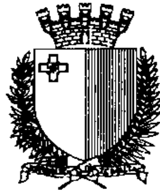

PRIM'AWLA QORTI CIVILI
ONOR IMHALLEF ANNA FELICE
(SEDE KOSTITUZZJONALI)

Illum 02 ta' Mejju, 2018

Rikors Guramentat Nru: 29/2014 AF

Tancred Tabone

vs

L-Onorevoli Speaker tal-Kamra tad-Deputati

u

Ic-Chairperson tal-Kumitat Permanenti dwar il-Kontijiet Pubblici ilkoll fil-kwalità taghhom premessa u in rapprezentanza tal-istess Kamra tad-Deputati u tal-istess Kumitat rispettivament

Il-Qorti:

Rat ir-rikors ta' Tancred Tabone li permezz tiegħu wara li ġie premess illi:

Fil-5 ta' Dicembru 2013, l-esponenti ircieva ittra minghand il-Kumitat Permanenti dwar il-Kontijiet Pubblici fejn gie mitlub

jidher quddiem l-istess Kumitat fil-11 ta' Dicembru 2013, sabiex jaghti x-xhieda tieghu dwar ir-rapport tal-Awditur Generali intitolat, "An Analysis of the Effectiveness of Enemalta Corporation's Fuel Procurement", u sabiex jirrispondi ghall-mistoqsijiet li jistghu jsirulu in konnessjoni mar-rapport imsemmi. Inoltre, gie mitlub igib mieghu xi dokumenti li ghandu disponibbli f'idejh u li huma relatati ma' dan il-kaz. Kopja ta' din l-ittra qed tigi annessa u markata bhala Dokument TT1.

Flimkien mal-ittra fuq imsemmija, l-esponenti inghata kopja tal-"Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives, Parliament of Malta" ppubblikat f'Ottubru 2011 (kopja hawn annessa u markata Dokument TT2), fejn fil-paragrafu numru erbgha (4) jinghataw il-konsegwenzi f'kaz li persuna li tkun giet imharrka sabiex tixhed quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubblici ma tidhirx jew tidher izda tirrifjuta li tirrispondi ghal mistoqsijiet maghmula lilha, u dan minghajr gustifikazzjoni valida fil-ligi.

L-esponenti jirrileva illi fid-19 ta' Frar 2013, huwa tressaq taht akkuza quddiem il-Qorti Tal-Magistrati Bhala Qorti Istruttorja, fejn *inter alia* gie akkuzat b'korruzzjoni, bi frodi u b'hasil tal-flus, liema proceduri penali huma potenzjalment konnessi mal-Enemalta Corporation Fuel Procurement u mal-mertu tal-investigazzjoni li qed issir mill-Kumitat Permanenti dwar il-Kontijiet Pubblici. Dawn il-proceduri penali ghadhom *sub judice*.

L-esponenti ikkomunika dan l-istat ta' fatt ampjament lill-Kumitat Permanenti dwar il-Kontijiet Pubblici meta, hekk kif interpellat, deher quddiem l-imsemmi Kumitat nhar il-11 ta' Dicembru 2013. F'din is-seduta l-esponenti spjega li ma xtaqx jirrispondi ghal mistoqsijiet maghmula lilu, u nvoka d-dritt tas-silenzju. Hawnhekk, ir-rapprezentant legali tieghu gie mistieden jiehu konjizzjoni tar-*ruling* moghti mill-Onorevoli Speaker tal-Kamra fl-10 ta' Dicembru 2013 (vide kopja hawn annessa u markata bhala Dokument TT3).

F'dan ir-*ruling* l-Onorevoli Speaker jikkwota l-paragrafu 16 tal-linji gwida suriferiti (vide Dokument TT2), u jistabillixxi li f'kaz li xhud joggezzjona ghal xi domanda li tkun saret minn xi Membru tal-Kumitat Permanenti dwar il-Kontijiet Pubblici, huwa jkun obbligat jirrispondi sakemm ma jkunx hemm xi Membru li jitlob li l-kwestjoni tal-ammissibilità tad-domanda tigi riferuta lill-Ispeaker biex jaghti decizjoni li mbaghad tkun torbot lill-kumitat. Inoltre, l-Onorevoli Speaker jikkwota ukoll il-paragrafu 19 tal-istess linji gwida li jghid, "No Witness is to be compelled to answer a question which might incriminate him/her". Hawn l-Onorevoli Speaker jikkonkludi li dawn iz-zewg paragrafi jfissru li xhud huwa mistenni li jixhed quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubblici.

Permezz ta' korrispondenza mibghuta mir-rapprezentanti legali tal-esponenti lic-Chairman tal-Kumitat fil-15 ta' Jannar 2014, gie rilevat li dan ir-*ruling* ma japplikax fir-rigward ta' l-esponenti, izda japplika esklussivament fil-konfront ta' persuna espressament imsemmija fl-istess *ruling* (vide kopja hawn annessa u markata bhala Dokument TT4). Il-persuna imsemmija tibbenefika minn proklama kondizzjonata, u ma gewx mehuda ebda proceduri kriminali kontra taghha in visto ta' tali proklama. Ghalhekk, fl-umli fehma tal-esponenti, din il-persuna hija legalment koperta ghal kwalsiasi domanda li tista' ssirilha, inkriminanti jew le. Ghal kuntrarju, kif inghad *supra*, l-pozizzjoni tal-esponenti hija *toto caelo* differenti, stante li huwa akkuzat b'reati potenzjalment konnessi ma' l-investigazzjoni li qed titmexxa mill-Kumitat.

Fit-3 ta' Frar 2014 l-Onorevoli Speaker tal-Kamra hareg *ruling* iehor, din id-darba fil-konfont tal-esponenti (vide kopja hawn annessa u markata bhala Dokument TT5). F'dan ir-ruling gie esspressament ddikjarat li l-esponenti, "ghandu jidher quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubblici u ghandu jwiegeb id-domandi li jsirulu minn kull membru ta' dan il-Kumitat, inkluz l-istess Chariman interim, u f'kaz ta' domanda li tista' tinkriminah huwa ghandu jitlob li jigi ezentat milli jwiegeb dik id-domanda. U f'kaz li jkun hemm oggezzjoni minn xi membru fis-sens li jekk dik id-domanda tigi mwiegba ma tkunx inkriminanti fil-konfront tal-istess xhud Tancred Tabone, il-Kumitat ghandu allura jitlob direzzjoni mis-Sedja biex taghti d-

decizjoni taghha dwar jekk dik id-domanda li x-xhud ipprefera li ma jwegibx ghax tista' tinkriminah ghandhiex tigi mwiegba jew le."

Permezz ta' korrispondenza ulterjuri mibghuta mir-rapprezentanti legali tal-esponenti lic-Chairman tal-Kumitat fit-13 ta' Frar 2014, gie nnutat li fir-*ruling* tat-3 ta' Frar 2014 fejn gie kkwotat l-Erskine May Parliamentary Practice thalliet barra sentenza rilevanti u importanti ghall-kaz de quo mis-silta citata mill-Onorevoli Speaker (vide kopja ta' l-ittra hawn annessa u markata bhala Dokument TT6). Din l-ahhar sentenza tghid hekk, *"for the treatment of matters sub judice see pp. 441-443, 813"*. Il-qarrej hawn jintbghat jirreferi ghal siltiet ohra fil-materja ta' *sub judice*[1], fejn jinghad is-segwenti: *"Subject to the discretion of the Chair, and to the right of the House to legislate on any matter or to discuss any delegated legislation, matters awaiting the adjudication of a court of law should not be brought forward in debate."*[2] [...] *The Resolution of the House prescribing its practice with regard to matters that are awaiting judgment in the courts includes proceedings in select committees.*[3] [...] ***Committees have suspended inquiries in progress because a witness had been charged with criminal offences related to the subject-matter of the inquiry*** *or have decided not to take evidence from particular witnesses in the course of an inquiry because the committee had been informed that the witnesses would also be witnesses in impending criminal or civil proceedings*[4]*"* (enfasi tal-esponenti).

Fl-umli fehma tal-esponenti, din il-parentesi tghid bla mezzi termini li l-bran citat mill-Onorevoli Speaker fir-*ruling* tat-3 ta' Frar 2014 ma japplikax ghall-kazijiet li huma *sub judice*, izda kif citat supra l-pozizzjoni tal-kazijiet li huma *sub judice,* bhal dik in disamina, hija trattata b'mod differenti. Il-qari komplet tal-branijiet rilevanti mill-Erskine May Parliamentary Practice juri li jekk il-Kumitat Permanenti dwar il-Kontijiet Pubblici

[1] Ibid, pp. 441-443, 813.
[2] Ibid, p. 441.
[3] Ibid, p. 813.
[4] Ibid.

jemmen li x-xhieda tal-esponenti hija rilevanti ghas-soluzzjoni tal-vertenzi taghha, allura l-inkjesta suriferita ghandha tigi sospiza sakemm ikun hemm sentenza definittiva fil-kawza kriminali kontra tieghu.

Fil-25 ta' Frar 2014, l-esponenti rega' gie msejjah jidher quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubblici fit-12 ta' Marzu 2014 (kopja hawn annessa u markata bhala Dokument TT7), ghall-istess ragunijiet moghtija fl-ewwel ittra tal-5 ta' Dicembru 2013 (Dokument TT1 suriferit u anness).

Kif debitament ingunt, l-esponenti deher quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubblici. F'din is-seduta r-rapprezentant legali ta' l-esponenti spjegat li ghar-ragunijiet suriferiti ma ghandux jigi mgieghel jixhed f'din l-inkjesta, u gie nvokat d-dritt ta' silenzju, liema dritt f'dawn ic-cirkostanzi ma ghandux ikun limitat jew ristrett biss ghall-mistoqsijiet it-twegiba ghall-liema jistghu b'xi mod jinkriminaw lill-esponenti. Gie rilevat li minkejja li l-esponenti gie msejjah jidher bhala xhud, is-sustanza tax-xhieda tieghu kienet sejra tkun fuq mertu ta' proceduri li ghadhom *sub judice*. Saret referenza ghall-Erskine May, fejn inghad li skond din l-awtorità (vide supra) lanqas min hu xhud f'proceduri *sub judice* ma ghandu jingieb quddiem tali kumitat biex jixhed, u allura persuna li tressqu kontriha akkuzi potenzjalment konnessi ma din l-inkjesta zgur li ma ghandiex tigi mgieghlha tixhed.

L-esponenti jirrileva illi filwaqt illi d-dritt li ma jigix kostrett jinkrimina ruhu u d-dritt ta' silenzju huma relatati, ma humiex esklussivi. Illi d-dritt ta' silenzju imur oltre d-dritt li ma jinkriminax ruhu u huwa parti fondamentali tad-dritt ta' smigh xieraq. Illi l-akkuzat mhux obbligat li jixhed fi proceduri migjuba kontra tieghu (vide Artikolu 634 tal-Kodici Kriminali, Kap. 9 tal-Ligijiet ta' Malta) u l-ebda xhud ma jista' jkun imgieghel iwiegeb ghal mistoqsijiet, meta t-twegiba tista' ggibu taht process kriminali (vide Artikolu 643 tal-Kodici Kriminali, Kap. 9 tal-Ligijiet ta' Malta).

Bla pregudizzju ghas-suespost u fi kwalunkwe kaz, l-esponenti jirreferi ghas-sentenza tal-Qorti tad-Drittijiet tal-Bniedem fi Stasbourg, fl-ismijiet ***Murray v. United Kingdon*** li tipprovdi s-

segwenti: *"Although not specifically mentioned in Article 6 of the Convention, there can be no doubt that the right to remain silent under police questioning and **the privilege against self-incrimination** are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6. By providing the accused with protection against **improper compulsion by the authorities** these immunities contribute to avoiding miscarriages of justice and to securing the aims of Article 6"*[5] (enfasi tal-esponenti).

Inoltre, is-sentenza tal-Qorti tad-Drittijiet tal-Bniedem fi Stasbourg, fl-ismijiet ***Saunders v. United Kingdom*** tapplika perfettament ghall-kaz in ezami. F'din is-sentenza l-Qorti affermat li, *"[…] bearing in mind the concept of fairness in Article 6, the right not to incriminate oneself cannot reasonably be confined to statements of admission of wrongdoing or to remarks which are directly incriminating. **Testimony obtained under compulsion** which appears on its face to be of a non-incriminating nature - such as exculpatory remarks **or mere information on questions of fact** - may later be deployed in criminal proceedings in support of the prosecution case, for example to contradict or cast doubt upon other statements of the accused or evidence given by him during the trial or to otherwise undermine his credibility. […] It follows that what is of the essence in this context is the use to which evidence obtained under compulsion is put in the course of the criminal trial."*[6].

Di più, fl-ittra suriferita (vide Dokument TT6) ir-rapprezentati legali tal-esponenti irrimarkaw li l-mod li qed jinzammu l-proceduri *de quo* quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubblici, bix-xhieda li qed jinstemghu u bil-fatt li s-seduti jistghu jigi segwiti b'mod audiovisiv, "live" mill-internet qed jikkrea 'prejudicial pre-trial publicity' serju fil-konfront tal-esponenti. F'dan ir-rigward, l-esponeti jilmenta li waqt is-seduti tal-Kumitat Permanenti dwar il-Kontijiet Pubblici intqal kliem li seta' jxellef il-presunzjoni ta' innocenza tieghu. Kaz meta l-presunzjoni tal-innocenza giet certament imxellfa kien

[5] App. No. 18731/91 p. 49, para. 45.
[6] App. No. 19187/91, p. 20, para. 71.

waqt ix-xhieda ta' George Farrugia moghtija quddiem il-Kumitat fil-11 ta' Dicembru 2013. Waqt ix-xhieda tieghu, George Farrugia jghid allegatament li huwa ta lil esponenti s-somma ta' €400,000. Meta mistoqsi mill-Onorevoli Owen Bonnici, *"Imma inti konvint minn dak li qed tghid?",* ix-xhud George Farrugia rrisponda, *"mija fil-mija"*. Hawnhekk l-Onorevoli Owen Bonnici Ministru tal-Gustizzja jiddikjara illi, ***"Li tajthomlu m'għandix dubju assolutament u li ħadhom m'għandix dubju lanqas."*** (Vide estratt mill-minuti tal-laqgha Nru. 29 li saret nhar l-Erbgha, 11 ta' Dicembru 2013, pagna 34, hawn anness u markat Dokument TT8).

Skond l-insenjament tal-Qorti tad-Drittijiet tal-Bniedem fi Stasbourg fis-sentenza ***Butkevicius v. Lithuania***[7] ikkwotata b'approvazzjoni fis-sentenza tal-Qorti Kostituzzjonali fl-ismijiet ***Il-Pulizija vs Dr Noel Arrigo et.*** moghtija fid-29 ta' Ottubru 2003, *"The Court recalls that the presumption of innocence enshrined in Article 6 § 2 of the Convention is one of the elements of a fair criminal trial guaranteed by Article 6 § 1. <u>It will be violated if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved so</u> according to law."*

Fid-dawl tas-suespost, l-esponenti jemmen mhux biss illi s-sejha tieghu sabiex jixhed quddiem il-Kumitat fuq imsemmi tilledi d-dritt tieghu ghas-silenzju, izda li r-*ruling* moghti fit-3 ta' Frar 2014 jilledi d-drittijiet fundamentali u kostituzzjonali tal-esponenti senjatament id-dritt tas-smigh xieraq sancit mill-artikolu 39 tal-Kostituzzjoni ta' Malta u l-artikolu 6 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem, liema Konvenzjoni tifforma parti mill-ligi taghna permezz tal-Att XIV tal-1987 (Kapitolu 319 tal-Ligijiet ta' Malta), stante li d-dritt ghas-silenzju huwa estensjoni ghad-dritt ta' smigh xieraq. L-esponenti jilmenta li li kieku d-dritt ghas-silenzju japplika biss meta jkun interrogat mill-pulizija, izda ma japplikax meta jigi interrogat minn xi awtorità ohra waqt li hemm proceduri penali ghaddejjin fil-konfront tieghu, id-dritt ghas-silenzju tieghu jigi irrizorju bil-konsegwenza li jigi mcahhad mit-tgawdija tad-dritt fondamentali ghas-smigh xieraq.

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[7] App. No. 48297/99 para. 49.

Di più, filwaqt li l-linji gwida suriferiti (vide Dokument TT2) jistipulaw taht paragrafu 19 illi, "No Witness is to be compelled to answer a question which might incriminate him/her", fl-istess waqt il-paragrafu 16 jghid illi f'kaz ta' oggezzjoni maghmula minn xhud ghal mistoqsija tal-Kumitat, ir-*ruling* ta' l-ispeaker fir-rigward jorbot lil Kumitat u konsegwentement lix-xhud. Fl-umli fehma ta' l-esponenti, id-dispozizzjonijiet f'dan iz-zewg paragrafi huma kontradittorji, b'rizultat li jekk jigi mgieghel jaghti x-xhieda tieghu u jirrispondi ghad-domandi tal-Kumitat ser ikun kostrett jiddekadi mid-dritt ghas-silenzju u jigi ghalhekk mcahhad mid-dritt tieghu ghas-smigh xieraq kif protett mill-artikolu 39 tal-Kostituzzjoni ta' Malta u l-artikolu 6 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem.

Intalbet din il-Qorti sabiex:

1. Tiddikjara li s-sejha maghmula lill-esponenti mill-Kumitat Permanenti dwar il-Kontijiet Pubblici fil-5 ta' Dicembru 2013 u fil-25 ta' Frar 2014, fejn gie mitlub jidher quddiem l-istess Kumitat fil-11 ta' Dicembru 2013 u fit-12 ta' Marzu 2014, sabiex jaghti x-xhieda tieghu dwar ir-rapport tal-Awditur Generali intitolat, "An Analysis of the Effectiveness of Enemalta Corporation's Fuel Procurement", u sabiex jirrispondi ghall-mistoqsijiet li jistghu jsirulu in konnessjoni mar-rapport imsemmi tilledi d-drittijiet fundamentali tieghu sanciti fl-artikolu 39 tal-Kostituzzjoni ta' Malta u l-artikolu 6 tal-Konvenzjoni Ewropea ghad-Drittijiet tal-Bniedem.

2. Tiddikjara li r-*ruling* moghti mill-intimat Onorevoli Speaker tal-Kamra tad-Deputat fit-3 ta' Frar 2014 jilledi d-drittijiet fundamentali ta' l-esponenti sanciti fl-artikolu 39 tal-Kostituzzjoni ta' Malta u l-artikolu 6 tal-Konvenzjoni Ewropea ghad-Drittijiet tal-Bniedem.

3. Tiddikjara li l-"Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives, Parliament of Malta" ppubblikat f'Ottubru 2011, b'mod partikolari l-paragrafu 16 li jghid illi f'kaz ta' oggezzjoni maghmula minn xhud ghal mistoqsija tal-Kumitat, ir-ruling ta' l-ispeaker fir-rigward jorbot lil

Kumitat u konsegwentement lix-xhud, jivvjola d-drittijiet fundamentali tieghu sanciti fl-artikolu 39 tal-Kostituzzjoni ta’ Malta u l-artikolu 6 tal-Konvenzjoni Ewropea ghad-Drittijiet tal-Bniedem.

4. Tiddikjara illi f’kull kaz il-fatt li persuna li tkun ghaddejja minn proceduri penali li huma potenzjalment konnessi mal-mertu tal-investigazzjoni li qed issir mill-Kumitat Permanenti dwar il-Kontijiet Pubblici u li d-dritt ta’ silenzju taghha ma jibqax assolut, izda jigi limitat ghall-mistoqsijiet li jistghu fil-kwalita’ taghhom jinkriminaw l-esponenti, jilledi d-drittijiet fundamentali ta’ l-esponenti sanciti fl-artikolu 39 tal-Kostituzzjoni ta’ Malta u l-artikolu 6 tal-Konvenzjoni Ewropea ghad-Drittijiet tal-Bniedem.

5. Tiddikjara li r-*ruling* moghti mill-intimat Onorevoli Speaker tal-Kamra tad-Deputat fit-3 ta’ Frar 2014 huwa null u bla effett fir-rigward ta’ l-esponenti, inkwantu jivvjola d-drittijiet fundamentali tieghu sanciti fl-artikolu 39 tal-Kostituzzjoni ta’ Malta u l-artikolu 6 tal-Konvenzjoni Ewropea ghad-Drittijiet tal-Bniedem.

6. Tiddikjara li l-mod kif qed jinzammu l-proceduri quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubblici, bix-xhieda li qed jinstemghu u bil-fatt li s-seduti jistghu jigi segwiti b’mod audiovisiv mill-internet qed jikkrea ‘prejudicial pre-trial publicity’ serju fil-konfront tal-esponenti, u li l-kliem dikjarat mill- Onorevoli Owen Bonnici fis-seduta tal-11 ta’ Dicembru 2013 quddiem l-istess Kumitat, precizament ***“Li tajthomlu m’għandix dubju assolutament u li ħadhom m’għandix dubju lanqas”***, jilledu d-drittijiet fundamentali ta’ l-esponenti sanciti fl-artikolu 39 tal-Kostituzzjoni ta’ Malta u l-artikolu 6 tal-Konvenzjoni Ewropea ghad-Drittijiet tal-Bniedem.

7. Taghti dawk id-direttivi kollha sabiex jigu sanciti d-drittijiet fundamentali u kostituzzjonali tal-esponenti kif protetti mill-istess Kostituzzjoni u Konvenzjoni.

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

Rat id-dokumenti annessi.

Rat ir-risposta tal-intimati l-Onorevoli Speaker tal-Kamra tad-Deputati et li permezz tagħha eċċepew illi:

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

Fit-tieni lok id-decizjonijiet tal-ispeaker ma humiex sindikabbili mill-Qorti u lanqas huma sindikabbili mill-Qorti l-linji gwida minnhu maghmula u certament u bl-akbar rispett dina l-Onorabbli Qorti ma ghandha l-ebda gurisdizzjoni li tiddikjara xi decizjoni ta' l-Ispeaker bhala nulla jew invalida ghaliex ir-regolament tal-procedura tal-kamra hija fil-gurisdizzjoni insindikabbilli tal-Kamra u kull indhil f'dik il-procedura tammonta ghall-ksur tal-privileggi tal-Kamra.

Inoltre l-Onorevoli Speaker tal-Kamra tad-Deputati Dr. Angelo Farrugia u l-Onorevoli Dr. Jason Azzopardi in kwantu imharrkin in rappresentanza tal-Kamra tad-Deputati ma ghandhomx dik ir-rappresentanza u huma malament imharrkin ghaliex il-Kamra tad-Deputati ma ghandiex *locus standi* fil-Qorti.

Inoltre l-Onorevoli Dr. Jason Azzopardi ma huwiex ic-Chairperson tal-Kumitat tal-Kontijiet Publici imma jippresjedi il-Kumitat biss fil-proceduri dwar ir-rapport tal-awditur fuq il-Enemalta minhabba li c-Chairperson tal-istess kumitat seta kellu konflitt.

Ghalhekk il-procedura hija evidentement monka u inkompleta ghaliex jonqos legittimu kontradittur fil-gudizzju billi l-intimati certament ma humiex legittimi kontradittur f' dan il-gudizzju.

Il-Kamra tad-Deputati u l-kumitati taghha bl-ebda mod bl-agir taghhom ma ivvjolaw xi dritt fondamentali tar-rikorrent u

lanqas huwa mahsub jew hemm il-biza li d-drittijiet fondamentali tar-rikorrent jigu vjolati. Il-Kumitat in kwistjoni huwa moghti l-mansjoni li fl-interess pubbliku jaghmel stharrig f'dak li jirrigwarda l-kontijiet publici ta' Malta u naturalment f'dan l-istharrig huwa ghandu d-dritt li jisma lil kull minn huwa mehtieg biex il-kumitat jista jasal ghall-konkluzjonijiet tieghu lil kull minn il-kumitat jidhirlu li jista jaghtih informazzjoni siwja. Dan il-kumitat jaghmlu fl-interess pubbliku nazzjonali u certament ma huwiex l-interess pubbliku li persuna li tista taghti informazzjoni ma tittellax tixhed. Naturalment dan jsir fir-rispett tad-drittijiet kollha ta' dik il-persuna, inkluz id-dritt, del resto rikonoxxut anke mill-istess Speaker u mill-kumitat li persuna ma tixhiedx fejn bir-risposta taghha tkun tista tinkrimina ruhha. Ma hemm l-ebda hsieb li ebda persuna tiggieghel tirrispondi domain li jistghu jinkriminawha imma naturalment jibqa dejjem l-obbligu ta' persuna li taghti l-informazzjoni mitluba f'affarijiet fejn hija ma tistax tigi inkriminata. Huwa dejjem dritt tax-xhud, rikonoxxut anke fil-linji gwida, li jekk jhoss li risposta tista tinkriminah, iqajjem il-kwistjoni tal-privilegg tieghu li ma jixhidx fejn jista jinkrimina ruhu; ma hemm l-ebda hsieb li jekk isir hekk dan ma jinghatax il-piz mehtieg u li d-decizjoni dwar dan ma tittihidx bil-ghaqal skond il-ligi u fil-pjen rispett tad-drittijiet tax-xhud.

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

a. Ma hemm l-ebda kontestazzjoni dwar il-fatti elenkati fil-paragrafi wiehed sa erba tar-rikors. Dwar il-fatt fil-paragrafu numru erba jigi ccarat li l-proceduri kriminali kondotti quddiem il-Qorti tal-Magistrati huma proceduri distinti u separati minn dak li qieghed jigri fil-Kumitat; u l-mansjoni tal-Kumitat ma hiex li tikkonduci investigazzjoni biex tigi uzata fil-proceduri kriminali; il-mansjoni tal-kumitat hija limitata ghas-sorveljanza tal-kontijiet publici u tas-sanita tal-istess kontijiet. L-ghan ta' dawk il-proceduri ma huwiex il-kondotta ta' proceduri kriminali u lanqas ma hija l-informazzjoni migbura mill-Kumitat intiza biex tintuza fi proceudrii kriminali imma hija intiza biex tintuza mill-Kamra fil-kors ta'

dibattiti taghha u fil-kors ta' dak li taghmel fir-rigward tal-kontijiet publici. Din hija mansjoni tal-Kamra ta' importanza fondamentali ghat-tmexxija tal-pajjiz u ghaz-zamma tad-demokrazija. Huwa ghallhekk precisament li dina ma taqax biex tigi sindikata minn dina l-Onorabbli Qorti.

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

c. Dwar dak li jinghad fil-paragragfu sitta dan assolutament mhux il-kaz; ir-ruling ta' l-ispeaker b' l-ebda mod ma jikser id-drittijiet fondamentali tar-rikorrent u b�Ꞌ l-ebda mod ma jikser id-dritt tar-rikorrent ghall-smiegh xieraq; ir-rikorrent ma huwa qieghed jissubixxi l-ebda process gudizzjarju quddiem il-Kumitat; naturalment hija l-mansjoni tal-Qorti fil-proceduri kriminali pendenti quddiema li tara li jigi assikurat ghax-xhud smiegh xieraq; bir-rispett kollu x' domandi jixtieq il-kumitat jpoggi lix-xhud, hawn rikorrent, hija mera spekulazzjoni la darba sa issa l-ebda domanda ghada ma saret;

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

e. Dwar il-fatt fit-tmien paragrafu dan huwa minnhu, dawk il-proceduri kriminali ma jinteressawx direttament lill-iSpeaker u l-procedura tal-Kumitat

ma hijiex relatata ma dawk il-proceduri kriminali imma hija xi haga kompletament indipendenti minnhom.

f. Illi dwar dak li jinghad fil-paragrafi sussegwenti dawn huma kollha argumenti ta' konvenjenza; certament lis-Speaker jista jara li d-dritt fondamentali ta' xhud sa fejn jikkoncerna d-decizjonijiet li jiehu huwa ma jinkisirx, lis-Speaker ma hux qieghed jghid li d-drittijiet fondamentali tal-individwu ma japplikawx, anzi il-linji gwida minnhu mahluqa huma intizi precisament biex dawk id-drittijiet fondamentali ma jigux mittifsa.

Ghallhekk it-talbiet tar-rikorrent huma kompletament infondati fil-fatt u fid-dritt u huma f'kull kaz prematur u biss frott ta' spekulazzjoni.

Rat is-sentenza preliminari tat-12 ta' Jannar 2017 li permezz tagħha din il-Qorti ċaħdet it-tieni eċċezzjoni preliminari tal-intimati.

Semgħet it-trattazzjoni finali tal-partijiet.

Rat l-atti kollha.

Rat li l-kawza thalliet ghas-sentenza.

Ikkunsidrat illi permezz ta' dawn il-proċeduri, ir-rikorrent qiegħed jitlob lil din il-Qorti ssib illi s-sejħa tiegħu mill-Kumitat Permanenti dwar il-Kontijiet Pubbliċi tal-Kamra tad-Deputati, ir-*Ruling* tal-iSpeaker tal-Kamra tad-Deputati tat-3 ta' Frar 2014 u l-Linji Gwida għax-Xhieda, maħruġa mill-istess Kumitat f'Ottubru 2011 jiksru d-dritt fundamentali tiegħu għal smigħ xieraq kif sanċit permezz tal-artikolu 39 tal-Kostituzzjoni u l-artikolu 6 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem. Huwa qiegħed jitlob ukoll lill-Qorti tiddikjara null u bla effett l-imsemmi *Ruling* tal-iSpeaker fil-konfront tiegħu. Ir-rikorrent jilmenta wkoll minn ksur tad-dritt fundamentali tiegħu għal smigħ xieraq minħabba l-mod li jinżammu s-seduti quddiem l-imsemmi Kumitat u ċioè għaliex jistgħu jiġu segwiti

mill-pubbliku kif ukoll minħabba kumment li għadda fil-konfront tiegħu l-Onorevoli Dottor Owen Bonnici fis-seduta tal-11 ta' Diċembru 2013.

Mill-atti jirriżulta illi r-rikorrent tressaq quddiem il-Qorti tal-Maġistrati (Malta) bħala Qorti Istruttorja, akkużat b'numru ta' reati fid-19 ta' Frar 2013. Il-proċeduri kriminali kontrih għadhom pendenti. Permezz ta' ittra datata 5 ta' Diċembru 2013, ir-rikorrent ġie mitlub jidher quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubbliċi sabiex jagħti x-xhieda tiegħu dwar ir-rapport tal-Awditur Ġenerali intitolat *An Analysis of the Effectiveness of Enemalta Corporation's Fuel Procurement* u sabiex jirrispondi għall-mistoqsijiet li setgħu jsirulu in konnessjoni mal-imsemmi rapport. Ġie mitlub ukoll sabiex jieħu miegħu dawk id-dokumenti li għandu disponibbli għalih relatati mal-każ.

Fil-11 ta' Diċembru 2013, ir-rikorrent deher quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubbliċi. F'din is-seduta huwa ddikjara li ma riedx jirrispondi għall-mistoqsijiet magħmula lilu, u invoka d-dritt għas-silenzju. Ir-rappreżentant legali tiegħu ġie mistieden jieħu konjizzjoni tar-*Ruling* mogħti mill-Onorevoli Speaker tal-Kamra fl-10 ta' Diċembru 2013.

Fit-3 ta' Frar 2014, l-Onorevoli Speaker tal-Kamra tad-Deputati ta *Ruling* ieħor, din id-darba fil-konfront tar-rikorrent, fejn ġie dikjarat espressament li r-rikorrent għandu jidher quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubbliċi u li għandu jwieġeb għad-domandi li jsiruli mill-membri tal-Kumitat, u f'każ ta' domanda li tista' tinkriminah, huwa għandu jitlob li jiġi eżentat milli jwieġeb għal dik id-domanda. F'każ li jkun hemm oġġezzjoni minn xi membru fis-sens li jekk dik id-domanda tiġi mwieġba, ir-rikorrent ma kienx ser jinkrimina ruħu, il-Kumitat kellu jitlob id-direzzjoni tal-Onorevoli Speaker tal-Kamra sabiex jiddeċiedi hu jekk dik id-domanda li r-rikorrent, *qua* xhud, ma riedx iwieġeb għax tista' tinkriminah, għandhiex tiġi mwieġba jew le.

Fir-risposta tagħhom l-intimati jeċċepixxu li mhuwiex minnu li r-rikorrent intalab jixhed dwar fatti li huma relatati mar-reati li

dwarhom huwa jinsab akkużat. Madanakollu, ma ressqu l-ebda prova sabiex jissostanzjaw it-teżi tagħhom.

Flimkien mal-ittra mibgħuta lir-rikorrent, ġiet annessa kopja tal-*Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives, Parliament of Malta*, ippubblikat f' Ottubru 2011. Il-partijiet rilevanti ta' dawn il-linji gwida jaqraw hekk:

> "*Clearly, the underlying principle must be that all protection afforded to witnesses under the Criminal Code CAP 9, the Code of Organisation and Civil Procedure CAP 12 and the Civil Code CAP 16, including protection from incrimination, shall be applicable to witnesses appearing before the Public Accounts Committee.*
>
> *...*
>
> *4. A person who, having been duly served with a copy of the warrant as prescribed in article 4 (recte 3) above, fails, without lawful excuse, to appear before the Committee, or having appeared before the Committee refuses to be sworn, or subject to guideline 19 below, to answer questions, shall be guilty of contempt of the House and shall be liable to the penalties as prescribed in article 11 of the House of Representatives (Power and Privileges) Ordinance (Cap 113).*
>
> *...*
>
> *12. All evidence is taken in public and members of the press can be present during these sessions. These sessions are streamed live on the Parliament's website and a transcript of the sessions are published.*
>
> *...*
>
> *16. Subject to guideline 19 below, if a Witness, personally, or through his/her legal counsel, objects to a question asked by an individual Committee member, he/she is obliged to reply unless any one Member requests that the*

issue of admissibility be referred to the Speaker for his/her decision which decision shall bind the Committee.

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

...

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

...

25. Subject to guideline 19 above, refusing to be sworn or make a solemn affirmation, refusal to answer questions, refusal to produce or destruction of documents in their possession and deliberately attempting to mislead a Committee is a contempt of the House which the House has the power to punish."

Id-disposizzjonijiet rilevanti tal-artikolu 39 tal-Kostituzzjoni jaqraw hekk:

"*(1) Kull meta xi ħadd ikun akkużat b'reat kriminali huwa għandu, kemm-il darba l-akkuża ma tiġix irtirata, jiġi mogħti smigħ xieraq għeluq żmien raġonevoli minn qorti indipendenti u imparzjali mwaqqfa b'liġi.*

....

(5) Kull min jiġi akkużat b'reat kriminali għandu jiġi meqjus li jkun innoċenti sakemm jiġi pruvat jew ikun wieġeb li huwa ħati:

Iżda ebda ħaġa li hemm fi jew magħmula skont l-awtorità ta' xi liġi ma titqies li tkun inkonsistenti ma' jew bi ksur ta' dan is-subartikolu safejn dik il-liġi timponi fuq xi persuna akkużata kif intqal qabel il-piż tal-prova ta' fatti partikolari.

....

(10) Ebda persuna li tgħaddi proċeduri għal reat kriminali ma għandha tkun obbligata li tixhed fil-proċeduri kontra tagħha."

L-ewwel u t-tieni sub inċiż tal-artikolu 6 tal-Konvenzjoni Ewropea, u ċioè dawk id-disposizzjonijiet ta' dan l-artikolu li huma rilevanti għall-każ tal-lum, jaqraw hekk:

"1. *Fid-determinazzjoni tad-drittijiet ċivili u tal-obbligi tiegħu jew ta' xi akkuża kriminali kontra tiegħu, kullħadd huwa ntitolat għal smigħ imparzjali u pubbliku fi żmien raġonevoli minn tribunal indipendenti u imparzjali mwaqqaf b' liġi. Is-sentenza għandha tingħata pubblikament iżda l-istampa u l-pubbliku jistgħu jiġu esklużi mill-proċeduri kollha jew minn parti minnhom fl-interess tal-morali, tal-ordni pubbliku jew tas-sigurta nazzjonali f'soċjeta demokratika, meta l-interessi tal-minuri jew protezzjoni tal-ħajja privata tal-partijiet hekk teħtieġ, jew safejn ikun rigorożament meħtieġ fil-fehma tal-qorti f'ċirkostanzi speċjali meta l-pubbliċita tista' tippreġudika l-interessi tal-ġustizzja*.

2. Kull min ikun akkużat b'reat kriminali għandu jiġi meqjus li jkun innoċenti sakemm ma jiġix pruvat ħati skont il-liġi."

Din il-Qorti diversament presjeduta kellha l-opportunita li titratta mertu simili fil-kawżi fl-ismijiet Francis Portelli et vs L-Onorevoli Speaker tal-Kamra tad-Deputati et u Frank Sammut vs L-Onorevoli Speaker tal-Kamra tad-Deputati et, it-tnejn deċiżi finalment fil-31 ta' Jannar 2017 u kkonfermati mill-Qorti Kostituzzjonali fis-26 ta' Jannar 2018. Dawn il-kawżi kienu jirrigwardaw ċirkostanzi kważi identiċi għall-mertu tal-kawża li qiegħda tiġi deċiża llum.

Permezz tal-ewwel eċċezzjoni tagħhom, l-intimati jeċċepixxu li n-notifika tar-rikors promotur hija nulla għaliex tmur kontra d-dispositiv ta' ordni pubbliku kontenut fl-artikolu 65(3) tal-Kostituzzjoni li trid li atti tal-Qorti ma jiġux notifikati lill-Kamra tad-Deputati u dan huwa privileġġ tal-Kamra.

L-artikolu 65(3) tal-Kostituzzjoni jiddisponi hekk:

"(3) Ma jistgħu jittieħdu ebda proċeduri ċivili jew kriminali kontra xi membru tal-Kamra tad-Deputati għal kliem li jkunu ntqalu quddiem, jew miktuba f'rapport lil, il-Kamra jew kumitat tagħha jew minħabba xi kwistjoni jew ħaġa miġjuba hemm minnu b'petizzjoni, abbozz, riżoluzzjoni, mozzjoni jew xort'oħra."

Din l-eċċezzjoni hija relatata mat-tieni eċċezzjoni tal-intimati, liema eċċezzjoni ġiet miċħuda minn din il-Qorti permezz tas-sentenza preliminari tagħha tat-12 ta' Jannar 2017. Permezz ta' dik id-deċiżjoni, il-Qorti sabet illi r-*Rulings* tal-iSpeaker kif ukoll il-linji gwida għax-xhieda li ser jidhru quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubbliċi huma sindikabbli minnha. Din id-deċiżjoni għaddiet in ġudikat. In kwantu li l-Qorti allura għandha l-ġurisdizzjoni neċessarja sabiex tieħu konjizzjoni tat-talbiet attriċi, isegwi għalhekk illi l-ewwel eċċezzjoni wkoll għandha tiġi miċħuda. Eċċezzjonijiet identiċi għall-ewwel u tieni eċċezzjoni f'din il-kawża ġew miċħuda minn din il-Qorti diversament presjeduta, u kkonfermati mill-Qorti Kostituzzjonali fl-imsemmi każ ta' Francis Portelli et vs L-Onorevoli Speaker tal-Kamra tad-Deputati et.[8]

Permezz tat-tielet eċċezzjoni tagħhom, l-intimati jeċċepixxu li l-Onorevoli Speaker tal-Kamra tad-Deputati Dottor Angelo Farrugia u l-Onorevoli Dottor Jason Azzopardi in kwantu imħarrkin in rappreżentanza tal-Kamra tad-Deputati m'għandhomx dik ir-rappreżentanza u huma malament imħarrkin għaliex il-Kamra tad-Deputati m'għandhiex *locus standi*. L-intimati jkomplu billi jeċċeipixxu li l-Onorevoli Dottor Jason Azzopardi mhuwiex iċ-Chairperson tal-Kumitat Permanenti dwar il-Kontijiet Pubbliċi imma jippresjedi l-imsemmi Kumitat biss fil-proċeduri dwar ir-rapport tal-Awditur Ġenerali fuq l-Enemalta minħabba li ċ-Chairperson tal-Kumitat kellu konflitt. Ikomplu jeċċepixxu li l-proċedura hija għalhekk monka u inkompleta għaliex jonqos leġittimu kontradittur fil-ġudizzju billi l-intimati ċertament mhumiex il-leġittimi kontradittturi.

[8] Sentenza in parte tal-15 ta' Jannar 2015, ikkonfermata mill-Qorti Kostituzzjonali fil-15 ta' Diċembru 2015

Din il-Qorti tibda billi tirrileva li jidher li bi żvista l-intimati jeċċepixxu li l-Onorevoli Dottor Jason Azzopardi ġie mħarrek in rappreżentanza tal-Kamra tad-Deputati meta filfatt huwa ċ-Chairperson tal-Kumitat Permanenti dwar il-Kontijiet Pubbliċi, u l-Onorevoli Dottor Jason Azzopardi, ġie imħarrek, u dan in rappreżentanza tal-imsemmi Kumitat, u mhux in rappreżentanza tal-Kamra tad-Deputati. It-tielet eċċezzjoni tal-intimati sejra allura tiġi kkunsidrata skont kif din il-Qorti temmen li kellha taqra, filwaqt illi r-raba' eċċezzjoni ser tiġi miċħuda.

L-artikolu 51 tal-Kostituzzjoni jistabbilixxi li għandu jkun hemm Parlament magħmul mill-President u Kamra tad-Deputati. L-artikolu 59 imbagħad jiddisponi li:

> *"Meta l-Kamra tad-Deputati tiltaqa` ghal ewwel darba wara xi elezzjoni ġenerali u qabel ma tipproċedi għat-tmexxija ta` xi xogħol ieħor, għandha teleġġi persuna biex tkun l-iSpeaker tal-Kamra; u jekk il-kariga ta` Speaker issir vakanti f'xi żmien qabel ix-xoljiment sussegwenti tal-Parlament, il-Kamra għandha, kemm jista` jkun malajr, teleġġi persuna oħra għal dik il-kariga."*

Din il-Qorti diversament presjeduta fl-imsemmija kawżi ta' Francis Portelli et u Frank Sammut għamlet riferenza għall-Ordnijiet Permanenti tal-Kamra tad-Deputati (Leġislazzjoni Sussidjarja KOST.02) li jirregolaw l-irwol u l-funzjoni tal-iSpeaker. Kif sewwa tirrileva il-Qorti f'dawk il-kawżi, imkien fil-Kostituzzjoni ta' Malta jew inkella fl-Ordnijiet Permanenti tal-Kamra tad-Deputati ma jingħad illi l-iSpeaker jirrappreżenta lill-Kamra tad-Deputati. Jirriżulta għalhekk illi l-intimati għandhom raġun fl-eċċezzjoni tagħhom li l-iSpeaker ġie mħarrek ħażin *qua* rappreżentant tal-Kamra tad-Deputati. Madanakollu, din il-Qorti wkoll issib li xejn ma kien iwaqqaf lir-rikorrent milli jħarrek lill-Onorevoli Speaker tal-Kamra tad-Deputati *ut sic*.

Imiss issa li tiġi kkunsidrata l-posizzjoni taċ-Chairperson tal-Kumitat Permanenti dwar il-Kontijiet Pubbliċi. Il-Kumitat *de quo* huwa regolat permezz tal-artikolu 120E tal-Ordnijiet

Permanenti tal-Kamra tad-Deputati, minn fejn jirriżulta (ir-raba' sub artikolu) li l-President ta' dan il-Kumitat għandu jkun wieħed mill-membri nominati mill-Kap tal-Oppozizzjoni. L-istess kif ingħad fir-rigward tal-iSpeaker tal-Kamra tad-Deputati, iċ-Chairperson tal-Kumitat Permanenti dwar il-Kontijiet Pubbliċi m'għandux ir-rappreżentanza ta' dan il-Kumitat u għalhekk mhuwiex il-leġittimu kontradittur tar-rikorrent fejn ġie mħarrek in rappreżentanza tal-imsemmi Kumitat, imma huwa l-leġittimu kontradittur mħarrek bħala ċ-Chairperson tal-Kumitat Permanenti dwar il-Kontijiet Pubbliċi *ut sic*.

Ma sar l-ebda appell minn dik il-parti tas-sentenza mogħtija minn din il-Qorti diversament presjeduta fil-kawżi ta' Frank Sammut u Francis Portelli et fejn ġie deċiż li l-Onorevoli Speaker tal-Kamra tad-Deputati u ċ-Chairperson tal-Kumitat Permanenti dwar il-Kontijiet Pubbliċi in rappreżentanza tal-Kamra tad-Deputati u tal-imsemmi Kumitat rispettivament m'humiex leġittimi kontradittturi.

Dwar l-aggravju tal-intimati appellanti f'dawk il-proceduri fir-rigward ta' dik il-parti tad-deċiżjoni ta' din il-Qorti diversament presjeduta fil-kawża ta' Francis Portelli fejn ġie misjub illi l-iSpeaker tal-Kamra tad-Deputati u ċ-Chairperson tal-Kumitat Permanenti dwar il-Kontijiet Pubbliċi *ut sic* huma l-leġittimi kontradittturi tar-rikorrenti f'dawk il-kawżi, il-Qorti Kostituzzjonali qalet hekk[9]:

> "*Il-Qorti, iżda, tirrileva li l-leġittimità passiva tal-intimati tiddependi minn natura tat-talbiet u l-premessi tar-rikorrenti fl-att promotur tal-ġudizzju. Ir-rikorrent appellat isostni li r-Ruling mogħti mill-intimat Onorevoli Speaker tal-Kamra tad-Deputati jikser id-dritt fondamentali tiegħu għal smigħ xieraq kif sanċit bl-Artikoli 39 tal-Kostituzzjoni u 6 tal-Konvenzjoni in kwantu jobbligawh iwieġeb għal mistoqsijiet li jsirulu mill-membri tal-Kumitat tal-Kontijiet Pubbliċi li jistgħu jiksrulu d-dritt għal smigħ xieraq.*

[9] Sentenzi tas-26 ta' Jannar 2018

Ir-rikorrent appellant inoltre jsostni li l-linji gwida għax-xhieda maħruġa mill-Kumitat tal-Kontijiet Pubbliċi f'Ottubru 2011 jiksru l-istess drittijiet fondamentali fuq imsemmija in kwantu jobbligawh jirrispondi għal mistoqsijiet li jsirulu mill-membri tal-Kumitat tal-Kontijiet Pubbbliċi li jistgħu jiksrulu d-dritt għal smigħ xieraq.

Konsegwentement l-appellat jitlob li tiġi dikjarata nulla u bla effett fil-konfront tar-rikorrent ir-ruling mogħti mill-Onorevoli Speaker tal-Kamra tad-Deputati tal-Parlament ta' Malta tal-10 ta' Diċembru 2013.

Irriżulta li L-Onorevoli Dr. Jason Azzopardi, bħala Chairman tal-Kumitat Permanenti dwar il-Kontijiet Pubbliċi, huwa risponsabbli għat-tregija tal-proċeduri quddiemu kif ukoll għall-esekuzzjoni ta' kwalunkwe ordnijiet jew direttivi li jisgħu jingħatwlu mill-iSpeaker tal-Kamra tad-Deputati u irrifera lir-rikorrent appellat għar-Ruling li qegħda tiġi impunjata f'dawn il-proċeduri. Inoltre, huwa proprju fuq talba tal-Kumitat Permanenti dwar il-Kontijiet Pubbliċi li r-rikorrenti appellati ntalbu jagħtu x-xhieda tagħhom quddiem l-istess Kumitat (Dok PC8, fol 36) u ġew mill-istess Kumitat riferuti għall-Guide fuq imsemmi li qiegħed jiġi impunjat mir-rikorrenti bħala leżiv tad-drittijiet fundamentali u kostituzzjonali tiegħu.

Il-premess huwa suffiċjenti sabiex jillegittima liċ-Chairman tal-Kumitat imsemmi sabiex iwieġeb għat-talbiet tar-rikorrenti f'dawn il-proċeduri u l-fatt li l-ewwel Qorti ddikjarat lill-iSpeaker bħala wkoll leġittimu kontradittur f'dawn il-proċeduri ma jbiddel xejn minn din il-konklużjoni.

Niġu issa għall-iSpeaker.

Ma hux kontestat li l-Linji Gwida impunjati f'dawn il-proċeduri jorbtu lill-iSpeaker u li r-Ruling li wkoll qiegħed jiġi impunjat f'dawn il-proċeduri ingħata mill-iSpeaker. Dan ukoll hu bizzejjed sabiex jillegittima l-preżenza tal-iSpeaker f'dawn il-proċeduri sabiex iwieġeb għall-pretensjonijiet tar-rikorrenti. Il-fatt li l-iSpeaker għadu ma tax deċiżjoni fil-

materja speċifika li se mai trid tiġi riferita lilu fi stadju ulterjuri tal-proċeduri quddiem il-Kumitat jista' jagħti lok, jekk hekk jirriżulta li jkun il-każ, għal konsegwenzi legali oħra bħal li ma tiġix konstatata ebda leżjoni iżda mhux li l-iSpeaker jinstab nieqes mill-leġittimità passiva f'dawn il-proċeduri.

Barra minn dan kollu, la darba d-deċiżjoni relevanti finali tkun tal-iSpeaker, għall-għanijiet tal-effikaċja tas-sentenza jkun utli li l-iSpeaker ukoll ikun parti."

Għaldaqstant, it-tielet eċċezzjoni tal-intimati ser tiġi milqugħa limitatament kif ingħad.

Il-Qorti ghalhekk tghaddi biex tqis il-mertu ta' dawn il-proceduri.

In linea ta' prinċipju ġenerali, ingħad hekk mill-Qorti Kostituzzjonali fis-sentenza tagħha fl-ismijiet Richard Cuschieri vs Avukat Ġenerali tat-12 ta' Frar 2016:

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

....

Rigward l-interpretazzjoni tar-rikorrent dwar id-dritt ta' persuna akkuzata li tibqa' siekta, issir referenza partikolari ghas-sentenza O'Halloran and Francis v. UK, li permezz taghha l-Qorti Ewropea enuncjat il-principju li d-drittijiet li johorgu mill-Artikolu 6 u, senjatament ghall-kaz odjern, id-dritt li wiehed jibqa' sieket u l-privilegg li persuna ma tigix imgieghla tinkrimina ruhha ma humiex assoluti. F'dak il-kaz gie osservat li:

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

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

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

Fil-każ Ibrahim and Others v United Kingdom tat-13 ta' Settembru 2016, il-Qorti Ewropea tad-Drittijiet tal-Bniedem qalet hekk:

"*(b)* *<u>General approach to Article 6 in its criminal aspect</u>*

The right to a fair trial under Article 6 § 1 is an unqualified right. However, what constitutes a fair trial cannot be the subject of a single unvarying rule but must depend on the circumstances of the particular case (see O`Halloran and

Francis v. the United Kingdom [GC], nos. 15809/02 and 25624/02, § 53, ECHR 2007_III). The Court`s primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings (see, among many other authorities, Taxquet v. Belgium [GC], no. 926/05, § 84, ECHR 2010; and Schatschaschwili v. Germany [GC], no. 9154/10, § 101, ECHR 2015).

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

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

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

…

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

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

thereby contributing to the avoidance of miscarriages of justice and to the fulfilment of the aims of Article 6 (see John Murray, cited above, § 45; Jalloh, cited above, § 100; and Bykov, cited above, § 92).

It is important to recognise that the privilege against self-incrimination does not protect against the making of an incriminating statement per se but, as noted above, against the obtaining of evidence by coercion or oppression. It is the existence of compulsion that gives rise to concerns as to whether the privilege against self-incrimination has been respected. For this reason, the Court must first consider the nature and degree of compulsion used to obtain the evidence (see Heaney and McGuinness v. Ireland, no. 34720/97, §§ 54-55, ECHR 2000-XII; O`Halloran and Francis, cited above, § 55; and Bykov, cited above, § 92). The Court, through its case-law, has identified at least three kinds of situations which give rise to concerns as to improper compulsion in breach of Article 6. The first is where a suspect is obliged to testify under threat of sanctions and either testifies in consequence (see, for example, Saunders, cited above; and Brusco v. France, no. 1466/07, 14 October 2010) or is sanctioned for refusing to testify (see, for example, Heaney and McGuinness, cited above; and Weh v. Austria, no. 38544/97, 8 April 2004). The second is where physical or psychological pressure, often in the form of treatment which breaches Article 3 of the Convention, is applied to obtain real evidence or statements (see, for example, Jalloh, Magee and Gäfgen, all cited above). The third is where the authorities use subterfuge to elicit information that they were unable to obtain during questioning (see Allan v. the United Kingdom, no. 48539/99, ECHR 2002.IX).

Testimony obtained under compulsion which appears on its face to be of a non-incriminating nature, such as exculpatory remarks or mere information on questions of fact, may be deployed in criminal proceedings in support of the prosecution case, for example to contradict or cast doubt upon other statements of the accused or evidence

given by him during the trial, or to otherwise undermine his credibility. The privilege against self-incrimination cannot therefore reasonably be confined to statements which are directly incriminating (see Saunders, cited above, § 69).

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

Il-Qorti tagħmel referenza wkoll għad-deċiżjoni tal-Qorti Ewropea fl-ismijiet Saunders v United Kingdom tas-17 ta' Diċembru 1996. L-applikant f'dak il-każ lmenta minn ksur tad-dritt tiegħu għal smigħ xieraq minħabba li t-traskrizzjoni tad-deposizzjoni li ta quddiem uffiċjali pubbliċi maħtura sabiex jinvestigaw is-soċjeta li tagħha kien direttur u Kap Eżekuttiv, ġiet mgħoddija lill-prosekuzzjoni u sussegwentement intużat kontrih fil-proċeduri kriminali li ttieħdu fil-konfront tiegħu. Il-Qorti Ewropea qalet hekk:

"*The Court recalls that, although not specifically mentioned in Article 6 of the Convention (art. 6), the right to silence and the right not to incriminate oneself are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6 (art. 6). Their rationale lies, inter alia, in the protection of the accused against improper compulsion by the authorities thereby contributing to the avoidance of miscarriages of justice and to the fulfilment of the aims of Article 6 (art. 6) (see the above-mentioned John Murray judgment, p. 49, para. 45, and the above-mentioned Funke judgment, p. 22, para. 44). The right not to incriminate oneself, in particular,*

presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused. In this sense the right is closely linked to the presumption of innocence contained in Article 6 para. 2 of the Convention (art. 6-2).

The right not to incriminate oneself is primarily concerned, however, with respecting the will of an accused person to remain silent. As commonly understood in the legal systems of the Contracting Parties to the Convention and elsewhere, it does not extend to the use in criminal proceedings of material which may be obtained from the accused through the use of compulsory powers but which has an existence independent of the will of the suspect such as, inter alia, documents acquired pursuant to a warrant, breath, blood and urine samples and bodily tissue for the purpose of DNA testing.

In the present case the Court is only called upon to decide whether the use made by the prosecution of the statements obtained from the applicant by the inspectors amounted to an unjustifiable infringement of the right. This question must be examined by the Court in the light of all the circumstances of the case. In particular, it must be determined whether the applicant has been subject to compulsion to give evidence and whether the use made of the resulting testimony at his trial offended the basic principles of a fair procedure inherent in Article 6 para. 1 (art. 6-1) of which the right not to incriminate oneself is a constituent element.

It has not been disputed by the Government that the applicant was subject to legal compulsion to give evidence to the inspectors. He was obliged under sections 434 and 436 of the Companies Act 1985 (see paragraphs 48-49 above) to answer the questions put to him by the inspectors in the course of nine lengthy interviews of which seven were admissible as evidence at his trial. A refusal by the applicant to answer the questions put to him could

have led to a finding of contempt of court and the imposition of a fine or committal to prison for up to two years (see paragraph 50 above) and it was no defence to such refusal that the questions were of an incriminating nature (see paragraph 28 above).

However, the Government have emphasised, before the Court, that nothing said by the applicant in the course of the interviews was self-incriminating and that he had merely given exculpatory answers or answers which, if true, would serve to confirm his defence. In their submission only statements which are self-incriminating could fall within the privilege against self-incrimination.

The Court does not accept the Government's premise on this point since some of the applicant's answers were in fact of an incriminating nature in the sense that they contained admissions to knowledge of information which tended to incriminate him (see paragraph 31 above). In any event, bearing in mind the concept of fairness in Article 6 (art. 6), the right not to incriminate oneself cannot reasonably be confined to statements of admission of wrongdoing or to remarks which are directly incriminating. Testimony obtained under compulsion which appears on its face to be of a non-incriminating nature - such as exculpatory remarks or mere information on questions of fact - may later be deployed in criminal proceedings in support of the prosecution case, for example to contradict or cast doubt upon other statements of the accused or evidence given by him during the trial or to otherwise undermine his credibility. Where the credibility of an accused must be assessed by a jury the use of such testimony may be especially harmful. It follows that what is of the essence in this context is the use to which evidence obtained under compulsion is put in the course of the criminal trial."

Fil-każ in ezami, is-sitwazzjoni hija pjuttost differenti għaliex ir-rikorrent f'dawn il-proċeduri għadu ma xehedx quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubbliċi peress illi qiegħed jinvoka d-dritt għas-silenzju. Madanakollu, il-prinċipji

msemmija mill-Qorti Ewropea fil-każ ta’ Saunders huma rilevanti għall-kawża li għandha quddiemha din il-Qorti llum.

Il-linji gwida in kwistjoni huma ċari meta jistabbilixxu li xhud ma jistax jiġi mġiegħel iwieġeb għal mistoqsija li tista’ tinkriminah. Madanakollu, ir-rikorrent m’huwiex sempliċiment xhud kwalunkwe imsejjaħ sabiex jixhed quddiem il-Kumitat, imma ġie wkoll imressaq quddiem il-Qorti tal-Maġistrati bħala Qorti Istruttorja akkużat b’diversi reati relatati mal-mertu tax-xhieda li qiegħed jintalab li jagħti quddiem l-imsemmi Kumitat. Bħala akkużat, huwa jgawdi mid-dritt għas-silenzju, liema dritt huwa qiegħed jinvoka. Kif qalet din il-Qorti diversament presjeduti fil-kawżi ta’ Frank Sammut u Francis Portelli et ċitati:

> *“Id-dritt ghas-silenzju jissupera l-Art 16 u anke l-Art 19 ghaliex dawn iz-zewg disposizzjonijiet ighoddu biss fil-kaz ta` persuni li jkunu gew mitluba jixhdu izda li ma jkunux akkuzati fi proceduri kriminali li jkunu ghadhom pendenti.*
>
> *Ghalhekk is-sitwazzjoni regolata fl-Art 16 hija diversa ghaliex hemm persuna tkun qeghda toggezzjona ghad-domanda izda mhux ghaliex id-domanda tista` tinkriminah, ghaliex jidhol l-Art 19, izda ghal ragunijiet ohra. F`dak il-kaz biss ghandha tintalab id-direzzjoni tal- Ispeaker.”*

Din il-Qorti diversament presjeduta kompliet billi spjegat li s-sitwazzjoni tar-rikorrenti f’dawk il-proċeduri, hija leżiva tad-drittijiet fundamentali tagħhom għaliex bħala akkużati kienu ser ikunu sfurzati jixhdu jew minaċċjati b’sanzjonijiet fin-nuqqas. L-istess japplika fil-każ tar-rikorrent fil-kawża li għandha quddiemha din il-Qorti llum. Hawnhekk ukoll, ir-rikorrent, minkejja li invoka d-dritt għas-silenzju għaliex jinsab akkużat b’reati kriminali, kien rinfaċċjat bir-*Ruling* tal-iSpeaker u allura kien ser jiġi mġiegħel jixhed.

Bir-rifjut tiegħu li jixhed, ir-rikorrent seta’ jiġi rapportat lill-Kamra tad-Deputati. L-artikolu 11 tal-Kapitolu 13 tal-Liġijiet ta’ Malta (l-Ordinanza dwar il-Privileġġi u s-Setgħat tal-Kamra tad-Deputati) jaqra hekk:

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

Ir-*Ruling* tal-iSpeaker fil-konfront tar-rikorrent effettivament ifisser illi huwa kien ser jiġi mġiegħel jixhed, b'mod illi ma kienx ser jkun salvagwardjat id-dritt tiegħu għas-silenzju.

Din il-Qorti tqis għalhekk illi r-*ruling* tal-iSpeaker li ngħata fit-3 ta' Frar 2014 huwa leżiv għall-jedd ta' smigħ xieraq tar-rikorrent.

Għal dak li għandu x'jaqsam mal-linji gwida, din il-Qorti tgħid illi l-artikolu 19 jitkellem dwar id-dritt tax-xhud li ma jinkriminax ruħu. Il-linji gwida ma jagħmlu l-ebda riferenza għad-dritt għas-silenzju meta x-xhud ikun jinsab ukoll akkużat b'reati kriminali relatati mal-mertu li dwaru jkun qiegħed jintalab jixhed. Jirriżulta għalhekk li l-linji gwida kif dedotti huma wkoll leżivi għad-dritt tar-rikorrent għal smigħ xieraq propju għaliex ma jagħtux kont tal-jedd għas-silenzju li għandu r-rikorrent bħala akkużat.

Il-Qorti Kostituzzjonali, li kkonfermat is-sentenza ta' din il-Qorti diversament presjeduta għal dak li għandu x'jaqsam mal-leżjoni tad-drittijiet fundamentali tar-rikorrenti għal smigħ xieraq, qalet proprju hekk fl-imsemmija kawżi ta' Frank Sammut u Francis Portelli et:

"Ġia ġie stabbilit li proċeduri ta' natura investigattiva sabiex jiġu stabbiliti l-fatti bħal dawk quddiem il-Kumitat Permanenti ma jinkwadrawx fi proċeduri għad-determiazzjoni ta' dritt jew obbligu ċivili jew ta' imputazzjoni kriminali. Il-Qorti fi Strasburgu, iżda, irriteniet li d-dritt kontra l-awtoinkriminazzjoni u d-dritt għas-silenzju li jinsiltu mid-dritt għal smigħ xieraq huma xorta waħda invokabbli mill-individwu fi proċeduri bħal dawn fejn

kontestwalment mal-proċeduri msemmija jkunu qegħdin jittieħdu kontra tiegħu proċeduri tax-xorta li jaqgħu fil-parametri tal-Artikolu 6 tal-Konvenzjoni.

Hekk fil-każ Shannon v. United Kingdom fejn l-applikant kien ġie msejjaħ biex jiġi intervistat minn investigaturi finanzjarji kien ġia ġie imputat mill-pulizija b'reati ta' false accounting u conspiracy to defraud il-Qorti irriteniet li:

"41. .... the requirement for the applicant to attend an interview with financial investigators and to be compelled to answer questions in connection with events in respect of which he had already been charged with offences was not compatible with his right not to incriminate himself. There has therefore been a violation of Article 6 § 1 of the Convention".

Għaldaqstant, fil-proċeduri pendenti quddiem il-Kumitat Permanenti dwar Kontijiet Pubbliċi, ir-rikorrenti għandhom id-drittijiet li ma jiġux kostretti jinkriminaw lilhom infushom u d-dritt tas-silenzju liema drittijiet, kif rajna, jiskaturixxu mid-dritt għal smigħ xieraq u dan in vista tal-fatt li kontestwalment mal-proċeduri quddiem il-Kumitat Permanenti hemm ukoll proċeduri kriminali kontra r-rikorrenti dwar fatti li jidher huma jew jistgħu jkunu relevanti għall-indaġni li qiegħed jagħmel l-istess Kumitat.

Fid-dawl tal-prinċipji premessi din il-Qorti hi msejjħa tiddeċiedi fl- ewwel lok jekk il-Linji Gwida intestati Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives humiex leżivi tad-dritt tar-rikorrenti għal smigħ xieraq.

Il-linja gwida 19 tal-isemmi Gwida kjarament u mingħajr kwalifiki jipprovdi li:
"No witness is to be compelled to answer a question which might incriminate him/her".

Dan ifisser li x-xhud għandu d-dritt li ma jiġix kostrett li jinkrimina ruħu iżda persuna imputata b'reat kriminali ma

għandhiex biss id-dritt li ma tiġix kostretta li twieġeb domandi li jistgħu jinkriminawha iżda għandha addirittura d-dritt għas-silenzju u ċioè li tibqa' siekta tant li "The right not to incriminate oneself is primarily concerned with respecting the will of an accused person to remain silent and presupposes that the prosecution in a criminal case seek to prove their case without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused". Għalhekk id-dritt ewlieni li għandha persuna akkużata hu li tibqa' siekta u d-dritt li ma tweġibx domandi li jistgħu jinkriminawha huwa intiż biex jassigura li d-dritt tal-akkużat għas-silenzju jiġi mħares.

Il-linji gwida in kwistjoni jipprovdu li fil-prinċipju l-persuna msejjħa biex tixhed quddiem il-Kumitat Permanenti hija obbligata li tixhed u għalhekk li ma tibqax siekta u l-unika eċċezzjoni li tipprevedi hi dik li persuna ma tiġix kostretta twieġeb għal domandi li jistgħu jinkriminawha. Dan ifisser li l-Linji Gwida in kwistjoni ma jħarsux id-dritt għas-silenzju ta' persuni imputati b'reat kriminali bħal ma huma r-rikorrenti appellati għalkemm iħarsulhom d-dritt tagħhom li ma jiġix mġiegħla jinkriminaw ruħhom bil-konsegwenza li jinkorru f'sanzjonijiet għal disprezz jekk jagħżlu li jibqgħu siekta.

Għalhekk, in kwantu li l-Linji Gwida jipprevedu sanzjonijiet punittivi għal persuna imputata b'reat kriminali jekk din tagħżel li teżerċita d-dritt tagħha għas-silenzju l-istess Linji Gwida jiksru d-dritt tar- rikorrenti appellati għal smigħ xieraq sanċit bl-Artikolu 39 u 6 tal- Kostituzzjoni u tal-Konvenzjoni rispettivament.

L-istess konsiderazzjonijiet sostanzjalment japplikaw għar-rigward tat-talbiet tar-rikorrenti dwar ir-Ruling tal-iSpeaker Dok. PC5. Huwa minnu li l-istess Ruling ingħata fil-konfront ta' terza persuna li ma hix parti fil-proċeduri tal-lum iżda c-Chairman tal-Kumitat Permanenti dwar il-Kontijiet Pubbliċi kien tal-fehma li ġia ladarba l-mertu tal-punt legali trattat mill-iSpeaker f'dak ir-Ruling huwa identiku għall-punt

sollevat fir-rigward tar-rikorrenti appellati tal-lum allura ma kienx hemm ħtieġa li ssir referenza mill-ġdid lill-iSpeaker fuq l-istess punt. Huwa evidenti, għalhekk, li fil-fehma tal-istess Chairman dak ir-Ruling kien ukoll applikabbli għas-sitwazzjoni tar-rikorrenti appellati f'dawn il-proċeduri.

Ir-Ruling imsemmi jagħmilha ċara li xhud quddiem il-Kumitat Permanenti ma għandux id-dritt li jibqa' sieket tant li fih jingħad li x-xhud għandu jidher quddiem l-istess Kumitat u għandu jwieġeb id-domandi li jsirulu u fil-każ biss ta' domanda li tista' tinkriminah huwa għandu d-dritt li jitlob li jiġi eżentat milli jwieġeb dik id-domanda partikolari. Tant hu hekk li fl-istess Ruling ġie riservat lis-Sedja d-dritt li tiddeċiedi jekk id-domanda li x-xhud "ipprefera" li ma jwiġibx għax tista' tinkriminah għandhiex tiġi mwiegba jew le.

Dan ifisser li dak ir-Ruling ukoll, in kwantu applikabbli għar-rikorrenti appellati, ma jħarisx id-dritt tagħhom għas-silenzju in kwantu persuni imputati b'reat kriminali għalkemm iħarsilhom id-dritt tagħhom li ma jiġux mġiegħla jinkriminaw ruħhom."

Aċċertata l-leżjoni, il-Qorti sejra tordna li r-*Ruling* tal-iSpeaker tal-Kamra tad-Deputati tat-3 ta' Frar 2014, u kull fejn il-linji gwida jirreferu għax-xiehda ta' persuni, m'għandhomx ikunu applikabbli fil-konfront tar-rikorrent fil-kors tal-proċeduri *de quo* li qegħdin jiġu kondotti mill-Kumitat Permanenti dwar il-Kontijiet Pubbliċi.

Ir-rikorrent jilmenta wkoll illi l-mod kif qed jinżammu l-proċeduri quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubbliċi, u ċioè bix-xhieda li qed jinstemgħu u bil-fatt li s-seduti jistgħu jiġu segwiti b'mod awdjoviżiv, *liv*e, mill-internet, qed jikkrea *prejudicial pre-trial pubblicity* serju fil-konfront tiegħu.

Ir-rikorrent jilmenta wkoll illi waqt seduta partikolari tal-imsemmi Kumitat, intqal kliem li seta' xellef il-presunzjoni tal-innoċenza tiegħu. Speċifikament, huwa jirreferi għal meta waqt ix-xhieda ta' George Farrugia mogħtija quddiem il-

Kumitat dakinhar tal-11 ta' Diċembru 2013 fejn Farrugia jgħid li huwa ta somma flus lir-rikorrent, l-Onorevoli Dottor Owen Bonnici għadda s-segwenti kumment: '*Li tajthomlu m'għandix dubju assolutament u li ħadhom m'għandix dubju lanqas.*'

Dwar il-preżunzjoni tal-innoċenza, fil-każ Butkevicius v Lithuania tas-26 ta' Marzu 2002, il-Qorti Ewropea qalet hekk:

> "*The Court recalls that the presumption of innocence enshrined in Article 6 § 2 of the Convention is one of the elements of a fair criminal trial guaranteed by Article 6 § 1. It will be violated if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved so according to law. It suffices, even in the absence of a formal finding, that there is some reasoning to suggest that the official regards the accused as guilty. Moreover, the presumption of innocence may be infringed not only by a judge or court but also by other public authorities (Daktaras v. Lithuania ...). In the above mentioned Daktaras case the Court emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of an offence. Nevertheless, whether a statement of a public official is in breach of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made.*"

L-istess Qorti fil-każ ta' Fatullayev v Azerbaijan deċiża fit-22 ta' April 2010 rriteniet li:

> "*Article 6 § 2, in its relevant aspect, is aimed at preventing the undermining of a fair criminal trial by prejudicial statements made in close connection with those proceedings. The presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of the fair criminal trial that is required by paragraph 1 (see Allenet de Ribemont, cited above, § 35). It not only prohibits the premature expression by the tribunal itself of the opinion that the person "charged with a criminal offence" is guilty*

before he has been so proved according to law (see Minelli v. Switzerland, 25 March 1983, § 38, Series A no. 62), but also covers statements made by other public officials about pending criminal investigations which encourage the public to believe the suspect guilty and prejudge the assessment of the facts by the competent judicial authority (see Allenet de Ribemont, cited above, § 41, and Daktaras v. Lithuania, no.42095/98, §§41-43, ECHR 2000-X). The Court stresses that Article 6 § 2 cannot prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected (see Allenet de Ribemont, cited above, § 38). A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. The Court has consistently emphasized the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (see Khuzhin and Others v. Russia, no. 13470/02, § 94, 23 October 2008, with further references)."

L-awtriċi Karen Reid, b'riferenza għas-sentenza tal-Qorti Ewropea fl-ismijiet Allenet de Ribemont vs France tal-10 ta' Frar 1995, tgħid li:

"*Since the declaration of guilt was made without any qualification or reservation and encouraged the public to believe the applicant guilty in prejudgment of the assessment of the facts by the competent judicial authority, there was a violation, which was not cured by the fact that the applicant was later released by the judge for lack of evidence. The Court emphasizes, however, that statements must be taken in their context, giving some allowance for infelicitous phrasing.*"

Applikati dawn il-prinċipji għall-kawża tal-lum, din il-Qorti tikkunsidra li l-Onorevoli Dottor Owen Bonnici, bil-kummenti

tiegħu, effettivament iddikjara li huwa kien qiegħed iqis lir-rikorrent ħati ta' reati, b'liema reati l-istess rikorrent jinsab akkużat.

L-Onorevoli Bonnici ddikjara kategorikament illi huwa 'ma kellux dubju' li l-flus ir-rikorrent kien 'ħadhom'. Minn dan il-kliem jirriżulta mingħajr l-ebda dubju illi oġġettivament *there is some reasoning to suggest* lill-pubbliku in ġenerali, għaliex is-seduti jistgħu jiġu segwiti mill-pubbliku b'mod awdjoviżiv, 'live' mill-internet, illi l-Onorevoli Dottor Owen Bonnici kien qed jikkunsidra lir-rikorrent ħati tar-reati illi bihom huwa jinsab akkużat fil-proċeduri kriminali pendent fil-konfront tiegħu. Bi kliemu, huwa ma użax *all the discretion and circumspection necessary if the presumption of innocence is to be respected*.

Il-Qorti hija tal-fehma li ma hemm l-ebda leżjoni tad-drittijiet fundamentali tar-rikorrent minħabba l-fatt *per se* li s-seduti tal-Kumitat Permanenti dwar il-Kontijiet Pubbliċi jistgħu jiġu segwiti mill-pubbliku 'live' b'mod awdjoviżiv minn fuq l-internet. Anke l-proċeduri ġudizzjarji, bi protezzjoni stess tal-akkużat, jinżammu miftuħa għall-pubbliku salvi każijiet eċċezzjonali. Il-leżjoni seħħet għaliex uffiċjal pubbliku ddikkjara pubblikament li huwa ma kellux dubju mill-ħtija tar-rikorrent meta l-proċeduri kriminali fil-konfront tal-istess rikorrent għadhom pendenti.

Fil-fehma tal-Qorti, dak illi, fiċ-ċirkostanzi tal-kaz, għandu jsir sabiex jiġi provvdut rimedju għall-leżjoni hawn fuq imsemmija tad-drittijiet fundamentali tar-rikorrent, huwa illi dan il-ġudikat jinġieb a konjizjoni ta' dik il-Qorti illi eventwalment tiġi msejħa sabiex tiddetermina l-proċeduri kriminali inizjati kontra l-istess rikorrent.

Għaldaqstant, il-Qorti qiegħda taqta' u tiddeċiedi l-kawża billi filwaqt illi tilqa' t-tielet eċċezzjoni tal-intimati safejn ġie eċċepit illi l-Onorevoli Speaker tal-Kamra tad-Deputati m'għandux ir-rappreżentanza tal-Kamra tad-Deputati u li ċ-Chairperson tal-Kumitat Permanenti dwar il-Kontijiet Pubbliċi m'għandux ir-rappreżentanza ta' dak il-Kumitat, tiċħad il-bqija tal-eċċezzjonijiet tal-intimati u tilqa' t-talbiet attriċi kif ġej:

1. Tilqa' l-ewwel u t-tieni talba;

2. Tilqa' t-tielet talba safejn il-*Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives, Parliament of Malta* jolqot il-każ tar-rikorrent;

3. Tilqa' r-raba' u ħames talba;
4. Tilqa' s-sitt talba limitatament billi tiddikjara li l-kliem dikjarati mill-Onorevoli Dottor Owen Bonnici fis-seduta tal-11 ta' Diċembru 2013 quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubbliċi, preċiżament il-kliem '*Li tajthomlu m'għandix dubju assolutament u li ħadhom m'għandix dubju lanqas*' jilledu d-drittijiet fondamentali tar-rikorrent sanċiti permezz tal-artikolu 39 tal-Kostituzzjoni u l-artikolu 6 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem;

5. Referibbilment għas-seba' talba, tordna li kull fejn il-linji gwida jirreferu ghax-xiehda ta' persuni, m'għandhomx ikunu applikabbli fil-konfront tar-rikorrent fil-kors tal-proċeduri *de quo* li qegħdin jiġu kondotti mill-Kumitat Permanenti dwar il-Kontijiet Pubbliċi. Tordna wkoll illi kopja ta' din is-sentenza tiġi inserita fl-atti tal-proċess kriminali fil-konfront tar-rikorrent.

Kull parti għandha tbati l-ispejjez tagħha, kemm dawk relattivi għad-deċiżjoni tal-lum u kif ukoll dawk relattivi għad-deċiżjoni parzjali ta' din il-Qorti tat-12 ta' Jannar 2017.

IMHALLEF

DEP/REG