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

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

Illum, 12 ta' Dicembru, 2017

Il- Pulizija
(Supretendent Ian J. Abdilla)

-vs-

Patrick Calleja, detentur tal-Karta tal-Identita' bin-numru 315067M.

Kumpilazzjoni Nru. 139/2002

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat Patrick Calleja u ċioè talli:

Fit-8 ta' Frar, 2002, u fiż-żmien ta' qabel, f'diversi postijiet f'Malta b'diversi azzjonijiet magħmulin minnu fi żmienijiet differenti u li jiksru l-istess dispożizzjonijiet tal-Liġi u li ġew magħmula b'riżoluzzjoni waħda:

1. Ikkommetta serq ta' debt card, li tappartjeni lil Margherita Mercieca u persuni oħra, u aktar talli kkommetta serq ta' flus ta' valur iktar minn Lm1,000 u dan billi għamel użu minn HSBC Quickcash f'isem Margherita Mercieca u persuni oħra, liema serq sar għad-detriment tal-imsemmija Margherita Mercieca u dan is-serq hu kkwalifikat bil-valur,

bil-persuna u bil-lok u dan bi ksur tal-Artikoli 261, 267, 268 u 269 tal-Liġijiet ta' Malta;

2. Xjentament xtara jew laqa' għandu ħwejjeġ misruqa meħuda b'qerq jew akkwistati b'reat sew jekk dan isir Malta jew barra minn Malta, jew xjentament, b'kull mod ieħor li jkun indaħal biex jbiegħhom jew jmexxihom liema oġġetti ġejjin minn reat ta' serq u dan bi ksur tal-Artikolu 334 tal-Kap 9 tal-Liġijiet ta' Malta.

3. fl-istess żmien, b'mezzi kontra l-liġi jew billi għamel użu ta' ismijiet foloz, jew ta' kwalifiki foloz, jew billi inqeda b'qerq ieħor, ingann, jew billi wera ħaġa b'oħra sabiex jġiegħel jitwemmen l-eżistenza ta' intrapriżi foloz, jew ta' ħila jew setgħa fuq ħaddieħor jew ta' krediti immaġinarji, jew sabiex iqanqal tama jew biża' dwar xi ġrajja kimerika, għamel qligħ b'qerq ta' aktar minn Lm1000 għad-dannu ta' MArgherita Mercieca, u persuni oħra u dan bi ksur tal-Artikoli 308, 30 u 310 tal-Kap 9 tal-Liġijiet ta' Malta;

4. u aktar talli, fl-istess dati, lokalitajiet u ċirkostanzi, sabiex kiseb xi vantaġġ jew benefiċju għalih jew għal ħaddieħor, f'xi dokument maħsub għal xi awtorità pubblika, xjentament għamel dikjarazzjoni jew stqarrija falza jew ta tagħrif falz u dan bi ksur tal-Art 188 tal-Kap 9 tal-Liġijiet ta' Malta.

5. Fl-istess perjodu għamel falsifikazzjoni oħra jew xjentement għamel użu minn xi dokument ieħor falsifikat u dan bi ksur tal-artikolu 189 tal-Kap 9 tal-Liġijiet ta' Malta;

6. Fl-istess perjodu uża liċenzja maħruġa fuq vettura partikolari bil-mutur għal vettura oħra bil-mutur u dan bi ksur tal-Artikolu 21 tal-Kap 65 tal-Liġijiet ta' Malta; u

7. Fl-istess perjodu naqas milli javża lill-awtorità kompetenti xi żmien sebat ijiem mid-data li hu ħareġ il-vettura bil-mutur u dan bi ksur tal-artikolu 26 tal-Kap 65 tal-Liġijiet ta' Malta.

Il-Qorti ġiet mitluba sabiex fil-każ ta' ħtija, barra li tinfliġġi l-pieni stabbiliti mil-Liġi, tordna ukoll il-konfiska tal-oġġetti kollha esebiti.

Semghet ix-xhieda.

Rat in-nota ta' l-Avukat Generali tat-8 ta' Gunju, 2017,[1] permezz ta' liema baghat lill-imputat biex jigi gudikat minn din il-Qorti bhala Qorti ta' Gudikatura Kriminali kif mahsub fis-segwenti artikoli:

[1] Fol.199

(i) Fl-artikoli 261(c), (d), (e), 267, 268, 269, 279, 280 u 281 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
(ii) Fl-artikolu 334 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
(iii) Fl-artikoli 308, 309 u 310 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
(iv) Fl-artikoli 188 u 189 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
(v) Fir-Regolamenti 27 u 26 tar-Regolamenti tat-Traffiku, Kapitolu 65 tal-Liġijiet ta' Malta; u
(vi) Fl-artikolu 17, 31 u 533 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta.

Rat li l-imputat ma kellux oggezzjoni li l-kaz jigi trattat bi procedura sommarja.

Rat l-atti u d-dokumenti kollha.

Semghet it-trattazzjoni finali.

Ikkunsidrat:
Illi qabel xejn irid jinghad illi ghalkemm din il-kawza tirrigwarda reati li allegatament sehhew fi Frar, 2002 u fis-snin ta' qabel, l-istess kawza giet mismugha minn din il-Qorti, kif diversament presjeduta, u l-ewwel udjenza quddiem din il-Qorti, kif preseduta, giet mizmuma fl-20 ta' Frar, 2017, wara li din il-Qorti riappuntat l-istess kawza peress li kienet giet mhollija *sine die* fis-16 ta' Jannar, 2017 mill-Qorti diversament preseduta kif inghad.

Illi fit-tieni lok ghandu jigi sottolinejat li din il-Qorti qed tiskarta ghal kollox iz-zewg stqarrijijiet tal-imputat u dan fid-dawl ta' gurisprudenza ricenti minkejja li ma saret ebda ammissjoni minnu. Kif irriteniet l-Qorti tal-Appell Kriminali (Sede Inferjuri) fil-kaz **Il-Pulizija vs Joseph Camilleri**[2]:

"Illi id-dritt ghal smiegh xieraq kif sancit fl-artikolu 6(1) u l-artikolu 6(3)(c) tal-Konvenzjoni Ewropeja gie estiz mill-gurisprudenza ewropeja mhux biss ghal jedd li ghalih hija intitolata l-persuna akkuzata matul il-proceduri penali fil-qorti izda ukoll ghal hekk imsejjah *pre-trial stage* u cioe' ghall-istadju meta persuna tkun giet arrestata u ser tigi interrogata. Dina l-fehma ghalhekk tfisser illi l-artikolu 6(3)(c) li jipprovdi dwar l-assientenza legali ghandu isib applikazzjoni anke fl-istadju ta'l-interrogazzjoni tal-persuna suspettata......

[2] Seduta tal-25 ta' Frar 2016, Appell numru 405/2014. Per Onor Imhallef Dr Edwina Grima.

Issir riferenza ukoll ghal dak dikjarat mill-Qorti Kriminali[3]:

"........din il-Qorti ma tistax tinjora principju ormai stabbilit mill-Qorti Ewropeja dwar id-Drittijiet tal-Bniedem illi id-dritt ghal smiegh xieraq kif sancit fl-artikolu 6(1) u l-artikolu 6(3)(c) tal-Konvenzjoni Ewropeja ghandu japplika mhux biss tul l-*iter* tal-proceduri penali fil-qorti, izda fuq kollox ghandu isib applikazzjoni u ghalhekk jigi estiz ghal hekk imsejjah *pre-trial stage* u cioe' ghall-istadju meta persuna tkun giet arrestata u ser tigi interrogata. Dana ghaliex huwa principju stabbilit fis-sistema penali taghna illi persuna ghandha titqies li hija innocenti sakemm ma tigix misjuba hatja minn qorti gudizzjarja. Kwindi hija ghandha dritt illi ma tinkriminax ruhha bl-ebda mod u dana sa mill-istadju inizjali ta'l-interrogazzjoni. Sabiex dana id-dritt jigi salvagwardjat ghalhekk kull persuna ghandha d-dritt li tikseb l-assistenza legali u dana sabiex tkun fl-ahjar pozizzjoni illi thejji id-difiza taghha. Dana huwa vitali billi fis-sistema penali taghna fejn il-konfessjoni tal-persuna akkuzata hija prova ewlenija fil-process gudizzjarju istitwit kontra taghha.

Il-Qorti Kostituzzjonali, madanakollu kienet recentement ziedet linji gwida ohra ghal gudikant li ikollu f'idejh id-decizjoni dwar jekk ghandux jiehu kont ta' stqarrija tal-interrogat bhala prova in atti sabiex jasal ghal gudizzju tieghu. Gie deciz illi fuq kollox ghandu jittiehed kont tal-fattispecje ta' kull kaz fost ohrajn il-vulnerabbilita tal-persuna li tkun qed tigi interrogata (fosthom l-eta, il-precedenti penali) l-jedd li l-persuna interrogata kellha biex tibqa' siekta u ma twegibx ghal dawk il-mistoqsijiet li jistghu jinkriminawh, l-inattivita da parti ta'l-akkuzat milli jipprova jattakka l-validita ta'l-istqarrija tieghu mill-bidunett tal-proceduri, l-provi l-ohra li hemm fl-atti, fost ohrajn. Dan il-hsieb izda gie mibdul mill-Qorti Kostituzzjonali f'sentenza recenti fl-ismijiet **Daniel Alexander Holmes vs Avukat Generali et** deciza fit-03 ta' Mejju 2016 fejn inghad hekk:

Fic-cirkostanzi din il-Qorti hi tal-fehma li ma jkunx għaqli li tinsisti fuq l-interpretazzjoni tagħha, għalkemm ittenni li għadha tal-fehma illi hija interpretazzjoni sostenibbli u ta' buon sens.

U ghalhekk wasslet ghad-decizjoni illi fid-dawl tal-gurisprudenza recenti koncernanti s-sitwazzjoni legali f'Malta qabel l-emendi li dahhlu fis-sehh fl-10 ta' Frar 2010:

".... il-Qorti ssib li kien hemm ksur tal-Artikolu 6(1) tal-Konvenzjoni abbinat mal-Artikolu 6(3)(c) tal-istess Konvenzjoni fis-sens li ma nghatatx l-assistenza legali qabel jew waqt l-interrogazzjoni tal-appellant mill-pulizija."

Issa xi ighidu dawn id-decizjoni recenti[4] moghtija mill- Qorti Ewropeja Dwar id-Drittijiet tal-Bniedem?

Illi f'decizjoni recenti[5] moghtija mill- Qorti Ewropeja Dwar id-Drittijiet tal-Bniedem gew affermati il-principji generali li ghandhom jigu sewgieti mill-qrati meta inghad:

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

---

[3] Decizjoni fuq Eccezzjonijiet Preliminari. Att t'Akkuza 17/2014 fl-ismijiet Ir-Repubbika ta' Malta vs Ramon Fenech. 02.06.2016

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

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

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

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

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

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

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

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

Illi gie deciz illi l-qrati ma kellhomx jaghtu interpretazzjoni stretta tad-decizjoni Salduz vs Turkey kif sehh fil-kaz ta' Charles Steven Muscat fost ohrajn. L-Imhallef Pinto De Albuquerque[6] ighid hekk fl-opinjoni tieghu:

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

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

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

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

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

Dan il-jedd gie anke estiz fil-kaz fejn l-akkuzat kien gie moghti il-jeddijiet kollha vigenti skont il-ligi ta' pajjizu inkluz allura il-jedd tieghu ghas-silenzju u fil-fatt huwa kien ezercita dan il-jedd u ma wiegeb ghall-ebda mistoqsija lilu maghmula. Il-Qorti xortwahda sabet li kien hemm vjolazzjoni ta'l-artikolu 6(3)[7] u dan ghaliex ma kienx ikkonsulta ma avukat biex ifissirlu il-jeddijiet tieghu skont il-ligi dwar id-dritt tieghu ghas-silenzju u id-dritt li ma jinkriminax ruhu b'dan ghalhekk illi l-Qorti implikat illi t-twissija moghtija mill-ufficjali investigattiv ma hijiex bizzejjed.

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

32. In accordance with the generally recognised international norms, which the Court accepts and which form the framework for its case-law, an accused person is entitled, as soon as he or she is taken into custody, to be assisted by a lawyer, and not only while being

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

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." (sottolinjar tal-Qorti)

Fil-fatt fid-decizjoni Brusco vs Franza[8] gie deciz:

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

Illi allura hija fis-setgha ta' din il-Qorti u dan qabel ma jigi determinat il-process gudizzjarju kontra l-appellanti illi twarrab dik l-evidenza illi tmur kontra il-garanziji moghtija kemm fil-Kostituzzjoni kif ukoll il-Konvenzjoni ghal harsien tal-jedd ghal smiegh xieraq tal-persuna akkuzata. Fil-fatt dan il-jedd gie indikat fid-decizjoni tal-Qorti Ewropeja fil-kaz Dimech vs Malta[9] fejn f'dak il-kaz ghalkemm il-Qorti ma setatx tasal biex tistabbilixxi jekk kienx sehh lezjoni ta'l-artikolu 6 tal-Konvenzjoni billi l-proceduri penali kienu ghadhom ma intemmux, madanakollu sahhqet:

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

[8] 1466/07 – 14/10/2010 The Court also notes that it does not follow either the file or the minutes of evidence that the applicant had been informed at the beginning of his examination of the right to remain silent, not to respond to questions, or to not answer the questions he wanted. It further notes that the applicant had been assisted by a lawyer twenty hours after the start of the custody period provided for in Article 63-4 of the Code of Criminal Procedure (see paragraph 28 above). The lawyer was therefore unable either to provide information on his right to remain silent and not to incriminate before his first interrogation or assist during the deposition and during those which followed, as required by Article 6 of the Convention.

[9] 02/07/2015 – 34373/13

legislature take action to ensure that a procedure is made available at the earliest opportunity for this purpose.""

Illi l-**Ispettur Ian Abdilla** kien ta rendikont tal-investigazzjoni kondotta mill-pulizija wara li din irceviet kwerela da parti ta' Margherita Mercieca fejn gie allegat li l-imputat kien uza debit card taghha u ghamel withdrawal ta' madwar Lm1,500 kontanti. Allegat ukoll li kien naqsilha curkett *solitaire* jiswa' madwar Lm2,000 u cappetta mir-residenza taghha.[10] Is-suspett kien waqa' fuq l-imputat wara li l-parte leza kienet rat *footage* tal-bank HSBC fejn il-persuna li dehret taghmel il-withdrawals kien il-*medical helper* ta' zewgha. L-investigazzjonijiet tal-Pulizija wrew kif kienu saru mas-17 il-transazzjoni minn ATMs fi Triq San Gorg, San Giljan, minn ohra fil-bowling alley u ohra f'Bugibba. **L-ufficjal** investigatur personalment ra dawn il-videos li kienu mifruxa fuq hmistax il-gurnata differenti fejn dejjem deher li saru mill-istess persuna.[11] Is-sinjura Mercieca kienet qalet lill-pulizija kif kienet hadet maghha lill-imputat l-HSBC San Giljan meta kienet ordnat PIN number gdid, liema numru qatt ma rcevietu.[12] Meta l-Pulizija marret biex tkellem lill-imputat rat vettura barra bil-pjanca bin-numru LCB-794 izda mal-windscreen kellha *road licence* li tappartjeni lill-vettura bin-numru PAT-100. Irrizulta li l-vettura LCB-794 kienet tappartjeni lil certu Anthony Sammut Alessi.[13] Wara tfittxija li saret fir-residenza tal-imputat giet **elevata crash helmet li kienet tidher sew fil-filmati** kif ukoll flokkijiet li anke kien suspettat li dehru fl-istess filmati.[14]

Illi xehed **Dr. Christian Grima** li ghamel il-kwerela ghan-nom tal-partijiet lezi fuq talba ta' binhom li kien jghix l-ingilterra. **Meta kellem lill- Margherita Mercieca din kienet qaltlu li kienet marret il-bank mal-impjegat taghha, Patrick Calleja, kienet ghamlet talba ghal card u pin godda li kellhom jintbghatu d-dar izda baqaw qatt ma wasslu**. Flimkien maghha marru l-HSBC fejn is-security officer urihom *footage "u rajna fil-presenza tas-sinjura Mercieca l-videos li ttiehdu, li jikkorispondu ghat-transactions illi sehhew f'dak il-perjodu fejn allegatament ahna qed nghidu insterqu l-elf u hames mitt lira. Issa minn dan irrizulta car illi l-persuna li effetivament kienet qed tigbed il-flus kienet Patrick Calleja. Jien kont xhud hemm u nista' nghidu bil-gurament. Li xtqat nghid ukoll illi meta staqsejt lis-*

---

[10] Fol.9-10
[11] Fol.11
[12] Fol.10
[13] Fol.11
[14] Fol.12

sinjura Mercieca jekk hi kienitx qatt tat awtorizazzjoni jew permess lil Patrick Calleja sabiex juzalha l-card, din cahditu kategorikament, qalet "qatt u qatt"."[15]

Illi **Mario Bartolo**, *security manager* tal-HSBC Bank xehed kif kien dahal rapport minghand Victor Mercieca, li ma kienx johrog mid-dar, li saru transazzjonijiet mhux awtorizzati bil-card tieghu. Sussegwentement sar kuntatt minn martu u mill-avukat taghhhom u hu beda jinvestiga it-transazzjonijiet rilevanti *"u sibt li fil-fatt kienu ngibdu kwazi kuljum, mitt lira, kwazi kuljum b'dik il-card. Fil-fatt it-transactions bdew fil-21 ta' Dicembru tas-sena l-ohra u baqghu sejrin kwazi kuljum sal-10 ta' Jannar ta' din is-sena. Kull darba kienu qed jingibdu mitt lira hlief f'zewg okkazzjonijiet illi ngibdu hamsin lira kull darba f'kull okkazzjoni."* Bartolo jispjega li gabar il-videos rilevanti biex jiddentifika minn kien qed jaghmel dawn il-withdrawals *"...stajt nara li day after day il-persuna li kienet qed taghmel dawn it-transactions kienet l-istess persuna."*[16] Baghtu ghas-sinjura Mercieca u fit-23 ta' Jannar marret man-neputi taghha u mal-avukat taghha sabiex tara l-footage. *"Urejtha l-video u kif artu mill-ewwel esklamiet, qalet "Madonna dak il-medical helper li jigi jaghti l-ghajnuna lir-ragel tieghi". U semmiet l-isem Patrick."*[17] Ix-xhud jiddeskrivi kif il-parte leza giet murija hafna *screen shots* minn angoli differenti u fil-fatt hi kienet zgura li kien l-imputat. In-numru tal-card li ntuzat kien 5887000221067470 u kienet registrata fuq Victor Mercieca izda l-kont kien wiehed kongunt mizmum ma martu.[18] <u>Bartolo qatt ma ntalab mill-prosekuzzjoni jiddentifika l-imputat bhala l-persuna li ra fuq il-footage.</u>

Illi **Jose` Abela,** in rapprezentanza tal-Licensing Department, xehed li l-vettura bin-numru LCB-794 kienet Peugot 106 kienet giet registrata fuq l-imputat sa mill-11 ta' Frar, 2002, filwaqt li l-vettura PAT-100 kienet Seat Ibiza li kienet ilha registrata fuq l-imputat sa mill-1995.[19]

Illi fl-atti jidher li gew anessi erronjament verbal kif ukoll dokumentazzjoni li tidher li tappartjeni process penali iehor u cioe` dak fl-ismijiet ***Il-Pulizija vs Patrick Pace (Kump. Nru 583/2004)*** u ghalhekk tali dokumentazzjoni ma ghandha ebda rilevanza ghal proceduri odjerni.

---

[15] Fol.28
[16] Fol.29-30
[17] Fol.30
[18] Fol.32
[19] Fol.62

Illi fl-ewwel seduta, l-Qorti kien hemm nomina ta' imhallef supplimenti sabiex jiehu x-xhieda tal-parte leza Margherita Mercieca.[20] Minkejja li l-Avukat Generali baqa' jindika li kellha tingieb din ix-xhieda fin-noti ta' rinviju tieghu sa mit-3 ta' Gunju, 2002, sad-data tal-ahhar rinviju tieghu u cioe` dak tal-10 ta' Jannar, 2007, meta sussegwentement il-proceduri marru *sine die* peress li l-imputat ma setghax jigi rintraccjat mill-pulizija, din ix-xhieda baqghet ma gietx prodotta.

Hawnhekk il-Qorti ma tistax ma tosservax li **kien biss fuq insistenza taghha li dan il-kaz gie rikjamat** u fejn ma nstabet ebda problema sabiex l-imputat jigi notifikat bis-smigh odjern. Hu tassew sfortunat ghall-amministrazzjoni retta tal-gustizzja li ghajr ghal l-**4 xhieda** msemmija (fejn l-ahhar xhud, Abela, xehed f'Mejju 2003), dan il-process li jirrisali ghal 2002, baqa' jiddelunga inspjeggabilment ghal xejn aktar minn 15 il-sena; jirrizulta li ghalkemm baqa' jigi indikat f'rinviji kostanti li kellha tittiehed ix-xhieda ta' Margherita Mercieca kif gja inghad, jirrizulta li din mietet fil-mori ta' dawn il-proceduri u cioe' fit-2 ta' Dicembru, 2005, tlett snin wara li kienu nbdew![21] Dan jindika in-nuqqas serju da parti tal-prosekuzzjoni li tittenta taghmel sforz sabiex ix-xhieda tas-Sinjura Mercieca tingabar.

Illi in vista tal-mewt tal-parte leza il-Qorti kkunsidrat jekk dak li qalet lix-xhieda ohra setghax ikun ammissibli bhala prova f'dawn l-atti.

Fis-sentenza moghtija mill-Qorti tal-Appell Kriminali fl-14 ta' Mejju, 2012, fl-ismijiet **Il-Pulizija vs Janis Caruana** gie dikjarat:[22]

21. Bir-rispett kollu, il-hearsay rule tagħna (fl-artikolu 599)[23] mhix daqshekk riġida daqs kemm wieħed jaħseb. Fil-fatt l-ewwel parti ta' dan l-artikolu jgħid hekk:

'599. Il-qorti tista', ***skont iċ-ċirkostanzi***, tippermetti xiehda fuq kliem ħaddieħor u tieħu qies tagħha, meta dan l-istess kliem ħaddieħor ikollu, fih innifsu, importanza sostanzjali, fuq il-meritu tal-kawża jew ikun jagħmel parti mill-meritu; **inkella meta dan ħaddieħor ma jkunx jista' jinġieb biex jixhed**, u l-fatti jkunu tali li ma jkunux jistgħu jiġu ppruvati sewwa xort'oħra,'

22. Fil-fatt fil-kawża 'Joseph Mary Vella et versus il-Kummissarju tal-Pulizija' il-Qorti Kostituzzjonali nhar it-13 ta' Jannar 1988[24]1 qalet hekk:

---

[20] Fol.5

[21] Dok. IA a fol.190

[22] Appell Kriminali Numru. 90/2011; Per Onor. Imhallef Dr. Lawrence Quintano

[23] Artikolu 599 tal-Kapitolu 12 tal-Ligijiet ta' Malta rez applikabbli bl-artikolu 520(1)9d) tal-Kodici Kriminali

[24] Volume LXXII. 1988 Partijiet 1 u II paġina 1.

'Issa, fil-każ preżenti, si tratta ta' depożizzjoni ta' xhud dwar x'qallu ħaddieħor li ma jistax jiġi prodott minħabba li x-xhud ġie marbut bis-sigriet professjonali fuq l-identita' ta' dan il-ħaddieħor. Ċertament il-klem ta' dan il-ħaddieħor jistgħu, fiċ-ċirkostanzi tal-każ, ikollhom importanza sostanzjali fuq il-mertu tal-kawża. Għalhekk il-Qorti ma tara l-ebda raġuni l-għala għandha tiddipartixxi mill-konlużjoni tal-ewwel qorti (li tħalli lil dan ix-xhud jiddeponi).'

23. Ukoll fl-Ingilterra u f'Wales ir-regola tal-hearsay m'għadhiex stretta daqsa qabel. Il-Qorti Ewropea Dwar id-Drittijiet tal-Bniedem fil-każ ' Al-Khawaja and Tahery versus the United Kingdom' tal-15 ta' Diċembru 2011 (deċiżjoni tal-Grand Chamber) qalet hekk f'pargrafu 130:

'However, the Court notes that the present cases have arisen precisely because the legal system in England and Wales has abandoned the strict common law ruel against hearsay evidence. Exceptions to the rules have been created, notably in the 1988 and 2003 Acts, which allowed for admission of ST's statement in Al-Khawaja's case and T's statement in Tahery's case.'

24. Fil-każ ta' Al-Khawaja, ST kienet għamlet rapport lill-Pulizija numru ta' xhur sewwa wara li kienet allegatament assaltata minn tabib. ST għamlet suwiċidju qabel il-ġuri. L-Imħallef li ppresieda ħalla li jinqara r-rapport waqt il-ġuri u ta direzzjonijiet appożiti. (Ara paragrafi 9 -19 tal-istess sentenza). Il-Grand Chamber ma sabitx vjolazzjoni tal-artikolu 6 (ara par.158 tas-sentenza)."

Illi ghalhekk anke jekk il-Qorti kellha tqis li l-kliem li qalet l-parte leza quddiem l-Avukat Grima u Mario Bartolo, meta qalet li gharrfet lill-imputat mill-footage, hi prova ammissibbli, xorta wahda jibqa' jimmina l-kaz tal-prosekuzzjoni l-fatt li l-best evidence - ***il-footage*** **- ma giex esebit bhala prova** mill-prosekuzzjoni.

Illi anke l-ufficjal prosekutur u Dr. Grima, avukat tal-parte leza, iddikjaraw li gharrfu l-imputat minn *footage* mizmum mill-HSBC. Pero` dan il-*footage* baqa' qatt ma gie esebit u ovvjament meta ntalab aktar kmieni din is-sena mill-abbli Avukat Generali, l-prosekuzzjoni gharrfet lil Qorti li dan ma kienx ghadu ezistenti. Lanqas jirrizulta li kien hemm xi tentattiv min-naha tal-prosekuzzjoni sabiex jinhargu *stills* mill-istess *footage* meta Bartolo kien indika li kien jinhtieg makkinarju specjali biex wiehed seta' jara l-footage imsemmi.[25] Mhemmx dubbju li l-*footage,* jew ghall-inqas l-*istills*, kienu l-aqwa prova li kellha tingieb mill-prosekuzzjoni u hekk kif dan ma sarx il-Qorti giet prekluza milli tezercita dak il-kontroll mistenni fuq dik l-evidenza, fejn certament ma tistax tistrieh fuq identifikazzjoni maghmula minn haddiehor.

[25] Fol.31

Issir riferenza ghas-sentenza tal-Qorti tal-Appell Kriminali fl-ismijiet **Il-Pulizija vs Dustin Bugeja**:[26]

Il-Qorti moghnija bir-regoli illi tfasslu fil-kawza **R vs Turnbull** fl-Ingilterra, li ghalkemm ma jikkostitwixxu l-ebda regola taht il-ligi Maltija, ghandha linji gwida imfassla fil-kaz ta'l-identifikazzjoni tal-persuna akkuzata. Illi dana gie ukoll sottolinjat f'sentenza moghtija minn din il-Qorti (kif diversament ippresjeduta) fl-ismijiet **Il-Pulizija vs Stephen Zammit** (deciza 16 ta' Lulju 1998) fejn il-Qorti tat esposizzjoni tar-regoli Turnbull fid-decizjoni taghha:

"***First, whenever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided this is done in clear terms the judge need not use any particular form of words.***

Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance? If in any case, whether it is being dealt with summarily or on indictment, the prosecution have reason to believe that there is such a material discrepancy they should supply the accused or his legal advisers with particulars of the description the police were first given. In all cases if the accused asks to be given particulars of such descriptions, the prosecution should supply them. Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence.

Recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.

All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger."

Dan ghaliex l-identifikazzjoni jew ir-rikonoxximent maghmul mix-xhud jibqa' dejjem suxxettibbli ghall-imperfezzjonijiet tal-osservazzjonijiet umani u ghall-possibbilitajiet kollha ta' zball genwin illi ifisser allura illi min hu imsejjah biex jiggudika irid japplika dik il-kawtela specjali qabel ma jasal ghal kundanna ibbazata fuq dik l-identifikazzjoni. [emfazi tal-Qorti].

[26] Onor.Imhallef Dr. Edwina Grima; Deciza 25.02.2016; Appell Nru: 493/2013

Illi anke l-Qorti tal-Magistrati (Malta) kellha okkazzjoni taghmel ezami funditus dwar il-linji gwida li ghandhom japplikaw meta jkun hemm identifikazzjoni ta' imputat/i maghmula minn xhieda:[27]

Illi l-Qorti ta' L-appell Kriminali kellha diversi okkazzjonijiet tesprimi ruhha dwar l-identifikazzjoni ta' persuna suspettat. Fis-sentenza mghotija fil-kawza fl-ismijiet **Il- Pulizija vs Massimo Caruso**[28], ghaddiet in rassenja il-gurisprudenza in tema u qalet hekk:

Dwar il-process ta' identifikazzjoni, il-Qorti ta' l-Appell Kriminali (Sede Inferjuri) fil-kawza Il-Pulizija vs. Stephen Zammit deciza fil-15 ta' Lulju 1998 (Vol. LXXXII.iv.235) qalet li "Il-ligi taghna hi partikolarment skarsa dwar regoli li ghandhom x'jaqsmu ma' l-identifikazzjoni ta' imputat jew akkuzat. Infatti, l-unika disposizzjoni tal-ligi in materja – l-Artikolu 648 tal-Kodici Kriminali - hi redatta fin-negattiv, fis-sens li tghid x'mhux mehtieg u mhux x'inhu mehtieg.

Dik id-disposizzjoni tipprovdi testwalment hekk: Biex issir il-prova ta' l-identita` ta' persuna li ghandha tigi maghrufa jew ta' oggett li ghandu jingieb bhala prova, mhux mehtieg, bhala regola, li x-xhud jaghraf dik il-persuna minn fost persuni ohra, jew dak l-oggett minn qalb ohrajn bhalu, hlief meta l-Qorti, f'xi kaz partikulari, ikun jidhrilha xieraq taghmel dan ghall-finijiet tal-gustizzja. ....

Minn din id-dispozizzjoni jidher car li l-legislatur ma riedx ixekkel lill-partijiet fil-kawza b'regoli rigidi ta' kif ghandha ssir l-identifikazzjoni ta' persuna jew oggett, izda halla fil-gudizzju prudenti tal-Qorti li tirregola ruhha skond il-kaz. Din id-dispozizzjoni, naturalment, tapplika ghal identifikazzjoni f'Qorti; meta si tratta ta' identifikazzjoni li tkun saret barra mill-Qorti, bhal, per ezempju, fl-Ghassa tal-Pulizija, u li ghalhekk tkun ipprecediet l-identifikazzjoni fil-Qorti, il-ligi taghna ma tghid xejn. Dan ma jfissirx li ma hemmx regoli ta' prudenza dettati mill-bwon sens li ghandhom jigu osservati, specjalment f'dawk li jissejhu identification parades; dawn ir-regoli huma intizi fl-interess kemm tal-prosekuzzjoni kif ukoll tad-difiza bl-iskop li l-identifikazzjoni ta' persuna bhala l-awtur ta' reat jew bhala l-persuna altrimenti involuta fih tkun attendibbli b'mod li l-Gudikant tal-fatt ikun jista' jserrah mohhu li ma hemmx zball f'dik l-identifikazzjoni. Fl-Ingilterra hafna minn dawn ir-regoli huma llum inkluzi fil-Code of Practice D taht il-Police and Criminal Evidence Act, 1984. S'intendi dawn ir-regoli mhumiex applikabbli ghal Malta, izda xi whud minnhom huma utili hafna ghax ighinu biex jizguraw dak li nghad aktar 'il fuq, u cioe l-attendibilita` ta' l-identifikazzjoni. Hekk, per ezempju, wahda minn dawn irregoli hi li meta jkun hemm aktar minn xhud wiehed u dawna jkunu ser jintwerew xi ritratti, 'only one witness shall be shown photographs at any one time' (para. 2, Annexe D) u dan bl-iskop ovvju li xhud ma jkunx jista' jinfluwenza lix-xhud l-iehor. Ix-xhud ghandu jigi muri numru sostanzjali ta' ritratti, mhux semplicement wiehed jew tnejn, u 'he shall not be prompted or guided in any way but shall be left to make any selection without help' (para. 4). Ir-ritratti hekk uzati, u specjalment dak li talvolta x-xhud ikun indika bhala li jirrapprezenta lill-persuna li qed jidentifika, ghandhom jigu ppreservati biex jekk ikun il-kaz, jigu esebiti fil-Qorti.
....

Jerga' jigi ribadit li n-non-osservanza ta' dawn ir-regoli ma jwassalx ghall-inammissibilita` tal-prova ta' l-identifikazzjoni; ikun ifisser biss li, skond ic-cirkostanzi partikolari tal-kaz, dik l-identifikazzjoni tista' ma tkunx attendibbli bizzejjed. Lanqas ma ghandu dan kollu jfisser jew jigi interpretat bhala li hemm xi regola generali li xiehda okulari (eye-witness testimony) hija minnha nnifisha inattendibbli jew li fiha xi perikoli. Kif fisser Chief Justice Miles fis-Supreme Court of the Australian Capital Territory fil-kawza

[27] Kump.1041/2014; Il-Pulizija vs Stephen Zammit; per Onor.Magistrat Dr. Doreen Clarke; Deciza 13.07.2017
[28] Deciza 17 ta' Marzu 2008.

Sharrett vs. Gill (1993) 65 A Crim R. 44: '… I am unaware of any authority in this country or elsewhere … that lays down a general principle that all eye-witness testimony is subject to weaknesses and dangers. It would be surprising if there were such a principle. Of course, everybody knows that everybody else has human failings with regard to such matters as observation, interpretation, recollection and articulateness and such failings are assumed to be taken into account in most cases by the tribunal of fact unless there is some particular need for the fact-finder to refer to or to be referred to some aspect of the case where such failings are relevant. The highest judicial authorities emphasise that, in jury trials, cases of disputed identification require express and precise reference to these human failings … and this principle has been extended to trials without a jury. However, it is hard to imagine life where people are not able to act safely and sensibly upon their observations of what they see and hear, and even upon their identification of fellow human beings by such observations. The ability to distinguish one human being from another and to recognise a person as one previously encountered are surely basic skills indispensable to social existence, and skills well acquired at an early age. What the lawyers call identification is essentially no different from what is generally known as recognition';

……..

Kif osservat ukoll din il-Qorti fis-sentenza taghha fl-ismijiet Ir-Repubblika ta' Malta vs Giuseppe sive Joseph Cassar moghtija fit-22 ta' Marzu 1988 (Vol. LXXII.v.868), "skond il-ligi taghna ghall-identifikazzjoni ta' l-akkuzat mhux necessarja identification parade". Hija qalet:

"Dan il-punt gie ttrattat mill-Qorti ta' l-Appell Kriminali (Sede inferjuri) per W. Harding fil-kawza 'Il-Pulizija vs Leading Steward Victor Dalmas' deciza fit-13 ta' Mejju 1961 (Vol. XLV.iv.963), fejn waqt li gie ribadit dak li ghadu kif inghad fuq dan l-artikolu dik il-Qorti qalet ukoll: 'Hu certament desiderabbli li l-identifikazzjoni ssir bla ma dak li jkun imsejjah biex jidentifika jigi b'xi mod, anki involontarjament, suggestjonat, u hi nota l-prattika rrakkommandata f'certi kazijiet, fis-sens li f'identifikazzjoni simili, meta jkun jehtieg, jingabru xi persuni, piu` o meno ta' l-istess eta` u klassi socjali tad-detenut, li jkun jista' jiehu post fejn irid fosthom';

M'hemmx dubju li kif qal Lord Parker CJ in R. vs Parks ((1961) I.W.L.R. 1484) 'cases of identification are difficult and can lead to a miscarriage of justice' u certament din il-preokkupazzjoni urietha diga` din il-Qorti fis-sentenza taghha in re Il-Maesta` Taghha r-Regina vs. Joseph Hallet moghtija fit-22 ta' Marzu 1971 fejn inghad li 'certament, il-Qorti tirrikonoxxi r-riskji li ghalihom tista', in generali, tkun esposta l-prova ta' l-identifikazzjoni ta' persuna'. Din il-Qorti f'dak il-kaz li kien jinvolvi identifikazzjoni minn fuq ritratti murija mill-Pulizija, waqt li enfasizzat il-perikoli inerenti ziedet tghid li 'il-Qorti ma tahsibx illi, ghall-finijiet prattici tal-hajja u l-investigazzjoni ta' delitti, essenzjali ghall-ezistenza ordinata stess tas-socjeta`, dan jista' jigi evitat - <u>basta s'intendi li jsir bil-prekawzjonijiet kollha possibbli biex jigu evitati miscarriages of justice</u>'". [emfazi tal-Qorti]

Issa xi prekawzzjonijijiet setghet tezercita' din il-Qorti galadarba la gie prezentat il-*footage* (jew *stills* minnu)? Kif tista' l-Qorti qatt tikkonkludi li saret id-debita prova dwar fatti li kkonstata haddiehor f'ufficju ta' bank minn *footage* li l-Qorti qatt ma rat? Mhemmx dubbju li l-prosekuzzjoni naqset milli tipprova sal-grad rikjest mill-ligi l-ewwel tlett akkuzi.

Illi dwar ir-raba akkuza il-Qorti ser tikkwota minn dak li qalet l-Qorti tal-Appell Kriminali fl-ismijiet **Il-Pulizija vs Paul Galea** meta iddistingwit bejn il-falz materjali u l-falz ideologiku f'kaz fejn l-imputat wehhel

number plates li kienu jappartjenu vettura partikolari ma vettura ohra. L-istess principju issib applikazzjoni ghall-kaz in dezamina in kwantu l-imputat wehhel *road licence* ma vettura li kienet tappartjeni vettura ohra:

"Id-differenza bejn il-falz materjali u l-falz ideologiku hi spjegata mill-awturi b'dan il-mod: filwaqt li fil-kaz tal-falz materjali d-dokument jigi ffalsifikat fl-essenza materjali tieghu, fil-falz ideologiku d-dokument ikun iffalsifikat biss fis-sustanza u cioe` fil-kontenut ideali tieghu (Antolisei, F., *Manuale di Diritto Penale – Parte Speciale II* (Giuffre`, Milano, 1986), p. 604). Fi kliem Manzini (*Trattato*, v. VI, n. 2296, p. 829) ikun hemm falsita` materjali meta d-dokument ikun wiehed mhux genwin (jigifieri jew meta l-awtur apparenti ma jkunx l-awtur reali tad-dokument jew meta d-dokument ikun issubixxa alterazzjonijiet wara l-formazzjoni definittiva tieghu), mentri fil-falz ideologiku, ghalkemm id-dokument ikun genwin *"non e` veridico, perche` colui che lo ha formato gli fa dire cose contrarie al vero"*.

Ghall-finijiet tad-dottrina in tema ta' falsita` ikun hemm dokument kull fejn hemm kitba, attribwibbli ghal persuna identifikabbli, liema kitba tkun tikkontjeni esposizzjoni ta' fatti jew dikjarazzjoni ta' volonta` (Antolisei, F., *op. cit.*, p. 594). S'intendi, b'kitba wiehed ma jifhimx biss is-sinjali alfabetici, izda tinkludi dawk numerici, stenografici u anke kriptografici, basta li dik il-kitba tesprimi hsieb li jkun jiftiehem minn kulhadd jew minn certu numru ta' nies. Il-kitba f'dan is-sens tista' ssir kemm bl-id kif ukoll b'mezzi mekkanici, b'mezz indelibbli jew li jista' jithassar u fuq kwalsiasi mezz li jista jiehu, imqar temporaneament, il-messagg – karta, parcmina, injam, gebel, hadid, plastik, etc." [29]

Mill-atti processwali din l-imputazzjoni tirrizulta ppruvata sal-grad rikjest mill-ligi.

Illi l-hames u s-sitt imputazzjonijijiet nghataw bhala alternattivi ghar-raba imputazzjoni, ghalhekk il-Qorti ser tastjeni milli tiehu konjizzjoni ulterjuri ta' dawn l-imputazzjonijiet.

Illi dwar l-ahhar akkuza jirrizulta biss li l-vettura LCB-794 giet registrata fuq l-imputat fil-11 ta' Frar, 2002[30] izda ma giex pruvat meta effettivament inbieghet lill-imputat mis-sid precedenti u cioe`Anthony Sammut Alessi.[31] Din l-akkuza ukoll ma gietx pruvata sodisfacentement u dan minhabba li l-prosekuzzjoni naqset milli tressaq prova ta' meta sar il-bejgh imsemmi.

In kwantu ghal piena il-Qorti hadet in konsiderazzjoni n-natura tar-reat li qed tinstab htija dwaru, tac-cirkostanzi tal-kaz u senjatament in-nuqqas t'interess palpabbli tal-prosekuzzjoni f'dan il-kaz fejn wara li nstema' l-ahhar xhud fil-2003 ma sar l-ebda progress ulterjuri u l-kaz thalla jmut

[29] Deciza 17 ta' Ottubru, 1997, per Onor. Imhallef Dr. Vincent Degaetano.
[30] Fol.11
[31] Fol.62

mewta naturali; destin riskontrat mill-parte leza fil-mori ta' dawn il-proceduri fejn zgur ma jistax jinghad li maghha saret dik il-gustizzja mistennija!

Ghal dawn il-motivi, wara li rat l-artikolu 188 tal-Kapitolu IX tal-Ligijiet ta' Malta, filwaqt li tastjeni milli tiehu konjizzjoni ulterjuri tal-hames u tas-sitt akkuza, u filwaqt li tilliberah mill-ewwel, mit-tieni u mit-tielet akkuzi. ssib lill-imputat hati tar-raba akkuza migjuba fil-konfront tieghu izda bl-applikazzjoni ta' l-artikolu 22 tal-Kapitolu 446 ta' l-Ligijiet ta' Malta tilliberah bil-kundizzjoni li ma jwettaqx reat iehor fi zmien xahar millum.

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