QORTI CIVILI PRIM`AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON

Illum it-Tlieta 27 ta` Gunju 2017

Kawza Nru. 2

Referenza Kostituzzjonali
Nru. 104/16 JZM

Il-Pulizija
(Spettur Malcolm Bondin)

kontra

Aldo Pistella

Il-Qorti :

I. Preliminari

Rat ir-referenza lil din il-Qorti li saret fid-29 ta` Novembru 2016 mill-Qorti tal-Magistrati (Malta) bhala Qorti Istruttorja, li taqra hekk :-

Il-Qorti :

Rat l-imputazzjonijiet migjuba fil-konfront tal-imputat Aldo Pistella.
Regghet rat ir-rikors tal-imputat Aldo Pistella tas-16 ta` Settembru 2016 (a fol. 441 et seq.) fejn intalab is-segwenti :

"Ghaldaqstant l-esponent bir-rispett jitlob lil din l-Onorabbli Qorti sabiex tirreferi din il-vertenza kostituzzjonali lil Prim`Awla tal-Qorti Civili sabiex dik l-Onorabbli Qorti taqta` u tiddeciedi jekk bil-fatt li l-esponenti ma kienx assistit waqt it-tehid tal-istqarrija tieghu mill-Pulizija, gewwa l-Kwartieri Generali tal-Pulizija, kif ukoll li huwa lanqas kellu d-dritt li jitlob li jkun assistit minn konsulent legali matul it-tehid tal-istqarrija tieghu, tali nuqqasijiet jiksrux id-drittijiet tieghu a tenur tal-Artikolu 6 tal-Konvenzjoni jew le".

Rat ir-risposta tal-Avukat Generali tad-19 ta` Settembru 2016 (a fol. 444 et seq.) f`liema risposta l-Avukat Generali indika r-ragunijiet ghala t-talba tal-imputat ghandha tigi michuda peress li skont hu tali talba hija wahda frivola u vessatorja.

Rat il-verbal tas-seduta tal-20 ta` Settembru 2016 (a fol. 449 et seq.) fejn il-Qorti, fost l-ohrajn, stiednet lid-difiza sabiex tipprezenta Nota ta` Sottomissjonijiet in sostenn tat-talba taghha kontenuta fir-Rikors promotur.

Rat in-nota tal-imputat ipprezentata fit-30 ta` Settembru 2016 (a fol. 451 et seq.).

Rat il-verbal tas-seduta tal-4 ta` Ottubru 2016 (a fol. 455) fejn il-Qorti, fost l-ohrajn, stiednet lill-Avukat Generali sabiex meta jerga` jibghat l-atti processwali lura lil din il-Qorti kif preseduta, l-atti jkun jikkontjenu fihom kwalunkwe Risposta ossia Nota ulterjuri li l-Avukat Generali jkun jixtieq jipprezenta.

Rat in-nota ulterjuri tal-Avukat Generali pprezentata fl-1 ta` Novembru 2016 (a fol. 462 et seq.).

Rat il-verbal tas-seduta tal-15 ta` Novembru 2016 (a fol. 469 et seq.) fejn il-Qorti giet mistiedna tiddegreta b`mod finali ir-Rikors promotur.

Illi f`kaz ta` lanjanza kostituzzjonali, il-funzjoni tal-Qorti tal-Magistrati hija wahda li ghandha parametri stretti dettati mill-Kostituzzjoni stess. Infatti Artikolu 46(3) tal-Kostituzzjoni ta` Malta jghid hekk :

"Jekk f`xi proceduri f`xi Qorti li ma tkunx il-Prim`Awla tal-Qorti Civili jew il-Qorti Kostituzzjonali tqum xi kwistjoni dwar il-ksur ta` xi wahda mid-dispozizzjonijiet tal-imsemmija Artikoli 33 sa 45 (maghdudin) dik il-Qorti ghandha tibghat il-kwistjoni quddiem il-Prim`Awla tal-Qorti Civili kemm-il darba fil-fehma taghha t-tqanqil tal-kwistjoni ma tkunx sempliciment frivola jew vessatorja; u dik il-Qorti ghandha taghti d-decizjoni skont dan is-subartikolu (4)

ta` dan l-Artikolu, il-Qorti li quddiemha tkun qamet il-kwistjoni ghandha tiddisponi mill-kwistjoni skont dik id-decizjon."

Illi, ghalhekk, il-Qorti, certament f`dana l-istadju, bl-ebda mod ma hija msejha u lanqas hija kompetenti sabiex tiddeciedi fil-mertu l-istess kwistjoni u trid tara biss jekk fl-opinjoni taghha, it-talba maghmula mid-difiza sabiex issir referenza abbazi ta` dak premess hijiex wahda li tinvolvi kwistjoni li hi primarjament frivola jew vessatorja.

Illi f`sentenza moghtija mill-Qorti Kostituzzjonali fl-ismijiet Alan Mifsud vs Avukat Generali, deciza fit-23 ta` Novembru 1990, gie deciz illi l-kliem frivoli jew vessatorji jfissru illi l-kwistjoni li tkun tqajjmet hi irrelevanti proceduralment fil-proceduri li fihom tkun tqajmet. Fil-fatt il-kelma "frivola" inghatat it-tifsira ta` "ebda pregju jew valur, vana, nieqsa mis-serjeta`, manifestament nieqsa mis-sens u b`hekk ma ghandhiex tinghata xi forma ta` attenzjoni jew konsiderazzjoni". In rigward "vessatorja" din tidher li tfisser"minghajr ragunijiet sufficjenti u bl-iskop li tiddejjaq u tirrita lil kontroparti".

Illi din il-Qorti hija tal-fehma li sabiex hija tkun legalment gustifikata li tista` taghmel ir-referenza mitluba, il-kwistjoni mqanqla trid tkun wahda relatata mal-proceduri li jkollha quddiemha, fis-sens li jekk dik il-kwistjoni kostituzzjonali ma tigix risolta u deciza mill-Qorti kompetenti, din il-Qorti ma tkunx tista` tkompli bis-smigh u d-decizjoni tal-mertu tal-vertenza li ghandha quddiemha.

Ikkunsidrat :

Illi jirrizulta li l-imputat irrilaxxa l-istqarrija tieghu lill-Pulizija fis-17 ta` Ottubru 2014 (a fol. 29 et seq.) u li din inghatat skont il-ligi vigenti f`Malta dak iz-zmien.

Illi fil-kaz odjern l-imputat jilmenta li Artikolu 6(1) tal-Konvenzjoni Ewropea abbinat mal-Artikolu 6(3)(c) tal-imsemmija Konvenzjoni jitlob u jesigi li s-suspettat mhux biss ghandu dritt li jikkonsulta ma` avukat biss qabel ma tittiehed l-istqarrija tieghu, izda wkoll waqt l-istess tehid tal-istqarrija.

Illi fir-Rikors tieghu (a fol. 441 et seq.) u fin-Nota tieghu (a fol. 451 et seq.), l-imputat jicita, fost l-ohrajn, gurisprudenza u kif ukoll jaghmel referenza ghal direttivi tal-Unjoni Ewropea in sostenn tat-talba tieghu kontenuta fir-Rikors promotur.

Illi l-Qorti kif preseduta hija tal-fehma li din il-kwistjoni mqanqla mill-imputat fir-Rikors promotur ghandha x`taqsam mal-kwistjoni fil-mertu quddiem din l-istess Qorti u l-Qorti hija tal-fehma li jkun ghaqli li din il-Qorti tistenna li l-kwistjoni kostituzzjonali mqanqla tigi rizolta sabiex tkompli tisma` l-proceduri odjerni.

Ghaldaqstant, peress li fil-fehma tal-Qorti t-talba ghal referenza kostituzzjonali kontenuta fir-Rikors tal-imputat tas-16 ta` Settembru 2016 (a fol. 441 et seq.) mhijiex wahda frivola jew vessatorja, il-Qorti tilqa` t-talba ghal referenza kostituzzjonali u qed tirreferi l-kaz lill-Qorti Civili Prim`Awla (Gurisdizzjoni Kostituzzjonali) sabiex tkun tista` taghti l-gudizzju taghha dwar dan il-punt imsemmi hawn fuq.

Rat ir-risposta tal-Avukat Generali u tal-Kummissarju tal-Pulizija pprezentata fil-21 ta` Dicembru 2016 li tghid :-

(I) Illi din ir-Referenza intalbet a bazi ta` talba mill-Qorti tal-Magistrati bhala Qorti Istruttorja senjatament dwar jekk fic-cirkostanzi odjerni "bil-fatt li l-esponenti (ir-rikorrent odjern) ma kienx assistit waqt it-tehid tal-istqarrija tieghu mill-Pulizija, gewwa l-Kwartieri Gernerali tal-Pulizija, kif ukoll li huwa lanqas kellu d-dritt li jitlob li jkun assistit minn konsulent legali matul it-tehid tal-istqarrija tieghu, tali nuqqasijiet jiksrux id-drittijiet tieghu a tenur tal-Artikolu 6 tal-Konvenzjoni, jew le" ;

(II) Illi minghajr pregudizzju ghas-suespost, fil-mertu l-esponent jirrespingi l-allegazzjoni tar-rikorrent bhala infondata fil-fatt u fid-dritt stante li c-cirkostanzi tal-kaz ma jirraprezentaw l-ebda ksur tad-drittijiet fundamentali tar-rikorrent ai termini tal-Artikolu 6 tal-Konvenzjoni Ewropea ghar-ragunijiet segwenti li qed jigu elenkati minghajr pregudizzju ghal xulxin :

(i) Illi fl-ewwel lok, il-fatt li persuna ma kinitx assistita minn avukat waqt l-interrogazzjoni, ma jwassalx awtomatikament ghal ksur tad-dritt ta` smigh xieraq kif donnu qed jippretendi r-rikorrent. L-esponenti jirribattu li kull kaz ghandu jigi ezaminat skont ic-cirkostanzi partikolari tieghu u l-imsemmi dritt irid jigi evalwat fir-rigward tat-totalita` tal-proceduri u mhux fir-rigward ta` mument specifiku kif qed jipprova jaghmel ir-rikorrent odjern;

(ii) Illi effettivament fil-kaz odjern, jirrizulta li fic-cirkostanzi odjerni, ir-rikorrent inghata d-drittijiet tieghu inkluz id-dritt ghall-parir legali fejn fil-fatt tkellem ma` Dottoressa Sarah Sultana qabel ma rrilaxxa volontarjament l-istqarrija fis-17 t`Ottubru, 2014. Fil-fatt, ir-rikorrent inghata t-twissija skont il-ligi senjatament li ma kienx obbligat li jitkellem sakemm ma kienx hekk jixtieq izda li dak li kien se jghid seta` jingieb bhala prova kontrih u ghalhekk ir-rikorrent irrilaxxa l-istess stqarrija liberalment u anke ffirma li l-kontenut

taghha kien korrett; apparti l-fatt li fil-kaz odjern jirrizultaw provi ohra li jikkoroboraw il-verzjoni li ta r-rikorrent fl-istess stqarrija;

(iii) Illi wiehed mill-principji li ormai gie stabbilit fil-kazijiet Kostituzzjonali, kif bazati anke fuq l-insenjament tal-kazistika tal-Qorti Ewropea tad-Drittijiet tal-Bniedem fosthom "Salduz u Turkey [Ref 36391/2002], m`hemmx principji universali li n-nuqqas ta` presenza ta` avukat waqt l-interrogazzjoni awtomatikament iggib maghha lezjoni tad-drittijiet tal-akkuzat rikorrent kif sanciti fl-Artikolu 6 tal-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem;

(iv) Illi l-esponent jirribatti li l-lanjanza tar-rikorrent hija wkoll insostenibbli, stante li l-ebda persuna li rrilaxxa stqarrija fil-perjodu relevanti ma kellha dan id-dritt fil-perjodu relattiv u ghalhekk anke f`dan ir-rigward ma gewx lezi d-drittijiet fundamentali tar-rikorrent ai termini tal-Artikolu 6 tal-Konvenzjoni Ewropea;

(v) Salv eccezzjonijiet ulterjuri, jekk ikun il-kaz;

(vi) Illi ghaldaqstant fil-kaz odjern huwa fl-umli sottomissjoni tal-esponenti manifest li c-cirkostanzi tal-kaz ma jirraprezentaw l-ebda ksur tad-drittijiet fundamentali tar-rikorrent kif allegat u ghalhekk l-esponenti jitolbu bir-rispett li din l-Onorabbli Qorti joghgobha tirrispondi ghar-Referenza Kostituzzjonali fis-sens li c-cirkostanzi tal-kaz ma jiksrux id-drittijiet fundamentali tar-rikorrent ai termini tal-Artikolu 6 tal-Konvenzjoni Ewropea; bl-ispejjez kontra l-istess rikorrent.

Rat il-verbal li sar fl-udjenza tat-12 ta` Jannar 2017 mid-difensur ta` Aldo Pistella fejn kien dikjarat li Pistella kien qed joqghod bhala prova fuq (i) ix-xiehda traskritta tal-Ispettur Malcolm Bondin ; (ii) fuq l-istqarrija li Aldo Pistella ghamel lill-Ispettur Bondin ; (iii) fuq id-dikjarazzjoni illi Aldo Pistella talab l-assistenza ta` avukat, izda dak l-avukat ma kienx prezenti waqt l-interrogatorju mill-Ispettur Bondin.

Rat in-nota ta` l-Avukat Generali u tal-Kummissarju tal-Pulizija tat-13 ta` Frar 2017.

Semghet ix-xhieda tal-Ispettur Malcolm Bondin fl-udjenza 16 ta` Frar 2017.

Rat id-dikjarazzjoni tal-partijiet dwar l-gheluq tal-provi fl-istess udjenza.

Rat illi l-procediment thalla ghal provvediment ghal-lum bil-fakolta` li l-partijiet jipprezentaw noti ta` osservazzjonijiet.

Rat in-noti ta` osservazzjonijiet tal-partijiet.

Rat in-nota b`dokument li pprezenta Also Pistella fit-8 ta` Gunju 2017.

Rat l-atti l-ohra ta` dan il-procediment kif ukoll l-atti tal-kawza fl-ismijiet *Il-Pulizija (Malcolm Bondin) vs Aldo Pistella.*

Ikkunsidrat :

Meta xehed quddiem din il-Qorti, l-Ispettur Malcolm Bondin ikkonferma li d-dokument a fol 29 sa 33 tal-atti tal-proceduri kriminali hija l-istqarrija li ghamel lilu Aldo Pistella. Fisser li Pistella nghata d-drittijiet tieghu kollha. L-istqarrija kienet rilaxxjata fl-ufficcju tieghu fis-17 ta` Ottubru 2014. Spjega li l-ligi dak iz-zmien kienet tghid illi Pistella kellu dritt li jikkonsulta ruhu ma` avukat ta` l-ghazla tieghu. Fil-fatt kien ghazel li jikkonsulta ruhu ma` Dr Sarah Sultana u qabel ma bdew l-investigazzjonijiet, kien kellem lil Dr Sultana fil-Kwartieri Generali tal-Pulizija.

Stqarr illi Dr Sultana ma kinitx fizikament prezenti waqt l-istqarrija peress illi dak iz-zmien il-ligi vigenti kienet tghid illi l-avukat ma setax ikun prezenti waqt it-tehid ta` l-istqarrija ta` l-akkuzat jew l-imputat. Qal illi huwa ma kienx fizikament prezenti meta saru t-tfittxijiet gewwa r-residenza ta` Pistella. Huwa nvestiga l-fatti li hargu mill-istqarrija, bhal per ezempju ghamel talbiet lil Virtu Ferries, u lil agenti ta` l-ivvjaggar, u anke staqsa xi domandi lis-sid tal-kera tal-fond fejn kien jirrisjedi Pistella.

Kompla jixhed li Pistella kien arrestat fis-16 ta` Ottubru 2014 u kienet instabet sustanza suspettuza fuqu li kienet cannabis. Il-pulizija imbaghad kompliet bl-investigazzjoni. Spjega li wara li saru t-tfittxijiet fil-post ta` Pistella, huwa ttiehed id-Depot ghal xi l-10.00 pm. Huwa fiehem lis-suspettat id-dritijiet tieghu, u fehmu d-dritt li ghandu li jkellem avukat. Baghtu jorqod ghax kien sar il-hin u kien ghadu ftit mifxul ; b`hekk ikun jista` jikkalma. L-ghada filghodu ghall-habta tas-7.30 am jew it-8.00 am huwa rega` fiehem lil Pistella d-drittijiet tieghu, u dan qallu li xtaq ikellem avukat ; fil-fatt ghamel kuntatt ma` Dr Sarah Sultana u ha parir legali.

Ikkonferma li sakemm ghamel kuntatt ma` l-avukat, ma ttiehdet l-ebda stqarrija.

Fisser li l-istqarrija ttiehdet fis-1.40 pm, wara li tkellem ma` Pistella dwar il-provi li kien. Spjega li Pistella rrisponda kull domanda li saret anke fejn jidhol raffikar ta` droga. Insista li fir-risposti li nghataw, Pistella kien koerenti u ma kienx hemm agitazzjoni. Kien qed jifhem l-import tac-cirkustanzi li kien jinsab fihom. Spjega li wahda mid-domandi kienet li dak li sehh kien illegali Malta u huwa qal li kien jaf b`dan.

Xehed illi huwa ma staqsiex x`kienet id-direzzjoni li Dr Sultana kienet tat lil Pistella.

Ikkunsidrat :

Il-Qorti sejra taghmel riferenza ghall-gurisprudenza dwar nuqqas ta` assistenza legali fl-istadju ta` qabel ir-rilaxx ta` stqarrija, peress li l-materja hija simili hafna ghall-kwistjoni li ghandha quddiemha llum billi din tirrigwarda nuqqas ta` assistenza legali waqt it-tehid ta` l-istqarrija mill-ufficjali tal-pulizija.

Il-Qorti taghmel referenza ghad-decizjoni taghha tat-28 ta` Frar 2017 fil-kawza fl-ismijiet **Dominic Camilleri vs Avukat Generali**.

Hemm saret rassenja ta` gurisprudenza relatata mal-kwistjoni dwar jekk stqarrija mehuda minghajr ma jkun inghata dritt ta` assistenza ta` konsulent legali qabel ma tkun rilaxxjata l-istqarrija tammontax ghal lezjoni tad-dritt fondamentali ghal smigh xieraq. Fiha kienu riportati numru ta` sentenzi : **Il-Pulizija (Spt Victor Aquilina) vs Mark Lombardi** (referenza kostituzzjonali Nru 34/2009 li kienet saret fl-ambitu tal-kawza fl-ismijiet *"Il-Pulizija (Spt Victor Aquilina) vs Mark Lombardi"*) ; **Il-Pulizija (Supt. Norbert Ciappara) v. Esron Pullicino** deciza minn din il-Qorti diversament presjeduta fl-24 ta` Frar 2010 u mill-Qorti Kostituzzjonali fit-12 ta` April 2011 ; **Ir-Repubblika ta` Malta vs Carmel Vella** deciza mill-Qorti ta` l-Appell Kriminali fl-10 ta` Novembru 2011 ; **Il-Pulizija (Spt Norbert Ciappara) v. Renald Baldacchino** moghtija fit-30 ta` Gunju 2014 wara referenza li kienet saret mill-Qorti tal-Magistrati (Malta) bhala Qorti ta` Gudikatura Kriminali u l-appell deciz mill-Qorti Kosstituzzjonali fis-6 ta` Frar 2015 ; **Malcolm Said vs Avukat Generali et** moghtija minn din il-Qorti diversament presjeduta fl-14 ta` Jannar 2016 u mill-Qorti Kostituzzjonali fl-24 ta` Gunju 2016 ; **Il-Pulizija vs Philip Borg et vs l-Avukat Generali et** moghtija mill-Qorti Kostituzzjonali fil-11 ta` Lulju 2016 ; **Gordi Felice vs Avukat Generali** deciza fil-31 ta` Ottubru 2016 ; u **Trevor Bonnici vs Avukat Generali** moghtija minn din il-Qorti diversament presjeduta fl-10 ta` Novembru 2016.

Hemm kien imfisser illi l-Art 6 tal-Konvenzjoni jirrikjedi illi jkun hemm dritt ghall-assistenza ta` avukat bhala parti ntegrali mill-jedd ghal smigh xieraq.

Fil-fatt ir-restrizzjonijiet li hemm fid-disposizzjoni huma l-eccezzjoni mhux ir-regola.

Hemm kien addottat il-principju senjalat fil-kaz quddiem l-ECHR ta` **Borg vs Malta** fejn inghad kjarament illi jkun hemm lezjoni tal-Art 6 meta stqarrija ssir minghajr assistenza legali, salv ghal kazi eccezzjonali.

Hemm ma tressqux provi li juru li kien hemm xi ragunijiet impellenti sabiex id-dritt ikun ristrett.

Ghalhekk kien hemm lezjoni tal-Art 39 tal-Kostituzzjoni u tal-Art 6 tal-Konvenzjoni.

Fis-sentenza li tat fil-kawza **Il-Pulizija vs Joseph Camilleri** fil-25 ta` Frar 2016, il-Qorti ta` l-Appell Kriminali (Sede Inferjuri) dahlet fil-fond tal-kwistjoni tal-legalita` ta` l-istqarrijiet.

Il-Qorti mxiet fuq id-decizjoni tal-ECHR fil-kaz ta` **Mario Borg vs Malta** tat-12 ta` Jannar 2016.

Dak li nghad mill-Qorti ta` l-Appell Kriminali (Sede Inferjuri) fis-sentenza jimmerita li jkun riprodott ghall-fini ta` kompletezza :-

> *"Illi din id-decizjoni hija wahda limitata ghall-ewwel impunjattiva imressqa `l quddiem mill-appellanti li tikkoncerna l-kwistjoni dwar l-ammissibbilita` o meno tal-istqarrija rilaxxjata minnu lill-pulizija meta kien gie arrestat u interrogat lura fis-17 ta` April 2002 u dan billi huwa ma giex moghti il-jedd ghal parir legali qabel gie interrogat. Illi l-Ewwel Qorti fid-decizjoni taghha qieset illi tali stqarrija kienet wahda ammissibbli billi l-appellanti ma kienx persuna vulnerabbli, kellu tletin sena, u li din ma kenitx l-ewwel darba li huwa xellef difrejgh mal-gustizzja u ghalhekk kellu esperjenzi precedenti ta` arrest u interrogazzjoni. Huwa kien gie moghti is-solita twissija vigenti f`dak iz-zmien fejn il-persuna arrestata ma kellhiex il-jedd la li tiehu parir legali qabel linterrogazzjoni u wisq inqas li tkun assistita minn avukat fil-waqt talinterrogazzjoni innifisha. Illi fid-decizjoni taghha, l-Ewwel Qorti strahet fuq il-gwida kostituzzjonali li kienet giet moghtija mill-Qorti Kostituzzjonali permezz ta` decizjonijiet* ***Charles Steven Muscat vs Avukat Generali*** *(08/10/2012),* ***il-Pulizija vs Robert Busuttil*** *(20/02/2014) u* ***il-Pulizija vs Omar Psaila*** *(20/06/2014). Illi l-appellanti madanakollu jaghmel referenza ghad-decizjonijiet moghtija mill-Qorti Ewropeja dwar id-Drittijiet tal-Bniedem li huma*

kollha konsoni fil-konkluzjoni taghhom illi ikun hemm vjolazzjoni ta`l-artikolu 6(3)(c) tal-Konvenzjoni kull meta persuna arrestata u interrogata ma tkunx inghatat assistenza legali qabel ma tigi assoggettata ghall-interrogazzjoni fejn tista` tinkrimina ruhha.

…

Illi id-dritt ghal smiegh xieraq kif sancit fl-artikolu 6(1) u l-artikolu 6(3)(c) talKonvenzjoni Ewropeja gie estiz mill-gurisprudenza ewropeja mhux biss ghal jedd li ghalih hija intitolata l-persuna akkuzata matul il-proceduri penali fil-qorti izda ukoll ghal hekk imsejjah pre-trial stage u cioe` ghall-istadju meta persuna tkun giet arrestata u ser tigi interrogata. Dina l-fehma ghalhekk tfisser illi lartikolu 6(3)(c) li jipprovdi dwar l-assistenza legali ghandu isib applikazzjoni anke fl-istadju ta`l-interrogazzjoni tal-persuna suspettata. Dana ghaliex huwa principju stabbilit fis-sistema penali taghna illi persuna ghandha titqies li hija innocenti sakemm ma tigix misjuba hatja minn qorti gudizzjarja. Kwindi hija ghandha dritt illi ma tinkriminax ruhha bl-ebda mod u dana sa mill-istadju inizjali ta`l-interrogazzjoni. Sabiex dana d-dritt jigi salvagwardjat ghalhekk kull persuna ghandha d-dritt li tikseb l-assistenza legali u dana sabiex tkun fl-ahjar pozizzjoni illi thejji id-difiza taghha. Dana huwa vitali billi fis-sistema penali taghna il-konfessjoni tal-persuna akkuzata hija prova ewlenija fil-process gudizzjarju istitwit kontra taghha.

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

*Illi f`decizjoni recenti (**Mario Borg vs Malta** 37537/13 12/01/2016) moghtija mill- Qorti Ewropeja Dwar id-Drittijiet tal-Bniedem gew affermati il-principji generali li ghandhom jigu segwiti mill-qrati meta inghad:*

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

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

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

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

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

62. It follows that, also in the present case, the applicant was denied the right to legal assistance at the pre-trial stage as a result of a systemic restriction applicable to all accused persons. This already falls short of the requirements of Article 6 namely that the right to

assistance of a lawyer at the initial stages of police interrogation may only be subject to restrictions if there are compelling reasons (see Salduz, cited above, §§ 52, 55 and 56).

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

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

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

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

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

Maghdud dan allura jidher illi r-regola hi li l-Artikolu 6(1) abbinat ma`l-artikolu 6(3)(c) jitlob li jkun hemm dritt ta` avukat fl-istadju tal-investigazzjoni talpulizija, sakemm ma jigix ippruvat li hemm ragunijiet impellenti ghaliex dan iddritt 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 iljedd lil persuna arrestata, ikun hemm il-periklu li jsehh lezjoni tad-dritt talpersuna 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 ghallassistenza ta`l-avukat matul l-interrogazzjoni similment billi l-ligi tal-pajjiz ma kenitx tippermettiha. (ara ukoll Yesilkaya vs Turkey – 59780/00 08/12/2009, Fazli Kaya vs Turkey – 24820/05 17/09/2015).***

….

fid-decizjoni ***Brusco vs Franza*** *(1466/07 – 14/10/2010) gie deciz:*

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

Illi allura hija fis-setgha ta` din il-Qorti u dan qabel ma jigi determinat il-process gudizzjarju kontra l-appellanti illi twarrab dik l-evidenza illi tmur kontra ilgaranziji moghtija kemm fil-Kostituzzjoni kif ukoll il-Konvenzjoni ghal harsien tal-jedd ghal smiegh xieraq tal-persuna akkuzata. Fil-fatt dan il-jedd gie indikat fid-decizjoni tal-Qorti Ewropeja fil-kaz Dimech vs Malta5 fejn f`dak il-kaz ghalkemm il-Qorti ma setghetx tasal biex tistabbilixxi jekk kienx sehh lezjoni ta`lartikolu 6 tal-Konvenzjoni billi l-proceduri penali kienu ghadhom ma intemmux, madanakollu sahhqet:

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

Illi mill-ezami tal-atti probatorji u minn qari tad-decizjoni impunjata huwa bilwisq evidenti illi ghalkemm fl-istqarrija rilaxxjata minnu, l-appellanti jaghzel li ma jwegibx ghal xi mixtoqsijiet li isirulu, madanakollu huwa iwiegeb ghal ohrajn u l-Ewwel Qorti hadet in konsiderazzjoni dawn id-dikjarazzjonijiet meta giet biex tistabilixxi r-rejita` fl-appellanti u dan meta stqarret testwalment :

"Illi l-akkuza migjuba fil-konfront tad-droga eroina hija dik tal-pussess mhux ghall-uzu esklussiv. Bla dubbju, il-Prosekuzzjoni rnexxielha tipprova l-pussess per se, imbaghad ressqet provi ta` ammont, mizien u stqarrija li jwasslu ghal prova tal-aggravvju. Fil-fatt l-ammont ta` erbgha u erbghin (44) gramma u fuqhom, ghal bniedem li fil-fatt kien aktar ivvizzjat bil-cannabis u kokaina (ara stqarrija u xhieda ta` rapprezentant tal-agenzija Sedqa), huwa ammont kbir u xejn negligibbli."

Illi dan l-Ewwel Qorti ma setghatx taghmlu u allura din il-Qorti ser tilqa` dan laggravvju imressaq `il quddiem mill-appellanti u ghalhekk ser tiskarta l-istqarrija ta`l-appellanti rilaxxjata fis-17 ta` April 2002 bhala prova u dan fid-dawl taddecizjonijiet hawn fuq iccitati.

Ghal dawn il-motivi l-Qorti qed tilqa` dan l-ewwel aggravvju ta`l-appellanti u tordna il-prosegwiment tas-smiegh ta`l-appell skont il-ligi fuq l-aggravvji l-ohra."

(enfazi mizjud)

Din is-sentenza kienet iccitata favorevolment mill-Qorti Kostituzzjonali fis-sentenza taghha tat-3 ta` Mejju 2016 fil-kawza fl-ismijiet **Daniel Alexander Holmes vs Avukat Generali et** u minn Qorti tal-Appell Kriminali (Sede Inferjuri) ohra tas-6 ta`Ottubru 2016 fil-kawza fl-ismijiet **Il-Pulizja (Spettur Jesmond J. Borg) vs Jason Cortis.**

Din ta` l-ahhar ghamlet ukoll is-segwenti osservazzjoni :

Din il-Qorti taqbel pjenament mas-sentenza appena riprodotta u tazzarda zzid illi fil-kwistjoni tal-istqarrija fil-pre trial stage, persuna arrestata ma kellha ebda jedd ghall-xi forma ta` assistenza legali sakemm iddum arrestata inkluz waqt l-interrogatorju. L-Att III tal-19 2002 imbaghad introduca fis-sistema legali taghna forma ta` dritt ta` assistenza legali billi ta il-jedd li persuna arrestata tkun intitolata titkellem wicc imm`wicc jew bit-telefon ma` avukat jew prokuratur legali ghal mhux aktar minn siegha zmien ex artikolu 355 AT tal-Kap 9. Dan il-jedd ma dahalx fis-sistema legali taghna minghajr skossi ghaliex l-artikolu 355 AU imbaghad holoq id-dritt tal-inferenza, igifieri, li f`kaz fejn l-arrestat ikun utilizza d-dritt li jikkonsulta mallegali tieghu, ikun naqas milli jsemmi fatti li ragonevolment ikun

mistenni li jsemmi, l-Qorti, allura fi stadju wara l-pre trial stage, "tista taghmel dawk l-inferenzi minn dan in-nuqqas bhala jidhru xierqa, liema inferenzi ma jistghux wahedhom jitqiesu bhala prova ta` htija izda jistghu jitqiesu bhala li jammontaw ghal korroborazzjoni ta` kull xhieda ta` htija tal-persuna akkuzata jew imputata". Dan ifisser illi ma tistghax issir tali inferenza f`dak il-kaz li l-persuna arrestata tghazel li ma tghamilx uzu mill-jedd ghall-assistenza legali. Ezaminati dawn ilprovvediment mad-Direttiva numru 2013/48/EU tal-Parlament Ewropew u tal-Kunsill dwar id-dritt ghall-assistenza legali waqt larrest, jista` jkun hemm lok ghal-dibattitu dwar kemm ilprovvedimenti tal-Kap 9 jirrispekkjaw d-dritt ghall-assistenza legali moghti lill-arrestat tenut kont ukoll illi dan id-dritt, kif ezistenti llum taht il-ligi taghna, huwa ristrett ghal siegha qabel l-interoggatorju u b`hekk jeskludi l-jedd tal-presenza tal-avukat waqt l-istess interrogatorju. F`dak l-istadju l-arrestat huwa soggett ghalmistoqsijiet diretti u suggestivi bir-risposti taghhom, anke jekk jghazel li ma jwegibx, bit-traskrizzjoni tieghu tkun eventwalment esebita fil-proceduri kontih fejn ikun meqjus innocenti sakemm pruvat mod iehor.

Tajjeb li jkun rilevat ukoll illi l-Att III tal-2002 ma dahalx fis-sehh qabel is-sena 2010.

Pronunjament iehor kien dak tal-Qorti Kostituzzjonali tat-13 ta` Frar 2017 fil-kaz **Il-Pulizija (Spettur Malcolm Bondin) vs Clayton Azzopardi** fejn inghad :-

Tqis li l-uzu ta` l-istqarrija mehuda minghajr l-assistenza legali fi process kriminali (nonostante li fiha Azzopardi fil-maggor parti taghha ghazel li ma jwegibx) huwa leziv ghad-dritt ta` smigh xieraq tal-imputat u dana bi ksur tal-artikolu 39 talKostituzzjoni u l-artikolu 6 tal-Konvenzjoni Ewropea. Jinghad dan ukoll ghax id-dritt ta` smigh xieraq fis-sens ta` fair trial jissusisti waqt ilproceduri per se u huma precizament dawk il-proceduri li Clayton Azzopardi qed jikkawtela kontra il-lezjoni in ezami. Ghalkemm fil- Referenza Kostituzzjonali Numru 12/2016 13/02/2017 8 kawza ta` Borg gie mcanfar in-nuqqas sistematiku ta` dan id-dritt fil-ligi penali taghna (u ben konxja minn dak li ntqal fil-kawza ta` Danayan), fil-verità stqarrija hekk mehuda, li tibqa` però ma ssib ebda uzu fi proceduri kriminali, qajla tista` tippregudika smigh xieraq, fair trial. Din il-qorti fil-fatt tiffavorixxi l-insenjament tal-Qorti Kostituzzjonali suriferit fil-kawza Malcolm Said suriferita. Dan huwa fl-opinjoni tal-qorti aktar imsahhah b`decizjoni li tat il-Qorti Kostituzzjonali taghna nhar il-11 ta` Lulju 2016 fl-ismijiet Aaron Cassar v. Avukat Generali et fejn qalet firrigward ta` proceduri kriminali mitmuma li "... din il-qorti temmen u ttenni illi l-interpretazzjoni minnha moghtija fis-sentenzi fuq imsemmija (Charles Steven Muscat v. Avukat Generali) hija interpretazzjoni korretta u proporzjonata illi tilqa` ghal abbuzi min-naha tal-prosekuzzjoni u thares id-drittijiet ta` persuna akkuzata b`reat kriminali, jidher li din l-

interpretazzjoni – ghallinqas fejn il-process kriminali jkun intemm – illum ma ghadhiex aktar tenibbli fid-dawl tas-sentenza ta` Borg v. Malta msemmija mill-ewwel qorti, li tqis il-fatt biss ta` nuqqas ta` ghajnuna ta` avukat bhala ksur tal-art 6(1) moqri mal-art. 6(3) tal-Konvenzjoni"

Il-Qorti Kostituzzjonali spjegat li f`dan l-istadju tal-proceduri pendenti :

" … ghadu ma sehh ebda ksur tal-jedd ghal smigh xieraq. Madankollu, kif osservat fil-kaz ta` Malcolm Said, il-qorti xorta hija tal-fehma li ma jkunx ghaqli li l-process kriminali jithalla jitkompla bil-produzzjoni tal-istqarrija tal-attur ukoll jekk, kif josserva lAvukat Generali, ma jidher li hemm xejn komprometttenti ghall-attur fiha. Il-qorti tasal ghal din il-konkluzjoni fid-dawl tal-posizzjoni li hadet il-Qorti Ewropea fil-kaz ta` Borg. Ghalhekk, ghalkemm ghadu ma sehh ebda ksur tal-jedd ghal smigh xieraq, fic-cirkostanzi huwa xieraq illi, kif qalet l-ewwel qorti, ma jsir ebda uzu mill-istqarrija fil-process kriminali sabiex, meta l-process kriminali jintemm, ma jkunx tnigges b`irregolarità li tista` twassal ghal konsegwenzi bhal dawk fil-kaz ta` Borg.

Il-qorti ghalhekk sejra tilqa` dan l-aggravju fis-sens biss li tghid illi ma hemm ebda ksur tal-jedd ghal smigh xieraq imhares taht l-art. 6 tal-Konvenzjoni izda jkun hemm tali ksur jekk isir uzu mill-istess stqarrija fil-proceduri kriminali kontra l-appellant Clayton Azzopardi"

Hu minnu li fiz-zmien li ttiehdet l-istqarrija l-persuna suspettata li wettqet reat ma kenitx tinghata l-opportunità li tkellem avukat qabel taghmel stqarrija. Sal-lum il-ligi Maltija lanqas taghtih id-dritt li jkun assistit minn avukat waqt li jkun qieghed jaghmel l-istqarrija.

Fil-*Factsheet* tal-ECHR li harget Settembru 2016 that it-titolu : **Police arrest and assistance of a lawyer** kienu citati diversi decizjonijiet dwar id-dritt ghal assistenza legali.

Din hija sintesi ta` whud mid-decizjonijiet :-

i. **Pishchalnikov v. Russia : 24 September 2009**

"Arrested on suspicion of aggravated robbery, the applicant was interrogated – both on the day of his arrest and immediately on the following day – in the absence of a lawyer, although he had clearly indicated a defence counsel he wanted to represent him. During these interrogations he confessed to having taken part in the activities of a criminal group which included among others a murder and kidnapping, crimes for which he was later convicted. The Court held

that there had been a violation of Article 6 § 3 (c) in conjunction with Article 6 § 1 of the Convention. It found that the lack of legal assistance to the applicant at the initial stages of police questioning had affected irreversibly his defence rights and undermined the possibility of him receiving a fair trial.

ii. **Yeşilkaya v. Turkey : 8 December 2009**

"The applicant was refused access to a lawyer while in police custody, although he had denied any involvement in the offences imputed to him by the interviewing officers. The Court held that there had been a violation of Article 6 § 3 (c) taken together with Article 6 § 1 of the Convention on account of the lack of legal assistance to the applicant while in police custody.

iii. **Boz v. Turkey : 9 February 2010**

Arrested on suspicion of belonging to the PKK (Workers` Party of Kurdistan, an illegal organisation), the applicant was at the end of his trial sentenced to the death penalty for "membership of an armed gang", a sentence which was subsequently commuted to life imprisonment. He complained in particular of the fact that he did not have access to a lawyer while in police custody. The Court reiterated that systematic restriction of access to a lawyer pursuant to the relevant legal provisions breached Article 6 of the Convention.

iv. **Brusco v. France : 14 October 2010**

The applicant, who was suspected of having masterminded an aggression, was taken into police custody and questioned as a witness, after being made to swear to tell the truth. The Court held that there had been a violation of Article 6 §§ 1 and 3 (right to remain silent and not to incriminate oneself) of the Convention. According to the Court, the applicant was not a mere witness but a person "charged with a criminal offence", and as such should have had the right to remain silent and not to incriminate himself, guaranteed by Article 6 §§ 1 and 3 of the Convention. The situation was aggravated by the fact that the applicant was not assisted by a lawyer until his 20th hour in police custody. Had a lawyer been present, he would have been able to inform the applicant of his right to remain silent.

v. **Nechiporuk and Yonkalo v. Ukraine : 21 April 2011**

The first applicant complained in particular about the unfairness of the proceedings against him, notably that his conviction for a number of offences, including premeditated murder for profit committed following a conspiracy with a group of persons, had been based on statements made without the assistance of a lawyer. The Court held that there had been a violation of Article 6 §§ 1 and 3 (c) of the Convention. It was

undisputed by the parties that the applicant had not become legally represented until having spent three days in detention. The applicant had confessed several times to murder at the early stage of his interrogation when he was not assisted by counsel, and had undoubtedly been affected by the restrictions on his access to a lawyer in that his confessions to the police were used for his conviction.

vi. **Mader v. Croatia : 21 June 2011**

Serving a prison sentence for murder, the applicant complained in particular of having been beaten by the police during his questioning at the Zagreb Police Department, of having been forced to sit on a chair and having been deprived of sleep and food during the three days that he was questioned. He also complained that the criminal proceedings against him had been unfair, in particular as he had lacked legal assistance during the police questioning. The Court held that there had been a violation of Article 6 § 3 in conjunction with Article 6 § 1 of the Convention, on account of the lack of legal assistance afforded to the applicant during his questioning by the police. While it was not for the Court to speculate on the impact which access to a lawyer during police custody would have had on the ensuing proceedings, it was clear that neither the assistance provided subsequently by a lawyer nor the adversarial nature of the proceedings could counteract the defects which had occurred during his initial questioning. The applicant had further not waived his right to legal assistance during his police questioning, as he had complained about the lack of that assistance from the initial stages of the proceedings. The Court also held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention both in respect of the applicant`s treatment at the Zagreb Police Department and in respect of the failure to investigate his complaint.

vii. **Bandaletov v. Ukraine : 31 October 2013**

The applicant was summoned to a police station with several others for questioning as a witness in connection with an investigation into a double murder committed in his home. He confessed to the offence. The following day he was arrested as a suspect and a lawyer was appointed to assist him. The applicant at all times thereafter confirmed his confession. He was sentenced to life imprisonment. The applicant complained that at the initial stage of the investigation he had not been assisted by a lawyer, and that the domestic courts had failed to mitigate his sentence even though he had voluntarily surrendered to the police and confessed to the crime. The Court held that there had been no violation of Article 6 §§ 1 and 3 of the Convention, finding that the criminal proceedings against the applicant had been fair overall. The domestic authorities had changed the applicant`s status from witness to suspect and provided him with a lawyer as soon as they had plausible reasons to suspect him. At his first interview as a suspect the

applicant was legally represented and no investigative measures were taken after his initial confession before he had been assigned a lawyer. The applicant had maintained his confession throughout the pre-trial investigation and judicial proceedings, during which he was represented by several different lawyers. His initial confession could hardly be regarded as having been used to convict him, as the trial court had relied exclusively on the investigative measures conducted afterwards, when the applicant already had legal assistance. Lastly, the applicant`s request for mitigation of sentence on the ground of his voluntary surrender had been examined by the domestic courts.

viii. **Pakshayev v. Russia : 13 March 2014**

Convicted of murder and sentenced to ten years` imprisonment in January 2001 – the conviction being eventually upheld in October 2006 – the applicant complained that he had been denied access to a lawyer during his questioning and first few days of police custody in May 1997. He submitted that during the questioning he had been threatened by the investigator that if he did not confess he would be raped by his cellmates. The applicant then confessed to the murder but retracted his confession during the trial when represented by a lawyer. Before the Court, he complained that he had not had any legal assistance during the initial stage of the criminal proceedings and that the confession he had made was then used to convict him. The Court held that there had been a violation of Article 6 §§ 1 and 3 of the Convention, finding that the use of his confession statement made without the benefit of legal advice for the applicant`s conviction undermined the fairness of the proceedings as a whole.

ix. **Blaj v. Romania : 8 April 2014**

The applicant, who was suspected of accepting a bribe, had been placed under police surveillance. A third party who had been cooperating with the police came to meet him and left an envelope containing money on his desk. The police officers intervened immediately and caught the applicant red handed. In accordance with domestic law, they drew up a report of the offence. Later that day the applicant was informed of the charges against him and of the fact that he had a right to remain silent and to see a lawyer. Subsequently he had the assistance of a lawyer during questioning. The applicant complained in particular that he had not been informed of his right to silence and legal representation at the time when he was "caught in the act". The Court held that there had been no violation of Article 6 §§ 1 and 3 of the Convention in respect of the lack of assistance from a lawyer during the applicant`s questioning by the police under the flagrante delicto procedure. Observing that under Romanian law where a person is "caught in the act" of committing an offence, the investigating authorities must confine themselves to questions about the material evidence found at the scene of the flagrante delicto and must not question the person about his

involvement in a criminal offence, it found that the investigating authorities had not overstepped the mark in the applicant`s case. It also noted that when the applicant had been questioned by the anti-corruption prosecutor about the offence he had had access to a lawyer. In all his statements, the applicant had maintained his innocence and had never contested the statements contained in the procès-verbal. The Court therefore found that the use of those statements at trial could not be said to have prejudiced the fairness of his trial. The Court also noted in conclusion that the applicant had never alleged that his very first statements recorded in the procès-verbal had been the result of duress or ill treatment.

x. **Çarkçı (no. 2) v. Turkey : 14 October 2014**

Serving a life sentence for participating in an armed robbery of a jewellery shop during which the shop owner was shot dead, the applicant complained in particular that the criminal proceedings against him had been unfair. Notably, he alleged that the statements taken from him without the assistance of a legal representative and not even bearing his signature had been used as evidence to convict him. The Court held that there had been a violation of Article 6 § 3 (c) taken in conjunction with Article 6 § 1 of the Convention, on account of the lack of legal assistance afforded to the applicant while in the custody of the gendarmerie.

xi. **A.T. v. Luxembourg : 9 April 2015**

This case concerned the failure to provide the applicant with effective legal assistance after he was arrested under a European Arrest Warrant, during both his police interview and his first appearance before the investigating judge the next day. The Court found in particular that, as regards the police interview, the statutory provisions then in force implicitly excluded the assistance of a lawyer for persons arrested under a European Arrest Warrant issued by Luxembourg. Since the domestic court had not remedied the consequences of that lack of assistance, by excluding from its reasoning the statements taken during that interview, the Court held that there had been a violation of Article 6 § 3 (c) taken together with Article 6 § 1 of the Convention on account of the failure to provide legal assistance during the police interview. As further regards the applicant`s first appearance before the investigating judge, the Court found that the lack of access to the file prior to that hearing had not constituted a violation of Article 6 § 3 (c) taken together with Article 6 § 1, as Article 6 of the Convention did not guarantee unlimited access to the file prior to such an appearance. However, the Court held that the possibility for the applicant to consult his lawyer before that hearing was not sufficiently guaranteed by Luxembourg law. In so far as the applicant had not been able to converse with his lawyer before the hearing in question, the Court thus

found a violation of Article 6 § 3 (c) taken together with Article 6 § 1 of the Convention.

Il-Qorti in fatti spjegat :

"*The Court emphasises in that respect that the fairness of proceedings requires that an accused be able to obtain the whole range of services, specifically associated, with legal assistance, pointing out that discussion of the case, organisation of the defence, collection of evidence favourable to the accused, preparation for questioning, support of an accused in distress and checking of the conditions of detention were fundamental aspects of the defence…Moreover, an accused often finds himself in a particularly vulnerable position at the investigation stage of the proceedings, the effect of which is amplified by the fact that legislation on criminal procedure tends to become increasingly complex, notably with respect to the rules governing the gathering and use of evidence. In most cases, this particular vulnerability can only be properly compensated for by the assistance of a lawyer, whose task is, among other thing, to help to ensure respect of the right of an accused not to incriminate himself.*"

xii. **<u>Turbylev v. Russia : 6 October 2015</u>**

This case concerned the applicant`s complaint of having been ill-treated in police custody and of the unfairness of the criminal trial against him, in which his statement of "surrender and confession", made as a result of his ill-treatment and in the absence of a lawyer, was used as evidence. The Court held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention, both on account of the applicant`s ill-treatment and on account of the ineffective investigation into the related complaints. It also held that there had been a violation of Article 6 §§ 1 and 3 (c) of the Convention, finding that the admission of the statement of "surrender and confession" as evidence had rendered the applicant`s trial unfair. The Court observed in particular that the absence of a requirement, under Russian law, of access to a lawyer for such a statement had been used to circumvent the applicant`s right as a de facto suspect to legal assistance. This situation had resulted from the systematic application of legal provisions, as interpreted by the domestic courts. Moreover, in failing to conduct an independent careful assessment of the "quality" of the statement as evidence, and instead relying on the investigative authority`s findings, the domestic courts had legalised the police officers` use of a statement of "surrender and confession" to document the applicant`s confession obtained as a result of his inhuman and degrading treatment after his apprehension on suspicion of having committed a crime.

xiii. **<u>Ibrahim and Others v. the United Kingdom</u>**
<u>13 September 2016 : (Grand Chamber)</u>

On 21 July 2005 four bombs were detonated on the London transport system but failed to explode. The perpetrators fled the scene and a police investigation immediately commenced. The first three applicants were arrested on suspicion of having detonated three of the bombs. The fourth applicant was initially interviewed as a witness in respect of the attacks but it subsequently became apparent that he had assisted one of the bombers after the failed attack and, after he had made a written statement, he was also arrested. All four applicants were later convicted of criminal offences. The case concerned the temporary delay in providing the applicants with access to a lawyer, in respect of the first three applicants, after their arrests, and, as regards the fourth applicant, after the police had begun to suspect him of involvement in a criminal offence but prior to his arrest; and the admission at their subsequent trials of statements made in the absence of lawyers. The Court held that there had been no violation of Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance) of the Convention in respect of the three first applicants and that there had been a breach of those provisions in respect of the fourth applicant. In respect of the three first applicants the Court was convinced that, at the time of their initial police questioning, there had been an urgent need to avert serious adverse consequences for the life and physical integrity of the public, namely further suicide attacks. There had therefore been compelling reasons for the temporary restrictions on their right to legal advice. The Court was also satisfied that the proceedings as a whole in respect of each of the first three applicants had been fair. The position with regard to the fourth applicant, who also complained about the delay in access to a lawyer, was different. He was initially interviewed as a witness, and therefore without legal advice. However, it emerged during questioning that he had assisted a fourth bomber following the failed attack. At that point, according to the applicable code of practice, he should have been cautioned and offered legal advice. However, this was not done. After he had made a written witness statement, he was arrested, charged with, and subsequently convicted of, assisting the fourth bomber and failing to disclose information after the attacks. In his case, the Court was not convinced that there had been compelling reasons for restricting his access to legal advice and for failing to inform him of his right to remain silent. It was significant that there was no basis in domestic law for the police to choose not to caution him at the point at which he had started to incriminate himself. The consequence was that he had been misled as to his procedural rights. Further, the police decision could not subsequently be reviewed as it had not been recorded and no evidence had been heard as to the reasons behind it. As there were no compelling reasons, it fell to the UK Government to show that the proceedings were nonetheless fair. In the Court`s view they were unable to do this and it accordingly concluded that the overall fairness of the fourth applicant`s trial had been

prejudiced by the decision not to caution him and to restrict his access to legal advice.

xiv. **Simeonovi v. Bulgaria : 20 October 2015**

The applicant, who is currently serving a sentence in Sofia Prison, alleges in particular that he was not assisted by a lawyer during the first days of his detention, and complains that his subsequent conversations with his lawyers in the temporary detention centre took place with an investigator present. In its Chamber judment, the Court held, unanimously, that there had been no violation of Article 6 § 3 (c) taken together with Article 6 § 1of the Convention. The Chamber considered that the fact that the applicant had not been assisted by a lawyer during the first three days of his detention had not infringed his right to defend himself effectively in the context of the criminal proceedings. His right not to incriminate himself had been complied with and the fairness of the criminal proceedings had indeed been respected.

Fil-kaz ta` **Dayanan v. Turkey** tat-13 ta` Ottubru 2009 l-ECHR qalet hekk :-

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

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

33. In the present case it is not disputed that the applicant did not have legal assistance while in police custody because it was not possible under the law then in force (see Salduz, cited above, §§ 27 and 28). A systematic restriction of this kind, on the basis of the relevant statutory provisions, is sufficient in itself for a violation of

Article 6 to be found, notwithstanding the fact that the applicant remained silent when questioned in police custody."

F`artikolu ppubblikat f`The New Journal of European Criminal Law, Vol. 7, Issue 4, 2016 intestat **<u>The Rights of the Defence according to the ECtHR – An Illustration in the Light of A.T. v Luxembourg and the Right to Legal Assistance</u>**, Vânia Costa Ramos tghid hekk :-

In respect of the contents of the right to legal assistance, after Salduz some states had alleged that while the right attached from the moment when the person was held in pre-trial or police custody and was subject to police interrogation, it did not imply that the lawyer had to be present during questioning.

*The ECtHR stated otherwise in **<u>Karabil v. Turkey</u>** (Second Section judgment of 16.06.2009, application no. 5256/02), establishing that the suspect benefited from legal assistance during his questioning, which was underlined in **<u>Navone and others v. Monaco</u>** (First Section judgment of 24.10.2013, applications no. 62880/11, 62892/11 62899/11) :*

79. La Cour souligne à ce titre qu`elle a plusieurs fois précisé que l`assistance d`un avocat durant la garde à vue doit notamment s`entendre, au sens de l`Article 6 de la Convention, comme l`assistance "pendant les interrogatoires" (Karabil c. Turquie, no 5256/02, §44, 16 juin 2009, Ümit Aydin c. Turquie, no 33735/02, §47, 5 janvier 2010, et Boz, précité, §34), et ce dès le premier interrogatoire (Salduz, précité, §55, et Brusco, précité, §54).

80. Par ailleurs, elle a déjà jugé qu`une application systématique de dispositions légales pertinentes qui excluent la possibilité d`être assisté par un avocat pendant les interrogatoires suffi t, en soi, à conclure à un manquement aux exigences de l`Article 6 de la Convention (voir, en premier lieu, Salduz, précité, §§56 et 61–62).

*In **<u>Dayanan v. Turkey</u>** (Chamber judgment of 13.01.2009, application no. 7377/03) the Court went further in clarifying that the right attached from the moment the person was taken into custody and that the lawyer`s role in the pre-trial stage included not only assistance during the interrogation, but even extended to further areas:*

32. In accordance with the generally recognised international norms, which the Court accepts and which form the framework for its case-law, an accused person is entitled, as soon as he or she is taken into custody, to be assisted by a lawyer, and not only while being questioned (for the relevant international legal materials see Salduz, cited above, §§37–44). Indeed, the fairness of proceedings requires that

an accused be able to obtain the whole range of services specifi cally associated with legal assistance. In this regard, counsel has to be able to secure without restriction the fundamental aspects of that person`s defence: discussion of the case, organisation of the defence, collection of evidence favourable to the accused, preparation for questioning, support of an accused in distress and checking of the conditions of detention."

Addirittura fil-kaz ta` **Dvorski v. Croatia**, l-ECHR kienet rinfaccjata b`ilment minhabba li waqt l-ghoti ta` stqarrija, il-persuna li kienet qed tigi akkuzata kienet rapprezentata minn avukat, mhux ta` l-ghazla tieghu izda minn avukat li gie offrut mill-pulizija.

Fis-sentenza li nghatat mill-Grand Chamber fl-20 ta` Ottubru 2015, inghad hekk :-

76. The Court reiterates that, even if the primary purpose of Article 6 of the Convention, as far as criminal proceedings are concerned, is to ensure a fair trial by a "tribunal" competent to determine "any criminal charge", it does not follow that the Article has no application to pre-trial proceedings. Thus, Article 6 – especially paragraph 3 thereof – may be relevant before a case is sent for trial if and so far as the fairness of the trial is liable to be seriously prejudiced by an initial failure to comply with its provisions. As the Court has already held in its previous judgments, the right set out in Article 6 § 3 (c) of the Convention is one element, among others, of the concept of a fair trial in criminal proceedings contained in Article 6 § 1 (see Imbrioscia v. Switzerland, 24 November 1993, §§ 36 and 37, Series A no. 275, and Salduz v. Turkey [GC], no. 36391/02, § 50, ECHR 2008).

77. The Court has held that in order to exercise his right of defence, the accused should normally be allowed to have the effective benefit of the assistance of a lawyer from the initial stages of the proceedings because national laws may attach consequences to the attitude of an accused at the initial stages of police interrogation which are decisive for the prospects of the defence in any subsequent criminal proceedings (see Salduz, cited above, § 52). The Court has also recognised that an accused often finds himself in a particularly vulnerable position at that stage of the proceedings, and in most cases this can only be properly compensated for by the assistance of a lawyer, whose task is, among other things, to help to ensure that the right of an accused not to incriminate himself is respected (ibid., § 54; see also Pavlenko v. Russia, no. 42371/02, § 101, 1 April 2010).

78. In such circumstances, the Court considers it important that from the initial stages of the proceedings, a person charged with a criminal offence who does not wish to defend himself in person must

be able to have recourse to legal assistance of his own choosing (for more detailed reasoning see Martin v. Estonia, no. 35985/09, §§ 90 and 93, 30 May 2013). This follows from the very wording of Article 6 § 3 (c), which guarantees that "[e]veryone charged with a criminal offence has the following minimum rights: ... to defend himself ... through legal assistance of his own choosing ...", and is generally recognised in international human rights standards as a mechanism for securing an effective defence to the accused. The Court emphasises that the fairness of proceedings requires that an accused should be able to obtain the whole range of services specifically associated with legal assistance (see Dayanan v. Turkey, no. 7377/03, § 32, 13 October 2009, and paragraph 110 below).

79. Notwithstanding the importance of the relationship of confidence between a lawyer and his client, this right is not absolute. It is necessarily subject to certain limitations where free legal aid is concerned and also where it is for the courts to decide whether the interests of justice require that the accused be defended by counsel appointed by them (see Croissant v. Germany, 25 September 1992, § 29, Series A no. 237-B). The Court has consistently held that the national authorities must have regard to the defendant`s wishes as to his or her choice of legal representation, but may override those wishes when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice (ibid., § 29; see also Meftah and Others v. France [GC], nos. 32911/96, 35237/97 and 34595/97, § 45, ECHR 2002-VII; Mayzit v. Russia, no. 63378/00, § 66, 20 January 2005; Klimentyev v. Russia, no. 46503/99, § 116, 16 November 2006; Vitan v. Romania, no. 42084/02, § 59, 25 March 2008; Pavlenko, cited above, § 98; Zagorodniy v. Ukraine, no. 27004/06, § 52, 24 November 2011; and Martin, cited above, § 90). Where such grounds are lacking, a restriction on the free choice of defence counsel would entail a violation of Article 6 § 1 together with paragraph 3 (c) if it adversely affected the applicant`s defence, regard being had to the proceedings as a whole (ibid., § 31; see also Meftah and Others, cited above, §§ 46-47; Vitan, cited above, §§ 58-64; Zagorodniy, cited above, §§ 53-55; and Martin, cited above, §§ 90-97).

80. Moreover, having regard to the considerations mentioned above, as the Court affirmed in its Salduz judgment, in order for the right to a fair trial to remain "practical and effective", Article 6 § 1 requires that, as a rule, access to a lawyer should be provided 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 a 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 questioning without access to a lawyer are used

for a conviction (see Salduz, cited above, § 55-57 and see also Panovits v. Cyprus, no. 4268/04, § 66, 11 December 2008).

81. Unlike in Salduz, where the accused, held in custody, had been denied access to a lawyer during police questioning, the present case concerns a situation where the applicant was afforded access to a lawyer from his first interrogation, but not – according to his complaint – a lawyer of his own choosing. In contrast to the cases involving denial of access, the more lenient requirement of "relevant and sufficient" reasons has been applied in situations raising the less serious issue of "denial of choice". In such cases the Court`s task will be to assess whether, in the light of the proceedings as a whole, the rights of the defence have been "adversely affected" to such an extent as to undermine their overall fairness (see, for example, Croissant, cited above, § 31; Klimentyev, cited above, §§ 117-118; and Martin, cited above, §§ 96-97).

82. It is the latter test which is to be applied in the present case. Against the above background, the Court considers that the first step should be to assess whether it has been demonstrated in the light of the particular circumstances of each case that there were relevant and sufficient grounds for overriding or obstructing the defendant`s wish as to his or her choice of legal representation. Where no such reasons exist, the Court should proceed to evaluate the overall fairness of the criminal proceedings. In making its assessment, the Court may have regard to a variety of factors, including the nature of the proceedings and the application of certain professional requirements (see Meftah and Others, cited above, §§ 45-48, and Martin, cited above, § 90); the circumstances surrounding the designation of counsel and the existence of opportunities for challenging this (ibid., §§ 90-97); the effectiveness of counsel`s assistance (see Croissant, cited above § 31, and Vitan, cited above §§ 58-64); whether the accused`s privilege against selfincrimination has been respected (see Martin, cited above, § 90); the accused`s age (ibid., § 92); and the trial court`s use of any statements given by the accused at the material time (see, for example, Croissant, cited above, § 31, Klimentyev, cited above, §§ 117-118; and Martin, cited above, §§ 94-95). It is further mindful that the Convention is intended to guarantee rights that are practical and effective and not theoretical and illusory (see, among many other authorities, Airey v. Ireland, 9 October 1979, § 24, Series A no. 32; Imbrioscia, cited above, § 38; Goddi v. Italy, 9 April 1984, § 30, Series A no. 76; and Salduz, cited above, § 55) and that in determining Convention rights one must frequently look beyond appearances and concentrate on the realities of the situation (see, inter alia, Delcourt v. Belgium, 17 January 1970, § 31, Series A no. 11; De Jong, Baljet and Van den Brink v. the Netherlands, 22 May 1984, § 48, Series A no. 77; Pavlenko, cited above, § 112; and Erkapić v. Croatia, no. 51198/08, §§ 80- 82, 25 April 2013). In cases where the accused had no legal representation, the Court also took into consideration the opportunity

given to the accused to challenge the authenticity of evidence and to oppose its use (see Panovits, cited above, § 82), whether the accused is in custody (Salduz, cited above, § 60); whether such statements constituted a significant element on which the conviction was based and the strength of the other evidence in the case (Salduz, cited above, § 57; and Panovits cited above, §§ 76 and 82).

Il-Qorti sabet li kien hemm vjolazzjoni ta` l-Art 6(1) u (3)(c) tal-Konvenzjoni, anke f`dan il-kaz fejn il-persuna koncernata kien assistit waqt l-interrogazzjoni mhux minn avukat tal-ghazla tieghu :

108. In this connection, the Court again underlines the importance of the investigation stage for the preparation of the criminal proceedings, as the evidence obtained during this stage determines the framework in which the offence charged will be considered at the trial (see Salduz, cited above, § 54), and emphasises that a person charged with a criminal offence should already be given the opportunity at this stage to have recourse to legal assistance of his or her own choosing (see Martin, cited above, § 90). The fairness of proceedings requires that an accused should be able to obtain the whole range of services specifically associated with legal assistance. In this regard, counsel has to be able to secure without restriction the fundamental aspects of that person`s defence: discussion of the case, organisation of the defence, collection of evidence favourable to the accused, preparation for questioning, support for an accused in distress and checking of the conditions of detention (see Dayanan, cited above, § 32).

109. Where, as in the present case, it is alleged that the appointment or the choice by a suspect of the lawyer to represent him has influenced or led to the making of an incriminating statement by the suspect at the very outset of the criminal investigation, careful scrutiny by the authorities, notably the national courts, is called for. However, the reasoning employed by the national courts in the present case in relation to the legal challenge mounted by the applicant concerning the manner in which his confession had been obtained by the police was far from substantial. Neither the trial court nor the investigating judge nor any other national authority took any steps to obtain evidence from G.M. or the police officers involved in order to establish the relevant circumstances surrounding G.M.`s visit to Rijeka Police Station on 14 March 2007 in connection with the applicant`s questioning by the police. In particular, the national courts made no real attempt to provide reasons supporting or justifying their decision in terms of the values of a fair criminal trial as embodied in Article 6 of the Convention.

110. In these circumstances, having regard to the purpose of the Convention, which is to protect rights that are practical and effective (see Lisica v. Croatia, no. 20100/06, § 60, 25 February 2010), the

Court is not convinced that the applicant had an effective opportunity to challenge the circumstances in which M.R. had been chosen to represent him during police questioning.

111. In determining whether, taking the criminal proceedings as a whole, the applicant received the benefit of a "fair hearing" for the purposes of Article 6 § 1, the Court must have regard to the actions of the police in effectively preventing the applicant, at the very outset of the investigation, from having access to the lawyer chosen by his family and from freely choosing his own lawyer, and to the consequences of the conduct of the police for the subsequent proceedings. In the abstract, if a suspect receives the assistance of a qualified lawyer, who is bound by professional ethics, rather than another lawyer whom he or she might have preferred to appoint, this is not in itself sufficient to show that the whole trial was unfair – subject to the proviso that there is no evidence of manifest incompetence or bias (see Artico v. Italy, 13 May 1980, § 33, Series A no. 37). In the instant case, it can be presumed that the consequence of the police`s conduct was that in his very first statement to the police, instead of remaining silent, as he could have done, the applicant made a confession, which was subsequently admitted in evidence against him. It is also significant that during the investigation and ensuing trial the applicant did not subsequently rely on his confession, save by way of mitigation in relation to the sentence, but took the first opportunity, before the investigating judge, to contest the manner in which the confession had been obtained from him by the police (see paragraph 23 above). Although there was other evidence against him, the significant likely impact of his initial confession on the further development of the criminal proceedings against him cannot be ignored by the Court. In sum, in the Court`s view, the objective consequence of the police`s conduct in preventing the lawyer chosen by the applicant`s family from having access to him was such as to undermine the fairness of the subsequent criminal proceedings in so far as the applicant`s incriminating initial statement was admitted in evidence.

112. The Court has found that the police did not inform the applicant either of the availability of the lawyer G.M. to advise him or of G.M.`s presence at Rijeka Police Station; that the applicant, during police questioning, confessed to the crimes with which he was charged and that this confession was admitted in evidence at his trial; and that the national courts did not properly address this issue and, in particular, failed to take adequate remedial measures to ensure fairness. These factors, taken cumulatively, irretrievably prejudiced the applicant`s defence rights and undermined the fairness of the proceedings as a whole.

113. The Court therefore finds that in the circumstances of the present case there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.."

Il-kaz fuq citat ta` **Simeonovi vs Bulgaria** mar quddiem il-Grand Chamber.

Fid-decizjoni tal-Grand Chamber tat-12 ta` Mejju 2017 kien trattat l-Art 6 tal-Konvenzjoni fil-kuntest ta` prociediment kriminali.

Inghad :-

"110. The protections afforded by Article 6 §§ 1 and 3 apply to a person subject to a "criminal charge", within the autonomous Convention meaning of that term. A "criminal charge" exists from the moment that an individual is officially notified by the competent authority of an allegation that he has committed a criminal offence, or from the point at which his situation has been substantially affected by actions taken by the authorities as a result of a suspicion against him (see Deweer v. Belgium, 27 February 1980, §§ 42-46, Series A no. 35; Eckle v. Germany, 15 July 1982, § 73, Series A no. 51; McFarlane v. Ireland [GC], no. 31333/06, § 143, 10 September 2010; and, more recently, Ibrahim and Others v. the United Kingdom [GC], nos. 50541/08 and 3 others, § 249, ECHR 2016).

111. Thus, for example, a person arrested on suspicion of having committed a criminal offence (see, among other authorities, Heaney and McGuinness v. Ireland, no. 34720/97, § 42, ECHR 2000-XII, and Brusco v. France, no. 1466/07, §§ 47-50, 14 October 2010), a suspect questioned about his involvement in acts constituting a criminal offence (see Aleksandr Zaichenko v. Russia, no. 39660/02, §§ 41-43, 18 February 2010; Yankov and Others v. Bulgaria, no. 4570/05, § 23, 23 September 2010; and Ibrahim and Others, cited above, § 296) and a person who has been formally charged, under a procedure set out in domestic law, with a criminal offence (see, among many other authorities, Pélissier and Sassi v. France [GC], no. 25444/94, § 66, ECHR 1999-II, and Pedersen and Baadsgaard v. Denmark [GC], no. 49017/99, § 44, ECHR 2004-XI) can all be regarded as being "charged with a criminal offence" and claim the protection of Article 6 of the Convention. It is the actual occurrence of the first of the aforementioned events, regardless of their chronological order, which triggers the application of Article 6 in its criminal aspect."

Dwar id-dritt ghall-assistenza legali, inghad hekk :

"112. The Court reiterates that the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, as guaranteed by Article 6 § 3 (c), is one of the fundamental features of a fair trial (see Salduz, cited above, § 51, and Dvorski v. Croatia [GC], no. 25703/11, § 76, ECHR 2015). Prompt access to a lawyer constitutes an important counterweight to the vulnerability of suspects in police custody, provides a fundamental safeguard against coercion and illtreatment of suspects by the police, and contributes to the prevention of miscarriages of justice and the fulfilment of the aims of Article 6, notably equality of arms between the investigating or prosecuting authorities and the accused (see Salduz, cited above, §§ 53-54, and Ibrahim and Others, cited above, § 255).

113. Article 6 § 3 (c) does not therefore secure an autonomous right but must be read and interpreted in the light of the broader requirement of fairness of criminal proceedings, considered as a whole, as guaranteed by Article 6 § 1 of the Convention. In particular, compliance with the requirements of a fair trial must be examined in each case with regard to the development of the proceedings as a whole and not on the basis of an isolated consideration of one particular aspect or one particular incident, although it cannot be ruled out that a specific factor may be so decisive as to enable the fairness of the trial to be assessed at an earlier stage in the proceedings (see Ibrahim and Others, cited above, §§ 250 and 251). Article 6 § 3 (c) leaves to the Contracting States the choice of the means of ensuring that it is secured in their judicial system, the Court`s task being only to ascertain whether the method they have chosen is consistent with the requirements of a fair trial (see Salduz, cited above, § 51).

114. Like the other guarantees of Article 6, the right to legal assistance is applicable from the moment that a "criminal charge" exists within the meaning of this Court`s case-law (see paragraphs 110 and 111 above) and may therefore be relevant during pre-trial proceedings if and in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to observe it (see Imbrioscia v. Switzerland, 24 November 1993, § 36, Series A no. 275; Dvorski, cited above, § 76; and Ibrahim and Others, cited above, § 253)."

Il-Qorti ndikat illi jista` jkun hemm ragunijiet fejn ghandu jkun hemm restrizzjoni temporanja tad-dritt ghall-assistenza legali :

"116. The Court also reiterates that access to a lawyer during the investigation phase may be temporarily restricted where there are "compelling reasons" for doing so. In paragraph 55 of its Salduz judgment (cited above), the Court held as follows concerning the restriction of the access to a lawyer for "compelling reasons" during detention in police custody :

"... the Court finds 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."

117. In its recent judgment in the case of Ibrahim and Others (cited above), the Court specified and fleshed out the criteria laid down in the Salduz judgment. It stated, in particular, that restrictions on access to legal advice were permitted only in exceptional circumstances, must be of a temporary nature and must be based on an individual assessment of the particular circumstances of the case. Where a respondent Government have convincingly demonstrated the existence of an urgent need to avert serious adverse consequences for life, liberty or physical integrity in a given case, this can amount to compelling reasons to restrict access to legal advice for the purposes of Article 6 of the Convention. In such circumstances, there is a pressing duty on the authorities to protect the rights of potential or actual victims under Articles 2 and 3 and Article 5 § 1 of the Convention in particular. When assessing whether compelling reasons have been demonstrated, it is important to ascertain whether the decision to restrict legal advice had a basis in domestic law and whether the scope and content of any restrictions on legal advice were sufficiently circumscribed by law so as to guide operational decision-making by those responsible for applying them (ibid., §§ 258 and 259).

118. The Court went on to point out that the absence of "compelling reasons" for restricting access to a lawyer did not lead in itself to a finding of a violation of Article 6 §§ 1 and 3 (c) of the Convention (ibid., § 262). In the absence of "compelling reasons", the Court must apply a very strict scrutiny to its fairness assessment: the Government`s failure to point to any compelling reasons weighs heavily in the balance when assessing the overall fairness of the trial and may tip the balance in favour of finding a breach of Article 6 §§ 1 and 3 (c). The onus will then be on the Government to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the trial was not irretrievably prejudiced by the restriction on access to legal advice (ibid.,§ 265). Where, on the contrary, compelling reasons for restricting access toa lawyer have been established, a holistic assessment of the entirety of

the proceedings must be conducted to determine whether they were "fair" for the purposes of Article 6 § 1 (ibid., § 264)."

Meta giet biex tapplika dawn il-principji ghall-kaz de quo, kompliet tghid hekk :-

"132. The Court must seek to ascertain whether the absence of a lawyer while the applicant was in police custody had the effect of irretrievably prejudicing the overall fairness of the criminal proceedings against him. The lack of "compelling reasons" in the present case requires the Court to conduct a very strict scrutiny of the fairness of the proceedings. It is incumbent on the Government to demonstrate convincingly that the applicant nonetheless had a fair trial (see paragraph 118 above).

133. In that connection, the Government referred to the following circumstances: the applicant had not been formally questioned in the absence of a lawyer during his time in police custody; no statement that the applicant might have made during that time had been taken into account or subsequently used in evidence against him; his conduct while in police custody had not been taken into account by the prosecuting authorities or the relevant courts; he had at no stage complained to the authorities of having been forced to confess while in police custody; he had benefited from a wide range of procedural safeguards during criminal proceedings which had had all the attributes of a fair trial (see paragraph 103 above).

134. The Court notes that the parties disagree on whether the applicant was questioned in the absence of a lawyer over the period from 3 to 6 October 1999. Drawing on the absence of any document mentioning this point, the Government submitted that even supposing a conversation or interrogation had taken place while the applicant was in police custody, it would have been conducted informally and could not have had any impact on the course of the criminal proceedings (see paragraph 103 above). The applicant, for his part, stated before the Grand Chamber that he had been questioned and that it would have been illogical for the authorities to have missed such an opportunity to obtain further evidence (see paragraph 97 above).

135. The Court notes in that connection that the version of events set out by the applicant during the proceedings before it has changed as the case had unfolded. In his application to the Court the applicant was very vague on this subject. It was not until he submitted his memorial before the Grand Chamber that he provided a number of more specific details, affirming, for example, that he had made statements while in police custody, and disclosing the content of those statements and the name of the lawyer whom he had asked to contact.

The Court also observes that the applicant did not mention his lack of legal assistance while in police custody in the proceedings before the Burgas Court of Appeal (see paragraph 34 above) and that his appeal on points of law referred only marginally to the absence of a lawyer on 4 October 1999 in the context of a separate plea relating to the exclusion of evidence obtained in the presence of his officially assigned lawyer (see paragraph 42 above). Moreover, whereas the handwritten statement of his presumed accomplice, A.S., dated 3 October 1999, was included in the case file (see paragraph 20 above), there is no prima facie evidence for the Court to conclude that the applicant was formally or informally questioned while in police custody.

*136. Be that as it may, **the Court attaches decisive importance to the fact that during that period of about three days no evidence capable of being used against the applicant was obtained and included in the case file. No statement was taken from the applicant. No evidence in the file indicates that the applicant was involved in any other investigative measures over that period, such as an identification parade or biological sampling.** Furthermore, the applicant did not personally allege before the Court that the domestic courts had possessed evidence presented during that period and used it at the trial in order to secure his conviction.*

…

Consequently, the absence of a lawyer during the applicant`s time in police custody in no way prejudiced his right not to incriminate himself.

141. The Court further notes that the applicant actively participated at all stages in the criminal proceedings: he subsequently retracted his initial statements, presenting a different version of events, and his defence lawyersvobtained exculpatory evidence and contested the incriminating evidence (see paragraphs 27, 29, 31, 35 and 42 above).

142. Moreover, the applicant`s conviction was not based exclusively on his confession of 21 October 1999, which he made in the presence of thevlawyer of his choosing, but on a whole body of consistent evidence, including the statements of a large number of witnesses who had been questioned during the assessment of the case, the results of ballistic, technical and accountants` reports and medical and psychiatrc opinions, and also on the physical and documentary evidence gathered (see paragraphs 26, 33, 36-41 and 43 above).

143. The case was examined at three levels of jurisdiction, by a regional court, a court of appeal and the Supreme Court of Cassation. All these courts gave due consideration to the evidence available, including the statements of the many witnesses questioned during the

assessment of the case, the results of the ballistic, technical and accountants` reports and the medical and psychiatric opinions, as well as the physical and documentary evidence gathered. Their decisions, which were properly reasoned in factual and legal terms, also duly assessed whether the applicant`s procedural rights had been respected (see paragraphs 31-44 above).

144. In the light of these findings, the Court considers that the Government provided relevant and sufficient evidence to demonstrate that the overall fairness of the criminal proceedings against the applicant had not been irretrievably prejudiced by the absence of legal assistance while he had been in police custody, from 3 to 6 October 1999."

(enfasi ta` din il-Qorti)

Il-konkluzjoni tal-Qorti kienet illi ma kienx hemm vjolazzjoni ta` l-Artikoli 6(1) u (3)(c) tal-Konvenzjoni.

Bi tnax-il vot favur u hames kontra kien deciz illi ma kienx hemm vjolazzjoni tal-Art 6 tal-Konvenzjoni bin-nuqqas ta` assistenza legali waqt detenzjoni peress li l-ebda provi ma ngabru matul iz-zmien li ma kienx hemm assistenza legali.

Tajjeb jinghad illi fid-9 ta` Mejju 2017 il-Qorti Kriminali tat decizjoni fil-kaz **Ir-Repubblika ta` Malta vs Martino Aiello.**

Fit-trattazzjoni tal-kawza sar l-argument illi l-akkuzat ma kellux avukat prezenti mieghu meta hu rrilaxxa l-istqarrija fid-19 ta` Ottubru 2014. It-tezi ta` Aiello kienet li meta sar ir-rilaxx ta` l-istqarrija, huwa ma kellux id-dritt ta` prezenza ta` l-avukat bil-konsegwenza li l-istqarrija ghandha tkun inammissibbli.

L-Avukat Generali ghamel l-argument illi Aiello kien inghata d-dritt li jikkonsulta avukat ta` fiducja tieghu izda rrifjuta dan id-dritt, ma kkonsulta ma` hadd, u liberament u volontarjament irrilaxxja l-istqarrija de qua.

Il-Qorti Kriminali qalet hekk :-

"*Illi din il-Qorti josserva li s-sentenza Borg v Malta (hawn fuq citata) ma kinitx biss titkellem fuq id-dritt li wiehed ikollu l-jedd li jikkonsulta ma` avukat qabel tigi rilaxxata stqarrija. Dik is-sentenza tghid illi f`kull stadju ta` l-investigazzjoni l-*

persuna suspettata jew akkuzata jrid ikollha d-dritt ta` l-avukat. Kien ghalhekk li gie promulgat l-Att numru LI ta` l-2016.

Illi fil-fehma ta` din il-Qorti l-istess principji li gew applikati fis-sentenzi hawn fuq imsemmija ghandhom japplikaw f` dan il-kaz ukoll. Dan ifisser li anki jekk ir-rikorrenti rrifjuta d-dritt li jikkonsulta avukat ma jfissirx li hu kien ser jirrifjuta l-prezenza ta` avukat fl-istess kamra ta` l-interrogatorju, tenut kont tal-fatt li l-artikolu fuq citat isemmi li l-avukat prezenti ghall-interrogatorju "…jjippartecipa b` mod effettiv fl-interrogazzjoni…" Kif wiehed jista` japprezza din hi sitwazzjoni kompletament differeenti minn dawk li huma in vigore llum.

Ghaldaqstant ghal dawn ir-ragunijiet din il-Qorti tilqa` l-eccezzjoni tar-rikorrenti. Tiddikjara li l-istqarrija tad-19 ta` Ottubru 2014 rilaxxat mir-rikorrenti bhala nammissibbli. Tali stqarrija ma tistax tigi prodotta waqt il-guri jew kopja taghha moghtija lill-gurati."

Ikkunsidrat :

Riferibbilment ghall-kaz in ezami, jirrizulta illi Aldo Pistella nghata dritt li jkellem lill-avukat ta` ghazla tieghu qabel irrilaxxja l-istqarrija lill-Ispettur Malcolm Bondin. L-ispettur koncernat ikkonferma li hekk kien il-kaz, kemm meta xehed fil-kors ta` dan il-procediment, kif ukoll meta xehed fil-kawza kriminali. In partikolari, fis-seduta tal-kawza kriminali tal-20 ta` Ottubru 2014 stqarr illi :-

"Minn hemm hekk komplejna bl-investigazzjonijiet mas-sur Aldo Pistella fejn jien tajtu d-drittijiet tieghu u fejn tajtu d-dritt tal-parir legali fejn xtaq li jkellem avukat u fil-fatt kien tkellem ma` l-avukat tieghu Dr Sarah Sultana personalment, kien tkellem l-ghada filghodu fejn kienet giet tkellmu gewwa l-kwartieri tal-Pulizija. Wara li ha l-parir legali kont komplejt bl-investigazzjonijiet mieghu…." (ara fol 19 u 20 tal-process kriminali).

Mill-istqarrija rrizulta wkoll illi Pistella kkonferma li fehem it-twissija moghtija lilu mill-pulizija u li kien kellem lil avukat tieghu qabel ma rrilaxxja l-istqarrija. Insibu a fol 29 :

"*M: Fhimtha t-twissija li ghadni kif tajtek?*
T: Iva.
M: Tikkonferma li kellimt lil avukat tieghek Dr Sara Sultana u gejt moghti dokument bid-drittijiet kollha tieghek bil-lingwa taljana?

*T:	Iva."*

Madanakollu rrizulta wkoll illi Pistella ma kienx assistit mill-avukat ta` ghazla tieghu waqt it-tehid tal-istqarrija. Gara hekk ghaliex fiz-zmien meta Pistella kien qed jigi nvestigat, ma kienx hemm dritt li min kien qed jigi nvestigat jitlob li jkun assistit minn konsulent legali waqt it-tehid ta` l-istqarrija.

Din hija propju l-kwistjoni mertu tar-referenza kostituzzjonali odjerna, ossija jekk il-kaz ta` persuna li ma jkollhiex assistenza legali fl-istadju meta tkun giet arrestata u interrogata jikkostitwix ksur tal-jedd ghal smigh xieraq kif tutelat bl-Art 6 tal-Konvenzjoni.

Il-Qorti hadet nota tal-fatt li Aldo Pistella ddikjara li talab l-assistenza ta` avukat izda dak l-avukat ma kienx prezenti waqt l-interrogatorju.

Irrizulta wkoll mix-xiehda tal-Ispettur Bondin fil-proceduri kriminali illi waqt li kien qed jaghti l-istqarrija, Pistella kkopera izda kellu problema bejn li ried jikxef il-persuni involuti u bejn li ma riedx ; ghalhekk kien rega` nsista li jkellem lill-konsulent legali izda din it-talba kienet michuda.

L-ispettur xehed hekk a fol 25 :-

"*Is-sinjur ikkopera maghna bis-shih. Il-problema li kellu s-sinjur qisu bejn jixtieq jikkopera mal-pulizija u jghid verament min huma nvoluti n-nies u minn ghand min kien qed jixtri u jassistina f`dawk l-affarijiet u bejn qed jibza` minn dawn l-affarijiet. Ghax f`hin minnhom xtaq li jghinna u f`hin minnhom rega` talab biex jitkellem fil-fatt ma` l-avukat, ghidtlu li ma jistax."*

Ghal din il-Qorti, il-fatt li persuna ma kinitx assistita minn avukat waqt l-interrogazzjoni jwassal ghal sitwazzjoni fejn l-**uzu ta` l-istqarrija** mehuda minghajr l-assistenza legali tammonta ghal lezjoni tad-dritt ghal smigh xieraq tal-imputat skont l-Art 6 tal-Konvenzjoni.

Din il-Qorti tqis li ghall-kaz odjern ghandha tapplika l-gurisprudenza l-aktar ricenti tal-ECHR u tal-qrati taghna fejn inghad kjarament li d-dritt ta` l-applikant jigi rrimedjabbilment ippregudikat meta hu jirrilaxxa stqarrijiet waqt l-interrogazzjoni meta ma kienx assistit minn avukat u in segwitu dawk l-istqarrijiet jintuzaw kontra tieghu.

Dan qed jinghad meta tqis wkoll illi fl-Art 3 tad-Direttiva tal-UE Nru. 2013/48/EU li b`effett tal-Avviz Legali 102 tal-2017 saret parti mil-ligi taghna, jinghad hekk dwar id-dritt ta` access ghal avukat fi proceduri kriminali :-

1. Member States shall ensure that suspects and accused persons have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively.

2. Suspects or accused persons shall have access to a lawyer without undue delay. In any event, suspects or accused persons shall have access to a lawyer from whichever of the following points in time is the earliest :

(a) before they are questioned by the police or by another law enforcement or judicial authority;

(b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of paragraph 3;

(c) without undue delay after deprivation of liberty;

(d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

3. The right of access to a lawyer shall entail the following :

(a) Member States shall ensure that suspects or accused persons have the right to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority;

(b) Member States shall ensure that suspects or accused persons have the right for their lawyer to be present and participate effectively when questioned. Such participation shall be in accordance with procedures under national law, provided that such procedures do not prejudice the effective exercise and essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using the recording procedure in accordance with the law of the Member State concerned;

(c) Member States shall ensure that suspects or accused persons shall have, as a minimum, the right for their lawyer to attend the following investigative or evidence-gathering acts where those acts are

provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned:

(i) identity parades;
(ii) confrontations;
(iii) reconstructions of the scene of a crime.

4. Member States shall endeavour to make general information available to facilitate the obtaining of a lawyer by suspects or accused persons. Notwithstanding provisions of national law concerning the mandatory presence of a lawyer, Member States shall make the necessary arrangements to ensure that suspects or accused persons who are deprived of liberty are in a position to exercise effectively their right of access to a lawyer, unless they have waived that right in accordance with Article 9.

5. In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of point (c) of paragraph 2 where the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty.

6. In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in paragraph 3 to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons: (a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person; (b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.

(enfasi ta` din il-Qorti)

L-Avukat Generali u l-Kummissarju tal-Pulizija sostnew li l-fatt li d-dritt li nghata lil persuni li jkunu se jirrilaxxjaw stqarrija lill-pulizija ezekuttiva bl-Avviz Legali 102 tal-2017 li dahal fis-sehh fit-13 ta` April 2017 ma jfissirx li awtomatikament inkiser id-dritt fondamentali ta` kwalunkwe persuna li tkun irrilaxxjat stqarrija qabel it-13 ta` April 2017.

Fil-fehma ta` din il-Qorti, il-fatt li persuna ma kinitx assistita minn avukat waqt l-interrogazzjoni u waqt l-istess interrogazzjoni talbet li terga` tkellem lill-avukat u tali talba giet michuda, iwassal ghal sitwazzjoni fejn id-dritt ta` dik il-persuna, fil-kaz tal-lum Aldo Pistella, kien irrimedjabbilment ippregudikat stante illi huwa rrilaxxja stqarrijiet waqt l-interrogazzjoni meta ma kienx assistit minn avukat u in segwitu dawk l-istqarrijiet jintuzaw kontra tieghu.

Issa rrizulta wkoll illi l-kawza kriminali ghadha pendenti.

Ghalkemm il-qorti ta` gurisdizzjoni kriminali eventwalment taghti decizjoni fil-mertu wara li jkun inghalaq il-gbir tal-provi, tenut kont tal-konsiderazzjonijiet kollha premessi, m`ghandux ikun illi l-kawza kriminali titkompla bl-istqarrija ta` Aldo Pistella lill-Ispettur Malcolm Bondin tkun taghmel prova ladarba rrizulta li waqt it-tehid tal-istqarrija ma kienx prezenti l-avukat ta` Aldo Pistella.

Del resto l-Avukat Generali u l-Kummissarju tal-Pulizija t-tnejn sostnew illi l-kaz tal-pulizija kontra Aldo Pistella mhuwiex fondat biss fuq l-istqarrija ta` l-akkuzat izda fuq provi ohra wkoll.

Ghalkemm jibqa` l-principju li procediment gudizzjarju ghandu jitqies fit-totalita` tieghu sabiex jigi determinat kienx hemm ksur tal-jedd ghal smigh xieraq, tibqa` l-konsiderazzjoni li m`ghandu jsir ebda uzu mill-istqarrija ta` Aldo Pistella fil-process kriminali sabiex meta jintemm il-process kriminali, ma jkunx mittiefes b`irregolaritajiet.

<u>Provvediment</u>

Ghar-ragunijiet kollha premessi, il-Qorti qeghda twiegeb ghar-referenza li saret lilha mill-Qorti tal-Magistrati (Malta) bhala Qorti Istruttorja fil-kawza fl-ismijiet "Il-Pulizija (Spettur Malcolm Bondin) vs Aldo Pistella" billi tiddikjara illi l-fatt li l-akkuzat Aldo Pistella ma kienx assistit minn avukat ta` ghazla tieghu waqt it-tehid tal-istqarrija lill-Pulizija Ezekuttiva fil-Kwartieri Generali tal-Pulizija, kif ukoll il-fatt li ma kellux id-dritt li jitlob li jkun assistit minn avukat tal-ghazla tieghu waqt it-tehid tal-istqarrija jkun jikkostitwixxi ksur tal-jedd ghal smigh xieraq tal-istess Aldo Pistella kif tutelat mill-Art 6 tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali tieghu fil-kaz illi l-istqarrija rilaxxjata lill-Pulizija Ezekuttiva tkun prova fil-kawza fl-ismijiet "Il-Pulizija (Spettur Malcolm Bondin) vs Aldo Pistella" pendenti quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti Istruttorja.

Ghalhekk qeghda tibghat dan il-provvediment flimkien mal-atti lura lill-Qorti tal-Magistrati (Malta) bhala Qorti Istruttorja sabiex tkompli bis-smigh tal-kawza fl-ismijiet "Il-Pulizija (Spettur Malcolm Bondin) vs Aldo Pistella".

Tordna li l-ispejjez ta` dan il-procediment jithallsu mill-Kummissarju tal-Pulizija u mill-Avukat Generali.

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur