the existence of which may be established on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity and without it being necessary to establish precisely which underlying activity."

Therefore, the Prosecution are aided, to a degree, in proving the necessary crime originator of the questioned laundered proceeds by direct evidence where available, or by circumstantial evidence or any other evidence, and need not necessarily produce an actual conviction that establishes the underlying offence. Neither does the Law require them to proof with precision the nature of the crime involved.

Therefore the launderer need not be knowledgeable of the precise nature of the crime whose proceeds he is helping to convert into unsuspicious clean property. Suffice that he has knowledge or a suspicion that these proceeds might have a dubious origin.

Applied to the case in question this therefore means that the Prosecution need not proof John Joseph Evans' guilt but the nature of his operations, in his instance drug trafficking or that something appeared amiss at a stage in time to the accused.

Yet another exception arises in this Chapter concerning the level of proof and or the burden thereof. This emanates from Section 3(3) of Chapter 373 which refers directly to a shift in the burden of proof found entrenched in Chapter 101 of the Laws of Malta.

Fil-fatt l-Artiklu 3(3) tal-Kapitolu 373, Ligijiet ta' Malta, li gja saret riferenza ghalih jipprovdi:

(3) Fi proċeduri dwar reat ta' *money laundering* taħt dan l-Att id-disposizzjonijiet tal-artikolu 22(1Ċ)(*b*) tal-Ordinanza dwar il-Mediċini Perikolużi., għandhom ikunu *mutatis mutandis* japplikaw.

Fl-artikolu 22(1C)(b) tal-Ordinanza msemmija nsibu:

(*b*) Fi proċedimenti għal reat taħt il-paragrafu (*a*), meta l-prosekuzzjoni ġġib prova li l-imputat jew akkużat ma jkun ta ebda spjegazzjoni raġonevoli li turi li dawk il-flus, proprjetà jew rikavatma kenux flus, proprjetà jew rikavat kif deskritti fl-imsemmi paragrafu, l-oneru li jipprova l-provenjenza leċita ta' dawk il-flus, proprjetà jew rikavat tkun tinkombi fuq il-persuna imputata jew akkużata.

Il-Qorti fil-kaz citat kompliet:

Obviously this last quoted Section deals with proceeds of crimes dealt with under Chapter 101. This presumption is however applicable to all predicate offences and their proceeds as regulated by Chapter 373.

It therefore transpires that for a charge of money laundering to be proven successfully, the Prosecution must proof the nexus between the criminal activity and the questioned dubious proceeds, but it lies with the charged or accused, failing a reasonable explanation thereof to prove, now to a level of probability, the lawful origin of the monies in question.

In this regard, for a better understanding of the level of proof the Prosecution has to reach to establish the underlying offence and that necessitated by the accused as rebuttal of the illegal knowledge of the proceeds, the Court is once again referring to the Carlos Frias Mateo decision above cited, dated 19th January, 2012, wherein the Court said:

"F'din il-kawza, l-appellat qed jigi akkuzat bil-ksur ta' provvedimenti tal-Kap 373 tal-Ligijiet ta' Malta izda dan il-Kap jaghmel referenza wkoll ghall-Artiklu 21(1C)(b) tal-Kap 101 tal-Ligijiet ta' Malta li wkoll jitfa' l-piz li juri l-origini lecita tal-flus, propjeta jew rikavat fuq il-persuna akkuzata.

Ghalhekk, dan il-livell ta' prova "prima facie" japplika kemm ghall-persuna li tkun akkuzata b'money laundering taht il-Kap 101 kif ukoll taht il-Kap 373. Issa, peress illi l-Artiklu 2(2)(a) ta' l-istess Att jezimi mir-responsabilta' l-prosekuzzjoni illi tipprova xi htija precidenti in konnessjoni ma xi attivita` kriminali, kull ma ghandha tipprova l-prosekuzzjoni huwa illi l-flus illi nstabu fil-pussess tal-persuna li kienux konformi ma l-istil ta' hajja tal-persuna, liema prova tkun tista' tigi stabbilita anke minn provi indizzjarji. Dana jfisser illi l-prosekuzzjoni m'ghandix tipprova lill-Qorti l-origini tal-flus, lanqas jekk il-flus kienu llegali. Kull ma trid tippruva huwa fuq grad ta' "prima facie" illi ma hemm l-ebda spjegazzjoni logika u plawsibbli dwar l-origini ta' dawk il-flus. Darba ssir din il-prova fil-grad imsemmi, jkun imiss lill-akkuzat sabiex juri illi l-origini tal-flus ma kienx illegali. [emfazi tal-Qorti]

Forsi f'dan l-istadju ikun opportun illi jigi kwalifikat il-prova "prima facie" u fiex din tikkonsisti.

Ikkunsidrat :
Hu ben saput illi l-Qrati generalment jirrikonoxxu erba' tipi ta' prova, dak li huwa possibli, l-probabbli, minghar dubju dettat mir-raguni u c-certezza. Izda l-prova "prima facie" hija wzata mill-Magistrat Inkwirenti meta jirredici l-Process Verbal u l-Magistrat Istruttur fl-gheluq tal-Kumpilazzjoni. Fl-opinjoni tal-Qorti din hija livell ta' prova illi tidhol bejn il-possibli u l-probabbli.

L-awtur Blackstone (At D 6.21) jghid fost affarijiet ohra,
"Thus, the standard of proof the prosecution are now required to satisfy at committal proceedings is very low, lower than that resting on a plaintiff in civil proceedings. It is commonly expressed as establishing a prima facie case or a case to answer."

Il-probabbli huwa l-livell uzat f'proceduri civili. Ghalhekk skond dan l-awtur "prima facie" huwa anqas minn hekk u jista' jigi definit bhala "a case to answer", haga li ghandha tigi nvestigata aktar fil-fond.

Fil-kuntest tal-provi illi l-proskuzzjoni gabet f'dan il-kaz, intlahaq dan il-livell ta' "prima facie"? Kien hemm "a case to answer"?"

Further considers:

First and foremost the Court is of the opinion that the first issue to be tackled is one raised by the Defence in its note of submissions regarding the charges proffered claiming uncertainty on the part of the Prosecution, having directed at the accused all the content of Section 2(2) of the Money Laundering Act. True enough, Prosecution chose to debit the accused with the burden of all the criminal instances found in the said Section. Obviously he cannot be guilty of all, but one does not necessarily exclude the other. Obviously these are alternate charges, this being more evident and obvious in as far as the alleged complicity or attempted charges are proffered. One must also remember that at a later stage in the proceedings, Attorney General, exercising his discretion under Chapter 373, sent this case for a summary judgement, therefore inviting this Court to examine the facts against the requisites of Section 2(2) of the said Chapter.

Illi fl-istess kaz il-Qorti tal-Appell Kriminali kellha l-opportunita` taghmel analizi approfondita u dettaljata dwar l-oneru tal-prova li tinkombi lill-partijiet f'kazijiet ta' hasil ta' flus. Fil-fatt dik l-Qorti qalet hekk:[164]

Ma hemmx dubju illi r-reat ta' money laundering huwa wiehed mir-reati l-aktar difficli u delikati biex jigu nvestigati. It-teknika u s-sofistikazzjoni tal-mod kif il-flus jigu girati u jinhbew mill-provenjenza llecita taghhom jaghmluha kwazi mpossibli illi l-investigaturi jsibu tracca tal-provenjeza tal-flus. Kien ghalhekk illi f'dawn ic-cirkostanzi l-ligi tal-Money Laundering Kap 373 ipoggi l-oneru fuq dak li jkun illi huwa jipprova ghas-sodisfazzjon tal-Qorti l-provenjenza lecita tal-flus illi jkunu nstabu fuqu. Dan il-bdil ta' l-oneru tal-provi m'hijiex wahda kapriccjuza u kif qalet il-Qorti fil-kawza "Il-Pulizija vs John Vella" "din hi ligi strordinarja li tintroduci kuncetti radikali fis-sistema nostrana u li tirrikjedi applikazzjoni fl-aktar skruplu u attenzjoni biex ma tigix reza xi sturment ta' ngustizzja, aktar reminixxenti taz-zminijiet ta' l-inkwizizzjoni minn dak ta' l-era' moderna tad-drittijiet tal-bniedem. . . .".

Il-Qorti qieghda taghmel dan il-pronuncjament fl-isfond tad-dispost ta' l-Artiklu 2(2)(a) u l-Artiklu 3(3) tal-Kap 373 tal-Ligijiet ta' Malta illi ghandhom jinqraw fid-dawl ta' l- Artiklu 21(1C)(b) tal-Kap 101 tal-Ligijiet ta' Malta li jistipulaw li l-Avukat Generali jista' jakkuza persuna bir-reat ta' "money laundering" minghajr ma jkollu xi sentenza b'referenza ghal xi offiza precedenti. Ma dan kollu, jibqa` l-fatt illi l-Avukat Generali ghandu jipprova n-ness bejn il-flus jew il-propjeta u l-attivita kriminali li tkun generat dawk il-flus.

*Dwar il-livell ta' prova li jinkombi fuq l-Avukat Generali, l-Qorti taghmel referenza ghall- kawza "**Il-Pulizija vs Paul Borg"** deciza mill-Qorti ta' l-Appell Kriminali fis-sitta (6) ta' Ottubru ta' l-2003. F'din il-kawza l-Qorti kienet qalet illi meta l-Avukat Generali jakkuza lil xi hadd bl-offiza ta' money laundering taht il-Kap 101 tal-Ligijiet ta' Malta, l-Avukat Generali ghandu jipprova "prima facie" n-ness bejn il-flus jew il-propjeta u l-attivita kriminali li tkun generat dak il-flus jew propjeta. Minn ezami u qari akkurat ta' din id-dispozizzjoni din il-Qorti thoss li una volta li l-prosekuzzjoni tiddeciedi li tipprocedi skond l-Ordinanza Kap 101 u mhux taht id-dispozizzjonijiet tal-Kap 373 ossia l-Att tan-1994 kontra "Money Laundering", fejn l-attivita kriminali sottostanti tista' tkun varja u tirreferi ghall-ksur ta' diversi ligijiet kif indikat fit-tieni skeda ta' l-istess Att, irid almenu jigi "prima facie" pruvat li l-akkuzat ikun qed jagixxi bi hsieb li jahbi jew jikkonverti flus jew ir-rikavat ta' flus u jkun jaf jew ikollu suspett li dawk il-flus ikunu miksuba bhala rizultat ta' ksur ta' xi dispozizzjoni ta' l-Ordinanza Kap 101 u dana qabel ma tiskatta l-inverzjoni ta' l-oneru tal-prova fuq l-akkuzat."*

Illi kif kkonkludiet b'mod konciz izda preciz ghall-ahhar, il-Qorti tal-Magistrati (Malta) fil-kawza **Il-Pulizija vs Alfred Delia et**:

Illi ghalhekk il-mistoqsija li trid tigi rizolta fil-kaz in ezami hija dik interposta mill-Qorti ta' l-Appell Kriminali fil-kawza hawn fuq kwotata u cioe *fil-kuntest tal-provi illi l-proskuzzjoni gabet f'dan il-kaz,* (provi biex jigi pruvat in-ness bejn il-flus utitlizzati biex jinxtraw il-vetturi imsemmija u xi attivita kriminali) *intlahaq dan il-livell ta' "prima facie"? Kien hemm "a case to answer"* biex mbaghad l-oneru tal-prova jdur fuq l-imputati biex jippruvaw l-origini legittima tal-flus utilizzati.[165]

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164 **Il-Pulizija vs Carlos Frias Mateos** deciza fid-19 ta Jannar, 2012, Onor.Imhallef Dr Michael Mallia

165 Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali, per Onor. Magistrat Dr. Doreen Clarke. Deciza 23.05.2013, Kump. Nru 672/2010

Il-Qorti tal-Appell Kriminali (Sede Superjuri) rritiniet kif gej dwar ir-rekwizit li ghandu jkun hemm indikazzjoni cara tar-reat sottostanti ossia l-attivita` kriminali li ssir riferenza ghaliha fl-artikolu 2(2) tal-Kapitolu 373:

7. In its judgement regarding these pleas, the Criminal Court said:

"That as regards the first count, the accused is claiming that this is null and void because it does not in any way indicate the antecedent offence or source which could give rise to money laundering.

"The accused is arguing that the Attorney General must at least prove prima facie that the money is coming from an illicit activity. If there is a shifting of the burden of proof, this must be accompanied by an illicit activity which illicit activity should show in the bill of indictment. In this case no previous offence was established, therefore there is no antecedent criminal act. The situation is very similar to the crime of receiving stolen property where there must be proof that the goods have a criminal origin. Therefore, in matters of money laundering, the Prosecution must prove the illicit origin of the money. The suspicion of a crime is not enough. It has yet to be established what is the predicate offence. .....

"This means, therefore, that if according to the accused, the bill of indictment does not in any way indicate the antecedent offence, or source, this does not mean that evidence of this offence can not be brought during the trial. ....[166]

Illi dwar l-ispjegazzjoni inverosimili li jaghtu l-imputati, partikolarment Buttigieg li jipprova jattribwixxi n-numru konsiderevoli ta' drabi fejn ordnijiet gew kancellati bhala zbalji li saru minn trainees li kienu sorveljati minnu, u ghal dak li tiddikjara meta xehdet quddiem il-Qorti Cutajar li l-flus hasbet li kienu gejjin mill-bejgh ta' mutur u mill-*part-time* li kien jaghmel Buttigieg, ser issir riferenza ukoll ghal dak li gie dikjarat minn l-istess Qorti:

18. It is also true that article 22(1C)(b) of Chapter 101 of the Laws of Malta is applicable to proceedings under Chapter 373 (see article 3(3) of said Chapter 373) and that this article provides:

"In proceedings for an offence under paragraph (a), where the prosecution produces evidence that no reasonable explanation was given by the person charged or accused showing that such money, property or proceeds was not money, property or proceeds described in the said paragraph, the burden of showing the lawful origin of such money, property or proceeds shall lie with the person charged or accused."

19. Nonetheless the following principles, as clearly outlined by the Constitutional Court in its judgement of the 1st April 2005 in the case **The Republic of Malta vs Gregory Robert Eyre and Susan Jayne Molyneaux,** must be applied:

"(i) it is for the prosecution to prove the guilt of the accused beyond reasonable doubt; (ii) if the accused is called upon, either by law or by the need to rebut the evidence adduced against him by the prosecution, to prove or disprove certain facts, he need only prove or disprove that fact or those facts on a balance of probabilities; (iii) if the accused proves on a balance of probabilities a fact that he has been called upon to prove, and if that fact is decisive as to the question of guilt, then he is entitled to be acquitted; (iv) to determine whether the prosecution has proved a fact beyond reasonable doubt or

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[166] **The Republic of Malta vs Morgan Ehi Egbomon**, Appell fuq Decizjoni tal-Qorti Kriminali fuq Eccezzjonijiet Preliminari, Att t' Akkuza Nru. 16/2009. Dec 31.07.2014.

whether the accused has proved a fact on a balance of probabilities, account must be taken of all the evidence and of all the circumstances of the case; (v) before the accused can be found guilty, whoever has to judge must be satisfied beyond reasonable doubt, after weighing all the evidence, of the existence of both the material and the formal element of the offence."

Fid-decizjoni taghha fil-proceduri fl-ismijiet "**Il-Pulizija vs Dayang Sakienah Binti Mat Lazin,** il-Qorti tal-Magistrati (Malta) ikkunsidrat:

That it is to be emphasised that the charge of money laundering brought against defendant is based on Chapter 373 of the laws of Malta and not Chapter 101. In the latter case the prosecution must necessarily show a link between the assets being laundered and some criminal activity prohibited under Chapter 101. In the former case (i.e. an offence under Chapter 373) what the prosecution must show is a link between the laundered assets and an offence listed in either the first or second schedule of the said Chapter 373 which however also include traffic in narcotic drugs and psychotropic substances.

That it must also be emphasised that what must be shown for the prosecution to satisfy its onus is a link between some criminal activity and the assets in question. This has been affirmed by the Court of Criminal Appeal in the case **Republic of Malta vs John Vella**[167] when it said:

….l-Avukat Generali jista' akkuza persuna bir-reat ta' money laundering minghjar ma jkollu sentenza ta' kundanna ta' dak li jkun qed jigi allegat li huwa l-attivita kriminali sottostanti…. Certament pero ikun x'jkun il-kaz, jekk l-Avukat Generali jiddeciedi li jakkuza lil xi hadd b'money laundering … irid jindika n-ness bejn l-attivita kriminali sottostanti partikolari li jkun qed jallega.

That once the prosecution satisfied this onus, in terms of article 22(1C)(b) of Chapter 101 of the Laws of Malta which applies to proceedings for an offence of money laundering by application of article 3(2A)(3) of Chapter 373, the burden of proof then shits on defendant who has the onus of showing the lawful origin of the money in question. Defendant produced no such evidence.[168]

Illi l-espert Axiaq ha konsiderazzjoni l-fatt li kif tenna l-imputat, veru jistghu isiru zbalji izda hu kien kapaci jindividwa zbalji genwini minn transazzjonijiet ohra. Bla ebda sforz tal-immaginazzjoni ma jista jinghad li dawn l-ammonti li gew komputati mill-espert Axiaq, jirriflettu zbalji jew transazzjonijiet li saru waqt li xi kaxxier kien fuq training! Kif anke rizulta mix-xhieda tad-diversi kaxxiera, il-card tal-manager gieli intuzat minn crew member iehor, kif ukoll li cash kienet tintuza anke minn persuna differenti ghal dik li tkun fethitha izda element ta' responsabbilita` ippersista ghaliex jekk ma kienu jigu *'under'* dik id-differenza kienet tinqasam bejn dawk il-kaxxiera li kienu wzaw dik il-cash tul is-shift taghhom. Altru ghalhekk li kien ikun hemm verifiki u daqstant iehor ma kienx ikun hemm il-*widespread errors* li l-imputat jattribwixxi ghall-ammonti li baqaw ma gewx registrati bhala sales!

Ix-xhieda ukoll kienu unanimi li l-card holder, u cioe' il-manager baqa' responsabbli ghall-card tieghu. Jirrizulta wkoll li anke ghal min kien qed jircevi training, mhux kull zball ta' kaxxier kien ikollha htiega tal-intervent

[167] Deciza 29.11.1999 u citata f' **Il-Pulizija vs Paul Borg** (Qorti tal-Appell Kriminali sede Inferjuri) Deciza 06.10.2003.
[168] Case Number: 197/2008; 23.11.2009, per Onor. Magistrate Dr Doreen Clarke.

tal-manager, kif isostni l-imputat.Mhux kull zball ta' kaxxier kien jirrikejdi li tinfetah il-cash! Is-sens kommun iwassal ghall-konkluzjoni li jekk l-imputat kien konsapevoli tal-fatt li d-diversi zbalji li qed isiru mit-trainees jew kaxxiera seta' jissarraf f'detriment ghalih dan kien dlonk ser jiehu l-mizuri sabiex jindirizza s-sitwazzjoni. Hadd mhu ser jistieden gratwitament jaghzel li jintefa' fuqu dell ikrah mhux misthoqq! Ma sar xejn minn dan. Importanti ukoll li dawn l-impjegati jixhdu li Buttigieg ma kienx ikun fuq il-cash![169]

Madanakollu l-istess espert jaghmel dikjarazzjoni incisiva hafna: ***"In fatti it-tielet perjodu kien l-uniku perjodu fejn wiehed seta' jhossu komdu fuq il figuri prezentati."***[170] fejn l-ammont kalkolat ghal dan il-perjodu kien ta' **€59,896.** Kien qal hekk l-espert ***"huwa f'dan il-perjodu li kellhi l-iktar informazzjoni u statistika fuq xhiex nibbaza il-kalkolazzjonijiet tieghi".***[171] *Fl-ahhar tax-xhieda tieghu jerga' "nghidulha analytical review fil-linja taghna jigifieri jkollna trends, ikollna patterns li generalment nippruvaw napprossimaw x'setgha gara, pero ovvjament ma nistax nghid jien le, ma nistax nghid".*[172]

Illi in konsiderazzjoni tal-principju li ***in dubbio pro reo*** ma jistax jinghad li l-ammonti ghall-ewwel zewg perjodi u cioe' bejn il-25 ta' Mejju, 2009, u l-21 ta' Gunju, 2011, jirrizultaw soddisfacjentement ppruvati u dan anke minkejja l-ammissjoni tal-imputat quddiem il-Qorti li kien ilu jiehu flejjes sa minn Frar, 2011, ghalkemm il-Qorti ma ghandhiex dubbju li l-agir kien imur oltre`!

Fil-kamp kriminali, a distinzjoni mill-kamp civili, l-prova trid tmur oltre` l-grad tal-probabbli u l-Qorti ma ghandhiex il-kompitu tillikwida danni sofferti mill-parte civile. Ghaldqastant filwaqt li mhemmx dubbju mir-reita` tal-imputati, l-ammont tar-rikavat ma jistax jigi definittivament determinat ghalkemm skond l-espert Axiaq l-ammont issupera il-€100,000. Ghal din ir-raguni l-Qorti skartat il-fatt li hu stess kien qabel ma' Food Chain Limited li kien ilu jaghmel dan sa minn 30 xahar qabel u cioe` minn Mejju, 2009, kif stqarr fid-dikjarazzjoni tal-14 ta' Settembru, 2012.

Lanqas ma hemm dubbju li Joanne Cutajar kienet konsapevoli ta' dak li kien qed issir mill-partner taghha. L-istqarrija taghha fejn din taghti verzjoni dwar kif l-imputat beda juza s-sistema bhala *calculator* u jaghfas *void* biex b'hekk kien jitfa' flus fil-cash minghajr ma johrog ricevuta u fl-ahhar tal-gurnata jiehu id-differenza, tirrifeletti sal-inqas dettal il-konsapevolezza taghha dwar dak li Buttigieg jammetti kien effettivament il-*modus operandi* tieghu.[173] Ix-xhieda minn Food Chain Limited lkoll qabblu li malli affrontawh nhar l-14 ta' Settembru, 2012, Buttigieg infurmahom li l-familja tieghu kienet taf x'kien qed jaghmel u fi kliem Cutajar meta dan gara kienu

[169] Fol.297 u fol.390
[170] Fol. 7 tar-relazzjoni tieghu
[171] Fol. 4 tar-relazzjoni tieghu
[172] Fol.245
[173] Vide fol.15 tergo (stqarrija ta' Cutajar) u fol.17 tergo (stqarrija ta' Buttigieg)

gja qed jirrisjedu fl-istess dar *"Iva konna diga dhalna fil-post, kellhi t-tifla ukoll".*[174]

Ma jistax ma jigix ukoll sottolinejat li anke hawn l-imputata hi inveritjiera ghaliex fl-istess xhieda minuti, wara li ssemmi li saret taf dwar l-agir tieghu meta tkecca mix-xoghol f' Settembru, u fiz-zmien li gja kienet twieldet binthom, tiddikjara li t-tarbija twieldet f'Ottubru, 2012[175] kif kienet qalet fl-istqarrija taghha.[176] Bla dubbju x-xhieda ta' Cutajar ma ghandhiex mis-sewwa u l-Qorti ma tista taghti l-ebda kreddibilita` lill-persuna li anke fuq dettal daqshekk inokkwu taghti twegibiet differenti.

Illi mid-dokumentazzjoni bankarja esebita mill-Ispettur Xuereb u kkonfermata minn **Joseph Caruana** in rapprezentanza tal-Bank of Valletta,[177] l-Qorti tinnota li fil-kont Savings (Naxxar) ta' Cutajar bin-numru **40019874889** minn April, 2011, jidhru depoziti kostanti li bdew isiru go fih ta' sommom ta' medja ta' €1,000 fix-xahar, ghalkemm f'April, 2011, kienet giet depozitata somma ta €5,000 u f'April, 2012, gie depozitat ammont iehor ta' €3,000. Meta xehed Buttigieg kien semma li hu kien biegh mutur f'April, 2011, u rcieva €5,000 cash ghalkemm baqa' qatt ma esebixxa prova dwar dan il-bejgh- la ricevuta, la isem tax-xerrej![178] Lanqas kien semma dan il-bejgh mal-ispettur fil-kors tal-istqarrija[179] jew xi zmien wara!

Jirrizulta li dawn id-depoziti saru minn kont Savings (Gzira) Current mizmum f'isem Cutajar bin-numru **40010113471**. F'dan il-kont ukoll jidhru depoziti kemm xejn gholjin meta jitqies li l-pagamenti li kienet tircevi minn Kentucky Operations Ltd kienu jkunu fil-gran parti bejn il-€100-€500. Gew esebiti il-*backing documents* tat-transazzjonijiet ta' depositu minn fejn jirrizultaw ghadd konsiderevoli ta' cash deposits li huma indikati fl-istatement tal-kont **40010113471** li gja saret riferenza ghalihom. Jirrizultaw ghadd ta' transazzjonijiet ta' withdrawals li jikkorelataw ma dhul fil-kont taghha bin-numru 40019874889.

Dak li setghet tiddetermina l-Qorti wara li ezaminat id-dokumentazzjoni bankarja, kien li kien il-kont **40010113471 li** kien jithaddem ghal htigiejiet ta' kuljum kif ukoll kien il-kont li fih kienet tircevi l-paga li kienet tkun circa sa €300-500 ewro. It-transazzjonijiet maghmula minnu huma modesti. Li gie osservat izda kien *withdrawal* ta' €2,500 maghmul fl-14 t'April, 2012 li sussegwentement gew depozitati fil-kont **40019874889 –** dan sar fl-istess data li Buttigieg iddepozita €2,000 fil-kont tieghu tal-Msida!

Issa jekk dan il-kont kellhu operat modest, mhux l-istess jista' jinghad ghall-kont **40019874889** li ra depoziti kostanti, kif anke juru il-banking vouchers, ta' sommom ta' €1,000 fix-xahar, anke wara li Cutajar temmet l-

174 Fol.364
175 Fol.376
176 Fol.15 tergo
177 Fol.294
178 Fol.348
179 Fol.350

impjieg taghha. **Kont attiv ghall-ahhar fejn l-imputati naqsu milli jgibu imqarr l-icken prova li turi minn fejn originaw dawn il-flejjes!** Gie osservat ukoll li fid-19 ta' Dicembru, 2011 gew depozitati €2,500 u fl-istess jum fil-kont ta' Buttigieg **40014634516** (Msida) gew depozitati €2,000.

Illi tirrizulta ukoll Loan mahruga lill-imputati a' €105,000 fis-17 ta' Frar, 2012.

Illi rrizultaw bosta *deposit slips* ta' *cash payments* maghmulin minn Brian Buttigieg fil-kont tieghu Savings (Hamrun) numru **13816944017** li jirrisalu minn Jannar, 2009 sa Awissu, 2012. F'dan il-kont jidhru numru ta' depoziti provvenjenti minn kont iehor - **40014634516** mizmum ukoll f'ismu mal-fergha tal-Imsida.[180] Sa qabel Awissu 2009 id-depoziti kienu ta' ammonti ta' bejn €200-€400 izda minn wara Awissu 2009 id-depoziti bdew ikunu ta' bejn €500-€1,000**.**

Fil-kont numru **40014634516** Buttigieg kien jaghmel depoziti mensili ta' €1,000 izda minn Awissu 2010, xahar wara li l-imputati bdew johrogu flimkien, id-depoziti bdew jizdiedu ghal darbtejn f'xahar. Fost dawn id-depoziti kien hemm numru li kienu ta' €2,000 u saru f'Ottubru, Novembru, Dicembru tal-2011, April u Mejju tal-2012 u depozitu ta' €5,000 fil-11 ta' Settembru 2012, tlett ijiem qabel ma gie terminat l-impjieg tieghu. Il-gran parti ta' dawn id-depoziti joriginaw minn transferrimenti maghmula bil-*24x7 facility* mill-kont l-iehor tieghu (tal-Hamrun Branch).

Altru' mela li kien jaf ifaddal u jgemma l-imputat Buttigieg ghax kien jaghmel dawn id-depoziti kollha u jhaddem flusu minn kont ghall-iehor minghajr il-htiega ta' terzi! Evidenza li kien kapaci jaghmel it-tfaddil wahdu minghajr il-htiega ta' Cutajar huma l-ghadd ta' *payment vouchers* u ATM *deposit slips* esebiti kif ukoll il-log esebita ta' kemm il-darba l-imputat Buttigieg ghamel trasferimenti bil-*24x7*. Il-kont ta' Cutajar intuza sabiex tigi osturata parti mill-flejjes li Buttigieg kien qed izomm ghalih izda ma jirrizultax li dahhlu flejjes fl-ammonti li jissemmew mill-espert Axiaq u wisq anqas mill-parte leza ghakemm dan ma jnaqqas xejn mir-reita` tal-imputati fir-rigward tar-riciklagg minnhom pperpetrat.

Certament riflessjoni tal-*modus operandi* tal-imputati kienu zewg transazzjonijiet ta' €5,000 li saru mill-kont ta' Buttigieg **40014634516** (Msida) registrati mal-bank fis-17 ta' Settembru, 2012, li kien it-Tnejn, tlett ijiem wara li Buttigieg tkecca mill-impjieg u cioe` l-Gimgha 14 ta' Settembru, 2012, lil hadd ghajr Joanne Cutajar.

Ghalhekk simili ghal dak li kien qed isehh fil-kaz ta' Joanne Cutajar kien hemm kont li kien qed jintuza ghall-htigijiet kwotidjani (Hamrun-**13816944017**) fejn kienet tidhol il-paga u kont iehor li kien qed issiru fih depozitati kostanti – dak bin-numru **40014634516** (Msida).

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180 Ez.17.02.2009; 13.03.2009; 13.07.2009 etc.

Illi fid-dawl ta' dan l-insenjament u mill-provi prodotti f'dawn l-atti din il-Qorti tqis li l-prosekuzzjoni irnexxilja tipprova sal-grad rikjest mill-ligi l-ewwel imputazzjoni u dan fil-konfront taz-zewg imputati. Il-Qorti temmen li dak li Cutajar stqarret mal-Pulizija wera bic-cjar li mhux biss kellha suspett dwar il-provenjenza illecita tal-flejjes mghoddija lilha minn Buttigieg **izda altru li kienet ben konxxja dwar minn fejn kienu originaw**. Jirrizulta ukoll li l-imputati naqsu milli joffru spjegazzjoni ragonevoli, hekk kif jiddetta l-artikolu 3(3) tal-Kapitolu 373 tal-Ligijiet ta' Malta, ghall-provvenjenza tal-flejjes li gew depozitati fil-kontijiet tal-imputati. Qed tinghata piz id-dikjarazzjoni ta' Cutajar maghmula fl-istqarrija li Buttigieg kien qed jghaddilha flejjes li originaw mill-agir qarrieq tieghu biex tiddepozitahom fil-kont taghha. Ghaldqstant giet pruvata l-*mens rea* rikjesta sabiex javvera ruhu r-reat ta' riciklagg, fejn *inter alia* kondotta ta' persuna tammonta ghal tali reat meta ikun hemm:

> (i) il-konversjoni jew trasferiment ta' proprjetà meta wieħed ikun jaf jew jissuspetta li dik il-proprjetà tkun direttament jew indirettament inkisbet minn, jew mir-rikavat ta', attività kriminali…
>
> (iii) l-akkwist, pussess jew użu ta' proprjetà meta wieħed ikun jaf jew jissuspetta li l-istess proprjetà tkun inkisbet jew oriġinat direttament jew indirettament minn attività kriminali jew minn att jew atti ta' parteċipazzjoni f'attività kriminali;
>
> (iv) ir-ritenzjoni mingħajr skuża raġonevoli ta' proprjetà meta wieħed ikun jaf jew jissuspetta li l-istess proprjetà tkun inkisbet jew oriġinat direttament jew indirettament minn attività kriminali jew minn att jew atti ta' parteċipazzjoni f'attività kriminali;

Illi l-imputat wahdu gie akkuzat mhux biss bir-reat t'approprijazzjoni indebita, it-tieni imputazzjoni, izda wkoll b'dak ta' frodi u serq bhala akkuzi alternattivi. Mhemmx dubbju li l-fattispeci ta' dan il-kaz jinkwadraw rwiehom perfettament fir-reat t'approprijazzjoni indebita u mhux fir-reati ta' frodi jew serq postulati fit-tielet, fir-raba u l-hames akkuza rispettivament. Ghaldaqstant il-Qorti qed tastjeni milli tiehu konjizzjoni ulterjuri ta' dawn l-imputazzjonijiet.

Illi dwar il-piena erogabbli l-Qorti mhux biss qiset in-natura tar-reati addebitati bihom, izda ukoll tal-ammont tar-rikavat; ikkunsidrat li kien biss fuq l-ammont ta' €59,896 li l-espert Axiaq seta' jiddetermina sal-grad rikjest bil-ligi bhala l-ammont li approprija ruhu minnu l-imputat minkejja li l-imputat jixhed li kien gja qed jikkometti tali reat fi Frar, 2011.[181] Axiaq kien qal *"In fatti it-tielet perjodu kien l-uniku perjodu fejn wiehed seta' jhossu komdu fuq il figuri prezentati";*[182] *"huwa f'dan il-perjodu li kellhi l-iktar informazzjoni u statistika fuq xhiex nibbaza il-kalkolazzjonijiet tieghi";*[183] u *"nghidulha analytical review fil-linja taghna jigifieri jkollna trends, ikollna*

181 Fol.337
182 Fol. 7 tar-relazzjoni tieghu
183 Fol. 4 tar-relazzjoni tieghu

patterns li generalment nippruvaw napprossimaw x'setgha gara, pero ovvjament ma nistax nghid jien le, ma nistax nghid".[184]

Illi il-Qorti qiset in-natura serja tar-reati addebitati bihom l-imputati, u l-pieni xejn leggeri li jgorru maghhom fejn il-massimu tal-piena erogabbli ghar-reat ta' riciklagg li qed tinstab htija dwarhu hija dik ta' disa snin habs u dan minghajr ma jittiehed kont tal-aggravju previst bl-artiklu 18 tal-Kodici Kriminali.[185]

Illi hu minnu li l-imputati ghandhom fedina penali netta. Madanakollu jibqa l-fatt li ma ddejqu xejn, u senjatament Buttigieg, li jigdmu dik l-id li kienet tipprovdilhom l-ghijxien taghhom. Buttigieg ghamel karriera jisfrutta lill-*employer* tieghu u dan meta kien fdat b'karriga fejn kellhu d-dmir jittutela l-interessi tal-kumpanija li timpjegah. Waqaf ghax inqabbad u qatt ma wera li ddispjacih ta' ghemilu. Irid ukoll jinghad li sa minn meta gie interrogat mill-Pulizija, Buttigieg ammetta il-kolpevolezza tieghu; dak li baqa' jikkontesta kien l-ammont pretiz mill-parte leza.

Ghal dawn il-motivi wara li rat l-artikolu 3 tal-Kapitolu 373 tal-Liġijiet ta' Malta, u fir-rigward ta' Brian Buttigieg anke l-artikoli 17, 18, 23, 31, 293, 294 u 310 (1)(a)[186] tal-Kapitolu IX tal-Liġijiet ta' Malta, ssib l-imputati hatja tal-akkuzi migjuba fil-konfront taghhom, u tikkundanna lil Brian Buttigieg ghal 4 snin prigunerija u *multa* ta' €30,000, filwaqt li tikkundanna lil Joanne Cutajar ghal sentejn prigunerija li bl-applikazzjoni tal-artikolu 28A tal-Kapitolu IX tal-Ligijiet ta' Malta qed jigu sospizi ghal 4 snin kif ukoll multa ta' €20,000.

Tordna l-konfiska favur il-Gvern ta' Malta tal-flejjes involuti f'dan il-kaz, kif ukoll tal-propjeta` mobbli u mmobbli tal-imputati kif stipulat fl-Artikolu 3(5) tal-Kap 373 tal-Ligijiet ta' Malta.

Inoltre` wara li rat l-artikolu 532A tal-Kapitolu IX tal-Ligijiet ta' Malta, moqri flimkien mal-artikolu 24 tal-Kapitolu 446 tal-Ligijiet ta' Malta, tordna lil hatja jhallsu is-somma ta' €59,896 fi zmien tlett snin lill-parte leza.

F'kaz li tali ammont jew parti minnu ma jithallasx hekk kif ordnat, ghandu jigi konvertit fi prigunerija ai termini tal-ligi.

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184 Fol.245

185 Il-piena ghal-riciklagg qabel l-emendi introdotti bl-Att VIII tal-2015 kienet ta' bejn sitt xhur u disa snin prigunerija filwaqt li l-multa prevista kienet bejn €2,329.37 u €116,468.67.

186 Il-piena ghal dan ir-reat, qabel l-emendi introdotti bl-Att XXIV tal-2014 kienet ta' bejn tlettax il-xahar u seba snin prigunerija.

Finalment b'applikazzjoni tal-artikolu 533 tal-Kapitolu IX tal-Ligijiet ta' Malta qed tordna lil imputati jhallsu lir-Registratur ta' din il-Qorti s-somma ta' €2,725.80 bejniethom, rapprezentanti spejjez inkorsi in konnessjoni mal-hatra tal-esperti; il-hlas ghandu jsir fi zmien sentejn.

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Magistrat